TITLE: FEDERAL REGISTER.

REEL NO: 2 of 7

VOLUME: 51 Issues: 16-36
Pages: 3,165-6,496

DATE: January 24 - February 24, 1986

PUBLICATION NO: 2575

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VOL
51

ISS
16

JA
24

1986

UMI

1-24-86
Vol. 51 No. 16

federal register

Friday
January 24, 1986

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COND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

VOL
51

ISS
16

JA
24

1986

UMI

1-24-86
Vol. 51 No. 16
Pages 3165-3320

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January 24, 1986

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Air Pollution Control
Environmental Protection Agency
Aliens
Employment and Training Administration
Animal Diseases
Animal and Plant Health Inspection Service
Communications Common Carriers
Federal Communications Commission
Endangered and Threatened Species
Fish and Wildlife Service
Fuel Economy
National Highway Traffic Safety Administration
Health Insurance
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Income Taxes
Internal Revenue Service
Labeling
Alcohol, Tobacco and Firearms Bureau
Marketing Agreements
Agricultural Marketing Service
Motor Vehicle Safety
National Highway Traffic Safety Administration
Postal Service
Postal Service

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1986
UMI

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Surface Mining
Surface Mining Reclamation and Enforcement Office

Securities
Securities and Exchange Commission

U.S. Constitution Bicentennial
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Presidential Documents

Title 3—

The President

Proclamation 5432 of January 21, 1986

National Jaycee Week, 1986

By the President of the United States of America

A Proclamation

Nowhere has the spirit of voluntarism shone more brightly than among the members of the United States Jaycees and its affiliated State and local organizations. Currently numbering more than 268,000 members and more than 6,500 chapters in 50 States, Jaycees have actively involved themselves in the life of our communities by providing leadership, rendering services, and returning the biblical hundredfold in a variety of endeavors. Their noteworthy contributions include such humanitarian projects as assistance to the elderly, fundraising for the disadvantaged, cardiopulmonary resuscitation programs, energy conservation, and countless other efforts to address community needs.

The heart and soul of the Jaycee philosophy may be found in its brief 65-word Creed:

"We believe:

That faith in God gives meaning and purpose to human life;

That the brotherhood of man transcends the sovereignty of nations;

That economic justice can best be won by free men through free enterprise;

That government should be of laws rather than of men;

That earth's great treasure lies in human personality;

And that service to humanity is the best work of life."

In recognition of the accomplishments of the United States Jaycees, the Congress of the United States, by Senate Joint Resolution 213, has designated the week beginning January 19, 1986, as "National Jaycee Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning January 19, 1986, as National Jaycee Week, and I call upon the people of the United States to observe that period with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of January, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-1686
Filed 1-22-86; 2:24 pm]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 623]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 623 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 24 through January 30, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 623 (§ 907.923) is effective for the period January 24–30, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on January 21, 1986, at Visalia, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges remains steady. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. The authority citation for 7 CFR 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.923 Navel Orange Regulation 623 is hereby added to read:

§ 907.923 Navel Orange Regulation 623.

The quantities of navel oranges grown in California and Arizona which may be handled during the period January 24, 1986, through January 30, 1986, are established as follows:

(a) District 1: 1,800,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: January 22, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–1711 Filed 1–23–86; 8:45 am]
BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85–129]

Contagious Equine Metritis, Certificate Signature and Endorsement Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations concerning the return to the United States of certain horses which have been temporarily exported from the United States to any country affected with contagious equine metritis (CEM). The amendments clarify the requirements concerning signing or endorsing certain certificates required to accompany such horses upon their return to the United States.

EFFECTIVE DATE: January 24, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Dan Sheesley, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 844AAA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

A document published in the **Federal Register** on October 7, 1985 (50 FR 40801–40802), amended the regulations concerning the return to the United States of certain horses which have been temporarily exported from the United States to any country affected with contagious equine metritis (CEM). The amendments clarify the requirements concerning signing or endorsing certain certificates required to accompany such horses upon their return to the United States.

Comments were solicited for 60 days

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after publication of the amendment. No comments were received. The factual situation which was set forth in the document of October 7, 1985, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The rule clarified certain regulations in Part 92. It has been determined that this clarification will have no impact on affected persons.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have the OMB control number 0579–0069.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 which was published at 50 FR 40801–40802 on October 7, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 16th day of January 1986.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-1528 Filed 1-23-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWA-28]

Alteration of VOR Federal Airway V-181-South Dakota

Correction

In FR Doc. 85-30933 beginning on page 7 in the issue of Thursday, January 2, 1986, make the following correction: In the docket line of the heading, the docket number should appear as it does above.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Permanent Program Amendments From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Kentucky as modifications to the State's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on June 6, 1984, and pertain to existing policies that Kentucky has incorporated by reference into its regulations. The policy statements pertain to underground mines, water quality monitoring, incremental bonding, permanent impoundments, roads, steep slope variances reclamation deferments, coal processing operations, and crushing and loading facilities, overlapping permits, transition permits, and withdrawal and maintenance of mining permit applications.

The amendments were submitted as emergency amendments but have since been replaced by superseding amendments that went through the regular Kentucky amendment process. The superseding amendments were submitted to OSMRE December 17, 1985. The regulations submitted to OSMRE on December 17, 1985 were identical in form and content to those submitted to OSMRE on June 6, 1984.

After providing for public comment and conducting a thorough review of the program amendments, the Director has determined that the amendments meet the requirements of SMCRA and the Federal regulations and is approving the amendments, with certain exceptions which will be discussed below. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement these actions.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: January 24, 1986.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. The Kentucky program was conditionally approved by the Secretary of the Interior subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in May 16, 1982 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 16, 1982 **Federal Register.**

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Submission of Program Amendments

On June 6, 1984, Kentucky advised OSMRE of certain revisions to the Kentucky program. These modifications incorporate program guidance and policy statements issued by the Kentucky National Resources and Environmental Protection Cabinet (NREPC) into approved regulations of the Kentucky regulatory program.

Kentucky submitted the proposed amendment on June 6, 1984. OSMRE published a notice in the **Federal Register** on October 22, 1984 (49 FR 41262) announcing receipt of the amendment and inviting public comment on its adequacy. The public comment period ended November 21, 1984. The public hearing scheduled for November 16, 1984 was not held because no one requested an opportunity to testify.

The amendments were originally submitted as emergency amendments, but have since been superseded by non-emergency rules, which were submitted to OSMRE on December 17, 1985. The regulations submitted to OSMRE on December 17, 1985 were identical in form and content to those submitted to OSMRE on June 6, 1984.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Kentucky on June 6, 1984 and December 17, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII, with the exception of certain policy documents which are discussed below.

The regulations adopted by Kentucky incorporated by reference program guidance and policy statements issued by NREPC concerning statutory and regulatory requirements of the Kentucky program for the regulation of surface coal mining and reclamation operations. The program guidance and policy statements being made a part of the Kentucky program through this rulemaking were applicable during the transition period from the interim to permanent regulatory program or are currently being utilized by NREPC in the implementation of the Kentucky program. In this regard, the material being incorporated by reference does not represent new requirements of the Kentucky program.

The program guidance documents and policy statements that are being approved for incorporation by reference as part of the regulation change, will be listed with a brief description of their contents.

Unless specifically stated in the findings below, all policy statements listed below are found to be consistent with the findings made by the Secretary and the Director in the approval of the Kentucky State regulatory program. Only the documents that are being disapproved will be discussed at length.

Since the submission of these amendments, Kentucky has been advised by OSMRE of required amendments to its program necessitated by Federal rule changes (Administrative Record No. KY–622). As the required amendments are submitted, it may be necessary for Kentucky to amend some of the program guidance documents and policy statements being incorporated by today's action. In those instances where Kentucky has already begun the process of amending its program in response to OSMRE's requirements the affected policy statements are noted in the discussion below. Therefore, the regulation changes and incorporations are approved as they apply to the approved Kentucky program. Changes may be required as Kentucky amends that program.

Title 405 KAR 1:015

Kentucky rule 405 KAR 1:015 pertains only to interim program permits and two-acre permits. The rule incorporates by reference the following Reclamation Advisory Memoranda (RAM) and Secretarial Order.

(1) RAM #10: "a) Existing Underground Coal Mines; Time Extension for Application for Permit, b) Supplemental Mine Map Required for Small Operators", March 1, 1979.

(2) RAM #14: "Reporting Results of Water Quality Monitoring," August 3, 1979.

(3) RAM #18: "Incremental Bonding," March 6, 1980.

(4) RAM #22: "Approval of Permanent Water Impoundments," May 8, 1980.

(5) RAM #23: "Retention of Roads," May 23, 1980.

(6) RAM #24: Also identified as #81–01, "AOC Variances on Steep Slopes," March 19, 1981.

(7) RAM #27: Also identified as #81–04, "Reclamation Deferments," April 29, 1981. A statement on page 3 under coal marketing problems indicates that such deferments may be given for a "single" period of six (6) months. Amendments submitted by NREPC on August 3, 1984 and modified on October 12, 1984 and approved by OSMRE on May 30, 1985 (50 FR 22999) provide that reclamation deferments may be renewed for additional six-month periods up to a maximum of 30 months.

(8) RAM #33: "Coal Processing Operations and Crushing and Loading Facilities," April 27, 1982. RAM #33 concerns coal processing operations and crushing and loading facilities and is dated April 27, 1982. The Director, in a previous action on September 17, 1985, disapproved this memorandum (50 FR 37656). The Director found that the RAM was less stringent than Section 701(28) of SMCRA and less effective than 30 CFR 700.5 and 701.5 insofar as it related to KRS 350.060(22) which the Director also disapproved in the same **Federal Register** notice. The Director found the RAM to be inconsistent with the Round I decision of the District Court in *In Re: Permanent Surface Mining Regulation Litigation II,* wherein the court held that facilities which in any way leach, chemically process or physically process coal should be regulated even when located away from the mine site and even if they do not separate coal from its impurities.

Kentucky has recently submitted a proposed amendment to its program which would render RAM #33 null and void (Administrative Record No. KY–680). This program amendment will be the subject of a separate rulemaking by OSM.

(9) RAM #56: "Overlapping Permits," December 1, 1982.

(10) RAM #75: "Permanent Program Performance Standards Take Effect March 16, 1984 on Transitioning Operations," March 12, 1984.

(11) RAM #78: "Departmental Policies: Withdrawal and Maintenance of Mining Permit Applications," April 23, 1984.

(12) Secretarial Order: "In Re: Steep Slope Remining," September 19, 1983.

The Director finds that Kentucky regulation Section 405 KAR 1:015 and the guidance documents and policy statements incorporated in the Kentucky program by adoption of the regulation with the exception of RAM # 33 discussed above are consistent with the findings issued by the Secretary and the Director in approving the Kentucky program. The incorporation of RAM # 33 into the Kentucky regulations is inconsistent with the decision made by

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the Director on September 17, 1985 (50 FR 37656).

Title 405 KAR 3:015

Kentucky rule 405 KAR 3:015 also applies only to interim sites and two acre permits and incorporates by reference nine of the RAM's listed under 405 KAR 1:015. These RAM's are as follows: RAM #10, RAM #14, RAM #22, RAM #24, RAM #33, RAM #56, RAM #75, and RAM #78. The subject area and dates of issue for these RAM's are listed under the discussion of Title 405 KAR 1:015.

For the reasons stated under the findings on Title 405 KAR 1:015 the Director has previously disapproved RAM # 33 insofar as it implements KRS 350.060(22) which the Director has also disapproved. The Director finds that Kentucky regulation Section 405 KAR 3:015 and the guidance documents and policy statements incorporated in the Kentucky program by adoption of the regulation are consistent with the findings issued by the Secretary and the Director in approving the Kentucky program with the exception of RAM # 33 discussed previously.

Title 405 KAR 7:015

Kentucky rule 405 KAR 7:015 which applies to surface coal mining and reclamation operations under the Kentucky permanent regulatory program incorporates by reference 21 RAM's, and additional guidance documents, manuals and reference documents.

(1) RAM #33: "Coal Processing Operations and Crushing and Loading Facilities," April 27, 1982.

(2) RAM #35: "Permanent Program Transition Application," May 14, 1982.

(3) RAM #46: "Status Report on Transition Application Review," August 25, 1982.

(4) RAM #48: "Lands Unsuitable for Mining Program Information Resource Center," September 14, 1982.

(5) RAM #53: "Procedures and Priorities for Review of Transition Comprehensive Applications," November 17, 1982.

(6) RAM #55: "Initial Completeness Requirements for Transition Comprehensive Applications," December 1, 1982.

(7) RAM #56: "Overlapping Permits," December 1, 1982.

(8) RAM #57: "Applicant Changes to Transition Applications," December 1, 1982.

(9) RAM #58: "Priority I Deadline for Sediment Structure Compliance Demonstrations," February 14, 1983.

(10) RAM #62: "Extension of Priority II Technical Submission Date," April 12, 1983.

(11) RAM #63: "Submission of Sediment Structure Compliance Demonstration Data and Other Technical Data," April 22, 1983.

(12) RAM #64: "Certificate of Liability Insurance Update," June 10, 1983. Kentucky has recently submitted an amendment which would delete RAM # 64 from 405 KAR 7:015 (Administrative Record No. KY–665). This program amendment will be the subject of a separate rulemaking by OSM.

(13) RAM #65: "Submission of Transitioned Application, Priority II, III, and IV Applications," June 10, 1983.

(14) RAM #66: "Submission of Sediment Pond Compliance Demonstrations for Priority I Transitioning Permits," August 5, 1983.

(15) RAM #68: "Submission of Priority II Data," September 23, 1983.

(16) RAM #72: "Submission of Technically Complete Applications, Priority III and IV," November 29, 1983.

(17) RAM #73: "Delayed Filing of Performance Bonds on Technically Acceptable Applications for Transitioning Permanent Program Permits," February 6, 1984.

(18) RAM #75: "Permanent Program Performance Standards Take Effect March 16, 1984 on Transitioning Operations," March 12, 1984.

(19) RAM #76: "Revision to RAM #73: Maximum Period of Bond Deferral Reduced from 5 Years to 3 Years," April 2, 1984.

(20) RAM #77: "Reinstatement of Small Operator Assistance," April 2, 1984.

(21) RAM #78: "Departmental Policies: Withdrawal and Maintenance of Mining Permit Applications," April 23, 1984.

(22) Technical Reclamation Memorandum (TRM) #1, "Existing Structures," October 22, 1982.

(23) TRM #9, "Revegetation Standards for Success," February 1, 1983.

(24) "Penalty Assessment Manual," July 1983.

(25) "Standard Methods for the Examination of Water and Wastewater," fourteenth edition, 1976. Prepared by American Public Health Association, American Water Works Association, and Water Pollution Control Federation.

(26) "Methods for Chemical Analysis of Water and Wastes," March 1979, U.S. Environmental Protection Agency.

(27) "Soil Taxonomy," Agriculture Handbook 436, 1975, U.S.D.A.—Soil Conservation Service.

(28) "Soil Survey Manual," Agriculture Handbook No. 18, 1951, U.S. Department of Agriculture.

(29) "ASTM STANDARD D388–77, Standard Specification for Classification of Coal by Rank," 1977, American Society for Testing and Materials.

(30) "Environmental Criteria for Electric Transmission Lines," 1970, U.S. Department of the Interior, U.S. Department of Agriculture.

(31) REA Bulletin 61–10, "Protection of Bald and Golden Eagles from Powerlines," 1972 U.S. Department of Agriculture.

(32) Technical Release No. 60, "Earth Dams and Reservoirs," 1976, U.S.D.A.—Soil Conservation Service.

(33) "Kentucky Standard and Specification for Ponds (378)", 1978 U.S. Soil Conservation Service.

(34) ANSI S1.4–1971 "Specification for Sound Level Meters," 1971, American National Standards Institute, Inc.

(35) AASHTO T99–74, "Standard Methods of Test for the Moisture-Density Relations of Soils using 5.5 lb. (2.5 Kg) Rammer and a 12 in. (305 mm) Drop," 1974, American Association of State Highway and Transportation Officials.

(36) Permit Application Review Procedure (PARP) #2, "Lands within 100 feet, measured horizontally, of a cemetery," April 18, 1983.

(37) PARP #6, "Advertising Schedule Variance, "July 29, 1983.

(38) PAPR #11, "Condition of Issuance for Transitioning Underground Permits," November 15, 1983.

(39) Department Policy Memorandum #81–003, "Conflict of Interest," June 19, 1981.

For the reasons stated previously in this notice, the Director has disapproved RAM #33 insofar as it implements KRS 350.060(22) which the Director has also disapproved.

The Director finds that Kentucky regulation Section 405 KAR 7:015 and the guidance documents, policy statements and reference works incorporated in the Kentucky program by adoption of the regulation are consistent with the findings issued by the Secretary and Director in approving the Kentucky program with the exception of RAM #33.

IV. Disposition of Public Comments

Disclosure of Federal agency comments is made pursuant to SMCRA § 503(b) (1) and (2) and 30 CFR 732.17(h)(10)(i). Of the Federal agencies invited to comment, the Environmental Protection Agency, by telephone, responded that some to the technical methodology documents referenced in the Kentucky regulations have been replaced by more recent versions. OSMRE agrees with the comment made by EPA. Kentucky will update appropriate technical document references in the course of its regulation review process currently underway.

Thomas J. FitzGerald, Attorney at law, submitted comments on behalf of the Kentucky Governmental Accountability Project of the Kentucky Resources Council, The Sierra Club, Cumberland Chapter, Joan and Mary DeBord, and Preston and Madaline Alexander.

Mr. FitzGerald stated that the commenters strongly object to incorporation of RAM #33 in the approved Kentucky program. He said that the RAM was in conflict with Judge Flannery's decision in Round I of *In Re: Permanent Surface Mining Regulation Litigation II*, because the RAM provides that crushing and screening facilities will be treated like loading facilities and regulated only if at or near the mine site. The commenter stated that the District Court in its Round I decision has ruled that coal crushing and screening facilities are clearly within the scope of "surface coal mining operations" as defined by SMCRA Section 701(28), and subject to regulation regardless of proximity to a mining operation.

The Director agrees with this observation and has previously disapproved RAM #33 (September 17, 1985, 50 FR 37656). Its incorporation in Kentucky's regulation has also been disapproved.

Comments were also submitted on behalf of the Kentucky Coal Association. The commenter said that OSMRE should not rule on any State program amendment until a final judgment is rendered in the courts of the federal regulations or until OSMRE promulgates new regulations. Except as noted in the Findings section of this notice the guidance documents and policy statements being incorporated by the Kentucky regulation changes are unaffected by recent court decisions on the revisions of the Federal regulations in 30 CFR Chapter VII. The incorporated material that has been utilized in the implementation of the approved Kentucky program does not reflect new requirements being incorporated in the Kentucky program but rather codifies existing policies and procedures. The commenter also stated that Kentucky should be required to publish the entire proposed regulation rather than be allowed to incorporate parts by reference, because such incorporation serves to confuse the regulated community and the public. Through its rulemaking process the NREPC afforded both the regulated community and the public the opportunity to comment on the revised Kentucky regulations and the material being incorporated in the Kentucky program by reference. OSMRE has no requirement which would limit the incorporation of material by reference into State programs and cannot impose such a requirement on Kentucky.

V. Director's Decision

The Director, based on the above findings, is approving the amendments to the Kentucky program that were submitted to OSMRE on June 6, 1984 and December 17, 1985 with the exception of the incorporation by reference of RAM #33, "Coal Processing Operations and Crushing and Loading Facilities," April 27, 1982. The Director is amending Part 917 of 30 CFR Chapter VII to reflect approval of the above State program modifications.

VI. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 16, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 917.15 is amended by adding a new paragraph (n) as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(n) The following amendments submitted to OSMRE on June 6, 1984 and December 17, 1985, are approved effective January 24, 1986: Revisions to the Kentucky Administrative Regulations adding 405 KAR 1:015, 405 KAR 3:015 and 405 KAR 7:015 except the incorporation by reference of RAM #33 "Coal Processing Operations and Crushing and Loading Facilities," dated April 27, 1982 in 405 KAR 7:015.

[FR Doc. 86–1568 Filed 1–23–86; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A–10–FRL–2959–4]

Standard of Performance for New Stationary Sources; Delegation to the Oregon Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS).

The Oregon Department of Environmental Quality (DEQ) on October 15, 1985, requested EPA to delegate to DEQ the authority to implement and enforce additional source categories for NSPS. EPA granted the request on dated December 4, 1985. DEQ now has the authority to enforce the additional source categories as approved in their OAR 340–25–510 to 690. This notice will amend the February 20, 1976, December 3, 1981, September 3, 1982, September 27, 1983, and October 12, 1984 and July 13, 1973 delegations.

EFFECTIVE DATE: December 4, 1985.

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ADDRESSES: The relative material in support of this delegation may be examined during normal business hours at the following locations: Air Programs Branch (10A–85–19), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Mark H. Hooper, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–1949, FTS: 399–1949.

SUPPLEMENTARY INFORMATION: On November 11, 1975, the Regional Administrator of EPA, Region 10 delegated to the State of Oregon the authority to implement and enforce New Source Performance Standards (NSPS) for 13 categories of stationary source as promulgated by EPA prior to January 1, 1975. This delegation was published in the **Federal Register** on February 1, 1976. Additional delegations were made on December 3, 1981 (46 FR 62066), September 3, 1982 (47 FR 38902), September 27, 1983 (48 FR 46535) and October 12, 1984 (49 FR 40031).

DEQ in a letter dated October 15, 1985, requested additional delegation of seven source categories under NSPS. The letter granting this additional delegation of authority to DEQ was dated December 4, 1985, and is as follows:

Fred Hansen, Director, Department of Environmental Quality, P.O. Box 1760, Portland, Oregon 97207

Dear Mr. Hansen: On October 15, 1985, you requested that EPA extend the delegation of authority to enforce seven additional source categories under New Source Performance Standards (NSPS). We have reviewed that request and hereby delegate to ODEQ authority to enforce the following categories:

Steel Plant Electric Air Furnaces and Argon-Oxygen Decarburization Vessels (Subpart AAa)
Lime Manufacturing Plants (Subpart HH)
Vinyl and Urethane Coating and Printing (Subpart FFF)
Leaks at Refineries (Subpart GGG)
Synthetic Fiber (Subpart HHH)
Petroleum Dry Cleaners (Subpart JJJ)
Fiberglass Insulation Plants (Subpart PPP)

This delegation is subject to the conditions outlined in the original letter of delegation dated November 11, 1975, and published in the **Federal Register** on February 20, 1976 (41 FR 7749).

A Notice announcing this delegation will be published in the **Federal Register** in the future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the Federal NSPS from sources located in the State which were previously sent to EPA will now be sent to the State agency.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objection within 10 days of the date of receipt of this letter, the State will be deemed to have accepted all the terms of the delegation. In addition, EPA hereby delegates to DEQ the authority to enforce revisions to NSPS which have been promulgated through March 22, 1985.

An advance copy of this **Register** is enclosed for your information.

Sincerely,

Ernesta B. Barnes,

Regional Administrator.

Enclosure

This notice is being published to notify the public that a delegation of authority under NSPS has occurred.

(Section 110, Clean Air Act 42 U.S.C. 7410(a) and 7502)

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, and zinc.

Dated: December 4, 1985.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 86–1554 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 60 and 61

[A–10–FRL–2906–2]

Standard of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation to the Washington Department of Ecology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 111(c) and section 112(d) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS), and Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

The State of Washington Department of Ecology (WDOE) on April 1, 1985, requested EPA to delegate to WDOE the authority to implement and enforce additional source categories for both NSPS and NESHAP. EPA granted the request on dated September 23, 1985. WDOE now has the authority to enforce the additional source categories as approved in their WAC 173–400–115 and WAC 173–400–075. This delegation will amend the April 1, 1975, July 7, 1977, May 1, 1981, August 24, 1983 and July 13, 1973 **Federal Register** notices.

EFFECTIVE DATE: September 23, 1985.

ADDRESSES: The relative material in support of this delegation may be examined during normal business hours at the following locations: Air Programs Branch (10A–85–18), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT: Mark H. Hooper, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–1949, FTS: 399–1949.

SUPPLEMENTARY INFORMATION: On February 28, 1975, the Regional Administrator of EPA, Region 10 delegated to the State of Washington Department of Ecology (WDOE) the authority to implement and enforce New Source Performance Standards (NSPS) for 13 categories of stationary sources as promulgated by EPA prior to January 1, 1975 and three categories for NESHAP or promulgated prior to June 1, 1974. This delegation was published in the **Federal Register** on April 1, 1975 (40 FR 14632). Additional delegations were made on July 7, 1977 (42 FR 55492), May 1, 1981 (46 FR 27173), August 24, 1982 (47 FR 38982), and July 13, 1983 (48 FR 32075).

WDOE in a letter dated April 1, 1985 requested additional delegation of eight source categories under NSPS and one source category under NESHAP. The letter granting this additional delegation of authority to WDOE was dated September 1985 and is as follows:

Andrea Beatty Riniker, Director, Department of Ecology, Olympia, Washington 98504

Dear Ms. Riniker: On April 1, 1975 you requested that EPA extend the delegation of authority to enforce eight additional source categories under New Source Performance Standards (NSPS) and one source category under National Emission Standards for Hazardous Air Pollutants (NESHAP) as granted to the Department of Ecology (WDOE) on February 28, 1975. We have reviewed that request and hereby delegate to WDOE authority to enforce the following categories:

NSPS

Metallic Mineral Processing Plants (Subpart LL)
Pressure Sensitive Tape & Label Surface Coating Operations (Subpart RR)
SOCMI Equipment Leaks (VOC) (Subpart VV)
Beverage Can Surface Coating Operations (Subpart WW)
Bulk Gasoline Terminals (Subpart XX)
Flexible Vinyl & Urethane Coating & Printing (Subpart FFF)
Petroleum Refineries-Compressors & Fugitive Emission Sources (Subpart GGG)
Synthetic Fiber Production Facilities (Subpart HHH)

NESHAP

Benzene-Fugitive Emission Sources Storage Tanks (Subpart J)

This delegation is subject to the conditions outlined in the original letter of delegation dated February 28, 1975 and published in the **Federal Register** on April 1, 1975 (40 FR 14632).

A Notice announcing this delegation will be published in the **Federal Register** in the future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the federal NSPS from sources located in the State which were previously sent to EPA will now be sent to the State agency.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within 10 days of the date of receipt of this letter, the State will be deemed to have accepted all the terms of the delegation. In addition, EPA hereby delegates to WDOE the authority to enforce revisions to NSPS and NESHAP which have been promulgated through October 1, 1984.

An advance copy of this **Register** is enclosed for your information.

Sincerely,

Ernesta B. Barnes,

Regional Administrator.

Enclosure

cc: M. Hoyles

This notice is being published to notify the public that a delegation of authority under NSPS and NESHAP has occurred.

List of Subjects

40 CFR Part 60

Intergovernmental relations, Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, and Zinc.

40 CFR Part 61

Intergovernmental relations, Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Authority: 42 U.S.C. 7401–7642.

Dated: September 23, 1985.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 86–1558 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 61

[A–10–FRL–2959–5]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Local Air Agency in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 112(d) of the Clean Air Act permits EPA to delegate to States the authority to implement and enforce the standards set out in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

The State of Washington Department of Ecology (WDOE) requested EPA to delegate to the Benton-Franklin-Walla Walla Counties Air Pollution Control Authority (BFWWCAPCA) the authority to implement and enforce NSPS category Subpart M (asbestos) on October 4, 1985. EPA granted the request on October 31, 1985. BFWWCAPCA now has the authority to enforce Subpart M (asbestos) as set forth in 40 CFR Part 61.

EFFECTIVE DATE: October 31, 1985.

ADDRESSES: The relative material in support of this delegation may be examined during normal business hours at the following locations: Air Programs Branch (10A–85–19), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Mark Hooper, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–1949, FTS: 399–1949.

SUPPLEMENTARY INFORMATION: Pursuant to section 112(d) of the Clean Air Act, as amended, the Regional Administrator of Region 10, EPA, delegated to the State of Washington Department of Ecology (WDOE) on February 28, 1975, the authority to enforce the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos. The delegation was announced in the **Federal Register** on April 1, 1975 (40 FR 14632).

On October 4, 1985, WDOE requested approval of a delegation to the Benton-Franklin-Walla Walla Counties Air Pollution Control Authority the authority to enforce the NESHAP for asbestos (Subpart M) and on October 31, 1985, the Regional Administrator concurred in the following letter:

Andrea Beatty Riniker, Director, Department of Ecology, Olympia, Washington 98504

Dear Ms. Riniker: On October 4, 1985, a request to subdelegate enforcement of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos to the Benton-Franklin-Walla Walla Counties Air Pollution Control Authority (BFWWCAPCA) was received. We have reviewed that request and hereby grant the subdelegation to the BFWWCAPCA.

This delegation is subject to the conditions outlined in the original letter of delegation dated February 28, 1975 and published in the **Federal Register** on April 1, 1975 (40 FR 14632).

A Notice announcing this delegation will be published in the **Federal Register** in the future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the federal NSPS from sources located in the State which were previously sent to EPA will now be sent to the State agency.

Since this delegation is effective immediately, there is no requirement that the State or local agency notify EPA of its acceptance. Unless EPA receives from the State of local agency written notice of objections within 10 days of the date of receipt of this letter, the State or local agency will be deemed to have accepted all the terms of the delegation.

An advance copy of this **Register** is enclosed for your information.

Sincerely,

Ernesta B. Barnes,

Regional Administrator.

Enclosure

This notice is being published to notify the public that a delegation of authority under NESHAP has occurred.

Authority: Section 112(d) of the Clean Air Act, as amended. (42 U.S.C. 7401–7642)

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: January 8, 1986.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 86–1555 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2002

Regulations on Donations

AGENCY: Commission on the Bicentennial of the United States Constitution.

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ACTION: Interim rule with request for comments.

SUMMARY: These regulations set forth general provisions governing the authority of the Commission to solicit, accept, determine the value, use and dispose of donations of money, property and personal services. Pub. L. 98–101, 97 Stat. 721, requires the Commission to prescribe regulations under which the Commission may accept donations of money, property or personal services, and further requires that these regulations include procedures for determining the value of donations of property or personal services. The intended effect is to clarify for donors the status and purpose of donations and to establish guidelines within the Commission for receipt and recording of donations.

DATES: Interim rule effective January 13, 1986; comments must be received on or before February 24, 1986.

ADDRESS: Comments should be mailed or delivered to the General Counsel of the Commission, 734 Jackson Place NW., Washington, DC 20503. Comments received may also be inspected at this address between 9:00 a.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, (202) USA–1787.

SUPPLEMENTARY INFORMATION:

Background

These regulations were approved by the Commission on November 25, 1985 as an interim rule to govern the handling of donations during the organizational phase of Commission operations. It is intended that the regulations will be published as a final rule following consideration of comments received and further review by the Commission during February 1986.

Classification

This is not a major rule under E.O. 12291 since it is not likely to have any effect on the economy, on costs or prices, or on competition, employment, investment, productivity, innovation or the ability of U.S. based enterprises to compete with foreign-based enterprises. A regulatory analysis is not required for this rulemaking. The rule has no effect on the environment and an environmental impact statement under the National Environmental Policy Act is not required.

Statutory authority

This regulation is mandated by section 5(h) of Pub. L. 98–101; 97 Stat. 719, 721. No previous regulation has been issued. The principal draftsman for this regulation was Joseph B. McGrath, General Counsel of the Commission.

Request for Comments

A 30 day public comment period ending February 24, 1986 has been provided for the purpose of receiving comments and recommendations for improvement of the regulation prior to publication of a final rule. Comments should be mailed or delivered to the General Counsel of the Commission at 734 Jackson Place NW., Washington, DC, 20503.

List of Subjects in 45 CFR Part 2002

Donations, U.S. Constitution Bicentennial.

Issued in Washington, D.C. in January 10, 1986.

Mark W. Cannon,

Staff Director.

For the reasons set out in the preamble and under the authority of sec. 5(h), Pub. L. 98–101, 97 Stat. 721, a new Chapter XX is established and a new Part 2002 is added to Title 45, Code of Federal Regulations, to read as follows.

Title 45—Public Welfare

CHAPTER XX—COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

PART 2002—REGULATIONS ON DONATIONS

Subpart A—Statement of Policy

Sec.

2002.10 Private sector support.
2002.11 An enduring commemoration.

Subpart B—General Provisions

2002.20 Statutory Authority.
2002.21 Limitations.
2002.22 Tax-exempt organizations.

Subpart C—Purpose of Donations

2002.30 General purpose.
2002.31 Specific purposes.

Subpart D—Valuation of Donations

2002.40 Statutory authority.
2002.41 Property.
2002.42 Personal services.
2002.43 Recognition of donors and volunteers.

Subpart E—Committee to Review Donations

2002.50 Appointment.
2002.51 Oversight function.
2002.52 Disposition of donations.

Subpart F—Recording and Reporting

2002.60 Accounting.
2002.61 Reporting.

Authority: Sec. 5(h), Pub. L. 98–101; 97 Stat. 719.

Subpart A—Statement of Policy

§ 2002.10 Private sector support.

(a) In creating the Commission, Congress enacted legislation which recognizes a leading role for the private sector in the bicentennial commemoration. Private donations of money, property or personal services, therefore, are encouraged by the Commission as a means of stimulating public support for the commemoration of the Constitution's bicentennial.

(b) Funding of Commission activities and projects by private individuals, corporations and tax-exempt organizations is authorized by specific statutory provisions (Pub. L. 98–101; 97 Stat. 721). Congress also intends a continuation of the same tax deductible status for private donations as was accorded donations to the American Revolution Bicentennial Administration.

§ 2002.11 An enduring commemoration.

(a) Donations to the Commission will be employed to the maximum extent feasible on commemoration projects and activities, including a limited number of bicentennial projects to be undertaken by the Commission on behalf of the Federal Government. Private donations will make possible a commemoration of enduring quality, a nationwide re-examination of the common principles which bind the United States together and a rekindling of national pride in the Constitution which embodies these common principles.

(b) The Commission's efforts, funded largely through private sector support, will stress homage to ideas—ideas that have shaped our Nation. Goals of scholarship and education will balance those of ceremony and celebration. Funds from the private sector will help provide an opportunity for all American citizens to learn more about our system of government and its history.

Subpart B—General Provisions

§ 2002.20 Statutory authority.

This regulation is issued in accordance with sec. 5(h) of Pub. L. 98–101, 97 Stat. 721, which provides that:

(a) The Commission is authorized to accept, use, solicit and dispose of donations of money, property, or personal services.

(b) The Commission shall prescribe regulations under which the Commission may accept donations of money, property of personal services.

(c) These regulations shall include procedures for determining the value of donations of property or personal services.

§ 2002.21 Limitations.

(a) Except for donations from tax-exempt organizations, sec. 5(h)(2) of Pub. L. 98–101, 97 Stat. 721, prohibits the Commission from accepting donations the value of which exceeds:

(1) $25,000 annually, in the case of donations from an individual; or,

(2) $100,000 annually, in the case of donations from a corporation, partnership, or other business organization.

(b) "Annually" means during one calendar year.

§ 2002.22 Tax-exempt organizations.

(a) Under sec. 5(h)(4) of Pub. L. 98–101, 97 Stat. 721, the limitations set forth in § 2002.21 do not apply in the case of an organization which is:

(1) Described in sec. 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)), and

(2) Exempt from taxation under sec. 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)).

(b) Any donation from a tax-exempt organization where the donation value exceeds $100,000 annually from the donor must be accompanied by written evidence from the donor that it is an organization described in sec. 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and that it is exempt from taxation under sec. 501(a) of such Code (26 U.S.C. 501(a)). This evidence of qualification shall be retained in the files of the Commission.

Subpart C—Purpose of Donations

§ 2002.30 General purpose.

A donation to the Commission must be for use by the Commission in carrying out the general purpose for which it was established, which is to promote and coordinate activities to commemorate the bicentennial of the Constitution (sec. 3, Pub. L. 98–101; 97 Stat. 719.).

§ 2002.31 Specific purposes.

Within this general purpose, a donation to the Commission may also be given to assist it in accomplishing its specific purposes, including but not limited to the following:

(a) Planning and developing activities appropriate to commemorate the bicentennial of the Constitution, including selected projects to be sponsored by the Commission.

(b) Assisting and encouraging private organizations, and State and local governments to organize and participate in appropriate bicentennial activities.

(c) Coordinating generally public and private bicentennial activities throughout all of the States.

(d) Serving as clearinghouse for the collection and dissemination of information about bicentennial events and plans.

(e) Expanding the personnel of the Commission to enable it to function more effectively.

(f) Providing equipment, facilities, support services or other types of property which will enable the Commission to accomplish its goals more efficiently.

(g) Furnishing the means for the Commission and its staff to travel and sponsor seminars and meetings in various regions of the country.

(h) Encouraging and providing the direction and facilities for volunteers to participate in Commission activities so as to involve the largest possible citizen participation in the bicentennial commemoration.

Subpart D—Valuation of Donations

§ 2002.40 Statutory authority.

Under sec. 5(h)(3) of Pub. L. 98–101, 97 Stat. 721, the Commission is required to prescribe regulations which include procedures for determining the value of donations of property or personal services. These valuation procedures are as follows.

§ 2002.41 Property.

(a) The value of property donated to the Commission, whether real or personal, shall be determined initially by the donor in a written statement filed with the Commission at the time of the donation. This statement shall be submitted to the Commission by the donor in a written document containing the name of the donor, the date and place of the contribution, an accurate description of the property and a valuation by the donor.

(b) Where the donor is unable to determine a precise value, a reasonably based estimate will suffice. In each case the donor shall receive a written receipt for the property containing the name of the donor, the date and location of the contribution and a description of the property including its value as stated by the donor.

(c) Other recordkeeping requirements which may be applicable to donors are set forth in the pertinent sections of income tax regulations published by the Internal Revenue Service at 26 CFR 1.170 A–13.

(d) If for any reason a donor's statement of value is unsatisfactory to the Commission, an alternative method of valuation shall be used by the Commission. This shall be done in accordance with regulations of the Internal Revenue Service published at 26 CFR 1.170 A–13T.

(e) The valuation of property provided to the Commission by donors and accepted for purposes of the Commission's use is not to be considered conclusive upon the Internal Revenue Service or other taxing authorities, or upon other governmental entities.

(f) Donors of property with an aggregate or stated value in excess of $5,000 may fall within substantiation requirements for deductibility under sec. 6050 L of the Tax Reform Act of 1984 (Pub. L. 93–369; 96 Stat. 494), as published by the Internal Revenue Service at 26 CFR 1.170 A–13T. Any questions as to deductibility should be taken up with the Internal Revenue Service.

§ 2002.42 Personal services.

(a) "Personal services" is defined to mean services by persons who are paid to perform a given task or tasks for the benefit of the Commission. This does not include services which are volunteered to the Commission by persons who are not paid, nor does it include provision of advice to the Commission by persons who serve without compensation on an advisory or consulting committee of the Commission.

(b) The value of donated personal services shall be determined by the information as to their costs supplied by the donor at the time of the donation. A donation of personal services is subject to the limitations set forth above in § 2002.21.

(c) A donor of personal services shall be responsible for providing the Commission with a statement or record of the donation showing the name of the donor, the date and place of the donation and a description of the services provided together with their costs or valuation by the donor. Each donor shall receive a receipt for donated services and this receipt may also serve, when appropriate, as the required record of the donation.

§ 2002.43 Recognition of donors and volunteers.

(a) All donors and volunteers of personal services shall receive from the Commission suitable acknowledgment and recognition of their contributions to

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the bicentennial. Certificates and letters of appreciation will be sent to donors of money, property or personal services.

(b) A National Honor Roll of donors shall be created and maintained bearing the names of all individual donors who make contributions of $10,000 or more in value, and of all corporations, partnerships, businesses, unions and other organizations, including tax exempt organizations, which make contributions of $100,000 or more in value. Suitable emblems, flags or other symbols of recognition shall also be given to such donors at the discretion of the Commission.

(c) The Commission shall keep a record of all volunteers of personal services and persons on this roll shall be recognized with suitable certificates and letters of appreciation and such other symbolic forms of recognition as may be approved by the Commission.

Subpart E—Committee To Review Donations

§ 2002.50 Appointment.

A committee of the Commission shall be appointed by the Chairman to review the propriety of all donations to the Commission together with any legal or other questions relating thereto. The Staff Director shall be responsible for the submission of a report to the committee; quarterly or more often if desired, on all donations or offers to donate money, property or personal services which are valued or estimated to be valued at $10,000 or more.

§ 2002.51 Oversight function.

(a) The review committee shall oversee the operation of the Commission's donation program, including the receipt, utilization and disposition of donated property and personal services and the effectiveness of this regulation on such donations. The committee may refer particular issues to the Chairman or to the Commission for further review, with or without a recommendation.

(b) The committee, the Chairman, or the Commission may direct the staff to return or decline to accept a donation whenever it is determined, for any reason, that the donation is unacceptable.

§ 2002.52 Disposition of donations.

(a) Records and reports of the Commission as to the receipt and utilization of donations of money and personal services shall be sufficient as records of their disposition.

(b) With respect to donations of property, real or personal, the following requirements shall apply:

(1) Property may be sold, exchanged, or otherwise disposed of only if the objective or result of the disposition will further the purposes of the Commission or will aid in the bicentennial commemoration of the Constitution.

(2) The committee to review donations shall be advised of all proposals for disposition of property prior to disposition and, for all such property valued at $1,000 or more, shall provide the Chairman or the Commission with a recommendation as to the proposed disposition.

(3) Approval of the Chairman or the Commission shall be obtained in advance of disposition.

(4) All Internal Revenue Service regulations applicable to donated property sold, exchanged or otherwise disposed of within two years after receipt will be observed. (see 26 CFR 1.6050 L–1T)

Subpart F—Recording and Reporting

§ 2002.60 Accounting.

(a) The Staff Director shall be responsible for establishing accounting procedures for the Commission and appropriate forms to record the receipt, utilization and disposition of all donations of money, property or personal services.

(b) Prior to acceptance, recording and deposit of donated moneys, and prior to acceptance and receipt of property and personal services, the Staff Director or his designee shall ascertain from Commission records whether the donation, singly or cumulatively, would exceed the annual dollar amount limits on the Commission's statutory authority to accept the donation as set forth in § 2002.21. Where these limits would be exceeded, all of the donations or, if divisible, the excessive portion of the donation shall be returned to the donor with an appropriate explanation and expression of appreciation.

§ 2002.61 Reporting.

Reports of all donations of money, property, and personal services, and the value thereof, shall be given to the Chairman and the Commission on a periodic basis as desired. Reports shall also be prepared for use in the Commission's annual report to the President, to each House of the Congress, and to the Judicial Conference of the United States, as required by sec. 6(e) of Pub. L. 98–101, 97 Stat. 719, 722.

[FR Doc. 86–1472 Filed 1–23–86; 8:45 am]

BILLING CODE 6340–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 78–72; CC Docket No. 80–286; FCC 86–5]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Decision and order.

SUMMARY: The Federal Communications Commission adopts the Federal-State Joint Board's recommendations concerning the separations treatment of the expenses in Account 645, Local Commercial Operations. The Commission adopted the separations procedures recommended by the Joint Board because they will produce a more cost based allocation of these costs between the jurisdictions. Implementation of separations procedures which reflect cost causation principles will promote efficient use of the telephone network.

EFFECTIVE DATE: February 24, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Susan Lee O'Connell, Common Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 67

Jurisdictional Separations, Communications common carriers.

Decision and order

[CC Docket No. 78–72; CC Docket No. 80–286; FCC 86–5]

In the matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board.

Adopted: January 3, 1986.
Released: January 7, 1986.

By the Commission:

I. Introduction

A. Summary

1. We hereby adopt the Federal-State Joint Board's recommendations[1] concerning the allocation of Account 645, Local Commercial Operations,[2]

[1] *Recommended Decision and Order, MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78–72 and 80–286, FCC 85–611, released November 15, 1985.

[2] Account 645 consists of expenses related to telephone company local commercial operations, excluding promotional and directory services.

Continued

with a few minor modifications.[3] We join in the Joint Board's conclusion that, whenever it is administratively feasible, the costs in Account 645 should be allocated based on a work function analysis in order to ensure that the resulting jurisdictional allocation reflects principles of cost causation. We also agree with the Joint Board's conclusion that we should distinguish between large and small local exchange carriers for purposes of implementing the new permanent allocation procedures.

B. Background

2. The issues addressed in the Joint Board's *Recommended Decision and Order* were initially raised in a Petition for Rulemaking filed on November 15, 1984, by the New York State Department of Public Service (New York State). That petition stated that the American Telephone and Telegraph Company (AT&T) planned to discontinue use of the billing inquiry service offered by New York Telephone Company, effective January 1, 1985.[4] In order to prevent a sudden and substantial reassignment of costs to the state jurisdiction, New York State requested that this Commisson freeze the customer contact factor [5] used in allocating the costs in Account 645 until this Commisson could permanently amend its rules governing the separation of these costs. The potential effect of AT&T's decision to discontinue use of Bell Operating Company (BOC) billing inquiry services stemmed from the Part 67 procedures for the categorizaton and allocation of Account 645 expenses which do not reflect the actual cost of performing the various local commercial office functions. Under these procedures, the level of Account 645 costs assigned to the interstate jurisdiction is largely a product of the customer contact factor,[6] although

Telephone company commercial offices perform service order processing, billing inquiry, and certain billing and collection functions for end users and interexchange carriers, as well as collect coins from pay telephones and perform related administrative functions.

[3] *See* para. 17, *infra*.

[4] This was part of an overall plan by AT&T to phase-in the provision of its own billing inquiry service for AT&T customers. *See Recommended Decision and Order* at footnote 6.

[5] Section 67.365(a)(1)(i) of this Commission's rules provides for the separation of Account 645 message toll costs based on "the relative number of business office contacts relating to state toll and interstate toll messages." 47 CFR § 67.365(a)(1)(i) (1984). This is referred to herein as the customer contact factor.

[6] For a more detailed discussion of the Part 67 procedures for allocating Account 645 costs see the Joint Board's *Recommended Decision and Order* at paragraphs 4 and 5.

responding to end user billing inquiries involves a very small portion of local business office work time. Thus, AT&T's provision of its own billing inquiry service would reduce the number of local commercial office contacts related to interstate toll messages, thereby lowering the interstate cost assignment, without producing an offsetting reduction in local commercial office expenses.[7]

3. In response to the New York State Petition, the Joint Board adopted a *Recommended Interim Order and Request for Comments (Recommended Interim Order)* [8] recommending that this Commission adopt measures to prevent a sudden and substantial transfer of costs to the state jurisdiction in study areas in which AT&T began to perform its own billing inquiry service. The Joint Board proposed a freeze of the customer contact factor at the average level for the twelve months preceding the date on which AT&T began to perform its own billing inquiry service in the affected study area. The frozen factor would remain in effect through May 31, 1985, in study areas in which AT&T began to handle its own billing inquiries before that date. Beginning June 1, 1985, the frozen factor would be reduced by 1/24th each month for twelve consecutive months or until adoption of new permanent allocation procedures, whichever came first. The Joint Board recommended that the phase-down begin immediately in the case of study areas in which AT&T began to handle its own billing inquiries after June 1, 1985. The Joint Board *Recommended Interim Order* also requested comments and data concerning permanent procedures for the allocation and recovery of Account 645 costs. These recommendations concerning interim measures for the allocation of Account 645 were adopted by this Commission on May 28, 1985.[9] The May 28, 1985 *Order* also established interim measures for the recovery of Account 645 costs.

[7] The resulting shift of costs to the state jurisdiction is magnified by the allocaton of costs in other accounts based on factors which reflect the allocation of costs in Account 645. *See Recommended Decision and Order* at paragraph 6 and footnote 9.

[8] CC Docket Nos. 78–72 and 80–286, 50 FR 14729 (April 15, 1985).

[9] *Interim Order*, CC Docket Nos. 78–72 and 80–286, 50 FR 26204 (June 25, 1985), *appeal held in abeyance pending recon. sub nom. AT&T v. FCC*, No. 85–1470 (D.C. Cir., filed July 26, 1985). For a detailed discussion of the requests for clarification and/or waiver of the Commission's *Interim Order* see the *Recommended Decision and Order* at footnote 11.

II. Joint Board Recommendation

A. Summary

4. Based on the comments received in response to both the *Recommended Interim Order* and a subsequent *Order Inviting Further Comments*,[10] the Joint Board recommended that, whenever possible, Account 645 costs be allocated based on an analysis of the work functions involved in order to ensure separations results which reflect cost causation principles. The Joint Board concluded that such an approach would provide a fair and equitable allocation of Local Commercial Operations expenses, and would facilitate the assignment of these costs to the appropriate access charge rate elements. In presenting its recommendations for new permanent allocation procedures, the Joint Board carefully considered the administrative difficulties involved in identifying the jurisdictional nature of Account 645 expenses and tailored its proposal to minimize these burdens.

5. The Joint Board recommended that Account 645 expenses for each study area be allocated to the following five categories, based on periodic work function studies [11] designed to reflect the costs of performing each of these local commercial functions: (1) End user service order processing; (2) end user payment and collection; (3) end user billing inquiry; (4) interexchange carrier service (including all service order processing, payment and collection, and billing inquiry functions associated with interexchange carrier service); and (5) coin collection and administration. The Joint Board's recommendations concerning the functions to be included in each of these categories, as well as the subcategorization [12] and jurisdictional allocation of the costs involved, are described below.

B. End User Service Order Processing

6. The Joint Board recommended that the end user service order processing category include expenses related to the receipt and processing of end users' (but not interexchanges carriers') orders for telephone service and inquiries concerning service. The Joint Board

[10] CC Docket Nos. 78–72 and 80–286, 50 FR 31749 (August 6, 1985).

[11] The Joint Board recognized that this approach would require the carriers to perform periodic work function studies, but found that utilization of such studies would avoid the existing mismetch between the actual cost of performing each local commercial office function and the assignment of the associated costs to the appropriate jurisdiction.

[12] The Joint Board concluded that, in general, the use of service-related subcategories to allocate Account 645 costs would facilitate the recovery of these costs under Part 69 of the Commission's rules.

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found that these expenses are generated when a customer contacts the local commercial office, and therefore recommended that the Commission allocate these costs to the following service-related subcategories based on the relative number of actual contacts, with the contacts weighted, if appropriate, to reflect variations in the average work time associated with each type of service contact: [13] (1) Local service order processing; (2) presubscription; (3) directory advertising; (4) state private line and special access; [14] (5) interstate private line and special access; (6) other state message toll including WATS; (7) other interstate message toll including WATS; and (8) TWX. The Joint Board recommended that the carriers update their customer contact studies periodically to ensure that the results reflect the actual number of contacts and the work times involved.[15]

7. Under the *Recommended Decision and Order*, end user service order processing costs for local service, directory advertising, state private line and special access, and other state message toll services including WATS, would be assigned directly to the state jurisdiction. Presubscription costs, interstate private line and special access costs, and costs associated with other interstate message toll services including WATS, would be assigned directly to the interstate jurisdiction. TWX expenses would be separated based on relative state and interstate billed TWX revenues.

8. In making these recommendations, the Joint Board stated that the cost of local service order processing for end users should be assigned directly to the state jurisdiction. The Joint Board found that the parties supporting an interstate allocation of these costs had not identified any common or joint costs that were material and not properly attributable to a specific service subcategory. The Joint Board recognized that customers must subscribe to local telephone service before they can obtain access to interstate services, and that local service order processing, therefore, may arguably provide some benefits to the interstate jurisdiction. However, it found that the ability to access interstate services over the local network also increases the attractiveness of local service. Given the mutual benefits involved, the Joint Board recommended segregating local service order processing costs and presubscription costs, and allocating each directly to the appropriate jurisdiction.[16] The Joint Board distinguished the issues involved in the allocation of local service order processing costs from those involved in allocating local telephone network costs. It stated that it is not possible to identify separately the costs caused by interstate use of local non-traffic sensitive (NTS) facilities, while local service order processing, presubscription, and other interstate service order processing costs can be distinguished.

C. End User Payment and Collection

9. The Joint Board recommended that the end user payment and collection cost category cover expenses associated with the payment and collection of amounts billed to end users, including commissions paid to collection agencies and payment agencies that receive customer payments. The Joint Board recommended that this category exclude payment or collection expenses for services provided to interexchange carriers. As with end user service order processing, the *Recommended Decision and Order* proposed allocating end user payment and collection expenses to service-related subcategories. It recommended allocation of these expenses to the following subcategories based on the relative total state and interstate revenues billed by the carriers involved (excluding revenues billed to interexchange carriers and/or deposited in coin boxes) for services for which end user payment and collection is provided: (1) State private line and special access; (2) interstate private line and special access; (3) state message toll including WATS; (4) interstate message toll including WATS, and interstate subscriber line charge; (5) local, including directory advertising; and (6) TWX. The Joint Board recommended direct assignment to the state jurisdiction of end user payment and collection expenses for state private line and special access, state message toll including WATS, and local service. Payment and collection expenses for interstate private line and special access, and interstate message toll including WATS, and interstate subscriber line charges would be assigned directly to the interstate jurisdiction. TWX expenses would be allocated based on relative state and interstate billed TWX revenues for service for which end user payment and collection is provided.

10. The Joint Board recognized that the use of billed revenues to allocate payment and collection expenses to the service subcategories would not produce entirely cost based separations results. However, it concluded that this approach was reasonable since more precisely cost based allocation procedures appeared to involve undue administrative burdens.

D. End User Billing Inquiry

11. The Joint Board recommended that the end user billing inquiry cost category include expenses related to handling end users' inquiries concerning their bills. The Joint Board recommended the allocation of these costs to service-related subcategories based on the relative number of actual contacts, with the contacts weighted, if appropriate, to reflect variations in the average work time per contact. It proposed the following subcategories: (1) State private line and special access; (2) interstate private line and special access; (3) state message toll including WATS; (4) interstate message toll including WATS; (5) TWX; and (6) other (primarily related to local service bills, but also including directory advertising). The Joint Board recommended direct assignment of the costs in each of these categories to the relevant jurisdiction, with TWX costs separated based on relative billed TWX revenues for service for which end user billing inquiry is provided. As with service order processing, the Joint Board concluded that utilization of customer contacts for purposes of allocating costs to the service-related subcategories would produce cost based separations results with a mimimum of administrative burdens.

[13] The Joint Board concluded that the use of customer contacts to allocate service order processing costs to the service-related subcategories, rather than work time studies as proposed by some commenting parties, should reduce the administrative burdens on the local exchange carriers. The Joint Board noted that its proposal for weighting the contacts when appropriate to reflect differences in work times would provide the increased accuracy produced by work time studies.

[14] In creating end user subcategories for special access, the Joint Board noted that the access charge tariffs permit end users to order special access services directly from the local exchange carrier. *See Memorandum Opinion and Order, Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I and II, Part 1, 49 FR 50457 at 50471 (December 28, 1984).

[15] The Joint Board did not recommend prohibiting the use of surrogate allocation factors in lieu of monitoring actual contacts. The Joint Board, however, expressed its view that the use of surrogates or conversion tables must produce accurate results, *i.e.*, they must reflect the actual level of contacts. *See Recommended Decision and Order* at paragraph 25 and footnote 25.

[16] While the Joint Board acknowledged that presubscription orders would apply to state as well as interstate toll services, if state toll competition exists, if found that presubscription costs would not be substantial enough to justify the administrative burdens involved in calculating and recovering a separate intrastate assignment.

E. Interexchange Carrier Service

12. The Joint Board recommended that all Account 645 costs incurred for interexchange carrier service order processing, payment and collection, and billing inquiry,[17] be categorized separately from end user costs associated with these functions due to the dissimilar nature of these functions.[18] Under the *Recommended Decision and Order*, Account 645 interexchange carrier service costs would be segregated, based on an analysis of job functions, into three subsidiary categories: (1) Service order processing; (2) payment and collection; and (3) billing inquiry. The expense in each subsidiary category would be further divided into the following subcategories using the same general allocation factors employed for end user functions:[19] (1) State special access and private line; (2) interstate special access and private line; (3) state switched access and message toll including WATS; and (4) interstate switched access and message toll including WATS. As previously discussed in connection with end user functions, the Joint Board concluded that utilization of those allocation procedures would strike a fair balance between the need for an accurate identification of state and interstate costs and the administrative constraints involved in making that identification.

F. Coin Collection and Administration

13. The Joint Board recommended that the coin collection and administration category include expenses for the collection and counting of money deposited in public or semi-public telephones, as well as expenses incurred for required travel and coin security. Costs associated with checking the serviceability of public and semi-public telephones and related functions would also be included in this category. The Joint Board concluded that these expenses should be allocated between the jurisdictions in proportion to the relative state and interstate revenues deposited in the coin boxes since the expenses included in this category are primarily related to physically retrieving and counting coins deposited in public or semi-public telephones. The Joint Board found that including revenues generated by credit card and collect calls, and calls billed to third parties would not produce appropriate results since no coin collection work is generated by these calls. The Joint Board also concluded that the costs involved in checking public and semi-public telephones for serviceability were not sufficient to justify allocation of these costs based on total pay telephone revenues.

G. Miscelloneous

1. Transition

14. The Joint Board recommended that the new permanent allocation procedures for Account 645 become effective June 1, 1986 [20] for AT&T and for exchange carrier study areas with more than 50,000 working loops, excluding WATS, wideband, and private line loops. [21] The interim phase-down procedures previously recommended by the Joint Board and adopted by the Commission would apply to those study areas with more than 50,000 working loops, excluding WATS, wideband and private line loops, for which AT&T begins to provide its own billing inquiry service prior to the effective date of the new permanent procedures.

15. The Joint Board recommended a different transition period for study areas with 50,000 or fewer working loops, excluding WATS, wideband, and private line loops, in order to ensure that the smaller carriers have adequate time to prepare for the anticipated shift of costs to the state jurisdiction due to implementation of the new separations procedures. Under the Joint Board proposal, the new permanent allocation procedures would not become effective for these study areas until January 1, 1987. In the event AT&T begins to provide its own billing inquiry service in such study areas prior to January 1, 1987, the customer contact factor would be frozen and remain frozen until January 1, 1987, instead of being phased down. The Joint Board concluded that allowing the smaller companies to retain the higher interstate allocation for this extended period of time would: (1) Produce essentially the same benefits as a phase-down but would be somewhat simpler to implement; (2) allow these carriers a substantial period of time to adjust to the anticipated revenue shifts; and (3) reduce administrative burdens by avoiding the need for interim revisions in the access charge tariffs for these small companies.

2. Small Companies

16. The Joint Board did not propose separate permanent allocation procedures for small telephone companies. It noted that certain carriers had suggested simplified procedures for small telephone companies, but concluded that the proposed separations procedures would not place excessive administrative burdens on smaller telephone companies.[22] The Joint Board also stated that the existing record was not sufficient to allow development of simplified procedures for small telephone companies.

III. Discussion

17. As previously stated, we adopt the Joint Board's recommendations with a few minor modification.[23] We also adopt, as our own, the Joint Board's reasoning in support of its recommendations. We are modifying the Joint Board's recommendations, however, to create a separate category for each of the interexchange carrier service functional subcategories

[17] These costs would include those related to receiving and processing interexchange carriers' orders for service and their inquiries concerning service, payment and collection of interexchange carrier bills, including commissions paid to payment and collection agents, and the handling of interexchange carrier billing inquiries.

[18] The Joint Board also explained that this approach should be relatively easy to implement since many of the carriers have separate local business office organizations for serving the interexchange carriers.

[19] Thus, interexchange carrier service order processing and billing inquiry expenses would be allocated to the service subcategories based on the relative number of actual contacts, weighted if appropriate, to reflect differences in the average work time per contact. Interexchange carrier payment and collection expenses would be allocated based on relative total state and interstate revenues billed to the interexchange carriers.

[20] The Joint Board stated that a delay until June 1, 1986 for implementation of the new permanent procedures may necessitate adjustments in the Commission's interim cost recovery plan, but noted that this implementation date would coincide with that for the direct assignment of closed end WATS access lines, as well as the increase in subscriber line charges, facilitating the adjustment of access charge tariffs in a single filing. The Joint Board also stated that the proposed implementation date would give the carriers ample time to prepare for the new Part 67 rules.

[21] The Joint Board explained that this loop count methodology is the same as that previously recommended by the Joint Board and adopted by the Commission for purposes of identifying those local exchange carriers which are small enough to qualify for an increased level of high cost assistance. *See Decision and Order*, CC Docket Nos. 78-72 and 80-286, 50 FR. 939 (January 8, 1985).

[22] The Joint Board also noted the small telephone companies could request waiver of these procedures if they proved to be burdensome.

[23] If this Commission amends the Part 69 access charge rules to reassign the WATS closed end lines to special access, expenses associated with end user or interexchange carrier service orders, collections or billing inquiries for such "special access" lines would, of course, be included in the relevant private line and special access subcategory rather than an interstate switched access and message toll subcategory. Expenses associated with end user or interexchange carrier service orders, collections or billing inquiries for an end-to-end WATS service or similar message services would still be included in the relevant switched access and message toll subcategory. The subcategory descriptions we are adopting would automatically produce that result without a further amendment of the Part 67 rules.

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recommended by the Joint Board. Thus, instead of a single interexchange carrier service category with functional subcategories for service order processing, payment and collection, and billing inquiry, there will be a separate interexchange carrier category for: (1) Interexchange carrier service order processing; (2) interexchange carrier payment and collection; and (3) interexchange carrier billing inquiry. We are making this change so that the treatment of interexchange carrier service will more closely parallel that of end user service. This change will also make the new rules easier to understand. It will not affect the allocation of interexchange carrier service costs between the state and interstate jurisdictions. We are also modifying the Joint Board's recommendations by adding separate state and interstate billing and collection subcategories for the interexchange carrier service order processing, payment and collection, and billing inquiry categories. The billing and collection subcategories will include the service order processing, payment and collection, and billing inquiry costs associated with the provision of billing and collection service to the interexchange carriers.[24]

F. Regulatory Flexibility Certification

18. We hereby certify that the Regulatory Flexibility Act is not applicable to the rules we are adopting in this proceeding. Although some local exchange carriers are very small, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity." The Act incorporates the definition of a "small business" in Section 3 of the Small Business Act as the definition of a "small entity." This latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even when small, enjoy a dominant monopoly position in their local service area. This Commission has found all exchange carriers, as well as AT&T, to be dominant in the *Competitive Carrier* proceeding.[25] To the extent that other interexchange carriers may be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of small entities.

IV. Ordering Clauses

19. Accordingly, it is ordered, That the recommendations of the Federal-State Joint Board, as modified and clarified herein, are adopted.

20 It is further ordered, That the amendments to Part 67 of the Commission's rules set forth in Appendix A of this *Decision and Order* are adopted effective February 24, 1986.[26]

Federal Communications Commission
William J. Tricarico,
Secretary.

Appendix A

PART 67—[AMENDED]

47 CFR Part 67 is amended as follows:

1. The authority citation for Part 67 is revised to read:

Authority: (47 U.S.C. 151), 48 Stat. 1064, as amended 50 Stat. 189 (47 U.S.C. 154(i)), 48 Stat. 1064 (47 U.S.C. 154(j)), 48 Stat. 1064 (47 U.S.C. 221(c)), 48 Stat. 1080 (47 U.S.C. 410(c)), 85 Stat. 363, unless otherwise noted.

2. Section 67.365 is amended by adding two sentences before the existing text in the introductory text of paragraph (a), by revising paragraph (a)(1)(i), and by adding paragraphs (b) and (c) to read as follows:

§ 67.365 Local commercial operations-account 645.

(a) The procedures set out in this subsection shall apply to AT&T amd study areas with more than 50,000 working loops, calculated as provided in § 67.611(a)(8), through May 31, 1986. Effective June 1, 1986, the procedures set out in subsection (c) of this section shall apply to AT&T and these study areas. * * *

(1) * * *

(i) In the case of study areas for which the American Telephone and Telegraph Co. (AT&T) subscribes to the billing inquiry service offered by the local exchange company, message toll expense is apportioned between state toll and interstate toll operations on the basis of the relative number of business office contacts relating to state toll and interstate toll messages. In the case of study areas for which AT&T begins to handle its own billing inquiries, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the average level for the twelve months preceding the date on which AT&T began to perform its own billing inquiry service. In the case of study areas for which AT&T begins to handle its own billing inquiries before May 31, 1985, the frozen factor described above will remain in effect through this date. For these study areas, beginning June 1, 1985, the frozen factor is to be reduced by 1/24th each month for twelve consecutive months or until June 1, 1986. In the case of study areas for which AT&T begins to handle its own billing inquiries after May 31, 1985, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the level described above. Beginning on the date on which AT&T begins to perform its own billing inquiry service for that study area, the frozen factor will be reduced by 1/24th each month for twelve consecutive months or until June 1, 1986, whichever comes first.

* * * * *

(b) The procedures set out in subsection (a) shall apply to study areas with 50,000 or fewer working loops, calculated as provided in § 67.611(a)(8), through December 31, 1986, except that the provisions set out in subsection (b)(1) below shall apply to these companies in place of subsection (a)(1)(i). Effective January 1, 1987, the procedures set out in subsection (c) shall apply to these study areas.

(1) In the case of study areas for which the American Telephone and Telegraph Co. (AT&T) subscribes to the billing inquiry service offered by the local exchange company, message toll expense is apportioned between state toll and interstate toll operations on the basis of the relative number of business office contacts relating to state toll and interstate toll messages. In the case of study areas for which AT&T begins to handle its own billing inquiries, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the average level for the twelve months preceding the date on which AT&T began to perform its own billing inquiry service.

(c) The procedures set out in this subsection shall apply to AT&T and study areas with more than 50,000 working loops, calculated as provided in § 67.611(a)(8), effective June 1, 1986. These procedures shall apply to study areas with 50,000 or fewer working loops, calculated as provided in

[24] The billing and collection subcategories are in addition to the service-related subcategories for state special access and private line, interstate special access and private line, state switched access and message toll including WATS, and interstate switched access and message toll including WATS. The term "interstate switched access" in the Part 67 rules we are adopting in this *Order* includes all access elements except Special Access and Billing and Collection.

[25] *First Report and Order, Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services*, CC Docket No. 79-252, 85 FCC 2d 1, 23-24 (1980).

[26] These actions are taken pursuant to section 1, 4(i) & (j), 205, 221(c), 403 and 410 of the Communications Act, as amended, 47 U.S.C. 151, 154(i) and (j) 205, 221(c), 403, and 410.

§ 67.611(a)(8), effective January 1, 1987. The expense in this account for the area under study is first segregated on the basis of an analysis of job functions into the following categories: end user service order processing; end user payment and collection; end user billing inquiry; interexchange carrier service order processing; interexchange carrier payment and collection; interexchange carrier billing inquiry; and coin collection and administration.

(1) *End user service order processing* includes expenses related to the receipt and processing of end users' orders for service and inquiries concerning service. This category does not include any service order processing expenses for services provided to the interexchange carriers. End user service order processing expenses are first segregated into the following subcategories based on the relative number of actual contacts, weighted if appropriate, to reflect differences in the average work time per contact: local service order processing; presubscription; directory advertising; state private line and special access; interstate private line and special access; other state message toll including WATS; other interstate message toll including WATS; and TWX.

(i) *Local* service order processing expense (primarily local telephone service orders) is assigned to the state jurisdiction.

(ii) *Presubscription* service order processing expense is assigned to the interstate jurisdiction.

(iii) *Directory advertising* service order processing expense is assigned to the state jurisdiction.

(iv) *State private line and special access* service order processing expense is assigned to the state jurisdiction.

(v) *Interstate private line and special access* service order processing expense is assigned to the interstate jurisdiction.

(vi) *Other state message toll including WATS* service order processing expense is assigned to the state jurisdiction.

(vii) *Other interstate message toll including WATS* service order processing expense is assigned to the interstate jurisdiction.

(viii) *TWX* service order processing expense is allocated between the jurisdictions based on relative state and interstate billed TWX revenues.

(2) *End user payment and collection* includes expenses incurred in relation to the payment and collection of amounts billed to end users. It also includes commissions paid to payment agencies (which receive payment on customer accounts) and collection agencies. This category does not include any payment or collection expenses for services provided to interexchange carriers. End user payment and collection expenses are first segregated into the following subcategories based on relative total state and interstate billed revenues (excluding revenues billed to interexchange carriers and/or revenues deposited in coin boxes) for services for which end user payment and collection is provided: state private line and special access; interstate private line and special access; state message toll including WATS; interstate message toll including WATS, and interstate subscriber line charge; local, including directory advertising; and TWX.

(i) *State private line and special access* payment and collection expense is assigned to the state jurisdiction.

(ii) *Interstate private line and special access* payment and collection expense is assigned to the interstate jurisdiction.

(iii) *State message toll including WATS* payment and collection expense is assigned to the state jurisdiction.

(iv) *Interstate message toll including WATS, and interstate subscriber line charge* payment and collection expense is assigned to the interstate jurisdiction.

(v) *Local, including directory advertising* payment and collection expense is assigned to the state jurisdiction.

(vi) *TWX* payment and collection expense is allocated between the jurisdictions based on relative state and interstate billed TWX revenues for service for which end user payment and collection is provided.

(3) *End user billing inquiry* includes expenses related to handling end users' inquiries concerning their bills. This category does not include expenses related to interexchange carrier inquiries concerning their bills. End user billing inquiry costs are first segregated into the following subcategories based on the relative number of actual contacts, weighted if appropriate, to reflect differences in the average work time per contact: state private line and special access; interstate private line and special access; state message toll including WATS; interstate message toll including WATS, and interstate subscriber line charge; TWX; and other.

(i) *State private line and special access* billing inquiry expense is directly assigned to the state jurisdiction.

(ii) *Interstate private line and special access* billing inquiry expense is directly assigned to the interstate jurisdiction.

(iii) *State message toll including WATS* billing inquiry expense is directly assigned to the state jurisdiction.

(iv) *Interstate message toll including WATS, and interstate subscriber line charge* billing inquiry expense is directly assigned to the interstate jurisdiction.

(v) *TWX* billing inquiry expense is allocated between the jurisdictions based on relative state and interstate billed TWX revenues for service for which end user billing inquiry is provided.

(vi) *Other* billing inquiry expense (primarily related to local bills but also including directory advertising) is directly assigned to the state jurisdiction.

(4) *Interexchange carrier service order processing* includes expenses associated with the receipt and processing of interexchange carrier orders for service and inquiries about service. Interexchange carrier service order processing expenses are assigned to the following subcategories based on the relative number of actual contracts, weighted if appropriate, to reflect differences in the average work time per contact: state special access and private line; interstate special access and private line; state switched access and message toll including WATS; interstate switched access and message toll including WATS; state billing and collection; and interstate billing and collection.

(i) *State special access and private line* service order processing expense is directly assigned to the state jurisdiction.

(ii) *Interstate special access and private line* service order processing expense is directly assigned to the interstate jurisdiction.

(iii) *State switched access and message toll including WATS* service order processing expense is directly assigned to the state jurisdiction.

(iv) *Interstate switched access and message toll including WATS* service order processing expense is directly assigned to the interstate jurisdiction.

(v) *State billing and collection* service order processing expense is directly assigned to the state jurisdiction.

(vi) *Interstate billing and collection* service order processing expense is directly assigned to the interstate jurisdiction.

(5) *Interexchange carrier payment and collection* includes expenses associated with the payment and collection of interexchange carrier bills, including commissions paid to payment and collection agents. Interexchange carrier payment and collection expenses are assigned to the following subcategories based on relative total state and interstate revenues billed to the interexchange carriers: state special access and private line; interstate special access and private line; state switched access and message toll including WATS; interstate switched

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access and message toll including WATS; state billing and collection; and interstate billing and collection.

(i) *State special access and private line* payment and collection expense is directly assigned to the state jurisdiction.

(ii) *Interstate special access and private line* payment and collection expense is directly assigned to the interstate jurisdiction.

(iii) *State switched access and message toll including WATS* payment and collection expense is directly assigned to the state jurisdiction.

(iv) *Interstate switched access and message toll including WATS* payment and collection expense is directly assigned to the interstate jurisdiction.

(v) *State billing and collection* payment and collection expense is directly assigned to the state jurisdiction.

(vi) *Interexchange billing and collection* payment and collection expense is directly assigned to the interstate jurisdiction.

(6) *Interexchange carrier billing inquiry* includes expenses related to the handling of interexchange carrier billing inquiries. Interexchange carrier billing inquiry expenses are assigned to the following subcategories based on the relative number of actual contacts, weighted if appropriate, to reflect differences in the average work time per contact: state special access and private line; interstate special access and private line; state switched access and message toll including WATS; interstate switched access and message toll including WATS; state billing and collection; and interstate billing and collection.

(i) *State special access and private line* billing inquiry expense is directly assigned to the state jurisdiction.

(ii) *Interstate special access and private line* billing inquiry expense is directly assigned to the interstate jurisdiction.

(iii) *State switched access and message toll including WATS* billing inquiry expense is directly assigned to the state jurisdiction.

(iv) *Interstate switched access and message toll including WATS* billing inquiry expense is directly assigned to the interstate jurisdiction.

(v) *State billing and collection* billing inquiry expense is directly assigned to the state jurisdiction.

(vi) *Interstate billing and collection* billing inquiry expense is directly assigned to the interstate jurisdiction.

(7) *Coin collection and administration* includes expenses for the collection and counting of money deposited in public or semi-public phones. It also includes expenses incurred for required travel, coin security, checking the serviceability of public or semi-public telephones, and related functions. These expenses are apportioned between the state and interstate jurisdictions in proportion to the relative state and interstate revenues deposited in the public and semi-public telephones.

(47 U.S.C. 151, 154(i), 154(j), 205, 221(c), 403, 410)

[FR Doc. 86-679 Filed 1-23-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Santalum Freycinetianum var. lanaiense (Lanai Sandalwood or 'Iliahi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Santolum freycinetianum* var. *lanaiense* (Lanai sandalwood or 'iliahi) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. This plant is known only from two areas, one at Kanepu'u, island of Lanai, and the other comprising the summit ridge system of the island of Lanai, County of Maui, Hawaii. The 39 known individuals of this variety are vulnerable to any substantial habitat alteration and face threats of grazing and browsing by feral animals, and rat predation on fruit, and the potential threats of taking and fire. The present rule is intended to provide the Lanai sandalwood the protection available under the Act.

EFFECTIVE DATE: The effective date of this rule is February 24, 1986.

ADDRESS: The complete file for this rule is available for inspection by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Santalum freycinetianum var. *lanaiense* is a small, gnarled tree with leaves that vary from nearly round to twice as long as broad, and are dark green on the upper surface. The tree bears small clusters of bright red flowers. J.F. Rock discovered the sandalwood on the island of Lanai in 1910 and formally described it in 1913. Historically, it has been collected and/or reported from several widely spaced localities on the island. Sandalwood trade prior to this plant's discovery by the scientific community could have already reduced the number of trees by an unknown amount. Thirty-nine individuals of the variety are now known and are widely spaced over its range. These can be divided into two populations, one near Kanepu'u and the other near the summit of the island. Both populations occur on private lands owned by Castle and Cooke, Inc.

The species is found in a range of habitats from dry lowland forests on well drained barren soils to mesic forests on shallow soils at higher elevations. The habitat has been severely degraded by grazing and browsing of livestock and exotic game animals. Much of the native vegetation has been removed, increasing wind erosion of the fragile soils. Rat predation on developing fruit has all but eliminated reproduction (Carr 1981).

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. The Lanai sandalwood was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A one-year grace period applied to those proposals already more than two years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796); the notice of withdrawal included the Lanai sandalwood.

Santalum freycinetianum var. *lanaiense* was included in the December 15, 1980 (45 FR 82480), notice of review of plant taxa as a candidate for listing. On February 15, 1983, the Service published a notice (48 FR 6752) of its prior petition finding that sufficient information exists to indicate that listing of this taxon may be warranted in accordance with section 4(b)(3)(A) of the Act. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing this taxon was warranted, but precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the 1983 finding appeared in the **Federal Register** of January 20, 1984 (48 FR 2485). Such a finding required recycling of the petition pursuant to section 4(b)(3)(C)(i) of the Act. A reproposal, which constituted a finding in accord with Section 4(b)(3)(B)(ii) that listing of this taxon was warranted, was published on March 6, 1985 (50 FR 9086), based on information available at the time of the 1976 proposal and on information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Carr 1981). The Service now determines the Lanai sandalwood to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the March 6, 1985, proposed rule (50 FR 9086) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, the county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Honolulu Stor Bulletin* and the *Hawaii Tribune-Herald* on April 1, 1985. Three comments were received and are discussed below.

A member of the University of Hawaii Botany Department faculty expressed concern that critical habitat was not being designated for this species. He stated that the locations of the remnant populations were identified in the proposed rule without according them any protection of their habitat. He continues that "persons seeking sandalwood now know where to find these plants though I believe the threat from this activity to be non-existent." The proposed rule states that "Thirty-nine individuals of the variety are now known and are widely spaced over its range. These can be divided into two populations, one near Kanepu'u and the other near the summit to the island." The Service believes that the distribution information is sufficiently vague so as not to reveal the exact locality of the plants. Few individuals in Hawaii collect rare or native woods, but there are several hobbyists active in this field. Most of these individuals are sincerely interested in the native flora, and would not damage a rare species. However, given the small population of this sandalwood, the loss of a single tree would be significant. Additionally, the Service is required to publish descriptions of critical habitat in local newspapers, making this information even more accessible to collectors, curiosity seekers, and vandals. The commenter also stated that land managers and planners need a definite location in which this plant is protected. The Service works closely with managers, planners, government agencies and others that need specific information on endangered species and their habitats. This is best handled on an individual basis as the needs of various agencies differ.

Castle and Cooke, Inc., the landowners, opposed the listing of the Lanai sandalwood as an endangered species, but stated that they are sensitive to the efforts to protect the species and will fully cooperate with conservation actions by Federal and State agencies should the plant be listed. Their main concern is the impact that the listing of the Lanai sandalwood would have upon their long-term land management plans. As this species is not involved in exportation or interstate or foreign commerce, and as no individuals are growing on Federal property, the prohibitions of Section 9 of the Act are not pertinent. However, the listing of the plant automatically invokes the Hawaii State Law with its more restrictive prohibition of "take." Castle and Cooke noted that, "* * * a significant modification of the environment can be prohibited as 'taking.' As a result, Castle and Cooke's long term plans and operations on Lanai will be affected by custodial responsibilities for the endangered species to avoid litigation to enjoin activities that allegedly have an effect on the species." The Service recognizes that prohibitions applied to private entities under State law are more restrictive than those of the Act; however, the Service is required to base its decision in listing a species solely on biological grounds.

A letter from the Director of the Waimea Arboretum and Botanical Garden strongly supported the listing of the Lanai sandalwood as an endangered species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Santalum freycinetianum* var. *lanaiense* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Santolum freycinetianum* Gaud. var. *lanaiense* Rock (Lanai sandalwood or 'iliahi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Only 39 individuals of this taxon are presently known to be extant (Peter Connally, State Conservation Officer, Lanai City, pers. comm.). The recent decline in numbers of the species is largely due to loss of habitat. Natural vegetation has been eliminated over vast areas of Lanai and native dryland forests have been severely degraded (Spence and Montgomery 1976). Agricultural development has removed large tracts of native vegetation, first for pasture and later for pineapple production. Cattle, sheep, and axis deer, which have been introduced into this area, have removed and trampled vegetation, contributing to severe erosion of soils.

B. *Overutilization of commercial, recreational, scientific, or educational purposes.* Extensive removal of Hawaiian sandalwoods for trade occurred from 1790 to 1820. The wood is valued for its fragrance and beauty and was used in making incense and in decorative woodworking. Although the species is no longer common enough for profitable commercial use, it may be threatened by individuals seeking the wood.

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C. *Disease or predation.* The Lanai sandalwood is grazed by introduced animals, including axis deer maintained for hunting, as demonstrated by the high browse line on the few remaining trees. Fruit predation by rats has resulted in virtual lack of reproduction in this taxon.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time to protect this taxon. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or manmade factors affecting its continued existence.* Only one sapling has recently been observed, indicating that reproduction of *Santalum freycinetianum* var. *lanaiense* is almost non-existent. Several factors may contribute, including reduction of the breeding population and rodent damage to fruit. The low numbers of individuals remaining has greatly reduced the gene pool for the species and may threaten its adaptive potential.

The Service has carefully assessed the best scientific and commerical information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Santalum freycinetianum* var. *lanaiense* as endangered. The species is listed as endangered due to the imminent threat of extinction. This choice reflects the strong likelihood that, without the institution of appropriate conservation measures, the species will become extinct. The conditions leading to a listing without critical habitat designation are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," and the University faculty member's comments in the "Summary of Comments and Recommendations," sandalwood is used for incense and decorative wood products and in the past Hawaiian species of *Santalum* were extensively harvested; today there is a limited interest in sandalwood by hobbyists. Collecting is an activity difficult to enforce against and is not regulated by the Endangered Species Act with respect to plants, except for prohibitions against exportation, interstate or foreign commerce, or removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species even more vulnerable to collection and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *Santalum freycinetianum* var. *lanaiense* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened; and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. *Santalum freycinetionum* var. *lanaiense* is found on private land. No Federal action currently exists or is anticipated with regard to this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Santalum freycinetianum* var. *lanaiense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any persons subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commerical activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species has been known since 1820. It is anticipated that few trade permits will be sought or issued for *Santalum freycinetianum* var. *lanaiense*.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition applies to *Santalum freycinetianum* var. *lanaiense* if it were to be found on Federal land or if any of the land it is now found on should pass into Federal jurisdiction. Permits for exception to this prohibition are available under regulations to be codified at 50 CFR 17.62 (50 FR 39681, September 30, 1985). As all known plants occur on private lands, it is anticipated that no collecting permits will be requested for *Santalum freycinetianum* var. *lanaiense*. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Carr, G.D. 1981. Status report on *Santalum freycinetianum* var. *lanaiense*. Research Corporation of the University of Hawaii, under contract 14-16-001-79096 to the U.S. Fish and Wildlife Service. 29 pp.

Spence, G.E., and S. Montgomery. 1976. Ecology of the dryland forest at Kanepu'u, Island of Lana'i. *Hawaii Botanical Society Newsletter* 15:62-80.

Author

The primary author of this final rule is Dr. Derral Herbst, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530 or FTS 546-7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants, (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Santalaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Santalaceae—Sandalwood family:						
Santalum freycinetianum var. *lanaiense.*	Lanai sandalwood or 'iliahi	U.S.A. (HI)	E	215	NA	NA

Dated: January 9, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-1474 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-55-M

VOL 51 ISS 16 JA 24 1986 UMI

Proposed Rules

Federal Register
Vol. 51, No. 16
Friday, January 24, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33-6619; 34-22791; IC-14897; File No. S7-01-86]

Proposed Amendments to Tender Offer Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed amendments to its issuer and third-party tender offer rules. The amendments would provide that any security holder must be paid the highest consideration paid to any other security holder. To facilitate the revised best price rules, the Commission is proposing to amend existing rules concerning minimum offering periods and withdrawal rights. With respect to minimum offering periods, a tender offer would remain open for ten business days upon announcement of an increase or decrease in the percentage of securities being sought or consideration offered by the offeror. With respect to withdrawal rights, two alternative proposals are being published for comment:

(1) That upon announcement of a decrease in the percentage of securities being sought or consideration offered, additional withdrawal rights attach for ten business days; and (2) that withdrawal rights extend throughout the offer, and the extension of withdrawal rights upon commencements of a competing bid be eliminated.

DATE: Comments should be received on or before February 24, 1986.

ADDRESSES: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-01-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: For information regarding proposed amendments to the third-party tender offer rules, contact Sarah A. Miller, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. For information regarding proposed amendments to the issuer tender offer rule, contact Nancy J. Burke, (202) 272-2848, or Deren E. Manasevit, (202) 272-7494, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Rule 13e-4[1] and Regulations 14D and 14E[2] pertaining to tender offers.

I. Executive Summary

In July 1985, the Commission proposed rules that would require that all bidders and issuers making a tender offer pay every tendering security holder the highest consideration offered to any other sucurity holder at any time during the tender offer ("best-price provision").[3] At the same time, the Commission also proposed rules to require that all bidders and issuers making a tender offer extend the offer to all security holders who own shares of the class of securities subject to the offer ("all-holders requirement").

The Commission also proposed to require that a tender offer remain open for at least ten business days from the date of announcement of an increase in the amount of securities being sought by the offeror, The Commission proposed that such amended offers remain open for the same period of time currently required after increases in the consideration offered or the dealer's soliciting fee in order to allow time for security holders to consider the offer as amended.[4]

Seventy-six letters were received from 68 commentators.[5] Commentators were divided in their position on the best price provision for issuer tender offers, while the majority of commentators supported adoption of the third-party best-price proposal. The majority of those commentators who opposed the best-price provision for issuer and third-party tender offers did so based upon their belief that the Commission lacked authority to promulgate the proposals. Commentators who supported the best-price provision did so for a variety of policy reasons, including the need to protect security holders from discriminatory tender offers. Three commentators suggested revising the best-price proposal to require that all security holders to whom a tender offer is made must be paid the highest consideration paid, rather than offered, to any other security holder. The Commission agrees with the suggested reformulation of the best-price provision. Certain relatively new defensive tender offer techniques employed by targets, including, *inter alia*, sales of assets, may result in the offeror determining that it is appropriate to offer a lower price for the target's securities. The Commission believes it may be appropriate to recognize such developing techniques by revising the best-price rule to focus on the best price paid rather than offered. The Commission, however, believes that it is necessary to balance the actions taken by the offeror and target on the one hand and the needs of investors confronted with such an amended offer on the other. When a decrease in consideration offered occurs, investors

[1] 17 CFR 240.13e-4.

[2] 17 CFR 240.14d-1 - 14d-101 and 240.14e-1 - 14e-3.

[3] For third-party tender offers, *see* Release No. 33-6595 (July 1, 1985) [50 FR 27976]; for issuer tender offers, *see* Release No. 33-6596 (July 1, 1985) [50 FR 28210].

[4] In Release No. 33-6596, *supra*, the Commission proposed to require that an issuer tender offer remain open for increases in the consideration offered or the dealer's soliciting fee. The Commission also proposed amendments to the time periods for issuer tender offers to bring the provisions governing the conduct of issuer tender offers into conformity with third-party tender offers, to eliminate the advantages afforded defensive issuer tender offers, and to alleviate the confusion that may arise from disparate time periods. The Commission today is publishing a release announcing adoption of those amendments. *See* Release No. 33-6618 (January 14, 1986).

[5] The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room. (*See* File Nos. S7-34-85, S7-35-85).

may need to be afforded sufficient time to consider the amended offer. Similarly, those investors who have tendered prior to the decrease in price offered may wish to reconsider their tenders in light of that decrease.

The reformulation of the best-price rule necessitates that the Commission also propose amendments pertaining to withdrawal rights and requiring the offering period to remain open for ten business days upon an increase in the amount of securities sought or consideration offered. Specifically, these proposals include: (1) The best-price provisions in Rule 13e-4(f)(8) and proposed Rule 14d-10; (2) the withdrawal rights provisions in Rules 13e-4(f)(2) and 14d-7,[6] and (3) the requirement in Rules 13e-4(f)(1) and 14e-1(b)[7] that the offering period remain open for a minimum time period upon the increased or decrease in consideration offered or percentage of shares sought. The Commissison will consider the all-holders requirement for issuer and third-party tender offers when it considers adoption of the best-price proposal.

This release discusses the specific proposed amendments to the rules. Persons interested in further information regarding the extensive history and background surrounding the equal treatment proposals, as well as a discussion of the Commission's position, are directed to the recent releases proposing the all-holders and best-price provisions.[8]

II. Proposed Amendments

A. Best-Price Provision

1. *General requirements.* The Commission has revised the best-price provision in proposed Rules 13e-4(f)(8)(a)(ii) and 14d-10(a)(2) to provide that "[t]he consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder, ..." Thus, under this proposal, offers may be made at prices higher than that eventually paid. The highest price paid to any tendering security holder, however, must be paid to a tendering security holder. For example, under the proposed best-price provision, a bidder makes a tender offer at $10.00 per share. In response to the bid, the target company announces that it has sold a significant portion of its assets to a third party resulting in the bidder lowering the price offered to reflect the sale of the target's assets and, eventually, paying to all tendering security holders the lower price offered.[9] In this example, the bidder has lowered its offering price in the face of the target's actions. Security holder who tender their shares in response to the bidder's revised offer will still be paid the same, albeit lower, price paid to any other security holder.

In Release Nos. 33-6595 and 6596, the Commission addressed in the context of the best-price provision those situations where more than one type of consideration is offered. The Commission proposed that in such a situation, alternative types of consideration would be allowed so long as the various types of consideration are substantially equivalent, and all security holders have the same choice among the types of consideration offered.

A few commentators stated that it was unnecessary to require alternative forms of consideration to be substantially equivalent in value, so long as security holders have the same choice among the forms of consideration offered. Some of these commentators opined that the substantial equivalence standard would present problems in valuation, attract litigation and serve as a deterrent to tender offers where more than one form of consideration is offered.

The Commission agrees with these commentators that determination of whether or not proferred alternatives are substantially equivalent in value is a decision that may best be left to the individual security holder. Accordingly, the Commission has revised the best-price proposal to provide that where more than one type of consideration is offered those types of consideration do not have to be substantially equivalent in value. Security holders, however, must be offered the right to elect among all types of consideration offered.[10] If the bidder or issuer increases or decreases the consideration offered, security holders still must be afforded the right to elect among the types of consideration offered, including any increases or decreases in that consideration. By revising the best-price provision to provide that security holders must be afforded the right to elect among all types of consideration offered and that those types of consideration offered do not have to be substantially equivalent in value, the Commission anticipates that any problems associated with valuation, encouraging litigation and deterring tender offers where more than one form of consideration is offered will be eliminated.

2. Exemption from Operation of the Best-Price Provisions

a. General Exemptive Authority: In Release Nos. 33-6595 and 6596, the Commission proposed general exemptive provisions in connection with the all-holders and best-price rules. These provisions would be contained in proposed paragraph (b) of Rule 14d-10 and present paragraph (g)(6) of Rule 13e-4. These general exemptive provisions provide that the Commission, upon written request or its own motion, may determine that the best-price provision, either conditionally or unconditionally, need not apply to a particular transaction.

b. Specific Exemption from Rule 13e-4: Rule 13e-4 would codify those few special and recurring circumstances where relief from the all-holders requirement for issuer repurchases through tender offers is warranted.[11] In Release No. 33-6596, the Commission proposed to amend paragraph (g)(5) of Rule 13e-4 [12] to permit odd-lot offers to be made without complying with the general all-holders proposals contained in Rule 13e-4(f)(8). The Commission notes, however, that the all-holders proposal would apply within the context of an odd-lot offer.[13]

Similarly, the best-price requirement would apply to require the issuer to pay to all security holders who tender pursuant to the odd-lot offer the highest consideration paid to any other security holder during the odd-lot offer.

[6] 17 CFR 240.13e-4(f)(2) and 240.14d-7.

[7] 17 CFR 240.13e-4(f)(1) and 240.14e-1(b).

[8] *See* Release Nos. 33-6595, 6596 (July 1, 1985) [50 FR 27976, 28210].

[9] The decrease in consideration also will require that the offering period remain open for a minimum ten day time period. *See* proposed amendments to Rules 13e-4(f)(1) and 14e-1(b) (minimum offering period). *See* § II.B. *infra*. Such time periods are to run concurrently.

[10] Although each alternative type of consideration generally must be offered, the Commission will not object if an offeror offers cash or other qualified securities in a state where there are Blue Sky law issues involved. This unusual situation will occur only in the context of an exchange offer made to residents of a state that has merit regulation of tenner offers and the state administrator has determined that the tender offer is neither fair, just or equitable. If such a situation does occur, the Commission will consider an application for exemptive relief on a timely basis while processing the registration statement. *See* rule 13e-4(g)(6), 17 CFR 240.13e-4(g)(6), and proposed rule 14d-10(b).

[11] No corresponding exemptions are being proposed for third-party tender offers. Such transactions are rare in the third-party tender offer context. To the exient that these transactions do arise, they could be addressed under the general exemptive authority of proposed Rule 14d-10(b).

[12] 17 CFR 240.13e-4(g)(5).

[13] For a complete understanding of how odd-lot offers would comply with the all-holders proposal, *see* Release No. 33-6596, *supra*.

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However, in the special context of issuer odd-lot offers, the Commission believes that an exception is appropriate to allow an issuer to use a formula to determine the amount that will be paid to a particular security holder, provided that formula is based on the market price for the security and is applied uniformly.[14] Accordingly, paragraph (g)(5) is proposed to be admended to reflect that an issuer odd-lot offer must comply with the best-price requirement of proposed paragraph (f)(8)(ii) or the issuer must pay an amount of consideration based on a uniformly applied formula that, in turn, is based on the market price for the security.

In Release No. 33–6596, the Commission indicated that it may be appropriate to exempt modified "Dutch auction" issuer tender offers from application of the best-price provision.[15] The revised best-price provision would require that all security holders whose securities are accepted in a modified Dutch auction issuer tender offer be paid the highest consideration paid to any other security holder whose securities are accepted. Accordingly, there would no longer be any need to exempt these transactions from the operation of the best-price provision.

B. Minimum Offering Period

Rules 14e–1(b) and 13e–4(f)(1)[16] currently provide that a tender offer must remain open for ten business days upon an increase in the offered consideration or the dealer's soliciting fee. In Release Nos. 33–6595 and 6596, the Commission proposed to add, as an additional trigger for the ten business day period, an increase in the amount of securities sought pursuant to a tender offer. The proposed revisions to the best-price provision necessitate, however, that additional amendments to Rules 13e–4(f)(1) and 14e–1(b) be made. Because the proposed best-price provision provides that the consideration paid may be lower than that initially offered, the Commission proposes corresponding amendments to Rules 13e–4(f)(1) and 14e–1(b) to provide that a decrease in consideration offered will require that tender offer's remain open for a minimum ten business day period from the date of such decrease. These proposed amendments will ensure that security holders receive information pertaining to the amended offer and will have additional time to analyze that offer.

The Commission also proposes to amend Rules 13e–4 (f)(1) and 14e–1(b) to provide that a decrease in securities sought will require the offering period to remain open for a minimum ten business day time period rather than resulting in the commencement of a new tender offer. The Commission believes that a decrease in securities sought does not, in itself, constitute a new tender offer, and that a ten business day time period would be appropriate for the same reasons that it is proposing to extend the minimum offering period for an increase in securities sought, *i.e.*, investors' need for time to evaluate the amended offer.

The Commission proposes to revise the language in Rule 14e–1(b) from "amount of securities sought" to "percentage of securities sought." This proposed revision from the July proposal recognizes those circumstances where an increase in the number of shares sought does not increase the percentage of shares ultimately sought. This situation may occur in a partial tender offer where a bidder, in the face of an issuance of securities by the issuer, continues to offer for the same desired percentage of securities even though the total amount of securities sought increases.

C. Withdrawal Rights

The reformulated best-price provisions necessitates that certain changes be made to withdrawal rights. The Commission is proposing, therefore, to amend Rules 13e–4(f)(2) and 14d–7 in one of two alternate ways. The first alternative would provide for additional withdrawal rights for ten business days from the date that notice of a decrease in consideration or percentage of securities sought is first communicated to security holders.[17] This proposed alternative would assure that security holders who tendered prior to the decrease have the ability to reconsider their tender in light of the disclosure.

The Commission is also proposing as an alternative a broader approach to withdrawal rights that causes more far-reaching changes to the applicable rules. The Advisory Committee on Tender Offers recommended that the withdrawal period should run coextensively with proration and minimum offering periods and that the extension of withdrawal rights upon commencement of a competing bid could be eliminated.[18] The Commission notes, however, that the Committee's withdrawal period recommendations were made in the context of other more extensive recommendations as to tender offer time periods. In light of the existing offering period framework, the Commission, as an alternative proposal, seeks comment on a rule amendment that would extend withdrawal rights until the expiration of the tender offer. This proposal would protect security holders by a system that provides for prorationing and withdrawal throughout the offering period.[19] In this connection, the Commission wishes to point out that if the proposal to extend withdrawal rights throughout the offer is adopted no additional withdrawal rights will attach in the event of the commencement of a competing bidder's offer.

The first alternative requires additional amendments to Rule 13e4(f)(2) pertaining to issuer notice of a subsequent third party offer and withdrawal rights. Commencement of a third party tender offer triggers the withdrawal rights specified by Rule 14d–7(a)(2) in a preceding third party offer only if the preceding third party offeror receives notice or otherwise has knowledge of the commencement of the subsequent third party tender offer.[20] Two commentators noted that there is no corresponding requirement in Rule 13e–4, so that the commencement of a third party tender offer may trigger the withdrawal rights specified by paragraph (f)(2)(ii) of Rule 13e–4 whether or not the issuer receives notice or otherwise has knowledge of the subsequent third party offer. The likelihood that a third party could initiate a tender offer without the issuer's knowledge is, however, small.[21] In such cases, the issuer may take steps that it would not otherwise pursue if it were thereafter required to reopen withdrawal rights. In order to address these relatively rare cases, the Commission believes that, should the first proposal be adopted, the issuer should not be required to afford security holders the withdrawal rights specified by Rule 13e–4(f)(2)(ii) unless the issuer receives notice or otherwise has knowledge of the commencement of a subsequent third party offer, and is proposing to amend paragraph (f)(2)(ii) accordingly.

[14] *See, e.g., Letter regarding Great American Industries, Inc.* (letter dated April 6, 1983).

[15] Under current staff interpretation, issuers have been permitted to make modified "Dutch auction" issuer tender offers, although pure issuer "Dutch auction" tender offers currently are not permitted under Rule 13e–4. In a pure Dutch auction cash tender offer, the bidder invites security holders to tender securities to it at a price to be specified by the tendering security holder, rather then at a price specified by the bidder. Securities are accepted, beginning with those for which the lowest price has been specified, until the bidder has purchased the desired number of securities. Modified issuer Dutch auction tender offers have been permitted under Rule 13e–4 subject to several conditions: (i) disclosure in the tender offer materials of the minimum and maximum consideration to be paid; (ii) pro rata acceptance throughout the offer with all securities purchased participating equally in prorationing; (iii) withdrawal rights throughout the offer; (iv) prompt announcement of the purchase price, if determined prior to the expiration of the offer, and (v) purchase of all accepted securities at the highest price paid to any security holder under the offer. The staff has not addressed defensive modified issuer Dutch auction tender offers.

[16] The Commisson today amended Rules 13e–4(f)(1) and 14e–1(b) to require that the offering period of any issuer tender offer be open for a minimum of ten business days from the date that an increase in the consideration offered or the dealer's soliciting fee is first published, sent or given to security holders. *See* Release No. 33–6618.

[17] *See* 17 CFR 240.13e–4(e) and 240.14d–4(c).

[18] *See* Recommendations 17 and 18 of Advisory Committee on Tender Offers Report of Recommendations at 28–29 (July 8, 1983). The Advisory Committee's recommendation to eliminate the extension of withdrawal rights upon commencement of a competing bid was premised on the idea "that each bidder should control its own bid" and that the other recommendations concerning withdrawal periods "provide shareholders protections comparable to those under the current system."

[19] The Commission has previously expressed a view that there may, in certain situations, be benefits to coextensive withdrawal periods. *See* Statement of John S. R. Shad, Chairman of the Securities and Exchange Commission, before the House Subcommittee on Telecommunications, Consumer Protection, and Finance, March 28, 1984.

[20] 17 CFR 240.14d–7(a)(2).

[21] Rule 14d–3(a)(2), 17 CFR 240.14d–3(a)(2), requires a third party offeror, as soon as practicable on the date of commencement of the tender offer, to hand deliver to the target the Schedule 14D–1 filed with the Commission in connection with the tender offer. Accordingly, if the third party tender offer is for a class of equity securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. 78*l*, the third party offeror must provide notice to the issuer of the commencement of the third party tender offer by operation of Rule 14d–3(a)(2). The proposed amendment to Rule 13e–4 would apply to all tender offers subject to that rule.

III. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed Rule 14d–10 and proposed amendments to Rules 13e–4, 14d–7 and 14e–1 and has been prepared by the Securities and Exchange Commission ("Commission") in accordance with 5 U.S.C. 604.

Reasons for Proposal

The proposed amendments to Rule 13e–4 and proposed Rule 14d–10 will require that an offeror making a tender offer pay to any security holders who tender pursuant to the tender offer the highest consideration paid to any other security holder during the tender offer ("best-price provision"). The Commission has recognized the need to provide clarity and certainty in the regulatory scheme applicable to tender offers with respect to equal treatment of security holders, and accordingly is proposing the best-price provision for issuer and third-party tender offers.

Certain of the amendments to Rules 13e–4, 14d–7 and 14e–1(b) are necessitated by the proposed amendments to Rule 13e–4 and proposed Rule 14d–10. In addition, certain of the proposed amendments to Rules 14e–1 and 13e–4 would implement a recommendation of the Commission's Advisory Committee on Tender Offers.

Objectives

The Objective of the best-price provisions are to make explicit the requirement that issuers and bidders must pay to any security holder who tenders pursuant to the tender offer the highest consideration paid to any other security holder during the tender offer.

The Commission proposes amending Rules 13e–4 and 14e–1 to add, as a trigger to the current ten business day period specified in those rules, an increase or decrease in the amount of securities sought and a decrease in the consideration offered.

Legal Basis

The proposed amendments would be promulgated pursuant to Sections 3(b), 9(a)(6), 10(b), 13(e), 14(d), 14(e) and 23(a) of the Securities Exchange Act and Section 23(c) of the Investment Company Act of 1940.

Small Entities Subject to the Rule

If the proposed amendments to Rule 14e–1(b) were adopted, certain small entities, including those not subject to Rule 13e–4 and Regulation 14D, would become subject to its requirements. It therefore appears likely that a substantial number of small entities would be affected by proposed Rules 13e–4 and 14e–1(b). Those entities not subject to Rule 13e–4 and Regulation 14D could include issuers who have publicly traded securities that are not registered with the Commission, issuers who report to the Commission pursuant to 15(d) of the Exchange Act and issuers whose securities are not publicly traded.

An unknown portion of these classes of issuers are small entities. At this time the Commission is unable to determine the costs to small entities of compliance with the proposal. With respect to the proposed best-price provision and proposed amendments to withdrawal rights for issuer tender offers, Rule 13e–4 only applies to issuers that have a class of equity securities registered pursuant to Section 12 of the Exchange Act, or that are required to file periodic reports pursuant to Section 15(d) of the Exchange Act. Under Rule 12g–1 under the Exchange Act, an issuer is exempt from Section 12(g)(1) of the Exchange Act if, on the last day of its last fiscal year, it had total assets of $3,000,000 or less. Most issuers who register pursuant to Section 12(g) of the Exchange Act are required to do so because they have total assets of $3,000,000 or more. Therefore, such issuers would not be considered small for purposes of Rule 0–10(a). As a result, the only small issuers to whom the Rule applies are those who voluntarily register pursuant to Section 12(g), and those who are required to file periodic reports under Section 15(d), of the Exchange Act.

In a review of a random sample of twenty percent of the Schedule 13E–4s filed pursuant to Rule 13e–4 in fiscal year 1984, every issuer who filed a Schedule 13E–4 has assets of over $3,000,000. Thus, it appears that few if any small issuers would be affected by the proposed amendments to Rule 13e–4. The Commission also believes that the proposed amendments would not have a significant economic impact on a substantial number of small entities that might be third party offerors. With respect to the proposed best-price provision and proposed amendments to withdrawal rights for third-party tender offers, there should be no significant economic impact on small entities, because the proposal: (i) Represents a proposed codification of existing Commission interpretations that currently govern the conduct of tender offers subject to Section 14(d) of the Exchange Act;[22] and (ii) entities currently exempt from the Commission's interpretations would not be brought within the scope of the proposed rule.

Reporting, Recordkeeping and Other Compliance Requirements

The Commission believes that the best-price provision would not result in any significant increase in reporting or recordkeeping requirements. The proposed amendments to Rules 13e–4 and 14e–1(b), however, would require that, in a tender offer involving a small entity, an increase in the percentage of securities sought would cause the offering period to remain open for an additional ten business days. In addition, one of the proposed amendments to Rules 13e–4 and 14d–7 would require that, in a tender offer involving a small entity, a decrease in the percentage of securities sought or consideration offered would cause withdrawal rights to be extended for an additional ten business days. The alternative proposal would require that, in a tender offer involving a small entity, withdrawal rights under Rules 13e–4 and 14d–7 would be extended throughout the offer.

[22] 15 U.S.C. 78n(d).

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Overlapping or Conflicting Federal Rules

The Commission does not believe that the proposed rules duplicate or conflict with any existing rule provisions.

Significant Alternatives

The Commission has considered imposing fewer requirements on tender offers by small issuers, such as exempting from the rule affected small entities, or limiting the rules' applicability to those tender offers that meet certain standards, such as tender offers for the securities of issuers subject to section 15(d) of the Exchange Act or tender offers made to residents of more than one state. The Commission does not believe that such alternative proposals would be consistent with the Commission's statutory mandate of investor protection. Similarly, the Commission does not consider the use of performance rather than design standards to be a significant alternative because a performance standard would be inconsistent with the Commission's statutory mandate.

IV. Request for Comments

Any interested person wishing to submit written comments on the proposals as well as on other matters that might have an impact on the proposals, are requested to do so.

The Commission also requests comment on whether the proposed rule, if adopted would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[23]

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–01–86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

[23] 15 U.S.C. 78w(a)(2).

V. Statutory Basis and Text of Proposed Amendments

The Commission hereby proposes to amend Rule 13e–4 and Regulations 14D and 14E pursuant to sections 3(b), 9(a)(6), 10(b), 13(e), 14(d), 14(e) and 23(a) of the Exchange Act and section 23(c) of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Tender offers, Issuers.

VI. Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is revised to read as follows: (Citations before * * * indicate general rulemaking authority).

Authority. Sec. 23, 48 Stat. 901 as amended; 15 U.S.C. 78w. * * * §§240.13e–4, 14d–7, 14d–10 and 14e–1 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(d) and 14(e), 15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78n(d) and 78n(e) and sec. 23(c) of the Investment Company Act of 1940, 15 U.S.C. 89a–23(c).

2. By revising paragraph (f)(1)(ii) of § 240.13e–4 to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(f) * * *

(1) * * *

(ii) At least ten business days from the date that notice of an increase or decrease in the percentage of securities being sought or the consideration offered or the dealer's, soliciting fee to be given is first published, sent or given to security holders.

* * * * *

3. By amending paragraph (f)(2) of § 240.13e–4 in one of the two following respects.

Proposal I (redesignating current paragraphs (f)(2) (ii) and (iii) as (f)(2) (iii) and (iv), adding new paragraph (f)(2)(ii), and revising paragraphs (f)(2)(i), and newly redesignated (f)(2)(iii)):

* * * * *

(f) * * *

(2) * * *

(i) At any time until the expiration of fifteen business days from the commencement of the issuer tender offer;

(ii) Until the expiration of ten business days from the date that notice of a decrease in the percentage of securities being sought or consideration offered is first published, sent or given to security holders; and

(iii) If not yet accepted for payment, on the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to Rule 14d–2(b) [§ 240.14d–2(b)] for securities of the same class *provided that* the issuer has received notice or otherwise has knowledge of the commencement of such other tender offer;

* * * * *

Proposal II (revising (f)(2)(i), removing paragraph (f)(2)(ii) and redesignating paragraph (f)(2)(iii) as (f)(2)(ii)):

* * * * *

(f) * * *

(2) * * *

(i) At any time during the period such issuer tender offer remains open.

* * * * *

4. By revising paragraph (f)(8) introductory text and (f)(8)(ii) as proposed in the **Federal Register** of July 11, 1985 (50 FR 28218) and by revising paragraph (g)(5) of § 240.13e–4 to read as follows:

* * * * *

(f) * * *

(8) No issuer shall make a tender offer unless:

* * * * *

(ii) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder at any time during such tender offer; *Provided, however,* That in a tender offer in which more than one type of consideration is offered, including increases or decreases in any such type of consideration. (A) security holders must be afforded the right to elect among the types of consideration offered; and (B) the highest consideration of each type paid to any security holder is paid to any other security holder electing that type of consideration.

(g) * * *

(5) Offers to purchase from security holders who own as of a specified date prior to the announcement of the offer an aggregate of not more than a specified number of shares that is less than one hundred: *Provided however,* That: (i) the offer complies with paragraph (f)(8)(i) of this section with respect to security holders who own the specified number of shares as of the specified date, except that an issuer can elect to exclude participants in an issuer's plan as that term is defined in Rule 10b–6(c)(4) under the Act [§ 240.10b–6(c)(4)], and (ii) the offer complies with paragraph (f)(8)(ii) of this section or the consideration paid

pursuant to the offer is determined on the basis of a uniformly applied formula based on the market price of the subject security.

* * * * *

5. By amending § 240.14d–7 in one of the two following respects:

Proposal I (revising paragraph (a))

§ 240.14d–7 Additional withdrawal rights

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following periods:

(1) At any time until the expiration of fifteen business days from the date of commencement of such tender offer;

(2) Until the expiration of ten business days from the date that notice of a decrease in the percentage of securities being sought or consideration offered is first published, sent or given to security holders; and

(3) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to Rule 14d–2(b) (§ 240.14d–2(b)) for securities of the same class *Provided,* That the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer and, *Provided further,* That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

* * * * *

Proposal II (deleting paragraphs (b) and (c), and redesignating paragraph (d) as (b), and revising paragraph (a)):

§ 240.14d–7 Additional withdrawal rights.

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the period such offer request or invitation remains open.

* * * * *

6. By revising paragraph (a) introductory text and (a) (2) of § 240.14d–10 as proposed in the **Federal Register** of July 9, 1985 (50 FR 27980):

§ 240.14d–10 Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

* * * * *

(2) In addition to the provisions of section 14(d)(7) of the Act, the consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder at any time during such tender offer; *Provided, however,* in a tender offer in which more than one type of consideration is offered, including increases or decreases in any such type of consideration: (i) security holders must be afforded the right to elect among the types of consideration offered; and (ii) the highest consideration of each type paid to any security holder is paid to any other security holder electing that type of consideration.

* * * * *

7. By revising paragraph (b) of § 240.14e–1 to read as follows:

§ 240.14e–1 Unlawful tender offer practices.

* * * * *

(b) Increase or decrease the percentage of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders;

* * * * *

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

January 14, 1986.

[FR Doc. 86–1589 Filed 1–23–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is proposing to amend its regulations relating to the labor certification process for the permanent employment of immigrant aliens in the United States. The proposed amendment would delete alien graduates of foreign medical schools from the *Schedule A* recertification list.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before February 24, 1986.

ADDRESSES: Send written comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, U.S. Department of Labor, Suite 8100, Patrick Henry Building, 601 D Street, NW., Washington, DC 20213.

FOR FURTHER INFORMATION CONTACT: Thomas M. Bruening, Telephone: 202–376–6228.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is proposing to amend its regulations at 20 CFR Part 656 by deleting from the *Schedule A* precertification list alien graduates of foreign medical schools. Those alien physicians (and surgeons) who are of exceptional ability in a science or art will remain on *Schedule A.*

Permanent Alien Employment Certification Process

Pursuant to the Immigration and Nationality Act (INA), before the Department of State (DOS) and the Immigration and Naturalization Service (INS) issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(14).

Department of Labor Regulations

Pursuant to 8 U.S.C. 1182(a)(14), DOL has promulgated regulations at 20 CFR Part 656 to implement the labor certification process for the permanent employment of immigrant aliens in the United States.

The regulations at 20 CFR Part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. Part 656 also sets forth the responsibilities of employers who desire to permanently employ immigrant aliens in the United States, and the responsibilities of the alien beneficiaries of permanent alien labor certifications.

Schedule A Precertification List

DOL has published, at 20 CFR 656.10, a list of occupations *(Schedule A)* for which the U.S. Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified, and available, and that the wages and working conditions

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of U.S. workers similarly employed will not be adversely affected by the employment of aliens. DOL has delegated to the DOS and the INS the authority to determine if an alien falls within one of the occupational categories on *Schedule A*, and, if so, to issue a permanent alien labor certification for the alien. 20 CFR 656.22. The *Schedule A* determination of the INS or Department of State is conclusive and final, and is not appealable within DOL. 20 CFR 656.22(h)(2).

Alien Graduates of Foreign Medical Schools

Regulations at 20 CFR 656.10(a)(2) and 20 CFR 656.22(b) provide for the precertification of alien graduates of foreign medical schools in specific shortage areas for specific medical specialties as designated by the Department of Health and Human Services (HHS). ETA is proposing to amend these regulations by deleting physicians from the DOL's *Schedule A* percertification list. Physicians would still, however, be allowed to be the beneficiaries of permanent labor certification applications. No change is contemplated in DOL's regulations which allow employers to file applications for labor certification under the basic labor certification process at 20 CFR 656.21. Further, alien physicians (and surgeons) of exceptional ability in a science or art would continue on *Schedule A*. 20 CFR 656.10(b).

Under the current regulations, a signed statement is required from the appropriate Regional Health Administrator (RHA), Public Health Service (PHS) Regional Office, HHS, as documentation of physicians (and surgeons) *Schedule A* eligibility. The signed statement from the RHA certifies that the alien will be employed as a physician (or surgeon) in a geographic area which has been designated by the Secretary of HHS as a Health Manpower Shortage Area (HMSA) for the alien's medical specialty, or has been identified otherwise by the Secretary of HHS as having an insufficient number of physicians in the alien's medical specialty (hereinafter referred to as an inadequately served area).

In August of 1984, HHS wrote to the Assistant Secretary of Labor for Employment and Training informing him that as a result of an internal HHS study of the current labor certification program, HHS had come to the conclusion that major changes in HHS participation in the program were warranted. HHS proposed discontinuing, beginning with Fiscal Year 1985, making labor shortage certifications through PHS regional offices. The reasons for this decision were as follows:

—Neither the Congress or HHS recognizes the existence of a national shortage of physicians in the U.S.;
—Methodological problems exist in developing and keeping accurate information for inadequately served areas for other than the primary care specialties;
—The recent HHS Report to the President and the Congress on the Status of Health Personnel in the United States indicated that the aggregate number of physicians in the United States is projected to exceed requirements in 1990 and 2000;
—Scarce PHS resources for this activity, given its apparent limited utility; and
—Less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified.

To date, 90 percent of all positive certifications issued by PHS have been based on the lists of HMSAs and only 10 percent have been based on the lists of inadequately served areas. The HMSA lists, which are maintained only for primary care physicians and psychiatrists, according to HHS have a high degree of currency and reliability, are published annually in the **Federal Register**, and are widely recognized as being accurate and correct.

PHS recommended removal of physicians from *Schedule A*, or, in the alternative, leaving only those physicians on *Schedule A* that are to be employed in the HMSAs. However, as indicated above, less than one-third of the physicians certified for direct patient care work in the shortage areas or specialties for which they obtained certification for any length of time. Thus, the labor certification program has not had significant effect in alleviating the shortage of physicians in the HMSAs or in the inadequately served areas. Consequently, DOL proposes to remove physicians (and surgeons) from *Schedule. A*.

Regulatory Impact

The economic and other impact of this proposed rule is not so great as to make it a major rule requiring the development of a regulatory impact analysis. See Executive Order No. 12291, 3 CFR, 1981 comp., p. 127 (February 17, 1981).

The proposed rule would not have a significant impact on a substantial number of small entities. It would only affect those few employers who petition for foreign medical graduates pursuant to DOL's *Schedule A* precertification list. Only 103 *Schedule A* physicians were certified in Fiscal Year 1984. For this reason, the Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act, that this rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at Number 17.203, "Certification for Immigrant Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Fraud, Labor, Unemployment, and Wages.

Proposed rule

Accordingly, it is proposed to amend Part 656 of Chapter V of Title 20, Code of Federal Regulations, as follows:

PART 656—[AMENDED]

1. The authority citation for Part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(14); 29 U.S.C. 49 *et seq.*

§ 656.10 [Amended]

2. Section 656.10 is amended by removing paragraphs (a)(2) and (a)(4)(ii) from *Schedule A*; and by redesignating paragraphs (a)(3) and (a)(4)(iii) of *Schedule A* as (a)(2) and (a)(4)(ii) respectively.

§ 656.22 [Amended]

3. Section 656.22 is amended by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

§ 656.50 [Amended]

4. Section 656.50 is amended by removing the definitions for "Regional Health Administration" and "Secretary of Health and Human Services (HHS)".

§ 656.61 [Removed]

5. Section 656.61 is removed.

Signed at Washington, DC, this 14th day of January, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-1503 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-3-77]

Income Tax; Recapture of Overall Foreign Losses

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the recapture of overall foreign losses. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations provide the public with the guidance needed to comply with that Act and would affect all taxpayers receiving income from sources without the United States.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 25, 1986. The amendments are proposed to be effective in general for taxable years ending after December 31, 1975, except for the amendments under paragraph 2, which are proposed to be effective for taxable years for which the due date (without extensions) for filing returns is after (date that is 30 days after the date these regulations are published in the **Federal Register** as final regulations).

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-3-77), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Nerman D. Hubbard of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (LT-3-77), (202) 566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 904 (f) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1032 of the Tax Reform Act of 1976 (90 Stat. 1624) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805). The amendments under paragraph 2 are also to be issued under the authority contained in section 1502 of the Internal Revenue Code (68A Stat. 637, 26 U.S.C. 1502).

Statutory Provisions

In 1975, Congress enacted section 907 containing a separate overall foreign tax credit limitation for foreign oil related income. This new separate limitation (section 907(b)) required that foreign oil related income and expenses and deductions related thereto be kept separate from other types of foreign source taxable income and that the provisions of section 904 be applied separately to foreign oil related income. It thus, prevented the averaging of taxes on foreign oil related income with taxes on other types of foreign source income and required foreign oil related losses to offset U.S. source income instead of other foreign source income. At the same time, Congress was also concerned about the potential double benefit of having the foreign tax credit reduce U.S. tax on foreign oil related income in a subsequent tax year. As a consequence, Congress provided for the recapture of foreign oil related losses under section 907(f).

Recognizing that the same double benefit could occur when non-oil related foreign sources losses offset U.S. source income, Congress broadened its original recapture rule to cover other foreign source losses by enacting section 904(f) in the Tax Reform Act of 1976. It also consolidated all the overall foreign loss recapture rules into section 904(f) by repealing section 907(f) and providing a separate definition of foreign oil related losses in section 904(f)(4).

Section 904(f) provides that a taxpayer that sustains an overall foreign loss in any taxable year beginning after December 31, 1975, or a foreign oil related loss in any taxable year ending after December 31, 1975 (and beginning before January 1, 1983), is required to recapture such loss in a succeeding taxable year in which it seeks the benefits of the foreign tax credit under section 901 or the Puerto Rico and possession tax credit under section 936. Recapture is accompanied by recharacterizing a portion of the taxpayer's foreign source taxable income as U.S. source income for purposes of the foreign tax credit limitation under section 904 and the allowable possession tax credit under section 936(a)(1). The effect of such recharacterization is a reduction in the taxpayer's foreign tax credit limitation or possession credit. Such reduction occurs annually until such times as the entire overall foreign loss has been recaptured.

Effect of Separate Limitations of Section 904(f)

When Congress repealed section 907(f) and added the separate definition of a foreign oil related loss to section 904(f), it evidenced its intent that foreign oil related losses were to be determined separately without regard to other types of foreign source taxable income. It did not, however, enact a separate recapture provision for foreign oil related losses. This was unnecessary because the separate limitation for foreign oil related income under section 907(b) required the separate application of all the provisions of section 904, including 904(f), to foreign oil related income. Thus, a foreign oil related loss, as defined in section 904(f)(4) (prior to September 3, 1982), is to be recapture by applying the recapture rules of section 904(f) separately to foreign oil related income.

Even if Congress has not included a separate definition of a foreign oil related loss in section 904(f)(4), the separate determination of foreign oil related losses and the recapture of such losses only out of foreign oil related income is consistent with the operative effect of the separate limitation for foreign oil related income. Such limitation required that foreign oil related income and expenses and deductions properly allocated and apportioned thereto be placed in a separate basket. The fact that the netting of foreign oil related income and expenses in the basket results in a loss does not change the fact that the foreign oil related basket must be kept separate from other baskets. Accordingly, foreign oil related losses are determined without regard to foreign source income or losses subject to another separate limitation. (The separate limitation for foreign oil related income was repealed in 1982; transitional rules are discussed below.)

Similarly, the separate limitations for certain interest income (section 904(d)(1)(A)), DISC dividend income (section 904(d)(1)(B)), foreign trade income (section 904(d)(1)(C)), distributions from a FSC (section 904(d)(1)(D)), and other foreign source income (section 904(d)(1)(EA)), requrie a determination of taxable income (or loss) under each separate limitation without taking into consideration foreign source income and deductions subject to another separate limitation. In addition, section 936 requires a qualifying corporation to make separate determinations of its foreign taxable income from sources within a possession (income eligible for the

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section 936 credit) and other foreign source taxable income (income eligible for the section 901 credit). It thus creates another separate limitation.

As a consequence, for purposes of section 904(f), there are seven types of overall foreign losses, one under each of the above mentioned separate limitations. For instance, there can be an overall foreign "interest income" loss, an overall foreign "DISC dividend" loss, and overall "foreign trade income" loss, and overall "FSC distributions" loss, an overall "other" foreign loss, an overall foreign oil related loss, and an overall foreign "section 936" loss. For purposes of recapture it is necessary and consistent with the concept of the separate limitations that any overall foreign loss under a separate limitation be recaptured only out of foreign source taxable income subject to such separate limitation.

Determination of Overall Foreign Losses

Section 1.904(f)–1(c) of the proposed regulations sets forth rules for determining a taxpayer's overall foreign losses in any taxable year. Generally, a taxpayer sustains an overall foreign loss in any taxable year in which its gross income from sources without the United States is exceeded by the sum of the deductions properly allocated or apportioned to such income. However, this is determined separately with respect to each of the seven separate limitations discussed above. For example, a taxpayer sustains an overall "other" foreign loss under the section 904(d)(1)(E) separate limitation in any taxable year in which its gross income subject to such separate limitation is exceeded by the sum of the deductions properly allocated and apportioned thereto. Thus, a taxpayer may have an overall foreign loss under its section 904(d)(1)(E) limitation in the same taxable year in which it has foreign DISC dividend income subject to the section 904(d)(1)(B) limitation which exceeds the sum of the deductions properly allocated or apportioned thereto.

The Overall Foreign Loss Accounts

A taxpayer sustaining any type of overall foreign loss is required under § 1.904(f)–1(b) to establish an overall foreign loss account. A taxpayer is required to make additions and reductions to the account as specified in § 1.904(f)–1 (d) and (e). Generally, the amount of overall foreign loss sustained in the taxable year is added to the overall foreign loss account. In subsequent taxable years in which the loss is recaptured, the amount recaptured is subtracted from such account. Thus, the balance in an overall foreign loss account represents the amount of an overall foreign loss which is subject to recapture. Separate overall foreign loss accounts must be established for losses under each separate limitation.

"Benefit" Rule

Although a literal reading of the statute would require recapture of any overall foreign loss, these regulations adopt a tax benefit rule that limits recapture to those overall foreign losses which offset U.S. source income. Thus, in a taxable year in which the taxpayer has no U.S. source income, the exact amount of an overall foreign loss that will be subject to recapture can only be determined after application of the net operating loss deduction rules. To the extent that such foreign source net operating loss offsets foreign source taxable income in the year to which it is carried, there will be no recapture. The "benefit" concept is accomplished under § 1.904(f)–(d) by providing that overall foreign losses are added to the overall foreign loss account only to the extent that they reduce U.S. source income. A similar "benefit" rule is provided for an overall foreign loss that is part of a net capital loss. As a result, an overall foreign capital loss is only recapturable to the extent it offsets U.S. source capital gain net income.

Paragraphs (d) (2) and (3) provide for further adjustments to the amount of overall foreign loss to be added to the applicable account if such amount includes net capital losses. A corporate taxpayer's foreign source net capital loss is reduced by the rate differential between the highest U.S. tax rate on ordinary income under section 11 and the U.S. tax on net capital gain under section 1201(a) before being added to the overall foreign loss account. A noncorporate taxpayer's foreign source net capital loss is reduced by the amount deducted from gross income under section 1202. These reductions are made in order to reflect the lower U.S. tax rate with respect to net capital gains, and thereby to take into account the actual benefit received by the taxpayer from foreign source capital losses that are subject to recapture.

Effect of Section 904(b) Adjustments on Treatment of Foreign Capital Losses as Overall Foreign Loss

When a taxpayer's capital gain net income is reduced by foreign net capital losses, section 904(b) requires the numerator of the taxpayer's foreign tax credit limitation fraction to be reduced by the amount of the reduction in capital gain net income. To the extent that the reduction of capital gain net income is a reduction of U.S. source net capital gain, a further adjustment is made to the numerator of the foreign tax credit limitation fraction to reflect the tax rate differential between ordinary income and net capital gain. If these reductions of the numerator result in a reduction of foreign source taxable income (but not below zero), then, to that extent, the foreign capital loss is already being recaptured for purposes of the foreign tax credit, because the foreign tax credit limitation is already being reduced. Therefore, the amount of the foreign capital losses will not be treated as a recapturable overall foreign loss to the extent of the reduction of foreign source taxable income in the numerator of the foreign tax credit limitation fraction.

Recapture of Overall Foreign Losses

Section 1.904(f)–2 provides rules for determining the amount of an overall foreign loss subject to recapture in a given year, and for calculating the recapture. In general, the taxpayer is required to recapture a portion of any overall foreign loss equal to the lesser of the balance in the applicable overall foreign loss account or 50 percent of its foreign source taxable income subject to the separate limitation under which the loss arose. Recapture is accomplished by recharacterizing such foreign source taxable income as U.S. source income for purposes of the foreign tax credit limitation fraction. Section 1.904(f)–2(b) provides an ordering rule for determining the amount of a taxpayer's foreign source taxable income for purposes of recapture. Only the amount of foreign source income in the numerator of the foreign tax credit limitation fraction after making the adjustments required under section 904(a) and section 904(b) is subject to recapture. If this ordering rule were not applied, the overall foreign loss account would be reduced by recapturing amounts that were, in effect, already recaptured under other provisions, and thus should not be subject to recapture. Section 1.904(f)–2(c)(2) provides that a taxpayer may elect to recapture a greater portion of any overall foreign loss than is required by statute. If the taxpayer has foreign source taxable income subject to a separate limitation other than the limitation under which the loss arose, such income is not taken into account in determining the amount of overall foreign loss to be recaptured in such year, nor is such other income subject to recharacterization. Therefore, a taxpayer's DISC dividend income subject to the section 904(d)(1)(B) limitation is not taken into account in determining how much of an overall foreign loss under the section 904(d)(1)(E) limitation is subject to recapture, nor is such income recharacterized for purposes of recapturing the section 904(d)(1)(E) overall foreign loss.

Relationship of Recapture to Foreign Source Capital Gain

Foreign source capital gain net income is included in the foreign tax credit limitation fraction, and is therefore included in foreign source taxable income for purposes of recapture. The ordering rule for determining the amount of foreign source taxable income subject to recapture incorporates the section 904(b) adjustments for the tax rate differential between ordinary income and net capital gain. These adjustments have also been made in determining the amount of overall foreign loss that has been added to the applicable account. Thus, when recapture is applied to foreign source taxable income in the numerator of the limitation fraction, it applies to ordinary income and capital gain simultaneously.

Disposition Rule

Section 1.904(f)–2 (d) sets forth rules for recapturing an overall foreign loss in a taxable year in which a taxpayer disposes of property used predominantly outside of the United States in a trade or business. Under section 904(f)(3), a taxpayer making such a disposition is required to recapture an amount of any overall foreign loss equal to the lesser of the taxpayer's remaining overall foreign loss or 100 percent of the foreign source taxable income realized on such disposition.

The rules contained in § 1.904(f)–2(d) apply regardless of whether or not the taxpayer actually recognized gain on such disposition. In the case of a disposition of property in which gain is recognized irrespective of § 1.904(f)–2(d), paragraph (d)(3) provides that the general recapture rule of § 1.904(f)–2(c) is applied prior to applying the special recapture rule for dispositions. If the taxpayer makes a disposition of property from which gain would otherwise not be recognized in that taxable year, § 1.904(f)–2(d)(4) provides that the taxpayer will be deemed to have recognized gain to the extent of the lesser of: (1) The balance in its overall foreign loss account (plus any overall foreign loss that is part of a net operating loss carryover from a prior year, or that would otherwise be part of a net operating loss for the year of the disposition), or (2) the excess of the fair market value of the property over its adjusted basis. The accelerated recapture rules of § 1.904(f)–2(d) are applied first to dispositions in which gain is recognized irrespective of such section, and then to dispositions in which gain is deemed recognized by application of section 904(f)(3) and § 1.904(f)–2(d)(4). The ordering rule of § 1.904(f)–2(b) applies to determine the amount of gain which is deemed to be recognized, and which therefore will be recaptured. Since this ordering rule is applied before recapture, in some circumstances the application of section 904(b)(3) will recharacterize foreign source gain as U.S. source gain after it has been deemed to be recognized under section 904(f)(3) and § 1.904(f)–2(d)(4), but before such gain can be recaptured under § 1.904(f)–2(a). If this occurs in a case where the gain would not be recognized but for the application of section 904(f)(3), the overall foreign loss account will, nevertheless, be reduced by the amount of the gain deemed recognized even though the gain was not recharacterized by section 904(f).

Section 1.904(f)–2(d)(5) provides definitions of relevant terms.

Special Rules for Net Operating Loss and Capital Loss Carrybacks and Carryovers

Section 904(f)(2) defines an overall foreign loss as the amount by which the gross income for the taxable year from sources without the United States is exceeded by the deductions properly apportioned or allocated thereto. This definition includes not only amounts that reduce income from sources within the United States in the taxable year of the loss, but also amounts that, in carryback and carryover years, reduce income from sources both within and without the United States. Thus, under the statute, all such amounts are overall foreign losses in the loss year and are subject to recapture. In view of this, a foreign source loss that is part of a net operating loss deduction in a taxable year to which carried back or over should not be included in the determination of overall foreign loss for such year because it was included in the overall foreign loss for the year in which it arose. To prevent double counting of such a foreign source loss, section 904(f)(2)(A) specifically excludes net operating loss deductions from the determination of overall foreign losses in carryback or carryover years.

However, these proposed regulations take the position that a foreign source loss cannot be considered an overall foreign loss that is subject to recapture (and, therefore, included in the overall foreign loss account) unless it has reduced income from sources within the United States either in the loss year or in a carryback or carryover year. This position is more liberal than the rule under section 904(f)(2)(A), which would also reduce the foreign tax credit "benefit" in situations in which there has been no countervailing benefit to the taxpayer, i.e., the loss did not reduce its U.S. source income. To implement Congress' intent to prevent a double benefit in such a way as to avoid creating a detriment, these proposed regulations consider a foreign source loss to be an overall foreign loss (and thus added to the overall foreign loss account in the loss year) only to the extent that it has reduced U.S. source income in the loss year or in carryback years. Since the losses which are carried forward cannot be determined to have reduced U.S. source income until income in those years has been determined, the net operating loss rules must be applied. If the foreign source loss reduces U.S. source income in those carryforward years, it is added to the overall foreign loss account to that extent in those years. Section 1.904(f)–3 provides that net operating loss and net capital loss carrybacks and carryforwards from foreign source losses are first allocated to foreign source income, which does not give rise to overall foreign losses subject to recapture. This allocation is consistent with the rules applied in *Motors Insurance Corp.* v. *United States*, 530 F.2d 864 (Ct. Cl. 1976). To the extent that these losses exceed foreign source income in the year to which carried, they are allocated to U.S. source income in that year and are subject to recapture to the same extent as if they had reduced U.S. source income in the year in which they arose.

Recapture Out of Accumulation Distributions of a Foreign Trust

Section 1.904(f)–4 provides rules for recapture of overall foreign losses out of accumulation distributions of a foreign trust. A taxpayer receiving accumulation distributions that are deemed distributed in preceding years under section 666 first applies the general recapture rules of § 1.904(f)–2 to its other foreign source income, after which the amounts of foreign source taxable income deemed distributed in prior years are subject to recapture to the extent of 100 percent of such income or the remaining balance in the overall foreign loss account, if less. An exception from recapture is provided for income deemed distributed in a year for which the taxpayer elects under section 667(d) (1)(B) to deduct, rather than credit, foreign taxes deemed distributed with respect to the accumulation distribution.

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Recapture of Foreign Losses of Domestic Trusts

Section 1.904(f)–5 provides special rules for recapturing overall foreign losses of a domestic trust. In general, the rules of §§ 1.904(f)–1 through 1.904(f)–4 apply to domestic trusts, except that if foreign source taxable income subject to the separate limitation under which the trust's overall foreign loss arose is distributed to beneficiaries, a portion of the amount of the trust's loss to be recaptured in such year will be allocated to the beneficiaries receiving such income. The overall foreign loss of a trust so allocated to a beneficiary is recaptured by the beneficiary in the same year, in accordance with the rules of § 1.904(f)–1 through §1.904(f)–4. If such trust distributes its income in whole or in part, paragraph (c) provides rules for apportioning the amount of the overall foreign loss subject to recapture in that taxable year between the trust and the beneficiaries.

Repeal of Separate Limitation for Foreign Oil Related Income

Section 211 of the Tax Equity and Fiscal Responsibility Act of 1982 repealed the separate limitation for foreign oil related income contained in section 907(b). As a consequence, for taxable years beginning after December 31, 1982 there will no longer be a separate basket of foreign oil related income and no separately determined foreign oil related loss. Instead, foreign oil related income and deductions properly allocated and apportioned thereto are to be netted with other foreign source income subject to the section 904(d)(1)(E) limitation for purposes of determining the amount of foreign source taxable income or overall foreign loss under this limitation.

Section 211 of TEFRA also provided a transitional rule for recapture of pre-1983 foreign oil related and non-oil related losses out of post-1982 section 904(d)(1)(E) foreign source taxable income (which includes foreign oil related income). The transitional rule provides that a pre-1983 foreign source non-oil related loss may not be recaptured out of post-1982 foreign oil related income more rapidly than ratably over an 8-year period (or such shorter period as the taxpayer may select). Likewise, a pre-1983 foreign oil related loss may not be recaptured out of post-1982 non-oil related income more rapidly than ratably over an 8-year (or shorter) period. Section 1.904(f)–6 provides transitional rules for recapturing pre-1983 section 904(d)(1)(E) overall foreign losses and section 907(b) overall foreign losses (foreign oil related losses) out of taxable income subject to the section 904(d)(1)(E) limitation in taxable years beginning after December 31, 1982.

Consolidated Overall Foreign Losses

Section 1.1502–9(a) requires affiliated corporations filing consolidated returns to calculate their overall foreign losses on a consolidated basis and requires the establishment of consolidated overall foreign loss accounts. It also provides rules for allocating an overall foreign loss sustained by a member of the group in a separate return year or a separate return limitation year to a consolidated overall foreign loss account when such corporation joins in filing a consolidated return. Once the consolidated overall foreign losses have been determined, the rules contained in § 1.904(f)–1 through 1.904(f)–6 are applied to recapture such losses. Section 1.1502–9(c) requires that individual members of an affiliated group keep separate national loss accounts reflecting their portion of any consolidated overall foreign losses. Such notional acounts are reduced, when the consolidated overall foreign losses are recaptured, by the pro rata share (of the total amount recaptured) of each member that contributed to the consolidated overall foreign loss. Further, § 1.1502–9 provides rules for allocating a portion of the balance in any consolidated overall foreign loss account to a member that leaves the group before such balance has been fully recaptured. This section also provides rules for recapturing an overall foreign loss that was incurred in a member's separate return limitation year. Such a loss is only recaptured to the extent of the foreign source taxable income of the member that incurred the loss. Finally, this section provides rules for recapturing a consolidated overall foreign loss in taxable years in which the excess loss account of a member is triggered.

Section 1.1502–9 of these proposed regulations provides for recapture of an overall foreign loss which arose in a separate return limitation year only from the separate foreign taxable income of the member of the consolidated group which incurred such overall foreign loss. The appropriateness of this position and whether there should be a recapture of such losses from the consolidated foreign taxable income, rather than solely from the separate foreign taxable income of the member of the consolidated group whch sustained the loss will be reconsidered in the final regulations. Taxpayers are invited to comment as to whether the rule in the proposed regulations is the correct one, or whether the alternative, which would recapture an overall foreign loss from a separate return limitation year from consolidated foreign taxable income, is the more appropriate rule.

Drafting Information

The principal author of these proposed regulations is David J. Dean formerly of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. do not appiy. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 8). The Commissioner of Internal Revenue has determined that this proposed rule is not a major regulation as defined in Executive Order 12291 and therefore a regulatory impact analysis is not required.

List of Subjects

26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

26 CFR 1.1501–1 Through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805; * * * Sections 1.904(f)–(2) and 1.1502–9 are also issued under 26 U.S.C. 904(f)(3)(B) and 26 U.S.C. 1502. * * *

Par. 2. The following new §§ 1.904(f)–1 through 1.904(f)–6 are added immediately following § 1.904(b)–4 to read as set forth below:

§ 1.904(f)–1 Overall foreign loss and the overall foreign loss account.

(a) *Overview of regulations.* In general, section 904(f) and these regulations apply to any taxpayer that sustains an overall foreign loss (as defined in paragraph (c)(1) of this section) in a taxable year beginning after December 31, 1975. There can be seven types of overall foreign losses: An overall foreign loss under each of the five separate limitations contained in section 904(d)(1), a foreign oil related loss under the section 907(b) limitation (for taxable years ending after December 31, 1975 and beginning before January 1, 1983), and an overall foreign loss with respect to income subject to section 936. Section 1.904(f)–1 provides rules for determining a taxpayer's overall foreign losses, for establishing overall foreign loss accounts, and for making additions to and reductions of such accounts for purposes of section 904(f). Section 1.904(f)–2 provides rules for recapturing the balance in any overall foreign loss account under the general recapture rule of section 904(f)(1) and under the special recapture rule of section 904(f)(3) when the taxpayer disposes of property used predominantly outside the United States in a trade or business. Section 1.904(f)–3 provides rules for allocating overall foreign losses that are part of net operating losses or net capital losses to foreign source income in years to which such losses are carried. Section 1.904(f)–4 provides rules for recapture out of an accumulating distribution of a foreign trust. Section 1.904(f)–5 provides rules for recapture of overall foreign losses of domestic trusts. Section 1.904(f)–6 provides a transitional rule for recapturing a taxpayer's pre–1983 overall foreign losses under the section 904(d)(1)(C) and section 907(b) limitations, prior to their amendment by TEFRA, out of taxable income subject to the section 904(d)(E) limitation (and its predecessor) in taxable years beginning after December 31, 1982. See § 1.1502–9 for rules concerning the application of these regulations to corporations filing consolidated returns.

(b) *Overall foreign loss accounts.* Any taxpayer that sustains an overall foreign loss must establish an account for such loss. Separate types of overall foreign losses must be kept in separate accounts. The balance in any overall foreign loss account represents the amount of such overall foreign loss account represents the amount of such overall foreign loss subject to recapture by the taxpayer in a given year. From year to year, amounts may be added to or subtracted from the balance in such account as provided in paragraphs (d) and (e) of this section. The taxpayer must report the balance in its overall foreign loss accounts annually on a Form 116 or 1118 which is filed after these regulations are published as final regulations. The balance is each account does not have to be attributed to the year or years in which the loss was incurred.

(c) *Determination of a taxpayer's overall foreign loss*—(1) *Overall foreign loss defined.* A taxpayer sustains an overall foreign loss in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in paragraph (c)(2) of this section) is exceeded by the sum of the deductions properly allocated and apportioned thereto. Such losses are to be determined separately in accordance with the principles of the separate limitations. Accordingly, income and deductions subject to a separate limitation are not to be netted with income and deductions subject to another separate limitation for purposes of determining the amount of a overall foreign loss. A taxpayer may, for example, have an overall foreign loss under the section 904(d)(1)(E) limitation in the same taxable year in which it has taxable income under the section 904(d)(1)(B) limitation.

(2) *Separate limitation define.* For purposes of paragraph (c) (1) of this section and these regulations, the term separate limitation means any of the separate limitations under section 904(d)(1) (A), (B), (C), (D), and (E); the separate limitation for foreign oil related income under section 907(b) (for taxable years ending after December 31, 1975 and beginning before January 1, 1983); or the separate limitation for the Puerto Rico and possession tax credit under section 936.

(3) *Method of allocation and apportionment of deductions.* In determining its overall foreign loss the taxpayer shall allocate and apportion expenses, losses, and other deductions to the appropriate category of gross income in accordance with section 862(b) and § 1.861–8 of the regulations. However, the following deductions shall not be taken into account:

(i) The amount of any net operation loss deduction for such year under section 172(a); and

(ii) The amount of any—

(A) Expropriation losses for such year (as defined in section 172(h), or

(B) Loss for such year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(d) *Additions to the overall foreign loss account*—(1) *General rule.* A taxpayer's overall foreign loss as determined under paragraph (c) of this section shall be added to the applicable overall foreign loss account at the end of its taxable year to the extent that the overall foreign loss has reduced U.S. source income during the taxable year or during a year to which the loss has been carried back. For rules to which the loss has been carried back. For rules with respect to carryovers see paragraph (d)(4) of this section and § 1.904(f)–3.

(2) *Overall foreign net capital loss.* An overall foreign net capital loss shall be added to the overall foreign loss account at the end of the taxable year to the extent that the foreign source capital loss has reduced U.S. source capital gain net income during the current taxable year and during the years to which the loss has been carried back, subject to the adjustments in paragraph (d)(3) of this section. For rules with respect to carryovers, see paragraph (d)(5) of this section and § 1.904(f)–3.

(3) *Adjustments.* The amount of overall foreign loss determined in paragraph (d)(1) of this section and the amount of overall foreign net capital loss determined in paragraph (d)(2) of this section shall be subject to the following adjustments:

(i) *Adjustment due to reduction in foreign source income under section*

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904(b). A taxpayer's overall foreign loss account shall not include any net capital loss from sources without the United States to the extent that the application of section 904(b) would result in a reduction of foreign source taxable income (but not below zero) for purposes of the numerator of the foreign tax credit limitation fraction.

(ii) *Adjustment to account for rate differental between ordinary income rate and capital gain rate.* Subject to the provisions of paragraph (d)(30)(i) of this section, if an overall foreign loss for a taxable year includes an overall foreign net capital loss, such amount shall be reduced as follows, in accordance with the provisions of section 904(b), before being added to the overall foreign loss account:

(A) In the case of a corporate taxpayer, to the extent that the U.S. source capital loss consists of U.S. source net capital gain, by an amount equal to the rate differental portion (as defined in section 904(b)(3)(F) of the Code and the regulations thereunder) of the U.S. source net capital gain; or

(B) In the case of a taxpayer other than a corporate taxpayer, by 50 percent (for taxable years beginning prior to January 1, 1979) or 60 percent (for taxable years beginning after December 31, 1978) of the taxpayer's U.S. source net capital gain that is offset by such foreign source net capital loss.

(iii) *Illustrations.* The provisions of this paragraph (d)(3) may be illustrated by the following examples, which assume that all foreign source income and losses are under the section 904(d)(1)(E) separate limitation.

Example (1). V Corporation has $1000 of foreign source taxable income and $500 of foreign source net capital loss which has reduced $500 of U.S. source capital gain net income (none of which is net capital gain). Under section 904(b), the numerator of V Corporation's foreign tax credit limitation fraction is reduced by $500 (see § 1.904(b).1(a)(3)). Under paragraph (d)(3)(i) of this section, none of that $500 goes into its overall foreign loss account.

Example (2). W Corporation has $1000 of foreign source taxable income and $2000 of foreign source net capital loss, which has reduced $2000 of U.S. source capital gain net income (all of which is U.S. source net capital gain). Under section 904(b), $1000 of W Corporation's foreign source net capital loss has reduced foreign source income in the numerator of the foreign tax credit limitation fraction (reducing the numerator to zero). As in example (1), that $1000 will not be included in W Corporation's overall foreign loss account. The additional amount of foreign source net capital loss which reduced U.S. source capital gain net income must be added to the overall foreign loss account. Since the U.S. source capital gain net income which was reduced by the foreign source net capital loss was net capital gain, a rate differential adjustment must be made under paragraph (d)(3)(ii) of this section before adding the overall foreign net capital loss to the account. The overall foreign loss is, therefore, $217.40 determined as follows. Under section 1.904(b)—1(a)(3) the $2000 foreign source net capital loss which has reduced $2000 of U.S. source net capital gain has resulted in a reduction in the numerator of the foreign tax credit limitation fraction of $1217.40

$$\left(\$2.000 - \frac{46.28}{46}(\$2.000)\right)$$

$1000 of the $1217.40 will result in a reduction of foreign sarce taxable income (but not below zero) for purposes of the numerator of the foreign tax credit limitation fraction and is not included in the overall foreign loss account. Therefore $217.40 is included in the overall foreign loss account.

(4) *Overall foreign loses of another taxpayer.* If any portion of any overall foreign loss of another taxpayer is allocated to the taxpayer in accordance with § 1.904(f)–5 (relating to overall foreign losses of domestic trusts) or § 1.1502–9 (relating to consolidated overall foreign losses), the taxpayer shall add such amount to its applicable overall foreign loss account.

(5) *Loss carryovers.* Subject to the adjustments under paragraph (d)(3) of this section, the taxpayer shall add to the overall foreign loss account—

(i) All net operating loss carryovers to the current taxable year to the extent that overall foreign losses included in the net operating loss carryovers have reduced U.S. source income for the taxable year, and

(ii) All capital loss carryovers to the current taxable year to the extent that foreign source capital loss carryovers have reduced U.S. source capital gain net income for the taxable year.

(e) *Reduction of the overall foreign loss accounts.* The taxpayer shall subtract the following amounts from its overall foreign loss accounts at the end of its taxable year in the following order, if applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* The amount of any type of overall foreign loss which is allocated to another taxpayer in accordance with § 1.904(f)–5 (relating to overall foreign losses of domestic trusts) or § 1.1502–9 (relating to consolidated overall foreign losses).

(2) *Reduction for amounts recaptured.* The amount of any type of overall foreign loss which is recaptured in such year in accordance with §§ 1.904(f)–2(c) (relating to recapture under section 904(f)(1)), 1.904(f)–2(d) (relating to recapture when the taxpayer disposes of certain properties under section 904(f)(3)), and § 1.904(f)–4 (relating to recapture when the taxpayer receives an accumulation distribution from a foreign trust under section 904(f)(4)).

(f) *Illustrations.* The rules of this section may be illustrated by the following examples.

Example (1). X Corporation is a domestic corporation with foreign branch operations in country C. X Corporation's taxable income and (losses) for its taxable year 1979 are as follows:

U.S. source taxable income	$1,000
Foreign source taxable income (loss) subject to section 904(d)(1)(E)	(500)
Foreign oil related income (loss) subject to section 907(b)	$200

X Corporation has a section 904(d)(1)(E) overall foreign loss of $500 for 1979 in accordance with paragraph (c)(1) of this section. Since the section 904(d)(1) (E) overall foreign loss is not considered to offset income under any other separate limitation described in paragraph (c)(1) of this section, it therefore offsets $500 of U.S. source taxable income. This amount is added to X Corporation's section 904(d)(1)(E) overall foreign loss account at the end of 1979 in accordance with paragraph (d)(1) of this section.

Example (2). X Corporation is a domestic corporation with foreign branch operations in country C. for its taxable year 1980, X Corporation has a net operating loss of $1,250, determined as follows:

U.S. source taxable income (loss)	($250)
Foreign source taxable income (loss) subject to section 904(d)(1)(E)	($1,000)

The only prior year to which the net operating loss can be carried under section 172 is 1977. For its taxable year 1977, X Corporation had the following taxable income:

U.S. source taxable income	$1,900
Foreign source taxable income subject to section 904(d)(1)(E)	400

X Corporation has a section 904(d)(1)(E) overall foreign loss for 1980 of $1,000. X Corporation's overall foreign loss is part of a net operating loss of $1,250 for 1980. Since, in accordance with § 1.904(f)–3(a), the foreign loss carried back to 1977 is first allocated to X Corporation's foreign source taxable income subject to the limitation under which the loss arose, the amount of overall foreign loss to be added to X Corporation's overall foreign loss account in 1980 is $600 under paragraph (d)(1) of this section after the foreign loss carryback is first applied to foreign source income of $400 (which does not result in an overall foreign loss that is subject to recapture).

Example (3). The facts are the same as in example (2), except that in 1977 X Corporation's U.S. source taxable income was zero. Nothing is added to X Corporation's overall foreign loss account at the end of 1980. X Corporation's income and deductions for 1981 are as follows:

U.S. source taxable income	$1,250
Foreign source taxable income subject to section 904(d)(1)(E)	300

X Corporation has a net operating loss carryover of $850 ($1250–$400) to 1981. The $600 of foreign losses that are part of this net operating loss ($1000 of 1980 loss, minus $400 offset by foreign source income in the carryback year) are allocated to X Corporation's foreign source taxable income subject to the section 904(d)(1)(e) limitation in such year, in accordance with § 1.904(f)–3, prior to reducing U.S. source income. Thus, $300 of the remaining $600 of foreign source net operating loss carryover is first applied to foreign source income in the carryover year, leaving $300 which offsets U.S. source income in the carryover year. Therefore, $300 is added to X Corporation's section 904(d)(1)(E) overall foreign loss account in 1981 in accordance with paragraph (d)(5)(i) of this section. Since the entire net operating loss carryforward was absorbed in 1981, there are no further additions to X Corporation's overall foreign loss account under paragraph (d) as a result of this loss.

Example (4). Z Corporation is a domestic corporation with foreign branch operations. For the taxable year 1981, Z Corporation's taxable income and (losses) are as follow:

U.S. Source taxable ordinary income	$1,000
U.S. Source net capital gain	460
Foreign source taxable ordinary income subject to section 904(d)(1)(E)	200
Foreign source net capital loss subject to section 904(d)(1)(E)	(800)

Z Corporation had no capital gain net income in any prior taxable year. Under paragraph (d)(2) and (3) of this section, the amount to be added to Z Corporation's section 904(d)(1)(E) overall foreign loss account is the excess of the amount which has reduced U.S. source capital gain net income for the taxable year ($460), adjusted for the rate differential because it has reduced U.S. source net capital gain ($460×28/46=$280), over the amount which has reduced the numerator of Z Corporation's foreign tax credit limitation fraction under section 904(b)(2), which is $200. (The $200 amount is foreign source net capital loss that has reduced U.S. source net capital gain in the denominator of the fraction, but not exceeding the amount of foreign source income in the numerator before the section 904(b)(2) adjustment.) Thus, Z Corporation must add $80 (the excess of the $280 over $200) to its section 904(d)(1)(E) overall foreign loss account in 1981. It should be noted that an overall foreign loss can occur in the absence of foreign branch operations.

§ 1.904(f)–2 Recapture of overall foreign losses.

(a) *In general.* A taxpayer electing the benefits of section 901 or 936 with respect to foreign source taxable income subject to a separate limitation under which the taxpayer has sustained an overall foreign loss shall be required to recapture such loss as provided in this section. Recapture is accomplished by treating as U.S. source income a portion of the taxpayer's foreign source taxable income subject to the limitation under which the loss arose. As a result, the taxpayer's foreign tax credit limitation (or section 936 credit) with respect to such income is decreased. Recapture continues until such time as the amount of foreign source taxable income recharacterized as U.S. source income equals the U.S. source income which was previously offset by the overall foreign loss. As provided in § 1.904(f)–1(e)(2), the balance in a taxpayer's overall foreign loss account is reduced by the amount of loss recaptured. Recapture is only applied to the extent that it will produce a reduction in the foreign tax credit limitation or the section 936 credit. This is accomplished by applying recapture to foreign source taxable income in the numerator of the foreign tax credit limitation fraction only after applying the section 904(a) limitation and section 904(b) adjustments, as provided in paragraph (b) of this section.

(b) *Determination of taxable income from sources without the United States for purposes of recapture.* For purposes of determining the amount of an overall foreign loss subject to recapture, the taxpayer's taxable income from sources without the United States, as determined in the numerator of the foreign tax credit limitation fraction, shall be computed with respect to each of the separate limitations described in § 1.904(f)–1(c)(2) in accordance with § 1.904(f)–1(c) (1) and (3). This computation is made without taking into account foreign source taxable income (and deductions properly allocated and apportioned thereto) subject to another separate limitation. Before applying the recapture rules to such foreign source taxable income, the following provisions shall be applied to such income in the following order:

(1) Section 904 (b)(3)(C) and the regulations thereunder shall be applied to treat certain foreign source gain as U.S. source gain;

(2) Section 904(b)(2) and the regulations thereunder shall be applied to make adjustments in the foreign tax credit limitation fraction for certain capital gains and losses; and

(3) Section 904(a) shall be applied to determine foreign source taxable income in the numerator of the foreign tax credit limitation fraction.

An overall foreign loss under a separate limitation shall only be recaptured by recharacterizing foreign source taxable income subject to the same separate limitation as U.S. source income, except as provided in § 1.904((f)–6. However, for purposes of recapturing an overall foreign loss incurred before a corporation elected to use section 936, the possession source income of a section 936 corporation shall be used to recapture the previously incurred overall foreign loss.

(c) *Section 904(f)(1) recapture*—(1) *In general.* The mount of any overall foreign loss subject to recapture in a taxable year in which paragraph (a) of this section is applicable is the lesser of the balance in the applicable overall foreign loss account (after reduction of such account in accordance with § 1.904(f)–1(e)(1)) or 50 percent of the taxpayer's foreign source taxable income subject to the limitation under which the loss arose, as determined under paragraph (b) of this section.

(2) *Election to recapture more of the overall foreign loss than is required under paragraph (c)(1).* A taxpayer may make a revocable election to recapture a greater portion of the balance in an overall foreign loss account than is required to be recaptured under paragraph (c)(1) of this section. A taxpayer may make such an election or amend an election by attaching a statement to its Form 1118 or 1118 for the taxable year for which the election is made. This statement must indicate the percentage of the taxpayer's foreign source taxable income that is being reacharacterized as U.S. source income and the percentage of the balance in the overall foreign loss account that is being recaptured. The taxpayer may not elect to recapture an amount in excess of the taxpayer's foreign source taxable income subject to the same separate limitation as the loss after applying paragraph (b) of this section to such income.

(3) *Illustrations.* The rules of this paragraph (c) may be illustrated by the following examples, all of which assume a U.S. corporate tax rate of 50 percent unless otherwise stated.

Example (1). X Corporation is a domestic corporation which does business in the United States and abroad. On December 31, 1980, the balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is $600. For 1981, X Corporation has U.S. source

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taxable income of $500 and foreign source taxable income subject to section 904(d)(1)(E) of $500. For 1981, X Corporation pays $200 in foreign taxes and elects section 901. Under paragraph (c)(1) of this section, X Corporation is required to recapture $250 (the lesser of $600 or 50 percent of $500) of its overall foreign loss. As a consequence, X Corporation's foreign tax credit limitation under section 904(d)(1)(E) is $250/$1000×$500, or $125, instead of $500/$1000×$500, or $250. The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is reduced by $250 in accordance with § 1.904(f)–1(e)(2).

Example (2). The facts are the same as in example (1) except that X Corporation makes an election to recapture its overall foreign loss to the extent of 80 percent of its foreign source taxable income subject to the section 904(d)(1)(E) limitation (or $400) in accordance with paragraph (c)(2) of this section. As a result of recapture, X Corporation's foreign tax credit limitation under section 904(d)(1)(E) for 1981 is $100/$1000×$500, or $50, instead of $500/$1000×$500, or $250. X Corporation's overall foreign loss account is reduced by $400 in accordance with § 1.904(f)–(1)(e)(2).

Example (3). The facts are the same as in example (1) except that X Corporation does not elect the benefits of section 901 or 936 in 1981 and deducts its foreign taxes paid in 1981. The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account on December 31, 1981 is $600. There is no recapture of the overall foreign loss since X Corporation did not elect the foreign tax credit.

Example (4). The facts are the same as in example (1) except that in 1981, X Corporation also has $1,000 of foreign source DISC dividend income subject to section 904(d)(1)(B) which carries a foreign tax of $50. Under paragraph (c)(1) of this section the amount of X Corporation's section 904(d)(1)(E) overall foreign loss subject to recapture is $250 (the lesser of the balance in the overall foreign loss account or 50 percent of the foreign source taxable income subject to the section 904(d)(1)(E) limitation (which excludes taxable income subject to the separate limitation of section 904(d)(1)(E)(B))). X Corporation's separate limitation under section 904(d)(1)(B) for DISC dividend income is $1000/$2000×$1000, or $500. Its limitation under section 904(d)(1)(E) for other foreign source taxable income is $250/$2000×$1000, or $125, instead of $500/$2000×$1000, or $250. The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is reduced by $250 in accordance with § 1.904(f)–1(e)(2).

Example (5). The facts are the same as in example (1) except that on December 31, 1980 X Corporation also has a balance in its section 907(b) overall foreign loss account of $900. For 1981, X Corporation also has foreign source taxable income subject to the section 907(b) limitation of $800. As in example (1), X Corporation is required to recapture $250 of its section 904(d)(1)(E) overall foreign loss, and its section 904(d)(1)(E) foreign tax credit limitation is $250/$1800×$900, or $125, instead of $500/$1800×$900, or $250. X Corporation is also required to recapture $400 of its section 904(b) overall foreign loss (the lesser of $900 or 50 percent of $800). X Corporation's foreign tax credit limitation under section 907(b) is $400/$1800×$900, or $200, instead of $800/$1800×$900, or $400. The balance in X Corporation's section 907(b) overall foreign loss account is reduced to $500 in accordance with § 1.904(f)–1(e)(2).

Example (6). This example assumes a U.S. corporate tax rate of 46% (under section 11(b)) and an alternative rate of tax under section 1201(a) of 28%. W is a U.S. corporation that does business in the United States and abroad. On December 31, 1980, W has $350 in its section 904(d)(1)(E) overall foreign loss account. For 1981, W has $500 of U.S. source taxable income, and has foreign source income subject to section 904(d)(1)(E) as follows:

Foreign source taxable income other than net capital gain	$720
Foreign source net capital gain	460

Under paragraph (b)(2) of this section, foreign source taxable income for purposes of recapture includes foreign source capital gain net income, reduced, under section 904(b)(2), by the rate differential portion of foreign source net capital gain, which adjusts for the reduced tax rate for net capital gain under seciton 1201(a):

Foreign source capital gain net income	$460
Rate differential portion of foreign source net capital gain (18/46 of $460)	180
Foreign source capital gain included in foreign source taxable income	280

The total foreign source taxable income of W for purposes of recapture in the 1981 is $1000 ($720+$280). Under paragraph (c)(1) of this section, W is required to recapture $350 (the lesser of $350 or 50 percent of $1000), and W's section 904(d)(1)(E) overall foreign loss account is reduced to zero. W's section 904(d)(1)(E) foreign tax credit limitation is $650/$1500×$690, or $299, instead of $1000/$1500×$690, or $460.

(d) *Recapture of overall foreign losses from dispositions under section 904(f)(3)*—(1) *In general.* If the taxpayer disposes of property used or held for use predominantly without the United States in a trade or business during a taxable year in which paragraph (a) of this section is applicable, its overall foreign loss shall be recaptured as provided in paragraphs (d)(2), (d)(3), and (d)(4) of this section. See paragraph (d)(5) of this section for definitions. For the purposes of this paragraph (d), gain recognized on the disposition of property that was used or held for use to generate foreign source taxable income subject to a separate limitation will be treated as foreign source gain subject to the same separate limitation.

(2) *Treatment of net capital gain.* If the gain from a disposition of property to which this paragraph (d) applies is treated as net capital gain, all references to such gain in paragraphs (d)(3) and (d)(4) of this section shall mean such gain as adjusted under paragraph (b) of this section. The amount by which the overall foreign loss account shall be reduced shall be determined from such adjusted gain.

(3) *Dispositions where gain is recognized irrespective of section 904(f)(3).* If the taxpayer recognized foreign source gain subject to a separate limitation on the disposition of property described in paragraph (d)(1) of this section, and there is a balance in the taxpayer's overall foreign loss account under such separate limitation after applying paragraph (c) of this section, and additional portion of such balance shall be recaptured in accordance with paragraphs (a) and (b) of this section. The amount recaptured shall be the lesser of such balance or 100 percent of the foreign source gain recognized on the disposition that was not previously recharacterized under this section. The amount of gain not previously recharacterized shall be determined by subtracting 50 percent (or the percentage recaptured under paragraph (c)(2) of this section) of the gain recognized on such disposition from the entire amount of such gain.

(4) *Dispositions in which gain is not otherwise recognized*—(i) *Recognition of gain to the extent of overall foreign loss.* If the taxpayer makes a disposition of property described in paragraph (d)(1) of this section in which any amount of gain otherwise would not be recognized in the year of the disposition, and such property was used or held for use to generate foreign source taxable income subject to a separate limitation under which the taxpayer had an overall foreign loss incurred in the year of the disposition), the taxpayer shall recognize foreign source taxable income in an amount equal to the lesser of:

(A) The sum of the balance in the applicable overall foreign loss account (but only after such balance has been increased by amounts added to the account for the year of the disposition or has been reduced by amounts recaptured for the year of the disposition under paragraph (c) and paragraph (d)(3) of this section) plus the amount of any overall foreign loss that would be part of a net operating loss for the year of the disposition if gain from the disposition were not recognized under section 904(f)(3), plus the amount of any overall foreign loss that is part of a net operating loss carryover from a prior year, or

(B) The excess of the fair market value of such property over the taxpayer's adjusted basis in such property.

The excess of the fair market value of such property over its adjusted basis shall be determined on an asset by asset basis. Losses from the disposition of an asset shall not be recognized. Any foreign source taxable income deemed received and recognized under this paragraph (d)(4)(i) will have the same character as if the property had been sold or exchanged in a taxable transaction.

(ii) *Basis adjustment.* The basis of the property received in an exchange to which this paragraph (d)(4) applies shall be increased by the amount of gain deemed recognized, in accordance with applicable sections of subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), O (relating to gain or loss on disposition of property), and P (relating to capital gains and losses). If the property to which this paragraph (d)(4) applies was transferred by gift, the basis of such property in the hand of the donor immediately preceding such gift shall be increased by the amount of the gain deemed recognized.

(iii) *Recapture of overall foreign loss of the extent of amount deemed recognized.* The provisions of paragraphs (a) and (b) of this section shall be applied to the extent of 100% of the foreign source taxable income which is recognized under paragraph (d)(4)(i) of this section. However, amounts of foreign source gain that would not be recognized except by application of section 904 (f)(3) and paragraph (d)(4)(i) of this section, and which are treated as U.S. source gain by application of section 904(b)(3)(C) and paragraph (b)(1) of this section, shall reduce the overall foreign loss account, subject to the adjustments described in paragraph (d)(2) of this section if such gain is net capital gain, notwithstanding the fact that such amounts were precluded from recapture by paragraph (a) of this section due to the ordering rules in paragraph (b) of this section.

(iv) *Priorities among dispositions in which gain is deemed to be recognized.* If the taxpayer makes more than one disposition to which this paragraph (d)(4) is applicable, the rules of this paragraph (d)(4) shall be applied to each disposition in succession starting with the disposition which occurred earliest, until the balance in the applicable overall foreign loss account is reduced to zero.

(5) *Definitions*—(i) *Disposition.* A disposition to which this paragraph (d) applies includes a sale (including a sale in lease back transaction); exchange; distribution; gift; transfer upon the foreclosure of a security interest (but not a mere transfer of title to a creditor upon the creation of a security interest or to a debtor upon termination of a security interest); involuntary conversion; contribution to a partnership, trust, or corporation; transfer at death; or any other transfer of property whether or not gain or loss is recognized. However, a disposition to which this paragraph (d) applies does not include:

(A) A distribution or transfer of property to a domestic corporation described in section 381 (a) (provided that paragraph (d)(6) of this section applies), or

(B) A disposition of property which is not a material factor in the realization of income by the taxpayer (as defined in paragraph (d)(5)(iv) of this section).

(ii) *Property used in a trade or business.* Property is used in a trade or business if it is held for the principal purpose of promoting the present or future conduct of the trade or business. This generally includes property acquired and held in the ordinary course of a trade or business or otherwise held in a direct relationship to a trade or business. In determining whether an asset is held in a direct relationship to a trade or business, principal consideration shall be given to whether the asset is used in the trade or business. Property will be treated as held in a direct relationship to a trade or business if the property was acquired with funds generated by that trade or business or if income generated from the asset is retained or reinvested in that trade or business. Property used in a trade or business may be tangible or intangible, real or personal property. It includes property, such as equipment, which is subject to an allowance for depreciation under section 167 or cost recovery under section 168. Property may be considered used in a trade or business even it it is a capital asset in the hands of the taxpayer. Stock of another corporation held only for investment purposes shall not be considered property used in a trade or business. However, stock acquired or held to assure a source of supply for the trade or business shall be considered property used in a trade or business. Stock in trade is generally not considered property used in a trade or business. However, when disposed of in a manner not in the ordinary course of a trade or business, stock in trade will be considered as property used in the trade or business.

(iii) *Property used predominantly outside the United States.* Property will be considered used predominantly outside the United States if for a 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business) such property was located outside the United States more than 50 percent of the time. An aircraft, railroad rolling stock, vessel, motor vehicle, container, or other property used for transportation purposes is deemed to be used predominantly outside the United States if, during the 3-year (or shorter) period, either such property is located outside the United States more then 50 percent of the time or more than 50 percent of the miles traversed in the use of such property are traversed outside the United States.

(iv) *Property which is a material factor is the realization of income.* For the purposes of this section, property used in a trade or business will be considered a material factor in the realization of income unless that taxpayer establishes that it is not (or, if the taxpayer did not realize income from the trade or business in the taxable year, would not be expected to be) necessary to the realization of income by the taxpayer.

(6) *Carryover of overall foreign loss account in a corporate acquisition to which section 381(a) applies.* In the case of a distribution or transfer described in section 381(a), an overall foreign loss of the distributing or transferor corporation shall be treated as the overall foreign loss of the acquiring or transferee corporation as of the close of the date of the distribution or transfer. If the transferee corporation has an overall foreign loss account under the same separate limitation prior to the distribution or transfer, the balance in the transferer's account may be added to the transferre's account. If not, the transferee must establish a new overall foreign loss account. An overall foreign loss of the transferor will be treated as incurred by the transferee in a year prior to the year of the transfer.

(7) *Illustrations.* The rules of this paragraph (d) may be illustrated by the following examples which assume that the U.S. corporate tax rate is 50 percent (unless otherwise stated). For purposes of these examples, none of the foreign source gains are treated as net capital gains (unless so stated).

Example (1). X Corporation has a balance in its section 904 (d)(1)(E) overall foreign loss account of $600 at the close of its taxable year ending December 31, 1980. In 1981, X Corporation sells assets used predominantly

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outside the United States in a trade or business and recognizes $1,000 of gain on the sale under section 1001. This gain is subject to the section 904(d)(1)(E) limitation. This sale is a disposition within the meaning of paragraph (d)(4)(i) of this section, and to which this paragraph (d) applies. X Corporation has no other foreign source taxable income in 1981 and has $1,000 of U.S. source taxable income. X Corporation is required to recapture $500 (the lesser of the balance in X's section 904(d)(1)(E) overall foreign loss account ($600) or 50 percent of $1000) of its overall foreign loss under paragraph (c) of this section. The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is reduced to $100 in accordance with § 1.904(f)–1 (e)(2). In addition, under paragraph (d)(3) of this section, X Corporation is required to recapture $100 (the lesser of the remaining balance in its section 904(d)(1)(E) overall foreign loss account ($100) or 100 percent of its foreign source taxable income recognized on such disposition that has not been previously recharacterized ($500)). The total amount recaptured is $600. X Corporation's section 904(d)(1)(E) foreign tax credit limitation for 1981 is $200 ($400/$2,000x$1,000) instead of $500 ($1,000/$2,000x$1,000). The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is reduced to zero in accordance with § 1.904(f)–1 (e) (2).

Example (2). On December 31, 1980, Y Corporation has a balance in its section 904(d)(1)(E) overall foreign loss account of $1,500. In 1981, Y Corporation has $500 of U.S. source taxable income and $200 of foreign source taxable income subject to the section 904(d)(1)(E) limitation. Y Corporation's foreign source taxable income is from the sale of property used predominantly outside of the United States in a trade or business. This sale is a disposition to which this paragraph (d) is applicable. In 1981, Y Corporation also transferred property used predominantly outside of the United States in a trade or business to another corporation. Under section 351, no gain was recognized on this transfer. Such property had been used to generate foreign source taxable income subject to the section 904(d)(1)(E) limitation. The excess of the fair market value of the property transferred over the corporation's adjusted basis in such property was $2,000. In accordance with paragraph (c) of this section, Y Corporation is required to recapture $100 (the lesser of $1500, the amount in Y Corporation's overall foreign loss account, or 50 percent of $200, the amount of foreign source taxable income for the current year) of its section 904(d)(1)(E) overall foreign loss. Y Corporation is then required to recapture an additional $100 of its overall foreign loss under paragraph (d)(3) of this section out of gain recognized on the sale of assets which has not been previously recharacterized, since 100 percent of such gain is subject to recapture. The balance in Y Corporation's section 904(d)(1)(E) over all foreign loss account is reduced to $1,300 in accordance with § 1.904(f)–1 (e) (2). Y Corporation is then required to recognize $1,300 of foreign source taxable income on its section 351 transfer under paragraph (d)(4) of this section. Under paragraph (d)(4), 100 percent of the amount so recognized is treated as U.S. source taxable income, and Y Corporation's section 904(d)(1)(E) overall foreign loss account is reduced to zero.

X Corporation's entire taxable income for 1981 is:

U.S. source taxable income	$500
Foreign source taxable income subject to section 904(d)(1)(E) that is recharacterized as U.S. source income by paragraphs (c) and (d)(3) of this section	200
Gain recognized under section 904(f)(3) and paragraph (d)(4) of this section, and recharacterized as U.S. source income	1,300
Total	2,000

Y Corporation's section 904(d)(1)(E) foreign tax credit limitation for 1981 is o ($0/$2,000 x $1,000) instead of $100 ($200/$700 x $350).

Example (3). Z Corporation has a balance in its section 907 (b) overall foreign loss (foreign oil related loss) account of $1,500 at the end of its taxable year 1980. In 1981, Z Corporation has $1,600 of foreign oil related income subject to the section 907 (b) limitation and no U.S. source income. In addition, in 1981, Z Corporation makes two dispositions of property used predominantly outside the United States in a trade or business on which no gain was recognized. Such property generated foreign oil related income. The excess of the fair market value of the property transferred in the first disposition over the taxyear's adjusted basis in such property is $575. The excess of the fair market value of the property transferred in the second disposition over the taxpayer's adjusted basis in such property is $1,000. Under paragraph (c) of this section, Z Corporation is required to recapture $800 (the lesser of 50 percent of its foreign oil related income of $1600 or the balance ($1500) in its section 907 (b) overall foreign loss account) of its foreign oil related loss. In accordance with paragraph (d)(4) (i) and (iv) of this section Z Corporation is required to recognize foreign oil related income in the amount of $575 on the first disposition and, since the foreign oil related loss account is now reduced by $1375 (the $800 and $575 amounts previously recaptured), Z Corporation is required to recognize foreign oil related income in the amount of $125 on the second disposition. In accordance with paragraph (d)(4) (iii) of this section, the entire amount recognized is treated as U.S. source income. the balance in its section 907(b) overall foreign loss account is reduced to zero under § 1.904(f)–1 (e) (2). Z Corporation's foreign tax credit limitation under section 907(b) is $400 ($800/$2,300 x $1150) instead of $800 ($1,600/$1,600 x $800). Z Corporation has $700 of U.S. source taxable income with respect to which no foreign tax credit is allowed.

Example (4). The facts are the same as in example (3), except that the gain from the two dispositions of property is treated as net capital gain and the U.S. corporate tax rate is assumed to be 46 percent. As in example (3), Z Corporation is required to recapture $800 of its foreign oil related loss from its ordinary foreign oil related income. In accordance with paragraph (d)(4)(i) and (iv) of this section, Z Corporation is first required to recognize foreign oil related income (which is net capital gain) on the first disposition in the amount of $575. Under paragraphs (b) and (d)(2) of this section, this net capital gain is adjusted by substracting the rate differential portion of such gain from the total amount of such gain to determine the amount by which the foreign oil related loss account is reduced, which is $350 ($575–($575 x 18/46)). The balance remaining in Z Corporation's foreign oil related losa account after this step is $350. Therefore, this process will be repeated, in accordance with paragraph (d)(4)(iv) of this section, to recapture that remaining balance out of gain deemed recognized on the second disposition, resulting in reduction of the foreign oil related loss account to zero and net capital gain required to be recognized from the second disposition in the amount of $575, which must also be adjusted by subtracting the rate differential portion to determine the amount by which the foreign oil related loss account is reduced (which is $350). The $575 of net capital gain is also recharacterized as U.S. source net capital gain. Z Corporation's section 907(b) foreign tax credit limitation is the same as in example (3), and Z Corporation has an additional $1,150 ($575+$575) of U.S. source net capital gain for which no credit is available.

§ 1.904(f)–3 Allocation of net operating losses and net capital losses.

(a) *Allocation of net operating loss carrybacks and carryovers attributable to overall foreign losses.* If the taxpayer sustains an overall foreign loss that is part of a net operating loss for the year, then, in carrying such net operating loss back or over in accordance with section 172, (or §§ 1.1502–21(b) and 1.1502–79(a)), the portion of the net operating loss attributable to an overall foreign loss shall be allocated to foreign source taxable income subject to the same separate limitation in the carryback or carryback year. To the extent that such overall foreign loss exceeds foreign source taxable income subject to the same separate limitation in the year to which it is carried, it shall be allocated to the taxpayer's U.S. source income for such year and not to foreign source taxable income subject to another separate limitation. See § 1.904(f)–1(d) for additions to the applicable overall foreign loss account to the extent that U.S. source taxable income is reduced in the taxable year to which the loss is carried.

(b) *Allocation of net capital loss carrybacks and carryovers attributable to overall foreign losses.* If the taxpayer sustains an overall foreign loss that is part of a net capital loss for the year, then in carrying the net capital loss back or over in accordance with section 1212 (or § 1.1502–22 and 1.1502–79(b)), the portion of the net capital loss that is attributable to a foreign source capital loss shall be allocated to foreign source capital gain net income subject to the same separate limitation in the carryback or carryover year. To the extent that such foreign source capital loss exceeds foreign source capital gain net income subject to the same separate limitation in the year to which carried, it shall be allocated to U.S. source capital gain net income in such year and not to foreign source capital gain net income subject to another separate limitation. An overall foreign source net capital loss carried over to a later year in accordance with this paragraph (b) shall be taken into consideration in determining the taxpayer's overall foreign loss in the year to which carried and shall be added to the applicable loss account for such year in accordance with § 1.904(f)–1(d).

§ 1.904(f)–4 Recapture of foreign losses out of accumulation distributions from a foreign trust.

(a) *In general.* If the taxpayer receives a distribution of foreign source taxable income that is treated under section 666 as having been distributed by a foreign trust in a preceding taxable year, a portion of the balance in the taxpayer's overall foreign loss account shall be subject to recapture under this section. The amount subject to recapture shall be an amount equal to the lesser of the balance in the taxpayer's overall foreign loss account (after applying §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, and 1.904(f)–6 to the taxpayer's other income or less in the current taxable year) or the entire amount of foreign source taxable income deemed distributed in a preceding year or years under section 666.

(b) *Effect of recapture on foreign tax credit limitation under section 667(d).* If paragraph (a) of this section is applicable, then in applying the separate limitation (in accordance with section 667(d)(1) (A) and (C)) to determine the amount of foreign taxes deemed distributed under section 666 (b) and (c) that can be credited against the increase in tax in a computation year, a portion of the foreign source taxable income deemed distributed in such computation year shall be treated as U.S. source income. Such portion shall be determined by multiplying the amount of foreign source taxable income deemed distributed in the computation year by a fraction. The numerator of this fraction is the balance in the taxpayer's overall foreign loss account (after application of §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, and 1.904(f)–6), and the denominator of the fraction is the entire amount of foreign source taxable income deemed distributed under section 666. However, the numerator of this fraction shall not exceed the denominator of the fraction.

(c) *No recapture if taxpayer chooses tc deduct foreign taxes deemed distributed.* The provisions of this section shall not apply to the income deemed distributed in any computation year of a taxpayer making an election under section 667 (d) (1) (B) to deduct foreign taxes deemed distributed under section 666 (b) or (c) for such computation year.

(d) *Illustration.* The provisions of this section may be illustrated by the following example:

Exomple. X Corporation is a domestic corporation that has a balance of $10,000 in its overall foreign loss account on December 31, 1980. For its taxable year beginning January 1, 1981, X Corporation's only income is an accumulation distribution from a foreign trust of $20,000 of foreign source taxable income. Under section 666, the amount distributed and the foreign taxes paid on such amount ($4,000) are deemed distributed in 2 prior taxable years. In determining the partial tax on such distribution under section 667 (b), the amount added to each computation year is $12,000 (the sum of the actual distribution plus the taxes deemed distributed ($24,000) divided by the number of accumulation years (2)). Of that amount, $5,000 ($10,000/$24,000 x $12,000) is treated as U.S. source taxable income in accordance with paragraph (b) of this section. X Corporation's separate foreign tax credit limitation against the increase in tax in each computation year is $7,000/$12,000 x $6,000 instead of $12,000/$12,000 x $6,000. X Corporation's overall foreign loss account is reduced to zero in accordance with paragraph (a) of this section.

§ 1.904(f)–5 Special rules for recapture of overall foreign losses of a domestic trust.

(a) *In general.* Except as provided in this section, the rules contained in §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, 1.904(f)–4, and 1.904(f)–6 apply to domestic trusts.

(b) *Recapture of trust's overall foreign loss.* In taxable years in which a trust has foreign source taxable income subject to a separate limitation under which the trust had an overall foreign loss, the balance in the trust's overall foreign loss account shall be recaptured as follows:

(1) *Trust accumulates income.* If the trust accumulates all of its foreign source taxable income subject to the limitation under which the loss arose, its overall foreign loss shall be recaptured out of such income in accordance with §§ 1.904(f)–1 1.904(f)–2, 1.904(f)–3, 1.904(f)–4, and 1.904(f)–6.

(2) *Trust distributes income.* If the trust distributes all of its foreign source taxable income subject to the limitation under which the loss arose, the amount of the overall foreign loss that would be subject to recapture by the trust under paragraph (b) (1) of this section shall be allocated to the beneficiaries in proportion to the amount of such income which is distributed to each beneficiary over the total amount of such income.

(3) *Trust accumulates and distributes income.* If the trust accumulates part of its foreign source taxable income subject to the limitation under which the loss arose and distributes part of such income, the portion of the overall foreign loss that would be subject to recapture by the trust under paragraph (b) (1) of this section if the distributed income were accumulated shall be allocated to the beneficiaries receiving income distributions. The amount of overall foreign loss to be allocated to such beneficiaries shall be the same portion of the total amount of such overall foreign loss that would be subject to recapture as the amount of such income which is distributed to each beneficiary bears to the total amount of such income of the trust for such year. That portion of the overall foreign loss subject to recapture in such year that is not allocated to the beneficiaries in accordance with this paragraph (b) (3) shall be recaptured by the trust in accordance with §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, 1.904(f)–4, and 1.904(f)–6.

(c) *Amounts allocated to beneficiaries.* Amounts of a trust's overall foreign loss allocated to any beneficiary in accordance with paragraph (b)(2) or (3) of this section shall be added to the benficiary's applicable overall foreign loss account and treated as an overall foreign loss of the beneficiary incurred in the taxable year preceding the year of such allocation. Such amounts shall be subject to recapture in accordance with §§ 1.904(f)–1, 1.904(f)–2, 1.904(f)–3, 1.904(f)–4, and 1.904(f)–6 out of foreign source taxable income subject to the same separate limitation which is distributed to the beneficiaries.

(d) *Section 904 (f) (3) dispositions to which § 1.904(f)–2, (d) (4) (i) is applicable.* Foreign source taxable income recognized by a trust under 1.904(f)–2, (d) (4) on a dispostion of

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property used in a trade or business outside the United States shall be deemed to be accumulated by the trust. One hundred percent of such income shall be used to recapture the trust's overall foreign loss in accordance with § 1.904(f)–2(d) (4).

(e) *Illustrations.* The provisions of this section are illustrated by the following examples:

Example (1). T, a domestic trust, has a balance of $2000 in its overall foreign loss account on December 31, 1979. For its taxable year ending on December 31, 1980, T has foreign source taxable income (subject to the same separate limitation as that under which the overall foreign loss was incurred) of $1600, all of which it accumulates. Under paragraph (d) (1) of this section, T is required to recapture $800 in 1980 (the lesser of the overall foreign loss or 50 percent of the foreign source taxable income). At the end of its 1980 taxable year, T has a balance of $1200 in its overall foreign loss account.

Example (2). The facts are the same as in example (1). In 1981, T has foreign source taxable income (subject to the same separate limitation) of $1000, which it distributes to its beneficiaries as follows: $500 to A, $250 to B, and $250 to C. Under paragraph (b) (1) of this section, T would have been required to recapture $500 of its overall foreign loss if it had accumulated all of such income. Therefore, under paragraph (b)(2) of this section, T must allocate $500 of its overall foreign loss to A, B, and C as follows: $250 to A ($500×$500/$1000), $125 to B ($500×$250/$1000), and $125 to C ($500 × $250/$1000). Under paragraph (c) of this section and § 1.904 (f)–1 (d) (4), A, B, and C must add the amounts of overall foreign loss allocated to them from T to their overall foreign loss accounts and treat such amounts as overall foreign loss incurred in 1980. A, B, and C must then apply the rules of § 1.904 (f)–1, –2, –3, –4, and –6 to recapure their overall foreign losses. T's overall foreign loss account is reduced, in accordance with § 1.904 (f)–1 (e) (1), by the $500 that is allocated to A, B, and C. At the end of 1981, T's overall foreign loss account has a balance of $700

Example (3). The facts are the same as in example (2), except that in 1981 T's foreign source taxable income under the applicable separate limitation is $1500 instead of $1000, and T accumulates the additional $500. Under paragraph (b)(1) of this section, T would be required to recapture $750 of its overall foreign loss if it accumulated all of the $1500. Under paragraph (b) (3) of this section, T must allocate $500 of its overall foreign loss A, B, and C as follows: $250 to A ($750 × $500/$1500) and $125 each to B and C ($750 × $250/$1500). T must also recapture $250 of its overall foreign loss, which is the portion of the amount subject to recapture in 1981 that is not allocated to the beneficiaries ($750 – $500 = $250). Under § 1.904 (f)–1 (e) (1), T subtracts $500 from its overall foreign loss account, and under § 1.904 (f)–1 (e) (2), T subtracts $250 from its overall foreign loss account, leaving a balance at the end of 1981 of $450.

§ 1.904(f)–6 Transitional rule for recapture of old section 907 (b) and section 904 (d)(1)(E) overall foreign losses incurred in taxable years beginning before January 1, 1983 from foreign source taxable income subject to the section 904 (d)(1)(E) limitation in taxable years beginning after December 31, 1982.

(a) *General rule.* For taxable years beginning after December 31, 1982, foreign source taxable income subject to the section 904 (d) (1) (E) limitation includes foreign oil related income (as defined in section 907 (c) (2) prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982). However, for purposes of recapturing section 904 (d) (1) (E) overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983) out of foreign source taxable income subject to the section 904 (d) (1) E) limitation in taxable years beginning after December 31, 1982 (post-1982), the taxpayer shall make separate determinations of foreign oil related income and other section 904 (d) (1) (E) income (as if the "old section 907 (b)" separate limitation, under section 907 (b) prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982, were still in effect), and shall apply the rules set forth in this section. The taxpayer shall maintain separate accounts for its pre-1983 old section 907 (b), pre-1983 section 904 (d) (1) (E), and post-1982 section 904 (d) (1) (E) overall foreign losses. The taxpayer shall continue to maintain such separate accounts, make such separate determinations, and apply the rules of this section until the earlier of—

(1) Such time as the taxpayer's entire pre-1983 old section 907 (b) and pre-1983 section 904 (d) (1 (E) overall foreign losses have been recaptured, or

(2) The end of the taxpayer's eighth post-1982 taxable year, at which time the taxpayer shall add any remaining balance in its pre-1983 old section 907 (b) and pre-1983 section 904 (d) (1) (E) overall foreign loss accounts to its post-1982 section 904 (d) (1) (E) overall foreign loss account,

after which time the taxpayer shall recapture all overall foreign losses as provided in §§ 1.904(f)–1 through 1.904(f)–5.

(b) *Recapture of pre-1983 old section 907(b) and section 904(d)(1)(E) overall foreign losses from post-1982 income.* A taxpayer having a balance in a pre-1983 old section 907(b) or section 904(d)(1) (E) overall foreign loss account in a post-1982 taxable year shall recapture a portion of such overall foreign loss as follows:

(1) *Recapture from income subject to the same limitation.* The taxpayer shall first apply the rules of §§ 1.904(f)–1 through 1.904(f)–5 to the taxpayer's separately determined foreign oil related income to recapture pre-1983 old section 907(b) overall foreign losses, and shall apply such rules to the taxpayer's separately determined section 904(d)(1)(E) income (exclusive of foreign oil related income) to recapture pre-1983 section 904(d)(1)(E) overall foreign losses.

(2) *Recapture from income subject to the other limitation.* The taxpayer shall next apply the rules of §§ 1.904(f)–1 through 1.904(f)–5 to the taxpayer's separately determined foreign oil related income to recapture pre-1983 section 904(d)(1)(E) overall foreign losses, and shall apply such rules to the taxpayer's separately determined section 904(d)(1)(E) income to recapture pre-1983 old section 907(b) overall foreign losses, but only to the extent that—

(i) The amount recaptured from such separately determined income under paragraph(b)(1) of this section is less than 50 percent (or such larger percentage as the taxpayer elects) of such separately determined income, and

(ii) The amount recaptured from such separately determined income under this paragraph (b)(2) does not exceed an amount equal to 12½ percent of the balance in the taxpayer's pre-1983 old section 907(b) or section 904(d)(1)(E) (as applicable) overall foreign loss account at the beginning of the taxpayer's first post-1982 taxable year, multiplied by the number of post-1982 taxable years (including the year to which this rule is being applied) which have elapsed, less the amount (if any) recaptured in prior post-1982 taxable years under this paragraph(b)(2) from such separately determined income.

The taxpayer may elect to recapture a pre-1983 overall foreign loss from post-1982 income subject to the section 904(d)(1)(E) limitation at a faster rate than is required by this paragraph(b)(2). This election shall be made in the same manner as an election to recapture more than 50 percent of income subject to recapture under section 904(f)(1), as provided in § 1.904(f)–2(c)(2).

(c) *Coordination of recapture of pre-1983 and post-1982 overall foreign losses.* A taxpayer incurring a section 904(d)(1)(E) overall foreign loss in any post-1982 taxable year in which the taxpayer has a balance in a pre-1983 old section 907(b) or section 904(d)(1)(E) overall foreign loss account shall establish a separate overall foreign loss account for such loss. The taxpayer shall recapture its overall foreign losses in succeeding taxable years by first applying the rules of this section to

recapture its pre-1983 overall foreign losses, and then applying the rules of §§ 1.904(f)–1 through 1.904(f)–5 to recapture its post-1982 section 904(d)(1)(E) overall foreign loss. A post-1982 section 904(d)(1)(E) overall foreign loss may only be recaptured to the extent that the amount of foreign source taxable income recharacterized under paragraph(b) of this section is less than 50 percent (or such greater percentage as the taxpayer elects) of the taxpayer's total section 904(d)(1)(E) foreign source taxable income (including foreign oil related income) for such taxable year (except as required by section 904(f)(3)).

(d) *Illustrations.* The provisions of this section may be illustrated by the following examples:

Example (1). X Corporation is a U.S. corporation which has the calendar year as its taxable year. On December 31, 1982, X Corporation has a balance of $1,000 in its section 904(d)(1)(E) overall foreign loss account and does not have a balance in an old section 907 (b) overall foreign loss account. For 1983, X Corporation has section 904(d)(1)(E) income of $1,200, which includes foreign oil related income of $1,000 and other section 904(d)(1)(E) income of $200. In 1983 X Corporation is required to recapture $225 of its pre-1983 section 904(d)(1)(E) overall foreign loss, computed as follows:

Amount recaptured under paragraph (b)(1) of this section	$100
The amount recaptured from section 904(d)(1)(E) income exclusive of foreign oil related income is the lesser of $1,000 (the pre-1983 section 904(d)(1)(E) overall foreign loss) or 50 percent of $200 (the separately determined section 904(d)(1)(E) income exclusive of foreign oil related income).	
Amount recaptured under paragraph (b)(2) of this section	125
The amount recaptured from foreign oil related income is the lesser of $900 (the remaining pre-1983 section 904(d)(1)(E) overall foreign loss after recapture under paragraph (b)(1) of this section) or 50 percent of $1,000 (the separately determined foreign oil related income), but is limited by paragraph (b)(2)(ii) of this section to [12½ percent of $1,000×1) – $0, which is $125.	
Total amount recaptured in 1983	225

Example (2). The facts are the same as in example (1), except that X Corporation has section 904(d)(1)(E) income of $50 for 1984 and $600 for 1985, all of which is foreign oil related income. X Corporation is required to recapture $25 in 1984 and $225 in 1985 of its pre-1983 section 904(d)(1)(E) overall foreign loss, computed as follows:

Amount recaptured under paragraph (b)(2) of this section in 1984	$25
The amount recaptured from foreign oil related income is the lesser of $775 (the remaining pre-1983 section 904(d)(1)(E) overall foreign loss) or 50 percent of $50 (the separately determined foreign oil related income). This amount is within the limitation of paragraph (b)(2)(ii) of this section, (12½ percent of $1,000×2)–$125, which is $125.	
Amount recaptured under paragraph (b)(2) of this section in 1985	225
The amount recaptured from foreign oil related income is the lesser of $750 (the remaining pre-1983 section 904(d)(1)(E) overall foreign loss) or 50 percent of $600 (the separately determined foreign oil related income), but is limited by paragraph (b)(2)(ii) of this section to (12½ percent of $1,000×3) – ($125+$25), which is $225. ($125 is the amount recaptured in 1983 under paragraph (b)(2) of this section, and $25 is the amount recaptured in 1984 under paragraph (b)(2) of this section.)	

Example (3). Y Corporation is a U.S. corporation which has the calender year as its taxable year. On December 31, 1982, Y Corporation has a balance of $400 in its section 904(d)(1)(E) overall foreign loss account and does not have a balance in a section 907(b) overall foreign loss account. For 1983, Y Corporation has a section 904(d)(1)(E) overall foreign loss of $200. For 1984, Y Corporation has section 904(d)(1)(E) income of $1,200, all of which is foreign oil related income. In 1984 Y Corporation is required to recapture a total of $300 computed as follows:

Amount of pre-1983 overall foreign loss recaptured under paragraph (b)(2) of this section	$100
The amount of pre-1983 section 904(d)(1)(E) overall foreign loss recaptured from foreign oil related income is the lesser of $400 (the loss) or 50 percent of $1,200 (the separately determined foreign oil related income), but is limited by paragraph (b)(2)(ii) of this section to (12½ percent of $400×2)–$0, which is $100.	
Amount of post-1982 overall foreign loss recaptured under paragraph (c) of this section	200
The amount of post-1982 section 904(d)(1)(E) overall foreign loss recaptured is the amount computed under § 1.904(f)–2(c)(1), which is the lesser of $200 (the post-1982 loss) or 50 percent of $1,200 (the income), but only to the extent that the amount of pre-1983 loss recaptured under paragraph (b) of this section is less than 50 percent of such income [(50 percent of $1,200)–$100 recaptured under paragraph (b)=$500).	
Total amount recaptured in 1984	300

At the end of 1984, Y Corporation has a balance in its pre-1983 section 904(d)(1)(E) overall foreign loss account of $300, and has reduced its post-1982 section 904(d)(1)(E) overall foreign loss account to zero.

Example (4). Z Corporation is a U.S. corporation which has the calendar year as its taxable year. On December 31, 1982, Z Corporation has a balance of $400 in its section 904(d)(1)(E) overall foreign loss account and a balance of $1,000 in its old section 907(b) overall foreign loss account. For 1983, Z Corporation has section 904(d)(1)(E) income of $2,000, which includes foreign oil related income of $1,000 and other section 904(d)(1)(E) income of $1,000. Keeping these amounts separate for purposes of this section, Z Corporation is required to recapture a total of $1,000 in 1983, computed as follows:

Amount recaptured under paragraph (b)(1) of this section	$900
The amount of pre-1983 old section 907(b) overall foreign loss recaptured from foreign oil related income, in accordance with § 1.904(f)–2(c)(1), is the lesser of $1,000 (the old section 907(b) overall foreign loss) or 50 percent of $1,000 (the foreign oil related income), which is $500.	
The amount of pre-1983 section 904(d)(1)(E) overall foreign loss recaptured from section 904(d)(1)(E) income exclusive of foreign oil related income, in accordance with § 1.904(f)–2(c)(1), is the lesser of $400 (the section 904(d)(1)(E) overall foreign loss) or 50 percent of $1,000 (the section 904(d)(1)(E) income exclusive of foreign oil related income which is $400.	
Amount recaptured under paragraph (b)(2) of this section	100

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The amount of pre-1983 old section 907(b) overall foreign loss recaptured from section 904(d)(1)(E) income exclusive of foreign oil related income is the lesser of $500 (the remaining balance in that loss account) or 50 percent of $1,000 (the section 904(d)(1)(E) income exclusive of foreign oil related income), but only to the extent that the amount recaptured from such income under paragraph (b)(1) of this section is less than 50 percent of such income, or $100 ((50 percent of $1,000)−$400 recaptured due to section 904(d)(1)(E) overall foreign loss), and only up to the amount permitted by paragraph (b)(2)(ii) of this section, which is (12½ percent of $1,000×1)−$0, or $125.

Total amount recaptured in 1983	$1,000

At the end of 1983, Z Corporation has reduced its pre-1983 section 904(d)(1)(E) overall foreign loss account to zero, and has a balance in its pre-1983 old section 907(b) overall foreign loss account of $400.

Par. 3. A new § 1.1502–9 is added in the appropriate place to read as set forth below:

§ 1.1502–9 Application of overall foreign loss recapture rules to corporations filing consolidated returns.

(a) *In general.* An affiliated group of corporations filing a consolidated return sustains an overall foreign loss (a consolidated overall foreign loss) in any taxable year in which its gross income from sources without the Unites States subject to a separate limitation (as defined in § 1.904(f)–1 (c) (2)) is exceeded by the sum of the deductions properly allocated and apportioned thereto. The rules contained in §§ 1.904(f)–1 through 1.904(f)–6 are applicable to affiliated groups filing consolidated returns. This section provides special rules for applying those sections to such groups. Paragraph (b) provides rules for additions and subtractions of overall foreign losses to and from consolidated overall foreign loss accounts. Paragraph (c) requires that separate national overall foreign loss accounts be kept for each member of the group that contributes to a consolidated overall foreign loss account and provides for allocation of overall foreign losses when a member leaves the group prior to recapture of the entire amount of such losses. Paragraph (d) provides rules for recapture of amounts in consolidated overall foreign loss accounts. Paragraph (e) provides special rules pertaining to section 904 (f) (3) dispositions between members of a group. Paragraphs (b), (c), and (e) also contain special rules applying to overall foreign losses arising in separate return limitation years; the principles therein shall also apply to overall foreign losses where there has been a consolidated return change of ownership (as defined in § 1.1502–1(g)).

(b) *Consolidated overall foreign loss accounts.* Any group sustaining an overall foreign loss (or acquiring a member having an overall foreign loss) must establish a consolidated overall foreign loss account for such loss, and amounts shall be added to and subtracted from such account as provided in §§ 1.904(f)–1 through 1.904(f)–6 and this section.

(1) *Additions to the consolidated overall foreign loss accounts*—(i) *Consolidated overall foreign losses.* Any consolidated overall foreign loss shall be added to the applicable consolidated overall foreign loss account for such separate limitation, to the extent that the overall foreign loss has reduced U.S. source income, in accordance with the rules of §§ 1.904(f)–1 and 1.904(f)–3.

(ii) *Overall foreign losses from separate return years.* If a corporation joins in the filing of a consolidated return in a taxable year in which such corporation has a balance in an overall foreign loss account from a prior separate return year that is not a separate return limitation year, such balance shall be added to the applicable consolidated overall foreign loss account in such year and treated as a consolidated overall foreign loss incurred in the previous year (and shall therefore be subject to recapture, in accordance with paragraph (d) of this section, beginning in the same year in which it is added to the consolidated overall foreign loss account).

(iii) *Overall foreign losses from separate return limitation years.* If a corporation joins in the filing of a consolidated return in a taxable year in which such corporation has a balance in an oveall foreign loss account from a prior separate return limitation year, such balance shall be added to the applicable consolidated overall foreign loss account in such consolidated return year to the extent of consolidated foreign source taxable income subject to the same separate limitation (computed in accordance with §§ 1.904(f)–2(b) and 1.1502–4(d)(1)) minus such consolidated foreign source taxable income recomputed by excluding the items of income and deduction of such corporation (but not less than zero). The amount added to a consolidated overall foreign loss account in any taxable year under this paragraph (b)(1)(iii) shall be treated as a consolidated overall foreign loss in the previous year (and shall therefore be subject to recapture, in accordance with paragraph (d) of this section, beginning in the same year in which it is added to the consolidated overall foreign loss account).

(iv) *Overall foreign losses that are part of net operating losses or net capital losses carried over from a separate return limitation year.* Overall foreign losses that are part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year are treated as though they were added to an overall foreign loss account in a separate return limitation year of such member. See paragraph (c)(2) of this section for rules regarding the addition of such losses to the applicable overall foreign loss account of such member.

(2) *Reductions of the consolidated overall foreign loss accounts*—(i) *Amounts allocated to members leaving the group.* When a member leaves the group, each applicable consolidated overall foreign loss account shall be reduced by the amount allocated from such account to such member in accordance with paragraph (c)(3)(i) of this section.

(ii) *Amounts recaptured.* Each applicable consolidated overall foreign loss account shall be reduced by the amount of the overall foreign loss under the same separate limitation that is recaptured from consolidated income in accordance with § 1.904(f)–2.

(c) *Allocation of overall foreign losses among members of an affiliated group*—(1) *Notiponal overall foreign loss accounts.* Separate notional overall foreign loss accounts shall be established for each member of a group that contributes to a consolidated overall foreign loss account. Additions to and reduction of such notional accounts shall be made when additions or reductions are made to consolidated overall foreign loss accounts in accordance with paragraph (b) of this section and § 1.904(f)–1.

(i) *Additions to notional accounts*—(A) *Consolidated overall foreign losses.* When a consolidated overall foreign loss is added to a consolidated overall foreign loss account, each member shall add its pro rata share of the amount of such loss added to a consolidated overall foreign loss account to such member's notional overall foreign loss account. A member's pro rata share of the amount of such loss added to a consolidated overall foreign loss

account for any taxable year is determined by multiplying such amount by a fraction. The numerator of this fraction is the amount by which the member's separate gross income for the taxable year from sources without the United States is exceeded by the sum of the deductions properly allocated and apportioned thereto (including such member's share of any consolidated net operating loss deduction and consolidated net capital loss carryovers and carrybacks to the taxable year), for each member with such deductions in excess of such income. The denominator of this fraction is the sum of the numerators of this fraction for all such members of the group.

(B) *Overall foreign losses from separate return years and separate return limitation years.* When an amount from a member's overall foreign loss account from a separate return year or separate return limitation year is added to a consolidated overall foreign loss account in accordance with paragraph (b)(1) (li) or (iii) of this section, such amount shall also be added to that member's notional overall foreign loss account for such separate limitation.

(ii) *Reductions of notional accounts.* When a consolidated overall foreign loss account is reduced by recapture, in accordance with paragraph (b)(2)(ii) of this section, each member of the group shall reduce its notional overall foreign loss account for such separate limitation by its pro rata share of the amount by which the consolidated overall foreign loss account is reduced. A member's pro rata share of the amount by which a consolidated overall foreign loss account is reduced is determined by multiplying such amount by a fraction, the numerator of which is the amount in such member's notional account under such separate limitation, and the denominator of which is the amount in the consolidated overall foreign loss account under such separate limitation before reduction for the amount recaptured for that taxable year.

(2) *Overall foreign losses that are part of net operating losses or net capital losses from separate return limitation years.* An overall foreign loss that is part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year shall be treated as an overall foreign loss of such member (rather than the group) and shall be added to such member's separate overall foreign loss account (for losses added to the member's overall foreign loss account under such separate limitation in prior separate return limitation years), to the extent it reduces U.S. source income, in accordance with § 1.904(f)–1(d)(5). Such overall foreign losses shall be added to the appropriate consolidated overall foreign loss account in later years in accordance with paragrpah (b)(1)(iii) of this section.

(3) *Allocation of overall foreign losses to a member leaving the group*—(i) *Consolidated overall foreign losses.* When a corporation ceases to be a member of an affiliated group filing consolidated returns, a portion of the balance in each applicable consolidated overall foreign loss account shall be allocated to such corporation. The amount allocated to such corporation shall be equal to the amount in such member's notional overall foreign loss account under the same separate limitation.

(ii) *Overall foreign losses from separate return limitation years.* When a corporation ceases to be a member of an affiliated group filing consolidated returns, it shall take with it the remaining portion of its separate overall foreign loss account for its overall foreign losses from separate return limitation years (including amounts added to such account under paragraph (c)(2) of this section) that has not been added to a consolidated overall foreign loss account under paragraph (b)(1)(iii) of this section.

(d) *Recapture of consolidated overall foreign losses.* The amount in any consolidated overall foreign loss account shall be recaptured under §§ 1.904(f)–1 through 1.904(f)–6 by recharacterizing consolidated foreign source taxable income subject to the limitation under which the loss arose as U.S. source taxable income. For purposes of recapture, consolidated foreign source taxable income subject to the limitation under which the loss arose shall be determined in accordance with §§ 1.904(f)–2 and 1.1502–4. Amounts in a member's excess loss account that are included in income under § 1.1502.19 shall be subject to recapture to the extent that they are included in consolidated foreign source taxable income subject to the limitation under which the loss arose.

(e) *Dispositions of property between members of the same affiliated group during a consolidated return year*—(1) *Recapture of overall foreign loss from a separate return limitation year.* To the extent of any balance in a separate account for overall foreign losses from a separate return limitation year of a member (a "selling member") making a disposition of property to which section 904(f)(3)(A) applies to another member of the same affiliated group, no gain from such disposition shall be deferred under the rules of § 1.1502–13(c).

(2) *Recapture of consolidated overall foreign loss not from a separate return limitation year.* Except as provided in paragraph (e)(1) of this section, the rules of § 1.1502–13 with respect to deferral of gain shall apply to dispositions of property to which section 904(f)(3)(A) applies.

(f) *Illustrations.* The provisions of this section are illustrated by the following examples. All foreign source income or loss in these examples is subject to the section 904(d)(1)(E) limitation.

Example (1). A, B, and C are the members of an affiliated group of corporations (as defined in section 1504), and all use the calendar year as their taxable year. For 1983, A, B, and C file a consolidated return. ABC has U.S. source income of $1000 and foreign source losses (overall foreign loss) of $400. In accordance with paragraph (b)(1)(i) of this section, ABC adds $400 to its consolidated overall foreign loss account at the end of 1983. For 1983, the separate foreign source taxable income (or loss) of A is $400, of B is ($200), and of C is ($600). Under paragraph (c)(1) of this section, B and C must establish separate notional overall foreign loss accounts. Under paragraph (c)(1)(i)(A) of this section, the amount added to each notional account is the pro rata share of the consolidated overall foreign loss of each member contributing to such loss. The pro rata share is determined by multiplying the consolidated loss by the member's proportional share of the total foreign source losses of all members having such losses. B's foreign source loss is $200 and C's foreign source loss is $600, totalling $800. B must add $400x200/800, or $100, to its notional overall foreign loss account. C must add $400x600/800, or $300, to its notional overall foreign loss account.

Example (2). The facts are the same as in example (1). In 1984, ABC has consolidated foreign source taxable income of $200. Under paragraph (d) of this section and § 1.904(f)–2, ABC is required to recapture $100 of the amount in its consolidated overall foreign loss account, which reduces that account by $100 under paragraph (b)(2)(ii) of this section. In accordance with paragraph (c)(1)(ii) of this section, B reduces its notional account by $100x100/400, or $25, and C reduces its notional account by $100x300/400, or $75. At the end of 1984 ABC has $300 in its consolidated overall foreign loss account, B has $75 in its notional account, and C has $225 in its notional account.

Example (3). D and E are members of an affiliated group and file separate returns using the calendar year as their taxable year for 1980. In 1980, D has an overall foreign loss, of $200, which it adds to its overall foreign loss account, and E has no overall foreign losses. For 1981, D and E file a consolidated return, and DE must establish a consolidated overall foreign loss account, to which D's overall foreign loss from 1980 is added under paragraph (b)(1)(ii) of this section. D also

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adds the same amount to its notional account under paragraph (c)(1)(i)(B) of this section. In 1981, DE has consolidated foreign source taxable income of $300. Since the amount added to the consolidated overall foreign loss account in 1981 is treated as a consolidated overall foreign loss from 1980, DE must recapture $150 in 1981 under paragraph (d) of this section and § 1.904(f)–2. DE's consolidated overall foreign loss account is reduced by $150 under paragraph (b)(2)(ii) of this section, and D's notional account is reduced by $150 under paragraph (c)(1)(ii) of this section, leaving balances of $50 in each of those accounts at the end of 1981.

Example (4). F and G are not members of an affiliated group in 1980, and G has an overall foreign loss of $200, which it adds to its overall foreign loss account. F has no overall foreign loss. On January 1, 1981, F acquires G, and FG files a consolidated return for the calendar year 1981. In 1981, F has no foreign source taxable income or loss, and G has $100 of foreign source taxable income. FG's consolidated foreign source taxable income, $100, minus such income without G's items of income and deduction, $0, is $100. Therefore $100 of G's overall foreign loss from its 1980 separate return limitation year is added to FG's consolidated overall foreign loss account under paragraph (b)(1)(iii) of this section, and the same amount is added to G's notional account under paragraph (c)(1)(i)(B) of this section. In accordance with paragraph (d) of this section and § 1.904(f)–2, FG must recapture $50 of the balance in its consolidated overall foreign loss account in 1981 because the amount added from G's separate return limitation year is treated as a 1980 consolidated overall foreign loss. At the end of 1981, FG has a balance of $50 in its consolidated overall foreign loss account, G has $50 in its notional account, and G also has $100 remaining from its 1980 overall foreign loss that has not yet been added to the consolidated overall foreign loss account.

On January 1, 1982, F sells G and G leaves the affiliated group. Under paragraph (c)(3)(i) of this section, $50 of the consolidated overall foreign loss account is allocated to G (an amount equal to the amount in G's notional account), and G also takes with it the balance in its overall foreign loss account from 1980 (its prior separate return limitation year) that has not been added to the consolidated account. The FG consolidated overall foreign loss account is reduced by $50 (to zero) and G has $150 of overall foreign loss in its overall foreign loss account.

Example (5). (i) In 1982 corporation H has U.S. source income of $300 and foreign source losses of $500, resulting in a net operating loss of $200 and a balance in H's overall foreign loss account at the end of 1982 of $300.

(ii) On January 1, 1983, H is acquired by J, and for the calendar year 1983 JH files a consolidated return. JH has consolidated taxable income of $700 in 1983, including a consolidated net operating loss deduction of $100. This net operating loss deduction is $100 of H's $200 net operating loss from 1982 (a separate return limitation year), which is limited by § 1.1502–21(c). For 1983, H has separate taxable income of $100, comprised of $100 of U.S. source taxable income and zero foreign source taxable income, and J has separate taxable income of $700, comprised of $700 of U.S. source taxable income and zero foreign source taxable income. Under paragraph (c)(2) of this section, H adds $100 to its separate overall foreign loss account, since that amount of its net operating loss has reduced U.S. source income. H has $400 in its separate overall foreign loss account at the end of 1983, none of which has been added to a consolidated overall foreign loss account.

(iii) In 1984, H has separate taxable income of $400, comprised of $100 of U.S. source taxable income and $300 of foreign source taxable income. J has separate taxable income of $900, comprised of $700 of U.S. source taxable income and $200 of foreign source taxable income. JH has consolidated taxable income of $1200, which includes $100 of consolidated net operating loss deduction from H's 1982 net operating loss. Since this net operating loss deduction is allocated to foreign source income, it does not reduce U.S. source income and will not be added to an overall foreign loss account. Under paragraph (b)(1)(iii) of this section, $200 from H's overall foreign loss is added to the consolidated overall foreign loss account computed as follows:

Consolidated foreign source taxable income	$400
Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deductions	−200
Amount from H's separate return limitation year overall foreign loss account added to the consolidated overall foreign loss account	200

This amount is subject to recapture beginning in the same taxable year, as it is treated as a consolidated overall foreign loss incurred in a previous year. Therefore, under paragraph (d) of this section and § 1.904(f)–2, JH also recaptures this $200, reducing the consolidated overall foreign loss account to zero. H has $200 remaining in its separate overall foreign loss account at the end of 1984.

(iv) In 1985, H has separate taxable income of $400, comprised of $100 of U.S. source taxable income and $300 of foreign source taxable income. J has separate taxable income of $300 comprised of $600 of U.S. source taxable income and $300 of foreign source losses. JH has consolidated taxable income of $700, all of which is U.S. source. Under paragraph (b)(1)(iii) of this section, the remaining $200 from H's separate overall foreign loss is added to the consolidated overall foreign loss account, computed as follows:

Consolidated foreign source taxable income	0
Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deductions	(−$300)
Amount from H's separate return limitation year overall foreign loss account that may be added to the consolidated overall foreign loss account	300

Thus, the entire $200 balance of H's separate overall foreign loss is added to the consolidated overall foreign loss account, and, under paragraph (c)(1)(i)(B) of this section, the same amount is added to H's notional account. While this amount is subject to recapture beginning in the same taxable year, JH has no consolidated foreign source taxable income in 1985, so no overall foreign loss is recaptured.

Rosco L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–1468 Filed 1–23–86; 8:45 am]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[Notice No. 580]

Labeling of Distilled Spirits in Percent-Alcohol-by-Volume

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend regulations in 27 CFR Parts 5 and 19 to provide for labeling and advertising the alcohol content of distilled spirits products in percent-alcohol-by-volume rather than in proof. This notice of proposed rulemaking is based on a petition submitted by Joseph E. Seagram and Sons, Inc. ATF invites comments from the public and industry as to whether these regulations should be amended.

DATE: Written comments must be received by May 27, 1986.

ADDRESSES: Send written comments to: Chief, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Attn: Notice No. 580).

Copies of the petition, the November 1980 Report to the President and the Congress on *Health Hazards Associated with Alcohol and Methods to Inform the General Public of these Hazards*, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

The alcohol content is specifically required to be shown on labels and in advertisements of distilled spirits products under 27 U.S.C. 205 (e) and (f). The purpose of this requirement, stated in this section, is to ". . . provide the consumer with adequate information as to the identity and quality of the products, [including] the alcoholic content thereof. . . .". The alcohol content is also required to be shown on labels of distilled spirits products under the authority conferred by 26 U.S.C. 5301(a). This section reads, in part, "Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him . . . to regulate the kind, size, branding, marking, . . . of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits. . . .".

Since the repeal of Prohibition, ATF and its predecessor agencies have regulated the labeling and advertising of the alcohol content of distilled spirits products by requiring a statement expressed in degrees of proof. (Degrees of proof are equal to the percent-alcohol-by-volume multiplied by two). This requirement, unchanged for 50 years, was also the conventional method of labeling and advertising the alcohol content of distilled spirits products before Prohibition. Branding and marking requirements are expressed in proof on labels of distilled spirits because the tax is imposed on the basis of proof.

The current regulations, 27 CFR 5.37 (implementing 27 U.S.C. 205(e)), 27 CFR 5.63 (implementing 27 U.S.C. 205(f)), and 27 CFR 19.643 (implementing 26 U.S.C. 5301(a)), require proof statements on labels and in advertisements of distilled spirits except that the alcohol content may be stated in percent-alcohol-by-volume on labels for liqueurs, cordials, bitters, cocktails, highballs, or other such specialties.

Petition

Joseph E. Seagram & Son, Inc. has petitioned ATF to amend 27 CFR 5.37, relating to the alcohol content statement on labels of distilled spirits. Seagram is petitioning for a statement of percent-alcohol-by-volume to replace the use of proof statements on labels of distilled spirits. ATF would not consider amending the labeling requirement under 27 U.S.C. 205(e), 27 CFR 5.37, without also amending the labeling requirements under 26 U.S.C. 5301(a), 27 CFR 19.643. In addition, 27 CFR 5.63 would be amended to change the mandatory advertising statement of alcohol content.

Discussion

In the November 1980 Report to the President and the Congress on *Health Hazards Associated with Alcohol and Methods to Inform the General Public of these Hazards*, submitted by the Treasury Department and the Department of Health and Human Services, the Treasury Department was in favor of labeling distilled spirits in percent-alcohol-by-volume.

In the ATF Quarterly Bulletin, A.T.F.Q.B. 1985–2, Page 71, ATF announced that statements of percent-alcohol-by-volume may now appear on labels of all distilled spirits products, as additional, truthful information. This announcement reverses a long-standing label approval policy, and partially implements the Seagram's petition and the November 1980 Report to the President and the Congress, mentioned above. If adopted, the proposals in this Notice would require that the alcohol content of distilled spirits be expressed in percent-alcohol-by-volume on labels and in advertisements, with a proof statement allowed as optional, additional information. In addition, the tolerances for losses in alcohol content occurring during bottling will become tolerances calculated in percent-alcohol-by-volume, rather than tolerances calculated in proof.

Other Requirements to Label Proof. In this notice of proposed rulemaking, ATF is not considering the amemdment of regulations on marking requirements for cases, bulk containers (including barrels used for aging spirits), or bottles of industrial alcohol used by hospitals, universities, or manufacturers of food products or medicinal preparations. These regulations require that some containers of distilled spirits be marked to show the proof of the product. In general, these are the containers on which taxes are determined. Since taxes are imposed on the basis of proof, as previously discussed, these requirements are oriented toward protection of the revenue.

Moreover, these marking requirements have little or no impact on consumers. Although whole cases of distilled spirits are sometimes purchased by consumers, ATF does not generally consider a case to be a consumer container. Therefore, ATF is not considering amendments of marking requirements for these containers.

Public Participation—Written Comments

Based on the above discussion, ATF is issuing this notice of proposed rulemaking concerning labeling of distilled spirits in percent-alcohol-by-volume. In addition to comments on the proposed amendments, ATF is requesting comments on the following question:

If percentage statements replace proof statements, how long should the transition period be?

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Director within the 120-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidential effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

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Compliance With Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to display information on labels of distilled spirits, proposed in this notice, have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouse, Wine.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

PART 5—[AMENDED]

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

1. The statutory authority for 27 CFR Part 5 is revised to read as follows:

Authority: 27 U.S.C. 205.

2. Section 5.37 is amended by revising paragraphs (a) and (b).

§ 5.37 Alcohol content.

(a) *Stotement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. In addition, the label may also state the alcohol content in degrees of proof.

(b) *Tolerances.* The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent-alcohol-by-volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.15 percent-alcohol-by-volume for all other spirits.

* * * * *

3. Section 5.63 is amended by revising paragraph (c) to read as follows:

§ 5.63 Mandatory statements.

* * * * *

(c) *Alcohol content.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. In addition, the advertisement may also state the alcohol content in degrees of proof.

* * * * *

PART 19—[AMENDED]

27. CFR Part 19, *Distilled Spirits Plants*, is amended as follows:

4. The statutory authority for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510; 31 U.S.C. 9301, 9303, 9304, 9306.

5. Section 19.643 is amended by replacing the first sentence with the following two sentences which read as follows:

§ 19.643 Brand name, kind, alcohol content, and State of distillation.

The brand name, kind as set out in 27 CFR Part 5, and alcohol content expressed in percent-alcohol-by-volume, shall be stated on the label of distilled spirits. In addition, the label may also state the alcohol content in degrees of proof. * * *

Signed: November 5, 1985.
Stephen E. Higgins,
Director.

Approved: December 16, 1985.
David W. Green,
Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 86-1522 Filed 1-23-86; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt.]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Administrative Remedies for Fraud, Abuse, and Conflict of Interest

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed rule would amend Part 199 of title 32, the Regulation which implements CHAMPUS, by adding a new section that would provide administrative remedies, including exclusion, suspension, and termination of CHAMPUS providers for fraud, abuse, or conflict of interest. The new section will be designated as § 199.15, which was reserved after amendment number 34. This amendment would strengthen the Regulations's remedies when providers or beneficiaries violate laws pertaining to fraud or false claims. It also applies to situations that constitute program fraud or abuse. The proposed section is responsive to the Administration's and DoD's concern with controlling and reducing fraud and abuse. The end result will be to minimize poor quality care and health risks for CHAMPUS beneficiaries and to reduce unnecessary costs to the Government.

DATES: Written comments must be received on or before February 24, 1986.

ADDRESS: Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Policy Branch, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Tariq S. Shahid, Policy Branch, CHAMPUS, telephone (303) 361-3587.

SUPPLEMENTARY INFORMATION: In FR Doc 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

Section 199.12(a)(4)(i) provides for denial of CHAMPUS payments for services of a provider who has been found to have engaged in fraudulent activities against the program and a provider's disqualification from participation in CHAMPUS. In regard to unnecessary and poor quality care, the Regulation provides for denial of CHAMPUS payments for services or supplies that are not medically necessary or that fail to meet professionally recognized standards for health care, but it is silent on the CHAMPUS' authority to exclude providers from the program for such abusive practices.

Section 199.12(a)(4)(ii) authorizes denial of CHAMPUS reimbursements for services of any provider that has been determined by the Secretary of the Department of Health and Human Services (DHHS) to have furnished supplies or services which were substantially in excess of the needs of individuals, or to be harmful to individuals, or to be of a grossly inferior quality, and the Secretary has on the basis of such a determination terminated the agreement of that provider for purposes of reimbursement under Medicare and Medicaid programs. CHAMPUS is dependent upon the DHHS for excluding those providers who engage in abusive practices. This weakness in the Regulation has a potential for CHAMPUS abuse since a provider can continue rendering unnecessary or poor quality services to CHAMPUS beneficiaries while avoiding the termination by DHHS by not doing so under the Medicare and Medicaid progrms. Also, CHAMPUS could be abused by a provider who avoids the termination by DHHS simply be electing not to participate in Medicare and Medicaid programs.

We believe that once a provider has been found to have ordered or furnished services or supplies for a CHAMPUS beneficiary that are medically unnecessary, inferior, or harmful, CHAMPUS should be able to exclude such a provider from the program without having to rely on the DHHS. Such CHAMPUS authority is needed to eliminate poor quality providers from the program.

We believe the Regulation should define fraud and abuse under the CHAMPUS and strengthen its authority. The criminal statutes defining fraud and abuse are enforced in courts of law. The proposed rule provides for provider exclusion when judgements involving fraud are entered in a court of law. In addition, it establishes what is fraud or abuse under the CHAMPUS by providing administrative definitions separate from any definitions found in criminal codes.

This proposed amendment would add a new Section to the Regulation and would prescribe necessary definitions, more clearly express the CHAMPUS' authority, and would provide a range of administrative responses and remedies, including exclusion, suspension, and termination from the program for health care providers for fraud, abuse, or conflict of interest. Also, it would authorize CHAMPUS to exclude those providers who are suspended by other health care programs.

The amendment would provide that any CHAMPUS determination to exclude, suspend, or terminate a provider must be supported by substantial evidence and the provider will be given an opportunity to submit evidence in his or her support. It would clarify administrative appeal rights, provide criteria for reinstatement of an excluded or suspended provider, and would provide other administrative guidelines.

Conforming changes to other Sections of the Regulation have been made to insure consistency with the provisions of the new Section.

This proposed amendment is intended to permit easier elimination of poor quality health care providers from CHAMPUS. The end result will be to minimize poor quality care and health risks for CHAMPUS beneficiaries and to reduce unnecessary costs to the Government. The strengthened Regulation would allow an increased, more aggressive and more timely pursuit of suspected instances of fraud and abuse, and has a potential for positive impact on the program costs. The direct value of CHAMPUS would include the fraud and abuse deterrent effect of the stepped-up actions against suspected and determined violators.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, with the Department of Health and Human Services, the Department of Transportation and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects of 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

PART 199—[AMENDED]

Accordingly, it is proposed to amend 32 CFR, Chapter I, Part 199, as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. Section 199.8, paragraph (b) is revised by adding, in alphabetical order, the definitions for "Abuse," "Adequate Medical Documentation, Medical Treatment Records," "Adequate Medical Documentation, Mental Health Records," "Conflict of Interest," "Dual Compensation," "Fraud," "Item, Service, or Supply," "Provider Exclusion," "Provider Suspension," "Provider Termination," and "Suspension of Claims Processing," to read as follows:

§ 199.8 Definitions.

* * * * *

(b) * * *

Abuse. For the purposes of this Regulation, abuse is defined as any practice that is inconsistent with a legally sound fiscal, business, or medical practice, and results in a CHAMPUS claim or an unnecessary cost or in CHAMPUS payments for services or supplies that are not medically necessary or that fail to meet professionally recognized standards for health care providers. The definition of abuse includes deception or misrepresentation by a provider, or any person or entity acting on behalf of a provider in relation to a CHAMPUS.

Note.—The definition of "abuse" is distinguished from the definition of "fraud" which includes the additional elements that the deception or misrepresentation be intentional and with the knowledge that the deception could result in an unauthorized benefit. Therefore, any practice or action that constitute fraud, as defined by this Regulation, would also be abuse.

* * * * *

Adequate Medical Documentation, Medical Treatment Records. Adequate medical documentation contains sufficient information to justify the diagnosis and warrant the treatment and end results. Under CHAMPUS, it is required that adequate and sufficient clinical records be kept by the health care providers to substantiate that the care was rendered, was medically necessary (as defined by this Regulation), and who provided the care. In general, in determining whether medical records are adequate, the comparison will be to the applicable Joint Commission on Accreditation of

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Hospitals (JCAH) standards (and the provider's state or local licensing requirements) and other requirements specified by this Regulation and the other CHAMPUS issuances.

Adequate Medical Documentation, Mental Health Records. Adequate medical documentation provides the means for measuring the type and frequency of active treatment mechanisms employed. Under CHAMPUS, it is required that adequate and sufficient clinical records be kept by the providers to substantiate that the care was rendered, was medically or psychologically necessary (as defined by this Regulation), and who provided the care. In determining whether there is adequate documentation, the standard will be the applicable JCAH requirements (and the provider's state or local licensing and regulatory requirements) and other requirements specified in this Regulation and the other CHAMPUS issuances. It is further noted that the psychiatric evaluation, the treatment plan, progress notes (from the treating therapist) nursing and staff notes, and the discharge summary are the more critical elements of the mental health record. In general, the documentation expectations of a professional provider are not less in the outpatient setting than the inpatient setting.

* * * * *

Conflict of Interest. Includes any situation where an active duty member or civilian employee of the Government, through and official Federal position, has the opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries or himself of herself or others. For purposes of this Regulation, individuals under contract to a Uniformed Service may be involved in a conflict of interest situation through the contract position.

* * * * *

Dual Compensation. Federal Law (5 U.S.C. 5536) prohibits active duty members or civilian employees of the Government from receiving additional compensation from the Government above their normal pay and allowances. This prohibition applies to CHAMPUS cost-sharing of medical care provided by active duty members or civilian employees to CHAMPUS beneficiaries.

* * * * *

Fraud. For purposes of this Regulation, fraud is defined as an intentional deception or misrepresentation made by a provider, beneficiary, sponsor, or any person acting on behalf of a provider, sponsor, or beneficiary with the knowledge (or who had reason to know or should have known) that the deception could result in some unauthorized CHAMPUS benefit to self or some other person or some unauthorized CHAMPUS payment. It is presumed, if an intentional deception or misrepresentation is established *and* a CHAMPUS claim is filed, that the person responsible for the claim had the requisite knowledge; this presumption is rebuttable. It is further presumed that the provider of the services is responsible for the actions of the individuals who file a claim on behalf of the provider (for example, billing clerks); this presumption may only be rebutted by clear and convincing evidence.

* * * * *

Item, Service, or Supply. Includes: (1) Any item, device, medical supply or service claimed to have been provided to a beneficiary (patient) and listed in an itemized claim for CHAMPUS payment or a request for payment, or (2) in the case of a claim based on costs, any entry or omission in a cost report, books of account, or other documents supporting the claims.

* * * * *

Provider Exclusion. The denial of CHAMPUS status as an authorized provider where the denial (exclusion) from CHAMPUS is based on a criminal conviction or civil judgment involving fraud. Conviction includes both findings of guilt by a court and pleas of guilty or *nolo contendere.*

Provider Suspension. The denial of CHAMPUS status as an authorized provider based on: (1) An administrative finding of fraud or abuse (as defined in this Regulation) by OCHAMPUS; or (2) an administrative finding that the provide was "suspended" by another agency of the Federal Government, a state, or a local entity with authority to license the provider.

Provider Termination. When a provider's status as an authorized CHAMPUS provider is terminated based on a finding that the provider does not meet the qualifications, as set forth in Section 199.12 of this Part, to be an authorized CHAMPUS provider.

* * * * *

Suspension of Claims Processing. The temporary suspension of claims processing (as necessary to protect the Government's interest) for care provided by a specific provider (whether the claims are submitted by the provider, beneficiary, or sponsor) or claims submitted by or on the behalf of a CHAMPUS beneficiary pending action by the Director, OCHAMPUS, or a designee, in a case of suspected fraud or abuse. The action may include the administrative remedies provided for in Section 199.15, development or investigation by OCHAMPUS, a referral to the Department of Defense-Inspector General or the Department of Justice for action within their cognizant jurisdictions.

* * * * *

3. Section 199.12 is amended by removing paragraphs (a)(3), (a)(4)(i), and (a)(4)(ii), by redesignating paragraph (a)(4)(iii) as (a)(3), by redesignating paragraph (a)(5) as (a)(4), by redesignating paragraph (a)(6) as (a)(5), by redesignating paragraph (a)(7) as (a)(6); by revising introductory paragraph (b)(3)(iv) and removing its paragraphs (b)(3)(iv)(*a*) through (b)(3)(iv)(*d*) to read as follows:

§ 199.12 Authorized providers.

(a) * * *

(3) *For-profit institutions excluded under Program for the Handicapped.* * * *

(4) *Utilization review/quality assurance.* * * *

(5) *Provider required.* * * *

(6) *Participating provider.* * * *

* * * * * *

(b) * * *

(3) * * *

(iv) *Institutions not in compliance with CHAMPUS standards.* If a determination is made that an institution is not in compliance with one or more of the standards applicable to its specific category of institution, OCHAMPUS shall take immediate steps to bring about compliance or terminate its approval as an authorized institution in accordance with § 199.15, paragraph (d)(3).

(4) * * *

4. Section 199.13 is revised by removing paragraph (i) in its entirety, by redesignating paragraph (j) as (i), and by redesignating paragraph (k) as (j) to read as follows:

§ 199.13 Claims submission, review and payment.

* * * * * *

(h) * * *

(i) *Erroneous payments and recoupment.* * * *

(j) *General assignment of benefits not recognized.* * * *

5. Section 199.15 is added to read as follows:

§ 199.15 Administrative remedies for fraud, abuse and conflict of interest.

(a) *General.* (1) This Section sets forth the guidelines for invoking CHAMPUS administrative remedies in situations involving fraud, abuse, or conflict of interest. The remedies impact institutional providers, professional providers, beneficiaries, and sponsors, and distinguish between situations involving criminal fraud, civil fraud, and fraud, abuse, and conflict of interest as defined in this Regulation. In addition, administrative actions, remedies, and procedures may differ based upon whether the initial findings were made by a court of law, another agency, or OCHAMPUS.

(2) This Section also sets forth guidelines for invoking administrative remedies in situations requiring administrative action to enforce provisions of law, regulation, and policy in the administration of CHAMPUS and to ensure quality of care for CHAMPUS beneficiaries. Examples of such situations may include the suspension or revocation of a provider's license for unethical or unprofessional conduct, or discovery that a provider fails to meet the requirements to be an authorized CHAMPUS provider.

(3) The administrative remedies set forth in this Section are in addition to, and not in lieu of, any other remedies or sanctions authorized by law or regulation.

(4) Section 199.12 of this Regulation specifies the minimum criteria for individuals and institutions to qualify as authorized CHAMPUS providers. This Section, among other matters, provides administrative remedies when providers who meet the minimum requirement set out in § 199.12, nevertheless, demonstrate through their actions they should not be CHAMPUS authorized providers and should not be permitted to continue as such.

(5) Providers under the CHAMPUS program have a duty to familiarize themselves with the CHAMPUS requirements. See *Heckler* v. *Community Health Services of Crawford County Inc., et al.,* ——— U.S. ———, 104 S.Ct 2218, 2226 (1984).

(b) *Abuse.* For the definition of abuse, see Section 199.8 of this Regulation. Examples of abuse, which are not all inclusive, include:

(1) Waiver of beneficiary (patient) cost-share or deductibles.

(2) Improper billing practices. For example, charging CHAMPUS beneficiaries rates for services and supplies that are in excess of those charges routinely charged by the provider to the general public, commercial health insurance carriers, or other federal health benefit entitlement programs for the same or similar services. (This includes dual fee schedules—one for CHAMPUS beneficiaries and one for other patients or third-party payors.)

(3) Claims for services not medically necessary, or if medically necessary, not to the extent rendered. For instance, a battery of diagnostic tests given whereas, based on the diagnosis, only a few are needed.

(4) Care of inferior quality. For example, consistently furnishing medical or mental health services that do not meet the accepted standards of care.

(5) Failure to maintain adequate medical or financial records.

(6) Refusal to furnish or allow the Government (for example, OCHAMPUS) or its contractors access to records related to CHAMPUS claims.

(c) *Fraud.* For the definition of fraud, see § 199.8 of this regulation. Situations which, for purposes of this Regulation are presumed to come within the definition of fraud but are not all inclusive, include:

(1) Submitting claims for CHAMPUS cost-sharing (this includes billings by providers when the claim is submitted by the beneficiary) for services, supplies, or equipment not rendered to, or used for, CHAMPUS beneficiaries. For example, billing for services when the provider was on call and did not provide any specific medical care to the beneficiary; providing services to an ineligible person and claiming CHAMPUS beneifts on the account of an eligible CHAMPUS beneficiary; or billing for an office visit for a missed appointment.

(2) Claiming of costs for noncovered or nonchargeable services, supplies, or equipment disguised as covered items. A claim for noncovered services billed as services which could be covered. Some examples are: (i) Billing for services which would be covered except for the frequency of the services, (ii) spreading the billing over a time period that reduces the apparent frequency to a level that CHAMPUS will cost-share, or (iii) charging to the CHAMPUS, directly or indirectly, costs not incurred or which were attributable to nonprogram activities, other enterprises, or personal expense of principals.

(3) Breach of a provider participation agreement which results in the beneficiary or sponsor being billed for amounts disallowed by CHAMPUS on the basis that such charges exceeded the Champus-determined allowable charge.

(4) Billings for supplies or equipment which are clearly unsuitable for the patient's needs or are so lacking in quality or sufficiency for the purpose as to be virtually worthless.

(5) Flagrant and persistent overutilization of services with little or no regard for results, the patient's ailments, condition, medical needs, or the physician's orders.

(6) Material misrepresentations of dates or descriptions of services rendered or of the identity of the recipient or the individual who rendered the services.

(7) Submitting falsified or altered CHAMPUS claims or medical or mental health patient records with intent to deceive or misrepresent the type, frequency, and duration of services or supplies or who provided the services or supplies.

(8) Duplicate billings intended for the purpose of undue enrichment. This includes billing the CHAMPUS more than once for the same services, billing both CHAMPUS and the beneficiary for the same services, or billing both CHAMPUS and other third parties (such as other health insurance or government agencies) for the same services, without making immediate, voluntary repayment or notification to CHAMPUS upon receipt of payments which combined exceed the CHAMPUS-determined allowable charge of the services involved.

(9) Misrepresentation by a provider of his or her credentials. For example, representing one as having a doctorate in clinical psychology when the degree is not from a regionally accredited university.

(10) Reciprocal billing. For example, practices such as the following: (i) One provider performing services for another provider and then the latter bills as though he had performed the services himself (e.g., as a weekend fill-in); (ii) provides service as an institutional employee and bills as a professional provider for the services; or (iii) bills for professional services when the services were provided by another individual who was an institutional employee.

(11) Submitting CHAMPUS claims at a rate higher than a rate established between CHAMPUS and the provider, if such a rate has been established.

(12) Arrangements by providers with employees, independent contractors, suppliers, or others which are designed primarily to overcharge the CHAMPUS through various means (such as commissions, fee-splitting, and kickbacks) used to divert or conceal improper or unnecessary costs or profits.

(13) Claims involving collusion between the supplier and the recipient (recipient could be either a provider, beneficiary, sponsor, or guardian) resulting in unnecessary costs or charges to CHAMPUS.

(d) *Administrative Remedies.* The following administrative remedies are available to OCHAMPUS.

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(1) *Provider exclusion.* An otherwise authorized CHAMPUS provider may be excluded from receiving payment, directly or indirectly, under CHAMPUS based on a criminal conviction or civil judgment involving fraud by the provider.

(i) *Criminal conviction involving CHAMPUS fraud.* (A) A provider convicted for a crime, whether the crime is a felony or misdemeanor, involving CHAMPUS fraud shall be excluded from CHAMPUS by the Director (or a designee) for the period of time to which the provider is sentenced but not less than 2 years.

(*1*) Conviction of a crime includes pleas of guilty or *nolo contendere.*

(*2*) The conviction can be in Federal Court, State Court, or a foreign court.

(*3*) The CHAMPUS exclusion applies whether or not the sentence is suspended and whether or not the conviction or sentencing is being appealed.

(*4*) If the provider is given probation, then the exclusion will be for 2 years.

(B) In addition, the Director, OCHAMPUS, (or a designee) may, based on the criteria set forth in paragraph (e)(4) below, excluded the provider for a period greater than the period described above, but not to exceed 10 years. Appeal rights shall be granted regarding the reasonableness of the additional period of exclusion beyond that described in subparagraph (d)(1)(i)(A) above.

(C) The exclusion will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(ii) *Criminal fraud involving other Federal programs.* (A) Any provider convicted of a crime whether the crime is a felony or misdemeanor, involving other Federal health care or benefit programs such as plans administered under titles XVIII and XIX of the Social Security Act, Federal Workmen's Compensation, and the Federal Employees Program (FEP) for employee health insurance, shall be excluded from CHAMPUS for the period of sentence.

(*1*) Conviction of a crime includes pleas of guilty or *nolo contendere.*

(*2*) The conviction can be in Federal Court, State Court, or a foreign court.

(*3*) The CHAMPUS exclusion applies whether or not the sentence is suspended and whether or not the conviction or sentencing is being appealed.

(*4*) If the provider is given probation, then the exclusion will be for 2 years.

(B) In addition, the Director, OCHAMPUS (or a designee) may, based on the criteria set forth in paragraph (e)(4) below, exclude the provider for a period greater than the period described above, but not to exceed 10 years. Appeal rights shall be granted regarding the period of exclusion to the extent it is greater than the period prescribed by subparagraph (d)(1)(ii)(A) above.

(C) The exclusion will effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(iii) *Criminal fraud involving non-Federal programs.* (A) Any provider convicted of a crime involving any non-Federal health benefit program or private insurance involving health benefits may be excluded from the CHAMPUS. The period of exclusion will be based on the criteria set forth in paragraph (e)(4) below and may not exceed 10 years.

(B) Since the exclusion is not automatic but is discretionary, the entire period of exclusion is appealable.

(C) The exclusion will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(iv) *Civil fraud involving CHAMPUS.* (A) Any provider, if a judgment involving civil fraud has been rendered (whether or not it is appealed) against the provider in a Civil action involving CHAMPUS benefits (whether or not other Federal programs are involved), shall be excluded from the CHAMPUS for a period of not less than 2 years and no more than 5 years.

(B) Any period of exclusion in excess of 2 years will be based on the criteria set forth in paragraph (e)(4) below and is appealable.

(C) The exclusion will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination.

(v) *Civil fraud involving other programs.* (A) Any provider, if a judgment involving civil fraud has been rendered against the provider (whether or not it has been appealed) in a civil action and involves other medical health care programs (whether Federal or state) or private health insurance, may be excluded from the CHAMPUS for a period not to exceed 5 years. The period of exclusion will be based on the criteria set forth in paragraph (e)(4) below.

(B) Since the entire period of exclusion is discretionary, the period of suspension is appealable.

(C) The exclusion will be effective on the date specified in the initial determination, but no later than 60 days from the date of the initial determination.

(2) *Provider suspension*—(i) *OCHAMPUS administrative determinations of fraud.* (A) The Director, OCHAMPUS or a designee, may make a factual finding that the elements of fraud, as defined in this Regulation, are present and suspend the provider's status as a CHAMPUS authorized provider based on the finding of fraud.

(B) If a finding is made by OCHAMPUS that a provider's actions constituted fraud as defined in this Regulation, the Director, OCHAMPUS, or a designee will suspend the provider for a perior of time to be determined by the Director, or a designee, but in no event will the suspension of the provider's status as an authorized provider exceed 5 years. All factual questions in dispute and the period of suspension are appealable.

(C) The suspension will be effective as of the date specified in the initial determination notice, but no later than 60 days from the date of intitial determination notice.

(ii) *OCHAMPUS administrative determination of abuse.* (A) Director, OCHAMPUS, or a designee, may make a factual finding that elements of abuse, as defined in this Regulation, are present.

(B) In situations involving provider abuse, the Director, OCHAMPUS, or a designee, may suspend the provider for such period of time as the Director or a designee deems reasonable, utilizing the criteria set forth in paragraph (e)(4) below, but not to exceed 5 years.

(C) All factual questions in dispute and the period of suspension are appealable.

(D) The suspension will be effective on the date specified in the initial determination notice but no later than 60 days from the date of the initial determination notice.

(E) Prior to invoking the remedy provided by this paragraph (d)(2)(ii), the Director, OCHAMPUS, or a designee, at the sole discretion of the Director or a designee, may suggest to the provider a method for correcting the situation and a time period for correction.

(iii) *Loss of provider status involving other Federal programs.* (A) Any provider who is suspended by any other Federal health care program, for example Medicare, shall be suspended by OCHAMPUS. A provider who has his or her credentials revoked through a Veterans Administration's or a Military Department's credentials review process and who is suspended, terminated, retired, or separated, and is reported to an appropriate professional regulating authority, shall also be suspended by OCHAMPUS. The suspension by OCHAMPUS under this paragraph is not appealable under § 199.16. The period of suspension will be for the period the other program has suspended the provider, or the provider may be reinstated upon the reinstatement under the other program.

(B) The suspension will be effective on the date of suspension by the other program or as specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(iv) *Conflict of interest and dual compensation.* See § 199.8(b).

(A) *Conflict of interest.* For purposes of this Regulation, conflict of interest, potential or actual, includes any situation where the active duty member or civilian employee of the Government, through an official Federal position, has the opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries to himself or herself or others. For purposes of this Regulation, individuals under contract by the Uniformed Services to provide medical care may be involved in a conflict of interest situation through their contract position. Conflict of interest also includes situations where authorized CHAMPUS providers employ an active duty member or civilian employee who has the opportunity to exert influence on the referral of CHAMPUS beneficiaries to the employing CHAMPUS provider.

(*1*) All such instances shall be referred to the applicable Uniformed Service for investigation and appropriate action. A report of the findings and action taken by the Uniformed Service shall be made to the Director, OCHAMPUS, with a copy to the General Counsel, Department of Defense, within 90 days of receiving the referral.

(*2*) In situations where it appears that CHAMPUS beneficiaries are being channeled to selected civilian providers where other providers are available, the Director, OCHAMPUS, or a designee, may investigate. If any conflict of interest or impropriety is found to exist, the matter will be referred to the appropriate Uniformed Service for appropriate action. The Uniformed Service shall report the action taken to the Director, OCHAMPUS.

(*3*) The Director, OCHAMPUS, or a designee, may make a factual finding that a CHAMPUS provider was involved in a conflict of interest situation, either with an active duty member or civilian employee or with an individual under contract to a Uniformed Service.

(*4*) CHAMPUS cost-sharing shall be denied on a claim where a conflict of interest situation is found to exist. This denial of cost-sharing applies whether the claim was filed by the individual who provided the care, the institutional provider in which the care was rendered, or by the beneficiary.

(*5*) Where a CHAMPUS provider, institutional or professional, has knowingly been involved in a conflict of interest situation, the Director, OCHAMPUS, or a designee, may suspend the provider, as an authorized CHAMPUS provider, for a period of time as the Director, or a designee, deems reasonable, but not to exceed 2 years.

(*i*) All factual questions and the period of suspension are appealable.

(*ii*) The suspension shall be effective on the data specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(B) *Dual compensation.* See § 199.8(b). Federal Law (5 U.S.C. 5536) prohibits active duty members or civilian employees of the Government from receiving compensation from the Government above their normal pay and allowances.

(*1*) The Director, OCHAMPUS, or a designee, may make a factual finding that services or supplies were performed by an active duty member or civilian employee of the Government and that CHAMPUS cost-sharing of the claim will constitute dual compensation.

(*2*) CHAMPUS cost-sharing of a claim shall be denied where the services or supplies were provided by an active duty member or civilian employee of the Government. This denial of cost-sharing applies whether the claim for reimbursement is filed by the individual who provided the care, the institutional provider in which the care was rendered, or by the beneficiary.

Note.—Physicians of the National Health Service Corps (NHSC) may be assigned to remote areas where there is a shortage of medical providers. Although these physicians would be prohibited from accepting CHAMPUS payments, the private organizations to which they may be assigned would remain eligible for payment in certain cases, as determined by the Director, OCHAMPUS, or a designee.

(*3*) No active duty member or civilian employee of the Government may be an authorized CHAMPUS provider except active duty members on terminal leave.

(*4*) The prohibition against dual compensation does not apply to individuals under contract to the Uniformed Services.

(*5*) If there is no factual dispute that the provider is an active duty member (not on terminal leave) or a civilian employee of the Government, findings by the Director, OCHAMPUS, or a designee, that payment of the claim is prohibited as dual compensation and that the claim must be denied are not appealable under § 199.16 of this Regulation.

(*6*) Where the Director, OCHAMPUS, or a designee, has found that a CHAMPUS claim has been submitted for cost-sharing of services or supplies provided by an active duty member or civilian employee of the Government, the matter shall be referred to the Assistant Inspector General for Investigations, Department of Defense, under circumstances established by the Director, OCHAMPUS, or a designee, and the Assistant Inspector General.

(v) *Unethical or improper practices or unprofessional conduct.* (A) In most instances, unethical or improper practices or unprofessional conduct by a provider would be program abuse and subject the provider to suspension. In other instances, such practices and conduct are separate causes for suspending a provider.

(B) Such suspensions can be based on findings of state licensure boards, boards of quality assurance, other regulatory agencies, state medical societies, peer review organizations, or other professional associations.

(C) The length of the suspension is discretionary with the Director, OCHAMPUS, or a designee, but shall not exceed 5 years.

(D) The suspension will be effective on the date specified in the initial determination notice but no later than 60 days from the date of the initial determination.

(E) Nothing in this paragraph (d)(2)(v) shall limit the authority of the Director, OCHAMPUS, or a designee, to settle any issue or case or to compromise any suspension.

(vi) *Miscellaneous.* (A) In circumstances where a professional provider may for his or her entire practice or for most of his or her practice provide treatment that is not a CHAMPUS covered benefit which results in CHAMPUS frequently and repeatedly denying claims because the care provided is not a CHAMPUS benefit, the provider can be suspended as an authorized provider. For example, a professional provider may be providing sex therapy, which may be recognized as a treatment within his or her jurisdiction; however, it is not a covered CHAMPUS benefit. A decision to suspend will be based on the potential expense to the Government of routinely processing and denying claims and the expense if a claim is erroneously paid. In such circumstances, CHAMPUS may suspend the provider's authorized status with CHAMPUS.

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Depending on the circumstances, specific claims filing requirements may be imposed by OCHAMPUS as a condition of maintaining or restoring a provider's status and before the provider's claims will be processed. Authorized provider status can be restored upon a showing by the provider that his or her practice has changed.

(B) The suspension will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(3) *Provider termination.* The Director, OCHAMPUS, or a designee, shall terminate the provider status of any provider determined by CHAMPUS not to meet the qualifications under this Regulation to be an authorized provider. The termination shall be retroactive to the date it is determined the provider did not meet the regulatory requirements to be an authorized CHAMPUS provider.

(i) *Institutions not in compliance with CHAMPUS standards.* If a determination is made that an institution is not in compliance with one or more of the standards applicable to its specific category of institution (see Section 199.12, paragraph (b)), OCHAMPUS shall take immediate steps to bring about compliance or terminate its approval as an authorized institution.

(A) *Minor violations.* An institution determined to be in minor violation of one or more of the standards shall be advised by certified mail of the nature of the discrepancy or discrepancies and will be given a grace period of 30 days to effect appropriate corrections. The grace period may be extended at the discretion of the Director, OCHAMPUS, or a designee, but in no event shall be extension exceed 90 days.

(*1*) CHAMPUS will not cost-share a claim for any beneficiary admitted during the grace period.

(*2*) Any beneficiaries already in the institution (or their sponsors) shall be notified in writing of the minor violations and the grace period granted to the institution to correct them.

(*3*) If the institution notifies OCHAMPUS (in writing) before the end of the grace period that corrective action has been taken and if that is acceptable to OCHAMPUS, then those beneficiaries in the institution (or their sponsors) will be notified and benefits continued (assuming the case is otherwise covered). Also, for any beneficiary admitted during the grace period, benefits may begin to be extended (if the case is otherwise covered) as of 12:01 a.m. on the day notice of correction is received by OCHAMPUS.

(*4*) If the institution has not notified OCHAMPUS in writing before the end of the grace period that corrective action has been completed, the Director, OCHAMPUS, or a designee, may terminate CHAMPUS approval as an authorized institution.

(B) *Major violations.* A determination that an institution is in major violation of standards significantly detrimental to life, safety, and health, or substantially in violation of approved treatment programs, will result in immediate termination as an authorized institution upon receipt of notice. The institution shall be notified of the termination by telegram or certified mail and the notice shall include the nature of the violations.

(C) *Notice to beneficiary or sponsor upon termination of approval as an authorized institutional provider.* When approval as an authorized institutional provider is terminated, any beneficiary in the institution or the sponsor shall be notified by certified mail of such action at the same time the institution is notified. Notice to the beneficiary or sponsor also shall include the nature of the noncompliance violations that resulted in the termination. CHAMPUS benefits may be continued for those cases already approved for benefits for an interim period of up to the last day of the month following the month in which approval of the institution was terminated.

(ii) *Revocation of license.* A provider whose license to practice (or, in the case of an institutional provider, to operate) has been temporarily or permanently suspended or revoked by the jurisdiction issuing the license will be terminated from the CHAMPUS.

(A) The suspension will be continued against a professional provider, who having been suspended by a jurisdiction from which he or she has a license, obtains a license to practice in a second jurisdiction. A provider who has license to practice in two or more jurisdictions and has one suspended or revoked will also be suspended from the CHAMPUS.

(B) Professional providers will be suspended from the CHAMPUS until the jurisdiction suspending or revoking the provider's license to practice restories it.

(C) Institutional providers will remain suspended until their license is restored. In the event the facility is sold, transferred, or reorgainzed as a new legal entity, and a license issued under a new name or to a different legal entity, OCHAMPUS must be petitioned by the new entity to be an authorized provider.

(D) If the termination is due to the loss of the providers' license, the effective date shall be retroactive to the date the provider lost the license; however, in the case of a professional provider who has licenses in two or more jurisdictions and submitted claims from a jurisdiction from which he or she had a valid license, the effective date of the termination will be on the date specified in the initial determination, but no later than 60 days from the date of the initial determination.

(4) *Claims and actions subject to review.* (i) Administrative actions pursuant to the provisions for provider exclusion or provider suspension are limited to actions, claims, or events that occurred within 6 years of the OCHAMPUS initial determination to exclude or suspend.

(ii) Administrative actions pursuant to the provisions for provider termination relate to qualification, therefore, there is no limitation on the time frame. However, in the circumstances where a provider has or had licenses from two or more jurisdictions, an initial determination to terminate must be within 3 years of the revocation of the provider's license in one jurisdiction.

(e) *Administrative Procedures for Issuing Determinations to Exclude, Suspend, or Terminate a Provider, and Reinstatement.*—(1) *Initial determination.* The initial determination to invoke an administrative remedy of exclusion, suspension, or termination of a provider will be issued by the Director, OCHAMPUS, or a designee.

(i) Except as provided in paragraph (d)(3)(1), in making the initial determination, the Director, OCHAMPUS, or a designee, will:

(A) Notify the provider that OCHAMPUS is considering taking administrative action under this Section. The notice to be sent by certified mail to the provider's last known business or office address (or home address if no business address).

(B) Notify the provider of the basis on which OCHAMPUS is considering imposing a sanction under this Regulation. The notice shall include reference to the provisions of this Section under which the administrative action is being taken and the situation, circumstances, or actions that gave rise to the considered administrative cction.

(C) Provide the provider an opportunity to submit, in writing, evidence in support of the provider's position.

(D) The provider shall be given 60 days from the date of the notice to respond; however, this may be extended for good cause shown, but in no event shall the extension exceed 120 days.

(E) The initial determination will generally be issued within 60 days of the time for responding; it may be extended.

(F) Send by certified or registered mail the initial determination of any decision under this Section.

(ii) Any initial determination by the Director, OCHAMPUS, or a designee, to exclude, suspend, or terminate a provider must be supported by evidence (refer to paragraph (a)(4) in § 199.16).

(iii) OCHAMPUS may consider any material, relevant, or competent evidence.

(2) *Formal review.* Following an initial determination by the Director, OCHAMPUS, or a designee, a suspended provider may request a formal review determination by OCHAMPUS, subject to the requirements of § 199.16 of this Regulation and the provisions set forth below.

(i) A provider that has been excluded from the CHAMPUS because the provider has been convicted of a crime (see paragraph (d)(1) above) or had a civil judgment rendered against the provider, may request a formal review on the following issues:

(A) Whether the provider was, in fact, convicted (including pleas of guilty, or *nolo contendere*) or had a civil judgment rendered against the provider. (Note: Copies of cour. orders are *prima facie* evidence and can only be rebutted by clear and convincing evidence.)

(B) Whether the conviction of judgment involved fraud involving CHAMPUS or other federal health care programs.

Note.—Copies of the indictment (or similar documents) would provide *prima facie* evidence of this.

(C) Whether the length of the suspension is reasonable based on the criteria set forth in this Regulation; except that a suspension for the period the provider was sentenced (whether or not it was suspended) or 2 years, whichever is greater, is not appealable.

(ii) The provider shall bear the burden of producing and providing by a preponderance of the evidence any circumstances that would justify reducing the period of exclusion or suspension or reversing any determination to exclude, suspend, ot terminate.

(3) *Hearings prior to an initiol determination.* A provider is not entitled to a hearing prior to exclusion, suspension, or termination of the authorized provider status. However, a provider will be notified of the proposed action and given an opportunity to respond in writing. Requests for hearings before an independent hearing officer will be subject to the provisions of § 199.16 of this regulation.

(4) *Length of exclusion, suspension, termination.* (i) In determining the time period of an exclusion or suspension in excess of the period otherwise required by this Section, the Director, OCHAMPUS, or a designee, may consider:

(A) The nature of the claims and the circumstances under which they were presented;

(B) The degree of culpability;

(C) History of prior offenses (including whether claims were submitted while the provider was either excluded or suspended pursuant to prior administrative action);

(D) Number of claims involved;

(E) Dollar amount of claims involved;

(F) Whether, if a crime was involved, it was a felony or misdemeanor;

(G) If patients were injured, the number of patients and the seriousness of the injury(ies);

(H) The previous record of the provider under CHAMPUS;

(I) Whether restitution has been made; and

(J) Such other factors as may be deemed appropriate.

(ii) Maximum periods of exclusion and suspension are set forth in paragraph (d).

(iii) In some instances the period of the exclusion or the minimum period is mandatory under this Section.

(iv) Terminations relate to minimum requirements to be an authorized provider and will be for an indefinite period.

(5) *Reinstatement.* (i) Following the expiration of the period of any exclusion or suspension, a provider may request reinstatement. OCHAMPUS will not automatically restore a provider to the status of authorized provider. A written request from the excluded or suspended provider must be submitted.

(ii) In the case of false claims or erroneous payments, provider status *will not be restored* until the excluded or suspended provider has made restitution to the Government for the erroneous payments.

(iii) A terminated provider who subsequently achieves the minimum qualifications to be an authorized provider may also request reinstatement. Provider status will not be granted until restitution has been made to the Government. In case of an institution that has its approval as an authorized institution provider terminated because of noncompliance with CHAMPUS standards or approved treatement program, reapproval cannot be granted until an on-site facility review is conducted.

(iv) A provider who has submitted participating claims and who is excluded or suspended for submitting claims involving fraud or abuse forfeits and waives any right or entitlement to bill the beneficiary or sponsor for the care that involved the fraud or abuse. If the provider has billed the beneficiary or sponsor, restitution to the beneficiary or sponsor may be imposed as a condition of reinstatement.

(v) There is no entitlement under the CHAMPUS for payment (cost-sharing) to either a provider or a beneficiary for any service or care that involves either criminal or civil fraud as defined by law, or fraud or abuse as defined by this Regulation.

(vi) Except as provided in paragraph (d)(3)(i), there is no entitlement under the CHAMPUS for payment (cost-sharing) to either a provider or a beneficiary for any care or services provided by a provider who does not meet the requirements to be an authorized provider.

(6) *Delay of exclusion or suspension.* Providers who have been excluded or suspended can request the Director, OCHAMPUS, or a designee, to stay the imposition of the exclusion or suspension pending an appeal.

(i) The criteria for allowing the stay include:

(A) Whether the reason for the exclusion or suspension has been removed;

(B) Whether there is reasonable assurance it will not recur;

(C) The availability to beneficiaries of care from other providers;

(D) To give beneficiaries an opportunity to secure another provider;

(E) Whether, in the case of potential overpayment, the Government's interest has been protected through restitution or the posting of adequate security, for example, irrevocable Letter of Credit or cash bond;

(F) In the case of a criminal conviction, whether a non-Federal program was involved; and

(G) Such other factors that are deemed appropriate.

(ii) Decisions made on requests to stay or delay the effective date of an exclusion or suspension are not appealable issues.

(7) *Compromise and settlement.* The Director, OCHAMPUS, or a designee, has the discretionary authority to enter into compromise settlements of administrative actions initiated under paragraph (d)(2), prior to a final decision.

(f) *Suspending Administrative Action.* (1) All or any administrative action may be suspended by the Director, OCHAMPUS, or a designee, pending action in the case by the Department of

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Defense-Inspector General, Defense Criminal Investigative Service, or the Department of Justice (including the cognizant United States Attorney). However, action by the Department of Defense-Inspector General or the Department of Justice, including investigation, criminal prosecution, or civil litigation, does not preclude administrative action by OCHAMPUS.

(2) The normal OCHAMPUS procedure is to suspend action of the administrative process pending an investigation by the Department of Defense-Inspector General or final disposition by the Department of Justice or the cognizant United States Attorney.

(3) Though OCHAMPUS administrative action is taken independently of any action by the Department of Defense-Inspector General or by the Department of Justice or cognizant United States Attorney, once a case is forwarded to the Department of Defense-Inspector General or the Department of Justice or the cognizant United States Attorney for legal action (criminal or civil), that office has control over the case.

(4) In some instances there may be dual jurisdiction between agencies; for example, the joint regulations issued by the Department of Justice and the Government Accounting Office regarding debt collection.

(g) *Sponsors and Beneficiaries.* (1) Entitlement to CHAMPUS benefits is based on public law, consequently, an eligible beneficiary cannot be suspended from the program. However, the Director, OCHAMPUS, or a designee, may take appropriate and reasonable action to protect the CHAMPUS from those beneficiaries or sponsors who have previously submitted false claims and to recoup payments made as a result of false claims or erroneous payments not involving false claims.

(2) OCHAMPUS may offset against future CHAMPUS payments amounts owed by a beneficiary or sponsor.

(3) The Director, OCHAMPUS, or a designee, may implement whatever policies that he or she deems appropriate and reasonable to require individuals who have previously furnished false claims to establish that their medical care and CHAMPUS claims, *and* the medical care and CHAMPUS claims submitted by or for members of their family, are proper CHAMPUS claims.

(h) *Notice to Other Agencies.* (1) When OCHAMPUS excludes, suspends, or terminates a provider, the Director, OCHAMPUS, or a designee, will notify other appropriate agencies (for example, the state licensing agency that issued the provider's license to practice medicine that the individual has been suspended as an authorized provider from the CHAMPUS. An exclusion, suspension, or termination action is considered a public record. Such notice can include the notices and determinations sent to the suspended provider and other public documents such as testimony given at a hearing or exhibits or depositions given in a lawsuit or hearing. Notice may also be given to Uniformed Services Military Treatment Facilities, Health Benefit Advisors, beneficiaries and sponsors, and institutional providers if inpatient care was involved.

(2) If OCHAMPUS has temporarily suspended claims processing, notice of such action will be given to Uniformed Services Medical Treatment Facilities, Health Benefits Advisors, beneficiaries, and sponsors. Notice may also be given to any other individual, professional provider, or institutional provider, as deemed appropriate. However, since a "temporary suspension of claims process" is by definition not a final or formal agency action, the basis for the action generally will not be disclosed. It is noted that the basis for the action can be a result of questions arising from routine audits to investigation of possible criminal violations.

(i) *Suspension of Claims Processing.* (1) The normal procedure of OCHAMPUS, when a provider or beneficiary is suspected of submitting criminally fraudulent or false claims, or, through practices that are within the Regulation's definition of fraud or abuse, and overpayments have been made to the provider, is to suspend CHAMPUS claims processing (in whole or in part) for claims of the beneficiary or care provided by the provider, whether or not the claims are participating claims or submitted by beneficiaries.

(2) If the matter has been referred to either the Department of Defense-Inspector General, Defense Criminal Investigative Service, or the Department of Justice (including the cognizant United States Attorney), CHAMPUS claims processing may be suspended (or continued to be suspended) by OCHAMPUS until the completion of the review or any litigation instituted. Generally, suspected false claims are first referred to the Defense Criminal Investigative Service for criminal investigation and referrals for civil fraud are not made until the criminal investigation or prosecution completed.

(3) A provider is not entitled to a hearing of a temporary suspension of claims processing pending final agency action.

(4) CHAMPUS will normally make efforts to give notice within the community by advising military facilities and Health Benefit Advisors within 1 100-mile radius of the provider that the claims are being reviewed and claims processing is suspended. Notice may also be given directly to beneficiaries and sponsors who have been or are receiving care from the provider.

(5) The decision to suspend claims processing is made by OCHAMPUS; it normally will not be done if it would interfere with the Defense Criminal Investigative Service investigation. Disclosure of the basis of the investigation is the responsibility of Defense Criminal Investigative Service or the cognizant Department of Justice attorney or United States Attorney.

6. Section 199.16 is amended by redesignating current paragraphs (a)(2)(i)(b), (a)(2)(i)(C) and (a)(2)(i)(D) as paragraphs (a)(2)(i)(C), (a)(2)(i)(D) and (a)(2)(i)(E) respectively, by adding a new paragraph (a)(2)(i)(B), by redesignating current paragraph (a)(4) as (a)(5), by redesignating paragraph (a)(5) as (a)(6) and adding paragraph (a)(6)(iv), and by redesignating current paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8) respectively, and adding a new (a)(4) to read as follows:

§ 199.16 Appeal and hearing procedures.

(a) * * *

(2) * * *

(i) * * *

(B) CHAMPUS beneficiaries or sponsors that show an interest in receiving care from a particular provider or in a particular facility cannot be an appealing party regarding the exclusion, suspension, or termination of the provider by OCHAMPUS under § 199.15.

(C) * * *

(D) * * *

(E) * * *

(4) *Evidence.* (i) Evidence, used by OCHAMPUS in determining whether an action constituted fraud (civil or criminal), abuse, or unethical conduct under § 199.15 of this regulation, can include the results of an audit based on a 100% review of the claims or records or a statistically valid sample of the claims or records. Such a statistical sampling shall constitute *prima facie* evidence of the number and amount of claims and the instances of fraud or abuse.

(ii) Once OCHAMPUS has made a *prima facie* case, as described in paragraph (a)(2)(i) above, the burden of proof shall shift to the provider to produce evidence reasonably calculated to rebut the findings of the statistical sampling study. OCHAMPUS will have the opportunity to rebut this evidence.

(iii) Medical texts, medical journals and articles, studies and literature from national medical organizations, and opinions by medical reviewers may be used as evidence. Medical evidence is not limited to the foregoing.

(iv) Audits conducted by the Government or on behalf of the Government may be used as evidence.

(v) The technical rules of evidence applicable in civil jury trials are neither required nor generally employed in reaching decisions and conducting hearings under this section; the technical rules of evidence will not apply.

(vi) Failure to produce medical records (whether or not the provider kept adequate medical records) constitutes a rebuttable presumption that the care was not provided and is evidence in support of an adverse determination against a provider. It is the obligation of any provider (professional or institutional), who furnishes or orders health care, to the extent of his influence or control to assure the care, service, or supply is supported by evidence of the medical necessity and quality in the form of adequate medical documentation and records. See definitions of "Adequate Medical Documentation, Medical Treatment Records" and "Adequate Medical Documentation, Mental Health Records" in § 199.8(b) of this regulation.

(5) *Late filing.* * * *

(6) *Appealable issue.* * * *

(iv) Decisions made on requests to stay or delay the effective date of an exclusion or suspension under § 199.15 of this regulation.

(7) *Amount in dispute.* * * *

(8) *Levels of appeal.* * * *

* * * * *

Note.—We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291. We certify that this amendment will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Dated: January 17, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-1443 Filed 1-23-86; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Location of Information About Mailing Under Company Permit Imprints; Withdrawal of Proposed Rule

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: On June 3, 1985 the Postal Service published in the **Federal Register** (50 FR 23317) a proposal to require mailers to print on matter bearing a company permit imprint a complete return address where information about a mailing could be obtained for inspection and audit by postal officials. We received 14 written comments on the proposal, which was also an agenda item at a Mailer's Technical Advisory Committee (MTAC) meeting. Ten of the commenters opposed the proposal, as did MTAC. Upon further consideration in light of the views expressed, the Postal Service is hereby withdrawing the proposal.

DATE: This withdrawal is effective January 24, 1986.

FOR FURTHER INFORMATION CONTACT: John C. English, (202) 245-4353.

List of Subjects in 39 CFR Part 111

Postal service.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86-1566 Filed 1-23-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-10-FRL-2959-3]

Approval and Promulgation of State Implementation Plan and Designation of Areas for Air Quality Planning Purposes: State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA proposes to approve the redesignation of the Medford-Ashland, Oregon "nonattainment" area to "attainment" for the primary ozone (O_3) standard and to approve an air quality maintenance strategy as a revision to the Oregon State Implementation Plan (SIP). The redesignation request is based on supporting documentation prepared and submitted by the Oregon Department of Environmental Quality (ODEQ) pursuant to Section 107(d) of the Clean Air Act. Air quality data and emission reductions achieved through implementation of control strategy measures support this redesignation.

DATE: Comments must be postmarked on or before February 24, 1986.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-85-8), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, Yeon Building, 522 S.W. Fifth, Portland, OR 97204

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442-4232, (FTS) 399-4232.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1978 (43 FR 8962), EPA designated, pursuant to the requirements of Section 107(d) of the Clean Air Act, all areas of the country as "attainment," "nonattainment," or "unclassifiable" in terms of meeting National Ambient Air Quality Standards (NAAQS). At that time, the Medford-Ashland, AQMA, encompassing a portion of Jackson County, Oregon, was designated "nonattainment" for primary O_3 standards in 40 CFR, Part 81, Section 81.338.

EPA approved, with conditions, the Medford-Ashland, O_3 SIP on June 24, 1980 (45 FR 42265). These conditions were satisfied by ODEQ and removed by EPA on November 5, 1981 (46 FR 54939). On March 11, 1982 (47 FR 10534), EPA approved additional revisions to the O_3 SIP.

ODEQ held a public hearing in Medford, Oregon, on December 4, 1984, to obtain public comment on the redesignation proposal. The proposal was then adopted by the Oregon Environmental Quality Commission on January 25, 1985. ODEQ submitted the redesignation request to EPA on February 28, 1985. The submittal included documentation of attainment for the O_3 standard based on both emission reductions, air quality improvement, and O_3 and precursor modeling.

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II. Technical Evaluation

A. Attainment Demonstration

1. Air Quality: The redesignation request included data from the primary O_3 monitoring station located eight kilometers south of the Medford central business district. No violations were recorded from 1978 through 1984. This satisfies the redesignation requirement of at least eight quarters with no violations.

The air monitoring data are considered generally representative of the maximum ambient O_3 levels in the impacted air mass within the Medford-Ashland O_3 nonattainment area. The ODEQ quality assurance program has been approved by EPA as satisfying the requirements of 40 CFR Part 58.

2. VOC Emission Reduction: The approved O_3 SIP called for a 9 percent reduction of 1977 emissions in order to demonstrate attainment in 1982. The reductions would result from the implementation of VOC controls the Federal Motor Vehicle Emission Control Program (FMVECP). However, because of reduced commercial and industrial activity and a decrease in traffic volume, the required reduction was achieved in 1979. This relates to 1977 emissions of 13,363 tons/year which were reduced to 11,584 tons per year in 1979.

B. Maintenance Demonstration

1. Rule and Regulations: Rules and regulations for maintaining VOC controls and limiting new VOC emissions include New Source Review (OAR 340–20–220 to 275), Plant Site Emission Limits (OAR 340–20–300 to 320), and General VOC Emission Standards (OAR 340–22–100 to 220), all of which are part of the approved SIP.

2. VOC Emission Reduction Projections: Emission reduction projections are consistent with the growth projections of the Jackson County Comprehensive Plan, the Medford Area Transportation Study, and the 208 Water Quality Planning Program. These projections consider the economic factors affecting commercial and industrial activity. Continued reductions from VOC controls and the FMVECP will ensure maintenance of the O_3 standard.

3. Growth Cushion: The Medford-Ashland O_3 control strategy has reduced VOC emissions below the level required for attainment for the O_3 standard. The EPA O_3 isopleth plotting package (OZIPP) and city-specific version of the empirical kinetic modeling approach (EKMA) were used to estimate the available growth cushion for the Medford-Ashland area. The OZIPP and EKMA analysis and the 1987 VOC projections indicate that VOC emissions in 1987 will be 2000 tons per year (about 5000 kilograms per day) lower than the VOC emission levels required to just meet the O_3 standard. Continued maintenance of the O_3 standard will be assured by judiciously allocating source growth within the limits of the growth cushion. As a result, case-by-case air quality analysis for new or modified major stationary sources subject to the ODEQ PSD rules will not be required.

III Proposed Action

EPA proposes to redesignate the Medford-Ashland, Oregon, O_3 nonattainment area to attainment for the primary O_3 standard and to approve the maintenance plan.

Interested parties are invited to comment on all aspects of this proposed approval of the redesignation and SIP revision. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked February 24, 1986, will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP revisions do not have significant impact on a substantial number of small entities (46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR

Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Part 81

Air Pollution Control Agency, National parks, and Wilderness areas.

Dated: June 28, 1985.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 86–1556 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 260, 261, 266, 270, 271, and 302

[SWH–FRL–2958–1]

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil; Recycled Oil Standards; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules; extension of comment period.

SUMMARY: The purpose of this notice is to extend the public comment period on the proposal to list used oil as a hazardous waste and the proposed management standards for recycled used oil, both of which appeared in the Federal Register on November 29, 1985 (50 FR 49212, 49258, Nov. 29, 1985).

The comment period is extended from January 28 to February 11, 1986, to ensure that commenters have adequate time to prepare comments and to ensure that affected parties are also able to comply with certain closely related requirements that were imposed as final rules in the November 29 Federal Register notice.

DATES: The deadline for submitting written comments on both the proposal to list used oil as a hazardous waste *and* the proposed management standards for recycled oil is extended from January 28, 1986, to February 11, 1986.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH565–A), U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424–9348 or (202) 382–3000, or for technical information Michael Petruska at (202) 382–7917.

Dated: January 9, 1986.

J.D. Denit,

Acting Director, Office of Solid Waste.

[FR Doc. 86–1223 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE–86–01, Notice 1]

Light Truck Average Fuel Economy Standards Model Years 1988–89

AGENCY: National Highway Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the establishment of average fuel economy standards for light trucks manufactured in model years (MY) 1988 and 1989. The issuance of the standards is required by Title V of the Motor Vehicle Information and Cost Savings Act. The agency is proposing ranges of standards instead of specific standards due to a number of uncertainties regarding key factors. For MY 1988, the proposed range for the combined standard for all light trucks is 20.5 mpg to 22.0 mpg, and for MY 1989, it is 20.5 mpg to 22.5 mpg. As a compliance alternative to the combined standard, the agency also proposes separate standards for two- and four-wheel drive vehicles. In view of the factual uncertainties that exist, the setting of standards outside the proposed range is possible depending on the comments that may be submitted.

DATE: Comments must be received on or before February 24, 1986. The proposed standards would be effective for the 1988–89 model years.

ADDRESSES: Comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. The Docket is open 8 a.m. to 4 p.m., Monday through Friday. Submissions containing information for which confidential treatment is requested should be submitted (in 3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 205909, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shelton, Office of Market Incentives, National Highway traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–755–9384).

SUPPLEMENTARY INFORMATION:

Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, the Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing the automotive fuel economy regulatory program. That provision added a new title, Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act. Title V provides for the establishment of average fuel economy standads for cars and light trucks.

Section 502(b) of the Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. The Act provides that the fuel economy standards are to be set at the maximum feasible level. In determining maximum feasible average fuel economy, the Secretary is required under section 502(e) of the Act to consider four factors: Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.[1] Light truck fuel economy standards have previously been established for model years through MY 1987. Recent rulemaking proceedings regarding light truck standards have reflected the fact that while manufacturers have implemented a number of technological improvements during recent model years to improve their light truck fuel economy, there has also been a continuing shift in consumer demand toward larger light trucks and larger displacement engines. These demand shifts, which have been largely due to stable and sometimes even diminishing gasoline prices and also have reflected general improvements in the U.S. economy, have resulted in corporate average fuel economy (CAFE) levels which have been lower than were once anticipated by the manufacturers and the agency.

In light of these changed conditions, NHTSA found it necessary to reduce the MY 1985 light truck fuel economy standard from 21.0 mpg to 19.5 mpg (with corresponding changes in the alternative two- and four-wheel drive standards). 49 FR 41250, October 22, 1984. In that same notice, the agency established a MY 1986 standard of 20.0 mpg. NHTSA later set the MY 1987 standard at 20.5 mpg. 50 FR 40398, October 3, 1985. In that notice, the agency concluded that market trends toward large vehicles and engines are likely to continue through 1987.

With ruelmaking action complete with respect to the 1987 model year, the agency now turns to proposing light truck standards for MY 1988–89.

Proposals

A. General

As part of setting forth proposals, this notice discussed a variety of issues which are being considered by the agency, all of which are relevant to the statutory criteria noted above. In discussing these issues, the agency asks a number of questions or makes a number of requests for data to help it obtain information to facilitate its analysis. For easy reference, the questions or requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, please provide any relevant factual information to support conclusions or opinions, including but not limited to statistical and cost data, and the source of such information.

B. Ranges of Proposals

This notice proposes to establish the MY 1988 combined standard for light truck average fuel economy within a range of 20.5 mpg to 22.0 mpg and the MY 1989 standard within a range of 20.5 mpg to 22.5 mpg. The lower end of the ranges, 20.5 mpg, is the value determined by NHTSA to be the maximum feasible level for MY 1987. The upper ends of the ranges are largely based on the agency's evaluation of manufacturer projections and underlying product plans, which are discussed below. Corresponding ranges for two-wheel drive (2WD) and four-wheel drive (4WD) alternative standards are also being proposed. For MY 1988, the ranges are 21.0 mpg to 22.5 mpg for 2WD and 19.5 mpg to 21.0 mpg for 4WD. For MY 1989, the ranges are 21.0 mpg to 23.0 mpg and 19.5 mpg to 21.5 mpg, respectively. The combined standard permits manufacturers greater flexibility in allocating their improvement efforts among various portions of their fleets. Moreover, the separate standards accommodate differences among the manufacturers in market share of the generally less fuel-efficient 4WD vehicles.

In view of uncertainties, the setting of standards outside the proposed ranges is possible. Factual uncertainties which could result in lower standards include the possibility of further mix shifts toward larger light trucks and engines and the possibility that planned

[1] Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976).

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technological improvements may not achieve anticipated fuel economy benefits or may prove to be infeasible, beyond these uncertainties which are already being considered in the low end of the range. Factual uncertainties which could result in higher standards include the possibility that manufacturers may be able to improve their CAFE by further technological changes, beyond those they are already planning.

Manufacturer Capabilities for MY 1988–89

In evaluating manufacturers' fuel economy capabilities for MY 1988–89, the agency has analyzed manufacturers' current projections and underlying product plans and is considering what, if any, additional actions the manufacturers could take to improve their fuel economy.

A. Manufacturer Projections

General Motors: General Motors (GM) projected in March 1985 that it could achieve CAFE levels of 22.6 mpg in MY 1988 and 23.1 mpg in MY 1989. NHTSA adjusted the MY 1989 figure downward to 23.0 mpg to correct errors in the March 1985 submission. Since GM's latest MY 1987 projection was for CAFE of up to 22.4 mpg, these MY 1988–89 projections would represent addtional CAFE improvements of at least 0.2 mpg and 0.4 mpg, per year, respectively. The expected improvements are due to engine improvements and the introduction of new models.

(The details of the changes are subject to a claim of confidentiality. This is also true for the Ford and Chrysler projections discussed below.)

As noted in the MY 1987 final rule, GM's March 1985 submission indicated that a program risk (the details of which are subject to a claim of confidentiality) could result in a decline in its projected MY 1987 CAFE of upt to 1.3 mpg. NHTSA believes that this particular risk does not affect GM's projection for MY 1988–89.

GM emphasized the following, however, in its March 1985 submission:

> All estimates and future product plans contained in this submission are but a 'snapshot in time.' As we have stated on a number of occasions, most recently in our 1985 pre-model year report, changes in the economic outlook, in fuel availability, in fuel prices or in consumer preference significantly affect GM's CAFE. The unpredictability of the market, the unknown effect of future light duty truck emission regulations and the unproven results of future combinations of technology cause CAFE projections to be . . . tentative . . .

The agency notes that although GM's actual fuel price forecasts are subject to a claim of confidentiality, they are significantly higher than those currently projected by the Department of Energy's Energy Information Administration (EIA). Should the prices forecast by EIA occur, GM's CAFE estimates might prove to be overly optimistic.

Ford: Ford projected in February 1985 that it could achieve CAFE levels of up to 22.5 mpg for MY 1988 and up to 22.6 mpg for MY 1989. NHTSA adjusted these figures downward to 22.2 mpg for MY 1988 and 22.3 mpg for MY 1989, however, in light of later technical information provided by Ford. The primary reason for the reduction is that actual test data regarding some programs have indicated smaller fuel economy improvements than projected. Since Ford's latest MY 1987 projected was for a CAFE value of up to 21.0 mpg, the corresponding MY 1988–89 projections would represent additional improvements of 1.2 mpg and 0.1 mpg, per year, respectively. These improvements would be attributable to transmission improvements, engine improvements, and mix shifts toward more fuel-efficient vehicles.

Given current trends in the price of gasoline, the agency questions whether the mix shifts whose existence is suggested in the Ford data are likely to occur in MY 1988–89. Part of the explanation for the apparent existance of mix shifts is that the agency is comparing a June 1985 projected by Ford for MY 1987 and February 1985 projections by Ford for MY 1988–89. While Ford reduced its February 1985 projection for MY 1987 in June 1985, it did not change its projected sales mixes for MY 1988–89. Given the recent and expected continued declines in gasoline prices, the agency believes it is unlikely these mix shifts will occur. Deleting the mix shifts from the Ford projections would lower the upper end projections to 21.8 and 21.9 mpg, respectively.

Ford identified several risks to its MY 1988–89 CAFE projections. These include both technological risks and mix shift risks. That company identified additional technological risks totalling 0.9 mpg for MY 1988–89 and mix shift risks totalling 0.8 mpg, for a total risk of 1.5 mpg. However, the agency incorporated 0.7 mpg in technological and sales mix risks in its above estimates, reducing the remaining risk to 0.8 mpg. If these risks occurred simultaneously, Ford's CAFE projections would decline to 21.0 mpg for MY 1988 and 21.1 mpg for MY 1989.

Chrysler: Chrysler projected in August 1985 that it could achieve CAFE levels of 22.3 mpg in MY 1988 and 23.3 in MY 1989. Since Chrysler's latest MY 1987 projection is for a CARE level of 21.2 mpg, that company's MY 1988–89 projections would represent additional CAFE improvements of 1.1 mpg and 1.0 mpg, per year, respectively. The bulk of the improvement would be attributable to technological improvements, especially transmission improvements. Chrysler also expects slight mix shifts toward smaller, more-efficient trucks.

The agency notes that Chrysler's August 1985 projections for MY 1987–89 are different from that company's projections provided in February 1985. On the earlier date, Chrysler provided CAFE projections of 21.6 mpg for MY 1987, 22.3 mpg for MY 1988, and 24.3 mpg for MY 1989. The .4 mpg reduction for MY 1987 is attributable to mix shifts and performance increases. While Chrysler's projection for MY 1988 remains the same, the underlying product plans are different. A mix shift is compensated for by additional technological changes. The 1.0 mpg reduction for MY 1989 is attributable to changes in model offerings.

American Motors: In February 1985, American Motors provided separate CAFE projections for its MY 1988–89 2WD and 4WD fleets, but did not provide combined projections or the information necessary to calculate combined projections. The company recently advising the agency that it is revising its projections. They were not available at the time this notice was issued but will be considered during the development of the final rule.

Other Manufacturers: Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus, with an average fuel economy of 21.3 mpg. That company projects a CAFE of 21 mpg through MY 1990. It is thus possible that VW will have CAFE levels below those achievable by GM, Ford and Chrysler for those model years.

The other foreign light truck manufacturers only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM, Ford and Chrysler, which offer full ranges of light truck models.

Uncertainties: In analyzing the manufacturers' CAFE projections and underlying product plans for the MY 1988–89 time period, it is clear that they are subject to significant uncertainties. While there are always some uncertainties related to market mix and the benefits that will be achieved by use of technology, the agency believes that the period at issue for this rulemaking is unusually fraught with uncertainties, beyond manufacturers' control, which could have substantial adverse impacts on their CAFE.

This is particularly true with respect to future gasoline prices. EIA now projects that the price of unleaded gasoline will drop by 10 cents a gallon between 1985 and 1986 (in real terms) and rise only very slowly in the several years after 1986. As discussed during the recent rulemaking for MY 1986 passenger automobiles, several forecasts made during the last several years that prices would soon turn upward have proven to be incorrect. Moreover, there have been reports in the press that gasoline prices may even drop precipitously dut to a possible price war among the oil-producing nations. Since the price of gasoline is one of the most significant determinants of consumer demand for fuel-efficient vehicles and a major factor in the ability of manufacturers to market their most fuel-efficient vehicles, such a drop could significantly erode manufacturers' projected CAFE levels.

Foreign competition is another uncertainty. If the Japanese manufacturers increase their market share of smaller, more fuel-efficient light trucks at the expense of the domestic manufacturers, the domestic manufacturers' CAFE would be adversely affected.

In order to assist NHTSA is analyzing the fuel economy capabilities of manufacturers during MY 1988–89, the agency requests information or comments on the following question:

1. How substantial are the uncertainties affecting manufacturers' fuel economy capabilities during the MY 1988–89 time period, and how should these uncertainties be considered in setting fuel economy standards at the maximum feasible level?

B. Possible Additional Actions To Improve MY 1988–89 CAFE

The possible additional actions which manufacturers may be able to take to improve their MY 1988–89 CAFE above the levels which are currently projected may be divided into three categories: further technological changes to their product plans (beyond what they are already planning), increased marketing efforts, and product restrictions.

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel-efficiency enhancing technologies which manufacturers are able to apply within available time.

The agency's Preliminary Regulatory Impact Analysis (PRIA) discusses the fuel efficiency enhancing technologies which are expected to be available during the MY 1988–89 time period. In analyzing the issue of improving MY 1988–89 CAFE by additional technological means, the agency requests information or comments on the following questions:

2. What is the feasibility (bearing in mind both technological feasibility *and* economic practicability) of the various fuel-efficiency enhancing technologies, including but not limited to those identified in the agency's PRIA, for improving manufacturers' CAFE for MY 1988–89? In answering this question, please address the potential penetrations of those technologies during this time period, i.e., the extent to which they could be incorporated across manufacturers' fleets. If feasible, for which model years? If not, why not? What are the leadtimes involved in making such technological changes?

The agency believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are generally purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of many users, the manufacturers' ability to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks is limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. A factor which makes it difficult for domestic manufacturers to increase sales of fuel-efficient light trucks is the strong competition in that market from Japanese manufacturers. While Japanese manufacturers currently have an overall combined market share of about 20 percent of light trucks, their share for the smaller, more fuel-efficient pick-up trucks is about 50 percent.

The agency also notes that the improved fuel efficiency of all sizes of modern light trucks makes it more difficult to sell the small light trucks. The reason for this is that there are diminishing returns in terms of fuel economy from purchasing smaller light trucks as the fuel efficiency of larger light trucks increases. The average fuel economy of large pickup trucks rose from 13.1 mpg in 1975 to 18.4 mpg in 1985, and the average fuel economy of large vans rose from 13.1 mpg to 17.5 mpg during this time period. The average fuel economy of small pickup trucks rose from 22.1 mpg to 28.2, and the average fuel economy of small vans rose from 20.7 mpg to 23.9 mpg. SAE Paper No. 850550, "Light Duty Automotive Fuel Economy . . . Trends thru 1985." The fuel economy of large pickup trucks and vans has thus improved more than the fuel economy of small pickup trucks and vans, both in absolute and percentage terms. Also, as gasoline prices have declined, there are diminishing returns from purchasing more fuel-efficient vehicles.

A problem with pulling ahead sales is that the manufacturer's CAFE for subsequent years is reduced. For example, if a manufacturer increases its MY 1988 CAFE by pulling ahead sales of fuel-efficient ligh trucks from MY 1989, its MY 1989 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

Given these factors and the manufacturers' past and current marketing efforts, NHTSA does not believe that the domestic manufacturers can significantly improve their CAFE's by increased marketing efforts.

Manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting particular larger light truck models and larger displacement engines. However, such product restrictions could have signficant adverse economic impacts on the industry and the economy as a whole. In the final rule reducing the light truck fuel economy standard for MY 1985, the agency concluded that sales reductions to a manufacturer of 100,000 to 180,000 units, with resulting employment losses of 12,000 to 23,000, "go beyond the realm of 'economic practicability' as contemplated in the Act. . . ." (49 FR 41252, October 22, 1984).

In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously impacted to the extent that they could not obtain the light trucks they need for business use. Also, such product restrictions could run counter to the congressional intent that the CAFE program not unduly limit consumer choice.[2]

In analyzing the possible economic impacts of alternative standards, the agency requests information or comments on the following questions:

3. What would be the likely effects on employment and sales of alternative MY 1988–89 light truck fuel economy

[2] See H.R. Rep. No. 93-340, 94th Cong., 1st Sess. 87 (1975).

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standards, within and outside the proposed ranges? At what absolute levels for each model year would serious economic harm likely begin to occur? Please provide data to support arguments on this point.

4. What would be the likely effects on consumer choice of alternative light truck fuel economy standards? Given that light trucks are frequently used for commercial purposes, should the agency treat this issue differently in setting light truck standards than in setting passenger automobile standards? The agency requests data on the uses to which light truck are put and on whether there are clear divisions of categories of light trucks as to commercial versus personal use.

Other Federal Standards

As discussed by the PRIA, several recent and proposed changes in Federal safety requirements may affect CAFE. These include several amendments to NHTSA's lighting standard, which permit greater aerodynamic drag and slight weight savings; an amendment to the agency's occupant crash protection standard to promote the comfort and convenience of safety belts, and a proposal to extend the applicability of the agency's standard concerning steering control rearward displacement to additional light trucks.

While the agency has estimated that passenger car fuel economy could be increased by 0.4 to 0.9 percent by using aerodynamic headlamps, it is likely that the potential fuel economy improvement for light trucks by adoption of this feature is less. The reason for this is that the basic shape of light trucks is often dictated by load carrying capability or other functional attributes, thereby making it more difficult to reduce aerodynamic drag. The PRIA concludes that the effect of the comfort and convenience requirements on light truck CAFE will be negligible, since both the number of affected vehicles and weight impact are small. The PRIA similarly concludes that the effect of the proposed requirements for steering control rearward displacement on light truck CAFE would not be significant, since the number of affected vehicles is believed to be small and the required modifications minimal.

The Environmental Protection Agency (EPA) published a proposal on July 1, 1985 (50 FR 27188) to provide test adjustment credits to light truck manufacturers for changes made in test procedures. The rulemaking is not likely to have any significant effect on the manufacturers' projections discussed above.

EPA has a requirement for control of particulate matter, which will be tightened in MY 1987. In the preamble to the final rule establishing MY 1987 light truck fuel economy standards, NHTSA concluded that any impact on fuel economy would be very small, i.e., much less than 0.1 mpg. This requirement is discussed further in the PRIA.

EPA has a requirement for control of oxides of nitrogen, which will be tightened in MY 1988. As discussed by the PRIA, EPA estimates that with the use of three-way catalyst technology, there will be no net loss in fuel efficiency and possibly even small gains. Morever, since the EPA regulation provides for averaging compliance with the more stringent particulate standard and the oxides of nitrogen standard, manufacturers have greater flexibility to help ensure that there are little or no attendant fuel economy penalties.

NHTSA is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1988–89 time period and therefore does not anticipate any attendent fuel economy penalties.

In analyzing the effects of other Federal standards on fuel economy, the agency requests information or comments on the following question:

5. Is the agency's analysis of the effects of other Federal standards correct? Are there any other Federal standards that might impact light truck fuel economy during MY 1988–89? The agency seeks comment on GM's observation, cited earlier in this notice, that the unknown effect of future light duty truck emission regulations causes its CAFE projections to be uncertain.

The Need to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. In particular, oil markets have been deregulated and the Strategic Petroleum Reserve (SPR) has been established.

In 1977, the United States imported 46.4 percent of its oil needs and the value of imported crude oil and refined petroleum products was $67 billion (stated in 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1984, the import share had declined to 30.9 percent at a cost of $54.2 billion. For the first eight months of 1985, the import share has continued to decline to 27.7 percent. Thus, the cause for concern over dependence on imported petroleum, as measured by these indicators, has lessened in the past several years.

Moreover, imports from OPEC sources have been declining, from a high of 6.2 million barrels per day and 70.3 percent of all imports in 1977 to 2.0 million barrels per day and 37.7 percent of imports in 1984. For the first eight months of 1985, the OPEC share of imports has declined further to 34.3 percent of total imports. Conversely, imports from non-OPEC sources have risen from a low of 2.2 million barrels per day or 30.7 percent in 1976, to 3.4 million barrels per day or 62.4 percent in 1984. In 1984, Mexico supplied the U.S. with the largest amount of crude oil and petroleum products, followed by Canada. As imports have shifted to non-OPEC sources, the United States' supply of petroleum has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's.

Overall, the nation is much more energy independent than it was a decade ago. From 1975 to 1984, energy efficiency in the economy improved by 21 percent (*1984 Annual Energy Review*, Energy Information Administration, U.S. Department of Energy, p. 47). Domestic oil production is higher than it was in 1975, total imports have dropped 20 percent since then, the value of the nation's imported oil bill has declined nearly 40 percent in the last five years (on a net import basis, the value of the nation's imported oil bill fell nearly 45 percent from 1980 to 1984), and the amount of imported oil from OPEC has dropped by 67 percent since the peak of 1977. As a percentage share of GNP, the net oil import bill fell from 2.8 percent in 1980 to 1.5 percent in 1984. In addition, the price of oil is now fully decontrolled, permitting the market to adjust quickly to changing conditions, and the Strategic Petroleum Reserve is well on its way to being filled. The 451 million barrels in the SPR at year-end 1984 were equal to 141 days or 38.6 percent of non-SPR crude oil imports that year. Thus, by any measure, the nation is in a stronger energy position than it was a decade ago.

Projections by the Energy Information Administration (EIA) and Data Resources, Inc. (DRI), are that domestic production will decline from a stable level of 10 MMB/D to about 8.5 MMB/D by 1995, and net imports will rise from 4.5 to 5 MMB/D to about 7.5 (EIA) to 9.0 (DRI) MMB/D by 1995. If this occurred, imports could approach 50 percent of U.S. petroleum use by 1995. However, experience has shown that future projections about pretroleum imports are subject to great uncertainty. It is especially true that oil imports are very difficult to project beyond a year or two.

for example, the EIA's *1977 Annual Report to Congress* projected that net oil imports by the U.S. would, in the "reference case," reach 11 million barrels per day by 1985. Net imports for this year are now forecast to be less than 4.5 million barrels per day, less than half the level predicted in 1977.

In the recent MY 1986 passenger automobile rulemaking, the Energy Conservation Coalition cited the uncertainty of future oil supplies in arguing for steadily increasing standards. In amending the passenger automobile standard for that model year from 27.5 mpg to 26.0 mpg, NHTSA stated that it believes that energy conservation is important, but also emphasized that it must consider all of the statutory criteria in establishing fuel economy standards. The agency concluded that, in its judgment, the need to conserve energy did not justify the severe economic consequences associated with the product restrictions necessary for the major manufacturers to achieve 27.5 mpg for that model year.

In analyzing the issue of how the need of the nation to conserve energy should be considered in determining CAFE standards for MY 1988–89, the agency requests information or comments on the following questions, which is also asked in the agency's rulemaking concerning post-1986 passenger automobile fuel economy standards:

6. How should changes in the nation's energy situation since 1975, including but not limited to those discussed above, affect the agency's consideration of the statutory criterion of "the need of the nation to conserve energy"?

Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): Technological feasiblity, economic practicability, the effect of other federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency has traditionally interpreted the term "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) Be capable of being done and (2) be at the highest level that is capable of being done, taking account of what manufacturers are able to do in light of available technology, economic practicability, how other Federal motor vehicle standards affect average fuel economy level, and the need of the nation to conserve energy. In this proposal, as in earlier rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e), and has not merely proposed a level based on what was technologically capable of being done.

B. Industrywide Considerations

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–5 (1975)) states:

> Such determination [of maximum feasible average fuel economy level] should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . .

This language of the Conference Report indicates that standards may at times be set at a level above that of the least capable manufacturer. The issue arises of how (and whether) this language should be reconciled with the statutory text indicating that standards must be set at a level that is capable of being done. As a matter of construction, statutory language is controlling over legislative history. Legislative history, however, should be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the above quoted language of the Conference Report provides guidance on the meaning of "maximum feasible average fuel economy level."

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level. The focus, thus, must be on the manufacturers' collective ability to meet a standard, rather than any particular manufacturer's ability to meet it.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level than can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. However, the agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy savings benefits associated with the higher standard would outweigh the harm to Chrysler (45 FR 20671, 20676; March 31, 1980). The House Committee on Interstate and Foreign Commerce later stated that it "generally agreed with DOT." House Report No. 96–1026, May 16, 1980, p. 17. However, the Congress also enacted special provisions for adjusting the light truck fuel economy standards to provide greater flexibility in dealing with the kinds of potential problems then faced by Chrysler, in part responding to Chrysler's arguments that it should not be forced to choose between paying millions of dollars in fines for violating the law and closing plants in order to meet the law.[3]

Based on the projections discussed above, it is likely that Ford will be the least capable manufacturer for MY 1988–89, for manufactueres with a substantial share of sales. While it is possible that VW could have a lower capability than Ford, VW's market share is only about 0.6 percent. The agency would not consider it appropriate under the Act to set a standard based on the capability of a single manufacturer having less than a one percent market share.

C. Petroleum Consumption

The precise magnitude of possible energy savings associated with alternative light truck fuel economy standards is uncertain. The PRIA provides calculations for the hypothetical lifetime fuel consumption of the MY 1988–89 domestic light truck fleets assuming those same fleets could and would achieve CAFE at each of the proposed ranges for CAFE standards. For example, assuming that manufacturers could achieve average CAFE of 22.0 mpg for the MY 1988 domestic light truck fleet but instead achieved 20.5 mpg with the same number of sales, there could be a maximum difference in fuel

[3] House Report No. 96–1026, May 16, 1980, p. 17; Hearings before the Subcommittee on Energy and Power, March 28 and April 15, 1980, Serial No. 96–162, pp. 165–167.

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consumption of 1.56 billion gallons over the life of the model year's fleet.

As discussed earlier in this notice, however, it is possible that manufacturers may be able to achieve higher CAFE levels only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less-fuel efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to restrict sales of its large light trucks, consumers may be able to transfer their purchases of those same types of vehicles to another manufacturer which may have less difficulty meeting the CAFE standard.

Moreover, NHTSA believes that each manufacturer will attempt to achieve its highest CAFE possible during MY 1988–89. The record is clear that the domestic manufacturers have been continuing to make significant efforts to improve their light truck fuel economy for model years before a standard is required to be set for that year. Thus, should post-rulemaking events enable the manufacturers to achieve higher CAFE levels than was considered likely by the agency during the rulemaking process, the agency believes that the domestic manufacturers, would, in fact, strive to achieve that higher CAFE. Therefore, with respect to the theoretical figure noted above for MY 1988 and similar calculations for MY 1989, the agency does not believe it likely that an individual manufacturer would only attempt to meet the level of the standard, regardless of where it is set, but so long as it was capable of acheiving a higher CAFE without sales losses, would attempt to achieve that higher level.

For these reasons, the agency believes that the *actual* impacts on energy consumption of alternative fuel economy standards, if any, would be much less than the theoretical calculations comparing different levels of industry-wide CAFE.

Impact Analyses

A. Economic Impacts

The agency considered the economic implications of the proposed standards and determined that the proposal is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a preliminary regulatory impact analysis (PRIA), copies of which are avaialble from the Docket Section. The contents of that analysis are generally described above.

B. Environmental Impacts

The agency has analyzed the environmental impacts of the proposed 1988–89 model year light truck average fuel economy standards in accordance with the national Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Copies of the Environmental Assessment (EA) are available from the Docket Section. The agency expects to conclude that no significant environmental impact would result from this rulemaking action.

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regualtory flexibility analysis is not required for this action. No light truck manufacturer subject to the proposed rule would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, small organizations, and small governmental units which purchase light trucks, adoption of the proposed rule would not affect the availability of fuel efficient light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

Comments

NHTSA is providing a 30-day comment period for interested parties to present data, views, and arguments on the proposed standards. A longer comment period is not being provided in light of the statutory deadline for issuance of the MY 1988 standards. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 5533.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this proposal to the Department of Energy for review. There were no unaccommodated comments.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 would be amended as follows:

1. The authority citation for Part 533 would be revised to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

§ 533.5 [Amended]

2. Table II in § 533.5(a) would be amended by adding MY 1988–89 average fuel economy standards at the levels determined by the agency to be the maximum feasible average fuel economy level, based on the considerations discussed above.

Issued on January 21, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–1504 Filed 1–23–86; 10:59 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 86–01; Notice 1]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes that replacement lighting equipment be marked and identified as to function, in a manner similar to that of SAE Recommended Practice J759, May 1983. It is also proposed that this equipment bear a DOT mark as certification of compliance; this method of certification is presently at the manufacturer's option. The code would identify the manufacturer (and importer, where applicable) and hence assist in enforcement efforts. It would also remove ambiguities about the intended function of dual purpose devices. The proposal implements the grant of a petition for rulemaking submitted by Peterson Manufacturing Co.

DATE: Comment closing date for the proposal is March 10, 1986. Any request for an extension of time in which to comment must be received not later than 10 days before the closing date for comments. Proposed effective date: Three years after publication of the final rule in the **Federal Register**.

ADDRESS: Comments should refer to the docket number and notice number of the notice of proposed rulemaking and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, DC 20590 (202–426–2153).

SUPPLEMENTARY INFORMATION: On November 15, 1982, Peterson Manufacturing Co. of Grandview, Mo., a manufacturer of motor vehicle lighting equipment, petitioned for rulemaking to amend Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to adopt SAE Recommended Practice J759 *Lighting Identification Code*. The company amended its petition on September 13, 1983, to include the addition of the letters DOT, a request it subsequently withdrew on October 4, 1984.

Petitioner argued that adoption of the code would identify those manufacturers, mainly located outside the United States, "who have been sending non-complying illegal products to the U.S. in ever-increasing numbers. It will provide the enforcement agencies with a simple tool which will enable them to identify the manufacturer of any lighting product or reflector." In petitioner's opinion, manufacturers who ignore Standard No. 108 "would be very hesitant to continue to offer these products if they had to put their name and identification on the product." Petitioner believes that domestic manufacturers have, for the most part, followed this code for the past 15 years, and thus, that a rule requiring it would add no burden to them. The original request to require the letters DOT as mandatory marking was based upon a similar premise that such certification might reduce instances of certification that were false or misleading; however, after discovering that "a number of companies, including Ford and Chrysler, do not routinely mark their products with the DOT certification symbol," it withdrew its request.

The agency reviewed the petitioner's arguments and its own enforcement experience. Under section 102(5) of the National Traffic and Motor Vehicle Safety Act those who import motor vehicle equipment for resale are defined as "manufacturers". If an item of motor vehicle equipment covered by Standard No. 108 is not certified by its overseas manufacturer, it must be certified by its importer as meeting all applicable Federal motor vehicle safety standards, before it is delivered to a distributor or dealer. Further, such statutory manufacturer stands in the shoes of the original manufacturer with respect to obligations to notify and remedy in the event the product fails to meet Standard No. 108 or is determined to incorporate a safety-related defect. Thus, an enforcement mechanism is already in place that can impose responsibility under the Act for safety matters. In practice, however, a foreign manufacturer may sell its product to more than one importer. Therefore, if the foreign manufacturer applies the code, it would facilitate identification of noncomplying or defective equipment items that came from a single manufacturer into the United States through more than one importer.

The identification code of SAE J759 appears to be an appropriate departure point for a Federal identification code, since it is one with which industry is already familiar. There are four elements to the SAE identification code, set out in sequential paragraphs of section 2.5 of J759. The first in the series of numbers and letters of the SAE Code is the abbreviation "SAE". NHTSA proposes that "DOT" be substituted, as the manufacturer's certification of compliance with all applicable safety standards. Mandatory certification of all other equipment items covered by a safety standard is required in such standard (such as brake hoses and glazing) and Standard No. 108 is anomalous by not requiring this method of certification. The requirements would apply only to replacement equipment, since original equipment is certified as a part of the overall vehicle certification of compliance with all applicable Federal motor vehicle safety standards.

The second item specified by the SAE Code applies to multicompartment or multi-lamp arrangements; it requires a number to be stated indicating the number of lamps or compartments needed to satisfy the requirements of the applicable SAE specification. NHTSA has concluded that this item of the SAE Code need not be required in a Federal lighting code.

The third item of the SAE Code is one or more letters identifying the function or functions for which the device is designed. Multipurpose devices would carry multiple markings. Table 1 of SAE J759 contains letters indicating the function of the devices. NHTSA has tentatively concluded that much of this lettering is appropriate to retain. The SAE Table contains identification for a number of devices that are not covered by Standard No. 108 (e.g., front fog lamps, rear cornering lamps), but there would be no Federal requirement that they be marked as they are outside the ambit of Standard No. 108. NHTSA's proposed "Figure ——— includes TS as the identifier for turn signal flasher (rather than J759's "J590"), and HW for hazard warning signal flasher (instead of J759's "J945"), and "U" for the center high-mounted stop lamp. However, NHTSA invites comments on whether the functional aspect of the device need be indicated at all under a Federal standard. For example, a back-up lamp is readily identifiable as such and not likely to be confused with a turn signal lamp or a stop lamp. Lighting manufacturers would not be prohibited from applying the SAE Code as a supplement to the required Federal code.

The final element of the SAE Code is "the last two numbers of a year" which refers to "SAE Specifications current in the year indicated, or the applicable requirements of Federal Motor Vehicle Safety Standard No. 108 specified for the device function in the year indicated." (SAE J759, para. 2.5.4) Under J759, to denote that a function meets the requirement of Standard No. 108 but not the current SAE specifications, a dash line is to be placed under the function

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letter. Because of the extent to which SAE requirements have been incorporated into Standard No. 108, NHTSN originally considered retaining the two digit aspect of the code as an identifier of the version of the SAE standard incorporated into Standard No. 108. However, NHTSA has decided that verification of the validity of certification by an identifiable manufacturer can be accomplished without this element.

The final element of NHTSA's code will be the name and/or registered trademark of the manufacturer and the importer of the item. NHTSA has decided that use of an abbreviation, as is allowed by SAE J759, is not practicable. The main reason for this conclusion is that it would be impossible to identify the manufacturer from an abbreviation without an additional mechanism for monitoring usage of abbreviations. The agency believes that the disadvantages of such an additional procedure can be avoided by simply using the manufacturer's name. However, if the manufactuer has a trade mark which is registered with the U.S. Patent Office, this trade mark can be used instead of the manufacturer's name.

NHTSA realizes that the requirement to mark all replacement equipment as proposed here may have a significant economic impact on some manufacturers. Therefore, in order to allow equipment manufacturers to phase in the certification and identification codes as they replace their molds, it is tentatively found that an effective date three years after issuance of the final rule would be in the public interest. A manufacturer may use one or more elements of the code before that time.

NHTSA has considered the potential impacts of this proposal and has determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation regulatory policies and procedures. The final rule should have an impact only on those manufacturers who do not currently mark their products with adequate information to indicate compliance with Federal motor vehicle safety standards or to identify themselves. Preliminary information from several manufacturers indicates that most, if not all domestic and foreign manufacturers, either already are using identification codes that essentially comply with the proposed code or that extended leadtimes will eliminate any significant potential costs or other impacts. Therefore, a preliminary regulatory evaluation is not considered necessary. However, to further assess any potential economic impacts that are associated with this rulemaking action, NHTSA requests answers to the following questions:

1. The types of identification codes that are presently in use on various lamps reflective devices, and associated equipment ("products") that must comply with Standard No. 108.
2. The number and type of such products that are now planned to remain marked with each type of code and that will remain in production for more than two years.
3. The number and type of such products that are not marked with any type of code.
4. The average cost to change or add a coding label to comply with the proposed new code.
5. Other currently-used identification codes thought essentially to comply with the code that is proposed in this notice, and whether their use would be preferable to the proposal.
6. The adequacy of the proposed leadtime and coding requirements to provide for the timely marking of all unmarked products while minimizing any impact on manufacturers who already mark their products with some type of indentification code.
7. Other recommended approaches to accomplish NHTSA's marking objectives.
8. The average lifetime of current molds and marking tools before replacement is necessary due to wear/breakage/obsolescence.

The agency has also considered the impacts of this proposed amendment under the Regulatory Flexibility Act. I certify that this amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicle equipment, those businesses affected by this proposed amendment, are generally not small businesses within the meaning of the Regulatory Flexibility Act, although some manufacturers of trailers may be so considered. The effect on new vehicle equipment prices would be negligible so that small organizations and governmental units purchasing new vehicle equipment would not be significantly affected.

The proposed marking and identification requirements in this proposal are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements will be submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that paragraph S4.7.2 of 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, be revised as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority. 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1 50

§ 571.108 [Amended]

2. In § 571.108, paragraph S4.7.2 would be revised to read:

S4.7.2 Each lamp, reflective device, or item of associated equipment to which section S4.7.1 applies and which is manufactured on or after ——— 1, 1989, shall be marked visibily and permanently with: the symbol D.O.T., which shall constitute a certification that it conforms to Federal Motor Vehicle Safety Standard No. 108; a functional identification code as specified in Figure ——— (a multifunction lamp shall be marked to indicate each function for which the device is designed); and the name or trade mark registered with the U.S. Patent Office of the manufacturer and importer (if applicable). Each lamp, reflective device, or item of associated equipment manufactured before ——— 1, 1989, may be marked with any of these elements.

3. A new Figure—would be added to § 571.108 as follows:

Figure ———

LETTERS INDICATING DEVICE FUNCTIONS *

A	Reflex reflectors.
HW	Hazard warning signal flasher.
I	Turn signal lamps.
I2	Turn signal lamps—spaced less than 100 mm from headlamp.
L	License plate lamps.
M	Motorcycle headlamps.
N	Motor driven cycle headlamps.
P	Parking lamps.
P2	Clearance or side marker or identification lamps.
PC	Combination clearance and side marker lamps.
Q	Turn signal operating units—Class A.
QB	Turn signal operating units—Class B.
QC	Vehicular hazard warning signal operating unit.
R	Backup lamps.
S	Stoplamps.
T	Tail lamps.
TS	Turn signal flasher.
U	Center high-mounted stop lamp.
W2	Lamps for school buses.

* For headlamps and standardized replaceable light sources refer to S4.1.1.14, S4.1.1.21, S4.1.1.36(e), S4.1.1.40, S4.1.1.44.

The engineer and attorney primarily responsible for this proposal are Kevin Cavey and Taylor Vinson, respectively.

Issued on January 17, 1986.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 86-1471 Filed 1-23-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To List the Nashville Crayfish (Orconectes shoupi) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Nashville crayfish (*Orconectes shoupi*) as an endangered species under the Endangered Species Act of 1973, as amended. This species is currently known to exist only in the Mill Creek basin in Davidson and Williamson Counties, Tennesse. The species is threatened by flood control projects, siltation, stream alterations, and general water quality deterioration resulting from developmental pressures in the urbanized areas surrounding Nashville, Tennessee. The species' limited distribution also makes it vulnerable to a single catastrophic event, such as a toxic chemical spill or other contamination. Comments and information pertaining to this proposal are sought from the public.

DATES: Comments from all interested parties must be received by March 25, 1986. Public hearing requests must be received by March 10, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins, at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The Nashville crayfish (*Orconectes shoupi*), described by Hobbs (1948), is currently known only from Mill Creek and five of its tributaries in Davidson and Williamson Counties, Tennesse (O'Bara 1985, Bouchard 1984). Historic collection records indicate that the Nashville crayfish has been taken from three other Tennessee localities: (1) Big Creek (Elk River system), Giles County; (2) South Harpeth River (Harpeth River system), Davidson County; and (3) Richland Creek (a Cumberland River tributary), Davidson County.

The three historic localitites outside the Mill Creek drainage were surveyed as part of a recently completed Service funded status survey (O'Bara 1985), but the Nashville crayfish was not found. O'Bara (1985) also surveyed crayfish populations at 96 other sites outside the Mill Creek watershed and found no additional Nashville crayfish populations. Bouchard (1976, 1984) collected extensively in the Nashville basin and elsewhere in Tennesse, but was unable to find the species outside of the Mill Creek watershed.

The Nashville crayfish, which attains a length of over 6 inches (15 centimeters), has been observed to inhabit riffle areas with moderate current. Very little is known concerning the species' biology, but, like related crayfish, it probably feeds on vegetation fragments and animal matters. Reproduction occurs in the winter months, and females have been observed carrying eggs in the spring.

The species' restricted range makes it vulnerable to toxic chemical spills. The species is also subjected to water quality and othr habitat deterioration associated with urban runoff, land disturbance, and development within the Mill Creek watershed. A flood control project being planned for the Mill Creek basin by the U.S. Army Corps of Engineers (COE) could also impact the species.

The Nashville crayfish was proposed for listing as an endangered species on January 12, 1977 (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796), under provisions of the 1978 amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final

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within two years of being proposed or within one year after passage of the amendments, whichever date came later. A notice of review was published on May 22, 1984 (49 FR 21664), announcing that the Service considered the Nashville crayfish a potential candidate for Endangered Species Act protection. On January 3, 1985, the Service notified Federal, State, and local governmental agencies and interested parties that the Service was reviewing the species' status. That notification requested information on the species' status and threats to its continued existence.

Three agencies, (1) U.S. Department of the Army, Corps of Engineers, Nashville District (COE), (2) Tennessee Valley Authority (TVA), and (3) Federal Energy Regulatory Commission (FERC), provided comments. COE informed the Service that it was conducting a flood protection study of Mill Creek. TVA and FERC stated that they were unaware of any of their projects that would be affected by listing the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; 49 FR 30000, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species owing to one or more of the five factors described in section 4(a)(1). These factors and their application to the Nashville crayfish (*Orconectes shoupi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Results of recent studies indicate that the Nashville crayfish is restricted to Mill Creek and five of its tributaries in Davidson and Williamson Counties, Tennessee. The species has previously been reported from three other watersheds but has not been collected from these areas in recent years (O'Bara 1985, Bouchard 1976, 1984), as discussed in the Background section.

The species is endangered by water quality deterioration from development within the watershed. According to a COE report (COE 1984), about 40 percent of the Mill Creek watershed has been developed. The lower watershed lies within the highly urbanized Nashville, Tennessee, metropolitan area. The Tennessee Department of Public Health (TDPH 1978) characterized this area of Mill Creek as follows: "The stream's main problem stems from urban commercialization that is gradually overtaking the whole watershed." The TDPH also reported that the diversity of organisms in Mill Creek, "does not look good. The number of taxa found was severely limited and decreased as one moved downstream." The upper portion of the Mill Creek watershed has less residential and industrial development, but agricultural activity is extensive. COE (1981) concluded that the uppermost segment of Mill Creek was degraded by organic enrichment and had very poor water quality. In that same report, COE stated, concerning the entire Mill Creek system, that, "biological communities inhabiting Mill Creek during the 1981 survey indicated water of fair to very poor quality and the influence of moderate to extensive enrichment and disturbance."

The Nashville crayfish is also potentially endangered by a flood protection project being planned by COE. This project could involve the contruction of two dry flood control dams within the watershed. These dams could, depending on project design, impact the crayfish by modifying stream flows, water temperatures, and silt loads during the construction and operational phases. Threats to the species could also come from other activities in the watershed such as road and bridge contruction, stream channel modifications, impoundments, land use changes, and other projects, if such activities are not planned and implemented with the survivial of this geographically restricted species in mind.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Crayfish are frequently taken in the southeast for food and bait. There is concern that overutilization could be a problem if the species' specific habitat were identified to the extent required for designation of critical habitat.

C. *Disease or predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* Tennessee State law provides limited protection for this species by requiring a State permit to collect crayfish for scientific purposes. However, these is currently no State law that provides specific protection for the species' habitat. Federal listing would provide additional protection for the species by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect a listed species.

E. *Other natural or manmade factors affecting its continued existence.* The Nashville crayfish's restricted range makes it very vulnerable to a single catastrophic event, such as a chemical spill. Although the Service has no records of catastrophic spills occurring in Mill Creek, COE (1984) reported that occasional spills and discharges have occurred along Mill Creek in the past.

The Service has carefully assessed the best scientific and commerical information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Nashville crayfish as an endangered species. The crayfish's restricted range, along with pressure on the species and its reamining habitat from the rapid development of the Mill Creek basin, makes the species in danger of extinction at the present time; therefore, threatened status is inappropriate. Critical habitat designation (see Critical Habitat section below) would not be prudent for the Nashville crayfish, as defining its exact range and specific habitat could further endanger the species by increasing the incidence of illegal take or vandalism. A decision to take no action would exclude the Nashville crayfish from needed protection available under the Endangered Species Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Crayfish are frequently taken in the southeast for food and bait. Much of the Nashville crayfish's habitat is adjacent to a large human population. Considerable human interest in the species is expected to result from this proposed rule and subsequent Federal actions. The Service believes a detailed description of the species' habitat, including maps and text detailing the crayfish's specific habitat and constituent elements of that habitat, as required for any critical habitat designation, would increase the species' vulnerability to illegal taking and/or vandalism, increase the law enforcement problem, and further endanger the species. Therefore, it would not be prudent to designate critical habitat for this species at this time. Doing so would draw attention to the Nashville crayfish and risk further depletion of its populations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could impact the species and its habitat include, but are not limited to, the carrying out of, or the issuance of permits for, hydroelectric facility, and reservoir construction, stream alteration, wastewater facility development, and road and bridge construction on Mill Creek or its tributaries. The construction and operation of flood control facilities on Mill Creek and its tributaries could likewise impact the species, as discussed above. It has been the experience of the Service, however, that nearly all section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Nashville crayfish;

(2) The location of any additional populations of the Nashville crayfish and the reason why any habitat should or should not be determined to be critical habitat as provided for by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impact on the Nashville crayfish.

Final promulgation of the regulation on the Nashville crayfish will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Mr. Warren T. Parker, Field Supervisor, Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Bouchard, R.W. 1976. Investigations on the status of fourteen species of freshwater decapod crustaceans in the United States Part I. Troglobitic shrimp and western North American crayfishes. Report to Office of Endangered Species, Department of the Interior. 26 pp.

Bouchard, R.W. 1984. Distribution and status of the endangered crayfish *Orconectes shoupi* (Decapoda: Cambaridae). U.S. Fish and Wildlife Service, Tennessee Cooperative Fishery Research Unit, Tennessee Tech University, Cookeville, Tennessee. 27 pp.

Hobbs, H.H., Jr. 1948. On the crayfishes of the Limosus section of the genus *Orconectes* (Decapoda , Astackdae). Journal of the Washington Academy of Science 38(1):14–21.

O'Bara, C.J. 1985. Final report, status survey of the Nashville crayfish (*Orconectes shoupi*). Report to U.S. Fish and Wildlife Service. Asheville, North Carolina. 17 pp.

Tennessee Department of Public Health. 1978. Mill Creek survey, Davidson County, Tennessee. Tennessee Department of Public Health, Division of Water Quality Control. Nashville Basin. Unpublished report. 7 pp.

U.S. Army Corps of Engineers, Nashville District. 1981. Water quality along Mill Creek. Nashville, Tennessee. 35 pp.

U.S. Army Corps of Engineers, Nashville District. 1984. Mill Creek, Wimpole Drive area, Nashville, Davidson County, Tennessee. Final detail project report and environmental assessment. 331 pp.

Author

The primary author of this proposed rule is Richard G. Biggins, Asheville Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704 259–0321 or FTS 672–0321).

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "CRUSTACEANS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
Crayfish, Nashville	*Orconectes shoupi*	U.S.A. (TN)	NA	E		NA	NA

Dated: December 26, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–1473 Filed 1–23–86; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 51, No. 16
Friday, January 24, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative Agreements: Puerto Rico University

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to award a cooperative agreement.

ACTIVITY: The Office of International Cooperation and Development intnds to award a cooperative agreement to the University of Puerto Rico to collaborate in carrying ut the VIII Soil Classification Workshop In conjunction with the Soil Management Support Services Project implemented by USDA on behalf of the U.S. Agency for International Development.

Authority: Section 1458 of The National Agriculture Research Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291) and The Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter into a cooperative agreement with the University of Puerto Rico for implementing the VIII Soil Classification Workshop. The workshop, to be held in Brazil and co-sponsored by the National Soil Survey and Conservation Service of the Brazilian Enterprise for Agricultural Research (EMBRAPA), draws together an international panel of soil acientists to study hitherto unclassified soil pedons and recommend a nomenclature for their entry into Soil Taxonomy, the international system of soil classification.

Assistance will be provided only to the University of Puerto Rico, which has the requisite resources, as well as experience in organizing past workshops, and has developed close working relationships with participating scientists and host institutions. Therefore, this is not a formal request for applications. It is estimated that approximately $95,000 will be available in Fiscal Year 1986 to support this work. It is anticipated that the cooperative agreement will be funded over a budget period of 12 months. Information may be obtained from: Mr. Pat Miles, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture (#58–319R–6–018).

Dated: January 17, 1986.

Allen Wilder, Chief,

Management Services.

[FR Doc. 86–1561 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–DP–M

Cooperative Agreements: Virgin Islands College

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to award a cooperative agreement.

Activity: The Office of International Cooperation and Development intends to award a cooperative agreement to the College of the Virgin Islands to provide support funding for the Caribbean Agricultural Research Management Implementation and Evaluation Workshop.

Authority: Section 1458 of The National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter a cooperative agreement with the College of the Virgin Islands, in the amount of $25,000. The agreement is required to enable the College to cooperate with OICD, as well as the ISEC Research Committee and the Caribbean Agricultural Research and Development Institute (CARDI), in conducting the Caribbean Agriculture Research Management Implementation and Evaluation Workshop, scheduled for April 1986. The overall objective of the workshop is to strengthen capacity of senior agricultural research managers to implement, monitor and evaluate research and development projects/programs.

Assistance will be provided only to the College of the Virgin Islands, which will host the workshop. The funds will be used to provide airfare, per diem and associated expenses for 25 participants in the workshop from the Eastern Caribbean.

Based on the above, this is not a formal request for applications. It is estimated that approximately $25,000 will be available in Fiscal Year 1986 to support this work. It is anticipated that the cooperative agreement will be funded over a six-month period.

Information may be obtained from: Mr. Whetten Reed, International Research Division, Office of International Cooperation and Development, U.S. Department of Agriculture (#58–319R–6–017).

Dated: January 21, 1986.

Nancy J. Croft,

Contract Specialist, Management Services Branch, OICD.

[FR Doc. 86–1560 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–DP–M

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of Personnel, Office of the Secretary, USDA.

ACTION: Notice of a proposed new routine use of an existing system of records.

SUMMARY: The purpose of this document is to propose a new routine use for the Office of Personnel's Personnel and Payroll System (USDA/OP–1). The routine use, once in effect, will permit the disclosure of information from this system of records to a contractor assisting in a matching program involving workers' compensation.

DATES: Any interested party may submit written comments concerning this proposal. To be considered, however, comments must be received by February 24, 1986. Unless a notice to the contrary is published, this routine use will become effective 30 days after the end of the comment period.

ADDRESS: Comments should be addressed to: Chief, Security, Employee Management and Training Staff, Office of Personnel, Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: The Department has been participating with the Department of Labor in a

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matching program aimed at the rehabilitation and rehire of employees currently receiving workers' compensation. This program was announced on December 10, 1984 (49 FR 48071).

The Department has found, however, that it cannot verify USDA employment through its initial computer matching program for a number of OWCP claimants. These claims must then be verified by the employing office that processed the claim. It is these claims, totalling approximately 100 a quarter, which will be verified by a contractor.

The Department will provide the contractor with the claimant's name, Social Security number and the claimant's employing office code number. The contractor will then contract the employing office to verify: (1) Whether the claimant was employed by the office; (2) whether the claimant was assigned to a special employment office program (Job Corps, Older American Youth Conservation Corps, Young Adult Conservation Corps or Volunteers); and (3) the Social Security number or obtain the correct Social Security number for each claimant. The contractor will also obtain from the employment office: (1) The USDA organization code, down to the 5th level if possible, for each employed claimant, and (2) the employer's name and Form CA–1 from the employing office if the claimant was not employed by USDA. The contractor will conduct this portion of the matching program in accordance with Office of Management and Budget revised guidelines which were published in the **Federal Register** on May 19, 1982 (47 FR 21658).

The Department believes that its proposed use of USDA/OP–1, Personnel and Payroll System, is covered by the routine uses published by the Office of Personnel Management for OPM/GOVT–1, General Personnel Records, specifically item (d), last published on September 20, 1984 (49 FR 36949–73).

The following routine use will be added to USDA's system of records (USDA/OP–1). The current notice of this system is published at 49 48071 et seq. (December 10, 1984).

USDA/OP–1

SYSTEM NAME:

Personnel and Payroll System for USDA Employees, USDA/OP

* * * * *

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(23) The contractor selected to verify employment for specific claims relating to workers compensation.

* * * * *

Dated: January 17, 1986.

John R. Block,

Secretary of Agriculture.

[FR Doc. 86–1565 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Environmental Impact Statement; Hells Canyon National Recreation Area

The Department of Agriculture, Forest Service, has determined that it would not be appropriate at this time to prepare a Supplement to the Final Environmental Impact Statement for the Comprehensive Management Plan for the Hells Canyon National Recreation Area. There has not been the anticipated public support for a trail to provide improved fishing access to the east side of the Snake River, immediately downstream from Hells Canyon Dam.

The Notice of Intent, published in the **Federal Register** of April 17, 1985, is hereby rescinded (FR Doc. 85–10036).

For further information contact Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker, OR 97814, telephone (503) 523–6391.

Dated: January 14, 1986.

David B. Trask,

Acting Regional Forester.

[FR Doc. 86–1482 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–11–M

Land and Resource Management Plan; Stanislaus National Forest, Alpine, Calaveras, Mariposa and Tuolumne Counties, CA; Environmental Impact Statement; Extension of Comment Period

The public comment period for the Stanislaus National Forest Proposed Land and Resource Management Plan and Draft Environmental Impact Statement is being extended. Comments must now be received by April 7, 1986.

This amends the Notice of Availability published in the **Federal Register** of November 29, 1985 (50 FR 49126).

The former due date was March 10, 1986.

For further information contact: Ed Tonnesen, Land Management Planning Officer, Stanislaus National Forest, 19777 Greenley Rd., Sonora, CA 95370; telephone 209–532–3671.

Dated: January 13, 1986.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 86–1478 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–11–M

Environmental Impact Statement; Western Spruce Budworm Insect Control

The Department of Agriculture, Forest Service, has withdrawn its proposal to prepare an Environmental Impact Statement for the control of Western Spruce Budworm insect infestations on National Forest lands; lands administered by the Bureau of Indian Affairs and the Bureau of Land Management, US Department of Interior; certain other lands administered by the State of Oregon and State of Washington; and certain lands of cooperating private landowners.

The Notice of Intent, published in the **Federal Register** on February 12, 1985, is hereby cancelled (50 FR 5803).

For further information, contact Robert Dolph, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208, Attention: Forest Pest Management, telephone (503) 221–3605.

Dated: January 14, 1986.

David B. Trask,

Acting Regional Forester.

[FR Doc. 86–1481 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–11–M

Delegation of Authority for Issuance of Easements and Reservations; Director of Lands, Watershed and Minerals, Eastern Region

Pursuant to 36 CFR 251.52 and the delegation to the Regional Forester Eastern Region, by the Chief, Forest Service (FSM 2733.04b) the Regional Forester, Eastern Region of the Forest Service hereby delegates to the Director of Lands, Watershed and Minerals, Eastern Region, authority to issue all easements and reservations for construction and use of roads under authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761).

Effective date: January 24, 1986.

Date: January 15, 1986.

Larry Henson,

Regional Forester.

[FR Doc. 86–1569 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

East Branch of Sugar Creek Watershed, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, U.S.A.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East Branch of Sugar Creek Watershed, Tuscarawas and Holmes Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 200 North High Street, Columbus, Ohio, 43215, telephone 614–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns watershed protection. The planned works of improvement include accelerated technical assistance and cost sharing for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: January 15, 1986.

Harry W. Oneth,

State Conservationist.

[FR Doc. 86–1567 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–16–M

Floyd County Road Bank Critical Area Treatment RC&D Measure, VA; Environmental Impact Statement

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Floyd County Road Bank Critical Area Treatment RC&D Measure, Floyd County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804–771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for seeding eroding road banks in Floyd County, Virginia. The planned work will include the establishment of 69 acres of permanent vegetative cover by hydro-seeding and mulching.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: January 15, 1986.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Manly S. Wilder,

State Conservationist.

[FR Doc. 86–1479 Filed 1–23–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Attachment to Certification for General License GTE (Temporary Exports).

Form Number: Agency—EAR 371.22(d); OMB–N/A.

Type of Request: Existing collection in use without an OMB control number.

Burden: 130 respondents; 65 reporting hours.

Needs and Uses: The information collected from exporters will be used to authorize the temporary export of goods from the United States.

Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Sheri Fox 395–3785.

Agency: International Trade Administration.

Title: Disclosure of Shipments.

Form Number: Agency—EAR 372.7; OMB–N/A.

Type of Request: Existing collection in use without an OMB control number.

Burden: 20 respondents; 20 reporting hours.

Needs and Uses: The information is used for enforcement purposes with respect to exporters who have made shipments without the required validated export license.

Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies, non-profit institutions, and small businesses or organizations.

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Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Sheri Fox 395–3785.

Agency: International Trade Administration.
Title: Application for Duplicative License.
Form Number: Agency—EAR 372.10; OMB–N/A.
Type of Request: Existing collection in use without an OMB control number.
Burden: 120 respondents; 60 reporting hours.
Needs and Uses: If a validated export license is lost or destroyed, the Department needs certain information from the exporter to issue a duplicative license.
Affected Public: Businesses or other for-profit institutions, small businesses or organizations, non-profit individuals, and state or local governments.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Sheri Fox 395–3785.

Agency: International Trade Administration.
Title: Report of Commodities Returned After Temporary Export to Communist Countries.
Form Number: Agency—EAR 372.8; OMB–N/A.
Type of Request: Existing collection in use without an OMB control number.
Burden: 100 respondents; 50 reporting hours.
Needs and Uses: Individual validated licenses are granted for goods temporarily exported to communist bloc countries for display, exhibition, or testing purposes. Exporters are required to notify the Department of the return of the U.S. commodities. The purpose of this requirement is to avoid diversion.
Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies, non-profit institutions, and small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Sheri Fox 395–3785.

Agency: International Trade Administration.
Title: Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty.
Form Number: Agency—ITA–362P; OMB–0625–0118.
Type of Request: Extension of the expiration date.
Burden: 370 respondents;185 reporting hours.
Needs and Uses: Information will be used to assess possible injury to domestic manufacturing industries of articles for handicapped persons.
Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies, non-profit institutions, and small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Sheri Fox 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.
Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: January 21, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–1572 Filed 1–23–86; 8:45 am]

BILLING CODE 3510–CW–M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions taken during the fourth quarter of 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, Manager, Laboratory Accreditation, ADMIN A603, National Bureau of Standards, Gaithersburg, MD 20899 (301) 921–3751.

SUPPLEMENTARY INFORMATION: This supplement to the 1984 NVLAP Directory of Accredited Laboratories (NBS Special Publication 687) is published pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.6(b)).

The following table summarizes NVLAP accreditation actions for the period October 1, 1985, through December 31, 1985.

	TIM	CON	CAR	STO	ACO	CPL	DOS	SEA	Totals
Initial accreditations	1			1		2	4	1	9
Terminations	3	1	3						7
Suspensions		1							1
Balance	37	28	21	11	8	4	35	1	145

TIM—Insulation LAP.
CON—Concrete LAP.
CAR—Carpet LAP.
ACO—Acoustical Testing Services LAP.
STO—Stove LAP.
CPL—Commercial Products LAP (Paint, Paper, Mattresses).
DOS—Dosimetry LAP.
SEA—Seals and Sealants LAP.

The laboratories awarded initial accreditations are:

Insulation: Radco, Gardena, CA.
Stove: Shelton Research Inc., Santa Fe, NM.
Commercial Products: United States Testing, Hoboken, NJ, Whittaker Analytical Services, Colton, CA.
Dosimetry: Louisiana Power and Light Co., New Orleans, LA, Duquesne Light, Shippingport, PA, Siemans Gammasonics, Des Plaines, IL, U.S. Army Ionizing Radiation Dosimetry Ctr, Lexington, KY.
Seals and Sealants: D/L Laboratories, New York, NY.

the laboratories whose accreditation expired and were not renewed are:

Insulation: Olin Chemicals Operation, Physical Test. Lab, New Haven, CT, Terralab Engineers, Salt Lake City, UT, Technical Micronics Control Inc., Huntsville, AL.
Concrete: Engineering Testing Lab, City of Akron, Akron, OH.
Carpet: Underwriters Laboratories, Northbrook, IL, United States Testing, Hoboken, NJ, C. H. Masland & Sons, Carlisle, PA.

The laboratory suspended due to relocation of its laboratory site is:

Concrete: Gifford-Hill, Technical Services Division, Dallas, TX.

Dated: January 17, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 86–1519 Filed 1–23–86; 8:45 am]

BILLING CODE 3510–13–M

Committee for the Implementation of Textile Agreements

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines Effective on January 1, 1986; Correction

January 17, 1986.

On December 26, 1985, a notice was published in the **Federal Register** (50 FR 52830), which established import restraint limits for certain specified categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

In the letter to the Commissioner of Customs which followed that notice, the following limits should be included:

Category	12-month limit
348T	245,199 dozen.
348NT	263,739 dozen.

Reference to a limit of "42,236" for category "634T" should be corrected to read as follows:

635T	42,236 dozen.

The units shown for Categories 635NT and 659T should be "dozens." The units for Category 669 should be "pounds."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 86–1571 Filed 1–23–86; 8:45 am]

BILLING CODE 3510–DR–M

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR PURCHASE FROM

Procurement List, 1986; Proposed Additions

AGENCY: Committee for Purchase form the Blind and Other Severely Handicapped..

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1986 commodities to be produced by workshops for the blind and other severely handicapped.

Comments must be received on or before: February 26, 1986.

ADDRESS: Committee for Purchase form the Blind and Other Severely Handicapped, Crystall Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1986, October 15, 1985 (50 FR 41809):

Paper Sheeting, Examination, 6530–00–786–4790, 6530–00–269–3598.
Dining Packet, Unitized Tray Pack Ration, 7360–01–119–2026.

C.W. Fletcher,

Executive Director.

[FR Doc. 86–1562 Filed 1–23–86; 8:45 am]

BILLING CODE 6820–33–M

Procurement List, 1986; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Othr Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1986 commodities and services to be provided by workshops for the blind and other severely hadicapped.

EFFECTIVE DATE: January 24, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 16, November 15 and November 29, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 33094, 50 FR 47245 and 50 FR 49090) of proposed additions to and deletions from Procurement List 1986, October 15, 1985 (50 FR 41809).

Addition

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.5.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to provide the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1986:

Pillow Bed, 7210–01–015–5190 (Portion of Government requirement not on Procurement List except for the requirements of the Richmond, Virginia DLA depot)

Deletions

After consideration of the relevant matter proesented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

Accordingly, the following commodities and services are hereby deleted from Procurement List 1986:

Commodities

Dividers, Steel, P.S. Item No. 124–C–114, P.S. Item No. 124–C–234, P.S. Item No. 124–R–54, P.S. Item No. 124–R–114 (Requirements of USPS Western and Southern Regions only)
Pallet, Material Handling, 3990–00–555–0458 (For Sharpe Army Depot, Lathrop, California only)
Strap, Chin, 8405–00–152–3952

Services

Commissary Shelf Stocking and Custodial, Oakland Army Base, Oakland, California
Janitorial/Custodial, Army Materials and Mechanics Research Center, Buildings 36, 37, 39, 43, 97, 131, 292, 311, 312, 313 only Watertown, Massachusetts.

C.W. Fletcher,

Executive Director.

[FR Doc. 86–1563 Filed 1–23–86; 8:45 am]

BILLING CODE 6820–33–M

BEST COPY AVAILABLE

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DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday, 10 February 1986.

Times of Meeting: 0900-1600 hours.

Places: The Pentagon, Washington, D.C.

Agenda: The Army Science Board 1986 Summer Study Panel on Technology Forecast for the Key Operational Capabilities will meet for initial orientation and planning for the conduct of the Summer Study. Summer Study Terms of Reference will be reviewed and fact finding sessions discussed. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, USC, specifically subparagraph (1) thereof, and Title 5, USC, Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A Warner,

Administrative Officer, Science Board, Army Science Board.

[FR Doc. 86-1489 Filed 1-23-86; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Local Flood Protection Project Along the Blanchard River at the Village of Ottawa, Putnam County, OH

AGENCY: U.S. Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action:* The proposed action would alleviate flood damages along the Blanchard River in the village of Ottawa, Ohio. Flood protection measures under consideration include, but are not limited to, selective clearing and snagging of various obstructions to flow in the river, stream-bank slope excavation for a portion of the river, earthen levee construction, and the provision of gated valves on approximately 190 residences.

2. *Scoping Process:* Scoping for the DEIS will include continued coordination with affected Federal, State, and local agencies, as well as other interested parties. Formal scoping meetings are not planned at this time, however, all interested parties are urged to actively participate in the study by submitting in writing any concerns or recommendations to the Buffalo District.

Significant issues to be addressed in the DEIS include, but are not limited to fish and wildlife habitat, threatened and endangered species, water quality, recreation, aesthetic values, cultural resources, health and safety, and other social impacts.

3. *Availability:* The DEIS is expected to be available for public and agency review in December 1986.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. William E. Butler, Environmental Analysis Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, NY 14207-3199.

Dated: January 13, 1986.

Daniel R. Clark,

Colonel, Corps of Engineers District Commander.

[FR Doc. 86-1480 Filed 1-23-86; 8:45 am]

BILLING CODE 3710-GP-M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Crabtree Creek Project, Wake County, NC

AGENCY: Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Environment Impact Statement.

SUMMARY: 1. The Wilmington District completed a water resources reconnaissance study and report on the Neuse River Basin, N.C., in May of 1984. This study identified Crabtree Creek, a tributary to the Neuse River, as a flood problem area and recommended feasibility studies for developing the best overall plans for flood damage reduction and related purposes at and in the vicinity of Crabtree Creek in Raleigh, N.C.

Under the authority contained in section 205 of the 1948 Flood Control Act, as amended, I am initiating studies for the preparation of a Detailed Project Report (DPR) and Environmental Impact Statement (EIS) to investigate flood problems at Crabtree Creek and analyze effectiveness and potential environment impacts of alternatives to reduce flood damages.

The study area will include the lower 16 miles of the Crabtree Creek Basin above its confluence with the Neuse River. Significant flood problems which have been identified along Crabtree Creek and Pigeon House Branch will be specifically addressed.

2. Alternatives which will be investigated in detail include stream chanel excavation, clearing and snagging, dike construction, flood proofing, relocation of structures, and no action.

3a. All private interests and Federal, State, and local agencies known to have an interest in the study have been notified of the study start and have been provided an opportunity for input into the study process. All additional agencies, organizations, and interested parties which have not been previously notified are invited to comment at this time.

3b. Significant issues to be analyzed in the DEIS include the impact of alternatives of fish and wildlife resources, upland and wetland vegetation, endangered species, prime farmland, esthetics, recreation, and cultural resources. The impact of alternatives on ongoing or proposed programs of individuals or institutions including the city of Raleigh's Greenway, which follows Crabtree Creek, will also be addressed.

3c. The U.S. Fish and Wildlife Service is furnishing input into the planning process in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). A section 404 (Pub. L. 95-217) public notice will be circulated to the public.

4. A scoping letter requesting input to the study has been sent to all known interested parties. A public meeting is scheduled for March of 1986. The identification of any significant issues relating to the project by others will result in coordination with appropriate interests as needed.

5. The Draft Detailed Project Report and Draft Environmental Impact Statement for the project are currently scheduled for distribution to the public in May of 1987.

ADDRESS: Questions about the proposed action and reports can be answered by Mr. Gene Gill, Plan Formulation Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402, telephone: (919) 343-4596 or FTS 671-4596.

Dated: January 17, 1986.

Wayne A. Hanson,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 86-1483 Filed 1-23-86; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Grants Availability; Bilingual Education Fellowship Program

AGENCY: Department of Education.

ACTION: Application Notice for Continued Participation under the Bilingual Education Fellowship Program for Fiscal Year 1986.

Programmatic and Fiscal Information

Applications are invited from Institutions of Higher Education for continued participation under the Bilingual Education Fellowship Program.

The purpose of this program is to provide financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs for limited English proficient persons, such as teacher training, program administration, research and evaluation, and curriculum development.

An estimated $3,240,000 will be authorized for continued participation under the Fellowship Program for Fiscal Year 1986. The estimated average fellowship continuation award is $10,000. The estimated number of fellowship continuations is 324.

These estimates do not bind the U.S. Department of Education to a specific number of fellowships or to the amount of any fellowship, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applicants should mail or hand deliver their applications on or before March 24, 1986.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for continued participation and may decline to accept it.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.003U), 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any othe proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the Fellowship Program in 34 CFR Part 562.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.51 (relating to proof of nonprofit status).

Application Forms

Application forms and program information packages are expected to be available by January 31, 1986. These may be obtained by writing to the U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202.

FURTHER INFORMATION: For further information contact Joyce Brown, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245-2595.

Program authority: 20 U.S.C. 3221-3262.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: January 17, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86-1588 Filed 1-23-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TA86-6-20-000 & 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 15, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on January 10, 1986, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Tenth Revised Sheet No. 203
Nineteenth Revised Sheet No. 213

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F-2 and Rate Schedule S-IS, changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), that were placed into effect by a motion filed December 31, 1985, effective January 1, 1986 under its general rate increase in Docket No. RP85-169-000.

Algonquin Gas requests that the Commission accept Tenth Revised Sheet No. 203 and Nineteenth Revised Sheet No. 213, to be effective January 1, 1986 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas requests that the Commission grant such special permission as may be necessary to adjust the next month's billing subsequent to Commission approval to effectuate the result of the proposed rate change as of January 1, 1986.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 22, 1986. Protests will be considered by the Commission in determining the appropriate action to be take but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1525 Filed 1-23-86; 8:45 am]

BILLING CODE 6717-01-M

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Regulation of National Gas Pipelines After Partial Wellhead Decontrol; Conoco, Inc.; Order Granting Petition for Clarification

Regualtion of Natural Gas Pipelines After Partial Wellhead Decontrol (Conoco Inc.), Docket No. RM85-1-000.

Conoco Inc., Dockets Nos. CI80-365-002, CI82-237-002, and CI85-598-000.

Issued: January 16, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

On December 6, 1985, Conoco Inc. filed a petition for clarification of the order issued on October 16, 1985, in Docket No. CI80-365-002, et al., 33 FERC ¶61,034, permitting and approving limited-term abandonments and granting a limited-term certificate for which applications had been filed on July 29, 1985. Although not so characterized by Conoco, the petition in essence requests waiver of the restrictions in the transitional provisions of Order No. 436,[1] and has been treated as such. We conclude that waiver should be granted.

The October 16, 1985 order granted Conoco's request for a partial, limited-term abandonment of certain sales to ANR Pipeline Company and issued a certificate authorizing the sale of the released gas to Longhorn Pipeline Company, a Texas intrastate pipeline and a wholly-owned subsidiary of Conoco. Longhorn in turn, entered into an agreement to sell a portion of the released gas to Brandywine Industrial Gas Inc., an affiliate of Conoco, for conversion into methanol at E.I. Du Pont de Nemours & Company's plant in Beaumont, Texas. In order to transport the gas to the Beaumont plant, Longhorn entered into agreements with ANR and Florida Gas Transmission Company on September 24, 1985, and October 1, 1985, respectively, whereby ANR and Florida Gas agreed to transport the gas under section 311 of the Natural Gas Policy Act of 1978.

In reliance on these agreements, between October 1 and October 24, Du Pont spent $2,700,000 to repair the Beaumont plant and return it to serviceable condition.

Sales by Conoco to Longhorn and transportation by ANR and Florida Gas to the Du Pont plant commenced on October 21, 1985. Transportation was discontinued on October 24 for maintenance on ANR's line. Since that time ANR and Florida Gas have been unwilling to resume deliveries because of their reluctance to become non-discrimiantory access transporters under Order No. 436.

In *Judel Glassware Co., Inc.*, 33 FERC ¶61,386 (December 17, 1985), we established an economic substance test for grant of a waiver from the restrictions in the transitional provisions of Order No. 436. We stated that "a purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9." This test is meant to grant relief from the transitional provisions of Order No. 436 without defeating its objectives.

The transportion contracts between Longhorn and ANR and Longhorn and Florida Gas were executed prior to October 9, 1985. In addition, prior to that date Du Pont had made sizeable investments to refurbish its Beaumont plant. Under these circumstances, we conclude that the transportation transactions identified herein have shown the requesite expenditure of substantial funds by an end user prior to October 9 in reliance on transportation contracts. Accordingly, we hereby waive the restrictions in § 284.105 to the extent necessary to permit the transportation transactions identified in Conoco's petition to continue.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1525 Filed 1-23-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed, Week of December 27, 1985, Through January 3, 1986

During the Week of December 27, 1985 through January 3, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 14, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 27, 1985, through Jan. 3, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 30, 1985	ESSRO, Scottsdale, AZ	KFA-0009	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded and ESSRO would receive a waiver of fees for information relating to the Liberty-Coolidge transmission line and the Parker-Phoenix No. 1 transmission line.
Do	Meier Oil Service, Inc., Ashkum, IL	KEE-0014	Exception to the reporting requirements. If granted: Meier Oil Service, Inc., would not be required to file Form EIA-782B, the "Resellers/Retailers' Monthly Petroleum Products Sales Report."
Dec. 31, 1985	Lowtex Oil & Gas Co., Washington, DC	KOF-0017	Implementation of second stage refund procedures. If granted: The Office of Hearings and Appeals would implement a second-stage refund proceeding to distribute the balance of the funds remitted to the DOE pursuant to the Consent Order entered into with Lowtex Oil & Gas Company (DEF-0033).
Do	Southwestern States Marketing Corp., Dallas, TX	KRD-0013, KRH-0013	Motions for discovery and evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Southwestern States Marketing Corporation in response to the Proposed Remedial Order (Case No. HRO-0258) issued to the firm.

[1] 33 FERC ¶61,007 (1985), 50 F.R. 42,408 (October 18, 1985).

REFUND APPLICATIONS RECEIVED

[Week of Dec. 27, 1985 to Jan. 3, 1986]

Date received	Name of refund proceeding and name of refund applicant	Case No.
12/30/85	City Service/Main Street Exxon	RF219-3
12/30/85	Quaker State/V.I. Oil Co	RF213-11
12/30/85	Boswell/Harris Thomas Drop Forge	RF179-14
12/30/85	Blaylock/Defense Logistics Agency	RF221-1
12/30/85	Pasco/Brennan Petroleum Co.	RF222-1
12/31/85	Amerol/Sleighter Brothers	RF139-142
12/31/85	Gulf/Watson Oil Co., Inc	RF40-3089
12/31/85	Zia/Circle K Corp	RF216-3
1/2/86	Harris/Stein Oil Co., Inc	RF155-17
1/3/86	Quaker State/Highway Services, Inc.	RF213-12
1/3/86	Quaker State/Slaughter Oil Co.	RF213-13
1/2/86	Consumers/Powerine Oil Co.	RF223-1

[FR Doc. 86-1551 Filed 1-23-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders, Week of November 18 through November 22, 1985

During the week of November 18 through November 22, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Y. Shanmugadhasan, 11/22/85; HFA-0196

Y. Shanmugadhasan filed an Appeal from a denial by the Acting Deputy Assistant Secretary for Defense Programs of a Request for Information which the Appellant had submitted under the Freedom of Information Act (FOIA). The document, entitled "The Los Alamos Primer," was initially withheld under Exemption 3 of the FOIA. In considering the Appeal, the DOE found that the document had been widely disseminated in the public domain and accordingly, could not be withheld pursuant to the regulations governing Unclassified Controlled Nuclear Information. Accordingly, the DOE conoluded that the document was not exempt from the FOIA and should be released.

Requests for Exception

Haiston Oil Co., Inc., 11/18/85; HEE-0161

Haiston Oil Company, Inc. filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." In considering the request, the DOE found that the firm would not experience and inordinate burden by fulfilling its reporting obligations. Accordingly, exception relief was denied.

St. Joe Petroleum Co., 11/18/85; HEE-0160

St. Joe Petroleum Company filed an Application for Exception seeking relief from the requirement that the firm file Form EIA-782B, the Reseller/Retailers' Monthly Petroleum Product Sales Report. The DOE found that St. Joe had not shown that the burden which completing the form placed upon the firm outweighed the benefit to the nation provided by the EIA-782B survey results. Accordingly, exception relief was denied.

Motion for Discovery

United Independent Oil Co., Peter L. Hirschburg, 11/21/85; HRD-0280, HRH-0280

United Independent Oil Company and Peter L. Hirschburg jointly filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with their Statements of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to United on July 27, 1984 and to Hirschburg by amendment to the PRO on April 8, 1985. In the PRO, the ERA alleged that United improperly received small refiner bias entitlements as a result of a May 1977 processing agreement with Lion Oil Company and the subsequent sale of refined product to Pacific Gas and Electric (PG&E).

In their Motion for Evidentiary Hearing, Respondents sought to present oral testimony regarding the factual bases for the ERA's finding that United inserted itself into an existing "arrangement" between Lion and PG&E for the refining and distribution of crude oil and the resulting products. The DOE granted this request, finding that testimony on these issues would aid it in resolving relevant factual disputes. On the other hand, the DOE found that Respondents had not demonstrated the relevance of their requests to call personnel of the DOE to testify regarding the contemporaneous construction of the regulations at issue.

In their Motion for Discovery, Respondents sought (1) the complete audit record underlying the PRO; (2) contemporaneous construction discovery of the disputed regulations; and (3) the depositions of eleven individuals who are present or former officials of Lion or PG&E. The DOE found that Respondents had now shown a need for obtaining access to most of the audit record. However, it did find a basis for granting discovery of all factual, non-deliberative materials in the audit file that concerned United, Lion and PG&E and the relationships that existed between them. The DOE also found that Respondents had not demonstrated that their requested contemporaneous construction discovery would provide relevant and material information. Accordingly, the Motion for Evidentiary Hearing and the Motion for Discovery both were granted in part.

Implementation of Special Refund Procedures

Zia Fuels (GGC, Inc.), Goodman Oil Co., 11/20/85; HEF-0076, HEF-0082

Procedures to be used for filing Applications for Refund from the $25,420.99 and $9,566 escrow funds obtained through separate consent orders entered into by the DOE respectively with GGC, Inc. of Hobbs, New Mexico and Goodman Oil Co. of Boise, Idaho, have been issued by OHA. The funds were provided to settle alleged pricing violations in the sales of motor gasoline for the periods of September 1, 1979 through July 31, 1980 for GGC and July 25, 1979 through December 31, 1979 for Goodman.

In order to be eligible for a refund, an applicant will be required to show that it maintained prices at the same level as if the overcharges had not occurred. Generally, applicants will be required to show that market conditions did not permit price increases, and that the applicant maintained banks of unrecovered costs which were not passed through to its customers. Also, applicants who submit claims below the threshold level of $5000 will not be required to submit any additional evidence of injury beyond the purchase volume information. If money remains after all first stage claims have been paid, second stage procedures will be determined by OHA at a later date.

Refund Applications

Boswell Oil Co./Universal Supply et al., 11/20/85; RF179-1 et al.

Applications for Refund were filed by five firms that purchased refined petroleum products from the Boswell Oil Company. The applications were evaluated in accordance with the procedures set forth in *Boswell Oil Co.*, 13 DOE ¶85,088 (1985). The Department of Energy issued a Decision and Order approving the applications and granting refunds totalling $9,954.

Eugene Endicott/Ronald L. Halsey, et al., 11/20/85; RF188-1 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four resellers of motor gasoline or aviation gasoline purchased from Eugene Endicott. Each applicant documented its purchases of Endicott motor gasoline or aviation gasoline during the consent order period and requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Endicott Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on its prorated portion of the alleged overcharges. The total amount of refunds approved in this Decision is $17,766 ($9,810 principal plus $7,956 interest).

F.O. Fletcher, Inc./Forsberg Heating Oils, et al., 11/20/85; RF172-1 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 22 resellers of motor gasoline purchased from F.O. Fletcher, Inc. Each applicant provided evidence that it purchased motor gasoline from Fletcher and requested a refund at or below the $5,000 threshold level. In accordance with the procedures established in the Fletcher Special Refund Proceeding, *see Eugene Endicott*, 13 DOE ¶ 85,086 (1985), the DOE determined that each applicant should receive a refund based on its prorated portion of the alleged overcharges. The total amount of refunds approved in this Decision is $59,925 ($32,103 principal plus $27,822 interest).

Gulf Oil Corp./Allied Oil, 11/18/85; RF40-856

The DOE issued a Decision and Order concerning an Application for Refund filed by

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the Allied Oil Company, a reseller of Gulf covered petroleum products. Allied requested the refund based upon the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, Allied demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. Allied also demonstrated that it had purchased the products directly from Gulf. After examining the evidence and supporting documentation, the DOE concluded that Allied should receive a refund of $27,523, the full volumetric amount.

Gulf Oil Corp./Crawford's Gulf Service, et al., 11/20/85; RF40-1874 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed by resellers and retailers of Gulf refined products, in accordance with the refund procedures established in *Gulf Oil Corp.*, 12 DOE ¶ 85,048. In considering the Applications, the DOE found that each of the applicants had demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totalling $53,546 ($46,334 principal plus $7,212 interest).

Navajo Refining Co./Conoco, Inc., Plateau, Inc/Conoco, Inc., 11/21/85; RF203-0001, RF204-0001

Conoco, Inc. (Conoco) filed Applications for Refund in which the firm sought portions of the funds obtained by the DOE through Consent Orders entered into by the agency and Navajo Refining Company (Navajo) and Plateau, Inc. (Plateau). Since the Applicant's allocable shares of both consent order funds were less than the $5,000 small claims threshold Conoco was presumed to have been injured by Navajo's and Plateau's pricing practices. Accordingly, the firm was awarded refunds equal to its allocable shares of the consent order funds. Conoco received a total of $3,215 principal and $1,550 interest from the Navajo and Plateau funds.

Dismissals

The following submissions were dismissed.

Company Name and Case No.
Saunders Oil Co. RF112-49
Yellow Freight Systems; RF112-20

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 13, 1986

[FR Doc. 86-1552 Filed 1-23-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $27,848.88 obtained as a result of a consent order which the DOE entered into with Pacific Northern Oil Company, a reseller-retailer of petroleum products located in Seattle, Washington. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0144.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $27,848.88 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Pacific Northern Oil Company (Panoco). The funds were provided to the DOE by Panoco to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period November 1, 1973, through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 3 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Panoco or to submit a statement verifying that it purchased motor gasoline from Panoco and is willing to rely on the data in the audit files. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. Unidentified customers who purchased directly from Panoco will only be required to provide schedules of their monthly purchase volumes. However, an indirect purchaser will also be required to provide the name of the firm from which the purchase was made as well as the reason why it believes the product was initially sold by Panoco. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: January 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Pacific Northern Oil Company
Date of Filing: October 13, 1983
Case Number: HEF-0144

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearing and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Pacific Northern Oil Company (Panoco).

I. Background

Panoco is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Seattle, Washington. A DOE audit of Panoco's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Based on the audit, the DOE alleged that between November 1, 1973 and April 30, 1974, Panoco committed certain pricing violations with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Panoco and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Panoco and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Panoco does not admit that it violated the regulations.

Under the terms of the consent order, Panoco agreed to deposit $22,428 plus installment interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Panoco was required to make its payments in 24 equal monthly installments. The consent order fund was paid in full on October 15, 1983. Including installment interest, Panoco's actual deposits total $27,848.88.[1] That sum will be considered to be the principal amount in this proceeding. This decision concerns the distribution of the funds in the Panoco escrow account.[2]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by Panoco's alleged pricing practices between November 1, 1973 and April 30, 1974 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. In this proceeding, we have the benefit of access to material developed by the DOE during its audit of Panoco and we intend to rely in part on that information. This information contained in ERA's audit files may reasonably be used to determine the identities of allegedly overcharged purchasers and the amounts of the overcharges. *See, e.g., Marion Corp*, 12 DOE ¶ 85,014 (1984) (information contained in the audit file utilized to fashion a more accurate refund plan than that devised by using a general volumetric approach). *See also Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983).

The DOE audit identified three of Panoco's reseller purchasers which were alleged to have been overcharged in their purchases of motor gasoline from the firm. The results of this audit also indicated that additional overcharges had occurred in Panoco's sales to end-users (other than Boeing). In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the purchasers identified by the audit, and other as yet unidentified customers that may have been injured by purchases from the consent order firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit and the share of the settlement earmarked for each are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. To aid us in our assessment of a purchaser's injury, we propose the adoption of certain presumptions.

We intend to use both the information in the audit files along with these presumptions to distribute the funds in the escrow account. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we plan to use a volumetric presumption for applicants who were not identified during the audit. As a separate matter, we are making a proposed finding that end-users experienced injury. The volumetric presumption and the end-user finding will be discussed in Section B.

There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Ubon Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury, a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and

[1] The original settlement amount totalled $28,514. Of that sum, $6,086 has previously been refunded to Boeing Company of Seattle, Washington, thus leaving $22,428 to be deposited into escrow. Boeing is precluded, therefore, from applying for a refund in this proceeding.

[2] As of December 31, 1985, the Panoco escrow account contained a total of $35,166.95, representing $27,848.88 in principal (including installment interest) and $7,318.07 in accrued interest.

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the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the consent order period is many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶85,226 (1984) (*Conoco*), and cases cited therein. The record in this proceeding indicates that one of the three identified customers may be eligible for a refund of $5,000 or less.

However, a reseller or retailer which seeks a refund of more than $5,000 will be required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged ovecharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a "bank" of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.[3]

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to the firms listed in the Appendix, provided they can successfully document their injury with regard to their purchases from Panoco. The refund amounts attributable to each firm have been adjusted from those listed in the consent order to reflect the larger principal amount in escrow resulting from Panoco's payments of installment interest.[4] Refunds will be authorized to successful applicants in the amounts indicated, plus accrued interest.

B. Refunds to Unidentified Purchasers

The refunds tentatively allotted to identified purchasers total $19,084.94. As a result, the remaining portion of the Panoco consent order funds may be distributed among first purchasers other than those identified by the ERA audit, specifically but not limited to Panoco's retail customers, and to downsteam customers of Panoco, provided they can make the necessary demonstration of injury.

To assist potential claimants in deciding whether to apply for a refund, we propose using the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of motor gasoline made by Panoco during the consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, the volumetric presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Using a volumetric approach means that a portion of the Panoco consent order amount would be allocated to each gallon of product which a successful claimant purchased from the consent order firm. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.007160 per gallon.[5] Potential applicants that were not identified by the ERA audit of Panoco may use this volumetric figure to estimate the refund to which they may be entitled.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶85,054 at 88,164 (1984), and cases cited therein. Similarly, purchasers identified in the ERA audit may attempt to show that they should receive refunds greater than those indicated in the Appendix. If valid claims exceed the funds available in escrow, all refunds will be reduced proportionately. Actual refunds will be determined only after analyzing all appropriate claims.

As noted above, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry concerning pass-through of injury. *See Office of Enforcement*, 10 DOE ¶85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of motor gasoline sold by Panoco, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, if a reseller or a retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Panoco not receive refunds unless they present evidence which rebuts the spot purhaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from Panoco during the consent order period.

Finally, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Panoco's sales of motor gasoline. *See, e.g., Office of Special Counsel*, 9 DOE ¶82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

III. Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of motor gasoline from Panoco or a statement verifying that it purhased motor gasoline from Panoco and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of motor gasoline from Panoco. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That

The refund amount remitted to the Department of Energy by Pacific Northern Oil Company pursuant to the Consent Order executed on September 1, 1981, will be distributed in accordance with the foregoing Decision.

APPENDIX

Name and address	Share of settlement*
Maxwell Oil Co., 701 S. Plum, Olympia, Washington 98507	$5,709.34
Fletcher Oil Co., 806 Alexander Ave., Tacoma, Washington 98421	12,250.62
Jack Pay-less, Inc., 9243 Empire Way, Seattle, Washington 98122	1,124.98
Total	19,084.94

*This figure does not include accrued interest.

[FR Doc. 86–1549 Filed 1–23–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of $69,216.58 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Wellen Oil, Inc. of Jersey City, New Jersey.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF–0584.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Wellen Oil, Inc. (Wellen) of Jersey City, New Jersey. The Consent Order settles possible pricing violations in Wellen's sales of petroleum products to customers during the period September 1, 1973 through December 31, 1973.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Wellen pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Wellen who establish that they were injured by Wellen's alleged overcharges. Such customers will receive refunds proportionate to the volume of petroleum products they purchased from Wellen. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

January 14, 1986.

Name of Firm: Wellen Oil, Inc.
Date of Filing: May 28, 1985.
Case Number: HEF–0584.

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[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶85,029 at 88,125 (1982) (Ada).

[4] These amounts were recalculated according to the following formula: we divided the $22,428 original principal amount into the new principal amount, $27,848.88 to obtain a factor of 1.241701. We then multiplied this factor by the amounts attributed to each firm to obtain the revised refund amounts.

[5] The volumetric factor has been calculated from information contained in ERA's audit workpapers. According to the audit, Panoco began sales of motor gasoline on February 22, 1974 and concluded these sales on approximately May 31, 1974. The workpapers indicate that Panoco sold a total of 4,037,469 gallons of motor gasoline during the consent order period. Panoco sold 1,223,951 gallons of that total to its retail end-users. The per gallon factor is computed by dividing the $8,763.94 available for distribution to those customers not identified in the ERA audit (including downstream customers), by Panoco's total retail sales (1,223,951 gallons), to obtain a volumetric factor of $.007160 per gallon.

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Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on May 28, 1985 requesting that the OHA implement a proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Wellen Oil, Inc. (Wellen) of Jersey City, New Jersey.

I. Background

Wellen is a "reseller-retailer" of petroleum products, as this term was defined in 10 CFF. 212.31. In a Proposed Remedial Order (PRO) issued to Wellen on July 31, 1979, the ERA alleged that Wellen had overcharged members of its barge class of purchaser by $849,713 in sales of No. 2 heating oil during the period September 1, 1973 through December 31, 1973 (the audit period). In order to settle all claims and disputes between Wellen and the DOE regarding Wellen's compliance with the Federal Petroleum Price and Allocation Regulations during the audit period (hereinafter referred to as the consent order period), the firm entered into a Consent Order with the DOE on June 25, 1984. Under the terms of the Consent Order, the firm agreed to deposit $69,216.58 in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA's allegations of overcharges, but notes that no formal findings of violations were made. Additionally, the Consent Order states that Wellen does not admit it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Wellen consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

A. Eligible Claimants

We propose to establish a claims procedure whereby claimants who can demonstrate that they were injured as a result of Wellen's pricing practices during the consent order period will be eligible to receive a refund. Although the PRO lists specific alleged overcharges for customers in the barge class of purchaser who bought No. 2 heating oil from Wellen during the consent order period, the terms of the Consent Order are global in scope and cover all claims and disputes regarding Wellen's compliance with the DOE regulations during the consent order period, "whether or not those claims and disputes have been previously raised." *See* Consent Order ¶ 101. Accordingly, we propose to allow any customer who purchased petroleum products from Wellen during the consent order period to apply for a refund in this proceeding.[1]

B. Showing of Injury

We propose that claimants who resold petroleum products purchased from Wellen be required to demonstrate that they did not pass on to their customers the price increases implemented by Wellen. Accordingly, in order to qualify for a refund, a reseller claimant (including retailers) must show that it would have maintained its prices for the product purchased from Wellen at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased petroleum products from Wellen, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller will be required to show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its prices. The maintenance of banks will not, however, automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

C. Applicants Claiming a Refund of $5,000 or Less

In the present case, we propose to adopt a presumption of injury which has been used in many previous special refund cases. We will presume that reseller applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of product from Wellen. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs or to show that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost of the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We propose to adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[2]

D. Sport Purchosers

We further propose that resellers who make spot purchases from Wellen be ineligible to receive a refund, even a refund at or below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser tends to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of the consent order firm's product at increased prices unless it was able to pass through the full amount of the alleged overcharges to its own customers. *See Vickers*, 8 DOE at

[1] The Consent Order required Wellen to pay the State of Virginia $180,783.42, representing the State's prorated share of the No. 2 heating oil overcharges alleged in the PRO. Accordingly, the State of Virginia will not be eligible to apply for a refund based on its purchases of No. 2 heating oil from Wellen. In addition, JOC Oil, Inc., an entity related to Wellen, has waived its right to apply for a refund in this proceeding. *See* Consent Order ¶ 502.

[2] As in prior refund cases, resellers whose calculated refund exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

85,396–97. Accordingly, in order to overcome the rebuttable presumption that it was not injured, a spot purchaser must submit evidence to establish that it was unable to recover the prices it paid for Wellen product and did not have discretion as to where and when to make the purchase(s) upon which its refund claim is based.

E. End-Users

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to make a detailed showing of injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Id.* We have therefore concluded that end-users of Wellen petroleum products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Wellen petroleum products for consumption as fuel or raw materials will not be considered end-users for the purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

F. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of the consent order product(s) sold by a consent order firm. *See, e.g., Vickers.* In the present case, we have calculated the volumetric refund amount by dividing the consent order fund ($69,216.58) by the estimated total volumes of petroleum products sold by Wellen during the consent order period and covered by the present proceeding (14,891,239 gallons), resulting in a per gallon refund amount of $0.004648.[3] The interest that has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

Refund applications in the Wellen proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Consent Order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the event that money remains after all first stage claims have been processed, undistributed funds could be disbursed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That the refund amount remitted to the Department of Energy by Wellen Oil, Inc. pursuant to the Consent Order executed on June 25, 1984 will be distributed in accordance with the foregoing Decision.

[FR Doc. 86–1550 Filed 1–23–86; 8:45 am]

BILLING CODE 6450–01–M

[3] Because the available ERA audit files do not list the volumes of petroleum products sold by Wellen during the entire consent order period, we have extrapolated sales figures from the available audit data. In addition, we have omitted the volumes of petroleum products sold to JOC and the volumes of No. 2 heating oil sold to the State of Virginia. Any alleged overcharges on these volumes are not covered by this special refund proceeding. *See* n.1, *supra*.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $61,000 obtained as a result of a consent order which the DOE entered into with McCleary Oil Company, Inc., a reseller-retailer of refined petroleum products located in Chambersburg, Pennsylvania. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0127.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $61,000 plus accrued interest obtained by the DOE under the terms of a consent order entered into with McCleary Oil Company. The funds were provided to the DOE by McCleary to settle all claims and disputes between the firm and the DOE rearding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period November 1, 1973 through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased Nos. 2, 4 and 5 heating oil, gasoline, kerosene and/or diesel fuel from McCleary. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from McCleary and to demonstrate that it was injured by McCleary's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public

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notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorius first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 15, 1986.

George R. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: McCleary Oil Co., Inc.
Date of Filing: October 13, 1983
Case Number: HEF–0127

Under the procedural regulations of Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Supart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with McCleary Oil Co., Inc. (McCleary).

I. Background

McCleary is a "reseller-retailer" of Nos. 2, 4 and 5 heating oil, gasoline, kerosene, and diesel fuel as those terms were defined in 10 CFR 212.31, and is located in Chambersburg, Pennsylvania. Based on an audit of McCleary's records, ERA issued a Notice of Probable Violation (NOPV) in which it alleged that McCleary had committed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The NOPV stated that between November 1, 1973 and April 30, 1974, McCleary committed certain pricing violations with respect to its sales of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and diesel fuel.

In order to settle all claims and disputes between McCleary and the DOE regarding the firm's sales of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and diesel fuel during the period covered by the audit, McCleary and the DOE entered into a consent order on August 15, 1979. The consent order fund represents 49.20 percent of the amount of the overcharge originally alleged in the NOPV. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that McCleary does not admit that it violated the regulations.

Under the terms of the consent order, McCleary agreed to deposit $61,000 into an interest-bearing escrow account for ultimate distribution by the DOE. The consent order was paid in full on August 7, 1981. This decision concerns the distribution of the funds in the McCleary escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process is used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or readily ascertain the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶82,508 (1981), and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by McCleary's alleged pricing practices between November 1, 1973 and April 30, 1974 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶85,048 (1982) (*Amoco*).

[1] As of December 31, 1985, the McCleary escrow account contained a total of $106,012.38 representing $61,000 in principal and $45,012.38 in accrued interest.

A. Refunds to Identified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. In this proceeding, we have the benefit of access to material developed by the DOE during its audit of McCleary and we intend to rely in part on that information. In other Subpart V cases where audit material was available to identify purchasers, for example, the refund process has been facilitated by the use of that material. At the same time, these audit files do not necessarily provide a full and conclusive basis for the distribution of refunds. However, the audit material may reasonably be used to determine the identities of at least some of the purchasers allegedly overcharged and the amounts of the overcharges. *See, e.g., Marion Corp.* 12 DOE ¶ 85, 014 (1984) (the information contained in the audit file may be used to fashion a more accurate refund plan than that devised by using a general volumetric approach). *See also Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983).

On the basis of its audit, the ERA identified six first purchasers of Nos. 4 and 5 heating oil which it alleged had been overcharged by McCleary. In previous similar cases, we have proposed that the funds in the escrow account be apportioned among the purchasers identified by the audit, as well as other purchasers that may have been injured, including other as yet unidentified first purchasers and downstream customers. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The identified first purchasers and the share of the settlement earmarked for each are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution process. It is also necessary to determine whether these purchasers were injured or were able to pass through the effects of the alleged overcharges. To aid us in our assessment of a purchaser's injury, we are proposing certain presumptions which, together with the information in the audit files, will be used to distribute the consent order funds. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing

the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case will permit claimants to participate in the refund process without incurring inordinate expenses and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we plan to use a volumetric presumption for applicants who were not identified during the audit. As a separate matter, we are making a proposed finding that end users experienced injury. The volumetric presumption and the end user finding will be discussed in Section B.

There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. Such a demonstration, if even possible, would generally be very time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the value of any expected refund as well as any analytic benefits to be derived. Consequently, without simplified procedures, some potential claimants could be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant that is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Principal among the factors which determine the value of this threshold is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order period is many years past, $5,000 is a reasonable value for the small-claim threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,228 (1984) (*Conoco*), and cases cited therein. The record in this proceeding indicates that the purchases of all six of the customers identified by the ERA audit fell below this threshold.

Any reseller or retailer which seeks a refund of more than $5,000 will be required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a "bank" of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.[2]

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to the firms listed in the Appendix, provided they can successfully document their injury with regard to their purchases from McCleary. Refunds will be authorized to successful applicants in the amounts indicated, plus accrued interest.

B. Refunds to Unidentified Purchasers

The refunds tentatively allotted to identified purchasers total $1,220.00. As a result, the remaining portion of the McCleary consent order funds may be distributed among first purchasers other than those identified by the ERA audit, and to downstream customers of McCleary, provided they can make the necessary demonstration of injury.

To assist potential claimants in deciding whether to apply for a refund, we propose using the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and diesel fuel made by McCleary during the consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, the volumetric presumption is sound because the DOE price regulations generally required a regulated firm to account

Using a volumetric approach means that a portion of the McCleary consent order amount would be allocated to each gallon of product sold by the consent order firm. The average per gallon refund, or volumetric refund amount, in this proceeding is $.0178 per gallon.[3] Potential applicants that were not identified by the ERA audit of McCleary may use this volumetric figure to estimate the refund to which they may be entitled.[4]

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co., and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein. Similarly, purchasers identified in the ERA audit may attempt to show that they should receive refunds greater than those indicated in the Appendix. If valid claims exceed the funds available in escrow, all refunds will be reduced proportionately. Actual refunds will be determined only after analyzing all appropriate claims.

As noted above, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[3] This per gallon factor is computed by dividing the remaining $59,780 available for distribution to unidentified customers of McCleary by 3,351,942 gallons, which represents an estimate of the total sales volumes to those unidentified firms during the consent order period. Included in this volumetric computation were the No. 2 fuel oil gallons sold to the American Can Company.

[4] This volumetric figure is based upon an estimate of the number of gallons sold by McCleary. Specific volume information has been requested from McCleary, and thus this figure is subject to change.

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not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of injury. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of Nos. 2, 4 and 5 heating oil, gasoline, kerosene, and diesel fuel sold by McCleary, for increased costs on a firm-wide basis in determining its prices, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with McCleary's sales of Nos. 2, 4 and 5 heating oil gasoline, kerosene and diesel fuel. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*) and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

III. Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and/or diesel oil from McCleary or a statement verifying that it purchased Nos. 2, 4 and 5 heating oil, gasoline, kerosene and/or diesel oil from McCkeary and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and diesel oil from McCleary. If they claim injury at a level greater than the volumetric level, they must document this injury in accordance with the procedures described above. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 201 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. In this special refund proceeding, however, the State of Pennsylvania is a general claimant. Based on the fact that many McCleary sales were made in Pennsylvania and all of the identified firms were located in Pennsylvania, we propose to distribute at least 50 percent of the remainder of the funds to the State of Pennsylvania in a second-stage refund proceeding. To the extent that unidentified purchasers may change this configuration, this proposal will be subject to modification.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by McCleary Oil Co., Inc. pursuant to the Consent Order executed on November 3, 1980, will be distributed in accordance with the foregoing Decision.

APPENDIX

McCLEARY OIL CO., INC.

First purchaser	*Share of settlement
Tuscarora School District, P.O. Box 149, Mercersburg, PA 17236	$158.60
Green Castle Antrim School District, 370 South Ridge Ave., Green Castle, PA 17226	73.20
Chambersburg School District, 511 South 6th St., Chambersburg, PA 17201	274.50
Fannet Metal School District, Willow Hill, PA 17271	140.30
Shippensburg School District, North Morris St., Shippensburg, PA 17257	500.20
Phoenix Clothing (Jordan Clothing), North Lurgan Ave., Shippensburg, PA 17257	73.20
Total escrow to identifiable first purchasers	1,220.00
Total escrow to unidentifiable first purchasers	59,780.00
Total escrow amount	61,000.00

*This figure includes the share of installment interest. It does not include accrued interest. *See* n.1, p.2.

[FR Doc. 86–1548 Filed 1–23–86; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–2958–2]

Intent To List 1,3-Butadiene as a Hazardous Air Pollutant; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of the Public Comment Period.

SUMMARY: This notice extends the public comment period provided in EPA's Notice of Intent to List 1,3-butadiene under section 112 of the Clean Air Act published on October 10, 1985 (50 FR 41466). That notice described the results of EPA's preliminary assessment of 1,3-butadiene as a potentially toxic air pollutant and announced EPA's intent to add 1,3-butadiene to the section 112(b)(1)(A) listed based on the health and risk assessment. In response to the 60-day public comment period provided in the notice, a request was submitted for an extension of the public comment period. For this reason the public comment period has been extended for an additional 60 days and will now close on February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Ila Cote at (919) 541–5645.

Dated: January 14, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86–1215 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2959–6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed January 13, 1986 Through January 17, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860013, Draft, AFS, NM, Santa Fe National Forest, Land and Resource Management Plan, Due: April 30, 1986, Contact: Maynard Rost (505) 988–6945.

EIS No. 860014, Draft, COE, TT, Kwajalein Atoll Causeway, Dredged and Fill Material Discharge Project, Permit, Republic of the Marshall Island, Due: March 10, 1986, Contact: Michael Lee (808) 438–9258.

EIS No. 860015, Final, EPA, REG, Basic Oxygen Process Furnaces, Secondary Emissions, Revised Performances Standards, Due: February 24, 1986, Contact: Doug Bell (919) 541–5578.

EIS No. 860016, Draft, AFS, OR, Deschutes National Forest, Land and Resource Management Plan, Due: May 9, 1986, Contact: Lee Coonce (503) 388–2715.

EIS No. 860017, Draft, HUD, MN, Duluth Paper Mill Project, Construction and Operation, CDBG, Due: March 10, 1986, Contact: David Sebok (218) 723–3556.

EIS No. 860018, FSuppl, EPA, SC, Georgetown Harbor Area, Ocean Dredged Material Disposal Site, Designation, Due: February 24, 1986, Contact: Theodore Bisterfeld (404) 881–3776.

Dated: January 21, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86–1592 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2959–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 6, 1986 through January 10, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–FHW–E40669–TN, Rating EC2; TN Connector Route Construction, TN–6/US 31 to I–65, Right-of-Way Acquisition, (Possible 404 Permit), TN. Summary: EPA is concerned about the potential secondary impacts of the proposed connector on new alignment and the Federal Highway Administration's consideration of one or more additional feasible build alternatives. Discussion in these areas, additional no-build noise and air quality analyses, and potential karst geology impact information are requested.

Final EISs

ERP No. F–AFS–J55134–WY, Medicine Bow Nat'l Forest and Thunder Basin Nat'l Grassland, Land and Resource Mgmt. Plan, WY. Summary: EPA identified several unresolved concerns regarding: protection of water quality standards and ground water; watershed planning; cumulative impacts assessment and tracking; management of riparian areas and wetlands, mineral development, and vegetation; pesticide applications; and monitoring. Additionally, EPA has recommended inter-agency consultation with EPA to resolve the concerns.

ERP No. F–COE–C36055–PR, Rio Puerto Nuevo Basin Flood Control Plan, PR. Summary: Based on the review of the Final EIS, EPA still has concerns about the loss of mangrove and mudflat areas without adequate compensation, and potential ground-water contamination from the upland disposal sites. EPA indicated that the bioassay data should be updated, if required. EPA requested that its concerns be addressed during the design phase, and that EPA be provided the opportunity for further review.

ERP No. F–COE–D36095–WV, Island Creek Basin Flood Control Plan, Guyandotte R., WV. Summary: EPA concurred with the final EIS and has no objection to the proposed alternative.

ERP No. F–COE–G36129–AR, L'Anguille River and Tributaries Flood Control Plan, AR. Summary: EPA has environmental concerns about the potential loss of forested bottomland hardwoods and questions regarding the reduction of adverse impacts that will depend on actions by individuals rather than the Corps of Engineers (COE). Mitigation by purchasing upland habitat is not considered sufficient. Specific permit conditions and COE surveillance are necessary for an acceptable project.

ERP No. F–FHW–G40038–TX, Beltway 8 Construction, US 59 N. to I–10 East, Right-of-Way Acquisition, TX. Summary: EPA expressed no objections to the proposed action as described.

Amended Notices

The following reviews were completed during this week of December 30, 1985 through January 3, 1986 and should have appeared in the FR Notice published on January 17, 1986.

ERP No. D–FHW–D40211–MD, Rating EC2, Calvert Road Closure, US–1 to MD–201, Construction of Metro Line, Right-of-Way Acquisition, MD. Summary: EPA expressed concern about the impacts and mitigation with regard to drainage design, floodplains, sediment control, and wetlands. It was recommended that the final EIS include an analysis of these issues in greater depth.

ERP No. D–FHW–D40213–DE, Rating EC2, US 13 Relief Rt. Construction, DE–7 to US 113/US 13, 404 Permit, DE. Summary: EPA identified a number of deficiencies in the document, including the adequacy of the mitigation proposals, and the need for further detailed documentation of impacts.

Dated: January 21, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86–1591 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–62024; FRL–2959–2]

Comprehensive Assessment Information Rule; Notice of CAIR Form Pretest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of CAIR form pretest.

SUMMARY: EPA is developing a model rule under section 8(a) of the Toxic Substances Control Act (TSCA) called the Comprehensive Assessment Information Rule (CAIR). The rule will establish uniform reporting and recordkeeping requirements, including a reporting form containing a list of questions from which specific information requests would be assembled on a chemical-by-chemical basis. EPA will be conducting a pretest of the form during the comment period for the proposed rule (Spring 1986). Persons wishing to participate in this pretest should notify EPA's contractor no later than February 24, 1986.

DATE: Persons requesting additional information should contact the EPA TSCA Assistance Office on or before February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Toll free: (800–424–9065), In Washington, DC: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is conducting this pretest to determine potential problems with the form and provide EPA with an opportunity to improve the form before the rule is promulgated. In order to develop a pretest which will be representative of the industry as a whole, EPA is interested in having the widest variety of companies participate. EPA's contractor, Science Applications International Corporation (SAIC) will be conducting the pretest and any data received during the pretest will not be revealed to EPA or the public. EPA encourages all companies interested in participating to contact SAIC. However, the selection of companies will be made

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at random by SAIC, so EPA cannot guarantee that all volunteers will be able to participate in the pretest due to limitations on the number of total participants. Send requests in writing or call SAIC at the following location: Ms. Carolyn Bosserman, Science Applications International Corporation, 8400 Westpark Drive, McLean, VA 22102, (703–821–4812).

Those persons interested in participating in this pretest should send the following information with their request:

1. Company name and mailing address.
2. Contact person and telephone number.
3. Whether the company manufactures, processes or imports chemicals.
4. Relative size of company (e.g., Is it a small, medium or large business?).
5. Level of automation of files (e.g., How long have records been computerized?).

SAIC will be accepting responses to this notice until February 24, 1986.

Dated: January 14, 1986.

Don R. Clay,

Director, Office of Toxic Substonces.

[FR Doc. 86–1557 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

[OW–5–FRL 2959–1]

Region V; Proposed Revocation of Certain Safe Drinking Water Act Variances Issued by the Illinois Pollution Control Board; Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Hearing and Proposed Revocation of Certain Safe Drinking Water Act Variances.

SUMMARY: U.S. EPA is proposing to revoke several variances to the National Interim Primary Drinking Water Regulations issued by the Illinois Pollution Control Board. The Illinois Pollution Control Board issued several variances which do not meet Federal requirements, and U.S. EPA has, therefore, proposed revocation of these variances. This notice establishes a public hearing at which U.S. EPA will take comments on the proposed revocations.

DATES: April 1, 1986, and April 2, 1986 from 10:00 a.m. to 4:30 p.m. both days.

ADDRESS: The Executive House of the Ramada Hotel, The Illinois Room, 71 East Wacker Drive, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Write to Branch Chief, Safe Drinking Water Branch, United States Environmental Protection Agency, Mail Code 5WD, 230 South Dearborn Street, Chicago, Illinois 60604, or call Joseph F. Harrison or Steven J. Lemon, at (312) 353–2151.

SUPPLEMENTARY INFORMATION:

I. Background

In order to protect the public from health hazards associated with contaminated drinking water, Congress passed the Safe Drinking Water Act of 1974 ("the Act"). The goal of the Act is to assure that drinking water meets certain water quality standards, and that it is tested regularly for the various types of contaminants.

As required by the legislation, U.S. EPA established National Interim Primary Drinking Water Regulations in 1975. The regulations set limits on concentrations of bacteriological, chemical, and physical contaminants known to be dangerous to public health. These concentration limits are known as maximum contaminant levels ("MCLs"). U.S. EPA has also identified treatment technology designed to achieve these MCLs.

The goal of the Act if to assure the provision of safe drinking water by combining the efforts of Federal and State authorities. Under the Act, U.S. EPA has the responsibility of establishing regulations defining safe drinking water quality for public water systems, and of assuring that all public water systems provide water meeting this definition. States which adopt regulations at least as stringent as those established by U.S. EPA, and adopt appropriate administrative and enforcement procedures, are delegated primary enforcement responsibility, or "primacy" for administration of the program.

U.S. EPA supports the efforts of primacy States with technical assistance, with financial assistance in the form of program grants, and by review of various actions taken by the States. Where States do not assume primacy, U.S. EPA must administer the regulations directly.

In August of 1979, the Illinois Environmental Protection Agency ("IEPA") was granted primary enforcement responsibility for public water systems in the Act. 44 FR 50649 (August 29, 1979). This determination was, in part, based upon an understanding that the Illinois Pollution Control Board ("the Board") will follow the Federal variance and exemption regulations set forth at 40 CFR Part 142, Subparts E and F. *Id.* at 50649.

Under 40 CFR Part 142.22, the Regional Administrator, as delegated by the Administrator, has the authority to review the variances granted by the States with primary enforcement responsibility. Upon review of the variances granted by the Board, the Regional Administrator found that the State of Illinois has, in a substantial number of instances, abused its discretion in granting variances from the National Primary Drinking Water Regulations under section 1415(a) of the Act, 42 U.S.C. 300g–4.

U.S. EPA is proposing revocation of the variances listed in Section III of this notice. A letter setting forth the notice and findings by the Regional Administrator and the proposed revocation of the variances was sent to IEPA on December 27, 1985. A copy of this letter is available by writing to the Branch Chief of the Safe Drinking Water Branch at the adddress listed above.

II. Public Hearings

The public hearing will be conductd before a public hearing officer designated by the Regional Administrator. The hearing officer shall have the authority to call witnesses, receive oral and written testimony, and take any other action to ensure a fair and efficient hearing. A court reporter will record all statements and comments given during the 2 day hearing.

The hearing officer will take public comments on those variances numbered 1 through 13 on April 1, 1986, and public comments will be taken on those variances numbered 14 through 21 on April 2, 1986.

Any member of the public may file a written statement with the hearing officer before, during, or within 30 days after the hearing. These written statements may be sent to the Branch Chief at the address listed above. To ensure a fair and efficient hearing, the hearing officer may limit the duration of public comments.

Public attendance, depending upon available space, may be limited to those persons who have notified the Branch Chief of the Safe Drinking Water Branch, in writing, by March 18, 1986. Persons may notify the Branch Chief of their attendance by writing to the address listed above.

Following the conclusion of the 2 day public hearing, the hearing officer shall forward the record of the hearing to the Regional Administrator. Within 180 days after IEPA is notified of the proposed revocation and of the public hearing, the Regional Administrator shall either (1) rescind the finding for which the notice was given and promptly notify IEPA, or (2) promulgate with any modifications, as appropriate, the revocations proposed in the notice and promptly notify IEPA of such action.

III. Findings

On May 3, 1985, U.S. EPA informed IEPA that certain variances granted by the Board are inconsistent with Federal regulations as outlined in section 1415 of the Safe Drinking Water Act, 42 U.S.C. 300g–4 and 40 CFR Part 142, Subpart E. Neither IEPA nor the Board has taken any corrective action, however, and the Board continues to issue variances using requirements which are less stringent than those required by Federal law.

Pursuant to 40 CFR Part 142.23, U.S. EPA notified IEPA in the letter of December 27, 1985, of (1) each public water system in Illinois with an improperly issued variance; (2) the reasons each variance is improper; and (3) U.S. EPA's proposed revocation of each improper variance.

The Regional Administrator has determined that the following public water supply variances issued by the Board do not meet Federal requirements, and therefore, has proposed that they be revoked:

1. Abingdon (PCB 84–184)
2. Blake (PCB 81–137)
3. Central Illinois Utility (PCB 80–234)
4. Hanna City (PCB 80–206)
5. Hanna City (PCB 80–206, 3/5/81)
6. Henderson (PCB 81–84)
7. Kirkwood (PCB 81–111)
8. Little Swan Lake (PCB 83–74)
9. Oneida (PCB 81–154)
10. Parkersburg (PCB 81–195)
11. Rio (PCB 81–146)
12. Trivoli (PCB 80–208)
13. Watage (PCB 85–20)
14. Aurora (PCB 85–51)
15. Batavia (PCB 85–11)
16. Burlington (PCB 80–203)
17. Crystal Lake (PCB 84–2)
18. Hampshire (PCB 80–165)
19. Hampshire (PCB 85–114)
20. Hanover Park (PCB 85–22)
21. Knoxville (PCB 84–70)

The above variances failed to meet the initial requirement for the issuance of a variance as detailed in section 1415(a)(1)(A) of the Safe Drinking Water Act, which requires that a State with primary enforcement responsibility may grant one or more variances to a public water system if the system:

> . . . because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulations despite the application of the best technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration).

There variance recipients have neither installed nor agreed to install by a time certain, the treatment technology to remove the contaminants for which the variances were granted.

These variances also failed to meet the following requirements of a variance, as outlined in 40 CFR Part 142, Subpart E:

(1) The variances did not contain expeditious compliance schedules prescribed by the State within 1 year of the date of the variance. These compliance schedules must include implementation of interim control measures and must specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting interim control measures are to be met;[1]

(2) The variances did not include dates for increments of progress, implementation of control measures and final compliance;

(3) The variances did not include the date by which arrangements will be made for a new water source, or improvements in the existing source.

(4) The variances did not include the date of initiation of the alternative water source, or improvements in the existing source.

(5) The State failed to document that the granting of a variance would not result in an unreasonable risk to health.

(6) U.S. EPA has received no evidence from IEPA that the variance request included the following requirements: relevant analytical results, a proposed expeditious compliance schedule; a discussion of best available technology; economic and legal factors; a plan for emergency provision of safe water; a plan for interim control measures; and a statement that the system will perform monitoring requirements.

All of the above-mentioned variances must be revoked or voided by the State of Illinois. The variances must be replaced with enforceable compliance schedules embodied in a State judicial or administrative order, as appropriate to the violaton. Each order must require the following: (1) An expeditious and enforceable schedule for implementation of control measures that will result in final compliance with the National Interim Primary Drinking Water Regulations under the Safe Drinking Water Act; (2) Enforceable implementation milestones sufficient in number to guarantee expeditious final compliance; and (3) The implementation of specific interim control measures to reduce contaminants to the greatest extent possible pending final compliance. Minimum increments of progress are: the submittal of plans to IEPA; the beginning of constructon; the expeditious completion of construction; and the achievement and demonstration of final compliance with the MCL and specified reporting and monitoring requirements.

Each schedule, as well as the increments of progress and interim contaminant reduction measures, must be approved by U.S. EPA. The State must, in each enforcement action, consider seeking other appropriate legal remedies.

U.S. EPA will consider the withdrawal of this action only if IEPA takes corrective action in accordance with Federal guidance and regulations, and with State enforcement procedures [2] prior to the public hearing.

Dated: January 6, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–1439 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–62–M

[1] The Aurora and Watage variances contain conditions that could be interpreted as requiring compliance by a date certain. The schedules, however, are inadequate because of too few increments of progress and vaguely worded directives for final compliance.

[2] Thirteen of the above-mentioned improper variances were granted to public water systems which are in violation of the maximum contaminant level for flouride. U.S. EPA recognizes the ambiguity surrounding the fluoride standard at this time. A November 14, 1985 Federal Register notice proposed a revised maximum contaminant level of 4 milligrams/liter (mg/1). The present flouride level is 1.5 through 2.4 mg/1. (This range is based upon average maximum daily temperature.) Assuming that the proposed level will be promulgated as a final rule at 4 mg/1, only the Parkersburg public water system will be in violation of the fluoride level. This fact will be considered, along with other evidence, at the public hearing.

[OW-TO-FRL 2958-9]

State of Oregon Drinking Water Program; Determination of Primary Enforcement Responsibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: The State of Oregon has submitted an application for primary enforcement authority over public water systems in the State to implement the Safe Drinking Water Act (SDWA). EPA has determined that the State meets the requirements for primary enforcement responsibility. This determination becomes effective February 24, 1986, unless a hearing is requested and held.

DATES: Requests for a hearing must be received by February 17, 1986. EPA will determine by February 19, 1986 whether to hold a hearing. If a hearing is held it will be held at 7:00 p.m. at the address

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listed below on February 24, 1986. Written comments must be received by EPA by the close of business on February 24, 1986.

ADDRESSES:

If a hearing is held it will be held at: 7:00 p.m.—EPA Conference Room, 2nd Floor Yeon Building, 522 Southwest Fifth Avenue, Portland, OR 97204

Written comments must be submitted to: Mr. Richard R. Thiel, Chief, Drinking Water Programs Branch, Mail Stop 409, U.S. EPA—Region 10, 1200 Sixth Avenue, Seattle, WA 98101 (206) 442–4092

FOR FURTHER INFORMATION CONTACT:

Mr. Richard R. Thiel, Chief, Drinking Water Programs Branch, Mail Stop 409, U.S. EPA—Region 10, 1200 Sixth Avenue, Seattle, WA 98101 (206) 442–4092

SUPPLEMENTARY INFORMATION: Public notice is hereby given, in accordance with the provisions of section 1413 of the SDWA (Pub. L. 93–523, December 16, 1974, 88 Stat. 1661; 42 U.S.C. 300f et seq., as amended) and 40 CFR 142.10, the National Interim Primary Drinking Water Regulations, that the Health Division of the Oregon Department of Human Resources has submitted an application requesting primary enforcement responsibility for public drinking water systems under the Safe Drinking Water Act (SDWA) to the U.S. Environmental Protection Agency (EPA) Region 10 office for concurrence and approval.

Ernesta B. Barnes, Regional Administrator for EPA Region 10, has approved this application from the State of Oregon for primary enforcement responsibility. This determination is based upon a thorough evaluation of Oregon's public water system supervision program, which meets the requirements stated in 40 CFR 142.10, and shall become effective on February 24, 1986, unless a hearing is requested and held. The State has adopted and implemented:

—Primary drinking water regulations no less stringent than the national interim primary drinking water regulations;
—Procedures to maintain an inventory of public water system facilities;
—A systematic program for conducting sanitary surveys of public water systems;
—A program for certifying laboratories which conduct analytical measurements of drinking water contaminants;
—Laboratory facilities certified by EPA for conducting all required analytical measurements;
—A program capability to assure proper design and construction of new or substantially modified public water system facilities;
—Authority to compel compliance with the State's drinking water standards;
—Authority to sue in courts to enjoin continuing violations;
—Authority for right of entry and inspection of public water systems;
—Authority to require public water systems to keep appropriate records and make appropriate reports to the State;
—Authority to require notification of the public regarding regulatory violations; or, when circumstances make a more immediate notice appropriate, to directly provide notice as needed to protect public health;
—Authority to assess civil or criminal penalties for violation of the State's drinking water regulations or public notification requirements, including multiple penalties for continuing violations;
—Recordkeeping and reporting of its activities pursuant to 40 CFR 142.14 and 142.15 of the Federal regulations;
—A system for issuing variances, and
—A plan for the provision of safe drinking water under emergency circumstances.

Oregon's drinking water program, as presented and evaluated against these criteria, is fully capable of conducting all activities required to implement primary enforcement responsibility. During the final review of Oregon's application, three issues were identified that required resolution before deciding that Oregon's regulations are at least as stringent as the National Interim Primary Drinking Water Regulations. These issues are as follows:

1. The Oregon Drinking Water Quality Act (ODWQA) appears to provide that a permit (which is analogous to an exemption under SDWA section 1416) is to be issued when certain criteria are met. (ORS section 448–145). Under the SDWA, exemptions were available to excuse non-compliance with primary drinking water regulations but were to require compliance by January 1, 1984. Therefore, exemptions may not now be issued under the Safe Drinking Water Act. Oregon's permits, if issued, would excuse non-compliance inconsistent with the Safe Drinking Water Act.

Oregon regulations were recently amended to authorize the issuance of permits, if consistent with the Safe Drinking Water Act. (*See* new OAR section 333–61–045(5).) EPA believes that this regulation and the underlying State statutes and accompanying legislative history provide the State with some discretion not to issue permits, particularly where the permits would allow non-compliance beyond the limits authorized by the SDWA. The Administrator of the Health Division has stated that the Division will not issue permits until authorized by the SDWA. Therefore, State law is not less stringent.

2. It appeared that Oregon regulations are less stringent than EPA regulations by excluding from coverage those water systems that provide treatment not designed to comply with maximum contaminant levels (MCLs). However, the Administrator of the Health Division has stated that there are no systems in Oregon which fall under the coverage of the SDWA but would be excluded by this provision of Oregon's regulations. Therefore, the State program is not less stringent than EPA's program.

3. Another concern related to requirements in the Oregon rules for total trihalomethane (TTHM) sampling. Oregon regulations calculate compliance for TTHM by the number of samples per water source. EPA regulations calculate compliance by the number of samples per treatment plant. If a system had more water sources than treatment plants, Oregon regulations would show a system in compliance when it might be out of compliance under EPA regulations. However, the State has informed EPA that no systems have more water sources than treatment plants. Therefore, the State program is not less stringent than EPA's regulations.

If the status quo changes in Oregon and systems are excluded or if compliance is calculated in a less stringent manner, the State program will have to be revised to remain equivalent.

If significant public interest is expressed, a public hearing will be held to receive comments on the application. If the level of interest is judge to be sufficient, a public hearing will be held on February 24, 1986, at 7 p.m. at the EPA Conference Room, 2nd Floor, Yeon Building, 522 Southwest Fifth Avenue, Portland, OR 97204. The Oregon State Health Division will be represented at the hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA, in writing, by February 17, 1986. EPA will determine by February 19, 1986 whether a public hearing will be held. If EPA decides not to hold a hearing, parties who had contacted EPA will be notified. All written comments on Oregon's final application for primary enforcement responsibility under the SDWA must be received by EPA by the close of business on February 24, 1986.

Written comments on this determination and the application, and written communication expressing interest in holding a public hearing on the Oregon application, must be sent to Mr. Richard R. Thiel at the address listed at the front of this notice.

A request for a public hearing shall include the following information:

1. The name, address, and telephone number of the individual(s), organizations(s), or other entity requesting a hearing.

2. A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief description of information that the requesting person intends to submit at such a hearing.

3. The signature of the individual(s) making the request; or, if the request is made on behalf of an organization(s) or other entity, the signature(s) of a responsible official(s) of the organization(s) or other entity.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator; however, if a substantial request for a public hearing is made by February 17, 1986, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on here own motion, a hearing will not be held and parties who had contacted EPA will be notified.

If a hearing is held, the Regional Administrator will review the hearing record and will issue an order affirming or rescinding her original determination. If such an order affirms the determination, primary enforcement responsibility will become effective as of the date of the order. If a hearing is not held, the determination will become effective 30 days from the date of this notice.

A complete copy of Oregon's application for primary enforcement responsibility is available for public inspection during normal business hours at the office of the Regional Administrator and at the Oregon State Health Division, Drinking Water Section, Sixth Floor, 1400 Southwest Fifth Avenue, Portland, Oregon 97201.

Dated: January 10, 1986.

Ernesta B. Barnes,

Regional Administrator, Region 10.

[FR Doc. 86–1438 Filed 1–23–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 17, 1986.

Office of the Secretary

Subject: 45 CFR 95.624 State Requests for HHS Approval of Federal Financial Participation in the Cost of ADP Systems, Equipment and Services—Emergency Situations—NEW

Respondents: States and Local Governments

OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

Subject: Program Performance Standards Information Collection—Centers for Runaway and Homeless Youth—Existing Collection

Respondents: Non-profit Institutions

Subject: Program Performance Standards—Runaway and Homeless Youth Centers Self-Assessment Instrument—Reinstatement—(0980–0037)

Respodnents: State or Local Governments

Subject: Individualized Habilitation Plan—Reinstatement—(0980–0139)

Respondents: State or Local Governments

OMB Desk Officer: Fay S. Iudicello

Public Health Service

National Institutes of Health

Subject: Clinical, Laboratory and Epidemiologic Characterization of Individuals at High Risk of Cancer—Extension (0925–0194)

Respondents: Individuals or Households

Food and Drug Administration

Subject: Registration of Cosmetic Product Establishment Extension—(0910–0027)

Respondents: Businesses or Other For-Profit Institutions

OMB Desk Officer: Bruce Artim

Social Security Administration

Subject: Notification of Projected Completion Date—Existing Collection

Respondents: State or local Governments

Subject: Statement of Income and Resources Extension—(0960–0124)

Respondents: Individuals or Households

OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: January 17, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–1545 Filed 1–23–86; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: February 3–4, 1986.

Place: Emory Room, Stafford Emory Inn, 1641 Clifton Road, NE., Atlanta, Georgia 30333.

Time and Type of Meeting:

Open 1:00 p.m. to 4:30 p.m.—February 3.
Closed 4:30 p.m. to 5:00 p.m.—February 3.
Open 8:30 a.m. to 4:00 p.m.—February 4.

Contact Person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291–4474, FTS: 923–4474.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of the previous meeting and future meeting dates; discussion of the MHRAC subgroup's report of the x-ray surveillance program for underground coal miners: the

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NIOSH mining program; Bureau of Mines musculoskeletal and noise research program; MSHA's organizational structure and function; and worker notification.

Beginning at 4:30 p.m. through 5:00 p.m., February 3, the Committee will be performing the final review of the mine health research grant applications for Federal assistance. This portion of the meeting will not be open to the public in accordance with the provisions set forth in Section 552b(c)(6), Title 5 US Code, and the Determination of the Director, Centers for Disease Control, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speaker.

The requirement for 15 days advance meeting notice was not met because the meeting was changed from February 10-11, 1986.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: January 17, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-1757 Filed 1-23-86; 10:53 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 85M-0579]

Cardiac Pacemakers, Inc.; Premarket Approval of Delta® Model 925 Pulse Genererator, Model 2040 Desktop Programmer With the Model 2041 Program Module, and Model 6564 Telemetry Wand

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the applications submitted by Cardiac Pacemakers, Inc., St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the DELTA® Model 925 Pulse Generator, Model 2040 Desktop Programmer with the Model 2041 Program Module, and Model 6564 Telemetry Wand. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by February 24, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7564.

SUPPLEMENTARY INFORMATION: On December 21, 1984, Cardiac Pacemakers, Inc., St. Paul, MN 55164-0079, submitted to CDRH an application for premarket approval of the DELTA® Model 925 Pulse Generator, Model 2040 Programmer with the Model 2041 Program Module, and Model 6564 Telemetry Wand. The device is indicated for use as a cardiac pacing system. On July 26, 1985, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On November 27, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b)(21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 24, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 15, 1986.

John G. Villiforth, Center for Devices and Radiological Health.

Director.

[FR Doc. 86-1487 Filed 1-23-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-001]

University Optical Products, Co.; Premarket Approval of the Boston Lens® II (Itafocon A) ALGES® Bifocal Contact Lens (Clear and Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Durg Administration (FDA) is announcing its approval of the application by University Optical Products Co., Largo, FL, for premarket approval, under the Medical Device Amendments of 1976, of the BOSTON LENS® II (itafocon A) ALGES® Bifocal Contact Lens. after reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center of Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petition for administrative review by February 24, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On February 15, 1985, University Optical Products Co., Largo, FL 33543, submitted to CDRH an application for premarket approval of the BOSTON LENS® II (itafocon A) ALGES® Bifocal Contact Lens (clear and tinted). The spherical BOSTON LENS® II (itafocon A) ALGES® Bifocal Contact Lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic presbyopic or hyperopic presbyopic and for the correction of corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from −10.00 D to +10.00 D with add powers ranging from 0.25 D to 5.00 D. The tinted version of the contact lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206. The clear and tinted lenses are to be disinfected using the chemical lens care system specified in the approved labeling.

On October 17, 1985, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On December 10, 1985 CDRH approved the application by a letter to the applicant from the director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Request should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFX-460), address above.

The labeling of the BOSTON LENS® II (itafocon A) ALGES® Biofocal Contact Lens (clear and tinted) states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 UY.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 24, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, indentified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner for Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 15, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health

[FR Doc. 86-1488 Filed 1-23-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0514]

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Funds; Request for Applications

Correction

In FR Doc. 86-526 beginning on page 1299 in the issue of Friday, January 10, 1986, make the following corrections:

On page 1301, first column, VI. **Submission Requirements**, second complete paragraph, third line, "of" should read "to"; and in the second column, sixth line, "address" should appear between "the" and "section".

BILLING CODE 1505-01-M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, National Institutes of Health, April 21-22, 1986, Building 31C, Conference Room 6, Bethesda, Maryland 20892. This meeting will be open to the public on April 21, from 8:30 a.m. to 9:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 21, from approximately 9:00 a.m. until recess, and on April 22, from 8:30 a.m. until adjournment for the review, discussion

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and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winfred Lunsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301)/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Suzanne E. Fisher, Executive Secretary, Cancer Therapeutics Program Project Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301)/496–2330) will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–1531 Filed 1–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, February 20–21, 1986, Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20814. This meeting will be open to the public on February 20, from 8:30 a.m. to 9:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 20, from approximately 9:00 a.m. until recess, and on February 21, from 8:30 a.m. until adjournment for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Ms. Cynthia L. Sewell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20892 (301)/496–7721) will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–1537 Filed 1–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Cancer Program Project Review Committee, National Cancer Institute, National Institutes of Health, March 27–28, 1986, Building 31A, Conference Room 4, Bethesda, Maryland 20892. This meeting will be open to the public on March 27 from 8:30 a.m. to 9:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 27, from approximately 9:00 a.m. to recess; and on March 28, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Carolyn Strete, Acting Executive Secretary, Clinical Cancer Program Project Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20892 (301/496–2376) will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–1539 Filed 1–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Preclinical Program Project Review Committee, National Cancer Institute, National Institutes of Health, March 27–28, 1986, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public on March 27, from 8:30 a.m. to 9:15 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 27 from approximately 9:15 a.m. to recess and on March 28 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Edwin M. Bartos, Executive Secretary, Cancer Preclinical Program Project Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7565) will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 86–1540 Filed 1–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute, Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute National Institutes of Health, March 3–5, 1986, Building 31C, Conference Room 10, Bethesda, Maryland 20892. This meeting will be open to the public on March 3, from 8:30 a.m. to 9:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 3, from approximately 9:00 a.m. until recess, March 4, from 8:30 a.m. until recess, and March 5, from 8:30 a.m. to adjournment for the review, discussion and evaluation of cooperative agreement applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Richard Hsieh, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 819, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7481) will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–1542 Filed 1–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 23–27, 1986, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on February 23, 1986, from 7:00 p.m. to approximately 9:00 p.m. for orientation of new members, to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 23 from approximately 9:00 p.m. to recess, and from 8:00 a.m. on February 24 to adjournment on February 27, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Therefore, this meeting is concerned with matters exempt from mandatory disclosure under section 552b(c)(4) and 552b(c)(6) of Title 5, U.S. Code.

Ms. Terry Bellicha, Chief, Public Inquiries Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Norman S. Braveman, Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, phone (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research, also 13.839, Division of Blood Diseases and Resources, National Institutes of Health.)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–1538 Filed 1–23–86 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, February 25, 1986, National Cancer Institute, Building 31C, Conference Room 6, 6th floor, National Institutes of Health, Bethesda, Maryland 20892. Meetings of Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of these meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Subcommittee on Planning and Budget will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, to discuss the 1987 Presidential Budget.

Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meetings and rosters of Board members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5147) will furnish substantive program information.

Name of Committee: *National Cancer Advisory Board.*

Dates of Meeting: February 3–5, 1986.

Place of Meeting: Building 31C, Conference Room 6, 6th floor, National Institutes of Health.

Open: February 3, 8:30 a.m.—recess, February 5, 8:00 a.m.—adjournment.

Agenda: Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; Subcommittee Reports and New Business.

Closed Session: February 4, 8:30 a.m.—recess.

Closure Reason: To review grant applications.

Name of Committee: *Subcommittee on Cancer Information.*

Date of Meeting: February 2, 1986.

Place of Meeting: Building 31A, Conference Room 2, 1st Floor, National Institutes of Health.

Open: February 2, 6:00 p.m.—adjournment.

Agenda: A discussion of the cancer information program.

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Name of Committee: *Subcommittee on Organ Systems.*

Date of Meeting: February 2, 1986.

Place of Meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health.

Open: February 2, 7:00 p.m.—adjournment.

Agenda: A review of the organ systems program.

Name of Committee: *Ad Hoc Subcommittee on Construction.*

Date of Meeting: February 3, 1986.

Place of Meeting: Building 31, C Wing, Conference Room 6, Sixth Floor, National Institutes of Health.

Closed: February 3, Immediately following the open session of the National Cancer Advisory Board meeting.

Closure Reason: To review construction grants available for funding in FY 86.

Name of Committee: *Subcommittee on Planning and Budget.*

Date of Meeting: February 3, 1986.

Place of Meeting: Building 31, A Wing, Conference Room 11A10, 11th Floor, National Institutes of Health.

Closed: February 3, 7:30 p.m.—adjournment.

Closure Reason: To discuss the President's FY 87 Budget.

Name of Committee: *Subcommittee on Special Actions for Grants.*

Date of Meeting: February 4, 1986.

Place of Meeting: Building 31, C Wing, Conference Room 6, 6th Floor, National Institutes of Health.

Closed: February 4, 8:30 a.m.—adjournment.

Closure Reason: To review grant applications.

Name of Committee: *Subcommittee on Innovations in Surgical Oncology.*

Date of Meeting: February 4, 1986.

Place of Meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health.

Open: February 4, 7:30 p.m.—adjournment.

Agenda: A progress report on the surgical oncology program.

(Catalog of Federal Domestic Assistance Program Numbers: 13.392, project grants in cancer construction. 13.393, project grants in cancer cause and prevention. 13.394, project grants in cancer detection and diagnosis. 13.395, project grants in cancer treatment. 13.396, project grants in cancer biology. 13.397, project grants in cancer centers support. 13.398, project grants in cancer research manpower. 13.399, project grants and contracts in cancer control)

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1529 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on April 3-4, 1986, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on April 3, 1986 from 8:30 AM to approximately 9:30 AM to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on April 3, from approximately 9:30 AM until recesss, and from 8:30 AM to adjournment on April 4, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-1541 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1986.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, Scientific Review Program, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Population Research Committee.

Executive Secretary: Dr. Dinesh Sharma, Room 6C03, Landow Building, Telephone: 301, 496-1696.

Date of Meeting: March 6-7, 1986.

Place of Meeting: Landow Building, Conference Room A.

Open: March 6, 1986, 9:00 a.m.-10:00 a.m.

Closed: March 6, 1986, 10:00 a.m.-5:00p.m.; March 7, 1986, 9:00 a.m.-adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Acting Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496-1696.

Date of Meeting: March 11-12, 1986.

Place of Meeting: Landow Building, Conference Room A.

Open: March 11, 1986, 9:00 a.m.-10:00 a.m.

Closed: March 11, 1986, 10:00 a.m.-5:00 p.m.; March 12, 1986, 9:00 a.m.-adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496-1696.

Date of Meeting: March 13-14, 1986.

Place of Meeting: Landow Building, Conference Room A.

Open: March 13, 1986, 9:00 a.m.-10:00 a.m.

Closed: March 13, 1986, 10:00 a.m.-5:00 p.m.; March 14, 1986, 9:00 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1532 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for March 1986.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately two hours at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of committee: Cellular and Molecular Basis of Disease Review Committee.

Executive secretary: Dr. Helen Sunshine, Room 950 Westwood Building, Telephone: 301-496-7125.

Dates of meeting: March 3-4, 1986.

Place of meeting: Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

Open: March 3, 1986, 8:30 a.m.-10:30 a.m.

Closed: March 3, 1986, 10:30 a.m.-5:00 p.m.; March 4, 1986, 8:30 a.m.-adjournment.

Name of committee: Genetic Basis of Disease Review Committee.

Executive secretary: Ms. Linda Engel, Room 950 Westwood Building, Telephone: 301-496-7125.

Dates of meeting: March 7, 1986.

Place of meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

Open: March 7, 1986, 8:30 a.m.-10:30 a.m.

Closed: March 7, 1986, 10:30 a.m.-adjournment.

Name of committee: Pharmacological Sciences Review Committee.

Executive secretary: Dr. Rodney Ulane, Room 952 Westwood Building, Telephone: 301-496-4772.

Dates of meeting: March 10-11, 1986.

Place of meeting: Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

Open: March 10, 1986, 8:30 a.m.-10:30 a.m.

Closed: March 10, 1986, 10:30 a.m.-5:00 p.m.; March 11, 1986, 8:30 a.m.-adjournment.

Name of committee: Minority Access to Research Careers Review Committee.

Executive secretary: Dr. Agnes Donahue, Room 949 Westwood Building, Telephone: 301-496-7585.

Dates of meeting: March 13-14, 1986.

Place of meeting: Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

Open: March 13, 1986, 8:30 a.m.-10:30 a.m.

Closed: March 13, 1986, 10:30 a.m.-5:00 p.m.; March 14, 1986, 8:30 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13-859, 13-862, 13-863, 13-880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1533 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Geriatrics Review Committee, National Institute on Aging, on March 10 and 11, 1986, to be held in Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:00 a.m. on March 10 for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 10 from 9:00 a.m. to adjournment on March 11 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20892, (301/496-5898), will provide summaries of meetings and roster of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-1534 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on February 12 and 13, 1986, in Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public February 12 from 8:30 a.m. to 12:00 p.m. to discuss administration, management, and special reports. Attendance by the public will be limited to space available.

The meeting of the full Council and its subcommittees will be closed to the public as indicated below in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The following subcommittees will be closed to the public on February 12, 1986, from 1:00 p.m. to adjournment: Arthritis, Musculoskeletal and Skin Diseases; Diabetes, Endocrine, and Metabolic Diseases; Digestive Diseases

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and Nutrition; and Kidney, Urology and Hematology. The full Council meeting will be closed to the public on February 13 from 8:30 a.m. to approximately 12:00 p.m.

The full Council meeting will then be open for the reports of the Division Directors on February 13 from approximately 1:00 p.m. to adjournment at 3:30 p.m.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council, NIADDK, Westwood Building, Room 637, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDK, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 13.846–849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 86–1536 Filed 1–23–86; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 13 and 14, 1986, in Conference Room 7, Building 31, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on February 13, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until adjournment on February 13, and from 9:30 a.m. until adjournment on February 14. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lynn Trible, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–32, National Institute of Health, Bethesda, Maryland 20892, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the committees members.

Dr. M. Sayeed Quraishi, Executive Secretary, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301) 496–7465, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–1536 Filed 1–23–86; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Chemicals (7) Nominated for Toxicology Studies: Request for Comments

SUMMARY: On October 23, 1985, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review seven chemicals nominated for toxicology studies and to recommend the types of testing to be performed. With this notice, the NTP solicits public comment on the seven chemicals listed herein.

FOR FURTHER INFORMATION AND SUBMISSION OF COMMENTS, CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register**. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for its decision-making about testing. The NTP chemical selection process is summarized in the **Federal Register**, April 14, 1981 (46 FR 21826), and also in the NTP FY 1985 *Annual Plan*, pages 201–202.

Chemical	CAS No.	Committee recommendation
1. n-Butyl acrylate	141–32–2	Subchronic study. Carcinogenicity. Chemical disposition. Reproductive studies. Mutagenicity, including *Drosophila* and *in vitro* cytogenetics
2. t-Butylhydroquinone	1948–33–0	Carcinogenicity.
3. Methyl ethyl ketoxime	96–29–7	In-depth toxicological evaluation to include behavioral studies by inhalation route. *In vitro* cytogenetics.
4. α-Methylstyrene	98–83–9	In-depth toxicological evaluation. Short-term *in vivo* reproductive toxicity studies *In vitro* cytogenetics.
5. Styrene	100–42–5	Carcinogenicity by inhalation route.
6. Tung oil	8001–20–5	No testing.
7. 12-O-Hexadecanoyl-16-hydroxyphorbol-13-acetate	53202–98–5	No testing.

t-Butylhydroquinone is the Food and Drug Administration's Fiscal Year 1985 priority chemical for NTP carcinogenicity testing. In accordance with established NTP policy for processing priority chemicals of the NTP participating agencies, t-butylhydroquinone will not be evaluated by the Board of Scientific Counselors but will be submitted directly to the Executive Committee for action.

Two of the seven compounds have been previously selected for some type of toxicology study by the NTP. n-Butyl acrylate was non-mutagenic in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA1537, with and without metabolic activation. The NTP has also conducted a conventional teratology stud on n-butyl acrylate. The chemical was administered orally to CD–1 mice at doses of 0, 0.1, 1.0, 1.5, 2.0, 2.5, and 3.0 g/kg/day on gestation days 6–15. Fetal malformation was observed in the 1.0 g/kg dosed group, maternal toxicity and reduced fetal weight in the 1.5 g/kg group, and increased prenatal death in the 2.5 g/kg group.

In a gavage carcinogenicity study on styrene in Fischer 344 rats and B6C3F1 mice, no evidence of carcinogenicity was obtained in male and female rats and in female mice; equivocal evidence, namely, an increased incidence of a combination of adenomas and carcinomas of the lung, was found in male mice.⅛

Interested parties are requested to submit pertinent information.

The following types of data are of particular relevance: (1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds. Please submit all information in writing by (thirty days after date of publication). Any submissions received after the above date will be accepted and utilized where possible.

Dated: January 14, 1986.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

[FR Doc. 86–1530 Filed 1–23–86; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Addition of Certain Lands to the Fond du Lac Indian Reservation

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8.1. Notice is hereby given that under the authority of section 7 of the Act of June 18, 1934 (25 U.S.C. 467; 48 Stat. 986), the hereinafter described land located within the city limits of Duluth, Minnesota, was proclaimed a part of the Fond du Lac Reservation effective January 7, 1986, for the exclusive use of Indians entitled by enrollment or tribal membership to residence at such reservation.

4th Principal Meridian, St. Louis County, Minnesota

Lots twenty-nine (29) and thirty-one (31) Duluth Property First Division, East Superior Street.

Said land being subject to all valid rights, reservations, rights-of-way and easements of record.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86–1477 Filed 1–23–86; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[N–43026]

Airport Lease Application; Nevada

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), Henry W. Taylor has applied for an airport lease for the following land:

Mount Diablo Base and Meridian

T. 38 N., R. 36 E., Sec. 14 N½N½.

A strip of land 300 feet wide and 3,960 feet long.

The area described is located in Humboldt County, Nevada. The application was filed on January 3, 1986, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445.

Dated: January 9, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86–1595 Filed 1–23–86; 8:45 am]

BILLING CODE 4310–HC–M

[Serial Number AA–55461]

Lease of Public Land in Southcentral Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, FLPMA 302 Lease.

SUMMARY: The Bureau proposes to issue a noncompetitive lease, subject to a site specific environmental and land use analysis, for the following described tract of land.

Copper River Meridian

T. 5 S., R. 1 E.,

Sec. 34, N½ NE¼ (portion) lying on and within the east edge of the Richardson Highway right-of-way at mile 57.4, comprising approximately one acre.

This notice of realty action proposes a long term lease of lands under the jurisdiction of the Bureau of Land Management. The proposed lease is intended to legalize improvements, long term occupancy, and to facilitate land use planning in the area. The annual rental of the lease, if issued, has been estimated at $400 per acre per year, subject to final appraisal.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action, is available for review at the Glennallen Resource Area Office, P.O. Box 147 in Glennallen, Alaska 99588. For further information call Mark Phillips (907) 822–3218.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comments at the above address. Any adverse comments will be evaluated by the Anchorage District Manager who may cancel or modify this action and issue a final determination. In the absence of any adverse action by the Anchorage District Manager, this will become the final determination of the Department of Interior.

Richard J. Vernimen,

Associate District Manager.

[FR Doc. 86–1577 Filed 1–23–86; 8:45 am]

BILLING CODE 4310–JA–M

Hearing; Wild Horse and Burro Gather

Notice is hereby given in accordance with Pub. L. 92–195, as amended by Pub. L. 94–579, and Pub. L. 95–514, two public hearings will be held on February 26 and 27, 1986. The public hearing on February 26 will begin at 7:30 P.M. at the Humboldt County Fairgrounds, Winnemucca, Nevada. The public hearing on February 27 will begin at 7:30 P.M. in the Pershing County Community Center, 810 Sixth Street, Lovelock, Nevada 89419.

The agenda for the meeting will include: (1) Implementation of the Winnemucca District's approved Land Use Plans for reducing wild horse and burro populations to management levels; (2) the use of helicopters and motorized

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vehicles when conducting wild horse and burro gatherings.

The hearing is open to the public. Interested persons may make oral statements to the hearing moderator or file written statements for management consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, by February 19, 1986. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the hearing moderator.

Summary minutes of the hearing will be maintained in the Winnemucca District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: January 8, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86-1594 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-HC-M

[I, 22298, I-22299]

Realty Action; Noncompetitive Sale of Public Lands; Lemhi County, ID

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action, I-22298 and I-22299—Noncompetitive Sale of Public Lands in Lemhi County, Idaho.

DATE AND ADDRESS: The sale offering will be held on Thursday, March 27, 1986, at 10:00 a.m. at the Salmon District Office, Highway 93 South, Box 430, Salmon, Idaho 83467.

SUMMARY: Based on public supported land use plans the following described land has been examined and identified as suitable for disposal by public sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 stat. 2750, U.S.C. 1713), at no less than the appraised fair market value

The below described lands are hereby segregated from appropriation under the public land laws, including the mining laws, as provided by 43 CFR 2711.1-2(d).

Parcel	Legal description	Acres	Sale type
I-22298	T. 22 N., R. 23 E., B.M. section 34: lot 5. T. 21 N., R. 23 E., B.M., section 3: lot 4, SW¼NW¼.	97.05	Direct
I-22299	T. 21 N., R. 23 E., B.M. section 4: NW¼SE¼Ne¼, E½SE¼SW¼NE¼, NE¼NW¼SE¼, E½NW¼SE¼, SW¼NW¼SE¼. Section 9: E½E½S W¼NW¼.	50.00	Direct

When patented the lands will be subject to the following reservations:

1. Ditches and Canals (43 U.S.C. 945).

2. Oil, gas, and coal leasing and development (43 U.S.C. 1719).

3. All valid and existing rights and reservations of record.

4. Mining Claims: The purchaser of this land further acknowledges that the property is encumbered by mining claims filed pursuant to the mining laws of the United States (20 U.S.C. 21 et. seq.). These include the placer claims under Serial Nos. 73217, 73218 and parcel I-22298 and 82134-82137 and 82139 on parcel I-22299. The conveyance will be made subject to those claims and includes the right of the claimant to (1) continue to prospect for, mine, and remove locatable minerals under applicable laws; (2) the right to obtain a mineral patent to both the surface and mineral estates within the mining claim(s) if valid discovery was made prior to the date of the FLPMA patent, or; (3) the right to obtain patent to the mineral estate only if discovery is made subsequent to the patent.

5. a. I-22298 only: Pursuant to the authority contained in Sec. 4 of E.O. 11990 of May 24, 1977 and section 203 of Pub. L. 94-579 (Federal Land Policy and Management Act) of October 21, 1976, the patent to this tract is subject to a restriction which constitutes a covenant running with the land, that the portion of the land lying within 35 feet on either side of the center of Geertson Creek (70 feet total), containing riparian habitat must be managed to protect and maintain the riparian habitat on a continuing basis.

b. I-22298 only: Pursuant to the authority contained in section 3(d) of Executive Order 11988 of May 24, 1977, and section 203 of Pub. L. 94-579 of October 21, 1976, the patent to this tract is subject to a restriction which constitutes a covenant running with the land, that the portion of the land lying within the 100-year floodplain may be used for agricultural purposes only and not the dwellings, buildings, dumps, landfills, placement of hazardous wastes, leach fields, lagoons, etc. which could contaminate the water source.

Sale Procedures

These parcels will be offered by *Direct Sale* to Bolton Ranch, Inc. at the appraised fair market value. These lands have been improved and used by Bolton Ranch, Inc. and they are the owner of the adjoining private land. Disposal by direct sale will legalize their use and protect their investments. The designated bidder will be notified of the final appraised fair market value prior to the date of sale. No other bids or bidders will be considered.

Bolton Ranch, Inc. will be required to submit payment of at least twenty (20) percent of the appraised fair market value by cash, certified or cashier's check, bank draft or money order at the above address on March 27, 1986. The balance will be due within 180 days, payable in the same form, and at the same location. Failure to submit the remainder of the payment within 180 days will result in cancellation of the sale offering and forfeiture of the deposit. A bid will also constitute an application for conveyance of the mineral interests of no known value. A $50.00 non-returnable filing fee for processing the mineral conveyance must accompany each bid. If no bid is received from Bolton Ranch, Inc. on the sale date, the parcels will then be offered for sale by competitive bidding procedures beginning on April 3, 1986 and continuing until July 3, 1986.

SUPPLEMENTARY INFORMATION: Detailed information concerning these parcels, terms and conditions of the sale, and bidding instructions may be obtained by contacting Stephanie Snook at (208) 756-2201. For a period of 45 days from the date of this notice, interested parties may submit comments regarding the sale to the Salmon District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 13, 1986.

Kenneth G. Walker,

District Manager.

[FR Doc. 86-1576 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-GG-M

[ES 35646]

Transfer of Lands; Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Transfer of submarginal lands, Mississippi band of Choctaw Indians.

SUMMARY: 1. Pursuant to Pub. L. 94-114 (89 Stat. 577) of October 17, 1975, as amended by Pub. L. 97-434 of January 8, 1983 (96 Stat. 2280), the lands described in paragraph 3 of this notice, together with all minerals underlying this land, whether acquired or otherwise owned by the United States, are hereby declared to be held by the United States in trust for the Mississippi Band of Choctaw Indians for the use and benefit of the Choctaw Indians subject to all valid rights, reservations, rights-of-way, and easements of record.

These lands were submarginal lands acquired under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), and any subsequent Emergency Relief Appropriations Acts, including but not limited to section 5 of the Emergency Relief Appropriation Act of 1939 (53 Stat. 927, 930) and section 4 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 617).

2. Any existing mineral leases, including oil and gas leases, which have been issued on this land will remain in force and effect in accordance with the terms and provisions of the Act under which the leases were issued. The lease files will be transferred to the Office of the Eastern Area Director, Bureau of Indian Affairs, Washington, DC. Future rentals for these leases will be paid to and collected by that office. Jurisdiction of these mineral leases is transferred from the Bureau of Land Management to the Bureau of Indian Affairs in trust for the Mississippi Band of the Choctaw Indians.

3. Choctaw Meridian, Mississippi

T. 11 N., R. 7 E.,
- Sec. 22, 10 acres in the NE¼NE¼ being described as follows: Beginning at the NE corner of said NE¼ of NE¼ and run West along the North line of said forty acres to the NW corner thereof a distance of 440 yards, thence South along the West line of said forty acres 220 yards, and thence Northeast to the NE corner of said forty acres or place of beginning;
- Sec. 23, NW¼SW¼, SW¼NW¼;

T. 8 N., R. 9 E.,
- Sec. 34, S½SE¼NW¼.

The areas described aggregate 110.00 acres in Leake and Scott Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: A. Nate Felton, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 274-0233.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 86-1580 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-35121]

Transfer of Lands; Sawyer County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Transfer of submarginal lands, Lac Courte Oreilles Band of the Lake Superior Chippewa Indians.

SUMMARY: 1. Pursuant to Pub. L. 94-114 (89 Stat. 577) of October 17, 1975, as amended by Pub. L. 97-434 of January 8, 1983 (96 Stat. 2280), the lands described in paragraph 3 of this notice, together with all minerals underlying this land, whether acquired or otherwise owned by the United States, are hereby declared to be held by the United States in trust for the Lac Courte Oreilles Band of the Lake Superior Chippewas for the use and benefit of the Lac Courte Oreilles Indian subject to all valid rights, reservations, rights-of-way, and easements of record. The land shall be a part of the established Lac Courte Oreilles Indian Reservation.

These lands were submarginal lands acquired under Title II of the National Industrial Recovery Act of June 18, 1933 (48 Stat. 200), and any subsequent Emergency Relief Appropriations Acts, including but not limited to section 5 of the Emergency Relief Appropriation Act of 1939 (53 Stat. 927, 930) and section 4 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 617).

2. Any existing mineral leases, including oil and gas leases, which have been issued on this land will remain in force and effect in accordance with the terms and provisions of the Act under which the leases were issued. The lease files will be transferred to the Office of the Area Director, Bureau of Indian Affairs, Minneapolis, Minnesota. Future rentals for these leases will be paid to and collected by that office. Jurisdiction of these mineral leases is transferred from the Bureau of Land Management to the Bureau of Indian Affairs in trust for the Lac Courte Orielles Band of the Lake Superior Chippewa Indians.

3. Fourth Principal Meridian, Wisconsin

T. 40 N., R. 6 W.,
- Sec. 4, W½NE¼, S½.

T. 38 N., R. 7 W.,
- Sec. 6, W½W¼ (70.77), W½NE¼NW¼ (22.76), W½SE¼NW¼.

T. 39 N., R. 7 W.,
- Sec. 2, N½SW¼, S½SW¼;
- Sec. 7, E½NE¼, SW¼SE¼;
- Sec. 8, Lot 4, NW¼NW¼, SW¼SE¼;
- Sec. 13, S½NW¼;
- Sec. 14, N½SW¼;
- Sec. 16, NW¼NE¼, NE¼NW¼, SW¼NW¼;
- Sec. 17, NE¼NE¼, NE¼NW¼, S½NW¼, SW¼SE¼;
- Sec. 18, SE¼NW¼, NE¼SW¼, W½SW¼, S½SE¼;
- Sec. 19, N½NE¼, W½SW¼, W½SE¼;
- Sec. 20, NW¼NW¼, E½SE¼;
- Sec. 21, E½NW¼, N½SW¼;
- Sec. 28, E½NE¼, SW¼NE¼, NE¼NW¼, W½NW¼, SW¼;
- Sec. 29, W½NE¼, NW¼SE¼, S½SE¼;
- Sec. 30, W½, W½SE¼;
- Sec. 31, W½SW¼, (66.5), E½NE¼, NE¼NW¼, NE¼SW¼, E½SE¼, NW¼SE¼;
- Sec. 32, E½NE¼, S½SW¼, W½SE¼;
- Sec. 33, SE¼NE¼.

T. 40 N., R. 7 W.,
- Sec. 5, W½NW¼ (51.58);
- Sec. 6, E½NE¼ (52.62), W½NE¼ (52.97), NW¼SE¼;
- Sec. 7, NW¼NW¼ (32.46), SW¼SW¼ (31.72), NE¼NW¼, SW¼SE¼;
- Sec. 16, NW¼NW¼;
- Sec. 17, NW¼NE¼, SW¼NW¼, SW¼, W½SE¼;
- Sec. 18, E½, NE¼NW¼;
- Sec. 19, N½NE¼;
- Sec. 20, N½NW¼;
- Sec. 31, SE¼NE¼, E½SE¼;
- Sec. 32, All;
- Sec. 33, NW¼NW¼, SW¼.

T. 38 N., R. 8 W.,
- Sec. 1, E½NE¼NE¼, (23.35), NE¼SE¼ NE¼;
- Sec. 4, Lots 1, 2, 4, E½SW¼, N½SE¼;
- Sec. 5, Lots 5, 9, SE¼SW¼;
- Sec. 7, E½NE¼;
- Sec. 8, NW¼NE¼, NE¼NW¼, SE¼SE¼;
- Sec. 9, W½NE¼;
- Sec. 17, E½NE¼;
- Sec. 18, S½NW¼.

T. 39 N., R. 8 W.,
- Sec. 2, NE¼NE¼, S½NW¼;
- Sec. 3, SE¼NE¼, N½NW¼ (68.54), NE¼SW¼, SW¼SW¼, E½SE¼;
- Sec. 4, N½NE¼ (68.25), NE¼SW¼, NW¼SE¼, SE¼SE¼;
- Sec. 7, W½SE¼;
- Sec. 9, N½NW¼, N½SW¼;
- Sec. 10, NE¼NE¼, S½NE¼, N½SE¼;
- Sec. 11, W½NE¼, W½NW¼;
- Sec. 12, E½SW¼;
- Sec. 13, NW¼NE¼, N½NW¼, N½SW¼, SE¼;
- Sec. 14, S½SW¼, SW¼SE¼;
- Sec. 15, W½SE¼, SE¼SE¼;
- Sec. 20, E½NW¼;
- Sec. 22, W½NE¼, N½SW¼;
- Sec. 23, NW¼NE¼;
- Sec. 24, NE¼SE¼;
- Sec. 28, E½NW¼;
- Sec. 29, E½SE¼;
- Sec. 30, N½SE¼;
- Sec. 31, NW¼SW¼ (38.61), NE¼SW¼;
- Sec. 32, N½NE¼, NW¼;
- Sec. 33, E½SW¼, SW¼SW¼;
- Sec. 34, E½NW¼, S½SW¼;
- Sec. 35, W½NE¼, SE¼NE¼, NE¼SE¼, S½SE¼;
- Sec. 36, S½NW¼, E½SW¼.

T. 40 N., R. 8 W.,
- Sec. 3, SW¼SW¼;
- Sec. 4, W½NW¼ (55.10);
- Sec. 7, Lot 2, SE¼NE¼;
- Sec. 8, E½NW¼, E½SE¼;
- Sec. 9, NE¼NE¼;
- Sec. 10, NW¼NW¼, S½SW¼;

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Sec. 11, W½NW¼;
Sec. 13, N½S½;
Sec. 14, W½SW¼;
Sec. 16, SE¼;
Sec. 22, E½NW¼, SW¼SW¼;
Sec. 23, E½NE¼, NE¼SE¼;
Sec. 24, S½SW¼;
Sec. 25, NW¼NW¼;
Sec. 26, N½NE¼, SE¼NE¼, N½NW¼, N½SW¼, N½SE¼;
Sec. 27, N½NW¼, SE¼NW¼, NW¼SW¼;
Sec. 28, E½SE¼;
Sec. 33, SE¼NE¼;
Sec. 34, S½NW¼, W½SW¼;
Sec. 35, NE¼NE¼, S½NE¼, N½NW¼, SW¼, SE¼SE¼.
T. 38 N., R. 9 W.,
Sec. 1, Lots 4, 5, 11, 12, S½SW¼.
T. 39 N., R. 9 W.,
Sec. 24, E½SW¼;
Sec. 36, W½NE¼, NE¼NW¼, NE¼SW¼.

The areas described aggregate 13,184.65 acres in Sawyer County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Alice J. Stephenson, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. (703) 274–0121.

G. Curtis Jones, Jr.,
State Director.

[FR Doc. 85–1578 Filed 1–23–86; 8:45 am]
BILLING CODE 4310-GJ-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–59]

Import Investigations; Apple Juice

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Following receipt on December 27, 1985, of a request from the United States Trade Representative, the United States International Trade Commission instituted investigation No. TA–201–59 under section 201 of the Trade Act of 1974 to determine whether apple juice, not mixed and not containing over 1.0 percent of ethyl alcohol by volume, provided for in item 165.15 of the Tariff Schedules of the United States, is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The Commission will make its determination in this investigation by June 27, 1986 (see section 201(d)(2) of the act (19 U.S.C. 2251(d)(2))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 206, Subparts A and B (19 CFR Part 206), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 27, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen Vastagh 202–523–0283, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.—The Commission will hold in connection with this investigation beginning at 10:00 a.m. on April 17, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 8, 1986. All persons desiring to appear at the hearing and make oral presentations, with the exception of public officials and persons not represented by counsel, should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 8, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 11, 1986. Posthearing briefs must be submitted not later than the close of business on April 24, 1986. Confidential material should be filed in accordance with the procedures described below.

Parties are encouraged to limit their testimony at the hearing to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Parties are requested to use the following units of measure when presenting data and charts in briefs, testimony, and other submissions: (1) Thousands, millions, or billions of pounds for quantities of apples; (2) cents per pound for prices of apples, whether for fresh market or for processing; (3) thousands or millions of gallons of single strength equivalent for quantities of concentrate or fresh juice; and (4) dollars and cents per single strength gallon for prices of juice, whether concentrate of freshly squeezed. The uniform use of such units will make the data in all submissions comparable. Convert all concentrate to single strength equivalent using conversion factors published in relevant publication of the U.S. Department of Agriculture.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 24, 1986. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Remedy.—In the event that the Commission makes an affirmative injury determination in this investigation, remedy briefs will be due to the Secretary no later than the close of business on May 28, 1986, and must conform with the requirements of § 201.6 of the Commission's rules. Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present oral arguments on the issue of remedy may do so at the hearing scheduled for April 17, 1986.

Authority: This investigation is being conducted under the authority of section 201 of the Trade Act of 1974. This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

Issued: January 17, 1986.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 86–1500 Filed 1–23–86; 8:45 am]
BILLING CODE 7020-02-M

[Investigations Nos. 731–TA–301 Through 303 (Preliminary)]

Certain Butt-Weld Pipe Fittings From Brazil, Japan, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Comimssion hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–301 through 303 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, Japan, and Taiwan of carbon steel butt-weld type pipe and tube fittings, under 14 inches (inside diameter), provided for in item 610.88 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in sectin 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 27, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202–523–0104), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed by the U.S. Butt-Weld Pipe Fittings Committee on January 13, 1986, regarding allegedly less than fair value imports from Brazil and petitions filed on January 16, 1986, regarding alledgedly less than fair value imports from Japan and Taiwan.

Particpotion in the investigation.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR § 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accpet the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10:00 a.m. on February 6, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202–523–0104) not later than February 3, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and Parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before February 10, 1986, a written statement of information pertinent to the subject of these investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: January 21, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86–1564 Filed 1–23–86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337–TA–228]

Import Investigations; Certain Fans With Brushless DC Motors

AGENCY: International Trade Commission.

ACTION: Review and affirmance of the presiding administrative law judge's initial determination granting a joint motion for the issuance of a consent order with respect to complainant's motion for temporary relief.

SUMMARY: On November 19, 1985, all parties to the investigation moved for

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the entry of a consent order with respect to complainant Rotron Incorporated's motion for temporary relief. The presiding administrative law judge (ALJ) issued an initial determination (ID) on November 25, 1985, granting the joint motion that the Commission issue a consent order. The Commission determined to review and affirm the ID.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–523–0074.

SUPPLEMENTARY INFORMATION:

Background—On September 4, 1984, complainant Rotron Incorporated (Rotron) filed a complaint with the Commission alleging that respondents Matsushita Electric Industrial Company, Ltd. (MEI) and Matsushita Electric Corporation of America (MECA) were violating section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, complainant Rotron alleged that respondents were infringing several of the claims of a U.S. patent owned by it. The Commission instituted the present investigation on October 9, 1985.

Complainant Rotron accompanied its complaint with a motion for temporary relief and the ALJ scheduled a hearing on temporary relief for December 2, 1985. Pursuant to an agreement, on November 19, 1985, all parties to the investigation moved for the entry of a consent order with respect to complainant Rotron's motion for temporary relief. Under the terms of the agreement, respondent MEI will voluntarily discontinue exporting the fans under investigation from Japan to the United States between January 20, 1986, and the completion of the Commission's present investigation. In exchange, complainant Rotron agreed to withdraw its motion for temporary relief.

Authority—This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Public Inspection—Copies of the Commission's Action and Order, the consent order, the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: January 14, 1986.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1491 Filed 1–23–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701–TA–257 (Final)]

Import Investigation; Certain Fresh Atlantic Groundfish From Canada

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby given notice of the institution of final countervailing duty investigation No. 701–TA–257 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of fresh and chilled cod, haddock, pollock, hake, and flounders and other flatfish (except halibut), whether whole or processed by removal of heads, viscera, fins, or any combination thereof, but not otherwise processed, provided for in items 110.15 and 110.35 of the Tariff Schedules of the United States (TSUS), and of otherwise processed fresh and chilled cod, haddock, pollock, hake, and flounders and other flatfish (except halibut), provided for in items 110.50, 110.55, and 110.70 of the TSUS, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada. Commerce will make its final subsidy determination in this investigation on or before March 18, 1986, and the Commission will make its final injury determination by May 8, 1986 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 9, 1986.

FOR FURTHER INFORMATION CONTACT: David Coombs (202–523–1376), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1871) are being provided to manufacturers, producers, or exporters in Canada of certain fresh Atlantic groundfish. The investigation was requested in a petition filed on August 5, 1985 by the North Atlantic Fisheries Task Force, Gloucester, Massachusetts. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investgation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 38904, Sept. 19, 1985).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201:11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on March 14, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on April 1, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 18, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 20, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filng prehearing briefs is March 25, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with th. procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 8, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 8, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1498 Filed 1–23–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–232]

Certain Glass Firescreens for Fireplaces; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Oliver-MacLeod Ltd., and Thomas Industries, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 10, 1986

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: January 15, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1494 Filed 1–23–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–201]

Certain Products With Gremlins Character Depictions; Commission Decision To Reverse a Portion of Initial Determination; Termination of Investigation on the Basis of no Violation

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to reverse that part of the presiding administrative law judge's initial determination (ID) finding that complainant's licensing program can be a domestic industry under section 337, and to terminate the investigation on the basis that there is of no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

SUMMARY: The Commission has determined to reverse that part of an ID that found complainant's licensing program to be a domestic industry under section 337. The investigation is therefore terminated on the basis that there is no violation of section 337.

FOR FUTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, telephone 202–523–0311. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–724–0002.

SUPPLEMENTARY INFORMATION: On September 12, the presiding administrative law judge issued an ID in the above-captioned investigation. The ID found that (1) certain imported products infringe complainant's Warner

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Bros., Inc.'s copyrights; (2) there are domestic industries, including one consisting of complainant's licensing program for the Gremlins copyrights; (3) the domestic licensing industry is efficiently and economically operated; and (4) respondents' unfair practices have the tendency to substantially injure the domestic licensing industry, but no other domestic industry.

On October 30, 1985, the Commission determined to review those portions of the ID relating to industry and injury.

Notice of this investigation was published in the **Federal Register** of August 30, 1984 (49 FR 34422–23.)

Copies of the public version of the Action and Order, Commission opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: January 16, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc.86–1495 Filed 1–23–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–247 (Final)]

Import Investigation; Low-Fuming Brazing Copper Wire and Rod From South Africa

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from South Africa of low-fuming brazing copper wire and rod, provided for in items 612.62, 612.72, and 653.15 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation following a preliminary determination by the Department of Commerce on September 23, 1985, that imports of low-fuming brazing copper wire and rod from South Africa were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 9, 1985 (50 FR 41231). The hearing was held in Washington DC, on December 4, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 17, 1986. The views of the Commission are contained in USITC Publication 1790 (January 1986), entitled "Low-Fuming Brazing Copper Wire and Rod From South Africa: Determination of the Commission in Investigation No. 731–TA–247 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: January 16, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1496 Filed 1–23–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–255 (Final) and 731–TA–276 and 277 (Final)]

Import Investigation; Oil Country Tubular Goods From Canada and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701–TA–255 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and of final antidumping investigations Nos. 731–TA–276 and 277 under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of oil country tubular goods,[1] provided for in items 610.32, 601.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada, and of oil country tubular goods from Canada and Taiwan which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless these investigations are extended, Commerce will make its final subsidy determination by March 4, 1986, and its final dumping determinations by March 17, 1986, and the Commission will make its final injury determinations by April 28, 1986 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b)) and sections 735(a) and 735(b) of the act (19 U.S.C. 2673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202–523–0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commisison's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Canada of oil country tubular goods and that imports of oil country tubular goods from Canada and Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on July 22, 1985, by the Lone Star Steel Company, Dallas, TX and CF&I Steel Corporation, Pueblo, CO. In response to that petition the Commission conducted preliminary countervailing duty and antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 37066, September 11, 1985).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (29 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on March 14, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on March 31, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 14, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 19, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 25, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing brief must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 7, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 7, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Issued: January 14, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1492 Filed 1–23–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–239 (Final)]

Import Investigation; Rock Salt From Canada

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of rock salt, provided for in items 420.94 and 420.96 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 15, 1985, following a preliminary determination by the Department of Commerce that imports of rock salt from Canada were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 7, 1985 (50 FR 31933). The hearing was held in Washington, DC, on December 5, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 10, 1986. The views of the Commission are contained in USITC Publication 1798 (January 1986), entitled "Rock Salt from Canada: Determination of the Commission in Investigation No. 731–TA–239 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: January 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1490 Filed 1–23–86; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler and Commissioner Lodwick dissenting. Commissioner Brunsdale did not participate.

[1] For purposes of these investigations, "oil country tubular goods" includes drill pipe casing, and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

[1] The record is defined in 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

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[332-222]

Import Investigation; U.S. Jewelry Industry; Competitive Assessment

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: At the request of the Committee on Finance, United States Senate, the Commission has instituted investigation No. 332-222 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of assessing the conditions of competition affecting U.S. producers of jewelry.

EFFECTIVE DATE: January 8, 1986.

FOR FURTHER INFORMATION CONTACT: Brian E. Garbecki (202-724-1731) or Mark Estes (202-724-0977), General Manufactures Division, U.S. International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTAL: The Commission investigation will examine the U.S. jewelry industry, analyze key economic forces in the U.S. jewelry market and assess the factors of competition in the U.S. market between domestic and foreign products. There will be two consecutive reports issued. The first report will cover the costume jewelry segment of the U.S. industry and is to be transmitted to the Committee on Finance not later than October 6, 1986. The second report will cover the precious metal jewelry segment of the U.S. jewelry industry and is to be transmitted to the Committee on Finance not later than September 8, 1987.

The request specified that the Commission's reports should include, to the extent possible: (1) an analysis of the key economic factors in the U.S. market including U.S. production, trade, consumption inventories and other relevant factors; (2) an analysis of the conditions of competition in the U.S. market between domestic and imported products including factors such as price, quality, design and marketing techniques; (3) an analysis of the levels and trends in employment of U.S. jewelry industry; and (4) a discussion of U.S. and foreign government standards and regulations as to the country origin and precious metal content marking of jewelry including customs procedures for enforcing such standards and regulations, as available.

Written submissions: Interested persons are invited to submit written statements concerning the investigation. Written statements concerning the costume jewelry report should be received by May 9, 1986, and those concerning the precious metal jewelry report should be received by February 27, 1987. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's Office in Washington, D.C.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: January 15, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1493 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-271 through 274 (Final)]

Import Investigation; Certain Welded Carbon Steel Pipes and Tubes From India, Taiwan, Turkey, and Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-271 through 274 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the following welded carbon steel pipes and tubes, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV):

Standard pipes and tubes [1] from India (inv. No. 731-TA-271 (Final));

Line pipes and tubes [2] from Taiwan (inv. No. 731-TA-272 (Final));

Standard and line pipes and tubes from Turkey (inv. No. 731-TA-273 (Final)); and

Standard pipes and tubes from Yugoslavia (inv. No. 731-TA-274 (Final)).

Unless the investigations are extended, Commerce will make its final LTFV determinations on or before March 10, 1986, and the Commission will make its final injury determinations by April 29, 1986, for the investigation concerning pipes and tubes from Taiwan; April 30, 1986, for the investigations concerning pipes and tubes from India and Yugoslavia; and May 5, 1986, for the investigation concerning the products from Turkey (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATES: The effective date for the investigation concerning pipes and tubes from Taiwan is December 30, 1985. The effective dates for the investigations concerning pipes and tubes from India and Yugoslavia is December 31, 1985, and the effective date for the investigation concerning the products from Turkey is January 3, 1986.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth (202-523-0289), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that

[1] For purposes of these investigations, the term "standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

[2] For purposes of these investigations, the term "line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to API specifications for line pipe, provided for in items 610.3208 and 610.3209 of the TSUSA.

imports of certain welded carbon steel pipes and tubes from India, Taiwan, Turkey, and Yugoslavia are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on July 16, 1985 by counsel for the Committee of Pipe and Tube Imports. In response to the petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 37068, September 11, 1985).

Participation in the investigations.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accpet the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on March 3, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on March 13, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 3, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 6, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 10, 1986.

Testimony at the public hearing is governed by § 207.33 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 20, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before March 20, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1499 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-211 (Final)]

Import Investigation; Certain Welded Carbon Steel Pipes and Tubes From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Taiwan of welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness of less than 0.156 inch, provided for in item 610.49 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 22, 1985, following a preliminary determination by the Department of Commerce that imports of certain welded carbon steel pipes and tubes from Taiwan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 7, 1985 (50 FR 31930). The hearing was held in Washington, DC, on December 17, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 17, 1986. The views of the Commission are contained in USITC Publication 1799 (January 1986), entitled "Certain Welded Carbon Steel Pipes and Tubes From

[1] The record is defined in section 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Commissioner Brunsdale abstained from voting.

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Taiwan: Determination of the Commission in Investigation No. 731–TA–211 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: January 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1497 Filed 1–23–86; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

January 21, 1986.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and addresses of Principal office American Bakeries Company 633 3rd Avenue, New York, NY 10017.

2. Wholly owned subsidiary which will participate in the operations and state of corporation.

Cotton Brothers Baking Company Inc., Incorporated in Mississippi.

(1) Parent Corp.: Independent Explosives Co. of Penna. Suite 500, United Penn Bank Bldg., 400 Spruce St., Scranton, Pa. 18503.

(2) Wholly owned subsidiary: IR Inc., Suite 500, United Penn Bank Bldg., 400 Spruce St., Scranton, Pa. 18503.

Both the parent and subsidiary are incorporated in Pennsylvania.

1. The name of the parent corporation is D.B. Kenney Fisheries Limited. Its principal office is located at: Box 1210, Westport, Nova Scotia, Canada B0V 1H0

2. The wholly-owned subsidiary which will participate in the operation is D.B. Kenney Transport Incorporated, a corporation incorporated under the laws of the Province of Nova Scotia, Canada.

1. Parent corporation and address of principal office: The Pillsbury Company, Pillsbury Center—3830, 200 South Sixth Street, Minneapolis, Minnesota 55402 (Delaware Corporation)

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Burger King Corporation, 7360 North Kendall Drive, Miami, Florida 33156, (Florida Corporation)

Godfather's Pizza, Inc., 9140 West Dodge Road, Omaha, Nebraska 68114 (Nebraska Corporation)

Green Giant Company, Pillsbury Center—3726, 200 South Sixth Street, Minneapolis, Minnesota 55402 (Delaware Corporation)

S&A Restaurant Corp., 6606 LBJ Freeway, Dallas, Texas 75240 (Delaware Corporation)

TPC Transportation Company, Pillsbury Center—3430, 200 South Sixth Street Minneapolis, Minnesota 55402 (Delaware Corporation)

1. The name of the parent corporation is North Ocean Enterprises Limited. Its principal office is located at: Souris; Prince Edward Island, Canada C0A 2B0

2. The wholly-owned subsidiary which will participate in the operation is North Ocean Enterprises Transport Incorporated, a corporation incorporated under the laws of the Province of Nova Scotia, Canada.

James H. Bayne,

Secretary.

[FR Doc. 1543 Filed 1–23–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30697]

Hillsdale County Railway Co., Inc.; Purchase and Issuance of Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the acquisition and operation by the Hillsdale County Railroad Company (HCRC) of the N&W Gary-East District branch line between milepost 98.5 near Pergo, OH, and milepost 122.53 just west of Ashley-Hudson, IN, a distance of 24.03 miles, subject to employee protective conditions and dismisses for want of jurisdiction the request by HCRC for exemption from the requirements of 49 U.S.C. 11301 to issue a note in the amount of $310,500.

DATES: This exemption will be effective February 24, 1986. Petitions to stay must be filed by February 3, 1986, and petitions for reconsideration must be filed by February 13, 1986.

ADDRESSES: Send pleading referring to Finance Docket No. 30697 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Angelica D. Lloyd, General Attorney, 204 South Jefferson St., Roanoke, VA 24042.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. infoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 19, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression. Commissioner Taylor dissented in part with a separate expression. Vice Chairman Simmons did not participate in the dispostion of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 86–1544 Filed 1–23–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children; Official Use of Penalty Mail To Aid in the Location and Recovery; Public Hearing

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of public hearing.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention announces a public hearing on the use of penalty mail to aid in the location and recovery of missing children.

DATE: The hearing will be held Monday, February 3, 1986, at 9:00 a.m.

ADDRESS: The hearing will be held in Conference Room B, Main Justice Building, 10th and Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Michelle Easton, Missing Children's Program Coordinator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Room 1110, Washington, D.C. 20531, telephone: (202) 724–7655.

SUPPLEMENTARY INFORMATION: On November 8, 1985, the Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), published preliminary guidelines for the implementation of S. 1195 by Federal departments and independent establishments in the **Federal Register** (50 FR 46822). S. 1195 authorizes Federal departments and independent

establishments (agencies), and the Congress, to use official mail to aid in the location and recovery of missing children.

These preliminary guidelines, required by 39 U.S.C. 3220(a)(1), are intended to inform agencies of available options for the use of missing children information on or in penalty mail envelopes and mailers. The guidelines include information on U.S. Postal Service restrictions on the placement of information on envelopes, "shelf-life" restrictions on the use of missing children information, and other factors, unique to agency structure and practice, which may impact the form and manner of the use of such information.

The guidelines provide that agencies can receive camera-ready photographic and biographical information on missing children through the National Center for Missing and Exploited Children. Agencies are encouraged to give priority to the use of missing children information in mail addressed to members of the public and to inter- and intra-agency publications that will be widely disseminated and viewed by agency employees.

In addition, the guidelines request that implementing regulations promulgated by Federal departments and establishments identify a single agency-wide point of contact and additional points of contact for any subunits promulgating individual regulations. A brief plan to maximize the use of missing children information is also requested, with supporting information including use and cost estimates. A report on each implementing agency's experience and recommendations for future action is requested to be submitted to OJJDP by June 30, 1987. These reports will assist OJJDP in providing its report and recommendations to Congress for consideration in determining whether to extend the law beyond its February 8, 1988 expiration date.

Many agencies are in the process of drafting their regulations to implement the guidelines. In order to advise and assist agencies in this process, to answer questions, and to receive input on how agencies' use of missing children information can be maximized in the most cost-effective manner, OJJDP will hold a public hearing on February 3, 1986. Participation is invited from public and private agencies, both governmental and nongovernmental, who may have ideas, suggestions, questions or concerns to offer. Written comments and suggestions are also welcome. Written comments and suggestions should be received, at the contact address above, by February 7, 1986.

Following the hearing, additional agency guidance and information that may be of assistance to Federal agencies in the implementation of S. 1195 will be published in the **Federal Register** and directed to agency contact persons. Agency mail management personnel and individuals responsible for writing or implementing agency regulations, are particularly invited to attend the hearing.

Dated: January 17, 1986.

Michelle Easton,

Missing Children's Program Coordinator.

[FR Doc. 86–1521 Filed 1–23–86; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of Administrative Law Judges; Georgia Department of Labor v. Labor Department; Employment Service and Unemployment Insurance Grants

In the matter of Georgia Department of Labor, Appellant, vs. U.S. Department of Labor, respondent (Case No. 86–ESA–1).

In the matter of Georgia Department of Labor, appellant, vs. U.S. Department of Labor, respondent (Case No. 86–UIA–1).

Please take notice that upon the Appellant's appeals from Respondent's Final Determinations disallowing payments of $14,446.00 in Employment Service grants to Merlin Suggs and $5,464.00 in Unemployment Insurance grants to Nancy Brown, a joint hearing will be held on March 10, 1986 in the Federal Trade Commission courtroom, Suite 1010, No. 1718 Peachtree Street NW., Atlanta, Georgia, commencing at 2:00 p.m.

Pursuant to 29 CFR 658.707 and 658.708, all interested parties are hereby invited to attend and to present evidence at the hearing; and the parties hereto are hereby advised that:

(1) They may be represented at the hearing;

(2) They may present oral and documentary evidence at the hearing;

(3) They may cross-examine opposing witnesses at the hearing; and

(4) They may request rescheduling of the hearing if the time, place, or date set are inconvenient.

Any request for re-scheduling must be in writing addressed to the undersigned at 1111–20th Street NW., Washington, D.C. 20036 and must be received at least ten (10) days before the hearing.

Robert J. Feldman,

Administrative Law Judge.

Dated: January 17, 1986, Washington DC.

[FR Doc. 86–1593 Filed 1–23–86; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.

The title of the recordkeeping/ reporting requirement.

The OMB and Agency identification numbers, if aplicable.

How often the recordkeeping/ reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/ reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and

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Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

State-by-State breakdown of total JTPA Title III Formula Funds and Obligations in PY 1985

ETA RC 86

One-time use

State or local governments

57 respondents; 57 hours; no forms.

The information is requested by the Senate Committee on Appropriations and will be used to respond to their needs. State-by-State breakdown of total JTPA Title III formula funds and obligations in PY 1985 is requested.

Signed at Washington, DC, this 16th day of January, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-1516 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-16,111]

Westinghouse Electric Corp., Concordville, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Westinghouse Electric Corporation, Concordville, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-16,111; Westinghouse Electric Corporation, Concordville, Pennsylvania (January 16, 1986)

Signed at Washington, D.C., this 16th day of January 1986.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-1517 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

Discontinuance of Trade Readjustment Allowances (TRA) Payments for Weeks Subsequent to December 19, 1985

Statutory authority expired on December 19, 1985 for paying trade readjustment allowances (TRA) to workers certified as eligible for trade adjustment assistance. State employment security agencies, which serve as agents of the Secretary of Labor for administering the adjustment assistance provisions of the Trade Act of 1974, have been advised to continue to take and pay TRA claims for weeks including and prior to the week of December 19, 1985. States have also been advised to accept TRA claims from eligible workers for weeks subsequent to December 19, 1985 but to hold such claims in suspense for the present.

Pub. L. 99-190, the Third Continuing Resolution for F.Y. year 1986, provides authorization and funds for continuing reemployment services under sections 236, 237, and 238 of the Trade Act through September 30, 1986. These sections cover worker training, job search and relocation activities. State employment security agencies have been instructed to continue to provide these reemployment services to eligible workers. For further information contact Mr. Glenn Zech, Deputy Director, Office of Trade Adjustment Assistance, Room 6434, 601 D Street, Washington, D.C. 20213 at telephone number (202) 376-2646.

Signed at Washington, DC, this 14th day of January 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-1518 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-Servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in October 1985. The revised schedule was issued on December 31, 1985, in Unemployment Insurance Program Letter No. 7-86, and is effective with respect to UCX first claims filed on or after January 5, 1985.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective on and after January 5, 1986.

Pay grade	Monthly rate
(1) Commissioned Officers:	
O-10	$7,086
O-9	7,086
O-8	7,086
O-7	6,408
O-6	5,393
O-5	4,449
O-4	3,715
O-3	3,040
O-2	2,379
O-1	1,842
(2) Warrant Officers:	
W-4	3,417
W-3	2,841
W-2	2,455
W-1	1,970
(3) Enlisted Personnel:	
E-9	3,147
E-8	2,629
E-7	2,248
E-6	1,909
E-5	1,607
E-4	1,353
E-3	1,196
E-2	1,103
E-1	964

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on January 16, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-1515 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Florida:
FL86-11 (Jan. 3, 1986) ..... p. 129.
Georgia:
GA86-22 (Jan. 3, 1986)..... p. 252.
Maryland:
MD86-1 (Jan. 3, 1986) ..... p. 386.
New York:
NY86-13 (Jan. 3, 1986)..... pp. 752-758.
New York:
NY86-17 (Jan. 3, 1986)..... p. 776.
Virginia:
VA86-15 (Jan. 3, 1986)..... p. 1089.

Volume II

Kansas:
KS86-8 (Jan. 3, 1986)..... pp. 335-337, pp.339-340.
Kansas:
KS86-5 (Jan. 3, 1986)..... pp. 342-343, p. 345.
Louisiana:
LA86-5 (Jan. 3, 1986) ..... pp. 360-361.
Minnesota:
MN86-5 (Jan. 3, 1986)..... p. 496.
Missouri:
MO86-1 (Jan. 3, 1986)..... pp. 540-546.
Missouri:
MO86-2 (Jan. 3, 1986)..... pp. 559-562.
Missouri:
MO86-9 (Jan. 3, 1986)..... p. 599.
New Mexico:
NM86-1 (Jan. 3, 1986)..... p. 639.
Oklahoma:
OK86-13 (Jan. 3, 1986)..... pp. 820, 825.
Oklahoma:
OK86-14 (Jan. 3, 1986)..... p. 831, pp. 835-836.
Texas:
TX86-3 (Jan. 3, 1986) ..... p. 849.
Listing by Location (Index)..... p. xliii.

Volume III

None.

Corrections

On January 3, 1986, notice of superseded general wage determination decisions was published in the Federal Register. Certain decisions being superseded were incorrectly identified. The correct numbers of the decisions being superseded and their dates of publication in the Federal Register are listed by State. Supersedeas decision numbers are in parentheses following the number of the superseded decision.

North Carolina:
NC81-1138 (NC86-13)..... Dec. 30, 1980.
South Carolina:
SC81-1253 (NC86-16)..... June 26, 1981.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 60 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 17th day of January, 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-1460 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-27-M

BEST COPY AVAILABLE

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Mine Safety and Health Administration

[Docket No. M-85-196-C]

Gamble Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Gamble Mining Company, Inc., Drawer 1160, Grundy, Virginia 24614 has filed a petition to modity the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-06201) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies. be installed on the mine's electric face equipment.

2. The average mining height is 43 inches and the average frame height of the equipment is 35 inches. With cabs or canopies added, the frame height increases to 41 inches.

3. Lowering cabs or canopies closer to the frame would limit the operator's visibility and seating position.

4. Cabs or canopies could strike and dislodge roof bolts creating roof fall hazards and could possibly strike and damage the electrial cables that are hung and cause an electrocution hazard.

5. For these reasons, petitioner requests a modification of the Standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1505 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-27-M]

Hecla Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Hecla Mining Company, P.O. Box 320, Wallace, Idaho 83873 has filed a petition to modify the application of 30 CFR 57.11037 (ladderway openings) to its Lucky Friday Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ladderways have a minimum unobstructed cross-sectional opening of 24 inches by 24 inches measured from the face of the ladder.

2. Petitioner requests that the unobstructed cross-sectional opening measured from the face of the ladder be 18" by 20" in all manways located underground.

3. Due to extreme ground pressures, the raise area and hexagonal crib manways are subject to significant horizontal stresses which reduce the manway openings. Larger openings would require longer leg lenghts for the hex cribbing which would increase the uniformly distributed load exerted on the crib legs, causing the crib to fail due to horizontal shear. In addition, larger hex cribs would require longer raise caps, increasing the likelihood of cap failure due to underground stresses.

4. Petitioner states that lengthening the legs of the hexagonal crib and the raise caps would cause a diminution and deterioration of the structural integrity of the hexagonal crib and raise caps, resulting in a diminution of safety for the miners who work in these areas daily.

5. For these reasons petitioners request a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1506 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-192-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, 2355 Harrodsburg Road, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its VP-3 Mine (I.D. No. 44-01520) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. In a portion of the tail entries of the 7th development north of the VP-3 Mine, the roof has deteriorated to the extent that persons making the examinations would be exposed to hazardous conditions.

3. As an alternate method, petitioner proposes that a certified person conduct examinations for methane and other hazardous conditions at the tail of the longwall unit and at the regulatory at the mouth of the longwall tail entries at a location approximately 50 feet inby.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1507 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-189-C]

Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Galatia Mine 56-1 (I.D. No 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low and medium voltage resistance ground systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The ground check circuit shall cause the circuit breaker to open when either the ground or pilot wire is broken.

2. As an alternate method petitioner is constructing underground shops and plans to distribute power through the use of standard panel boxes as would be used in a surface application. The shops are to be constructed with concrete floors and chain-link mats on the ribs and overheads. All of the electrical equipment will be installed and connected to the main panel boxes, through the use of rigid conduit. Conduit will be supported by steel framework in the crane area and by "uni-strut" secured to the overhead by conventional roof bolts. Power will be distributed to the panels from a mine duty power center. The cables from the power center to the panels will be MSHA-approved and protected at the power center with MSHA-approved ground monitors, ground fault, under voltage release, thermal overload and magnetic overload protection.

3. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1508 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. MM-85-185-C]

Laurel Ridge Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Laurel Ridge Coal Company, Box 190, Ashcamp, Kentucky 41512 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 17 Mine (I.D. No. 15-10707) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal snap locks which will be welded to the frames of the haulage equipment by using a chain in lieu of padlocks.

3. Petitioner states that the metal snap locks will provide the same degree of safety as locked padlocks. For this reason, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1509 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-143-C]

Little Buck Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Little Buck Coal Company, R.D. 4, Box 400, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Little Buck Slope (I.D. No. 36-07547) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face will be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

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Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1510 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-186-C]

Midland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Midland Coal Company, P.O. Box 159, Farmington, Illinois 61531 has filed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its Elm Mine (I.D. No. 11-00067) located in Peoria County, Illinois and its Mecco Mine (I.D. No. 1100603) located in Knox County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that water, sediment, or slurry impoundments be examined at intervals not exceeding seven days, and all instruments monitored at intervals not exceeding seven days.

2. As an alternate method petitioner proposes to examine the impoundments on a semi-annual basis and following major precipitation events.

3. The mines are located in remote, rural areas with no downstream developments and low hazard potential. The Mecco Mine has been abandoned, with no miners working there since 1983. After reclamation is completed, the Elm Mine will also be closed. No hazard will exist to miners due to their absence from the vicinity of the impoundments.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1511 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-194-C]

New Lincoln Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

New Lincoln Coal Company, Inc. 837 E. Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Lykens Slope (I.D. No. 36-0.7629) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of developing entires and the last open crosscut in any pair or set of room be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute; and that the minimum quantity of air reaching each working face be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1512 Filed 1-3-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-26-M]

Umetco Minerals Corp.; Petition for Modification of Application of Mandatory Safety Standard

Umetco Minerals Corporation, P.O. Box 669, Blanding, Utah 84511 has filed a petition to modify the application of 30 CFR 57.9022 (berms or guards) to its White Mesa Mill (I.D. No. 42-01429) located in San Juan County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.

2. The roads of primary concern are on top of dikes which separate the sub-grade tailings pond cells. The pond cells are lined, with the liners extending over the dikes and under the roadways, which precludes the possibility of installing guardrails.

3. As an alternate method, petitioner proposes to enforce a maximum speed limit of 15 mph on these roads. Inspectors would be required to carry a two-way radio for communications when traveling alone. When road conditions are slick or muddy, travel on the dike roads would be limited to that which is absolutely necessary, and depending on conditions, four-wheel-drive vehicles or chains may be required.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspecton at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1514 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-21-M]

Valdez Creek Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Valdez Creek Mining Company, Inc., 610 East 4th Avenue Anchorage, Alaska 99501-2213 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Denali Mine (I.D. No. 50-01315) located in Cook Inlet County, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows.

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. Petitioner states that the mining consists of the removal of old stream gravels which occur in very narrow types of deposits. When working in very restricted areas, several back-up beepers tend to confuse things, rather than make the work area safer. The constant beeping becomes a normal routine and tends to be ignored.

3. For these reasons, petitoner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Ali comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspecton at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1515 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-07]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council.

DATE AND TIME: February 10, 1986, 8:30 a.m. to 5:30 p.m., and February 11, 1986, 8:30 a.m. to 12 noon.

ADDRESS: Jet Propulsion Laboratory (JPL), Room 101, Building 180, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 24 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

This meeting will be closed to the public from 8:30 a.m. to 9:15 a.m. on February 11 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 80 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open—except for a closed session as noted in the agenda below.

Agenda

February 10, 1986

8:30 a.m.—Introductory Remarks.
8:45 a.m.—FY 1987 President's Budget.
10 a.m.—Review of Life Science Program.
1 p.m.—Review of Spacelab 2 Physical Science Results.
2:30 p.m.—Review of Results of Voyager Uranus Encounter.
4 p.m.—JPL Briefing on Future Technology.
5:30 p.m.—Adjourn.

February 11, 1986

8:30 a.m.—Closed Session on Membership.
9:15 a.m.—NASA Ames Research Center Briefing on Future Technology.
10:45 a.m.—Review of Transatmospheric Vehicle Program.
12 noon—Adjourn.

Dated: January 17, 1986.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 86-1486 Filed 1-23-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Design Arts Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Executive Committee) to the National Council on the Arts will be held on February 13, 1986, from 9:00 am-5:30 pm, Room 526 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting will be open to the public on a space available basis. The

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topic for discusson will be guidelines and other policy issues.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 17, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–1484 Filed 1–23–86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District (Fort Calhoun Station, Unit No. 1); Exemption

I

Omaha Public Power District (the licensee) is the holder of Facility Operating License No. DPR–40 that authorizes operation of the Fort Calhoun Station, Unit No. 1 (the facility) at a steady state reactor power level not in excess of 1500 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Washington County, Nebraska. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

10 CFR 50.54(o) states that primary reactor containments shall be subject to the requirements set forth in Appendix J to this part. Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," sets forth the detailed requirements for containment leakage testing. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for such tests.

Section III of Appendix J addressed the specific leakage testing requirements.

III

Exemption requests were submitted by the licensee by letter dated January 26, 1983.

IV

Personnel Air Lock Leakage Testing

The licensee's proposed leak testing of the containment personnel air lock (PAL) is in compliance with the requirements of Appendix J to 10 CFR Part 50, with one exception. The licensee has requested an exemption from paragraph III.D.2(b)(ii) of Appendix J, which states:

> Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than Pa.

Whenever the plant is in cold shutdown, containment integrity is not required. However, if an air lock is opened during cold shutdown, paragraph III.D.2(b)(ii) requires that an overall air lock leakage test at not less than Pa be conducted prior to plant heatup and startup. The existing PAL doors are so designed that a full pressure, i.e., Pa (60 psig), test can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. The strong backs are extremely difficult to install and the outer door must be opened to remove the strong backs. As a result, about 18–24 hours are required to complete a full pressure test of an air lock.

Alternatively, the licensee proposes to leak test the door seals at 5 psig prior to returning to a plant operating condition requiring containment integrity, and conduct a full pressure test on the PAL assembly within 2 weeks. The licnesee contends this proposal will provide adequate assurance of air lock integrity without imposing undue delays on return to power operations.

If the periodic 6-month test of paragraph III.D.2(b)(i) and the test required by paragraph III.D.2(b)(iii) are current, there should be no reason to expect an air lock to leak excessively just because it has been opened during cold shutdown or refueling.

Containment integrity, which is required during hot shutdown, hot standby, startup, and power operations, will not be violated when the full pressure test is conducted during these modes. One of the requirements for containment integrity is for at least one door in the personnel air lock to be properly closed and sealed. Both doors open inward toward containment. The outer door will be opened prior to the test to permit the strong backs to be placed on the inner door. The closed inner door keeps the integrity of the containment. The outer door is then closed and the test is performed. Since strong backs are on the inner door, the integrity of the containment is not violated during the test. Once the test is completed, the outer door is opened, the strong backs on the inner door are removed, and the outer door is subsequently closed. Once this has been completed, the inner door still maintains containment integrity.

Accordingly, the staff concludes that the licensee's proposed approach, consisting of delaying by up to 2 weeks the full pressure (Pa) test required by paragraph III.D.2(b)(ii) and performing a reduced pressure (5 psig) door seal test prior to achieving a condition requiring containment integrity, is acceptable.

Therefore, an exemption from paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is granted.

Type C Testing of Penetration M–3 Isolation Valve

The licensee has requested an exemption from the requirements of Appendix J in regard to performing Type C leakage tests on the isolation valve in the Charging Pump Discharge Line (penetration M–3). The justification for not testing this valve is that the pressure (2100 psig) seen by the valve in the direction of flow toward containment is greater than the maximum containment accident pressure (60 psig). All of the charging pumps remain operational or are automatically started and the subject isolation valve remains open upon receipt of a Safety Injection Actuation Signal (SIAS). Thus, the charging pump flow provides a steal barrier against escape of the containment atmosphere. Maintaining this barrier during a loss of coolant accident is assured since, upon receipt of a SIAS, the charging pumps are automatically aligned to the boric acid storage tanks. The volume held by these tanks provides a source of supply to the pumps for approximately 80 minutes and, as demonstrated in the facility's Updated Safety Analysis Report, Section 14.16, the containment pressure would be reduced back to near atmospheric levels (approximately 2 psig) within 50 minutes. Even after the tanks are empty, there will exist a 14-ft water head on the suction side of the charging pumps. This head of water will exert a pressure of approximately 6 psig to provide a seal against air leakage for the remainder of the accident.

The staff finds that an exemption from the Type C testing requirements of Appendix J is not needed for the containment isolation valve associated with penetration M–3, since the valve is not included in the valve categories of paragraph II.H of Appendix J, which are required to be Type C tested.

Furthermore, the staff has determined that penetration M–3 does not constitute a potential containment atmospheric leak path, for the reasons stated above. Therefore, the licensee may exclude the subject valve from the Type C test program.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest and hereby grants an exemption from the requirements of Section III of Appendix J to 10 CFR Part 50 to the extent discussed in Section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 33434).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 10th day of January, 1986.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing–B, Office of Nuclear Reactor Regulation.

[FR Doc. 86–1579 Filed 1–23–86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Hydro assessment: rivers study, anadromous fish, production objectives, protected areas, site ranking, supply curve.
- Cumulative impacts (Argonne).
- FERC update.
- Other.
- Public comment.

DATE: February 4, 1986, 9:30 a.m.

ADDRESS: The meeting will be held in the Council's meeting room, 850 S. W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–1574 Filed 1–23–86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

Notice of Visits to Facilities

January 17, 1986.

Notice is hereby given that Commission staff members and members of the Office of the Consumer Advocate will visit the U.S. Postal Service Bulk Mail Center in Largo, Maryland on January 24, 1986, to obtain general knowledge and understanding of mail operations. A report of the visit will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 86–1476 Filed 1–23–86; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Agency Information Collection Activities Under OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Employee Noncovered Service Pension Questionnaire.

(2) Form(s) submitted: G–209.

(3) Type of request: New collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 15,000.

(7) Annual reporting hours: 316.

(8) Collection description: Under Pub. L. 98–21, the Tier 1 portion of an employee annuity may be subjected to a reduction for benefits received based on work not covered under the Social Security Act or Railroad Retirement Act. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86–1573 Filed 1–3–86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–22806; File No. SR–Amex–86–1]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1986 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to clarify its interpretation of the words "stock" and "shares" as used in its options rules, particularly Exchange Rule 915, to permit the listing of options contracts on securities which are not common stock but have sufficient indicia of common stock ownership to satisfy the criteria for listing options on a national securities exchange. An

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example of this interpretation is set forth below in Item 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The need to clarify the interpretation of the words "stocks" and "shares", as used in certain Exchange rules (including Exchange Rule 915) has arisen in connection with the reorganization of Mesa Petroleum Co. ("MSA").

Options on MSA common stock began trading on the Exchange in May 1975. On December 4, 1985, the shareholders of MSA approved a two-step plan to reorganize the company's business into a limited partnership. Pursuant to the terms of the reorganization, first, in December 1985, MSA transferred its oil and gas properties into a limited partnership. The partnership interests were issued to a Depositary which, in turn, issued freely transferable Units that were distributed to MSA shareholders. Each MSA shareholder of record as of December 16, 1985 received one partnership Unit for each share of common stock held. The Units were listed on the New York Stock Exchange (NYSE), where both the Units and the MSA common stock continue to trade independently.

In the second step of the reorganization, scheduled to take place in the first half of 1987, MSA will make a liquidating distribution. After the second step, MSA common stock will cease to be publicly traded and the MSA limited partnership will be the sole surviving successor entity.

Pursuant to the rules of the Options Clearing Corporation (OCC), each MSA options contract was adjusted to settle for 100 MSA common shares and 100 Units for all options exercised on or after the ex-distribution date (December 31, 1985). Usually, to facilitate the maintenance of a fair and orderly market in MSA options, new series with a contract unit of 100 shares of MSA common stock would be listed for trading.

However, because substantially all the oil and gas properties, in addition to other operating assets, have been transferred to the limited partnership, and because the rights adherent to ownership of the Units are so similar to common stock ownership rights, the OCC has determined that the actual successor corporation to MSA is the limited partnership. Therefore, the Exchange will list options contracts representing 100 MSA partnership Units.

Exchange Rule 915, which governs the criteria to be used to select new options contracts, refers to the security underlying options contracts as "stock" and "shares". Accordingly, the Amex proposes to interpret Rule 915 to also apply to options trading on listed securities like the MSA partnership Units, that have the principal indicia of stock ownership. Of course, all other options rules will also be interpreted similarly.

The proposed interpretation is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by providing options investors with continuity in options trading on the successor equity security to MSA. Therefore, the proposed interpretation is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act to facilitate the maintenance of a fair and orderly market in MSA options by providing continuity in MSA options trading. The Exchange is converting the current options on MSA to options on MSA Units to coordinate the options with the successor equity security to MSA.

The Commission finds that the proposed rule change is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because of the necessity to provide a continuous market for investors in options on MSA. Establishing options on MSA Units is consistent with the OCC's determination that the successor corporation to MSA is the limited partnership. Indeed, the MSA Units already are traded on the NYSE and MSA common stock will cease to be traded after the liquidating distribution in the first half of 1987.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-1587 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22812; File No. SR-AMEX-85-41]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Incorporated; Relating to Treasury Note Options Escrow Receipts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1985 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes a policy change to permit Treasury Notes other than those which underlie specific Treasury Note option contracts to collateralize escrow receipts for such option contracts. The details of the proposal are set forth below in Item 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Treasury Note option contracts traded on the Exchange are primarily used by institutions to produce income and to hedge their Government portfolios. The majority of these institutions, however, are restricted from trading in margin accounts, so their options writing programs are done in cash accounts, usually through the use of escrow receipts.

Under current Exchange margin rules, to collateralize a short call Treasury Note option, a customer delivers to a member organization an escrow receipt from an approved bank stating, among other things, that the bank holds for the customer's account the specific Treasury Note underlying the call and will deliver it if the customer's account is assigned an exercise notice. In the case of a short put option, a customer delivers a similar escrow receipt stating that the bank holds cash or cash equivalents which have an aggregate market value of not less than 100 percent of the aggregate exercise price of the underlying put.

To provide institutional investors with flexibility in hedging their investments, as well as to promote liquidity in the Exchange's Treasury Note options market, it is proposed that Treasury Notes other than those specifically underlying an option contract may be used to collateralize a specific short Treasury Note call option contract. The proposal is based on that fact that changes in interest rate levels tend to have a similar impact on the dollar price of Treasury Notes with approximately the same time to maturity.

Accordingly, the Exchange proposes that the following two tests be met for any surrogate Treasury Notes used as collateral. First, the Treasury Notes which may be used as collateral must mature (i) not more than one month after the underlying Note; and (ii) not less than 80 percent of the time to maturity before the underlying Note. That is, under the proposal, the most current 10-year Treasury Note options traded on the Exchange must be collateralized by Treasury Notes maturing no later than ten years and one month and no earlier than eight years (i.e. 80% of ten years). This will ensure that a close relationship exists between the market price fluctuations of the Note underlying the option and the Note used to collateralize the escrow receipt.

Second, the Exchange proposes that the amount of surrogate Treasury Notes to be required to collateralize a Treasury Note escrow receipt shall be determined by multiplying $10,000 per contract by a multiplier (which would be determined by dividing the coupon rate of the underlying Treasury Note by the coupon rate of the surrogate Treasury Note). For example, if a Treasury Note with a 12% coupon is used to collateralize a Treasury Note option contract overlying a Treasury Note with a 10% coupon, $83,333 worth of the Treasury Note with the 12% coupon would be required as collateral (1 9/12 × $100,000=$83,333). Similarly, if a Treasury Note with a 8% coupon is used to collateralize a Treasury Note option contract overlying a Treasury Note with an 10% coupon, $125,000 worth of the Treasury Note with the 8% coupon would be required as collateral (1 9/12 × $100,000=$125,000). Thus, the proposal has been structured to satisfy the concern that, if the writer fails to deliver the Treasury Note underlying the option, there are sufficient funds available which can be derived from the sale of the surrogate security to ensure that the specific security can be purchased in the market and delivered. (The Treasury Note contract specifications will continue to require the underlying Note to be delivered upon assignment.)

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by expanding the available securities which may be used to collateralize Treasury Note escrow receipts and by providing flexibility in hedging Treasury Note options investments. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1580 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22805; File No. SR-DTC-85-7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Depository Trust Company

On December 23, 1985, the Depository Trust Company ("DTC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this Notice to solicit comment on the rule change.

The proposed rule change revises DTC's procedures to clarify that securities pledged to the Option Clearing Corporation ("OCC") through the Participant Terminal System ("PTS") are pledged pursuant to the same terms and conditions and with the same legal effect as pledge data submitted on paper forms. DTC previously amended its pledge procedures, SR-DTC-85-2, to permit DTC participants to pledge securities to OCC through PTS as an alternative to submitting pledge data in paper form.

DTC states in its filing that the proposal is consistent with the requirements of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. DTC also stated that the submission of pledge data through PTS improves the efficiency and reduces the cost of pledging securities to OCC.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after this Notice is published in the **Federal Register**. Please refer to File No. SR-DTC-85-7, and file six copies of your comments with the Secretary of the Commission, 450 5th Street NW., Washington, DC 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available for inspection at the Commission's Public Reference Room and at the principal offices of DTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1586 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22809; File No. SR-MSRB-86-3]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Conduct of Municipal Securities Business

The Municipal Securities Rulemaking Board on January 6, 1986, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing an interpretation of Board rule G-17 (hereafter referred to as the "proposed rule change") concerning the conduct of municipal securities business. The text of the proposed rule change is as follows:

The Board has received inquiries concerning situations in which syndicate managers charge fees for designated sales that do not appear to be actual expenses incurred on behalf of the syndicate or may appear to be excessive in amount. For example, one commentator has described a situation in which the syndicate manager charged $.25 to $.40 per bond as expenses on designated sales and has suggested that such a charge seems to bear no relation to the actual out-of-pocket costs of handling such transactions.

Rule G-17 provides that

> In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

The Board wishes to emphasize that syndicate managers should take care in determining the actual expenses involved in handling designated sales and may be acting in violation of rule G-17 if the expenses charged to syndicate members bear no relation to or otherwise overstate the actual expenses incurred on behalf of the syndicate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The Board has received inquiries concerning situations in which syndicate managers charge fees for designated sales that either do not appear to be actual expenses incurred on behalf of the syndicate or appear to be excessive in amount. The Board has determined that syndicate managers may be acting in violation of rule G-17, which sets forth a general requirement that municipal securities dealers deal with all persons fairly and not engage in any deceptive, dishonest, or unfair practice, if expenses charged to syndicate members bear no relation to or otherwise overstate the actual expenses incurred on behalf of the syndicate.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, setling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers that act as syndicate managers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1581 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22810; File No. SR-MSRB-86-2]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Customer Account Transfers

The Municipal Securities Rulemaking Board on January 2, 1986, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing proposed rule G-26 on customer account transfers (hereafter referred to as "the proposed rule change"), as follows:

*Rule G-26. Customer Account Transfers**

(a) When a customer whose municipal securities account is carried by a municipal securities broker or dealer (the "carrying party") wishes to transfer its entire account to another municipal securities broker or dealer (the "receiving party") and gives written notice of that fact to the receiving party, both municipal securities brokers or dealers must expedite and coordinate activities with respect to the transfer as follows:

(i) Upon receipt from the customer of a signed transfer instruction to receive such customer's securities account from the carrying party, the receiving party shall immediately submit such instruction to the carrying party. The carrying party shall, within five business days following receipt of such instruction, validate and return the transfer instruction to the receiving porty (with an attachment reflecting all positions and money balances as shown on its books) or take exception to the transfer instruction for reasons other than securities positions or money balance differences and advise the receiving party of the exception taken.

(ii) The carrying party and the receiving party shall promptly resolve any exceptions taken to the transfer instruction.

(iii) Within five business days following the validation of a transfer instruction, the carrying party shall complete the transfer of the account to the receiving party. The receiving party and the carrying party must immediately establish fail-to-receive and fail-to-deliver contracts as of the date of validation upon their respective books of account against the long/short positions in the customer's account that hove not been physically delivered/received and the receiving party/carrying party shall debit/credit the reloted money amount. The customer's account shall thereupon be deemed transferred.

(b) Any fail contracts resulting from this account transfer procedure shall be closed out in accordance with rule G-12(h).

(c) Any discrepancies relating to positions or money balances that exist or occur after transfer of a customer's securities account shall be resolved promptly.

(d) The Board may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any dealer or any type of account, security or municipal security.

(e) When both the carrying party and the receiving party are direct participants in a clearing agency registered with the Securities and Exchange Commission offering automated customer securities account transfer capabilities, the account transfer procedure, including the establishing and closing out of fail contracts, shall be accomplished pursuant to the rules of and through such registered clearing agency.

(f) The carrying party shall provide a copy of eoch customer account transfer instruction issued pursuant to paragroph (a)(i) to the enforcement authority having jurisdiction over the carrying

*Italics indicate new language; [brackets] indicate deletions.

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party member, at the request of such authority.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The securities industry recently has sought to address the problems that can arise when a customer decides to transfer its entire account from one industry member to another. Previously, only one self-regulatory organization, the New York Stock Exchange ("NYSE"), had a rule addressing this situation. NYSE rule 412 had required that customer account transfers between members be accomplished "promptly." Because of dissatisfaction with this standard, and a perceived increase in the number of "problem transfers" involving securities industry participants, the NYSE and the National Association of Securities Dealers ("NASD") recently adopted rules regarding customer account transfers and filed them with the Commission.[1] The Commission approved NYSE amended rule 412 on November 26, 1985, with an effective date of February 24, 1986. The Commission has not yet taken action on the NASD proposal, although it is expected that it will be approved in time to take effect at the same time as NYSE rule 412.

It is apparent that the securities industry is moving toward a uniform customer account transfer standard. Proposed rule G–26 is designed to enhance this development by applying a customer account transfer procedure to all municipal securities brokers and municipal securities dealers. The proposed rule change provides that a customer account transfer instruction must be validated unless the transferring dealer objects for reasons unrelated to securities positions or money balances in the account. It provides for the establishment and resolution of fail contracts in accordance with the Board's close-out rule. It requires the use of automated customer account transfer systems in place at registered clearing agencies when both dealers are participants in said agency. It contains a provision for enhancing compliance with the rule by requiring submission of transfer instructions to the enforcement agency with jurisdiction over the dealer carrying the account, if the enforcement agency requests such submission.

Approval of the proposed rule change will benefit the securities industry as a whole by ensuring a uniform customer account transfer standard. Currently certain municipal scurities brokers or municipal securities dealers, particularly those with municipal security-only accounts and bank dealers, will not be covered by the standards governing the rest of the securities industry. The Board requests that the Commission approve the proposed rule change in time to take effect along with the customer account transfer rules of the NYSE and the NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change applies uniformly to all brokers, dealers, or municipal securities dealers that are engaged in municipal securities activities and are generally technical in nature. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither asked for nor received any comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule, or

(B) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–1582 Filed 1–23–86; 8:45 am]

BILLING CODE 8010-01-M

[1] SR–NYSE–85–17; SR–NASD–85–29.

[Release No. 34–22806; File No. SR–MSRB–86–1]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Dissemination of CUSIP Numbers and Initial Trade Dates

The Municipal Securities Rulemaking Board on January 6, 1986, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing herewith an amendment to Board rule G–34 on CUSIP numbers (hereafter referred to as the "proposed rule change"). The text of the proposed rule change is as follows: [1]

G–34 CUSIP Numbers *and Dissemination of Initial Trade Date Information*

(a)–(b) No change.

(c) Each municipal securities broker or municipal securities dealer who acquires, whether as principal or agent, a new issue of municipal securities from the issuer of such securities for the purposes of distributing the new issue shall on the initial trade date communicate the following information to syndicate and selling group members:

(i) the CUSIP number or numbers assigned to the issue and descriptive information sufficient to identify the CUSIP number corresponding to each part of the issue assigned a specific CUSIP number; and

(ii) the initial trade date. For purposes of this paragraph (c), initial trade date shall mean, for competitive issues, either the date of award, or the first date allocations are made to syndicate or selling group members, whichever date is later, and, for negotiated issues, either the date on which the contract to purchase the securities from the issuer is executed, or the first date allocations are made to syndicate or selling group members, whichever date is later.

(d) [(c)]: No change.

[1] Italics indicate new language; [brackets] indicate deletions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G–34 requires a municipal securities dealer acting as an underwriter of a new issue to apply to the Board or its designee (currently the CUSIP Service Bureau) for assignment of CUSIP numbers to the issue. National Securities Clearing Corporation is planning to provide automated comparison facilities for when, as and if issued ("when-issued") transactions in mid-February 1986. The proposed system will require that a dealer submitting a transaction to the system include the CUSIP number for the issue, which will require dealers to have access to CUSIP numbers for a new issue at the time that trading in the issue begins. For when-issued transactions that are not between a syndicate manger and a syndicate member, both dealers should submit transactions to the registered clearing agency by the day after trade date in order for the system to work efficiently. Therefore, dealers submitting transactions to the system will need CUSIP numbers, on, or as soon as possible after, trade date.

In addition, since many dealers wish to begin trading in an issue as soon as possible, it also is necessary for the industry to be advised by the underwriters when trading begins. For purposes of rule G–12(c), which requires when-issued confirmations to be sent within two business days of trade date, the Board has interpreted "trade date" to be no earlier than the date of award, for competitive issues, or the date of the execution of the contract to purchase the issue, for negotiated issues, and has interpreted rule G–17, on the conduct of municipal securities business, to prohibit the sending of confirmations of when-issued transactions prior to these dates. Although managing underwriters will know the date of award or the execution of the contract to purchase the issue, other dealers with pre-sale orders also will need to know the "initial trade date" on which traders can be submitted to the automated comparison system.

The proposed rule change would require managing underwriters to communicate CUSIP numbers and the "initial trade date" to syndicate members and to selling group members on the initial trade date. The "initial trade date" is defined in the proposed rule change to mean, for competitive issues, either the date of award or the first date allocations are made to syndicate or selling group members, whichever date is later, and, for negotiated issues, either the date on which the contract to purchase the securities from the issuer is executed or the first date allocations are made to syndicate or selling group members, whichever date is later. This would ensure that syndicate members and selling group members have information necessary for timely submission of transactions to the automated comparison system. If the proposed rule change does not result in adequate dissemination of this information, the Board will consider other measures, such as a requirement that managing underwriters publish the information through channels generally available to the industry.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules.

> designed . . . to foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities. . . .

The proposed rule change is consistent with the provisions of section 17A of the Act, which mandates the creation of an automated national clearing system for securities.

The Board believes that the proposed rule change will promote compliance with rule G–12(f)(i), thereby fostering the use of automated clearance facilities and providing greater efficiencies in the comparison of inter-dealer transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change applies in a uniform manner to all brokers, dealers, and municipal securities dealers that are engaged in municipal securities activities. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither asked for nor received comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commissioin will: (A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Board has requested the Commission to find good cause for approving the proposed rule change prior to the 35th day after publication in the **Federal Register** under section 19(b)(2) of the Act if the approval date would not occur prior to or concurrent with the commencement of operation of the automated comparison system for when-issued transaction. The Board has advised that National Securities Clearing Corporation is planning to begin operation of the when-issued comparison system in mid-February 1986. The Board believes that the proposed rule change is necessary to ensure that municipal securities dealers can submit transactions to the comparison system in a timely and efficient manner. Therefore, the Board believes that good cause exists to accelerate the effectiveness of the proposed rule change under section 19(b)(2) of the Act if such acceleration is necessary to obtain effectiveness of the proposed rule change on or prior to the commencement date for the operation of the when-issued comparison system.

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IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission and all related items other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the office of the MSRB. All submissions should refer to the file number in the caption above and should be submitted by Febraury 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1583 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22807; File No. SR-MSRB-86-4]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Uniform Practice

The Municipal Securities Rulemaking Board on January 6, 1986, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepard by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing herewith proposed amendments to rule G-12 on uniform practice (hereafter referred to as the "proposed rule change"). The text of the proposed rule change is as follows:[1]

G-12 Uniform Practice

(a) and (b) No change.
(c) Dealer Confirmations.
(i) through (iv) No change.

(v) Each confirmation shall contain the following information:

(A) through (I) No change.

(J) amount of concession, if any, per $1000 par value unless stated to be an aggregate figure, *provided however, that for a transaction in securities maturing in two or more years and, at the time of the transaction, paying investment return solely through capital appreciation, the concession, if any, shall be expressed as a percentage of the price of these securities;*

(K) through (N) No change.

(vi) No change.

(d) through (l) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Board rule G-12(c)(v)(J) requires municipal securities dealers to disclose on inter-dealer confirmations the amount of concession on the transaction, if any, per $1000 par value unless stated to be an aggregate figure. In response to industry inquiries on how the rule applies to zero coupon, compound interest, and multiplier securities,[2] the Board has adopted amendments to rule G-12(c)(v)(J) to require disclosure of the amount of concession on these securities as a percentage of the bond's price. This new requirement is more consistent with industry practice. The Board also was concerned that disclosure of the amount of concession on the basis of maturity or par value may be confusing.[3]

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest . . . .

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

[1] Italics indicate additions.

[2] Zero coupon securities have a stated interest rate of "0%" and are sold at deep discounts, with the investor's return received in the form of an accretion to this discount to par at the rate of return represented by the original offering yield. Other similar municipal securities, often described as "compound interest" or "multiplier" securities, are issued with a stated rate of investment return; an investor purchasing such a security would receive at maturity a single payment (the "maturity value") representing both return of the initial principal value and payment of an investment return accrued over the life of the instrument at a stated compounded rate.

[3] The proposed rule change also would accommodate transactions in "GAINS," municipal securities that are issued as zero coupon bonds but, after a certain period, convert to bonds paying interest periodically. During the period that these securities pay investment return solely through capital appreciation, the concession on these securities must be expressed as a percentage of their price. Once these bonds convert to paying interest periodically, the concession must be expressed per $1000 par value or as an aggregate figure.

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commisson by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1584 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22800; File No. SR-NYSE-85-45]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Option Fees

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OPTION TRANSACTION FEES

Agency Transactions	
(Per Contract Charge)	
(Premiums < $1.00	$0.15)
(Premiums ≥ $1.00	.30)
(Per Side Charge	.02)
Index Options	
(Premiums Less than $1.00 (per contract side)	.20
(Premiums equal to or greater than $1.00 (per contract side)	.35
Stock Options	
(Premiums less than $1.00 (per contract side)	$.15
(Premiums equal to or greater than $1.00 (per contract side)	.30
Principal Transactions	
(Per Contract Charge) *in all options (per contract side)*	$.06
(Per side Charge (comparison)	.02

OPTION COMPARISON FEES

For all option transactions (per contract side)	$.0125

The new fees will be effective January 1, 1986

OPTIONS FLOOR FACILITY OPERATION FEES

Option Clerk Ticket Fee	
Per annum Charge	
Regular	*$510* [$380.]
(Premium	*$960* ($715.]
Options Floor Telephone Fee Per Annum/each private line	$900
Options Floor Booth Fee Per Annum	$3,000

OPTIONS TRADING RIGHT FEES

Options Trading Right Transfer Charge—5% of purchase price (in no case more than $5,000.)	
Options Trading Badge Per Annum	$300
Application Processing Fee	*$150.* (100.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Section A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees charged for agency transactions in index options, for the comparison of all option transactions made on the Exchange, for clerks on the options floor, and for the processing of OTR applications. The increase in fees would assist the Exchange in offsetting the costs of operating a facility for options trading. The proposed fees and methods of calculating these fees are similar to fees collected by other option exchanges.

The statutory basis under the Securities Exchange Act of 1934 (the "Act") is section 6(b)(4) and its requirement that a national securities exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed fees were reviewed and approved by the Options Subcommittee on Market Performance, comprised of Exchange members and representatives of member organizations.

No written comments were solicited or received.

III. Date of effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation Of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 15, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1526 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22801; File No. SR-PSE-85-33]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Summary Effectiveness of Proposed Rule Change

The Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") submitted on November 15, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to establish a policy for Floor Brokes to vocalize the name of the Member Firm or Market Maker for whom they are transacting orders.

In its filing with the Commission, the self-regulatory organization included statements concerning the terms of

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substance, purpose of and basis for the proposed rule change and discussed any comments received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Items I and II below.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its Options Floor Procedure Advices B–6 and D–9 to more clearly define the responsibility of Floor Brokers in effecting agency orders. Specifically, the proposed changes will set out the obligations of Floor Brokers to vocalize the name of the Member Firm or Market Maker for whom they are transacting orders.

Currently OFPA B–6 requires that a Floor Broker, after effecting a transaction for the account of a Market Maker, shall supply the name of the Market Maker upon request. However, it is unclear as to which party or parties may make such a request and to whom the name shall be supplied. The Exchange proposes to amend OFPA B–6 to remove the ambiguity in the provision.

OFPA D–9 requires that a Floor Broker executing an order for a Member Firm shall indicate by public outcry the name of such member firm immediately upon effecting the transaction. This requirement is seen as overly burdensome, particularly in active trading Crowds. The Exchange propose to amend OFPA D–9 to require this give-up only upon request.

Set forth below are the proposed rule changes. (Brackets indicate language to be deleted; italic indicates new language.)

PSE OPTIONS FLOOR PROCEDURE ADVICE

B–6

Subject: Market Maker's Use of Floor Brokers to Effect Transactions for the Market Maker's Account

Section 73 of Rule VI states, in part, that "A Market Maker is an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist on the Floor," and Section 79 requires, in part, that "Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. . . ." Accordingly, the Exchange believes that the special obligations and role of the Market Maker warrant that the crowd be fully aware of the Market Maker's trading activity. Pursuant to Sections 73 and 79, the following special procedures will be applicable when a Market Maker has occasion to utilize the services of a Floor Broker to effect transactions for the Market Maker's account:

Sections 1 and 2 are not amended.

(3) A Floor Broker holding an order for the account of a Market Maker shall verbally identify the order as such prior to consummating a transaction, and shall after effecting the trade, supply the name of the Market Maker concerned, *by public outcry*, upon request[.] *of any member or members in the trading crowd.*

Sections 4 and 5 are not amended.

PSE OPTIONS FLOOR PROCEDURE ADVICE

Subject: Giving Up the Name of a Member Organization At a Time of Requesting the Size of the Market and/or Executing an Order

First Paragraph—No Change.

Paragraph (1)—No Change.

(2) Whether or not he shall have previously indicated the name of the member organization for whom he is acting in requesting a quotation, a Floor Broker executing an order shall *upon request by any Member or Members in the trading crowd* indicate by public outcry the name of such member organization immediately upon effecting any transaction on the Options Trading Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included the following statements concerning the purpose of and basis for the proposed rule change.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

The PSE is proposing to change its Options Floor Procedure Advices ("OFPA" or "Advices") with respect to the obligations of Floor Brokers to vocalize for whom they are executing transactions. OFPA B–6 indicates that a Floor Broker after executing a transaction for a market maker should supply the name of the market maker upon request. However, the Advice does not specify to whom the name should be supplied or upon whose request. The proposed rule change is designed to remedy this deficiency and make clear that any member in the trading crowd may request this information and that the floor broker must announce the information, generally, to the trading crowd.

With respect to OFPA D–9, a Floor Broker is required to give up the name of the member organization for whom he is executing a transaction immediately upon effecting such transaction. The PSE notes that such a requirement is needed on certain exchanges in order to facilitate comparison and clearing of trades. This is not the case at the PSE however, owing to its unique-trade match. Morever, the requirement to vocalize the name of the member organization after each trade is deemed burdensome, particularly in active or fast markets. Consequently, the PSE proposes to change the OFPA to require Floor Brokers to announce the name of the member organization only upon request. This will preserve the right of crowd members to gain this knowledge when so desired, and will also be consistent with the proposed change to OFPA B–6.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change imposes no burden on competition.

(C) *Self-Regulatory Organization 's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been put into effect summarily, pursuant to section 19(b)(3)(B) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

On preliminary consideration, it appears to the Commission that summary effectiveness is necessary for the maintenance of fair and orderly markets.

Section 19(b)(3)(B) of the Act requires that any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with the provisions of section 19(b)(1) of the Act.

Publication of the submission is expected to be made in the Federal Register during the week of January 20, 1986. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. PSE–85–33.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the PSE.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 15, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–1527 Filed 1–23–86; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–14600]

Application and Opportunity for Hearing; Marine Midland Banks, Inc.

January 17, 1986.

Notice is Hereby Given that Marine Midland Banks, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Manufacturers Hanover Trust Company (the "Trust Company") under two existing Indentures between the Applicant and the Trust Company and a Pooling and Servicing Agreement, dated as of December 1, 1985 (the "Agreement"), between Marine Midland Bank, N.A. ("Marine") and Trust Company under which certificates evidencing interest in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under the Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest in shall, within ninety days after ascertaining the conflicting interest, either eliminate such conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee upon another indenture under which any other securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that: (1) The Trust Company currently is acting as Trustee under two indentures under which the Applicant is the obligor. The indenture dated as of April 1, 1969 and supplmented by a Supplemental Indenture dated as of December 6, 1974 involved the issuance of 8⅛% Debentures due 1994. The indenture dated as of March 1, 1973 involved the issuance of 7⅞% Debentures due 2003. Said indentures were filed respectively as Exhibit 2 and 2–A to Applicant's respective Registration Statements Nos. 2–31857 and 2–46974 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said two indentures are hereinafter called the Indentures and the Securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On December 16, 1985, the Trust Company entered into a Pooling & Servicing Agreement dated as of December 1, 1985 (the "1985–1 Agreement") with Marine Midland Bank, N.A., Seller, Servicer and Custodian, under which there were issued on December 16, 1985 Mortgage Pass-Through Certificates, Series 1985–1 11.00% Pass-Through Rate (the "Series 1985–1 Certrificates"), which evidence fractional undivided ownership interests in a pool of conventional one-to-four family mortgage loans (the "1985–1 Mortgage Pool") having an adjusted principal balance aggregating $15,063,923.77 at the close of business on December 1, 1985 which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985–1 Certificates.

(4) On December 16, 1985, Applicant, the parent of Marine Midland Bank, N.A., entered into a Limited Guaranty of even date (the "1985–1 Limited Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985–1 Certificates, to be liable for 5% of the initial aggregate principal balance of the 1985–1 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985–1 Limited Guaranty. The Series 1985–1 Certificates were not registered under the Securities Act of 1933 by reason of a section 4(2) exemption under said Act. The 1985–1 Agreement has not been qualified under the Trust Indenture Act of 1939.

(5) On December 28, 1984, Applicant and National Westminster Bank USA, a national banking association ("NatWest") entered into a Trust Agreement of even date (the "Trust Agreement") providing for the delivery of certain debt securities to be held by NatWest in a special and irrevocable trust (the "Trust") for the purpose of satisfying Applicant's obligations in respect of the Debentures and other outstanding debt securities of Applicant. The Trust was created by Applicant so that is might utilize Statement of Financial Accounting Standards No. 76 and as a result the Debentures have been defeased for financial accounting purposes only. The Bank is not a party to the Trust Agreement and has no rights thereunder.

(6) The obligations of Applicant under the Indentures and the 1985–1 Limited Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. The setting aside of certain securities pursuant to the Trust Agreement was to effect favorable accounting treatment and not for the purpose of securing accounting treatment and not for the purpose of securing Applicant's obligations under the Indentures. The Trust Agreement does not provide for a grant of a security interest and the Bank has no rights under the Trust Agreement in the assets held in Trust. Any differnences that exist between the provisions of the Indentures and the 1985–1 Limited Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1985–1 Agreement.

Applicant has waived notice of hearing, and waived hearing, and waived all rights to specify procedures

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under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14600, which is a public document on file in the office of the Commission's Public Refreence Room, 450 Fifth Street, NW, Washington, DC 20549.

Notice is Further Given that any interested person may, not later than February 11, 1986 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which desires to controvert or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be adressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Fiance, pursuant to delegated authority.

Shirley E. Hollis

Assistant Secretory.

[FR Doc. 86-1585 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowance; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on April 2, 1986, at 1:00 p.m., the Veterans Administration Regional Office, St. Petersburg, Florida, Station Committee on Educational Allowances, shall, at the Federal Building, 6th Floor, Hearing Room A, Room 660, 144 First Avenue South, St. Petersburg, Florida, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons pursuing/enrolled in BAR/BRI Florida Bar Review, 226 West Pensacola Street, Suite 108, Tallahassee, Florida, 32301, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: January 13, 1986.

Carlos L. Rainwater,

Director.

[FR Doc. 86-1575 Filed 1-23-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 16
Friday, January 24, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

Contents

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Federal Reserve System	1
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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 29, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1602 Filed 1-22-86; 10:11 am]

BILLING CODE 6210-01-M

2

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, February 5, 1986.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of January, 1986.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: January 14, 1986.

Mr. B.E. Meredith,

Acting Executive Director, Notionol Mediation Board.

[FR Doc. 86-1636 Filed 1-22-86; 11:22 am]

BILLING CODE 7550-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 28, 1986.

Closed meetings will be held on Tuesday, January 28, 1986, at 2:30 p.m and on Thursday, January 30, 1986, following the 2:30 p.m. open meeting. Open meetings will be held on Thursday, January 30, 1986, at 10:00 a.m., 1:45 p.m. and 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Connsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 28, 1986, at 2:30 p.m., will be:

Formal orders of investigation.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Institution of injunctive action.
Regulatory matter regarding financial institutions.

The subject matter of the open meeting scheduled for Thursday, January 30, 1986, at 10:00 a.m., will be:

1. Consideration of whether to issue a release proposing amendments to Rule 3a12-8 under the Securities Exchange Act of 1934 that would exempt certain Japanese government securities from the provisions of the Act for purposes of marketing futures contracts on these securities in the United States. For further information, please contact Sharon Lawson at (202) 272-3116.
2. Consideration of whether to propose amendments to rule 202.3a under the Commission's Rules on Informal and Other Procedures which would require payment of filing and other fees to a U.S. Treasury designated lockbox depository. The proposed amendments respond to regulations issued by the U.S. Treasury Department to facilitate payments to the federal government. For further information, please contact Kathleen A. Jackson at (202) 272-2700.

The subject matter of the open meeting scheduled for Thursday, January 30, 1986, at 1:45 p.m., will be:

The Commission will hear oral argument on an appeal by C.E. Carlson, Inc., a registered broker-dealer, and Charles E. Carlson, its president, from an administrative law judge's initial decision. For further information, please contact Daniel J. Savitsky at (202) 272-7400.

The subject matter of the open meeting scheduled for Thursday, January 30, 1986, at 2:30 p.m., will be:

The Commission will hear oral argument on an appeal by Butcher & Singer, Inc., a registered broker-dealer, and Thomas A. Grey and Samuel J. Bennett, vice presidents, from an administrative law judge's initial decision. For further information, please contact Herbert V. Efron at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, January 30, 1986 following the 2:30 p.m. open meeting, will be: Post oral argument discussions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jerry Laporte at (202) 272-2468.

Dated: January 17, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-1647 Filed 1-22-86; 11:23 am

BILLING CODE 8010-01-M

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federal register

Friday
January 24, 1986

Part II

Environmental Protection Agency

40 CFR Part 60
Review and Amendment of Standards of Performance for New Stationary Sources; Hot Mix Asphalt Facilities (Asphalt Concrete Plants); Proposed Rule

BEST COPY AVAILABLE

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2943-3]

Review and Amendment of Standards of Performance for New Stationary Sources; Hot Mix Asphalt Facilites (Asphalt Concrete Plants)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Review and amendment of standards.

SUMMARY: Under section 111 of the Clean Air Act, EPA is required to review standards of performance for new, modified, or reconstructed stationary sources every 4 years. A review of the existing standards of performance for hot mix asphalt (HMA) facilities (asphalt concrete plans) (40 CFR Part 60, Subpart I) has been completed. Only minor revisions of terminology in the standards are warranted as a result of this review.

DATES: *Comments.* Comments must be received on or before March 25, 1986.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-83-26, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

Document. The document summarizing information gathered during the review may be obtained by written request from the EPA Library (MD-35), Research Triangle Park, North Carolina 27711, or by phone at (919) 541-2777. Please refer to "A Second Review of Standards of Performance for New Stationary Sources—Asphalt Concrete Plants," EPA-450/3-85-024.

Docket. Docket No. A-83-26, which contains information gathered during the review, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW, Washington, DC 20460, A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert H. Wood at (919) 541-5624, Standards Development Branch, concerning regulatory aspects and the standards, or Mr. Kenneth R. Durkee at (919) 541-5595, Industrial Studies Branch, concerning technical aspects of the industry and control technologies. The address for both persons is Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background

Subsequent to the development of the document, "A Second Review of Standards of Performance for New Stationary Sources—Asphalt Concrete Plants" (EPA-450/3-85-024), the National Asphalt Paving Association (NAPA) suggested that terminology used in the asphalt concrete industry be standardized. The Association suggests using the terms "hot mix asphalt (HMA)" instead of "asphalt concrete"; HMA facility" instead of "asphalt concrete plant"; virgin hot mix asphalt" or "virgin HMA" instead of "conventional mix"; and "recycled hot mix asphalt" or recycled HMA" instead of "recycled asphalt pavement (RAP)." The standard terminology recommended by NAPA is used in this **Federal Register** notice and will be used by EPA in future documents pertaining to the HMA industry. The new source performance standards (NSPS) are being amended to use the terminology recommended by NAPA.

The NSPS for the industry were proposed on June 11, 1973, and promulgated on March 8, 1974. The standards apply to any HMA facility for which construction, modification, or reconstruction (as defined under 40 CFR 60.2, 60.14, 60.15) began after June 11, 1973. An HMA facility is defined as any facility used to manufacture HMA by heating and drying aggregate and then mixing the aggregate with asphalt cement. The HMA facility is comprised of any combination of dryers; systems for screening, handling, storing, and weighing hot aggregaate systems for loading, transferring, and storing mineral filler; systems for mixing HMA; and systems for loading, transfer, and storage associated with emission control devices.

The existing standards prohibit the discharge into the atmosphere from any affected facility exhaust gases that:

a. Contain particulate matter in excess of 90 milligrams per dry standard cubic meter (mg/dscm) (0.04 grains per dry standard cubic foot [gr/dscf]), and

b. Exhibit 20 percent opacity or greater.

Section 111(b)(1)(B) of the Act requires review of the NSPS at least every 4 years and, if appropriate, revision of the standards. The principal purpose of such review and appropriate revisions is to ensure that the standards reflect a current assessment of best demonstrated control technology (BDT). The first review of the standards was completed in 1979. No revisions to the standards were made as a result of that review.

In 1983, EPA undertook a second review of the standards of performance for HMA facilities. During this review, EPA regional offices, State and local air pollution control agencies, the National Asphalt Pavement Association, the Asphalt Institute, and industry representatives were contacted to identify concerns regarding all facets of the NSPS. In addition, 369 NSPS compliance test reports were collected and analyzed. Visits were made to 45 HMA facilities owned by 34 companies and to 5 equipment manufacturers to obtain information on HMA processes, emission control devices, trends in the HMA industry, and any problems complying with the NSPS. Tests were conducted by EPA at four HMA facilities to measure particulate emissions, hydrocarbon emissions, and visible emissions. The tests were conducted at fabric filter- and scrubber-controlled HMA facilities during production of virgin and recycled HMA. Based on the data and information obtained, a background information document was prepared that summarizes the current status of the HMA industry and industry compliance with the NSPS. A summary of the findings of this review follows.

II. Findings

A. Industry Status

There is steady growth in the number of facilities affected by the NSPS. The Bureau of Census and the Construction Industry Manufacturers Association estimate that approximately 700 HMA facilities were shipped between June 1973 and January 1979, and more than 600 new HMA facilities were shipped between January 1979 and the end of 1984. More than 100 new HMA facilities are expected to be shipped in 1985.

Since the 1979 review, the use of drum-mix HMA facilities and recycled HMA in this industry has increased. At the time of the 1979 review, only 2.5 percent of the existing HMA facilities were drum-mix. In 1983, approximately 96 percent of all new HMA facilities purchased in the U.S. were drum-mix. The use of recycled HMA approximately doubled between 1981 and 1983. Both of these trends are expected to continue.

B. Control Technology.

Fabric filters or wet scrubbers (venturi scrubbers) are used to control emissions from both batch and drum-mix HMA facilities. Most HMA facilities use knockout boxes or cyclones to recover particulate matter from the exhaust gas stream and to reduce the particulate load to the emission control device. The recovered material is recycled to the process as filler; thus, knockout boxes or cyclones are considered to be process equipment rather than emission control devices. Based on compliance test data and cost-effectiveness calculations, the Agency has determined that fabric filters and wet scrubbers are still BDT.

C. Cost Effectiveness of the NSPS

The control costs for meeting the NSPS were estimated for three sizes of model HMA facilities operated seasonally (1,000 hours per year) and year-round (1,500 hours per year) by comparing the annualized costs and emissions for facilities controlled by fabric filters or wet scrubbers to those for uncontrolled facilities. In all cases, the control costs were found to be reasonable.

For seasonal operation, the cost effectiveness of controlling particulate emissions from model HMA facilities with a fabric filter ranges from $130 to $253 per megagram (Mg) ($118 to $230 per ton). With a wet scrubber, the cost effectiveness of emission control ranges from $108 to $213 per Mg ($99 to $194 per ton). For year-round operation, the cost effectiveness of control ranges from $89 to $183 per Mg ($81 to $168 per ton) for fabric filters and from $84 to $166 per Mg ($76 to $151 per ton) for wet scrubbers.

D. Compliance Test Results

The EPA analyzed 369 compliance test reports obtained from State agencies and HMA companies. The amount of information contained in the reports varied greatly. However, of these reports that identified test results, 87 percent showed compliance with the NSPS. Of those HMA facilities that produced recycled HMA during testing, 82 percent showed compliance with the NSPS. Of the HMA facilities that failed to demonstrate compliance, over 60 percent were controlled by wet scrubbers. In addition, 82 percent of the scrubber-controlled HMA facilities analyzed were operated at pressure drops (ΔP) less than 5 kilopascals (kPa) (20 inches of water column [in. w.c.]). Most HMA facility vendors recommend operating scrubbers at a ΔP of 4 to 5 kPa (15 to 20 in. w.c.) and a liquid-to-gas ratio of at least 1.1 liters per cubic meter (8.0 gallons per thousand actual cubic feet) to achieve compliance with the NSPS.

Compliance test data indicate that HMA facilities are frequently tested for compliance while operating at less than 80 percent of design capacity. Test data acquired during this review indicate that particulate emissions decrease as production rate decreases.

E. EPA-Conducted Tests

During the NSPS review, seven emission tests were conducted by EPA at four HMA facilities. These HMA facilities were selected primarily because they had predictable production schedules for both virgin and recycled HMA. Four tests demonstrated HMA facility compliance with the NSPS particulate emission limit. Three tests had results above the NSPS limit, but HMA facility or control device operation was determined to be the cause in each case as described in detail in the review document, EPA-450/3-85-024. Visible emission data were obtained during five tests, and all results were less than the NSPS limit of 20 percent opacity.

A blue haze is sometimes observed at HMA facilities producing recycled HMA. Although the blue haze is generally believed to consist of condensing hydrocarbons, available data do not show a relationship between blue haze and hydrocarbon emissions or between the production of recycled HMA and hydrocarbon emissions.

F. Coal Use

The use of coal as fuel in HMA facilities, which is a recent (since 1983) development in the U.S., may increase emissions of SO_x and particulate matter. During the present NSPS review, three test reports were available for HMA facilities using coal as a fuel. All of these HMA facilities were fabric filter-controlled, and two of the three had particulate emissions greater than 90 mg/dscm (0.04 gr/dscf). One of these two HMA facilities was retested while firing fuel oil and met the NSPS. The other HMA facility has not been retested at this time. The third HMA facility demonstrated particulate emissions of 23 to 30 percent of the NSPS limit. These test results indicate that the use of coal as a fuel may cause particulate emissions to exceed the NSPS limit. Adjustments to the control device and its operating parameters may be necessary for an HMA facility to remain in compliance with the particulate standard when coal is used as a fuel.

Any HMA facility not originally designed to burn coal that switches from gas or oil to coal fuel would be a modified facility and would be required to conduct an emission test to demonstrate compliance with the NSPS or to demonstrate that conversion to coal firing does not increase particulate emissions to the atmosphere. Any existing HMA facility already subject to the NSPS also would have to demonstrate compliance with the standards if it were to switch from oil or gas to coal firing.

III. Conclusions

The conclusions of this NSPS review are as follows: (1) The present standards are appropriate, (2) the present standards are achievable when control devices are operated and maintained properly, and (3) the costs and cost effectiveness of the present standards are reasonable. Therefore, except for revisions in terminology, no changes in the standards are being made.

IV. Miscellaneous

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this 4-year review would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." It has been concluded from the review that no changes are necessary to the existing standards. The Agency has, therefore, concluded that this review is not a "major rule" under Executive Order 12291.

The review was submitted to the Office of Management and Budget (OMB) for review as required under Executive Order 12291. Any written comments from OMB and any EPA responses to those comments will be included in Docket A-83-26. This docket is available for public inspection at EPA's Central Docket Section, which is listed under the **ADDRESSES** section of this notice.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because there are no adverse economic impacts associated with this 4-year review, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this review will not have a significant economic impact on a substantial number of small entities.

The Agency finds that notice and public procedure on the changes in terminology made by this notice are unnecessary because the changes have no substantive effect.

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V. List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, and Hot mix asphalt facilities (SIC 2951).

Dated: December 13, 1985.

Charles L. Elkins,

Acting Assistant Administrator.

PART 60—[AMENDED]

For the reasons outlined in the preamble, Part 60, Subpart I, of 40 CFR is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

2. 40 CFR Part 60, Subpart I title is amended as follows:

Subpart I—Standards of Performance for Hot Mix Asphalt Facilities

3. Section 60.90 paragraph (a) is revised to read as follows:

§ 60.90 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each hot mix asphalt facility. For the purpose of this subpart, a hot mix asphalt facility is comprised only of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems.

* * * * *

4. Section 60.91 is revised to read as follows:

§ 60.91 Definitions

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

(a) "Hot mix asphalt facility" means any facility, as described in § 60.90, used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements.

[FR Doc. 86-1553 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

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January 24, 1986

Part III

Department of Transportation

Urban Mass Transportation Administration

Guidance on Private Sector Participation for Section 18 and Section 16(b)(2) Recipients; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

[Docket No. 86–B]

Guidance on Private Sector Participation for Section 18 and Section 16(b)(2) Recipients

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice provides guidance to section 18 and section 16(b)(2) recipients for complying with the Urban Mass Transportation Administration's (UMTA) policy, "Private Enterprise Participation in the Urban Mass Transportation Programs," 49 FR 41310 (1984).

DATE: The policy provisions of this Notice are effective upon issuance. New information requirements are effective beginning in Fiscal Year 1987. UMTA is interested in receiving comments on this Notice. Comments will be accepted for sixty (60) days after publication in the **Federal Register**.

ADDRESS: Comments on this Notice should be submitted to UMTA Docket Number 86–B, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Birnie, Acting Director, Office of Private Sector Initiatives, Room 9310, Telephone (202) 426–6385, UMTA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On October 22, 1984, UMTA published its private sector policy statement in the **Federal Register**. The policy statement provided guidance to the major UMTA programs, sections 3 and 9, for achieving compliance with the private enterprise provisions contained in the UMT Act, and "to promote greater reliance on the private sector in the provision of mass transportation services both as an independent private sector activity and through competitive contractual arrangements with public bodies". The three provisions of the UMT Act which address private sector involvement, sections 3(e), 8(e), and 9(f), address urbanized area planning and programming processes, and for this reason the section 18 and section 16(b)(2) programs were not cited in the policy statement, although section 16(b)(2) subrecipients within urbanized areas were implicitly covered.

On November 19, 1985, the UMTA Administrator signed a "Dear Colleague letter" which stated that the basic spirit and principles of UMTA's policy statement on private sector participation apply to the section 18 and 16(b)(2) programs and should be recognized by States and subrecipients in the project and program development processes. The letter mentioned the longstanding procedure in the section 16(b)(2) program requiring nonprofit agencies applying for capital grants to formally notify private operators of their intentions and invite their written comments and signoffs on the applications.

It is recognized that the method of applying the policy must take into consideration the nature and characteristics of the rural and small urban environment and the wide variety of small operations funded under these two programs. It is also recognized that a number of States already have good policies and procedures in place for involving the private sector in State-administered transit programs, and that in these cases, significant changes may not be required.

UMTA intends to issue a Circular establishing permanent guidance for sections 18 and 16(b)(2) recipients. To ensure that grantees and other affected parties have full opportunity to participate in the establishment of this guidance, UMTA invites comments on this Notice. Such comments will be considered in the development of further guidance.

Issued: January 16, 1986.

Ralph L. Stanley,

Administrator.

Urban Mass Transportation Administration, Guidance on Private Sector Participation for Section 18 and Section 16(b)(2) Recipients

1. Purpose

This Notice recites the elements of the private sector policy which apply to the section 18 and section 16(b)(2) programs and clarifies the State's role in implementing and assessing compliance. The Notice also outlines the type of information considered reasonable to be provided by local recipients so that State agencies can assess local recipients' compliance with the policy, and it outlines procedures and guidance which States must incorporate into their State Management Plans.

2. Scope

This Notice provides guidance for all applicants for Federal assistance under section 18 and 16(b)(2) of the Urban Mass Transportation Act of 1964, as amended. The policy provisions of this guidance are effective upon issuance. New information requirements are effective beginning in Fiscal Year 1987.

3. Guidance

The following provisions contained in or based upon the October 22, 1984, policy statement apply to the section 18 and section 16(b)(2) programs.

a. *Notification.* Local entities should provide reasonable notice to private transportation providers and possible new business entrants regarding proposed services and opportunities for private transportation providers in order that they may present their views concerning the development of local plans and programs. To the extent possible, it is also desirable to make known in advance the criteria which will be taken into account in making public/private service decisions.

b. *Early Consultation.* A fair appraisal of private sector views and capabilities should be assured by affording private providers an early opportunity to participate in the development of projects. Private providers should be given opportunity to present their views concerning the development of local transportation plans and programs and to offer their own service proposals for consideration.

c. *Consideration of Unsubsidized Private Sector Service.* When the need for new services is defined or services are significantly restructured, consideration first should be given to whether private carriers could provide such service in a manner which is consistent with local objectives without public subsidy.

d. *Periodic Review of Existing Services.* Existing transit services should be periodically reviewed to determine if they can be provided more efficiently by the private sector. Public officials should encourage possible adjustments in local regulations or existing service requirements in order to permit private carriers to perform service without subsidy in the free market.

e. *Consideration of Private Carriers to Provide Assisted Services.* Where it is determined that public assistance is required for new or substantially restructured mass transportation services, consideration should be given to the capability of private providers to provide them.

f. *Local Barriers to Private Participation.* UMTA does not consider it acceptable for localities to foreclose opportunities for private enterprise by simply pointing to local barriers to their involvement in federally assisted local transportation programs. In general, a simple reference in the public record to public agency labor agreements or a local policy that calls for direct operation of all mass transportation services would not satisfy the private enterprise policy.

g. *True Comparison of Costs.* When comparing the service proposals made by public and private entities, all the fully allocated costs of public and nonprofit agencies should be counted. Subsidies provided to public and private nonprofit carriers, including operating subsidies, capital grants and the use of public facilities should be reflected in the cost comparisons. If a private for-profit carrier receives public subsidies, these should be indicated.

h. *Complaint Procedures.* Since the underlying spirit of the UMT Act is to afford communities maximum flexibility in local decisionmaking, it is appropriate that questions dealing with the fairness of local procedures and decisions be addressed at the local level. Accordingly, a discrete local mechanism, preferably independent, should be devised for resolving disputes in a manner which assures fairness to all parties. In the absence of a locally developed process, the State may prescribe and/or be party to a local process. Complaints which cannot be resolved at the local level should be resolved at the State level. State agencies are required, as part of their State Management plan, to have in place a mechanism for resolving conflicts or complaints from private transportation providers, including hearing and appeal procedures.

i. UMTA will entertain complaints from private enterprise organizations only upon procedural grounds based on the following claims: That the local project development process has not established procedures for the maximum feasible participation of private transportation providers consistent with the spirit of the policy; or that the local procedures were not followed; or that the State hearing and appeals procedures do not provide for fair resolution of local disputes. UMTA will not review disputes concerning the substance of local decisions regarding service or who should provide the service. Nor will UMTA entertain procedural protests prior to a disposition of complaints at the local and State level.

j. *Documentation.* Grantees are expected to maintain public records that document private participation in the project development process and the rationale used in making public/private service decisions. This information, along with State documentation, will be the primary evidence of compliance with the policy if a complaint is sent to UMTA.

k. *"Private nonprofit organization".* For purposes of implementing this policy, a private nonprofit organization which is exempt from taxation under 26 U.S.C. 501(a), or which has been determined under State law to be private nonprofit, is *not* included in the term "private enterprise", and is *not* considered to be a private transportation company or carrier.

4. State Role

The State agency administering the section 18 and section 16(b)(2) programs is responsible for having in place policies and procedures for achieving compliance with UMTA's private sector policy. In order to receive a section 18 or 16(b)(2) grant, State agencies are required to certify to UMTA that local recipients have afforded private for-profit transit and paratransit operators a fair and timely opportunity to participate to the maximum extent feasible in the planning and provision of the proposed transportation services. This assurance is one of the "State Assurances" contained in UMTA program circulars 9040.1A, and 9070.1A. In making this assurance, the State is henceforth assuring to UMTA that the policy provisions of this notice have been complied with. As is the case with other assurances for these programs, local projects must be placed in Category B of the State's program of projects until all the assurances, including participation by the private sector, can be made.

5. Information Requirements

a. *Local Recipients.* In order for the State to make the required assurance to UMTA, each local applicant should make available to the State agency, either in its application for funds, or through other channels, information which addresses the following areas, as appropriate:

1. The current participation of private providers in section 18 or 16(b)(2) supported services.

2. All efforts to provide written notice to private providers of proposed services.

3. All forums, meetings, hearings, or other opportunities for involving the private sector early in the project development process.

4. Description of private sector proposals, if any, offered for consideration, and the rationale for inclusion or exclusion.

5. Methods for periodically reveiwing existing services to determine whether they can be provided more efficiently by the private sector.

6. Any locally established criteria for making public/private service decisions.

7. The local methodology for making true cost comparisons when there are two or more operators interested in providing service.

8. Any complaints from private operators and how these were resolved.

9. The local mechanism for resolving conflicts or complaints involving private operators.

b. *State agencies:* Each State's State Management Plan for the section 18 program must be revised as necessary to fully address the areas listed below. If the same procedures will be used for the section 16(b)(2) program the State agency should so indicate. If they are different, the State should provide these to UMTA, since there is no State Management Plan requirement for the section 16(b)(2) program.

Revisions to the State Management Plans or section 16(b)(2) procedures must be received in the UMTA Regional Offices by July 31, 1986. These must be approved by UMTA before FY 1987 grants will be awarded. Revisions should:

1. Describe the State's procedures and requirements for achieving participation by private providers in local services at the beginning of the project development process and in the provision of service.

2. Describe the State's guidance to and requirements of local applicants to address implementation of the private sector policy.

3. Describe the State's process for resolving conflicts or complaints from private transportation providers that cannot be resolved at the local level, including hearing and appeal procedures.

4. Describe any technical assistance that the State provides to assist local recipients to involve the private sector; or technical assistance that is provided to private operators to assist them to participate in UMTA assisted services.

6. *UMTA Oversight.* In order to ensure that the policy objectives are being carried out, UMTA Regional staff will conduct periodic State level reviews.

[FR Doc. 86–1623 Filed 1–23–86; 8:45 am]

BILLING CODE 4910–57–M

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Part IV

Department of Transportation

Urban Mass Transportation Administration

Guidance on Documentation of Private Enterprise Participation in Urban Mass Transportation Programs; Notice

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

[Docket No. 86-A]

Guidance on Documentation of Private Enterprise Participation in Urban Mass Transportation Programs

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: On October 22, 1984, the Urban Mass Transportation Administrtion (UMTA) announced in the **Federal Register** (49 FR 41310) its policy regarding private enterprise participation in the development of plans and programs to be funded under the Urban Mass Transportation Act of 1964, as amended (the UMT Act), and under provisions authorizing the use of Federal-Aid Highway Funds for public mass transit projects. The purpose of this Notice is to provide guidance on pending or proposed applications for Federal financial assistance under sections 3, 5, 9 and 9A of the Act.

DATE: This guidance is effective January 24, 1986. UMTA is interested in receiving comments on this guidance. Comments must be received before February 24, 1986.

ADDRESS: Comments on this policy should be submitted to UMTA Docket Number 86-A, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, DC 20590.

All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed , stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Birnie, Acting Director, Office of Private Sector Initiatives, Room 9310, telephone (202) 426-6385, UMTA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This Notice provides FY 1986 guidance for the documentation of private sector participation to be submitted to UMTA to assist in making the findings required under sections 3(e), 8(c), 8(e), and 9(f) of the UMT Act. UMTA intends to issue in the near future a Circular establishing permanent guidance. However, to ensure that grantees and other affected parties have full opportunity to participate in the establishment of this guidance, UMTA invites comments on this Notice. Such comments will be considered in developing the Circular establishing this guidance for FY 1987 and beyond.

Section 8(c) requires the Secretary to find that (1) the planning process on which a program is based is being carried on in conformance with the objectives of section 8, and (2) the program of projects is based on the planning process. Section 8(e) requires that federally assisted plans and programs encourage to the maximum extent feasible the participation of private enterprise. Section 3(e) establishes protections for existing private mass transportation companies against federally assisted acquisition or competitive service by requiring the Secretary to find that (1) the financial assistance requested would be essential in carrying out the local programs, and (2) that the local provides for the participation of private mass transportation companies to the maximum extent feasible. Among other things, section 9(f) requires each grant recipient to (1) develop a proposed program of projects concerning activities to be funded in consultation with interested parties, including private transportation providers, and (2) publish a proposed program of projects in such a manner to afford affected citizens, private transportation providers and, as appropriate, local elected officials an opportunity to examine its content and to submit comments on the proposed program of projects and on the performance of the recipient.

Applications for Federal financial assistance under sections 3, 5, 9, and 9A of the UMT Act, or under sections 103(e)(4), and 162 of Title 23, U.S.C., should include documentation as set forth in this guidance.

Issued: January 16, 1986.

Ralph L. Stanley,

Administrator.

Urban Mass Transportation Administration, Guidance on Documentation of Private Enterprise Participation in Urban Mass Transportation Programs

1. Purpose

This Notice issues implementation guidance for the documentation of private sector participation to be submitted to UMTA to assist in making the findings required under sections 3(e), 8(c), 8(e), and 9(f) of the UMT Act.

2. Scope

This Notice provides interim guidance for all pending and proposed applications for Federal assistance under sections 3, 5, 9, and 9A of the Urban Mass Transportation Act of 1964, as amended, and Sections 103(e)(4) and 142 of Title 23, U.S.C.

3. Background

The policy statement implementing these sections of the UMT Act is intended to promote a greater competitive environment and increased opportunities for the private sector in the provision of mass transportation services and operations. It is anticipated that transit services will be improved or provided more efficiently in a more competitive environment.

Since the policy was issued in 1984, grantees have had a reasonable period to react to its intent. Therefore, local programs and projects in FY 1986 will be closely reviewed for their conformance with the principles outlined in the policy statement. Where possible, this will take place during the review of the Annual Element of the Transportation Improvement Program (TIP). However, recognizing that some projects may have progressed beyond the TIP stage, review of individual grantee's projects and activities will be conducted at the grant approval stage.

This Notice outlines the necessary documentation which must be submitted to UMTA to make these findings. In those cases where the State is the recipient for section 9 funds in urbanized areas of less than 200,000 population, those individual areas must submit the appropriate documentation to the State. The State shall provide UMTA with a summary of the documentation submitted by urbanized areas of less than 200,000. The actual documentation shall be retained by the State to be made available to UMTA upon request.

Nothing in this Notice shall be construed to mandate or prescribe a specific level of private enterprise participation in federally assisted programs. The choice of the most efficient and effective provider of services is best decided locally. Rather, the intent of this Notice is to ensure that the capabilities of private enterprise are fairly and adequately considered by local decisionmakers, as required by the UMT Act.

4. Program and Application Guidance

I. Review of Transportation Improvement Programs (TIP)

A. Required documentation for review of TIP Annual Element for conformance with Sections 3(e), 8(e), and 9(f) of the UMT Act. Projects included in the TIP must have been developed in conformance with a local process called for under the UMTA private sector policy. Documentation of this process would include the following, which will normally result from the local planning process, and should be submitted to the UMTA regional office either prior to or along with the TIP, normally as part of the Short-Range Transit plan.

1. Narrative description of local private sector policy process.

2. List of new and restructured services and operations and description of how these services have been or will be developed consistent with the policy. In particular, these services should provide competitive opportunity for private providers or an analysis of fully allocated costs which demonstrate service and operations decisions.

3. Narrative description of analysis of existing public services to determine if services can be provided by private operators and the results of that analysis. If analysis has not been undertaken, a schedule of when such analysis will be undertaken should be presented. To the extent feasible, such a review should be undertaken at least every three years.

4. Description of private sector proposals, if any, offered for consideration in the TIP and rationale for inclusion or exclusion.

5. Description of efforts to include private sector capital investment strategies.

If all such documentation is available, the TIP will be reviewed for conformance with locally adopted procedures designed to implement UMTA's private enterprise policy and sections of the UMT Act previously cited. Projects which have been programmed based on this may move to the application stage and, unless additional documentation is requested in the TIP review letter, no further private sector justification will be required.

"New or restructured services" may involve any or all of the following: establishment of a new mass transportation service; addition of a new route or routes to an applicant's or grantee's mass transportation system; a significant increase in service on an existing route in an applicant's or grantee's mass transportation system; or a change in the type or mode of service provided on a specific, regularly scheduled route in an applicant's or grantee's mass transportation system.

B. UMTA action in absence of full documentation. If all documentation is not available, UMTA will only allow the programming of projects which do not represent a change in service or operation, or a major capital project, as discussed in paragraph II below. For projects not programmed, as additional documentation becomes available, UMTA will amend its TIP approval to include such projects.

In the case of operating assistance projects which do not represent a change in service or operation, certification to that effect must be submitted with the annual element of the TIP.

The discussion in the following section illustrates more specifically the type of information in UMTA is seeking.

II. Review of Grant Applications

Where projects have been previously programmed based on a TIP Annual Element but not supported by the private sector documentation required by this Notice, the following information must be submitted in support of grant applications for capital and operating projects in order for UMTA to make its statutory findings.

A. Involvement of Private Sector. 1. What specific steps have been taken in the past 12 months to involve the private sector in the early development of services and operations? This would include systems planning and any other studies of possible service modification.

2. What comments and proposals have been received from the private sector and how were they responded to?

3. How is the private sector informed of opportunities for participation, both service and operation?

4. Are there impediments to contracting out? Describe impediments and measures that will be taken to resolve these impediments.

5. What specific steps will be taken over the next 12 months to involve the private sector in the early development of services and operation?

6. Are there outstanding private sector complaints? What is their status?

B. Analysis of New and Restructured Services. 1. List of new and restructured services developed over the last 12 months.

2. Assessment of whether private operators could participate through competitive procurement.

3. Methods for evaluating proposals, including assessment of fully allocated costs.

4. Actions planned during the next 12 months to give private operators competitive procurement opportunities.

C. Analysis of Existing Services and Operations. 1. Has competitive procurement of existing services or operations been examined during the last 12 months?

2. If so, describe the analysis and rationale for the outcome.

3. Were fully allocated costs for public operations considered in this analysis?

4. What further analysis of existing service or operations are planned during the next 12 months?

D. Public/Private Partnerships in Financing of Transportation Services and Facilities. 1. Describe efforts to develop and analyze private sector investment strategies.

2. Describe procedures for joint development and any current joint development projects.

3. Describe efforts to involve local firms and developers in providing fixed facilities, such as benefit assessment districts, connection fees, and developer proposals.

4. Describe consideration of any financing arrangements with the private sector to reduce costs, such as sale leaseback, grant anticipation notes, bonds and partnerships.

III. Compliance

The guidelines described below will be used by UMTA in making pre-award determinations of compliance with the private sector requirement of the UMT Act for FY 1986 grants.

A. Operating Assistance Projects. The approval of operating assistance grants is conditioned by the demonstration of the grantee to involve the private sector in its transportation program.

B. Bus Capital Projects. 1. Purchase of buses for new or restructured service-projects will be approved if the project is based upon full consideration of private sector operators, through competitive procurement which may include public operators. When services are competitively developed, this analysis and decision must be based on fully allocated public costs.

2. Bus replacement—the grantee must justify its decision on private sector proposals that have been presented. The justification must include a cost analysis of the proposals considered. If no private sector proposal has been forthcoming, replacements may be funded.

3. Maintenance facilities—the design and construction or major rehabilitation of maintenance facilities shall be approved if an analysis of contracting out maintenance services opportunities and their impact on the need for maintenance facilities has been evaluated. The justification must include a cost analysis of the alternatives considered. This paragraph shall not apply to facilities currently under construction; that is, a facility already partially constructed (not including land acquisition or site preparation).

4. Rehabilitation of buses—projects for the rehabilitation of buses will be approved if the project was based upon

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full consideration of private contractors, through competitive procurement which may include public contractors based on their fully allocated costs.

5. Force Account Activities—will be allowed if justified by a competitive cost analysis. If a decision is made to utilize public forces at higher costs, a detailed rationale must be submitted for evaluation.

C. Rail Capital Projects. 1. New Starts/Extension—projects will be considered after full evaluation of joint public/private opportunities, as required in other UMTA documents. Private sector must be involved in the earliest phases of project development, including systems planning and alternatives analysis. This requirement does not apply to projects which are under a full funding contract signed before the effective date of this Notice.

2. Force Account Activities—will be allowed if justified by a competitive cost analysis. If a decision is made to utilize public forces at higher costs, a detailed rationale must be submitted for evaluation.

3. Maintenance facilities—the design for construction or major rehabilitation of maintenance facilities shall be approved if all analysis of contracting out maintenance services opportunities has been done and evaluated. The justification must include a cost analysis of the alternatives considered.

4. Rehabilitation of rail cars—projects for the rehabilitation of rail cars will be approved if the project was based upon full consideration of private contractors, through competitive procurement which may include public contractors based upon their fully allocated costs.

D. Critical Projects. UMTA recognizes that, since this Notice is appearing after the start of the fiscal year 1986, it may be necessary in certain, limited cases to phase in these guidelines. It is not the intent of the guidelines to slow the delivery of formula funds to UMTA grantees. Accordingly, if a grantee believes that a particular section 9 project is critical, UMTA will consider a request by the grantee to submit, in lieu of the information requested in this Notice for that project, a statement of intent to comply with this Notice on all other projects and with its remaining formula funds. UMTA particularly will consider such requests where the grantee can show that a TIP has been completed at the time this Notice is published.

[FR Doc. 86-1622 Filed 1-23-86; 8:45 am]
BILLING CODE 4910-57-M

federal register

Friday
January 24, 1986

Part V

Department of Transportation

Urban Mass Transportation Administration

Fiscal Year 1986 UMTA Formula Grant Apportionments; Notice

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Fiscal Year 1986 UMTA Formula Grant Apportionments

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Surface Transportation Assistance Act of 1982 (Pub. L. 97–424) established a formula grant program for Fiscal Years 1984, 1985, and 1986 under section 9 and section 18 of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). This Notice provides the Fiscal Year 1986 apportionment of funds to each urbanized area over 200,000 in population, and to State Governors for both urbanized areas under 200,000 in population and nonurbanized areas. This Notice also provides information on other matters, including actions taken in light of the recently enacted Gramm-Rudman legislation.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 426–2053, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: A program of Federal assistance to urban mass transportation systems by means of formula grants for capital and operating assistance was enacted January 6, 1983, under the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424). The legislation is authorized for Fiscal Years 1984, 1985, and 1986. Funds for Fiscal Year 1986 were appropriated by the Department of Transportation and Related Agencies Appropriations Act, 1986, Pub. L. 99–190 (the Fiscal Year 1986 Appropriations Act).

This Notice provides the Fiscal Year 1986 apportionment of section 9 and section 18 funds for urbanized and nonurbanized areas, based on census information and operating and financial data submitted for the 1984 section 15 Annual Report. In addition, this Notice discusses a number of other significant legislative and administrative matters.

FY 1985 Data Corrections

Corrections have been made to the data from certain urbanized areas that were used to compute the Fiscal Year 1985 formula grant apportionments published in the **Federal Register** of October 26, 1984 (49 FR 43218). Differences between corrected apportionments and previously published apportionments have been resolved and necessary adjustments have been made by adding to or subtracting from, as appropriate, the apportionments for Fiscal Year 1986. The dollar amounts published in this Notice contain these corrections. Each affected urbanized area has been advised of these corrections.

Section 5 Issues

This apportionment includes more than Fiscal Year 1986 appropriated funds. It also includes unobligated Fiscal Year 1982 section 5 funds for urbanized areas over 200,000 in population. In addition, it includes those Fiscal Year 1975 through Fiscal Year 1981 section 5 funds that have now been deobligated but were not available for apportionment on September 30, 1985 (50 FR 39948), when the majority of prior year deobligated funds were reapportioned. All of these funds, totaling $17,153,650, are being apportioned under and become part of the Fiscal Year 1986 section 9 program as provided for in the Surface Transportation Assistance Act of 1982.

Moreover, pursuant to section 317 of the Fiscal Year 1986 Appropriations Act, which amends section 5 of the UMT Act, unobligated Fiscal Year 1982 section 5 funds attributable to urbanized areas under 200,000 in population will remain available, along with unobligated Fiscal Year 1983 section 5 funds, until September 30, 1986. Section 317 further provides that any such unobligated Fiscal Year 1982 or related Fiscal Year 1983 section 5 funds (i.e., those attributable to urbanized areas with populations of less than 200,000) may be expended in an urbanized area of 200,000 or more in population as well as in urbanized areas under 200,000 in population. Any residual section 5 funds not obligated by the end of Fiscal Year 1986 will be reapportioned to urbanized areas under the section 9 program.

FY 1986 Apportionments to the Governors

For all urbanized areas under 200,000 in population within each State, an initial table provides only one figure for the Governor's apportionment. This practice was initiated last fiscal year with the September 30, 1985 (50 FR 39948), apportionment of certain lapsed section 5 funds. Section 9(m)(2) of the UMT Act states that "[s]ums apportioned under this subsection . . . shall be made available to the Governor for expenditure in urbanized areas with populations of less than 200,000."

In accordance with section 9 of the UMT Act, these apportionments are not made to individual urbanized areas but are made to the Governors for use within all urbanized areas between 50,000 and 200,000 in population as needed. UMTA has administered the section 9 program in this fashion from its inception, and it parallels UMTA's procedures under the section 5 program. Because the section 9 program has been showing large balances of unobligated funds at the end of each fiscal year, especially in urbanized areas between 50,000 and 200,000 in population, UMTA is now stressing the Governor's flexibility in using these funds to meet statewide needs by showing one amount for the Governor's apportionment.

However, this Notice also contains a list showing the percentages and the dollar amounts of the Governor's apportionment attributable to the 1980 census data for individual urbanized areas between 50,000 and 200,000 in population. An individual urbanized area's attributable apportionment was determined by multiplying the State total by the urbanized area percentage.

Period of Availability of Funds

The funds apportioned to urbanized areas in this Notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following Fiscal Year 1986. Any apportioned funds unobligated at close of business on September 30, 1989, will be added to the amounts available for apportionment for the succeeding fiscal year under section 9. Funds apportioned to nonurbanized areas will remain available for two (2) years following Fiscal Year 1986. Any such funds remaining unobligated at the close of business on September 30, 1988, will be reapportioned among the States in the succeeding fiscal year.

Construction Management Oversight

The Fiscal Year 1986 Appropriations Act allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available for Fiscal Year 1986 under sections 3, 9, and 18 of the UMT Act, the Interstate Transfer Grants-Transit Program, and the National Capital Transportation Act of 1969 ("Stark-Harris") to contract with any person to oversee the construction of any major project under such programs. Therefore, one-half of one percent of the funds appropriated for Fiscal Year 1986 under the formula program, $10,750,000, has been reserved for this purpose. The remaining amount of $2,139,250,000 of Fiscal Year 1986 funds is apportioned in this Notice. If the $10,750,000 reserved for construction management oversight is not fully required for this function in Fiscal Year 1986, the balance remaining will be apportioned in Fiscal Year 1987.

Gramm-Rudman Issues

Until actual reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman"), Pub. L. 99–177, can be determined, UMTA is temporarily establishing an obligation limitation of 50 percent of an area's Fiscal Year 1986 formula apportionment. A similar 50 percent limitation is also established on the operating assistance caps established by the Surface Transportation Assistance Act of 1982. Even though the apportionment tables show apportionments for the entire year, an urbanized area may not receive funds in excess of 50 percent of its total apportionment and 50 percent of its operating cap until further notice. The same restriction applies to funds apportioned to the Governors for urbanized areas between 50,000 and 200,000 in population, except that the limitation is in effect only at the State level, not for individual urbanized areas. In order to minimize paperwork and processing time, applicants should consider submitting a single grant application at the time full Fiscal Year 1986 apportionments are available.

Application Procedures

Applications for section 9 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9030.1, published June 27, 1983. Applications for section 18 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9040.1, published May 23, 1985.

Private Enterprise

Applications should also be in conformance with the UMTA Notice of Policy published in the **Federal Register** of October 22, 1984 (49 FR 41310), entitled "Private Enterprise Participation in the Urban Mass Transportation Program." This Policy, which implements the private enterprise directives of the Urban Mass Transportation Act of 1964 (sections 3(e), 8(c), 8(e), and 9(f)) is designed to promote a more competitive environment and to create increased opportunities for the private sector in the provision of public transportation services. As this Policy has been in circulation for over a year, localities and States have had sufficient opportunity to consider how they will integrate private sector initiatives into their transit programs. Effective immediately, UMTA will begin a private sector review of section 9 programs and projects to determine whether they are consistent with the Policy.

Two separate Notices found elsewhere in this **Federal Register** have been developed to facilitate implementation of the private enterprise policy. The first Notice addresses the UMTA programs under sections 3 and 9. The guidance in this Notice describes the documentation that UMTA will now review to judge consistency with the principles outlined in the private enterprise policy which is based upon sections 3(e), 8(c), 8(e), and 9(f) of the UMT Act. The review of this documentation will take place, for the most part, during the review of the Transportation Improvement Program (TIP). Supplemental information will be requested for projects which have been programmed without the benefit of such a review. The second Notice provides guidance for applying the private enterprise policy to the section 16(b)(2) and section 18 programs. It is intended that these Notices will become permanent guidance in the near future after appropriate public comment and input. Please contact the appropriate UMTA Regional Office for assistance.

Issued on: January 16, 1986.

Ralph L. Stanley,

Administrator.

BILLING CODE 4910-57-M

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

URBANIZED AREA	APPORTIONMENT
Akron, Ohio	$4,200,231
Albany-Schenectady-Troy, New York	6,188,682
Albuquerque, New Mexico	3,684,776
Allentown-Bethlehem-Easton, Pa.-N.J.	3,128,171
Ann Arbor, Michigan	2,151,092
Atlanta, Georgia	23,432,529
Augusta, Georgia-South Carolina	1,357,449
Austin, Texas	3,365,013
Bakersfield, California	2,046,366
Baltimore, Maryland	24,372,412
Baton Rouge, Louisiana	2,588,163
Birmingham, Alabama	3,993,850
Boston, Massachusetts	63,656,353
Bridgeport, Connecticut	4,645,276
Buffalo, New York	9,764,169
Canton, Ohio	1,709,236
Charleston, South Carolina	1,193,196
Charlotte, North Carolina	3,055,373
Chattanooga, Tennessee-Georgia	2,046,291
Chicago, Illinois-Northwestern Indiana	170,840,353
Cincinnati, Ohio-Kentucky	10,152,424
Cleveland, Ohio	22,510,387
Colorado Springs, Colorado	2,445,385
Columbia, South Carolina	1,203,263
Columbus, Georgia-Alabama	1,634,675
Columbus, Ohio	9,744,885
Corpus Christi, Texas	1,630,969
Dallas-Fort Worth, Texas	19,098,456
Davenport-Rock Island-Moline, Iowa-Illinois	2,470,348
Dayton, Ohio	11,005,062
Denver, Colorado	15,829,284
Des Moines, Iowa	2,434,310
Detroit, Michigan	39,486,177
El Paso, Texas	4,061,340
Fayetteville, North Carolina	1,110,266
Flint, Michigan	2,485,053
Fort Lauderdale-Hollywood, Florida	8,196,649
Fort Wayne, Indiana	1,815,548
Fresno, California	3,531,087
Grand Rapids, Michigan	3,181,942
Greenville, South Carolina	1,306,642
Harrisburg, Pennsylvania	2,155,699
Hartford, Connecticut	6,132,321
Honolulu, Hawaii	17,497,376
Houston, Texas	25,382,183
Indianapolis, Indiana	6,938,759
Jackson, Mississippi	1,584,972
Jacksonville, Florida	5,304,211
Kansas City, Missouri-Kansas	7,375,859
Knoxville, Tennessee	1,510,936
Lansing, Michigan	2,335,577
Las Vegas, Nevada	2,802,675
Lawrence-Haverhill, Mass.-New Hampshire	2,614,717
Little Rock-North Little Rock, Arkansas	2,053,512
Lorain-Elyria, Ohio	930,853
Los Angeles-Long Beach, California	129,592,770
Louisville, Kentucky-Indiana	8,644,481
Madison, Wisconsin	3,653,922
Melbourne-Cocoa, Florida	1,395,650
Memphis, Tennessee-Arkansas-Mississippi	7,080,957
Miami, Florida	20,678,116
Milwaukee, Wisconsin	15,781,256
Minneapolis-St. Paul, Minnesota	18,499,989
Mobile, Alabama	1,866,232
Nashville-Davidson, Tennessee	4,254,169
New Haven, Connecticut	5,281,971
New Orleans, Louisiana	14,806,243
Newport News-Hampton, Virginia	2,383,445

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

URBANIZED AREA	APPORTIONMENT
New York, N.Y.-Northeastern New Jersey	531,029,295
Norfolk-Portsmouth, Virginia	5,925,340
Ogden, Utah	2,271,852
Oklahoma City, Oklahoma	3,717,255
Omaha, Nebraska-Iowa	5,381,686
Orlando, Florida	4,254,914
Oxnard-Ventura-Thousand Oaks, California	2,354,552
Pensacola, Florida	1,244,860
Peoria, Illinois	2,052,262
Philadelphia, Pennsylvania-New Jersey	92,127,408
Phoenix, Arizona	10,030,328
Pittsburgh, Pennsylvania	28,860,226
Portland, Oregon-Washington	15,541,066
Providence-Pawtucket-Warwick, R.I.-Mass.	11,824,625
Raleigh, North Carolina	1,637,799
Richmond, Virginia	5,033,739
Rochester, New York	6,803,363
Rockford, Illinois	1,631,778
Sacramento, California	8,157,818
St. Louis, Missouri-Illinois	17,354,662
St. Petersburg, Florida	6,814,399
Salt Lake City, Utah	7,955,561
San Antonio, Texas	12,940,819
San Bernardino-Riverside, California	5,774,748
San Diego, California	22,003,460
San Francisco-Oakland, California	87,645,915
San Jose, California	19,055,992
San Juan, Puerto Rico	13,518,567
Sarasota-Bradenton, Florida	2,214,103
Scranton-Wilkes-Barre, Pennsylvania	3,311,578
Seattle-Everett, Washington	38,854,801
Shreveport, Louisiana	2,080,906
South Bend, Indiana-Michigan	2,106,782
Spokane, Washington	4,089,661
Springfield-Chicopee-Holyoke, Mass.-Conn.	4,664,231
Syracuse, New York	5,110,920
Tacoma, Washington	5,765,949
Tampa, Florida	5,463,686
Toledo, Ohio-Michigan	5,416,088
Trenton, New Jersey-Pennsylvania	86,867
Tucson, Arizona	5,342,543
Tulsa, Oklahoma	3,093,072
Washington, D.C.-Maryland-Virginia	53,832,735
West Palm Beach, Florida	3,382,756
Wichita, Kansas	2,380,099
Wilmington, Delaware-New Jersey-Maryland	3,034,526
Worcester, Massachusetts	2,503,514
Youngstown-Warren, Ohio	2,284,412
TOTAL	1,901,501,282

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FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
AMOUNTS APPORTIONED TO STATE GOVERNORS FOR AREAS UNDER 200,000 POPULATION

STATE	APPORTIONMENT	STATE	APPORTIONMENT
ALABAMA	$5,089,012	MONTANA	1,703,353
ALASKA	1,031,986	NEBRASKA	1,683,178
ARIZONA	444,424	NEVADA	1,289,467
ARKANSAS	1,499,562	NEW HAMPSHIRE	1,927,986
CALIFORNIA	15,222,978	NEW JERSEY	1,511,485
COLORADO	3,364,374	NEW MEXICO	730,934
CONNECTICUT	13,277,739	NEW YORK	4,819,007
DELAWARE	0	NORTH CAROLINA	8,258,723
FLORIDA	7,033,542	NORTH DAKOTA	1,447,968
GEORGIA	3,917,461	OHIO	4,690,123
HAWAII	1,004,035	OKLAHOMA	1,021,370
IDAHO	1,457,030	OREGON	3,263,902
ILLINOIS	9,664,662	PENNSYLVANIA	9,345,893
INDIANA	5,953,042	PUERTO RICO	6,529,920
IOWA	3,320,500	RHODE ISLAND	519,588
KANSAS	1,427,377	SOUTH CAROLINA	1,632,485
KENTUCKY	3,019,790	SOUTH DAKOTA	1,036,988
LOUISIANA	3,527,171	TENNESSEE	1,776,455
MAINE	1,522,631	TEXAS	16,340,334
MARYLAND	1,336,634	UTAH	1,324,337
MASSACHUSETTS	6,661,492	VERMONT	516,369
MICHIGAN	5,927,760	VIRGINIA	3,701,177
MINNESOTA	2,013,659	WASHINGTON	3,119,250
MISSISSIPPI	1,909,897	WEST VIRGINIA	3,408,377
MISSOURI	2,353,935	WISCONSIN	7,749,973
		WYOMING	973,248
TOTAL	$192,222,423		

FISCAL YEAR 1986 UMTA SECTION 18 FORMULA APPORTIONMENTS
AMOUNTS APPORTIONED TO STATES FOR NONURBANIZED AREAS

STATE	APPORTIONMENT	STATE	APPORTIONMENT
ALABAMA	$1,497,242	MONTANA	486,644
ALASKA	162,922	NEBRASKA	658,200
AMERICAN SAMOA	22,719	NEVADA	144,441
ARIZONA	566,017	NEW HAMPSHIRE	441,444
ARKANSAS	1,212,105	NEW JERSEY	754,959
CALIFORNIA	2,740,640	NEW MEXICO	546,984
COLORADO	614,042	NEW YORK	2,648,979
CONNECTICUT	557,664	NORTH CAROLINA	2,729,203
DELAWARE	159,526	NORTH DAKOTA	334,753
FLORIDA	1,630,476	NORTHERN MARIANA ISLANDS	11,804
GEORGIA	2,011,767	OHIO	2,996,291
GUAM	74,551	OKLAHOMA	1,236,967
HAWAII	194,515	OREGON	960,124
IDAHO	531,587	PENNSYLVANIA	3,303,151
ILLINOIS	2,203,655	PUERTO RICO	1,039,004
INDIANA	2,032,310	RHODE ISLAND	109,981
IOWA	1,394,204	SOUTH CAROLINA	1,359,167
KANSAS	1,061,594	SOUTH DAKOTA	388,347
KENTUCKY	1,708,043	TENNESSEE	1,761,879
LOUISIANA	1,409,882	TEXAS	3,588,183
MAINE	615,864	UTAH	289,394
MARYLAND	756,634	VERMONT	385,950
MASSACHUSETTS	909,098	VIRGINIA	1,619,588
MICHIGAN	2,448,230	VIRGIN ISLANDS	67,931
MINNESOTA	1,422,397	WASHINGTON	1,862,700
MISSISSIPPI	1,358,986	WEST VIRGINIA	1,087,721
MISSOURI	1,615,520	WISCONSIN	1,666,544
		WYOMING	247,582
TOTAL	$62,680,825		

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
ALABAMA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$5,089,012
Anniston	0.086822528	441,841
Auburn-Opelika	0.053977383	274,691
Decatur	0.063229779	321,777
Dothan	0.055416854	282,013
Florence	0.084918670	432,152
Gadsden	0.080022591	407,236
Huntsville	0.178566225	908,726
Montgomery	0.266398987	1,355,787
Tuscaloosa	0.130647942	664,869
ALASKA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,031,986
Anchorage	1.000000000	1,031,986
ARIZONA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$444,424
Yuma, Ariz.-Calif	1.000000000	444,424
ARKANSAS:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,499,562
Fayetteville-Springdale	0.237883535	356,721
Fort Smith, Ark.-Okla	0.355694845	533,385
Pine Bluff	0.326152749	489,086
Texarkana, Tex.-Ark	0.080269670	120,369
CALIFORNIA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$15,222,978
Antioch-Pittsburg	0.056144233	854,682
Chico	0.026000699	395,808
Fairfield	0.035404375	538,968
Hemet	0.027081338	412,259
Lancaster	0.022669529	345,098
Modesto	0.106368320	1,619,243
Napa	0.037061544	564,187
Palm Springs	0.025166937	383,116
Redding	0.020791165	316,503
Salinas	0.068773745	1,046,941
Santa Barbara	0.097778333	1,488,477
Santa Cruz	0.055662277	847,346
Santa Maria	0.031478975	479,204
Santa Rosa	0.077742782	1,183,477
Seaside-Monterey	0.072148587	1,098,316
Simi Valley	0.048443711	737,458
Stockton	0.127055944	1,934,178
Visalia	0.031583848	479,582
Yuba City	0.032594436	496,184
Yuma, Ariz.-Calif	0.000129223	1,967
COLORADO:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,364,374
Boulder	0.247885553	833,988
Fort Collins	0.184172224	619,624
Grand Junction	0.119638374	402,588
Greeley	0.176069865	592,365
Pueblo	0.272233984	915,897
CONNECTICUT:		
Governor's apportionment for areas 50,000 to 200,000 population:		$13,277,739
Bristol	0.079121916	586,557
* Danbury, Conn.-N.Y.	0.078443563	2,848,467
Meriden	0.064422523	477,585
New Britain	0.159172573	1,179,998
New London-Norwich	0.130548869	967,742
* Norwalk	0.114938195	2,318,954
* Stamford	0.200239128	2,948,032
* Waterbury	0.173129234	2,750,403
*An appropriate amount for commuter rail from UZA's above 200,000 has been included.		
DELAWARE:		
FLORIDA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$7,033,542
Daytona Beach	0.165214252	1,162,041
Fort Myers	0.131222633	922,960
Fort Pierce	0.061892935	435,327
Fort Walton Beach	0.077553553	545,476
Gainesville	0.110314392	775,981
Lakeland	0.106491098	749,010
Naples	0.044287682	311,499
Ocala	0.044144210	310,490
Panama City	0.070912898	498,765
Tallahassee	0.118676086	834,713
Winter Haven	0.069290261	487,356
GEORGIA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,917,461
Albany	0.144253459	565,107
Athens	0.106583724	417,538
Macon	0.256768154	1,005,879
Rome	0.081261000	318,337
Savannah	0.310501815	1,216,379
Warner Robins	0.100631849	394,221
HAWAII:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,004,035
Kailua-Kaneohe	1.000000000	1,004,035

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
IDAHO:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,457,030
Boise City	0.722095208	1,052,114
Pocatello	0.277904792	404,916
ILLINOIS:		
Governor's apportionment for areas 50,000 to 200,000 population:		$9,664,662
Alton	0.065843806	636,350
Aurora	0.132108676	1,276,786
Beloit, Wis.-Ill	0.004716446	45,583
Bloomington-Normal	0.085989443	831,059
Champaign-Urbana	0.123690122	1,195,423
Danville	0.043117585	416,717
Decatur	0.088536812	855,678
Dubuque, Iowa-Ill	0.001798984	17,387
Elgin	0.098666155	953,575
Joliet	0.142059532	1,372,957
Kankakee	0.058277888	563,236
Round Lake Beach	0.045958951	444,100
Springfield	0.109244401	1,055,810
INDIANA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$5,953,042
Anderson	0.090936671	541,350
Bloomington	0.102638096	610,961
Elkhart-Goshen	0.103129168	613,932
Evansville, Ind.-Ky	0.231665437	1,379,114
Kokomo	0.094058162	559,932
Lafayette-West Lafayette	0.146963465	874,880
Muncie	0.132141744	786,645
Terre Haute	0.098475257	586,227
IOWA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,320,580
Cedar Rapids	0.312701377	1,038,325
Dubuque, Iowa-Ill	0.167898822	557,565
Iowa City	0.132987380	441,319
Sioux City, Iowa-Nebr.-S. Dak	0.166192865	551,843
Waterloo	0.220309436	731,588
KANSAS:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,427,377
Lawrence	0.329235236	469,943
St. Joseph, Mo.-Kans	0.005447885	7,776
Topeka	0.665316879	949,658
KENTUCKY:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,019,790
Clarksville, Tenn.-Ky	0.055478781	167,510
Evansville, Ind.-Ky	0.059812843	180,622
Huntington-Ashland, W.Va.-Ky.-Ohio	0.141129359	426,181
Lexington-Fayette	0.545700611	1,647,902
Owensboro	0.197886286	597,575
LOUISIANA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,527,171
Alexandria	0.177653691	626,615
Houma	0.115544189	407,544
Lafayette	0.263984780	930,837
Lake Charles	0.228136826	804,675
Monroe	0.214761314	757,500
MAINE:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,522,631
Bangor	0.212315735	323,278
Lewiston-Auburn	0.251581973	383,066
Portland	0.488139396	743,256
Portsmouth-Dover-Rochester, N.H.-Me	0.047962895	73,030
MARYLAND:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,336,634
Annapolis	0.362098577	483,993
Cumberland, Md.-W. Va	0.290063593	387,709
Hagerstown, Md.-Pa	0.347837831	464,932
MASSACHUSETTS:		
Governor's apportionment for areas 50,000 to 200,000 population:		$6,661,492
Brockton	0.237443951	1,581,731
Fall River, Mass.-R.I	0.188895876	1,258,328
Fitchburg-Leominster	0.069765776	464,744
Lowell, Mass.-N.H	0.202923451	1,351,773
New Bedford	0.204475183	1,362,110
Pittsfield	0.053355944	355,438
Taunton	0.043139819	287,376

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GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
MICHIGAN:		
Governor's apportionment for areas 50,000 to 200,000 population:		$5,927,760
Battle Creek	0.089999833	533,493
Bay City	0.103287972	612,266
Benton Harbor	0.075747658	449,010
Jackson	0.107320383	636,169
Kalamazoo	0.195876858	1,156,369
Muskegon-Muskegon Heights	0.128620277	762,430
Port Huron	0.077686350	460,586
Saginaw	0.222262149	1,317,517
MINNESOTA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$2,013,659
Duluth-Superior, Minn.-Wis.	0.298298847	600,656
Fargo-Moorhead, N. Dak.-Minn.	0.141378682	284,672
Grand Forks, N. Dak.-Minn.	0.033541994	67,542
La Crosse, Wis.-Minn.	0.014348095	28,876
Rochester	0.272748223	549,222
St. Cloud	0.239708239	482,691
MISSISSIPPI:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,909,897
Biloxi-Gulfport	0.606110832	1,157,609
Hattiesburg	0.184761601	352,876
Pascagoula-Moss Point	0.209127567	399,412
MISSOURI:		
Governor's apportionment for areas 50,000 to 200,000 population:		$2,353,935
Columbia	0.181963596	428,331
Joplin	0.142773670	336,088
St. Joseph, Mo.-Kans.	0.234707123	552,485
Springfield	0.440555611	1,037,039
MONTANA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,783,353
Billings	0.395612195	673,867
Great Falls	0.344866928	587,438
Missoula	0.259520876	442,056
NEBRASKA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,603,178
Lincoln	0.950154973	1,523,267
Sioux City, Iowa-Nebr.-S. Dak.	0.049845027	79,910
NEVADA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,289,467
Reno	1.000000000	1,289,467

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
NEW HAMPSHIRE:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,927,906
Lowell, Mass.-N.H.	0.002438545	4,701
Manchester	0.442744197	853,569
Nashua	0.303832767	584,219
Portsmouth-Dover-Rochester, N.H.-Me	0.251784491	485,417
NEW JERSEY:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,511,485
Atlantic City	0.700675556	1,059,060
Vineland-Millville	0.299324444	452,424
NEW MEXICO:		
Governor's apportionment for areas 50,000 to 200,000 population:		$730,934
Las Cruces	0.533416538	389,892
Santa Fe	0.466583462	341,042
NEW YORK:		
Governor's apportionment for areas 50,000 to 200,000 population:		$4,819,007
Binghamton	0.279828852	1,348,497
Danbury, Conn.-N.Y.	0.003197697	15,410
Elmira	0.122003483	587,936
Glens Falls	0.072176850	347,817
Newburgh	0.089586656	431,333
Poughkeepsie	0.197037178	949,524
Utica-Rome	0.236250084	1,138,491
NORTH CAROLINA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$8,258,723
Asheville	0.075558357	624,016
Burlington	0.053723274	443,686
Concord	0.053581468	442,515
Durham	0.147981442	1,221,477
Gastonia	0.082485330	681,224
Goldsboro	0.041838628	345,468
Greensboro	0.165831093	1,369,553
Hickory	0.044687153	368,398
High Point	0.078627451	649,362
Jacksonville	0.052558653	434,001
Wilmington	0.063915524	527,861
Winston-Salem	0.139387625	1,151,164
NORTH DAKOTA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,447,968
Bismarck-Mandan	0.318685462	461,446
Fargo-Moorhead, N. Dak.-Minn.	0.386936110	560,271
Grand Forks, N. Dak.-Minn.	0.294378428	426,251

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STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
OHIO:		
Governor's apportionment for areas 50,000 to 200,000 population:		$4,698,123
Hamilton	0.181179092	849,752
Huntington-Ashland, W.Va.-Ky.-Ohio	0.052518882	246,328
Lima	0.115237140	540,476
Mansfield	0.114098258	535,135
Middletown	0.128771999	603,956
Newark	0.077508284	363,523
Parkersburg, W.Va.-Ohio	0.012799829	60,033
Sharon, Pa.-Ohio	0.007685417	36,046
Springfield	0.179158675	840,239
Steubenville-Weirton, Ohio-W.Va.-Pa	0.070638439	331,303
Wheeling, W.Va.-Ohio	0.060412056	283,340
OKLAHOMA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,021,370
Enid	0.320973520	327,833
Fort Smith, Ark.-Okla.	0.012156063	12,416
Lawton	0.666870417	681,121
OREGON:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,263,902
Eugene	0.514283787	1,678,310
Longview, Wash.-Oreg.	0.002632844	8,593
Medford	0.125746826	410,423
Salem	0.357417422	1,166,575
PENNSYLVANIA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$9,345,893
Altoona	0.077174727	721,267
Erie	0.197103347	1,842,107
Hagerstown, Md.-Pa.	0.000639084	5,973
Johnstown	0.081167235	758,580
Lancaster	0.137889684	1,287,955
Monessen	0.047732680	446,105
Reading	0.183918837	1,718,878
Sharon, Pa.-Ohio	0.042343940	395,742
State College	0.057662270	538,905
Steubenville-Weirton, Ohio-W.Va.-Pa	0.000176471	1,649
Williamsport	0.053234944	497,528
York	0.121037572	1,131,204

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
PUERTO RICO:		
Governor's apportionment for areas 50,000 to 200,000 population:		$6,529,920
Aguadilla	0.060009386	522,455
Arecibo	0.091640811	598,482
Caguas	0.214622934	1,401,471
Mayaguez	0.150299896	981,441
Ponce	0.353241780	2,306,641
Vega Baja-Manati	0.110186793	719,511
RHODE ISLAND:		
Governor's apportionment for areas 50,000 to 200,000 population:		$519,588
Fall River, Mass.-R.I.	0.217861331	113,158
Newport	0.782138669	406,390
SOUTH CAROLINA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,632,485
Anderson	0.205520689	335,509
Florence	0.216585485	353,442
Rock Hill	0.193761240	316,312
Spartanburg	0.384212746	627,222
SOUTH DAKOTA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,036,988
Rapid City	0.363413810	376,856
Sioux City, Iowa-Nebr.-S.Dak.	0.010462344	10,849
Sioux Falls	0.626123846	649,283
TENNESSEE:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,776,455
Bristol, Tenn.-Bristol, Va.	0.096994436	172,306
Clarksville, Tenn.-Ky.	0.183644882	326,235
Jackson	0.177359257	315,071
Johnson City	0.273361835	485,615
Kingsport, Tenn.-Va.	0.268648470	477,228

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STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
TEXAS:		
Governor's apportionment for areas 50,000 to 200,000 population:		$16,340,334
Abilene	0.037183113	607,584
Amarillo	0.066115835	1,080,342
Beaumont	0.050184520	820,032
Brownsville	0.051681542	844,494
Bryan-College Station	0.035542963	580,784
Galveston	0.028913277	472,453
Harlingen-San Benito	0.027787978	454,065
Killeen	0.042371712	692,368
Laredo	0.067938323	1,110,084
Longview	0.026650446	435,477
Lubbock	0.077783443	1,271,007
McAllen-Pharr-Edinburg	0.080833437	1,320,848
Midland	0.032710907	534,587
Odessa	0.049386647	806,994
Port Arthur	0.044571764	728,317
San Angelo	0.033456580	546,698
Sherman-Denison	0.020685205	338,003
Temple	0.019092261	311,974
Texarkana, Tex.-Ark	0.018258768	298,354
Texas City-La Marque	0.036791451	601,185
Tyler	0.033614132	549,266
Victoria	0.026254742	429,011
Waco	0.050320965	822,261
Wichita Falls	0.041878982	684,315
UTAH:		
Governor's apportionment for areas 50,000 to 200,000 population:		$1,324,337
Provo-Orem	1.000000000	1,324,337
VERMONT:		
Governor's apportionment for areas 50,000 to 200,000 population:		$516,369
Burlington	1.000000000	516,369
VIRGINIA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,701,177
Bristol, Tenn.-Bristol, Va	0.036235960	134,116
Charlottesville	0.148464466	549,493
Danville	0.104689124	387,177
Kingsport, Tenn.-Va	0.007005892	25,927
Lynchburg	0.146392725	541,825
Petersburg-Colonial Heights	0.200839926	743,344
Roanoke	0.356452707	1,319,294
WASHINGTON:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,119,250
Bellingham	0.121333911	378,471
Bremerton	0.148992269	464,744
Longview, Wash.-Oreg	0.118787872	370,529
Olympia	0.150025195	467,966
Richland-Kennewick	0.244733674	763,386
Yakima	0.216127879	674,154
WEST VIRGINIA:		
Governor's apportionment for areas 50,000 to 200,000 population:		$3,408,377
Charleston	0.364178562	1,241,231
Cumberland, Md.-W. Va	0.005410634	18,441
Huntington-Ashland, W.Va.-Ky.-Ohio	0.235738335	803,458
Parkersburg, W. Va.-Ohio	0.155082619	528,580
Steubenville-Weirton, Ohio-W.Va.-Pa	0.061496712	209,684
Wheeling, W. Va.-Ohio	0.178189138	607,063
WISCONSIN:		
Governor's apportionment for areas 50,000 to 200,000 population:		$7,749,973
Appleton	0.167284251	1,296,448
Beloit, Wis.-Ill	0.043684138	337,931
Duluth-Superior, Minn.-Wis	0.019685671	151,943
Eau Claire	0.065138677	504,761
Green Bay	0.126488585	980,283
Janesville	0.052837962	409,493
Kenosha	0.120986523	937,822
La Crosse, Wis.-Minn	0.070143272	543,608
Oshkosh	0.062829975	486,931
Racine	0.153933161	1,192,978
Sheboygan	0.065589135	508,314
Wausau	0.051646651	400,260
WYOMING:		
Governor's apportionment for areas 50,000 to 200,000 population:		$973,248
Casper	0.532792106	518,539
Cheyenne	0.467207894	454,709
TOTAL		$192,222,423

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BILLING CODE 4910-57-C

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final Rule, revised organization and functional statements.

SUMMARY: The Merit Systems Protection Board is republishing its organizational and functional statements to reflect the current principal organizational units of the Board and the functions assigned to those units.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav (202) 653–8900.

SUPPLEMENTARY INFORMATION: On June 12, 1981, the Board published its organizational structure and functional statements (46 FR 30999). Subsequently, there have been certain title changes and other realignments have evolved. The changes here made provide the public current information regarding the Board's organization and more clearly state the functions assigned.

Regulatory Flexibility Act

The Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this rule pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of the determination that this rule would have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1200

Organization and functions (government agencies).

Therefore, Part 1200 is revised to read as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 1200—BOARD ORGANIZATION

Subpart A—General

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1200.1 The Board.
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1200.10 Principal organizational units of the Board.
1200.11 The Special Counsel.

Subpart A—General

Authority: 5 U.S.C. 1101 et seq.

§ 1200.1 The Board.

The Merit Systems Protection Board ("The Board") is composed of three Members who are appointed by the President with the advice and consent of the Senate, and whose terms are for a period of seven years.

§ 1200.2 The Chair, Vice Chair.

One of the Members of the Board shall be appointed by the President, with the advice and consent of the Senate, to serve as the Chair and chief executive and administrative officer of the Board. From time to time, the President shall also designate one of the Members of the Board to serve as Vice Chair. In the absence or disability of the Chair, or when the Office of the Chair is vacant, the Vice Chair shall perform the functions vested in the Chair. During the absence or disability of both the Chair and the Vice Chair, or when their offices are vacant, the remaining Board Member shall perform the functions vested in the Chair.

Subpart B—Offices of the Board

Authority: 5 U.S.C. 1205 (g) and (i).

§ 1200.10 Principal organizational units of the Board.

(a) The Board is assisted in the performance of its statutory duties by its staff which is divided into the following principal organizational units:
(1) Office of the Managing Director.
(2) Office of the General Counsel.
(3) Office of the Appeals Counsel.
(4) Office of the Administrative Law Judges.
(5) Office of the Clerk of the Board.
(6) Office of Merit Systems Review and Studies.
(7) Office of the Comptroller.
(8) Office of Legislative Counsel.
(9) Office of Personnel.
(10) Office of Equal Employment.
(11) Regional Offices.

(b) *Office of the Managing Director.* The Managing Director has responsibility for management of all agency operations and programs which support the work of the Board; including supervision of the Board's regional offices. The Managing Director, who reports directly to the Chair as chief executive officer has delegated authority to make all final decisions in the performance of the Board's personnel management, fiscal management, general administrative support services, procurement and contracts, personnel and document security and claims.

(c) *Office of the General Counsel.* This office provides legal advice to the Board and its staff. It represents the Board in proceedings involving Board employees and, where appropriate under 5 U.S.C. 1205(h), it represents the Board in court in civil actions brought in connection with any of its functions. It also reviews the rules and regulations of the Office of Personnel Management under 5 U.S.C. 1205(a)(4) to determine their validity on their face and as implemented by the agencies.

(d) *Office of Appeals Counsel.* This office has the following functions:
(1) Processes petitions for review and interlocutory appeals including recommending appropriate action, and recommending reopenings by the Board;
(2) Recommends appropriate action in cases instituted prior to the effective date of the Act; and
(3) Prepares proposed decisions for the Board in interlocutory appeals and actions brought under its appellate jurisdiction which have previously been adjudicated in the regional offices.

(e) *Office of the Administrative Law Judges.* The Administrative Law Judges are appointed by the Board under 5 U.S.C. 3105, to hear cases governed by the Administrative Procedure Act as well as other cases assigned by the Board, and to rule on discovery motions and subpoena requests.

(f) *Office of the Clerk of the Board.* The Office of the Clerk of the Board is responsible for establishing and maintaining systems for the timely processing, recording, and controlling of

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cases; maintenance of a data base system to record and provide information on the status and disposition of cases; preparing and certifying official records; publishing final Board decisions; providing the initial response to Freedom of Information and Privacy Act requests; managing a formal system for the organization, maintenance, and disposition of Board records; and formulating and implementing library programs and policies which provide research assistance to Board staff and the public.

(g) *Office of Merit Systems Review and Studies.* The primary function of this office is to conduct special studies of the civil service and other merit systems under 5 U.S.C. 1205(a)(3) to determine whether they are free of prohibited personnel practices.

(h) *Office of the Comptroller.* This office carries out the financial management functions of the Board and provides general administrative services, including contracting and purchasing, security, internal audit and control functions.

(i) *Office of Legislative Counsel.* This office has primary two functions. First, it undertakes duties relating to Congress and other Executive agencies including: preparing testimony; responding to inquiries; and drafting legislative and bill reports. Second, it provides informational and training services for the Board, including responding to inquiries of the press and the public, assisting in the preparation and distribution of Board publications, and augmenting the Board's training capabilities through audio/visual and graphic services.

(j) *Office of Personnel.* This office is responsible for managing the internal personnel programs of the Board.

(k) *Office of Equal Employment.* This office has responsibility for developing and monitoring the implementation of all Equal Employment Opportunity programs and policies of the Board, including its internal affirmative action program, discrimination complaint proceedings, and providing advice and training for Board personnel in EEO related matters.

(l) *Regional Offices.* The Board has eleven regional offices located throughout the country as set forth in Appendix II of Part 1201. The primary function of the regional offices is to adjudicate cases arising under the Board's appellate jurisdiction in accordance with 5 CFR Part 1201 and to render initial decisions as set forth at 5 CFR 1201.111. Each regional office is headed by a Regional Director who reports to the Managing Director.

§ 1200.11 The Special Counsel.

The Special Counsel investigates and prosecutes prohibited personnel practices and certain other violations of Federal law. The Special Counsel's duties include bringing actions before the Board for adjudication. By law, the Office of the Special Counsel carries out its investigative and prosecutorial functions independent of the Board's adjudicatory role. A further statement and discussion of the functions and duties of this office is found at 5 CFR Part 1250.

Dated: January 17, 1986.

Herbert E. Ellingwood,
Chairman.

[FR Doc. 86-1596 Filed 1-24-86; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 225

Summer Food Service Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Summer Food Service Program (SFSP) regulations by: Revising the SFSP audit requirements to bring them into conformance with Federal law; prohibiting sponsors from claiming the costs of some disallowed meals as "operating costs"; and making various technical and clarifying amendments to the SFSP regulations. A proposed prohibition on sponsor claims for second meals served to children has been modified. The Department is limiting the number of second meals eligible for reimbursement to two percent of the number of first meals served to children for each type per claiming period. The program changes made by this final rule are necessary to bring the regulations into conformance with applicable laws and to improve program management.

EFFECTIVE DATE: February 26, 1986.

ADDRESS: Copies of all written comments on the proposed rule are available for review during normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million; will not cause a major increase in costs or prices for program participants, individual industries, Federal agencies, State or local government agencies or geographic regions; and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584-0057.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate, and any subsequent notices that may apply.)

Background

The Department published a proposed rule on November 4, 1985 (50 FR 45898) which included one statutory change affecting the SFSP audit requirements and four technical and clarifying amendments. The latter were intended to improve program management, remove internal inconsistencies in the program regulations, and delete obsolete requirements.

The Department received a total of 81 comments on the regulation from program sponsors, State agencies, Food and Nutrition Service (FNS) regional offices, members of Congress, advocacy groups, and private citizens. All comments were carefully considered and the issues raised by them are discussed in the preamble to this final rule.

Before analyzing the comments on each issue, it is appropriate to mention that several commenters questioned the adequacy of the comment period. The Department established a 30-day period during which interested parties could submit comments for consideration in the formulation of this final rule. While the Department understands commenters' desire to have additional time to respond, it is important to point out that Section 13 of the National School Lunch Act mandates a deadline for publication of the final Summer Food Service Program regulations which is 60 days after the required date of publication for the proposed regulation. Therefore a 30-day period was the maximum amount of time which could be allotted for comments.

Statutory Changes

The Department received 15 comments on the proposed changes to the SFSP audit requirements. Eight commenters were in favor of the proposed changes, three were opposed, and four apparently misunderstood the change or requested additional information. As explained in the preamble to the proposed rulemaking, the audit requirements set forth in the Single Audit Act (Pub. L. 98-502) and OMB Circular A-128 are generally non-discretionary. Therefore, the Department must comply with the law and the circular.

Nevertheless, several commenters raised questions about the implementation of organization-wide audits (OWA) which merit attention. One commenter raised several questions concerning sponsors which receive between $25,000-$100,000 in Federal funds each year. This commenter suggested that Pub. L. 98-502 and Circular A-128 provide for an option of an OWA or a program-specific audit for public sponsors receiving this level of funding. In fact, Pub. L. 98-502 and Circular A-128 allow such a sponsor the option of performing an OWA or an audit in accordance with the laws and regulations governing the programs in which the sponsor participates. This final rule requires that audits be performed in accordance with 7 CFR Part 3015 and OMB Circulars A-128 and A-110. Since the SFSP regulations do not set forth a separate program-specific audit requirement, public sponsors will be exempt from the OWA requirement only if they annually receive less than $25,000 in Federal funds.

One commenter felt that the audit requirements for private sponsors were unclear, believing that OMB Circular A-110 does not require all private sponsors to have an OWA whereas the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015) do require OWAs. The Department does not believe that there is any difference between the audit requirements specified in Attachment F, paragraph 2(h) of OMB Circular A-110 and in § 3015.77. Therefore, like public sponsors, only private sponsors receiving less than $25,000 per year in Federal funds are exempt from the OWA requirement.

Private sponsors receiving $25,000 per year or more in Federal funds are required to follow Circular A-100 and Part 3015, both of which require OWAs to be conducted.

Several commenters felt that these audit requirements would be burdensome to small sponsors which receive all of their Federal funding from the SFSP. It should be pointed out, however, that the smallest public sponsors (those receiving less than $25,000 in Federal funds per year) are exempt from the OWA requirements under OMB Circular A-128. Similarly, the same category of private nonprofit sponsors is exempted under authority given to the Department by OMB. Furthermore, the proposed regulation did not add new requirements for sponsors who should already have been conducting OWAs in accordance with OMB Circulars and Departmental regulations.

Finally, one commenter stated that implementation of the requirement might be difficult in States lacking jurisdiction over "privately funded entities". The Department does not believe that this is an issue since the audit requirements are based on Federal law (Pub. L. 98-502, the Single Audit Act of 1984). Any organization receiving Federal program funds agrees to comply with Federal audit requirements. Therefore, State monitoring of audit compliance should present no particular jurisdictional problems.

For these reasons, and those stated in the proposed rule, the proposed changes have been incorporated in the final rule.

Clarifying Amendments

I. Claims for Seconds and Disallowed Meals

The Department received seventy-six (76) comments on the proposal to disallow sponsor claims for "seconds" served to participating children. Four commenters favored the proposal, 70 were opposed, and two were unclear in their position. The arguments presented by some commenters have persuaded the Department to modify its proposed disallowance of claims for second meals. Specifically, these comments pointed out that certain types of sites (especially "open", non-enrolled sites at playgrounds and other locations) would find it difficult to administer the program with no seconds whatsoever. Even with delivery just prior to the beginning of the meal period, they point out that a precise count of attendance is difficult to estimate. In addition, many of these sites either lack the refrigeration capacity to hold a large number of leftover meals until they could be returned to the sponsor or have no refrigeration whatsoever. Commenters also noted that local health regulations regarding the service of leftover meals vary widely. In some cases, health regulations prohibit serving any leftover meals (regardless of the site's refrigeration capabilities) due to the increased possibility of bacterial contamination. Finally, a number of the commenters argued that, in order to avoid ordering non-reimbursable meals, sponsors barred from claiming any seconds might be inclined to "under-order", which could result in eligible participants being turned away without receiving a meal.

The Department does not wish to promulgate a rule that would work an undue hardship on particular sponsors or localities, or which could result in eligible children not receiving meals. The stated objective of the SFSP is to provide meal service to all eligible children. However, Section 13 of the National School Lunch Act intends that sponsors serve one meal to each child in attendance. Therefore, although the Department accepts the commenters' contention that reimbursement for seconds should not be completely eliminated, the Department strongly believes that reimbursement for seconds must be curtailed to the maximum extent possible in order to ensure effective program management. The final rule establishes a two percent limit on the number of second meals which sponsors may claim for reimbursement in any claiming period (i.e., in any month). That is, in any month, sponsors may claim a number of seconds which does not exceed two percent of the number of first meals served to eligible children for each meal type (i.e., lunch, breakfast, supplement, or supper) during that month.

Such a limit is consistent with a number of comments which agreed with the need for greater control over seconds but stated that a *total* elimination of reimbursment for seconds was not reasonable. Approximately one-third of the commenters who addressed this issue provided data indicating that they had already limited seconds to a

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low percentage of first meals served or stated their support for the establishment of a percentage limit on reimbursable seconds. Generally, commenters who provided such estimates stated that their seconds ranged from "less than two percent" to "less than ten percent" of first meals served. Most estimates clustered at the low end of this range, between two and five percent. The comments demonstrated that a two percent limitation on second meals is attainable. Based on these comments and data, the Department has established the two percent limit on seconds. The Department believes that a two percent tolerance for seconds constitutes an effective management tool for limiting program waste and responds to commenters' specific concerns regarding the difficulties involved in eliminating seconds altogether. Therefore, for the reasons stated in this preamble and the preamble to the proposed rule, the Department has established a two percent limit on the number of second meals which may be claimed for reimbursement.

It must also be emphasized that the two percent limit applies to the claiming period (month) and *not* to a single day's meal service. Reimbursable seconds may exceed two percent of firsts for one or more meal types on a given day, but may not exceed the two percent limit on seconds for any meal type over the course of the entire month. This will provide sponsors with continued flexibility in dealing with unanticipated day-to-day fluctuations in attendance.

Finally, the Department also wishes to reiterate that any claims for service of second meals should be closely monitored and are not to be approved by the State on a routine basis. The intent of § 225.19(d) is to firmly establish the objective of providing only one meal per child at each meal service. Sponsors and State agencies must work together to ensure that all possible efforts are being made to meet that objective. Sites or sponsors which routinely over-order and serve seconds are not taking positive action to limit seconds, and their second meals should be disallowed in accordance with §§ 225.19(d) and 225.13(e)(1).

Thirty-three (33) comments were received on the proposal to end the practice of allowing the cost of some disallowed meals as "operating costs". Five commenters approved of this change, 25 opposed it, and three were unclear as to their position or requested additional information. Most commenters who opposed this change did not present specific arguments against it. The Department is implementing the prohibition on claiming meals as "operating costs".

Unlike the proposal to end reimbursement for seconds, this change involves either unserved meals and/or meals which fail to meet minimum nutritional requirements. The few commenters who specifically addressed this change objected on three different grounds. The first was that sponsors have no budget to pay for these meals. Although the Department recognizes that many sponsors have limited resources, sponsors are entitled to receive reimbursement for allowable costs only. These disallowed meals clearly should be few in number and should not be considered as allowable costs.

The second argument made was that a natural disaster could render a large number of meals unallowable. The Department sees no need to specifically address the possibility of natural disasters in these regulations. The chance of a disaster happening is remote and does not justify the retention of a provision with such a broad scope.

Finally, three commenters felt that it would be difficult to specifically identify "operating costs" under the proposed change. However, this change does not affect the current definition of operating costs in § 225.2 or the requirement that sponsors be reimbursed for the *lesser* of either actual operating costs *or* the per meal rates established under § 225.11(c)(6)(ii). The Department does not intend to establish new recordkeeping or monitoring requirements with this charge and does not envision any difficulty in implementing this provision. For example, in calculating the lesser of operating costs or rates, sponsors which purchase meals need only deduct the actual cost of disallowed meals from total operating costs. Those which prepare their own meals are to deduct a reasonable proration of the cost of the disallowed meals compared to total costs.

II. Approved Level of Meal Service

Twelve (12) comments were received on this provision, which was intended solely to provide consistency between the language of §§ 225.7(j), 225.11(e), and 225.13(e)(3). All of these sections should state that it is never permissible to claim reimbursement for meals in excess of a site's approved level of meal service if such an approved level is required pursuant to § 225.7(j). Seven commenters were in favor of the proposed change, one was opposed, and four were uncertain about the provision's impact.

Three commenters appeared to be unaware that State agencies have been required to establish such "site caps" for each meal service at sites serving meals prepared by a food service management company. Two other commenters thought that the Department intended to eliminate sponsor-wide claims and institute site-specific claims reporting to the State. This is not the Department's intent. Rather, the Department anticipates that the State would monitor compliance with this provision in the normal course of conducting sponsor reviews. Such monitoring would only entail checking to see that daily meal counts do not exceed the site's approved level for each meal service.

Accordingly, the proposed changes governing approved levels of meal service are contained in this final rule, except that in the course of making this minor change in wording, § 225.11(d) was inadvertently removed. This paragraph is restored in the final regulation.

III. "Scope Reports"

All 11 commenters on the proposed change to eliminate State submission of "Scope Report" information agreed with the Department's deletion of § 225.10(b). Therefore, for the reasons stated in the proposed rule, this section is deleted in this final rule.

IV. Sponsor Eligibility

The Department received 15 comments on its proposal to clarify the circumstances under which a school food authority's sites are eligible to participate in the SFSP. Eight were in favor, three were opposed, and four expressed a desire for further clarification of the provisions of § 225.18 (b) and (c).

Two commenters felt that it should make no difference whether academic summer school sites receive reimbursement under the SFSP or the National School Lunch Program (NSLP) since both have the same purpose. Although both programs provide meals to children, section 13(a)(1) of the National School Lunch Act limits SFSP sponsors to those organizations which provide special summer or school vacation programs. The NSLP operates almost exclusively in schools when academic sessions are in progress. Schools which offer a food service during the summer exclusively to children who are enrolled in academic sessions are the type of organizations which participate in the NSLP. Schools which operate a food service for all children in the area of the school, regardless of whether or not they are enrolled in summer school, are the type of organizations which participate in the SFSP. It was intended that the proposed rule would clarify this distinction.

Another commenter suggested that all SFSP school sites be limited to NSLP levels of reimbursement. However, Section 13 of the National School Lunch Act does not provide authority to alter the maximum reimbursement rates for any given class of sponsors. Consequently, schools are entitled to the full reimbursement rates available to other sponsors unless, of course, their actual costs are less than these rates.

Several commenters believed that the changes made to § 225.18(b) were actually proposed substantive changes in the degree of administrative control which government sponsors should have over their SFSP sites. This is not the case. The intent of the changes to § 225.18(b) was primarily to clarify the operation of the program at school sites. Government sponsors will continue to have the same responsibilities enumerated under the former § 225.18(b)(9).

For the reasons stated here and in the preamble, the proposed changes concerning this issue are incorporated in the final rule.

List of Subjects in 7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants and children.

PART 225—[AMENDED]

Accordingly, the Department is amending 7 CFR Part 225 as follows:

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 803, 807, 809, 816 and 817, Pub. L. 97–35, Secs. 203 and 208, Pub. L. 96–449, Secs. 5, 7, 10, Pub. L. 95–627, 95 Stat. 3603 (42 U.S.C. 1771); Sec. 2, Pub. L. 95–166, 91 Stat. 1325 (42 U.S.C. 1761); Sec. 7, Pub. L. 91–248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

§ 225.8 [Amended]

2. In § 225.8, paragraph (a)(8) is amended by changing the words "§ 225.18(b)(9)" to read "§ 225.18(c)(3)".

§ 225.10 [Amended]

3. In § 225.10, paragraph (b) is removed, and paragraphs (c), (d), and (e) are redesignated as paragraphs (b), (c), and (d), respectively.

4. In § 225.11:

a. Paragraph (c)(4) is amended by changing the words "Section 225.10(c)" to read "Section 225.10(b)" and by removing the fourth and fifth sentences.

b. Paragraph (e) is amended by revising the second sentence to read as follows:

§ 225.11 Program payments

* * * * * *

(e) * * * In reviewing a sponsor's claim, the State agency shall ensure that reimbursements for second meals are limited to the percentage tolerance established in § 225.19(d).

5. In Section 225.12, paragraph (a) is amended by removing the first sentence and replacing it with two new sentences to read as follows:

§ 225.12 Audit and management evaluation.

(a) State agencies shall arrange for audits of their own operations to be conducted in accordance with Office of Management and Budget Circular A–128 and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). Unless otherwise exempt, sponsors shall arrange for audits to be conducted in accordance with Office of Management and Budget Circular A–128 or A–110, as applicable, and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015. * * *

* * * * * * *

§ 225.16 [Amended]

6. In Section 225.16, paragraph (c)(8) is amended by changing the words "Section 225.10(e)" to read "Section 225.10(d)".

7. In Section 225.18:

a. Paragraphs (b)(7)–(b)(9) are removed.

b. Paragraphs (c), (d), (e), (f), (g), (h), and (i) are redesignated (d), (e), (f), (g), (h), (i), and (j), respectively, and a new paragraph (c), "Special Circumstances", is added to read as follows:

§ 225.18 Requirements for sponsor participation.

* * * * * *

(c) *Special Circumstances.* (1) If the sponsor is not a camp, it shall provide documentation that its food service will serve children from an area in which poor economic conditions exist, as defined in § 225.2. If the sponsor is a camp, it shall certify that it will collect information on participant's family size and income to support the sponsor's claim for reimbursement;

(2) If the sponsor administers the program at sites at which summer school is in session, the sponsor may offer the program only at sites which make meals available to children enrolled in summer school and all children in the area served by the site.

(3) Sponsors which are units of local, municipal, county or State governments shall be approved to administer the program only at sites over which the sponsor has direct operational control. Such operational control means that the sponsor shall be responsible for: (i) Managing site staff, including such areas as hiring, terminating and determining conditions of employment for site staff; and (ii) exercising management control over program operations at sites throughout the period of program participation by performing the functions specified in § 225.19.

* * * * * *

8. In Section 225.19, paragraph (d) is amended by removing the sixth sentence. In its place, two new sentences are added which read as follows:

§ 225.19 Operational responsibilities of sponsors.

(d) * * * In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, sponsors may claim reimbursement for a number of second meals which does not exceed two percent of the number of first meals served to children for each meal type (i.e., breakfasts, lunches, supplements, or suppers) during the claiming period. The State agency shall disallow all claims for second meals if it determines that the sponsor has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service. * * *

* * * * * * *

Dated: January 21, 1986.

Sonia F. Crow,

Acting Administrator.

[FR Doc. 86–1624 Filed 1–24–86; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Part 1924

Internal Management Change for Notifying Farmer Program Borrowers Who Are In Monetary Default on Their Farmers Home Administration Loan Accounts

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation regarding management advice for Farmer Program borrowers. The intended effect is to allow the Administrator to establish the method of notifying Farmer Program borrowers that are behind schedule on FmHA loan payments and to inform the borrower of

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alternative servicing options. The number of borrowers behind schedule on loan payments has increased substantially due to the depressed farm economy. This amendment is necessary to provide quick and more orderly processing of assistance to approximately 65,000 borrowers that are in default on FmHA loan commitments.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Yaxley, Senior Loan Officer, Farm Real Estate and Production Division, Farmers Home Administration, USDA, Room 5449–S, Washington, DC 20250, Telephone: (202) 447–3646.

SUPPLEMENTARY INFORMATION:

Classification: This final action has been reviewed under USDA procedures established in Departmental Regulations 1512–1, which implements Executive Order 12291 and has been determined to be exempt from these requirements because it involves internal agency management to allow the Administrator to establish the order of sending notices to farmer program borrowers that are in default on FmHA loan commitments. It is the policy of this Department to publish for comment, rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal agency management and publication for comment is unnecessary.

Intergovernmental Consultation

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operation Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

For the reasons set forth in the final rule related to Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983) this action is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

This action does not change or add any information collection requirements in the regulations under the Paperwork Reduction Act and 5 CFR 1320.

Background

On November 1, 1985, FmHA published in the **Federal Register** (50 FR 45740) a final rule on Special Supervision of Delinquent and Problem Case FmHA Farm Borrowers which requires that all Farmer Program borrowers (except those under the jurisdiction of a bankruptcy court) that are more than $100 behind schedule on their FmHA loan payments on December 31st will immediately be sent a Notice Of Intent to Take Adverse Action. It is now known that approximately 65,000 FmHA farmer program borrowers would immediately receive this notice. It has been determined that the impact of such a large number of farmers receiving the notice at one time would be detrimental to the agency and to rural communities. Therefore, the Agency has determined that a better approach is to establish an order for sending the notice based on the age of the delinquency. There are indications that the purpose of the notice is generally misunderstood. Many people are calling it a "foreclosure" notice. This is incorrect. The notice does not accelerate the account.

It does inform the borrower that the FmHA loan account is in default and informs the borrower of a number of servicing options such as rescheduling and deferral of payments. As time goes by people will become better informed of the purpose of the notice and this should reduce the apprehension of receiving the notice.

List of Subjects in 7 CFR Part 1924

Agriculture, Construction and repair, Loan programs—Agriculture.

Accordingly, Chapter XVIII, Title 7, Part 1924, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management Advice to Individual Borrowers and Applicants

2. Section 1924.71 is revised to read as follows:

§ 1924.71 Delinquent borrowers.

The Finance Office will send each FmHA County Office a status report of farmer program borrowers accounts as of December 31 each year. Beginning December 31, 1985, borrowers that are behind schedule more than $100 on their FmHA loan payments on the December 31 report will be considered delinquent (except those under the jurisdiction of a bankruptcy court). The Administrator will issue administrative notices (which will be available from any FmHA office) to inform field offices of the order for sending delinquent borrowers Form FmHA 1924–25, "Notice of Intent to Take Adverse Action" with attachments of Form 1924–26, "Borrower Acknowledgement of Notice to Take Adverse Action" and Form FmHA 1924–14, "Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities". The order for sending these forms will be based on the age of the delinquency. Cases involving litigation will be handled in accordance with the advice of the Office of General Counsel (OGC). Bankruptcies will be handled in accordance with § 1962.47 of Subpart A of Part 1962 of this chapter.

Dated: January 23, 1986.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 86–1860 Filed 1–24–86; 9:09 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–156–AD; Amdt. 39–5224]

Airworthiness Directives; Cessna Model S550 and 552 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Cessna Model S550 and 552 airplanes by individual priority letters. This AD removes approval for flight into icing conditions until certain inspections and modifications, as necessary, of the fluid ice protection system installation are accomplished. The AD is necessary because production errors have been identified, resulting in incorrect installation of the fluid ice protection system during manufacture of these airplanes.

DATE: Effective February 11, 1986.

This AD was effective earlier to all recipients of Priority Letter AD 85–25–10, issued December 17, 1985.

Compliance schedule as prescribed in the body of the AD.

ADDRESS: The applicable service information may be obtained from Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Ralph W. Rissmiller, Jr., Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4419.

SUPPLEMENTARY INFORMATION: Cessna Aircraft Company has identified production errors in the Model S550 airplane which have resulted in incorrect installation of the fluid ice protection system during manufacture of certain of these airplanes. These errors affect anti-ice protection to the wings, engine, and horizontal stabilizer. This condition, if not corrected, can cause hazardous accumulation of ice on these areas during flight into icing conditions.

Cessna issued Alert Service Letter SLAS550–30–05 on December 17, 1985, which recommends that operators restrict flight into icing conditions and describes inspection and replacement of the fluid icing protection system on the left and right inboard and outboard wing and horizontal stabilizer installations.

Since this situation is likely to exist or develop on other airplanes of the same type design, Priority Letter AD 85–25–10 was issued on December 17, 1985, and made effective immediately to all known U.S. owners and operators of Cessna Models S550 and 552 airplanes. The AD removes approval for flight into icing conditions until certain inspections and modification, as necessary, of the fluid ice protection system installation, in accordance with the Cessna Alert Service Letter previously mentioned, are accomplished.

Since a situation existed and still exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The reporting requirements of this AD are approved by the Office of Management and Budget under OMB No. 2120–0056.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) (Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Cessna Aircraft Company: Applies to Cessna Model S550 and 552 airplanes, with unit numbers identified below, certificated in any category.

Model	Unit Numbers
S550	0001 thru 0046, 0051 thru 0075, 0077, and 0079.
552	–0001 thru –0015

Compliance is required as indicated, unless already accomplished.

To prevent hazardous accumulation of ice on the wing leading edge and horizontal stabilizer during flight in icing conditions, accomplish the following.

A. Prior to further flight:

1. Fabricate and install on the instrument panel, in clear view of the pilot, the following placard, using letters of a minimum of 0.10 inch in height: "FLIGHT INTO KNOWN OR FORECAST ICING PROHIBITED," and operate the airplane accordingly.

2. Revise the Airplane Flight Manual, Section II, Operating Limitations-Operations Authorized to read: "This airplane is approved for day and night, VFR, IFR flight. Flight into known or forecast icing conditions prohibited." This may be accomplished by inserting a copy of this AD in the Airplane Flight Manual.

B. Within the next 15 flight hours or 15 days after the effective date of this AD, whichever occurs first, inspect and modify, as necessary, the fluid ice protection system left and right inboard wing installation in accordance with Accomplishment Instruction A. of Cessna Alert Service Letter SLAS550–30–05, dated December 17, 1985.

C. Within the next 25 flight hours or 30 days after the effective date of this AD, whichever occurs first, inspect and modify, as necessary, the fluid ice protection system left and right outboard wing and horizontal stabilizer installations in accordance with Accomplishment Instructions B. and C. of Cessna Alert Service Letter SLAS550–30–05, dated December 17, 1985.

D. Within 5 days after the required inspection, report any defects found to the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

E. The requirements of paragraphs A.1. and A.2., above, may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplanes owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

F. The requirements of paragraphs A.1. and A.2., above, are terminated upon the accomplishment of paragraphs B. and C. of this AD.

G. Airplanes may be flown in accordance with FAR 21.197 and 21.199 to a location where the inspection/modification requirements of the AD can be accomplished.

H. Alternate means of compliance with this AD which provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, FAA, Central Region, 1803 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

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This Amendment becomes effective February 11, 1986, as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 85-25-10, issued December 17, 1985.

Issued in Seattle, Washington, on January 17, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86-1663 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AEA-9]

Designation of Transition Area, Ocean City, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a transition area at Ocean City, NJ, A new VOR Runway 06 instrument approach procedure has been developed to the Ocean City Municipal Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 GMT, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On September 13, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Ocean City Municipal Airport, NJ, to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at Ocean City Municipal Airport (50 FR 41524). A new VOR Runway 06 instrument approach procedure has been developed to the Ocean City Municipal Airport. Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a new transition area at Ocean City Municipal Airport, NJ. A new VOR Runway 06 approach procedure has been developed to the Ocean City Municipal Airport. This action provides protected airspace for aircraft arriving/departing under instrument flight rules.

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Ocean City, NJ [New]

That airspace extending upward from 700 feet above the surface within a five statute mile radius of the Ocean City Municipal, NJ, Airport (lat. 38°15'49"N., long. 74°36'28" W.); and within three miles each side of the Sea Isle VORTAC 051° radial extending from the five mile radius to 5.5 miles southwest of the airport, excluding that portion which overlaps the Woodbine, NJ, and Atlantic City, NJ, transition area, and that portion outside the continental limits of the United States.

Issued in Jamaica, New York, on December 26, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 86-1664 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM85-19-000]

Electric Utilities; Generic Determination of Rate of Return on Common Equity for Public Utilities

January 15, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Benchmark Rate of Return on Common Equity for Public Utilities.

SUMMARY: In accordance with § 37.5, the Commission issues the update to the "advisory" benchmark rate of return on common equity applicable to electric rate filings made during the period February through April 1986. This rate is set at 13.39 percent.

EFFECTIVE DATE: February 1, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-8015.

SUPPLEMENTARY INFORMATION:

On December 26, 1985, the Commission issued a final rule which amended the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this amended procedure, the Commission determines that the benchmark rate of return on common equity applicable to rate filings made during the period February 1 through April 30, 1986 is 13.39 percent.

According to the amended § 37.9, the quarterly benchmark rates of return are set equal to ratemaking rates of return on common equity [2] subject to a 50 basis point limitation on the quarter-to-quarter changes. The ratemaking rates of return used in establishing the quarterly benchmarks are based on the average of the median dividend yield for the two most recent calendar quarters for a sample of 100 utilities and are calculated through a three step process. First, given the dividend yield value, the average effective required rate of return on common equity is determined using a particular discounted cash flow model. Second, an adjustment is made to this effective required rate to reflect industry average annual flotation costs and obtain an estimate of the industry average cost of common equity. Finally, this cost estimate is adjusted through a formula that reflects the manner in which the rate base is determined for the cost of service to obtain the average ratemaking rate of return.

The median dividend yield for the sample of utilities for the third and fourth calendar quarters of 1985 are 9.14 and 8.92 percent, respectively, for an average of 9.03 percent. Using the latter yield produces an average effective required rate of return on common equity of 14.20 percent, an average cost of common equity of 14.24 percent, and an average ratemaking rate of return on common equity of 13.39 percent.[3] Since this is the first quarter to which the results of the annual proceeding are applicable, the benchmark rate of return is set equal to this ratemaking rate of return. It is not subject to any limitation on the change from the last quarter. Thus the Commission finds the benchmark rate of return applicable to rate filings made from February 1, 1986 through April 30, 1986 is 13.39 percent. The attached appendix provides the underlying data on dividends and market prices supporting this update.

Generally, a rule becomes effective not less than 30 days after it is published in the **Federal Register**. A rule may become effective sooner if the agency finds that there is good cause to do so. 5 U.S.C. 553(d) (1982). The Commission finds good cause to make this rule effective February 1, 1986. Specifically, this notice is intended to supplement the generic rate of return rule announced in Order No. 442, issued December 26, 1985 and effective on February 1, 1986, by applying the method adopted in that rule to data which was not available until after January 1, 1986. In addition, the benchmark rate of return established by this rule is effective on an advisory basis only.

List of Subjects in 18 CFR Part 37

Electric Power Rates, Electric Utilities, Rate of Return.

In consideration of the foregoing, the Commission revises Chapter I, Title 18 of the Code of Federal Regulations, as set forth below, effective February 1, 1986.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 37—[AMENDED]

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16, U.S.C. 791a-825r (1982); Department of Energy Organization Act 42 U.S.C. 7101-7352 (1982).

2. In paragraph (d) of § 37.9, the table is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) * * *

Benchmark applicability period (t)	Expected dividend growth (g)	Flotation cost adjustment (f)	Current dividend yield (y_t)	Average ratemaking rate of return (r_t)	Benchmark rate of return
2/1/86- 4/30/86	.045	.0004	.0903	.1339	.1339
5/1/86- 7/31/86	.045	.0004			
8/1/86-10/31/86	.045	.0004			
11/1/86- 1/31/87	.045	.0004			

Appendix

Note.—The following Appendix will not be printed in the Code of Federal Regulations.

Exhibit Number and Title

1—Initial Sample of Utilities
2—Utilities Excluded From the Sample for the Indicated Quarter Due to Either Zero Dividends or a Cut in Dividends for This Quarter or the Prior Three Quarters
3—Quarterly Dividend Yields for the Indicated Quarters for Utilities Retained in the the Sample

Source of Data: Standard and Poor's Compustat Services Inc., Utility COMPUSTAT® II Quarterly Data Base.

EXHIBIT 1.—INITIAL SAMPLE OF UTILITIES

Utility	Ticker symbol
Allegheny Power System	AYP
American Electric Power	AEP
Atlantic City Electric	ATE
AZP Group Inc	AZP
Baltimore Gas & Electric	BGE
Black Hills Power & Light Co	BHP
Boston Edison Co	BSE
Carolina Power & Light	CPL
Central & South West Corp	CSR
Central Hudson Gas & Electric	CNH
Central Ill Public Service	CIP
Central Louisiana Electric	CNL
Central Maine Power Co	CTP
Central Vermont Pub. Serv	CV
Cilcorp Inc	CER
Cincinnati Gas & Electric	CIN
Cleveland Electric Illum	CVX
Commonwealth Edison	CWE
Commonwealth Energy System	CES
Consolidated Edison of NY	ED
Consumers Power Co	CMS
Dayton Power & Light	DPL
Delmarva Power & Light	DEW
Detroit Edison Co	DTE
Dominion Resources Inc-VA	D
Duke Power Co	DUK
Duquesne Light Co	DQU
Eastern Utilities Assoc	EUA
Empire District Electric Co	EDE
Fitchburg Gas & Electric Light	FGE
Florida Progress Corp	FPC
FPL Group Inc	FPL
General Public Utilities	GPU
Green Mountain Power Corp	GMP
Gulf States Utilities Co	GSU
Hawaiian Electric Inds	HE
Houston Industries Inc	HOU
Idaho Power Co	IDA
Illinois Power Co	IPC
Interstate Power Co	IPW
Iowa Electric Light & Power	IEL
Iowa Resources Inc	IOR
Iowa-Illinois Gas & Electric	IWG
Ipalco Enterprises Inc	IPL
Kansas City Power & Light	KLT
Kansas Gas & Electric	KGE
Kansas Power & Light	KAN
Kentucky Utilities Co	KU
Long Island Lighting	LIL
Louisville Gas & Electric	LOU
Maine Public Service	MAP
Middle South Utilities	MSU
Midwest Energy Co	MWE
Minnesota Power & Light	MPL
Montana Power Co	MTP
Nevada Power Co	NVP
New England Electric System	NES
New York State Electric & Gas	NGE
Newport Electric Corp	NPT
Niagara Mohawk Power	NMK
Northeast Utilities	NU
Northern Indiana Public Serv	NI
Northern States Power-MN	NSP
Ohio Edison Co	OEC
Oklahoma Gas & Electric	OGE
Orange & Rockland Utilities	ORU
Pacific Gas & Electric	PCG
Pacificorp	PPW
Pennsylvania Power & Light	PPL
Philadelphia Electric Co	PE
Portland General Electric Co	PGN
Potomac Electric Power	POM
Public Service Co of Colorado	PSR
Public Service Co of Indiana	PIN
Public Service Co of New Hampshire	PNH
Public Service Co of New Mexico	PNM
Public Service Electric & Gas	PEG
Puget Sound Power & Light	PSD
Rochester Gas & Electric	RGS
San Diego Gas & Electric	SDO
Savannah Electric & Power	SAV
Scana Corp	SCG
Sierra Pacific Resources	SRP
Southern California Edison Co	SCE
Southern Co	SO
Southern Indiana Gas & Electric	SIG
St. Joseph Light & Power	SAJ
Teco Energy Inc	TE
Texas Utilities Co	TXU
TNP Enterprises Inc	TNP
Toledo Edison Co	TED
Tucson Electric Power Co	TEP
Union Electric Co	UEP
United Illuminating Co	UIL
Utah Power & Light	UTP
Utilicorp United Inc	UCU
Washington Water Power	WWP
Wisconsin Electric Power	WPC
Wisconsin Power & Light	WPL
Wisconsin Public Service	WPS

EXHIBIT 1.—INITIAL SAMPLE OF UTILITIES—Continued

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[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, 51 FR 343 (January 6, 1986) (Docket No. RM85-19-000) (Final Rule) (Order No. 442).

[2] Defined in § 37.3 and calculated according to § 37.9(a)(3).

[3] These values are determined according to the formulas given in § 37.9(a)(1) through (3). The basic data and computer programs used to derive these values have been placed in the public file. *See* "Source Data and Calculations Used in Final Rule and Quarterly Updates," dated January 1986.

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EXHIBIT 2—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

Ticker symbol and utility	Reason for exclusion
Year=85; Quarter=3	
CMS—Consumers Power Co.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
CTP—Central Maine Power Co.	Dividend rate reduced in the quarter ending Dec. 31, 1984.
FGE—Fitchburg Gas & Elec Light.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
LIL—Long Island Lighting	Dividend rate was zero for the quarter ending Sept. 30, 1985.
MAP—Maine Public Service.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
MTP—Montana Power Co	Dividend rate reduced in the quarter ending Mar 31, 1985.
PNH—Public Service Co of NH.	Dividend rate was zero for the quarter ending Sept. 30, 1985.
Year=85; Quarter=4	
CMS—Consumers Power Co.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
FGE—Fitchburg Gas & Elec Light.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
GPU—General Public Utilities.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
KGE—Kansas Gas & Electric.	Dividend rate reduced in the quarter ending Dec. 31, 1985.
LIL—Long Island Lighting	Dividend rate was zero for the quarter ending Dec. 31, 1985.
MAP—Maine Public Service.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
MSU—Middle South Utilities.	Dividend rate was zero for the quarter ending Dec. 31, 1985.
MTP—Montana Power Co	Dividend rate reduced in the quarter ending Mar 31, 1985.
NI—Northern Indiana Public Serv	Dividend rate was zero for the quarter ending Dec. 31, 1985.
PNH—Public Service Co of NH.	Dividend rate was zero for the quarter ending Dec. 31, 1985.

BILLING CODE 6717-01-M

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE — 13:18 TUESDAY, JANUARY 7, 1986

YEAR=85 QUARTER=3

TICKER SYMBOL	PRICE, 1ST MONTH OF QRTR-HIGH	PRICE, 1ST MONTH OF QRTR-LOW	PRICE, 2ND MONTH OF QRTR-HIGH	PRICE, 2ND MONTH OF QRTR-LOW	PRICE, 3RD MONTH OF QRTR-HIGH	PRICE, 3RD MONTH OF QRTR-LOW	DIVIDENDS ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
AEP	24.875	22.250	23.500	21.250	21.875	19.875	2.260	10.148
ATE	29.250	25.750	27.375	26.000	28.500	25.625	2.580	9.526
AYP	34.000	29.000	31.000	29.125	31.250	28.125	2.700	8.877
AZP	28.125	25.000	25.250	23.875	24.875	22.625	2.720	10.898
BGE	23.313	20.188	22.125	20.000	22.500	20.625	1.700	7.922
BHP	34.875	32.625	34.750	32.125	36.250	33.750	1.920	5.637
BSE	44.125	36.000	40.250	37.000	40.375	38.250	3.240	8.237
CER	27.250	23.250	25.000	23.375	24.875	22.250	2.220	9.123
CES	30.625	26.750	28.625	26.375	29.000	26.500	2.520	9.007
CIN	19.375	17.000	18.375	17.000	18.625	16.500	2.160	12.126
CIP	21.500	18.875	19.500	18.500	19.750	17.500	1.640	8.510
CNH	31.250	28.000	29.750	28.375	28.750	24.000	2.960	10.439
CNL	29.125	24.125	25.750	24.375	26.500	23.750	2.080	8.124
CPL	30.000	26.625	28.125	26.000	27.125	25.625	2.600	9.630
CSR	27.000	23.000	26.000	22.750	25.875	23.375	2.020	8.189
CV	21.750	18.125	21.125	18.625	21.125	19.250	1.900	9.500
CVX	23.875	21.750	23.375	21.250	23.000	21.250	2.520	11.242
CWE	32.875	29.625	31.500	29.000	31.000	28.250	3.000	9.877
D	34.125	28.625	31.375	29.250	31.125	28.375	2.720	8.924
DEW	26.625	22.750	24.625	23.125	24.875	22.750	1.920	7.959
DPL	20.250	17.750	18.500	17.250	18.750	16.750	2.000	10.984
DQU	17.500	16.125	17.250	16.125	16.500	14.375	2.060	12.628
DIE	17.875	15.750	16.750	15.125	16.500	14.000	1.680	10.500
DUK	35.875	30.750	32.625	30.625	32.875	30.000	2.600	8.093
ED	38.000	32.750	35.000	33.000	34.750	32.125	2.480	7.003
EDE	22.500	21.125	21.875	20.375	21.500	20.375	1.780	8.266
EUA	23.750	20.500	23.125	21.000	22.125	18.375	2.060	9.591
FPC	29.125	25.750	27.875	26.500	27.000	24.000	2.160	8.087
FPL	28.000	25.375	25.625	23.625	24.750	22.625	1.960	7.946
GMP	20.000	17.000	19.625	17.750	19.750	17.250	1.760	9.481
GSU	16.500	14.625	14.750	12.750	13.875	11.625	1.640	11.697
HE	25.375	22.125	22.875	20.250	22.125	20.250	1.640	7.398
HOU	29.500	27.000	28.000	26.750	27.750	25.000	2.660	9.659
IDA	24.500	20.000	21.375	20.000	21.875	20.125	1.720	8.070
IEL	21.500	18.625	21.000	19.000	21.000	18.750	1.900	9.510
IOR	37.750	33.000	34.500	33.000	34.250	32.250	3.080	9.026
IPC	27.500	23.375	25.625	23.250	24.750	22.375	2.640	10.785
IPE	40.000	33.375	36.250	33.625	36.125	32.750	3.040	8.599
IPW	22.750	19.625	20.750	19.750	20.250	19.000	1.900	9.335
IWG	35.000	30.250	31.625	29.875	31.500	29.875	2.760	8.859
KAM	41.375	34.500	38.125	35.250	37.000	33.875	2.960	8.068
KGE	19.125	17.375	18.500	14.375	15.375	10.250	2.360	14.905
KLT	24.500	22.375	23.500	20.000	22.375	18.000	2.360	10.830
KU	29.875	26.500	28.125	26.900	28.125	26.000	2 440	8.866
LOU	30.875	26.125	28.750	26.500	29.125	25.750	2.520	9.047
MPL	39.250	33.750	35.875	33.875	36.750	33.375	2.760	7 779
MWE	32.250	27.750	30.125	26.750	30.875	28.000	2.760	9.422
NES	46.500	41.750	44.625	42.125	44.500	40.375	3.600	8.312
NGE	29.250	24.875	26.500	24 875	26.250	23.750	2.560	9.878
NI	12.875	11.375	12.925	11.125	12.500	10.625	1.560	13.253
NMK	21.875	19.500	20.500	18.875	20.000	17.500	2.080	10.554
NPT	17.375	16.375	17.125	15.625	16.500	15.500	1.500	9.137
NSP	51.875	46.125	48.250	45.750	48.875	44.875	3.520	7.391
NU	18.000	16.500	17.875	16.000	17.000	14.500	1.580	9.492
NVP	33.500	28.750	30.875	29.125	31.000	29.250	2.840	9.337
OEC	16.000	15.000	16.125	15.125	16.125	14.375	1.880	12.162
OGE	26.250	22.250	23.375	21.625	24.375	21.500	2.000	8.610
ORU	29.000	24.375	26.750	25.125	27.250	25.125	2.140	8.146
PCG	20.000	17.875	19.000	17.375	19.250	17.250	1.840	9.968
PE	16.625	15.250	16.500	14.750	15.000	14.000	2.208	14.328
PEG	32.375	27.750	31.000	28.000	30.875	26.625	2.840	9.648
PGN	21.625	18.625	20.125	19.125	20.375	17.875	1.900	9.682
PIN	10.125	8.250	9.250	8.625	9.250	8.625	1.000	11.085
PNM	29.500	25.500	27.375	26.000	27.875	26.250	2.880	10.634
POM	34.000	28.000	32.125	29.125	31.375	27.500	2.160	7.116
PPL	27.875	24.500	26.250	24.375	26.375	23.500	2.560	10.047
PPW	31.625	27.000	29.500	27.250	29.750	27.375	2.320	8.070
PSO	17.000	14.875	15.750	14.500	14.875	13.000	1.760	11.733
PSR	24.125	20.250	22.250	20.375	22.125	20.375	2.000	9.266
RGS	24.875	21.500	23.000	21.750	22.875	19.750	2.200	9.869
SAJ	23.000	20.000	21.625	19.500	20.750	19.000	1.720	8.331
SAV	21.750	18.750	20.375	18.875	20.375	19.250	1.600	8.042
SCE	27.625	23.000	26.000	23.375	25.625	22.750	2.160	8.735
SCG	28.125	24.750	26.500	24.250	26.250	23.375	2.160	8.457
SDO	27.500	24.125	26.750	25.000	27.000	24.750	2.240	8.664
SIG	26.625	22.875	24.000	22.750	25.000	23.500	1.800	7.461
SO	23.125	20.375	21.250	19.750	20.500	18.875	1.920	9.300
SRP	19.875	17.000	18.500	17.375	18.125	17.375	1.660	9.201
TE	36.625	30.625	32.375	29.875	32.500	30.625	2.360	7.351
TED	21.250	19.125	20.875	19.125	20.750	19.125	2.520	12.574
TEP	43.625	36.875	40.625	37.250	40.125	37.000	3.000	7.643
TNP	21.625	18.125	19.875	16.625	18.250	15.750	1.250	6.803
TXU	31.875	28.000	29.875	28.375	29.000	25.875	2.520	8.740
UCU	27.000	24.375	25.000	24.000	24.750	21.875	1.400	5.714
UEP	19.750	18.125	19.625	17.750	19.375	16.375	1.840	9.901
UIL	22.625	18.500	21.875	20.375	22.125	20.250	2.000	9.543
UTP	26.875	23.250	25.500	23.750	24.250	22.750	2.320	9.510
WPC	40.500	34.375	36.250	33.500	37.000	33.875	2.480	6.905
WPL	40.375	35.375	37.625	34.375	36.625	34.500	2 760	7.566
WPS	39.250	36.125	39.000	37.000	38.875	35.750	2 860	7.593
WWP	24.500	22.125	23.500	21.750	22.125	21.000	2.480	11.022

N=91

EXHIBIT 3 page 1 of 4

EXHIBIT 3 page 2 of 4

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ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

13:18 TUESDAY, JANUARY 7, 1986

YEAR=85 QUARTER=4

TICKER SYMBOL	PRICE, 1ST MONTH OF QRTR-HIGH	PRICE, 1ST MONTH OF QRTR-LOW	PRICE, 2ND MONTH OF QRTR-HIGH	PRICE, 2ND MONTH OF QRTR-LOW	PRICE, 3RD MONTH OF QRTR-HIGH	PRICE, 3RD MONTH OF QRTR-LOW	DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
AEP	23.000	20.500	24.250	22.000	24.625	22.500	2.260	9.907
ATE	28.000	26.000	29.250	27.625	29.750	28.000	2.580	9.180
AYP	31.500	28.250	33.125	29.500	34.125	32.000	2.700	8.594
AZP	25.625	22.750	26.625	23.875	27.375	25.500	2.720	10.755
BGE	22.625	20.375	24.500	22.000	25.500	23.000	1.700	7.391
BHP	33.750	32.125	35.500	33.000	40.750	35.250	1.920	5.476
BSE	39.875	36.625	42.250	39.375	46.250	41.125	3.440	8.407
CER	25.625	23.625	26.250	24.500	27.000	24.750	2.220	8.778
CES	27.875	26.250	29.000	27.250	30.875	28.125	2.520	8.927
CIN	18.750	17.500	19.625	18.125	22.250	19.000	2.160	11.245
CIP	19.375	17.375	19.875	18.625	20.500	19.375	1.640	8.547
CNH	27.000	24.625	28.375	26.625	30.500	27.250	2.960	10.805
CNL	27.500	24.875	27.750	26.125	30.250	27.000	2.080	7.633
CPL	27.875	25.125	29.125	27.000	30.875	28.250	2.680	9.272
CSR	25.750	24.125	26.625	25.125	28.125	25.625	2.020	7.800
CTP	13.375	12.375	13.250	12.750	14.375	13.000	1.400	10.616
CV	20.500	19.125	20.500	19.125	22.125	20.000	1.900	9.392
CVX	23.500	22.000	24.250	22.375	25.625	23.000	2.640	11.254
CWE	29.750	27.000	30.000	27.625	30.625	28.625	3.000	10.367
D	32.250	28.875	33.500	31.500	36.750	32.250	2.840	8.733
DEW	25.375	22.625	26.000	24.625	28.250	25.625	1.920	7.554
DPL	19.125	17.125	20.000	18.250	20.875	19.625	2.000	10.435
DQU	15.875	14.250	17.250	15.250	17.125	16.000	2.060	12.909
DTE	15.375	14.125	15.750	14.875	16.375	15.125	1.680	11.001
DUK	34.750	31.375	34.750	33.125	36.875	33.875	2.680	7.619
ED	36.250	33.500	36.625	34.250	39.625	36.125	2.480	6.655
EDE	21.375	20.375	23.375	21.125	24.500	22.875	1.880	8.442
EUA	22.875	20.375	24.625	21.500	26.875	24.500	2.060	8.782
FPC	28.625	25.375	30.125	27.250	31.000	26.375	2.280	8.107
FPL	25.750	22.875	28.875	24.625	29.000	24.750	1.960	7.545
GMP	19.250	17.125	19.750	18.500	21.000	19.500	1.760	9.173
GSU	13.125	12.125	15.500	12.250	13.875	12.500	1.640	12.397
HE	22.125	20.125	23.750	21.375	25.375	22.625	1.720	7.623
HOU	28.375	25.375	29.375	27.000	29.125	27.125	2.640	9.521
IDA	21.750	20.625	21.875	20.750	23.500	21.250	1.720	7.954
IEL	19.750	18.000	21.000	19.125	21.625	19.000	1.960	9.823
IOR	33.875	31.000	34.125	32.375	36.500	33.875	3.080	9.160
IPC	23.750	21.375	25.250	22.375	24.375	22.750	2.640	11.324
IPL	36.250	33.000	36.875	35.500	38.375	35.125	3.040	8.479
IPW	20.000	19.250	21.625	19.750	22.750	21.000	1.900	9.166
IWG	32.500	30.375	33.875	31.625	36.250	33.500	2.740	8.298
KAN	38.125	35.000	39.250	37.125	41.375	38.000	2.960	7.760
KLT	22.000	19.250	25.125	21.000	22.875	21.000	2.360	10.956
KU	28.250	26.125	29.500	27.750	31.250	27.625	2.440	8.587
LOU	27.750	26.000	29.500	27.375	32.250	28.375	2.520	8.829
MPL	37.750	33.500	39.000	36.750	40.750	38.375	2.760	7.592
MWE	30.625	28.625	31.125	29.750	33.125	30.750	2.760	9.000
NES	44.250	40.500	48.625	43.875	51.500	47.875	3.840	8.359
NGE	27.625	23.875	27.375	25.250	28.750	25.000	2.360	9.729
NMK	19.125	17.625	20.625	18.750	21.000	18.375	2.080	10.805
NPT	17.000	15.750	17.750	16.500	17.375	16.500	1.500	8.922
NSP	48.000	45.125	50.500	47.625	54.750	49.500	3.520	7.147
NU	16.875	14.500	18.000	16.625	18.750	17.000	1.580	9.317
NVP	31.625	30.125	32.375	31.375	33.625	31.500	2.840	8.939
OEC	15.875	14.500	16.500	16.750	16.750	15.250	1.880	11.968
OGE	24.250	22.000	25.000	23.625	27.625	24.375	2.000	8.179
ORU	26.250	24.875	27.625	25.500	28.250	26.625	2.140	8.049
PCG	18.750	17.375	19.875	18.250	20.375	19.250	1.840	9.695
PE	15.875	14.000	15.875	14.875	17.625	15.000	2.200	14.155
PEG	29.125	26.625	31.875	28.000	33.125	29.375	2.840	9.566
PGN	20.750	18.000	21.875	20.500	23.250	21.750	1.900	9.039
PIN	9.375	8.500	9.000	7.125	7.875	6.875	1.000	12.308
PNM	28.500	26.625	29.000	27.250	30.750	26.750	2.920	10.375
POM	31.375	28.500	33.125	31.250	34.750	32.125	2.160	6.781
PPL	26.000	23.750	27.875	25.625	29.000	26.000	2.560	9.706
PPW	29.250	27.875	29.875	28.125	31.500	29.000	2.400	8.199
PSD	15.125	14.000	15.375	14.625	18.375	14.750	1.760	11.447
PSR	21.125	18.125	20.875	19.875	21.875	20.125	2.000	9.776
RGS	22.125	19.125	23.125	21.625	24.625	22.500	2.200	9.915
SAJ	20.875	20.000	22.375	20.375	23.750	22.000	1.720	7.977
SAV	20.375	19.375	21.875	20.000	23.375	21.125	1.600	7.611
SCE	25.250	22.750	25.375	24.000	28.500	24.625	2.160	8.611
SCG	26.000	23.875	27.375	25.500	28.000	25.375	2.160	8.301
SDO	26.875	25.000	27.000	26.125	28.250	25.875	2.240	8.444
SIG	24.375	23.000	26.500	24.000	27.750	25.250	1.800	7.158
SO	20.625	19.125	21.750	20.125	23.750	20.500	2.040	9.724
SRP	18.125	17.250	19.125	17.875	20.250	18.500	1.660	8.963
TE	33.375	30.875	33.875	32.625	35.125	32.750	2.360	7.129
TED	20.250	19.375	21.375	19.875	22.125	20.125	2.520	12.280
TEP	40.250	37.375	43.625	39.750	45.500	41.750	5.000	7.251
TNP	18.875	17.000	19.750	17.625	20.375	18.750	1.250	6.674
TXU	28.500	26.125	30.125	28.375	31.375	28.000	2.520	8.765
UCU	21.814	20.188	24.250	20.185	27.500	22.375	1.372	6.024
UEP	19.625	18.875	21.375	19.500	21.875	19.500	1.840	9.297
UIL	24.125	21.500	26.500	22.875	27.125	25.750	2.320	9.413
UIP	25.125	23.375	26.500	25.000	26.000	24.375	2.320	9.257
WPC	36.875	35.000	38.875	36.125	40.375	37.875	2.480	6.618
WPL	37.000	34.750	39.625	36.000	40.500	38.375	2.760	7.319
WPS	38.375	35.750	39.625	38.000	40.750	38.500	2.860	7.429
WWP	22.625	21.375	26.375	22.250	25.125	22.625	2.480	10.600

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EXHIBIT 3 page 3 of 4

EXHIBIT 3 page 4 of 4

[FR Doc. 86-1523 Filed 1-24-86; 8:45 am]

BILLING CODE 8717-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 85N-0525]

Food Additives; Substances Generally Recognized as Safe; Editorial Amendments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that amended its regulations on food additives and food substances that are generally recognized as safe (50 FR 49535; December 3, 1985). This document corrects a typographical error.

FOR FURTHER INFORMATION CONTACT: Alan Rulis, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-28635 appearing on page 49535 in the issue of Tuesday, December 3, 1985; the following correction is made on page 49536: In the second column in the amendment for § 172.846 introductory text, "CAS Ret. No. 25-383-997" is corrected to read "CAS Reg. No. 25383-99-7".

Dated: January 17, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1611 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Seeco, Inc., providing for manufacture of premixes containing 5, 20, or 40 grams per pound each of tylosin and sulfamethazine. The premixes are subsequently used to make finished swine feeds.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Seeco Inc., Box 1014, North Highway 71, Willmar, MN 56201, is sponsor of a supplemental NADA 107-002 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of premixes containing 5, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use to make finished swine feeds. The NADA is presently approved for use of such premixes containing 10 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(3) by removing "011749" and in paragraph (b)(10) by inserting numerically the number "011749."

Dated: January 17, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-1459 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-85-1580; FR-2199]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the limits for one high-cost area and adding the limits of seven designated high-cost areas to the list. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: For single family: Brian Chappelle, Director, Single Family Development Division, Room 9270, Telephone (202) 755-8720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160, Telephone, (202) 755-6880; 451 Seventh Street, SW., Washington, DC 20410. (Telephones are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710-1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family

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structures), condominiums, manufactured home lots, and manufactured homes, combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Act of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam, and Hawaii.

The Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, November 30, 1983) (1983 Act) further amended HUD's insuring authority. Of particular interest here are (1) the authorization to insure condominiums in high-cost areas at the same levels as the high-cost limits for one-family residences insured under section 203(b) of the National Housing Act; and (2) the authorization to increase maximum loan limits under the Title I loan insurance program for combination manufactured home and lot loans and for individual lot loans in high-cost areas, so long as the percentage increase in the maximum loan limit does not exceed the percentage increase made to a one-family residence in the area authorized under section 203(b) of the NHA.

The Department implemented these provisions of the 1983 Act in related documents published in the **Federal Register** on April 11, 1984 (see 49 FR 14332, 14335, 14336), effective May 22, 1984. These documents also amended the Department's rules to codify the procedure of announcing high-cost mortgage limits for single family residences, condominiums, combination manufactured homes and lots and manufactured home lots by notice in the **Federal Register** (see April 11, 1984 documents, amending 24 CFR 201.1504, 203.18b, 203.29, 234.27, and 234.49). In addition, the documents codified the procedure whereby a party may request an alternative mortgage limit (see the same sections cited above).

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam, and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area."

On December 6, 1984 (49 FR 47657), May 8, 1985 (50 FR 19341), July 24, 1985 (50 FR 30154), November 6, 1985 (50 FR 45993), and January 7, 1986 (51 FR 596), the Department published amendments to the "high-cost" mortgage amounts that added additional areas and further increased the limits of several previously designated high-cost areas.

This Document

Today's document adds Cumberland County, Maine; Kent County, Rhode Island; Bristol County, Rhode Island; Newport County, Rhode Island; Hillsborough County, New Hampshire; Los Alamos County, New Mexico and Coconino County, Arizona to the list of high-cost areas and further increases the limits of El Paso County, Colorado.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists any changes for single family residences insured under sections 203(b), and 234(c) of the National Housing Act.

Accordingly, the Commissioner hereby amends the list of high-cost mortgage limits by adding the limits for Cumberland County, Maine; Kent County, Rhode Island; Bristol County, Rhode Island; Newport County, Rhode Island; Hillsborough County, New Hampshire; Los Alamos County, New Mexico; and Coconino County, Arizona and further increasing the limits for El Paso County, Colorado, as set forth in Part II of the following Table:

National Housing Act High-Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, and Hawaii)*: To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by 80. For example, Cumberland County, Maine, has a one-family limit of $76,000. The combination home and lot loan limit for Cumberland County is $76,000 × .80 or $60,800.

B. *Section 2(b)(1)(E). Lot only (excluding Alaska, Guam, and Hawaii)*: To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Cumberland County, Maine, has a one-family limit of $76,000. The lot only loan limit for Cumberland County is $76,000 × .20, or $15,200.

C. *Section 2(b)(2). Alaska, Guam, and Hawaii limits:* The maximum dollar limits for Alaska, Guam, and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1). Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes, $56,700. ($40,500 × 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 × 140%).

3. For lots only: $18,900. ($13,500 × 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

REGION I

HUD Field Office—Bangor Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Cumberland County	$76,000	$85,500	$104,000	$120,500

HUD Field Office—Providence Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Kent County	$70,650	$79,550	$96,650	$111,550
Bristol County	$81,450	$91,750	$111,450	$128,600
Newport County	$85,850	96,700	$117,500	$135,550

HUD Field Office—Manchester Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Hillsborough County	$90,000	$101,300	$122,650	$142,650

REGION VI

HUD Field Office—Albuquerque Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Los Alamos County	$90,000	$101,300	$122,650	$142,650

REGION VIII

HUD Field Office—Denver Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
El Paso County	$85,500	$96,300	$117,000	$135,000

REGION IX

HUD Field Office—Phoenix Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Coconino County	$75,900	$85,450	$103,850	$119,850

Dated: January 15, 1986.

Janet Hale,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-1597 Filed 1-24-86; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2948-6]

Approval and Promulgation of Air Quality Implementation Plans; Arizona Carbon Monoxide (CO) and Total Suspended Particulates (TSP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces EPA's final disapproval of the State Implementation Plan (SIP) for carbon monoxide (CO) and total suspended particulates (TSP) that Arizona submitted in 1979 and 1980 for the purpose of meeting the requirements of Part D (Sections 171-178) of the Clean Air Act (CAA or "the Act"), as that plan relates to certain subareas of the parts of Pima County, Arizona that EPA has designated as nonattainment for CO and TSP, respectively. As to those subareas, this action supersedes EPA's July 7, 1982 finding that those submittals conditionally satisfy the requirements of Part D (47 FR 29532). This disapproval will result in the imposition of a moratorium on the construction and modification of major stationary sources of CO and TSP in those subareas of the Pima County CO and TSP nonattainment areas, respectively, effective thirty days from today. (See 40 CFR 52.24 and section 110(a)(2)(I) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(I).)

These actions are based on the State's failure to submit revisions to the New Source Review (NSR) regulations for those subareas in response to the condition EPA established in the 1982 conditional approval. In a parallel notice, EPA is proposing to approve revised NSR rules that the State did submit, as they apply to the subareas of the Pima County CO and TSP nonattainment areas not covered by today's action. Finally, EPA will describe in separate proposal notices some additional deficiencies in the Pima County Part D plan for CO that the State must also remedy before EPA will lift the construction moratorium on CO sources described in today's notice.

EFFECTIVE DATE: This action is effective February 26, 1986.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 974-7634, (FTS) 454-7634.

SUPPLEMENTARY INFORMATION: The CAA amendments of 1977 required States to revise their SIPs generally by January 1, 1979 for all areas that had not attained the National Ambient Air Quality Standards (NAAQS). The 1979 SIP revisions were to provide for attainment of the NAAQS generally by December 31, 1982.

EPA designated certain areas in Pima County (hereinafter simply "Pima County" or "the County") as nonattainment for CO and TSP, respectively, in 1978. The State submitted various elements of Pima County's Nonattainment Area Plan for CO and TSP on March 20, March 27, and October 9, 1979, and on February 28, 1980. The plan consisted of a control strategy and regulations intended to provide for attainment of the CO and TSP NAAQS in the area by the end of 1982.

Included in the submittals were rules that Pima County had developed to meet the New Source Review (NSR) requirements of Part D of the Act. Those rules, together with several Arizona State NSR rules that EPA had conditionally approved on May 5, 1982, comprised the complete NSR permit program for Pima County. (For further information, see the **Federal Register** notices of July 23, 1980, May 5, 1982, and July 7, 1982.)

As discussed in the materials accompanying EPA's 1982 rulemaking on the NSR rules, the permit program of the Pima SIP contained several inconsistencies with EPA's current NSR regulations, set forth at 40 CFR 51.18(j). See also the **Federal Register** notices at 45 FR 31307 (May 13, 1980), 45 FR 52676 (August 7, 1980), and 46 FR 50766 (October 14, 1981). Based on assurances from the pollution control agencies for Arizona and Pima County that they would submit materials to correct these deficiencies and the belief that the deficiencies would not significantly affect the critical elements of the Pima County NSR rules during the expected short "interim" period of conditional approval, EPA conditionally approved the Pima NSR rules in the July 7, 1982 notice (47 FR 29532). EPA stated in that notice that, to satisfy the condition, the State and County needed to submit by November 4, 1982 NSR rules that met the terms of EPA's amended NSR regulations.

Arizona recently submitted to EPA revised NSR rules that Pima County had adopted. Those rules, however, apply only to areas that Pima County, as a matter of local law, has designated nonattainment for the relevant pollutant. They do not apply to areas that the County has designated attainment but that EPA continues to designate as nonattainment under the Agency's regulations at 40 CFR Part 81. Currently, the areas that EPA has designated nonattainment for TSP do not coincide geographically with the areas that Pima County has designated nonattainment for CO and TSP, respectively.[1] As to the subareas that both Pima County and EPA have designated nonattainment for CO and the subareas that both have designated nonattainment for TSP, EPA is proposing in a parallel notice to find that the Pima County NSR rules meet the 1982 NSR condition described above. However, since the Pima County NSR rules do not apply to the subareas with conflicting designations, EPA must conclude that it still has received no revised NSR rules governing those subareas. Thus, EPA must now conclude that the State has not met the condition of EPA's July 7, 1982 approval of the Part D Pima County SIP for TSP and CO as that condition relates to the subareas with conflicting designations. Because of the extended period of time that has elapsed since EPA established the condition, the Agency can no longer regard this NSR deficiency as minor. For

[1] The subareas for which the local and EPA CO designations differ and the subarea for which the local and EPA TSP designations differ are described in the Code of Federal Regulations language appearing at the end of this notice.

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that reason, EPA is finding today that the CO and TSP nonattainment area plans for those subareas do not meet the requirements of Part D. Based on that finding, EPA is today rescinding its 1982 conditional approval of the CO and TSP plans as they apply to those subareas and substituting a disapproval of the Part D Pima County TSP and CO SIP. Consistent with section 110(a)(2)(I) of the CAA and EPA's general guidance on failure to meet germane conditions on approval of Part D SIPs (see 48 FR 50686 (November 2, 1983)), EPA also announces that the moratorium on major source construction and modification that appears at 40 CFR 52.24(a) will apply thirty days from the publication of this notice to TSP and CO sources in those TSP and CO subareas, respectively. EPA is taking these actions without further notice because the Agency gave adequate notice in its July 7, 1982 action that it regarded November 4, 1982 as the date by which State needed to submit revised NSR rules to avoid the construction moratorium.[2]

The finding that the 1979 SIP for CO and TSP does not satisfy Part D of the Act as to those Pima County subareas and the consequent imposition of the section 110(a)(2)(I) construction moratorium in those subareas does not remove from the SIP any control measures and NSR rules that EPA has previously approved. Those provisions remain in the SIP because they are helpful to attainment of the CO and TSP NAAQS.

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. As noted above, a moratorium on the construction and modification of certain major stationary sources goes into effect in certain areas of the State by virtue of the disapproval here. EPA does not have sufficient information to determine the impacts such a moratorium may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action were to have a significant impact, however, the Agency could not modify its action. Under the Clean Air Act, the imposition of a construction moratorium plan for a nonattainment area fails to meet the requirements of Part D of the Clean Air Act.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by sixty days from the date this notice appears in the Federal Register. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Particulate matter, Intergovernmental relations.

Dated: December 16, 1985.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart D—Arizona

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.123 is amended by revising paragraph (c) to read as follows:

§ 52.123 Approval status.

* * * * *

(c) With the exceptions set forth in this subpart, the Administrator approves the plan with respect to Part D, Title I of the Clean Air Act, as amended in 1977, for the nonattainment areas listed in this paragraph.

(1) Maricopa County Urban Planning Area for CO.

(2) For CO, the portion of the Tucson CO Air Planning Area falling both within the area described by connecting the geographic points in the order listed below in this paragraph and within the townships described below in this paragraph:

Latitude 32°38.5' N, Longitude 111°24.0' W
Latitude 32°26.5' N, Longitude 110°47.5' W
Latitude 32°12.5' N, Longitude 110°32.5' W
Latitude 31°49.5' N, Longitude 110°25.5' W
Latitude 31°42.0' N, Longitude 110°50.5' W
Latitude 31°52.5' N, Longitude 111°12.5' W
Latitude 31°24.5' N, Longitude 111°29.0' W

T9S, R9–11E
T10S, R9–13E
T11S, R11–14E
T12S, R11–14E
T13S, R11–16E
T14S, R11–16E
T15S, R11–16E
T16S, R12–16E
T17S, R19E
T18S, R19E
T20S, R14–15E

Except for those portions of the Coronado National Forest and the Saguaro National Monument contained therein.

(3) For TSP, the portion of the Tucson TSP Air Planning Area falling both within the area described by connecting the geographic points in the order listed below in this paragraph and within the townships and sections described below in this paragraph:

Latitude 32°38.5' N, Longitude 111°24.0' W
Latitude 32°26.5' N, Longitude 110°47.5' W
Latitude 32°12.5' N, Longitude 110°32.5' W
Latitude 31°49.5' N, Longitude 110°25.5' W
Latitude 31°42.0' N, Longitude 110°50.5' W
Latitude 31°52.5' N, Longitude 111°12.5' W
Latitude 31°24.5' N, Longitude 111°29.0' W
(and return to initial point)

T9S, R9–11E
T10S, R9–13E
T13S, R13E: sections 5, 8–10, 13–17, 20–28, 33–36, 6 (NE and SE quarters only) and 7 (NE and SE quarters only)
T13S, R14E: sections 19–21, 28–35
T14S, R13E: sections 1–3, 10–14, 23–25
T14S, R14E: sections 3–9, 17–19, 30
T17S, R19E
T18S, R19E
T20S, R14–15E

3. Section 52.123 is amended to add new paragraphs (e)(2) and (e)(3) as follows:

§ 52.123 Approval status.

* * * * *

(e) * * *

(2) The following portion of the Tucson CO Air Planning Area: The area described by connecting the following geographic points in the order listed below:

Latitude 32°38.5' N, Longitude 111°24.0' W
Latitude 32°26.5' N, Longitude 110°47.5' W
Latitude 32°12.5' N, Longitude 110°32.5' W
Latitude 31°49.5' N, Longitude 110°25.5' W
Latitude 31°42.0' N, Longitude 110°50.5' W
Latitude 31°52.5' N, Longitude 111°12.5' W
Latitude 31°24.5' N, Longitude 111°29.0' W
(and return to initial point)

Excluding the area within the following townships:

T9S, R9–11E
T10S, R9–13E
T11S, R11–14E
T12S, R11–14E
T13S, R11–16E
T14S, R11–16E
T15S, R11–16E
T16S, R12–16E
T17S, R19E
T18S, R19E
T20S, R14–15E

But including those of the Coronado National Forest and the Saguaro National Monument within the townships.

[2] EPA has already proposed to approve the State's request to redesignate from nonattainment to attainment the CO nonattainment subarea described in the previous footnote. Under section 110(a)(2)(I) of the Act, final approval of that redesignation would lift the construction moratorium as to CO sources in that subarea. EPA intends to take final action on that request in the near future.

(3) The following portion of the Tucson TSP Air Planning Area: The area described by connecting the following geographic points in the order listed below:

Latitude 32°38.5' N, Longitude 111°24.0' W
Latitude 32°26.5' N, Longitude 110°47.5' W
Latitude 32°12.5' N, Longitude 110°32.5' W
Latitude 31°49.5' N, Longitude 110°25.5' W
Latitude 31°42.0' N, Longitude 110°50.5' W
Latitude 31°52.5' N, Longitude 111°12.5' W
Latitude 31°24.5' N, Longitude 111°29.0' W
(and return to initial point)

Excluding the area within the following townships:

T9S, R9–11E
T10S, R9–13E
T13S, R13E: sections 5, 8–10, 13–17, 20–28, 33–36, 6 (NE and SE quarters only) and 7 (NE and SE quarters only)
T13S, R14E: sections 19–21, 28–35
T14S, R13E: sections 1–3, 10–14, 23–25
T14S, R14E: sections 3–9, 17–19, 30
T17S, R19E
T18S, R19E
T20S, R14–15E

4. § 52.124 is amended by revising paragraph (a)(2) to read as follows:

§ 52.124 Part D Conditional Approval.

* * * * *

(a) * * *

(1) * * *

(2) As to only the areas listed in § 52.123(c)[2] and [3] of this subpart, the Tucson Air Planning Area portion of the Arizona SIP is approved as satisfying Part D requirements for CO and TSP, respectively, provided that, by November 4, 1982, the NSR regulations must be revised to meet the requirements in EPA's amended regulations for NSR [40 CFR 51.18(j)].

[FR Doc. 86–1668 Filed 1–24–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 95

Automatic Data Processing Equipment and Services; Conditions for Federal Financial Participation

AGENCY: Office of the Secretary, HHS.

ACTION: Interim Final Rule With Comment Period.

SUMMARY: On November 19, 1984 the Department of Health and Human Services published a Notice of Proposed Rule Making (NPRM) on Automatic Data Processing—Conditions for Federal Financial Participation in the Federal Register (49 FR 45617). Those proposed regulations are applicable to the administration of Public Assistance programs under Titles I, IVA, B, C, D, and E, X, XIV, XVI (AABD), XIX of the Social Security Act.

This Interim Final Rule establishes the conditions and the procedures under which a State can obtain consideration for Federal Financial Participation (FFP) in emergency and certain other circumstances for the acquisition of Automatic Data Processing (ADP) equipment or services in affected programs. It does not deal with all provisions contained in the NPRM.

The remaining provisions of the NPRM that are not published as part of the Interim Final Rule will be published by DHHS at a later date.

DATES: Effective Date: These Interim Final Regulations are effective January 27, 1986. The comment period for these regulations, extends for 60 days after their publication in the Federal Register.

ADDRESS: Comments should be forwarded to: K. Jacqueline Holz, Deputy Assistant Secretary for Management Analysis and Systems, Hubert H. Humphrey Building, Room 514E, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ron Lentz, (202) 245–7354.

SUPPLEMENTARY INFORMATION: This Interim Final Rule revises § 95.605 to add the definition of the term "emergency situation", revises § 95.623 governing waiver of the prior approval requirement and adds a new section, 95.624, that provides for DHHS consideration of State requests for FFP in emergency situations. No comments were received relating to § 95.623 of the NPRM.

Regulatory Provisions

Section 95.623 is revised to permit waiving the prior approval requirements contained in § 95.611 for those State requests for funding ADP system developments and acquisitions which were postmarked and received by the Department prior to December 1, 1985, for which a State did not receive prior approval. The intent of this revision is to give the Department the authority to waive the prior approval requirements of § 95.611 in situations where a State undertook an ADP systems development or acquisition in anticipation of the Department retroactively approving the development or acquisition (in effect waiving the prior approval requirement). Until recently, the Department has on several occasions retroactively approved systems developments and acquisitions of merit and led some States to believe erroneously that prior approval was not a pre-condition for ADP funding. For this reason, a number of States have not sought prior approval in situations that call for it. Because such after the fact approval has not been authorized by existing regulations the Department believes it must provide a mechanism, by regulation, to allow for waiver of the prior approval requirement and not unfairly penalize States that have relied on a Departmental practice not authorized by its regulations.

The Department has chosen to limit the waiver of prior approval provisions contained in § 95.623 to only those State requests for FFP in acquiring ADP equipment or services, postmarked and received by the Department and undertaken without prior approval before December 1, 1985 because:

1. The Department's policy is to require prior approval as a means of assuring its early participation in State system developments and acquisitions. To establish a broad waiver of the prior approval requirement would defeat this purpose.

2. The Department wishes to provide only a brief transition period which allows it to waive prior approval instances where States acted without prior approval based on their perception of the Department's past practice of retroactively approving State ADP initiatives of merit.

By letter dated August 13, 1985, the Assistant Secretary for Management and Budget advised heads of all State public assistance agencies of the requirements for prior approval contained in 45 CFR 95.601 *et seq.* He informed them that "if a State does submit a request for retroactive approval and funding of the design, development and installation of an automatic data processing system, or the acquisition of automatic data processing equipment or services, the Department will deny the request."

We believe that this was sufficient notice to States of the Department's prior approval requirements, and that establishing December 1, 1985 as the cut-off date for permitting the waiver of the Department's prior approval requirements provides sufficient time for States to adjust to long-standing regulatory requirements. Accordingly, for State requests for the acquisition of ADP equipment or services postmarked and received by the Department after December 1, 1985, the Department will no longer waive the prior approval requirements contained in § 95.611.

Section 95.623(a) provides a mechanism for waiving the Department's prior approval requirements contained in § 95.611 for

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State systems initiatives which the Department has previously approved retroactively in a formal approval letter. The intent of this Section is to ratify those instances where the Department has previously issued (prior to December 1, 1985) a letter retroactively approving State agency initiatives, although the Department was not permitted to do so under 45 CFR 95.601 *et seq.* This section applies only to the past actions described in this paragraph. The provisions of this section are effective December 1, 1985 with no further action required on the part of the States.

Section 95.623(b) is intended to provide a transition period which permits States to adjust to the Department's change in practice from one of having approved a number of State system initiative retroactively, albeit contrary to regulatory requirements, to one of strict adherence to the prior approval requirements in § 95.611. This transition period extends to December 1, 1985 and applies only to requests, which were postmarked and received by the Department prior to December 1, 1985 for which a State did not receive prior approval. The Department will retroactively approve these actions if the request would have received prior approval had a request for such approval been made by the State agency.

Section 95.605 has been revised to include the definition of the term "emergency situation." Under 45 CFR 95.611 we require States to seek and receive prior approval for ADP equipment and services acquisitions that meet certain expenditure thresholds that are set forth in the regulation. While this long-standing requirement has enabled the Department to have needed involvement in States' program planning, the requirement for prior approval may become counter-productive in emergency situations where ADP materials have to be replaced immediately in order to maintain program operations and still satisfy program requirements. For this reason, we are revising § 95.605 to include a definition of emergency situations and are adding a new § 95.624 to provide a procedure for States to follow in such situations.

The Department will consider as "emergency situations" those situations which could not reasonably have been anticipated and for which a State could not have planned. The following are examples of situations that the Department considers to be "emergency situations."

(a) Equipment failure due to physical damage or destruction caused by natural or other disaster; or,

(b) Changes imposed by Federal legislative requirements which necessitate the immediate acquisition of ADP equipment or services.

The Department will not consider as emergency situations, instances which arise because of poor planning on the part of a State. Examples of situations that the Department does not consider "emergency situations" are:

(a) ADP equipment or software systems becoming obsolete through the rapid development of new technology or software techniques;

(b) The expiration of a contract that provides equipment or services support;

(c) Oversight or administrative inadequacy on the part of a requesting State or local government in obtaining prior approval; or

(d) Changes imposed by Federal legislative requirements which allow the State agency time to comply with the prior approval requirements of § 95.611.

The Department, in reaching a decision as to whether or not a situation should be accepted as an emergency, will require a State to demonstrate that its need to immediately acquire ADP equipment or services was unexpected and could not have been anticipated or planned.

Section 95.624 describes the procedure to be followed by State agencies when requesting approval of FFP for emergency situations as defined in § 95.605. Under this procedure if a State encounters an "emergency situation" as defined in § 95.605, it must submit a written request to the Department to proceed with the ADP acquisition immediately in order to meet the State's emergency need. The written request must be sent by registered mail and include:

(1) A brief description of the ADP equipment and/or services to be acquired;

(2) A brief description of the circumstances which result in the State's need to proceed prior to obtaining approval from the Department; and,

(3) A description of the harm which will be caused if the State does not acquire immediately the ADP equipment and services.

Upon receipt of the information, the Department will within 14 days take one of the following actions:

(1) Inform the State in writing that the request has been disapproved and the reason for disapproval; or,

(2) Inform the State in writing that the Department recognizes that an emergency exists and that within 90 days from the date of the State's initial written request, the State must submit a formal request for approval which includes the information specified at § 95.611 in order for the ADP equipment or services acquisition to be considered for the Department's approval.

The Department is establishing this emergency procedure in recognition of the fact that situations may arise which preclude a State from taking the time to follow the full prior approval procedures contained in § 95.611 before acting to correct the emergency situation in order to meet program requirements. States will be required to meet the requirements of § 95.611, except for the requirement of prior approval, within 90 days from the date of their written emergency request. The granting of FFP by the Department for the emergency acquisition will rest on the Department's determining whether or not the acquisition was necessary and satisfies all requirements of 45 CFR 95.601 *et seq.* except, the requirement of prior approval. In such cases, where those requirements are met, we will approve FFP retroactive to the date of the emergency acquisition.

Interim Final Regulations

These regulations, 45 CFR 95.605, 95.623 and 95.624, are being published in interim final form with an immediate effective date. At the same time, we encourage interested parties to comment upon these new rules so that we may have the full benefit of public participation before the rules are published in final form. We are disposing with prior notice and comment procedures because we believe there is good cause to do so.

Specifically, we find that publication of these regulations in proposed form would be unnecessary, impractical and contrary to the public interest for the following reasons:

1. The Department presently has pending a number of requests from States for retroactive approval of system developments and acquisitions initiated before the Department's approval was requested. The Department believes that the States submitting these late requests acted in good faith based on their perception of the Department's practice until recently, and should not be penalized. While it is important to the efficient operation of affected Public Assistance programs that a number of these requests be approved promptly, the Department has no current authority to provide approval for the ADP equipment and services acquisitions at issue.

2. The Department wishes to immediately put in place a procedure by which States can act to acquire automatic data processing equipment or services in emergency situations without risking the loss of FFP from the Department because the prior approval requirements of § 95.611 were not followed. The Department believes that since it does not have the authority under existing regulations and does not seek the authority to waive its prior approval requirements contained in § 95.611, it must immediately establish procedures for handling emergency situations, so that in the event an emergency arises, a State will have a basis for quickly acting to correct the emergency situation without jeopardizing its eligibility for FFP.

3. We believe that since both the emergency situation and waiver provisions constitute relief and exemption from the pre-existing requirements for prior approval, the immediate effective date we are providing is justified and reasonable.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a major rule because it will not have an annual impact on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, any governmental agencies or any geographic regions, or otherwise meet the thresholds of the Executive Order.

Regulatory Flexibility Analysis

Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities in appropriate cases. This rule has no significant effect on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-611), the Department has previously obtained OMB clearance of the paperwork requirements contained in § 95.611, referenced under § 95.623 of this interim final rule. The OMB number is 0990-0058.

The emergency processing paperwork requirements contained in Section 95.624 of this interim final rule have been approved by OMB. The OMB approval number is 0990-0160.

(Catalog of Federal Domestic Assistance Program Numbers 13.645 Child Welfare Services—State Grants, 13.658, Foster Care, Maintenance, 13.659, Adoption Assistance; 13.679, Child Support Enforcement Program; 13,714, Medical Assistance Program; 13.808, Assistance Payments—Maintenance Assistance; 13.810, Assistance Payments—State and Local Training)

List of Subjects in 45 CFR Part 95

Claims, Computer technology, Grant programs—health, Grant programs—social programs, Social Security.

PART 95—[AMENDED]

45 CFR Part 95, Subpart F, is amended as set forth below:

The authority citation for 45 CFR Part 95, Subpart F is added to read as follows:

Authority: Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

1. Section 95.605 is amended to add the definition for "emergency situation" as follows:

§ 95.605 Definitions.

* * * * *

"Emergency situation" is defined as a situation where:

(a) A State can demonstrate to the Department an immediate need to acquire ADP equipment or sevices in order to continue the operation of one or more of the Social Security Act programs covered by Subpart F, and

(b) The State can clearly document that the need could not have been anticipated or planned for and the State was prevented from following the prior approval requirements of § 95.611.

* * * * *

2. Section 95.623 is revised to read as follows:

§ 95.623 Waiver of prior approval requirements.

For ADP equipment and services acquired by a State without prior written approval, the Department may waive the prior approval requirement if prior to December 1, 1985:

(a) The State submitted to the Department all information required under § 95.611, satisfactorily responded to all concerns raised by the Department and received a final letter of approval from the Department; or,

(b) The State has a request pending with the Department for retroactive approval, which the Department received before December 1, 1985 and the Department determines that the request would have received prior approval had a timely request for such approval been made by the State agency.

(Approved by the Office of Management and Budget under control No. 0990-0058.)

3. A new § 95.624 is added to read as follows:

§ 95.624 Consideration for FFP in emergency situations.

For ADP equipment and services acquired by a State after December 1, 1985 to meet emergency situations, which preclude the State from following the requirements of § 95.611, the Department will consider providing FFP upon receipt of a written request from the State. In order for the Department to consider providing FFP in emergency situations, the following conditions must be met:

(a) The State must submit a written request to the Department, prior to the acquisition of any ADP equipment or services. The written request must be sent by registered mail and include:

(1) A brief description of the ADP equipment and/or services to be acquired and an estimate of their costs;

(2) A brief description of the circumstances which result in the State's need to proceed prior to obtaining approval from the Department; and,

(3) A description of the harm which will be caused if the State does not acquire immediately the ADP equipment and services.

(b) Upon receipt of the information, the Department will within 14 days take one of the following actions:

(1) Inform the State in writing that the request has been disapproved and the reason for disapproval; or,

(2) Inform the State in writing that the Department recognizes that an emergency exists and that within 90 days from the date of the State's initial written request, the State must submit a formal request for approval which includes the information specified at § 95.611 in order for the ADP equipment or services acquisition to be considered for the Department's approval.

(c) If the Department approves the request submitted under paragraph (b) of this Section, FFP will be available from the date the State acquires the ADP equipment and services.

(Approved by the Office of Management and Budget under control number 0990-0160.)

* * * * * *

Dated: November 13, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 86-1717 Filed 1-24-86; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1312

[Ex Parte No. 387]

Railroad Transportation Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: By rules that became effective January 4, 1983, 47 FR 50261 (November 5, 1982), the Commission established regulations to govern the filing of railroad contracts and contract summaries pursuant to 49 U.S.C. 10713. As currently provided at 49 CFR 1039.3(a) and 49 CFR 1312.41(a)(1), an original and one copy of the contract is to be filed with the Commission. There is a contradiction, however, as to the number of contract summaries to be filed, with § 1312.41(a)(1) calling for the filing of 3 copies of the contract summary while § 1039.3(a)(1) requires only 2.

The Commission is amending the rules to require the filing of: (1) Only an original contract, and (2) three copies of contract summaries.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: C.E. Langyher, Chief, Section of Tariffs, Bureau of Traffic, (202) 275–7739.

SUPPLEMENTARY INFORMATION: At the present time the Commission's regulations at 49 CFR 1039.3 and 49 CFR 1312.41 direct that an original and one copy of the contract, or amendments thereto, be filed. The purpose of the contract "copy", in addition to the original, was to accommodate the Commission's Office of Compliance and Consumer Assistance (OCCA) with a copy. OCCA no longer requires copies of rail contracts. Thus, we are amending the rules to require only the original of filed contracts.

Further, through oversight, when 49 CFR 1312.41 was established requiring the filing of three copies of the contract summary and supplements, the companion provisions of 49 CFR 1039.3 were not similarly amended. We intend to rectify this oversight by bringing the regulations into agreement.

Since this rule change results in a lessening of regulation and removal of a conflict, it is issued in final form. Notice and public comments are not required.

This action does not significantly affect the quality of the human environment, the conservation of energy resources, or small entities.

List of Subjects in 49 CFR Parts 1039 and 1312

Railroads.

(49 U.S.C. 10321, 10505, 10713, 10762, and 11105; 5 U.S.C. 553)

(49 U.S.C. 10762; 5 U.S.C. 553)

Decided: January 17, 1986.

By the Commission: Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,
Secretary.

Appendix

The Commission is amending 49 CFR Parts 1039 and 1312 as follows:

PART 1039—CONTRACTS AND EXEMPTIONS

1. The authority citation for 49 CFR Part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713, 10762, and 11105; 5 U.S.C. 553.

2. 49 CFR Part 1039 is amended by revising the first and second sentences of § 1039.3(a) to read as follows:

§ 1039.3 Filing and approval.

(a) Rail carriers providing transportation subject to Subchapter I of Chapter 105 of Title 49, United States Code, shall file with the Commission an original contract entered into with one or more purchasers of rail service. The contract will be accompanied by three copies of a summary of the non-confidential elements of the contract in the format specified in 49 CFR 1312.41. * * *

* * * * * *

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

3. The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10762; 5 U.S.C. 553.

4. 49 CFR Part 1312 is amended by revising § 1312.41 paragraph (a)(1)(i) to read as follows:

§ 1312.41 [Amended]

(a) * * *

(1) * * *

(i) Railroads entering into contracts for railroad transportation services with purchasers of rail service shall file with the Commission's Section of Tariffs an original contract and three copies of the contract summary.

* * * * * *

[FR Doc. 86–1721 Filed 1–24–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 17
Monday, January 27, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AGL–22]

Proposed Alteration of Transition Area—Manitowoc, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Manitowoc, Wisconsin, transition area to accommodate a new ILS Runway 17 instrument approach procedure to Manitowoc County Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument weather conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before February 28, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 85–AGL–22, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The present transition area is being expanded to accommodate a new ILS Runway 17 instrument approach procedure. The additional airspace designated will be approximately a 1.5-mile expansion to the west and from 13 miles north of the VOR point expanding to 23 miles north of the VOR with a 5-mile width either side of the 349° radial.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AGL–22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area airspace near Manitowoc, Wisconsin.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) Is not a "significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to

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amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Revised]

2. By revising § 71.181 as follows:

Manitowoc, Wisconsin

That airspace extending upward from 700 feet above the surface within 9.5 miles west and 5 miles east of the Manitowoc VOR 349° radial and 169° radial extending from 2 miles south to 13 miles north of the VOR, then within 5 miles west and 5 miles east of the Manitowoc VOR 349° radial extending from the 13 miles north of the VOR point to 23 miles north of the VOR. Also, within 9.5 miles west and 5 miles east of the Manitowoc VOR 176° radial extending from the VOR to 12 miles south of the VOR.

Issued in Des Plaines, Illinois, on January 13, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86-1665 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment pertains to alternative enforcement actions.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before February 26, 1986, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on February 21, 1986, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any schedule public meetings and all written comments received in response to this notice will be available for review at the OSMRE offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, DC 20240.

Bureau of Surface Mining Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSMRE's Lexington Field Office listed under **"ADDRESSES."**

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber. Submissions of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments

and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

III. Submission of Program Amendment

On December 10, 1985, Kentucky submitted a program amendment to modify requirements pertaining to alternative enforcement actions to be taken under certain circumstances (Administrative Record No. KY 681). The amendment further modifies a revision to the Kentucky rules that was approved by the Director, OSMRE, on November 20, 1985 (50 FR 47728). The amendment modifies language at 405 KAR 7:090 section 11(2)(a) concerning appropriate action to be taken if a permittee has not abated a violation within thirty days following the prescribed abatement period. The amended language references alternative enforcement actions at KRS 350.990(3), KRS 350.990(4), KRS 350.990(9) and "the pattern of violations provisions of KRS 350.028(4)." The amendment that was previously approved did not contain the language "the pattern of violations provisions" in reference to KRS 350.028(4).

Therefore, the Director, OSMRE is seeking public commetit on the adequacy of the proposed program amendment. Comments should specifically address the issue of whether the proposed amendment is in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. *Compliance with the Notonal Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from section s 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 21, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-1668 Filed 1-24-86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2948-5]

Approval and Promulgation of Implementation Plans; Arizona, Maricopa Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces EPA's proposed actions under the Clean Air Act on certain revisions to the carbon monoxide (CO) State Implementation Plan (SIP) for Maricopa County (Phoenix), Arizona. First, EPA proposes to approve emission reduction measures contained in the Maricopa CO plan because they strengthen the existing SIP. Second, EPA proposes to disapprove the Maricopa CO plan, as revised in 1982 and 1985, as not meeting all of the requirements of Part D (sections 171-178) of the Clean Air Act. Finally, based on that proposed finding, EPA also proposes to impose the construction ban set forth in Section 110(a)(2)(I) of the Act on major new stationary sources and major modifications of stationary sources of CO in the Maricopa CO nonattainment area.

DATES: Comments should be submitted to EPA on or before March 13, 1986.

ADDRESSES: Send any comments to: Regional Administrator, Attn: Air Management Division, State Liaison Section (A-2-2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the submitted SIP revision may be inspected during normal business hours at the above address or at the following locations:

Arizona Department of Health Services, Division of Environmental Health, 2005 N. Central, Phoenix, AZ 85004;

Maricopa Association of Governments, 1820 West Washington, Phoenix, AZ 85007;

Maricopa County Bureau of Air Pollution Control, 1845 East Roosevelt Phoenix, AZ 85006.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974-7634, FTS: 454-7634.

SUPPLEMENTARY INFORMATION: This notice contains the following sections: "Background", "CO Plan Evaluation", and "Proposed Actions". The "Background" section briefly summarizes the history of the development of the CO SIP for Maricopa County. The "CO Plan Evaluation" section discusses EPA's review of the State's 1982 Part D CO SIP submittal for Maricopa. The "Proposed Actions" section describes EPA's proposal; to approve the measures in the CO plan submittal as helpful to attainment. It also describes EPA's proposal to (1) find that the plan as a whole does not meet all of the requirements of Part D of the Act and (2) impose a construction ban on CO sources in the area until the State submits, and EPA approves, a new attainment demonstration (including, but not limited to, an air quality analysis and updated emission inventory) and the necessary control measures for the area. It also discusses additional sanctions that EPA is considering imposing in the event the State does not submit such a package within a reasonable time.

Background

The Clean Air Act (CAA) amendments of 1977 required states to revise their SIPs by certain times for all areas that had not attained the National Ambient Air Quality Standards (NAAQS). The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or CO to no later than December 31, 1987 was available under section 172 if the State could demonstrate that attainment by the end of 1982 was not possible, despite the implementation of all reasonably

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available control measures. For areas for which EPA approved an extension of the attainment date beyond 1982, states were required to submit to EPA by July 1, 1982 an additional SIP revision that provided for attainment no later than December 31, 1987 and that complied with all other requirements of Part D of the CAA.

Maricopa County was designated nonattainment for CO on March 3, 1978 (43 FR 8970). The State submitted various elements of Maricopa County's 1979 nonattainment area plan for CO on January 4, January 18, February 23, July 3, and November 6, 1979, and on June 23, July 17, and October 30, 1980. On October 30, 1980, the State submitted a request to EPA to extend the attainment date for CO in Maricopa County to December 31, 1987. EPA proposed to approve the extension request on February 5, 1982 (47 FR 5439).

On May 5, 1982 (47 FR 19826), EPA conditionally approved the 1979 Maricopa CO plan. That plan purported to demonstrate attainment of the CO standard by December 31, 1982 through the implementation of the following control measures: (1) An automotive Inspection and Maintenance (I/M) program, (2) traffic signal coordination improvements, (3) public transit improvements, (4) carpool and vanpool programs, and (5) the Federal Motor Vehicle Emission Control Program.

EPA approved the 1979 plan contingent upon the submittal of regulations meeting the New Source Review (NSR) requirements in Part D. In response to that condition, the State submitted NSR regulations for Maricopa County on June 3, 1982 and March 4, 1983. EPA proposed to approve those rules on July 3, 1983 (48 FR 34293), with one exception and certain understandings. In a separate **Federal Register** notice, EPA is taking action on the NSR rules and the 1982 NSR condition.

Beyond establishing this NSR condition, EPA, in its final action on the 1979 CO plan, found that the plan by itself was not adequate to bring about attainment of the CO standard by the end of 1982. Thus, EPA gave only limited approval to the 1979 plan, and premised that approval on the expectation that (1) the Agency would take final action to grant the State's request for an attainment date extension to December 31, 1987 and (2) the State would submit another plan revision providing for attainment in Maricopa County by that date. The State submitted such a plan revision on October 28, 1982. In addition, in 1985 the State enacted a set of measures expanding the current I/M program in Maricopa County, which EPA expects the State to submit as a SIP revision. EPA will act on those additional I/M measures in a separate notice. EPA's evaluation of, and proposed action on, the 1982 revision are discussed in the "CO Plan Evaluation Section", below. EPA's detailed evaluation of the revisions appear in the the technical support document available for public inspection at EPA's Region 9 office in San Francisco.

CO Plan Evaluation

For a SIP revision to be approved, it must meet the requirements of section 110 of the CAA and any pertinent requirements of 40 CFR Part 51. For a nonattainment area plan revision to be approved, it must satisfy the requirements of Part D of the CAA, including section 172. Section 172 contains special requirements for 1982 plan revisions for areas that receive an extension of the attainment date for CO or ozone beyond December 31, 1982. EPA addressed these requirements in detail in policy guidance published in a January 22, 1981 **Federal Register** notice (46 FR 7182). That guidance supplemented guidance issued in EPA's "General Preamble" for Part D plans (44 FR 20372 (April 4, 1979)) and four additional notices (44 FR 38583 (July 2, 1979); 44 FR 50371 (August 28, 1979); (44 FR 53761 (September 17, 1979); and 44 FR 67182 (November 23, 1979)).

As discussed above, EPA promised its conditional approval of the 1979 Maricopa CO plan partly on the assumption that the Agency would grant the State's request for an attainment date extension to December 31, 1987. EPA has evaluated the 1982 Maricopa CO plan on the same assumption. Thus, consistent with the State's intent, EPA has judged the 1982 Maricopa CO plan revision against not only the general Part D requirements, but also the requirement in section 172 that the follow-up SIP for an extension area provide for attainment by the extended date.

Attainment Demonstration

The 1982 plan revision contains a revised CO control strategy based on an updated emission inventory and air quality data base. More specifically, the base year for the emission inventory and air quality data has been updated from 1976 to 1979, and the emission factors for mobile sources have been updated.

The 1979 inventory shows an estimated 825 tons/day from traffic emissions and 86 tons/day from nontraffic emissions. Thus, approximately 90 percent of the CO emissions are the result of automotive traffic. The revised mobile source inventory is based on EPA's MOBILE1 emission factors, which are more accurate than the factors that were used for the 1979 plan.

The control strategy was developed using the APRAC 3 area-wide dispersion model with the MOBILE1 emission factors. A variety of control strategies were modeled, and the targeted allowable emission inventory was calculated to be 462 tons/day. The APRAC model predicted that at that emission level, the maximum CO concentration value would be 9 ppm (within the CO standard).

The analysis projects that a 580 tons/day emission level would occur if only the controls contained in the 1979 plan were applied. Additional control measures included in the 1982 plan and their expected emission reductions are: (1) A commitment to expand the I/M program to include vehicles with a model year of 1969 or later for 71 tons/day reduction (the current program covers vehicles 13 years old and newer as of the testing date—a rolling 13-year period); (2) site-specific traffic flow flow improvement projects for 24 tons/day reduction; (3) an increase in the vehicle occupancy rate from 1.33 to 1.4 for 35 tons/day reduction; and (4) an increase of 50,000 in the average daily transit ridership for 3 tons/day reduction. The total emission reduction included in the plan was therefore estimated at 133 tons/day. Analysis of these figures using the MOBILE1 factors indicates, however, that the actual emission reduction would be only 128 tons/day, since the combination of an expanded I/M program and the increased vehicle occupancy would produce 5 tons/day less emission reductions then the sum of those control measures considered separately.

Thus, the MOBILE1 analysis shows that the total emission reduction achievable with the control measures included in the plan would be an additional 128 tons/day, which would result in a 452 tons/day emission level by 1987. Since the MOBILE1 analysis shows that the emission level that would attain the standard is 462 tons/day, the analysis predicts that this control strategy would result in attainment of the standard by 1987.

The Maricopa attainment demonstration is generally consistent with EPA's earlier guidance on using the MOBILE1 factors to predict CO emission reductions.

As mentioned earlier, the state's MOBILE1 demonstration assumed that a 71 tons/day CO emissions reduction would result by 1987 from expansion of the state's I/M program to include vehicles with a model year of 1969 or later. On February 24, 1984, EPA informed the State that the Agency could not approve the 1982 CO plan unless the State provided adequate legal authority for this expansion of the I/M program in Maricopa. As indicated above, the State provided legal authority for several I/M changes in 1985. Those changes would: (1) Expand the program to cover vehicles with a model year of 1972 or later; (2) create a 3-point program to restrict owner tampering of vehicles that are found to fail the I/M test; (3) decrease from $75 to $50 the amount of money an owner must spend on vehicle repair following failure of the I/M test to become eligible for a waiver of the requirement to pass; (4) eliminate the previously automatic waiver upon a 40% reduction in idle emissions; and (5) remove the authority of peace officers to enforce I/M requirements.

This mix of changes is different from the single model-year change to which the State had committed in the 1982 submittal. The State has not submitted a supplementary demonstration showing that the new measures will achieve the CO emission reduction that the 1982 MOBILE1 demonstration concluded is needed, together with the reductions achieved by other measures, to bring about attainment of the CO standard. For this reason, EPA cannot conclude that the submittal as a whole meets the requirement in section 172 for a plan that provides for attainment of the standard by the end of 1987.

Before EPA can approve the plan as adequate to meet that requirement, the State must submit a revised demonstration using the latest available EPA mobile source emission factors (the MOBILE3 factors) and modeling procedures. A demonstration must be provided to show that the control measures the state and local governments have adopted, or will adopt, will provide for attainment by that date. Further improvements to the I/M program should be evaluated along with other control options necessary to demonstrate attainment. In addition, the new analysis should address the control of identified CO "hotspots."

Legally Adopted Measures

The revised plan contains several Transportation Control Measures (TCMs) that are listed in section 108(f) of the Act. The State intends those TCMs to achieve the CO emissions reductions assumed in the 1982 MOBILE1 attainment demonstration. Commitments are provided by the various responsible local government agencies to implement the site-specific control measures. The plan also includes commitments to area-wide control measures, e.g. a program for increased car/van pool ridership. Although a specific commitment to actions to achieve increased public transit ridership is not included in the plan, the transit budget provides funding to implement this control measure. All of these measures would strengthen the current SIP.

The plan does not incorporate many other TCMs listed in section 108(f). In most cases, it concludes that these measures are not feasible for the Phoenix area. Given the relatively small amount of guidance EPA has provided the states on the applicability of these measures to different types of areas, EPA has generally accorded substantial defference to the states' conclusions on whether these measures are indeed applicable. EPA anticipates, however, that many states and localities with continuing CO nonattainment problems will need to place greater emphasis on re-evaluating and, where feasible, implementing the section 108(f) and other TCMs because of the improved likelihood of CO attainment with the measures. For that reason, any future plan updates from Maricopa must include new, more detailed analyses of the feasibility of applying TCMs beyond those that Maricopa has already determined are feasible.

Reasonable Further Progress (RFP)

The revised plan includes a revised RFP demonstration. It indicates that a 56.1 tons/day reduction from the 1979 base year inventory will be achieved each year from 1979 through 1987 to ensure RFP. The plan also includes a commitment to assess annually the effectiveness of the control measures to ensure that RFP is being met. These projections and commitments are satisfactory as elements of the attainment demonstration using MOBILE1 factors, but a new RFP demonstration will have to accompany any revised modeling analysis based on MOBILE3 factors.

Additional Requirements

Plans should also include the following elements: (1) Adequate evidence of public and governmental involvement; (2) a contingency provision that describes the process of correcting a failure to meet RFP; (3) procedures to ensure that transportation plans, programs, and projects approved by the Metropolitan Planning Organization conform with the SIP, as required by section 176(c) of the Act; and (4) a commitment to develop, expand, or improve public transportation to meet basic transportation needs. The revised plan addresses all of these requirements except that it does not contain conformity procedures. However, conformity procedures satisfying section 176(c) were included in the 1979 Maricopa SIP and are still operative.

Summary of CO Plan Evaluation

The plan strengthens the current CO SIP, since it contains a revised and updated data base, control strategy analysis, and additional control measures.

For the reasons described above, however, EPA cannot now conclude that the 1982 submittal together with the I/M measures recently adopted by the State meet the requirement for a plan revision that provides for attainment of the CO standard by the end of 1987.

Proposed Action

Based on the conclusions discussed above, EPA proposes to: (1) Approve the legally adopted control measures included in the 1982 CO plan submittal, as a part of the Maricopa CO SIP, because they are helpful to attainment, and (2) find that the Maricopa CO SIP as a whole, taking into account these new measures, does not adequately demonstrate attainment of the CO NAAQS by the end of 1987 and therefore does not meet all of the requirements of Part D of the Clean Air Act.

Consistent with section 110(a)(2)(I) of the Act and the policy contained in EPA's **Federal Register** notice of November 2, 1983 (48 FR 50686), EPA also proposes that, if after consideration of public comments it concludes that the Maricopa CO plan does not meet the requirements of Part D, the Agency will at that time impose a ban on the construction of major sources and major modifications of sources of CO in the Maricopa CO nonattainment area. Once that ban is in place, EPA would lift it only upon final approval of a corrective CO plan revision of the type described earlier.

Interested parties are invited to comment on all aspects of these proposed actions.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under the Regulatory Flexibility Act 5 U.S.C. 605(b), EPA must access the impact of proposed or final rules on small entities. If EPA takes final action as proposed today, a moratorium on the construction and modification of major stationary sources will go into effect in

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the nonattainment areas of the State affected. EPA does not have sufficient information to determine the impacts such a moratorium may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action, when promulgated, were to have a significant impact, the Agency could not modify its action. Under the Clean Air Act, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the Clean Air Act.

List of Subjects in 40 CFR Part 52

Air Pollution control, Intergovernmental relations, Carbon monoxide.

Authority: 42 U.S.C. 7401–7642.
Dated: October 30, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 86–1689 Filed 1–24–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-9-FRL-2948-7]

Approval and Promulgation of Implementation Plans; Arizona, Pima County Carbon Monoxide Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces EPA's proposals under the Clean Air Act (1) to deny Arizona's request for an extension of the date for attaining the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO) to December 31, 1987 in the Tucson Air Planning Area in Pima County and (2) to find that the CO State Implementation Plan (SIP) for that area, as revised in 1984, does not provide for attainment of the CO NAAQS as expeditiously as practicable, and therefore does not satisfy the requirements of Part D (sections 171–178) of the Act, and (3) based on that finding, to impose a moratorium on the construction and modification of CO stationary sources in the Tucson Air Planning Area under section 110(a)(2)(I) of the Act. If EPA makes these actions final, Arizona will need to submit an additional plan revision as a prerequisite to lifting the construction moratorium.

DATE: Comments should be submitted to EPA on or before March 13, 1986.

ADDRESSES: Send any comments to: Regional Administrator, Attn: Air Management Division, State Liaison Section (A–2–2), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the 1982 extension request and the 1984 SIP revision may be inspected during normal business hours at the above address or at the following locations:

Arizona Department of Health Services, Division of Environmental Health, 2005 N. Central, Phoenix, AZ 85004

Pima Association of Governments, 177 N. Church, 405 Transamerica Bldg., Tuscon, AZ 85701

Pima County Air Pollution Control District, 150 W. Congress, Tuscon, AZ 85701.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–7634, FTS: 454–7634.

SUPPLEMENTARY INFORMATION: This notice contains the following sections: "Background", "Extension Request Evaluation", "CO Plan Evaluation", and "Proposed Action". The "Background" section briefly summarizes the history of the development of the CO SIP for the Tucson Air Planning Area in Pima County (hereinafter referred to as "Pima County" or "the County"). The "Extension Request Evaluation" section describes EPA's reasons for denying the state's request for an extension of the date for attaining the CO standard in the County. The "CO Plan Evaluation" section discusses EPA's review of the State's 1984 Part D CO SIP revision for the County. The "Proposed Action" section sets forth EPA's proposals (1) to deny Arizona's request for an extension of the date for attaining the NAAQS for CO to December 31, 1987 in the County, (2) to find that the Pima County CO plan as a whole does not adequately demonstrate that the measures in the plan provide for attainment as expeditiously as practicable, as required by Part D of the Act, and (3) based on that finding, to impose the moratorium on the construction and modification of CO stationary sources in the county under section 110(a)(2)(I) of the Act. These actions would supplement the actions EPA is taking in separate notices to address deficiencies in the Pima County Part D plan for CO relating to new source review requirements. Those notices should be read in conjunction with this notice.

Background

The Clean Air Act Amendments of 1977 required states to revise their SIPs for all areas that had not attained the National Ambient Air Quality Standards (NAAQS). The 1979 SIP revisions were to provide for attainment of the NAAQS by December 31, 1982. An extension of the attainment date for ozone or CO to no later than December 31, 1987 was available under section 172 if the state could demonstrate that attainment by the end of 1982 was not possible, despite the implementation of all reasonably available control measures. For areas for which EPA approved an extension of the attainment date beyond 1982, states were required to submit to EPA by July 1, 1982, an additional SIP revision that provided for attainment no later than December 31, 1987, and that complied with all other requirements of Part D of the Act.

Pima County was designated as nonattainment for CO on March 3, 1978 (43 FR 8970), and the State submitted Pima County's initial nonattainment area plan for CO in 1978. On May 24, 1982, the State submitted a request to EPA to extend the atttainment date for CO in Pima County to December 31, 1987. In that submittal, the state informed EPA that it believed the 1978 CO plan was inadequate by inself to bring about attainment by the end of 1982.

On July 7, 1982 (47 FR 29532), EPA took final action to approve the 1978 SIP revision on the condition that the State submit revised regulations for Pima County to meet EPA's new requirements for New Source Review (NSR). The state has recently submitted revised NRS regulations for the County, and EPA will be acting on those rules in the near future.

On February 3, 1984, the Arizona Department of Health Services (ADHS) submitted proposed revisons to the 1978 CO plan for Pima County, including an evaluation of control options for the County, adjustments to the baseline and projected data assumptions, and a new section dealing to CO "hotspot" control. The State intended the revisions to fulfill the requirement for a supplementary plan revision applicable to CO nonattainment areas that have requested an attainment data extension. On March 1, 1985 (50 FR 8346), EPA proposed to approve and incorporate into the SIP the CO control measures in the plan update, including certain traffic flow improvement measures, as helpful to attainment of the CO standard. In that notice, however, EPA stated that it was deferring action on whether the

attainment demonstration and measures met the requirements of Part D, including the requirement for a plan update that provides for attainment by the applicable Part D deadline. Today's notice sets forth EPA's proposed findings on that question.

This notice also sets forth EPA's proposed action on the State's attainment date extension for the County.

Extension Request Evaluation

The State submitted its request for an extension of the CO attainment date for Pima County on May 14, 1982. EPA has reviewed the request against the requirements in Part D for such requests.

Section 172(a)(2) authorizes extensions of the attainment date for CO where the state demonstrates that the standard is not attainable before 1983 through the implementation of all reasonably available control measures. Section 129(c) discusses the timing of Part D submittals. It first states that initial Part D SIPs were due by January 1, 1979. It then says that, "[i]n the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act (respecting the impossibility of attainment before 1983), such State shall [submit of follow-up SIP by July 1, 1982]." In a November 1983 policy on the applicability of sanctions under Part D, EPA interpreted these provisions to mean that an extension request generally would be timely if the state submitted it with its first round of Part D SIP submissions (48 FR 50697: col. 2–3). Although EPA acknowledged that Section 129 appears to provide a deadline of January 1, 1979 for submittal of such requests, the Agency noted that the legislative history contains no express indication of why Congress imposed that deadline, and concluded that Congress most likely "wanted to force States to make decisions on extensions early in the planning process, to ensure that there would be sufficient time to implement the stringent controls needed for an area where, 'reasonable measures' would not provide for attainment." Id. (col. 3). EPA continues to adhere to this view. EPA believes that Congress intended the Agency to treat an extension request as timely if the state makes it as early as possible as part of its initial round of Part D planning, but not so late as to adversely affect attainment by the end of 1987.

Arizona submitted the Pima County extension request in mid-1982, more than three years after submittal of its initial Part D CO SIP for the County. It appears that the request represented an independent, additional step in the Part D planning process for the County, rather than the last step in the initial round of Part D SIP planning that commenced in 1979. For that reason, EPA cannot conclude that the request is timely, within the meaning of Sections 172 and 129 of the Act.

CO Plan Evaluation

To evaluate a CO plan update under Part D, the Agency must first determine the applicable attainment date. As indicated above, EPA is proposing to deny the State's attainment date extension request for Pima County. Under Section 172, the applicable attainment date was December 31, 1982 for areas that do not receive approval of an extension request. Under EPA's policy on sanctions under Part D (48 FR 50686; November 2, 1983), the Agency will approve plan revisions for nonextension areas that did not attain the relevant standard by the end of 1982 if they provide for attainment as expeditiously as practicable, even though that date is beyond 1982. Accordingly, EPA has evaluated the Pima County CO plan update to see if it demonstrates adequately that the plan provides for attainment of the CO standard as expeditiously as practicable.

A detailed evaluation of the attainment demonstration in the Pima County plan update appears in the EPA technical support document available for public inspection at the EPA Region 9 Office in San Francisco. The most important aspects of that evaluation are described below.

Emission Inventory

Although the inventory relating to areawide CO emissions and concentrations appears to conform to EPA guidance, the portion of the inventory relating to emissions and concentrations at the CO "hotspots" that the County has identified are not adequately documented. The available documentation does not adequately explain which values the County used for model inputs such as temperature and future-year mobile source fleet characteristics. Also, the traffic volume values assumed for the three hotspot intersections are lower than many of the peak traffic volumes that were actually measured. Therefore, it is not possible to determine whether the inventories represent an average worst case day. These flaws could have resulted in an underprediction of CO concentrations by the model.

Modeling and Design Value

The plan did not substantiate the mixing depth assumption used for periods of NAAQS exceedance. Moreover, the wind assumptions used in the model were derived from on-site averages, and therefore do not represent worst case meteorology. Since the modeling accounted for only one wind direction, it was not run to find the point where the maximum CO concentrations would occur at the intersections. Also, the demonstration used an average urban CO concentration as background, rather than the CO background values that actually exist when the NAAQS violations occur at the intersections. In sum, the model inputs used produce outputs that one would expect to be biased low. For that reason, the modeling analysis is not adequate to show whether the strategy will bring about attainment of the CO NAAQS.

To correct these problems, the State must submit a revised demonstration, using current EPA emission factors and modeling procedures, showing that the control measures that the State and local governments have adopted, or will adopt, provide for attainment of the CO standard as expeditiously as practicable in Pima County.

Control measures

As discussed in the March 1, 1985 proposal notice, the plan includes measures aimed at controlling CO emissions at the "hotspot" intersections. Consistent with that proposal, EPA intends to approve those measures for incorporation into the SIP when the Agency takes final action on today's proposal.

Although the plan incorporates some of the Transportation Control Measures (TCMs) listed in section 108(f) of the Clean Air Act, it does not include many others listed in that provision. Given the relatively small amount of guidance EPA has provided the states on the applicability of these measures to different types of urban areas, EPA has generally accorded substantial deference to the states' conclusions on whether those measures are indeed applicable. EPA anticipates, however, that many states and localities with continuing CO nonattainment problems will need to place a greater emphasis on evaluating and, where feasible, implementing these and other TCMs because many of them may be practicable, and in some cases there is a significantly improved likelihood of attainment with them. For that reason, any future plan update from Pima County must include new, more detailed

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analyses of the feasibility of applying TCMs beyond those that the County has already determined are feasible.

Summary

Because the plan includes control measures that strengthen the SIP, EPA intends to incorporate those measures into the SIP as helpful to attainment of the CO standard. However, because of the significant deficiences in the modeling demonstration discussed above, EPA does not have an adequate basis for concluding that the plan, as a whole, provides for attainment as expeditiously as practicable.

Proposed Action

Based on the evaluation set forth above, EPA proposes (1) to deny the attainment date extension request for Pima County, (2) to find that the Pima County CO Part D plan as a whole does not meet the requirement in section 172 for a plan demonstrating attainment as expeditiously as practicable and (3) based on that finding, to impose the moratorium on the construction and modification of CO stationary sources in the Tucson Air Planning Area under section 110(a)(2)(I) of the Act. EPA proposes to condition the lifting of that construction moratorium on the State's submitting a further modeling analysis that adequately demonstrates attainment of the CO standard as expeditiously as practicable in the area. These actions would supplement the actions EPA is taking in separate notices to address deficiencies in the Pima County Part D plan for CO relating to new source review requirements. Interested parties are invited to comment on all aspects of these proposed actions.

Regulatiory Process

Under the Regulatory Flexibility Act 5 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities. If EPA takes final action as proposed today, a moratorium on the construction and modification of major stationary sources will go into effect in the nonattainment areas of the State affected. EPA does not have sufficient information to determine the impacts such a moratorium may have on small entities, because it is difficult to obtain reliable information on future plans for business growth. Even if this action, when promulgated, were to have a significant impact, the Agency could not modify its action. Under the Clean Air Act, the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that an implementation plan for a nonattainment area fails to meet the requirements of Part D of the Clean Air Act.

Regulatory Process

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: October 30, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 86–1690 Filed 1–24–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[OW-FRL-2955-9]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate two existing dredged material disposal sites and one new dredged material disposal site located in the Pacific Ocean offshore of Coos Bay, Oregon, as EPA approved ocean dumping sites for the dumping of material dredged from the bay to maintain navigation channels. The two existing sites (sites E and F) would be used for disposal of larger grained dredged material, while the new site (site H) farther offshore would be used for disposal of finer sediments more compatible with sediments of that area. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of this material.

DATE: Comments must be received on or before March 13, 1986.

ADDRESSES: Send comments to: Paul Pan, Chief, Environmental Analysis Branch (WH–556M), EPA, Washington, DC 20460.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC

EPA Region X, 1200 Sixth Avenue, Seattle, Washington

U.S. Army Corps of Engineers Library, Portland District, 319 Southwest Pine, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Paul Pan, 202/755–9231.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was extended on February 7, 1983 (48 FR 5557 et seq.). That list established two of the Coos Bay sites as interim sites and extended the sites' period of use until January 31, 1985. The interim designation of these two sites was further extended to December 31, 1988, on February 19, 1985 (50 FR 6942 et seq.) in order to provide sites necessary for the disposal of dredged material from Coos Bay until such time as rulemaking for ocean disposal sites for continuing use can be completed. The purpose of this notice is to provide the public with an opportunity to comment on the proposed final designation, as EPA approved ocean dumping sites, of three sites in the Pacific Ocean offshore of Coos Bay, Oregon, for the continuing disposal of dredged material.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., ("NEPA") requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions.

The Corps of Engineers and EPA have prepared a draft EIS entitled "Coos Bay Dredged Material Ocean Disposal Site Designation Environmental Impact Statement." On September 7, 1984, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** (49 FR 35413). The draft EIS presented information needed to evaluate the

suitability of ocean disposal areas for final designation for continuing use and was based on a series of disposal site environmental studies. In the draft EIS EPA determined that the existing sites and the new site were compatible with the general criteria and specific factors and that the sites were the preferable locations for the disposal of dredged material. The public comment period on this draft EIS closed October 22, 1984. Anyone desiring a copy of the EIS may obtain one from the address given above.

The action discussed in the EIS is the designation for continuing use of ocean dredged material disposal sites offshore of Coos Bay, Oregon. The purpose of the designation is to provide an environmentally acceptable location for the ocean disposal of materials dredged from the Coos Bay Channel System when ocean disposal is found to be necessary for some dredged material. The need for ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

The EIS discusses the need for the action and examines ocean disposal sites and alternatives to the proposed action. An evaluation of alternatives for land-based disposal has recently been updated in a memorandum to the Record (9/5/85) by Eric Braun and is available for inspection at the above addresses.

The memorandum states that the only upland disposal site currently in use, known as the Eastside Site, is between river mile 12 and 15. The current dikes are inadequate as shown by recent failures. Extensive dike rehabilitation would be required prior to any use at this site. Thus, it is expected to have limited capacity for future disposal. Two disposal islands have been created in the past, and these sites could possibly be used for some material by raising the dikes. However, raising the dikes on these disposal islands is not considered appropriate at this time due to concerns related to engineering considerations and potential impacts to the surrounding tidal area. Therefore, their remaining capacity is also very limited.

Two other potential sites have been considered near the navigation channel. The site consisting of a diked marsh was rejected because filling of wetlands was not considered environmentally preferable. The other site presently has no capacity with the existing dike configuration, and raising the dikes is not considered feasible from an engineering point of view. Most other sites within reasonable pumping distance from the channel have been considered in the past. Locating sites farther from the channel would require the use of booster pumps and increase costs.

The EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation for continuing use and is based on one of a series of disposal site environmental studies. The environmental studies and final designation process are being conducted in accordance with the requirements of the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

C. Proposed Site Designation

The two existing interim designated sites, termed E and F, have been used since at least 1951 for the ocean disposal of about 975,000 cubic yards of dredged material annually. Dredging is intermittent, for several months in each year. The new site H was used for a test disposal of dredged material in August 1981.

Site E is located approximately 1.3 nautical miles offshore of the entrance to Coos Bay and occupies an area of about 0.13 square nautical miles. Water depths within the area average 17 meters. It is approximately rectangular with coordinates as follows:

43°21'59" N., 124°22'45" W.;
43°21'48" N., 124°21'59" W.;
43°21'35" N., 124°22'05" W.;
43°21'46" N., 124°22'51" W.

Site F is located approximately 1.3 nautical miles offshore of the entrance to Coos Bay and occupies an area of about 0.13 square nautical miles. Water depths within the area average 24 meters. It is approximately rectangular with coordinates as follows:

43°22'44" N., 124°22'18" W.;
43°22'29" N., 124°21'34" W.;
43°22'16" N., 124°21'42" W.;
43°22'31" N., 124°22'26" W.

Site H is located approximately 3.7 nautical miles offshore of the entrance to Coos Bay and occupies an area of about 0.13 square nautical miles. Water depths within the area average 55 meters (30 fathoms). It is approximately rectangular with coordinates as follows:

43°23'53" N., 124°22'48" W.;
43°23'42" N., 124°23'01" W.;
43°24'16" N., 124°23'26" W.;
43°24'05" N., 124°23'38" W.

D. Regulatory Requirements

Five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site will be restricted or terminated. All three of the proposed sites conform to the five general criteria except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the EIS, that no economic benefit would be obtained by selecting sites off the Continental Shelf instead of those proposed in this action. In addition, no adverse environmental impacts are expected at the sites that are proposed for designation today.

The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations; the specific 11 factors are given in § 228.6 and are used in evaluating a proposed disposal site to assure that the general criteria are met. EPA established these 11 specific factors to constitute an environmental assessment of the impact of the site for disposal. The criteria are used to make critical comparisons between the alternative sites and are the bases for final site selection. The characteristics of the two existing sites and one new site are reviewed below in terms of these 11 factors.

1. *Geographical position, depth of water, bottom topography and distance from coast.* [40 CFR 228.6(a)(1).] The two existing sites are termed E and F. The new site is termed H. Corner coordinates, size, depth of water, and distance from coast for the three sites are given above.

The bottom topography of sites E and F is generally flat with some gentle sand swells. The bottom topography of site H is generally flat with some gentle silty-sand swells (wave forms).

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.* [40 CFR 228.6(a)(2).] Breeding, spawning, nursery and/or passage of commercially and recreationally important finfish and shellfish species occur throughout the ocean area offshore of Coos Bay. There may be some minor interference with the biological activities during the actual dredged material disposal operations. However, the disposal area would be quite limited at any one time and can be easily avoided by motile living organisms. Benthic habitat and community would be altered by disposal activity with possible temporary perturbations to the food chain. The disposal sites are extremely small in

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comparison with the overall area available for breeding, spawning, nursery, and passage purposes.

The only resource that might be considered to be limited is an area between the 40- and 52-fathom contour where scallops were found in densities high enough to support a fishery. Sites E and F are located in the vicinity of the 10- to 12-fathom contour, well shoreward of the scallop bed, while site H is located in the vicinity of the 29- to 36-fathom contour, south of the scallop bed. However, since the sediments are transported from site H predominantly in the southerly direction and downslope during the dumping season, they are highly unlikely to move toward the scallop bed. In addition, recent information indicates that the scallop beds have been fished out; thus, adverse impacts are unlikely.

3. *Location in relation to beaches and other amenity areas.* [40 CFR 228.6(a)(3).] Sites E and F are each located within 1.6 nautical miles of a beach. The proximity of sites E and F to the beaches, coupled with the frequency of onshore transport and seasonal ocean currents parallel to the coast, contributes to a potential for onshore transport from those two sites. Any material transported toward the beaches would be a combination of the naturally occurring sands in the vicinity of sites E and F and the marine sands planned for disposal at these sites. These materials would have no significant effect on the beaches should onshore transport occur. Site H is located about 3.7 nautical miles from the nearest beach. Because of the depth and distance from shore of site H and the predominance of north-south alongshore currents, there is also little likelihood of dredged material disposed of at site H reaching any beach.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any.* [40 CFR 228.6(a)(4).] Approximately 1.3 million cubic yards of predominantly clean sand of marine origin (Type 1) will be disposed of at sites E and F during several months of each year. The grain size of this material is relatively constant at 0.2 to 0.3 mm, and volatile solids content ranges between 0.1 and 2.0 percent. Type 1 material is found between the channel entrance and river mile 12.

Approximately 400,000 cubic yards of fine-grained sand with high organic solids content (Type 2 and 3) will be disposed of at site H on a two- to four-year cycle. The median grain size of this material varies from 0.2 to 0.006 mm, and volatile solids content ranges from 2.0 to 20 percent. Type 2 material is found between river mile 12 and river mile 14, and Type 3 material is found above river mile 14. Type 3 material contains increased levels of total sulfides, ammonia-nitrogen, oil and grease, petroleum hydrocarbons, and trace metals compared to materials from below river mile 14.

The dredged material will be transported to the disposal sites by hopper dredges and ocean-going barges, and the material will be released at the sites through subsurface release mechanisms. None of the dredged material will be packaged in any way.

Dredged material may not be approved for ocean dumping unless it meets the criteria in 40 CFR Part 227.

5. *Feasibility of surveillance and monitoring.* [40 CFR 228.6(a)(5).] Surveillance and monitoring are both feasible; both dredging and disposal operations can be observed from shore or from vessels. The sites are near to shore and relatively shallow which facilitates routine monitoring.

Monitoring by EPA, the Corps of Engineers, and permittees, as required, will continue for as long as the sites are used. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to limit or terminate dumping at that site.

Monitoring at site H will begin with the first disposal action at the site in the fall of 1985. Monitoring will be conducted at site H to determine if post-disposal movement of dredged material will have any impacts on adjacent resources of importance. Pre- and post-disposal bathymetry surveys will be conducted with additional surveys scheduled as needed. Representative sediment samples will also be collected periodically in and around the disposal site and analyzed for parameters of interest. These samples will be compared with pre-disposal samples and samples from the dredging area to allow detection of movement and comparison with theoretical transport. If movement of material appears likely to impact a known resource, additional analyses of the benthic community or specific resource will be undertaken. Analysis of the dredged material will be used to identify chemical or other contaminants which would require monitoring. The monitoring program will be finalized as part of the permit development process.

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.* [40 CFR 228.6(a)(6).] Average currents in the region generally flow parallel to bathymetric contours with downslope components predominating over upslope components near the bottom. Local current speed and direction, however, reflect the variability of local winds. Since ocean disposal operations are generally restricted to April through November, the predominant direction of transport of the dredged material during dumping will be southward at 10 to 30 cm/s. Northerly transport may occur during the late fall.

Dredged material disposed at sites E and F will be rapidly reworked by strong tidal and surface wave generated currents. Winter reworking will be especially intense, and will result in the erasure of any mounding and the distribution of coarser size fractions of the dredged material over the tidal delta. Finer size fractions will be transported with the net or prevailing currents.

Coarse grain dredged material will remain generally stable at site H, gradually spreading over the bottom of the site. Finer grained material will be more mobile and tend to be spread in the direction of the prevailing currents. Both the coarser grained and finer grained sediments would probably be mobilized during winter storm events and spread in thin layers over and around the site. There may be slight mounding in site H over a number of years due to the increased depth and associated slower currents in the vicinity.

7. *Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).* [40 CFR 228.6(a)(7).] Previous disposal at sites E and F has averaged 975,000 cubic yards annually of coarse grained marine sands. This disposal has produced a seaward extension of the tidal delta as evidenced by noticeable seaward bulges in the bathymetric contours of the tidal delta in the vicinity of the sites. No topographic mounding has occurred at either of the sites. Short-term increases in the turbidity of the water column have occurred, but the impact of these has been minor due to the coarse-grained nature of the material disposed at the sites. No significant biological impacts have been associated with the past disposal at sites E and F.

The test dump of type 3 material (finer grained dredged material with higher volatile solids and inorganic material content) made at site H indicates that no significant mounding occurred. A short-term impact on turbidity occurred; however, it was comparable to natural events. The benthic community was impacted in the area of disposal immediately after disposal; however, a steady recovery to predisposal conditions was observed, suggesting

that disposal impacts on the benthos were of short duration. In addition, the erasure or mixing of the disposal mound beyond recognition within 19 months suggests that long-term impacts on the biota are unlikely at site H.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean.* [40 CFR 228.6(a)(8).] Except for marine navigation, commercial or recreational use of the sites is minimal if at all. Disposal of dredged material at the sites will have little if any effect on marine navigation.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.* [40 CFR 228.6(a)(9).] Water quality analyses for surface and bottom water indicate that the water at all the sites is typical of seawater of the Pacific Northwest. As discussed above, there is great variation in sediment movement during the seasonal current shifts along with major reworking during the winter storm period. Upwelling during the spring and summer brings subsurface water to the surface. Although the scale and duration of these events are extremely variable, upwelling keeps surface waters relatively cool through the summer. Turbidity within the water column maximizes near the bottom, the top of the transition zone between high density bottom water and low density surface water, and in surface waters. The Coos Bay water mass would also contribute turbid waters to surface layers during periods of high runoff.

The ecology of the area is typical of the Oregon coast. Distribution and abundance of pelagic fish are closely tied to the influence of the ocean currents; and the abundance, diversity, and species composition of the benthic community are tied to the character of bottom conditions. As water depth increases, sea flood currents and sediment grain size decrease while organic, chemical constituents, and biological abundance tend to increase. The benthic community in the nearshore region (sites E and F) has the lowest abundance and diversity. In addition, it is dominated by burrowing species and deposit or opportunistic feeders.

The region seaward of site H is characterized by the most abundant and diverse benthic community. The community is dominated by filter and surface feeders. The zone between the nearshore and the outer area (vicinity of site H) can be classified as a physical and biological transition zone. Species composition in the shallow portion is most similar to that of the nearshore region; species composition of the deeper portion is more similar to the outer region. Seasonal variation in abundance is high.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site.* [40 CFR 228.6(a)(10).] There are no known components in type 1 dredged material or its method of disposal that would attract or result in recruitment of nuisance species. Surveys at sites E and F (previously used) did not detect the development or recruitment of nuisance species. Although the increased organic content of types 2 and 3 material has some potential for recruitment of nuisance species, no major shifts in benthic community composition were observed at site H after the test dump. Therefore, the development or recruitment of nuisance species at any of the proposed disposal sites is not expected.

11. *Existence of or in close proximity to the site of any significant natural or cultural features of historical importance.* [40 CFR 228.6(a)(11).] The Oregon State Historic Preservation Office indicated that the area of the project is not of historic significance and, since ground disturbance of previously undisturbed ground is minimal, there will be no likely impact to archeological resources.

E. Proposed Action

The existing sites and the new site are compatible with the general criteria and specific factors used for site evaluation. EPA considered whether it would be preverable to designate a deepwater site beyond the edge of the Continental Shelf. For the following reasons, EPA has determined that the existing sites and the new site are the preferable sites for the disposal of dredged material. These factors are discussed in greater detail in the EIS.

The existing sites and the new site are 1.3 nautical miles and 3.7 nautical miles offshore of the entrance to Coos Bay, respectively, whereas the deepwater site considered is more than 24 nautical miles offshore of the entrance to Coos Bay. Disposal costs and energy consumption involved in use of the deepwater site would be significantly greater than for the existing sites and for the new site due to greater transportation demands. In addition, disposal of the relatively clean (predominantly sand) sediments at sites closer to shore is expected to cause no adverse environmental impacts. Dredged material has been dumped at the existing sites (E and F), and the effects of disposal have been localized. Sites E and F will be restricted to the disposal of type 1 material, which is predominantly coarser grained marine sands with low volatile solids content. Short-term impacts on the benthos have occurred due to dredged material disposal with rapid benthic recruitment and recolonization, suggesting limited long-term biological impacts. The new site (H) will be designated for disposal of type 2 and 3 material, which is finer grained dredged material with higher volatile solids content. The high benthic species diversity and large seasonal variation in abundance, along with the test dump observations, suggest that benthic recovery subsequent to disposal of type 2 and 3 material at site H will be rapid. Therefore, long-term biological impacts are not expected.

The designation of the two existing Coos Bay and the one new Coos Bay dredged material disposal sites as EPA Approved Ocean Dumping Sites is being published as proposed rulemaking. Management authority of these sites will be delegated to the Regional Administrator of EPA Region X. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

It should be emphasized, that, if an ocean dumping site is designated, such as site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evauate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact

Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this proposed rule does not necessitate preparation of a Regulatory Impact Analysis.

This proposed rule does not contain any information collection requirement subject of Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: January 2, 1986.

Lawrence J. Jensen,

Assistant Administrator for Water.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is proposed to be amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. In Part 228, it is proposed to revise the section heading, remove paragraph (l), the Coos Bay Dredged Material Disposal Sites, from paragraph (a)(1)(i) of § 228.12 and add §§ 228.12(b) (24), (25), and (26) as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(24) Coos Bay Dredged Material Site E—Region X.

Location: 43°21'59" N., 124°22'45" W.; 43°21'48" N., 124°21'59" W.; 43°21'35" N., 124°22'05" W.; 43°21'46" N., 124°22'51" W.
Size: 0.13 square nautical mile.
Depth: Averages 17 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material in the Coos Bay area of type 1, as defined in the site designation final EIS.

(25) Coos Bay Dredged Material Site F—Region X.

Location: 43°22'44" N., 124°22'18" W.; 43°22'29" N., 124°21'34" W.; 43°22'16" N., 124°21'42" W.; 43°22'31" N., 124°22'26" W.
Size: 0.13 square nautical mile.
Depth: Averages 24 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material in the Coos Bay area of type 1, as defined in the site designation final EIS.

(26) Coos Bay Dredged Material Site H—Region X.

Location: 43°23'53" N., 124°22'48" W.; 43°23'42" N., 124°23'01" W.; 43°24'16" N., 124°23'26" W.; 43°24'05" N., 124°23'38" W.
Size: 0.13 square nautical mile.
Depth: Averages 55 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to dredged material in the Coos Bay area of types 2 and 3, as defined in the site designation final EIS.

[FR Doc. 86-1225 Filed 1-24-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 52, 56, 58, 61, 62, 110, 111, and 113

[CGD 81-030]

Marine Engineering; Vital System Automation

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period for proposed rules.

SUMMARY: This notice extends the public comment period on proposed rules for vital system automation on new ships and mobile offshore drilling units. The extended comment period is provided to satisfy requests for additional time to review the proposed rules. On September 23, 1985 the Coast Guard published a Notice of Proposed Rulemaking (50 FR 38608) regarding vital system automation on new ships and mobile offshore drilling units. The comment period closed December 23, 1985. Shortly before the end of the comment period requests for additional time to prepare and submit comments were received from the American Bureau of Shipping and others. The requests cited the extensive and comprehensive nature of the proposed rule as the reason they needed additional time. Due to the significance of this rulemaking the Coast Guard believes it is important to allow parties with relevant comments additional time to evaluate the proposal.

DATE: The public comment period is extended to February 21, 1986.

ADDRESSES: Comments referencing CGD 81-030 should be submitted to Commandant (G-CMC/21), U.S. Coast Guard, Washington, DC 20593. Comments may be delivered to, and will be available for inspection and copying at the Marine Safety Council, U.S. Coast Guard Headquarters, Room 2110, 2100 Second Street, SW., Washington, DC between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Peter L. Randall, Office of Merchant Marine Safety (202) 426-2206.

Dated: January 22, 1986.

J.S. Gracey,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 86-1743 Filed 1-24-86; 10:39 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 86-1]

Common Carrier Services; Access Charges; Closed-end of WATS Lines; Peak/Off-Peak Pricing

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Common Carrier Bureau, acting pursuant to delegated authority, grants in part motions for extension of time for filing pleadings in response to a Notice of Proposed Rulemaking, published on January 7, 1986, at 51 FR 633. This action is taken in order to provide interested parties with adequate time to address the important issues raised in this proceeding.

DATES: Comments and reply comments on issues dealing with special access treatment of closed and WATS access lines and WATS resale will be due on January 27, 1986 and February 10, 1986, respectively. Comments and reply comments regarding peak/off-peak pricing and carrier common line cost recovery will be due on February 3, 1986 and February 18, 1986, respectively.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Sandra Eskin, Common Carrier Bureau (202) 632-9342.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 69

Access charges, communications common carriers.

Order

In the matter of WATS-Related and Other Amendments of Part 69 of the Commission's Rules; CC Docket No. 86-1.
Adopted: January 15, 1986.
Released: January 17, 1986.
By the Chief, Common Carrier Bureau.

1. We have before us two Motions for Extension of Time in connection with the comment cycle established in the above-captioned proceeding. In a Notice

of Proposed Rulemaking (*Notice*), released on January 6, 1986, were provide that comments would be due January 27, 1986, with reply comments due February 10, 1986.

2. On January 10, 1986, MCI Telecommunications (MCI) filed a motion requesting that we extend the time for filing comments to February 5, 1986, with an extension of the time for filing reply comments to February 26, 1986.[1] On the same date, the National Telephone Cooperative Association (NTCA) filed a motion to bifurcate the issues to be examined in this proceeding and seeks an extension of time for filing comments on certain issues. NTCA requests that we maintain the established pleading cycle for comments and replies on the issues dealing with the special access treatment of closed end WATS access lines and WATS resale. It asks that we extend the filing dates on issues relating to time-of-day access pricing and recovery of carrier common line costs based on terminating usage to March 27, 1986, for comments, and April 28, 1986, for reply comments.

3. It is the policy of the Commission, set forth in § 1.46(a) of the Commission's rules, 47 CFR 1.46(a) (1984), that extensions of time shall not be routinely granted. However, because of the large number of filings on related matters due during this period and our desire to receive thoughtful filings on the important issues raised in this proceeding, we are revising the pleading cycle and adopting a bifurcated schedule for the filing of pleadings.

4. Comments on the issues dealing with special access treatment of closed end WATS access lines and WATS resale, discussed in Sections III. and IV. of the *Notice*, will be due on January 27, 1986, with reply comments on these issues due February 10, 1986. Comments on the issues dealing with peak/off-peak pricing and carrier common line cost recovery, discussed in Sections V. and VI. of the *Notice*, will be due on February 3, 1986, with reply comments on these issues due February 18, 1986. We believe that this revised schedule will provide interested parties with adequate time to address the important issues raised in this proceeding.

5. Accordingly, it is ordered, that the Motion for Extension of Time by MCI Telecommunications, and the Motion To Bifurcate Issues and for Partial Extension of Time by the National Telephone Cooperative Association, are granted to the extent discussed herein. This action is taken pursuant to sections 4(i) and (j) and 201 of the Communications Act of 1934, 47 U.S.C. 154(i), (j) and 201 (1982), and §§ 0.91(h) and 0.291 of the Commission's Rules, 47 CFR 0.91(h), 0.291.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86-1614 Filed 1-23-86; 8:45 am]

BILLING CODE 6712-01-M

[1] MCI's proposal to extend the reply comment date to February 26, 1986, is based on the assumption that the established reply comment date is February 14, 1986, rather than February 10, 1986. GTE Sprint and ALC Communications filed comments in support of MCI's Motion for Extension of Time.

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Notices

Federal Register
Vol. 51, No. 17
Monday, January 27, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative Agreements; Colorado State University Research Foundation

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of Intent to Award a Cooperative Agreement.

ACTIVITY: The Office of International Cooperation and Development intends to award a cooperative agreement to the Colorado State University Research Foundation (CSURF) to continue Technical Assistance for Manufacturing Nutritious, Low-Cost Weaning Foods.

Authority: Section 1458 of The National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99–198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter into a cooperative agreement with the Colorado State University Research Foundation (CSURF), in the amount of $174,000. The agreement is an extension of on-going work being conducted by the Research Institute of Colorado (RIC) which is terminating its activities. Technical personnel and resources currently at RIC will be available to CSURF.

Funds will be utilized by the CSURF for research and development in the field of low-cost extrusion cooking (LEC) for production of low-cost nutritious foods. LEC was developed by USDA in cooperation with RIC and its predecessor, Colorado State University over the last 11½ years. LEC facilities and technical expertise is available to CSURF. On-going projects in the Philippines (Rice Brand Stabilization and Rice Bran Oil Recovery) and Guyana (Improvements in Guyana Weaning Food Plant) will be continued by CSURF. This proposed agreement will allow the work to continue efficiently with no interruptions.

Based on the above, this is not a formal request for applications. It is estimated that approximately $174,000 will be available in Fiscal Year 1986 to support this work. It is anticipated that the cooperative agreement will be funded from 1 March 1986 through 30 September 1986.

Information may be obtained from: Dr. David A. Fellers, Food Technology Branch, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture (#58–319R–6–019).

Dated: January 22, 1986.

Allen Wilder,

Chief, Management Services Branch.

[FR Doc. 86–1598 Filed 1–24–86; 8:45 am]

BILLING CODE 3410–DF–M

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement Rates for 1986

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustment to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments reflect changes in the Consumer Price Index and are required by statute governing the Program.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virgina 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION: Classification: This notice has been reviewed under Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete with foreign based enterprises in domestic or foreign markets. This notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this notice will not have a significant economic impact on a substantial number of small entities.

This notice is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V (48 FR 29112, June 24, 1983).) In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR Part 225).

(Catalog of Federal Domestic Assistance Programs No. 10.559)

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the Summer Food Service Program for Children (7 CFR Part 225), notice is hereby given of adjustment in Program payments for meals served to children participating in the Summer Food Service Program for Children during the 1986 Program. Adjustment are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1984 through November 1985. The new reimbursement rates in cents are as follows:

Maximum Per Meal Reimbursement Rates

Operating Costs

Breakfast	88.25
Lunch or Supper	158.50
Supplement	41.50

Administrative Costs

a. For meals served at rural or self-preparation sites:

Breakfast	8.25
Lunch or Supper	15.00
Supplement	4.00

b. For meals served at other types of sites:

Breakfast	6.50
Lunch or Supper	12.50
Supplement	3.25

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represented a 4.03 per cent increase during 1985 (from 337.7 in November 1984 to 351.3 in November 1985) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

Authority: Secs. 803, 807, 809, 816, and 817, Pub. L. 97–35, Secs. 203 and 206, Pub. L. 96–499, Secs. 5, 7, 10, Pub. L. 95–627, 95 Stat. 3603 (42 U.S.C. 1771); Sec. 2, Pub. L. 95–166, 91 Stat. 1325 (42 U.S.C. 1761); Sec. 7, Pub. L. 91–248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

Dated: January 2, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86–1625 Filed 1–24–86; 8:45 am]

BILLING CODE 3410–30–M

ARCTIC RESEARCH COMMISSION

Notice of Meetings

Notice is hereby given that the Arctic Research Commission will meet with the Governor, State of Alaska and with members of his cabinet and with the Alaska State Legislature Senate and House Committee on Resources in Juneau, Alaska on 31 January 1986.

The meetings will begin at 7:00 a.m. in the Sheffield Hotel, Egan Drive, Juneau, Alaska. Matters to be considered include: 1. Chairman's items, 2. Approval of Report of Meetings held 14–15 November 1985, 3. Annual Report to President and Congress, 4. Statement by Chairman to Governor and Legislature, 5. Discussion of draft report "National Needs and Arctic Research—A Framework for Action", 6. Dates of Future Meetings, and 7. Other Business.

At 10:00 a.m. the Commission will be introduced to House of Representatives in the State Capitol Building, 2nd Floor, which is located at Main and 4th Street, Juneau, Alaska.

At 10:15 a.m. the Commission will have joint meeting with Governor's Science and Engineering Advisory Committee. The major topic will be a discussion of Arctic research needs. The meeting will be held in the Governor's Conference Room, 3rd Floor, State Capitol Building.

At 11:00 a.m. the Arctic Research Commission will meet with the Governor and his cabinet to discuss Arctic research needs. Matters to be presented include: 1. State of Alaska Research Policy and Needs by Governor Sheffield, 2. Arctic Research Policy and Possible Joint State/Federal Interaction by Dr. James Zumberge. The meeting will be held in the Governor's Conference Room, 3rd Floor, State Capitol Building.

At 1:30 p.m. the Commission will meet with a joint session of the House and Senate Committees on Resources in the State Capitol Building, 2nd Floor, Butrovitch Room. Matters to be considered include discussion of Arctic research needs and possible joint State/Federal research programs.

At 3:30 p.m. a Press Conference will be held in the State Capitol Building, 3rd Floor, Governor's Conference Room.

The Commission will meet in Executive Session from 6:30–8:30 p.m. on 31 January. Matters to be discussed in the Executive Session will include: 1. Composition of Group of Advisors, 2. Future Activities of the Commission, and 3. Commission Budgetary Matters.

Contact Person for More Information: W. Timothy Hushen, Executive Director, Arctic Research Commission (213) 743–0970.

W. Timothy Hushen,

Executive Director, Arctic Research Commission.

[FR Doc. 1670 Filed 1–24–86; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—1986 Panel Wave 2
Form Number: Agency—SIPP–6200, SIPP–6205L; OMB—0607–0425
Type of Request: Revision of a currently approved collection
Burden: 29,400 respondents; 14,700 reporting hours
Needs and Uses: This survey is used to collect data that will support policy and program planning. The data is used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: 1986 Test Censuses of Central Los Angeles County and East Central Mississippi—Content Reinterview
Form Number: Agency—DC–5; OMB—NA
Type of Request: New collection
Burden: 2,750 respondents, 680 reporting hours
Needs and Uses: These test censuses will enable Census to compare/evaluate information as to the accuracy and consistency of answers reported through the self-administered, mail-return questionnaires used
Affected Public: Individuals or households
Frequency: One time only
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: January 21, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86–1701 Filed 1–24–86; 8:45 am]

BILLING CODE 3510–07–M

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Foreign-Trade Zones Board

[Order No. 322]

Resolution and Order Approving the Application of the Louisville and Jefferson County Riverport Authority for a Special-Purpose Subzone in Lexington, KY, Adjacent to the Louisville Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, filed with the Foreign-Trade Zones Board (the Board) on April 2, 1985, requesting special-purpose subzone status for the typewriter and printer manufacturing plant of International Business Machines Corporation in Lexington, Kentucky, adjacent to the Louisville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone for International Business Machines Corporation in Lexington, Kentucky

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone No. 29, has made application (filed April 2, 1985, Docket No. 7–85, 50 FR 16329) in due and proper form to the Board for authority to establish a special-purpose subzone at the typewriter and printer manufacturing plant of International Business Machines Corporation (IBM) in Lexington, Kentucky, adjacent to the Louisville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed April 2, 1985, the Board hereby authorizes the establishment of a subzone at the IBM plant in Lexington, Kentucky, designated on the records of the Board as Foreign-Trade Subzone No. 29D at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury to damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC this 13th day of January 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternotes.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86–1640 Filed 1–24–86; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 323]

Resolution and Order Approving the Application of the North Carolina State Department of Commerce for a Special-Purpose Subzone in Mecklenburg County, NC, Adjacent to the Charlotte Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the North Carolina State Department of Commerce, grantee of Foreign-Trade Zone 57, filed with the Foreign-Trade Zones Board (the Board) on June 5, 1985, requesting authority for a special-purpose subzone for the printer, banking equipment and electronic assemble manufacturing plant of International Business Machines Corporation in Mecklenburg County, North Carolina, adjacent to the Charlotte Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Mecklenburg County, North Carolina, Adjacent to the Charlotte Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the North Carolina State Department of Commerce, grantee of Foreign-Trade Zone No. 57 has made application (filed June 5, 1985, Docket No. 18–85, 50 FR 27472) in due and proper form to the Board for authority to establish a special-purpose subzone at the printer and electronic equipment manufacturing plant of International Business Machines Corporation (IBM) in Mecklenburg County, North Carolina, adjacent to the Charlotte Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed June 5, 1985, the Board hereby authorizes the establishment of a subzone at the IBM plant in Mecklenburg County, North Carolina, designated on the records of the Board as Foreign-Trade Subzone No. 57A at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations;

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC this 13th day of January 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternotes.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86–1639 Filed 1–24–86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-559-501]

Final Negative Countervailing Duty Determination; Carbon Steel Wire Rod From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore of carbon steel wire rod. Therefore, our final countervailing duty determination is negative.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey, David Levine, or Barbara Tillman of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1784, 377–8498 or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

On the basis of our investigation, we determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended, (the Act) are being provided to manufacturers, producers, or exporters in the Republic of Singapore.

Case History

On August 9, 1985, we received a petition in proper form from Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co. on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of §355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Singapore of carbon steel wire rod directly or indirectly receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 29, 1985, we initiated such an investigation (50 FR 36130). We stated that we expected to issue a preliminary determination by November 4, 1985.

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the product under investigation is dutiable, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product materially injure, or threaten material injury to, a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Singapore in Washington, DC on September 9, 1985. On October 18, 1985, we received responses to our questionnaire from the government of Singapore, National Iron and Steel Mills Ltd. ("NISM"), and Kloeckner Singapore Pte. Ltd. ("Kloeckner"). According to the response of the government of Singapore, NISM was the sole producer and Kloeckner the sole exporter in Singapore of carbon steel wire rod to the United States. On November 4, 1985, we preliminarily determined that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of wire rod in Singapore.

At verification, we found that the trading company Mitsui & Co., Ltd. ("Mitsui") had exported a small amount of carbon steel wire rod to the United States in March 1985. We verified that Mitsui did not use any of the programs under investigation. On December 20, 1985, the government of Singapore submitted an amendment to the original response indicating the Mitsui shipment.

A hearing was requested and took place January 7, 1986. We received briefs from the parties to the proceeding on January 2 and January 10, 1986.

Scope of the Investigation

The product covered by this investigation is carbon steel wire rod, which is a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter. Carbon steel wire rod is currently classifiable under items 607.14, 607.17, 607.22 and 607.23 of the *Toriff Schedules of the United States, Annotated (TSUSA).*

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is the calendar year 1984. Although there were no exports of the subject merchandise during our review period, there were exports of wire rod during 1985. Therefore, we have investigated any potential benefits that may have been received during 1985. The responses of the government of Singapore and Kloeckner and the results of verification indicate that neither Kloeckner nor Mitsui used any of the programs under investigation during the review period or in 1985. Based upon our analysis of the petition, the responses submitted by the government of Singapore, NISM and Kloeckner to our questionnaires, the verification, and comments submitted by petitioners and respondents, we determine the following.

I. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not provided to manufacturers, producers, or exporters of wire rod in Singapore under the following programs:

A. Location in Industrial Estates

Petitioners alleged that Singapore carbon steel wire rod manufacturers, producers, or exporters may receive benefits based on their location in "government-backed" industrial estates. Petitioners alleged that these estates provide facilities such as factory buildings and that firms located in these estates face lower property tax rates. The largest of these estates is Jurong Town and petitioners alleged that Singapore wire rod manufacturers are located in Jurong.

There are 23 industrial estates located at various places throughout Singapore. Jurong Town is the largest of the industrial estates. All of the industrial estates are owned and managed by the Jurong Town Corporation (JTC), which is a government corporation. Seventy percent of the work force in Singapore is located in the industrial estates, and virtually every industry is represented.

Location in industrial estates and rental charges cannot be considered countervailable unless the government limits which industries can locate in the industrial estates, or unless the government establishes criteria for terms on industrial estate rentals which are not neutral in application, but rather based on industry or regional preferences.

JTC leases out three types of property in the industrial estates: (1) Industrial land; (2) standard factory buildings; and (3) flatted factories. At verification, we found that NISM is the only company subject to this investigation which is located in an industrial estate and it leases only land from JTC. We verified that the property tax paid on industrial estate property is the same as that paid by all companies in Singapore (23 percent). We found that any manufacturing company in any industry may locate in an industrial estate, and that a large number and a wide variety of industries are in fact located in industrial estates in Singapore. These include textiles, transportation, cement, computer, chemical, rubber, plastics, basic metals and paper industries. We also verified that JTC sets and applies rental rates and rent escalation terms consistently for all JTC tenants in all the industrial estates. Although some of the rental rates differ in and between industrial estates, we found that this variance is based on differences in property values rather than on any criteria set out by the government of Singapore. In particular, we found no indication that JTC has established criteria for rental charges or use of any facilities that are based on industry or regional factors rather than neutral factors.

Accordingly, we determine that location in industrial estates does not confer a bounty or grant because such location is not limited to a specific enterprise or industry, or group of enterprises or industries, and the rental terms on property and facilities in all the industrial estates are neutral in application and not based on industry or regional preferences.

B. Rebate on Industrial Estate Rentals by JTC

According to the responses of the government of Singapore and NISM, rebates of 5 to 15 percent were given on JTC warehouse and land rentals for a period of 17 months beginning on August 1, 1985. We preliminarily determined that the information submitted in the responses was insufficient to determine if a bounty or grant had been bestowed on the product under investigation.

At verification, we found that the JTC rebate scheme was introduced in April 1985 as a 10 percent rebate in order to counteract the declining demand for industrial property in all of Singapore. The rebate was increased in August 1985 to 15 percent. We also verified that hundreds of companies in all the industrial estates, representing many industries, had been offered 15 percent rebates. Since the rental rebate program applies consistently throughout all the industrial estates, the program effectively constitutes a change in rental rates. Therefore, the test we set out in section A above applies to the JTC rebate program, and we determine that this program does not confer a bounty or grant on the product under investigation because it is not limited to a specific enterprise or industry, or group of enterprises or industries.

C. Property Tax Rebates

Although not alleged by petitioners and not included in our notice of "Initiation of Countervailing Duty Investigation: Carbon Steel Wire Rod from the Republic of Singapore" (50 FR 36130 (1985)), respondents included in their responses a reference to property tax rebates. This scheme involves a 30 percent rebate on property taxes paid for all industrial and commercial properties for 1 and ½ years beginning July 1, 1985. We verified that this measure applies equally to all industrial and commercial property "owners" in Singapore, where "owners" are defined to be all property holders for at least a three year term. Only owners are required to pay property taxes in Singapore. Therefore, we determine that this practice does not provide a bounty or grant because it is not limited to a specific enterprise or industry, or group of enterprises or industries.

D. Long-Term Loans from the Development Bank of Singapore (DBS)

Although not alleged by petitioners and not included in our notice of initiation, NISM provided information in its response that it received long-term financing from the DBS. We found that, although DBS was established in 1968 as a government development bank, since 1973 it has functioned as an ordinary commercial bank. We verified that DBS financing is available to a wide range of industries such as agriculture, mining, building construction, transport, storage, various manufacturing industries and financial institutions, and that its terms are pegged to the prime rate, similarly to financing by other commercial banks in Singapore. Therefore, we determine that DBS financing is not countervailable because it is not limited to a specific enterprise or industry, or group of enterprises or industries and the terms of DBS loans are not inconsistent with commercial considerations.

E. Withholding Tax Exemption Under Section 13(2) of the Singapore Income Tax Act

This program was not alleged by petitioners to provide bounties or grants and the information on this program was first provided to the Department in the government of Singapore and NISM responses. During the review period NISM obtained an exemption from withholding taxes on certain interest paid by NISM to an Italian environmental protection device supplier. For purposes of the preliminary determination, we determined that the information submitted by the respondents was insufficient to determine if a bounty or grant had been bestowed on the product under investigation.

Section 13(2) of the Singapore Income Tax Act provides for a withholding tax exemption on all interest and royalty payments made to non-residents. We verified that the section 13(2) exemption applies, without restriction, to any enterprise or industry, or group of enterprises or industries in Singapore which paid such interest or royalties, and that a wide range of industries participated in this program, including shipping, airlines, banking, telecommunications, transportation, textiles and chemicals. Therefore, we determine that this program does not confer a bountry or grant on the product under investigation.

II. Programs Determined Not To Be Used

We determine that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation" were not used by the manufacturers, producers or exporters in Signapore of carbon steel wire rod during the review period.

A. Part II, III, IV, IVA, V, VI and VIB of the Economic Expansion Incentives Act

Petitioners alleged that the producers and exporters of carbon steel wire rod, based upon their classification under the Economic Expansion Incentives Act, benefit from exemptions on income tax and taxes on royalties, technical assistance fees, research and development costs, and interest paid to non-residents. (The exemptions for taxes on royalties and interest paid to non-residents are similar to the section 13(2) withholding tax exemption program discussed above.)

We verified that these exemptions were not claimed in the tax returns filed during the review period by the companies subject to this investigation.

B. Research and Development Tax Incentives

Petitioners alleged that producers and exporters of wire rod receive special tax treatment for approved research and development projects.

We verified that this program was not used by the companies subject to this investigation during the review period.

C. Monetary Authority of Singapore Rediscount Facility and Working Capital Loan Fund of the Development Bank of Singapore (DBS)

Petitioners alleged that manufacturers, producers and exporters of carbon steel wire rod benefitted from preferential financing through the Monetary Authority of Singapore (MAS) which operates a rediscounting facility through which banks are permitted to rediscount qualified pre-export and export bills of exchange. Petitioners also alleged that the DBS operates a Working Capital Loan Fund which discounts export bills for up to 120 days at preferential rates.

We verified that the Rediscount Facility was not used during the review period by the companies subject to this investigation and that the DBS does not operate such a "Working Capital Loan Fund".

D. Singapore Economic Development Board

Petitioners alleged that the Singapore Economic Development Board (SEDB) provides assistance to manufacturers, producers, and exporters of carbon steel wire rod under the following programs:

1. The Capital Assistance Scheme under which the SEDB provides loans at preferential, below-market rates, as well as loan guarantees;

2. The Product Development Assistance Scheme under which the SEDB provides matching grants for financing substantial technical improvements in products or manufacturing processes; and

3. Labor Training which covers training overseas, in-house, and at training centers in Singapore.

We verified that none of the companies subject to this investigation received any benefits from these programs during the review period.

E. Double Deduction of Export Promotional Expenses

Petitioners alleged that firms exporting carbon steel wire rod to the U.S. received benefits under Singapore tax law which allows a double deduction from gross corporate income of expenses incurred in export promotion.

We verified that this program was not used by the companies subject to this investigation during the review period.

Comments by Petitioners

Comment 1. Petitioners argue that ITA must consider the nature of the Singapore economy, which is heavily oriented to the development of manufacturing industries for export rather than domestic consumption. Petitioners argue that ITA should countervail government of Singapore programs, such as formation of the industrial estates, even though these programs are not limited to a specific enterprise or industry, or group of enterprises or industries, because ITA should consider these government of Singapore programs as export-oriented subsidies.

DOC Position. Even if we accept petitioners' characterization of the Singapore economy as export-oriented, we disagree with petitioners that we should infer from the character of the economy that all government of Singapore programs constitute export subsidies.

If we accepted this argument, the result would be that every government of Singapore program could be characterized as a subsidy, and section 771(5)(B) of the Act (defining domestic subsidies) would be a nullity with respect to so-called export-oriented economies. If Congress had intended such an extreme result, it easily could have specifically written it into the statute. Our position is consistent with *Certain Softwood Products from Canada*, (48 FR 24159, 24167, May 31, 1983), in which we concluded that "the mere fact that significant quantities of products made from stumpage are exported to the United States does not mean that stumpage programs confer an export subsidy." See also *Canned Tuna from the Philippines*, (48 FR 50133, October 31, 1983).

The *Michelin* decision upon which petitioners rely is not relevant. In that decision, the court did not address the definition of export subsidy. It merely upheld Treasury's determination that a subsidy existed when the Canadian and provincial governments provided grants, law-interest loans, and special tax provisions to two Michelin plants. Moreover, the *Michelin* decision upon which petitioners rely was vacated in *Michelin Tire Corp. v. United States*, Slip Op. 85–11 (January 29, 1985).

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Comment 2. Petitioners argue that JIC provides land and building rents on a preferential basis, including the base rental terms as well as the provisions for rate escalations over time.

DOC Position. We disagree that JIC charges rents that are preferential. At verification, we found that the government of Singapore does not limit which industries can locate in the industrial estates and that the government employs neutral criteria for establishing base rental terms as well as the rate escalations. Although some of the rental rates differ in and between industrial estates, we found that this variance is based on differences in property values rather than on any industrial or regional criteria set out by the government of Singapore. See section on "Location in Industrial Estates."

Therefore, we are satisfied that JIC does not provide land, building rents or rent escalations on a preferential basis.

Comment 3. Petitioners argue that the rate charged by JIC for its annual rental fee is non-commercial and extremely low. Petitioners also argue that the verification report gives no indication of who determines the "average market purchase cost" or how that price is determined. Additionally, petitioners contend that the verification report does not identify normal commercial rental terms on property not administered by JIC.

DOC Position. The rental fees charged by JIC to its tenants are based on neutral criteria which are applied equally to all tenants in the industrial estates. Because we found that location in any industrial estate is not limited and the criteria used to determine rental rates are neutral and non-preferential, we determine that this program is not countervailable. Even if we were to find that location in industrial estates is limited to a specific enterprise or industry, or group of enterprises or industries, inconsistency with commercial considerations is not the appropriate standard for evaluating whether rental rates charged by JIC confer a subsidy. Instead, the correct test under section 771(5)(B) is whether preferential rates are being charged. See the *Preliminary Affirmative Countervailing Duty Determination; Carbon Steel Wire Rod from Saudi Arabia* (50 FR 47788) and the *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Trinidad and Tobago* (49 FR 480).

Comment 4. Petitioners argue that commercial lenders in Singapore received rates of return far in excess of the amount charged by JIC on NISM's rent and the differential between the two constitutes a subsidy.

DOC Position. As discussed above, the appropriate standard for identifying and measuring the subsidy conferred by JIC rental rates is whether the rates are preferential, not their commercial soundness.

Comment 5. Petitioners argue that rent escalation schemes are inconsistent with commercial considerations.

DOC Position. As discussed above, the appropriate standard for identifying and measuring the subsidy conferred by JIC rental rates is whether the rates are preferential, not their commercial soundness.

Comment 6. Petitioners state that the verification report does not discuss other facilities provided by JIC to industries located in the industrial estates.

DOC Position. The verification report does discuss the facilities in the industrial estates. As stated in the report, JIC leases out three types of property in the industrial estates: (1) Industrial land; (2) standard factory buildings; and (3) flatted factories. We found that the rental terms on these facilities in all the industrial estates are applied neutrally and consistently to all enterprises and industries. Moreover, the only company subject to this investigation which is located in an industrial estate, NISM, rents only industrial land from JIC.

Comment 7. Petitioners argue that JIC's alleged profits are the result of government subsidies and that the rental rate charged by the government of Singapore to JIC is less than the rate charged by JIC to its lessees. Petitioners also argue that JIC received countervailable loans and other benefits from the government of Singapore.

DOC Position. There is no basis for examining alleged subsidies from the government of Singapore to JTC since, even if the government of Singapore subsidizes JIC, any pass-through of such subsidies would be countervailable only if location in industrial estates was limited to a specific enterprise or industry, or group of enterprises or industries, or JTC applied its rental terms preferentially by industry or region.

Comment 8. Petitioners contend that the JTC rental rebates amount to countervailable benefits because they are inconsistent with commercial considerations and limited to certain eligible companies.

DOC Position. We found at verification that the JTC rental rebates are not limited to certain eligible companies or industries. Rather, eligibility is based solely on a tenant's effective rental rate relative to the current market rate. We found that this criterion did not limit, *de jure* or *de facto*, the rebates to a specific enterprise or industry, or group of enterprises or industries. For the same reasons discussed above in our response to Petitioners' "Comment 3", the question of consistency with commerical considerations is irrelevant.

Comment 9. Petitioners argue that the 30 percent property tax rebates received by NISM must be presumed to be a subsidy because the Verification Reports do not adequately show how rebate recipients are selected and that such rebates are the norm rather than the exception.

DOC Position. Contrary to petitioners' claim, the Verification Report for the government of Singapore notes our finding that the rebates are issued automatically and not on a case-by-case basis. No selective criteria were found to apply. The Verification Report also shows that the rebates are the norm in Singapore rather than the exception since we listed many of the various industries included among rebate recipients.

Comment 10. Petitioners claim the section 13(2) withholding tax exemption is countervailable because it is applied on a selective basis and premised on governmental purposes not motivated by commercial considerations.

DOC Position. We found at verification that the eligibility criteria for the 13(2) exemption set out in the original questionnaire response from the government of Singapore were applied consistently in actual practice by the Finance Minister. No indications of selectivity were evident, *de jure* or *de facto*, since we found to our satisfaction that all of the exemption rejections were based entirely on failure to meet the objective, industry-neutral criteria set out in the government of Singapore response. We note that governmental tax policies are not generally motivated by commercial considerations.

Comment 11. Petitioners argue that the JTC rental rates, JTC rental rebates and other programs are countervailable even if more than a specific enterprise or industry, or group of enterprises or industries, receives their benefits because they are commercially unfair. Petitioners cite *Bethlehem Steel Corp.* v. *United States*; 590 F. Supp. 1237 (C.I.T. 1984) and *Cabot Corp.* v. *United States* Slip Op. 85–102 (C.I.T. October 4, 1985).

DOC Position. At verification, we found that in actual practice, JTC's rental program is available to all enterprises and industries and utilized by virtually all industries in Singapore under consistently applied terms. We found that JTC sets its rental rates without preferentiality among the tenants; i.e., all tenants enter into a lease at a pre-set rate which is based on the market value of the property. We made similar findings with respect to JTC's rebate program, the withholding tax exemption and the property tax rebate. Thus, the Department is satisfied that these programs are available to more than a specific enterprise or industry, or group of enterprises or industries, and that the benefits are provided without preferentiality under section 771(5)(B)(ii) of the Act.

The Department does not agree with the *Cabot Corp.* opinion and has appealed that decision. The Department's refusal to find a subsidy absent an industry-specific or regional preference was upheld by the Court of International Trade in *Carlisle Tire and Rubber Co.* v. *United States*, 564 F. Supp 834 (C.I.T. 1983).

Comment 12. Petitioners argue that the GATT Subsidies Code does not render the programs under investigation noncountervailable.

DOC Position. There is no agreed interpretation within the GATT Subsidies Code on the definition of what practices constitute a domestic subsidy. The U.S. Government believes that the standards set out in section 771(5)(B) of the Act are consistent with the Subsidies Code indicia for what consititutes a domestic subsidy. We have, therefore, examined the programs under investigation according to the U.S. countervailing duty law. For our explanation of the countervailability of the programs under investigation see "DOC Position" to Petitioners' "Comment 1".

Comments by Respondents

Comment 1. Respondents contend that any benefits received by NISM through JTC facilities, property tax rebates, and long-term DBS loans were not countervailable bounties or grants because these programs (1) were available to a wide range of industries, and (2) were on terms consistent with commercial practices.

DOC Position. We have determined that these programs are not countervailable because they are not limited to a specific enterprise or industry, or group of enterprises or industries. See the individual sections of the notice for our determination on each of these programs.

Comments 2. Respondents interpret the case law to require that the Department compare terms under which an alleged bounty or grant is provided with comparable commercial terms in order to determine whether there is a countervailable benefit.

DOC Position. In examining alleged domestic subsidies in the form of loans, loan guarantees and equity provided to a specific enterprise or industry, or group of enterprises or industries, the Department considers whether commerical terms are comparable. Other forms of alleged subsidies are evaluated on different bases.

Comment 3. Respondents state that long-term loans provided by the Development Bank of Singapore (DBS) are not limited to specific enterprises or industries and are made in accordance with commercial considerations.

DOC Position. We agree. See the section on "Development Bank of Singapore (DBS) Financing."

Comment 4. Respondents argue that the section 13(2) withholding tax exemption is not limited to a specific enterprise or industry, or group of enterprises or industries, and therefore not countervailable.

DOC Position. We agree. See the section on "section 13(2) Withholding Tax Exemption."

Comment 5. Respondents state that JTC rental rebates are offered "across the board" to all tenants whose rents are more than 50 percent of JTC's current published rental rates. Respondents also argue that the JTC rental rebate is not a bounty or grant because it is not limited to a specific enterprise or industry, or group of enterprises or industries.

DOC Position. We agree. See section on "Location in Industrial Estates."

Comment 6. Respondents argue that the GATT Subsidies Code specifically seeks to avoid the countervailing or broad social programs which a government undertakes to develop the infrastructure of its country.

DOC Position. Even without direct reference to the GATT Subsidies Code, according to the U.S. countervailing duty law, the programs under investigation were found not to be countervailable.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of NISM's, Kloeckner's and Mitsui's records.

Administrative Procedures

In accordance with its regulations (19 CFR 355.35), the Department has afforded interested parties an opportunity to present oral views. A public hearing was held on January 7, 1986. Also in accordance with the Department's regulations (19 CFR 355.34(a)), all written views have been received and considered in this determination.

This notice is published in accordance with section 303 and 705(d) of the Act (19 U.S.C. 1303, 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration

January 22, 1986.

[FR Doc. 86–1707 Filed 1–24–86; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-501]

Final Affirmative Countervailing Duty Determination; Fuel Ethanol From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of fuel ethanol in Brazil. The net subsidy is 2.60 percent *ad valorem*. In addition, we determine that "critical circumstances" do not exist with respect to the subject merchandise.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in an amount equal to the net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0186 (Letort) or 377–2438 (Tillman).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers,

or exporters of fuel ethanol in Brazil. for purposes of this investigation, the following programs are found to confer subsidies:

- PROALCOOL Industrial Credits to Distillers
- PROALCOOL Agricultural Credits to Distillers.
- FUNPROCUCAR Long-Term Loans.
- IAA Financing.
- Income Tax Exemption for Export Earnings.

We determine the net subsidy to be 2.60 percent *ad valorem* for all manufacturers, producers or exporters of fuel ethanol in Brazil.

Case History

On February 25, 1985, we received a petition in proper form from the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the fuel ethanol industry in the United States. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters of fuel ethanol in Brazil directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. On March 15, the Oil, Chemical and Atomic Workers' International Union joined this proceeding as a co-petitioner.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 18, 1985, we initiated this investigation (50 F.R. 11526). We stated that we expected to issue a preliminary determination by May 21, 1985.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On April 12, 1985, the ITC preliminarily determined that an industry in the United States is threatened with material injury by reason of imports of fuel ethanol from Brazil (50 F.R. 15236).

On March 29, 1985, we received information from petitioners which established a reasonable basis to believe or suspect that the product under investigation benefitted from upstream subsidies in the form of subsidized sugar cane inputs. On April 23, 1985, pursuant to section 703(h) of the Act, we extended the due date for a preliminary determination to November 4, 1985 (50 F.R. 16727).

We presented questionnaires concerning the allegations to the government of Brazil in Washington, DC on April 15, May 14, June 3, June 17, August 26, and September 2, 1985. We received responses to these questionnaires on June 7, July 26, September 16, and October 21, 1985. Based on the information contained in the June 7 response, we requested detailed responses from those producers who account for at least 60 percent of the fuel ethanol exported from Brazil to the United States. We also requested responses from the distillers' cooperative, as well as from four trading company exporters who accounted for over 85 percent of Brazilian exports of fuel ethanol to the United States.

We issued upstream subsidy questionnaires on May 24 and June 17, 1985, and received responses on July 26, September 16, and October 21, 1985. The responding distillers provided us with a list of those sugar cane growers who accounted for the top 60 percent of their supplies of sugar cane in 1984. We requested detailed responses from those sugar cane growers who represent the top 60 percent of this group. On the basis of information contained in these responses, we made a preliminary determination on November 4, 1985 (50 F.R. 46681).

From September 23 to October 11, 1985, we verified the information submitted by the government of Brazil, ethanol distillers, the distillers' cooperative, and trading companies. We conducted a supplementary verification of this information, in addition to verifying information submitted by upstream suppliers of sugar cane inputs, from November 18 to December 6, 1985. Prehearing briefs were submitted on December 11, 1985, the hearing being held on December 18, 1985. Post-hearing briefs were received by the Department on December 30, 1985, and additional comments were submitted on January 13, 1986.

Scope of Investigation

The product covered by this investigation is fuel-grade ethyl alcohol (also called fuel ethanol) for use as a motor fuel additive, which is currently classified in the *Tariff Schedules of the United States (TSUS)* under item numbers 427.88, 430.10, 430.20, and 432.10. Ethanol, when imported to be used as a fuel or in producing fuel, is subject to additional duties under *TSUS* item number 901.50.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in April 26, 1984 issue of the **Federal Register** (49 F.R. 18006).

Petitioners have alleged that as much as 25 percent of the fuel ethanol industry in Brazil is in a state of bankruptcy, and that a large portion of that industry is both uncreditworthy and unequityworthy. We have addressed in the appropriate sections of this notice specific allegations of uncreditworthiness and unequityworthiness made by petitioners against certain companies. It is our practice to investigate only allegations that specific companies are uncreditworthy or unequityworthy during a specific time period. Therefore, we will not make a determination as to whether the fuel ethanol industry in Brazil is uncreditworthy or unequityworthy, in whole or in part.

For purposes of the final determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition,the responses to our questionnaires, our verifications, and comments filed by petitioners and respondents, we determine the following.

I. Programs Determined to Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of fuel ethanol under the following programs.

A. PROALCOOL Industrial Credits to Distillers

Petitioners have alleged that, under the guidelines of the Programa Nacional do Alcool (PROALCOOL) and subject to the approval of the Comissao Executiva Nacional do Alcool (CENAL), ethanol distillers receive long-term financing on terms inconsistent with commercial considerations for the construction, expansion, and modernization of ethanol production and storage facilities.

In its response, the government of Brazil stated that CENAL is the administering authority for the PROALCOOL program. Private companies that wish to produce ethanol must submit a project to CENAL for approval; once approval is secured, the company may obtain start-up credits under PROALCOOL. It will then receive production quotas for sugar cane and alcohol from the Instituto do Acucar e do Alcool (IAA).

Projects eligible for PROALCOOL financing include:

- Establishment, expansion, or modernization of a distillery;
- Installation of an agricultural storage facility;
- Production of raw materials for use in ethanol production;
- Research and support for the production of raw materials;
- Innovation and improvement of the technology related to the Production and use of ethanol; and
- Irrigation.

CENAL also takes into account the location and size of each project.

Once a project is approved, the producer becomes eligible for (1) PROALCOOL credit lines administered by the Banco do Brasil to finance the start-up costs, and (2) PROALCOOL long-term investment loans, which are to be paid back according to amortization schedules linked to the expected development of production.

Ethanol distillers had PROALCOOL long-term industrial loans outstanding during the review period. Typically, these loans were made for a duration of five years with a grace period of one year, in the case of storage facilities, or 12 years with a grace period of 3 to 4 years, in the case of production facilities. The maximum level of eligibility varied, depending on the category of borrower and the year in which the loan was taken out.

The interest rates on these loans also varied, depending on the year in which the loans were taken out. In the PROALCOOL program's early years, interest rates were fixed and did not include a mechanism to adjust for inflation. In the program's later years, the loans were partially, then fully, indexed to the inflation rate as measured by the variation in the nominal value of the Obrigaçoes Reajustaveis do Tesouro Nacional (Readjustable National Treasury Bonds, or ORTN). This type of adjustment for inflation is referred to in Brazil as "monetary correction."

In December 1982, the interest rates on PROALCOOL industrial loans were placed on a par with interest rates on agro-industrial loans given to the processors of agricultural products, as part of the agricultural loan program, with funds provided by the Banco Central do Brasil (BCB). We verified that these agricultural and agro-industrial loans were available to producers of all types of agricultural and agro-industrial products in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and ethanol producers became eligible for agro-industrial loans carrying an interest rate of 5 percent, including full monetary correction except for those loans made to borrowers located in certain regions of Brazil (Amazonia, Northeast, State of Espirito Santo, and Vale do Jequitinhonha in the State of Minas Gerais). We verified that none of the companies chosen to respond to our questionnaires are located in any of those areas.

Based on the foregoing, we determine that PROALCOOL loans are provided to a specific enterprise or industry, or group of enterprises or industries. Therefore, PROALCOOL industrial loans granted prior to the merger of the PROALCOOL and agricultural loan systems are countervailable to the extent that they were provided on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agro-industrial loans received by ethanol distillers following the merger of the programs are not countervailable [*see*, "Final Negative Countervailing Duty Determination: Fresh Cut Flowers from Mexico" (49 FR 15007)].

At the time of our preliminary determination in order to ascertain whether PROALCOOL industrial loans were made on terms inconsistent with commercial considerations, we compared the interest rates on these loans to the interest rates of agro-industrial loans, taking into account the different levels of eligibility available under each program. Based on these comparisons, we found that PROALCOOL loans were given on terms inconsistent with commercial considerations. To measure the benefit, we used accomposite benchmark made up of the interest rates on agro-industrial loans and ORTN, as a measure of the rate of inflation.

For the final determination, we have reconsidered the basis for evaluating whether PROALCOOL industrial loans are given on terms inconsistent with commercial considerations and the benchmark for measuring the benefit, if any. We have concluded that our earlier reliance on agro-industrial loans was incorrect.

Of the distillers selected to respond to our questionnaire, none had agro-industrial loans prior to the merger of the PROALCOOL program with the agricultural loan program. Instead, the primary alternative sources of funds for the distillers were loans from the Banco Nacional de Desenvolvimento Econômico e Social (BNDES) and its subsidiary agency, the Agência Especial de Financiamento Industrial (FINAME). BNDES and FINAME loans have been found not to be countervailable in previous Brazilian countervailing duty investigations because they are provided to a wide range of industries [see, *e.g.*, "Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil" (49 FR 17988)].

Therefore, in accordance with the Subsidies Appendix, we have used company-specific benchmarks or, where the distiller did not take out a BNDES or FINAME loan in the same year as it undertook PROALCOOL loans, the BNDES or FINAME rates incurred by other distillers in that year. On this basis, we determine that PROALCOOL industrial loans were made on terms inconsistent with commercial considerations.

Respondents submitted information that the source of PROALCOOL loans was a World Bank loan to the government of Brazil. Documentation provided during verification shows that, in June 1981, the World Bank agreed to provide a loan to the government of Brazil for the purpose of financing PROALCOOL projects. The loan contract specified that the government of Brazil match the World Bank commitment. Funds provided by the World Bank are not countervailable [*see* "Initiation of Countervailing Duty Investigation: Certain Textiles and Textile Products from the Philippines" (49 FR 34382)]. Accordingly, for those PROALCOOL loans provided after June 1981, we are countervailing only that portion attributable to the government of Brazil's commitment under the terms of the World Bank contract.

To measure the benefit, we have computed the amount of principal and interest paid on the PROALCOOL loan during the review period and compared it to the amount of principal and interest that would have been paid that year had the financing been in the form of a BNDES or FINAME loan taken out in the same year as the PROALCOOL loan. For years where no BNDES or FINAME loans were taken out by the distillers, we have relied on best information available, derived from World Bank sources, to construct the benchmark. We used this methodology for measuring the benefits from PROALCOOL industrial loans, rather than the long-term loan methodology describe in the Subsidies Appendix, because payments under the benchmark loan are indexed to inflation. Therefore, we cannot calculate the grant equivalent to allocate over the life of the loan.

In addition, in reviewing PROALCOOL loan contracts received

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during verification, we found that the proceeds from PROALCOOL loans were applied to purchase machinery and equipment used in the manufacture of refined sugar as well as alcohol. Therefore, after measuring the benefit from the PROALCOOL industrial loans, using the methodology described above, we allocated the benefit over the distillers' total sales, and calculated a net subsidy of 1.65 percent *ad valorem*.

B. PROALCOOL Agricultural Credits to Distillers

During verification, we found that certain loans to distillers, which the government of Brazil had originally reported as PROALCOOL industrial loans, were actually PROALCOOL agricultural loans. Like PROALCOOL industrial loans, PROALCOOL agricultural loans are long-term loans which are administered by the Banco Central do Brasil (BCB), with commercial, federal, and state banks acting as agents. Certain distillers who are also sugar cane growers received these loans, which were tied to their production of sugar cane.

In December 1980, interest rates and eligibility levels on PROALCOOL agricultural loans were placed on a par with interest rates and eligibility levels on agricultural loans made with funds provided by the BCB. We verified that these agricultural loans were available to producers of all types of agricultural products in Brazil. Moreover, based on statistics provided in the response, sugar cane does not receive a disproportionate share of agricultural credits in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and sugar cane growers became eligible, as were all other agricultural producers, for agricultural loans carrying an interest rate of 3 percent, including full monetary correction.

Based on the foregoing, we determine that PROALCOOL agricultural loans are provided to a specific enterprise or industry, or group of enterprises or industries, because they are limited to growers of sugar cane for ethanol. Therefore, PROALCOOL agricultural loans given prior to the merger of the PROALCOOL and agricultural loan systems confer a subsidy to the extent that they were given on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agricultural loans received by ethanol distillers for their sugar cane operations following the merger of the programs are not countervailable [*see* our notice of "Final Negative Countervailing Duty Determination; Fresh Cut Flowers from Mexico" (49 FR 15007)].

To determine whether PROALCOOL agricultural credits were made on terms inconsistent with commercial considerations, we compared the PROALCOOL interest rate with composite benchmark rates made up of the interest rates on agricultural loans and ORTN. The composite benchmarks were constructed to take into account the different levels of eligibility for PROALCOOL and agricultural loans. Using this benchmark, we find that the PROALCOOL agricultural loans made before December 1980 are inconsistent with commercial considerations, and therefore confer a subsidy. We also find that PROALCOOL agricultural loans made after December 1980 are not inconsistent with commercial considerations. In order to measure the benefit, we applied our long-term loan methodology, using the benchmark interest rate described above as the discount rate. We allocated the benefit over the distillers' total sales during the review period, and calculated a net subsidy of 0.001 percent.

C. FUNPROCUCAR Long-Term Loans

Petitioners allege that certain ethanol distillers have received countervailable financing under the heading of FUNPROCUCAR. According to the government of Brazil, the now-terminated FUNPROCUCAR program was administered jointly by the Banco do Brasil and the Instituto do Açucar e do Alcool (IAA) throughout the 1970's in order to expand sugar refining capacity. IAA is the government agency which administers sugar and alcohol production and distribution in Brazil.

At verification, we ascertained that certain ethanol distillers had a number of FUNPROCUCAR loans outstanding during the review period. Althoug FUNPROCUCAR loans were tied to the expansion of production facilities for refined sugar, a product which is neither under investigation nor used as an unput for the product under investigation, the machinery which was purchased with these loans can also be used inthe production of fuel ethanol.

Because these loans were limited to a specific industry, the sugar refining industry, they are countervailable to the extent that they were provided on terms inconsistent with commercial considerations. To determine whether these loans were made on terms inconsistent with commercial considerations, we compared the interest rate with the following benchmarks.

For loans given in 1977, we used the same benchmark as for PROALCOOL industrial loans, *i.e.*, the BNDES/FINAME interest rate as derived from World Bank sources. For those loans given in 1975 and 1976, we used best information available. According to the World Bank, BNDES/FINAME applied a monetary correction cap of 20 percent in 1975 and 1976. We had no information on the average real interest charged. Therefore, we used the 1977 real interest rate and the partial monetary correction to construct our benchmark. We had no benchmark information for loans given in 1973 or 1974. Monetary correction was not applied until 1975. Therefore, we used the 1977 real interest rate as the best information available to calculate the interest differential.

Using these benchmarks, we find that the terms of FUNPROCUCAR loans were inconsistent with commercial considerations. In order to measure the benefit, we applied our long-term loan methodology. We allocated the benefit over the distillers' total sales during the review period, and calculated a net subsidy of 0.05 percent *ad valorem*.

D. IAA Financing

Petitioner's allege that the ethanol industry in Brazil has received financing on terms inconsistent with commercial considerations from the IAA. In its response, the government of Brazil stated that the Cooperativa Central dos Produtores de Açucar e Alcool do Estado de Sao Paulo (COPERSUCAR) had received a loan from IAA. COPERSUCAR is the cooperative to which all but one of the distillers from whom we requested responses belong.

During verification, we ascertained that COPERSUCAR was the only respondent that had received any financing from IAA.

Because the IAA loan to COPERSUCAR was limited to a specific enterprise, a cooperative of ethanol distillers and sugar producers, we find the loan to be countervailable to the extent that it was provided on terms inconsistent with commercial considerations. To determine whether this loan was made on terms inconsistent with commercial considerations, we compared the terms of the IAA loan with the terms on FINAME loans taken out by distillers in the same year. Using this benchmark, we find that the terms of the IAA loan are inconsistent with commercial considerations.

In addition, in response to a specific allegation by petitioners, we analyzed the creditworthiness of COPERSUCAR. As a cooperative, COPERSUCAR operates only as an administrative, marketing, and selling arm for its members, and is a non-profit organization. Therefore, COPERSUCAR's ability to repay the loan depends on the creditworthiness of its member companies, and we must examine the financial position of its members in order to determine whether COPERSUCAR itself is creditworthy. Based on our review of the financial ratios for the period 1978 through 1981 of the cooperative members chosen to respond to our questionnaires, we find these members, in aggregate, to be creditworthy in 1981, the year in which COPERSUCAR received the loan.

In order to measure the benefit, we applied our long-term loan methodology for loans to creditworthy companies. We allocated the benefit over COPERSUCAR's sales during the review period, and calculated a net subsidy of 0.12 percent *ad valorem*.

E. Income Tax Exemption for Export Earnings

Under Decree-Laws 1158 and 1721, exporters of fuel ethanol are eligible for an exemption from income tax on profits attributable to export revenue. Because this exemption is tied to exports and is not available for domestic sales, we determine that this exemption confers an export subsidy.

None of the trading company respondents claimed this exemption during the review period. However, several of the respondent distillers took an exemption from income tax payable in 1984 on export profits earned in 1983. We indexed the exempted profit, as required under Brazilian tax law, and multiplied it by each company's effective corporate tax rate to measure the benefit. We determined each company's effective corporate tax rate by taking the base tax liability and adding, where applicable, the standard surcharge for excess profits, and subtracting normal deductions such as the investment tax credit and the tax for the Programa de Integraçao Social (PIS) tax, which were taken by the respondents, and dividing the result by taxable income.

In certain past cases, we have refused to accept the investment tax credits in calculating an effective tax rate because, absent a showing of a reasonable expectation of returns from these investments, we considered them to be merely a way of targeting a company's taxes. However, in this proceeding, we verified that respondents received shares in certain investment funds and companies. Therefore, we have deducted the investment credits in calculating each company's effective tax rate.

As described above, we measured the benefit by multiplying the indexed value of the exemption by each company's effective tax rate and dividing the amount by the value of the distillers' exports. On this bases, we calculated a net subsidy 0.78 percent *ad valorem*.

II. Upstream Subsidies

Petitioners alleged that Brazilian fuel ethanol producers receive an "upstream subsidy" through the purchase of subsidized sugar cane inputs. Under section 771A(a) of the Act, we must apply the following tests in order to determine whether "upstream subsidies" are being paid or bestowed upon the product under investigation:

> The term "upstream subsidy" means any subsidy described in section 771(5)(B)(i), (ii), or (iii) by the government of a country that—
>
> (1) is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of merchandise which is the subject of a countervailing duty proceeding;
>
> (2) in the judgment of the administering authority, bestows a competitive benefit on the merchandise; and
>
> (3) has a significant effect on the cost of manufacturing or producing the merchandise.

Domestic Subsidy: PROALCOOL Agricultural Loans

Petitioners allege that sugar cane growers in Brazil have benefitted from long-term financing on terms inconsistent with commercial considerations under the PROALCOOL agricultural credit program. In response, the government of Brazil stated that certain sugar cane growers had received long-term agricultural credits from PROALCOOL. These credits were administered by the BCB, with commercial, federal, and state banks acting as agents.

In December 1980, interest rates and eligibility levels on PROALCOOL agricultural loans were placed on a par with interest rates and eligibility levels on agricultural loans made with funds provided by the BCB. We verified that these agricultural loans were available to producers of all types of agricultural products in Brazil. Moreover, based on statistics provided in the response, sugar cane does not receive a disproportionate share of agricultural credits in Brazil. In December 1983, PROALCOOL loans ceased to exist as such, and sugar cane growers became eligible, as were all other agricultural producers, for agricultural loans carrying an interest rate of 3 percent, including full monetary correction.

Based on the foregoing, we determine that PROALCOOL agricultural loans are provided to a specific enterprise or industry, or group of enterprises or industries, because they are limited to growers of sugar cane for ethanol. Therefore, PROALCOOL agricultural loans given prior to the merger of the PROALCOOL and agricultural loan systems confer a subsidy to the extent that they were given on terms inconsistent with commercial considerations. We also determine that, because agricultural loans are provided to a wide variety of agricultural and agro-industrial products, the agricultural loans received by sugar cane producers following the merger of the programs are not countervailable [*see*, "Final Negative Countervailing Duty Determination; Fresh Cut Flowers from Mexico" (49 FR 15007)].

To determine whether PROALCOOL agricultural credits were made on terms inconsistent with commercial considerations, we compared the PROALCOOL interest rates with composite benchmark rates made up of the interest rates on agricultural loans and ORTN. The composite benchmarks take into account the different levels of eligibility for PROALCOOL and agricultural loans. Using this benchmark, we found that the terms of the PROALCOOL agricultural loans made before 1980 are inconsistent with commercial considerations, and therefore confer a subsidy. To determine the benefit, we applied our long-term loan methodology. We allocated the benefit over total sales of sugar cane during the review period, and calculated a net subsidy of 0.03 percent, which is *de minimis*.

We examined several other domestic programs which were available to sugar cane suppliers:

- PLANALSUCAR Research and Development Program
- Regional Research and Development Programs
- Plantation Roads
- SUDENE

The first of these programs is determined not to confer a subsidy, and is discussed below in "Programs Determined Not to Confer a Subsidy:" the others are discussed in "Programs Determined Not to Be Used."

Because the subsidy to upstream suppliers of sugar cane is *de minimis*, the issues of whether (1) this subsidy has a significant effect on the cost of producing fuel ethanol, and (2) the subsidy confers a competitive benefit on fuel ethanol from Brazil are moot. Accordingly, we determine that no upstream subsidies are being paid or bestowed on fuel ethanol.

III. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Brazil of fuel ethanol under the following programs.

A. Research and Development Assistance

Petitioners allege that, under the aegis of PROALCOOL and the Programa Nacional de Melhoramento da Cana-de-Aucar (PLANALSUCAR), the government of Brazil provides research and development assistance aimed primarily at increasing the saccharose content of sugar cane, developing higher-yield and disease-resistant strains of sugar cane, and increasing the productivity of Brazilian distillers.

During verification, we ascertained that research and development assistance is not restricted to the sugar cane and ethanol industries, but is available to all sectors of Brazilian agriculture. In addition, all research papers generated under the PROALCOOL and PLANALSUCAR programs are published and made available to all interested persons, not only in Brazil but also in other countries, including the United States. Therefore, we determine that this program does not confer a subsidy.

B. Government Equity Infusions and Capital Assistance to Distillers

Petitioners allege that BNDES-Participaçoes S.A. (BNDESPAR), a holding company subsidiary of BNDES, and its predecessor Investimentos Brasileiros S.A. (IBRASA) have provided equity capital, purchased debentures, and guaranteed securities to promote the capitalization of the Brazilian fuel ethanol industry, and that such equity investments were made on terms inconsistent with commercial considerations.

In its response, the government of Brazil stated that since 1981 IBRASA/BNDESPAR has held a small equity position (less than five percent of the stock) in on ethanol distiller (Usina Costa Pinto S.A.) as a result of a public stock offering. Subsequent to the response, petitioners alleged that Usina Costa Pinto was on the verge of bankruptcy at the time of the public stock offering, and, therefore, the investment was on terms inconsistent with commercial considerations.

During verification,we found that IBRASA/BNDESPAR acquired a very small equity position in Usina Costa Pinto on the same terms and conditions as equity investments by private commercial banks. We also ascertained that another company, Costa Pinto Industria e Comércio Ltda. (CPIC), unrelated to Usina Costa Pinto, had indeed undergone a bankruptcy proceeding in 1981. CIIC is related to Sociedade Anônima Costa Pinto Exportaçao (CPEI), a trading company which exported fuel ethanol to the United States during the review period. We verified that CPEI had no government equity participation.

Because the IBRASA/BNDESPAR purchase of equity in Usina Costa Pinto was made on the same terms as purchases by private commercial banks, we find that that IBRASA/BNDESPAR's equity participation does not confer a subsidy.

C. Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNO

Petitioners allege that the ethanol-related activities of the predominantly state-owned energy conglomerate Petroleos do Brasil S.A. (PETROBRAS) are unprofitable, and that the government of Brazil's debt and equity infusions in PETROBRAS are enabling the conglomerate to continue its support of the Brazilian ethanol industry. Therefore, petitioners claim that the loans and equity infusions were on terms inconsistent with commercial considerations. In a later submission, petitioners alleged that PETROBRAS users retained earnings from its profitable petroleum and petrochemical activities, to make equity infusions into INTERBRAS, a trading company which is a separately incorporated, wholly-owned subsidiary of PETROBRAS. Petitioners claim that such equity infusions are made on terms inconsistent with commercial considerations, and that they are used by INTERBRAS to cover the operating losses it experiences on its export sales of ethanol. Finally, petitioners allege that INTERBRAS made equity infusions into INTERNO, its wholly-owned trading arm in the United States, and that these infusions were made on terms inconsistent with commercial considerations.

Based on our investigation, we have learned that PETROBRAS is an energy conglomerate in which the government of Brazil holds 51 percent of the equity. PETROBRAS does not produce ethanol. Instead, it purchases domestically produced ethanol and sells it to distributors and retailers in Brazil. PETROBRAS is not directly involved in fuel ethanol sales to the United States. INTERBRAS, its wholly-owned subsidiary, exports fuel ethanol as well as other non-fuel products. INTERBRAS does not sell ethanol in the domestic Brazilian market. INTERBRAS, in turn, owns a number of subsidiaries in various countries which act as selling arms for its export activities. INTERNOR is INTERBRAS' selling arm in the United States.

We have also learned that PETROBRAS has received no equity infusions from the government since 1976, which is the first year for which we asked for information. Furthermore, the government has not converted any debt to equity from 1976 through 1984. With respect to debt, PETROBRAS had two FINEP (Financiadora de Estudos e Projetos) loans and two PROALCOOL loans outstanding during the review period. The two FINEP loans are tied to products other than ethanol. The PROALCOOL loans were used to build storage tanks for ethanol.

Neither INTERBRAS nor INTERNOR has received direct government debt or equity infusions. However, PETROBRAS made equity infusions into INTERBRAS during 1976–1984 and, in 1983 and 1984, INTERBRAS converted some of INTERNOR's debt to equity.

In examining whether these equity infusions into INTERBRAS and INTERNOR confer a subsidy, petitioners contend that we must focus not on the overall equityworthiness of these firms, but rather on the profitability of the specific product line under investigation. In this way, they argue, subsidies cannot be removed from the scope of the countervailing duty law merely because profitable product lines are used to subsidize unprofitable product lines. Petitioners note that the concept and countervailability of "cross-product subsidization" was recognized by the Department in the countervailing duty investigation of *Nitrocellulose from France*, 48 FR 11971 (1983).

We determine that although PETROBRAS did have two preferential PROALCOOL loans, thus creating a subsidized pool of funds which could potentially be transmitted to INTERBRAS/INTERNOR via equity infusions, these infusions were not made on terms inconsistent with commercial considerations, and are therefore not countervailable. Because we have determined that PETROBRAS' equity infusions into INTERBRAS/INTERNOR were made on terms not inconsistent with commercial considerations, we do not have to reach the issue of whether PETROBRAS' profits constitute a potential source of subsidy funds for the activities of INTERBRAS/INTERNOR.

We determine further that the equity infusions by INTERBRAS into INTERNOR should be viewed as intra-company transfers of funds, and therefore not countervailable, because INTERNOR is merely the selling arm of INTERBRAS in the United States, and its activities are expressly stated to be an extension of its parent's.

Although they are separately incorporated entities, INTERBRAS treats the profits and losses from INTERNOR and its other sales subsidiaries as line items in its income statement. In addition, in an annual note to its financial statements, INTERBRAS states that its sales subsidiaries are merely extensions of its own activities. Therefore, we have examined only the equity infusions from PETROBRAS to INTERBRAS/INTERNOR. We have examined INTERBRAS/INTERNOR's financial ratios and find it to be equitworthy.

We reaffirm our normal practice of examining a company's overall equityworthiness when making a determination of whether infusions were made on terms inconsistent with commercial considerations. We have long held that the benefit from an equity infusion benefits all operations of a company. The Court has upheld this practice in *British Steel Corp.* v. *United States* (Slip Op. 85–26, March 6, 1985, p. 20):

> [T]he Court agrees with the defendants' contention that since equity investments in BSC benefitted all of its remaining manufacturing and exporting operation, it is unnecessary to trace the use of such funds or to find that they directly related to enhanced product competitiveness.

We disagree with petitioners' contention that we should focus on the profitability of INTERBRAS' ethanol activities in relation to its profitability on its other product lines in determining whether an equity investment is consistent with commercial practice. It is normal commercial practice for a firm engaged in a number of product lines to expect differing rates of return on each product line. Each product line must be sufficiently profitable over the long term to justify the commitment of resources by the company. However, simply because one product line has a lower rate of return than another does not indicate that a firm is behaving in a non-commercial manner. Were we to accept petitioners' rationale, any product line which achieved less than the average rate of return for the company as a whole would be considered as benefitting from the more profitable product lines. This leads to the absurd result that half of a company's activities are potentially subsidized.

Even if we had accepted petitioners' argument our determination that no subsidy was provided would not have changed. We verified that INTERBRAS/INTERNOR ethanol-related activities were not unprofitable during the period of investigation. Therefore, we determine that there were no subsidized equity infusions.

D. PETROBRAS Storage Assistance

Petitioners allege that PETROBRAS has provided storage facilities to Brazilian distillers and cooperatives at non-commercial rates. In addition, petitioners allege that PETROBRAS made available to fuel ethanol exporters its pipeline from Sao Paulo to the port of Santos.

During verification, we ascertained that the rates fuel ethanol distillers pay PETROBRAS for the use of its storage facilities are identical to those they charge PETROBRAS for the same service. In addition, we found no evidence that PETROBRAS built storage tanks for use by the distillers, or that it provided the distillers with free use of its storage facilities. We also verified that PETROBRAS charged for the use of its pipeline to transport fuel ethanol. Therefore, we determine PETROBRAS storage assistance does not confer a subsidy.

E. PETROBRAS Payment Terms

Petitioners allege that ethanol distillers in Brazil receive two types of benefits by virtue of the payment terms for ethanol sales to PETROBRAS. First, payment is received by distillers within 15 days of invoicing. Petitioners contend that if the standard commercial payment terms in Brazil exceed 15 days, then PETROBRAS' "early" payment terms constitute a subsidy. Second, PETROBRAS takes delivery of ethanol over a twelve-month period but makes payments over a nine-month period, resulting in prepayment. Petitioners argue that such prepayment is unlikely to be consistent with standard commercial practice and, therefore, constitutes a subsidy.

All anhydrous fuel ethanol produced for the domestic market must be sold to PETROBRAS. Under IAA rules, PETROBRAS takes delivery of one-twelfth of each distiller's quota every month. Invoices are issued over a nine-month period, and payment is made by PETROBRAS within two weeks after invoicing. These payment terms are established by legislation.

Based on information gathered at verification, we determine that 15-day payment terms are not an unusual practice in Brazil. Terms normally range from payment on sight to 180 days. Therefore, we determine that PETROBRAS' 15-day payment terms do not confer a subsidy.

With regard to prepayment, we have concluded that the payment and delivery scheme reflects the agricultural commodity nature of this product. The harvest and production cycles are not continuous, yet the product is consumed year round. Thus, the delay in deliveries is the result of the necessary stockpiling and withdrawal for consumption during the period when ethanol is not produced. Therefore, we determine that this payment and delivery scheme can be considered normal commercial practice for agricultural commodities, and, as such, does not constitute a subsidy.

IV. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters of fuel ethanol in Brazil did not use the following programs which were listed in our notice of "Initiation of a Countervailing Duty Investigation; Fuel Ethanol from Brazil" (50 FR 11526).

A Regional Development Programs

Petitioners allege that ethanol distillers in the Northeast of Brazil are subsidized under the following federal and state programs.

1. *Cost Equalization Programs.* Petitioners allege that under this program, the IAA makes cash payments to fuel ethanol producers located in the states of Alagoas, Espirito Santo, Minas Gerais, Paraiba, Pernambuco, Rio de Janeiro, and others.

2. *SUDENE.* Petitioners allege that a government agency known as the Superintendência do Desenvolvimento do Nordeste (SUDENE) extends tax credits, exemptions, and other benefits to companies operating or investing in the Northeast of Brazil.

We verified that none of the companies from which we requested responses are located in any of the regions eligible for special assistance.

B. IAA and Other Government Loan Guarantees

Petitioners allege that the IAA and other Brazilian government agencies have guaranteed loans taken out by certain fuel ethanol producers and cooperatives.

We verified that none of the companies from which we requested responses had received loan guarantees from the IAA or any other government agency.

C. Restructured IAA Loans

Petitioners allege that certain loans taken out by ethanol distillers and

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cooperatives have been restructured with IAA assistance.

During verification, we ascertained that one of the respondents, Companhia Industrial e Agricola Sao Joao ("Sao Joao"), had its foreign-currency debt restructured and converted into cruzeiro-denominated debt in 1984. We verified that neither IAA nor any other agency of the government of Brazil was involved in this debt restructuring, and that it did not take place at the behest of the government of Brazil. Rather, the restructuring was carried out by Sao Joao's private creditors. Therefore, we determine this program was not used.

D. Accelerated Depreciation for Brazilian-Made Capital Equipment

Petitioners allege that, pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws.

At verification, we ascertained that none of the respondents had used this tax provision during the review period.

E. Preferential Working-Capitol Financing for Exports

Petitioners allege that producers and exporters of fuel ethanol have received preferential export financing from the Carteira do Comércio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil, which administers a program of short-term working-capital financing. During the review period, these working-capital loans were provided under Resolution 882 of the Banco Central do Brasil. On August 21, 1984, Resolution 882 was superseded by Resolution 950.

During verification, we ascertained that exports of fuel ethanol are not eligible for this type of financing.

F. Export Financing Under the CIC–CREGE 14–11 Circular

Petitioners allege that producers and exporters of fuel ethanol may have obtained preferential export financing under the Banco do Brasil's CIC–CREGE 14–11 circular.

During verification, we ascertained that none of the respondents had any such loans outstanding during the review period.

G. FINEX Export Financing

Petitioners allege that producers and exporters of fuel ethanol, as well as importers of fuel ethanol from Brazil in the United States, may have received preferential export financing under Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX).

During verification, we ascertained that fuel ethanol is not eligible for FINEX financing.

H. Resolution 330 of the Banco Central do Brasil

Petitioners allege that producers and exporters of fuel ethanol may have benefited from Resolution 330 of the Banco Central do Brasil, which provides financing for up to 60 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export.

During verification, we ascertained that none of the respondents participated in this program during the review period.

I. Exemption of IPI Tax and Customs Duties on Imported Equipment (CDI)

Petitioners allege that producers and exporters of fuel ethanol may have participated in the CDI program, under which companies may receive an exemption of 80 to 100 percent of customs duties and IPI tax on certain imported machinery. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

During verification, we ascertained that none of the respondents were eligible to participate in this program during the review period.

J. The BEFIEX Program

Petitioners allege that exporters of fuel ethanol may have received benefits from the Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportaçao (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX), which grants certain tax benefits to Brazilian exporters.

During verification, we ascertained that none of the respondents participated in this program during the review period.

K. The CIEX Program

Petitioners allege that exporters of fuel ethanol may have received tax benefits from the Comissao para Incentivos à Exportaçao (Commission for Export Incentives, or CIEX) under Decree-Law 1428.

During verification, we ascertained that none of the respondents participated in this program during the review period.

L. Incentives for Trading Companies

Petitioners allege that, under Resolution 883 of the Banco Central do Brasil, trading companies may obtain export financing similar to that obtained by manufacturers under Resolution 882 and 950.

During verification, we ascertained that none of the respondents participated in this program during the review period.

M. The PROEX Program

Petitioners allege that exporters of fuel ethanol may have benefited from short-term export credits under the Programa do Financiamento à Produçao par a Exportaçao (PROEX), previously referred to as the Apôio à Exportaçao program.

During verification, we ascertained that none of the respondents participated in this program during the review period.

N. Plantation Roads

Petitioners allege that sugar cane growers in the Northeast of Brazil have benefited from plantation roads built at government expense for their exclusive use.

During verification, we ascertained that none of the respondents are located in the Northeast of Brazil. Therefore, we determine this program was not used.

O. Regional Research and Development Programs

Petitioners allege that ethanol distillers and sugar cane growers located in the northeastern Brazilian states of Alagoas and Pernambuco have benefited from certain state-run research and development programs.

During verification, we ascertained that none of the respondents are located in the states of Alagoas and Pernambuco. Therefore, we determine that these programs were not used.

V. Program Determined to Have Been Terminated

IPI Export Credit Premium

Until recently, Brazilian exporters of manufactured products were eligible for a tax credit on the Imposto sobre Produtos Industrializados (Tax on Industrialized Products, or IPI). The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to confer a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of Ministry of Finance "Portaria" (Notice) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985. We verified that no producers or exporters of fuel ethanol received the IPI export credit premium after that date.

Accordingly, consistent with our stated policy of taking into account program-wide changes that occur subsequent to the review period but prior to our preliminary determination, we determine that this program has been terminated, and no benefits under the program are accuring to current exports of fuel ethanol to the United States.

Petitioners' Comments

Comment 1: Petitioners argue that the Department's failure to obtain subsidy data on all ethanol producers and exporters from the government of Brazil, and to base its sample solely on export volumes, skewed the subsidy findings and ignored a number of critical variables such as the creditworthiness of the distiller and/or cooperative; the nature of ownership (public or private); the location of production facilities; and the relationship between the distiller and grower (autonomous versus annexed). All these variables should have been measured and analyzed in order to determine the true level of subsidization occurring in the Brazilian fuel ethanol industry.

DOC Position: In light of the number of companies involved, the complexity of issues, and the mulitplicity of government agencies administering the programs, obtaining global subsidy information from the government of Brazil and investigating 100 percent of the producers and exporters of fuel ethanol would be an administratively impossible task. Moreover, this is not required by law. Thus, we followed our well-established practice of obtaining information from producers who account for at least 60 percent of the dollar volume of exports to the United States of the merchandise in question. See, *e.g., Bars and Shapes from Mexico* [49 FR 32887 (1984)]; *Oil Country Tubular Goods from Mexico* [49 FR 47054 (1984)]; and *Certain Textile Mill Products and Apparel from Malaysia* [50 FR 9852 (1985)].

We do not agree with petitioners' contention that our methodology has skewed the subsidy findings or ignored critical variables. We believe the selection method utilized, and the investigation conducted pursuant thereto, provides an accurate representation of the industry. For further discussion of our methodology in selecting companies to receive detailed questionnaires and our investigation of only those companies that account for 60 percent of exports to the United States of the subject merchandise, see *Certain Textile Mill Products and Apparel from Malaysia* (50 FR 9652).

Comment 2: Petitioners contend that the Department must base its countervailing duty deposit rate on a nationwide average level of subsidization (*i.e.*, all distillers capable of producing the product under investigation), due to the extensive control the government of Brazil maintains over the industry. It is argued that this information is relevant in order to capture subsidies to entities not currently exporting to the United States which might, however, do so in the future, and because the government of Brazil's role in ethanol production makes the distinction between exporters and domestic producers meaningless and artificial. Petitioners cite *Float Glass from Italy* as a precedent wherein the Department, in order to ensure that any potential subsidy was captured, examined both the region where the product was manufactured and the region from which the product was ultimately exported in considering whether regional subsidies were bestowed.

DOC Position: Countervailing duties are levied to neutralize the effects of benefits given to merchandise which is exported to the United States. Therefore, the law does not encompass entities which do not export to the United States. Whether or not the government of Brazil's "control" over the ethanol industry will affect Brazilian domestic entities' business decisions to export to the United States in the future is an issue inappropriate to this investigation. Changes in the make-up of the industry and the level of subsidization will be determined in any future administrative review. Our determination in *Float Glass from Italy* is inapposite to this investigation. That investigation involved examining a potential regional subsidy received by one of the plants of the company which manufactured the product under investigation. It does not stand for the proposition that the Department must examine every company in every region in order to determine whether a subsidy is being provided with respect to the merchandise under investigation. *See* also response to petitioners' Comment 1.

Comment 3: Petitioners contend that while autonomous distillers receive greater PROALCOOL loan benefits than annexed distillers, the distillers selected to respond to the Department's questionnaire are all annexed to sugar-making facilities, thereby minimizing, by definition, the amount of subsidy resulting from the limited inquiry.

DOC Position: We disagree. According to verified information on the record, both autonomous and annexed distillers pay the same interest rates on PROALCOOL loans. Therefore, we have no reason to believe that the absence of autonomous distillers from our pool of respondents has resulted in any underestimation of the level of benefits.

Comment 4: Petitioners argue that the issue of regional subsidies was "side-stepped" by the Department since all the distillers selected to respond are located in one state, where regional subsidies apparently do not exist.

DOC Position: The issue of regional subsidization was not side-stepped by the Department. The Department did not select distillers by region, but by the dollar volume of their exports to the United States. That all of the distillers selected are located in a single state, where regional subsidies do not exist, merely demonstrates that the companies comprising over 60 percent of exports of fuel ethanol to the United States do not use regional subsidies. Furthermore, the 60 percent methodology does not misrepresent the estimated net subsidy. *See* also response to petitioners' Comment 1.

Comment 5: Petitioners contend that since the Brazilian ethanol industry is not autonomous from the government and the industry and the government are by and large inseparable, the Department's standard sampling techniques fall far short of defining the totality of government subsidization.

DOC Position: While the government of Brazil controls prices and implements production quotas on ethanol in Brazil, we do not find that the industry is inseparable from the government. The distillers and cooperatives are privately owned, keep their own accounts, and are responsible to their shareholders for all business decisions. The methodology utilized by the Department does not, under these circumstances, fail to define the totality of government subsidization.

Comment 6: Petitioners contend that most participants in the Brazilian fuel ethanol industry (including COPERSUCAR, Sao Joao and Usina Costa Pinto) should be considered

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uncreditworthy from 1981 onward since, in the absence of debt back-ups and guarantees by the government of Brazil, these companies would not have received any loans.

DOC Position: We verified that none of the respondents received loan guarantees from the IAA or any other agency of the government of Brazil. Accordingly, this issue does not need to be addressed.

Comment 7: Petitioners contend that, for creditworthy companies, government-guaranteed debt constitutes a subsidy because the mere presence of the government guarantee ensures a lower rate of interest.

DOC Position: See answer to petitioners' Comment 6.

Comment 8: Petitioners argue that the Department should use a comparison of real interest rates in order to measure the subsidy value of cruzeiro-based replacement loans for those respondents with dollar-denominated debt in default.

DOC Position: We verified that Sao Joao's reorganization of its dollar-denominated debt was carried out by its private creditors without government direction, and that COPERSUCAR never had dollar-denominated debt at all. Accordingly, this issue need not be addressed.

Comment 9: Petitioners argue tht the government of Brazil's contention that the portion of PROALCOOL credits originating from the World Bank should not be countervailed is irrelevant, since (i) this assertion of World Bank financing is undocumented, and (ii) it is the government of Brazil which targets the recipients and uses of PROALCOOL funds.

DOC Position: We disagree. As explained above in the section on "PROALCOOL Industrial Credits to Distillers," a copy of the contract between the World Bank and the government of Brazil has been entered on the record. We verified that the contract itself specifies that the World Bank funds are to be applied to finance PROALCOOL projects.

Comment 10: Petitioners argue that the Department must use a commercial benchmark, *i.e.*, the charges that would be paid to a commercial lender, in measuring the benefits conferred by government-sourced debt. Therefore, every loan from a government source, obtained with a government guarantee or directed by the government must be examined. The Department's analysis in the preliminary determination was inappropriate because it compared subsidized debt to other government-based debt. In hyper-inflationary countries such as Brazil, commercial lenders are unwilling to provide long-term financing. Therefore, the appropriate benchmark is the short-term, commercial interest rate. Moreover, the benchmark rate should include compensating balances, because such balances are normally required for short-term, commercial loans and because the Deparrtment's benchmark in the recent ruling on *Certain Agricultural Tillage Tools from Brazil* included compensating balances. Finally, if the recipient of the loan is uncreditworthy, an additional risk premium must be included in the benchmark.

DOC Position: In countries where long-term financing or the terms of long-term financing are controlled by the government, it has been the Department's practice to use government-sourced or directed loans as benchmarks when those loans are provided to more than a specific industry or group of industries (see, *e.g.*, *Cold-Rolled Carbon Steel Flat-Rolled Products from Korea*, 49 F.R. 47284, and *Certain Textile Mill Products and Apparel from Colombia*, 50 F.R. 9863). In our view, this benchmark is the best measure of the benefit to the recipient of the subsidized loan because it reflects what the recipient would otherwise have paid for a comparable loan.

The short-term benchmark proposed by petitioners, a trade bill discount rate, cannot be considered comparable to long-term financing for investment. Even where the Department has used the short-term commercial rate in Brazil as a benchmark, most often for short-term export financing, we do not generally include compensating balances. This is because we have found that there is no uniform requirement for such balances (see, *e.g.*, *Oil Country Tubular Goods from Brazil*, 49 F.R. 46570). Compensating balances have been included in benchmarks for uncreditworthy companies, as was the case in *Certain Agricultural Tillage Tools*, where we used that benchmark as best information available. In this investigation we have found no loans to uncreditworthy companies and, therefore, there is no need for such a benchmark.

Comment 11: Petitioners contend the cruzeiro-based bail-out of loans received by COPERSUCAR, Sao Joao, and Usina Costa Pinto in 1981 and 1984 should not be compared to other subsidized, cruzeiro-based agricultural loans. The subsidy value of the replacement loans should instead be compared to a benchmarak reflecting the cost of dollar-denominated debt to uncreditworthy companies in Brazil. Moreover, this benchmark should be the highest rate associated with dollar-denominated long-term debt in Brazil, should include dollar-based risk premiums, and should reflect any additional subsidy due to the relaxation of the repayment schedules.

DOC Position: As discussed above, we found no evidence that cruzeiro-based loans replaced dollar-denominated loans for COPERSUCAR or Usina Costa Pinto. For Sao Joao the refinancing of dollar-denominated debt was carried out between Sao Joao and private commercial banks without government direction. Therefore, the correct benchmark for refinancing of dollar-denominated debt need not be addressed.

Comment 12: Petitioners contend that the department's use of a general agricultural financing benchmark to measure the benefits received through PROALCOOL industrial credits undervalued the subsidy, since general agricultural financing is itself highly subsidized. According to a Banco de Boston newsletter, commercial banks are required to set aside a portion of their reserves for loans to the agricultural sector and the Department has found export financing from similar "set-aside" programs to be countervailable in *Prestressed Concrete Steel Wire Strand from Spain*.

DOC Positioni: For reasons discussed above, we have not used agricultural loan terms or commercial short-term loan rates proposed by petitioners as the benchmark for PROALCOOL industrial financing to distillers. This is not, however, because of the alleged set-aside characteristic of the agricultural loan program but because we have used company-specific benchmarks. Moreover, with respect to the Spanish export loans, we found that the interest rates on those loans were preferential. While the lower rates may have resulted from the set-aside requirements, we countervailed the result of the program, not the set-aside characteristic *per se*.

Comment 13: Petitioners argue that agricultural loans are not an appropriate benchmark for PROALCOOL loans because it has not been demonstrated that agricultural loans are generally available. Based on information they have provided, petitioners claim that agricultural fiancing is scarce and that it is allocated disproportionately to certain crops, including sugar cane. Morever, the information submitted by respondents to demonstrate the general availability of agricultural financing shows only how the supply is allocated without any analysis of the relative demand. Unless agricultural entities have equal access to the available credit, petitioners contend that agricultural financing cannot be considered generally available.

DOC Position: We have reviewed the information supplied by petitioners and respondents regarding the availability of agricultural loans and have reaffirmed our preliminary finding that agricultural credits are not provided to a specific enterprise or industry, or group of enterprises or industries. In reaching this conclusion, we have considered information from the World Bank report, cited by petitioners, which indicates that, in terms of credit extended as a percentage of value of production, sugar cane does not receive a disproportionate share of agricultural funds. In addition, published statistics filed with one of the responses indicate that sugar cane did not receive a disproportionate share of agricultural funds. The World Bank report also offers explanations of why the demand for credit would vary among types of crops. Regarding the information submitted by petitioners on the recent shortage of agricultural loans, there is no indication that particular segments of the agricultural sector have suffered more than others. Hence, while demand may exceed supply, the alleged shortage of agricultural credit does not appear to affect certain crops disproportionately. Finally, the information submitted by respondents on the distribution of agricultural loans is more contemporaneous with the period during which PROALCOOL loans were given and, thus, is a more relevant measure of their availability.

Comment 14: Petitioners further contend that the Department should not use agricultural financing as a benchmark for PROALCOOl loans to sugar cane growers, because agricultural loans are highly subsidized. Instead, the Department should use a commercial interest rate in the range of ORTN plus 24 to 32 percent. Where appropriate, the benchmark should include a risk premium for uncreditworthy companies.

DOC Position: We disagree. We have chosen agricultural loans as the benchmark for PROALCOOL agricultural loans to sugar cane growers because they represent the major alternative source of financing to the growers, and because we have found them not to be limited to a specific eterprise or industry, or groups of enterprises or industries. We have not analyzed the creditworthiness of these companies because petitioners did not present any specific allegations that these companies were uncreditworthy.

Comment 15: Petitioners argue that the Department should use fixed interest rates in calculating PROALCOOL agricultural loan benefits, based on information received at verification.

DOC Position: The agricultural loans used as the basis for the PROALCOOL agricultural loan benchmarks were offered at fixed interest rates. Therefore, we are using a fixed interest rate benchmark.

Comment 16: Petitioners argue that the Department should rely on their estimates that one-half of the 1983–1984 sugar cane crop was used to produce ethanol and reduce by 50 percent the reported sales value of sugar cane in its calculation of the *ad valorem* benefit from agricultural subsidies on sugar cane.

DOC Position: Although PROALCOOL loans are used to finance the production of sugar cane for use in ethanol production, eligibility for these loans is not contingent upon the specific quantity of sugar cane earmarked for ethanol production. Moreover, even if we accepted petitioners' allegation, the upstream subsidy would still be *de minimis*.

Comment 17: Petitioners contend the Department should examine the discrepancy between the total debt figures in the balance sheet and loan ledger of Agropecuaria Monte Sereno S.A. ("Monte Sereno"), one of the sugar cane growers we investigated, to ensure that no additional loans were outstanding during the period of investigation.

DOC Position: As stated in the verification report on sugar cane growers, Monte Sereno's loan ledger, unlike the audited balance sheet, includes as yet unreleased parcels of long-term loans, which are posted in a separate account. The company's auditors removed these amounts from the balance sheet because they had not yet been received. After deducting these amounts from the outstanding loan balance according to the ledger, the Deparment investigator was able to reconcile it with the outstanding loan balance according to the balance sheet. Having done this, we are satisfied that no unreported parcels of long-term loans were disbursed during the review period.

Comment 18: Petitioners contend that, since the Department was unable to verify payment of principal and interest on non-PROALCOOL loans by Companhia Agricola Sertaozinho ("Sertaozinho"), one of the sugar cane growers under investigation, we should consider these loans as PROALCOOL agricultural loans and calculate the appropriate subsidy amount.

DOC Position: Documentation shows that Sertaozinho made principal and interest payments on its non-PROALCOOL loans.

Comment 19: Petitioners contend that in calculating benefits under the income tax exemption for export earnings program, the Department erred in reducing the effective corporate income tax rate from 35 percent to 26 percent, since there is no evidence that taxes earmarked for the development funds have actually yielded returns. Petitioners further contend there is no basis for a reduction in the calculated tax rate equal to the total amount of the investment because respondents have not demonstrated that they received any return on their investment.

DOC Position: We verified during the course of this investigation that the respondents received shares in certain investment funds and companies. In addition, in our recent investigation of *Certain Agricultural Tillage Tools from Brazil*, we verified that the respondents were receiving dividends from the same funds and companies that the ethanol distillers have invested in. Therefore, we find it is appropriate to deduct the investment credits in calculating the effective tax rate of each distiller.

Comment 20: Petitioners contend that, in calculating benefits under the income tax exemption for export earnings program, the Department erred in not adjusting respondents' tax liabilities for the surtax on excess profits, as in our recent investigation of *Certain Agricultural Tillage Tools from Brazil*.

DOC Position: We did not adjust respondents' tax liabilities for the surtax on excess profits at the time of the preliminary determination because we had tax returns for only a few of the distillers subject to this investigation. Now that we are in possession of the income tax returns of all the respondents we have in fact, followed our recent precedent, and have adjusted respondents' tax liabilities for the surtax on excess profits.

Comment 21: Petitioners contend the Department also erred in calculating export earnings eligible for the exemption by erroneously basing it on the income tax on the "portion of profits attributable to export revenue." The Department should instead have determined for each distiller and exporter the actual company-wide profits and the proportion of total sales which were exported.

DOC Position: In calculating the income tax exemption for export earnings, we do, in fact, use respondents actual company-wide profits and the proportion of total sales which were exported.

Comment 22: Petitioners contend the Department, in calculating the benefit arising from the income tax exemption

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on export earnings, should have indexed the respondents' tax liabilities for inflation, as it did in *Certain Agricultural Tillage Tools from Brazil.*

DOC Position: For purposes of our final determination, we have indexed the respondents' tax liabilities, in accordance with Brazilian tax law.

Comment 23: Petitioners argue that the benefit derived from the income tax exemption for export earnings should be allocated over export sales and not total sales, since this exemption is tied to exports and is not available to firms which have only domestic sales.

DOC Position: We agree. *See* answer to respondents' Comment 5 below.

Comment 24: Petitioners contend that BNDESPAR's purchase of equity in Usina Costa Pinto was inconsistent with commercial considerations since Usina Costa Pinto, like many other distillers, has been on the verge of bankruptcy since at least 1983. The mere fact that certain banks were also involved in the equity acquisition of Usina Costa Pinto should not prevent a finding of unequityworthiness.

DOC Position: The bankruptcy to which petitioners refer concerns another company, Costa Pinto Industria e Comércio Ltda., which we verified was not related to Usina Costa Pinto. We verified that IBRASA/BNDESPAR's purchase of a small percentage of Usina Costa Pinto stock was made on the same conditions and terms as those offered to, and paid by, other private banks in the stock offer. We also note that Usina Costa Pinto has been a consistently profitable company.

Comment 25: Petitioners contend that the redirection of PETROBRAS' oil-derived profits to its unprofitable ethanol activities clearly confers a counteravailable subsidy on these activities and should be treated as grants.

DOC Position: Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNOR."

Comment 26: Petitioners contend the Department should countervail PROALCOOL financing by PETROBRAS.

DOC Position: Our determination with respect to these loans is addressed in the section on "Government Debt and Equity Infusions into PETROBRAS/INTERBRAS/INTERNOR."

Comment 27: Petitioners contend that the provision by PETROBRAS of working capital, in the form of equity infusions, to meet INTERBRAS' heavy liabilities in 1983 and 1984 is an export subsidy at least as far as this working capital was used to support INTERBRAS' highly unprofitable ethanol export activities.

DOC Position: Our determination with respect to PETROBRAS' equity infusions in INTERBRAS/INTERNOR is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNOR."

Comment 28: Petitioners contend that INTERBRAS' equity infusions into INTERNOR in 1984 is a subsidy since the latter was absolved of a heavy dollar-denominated liability in exchange for more stock from its parent. Given the fact that INTERNOR is wholly-owned by the PETROBRAS family, additional stock purchases enhanced neither PETROBRAS' nor INTERBRAS' direct equity position in the venture. Furthermore, in all the years of its existence except 1984, INTERNOR appears to have operated at a loss.

DOC Position: Our determination with respect to INTERNOR's debt-to-equity conversion is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNOR."

Comment 29: Petitioners contend that, in its quantification of equity subsidies from PETROBRAS to INTERBRAS/INTERNOR , the Department should trace the government funds flowing through PETROBRAS companies' equity accounts to its ethanol operations. The Department should either adopt the formula developed in *Industrial Nitrocellulose from France* and compare the rate of return on ethanol sales to INTERBRAS' and INTERNOR's rates of return on all other products, or measure the actual net operating losses arising from INTERBRAS' sales of ethanol.

DOC Position: Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity Infusions in PETROBRAS/INTERBRAS/INTERNOR."

Comment 30: Petitioners contend that research and development assistance to ethanol distillers and sugar cane growers should be treated as a subsidy notwithstanding the nominal general availability of such benefits in Brazil. *De focto* availability in this case indicates that the programs in question are targeted to distillers and cane growers as the two major actors in the production of fuel ethanol (see *Cabot Corp.* v. *United Stotes* and *Agrexco Agricultural Export Co., Ltd.* v. *United Stotes*).

DOC Position: The Department has verified that research and development assistance in Brazil is not limited or "targeted" to ethanol distillers and sugar cane growers. Instead, the government provides research and development for all sectors of Brazilian agriculture, including but not limited to genetic research, soils, pork, cattle and forest industry programs.

Section 771(5) of the Act, in describing governmental benefits which should be viewed as domestic subsidies under the law, clearly limits such subsidies to those provided "to a specific enterprise or industry, or group of enterprises or industries." We have followed this statutory standard consistently, finding countervailable only the benefits from those programs which are applicable and, in fact, available only to one company or industry, a limited group of companies or industries, or companies or industries located within a limited region or regions within a country. See, *e.g.*, "Final Affirmative Countervailing Duty Determination; Certain Steel Products from Belgium," 49 F.R. 39304, 39328 (1982), and "Final Negative Countervailing Duty Determination; Fresh Cut Flowers from Mexico" (49 F.R. 25007). We do not agree with the decisions in *Cabot Corp.* v. *United States,* Slip op. 85–102 (Ct. Int'l Trade Oct. 4, 1985) (presently on appeal to the Court of Appeals for the Federal Circuit), and *Agrexco Agricultural Export Co., Ltd.* v. *United States,* 604 F. Supp. 1238 (Ct. Int'l Trade 1985). In *Carlisle Tire and Rubber Company* v. *United States,* 564 F. Supp. 834 (Ct. Int'l Trade 1983), the Court approved the Department's specificity test.

Comment 31: Petitioners contend that regional development programs administered by the government of Brazil bestow subsidies irrespective of whether any exports to the United States originated from these regions since these programs have spurred the production of ethanol in non-profitable areas, thereby diverting ethanol produced in profitable regions to the United States.

DOC Position: Petitioners' allegation does not set forth a countervailable subsidy. Producers in regions which are exporting do not obtain an actual benefit from regional programs. Therefore, no countervailability exists.

Comment 32: Petitioners contend that PETROBRAS storage assistance to the ethanol industry is a subsidy and the absorption by PETROBRAS of those costs normally borne by producers and exporters of ethanol should be treated as direct grants.

DOC Position: We ascertained during verification that fuel ethanol distillers pay PETROBRAS the same rates for use of its storage facilities that PETROBRAS pays the distillers for the same service. Additionally, we found no evidence that PETROBRAS built storage tanks for use by the distillers, or that it provided the distillers with free use of its storage facilities.

Comment 33: Petitioners contend the Department should find that PETROBRAS storage assistance is offered on preferential terms since the documented difference between PETROBRAS' government-regulated storage charges and the rates charged by private companies have not been explained.

DOC Position: Since we ascertained during verification that fuel etanol distillers paid PETROBRAS the same rates for use of its storage facilities that PETROBRAS pays the distillers for the same service, we find that no preferentiality exists with respect to PETROBRAS storage assistance. Although there was one instance in which PETROBRAS was charged more than the uniform stroage rate, circumstances surrounding that transaction indicate that it was an exception to the normal commercial practice.

Comment 34: Petitioners contend that PETROBRAS' practice of early payment and pre-payment for ethanol deliveries is a subsidy and should be treated as a zero-interest loan with terms running from the date of payment to the date of receipt normally expected under standard commercial practice.

DOC Position: Because of the agricultural commodity nature of this industry, delivery delays simply reflect the necessary stockpiling and withdrawal from consumption during the three-to-five month period when sugar cane harvesting stops. We found during verification that PETROBRAS paid COPERSUCAR and several independent distillers two weeks after invoicing, which does not differ from standard commercial practice in Brazil.

Comment 35: Petitioners contend that PETROBRAS payment terms are countervailable since in a country where the monthly inflation rate is over 10 percent, government-mandated payment terms of 15 days which are one-half to one-quarter those of commercial terms are highly preferential.

DOC Position: We verified that 15-day payment terms are not an unusual commercial practice in Brazil.

Comment 36: Petitioners contend that the Department failed in its analysis of export subsidies to consider deliveries by distillers to trading companies. Since under Brazilian law these transactions are considered an export, petitioners argue the Department should determine whether distillers are benefitting from any of the various export financing programs available in Brazil, as well as other export incentives such as BEFIEX, CIEX, and accelerated depreciation.

DOC Position: We verified that none of the responding distillers or trading companies benefited from any of the above-mentioned programs during the review period.

Comment 37: Petitioners contend that the FUNPROCUCAR program should be treated as a subsidy since FUNPROCUCAR loans could also benefit the production of "poor" molasses, which serves as an input for ethanol.

DOC Position: We have countervailed FUNPROCUCAR loans because the machinery purchased with these loans is used in the production of ethanol as well as refined sugar. *See* section on "FUNPROCUCAR Long-Term Loans."

Comment 38: Petitioners contend that the assumption and restructuring of COPERSUCAR's debt by IAA saved the cooperative from bankruptcy in 1981, and that COPERSUCAR thereby received a countervailable benefit.

DOC Position: We disagree. The facts on the record of this case demonstrate that there was no such debt assumption and restructuring. As discussed above, we did countervail a loan from IAA to COPERSUCAR.

Comment 39: Petitioners claim that since long-term cruzeiro financing was not available to any borrowers at the time of the IAA loan to the distiller's cooperative, the Department should use a dollar-denominated benchmark and calculate the benefit arising from the preferential interest rate and government assumption of exchange rate risks.

DOC Position: We were able to demonstrate at verification that long-term cruzeiro financing, in the form of BNDES and FINAME loans, was available to borrowers at the time of the IAA loan.

Comment 40: Petitioners contend that, if the Department chooses to use a cruzeiro benchmark, it should find COPERSUCAR uncreditworthy, use the highest cruzeiro interest rate available in Brazil, and apply an apporpriate risk premium.

DOC Position: Since we found COPERSUCAR to be creditworthy, we did not need to construct a benchmark for an uncreditworthy company.

Comment 41: Petitioners contend that a number of distillers have received FINAME, BADESP/PROTAN, and other working capital loans on terms which are higly preferential. Given the preferentiality and specificity of these loan programs, petitioners argue that they shold be countervailed as subsidies.

DOC Position: We found at verification that BADESP/PROTAN loans to distillers are in reality repassed loans from BNDES. As stated in the program section "PROALCOOL Industrial Loans to distillers," both BNDES and FINAME loans have been found not countervailable in previous determinations because they are not limited to an enterprise or industry or group of enterprises or industries. Although several distillers had working capital loans from private commercial banks, we found nothing in the terms of these loans that would lead us to conclude that they were made on non-commercial terms.

Comment 42: Petitioners contend that any subsidies received by sugar cane growers sharing common ownership with distillers should be countervailed directly and not subject to upstream subsidy analysis.

DOC Position: We disagree. When the allegedly subsidized suppliers of the input product are distinct from the producers of the product under investigation, we analyze whether the alleged subsidies are passed through under the upstream provision [*see* "Initiation of a Countervailing Duty Investigation; Certain Table Wine from Italy" (50 F.R. 40584)] In this case, although there is common ownership of the ethanol distillers and sugar cane growers, they are organized as separate companies, and the prices charged for sugar cane cannot be considered as inter-corporate transfer prices. Where a distiller also comprised sugar cane operations, we countervailed the PROALOOL agricultural credits reveived by the distiller (*see* the section on "PROALCOOL Agricultural Credits to Distillers").

Comment 43: Petitioners argue that the Department should investigate the nature of the IAA price adjustments claimed by sugar cane growers. If these are straight grants untied to any revaluation of the goods sold, they should be excluded from the total sales value and countervailed as a subsidy.

DOC Position: We verified that these price readjustments were merely the regular revaluation of prices which the IAA makes three times a year, usually in February, June, and October, to counter the effects of inflation. Therefore, these adjustments are not subsidies and have been included in the sugar cane growers' total sales value.

Comment 44: Petitioners contend that the scope of investigation section should also encompass "wet" non-fuel grade ethanol transported from Brazil to the Caribbean Basin region, "dried" there, and then exported to the United States for use as a motor fuel additive.

DOC Position: The issue concerning wet Brazilian non-fuel grade ethanol

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which is shipped to third countries to be dehydrated into anhydrous fuel ethanol for export to the United States was first raised in petitioners' prehearing brief. As we have no knowledge of actual shipments of this nature, originating from Brazil, entering into the United States, we determine that a clarification of the scope of our determination would be premature. If, at the time of any administrative review there is evidence of such imports, the Department will address the issue more fully.

Comment 45: Petitioners contend that the respondents' failure to provide English translations of all documents has hindered the Department in verifying the government of Brazil's claims and has deprived petitioners of the opportunity to participate meaningfully in this investigation. Petitioners argue that the Department should resolve all subsidy issues for which respondents submitted untranslated responses by using information contained in petitioner's submissions as "best information available" for the final determination.

DOC Position: Section 355.39(e) of the Department's regulations states that "[a]ll responses to requests for information must be in English . . . unless such requirement is waived." In cases where large quantities of voluminous documents are submitted in support of a questionnaire response, we have often waived the translation requirement for documents such as annual reports and descriptive brochures that would be overly lengthy and costly to translate if we felt that the Department's investigative staff was able to analyze these documents in the original language. Respondents' failure to provide English translations of all documents did not hinder the Department in its verification of respondents' submissions. We have not, therefore, resorted to best information available in our final determination. Furthermore, petitioners' comment regarding its lack of meaningful participation caused by untranslated documents was not made until a point too late for us to determine whether to require respondents to resubmit their information.

Comment 46: Petitioners argue that the Department has been placed at a distinct disadvantage due to the respondents' incomplete and untimely responses to the Department's questionnaires. With respect to any data outstanding, the Department should use "best information available" to complete the record for the final determination.

DOC Position: We disagree. We consider the responses we have received to be substantially complete and to have been submitted in time for us to analyze and verify them.

Comment 47: Petitioners argue the Department should not use any information submitted by the government of Brazil later than the date petitioners received the confidential versions of the verification reports, since it would allow respondents to "paper" unfairly the record after the effective closing date for petitioners' comments.

DOC Position: We disagree. Documentation submitted by the respondents since the verification does not consist of new information, but rather consists of clarifications, requested by the Department's staff, of existing responses. This information merely substantiates previously verified information and is not in itself the basis for the Department's determination.

Comment 48: Petitioners contend that the Department's doctrine of "general availability" should not be applied to any of the subsidies under investigation in this proceeding (debt restructuring, PROALCOOL loans and regional R&D). Petitioners argue that the Department's "general availability" doctrine is inconsistent with the countervailing duty statute and with recent court decisions.

DOC Position: The Department's doctrine of "general availability" is appropriately applied to the programs listed by petitioners since Section 771(5) of the Act, in describing governmental benefits which should be viewed as domestic subsidies under the law, clearly limits such subsidies to those provided "to a specific enterprise or industry, or group of enterprises or industries." In light of the Court's decision in *Carlisle Tire and Rubber Co.* v. *United States*, upholding the Department's standard for finding that benefits are generally available, we are not following the standard adopted by the Court in *Cabot* or *Agrexco*. *See* response to petitioners' Comment 30.

Respondents' Comments

Comment 1: Respondents assert that the Department's use of anhydrous alcohol sales as the denominator in calculating the benefit accruing to ethanol distillers from PROALCOOL industrial credits was inappropriate, since these credits were used to purchase machinery used in the manufacture of sugar and other products as well. In light of this assertion, respondents contend that we should have used total sales by the distillers as our denominator.

DOC Position: By reviewing PROALCOOL industrial loan contracts, we verified that the funds were used to purchase machinery used in the production of sugar, molasses, and other products. Accordingly, we are now allocating the benefit from PROALCOOL industrial credits over total sales.

Comment 2: Respondents argue that the hypothetical composite benchmark used to value benefits from PROALCOOL loans violates the Department's policy with respect to long-term loans as articulated in the Subsidies Appendix. Moreover, the amount of the benefit found has been artificially inflated because the Department cannot assume the companies borrowed the maximum amount under PROALCOOL, nor that the companies would have borrowed any additional funds to cover the eligibility differential. Therefore, the Department should use the agricultural or agro-industrial loan interest rate as the benchmark most reflective of any economic benefit.

DOC Position: As explained above, we have used BNDES and FINAME loans as benchmarks for PROALCOOL industrial loans to distillers because these loans are company-specific or represent what a comparable firm would otherwise have paid had it not obtained PROALCOOL industrial financing. Therefore, we have not used a composite benchmark for those loans.

We have continued to use the composite benchmark for PROALCOOL agricultural loans. While agricultural loans are the best representation of interest rates these firms would otherwise have paid for loans to finance cane growing operations, the level of financing available under the agricultural program was, by regulation, less than the level of financing from PROALCOOL. Therefore, it is not unreasonable to assume that additional funds would have to have been obtained elsewhere. Moreover, while borrowers may not always have used the maximum amount of financing available under PROALCOOL, it is just as likely that borrowers under the agricultural loan program did not obtain the maximum amounts. Therefore, it is reasonable to assume that the different maximum eligibility levels under each program reflect the relative differences in amounts borrowed.

Comment 3: Respondents contend that PROALCOOL credits are not countervailable since they were substantially financed by World Bank funds.

DOC Position: Funds provided by multinational organizations, such as the World Bank, are not countervailable [see *Certain Textile and Textile Mill Products from the Philippines*, 49 FR 34301 (1984) (initiation), and *Non-Rubber Footwear from Brazil*, 49 FR 9901 (1983) (preliminary)]. Under section 701(a) of the Act, the Department must determine whether "a country under the Agreement" or "a person who is a citizen or national of such a country, or a corporation, association, or other organization organized in such a country" is providing a subsidy with respect to a class or kind of merchandise. The World Bank is not a "country under the Agreement" as defined by section 701(a). Therefore, the portion of the funds provided under the PROALCOOL program after June 1981 which represents the financing of the World Bank is not countervailable.

Comment 4: Respondents contend that the Department, in calculating the benefit arising from the income tax exemption for export earnings, failed to use the respondents' effective tax rates.

DOC Position: See answer to petitioners' comment 19.

Comment 5: Respondents contend that the income tax exemption for export earnings is a domestic subsidy. Therefore, the Department should have allocated the benefit arising from this exemption over total sales rather than total exports.

DOC Position: We disagree. When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received depends directly or indirectly on the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitable to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenues instead of total revenues.

Comment 6: Respondents argue that the Department was incorrect in concluding that a loan provided by the IAA to COPERSUCAR bestowed a countervailable benefit since the interest rate provided on the loan was within the range of generally available long-term loan rates in Brazil.

DOE Position: We used as a benchmark for the loan to COPERSUCAR the terms paid by its member distillers for long-term financing in 1981. We consider COPERSUCAR to be comparable to its member distillers. Therefore, their loan rates are to be preferred as a benchmark over loan rates obtained by firms in other investigations.

Comment 7: Respondents contend that petitioners' allegations regarding the circumstances surrounding the IAA loan are incorrect. A review of COPERSUCAR's audited financial statements reveals that, not only did COPERSUCAR not have any overseas debt, but also that the cooperative's total debt did not approach the level alleged by petitioners.

DOC Position: We agree. *See* the section on "IAA Financing" above.

Comment 8: Respondents argue that the Department was correct in investigating subsidies only to producers who export to the United States. Moreover, basing the finding on firms which account for 60 percent of exports to the United States was consistent with the law and past practice.

DOC Position: We agree. *See* responses to petitioners' comments 1 through 5.

Comment 9: Respondents claim that the alleged subsidies to PETROBRAS are not countervailable since (i) PETROBRAS only sells its product in the domestic market; (ii) there is no evidence that the government of Brazil paid more for its shares than that paid by private shareholders; (iii) there have been no new cash equity infusions in PETROBRAS by the government of Brazil for the ten years; (iv) PETROBRAS has been one of the most profitable companies in Brazil; and (v) PETROBRAS stock is one of the highest priced, actively traded, and most attractive stocks in the Brazilian stock market.

DOC Position: Our determination with respect to PETROBRAS is discussed in the section on "Government Debt and Equity into PETROBRAS/INTERBRAS/INTERNOR."

Comment 10: Respondents contend that petitioners' request to review return on investment in ethanol operations is misplaced since any equity infusion is provided to an entire company and not to a specific department of a company. Even if the Department accepts petitioners' approach, both PETROBRAS and INTERBRAS demonstrated during the verification that their respective ethanol operations were profitable during the reveiw period.

DOC Position: Our determination with respect to this allegation is discussed in the section on "Government Debt and Equity into PETROBRAS/INTERBRAS/INTERNOR."

Comment 11: Respondents claim that PETROBRAS' equity infusion into INTERBRAS are commercially reasonable and are not countervailable since INTERBRAS has had a profit in every year since it began operations and private investment in PETROBRAS logically prohibits it from providing equity infusions in any corporation which is not equityworthy.

DOC Position: Our determination with respect to PETROBRAS' equity infusions into INTERBRAS is discussed in the section on "Government Debt and Equity Infusions into PETROBRAS/INTERBRAS/INTERNOR."

Comment 12: Respondents argue that petitioners' allegation regarding conversion of INTERNOR's debt into equity is inaccurate. There is no evidence on the record that this debt conversion was not based upon commerical considerations.

DOC Position: Our determination with respect to INTERNOR is discussed in the section on "Government Debt and Equity Infusions into PETROBRAS/INTERBRAS/INTERNOR."

Comment 13: Respondents argue that government equity infusions in Costa Pinto are not countervailable since IBRASA's purchase of stock in Costa Pinto was made on the same conditions and terms as those offered to, and paid by, other private banks in the stock offering.

DOC Position: We agree. See answer to petitioners' comment 24.

Comment 14: Respondents claim that fuel ethanol does not benefit from government assistance for research and development since virtually all agricultural research and development is conducted by the government of Brazil and is generally available to the public, thereby meeting criteria enunciated in *Cabot Corp.* v. *United States*. Unlike the situation in *Agrexco Agricultural Export Co. Ltd.* v. *United States*, respondents argue that they have provided information to the effect that the government of Brazil conducts virtually all agricultural research and development.

DOC Position: We agree that the research and development conducted by the government of Brazil is not limited to specific sectors of Brazilian agriculture. Additionally, research papers generated under these programs are published and made available to all interested parties.

Comment 15: Respondents contend that fuel ethanol does not benefit from. PETROBRAS storage facilities since it was shown at verification that distillers were charged for and paid for storage; that the rate charged by PETROBRAS was exactly the same rate charged by the distillers to PETROBRAS for storage; that storage charges are fixed by government regulations and are adjusted according to variations in the price of ethanol. Moreover, there was no evidence that PETROBRAS constructed tanks for distillers or provided free use of storage tanks.

DOC Position: Our determination with respect to this issue is discussed in the

section on "PETROBRAS Storage Assistance."

Comment 16: Respondents claim that petitioners' allegation that PETROBRAS pays in October for ethanol deliveries in May is incorrect. Ethanol is produced over a seven-month period, paid for over a nine-month period, and delivered over a twelve-month period. This schedule reflects the agricultural commodity nature of the product. Since ethanol is produced prior to payment, petitioners' allusion to interest-free working-capital loans is specious. Also, the 15-day payment terms between PETROBRAS and the distillers are normal in the Brazilian economy.

DOC Position: Our determination with respect to this issue is discussed in the section on "PETROBRAS Payment Terms."

Comment 17: Respondents argue that the Department should disregard amendments to the original petition which have not been filed concurrently with the ITC as they are in violation of 19 C.F.R. 355.26(e).

DOC Position: The Department does not consider petitioners' submissions, received after the preliminary determination but before verification, to be amendments to the original petition. In their submissions, petitioners clarified their original allegations and set forth commentary on the questionnaire responses and on the proposed verification outline.

Comment 18: Respondents contend that the Department has initiated investigations into numerous new allegations without even satisfying the threshold initiation requirements for an original petition (19 CFR 355.27).

DOC Position: The Department's investigation of petitioners' allegations has satisfied the threshold initiation requirements of 19 CFR 355.27. The allegations under investigation properly allege a basis on which a countervailing duty may be imposed under 701(a) of the Act. Furthermore, the Department has the authority to investigate any potential subsidy programs it discovers during the course of the investigation.

Comment 19: Respondents contend that petitioners' allegations regarding the "uncreditworthiness" of the ethanol industry are misplaced since (i) creditworthiness is a company-specific issue; (ii) commercial banks have determined that each loan was commercially reasonable and the Department should not second-guess such decisions; (iii) neither the members of COPERFLU nor COPERFLU itself are subject to this investigation; (iv) COPERSUCAR is one of the largest and strongest private companies in Brazil and a review of its payments on interest and principal demonstrates that it is a reliable borrower.

DOC Position: We have addressed in this notice the company-specific allegations of uncreditworthiness presented by the petitioners, and have found COPERSUCAR to be creditworthy based on the financial positions of its members in the years immediately preceding the IAA loan.

Comment 20: Respondents argue that petitioners' suggestion that the scope of investigation be expanded to include hydrous exports from Brazil which are then transformed to anhydrous in third countries is incorrect, since the United States Customs Service has reaffirmed that dehydration of hydrous ethanol constitutes a substantial transformation and this product subsequently cannot be considered fuel ethanol from Brazil and is outside the scope of this investigation.

DOC Position: The Department is not bound by United States Customs Service determinations. *Royal Business Machines, Inc. v. United States*, 507 F. Supp. 1007 (Ct. Int'l Trade 1980), *affd*, 669 F.2d 691 (Fed. Cir. 1982) recognized that the Department has the authority not only to define the scope but also to clarify the statement of scope of an investigation. Since petitioners' allegation regarding wet ethanol was received very late in this proceeding, and we have no evidence that any wet ethanol originating from Brazil has entered the United States, we are not resolving this issue at this time, but reserve the right to clarify the scope of investigation in any subsequent administrative review that may occur under section 751 of the Act or in a separate scope ruling.

Negative Determination of Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of fuel ethanol from Brazil. Under section 705(a)(2) of the Act, we must determine whether critical circumstances exist as alleged under 703(e)(1) of the Act. Critical circumstances exist when the Department finds that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Based upon our analysis, we have determined that the government of Brazil is providing an export subsidy to fuel ethanol under the income tax exemption for export earnings.

Accordingly, we must now determine whether there have been massive imports over a relatively short period of time. In making this determination, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above imports calculated over the last three years.

In this case, Department of Commerce statistics indicate that imports of the subject merchandise have not surged over a relatively short period of time within the meaning of section 703(e) of the Act. Therefore, for the reasons described above, we determine that critical circumstances do not exist with respect to fuel ethanol from Brazil.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government officials, inspection of documents and ledgers, and tracing the information in the responses to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of fuel ethanol from Brazil entered, or withdrawn from warehouse, for consumption, on or after November 12, 1985. As of the date of publication of this notice in the **Federal Register**, the Customs Service should require a cash deposit or bond of 2.60 percent *ad valorem* for each such entry of this merchandise. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for import Administration.

The ITC will determine whether these imports materially injure or threaten material injury to a U.S. industry 45 days after the date of publication of this notice. If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that injury exists, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on fuel ethanol from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of the suspension of liquidation as indicated in the "Suspension of Liquidation" section of this notice, equal to the net subsidy of 2.60 percent *ad valorem*.

This notice is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

January 21, 1986.

[FR Doc. 86-1706 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-504]

Extension of the Deadline for Final Countervailing Duty Investigation Determination; Oil Country Tubular Good From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the Lone Star Steel Company and CF&I Steel Corporation, the Department of Commerce is extending the deadline for its final determination in the countervailing duty investigation of oil country tubular goods from Taiwan to correspond to the date of the final determination in the antidumping investigation of the same product pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573).

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0189 or 377-2830.

SUPPLEMENTARY INFORMATION:

Case Histories

On July 22, 1985, we received antidumping duty and countervailing duty petitions filed by the Lone Star Steel Company and CF&I Steel Corporation on oil country tubular goods from Taiwan.

In compliance with the filing requirements of § 353.26 of our regulations (19 CFR 353.36), the antidumping duty petition alleged that imports of oil country tubular goods from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Taiwan of oil country tubular goods directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petitions contained sufficient grounds on which to initiate antidumping duty and countervailing duty investigations, and on August 12, 1985, we initiated these investigations. On September 23, 1985, we received a timely request by petitioners for an extension of the deadline date for the preliminary countervailing duty determination. An extension was granted on September 26, 1985 (50 FR 40580). On November 29, 1985, we issued a negative preliminary determination in the countervailing duty investigation. The preliminary determination in the antidumping duty investigation was made on December 30, 1985.

On December 4, 1985, petitioners filed a request for an extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the antidumping duty investigation.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping duty investigation (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, the Department is granting an extension of the deadline for the final determination in the countervailing duty investigation of oil country tubular goods from Taiwan to March 17, 1986, the current deadline for the final determination in the antidumping duty investigation.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 14, 1986.

[FR Doc. 86-1705 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-503]

Preliminary Affirmative Countervailing Duty Determination; Rice From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Thailand of rice. The estimated net bounty or grant is 1.57 percent *ad valorem*. However, we are taking into account several program-wide changes which occurred after our review period, but prior to this determination, and we are adjusting the bonding rate accordingly. We are directing the U.S. Customs Service to suspend liquidation of all entries of rice from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to 1.60 percent *ad valorem*.

If this investigation proceeds normally, we will make our final determination by April 3, 1986.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Loc T. Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone (202) 377-0167 or (202) 377-2830.

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SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Thailand of rice. The following programs are preliminarily found to confer bounties or grants:

- Export Packing and Stocking Credits.
- Investment Promotion Act.
- Price Support and Stabilization Program.
- Marketing Organization of Farmers' Fertilizer Program.
- Paddy Rice Mortgage Program.
- Supplementary Program to Implement the Government's.

Rice Policy—Preferential Financing to Rice Millers. We preliminarily determine the estimated net bounty or grant to be 1.57 percent *ad valorem* for all manufacturers, producers, or exporters in Thailand of rice. However, we are adjusting the bonding rate to reflect several program-wide changes that occurred after our review period. Thus, the cash deposit or bond on entries of this product will be 1.60 percent *ad valorem*.

Case History

On September 24, 1985, we received a petition from the Rice Millers' Association on behalf of the U.S. rice industry. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Thailand of rice receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and, on October 15, 1985, we initiated such an investigation (50 FR 42561). We stated that we expected to issue a preliminary determination by December 18, 1985.

On November 29, 1985, we determined this investigation to be "extraordinarily complicated" as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination by 30 days until January 17, 1986.

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a) (1) and (b) of the Act apply to this investigation. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

We presented a questionnaire to the government of Thailand in Washington, DC, on October 24, 1985. The responses to our questionnaire were received on December 6 and December 30, 1985.

Scope of the Investigation

The product covered by this investigation is rice, both milled and unmilled, and includes all varieties of rice. Rice is currently classified in the *Tariff Schedules of the United Stotes Annotated* (TSUSA) under items 130.5000, 130.5600, 130.5800, 131.3000, and 131,3300 according to the type and level of processing.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If the response cannot be supported at verification and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

It is the Department's policy to take into account program-wide changes where these are implemented after the review period, but before a preliminary determination, with the result that the rate for cash deposit or bonding purposes is raised or lowered, as appropriate. This policy is desirable because it promotes the expeditious elimination or curtailment of bounties or grants. The recognition of program-wide changes also permits the Department to adjust the bonding rate to correspond as nearly as possible to the eventual duty liability.

In this investigation we have discovered that, subsequent to the review period, but prior to this preliminary determination, two programs have been newly instituted resulting in a fundamental change in the bestowal of benefits. Descriptions of these program-wide changes, and of our treatment of them, follow in this section of the notice.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants is calendar year 1984.

The Upstream Issue

In a letter dated November 1, 1985, the government of Thailand argued that the government's provision of subsidized fertilizer to the Thai rice industry constitutes an "upstream subsidy" under section 771A(a) of the Tariff Act of 1930, as amended, because fertilizer is an "input product" in the production of rice. We disagree. In this case, the government of Thailand is not providing assistance to the producers of fertilizer, but rather directly to the growers of rice, the product under investigation, by acquiring fertilizer for distribution to the latter on a preferential basis.

On January 6, 1986, the government of Thailand once again brought up the upstream issue, this time arguing that paddy (rice) is an upstream input of milled rice and the Department should therefore investigate subsidies bestowed on paddy (rice) only under the upstream subsidy provisions of the countervailing duty law. The government of Thailand further argued that the Department should dismiss all allegations of subsidies bestowed on "paddy growing" because the petition does not offer any evidence to satisy the statutory requirements for countervailing upstream subsidies. We disagree. In a case concernig an agricultural product such as this, it is inappropriate to term the raw product an "input" into the next stage or further processed product. The primary, if not the sole, purpose of all segments of the industry in this case is to produce a single end product—milled rice. Substantially all of the raw agricultural product, paddy or unmilled rice, is dedicated to the production of milled rice. The fact that beyond this stage other processed products can be made, e.g., rice wine, is irrelevant. The key is that there is a single, continuous line of production from paddy rice to milled rice. Therefore, we preliminarily determine that paddy rice, or unmilled rice, is not an "input" of milled rice. Consequently, the upstream subsidy provisions of the countervailing duty law are not applicable in this case.

Based upon our analysis of the petition and the responses to our questionnaire, we peliminarily determine the following:

I. Programs Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Thailand of rice under the following programs:

A. Export Packing and Stocking Credits

Export packing and stocking credits are short-term loans used for either pre-shipment or post-shipment financing. These loans, which are provided through commercial banks, can be rediscounted at the Bank of Thailand through its export refinancing facility. Under the "Regulations Governing the Rediscount of Promissory Notes Arising from Exports" (B.E. 2514), the commercial banks, during the period for which we are measuring bounties or grants, charged the borrower a maximum of 7 to 9 percent interest per annum and then the bank rediscounted these loans at 5 to 7 percent interest with the Bank of Thailand. These loans are provided in baht for up to 90 days.

Because only exporters are eligible for these loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates. As specified in the Subsidies Appendix, we used the most appropriate national average commercial method of short-term financing as the benchmark rate for short-term loans. In its response, the government of Thailand stated that an average interest rate charged by commercial banks in 1984 on short-term loans, bills, and overdrafts was 14.39 percent. This average interest rate was used as the benchmark in *Circular Welded Carbon Steel Pipes and Tubes from Thailand* (50 FR 32751) (Aug. 14, 1985). Comparing this average interest rate to the rate charged on export packing and stocking credits, we find that the rate on export packing and stocking credits is preferential, and, therefore, these loans confer bounties or grants on the products under investigation. Applying this average commerical bank interest rate as the benchmark, we calculated an estimated net bounty or grant of 0.872 percent *ad valorem*.

B. Investment Promotion Act

According to the response of the government of Thailand, the Investment Promotion Act (B.E. 2520) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment, the Investment Promotion Act authorizes the exemption of import duties and certain taxes under sections 35 and 36. Section 35 provides various tax reductions to companies located in investment zones, set up at the discretion of the Board. Since only companies located in these zones may receive benefits under section 35, and since we are not yet able to determine the extent to which the government of Thailand limits which companies can receive these benefits, they appear to be targeted to specific regions. Section 36 provides various tax and custom duty exemptions to promote enterprises that export. The respondents indicate that section 36 benefits were not received by producers or exporters of rice.

The response identified Mah Boonkrong Rice Mill Co., Ltd., as the only rice firm that received benefits under the Investment Promotion Act. According to the respondents, Mah Boonkrong Rice Mill Co. received the benefits from this program under section 35. Although Mah Bookrong Rice Mill was not located in one of the four investment promotion zones previously established by the Board of Investment, the Board designed the rice mill as a private investment promotion zone, thereby granting it benefits accorded to companies located in these zones. Mah Boonkrong Rice Mill received business tax reductions of fifty percent during the review period.

We preliminarily determine that section 35 of the Investment Promotion Act, which limits recipients to industries located in designated regions, confers a bounty or grant within the meaning of the countervailing duty law. Under our tax methodology, we calculate the country-wide benefit from this program by dividing the amount of the tax reduction claimed by Mah Boonkrong Rice Mill on its tax return filed during the review period by the total value of milled rice during the review period. On this basis, we calculated an estimated net bounty or grant of 0.007 percent *ad valorem*.

C. Price Support and Stabilization Program

The support and stabilization of the price of rice in Thailand is undertaken by two government agencies, the Public Warehouse Organization (PWO) and the Marketing Organization for Farmers (MOF), and one private organization, the Agricultural Cooperative Federation of Thailand (ACFT).

1. According to the responses, the PWO, chaired by the Minister of Commerce, is charged with carrying out activities concerning rice, agricultural products, and other products in order to ensure that their quantity, quality, and prices are appropriate and that the supply is sufficient to meet the demand of the state and the public. The PWO can trade for its own account or pursuant to special instructions from the Minister of Commerce. Funds are received from the Farmers Assistance Fund (FAF) in the form of loans repayable at an interest rate of 2 percent annually. The PWO may sell in the domestic market or for export. The resonse states, however, that no exports by the PWO have ever gone to the United States. Therefore, we determine that this particular program is not used.

2. The MOF operates under the Ministry of Agriculture and Cooperatives with the objective of assisting farmers and farmers' associations by intervening in the market for paddy rice in order to raise the market price for paddy rice during certain periods in the harvest year. According to the responses, the activities of the MOF are funded by the FAF, and the MOF has performed similar functions as necessary with respect to products other than rice.

3. The ACFT is a private association of farmers operating at the district, provincial, and national levels. Among the objectives of the ACFT are the provision of funds to farmers in return for paddy rice which is then marketed, the provision of fertilizer to farmers financed against paddy production, and the provision of warehouse facilities for rice and fertilizer. In both 1984 and 1985, the ACFT received working capital loans from the FAF. These were one year loans at two percent interest per annum. The loans were used for purchases of fertilizer for sale to farmers and to undertake milling and marketing operations.

Respondents argue that the price support and stabilization programs cover many agricultural products and are not countervailable because they are provided to more than a specific enterprise or industry, or group of enterprises or industries. Furthermore, the government of Thailand claims that these programs were financed by the FAF, which is, in turn, funded by an export premium on rice; therefore, they should not be found to confer bounties or grants.

Based on the information provided by respondents, we find that, although some agricultural products have benefited from these programs sporadically, we have no information that the price support and stabilization programs are being provided to all agricultural products, nor do we find

indications of any objective, identifiable criteria which would automatically trigger the price support mechanism. As a matter of fact, according to the responses, price support actions by the government-run organizations are taken only at the special instructions of the Ministry of Commerce or at the discretion of the Ministry of Agriculture. Therefore, based on the information received, price supports seem to be made only to selected agricultural producers at various levels for different commodities at various times, all at the discretion of the government. As such, we cannot conclude that these programs are available to more than a specific enterprise or industry, or group of enterprises or industries.

Nor can we, at this time, agree with respondents that the benefits conferred by these programs should be offset by the export premium. The Act makes very specific provisions as to what are permissible offsets. Section 771(6) of the Act authorizes the Department, for purposes of determining the net bounty or grant, to subtract from the gross bounty or grant the amount of:

(A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the subsidy;

(B) Any loss in the value of the subsidy resulting from its deferred receipt, if the deferral is mandated by the government order; and

(C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

This provision is the exclusive source of permissible offsets. Nothing which does not strictly fit the descriptions under section 771(6) is allowable as an offset.

Respondents have not shown to our satisfaction that the export premium on rice is "specifically intended to offset the subsidy received" nor is it a "payment in order to qualify for, or to receive, the benefit of the subsidy".

In fact, the description of the fund indicates a broad-based revenue-raising measure.

Because the price support and stabilization programs are limited to a specific enterprise or industry, or group of enterprises or industries, and because the funds provided to support these programs are not specifically intended to offset the subsidy received, we preliminarily determine that these programs confer bounties or grants on rice farmers. However, we preliminarily determine that of the two government-run organizations undertaking these programs, only one, the MOF, participated in price support and stabilization for rice exported to the United States during the review period.

We requested information regarding the market price of rice by the MOF at the time of purchase in 1984, but respondents did not provide us with this information; therefore, to calculate benefits received under the MOF, we took the difference between the average farm price for rice in 1983 and the MOF support price for rice in 1983, as best information available, and multiplied it by the amount of rice the MOF purchased in 1983. This benefit was then divided by the total value of paddy rice for 1984, as best information available, to arrive at an *ad valorem* rate of 0.327 percent.

We also preliminarily determine that the preferential loans received by the ACFT for use in price support and stabilization for rice are countervailable. To calculate the benefits received under the ACFT, we took the total amount of loans acquired by ACFT from the FAF in 1984 and multiplied it by the difference between the two percent interest rate and the national average interest rate. The benefits were then divided by the total value of paddy rice to arrive at an *ad valorem* rate of 0.088 percent.

D. MOF Fertilizer Program

The MOF sells fertilizer to farmers, under certain conditions, at prices below market price. According to the responses, the fertilizer sales program of the MOF is limited to selling fertilizer to farmers certified by provincial officials as poor farmers or tenant farmers or those farmers whose total land area is 10 rai (approximately 4 acres) or less. In addition, there is a limitation of 500 kg. per farm or 50 percent of its requirements, whichever is less. The MOF sells four types of fertilizer, two of which are for use by rice farmers exclusively, and two of which can be used for rice as well as other grain and vegetable crops. The government of Thailand stated that, since eligibility for fertilizer purchases is not based on the crop for which the fertilizer is to be used but on the status of the farmer, the two types of fertilizer which can be used for other crops as well as rice cannot be traced to usage for growing rice. The respondents argue that this program is not specific to rice and that the benefits received by rice farmers are in proportion to the ratio of rice production to other crops. Furthermore, they argue that any benefit under this program was more than offset by the export premium on rice, the source of the funding for the program; therefore, this program is not countervailable.

Since two out of the four types of fertilizer sold under this program can be used only for growing rice, we believe that the benefit on these two types of fertilizer is limited to a specific enterprise or industry, or group of enterprises or industries. Since the other two types of fertilizer may be used not only for rice, but also for sugar cane, corn, casava, and most vegetable crops, we preliminarily determine that the benefit on these two types is not limited to a specific enterprise or industry, or group of enterprises or industries.

As to the respondents' argument regarding the offset, we have dealt with this issue under the "Price Support and Stabilization Program" section of this notice.

To calculate the benefit of the MOF fertilizer program, we took the total value of the two types of fertilizer used only for rice sold by the MOF in 1984 and multiplied it by the difference between the market price and the preferential price at which fertilizer was sold by the MOF to the farmers. This benefit was then divided by the total value of paddy rice in 1984 to arrive at an *ad valorem* rate of 0.279 percent.

E. Paddy Rice Mortgage Program

During the review period, this program did not exist. From January 1, 1985, through September 30, 1985, however, the Bank of Agriculture and Agricultural Cooperatives (BAAC) and the PWO participated in the paddy rice mortgage program. This program allows the grower to hold back paddy rice sales in times of depressed seasonal prices until prices recover. Under this program, the rice farmer can mortgage his rice for a period of five months by storing the paddy rice and obtaining a loan from the Bank of Agriculture and Agricultural Cooperatives (BAAC) equal to 80 percent of the value of the paddy rice against warehouse receipts. The loan is made at 14 percent interest, with half being paid by the farmer and half by the FAF. In addition, a 15 baht per month storage fee is charged by the PWO, half paid by the farmer and half by the FAF. The purpose of the program is to provide the farmer with income while he holds his paddy rice for sale at a time when he can realize higher prices for his rice.

Respondents argue that the benefit received under this program is not countervailable because (1) it is entirely offset by the export premium on rice; (2) the program is generally available; and (3) rice prices did not increase as expected.

We have dealt with the offset and general availability issues under the "Price Support and Stabilization Program" section of this notice.

Section 771(5) defines the term subsidy to include "the provision of capital, loans or loan guarantees on terms inconsistent with commercial considerations." There is no doubt that the loans granted under the rice mortgage program were at terms inconsistent with commercial considerations, since the farmer paid only half the stated interest rate which is itself lower than the national average commercial rate. Whether the prices of rice rose enough that year for the farmer to make a profit is totally irrelevant to determining whether the preferential loan provides a countervailable benefit.

Because the Rice Mortgage Program is limited to a specific enterprise or industry, or group of enterprises or industries and because the terms of the loans are inconsistent with commercial considerations, we preliminarily determine that this program confers a bounty or grant. We have included this program in our cash deposit rate for the reasons mentioned earlier in this notice.

To calculate the benefit of the Rice Mortgage Program, we took the total amount of the loans given to rice farmers in 1985 times the difference in the 1985 national average commercial rate of 14.16 percent and the preferential rate of 7 percent (paid by the farmers) times the number of days the loans were outstanding. this benefit was added to the benefit received for rice storage. the total was then divided by the 1985 value of paddy rice to arrive at an *ad valorem* rate of 0.017 percent for duty deposit purposes.

F. Supplementary Program to Implement the Government's Rice Policy—Preferential Financing to Rice Miller

During the review period, this program did not exist, to our knowledge. In 1985, however, the Ministry of Agriculture and Cooperatives, in conjunction with eight commercial banks, established a program to provide low interest loans at 8.25 percent per annum to participating rice millers. One half of the loan is from the commercial bank charged at an interest rate of up to 16.5 percent and the other half is provided by the FAF at zero percent interest.

Under this program, a rice miller buys paddy rice from the farmer and pays an advance of 80 percent of the total value of the paddy rice based on the administered price. The rice miller also provides the farmer with a bank guarantee against the 20 percent of the value not paid at the time of receipt. The miller obtains a 180 day loan for the 80 percent of the value paid at an effective annual interest rate of 8.25 percent and pays the bank one percent of the guarantee amount.

Because the Supplementary Program is limited to a specific enterprise or industry or group of enterprises or industries, and because the terms of the loans are inconsistent with commercial considerations, we preliminarily determine that this program confers a bounty or grant. We have included this program in our cash deposit rate for the reasons mentioned earlier in this notice.

According to the response, 60 percent of the loans to fund this program were given by the FAF at 0.00 percent interest and 40 percent were given by the banks at 16.5 percent interest. Therefore, to calulate the benefit, we weighted these percentages against the interest rate charged by the banks of 16.5 percent to arrive at a preferential interest rate of 6.6 percent. We then took the difference between the 1985 national average commercial interest rate of 14.16 percent and this preferential rate of 6.6 percent and multiplied it by the total value of the loans, times the number of days the loans were outstanding. This benefit was then divided by the total 1985 value of milled rice to arrive at an *ad valorem* rate of 0.008 percent for duty deposit purposes.

II. Program Determined Not to be Countervailable

Construction of Roads and Irrigation Facilities for Rice Producers

The petitioner alleges that producers and exporters of rice receive benefits through the construction of roads and irrigation facilities targeted to benefit rice producers. The government of Thailand stated that the rehabilitation and construction of roads to facilitate the transportation of agricultural goods is an obvious concern given the dominant position of agriculture in the Thai economy; however, it is only one of a number of objectives of the Thai government. Furthermore, road construction in rice growing areas has not been among the principal priorities of any of the highway development plans, because rice is grown predominantly in the lowland areas which are already quite devloped. In fact, the emphasis on rural road construction and maintenance has been concentrated in upland areas where crops such as maize, sugar-cane, cassava, jute, and para-rubber are grown.

As for the construction of irrigation facilities, the government of Thailand stated that the Department of Royal Irrigation of the Ministry of Agriculture and Cooperatives, whose functions are similar to those of the U.S. Bureau of Reclamation and the U.S. Corps of Engineers, is responsible for all irrigation development. Crops using irrigation in Thailand include rice, sugar, citrus, vegetables, beans, and tobacco, among others.

We have consistently held that government activities regarding the construction of roads and irrigation facilities constitute a bounty or grant only when they are limited to a spcific enterprise or industry, or group of enterprises or industries. Moreover, we have held that where limitations on use do not result from government activities, but instead result from the inherent characteristics of the good or service being provided, the government action does not confer a countervailable bounty or grant. Basic infrastructure facilities are, by their very nature, available for use only by companies and individuals located in the vicinity of such facilities. Roads, ports, and training centers established in a given location obviously benefit those located in that area more than they benefit firms and individuals located in other areas. Nevertheless, this does not mean that those located in close proximity to the infrastructure are receiving countervailing bounties or grants. The provision of basic infrastructure does not confer a counteravailable bounty or grant when the following three conditions are met: (1) The government does not limit who can move into the area where the infrstructure has been built; (2) the infrastructure that has been built is used by more than a specific enterprise or industry, or group thereof; and (3) those that locate there have equal access or receive the benefits of the infrastructure on equal terms.

Inasmuch as roads and irrigation facilities in Thailand are available for use by the agricultural sector as a whole, we prliminarily determine that this program is not countervailable.

III. Programs Determined Not To Be Used

We preliminarily determine that the manufacturers, producers, or exporters in Thailand of rice do not use the following programs which were listed in our notice of initiation.

A. Export Processing Zones

In 1979, Export Processing Zones were authorized through the "Industrial Estates Authority of Thailand Act" (B.E. 2522). According to the responses, none of the companies responding to our questionnaire located in the export processing zones and, thus, none receives benefits under this program.

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B. Rediscount of Industriol Bills

The petitioner alleges that producers and exporters of rice receive preferential financing for raw material purchases through a rediscounting of Industrial bills. According to the responses, rice millers and growers are not eligible for this program.

C. Incentives for Internotional Trading Firms

The petitioner alleges that the Board of Investment (BOI) grants to qualified international trading companies: (1) Import duty exemptions and the provision of duty drawback schemes; (2) income tax deductions of 200 percent of foreign marketing expenses; and (3) financial support from the Bank of Thailand, including permission to hold foreign-currency accounts.

The government of Thailand responded that between 1978 and 1980, the BOI granted certain incentives to international trading firms pursuant to the Announcement of the BOI No. 40/2521 (1978). This program was terminated on March 11, 1981, pursuant to the Announcement of the BOI No. 1/2524 (1981). As of this effective date, if a trading company had not already been certified, it was not eligible for certification and could not receive benefits. Only two companies that export rice to the United States are eligible to receive benefits under this program. The government of Thailand stated that neither of the two eligible companies received any benefits during the review period.

According to the responses, one company held a Singapore dollar account, but none of the companies under investigation held U.S. dollar accounts during the review period.

D. Export Promotion Fund

The petitioner alleges that producers and exporters of rice receive benefits from the Export Promotion Fund, which is administered by the Department of Commercial Relations, aimed at promoting rice exports. According to the responses, no projects related to rice were financed by the Fund in 1984 and 1985.

E. Electricity Discount for Exporters

The petitioner alleges that electricity authorities in Thailand provide discounts on electricity rates charged to producers of exported products. According to the responses, only industries entitled to participate under the Ministry of Finance regulations in the tax certificate program pursuant to the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" are eligible for the electricity discount. Since rice producers and exporters are not entitled to participate in the tax certificate program under the aforementioned act, they are ineligible for electricity discounts.

F. Tax Certificates for Exporters

The petitioner alleges that the producers and exporters of rice receive tax certificates based on the value of their exports, which may be used to pay tax liabilities. According to the responses, the primary authority for the rebate of indirect taxes is the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act." Section 12 of the Act states that "goods subect to tax and duty or fees when exported" are not eligible for rebates. Rice is subject to an export tax and an export premium; therefore, the exporters of rice are not eligible to receive these tax certificates.

IV. Program for Which we Need More Information

Paddy Price Raising Project

On October 22, 1985, the Council of Economic Ministers approved a new rice policy for the 1985/1986 crop year (December 1, 1985 through November 30, 1986), the "Paddy Price Raising Project". One aspect of this project is to fix a minimum price to be paid by millers for paddy rice delivered to the mill. Another is the provision of below market rate financing to millers meeting certain stock requirements.

According to the response, rice mills intending to participate in the compensatory financing program were required to register by December 1, 1985. Preliminary figures kept by the government of Thailand show that 978 rice millers have registered to participate. The Government estimates that about 30–40 percent of those registered will actually qualify for financing. As of the date of the response, no benefit has been given out. We will seek further information on how this program works, as well as any benefits received, during verification.

V. Program That Does Not Exist

Exemption of Soles Tax for Promoted Industries

The petitioner alleged that the producers and exporters of rice receive exemptions from sales tax if they qualify for promotion under the Promotion Investment Act. The government of Thailand responded that there is no law providing exemptions from sales for "promoted" industries other than the Investment Promotion Act, which is dealt with in the section of the notice entitled "Investment Promotion Act."

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rice from Thailand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a 1.60 percent *ad valorem* cash deposit or bond for each such entry of this merchandise.

This suspension will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. As previously stated, we will not accept for our final determination any statement in the response that cannot be verified.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on March 3, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs and at least 10 copies must be submitted to the Deputy Assistant Secretary by February 24, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with CFR 355.34, within 30 days of the publication of this notice, at the above address in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: January 17, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–1708 Filed 1–24–86; 8:45 am]

BILLING CODE 3510–DS–M

Importers and Retailers' Textile Advisory Committee Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on February 20, 1986, 2:30 p.m., #6 World Trade Center, Room 718, New York, New York. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

General Session: 2:30 p.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 3:00 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande, (202) 377–3737.

Dated: January 17, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–1643 Filed 1–24–86; 8:45 am]

BILLING CODE 3510–DR–M

Management-Labor Textile Advisory Committee Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held February 25, 1986 at 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials on problems and conditions in the textile and apparel industry).

General Session: 1:00 p.m. Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

Executive Session: 1:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande, (202) 377–3737.

Dated: January 17, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–1644 Filed 1–24–86; 8:45 am]

BILLING CODE 3510–DR–M

University of California, Irvine; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–128. Applicant: University of California, Irvine, Irvine, CA 92717. Instrument: NMR–FT Spectrometer, Model SMH 300 with Accessories. Manufacturer: Bruker Instruments, Inc., West Germany. Intended use: See notice at 50 FR 13844.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (January 16, 1984).

Reasons: The foreign instrument provides detailed lineshape analysis and a bandwidth of 2.5 megahertz. The National Institutes of Health advises in its memorandum dated October 22, 1985 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1642 Filed 1–24–86; 8:45 am]

BILLING CODE 3510–DS–M

University of Southern California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 83–066R. Applicant: University of Southern California, Los Angeles, CA 90089. Instrument: Excimer Laser, EMG 50E with Extended Gas Lifetime Option Complete with Optics. Original notice of this resubmitted application was published in the **Federal Register** of December 17, 1982.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (August 27, 1982).

Reasons: The foreign instrument provides low electrical noise operation permitting the measurement of weak signals (in the 20 to 50 microvolt range) from an indium-antimony photovoltaic detector. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1641 Filed 1–24–86; 8:45 am]

BILLING CODE 3510–DS–M

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[A-549-502]

Antidumping: Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain circular welded carbon steel pipes and tubes from Thailand are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend the liquidation of all entries of certain circular welded carbon steel pipes and tubes from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after October 3, 1985, and to require a cash deposit or bond for each entry in an amount equal to 15.69 percent *ad valorem* for Saha Thai Steel Pipe Company and 15.60 percent for Thai Steel Pipe Industry Company.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–5404 or (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that certain circular welded carbon steel pipes and tubes from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margins are listed in the "Suspension of Liquidation" section of this notice.

Case History

On February 28, 1985, we received a petition filed in proper form from the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports, and its member companies, on behalf of the U.S. industry producing certain circular welded carbon steel pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 20, 1985 (50 FR 12068), and notified the ITC of our action.

On April 15, 1985, the ITC found that there is a reasonable indication that imports of certain circular welded carbon steel pipes and tubes from Thailand are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 1680, April 1985).

On July 11, 1985, the petitioners alleged that the respondents' home market sales prices were below cost of production.

On July 16, 1985, the petitioners requested that we postpone the preliminary determination until September 26, 1985. They also alleged that critical circumstances exist. We postponed the preliminary determination on July 18, 1985 (50 FR 30493).

On July 25, 1985, we initiated a cost of production investigation.

We investigated Saha Thai Steel Pipe Company, Ltd., (Saha Thai) and Thai Steel Pipe Industry Company, Ltd., (Thai Steel) the manufacturers who account for all Thai exports of the merchandise to the United States. We examined 100 percent of the sales made by these companies during the period of investigation.

On September 26, 1985, we made an affirmative preliminary determination (50 FR 40427).

We verified the respondents' questionnaire resposes on October 10–24, 1985.

We conducted a public hearing on December 5, 1985.

On December 6, 1985, we postponed our final determination until not later than January 16, 1986.

Scope of Investigation

The products under investigation are: certain circular welded carbon steel pipes and tubes, also known as "standard pipe" or "structural tubing," which includes pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, or any wall thickness, as currently provided in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925 of the *Tariff Schedules of the United States Annotated.*

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the FOB or C + I packed price. We made deductions, where appropriate, for foreign inland freight, inland and marine insurance, handling and brokerage charges. We increased the United States price by the amount of import duties imposed by Thailand which had been rebated by reason of the exportation of the merchandise pursuant to section 772(d)(1)(B) of the Act (19 U.S.C. 1677a(d)(1)(B)).

Foreign Market Value

The petitioners alleged that sales in the home market were at prices below the cost of producing the merchandise. We attempted to examine production costs including all appropriate costs for materials, fabrication and general expenses. However, as explained in the verification section of this notice, below, we were unable to verify portions of the respondents' cost of production information. Therefore, for those portions which could not be verified, we calculated the cost of production by using the best information available, which was estimates derived from the respondents' and petitioners' information.

In accordance with section 773(a)(1)(A) of the Act, when there were sufficient sales of such or similar merchandise at or above the cost of production for a particular product group, we calculated foriegn market value for Thai Steel based on home market sales, packed, to unrelated purchasers. When there were insufficient sales of such or similar merchandise at or above the cost of production for a particular product group, we used constructed value as the basis for comparison.

When foreign market value was based on home market price, we made comparisons of "such or similar" merchandise groups based on grade, dimension, and end finish selected by Commerce Department industry experts. Where foreign market value was based on constructed value, we used timely information submitted by Thai Steel when we were able to verify it and, otherwise, best information available for materials, fabrication, general expenses, profit, and packing costs. When appropriate for constructed value, adjustments were made under § 353.15 of the Commerce Regulations for differences in circumstances of sale between the two markets. These adjustments were for differences in credit costs. Since the amount for general expenses was greater than 10 percent of the cost of materials and fabrication, we did not need to adjust it to the statutory minimum of 10 percent. Since the amount for profit was less than eight percent of the cost of materials, fabrication and general expenses, in accordance with statutory requirements, we added eight percent of the sum of the cost of materials, fabrication and general expenses for profit.

In the case of Thai Steel, we found sufficient sales in one product group at or above the cost of production to allow us to use its delivered home market prices to determine foreign market value. From these delivered prices we deducted inland freight costs. We made adjustments for differences in credit costs in accordance with § 353.15 of our Regulations (19 CFR 353.15). Since there were no home market packing costs, we added the packing costs incurred on sales to the United States.

In accordance with current Departmental policy, we also deducted from foreign market value for both respondents a business or sales tax which is levied on domestic sales of pipe and tube at a 5.5 percent rate. Although section 772(d)(1)(C) of the Act calls for adding these taxes to the United States price, this would result in distorting the tax absent an *ad valorem* margin. We are unable to establish what the appropriate tax basis would be for the exported merchandise since it is not subject to the tax. In the absence of knowing what the tax addition to U.S. price should be, we cannot calculate the differential. Therefore, as best information, we are making the adjustment by deducting these taxes from the price of the home market merchandise. Deducting from the home market price is the only tax neutral adjustment for both the *ad valorem* and absolute margin.

In the case of Saha Thai, we found sufficient sales at or above the cost of production for some product groupings, but not for others. For those sales at or above the cost of production, we used delivered home market prices to determine the foreign market value. From these delivered prices we deducted inland freight costs and trade discounts. We made adjustments for differences in credit costs. We also subtracted home market packing costs and added U.S. packing charges.

For product groupings for which there were insufficient sales at or above the cost of production, we calculated the constructed value by using information submitted by Saha Thai when it was timely and we were able to verify it, and, otherwise, best information available for cost of materials, fabrication, general expenses, profit, and packing costs. Since the amount for general expenses was less than ten percent of the cost of materials and fabrication, we adjusted it to the statutory minimum of ten percent. Since the amount for profit was less than eight percent of the cost of materials, fabrication and general expenses, in accordance with statutory requirements, we added eight percent of the sum of the costs of materials, fabrication and general expenses for profit. Where appropriate for constructed value, adjustments were made under § 353.15 of the Commerce Regulations for differences in credit costs in the two markets.

Negative Determination of Critical Circumstances

The petitioners alleged that imports of pipe and tube from Thailand present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine that: (1) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of the products under investigation, we ascertain whether there have been any prior investigations of these products in any other country. When Australia investigated these products, it made a negative final determination in February 1985. Neither the Department nor Treasury has investigated these products before. Therefore, we find that there is no history of dumping.

The second criterion is whether the importers knew, or should have known, that the exporter was dumping the merchandise. We normally consider margins of 25 percent or more to constitute constructive knowledge of dumping. Since the margins in this case do not meet or exceed this level, we find tht knowledge of dumping cannot be imputed to the importers.

Because we do not have either a history of dumping or knowledge on the part of the importers that the merchandise was being dumped, we, therefore, do not have to consider whether there are massive imports over a relatively short period.

Thus, for the reasons described above, we determine that "critical circumstances" do not exist with respect to pipes and tubes from Thailand.

Verification

In accordance with section 776(a) of the Act, the Department attempted to verify the cost-of-production data of Thai Steel and Saha Thai. However, respondents submitted numerous revisions to the cost-of-production data shortly before the start of and during the on-site verification. In addition, there was a lack of sufficient supporting documentation for certain portions of the respondents' cost-of-production information. Therefore, we determined that portions of the cost of production data submitted by the respondents could not be verified.

Petitioners' Comments

Comment 1. The petitioners allege that critical circumtances exist and that the Department should impute knowledge of dumping to the importers based on prices of pipe imports from countries other than Thailand, price of coil imports and margins lower than 25 percent.

DOC Position. We have found that critical circumstances do not exist. Petitioners' position ignores the many financial complexities and adjustments that are essential in calculating whether merchandise is sold at less than fair value. Only after thorough investigation and verification can such a determination be made under section 773 of the Act. Short-hand formulas for imputing knowledge of dumping such as those suggested by petitioners run the risk of arbitrarily penalizing importers who believe in good faith that their imports are not being dumped.

Comment 2. Petitioners state that the Department should use the best information available since the Department could not examine underlying documentation to test the

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accuracy of the summary documents at verification for one company, and the information and methodology changes significantly at the other company.

DOC Position. We agree. The Department used the best information available for those costs presented in the respondents' submission which could not be verified.

Comment 3. Petitioners state that the Department should use coil costs of Thai Steel only for the last three quarters of Thai Steel's 1984–1985 fiscal year instead of the full year.

DOC Position. We agree. The Department used best information to adjust the material costs to reflect the costs of the higher priced coils which were used by the company for the nine months ended March 31, 1985.

Comment 4. Petitioners contend that certain costs for Thai Steel are incorrect, specifically, the scrap rate, production rates and zinc yield.

DOC Position. In determining the steel scrap rate, zinc yield loss and transformation costs to be used for calculating the cost of production, the Department analyzed the respondent's data, which was considered by the Department not to be verified, to determine the reasonableness of the data compared to available U.S. industry data. The Department accepted the company's steel scrap rate but we adjusted the transformation costs and zinc yield loss.

Comment 5. Petitioners contend that the Department may not have included in the cost of production and may not have verified certain items, such as flux, acid for pickling and energy costs.

DOC Position. These costs were included as part of the fabrication costs, and adjusted accordingly, See Comment 4.

Comment 6. The Department should consider the business tax as a cost of manufacturing rather than as a general expense.

DOC Position. We disagree. The business tax was considered a part of the general expenses because it is paid on sales.

Comment 7. The amount of the business tax paid should be calculated by applying 5.5 percent to the price of pipe after deducting the amount of the tax.

DOC Position. We disagree. The business tax is already included in the home market price of the pipe. Therefore, we subtracted the verified amount from the home market price.

Comment 8. Since the foreign market value, pursuant to section 773(a)(1), is the price in the home market at the time of sale of the merchandise within the United States, the Department should consider only the home market price in the same month as sales to the U.S. Since the only sale to the U.S. occurred in February, 1985, then the Department need look at only February, 1985, home market sales.

DOC Position. We disagree. It is our practice to use foreign market value for the entire period of investigation, unless we are investigating imports from a hyper-inflationary economy or rapidly changing prices. Therefore, we have used all home market sales during the period of investigation.

Comment 9. The petitioners contend that the Department should compare U.S. sales of ASTM–120 pipe to both British Standard medium and heavy pipe sold in the home market because the specification of ASTM 1–120, in terms of wall thickness, is between both British specifications for some sizes and is thicker than the heavy specification for other sizes.

DOC Position. Our Departmental steel industry experts agree. When ASTM–120 pipe wall thickness is closer to British Standard medium, we used that for comparison purposes. Likewise, where the ASTM–120 is closer to British Standard heavy, we used it.

Comment 10. Saha Thai's duty drawback claims cannot be correct, particularly in light of what it pays for coil.

DOC Position. We disagree. We verified the amount that Saha Thai collects for duty drawback and have used that amount.

Comment 11. Petitioners contend that certain costs of Saha Thai do not seem plausible, specifically scrap loss, factory overhead and finishing galvanizing costs.

DOC Position. The Department did not consider the cost of manufacturing presented in the response received by the Department prior to its verification to be verified. Therefore, we adjusted such costs.

Comment 12. Petitioners contend that the business tax should not be included in Saha Thai's production costs if it is paid on sales.

DOC Position. In comparing cost of production to home market sales, we included the business tax in each. We did not include the business tax in constructed value or in the home market sales price, nor in the U.S. sales price when making our fair value comparisons.

Comment 13. Petitioners contend that not all interest expense should be allocated to SG&A expenses. Specifically, interest expenses arising from supplier credits should properly be considered a part of raw material costs.

DOC Position. The Department considers the financing expense of assets, long-term or short-term, to be fungible and, therefore, a general expense of operating the company.

Respondents' Comments

Comment 1. Respondents contend that the Department should not use best information available because they gave the verification team revised data at the outset of the verification and the data were fully verified. Any changes made to the data were insignificant.

DOC Position. The purpose of verification is to assess the accuracy of the response to the Department's questionnaire which is required, in most instances, prior to the preliminary determination. When required, respondents have an obligation to provide the Department with an accurate and complete response prior to the preliminary determination so that the Department has accurate and complete information on which to base its preliminary determination. That obligation is not met where a respondent reconstructs its response after the preliminary determination and presents it to our analysts or accountants shortly before the start of the verification or at the verification site. Indeed, this may render meaningless our preliminary determination. In addition, a thorough on-site verification can be conducted only where the Department has the opportunity: (1) To fully analyze information included in the response, (2) to assess comments submitted by other parties to the proceeding, and (3) to develop questions to pursue at the on-site verification. In cases where initial or supplemental responses to questionnaires are due after the preliminary determination date, they must be submitted in a timely manner to allow for analysis, comments and the development of questions prior to arrival at the verification site. Thus, while correction of minor errors is acceptable during verification, as a general matter we will not accept portions of responses (or entire responses) when they are changed in major respects shortly before the start of the verification or at the verification site because there is insufficient time for analysis and verification.

In this case both respondents prior to and in the course of the verification made significant changes in the cost submissions because the respondents were unable to provide support for their responses and because of the discovery of errors and inconsistencies.

Comment 2. Respondents contend that the Department, if it uses constructed value, should adjust for circumstances of sale.

DOC Position. We agree. See our section, *supra*, on "Foreign Market Value."

Comment 3. Respondents contend that with respect to the outstanding countervailing duty order, the Department should adjust the U.S. price to reflect the amount of the countervailing duty attributable to an export subsidy, instead of adjusting the deposit rate.

DOC Position. We disagree. The statutory prohibition of section 772(d)(1)(D) is on double assessment for the same situation of dumping or export subsidization. Nevertheless, the Departmental practice has been to deduct the amount of the export subsidy from the dumping deposit or bonding requirement when there is a final countervailing duty order in effect on the imported merchandise. It is reasonable not to collect a double deposit when there cannot be double assessment. There has not yet been any assessment of countervailing duties on the shipments referred to by respondents. If there is ultimately such an assessment attributable to export subsidies, assessment of dumping duties for that amount will not be made. In the meantime, we will continue to deduct the amount attributable to the export subsidy from the dumping deposit.

Comment 4. Respondents contend that the Department erred in not correcting a clerical error in the preliminary determination concerning the use of British Standard heavy pipe, when only medium pipe should have been used.

DOC Position. We disagree. The Department's steel industry experts have decided that it is proper to include British Standard heavy pipe for certain product groups in making our comparisons.

Comment 5. Respondents contend that the Department should adjust the business tax by adding it to the U.S. purchase price instead of adjusting the foreign market value.

DOC Position. We disagree. See "Foreign Market Value," *supra*.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of certain circular welded carbon steel pipes and tubes from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after October 3, 1985. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on certain circular welded carbon steel pipes and tubes from Thailand, we found export subsidies (50 FR 32751). Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amont of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Saha Thai Steel Pipe Co	15.69
Thai Steel Pipe Industry Co	15.60
All others	15.67

ITC Notification

In accordance with section 735(c)(1) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after we make our final affirmative determination

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

January 16, 1986.

[FR Doc. 86–1702 Filed 1–24–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-501]

Antidumping: Oil Country Tubular Goods From Argentina; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by April 8, 1986.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1769.

Preliminary Determination

We have preliminarily determined that OCTG from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act).

We have preliminarily found that the foreign market value of OCTG from Argentina exceeded the United States price on approximately 95 percent of the sales of this product. These margins ranged from 16 percent to 21 percent. The weighted-average margin for all comparisons made was 18.10 percent.

We have preliminarily determined that "critical circumstances" do not exist with respect to oil country tubular goods from Argentina.

Case History

On July 22, 1985, we received a petition from the Lone Star Steel Company (Lone Star) and CF&I Steel Corporation (CF&I) on behalf of the domestic OCTG industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners allege that imports of OCTG from Argentina are being, or are likely to be, sold in the United States at less than fair value

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within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a United States industry. The petition also alleges that sales of the subject merchandise were being made at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. The petitioners, however, did not provide information sufficient to justify our initiating a cost of production investigation. We notified the ITC of our action and initiated such an investigation on August 12, 1985 (50 FR 33386). On September 11, 1985, the ITC determined that there is reasonable indication that imports to OCTG from Argentina materially injure a U.S. industry (50 FR 37066).

On September 3, 1985, we presented an antidumping duty questionnaire to Dalmine Siderca S.A.I.C. (Dalsid). An extension of time to respond was granted, and on October 31, 1985, we received Dalsid's response to the questionnaire. After receipt of the response, the petitioners again requested that we initiate a cost of production investigation on December 6, 1985. We found that petitioners allegation contained the elements necessary for use to initiate a cost of production investigation, and did so on December 27, 1985.

On December 5, 1985, the petitioners requested that the Department postpone the preliminary determination until not later than January 21, 1986. The Department granted the request on December 16, 1985. (50 FR 51275). On December 26, 1985, the petitioners alleged that "critical circumstances" exist with respect to imports of OCTG from Argentina.

Scope of Investigation

The merchandise covered by this investigation is OCTG. The term OCTG covers hollow steel products of circular cross section intended for use in drilling of oil of gas. It includes oil well casing, tubing and drill pipe or carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary) as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

This investigation covers the period from February 1, to July 31, 1985. Dalsid is the only known Argentine producer who exports the subject merchandise to the United States. We examined virtually all sales to the United States made during the period of investigation.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States.

We calculated the purchase price for Dalsid based on the C.I.F., duty paid, price to unrelated United States purchasers. we made deductions, for port charges, inland freight, brokerage, duties, wharfage, marine insurance and ocean freight costs incurred in delivering the product to the United States.

Foreign Market Value

We determined that there were insufficient sales of OCTG in the home market for purposes of determining foreign market value. Therefore, we looked to third country sales as the basis of comparision. We have based such or similar product groupings on advice from Department of Commerce steel experts. We found that Colombia was the largest third county market to which Dalsid sold such or similar merchandise. For purposes of developing foreign market value for merchandise of which there were no sales of such or similar merchandise to Colombia we used sales to Canada since this was the largest market to which the appropriate merchandise was sold. Petitioners alleged that the sales to third countries were made at prices below the cost of production. We found that all sales of such or similar merchandise to Colombia were at prices at or above the cost of production. Therefore, we calculated foreign market value for that merchandise on the basis of the C.I.F. price with deductions for brokerage, ocean freight, inland freight and insurance. We made an adjustment for differences in credit terms under § 353.15 of our regulations. We deducted third country packing costs and added packing costs for merchandise sold to the United States. We compared "green shell" which as sold to the United States with the most similar grade and dimensions of OCTG sold to Colombia. We made an adjustment for differences in physical characteristics in accordance with § 353.16 of our regulations.

We found that all of such or similar merchandise sold to Canada was sold at prices below the cost of production over an extended period of time, in substantial quantities, and at prices that did not permit recovery of all cost within a reasonable period of time in the normal course of trade. We examined production costs, including materials; labor and general expenses. Therefore, we disregarded these sales in our analysis in accordance with section 773(b) of the Act since there were insufficient sales at or above cost of production. Instead, we used constructed value to determine foreign market value. In accordance with section 773 of the Act, we calculated contructed value by adding the costs of materials, fabrication, general expenses, and profit. For materials an fabrication we used the producer's actual cost figures. We used the actual general expenses since they exceeded the statutory minimum of ten percent. We used the statutory minimum of eight percent for profit prescribed in section 773(e)(1)(B) of the Act, since actual profit was less than eight percent of the sum of costs and general expenses. We added U.S. packing costs.

In calculating foreign market value, we made currency conversions from Argentine australs to United States dollars in accordance with § 353.56(a)(1) of our regulations using the exchange rates for July 1985.

Verification

In accordance with section 776(a) of the Act, we will verify the information provided by Dalsid by using standard verification procedures, which will include on-site inspection of manufacturer's facilities and examination of relevant sales and financial records of the company.

Preliminary Negative Determination of Critical Circumstances

Petitioners alleged that imports of OCTG from Argentina present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when the Department finds that (1)(a) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise under investigation or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling merchandise at less than its fair value and (2) there have been massive imports of the merchandise under investigation over a relatively short period.

In preliminarily determining whether there is a history of dumpling oil country tubular goods from Argentina in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping orders. Moreover, in the earlier investigation of Argentine OCTG in the U.S., the ITC found no injury (50 FR 21147). We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Although there are antidumping investigations in other countries, none has concluded in a final finding of dumping. Because we found no final determinations on the class or kind of oil country tubular goods which are the subject of this investigation, there is not the requisite history of dumping of the general class or kind of merchandise.

The second criterion is whether the importers knew, or should have known, that the exporter was selling the merchandise at less than fair value. We normally consider margins of 25 percent or more to constitute constructive knowledge of sales at less than fair value. Since the margins in this case do not meet or exceed this level, we find that knowledge of sales at less than fair value cannot be imputed to the importers.

We therefore, do not need to consider whether there have been massive imports over a relatively short period.

For the reasons described above, we preliminarily determine that "critical circumstances" do not exist with respect to OCTG from Argentina.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make an affirmative final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of the subject OCTG from Argentina, which are entered, or withdrawn from warehouse, for consumption, on or after the date this notice is published in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margin is as follows:

Manufacturer/Producer/Exporter	Margin
Dalmine Siderca S.A.I.C.	18.10
All other manufacturers, producers and exporters	18.10

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(no) product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since the dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in the final affirmative countervailing duty determination on OCTG from Argentina will be subtracted from the dumping margin for deposit or bonding purposes.

Public Comment

In accordance with § 353.47 of Commerce Department Regulations, if requested, we will hold a public hearing at 10 am on March 3, 1986 to afford interested parties an opportunity to comment on this preliminary determination at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W. Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication.

Requests should contain: (1) The party's name, address, and telephone number (2) the number of participants (3) the reason for attending and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 24, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 21, 1986.

[FR Doc. 86-1703 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-506]

Antidumping; Postponement of Final Duty Determination of Sales at Less Than Fair Value; Oil Country Tubular Goods From Canada

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondents in this investigation that the final determination be postponed until not later than 99 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of oil country tubular goods (OCTG) from Canada have occurred at less than fair value until not later than April 16, 1986.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1776.

SUPPLEMENTARY INFORMATION: On August 19, 1985, we published a notice in the **Federal Register** (50 FR 33387) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of oil country tubular goods from Canada were being, or were likely to be, sold at less than fair value. On August 17, 1985,

the International Trade Commission determined that there is a reasonable indication that imports of OCTG from Canada are materially injuring a U.S. industry. On January 7, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchandise (51 FR 660). The notice stated that if the investigation proceeded normally, we would make our final determination by March 17, 1986.

On Januray 15, 1986, counsel for Algoma Steel Corporation, Ltd., Sonco Steel Tube, Welded Tube of Canada and Ipsco Steel Inc., respondents in this case, requested that we extend the period for the final determination until not later than 99 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

Algoma, Sonco, Welded Tube and IPSCO are qualified to make such a request since they account for virtually all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final determination in this case not later than April 16, 1986.

The public hearing is also being postponed until 10:00 a.m. on March 5, 1986, at the U.S. Department of Commerce, Room 1851 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by March 3, 1986.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 21, 1986.

[FR Doc. 86-1704 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcements; Minnesota

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a three (3) year period, subject to available funds and satisfactory performance. The cost of performance for the first 12 months is estimated at $165,000 for the budget period July 1, 1986, to June 30, 1987. The IBDC will operate in the State of Minnesota. The award number will be 05-10-86010-01.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to American Indian non-profit organizations and for profit firms (those entities which are owned or controlled by one or more American Indian persons).

The IBDC is designed to provide management and technical assistance to eligible American Indian clients for the establishment and operation of businesses. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of American Indian individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of American Indian businesses, individuals, and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance.

The IBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an IBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is February 28, 1986. Applications must be postmarked on or before February 28, 1986.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: January 21, 1986.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 86-1626 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

National Bureau of Standards' Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet Wednesday, February 19, 1986, from 8:30 a.m. to 4:45 p.m., in Room 1107, Radio Building, National Bureau of Standards, Boulder, Colorado.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb, Office of the Director, National Bureau of Standards, Gaithersburg, Maryland 20899, telephone (301) 921-2411.

Dated: January 21, 1986.

Ernest Ambler,

Director.

[FR Doc. 86-1613 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

[Modification No. 2 to Permit 377]

Endangered Species; Permit Modification; Lawler, Matusky & Skelly Engineers

Notice is hereby given that pursuant to the provisions of § 222.25 of the regulations governing Endangered Fish or Wildlife (50 CFR Part 222), Scientific Research Permit No. 377 issued to Lawler, Matusky & Skelly Engineers, Pearl River, New York 10965, on May 3, 1982, (47 FR 19730) and modified on January 24, 1984 (49 FR 2928), is further modified as follows:

Section B-8 is deleted and replaced by:

8. This permit is valid with respect to the taking authorized herein until December 31, 1986.

This modification is effective as of January 1, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to, Parts 217-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367, November 27, 1974).

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1650 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 to Permit No. 403]

Marine Mammals; Permit Modification; Dr. Bruce R. Mate

Notice is hereby given that pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR 222), Scientific Research Permit No. 403, issued to Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365, on January 20, 1983 (48 FR 3641) is modified as follows:

Section B.6 is deleted and replaced by:

6. This Permit is valid with respect to the taking authorized herein until December 31, 1987.

This modification became effective on January 1, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to, Parts 217-222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367) November 27, 1984.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, Washington, D.C.;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115, and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1648 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Kenneth S. Norris, Mr. Randall S. Wells, and Dr. William T. Doyle (P20E)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Dr. Kenneth S. Norris, Mr. Randall S. Wells, and Dr. William T. Doyle.

b. Address Institute of Marine Sciences, Long Marine Laboratory, University of California, Santa Cruz, CA 95064.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Pacific white-sided dolphins, Lagenorhynchus obliquidens—17,600.

4. Type of Take: The animals will be inadvertently harassed during an observational study of social behavior and ecology of the species. Researchers will obtain audio and video recordings and sample prey species in the area.

5. Location of Activity: Southern California Bight.

6. Period of Activity: 3 Years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1649 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-22-M

VOL 51 ISS 17 JA 27 1986 UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammals; Application for Permit: Dr. Lanny H. Cornell and Mr. Edward D. Asper (P373)

Notice is hereby given that an Applicant has applied in due form for a Permit to take Marine mammals as authorized by the marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–22).

1. Applicant:
   a. Name Dr. Lanny H. Cornell and Mr. Edward D. Asper
   b. Address 1720 South Shores Road, San Diego, California 92109
2. Type of Permit: Scientific Research.
3. Name and Number of Marine Mammals: Unspecified number of all species of marine mammals.
4. Type of Take: Specimens will be taken as salvage from dead animals and may be imported and re-exported for scientific purposes.
5. Location of Activity: Worldwide.
6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Services.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 8300 Whitehaven Street, NW., Washington, DC.;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; and

Director, U.S. Fish and Wildlife Service, Room 611, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: January 17, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Dated: January 22, 1986.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office

[FR Doc. 86–1720 Filed 1–24–86; 8:45 am]

BILLING CODE 3510-22-M

THE COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts will next meet in open session on Friday, February 21, 1986 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, January 16, 1986.

Charles H. Atherton,

Secretary.

[FR Doc. 86–1671 Filed 1–24–86; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the People's Republic of China

January 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 28, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 30, 1985, a notice was published in the Federal Register (50 FR 53182) announcing the import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in China and exported to the United States during the agreement year which began on January 1, 1986 and extends through December 31, 1986.

During consultations held under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, the Governments of the United States and the People's Republic of China agreed to establish specific limits for the following products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986: cotton vests in Category 359pt., (only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0652, 384.4300, and 384.4420), cotton sheets in Category 361, cotton luggage in Category 369pt., (only T.S.U.S.A. numbers 706.3200, 706.3650, and 706.4111), and wool dresses in Category 436. The United States Government has decided to control imports in these categories at the agreed limits. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry, or withdrawal from warehouse, for consumption in the United States of textile products in the foregoing categories in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 51175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

January 22, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of April 30, 1985 which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton textile products, produced or manufactured in China and exported during the twelve-month period which began on May 1, 1985 and extends through April 30, 1986.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended and extended, between the Governments of the United States and People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 28, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in Categories 359pt.,[1] 361, 369pt.,[2] and 436, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the following limits:

Category	12-Month restraint limit [3]
359pt.[1]	1,397,250 pounds.
361	3,001,500 numbers.
369pt.[2]	3,885,000 pounds.
436	13,020 dozen.

[3] The limits have not been adjusted to account for any imports exported after December 31, 1985.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out this directive textile products in the foregoing categories which have been exported to the United States during the agreement year which began on January 1, 1985 and extends through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during the twelve-month period. In the event the restraint limits established for such goods during that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 19, 1983, as amended, which provide in part, that: (1) Specific limits may be exceeded by not more than 5 percent of their square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) except for certain exceptions specified in the agreement, specific limits may be increased for carryover and carryforward up to 30 percent of the applicable category limit in any agreement year, subject to consultations, according to the terms specified in the agreement; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementaton of the agreement. Any appropriate adjustments under the privisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was pulished in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–1645 Filed 1–24–86; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0652, 384.4300, and 384.4420.

[2] In Category 369, only T.S.U.S.A. numbers 706.3200, 706.3650, and 706.4111.

Announcing Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

January 22, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 28, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, the United States Government has decided to convert to specific limits in 1986 the levels for textile products in Categories 310/318 (cotton yarn-dyed fabrics), 342 (women's, girls' and infants' cotton skirts), 350 (cotton dressing gowns), 352 (cotton underwear), 359pt. (cotton headwear in T.S.U.S.A. numbers 702.0600 and 702.1200), 605pt. (yarns of man-made fibers in all T.S.U.S.A. numbers except 310.5500 and 318.5800), 611 (woven fabrics of man-made fibers), and 632 (man-made fiber hosiery), which are exported during 1986. The letter to the Commissioner of Customs which follows this notice controls the new specific limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

January 22, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended and extended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit,

BEST COPY AVAILABLE

effective on January 28, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the indicated limits:

Category	12-mo. restraint limit [1]
310/318	3,816,125 square yards.
342	72,775 dozen.
350	12,527 dozen.
352	133,935 dozen.
359pt.[2]	4,253,750 pounds.
605pt.[3]	717,500 pounds.
611	2,306,250 square yards.
632	1,716,875 dozen pairs.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.
[2] In Category 359, only T.S.U.S.A. numbers 702.0600 and 702.1200.
[3] In Category 605, all T.S.U.S.A. numbers except 318.5500 and 316.5800.

In carrying out this directive entries of cotton and man-made fiber textile products in the foregoing categories, except Categories 310/318, and 359pt.[2], produced or manufactured in the Republic of Korea and exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the restraint limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 310/318 and 359pt.[2] which have been exported prior to January 1, 1986 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The levels set forth above are subject to adjustment according to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, which provide in part, that: (1) During any agreement year specific limits and sublimits may be exceeded be designated percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits; (2) under specified conditions, specific limits and sublimits may be adjusted for carryover and carryforward not to exceed 10 percent; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the foregoing provisions of the agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption in the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-1646 Filed 1-24-86; 8:45 am]

BILLING CODE 3510-DR-M

[2] In Category 359, only T.S.U.S.A. numbers 702.0600 and 702.1200.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of Section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been rescheduled from January 28, 1986 as follows:

DATE: March 4, 1986, 9:00 a.m. to 5:00 p.m..

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on future initiatives in emergency planning.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 21, 1986

[FR Doc. 86-1697 Filed 1-24-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Electronic Warfare; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Electronic Combat will meet in closed session on 10-11 February 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine current electronic warfare technical issues, vulnerabilities of U.S. systems, and the means of countering the effects of these technologies.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

January 21, 1986

[FR Doc. 86-1698 Filed 1-24-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Follow-on Forces Attack will meet in closed session on 6-7 March 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to examine the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish attacking follow-on forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)

(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 21, 1986

[FR Doc. 86-1699 Filed 1-24-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Small ICBMs; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Small ICBMs will meet in closed session on 12 and 24 February 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings on ICBMs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

January 21, 1986

[FR Doc. 86-1700 Filed 1-24-86; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (EIS) for the West Bank Mississippi River-Vicinity of New Orleans in Jefferson Parish, LA, Project

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of Intent to prepare a Draft EIS.

SUMMARY:

1. Proposed Action

The proposed action to be described in this statement is the plan for providing hurricane protection measures (levees, floodwalls, etc.) on the West Bank of the Mississippi River in the vicinity of New Orleans from the Harvey Canal to the vicinity of Westwego, Louisiana.

2. Alternatives

a. *General.* In response to hurricane protection and related flood control concerns of the West Bank of the Mississippi River in the vicinity of New Orleans, the construction of hurricane protection measures is being proposed. Planning has been undertaken intermittently by the local and Federal government since 1966. As a result of recent hurricanes, particularly Hurricane Juan, extensive damage to property occurred.

b. *Plan 1 (The Crown Point Plan).* This plan would consist of new or enlarged levees along a recently permitted alignment from the Westwego area to near the lower end of the V-shaped levee. From that point a new levee would go nearly due south along the western edge of Crown Point to Bayou Barataria. The road parallel to Bayou Barataria would be raised from the LaRose-Lafitte bridge to the intersection of Bayou Barataria and Bayou des Familles. This plan would also include upgrading of the levee along Bayou Barataria and the Harvey Canal with floodgates installed at Bayou des Familles and Bayou aux Carpes. Elevation of the levees and other protective works would vary. No new development, however, would be allowed under this plan between the V-levee and Bayou Barataria to the south, since the U.S. Environmental Protection Agency has ruled that under section 404(c) of the Clean Water Act fill may not be discharged in this particular area.

c. *Plan 2 (The Permit/V-levee Plan).* This plan would also consist of new or enlarged levees along the recently permitted alignment from the Westwego area to the V-levee north of Crown Point. From that point, it would generally follow the V-levee to the vicinity of the Estelle Pumping Station. It would then continue along the existing Harvey Canal-Bayou Barataria levee.

d. *Plan 3 (The Existing Development Plan).* This plan would consist of new and enlarged levees along the permitted alignment on the west and would follow an alignment that would only protect currently developed areas and tie into and follow the existing Harvey Canal-Bayou Barataria levee. That segment of levee would also be upgraded.

e. *No Action.* The alternative of no action, or future condition without Federal action, will be the basis for comparing any action alternative considered.

3. Scoping Process

a. Public meetings were held in 1966, 1972, and 1984 regarding various proposals for hurricane protection on the West Bank of the Mississippi River. The proposals discussed at the 1966 and 1972 meetings were broad in scope and concerned with protection over a multi-Parish area. The 1984 meeting was concerned with a much smaller area and is generally the same area of impact to be addressed by the upcoming Draft EIS. All affected Federal, state, and local agencies and other interested private organizations and parties are encouraged to participate throughout the EIS process.

b. The most significant issues to be analyzed are project economics and the effects of the project on wetlands and areas of special interest such as the Jean Lafitte National Park and the Bayou aux Carpes Swamp.

c. The U.S. Fish and Wildlife Service will provide a Draft Fish and Wildlife Coordination Act Report for attachment to the statement.

d. A minimum of a 45-day review period for the Draft statement will be allowed for all interested agencies and individuals.

4. Scoping Meeting

A scoping meeting will be scheduled to take place during February 1986 and it will be open to the general public.

5. Availability

The Draft EIS is scheduled to be available to the public in August 1986.

ADDRESS: Questions concerning the proposed action and draft EIS can be directed to Mr. Dave Reece, U.S. Army Corps of Engineers, Environmental Analysis Branch [LMNPD-R), P.O. Box 60267, New Orleans, Louisiana 70160-0267, telephone [504) 862-2522.

Dated: January 14, 1986.

Eugene S. Witherspoon,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-1655 Filed 1-24-86; 8:45 am]

BILLING CODE 3710-84-M

Intent To Prepare a Federal Supplement to the Final Environmental Impact Statement; Carrier Battle Group, Puget Sound Region, Ship Homeporting Project

AGENCY: U.S. Army Corps of Engineers, Seattle District, (lead agency), DOD.

ACTION: Regulatory Permit Action: Preparation of a Federal Supplement to

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the Final Environmental Impact Statement (Prepared by the U.S. Navy) for the Carrier Battle Group, Puget Sound Region, Ship Homeporting Project.

SUMMARY: Preparation of a National Environmental Policy Act draft Supplement to the Final Environmental Impact Statement (FEIS) for the dredging of East Waterway in Port Gardner with deep water disposal, including the construction of a breakwater, moles, pier, wharf, and dockside facilities. The purpose of the work is to construct a homeport facility for a carrier battle group in Port Gardner, Possession Sound, Puget Sound at Everett, Washington.

1. Description of Actons: The U.S. Navy, Western Division Naval Facilities Engineering Command has applied for a Section 10/404 permit to dredge approximately 2,300,000 cubic yards and excavate 1,000,000 cubic yards by clamshell dredge with open-water confined (capped) disposal by bottom-dump scow at an open-water site near the base of the Snohomish River delta. Forty thousand cubic years of excavated material (wood refuse) will be deposited on uplands. Approximately 1,280,000 cubic yards of material will be placed in Port Gardner to construct a breakwater and two moles, and for bank protection. A 1,660-foot carrier pier, perimeter wharfs, and one intake and three outfall structures will also be constructed. The applicant has requested 5 years to complete the proposed work.

2. Project Background: A preapplication meeting was held for this project on 8 May 1985. A Final Environmental Impact Statement (FEIS) was published by the U.S. Navy on 14 June 1985. On 27 September 1985, the U.S. Navy submitted an application to the Seattle District for the proposed work. This was the subject of Seattle District Public Notice No. 071–OYB–2–010288 dated 15 October 1985. In light of comments received on the permit application through public and agency coordination (33 CFR Parts 320–330) and a thorough review of the FEIS, the Corps of Engineers determined that preparation of an EIS supplement is necessary to assess significant issues relating to direct and indirect project impacts and alternatives to the project. The City of Everett and the Washington State Department of Ecology are co-lead agencies to prepare an EIS Supplement under the Washington State Environmental Policy Act. To reduce duplication, efforts will be made to combine as much documentation, public hearings, etc. on these Supplements as possible.

3. Alternatives:

a. The Corps of Engineers has three alternative courses of action available:

(1) The permit could be issued as described in the public notice with standard conditions.

(2) The permit could be issued with standard and special conditions that would mitigate adverse impacts resulting from the proposed action.

(3) The Section 10/404 permit could be denied. A decision to deny the permit could be made with a view toward accomplishing the objective of the proposal at some other location or by a major redesign at the preferred alternative site.

At the present time there is a need for further information on project impacts before the appropriate alternative can be selected.

b. Alternatives to the proposed action considered by the U.S. Navy in their FEIS include: no action, the preferred site (Norton Avenue Terminal site in Everett, Washington), and the use of a different site (Terminal 91 site in Seattle, Washington).

(1) No Action. This alternative would require no further involvement by the Corps of Engineers.

(2) Preferred Alternative Site. Significant issues remain to be addressed, and will be evaluated from additional information being gathered, and from studies already initiated.

(3) Use of a Different Site. Other potential locations were evaluated in the "Carrier Battle Group Northwest Homeporting Site Evaluation Report (1984). Only one alternative site, the Seattle site, was considered in detail in the FEIS. Other reasonable alternative sites (such as Bremerton, Washington, Bangor, Washington, etc.) were not sufficiently addressed in the FEIS. The rationale for why these alternatives are not acceptable needs to be expanded.

4. Significant Issues: Major concerns were raised by resource agencies, Indian Tribes, and the public during the public interest review of the proposed project and permit action. The significant issues to be addressed in the draft supplement to the FEIS include: direct project-related impacts concerned with dredged material disposal, fisheries impact/mitigation, benthic impacts/mitigation, Indian Treaty fishing rights, water quality, and treatened and endangered species. Secondary and cumulative impacts ensuing from the proposed action will also be addressed, such as alterations to fish and wildlife resources, traffic patterns in the city of Everett, sewage treatment problems, urban expansion, and nuclear hazards.

5. Other Environmental Review and Coordination Requirements: Other environmental review and consultation requirements include preparation of a section 404(b)(1) report by the Corps of Engineers; consultation between the U.S. Navy, the Fish and Wildlife Service, and the National Marine Fisheries Service on threatened and endangered species, per section 7 of the Endangered Species Act; and acquisition by the applicant of a Washington State Water Quality Certification, a National Pollutant Discharge Elimination System (NPDES) permit, and insure consistency to the maximum extent practicable with the Washington State Coastal Zone Management Program.

6. Public Involvement: To assist in determining the scope of issues to be analyzed in depth in the supplement, correspondence will be sent to all affected agencies, affected Indian Tribes, and other interested persons indicating that the supplement is being prepared and inviting any comments regarding its scope not already expressed in responses to the permit application public notice.

7. Draft Supplement to FEIS Availability: The draft supplement to FEIS for this proposed action should be available by summer 1986.

8. Address: Questions and/or comments on this proposed action or the draft supplement to FEIS should be directed to: Mr. Tom Mueller, Regulatory Branch, U.S. Army Corps of Engineers, Seattle District, Post Office Box C–3755, Seattle, Washington 98124, Telephone (206) 764–3495 (FTS 399–3495).

Dated: January 17, 1986.

Rance H. Rountree,

Lt. Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 86–1658 Filed 1–23–86; 8:45 am]

BILLING CODE 3710-ER-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Proposal Review Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 11–14, 1986, 9:00 A.M. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 202/732–1887.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street, NW., Suite 574, Washington, DC 20036 (202/634–6160).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The Proposal Review Committee of the Council will meet in closed session starting at approximately 9:00 a.m., and will end at the conclusion of business each day, approximately 5:00 p.m. The agenda includes reviewing applications submitted under the (1) Indian Controlled Schools authorized by Part A of the Indian Education Act; (2) Planning, Pilot, and Demonstration Projects and Educational Personnel Development (Sections 1005 and 422) authorized by Part B of the Indian Education Act; and (3) Planning, Pilot, and Demonstration Projects for Indian Adults Program and Educational Services for Indian Adults Program authorized by Part C of the Indian Education Act. Under section 442(b)(2) of Part D of the Indian Education Act, the Council is authorized to review applications for assistance submitted under these programs and to make recommendations to the Secretary of Education with respect to their approval.

The reviewing of applications must be held in the highest confidence until the announcement is released by proper authorities as to which projects will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of agency action. Financial information which is privileged or confidential contained in and related to these proposals will be discussed at the review session. In addition, discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4), and (6) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: January 14, 1986. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 86–1685 Filed 1–24–86; 8:45 am]

BILLING CODE 4000-01-M

National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs; Appeals Deadline

AGENCY: Department of Education.

ACTION: Notice of deadline date for submitting appeals for funds; and notice of average program expenditures by type of institution.

SUMMARY: The Secretary gives notice of the deadline date for institutions of higher education wishing to file appeals of their initial allocations of funds (tentative awards) for award year 1986–87 under the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the cost of postsecondary education.

The Secretary also announces the average 1984–85 expenditure of funds per enrolled student for the NDSL, CWS, and SEOG Programs by type of institution. The Secretary uses these average expenditures in calculating the 1986–87 NDSL, CWS, or SEOG award of an institution that is participating in that program for the first or second time.

The NDSL, CWS, and SEOG Programs are authorized by Parts E, C, and Supart A–2, respectively, of title IV of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1087aa–1087ii, 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

Closing date for transmittal of appeals: The deadline date for an institution of higher education to submit an appeal of its 1986–87 tentative NDSL, CWS, or SEOG award is February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Easter, Division of Program Operations, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4621, ROB–3), Washington, DC 20202. Telephone (202) 245–2432.

SUPPLEMENTARY INFORMATION: An institution that wishes to participate in the NDSL, CWS, or SEOG Program must submit an application for funds to the Secretary before an established closing date. The information the institution provides on the application is evaluated according to the appropriate funding criteria to determine the institutions's appropriate funding level. Each institution is informed of its funding level. However, the regulations for each of these programs permit an institution to appeal its funding level.

Regulations containing the procedures for calculating institutional awards and appeals of those awards are contained in 34 CFR 674.7 for the NDSL program, 34 CFR 675.7 for the CWS program, and 34 CFR 676.7 for the SEOG program.

Average 1984–85 Expenditure of Funds per Enrolled Student by Program and Type of Institution

Listed below are the types of institutions and the average program expenditure per enrolled student for each type of institution. The Secretary uses this information to calculate the 1986–87 award of an institution that is participating in the NDSL, CWS, or SEOG program for the first or second time.

Type of institution	NDSL expenditure	SEOG	CWS Federal share
Cosmetology	$35	$60	$8
Business	68	60	24
Trade and technical	60	40	18
Art	87	74	60
Other proprietary	67	40	26
Other non-proprietary	72	26	38

Appeals Delivered by Mail

An appeal sent by mail must be addressed to Appeals, NDSL/CWS/SEOG, Post Office Box 23914, L'Enfant Plaza, Washington, D.C. 20026.

An institution must show proof of mailing its appeal by the deadline date. Proof of mailing must consist of one of the following:

(1) A legible receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

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(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an appeal is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use registered or at least first-class mail.

Appeals Delivered by Hand

An appeal that is hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus-Based Programs Branch, Room 4621, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. The Campus-Based Programs Branch will accept hand-delivered appeals between 8:00 a.m. and 4:30 p.m. daily (Eastern Standard Time) except Saturdays, Sundays, and Federal Holidays.

An appeal that is hand-delivered will not be accepted after 4:30 p.m. on February 28, 1986.

Applicable Regulations

The following regulations apply to the campus-based programs:

34 CFR Part 668—Student Assistance General Provisions.
34 CFR Part 674—National Direct Student Loan Program.
34 CFR Part 675—College Work-Study Program.
34 CFR Part 676—Supplemental Educational Opportunity Grant Program.

(20 U.S.C. 1087aa-1037ii, 42 U.S.C. 2761-2756b; and 20 U.S.C. 1070b-1070b-3)

(Catalog of Federal Domestic Assistance No. 84. 038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Education Opportunity Grant Program)

Dated: January 22, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86-1730 Filed 1-24-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Program Announcement; A Program Opportunity Notice for a Clean Coal Technology Program

AGENCY: Office of Fossil Energy, DOE.

ACTION: A Program Opportunity Notice for a Clean Coal Technology Program.

SUMMARY: The United States Department of Energy (DOE), Office of Fossil Energy (FE), is issuing a Program Opportunity Notice (PON) (Number DE-PS01-86FE60966) in response to Pub. L. 99-190, "A Joint Resolution Making Further Continuing Appropriations for FY 1986, and for Other Purposes." This Joint Resolution among other things, provides funds to conduct clean coal technology projects through cost-shared cooperative agreements for the construction and operation of facilities that would demonstrate the feasibility for future commercial applications of such technology.

Pub. L. 99-190 specifies that the Secretary of Energy shall not finance more than 50 percent of the total costs of a clean coal technology project as estimated by the Secretary of Energy as of the date of award of financial assistance. Further, at least fifty percent cost-sharing by project sponsors will be required in each of the design, construction, and operating phases proposed to be included in a clean coal technology project. Additionally, the PON will contain qualification criteria, and each offeror will need to demonstrate ability to meet these qualification criteria.

There are three objectives of this announcement. First, this announcement is to request written public comment on the draft PON for this program. For those on the DOE mailing list, copies of the draft PON will be mailed on January 30, 1986. Instructions for being placed on the mailing list to receive copies of the draft PON are contained below. In addition, copies can be picked up at DOE Headquarters on or after January 30, 1986.

DOE is requesting input from all interested parties to have the benefit of a broad range of public viewpoints as guidance in developing the final PON. Included in the draft PON will be DOE's proposed strategy for compliance with the National Environmental Policy Act. Oral or written responses to, or acknowledgement by DOE, of public comments received with respect to the draft PON will not be possible due to the limited time available to issue the final PON. The final PON will contain no discussion of the responses received. However, all timely comments received will be considered in finalizing the PON.

Second, this announcement is to serve as notice that the final PON for the Clean Coal Technology program will be mailed no later than February 17, 1986. In addition, a copy can be picked up at DOE Headquarters on or after February 18, 1986. Proposals in response to this PON will be due on April 18, 1986.

Third, this annoucement is to give notice that a preproposal conference for the Clean Coal Technology program will be held on March 4, 1986 to enable prospective offerors the opportunity to gain a better understanding of the objectives of this PON and to receive answers in response to written questions submitted regarding the PON.

All persons receiving the draft PON should retain their copies of the draft PON since the issuance of the final PON may be accomplished through substitution of pages, if needed. In order to have a complete PON, offerors may therefore need copies of the draft PON and the substitution pages.

Date of Preproposal Conference: March 4, 1986 at 9 a.m., e.s.t.

Location of Preproposal Conference: U.S. Department of Energy, Germantown Auditorium, 19901 Germantown Road, Route Md. 118, Germantown, Maryland.

Date for Submission of Public Comment on Draft PON: The deadline date for receipt of comments at the address identified below is 3:30 p.m., e.s.t., on February 6, 1986.

Address for Submission of Public Comment on Draft PON: Comments must be submitted in writing to the U.S. Department of Energy, Office of Procurement Operations, Attn: Mr. E. Stephen Logan, MA-452.1, Room 1I-065, 1000 Independence Avenue, SW., Washington, DC 20585.

For Copies of the Draft and Final PON: Written requests must be sent to U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, MA-451.1, Washington, DC 20013. Written requests to be placed on the mailing list for the draft and final PON should be received by January 30, 1986. Also, copies of the draft and final PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room 1J-005, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.s.t., Monday through Friday, except Federal holidays, on or after January 30, 1986 for the draft PON and on February 18, 1986 for the final PON. Requests for copies of the draft and final PON after February 18, 1986 will be filled only to the extent that copies are available.

For further information contact: Mr. E. Stephen Logan, Tel. (202) 252-1026.

Issued in Washington, D.C., on January 22, 1986.

Berton J. Roth,

Director, Procurement and Assistance, Management Directorate.

[FR Doc. 86-1725 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Availability of Program for Support of Advanced Coal Research; Pittsburgh Energy Technology Center

AGENCY: Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Availability of program solicitation for support of advanced coal research at U.S. colleges and universities.

SUMMARY: Now available Program Solicitation (PS) DE-PS22-86PC90501 which solicits grant applications from U.S. colleges, universities, and university-affiliated research centers for research and advance concepts related to coal science.

This activity is a part of the Department of Energy's coal research efforts; moreover, the purpose of this overall effort is to improve fundamental scientific and technical understanding of the chemical and physical processes involved in the conversion and utilization of coal.

In order to develop a focused national and regional program of university research on coal science, the Department is particularly interested in innovative, fundamental research pertinent to coal conversion and utilization limited to the following seven topics:

(1) *Coal Science:* Structure and reactivity of coal; physical and chemical characteristics of coal and coal-derived materials; analytical research applicable to coal and coal-derived materials including heavy waxes formed in indirect liquefaction processes; determination of functional groups in coal and coal-derived materials.

(2) *Reaction Chemistry:* Fundamental research directed toward an understanding of organic and inorganic chemistry of coal with respect to conversion and utilization; electrochemical investigation of conversion and utilization reactions; chemical coal cleaning; microbial desulfurization; upgrading of chars produced in conversion and utilization processes; novel reactions for depolymerizing coal; chemical reactions in supercritical fluids.

(3) *Surface Science:* Surface properties of coal pertinent to conversion and utilization; surface enhanced beneficiation; dewatering and pelletizing of fine coals; stabilization of coal-oil/coal-water slurries; surface properties of catalysts useful in conversion and utilization of coal; catalyst surface transitions under process conditions.

(4) *Advanced Process Concepts:* Improvements in practical homogeneous and heterogeneous chemical reactions for coal pyrolysis, preoxidation, combustion, direct and indirect liquefaction, and surface and underground gasification through novel chemical and/or reactor systems or through advanced mechanism or kinetics studies that provide insight on process concepts.

(5) *Thermodynamics:* Measurement and correlation of thermodynamic and transport properties pertinent to coal conversion and utilization; supercritical phase behavior; phase transformations of coal mineral matter occurring during conversion and utilization.

(6) *Engineering Fundamentals:* Transport phenomena at high temperatures and/or high pressures with or without chemical reactions; transport in 3-phase slurry reactors; formation and transport of aerosols; electrical effects in coal flames.

(7) *Environmental Science:* Chemistry of formation and/or elimination of gaseous and liquid pollutants arising from coal conversion and utilization reactions; sulfur, nitrogen, halide, alkali, and heavy metal chemistry related to gas or liquid cleanup; mechanisms and kinetics of catalytic destruction of nitrogen compounds produced in subtoichiometric and stoichiometric coal combustion regime at pressurized and nonpressurized conditions; size and composition of particulates in combustion products as a function of the properties of coal or coal-derived fuel and combustion temperature; collection/removal of particulates from aerosols.

Authority

DOE Organization Act, Pub. L. 95-91 (42 U.S.C. 7101); Federal Non-nuclear Energy Research and Development Act of 1974, Pub. L. 93-577 (42 U.S.C. 5901 *et seq.*); DOE Financial Assistance Regulations, 10 CFR Part 600, Subparts A and C.

Awards

DOE anticipates awarding grants for each project subject to the availability of funds. Approximately $4.31 million is available for the program solicitation, which should provide support for about 25-30 proposals.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 900-33, Pittsburgh, PA, 15236, Attn: Keith R. Miles.

Issued in Pittsburgh, PA on January 14, 1986.

Sun W. Chun,

Director.

[FR Doc. 86-1674 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-80-304]

Industrial Energy Conservation Program; Change in Deadline for Exempt Corporations and Adequate Reporting Programs

AGENCY: Department of Energy.

ACTION: Notice of change of date.

SUMMARY: Pursuant to 10 CFR 445.36, the Department of Energy (DOE) is announcing a change in the deadline for submissions to DOE of requests by corporations for exemption from direct reporting of energy efficiency progress and of requests by third party sponsors for approval of their alternative reporting programs. The deadline is changed from February 28, 1986, to February 4, 1986.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT:

Charles J. Glaser, Office of Industrial Program, CE-14, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2429

Vivian Lewis, Office of General Counsel, GC-12, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9507.

SUPPLEMENTARY INFORMATION: The Department of Energy hereby gives notice, pursuant to 10 CFR § 445.36, that the deadline for filing requests for exemption from direct reporting of energy efficiency progress under the Industrial Energy Conservation Program and for approval of an alternative adequate reporting program by a third party sponsor is changed from February 28, 1986, to February 4, 1986. The purpose of the earlier date is to facilitate earlier publication of the proposed and final notices of exempt corporations and adequate reporting programs, respectively, than has been the case in previous years.

All reports of energy efficiency progress under the program are due by June 1 annually. Earlier identification of exempt corporations and adequate

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reporting programs has been urged by some corporations. As they point out, publication of the final notice before June 1, rather than after that date, would remove any possible uncertainty as to which corporations may report through third party sponsors. It is possible that DOE will take steps to make this change applicable to future years.

As in the past, any corporation which was exempt for the last reporting period (calendar year 1985) and for which all information required is unchanged, need not refile a request at this time. The same is true for an approved sponsor except that the sponsor's chief executive officer or his designee must certify that all items in the previous year request are still true and accurate.

Issued in Washington, D.C., January 17, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-1652 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Intent To Request Office of Management and Budget Approval for CE-189-P, C, and S

AGENCY: Energy Information Administration, Energy.

ACTION: Notice.

SUMMARY: The Department of Energy plans to request clearance from the Office of Management and Budget (OMB) for the continuing use of forms CE-189-P, CE-189-C and CE-189-S. These forms collect plant, corporate, and sponsor data, respectively, for industrial energy efficiency and recovered materials reporting under its Industrial Energy Conservation Program. These forms have remained unchanged since inception, with the most recent Office of Management and Budget approval expiring in March 1986.

FOR FURTHER INFORMATION CONTACT: Charles J. Glaser, Office of Industrial Programs, CE-14 U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 252-2429.

SUPPLEMENTARY INFORMATION: Under the provisions of the Energy Policy and Conservation Act (Pub. L. 94-163), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) certain corporations in major energy consuming industries are required to report data on energy efficiency improvement and recovered materials utilization to the Department of Energy (DOE). The regulations governing the identification of corporations required to report and establishing the reporting requirements are contained in Title 10 of the Code of Federal Regulations Part 445, entitled "Industrial Energy Conservation Program."

Issued in Washington, DC, January 22, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 86-1726 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-012 OFP Case No. 55118-9276-21,22,23-24]

Powerplant and Industrial Fuel Use; Exemption; General Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting to General Electric Company exemption from prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to General Electric Company (GE or "the petitioner") of Schenectady, New York. The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a planned GE facility located in Baytown, Texas. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: The order shall take effect on March 28, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION:

Frank Duchaine, Office of Fuels Programs, Coal and Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC. 20585, Telephone (202) 252-8233

Steve E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The COGEBAY cogeneration plant is a cogeneration facility which will be located on land belonging to Mobay Chemical Corporation at its Baytown plant, West Bay Road, Baytown, Texas. The proposed COGEBAY cogeneration plant is a gas turbine, heat recovery steam generator (HRSG) and an extraction condensing steam turbine-generator installation which will supply steam to Mobay at 630 psig/509 °F. It is intended that the electric power from the gas turbine-generators and the condensing steam turbine-generator will be purchased by a Texas electric utility company which is interconnected with the Electric Reliability Council of Texas regional grid.

The cogeneration plant system will consist of three gas turbine-generators, coupled to three supplementary-fired HRSGs and a single automatic extraction/admission condensing steam turbine-generator. The HRSGs are supplemetary-fired. The steam turbine is sized to handle the total steam generation with unfired HRSGs at minimum ambient temperature minus the minimum process steam flow required by Mobay. This is necessary to provide an economical cogeneration plant that will also have the required operational flexibility to respond to changing process steam demand. The gas turbines and the condensing steam turbine-generator are connected to electrical generating units which have a design net capacity of 329,320 kilowatts (average life) at 69°F dry bulb ambient and 60°F wet bulb abient with 2000,000 pph steam to process and supplementary-fired HRSGs.

The purpose of the gas turbine-generators will be to serve as the cogeneration system's prime mover, providing power for the generation of electricity and the source of high temperature exhaust gas which will be assisted by supplemental firing of natural gas in the HRSGs for the sequential production of steam for industrial applications and the stea n turbine-generator.

The petitioner proposes to burn natural gas in the combustion gas turbine and HRSGs.

Basis For Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including GE's certification to ERA, in accordance with § 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on June 17, 1985 (50 FR 25118), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on August 1, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that GE has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to Section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to GE to permit the use of natural gas as the primary energy source for its cogeneration facility in Baytown, Texas.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on January 16, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-1651 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Office Of Energy Research

Magnetic Fusion Advisory Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and Time: Wednesday, February 19, 1986, 9:00 a.m.-5:00 p.m.; Thursday, February 20, 1986, 9:00 a.m.—5:00p.m.

Location: Lawrence Livermore National Laboratory, Building 123—Auditorium, 7000 East Avenue, Livermore, CA 94550.

Contact: Richard E. Nygren, Office of Fusion Energy (ER-50.1), U.S. Department of Energy, Mail Stop C-226, Washington, D.C. 20545, Phone: (301)-353-4941.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Agenda Outline

1. FY 1986-87 Fusion Budget and Program Issues—Clarke, Trivelpiece
2. MFAC Discussion
3. Public Discussion
4. International Collaboration in Fusion
   A. Possible New Initiatives—Clarke, Trivelpiece
   B. Status of INTOR Studies—Stacey
5. Report of MFAC Panel XIV on Ignition Physics
   A. Review of Charge—Davidson
   B. Panel Findings and Recommendations—Meade, et al.
6. MFAC Discussion and Recommendations
7. Public Discussion
8. Status of Technical Planning Activity—Baker, et al.
9. Other Program Issues—MFAC Discussion
10. New Charge Areas
11. MFAC Discussion and Recommendations
12. Public Discussion

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Commitee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 22, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-1727 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP86-37-000]

Southern Natural Gas Co.; Proposed Tariff Changes

January 17, 1986.

Take notice that Southern Natural Gas Company (Southern) on January 7, 1986, tendered for filing First Revised Sheet No. 468 to its FERC Gas Tariff, Original Volume No. 2, proposed to be effective February 7, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the commission receives the appropriate filing fee, which in the instant case was not until January 13, 1986.

Southern states that this tariff sheet decreases the fuel charge deducted by Southern for gas redelivered at the St. Mary Parish, Louisiana, delivery point from 3.5 percent to 1 percent. The fuel charge deducted for gas redelivered at the Perryville, Ouachita Parish, Louisiana, and Kosciuski, Attala County, Mississippi, delivery points remains at 3.5 percent.

Southern states that this filing is being made in compliance with Part 154 of the Commission's Regulations under the Natural Gas Act.

Southern indicates that copies of the filing have been mailed to United Gas Pipe Line Company.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE.,

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Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 24, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1634 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-437-000, et al.]

Mojave Pipeline Co., et al.; Pipeline Projects To Supply Natural Gas for Enhanced Oil Recovery in California: Notification of Schedule for Public Scoping Meetings on Environmental Issues To Be Addressed in the Environmental Impact Statement

January 24, 1986.

In the matter of Mojave Pipeline Company, CP85-437-000; Kern River Gas Transmission Company, CP85-552-000; Northwest Pipeline Company, CP85-625-000; El Paso Natural Gas Company, CP86-192-000; El Dorado Interstate Transmission Company, CP86-205-000; and Transwestern Pipeline Company, CP86-212-000.

The staff of the Federal Energy Regulatory Commission (FERC) hereby announces the schedule of public scoping meetings to be held jointly with the California State Lands Commission (SLC). The meeting will be conducted to identify the scope and significance of environmental impact associated with three competing proposals to transport natural gas from various sources outside of California to the Bakersfield, California, area for use in enhanced oil recovery (EOR) and related cogeneration projects. The attachment lists the locations, dates, and times of the meetings.

On August 23 and December 10, 1985, the FERC staff issued notices of intent to prepare a draft environmental impact statement and request for comments on its scope for the projects proposed in the dockets listed above (50 FR 34174 and 50941). These notices identified that the SLC is working with the FERC staff to produce a joint environmental impact document and contained brief descriptions of the actions proposed, general location maps, and information on comment procedures. Proposed locations for public scoping meetings were noted and the public was invited to comment and/or nominate additional locations.

The purpose of this notice is twofold: to announce the schedule of joint public scoping meetings and to alert the public that alternatives to and variations of the routes proposed by the various applicants will be presented and discussed. In particular, Kern River Gas Transmission Company has recently notified the FERC staff that it is studying a route variation which would pass through a portion of the Salt Lake Valley between Bountiful (Davis County) and Elberta (Utah County), Utah. The FERC staff feels that this variation, referred to as the Wasatch Variation, may be of particular interest to the public near Salt Lake City because in contrast to other routes under consideration in northern Utah, the Wasatch Variation would traverse a relatively populated corridor in the northern portion of the Salt Lake Valley. The Wasatch Variation and other routes under evaluation in northern Utah will be identified at the scoping meeting in Heber City, Utah. Other routing alternatives to the various proposals which are under evaluation occur near Las Vegas, Nevada, and Barstow and Bakersfield, California. These route alternatives will be discussed at the respective scoping meetings planned for these locations.

As referenced in the supplemental notice issued December 10, 1985, the public scoping meetings are intended as an opportunity for state and local governments and the general public to provide information and assistance directly to the FERC staff and the SLC in defining the range of environmental issues and concerns that need to be addressed in the impact analysis. As previously stated, Federal agencies with an interest in the proposals have formal channels for input into the analysis and are expected to coordinate their comments through the lead Federal agency outside the public meeting mechanism.

Further information concerning the joint public scoping meetings or about the EOR proposals in general is available from either of the following individuals:

Mr. Robert K. Arvedlund, Room 7102, Environmental Evaluation Branch, OPPR, Federal Energy Regulatory Commission, Washington, DC 20426, Telephone (202) 357-9043

or

Ms. Mary Griggs, California State Lands Commission, 1807-13th Street, Sacramento, CA 95814, Telephone (916) 322-0354.

Kenneth F. Plumb,

Secretary.

Attachment—Schedule of Joint FERC/SLC Public Scoping Meetings

All meetings will begin promptly at 7 p.m.

Monday, February 10, 1986—Classic Hotel, 6815 Menaul Avenue NE., Albuquerque, NM

Wednesday, February 12, 1986—Conference Room, U.S. Geological Survey Building No. 3, 2255 North Gemini Drive, Flagstaff, AZ

Thursday, February 13, 1986—Barstow Holiday Inn, 1520 East Main, Barstow, CA

Friday, February 14, 1986—Beale Library Auditorium, 1315 Truxtun Avenue, Bakersfield, CA

Tuesday, February 18, 1986—Wasatch Middle School Auditorium, 200 East 800 South, Heber City, UT

Wednesday, February 19, 1986—Board Room of the Clark County School District Education Center, 2832 East Flamingo Road, Las Vegas, NV.

[FR Doc. 86-1632 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-240-000, et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co., et al.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86-240-000]

January 15, 1986.

Take notice that Arizona Public Service Company ("APS"), on January 10, 1986, tendered for filing proposed changes in the following FPC/FERC Electric Service Rate Schedules:

12—Electrical District No. 3
13—Electrical District No. 7
14—Maricopa County Municipal Water Conservation District No. 1
15—Roosevelt Irrigation District
16—Buckeye Water Conservation & Drainage District
25—North Gila Valley Irrigation District
35—Electrical District No. 6
39—Yuma Irrigation District
50—Citizens Utilities Company
52—Papago Tribal Utility Authority
XX—Papago Tribal Utility Authority, formerly Supplement No. 24 to FERC Rate Schedule No. 52 (a new rate schedule designation is requested)
57—Arizona Electric Power Cooperative, Inc.
58—Wellton-Mohawk Irrigation & Drainage District
59—Arizona Power Authority
65—Colorado River Indian Irrigation Project
66—San Carlos Indian Irrigation Project
68—Electrical District No. 1
74—Town of Wickenburg
120—Southern California Edison Company.

The proposed two-step rate change would increase Period II projected revenues from jurisdictional sales and service by $23,278 million for Step I rate increases and an additional $4,150 million for Step II rate increases based on the estimated 12-month test period ending December 31, 1986, for a total increase of $27,428,000.

The principal reasons for the proposed changes in the rates are to include in APS' cost-of-service the costs associated with the remainder of Unit One of the Palo Verde Nuclear Generating Station and the costs associated with Unit Two in the test period; and to increase the Electrical/Irrigation Districts, existing operating charge and to separate it into two charges.

Comment date: January 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Company

[Docket No. ER86-241-000]

Take notice that Northern States Power Company (Minnesota) on January 13, 1986, tendered for filing a supplement to certain Northern States Power Company (NSP) municipal transmission service and interconnection and interchange agreements (Supplement).

The Supplement reduces the obligation of the customer to compensate NSP for transmission line losses. The Supplement provides that NSP shall only be furnished power and energy equal to 4.5 percent of the deliveries instead of the 7 percent provided for in the existing agreements.

The three affected customers and the current FERC rate schedule designations of their contracts are as follows:

Customer	Rate schedule FERC No.
Hillsboro	414
Marshall	403
St. James	412

The filing of this Supplement by NSP is a result of the settlement reached between the parties in the FERC Docket No. EL85-14-000. NSP requests a waiver of the 60 Day Notice Requirement and an effective date of November 20, 1985, for these Supplements. This date provides a convenient point in the meter reading cycle to make this adjustment and reduces the customers' bills at the earliest possible date. NSP also requests any other filing requirements under Section 35.13 or any other applicable section be waived by the Commission.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER86-244-000]

January 21, 1986.

Take notice that on January 13, 1985 Portland General Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 46. PGE states that this Rate Schedule has expired by its own terms.

PGE requests an effective date of December 31, 1985.

Notice of the proposed cancellation has been served upon the following parties:

Southern California Edison Company
Public Utility Commissioner of Oregon.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Portland General Electric Company

[Docket No. ER86-245-000]

January 21, 1986.

Take notice that on January 13, 1986, Portland General Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 48. PGE states that this Rate Schedule has expired by its on terms.

PGE requests an effective date of September 30, 1985.

Notice of the proposed cancellation has been served upon the following parties:

Northern California Power Agency
Public Utility Commissioner of Oregon.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER86-246-000]

January 21, 1986.

Take notice that on January 13, 1986, Portland General Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 47. PGE states that this Rate Schedule has expired by its on terms.

PGE requests an effective date of September 30, 1985.

Notice of the proposed cancellation has been served upon the following parties:

The Department of Water Resources, State of California
Public Utility Commissioner of Oregon.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER86-243-000]

January 21, 1986.

Take notice that on January 13, 1986, Tampa Electric Company (Tampa Electric) tendered for filing an Agreement to Provide Qualifying Facility Transmission Service between Tampa Electric and Royster Company (Royster).

Tampa Electric states that Royster owns and operates a qualifying cogeneration facility located in Tampa Electric's service area. Royster has entered into a contract with Florida Power and Light Company (FPL) for the sale of power produced at Royster's facility to FPL. The Agreement tendered in this docket provides for the transmission of power by Tampa Electric from Royster's facility to points of interconnection between the Tampa Electric and FPL transmission systems.

Tampa Electric proposes an effective date of January 1, 1986, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Royster and the Florida Public Service Commission.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Gulf States Utilities Company

[Docket No. ER84-568-007]

January 21, 1986

Take notice that on December 20, 1985, Gulf States Utilities tendered for filing an amended refund report in the event the Commission did not receive the filing sent on November 22, 1985.

Comment date: January 31, 1986, in accordance with Standard Paragraph H at the end of this notice.

8. New England Power Company

[Docket No. EC86-12-000]

January 21, 1986

The Federal Energy Regulatory Commission (Commission) issues notice that on January 13, 1986, the New England Power Company (NEP) pursuant to section 203 of the Federal Power Act and Part 33 of 18 CFR of the Commission's regulations filed an application for the sale of certain electric facilities to the Town of Shrewsbury, Massachusetts (Shrewsbury).

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NEP and Shrewsbury have signed a purchase sale agreement under which NEP will sell to Shrewsbury certain electric facilities including but not limited to 2–Circuit switches with support structures and associated controls, 2–115 kV taps to NEP's 0–141 line including wire, poles and other miscellaneous equipment and hardware and such rights and easements or other acceptable permit or license rights as are reasonably necessary for the maintenance and operation of the facilities all located at the Rolfe Avenue substation in Shrewsbury, Massachusetts.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end this notice.

9. PacificCorp doing business as Pacific Power & Light Company

[Docket No. ES86–24–000]

January 21, 1986

Take notice that on January 13, 1986, PacifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order (1) authorizing it to issue and sell, in one or more public offerings or private placements, prior to December 31, 1987, fixed rate debt in aggregate principal amount of not more than $210,000,000 (or its equivalent amount in, or based upon, foreign currencies determined at the time of issue), (2) authorizing it to enter into one or more currency payment exchanges, and (3) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Power & Light Company

[Docket No. ES86–18–000]

January 21, 1986

Take notice that on January 13, 1986 Pacific Power and Light Company (Pacific) tendered for filing information intented to supplement its filing of December 9, 1985 in the above named docket number. Pacific includes in this filing copies of the certified resolutions of the board of directors approving the issuance of shares and amendments to the Dividend Reinvestment and Stock Purchase Plan, as amended. These certified resolutions should replace the draft copies received January 3, 1986.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Atlantic City Electric Company

[Docket No. ER86–225–000]

January 15, 1986

Take notice that on January 6, 1986, Atlantic City Electric Company (Atlantic) tendered for filing on behalf of the City of Vineland a Transmission Service Agreement dated July 1, 1985. The purpose of the agreement is to provide for the transmission of energy from the Power Authority of New York to the City. The allocation of energy became effective July 1, 1985.

The parties state that no new facilities will be installed nor will existing facilities be modified in connection with this Agreement. The filing party has requested a waiver of any otherwise applicable Rules and Regulations not already complied with in order to permit this Agreement to become effective July 1, 1985.

Comment date: January 28, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1631 Filed 1–24–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER86–138–000]

Electric Rate Filings; Niagara Mohawk Power Corp.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Ordering Summary Disposition, Denying Request for Consolidation, and Establishing Hearing Procedures

Issued: January 17, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon and Charles A. Trabandt.

On November 4, 1985, as amended on November 21, 1985,[1] Niagara Mohawk Power Corporation (Niagara) tendered for filing a proposed increase in rates to the New York Power Authority (NYPA) for the firm transmission of power to NYPA's large industrial preference customers.[2] The proposed rates would increase revenues by approximately $5 million (94.0%) over the current rates, based on the 12-month test period ending March 31, 1987. Niagara requests that its proposed rates become effective on January 20, 1986.[3]

The proposed rate increase has been filed pursuant to a letter of understanding dated November 2, 1984, between Niagara and NYPA which contained procedures designed to phase-in increases in Niagara's transmission rates up to its current cost levels.

The first step, filed in Docket No. ER85–109–000, increased Niagara's rates by 50% of the difference between the rates then in effect (since 1961) and Niagara's cost of service based on a test year ending March 31, 1986.[4] The second step, at issue here, increases the rates by an amount equal to 80% of the difference between current rates and Niagara's cost of service based on a test year ending March 31, 1987. A third increase will be filed at a later date to recover the full costs of service for a test year ending March 31, 1988.

Notice of the amended filing was published in the **Federal Register**, [5] with

[1] Niagara originally filed a proposed $2.1 million rate increase on November 4, 1985. Subsequently, Niagara filed revised sheets and an amended cost of service to correct errors in the November 4, 1985 filing.

[2] *See* Attachment for rate schedule designations.

[3] Niagara's proposed effective date falls one day short of the required 60-day notice period.

[4] *See* 29 FERC ¶ 61,369 (1984).

[5] 50 FR 50209 (1985).

comments due on or before December 12, 1985. Timely motions to intervene were filed by NYPA, Niagara Hydropower Industries (Niagara Hydropower), Occidental Chemical Corporation (Occidental), and Olin Corporation (Olin). Niagara Hydropower and NYPA did not raise any specific issues or request any particular Commission action. While Occidental and Olin requested a hearing, stating that their review of the filing was not yet complete, they did not identify any issues which they believe would warrant a hearing.

On January 9, 1986, Niagara Hydropower filed a petition requesting that the Commission consolidate this docket with the proceedings concerning Niagara's first step increase in Docket No. ER85–109–000. An initial decision was issued in that case on December 9, 1985. 33 FERC ¶ 63,002, *reconsideration denied*, 33 FERC ¶ 63,070. Niagara Hydropower contends that the presiding judge in the earlier docket erred in determining that transmission costs should be "rolled-in;" however, Niagara Hydropower did not file exceptions to that initial decision. The intervenor now wishes to introduce evidence in this proceeding supporting a different cost methodology and have the Commission consider this evidence before reaching a decision in either proceeding. Thus, Niagara Hydropower requests that the Commission: (1) Defer action upon the exceptions filed in Docket No. ER85–109–000; (2) set this docket for hearing; (3) consolidate the two proceedings; and (4) issue a final determination with respect to the appropriate costing methodology for transmission service at the conclusion of the consolidated proceeding.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, [6] the timely, unopposed motions to intervene serve to make NYPA, Niagara Hydropower, Occidental, and Olin parties to this proceeding.

We note that Niagara has failed to properly synchronize the test year interest expense used in its income tax calculation with the long-term interest used in calculating its claimed rate of return. Commission precedent requires the computation of the long-term debt cost component of the interest expense tax deduction as the product of a utility's allocated rate base and the weighted cost of long-term debt used for rate of return purposes.[7] Given the revenue impact of this decision, we shall direct Niagara to reflect this determination in its compliance cost-of-service submitted at the conclusion of this proceeding.

Based upon our review of Niagara's filing and the pleadings, we find that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept Niagara's rates for filing and suspend them as them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination, indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a minimal suspension. Here our examination suggests that the proposed rates may not yield substantially excessive revenues. We shall therefore suspend the rates for one day from sixty days after filing, to become effective on January 22, 1986, subject to refund.

We shall deny Niagara Hydropower's request for consolidation. The primary resaon for which the intervenor requests consolidation is its claim that the presiding judge in Docket No. ER85–109–000 erred in adopting the use of a "rolled-in" transmission cost methodology. The appropriate remedy in those circumstances would have been to file an exception to the initial decision in that proceeding. Having chosen not to do so, Niagara Hydropower cannot, in essence, collaterally attack that decision in this docket. Insofar as Niagara Hydropower seeks to raise related issues in this proceeding, we would expect a convincing showing that it is necessary to relitigate such matters. Generally, under such circumstances, Commission precedent requires a showing of changed circumstances.[8] We shall, however, leave to the presiding judge to determine, in the first instance, whether sufficient reason exists to revisit the issues raised by Niagara Hydropower.

The Commission orders

(A) Summary disposition is hereby ordered with respect to interest synchronization. Niagara shall reflect the proper synchronization in its compliance cost-of-service filed at the conclusion of these proceedings.

(B) Niagara's submittal is hereby accepted for filing and suspended for one day from sixty days after filing, to become effective, subject to refund, on January 22, 1986.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Niagara's rates.

(D) The Commission staff shall serve top sheets within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, D.C. 20426. Such conference shall be held for purposes of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Niagara Hydropower's petition for consolidation is hereby denied.

(G) Subdocket 000 of Docket No. ER86–138 is hereby terminated. The evidentiary proceeding established herein is designated as Docket No. ER86–138–001.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Niagara Mohawk Power Corporation

Docket No. ER86–138–000

Rate Schedule Designations

Designation	Description
(1) Supplement No. 4 to Rate Schedule FPC No. 19.	Rates for Transmission of Replacement and Expansion Power.

[6] 18 CFR 385.214 (1985).

[7] *See Gulf States Utilities Co.*, 20 FERC ¶ 61,039 (1982); *Public Service Co. of New Mexico*, Opinion No. 133, 17 FERC ¶ 61,123 (1981); *Union Electric Co., Opinion No. 84, 12 FERC ¶ 61,239 (1980); Alabama Power Co.*, Opinion No. 54, 8 FERC ¶ 61,083 (1979).

[8] *See, e.g. Delmarva Power & Light Co.*, 14 FERC ¶ 63,074 (1981); *Minnesota Power & Light Co.*, Opinion No. 87, 11 FERC ¶ 61,313 (1980); *Central Kansas Power Co.*, 5 FERC ¶ 61,291 (1978).

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Designation	Description
(2) Supplement No. 3 to Supplement No. 2 to Rate Schedule FPC No. 95 (Supersedes Supplement No. 2 to Supplement No. 2).	Do.

[FR Doc. 86-1633 Filed 1-24-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP85-189-000, et al.]

Natural Gas Certificate Filings; Sea Robin Pipeline Co., et al.

Take notice that the following filings have been made with the Commission:

1. Sea Robin Pipeline Company

[Docket No. CP85-189-000]

January 15, 1986.

In Docket No. CP85-189-000, Sea Robin Pipeline Company (Applicant), P.O. Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on December 20, 1984, Applicant filed in Docket No. CP85-189-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Texas Gas from a point of receipt in Eugene Island Block 273, offshore Louisiana, at an existing subsea tap on Applicant's pipeline in Block 273, for delivery to Columbia Gulf Transmission Company for the account of Texas Gas at the outlet side of Applicant's existing measuring station near Erath, Louisiana. Applicant would transport up to 500 Mcf of natural gas per day on a firm basis pursuant to a gas transportation agreement dated September 12, 1984. The proposed service, it is said, would provide Texas Gas with a means of transporting an additional supply of natural gas without its having to construct and operate duplicative facilities.

Applicant states that Texas Gas would pay a monthly demand charge as well as commodity charge as provided for on Sheet No. 4-A of Applicant's FERC Gas Tariff, Original Volume No. 1. Applicant states further that Texas Gas would pay a transportation charge for the transportation of liquids and liquefiable hydrocarbons.

Comment date: January 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Sea Robin Pipeline Company

[Docket No. CP85-861-000]

January 15, 1986.

In Docket No. CP85-861-000, Sea Robin Pipeline Company (Applicant), P.O. Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on September 5, 1985, Applicant filed in Docket No. CP85-861-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on a firm basis, up to 4,500 Mcf of natural gas per day of Texas Gas' gas produced from Eugene Island Blocks 330 and 337, offshore Louisiana.

Applicant states that it would transport such gas for Texas Gas from the existing interconnection of the facilities of Applicant and Pennzoil Corporation at the outlet side of Texas Gas' metering station located on platform B in Eugene Island Block 330 and would redeliver equivalent volumes to Columbia Gulf Transmission Company for the account of Texas Gas, at the terminus of Applicant's pipeline system near Erath, Louisiana.

Texas Gas, it is said, would pay Applicant a demand charge of $3.11 and a commodity charge 1.30 per Mcf of gas transported. It is said further that the transportation would continue for a period of five years from the date of initial delivery and yearly thereafter unless terminated by either party.

Comment date: January 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP86-249-000]

January 16, 1986.

Take notice that on December 23, 1985, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP86-249-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon in place or salvage certain bare pipe line and for a certificate of public convenience and necessity authorizing the construction and operation of 9.23 miles of three paralleled segments of 16-inch coated steel line as a replacement for the abandoned pipe in Warren County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel indicates that the three lines, installed in 1886, 1899 and 1926 would be salvaged with the exception of 3,000 feet which would be abandon in place. National Fuel also states that it would use existing rights-of-way for the entire project.

National Fuel explains that service to existing customers will not be terminated and estimates the cost of construction to be $2,596,200. Such funds are expected to be generated internally and/or financed from interim short-term bank loans.

Comment date: February 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-253-000]

January 16, 1986.

Take notice that on December 24, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-253-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by removal twenty-five measuring stations in the states of Kansas, Minnesota, Iowa, South Dakota, Texas, Nebraska and Montana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Nothern proposes to remove the meters in response to notification by Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), that twenty-five of its small volume end-users have requested removal of the meters. (See appendix for details.)

It is estimated that the cost of removal of the facilities would be $4,800. It is stated that the proposed abandonments have been requested and consented to by the customers. It is further stated that the proposed abandonments would have no negative impact on Northern's other existing customers.

APPENDIX

End-user	Location
Albright Investment Company	Stevens County, Kansas.
Jim Gooch	Do.
Ralph Stoddard	Do.
Logan Sprunger	Haskell County, Kansas.
Hiniker Farms Inc.	Blue Earth County, Minnesota.
Elaine Lambert	Rice County, Minnesota.
Gordon Roscoe	Do.
Russell Oehrlein	Dakota County, Minnesota.
Ewald Damgaard	Black Hawk County, Iowa.
Godfrey Guldager	Do.
Barbara Csomay	Wright County, Iowa.
M.O. Mendell	Obrien County, Iowa.
Orin Pratt	Plymouth County, Iowa.
Dale Wester	Cherokee County, Iowa.
Inez Clark	Lincoln County, South Datota.
Don M. Anthony, A&D Farms #1.	Moore County, Texas.
Don M. Anthony, A&D Farms #2.	Do.
Arthur L. Stokes	Do.
Robert L. Bauerkemp	Cass County, Nebraska.
W-M, Inc	Do.
Ardist Dodd/Marguerite Mertes.	Pawnee County, Nebraska.
Virgil Kardell	Wayne County, Nebraska.
Dan R. McIntosh	Washington County, Nebraska.
Ralston Baptist Church	Douglas County, Nebraska.
Stephen C. Boyce	Hill County, Montana.

Comment date: February 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Ozark Gas Transmission System

[Docket No. CP86-250-000]

January 16, 1986.

Take notice that on December 24, 1985, Ozark Gas Transmission System (Ozark), First City Center, 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP86-250-000 an application pursuant to section 7 of the Natural Gas Act, section 311 of the Natural Gas Policy Act of 1978, and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity that would authorize Ozark to transport natural gas on behalf of others pursuant to Order No. 436 and for the waiver of § 284.7 of the Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ozark requests that the Commission waive § 284.7 of its Regulations which requires that any rate filed for service subject to § 284.7 must be a one-part rate that is designed to recover the costs allocated to the service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or any provision that guarantees revenues. Ozark explains that as a project-financed pipeline it has a unique status that was recognized by the Commission in its Opinion No. 125 which specified a rate structure requiring Ozark to recover in its demand charge all costs other than return on and of equity and associated income taxes. It is explained that as part of the projected-financing effort, lenders required that Ozark continue this particular rate structure and that if Ozark were to propose or accept a rate structure other than that set out in Opinion No. 125 Ozark would be in automatic default under its loan agreements. Under these circumstances, Ozark states that it is now precluded from operating as an open-access carrier under Order No. 436 and has therefore requested waiver of § 284.7 of its Regulations.

Comment date: February 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1635 Filed 1-24-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF86-391-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc. Chrysler Credit Corp., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

January 16, 1986.

Take notice that the following filings have been made with the Commission.

1. Chrysler Credit Corp.

[Docket No. QF86-391-000]

On December 26, 1985, Chrysler Credit Corp. (Applicant), of 155 the Embarcadero, Suite 202, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Contra Costa County, California. The facility will consist of 40 wind turbine generators. The electric power production capacity of the facility will be 8.25 MW.

2. Coal Creek Energy, Inc.—Palisade, Colorado

[Docket No. QF86-475-000]

On January 6, 1986, Coal Creek Energy (Applicant), of 1000 Prospect Hill Road, Windsor, Connecticut 06095, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Palisade, Mesa County, Colorado. The facility will consist of a fluidized bed boiler, steam turbine generator and related auxiliary equipment. Applicant states that the primary energy source for the facility will be "waste" in the form of bituminous coal refuse. The electric power production capacity of the facility will be 80 megawatts.

3. Cogentrix of Florida, Inc.

[Docket No. QF86-381-000]

On Decemberr 23, 1985, Cogentrix of Florida, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Lake Wales, Florida. The facility will consist of three stoker-fired boilers and a condensing/extraction steam turbine generating unit. Extraction steam produced by the facility will be supplied to the Citrus World, Inc. to process citrus fruit to citrus juice. The electric power production capacity of the facility will be 51.7 MW. The primary energy source will be coal. The facility is scheduled to be in service on or about October 1, 1988.

4. Double "C" CoGen, Inc.

[Docket No. QF86-441-000]

On December 31, 1985, Double "C" CoGen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam generators. Steam produced by the facility will be used by Carrec Oil Associates and Cities Service Oil and Gas Corporation for enhanced oil recovery. The electric power production capacity of the facility will be 47.0 MW. The primary energy source will be natural gas. The installation of the facility will begin in May, 1986.

5. Foster Wheeler Power Systems, Inc—Mount Carmel Facility

[Docket No. QF86-343-000]

On December 3, 1985, Foster Wheeler Power Systems, Inc., (Applicant) of 110 South Orange Avenue, Livingston, New Jersey 07039, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 1.5 miles northwest of Mount Carmel, Pennsylvania. The facility will consist of two circulating fluidized bed boilers, a steam turbine generator, and related auxiliary equipment. The primary energy source for the facility will be "waste" in the form of anthracite coal culm. The electric power production capacity of the facility will be 40 megawatts.

6. Sierra CoGen, Inc.

[Docket No. QF86-442-000]

On December 31, 1985, Sierra CoGen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of two combustion turbine generating units with two waste heat recovery steam generators. Steam produced by the facility will be used by Cities Service Oil and Gas Corporation for enhanced oil recovery. The electric power production capacity of the facility will be 47.0 MW. The primary energy source will be natural gas. The installation of the facility will begin in May, 1986.

7. Ultrapower Inc.

[Docket No. QF86-373-001]

On December 20, 1985, Ultrapower, Inc. (Applicant) of 16845 Von Karman Avenue, Irvine, California 92714, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Rocklin, California and consists of steam turbine generators and fluidized-bed combustion boilers. The net electric power production capacity is 25 MW. The primary source of energy is biomass in the form of wood waste.

8. Valley Energy Corporation

[Docket No. QF86-337-000]

On December 2, 1985, Valley Energy Corporation (Applicant) of SR 5249-K, Wasilla, Alaska 99687, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Mat-Su Borough, Alaska and consists of a wood waste fired boiler and a condensing steam turbine generator. The electric power production capacity of the facility is 15 MW.

Standard Paragraphs

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

FR Doc. 86-1627 Filed 1-24-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of December 6 Through December 13, 1985

During the Week of December 6 through December 13, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 16, 1986

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 6 through December 13, 1985]

Date	Name and location of applicant	Case No.	Type of Submission
Dec. 9, 1985	Arent, Fox, Kintner, Plothin & Kahn Washington, DC	KFA-0006	Appeal of an information request denial. If granted: The Nov. 27, 1985 freedom of information request denial issued by the Office of Procurement Operations would be rescinded, and Arent, Fox, Kintner, Polthin & Kahn would receive a copy of the Department of Energy Contract No. DE-AC01-84IG00064.
Do	La Jet, Inc. Washington, DC	KDR-0011	Motion for discovery. If granted: Discovery would be granted to La Jet, Inc. in connection with the statement of objections submitted in response to the May 8, 1985 proposed remedial order (Case No. HRO-0297) issued to North American Petroleum Co.
Do	Wadsworth Oil Co., Inc., Tuskegee, AL	KEE-0010	Exception to the reporting requirements. If granted: Wadsworth Oil Co., Inc. would not be required to filed Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Dec. 11, 1985	Less Petersen Oil Co., Inc., Tuskegee, AL	KEE-0011	Exception to the reporting requirements. If granted: Les Petersen Oil Co. would not be required to filed Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do	OHR's Fuel, Inc., Wellingford, CT	KEE-0012	Exception to the reporting requirements. If granted: OHR's Fuel, Inc. would not be required to file Form EIA-782B, "Reseller/Retailer' Monthly Petroleum Product Sales Report."
Do	Pacific Lighting Energy Systems, Commerce, CA	KFA-0007	Appeal of an information reguest denial. If granted: The Nov. 13, 1985 freedom of information request denial issued by the office of Policy, Planning and Analysis. would be rescinded, and Pacific Lighting Energy Systems would receive access to comments of DOE personnel concerning a draft study relating to the Public Utilities Regulatory Policy Act.
Do	REK-CHEM Manufacturing Corp., Albuquerque, NM	KFA-0008	Appeal of an information request denial. If granted: The Dec. 3, 1985 freedom of information request denial issued by the Office of Classification and Technical Information Division would be rescinded, and REK-CHEM Manufacturing Corp. would receive a copy of the unit price schedule which shows the awarded price of Sandia National Laboratories contract solicitation RFQ No. 60-8002.
Dec. 13, 1985	Champlain Oil Co., Inc., South Burlington, VT	DEE-0013	Exception to the reporting requirements. If granted: Champlain Oil Co., Inc. would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of December 6 through December 13, 1985]

Date received	Name of refund proceeding/name of refund appeant	Case No.
Dec. 09, 1985	True/Farmland	RF195-9
Do	Vickers/Oklahoma	RQ1-256
Do	Zia/Fleming Co., Inc	RF216-1
Do	Amoco/California	RQ21-249
Do	Perry Gas/California	RQ183-250
Do	Belridge/California	RQ8-251
Do	Charter/California	RQ29-252
Do	National Helium/California	RQ3-253
Do	Coline/California	RQ2-254
Do	Palo Pinto/California	RQ5-255
Dec. 10, 1985	Palo Pinto/Mississippi	RQ5-257
Do	Seber/Mobil Oil Corp	RF192-13
Do	National Helium/Ohio	RQ3-258
Do	National Helium/Indiana	RQ3-259
Do	National Helium/Missouri	RQ3-260
Do	National Helium/Florida	RQ3-261
Dec. 11, 1985	True/Petrolane, Inc	RF195-10
Do	Zia/Intercontinental Petroleum Corp	RF216-2
Do	Macmillan/Cool Fuel, Inc	RF217-1
Dec. 12, 1985	Quaker State/T T Enterprises	RF213-7
Do	Seber/Cool Fuel, Inc	RF192-14
Do	Seber/Apex Oil Co	RF192-15
Do	True/Mobil Oil Corp	RF195-11

REFUND APPLICATIONS RECEIVED—Continued

[Week of December 6 through December 13, 1985]

Date received	Name of refund proceeding/name of refund appeant	Case No.
Do	True/Kerr-McGee Corp	RF195-12
Do	True/T&T Gas Products Co	RF195-13
Do	Alkek/Adams/Farmers Union Central Exchange, Inc.	RF6-76
Dec. 13, 1985	Eastern/Crofton Country Club	RF215-3
Do	Gulf/Cunningham Butane Gas Co.	RF40-3082
Do	True/Tesoro Petroleum Corp	RF195-14
Do	Eastern/Robert F. Supcoe	RF215-4
Do	Gulf/Willis's Quail Gulf Service	RF40-3083
Do	True/V-1 Oil Co	RF195-15
Do	Alkek/Adams/Farmers Petroleum Cooperative, Inc., et al.	RF6-77

[FR Doc. 86-1675 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of December 20 Through December 27, 1985

During the Week of December 20 through December 27, 1985, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 16, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

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LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 20 through December 27, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 20, 1985	J.R. Cone, Washington, DC	KCX-0007	Supplemental order remand. If granted: The Mar. 25, 1983 remedial order (Case No. DRO-0247) issued to J.R. Cone by the Office of Hearings and Appeals would be modified in accordance with the Oct. 31, 1985 order issued by the Federal Energy Regulatory Commission.
Dec. 23, 1985	Economic Regulatory Administration, Washington, DC	KRR-0001	Request for modification/rescission. If granted: The Nov. 14, 1985 decision and order issued to Marathon Oil Co. and Growmark, Inc. would be modified regarding the ERA's motions for discovery and evidentiary hearing (Case Nos. HRD-0053 and HRH-0024).
Dec. 24, 1985	do	KRZ-0014	Interlocutory. If granted: The proposed remedial order issued to Telum, Inc. (Case No. 8RO-1244) on May 28, 1980, would be amended to change the characterization of Telum's first sale for purposes of applying the new item/new market rule at 10 CFR 212.111(b) and to increase the level of alleged overcharges.
Do	Growmark, Inc., Washington, DC	KRR-0002	Request for modification/rescission. If granted: The Nov. 14, 1985 decision and order issued to Marathon Oil Co. and Growmark, Inc. would be modified regarding Growmark's motions for discovery (Case Nos. HRD-0036 and HRD-0044).
Do	Telum, Inc., Washington, DC	KRZ-0015	Interlocutory. If granted: The proposed remedial order issued to Telum, Inc. (Case No. 8RO-1244) on May 28, 1980 would be dismissed with prejudice.
Dec. 26, 1985	Economic Regulatory Administration, Washington, DC	KRR-0003	Request for modification/rescission. If granted: The Dec. 10, 1985 remedial order (Case No. HRO-0161) issued to Oil-Tex Petroleum and David F. Myers would be modified, and the firm's crude oil sales to American Petrofina would be found to be layering transactions in violation of 10 CFR 212.186.

REFUND APPLICATIONS RECEIVED

[Week of December 20 to December 27, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
Dec. 23, 1985	Lowe/Jones Texaco	RF206-4
Dec. 24, 1985	City Service/Hilltop Exxon	RF219-2
Do	Boswell/Koppers Company, Inc.	RF179-13
Dec. 26, 1985	Leese/Defense Logistics Agency	RF211-7
Do	OKC/Sooner Petroleum Corp.	RF13-40
Dec. 24, 1985	Conoco/Gramco, Ltd.	RF220-1
Dec. 26, 1985	LARCO/B&B Oil Co.	RF112-186
Do	LARCO/K.O. Oil	RF112-185
Dec. 27, 1985	Gulf/B.F. Goodrich Chemical Group.	RF40-3088
Do	do	RF40-3087
Do	Eastern/Dawson's American	RF215-5

[FR Doc. 86-1676 Filed 1-24-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed the refunding a total of $1,053,503.10, plus interest, in consent order funds to the public. This money is being held in escrow following the settlement of three enforcement proceedings involving Gull Industries, Inc. of Seattle, Washington (Case Nos. HEF-0084, HEF-0085, and HEF-0086).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Gull Industries Consent Order Proceding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case Nos. HEF-0084 et al.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to two consent orders and a letter of agreement entered into by Gull Industries, Inc. of Seattle, Washington, and the Department of Energy which settled possible regulatory violations in the firm's sales of motor gasoline and middle distillates during the consent order periods. The case numbers, consent order periods, and consent order amounts are set forth below:

Case No.	Consent order period	Escrow amount
HEF-0084	May 3, 1975-June 30, 1977; Feb. 1, 1974-Sept. 30, 1974.	$52,342.00
HEF-0085	Aug. 19, 1973-June 9, 1977	873,880.54
HEF-0086	Nov. 1, 1973-May 3, 1975	127,280.56

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow accounts funded by Gull; pursuant to the consent orders and letter of agreement. The DOE has tentatively established procedures under which purchasers of Gull motor gasoline or middle distillates during the applicable periods may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 anf 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 16, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Gull Industries, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0084, HEF-0085, HEF-0086.

January 16, 1986

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to

distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations were the DOE is unable to identify readily those persons who were likely injured by alleged or adjudicated overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,553 at 88,284 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with three consent orders entered into with Gull Industries, Inc. (Gull) of Seattle, Washington. Gull sells motor gasoline and middle distillates in the States of Idaho, Oregon and Washington. It sells those products to other petroleum marketers (resellers), in bulk sales to end-users, and to retail stations which were either Gull-owned and operated by commission agents ("commission" accounts) or Gull-owned but leased to independent operators ("consignment" accounts).[1] Gull was therefore a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31. ERA audits of the firm's operations revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Gull and the DOE regarding the firm's compliance with the DOE price and allocation regulations during the audit periods involved, the firm entered into three consent orders with the DOE. The consent orders were signed on April 7, 1978 (Case No. HEF-0086), September 1, 1981 (Case No. HEF-0084), and January 15, 1982 (Case No. HEF-0085). The consent orders refer to the ERA's allegations of overcharges, but note that no formal findings of violation were made. Additionally, the consent orders state that Gull does not admit that it committed any such violations. The case numbers and applicable consent order information are set forth below:

Case No.	Consent order periods[2]	Consent order amounts[3]
Apr. 7, 1978 consent order: HEF-0086	Nov. 1, 1973 to May 3, 1975.	[4] $127,280.56
Sept. 1, 1981 consent order: HEF-0084	Feb. 1, 1974 to Sept. 30, 1974, May 3, 1975 to June 30, 1977.	52,342
Jan. 15, 1982 consent order: HEF-0085	Aug. 19, 1973 to June 9,1977.	[5] 873,880.54

[2] The consent order periods for middle distillates in HEF-0084 and HEF-0085 terminated with the decontrol of those products on June 30, 1976.

[3] These amounts represent the portions of the the Gull consent order funds subject to the ERA's October 13, 1983 Subpart V Petition.

[4] In executing the April 7, 1978 consent order, Gull agreed to refund:

(i) $196,092.28 to the marketplace through price rollbacks at its commission account stations;

(ii) $189,121.67 to its wholesale accounts, i.e., reseller and bulk purchase end-user customers; and

(iii) $165,942.12 to its "consignment" accounts, i.e., independent operators who leased Gull-owned stations.

As of August 31, 1978 Gull had completed its rollback obligation at its commission account stations (category (i) above). According to the terms of the consent order, Gull was to refund directly any alleged overcharges of $1,000 or less to its wholesale accounts (category (ii) above), except for one of those customers, Seame Ready Mix who was to receive $2,866.53. In order to accomplish refunds to its other wholesale accounts and to its "consignment" accounts (category (iii) above), Gull was required to deposit the remainder of its refund obligation in an interest bearing escrow account. From this account, Gull paid refunds, subject to DOE approval, to its "consignment" accounts and its wholesale accounts that had not received direct refunds. Gull was also permitted to offset its "consignment" account refund obligations by price reductions, as approved by the DOE. Consent Order ¶ 7. By April 10, 1981, Gull had completed its refund obligations to all but 26 of its customers (12 wholesale accounts and 14 "consignment" accounts). The refund amounts attributable to these customers were deposited with the DOE. The consent order amount in Case No. HEF-0086 represents $100,859.42 in residual funds which were not distributed to "consignment" accounts and $26,421.14 which was deposited with DOE as part of Gull's restitution for alleged violations in wholesale sales. [The ERA records] indicate that a total of $74,041.23 was supposed to be deposited with the DOE for the alleged wholesale violations but $47,620.09 of that amount was erroneously deposited by the ERA in the U.S. Treasury as miscellaneous receipts. As a result only $26,421.14 is currently available for wholesale distribution. This Office has directed the DOE Office of Departmental Accounting to notify the Treasury of the erroneous deposits and to see that the $47,620.09 is remitted to the correct Gull escrow account. *See* December 31, 1985 Memorandum to George Burkett, Office of Departmental Accounting from Richard Dugan, OHA. Those funds will increase refund pool to $74,041.23.)

[5] Case No. HEF-0085 actually pertains to a letter of agreement (hereinafter referred to in this Proposed Decision as a consent order) between the DOE and Gull. The consent order involves Gull's sales of Texaco Inc. (Texaco) petroleum products during the period August 19, 1973 through June 9, 1977, and sets forth the terms for distribution by Gull of funds it received from Texaco pursuant to a consent order executed by the DOE and Texaco on April 25, 1978. The letter of agreement required that Texaco's refund to Gull totalling $3,087,770.72, plus interest, be distributed in the following manner:

(i) $156,190.31, plus interest, to be refunded by Gull directly to identified customers to whom it had passed through Texaco overcharges,

(ii) $2,100,994.26, plus interest, to be retained by Gull, to compensate it for Texaco overcharges that Gull did not pass through to its customers, and

(iii) $830,896.15, plus interest, to be paid to the DOE for disbursement to Gull customers unidentified in the audit. *See* January 15, 1982 Letter of Agreement ¶ 5e-c.

The consent order amount in the case represents the $830,896.15 principal and $42,984.39 interest which accrued prior to Gull's payment to the DOE.

This Proposed Decision and Order concerns the distribution of the three separate consent order funds, plus interest which has accrued on those funds since they were remitted to the DOE.

II. Jurisdiction

As stated earlier, the Subpart V procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to utilize the Subpart V process to distribute such funds where appropriate. We have considered the ERA's petition to implement Subpart V proceedings with respect to the three Gull consent orders and have determined that such proceedings are appropriate in this case. We therefore propose to accept jurisdiction over the funds received by the DOE pursuant to the three Gull consent orders.

III. Proposed Refund Procedures

We expect that claimants in each of the three proceedings will fall into one of two general categories: (i) Resellers and retailers (hereinafter collectively referred to as resellers) who resold Gull petroleum products or (ii) individuals or firms that consumed Gull petroleum products for their own use (end-users).

A. Showing of Injury

As in prior refund proceedings, we propose to require claimants who were resellers of refined petroleum products purchased from Gull to demonstrate that during the applicable consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that, at the time it purchased the product from Gull, market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, the reseller is generally required to show that it had a "bank" of unrecovered costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its own prices. The maintenance of a bank does not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

B. Small Claims Presumption

In these proceedings, we propose to adopt a small claims presumption of injury which has been used in many previous special refund cases. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of Gull petroleum products. For

[1] The term "consignment" accounts, as used by Gull, does not refer to the type of operations the DOE has traditionally called "consignees" in other situations. *See, e.g.*, Ruling 1975-8, 2 Fed. Energy Guidelines ¶ 16,046, and *Texas Oil Marketers Association*, 7 DOE ¶ 81,008 at 82,702 (1980); *Gulf Oil Corp./C.R. Hill Co.*, Case No. RF40-1004 (September 11, 1985) (Proposed Decision). In its business operations, Gull used the term "commission" accounts to refer to those entities that we have traditionally called "consignees."

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example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims presumption to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Marion Corp.,* 12 DOE ¶ 85,014 (1984) (*Marion*). We propose to adopt such a procedure in this case. Therefore, we propose that any reseller claiming a refund of $5,000 or less need only document its purchase volumes rather than make a detailed showing of injury in order to be eligible to receive a refund.

C. End-users

As in many other refund proceedings, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges covered by the consent orders. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. *See, e.g., Marion; Thornton Oil Corp.,* 12 DOE ¶ 85,112 (1984). For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement,* 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. We therefore propose that end-users of Gull petroleum products need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

D. Spot Purchasers

We also propose to adopt a rebuttable presumption that firms which made only spot purchases of Gull petroleum products have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot purchases of Gull's product at increased prices unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers,* 8 DOE at 85,396–97. Accordingly, in order to overcome the rebuttable presumption that it was not injured, a spot purchaser should submit evidence to establish that it was unable to recover the prices it paid for Gull petroleum products and that it did not have discretion as to where and when to make the purchase(s) upon which the refund claim is based.

E. Commission Accounts

With respect to each consent order fund, we propose that Gull's commission accounts be ineligible to receive refunds. In previous Decisions, we have adopted the rebuttable presumption that these types of agents (see n.1) which sold a consent order firm's products were not injured as a result of their contractual arrangement. *See, e.g., Office of Special Counsel,* 10 DOE ¶ 85,048 at 88,200 (1982) (*Amoco*). In that Decision, we pointed out that "consignee agents established their prices at a set, per gallon commission fee that was added to Amoco's wholesale price. That type of arrangement insured that a consignee did not absorb any alleged overcharges." *Id. See also Tenneco Oil Co./Kellermyer, Inc.,* 10 DOE ¶ 85,092. (1983). We therefore decided to adopt a presumption that Amoco consignees generally experienced no injury as a result of their purchases from Amoco. However, we also determined that these types of agents could rebut this presumption by establishing that, "their sales volumnes, and their corresponding commission revenues, declined due to the alleged uncompetitiveness of Amoco's prices." *Amoco* at 88,200. *See, also Aztex Energy Co.,* 12 DOE ¶ 85,116 at 88,358–59 n.2, (1984); *cf. Gulf Oil Corp./C.R. Hill Oil Co.,* Case No. RF40–1004 (September 11, 1985) (Proposed Decision) (generalized arguments to rebut presumption rejected). We propose to adopt the same presumption here. Gull's commission accounts (which operate as consignees) will therefore be required to rebut the presumption of non-injury in order to receive a refund.[6]

F. $15 Mimimum

We also propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See Uban Oil Co.,* 9 DOE ¶ 82,541 (1982); *see also* 10 CFR 205.286(b).

IV. Eligible Claimants and Refund Amounts

A. Case No. HEF–0086 (April 7, 1978 Consent Order)

The April 7, 1978 consent order covers Gull's sales of motor gasoline and middle distillates during the period November 1, 1973 through May 3, 1975. According to the consent order, the alleged overcharges occurred in specified transactions during the consent order period. Consent Order ¶¶ 3, 4 and 5.[7] The audit files pertaining to this consent order contain very specific data concerning the customers and alleged overcharges involved in the transactions covered by the April 7, 1978 consent order. We therefore believe it is appropriate to use the ERA audit files to determine the manner in which refunds should be distributed. *See Marion.* In relying on the information in the ERA files, we note that the ERA audit of the Gull transactions covered by the April 7, 1978 consent order had been substantially completed, that a Notice of Probable Violation had been drafted but not issued, and that the allegedly overcharged parties and amounts were clearly identified in the appendices attached to the consent order and the subsequent records kept to monitor Gull's progress in issuing refunds.

Therefore we propose that the April 7, 1978 consent order fund be distributed only to the 26 Gull "consignment" and wholesale account customers who have not already received their designated refund amount. As indicated earlier, the ERA audit files reveal that, pursuant to the 1978 consent order, Gull completed refunds to retail customers at all of its commission account stations and to a portion of its wholesale and "consignment" accounts. *See* n.4. We believe that the wholesale and "consignment" accounts. *See* n.4. We believe that the wholesale and "consignment" accounts with remaining refund balances should receive further restitution for Gull's alleged overcharges. We therefore propose to limit eligibility for refunds from the April 7, 1978 consent order to those firms listed in Appendices A–1 and A–2 who satisfactorily demonstrate that they were injured by Gull's alleged regulatory violations in sales of motor gasoline and middle distillates during the period covered by that consent order. Those firms that received their total designated refunds are listed in Appendix A–3 to this Proposed Decision and Order. We propose that since those firms have received restitution they be ineligible for any refunds in Case No. HEF–0086.[8]

In order to allocate the consent order fund in a manner which will correspond to the injuries experienced, we propose to use the information provided in the April 7, 1978 consent order and the reports which Gull prepared in accordance with ¶ 12 of the consent order. These reports show for each customer listed in Appendices A–1 and A–2, the alleged overchange amounts plus interest, the amounts voluntarily refunded by Gull prior to the consent order, and amounts refunded, during the period from the signing of the consent order to Gull's remittance of funds to the DOE. The DOE used these reports to monitor Gull's refunds to identified customers. In the absence of any later documentation of additional payments or price rollbacks by Gull to its "consignment" and wholesale account customers, we presume that the balances remaining as stated in the ERA audit files are accurate. We therefore propose to use these records to determine the firms' potential refunds. *See Harris Enterprises, Inc.,* 13 DOE ¶ 85,179 (1985).

We propose that the maximum refunds for the firms listed in Appendices A–1 and A–2 who make the requisite showing of injury be equivalent to the balance outstanding on the refund amounts designated for them in the 1978 consent order, plus interest which accured prior to the remittance of the funds to the DOE. These refund amounts are also set forth in Appendices A–1 and A–2.[9] In addition, all eligible claimants will be entitled to a proportionate share of the interest which has accured since the funds were remitted to the DOE.

B. Case No. HEF–0084 (September 1, 1981 Consent Order)

The September 1, 1981 consent order primarily covers Gull's sales of motor gasoline and middle distillates during the period May 3, 1975 through June 30, 1977.[10] From the ERA audit materials, it is clear that the audit upon which this consent order is based was essentially a continuation of the audit which led to the April 7, 1978 consent order. In negotiating the April 7, 1978 consent order (which covered the period November 1, 1973 through May 3, 1975), the DOE and Gull agreed that Gull would review its records for the period May 3, 1975 through June 30, 1977 to determine what, if any, additional violations might have occurred in Gull's sales of motor gasoline and middle distillates. This self-audit resulted in the finding of additional alleged overcharges. *See* November 9, 1981 DOE Narrative Summary of Gull Audits, prepared by Region X Office of Enforcement. The audit file states that the September 1, 1981 consent order was "a follow-on to Case No. (HEF–0086) and covered overcharges from May 1975 through June 1977. . . ." *See* November 9, 1981 Memorandum from Lyle N. Nelson, Region X Office of Enforcement to Judy Hall, ERA Refund Coordinator. The 1981 consent order also states that it covers Gull's sales of "specified products" in "specified transactions." 1981 Consent Order ¶ 4. It is therefore clear that these "specified transactions" are similar to those enumerated in the 1978 consent order.

In light of this information, we believe that it is highly likely that the parties who were injured by the alleged overcharges settled in the September 1, 1981 consent order closely correspond to the customers allegedly overcharged in transactions covered by the April 7, 1978 consent order. We therefore propose that the September 1, 1981 consent order fund be distributed to the Gull wholesale and "consignment" account customers listed in the appendices to the April 7, 1978 consent order who (i) establish that they were customers after May 3, 1975 and (ii) satisfactorily demonstrate that they were injured by alleged violations that were settled by the 1981 consent order. The firms who we expect will be eligible are listed in Appendix B to this Proposed Decision. While most of these firms received direct refunds under the April 7, 1978 consent order and are therefore ineligible for a refund in the proceeding involving that consent order (Case No. HEF–0086), they have not received refunds pursuant to the September 1, 1981 consent order.

We believe that it is also appropriate to use audit information from the 1978 consent order proceeding to allocate refunds in the 1981 consent order proceeding. As mentioned earlier, the appendices to the 1978 consent order specify the dollar amounts by which each identified customer was allegedly overcharged by Gull. Using these figures, we propose to calculate for each wholesale and consignment account a percentage of the total overcharges alleged in the 1978 consent order. For each firm we will then multiply this alleged overcharge percentage by the 1981 consent order amount of $52,342 to detemine the firm's pro rata share of this settlement fund. A successful applicant will also receive a pro rata share of the interest which has accured on the fund since its remittance to the DOE. If this pro rata methodology is used to allocate refunds, each claimant's potenital refund will fall below the $5,000 threshold. Thus no claimant will need to make a detailed demonstration of injury in this proceeding.[11]

C. Case No. HEF–0085 (January 15, 1982 Consent Order)

The January 15, 1982 consent order covers all Gull sales of Texaco motor gasoline and middle distillates during the period August 1973 through June 9, 1977. We propose that this consent order fund be distributed to Gull customers who have not already received a direct refund from Gull pursuant to the January 15, 1982 consent order and who satisfactorily demonstrate that they were injured by Gull's passthrough of Texaco's alleged overcharges. *See* n.5. The audit files indicate that the ERA reviewed Gull's records to determine the extent of Gull's passthrough of Texaco's alleged overcharges to certain customers. The audit files further indicate that all of the firms who were identified by the ERA and were listed as being entitled to a Gull refund for Texaco's alleged overcharges were paid in full by Gull. Those firms that received payment are listed in Appendix C to this Proposed Decision. We propose that the customers which already received refunds for the alleged Texaco overcharges be ineligible for refunds from the consent order escrow account. The eligible claimants will therefore be unidentified Gull customers who did not receive a refund from Gull in connection with Texaco's alleged overcharges.

In order to calaculate refunds for eligible claimants in this proceeding

[6] The audit files indicate that some Gull commission accounts also had independent reseller operations during a portion of the consent order period. These customers will be eligible to apply for refunds for the purchases made in connection with those operations.

[7] The alleged overcharges resulted from, *inter alia,* Gull's erroneous base period and maximum lawful selling price computations based on the firm's failure to take into account certain May 15 1973 transactions and to place spot purchasers into the appropriate class of purchaser.

[8] Any wholesale or "consignment" account listed in Appendix A–3 that demonstrates that it did not receive the refund to which it was entitled pursuant to the April 7, 1978 consent order will be eligible to apply for a refund.

[9] As indicated in fn.4, a portion of the refund amount designated for wholesaler customers was erroneously deposited in the miscellaneous receipts account of the Treasury. The wholesale customers refund amounts listed in Appendix A–2 will be proportionately increased when the misdirected funds are retrieved.

[10] The consent order also covers alleged credit card sales violations from February 1, 1974 through September 31, 1974.

[11] Any firm not listed in Appendix B which became a Gull customer after May 3, 1975 may also be eligible for a refund if it submits documentation verifying its claim. In the event that unidentified customers establish their right to a refund, the proposed refund amounts will be adjusted.

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(Case No. HEF-0065), we propose to adopt a volumetric refund presumption. The volumetric presumption assumes that the alleged Texaco overcharges were spread equally over all gallons of Texaco petroleum products marketed by Gull. The volumetric refund amounts in this case will be calculated by dividing the amount deposited in the consent order escrow account by the total gallonage (excluding those gallons for which refunds were made by Gull) of covered products sold by Gull to its wholesale and consignment accounts during the January 15, 1982 consent order period. Based upon the information available to us at this time, the volumetric refund amount will be $0.001665 per gallon, exclusive of interest ($873,880.54 consent order fund divided by 524,631,202 gallons of Texaco motor gasoline and middle distillates resold by Gull during the consent order period). We propose that any Gull customer who has not already received a refund from Gull for the Texaco overcharges may file a refund application based on the total gallons of motor gasoline and middle distillates it purchased during the consent order period.[12] A successful applicant will receive a refund equal to the volumes of Texaco product it purchased from Gull during the consent order period times the volumetric refund amount, plus a proportionate share of the accured interest.[13]

V. Conclusion

Refund applications in these three proceedings should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. We have, however, summarized the proposed methodology in Appendix D of this Proposed Decision. Before disposing of any of the funds received, we intend to publicize the distribution process in the Federal Register and to notify all of the firms whose names and addresses are listed in the audit files of these proceedings. In the event that money remains after all meritorious claims have been disposed of in the first stage, undistributed funds could be distributed in a subsequent second-stage proceeding. However, we will not be in a position to consider that process until first stage refund proceedings are completed.

It is Therefore Ordered That:

(1) The refund amount remitted to the Department of Energy by Gull Industries, Inc. pursuant to the consent order executed on April 7, 1978 will be distributed in accordance with the foregoing Decision.

(2) The refund amount remitted to the Department of Energy by Gull Industries, Inc. pursuant to the consent order executed on September 1, 1981 will be distributed in accordance with the foregoing Decision.

(3) The refund amount remitted to the Department of Energy by Gull Industries, Inc. pursuant to the letter of agreement executed on January 15, 1982 will be distributed in accordance with the foregoing Decision.

Appendix A-1

HEF-0086

April 7, 1978 Consent Order

"Consignment" Accounts

	Principal Consent order amount after adjustment [1]	Interest accrued (before September 1981)	Amount refunded or rolled back by Gull after consent order	Potential refund (excluding) interest accrued after September 1981
Bob's Gull	$5,206.81	$2,275.26	$66.61	$7,417.26
Bolser, Al	2,967.11	1,296.07	0.00	[2] 4,263.18
Coronata, Mario	6,410.74	2,800.28	0.00	9,211.02
D & D Discount	3,082.76	3,967.44	1,899.41	11,150.79
Denny's Gull	4,321.29	1,887.58	4,749.34	[2] 1,459.53
Don's Truckstop	9,696.50	4,236.40	1,759.76	12,175.14
Eigell, Robert	5,835.61	2,896.58	1,016.57	8,515.62
Martin, Stanley	8,540.82	3,717.61	149.90	12,078.53
Mills, Arthur	5,722.18	2,499.50	700.22	7,521.44
Newlun, Albert	2,221.67	970.54	267.11	[2] 2,825.30
Seiflein, Richard	3,512.66	1,534.45	175.23	[2] 4,872.06
Shane, Richard	3,585.80	1,557.36	64.72	5,057.94
Stanley, E. L.	2,558.77	1,117.70	395.54	[2] 3,280.93
Wescott, Steve	7,607.45	3,323.01	0.00	[10] 10,930.46
Total	78,024.25	34,081.78	11,246.61	100,859.42

[1] The consent order provided for reductions in refunds due individual firms to account for voluntary refunds or price rollbacks Gull made during the course of the consent order period. *See* n.4.

Appendix A-2

HEF-0086

April 7, 1978 Consent Order

Wholesale Accounts

	Consent order amount paid to DOE	Consent order amount as a percent of total amount paid to DOE	Potential refund (excluding interest after September 9, 1981
Distler, John [1]	$986.83	0.49544018	$130.90
Jack's Payless	4,507.19	6.06740563	1,806.36
Jones, Bud [1]	977.70	1.32048049	348.89
Maxwell Oil Co. [2]	3,868.81	5.25222231	1,387.70
New Way Fuels [1]	16,861.36	25.23102331	6,666.32
Paramount Oil	3,861.33	4.93146208	1,302.95
Perovich, Wm	1,547.82	2.08648391	552.33
Reinhard Dist	5,767.93	7.79015962	2,056.25
Star Oil	8,450.87	11.41346517	3,015.57
Truax Oil Co.	9,899.48	13.03922236	3,176.62
Trunkey Oil	13,833.15	18.41291670	4,864.90
Yaden, Cliff	3,869.26	4.95569633	1,309.35
Total	[3] 74,041.23	100	26,421.14

[1] In addition to the designated consent order amount paid to the DOE, these firms received partial refunds directly from Gull in the following amounts: John Distler, $33,017.59; Bud Jones, $4,226.62; Maxwell Oil Co., $3,897.31; and New Way Fuels, $182.46.

[2] Maxwell Oil Co. is currently in default in the amount of $9,743.39 plus interest in its obligations pursuant to a settlement agreement it entered into with the DOE. *See Maxwell Oil Co.*, Case No. HEF-0125 (dismissed by letter July 3, 1985). In the event Maxwell files a refund application, the fact that it is in arrears to the DOE will be taken into consideration in determining whether to disburse any refund for which it may be eligible. *Cf. Standard Oil Co. (Indiana)/ Marathon petroleum Co.*, 12 DOE ¶ 85,007 (refund deposited in separate escrow accont pending resolution of enforcement proceeding involving refund applicant).

[3] *See* nn. 4 and 9.

APPENDIX A-3

HEF-0086

April 7, 1978 Consent Order

Firms whose consent order amounts were paid in full:

Wholesale Accounts

CK Company
C & M Company
Christenson Oil
Circle S Distributing
Denny's Heating Oil
Digas
Drain Oil
Dvorak Oil

[12] Texaco also made direct refunds totalling $1,777,810.40 to Gull customers. These refunds have no bearing on the current proceeding, and a firm may apply for a Gull refund regardless of whether it received a direct refund from Texaco.

[13] Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from a consent order settlement is also a compromise. The volumetric refund amount does not purport to calculate the exact amount that a customer may have been overcharged. Rather it is a method by which we can estimate the portion of the consent order fund that should be allocated to a given purchaser. We recognize that the impact on an individual purchaser. We recognize that the impact on an individual purchaser could have been greater than the applicable volumtric refund amount, and we propose that any purchaser be allowed to file a refund application based on a claim that it incurred a disproportionate share of the injury associated with Texaco's alleged overcharges. *See e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233-34 (1984); *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984) and cases cited therein.

Ferguson
Gas-A-Matic (Vancouver)
Gas-A-Matic
Val Goemaere
Paul Greig
H & E Enterprises
Thomas Hanson
Huling Brothers
Joe's Gas Stop
John's Carousel
Leathers Oil
Aaron Leisle
Lowell Oil
Mennis Oil Co.
D.E. Mercer
Milk Barn
Mobile Crane
Nichols
OK Cash
William Perovich
Prine Oil
Claire Reid/Bestway
Robben Oil
Ronco Oil Co.
Seattle Ready Mix
Shane's Supply
R.H. Smith
Ed Smith
Spear Oil
Joe K. Staley
Stewart Oil
Thrifty Gas
Tire Center
Valley/Smith Brothers
Edmund Vitt
Ken Wagnon
Fred Wambough
Western Oil
Winston Oil Co.

"Consignment" Accounts

Elbert Adams
Lon Allen
Lou Allen
B & B Service
Chambers/Hill
Bill Cummins
William Flores
Four Corners Gull
Glenn's Gull
Chester Goad
Grand Gull
Don Gunner
Raynard Halverson
Jerry's Gull
Bert Jolly
William Perovich
Pittman Harold
Cletus Redmond
Harry Russell
Howard Swanstrom

Commission Accounts

Stations through which Gull refunded alleged retail overcharges to consumers:

Robert Adams
Robert Akers
G. Anderson
G. M. M. Anderson
Russ Appleyard
Jay Arlen
William Bentley
Terry Berg
Phil Browder
Troy Church
Circle S Distributing
Martin Diesberg
John Distler
Rose Draper
Oscar Eady
Marlin Erickson
Robert Fite
Ralph Gabbard
James Haven
David Hought
Tsai Hsu
D. Johnson/Kent Gull
H. Johnson
Kortman
Norm's MacDonald
Larry Meyers
Richard Neff
Al Newlun
Richard Oughton
Tom Papineau
Lloyd Paxton
Roberts
Richard Seiflein
Shamblin
Lou Spurlock
John Taylor
Robert Utermarck
Mike Vess
Doug Ward
Ralph Webb
Don wesley
Allan Widell

Appendix B

HEF-0084

September 1, 1981 Consent Order, Eligible "Consignment" & Wholesale Claimants.

Firm	Percentage of alleged overcharges	Potential refund
Adams, Elbert	0.012176337	$637.33
Allen, Lon	.001554325	81.36
B&B Service	.014651277	766.86
Bob's Gull	.015358661	803.97
Bolser, Al	.009689718	507.18
C&M Supply	.000933502	48.86
CK Company	.000618963	32.40
Chambers (Hill)	.015348834	803.39
Christenson Oil	.001700746	89.02
Circle S Dist. Co	.000028253	[1] 1.48
Coronata, Mario	.017417591	911.67
Cummins, Bill	.008965539	469.27
D&D Discount	.027992232	1,465.17
Denny's Heating	.002785400	145.79
Denny's Gull	.014568344	762.54
Digas Oil	.000916113	47.95
Distler, John	.083127137	4,351.04
Don's Truckstop	.027190144	1,423.19
Drain Oil	.001035227	54.19
Dvorak Oil	.011821062	618.74
Eigell, Robert	.022427784	1,173.92
Ferguson	.000020032	[1] 1.05
Flores, William	.040156368	2,102.02
Four Corners Gull	.000899637	47.09
Gas-A-Matic	.031626306	1,655.38
Gas-A-Matic Vanc.	.003082092	161.32
Gleen's Gull	.005368948	281.02
Goad, Chet	.015191940	795.16
Goemaere, Val	.001162921	60.87
Goshen CVS Newton	.038266102	2,002.92
Grand Gull	.011697629	612.28
Greig, Paul	.002762530	144.60
Gunner, Don	.009192511	481.15
H&E Enterprises	.000989389	51.79
Halverson, Raynard	.006145099	321.65
Hanson, Thomas	.009168956	479.92
Huling Bros.	.001238220	64.81
Jack's Payless	.011008554	576.21
Jerry's Gull	.011366256	594.93
Joe's Gas Stop	.000424322	22.21
John's Carousel	.000065348	[1] 3.42
Jolly, Bert	.009114439	477.07
Jones, Bud	.013242427	693.14
Leathers Oil	.002959063	154.86
Leisle, Aaron	.001035194	54.16
Lowell Oil	.000255520	[1] 13.37
Martin, Stanley	.025704821	1,345.44
Maxwell Oil [2]	.014926371	781.26
Mennis Oil	.003340809	174.86
Mercer, D.E.	.000017978	[1] 0.94
Milk Barn	.000031385	[1] 1.64
Mills, Arthur	.018521526	969.45
Mobile Crane	.000927368	48.54
Newway Fuel	.046459796	2,431.80
Newlun, Albert	.009481994	496.31
Nichols	.000240153	[1] 12.57
OK Cash	.000274279	[1] 14.36
Paramount Oil	.008958850	468.92
Perovich, William	.010269107	537.51
Perovich, William	.003815505	199.71
Pittman, Harold	.009101520	476.39
Prine Oil	.000260348	[1] 13.63
Redmond, Cletus	.015504455	811.53
Reid/Bestway	.022315433	1,168.03
Reinhart Dist.	.014196091	743.05
Robben Oil	.002371322	124.12
Ronco Oil Co.	.004951837	259.19
Russell/Portland	.015796319	826.81
Russell/Salem	.039620010	2,073.79
Seattle Ready Mix	.007794852	408.00
Seiflein, Richard	.012059213	631.20
Shane, Richard	.013278119	695.00
Shane's Supply	.000733086	38.37
Smith, R.H.	.002974886	155.71
Smith, Ed	.000046132	[1] 2.41
Staley, Joe K.	.000148444	[1] 7.77
Stanley, Everett	.009372798	490.59
Star Oil	.020771365	1,087.22
Stewart Oil	.000157416	[1] 8.24
Swanstrom, Howard	.014443031	755.98
Thrifty Gas	.000503816	26.32
Tire Center	.001528159	79.99
Truax, Mike	.017154502	897.90
Trunkey Oil	.026148879	1,368.69
Valley/Smith Bros.	.031166066	1,631.29
Vitt, Edmund	.001906088	99.17
Wagnon Trucking	.000904388	47.34
Wambough, Fred	.000402561	21.07
Western, Steve	.020889039	1,082.91
Western Oil	.008195456	428.87
Winston Oil Co.	.006684131	349.86
Yaden, Cliff	.009078324	475.16
Total	1.000000000	52,342.00

[1] These customers will not be eligible for refunds unless the amount of accrued interest is sufficient to raise their refund to the minimum of $15.00.

[2] See n.** to Appendix A-2.

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Appendix C

HEF-0085

January 15, 1982 Consent Order

Gull Customers Who Received Texaco Refunds from Gull.
Addision, Lon
B&B Service
CK Company
Christenen Oil
Chuck's Oil
Denny's Gull
Denny's HO Eugene
Denny's HO
Denny's Heating Oil
Distler, John
Don's Truck Stop
Eugene Heating Oil
Flying J Oil
Four Corners Gull
Glenn's Gull
Golden Gate Petroleum
Gunner, Don
Hanson, Eugene
Huling Seattle
Jack's Auto Parts
Jerry's Gull
Leisle, Aaron
Lost Creek, Chas. Liles
McCall Oil
Mercer, DE
Mills, Arthur
Mustang Oil
Newway Fuel
Reed, Claire (Bestway)
Redmond, Cletus
Robben Oil
Rusich, Ivan
Salem #2/Russell #1
Salem #2/Boedecker
Shourd, William
Stark St/Boedecker
Swanstrom, Howard
Taylor, J.
Time Oil
Trunkey's Oil
Vess, Mike

APPENDIX D.—SUMMARY OF PROPOSED REFUND PROCEDURES

Consent order date and case No.	Consent order period	Eligible claimants	Method of refund calculation
Apr. 7, 1978, HEF-0086	Nov. 1 1973–May 3, 1975	"Consignment" accounts listed in Appendix A-1, wholesale accounts listed in Appendix A-2.	Balance of original refunds designated in consent order.
Sept. 1, 1981, HEF-0084	Feb. 1, 1974–Sept. 30, 1974, May 3, 1975–June 30, 1977.	"Consignment" and wholesale accounts listed in Appendix B	Pro-rata distribution of consent order amount.
Jan. 15, 1982, HEF-0085	Aug. 19, 1973–June 9, 1977	All Gull customers except commission accounts and those listed in Appendix C.	$0.001665, plus interest, for each gallon of covered product purchased during consent order period.

[FR Doc. 86-1677 Filed 1-24-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2960-3]

Science Advisory Board; Environmental Engineering Committee; Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of a Subcommittee of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room 1101, West Tower, 401 M Street SW, Washington, DC on February 12, 1986. The meeting will begin at 10:00 a.m. and last until 5:00 p.m.

The purpose of the meeting will be to commence review of draft Agency guidance for the definition of Ground Water Vulnerability for Resource Conservation and Recovery Act (RCRA) facilities (required under section 3004 (o)(7) of RCRA). The draft guidance presents a site-specific method for ground water vulnerability determination based on a time-travel calculation.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mr. Torno prior to February 7, 1986 in order to be placed on the agenda.

Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382-2552.

Dated: January 16, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-1679 Filed 1-24-86; 8:45 am]
BILLING CODE 6560-50-M

[SAB-FRL-2960-4]

Science Advisory Board; Environmental Engineering Committee; Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room 3906/3908M, 401 M Street SW, Washington, DC on February 13-14, 1986. The meeting will begin at 9:00 a.m. and last until 5:00 p.m. on Feburary 13, and will begin at 9:00 a.m. and last until 1:00 p.m. on February 14.

Agenda items will include final approval of committee reports on their review of Agency guidance for the establishment of Alternate Concentration Limits and of a RCRA Ground Water Monitoring Technical Enforcement Guidance Document. The committee will also be briefed on the status of technical documents relating to proposed revisions to Agency Ocean Dumping Regulations and to regulations for the reuse and disposal of sewage sludge.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mr. Torno prior to February 7, 1986, in order to be placed on the agenda.

Any member of the public wishing to attend should contact Mrs. Brenda Browne at (202) 382-2552.

Dated: January 16, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-1678 Filed 1-24-86; 8:45 am]
BILLING CODE 6560-50-M

[AD-FRL 2879-5]

Toxic Pollution Control; Intent to List Cadmium Under Section 112 of the Clean Air Act and Solicitation of Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The public comment period on the EPA's Notice of Intent to List cadmium under section 112 of the Clean Air Act and Solicitation of Information (50 FR 42000, October 16, 1985) has been extended 90 days.

DATES: Written comments to be included in the record on the subject notice must be postmarked no later than April 14, 1986. Written comments responding to, supplementing, or rebutting written or oral comments received at the public hearing must be postmarked no later than April 14, 1986.

ADDRESSES: Comments on the Notice of Intent to List should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Environmental Protection Agency, ATTN: Docket No. A-81-37, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert G. Kellam, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone: Commercial (919) 541-5645/FTS: 629-5645).

SUPPLEMENTARY INFORMATION: In the course of conducting the public hearing on the Notice of Intent, EPA received requests to extend the public comment period to enable sources of cadmium emissions to conduct source and emission tests and other data-gathering activities to provide information requested by EPA in the October 16 notice. In that notice, EPA requested information on cadmium source location, emission rates and control equipment, control efficiencies for cadmium emission control technology similar to those for total particulate emission control, problems associated with establishing emissions standards for cadmium, and information on sources not identified in the Notice of Intent that would be likely to emit significant amounts of cadmium into the air. The 90-day extension to April 14, 1986, will enable commenters to respond more fully through additional testing, analyses, and studies to the EPA's requests for information.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-1683 Filed 1-24-86; 8:45 am]
BILLING CODE 8560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirements Approved by OMB

January 21, 1986

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Benz, FCC, (202) 632-7513.

OMB No.: 3060-0113
Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines
Form No.: FCC 396

The approval on FCC 396-A has been extended through 1/31/87. The April 1984 edition will remain in use until updated forms are available.

OMB No.: 3060-0120
Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines
Form No.: FCC 396-A

The approval on FCC 396-A has been extended through 1/31/87. The January 1984 edition will remain in use until updated forms are available.

OMB No.: 3060-0132
Title: Supplemental Information—72-76 MHz Operational Fixed Stations
Form No.: FCC 1068-A

The approval on FCC 1068-A has been extended through 12/31/88. The October 1984 edition will remain in use until updated forms are available.

Federal Communications Commissions.

William J. Tricarico,

Secretary.

[FR Doc. 86-1619 Filed 1-24-86; 8:45 am]
BILLING CODE 6712-01-M

[FCC 85-663]

KQED, Inc., et al.; Memorandum Opinion and Order

In re applications of MM Docket No. 85-396:

	File No.
KQED, INC., San Francisco, CA, for renewal of licenses of noncommercial stations.	
KQED-FM	BRED-237, 800801ZS, and 830801WD.
KQED-TV, and	BRET-25, 800801LQ, and 830801LK.
KQEC-TV	BRET-203 and 800801LV.

In re applications of MM Docket No. 84-567:

	File No.
KQED, INC., San Francisco, CA, for renewal of license of non-commercial educational station KQEC (TV), Channel 32, San Francisco, CA.	BRET-830801LJ.

In re applications of MM Docket No. 84-568:

	File No.
Minority Television Project, San Francisco, CA, for a construction permit for a new non-commercial educational television station on Channel 32, San Francisco, CA.	BPET-831101KI.

Adopted: December 24, 1985.

Released: January 3, 1986.

By the Commission.

1. Before the Commission are: (1) the above-captioned applications; (2) a Petition for Leave to Intervene filed May 10 by Minority Television Project (Minority)[1] and an Opposition thereto filed May 22 by KQED, Inc. (KQED); (3) Contingent Comments filed May 24 by Minority, Comments filed June 12, 1985 by the Mass Media Bureau and June 14 by the California Public Broadcasting Forum, *et al.* (Forum)[2] and KQED; (4) Reply Comments filed July 11 by Forum and July 15 by KQED;[3] (5) a Petition for Leave to Amend filed August 13 by KQED, and (6) a Petition for Leave to Amend filed September 17 by Minority, Comments filed September 26 by KQED, and a Reply filed October 8 by Minority.

I. Background

2. KQED is the licensee of noncommercial Stations KQED-FM, KQED-TV, and KQEC-TV, all at San

[1] Minority filed addena to this pleading on May 16, 1985 and May 24, 1985.

[2] Forum includes in addition to the California Public Broadcasting Forum: the Bay Area Bilingual Education League, the NAACP, the Community Coalition for Media Change, the Public Media Center, and the Committee to SAVE KQED.

[3] As an additional matter, KQED and Forum jointly filed requests for extension of time on May 6 and May 24, 1985 and Forum filed similar requests on June 6 and June 28. Good cause having been shown, these requests will be granted.

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Francisco, California. In 1977, Forum filed a Petition to Deny KQED's renewal applications for the three stations, alleging that: (1) KQED engaged in improper commercial broadcasting, (2) KQED refused to disclose financial information and open its meetings to the public, (3) KQED inadequately served community needs, and (4) KQED committed EEO violations. The Commission denied Forum's Petition to Deny and renewed KQED's licenses for the 1977–80 term.[4] In 1980, Forum filed a Petition to Deny against KQED's renewal applications for the year. This Petition alleged that KQED had committed misrepresentations to the Commission concerning the reasons that KQEC–TV had gone dark in late 1979 and early 1980. The Commission also denied this Petition and renewed KQED's licenses for the 1980–83 term. Simultaneously, the Commission denied reconsideration of its action previously granting renewal for the 1977–80 license term.[5]

3. Forum appealed the Commission actions nenewing KQED's licenses to the United States Court of Appeals for the District of Columbia Circuit. At about the same time, KQED filed applications to renew its station licenses for the 1983–88 and 1983–90, license terms.[6] Minority then filed an application for a construction permit mutually exclusive with KQEC–TV. Additionally, Forum filed a Petition to Deny all three stations. KQED's renewal application for KQEC–TV and Minority's competing application were designated for a comparative renewal hearing.[7]

4. On January 11, 1985, the Court of Appeals reversed the Commission's renewal of KQED's licenses for the 1977–80 and 1980–83 terms.[8] Although the Court affirmed the other aspects of the Commission's action, the court held that Forum's allegations of misrepresentation raised substantial and material questions of fact which warranted an evidentiary hearing. Pursuant to the court's directive, the parties were requested to file comments as to how the Commission should proceed after this matter was remanded.[9] Minority has filed a Petition for Leave to Intervene in any hearing conducted pursuant to the court's remand.

5. On January 4, 1985, prior to the court's remand, Minority voluntarily sought dismissal of its construction permit application. On January 18, after the court decision was announced, Minority rescinded its request that its application be dismissed. However, on January 22, the Presiding Judge dismissed Minority's application and terminated the comparative renewal proceeding for KQEC–TV, apparently unaware of Minority's intervening request to rescind.[10] The Review Board granted Minority's appeal of the Presiding Judge's action and reinstated Minority's application in hearing status.[11] Because of the relationship betweend the existing comparative renewal proceeding and the proceeding remanded by the Court of Appeals, the Board referred the 1983 applications to the Commission instead of returning them to the Presiding Judge.

II. Misrepresentation Issue

6. The misrepresentation issue arises from the following facts. In 1971, KQED acquired KQEC–TV, a smaller station than its existing station KQED–TV, also in San Francisco. Because of budgetary problems, KQED, with Commission approval, did not operate KQEC–TV during the years 1972–77. In 1975, the Commission warned KQED that it would no longer accept budgetary problems as a justification for continued nonoperation of the station. A Commission Order that KQEC–TV resume operation did not become effective until 1977, however, at which time the station returned to the air. In November 1979, the station once again went dark, because, as KQED explained, a master routing switcher needed replacement. The station resumed operation for three weeks in December 1979, but ceased operation during the months of January to May 1980.

7. During the period in which KQEC–TV remained dark, KQED notified the Commission on three occasions that the delays in resuming operation were due to the replacement of the switching equipment. In its 1980 Petition to Deny and Petition for Reconsideration Forum asserted that these were misrepresentations. Forum proferred an affidavit by Henry Kroll, former director of KQED, which stated that the deactivation of KQEC–TV resulted solely from budgetary reasons, which the Commission had rejected as a justification in 1975, and that the deactivation was anticipated to last through August 1980. Additionally, Forum proffered as corroborating evidence: (1) The KQED board resolution approving the deactivation of KQEC–TV, (2) statements in a monthly magazine sent to KQED members, and (3) an internal KQED memorandum. KQED responded by alleging that the budgetary problems referred to in Forum's evidence were those specifically associated with the switcher replacement and not general budgetary considerations. KQED submitted affidavits by KQED President Tiano and Chief Engineer Zastrow to support its position.

8. The Commission found that no question of misrepresentation had been raised, noting that the shut down or KQEC–TV had only been temporary, new equipment was in fact installed, and the Commission had been informed of KQED's progress in installing the new equipment. The court disagreed and held that Forum's evidence raised a substantial question of fact as to KQED's intent in shutting down the station. The court ruled that it was arbitrary and capricious for the Commission to require Forum to make a more specific showing of deceptive intent where KQED's had the only access to relevant facts. According to the court, the documentation submitted by Forum was adequate to raise a substantial question that the explanation gave for deactivating KQEC–TV was false and KQED knew it was false.

9. All of those filing comments agree that KQED's 1977 and 1980 renewal applications for Stations KQED-TV, KQED-FM, and KQEC-TV must now be designated for evidentiary hearing on the question of misrepresentation. Although KQED, Forum, and the Bureau propose somewhat different language for the issue to be designated, they essentially agree as to the scope of the issue. Thus, we need not belabor the choice of language. The commenters also agree that because the question of misrepresentation goes to KQED's requisite qualifications, all three license renewals must be designated.

10. KQED and Forum disagree over how the initial burden of proceeding with the introduction of evidence should be allocated in this case. KQED, relying on *Office of Communication of the United Church of Christ* v. *FCC.* [12] argues that the burden of proceeding should be on Forum because it intends to "prosecute" the issue. Forum responds that since the designated issue arises from KQED's documents and concerns information within. KQED's knowledge, KQED should bear the burden. We will follow *United Church of Christ* and place the burden on Forum. Forum has already indicated, in seeking the misrepresentation issue in the first instance, that it has significant evidence in support thereof. If Forum needs to augment the information in its possession, it will have recourse to the Commission's discovery processes.

III. Relationship Between 1977/1980 and 1983 Proceedings

11. The Mass Media Bureau and Minority propose consolidating the proceeding remanded by the Court of Appeals involing KQED's 1977/1980 renewals and the existing comparative renewal proceeding involving the 1983 renewal of KQED-TV.[13] The Bureau asserts that, since the misrepresenation issue bears on KQED's requisite qualifications, it could have an impact on the disposition of the 1983 proceeding. Accordingly, the Bureau suggests that considerations of administrative efficiency and due process favor consolidation. Minority observes that KQED is a party to both proceedings and that consolidation would avoid duplicative litigation of the issues. Minority also notes that the misrepresentation issue could moot the comparative renewal proceeding.

12. Forum and KQED oppose consolidation. KQED maintains that the misrepresentation issue is narrow and should be expeditiously decided to remove the cloud from KQED's reputation. KQED also points out that the issues involved in the comparative renewal proceeding are broader and unrelated to misrepresentation. Forum finally stresses that the issues involve two different license terms and that both proceedings will be unnecessarily complicated by the participation of parties in proceedings in which they have no direct interest or ability to assist the Commission. KQED and Forum therefore suggest making the 1983 proceeding subject to the outcome of the 1977/1980 proceeding.

13. We will consolidate the two proceedings. KQED's requisite qualifications to be determined in the 1977/1980 proceedings are relevant to the 1983 comparative renewal proceeding and might affect the outcome of the later proceeding. Hence, it is appropriate that Minority have the opportunity to protect its interests by participating in the litigation of the misrepresentation issue.[14] Administratively these cases are not extraordinarily complex,[15] and we believe that the resources of both the parties and the Commission would best be employed by dealing with all parties and issues in a coordinated fashion before a single Administrative Law Judge.[16]

14. Accordingly, it is ordered, that the Joint Requests for extension of Time filed May 8, 1985 and May 24, 1985 by KQED, Inc. and the California Public Broadcasting Forum, *et al.* and the Requests for Extension of Time filed June 6, 1985 and June 28, 1985 by the California Public Broadcasting Forum, *et al.* ARE GRANTED.

15. It is further ordered that, good cause having been shown, the Petition for Leave to Amend filed August 13, 1985 by KQED, Inc. is granted.[17]

16. It is further ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the 1977/1980 applications of KQED, Inc. for renewal of Stations KQED–FM, KQED–TV, and KQEC–TV (BRED–237 and BRED–800801ZS, BRET–25 and BRET–800801LQ, and BRET–203 and BRET–800801LV) ARE DESIGNATED FOR HEARING at a time and place to be specified in a subsequent Order, upon the following issue:

To determine whether KQED, Inc. misrepresented the reason for suspending the operations of Station KQEC–TV from November 1979 through May 1980 and, if so, the effect thereof of KQED, Inc's requisite qualifications to remain a Commission licensee.

17. It is further ordered, that the California Public Broadcasting Forum, *et al.* IS MADE a party to this proceeding.

18. It is further ordered, that the California Public Broadcasting Forum, *et al.* shall proceed with the initial presentation of evidence with respect to the issue designated in paragraph 16 and that the burden of proof with respect to this issue shall be on KQED, Inc.

19. It is further ordered, that the Petition to Deny filed November 1, 1983 by the California Public Broadcasting Forum, *et al.* is granted to the extent indicated herein and otherwise is denied; and that the 1983 applications of KQED, Inc. for renewal of KQED–FM (File No. BRED–830801WD) and KQED–TV (File No. BRET–830801LK) are designated for hearing as part of the proceeding specified in paragraph 16.

20. It is further ordered, that the 1983 application of KQED, Inc. for renewal of station KQEC–TV (BRET–830301LJ) and the application of Minority Television Project for a construction permit (BPET–831101KI) ARE REINSTATED in hearing status.

21. It is further ordered, that the proceedings specified in paragraphs 16 and 20 are consolidated.

22. It is further ordered, that the Petition for Leave to Intervene filed May 10, 1985 by Minority Television Project IS DISMISSED as moot.

23. It is further ordered, that the Petition for Leave to Amend filed September 17, 1985 by Minority Television Project and related pleadings are referred to the Presiding Judge for disposition.

24. It is further ordered, that, to avail themselves of the opportunity to be heard, any applicant or party respondent, who has not already done so, shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

25. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

26. It is further ordered, that the Secretary send by Certified Mail-Return Receipt Requested on copy of this

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[4] *KQED, Inc.*, 77 FCC 2d 9873 (1980).

[5] *KQED, Inc.*, 88 FCC 2d 1159 (1982), *recon. denied*, FCC 83–405, released September 20, 1983. Forum also made its new allegations in the Petition For Reconsideration of the Commission's 1977 renewal.

[6] Congress extended the license term for television stations from three years to five years and for radio stations from three years to seven years. Pub. L. 99–35, August 13, 1981.

[7] Mimeo No. 4615, released June 8, 1984.

[8] *California Public Broadcasting Forum* v. *FCC*, 752 F.2d 670 (D.C. Cir. 1985).

[9] Mimeo No. 3799, released April 10, 1985.

[10] FCC 85M–319, released June 8, 1984.

[11] FCC 84R–34, released April 26, 1985, *modified*, FCC 85R–45, released May 28, 1985.

[12] 425 F.2d 543, 546 n. 6 (D.C. Cir. 1969).

[13] Pursuant to § 1.227(a)(1) of the Commission's Rules any cases involving the same applicant or substantially the same issues may be consolidated where such action will best conduce to the proper dispatch of business and to the ends of justice.

[14] *See RKO General, Inc.*, 94 FCC 2d 890 (1983); *Advance Mobile Phone Service, Inc.*, 91 FCC 2d 512, 520 n. 19 (1982).

[15] *Compare* cases cited note 14.

[16] *See Seaboard Broadcasting Corp.*, 18 RR 2d 849, *recon. granted in part*, 26 FCC 2d 653 (1970). *Compare Radio Stamford, Inc.*, 35 FCC 2d 776 (1972), *recon. denied*, 39 FCC 2d 84 (1973). Finally, in addition to the 1977 and 1980 renewal applications remanded by the court, we will also designate for hearing KQED's 1983 applications for KQED-TV and KQED–FM. This action does not require the consideration of any additional issues, since Forum's 1983 Petition to Deny merely reiterates the allegations previously made in 1977 and 1980. Forum's Petition to Deny at 5. This will accord with the Commissions' usual practice of considering all pending application for renewal of the same station in consolidated fashion.

[17] This unopposed pleading reports that a complaint of employment discrimination by Wendy Ho has been dismissed by the EEOC and the California State Department Fair Employment and Housing.

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Memorandum Opinion and Order to the applicants and to the petitioners.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc 86-1615 Filed 1-24-86; 8:45 am]
BILLING CODE 6712-01-M

[Report No. CL-86-57]

Common Carrier Public Mobile Services Information; Filing Information for Cellular Markets 121-305

January 21, 1986.

The Mobile Services Division has received a number of inquiries concerning the filing requirements pertaining to cellular markets 121-305. Some of the most frequently asked questions, and the answers of the Division to them, follow:

Q. Must the microfiche copies which accompany the application reproduce the signatures which appear on the original application, certification and verification forms?

A. No. Only the original application itself need be executed. The duplicate copy of the application, and the microfiche copies, need not bear facsimiles of the signatures. However, they should be conformed to identify the signatory.

Q. Must the full scale 1:250,000 map be duplicated in the microfiche copies?

A. No. The microfiche copy need only contain a reproduction of the 8.5 by 11 inch version of the map. The original and paper duplicate copy of the application must include both the full-scale 1:250,000 map required by § 22.903(a) and the 8.5 by 11 inch version required by § 22.913(a)(2).

Q. Does revised § 22.913(b)(4) of the rules require that the applicant split up the Schedule B's filed with the application so as to include the lead cell site with the "Initial Form 401" which follows the certification, while the Schedule B's pertaining to the "remaining cell sites" fall at the end of the application?

A. No. Applicants may consolidate all Schedule B's at the end of the application. The "Initial Form 401" following the certification may include only Schedule A.

Q. Can the legal portions of the application and the technical portions of the application be reproduced on separate microforms?

A. Yes. As long as the microfiche copy of the application is complete and is in the same order as the original application, and provided that both microfiche cards are readably labeled at the top, as provided in § 22.913(c).

Q. Revised rule § 22.913(b)(5) imposes certain page limitations on the informational showings required under particular subsections of 22.913(a). Do these page limitations apply to the entire exhibit filed in response to each subsection, or rather to each topic addressed in the subsection?

A. Responses to a particular subsection of the rules should be combined in a single exhibit. The entire exhibit must meet the page limitation.

Q. May applicants respond "Does Not Apply" to items 21, 37(j) of the FCC Form 401 and to the box immediately preceding item 37(h) of the form.

A. Yes.

Q. Must applicants affirmatively state in their applications their willingness to engage in frequency coordination and to cooperate to resolve frequency conflicts?

A. No. These obligations are set forth in the rules and need not be reiterated in the applications.

Q. May applicants combine in a single exhibit information required under more than one rule section?

A. No, except that the information called for by §§ 22.913(a)(11) and 22.13(a)(1) may be combined in a single response. This combined exhibit should immediately follow the table of contents.

Q. Now that Item 32 of the Form 401 asks whether a grant of the application is an environmental "major action", can applicants eliminate the separate exhibit contemplated by § 22.913(a)(1) of the rules?

A. Yes, provided that the answer to item 32 is "No".

Q. Is there a difference between the information required by §§ 22.13(a)(1) and 22.13(a)(2)?

A. Yes. Section 22.13(a)(1) requires a disclosure of real parties in interest, applicant subsidiaries and affiliates, and ownership information. Section 22.13(a)(2) requires a demonstration of the applicant's "qualifications to hold an authorization".

Q. How should the microfiche envelope be presented to the Commission?

A. Two jacketed microfiche copies in a clearly labeled envelope, attached to the original application by clip or rubber band, should be presented to the Commission. The envelope should not be bound into the original or paper copy of the application.

Q. Will applicants be able to get a receipt stamped copy of the microfiche envelope?

A. No. Only a hard copy of the original application will be receipt stamped.

Q. Must the counsel's transmittal letter to the Commission be included in the microfiche copy?

A. No.

Q. Where the large CGSA map appear in the application?

A. The 1:250,000 scale map may be inserted either in the exhibit pertaining to § 22.913(a)(2) or at the end of the application. The 8.5 by 11 inch map must be inserted in the § 22.913(a)(2) Exhibit.

Q. Must exhibits be submitted in response to § 22.913(a)(9) and (10)?

A. Non-wire carriers need not respond to § 22.913(a)(9) while wireline carriers must do so. Section § 22.913(a)(10) is inapplicable to applications for markets 121-305.

Q. Must applicants provide a frequency plan that shows specific frequencies for each site?

A. No. The applicant must, however, provide the number of frequencies to be used at each site and list either the specific frequencies or the groups from which the frequencies will be selected. Similarly, applicants need not list specific frequencies in response to Item 33(j).

Q. Must any FAA filing be made prior to filing the Form 401?

A. Any required FAA Form 7460-1 must be filed with the FAA prior to, or concurrently with, the filing, and 35(f) must be answered appropriately.

Q. Which editions of Form 401 may be used?

A. FCC Form 401 dated January 1985, bearing OMB approval number 3060-0046, must be used. Earlier editions of the form may *not* be used.

Applicants with further questions regarding filing requirements for markets 121-305 should contact Lawrence Krevor at (202) 632-6450 or Myron Peck at (202) 632-6400 for further information.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86-1617 Filed 1-24-86; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1563]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

January 21, 1986.

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions for reconsideration must

be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Request to Amend the Broadcast Network Affiliation Rules and Employment Practice Rules to Extend to Networks and Licensee Headquarters Employment Practice Requirements Now Mandated for Licensees. (RM-3397)

Filed by: David Honig, Attorney for the National Black Media Coalition on 12-16-85.

Subject: Amendment of § 97.114 of the Amateur Radio Service Rules to prohibit disqualified persons from participating in third-party communications. (PR Docket No. 85-51)

Filed by: David B. Popkin on 1-3-86.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86-1618 Filed 1-24-86; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-464]

Tucker Federal Savings and Loan Association, Tucker, GA; Final Action Approval of Conversion Application

Dated: January 13, 1986.

Notice is hereby given that on January 10, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Tucker Federal Savings and Loan Association, Tucker, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Atlanta, P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
Secretary.

[FR Doc. 86-1687 Filed 1-24-86; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Freight Forwarder License; Apollo International Forwarders

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as an ocean freight forwarder pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why the following applicant should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Apollo International Forwarders, 2210 McLester Street, Elizabeth, NJ 07201. Officers: Marty Berger, President, Emil Schneider, Vice President

Dated January 22, 1986.

By the Federal Maritime Commission:
Bruce A. Dombrowski,
Acting Secretary.

[FR Doc. 86-1712 Filed 1-24-86; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 85-14]

Cari-Cargo International, Inc. and Jorge Villena; Amendment to Order of Investigation and Hearing

This proceeding was instituted by Order of Investigation and Hearing served May 3, 1985, to determine whether Respondents Cari-Cargo International, Inc. and Jorge Villena have violated sections 18(b)(1) and 18(b)(3) of the Shipping Act, 1916 (1916 Act) (46 U.S.C. app. 817(b) (1) and (3)), and 8(a)(1) and 10(b)(1) of the Shipping Act of 1984 (1984 Act) (46 U.S.C. app. 1707(a)(1) and 1709(b)(1)), by operating as a common carrier without a tariff on file with the Commission. On the basis of additional evidence which the Commission's Bureau of Hearing Counsel uncovered relating to Respondent's practices in tendering cargoes to underlying vessel-operating carriers allegedly under incorrect descriptions, the investigation was expanded by Amendment to Order of Investigation and Hearing served August 7, 1985, to include issues under section 18 Initial Paragraph, 1916 Act (46 U.S.C. app. 815) and section 10(a)(1) of the 1984 Act (46 U.S.C. 1709(a)(1)).

On December 4, 1985 Hearing Counsel filed a Motion to Further Modify Order of Investigation (Motion). The Motion advises the Presiding Administrative Law Judge (Presiding Officer) that additional information has recently come to Hearing Counsel's attention, alleging that Respondent Jorge Villena has been operating a company, known as Sea Trade Shipping, which issued a non-vessel operating common carrier (NVOCC) bill of lading as late as September 13, 1985. Hearing Counsel believes that Mr. Villena has been operating or at least advertising this company as an NVOCC during the course of this proceeding and that he may have been assessing rates without regard to a tariff which Sea Trade Shipping filed effective September 5, 1985. To ensure that any orders resulting from this proceeding reach the full extent of Mr. Villena's activities, Hearing Counsel requests that Sea Trade Shipping be named as a respondent. No reply to Hearing Counsel's Motion has been received.

Rule 147 of the Commission's Rules of Practice and Procedure (46 CFR 502.147) authorizes a presiding administrative law judge to "delineate the scope of a proceeding instituted by order of the Commission by amending, modifying, clarifying or interpreting said order * * *." However, Rule 147 does not authorize a presiding judge to enlarge a proceeding by adding respondents. *See Rules of Practice and Procedure*, 16 SRR 1387, 1388 (1976). Therefore, under the Commission's Rules, the Presiding Officer in this proceeding referred Hearing Counsel's Motion to the Commission. *See* Rule 73(a) of the Commission's Rules of Practice and Procedure. (46 CFR 502.73(a).)

The Order of Investigation and Hearing will be modified to include Sea Trade Shipping as a respondent. This should not delay the proceeding as Hearing Counsel states that it would be prepared to go forward immediately in oral hearing to present its evidence as it relates to Sea Trade Shipping.

Therefore, it is ordered, that the first ordering paragraph of the May 3, 1985 Order of Investigation and Hearing in this proceeding, ad modified, be further modified as follows:

Therefore, it is ordered, that, pursuant to section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821), and section 11 of the Shipping Act of 1984 (46 U.S.C. app. section 1710), a formal investigation and hearing is hereby instituted to determine:

1. Whether Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. violated section 18(b)(1) of the Shipping Act, 1916, and section 8(a)(1) of the Shipping Act of 1984 by performing common carrier operations and failing to maintain with the Commission a tariff showing all rates, charges, classifications, rules and practices;

2. Whether Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. violated section 18(b)(3) of the Shipping Act, 1916, and section 10(b)(1) of the Shipping Act of 1984 by charging different rates for the transportation of property than the effective tariff rates filed with the Commission;

3. Whether Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. knowingly and wilfully, by means of false classification, obtained or attempted to

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obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable in violation of section 16, Initial Paragraph, of the Shipping Act, 1916, and section 10(a)(1) of the Shipping Act of 1984;

4. Whether, in the event Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. is found to have violated section 16 Initial Paragraph, or sections 18(b)(1) or (3), of the Shipping Act, 1916, or sections 8(a)(1), 10(a)(1) or 10(b)(1) of the Shipping Act of 1984, civil penalties should be assessed, and, if so, against whom and in what amount; and

5. Whether, in the event Jorge Villena, Sea Trade Shipping and/or Cari-Cargo International, Inc. is found to have violated section 16, Initial Paragraph or section 18(b)(1) or (3) of the Shipping Act, 1916, or sections 8(a)(1), 10(a)(1) or 10(b)(1) of the Shipping Act of 1984 they should be ordered to cease and desist from violating the provisions of the Shipping Act of 1984.

It is further ordered, that the second ordering paragraph of the Order of Investigation and Hearing in this proceeding be modified as follows:

It is further Ordered, that Jorge Villena, Sea Trade Shipping and Cari-Cargo International, Inc. be named Respondents in this proceeding.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86-1713 Filed 1-24-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-3]

The Trans-Pacific Freight Conference of Japan Agreement, the Japan-Atlantic and Gulf Freight Conference Agreement, and the Japan-Puerto Rico and Virgin Islands Freight Conference Agreement; Modifications; Order To Show Cause

The Trans-Pacific Freight Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, and the Japan-Puerto Rico and Virgin Islands Freight Conference agreements [1] each contain two provisions dealing with a member's right to take independent action which appear to be contrary to section 5(b)(8) of the Shipping Act of 1984 (46 U.S.C. app. 1740(b)(8)).

Article 13(a) of each agreement contains language which prohibits independent action on existing tariff rates if a service contract is being negotiated for the commodities covered by the existing rates.[2] Article 13(b) of each agreement prohibits the chairman of the Conference from publishing a matching independent action if an original proposer of independent action withdraws or modifies the original proposal during the notice period.[3]

Section 5(b)(8) requires that each Conference agreement:

> Provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff * * * and that the conference will include the new rate or service item in its tariff for use by that member * * * and by any other member that notifies the conference that it elects to adopt the independent rate or service item * * *.

It, thus, appears that the subject provision in Article 13(a) violates the provisions of section 5(b)(8) by preventing members from taking independent action in regard to a rate or service item required to be filed in a tariff during the pendency of service contract negotiations by another member. It, likewise, appears that the subject provision in Article 13(b) violates the provisions of section 5(b)(8) by preventing a member from taking independent action after the original proposer of independent action withdraws the proposal before its effective date even though the member following the independent action had met its statutory requirement of notifying the conference that it elects to adopt the original independent action. The cancellation of this independent action could create problems for following carriers who made rate commitments based on the proposed independent action.

On November 15, 1985 the Trans-Pacific Freight Conference of Japan and the Japan-Atlantic and Gulf Freight Conference filed modifications to Article 13(b) of their respective agreements to allow members to partially match or cancel an independent action.[4] The modifications appear to contain the same infirmity, discussed above, if the initiating member elects to partially cancel its independent action before it goes into effect and also appear to violate the provisions of section 5(b)(8).

Section 11(c) of the Shipping Act of 1984 (46 U.S.C. app 1710) provides that:

> The Commission, * * * may investigate any . . . agreement that it believes may be in violation of this Act.
>
> * * * * *
>
> The Commission may by order disapprove, cancel, or modify any agreement filed under section 5(a) of this Act that operates in violation of this Act.

Therefore, it is ordered, that pursuant to section 11 of the Shipping Act of 1984 (46 U.S.C. app. 1710) the Trans-Pacific Freight Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, and the Japan-Puerto Rico and Virgin Islands Freight Conference are ordered to show cause why Agreements No. 202-000150-080, 202-000150-081, 202-003103-081, 202-003103-082, and 202-008190-016 should not be found to be in violation of section 5(b)(8) of the Shipping Act of 1984 (46 U.S.C. app. 1704(b)(8)) by reason of the failure to comply with the mandatory independent action provision of this section of the Act, and, if found to be in violation, whether the agreements should be disapproved, cancelled, or modified by the Commission;[5]

It is further ordered, that this proceeding is limited to the submission of affidavits of fact and memoranda of law on the issue of the legality of the subject provisions of sections 13(a) and 13(b) of the agreements. Should any party feel that an evidentiary hearing is required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, a description of the evidence which would be adduced to prove those facts, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed no later than February 14, 1986. Any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72) no later than February 14, 1986. If any such person believes that an evidentiary hearing is required, their request for hearing shall be filed as a separate pleading and shall accompany their petition to intervene;

It is further ordered, that the Trans-Pacific Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, the Japan-Puerto Rico and Virgin Islands Freight Conference, and their respective members are named Respondents in this proceeding. Affidavits of fact and memorandum of law shall be filed by Respondents and any intervenors in support thereof by March 17, 1986;

It is further ordered, that the Commission's Bureau of Hearing Counsel be made a party to this proceeding. Reply affidavits and a memorandum of law shall be filed by the Bureau of Hearing Counsel and any other intervenors no later than April 16, 1986;

It is further ordered, that notice of this Show Cause Order be published in the Federal Register and that a copy thereof be served upon Respondents;

It is further ordered, that all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118) as well as being mailed directly to all parties of record;

Finally, it is ordered, that pursuant to the terms of Rule 61 (46 CFR 502.61) of the Commission's Rules of Practice and Procedure, the final decision of the Commission in this proceeding shall be issued by September 24, 1986.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86-1714 Filed 1-24-86; 8:45 am]

BILLING CODE 6730-01-M

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[1] Trans-Pacific Freight Conference of Japan, Agreement No. 202-000150-080; Japan-Atlantic and Gulf Freight Conference, Agreement No. 202-003103-081; and Japan-Puerto Rico and Virgin Islands Freight Conference, Agreement No. 202-008190-016.

[2] The specific language in each is: "Independent action may not be taken by any member in the case of any matter, including a rate, charge or service item, associated with negotiating or providing any service contract * * *."

[3] The specific language in each is: "If at any time during the notice period the member should elect to withdraw or modify its independent action, it shall advise the Chairman in writing and the Chairman shall not include the rate or service item in the Conference tariff or tariffs for that member and shall not so include it for any other member."

[4] These modifications are designated Agreements 202-000150-081 and 202-003103-082. The language being added to each agreement is:

In the case where the initiating member of any other member taking a matching action elects to cancel the particular action in part, it shall advise the Chairman in writing and the Chairman shall not include the cancelled part in the Conference tariff or tariffs, it being understood that such partial cancellations shall be accomplished by the cancellation of any rate or service item according to transportation mode and/or on any qualifying conditions stated in the independent action and in the case of a partial cancellation by the initiating member, the Chairman shall not include the cancelled part for any other member.

[5] The Commission currently has pending a Notice of Proposed Rulemaking, Docket No. 85-7, which may require modifications to the independent action provisions of the subject agreements upon issuance of a final rule.

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1)) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested person may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating ho the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Masachusetts; to engage *de novo* through the formation of a wholly-owned subsidiary, Boston International Data Services, Inc., Boston, Massachusetts, in data processing services and other incidential activities, pursuant to § 225.25(b)(7) of Regulation Y.

These activities are to be conducted principally in Europe.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1603 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Bank of New England Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1643 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New England Corporation*, Boston, Massachusetts; to acquire Mariner Mortgage Corporation, Providence, Rhode Island, and thereby engage in making and servicing mortgage and real estate loans that are primarily residential one-to-four family, pusuant to § 225.25(b)(1)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1604 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

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Blissfield Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 14, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Blissfield Bank Corporation*, Blissfield, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Blissfield State Bank, Blissfield, Michigan.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty United Bancorp, Inc.*, Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Kentucky Bank and Trust Company, Madisonville, Kentucky.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Overton Financial Corporation*, Overton, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Overton, Texas.

2. *Ruston Bancshares, Inc.*, Ruston, Louisiana; to acquire 100 percent of the voting shares of Morehouse Bancshares, Inc., Bastrop, Louisiana, thereby indirectly acquiring The Bank of Morehouse, Bastrop, Louisiana.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1605 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Farmers Banc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank of bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 13, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Farmers Banc Corp.*, Mullica Hill, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers National Bank of Mullica Hill, Mullica Hill, New Jersey.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to acquire 100 percent of the voting shares of Suburban Bank/Delaware, Dover, Delaware. Comments on this application must be received not later than February 14, 1986.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Baker Financial Corporation*, Pocahontas, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of Planters and Stockmen Bank, Pocahontas, Arkansas.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1606 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

First National Bankshares of Sheridan, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) (2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) (2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Bankshares of Sheridan, Inc.*, Sheridan, Wyoming; to acquire Rawlings Insurance Agency, Inc., Ranchester, Wyoming, and thereby engage in general insurance activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)(C)(i) of the Act.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1607 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

First National Cincinnati Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 12, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Cincinnati Corporation*, Cincinnati, Ohio; to acquire 100 percent of the voting shares of New Bancshares, Inc., Newport, Kentucky, thereby indirectly acquiring Newport National Bank, Newport, Kentucky. Comments on this application must be received not later than February 13, 1986.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *United Virginia Bankshares Incorporated*, Richmond, Virginia; to acquire 100 percent of the voting shares of Bethesda Bancorporaton, Bethesda, Maryland, thereby indirectly acquiring Bank of Bethesda, Bethesda, Maryland.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Farmers and Merchants Bancorp, Inc.*, Dover, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Merchants Bank of Bumpus Mills, Bumpus Mills, Tennessee.

D. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to acquire at least 80 percent of the voting shares of Valley View Bank, La Crosse, Wisconsin. Comments on this application must be received not later than February 10, 1986.

2. *F & M Bancorporation, Inc.*, Kaukauna, Wisconsin; to acquire at least 80 percent of the voting shares of Farmers State Bank of Potter, Potter, Wisconsin.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Kaufman Banchares, Inc.*, Kaufman, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of BancTexas Kaufman, N.A., Kaufman, Texas.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1608 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Mellon Bank Corp.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has ben accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 7, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire Fidata Systems Incorporated, Boston, Massachusetts and Fidata Trust Company—Massachusetts, Boston, Massachusetts, and thereby engage in providing data processing and data transmission services, including a variety of mutual fund recordkeeping and shareholder servicing functions to their customers, primarily mutual fund groups, as well as engage in the activities of transfer agent, registrar, dividend disbursing agent and related functions, pursuant to 225.25 (b)(3) and (7) of Regulation Y, respectively. The nonbank offices to be acquired are located at 100 Summer Street, Boston, Massachusetts and 10 Post Office Square, Boston, Massachusetts.

2. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire Fidata Securities Management, Inc. (FSMI), Pittsburgh, Pennsylvania, and Fidata Securities Services, Inc. (FSSI), Pittsburgh, Pennsylvania, and thereby engage in providing securities transfer and shareholder recordkeeping services, act as transfer agent, paying agent,

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dividend disbursing agent, or securities clearing agent and engage in related functions, pursuant to § 225.25(b) (3) and (7) of Regulation Y, respectively. The nonbank offices to be acquired are located at FSMI's principal offices in Ft. Lee and Hackensack, New Jersey. Regional offices in Miami, Florida; Minnespolis, Minnesota; and San Francisco, California. FSSI's office is located at 4 Station Square, Pittsburgh, Pennsylvania.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1609 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Mountain Bancorp Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulations Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless othewise noted, such activities will be conducted throughout the United States.

The applicaton is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice Presiden)t 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mountain Bancorp Inc.*, West Liberty, Kentucky; to engage *de novo* through its subsidiary, Consumer Lending Corporation, West Liberty, Kentucky, in the consumer finance business, pursuant to § 225.25(b)(1) of Regulation Y. These activities would be conducted in Morgan, Johnson, Lawrence, Elliott, Rowan, Menifee, Wolfe and Magoffin Counties; all of which are located in Kentucky.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1599 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

Oxford Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 12, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60609:

1. *Oxford Bank Corporation*, Oxford, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Oxford, Oxford, Indiana.

2. *PSB Bankcorp*, Francesville, Indiana; to become a bank holding company by acquiring 80 percent or more of the voting shares of Peoples State Bank of Francesville, Francesville, Indiana.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Longview Bancshares, Inc.*, Longview, Texas; to acquire 100 percent of the voting shares of The First State Bank, Big Sandy, Texas.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1600 Filed 1-24-86; 8:45 m]

BILLING CODE 6210-01-M

Resource Companies, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1986.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Resource Companies, Inc.*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Resource Capital Advisers, Inc., Minneapolis, Minnesota, in providing portfolio investment advice to any other person, pursuant to § 225.25(b)(4)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1601 Filed 1-24-86; 8:45 am]

BILLING CODE 6210-01-M

National Bank of Canada; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2), or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 7, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Bank of Canada*, Montreal, Canada; to acquire Mercantile Canda Corporation, Dallas, Texas, and thereby engage in the servicing and making of commercial loans.

Board of Governors of the Federal Reserve System, January 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 1661 Filed 1-24-86; 9:21 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Program Announcement and Notice of Availability of Funds for Fiscal Year 1986; Cooperative Agreements for Acquired Immunodeficiency Syndrome (AIDS); Health Education and Risk Reduction Programs

Introduction

The Centers for Disease Control (CDC) anounces the availability of funds for Fiscal Year 1986 for cooperative agreements for acquired immunodeficiency syndrome (AIDS) health education and risk reduction programs in the following four specific areas: I. State-Based AIDS Projects for Community Health Education and Risk Reduction, II. Augmentation and Evalsation of Health Education and Risk Reduction Programs in Communities with High Incidence of AIDS, III. Community-Based Demonstration Projects for AIDS Prevention and Risk Reduction, IV. Innovative Projects for AIDS Risk Reduction.

Authority

These projects are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241(a)), as amended, section 311(b) of the Public Health Service Act (42 U.S.C. 243(b)), as amended, and section 318 of the Public Health Service Act (42 U.S.C. 247c), as amended. The Catalog of Federal Domestic Assistance Number is 13.118.

Program Background and Objectives

The acquired immunodeficiency syndrome continues to grow as a major public health problem in the United States. Through December 1985, more than 15,400 cases have been reported and more than 7,800 persons have died from AIDS as defined by the CDC surveillance case definition:

1. Presence of reliably diagnosed disease at least moderately indicative of underlying cellular immune deficiency (e.g., Kaposi's sarcome in patients who are less than 60 years of age or patients with *Pneumocystis carinii* pneumonia or other opportunistic infections; and

2. Absence of known causes of underlying immune deficiency and of any other reduced resistance reported to be associated with the disease.

Human T-Lymphotropic Virus Type III/ Lmphadenopathy-Associated Virus (HTLV-III/LAV), the virus that causes AIDS, is transmitted sexually, through contaminated needles, through blood and blood components, and perinatally. A serologic test for HTLV-III/LVA antiboby has been developed, and its use on donated blood and plasma has decreased the risk of AIDS for transfusion recipients and hemophiliacs. These two groups account for 3 percent of reported AIDS cases. Without a vaccine or therapy, the basis for AIDS prevention in other groups is a thorough understanding of the risk factors for HTLV-III/LAV infection and efforts to change the behavior which contribute to those factors. Significant gaps still exist in the understanding of risk factors for HTLV-III/LAV infection, and the behaviors which contribute to those factors are complex and difficult to change.

Specific Program Areas of Assistance

I. State-Based AIDS Projects for Community Health Education and Risk Reduction

A. Purpose

The purpose of the AIDS Projects for Community Health Education and Risk Reduction is to assist States in developing and conducting programs of health education and risk reduction for AIDS. The specific purpose of the first year is to assist States in building their capacity to deliver health education and risk reduction programs by providing the impetus to appraise community needs

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and resources related to the AIDS problem, to development effective community-based organizations to implement the program, and be begin actual implementation.

B. Cooperative Activities

1. Recipient Activities. a. Assess community needs and resources concerning AIDS prevention among high-risk groups and in the general population;

b. Determine the prevalence of HTLV–III/LAV infection in groups at risk and in the general population;

C. Determine the levels of disease-related knowledge, attitudes, and behaviors among persons at risk of infection;

d. Determine the levels of disease-related knowledge in the general population, fears and beliefs about the methods of transmission, and perceptions about people at risk or with the disease;

e. Build a core capacity, which includes the organized collaboration of community level resources, directed toward preventing transmission of HTLV–III/LAV infection; and

f. Based on a strategy developed from these assessment and organizational activities, begin using the core capability to: (1) Deliver Health Education/Risk Reduction services to prevent the transmission of HTLV–III/LAV infection that are specifically targeted to groups and individuals known to have risk factors for AIDS; and

(2) Deliver health education messages to the general public to clarify dominant misunderstandings, alleviate unwarranted fears, and clarify misunderstandings and misconceptions about AIDS victims and persons at risk for HTLV–III/LAV infection.

2. Centers for Disease Control Activities. a. Provide technical assistance and training to health department and community organization personnel;

b. Participate in the analysis of information and data gathered from program activities; and

c. Develop prototype materials and uniform evaluation guidelines and instruments.

C. Eligible Applicants

Eligible applicants are the official public health agencies of States, includng the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Applicants for this project may also be eligible to apply for assistance under Part II of this announcement entitled *PROJECTS FOR AUGMENTATION AND EVALUATION OF ESTABLISHED HEALTH EDUCATION/RISK REDUCTION PROGRAMS IN COMMUNITIES WITH HIGH INCIDENCE OF AIDS.* However, an applicant will not be funded for both.

D. Availability for Funds

Approximately $5,170,000 will be available in Fiscal Year 1986 to fund up to 45 new cooperative agreements ranging from approximately $75,000 to $150,000 with an average award of $115,000. It is expected that the initial cooperative agreements will begin on or about April 15, 1986, and will be funded for 12 months in a 1 to 5-year project period. Funding estimates outlined above may vary and are subject to change.

E. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

a. The applicant's understanding of AIDS prevention activities and the purpose of the cooperative agreement;

b. The establishment of objectives which are consistent with the stated purpose of the cooperative agreement, and which are specific, measurable, and time-phased;

c. The quality of the applicant's proposed plan to appraise community needs and resources pertinent to the AIDS problem;

d. Evidence of the applicant's commitment to generate community cooperation and support for AIDS prevention activities and to maintain close collaboration and working relationships with community-based organizations serving the interests of groups at risk for AIDS;

e. The quality of the applicant's preliminary plan of action which would be the framework for implementation once the precise community needs and resources are identified;

f. The quality of the applicant's proposed plan to develop a long-range core capacity to prevent the transmission of HTV–III/LAV infections;

g. The quality of the applicant's plan to determine prevalence of HTLV–III/LAV infection in groups at risk and in the general population;

h. The quality of an evaluation plan which specifies the method and instruments of measurement to be used;

i. The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds;

j. The assurance that the confidentiality of all information obtained related to clinical laboratory results, medical, or counseling information on individuals and/or studies with personal identifiers will be maintained; and

k. The size, qualifications, and time allocation of proposed staff and availability of equipment and facilities to be used during the project.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan will allow management to monitor whether the methods are effective; and

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

II. Projects for Augmentation and Evaluation of Established Health Education/Risk Reduction Programs in Communities With a High Incidence of AIDS

A. Purpose

The purpose of this program is to assist communities that have a high incidence of AIDS and an established community-based health education/risk reduction program to intensify their prevention efforts and to implement evaluation mechanisms to monitor their effectiveness in reducing transmission of HTLV–III/LAV.

B. Cooperative Activities

1. Recipient Activities. a. Determine the prevalence of HTLV-III/LAV infection in groups at risk and in the general population;

b. Determine the levels of disease-related knowledge, attitudes, and behaviors among persons at risk of infection;

c. Provide targeted education for groups and individuals at high risk;

d. Conduct educational activities intended to inform individuals at high risk of what actions to take to remain uninfected and prevent transmission to others, if infected;

e. Provide risk reduction counseling services which will motivate individuals at high risk to make needed behavioral changes and assist them in acquiring the assertiveness and interpersonal negotiating skills needed to implement and carry through adopted behavioral changes;

f. Provide AIDS health education and information to the general public to address unwarranted fears, misbeliefs about the methods of transmission, and errant perceptions about people at risk or with the disease;

g. Assist the community in organizing itself as needed to reinforce and support the lifestyle changes that individuals are trying to make and maintain; and

h. Evaluate programmatic efforts to prevent the spread of HTLV–III/LAV infection and change risk-associated behaviors.

2. CDC Activities. a. Provide consultation and technical assistance in planning, operating and evaluating prevention activities;

b. Provide up-to-date scientific information regarding national program strategy for the prevention of AIDS and the transmission of HTLV–III/LAV infections;

c. Refine risk reduction guidelines and describe any methods developed to monitor progress that appear workable and effective; and

d. Facilitate the transfer of information and technology to other States and communities.

C. Eligible Applicants

Eligible applicants are the official public health agencies of States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa which, as of the date of publication of this notice, have reported 100 or more cases of AIDS meeting the CDC surveillance case definition as set forth above, and local governments which have reported 1,000 or more cases. States which are eligible for this project can also apply for assistance under Part I of this announcement entitled *STATE-BASED AIDS PROJECTS FOR COMMUNITY HEALTH EDUCATION AND RISK REDUCTION.* However, an applicant will not be funded for both.

D. Availability of Funds

Approximately $5,700,000 will be available in Fiscal Year 1986 to fund 15 to 25 new cooperative agreements ranging from $200,000 to $400,000 with an average award of $285,000. It is expected that the initial cooperative agreements will begin on or about April 15, 1986, and will be funded for 12 months in a 1 to 5-year project period. Funding estimates outlined above may vary and are subject to change.

E. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

a. Documentation of 100 or more reported cases of AIDS meeting the CDC surveillance case definition, it the applicant is a State; 1,000 or more cases where the applicant is a local government;

b. The applicant's understanding of AIDS prevention activities and the purpose of the cooperative agreement;

c. The establishment of objectives which are consistent with the stated purpose of the cooperative agreement, and which are specific, measurable, and time-phased;

d. The quality of the applicant's current methods for determining the prevalence of HTLV–III/LAV infection in groups at risk and in the general population or plans to monitor the prevalence of HTLV–III/LAV infection if this effort is not already underway;

e. The quality of the applicant's efforts to determine the levels of disease related knowledge, attitudes, and behaviors among persons at risk of infection or plans to make these determinations if the activity is not already underway;

f. The quality of the applicant's plans for community organizational assistance that will reinforce and support behavior change designed to persuade individuals to remain uninfected and prevent transmission to other, if infected;

g. The details of how the applicant plans to build upon and expand the current program of health education and risk reduction augment activities to prevent the transmission of HTLV–III/LAV infection;

h. The quality of the plan to provide risk reduction counseling to motivate behavior change and provide people assistance with the means and skills they need to accomplish it;

i. Evidence of the ability of the applicant to generate community cooperation and support for AIDS prevention activities and maintain close collaboration and working relationships with community-based organizations serving the interests of groups at risk for AIDS;

j. The quality of an evaluation plan which specifies appropriate methods and instruments of measurement to be used;

k. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds;

l. The assurance that the confidentiality of all information obtained related to clinical laboratory results, medical, or counseling information on individuals and/or studies with personal identifiers will be maintained; and

m. The size, qualifications, and time allocation of proposed staff and availability of equipment and facilities to be used during the project.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan will allow management to monitor whether the methods are effective; and

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

III. Community-Based Demonstration Projects for AIDS Prevention and Risk Reduction

A. Purpose

The purpose of the comprehensive community-based demonstration projects for AIDS prevention and risk-reduction is to design, implement, and evaluate intensive programs in well-defined geographic/political subdivisions to serve as national models to prevent transmission of HTLV–III/LAV infection. These demonstration areas will carry out the broadest possible spectrum of available prevention methodology, test the practicality of those new and innovative methods developed there and elsewhere, document all activities and results to facilities nationwide implementation of workable approaches, and participate in the training of personnel on a national basis.

B. Cooperative Activities

1. *Recipient Activities.* a. Design and conduct seroprevalence studies to determine the prevalence of HTLV–III/LAV infection in groups at risk and in the general population;

b. Design and conduct studies to determine current knowledge of HTL–III/LAV infection and attitudes concerning AIDS among groups at risk as well as baseline data on risk-

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associated behaviors of individuals within these groups;

c. Develop and distribute written and audiovisual materials with accurate information on AIDS, risk factors, prevention guidelines, and community resources available;

d. Promote and carry out multifaceted educational programs intended to persuade individuals to take action to remain uninfected and prevent transmission to others, if infected, which involve developing, promoting, and conducting programs, presentations, group discussions, and other activities designed to facilitate awareness of AIDS risk situations and support for prevention measures;

e. Promote and carry out programs to counsel seropositives and assure the referral of their recent sex partners for testing and counseling, and to counsel seronegative individuals at high risk for AIDS;

f. Repeat studies to document whether and to what extent changes have occurred in the understanding of AIDS risk factors and risk-associated behaviors;

g. Repeat seroprevalence studies to monitor changes in the prevalence of HTLV–III/LAV infection in groups at risk;

h. Monitor trends in other illnesses which are sensitive indicators of behavior change in populations at risk (e.g., reportable sexually transmitted infections, hepatitis B, and non-A, non-B hepatitis);

i. Evaluate and revise programmatic efforts in reaction to changes in behavior and infection with HTLV–III/LAV;

j. Maintain the programmatic and budgetary flexibility to respond, on short notice, to requests from CDC to test the feasibility of newly developed control strategies, or to conduct short-term formal studies to duplicate or examine the relevance of potentially important program findings from AIDS Innovative Risk Reduction cooperative agreement recipients, program areas, or other Community-Based Demonstration sites; and

k. Provide information and insight for use in the development of curricula and other learning opportunities to train personnel from other programs in the State or locality.

2. Centers for Disease Control Activities. a. Collaborate in the design of the initial and followup seroprevalence studies for HTLV–III/LAV infection in groups at risk and in the general population;

b. Collaborate in the design of the initial and followup studies of individuals at risk, and provide consultation regarding data-collection instruments and procedures;

c. Participate in the analysis of information gathered from studies;

d. Provide up-to-date scientific information regarding risk/protective factors for AIDS, sensitivity and specificity of serologic tests, and national program for preventing the transmission of HTLV–III/LAV infection;

e. Provide on-site technical involvement in planning, operating, and evaluating prevention activities;

f. Develop course curricula, training materials, job aids, and other learning opportunities to train personnel from other programs in the State or locality; and

g. Analyze the findings of AIDS innovative Risk Reduction projects, program areas, and other community-based demonstration sites, and identify control strategies requiring further testing and refinement.

C. Eligible Applicants

Eligible applicants are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa.

D Availability of Funds

Approximately $4,000,000 will be available in Fiscal Year 1986 to fund two to four new cooperative agreements totaling approximately $3,300,000 ranging from approximately $200,000 to $1,000,000 with an average award of $800,000, and to extend up to four continuation cooperative agreements totaling approximately $700,000 to adjust their anniversary dates to coincide with the new awards under this announcement. It is expected that new cooperative agreements will begin on or about April 15, 1986, and will be funded for 12 months in a 1 to 5-year project period. Funding estimates outlined above may vary and are subject to change.

E. Review and Evaluation Criteria

1. The initial application for a project period will be reviewed and evaluated according to the following criteria:

a. The applicant's understanding of AIDS prevention activities and the purpose of the cooperative agreement;

b. The quality and scope of the applicant's current activities in AIDS information and education;

c. The establishment of objectives which are consistent with the stated purpose of the cooperative agreement, and which are specific, measurable, and time-phased;

d. Evidence of the soundness and potential operational impact of the overall approach;

e. The quality of the applicant's proposed plan to determine current prevalence and knowledge of HTLV–III/LAV infection in groups at risk as well as how the applicant will assess current risk-associated behavior of individuals with these groups;

f. Evidence of the ability of the applicant to generate community cooperation and support for AIDS prevention activities and to maintain close collaboration and working relationships with community-based organizations serving the interest of groups at risk for AIDS;

g. The quality of the applicant's proposed plan to promote behaviors designed to persuade individuals to remain uninfected, and prevent transmission to others, if infected;

h. The quality of the plan to provide risk reduction counseling to motivate behavior change and provide individuals assistance with the means and skills they need to accomplish it;

i. The quality of the plans for community organizational assistance that will reinforce behavior change;

j. The quality of an evaluation plan which specifies the method and instruments of measurement to be used;

k. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds;

l. The assurance that the confidentiality of all information obtained related to clinical laboratory results, medical, or counseling information on individuals and/or studies with personal identifiers will be maintained;

m. The commitment to maintain the programmatic and budgetary flexibility to respond, on short notice, to requests from CDC to test the feasibility of newly developed control strategies, or to conduct short-term formal studies to duplicate or examine the relevence of potentially important program findings from AIDS Innovative Risk Reduction cooperative agreement recipients, program areas, or other Community-Based Demonstration sites;

n. The applicant's plan to participate in technology transfer to personnel from other States and local communities;

o. The size, qualifications, and time allocation of proposed staff and availability of equipment and facilities to be used during the project; and

p. the ability of the applicant to identify experienced, qualified personnel, and a satisfactory description of how they will supervise, coordinate, and operate the program.

2. Continuation awards within the project period will be made on the basis of the following criteria:

a. The accomplishments of the current budget period show that the applicant is meeting its objectives;

b. The objectives for the new budget period are realistic, specific, and measurable;

c. The methods described will clearly lead to achievement of these objectives;

d. The evaluation plan will allow management to monitor whether the methods are effective; and

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of cooperative agreement funds.

IV. Innovative Projects for AIDS Risk Reduction

No new applications are being accepted for innovative projects for risk reduction. It is expected that up to eight cooperative agreements totaling up to approximately $1,900,000 will be awarded in Fiscal Year 1986 from the applications received in response to the Program Announcement published in the **Federal Register** (50 FR 30298) on July 25, 1985. Awards are expected to range from approximately $85,000 to $260,000. The initial cooperative agreements will be funded for 12 months in a 1 to 3-year project period. Funding estimates outlined above may vary and are subject to change.

Information Applicable to Cooperative Agreement Programs in Parts I, II, III, and IV Above

Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions

The current lack of therapeutic or vaccine methods to control the spread of HTLV–III/LAV infection and AIDS requires the promotion of sexual and lifestyle behaviors for individuals which will reduce their risk of acquiring and spreading the virus. Behavioral science research suggests that expecting people to permanently alter any set of behaviors affecting their health is unrealistic unless the educational message provides acceptable alternatives to the behaviors creating the risk. Consequently, AIDS risk reduction efforts have focused on the promotion of responsible sex practices for individuals such as gay and bisexual men, for whom sexual activity is an important factor of risk in acquiring or spreading HTLV–III/LAV.

The adoption of "safer sex" practices is a practical concept of AIDS risk reduction and is being suggested as a strategy intended to minimize the spread of HTLV–III/LAV infection among sexually active individuals, including gay and bisexual men. Implementing programs to promote a "safer sex" risk reduction strategy may involve supporting the communication of suggestions using candid terms, some of which may be offensive to society at large. The Centers for Disease Control (CDC) is answerable for the use of Federal funds and broad support is vital to its public health mission. CDC also has an obligation to take actions designed to control the spread of HTLV–III/LAV. This guidance is meant to promote such actions, and to require local review panels to consider the bounds of explicitness believed needed to communicate an effective message to those for whom it is intended.

1. *Basic Principles.* a. Language used in written materials (i.e., pamphlets, brochures, fliers), audiovisual materials (i.e., motion pictures and video tapes), and pictorials (i.e., posters and similar educational materials using photographs, slides, drawings, or paintings) to explain "safer sex" practices and/or to contrast them with "unsafe sex" practices concerning AIDS should use terms or descriptors necessary for the target audience to understand the messages.

b. Such terms or descriptors used should be those which a reasonable person would conclude should be understood by a broad cross-section of educated adults in society, or which when used to communicate with a specific group, such as gay men, about high risk sexual practices, would be judged by a reasonable person to be unoffensive to most educated adults beyond that group.

c. The language of items in questionnaires or survey instruments which will be administered in any fashion to any persons should use terms to communicate the information needed which would be understood by a broad cross-section of educated adults in society but which a reasonable person would not judge to be offensive to such people.

d. Audiovisual materials and pictorials in addition should communicate risk reduction messages by inference rather than through any display of the anogenital area of the body or overt depiction of the performance of "safer sex" or "unsafe sex" practices.

e. Educational group sessions of any size should avoid activities in which attendees participate in sexually suggestive physical contact or actual sexual practices.

2. *Program Review Panel.* a. Prospective cooperative agreement recipients will be required to establish a program review panel. This panel, guided by the CDC Basic Principles in conjunction with prevailing community standards, will review and approve all written materials, pictorials, and audiovisuals, questionnaires or survey instruments, and proposed educational group session activities to be used under the project plan. This panel is intended to review materials only and should not be empowered either to evaluate the proposal as a whole or to replace any other internal review panel or procedure of the local governmental jurisdiction. Specifically, applicants for cooperative agreements will be required to:

(1) Identify a panel of no less than five persons representing a reasonable cross-section of the general community, not drawn predominantly from the target group or groups to whom the written materials, pictorials, audiovisuals, questionnaires, survey instruments, or educational group sessions are directed; and

(2) Provide to CDC a letter or memorandum from the proposed project director, countersigned by the business office, which includes:

(a) Concurrence with this guidance and assurance that its provisions will be observed;

(b) The identity of proposed members of the Program Review Panel, including their names, occupations, and any organizational affiliations that were considered in their selection for the Panel;

(c) If the applicant is not an official public health agency, a written concurrence on the composition of the Program Review Panel by the Director of the State or local health department official of the agency with appropriate jurisdiction for the locality.

b. When a cooperative agreement is awarded, the recipient will:

(1) Convene the Program Review Panel and present for its assessment actual copies of written materials, pictorials, and audiovisuals to be used and questionnaires of survey instruments;

(2) Provide for assessment by the Program Review Panel draft text, scripts, or detailed descriptions for written materials, pictorials, or audiovisuals to be used and questionnaires or survey instruments;

(3) Provide detailed plans for educational group session activities to the Program Review Panel for assessment;

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(4) Provide to CDC a statement signed by all members of the Program Review Panel which itemizes their majority vote approval or disapproval of all proposed written materials, audiovisual materials and pictorials, of questionnaires or survey instruments, and of plans for educational group session activities submitted to them for assessment as part of the proposed project plan.

The CDC award of funds for approved applications will restrict the expenditure of funds related to the ultimate program use of the materials or actual implementation of questionnaires or survey instruments or activities until the signed statement of the Program Review Panel is received.

Information Applicable to Cooperative Agreement Programs in Parts I, II, and III Above

A. Confidentiality

In accordance with section 818(e)(5) of the Public Health Service Act (42 U.S.C. 247c(e)(5)), all information obtained in connection with the examination, care, or services provided to any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him or as may be required by a law of a State or politicial subdivision of a State. Information derived from any such program may be disclosed (A) in summary, statistical, or other form, or (B) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care under such program is not dislcosed.

B. Use of Funds

1. Funds may be expended for the written materials, pictorials, audiovisuals, questionnaires or survey instruments, and educational group sessions related to AIDS risk reduction if approved in accordance with guidance provided above the subpart entitled *Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey, Instruments, and Educational Sessions;*

2. Funds may be used to support personnel and purchase supplies and services directly related to planning, organizing, and conducting AIDS projects described in Parts I through III of this announcement;

3. Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies, and other forms of direct assistance will be considered;

4. Funds shall not be used for purchasing computers, office equipment and furniture, and renting or leasing office space unless specifically approved; and

5. Funds may not be used to support construction or renovation costs.

C. Reporting Requirements

Progress reports are required on a quarterly basis and are due 30 days after the end of each quarter. The fourth quarter report will include a summary of the year's activities. Annual financial status reports are required no later than 90 days after the end of each budget period. Final financial status and performance reports are required 90 days after the end of a project period.

D. Recipient Financial Participation

This program has no statutory cost sharing formula. No specific matching funds are required; however, the application should include data on the applicant's contribution to the overall program costs.

E. Special Guidelines for Application Preparation

There are four separate and distinct project areas set forth in this announcement. For Parts I through III, a *single application document* shall be submitted, but a *separate* application *narrative* and *budget* request is required for each project area for which assistance is requested. Consolidated applications which do not contain separate narrative and budget requests will not be evaluated and will be returned to the applicant. Award of funds may be on a consolidated basis with separate budgets for each Part. Additionally, funding decisions for applicants applying for assistance under more than one Part of this announcement will be based on the extent to which an applicant effectively described the efficient consolidation and coordination of Federal, State, and other AIDS resources, including resources requested under this announcement.

Applications

A. Application Content

1. Compliance with Program Review Panel Requirement. Applications which include written materials, pictorials, audiovisuals, questionnairea or survey instruments, or group educational sessions related to AIDS risk reduction must contain the documentation required in paragraph 2.a under the subpart of this announcement entitled *Content of Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments and Educotion Sessions;*

2. Initiol Application. The initial application for a new project period must include a narrative for *each* Part of this announcement under which funds are requested which details the following:

a. The background and need for project support, including information that relates to factors by which the applications will be evaluated;

b. The objectives of the proposed project which are consistent with the purpose of the cooperative agreement and which are measurable and time-phased;

c. The methods and activities which will be undertaken to accomplish the objectives;

d. The methods which will be used to evaluate the success of the project;

e. A budget and accompanying justification consistent with the purpose and objectives of the project; and

f. Any other information that will support the request for assistance.

3. Continued Funding. An application for continuing funding of these activities within an approved project period should contain the following information:

a. Progress report on activities performed and results achieved durng the prior budget period;

b. Short-term objectives for the new budget period;

c. A description of the method of operation that will be used to accomplish any new objectives;

d. An evaluation plan which will help determine if the methods are effective and the objectives are being achieved; and

e. A budget and accompanying justification consistent with the purpose and objecives of the project.

4. Index. Exch application will contain an index specifically directing the reviewers to each section of the application that applies to the various Parts of the announcement.

B. Application Submission and Deadline

The originial and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, on or before March 3, 1986.

1. Deadline. Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications. Applications which do not meet the criteria in l. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. Other Submission and Review Requirements

Applications are subject to review as governed by the regulations (42 CFR Part 1322, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974, as amended. Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Leo A. Sanders, Grants Management Officer, or Nancy Bridger, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Willard Cates, M.D., M.P.H., Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-2552 or FTS 236-2552.

Dated: January 17, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-1765 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Medical Radiation Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the renewal of the Medical Radiation Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on January 5, 1988, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: January 17, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1610 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-01-M

Vaccines and Related Biological Products Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration annouces the renewal of the Vaccines and Related Biological Products Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)).

DATE: Authority for this committee will expire on December 31, 1987, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: January 17, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1612 Filed 1-24-86; 8:45 am]

BILLING CODE 4160-01M

[Docket No. 85N-0185]

Chloramphenicol Oral Solution; Withdrawal of Approval of NADA's

Correction

In FR Doc. 86-685 appearing on page 1441 in the issue of Monday, January 13, 1986, make the following corrections: In the second column, in the third complete paragraph, in the third line, "360(e)" should read "360b(e)"; in the fourteenth line, "January 23, 1980" should read "January 23, 1986".

BILLING CODE 1505-01-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of an Arkansas State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 19, 1986 in Dallas, Texas to reconsider our decision to disapprove the Arkansas State Plan Amendment 85-16.

DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk, February 11, 1986.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Arkansas State Plan Amendment 85-16.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether Arkansas' proposed plan which would provide for an increase in the dispensing fee in the State's Prescribed Drug Program from $3.87 to $4.01 per prescription to be effective July 1, 1985 violates 1902(a)(30) of the Social Security Act.

BEST COPY AVAILABLE

Arkansas' proposed increase is provided for in Arkansas legislation passed in 1983 which allows the dispensing fee to be based upon the most recent cost of dispensing survey and adjusted on July 1 of each year by the percent change in the Consumer Price Index.

Act 518 of the 74th General Assembly of the State of Arkansas (passed into law on March 17, 1983) states in section 3 that the method of determining the dispensing fee is to be the result of a cost dispensing survey.

The most recent cost of dispensing survey was conducted in 1983 by Myers and Stauffer under contract with the State. Based on this survey and other factors, the State submitted Arkansas State Plan Amendment No. 84–11 which proposed to increase the dispensing fee from $3.58 to $3.87 effective July 1, 1984. On November 21, 1984 Arkansas was advised by the Administrator of the Health Care Financing Administration (HCFA) that State Plan Amendment No. 84–11 was disapproved because in HCFA's opinion the cost finding methodology used by the consultants was questionable because it inflated the cost of the pharmacy area and certain salaries and, therefore, the cost of the dispensing fee.

Arkansas' current request for an increase in the dispensing fee in State Plan Amendment No. 85–16 is based on the same survey used for the dispensing fee increase in State Plan Amendment No. 84–11 which was disapproved. Therefore, HCFA disapproved State Plan Amendment 85–16, because it determined the plan is in violation of section 1902(a)(30) of the Social Security Act, which states in part, "A State plan for medical assistance must . . . assure that payments are consistent with efficiency, economy, and quality of care."

The notice to Arkansas announcing an administrative hearing to reconsider our disapproval of portions of its State plan amendment reads as follows:

Mr. Walt Patterson,
Deputy Director, Division of Economic and Medical Services, P.O. Box 1437, Little Rock, Arkansas 72203.

Dear Mr. Patterson: This is to advise you that your request for reconsideration of the decision to disapprove Arkansas State Plan Amendment No. 85–16 was received on December 26, 1985. Arkansas State Plan Amendment No. 85–16 would provide for an increase in the dispensing fee in the State's Prescribed Drug Program from $3.87 to $4.01 per prescription to be effective on July 1, 1985. You have requested a reconsideration of whether this plan amendment violates section 1902(a)(30) of the Social Security Act.

I am scheduling a hearing on your request to be held March 19, 1986 at 10:00 a.m. in Room 1915, 2535 Main Tower Building, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

C. McClain Haddow,
Acting Administrator.

(Sec. 1116 of the Social Security Act (42 U.S., 1316))
(Cataglog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 22, 1986.

C. McClain Haddow
Acting Administrator, Health Care Financing Administration

[FR Doc. 86–1716 Filed 1–24–86; 8:45 am]
BILLING CODE 4120–01–M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on February 20–21, 1986, Building 31, C Wing, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open to the public from 1:00 p.m. to recess on February 20, and from 9:00 a.m. to adjournment on February 21, for discussion and review of the Division budget and review of concepts for grants and contracts and an overview of the Chemical and Physical Carcinogenesis Program. Attendance by the public will be limited to space available.

The Board of Scientific Counselors meeting will be closed to the public from 9:00 a.m. to approximately 1:00 p.m. on February 20, 1986, in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Dated: January 21, 1986.

Betty J. Beveridge,
Committee Monogement Officer, NIH.

[FR Doc. 86–1630 Filed 1–24–86; 8:45 am]
BILLING CODE 4140–01–M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, February 6–7, 1986, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20892. The meeting will be open to the public on February 6, 1986, from 8:30 a.m. until 5:00 p.m., and again on February 7, 1986, from 8:30 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 6, 1986, from 5:30 p.m. to recess, for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Bruce A Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–52, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: January 21, 1986.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 86–1628 Filed 1–24–86; 8:45 am]
BILLING CODE 4140–01–M

National Library of Medicine; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, March 4 and March 5, 1986, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4:00 p.m. on March 4, 1986, and from 9:00 a.m. to approximately 4:00 p.m. March, 5 1986, for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 4, from approximately 4:00 p.m. to 5:00 p.m. for the consideration of personnel qualifications and performance of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Mr. Earl Henderson, Acting Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: January 2, 1986.

Betty J. Beveridge,
NIH Committee Management Officer.

[FR Doc. 86–1629 Filed 1–24–86; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Information Collections Submitted for OMB Review

The proposals for the collections of information listed below have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collections of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202–395–7340.

Title: Application for Permit for Drill, Deepen, or Plug Back, 43 CFR 3160.

Abstract: Data submitted by oil and gas lessees and operators is used for agency approval of proposed drilling operations through review of technical and environmental factors.

Bureau Form Number: 3160–3.

Frequency: On occasion.

Description of Respondents: Oil and gas lessees and operators.

Annual Responses: 6,000.

Annual Burden Hours: 5,000.

Title: Well Completion or Recompletion Report and Log, 43 CFR Part 3160.

Abstract: Data submitted by oil and gas lessees and operators is used for agency approval of specific additional operations on a well and to report the completion of such additional work.

Bureau Form Number: 3160–4.

Frequency: Nonrecurring.

Description of Respondents: Oil and gas lessees and operators.

Annual Responses: 1,100.

Annual Burden Hours: 1,145.

Bureau Clearance Officer: Rebecca Daugherty 202–653–8853.

Dated: October 2, 1985.

George F. Brown,
Assistant Director.

[FR Doc. 86–1654 Filed 1–24–86; 8:45 am]
BILLING CODE 4310–84–M

[A–21573 Through A–21578 and A–21584]

Conveyance or Lease of Public Land in Mohave County, AZ

BLM has determined the following described lands suitable to be classified for conveyance or lease under the provision of the *Recreation and Public Purposes Act* of June 14, 1926, as amended (43 U.S.C. 868 et seq.) and the regulations established by 43 CFR 2740 and 2910, and as amended in the Final Rulemaking, published in the Federal Register on December 10, 1985.

Gila and Salt River Meridian, Arizona

T. 13 N., R. 22 W.,
Sec. 9, portion E½E½SE¼ (4.16 acres for proposed police station);
Sec. 15, portion SW¼NW¼ (1 acre for water well booster station) and portion E½SW¼ and W½SE¼ (43 acres in Mud Shark Community Beach);
Sec. 18, portion SE¼NE¼ (1 acre for water well booster station) and portion SE¼ (25 acres for waste water treatment plant);
Sec. 20, portion Lot 3 (2 acres for the Site Six facilities);
Sec. 21, portion SE¼NW¼ (1 acre for proposed fire station).

The City of Lake Havasu has expressed an interest in the above described lands for community purposes; and the Arizona State Parks Board has applied for the following described lands, known as Windsor Beach, to remain a community park.

Gila and Salt River Meridian, Arizona

T. 13 N., R. 22 W.,
Sec. 4, E½SW¼ and that portion of the W½SE¼ west of State Highway 95;
Sec. 9, W½SE¼NE¼, W½NE¼, portions of SE¼, excepting the parcel for proposed police station and that portion south of the London Bridge channel.

The above described lands, totaling aproximately 377 acres, are hereby segregated from appropriations under any other public land law, including location under the mining laws.

The lands transferred or leased by the United States will be subject to all valid existing leases, permits, agreements, and rights-of-ways. The actual legal descriptions and acreages will be delineated by U.S. Government survey prior to conveyance.

Detailed information concerning these conveyances can be obtained or seen at the Havasu Resource Area Office, 3189 Sweetwater, P.O. Box 685, Lake Havasu City, Arizona 86406. For a period of 45 days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, Yuma District Office, 3150 Winser Avenue, P.O. Box 5680, Yuma, Arizona 85364.

This classification will become final 60 days from the date of this publication, unless this classification is modified or cancelled by the authorized officer.

Dated: January 17, 1986.

B. Gene Miller,
Acting District Manager.

[FR Doc. 86–1688 Filed 1–24–86; 8:45 am]
BILLING CODE 4310–32–M

[A–21760 and A–21761]

Exchange of Public Land; Mohave County, AZ

The Bureau of Land Management has examined and determined the following

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described public lands as suitable for disposal by Exchange pursuant to section 206(a) of the *Federal Land Policy and Management Act of 1976*, 43 U.S.C. 1716 and/or State Indemnity Selections pursuant to section 7 of *The Act of June 28, 1934* (43 U.S.C. 315f):

Gila and Salt River Meridian

T. 13 N., R. 20 W.,
Sec. 4, E½NW¼, E½W½NW¼ and that portion W½SE¼ east of State Highway 95;
Section 9, that portion S½S½SE¼ lying south of the London Bridge Channel;
Section 15, NW¼SE¼NW¼, NE¼SW¼NW¼, SW¼, NW¼NW¼SE¼, S½NW¼SE¼, S½SE¼, excepting Recreation and Public Purposes (R&PP) applications A–21574 and A–21578;
Section 16, NE¼ E½NW¼, S½, excepting R&PP applications A–21574 and A–21575;
Section 17, Lot 4 and SE¼SE¼;
Section 20, Lots 1, 2, 3, 4 and E½NE¼, excepting R&PP Serial No. A–21577;
Section 21, Lots 1, 2, 3, 4, E½NE¼, NE¼NW¼NE¼, SW¼NE¼, E½SE¼NW¼, SW¼SE¼NW¼ excepting R&PP Serial No. A–21576;
Section 22, Lot 4, NW¼NW¼, NE¼NE¼;
Section 23, Lot 1, and that portion NW¼NW¼, E½NW¼, lying west of State Highway 95.
Comprising 2,000 acres of public land.

In accordance with the regulations of 43 CFR 2201(b), publication of this Notice will segregate the public lands from entry, including the mining laws. The segregative effect will terminate upon issuance of patent to the State of Arizona, upon expiration of 2 years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

The lands transferred by the United States will be subject to all valid existing leases, permits, agreements, and rights-of-ways. The actual legal descriptions and acreages will be delineated by U.S. Government survey prior to conveyance.

After final appraisal value is established, some of the public land will be used for exchange to acquire the following described land from the State of Arizona. The State will apply for the remaining lands under State Indemnity Selections.

Gila and Salt River Meridian

T. 17 N., R. 5 E.

A parcel of land located in Sec. 33 and 34 in Yavapai County, comprising 286.18 acres.

Detailed information concerning these conveyances can be obtained or seen at the Havasu Resource Area office, 3189 Sweetwater, P.O. Box 685, Lake Havasu City, Arizona 86403. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma Arizona 85364.

Dated: January 17, 1986.

B. Gene Miller,

Acting District Manager.

[FR Doc. 86–1637 Filed 1–24–86; 8:45 am]

BILLING CODE 4310–32–M

[U–54569]

Realty Action; Sale of Public Lands in Washington County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) public land described as Lot 3, Section 11, T. 42 S., R. 13 W., SLB&M, Utah, containing 41.95 acres is proposed for sale by competitive bidding at no less than the appraised fair market value of $12,230.00. The lands described are hereby segregated from all forms of appropriation under the public laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency.

DATES: Comments should be submitted to the address listed below by March 17, 1986. The sale will be held on April 8, 1986 at 2:00 p.m.

ADDRESS: Detailed information concerning the sale, including bidding procedures, is available at the Dixie Resource Area Office, 225 North Bluff, St. George, Utah 84770 (801) 673–4654. The sale will be held a the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States, a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1989, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights including Oil and Gas Lease U–41430.

If the tract of public land is not sold pursuant to this notice, it will remain available for sale by sealed bid at no less than the appraised value. In this case, sealed bids will be accepted anytime and will be opened on the first business day of each month until the land is sold or removed from the market. Any comments or objections received during the comment period will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action notice will be the final determination of the Department of the Interior.

Dated: January 14, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86–1659 Filed 1–24–86; 8:45 am]

BILLING CODE 4310–DQ–M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document, Conoco Inc.

AGENCY: Mineral Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4264, Block 312, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on January 13, 1986. Comments must be received within 15 days of the date of this Notice of 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that is available for review. Additionally this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natual Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program. Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 14, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–1620 Filed 1–24–86; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf; Development Operations Coordination Document; FMP Operating Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that FMP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4578, Block A–437, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on January 13, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 14, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–1656 Filed 1–24–85; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App. 1 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, February 14, 1986.

The Commission as established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The meeting will convene at Park Headquarters at 1:30 p.m. to discuss:

1. Request for extension of Commercial Certificates for Head of Meadow Service Station.
2. Fire Research.
3. Herring River—Ecological Considerations for Mosquito Control.
4. Subcommittee Report on Off-road Vehicle Use.

The meeting is open to the public. It is expected that 50 persons will be able to attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663 Telephone: (617) 349–3785. Minutes of the meeting will be available for public information and copying two weeks after the meeting at the office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

January 17, 1986.

FR Doc. 86–1732 Filed 1–24–86; 8:45 am]

BILLING CODE 4310–70–M

Gates of the Arctic National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resources Commissions.

DATE: The meetings will be held starting on Wednesday, January 29, 1986 from 9:00 a.m. to 5:00 p.m., and ending Friday afternoon, January 31, 1986.

Location: Federal Building, 101 12th Avenue, Room 329, Fairbanks, Alaska.

Agenda: The following agenda items will be undertaken:

1. Call meeting to order.
2. Roll call.
3. Introduction and orientation of new commissioners.
4. Introduction of visitors and guests.
5. Minutes reviewed and approved.
6. National Park Service reports:
   a. Revised General Management Plan
   b. Research Projects
   c. Kobuk River Patrols
   d. Park Operations
   e. Lands Projects
7. Program Outline.
8. Committee Workshops:
   a. Eligibility
   b. Access
   c. General Management Plan
9. Committee reports and recommendations.
10. Public/Agency Testimony.
11. Other Business.
12. Date and agenda for next meeting.

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13. Adjournment.

Written comments and recommendations received prior to January 20, 1986, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o P.O. Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone: (907) 456–0281.

SUPPLEMENTAL INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96–487, and operate under the provisions of the Federal Advisory Committees Act Pub. L.

Dated: January 8, 1986.

M.V. Finley,

Acting Regional Director, Alaska Region.

[FR Doc. 86–1733 Filed 1–24–86; 8:45 am]

BILLING CODE 4310–70–M

Kobuk Valley National Park and Cape Krusenstern National Monument Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Kobuk Valley National Park and Cape Krusentern National Monument Subsistence Resources Commissions. The following agenda items will be discussed:

1. Minutes of the last meeting.
2. Discussion of changing quorum requirements.
3. Discussion of subsistence sheep hunts.
4. Discussion of resident zones.
5. Discuss schedule for Commission recommendations to the Secretary.
6. Discussions of Subsistence Commission Chairpersons meeting held in Anchorage.
7. Discuss progress of General Management Plans.

DATE: January 29, 1986 at 1:00 p.m. through 6:00 p.m., January 30, 1986.

ADDRESS: NANA Regional Corporation Conference Room Drift Inn Building, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Mack Shaver, Superintendent, Northwest Alaska Areas, National Park Service, P.O. Box 287, Kotzebue, Alaska 99752.

SUPPLEMENTAL INFORMATION: The Kobuk Valley National Park and Cape Krusenstern National Monument Subsistence Resources Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487.

Dated: January 8, 1986.

M.V. Finley,

Acting Regional Director,

Alaska Region.

[FR Doc. 86–1734 Filed 1–24–86; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 40.4.1]

Redelegation of Authority Regarding Ocean Transportation Source

A. Pursuant to the authority delegated to me as Director, Office of Acquisition and Assistance Management under Delegation of Authority No. 40.4 dated March 16, 1981 (46 FR 18631), I hereby redelegate to the Chief, Transportation Division, authority to waive, in accordance with the criteria prescribed in Supplement B of A.I.D. Handbook 1, the ocean transportation flag eligibility requirements in order to permit the financing of transportation on vessels under flag registry of the cooperating country, any country included in AID Geographic Code 941 (Selected Free World), or AID Geographic Code 899 (Free World), or AID Geographic Code 935 (Special Free World) when the cost of the transportation services does not exceed $25,000; *provided, however,* that all waivers approved pursuant to this authority which permit financing of transportation on vessels under flag registry of any country included in Code 899 or Code 935 shall contain a certification by the approving official that "The interests of the U.S. are best served by permitting financing of transportation services on ocean vessels under flag registry of free world countries other than the cooperating country and countries included in Code 941."

B. The Authority herein redelegated to the Chief, Transportation Division, may not be further redelegated but may be exercised by duly authorized persons who are performing the functions of the Chief in an acting capacity.

C. The Authority herein are to be exercised in accordance with regulations, procedures, and policies now or hereafter established or modified and promulgated within the Agency for International Development.

D. I retain for myself concurrent authority to exercise the authority herein delegated.

E. This redelegation of authority shall be effective immediately.

Dated: December 19, 1985.

Robert Halligan,

Director, Office of Acquisition and Assistance Management.

[FR Doc. 86–1660 Filed 1–24–86; 8:45 am]

BILLING CODE 6116–01–M

Overseas Private Investment Corporation

Insurance Contract Form

AGENCY: Overseas Private Investment Corporation, Aid.

ACTION: Notice of Adoption of Form Contract.

SUMMARY: New standard form insurance contact adopted by Overseas Private Investment Corporation ("OPIC").

SUPPLEMENTARY INFORMATION: On May 21, 1985, the Overseas Private Investment Corporation ("OPIC") published a draft of a proposed new insurance contract form and solicited comments on the draft. After reviewing the comments received, OPIC has adopted the contract form set forth below, designated 234 KGT 12–85, for current use. Individual contracts, of course, may deviate from the standard form, and OPIC may change the standard form without notice in the **Federal Register.**

The new standard form contract is intended primarily to simplify the standard OPIC contract and make it more readable.[1] The new form provides materially the same coverage as the previous OPIC contracts (234 KGT 12–70 (Revised) and 234 KGT 12–70 (Second Revision)), but a number of changes to particular provisions have also been made. (OPIC may offer some of its current customers the opportunity to substitute the new contract for their present contracts and conversely may permit some investors to continue to use the previous contract forms.)

Following is a discussion of the major changes to the previous contract form and certain key provisions of the new contract. This discussion is intended to

[1] OPIC uses a number of other standard contract forms in addition to the basic one presented here, including special forms for coverage of loans, leases and oil and gas exploration projects. None of these are affected by the proposed changes to the basic form.

be an authoritative guide to understanding and interpreting the contract. It is not, however, a complete section-by-section analysis of the contract.

OPIC may, of course, modify any individual contract or amend the form contract without notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Richard Stern (202) 457–7025.

Summary of Contract Revisions

Contract Organization

To simplify the contract and make it easier to locate particular provisions, the contract has been reorganized along functional lines. A new Article I replaces the Special Terms and Conditions, which was previously a separate document. The main purpose of the new Article I is to identify the insured investment which is the subject of the contract. It also contains the basic exchange of promises between the parties, establishes the premium schedule, and provides an overview of the organization of the contract.

OPIC offers insurance coverage against three separate risks: (1) The risk that proceeds from the insured investment will not be convertible into U.S. dollars, (2) the risk of expropriation of the insured investment in the project, and (3) the risk of loss of project property due to war, revolution, insurrection or civil strife. (In the new contract, the last category of risks collectively is called "political violence".)

In the new contract, contract terms relating to each of the three OPIC coverages have been combined and reorganized into two articles, one defining the scope of coverage and one specifying the amount of compensation available. Thus, Article II defines the scope of coverage against inconvertibility of funds, and Article III specifies the amount of compensation payable if an event satisfies the scope of coverage requirements. Similarly, Article IV defines the scope of coverage and Article V specifies the amount of compensation available in the event of an expropriation of the insured investment. Articles VI and VII set forth the scope and amount of compensation for damage due to political violence.

If an investor chooses not to purchase all three types of insurance coverage offered by OPIC, the portions of the standard contract relating to those types of insurance that have not been purchased will be omitted from the investor's contract.

Articles VIII and IX contain general provisions applicable to all three coverages. Article VIII sets out procedures, including those applicable to applications for compensation. Article IX outlines the investor's duties to OPIC. If an investor fails to comply with any of these duties, he may lose his right to compensation.

The previous OPIC contract began with definitions of 33 "governing terms." The new contract reduces the reliance on defined terms. Some definitions have been eliminated as unnecessary. In other instances, definitions have been incorporated into the substance of the relevant contract provisions. Others have become unnecessary as a result of the simplification of contract terms. For example, the definition of "Net Investment" is no longer necessary because the revised contract adopts a "book value" standard for compensation for expropriation.[2]

Article I—Subject of Insurance and Exchange of Promises

Section 1.01 describes the insured investment by setting forth the amount that will be contributed, the foreign enterprise which will receive the contribution, the securities which the investor will receive in return and the project to which the investment will be applied. Investors should be aware that subsequent investments to the same foreign enterprise which are not insured by OPIC can affect the computation of coverage. For example, assume that an investor owns all of a foreign enterprise and obtains insurance covering 90% of his 100 equity shares. If the investor subsequently contributes additional funds and receives 100 new shares, only the investment represented by 90 of his shares is covered, i.e., only 45% of the equity is insured under the inconvertibility and expropriation insurance. On the other hand, a subsequent contribution to capital without the issuance of new shares results in no change in the number of shares and percentage of equity covered under the expropriation and inconvertibility insurance; however, the amount of the contribution is deducted from book value in computing compensation for expropriation (section 5.03.2).

A subsequent, uninsured contribution to a branch foreign enterprise is treated the same as a contribution to an incorporated subsidiary for which no new shares are issued. Because compensation under the political violence insurance is based upon the investor's entire equity interest (section 7.03), subsequent, uninsured contributions have no effect on the computation of the proportion of any loss which is compensated.

Section 1.03 states the maximum aggregate compensation for which OPIC could be liable under the contract. This amount will be equal to the highest of the maximum coverage amounts for the categories of risks elected for the first period of coverage. Because of this overall cap, payment of compensation under one coverage can have the effect of reducing the amounts of the other coverages remaining. For example, if the Investor has $1,000,000 of maximum coverage each for inconvertibility, expropriation and political violence and the amount specified in section 1.03 is $1,000,000, a payment of $100,000 under any coverage will have the effect of reducing the maximum amounts of compensation for subsequent claims under the coverages to $900,000 each, as the total amount payable under the contract cannot exceed $1,000,000.

Article II—Inconvertibility—Scope of Coverage

Section 2.01 is intended to have the same essential effect as Articles 13 and 14 of the previous contract. As under the previous contract, OPIC does not insure against devaluation. Nor does OPIC insure that all the investor's funds in the project country will be convertible into United States dollars, but only "earnings from or returns of the insured investment." This language is intended to have the same meaning as the defined terms "Investment Earnings" and "Return of Capital" in the previous contract; that is, the only funds covered against the risk of inconvertibility are proceeds from the insured investment, such as dividends, repayments of principal and interest on loans, proceeds from the sale of securities acquired for the insured investment, and payments of technical assistance fees, management fees and royalties, if specifically covered. Also, if an investor owns all of the equity of a foreign enterprise, but only a portion of the stock is insured, only that portion of any inconvertible dividend or distribution could be made the subject of a claim.

Some previous OPIC contracts provided that inconvertibility coverage is lost as to local currency which has been held by the investor for more than 18 months (section 14.01, proviso (ii) (B) and (C)). During the past two years, however, OPIC's practice has been to delete the 18-month limitation by amendment to the contract form. The new contract codifies OPIC's practice.

[2] Recently, OPIC began issuing contracts to new investors which incorporate the "book value" approach by amending OPIC's standard contract form.

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An investor may leave project earnings or other covered funds in the project country up to the termination of the contract without losing inconvertibility coverage.

The standard for determining whether local currency has in fact become inconvertible into dollars is a practical one. For example, if direct exchanges of local currency for dollars are prohibited by law or no dollars are available through the official exchange mechanism, but another legal and normal mechanism (such as a parallel market or government bonds which can be sold for dollars) remains available for converting funds, the local currency would not be considered inconvertible since a legal functional equivalent to a formal exchange market would be available. This is true even though the effective rate obtainable through such means may be less favorable than the rate nominally provided through other lawful channels. Similarly, if local currency is convertible into the currency of a third country, and that currency is in turn convertible into dollars, the requirements for compensation would not be satisfied. If the legal channel is a "thin market" and there is insufficient hard currency available to service all of the local currency in question, the portion of the local currency which cannot be converted into dollars will be considered inconvertible. The investor is not required to resort to any practice which is illegal under the laws of the project country, even if the practice is common.

As with the previous contract, the investor need not be in actual receipt of local currency to establish an inconvertibility claim. If the foreign enterprise attempts to make a conversion in order to pay dollars to the investor, the elements of a claim can be satisfied. OPIC will accept delivery of the local currency by the foreign enterprise as the delivery by the investor required by section 3.01.1 as a precondition to compensation.

OPIC's inconvertibility coverage applies only to situations in which the investor is unable legally to convert currency but can deliver the local currency to OPIC. Other types of government restrictions which preclude an investor from transferring funds out of the project country (such as restrictions on bank accounts) are not covered by OPIC's inconvertibility coverage, but may be compensable as an expropriation of funds section 4.02) if they are illegal and satisfy the other requirements of Article IV.

OPIC coverage does not provide compensation for temporary delays in processing currency exchanges. Under the previous contract, different waiting periods are provided, depending upon the reason for blockage, for establishing a mature claim. The new contract adopts a single time period. Ordinarily, the maximum waiting period is 60 days; however, since the time required to make currency exchanges under normal conditions varies from country to country, a longer time limit may be specified when a particular contract is executed.

Exclusions from inconvertibility coverage have been consolidated in section 2.02. Investors should pay particular attention to the exclusion of pre-existing restrictions section 2.02(a)). If the investor would have been legally unable to convert local currency into dollars in similar circumstances on the date that the contract was issued, and if the investor either had actual notice of the exchange restrictions, or could have discovered them through the exercise of due diligence, OPIC does not pay compensation. Thus, OPIC's inconvertibility coverage does not guarantee an investor that a particular currency will in fact be convertible into dollars; rather, OPIC insures investors against the consequences of conversion restrictions not existing at the time the investor entered into the contract with OPIC. The investor assumes the burden of any exchange restrictions existing in the host country at the time the insurance is issued.

Also of particular importance is the exclusion in section 2.02(b), which requires the investor to make all reasonable efforts to convert the funds.

The exclusion for events due predominantly to provocation or instigation attributable to the investor section 2.02(d)) applies to situations in which transfers of currency are blocked as a reasonable response by the government of the project country to actions attributable to the particular investor, including corrupt practices, such as bribery of foreign government officials. Investor actions which are legal under local and international law may nonetheless constitute provocation or instigation if they are unreasonable. Actions by a foreign enterprise controlled by the investor are considered attributable to the investor. Actions taken in compliance with a specific request of the United States Government and measures taken in good faith by the investor or foreign enterprise in litigation against the government of the project country would not be considered unreasonable. OPIC is pleased to consult with any investor concerning the applicability of this provision to any contemplated action.

Article III—Inconvertibility—Amount of Compensation

Section 3.01 of the draft is a simplification of the defined term "Reference Rate of Exchange" in the existing contract, as modified by standard amendments. The basic standard for calculating compensation for inconvertibility is the official rate of exchange recognized by the government of the project country 60 days prior to receipt of the application for compensation by OPIC. If more than one official exchange rate was in effect, OPIC pays compensation at the exchange rate which would have been applicable to the type of transfer involved (e.g., dividend remittance, debt repayment).

Some countries maintain a nominal official rate of exchange for political purposes, but permit conversions to be made at a different (usually less favorable) rate of exchange in a parallel market or through some other channel such as a government bond market. If dollars were not generally and readily available to the public at the official exchange rate, compensation is computed at the effective rate at which dollars were available in the project country through a legal and normal channel (section 3.01.2). The exchange rate prevailing in that channel shall be the applicable rate even if insufficient dollars are available through it to service the entire demand.

Article IV—Expropriation—Scope of Coverage

Provisions relating to acts constituting expropriation have been combined and rewritten in Article IV. The article is divided into two sections, "total expropriation" and "expropriation of funds." OPIC does not insure against partial expropriation as such. An expropriation of a portion of the insured investment, or an action which partially impairs the investor's rights in the investment, is covered only if it meets the requirements for "total expropriation" (section 4.01). Prior to receiving compensation from OPIC, an investor must assign to OPIC all of its interest in the project attributable to the insured investment (section 8.02).

Expropriations of proceeds from the insured investment, however, are covered by the "expropriation of funds" provision (section 4.02). This is the only form of partial expropriation compensable by the contract without requiring an assignment of the total insured interest. Compensation is in the amount of the value of the expropriation proceeds and the rights assigned to OPIC are only those related to the proceeds. The investor need not have received the funds in question in order to establish a claim. For example, governmental action preventing receipt by the investor could be the basis for a claim if the other requirements are met.

The new contract, like the previous one, requires governmental action to establish expropriation (section 4.01(a)). Neither recognition by the Government of the United States nor a legal manner of succession is necessary for an entity to be considered a "foreign governing authority." The test is whether the entity is in *de facto* control of the part of the country in which the project is located and performs the functions of a government. The action complained of must be legally attributable to the government or a subdivisinn of it (such as a province or agency). For example, if an organized rebel force takes and maintains control of part of the country and expropriates the project, OPIC would pay compensation, even though the investor's legal rights were still recognized by the central government. Also, an action by a government-owned corporation can be the basis for an expropriation if the government is legally responsible for the action. The term "foreign" is used to exclude the Government of the United States and any military command in which it participates.

The substance of proviso 1 to the definition of Expropriatory Action in the previous contract has been retained in the illegality requirement of section 4.01(b). Thus, governmental actions may have a substantial adverse effect on the project, but if they are not illegal under local or international law they do not constitute a compensable expropriation. For example, bona fide tax increases, price controls, currency controls, regulatory measures or other legitimate governmental actions may seriously harm an investor, but if they are not illegal as applied to the investor, OPIC would not pay compensation.

Section 4.01(c), the taking requirement, provides that illegal government action is compensable as a total expropriation under the OPIC contract only if it has the effect of directly depriving the investor of fundamental rights in the insured investment. Rights are "fundamental" if their denial substantially deprives the investor of the benefits of the investment. Not all of the investor's rights with respect to the insured investment need be affected.

As under the previous contract, the focus is on the practical effect of the illegal actions on the investor's interest. A right that is fundamental in one case may not be in another. In each instance, the significance of the rights in question must be examined in the context of the overall investment arrangement. The action could affect the foreign enterprise directly or the investor's rights with respect to the foreign enterprise.

For example, a breach by the host government of an investment agreement, either with the investor or with the foreign enterprise, might violate international and local law. The breach would not give rise to a valid claim for total expropriation, however, unless it so impeded the project's ability to continue to operate or the investor's rights with respect to the foreign enterprise that it substantially deprived the investor of the benefits of the investment.

As under the previous contract, the illegal government actions must "directly" deprive the investor of the benefits of the investment. The contract does not insure investors against actions which directly deny only rights of third parties. OPIC does recognize, however, that actions which transgress the rights of a corporation also deny rights to the investors in the corporation.

As under the previous contract, the expropriatory effect must continue for one year. An investor is not required to exhaust local remedies for breaches of local or international law before submitting its claim to OPIC, but it is required to pursue them for one year (section 4.01(d)), and to consult and cooperate with OPIC (section9.01(8) and (9)) in doing so.

The provocation and instigation section (section 4.03) has the same meaning as the provocation and instigation section for inconvertibility coverage, described above. For example, assume that a mining lease was obtained originally by bribery or other corrupt practices by the investor and that upon discovery of the circumstances the government of the country in which the project is located declares the lease void. Compensation would not be due from OPIC, since a preponderant cause of the expropriation would be the investor's corrupt practices.

Article V—Amount of Compensation—Expropriation

Under some previous OPIC contracts, compensation for total expropriation was determined under the definition of "Net Investment." This formula is replaced in the draft by the "book value" concept, which is more familiar to accountants and business people. Essentially, book value means the initial investment in a project, adjusted by the net retained earnings or losses of the project. The term "book value" is applied to calculate the compensation for losses due to expropriation of the insured investment and net retained earnings up to the contract maximum. On the other hand, the investor does not receive compensation for losses from causes other than expropriation, nor does the investor benefit from accounting practices which the investor does not ordinarily use or which do not reflect economic reality.

OPIC does not generally provide expropriation coverage for the full amount of an investor's investment in a project, but ony for that portion of the investor's investment identified in Article I as the "insured investment" (§ 1.01). In the event of an expropriation, OPIC does not pay compensation based on the full book value of the investor's investment in the project, but only for the *pro rata* share of book value attributable to the portion of the investment in the project that is insured by OPIC (section 5.01). For example, suppose that an investor is a one-half partner in a project, and the investor's contract stipulates that 90% of the investor's investment constitutes the "insured investment" (section 1.01). Compensation for expropriation would be based on 45% of the project's book value (the investor's one-half share multiplied by the 90% which OPIC insures). If the investor contributes additional sums to the project (either directly or through a third party) but does not obtain additional OPIC insurance, the additional contributions are deducted from book value in computing compensation (section 5.03(2)) even though no new shares are issued.

Book value is based on financial statements maintained by the investor in accordance with accounting principles generally accepted in the United States ("GAAP") and translated into dollars in accordance with GAAP. The methods of accounting used in submitting a claim to OPIC must be consistent with the investor's own accounting methods for similar circumstances and periods. OPIC will follow the investor's choice of alternative methods within GAAP and reasonable valuations of contributed property, but adjustments can be made to (1) adjust related party transactions to reflect fair market prices; (2) disregard the effects of tax sharing agreements and consolidated accounting; and (3) write-down the book value of impaired assets of fair market value. Also, any accounting treatment which substantially overstates the fair market value of the insured investment

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or the foreign enterprise viewed as an independent entity will not be accepted.

The new contract adds a provision to benefit investors experiencing normal losses during the development phase of a new enterprise, up to three years. Even though start-up expenses incurred in development reduce book value below the amount of the original contributed investment, the investor can be compensated in the amount of the original insured contribution if the foreign enterprise is a going concern when the expropriatory effect commences and it is clear that no adjustment is warranted for a write-down of assets.

OPIC's previous standard contract (section 2.11) required the investor to maintain annual certificates from a responsible financial officer or outside accountants acceptable to OPIC certifying that financial records were maintained in accordance with generally accepted accounting principles. The new contract eliminates that requirement. However, the investor remains responsible for maintaining records sufficient to substantiate all aspects of claims for compensation (section 9.01.6).

Provisions relating to other compensation and retained property (section 5.03.4) have been rewritten to delete the requirements for certain assignments and possible removal of assets from the project country. As a result of these changes, if property remains subject to the investor's effective control after the expropriation, OPIC may decline to accept the assignment of rights to that property and may deduct from the compensation payable the property's book value. The purpose of this provision is to ensure that the investor is compensated only for actual losses due to expropriation. For example, assume that an investor made an insured investment in a project consisting of a rubber plantation and a rubber vulcanizing plant and that the plantation, but not the plant, was expropriated. If the plantation constituted a substantial portion of the project's assets, OPIC would pay compensation for total expropriation in the amount of the insured investment's *pro rata* share of the book value of the total project and receive an assignment of the investor's interest in the entire project (section 8.02). However, under sections 5.03.4(b) and 8.02 of the new contract, OPIC could refuse to accept an assignment of the investor's interest in the plant, if it remained subject to the investor's effective disposition and control and commercially viable. The book value attributable to the plant would be deducted from compensation.

Also, section 5.03.4(c) provides that OPIC may reduce compensation to offset obligations of which the investor is relieved by the expropriation.

Limitations on amounts of compensation are substantially the same as under the previous contract.

Article VI—Political Violence—Scope of Coverage

OPIC's previous contract provided coverage against "Damage," which is defined to include injury to property from "war, revolution or insurrection" (section 1.07). In addition, in recent years OPIC has offered a standard addendum which broadens coverage to include damage caused by "civil strife." Several of these terms are becoming words of art with established meanings under international and domestic law. OPIC does not intend to limit coverage to violent events that fall into one of these established categories. Therefore, § 6.01 has been written to define "political violence" broadly as any violent act which has a political objective as its principal, immediate motive. Declared and undeclared wars, hostile actions by armed forces, civil wars, revolutions, insurrections, civil strife, terrorism and sabotage all qualify as examples of types of political violence which are covered. This list is not intended to be exhaustive, and other actions that satisfy the definition of political violence are also covered.

A political objective must be the primary intent of the specific act. Thus, an ordinary criminal act, such as a robbery, to obtain financing for a political group would not be encompassed in the term "political violence."

Labor and student violence may not be included within political violence coverage, however. In determining whether a specific action falls into the category of political violence, which is covered under the contract, as opposed to the category of labor or student violence, which is not covered, the primary objective of the act as it affects the investor must be considered. For example, if in the course of a general strike to achieve higher wages, the investor's property is destroyed, compensation would not be payable since the primary goal of the violence was related to a typical labor objective. On the other hand, if the general strike was called to bring down a government, attendant violence would be "political violence" unless the specific act of violence directly affecting the investor was motivated by a separate labor objective.

A number of types of property are not eligible for political violence coverage. Only the loss, damage or destruction of "tangible property of the foreign enterprise used for the project" is covered. Thus, notes or other intangibles are not protected against theft or destruction due to political violence. In addition, certain valuable items such as precious metals, gems, works of art, money and documents are excluded from coverage (section 6.02(a)). However, property leased by the foreign enterprise is considered property "of" the foreign enterprise, and therefore it is covered, provided that it is actually used for purposes of the project and the foreign enterprise bears the risk of loss.

Compensation will not be paid for losses that could have been prevented by taking reasonable protective measures (§ 6.02(c)). In applying this provision, measures which could have been taken by the management of the enterprise as well as by the investor must be considered.

The provocation and instigation provision (section 6.02(d)) has essentially the same meaning as under the inconvertibility and expropriation coverages, described above. In assessing whether particular actions consitute provocations, the existing political climate in the project country must be taken into account. Actions that are legal and that would be reasonable under ordinary circumstances may nevertheless constitute provocation if the investor, or local representatives acting on the investor's behalf, knew or should have known that the action might foreseeably result in political violence.

Article VII—Amount of Compensation—Political Violence

Contract provisions relating to compensation for damage due to political violence have been restructured to provide alternative measures of compensation: historical cost and replacement cost (section 7.01). If the investor does not repair or replace the property permanently lost due to political violence within three years, the investor can obtain compensation on a historical cost basis only.

Historical cost is the investor's share of the least of the actual original cost of the item, the fair market value of the item at the time it was lost or the reasonable cost to repair the item. The determinaton of reasonable cost to repair property is based on the actual conditions which exist in the country at the time. "Investor's share" is defined as the proportion of equity in the foreign enterprise held by the investor (section 7.03). The total amount of compensation

received on a historical cost basis for a single incident or a related series of incidents may not exceed the total book value of the investor's insured investment in the project at the time of the loss (section 7.02(c)).

If the investor does repair or replace the property within three years with new or used property which is equivalent to or better than that which was lost, the investor may elect to have OPIC pay compensation based on the actual cost to repair or replace the property, less any other compensation received, up to a maximum of 200% of the original cost of the item which was lost (section 7.01(b)). Compensation for any item cannot exceed 200% of the investor's share of the amount so calculated (section 7.02(d)). This limitation affects only an investor with less than a 50% equity interest in the foreign enterprise.

For example, assume that an investor has a 40% interest in a foreign enterprise which suffers loss through political violence of a machine having an original cost of $10,000. The replacement cost of the machine is determined to be $25,000 and other insurance compensates $3,000, leaving a potential out-of-pocket replacement cost requirement of $22,000. Under the basic replacement cost compensation provision (section 7.01(b)), compensation would be limited to $20,000—200% of original cost. As the investor has only a 40% equity interest, compensation is limited by section 7.02(d) to $16,000—200% of the Investor's share (40%) times $20,000 (the amount calculated under section 7.01(b)).

Compensation on a replacement cost basis may exceed the book value of the investor's insured investment in the project on the date of the loss.

Sections 9.01.3 and 7.02(b) require the investor to remain uninsured for the risk of loss to physical assets by political violence in an amount equal to at least ten percent of the book value of the investor's interest in the foreign enterprise, whether historical or replacement cost compensation is sought.

As under the previous contract, political violence coverage applies to partial damage to property, as well as total destruction. However, OPIC does not pay compensation if the project is deprived temporarily of the use of its property, nor does it pay for lost profits or consequential damages. For example, if an invading army commandeers delivery trucks belonging to the project for six months and then returns them, OPIC would pay compensation based on any physical damages to the delivery trucks, but it would not pay for the loss of use of the trucks or for lost profits which the project sustained because it was unable to operate during the period that it was deprived of the use of the trucks.

A new feature in the proposed draft is a provision for a mutually agreed upon appraiser to resolve any dispute concerning valuation (section 7.05).

Of course, any compensation received from other sources (including under other OPIC contracts) is deducted in the computation of loss.

Article VIII—Procedures

Article VIII consolidates and reorganizes the procedures applicable to claims. With only a few exceptions, Article VIII either has the same effect as the previous contract or puts into the contract the policies which OPIC has followed as a matter of practice.

Section 8.01 deals with applications for compensation, including time limits. There is no prescribed form for an application for compensation, but a list of required documents for inconvertibility claims is furnished upon request of an investor who is about to file a claim.

Section 8.02 sets forth the rights which must be transferred to OPIC in connection with claim payments.

Section 8.04 provides for payment of excess salvage to the investor. If OPIC obtains greater value from property transferred to it than the amount of compensation paid, plus interest and OPIC's expenses, OPIC will refund the excess to the investor. However, this provision in no way obligates OPIC to take any actions with regard to the property transferred to it.

The rules concerning election of coverage are set forth in section 8.06, including rules for mandatory minimum elections.

Section 8.09 codifies OPIC's existing policy relating to the refund of premiums.

Article IX—Investor's Duties

The Investor's Duties section of the contract is intended to collect in one place all of the investor's duties to OPIC. If the investor materially breaches any of the duties to OPIC, the investor may lose the right to compensation.

Of course, material misrepresentations in the application for insurance or material changes—such as a change in the line of business in which the foreign enterprise is engaged—can invalidate coverage (section 9.01.1). It is important that investors realize that OPIC considers statutory policy goals, as well as underwriting considerations, in deciding whether to issue insurance to a particular investor. Accordingly, misrepresentations or changes can be grounds for voiding coverage even if they do not affect underwriting risk.

Section 9.01.3 requires the investor to maintain the risk of loss for at least ten percent of the book value of its interest in the foreign enterprise. For this ten percent, the investor may not obtain insurance from any source. Other provisions in the draft contract reduce the compensation otherwise payable to ensure that this duty is satisfied (section 5.04(c), section 7.02(b)).

The investor must maintain adequate accounting books and records and regularly prepared financial statements which can be a basis for computing compensation. All accounting must be in accordance with principles of accounting generally accepted in the United States, including principles of currency translation (section 9.01.6).

The contract gives OPIC authority to require investors to make available any and all information which may be relevant to OPIC's duties, which include not only processing claims but also reporting to the Congress (section 9.01.7).

The investor is required to consult with OPIC concerning any events which could result in claims for compensation under the expropriation or political violence coverage (section 9.01.8 and section 9.01.9). Prior to the time that the investor assigns rights in the insured investment to OPIC, the investor is obliged, at its own expense, to take all reasonable measures to preserve property or rights which may be transferred to OPIC, including pursuing administrative and judicial remedies. After the transfer of property or rights to OPIC, the investor has a duty to cooperate with OPIC in any actions which OPIC may take with regard to the rights or property. For example, the investor shall, in exchange for the payment of reasonable out-of-pocket expenses by OPIC, make available appropriate personnel and information to assist OPIC in preserving the property or in prosecuting claims.

Of course, OPIC cannot investigate an investor's representations or compliance with all duties until after a claim arises. Therefore, it is important that investors understand that OPIC does not, through inaction, waive any breaches of investor's duties (section 9.03).

Elizabeth Burton,

Corporate Secretary.

Form 234 KGT 12–85

OPIC Contract of Insurance No.

Overseas Private Investment Corporation Contract of Insurance Against as Defined Below, Between the Overseas Private Investment Corporation ("OPIC") and (the "Investor")

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[1] This Table of Contents applies to all coverages offered by OPIC whether or not all of those coverages are provided in this contract.

Article I—Subject of Insurance and Exchange of Promises

1.01 *Subject.*

1. *Investment.* The Investor promises that the Investor contributed or will contribute to (the "foreign enterprise") for which the Investor has acquired or will acquire (together "the investment"). ——— % of each of these interests acquired by the Investor is insured under this contract (the "insured investment").

2. *Project.* The investment will be applied to (the "project").

1.02 *Promises.*

OPIC promises that if acts occur during the term of this contract which satisfy the requirements for coverage in Article ———, OPIC will pay the Investor the amount of compensation provided in Article ———, in accordance with the procedures in Article VIII.

The Investor promises to comply with the duties in Article IX. If the Investor violates any of those duties, the Investor may lose rights, including the right to compensation.

Amendments to Articles I through IX may be contained in Article X.

1.03 *Maximum Aggregate Compensation.*

OPIC will not pay compensation under this contract in an aggregate amount that exceeds $———.

1.04 *Full Faith and Credit.*

The full faith and credit of the United States of America is pledged to secure that full payment by OPIC of its obligations under this contract.

1.05 *Term.*

This contract shall enter into force on the date it has been signed by OPIC and the Investor and shall terminate ——— years afterward.

1.06 *Premiums and Coverage Elections.*

The Investor shall elect amounts of coverage (§ 8.06) and pay premium on or before each annual anniversary of the effective date of the contract. By notice to the Investor at least thirty days prior to a premium due date, OPIC may increase the rates for Current Insured Amounts. The total increase during the first ten years shall be limited to 50% of the rates for the first period of this contract and thereafter to 100% of the rates for the first period.

The coverages and premiums for the first period shall be as follows:

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_____ securities:

	Inconvertibility	Expropriation	Political Violence	
Maximum Insured Amount:	$	$	$	
Current Insured Amount:	$	$	$	
Premium rate is:	x %	x %	x %	
Total premium due for Current is:	$ +	$ +	$	= $
Standby Amount (Maximum less Current):	$	$	$	
Premium rate is:	x %	x %	x %	
Total premium due for Standby is:	$ +	$ +	$	= $
Total premium due for coverage of _____ securities is:				$

_____ securities:

	Inconvertibility	Expropriation	Political Violence	
Maximum Insured Amount:	$	$	$	
Current Insured Amount:	$	$	$	
Premium rate is:	x %	x %	x %	
Total premium due for Current is:	$ +	$ +	$	= $
Standby Amount (Maximum less Current):	$	$	$	
Premium rate is:	x %	x %	x %	
Total Premium due for Standby is:	$ +	$ +	$	= $
Total premium due for coverage of _____ securities is:				$
Total Premium				$

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Article II—Inconvertibility—Scope of Coverage

2.01 *Inconvertibility of Local Currency.* Local currency shall be deemed inconvertible and compensation shall be payable, subject to the exclusions (section 2.02) and limitation (section 3.02), if the Investor is unable legally to convert earnings from or returns of the insured investment into United States dollars through any channel during the ——— days immediately prior to a claim to OPIC, except at rates which are on each day less favorable than the rate described under section 3.01.2 for that day.

2.02 *Exclusions.* Regardless of any other provisions, no compensation for inconvertibility shall be payable if:

(a) *Pre-existing Restrictions.*

(1) The Investor would have been unable legally to convert local currency into United States dollars in comparable circumstances on the date of this contract; and

(2) The Investor knew or should have known about the restriction; or

(b) *Investor Diligence.* The Investor has not made all reasonable efforts to convert the local currency into United States dollars through all direct and indirect legal mechanisms reasonably available; or

(c) *Reconversions.* The local currency represents funds which were previously converted into another currency; or

(d) *Provocation.* A preponderant cause of the inconvertibility is unreasonable actions attributable to the investor, including corrupt practices, which provoke or instigate a loss.

Article III—Inconvertibility—Amount of Compensation

3.01 *Rate of Compensation for Inconvertibility.*

1. *Date.* If the requirements of inconvertibility are satisfied (Article II), OPIC shall pay compensation against prior delivery of the inconvertible local currency. The compensation shall be the United States dollar equivalent of the local currency at the exchange rate in effect sixty days before OPIC receives the completed application for compensation.

2. *Exchange Rate.*

(a) The exchange rate shall be the official exchange rate applicable to the type of remittance involved.

(b) If, however,

(1) United States dollars were not generally available at the applicable official exchange rate; and

(2) Exchanges of local currency for United States dollars were effected legally and normally through another channel; then the exchange rate shall be the effective rate obtained through that channel.

(c) In either case, the exchange rate shall be net of all deductions for governmentally imposed charges, such as taxes and commissions.

3.02 *Limitation.* Compensation shall not exceed the Current Insured Amount (section 8.06) in effect sixty days before OPIC receives the application for compensation.

Article IV—Expropriation—Scope of Coverage

4.10 *Total Expropriation.* Compensation is payable for total expropriation (section 5.01), subject to the exclusion (section 4.03) and limitations (section 5.04), if an act or series of acts satisfies all of the following requirements:

(a) The acts are attributable to a foreign governing authority which is in *de facto* control of the part of the country in which the project is located;

(b) The acts are violations of international law (without regard to the availability of local remedies) or material breaches of local law;

(c) The acts directly deprive the Investor of fundamental rights in the insured investment (Rights are "fundamental" if without them the Investor is substantially deprived of the benefits of the investment); and

(d) The violations of law are not remedied (§ 9.01.9) and the expropriatory effect continues for one year.

4.02 *Expropriation of Funds.* Compensation is payable for an expropriation of funds that constitute a return of the insured investment or earnings on the insured investment (section 5.02) if an act or series of acts:

(a) Satisfies the governmental action, illegality and duration requirements (section 4.01 (a), (b) and (d)); and

(b) Directly results in preventing the Investor from:

(1) Repatriating the funds; and

(2) Effectively controlling the funds in the country in which the project is located.

4.03 *Provocation Exclusion.* No compensation shall be paid for any loss for which a preponderant cause is unreasonable actions attributable to the Investor, including corrupt practices, which provoke or instigate a loss.

Article V—Expropriation—Amount of Compensation

5.01 *Total Expropriation.* For total expropriation (section 4.01), OPIC shall pay compensation in United States dollars in the amount of the book value of the insured investment, subject to adjustments (section 5.03) and limitations (section 5.04).

Compensation is computed as of the date the expropriatory effect commences (section 4.01(c)) and is based on financial statements maintained by the Investor in accordance with section 9.01.6 for the foreign enterprise. However, OPIC may audit and make adjustments to the financial statements:

(1) To conform them to principles of accounting generally accepted in the United States; and

(2) To make the adjustments (section 5.03).

OPIC shall be bound by the Investor's choice among generally accepted accounting principles, if the choice is consistent with the Investor's own accounting, unless such choice results in a substantial overstatement of the fair market value of the insured investment or the foreign enterprise as an independent entity.

5.02 *Expropriation of Funds.* For expropriation of funds (section 4.02), OPIC shall pay compensation in the amount of the United States dollar equivalent of the expropriated funds at the exchange rate determined by section 3.01.2, computed as of the date the expropriation begins. Compensation for expropriation of funds shall be subject to the adjustments and limitations (section 5.03 and section 5.04).

5.03 *Adjustments.*

1. *Investments of Property.* Non-cash items contributed as part of the investment shall be adjusted to reasonable value of the items furnished at the time of transfer, plus freight and other reasonable direct costs incurred in furnishing the items to the project.

2. *Non-Insured Contribution.* Any direct or indirect contribution by the Investor after the insured investment is made shall be deducted from book value.

3. *Special Accounting Rules.* Dealings among related parties shall be adjusted to the standard of arm's length dealing, and forgiveness of obligations shall be disregarded. Each entity shall be accounted for as if it were a separate person for income tax purposes, and the effect of tax shifting arrangements shall be disregarded. Obsolescence or permanent reduction in recoverable values shall be recognized by adjusting the book value of productive facilities and assets to realizable value. OPIC may adjust financial statements to reflect the effect of events that occur before the expropriatory effect commences, such as events of loss which are later confirmed.

4. *Other Compensation and Retained Property.* OPIC may reduce compensation for:

(a) Compensation received from other sources on account of the expropriation;

(b) The book value of commercially viable property which remains subject to the Investor's effective disposition and control after the expropriatory effect commences (unless OPIC requires the Investor to assign the property (section 8.02); and

(c) Any obligation the Investor is relieved of by the expropriation.

The reduction shall be proportionate to the extent that these items are attributable to the insured investment.

5. *Start-up Expenses.* If the book value of the insured investment of a new foreign enterprise in the development stage is less than the insured amount originally contributed, the accumulated loss will be disregarded if:

(a) the foreign enterprise is newly formed for the principal purpose of undertaking the project,

(b) The foreign enterprise is a going concern as of the date of expropriatory effect commences,

(c) That date is within three years of the date this contract is issued, and

(d) It is clear that no adjustment to book value is necessary by reason of obsolescence or permanent reduction in recoverable values of productive facilities or assets.

5.04 *Limitations.* Compensation shall not exceed any of the following limitations:

(a) *Current Insured Amount.* The Current Insured Amount (section 8.06) on the date the expropriatory effect commences;

(b) *Insolvency.* If foreign enterprise liabilities exceed assets as of the date the expropriatory effect commences, the amount that the Investor would have been entitled to receive in insolvency proceedings with respect to the insured investment if assets had been liquidated at book value on that date;

(c) *Self-Insurance.* The maximum amount which could be received by the Investor from OPIC without breaching section 9.01.3.

Article VI—Political Violence—Scope of Coverage

6.01 *Loss Due to Political Violence.* Compensation is payable, subject to the exclusions (section 6.02) and limitations (7.02), if political violence is the direct and immediate cause of the permanent loss (including loss of value by damage or destruction) of tangible property of the foreign enterprise used for the project.

"Political violence" means a violent act undertaken with the primary intent of achieving a political objective, such as declared or undeclared war, hostile action by national or international armed forces, civil war, revolution, insurrection, civil strife, terrorism or sabotage. However, acts undertaken primarily to achieve labor or student objectives are not covered.

6.02 *Exclusions.* Regardless of any other provision of this contract, no compensation shall be payable:

(a) *Excluded Property.* For loss of precious metals, gems, works of art, money or documents;

(b) *Minimum Loss.* If the amount of compensation payable would be less than $5,000;

(c) *Reasonable Protective Measures.* If the loss results from the failure to take reasonable measures to protect or preserve the property; or

(d) *Provocation.* If a preponderant cause of the loss is attributable to the unreasonable actions of Investor, including corrupt practices, which provoke or instigate a loss.

Article VII—Political Violence—Amount of Compensation

7.01 *Basis of Compensation.* If the requirements of Article VI are satisfied, and subject to the limitations (section 7.02), OPIC shall pay compensation in United States dollars for any item of property loss. Compensation shall be in the amount of historical cost, or, if the requirements of section 7.01(b) are met, in the amount of replacement cost.

(a) *Historical Cost.* Historical cost is the Investor's share (section 7.03) of the least of:

(1) The original cost;

(2) Fair market value; or

(3) The reasonable cost to repair the property;

less anything of value received by the Investor on account of the property lost, including insurance proceeds, and less the Investor's share of any such receipts by the foreign enterprise.

(b) *Replacement Cost.* If the Investor so elects, OPIC will pay the reasonable cost to repair any item of lost property or to replace it with equivalent new property, less anything of value received by the Investor or the foreign enterprise on account of the property lost, including insurance proceeds. Such compensation shall not exceed 200% of the original cost of the item. To receive such compensation, the Investor must repair or replace the lost property within three years of the loss.

7.02 *Limitations.* Regardless of any other provision of this contract, the following limitations shall apply in computing compensation:

(a) *Current Insured Amount.* Compensation shall not exceed the Current Insured Amount (section 8.06) on the date of the loss.

(b) *Self-insurance.* Violation of the duty to be self insured (section 9.01.3) shall result in a corresponding reduction of compensation otherwise payable under this contract.

(c) *Aggregate Historical Cost Compensation.* Aggregate compensation for property compensated at historical cost shall not exceed the book value of the insured investment (section 7.04) at the time of loss.

(d) *Replacement Cost Limit.* Compensation for any item compensated at replacement cost shall not exceed 200% of the Investor's share of the amount calculated under (section 7.01(b).

7.03 *Investor's Share.* "Investor's share" means the ratio of the number of equity shares owned by the Investor to the total number of equity shares of the foreign enterprise.

7.04 *Book Value of Insured Investment.*

(a) *Book Value.* Book value is based on financial statements maintained by the Investor in accordance with section 9.01.6 for the foreign enterprise. However, OPIC may audit and make adjustments to the financial statements.

(1) To conform to principles of accounting generally accepted in the United States; and

(2) To make the adjustments described in section 7.04(b).

OPIC shall be bound by the Investor's choice among generally accepted accounting principles, if the choice is consistent with the Investor's own accounting, unless such choice results in a substantial overstatement of the fair market value of the insured investment or the foreign enterprise as an independent entity.

(b) *Adjustments.*

(1) *Investments of Property.* Non-cash items contributed to the investment shall be adjusted to reasonable value of the items furnished at the time of transfer, plus freight and other reasonable direct costs incurred in furnishing the items to the project.

(2) *Non-Insured Contribution.* Any direct or indirect contribution by the Investor after the insured investment is made shall be deducted from book value.

(3) *Special Accounting Rules.* Dealings among related parties shall be adjusted to the standard of arm's length dealing, and forgiveness of obligations shall be disregarded. Each entity shall be accounted for as if it were a separate person for income tax purposes, and the effect of tax shifting arrangements shall be disregarded. Obsolescence or

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permanent reduction in recoverable values shall be recognized by adjusting the book value of productive facilities and to realizable value. OPIC may adjust financial statements to reflect the effect of events that occur before the property is lost, such as events of loss which are later confirmed.

(4) *Start-up Expenses.* If the book value of the insured investment of a new foreign enterprise in the development stage is less than the insured amount originally contributed, the accumulated loss will be disregarded if:

(a) The foreign enterprise is newly formed for the principal purpose of undertaking the project,

(b) The foreign enterprise is a going concern as of the date of the loss,

(c) That date is within three years of the date this contract is issued, and

(d) It is clear that no adjustment to book value is necessary by reason of obsolescence or permanent reduction in recoverable values of productive facilities or assets.

(c) *Insolvency.* If foreign enterprise liabilities exceed assets as of the date of the loss, book value of the insured investment shall not exceed the amount that the Investor would have been entitled to receive in insolvency proceedings with respect to the insured investment if assets had been liquidated at book value on the day prior to the loss.

7.05 *Appraisal.* If OPIC determines that compensation is payable but OPIC and the Investor are unable to agree on a question of valuation, either may demand the appointment of an impartial appraiser. If the parties are unable to agree on the appraiser, the appointment shall be made by the American Arbitration Association. The appraiser's itemized appraisal shall be binding. Appraisal costs shall be borne equally by OPIC and the Investor.

7.06 *Estimated Compensation.* If OPIC determines that compensation is payable but conditions in the project country preclude reasonable efforts by OPIC to determine the precise amount due, OPIC may pay estimated compensation based on the information then available. OPIC may revise its estimate and recover any excess or pay any additional amount due.

Article VIII—Procedures.

8.01 *Application for Compensation.* An application for compensation shall demonstrate the Investor's right to compensation in the amount claimed. The Investor shall provide such additional information as OPIC may reasonably require to evaluate the application. The Investor may withdraw an application for compensation, but the right to recover compensation will be lost for any acts covered by the application.

(a) There is no time limit on application for inconvertibility compensation (Article III); however, section 3.02 provides that compensation shall not exceed the Current Insured Amount in effect sixty days before OPIC receives the application.

(b) An application for expropriation compensation (Article V) must be filed within six months after the Investor has reason to believe that all requirements of Article IV have been satisfied.

(c) A notice demonstrating the Investor's entitlement to political violence compensation (Article VI) must be filed within six months of the loss. The notice together with proof of the amount of compensation due will be considered a completed application, which must be filed within three years of the loss. The Investor may request historical cost compensation (section 7.01(a)) and later amend the application within three years of the loss to elect replacement cost compensation (section 7.01(b)).

(d) OPIC shall have a reasonable time in which to complete processing of any application for compensation.

8.02 *Assignment to OPIC.* Within sixty days after OPIC notifies the Investor of the amount of compensation OPIC will pay under expropriation or political violence coverage, and prior to payment, the Investor shall transfer to OPIC all interests attributable to the insured investment (section 4.01) or funds (section 4.02) as of the date the expropriatory effect commences, including claims arising out of the expropriation, or claims arising out of the loss due to political violence (section 6.01). The Investor shall transfer the interests and claims free and clear of, and shall agree to indemnify OPIC against, claims, defenses, counterclaims, rights of setoff and other encumbrances (except defenses relating to the expropriation).

In connection with an inconvertibility claim, immediately upon receipt of instructions from OPIC, the Investor shall deliver the local currency to OPIC by draft subject to collection (or, at OPIC's option, in cash).

OPIC may decline all or any portion of the Investor's interests or claims; if so, the Investor's right to compensation shall be affected only as provided in (section 5.03.4(b).

8.03 *Security.* As a condition for the payment of compensation, OPIC may require the Investor to provide reasonable security satisfactory to OPIC for repaying compensation (as may be required, for example, by (section 7.06 or (section 9.02(b)).

8.04 *Excess Salvage Value.* With respect to compensated expropriation and political violence claims, OPIC shall pay to the Investor any amounts OPIC realizes in United States dollars from the rights transferred (section 8.02) in excess of

(a) The compensation paid by OPIC; plus

(b) Reasonable interest; plus

(c) OPIC's out-of-pocket expenses in maintaining and realizing funds from the transferred property.

However, this provision shall not in any way restrict OPIC's discretion to deal with the rights transferred. OPIC shall have no obligation to take action with respect to the rights transferred and shall incur no liability to the Investor for any actions taken or not taken after the transfer.

8.05 *Arbitration.* Any controversy relating to this contract shall be settled by arbitration in Washington, DC according to the then prevailing Commercial Arbitration Rules of the American Arbitration Association. Unless the Investor initiates arbitration, OPIC's liability shall expire one year after OPIC notifies the Investor of its determination concerning an application for compensation. A decision by arbitrators shall be final and binding, and any court having jurisdiction may enter judgment on it.

8.06 *Election of Amount of Coverage and Termination.* By prior notice to OPIC effective as of the next due date for premiums (section 1.06), the Investor may increase or decrease the Current Insured Amount or decrease the Maximum Insured Amount for any coverage for the remainder of the contract term, subject to the following limitations:

(a) Current Insured Amount shall not exceed Maximum Insured Amount;

(b) Maximum Insured Amount shall be reduced automatically by compensation paid by OPIC; Current Insured Amount shall also be reduced for the remainder of the annual election period to which the claim relates (section 3.02, section 5.04(a), or section 7.02(a));

(c) For expropriation coverage, Current Insured Amount shall not be less than the amount of compensation which would be due under section 5.01 unless a lower Maximum Insured Amount has been elected;

(d) For political violence coverage, Current Insured Amount shall not be less than the lesser of the Investor's share of

(1) original cost (section 7.01(a)(1)); or

(2) fair market value of the covered property unless a lower Maximum Insured Amount has been elected or OPIC and the Investor have agreed to a lower amount to take into account coverage under another OPIC contract.

The Investor may terminate this contract effective as of any premium due date unless the premium is already paid. However, termination shall not affect any rights or obligations of either party relating to prior periods.

8.07 *Legal and Miscellaneous.* This contract shall be governed by the law of the District of Columbia, its conflict of law rules excepted. This contract constitutes the complete agreement between the parties, superseding any prior understandings. This contract may be modified, or its terms waived, only in writing.

8.08 *Notices.* Notices must be in writing, and shall be effective when received. Notices may be given to the Investor at the address on the title page (unless changed in writing), and to OPIC at

Overseas Private Investment Corporation Washington, DC 20527,
Attention: Vice-President, Insurance.

8.09 *Refund of Premiums.* Upon timely request, OPIC will refund premiums *pro rata* if

(a) Excess coverage is maintained while a valid claim for compensation is pending; or

(b) The Investor becomes ineligible for coverage or ceases to hold all or a portion of the insured investment.

Article IX—Investor's Duties

9.01 *Duties.*

1. *Representations and Project Execution.* The Investor understands that OPIC has issued this contract based on statutory policy goals (22 U.S.C. section 2191) as well as underwriting considerations. All statements made by the Investor to OPIC in connection with this contract are true and complete, and the investment and the project shall be carried out as described.

2. *Ownership and Eligibility.* The Investor shall at all times remain the beneficial owner of the insured investment and shall remain eligible for OPIC insurance as

(a) A citizen of the United States; or

(b) A corporation or other association created under the laws of the United States, its states or territories, of which more than 50% of both the total interest and of each class of shares is beneficially owned by citizens of the United States; or

(c) an entity created under foreign law in which a 95% interest is owned by entities eligible under (a) or (b).

3. *Self-Insurance.* The Investor shall continue to bear the risk of loss of at least 10% of the book value of its interest in the foreign enterprise.

4. *Assignment.* The Investor shall not assign this contract, or any of its rights, without OPIC's written consent, which will not be withheld unreasonably.

5. *Premiums.* The Investor shall pay the premiums for this contract in accordance with Article I. In the event that premiums are not paid when due, the Investor shall be in default but may cure this default within sixty days by paying the premiums plus interest at a rate of 12% per annum.

6. *Accounting Records.*

(a) The Investor shall maintain in the United States the records, books of account and current financial statements for the foreign enterprise necessary to compute and substantiate compensation, including

(1) Records documenting the investment;

(2) Annual balance sheets;

(3) Annual statements of income, retained earnings, changes in financial position and related footnotes.

(b) Accounting records shall be maintained in United States dollars in accordance with principles of accounting generally accepted in the United States (including principles of currency translation), as modified by the special accounting rules (section 5.03.3 and section 7.04(b)(3)).

(c) The Investor shall retain all accounting records until

(1) The deadline for filing an application for compensation has expired (section 8.01); or

(2) Final action has been taken on an application for compensation (including arbitration and judicial appeals).

However, if compensation has been paid, the accounting records shall be retained for three years after the Investor receives the compensation.

7. *Reports and Access to Information.* In order that OPIC may perform its statutory duties, including settling claims and reporting to the Congress (22 U.S.C. 2200a), the Investor shall furnish OPIC with such information as OPIC may reasonably request, including

(a) Making available for interviews any persons subject to the Investor's practical control (including employees of the project and independent accountants);

(b) Making available for inspection and copying all documents and accounting records relating to the project (including workpapers of independent accountants);

(c) Permitting OPIC to inspect the project; and

(d) Furnishing available information concerning the effects of the project on the economy of the United States, the environment, and the economic and social development of the country in which the project is located.

The Investor's duties under this paragraph shall continue for the periods specified for retention of accounting records (section 95.9.01.6(c)).

8. *Compulsory Notice.* The Investor shall notify OPIC promptly of any acts or threats to act in a manner which may come within the scope of the expropriation or political violence coverage (Articles IV and VI) and shall keep OPIC informed as to all relevant developments.

9. *Preservation, Transfer and Continuing Cooperation.* At OPIC's request, the Investor shall promptly assign rights with respect to the investment, as required by section 8.02. Prior to the assignment of rights required by section 8.02, the Investor shall take all reasonable measures to preserve property, to pursue available administrative and judicial remedies, and to negotiate in good faith with the governing authority of the country in which the project is located and other potential sources of compensation. After a transfer of rights or delivery of local currency, in exchange for reimbursement of reasonable out-of-pocket expenses, the Investor shall take all actions reasonably requested by OPIC to assist OPIC in preserving the property and rights transferred to OPIC and in prosecuting related claims.

10. *Other Compensation.* The Investor shall not enter into any agreement with any foreign governing authority with respect to compensation for any acts within the scope of coverage (Article II, IV or VI) without OPIC's prior written consent.

11. *Agreements Regarding Investment Disputes.* If any rights transferrable to OPIC (section 8.02) are subject to agreements providing for arbitration in a forum limited to non-governmental parties (such as the International Centre for Settlement of Investment Disputes), the Investor shall act as necessary to protect OPIC's interests.

9.02 *Default.* Material breach or misrepresentation by the Investor shall constitute default, and OPIC may

(a) Refuse to make payments to the Investor;

(b) Recover payments made; or

(c) Terminate this contract effective as of the date of the breach by giving notice to the Investor.

9.03 *Non-Waiver.* Neither OPIC's failure to invoke its rights, nor its acceptance of premiums, shall constitute

waiver of any of its rights, even though OPIC knows of the Investor's breach.

9.04 *Cure.* OPIC may permit the Investor to cure a breach in a manner satisfactory to OPIC, but shall have no obligation to allow breaches to be cured.

Investor
By: _____
Date: _____

(Name and Title)

Overseas Private Investment Corporation
By: _____
Date: _____

(Name and Title)
Elizabeth Burton,
Corporate Secretary.
[FR Doc. 86-1661 Filed 1-24-86; 8:45 am]
BILLING CODE 3210-01-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Quarterly Report of Revenues, Expenses, Class I Railroads
OMB Form No.: 3120-0027
Agency Form No.: RE&I
Frequency: Quarterly
Respondents: Class I Railroads
No. of Respondents: 26
Total Burden Hrs.: 624

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Quarterly Report of Freight Commodity Statistics Class I Railroads
OMB Form No.: 3120-0031
Agency Form No.: QCS
Frequency: Quarterly/Annually
Respondents: Class I Railroads
No. of Respondents: 25
Total Burden Hrs.: 13,000

Type of Clearance: Extension
Bureau/Office: Office of Proceedings
Title of Form: Application for Authority under 49 USC to Acquire control of a motor carrier or carriers thru ownership of stock, or otherwise.
OMB Form No.: 3120-0100
Agency Form No.: OP-F-45
Frequency: Non-recurring
Respondents: Motor passenger carriers & non-carriers
No. of Respondents: 10
Total Burden Hrs.: 1,200

James H. Bayne,
Secretary.
[FR Doc. 86-1667 Filed 1-24-86; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 191X)]

Chicago and North Western Transportation Co.; Abandonment Exemption Between Maple River and Ida Grove, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Chicago and North Western Transportation Company filed a petition seeking an exemption under 49 U.S.C. 10505 from 49 U.S.C. 10903, *et seq.*, in connection with the abandonment of 38.4 miles of its line between Maple River and Ida Grove, IA. The Commission has determined that there should be notice and comment because the impact of the proposed abandonment cannot be ascertained from the present record. Also comments on the impostion of public use conditions and the use of the rail right-of-way on an interim basis for trails will be considered.

DATES: Comments may be filed with the Commission and served on petitioner's representative by February 26, 1986. Replies to the comments may be filed by March 18, 1986.

ADDRESSES: Send comments referring to Docket No. AB-1 (Sub-No. 191X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Robert T. Opal, Commerce Counsel, One North Western Center, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT:
Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purschase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll free (800) 424-5403.

Decided: December 24, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Taylor did not participate in the disposition of this proceeding.

James H. Bayne,
Secretary.
[FR Doc. 86-1666 Filed 1-24-86; 8:45 am]
BILLING CODE 7035-01-M

[Section 5a Application No. 1 [1] Amdt. No. 8]

Agreement; Household Goods Carriers' Bureau, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: Household Goods Carriers' Bureau, Inc. (HHGB), has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Since some modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of HHGB's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave. NW., Washington, DC 20423, and from HHGB's respresentative: Thomas M. Auchincloss, Jr., 700 World Center Building, 918-16th Street, NW., Washington, DC 20006.

Copies of the complete Commission decision are available for inspection and copying at the Interstate Commerce Commission or may be purchased from TS Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th St. and Constitution Ave., NW., Washington, DC 20423; or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC metropolitan area.

DATE: Comments from interested persons are due by February 26, 1986. Replies are due 15 days thereafter.

ADDRESS: An original and fifteen copies, if possible, of comments should be sent to: Section 5a Application No. 1, Office

[1] Section 5 was recodified as section 10706.

of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Harold Johnson, (202) 275-7971
and
Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION:
Household Goods Carriers Bureau (HHGB) has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. 96-296 (1980) (MCA). Since filing its application, HHGB has been obligated to observe the requirements of the MCA and the standards set forth in our decision implementing Section 14, found in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureau Implementation of Pub. L. 96-296*, 364 I.C.C. 464 (1980) and 364 I.C.C. 921 (1981).

We have provisionally approved HHGB's agreement as consistent with 49 U.S.C. 10706(b) and Ex Parte No. 297 (Sub-No. 5), *supra*, subject to certain modifications including the following subject areas: identification and description of member carriers; right of independent action; employee docketing; open meetings; quorum standards; final disposition of cases; general standards for member voting and discussion of collectively established rates; singleline rates; general tariff increases or decreases; and zone of freedom rates. We have also offered comments and imposed requirements concerning the agreement generally. HHGB has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision provisionally approving the agreement.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and Ex Parte No. 297 (Sub-No. 5), *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to HHGB's agreement in particular.

A copy of any comments filed with the Commission shall also be served on HHGB, which shall have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that HHGB must submit to the Commission as a condition precedent to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice and accompanying decision are issued pursuant to 49 U.S.C 10321 and 10706 and 5 U.S.C. 553.

Decided: December 24, 1985.

By the Commission, Chairman Taylor, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Andre concurred.

James H. Bayne,
Secretary.
[FR Doc. 86-1724 Filed 1-24-86; 8:45 am]
BILLING CODE 7035-01-M

[Section 5a Application No. 92 Amdt. No. 3]

Agreement; Maine Motor Rate Bureau Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision on reconsideration.

SUMMARY: Pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), Maine Motor Rate Bureau (Maine) filed an application for approval of its collective ratemaking agreement under 49 U.S.C. 10706(b). In a decision noticed at 48 FR 53608 (1983), the Commission found Maine's revised ratemaking agreement to be inconsistent in several respects with the MCA and the decisions implementing it. The Commission noted the areas in which the agreement was deficient; ordered a revised agreement to be filed; and solicited public comment on its interpetation and application of specific rate bureau provisions. Maine's revised agreement has not been modified to the extent required by the Commission's earlier decision. The decision on reconsideration reviews the comments that were filed; modifies the language of the prior decision; extends provisional approval; and requires Maine to submit a fully consistent revised agreement.

DATES: This provisional approval of secton 5a Application No. 92 (Amendment No. 3) will expire, and the application will be denied on March 25, 1986, unless prior to that date the Maine Motor Rate Bureau files a revised agreement complying with the requirements stated in the full decision. The decision is effective on the date served.

FOR FURTHER INFORMATION CONTACT:
Robert G. Rothstein, (202) 275-7912
or
Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION:
Additional information is contained in the full Commission decision, which is available for inspection and copying at the Interstate Commerce Commission, 12th Street and Constitution Ave., NW., Washington, DC, 20423, or may be purchased from TS Infosystems, Inc., Room 2229, Interstate Commerce Commission Building; or toll-free (800) 424-5403; or (202) 289-4357 in the Washington, DC, metropolitan area.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: December 24, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Andre concurred.

James H. Bayne,
Secretary.
[FR Doc. 86-1723 Filed 1-24-86; 8:45 am]
BILLING CODE 7035-01-M

[Section 5a Application No. 9]

National Bus Traffic Association, Inc.; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: National Bus Traffic Association, Inc. (NBTA), has filed, pursuant to section 10 of the Bus Regulatory Reform Act of 1982 (Bus Act), an application for approval of its rulemaking agreement under 49 U.S.C. 10706(b). Since several modifications are required before the agreement may be approved, and since new and complex questions are involved in determining whether the agreement is consistent with the Bus Act and the decision implementing it, the Commission will solicit public comment on its interpretation of NBTA's compliance with specific rate bureau provisions. Copies of NBTA's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423, and from NBTA's representatives:

Charles A. Webb, 606 London House, 1001 Wilson Boulevard, Arlington, VA 22209
John A. Grady, 301 N. Fairfax St., Suite 100, Alexandria, VA

Copies of the complete Commission decision are available for inspection and copying at the Interstate Commerce Commission, or may be purchased from TS Infosystems, Inc., Room 2229, Interstate Commerce Commission Building, 12th St. and Constitution Ave.,

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NW., Washington, DC 20423; or call toll-free (800) 424-5403, or (202) 289-4357 in the Washington, DC metropolitan area.

DATES: Comments from interested persons are due by February 26, 1986. Replies are due 15 days thereafter.

ADDRESS: An original and fifteen copies, if possible, of comments should be sent to: Section 5a Application No. 9, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

FOR FURTHER INFORMATION CONTACT:
Harold Johnson, (202) 275-7971
or
Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION: National Bus Traffic Association, Inc. (NBTA), filed an application for approval of its proposed amended collective ratemaking agreement as required by section 10 of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261 (1982) (Bus Act). During the time the proposed amended agreement was prepared for, submitted to, and considered by the Commission, NBTA has been obligated to observe the requirements of the Bus Act and the standards set forth in our decision implementing Section 10, found in Ex Parte No. 297 (Sub-No. 6), *Bus Rate Bureau Procedures*, 367 I.C.C. 313 (1983), to enjoy continuing antitrust immunity for collective activities.

We have provisionally approved NBTA's agreement as consistent with 49 U.S.C. 10706(b) and Ex Parte No. 297 (Sub-No. 6), *supra*, subject to certain modifications, including the following subject areas: identification and description of member carriers; right of independent action; rate bureau protests; employee docketing; open meetings; proxy voting; quorum standards; final disposition of cases; general standards for member voting; general rate increases or decreases; broad changes in tariff structure; promotional and innovative fares; and scope of collective activities. We have also offered comments and imposed requirements concerning the agreement generally. NBTA has been directed to file a revised agreement conforming to the conditions imposed within 120 days following service of the decision provisionally approving the agreement.

In light of the complex interpretation involved in determining whether the agreement is consistent with the Bus Act and Ex Parte No. 297 (Sub-No. 6), *supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria generally, and their application to NBTA's agreement in particular.

A copy of any comments filed shall also be served on NBTA, which shall have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that NBTA must submit to the Commission as a condition precedent to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

This notice and accompanying decision are issued pursuant to 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: December 24, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Andre concurred.

James H. Bayne,
Secretary.

[FR Doc. 86-1722 Filed 1-24-86; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 96)]

Railroad Services Abandonment; Southern Pacific Transportation Co.; Los Angeles County, CA; Findings

The Commission has found that the public convenience and necessity permit the Southern Pacific Transportation Company to abandon its 2.512-mile line of railroad between Santa Fe Springs (milepost 497.00) and Whittier (milepost 500.212), in Los Angeles County, CA.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of the Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc. 86-1760 Filed 1-24-86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Grants; Availability; OJP Financial Guideline M7100.1C

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Issuance of OJP Guideline Manual M7100.1C, Financial and Administrative Guide for Grants.

SUMMARY: The purpose of the Financial and Administrative Guide for Grants is to provide a reference source and guide for financial matters arising in the administration of assistance awards (grants and cooperative agreements) made pursuant to the following statutes: Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Victims of Crime Act of 1984, and Titles II and IV of the Juvenile Justice and Deliquency Prevention Act of 1974, as amended. The Guide identifies the Office of Justice Programs (OJP) agencies' financial management policies and procedures. These policies are designed to assure the establishment of sound and effective business management standards for agency grantees and subrecipients. The OJP agencies include the Office of Justice Programs, the Office of Juvenile Justice and Deliquency Prevention (OJJDP), the Bureau of Justice Assistance (BJA), the National Institute of Justice (NIJ), and the Bureau of Justice Statistics (BJS). The Guide builds upon and complements the grant funding and administrative requirements established in the effective edition of the OJJDP formula and BJA block grant guidelines, the OJP agencies' program announcements for discretionary programs and projects, and other OJP agency guidelines. The new Guide supercedes M7100.1B, October 20, 1980.

EFFECTIVE DATE: M7100.1C was effective November 1, 1985. It applies to: (1) All new assistance awards made by the OJP agencies on and after November 1, 1985; (2) all prior assistance awards which were made subject to the "current" or a "subsequent" edition of M7100.1, effective November 1, 1985; and (3) all actions on other assistance awards which occur on and after November 1, 1985.

FOR FURTHER INFORMATION CONTACT:
Michael C. Lynch, Financial Management and Grants Administration Division, Office of the Comptroller, Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7584.

Richard B. Abell,
Deputy Assistant Attorney General, Office of Justice Programs.

[FR Doc. 86-1715 Filed 1-24-86; 8:45 am]
BILLING CODE 4410-18-M

NUCLEAR REGULATORY COMMISSION

Advisory Panel for the Decontamination of Three Mile Island Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI-2) will be meeting on February 12, 1986, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, PA. The meeting will be open to the public.

At this meeting, the Panel will receive a presentation by the U.S. Department of Energy on the plans for the shipment of fuel removed from damaged TMI-2 reactor to a DOE facility for interim storage. The Panel will also receive a status report on the progress of defueling and a presentation on the Strontium-90 measurement errors at TMI-2 from General Public Utilities Nuclear Corporation. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Cleanup Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492/7466.

Dated: January 22, 1986.

John C. Hoyle,
Advisory Committee, Management Officer.

[FR Doc. 86-1709 Filed 1-24-86; 8:45 am]
BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Open Meeting

Notice is hereby given of a meeting of the Subcommittee on Hospital Productivity and Cost Effectiveness of the Prospective Payment Assessment Commission Scheduled for Monday, February 10, 1986. The meeting will convene at 2:00 pm in the Diplomat room of the Shoreham Hotel, 2500 Calvert Street, Northwest, Washington, DC., and will be open to the public.

Donald A. Young, M.D.,
Executive Director.

[FR Doc. 86-1766 Filed 1-24-86; 8:45 am]
BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33-6620; File No. S7-286]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at conference uniformity of securities laws, announcing a hearing and requesting written comments.

SUMMARY: In conjunction with a Conference to be held on March 10-11, 1986, the Commission and the North American Securities Administrators Association, Inc. today announced public hearings and published a request for comments on effectuating increased uniformity in matters concerning state and federal regulation of securities. This inquiry is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, as adopted as part of the Small Business Investment Incentive Act of 1980, to maximize the effectiveness of securities regulations and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The Conference will be held on March 10-11, 1986. Hearings will commence on February 26, 1986 at 10:00 a.m. All witnesses are requested to submit 10 copies of their prepared statements no later than February 14, 1986. Written comments not prepared in connection with an oral presentation must be received on or before February 20, 1986 in order to be considered by the conference participants.

ADDRESSES: Hearings will be held at the headquarters of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Written submissions not prepared in connection with an oral presentation should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments should refer to File No. S7-286. All witnesses desiring to make oral presentations should submit copies of their prepared statements to the Commission. Such materials should be directed to the attention of either Richard Wulff or Mary Jackley as specified below. All written submissions including the written texts submitted in connection with oral presentations and the transcripts of such oral presentations, will be available for public inspection at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT:
Richard Wulff or Mary Jackley, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, (202) 272-2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers attempting to raise captial through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with federal securities laws as well as with all the appropriate state regulations. In recent years it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while appropriate investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of Section 19(c) of the Securities Act [2] in the Small Business Investment Incentive Act of 1980 [3] (the "Investment Incentive Act"). Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The declared policy of the section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small

[1] 15 U.S.C. 77a *et seq.*
[2] 15 U.S.C. 77s(c).
[3] Pub. L. 96-77 (October 21, 1980).

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business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is mandated to conduct an annual conference. The first such conference was held in September 1983, the second, in February 1985.

II. 1986 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA"),[4] are planning the 1986 Conference on Federal-State Securities Regulation (the "Conference").

At the Conference, representatives from the Commission and NASAA will meet to discuss methods for enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of both federal and state securities regulation. Attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion. Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments, or by making oral presentations to a panel of Commission and NASAA representatives at the public hearing on February 26, 1986, which will later be considered by the Conference attendees, on the issues set forth below. In addition, comment is requested on other appropriate subjects that commentators wish to be included in the Conference agenda.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following selected topics in the areas of corporation finance, investment management, market regulation and oversight and enforcement.

(1) Corporation Finance Issues

a. *Uniform Limited Offering Exemption.* Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal regulation governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983 NASAA endorsed a revised form of the Uniform Offering Exemption ("ULOE") that is intended to coordinate with Regulation D.

ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. To date, more than half of the states have adopted some form of ULOE, although both the Commission and NASAA have made a concerted effort toward universal adoption of ULOE. The Commission and NASAA hope to achieve the goal of uniformity envisioned by the statute. Comment is requested on approaches to achieve this goal and on other issues of uniformity of exemptions, including the joint Commission-NASAA interpretive process.

b. *Disclosure Policy and Standards.* The Commission has an ongoing program of considering, reviewing and revising its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. In the past, coordination with the states has been beneficial in the development of guidelines for real estate offerings. Commentators are invited to discuss other areas where federal-state cooperation could be of particular significance, as well as any ways in which such federal-state coordination could be improved.

c. *Takeover Regulations.* The continuing high level of corporate tender offers and other takeover techniques makes discussion of state and federal issues relating to takeovers as well as the aftermath of such transactions appropriate at the Conference. The public is invited to comment on the appropriate role of state and federal regulators in the context of corporate takeovers.

d. *Multinational Securities Offerings.* In light of the increasing internationalization of securities markets the Commission published a release soliciting comments on methods of harmonizing disclosure and distribution practices for multinational offerings by non-governmental issuers.[5] In this release, two methods for facilitating multinational offerings were considered. First, the reciprocal approach whereby the United States, Canada and the United Kingdom would agree that a prospectus accepted in an issuer's domicile which meets certain standards would be accepted for offerings in each of the participating countries. Second, the common prospectus approach whereby a common prospectus would be developed which would be simultaneously filed with each of the countries respective securities administrators.

Each of the fifty states have securities statutes which must be considered when attempting to institute multinational offerings. Comment is specifically requested on mechanisms which will facilitate such offerings in light of both federal and state securities laws.

(2) Investment Management Issues

a. *Investment Companies.* In 1984 NASAA adopted a number of resolutions supporting more uniform regulation of mutual funds and unit investment trusts. These resolutions encouraged states to adopt uniform, streamlined approaches to investment company registration and renewal procedures, the filing of advertising and sales reports and the treatment of oversales. The conferees will discuss the progress that has been made in implementing these resolutions and whether more uniform requirements may be appropriate in other areas of investment company regulation. Commentators are invited to address these matters and any other issues that should be addressed by NASAA and the Commission in the next year with respect to regulation of open and closed-end management investment companies and unit investment trusts.

b. *Investment Advisers.* In October 1985, NASAA and the Commission adopted a uniform adviser registration form for advisers registering with the Commission and those states that register advisers. New uniform Form ADV became effective January 1, 1986. The conferees will review the experience of the Commission and the states in implementing the new form and will consider uniform rules for filing amendments to the form and whether and how to use the Central Registration Depository ("CRD"), developed by the National Association of Securities Dealers ("NASD") and NASAA, or another clearing house facility to process adviser registration filings. The CRD is a computerized system used to register securities industry personnel with the NASD and the states. Persons filing applications or amending registrations file one form and any required fees with the NASD which disseminates the information and fees electronically to the appropriate jurisdictions. Comment is requested on whether, and how, a central registration system for advisers should be developed, whether it should be developed in connection with the CRD or the Commission's Edgar system, and what cost-savings for advisers would result from a central registration processing system. As discussed below, participants in the sessions on Market Regulation Issues also will focus on the CRD.

The 1985 Conference recommended that the adviser registration form be tailored or clarified to obtain appropriate information and disclosure of the activities of investment advisers offering financial planning services and that the Commission staff and NASAA develop a uniform statement on the application of federal and state adviser laws to financial planners.[6] The former recommendation was implemented in the adoption of uniform Form ADV and the conferees may discuss what, if any, preliminary data is available from the new form at the time of the Conference. While the joint release on the application of adviser laws will not be finalized by the time of the Conference, commentators are welcome to address this issue generically. The conferees also will discuss recent initiatives regarding self-regulatory organizations for investment advisers.

The conferees also expect to discuss efforts by the Commission and the states to increase the level of routine surveillance over the advisory industry through greater cooperation with regard to routine investment adviser inspections and NASAA efforts to develop uniform standards for investment advisers and their personnel. Comment is invited on these matters. Specific suggestions also are welcome for other areas relating to investment advisers where Commission-NASAA cooperation could reduce unnecessary regulatory burdens or maximize regulatory effectiveness.

(3) Market Regulation and Oversight Issues

a. *Central Registration Depository.* As indicated above, the NASD and NASAA have jointly developed the CRD, a computerized system for the registration of securities industry personnel with the NASD, the New York Stock Exchange and the various state securities commissions. Persons filing applications or amending registrations file one form and any required fees with the NASD which disseminates the information and fees electronically to the appropriate jurisdictions. Phase I of the system, which has been in place for several years, provides for the registration of registered representatives through the filing of Form U–4 with the CRD, as well as means for updating information with respect to these representatives and for facilitating transfer of registration under certain circumstances. Implementation of Phase II which will enable the CRD to handle the registration of broker-dealers as well as annual renewal of such registrations is expected to commence in February 1986.

During the sessions, participants will focus on future uses of the CRD by the states, the relationship of the Commission to the CRD (including the possible processing of broker-dealer registrations with the Commission through the system), and the impact of CRD on the development of the Commission's Edgar system.

Commentators are requested to address the effectiveness and efficiency of the CRD (including any suggestions for improving the system) as well as the future direction of the system.

b. *Forms Revision.* During 1985, the Commission and NASAA participated in a number of joint projects relating to the revision of existing forms and the development of new uniform forms. The NASAA Forms Revision Committee, assisted by representatives of the Commission, the securities industry and the self-regulatory organizations, completed work during the year on major revisions to Forms U–4 and U–5, the uniform forms used to register securities sales persons and terminate such registrations. NASAA and the Commission also approved changes in Form BD, the uniform form used to register broker-dealers, designed to simplify the form and conform the disciplinary questions contained therein with those in Form U–4. The changes represented a significant improvement in all of the forms and represented the first effort at drafting such forms in "plain English." During 1986, NASAA and the Commission expect to adopt simplifying revisions to Form BDW, the form used to withdraw from broker-dealer registration. Commentators are encouraged to address any aspect of the forms revisions which have been adopted or are contemplated.

c. *National Market System Exemption from Registration.* Most state securities laws currently provide an exemption from their securities registration requirements to issuers choosing to list on the New York or American Stock Exchanges or, in various cases, certain regional stock exchanges. Recently, several states have extended these exemptions to include over-the-counter securities designated pursuant to Commission rule as National Market System ("NMS") securities. Commentators are asked to address whether the states should generally exempt from registration exchange-listed securities, particularly in light of possible changes to listing standards with respect to corporate governance. Also, commentators are requested to address whether any exemption for NMS securities should be conditioned on the NASD adopting corporate governance standards. Finally, commentators are asked to address whether such exemptions should apply to initial public offerings.

d. *Government Securities Regulation.* In the wake of the failure in recent years of a number of small unregistered government securities dealers, resulting in substantial losses to investors, several proposals for greater regulation of government securities markets have emerged. A bill creating a government securities rulemaking body and requiring dealer registration has passed the U.S. House of Representatives[7] Several bills have also been introduced in the Senate.[8] In addition, oversight of institutional investors in the government securities market has been increased on the federal and state levels. Commentators are asked to address the continuing need for regulation of the government securities markets and steps that can be taken on the national and state levels to ensure the integrity of these markets.

e. *Internationalization of the Securities Markets.* The world's securities markets are increasingly becoming international in orientation, with securities being issued simultaneously in different countries, and with securities trading concurrently in the securities markets of more than one country. In view of these developments, the Commission has sought comment on the direction of the internationalization of the trading markets. Commentators are asked to address steps that would be useful on the national and state levels to facilitate international markets while protecting

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[4] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, the Canadian provinces and territories, and Mexico.

[5] Securities Act Release No. 33-6568 (February 28, 1985) [50 FR 9281].

[6] Such uniform statement would be modeled after the Commission's Investment Advisers Act Release No. IA-770 (August 13, 1981) [46 FR 41771].

[7] H.R. 2032, 99th Cong., 1st Sess. (September 17, 1985.

[8] S. 1416, 99th Cong., 1st Sess. (July 10, 1985; S. 936, 99th Cong., 1st Sess. (April 17, 1985).

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the fairness and integrity of the U.S. securities markets.

f. *Immobilization.* The Commission has identified as a major goal the increased immobilization, and where appropriate, elimination of securities certificates. NASAA has established a Securities Immobilization Committee to pursue initiatives that will advance the use of book-entry recordkeeping systems and will accelerate the immobilization of securities certificates in securities depositories. At the conference, Commission staff members will meet with the Committee to review goals to be achieved, to discuss book-entry initiatives begun by various banking and securities industry groups, and to address immobilization issues that may be of particular interest or concern to state securities law administrators. During the sessions, staff of the Commission and members of the Committee will also try to identify ways in which the Committee can help secure needed changes in state laws and regulations to ensure greater use of safe and efficient book-entry ownership systems. The sessions will also review ways the Committee can increase public investor awareness of the characteristics of book-entry ownership systems (including transfer-agent-operated investor ownership registration systems).

Comment is requested on initiatives the NASAA Committee can pursue to promote expanded use of safe and efficient book-entry ownership registration and transfer systems.

g. *Rule 3b-9.* On July 1, 1985, the Commission adopted Rule 3b-9 under the Securities Exchange Act of 1934 (the "Exchange Act") [9] which became effective January 1, 1986. That rule requires banks that conduct certain kinds of securities business, such as the public solicitation of brokerage transactions, to conduct that business through a registered broker-dealer. Comment is requested on what, if any, unique steps are required to implement the rule on the state level.

h. *Installment sales.* In November 1984, the Commission proposed Rule 3a12-9 under the Exchange Act for public comment.[10] Subject to certain conditions, the rule would permit direct participation programs to be sold publicly on a mandatory installment basis. Currently, interpretations of the credit regulations have prohibited such sales. If the Commission adopts the rule in some form, comment is requested on the manner in which the rule should be implemented on the state level.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) Edgar

The Commission currently is operating a Pilot electronic disclosure system, Edgar. From its inception, the Commission has worked with NASAA to explore the possibility of a single filing in Edgar constituting the required filing with the states. Three states, California, Georgia and Wisconsin, were designated by NASAA to participate in the Pilot, and they began receiving access to public Edgar filings in their offices in February 1985.

The Commission now is proceeding to develop the operational Edgar system in which most filings with the Commission will be made electronically.

The conferees will discuss the relationship of NASAA to this system and the goal of one-stop filing. Commentators are invited to discuss approaches to achieving this goal.

(6) General

There are a number of matters which are applicable to all or a number of the disciplines noted above. These include the coordination of Commission rulemaking procedures with the states, the training and educating of staff examiners and analysts, the sharing of information, CRD, and the Commission's Edgar system.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commentators should focus on the agenda but may also discuss or comment on other areas in which the existing scheme of state and federal regulation can be made more uniform while high standards of investor protection are maintained.

IV. Procedures

(1) Written Submissions

Interested persons are invited to submit their views on the foregoing no later than February 20, 1986. Written submissions should be made in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Please refer to File No. S7-286.

(2) Oral Presentations

Public hearings on the foregoing will commence at 10:00 A.M. on February 26, 1986 at the headquarters of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Any interested person desiring to make a presentation at the hearings is requested to call or write Richard Wulff or Mary Jackley on or before February 14, 1986, as specified above. All witnesses are requested to submit 10 copies of their prepared statements by February 14, 1986.

By the Commission.

John Wheeler,

Secretary.

January 21, 1986.

[FR Doc. 86-1729 Filed 1-24-86; 8:45 am]

BILLING CODE 8010-01-M

[9] Release No. 34-22205 (July 1, 1985) [50 FR 28385].

[10] Release No. 34-21495 (November 16, 1984) [49 FR 46556].

DEPARTMENT OF STATE

[Public Notice LM-8/928]

Chairman's Ad Hoc Group on Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 11, 1986 at 10:30 A.M. in Room 1406, Department of State, 2210 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

The purposes of the meeting on February 11 will include the designation of a chairman for the Ad Hoc Group. In addition, the Ad Hoc Group will review the status of United States support for the Center and make recommendations regarding appropriate United States positions on the agenda items to be considered at the next meeting of the Center's Advisory Board in April in Geneva. Participants are also invited to make contributions for establishing data bases concerning telecommunications training opportunities open to foreign participants and of equipment suppliers that can be provided to the International Telecommunication Union for dissemination to developing countries.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Attendance will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647-1007.

Requests for further information should be directed to Mr. D. Clark Norton, Department of State, telephone (202) 647-1007.

Dated: January 22, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-1432 Filed 1-24-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 43742, order 86-1-38]

Aviation Proceedings; Amendment of Foreign Air Carrier Permit and Exemption Authority; Order To Show Cause

Issued by the Department of Transportation on the 21st day of January, 1986.

By this order, the Department of Transportation directs interested persons to show cause why it should not amend all foreign air carrier operating authority to make it clear that the required waiver of sovereign immunity extends to all of a foreign carrier's air service operations, whether or not those activities take place within foreign air transportation as defined in the Federal Aviation Act. The proposed action is limited to clarifying the scope of a condition currently imposed on the operations of foreign air carriers, and is not intended to affect any other aspect of a foreign carrier's operations, including its right to raise other legal defenses, such as jurisdictional arguments.

Background

Recent world events have highlighted the need for the United States to examine closely the protections afforded U.S. citizens traveling in international air transportation. Accordingly, we have been examining many of the terms under which foreign air carriers operate to the United States.

U.S. citizens, as well as others, have been the victims of vicious terrorist attacks and tragic airline disasters. Some of these Americans were traveling on foreign airlines between two foreign points, under circumstances which would not constitute "foreign air transportation" within the meaning of the Federal Aviation Act.

We expect that some U.S. citizens injured in these incidents will seek recovery from the airlines pursuant to the Warsaw Convention, which governs the recovery of damages by those injured while traveling in international air transportation.[1] Recent pleadings filed with the Department have brough to our attention a possible ambiguity in one of the terms under which foreign airlines operate to the United States which could undermine the ability of U.S. citizens to recover under the Convention. We have tentatively decided to clarify that term.[2]

Under standard practice, every foreign air carrier operating to the United States today is required to relinquish its right to the defense of sovereign immunity as a condition of holding operating authority under the following standard condition:

[The holder shall] Waive any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against it in any court of other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations under this [permit or exemption] [3]

This condition was first imposed in 1951 by the CAB, which stated:

[a]s a matter of policy . . . proper protection of shippers and the traveling public requires that insofar as practicable a foreign air carrier shall not enjoy immunity from suit any more than does a domestic air carrier.[4]

This condition reflects our policy that an airline enjoying the benefits of operating in the U.S. market should also be subject to the responsibilities that attach to doing business in the United States, and seeks to place governments operating commercial enterprises on an equal footing with private entrepreneurs engaged in the same activities. However, the exact words of the condition make it possible to argue that the CAB intended that the waiver should be limited to claims arising out of a carrier's opeations to and from the United States made possible as a result of the permit or exemption.

We think that such a narrow interpretation would be contrary to the CAB's intent, as quoted above. Moreover, even if the CAB had intended to limit the waiver to operations clearly in foreign air transportation, we do not agree that the waiver should be so limited. We think that the public interest, and U.S. International avation policy, demand that foreign air carriers owned by foreign governments waive any claims they may otherwise enjoy to claim sovereign immunity in U.S. courts, whether or not the particular air service activity complained of takes place between the United States and some foreign place, or between two foreign places.

We think that the requirement that airlines be commercially liable for their airline activities in U.S. courts is reasonable. It is consistant with U.S. law and policy, as set forth in the Foreign Sovereign Immunities Act and enunciated by U.S. courts and administrative agencies.[5] An airline is universally recognized to be a commercial enterprise, and most foreign carriers benefit substantially from their U.S. operations. Accordingly, they should not be permitted to avoid the obligations and responsibilities that are a part of operating a business. The logic of this principle is not diluted by the fact that the airline's action took place in the context of operations between foreign points rather than directly between a foreign point and a point in the United States.

Our position also comports with customary international law.[6] Although

[1] Warsaw Convention, October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11.

[2] Motions dated June 7, and July 2, 1985 in Docket 38066, and Answer dated July 3, 1985 in Docket 38034.

[3] *E.g.*, Orders 85-11-5, 85-9-15, 85-9-21, and 85-9-22.

[4] *El Al Israel Air., Amendment of Permit*, 14 C.A.B. 962 (1951).

[5] *Verlinden* v. *Central Bank*, 461 U.S. 480 (1983); *El Al Israel Air., Amendment of Permit*, 14 C.A.B. 962 (1951); letter from Jack B. Tate to U.S. Attorney General, 25 Dep't of State Bull. 984 (1952), *reprinted in Dunhill* v. *Cuba*, 425 U.S. 682, 711 (1976) (hereinafter cited as the Tate letter).

For the most part, the Foreign Sovereign Immunities Act (FSIA) adopts the restrictive theory of sovereign immunity, under which immunity is confined to suits involving the foreign sovereign's public acts and does not extend to cases arising out of its strictly commerical acts. Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2892 (codified in various sections of 28 U.S.C.).

[6] State Immunity Act, 1978 (United Kingdom); *Qureshi* v. *U.S.S.R.*, 33 All Pakistan Legal Decisions 377 (Sup. Ct. 1981), *reprinted in* 20 International Legal Materials 1080 (1981).

Asian-African Legal Consultative Committee, 3rd Sess., Colombo, Ceylon, Final Report of the Committee on Immunity of States in respect of Commercial and Other Transactions of a Private Character 66-68 (1960), *excerpted in* 6 Whiteman, Digest of International Law 572-74 (1968).

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the precise interpretation of the extent to which one government will grant immunity from suit to another varies among the nations, one principle seems clear: there is an international consensus that immunity of a sovereign from suit should be restricted to its public, or sovereign, acts (*jure imperil*). On the other hand, suits arising from the private activities of a sovereign (*jure gestionis*) should not be immune from suit.

Finally, we are very concerned that the ability of a foreign air carrier to claim sovereign immunity for its air service operations could prove disruptive to international civil aviation. The vast majority of non-U.S. airlines are instrumentalities of foreign governments. The United States has entered into multilateral agreements which stipulate in great detail the commercial responsibilities of airlines providing international air transportation. Indeed, the United States is now considering ratification of the Montreal Protocols to the Warsaw Convention, which, if adopted, would permit U.S. citizens to sue foreign airlines in U.S. courts regardless of whether the air transportation has any connection with the United States, so long as the carrier maintains an establishment in the United States.[7]

This carefully negotiated international scheme would be entirely frustrated if foreign airlines could avoid liability by claiming sovereign immunity. Indeed, since most foreign airlines are owned by foreign governments, conventions such as Warsaw would prescribe rules which apply only to U.S. airlines and the few foreign airlines that are privately owned. Continued U.S. participation in international civil aviation accords and multilateral agreements like the Warsaw Convention might be disrupted or jeopardized if foreign airlines were able to assert sovereign immunity in our courts.

Proposed Department Action

Because there is a possibility that the language currently used in foreign air carrier permits and other operating authorities may be subject to misunderstanding or misinterpretation, we have tentatively concluded that the language of our standard condition requiring a waiver of sovereign immunity should be clarified.

We propose to amend the standard condition contained in all foreign air carrier permits and all temporary exemption authority granted to all foreign air carriers so that it will read as follows:

> Waive any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against it in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder *of* this [permit] [exemption].

(Change underlined). By so doing, we are making it clear that foreign air carriers may not seek sovereign immunity in U.S. tribunals for their air service activities, regardless of whether those activities took place within "foreign air transportation". Accordingly, the waiver of sovereign immunity applies to all such litigation brought in U.S. courts, whether or not it is pending at the time the order is made final.

As stated at the beginning, our action here does not reflect any position on the propriety of asserting any other defense to which a foreign air carrier may be legally entitled, including jurisdictional defenses available under the Warsaw Convention. Such defenses are available equally to U.S. air carriers, privately held foreign carriers and government-owned foreign carriers.

Nor are we deciding whether the provisions of the Foreign Sovereign Immunities Act would otherwise exclude foreign air carriers from the general grant of sovereign immunity, or whether any particular carrier is or should be held liable to any plaintiff. We are merely tentatively concluding that the public interest requires that any foreign air carrier that enjoys the benefits of commercial operations to the United States must waive sovereign immunity in U.S. courts in suits arising from their air service operations.

This order shall be served on all foreign air carriers. Those carriers and any other interested persons are invited to file comments on this order in accordance with the terms of the ordering paragraphs below.

Accordingly

1. We direct all interested persons to show cause why we should not issue an order: (a) Making final the tentative findings and conclusions of this order and (b) amending the operating authorities of all foreign air carriers to clarify the terms of the required waiver of sovereign immunity in the manner indicated above;

2. We direct all interested persons having objections to the issuance of an order making final our proposed findings and conclusions to file their objections with the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590 in Docket 43742 and serve them upon all persons listed in paragraph 5 below, no later than 10 days (i.e. February 3, 1986) after the date of service of this order. Answers to such objections shall be filed no later than 15 days (i.e. February 10, 1986) after the date of service of this order;

3. If timely and properly supported objections are filed, we will give consideration to the matters and issues raised by the objections before we take further action; provided, that we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order if we determine that there are no factual issues present that warrant the holding of an oral evidentiary hearing or the institution of discovery procedures; [8]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived, and an order will be entered which shall: (1) Make final our tentative findings and conclusions; and (2) subject to the disapproval of the President under section 801(a) of the Act, amend the operating authorities of all foreign air carriers to clarify the terms of the required waiver of sovereign immunity;

5. We will serve a copy of this order on all parties to Dockets 38066 and 38034, on all foreign air carriers, the Air Transport Association, the International Air Transport Association and the U.S. Departments of State and Justice; and

6. We will publish this order in the **Federal Register.**

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-1653 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-62-M

Representatives from Burma, Ceylon, India, Indonesia, Iraq, Japan, Pakistan, Sudan, Syria, and the United Arab Republic comprised the Asian-African Legal Consultative Committee.

European Convention on States Immunity, entered into force June 11, 1976. The following States ratified the Convention: Austria, Belgium, Cyprus; the following states have signed the Convention: the Federal Republic of Germany, Luxembourg, the Netherlands, and the United Kingdom.

[7] The Warsaw Convention, Article 28, provides that an action for damages may be brought either before a court: (1) Of the carrier's domicile; (2) at the carrier's principal place of business; (3) where the carrier has a place of business through which the ticket was bought, or (4) at the place of destination. The 1971 Guatemala Protocol (ICAO Doc. 9040-LC/168-2 at 191), Article XII, added as a fifth place of jurisdiction the court where the carrier has an establishment if the passenger also has his or her domicile or permanent residence there. The Guatemala Protocol is incorporated by reference into the 1975 Montreal Protocol No. 3, Article VII (ICAO Doc. 9151-LC/171-2 at 270).

[8] Because we have provided for the filing of objections to our tentative findings and conclusions, we will not entertain petitions for reconsideration of this order.

Coast Guard

[CGD 86-007]

Information Concerning the Availability of Voluntary Uninspected U.S. Commercial Fishing Vessel Safety Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard has developed a series of Navigation and Vessel Inspection Circulars (NVICs) establishing proposed voluntary vessel safety standards for U.S. uninspected commercial fishing vessels. These standards are advisory in nature and do not modify or supersede any existing or future laws or regulations. The NVICs, which are technical in nature and written for fishing vessel designers, builders, naval architects, marine surveyors, insurance underwriters and vessel owners, are available through the Government Printing Office (GPO). Comments and recommendations concerning these standards from interested parties are encouraged. The NVICs will be consolidated into an final NVIC in June 1986 after time has elapsed for the Coast Guard to consider comments.

DATE: Comments are requested by 15 March 1986.

FOR FURTHER INFORMATION CONTACT: LCDR William J. Morani Jr., Fishing Vessel Safety Task Force, (G-MTH-F/V), Room 1407, U.S. Coast Guard Headquarters, 2100 Second St., SW. Washington, DC 20593; (202) 426-4431.

SUPPLEMENTARY INFORMATION: It is generally acknowledged that commercial fishermen are engaged in one of the most hazardous of all occupations. It has the poorest safety record of all U.S. industries. In response to this poor safety record the Commandant of the Coast Guard recommended a fishing vessel safety initiative to the Secretary of Transportation to reduce the number of casualties. The Coast Guard formed a full time Fishing Vessel Safety Task Force under the direction of the Chief, Office of Merchant Marine Safety to develop the initiative. With the Secretary's support and approval the initiative has developed into a total voluntary program.

The Fishing Vessel Safety Task Force developed proposed voluntary fishing vessel safety standards which cover topics on stability; radio and shipboard navigation equipment; fire safety measures; lifesaving equipment and protection of the crew; and hull, machinery, and electrical installations. Navigation and Vessel Inspection Circulars (NVICs) 5-85 through 9-85 respectively. These NVICs, which are not intended to modify or supersede any existing or future laws or regulations, can be obtained by sending a check or money order ($1.75 domestic, $2.20 foreign for each NVIC) payable to the "Superintendant of Documents, Government Printing Office." Send orders to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Boat builders, marine surveyors, insurance underwriters, fishing vessel owners, operators, industry associations, and other interested parties are encouraged to adopt and implement these voluntary standards. In order to make them responsive, the Coast Guard is encouraging comments on the adequacy and applicability of these voluntary standards by 15 March 1986. Send comments to Commandant (G-MTH-F/V), 2100 Second St., SW., Washington, DC 20593. The Coast Guard will evaluate industry recommendations and consolidate the five NVICs into one final NVIC between 1-9 June 1986.

Dated: January 15, 1986.

J.W. Kime,

Rear Admiral (Lower Half), U.S. Coost Guard Chief, Office of Merchant Marine Safety.

[FR Doc. 86-1693 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Docket No. 23634]

Regulatory Negotiation Advisory Committee for Flight and Duty Time Rulemaking; Termination

Notice is hereby given of the termination of the Regulatory Negotiation Advisory Committee for Flight and Duty Time Rulemaking. The committee was sponsored by the Office of Flight Operations, Federal Aviation Administration (FAA), to develop a report including a recommended rulemaking proposal concerning flight time, duty time, and rest requirements for flight crewmembers engaged in air transportation. The committee's charter has expired and the committee has been terminated, as its continuation is no longer in the public interest in connection with the performance of the duties imposed on the FAA by law.

Issued in Washington, DC, on January 17, 1986.

Fred Laird,

Acting Manager, Safety Regulations Division, Office of Program and Regulations Management.

[FR Doc. 86-1662 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A Cook, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 551-1307.

SUPPLEMENTARY INFORMATION: The FHWA, in corporation with the California Department of Transportation (Caltrans), will prepare an EIS on a proposal to construct a 4-mile segment of adopted State Route 125 from Fletcher Parkway in the City of La Mesa to Mission Gorge Road in the City of Santee near the junction with future Route 52. (Route 52 location and environmental studies are in progress). The proposed Route 125 project is part of a Route 125/52 "North Inner Loop" freeway proposed in the 1984 Regional Transportation Plan to relieve congestion of Interstate Route 8. This "loop" is forecast to carry 70,000-90,000 average daily traffic by the year 2005. Alternatives for this project presently consist of a multi-lane freeway on the State adopted alignment and a No Project Alternative.

Scoping meeting will be arranged with all responsible/cooperating agencies and with special interest groups upon request. In addition at the time of Draft EIS circulation, a public hearing will be held. Public notice will be given as to the time and place of the hearing. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

UMI

Issued on: January 17, 1986.

Michael A. Cook,

District Engineer.

[FR Doc. 86-1657 Filed 1-24-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on February 26 & 27, 1986. The meeting will be held in the Fresno Service Center. The building is located at 5045 E. Butler Avenue, Fresno, California. The meeting will begin at 9:00 A.M. on Wednesday, February 26 and 9:00 A.M. on Thursday, February 27. The agenda will include the following topics:

Wednesday, February 26, 1986

Mission and Management of a Service Center; Operation of the Service Center

Thursday, February 27, 1986

Management in the 90's; Proposal for Revision of 1986, Form 5500; Problem Resolution Program; Collection Notice Study, 1986 Filing Period

Due to the service center's secuitry requirements and limited conference space, notification of intent to attend the meeting must be made with George O'Hanlon, Executive Secretary, no later than February 18, 1986. Mr. O'Hanlon may be reached on (202) 566-4235 (not toll-free).

If you would like to have the Committee consider a written statement, please call or write George O'Hanlon, Executive Secretary, 1111 Constitution Ave., NW., Room 3308, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: George O'Hanlon, Executive Secretary, (202) 566-4235 (Not toll-free).

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 86-1731 Filed 1-21-86; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on February 20, 1986, at 1:00 P.M. the Hartford Regional Office Station Committee on Educational Allowances shall at 450 Main Street, Hartford CT 06103, Room 128 conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Southern Illinois University at Carbondale, Naval Submarine Base, Box 74, Groton, CT 06349 should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: January 15, 1986.

Robert E. Schloendorn,

Director, VA Regional Office.

[FR Doc. 86-1669 Filed 1-24-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 17
Monday, January 27, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 2785, January 21, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 3:00 p.m., January 24, 1986.

STATUS: Rescheduled for Monday, February 10, 1986, at 10:00 a.m., Room 104-A Administration Building. Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Ashworth, Secretary, Commodity Credit Corporation, Room 3086 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 447-8165.

Dated: January 23, 1986.

Richard A. Ashworth,

Secretary, Commodity Credit Corporation.

[FR Doc. 86-1827 Filed 1-23-86; 3:55 pm]

BILLING CODE 3410-05-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, January 29, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Disposal Cigarette Lighters

The Commission will consider whether to authorize an analysis of the hazard presented by disposal lighters to young children.

2. Voluntary Standards Status Report

The staff will brief the Commission on information presented in recent status reports on voluntary standard projects.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION CALL: 301—492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary

January 22, 1986.

[FR Doc. 86-1808 Filed 1-23-86; 12:43 pm]

BILLING CODE 6355-01-M

3

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, January 30 1986.

LOCATION: Room 456 Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY 1986 Budget/Gramm-Rudman-Hollings

The Commission will consider issues related to the 1986 Fiscal Year Budget and the impact of the Gramm-Rudman-Hollings Act.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Burns, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Burns, Deputy Secretary.

January 23, 1986.

[FR Doc. 86-1809 Filed 1-23-86; 12:44 pm]

BILLING CODE 6355-01-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, February 3, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: January 22, 1986.

Cynthia C. Matthews,

Executive Officer Executive Secretariat.

This Notice Issued January 22, 1986.

[FR Doc. 86-1756 Filed 1-23-86; 11:01 am]

BILLING CODE 6750-06-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:32 p.m. on Friday, January 17, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First Progressive Bank, Metairie, Louisiana, which was closed by the Commissioner of Financial Institutions for the State of Louisiana on Friday, January 17, 1986; (2) accept the bid for the transaction submitted by First Industrial Bank & Trust Company, Metairie, Lousiana, a newly-chartered State nonmember bank; (3) approve the applications of First Industrial Bank & Trust Company, Metairie, Louisiana, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in First Progressive Bank, Metairie, Louisiana; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

At that same meeting, the Board also considered a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman L.

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William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)((9)(B)).

The meeting was recessed at 3:35 p.m., and at 5:45 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted a resolution (a) making funds available for the payment of insured deposits in American Bank of Casper, Casper, Wyoming, which had been closed by the Wyoming State Examiner on Friday, January 17, 1986; (b) accepting the bid of Hilltop National Bank, Casper, Wyoming, for the transfer of the insured and fully secured or preferred deposits of the closed bank; and (c) designating Hilltop National Bank, Casper, Wyoming, as the agent for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank.

At that same meeting, the Board also considered a recommendation regarding the initiation of an administrative enforcement proceeding against an insured bank: name and location of bank authorized to be exempt from disclosure pursuant to the provision of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

In reconvening the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. John F. Downey, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 22, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-1786 Filed 1-23-86; 12:41 p.m.]

BILLING CODE 6714-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 22, 1986.

TIME AND DATE: 10:00 a.m. Wednesday, January 29, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Jim Walter Resources, Inc., Docket No. SE 84-79. (Consideration of Petition for Discretionary Review).

2. Ozark-Mahoning Co., Docket No. LAKE 84-96-M. (Issues include whether the administrative law judge properly found that the operator violated 30 CFR 57.15-14, a mandatory safety standard dealing with the wearing of safety glasses, and that the violation was significant & substantial).

3. Jimmy R. Mullins v. Beth-Elkhorn Corp., etc., Docket No. KENT 83-268-D. (Consideration of procedural motions).

4. Robert Simpson v. Kenta Energy, Inc., etc., Docket No. KENT 83-155-D. (Consideration of motion to reopen).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATON: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-1783 Filed 1-23-86 12:40 pm]

BILLING CODE 6735-01-M

7

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, February 4, 1986, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Tuesday Session

February 4, 1986—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 6-7, 1986.
2. Remarks of the Postmaster General.
3. Appointment of Committee Members by Chairman.
   (The Bylaws provide that the Chairman shall select and appoint the Chairmen and members of the several committees of the Board.)
4. Consideration of Rates for Preferred Rate Mail.
5. Quarterly Report on Financial Performance.
   (Mr. Cummings, Senior Assistant Postmaster General, Finance Group, will present the quarterly summary on financial performance.)
6. Quarterly Report on Service Performance.
   (Mr. Campbell, Assistant Postmaster General, Mail Processing Department, will present the quarterly summary on service performance.)
7. Consideration of a request to the Postal Rate Commission for an advisory opinion on a change in the nature of COD service.
   (Ms. Uemoto, Assistant Postmaster General, Rates and Classification, will present this item.)
8. Capital Investments:
   a. Extension of lease for Southern Region headquarters.
   b. Flat sorters.
9. Tentative agenda for March 3-4, 1986, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 86-1747 Filed 1-23-86; 12:39 pm]

BILLING CODE 7710-12-M

Reader Aids

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Monday, January 27, 1986

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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Presidential Documents

Title 3—

The President

Proclamation 5433 of January 25, 1986

Truck and Bus Safety Week, 1986

By the President of the United States of America

A Proclamation

Truck and bus safety is important to all Americans. More than 5 million trucks travel more than 135 billion miles each year on our highways transporting raw materials, finished goods, food, and other essential products and services. Buses annually carry millions of Americans to over 10,000 cities and communities. Clearly, the safe maintenance and operation of trucks and buses is vital to the health and safety of all users of our Nation's thoroughfares.

The truck and bus industry is a major employer in our country, essential to the Nation and to the smooth and safe flow of commerce. The safe operation of trucks and buses is of great consequence to the motoring public with which they share the roads. Safety compliance not only saves lives, it is also sound business practice. It reflects well on the industry and enhances profitability.

Ultimately, the most important means to improve safe operation are those activities undertaken by the truck and bus industry itself. Therefore, I challenge each and every person, business, and association involved in the industry to make a commitment to encourage safe truck and bus operations. I am convinced that such an effort will reward everyone. The industry must also inform the public that safety is one of its highest priorities.

January is a particularly appropriate time to direct the Nation's attention to special care in the operation of vehicles on the highways, because of ice and snow conditions in many parts of the country. Observance of this week should help to establish an increased safety consciousness throughout the entire year.

I call upon our State governments to increase their efforts to improve safety compliance, using their own resources as well as funds provided by the Federal government. I call upon industry, labor, and the professional drivers of the country to continue to improve the safe operation of trucks and buses. Very special care must be exercised in seeing to the safe maintenance and operation of trucks carrying extremely hazardous materials.

The Congress, by Senate Joint Resolution 235, has designated the week beginning January 26, 1986 as "Truck and Bus Safety Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of January 26 through February 1, 1986, as Truck and Bus Safety Week, and I call upon all Americans to observe this week with appropriate activities and informational programs.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of January, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-1990
Filed 1-27-86; 10:31 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 18
Tuesday, January 28, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No. 50584-5166]

United States Geostationary Operational Environmental Satellites (GOES) Data Collection System (DCS)

AGENCY: National Oceanic and Atmospheric Administration, Dept. of Commerce.

ACTION: Final rule.

SUMMARY: The GOES DCS has extra capacity which has been made available to non-NOAA users for the collection from remote locations of environmental data provided that NOAA, another Federal agency, or a state or local government has an interest in or requirement for obtaining these data and that no adequate alternative commercial service exists. This revision of NOAA's regulations is necessary because the GOES DCS ground system is approaching saturation and more careful use must be made of it. Also, the revision clarifies that use of the GOES DCS may be allowed when an alternative commercial service exists but involves significant additional cost to the government. Finally, the revision updates organizational references.

EFFECTIVE DATE: This regulation is effective on January 28, 1986.

FOR FURTHER INFORMATION CONTACT: Douglas MacCallum, Chief, Data Collection and Direct Broadcast Branch (E/SP21), National Environmental Satellite, Data and Information Services, National Oceanic and Atmospheric Administration, Room 806, World Weather Building, Washington, DC 20233. Telephone Number (301) 763-8325.

SUPPLEMENTARY INFORMATION: The GOES DCS is a communications system for collecting and transmitting environmental data from remote data collection platforms (DCP's) via a government-owned geostationary satellite.

NOAA's regulations at 15 CFR Part 911 establish that the GOES DCS will be made available to non-NOAA users who own or operate DCP's for the collection of environmental data useful to federal agencies or state or local governments. All users have to agree to permit NOAA and other federal agencies free and open use of data collected (except under certain specified conditions).

The NOAA GOES DCS ground system (but not the space system) is nearing saturation and no expansion of the ground system is planned for several years. Once saturation is reached, users wanting to enlarge their DCP networks will have to delay this enlargement until the NOAA ground system is expanded. In order to more fairly distribute the impact of saturation on the user community, on July 16, 1985, NOAA published a Notice of Proposed Rulemaking (NPR) in the **Federal Register** (50 FR 28816) proposing to require federal agencies or state or local governments sponsoring new private GOES DCS users to share their existing channel resources with the new user they are sponsoring.

This NPR also clarified NOAA's interpretation of § 911.2(a) of the regulations which precludes the use of the GOES DCS when "adequate" private common carrier communications exist. Requiring the use of a commercial system will involve some cost to the user, but may also involve additional cost to a federal agency which needs the data, i.e. to tap into the common carrier. Where a federal agency has an urgent need for certain data, it seems inappropriate to preclude the collector from using the government system. The Government built and paid for the DCS and should not have to pay more for data the system is built to collect. NOAA never intended to preclude users under these conditions and this interpretation is clarified in this amendment. It allows use of the DCS unless a carrier arranges to make relevant data available to NOAA at no additional cost, e.g. by relaying these data.

No comments were received on the NPR. Therefore, NOAA is publishing the proposed rule as final without change.

Other Actions Associated With Rulemaking

(A) Classification under Executive Order 12291

As stated in the NPR these regulations are not major.

(B) Administrative Procedure Act and Regulatory Flexibility Act

This rule is a matter relating to contracts because it determines who may enter into agreements with Federal agencies for use of channel resources in the GOES DCS. The rule is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), and therefore, the Regulatory Flexibility Act does not apply.

(C) Effective Dote

For the reasons explained in the immediately preceding paragraph, the 30 day delayed effectiveness requirement of the Administrative Procedure Act does not apply, and the rule is being made effective on the date of publication in the **Federal Register**.

(D) Paperwork Reduction Act

The information requirements for the regulations at 15 CFR Part 911 have been reviewed and approved by the Office of Management and Budget. The control number is 0648-0157.

List of Subjects in 15 CFR Part 911

Communications; Satellites.

Dated: January 17, 1986.
William P. Bishop,
Acting Assistant Administrator.

PART 911—[AMENDED]

Accordingly, 15 CFR Part 911 is amended by:

(a) The authority for Part 911 continues to read as follows:

Authority: 15 U.S.C. 313; 49 U.S.C. 1463; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 522.

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(b) Section 911.1 is amended by adding paragraph (b)(2) to read as follows:

§ 911.1 General information.

* * * * *

(b) * * *

(3) "For purposes of this part, "Assistant Administrator" means the Assistant Administrator for Environmental Satellite, Data, and Information Services or his/her designee."

* * * * *

(c) Revising section 911.2(b) and (c) to read:

§ 911.2 Use of the GOES DCS.

(b)(1) Except as provided in paragraph (2) of this subsection, the GOES DCS is not to be used for data collection where adequate private common carrier communications exist to provide the service. (Adequate is defined in terms of capacity, speed and reliability with respect to the particular use envisioned.) A user must document, with a request for use of the GOES DCS, why private common carrier communications are not adequate.

(2) NOAA may authorize the use of the GOES DCS for environmental data collection critical to a federal program where adequate common carrier communications exist when use of the common carrier would substantially increase the cost to the federal program of collecting these data.

(c) A user must identify the Federal agency or State or local government which will benefit from the proposed collection of data. NOAA will confirm with the identified sponsor that these data are required by it and that the sponsor is willing to share with the user any frequency channel resource allocated to it.

* * * * *

(d) Removing the words "for Satellites" wherever they follow "Assistant Administrator" in §§ 911.3 (c)(1), (d)(1), (e)(g)(2) and 911.5(c).; and

(e) Substituting "Director, Office of Satellite Data Processing and Distribution" for "Director of Data Services for the National Earth Satellite Service" in § 911.5(c).

(f) Add the following Office of Management and Budget approved number to the end of §§ 911.2 and 911.3.

(Approved by the Office of Management and Budget under control number 0648–0157)*ERR20*

[FR Doc. 86–1559 Filed 1–27–86; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 77P–0428 and 77P–0358]

Food Ingredient Labeling; Exemptions

Correction

In FR Doc. 86–927 beginning on page 2405 in the issue of Thursday, January 16, 1986, make the following corrections:

1. On page 2407, in the first column, in the seventh line of paragraph 4, "of" should be inserted before the blank space.

2. On the same page, in the third column, "%" should be inserted at the end of the thirteenth line of § 101.4—[a](2).

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8059]

Statutory Merger Using Voting Stock of the Corporation Controlling the Merged Corporation

Correction

In FR Doc. 85–25174 beginning on page 42688 in the issue of Tuesday, October 22, 1985, make the following correction:

On page 42689, in the second column, in the tenth line of the third complete paragraph, "continuation" should read "contribution".

BILLING CODE 1505–01–M

26 CFR Part 1

[T.D. 8061]

Income Tax; Temporary Regulations Relating to the Revised Recordkeeping Requirements With Respect to Listed Property; Taxation of Fringe Benefits

Correction

In FR Doc. 85–26358 beginning on page 46006 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46012, in the first column, in § 1.132–1T in the fifth line of Q—4a, "employer-provider" should read "employer-provided"; and

2. On page 46013, in § 1.132–1T, A—4a(f), in the first column, in the first line of the first complete paragraph, "Q/A—4a9f)" should read "Q/A—4a(f)".

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–2961–3]

Approval and Promulgation of Implementation Plans; Georgia; Visibility Protection Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action EPA is approving revisions to the Georgia State Implementation Plan (SIP) which were submitted to EPA on May 22, 1985, and October 31, 1985. Georgia has revised its SIP to include a visibility monitoring plan and visibility new source review regulations. These visibility provisions meet the requirements of 40 CFR 51.305 and 51.307 and were submitted to EPA in order to satisfy the first part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 40 FR 20647 on May 16, 1984. The principal effect of the new visibility protection regulations will be to require the State to consider visibility impacts when reviewing permit applications for new major sources, and major modifications, which could affect visibility in Federal Class I areas.

DATES: This action will be effective March 31, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted. Such notice may be submitted to Janet Hayward at the EPA Regional Office address listed below.

ADDRESSES: Copies of the Documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 270 Washington Street, S.W., Atlanta, Georgia 30334

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV, Air Programs Branch, at the above address and telephone (404) 881–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: As a result of the Environmental Defense Fund (EDF) Agreement, the State of Georgia was required to develop visibility new source review and visibility monitoring provisions to meet the requirements of 40 CFR 51.305 and 51.307. On May 22, 1985, and October 31, 1985, Georgia submitted Part 1 visibility provisions to EPA for approval. Together, these submittals satisfy the requirements of 40 CFR 51.305 and 51.307.

On May 22, 1985, the State submitted its "Plan for Visibility Protection in Class I Areas". The plan contains a narrative discussion of the scope and intent of Georgia's visibility program, and describes the State's visibility monitoring strategy. It also contains revisions to the State's new source review and Prevention of Significant Deterioration (PSD) regulations.

1. *SIP Narrative.* The narrative section, titled "Georgia's Plan for Visibility Protection in Class I Areas", provides a comprehensive discussion of the State's approach to protecting visibility in Federal Class I areas. It describes the causes of visibility degradation, and identifies the pollutants which are most involved in visibility impairment—fine particulates, nitrogen dioxide and sulfur oxides. The purpose of Georgia's visibility protection plan is also described; it is consistent with the national goal of preventing future and remedying existing impairment of visibility in mandatory Class I Federal Areas. There are three Federal Class I areas in the State of Georgia: The Okefenokee Wildlife Refuge and Wilderness Area, the Wolf Island Wildlife Refuge and Wilderness Area, and the Cohutta Wilderness Area.

Also included in the narrative discussion is Georgia's preliminary assessment of visibility impairment. By surveying the sources in the vicinity of their Class I areas, Georgia concluded that there is no existing visibility impairment that can be traced to a particular source or group of sources. The State has also coordinated their plan development with the affected Federal Land Managers (FLMs), and to date, neither the U.S. Forest Service nor the National Park Service has identified impairment which is caused by an individual source.

The plan also outlines the State's notification and review procedures for evaluating new source applications. Georgia will utilize this process to assess the impact new major sources, or major modifications, could have on visibility in the State's Class I areas. The State will ensure that the FLMs have an opportunity to review the source's application and comment on the impact of the proposed facility prior to permit issuance. It is the State's intent to permit sources only if it is consistent with the national visibility goal. The State will use all available data in determining whether a source would have an adverse impact on visibility in a Class I area.

2. *Visibility Monitoring Plan.* The main goals of Georgia's visibility monitoring strategy are to generate data for evaluating visibility trends and to provide information or determining the potential impact of new sources. The monitoring program for Georgia's Class I areas will include both background and attribution monitoring.

Background visibility data will be obtained for each of the three Class I areas in the State. Georgia proposes to use data from the National Park Service's visibility monitoring site in the Great Smoky Mountains National Park to represent background visibility conditions in the Cohutta Wilderness Area. Cohutta is close in proximity to the Smoky Mountain site and is located in an area with similar topographic and meteorological conditions. The Smoky Mountain data will be adequate for new source review purposes, and for trends analysis, in the North Georgia Class I area. Background visibility data for the Wolf Island and Okefenokee Wildlife Refuge Areas will be obtained from existing airport Weather Service Stations near the two Class I areas. These two sources of data will be sufficient for the assessment of background visibility in all of Georgia's Class I areas. On October 31, 1985, the State submitted a schedule for finalizing the details of their monitoring strategy. The State will have access to the appropriate visibility data by March of 1986, and will determine how that data will be used in their visibility program by June of 1986.

Georgia's monitoring plan is consistent with the national visibility goal, meets the EPA's criteria for approval, and will provide data for use in evaluating new source impacts as well as analyzing visibility trends.

3. *Visibility New Source Review.* Georgia has revised its rules to meet the new source review requirements contained in 40 CFR 51.307. The State has added a new subsection to existing Rule No. 391–3–1.02. The new paragraph (2)(uu), titled "Visibility Protection", applies to new major sources and major modifications which are proposed to be located in attainment, unclassified, or nonattainment areas. The rule now contains procedures to be followed when a proposed major stationary source or major modification may impact visibility in a Class I area. The State must notify the Federal Land Manager (of any impact area) when it receives such a permit application and must provide the FLM with all information relevant to the proposed source. The State is required to consider any analysis concerning visibility impairment which is submitted by the FLM in a timely manner. The regulation also sets forth the conditions under which a permit may be issued to a new source which is proposed to be located near a Federal Class I area.

Prior to the issuance of any permit, the State will ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal. Under this regulation, the State may also require a source to monitor visibility in any Class I area in the vicinity of the proposed source.

Further details pertaining to these regulation changes are contained in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

If no such comments are received, the public is advised that this action will be effective March 31, 1986.

Final Action

After reviewing Georgia's visibility-related SIP revisions, EPA has found them to meet the requirements contained in 40 CFR 51.305 and 51.307. EPA is therefore approving Georgia's "Plan for Visibility Protection in Class I Areas" visibility monitoring strategy, and new source review regulations (Rule 391–3–1–.02(2)(uu)), as submitted on May 22, 1985, and October 31, 1985.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a

substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceeding to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Georgia was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 9, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 is amended as follows:

PART 52—[AMENDED]

Subpart L—Georgia

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.570 is revised by adding paragraph (c)(32) as follows:

§ 52.570 Identification of Plan.

* * * * *

(c) * * *

(32) Visibility new source review regulations and visibility monitoring strategy were submitted to EPA on May 22, 1985, and October 31, 1985.

(i) Incorporation by reference:

(A) Letter of May 22, 1985, from the Georgia Department of Natural Resources and new paragraph (2)(uu) of Rule No. 391–3–1–.02, titled "Visibility Protection", adopted by the Georgia Board of Natural Resources on May 1, 1985.

(ii) Additional material:

(A) Narrative SIP, titled "Georgia's Plan for Visibility Protection in Class I Areas" which includes the State's Visibility Monitoring Strategy.

(B) Letter dated October 31, 1985, from the Georgia Department of Natural Resources, providing a schedule for the completion of Georgia's Visibility Monitoring Strategy.

[FR Doc. 86–1814 Filed 1–27–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 799

[OPTS–42012B; TSH–FRL 2915–5]

Identification of Specific Chemical Substance and Mixture Testing Requirement; Diethylenetriamine

Correction

In the issue of Tuesday, August 20, 1985, on page 33543 in the first column, a correction to FR Doc. 85–12422 appeared. In the second paragraph, in the third line, "or in the" should read "or the".

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950–5182]

Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the Northeast Section of the Kodiak District of Registration Area J must be closed in order to protect the Tanner crab stock. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the Northeast Section. This action is intended as a management measure to conserve Tanner crabs.

DATE: This notice is effective at noon, Alaska Standard Time (AST), January 23, 1986. Public comments on this notice of closure are invited until February 7, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Services, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska, which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(e) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of these districts is the Kodiak District, which is further subdivided into eight sections also to prevent overfishing of individual Tanner crab stocks. Desired harvest levels are established on the basis of pot and trawl index surveys conducted by the Alaska Department of Fish and Game. The optimum yield for the entire Kodiak District is 11 to 33 million pounds. A preseason guideline harvest forecast for the Kodiak District was 7.5 to 7.65 million pounds, with 2.2 million pounds projected for the Northeast Section, based on the 1985 crab index survey. The 1986 fishing season began on January 15 (50 FR 47549, November 19, 1985). Reasons for the closure follow.

In the Northeast Section, 37 vessels landed about 200,000 pounds of Tanner crabs through January 17. There are 64 vessels with 5,000 pots registered to fish the Northeast Section during the 1986 season. The estimated CPUE has dropped from approximately 35 crabs per pot on January 16 to 27 crabs per pot on January 17 and to 0.5 crabs per pot on January 18. This decreased CPUE was not anticipated prior to November 1, 1985, the beginning of the fishing year. Based on the reduced catch per pot, the accuracy of the preseason harvest guideline of 7.0 million pounds is questionable. The dramatic decline in CPUE observed in the Northeast Section suggests that the Tanner crab stock is in poorer condition than was anticipated at the beginning of the season.

Therefore, the Regional Director has determined that the condition of the Tanner crab stock in the Northeast Section of the Kodiak District is substantially different from the condition anticipated at the beginning of the fishing year and that this difference reasonably supports the need to protect this Tanner crab stock by closing the Northeast Section, as defined in § 671.26(f)(1)(i), from noon, AST, January 23, 1986, until noon, Alaska Daylight Time, April 30, 1986, at which time the closure of this section prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

The Tanner crab stock in the Northeast Section of the Kodiak District will be subject to damage by overfishing unless the closure takes effect promptly. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice of closure is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 23, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–1841 Filed 1–23–86; 4:22 pm]

BILLING CODE 3510–22–M

VOL 51 ISS 18 JA 28 1986

Proposed Rules

Federal Register
Vol. 51, No. 18
Tuesday, January 28, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Automatic Immediate Coverage for Career or Career Conditional Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations concerning the exceptions to the exclusions from civil service retirement (CSR) coverage. Specifically, these proposed regulations would clarify that retirement coverage applies, immediately upon appointment, to a career or career-conditional employee who might otherwise be excluded from such coverage until after he or she achieved competitive status (that is, after completion of a probationary period). These regulations are necessary to reconcile the discrepancy in the current regulations and the longstanding policy and guidance in Federal Personnel Manual Supplement 831–1 that career and career-conditional employees are entitled to automatic immediate coverage under the CSR system, even though they may serve under conditions that would ordinarily exclude them from retirement coverage, such as non-full-time employment without a pre-arranged regular tour of duty.

DATES: Comments must be received on or before March 31, 1986.

ADDRESS: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Compensation Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doris L. Reeves, (202) 632–1285.

SUPPLEMENTARY INFORMATION: Current regulations (5 CFR 831.201(a)) exclude certain types of Federal employees from CSR coverage. For example, employees with appointments limited to 1 year or less, or who work under an intermittent tour of duty, are generally excluded from CSR coverage. These exclusions are subject to exceptions under 5 CFR 831.201(b). One of the exceptions allows coverage for an employee who would normally be excluded, such as an intermittent employee, but who is granted competitive status while serving in a position in the competitive service.

Employees in the competitive service receive competitive status when they complete a probationary period. (The provisions governing probation for career and career-conditional employees are found under 5 CFR Part 315.) For career-conditional employees, probation generally is completed after 1 year of service. (Probation may last more than one calendar year for some categories, such as seasonal, on-call, and intermittent employees). Therefore, during the probationary period of a career or career-conditional appointment, a literal reading of current regulations would exclude employees from CSR coverage if their tour of duty is intermittent rather than full-time or regularly scheduled part-time. Upon completion of the probationary period, the employees would attain competitive status and become eligible for CSR coverage.

A problem arises because career or career-conditional employees have generally been considered permanent employees and, under guidance in Federal Personnel Manual Supplement 831–1, are entitled to CSR coverage immediately upon appointment. Under the circumstances described above, a career or career-conditional employee would technically be excluded from coverage during the period of probation.

The proposed amendment would eliminate confusion about whether career and career-conditional employees who otherwise would be excluded from CSR coverage, such as intermittent employees, should be covered from the time of their initial appointments.

In addition, the authority citations in Part 831 are amended in accordance with the new authority citation requirements in 1 CFR 21.43 that were published by the Administrative Committee of the Federal Register on March 28, 1985, at 50 FR 12462. To comply with the new requirements, authority citations appearing in Part 831 are placed at the subpart level only.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Federal employees and agencies.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

PART 831—RETIREMENT

1. The authority citation for Part 831 is removed and the authorities following all the sections are removed.

2. The authority citation for Subpart A of Part 831 is added to read as follows:

Authority: 5 U.S.C. 8347; Sections 831.102 also issued under 5 U.S.C. 8334; Section 831.106 also issued under 5 U.S.C. 552a; Section 831.108 also issued under 5 U.S.C. 8336(d)(2).

3. The authority citations for Subparts B, C, D, F, G, H, J through R, and T through U of Part 831 are added to read as follows:

Authority: 5 U.S.C. 8347.

§ 831.201 [Amended]

4. In § 831.201 of Subpart B, paragraph (b) is revised to read as follows:

* * * * *

(b) Paragraph (a) of this section does not deny retirement coverage when (1) employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, except in the case of an alien employee whose duty station is located in a foreign country; (2) the employee receives a career or career-conditional appointment under Part 315 of this chapter; (3) the employee is granted competitive status under legislation, Executive order, or civil service rules and regulations, while he or she is serving in a position in the competitive service, or (4) the employee is granted merit status under 35 CFR Chapter I, Subchapter E.

5. The authority citation for Subpart E of Part 831 is added to read as follows:

Authority: 5 U.S.C. 8347; Section 831.502 also issued under 5 U.S.C. 8337; Section 831.503 also issued under Sec. 1(3), E.O. 11228, 3 CFR, 1964–1965 Comp.

6. The authority citation for Subpart I of Part 831 is added to read as follows:

Authority: 5 U.S.C. 8347; Sections 831.903 and 831.904 also issued under 5 U.S.C. 8336.

7. The authority citation for Subpart S of Part 831 is revised to read as follows:

Authority: 5 U.S.C. 8345(k) and 8347.

[FR Doc. 86–1858 Filed 1–27–86; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 423

Deportation of Aliens in the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the present rule which established procedures requiring a 72-hour surrender notice to aliens under a final order of deportation, prior to their removal from the United States. Statistics generated by the Service indicate general noncompliance with the surrender notice, thus impeding the orderly and just administration of the law by the Immigration and Naturalization Service.

DATE: Comments must be received on or before March 31, 1986.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3048

For Specific Information: W.D. Cadman, Senior Special Agent, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3098.

SUPPLEMENTARY INFORMATION: On September 13, 1976, a final rule published in the Federal Register (41 FR 38758) revised 8 CFR 243.3 by requiring that the Immigration and Naturalization Service provide aliens under a final order of deportation 72 hours advance notice to surrender for deportation prior to their explusion. The rule is procedural and not substantive in nature; neither constitutional due process not statutory language require provision of such a notice. A principal purpose of the rule was to permit aliens under a final order of deportation a reasonable period of time to arrange personal affairs before removal.

However, in a statistical study conducted in 1984, the Service found that 76 percent of those aliens ordered to surrender fail to do so, many of them after lengthy appellate procedures that had been resolved in favor of the Service. This general noncompliance with the surrender notice impedes the orderly and just administration of the immigration laws of the United States and encourages disrespect for the immigration judges and appellate courts which constitute an integral part of the immigration system. To ignore the alarming number of absconders from explusion proceedings through continued promulgation of the present rule is both costly and ineffective.

As an alternative, the Service proposes to institute procedures whereby it will assume custody of the alien respondent at the time of issuance of a final order of deportation by the immigration judge, or appellate tribunal or court of last resort. Upon assumption of custody, the respondent will be held a minimum of 72 hours prior to removal by the Service, to ensure that due process is accorded the detainee. At the expiration of this time period, the alien will be removed without further notice.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that deletion of this rule will have no significant economic impact on a substantial number of small entities within the meaning of that law.

List of Subjects in 8 CFR Part 243

Aliens, Explusion, Transportation, Voluntary departure.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 243—DEPORTATION OF ALIENS IN THE UNITED STATES

1. The authority for 8 CFR Part 243 continues to read as follows:

Authority: Secs. 103 and 243 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1253).

2. Section 243.3 would be revised to read as follows:

§ 243.3 Expulsion.

(a) *Execution of Order.* Once an order of deportation becomes final, an alien shall be taken into custody and the order shall be executed. For the purposes of this part, an order of deportation is final and subject to execution upon the date when any of the following occurs: (1) A grant of voluntary departure expires; (2) an immigration judge enters an order of deportation without granting voluntary departure or other relief, and the alien respondent waives the right to appeal or fails to take a timely appeal; (3) the Board of Immigration Appeals enters an order of deportation on appeal, without granting voluntary departure or other relief; or (4) a federal district or appellate court affirms an administrative order of deportation in a petition for review or habeas corpus action.

(b) *Service of decision.* In the case of an order entered by any of the authorities enumerated above, the order of deportation shall be executed no sooner than 72 hours after service of the decision, regardless of whether the alien is in Service custody. This shall not be construed, however, to proscribe assumption of custody by the Service at the time of issuance of the final order.

Dated: January 22, 1986.
Raymond M. Kisor,
Associate Commissioner, Enforcement, Immigration and Naturalization Service.

[FR Doc. 86–1826 Filed 1–27–86; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 904

Public Comment Forum on General Regulations for the Sale of Power From the Boulder Canyon Project

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Notice of Public Comment Forum.

VOL 51 ISS 18 JA 28 1986 UMI

SUMMARY: The Boulder City Area Office of the Western Area Power Administration (Western) published revised proposed General Regulations for the Sale of Power from the Boulder Canyon Project (General Regulations) in the **Federal Register** (50 FR 49050) on November 29, 1985. A public comment forum on the General Regulations was held on December 19, 1985. This notice is to announce that a second public comment forum on the General Regulations will be held.

DATE: The public comment forum will be held on February 12, 1986, beginning at 9:00 a.m.

ADDRESS: The public comment forum will be held at the Tropicana Hotel in the Monte Carlo Room, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 293–8855.

SUPPLEMENTARY INFORMATION: On May 17, 1985, Western published a notice of proposed General Regulations for the Sale of Power from the Boulder Canyon Project in the **Federal Register** (50 FR 20732). A public information forum was held on June 4, 1985, and a public comment forum was held on July 1, 1985. At the public comment forum, Western announced a 90-day delay in the comment period on the Proposed General Regulations. Subsequently, on July 26, 1985, a notice of a delay in the comment period until October 1, 1985, was published in the **Federal Register** (50 FR 30447). Following receipt and review of comments received on the proposed General Regulations, Western published revised proposed General Regulations in the **Federal Register** (50 FR 49050) on November 29, 1985. A public comment forum was held on December 19, 1985. Written comments were due on January 6, 1986. In order to allow ample opportunity for all interested parties to comment on the revised proposed General Regulations published in the **Federal Register** on November 29, 1985, a second comment forum will be held on February 12, 1986.

Issued in Washington, DC, January 22, 1986.

Ronald K. Greenbalgh,

Assistant Administrotor for Washington Liaison.

[FR Doc. 86–1951 Filed 1–27–86; 9:13 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–157–AD]

Airworthiness Directives; Canadair Model CL–44D4 and CL–44J Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) applicable to Canadair Model CL–44D4 and CL–44j airplanes which would require an initial and repetitive fluorescent penetrant inspections of the aft attachment lugs on the upper forging of the main landing gear, and replacement of this forging if the lugs are found cracked. This action is prompted by reports of stress corrosion cracks found running lengthwise in the bore on both upper and lower lugs on the main gear upper forgings on several CL–44 airplanes. If not corrected, this situation could result in the inability of the landing gear to extend or retract.

DATE: Comments must be received on or before March 24, 1986.

ADDRESSES: Send comments on the proposal in duplicate to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attn: Airworthiness Rules Docket 85–NM–157–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtain from Canadair Limited, Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Lester Lipsius, Aerospace Engineer, Airframe Branch, ANE–172, New York Certification Office, FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791–6221.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–157–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

In May, 1978, Canadair issued Service Information Circular (SIC) No. 419–CL44, "Additional Inspection of the Main Landing Gear Leg Upper Forging, P/N 44–87573–2, for Cracks in the Actuator Attachment Lugs," on CL–44 airplanes. This SIC was necessitated as a result of reports from the field of three instances of cracking within the bore of the main gear upper forging aft attachment lugs, which pick up the retraction jack actuator brackets. The cracks have been identified as the type caused by stress corrosion, running lengthwise in the lug bore. One crack was three inches long. If cracks of this nature are not detected by timely inspections of the part, they could propagate to complete failure of the attachment lugs, resulting in an inability of the gear to retract or extend, or to take landing loads.

Transport Canada issued Airworthiness Directive CF–85–09, dated July 25, 1985, which requires repetitive inspections of the lugs and replacement of the gear upper forging, if lug cracking is evident. This action will preclude failure of the main landing gear operation.

This airplane is manufacturer in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require an initial and repetitive flourescent penetrant inspection of the bore of the main landing gear upper forging aft attachment lugs, and replacement of the main gear upper forging if the lugs are found cracked.

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it would take approximately 32 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,960.

For these reasons, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 111034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,280.). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Canadair: Applies to all Model CL–44D4 and CL–44J airplanes, certificated in any category. Compliance is required as indicated.

To prevent failure of the aft attachment lugs on the main landing gear upper forging, P/N 44–87573–2, accomplish the following, unless already accomplished:

A. Within the next 30 days after the effective date of this airworthiness directive (AD), and at intervals thereafter not to exceed 2,000 hours time-in-service or one year, whichever occurs first:

1. Remove the parts shown in Figure 1 of Canadair Service Information Circular (SIC) No. 419–CL44, dated May 16, 1978, from both main landing gear legs: jack attach bracket assemblies, P/N 44–87503; spacers, P/N 44–87639; pins, P/N 44–87725–2; attaching parts; and bushings, P/N 44–87624–2; if necessary.

2. Inspect the bore of the upper and lower jack attachment lugs of the left and right main gear leg upper forgings, P/N 44–87573–2, for cracks, using fluorescent penetrant procedures.

3. Replace cracked parts prior to further flight with serviceable parts of the same part number which have been inspected in accordance with the requirements of the AD.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and replacement of parts required by this AD.

D. Upon the request of an operator, an FAA Maintenance Inspector, subject to approval by the Manager, New York Aircraft Certification Office, FAA, New England Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

All persons affected by this directive who have not already received the service documents from the manufacturer may obtain copies upon request to Canadair Limited, Commercial Aircraft Technical Services, Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

Issued in Seattle, Washington, on January 21, 1986.

Wayne J. Barlow,

Acting Director Northwest Mountain Region.

[FR Doc. 86–1766 Filed 1–27–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–ASO–30]

Proposed Alteration of Transition Area, Hattiesburg, MS

Correction

In FR Doc. 86–628, beginning on page 1385 in the issue of Monday, January 13, 1986, in the heading, "MI" should have read "MS".

BILLING CODE 1505–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Amendments to Comprehensive Plan and Basin Regulations; Water Code and Water Quality Standard; Notice and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on proposed amendments to its Comprehensive Plan and *Basin Regulations—Water Code and Water Quality Standards* relating to seasonal disinfection. The proposed amendments are intended to: (1) Allow disinfection to be practiced on a seasonal basis by dischargers to streams which do not form or cross a state boundary, (2) reduce the discharge of toxic substances and persistent chlorinated compounds (produced as by-products of chlorination), (3) conserve energy, (4) reduce the costs of water treatment, and (5) protect public health.

DATES: The public hearing will be held on February 26, 1986 at 1:30 p.m. Persons wishing to testify at this hearing are requested to register with the Secretary in advance. The comment closing date will be announced at the hearing.

ADDRESS: The February 26, 1986 hearing will be held in the Governor Printz Room of the Holiday Inn, Philadelphia International Airport at 45 Industrial Highway, Essington, Pennsylvania.

Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission. Telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: Background material relating to these proposed amendments may be examined at the Commission's offices.

Background and rationale: The Commission's *Basin Regulations—Water Code and Water Quality Standards* currently requires year-round disinfection of waste discharges containing human excreta or disease-producing organisms (except for stormwater bypass). As noticed in the August 11, 1983 Federal Register, Vol. 48.

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No. 156, the Commission held a public hearing on September 12, 1983 on a proposal to allow disinfection to be practiced on a seasonal basis by dischargers to all streams in the Basin except those in Zones 5 and 6 of the Delaware River. Following review of the hearing record and further deliberation, the Commission decided that additional data were needed to determine if shellfishing water quality could be protected under the proposed amendments. To provide this data, a two-year study is scheduled to begin July 1, 1986. Since disinfection practices by dischargers to most Basin streams will not impact shellfishing water quality or bacterial quality of streams forming or crossing state boundaries, there is no need to wait until 1988 to consider amending disinfection requirements for discharges to intrastate streams (streams not forming or crossing a state boundary).

The Commission's water quality standards set maximum permissible bacterial levels to protect such water uses as water-contact recreation and drinking water sources. Currently, these bacterial stream standards apply only to interstate streams (streams which form or cross a state boundary). In contrast, the states have bacterial standards applicable to streams not forming or crossing state boundaries. In many cases, applicable state bacterial standards can be met without disinfection. However, despite this fact, disinfection cannot currently be relaxed since Commission effluent standards now require effective disinfection by dischargers to all Basin streams at all times.

In recognition of this fact, the proposed amendments call for disinfection only as needed to meet applicable Commission or state water quality standards. Discharges to interstate streams would continue to be required to provide year-round disinfection in order to meet applicable Commission standards for those streams. Discharges to all other streams would have to provide disinfection as necessary to meet applicable state standards. Each state will determine the need for disinfection for each discharge based on the particular circumstances for that discharge, including its relationship to other nearby discharges and the receiving stream. Seasonal disinfection is currently permitted in waters of New York and Pennsylvania to protect water-contact recreation during the warm months of the year.

In cases where a discharge to a tributary would adversely affect the bacterial quality of an interstate stream and cause a water quality standard violation, Commission regulations provide the authority to require year-round disinfection. Article 4.20.4 of the Basin Regulations requires treatment to such extent as may be necessary for the discharge to a tributary to not cause a violation of water quality standards on downstream interstate waters.

The proposed amendments would also require maintenance of the capability to resume disinfection upon reasonable notice.

The subjects of the hearing will be as follows:

Amendments to the Comprehensive Plan, Basin Regulations—Water Code and Water Quality Standards Relating to Seasonal Disinfection.

List of Subjects in 18 CFR Part 410

Water pollution control.

Amend subsection 3.10.4B of the Comprehensive Plan and Basin Regulations—Water Code and Water Quality Standards and subsection 4.30.9B.1 of Basin Regulations—Water Code and Water Quality Standards which are referenced in 18 CFR Part 410.

The following amendments are proposed:

1. Amend subsection 3.10.4B of the Comprehensive Plan and *Basin Regulations—Water Code* and *Water Quality Standards* to read:

B. *Disinfection.* Wastes (exclusive of stormwater by-pass) containing human excreta or disease producing organisms shall be effectively disinfected before being discharged into surface bodies of water as needed to meet applicable Commission or State water quality standards.

2. Amend subsection 4.30.9B.1 of *Basin Regulations—Water Code* and *Water Quality Standards* to read:

1. a. Waste treatment operations, except disinfection, shall not be curtailed at any time of the year.

b. The capability to resume disinfection, upon reasonable notice, shall be maintained.

Delaware River Basin Compact, 75 Stat. 688.

Dated: January 16, 1986.

Susan M. Weisman,

Secretary.

[FR Doc. 86-1485 Filed 1-27-86; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[LR-214-82]

Treatment of Qualified Real Estate Agents and Direct Sellers as Nonemployees; Determination of Employer Liability for Certain Employment Taxes; Information Reporting of Direct Sales and Payments of Remuneration for Services

Correction

In FR Doc. 86-125 beginning on page 619 in the issue of Tuesday, January 7, 1986, make the following corrections:

1. On page 620, second column, first complete paragraph, fourth line, "321" should have read "3121".

2. On page 621, second column, second complete paragraph, eighth line, "65621" should have read "6521".

3. On page 623, first column, in § 31.3508-1(d)(1)(ii) last line, "(D)" should have read "(d)". In the second column, in § 31.3508-1(d)(2)(iii), fourth line, "that" should have read "the". In the third column, in § 31.3508-1 (e)(2)(ii), third line from the bottom, "the date' should have read "that date".

4. On page 626, second column, in § 1.6041A-1(a)(2), in the *Example*, tenth line, "type of" should have read "type or". In the third column, in § 1.6041A-1(b)(4), tenth line, insert the word "such" between "if" and "buyer".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Benzene

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rules; changes in hearing schedule.

SUMMARY: On December 10, 1985 (50 FR 50512), the Assistant Secretary for Occupational Safety and Health issued a proposed rule and notice of hearing on occupational exposure to benzene. That notice scheduled four hearings in Washington, D.C., New Orleans, Los Angeles and Chicago. OSHA has determined that it is not essential as part of this rulemaking to conduct all three regional hearings, especially in light of the impact of the Gramm-Rudman budget reductions. As a result, OSHA has canceled the two hearings which were to be held in New Orleans, LA, on March 25, 1986, and in Chicago, IL, on April 8, 1986. The other two hearings, namely, Washington, D.C., commencing on March 11, 1986, and Los Angeles, CA, commencing on April 2, 1986 will be held as previously scheduled. All other dates for submission of comments, notices of intention to appear, and hearing evidence remain unchanged and no changes are being made in the substance of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Rm. N-3641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-7111.

Signed at Washington, D.C., this 22nd day of January 1986.

Patrick R.Tyson,

Acting Assistant Secretary.

[FR Doc. 86-1789 Filed 1-27-86; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-2961-4; EPA Action MO 1830]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking (PRM).

SUMMARY: The Clean Air Act requires that all states which received an extension beyond December 31, 1982, to attain the ozone or carbon monoxide air quality standards submit revised plans by July 1, 1982, showing how those standards will be attained by December 31, 1987.

The State of Missouri has submitted such a plan for the St. Louis area. EPA has approved all portions of this plan except for the demonstration that the ozone standard will be attained and several specific control measures as described herein.

This document proposes to approve the State's most recent ozone attainment demonstration. Approval of this demonstration and specific control measure rules would mean that the St. Louis ozone plan would be fully approved.

The purpose of this document is to advise the pubic of EPA's preliminary finding and to invite comments on EPA's proposed approval.

DATE: Comments must be received by February 27, 1986.

ADDRESSES: Comments should be sent to Daniel J. Wheeler, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submission is available at the above address and at the Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, MO 65102.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, (913) 236-2893 (FTS 757-2893).

SUPPLEMENTARY INFORMATION: The Clean Air Act, as amended in 1977, required states to submit plans by January 1, 1979, showing how the National Ambient Air Quality Standards would be attained in areas of the country where air pollution still violated the standards. The deadline for attaining the standards was December 31, 1982, unless a demonstration was made that the carbon monoxide or ozone standards could not be met by that date. In that case, an extension could be granted until December 31, 1987, if the State made a commitment to submit a revised plan with additional control measures by July 1, 1982.

The State of Missouri made such a demonstration and commitment for the St. Louis area in its 1979 plan submission and received an attainment date extension. The State submitted the required 1982 plan, but it was not fully approvable. In the final rulemaking on the 1982 plan (see 49 FR 40164, October 15, 1984), EPA took no action on the automobile inspection and maintenance program or on the attainment demonstration while approving the remainder of the plan.

The inspection and maintenance program elements were submitted August 27, 1984, and were approved by EPA on August 12, 1985 (see 50 FR 32411). This was the final element needed as part of the carbon monoxide plan which is now fully approved.

A revised ozone attainment demonstration was submitted on August 1, 1985, as the State had committed (see 49 FR 40165, Column 1). As discussed below, EPA proposes to find that this submission demonstrates that emissions will be reduced below the level needed to attain the ozone standard and is therefore approvable as part of the Missouri State Implementation Plan (SIP).

Emission Reduction Target

The 1982 plan indicated that the St. Louis area would attain the ozone standard when the emissions of the volatile organic compound (VOC) ozone precursers were reduced 29.7 percent from the 1980 baseline inventory. EPA's technical review of the basis for this determination found that the emission reduction requirement is 34.8 percent, not 29.7 percent. Since the plan was designed to reduce emissions only 29.9 percent, it did not demonstrate attainment. The State agreed to submit by August 1, 1985, a revised control strategy that would reduce emissions more than 34.8 percent from the 1980 baseline inventory by December 31, 1987. The State has now submitted a demonstration that the emission reduction target will be met by reducing emissions 35.1 percent from 1980 levels.

Inventory Adjustments

In the process of revision, the State took the opportunity to update the emission inventory with new information not available in 1982.

The baseline 1987 inventory is the projection based on the State and federal control regulations now in place. The post control inventory is the 1987 baseline inventory minus the emissions controlled by the measures included in the 1982 SIP, many of which have already been approved (see the October 15, 1984, final rulemaking), and reductions from the measures the State committed to adopt in the August 1, 1985, submittal. Attainment of the ozone standard is demonstrated when the projected, or post control, 1987 VOC inventory is less than the target level.

Both the 1980 and 1987 baseline inventories have been adjusted by removing the emissions of perchloroethylene, which the State feels does not react in the atmosphere to form ozone. The listing of perchloroethylene as nonreactive has been proposed by EPA. The change of approximately two percent in both the 1980 and 1987 inventories results in a slight increase in the reductions needed to demonstrate attainment. This would not affect the attainment demonstration even if EPA eventually decided not to list perchloroethylene as nonreactive.

Both baseline inventories were also adjusted to take credit for the check of automobile evaporative canisters which has been part of the annual Missouri vehicle inspection since before 1980. These credits were inadvertently omitted from the original inventories. Making these almost identical corrections to the inventories has no effect on the control requirement.

The baseline auto assembly emissions were also corrected. The 1980 inventory was increased less than one percent to account for better information concerning emissions at one auto plant.

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The 1987 baseline inventory has been increased over three percent to account for corrected information and revised growth projections. This increase in emissions must be offset by additional reductions in other portions of the inventory.

The 1987 baseline inventory was also reduced about one-half of one percent to account for extending the inspection and maintenance program to cover light-duty trucks up to 8,500 pounds gross vehicle weight, and about one-third of one percent to account for two source shutdowns that have occurred since 1980.

The corrections to the 1980 baseline inventory reduce that inventory and have the effects of lowering the 1987 target inventory, since the target is a fixed percent reduction from the 1980 baseline. The corrections also raised the 1987 baseline inventory slightly. Taken together, these corrections resulted in a need to obtain about 17 percent greater reductions than had been expected in order to reduce the 1987 emissions to the target level from the baseline.

Additional Control Measures

The State is implementing the measures in the 1982 SIP submission including the I/M program. In order to meet the emission reduction requirement, as revised and corrected, the State has proposed four additional measures.

1. Major Source Controls

The State is claiming additional stationary source credit due to adoption of a rule limiting emissions from a facility manufacturing maleic anhydride. The State had originally planned to require emissions from this facility to be reduced 85 percent from uncontrolled, but adopted a rule requiring 98 percent control in compliance with the recently published Control Techniques Guideline for Air Oxidation Processes. The difference between the originally planned reduction, which was identified in the 1982 plan revision, and the actual reduction is shown in the current submission as part of the additional emission reductions to be obtained. The actual State regulation was adopted separately by the State and will be processed separately by EPA.

2. Fuel Inlet Restrictor Check

The State has added a check on the fuel inlet restrictor to the motor vehicle tampering inspection. The inlet restrictor is installed in cars requiring unleaded fuel to prevent the introduction of leaded fuel nozzles, which are larger than the nozzles used for unleaded fuel. If the restrictor is removed, then leaded fuel can be used, which will ruin the emission control system, especially the catalytic converter. The State is claiming significantly less emission reduction credit for this measure than would normally be creditable because it is not requiring replacement of catalytic converters on vehicles which are found to have tampered filler necks. EPA believes that if the opening in the filler neck of a car has been enlarged to allow the use of the larger leaded gasoline nozzle, then it is very likely that enough leaded gasoline has been used to ruin the catalytic converter. If the catalyst no longer functions, the emissions from the car will be just as high if it returns to burning unleaded gas as if it were still burning leaded, thus merely replacing the inlet restrictor will not reduce emissions. The only way to reduce emissions is to replace the catalytic converter. Therefore, EPA believes that no emission reductions are creditable without catalyst replacement. For the St. Louis attainment demonstration, this is not an approvability issue, as the reductions claimed for the filler neck check are not large enough to be a deciding factor. Even without this credit, the plan still demonstrates attainment.

3. Major Source Shutdown

The State is using the emission reductions due to the planned closing of the General Motors St. Louis Assembly Plant as part of the attainment demonstration. The 1982 attainment demonstration indicated that this plant would be operating in 1987 in compliance with stringent emission limits. The State placed the company on a schedule for compliance in accordance with the EPA policy that generally allows until the end of 1986 for compliance with priming and topcoating emission limits if a plant is scheduled to be renovated or shut down. (See 46 FR 51386, October 20, 1981.) The first step in the compliance schedule was submission of a compliance plan, and the company met that requirement by notifying the State that final compliance would be achieved by closing the plant at the end of 1986.

Since that time, economic and business factors have led General Motors to request permission to operate the St. Louis Assembly Plant until the end of 1987. During this one additional year of operation, the company has committed to install a topcoating system that will reduce the topcoating emissions significantly. It will not install the expensive dip-priming system for only one year of operation. Final compliance, by shutdown, will be on or before the statutory attainment date, December 31, 1987.

The October 20, 1981 policy for approval of revisions to compliance schedules for control of volatile organic compounds from automobile assembly plant paint shop operations establishes criteria the agency will apply in reviewing modifications to existing State compliance schedules. This policy noted that even where these criteria were met, SIPs still were required to assure continued compliance with the statutory portions of section 110 and 172 of the Clean Air Act. Therefore, in addition to the criteria in that policy, any revisions will need to be evaluated in light of the impact such revisions will have on the overall plan to attain and maintain the standards by the statutory deadline, including emission reductions necessary to demonstrate reasonable further progress during any intervening period.

This proposal is consistent with the October 20, 1981 policy. It also includes additional emission reduction measures, adjustments to the inventory and reasonable further progress achievements for a demonstration of attainment and is therefore approvable. However, should the proposed attainment demonstration of reasonable further progress achievements fail to be finally approved by EPA, the proposed compliance schedule revision for General Motors would no longer be approvable.

This proposed approval includes the State order which allows the plant to operate in excess of its regulatory limits until the end of 1987. This order includes an interim emission limit, a requirement to close the plant by December 31, 1987, some interim reporting dates, and an agreement by the company that the State will be able to use the emission credits in the attainment demonstration immediately. The source would otherwise retain the right under State rules to use these credits for one year.

4. Stage II Vapor Recovery

The control measure most important in terms of emission reductions is the control of vapor emissions from refueling of automobiles at filling stations. This is known as Stage II vapor recovery. The filling of underground tanks at filling stations from tank trucks is known as Stage I. Stage I controls have been required in St. Louis since 1978.

The current attainment demonstration contains a commitment to Stage II vapor recovery with a schedule of implementation and an estimate of the reductions to be obtained. The specific rules defining and requiring Stage II will be adopted early in 1986 with final compliance by the end of 1987. EPA will process these rules in a separate notice.

Future Policy Changes

The Agency is proposing to approve the St. Louis attainment demonstration, which is based in part on previous submittals from the State of Missouri. These submittals were in conformance with policies and procedures in effect at the time they were made. The submittals were approved by EPA. The attainment demonstration relied on an early version of the mobile source emission model. Use of that model may have resulted in an underprediction of emission reductions needed. Use of recently-improved data collection techniques and of a revised mobile source model could provide a different estimation of attainment status.

St. Louis is but one of many large metropolitan areas that are currently designated nonattainment for ozone. EPA is presently developing a comprehensive new strategy to address the nationwide ozone problem. When this strategy is adopted, it may be necessary to reexamine the attainment demonstration for St. Louis and other major cities. Where emission reduction shortfalls are demonstrated, additional controls will be required. Consequently, approval of this attainment demonstration does not relieve the State of any subsequent requirements which may be imposed under a new policy.

Summary

This attainment demonstration consists of a consent order and commitments to adopt several new regulations. These regulations will be the subjects of fixuture EPA rulemakings. The total of the emission reductions to be obtained, even not counting the fuel inlet check, exceeds the reductions which the State has demonstrated are needed to attain the ozone standard. Therefore, EPA believes the St. Louis attainment demonstration is approvable.

The State submission constitutes a proposed revision to the Missouri SIP. The Administrator's decision to approve or disapprove this proposed revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of sections 110 and 172 of the Clean Air Act, and of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans, and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: November 11, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 86–1610 Filed 1–27–86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 461

[OW-FRL-2899-6]

Battery Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works (POTW) by existing and new sources that conduct battery manufacturing operations in the lead subcategory. EPA agreed to propose these amendments in a settlement agreement which resolved the various lawsuites challenging the final battery manufacturing regulation promulgated by EPA on March 9, 1984, 49 FR 9108.

The proposed amendments include: (1) Certain modifications of the effluent limitations for "best available technology economically achievable" (BAT) and "new source performance standards" (NSPS) for direct discharges; (2) certain modifications of the pretreatment standards for new and existing indirect discharges (PSNS and PSES); and (3) guidance which allows consideration of employee shower wastewater as a process wastewater under certain circumstances. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATE: Comments on this proposal must be submitted on or before February 27, 1986.

ADDRESS: Send comments to Ms. Mary L. Belefski, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: ITD Docket Clerk, Proposed Battery Manufacturing Rule (WH–552).

The supporting information and all comments on this proposal will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear), (EPA Library) 401 M Street SW., Washington, DC. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382–7126.

SUPPLEMENTARY INFORMATION:

Organization of this Notice:

I. Legal Authority
II. Background
  A. Rulemaking and Settlement Agreement
  B. Effect of the Settlement Agreement
III. Proposed Amendments to the Battery Manufacturing Regulation
  A. Effluent Limitations and Standards for Battery Wash Operations in the Lead Subcategory
  B. Battery Employee Shower Wastewater
IV. Guidance to Permit Writers for Handling Non-Regulated Wastewater Sources
V. Environmental Impact of the Proposed Amendments to the Battery Manufacturing Regulation
VI. Economic Impact of the Proposed Amendments
VII. Solicitation of Comments
VIII. Executive Order 12291
IX. Regulatory Flexibility Analysis
X. OMB Review
XI. List of Subjects in 40 CFR Part 461.

I. Legal Authority

The regulation described in this notice is proposed under authority of sections 301, 304, 306, 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 92–217).

II. Background

A. Rulemaking and Settlement Agreement

On March 9, 1984, EPA promulgated a regulation to establish Best Practicable Control Technology Currently Available (BPT) and Best Available Technology Economically Achievable (BAT) Effluent Limitations Guidelines and New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the Battery Manufacturing Paint Source Category (40 CFR Part 461, 49 FR 9108). The preamble to the regulation describes the history of the rulemaking.

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After publication of the battery manufacturing regulation, certain members of the battery manufacturing industry and the Battery Council International filed a petition to review portions of the regulation that pertained to the lead subcategory (*Battery Council International* v. *EPA*, 4th Cir. No. 84–1507).

On March 27, 1985, the parties entered into a settlement agreement which resolved all issues raised by petitioners. On April 25, 1985, the United States Court of Appeals for the Fourth Circuit entered an order staying briefing in the lawsuits. In the Settlement Agreement, EPA agreed to publish a notice of proposed rules and preamble language and to solicit comments regarding certain amendments to the final battery manufacturing regulation. If EPA promulgates amendments to the battery manufacturing regulation and preamble language that are substantially the same as and do not alter the meaning of the proposed language, the petitioners have agreed to dismiss the lawsuit and not challenge the new amendments.

B. Effect of the Settlement Agreement

As part of the Settlement Agreement, the parties jointly requested the United States Court of Appeals for the Fourth Circuit to stay the effectiveness of cetain sections of 40 CFR Part 461 pending final action by EPA on the proposed amendments. The April 25, 1985 court order granted this request.

All limitations and standards proposed to be amended by regulation have been stayed by the court order (i.e., they are not currently in effect). However, until the Agency takes final action on the proposed revisions, the parties have agreed to treat these proposed amendments and preamble as applicable. All other limitations and standards remain the same, and EPA is not proposing to delete or amend any of them.

III. Proposed Amendments to the Battery Manufacturing Regulation

A. Effluent Limitations and Standards for Battery Wash Operations in the Lead Subcategory

The BAT, PSES, NSPS and PSNS limitations and standards for the battery wash (with detergent) operation in the lead subcategory were based upon discharging wastewater from the washing of each battery once during the production process. Based upon subsequent re-evaluation of this aspect of lead battery production, EPA concludes that batteries are washed with detergent twice at many plants (once after formation and once prior to shipping after the batteries have been in storage); that wastewater from each such battery wash operation may contain pollutants and is properly considered a process wastewater requiring treatment; and that an additional flow allowance for a second battery wash is appropriate for purposes of calculating the mass limits for battery washing operations. Consequently, EPA is proposing to double the battery wash (with detergent) mass limits for all pollutants covered by battery wash (detergent) BAT, PSES, NSPS and PSNS limitations and standards.

The proposed regulation, like the existing regulation, would provide no allowance for discharges from battery wash operations that do not use detergent. The wastewater from such operations may be reused and thus does not need to be discharged.

B. Battery Employee Shower Wastewater

When EPA promulgated the battery manufacturing regulation on March 9, 1984, EPA determined that no flow allowance should be provided for employee showers. EPA reasoned that relatively few employees in battery plants are exposed to high lead dust levels and that adequate means are available for assuring that substantially all lead is removed prior to showering. EPA concluded that there is thus no need for a plant to discharge battery employee shower wastewater as process wastewater (i.e., as water that has contacted and become contaminated with substantial amounts of lead) and that the battery employee shower wasterwater can be discharged as sanitary wastewater. See 49 FR 9108, 9123 (March 9, 1984).

The petitioners in *Battery Council International* v. *EPA* have argued that in some cases, battery employee shower wastewater may be significantly contaminated and require treatment. No data have been submitted to demonstrate the actual concentrations of lead in various battery shower wastewaters and EPA continues to believe that battery shower wastewater should not be classified as a process wastewater. However, showers are required by the Occupational Safety and Health Administration (OSHA) for battery plant employees working in areas with lead exposure in excess of 50 mg/m^3. See 29 CFR 1910.1002. This indicates a potential for the contamination of some employee shower wastewater with some amount of lead. Therefore, EPA agrees with petitioners that individual plants should have the opportunity to demonstrate that their particular wastewaters are significantly contaminated and should be accounted for accordingly. EPA is addressing this concern in two ways, one for indirect dischargers and one for direct dischargers.

First, for indirect dischargers in the battery manufacturing point source category, EPA is proposing today an amendment to the battery regulation, § 461.34(c), that would modify the way that the combined wastestream formula, 40 CFR 403.6(e), applies to contaminated shower wastewaters. The combined wastestream formula provides a means for determining final discharge requirements for indirect dischargers that combine different wastestreams prior to the treatment and discharge of these combined wastestreams to the publicly owned treatment works. The formula treats certain types of wastestreams, including sanitary wastestreams that are not regulated by a categorical pretreatment standard, as "dilution" streams (F_D in the combined wastestream formula). Thus, battery shower wastewater is considered a dilution stream under the existing regulation.

Under proposed § 461.34(c), where battery employee shower wastewater contains a significant amount of lead, and the discharger combines this wastewater with process wastestreams prior to treatment and discharge, the Control Authority is authorized to exercise its discretion to classify the stream as an unregulated stream rather that a dilution stream. Classification as an unregulated stream would result in the consideration of the battery shower wastewater as a contaminated stream that may be combined with regulated waste streams for purposes of treatment and provide an appropriate flow allowance.

EPA has selected 0.20 mg/l as the concentration of lead that represents a significant contamination of battery employee shower wastewater. This is the lead concentration that was used by EPA as a basis for establishing the monthly average lead mass limitations and standards in the regulation. EPA anticipates that a demonstration of significant contamination would be based on data that can appropriately be compared to the monthly average of 0.20 mg/l.

Second, for direct dischargers in the battery manufacturing point source category, EPA is stating its policy that where battery employee shower wastewater is shown to be significantly contaminated (greater than 0.20 mg/l), permit writers should likewise provide an allowance when developing the permit. In such situations, it would be appropriate for the permit writer to develop a mass allowance based upon the product of the employee shower wastewater discharge rate and the treatment effectiveness used as a basis for the promulgated regulation (as specified in the Final Development Document for Effluent Limitations Guidelines and Standards for Battery Manufacturing, Vol. II, Table, VII–21).

IV. Guidance to Permit Writers for Handling Non-Regulated Wastewater Sources

For those waste streams not given flow allowances in the regulation, the Agency does not believe they warrant treatment on a national basis because they are generally not contaminated or occur at only one or two plants. The Agency believes that such wastewater sources as nonconfact cooling water and boiler blowdown ordinarily do not contain significant quantities of toxic pollutants. However, in some instances wastewater sources such as these may be contaminated. In certain circumstances, the permit writer or Control Authority may develop mass limitations for site-specific wastewater sources.

If the permit writer makes a threshold determination that a wastestream is sufficiently contaminated to require a discharge allowance and further determines that combined treatment with other process wastewater is appropriate, then the permit writer should develop a mass discharge limitation for a site-specific waste stream. The permit writer must use his best professional judgment to decide which nonregulated wastestreams are sufficiently contaminated to require treatment, and which require combined treatment with other process wastewaters.

When consideration of site-specific wastewater sources is warranted as discussed above, the permit writer must quantify the discharge rate of the wastestream. The mass allowance provided for the waste stream is then obtained from the product of the discharge rate and treatment effectiveness of the technology basis of the promulgated regulation. For example, if the permit writer determines that boiler blowdown requires treatment, he or she must determine the flow rate of contaminated water to be treated. The permit writer can then determine the appropriate treatment technology basis and treatment effectiveness values by referring to the final development document for battery manufacturing. The product of the discharge rate and treatment effectiveness is then the allowed mass discharge. This quantity can then be added to the other building blocks (i.e., mass discharge for the regulated streams) to determine total allowed mass discharge for each pollutant.

In cases where an indirect discharger combines boiler blowdown or non-contact cooling water with regulated streams, the combined wastestream formula, 40 CFR 403.6(e) as amended on May 17, 1984, applies. See 49 FR 21024, 21037 (May 17, 1984).

V. Environmental Impact of the Proposed Amendments to the Battery Manufacturing Regulation

If promulgated, the proposed amendments would allow 111 existing direct and indirect dischargers to discharge a greater amount of pollutants than was allowed by the March 1984 regulation. The increase in the mass of pollutants allowed to be discharged is not expected to be substantial, however.

The increased quantity of lead that will be discharged at BAT and PSES due to the flow change under the proposed amended regulation average only 1.7 pounds per plant per year. Increases for copper and iron would be 5.3 and 5.1 pounds per plant per year. For new sources, the increases for these pollutants would be 33% smaller than the increases for existing sources.

For the 1984 promulgated regulation, it was estimated that 72,047 kkg per year of wastewater treatment sludges would be generated at BAT–PSES of which 93 percent was from the lead subcategory. As a result of these proposed amendments, sludge generation will be decreased by less than one percent to about 71,980 kkg. However, lead battery sludges are not specifically listed under RCRA as a hazardous waste and because of excess lime in the BAT–PSES treatment systems, the Agency believes that the sludges would pass the EPA toxicity test. Nevertheless, a separate analysis showed that even if all lead battery sludges were classified as hazardous, there would be no adverse economic impact on the industry from solid waste generation.

VI. Economic Impact of the Proposed Amendments

The proposed amendments will not alter the recommended technologies for complying with the battery manufacturing regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 49 FR 9116). Since the Agency concluded at the time that the regulation was economically achievable, and since it is expected that the amendments will not impose higher cost than the final regulation was estimated to impose, the Agency has concluded that these proposed amendments will not alter the determinations with respect to economic impact that were made previously.

VII. Solicitation of Comments

EPA invites public participation in this rulemaking and requests comments on the proposed amendments discussed or set out in this notice. The Agency asks that comments be as specific as possible and that suggested revisions or corrections be supported by data.

VIII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This proposed regulation, like the regulation promulgated in March 1984, is not major because it does not fall within the criteria for major regulations established in Executive Order 12291.

IX. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the March 9, 1984 final regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities [49 FR 911]. For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these proposed amendments, since the amendments would not alter the economic impact of the regulation. The Agency is not, therefore, preparing a formal analysis for this regulation.

X. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays. This rule does not contain any

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information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

XI. List of Subjects in 40 CFR Part 461

Battery manufacturing industry, Primary batteries, dry and wet, Storage batteries, Waste treatment and disposal, Water pollution control.

Dated: January 15, 1986.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA is proposing to amend 40 CFR Part 461 as follows:

PART 461—BATTERY MANUFACTURING POINT SOURCE CATEGORY

1. The authority section continues to read:

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307, 308 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977), (the "Act") 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. 40 CFR 461.32 is amended by revising paragraph (a)(4) to read as follows:

§ 461.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) * * *

(4) Subpart C—Battery Wash (Detergent).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 Day	Maximum for monthly average
	Metric Units—mg/kg of lead used English Units—pounds per 1,000,000 lb of lead used	
Copper	1.71	0.90
Lead	0.38	0.16
Iron	1.06	0.55

* * * * *

3. 40 CFR 461.33 is amended by revising paragraph (a)(4) to read as follows:

§ 461.33 New source performance standards (NSPS).

(a) * * *

(4) Subpart C—Battery Wash (Detergent) NSPS.

Pollutant or pollutant property	Maximum for any 1 Day	Maximum for monthly average
	Metric Units—mg/kg of lead used English Units—pounds per 1,000,000 lb of lead used	
Copper	1.152	0.549
Lead	0.252	0.117
Iron	1.06	0.55
Oil & Grease	9.0	9.0
TSS	13.5	10.8
pH	(1)	(1)

[1] Within the limits of 7.5 to 10.0 at all times.

* * * * *

4. 40 CFR 461.34 is amended by revising paragraph (a)(4) to read as follows:

§ 461.34 Pretreatment standards for existing sources (PSES).

(a) * * *

(4) Subpart C—Battery Wash—Detergent—PSES.

Pollutant or pollutant property	Maximum for any 1 Day	Maximum for monthly average
	Metric Units—mg/kg of lead used English Units—pounds per 1,000,000 lb of lead used	
Copper	1.71	0.90
Lead	0.38	0.16

* * * * *

5. 40 CFR 461.35 is amended by revising paragraph (a)(4) to read as follows:

§ 461.35 Pretreatment standards for new sources (PSNS).

(a) * * *

(4) Subpart C—Battery Wash—Detergent—PSNS.

Pollutant or pollutant property	Maximum for any 1 Day	Maximum for monthly average
	Metric Units—mg/kg of lead used English Units—pounds per 1,000,000 lb of lead used	
Copper	1.152	0.549
Lead	0.252	0.117

* * * * *

6. 40 CFR 461.34 is proposed to be amended by adding a new paragraph (c), reading as follows:

§ 461.34 Pretreatment standards for existing sources (PSES).

* * * * *

(c) (1) In cases where battery employee shower wastewater containing concentrations of lead exceeding 0.20 mg/l is combined with process wastewaters prior to treatment, the Control Authority may, for purposes of applying the Combined Wastestream Formula under § 403.6(e) of this Chapter, notwithstanding the provisions of § 403.6(e), exercise its discretion and classify battery employee shower wastewater as an unregulated rather than a dilute (F_D) wastestream.

(2) Before the Control Authority may exercise its discretion to classify such a stream as an unregulated stream, the battery manufacturer must provide engineering, production, and sampling, and analysis information sufficient to allow a determination by the Control Authority on how the stream should be classified.

[FR Doc. 86–1684 Filed 1–27–86; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Notice of technical information documents.

SUMMARY: The Department of the Interior announces the availability of the Draft Type B Technical Information Documents prepared in conjunction with the proposed rule on natural resource damage assessments published on December 20, 1985 (50 FR 52126). The proposed natural resource damage assessment regulations are being promulgated under the authority of section 301(c) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*

The Draft Type B Technical Information Documents provide useful information for performing assessments, but are not regulatory in that they are neither incorporated by reference in the proposed rule nor is their use required for obtaining the rebuttable presumption.

These documents evaluate some currently available techniques applicable to the various phases of a damage assessment to ensure that the steps and objectives outlined in the proposed rule are feasible and to provide more specific information to those peforming assessments, interested members of the public, and potentially responsible parties.

The following Draft Type B Technical Information Documents will be available on or before January 31, 1986

from the CERCLA 301 Project office at the address listed below:

1. Approaches to the Assessment of Injury to Soil Arising from Discharges of Hazardous Substances and Oil.

Includes possible methods and procedures both for determining injury and for quantifying injury to soil.

2. Application of Air Models to Natural Resource Injury Assessment.

Discusses use of models to describe movement of oil or hazardous substances in air.

3. Guidance on Use of Habitat Evaluation Procedures and Habitat Suitability Index Models for CERCLA Applications.

Recommends methods for adaption of the Habitat Evaluation Procedures (HEP), developed by the U.S. Fish and Wildlife Service, for use in quantifying habitat changes resulting from a discharge or release.

4. Techniques to Measure Damages to Natural Resources.

Provides additional discussion of economic methodologies that may be applied in the Damage Determination phase of a damage assessment.

5. Injury to Fish and Wildlife Species.

Discusses in more detail the injury determination methodology developed in the proposed rule for fish and wildlife, and identifies certain procedures and injuries that meet the acceptance criteria for determining injury to fish and wildlife.

ADDRESS: CERCLA 301 Project, Room 4354, Department of the Interior, 1801 C Street NW., Washington, DC 20240, (202) 343–1301.

FOR FURTHER INFORMATION CONTACT:

Keith Eastin, (202) 343–5757
Sheryl Katz, (202) 343–1301
Alison Ling, (202) 343–1301.

Dated: January 22, 1986.

Keith Eastin,

Associate Solicitor.

[FR Doc. 86–1787 Filed 1–27–86; 8:45 am]
BILLING CODE 4310–10–M

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Notices

Federal Register
Vol. 51, No. 18
Tuesday, January 28, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 85-123]

Importation of Certain Animals; Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of deadline for receipt of applications for special authorization, date, time and place of drawing, and schedule of fees for importation of cattle through the Harry S Truman Animal Import Center.

SUMMARY: This document establishes a specific date for receipt of applications for special authorization to be drawn on a lottery basis for the allotment of quarantine space for the next two groups of cattle to be imported through the Harry S Truman Animal Import Center (HSTAIC), and establishes the date, time, and place of the drawing. It also lists the geographic areas from which cattle will be considered for importation and the schedules of fees for importation of such cattle. This action is being taken to notify potential applicants of the lottery and fee schedule in accordance with the regulations.

DATES: Deadline for receipt of applications: March 14, 1986. Date and time of drawing: March 20, 1986, at 9 a.m..

PLACE OF DRAWING: Room 643A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

ADDRESSES: Application forms may be obtained upon request from and completed applications and deposits should be sent to Import-Export Animals and Products Staff, VS, APHIS, USDA, 6505 Belcrest Road, Room 838, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: Procedures are established in § 92.41 of Title 9, Code of Federal Regulations (9 CFR 92.41), concerning the allocation of space at the HSTAIC. These procedures include holding a drawing to determine from submitted applications which interested persons will have a right to attempt to qualify animals to enter the United States through the HSTAIC. The HSTAIC is intended to process animals from countries in which exotic diseases exist and which are not otherwise eligible for importation into the United States.

The regulations require that at least 30 days prior notice be provided in the **Federal Register** of the date, time, and place of the drawing; the geographic areas from which animals will be considered for importation; and the fee schedule for the proposed importation (9 CFR 92.41(a)(1)). The Department has determined that it would be too complicated and would pose unnecessary disease risks to allow cattle from Europe and South America to be combined in one importation. Therefore, cattle from Europe and South America shall be imported in separate importations. Importers of cattle from Europe are much more limited than importers from South America in when they can have their cattle qualified for importation into the HSTAIC. This is because of several factors including the severe winter weather and certain vaccination programs required by European countries but not found in South America. Cattle which have been vaccinated cannot enter the HSTAIC, so an importation of European cattle must occur before the cattle reach an age where they must, by law, be vaccinated. Based on these factors the Department anticipates that the next importation of catle from South America should be able to enter the HSTAIC on or about August 15, 1986, and any cattle that will qualify for importation from Europe should be able to enter the HSTAIC on or about December 15, 1986. The drawing for cattle from South America is scheduled for March 20, 1986, at 9 a.m. in Room 643A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. The drawing for cattle from Europe will begin immediately after the drawing for cattle from South America is completed.

Each applicant for importation shall complete an application for importing cattle through the HSTAIC which shall be received by Veterinary Services at least 5 days prior to the date of the drawing. Application forms may be obtained upon request from and completed applications must be sent to an received by Import-Export Animals and Products Staff, VS, APHIS, USDA, 6505 Belcrest Road, Room 838, Hyattsville, MD 20782.

Each application for South America or Europe shall be accompanied by a certified check, money order, or letter of credit payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service, in the amount of one thousand dollars ($1,000), for each animal for which special authorization is requested on the application. If a letter of credit is utilized, the effective date on the letter of credit accompanying an application for the importation of cattle from South America must run to December 1, 1986, and the effective date on the letter of credit accompanying an application for the importation of cattle from Europe must run to April 1, 1987. (The $1,000 deposit per animal does not apply to applications for exclusive use, pursuant to 9 CFR 92.41(b)(1)).

In the event the applicant does not receive special authorization for cattle for which the applicant has applied, the amount deposited with the application for each animal so authorized will be refunded. If the applicant receives special authorization, the deposited amount shall be applied against the total cost of importation of each animal. However, the $1,000 per head deposit is nonrefundable for each animal granted special authorization.

All applicants or their designated legal agents or representatives shall be required to appear in person at the drawing. Each designated legal agent or representative shall have a notarized statement of authority signed by the applicant. In accordance with these procedures, it should be emphasized that no person will be allowed to participate in the lottery as a designated legal agent or representative without a notarized statement of authority signed by the applicant. On the day of the drawing, the applicants selected or their legal agents or representatives shall be required to execute a cooperative agreement and pay the required fee in accordance with the provisions of the cooperative agreement.

If the total number of cattle for which special authorizations are requested is not at least 50, there shall not be a lottery or importation pursuant to 9 CFR 92.41(a) and the deposits shall be refunded to the applicants.

Special authorization for the exclusive use of the HSTAIC shall be issued in accordance with 9 CFR 92.41(b) when the HSTAIC is not scheduled for use for an importation of cattle pursuant to 9 CFR 92.41(a).

The fee schedules presented below are graduated depending on the number of cattle for which authorization is granted to qualify the cattle for entrance into the USDA approved embarkation facility and depending upon the number of cattle which go through the quarantine period at the USDA approved embarkation facility and the HSTAIC. To calculate the total deposit required for importation, the cost per head for qualifying or attempting to qualify cattle on the premises of origin must be added to the cost per head for 50 cattle to be quarantined in the USDA-approved embarkation facility and the HSTAIC. The fees are as follows:

COST OF QUALIFYING OR ATTEMPTING TO QUALIFY CATTLE—SOUTH AMERICA

[On Premises of Origin]

Number of cattle	Total fixed cost	In country: Fixed cost per head	In country: Variable cost per head	Total cost per head
50 to 55	$65,798	$1,316	$192	$1,508
56 to 60	67,827	1,211	192	1,403
61 to 65	69,855	1,145	192	1,337
66 to 70	71,884	1,069	192	1,261
71 to 75	73,913	1,041	192	1,233
76 to 80	75,942	999	192	1,191
81 to 85	77,970	963	192	1,155
86 to 90	79,999	930	192	1,122
91 to 95	82,028	901	192	1,093
96 to 100	84,056	876	192	1,068
101 to 105	86,085	852	192	1,044
106 to 110	88,114	831	192	1,023
111 to 115	90,142	812	192	1,004
116 to 120	92,171	795	192	987
121 to 125	94,200	779	192	971
126 to 130	96,229	764	192	956
131 to 135	98,257	750	192	942
136 to 140	100,286	737	192	929
141 to 145	102,315	726	192	918
146 to 150	104,343	715	192	907
151 to 155	106,372	704	192	896
156 to 160	108,401	695	192	887
161 to 165	110,429	686	192	878
166 to 170	112,458	677	192	869
171 to 175	114,487	670	192	862
176 to 180	116,516	662	192	854
181 to 185	118,544	655	192	847
186 to 190	120,573	648	192	840
191 to 195	122,602	642	192	834
196 to 200	124,630	636	192	828
201 to 205	126,659	630	192	822
206 to 210	127,139	617	192	809
211 to 215	127,819	605	192	797
216 to 220	128,099	593	192	785
221 to 225	128,579	582	192	774
226 to 230	129,059	571	192	763

COST OF QUARANTINING CATTLE—SOUTH AMERICA

[Canaveia and HSTAIC]

Number of cattle	Total fixed cost	In quarantine: Fixed cost per head	In quarantine: Variable cost per head	Total cost per head
50 to 55	$311,562	$6,231	905	$7,136
56 to 60	315,813	5,640	905	6,545
61 to 65	320,064	5,247	905	6,152
66 to 70	324,315	4,914	905	5,819
71 to 75	328,566	4,628	905	5,533
76 to 80	332,817	4,379	905	5,284
81 to 85	337,068	4,161	905	5,066
86 to 90	341,319	3,969	905	4,874
91 to 95	345,570	3,797	905	4,702
96 to 100	349,821	3,644	905	4,549
101 to 105	354,072	3,506	905	4,411
106 to 110	363,549	3,430	905	4,335
111 to 115	373,026	3,361	905	4,266
116 to 120	382,502	3,297	905	4,202
121 to 125	391,979	3,239	905	4,144
126 to 130	401,456	3,186	905	4,091
131 to 135	410,933	3,137	905	4,042
136 to 140	420,410	3,091	905	3,996
141 to 145	429,886	3,049	905	3,954
146 to 150	439,363	3,009	905	3,914
151 to 155	448,840	2,972	905	3,877
156 to 160	453,044	2,904	905	3,809
161 to 165	457,248	2,840	905	3,745
166 to 170	461,451	2,780	905	3,685
171 to 175	465,655	2,723	905	3,628
176 to 180	469,859	2,670	905	3,575
181 to 185	474,063	2,619	905	3,524
186 to 190	478,267	2,571	905	3,476
191 to 195	482,470	2,526	905	3,431
196 to 200	486,674	2,483	905	3,388
201 to 205	490,878	2,442	905	3,347
206 to 210	497,063	2,413	905	3,318
211 to 215	503,309	2,385	905	3,290
216 to 220	509,524	2,359	905	3,264
221 to 225	515,740	2,334	905	3,239
226 to 230	521,955	2,310	905	3,215

COST OF QUALIFYING OR ATTEMPTING TO QUALIFY CATTLE—EUROPE

[On Premises of Origin]

Number of Cattle	Total fixed cost	In country: Fixed cost per head	In country: Variable cost per head	Total cost per head
50 to 55	$77,052	$1,541	$154	$1,695
56 to 60	79,167	1,414	154	1,568
61 to 65	81,282	1,332	154	1,486
66 to 70	83,398	1,264	154	1,418
71 to 75	85,513	1,204	154	1,358
76 to 80	87,628	1,153	154	1,307
81 to 85	89,743	1,106	154	1,262
86 to 90	91,858	1,068	154	1,222
91 to 95	93,974	1,033	154	1,187
96 to 100	96,089	1,001	154	1,155
101 to 105	98,204	972	154	1,126
106 to 110	100,319	946	154	1,100
111 to 115	102,434	923	154	1,077
116 to 120	104,550	901	154	1,055
121 to 125	106,665	882	154	1,036
126 to 130	108,780	863	154	1,017
131 to 135	110,895	847	154	1,001
136 to 140	113,010	831	154	985
141 to 145	115,126	816	154	970
146 to 150	117,241	803	154	957
151 to 155	119,356	790	154	944
156 to 160	121,471	779	154	933
161 to 165	123,586	768	154	922
166 to 170	125,702	757	154	911
171 to 175	127,817	747	154	901
176 to 180	129,932	738	154	892
181 to 185	132,047	730	154	884
186 to 190	134,162	721	154	875
191 to 195	136,278	713	154	867
196 to 200	138,393	706	154	860
201 to 205	140,508	699	154	853
206 to 210	140,988	684	154	838
211 to 215	141,468	670	154	824

COST OF QUALIFYING OR ATTEMPTING TO QUALIFY CATTLE—EUROPE—Continued

[On Premises of Origin]

Number of Cattle	Total fixed cost	In country: Fixed cost per head	In country: Variable cost per head	Total cost per head
216 to 220	141,948	657	154	811
221 to 225	142,428	644	154	798
226 to 230	142,908	632	154	786

COST OF QUARANTINING CATTLE—EUROPE

[Brest and HSTAIC]

Number of cattle	Total fixed cost	In Quarantine: Fixed cost per head	In Quarantine: Variable cost per head	Total cost per head
50 to 55	$319,861	$6,397	$808	$7,205
56 to 60	324,114	5,786	808	6,596
61 to 65	328,368	5,383	808	6,191
66 to 70	332,621	5,040	808	5,848
71 to 75	336,874	4,745	808	5,553
76 to 80	341,128	4,489	808	5,297
81 to 85	345,381	4,264	808	5,072
86 to 90	349,634	4,066	808	4,874
91 to 95	353,887	3,889	808	4,697
96 to 100	358,141	3,731	808	4,539
101 to 105	362,394	3,588	808	4,396
106 to 110	371,902	3,509	808	4,317
111 to 115	381,409	3,436	808	4,244
116 to 120	390,917	3,370	808	4,178
121 to 125	400,424	3,309	808	4,117
126 to 130	409,932	3,253	808	4,061
131 to 135	419,439	3,202	808	4,010
136 to 140	428,947	3,154	808	3,962
141 to 145	438,454	3,110	808	3,918
146 to 150	447,962	3,068	808	3,876
151 to 155	457,469	3,030	808	3,838
156 to 160	461,674	2,959	808	3,767
161 to 165	465,879	2,894	808	3,702
166 to 170	470,085	2,832	808	3,640
171 to 175	474,290	2,774	808	3,582
176 to 180	478,495	2,719	808	3,527
181 to 185	482,700	2,667	808	3,475
186 to 190	486,905	2,618	808	3,426
191 to 195	491,111	2,571	808	3,379
196 to 200	495,316	2,527	808	3,335
201 to 205	499,521	2,485	808	3,293
206 to 210	505,736	2,455	808	3,263
211 to 215	511,952	2,426	808	3,234
216 to 220	518,167	2,399	808	3,207
221 to 225	524,383	2,373	808	3,181
226 to 230	530,598	2,348	808	3,156

Done at Washington, D.C., this 21st day of January, 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-1710 Filed 1-27-86; 8:45 am]

BILLING CODE 3410-34-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:00 p.m., on February 15, 1986, at the Call for Action Building, 3401 Pecos, Denver,

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Colorado. The purpose of the meeting is to conduct a community forum on Hispanic student dropouts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 22, 1985.

Bert Silver,

Assistant Stoff Director for Regional Programs.

[FR Doc. 86–1748 Filed 1–27–86; 8:45 am]

BILLING CODE 6335–01–M

Illinois Advisory Committee Meeting; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission scheduled for February 12, 1986, convening at 7:00 p.m. and adjourning at 9:00 p.m., at the Midland Hotel, 172 W. Adams, Chicago, Illinois has a new meeting purpose.

The meeting date, times and location will remain the same. The purpose of the meeting is to plan for the forum on February 13, 1986 and to discuss other civil rights developments in the State.

Dated at Washington, DC, January 21, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–1749 Filed 1–27–86; 8:45 am]

BILLING CODE 6335–01–M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 1:30 p.m., on March 12, 1986, at the Girl Scouts of Rhode Island, 125 Charles Street, Providence, Rhode Island. The purpose of the meeting is to review progress on a local civil rights directory project and discuss the efforts of the Providence police department to recruit minority officer candidates.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, David Sholes or Jacob Schlitt, Director of the New England Regional Office at (617)223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 22, 1986.

Bert Silver,

Assistant Stoff Director for Regional Programs.

[FR Doc. 86–1750 Filed 1–27–86; 8:45 am]

BILLING CODE 6335–01–M

Tennessee Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Commmittee to the Commission will convene at 3:00 p.m. and adjourn at 7:00 p.m. on February 21, 1986, at the Vanderbilt Plaza Hotel, 2100 West End Avenue, Rand Room, Nashville, Tennessee. The purpose of the meeting is to plan for community forum on "Higher Education Desegregation: Tennessee University System."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Blumstein, or Bobby Doctor, Director of the Southern Regional Office at (404) 221–4391, (TTD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 22, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–1751 Filed 1–27–86; 8:45 am]

BILLING CODE 6335–01–M

Washington Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 5:30 p.m., on February 14, 1986, at the Third and Board Building, 2901 Third Avenue, MS 110, Rooms 180 & 182, Seattle, Washington. The purpose of the meeting is to conduct a community forum on minority student achievement in Seattle public schools.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Arnold Manseth or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442–1246, (TDD 206/442–4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 22, 1985.

Bert Silver,

Assistant Stoff Director for Regional Programs.

[FR Doc. 86–1752 Filed 1–27–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Federal Coal Export Commission: Membership

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice.

SUMMARY: On November 25, 1985, the Secretary of Commerce (Secretary) established the Federal Coal Export Commission (Commission) pursuant to the "International Security and Development Cooperation Act of 1985," Pub. L. No. 99–83. The Commission will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2 (1982).

The Commission will have 30 members. Ten members will be prepresentatives from the U.S. Government. These members will be from the Departments of Commerce, Energy, Transportation, State, Interior, Labor, and Energy, the International Trade Administration, the Office of the U.S. Trade Representative, the Export-Import Bank, and the National Coal Council. The remaining members will be nominated from the private sector and will be representatives of producers of export coal, coal labor, coal transporters, and financial institutions with an interest in U.S. coal exports. The Secretary has asked the following organizations to nominate qualified individuals to serve on the Commission. The nominees are to be at the Chief Executive Officer, President, or Director level, with actual experience in areas affecting the export of U.S. coal.

Coal Exporters

National Coal Association, Washington, DC
Coal Exporters Association, Washington, DC
American Mining Congress, Washington, DC
Western Coal Export Council, Houston, TX
Mining & Reclamation Council of America, Washington, DC

Coal Labor

United Mine Workers of America, Washington, DC
International Union of Operating Engineers, Washington, DC
Railway Labor Executive Association, Washington, DC
International Longshoremens Association, Washington, DC
International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Washington, DC

Transporters of Export Coal

Association of American Railroads, Washington, DC
American Waterways Operators, Arlington, VA
American Association of Port Authorities, Alexandria, VA
Mississppi Valley Exporters Council, New Orleans, LA
Slurry Technology Association, Washington, DC

Financial Institutions

Amercian Bankers Association (4), Washington, DC
Foreign Credit Insurance Association, NY

These organizations have been asked to submit the names of a senior level representative and two alternates by February 7, 1986. Inquiries regarding private sector nominees should be made directly to these associations.

FOR FURTHER INFORMATION CONTACT: James M. Waters, Counsel to the Federal Coal Export Commission, Room 5611, U.S. Department of Commerce, Washington, DC 20230.

Dated: January 23, 1986.

Robert H. Brumley,

Executive Director, Federal Coal Export Commission.

[FR Doc. 85–1876 Filed 1–27–85; 8:45 am]

BILLING CODE 3510–BW–M

Bureau of the Census

Annual Survey of Communication Service Industries; Notice of Consideration

The Bureau of the Census hereby gives notice that we plan to conduct an annual survey of Communication Service Industries. This annual survey will be conducted under authority of Title 13, United States Code, sections 182, 224, and 225. Data for 1984 and 1985 will be collected on operating revenues, and expenses of communication service industries, including telephone communication, radio and television broadcasting, telegraphic, and other communication services. The survey, if conducted, shall begin not earlier than April 1, 1986.

Aggregate industry-wide data on communication services are not publicly available from nongovernmental or other governmental sources on a continuing basis. The need for these data has been documented by a number of sources, including the General Accounting Office, the National Academy of Sciences, and the U.S. House of Representatives Subcommittee on Telecommunications, Consumer Protection, and Finance. Information and recommendations received by the Bureau of the Census show that data developed from this survey have significant applications to the information needs of the public, the communication industries, and governmental agencies.

The Bureau of the Census needs reports only from a selected sample of communication service firms operating in the United States, with probability of selection based on payroll size. The sample will provide, with measurable reliability, national aggregate statistics on operating revenue and expenses. No data for individual companies will be released.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, DC 20233.

Any suggestions or recommendations concerning this survey will receive consideration if submitted in writing to the Director, Bureau of the Census, within 30 days of publication of this notice in the **Federal Register.**

Dated: January 22, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–1787 Filed 1–27–86; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In FR Doc. 86–1258 appearing on page 2747 in the issue of Tuesday, January 21,1986, make the following correction:

In the second column, in the table, under "Periods to be reviewed" the last line should have read "1/84–12/84".

BILLING CODE 1505–01–M

Arizona State University; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85–138R. Applicant: Airzona State University, Department of Chemistry, Tempe, AZ 85287. Instrument: X-Ray Powder Diffractometer, Model D/MAX–RB and Accessories. Original notice of this resubmitted application was published in the **Federal Register** of May 3, 1985.

Docket Number: 86–018. Applicant: Rutgers University, College of Engineering, P.O. Box 909, Piscataway, NJ 08854. Instrument: Electron Microscope, Model JEM–100CX. Manufacturer: JEOL, Limited, Japan. Intended Use: The instrument is intended to be used for instruction in a course in TEM Laboratory. The objective of the course is to familiarize the students with the skills necessary to

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operate a modern TEM. Application received by Commissioner of Customs: October 16, 1985.

Docket Number: 86-068. Applicant: California Institute of Technology, Pasadena, CA 91125. Instrument: Electron Microscope, Model EM 430. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument will be used for varied research interests which involve kinetic phenomena in materials synthesis and in materials characterization as a central theme. Experimental programs are directed toward the following: formation of metastable alloys by either rapid quenching, kinetic (diffusional) stablization, ion beam mixing or shock consolidation; molecular dynamics combined with non-equilibrium statistical mechanics to simulate the various atomic collision, chemical and diffusion phenomena governing these material processes; compositional modifications or modulation of materials (including superlattices); experiments permitting detailed examination of the kinetics of sputtering, mixing, and damage and theoretical programs aimed at molecular dynamics simulation of these processes. The instrument will also be used in two laboratory courses to acquaint the students with the modern techniques employed in the study of structure-property relationships in materials. Application received by Commissioner of Customs: December 20, 1985.

Docket Number: 86-069. Applicant: Barnett Institute, Northeastern University, 360 Huntington Avenue, Boston, MA 02115. Instrument: Circular Dichroism Spectropolarimeter, Model J-500C. Manufacturer: Japan Spectroscopic Company, Limited, Japan. Intended Use: The instrument will be used to obtain circular dichroism spectra of proteins that are chemically conjugated together, fragmented proteolytically, or unfolded under partially denaturing conditions. Experiments will be conducted to:

(1) Define the structure of a conjugate of ribonuclease and a Fab antibody fragment;
(2) Study subtle changes of the microenvironment of the heme of cytochrome C;
(3) Examine the unfolding of ribonuclease in organic soivent—buffer solutions;
(4) Compare predicted and experimental structures of ribonuclease, papain and ovalbumin.

The instrument will also be used in the course Modern Methods of Analysis to teach students both theoretical and practical aspects of modern instrumental techniques. Application received by Commissioner of Customs: December 20, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1772 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DS-M

Auburn University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-117R. Applicant: Auburn University, Auburn, AL 36849. Instrument: Secondary Ion Mass Spectrometer with Accessories. Original notice of this resubmitted application was published in the Federal Register of April 8, 1985.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article provides a beam diameter of 100 μm and a current density of 1-4 MA/cm², which enhances spatial resolution and sputtering rates. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1773 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DS-M

Cornell University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington DC.

Docket Number: 85-310. Applicant: Cornell University, Ithaca, NY 14853. Instrument: Electric Field Boom Assemblies, Model 3600. Manufacturer: SAAB Space, Sweden. Intended Use: See notice at 50 FR 45646.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is capable of providing in situ measurements in space of the Earth's electric field from dc to 100 000 cycles/second. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1774 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DS-M

Montana State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 85-190. Applicant: Montana State University, Bozeman, MT 59717. Instrument: Monochromatized X-Ray Source, Model RMC-10 with Accessories. Manufacturer: Leybold-Heraeus, West Germany. Intended Use: See notice at 50 FR 28395.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is an accessory for an existing instrument. It makes possible the detection of small peaks of trace elements. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1775 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DS-M

North Carolina State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 85-263. Applicant: North Carolina State University, Raleigh, NC 27695-7908. Instrument: Soil Testing System. Manufacturer: GDS Instruments, Limited, United Kingdon. Intended Use: See notice at 50 FR 34537.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides continuously controlled triaxial stress path tests with a pressure resolution of 0.25 kilopascals and a volume sensitivity of 0.5 cubic millimeters. The National Bureau of Standards advises in its memorandum dated November 25, 1985 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1776 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DS-M

Rensselaer Polytechnic Institute; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(C) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86-005. Applicant: Rensselear Polytechnic Institute, Troy, NY 12180-3590. Instrument: Spot Profile Analysis Low-energy Electron Diffractometer (SPA-LEED). Manufacturer: Leybold-Heraeus GmbH, West Germany. Intended Use: See notice at 50 FR 45647.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides high resolving power and two dimensional mapping of diffraction beam intensity. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1777 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Lawrence Livermore National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 85-303. Applicant: University of California, Lawrence Livermore National Laboratory, Livermore, CA 94550. Instrument: X-Ray Streak Camera System, Model C1936. Manufacturer: Hamamatsu Corporation, Japan. Intended Use: See notice at 50 FR 45645.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (May 22, 1985).

Reasons: The foreign article is sensitive to x-ray generation, thereby providing measurement of spatially and temporally resolved electron energy and current densities. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be take into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

In this case, the applicant received no response to a formal request for quotation sent to the only domestic manufacturer of comparable instruments we know of. It is therefore apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs, Staff.

[FR Doc. 86-1778 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DS-M

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University of Chicago, Operator of Argonne National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 85–296. Applicant: University of Chicago, Operator of Argonne National Laboratory, Argonne, IL 60439. Instrument: FTIR Vacuum Spectrometer, Model 6107457 and Accessories. Manufacturer: Bruher Analytische Messtechnik, GmbH, West Germany. Intended Use: See notice at 50 FR 41381.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (April 16, 1985).

Reasons: The foreign instrument provides for extended range spectra taken with both high and low temperature cells.

The capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

In this case, the applicant received no response to a formal request for quotation sent to several domestic manufacturers of comparable instruments. It is therefore apparent that no domestic manufacturer was both able and willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1779 Filed 1–27–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Iowa et al.; Applications for Duty-Free Entry of Scientific Instruments

Purusant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–063. Applicant: University of Iowa, Purchasing Department, 800 Jefferson Boulevard, Iowa City, IA 52242. Instrument: Mass Spectrometer, Model ZAB–HF with 11/250 Data System. Manufacturer: VG Instruments Group, United Kingdom. Intended Use: The instrument will be used for structural studies of organic, organometallic, inorganic, and biochemical compounds. Experiments to be conducted will involve high resolution accurate mass measurement. Such measurements allow the confirmation or determination of elemental compositions of molecular ions, pseudomolecular ions, and fragment ions which are observed in a mass spectrum. The instrument will also be used for educational purposes in the courses: Dissertation Research, Introduction to Organic Research and Undergraduate Research. Application received by Commissioner of Customs: December 12, 1985.

Docket Number: 86–065. Applicant: The Johns Hopkins University, Department of Chemistry, Charles & 34th Streets, Baltimore, MD 21218. Instrument: Mass Spectrometer, Model MM7070S. Manufacturer: VG Analytical Limited, United Kingdom. Intended Use: The instrument will be used to investigate the following range of materials: (i) biological samples such as carbohydrates, liposaccharides and lipoproteins, (ii) peptide enzyme inhibitors. peptide antibiotics and glycopeptide natural products, (iii) synthetic and natural products chemistry common to a chemistry department and (iv) solid state chemistry such as conducting organic metals and novel materials and some geological samples. Application received by Commissioner of Customs: December 13, 1985.

Docket Number: 86–069. Applicant: U.S. Department of Energy, New Brunswick Laboratory, Building 350, 9800 South Cass Avenue, Argonne, IL 60439. Instrument: Mass Spectrometer, Model 261 with Accessories. Manufacturer: Finnigan MAT GmbH, West Germany. Intended Use: The instrument will be used to do routine isotopic analysis of uranium and plutonium and to characterize isotopic standards and reference materials. Isotope dilution techniques will be utilized to determine the elemental concentration for these two materials. Refinements of the present measurement techniques as well as the development of new techniques will be evaluated to provide the highest level of assurance in the state-of-the-practice measurement technology. Application Received by Commissioner of Customs: December 13, 1985.

Docket Number: 86–076. Applicant: Maimonides Medical Center, Department of Pathology, 4802 10th Avenue, Brooklyn, NY 11219. Instrument: Electron Microscope, Model EM 109. Manufacturer: Carl Zeiss, West German. Intended Use: The instrument will be used for the study of the ultrastructural nature of lymphomas, leukemias and carcinomas and for studies of infectious diseases. The instrument will also be used for the training of residents who must learn the ultrastructural pathology of tumors and immune complex diseases. The training is imperative for them to function adequately so that they may deliver good health care and learn of the importance of electron microscopy in research. Application Received by

Commissioner of Customs: December 12, 1985.

Docket Number: 86–082. Applicant: University of Michigan, Chemistry Department, 930 N. Unviersity Avenue, Ann Arbor, MI 48109. Instrument: Mass Spectrometer, Model 70–250S. Manufacturer: VG Instruments, United Kingdom. Intended Use: The instrument is intended to be used to conduct research of the following:

(1) Distibines, New One-Dimensional Materials.
(2) Synthetic Studies of Binary Metal Sulfide Complexes.
(3) Characterization of Organometallic Complexes.
(4) Mass Spectrometry of Metalloporphyrins.
(5) Structural and Synthetic Studies of Bioactive Natural Products and Carcinogenic Polycyclic Aromatic Hydrocarbons.
(6) Formation and Properties of Ozonides.
(7) Organic Synthesis, Polypeptides.
(8) Synthetic Methodology.
(9) Organic Polymer Chemistry.
(10) Organic Synthesis.
(11) Homobinuclear Managanese Complexes.
(12) Complexes of Tetracyanobiimidazole.
(13) Nucleoside Antibiotics.
(14) Physical Organic Chemistry.

Application received by Commissioner of Customs: December 13, 1985.

Docket Number: 86–087. Applicant: Stanford Unversity, Stanford, CA 94305. Instrument: Electron Microscope, Model EM 430 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: The instrument is intended to be used for the study of solid-phase materials, particularly (but not limited to) semiconductors and metals. Phase transformations, interface morphology, and defect analyses are of particular interest, the overall goal being the elucidation of a variety of structure-property relationships. Often, the work will employ high resolution imaging techniques. In addition, the instrument will be used for educational purposes in the courses: Engineering 5—The Microscopic World of Technology, Materials Science 243—Transmission Electron Microscopy and Materials Science 253—TEM Laboratory. Application received by Commissioner of Customs: December 19, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1780 Filed 1–27–86; 8:45 am]

BILLING CODE 3510-DS-M

University of New Mexico et al; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Docket Number: 85–279. Applicant: University of New Mexico, Albuquerque, NM 87131. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 50 FR 38569. Instrument Ordered: July 25, 1985.

Docket Number: 85–280. Applicant: The Connecticut Agricultural Experiment Station, New Haven, CT 06504. Instrument: Electron Microscope, Model EM 10CA/C/CR. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 50 FR 3870. Instrument Ordered: July 18, 1985.

Docket Number: 85–282. Applicant: Naval Research Laboratory, Washington, DC 20375–5000. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 50 FR 38570. Instrument Ordered: August 21, 1985.

Docket Number: 85–305. Applicant: University of New Mexico, Albuquerque, NM 87131. Instrument: Electron Microscope, Model EM 109 with TFP Photography System. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 50 FR 41379. Instrument Ordered: September 10, 1985.

Docket Number: 85–306. Applicant: Yale University School of Medicine, New Haven, CT 06510. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL Limited, Japan. Intended Use: See notice at 50 FR 41375. Instrument Ordered: April 30, 1985.

Docket Number: 85–312. Applicant: Our Lady of the Lake Regional Medical Center, Baton Rough, LA 70809. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 50 FR 45646. Instrument Ordered: August 9, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–1781 Filed 1–27–86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Plan Development Team, Salmon Advisory Subpanel, and members of the Council's Scientific and Statistical Committee will convene a public meeting, February 13, 1986, at 1 p.m., in the Commission Room of the Oregon Department of Fish and Wildlife, 506 SW. Mill Street, Portland, OR, to allow review of the preliminary 1986 salmon stock abundance projections by the Council's advisory entities. Public and written or oral statements pertaining to the abundance projections will be accepted during the appropriate portion of the review. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 SW. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Dated: January 22, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–1847 Filed 1–27–86; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 404]

Marine Mammals; Permit Modification; Southwest Fisheries Center

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e)

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of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 404 issued to the Southwest Fisheries Center, National Marine Fisheries Service, La Jolla, California, 92038 on February 2, 1983 (48 FR 8758), as modified on October 26, 1984 (49 FR 43987), is further modified as follows:

Section A.1 is deleted and replaced by:

"1. Up to 200 Northern elephant seals (*Mirounga angustirostris*) may be captured, marked and/or tagged, and released. Of these, 15 may also be blood sampled."

Section B.5 is deleted and replaced by:

"5. The Permit is valud with respect to the taking authorized herein until November 31, 1987."

This modification is effective as of January 1, 1986.

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 22, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1815 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limit on Cotton Textile Products, Produced or Manufactured in Bangladesh

January 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 29, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton Textile Agreement of June 28, 1985 between the Governments of the United States and the People's Republic of Bangladesh establishes a specific limit of 58,300 dozen for men's and boys' other cotton coats in Category 334, produced or manufactured in Bangladesh and exported during the twelve-month period beginning on January 29, 1986 and extending through January 28, 1987. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports in this category at the designated limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisons.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Agreement of June 28, 1985, between the Government of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective January 29, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 334, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on January 29, 1986 and extends through January 28, 1987 in excess of 58,300 dozen.

In carring out this directive, entries of cotton textile products in Category 334, produced or manufactured in Bangladesh, which have been exported to the United States on and after January 29, 1985 and extending through January 28, 1986 shall, to the extent of any unfilled balance, be charged against the level established for such goods during that twelve-month period. In the event the level established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

The limit is subject to adjustment in the future according to the provisions of the bilateral agreement which provide, in part, that: (1) specific limits may be exceeded by not more than six percent for swing during an agreement year; (2) carryforward of six percent is available during the initial twelve-month periods; and (3) carryover may be available up to 11 percent during the subsequent agreement periods.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 86-1850 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Increasing Import Levels for Certain and Man-Made Fiber Textile Products Produced or Manufactured in Colombia

January 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 29, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Colombia have exchanged notes dated December 10, 1985 further amending their Bilateral Cotton, Wool and Man-Made Fiber Textile

Agreement, as amended, to convert the existing minimum consultation level of 152,174 dozen pairs for man-made fiber hosiery in Category 632 and 128,205 pounds for other man-made fiber furnishings in Category 666 to a consultation level of 347,826 dozen pairs and 256,410 pounds, respectively, for the agreement year which began on July 1, 1985 and extends through June 30, 1986. The letter to the Commissioner of Customs which follows this notice establishes these increased levels and controls them for the first in the current agreement year.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Categories 632 and 666 exported during the period which began on July 1, 1985 and extends through June 30, 1986, in excess of the designated restraint levels. Charges for goods exported during the aforementioned period and imported during the period July 1, 1985 through October 31, 1985 have amounted to 6,757 dozen pair for Category 632 and 1,217 pounds for Category 666 and will be charged.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of June 27, 1985, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in Colombia and exported during the twelve-month period which began on July 1, 1985 and extends through June 30, 1986.

Effective on January 29, 1986, the directive of June 27, 1985 is hereby further amended to include a restraint level of 347,826 dozen pairs for man-made fiber textile products in Category 632 and 256,410 pounds for man-made fiber textile products in Category 666.

Textile products in Categories 632 and 666 which have been exported to the United States prior to July 1, 1985 shall not be subject to this directive.

Textile products in Categories 632 and 666 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-1851 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DR-M

Increasing the Import Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia

January 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 23, 1986. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

A CITA directive dated October 31, 1985 (50 FR 46152) established limits for certain specified categories of cotton, wool and man-made fiber textile products within the aggregate including Category 369pt. (only T.S.U.S.A. number 366.2740 and 366.2840), produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1985. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985 between the Governments of the United States and Indonesia, swing and carryforward are being applied to the restraint limit established for Category 369pt.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of October 31, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia.

Effective on January 23, 1986, the directive of October 31, 1985 is hereby amended to adjust the previously established restraint limit for cotton textile products in Category 369pt.[1] to 1,017,000 pounds[2] for goods exported during the agreement year which began on July 1, 1985 and extends through June 30, 1986.[3]

[FR Doc. 86-1852 Filed 1-27-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted for Review to Office of Management and Budget

AGENCY: Commodity Futures Trading Commission.

[1] The levels have not been adjusted to reflect any imports exported after June 30, 1985. Imports during the period July 1, through October 31, 1985 have amounted to 6,757 dozen pairs (Category 632) and 1,217 pounds (Category 666).

[1] In Category 369, only T.S.U.S.A. numbers 366.2740 and 366.2840.

[2] The limit has not been adjusted to reflect any imports exported after July 1, 1985.

[3] The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25, and October 3, 1985 between the Governments of the United States and Indonesia provides, among other things, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

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ACTION: Notice of Information Collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395–7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254–9735.

Title: Practice by Former Members and Employees of the Commission, 17 CFR 140.735–10.

Abstract: The purpose of this regulation, which generally governs the practice by former members and employees of the Commission before the Commission, is to insured that the Commission is aware of any conflicts of interest that may exist.

Control Number: 3038–0025.

Action: Reinstatement.

Respondents: Former members and employees of the Commission.

Estimated annual burden: 1.2 hours.

Estimated number of respondents: 12.

Issued in Washington, D.C., January 23, 1986.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–1820 Filed 1–27–86; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of the upholstered furniture industry, with a requested expiration date of September 30, 1986.

The purpose of this survey is to determine the extent to which manufacturers of upholstered furniture participating in a voluntary program to improve resistance of upholstered furniture to ignition from cigarettes conform with the requirements of that program. In 1981, the Commission voted to defer consideration of a mandatory flammability standard for upholstered furniture and directed its staff to work with manufacturers participating in the Voluntary Action Program of the Upholstered Furniture Action Council (UFAC) to improve resistance of upholstered furniture to cigarette ignition. In 1984, the Commission tested several items of upholstered furniture manufactured in accordance with the UFAC program to measure their ability to resist ignition from cigarettes.

The Commission staff proposes to inspect 25 firms which manufacture upholstered furniture and participate in the UFAC program to determine the extent to which they use the materials, construction methods, and labeling specified by that program. The staff also proposes to inspect fifteen firms which manufacture component materials for use by upholstered furniture manufacturers participating in the UFAC program to determine the extent to which component materials comply with applicable requirements of the program. The Commission will use the information obtained from this survey to determine the extent to which the upholstered furniture industry is in conformance with the UFAC program and whether further consideration of a mandatory flammability standard for upholstered furniture may be warranted.

Details About the Proposed Collection of Information

Agency address: Consumer Product Safety Commission, 1111 18th Street NW., Washington, DC 20207.

Title of information collection: FY 1986 Upholstered Furniture Voluntary Standard Monitoring Program.

Type of request: Approval of new program.

Frequency of collection: One time.

General description of respondents: Manufacturers of upholstered furniture participating in the UFAC program to improve resistance of upholstered furniture to cigarette ignition, and manufacturers of component materials intended for use by manufacturers participating in the UFAC program.

Estimated number of respondents: 40.

Estimated number of hours for each respondent: 3.

Comments: Comments on this request for approval of a collection of information should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Budget, Planning, and Program Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: January 22, 1986.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 86–1846 Filed 1–27–86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Supplemental Notice of Intent to Prepare Environmental Impact Statement; Aberdeen Proving Ground, MD, et al.

AGENCY: Department of the Army, Department of Defense.

ACTION: Supplemental Notice of Intent to prepare a programmatic Environmental Impact Statement (EIS) and other appropriate site-specific environmental documents on the potential impacts resulting from the disposal of the entire stockpile of chemical agents/munitions currently in storage within the continental United States (CONUS) as referenced in Pub. L. 99–145 (1986 Defense Authorization Act). Stockpiles of these munitions and agents are located at the following CONUS installations: U.S. Army Aberdeen Proving Ground (APG), Maryland; Anniston Army Depot (ANAD), Alabama; Lexington-Blue Grass Army Depot (LBAD), Kentucky; Newport Army Ammunition Plant (NAAP), Indiana; Pine Bluff Arsenal (PBA), Arkansas; Pueblo Army Depot Activity (PUDA), Colorado; Tooele Army Depot (TEAD), Utah; and U.S. Army Depot Activity Umatilla (UMDA), Oregon.

1. On January 30, 1984, the Army published a Notice of Intent to prepare EISs for the demilitarization of M55 rockets stored at ANAD, LBAD and UMDA (49 FR 3679). In accordance with regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA), promulgated by the Council of Environmental Quality (CEQ) (40 CFR Parts 1500–1508) and applicable implementing regulations, the Army initiated a public scoping process designed to aid in identifying the significant issues related to the proposed action. Public scoping meetings were held at Anniston, Alabama (February 15, 1984), Richmond, Kentucky (February 16, 1984), and Hermiston, Oregon (February 21, 1984). As a result of comments received during the scoping process for those EISs, the Army determined that it was appropriate to develop a broader plan for the disposal of all M55 rockets currently in CONUS storage to prepare a single EIS which better examines all the alternatives.

2. On April 9, 1985, the Army published a Notice of Intent to prepare a single EIS on the potential impacts resulting from the disposal of all M55 rockets currently in storage within CONUS at ANAD, LBAD, PBA, TEAD, and UMDA (50 FR 4064).

3. The U.S. Congress, Title 14, Part B, Section 1412, 1986 Defense Authorization Act (Pub. L. 99–145) directs the Secretary of Defense to carry out the destruction of the U.S. stockpile of lethal chemical agents and munitions by September 30, 1994, in conjunction with the acquisition of binary chemical weapons. In view of this law and evaluation of long range defense requirements, the Army has determined that it is appropriate to expand the M55 rocket disposal EIS to include the disposal of the entire unitary chemical agent and munition stockpile currently in storage within CONUS. Accordingly, the schedule for the M55 rocket EIS must now be adjusted to include additional agents, munitions, and locations.

4. The Department of the Army, as Executive Agent for Department of Defense, is responsible for the disposal of lethal munitions in a manner which provides protection of public health and safety and which is evironmentally acceptable. Incineration in industrial-sized disposal facilities, coupled with comprehensive safety and pollution abatement systems, has been demonstrated to be the most efficient and environmentally safe process for destroying chemical agents. In accordance with NEPA, the Army will analyze and document the impacts of alternate courses of action and will consider the results of these analyses in its decision as to which of the alternatives to implement.

5. Alternatives which have been identified for consideration in the EIS include, but are not limited to:

a. The "no action" alternative which is considered to be the continued storage of the chemical munitions and agents at their current locations in accordance with applicable laws and regulations.

b. Construction (or modification), operation, and ultimate decommissioning of separate disposal facilities at each of the current CONUS storage locations. Upon completion of all agent disposal, these facilities shall be cleaned, dismantled, and disposed of in accordance with applicable laws and regulations. Variations of this alternative may consider the collocation of certain agents and munitions which are stored at some installations to other installations storing larger quantities of similar items.

c. Transportation to regional disposal facilities, to be constructed or modified, operated and decommissioned. Locations being considered as regional disposal sites are Toole Army Depot, Utah in the West and Anniston Army Depot, Alabama in the East.

d. Transportation to a CONUS or outside CONUS national disposal facility, to be constructed or modified, operated, and decommissioned. The location being considered for the national disposal site is Toole Army Depot, Utah.

6. In accordance with the decision to prepare an EIS on the disposal of the entire stockpile of existing lethal chemical agents and munitions in CONUS, the Army will be conducting a scoping process to aid in determining the significant issues related to the proposed action. The scoping process for this EIS will expand upon the scoping process initiated in January 1984 and extended in April 1985 on the demilitarization of M55 rockets. Public as well as Federal, State, and local agency participation and input are desired. In order to provide an opportunity for public input to the scoping process, interested individuals, governmental agencies, and private organizations are invited to submit information and comments for consideration by the Army and possible incorporation into the EIS. The Army is especially seeking information that would assist it in analyzing the potential environmental consequences of the proposed action. This includes other planned or completed environmental studies involving existing storage sites and neighboring environs potentially affected by the transportation alternatives; other environmental issues which the EIS should consider; recommended mitigating measures; and major impacts associated with the proposed action. Pertinent issues identified at the three public scoping meetings held in February 1984 on the demilitarization of the M55 rocket stockpile will be considered in this expanded EIS as will the findings of the National Research Council Report on Disposal of Chemical Munitions and Agents, and comments made at the series of M55 rocket demilitarization meetings held in Kentucky (LBAD area). Additional scoping meetings will be scheduled as required by public interest. Questions and comments regarding the scope of the environmental analyses should be submitted to LTC Robert R. Vocelka, U.S. Army Toxic and Hazardous Materials Agency, ATTN: AMXTH–ES–E, Aberdeen Proving Ground, Maryland, 21010–5401.

7. The draft EIS is expected to be available to the public in the summer, 1986. When the draft EIS is completed, a public notice of its availability for review will be announced in order that interested persons may comment on the document. Comments received will be considered in preparation of the final Environmental Impact Statement. Persons desiring to be placed on a mailing list to receive additional information regarding the public scoping process and copies of the draft and final EIS may contact LTC Robert R. Vocelka at the address indicated above.

Lewis D. Walker,

Deputy for Environmental, Safety and Occupational Health, OASA(I&L).

[FR Doc. 86–1817 Filed 1–27–86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 27, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of

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1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 23, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Special Education and Rehabilitative Services

Type of Review Requested: Extension
Title: Local Educational Agency Project Information Recordkeeping
Agency Form Number: NA
Frequency: Annually
Affected Public: Local governments
Reporting Burden
Responses: 0
Burden Hours: 0
Recordkeeping Burden
Recordkeepers: 10,000
Burden Hours: 10,000

Abstract: Each local school district which serves handicapped children who have been transferred from institutions is eligible for transfer funds under Chapter 1 of the Education Consolidation and Improvement Act. Each local educational agency submits a project application to the State educational agency (SEA) to qualify for these funds. The SEA keeps the application as part of its records to show how funds were used.

Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: State Performance Report, Chapter 1 of the Education Consolidation and Improvement Act of 1981
Agency Form Number: Ed 686-2
Frequency: Annually
Affected Public: State or local governments
Reporting Burden
Responses: 54
Burden Hours: 21,870
Recordkeeping Burden
Recordkeepers: 54
Burden Hours: 540.

Abstract: This report is used to obtain necessary participation and performance data on the Education Consolidation and Improvement Act (ECIA) Chapter 1 program throughout the Nation, to manage the program effectively, and to provide the Department with the information needed to comply with Sections 417(a), 418(a) and 422 of the General Education Provisions Act and Chapter 1, ECIA.

Office of Postsecondary Education

Type of Review Requested: Existing
Title: Tape Dump Procedures for the Guaranteed Student Loan (GSL) and Parent Loans for Undergraduate Students (PLUS) Programs
Agency Form Number: NA
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden
Responses: 37
Burden Hours: 2,960
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: Certain State and private non-profit guarantee agencies have agreed to provide the Department, via magnetic tape, data on borrowers participating in the GSL and PLUS programs. The data include each borrower's residence, institution, enrollment status, income, and type and amount of loans. The Department uses the data to generate a variety of managerial and statistical reports needed to evaluate the GSL and PLUS programs and to project the impact of various legislative, regulatory, and budgetary proposals on these programs. The Department also uses the data to monitor ineligible borrowing, for example, borrowing from several lenders in the same period to exceed an annual or cumulative debt limit.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: Application for Grants Under Library Services and Construction Act, Title VI-Library Literacy Program
Agency Form Number: G50-7P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden
Responses: 800
Burden Hours: 12,800
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0.

Abstract: This form will be used by State and local public libraries to apply for funds under Title VI of the Library Services and Construction Act, Pub. L. 98-480, to plan and coordinate library literacy programs, to train librarians and volunteers, and to acquire necessary materials.

Office of Educational Research and Improvement

Type of Review Requested: New
Title: National Survey of Chapter 1 Schools
Agency Form Number: 650-9P
Frequency: Non-recurring
Affected Public: State or local governments
Reporting Burden
Responses: 3,000
Burden Hours: 1,500
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0.

Abstract: This information will provide nationally representative data on the services provided to educationally deprived students under Chapter 1 of the Education Consolidation and Improvement Act (ECIA), as amended. It will be used to prepare a Congressionally mandated report for the 1987 reauthorization hearings on ECIA. The data will be collected from school administrators and other personnel.

[FR Doc. 86-1821 Filed 1-27-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM85-1-000]

Natural Gas Policy Act; Pipelines After Partial Wellhead Decontrol; Order Denying Request for Extensions; American Paper Institute, Inc., and Consumer Power Co.

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Section 284.223(g) of our regulations promulgated in Order No. 436[1] provides a transition period wherein transportation which had been authorized under § 157.209 of our regulations could continue for a period of 45 days, until December 15, 1985, if the pipeline notified us that it would comply with certain conditions concerning non-discriminatory access and rates. Section 284.10(a) of the regulations provided a transition period, through December 15, 1985, wherein new transportation arrangements under section 311 of the Natural Gas Policy Act of 1978 (NGPA) could be commenced without triggering the contract demand reduction/conversion conditions set forth in § 284.10 (c) and (d). Section 284.10(a) was amended by Order No. 436-A[2] on December 12, 1985. The amendment extends the transition period to February 15, 1986, with respect to transportation pursuant to NGPA section 311.

The American Paper Institute, Inc. (API), on December 4, 1985, and Consumers Power Company (Consumers), on December 6, 1985, have requested extensions of the December 15, 1985 dates in the two regulations.[3] As discussed below, we will deny their requests.

Specifically, API requests that we extend the December 15 termination date for providing non-discriminatory interstate transportation of self-help gas on an interim basis until 60 days after we issue an order on rehearing of Order No. 436, *i.e.*, until February 10, 1986. API argues that, absent the requested extension, existing transportation arrangements performed on an interim basis under Order No. 436 will cease on December 15. It contends that pipelines must decide before December 15 whether to participate in the Order No. 436 transportation program on a more permanent basis and that they need more time to evaluate the program.

We denied similar requests for an extension in Order No. 436-A. As we indicated there, it is important that the transportation program be initiated without delay. The existing transitional period is adequate to allow the final rule to be evaluated and the requisite managerial decisions concerning participation to be made on a timely basis. We also noted that there is nothing which precludes a pipeline from determining to initiate a permanent Order No. 436 program at any later date. Here, API has not made any arguments that were not considered and rejected in Order No. 436-A, and we see no reason to change our decision.

Consumers requests an extension until February 1, 1986, of the transition period during which pipelines may offer new transportation arrangements under NGPA section 311 without subjecting themselves to the contract demand reduction or conversion requirements of § 284.10 of the Order No. 436 regulations. As we indicated above, we amended § 284.10(a), in Order No. 436-A, to extend the transition period to February 15, 1986. Accordingly, Consumers' request is moot.

In light of the foregoing, API's and Consumers' requests for extension are denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1804 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-010]

Natural Gas Policy Act; Pipelines After Partial Wellhead Decontrol, Order Denying Alternative Requests for Rehearing and Waiver Of Commission Regulations; Amstar Corp.

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 6, 1985, Amstar Corporation filed a request for rehearing of the Commission's October 31, 1985 order wherein we denied Amstar's request for clarification of Order No. 436.[1] In the alternative, Amstar requests waiver of the Commission's Regulations. We deny Amstar's request for rehearing and for waiver of our Regulations.

Amstar states that it entered into a gas purchase contract with Equitable Resources Energy Company (Equitable) in the fall of 1985. The gas Amstar purchased from Equitable was to be transported by Texas Eastern Transmission Corporation (TETCO) under a contract with an effective date of September 1, 1985. Initial deliveries commened prior to October 9, 1985, but deliveries were discontinued after TETCO informed Equitable and Amstar that the quality of the gas was insufficient to permit injection into TETCO's system. As a result, Amstar was unable to initiate delivery to its plant.

Amstar then contracted with Texas Eastern Trading Company, an affiliate of TETCO, to purchase gas of sufficient quality to inject into TETCO's system. Amstar executed this gas purchase contract on October 7, 1985. Deliveries did not commence until October 18,

[1] RM85-1-000, 50 FR 42408 (October 18, 1985).

[2] 50 FR 52217 (December 23, 1985).

[3] While their pleadings are characterized as petitions for extensions, they are really requests for rehearing filed pursuant to section 19(a) of the Natural Gas Act. Since their petitions were not filed within 30 days of the date Order No. 436 was issued, they will not be considered as requests for rehearing. However, we will consider them as petitions for reconsideration of Order No. 436.

[1] 33 FERC ¶61,156 50 FR 42408, (October 18, 1985).

[Project No. 9035-000]

Availability of Environmental Assessment and Finding of No Significant Impact; Mountain West Hydro, Inc.

January 22, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Licenses

Project No.	Project name	State	Water body	Nearest town	Applicant
9035-000	Clarence Creek	OR	Clarence Creek	Blaine	Mountain West Hydro, Inc.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1804 Filed 1-27-86; 8:45 am]

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1985, however, and were terminated as of October 31, 1985.

Amstar requests that we grant rehearing of our October 31, 1985 order, wherein we found that the facts and circumstances presented by Amstar do not fall within the scope of the transitional provisions of the Regulations and do not merit a waiver of the Regulations. Amstar alleges that termination of its transactions with TETCO and its marketing affiliate causes a loss of approximately $7,000 per day and, under the terms of its contract with TETCO, such loss amounts to $2,550,000 annually. Amstar argues that grant of a waiver will not undermine the Commission's policies underlying Order No. 436 and that such waiver would be consistent with the court's decision in the *Maryland People's Counsel* cases because Amstar qualifies as a high-priority end-user.

The objectives of the transitional provisions of Order No. 436 are to minimize disruption in the gas markets and to prevent undue hardship that might reuslt from the transition from one regulatory scheme to another. The transitional provisions are designed to allow the continuation of transactions that had actual economic substance prior to the issuance of Order No. 436, while disallowing transactions initiated by parties after the date of the order unless the transporting pipeline agrees to provide non-discriminatory transportation services.

Under the transitional provisions, a transportation transaction can continue if the transportation was authorized and had commenced as of October 9, 1985. As recognized by Amstar, it does not meet these requirements. The Commission has waived the restrictions in the transitional provisions where the petitioner has demonstrated that, in reliance on a transportation contract, the purchaser, seller, or end user contructed significant facilities for delivery of gas prior to October 9, 1985, or expended substantial funds prior to October 9, 1985.[2] In the case before us, Amstar does not allege that it constructed significant facilities or expended substanital sums of money prior to October 9, 1985 in reliance on a transporation contract executed as of that date. Accordingly, Amstar's request for rehearing is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1792 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Judel Glassware Co., Inc.), 33 FERC ¶ 61,366 (issued December 17, 1985). *Accord* Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Carbonaire Co., Inc.), 34 FERC ¶ 61,016 (issued January 7, 1986).

[Docket No. Rm 85-1-143]

Natural Gas Policy Act; Pipelines After Partial Wellhead Decontrol; Clarification; ANR Pipeline Company

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 18, 1985, ANR Pipeline Company (ANR) filed a request for clarification of § 284.7(b)(2) [1] of the Regulations promulgated by Order Nos. 436 and 436-A.[2] Section 284.7(b)(2) provides that "[a]ny person offering a transportation service subject to this section must file rates in accordance with paragraph (a) of this section *to be effective not later than July 1, 1986.*" (emphasis added). ANR requests clarification of the meaning of the phrase "to be effective not later than July 1, 1986." Specifically, ANR expressed the concern that this provision may require pipelines to file rates under these regulations no later than January 1, 1986, in order to assure that, taking into account the possible five-month suspension period, the rates will become effective by July 1, 1986.

The meaning we ascribe to the provision in question obviates ANR's concern. Section 284.7(b)(2) simply means that pipelines must *file* new rates in accordance with the provision no later than May 31, 1986, in order to comply with the 30-day notice period contained in section 4(d) of the Natural Gas Act. Thus, a pipeline's filing under this provision must be filed by May 31, 1986, with a proposed effective date of July 1, 1986. Of course, under section 4(e) of the Natural Gas Act the Commission may still suspend the filing for a period not longer than five months beyond the requested effective date of July 1, 1986.

The Commission orders:

ANR's requested clarification is granted as set forth in the body of this order.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1790 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[1] II FERC Stats. & Regs. ¶ 284.7.

[2] 50 FR 42,408 (1985) (codified in 18 CFR Parts 2, 157, 250, 284, 375, and 381).

[Docket No. Rm 85-1-134]

Natural Gas Policy Act; Pipelines After Partial Wellhead Decontrol; Order Denying Request for Rehearing or Waiver; Carnation Co.

Issue: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On October 31, 1985, and order was issued [1] denying a request by Carnation Company for clarification that its Order No. 319 transportation arrangement qualified for transition treatment under § 284.223(g)(1) of Order No. 436.[2] On November 8, 1985, Carnation filed a petition for rehearing in which it contends that the denial of its request was erroneous. In the alternative, Carnation requests that a waiver be granted of the requirements in the regulations.

We conclude that Carnation's petition for rehearing or waiver should be denied.

The October 31, 1985 order noted that the transition provisions require that the transaction be both authorized and commenced, as an Order No. 319 transaction, prior to October 9, 1985. Carnation acknowledges in its petition that the gas supply which it received prior to October 9, 1985, for use at its Jacksonville facility, was in fact transported under PanMark's Special Marketing Program and not under its alternative agreement with Yankee Resources, Inc. Since service from Yankee under Order No. 319 did not commence prior to October 9, 1985, there is no basis for finding that this requirement of the transition provisions was met.

We likewise find no basis to grant Carnation's request for waiver. The requirement of the regulation is clear. Carnation has shown no unique or extraordinary circumstances to justify waiving the requirement.

Accordingly, the petition for rehearing or waiver is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1793 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[1] 33 FERC ¶ 61,152 (1985).

[2] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[Docket No. RM85-1-000]

Natural Gas Policy Act; Pipelines After Partial Wellhead Decontrol; Order Denying Request for Waiver; Exxon Gas System, Inc.

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 12, 1985, Exxon Gas System, Inc. (EGSI), an intrastate pipeline, filed a request for waiver of the transitional provisions of Order No. 436 [1] as they apply to a transportation transaction performed under section 311 of the Natural Gas Policy Act of 1978. We will deny EGSI's request.

On July 1, 1985, EGSI's entered into an agreement with TransAmerican Natural Gas Corporation whereby EGSI agreed to transport gas from a connection with TransAmerican in Nueces County, Texas, to the Exxon Company's gas processing plant in Kleburg County, Texas. The agreement also provides that EGSI will return the residue gas to TransAmerican in Nueces County after processing.

In reliance on this agreement, EGSI constructed facilities costing approximately $2,100,000. RGSI estimated, at the time it filed its petition, that the construction would be completed by December 15, 1985. Due to the construction schedule, gas did not commence flowing prior to October 9.

In *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386 (December 17, 1985), we established a test for granting a waiver from the restrictions in the transitional provisions of Order No. 436 based on whether a particular transaction had genuine economic substance prior to October 9, 1985. We stated that a "purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9." This test is meant to grant relief from the transitional provisions of Order No. 436 without defeating its objectives.

Because EGSI is a transporter and not a purchaser, seller, or end user, EGSI does not meet the criteria of the economic substance test established in *Judel*. A transporter, unlike a purchaser, seller, or end user, has the option of performing the transportation itself pursuant to the authority of the regulations adopted in Order No. 436. In other words, a transporter has the power to ameliorate its own economic detriment, and is not dependent on the decisions of the other participants to the transportation arrangement. Accordingly, we will not waive the restrictions in § 284.125.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1794 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[Docket No. CI79-620-001, et al.]

Exxon Corporation et al. Applications for Abandonment of Service

January 21, 1986.

Take notice that each of the applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the applications appear to meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI79-620-001 D Jan. 13, 1986	Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180.	Southern Natural Gas Co., Mississippi Canyon Area, Blocks 268 and 312, Offshore Louisiana.	(1)	
CI86-147-000 B, Jan. 10, 1986	Enstar Corp., P.O. Box 2120, Houston, TX 77252	United Gas Pipe Line Co., Triple "A" Field, San Patricio County, Texas.	(2)	

[1] Pursuant to the expedited procedures set forth in Section 2.77 of the Commission's rules, Applicant requests partial abandonment authorization for its sale to Southern of NGPA section 102(d) gas for a limited-term through November 30, 1986. Applicant states that the gas has been shut-in by Southern due to lack of demand and indicates that it is not being paid for gas not taken. Applicant and Southern have entered into a release agreement dated December 12, 1985, in which Southern agrees to release a daily quantity of gas of 10,000 Mcf per day or such greater daily quantity as may be mutually agreeable and Applicant agrees to credit volumes sold to another purchaser toward Southern's take-or-pay obligation for the applicable contract year under the subject contract or under other gas purchase agreements with Southern. Applicant states that it is seeking abandonment authority beyond March 31, 1986, the expiration date of Applicant's blanket certificate and limited-term abandonment authorization in Docket No. CI85-685-000.

[2] Pursuant to the expedited procedures set forth in Section 2.77 of the Commission's rules, Applicant requests authorization to abandon its sale of gas to United of NGPA section 104 post-1974 gas. Applicant states that United has purchased less than 10% of the gas deliverable under the contract and that Applicant has been subject to substantially reduced takes without payment. Applicant indicates that the delivery capacity is 1350 Mcf per day and that United's takes have averaged 120 Mcf per day. Applicant also indicates that the wells involved have been shut in more than 80% of the time and that the long shut in periods inhibits its ability to ever recover the remaining reserves because of the reservoir characteristics.

[3] Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-1803 Filed 1-27-86; 8:45 am]

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[Docket No. RM85-1-047]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Hadson Gas Systems, Inc.); Order Denying Rehearing

Issued January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeva.

On October 30, 1985, we issued an order denying a request for clarification which had been filed by Hadson Gas Systems, Inc. in this proceeding. Hadson had requested that we clarify that § 284.105(a) of the Order No. 436 regulations [1] allows amendment of "authorized transportation agreements" under section 311 of the Natural Gas Policy Act of 1978 (NGPA) to permit the substitution of one gas supplier for another and the addition of points where gas is received by the pipeline in the field. We held that section 284.105 pertains to transportation arrangements independent of purchase agreements and that the regulation specifically limits the transportation transaction to which the provision applies to transportation arrangements that existed on October 9, 1985. Any changes to those terms and conditions would be considered an initiation of a new NGPA section 311 transportation transaction under § 284.102. Hadson has now requested rehearing of the October 30 order. As discussed below, we deny rehearing.

First, Hadson argues that the order results in undue discrimination in that it penalizes potential suppliers, purchasers, and consumers, while protecting pipelines from competition with each other. According to Hadson, the order denies potential suppliers access to pipeline transportation. We disagree. Pipelines are not precluded from transporting gas on behalf of suppliers and end users under NGPA section 311 and § 284.105 of our regulations. In doing so, however, they must comply with certain conditions, concerning non-discriminatory access and rates, which are applicable to NGPA section 311 transactions that commenced after October 9, 1985. To minimize the disruption to existing arrangements that might otherwise occur, § 284.105 of the regulations provides that any NGPA section 311 transportation authorized and commenced on or before October 9, 1985, may be continued, with several exceptions, under the terms and conditions that applied prior to November 1, 1985, until the earlier of October 9, 1987, or the end of the expiration of the term of the contract.

Second, Hadson contends that our October 30 order is substantively and procedurally defective in that it is anticompetitive and lacks record support. We disagree. The very purpose of Order No. 436 is to stimulate competition. We believe that this purpose has been achieved by reasonably conditioning self-implementing interstate transportation services under both the NGPA and the Natural Gas Act. Our policy and the record support for that policy was fully and clearly articulated in Order No. 436. The October 30 order merely clarifies Order No. 436.

Finally, Hadson states that the October 30 order exceeds our authority to regulate transportation and unlawfully extends to the regulation of direct sales. Hadson is incorrect. We are regulating interstate transportation, not direct sales. Section 284.105 of our regulations merely provides a transitional rule whereby existing NGPA section 311 transactions may continue under the same terms and conditions as existed prior to the issuance of Order No. 436.

In light of the foregoing, Hadson's request for rehearing is denied.

By the Commission.

Kenneth F. Pumb,

Secretary.

[FR Doc. 86-1795 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Order No. 436, 50 FR 42,408 (October 18, 1985).

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Michigan Paperboard); Order Denying Request for Clarification

Issued January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 25, 1985, Michigan Paperboard Corporation filed a request for clarification in accordance with Rule 212 of the Commission's rules of practice and procedure.[1] Michigan Paperboard seeks confirmation that Panhandle Eastern Pipeline Company (Panhandle) may transport gas for Michigan Paperboard, pursuant to § 284.223(g)(1), without becoming subject to the nondiscriminatory access conditions.

Michigan Paperboard states that its transportation agreement with Panhandle commenced May 1, 1984, and continued "until the earlier of (a) eighteen (18) months from the date hereof, (b) termination of authorization for service hereunder pursuant to Subpart F of 18 CFR Part 157." The term of the agreement was subsequently extended beyond November 1, 1985 by a letter agreement dated October 22, 1985.

Panhandle's transportation service for Michigan Paperboard was initially identified to the Commission through the prior notice procedure, and was initially performed pursuant to section 157.209(e) of the regulations then in effect. However, in June 1985, Michigan Paperboard advised Panhandle that the gas was used for essential agricultural purposes and therefore qualified as a high priority service under § 157.209(a) of the regulations. On October 31, 1985, Panhandle filed a report with the Commission stating that the transportation service qualified under § 157.209(a)(1). Nevertheless, Panhandle, due to its concern over the effects of the nondiscriminatory access provisions of Order No. 436, terminated its transportation service for Michigan Paperboard.

Michigan Paperboard requests confirmation that Panhandle may continue to transport for Michigan Paperboard under authority of § 284.223(g)(1), and thereby avoid becoming subject to the non-discriminatory access conditions of §§ 284.8(b) and 284.9(b). Michigan Paperboard asserts that this requested clarification is appropriate since its transportation arrangement with Panhandle qualified under previously effective § 157.209(a)(1), and therefore now qualifies for continuance under § 284.223(g)(1), regardless of Panhandle's initial failure to correctly identify the status of the transportation arrangement under the Commission's regulations. Michigan Paperboard also contends that the October 22, 1985 extension of its agreement would have qualified the transportation for transition treatment on a timely basis but for the issuance of the Commission's Technical Corrections of October 24, 1985.

The Commission agrees with Michigan Paperboard's first argument that the initial misclassification under § 157.209(e), as opposed to § 157.209(a), will not prevent the transportation arrangement with Panhandle from qualifying for continuing transportation authorization under § 284.223(g)(1). Because Michigan Paperboard is a high-priority end-user, no filing was

[1] *See* 18 CFR 385.212.

necessary to qualify for § 157.209(a)(1) authorization since the transportation was authorized automatically with the commencement of service.[2]

However, the transportation service still does not qualify for transition treatment. Transportation service originally authorized and commenced under either § 157.209(a)(1) or § 157.209(e) may continue after November 1, 1985 under §§ 284.223 (g)(1) or (g)(2), respectively, only for the time remaining in the term authorized as of October 9, 1985. As of that date, the agreement between Michigan Paperboard and Pandhandle provided for transportation to terminate on November 1, 1985. The term of the agreement was not extended until October 22, 1985. Thus, Michigan Paperboard's transportation arrangement does not qualify for transitional transportation authorization under § 284.223 (g)(1) or (g)(2).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1796 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (National Fuel Gas Supply Corp.); Order Denying Request for Clarification

Issued January 21, 1986

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 5, 1985, National Fuel Gas Supply Corporation (National), pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, filed a request for clarification of the transitional provisions of Order No. 436 with respect to transportation under section 311 of the Natural Gas Policy Act.[1] National states that section 311 transportation service on behalf of its affiliate, National Fuel Gas Distribution Corporation (Distribution), was extended by letter agreements by both Tennessee and National, which were each performing section 311 transportation on behalf of Distribution as part of the same service. Although Tennessee filed an initial report and an extension report, National did not file any reports at all. National requests that its transaction with Distribution be eligible, through clarification of waiver, for the transitional provisions of § 284.105 because "Tennessee's reports disclosed the service by National."

National contends that this request should be granted on the basis of the Commission's clarifying order regarding Tex-La Gas Company.[2] We disagree. The facts on which the *Tex-La* decision was based are distinguishable from the facts posed by National. In *Tex-La*, we permitted the transaction at issue to be eligible because, although an initial report was filed late, it was filed prior to October 9, 1985. Here neither an initial nor an extension report was ever filed by National. Furthermore, section 284.106 requires that these reports be filed by the transporter; there is no provision for National's reporting obligations to be satisfied by Tennessee's reports. Accordingly, National's transportation transaction does not qualify for transition treatment under § 284.105

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1797 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[2] *See*, Midwest Solvents Company, Order Granting Rehearing, 33 FERC ¶ 61,395 (December 19, 1985).

[1] *See* section 284.105 and Order No. 436, FR 42495 (October 18, 1985).

[Docket No. ER86-170-000]

Natural Gas Policy Act; Order Accepting for Filing and Suspending Rates, Denying Motion To Reject, Noting Intervention, and Establising Hearing Procedures; New England Power Co.

Issued: January 21, 1986.

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On November 22, 1985, New England Power Company (NEP) tendered for filing proposed amendments to its FERC Electric Tariff, Original Volume No. 3, which increase NEP's various transmission rates over its non-Pool Transmission Facilities (PTF) to municipal customers.[1] The annual increase in revenues would amount to approximately $2.1 million (180%), based on a calendar 1986 test year. NEP requests that the proposed transmission rates be made effective on January 22, 1986.

Notice of NEP's filing was published in the **Federal Register**, [2] with responses due on or before December 10, 1985. A timely protest and motion to intervene was filed by the Massachusetts Wholesale non-PTF Customers (Customers). The Customers request that NEP's Rate T-3 be rejected, and further, that Rates T-1 and T-2 be suspended for five months. In the event that the Rate T-3 is not rejected, the Customers request a five month suspension of that rate as well. The Customers contend that Rate T-3 is predicated in part upon primary distribution facilities owned and operated by NEP's retail affiliate, Massachusetts Electric Company (MassElec), for which NEP incurs no costs. Because NEP's agreement with MassElec requires NEP to contribute only to certain specific facilities used to serve its customers, the intervenors challenge NEP's current proposal to base Rate T-3 on the average system cost of MassElec's primary distribution facilities as a means of improperly recovering unicurred costs. The Customers further argue that the remaining rate increases proposed by NEP are excessive.

On December 24, 1985, NEP filed a timely response to the Customers' pleading. While not opposing the Customers' motion to intervene, NEP asserts that they have not justified rejection of NEP's Rate T-3, and further, denies that a five month suspension is warranted.

Discussion

Pursuant to Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214), the timely, unopposed motion to intervene of the Customers serves to make them parties to this proceeding.

We shall deny the Customers' motion to reject NEP's Rate T-3. We find that the motion raises questions of law and fact best resolved after investigation and hearing.

Our review of NEP's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company* 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the proposed rates may

[2] *See* Regulation of Natural gas Pipelines After Partial Wellhead Decontrol (Tex-La Gas Company), Docket No. RM85-1-000 50 FR (December 2, 1985).121By the Commission.

[1] *See* Attachment for rate schedule designations and affected customers.

[2] 50 FR 50213 (1985).

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yield substantially excessive revenues. Accordingly, we shall suspend the proposed rates for five months, to become effective on June 22, 1986, subject to refund.

The Commission Orders

(A) The motion to reject NEP's Rate T–3 is hereby denied.

(B) NEP's proposed rates are hereby accepted for filing and are suspended for five months, to become effective, subject to refund, on June 22, 1986.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of NEP's rates.

(D) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) Subdocket 000 of Docket No. ER86–170 is hereby terminated. Docket No. ER86–170–001 is hereby assigned to the evidentiary proceedings ordered herein.

(F) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

New England Power Company Docket No. ER86–170–000 Rate Schedule Designations

Designation and Description

(1) 4th Revised Sheet No. 2 of Schedule II under FERC Electric Tariff, Original Volume No. 3 (Supersedes 3rd Revised Sheet No. 2)—Wheeling Rates.

(2) 6th Revised Sheet No. 3 of Schedule II under FERC Electric Tariff, Original Volume No. 3 [Supersedes 5th Revised Sheet No. 3)—Wheeling Rates.

(3) 3rd Revised Sheet No. 4 of Schedule II under FERC Electric Tariff, Original Volume No. 3 (Supersedes 2nd Revised Sheet No. 4)—Wheeling Rates.

[FR Doc. 86–1805 Filed 1–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM85–1–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Pelto Oil Company et al.); Order Denying Request for Clarification

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Pelto Oil Company, *et al.*[1] (applicants) filed a request for clarification of the relationship between the transportation provisions of Order No. 436[2] and section 5 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1334.

The OCSLA provides, in general, for Federal jurisdiction over the submerged lands of the Outer Continental Shelf (OCS) and authorizes the leasing of such lands for certain purposes, primarily the extraction of oil and natural gas and the construction and operation of facilities required for their transportation onshore. Section 5(e) authorizes the grant of rights-of-way for pipeline transportation through the OCS "upon the express condition that oil or gas pipelines shall transport or purchase without discrimination. . . ." Section 5(f)(1)(A), which was added to the OCSLA by the 1978 amendments, reaffirms and strengthens the non-discrimination provision by requiring that any pipeline transporting oil or gas on or across the OCS "must provide open and nondiscriminatory access to both owner and nonowner shippers."

Applicants are independent producers of natural gas from Federal leases on the OCS. Prior to November 1, 1985, several of them sold their OCS gas and had it transported pursuant to special marketing programs (SMPs), which have now expired. Gas produced on the OCS by several others has been transported pursuant to section 311 of the Natural Gas Policy Act of 1978.

Applicants contend that significant quantities of OCS gas have been shut-in since November 1, 1985, due to expiration of the SMPs and other offshore transportation arrangements previously authorized by the Commission "and the reluctance of substantially all of the pipelines operating in the OCS to accept the non-discriminatory access provisions of Order No. 436. . . ."

In light of the mandatory, non-discriminatory access requirements of section 5 of the OCSLA, applicants request clarification of Order No. 436 as follows: (1) That with respect to the transportation of OCS gas from the field to an onshore delivery point, the non-discriminatory access requirement of the OCSLA applies only to that segment of a pipeline's system on the OCS and to facilities necessary to effect delivery of the gas onshore; and (2) that on and after December 15, 1985, OCS pipelines may transport OCS gas on a non-discriminatory basis under NGPA section 311, a blanket certificate, or other section 7 certificate without having the non-discriminatory access requirement of Order No. 436 imposed on the entire system of such pipelines and without triggering the contract demand reduction/conversion conditions.

Applicants further claim that due to Order No. 436, certain OCS producers are now able to have their gas transported while others are not. "This discrimination," they contend, "cannot be satisfactorily addressed for producers lacking grandfathered Order No. 436 transportation by use of traditional section 7 certificate procedures because such procedures are lengthy and costly and, during the pendency of a section 7 application, offset producers or joint interest owners in wells can severely drain a disadvantaged producer."

Insofar as applicants' first requested clarification involves an interpretation of the non-discriminatory access requirement imposed by section 5 of the OCSLA, such interpretation is generally outside the scope of the present series of clarifications, which are limited to the effects of Order Nos. 436 and 436–A[3] and the duties and obligations assumed by pipelines operating thereunder. Moreover, an interpretation of the precise scope and reach of the non-discriminatory access requirement of the OCSLA would best be rendered in the context of a discrete controversy based on specific facts, rather than as an abstract proposition, as is here presented. Thus, we decline to provide the specific clarification requested.

Pelto's second requested clarification was raised in an application for rehearing of Order No. 436 filed by Ashland Exploration, Inc., and has been responded to in Order No. 436–A at mimeo. pp. 75–77. As therein pointed out, the Commission, in issuing Order No. 436, did not rely on its authority under the OCSLA to require non-discriminatory transportation of OCS gas. Rather, "Order No. 436 provides an opportunity for persons to transport voluntarily under authorizations which provide for non-discriminatory access pursuant to statutory authority wholly separate and apart from the OCSLA."[4] In denying Ashland's request that pipelines operating on the OCS should be permitted to implement transportation under Order No. 436 without subjecting their entire systems to the non-discriminatory access requirement, we considered and rejected the policy argument that OCS transportation should be carved out because of the separate, mandatory obligation for non-discriminatory access imposed by the OCSLA. Nothing in the present filing convinces us that that determination was erroneous.

Nor do we agree with the applicants that Order No. 436 *causes* discrimination because some pipelines operating on the OCS refuse to transport any gas at all, while others continue to transport. Insofar as OCS transportation is concerned, Order No. 436 provides transition treatment only for transportation arrangements already in operation prior to October 9, 1985. Those transportation arrangements are subject to the non-discriminatory access reuirement of the OCSLA. Any allegations of discrimination in OCS transportation conducted pursuant to the transition provisions of Order Nos. 436 and 436–A, or certificates issued under section 7 of the Natural Gas Act, will be considered on a case-by-case basis.

To summarize, pipelines transporting gas in interstate commerce after December 15, 1985, *under the conditions of Order No. 436*, including OCS transportation, are subject to all of the requirements of that order. These requirements include, *inter alia*, applicability of the order's non-discriminatory access requirement to the pipeline's entire system. In addition, if the pipeline commences or continues a new section 311 arrangement after February 15, 1986, or accepts a new blanket certificate, the option for reduction or conversion of entitlements will then become available to firm sales customers. As noted in Order No. 436–A, all interstate pipelines, including those operating on the OCS, retain the option of proceeding under section 7 of the Natural Gas Act without triggering the provisions of Order No. 436.

In any event, all transportation of gas on the OCS is subject to the non-discriminatory access requirements of the OCSLA, regardless of whether the gas is transported pursuant to the authority of Order No. 436 or individual section 7 certificates.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1798 Filed 1–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (SarVic Gas Company); Order Granting Request for Clarification

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 2, 1986, SarVic Gas Company (SarVic) filed a request for clarification of § 284.105 of the regulations adopted in Order No. 436.[1] Section 284.105 provides that a transportation arrangement authorized under section 311 of National Gas Policy Act which commenced on or before October 9, 1985, may continue until the earlier of the end of the extended contract term or October 9, 1987. SarVic outlined the following facts and circumstances in its petition.

On August 29, 1985, SarVic and United Gas Pipeline Company entered into a section 311 transportation agreement to provide transportation service to SarVic's market. The contract provided for two delivery points. Pursuant to the agreement, service commenced on September 5, 1985 at one of the specified delivery points. Service has not yet commenced at the remaining delivery point. In its petition, SarVic states that United has refused to commence service at the remaining delivery point absent clarification from the Commission that the delivery point qualifies under the transitional provisions of section 284.105.

We grant SarVic's request for clarification. The Commission recently clarified that where a transportation arrangement was authorized and service commenced on or before October 9, 1985, commencement of use of a particular receipt or delivery point after that date will not subject the party to §§ 284.8, 284.9, and 284.10, as long as those points were specified in the agreement prior to October 10, 1985.[2] We find that the delivery point at issue herein qualifies under the transitional provisions § 284.105.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 1799 Filed 1–27–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–5013–000, et al.]

Shell Western E&P, Inc. et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

January 22, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 5, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the

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[1] Pelto Oil Co., Mark Producting, Inc., Huffco Petroleum Corp., Norse Petroleum (U.S.) Inc., Total Petroleum, Inc. and Zapata Exploration Co.

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM85–1–000, 50 FR 42408 (October 18, 1985); Technical corrections issued October 24, 1985.

[3] *Id.*, Docket Nos. RM85–1–000, *et al.*, Order No. 436–A, issued December 12, 1985, 50 FR 52217.

[4] *Id.*, p. 76.

[1] 33 FERC ¶ 61,007, 50 FR 42408 (October 18, 1985).

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Natural Gas Pipeline Company of America), 33 FERC ¶ 61,385 (issued December 17, 1985); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Sohio Petroleum Company and Sohio Chemical Company), 33 FERC ¶ 61,448 (issued December 30, 1985).

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft	Pressure base
G-5013-000, D, Jan. 10, 1986	Shell Western E&P Inc., *et al.*, P.O. Box 4684, Houston, TX 77210.	El Paso natural Gas Co., Wasson (San Andres) Field, Gaines and Yoakum Counties, TX.	(1)	
G-12972-001, O, Jan. 13, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	ANR Pipeline Co., Mocane-Laverne Gas Area Field, Harper County, OK.	(2)	
C161-1102-000, D, Dec. 26, 1985	do	ANR Pipeline Co., Cheyenne Valley Filed, Major County, OK.	(3)	
C162-568-001, D, Jan. 13, 1986	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	El Paso Natural Gas Co., Thomas # 1 Unit, Puckett North Field, Peco county, TX.	(4)	
C163-280-001, D, Jan . 13, 1986	do	do	(5)	
C163-316-000, D, Dec. 23, 1985	Cities Service Oil & Gas Corp., Tulsa, OK 74102	Northern Natural Gas Co., Mocane Field, Beaver County, OK.	(6)	
C163-1407-001, D, Dec. 19, 1985.	Sun Exploration & Production Co.	K N Energy, Inc., Hugoton Field, Hamilton County, KS.	(6a)	
C164-137-000, D, Dec. 26, 1985	do	Panhanndle Eastern Pipeline Co., N. Webb Field, Dewey County, OK.	(7)	
C165-739-007, D, Dec. 16, 1985	Shell Western E&P Inc.	ANR Pipeline Co., Kings Bayou Field, Cameron Parish, LA.	(8)	
C165-739-008, D, Dec. 16, 1985	do	do	(9)	
C165-825-001, E, Dec. 16, 1985	Chevron U.S.A. Inc.	Transcontinental Gas Pipe Line Corp., South Marsh Island 23, OSC-G-0777, Offshore, LA.	(10)	
C165-1327-001, D, Dec. 19, 1985.	Sun Exploration & Production Co.	ANR Pipeline Co., Mocane-Laverne Gas Area, Harper County, OK.	(11)	
C165-1327-002, D, Dec. 19, 1985.	do	do	(12)	
C165-1327-0003, D, Jan. 10, 1986.	do	do	(13)	
C175-680-002, D, Dec. 27, 1985	Texaco Inc., P.O. Box 52332, Houston, TX 77052	Texas Gas Transmission Corp., Eugene Island Block 342 Field, Offshore Louisiana.	(14)	
C186-62-000 (C163-80-000), B, Nov. 12, 1985.	Mesa Petroleum Co., P.O. Box 2009, Amarillo, TX 79189.	K N Energy Inc., Bradshaw Field, Hamilton County, KS.	(15)	
C186-63-000 (C178-103), B Nov. 13, 1985.	Texas Eastern Exploration Co., P.O. Box 2521, Houston, TX 77252.	Texas Eastern Transmission Corp., Platform in Block 64 Field, Vermilion Area, Offshore Louisiana.	(16)	
C186-64-000 (C177-715), B, Nov. 15, 1985.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Transcontinental Gas Pipe Line Corp., Bassfield Field, Jefferson Davis County, MI.	(17)	
C186-133-000, F Dec. 16, 1985	Cities Service Oil & Gas Corp. (Succ. in Interest to Sun Exploration & Production Co.), P.O. Box 300, Tulsa, OK 74102.	Northern Natural Gas Co., Mocane Field, Beaver County, OK.	(18)	14.73
C186-134-000 (C178-560), B, Dec. 16, 1985.	Cities Service Oil & Gas Corp.	Panhandle Eastern Pipe Line Co., W. Optima Field, Texas County, OK.	(19)	
C186-135-000 (C175-624), B, Dec. 16, 1985	do	Panhandle Eastern Pipe Line Co., Mills "D" Unit, N/2 Sec. 9-33S-41W, Morton County, KS.	(20)	
C186-137-000, B, Dec. 20, 1985	JFD, Inc., 2500 Fondren—Suite 208, Houston, TX 77063.	Trunkline Gas Co., Grand Isle Block 82 Field, Offshore Louisiana.	(21)	
C186-139-000 (C168-656), B, Dec. 23, 1985.	Sun Exploration & Production Co.	Panhandle Eastern Pipeline Co., Tyrone Field, Texas County, OK.	(22)	
C186-140-000 (C177-691), B, Dec. 23, 1985.	Columbia Gas Development Corp., P.O. Box 1350, Houston, TX 77251-1350.	ANR Pipeline Co., West Cameron Block 265, Offshore Louisiana.	(23)	
C186-141-000 (C177-277), B, Dec. 23, 1985.	do	Columbia Gas Transmission Corp., West Cameron Block 265 and 268, Offshore Louisiana.	(24)	
C186-143-000 (C178-741), B, Dec. 30, 1985.	Phillips Petroleum Co., 336 HS&L Bldg., Bartlesville, OK 74004.	Transcontinental Gas Pipe Line Corp., West Cameron Block 460, Offshore Lousiana.	(25)	
C186-144-000 (C165-1283), B, Jan. 3, 1986.	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77001.	Mississippi River Transmission Corp., Woodlawn Field, Harrison County, TX.	(26)	
C186-145-000 (C179-134), B, Jan. 3, 1986.	do	Texas Gas Transmission Corp., Johnson Branch Field, Caddo Parish, LA.	(27)	
C186-146-000 (C172-519), B, Jan. 10, 1986.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, OK 74102.	El Paso Natural Gas Co., Washington Ranch Field, Eddy County, NM.	(28)	
C186-148-000 (C164-1070), B, Jan. 6, 1986.	Tenneco Oil Co.	United Gas Pipe Line Co., Logansport (Joaquin) Field, De Soto Parish, LA.	(27)	
C186-149-000 (C164-1040), B, Jan. 6, 1986.	do	Arkansas Louisiana Gas Co., Sibley Field, Webster Parish, LA.	(29)	
C186-150-000 (G-3527), B, Jan. 6, 1986.	do	Arkansas Louisiana Gas Co., Waskom Field, Harrison County, TX.	(27)	
C186-151-000 (C166-1060), B, Jan. 8, 1986.	do	Texas Gas Transmission Corp., Shiloh Field, Union Parish, LA.	(27)	
C186-152-000 (C175-466), B, Jan. 9, 1986.	do	Tennessee Gas Pipeline Co., East Cameron 281, Offshore LA.	(30)	
C186-157-000 (C175-255), B, Jan. 13, 1986.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Northern Natural Gas Co., Mocane-Laverne Field, Beaver County, OK.	(31)	
C186-158-000, B, Jan. 13, 1986	Mesa Petroleum Co., P.O. Box 2009, Amarillo, TX 79189.	Northern Natural Gas Co., Lovedale Field, Harper County, OK.	(32)	
C186-159-000 (C179-330), B, Jan. 13, 1986.	do	Transcontinental Gas Pipe Line Corp., East Cameron Block 263, Offshore Louisiana.	(33)	
C186-160-000, B, Jan. 13, 1986	do	ANR Pipeline Co., Reno Field, Beaver County, OK.	(33)	
C186-161-000, B, Jan. 14, 1986	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Shell Oil Co. & Exxon Company U.S.A. (Succ. to The Carter Oil Company), Bayou Field, Carter County, OK.	(34)	
C186-162-000 (C175-247), D, Jan. 14, 1986.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Kansas-Nebraska Natural Gas Co. Inc., Camrick Field, Beaver County, OK.	(32)	

[1] The wells contain a heavy concentration of carbon dioxide.
[2] Sale of Sun's interest in G.B. Crawford Unit to Union Oil Company of California.
[3] Sold Property No. 444400, Case Unit -F-, to Kenworthy Operating Company.
[4] Applicant seeks abandonment of reserves that cannot be economically produced and sold in the interstate market, so that such reserves may be produced and sold in the intrastate market.

[5] The gas-oil ratio has changed qualifying this well as an oil well, which disqualifies it from coverage under this Rate Schedule 160. The oil well gas will be sold to Phillips Petroleum Company under a percentage-type contract. Any gas well gas produced from the dedicated acreage will continue to be covered under this agreement.
[6] Partial Assignment and Bill of Sale covering Sun's NCU 2631 Unit to J.D. and Maria B. Kenworthy.
[7] Sold Property Nos. 873463 and 873468, Reen Unit No. 1 and 2 to Kenworthy Operating Company.
[8] Effective 10-31-85, SWEPI has released to its lessors that portion of seventeen leases only insofar as said lands lie outside the surface boundaries of the M Sand Unit B.
[9] Effective 7-30-85, SWEPI releases that portion of four leases that lies below the stratigraphic equivalent of 100 feet below the base of the "N-4" sand, to lessors.
[10] By assignment dated 10-6-82, Chevron acquired the 25% interest of CNG Producing Company in OCS-G-0777, South Marsh Island 23.
[11] Partial Assignment and Bill of Sale to Atlantic Richfield (87%) and Cities Service (13%) to Lizzie E. Howell Unit, Harper County, Oklahoma.
[12] Partial Assignment and Bill of Sale to Atlantic Richfield (76.50%) and Cities Service (23.50%) of Zoldoske Unit, Harper County, Oklahoma.
[13] Sale of Sun's Crawford B 1 (Dual) and 2 to Union Oil Company of California.
[14] On 9-20-85, Texaco Inc. assigned a part of its interest to Huffco covering OCS-G-2320, Block 343, Eugene Island Area, South Addition, Offshore Louisiana.
[15] Depletion of reserves to an uneconomical limit.
[16] Permanent depletion of reservors and lease expired of its own terms.
[17] Production has ceased and well plugged and abandoned.
[18] Effective 8-1-85, Cities Service Oil and Gas Corporation acquired the interest of Sun Exploration and Production Company in the Benjegerdes "E" lease in Beaver County, Oklahoma, covered under the Natural Gas Purchase Contract dated 3-1-62 between Sun and Northern Natural, only insofar as rights below 6,900 feet are concerned.
[19] Last sales under Rate Schedule No. 465 occurred sometime dunng 1978, and the Cooper A-1 well was plugged and abandoned on 7-22-82.
[20] The term of the agreement has expired and no gas is available for delivery.
[21] Leases expired and released to U.S. Government.
[22] Sun assigned its interest in Sun Property No. 545127, Ruby Harrison Unit #1, Leases No. 111745 and 111747 to Timberwolf Energy Company.
[23] Acreage subject to *R.S. 24* was assigned to Walter Oil & Gas Corporation effective 7-23-85.
[24] Acreage subject to *R.S. 22* was assigned to Walter Oil & Gas Corporation effective 7-23-85.
[25] The wells are all shut-in due to the inability of the gas production to meet line pressure. The purchaser has refused to provide needed compression due to economic reasons and has indicated its willingness to release the gas for sale to an alternate market.
[26] *Assignment* of all dedicated leases and Tenneco no longer has an interest in the acreage.
[27] *Surrender* of all dedicated leases and Tenneco no longer has an interest in the acreage.
[28] Cities' remaining leases under Contract dated 1-25-72 were jointly owned with El Paso Exploration and held beyond their 1976 expiration dates by El Paso's production. Upon plugging & abandoning of the Miller #1, these leases expired due to lack of production.
[29] *Assignment and/or surrender* of all dedicated leases and Te-neco no longer has an interest in the acreage.
[30] A Contract and rate schedule was entered into to correct a gas imbalance. The two year term of the contract has expired and the gas imbalance no longer exists.
[31] Sale of only producing property under contract.
[32] Production passed and depletion of reserves.
[33] Normal depletion and contract passed its primary term.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-1806 Filed 1-27-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Southeast Alabama Gas District); Order Denying Request for Clarification

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 24, 1985, Southeast Alabama Gas District (SAGD) filed a request for clarification of the transitional provisions of Order No. 436 § as they apply to a transportation transaction performed under former § 157.209 of the Commission's Regulations. We will deny SAGD's request.

SAGD operates a gas distribution system serving residential, commercial, and industrial customers. On October 1, 1985, SAGD entered into an agreement to purchase gas from SNG Trading Inc. At the same time, Southern Natural Gas Company agreed to transport the gas on behalf of SAGD acting as agent for Jenkins Brick Company, an end user, pursuant to former § 157.209 of the Commission's Regulations under authorization issued on September 1, 1982, in Docket No. CP82-406-000, 20 FERC ¶ 62,414.

In order to deliver the gas to Jenkins Brick, SAGD had to construct 8,000 feet of pipeline from Jenkins Brick's plant to a connection with Southern's system. Pipe for the project was ordered on October 3. Construction of the pipeline commenced on October 7, and was completed on November 11. SAGD states that it has spent $39,800 on the pipeline and that "a few more invoices are outstanding." Because of Order No. 436, Southern has not transported any gas to Jenkins Brick.

SAGD further states that almost all of the gas to be transported to Jenkins Brick is for a low-priority end use (only 10 MMBtu of the 1,000 MMBtu per day is for high priority end use). SAGD states that Southern ceased transporting all of the low-priority end use gas on October 31, 1985, because the transitional provisions of § 284.223(g)(1) apply only to high priority end use gas. According to SAGD, Southern "will transport gas for [SAGD] as agent for Jenkins Brick only if the Commission issues both (1) a clarification or waiver allowing the service to be 'grandfathered' although it did not commence on or before October 9, 1985, and (2) a clarification, waiver, or exemption allowing the transportation to be 'grandfathered' although not for high priority end uses."

Section 284.223(g)(2) provides that a low-priority end use transportation service existing on October 9, 1985, may continue beyond November 1, 1985, as long as several conditions are satisfied. "The most important condition is that the transporting pipeline file prior to November 1, 1985, a statement that it will, effective November 1, 1985, comply with the nondiscriminatory access condition set forth in §§ 284.8(b), 284.9(b), and with the rate conditions in § 284.7." [2] This statement will permit low-priority end use transportation to continue only until December 15, 1985, unless the transporting pipeline has filed an application for a blanket certificate under § 284.221 before that date. Southern has not applied for a blanket certificate.

Clearly Southern has not met the requirements of Order No. 436 that would allow it to continue transporting gas for low-priority end use under former § 157.209(e). The transportation of low-priority end use gas did not commence prior to October 9. Further, Southern ceased all of its low-priority end use transportation on October 31. Southern did not file a statement prior to November 1 indicating that it would comply with the nondiscriminatory access conditions of Order No. 436, nor has it applied for a blanket certificate to transport low-priority end use gas.

Among other things, the provisions of Order No. 436 pertaining to the continuation of transportation for low-priority end uses were adopted in order to satisfy the mandate of the decision in *Maryland People's Counsel v. FERC*, 761 F.2d 780 (D.C. Cir. 1985). Chief among these provisions was the condition that in order to continue such services beyond November 1, 1985, a pipeline would have to agree to provide transportation on a nondiscriminatory basis. Inasmuch as Southern has declined to comply with these requirements, we will not waive the restrictions in the transitional provisions of § 284.223(g)(2) to allow the transportation transaction to Jenkins Brick to commence.

We note that the economic substance test adopted in *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,366 (December 17, 1985), does not apply to transportation

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Northwest Pipeline Corporation), 33 FERC ¶ 61,137 (October 29, 1985).

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for low-priority end uses under § 284.223(g)(2). Nor can this transportation transaction be authorized to continue under § 284.223(g)(1) because that section is not applicable to transportation for low-priority end uses.

For these reasons, SAGD's request is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1800 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-142]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Valley Gas Company); Order Granting Rehearing for Further Consideration

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Panhandle Producers and Royalty Owners Association has filed a timely request for rehearing in this proceeding. Rehearing of the Order Granting Request for Clarification, pertaining to Valley Gas Company, issued on November 27, 1985, in Docket No. RM85-1-000 is granted solely for the purposes of affording the Commission additional time to consider the request for rehearing. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure, no answer to the request for rehearing will be entertained. By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1801 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-000 and ST82-106-001]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Western Gas Supply Company) (Tennessee Gas Pipeline Company); Order Granting and Denying Requests for Clarifications

Issued: January 21, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Western Gas Supply Company (WestGas) and Tennessee Gas Pipeline Company (Tennessee) each filed requests for clarification regarding the requirements of Order No. 436 [1] and the transitional provisions provided therein for transportation authorized and commenced under Part 284 of the Commissions Regulations. This order addresses transactions involving the need to file by October 9, 1985, an extension report required under former §§ 284.106 or 284.126. Both WestGas and Tenniessee seek authorization for transactions to continue beyond October 9, 1985, and to continue that transportation under the same terms and conditions in existence on October 9, 1985.

Applicable Regulations

Section 284.105 of the Commission's new rules provides for the continuation of certain transactions commenced by interstate pipelines under authority of NGPA section 311 or Order No. 60 as implemented by former § 284.221. Section 284.125 provides for continuation under similar circumstances of transactions commenced by intrastate pipelines under NGPA section 311 or by Hinshaw pipelines or local distribution companies under Order No. 63 as implemented by former § 284.222. In order to qualify for continuation under either of these sections, a transaction must have been "authorized and commenced . . . on or before October 9, 1985 . . ." Transactions that meet this requirement can continue

under the terms and conditions that applied prior to November 1, 1985 . . . until the earlier of:

(1) The expiration of the original or extended term of any authorized transportation arrangement as it was in effect on the date of issuance of this order; or

(2) October 9, 1987.

Sections 284.105 and 284.125 to be codified at 18 CFR.

Prior to the issuance of Order No. 436, self-implementing transportation arrangements under Part 284 could be authorized for terms of two years. Such transportation authorization could be extended, however, if the company filed an extension report not less than ninety days prior to the expiration of the two-year period for the authorized self-implementing transportation. 18 CFR 284.106(c) (1985) (extension report required by interstate pipelines); (18 CFR 284.126(c) (1985) (extension report required for intrastate pipelines, local distribution companies, and Hinshaw pipelines).

Thus, in order for a particular self-implementing transportation arrangement to be considered authorized beyond the initial two year term, a timely extension report had to be filed under the applicable provision. In order for an extension to be considered authorized prior to October 9, 1985, it follows that the extension report had to be filed before that date.[2]

Tennessee's Requests

1. On December 5, 1985, Tennessee Gas Pipeline Company (Tennessee) filed a request for clarification of Order No. 436 relating to transportation on its behalf by Transcontinental Gas Pipeline Corporation (Transco) pursuant to a blanket certificate issued under Order No. 60 (§ 284.221 of our former Rules).

Transco commenced transportation on behalf of Tennessee in 1981. On September 12, 1983, Transco filed an extension report to continue the transportation for another two years. On January 17, 1985, the parties executed a written agreement establishing a new term for the same transportation service. The new agreement was intended to supersede the original agreement. On September 17, 1985, Transco filed a subsequent report to describe the significant changes from the original agreement, but due to an administrative oversight Transco did not file the extension report with the Commission.

Tennessee asks for clarification that transportation of gas by Transco is "eligible for 'grandfathering' subject to filing an appropriate extension report. In the alternative, Tennessee requests that the Commission accept the subsequent report filed by Transco on September 17, 1985, in lieu of an out-of-time extension report.

Tennessee's request for clarification is denied. Section 284.105 allows existing transactions to continue only through the term that was authorized for a particular transaction when Order No. 436 was issued.

We also deny Tennessee's request for waiver. In our view, Transco's failure, as a result of administrative oversight, to acquire the authorization to extend the transaction does not justify extending it now by a waiver, solely to avoid the effects or Order No. 436.[3]

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[1] 33 FERC ¶ 61.007 (1985); 50 FR 42408 (October 18, 1985); Technical Corrections, FERC Statutes and Regulations ¶ 30,669. 50 FR 45907 (November 5, 1985).

[2] See Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (El Paso Natural Gas Company). 33 FERC ¶ 61,153 (October 31, 1985).

[3] We distinguish this case from the one in which we granted a waiver to accept an extension report that was filed late by United Gas Pipeline Company. In the case, United filed its report which was essential to authorize the extension, prior to the issuance of Order No. 436 on October 9, 1985. Regulation of Natural Gas Pipelines After Partial

Continued

2. Tennessee filed a second petition for clarification on December 6, 1985. In this petition Tennessee asks

whether a transaction authorized and commenced prior to October 9, 1985, and for which an extension report was filed prior to November 1, 1985, but for which the 90-day automatic authorization period expired after November 1, 1985, may be continued under the grandfather provisions of section 284.105(a) . . . .

In response to a data request from Commission staff, Tennessee submitted additional documentation regarding the ten transportation arrangements concerned.

For five of the ten transactions, Tennessee filed late extension reports prior to November 1, 1985, but after October 9, 1985. (Docket Nos. ST84-370, ST84-371, ST84-395, ST84-428 and ST84-567.) As indicated above, these transactions are not eligible for continuation under section 284.105 by the clear terms of the rule.

Extension reports for four of the other five transactions (Docket No. 84-160, ST84-204, ST84-311, ST82-96) were filed on time and prior to October 9, 1985. In each case, the extension of the term did not actually occur until after November 1, 1985. Nevertheless, these transactions all qualify for continuation. The relevant date under section 284.105 is October 9, 1985, not November 1.

The extension report for the fifth transaction (Docket No. ST84-77) was filed 16 days late, but was filed prior to October 9, 1985. As in *United*, supra n. 3, we will waive the filing date to accept the late report. Thus, this transaction too is eligible for continuation.

WestGas' Request

On November 27, 1985, WestGas filed, in Docket No. ST82-106-001, a request for waiver of the provisions of Order No. 436. On December 18, 1985, WestGas filed a request for clarification in Docket No. RM85-1 based on the same facts as its earlier request for waiver.

WestGas states that it is a Hinshaw pipeline under section 1(c) of the Natural Gas Act and therefore exempt from the Commission's Natural Gas Act jurisdiction. WestGas was transporting gas for Northern Natural Gas Company pursuant to the provisions of Order No. 63 promulgating § 284.222 of our former Rules. According to WestGas, it entered into an agreement with Northern Natural on September 13, 1985, to extend the transportation service for an additional two years, beginning December 18, 1985, the current expiration date for the transportation arrangement. WestGas should have filed an extension report by September 20, 1985, 90 days prior to the expiration of the contract, as former § 284.126(c) required. WestGas did not file its extension report until November 27, 1985, as part of its petition for a waiver in Docket No ST82-106-001.

WestGas requests that this arrangement with Northern Natural be accorded transition treatment under § 284.125, with the extension in term agreed to on September 13, 1985, so that service can continue until October 9, 1987, the date all transition transportation arrangements under Order No. 436 must come to an end.

WestGas' Request is denied. In all material respects, the facts presented by WestGas' petition are the same as those presented by Tennessee in its request of December 6, 1985. WestGas' petition is therefore denied for the same reasons.

The Commission orders: (1) Tennessee's petiton of December 5, 1985, is denied.

(2) Tennessee's petition of December 6, 1985, is granted to the extent set forth in the body of this order; otherwise it is denied.

(3) WestGas' petition is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1802 Filed 1-27-86; 8:45 am]

BILLING CODE 6717-01-M

Wellhead Decontrol (United Gas Pipeline Company). 33 FERC ¶ 61,424 (December 20,

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Southwestern Power Administration

Notice of Intent To Allocate Additional Power

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Intent to Allocate Additional Power.

SUMMARY: The Southwestern Power Administration (SWPA), an agency of the Department of Energy, markets Federal hydroelectric power and energy in accordance with section 5 of the Flood Control Act of 1944 (16 U.S.C. 825), as amended. SWPA's marketing area includes the States of Arkansas, Kansas, Louisiana, Missouri, Oklahoma and a portion of Texas. In 1980, SWPA adopted final power allocations which allocated then-existing and anticipated future Federal hydroelectric power (capacity) to preference customers in SWPA's marketing area. The 1980 Final Power Allocations (1980-1988) (FPA) were published March 24, 1980, (45 FR 19032).

A recent contract change has resulted in reduced system reserve requirements, making an additional 7.5 MW of power (capacity) available for allocation. SWPA intends to allocate this additional 7.5 MW pursuant to the FPA in states or areas within the SWPA marketing area which presently receive less than a "fair share" of SWPA power. The 1980 FPA Notice (45 FR 19032) observed that allocations to Kansas and Louisiana were deficient and, due to certain operating limitations, the allocation to the non-interconnected part of Texas was also deficient. No apparent changes in operating conditions in Texas have occurred since the FPA. However, SWPA has received numerous requests for power since the FPA was issued. Since this allocation involves only 7.5 MW, SWPA intends to allocate 4.2 MW and 3.3 MW of additional power to preference entities (customers) in the States of Kansas and Louisiana, respectively, in accordance with the FPA. Any amounts rejected by an allottee will be redistributed to allottees within the same state, based on the FPA. The proposed allocation will be completed by April 1, 1986. Customers and interested parties desiring to comment on this Notice of Intent to Allocate Additional Power should submit comments on or before February 27, 1986.

ADDRESS: Written comments should be submitted to the Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101 (918) 581-7529.

Issued this 14th day of January, 1986.

Ronald H. Wilkerson,

Administrator, Southwestern Power Administration.

[FR Doc. 86-1859 Filed 1-27-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36106; FRL-2961-1]

Availability of Applicator Exposure Monitoring Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability for Public Comment.

SUMMARY: The Environmental Protection Agency announces the availability of Subdivision U: Applicator Exposure Monitoring, of the Pesticide Hazard

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Assessment Guidelines for public review and comment. These Guidelines were developed for use by pesticide registrants for conducting indoor and outdoor applicator exposure monitoring studies. Standardized protocols for such studies will assist registrants in submitting acceptable data for review by the Agency. The Agency solicits public comment and will take these comments into account in revising these Guidelines. Copies of the proposed Guidelines are available at the address listed below.

DATE: Comments on Subdivision U, identified by the document control number [OPP–36108], must be received on or before March 31, 1986.

ADDRESS: Submit three copies of written comments, indentified with the document control number "OPP–36108", by mail to: Information Service Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, deliver comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 49 CFR 158.10(c). A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday though Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Alan P. Nielsen, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, Office location and telephone number: Rm. 809, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–3449).

Dated: January 21, 1986.

John W. Melone,

Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 86–1812 Filed 1–27–86; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board; Members

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the SES Performance Review Board for EEOC.

FOR FURTHER INFORMATION CONTACT: William J. Bartlett, Acting Director Personnel Management Services, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC, 20507, 202/634–7002.

SUPPLEMENTARY INFORMATION: Pursuant to the requirement of section 4314(c)(1), Chapter 43, Title 5, U.S.C., membership of the SES Performance Review Board is as follows: Johnny Butler, Acting General Counsel, Equal Employment Opportunity Commission (Chairperson); Allan D. Heuerman, Assistant Director for Employee, Labor and Agency Relations, Office of Personnel Management; Harriet G. Jenkins, Assistant Administrator for Equal Opportunity Programs, National Aeronautics and Space Administration; Joseph Vasquez, Chief, Central Budget Management Branch, Office of Management and Budget (Alternate).

Signed at Washington, DC, on this 21 day of January 1986.

For the Commission.

Clarence Thomas,

Chairman.

[FR Doc. 86–1672 Filed 1–27–86; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–008900–030.

Title: Eight-nine Hundred Rate Agreement.

Parties:

Barber Blue Sea,
A.P. Moller-Maersk Line
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
The National Shipping Co. of Saudi Arabia
United Arab Shipping Co. (S.A.G.)
Waterman Steamship Corporation

Synopsis: The proposed amendment would allow the parties to offer alternate port service between ports covered under the agreement by any mode of transportation. This would remove restrictions applicable to the types of alternate port service permitted by the agreement. The parties have requested a shortened review period.

Agreement No.: 213–010879.

Title: Evergreen Marine Corporation (Taiwan) Ltd. and Japan Line, Ltd. Space Charter and Sailing Agreement in the Far East—North America Trades

Parties:

Japan Line, Ltd.
Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: The proposed agreement would permit the parties to schedule sailings and charter space on each others vessels for the carriage of loaded or empty containers between ports and points in the Far East (including Taiwan, Japan, Korea, Hong Kong, Macao, Singapore, Malaysia, Brunei, Philippines, Thailand and Indonesia) on the one hand, and ports and points in the United States and Canada on the other, including intermodal service (minilandbridge and microbridge) via such ports. It would permit the parties to coordinate sailings, share space and operational expenses, but it would not authorize the pooling of cargo or gross or net revenue, or the division of earnings or losses between the parties.

Agreement No.: 221–010880.

Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority (Port)
Hanjin Container Lines, Ltd. (HCL)

Synopsis: The proposed agreement covers the assignment of parking slots for the operation of a container yard by HCL within the Port's Garden City Terminal. The agreement will be effective for five years. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: January 23, 1986.

Bruce A. Dombrowski,

Acting Secretary

[FR Doc. 86–1819 Filed 1–27–86; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 86–2]

Atlantic Cargo Services, AB v. Gulf European Freight Association; Filing of Complaint and Assignment

Notice is given that a complaint filed by Atlantic Cargo Services, AB against Gulf European Freight Association was served January 22, 1986. Complainant, which is a member of the respondent association, alleges that respondent concurs with the assessment of penalties and additional freight bills by respondent's self-policing group regarding certain bulk shipments moved by complainant. Complainant alleges that such action violates section 10(c)(2) of the Shipping Act of 1984 inasmuch as it is based on respondent's refusal to recognize a technological innovation used by complainant in the carriage of the involved bulk shipments.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 22, 1987, and the final decision of the Commission shall be issued by May 22, 1987.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86–1822 Filed 1–27–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

The Chase Manhattan Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 17, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York; to acquire The New York Switch Corporation, Fort Lee, New Jersey, and thereby engage in data processing and related activities, pursuant to § 225.25(b)(7) of Regulation Y.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCORP*, Dallas, Texas and *MCorp Financial, Inc.*, Wilmington, Delaware (a subsidiary of MCORP); to acquire National Computer Analysts, Inc., Princeton, New Jersey, and thereby engage in providing to others financially related data processing and data transmission services, facilities, and data bases; or access to them, pursuant to § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1744 Filed 1–27–86; 8:45 am]

BILLING CODE 6210–01–M

Guaranty Bancshares Corp. et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

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Guaranty Bancshares Corporation, Shamokin, Pennsylvania ("Applicant"); to engage *de novo* through its subsidiary, Guaranty Trust Company, Shamokin, Pennsylvania ("Company"), in providing trust services to Applicant's subsidiary banks. Company shall perform all functions and activities that my be performed by a trust company (including activities of a fiduciary agency, or custodial nature), in the manner authorized by federal or state law. Company will not be a bank and will not make loans or investments or accept deposits other than those authorized, pursuant to § 225.25(b)(3) of Regulation Y. These activities would be conducted in the Commonwealth of Pennsylvania.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *American Security Corporation*, Washington, DC; to engage *de novo* through its subsidiary, American Security Investment Services, Inc., Washington, DC, in providing discount brokerage services, including the buying and selling of securities solely as agent for the account of customers, but not including securities underwriting or dealing or investment advice or research services; offer individual retirement accounts; engage in related securities credit activities and incidental activities such as offering custodial services and cash management accounts, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1746 Filed 1-27-86; 8:45 am]

BILLING CODE 6301-01-M

Warren County Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 17, 1986.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Warren County Bancshares, Inc.*, Warrenton, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Commerce Warren County Bank, Warrenton, Missouri.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *R & C Bancorp, Inc.*, Oklahoma City, Oklahoma; to become a bank holding company by acquiring Rockwell Bank, N.A., Oklahoma City, Oklahoma, and Choctaw Bancorp, Inc., Choctaw, Oklahoma, thereby indirectly acquiring Choctaw State Bank, Choctaw, Oklahoma.

Board of Governors of the Federal Reserve System, January 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1745 Filed 1-27-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget; Appraisal of Fair Annual Parking Rate Per Space for Standard Level User Charge

AGENCY: Office of Administration, GSA.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to approve the extension of the expiration date of a currently approved collection.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Gareth G. Wells, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerold Yuter, Public Buildings Service (202-566-1517).

SUPPLEMENTARY INFORMATION:

a. *Purpose.* This collection is used to estimate the fair annual rental rate for GSA controlled parking spaces and is the basis for the Standard Level User Charge.

b. *Annual reporting burden.* Respondents 260 responses 1,300, hours 2,100.

c. *Copies of proposal.* Copies may be obtained from the Directives and Reports Management Branch (CAID), Room 3013, GS Building, Washington, DC 20405 (202-566-0666).

Dated: January 16, 1986

Johnny T. Young,

Acting Director, Information Management Division.

[FR Doc. 86-1741 Filed 1-27-86; 8:45 am]

BILLING CODE 6820-23-M

Federal Supply Service, National Capital Region; Closing of Self-Service Stores

SUBJECT: Closing of Self-Service Stores 8 and 74 in the Washington Navy Yard.

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) announces the closing of the Office Products Center located in Building 74, Washington Navy Yard, 4th and M Streets, SE, Washington, DC. The Office Supply Store will be closing on January 31, 1986; the Office Equipment Store (GOLD Card Store) will be closing on February 28, 1986.

ADDITIONAL INFORMATION: GSA is committed to providing effective and economical supply support to Government agencies.

GSA has determined that the most effective method to provide retail supplies to Federal agencies is through a network of Customer Supply Centers. CSCs provide catalog ordering by telephone and direct shipment of orders by small parcel carrier within 24 hours after placement of the order.

Authorized Federal activities that currently do not have a Customer Supply Center account may submit an application, GSA Form 3525, for an account by contacting the General Services Administration, Federal Supply Service, Customer Service Bureau (WFB), Washington, DC 20407. Telephone inquiries should be directed to (202) 472-5000.

GSA has further determined that the most effective method of providing

office equipment to Federal agencies is through the use of the GSA Federal Supply Schedules. Schedules provide a wide range of office equipment available directly from vendors under Government contract. Agencies will, however, have to carefully plan their procurements to allow for ordering and delivery timeframes.

Agencies may request further information on Federal Supply Schedules from the General Services Administration, Federal Supply Service, Office of the Customer Service Representative (WF-PL), Washington, DC 20407. Telephone inquiries should be directed to (202) 472-1932.

FOR FURTHER INFORMATION CONTACT: Mrs. Shelley King, Customer Service Bureau (WFB), General Services Administration, Washington, DC 20407. Telephone inquiries may be directed to Mrs. King at (202) 472-5000.

Dated: January 16, 1986.

William F. Madison,

Regional Administrator.

[FR Doc. 86-1742 Filed 1-27-86; 8:45 am]

BILLING CODE 6820-24-M

[GSA Bulletin FPMRA-40, Supp. 16]

Federal Travel Regulations; Real Estate Sale and Purchase Expenses for Change of Official Station

Correction

In FR Doc. 86-760 appearing on page 1560 in the issue of Tuesday, January 14, 1986, make the following correction: In the third column, paragraph 2-6.2g(1), fourth line, the last word, "of" should read "or".

BILLING CODE 1505-01-M

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will next meet March 5-7, 1986, at the Clarion Hotel, 200 South Fourth Street, St. Louis, MO 63102.

The purpose of this meeting is to discuss the Depository Library Program.

The meeting will be open to the public. Anyone who wishes to attend should notify the Meeting Coordinator, U.S. Government Printing Office, Library Programs Service (LPS), Washington, DC 20401 (Telephone: 202-275-1114).

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: January 22, 1986.

Ralph E. Kennickell, Jr.,

Public Printer.

[FR Doc. 86-1823 Filed 1-27-86; 8:45 am]

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings; February

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2) announcement is made of the following national advisory bodies scheduled to assemble during the month of February 1986.

Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee

February 6-7; 9:00 a.m., Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036

Open—February 6; 9:00-10:00 a.m.
Closed—Otherwise.

Contact: Maureen Eister, Room 9C02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4868.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., February 6, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

* * * * * *

Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee

February 13-14; 9:00 a.m., Linden Hill Hotel, Pinehurst Room, 5400 Pooks Hill Road, Bethesda, MD 20814.

Open—February 13; 9:00-10:00 a.m.
Closed—Otherwise.

Contact: Shirley Maltz, Room 9C24, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the area of biological sciences related to mental health with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., February 13, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee

February 18-19; 9:00 a.m., Wellington Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Open—February 17; 9:00-11:00 a.m.
Closed—Otherwise.

Contact: Walter T. Schaffer, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6106.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and research training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00-11:00 a.m., February 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Epidemiology and Prevention Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee

February 18-20; 8:00 a.m., Hyatt Regency Bethesda, Old Georgetown Room, 1 Bethesda Metro Center, Bethesda, MD 20814.

Open—February 18; 8:00-9:30 a.m.
Closed—Otherwise.

Contact: Ron Gold, Room 10-42, Parklawn Building, National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:00-9:30 a.m., February 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will

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be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee

February 19–21; 9:00 a.m., Wellington Hotel, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Open—February 19; 9:00–11:00 a.m.
Closed—Otherwise.

Contact: Mark R. Green, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol abuse and Alcoholism for final review.

Agenda: From 9:00–11:00 a.m., February 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Criminal and Violent Behavior Research Review Committee

February 19–21; 9:15 a.m., Dupont Plaza Hotel 1500 New Hampshire Avenue, NW., Washington, DC 20009.

Open—February 19, 9:15–10:30 a.m.
Closed—Otherwise.

Contact: Peg Lyons, Room 9C18, Parklawn Building, 5600 Fisher Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:15–10:30 a.m., February 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Psychopharmacological, Biological, and Physical Treatment Subcommittee of the Treatment Development and Assessment Research Review Committee

February 20–21; 9:20 a.m., Bethesda Marriott, 1551 Pooks Hill Road, Bethesda, MD 20814.

Open—February 20; 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Pamela J. Mitchell, Room 9C14, Parklawn Building, 5600 Fisher Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 20, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Basic Psychopharmacology Research Subcommittee of the Neurosciences Research Review Committee

February 20–21; 8:30 a.m., Ramada Inn–Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Open—February 20; 8:30–9:30 a.m.
Closed—Otherwise.

Contact: Lynn Warwick, Room 9C26, Parklawn Building, 5600 Fisher Lane, Rockville, MD 20857, (301) 443–3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 8:30–9:30 a.m., February 20, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Child and Family and Prevention Subcommittee of the life Course and Prevention Research Review Committee

February 20–22; 9:00 a.m., Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open—February 20; 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Charlotte Silber, Room 9C18, Parklawn Building, 5600 Fisher Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to the mental health of the child and family and prevention, with recommendation to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 20, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee

February 24–25; 9:00 a.m., Wellington Hotel, 2505 Wisconsin avenue, NW., Washington, DC 20007.

Open—February 24; 9:00–10:30 a.m.
Closed—Otherwise.

Contact: Mary L. Ganikos, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2860.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–10:30 a.m., February 24, the meeting will be open for discussion of review policies and procedures, administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Psychopathology and Clinical Biology Research Review Committee

February 24–26; 9:00 a.m., Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open—February 24; 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Mary L. Curvey, Room 9C24, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 24, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee

February 25–26; 9:00 a.m., February 25; Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, MD 20857, February 26–28; Wellington Hotel 2505 Wiconsin Avenue NW., Washington, DC 20007.

Open—February 25; 9:00 a.m.–2:30 p.m., February 26; 9:00 a.m.–10:30 a.m.
Closed—Otherwise.

Contact: Laura Weinstein, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00 a.m.–2:30 p.m., February 25, the meeting will be open for a workshop on the valadity of self report in treatment effectiveness research. From 9:00–10:30 a.m., February 26, the meeting will be open for a discussion of review policies and procedures, administrative announcements, and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Psychological Sciences Subcommittee of the Mental Health Research Education Review Committee

February 26–28; 9:00 a.m., Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Open—February 26; 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Paul Wohlford, Room 9C15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Mental Health for support of research and research training activities in the areas of personality, emotion, cognition, and related higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 26, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Basic Behavioral Processes Research Review Committee

February 27–28; 9:00 a.m., The State Plaza Hotel 2117 E Street NW., Washington, DC 20037.

Open—February 27; 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Shirley Maltz, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to experimental and physiological psychology and comparative behavior, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 27, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Clinical Program Projects/Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee

February 27–28; 9:00 a.m., Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Open—February 27; 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Pamela J. Mitchell, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of mental health clinical research centers, clinical program projects, and other large-scale multidisciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 27, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Mental Health Behavioral Sciences Research Review Committee

February 27–March 1; 9:00 a.m., Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.

Open—February 27; 9:00–10:00 a.m.
Closed—Otherwise.

Contact: Naomi Lichtenberg, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral science areas relevant to mental health and makes recomendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., February 27, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(b)(6), and section 10(d) of Pub. L. 92-463, 5 U.S.C. Appendix 2.

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Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widmer, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Mary Kielkopf, Acting Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville Maryland 20857, (301) 443–1644. NIMH: Ms. Helen Garrett, Committee Management Officer, Room 9–94, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

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Dated: January 22, 1986.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-1759 Filed 1-27-86; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

Medicaid Program; Notice of Hearing: Reconsideration of Disapproval of Two California State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 5, 1986 in San Francisco, California to reconsider our decision to disapprove California State Plan Amendments 84–24 and 85–5.

DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk February 12, 1986.

FOR FURTHER INFORMATION, CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider our decison to disapprove two California State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issues in this matter are (1) whether California SPA 84–24 violated section 1902(a)(10)(C)(i)(III), section 1902(a)(17)(B), section 1902(a)(4), section 1902(a)(19) of the Social Security Act and Federal regulations at 42 CFR 435.831(a)(2), 42 CFR 431.15 and 42 CFR 435.903 and (2) whether California SPA 85–5 violates section 1902(a)(10)(C)(i)(III) and section 1902(a)(17)(B) of the Social Security Act and Federal regulations at 42 CFR 435.831(a)(2).

California State Plan Amendment 84–24

California SPA 84–24 would establish a special disregard of income which under court order or by agreement with a district attorney is used to pay spousal or child support. This disregard would apply in determining eligibility for aged, blind and disabled medically needy individuals.

Under Medicaid statute at section 1902(a)(10)(C)(i)(III) of the Social Security Act (the Act), States such as California are required to employ the same methodologies in determining income eligibility for medically needy individuals as are employed in the related cash assistance programs. Thus, with respect to aged, blind and disabled individuals, the State must use the same income disregards and definition of income as used in the Supplemental Security Income (SSI) program.

Under the SSI program, support payments of the type encompassed by California SPA 84–24 are not excluded from income. The regulations at 20 CFR 416.1102 define income as ". . .anything you (an individual) receive in cash or in kind that you can use for food, clothing, or shelter. . ." Moreover, under 20 CFR 416.1123(b)(2), SSI even considers as available income, amounts which are withheld from the individual to make certain payments (e.g., amounts of income withheld because of a garnishment). Thus, income actually received, which is later used to make support payments is considered to be available income and is not excluded elsewhere in the SSI statute or regulations. Accordingly, the Secretary has determined these amounts to be available income and this SSI determination is applicable to the medically needy under section 1902(a)(10)(C)(i)(III) and 1902(a)(17)(B) of the Act.

Under Medicaid statute at section 1902(a)(17)(B) of the Act, States are precluded from considering any income or resource which is not available and to consider as available all income and resources which are determined in accordance with regulations of the Secretary to be available (unless the cash program rules require this income or resource to be disregarded). Medicaid regulations at 42 CFR 435.831(a)(2) require States covering SSI recipients to deduct amounts that would be deducted under SSI. HCFA has determined California SPA 84–24 violates 1902(a)(17)(B) of the Act because it would disregard income which the Secretary determines to be available and which is not disregarded under SSI.

Furthermore, under Federal statute at section 1903(f) of the Act and implementing regulations at 42 CFR 435.1007, Federal financial participation (FFP) is not available to any individual whose income after specified deductions exceeds 133⅓ percent of the highest money payment that would ordinarily be made under the State's AFDC plan to a family of the same size without income or resources. The disregard as proposed in SPA 84–24 is not included as one of the disregards specified under these provisions. The FFP requirements are not a specific State plan requirement. However, by applying an income disregard not permitted under the FFP provsions, the State could provide Medicaid to individuals whose income would otherwise exceed the FFP limitation expressly cited at section 1903(f). In light of this, HCFA has determine approval of the proposed State plan amendment would thus violate section 1902(a)(4) of the Act and 42 CFR 431.15. Further, HCFA has determined such approval would not be "consistent with simplicity of administration" as required under section 1902(a)(19) of the Act and 42 CFR 435.903.

Finally, we note that section 2373(c) of the Deficit Reduction Act of 1984 (DEFRA) imposed a "moratorium" with respect to the application of certain financial eligibility provisions of section 1902(a)(10)(C)(i)(III) of the Act that are less restrictive than those used for cash assistance determinations. However, only those less restrictive provisions which are in approved State plans are protected by the moratorium. Since the proposal contained in California's amendment is not in its State plan it is not protected by the moratorium provisions. Furthermore since HCFA has determined that proposal violates sections 1902(a)(17)(B), 1902(a)(4) and 1902(a)(19) of the Act as discussed above, it does not qualify for protection under the moratorium.

California State Plan Amendment 85–5

California SPA 85–5 provides for the use of the State's community property rules in determining Medicaid financial eligibility of medically needy aged, blind and disabled individuals.

The Medicaid statute at section 1902(a)(10)(C)(i)(III) of the Social Security Act requires that States apply the same methodologies as are applied in the Supplemental Security Income (SSI) program in determining financial eligibility of medically needy, aged, blind or disabled individuals. SSI regulations at 20 CFR Part 416 specify the methodology which States must apply in determining what is income and how it affects eligibility.

SSI regulations at 20 CFR 416.1102 define income as ". . . anything you receive in cash or in kind that you can use for food, clothing or shelter. . . ." SSI by statute is a Federal program with uniform eligibility standards and requirements. It uses nationwide rules to determine what income will be considered as the individual's and what income will be considered as the spouse's. For example, Federal rules require that benefit payments made under title II of the Act be considered as income to the individual beneficiary, and not be transferred or assigned to any other individual. Medicaid follow SSI rules as required by law. The SSI policy does not provide for any special treatment of income in those States which have in effect community property laws. Since the California plan amendment would apparently consider community property rules in determining attribution of all incomes received by married individuals, without regard to the Federal rules and would count the income of each spouse as his/her interest (one-half) of their own income and one-half of the other spouse's income it conflicts with SSI policies on counting income for purposes of establishing eligibility. Thus, HCFA has determined the California proposal violates section 1902(a)(10)(C)(i)(III) of the Act because the State proposes to apply its community property rules in determinining ownership of income rather than the required SSI methods.

We note that section 2373(c) of the Deficit Reduction Act of 1984 imposed a moratorium with respect to the application of the provisions of section 1902(a)(10)(C)(i)(III) of the Act which requires the use of a single income and resource standard and that the cash assistance methodologies be applied under medically needy programs. Under the moratorium, more liberal financial eligibility methodologies that those of the cash assistance programs may be applied in the State plan but only those more liberal provisions which were already contained in the approved State plan. There are two reasons HCFA had determined the California SPA 85–5 is not covered by the moratorium. In addition to the fact that California's amendment on community property is not in its existing State plan, and thus not covered by the moratorium, the moratorium applies only to provisions of the plan which are more liberal than the cash assistance methodology. Using community property rules is sometimes more liberal and sometimes more restrictive than cash assistance rules, depending upon the relative incomes of each spouse as well as which spouse is attempting to qualify for Medicaid. Because the California proposal can result in methodologies which are more restrictive than the cash assistance methodologies it is not covered by the moratorium.

Finally, section 1902(a)(17)(B) of the Act has a two-fold purpose. First, it precludes a State from considering any income or resources which is not available. Second, it requires a State to consider as available, all income and resources which are determined, in accordance with the Secretary's regulations, to be available (unless the cash program rules require this income or resource be disregarded). Regulations at 42 CFR 435.831(a)(2) require States covering all SSI recipients to deduct amounts that would be deducted in determining SSI.

HCFA has determined the California SPA 85–5 violates section 1902(a)(17)(B) and Federal regulations at 42 CFR 435.831(a)(2) since it would exclude income which the Secretary determines to be available (under SSI rules) to the individual (by considering it to be his spouse's), and which is not disregarded under that program.

The notice to California announcing an administrative hearing to reconsider our disapproval of its State plan amendments reads as follows:

Kenneth W. Kizer, M.D., M.P.H.,
Director, California Department of Health Services, 714/744 P Street, Sacramento, CA 95814

Dear Dr. Kizer: This it to advise you that your requests for reconsideration of the decision to disapprove California State Plan Amendments 84–24 and 85–5 were received on December 24, 1985.

California State Plan Amendment 84–24 would establish a special disregard of income which under court order or by agreement with a district attorney is used to pay spousal or child support. This disregard would apply in determining eligibility for aged, blind and disabled medically needy individuals. You have requested a reconsideration of whether this plan amendment violates section 1902(a)(10)(C)(i)(III), 1902(a)(17)(B), 1902(a)(4), and 1902(a)(19) of the Social Security Act and Federal regulations at 42 CFR 435.831(a)(2), 42 CFR 431.15 and 42 CFR 435.903. You have also requested a reconsideration of whether our plan amendment disapproval is prohibited by section 2373(c) of the Deficit Reduction Act of 1984.

California State Plan Amendment 85–5 proposes to apply the State's community property laws in determining Medicaid financial eligibility of medically needy aged, blind and disabled individuals.

You have requested a reconsideration of whether this plan amendment violates section 1902(a)(10)(C)(i)(III) and 1902(a)(17)(B) of the Social Security Act and Federal regulations at 42 CFR 435.831(a)(2). The issues to be considered during the hearing to reconsider plan amendment nos. 84–24 and 85–5 are specified in the "Supplementary Information" section of the enclosed Federal Register Notice.

I am scheduling a hearing on your request to be held on March 5, 1986 at 10 a.m., in the 21st Floor Conference Room, 100 Van Ness Avenue, San Francisco, California. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Larry Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communciation which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

C. McClain Haddow,
Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 22, 1986.

C. McClain Haddow,
Acting Administrator, Health Care Financing Administration.

[FR Doc. 86-1784 Filed 1-27-86; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress: National Advisory Council on Migrant Health.

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Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC, or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 245–6791. Copies may be obtained from Mr. Billy Sandlin, Executive Secretary, National Advisory Council on Migrant Health, Room 7A–55, Parklawn Building, 5700 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Dated: January 22, 1986.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 86–1753 Filed 1–27–86; 8:45 am]

BILLING CODE 4160–16–M

Office of Human Development Services

Federal Allotments to States for Social Services Expenditures Pursuant to the Title XX-Social Services Block Grant Act; Promulgation for Fiscal Year 1987

Correction

In FR Doc. 85–27272 appearing on page 47279 in the issue of Friday, November 15, 1985, make the following correction in the second column.

Under the chart entitled "Fiscal Year 1987 Federal Allotments to States Social Services-Title XX Block Grants", the entry for New Mexico should read "16,190,034".

BILLING CODE 1505–01–M

National Institutes of Health

National Institute of Dental Research; Amended Notice of Meeting; National Advisory Dental Research Council

The notice of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, January 27–28, 1986, Conference Room 7, Building 31C, National Institutes of Health, which was published in the **Federal Register** on December 27 (50 FR 53019) is hereby amended to reflect an additional basis for the closing of that portion of the meeting beginning at 9 a.m., on Tuesday, January 28 and ending with adjournment on that date.

A discussion of the President's 1987 budget will be held at that meeting to aid the Council members with their statutory responsibilities in the grant awarding process. Premature disclosure of this information could significantly frustrate implementation of proposed agency action. Accordingly, that specific portion of the January 28 meeting is closed under the authority of section 552b(c)(9) of Title 5, U.S. Code and section 10(d) of Public Law 92–463.

Dated: January 24, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–1948 Filed 1–27–86; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Las Cruces District, NM; Intent To Prepare Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent To Prepare Resource Management Plan; Call for Coal and Other Resource Information; and Invitation To Participate in Identification of Issues and Planning Criteria.

SUMMARY: The Bureau of Land Management (BLM), Las Cruces District, New Mexico, is initiating the preparation of a Resource Management Plan (RMP) which will include an Environmental Impact Statement (EIS). The plan will guide and control future management actions on approximately 3.7 million acres of public land and mineral resources administered by the Bureau in the Socorro Resource Area.

The public is invited to contribute to the planning process, beginning with participation in the identification of issues and planning criteria. Scoping meetings for public input will be held in Socorro and Quemado in February.

The purpose of this notice is also to solicit coal and other resource information and indications of interest and needs, pursuant to 43 CFR 3420.1–2 and Subpart 1600, for incorporation into the RMP. Coal companies, State and local governments, and the general public are encouraged to submit information to the BLM to assist in the determination of coal development potential and possible conflicts with other resources. Where such information is determined to indicate development potential for an area, the area may be included in the land use planning for evaluation of acceptability for further consideration for leasing.

DATE: Comments relating to the identification of issues and planning criteria and areas to be considered for competitive coal leasing will be accepted until March 14, 1986. Proprietary data should be identified to ensure confidentiality.

ADDRESS: Comments should be sent to: Joel Farrell, RMP Team Leader, Bureau of Land Management, Las Cruces District, Socorro Resource Area, 198 Neel Ave. NW., Socorro, NM 87801.

FOR FURTHER INFORMATION CONTACT: Harlen Smith, Area Manager, or Joel Farrell, RMP Team Leader, Socorro Resource Area, (505) 835–0412.

SUPPLEMENTARY INFORMATION: The planning area will include the public land and Federal mineral ownership in Socorro and Catron Counties. A map showing the area is available in the Socorro Resource Area Office. This encompasses approximately 594,000 and 945,000 acres of BLM-administered surface and 1.2 million and 1.0 million acres of Federal minerals under Federal, State, or private surface in Catron and Socorro Counties, respectively. Anticipated issues to be addressed during development of the RMP include, but are not limited to, the following: (1) Which lands in the Socorro Resource Area could be transferred to other than BLM administration or may require further study and which lands would be beneficial to BLM programs if acquired; (2) What are the correct levels of vegetative use for livestock, wildlife, and watershed protection; (3) What areas of public land should be designated as open, restricted, or closed to off-highway or off-road vehicles; (4) what public lands, if any, require special management practices to ensure conservation of a specific resource; (5) Management of the wild horse herd; and (6) What areas with coal development potential can be made available for further lease consideration?

These preliminary issues are not final and may be further refined by direct input through active public participation. The RMP will be developed by an interdisciplinary team, using representation from the Team Leader, Technical Coordinator, Range Conservationists, Realty Specialists, a Wildlife Biologist, a Geologist, and an Outdoor Recreation Planner, with additional technical support to be provided by other specialists as needed.

The data received from this call may be used to delineate tracts which may be considered for competitive leasing in the San Juan River Coal Production Region. This call for coal and other resource information is to: (1) Identify new areas with coal development potential not considered in previous planning; and (2) Gather new information on coal and other resources for those areas evaluated in previous planning documents which could affect the original decisions. Those areas included in previous planning documents and decisions and the Draft San Agustine MFP Amendment will be carried forward unchanged unless new information is received which would support a possible change from the original decisions. Industry and other interested parties are asked to provide any information that will be useful in application of the coal screens and delineation of areas acceptable for further lease consideration, as defined in 43 CFR Part 3420 Coal Program Regulations. If industry has an interest in leasing an area not evaluated in previous plans, they must provide BLM with adequate coal data during the response period for this call in order for BLM to consider that area for possible leasing. A major objective is to integrate potential lessees and other public data and needs with the process of delineating the areas acceptable for further lease consideration. It is important to note that availability of information from this call will be a major factor in applying the unsuitability criteria and multiple use trade-off screens. The type of information needed includes, but is not limited to, the following:

(1) Location:

a. Tracts desired by mining companies (narrative description with delineation of surface/mineral management quad map or other such map).

b. Public and private industry user facilities in the general region.

(2) Quantity needs (tonnage, average tons per year, and year during which production should commence) for both coal producers and users.

(3) Quality needs (types and grades of coal) for both producers and users.

(4) Coal reserve or drilling data which a company or the public may have pertaining to the Socorro Resource Area.

(5) Proposed Users of Coal:

a. By mining companies.

b. By public and private industries.

(6) Information Relating to Surface and Mineral Ownership:

a. Information on surface owner consents previously granted; e.g., description of the location of the property, whether consents are transferable, surface owner leases with coal companies, etc.

b. Commitments from fee coal owners or from associated non-Federal coal.

(7) For those wishing to identify areas with other resource values which may conflict with coal development, please include the following information:

a. Location—delineations should be made on a suitable map with a scale not less than ½ inch to the mile (preferably 1:24,000) accompanied with a narrative description.

b. Reasons for non-development.

c. Other pertinent information.

Any individual, business entity, governmental entity, or public body may participate and submit coal and other resource information under this call.

A comprehensive public participation plan will be prepared in accordance with 43 CFR 1610.2 in order to involve interested or affected parties early and continuously throughout the planning process. An individual may protest approval of the proposed plan in the final RMP/EIS only with respect to those items submitted in writing to the Area Manager during the planning process. The plan will emphasize localized one-to-one contacts, media coverage, direct mailings, and continual coordination with local, State, and other Federal agencies. Meetings to determine the scope of the RMP and to obtain input on issues and planning criteria will be held in Socorro and Quemado, New Mexico, at the following times and locations:

February 19, 1986, 7 p.m., Socorro Resource Area Office

February 20, 1986, 7 p.m., Quemado Community Hall

Complete records of phases of the planning process will be available to the public at the Socorro Resources Area Office at the address above throughout development of the RMP. Draft and final documents will be published and available for public review.

Dated: January 16, 1986.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86–1782 Filed 1–27–86; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations; California et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 18, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 12, 1986.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Francisco County

San Francisco, *Belt Railroad Engine House and Sandhouse*, Block bounded by Lombard, Sansome & the Embarcadero

KENTUCKY

Breathitt County

Jackson, *Breathitt County Jail (Jackson MRA)*, 1027 College St.

Jackson, *Crain's Wholesale and Retail Store (Jackson MRA)*, College & Broadway Sts.

Jackson, *Jackson Commercial District (Jackson MRA)*, Main St. between Court West to Broadway St.

Jackson, *L&N Railroad Depot (Jackson MRA)*, Armory Dr.

Jackson, *M.E. Church South (Jackson MRA)*, 1022 College St.

Jackson, *Stacey Hotel (Jackson MRA)*, Broadway & College Sts.

LOUISIANA

Caddo Parish

Shreveport, *Taylor Wholesale Grocers and Cotton Factors Warehouse—Lee Hardware Building*, 719, 723, & 729 Edwards St.

Calcasieu Parish

DeQuincy vicinity, *Jackson House*, Off LA 27

Jefferson Parish

Westwego vicinity, *Magnalia Lane Plantation House*, LA 541 at Nine Mile Point

Orleans Parish

New Orleans, *New Orleans City Park Carousel and Pavilion*, City Park off City Park Ave.

MARIANA ISLANDS

Tinian Island

Tachognya

MARYLAND

Anne Arundel County

Davidsonville, *Indian Range*, 1012 Mount Airy Rd.

Queen Anne's County

Centreville vicinity, *Content*, MD 305 near Tanyard Rd.

Somerset County

Princess Anne vicinity, *Waterloo*, Mount Vernon Rd. (MD 362)

Talbot County

St. Michaels, *Edna E. Lockwood—Chesapeake Bay Bugeye (boat)*, Navy Point; foot of Mill St.

MICHIGAN

Charlevoix County

Boyne City, *Wolverine Hotel*, 300 Water St.

BEST COPY AVAILABLE

Wayne County

Detroit, *GAR Building*, 1942 Grand River Ave.

MISSOURI

St. Louis (Independent City)

Chopin, Kate, House, 4232 McPherson Ave.

NEW JERSEY

Essex County

Newark, *Protestont Foster Home*, 272–284 Broadway

West Orange, *Llewellyn Park Historic District* Roughly bounded by I–280, Eagle Rock Ave., Main St., and Pleasant Ave.

Hudson County

Hoboken, *Jefferson Trust Company*, 313–315 First St.

Middlesex County

Milltown, *Milltown India Rubber Company*, 40 Washington Ave.

NEW MEXICO

Bernalillo County

Albuquerque, *Castle Apartments*, 1410 Central SW

Albuquerque, *Leverett, William J., House*, 301 Dartmouth NE

Albuquerque, *Milne, John, House*, 804 Park Ave. SW

Rio Arriba County

Chama, *Foster Hotel*, Fourth & Terrace

Sante Fe County

Jacona, *Ignacio Roybal House*, CR 84 West of NM 4 & US 84/285 Intersection

Taos County

Carson, *Carson School*, NM 96

OHIO

Belmont County

Bridgeport, *Kirkwood, Joseph, House*, 329 Bennett St.

Coshocton County

Warsaw vicinity, *Walhounding Canal Lock No. 9*, OH 715

Delaware County

Delaware vicinity, *High House*, 2360 Panhandle Rd.

Fayette County

Washington Courthouse vicinity, *Woodlawn Farm*, 3798 OH 41 NW

Hamilton County

Zanefield vicinity, *Marmon, Martin, House*, CR 153

Montgomery County

Dayton, *Wright Cycle Company Shop—Wright and Wright Printing Offices*, 22 S. Williams St.

Summit County

Hudson vicinity, *Ward House*, 1410 Hines Hill Rd.

Wayne County

Wooster, *Gertenslager Carriage and Wagon Company*, 572 E. Liberty

PENNSYLVANIA

Dauphin County

Shoop Site (36 Da20)

PUERTO RICO

Mayaguez County

Mayaguez, *Logia Adelphia*, Sol St. No. 64 E.

SOUTH DAKOTA

Brown County

Groton, *McKenzie—Cassels House*, 508 N. 3rd St.

Brule County

Chamberlain, *Toft Hotel*, 200 S. Main

Clay County

Vermillion, *First National Bank Building of Vermillion*, 1 E. Main St.

Faulk County

Faulkton, *Turner, Frank and Clara, House*, 1006 Main

Minnehaha County

Dell Rapids,, *Amphitheatre*, City Park on Washington Ave. extension

Dell Rapids, *Campbell, Gina Smith, Bathouse*, City Park on Beach Ave. extension

Dell Rapids, *Carnegie Public Library*, 513 N. Orleans

Sioux Falls, *Washington High School*, 315 S. Main

UTAH

Box Elder County

Lower Bear River Archaeological Discontiguous District

VERMONT

Windham County

Putney, *Putney Village Historic District*, Westminster W. Rd., US 5, Christian Square, Old US 5, and Depot Rd.

VIRGINIA

Pulaski County

Dublin vicinity, *Harvey, Nathaniel Burwell, House*, off Va 812

Tazewell County

Tazewell vicinity, *Burke's Garden Rural Historic District*, 20,000—Acre Valley encircled by Garden Mountain

WEST VIRGINIA

Mercer County

Bluefield, *Bluefield Downtown Commercial Historic District*, roughly bounded by Princeton Ave., Scott, High, and Russell Sts.

[FR Doc. 1825 Filed 1–27–86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC–C–10939]

Motor Carriers; Petition for Waiver or Modification of the Recordkeeping Requirements for Shipments of Low Value Packages

AGENCY: Interstate Commerce Commission.

ACTION: Waiver of recordkeeping requirements of shipments of low value packages granted to United Parcel Service.

SUMMARY: In response to a petition filed by United Parcel Services (UPS), the Commission instituted a notice of proposed rulemaking, 50 FR 21904 (May 22, 1985), which proposed to waive the recordkeeping requirements of 49 CFR 1051.1 for shipments of low value packages. After considering the comments, the Commission has decided to waive the recordkeeping requirements for shipments moving by UPS. Therefore, no modifications to 49 CFR 1051.1 are necessary. Pursuant to this waiver, a shipper that uses UPS's service could make invoices or elect to ship certain packages as low value, keeping daily records only of the total number of packages shipped and total applicable charges. The Commission intends to issue a subsequent decision discussing whether a waiver of the recordkeeping requirements also should be granted to all general freight carriers.

FOR FURTHER INFORMATION CONTACT:

Robin Williams Denick, (202) 275–7711

or

Howell I. Sporn, (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Interstate Commerce Commission Building, Room 2229, Washington, DC 20423; or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided: January 17, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–1764 Filed 1–27–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30767]

St. Louis Southwestern Railway Co.; Trackage Rights Missouri Pacific Railroad Co.; Exemption

Missouri Pacific Railroad Company (MP) has agreed to grant overhead trackage rights to St. Louis Southwestern Railway Company (SSW) between Pine Bluff (milepost 387.58) and Little Rock, AR (milepost 343.08), a distance of 44.50 miles.

The trackage rights will be effective on January 15, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the examption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: January 15, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–1762 Filed 1–27–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30768]

St. Louis Southwestern Railway Co.; Trackage Rights Exemption; Missouri Pacific Railroad Co.; Exemption

The St. Louis Southwestern Railway Company (SSW) has entered into an agreement for trackage rights over Missouri Pacific Railroad Company (MP) track from milepost 165.37 at or near Waco Jct., to milepost 91.23 at or near Hearne, TX, a distance of approximately 74.14 miles, in the Sate of Texas. This trackage rights agreement became effective January 15, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) will not stay the transaction.

Dated: Janurary 16, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–1761 Filed 1–27–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-153)]

Seaboard System Railroad, Inc.; Abandonment Between Sessoms and Alma, IN, Bacon County, GA; Findings

The Commission has found that the public convenience and necessity permit the Seaboard System Railroad, Inc. to abandon its 7.52 mile rail line between Sessoms (milepost AOB–613.04) and Alma, GA (milepost AOB–620.56) in Bacon County, GA. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–1763 Filed 1–27–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; United States v. City of Freeport, TX, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on January 10, 1986, a proposed consent decree in *United States* v. *City of Freeport, Texas, et al.*, Civil Action No. G–84–73, was lodged with the United States District Court for the Southern District of Texas, Galveston Division. This consent decree settles a lawsuit filed February 14, 1984, pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against the City of Freeport, Texas ("the City"). The complaint alleged, among other things, that the City: Discharged pollutants into navigable waters in excess of the authorization in the City's National Pollutant Discharge Elimination System ("NPDES") permit; discharged pollutants into navigable waters in a manner that pypassed the City's treatment plant; failed to operate and maintain the sewage treatment plant in an adequate manner; failed to report instances of noncompliance; and failed to handle and dispose of sludges properly. The complaint alleged that these acts and omissions constituted violations of section 301 of the Act, 33 U.S.C. 1311, and the NPDES permits issued to the City for its sewage treatment plant pursuant to section 402 of the Act, 33 U.S.C. 1342.

The State of Texas was named as a Defendant pursuant to section 309(e) of the Act, which states that a State shall be liable for payment of a judgment, or any expenses incurred as a result of complying with any judgment, entered against a municipality to the extent that State laws prevent the municipality from raising revenues needed to comply with the judgment.

Under the terms of the proposed consent decree, the City will undertake a program to attain and thereafter maintain compliance with its NPDES permit and the Clean Water Act, including: Upgrading some existing treatment units and construction of new units at the treatment plant; rehabilitation of the City's wastewater collection system to reduce infiltration and inflow; implementation of a preventive maintenance plan; implementation of a proper solids handling program; reduction of biochemical oxygen demand overloading; and employment of an adequate staff. The proposed consent decree also calls for stipulated penalties against the City for failure to meet any of the deadlines set by the decree or failure to meet any of the interim effluent limitations set by the decree. Also, the proposed decree calls for the City to pay a civil penalty of $27,000 with respect to the violations of the Clean Water Act alleged in the complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *City of Freeport, Texas, et al.*, D.J. Ref. 90–5–1–1–2072.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Bian Beverly, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (214) 767–9969

United States Attorney's Office

Contact: Robert Darden, Assistant United States Attorney, Southern District of Texas, U.S. Federal

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Building and Courthouse, 515 Rusk, Houston, Texas 77002, (713) 229–2691

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $1.60 payable to Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–1739 Filed 1–27–86; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; United States v. City of Harlingen, TX, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on January 10, 1986, a proposed consent decree in *United States* v. *City of Harlingen, Texas, et al.*, Civil Action No. B–85–8, was lodged with the United States District Court for the Southern District of Texas, Brownsville Division. This consent decree settles a lawsuit filed January 4, 1985, pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against the City of Harlingen, Texas ("the City"). The complaint alleged, among other things, that the City: Discharged pollutants from its two sewage treatment plants into navigable waters in excess of the authorization in the City's National Pollutant Discharge Elimination System ("NPDES") permits; failed to correct inflow and influent problems, failed to operate and maintain the sewage treatment plants in an adequate manner; failed to sample effluent as required by the permits; failed to report properly sampling results; and failed to comply with the construction schedule set forth in the permits. The complaint alleged that these acts and omissions constituted violations of section 301 of the Act, 33 U.S.C. 1311, and the NPDES permits issued to the City for its sewage treatment plant pursuant to section 402 of the Act, 33 U.S.C. 1342.

The State of Texas was named as a Defendant pursuant to section 309(e) of the Act, which states that a State shall be liable for payment of a judgment, or any expenses incurred as a result of complying with any judgment, entered against a municipality to the extent that State laws prevent the municipality from raising revenues needed to comply with the judgment.

Under the terms of the proposed consent decree, the City will undertake a program to attain and thereafter maintain compliance with its NPDES permits and the Clean Water Act, including: Upgrading and expanding existing treatment units; implementation of a proper sludge handling program; and implementation of the City's pretreatment program and enforcement of the pretreatment ordinance. The proposed consent decree also calls for stipulated penalties against the City for failure to meet any of the deadlines set by the decree or failure to meet any of the interim effluent limitations set by the decree. Also, the proposed decree calls for the City to pay a civil penalty of $57,500 with respect to the violations of the Clean Water Act alleged in the complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *City of Harlingen, Texas, et al.*, D.J. Ref. 90–5–1–1–2295.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Ralph Corley, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (214) 767–9971

United States Attorney's Office

Contact: Robert Darden, Assistant United States Attorney, Southern District of Texas, U.S. Federal Building and Courthouse, 515 Rusk, Houston, Texas 77002, (713) 229–2691

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $1.70 payable to Treasurer of the United States.

Roger Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–1740 Filed 1–27–86; 8:45 am]

BILLING CODE 4410–01–M

Office of the Attorney General

[Order No. 1123–86]

President's Commission on Organized Crime; Meetings

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces two forthcoming meetings of the President's Commission on Organized Crime. This notice also sets forth a summary of the agenda for the meetings, together with an explanation of why the meetings will be closed to the public. Notice of these meetings is required by the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2).

DATES: February 10 and 11, 1986, 9:00 a.m.–5:00 p.m. (closed meetings).

ADDRESS: President's Commission on Organized Crime, 1425 K St. NW., Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street, NW., Sutie 700, Washington, DC 20005; (202) 786–3500.

SUPPLEMENTARY INFORMATION: The closed meetings will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized criminal groups whose illegal activities are to be described in the Commission's final report. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the content of the information they made available to the Commission were to be made public. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that these discussions are exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(5), 552b(c)(7)(C), 552b(c)(7)(D), and 552b(c)(7)(F), which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss at the closed meetings a number of other issues specifically concerning the Commission's final report. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission, and who are to testify in depositions conducted by the staff of the Commission or in public hearings conducted by the Commission. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that this discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

Dated: January 22, 1986.

Edwin Meese, III,

Attorney General.

[FR Doc. 86–1768 Filed 1–27–86; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgment; U.S. v. Beech Aircraft Corp.

Notice is hereby given that Beech Aircraft Corporation ("Beech") has filed with the United States District Court for the District of Kansas a motion to terminate the Final Judgment in *United States* v. *Beech Aircraft Corporation*, Civil No. W–3129; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the last publication of this notice. The complaint in this case (filed April 2, 1964) alleged a conspiracy between Beech and its distributors and dealers to eliminate all price competition and other forms of competition among themselves and to refrain from selling aircraft manufactured by Beech's competitors. The judgment enjoins Beech from directly or indirectly:

(1) Agreeing with any distributor or dealer to limit the territories in which, the persons to whom, or the prices at which a distributor or dealer may sell or lease any aircraft in the United States;

(2) Selling, or offering to sell, aircraft to any distributor upon any condition which limits the territories within which, persons to whom or prices at which any distributor or dealer may sell or lease aircraft in the United States;

(3) Taking or threatening to take disciplinary action against anyone because of the persons to whom, territories in which, or prices at which he has sold or leased any aircraft in the United States;

(4) Selling aircraft to any person for resale in the United States on the condition that he not sell or lease aircraft manufactured by a competitor of Beech;

(5) Refusing to continue to sell aircraft to any person for resale in the United States because he sells or leases aircraft manufactured by a competitor; and

(6) Limiting the territory within which a distributor or dealer may advertise the sale or lease of any aircraft in the United States.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Beech's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at the Midwest Office of the Antitrust Division, United States Department of Justice, 230 South Dearborn Street, Room 3820, Chicago, Illinois 60604 (telephone: 312–353–7530), and at the Office of the Clerk of the United States District Court for the District of Kansas, Wichita Division, Room 204, 401 N. Market Street, Wichita, Kansas 67202. Copies of any of these materials may be obtained from the Midwest Office of the Antitrust Division, Justice Department, upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to Judy Whalley, Chief, Midwest Office, Antitrust Division, United States Department of Justice, Room 3820, 230 South Dearborn Street, Chicago, Illinois 60604 (telephone: 312–353–7530).

Dated: January 21, 1986.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–1735 Filed 1–27–86; 8:45 am]

BILLING CODE 4410–01–M

The National Cooperative Research Act of 1984; Kean Manufacturing Corp. and Fabristeel Products, Inc.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1948, Pub. L. 98–462 ("the Act"), Kean Manufacturing Corporation ("Kean") has filed a written notification on behalf of Char-Tech, a joint venture between Kean and Fabristeel Products, Inc. ("Fabristeel"), simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to Char-Tech and its general areas of planned activities, are given below.

Kean is a Michigan corporation with its principal place of business at 2500 South Gulley Road, Dearborn Heights, Michigan 48125.

Fabristeel is a Michigan corporation with its principal place of business at 22900 West Eight Mile Road, Southfield, Michigan 48034.

The principal nature of the research to be undertaken by Char-Tech is to design, refine, engineer, develop and test techniques for producing self-piercing metal fasterners. The overall objective of the research program is to extend into practical application the scientific and technical findings and theories related to techniques for producing self-piercing metal fasterners and development of patentable devices within such classification.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 86–1737 Filed 1–27–86; 8:45 am]

BILLING CODE 4410–01–M

The National Cooperative Research Act of 1984; Norton/TRW Ceramics

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98–462 ("the Act"), TRW Inc. has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the formation of Norton/TRW Ceramics, and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust

plaintiffs to actual damages under specified circumstantces. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The identities of the parties to the venture are as follows:

Norton Company and its wholly owned subsidiary, HPC Holdings, Inc.
TRW Inc. and its wholly owned subsidiary, TRW Structural Ceramics Inc.

The name of the venture company is Norton/TRW Ceramics, which is an unincorporated joint venture of HPC Holdings, Inc. and TRW Structural Ceramics Inc.

The purpose of the venture is to conduct basic research and development programs directed to the development of ceramic products, ceramic/ceramic composite products, and ceramic coatings for metallic and ceramic products. The areas of research and product development will encompass, but not be limited to, collecting, exchanging and analyzing research information; experimenting and testing; establishing and operating pilot plants; securing patent protection; and issuing technology licenses.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 86-1738 Filed 1-27-86; 8:45 am]
BILLING CODE 4410-01-M

The National Cooperative Research Act of 1984; Smart House Project

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), the NAHB Research Foundation, Inc., has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the Smart House Project and (2) the nature and objectives of the Smart House Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Smart House Project, and its general areas of planned activity, are given below.

The Smart House Project is a joint venture project that will be implemented in a series of stages by separate agreements at each stage. The following parties have signed agreements to fund or otherwise participate in the first stage of the venture, which involves, among other things organizational activities:

AMP, Incorporated
Apple Computer, Inc.
Bell Communications Research, Inc.
Bell Northern Research Ltd.
BrinTec Corporation
Broan Mfg. Co., Inc.
Burndy Corporation
Carrier Corporation
Dukane Corporation
E. I. duPont de Nemours & Company (Inc.)
Electric Power Research Institute
Emerson Electric Co.
Federal Pacific Electric
Gas Research Institute
General Electric Company
Honeywell Inc.
Landis & Gyr Metering, Inc.
Lennox Industries Inc.
NAHB Research Foundation, Inc.
National Semiconductor Corporation
North American Philips Consumer Electronics Corp.
Robertshaw Controls Company
Schlage Lock Company
Scott Instruments Corporation
Scovill Inc.
Shell Development Company (Division of Shell Oil Company)
Siemens-Allis, Inc.
SLATER ELECTRIC, INC.
Sola Basic Industries, Inc.
Square D Company
Systems Control, Inc.
Whirlpool Corporation
The Wiremold Company

The Smart House Project will engage in activities the purpose of which will be to develop a coordinating home control and energy distribution system containing integral telecommunications and advanced safety features. The project is intended to design and develop a set of compatible products, including integrated power and signal cabling to tie home electrical products into a single power and communications network; communications-capable appliances, heating and cooling equipment, utility meters and home electrical and electronic products; electric power conditioning and conversion equipment; controllers and software to make logical decisions, issue control instructions, and regulate the distribution of energy, information and instructions throughout the network; monitoring and control devices to detect and neutralize malfunctions in energy distributing within the home; telephone and CATV interfaces to allow information to be passed to and from the homes over telephone and CATV lines; and input and output devices with which users can control and receive information from the network and the devices attached to it.

Joseph H. Widmar,
Director of Operations, Antitrust Division.
[FR Doc. 86-1736 Filed 1-27-86; 8:45 am]
BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 84-49]

Jack H. Pincus, M.D.; Denial of Application

On December 3, 1984, the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an order to show cause to Jack H. Pincus, M.D. (Respondent), 3745 Evergreen Drive, Monroeville, Pennsylvania. The order to show cause sought to deny Respondent's application, executed on July 30, 1984, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the order to show cause was Respondent's conviction in the United States District Court for the Western District of Pennsylvania on January 8, 1979, of violations of 21 U.S.C. 841(a)(1) and 846, felony offenses relating to controlled substances.

Respondent, through counsel, requested a hearing on the issues raised by the order to show cause. The Matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held before Judge Young in Washington, D.C. on June 26, 1985. On November 1, 1985, Judge Young issued his opinion and recommended ruling. On December 2, 1985, Judge Young transmitted the record in this Matter to the Administrator. Neither side filed exceptions to the recommended ruling of the Administrative Law Judge. The Administrator, having considered the entire record in this Matter, hereby adopts the findings of fact and conclusions of law of the Administrative Law Judge.

The Administrator finds that Respondent came to the attention of the DEA Pittsburgh Resident Office in 1977. DEA offices in two other areas forwarded reports of excessive purchases of Didrex (benzphetamine), a Schedule III controlled substance, made by two pharmacies in Monroeville, Pennsylvania, where Respondent practiced. One pharmacy ordered 13,000 tablets in a three-month period and the other had ordered about 67,000 tablets in a nine-month period. The Upjohn Company, the manufacturer of Didrex, informed DEA in February, 1978, that

the purchases by these pharmacies were unusual and district from the normal purchasing patterns of Didrex and were excessive in the opinion of Upjohn. A drug audit trail revealed that Respondent was writing an enormous number of prescriptions for Didrex.

In August, 1978, a DEA Diversion Investigator conducted a prescription survey of six pharmacies in the Monroeville area. The survey revealed that Respondent had prescribed approximately 475,000 dosage units of Didrex 50mg. tablets and 34,750 dosage units of Fastin and Ionamin tablets and capsules in a period of 18 months. Judge Young found, and the Administrator agrees, that this was an inordinate amount of Fastin and Didrex. Many of the prescriptions were written in names that proved fictitious. There was a street market for Didrex and Fastin in the Pittsburgh area at that time.

The Administrator further finds that large numbers of young women, generally between the ages of 15 and 28, would arrive at the pharmacy at the same time bearing prescriptions written by Respondent for Didrex and Fastin. The pharmacist described the bearers of these prescriptions as "Pinkies", after Respondent Pincus.

One young woman interviewed by a DEA Special Agent and a Pittsburgh city police officer said that she had been receiving Didrex prescriptions from Respondent from the time she was 15 years old. She weighed 125 lbs. the first time she received a prescription for Didrex, an anorectic. This young woman was hospitalized as a result of a Didrex overdose. Respondent did no more than take her blood pressure and write her a prescription for Didrex at her request on the first and three subsequent visits.

A DEA Special Agent went to Respondent's office on April 27, 1978, posing as a patient seeking to lose weight. The Special Agent was a 27 year old woman who was 5'6" tall and weighed 125 lbs. The Agent timed other "patients" in their consultations with Respondent. The visits lasted between 45 seconds and three minutes, an average visit lasting one minute. Other persons left the examining room with prescriptions in their hands.

Repondent wrote a prescription for 100 Didrex 50 mg. and a diuretic for the Agent. The Administrative Law Judge found, and the Administrator also finds, that there was no therapeutic need for these prescriptions. The Agent was wearing a Medic-Alert bracelet indicating that she has an irregular heart valve. This condition would have been observable by Respondent had he listened to her heart with a stethoscope, but he did not do so. Didrex should not be prescribed to patients with the Agent's heart condition. The Medic-Alert bracelet was clearly visible but Respondent did not ask the Agent about it. Respondent himself admitted at the hearing that a person of the Agent's height and weight would have no need to lose weight, and therefore no need for Didrex.

The Agent returned to Respondent's office on May 11, 1978; June 1, 1978; June 12, 1978 and June 29, 1978. Each time Respondent prescribed Fastin or Tenuate, other controlled substance anorectics. At no time did Respondent conduct a physical examination. When the Agent brought a confidential informant, a young woman in her twenties, with her on June 15, 1978, Respondent first grabbed the informant's midriff and then grabbed the Agent's midriff and said, "Come over here," pulling her toward him. On May 11, 1978, after the Agent asked for more Didrex, Respondent wrote her a prescription for 30 Fastin 30 mg., saying that he could not give her another Didrex prescription since "they are watching those." When he wrote the Agent the Fastin prescription, he told her he would mark on her patient record that she had a reaction to the Didrex, in order to "cover" himself. Like the other visits, this one lasted no more than two minutes.

Respondent pled guilty to the felony charges against him and was fined $10,000 and sentenced to nine months, subsequently reduced to six months. He was also convicted of mail fraud, the result of a scheme to defraud insurance companies of several thousand dollars by charging for medical services never performed. Respondent was fined $8,000 and briefly incarcerated for this crime. After this conviction Respondent cooperated with the Federal Government in its ongoing mail fraud investigation from 1979 to 1983.

The Pennsylvania State Board of Medical Education and Licensure revoked Respondent'a medical license in 1981 and reinstated it May, 1984, subject to certain conditions. These included a three year probationary period and the donation of 500 hours of medical services by Respondent. The Administrative Law Judge noted that these restrictions do not constitute tight, meaningful control over Respondent's conduct. The Administrator does not believe that these conditions can protect the public from Respondent.

The Administrator is in complete accord with the recommendation of the Administrative Law Judge. Respondent had abused his prescription-writing privileges to such an extent that it was noticed by the manufacturer of a nationally distributed drug. Dr. Pincus was writing huge numbers of prescriptions for this and similar drugs. Most of the persons who received these prescriptions were young people, some as young as 15 years old. Quoting the Administrative Law Judge, Respondent "showed an extraordinarily callous disregard for the extent to which he endangered the health of these immature individuals. He showed complete disregard for his responsibility as a healer, licensed to dispense potentially dangerous drugs for therapeutic purposes."

The Administrator agrees with the Administrative Law Judge that there is no reasonable assurance that, if he is re-registered now by DEA, Respondent would not revert to his former irresponsible practices.

Having examined the entire record in this matter, and concluded that there is a lawful basis for denial of the application for registration submitted by Respondent, and having further concluded that under the facts and circumstances presented that the application at issue should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration, submitted by Jack H. Pincus, M.D. on July 30, 1984, and any other pending applications for registration submitted by Respondent be denied.

Dated: January 21, 1986.

John C. Lawn,
Administrator.
[FR Doc. 86-1818 Filed 1-27-86; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary of Labor's Order 1-86]

Delegation of Authority and Assignment of Responsibilities for Pension and Welfare Benefits Administration

January 16, 1986.

1. *Purpose.* To delegate authority and assign responsibilities for the administration of the Department of Labor's responsibilities under the Employee Retirement Income Security Act (ERISA).

2. *Background.* ERISA places responsibility in the Department of Labor for the administration of a comprehensive program to protect the

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interests of participants and beneficiaries of private employee benefit plans. Secretary's Order 1–84 established the Office of Pension and Welfare Benefit Programs as a separate agency within the Department of Labor and delegated authority and assigned resonsibility for ERISA activities to an Administrator. The authority which had been placed in the Office of Pension and Welfare Benefit Programs is being transferred to the Pension and Welfare Benefits Adminstration.

3. *The Pension and Welfare Benefits Administration (PWBA).* A Pension and Welfare Benefits Administration, which shall be headed by an Assistant Secretary for Pension and Welfare Benefits who shall report to the Secretary of Labor, is hereby established in the Department of Labor as a successor agency to the Office of Pension and Welfare Benefit Programs (OPWBP).

4. *Delegation of Authority and Assignment of Responsibilities.*

a. *The Assistant Secretary for Pension ond Welfare Benefits* is delegated authority (including the authority to redelegate) and assigned responsibilities, except as hereinafter provided, for carrying out programs and activities to be performed by the Secretary of Labor under:

(1) The Employee Retirement Income Security Act of 1974, as amended, except for subtitle C of Title III and Title IV; and,

(2) The Welfare and Pension Plans Disclosure Act of 1958, as amended.

b. *The Assistant Secretary for Administration and Management* is responsible for providing all administrative support services to PWBA such as personnel, payroll, budget, accounting, contracting and grants and other such services deemed necessary in support of the PWBA mission.

c. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all officals of the Department relating to the administration of the statutes listed in 4a. above and for bringing appropriate legal actions on behalf of the Secretary, and representing the Secretary in all civil proceedings.

5. *Reservation of Authority.* The submission of reports and recommendations to the President and the Congress concerning the administration of the statutes listed in 4a. above and responsibilities under Subtitle C of Title III of ERISA are reserved to the Secretary. Responsibilities under Title IV of ERISA are carried out by the Pension Benefit Guaranty Corporation.

6. *Directives Affected.*

a. Secretary's Order 1–84 is canceled.

b. Secretary's Order 9–80, is amended by substituting in section 4b. the words "Assistant Secretary for Pension and Welfare Benefits," for the words "Assistant Secretary for Labor-Management Relations".

7. *Effective Dote.* This Order is effective immediately.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–1854 Filed 1–27–86; 8:45 am]

BILLING CODE 4510-23-M

Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: February 11, 1986, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, phone: (202) 523–6565.

Signed at Washington, DC, this 24th day of January, 1986.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 86–1875 Filed 1–24–86; 10:56 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Cal-Crest Outerwear, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 7, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 7, 1986.

The petitions filed in this case are available for inspection at the office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 21st day of January 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner—(Union/workers or former workers of—	Location	Date received	date of petition	Petition No.	Articles produced
Cal-Crest Outerwear Inc. (ACTWU)	Murphysboro, IL	12/23/85	12/19/85	TA–W–17,081	Men's and boys' jackets outerwear.
Champion International Corp. (workers)	Lebanon, OR	12/23/85	12/18/85	TA–W–17,082	Plywood.

APPENDIX—Continued

Petitioner—(Union/workers or former workers of—	Location	Date received	date of petition	Petition No.	Articles produced
Corner Industries, Inc. (company)	Dallas, NC	12/24/85	12/7/85	TA–W–17,083	Mens cotton and blend pajamas.
Elders Manufacturing Co. (workers)	Bloomfield, MO	12/20/85	12/16/85	TA–W–17,084	Men's and boys' sport jackets.
Joy Manufacturing Co. (IAM)	Franklin, PA	12/19/85	12/12/85	TA–W–17,085	Underground longwall mining roof supports, armored flexible conveyors, stage loaders.
Monsanto Co. (chemical workers)	St. Louis, MO	12/26/85	12/20/85	TA–W–17,086	Sulfonamides and aromas.
Nova Manufacturing Co. (workers)	Red Boiling Sprgs, TN	12/23/85	12/11/85	TA–W–17,087	Ladies dresses, pants, jeans.
Pacific Western (workers)	Winnemucca, NV	1/7/86	12/26/85	TA–W–17,088	Capitol equipment for manufacturing semiconductor devices.
Plateau Resources Limited (workers)	Ticaboo, UT	12/23/85	12/2/85	TA–W–17,089	Uranium mine, mill explorations.
Plateau Resources Limited (workers)	Grand Junction, CO	12/23/85	12/12/85	TA–W–17,090	Office staff.
United Steelworkers of America, Local #1397 (USWA)	Homestead, PA	12/24/85	12/17/85	TA–W–17,091	USWA office staff.
Warner Bros. Inc., Music Processional Dept. (IATSE)	New York, NY	11/20/85	11/18/85	TA–W–17,092	Records, tapes, films, sheet music, music books, etc.
Aluminum Company of America (USWA)	Point Comfort, TX	12/26/85	12/20/85	TA–W–17,093	Alumina refining.
Davenport Machine & Tool Co. (workers)	Rochester, NY	1/7/86	1/4/86	TA–W–17,094	Machines tools.
Florsheim Shoe Co. (ACTWU)	Cape Girardeau, MO	1/8/86	12/31/85	TA–W–17,095	Soles and heels—footwear.
Goodyear Tire & Rubber Co., Plant II Chemicals Dept. 245 (URW).	Akron, OH	12/4/85	12/2/85	TA–W–17,096	Thiazoles and ultras (accelerators).
Koppers Co., Inc. Engineered Metal Products Group & Seal Div. (IAM).	Baltimore, MD	12/23/85	11/25/85	TA–W–17,097	Piston rings.
Regency Electronics, Inc. (workers)	Indianapolis, IN	12/16/85	12/12/85	TA–W–17,098	Scanners, cable converters.
Reynolds Metals Co., Hurrican Creek Plant & Bauxite Mine (USWA & Company).	Bauxite, AR	1/2/86	12/30/85	TA–W–17,099	Bauxite Mining & alumina production.
Reynolds Metals Co., Jones Mill Reduction Plant (USWA)	Malvern, AR	12/24/85	12/19/85	TA–W–17,100	Aluminum ingots.
Reynolds Metals Co., R.P. Patterson Plant (USWA)	Arkadelphia, AR	12/23/85	12/18/85	TA–W–17,101	Aluminum.
United Merchants & Manufacturers, Inc., Amertex Dept. 44 (Co.).	New York, NY	1/3/86	12/20/85	TA–W–17,102	Yarn dyed polyester/cotton fabrics.

[FR Doc. 86–1855 Filed 1–27–86; 8:45 am]

BILLING CODE 4510-30

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Pettibone Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 13, 1986–January 17, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely; and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–16,286; Pettibone Corp., Rome, NY

TA–W–16,350; Witco Chemical Corp., Lawrenceville, IL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–16,261; Elmer Little and Sons, Johnstown, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–16,281; Cisco Casuals, Carlstadt, NJ

The workers' firm does not produce and article as required for certification under section 222 of the Trade Act of 1974.

TA–W–16,298; Oneida Ltd., Oneida, NY

The investigation revealed that criterion (1) has not been met. Employment did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–16,263; R.L. Kilmer and Sons, Inc., Johnstown, NY

A certification was issued covering all workers of the firm separated on or after September 1, 1984.

TA–W–16,276; Perrella Gloves, Inc., Gloversville, NY

A certification was issued covering all workers of the firm separated on or after September 1, 1984.

TA–W–16,277; Abex Corp., Anderson, IN

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,297; Oneida Ltd., Sherrill, NY

A certification was issued covering all workers of the firm separated on or after July 26, 1984.

TA–W–16,225; Kentucky Electric Steel Co., Ashland, KY

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA–W–16,343; Steven Apparel Manufacturing Co., Hazleton, PA

A certification was issued covering all workers of the firm separated on or after December 1, 1984.

TA–W–16,296; Oneida, Ltd., East Seneca Street Plant, Sherrill, NY

A certification was issued covering all workers of the firm separated on or after July 26, 1984.

TA–W–16,304; Fermon Tanning Corp., Peabody, MA

A certification was issued covering all workers of the firm separated on or after October 1, 1984 and before October 1, 1985.

TA–W–16,288; U.S. Steel Corp., National Works McKeesport, PA

A certification was issued covering all workers producing seamless steel pipe and tubing of the firm separated on or after February 17, 1985.

TA–W–16,292; Forster Manufacturing Co., Inc., Strong, ME

A certification was issued covering all workers of the firm separated on or after July 25, 1984.

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TA–W–16,293; Forster Manufacturing Co., Inc., Wilton, ME

A certification was issued covering all workers of the firm separated on or after July 25, 1984.

TA–W–16,294; Forster Manufacturing Co., Inc., Straton, ME

A certification was issued covering all workers of the firm separated on or after July 25, 1984.

TA–W–16,294; Forster Manufacturing Co., Inc., Wilton, ME

A certification was issued covering all workers of the firm separated on or after July 25, 1984.

TA–W–16,328; Black and Decker Co., Inc., Allentown, PA

A certification was issued covering all workers producing coffee percolators of the firm separated on or after July 1, 1985 and all workers producing toasters separated on or after September 1, 1984.

I hereby certify that the aforementioned determinations were issued during the period Junary 13, 1986–January 17, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: January 21, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–1856 Filed 1–27–86; 8:45 am]

BILLING CODE 4510-30-M

Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on February 4, 1986, from 9:00 a.m. to 4:30 p.m.; February 5, from 9:00 a.m. to 12 noon at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3437, Washington, DC.

The agenda for the meeting on February 4 will include:

1. Swearing in New Members.
2. Welcoming Remarks—Assistant Secretary of Labor—ETA.
3. Status Report on BAT by Director.
4. Status Report on NASTAD (National Association of State and Territorial Directors).
5. Procedural Changes.
6. Status Report on Vocational Education.
7. April 1986 Conference on Apprenticeship (Sponsored by the International Union of Operating Engineers).
8. Plans for Observing the 50th Anniversary of the National Apprenticeship Act.
9. Presentations by Members of the Committee.

The agenda for the meeting on February 5 will include:

10. Presentations by Members of the Committee (continued).
11. Presentation as a Result of Requests from Members of the Public.

Agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Executive Secretary at any time prior to the meeting. Thirty duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time needed by furnishing a written statement to the Executive Secretary at any time prior to the meeting. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary should be addressed as follows:

Mrs. M.M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D Street, NW, (Room 6314), Washington, DC 20213

Signed at Washington, DC, January 22, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–1853 Filed 1–27–86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by February 28, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts requests OMB approval of the Application Guidelines and Supplemental Information Sheets listed below.

Dance/Inter-Arts/State Program Presenting/Touring Initiative
Design Arts
Fellows, Arts Management
Inter-Arts
International
Media Arts
Opera-Musical Theater
Purpose: Application for benefits.
Frequency of Collection: One-time.
Respondents: Individuals, State or local governments and nonprofit institutions.
Use: Guideline instructions and applications elicit relevant information from individual artists, nonprofit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.
Estimated Number of Respondents: 13,450
Estimated Hours for Respondents to Provide Information: 133,160

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 86–1745 Filed 1–27–86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Program Solicitation for Elementary School Science Instruction; Correction

Amendment to National Science Foundation *Program Solicitation: Programs for Elementary School Science Instruction*, which appeared in the **Federal Register**, Volume 51, Number 6, Thursday, January 9, 1986, Notices, page 1047.

The Catalog of Federal Domestic Assistance Number 47.067 should have been indicated.

Dated: January 23, 1986.

George W. Tressel,

Director, Division of Materials Development, Research, and Informal Science Education.

[FR Doc. 86–1843 Filed 1–27–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Biological, Behavioral, and Social Sciences; Postponement of Meeting

The meeting of the Advisory Committee for Biological, Behavioral, and Social Sciences scheduled for February 10 and 11, 1986 has been postponed. A new date has not yet been determined. A new meeting notice will be published in the **Federal Register** when a date has been finalized. The original meeting notice appeared in the **Federal Register** on Thursday, January 23.

M. Rebecca Winkler,

Committee Management Officer.

January 23, 1986.

[FR Doc. 1840 Filed 1–27–86; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Grottoes, VA; Aircraft Accident

In connection with its investigation of the accident involving a Henson Airlines, Beech 99, N339HA, at Grottoes, Virginia, September 23, 1985, the National Transportation Safety Board will convene a public hearing at 9 a.m. (local time) on February 5, 1986, in the Ballroom of the Harrisonburg Sheration Inn, 1400 East Market Street, Harrisonburg, Virginia, 22801. For more information, contact Mr. Brad Dunbar, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382–6600.

Catherine T. Kaputa,

Federal Register Liaison Officer.

January 22, 1986.

[FR Doc. 86–1785 Filed 1–22–86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–322–OL–3 (Emergency Planning)]

Long Island Lighting Co., Shoreham Nuclear Power Station, Unit 1; Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of January 21, 1986, oral argument on the pending appeals of intervenors Suffolk County and State of New York from the Licensing Board's April 17, 1985 partial initial decision; and the appeals of those intervenors (together with the Town of Southampton) and the applicant Long Island Lighting Company from the Licensing Board's August 26, 1985 concluding partial initial decision, will be heard at *9:00 a.m. on Wednesday, February 12, 1986, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: January 22, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 86–1824 Filed 1–27–86; 8:45 am]

BILLING CODE 7590-01-M

Availability of Draft Generic Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Draft Generic Technical Position on Determination of Radionuclide Sorption for High-Level Nuclear Waste Repositories."

DATE: The comment period expires March 31, 1986.

ADDRESSES: Send comments to Hubert J. Miller, Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Linda Luther, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555, Telephone 1/800/368–5642, Ext. 74426.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Jackson, Section Leader, Geotechnical Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/427–4541.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (Pub. L. 97–425) and the Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA's) submitted according to the Nuclear Waste Policy Act and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP's) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions (STP's) establish the staff's position on a site specific technical issue. A number of GTP's will be developed by the staff to establish technical positions on generic issues or information requirements for sites being investigated by DOE.

This announcement notices availability and solicits comments on the "Draft Generic Technical Position on Determination of Radionuclide Sorption for High-Level Waste Geologic Repositories." The purpose of this technical position is to provide guidance concerning an acceptable strategy for obtaining data on radionuclide sorption. The NRC staff considers that the approach used for determining the sorption of radionuclides which will be

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present in a high level waste repository is important to providing the data needed for predicting long term repository performance.

Dated at Silver Spring, Maryland, this 17th of January, 1986.

For the Nuclear Regulatory Commission.

Hubert J. Miller,

Chief, Repository Projects Branch, Division of Waste Management; Office of Nuclear Material Safety and Safeguards.

[FR Doc. 86-1828 Filed 1-27-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352]

Philadelphia Electric Co., Limerick Generating Station, Unit 1; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied under 10 CFR 2.206 requests for action filed by R.L. Anthony and the Friends of the Earth and Mr. Frank R. Romano regarding the Limerick Generating Station Unit 1 (the facility).

The Petitioners requested that the NRC revoke eight specific exemptions from certain aspects of NRC regulations that were granted to the Philadelphia Electric Company (PECo) with the issuance of the operating license for the Limerick Unit 1 facility. The Petition also requested that an environmental impact statement be prepared for the eight specific exemptions. The Director concluded that the Petitioners did not identify any information which warrants a change in the previous NRC actions regarding these matters.

The reasons for the above conclusions are fully described in a "Director's Decision Under 10 CFR 2.206", dated January 21, 1986, (DD-86-01) which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washington, DC 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 10464.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 21st day of January 1986.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-1830 Filed 1-27-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Form for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of proposed extension of form submitted to OMB for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of a form that collects information from the public. The Ethics in Government Act of 1978 (Pub. L. 95-521, as amended) requires that a financial disclosure report be filed by candidates for nomination or election to the Office of the President or Vice President and Presidential nominees requiring the advice and consent of the Senate. The Standard Form 278, Financial Disclosure Report, solicits the information required by law. For copies of this proposal, call James M. Farron, Agency Clearance Officer, on (202) 632-7714.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415;

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James M. Farron, (202) 632-7714, Office of Personnel Management.

David H. Martin,

Director, Office of Government Ethics.

[FR Doc. 86-1857 Filed 1-27-86; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA-129; File No. SIPC 85-1]

Securities Investor Protection Corp.; Order Approving Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members

On December 2, 1985, the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission, pursuant to section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA"), 15 U.S.C. 78ccc(e)(1), a proposed bylaw change.

I. Description of Proposed Bylaw Change

The proposed bylaw change would amend section 1(a) of Article 6 of SIPC's bylaw regarding SIPC fund assessments of SIPC members.[1] The bylay provides that if SIPC determines that the SIPC fund [2] totals or is reasonably likely to total less than (i) $250 million, the amount of each member's assessment shall be ⅛ of 1 percent of such member's gross revenues from the securities business, (ii) $150 million, the amount of each member's assessment shall be ¼ of 1 percent of such member's gross revenues from the securities business and (iii) $100 million, the amount of each member's assessment shall be ½ of 1 percent of such member's gross revenues from the securities business. Regardless of whether or not assessments based on a percentage of gross revenues from the securities business are in effect during any calendar year, the minimum amount of each member's assessment would be $100 per annum.

Under the current SIPC bylaw, the SIPC Board has required its members to pay assessments at the rate of ¼ of 1 percent of their respective gross revenues from the securities business with a minimum assessment of $25 per annum.[3]

In addition to the proposed bylaw changes, the SIPC Board of Directors took two other actions affecting assessments. The SIPC Board voted to (i) obtain a $500 million line of credit with a consortium of banks and (ii) discontinue the current ¼ of 1 percent assessment on member's gross revenues from the securities business on April 1, 1986 contingent on the line of credit being in place. Thus, under the proposed bylaw change, a minimum assessment of $100 per annum would be in effect after April 1, 1986.

SIPC indicated that the SIPC fund currently exceeds $300 million. SIPC expects that, absent any extraordinary costs, the fund will total approximately

[1] All broker-dealers registered under section 15(b) of the Securities Exchange Act of 1934, with some minor exceptions, are SIPC members.

[2] The SIPC fund consists of cash and amounts invested in U.S. government or agency securities.

[3] Section 1(a) of Article 6 of SIPC's bylaw currently provides that at any time the SIPC fund drops below $150 million, SIPC shall assess its members at the rate of ¼ of 1 percent of each member's gross revenues from the securities business. SIPC's bylaw provides that the assessments shall continue until the SIPC Board of Directors provides otherwise. Regardless of whether or not assessments based on a percentage of gross revenues are in effect during any calendar year, the bylaw provides that the minimum amount of each members assessment would be $25 per annum.

$325 million by April 1, 1986. SIPC indicates that it would have as of that date resources exceeding $800 million which could be tapped before any need to draw on the statutory $1 billion line of credit with the U.S. Treasury Department. SIPC indicated that the proposed bylaw provides for the automatic imposition of assessments on gross revenues at the rate of ⅛ of 1 percent in the event the fund drops below $250 million or in the event the SIPC Board determines the fund is "reasonably likely" to drop below that level. SIPC indicated that this and the other provisions of the proposed bylaw give SIPC considerable flexibility in maintaining the fund at a level adequate to carry out SIPC's primary goal of enhancing and maintaining investor confidence in the securities markets.

SIPC indicated that the SIPC Board's actions described above were based principally on the *Report To The Board of Directors Of The Securities Investor Protection Corporation By The Special Task Force To Consider Questions Relating To The SIPC Fund And Assessments*, and on the data gather and analyzed by the task force. The task force was composed of representatives of SIPC members, self-regulatory organization, securities industry associations, U.S. government agencies, and the SIPC staff.

II. Request for Public Comment

Section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA") provides that SIPC must file with the Commission a copy of proposed bylaw changes. That section further provides that bylaw changes shall take effect 30 days after filing, unless the Commission either (i) disapproves the change as contrary to the public interest or the purposes of SIPA, or (ii) finds that the change involves a matter of such significant public interest that public comment should be obtained, in which case, the Commission may, after notifying SIPC in writing of such finding, require that the proposed bylaw change be considered by the same procedures as a SIPC proposed rule change. Since the SIPC Fund is built from assessments on its members and the interest earned on the fund and since that fund is used for the protection of customers of members liquidated under SIPA to maintain investor confidence in the securities markets, the Commission found that the proposed bylaw change involved a matter of significant public interest, sought comment thereon, advised SIPC of the Commission's finding, and required the procedures applicable to proposed SIPC rule changes in section 3(e)(2) of SIPA to be followed with respect to the proposed bylaw change. Notice of the Commission's action including its request for public comment on the proposed bylaw change and notice of the proposed bylaw change together with the terms of substance of the proposed bylaw change was given by the issuance of a Commission release (Securities Investor Protection Act Release No. 128, December 24, 1985) and by publication in the Federal Register (50 FR 53044, December 27, 1985).

The comment period expired on January 15, 1986 and one letter of comment was received that strongly supported SIPC's proposed actions.

III. Approval of Proposed Bylaw Change

The Commission believes that SIPC's proposed actions (particularly the $500 million line of credit and the reimposition of assessments on members' gross revenues when the SIPC fund totals, or SIPC determines that it is reasonably likely to total, less than $250 million) provide substantial protections for customers of broker-dealers liquidated under SIPA. While the $100 mminimum assessment will represent an increase in assessments for 5,916 firms based on 1984 SIPC assessment data, the Commission believes these firms benefit from participation in the securities markets and should contribute to a fund which maintains investor confidence in the securities markets thus redounding to their benefit.

Accordingly, the Commission finds that the proposed SIPC bylaw change is in the public interest and is consistent with the purposes of the SIPA.

It is therefore ordered by the Commission, pursuant to section 3(e)(2) of the SIPA, that the above-mentioned proposed bylaw change be, and hereby is, approved.

The Commission finds good cause for approving the proposed bylaw change prior to the thirtieth day after the date of publication of notice of the filing thereof in the SIPC needs to negotiate a bank line of credit promptly and to publish announcements and revise assessment forms as needed before April 1, 1986.

Dated: January 21, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86-1771 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22770; File No. SR-DTC-85-6]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Fees for Major DTC Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1985, The Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Depository Trust Company ("DCT") is filing herewith the following changes in the fee schedule for major DTC services. The fees listed below as "present fees" do not reflect the 10% fee surcharge which has been effective since August 1, 1985. That surcharge will continue to be in effect until the subject proposed rule change become effective.

[[ ] indicates present fees; Italics indicate new fees. All footnotes are found on the last page]

SERVICE

Registered Securities

I. Deposits:

- The fee for deposits of certificates in active issues * * * is determined by the time of receipt by DTC: (1)

Zone A—4:00 PM to 8:00 PM (Prior PM) [and 7:30 AM to 9:30AM]	[$ .90] *$1.00*
Zone B—[9:30 AM to 11:00 AM] *7:30 AM to 10:00 AM*	[$1.40] *$1.60*
Zone C—[11:00 AM to 12:00 Noon] *10:00 AM to 11:00 AM*	[$3.00] *$4.00*

Zone D—[12:00 Noon to 1:00 PM] *11:00 AM to 12:00 Noon*	[$35.00] *$10.00*
Zone E—12:00 Noon to 1:00 PM	$40.00
• The fee for deposits of certificates in less-active issues * * * is determined by the time of receipt by DTC: (1)	
Zone A—4:00 PM to 8:00 PM (Prior PM) [and 7:30 AM to 9:30 AM]	[$ .90] *$1.60*
Zone B—[9:30 AM to 11:00 AM] *7:30 AM to 10:00 AM*	[$1.40] *$2.40*
Zone C—[11:00 AM to 12:00 Noon] *10:00 AM to 11:00 AM*	[$3.00] *$4.60*
Zone D—[12:00 Noon to 1:00 PM] *11:00 AM to 12:00 Noon*	[$35.00] *$10.60*
Zone E—12:00 Noon to 1:00 PM	$40.60
• A certificate charge per deposit per group of 10 certificates beyond the first 10 certificates in addition to the Zone fee.	[$.25] *$.30* per group of 10 certifictes beyond the first 10 certificates
• A record date deposit surcharge for bond [$2.50] *$4.00* per interest, cash and stock dividends and record date deposit proxy	
• Legal deposits	[$10.00 per deposit] *1 to 1,500 deposits during the month—$9.00 each; Excess over 1,500 to 2,500 deposits during the month—$60.00 each; Excess over 2,500 deposits during the month—$30.00 each*
• Rejects:	
For each deposit corrected or returned to a Participant because of error	
From 0 to .5%	No charge
From .5 to 1%	[$6.00] *$10.00* per reject
From 1 to 3%	[$11.00] *$15.00* per reject
From 3 to 5%	[$16.00] *$20.00* per reject
Over 5%	[$21.00] *$25.00* per reject
II. Withdrawals-by-Transfer (WTs):	
• For each assignment in an active issue * * * submitted on PTS, API, or CCF	[$1.15] *$1.05* per assignment
• For each separate paper assignment in an active issue * * *	[$2.05] *$2.75* per assignment
• For each assignment in a less-active issue * * * submitted on PTS, API, or CCF	[$1.15] *$2.85* per assignment
• For each separate paper assignment in a less-active issue * * *	[$2.05] *$4.55* per assignment
• For each assignment in an active issue * * * concluding in direct mail	[$.80] *$.55* per assignment
• For each assignment in a less-active issue * * * concluding in direct mail	[$.80] *$2.35* per assignment
• Aged Withdrawal-by-Transfer inquiries For each inquiry by PTS	[No charge] *$.08 per inquiry*
For each written inquiry on WT instruction aged less than 45 days	[No charge] *$12.00 per inquiry*
For each written inquiry on WT instruction aged less than 45 days or more if an explanation of the delay is not available in PTS transfer inquiry files.	[No charge] *$12.00 per inquiry (or free if an explanation of the delay is not available in PTS transfer inquiry files)*
Rejects:	
For each transfer corrected or returned to a Participant because of error:	
From 0 to .5%	[$6.00 per reject] *No charge*
From .5 to 1%	[$8.00 per reject] *$10.00 per reject*
From 1 to 3%	[$11.00 per reject] *$15.00 per reject*
From 3 to 5%	[$16.00 per reject] *$20.00 per reject*
Over 5%	[$21.00 per reject] *$25.00 per reject*
III. Urgent Withdrawals (CODs):	
• For each urgent withdrawal requested on an overnight basis:	
Submitted by PTS	[$6.00] *$8.00* per withdrawal
Submitted by paper	[$6.75] *$9.50* per withdrawal
• For each urgent withdrawal requested on a same-day basis:	
Submitted by PTS	[$6.00] *$14.00* per withdrawal
Submitted by paper	[$6.75] *$15.50* per withdrawal
Rejects:	
• For each urgent withdrawal returned to a Participant because of error:	
From 0 to .5%	[$6.00 per reject] *No charge*
From .5 to 1%	[$8.00 per reject] *$10.00 per reject*
From 1 to 3%	[$11.00 per reject] *$15.00 per reject*
From 3 to 5%	[$16.00 per reject] *$20.00 per reject*
Over 5%	[$21.00 per reject] *$25.00 per reject*
IV. Collateral Loans (Pledges & Releases):	
• For each security (line item) pledged, released or substituted via PTS	[$.35] *$.22* per line item payable by both the pledgee and pledgor in each transaction

• For each security (line item) pledged, released or substituted via paper	[$.42] *$.54* per line item payable by both the pledgee and pledgor in each transaction
Reject:	
• For each pledge or release corrected or returned to Participant because of error:	
From 0 to .5%	[$6.00 per reject] *No charge*
From .5 to 1%	[$6.00 per reject] *$10.00 per reject*
From 1 to 3%	[$11.00 per reject] *$15.00 per reject*
From 3 to 5%	[$16.00 per reject] *$20.00 per reject*
Over 5%	[$21.00 per reject] *$25.00 per reject*
V. Deliveries (Corporate Issues)(2):	
• Deliver orders via CNS	[$.09] *$.10* for each item delivered or received
• Deliver orders via ID System	[$.26] *$.25* for each item delivered or received
• Deliver orders via PTS, API or CCF:	
For each deliver item presented:	
Prior PM	$.30 to the deliverer
AM opening to 12:30 PM	[$.54*] *$.55* to the deliverer; $.40 for each item received (regardless of time)
• Deliver orders via paper:	
Deliver	[$1.70] *$2.50* for each item delivered
Receive	$.40 for each item received
• Rejects	
For each deliver order not completed because of incomplete or erroneous input by a submitting Participant:	
From 0 to .5%	[$6.00 per reject] *No charge*
From .5 to 1%	[$6.00 per reject] *$10.00 per reject*
From 1 to 3%	[$11.00 per reject] *$15.00 per reject*
From 3 to 5%	[$16.00 per reject] *$20.00 per reject*
Over 5%	[$21.00 per reject] *$25.00 per reject*
VI. ID Confirm/Affirm/Report Service:	
• For each confirm distributed by paper, tape, PTS, CCF or dial-in terminal	$.25 to broker (and $.25 for any interested party), $.25 to clearing agent if agent requests confirm; $.25 to investment manager for each confirm received, whether or not affirmed****
• For each confirm transmitted in magnetic tape form	$.40 per confirm, plus telephone line costs
• For each confirm transmitted by facsimile device	$.45 per confirm, plus telephone line costs
• For each Pre-Authorized Delivery Quantity (PDQ) Delivered/Not Delivered and Received Report line item.	$.09 to the deliverer and $.09 to the receiver
• For each Unaffirmed Report line item	$.09 to broker
• For each Cumulative and Daily Eligible Trade Report line item	$.09 to broker and clearing agent
• For each Daily Eligible Trade Report line item	$.09 to broker for reports received by any interested party
• For each Ineligible Trade Report line item	$.09 to broker and clearing agent
• Dial-in terminal service:	
Ability to dial-in and receive ID system confirmations only	[$120] *$250* per year
Ability to dial-in to DTC's value added network and receive ID system confirmations only	[$120] *$400* per year
VII. Long Position:	
• For each active issue*** (monthly) based on the daily average for registered corporate issues previously held by more than 15 Participants and for registered municipal bond issues held by more than 2 Participants.	$.58 per issue
• For each less-active registered corporate issue*** (monthly) based on the daily average previously held by 15 or fewer Participants.	[$.58] *$.83* per issue
• For each less-active registered municipal issue*** (monthly) based on the daily average previously held by 2 or fewer Participants.	[$. 58] *$1.33* per issue
• For each 100 shares or $4,000 bonds (monthly) based on the average daily number of shares or bonds:	
—0-25 million shares	[$.0050] *$.0052*
—Excess over 25 million up to 200 million shares	$.0013
—Excess over 200 million up to 300 million shares	$.000652
—Excess over 300 million shares	[No charge] *$.00005*

• For each book-entry-only issue (monthly)	$.40 per issue; no per bond/per share charge
VIII. Reorganization:	
• Conversions:	
For each common stock resulting from the conversion of bonds or preferred stocks Two DO fees, plus:	
From 1 to 500 common shares	[$10.00] *$20.00* per transaction minimum
501 to 3,749 common shares	[$.02 per share] *$.05 per share from 401 to 2,000 shares*
3,750 and over common shares	[$75.00] *$100.00* per transaction maximum
• Unit Swingovers	[$10.00] *$11.00* per swingover instruction plus 3 DO fees
• Mandatory Exchanges/Redemptions	[$5.00] *$20.00* per Participant position
• Voluntary Exchanges/Tender Offers	[$7.00] *$25.00* per letter of transmittal
• Exit COD	[$6.00] *$20.00* per withdrawal
IX. Underwritings:	
• Corporate Issues	[FAST COD issues Bonds: $2.00 per million dollars total principal amount ($70 minimum; maximum $1,000) Stock: $8.00 per million dollars total offering value ($70 minimum: maximum $1,000) Non-Fast COD issues Bonds: $4.00 per million dollars total principal amount ($150 minimum; maximum $2,000) Stock: $15.00 per million dollars total offering value ($150 minimum; maximum $2,000)] *$200.00 plus $3.00 per million with a total maximum fee of $2,000 and any unusual expenses. Any book-entry-only issue—$200.00 and any unusual expenses; Certificates of deposit—$100 and any unusual expenses*
• Registered Municipal Issues	[Non-FAST COD issues $4.00 per million total principal amount (minimum $150; maximum $2,000) and any unusual expenses FAST COD issues $2.00 per million total principal amount (minimum $70; maximum $1,000) and unusual expenses] *$400.00 plus $3.00 per million with a maximum of $2,000(3) and any unsual expenses. Any book-entry-only issue—$400.00(3) and any unusual expenses*
X. Dividends:	
• For each cash dividend or interest payment	[$1.00] *$1.40* per credit
• For each stock dividend payment	[$1.00] *$3.00* per credit
• For each Dividend Reinvestment Service instruction to receive stock in lieu of cash dividend	[$6.10] *23.00* per instruction
XI. PTS Reporting:	
• Inquiries, Unsolicited Messages and Messages Participant inquiries about security eligibility, aged WT instructions, and money settlement figures; messages about activities affecting a Participant's securities, etc.	[$.05] *$.08* inquiry or message
• Reports: Dropped Deliveries Report; Dropped CODs Report; Cash Dividend Report	[$25.00] *$40.00* per month per report series plus [$.05] *$.08* per line
• Pre-Updated Edits: Allows a Participant to edit a DO or WT instruction prior to update by DTC's system.	[$.05] *$.08* per edit
• Broadcast: To send messages to other Participants in the DTC terminal network	[$.12] *$.20* per 300 character message per addressee

XII Usage Charge:	
For each Participant account	[$320.00 per month] *$460.00* per month each account up to 5, $140.00 per month each account over 5
For each non-Participant Pledgee Bank account	$320.00 per month
For each Pledgee Bank that is also a Participant	[$160.00] *$140.00* per month
Bearer Bond Securities	
I. Deposits (by issue)	[$4.00] *$5.00* plus a charge after the first 10 certificates of $2.00 per group of 10 certificates, with a maximum total deposit charge of [$12.00] *$13.00***. A bulk deposit is available under certain conditions.
• A surcharge per deposit of certificates $.65 per deposit without CUSIP numbers	
Rejects:	
For each deposit corrected or returned to a Participant because of error:	
From 0 to .5%	No charge
From .5 to 1%	[$6.00] *$10.00* per reject
From 1 to 3%	[$11.00] *$15.00* per reject
From 3 to 5%	[$16.00] *$20.00* per reject
Over 5%	[$21.00] *$25.00* per reject
II. Withdrawals (CODs):	
• Overnight CODs:	
Submitted by PTS	[$6.00] *$8.25* plus a charge after the first 10 certificates of [$3.00] *$4.00* per group of 10 certificates, with a maximum total withdrawal charge of [$18.00] *$24.25***.
Submitted by Paper	[$7.50] *$10.75* plus a charge after the first 10 certificates of [$3.00] *$4.00* per group of 10 certificates, with a maximum total withdrawal charge of [$19.50] *$26.75***.
• Same-day CODs:	
Submitted by PTS	[$6.00] *$17.00* plus a charge after the first 10 certificates of [$3.00] *$4.00* per group of 10 certificates, with a maximum total withdrawal charge of [$18.00] *$33.00***.
Submitted by Paper	[$7.50] *$22.00* plus a charge after the first 10 certificates of [$3.00] *$4.00* per group of 10 certificates, with a maximum total withdrawal charge of [$19.50] *$38.00***.
III. Long Position:	
• For each active issue*** per month (previously held by more than 2 Participants)	$1.35 per issue
• For each less-active issue*** per month (previously held by 2 or fewer Participants)	[$1.35] *$2.10* per issue
• Monthly charge on face value:	
0–$.5 billion	$.000011
Excess over $.5 billion up to $1 billion	$.00000275
Excess over $1 billion up to $8 billion	$.000001375
Excess over $8 billion	$.0000006875
• A monthly surcharge on all positions in Book Bond issues	$1.05 per issue
• A monthly surcharge on all positions in issues whose paying agents cannot be reached through the lower-cost New York coupon collection system.	$.50 per issue
IV. Interest Payments	[$2.00 per credit] *$2.50 per credit plus $.03 per $1,000*
V. Redemption/Calls (Full or Partial)	[$15.00 per Participant position] *$20.00 per Participant position plus $.05 per $1,000 with an $80.00 maximum transaction fee*
VI. Deliver Orders (Bearer Issues):	
• ID	[$1.28] *$1.25* for each item delivered or received

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• PTS, API or CCF	[$1.34 for each item delivered or received] *$1.50 for each item delivered; $1.40 for each item received*
• Paper	[$2.50 for each item delivered or received] *$3.00 for each item delivered; $1.40 for each item received*
VII. Deliver Orders (Registered Municipal Issues):	
• Deliver orders via ID System	[$.28] *.50* for each item delivered or received
• Deliver orders via PTS, API or CCF: For each deliver item presented:	
Prior PM	[$.30] *$.55* to the deliverer
AM opening to 12:30 PM	[$.54*] *$.80* to the deliverer
	[$.40] *$.65* for each item received (regardless of time)
• Deliver orders via paper:	
Deliver	[$1.70] *$2.75* for each item delivered;
Receive	[$.40] *$.65* for each item received

Notes to Service Section

*Weighted rate based on current mix of transactions in this service.
**In a deposit or withdrawal of more than 150 certificates, each group of 150 certificates is charged as a separate deposit or withdrawal.
***A less-active issue is defined elsewhere: active issues are those which are not designated as less-active issues in any quarter.
****This fee is shared equally by the broker and clearing agent for investment manager trades made by other than a trust department of direct and indirect depository Participants.
(1) All deposits shipped to DTC from outside the NYC area will continue to be regarded as Zone A deposits.
(2) Excludes deliveries in registered municipal bond issues.
(3) A surcharge of $350.00 will apply to issues with a put option feature to cover the costs associated with reviewing the official statement and establishing a data base through which put periods are monitored. Issues requiring consultation and special development efforts will be charged an additional surcharge of $500.00.

[Unchanged fees are omitted here.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to increase reserves to cover increased costs and to adjust the fees charged for various services to bring them closer to DTC's costs of furnishing those services.

New Service Fee

Registered Securities

I. Deposits: The present zone charges per deposit are as follows: Zone A (4:00 p.m. to 8:00 p.m. prior day and from 7:30 a.m. to 9:30 a.m.) $.90, Zone B (9:30 a.m. to 11:00 a.m.) $1.40, Zone C (11:00 a.m. to 12:00 noon) $3.00 and Zone D (12:00 noon to 1:00 p.m.) $35.00.

When zone deposit fees were implemented in 1980, about one-third of deposits were received in the Zone A timeframe. The rationale for lower deposit fees in earlier time zones was to induce completion of more book-entry deliveries earlier in the day instead of just prior to mid-day after recycling, easing operations for the receiver and reducing settlement adjustments; it also permitted more efficient use of DTC operations staff. Some 92% of deposits are now received in Zone A.

The new fees for deposits in issues which have not been designated Less-Active Issues are Zone A (4:00 p.m. to 8:00 p.m. prior day) $1.00, Zone B (7:30 a.m. to 10:00 a.m.) $1.80, Zone C (10:00 a.m. to 11:00 a.m.) $4.00, Zone D (11:00 a.m. to 12:00 noon) $10.00 and Zone E (12:00 noon to 1:00 p.m.) $40.00. In addition, the present certificate charge per deposit of $.25 per group of 10 certificates beyond the first 10 certificates is increased to $.30.

The Zone A charge was reduced to $1.00 from $1.10 in the test fee schedule to reflect night processing efficiencies, while the fees for most deposits received for same-day processing were increased from the test fee schedule by adjusting the timeframes during which such deposits can be made. The Zone A charge of $1.00 will continue to apply to all deposit shipments to DTC from outside New York City.

For issues designated Less-Active Issues for any calendar quarter, based on a prior period of activity averaging 2 or fewer deposits on days when deposit activity occurred, the fees are: Zone A $1.60, Zone B $2.40, Zone C $4.60, Zone D $10.60 and Zone E $40.60. The higher fees are designed to recover more of the fixed costs associated with processing securities shipments to and from transfer agents. DTC estimates that about 31% of daily deposits will now be subject to Less-Active Issue fees. Issues subject to Less-Active Issue fees in any quarter would be identified by symbols in DTC's monthly Eligible Securities booklets.

The present surcharge for record date deposits is $2.50. The new surcharge is $4.00.

The legal deposit fee is now $10.00. The new legal deposit fee is as follows: 1–1,500 deposits during the month—$9.00, excess over 1,500–2,500 deposits during the month—$6.00 and excess over 2,500 deposits during the month—$3.00. This discount reflects the efficiencies inherent in processing a number of legal deposits with the same registration at the same time.

Deposit reject fees have been increased from the test fee schedule to reflect the standardization of fees for all categories of rejects as follows: 0–.5% no charge, over .5–1% $10.00, over 1–3% $15.00, over 3–5% $20.00 and over 5% $25.00. If a Participant's error rate is .5% or less for the month, there will be no charge for deposit rejects.

II. Withdrawals-by-Transfer (WT): Present WT fees are $1.15 per automated instruction and $2.05 per paper instruction. The new WT fees applicable to issues which have not been designated as Less-Active Issues are $1.05 per automated instruction and $2.75 per paper instruction, increased from $1.00 and $2.25, respectively, in the test fee schedule.

As with deposits, DTC proposed to implement a Less-Active Issue fee. It will apply to certain issues each calendar quarter based on a prior period of activity averaging 2 or fewer assignments on days when WT activity occurred. This higher fee will recover more of the fixed costs associated with processing securities shipments to and from transfer agents. The Less-Active Issue fees are $2.85 per automated instruction and $4.55 per paper instruction. DTC estimates that some 28% of daily assignments will now be subject to Less-Active Issue fees.

DTC currently charges $.89 for each assignment which is completed by the mailing of certificates under the Direct Mail program. The new fee is $.55 for each assignment, increased from $.50 in the test fee schedule. The new fee is $2.35 for each assignment in a less-active issue.

In early 1984, Participants were advised that DTC would develop a transfer inquiry function through which Participants could inquire through their PTS terminals regarding the status of delayed transfers. By Participants using this new function, DTC expected them to curtail their use of manual inquiries to DTC on hardcopy forms. This inquiry system is now available and DTC fees for an inquiry by PTS will be $.08, the same fee as for all other PTS inquiries. To encourage the use of PTS rather than hardcopy inquiries and to recover the cost incurred in responding to hardcopy requests for transfer information, DTC will charge a $12.00 fee for each written inquiry made to DTC within 45 days of the date of the original submission of the transfer to the transfer agent. For items aged 45 days or more, written inquiries would also be $12.00 per inquiry, or free if an explanation of the delay in not available in DTC's response to an inquiry by PTS.

WT reject fees—like all reject categories—have been standardized and now permit a monthly error factor of .5% without charge.

III. Urgent Withdrawals (COD): The COD certificate withdrawal fee is now $6.00 for instructions by Participant Terminal System (PTS), and $6.75 per paper instruction, the difference in fees reflecting the difference in unit cost due to savings in more automated DTC processing by PTS. The number of CODs requested by Participants is falling, reflecting the increasing immobilization of institutional securities in DTC. COD fees continue to reflect cost differences in processing COD instructions and encourage Participants to use the cheaper overnight withdrawal where possible rather than the more expensive form of instructions requiring three hour (same-day) turnaround. The new fee for CODs reflects a $1.50 reduction from the test fee schedule as follows: on an overnight basis, $8.00 per instructions by PTS and $9.50 per paper instruction, and for a same-day withdrawal, $14.00 and $15.50, respectively.

While the urgent withdrawal fee increase is substantial, it reflects the higher unit cost of a service which is, fortunately, declining.

COD reject fees—like all reject categories—have been standardized and now permit a monthly error factor of .5% without charge.

IV. Pledges & Releases: This service is used in connection with collateral loans. The present fee for pledges and releases for instructions submitted by PTS is $.35 per line item and $.42 per line item for instructions submitted by paper. The new fee is $.22 for PTS-originated instructions and $.54 for paper instructions; the $.32 discount for PTS input reflects DTC savings from not processing paper instructions.

Collateral loan reject fees—like all reject categories—have been standardized and now permit a monthly error factor of .5% without charge.

V. Deliveries (Corporate Issues): Deliver orders (DOs) are book-entry deliveries other than CNS deliveries. They are broker/bank deliveries and broker-to-broker deliveries typically for customer account transfers and stock loans. Do fees continue to reward automated input and incentive for early input by the deliverer. For the deliverer, fees for automated input (via PTS, Automated Participant Interface (API) and Computer Communication Facility (CCF)) for each item delivered are as follows: Prior p.m.—$.30, from a.m. opening to 12:30 p.m.—$.55. DO instructions submitted on paper are $2.50, up from $2.00 in the test fee schedule, for the delivering Participant. For the receiver, regardless of the instruction mode used by the deliverer or the time of day the deliverer transmits DO instructions to DTC, the fee is $.40, unchanged from the present fee schedule, but reduced from $.50 in the test fee schedule. The proposed above-cost fee for DOs is intended to cover a portion of the continuing below-cost fees for deposits and withdrawals-by-transfer.

Delivers and receives through the Institutional Delivery System are now below cost at $.25 and $.25, respectively, from $.29 and $.50 in the test fee schedule to provide an incentive to Participants to increase the percentage of trades affirmed and delivered through the ID system. This reduction in revenue will be recovered by an offsetting increase in the ID confirm/affirm fee, discussed below.

The above fees do not apply to deliver orders in registered municipal bond issues.

The present fee is $.09 to both the broker-dealer and National Securities Clearing Corporation (NSCC) for each CNS delivery. The new CNS fee is $.10.

DO reject fees—like all reject categories—have been standardized and now permit a monthly error factor of .5% without charge.

VI. ID Confirm/Affirm/Report Service: The present ID confirm/affirm fee is $.25 per confirm. In the test fee schedule, DTC proposed to reduce the ID confirm/affirm fee to $.22 per confirm. However, we now propose to leave the ID confirm/affirm fee unchanged at $.25 per confirm to offset the reduction in revenue resulting from lowering ID deliver order fees and to provide for previously unplanned training and education seminars to assist book-entry settlements in munis. The fee to those Participants who receive ID confirm/affirm transmissions from DTC by magnetic tape or facsimile transmission is unchanged at $.40 and $.45, respectively.

Some 300 ID users receive ID confirmations directly from DTC through their dial-in terminals. The present fee for access is $120.00 per year. The new access fee is $250.00 per year, closely reflecting service costs. In addition, almost 800 ID users outside the Metropolitan New York City area will soon use DTC's Value-Added Network (VAN)—a public data communication network that provides data transmission facilities—enabling such users to lower their long distance telephone costs that otherwise would be incurred if they dialed into DTC's computer directly. The new access fee for ID VAN users is $400.00 per year, up from $120.00. About half of the 1,100 dial-in users money managers and the rest are correspondent banks, investment companies and insurance companies.

VII. Long Position: The present fee is $.58 per issue per month plus per share charges which diminish as the number of shares on deposit increases. The new fee schedule raises the long position per share rates for the first 25 million shares on deposit by 4% and implements a new

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per share rate for shares on deposit in excess of 300 million shares. The new fee for shares on deposit in excess of 300 million shares reflects the increase in blanket bond insurance costs associated with shares on deposit.

DTC is also implementing a monthly Less-Active Issue fee of $.83 on registered corporate issues designated Less-Active Issues for any calendar quarter since, at the conclusion of the period measured prior to that quarter, they were held by 15 or fewer Participants (the bottom one-sixth of issues based on average Participant positions in an issue). This fee is greater than the $.58 per issue per month fee for other issues, in order to recover more of the fixed costs associated with maintaining less-active issues in DTC's system. In registered corporate issues in which DTC Participants have positions, an average of 46 Participants now have positions. At the proposed level, the Less-Active Issue fee would apply now to approximately 43% of the registered corporate issues in which Participants have positions and to 7.3% of billable Participant positions in registered corporate issues.

For registered municipal bond issues, DTC is implementing a monthly Less-Active Issue fee of $1.33 on issues designated Less-Active issues for any calendar quarter based on their being held at the end of the prior period by 2 of fewer Participants (the bottom one-sixth of issues based on average Participant positions in an issue). This fee is greater than the $.58 per issue per month fee, in order to recover more of the fixed costs associated with maintaining those issues in DTC's system. Of the registered municipal bond issues in which Participants have positions, an average of 6 Participants now have positions. At the proposed level, the Less-Active Issue fee would apply not to approximately 42% of the registered municipal bond issues in which Participants have positions and to 9.7% of billable Participant positions in such issues.

Those issues subject to Less-Active Issues fees during any calendar quarter will be indicated in the Eligible Securities booklets.

VIII. Reorganization: A number of Participants commented that the fees proposed in the test fee schedule for reorganization activity, particularly Conversions, Mandatory Exchanges/Redemptions and Voluntary Exchanges/Tender Offers fees, would often encourage Participants to withdraw their securities from the depository by COD and process these transactions directly with agents rather than through DTC. Accordingly, most reorganization fees in the test fee schedule have been reduced.

The new fee for conversions is $.05 per share of stock into which the conversion is made for transactions from 401 to 2,000 shares. The minimum fee is decreased to $20.00 per transaction from $25.00 in the test fee schedule. The maximum fee will drop to $100.00 per transaction from $187.50 in the test fee schedule.

The present fee for Unit Swingover is $10.00 per swingover instruction. Swingover services for units enable Participants to combine components on deposit into units or separate units into components by book-entry. The fee for this service is $11.00, unchanged from the test fee schedule.

Mandatory Exchanges/Redemptions and Voluntary Exchanges/Tender Offers services are designed to keep securities immobilized in the depository during periods when Participants or their customers are exchanging or redeeming them for cash and/or other securities. For Mandatory Exchanges/Redemptions, the present fee is $5.00 per Participant position. The new fee is $20.00 per Participant position, reduced from $27.00 in the test fee schedule. For voluntary Exchanges/Tender Offers the present fee is $7.00 per letter of transmittal. The new fee is $25.00 per letter of transmittal, reduced from $35.00 in the test fee schedule.

Occasionally, DTC sends all Participants positions in a given issue back to Participants in appropriate certificate denominations (Exit COD) because it has become necessary to make an issue ineligible. The new fee for this transaction is $20.00, reduced from $37.00 in the test fee schedule.

IX. Underwritings: Underwriting service fees reflect the processing differences associated with different types of security issues.

Underwriting of certificates of deposit require minimal processing and will be charged a fee of $100.00 and any unusual expenses.

Corporate underwritings (for stocks and bonds) require more processing, with costs affected somewhat by the size of the underwriting. The fee for this type of underwriting is $200.00 plus $3.00 per million, with a maximum of $2,000 and any unusual expenses. The change per million reflects DIC costs associated with certificate handling. This fee would apply to both Fast Automated Securities Transfer (FAST) and non-FAST issues, as savings from FAST are offset by additional costs incurred in balancing the position with the FAST transfer agent. Processing costs are lower, however, in underwritings of book-entry-only issues. Accordingly, the fee for this type of issue is $200.00 and any unusual expenses, with no additional charge based on value.

Underwritings of registered municipal issues are the most costly for DTC to process due to the complexities they generally present including many CUSIP numbers for serial bonds in the underwriting. The fee is $400.00 plus $3.00 per million dollars of the issue's principal amount, with a maximum of $2,000 and any unusual expenses. The charge per million reflects DTC costs associated with certificate handling. As with corporate underwritings, book-entry-only underwritings of registered municipal issues will get the benefit due them of a reduced fee—$400.00 and any unusual expenses, with no additional charge based on value. In addition, DTC will apply a surcharge of $350.00 to the managing underwriter in those issues with a put option feature to cover the costs associated with reviewing the official statement and establishing a data base through which put periods are monitored.

DTC will also apply an additional surcharge of $500.00 to the managing underwriter in any type of underwriting for which DTC incurs special consultation and development costs. This surcharge will be applied to initial and subsequent underwritings of the particular type of issue causing DTC to incur such special costs until they are fully recovered.

X. Dividends: The result of DTC's continuing efforts in collecting cash dividend and interest payments is that 89% of the value of such payments in 1984 was received on payable date, with 94% in same-day funds. Monthly refunds of investment income to Participants on the overnight investment of these payments, which are credited to Participants in clearinghouse funds in DTC's daily settlement, amounted to some $39.9 million for 1984.

The present fee for crediting dividend (cash or stock), interest and reorganization payments to Participants' accounts is $1.00. The new fee is $1.40, slightly reduced from $1.50 per credit in the test fee schedule, for cash dividends, interest and reorganization items, and $3.00, greatly reduced from $1.50 per credit plus $.03 per 100 shares in the test fee schedule, for a stock dividend.

We estimate that approximately $3.7 million of DTC's dividend processing costs are directly associated with efforts to collect cash dividend and interest payments in same-day funds on payable date. DTC will recover this portion of service costs by charging them against total monthly refunds of dividend and interest investment income to

Participants evenly during the year, rather than raising cash dividend and interest payment fees further.

The Dividend Reinvestment Service (DRS) allows those Participants who wish to reinvest all or part of their dividends in a security that is subject to an issuer's reinvestment plan to do so by book-entry, without withdrawing the underlying shares from their DTC accounts. The fee for each DRS instruction is increased to $23.00 from $8.10 and will cover service cost.

XI. PTS Reporting: The new fee is $.08, in line with unit cost, up from the current fee of $.05 per inquiry, message, or report.

XII. Usage Charge: The present monthly usage charge is $320.00 for each Participant account. The new monthly usage charge is $460.00 for each Participant account up to five accounts and, for each account after the fifth account, $140.00 per month. Charges are structured to recover costs, to recognize that some Participants require multiple accounts, and to acknowledge the lower incremental operating and administrative costs associated with multiple accounts of a single Participant.

For each Pledgee Bank that is also a Participant, the monthly usage charge is decreased to $140.00 per month from $160.00 per month.

Bearer Bond Securities

I. Deposits: The new service fee is $5.00, increased from $4.00 in the test fee schedule, for the transaction portion of the deposit fee plus a certificate charge. This fee will now substantially recover service costs and will partially offset revenue lost in lowering bond withdrawal fees from levels indicated in the test fee schedule (see below). No change is proposed to the certificate charge.

Deposit reject fees have been decreased from the test fee schedule to reflect the standardization of fees for all categories of rejects as follows: 0–.5% no charge, over .5–1% $10.00, over 1–3% $15.00, over 3–5% $20.00 and over 5% $25.60. If a Participant's error rate is .5% or less for the month, there will be no charge for deposit rejects.

II. Withdrawals: The present fee for withdrawal instructions received in automated form is $6.00 plus a certificate charge after the first 10 certificates of $3.00 per group of 10 certificates, with a maximum total withdrawal charge of $18.00 for 150 certificates. The maximum charge means that certificates beyond the 50th certificate in a withdrawal are not charged for, except that each group of 150 certificates in a withdrawal is charged as a separate withdrawal. Withdrawal instructions received on paper forms are priced higher than automated instructions—$7.50 vs. $6.00, with a maximum total charge of $19.50—to reflect higher processing costs.

Respondents to the test fee schedule expressed concern about the substantial Urgent Withdrawal fee increase. To ameliorate this problem, the new fee for the transaction portion of the withdrawal charge is reduced $4.00 from the test fee schedule as follows: on an overnight basis, $8.25 for instructions by PTS and $10.75 per paper instruction, and for a same-day withdrawal, $17.00 and $22.00, respectively. The new withdrawal fees continue to reflect the cost differential in processing paper and automated instructions and encourage Participants to maximize overnight rather than same-day withdrawal instructions because of the lower fee. The certificate charge for all withdrawals is unchanged from the test fee schedule at $4.00 per group of 10 certificates after the first ten certificates. The maximum charge incorporates the increases in the transaction and certificate portions of the withdrawal fee.

III. Long Position: The present fee is $1.35 per issue per month plus a monthly charge on face value which diminishes as the face value on deposit increases. No change to this fee is proposed.

DTC will implement a monthly Less-Active Issue fee of $2.10 on issues designated Less-Active Issues for any calendar quarter because, at the conclusion of the period measured prior to that quarter, they were held by 2 or fewer Participants (the bottom one-sixth of issues based on average Participant positions in an issue). This fee is greater than the $1.35 per issue per month fee for other issues, to recover more of the fixed costs associated with maintaining less-active issues in DTC's system. Of bearer issues reflecting Participant positions, an average of 6 Participants now have positions. At the proposed level, the Less-Active Issue fee would apply now to approximately 42% of the bearer municipal issues with position and to 9.2% of billable bearer municipal Participant positions. Those issues subject to the Less-Active Issue fees in any calendar quarter will be indicated in the Eligible Municipal Securities booklets.

IV. Interest Payments: The present fee for crediting interest payments on bearer municipal securities is $2.00 per credit per security issue. A credit normally occurs every six months.

The depository has been able thus far to collect and to credit Participants' interest on municipal securities on the payable date. Participants find this service valuable. The new fee is $2.50 per credit per security issue plus $.03 per $1,000 of interest credited to a Participant's account, unchanged from the test fee schedule. The portion of the fee applicable to the level of interest payments recognizes additional costs to DTC of coupon processing as well as the greater value of this service to Participants with many large interest payments.

V. Redemption/Calls (Full or Partial): The present Redemptions/Calls service fee for bearer municipal bonds is $15.00 per Participant position. The proposed fee in the test fee schedule was $30.00 per Participant position plus $.50 per $1,000. The portion of the fee attributable to the level of reorganization payments recognizes the large number of certificates handled, shipping and insurance costs. A number of respondents to the test fee schedule felt the redemption fee was excessive, particularly the portion of the fee attributable to the level of reorganization payment. Accordingly, the new fee is $20.00 per Participant position plus $.05 per $1,000, with a cap of $80.00 per transaction (i.e., the approximate unit cost for this service).

VI. Deliver Orders (Bearer Issues): For deliver orders (DOs) in bearer issues, instructions received by DTC in automated form are priced at $1.34 and in paper form at $2.50. The above-cost service fees when originally established recognized the significant cost savings to Participants of book-entry delivery for bearer securities and were designed to compensate for revenue shortfalls in deposit and withdrawal service fees. The above-cost fee for DO instructions is now intended to partially cover the revenue shortfall in bearer interest payments and will be $1.50 for the deliverer submitting automated instructions and $3.00 for the deliverer submitting paper instructions. The fee for the receiver, regardless of the instruction mode used by the deliverer, is $1.40, unchanged from the present fee schedule, but reduced from $1.50 in the test fee schedule.

Delivers and receives through the Institutional Delivery System are reduced to $1.25 from $1.29 and $1.50, respectively, in the test fee schedule.

VII. Deliver Orders (Registered Municipal Issues): DO instructions for registered municipal issues, a service benefiting municipal brokers and dealers in general, will now be priced above-cost to partially offset the revenue shortfall in bearer municipal interest payments. This is intended to permit cost recovery in DTC's overall municipals program to be proportional

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to cost recovery in DTC's corporate securities program. A margin of $.25, reduced from $1.00 in the test fee schedule, will be added to the new fees for DOs in registered municipal securities to accomplish this.

Less-Active Issue Fees in the New Fee Schedule

Action Taken

The test fee schedule distributed for comment in May contained a proposal for Less-Active Issue surcharges on Deposit, Withdrawal-by-Transfer (WT), and Long Position fees when service activity in any security issue was below specified levels on any day. The surcharges did not apply to book-entry Deliveries and Pledges, urgent COD Withdrawals, or any other service performed for less active issues. That proposal was modified as follows:

1. Less-Active Issue fees are established for Deposit, WT, and Long Position services when activity in any securities issue in these services has been below the levels which would have triggered the proposed surcharges.

2. Issues subject to these Less-Active Issue fees in any calendar quarter would be identified by symbols in DTC's monthly Eligible Securities booklets based on activity in the previous three months measured. Thus, for example, the January edition of the booklets, which list securities issues in CUSIP number order (which is virtually alphabetical order), would note those issues subject to Less-Active Issue fees for the Deposit, WT and/or Long Position services during that calendar quarter based on activity in those services during the most recent three month period measured.

3. The amount of revenue generated by the Lese-Active Issue fees has been reduced from the amount sought from the Less-Active Issue surcharges in the test schedule. Revenue from Less-Active Issue fees would currently recover overall about 55% of the estimated costs of processing such issues.

4. Each newly-eligible security issue, including underwriting distributions, will be presumed to be an active issue and will not be listed as a Less-Active issue until activity during the 3-month period in which it is made eligible qualifies it as a Less-Active issue in one or more services.

* * * * *

Accordingly, the DTC fee schedule with respect to Deposits, WTs and Long Position services will have one regular set of fees and another set of fees for less-active issues. The Less-Active Issue fees would add fixed increments onto the basic service fees—60¢ for Deposits, $1.80 for WTs, 25¢ for corporate Long Positions, and 75¢ for municipal Long Positions. The fee schedule for these services will be as follows:

Deposits			
Zone A	$1.00	$1.60	For less-active issues.
Zone B	1.80	2.40	Do.
Zone C	4.00	4.60	Do.
Zone D	10.00	10.60	Do.
Zone E	40.00	40.60	Do.
WTs			
Paper input	2.75	4.55	Do.
Automated input	1.05	2.85	Do.
Direct Mail	.55	2.35	Do.
Long Position (issue component of fee)			
Corporates	.58	.83	Do.
Registered Muni	.58	1.33	Do.
Bearer Muni	1.35	2.10	Do.

These Less-Active Issue fees are described below.

Deposit Fee for Less-Active Issues

This applies to registered issues, not bearer issues, since DTC incurs certain fixed costs when sending deposits in registered issues to transfer agents for transfer into DTC's nominee name, regardless of the number of deposits in the shipment. There are on average 3.5 deposits per day by Participants in security issues experiencing deposit activity. The Less-Active Issue fee will apply to an issue when an average of two or fewer deposits were made by Participants on all days deposit activity in that security occurred in the prior three month period measured. DTC studies indicate that currently on an average day, about 76% of issues with deposit activity, accounting for about 31% of total deposit activity, will be affected.

Withdrawal-by-Transfer Fee for Less-Active Issues

This applies only to registered issues, not bearer issues, since DTC must contact transfer agents to complete this service. There are on average 4 WT assignments* per day in security issues in which transfer activity takes place. The Less-Active Issue fee will apply to an issue when an average of two or fewer assignments occur on all days WT activity in that security occurred in the prior three-month period measured. About 71% of issues with daily transfer activity, accounting for 28% of daily total transfer activity, currently would be affected.

* An assignment is one registered name and address, regardless of the number and various denominations of certificates in that name.

Long Position Fee for Less-Active Issues

This fee applies to both registered and bearer issues and is determined by positions in an issue at the close of the period measured preceding each quarter. For corporate securities issues in which Participants have positions, on average 46 Participants currently have position; the Less-Active Issue fee adds 25¢ per issue to the regular Long Position fee when issues are held by 15 or fewer Participants. In both registered and bearer municipal bond issues where Participants have position, on average 6 Participants have position; here, a monthly fee increase of 75¢ per issue would apply where muni issues were held by 2 or fewer Participants. Less-Active Issue fees for Long Positions would apply only to the bottom 16% of Participant positions by size in each of these types of issues; they currently would affect about 43% of corporate, 42% of registered muni, and 42% of bearer muni issues with position. That such high percentages of each type of issue would be affected supports the arguments for Less-Active Issue fees since these percentages indicate how few users benefit from the eligibility of many issues. The affected positions, however, now amount to only 8% of total billable Participant long positions.

Analysis

These three groups of Less-Active Issue fees apply to listed as well as unlisted issues and to corporate issues as well as municipal issues.

The argument for these fees is based on cost of service to DTC, recovery of service cost by DTC, and truer allocation of service cost to those who benefit from a policy of having more issues eligible for depository services.

DTC attempts to relate its individual service fees to individual service costs. Thus, for example, total Deposit service costs for 1986 divided by the number of Deposits that year produce an average 1986 unit cost which could be recovered by a uniform fee for all deposits. However, since on average 9.5 deposits are made by Participants in a given security issue daily, DTC will not fully recover its Deposit service cost for an issue when only one or two (or even 3) deposits are made by Participants each day; there are not sufficient billable units of deposits on which DTC can collect its Deposit service fee to permit full cost recovery. The depository has to cover some of those costs from all the billable units created when the number of Participant deposits in an issue exceeds the average.

Put another way, since certain fixed costs for securities shipment to a transfer agent exist whether the shipment results from one deposit in an issue or many in that issue, DTC cannot recover those costs by charging its regular fee for only one or two deposits by Participants in a given registered securities issue during any business day. Accordingly, the case for the proposed Less-Active Issue fees is primarily a cost recovery case. Its rationale is that DTC has increased the number of issues eligible for its services 10 fold in 5 years in order to bring the benefits of continuous net settlement and book-entry delivery to users for a widening range of securities issues, that the proportion of less active issues will continue to increase if DTC continues to pursue this policy—as it should—and that those who benefit from this policy favoring wide eligibility of issues should pay for its costs.

The final argument based on cost is that monitoring and control of less active issues is more expensive for DTC (costs are perhaps as little as 3¢ per Deposit for an active issue vs. $1.30 for an inactive issue); less active issues tend to have small, less competent transfer agents, and there are fewer billable units to share costs arising from transfer agent delays and errors.

Perhaps the major concern about the proposed surcharges expressed during the comment period was as follows:

> ". . . The effect of the large proposed surcharges could be to force settlement in lightly traded issues out of the depository process. . . . Furthermore . . . NSCC . . . trades would also not be cleared through CNS. . . . Overall, this could thwart the process that has been made in bringing all OTC clearance and settlement into a standard system. . . ."

This conclusion seemed ill-founded, however. The cost difference between NSCC-DTC trade clearance and settlement on the one hand and physical processing on the other hand is so great that the small surcharges proposed—and the even smaller Less-Active Issue fees adopted—could not come close to eliminating that difference.

A related argument made against the proposed surcharges was that while it may be appropriate to apply surcharges to, say, all municipal bond long positions while not placing them on any corporate security long positions, surcharges should not apply to some corporate securities long positions but not others. The rationale for this argument was not clear. The answer to the argument is that the economics of the matter justify cost recovery measures for any less-active issue; the many users of DTC services who do not trade in and hold such issues should not be asked to share in covering the costs generated by those who do.

Many commentators on the test fee schedule complained that the burden of the surcharges will fall on the small broker-dealer. However, a large sample of fee effects on small regional firms and OTC broker-dealers shows that their monthly bills may be lowered as well as increased by the proposed surcharges or the Less-Active Issue fees. Of 50 firms tested, only 27 firms would be worse off with the Less-Active Issue fees than with mutualized fees (where Less-Active Issue fee revenues were replaced by charging higher Deposit, WT and Long Position fees to all Participants). More importantly, the largest adverse variance of this nature on a Participant's monthly bill amounted to less than $250. Moreover, most of these 50 firms already pay many times the amount of the Less-Active Issue fees' impact on them in transfer agent certificate issuance fees DTC passes through to them which have been charged to DTC, typically by transfer agents in OTC issues. Such agent fees are not mutualized but are passed on to those Participants with Deposit, WT or Urgent COD Withdrawal activity in those issues.

The application of the recommended Less-Active Issue fees is consistent with DTC's practice of taking costs seriously and having Participants pay for what they use. That is why fees charges to DTC by transfer agents for transferring certain security issues are passed on to Participants depositing those issues instead of being mutualized, that is, absorbed into overhead and spread among all users including those not holding such issues. That is why Participants which use the DTC Interface Department because they do not have operations in the New York metropolitan area pay interface fees. That is why Participants pay Participant Terminal System line charges according to the cost of the long distance line and location of its users.

DTC directly and indirectly serves a diverse group of users with varying kinds of businesses. Beyond a variety of broker-dealers, those users include 171 bank Participants which act not only for themselves but for over 1,000 bank correspondents and thousands of institutional customers. The depository believes it should not eschew clear-cut opportunities to let various Participants pay more of the cost of depository services that are useful only to them. It would be a departure from DTC practice of trying to set fees objectively, and it would be unfair to many Participants if fees of this nature were not adopted. Moreover, rejection of these fees would raise the question of whether DTC should change its policy of making issues eligible simply because they are traded among Participants; many DTC Participants which never trade in those issues would prefer this alternative if the Less-Active Issue fee alternative had been rejected.

Finally, Less-Active Issue fees should commence now because the proportion of less active issues in DTC is only going to rise in the future as the depository makes more issues eligible for the cost-saving benefits of continuous net settlement, securities immobilization, and book-entry.

DTC had adopted the proposed rule change pursuant to section 17A(b)(3)(D) of the Exchange Act which authorizes DTC to adopt reasonable fees for the services which it provides to Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will more equitably allocate fees among DTC's Participants.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In DTC's memorandum entitled "Test Fee Schedule for Major DTC Services" dated May 15, 1985 the depository distributed a test fee schedule for Participant comment. DTC received a total of fifty-eight letters of comment from forty-five of DTC's Participants, six industry associations and two securities self-regulatory organizations.

A number of commentators objected to the magnitude of the increases proposed in the test fee schedule for

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certain fees, particularly for the following services: Deliver orders (DOs); reorganization services for registered securities; municipal bearer bond redemptions; urgent withdrawals (CODs); municipal bearer bond interest payments; and stock dividend payments. Many of these commentators suggested the imposition of more moderate fee increases over time. As discussed more fully in Item 3 above, the new fee schedule reduces a number of these fees from levels proposed in the test fee schedule. This is due largely to the agreement of the depository's Board of Directors that DTC should estimate transaction volumes in its budget plan for 1986 on a "somewhat conservative" basis, rather than on the "very conservative" basis the Board desired for the 1985 budget and the test fee schedule in order to avoid recourse to a general surcharge on monthly billings to Participants in the future. This approach was also favored by most Participants commenting on the test fee schedule, who were willing to run some risk of a general surcharge in the future. Accordingly, the new fee schedule substantially reduces fee increases to Participants found in the test schedule. Where the average increase in Participant billings under the test schedule was 7.3% over the fee schedule in effect in March 1985 (including the 15% surcharge), the average increase under the new fee schedule on the same basis is less than 1%. Based on September activity, the new fee schedule would increase revenues by 5.06% over the present fee schedule, including the current 10% surcharge. Excess revenues resulting from high transactions volume under the new fee schedule would be refunded to Participants more frequently than in the past.

In adopting new fees, the Board also declared its belief and intention that DTC should revise its basic fee schedule each year so that, through modest changes gradually over approximately five years, DTC service fee will be based on service cost in the absence of policy considerations which would justify limited exceptions. Large changes in service fees after intervals of several years would thereby be avoided.

Comments on the proposed surcharges on certain fees for less active issues are summarized and discussed in Item II above. Less-Active Issue fees were adopted at reduced levels in place of the Less-Active Issue surcharges proposed in the test fee schedule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

(The following section has been prepared by the Commission's Division of Market Regulations.) DTC indicates that a principal objective underlying many of the proposed fee changes is to adjust service fees to bring them closer to DTC's cost of furnishing those services. A majority of commenters responding to DTC's previous solicitation of comments appeared to support that objective.[1] The Commission requests commenters, in reviewing the proposed service fees, to address the utility of this objective, to consider whether it should be applied across-the-board or whether there are circumstances where it is appropriate to depart from that approach, and to assess whether the DTC proposal effectuates that objective.

Notwithstanding that general stated objective, DTC notes that several of the proposed fees do in fact depart from cost-based pricing. For example, the proposed fees for deliveries, deposits and withdrawals continue to distinguish among different instruction input media (paper, tape, PTS and facsimile transmission) to encourage increased automation. In addition, the proposed zone charges for deposits and withdrawals are set above cost for activities during certain timeframes, thus rewarding those participants who submit deposit or withdrawal instructions well in advance of daily cut-off times for those services; the proposed fees also set fees above costs to discourage written inquiries (as opposed to inquiries by PTS) concerning withdrawal-by-transfer requests aged less than 45 days. The Commission encourages commenters to address whether these incentive fee structures would be effective in accomplishing their intended purposes. Commenters are requested to consider whether there are entities for whom these fee differentials would have a disproportionate impact (*e.g.*, because of their size, lack of automation, the time zones within which they conduct business or other factors) and whether such differentials would impose unfair or inappropriate burdens on any depository users.

The proposed fee schedule also contains discounts for users of particular services based on volume. For example, the proposed monthly fee for legal deposits ranges from $9 for the first 1,500 deposits to $3 for every deposit in excess of 2,500 during each month. Several commenters questioned whether a volume discount based on gross deposits reflected cost economies in handling those deposits. The Commission invites commenters to address whether they believe such economies exist and, if not, whether the proposed fees further other statutory goals.

The proposal incorporates a below-cost fee for Institutional Delivery System deliveries and receipts to provide an incentive to users to increase the percentage of trades affirmed and delivered through the ID system. The Commission invites commenters to address whether these below-cost fees would be effective in creating such an incentive, particularly in light of the separate proposal to retain the ID confirm/affirm fee at a level that is stated to exceed confirm/affirm service costs.

The proposal would also increase bearer bond deposit fees by one dollar per deposit, partially to offset revenue shortfalls associated with withdrawals of bearer bonds. The Commission invites commenters to address the appropriateness of setting withdrawal charges for bearer bonds below cost. Commenters also are requested to consider whether it is appropriate to earmark an increase in deposit fees above cost to cover this revenue shortfall and in particular whether the resultant increases in deposit fees would discourage certificate immobilization.

The proposed fees for deliveries and receipts of registered-form municipal securities also would be raised to offset the cost of collecting interest payments on bearer-form municipal securities certificates, as well as the cost of providing deposit and withdrawal services for bearer-form municipal securities certificates. The Commission invites commenters to address whether these subsidies are consistent with the

[1] References to "comments" in this section refer to persons responding to DTC's solicitation of comments on a package of fee changes that formed the basis, with certain revisions, for the instant proposed rule change.

Act and if so, whether they have been set at appropriate levels.

The most controversial aspect of the proposed rule change, based on the comments received by DTC on its prior proposal, concerns the surcharges proposed for inactive issues. DTC indicates that these surcharges are necessary because of the increased per unit costs in processing transactions and servicing positions in inactive issues. The proposal would establish surcharges for deposits, withdrawals and long positions in inactive securities issues. It would establish a surcharge on deposits in issues that, during the preceding three months, averaged fewer than two deposits each day that deposits were made in that issue. The proposal would establish a surcharge on withdrawals in issues that, during the preceeding three months, averaged fewer than two transfer assignments each day that withdrawal-by-transfers were made in that issue. Finally, the proposal would establish a surcharge on long positions in corporate issues held for 15 or fewer participants and registered and bearer municipal securities issues held for two or fewer participants. Newly eligible securities issues would be exempt from surcharges for the first three months following the first deposit in those issues.

DTC estimates that approximately 43% of the corporate securities issues and 42% of the municipal securities issues eligible for deposit at DTC would be subject to inactivity surcharges. Approximately 31% of the average daily deposits (76% of the issues with deposit activity) and 28% of average daily withdrawals (71% of the issues with withdrawal activity) would be subject to inactivity surcharges.

The Commission invites comment on all aspects of the proposed inactivity surcharges. The following discussion highlights specific concerns or issues commenters may wish to address.

As discussed above and in the filing, DTC believes that the proposal would increase participant billings by only 5% over current fees and that the proposal would not burden competition. The Commission invites commenters to address whether the surcharges would have a disproportionate effect on particular types of depository users (banks, broker-dealers, correspondent broker-dealers and piggybacked banks) or particular types of securities.

Section 17A directs the Commission to foster the immobilization of securities certificates to reduce the flow of physical certificates in settlements among brokers and dealers. It also directs the Commission to foster centralized, automated clearance and settlement of securities transactions. Several commenters asserted that the proposal would discourage increased immobilization of securities, particularly municipal issues. In particular, several commenters expressed concern that imposition of surcharges for less-active municipal securities issues at this time, when the industry is still in the initial stages of adjusting to the introduction of automated comparison and centralized book-entry settlement systems, could discourage broad industry participation in such systems.

Sections 17A and 11A of the Act direct the Commission to foster efficient securities markets. The Commission invites comment whether the proposed surcharges, or surcharges set at any level, would have a detrimental effect on the ability of dealers to maintain liquid and active markets for securities issues subject to the proposed inactivity surcharges.

Several commenters suggested that mutualization of service costs within product groups was preferable to the proposed inactivity surcharges as a means to recover service costs. These commenters asserted that distinguishing between, for example, services for registered-from corporate and municipal securities on the one hand, and bearer-form municipal securities on the other hand, was appropriate because of different service expenses associated with these different product types. These commenters questioned, however, whether distinguishing among registered-form instruments, based on estimated unit costs, was the best cost-recovery alternative in light of the statutory goals discussed above. Several commenters argued that the policy issues associated with inactivity surcharges are similar to the policy issues associated with the National Securities Clearing Corporation's ("NSCC") proposal to establish surcharge fees for use of NSCC's regional office facilities, which ultimately led to the development and implementation of "Geographic Price Mutualization." Under this policy, all NSCC members shared in the costs of national facilities on an equal basis. Thus, some commenters asserted that "Issue Price Mutualization" by product (*e.g.*, corporate *vs* municipal) is the best way to recover service costs. In order to evaluate these assertions, the Commission invites comment on the similarities or differences between depository and clearing corporation service fees.

Finally, several persons commenting on DTC's initial proposal objected to DTC's overall budgeting estimates, which they asserted understated likely revenues. The filing notes that, in response to those comments, DTC's Board of Directors agreed that DTC should estimate transaction volume on a "somewhat conservative" basis, rather than on the very conservative basis reflected in DTC's 1985 budget in order to avoid a general surcharge on monthly billings in the future. Although most commenters addressing this issue were willing to run some risk of a general low-volume surcharge, at least one commenter noted that such a surcharge would occur during periods of low trading volume, when the industry is least able to afford those surcharges. In addition, in response to several commenters who favored monthly or quarterly rebates, the filing notes that excess revenues resulting from high transaction volume would be refunded more frequently than at year-end. In light of DTC's adjusted volume projections and its intention to rebate excess revenues more than once a year, the Commission invites comment whether development of specific standards to clarify the frequency, scope and mechanics of excess revenue rebates would be appropriate.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1728 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-22818; File No. SR-PSE-85-37]

Self-Regulatory Organizations; Proposed Rule Change; the Pacific Stock Exchange Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 9, 1986, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule VI, sections 22, 23 and 24. The PSE proposes to allow member organizations which are clearing members of the Options Clearing Corporation to delegate trade checking authority to other member organizations and to make available to floor members electronic display terminals to facilitate such process.

Rule VI, section 26. The PSE proposes to rescind its requirement for member organizations which are clearing members of the Options Clearing Corporation to maintain Exchange approved officers, and to provide the Exchange with certified lists of authorized representatives for trade comparison purposes.

Rule VI, section 27. The PSE proposes to conform its trade checking rules to any Exchange approved hours of trading.

The PSE also proposes to base the amount of loss arising from uncompared trades from the price at the opening on the business day following such transaction or, to the price at which such uncompared trade is closed, whichever results in a lesser amount.

OFPA G-3. The PSE proposes to require that the majority of reconciliation and comparison take place within each trading day rather than after the close of the session.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change is designed to reflect certain changes which have occurred in the comparison and reconciliation process due to technological changes as well as those of business structure with respect to Exchange members and member firms. The rule change will also make clear the obligation of certain members, member firms, or their employees with respect to the comparison and clearing process. The specific purpose for each amendment is set forth as follows:

Secs. 22, 23, 24. The amendments to these sections intend to reflect the practical business arrangements of the members and member firms and to changes in the technology employed in the comparison and reconciliation process.

Sec. 26. This rule section is being deleted as it speaks to a comparison reconciliation process which is effected away from the trading floor and is not applicable to the Exchange's "trade match system".

Sec. 27. The amendments to this section are intended to make clear the staffing obligations of the members and member firms with respect to the comparison and reconciliation process and also to take into consideration anticipated changes in trading hours. Additionally, policy with respect to the manner in which the basis for liability and for establishment of loss (eg., the manner in which errors or uncompared trades are "covered" and/or closed") will encourage speedy resolution of and limit the liability associated with uncompared trades.

OFPA G-3. The amendments to this Advice are intended to reflect the changes in the reconciliation process brought on by technological advances.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("Act") in that it is intended to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the proposed rule change was considered and approved by the Board of Governors at its meeting on August 22, 1985.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) As to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld for the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 21, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-1770 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14903 (File No. 812-6161)]

Applications, Hearings, Determinations, etc.; Collateralized Mortgage Securities Corp.

January 17, 1986.

Notice is hereby given that Collateralized Mortgage Securities Corporation ("Applicant"), Park Avenue Plaza, New York 10055, filed an application on July 26, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), amending Applicant's present order issued on May 21, 1985 exempting Applicant from all provisions of the Act (Investment Company Act Rel. No. 14533). The present order permits Applicant to issue bonds collateralized primarily by Government National Mortgage Association ("GNMA") Certificates which may or may not represent the entire beneficial interest in the related mortgage pools. Applicant now seeks an amended order permitting it to transact business similar to that described in its original application, except that Applicant could now use partial pool Federal Home Loan Mortgage Corporation ("FHLMC") Certificates and/or partial pool Federal National Mortgage Association ("FNMA") Certificates as the primary collateral for its bonds. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein and to the Act and rules thereunder for the text of all applicable provisions.

Applicant states that it was incorporated for the limited purpose of acquiring, owning, holding and pledging mortgages and mortgage-backed securities ("Mortgage Collateral"), including Mortgage Certificates (described below), issuing and selling series of bonds secured by Mortgage Collateral, and engaging in activities incidential thereto. Each series of bonds ("Bonds") will be separately secured by Mortgage Collateral consisting primarily of mortgage pass-through certificates ("GNMA Certificates") which are guaranteed as to the full and timely payment of principal and interest by GNMA, Mortgage Participation Certificates ("FHLMC Certificates") guaranteed as to the timely payment of interest and the ultimate collection of principal by FHLMC, and/or Guaranteed Mortgage Pass-Through Certificates ("FNMA Certificates") guaranteed as to the full and timely payment of interest and principal by FNMA. As used herein, "Mortgage Certificates" means GNMA, FHLMC and/or FNMA Certificates. The Mortgage Certificates included in the Mortgage Collateral pledged to secure a series of Bonds may or may not represent the entire beneficial interest in the related mortgage pools.

Applicant states that each series of Bonds will be issued pursuant to an indenture between Applicant and an independent trustee ("Trustee"), as supplemented by a supplemental indenture for each such series ("Indentures"). Applicant contemplates that each series of Bonds will be registered under the Securities Act of 1933, unless an appropriate exemption is available from such registration, and sold pursuant to a prospectus or private placement memorandum containing all material disclosures required by the terms of that Act. Indentures for each public offering will be qualified under the provisions of the Trust Indenture Act of 1939.

Each series of Bonds will be structured so that it will receive the highest rating from one or more nationally recognized rating agencies, none of which rating agencies will be affiliated with the Applicant. The Mortgage Collateral for each series of Bonds will be pledged to an held by the Trustee or its nominee. Until such Bonds are paid, Applicant will not be permitted to release any of the Mortgage Collateral from the lien of the Indenture. At the time of issuance of a series of Bonds, the cash flow guaranteed by GNMA, FHLMC and/or FNMA on the Mortgage Certificates, plus the reinvestment earnings thereon at the assumed reinvestment rate specified in the related supplemental indenture, together with the other collateral pledged to secure such Bonds, will be sufficient to pay the principal and interest on the Bonds when due to bondholders. It is anticipated that the outstanding principal amount of the Mortgate Certificates securing a series of Bonds will be at least equal to the unpaid principal amount of such Bonds on their issue date.

Certain series of Bonds may provide for optional and mandatory redemptions on terms specified for each series of Bonds. In the event that principal payments on the Bonds are made other than on a monthly basis, the Bonds may provide for mandatory redemptions to the extent that principal payments on the Mortgage Collateral cannot be invested at a rate which will provide sufficient income to pay interest on the Bonds. The Bonds may also provide for redemptions at the option of bondholders, but only to the extent that payments received on the Mortgage Collateral are available for such redemptions. Except in the event of a default on the Bonds, and then only in limited circumstances, bondholders will not be entitled to compel the liquidation of the Mortgage Collateral in order to redeem the Bonds prior to maturity.

The other collateral pledged to secure the Bonds will include a separate collection account ("Collection Account") for each series of Bonds and may include a debt service reserve fund ("Debt Service Reserve Fund") or other reserve fund ("Reserve Fund"), and payments made under any minimum principal payment agreement. A Debt Service Reserve Fund would consist of cash, a letter of credit or eligible investments in an amount which, together with reinvestment earnings thereon, would be sufficient to cover any potential cash flow shortfall relating to any Mortgage Certificates which were backed by graduated payment mortgage loans. Any other Reserve Fund would consist of cash, a letter of credit or eligible investments or by the application over time of all or a portion of the excess cash flow relating to the series. The amount held in such reserve funds for any series of Bonds is expected to be insubstantial relative to the total amount of collateral securing such series of Bonds. The Collection Account for each series will be established by the Trustee for receipt of all monthly principal and interest distributions on the Mortgage Certificates securing the series, payments from any Debt Service Reserve Fund or other Reserve Fund, Reinvestment income thereon and any initial deposit required by the prospectus supplement.

Amounts in the Collection Account will be invested by the Trustee in eligible investments, which include, among other investments, obligations of the United States or any agency thereof backed by the full faith and credit of the United States, federal funds, certificates of deposit, time deposits and bankers acceptances sold by eligible commercial banks, other demand or time deposits or certificates of deposit fully insured by the FDIC or the FSLIC and certain repurchase agreements of United States government securities. The Trustee will hold any such securities which are subject to repurchase agreements. Such Collection Account investments will mature on or prior to the next payment date for the series, and will thus be

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available to make required payments on the Bonds of such series.

Applicant submits that (1) its acquisition of the Mortgage Certificies and issuance of Bonds are not the types of activities intended to be regulated by the Act, (2) the safeguards afforded to purchasers of the Bonds fully protect investors, and (3) its activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1833 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23994; 37-67]

Applications, Hearings, Determinations, etc.; Proposed Financing by System Service Co. and Amendment of Intrasystem Service Contracts

January 17, 1986.

Eastern Utilities Associates ("EUA"), a registered holding company, and its subsidiary service company, EUA Service Corporation (the "Service Company"), P.O. Box 2333, Boston, Massachusetts 02107, have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), 10, 12(f), and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 90, and 91 promulgated thereunder.

Based upon the recommendations of a consulting firm, EUA believes that a majority of the Service Company's functions should be relocated to a new Service Company office complex in West Bridgewater, Massachusetts, on land currently owned by Eastern Edison Company, a retail subsidiary of EUA. Expenditures of approximately $14,500,000 will be required to complete the project.

To provide interim financing for the project and for contingencies, it is proposed (i) that the Service Company retain authority to make borrowings from banks and from EUA and that the aggregate amount of notes of the Service Company payable to banks and/or to EUA to be outstanding at any one time will not exceed $20,000,000, with terms and conditions as more fully described in the application-declaration and (ii) that EUA make capital contributions to the Service Company and/or that EUA acquire from the Service Company and the Service Company issue and sell to EUA shares of its common stock and that the aggregate amount of such capital contributions and the price of the shares so purchased will not exceed $5,000,000; provided, however, that the aggregate amount of notes oustanding pursuant to the foregoing clause (i) and of capital contributions outstanding and shares purchased pursuant to the foregoing clause (ii) shall at no time exceed $21,000,000. The Service Company is presently authorized to borrow from banks and EUA up to a maximum of aggregate borrowings to be outstanding at any one time of $3,000,000 (HCAR No. 22875 (March 9, 1983)).

It is also proposed that the Service Company amend Schedule II of the service contracts between the Service Company and the other companies in the EUA system to provide a return on any equity capital to be invested in the Service Company. The annual equity return as defined for the calendar year 1985 under the proposed allocation formula would be 16.98%.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 10, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1834 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23991; 70-7179]

Applications, Hearings, Determinations, etc.; Montaup Electric Co.; Proposed Increase in Short-Term Borrowing

January 17, 1986.

Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, an electric utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed with this Commisson a post-effective amendment to the declaration in this proceeding, pursuant to sections 6, 7 and 12 of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 45 and 50(a)(2) thereunder.

By order in this proceeding dated December 26, 1985 (HCAR No. 23962), among other things, Montaup was authorized to borrow funds from December 27, 1985, to December 29, 1986, through the issuance and sale of short-term notes in an aggregate amount outstanding at any one time not to exceed $30 million.

By post-effective amendment Montaup proposes to increase such maximum aggregate amount of short-term notes to $40 millon. It is stated that such increase is necessary as a result of higher than anticipated borrowings for the period ending December 27, 1985. In the initial declaration filed on November 1, 1985, Montaup had anticipated its aggregate amount of borrowings at December 27, 1985 would be $15 million. Montaup's actual short-term borrowings at that date were $22.8 million and at December 31, 1985, said borrowings aggregated $25.4 millon. It is also stated that the increase in Montaup's borrowing authority will provide it with sufficient borrowing capability to meet its needs and will provide efficient financing flexibility.

The amended declaration and any further amendments thereto are available for public inspection through

the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 10, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended declaration as filed or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1835 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14904; File No. 812-6118]

Applications, Hearings, Determinations, etc.; Shearson Aggressive Growth Funds et al.

January 17, 1986.

Notice is hereby given that Shearson Aggressive Growth Fund Inc. ("SAGF"), The Shearson Appreciation Fund, Inc. ("SAFI") Shearson California Municipals Inc. ("SCMI"), Shearson Daily Dividend Inc. ("SDDI"), Shearson Daily Tax-Free Dividend Inc. ("SDTF"), Shearson FMA Cash Fund ("FMA Cash"), Shearson FMA Government Fund ("FMA Government"), Shearson FMA Municipal Fund ("FMA Municipal"), Shearson Fundamental Value Fund Inc. ("SFVF"), Shearson Government and Agencies Inc. ("SGAI"), Shearson Global Opportunities Fund ("SGOF"), Shearson High Yield Fund Inc. ("SHYF"), Shearson Managed Governments Inc. ("SMGI"), Shearson Managed Municipals Inc. ("SMMI"), Shearson New York Municipals Inc. ("SNYM"), Shearson Lehman Special Portfolios ("SLPS"), The Arch Fund, Inc. ("Arch"), Bison Money Market Fund ("Bison"), Money Express Reserve Fund ("Money Express"), Chestnut Street Cash Fund, Inc. ("Chestnut"), Westcore Funds, Inc. ("Westcore"), Portfolios for Diversified Investment, Inc. ("Diversified Funds"), The International Fund for Institutions, Inc. ("International Fund"), Municipal Fund For California Investors, Inc. ("CalMuni"), Municipal Fund For New York Investors, Inc. ("NyMuni"), Municipal Fund For Temporary Investment ("Muni"), Temporary Investment Fund, Inc. ("Temp"), Trust for Short-Term Federal Securities ("Fed"), U.S.T. Master Funds, Inc. ("U.S.T."), U.S.T. Tax-Exempt Master Funds, Inc. ("U.S.T. Tax-Exempt"), American Telecommunications Trust ("ATT") (collectively the "Shearson Funds"); The Boston Company Fund ("TBC Fund"), The Boston Company Tax-Free Municipal Funds ("Boston Tax-Free") (collectively the "Boston Company Funds"); IDS Mutual, Inc. ("IDS Mutual"), IDS Stock Fund, Inc. ("IDS Stock"), IDS Selective Fund, Inc. ("IDS Selective"), IDS Equity Plus Fund, Inc. ("IDS Equity Plus"), IDS New Dimensions Fund, Inc. ("IDS New Dimensions"), IDS Progressive Fund, Inc. ("IDS Progressive"), IDS Growth Fund, Inc. ("IDS Growth"), IDS Bond Fund, Inc. ("IDS Bond"), IDS Cash Management Fund, Inc. ("IDS Cash"), IDS Tax-Exempt Bond Fund, Inc. ("IDS Tax-Exempt Bond"), IDS High Yield Tax-Exempt Fund, Inc. ("IDS High Yield"), IDS Tax-Free Money Fund, Inc. ("IDS Tax-Free Money"), IDS Discovery Fund, Inc. ("IDS Discovery"), IDS Extra Income Fund, Inc. ("IDS Extra Income"), IDS Strategy Fund, Inc. ("IDS Strategy"), IDS International Fund, Inc. "IDS International", IDS Precious Metals Funds, Inc. ("IDS Precious Metals"), IDS Managed Retirement Fund, Inc. ("IDS Retirement"), IDS Federal Income Fund, Inc. ("IDS Federal"), IDS Life Capital Resource Fund, Inc. ("Capital Resource"), IDS Life Special Income Fund, Inc. ("Special Income") IDS Life Moneyshare Fund, Inc. ("Moneyshare Fund") (collectively, "IDS Mutual Fund Group"); IDS Life Variable Annuity Fund A, IDS Life Variable Annuity Fund B (collectively, "Funds A and B"); IDS Certificate Company ("IDSCC"); Liquid Capital Income Trust ("Liquid Capital"), Carnegie Government Securities Trust ("Carnegie Government Securities"), Carnegie Tax Free Income Trust ("Carnegie Tax Free"), Carnegie-Cappiello Growth Trust ("Carnegie-Cappiello") (collectively the "Carnegie Funds"); Lehman Opportunity Fund, Inc. ("Lehman Opportunity"), Lehman Capital Fund, Inc. ("Lehman Capital"), Lehman Cash Management Fund, Inc. ("Lehman Cash"), The Lehman Corporation ("Lehman Corp."), Lehman International Dollar Funds, Inc. ("Lehman International"), Lehman Government Fund, Inc. ("Lehman Government"), Lehman Investors Fund, Inc. ("Lehman Investors"), Lehman Tax-Free Reserves, Inc. ("Lehman Tax-Free") (collectively the "Lehman Funds"); Shearson Lehman Brothers Inc. ("Shearson"), Lehman Commercial Paper Incorporated ("LCPI") and Lehman Government Securities Inc. ("LGSI") (collectively the "Dealers") Two World Trade Center, New York, New York 10048, filed an application on May 17, 1985, and an amendment thereto on December 6, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from the provisions of section 17(a) of the Act to the extent necessary to permit each of Shearson Funds, the Boston Compnay Funds, the IDS Mutual Fund Group, Funds A and B, IDSCC, the Carnegie Funds and the Lehman Funds (collectively, the "Funds") (Funds and Dealers collectively, "Applicants") to engage in certain principal transactions in money market securities (as defined herein) with the Dealers and to enter into repurchase agreements with LGSI and LCPI in the manner and subject to the conditions set forth in the application. All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions.

The application states that each of the Shearson Funds is an open-end, diversified management investment company registered under the Act that employ Shearson as distributor. Shares of SAGF, SAFI, SCMI, SDDI, SDTF, FMA Cash, FMA Government, FMA Municipal, SFVF, SGOF, SGAI, SHYF, SMGI, SMMI, SNYM and SPIF are offered continuously to the public but must be purchased through a brokerage account maintained with Shearson. Shares of Diversified Funds, International Fund, CalMuni, NyMuni, Temp and Fed are sold solely to, or in the case of Diversified Funds, solely through, institutions, including banks, insurance companies and investment counselors. Shares of Arch, Bison, Chestnut, Money Express, Westcore, U.S.T. and U.S.T. Tax-Exempt are sold exclusively to the customers of certain banks or to customers of affiliated or correspondent banks of those banks. Shares of ATT, offered initially only in exchange for shares of American Telephone and Telegraph Company prior to its January 1, 1984, reorganization, are currently offered only to shareholders of ATT for the purpose of dividend reinvestment.

According to the application, Bernstein-Macaulay, Inc. ("Bernstein"), a subsidiary of Shearson, is a registered investment adviser under the

Investment Advisers Act of 1940 ("Advisers Act") and provides advisory services to SDDI, FMA Cash, FMA Government, SGAI, SHYF, SMGI and Chestnut (SDDI, FMA Cash, FMA Government, SGAI, SHYF, SMGI and Chestnut collectively, "Discretionary Portfolio"). Shearson Asset Management Inc. ("Shearson Asset Management") a subsidiary of Shearson and a registered investment adviser under the Advisers Act, provides investment advice to SAGF, SAFI, SCMI, SDTF, FMA Municipal, SFVF, SMMI and SNYM. The Boston Company Advisors, Inc. ("Boston Advisors"), a subsidiary of Shearson and a registered investment adviser under the Advisers Act serves: (1) As the investment adviser for ATT and SPIF; (2) As a co-investment adviser for International Fund; and, (3) As sub-investment adviser and/or administrator for each of the other Shearson Funds. American Express Asset Management N.V., a registered investment adviser under the Advisers Act and a subsidiary of American Express Company ("American Express"), serves as SGOF's investment adviser. Provident Institutional Management Corporation ("PIMC"), a registered investment adviser under the Advisers Act and a subsidiary of Provident National Bank ("Provident"), is not, Applicants represent, affiliated with either Shearson or American Express. PIMC serves: (1) As a co-investment adviser for International Fund with specific responsibility for transactions in money market securities and instruments; (2) As the investment adviser for Diversified Funds, CalMuni, NyMuni, Money Express, Muni, Temp and Fed; and, (3) As investment adviser for certain portfolio assets of Arch, Bison, Chestnut and Westcore. Portfolios of Arch, Bison, and Westcore not managed by PIMC receive investment advice from investment advisers which, Applicants represent, are not affiliated with Shearson, American Express or Provident.

The application states that 18 of the 31 Shearson Funds are money market funds authorized to purchase various types of high quality short-term debt and securities maturing in one year or less ("money market instruments") and seek high current income, liquidity and preservation of capital by investing principally in money market instruments. The remaining 13 Shearson Funds have various investment objectives, but each has authority under certain circumstances to purchase various kinds of money market instruments in various amounts.

According to the application, Boston Advisors is the investment adviser for the Boston Company Funds, registered under the Act as open-end diversified management investment companies. Both Boston Company Funds are series companies that offer investors the option of purchasing shares of one or more portfolios having different investment objectives. Two of the 5 portfolios of TBC Fund and both portfolios of Boston Tax-Free invest principally in various kinds of money market instruments. The 3 non-money market portfolios of TBC Fund have investment policies that permit investment under certain circumstances in various kinds and amounts of money market instruments.

Applicants state that the funds in the IDS Mutual Fund Group are registered under the Act as open-end diversified management investment companies and have various investment objectives and policies permitting investment in various kinds and amounts of money market instruments. Applicants state that 19 of the IDS Mutual Fund Group ("Public Funds") offer their shares to the general public; Capital Resource, Special Income and Moneyshare (collectively, the "Life Funds") were established by IDS Life Insurance Company ("IDS Life") a registered investment adviser under the Advisers Act and a subsidiary of IDS Financial Services, Inc. ("IDS") in connection with variable annuities offered by IDS Life and its wholly-owned subsidiary, IDS Life Insurance Company of New York.

According to the application, IDS, a wholly-owned subsidiary of American Express, is registered as an investment adviser under the Advisers Act and as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act"). Each of the Public Funds employs IDS as its principal underwriter and investment manager. Each of the Life Funds has contracted with IDS Life for certain investment advice. IDS Life employs IDS for certain investment advice rendered in connection with each of the Life Funds. Funds A and B are separate accounts of IDS Life and are management investment companies registered under the Act. Funds A and B are permitted under certain conditions to invest in various kinds and amounts of money market instruments. IDS provides Funds A and B investment pursuant to agreement and distribution services for Funds A and B are provided by IDS Life.

IDSCC, Applicants state, is a wholly-owned subsidiary of IDS and is a face amount certificate company registered under the Act. IDSCC is the largest issuer of face-amount investment certificates in the United States and is permitted, pursuant and subject to its investment policies and the recommendations of IDS, to invest in money market instruments.

Applicants state that Carnegie Funds are registered under the Act as open-end diversified management investment companies. Liquid Capital, Carnegie Government Securities and Carnegie Tax Free are money market funds; Carnegie-Cappiello generally seeks capital appreciation by investing in common stocks, convertible securities and warrants to purchase common stock, but, under certain circumstances, may also invest in money market instruments. Carnegie Capital Management Company ("Carnegie Management"), a registered investment adviser under the Advisers Act, serves as investment adviser for each of the Carnegie Funds in connection with money market investments. McCullough, Andrews & Cappiello, Inc., a registered investment adviser under the Advisers Act, serves as portfolio manager for Carnegie-Cappiello with respect to equity investments under the supervision of Carnegie Management.

The application states that Lehman Funds, registered under the Act as open-end management investment companies are, with the exception of Lehman Opportunity and Lehman Capital, diversified companies. Lehman Cash, Lehman International, Lehman Government and Lehman Tax-Free invest in various kinds of money market instruments. Lehman Opportunity, Lehman Capital, Lehman Corp. and Lehman Investors are authorized in certain situations to invest in various types and amounts of money market instruments. Lehman Management Co., Inc. ("Lehman Management"), a registered investment adviser under the Advisers Act, serves as the investment adviser for Lehman Funds. Lehman Brothers Distributor Inc., a wholly-owned subsidiary of Lehman Management, is the principal underwriter of the Lehman Funds.

According to the application, Shearson, a wholly-owned subsidiary of American Express, is registered with the Commission as a broker/dealer under the Exchange Act. Applicants represent that Shearson is one of the largest investment services firm and engages in many investment banking activities.

The application states that on May 11, 1984, Shearson, then known as "Shearson/American Express Inc.", and American Express acquired Lehman Brothers Kuhn Loeb Incorporated ("Lehman Brothers") (the "Acquisition"). Thereafter, the combined departments of both companies trading municipal obligations and municipal commerical paper made Shearson one of the leading dealers in municipal commercial paper. The trading activities of Shearson and Lehman Brothers in taxable money market instruments are now effected through LCPI and LGSI.

Applicants represent that LCPI, a wholly-owned subsidiary of Shearson, is believed to be the third largest commercial paper dealer in the United States and is also a major market-maker in other money market securities, including certificates of deposit, bankers' acceptances, and repurchase agreements with respect to such securities. LCPI acts as a primary dealer of commercial paper and bank obligations and conducts transactions in money market instruments exclusively on a principal basis.

Applicants state that LGSI, a wholly-owned subsidiary of LCPI, is one of the 36 government securities dealers that report their daily positions and trading in U.S. Government securities and securities issued by agencies and instrumentalities of the U.S. Government ("Government Securities") to the Federal Reserve Bank of New York and is one of the 5 largest market-makers in Government Securities in the United States. LGSI is a major market-maker in repurchase agreements with respect to Government Securities and is a primary dealer that conducts transactions in Government Securities exclusively on a principal basis.

The application states that under the Act, certain of the Funds' investment advisers, as well as LCPI and LGSI, are affiliates of Shearson. Each investment adviser and each Dealer is separately capitalized, maintains its own books and records and operates as an independent profit center. All investment decisions for Funds are made solely by officers or employees of the respective Funds' investment advisers. Applicants represent that each investment adviser, notwithstanding any affiliation with Shearson, makes investment decisions independently of Shearson and each is responsible for researching, recommending and executing transactions for the respective Funds under contract.

Applicants state that under the Act, each of the Dealers and IDS may be affiliated persons by reason of being subsidiaries of American Express. Applicants represent that all investment decisions for each of the IDS Funds are made solely by officers or employees of IDS and IDS Life subject to the supervision of the respective IDS Fund's board of directors or managers.

Applicants state that only one person affiliated with the Dealers currently sits on the board of directors or managers of the IDS funds. In addition, Applicants state that the Public Funds employ legal counsel who has no affiliation with American Express, the Dealers or IDS.

Applicants request an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicants from the provisions of section 17(a) of the Act so as to permit each of the Funds, and such future registered investment companies that employ an affiliated person of American Express as investment adviser or principal underwriter ("Future Funds"), to purchase from or to sell to the Dealers (or any dealer that becomes affiliated with Shearson) in principal transactions in the following kinds of money market instruments or securities (hereinafter "Covered Securities"): (1) Government Securities; (2) Obligations, such as certificates of deposit and bankers' acceptances, issued either by (a) a bank with a minimum of $1 billion in assets or one of the 100 largest banks in the world, or (b) a U.S. savings and loan association, U.S. savings bank or similar institution with a minimum of $1 billion in assets; (3) Commercial obligations, such as commercial paper and variable rate demand notes, of issuers rated at least A-2 by Standard & Poor's Corporation ("Standard & Poor's") or Prime-2 by Moody's Investor Services, Inc. ("Moody's") or, if not rated, of comparable quality as determined by the boards of directors of Funds purchasing or selling such Covered Securities; (4) Tax, revenue and bond anticipation notes, project notes, demand notes, variable rate notes and similar notes of issuers rated at least SP-1 by Standard & Poor's or MIG-2 or VMIG-2 by Moody's, municipal bonds rated at least AA by Standard & Poor's or Aa by Moody's and municipal commerical paper rated at least A-2 by Standard & Poor's or MIG-2 by Moody's, or, if not rated, of comparable quality as determined by the boards of directors of Funds purchasing or selling such Covered Securities; and (5) Repurchase agreements ("Covered Repurchase Agreements") between Funds and LGSI and LCPI (or successors thereto), collateralized and structured in accordance with condition number two below.

Applicants state that each Fund's board of directors believes that in order to protect the interest of Funds and Future Funds (collectively the "Covered Funds") in any transaction between a Covered Fund and a Dealer involving Covered Securities or Covered Repurchase Agreements (a "Covered Transaction"), Applicants undertake that Covered Transactions will be effected subject to the following conditions:

(1) Covered Securities will have a remaining maturity of one year or less at the time of the Covered Transaction, such maturity to be determined in accordance with Rule 2a-7 under the Act;

(2) Covered Funds will engage in Covered Repurchase Agreements only with LGSI or LCPI (or a successor thereto) and as of the date of the Covered Repurchase Agreement LGSI or LCPI has: (a) Capital of at least $100 million; (b) A record of at least five years' continuous operation as a dealer during which time it engaged in repurchase agreements with respect to the kinds of Covered Securities subject to the Covered Repurchase Agreements; and, (c) Furnishes the Covered Fund's investment adviser with financial statements for its most recent fiscal year and the most recent semiannual financial statements made available to its customers. Covered Funds' investment advisers shall determine, to the best of their judgment and in a manner similar to repurchase agreements entered with dealers not affiliated with Shearson, that LGSI or LCPI complies with the creditworthiness standards adopted by the Covered Fund. Each Covered Repurchase Agreement will be collateralized with securities deemed by the Covered Fund (in light of published statements on the subject by the Commission or its staff) to be appropriate and of the type and quality accepted as collateral in connection with repurchase agreements entered into with unaffiliated dealers ("Collateral Securities"). The respective investment adviser will require that the Covered Repurchase Agreement will: (a) Be collateralized with Collateral Securities with a value at least equal to 102% of the repurchase price (including accrued interest); (b) Maintain at all times the value of the Collateral Securities at not less than 100% of the repurchase price (including accrued interest); and, (c) Covered Funds will acquire from LGSI or LCPI actual or constructive possession of the Collateral Securities (which, for purposes of Government Securities, would include transfer by book entry in the Federal Reserve book entry system).

(3) Dealers will not attempt to influence or control in any manner a Covered Fund's: (a) Placement of an order for a Covered Security with any Dealer; or (b) Contracting a Covered Repurchase Agreement with any Dealer, provided that solicited transactions

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described below are not deemed to involve "influence or control."

(4) All unsolicited purchases or sales of Covered Securities will be effected after the Covered Fund's investment adviser obtains all information deemed necessary to enable the investment adviser to determine in good faith that the price to be paid or receive for the Covered Securities is no less favorable than the price available from entities not affiliated with Applicants. The investment adviser will make and maintain a record of current price information through the contemporaneous solicitation of bona fide offers from other nonaffiliated dealer. Funds will purchase Covered Securities from dealers who by virtue of the experience of the Fund's investment adviser, have Covered Securities in their inventories and that are in a position to quote favorable prices with respect thereto. Funds will dispose of Covered Securities only to those dealers that, in the experience of the investment adviser, are in a position to quote favorable prices.

(5) Solicited purchases or sales of Covered Securities by a Covered Fund will be made after the Covered Fund's investment adviser obtains all information deemed necessary to make a determination in good faith that the price for the Covered Security is better than that available from other sources. For purposes of this condition, "better than" defined in terms of yield, is a Dealer's quotation at minimum one basis point better than that available from other sources; for quotations in terms of dollar price, the quotation will be at least ¼₄ of a dollar higher than the quotations from other sources. Investment advisers will obtain and record competitive quotations from at least two other dealers with respect to securities comparable to proposed Covered Securities. Solicited Covered Transactions of fixed price offerings will be deemed effected at a no less favorable price provided that the Covered Securities are unavailable from other sources and provided that the Covered Transaction complies with Rule 10f–3 under the Act.

(6) Covered Repurchase Agreements will be effected after the Covered Funds' investment adviser obtains whatever information is deemed necessary for a good faith determination that the income to be earned form the Covered Repurchase Agreement is higher than that available from other sources. For purposes of this condition, "higher than" is defined, in terms of yield, as a return to the Covered Fund of at least one basis point higher than that available from other sources, or in terms of dollar price, at least ¼₄ of a dollar higher than the quotations from other sources. Applicants' advisers will establish that LGSI's or LCPI's price is higher than that available from other sources by obtaining and recording competitive quotations from at least two other dealers with respect to repurchase agreements comparable to Covered Repurchase Agreements.

(7) A Covered Fund's solicited Covered Transactions for a specified Covered Security will not exceed 20% of the portfolio transactions of the Covered Fund for that type of Covered Security during the immediate preceding calendar year or 365 day period, whichever period the board of directors of the Covered Fund has previously determined to be applicable. A Covered Fund's solicited Covered Repurchase Agreement will not exceed 10% of repurchase agreements entered into by the Covered Fund during the immediately preceding calendar year or 365 day period. Calculations will be computed with respect to the dollar value of transactions.

(8) Dealers' solicited Covered Transactions for any specific kind of Covered Security will not exceed 20% of the transactions of the Dealer in that Kind of Covered Security during the immediately preceding calendar year or 365 day period, whichever period the Dealer has prviously determined to be applicable. LGSI's and LCPI's solicited Covered Repurchase Agreements will not exceed 10% of repurchase agreements transacted by the Dealer during the immediate preceding calendar year or 365 day period. For purposes of this condition, percentage calculations will be computed with respect to the dollar value of transactions.

(9) A Dealer's spread, if any, with respect to a particular Covered Transaction, will be no greater than the Dealer's customary spread and is consistent with, or less than, the average standard spread charged by dealers in money market securities for the kind of security and the size of the particular Covered Transaction.

(10) Covered Transactions will be subject to section 11(a)(2)(B) of the Exchange Act and the rules thereunder.

(11) Covered funds' investment advisers and Dealers will be separately capitalized and maintain separate books and records.

(12) Covered Funds and their investment advisers will maintain records with respect to each Covered Transaction, including but not limited to, documentation indicating: (a) Whether the Covered Transaction was solicited or unsolicited, and (b) That all conditions of any order the Commission may issue are satisfied. In addition, each Covered Fund will append to each semiannual report it files with the Commission on Form N–SAR a schedule of Covered Transactions in which the Covered Fund has engaged during that respective reporting period. Dealers will maintain records with respect to each Covered Transaction entered into by the Dealer indicating: (a) Whether the Covered Transaction was solicited or unsolicited, and (b) that any applicable volume limitation is met.

(13) Counsel for, or the compliance department of each Covered Fund and Dealer will prepare guidelines for their respective employees to ensure that Covered Transactions comply with the conditions of any order issued by the Commisison. The rules will also seek to maintain an arm's length relationship between Applicants. Covered Funds will emphasize during the training of Dealer pesonnel the required prices or income received in unsolicited and solicited Covered Transactions and particular emphasis will be given to the distinction between unsolicited and solicited Covered Transactions. The compliance departments or counsel will periodically monitor the activities of Dealers' and Covered Funds' Covered Transactions to ensure compliance with the terms of the conditions set forth above.

(14) Each Dealer will provide the board of directors of each Covered Fund each year with market share data and any other financial information reasonably requested by the board of directors relating to the significance of the Dealers in the markets for Covered Securities. Any order issued by the Commission with respect to a Covered Transaction involving a Covered Fund will be subject to the condition that the board or directors of the Covered Fund has determined, prior to the Covered Transaction being effected, on the basis of information provided to the board of any other facts and circumstances deemed relevant, that the ability of the Covered Fund to engage in Covered Transactions generally is necessary or appropriate in the context of the Dealers' positions in the markets for the Covered Securities involved in a Covered Transaction.

(15) Guidelines will be prepared for Covered Funds and their investment advisers, pursuant to board of director resolution, that implement the conditions of any Commission order. A majority of the board of directors and a majority of the non-interested directors of each Covered Fund will approve the guidelines and will monitor compliance thereof by Covered Fund and its investment adviser as often as the board of directors deems appropriate, but no less frequently than annually.

The application states that exemption from section 17(a) of the Act is necessary because the money market is segmented and there may only be a few dealers that can be expected to be able to quote a favorable price in a particular kind of money market instrument. In order that Funds can trade particularly money market securities and enter into repurchase agreements at optimum prices, Applicants state, they believe that it is desirable, appropriate and in the best interests of Funds and their shareholders that Funds have access to all major dealers, including LGSI and LCPI.

Applicants state that dealers in money market instruments are aware that Funds currently cannot transact with affiliated dealers and therefore, in making quotations, those dealers are not subject to any competition from Dealers. The application states that this situation may adversely affect the best price and execution obtainable for Funds.

According to the application, investment advisors of Funds believe it important that Funds be permitted to engage in principal transactions involving money market securities and repurchase agreements with the broadest possible range of dealers. Elimination of access to Dealers, Applicants state, could significantly limit the amount of money market information available to Funds. The application submits that it is desirable for Funds to have access to all major sources of information, including Dealers.

Applicants assert that the necessity for access to Dealers is enhanced because of the significant position that Dealers occupy in the money market. Applicants state that Dealers are among the largest competitive dealers in a market which is characterized by concentration among a few large dealers. Excluding access to any of the larger dealers, such as a Dealer, could have considerable adverse effect on the Funds. In addition, the prominent position of Dealers in a highly concentrated money market, would provide dealer competition in transactions involving Funds.

Applicants further assert that the prior relationship of many Funds with Dealers had to be terminated after the Acquisition. These Funds must therefore find alternate sources of money market securities. Applicants estimate that at the time of Acquisition, LGSI and LCPI combined ranked second or third among the 15 to 20 dealers with which PIMC was doing business, and for the period from Janaury 1, 1984, until March 31, 1984, LCPI ranked first in municipal securities. In addition, Applicants represent that Boston Advisors estimates that LGSI and LCPI combined ranked as one of its two top dealers and Bernstein estimates that LGCSI was ranked as one of its top six dealers in U.S. Government secutities immediately prior to Acquitlsion.

According to the application, the board of directors of each Fund has recognized the potential conflicts of interest posed by conducting principal transactions with an affiliate; however, the boards of directors believe that compliance with the conditions set forth herein will prevent any overreaching on the part of any person that could act to the detriment of any Fund and will ensure that each transaction is effected on a reasonable and fair basis.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the aplication will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–1832 Filed 1–27–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22817; File Nos. SR–CBOE–85–32 and SR–CBOE–85–16]

Self-Regulatory Organizations; Proposed Rule Changes by the Chicago Board Options Exchange, Inc. Relating to a Retail Automatic Execution System; Solicitation of Comments

I. Introduction and Summary

On July 26, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a proposed rule change to implement on permanent basis a retail automatic execution system ("RAES") for certain options orders on the Standard & Poor's 100 Index (commonly referred to by its trading symbol, "OEX").[1] RAES has operated as a pilot program in a limited number of OEX series since February 1, 1985.[2] It provides for the automatic execution of public customer market [3] and marketable limit orders.[4] The system automatically executes orders entered into RAES against participating market makers in the CBOE trading crowd at the best bid or offer quoted on the CBOE floor. As such, it operates as an exception to the Exchange's priority rules by permitting market makers to trade ahead of public customer orders on the book at the same price.[5] The CBOE also filed a proposed rule change to extend RAES to certain classes of individual stock options on a six month pilot basis.[6]

The CBOE believes it is now appropriate to make RAES a permanent program in OEX, because, in its opinion, the pilot has demonstrated the system's ability to efficiently handl small customer orders and to operate without technical or other difficulties. The CBOE also states that the extension of RAES to individual equality options will enable the Exchange to better assess the system's capability in a full range of trading environments.

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[1] The filing was noticed in Securities Exchange Act Release No. 22274 (July 29, 1985), 50 FR 31264 (File No. SR–CBOE–85–32).

[2] *See* Securities Exchange Act Release No. 21695 (January 28, 1985), 50 FR 4823 (File No. SR–CBOE–84–30). When the initial pilot expired on April 30, 1985, the Commission extended the pilot, as modified in certain respects, until November 8, 1985. *See* Securities Exchange Act Release Nos. 22015 (May 6, 1985), 50 FR 19632 (File No. SR–CBOE–85–14) and 22387 (September 6, 1985) 50 FR 37753 (File No. SR–CBOE–85–33). Recently, the pilot has been extended to April 30, 1986. *See* Securities Exchange Act Release No. 22804 (November 8, 1985), 50 FR 47481 (File No. SR–CBOE–85–45).

[3] A market order is an order to buy or sell a stated number of option contracts at the best price obtainable when the order reaches the post at which that option is traded. CBOE Rule 6.53(a).

[4] Marketable limit orders are limit orders (*i.e.*, orders to buy or sell at a specified price or better) which are immediately executable because the market is at our better than the limit price.

[5] CBOE Rule 6.45 provides "where two or more bids for the same option contract represent the highest price and one such bid is displayed by the Board Broker or Order Book Official, such bid shall heve priority over any other bid at the post."

[6] The filing was noticed in Securities Exchange Act Release No. 22270 (July 26, 1985), 50 FR 31449 (File No. SR–CBOE–85–16, Amendment No. 2). CBOE would have authority to select the individual stock options which would be included in the pilot. As proposed, this pilot would operate in the same manner as the RAES pilot in OEX.

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The Commission believes there are important questions raised by the operation of RAES in OEX and its proposed expansion to individual equity options. The Commission is cognizant of the significant efficiencies RAES brings to the OEX market by providing nearly instantaneous executions at guaranteed prices. In doing so, RAES has helped address many of the operational problems associated with the volume of trading in OEX. RAES may provide the same execution efficiencies for the markets for individual equity options, although not against the same backdrop of operational necessity. In addition, RAES may enhance market liquidity in both individual and index options products by providing, in effect, for the first time on the CBOE firm quotes for orders up to ten contracts.

Nevertheless, the proposals, particularly the proposal to commence a pilot program in RAES for equity options, raise certain concerns. First, RAES represents a significant departure from the generally accepted auction trading principle of priority of public limit orders over member proprietary orders at the same price. In fact, it is the only automatic execution system operating on a national securities exchange that systematically by-passes limit orders, and does not provide any mechanism, manual or automatic, for protecting public customer limit orders.[7] The Commission is concerned that customer limit orders on the book will not receive executions even though orders entered through RAES are executed at prices equal to the book's best bid or offer. Second, this systematic supplanting of limit orders could have adverse effects on the pricing efficiency of the market. Maintenance of a limit order file contributes to price continuity by facilitating representation of increased trading interest away from the current market. The operation of RAES could discourage entry of limit orders and make continued representation of such trading interest in the market less likely. Third, the Commission seeks comment on whether the objective of increased execution efficiency is necessarily inconsistent with the objective of preserving public limit order priority. In this regard, the Commission requests comment on whether there may be alternative ways in which the Exchange might incorporate the limit order book into RAES or otherwise preserve traditional public limit order priority.

Because the CBOE's proposed operation of RAES does not include any mechanism which permits RAES orders to interact with orders on the book, the proposals may be inconsistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to "prevent fraudulent practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest," [8] and section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[9] Moreover, RAES may be inconsistent with section 11A of the Act, which states that it is in the public interest and appropriate for the protection of investors to assure "economically efficient execution of securities transactions;" "the practicability of executing customer orders in the best market;" and "an opportunity . . . for investors' orders to be executed without the participation of a dealer." [10]

The Commission has determined, because of the important questions raised by these proposals, to solicit public comment on the various issues discussed herein.[11]

II. Description of RAES

The RAES pilot operates only for certain OEX orders. Currently, RAES accepts public customer market and marketable limit orders of 10 or fewer contracts. Only those orders in the four OEX put and four OEX call series in the nearest term expiration month with the highest public customer volumes are eligible for RAES.[12] CBOE proposes to operate the proposed RAES pilot in individual equity options in the same manner.

Those CBOE member firms authorized to use CBOE's Order Support System ("OSS") are eligible to participate in RAES.[13] RAES operates daily, following completon of the opening rotation [14] and the updating of quotes in the series involved. When the system receives an order, it automatically attaches a price to the order, the price being equal to the displayed market quote at the time the order was entered into OSS. Participating market makers are assigned as the contra parties to RAES trades on a rotating basis, with the first market maker each day selected randomly. CBOE market makers are not required to participate in RAES. At any time throughout the day, market makers may sign on and off the system at terminals located near the OEX crowd. At the end of every day, all signed-on market makers are removed from the system. If no market makers sign on to participate at the time RAES is scheduled to open the following day, RAES does not become available that day.

RAES requires that participating market makers trade with the RAES order at the displayed market quote at the time the order was entered into the system, *i.e.*, RAES orders to buy are executed at the lowest offering price; RAES orders to sell receive executions at the highest bid price. If the execution price received by the RAES order is equal to the best prices in the public limit order book, the RAES order trades with a market maker at that price as an exception to CBOE priority rules.[15]

After execution of a RAES order, a price report is generated to the public; a fill report is sent to the member firm at the branch office or booth from which the order was transmitted; and a trade acknowledgement ticket ("TAT") is generated and forwarded to the contra market maker.[16] The system also provides a continuously updated log of all RAES transactions. In addition, CBOE's regulatory staff receives audit reports regarding all RAES transactions.

III. Comments Received

To date, the Commission has received one public comment letter from a retail firm (Smith Barney) [17] and a letter

[7] A description of other small order execution systems is provided in *Appendix A* to this release.

[8] Section 6(b)(5) of the Act.

[9] Section 6(b)(8) of the Act.

[10] Sections 11A(a)(1)(C) (i), (iv) and (v) of the Act.

[11] The OEX RAES pilot runs until April 30, 1986. *See supra* note 2.

[12] The selected calls and puts must have contiguous strike prices.

[13] OSS provides for the electronic routing of certain away-from-the-market public customer options limit orders to CBOE's public limit order book. Firms not presently on OSS that wish to participate in RAES will be given access to the system from terminals at their booths. As of October 1, 1985, 17 retail firms are participating in the RAES pilot. These firms account for more than 66% of the customer contract volume in OEX. Between 32 and 100 market makers were participating in the pilot as of this date.

[14] During opening rotation, the opening price of each series in an options class is determined seriatim. Following completion of the opening rotaton, trading in all series commences simultaneously.

[15] *See supra* note 5.

[16] Participating market makers are informed on a timely basis of RAES trades that have been executed against them. As soon as possible after execution, a TAT is generated at a printer located in the crowd and delivered to the market maker.

[17] *See* letter from George A. Vonder Linden, President, Smith Barney, Harris Upham & Co., Inc. ("Smith Barney"), to Eneida Rosa, Division of Market Regulation, SEC, dated September 24 1985.

signed by fifty-one CBOE floor members.[18] Smith Barney states that RAES has provided a great service to the firms' clients by improving execution speed and turn-around time. Based upon its experience with to OEX pilot, the firm supports the proposed extension of RAES to individual equity options. Those CBOE floor members who commented on the proposals are not in favor of extending RAES to equity options because, in their view, it is not necessary as an operational matter.

In addition to these letters, in September 1985, Commission staff contacted six broker-dealer firms participating in the RAES pilot in OEX ("participating firms").[19] While all spokespersons indicated that their firms' experience with RAES has been positive, and believe that RAES should be approved on a permanent basis for OEX, several commentators indicated concern regarding the extension of RAES to individual equity options.

The substance of the comment letters and the staff's discussions with participating broker-dealers is discussed below.

IV. Discussion

1. *Benefits of RAES.* The CBOE and the participating firms cite the enhanced efficiencies made possible by RAES as its chief advantage over non-automated systems. CBOE states that customer market orders for OEX routed through RAES are executed within seconds, that order entry, execution and fill reporting often occurs in one minute,[20] and

[a]s a result, customers whose OEX market orders are processed through RAES are far less likely to miss markets prevailing at the time those orders are initiated (*e.g.*, due to handling delays or the inability of floor brokers to be immediately heard) than customers whose market orders are handled outside of RAES.[21]

The CBOE's statistics are confirmed by the participating firms, all of whom commented that RAES has improved dramatically the timeliness of executions and fill reports. They indicated that the turnaround time between placing an order in the system and receiving back an execution report is 90 seconds or less. Before introduction of RAES, they reported that high volume in OEX often resulted in significant delays, with turnaround times averaging between 5–10 minutes and extending up to several hours during peak volume periods.[22]

Some firms stated, however, that because of the much lower volume in individual stock options, they have not experienced the same operational problems experienced in OEX before the RAES pilot.[23] Accordingly, some firms indicated that there is not the same operational need to extend RAES to individual stock options. This sentiment also was voiced in the comment from the CBOE floor members, [24] who view RAES as being unnecessary for equity options because certain enhancements planned for OSS will permit speedy turnaround of public orders without sacrificing limit order priority.

The CBOE, however, maintains that "although the operational difficulties for equity options are not as significant as those in OEX, more active equity options do have operational difficulties, and trading for customers in all equity options would be enhanced by near-instantaneous turn-around time and ten contract firm markets." [25] The CBOE maintains that in active equity options the operational efficiencies gained through RAES could be substantial.

In addition to increased execution efficiencies, CBOE points out that RAES offers options customers the benefit of firm quotes. CBOE market makers who sign on the RAES will be required to trade up to ten contracts at the prevailing market price.

The CBOE maintains that market maker priority over the limit order book is needed as an incentive for market makers' participation in the system. Indeed, the CBOE states that it could not maintain a voluntary RAES program without continuing the exception from limit order priority.[26]

2. *Costs of RAES.* Because orders entered into RAES only with CBOE market makers, the possibility exists that limit orders on the book may not be executed even though RAES orders receive executions at prices equal to the book's bid or offer and even though those limit orders were first in time. It is possible that this could discourage investors from entering limit orders, which, in turn, could have the destabilizing effect of decreasing trading interest represented on the floor away from the current market. While such efforts on the market would not appear to be noticeable in active options like OEX, commentators should assess their impact on less active options classes.

CBOE maintains that the "vast majority" of book orders at the same price as a RAES transaction are in fact being executed,[27] and states that it is "extremely unlikely" that book limit orders would remain unexecuted when market makers effect trades with RAES orders at prices equal to those of book orders.[28] CBOE argues that the order flow and trading activity occurring in the options markets ("particularly in OEX options") makes it unlikely that book limit orders will not be filled. In addition, because single series transactions cannot occur in the trading crowd at prices equal to the highest bid or lowest offer on the book without satisfying the book's trading interest,[29] the CBOE believes the possibility that book orders ultimately will not be executed is *de minimis*.

To support these contentions, CBOE has provided the Commission with statistics on the impact of RAES trades on book limit orders in both OEX and individual equity options.[30] Using data

[18] *See* letter from Penny Dolnick, *et al.* ("Dolnick Letter"), to Eneida Rosa, Division of Market Regulation, SEC, dated October 8, 1985. The majority of the signatories to the Dolnick Letter are independent floor brokers; a few are CBOE market makers.

[19] The staff spoke with representatives of the following firms: E.F. Hutton; Merrill Lynch; Paine Webber; Prudential-Bache; Shearson Lehman Brothers, Inc.; and Smith Barney.

[20] In July 1985, RAES handled 20,442 trades in OEX, which comprised 15% of the firm participants' OEX customer trades. On September 23, 1985, RAES' most active day, the system handled 2,382 trades, or approximately 6.75 trade per minute of operation. In the first half hour RAES handled 700 trades, or over 23 trades per minute. The CBOE represents that RAES handles this volume level easily. *See* letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Eneida Rosa, Division of Market Regulation, SEC, dated September 24, 1985, at 2 ("September Letter").

[21] *See* letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated April 9, 1985 ("Henry Letter") at 2.

[22] Generally, most of this time is accounted for by delays reporting back executions to the firm.

[23] For the period from September 1 to October 11, 1985, OEX averaged 400,810 contracts per day. The top ten individual options in terms of volume averaged, respectively, 42,906 (IBM), 6,120 (GM), 5,309 (Sperry), 5,120 (ITT), 5,040 (RCA), 4,474 (Ford), 3,634 (GE), 3,540 (ATT), 3,351 (Hewlitt Packard) and 3,305 (Control Data) contracts per day.

[24] *See* Dolnick Letter *supra* note 18.

[25] September Letter, *supra* note 20, at 4.

[26] The need for such an incentive may differ depending on the option product. For example, in OEX, between 75 to 80 market makers out of a trading crowd of approximately 300 generally sign on to RAES day. In most individual equity options, however, where the market maker "crowd" is ten or under, the CBOE is concerned that such incentives may be a necessary inducement to RAES participation.

[27] *See* letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Eneida Rosa, Division of Market Regulation, SEC, dated July 8, 1985 at 2 ("July Letter").

[28] Henry Letter, *supra* note 21, at 2.

[29] Spread, straddle and combination orders that meet certain requirements are permitted to take priority over book limit orders at the same price as an exception to the general priority rule. *See* CBOE Rule 6.45(d).

[30] CBOE derived the statistics for OEX by comparing computer reports of RAES transactions with reports of the best bid and offer displayed by the limit order book and the number of contracts at those prices. CBOE then isolated instances in which

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from July 1985, CBOE states that of the 20,442 OEX RAES trades executed that month, only 992, or 4.8%, involved instances where limit orders were on the book at the same price and those limit orders were not executed before a price change or by the end of the trading day ("stranded orders").[31] The same statistic for August is 2.8%.[32]

For all individual equity options combined, CBOE estimates that for July, of 25,536 RAES trades, 1,620 or 6.3% represent book orders that would not have received executions had RAES been operational for equity options. CBOE estimates the percent of stranded equity options orders in August would have been 3.7.

CBOE also calculated the average time lapse between a RAES trade occurring at the book's price and all book orders at that price receiving executions as 22.2 minutes for OEX and 27.9 minutes for equity options. CBOE believes that these figures are skewed by the few instances in which execution of a booked order takes an unusually long time, and that a more accurate figure is the time lapse which occurs in the majority of instances. Under this measure, CBOE estimates that in 50% of the instances all book orders are executed within 6 minutes of a RAES trade at the same price in both OEX and individual equity options.

The measure of "stranded" orders selected by CBOE, however, may understate the impact of RAES on orders on the book. The impact of RAES on book orders may also be measured by examining only those instances where limit orders were at the inside market and were denied executions because of RAES (factoring out those instances when limit orders were not executed because no orders on the book were at the best bid or offer). Using this approach, the CBOE's data show that 14.2% of OEX book orders were stranded because of RAES orders stepping ahead. The same statistic for equity options is 34.2%. Thus, if RAES were implemented in individual equity options, in instances where customers had limit orders on the book that represented the best bid or offer, those orders may miss receiving an execution perhaps one-third of the time or more because of RAES.[33]

Another issue raised by the proposals is whether the RAES exception to limit order priority, particularly if extended to individual equity options, ultimately may alter the order entry habits of public customers. Some firms participating in the RAES pilot in OEX already have indicated that, in their opinion, with increased broker and customer familiarity with RAES, fewer limit orders will be left on the book in options such as OEX, where, because of narrow spreads, it would be impossible to better on the floor the price that could be obtained through RAES. Moreover, in OEX, where the spread is generally ⅛th of a point, customers may be willing to enter a market, rather than a limit, order into the system and sacrifice the eighth point (*i.e.*, trade at the market maker's bid or offer instead of entering a limit order which matched the market quote) to be assured of an execution at the quoted market.

It is possible that, in options with wider spreads, RAES may have a more significant impact. On the other hand, public customers may be unwilling to use RAES if a superior price could be obtained through a manual execution using a floor broker or entering a limit order. On the other hand, customers may be discouraged from placing limit orders because of the increased likelihood that orders on the book may be by-passed due to the RAES priority exception. While these customers would probably prefer to have their order worked by a broker, it probably would not prove economic for small routine orders. Under this scenario, customers ultimately could be compelled to adjust their trading strategies and use RAES rather than limit orders.

In addition, RAES should be evaluated with respect to its overall effect on the pricing efficiency of the market, particularly in less active options. The operation of a limit order book, among other things, serves to both narrow quotation spreads and increase the likelihood that transactions will occur without the intervention of a dealer, thus providing net improved prices both to those investors that enter limit orders and those taking the other side of the transactions. Maintenance of a limit order file should improve price continuity by ensuring that increased trading interest away from the current market will be represented in the event increased buying or selling interest enters the market.[34] Thus, to the extent RAES discourages use of the limit order book, a possible adverse effect on efficiently priced executions and market continuity must be addressed.

Finally, because RAES (like any quote-based automatic execution system) does not provide any opportunity for a system order to receive a price superior to the quoted market, the potential effect of RAES on quote spreads must be assessed. To the extent investors are discouraged from entering limit orders because RAES executions would receive priority, there could well be less interest at the inside market. In addition, particularly if quote-based automatic executions represented a significant percentage of routine executions, market makers might have reduced incentives to quote tighter markets, and would have clear incentives, with respect to the automated executions themselves, to seek wider spreads.

3. *Alternatives to RAES.* While the Commission requests comment on the costs and benefits of RAES in its present configuration, the Commission is particularly interested in whether there are alternative approaches which both permit efficient execution of market orders and permit protection of limit orders. The Commission notes that, as presently operated, RAES is the only automated exchange execution system which provides a blanket exception from the general requirement imposed

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a RAES trade was effected at the book's bid or offer, and calculated the elapsed time between the RAES trade and when all book contracts at that price were executed (or withdrawn) before a price change or the end of the day. Because RAES is not operational in individual equity options, the CBOE attempted to develop equivalent statistics by comparing orders routed automatically to the exchange that would meet RAES eligibility criteria with limit order book information in the different options classes.

[31] In addition to calculating the number of stranded orders, CBOE estimated how many contracts were represented by those orders. CBOE states that of 1,392,600 contracts on the OEX book in July 1985, a maximum of .43% of those contracts were not executed before a price change or by the end of the trading day. *See* letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Eneida Rosa, Division of Market Regulation, SEC, dated October 15, 1985 ("October Letter").

[32] In August, the number of total RAES trades fell to 15,332, and the number of orders stranded on the book went to 422. CBOE maintains that its percentages are over-inclusive with respect to the size of stranded contract volume (if not trades) because it cannot track individual orders on the book. Therefore, its statistics include as a possible stranded limit order the instance, for example, in which the book displays 100 contracts at the market, a RAES trade for five contracts is effected at the book's displayed price and all booked limit orders at that price are neither executed or cancelled, even though only five contracts on the book were entitled to an execution. *See* September Letter, *supra* note 20, at 3–4.

[33] Although participating firms in the OEX RAES pilot stated that they have received few, if any, customer complaints concerning the execution of book orders, they indicated that there is an increased possibility of book orders in individual options not being executed, because equity options generally do not enjoy the same heavy order flow as OEX.

[34] Limit orders traditionally have been used heavily in options markets. For example, in July 1985, there were approximately 81,000 limit orders entered on the OEX book (representing an estimated 1.4 million contracts). The same statistic for August, 1985 is 74,600 orders (representing 1.3 million contracts). See chart attached to October Letter, *supra* note 31.

by CBOE and the other exchanges that specialists and members trading for their own account or holding customer orders for execution yield to public limit orders on the books at the same price.[35] In particular, the Commission notes that the American Stock Exchange ("Amex"), the only other exchange thus far to develop an automated execution system for options, has maintained the traditional priority of public limit orders. The Amex's Auto-Ex system for options differentiates between the bids and offers of limit orders on the book and all other bids and offers, and diverts an incoming Auto-Ex order to the specialist's post for manual execution against the limit order book if the best bid or offer in the marketplace is represented by a book order.[36]

CBOE argues, however, that the volume of activity in OEX and its competitive market maker system make the experience of other exchanges with automatic executions systems inapposite. The Commission staff, however, discussed with CBOE several ways in which the Exchange might incorporate the public limit order book into RAES or provide some other means for protecting limit order priority. One alternative discussed was the possibility of incorporating into RAES an "override" feature that would ensure that book limit orders participate in RAES transactions. In an override, whenever the book bid or offer is the best bid or offer, RAES would execute automatically and report market orders against the book's bid or offer and enter the Order Book Official's ("OBO") acronym as the contra side of the trade instead of that of one of the rotating market makers. At the time of execution, the system would notify the Order Book Official who would report executions and adjust the limit order book to reflect the RAES trade.

The CBOE contends that such an override would decrease the efficiency of RAES and could "jeopardize" the improvements that RAES has made possible in the OEX market.[37] The CBOE states that significant time delays would be involved in sorting and delivering trade acknowledgement tickets ("TATs") to the appropriate OBO clerk. While book personnel would be occupied in handling these TATs, the book display would remain static, yet RAES would continue to route executed orders to the book. In addition, the crowd could effect intervening executions with the book or orders that had been on the book could be withdrawn. Thus, RAES executions assigned to the book could exceed the number of contracts on the book at the inside market. In the CBOE's opinion, "these circumstances could well result in book liability to crowd participants or to RAES, because the number of contracts on the book is less than what the OBO has committed to execute."[38]

The Commission staff also discussed with the CBOE the possible future automatic integration of the limit order book and RAES.[39] Such a development is contingent on establishment of an electronic book, and while CBOE has indicated that it is presently developing such a book, it does not yet know whether a pilot using the electronic book "will be suited for initial introduction in a high volume situation such as OEX."[40] In addition, CBOE has stated that, in its view, "it is premature even to address the feasibility of, let alone the Exchange's commitment to, an electronic connection between RAES and the book until the electronic book project is much futher developed."[41]

Another alternative that has been suggested would be for the Exchange to guarantee the execution of limit orders that otherwise would be stranded. This alternative may be desirable for low volume options because the Exchange's maximum potential obligations should not be as great as for more active options.

Finally, it has been suggested by a number of CBOE floor brokers[42] that proposed modifications to the CBOE's currently operating order routing system, OSS, will provide the same benefits as RAES in terms of quick executions, but, unlike RAES, will ensure protection of limit orders on the book. These commentators argue that RAES for equity options is unnecessary because proposed changes to OSS will provide for quick executions by electronically routing public orders directly to floor brokers in the crowd, and sending trade reports back to the originating broker-dealer by the same route.[43] The CBOE, however, contends there is a "real operational necessity" for RAES in equity options, because in the aggregate, these options constitute "a very substantial portion of the Exchange's transaction volume," and involve substantial time delays in handling and reporting the execution of small orders.[44] The CBOE also points out that OSS does not provide customers with guaranteed executions at the quoted market.

4. *Absence of Limit Order Protection in the Over-the-Counter Market.* CBOE points out that customer limit orders in the OTC market do not receive the same protections they are given on exchange markets.[45] It further states that the NASD's automatic execution systems for stocks and options similarly incorporate no protection for limit orders.[46] Therefore, the Exchange argues that the NASD will have a competitive advantage over the CBOE when it begins side-by-side trading in OTC options and stocks and can offer

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[35] *See, e.g.*, NYSE Rule 92; Amex Rule 155, MSE Art. XXX, Rule 2; and Phlx Rule 218. CBOE maintains that its market makers should be subject to different priority rules than exchange specialists because of the separation of dealer and book administration functions in a market maker system. CBOE argues that, because its book is handled by independent Order Book Officials and accepts only public customer orders, its market makers have "far fewer advantages over other market participants than do unitary specialists." Henry Letter, *supra* note 21, at 3. CBOE contends that because the broker and dealer functions are combined in the specialist system, protection of book limit orders is necessary to prevent a specialist from trading ahead of customer or professional orders entrusted to him for execution. *Id.* at 4.

[36] The Amex recently commenced a three-month pilot providing for the automatic execution of certain Major Market Index ("XMI") orders. For a description of the Auto-Ex pilot, *see* Securities Exchange Act Release Nos. 22308 (August 9, 1985), 50 FR 32930 and 22610 (November 8, 1985), 50 FR 47480. Amex ensures participation in the program by requiring that those Amex market makers and Registered Options Traders who wish to participate in the system do so on a weekly basis and on the near-term expiration Friday. Participants who fail to honor this commitment are prohibited from participating in Auto-Ex both for the duration of the current expiration cycle and for the following expiration month.

[37] July Letter, *supra* note 27, at 3–4.

[38] July Letter, *supra* note 27, at 4.

[39] This integration would be achieved by means of an electronic link between RAES and a yet-to-be developed electronic limit order book having retrieval, tracking, sorting and execution functions. *Id.*

[40] *Id.* Henry Letter, *supra* note 21, at 5.

[41] July Letter, *supra* note 27, at 4.

[42] *See* note 18, *supra.*

[43] As indicated in note 13, *supra*, OSS currently is available for routing of away-from-the-market limit orders, subject to certain minimum size parameters, directly to the limit order book.

[44] *See* letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Eneida Rosa, Division of Market Regulation, SEC, dated November 27, 1985.

[45] In the OTC market, there is nothing comaparable to the exchange limit order book. Indeed, the Commission understands that limit orders historically have not been employed as widely in the OTC market as on exchanges, although there are some indications that this may be changing.

[46] The NASD's automatic execution system for stocks, [*i.e.*, its Small Order Execution System ("SOES")] executes customer orders up to 500 shares (1000 shares for NMS securities) on a rotating basis against market makers quoting the best NASDAQ displayed bid or offer. SOES accepts limit orders; however, they receive executions only when the inside NASDAQ quote is equal to or better than the limit price. *See* SOES User Guide at 1. The NASD has proposed a similar automatic execution system for options called "NOAES", which would guarantee executions up to three contracts. This system is not yet operational. *See* Securities Exchange Act Release No. 21691 (March 25, 1985), 50 FR 12673.

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automatic executions without providing limit order protection.

The Commission recognizes that there are differences in the protection provided limit orders by exchanges and the NASDAQ market and requests that commentators address the competitive impact to the CBOE of those differences. In this connection, the Commission notes that limit orders apparently have not been used as frequently in the OTC market for stocks as in the listed options markets, where a significant percentage of customer orders are limit orders. Moreover, limit orders are utilized in exchange markets as an active part of the auction process, while limit orders play a more passive role in the OTC market.[47] In addition, the Commission notes that, aside from the prospective side-by-side trading pilot in six options on actively traded OTC stocks, the NASDAQ market does not presently compete in options traded by the CBOE. Accordingly, it is not clear what effect, if at all, any present disparity in treatment of limit order priorities would have on the CBOE with respect to trading in OEX or individual equity options.

V. Solicitation of Comments

In view of the various issues raised above, the Commission believes it is important that commentators have an opportunity to discuss fully the benefits and costs associated with RAES. In particular, the Commission requests that commentators address the following questions. Comments are also welcome on any other matters of interest associated with the RAES program. Wherever possible, commentators should attempt to quantify the estimated costs and benefits of the present configuration of RAES.

A. Benefits of RAES

(1) What has been the member firm community and investor experience with RAES in OEX? How has it affected trade executions, firm operations, and investor order entry patterns?

(2) What benefits would member firms and investors expect to receive from a RAES pilot in individual equity options? Describe these benefits for both high and low volume equity options.

(3) How does member firm experience with RAES compare to the experience with other automated trading systems, such as Auto-Ex on the Amex?

(4) RAES has the effect, in affected options series, of providing for ten-contract firm quotes, at least for customer orders. How great are the benefits that this will provide, and how do they compare with the possible costs, such as reducing limit order protection?

B. Cost of RAES

(1) Do the benefits of efficient executions for RAES in OEX outweigh the potential harm to investors from denying limit order priority? What is the basis for that assessment?

(2) Does the lack of operational necessity, lower volume, and greater likelihood that limit orders may be "stranded" in individual equity options alter the cost/benefit analysis for RAES in individual equity options?

(3) What is the potential impact on customers of the RAES exception to book priority in options series with consistently wide spreads?

(4) Is there a greater likelihood that public customer orders sent through RAES in less liquid options with wide quote spreads would be deprived of the opportunity to receive an execution between he spread?

(5) Would commentators' responses to questions (3) and (4) vary depending on the volume level in or trading characteristics of the particular equity option?

(6) Would the expansion of RAES with an exception to limit order priority change customer order entry patterns, and as suggested by some firms, encourage the entry of market orders in place of limit orders? Would any such response effect the width of quotation spreads, price continuity, or liquidity in the relevant option classes?

(7) What is the potential effect of a quote-based automatic execution system (*i.e.*, either RAES or Auto-Ex) on quote spreads? For example, because such systems reduce the amount of orders routed to the floor for manual execution and, in effect, impose a firm quote obligation, do such systems encourage market makers to quote wider markets based on the belief that tighter spreads do not encourage more orders, but merely reduce profits from automatic executions? Would the impact of such systems on quote spreads differ based on the level of activity in the options series?

C. Alternatives to Proposals

(1) Is an interface between RAES and the limit order book to protect limit order priority in OEX feasible? Is it necessary or justified at this time, or should RAES continue on an extended pilot basis until automatic integration with the book is possible?

(2) Should an interface between RAES and the limit order book be required before the pilot can proceed in equity options? Does the lower volume of most options on individual stocks reduce or eliminate the operational difficulties of an interim manual interface?

(3) Is the RAES exception to limit order priority a necessary *quid pro quo* for market maker participation in the system? Does limit order priority result in substantially increased risks for participating market makers? Is this more or less true for options on individual securities as opposed to OEX? Should the Exchange require a market maker commitment to participate in the system for a minimum period of time or up to a certain contract limit?

(4) Are there other means for achieving the benefits of RAES which do not involve sacrificing limit order priority? For example, would enhancements to OSS provide execution efficiencies equivalent to the proposed RAES pilot in individual equity options? Are there other Exchange initiatives which would improve options market making without reducing limit order protection?

D. Relationship to Other Small Order Execution Systems

(1) Should CBOE market makers be subject to different priority rules than exchange specialists because of the separation of dealer and limit order book administration functions? Should CBOE market makers be permitted, for example, to have priority over or be on parity with the book? If so, under what circumstances or standards?

(2) Will CBOE be competitively injured if it is not permitted to provide an exception to limit order protection for RAES when NASDAQ options market makers have only anti-fraud or fiduciary requirements with respect to OTC limit orders? Is any competitive effect limited to options on OTC securities?

* * * * *

Interested persons are invited to submit written data, views and arguments regarding the proposed rule changes within 30 days of the publication of this release in the **Federal Register**. Persons desiring to submit written views should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File Nos. SR–CBOE–85–32 and SR–CBOE–85–16.

Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available at the principal office of the CBOE.

Dated: January 21, 1986.

By the Commission

Shirley E. Hollis,

Assistant Secretary.

Appendix A.—Overview of Small Order Processing Systems

During the past decade, the Commission has overseen the development by the exchanges of sophisticated order routing [1] and automatic execution systems [2] for use in the primary and regional stock markets. These systems have dramatically increased the efficiency and accuracy of small order executions. Recently, the options exchanges have begun developing similar systems, such as RAES, for the handling of small public options orders. Specifically, in addition to RAES, both the New York ("NYSE") and American ("Amex") Stock Exchanges are experimenting with systems which enhance these exchanges' ability to quickly execute small options orders.[3]

The channelling of routine small orders through automatic execution systems raises potential concerns regarding the protection of customer orders on the book.[4] Because these systems are often programmed to execute system orders against the specialist for his proprietary account, the possibility exists that public customer orders on the book may not have an opportunity to interact with system orders. Traditionally, exchange rules regarding priority, parity and precedence [5] have ensured that orders on the book generally will trade ahead of both the specialist in the stock or option, and member trading interest in the crowd at the same price. Specifically, the rules of all the stock and options exchanges provide some degree of protection for limit orders on the book. In particular CBOE rules provide that orders on the book have priority over any other orders in the crowd at the same price.[6]

All of the existing automated execution systems operating on the national securities exchanges, with the exception of RAES, include features which ensure the priority of customer orders on the book over members' bids or offers at the same price. In the primary market, the NYSE has three small order processing systems for stocks which provide for automatic execution of market orders. These systems, "SuperDOT," "R4" and the "Immediate Reporting Service" ("IRS"), permit the specialist to whom the order is routed to manually execute the order, if the best bid or offer is represented by the book, thereby allowing a limit order on the book to trade with the system order, or to substitute a book order for his proprietary account after the execution has taken place. The three systems which operate on the regional exchanges, the Pacific Stock Exchange's ("PSE") SCOREX system, the Midwest Stock Exchange's ("MSE") MAX system, and the Philadelphia Stock Exchange's ("Phlx") PACE system, all provide for protection of limit orders on the book.[7] Although each of these systems is designed to automatically execute an incoming market order against the specialist's account, on each exchange the specialist has the ability to substitute for his account a customer limit order on the book or in the crowd which has priority.[8] The Cincinnati Stock Exchange also operates an electronic execution system (the "National Securities Trading System" or "NSTS") which provides automated guaranteed executions for public agency orders up to 1,099 shares at the best available quote displayed by all ITS participants. This system matches public agency market and marketable limit orders against any existing contra agency interest in the system at the same price before allowing any part of the order to be executed against participating dealers.

Finally, one regional exchange, the BSE, operates a nonautomated system ("GES") which guarantees executions for small orders delivered to the exchange in the usual way and executed

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[47] The Commission currently has before it, in the context of an appeal from an NASD decision involving a private suit, the question of the proper handling of OTC limit orders. In that case, the NASD Board of Governors sanctioned a firm for failing to execute a customer's limit order when the firm continued to trade for its own account at prices inferior to the order's limit and did not disclose to the customer that he would not be entitled to an execution under firm practices. *See* Before Board of Governors, NASD, William Manning v. E.F. Hutton & Co., Inc., Decision Complaint No. NY–2099, District No. 12, February 12, 1985. This case is now on appeal before the Commission. *See* In re Manning v. E.F Hutton, Administative Proceeding File No. 3–6490

[1] Order routing systems permit customer orders to be sent electronically to the specialist's post, where upon receipt, the order is manually executed by the specialist.

[2] Automatic execution systems provide for the automatic execution of orders according to certain price formulas. No manual intervention is required.

[3] The Division recently approved a proposal by the Amex for a three month pilot for the automatic execution of certain Major Market Index ("XMI") options orders. *See* Securities Exchange Act Release No. 22610 (November 8, 1985), 50 FR 47480 and discussion *supra*. In addition, in September 1984, the Commission approved a proposal by the NYSE authorizing NYSE member firms to use, for certain options orders, the NYSE's Designated Order Turnaround ("DOT") and Limit Order Turnaround systems. *See* Securities Exchange Act Release No. 21229 (September 5, 1984), 49 FR 35075. The NYSE systems are limited to providing order routing; they have no automatic execution features to date.

[4] Order routing systems generally do not raise any concerns about limit order book priority because the orders are manually executed by the specialist, who will enter on the contra side of the system order the party entitled to an execution in accordance with exchange priority rules.

[5] In general, the rules of the exchanges provide that where two or more bids (offers) are made at the same price, the bid (offer) which was first in time will be filled ahead of the other bid (offer). If two or more bids (offers) are made simultaneously, all such bids (offers) shall be on parity, *i.e.*, shall share equally in the stock bid or offered. Other rules specify what priority shall be accorded to orders on the book.

[6] *See* CBOE Rule 6.45 ("where two or more bids for the same option contract represent the highest price and one such bid is displayed by the Board Broker or Order Book Official, such bid shall have priority over any other bid at the post").

[7] SCOREX, PACE and MAX automatically execute market orders or a certain size at the best Intermarket Trading System ("ITS") bid or asked price. MAX and SCOREX display the order to the specialist for 15 seconds before it is automatically executed. PACE does not have this capability; any substitution of a book or crowd order for the specialist's account occurs after the execution. PACE, which accepts up to 300 share limit orders, guarantees executions for these orders up to 500 shares when 1,000 shares are executed on any ITS-linked market center at the limit price. If a limit order on the book has time priority over a PACE limit order at the same price, the specialist will execute the book order in full as well as the PACE limit order pursuant to the 500 for 1,000 share guarantee.

In addition, the Institutional Networks Corporation ("Instinet") operates an automated execution system in connection with two of the regional exchanges, PSE and the Boston Stock Exchange ("BSE"). Instinet provides its subscribers with guaranteed executions for stocks traded in ITS at a price at least equivalent to the consolidated inside quote. Orders are displayed in the Instinet book and, in the event an order is not executed against the book, are routed to PSE and BSE market makers via Instinet terminals located on the exchange floors. Orders are executed automatically against a market maker's account in the event there are no Instinet subscribers willing to trade at a price equal to or better than the prevailing consolidated quote.

[8] In addition, the automated execution systems on the regional exchanges guarantee at least partial executions for away-from-the-market limit orders. The regional exchanges generally provide these orders with "primary market protection" ("PMP"). PMP provides that the regional specialist will provide at least a partial fill for a limit order left with him whenever there is a primary market trade at the limit price. Exchange rules set forth different formulae for determining the extent to which limit orders routed through the automated execution systems will be given executions. *See* Phlx Rule 229.10; PSE Rule 111, Sec. 12(c)(B)(4); and File No. SR–MSE–82–5.

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manually on the floor of the exchange. GES requires specialists to guarantee executions at the best consolidated quotation for all agency orders up to 1,299 shares in all ITS stocks traded on the BES.[9] If the book's price is equal to the best consolidated quote, the system order will trade with the book, thus ensuring the priority of book orders over the specialist's proprietary account. Similarly, agency orders routed to the American Stock Exchange pursuant to the linkage between the Amex and the Toronto Stock Exchange ("TSE") can trade with orders on the Amex specialist's book.[10]

In addition to RAES, there is only one other existing automated execution system for options on a national securities exchange, the Amex's Auto-Ex system.[11] The Division recently approved the Amex's request for a three month pilot providing for the automatic execution of certain Major Market Index ("XMI") orders.[12] Pursuant to the pilot, member firms may route public customer market and marketable limit orders up to ten contracts through the system for automatic execution at the best prevailing price at the time the order is entered. Unlike RAES, however, Auto-Ex does protect limit orders on the specialist's book. The system differentiates between the bids and offers of limit orders on the book and all other bids and offers, so that if the best bid or offer in the marketplace is represented by a book order, Auto-Ex will route the incoming order to the touch screen terminal at the specialist's post for manual execution against the limit order book.

[FR Doc. 86-1831 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22811; File No. SR-NYSE-86-1

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 8, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to list and trade options on a price-weighted "broad index stock group" comprised of 100 NYSE-listed stocks with high beta coefficients, with prices of at least $10.00 per share and with at least seven million shares outstanding. Trading in options on this index will be governed by the Exchange's 700 series rules. The Exchange will calculate, disseminate and publish the index value in the same manner it currently uses for its other indices. The contract specifications, other than the underlying index, are identical to the specifications for the NYSE Composite and Double Index option contracts. The NYSE asserts its proprietary interests in the manner and calculation of the Index, in the resulting Index values, and in the trading of options on the Index. The NYSE intends to take appropriate steps to protect these interests.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received in the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to list and trade options on an index designed to provide investors with a vehicle to hedge the risks associated with the volatility of individual stocks in relation to the market as a whole.

The Exchange is establishing a minimum price requirement to prevent very low-priced stocks, which tend to have higher beta coefficients, from skewing the index value. The minimum shares outstanding requirement guarantees that those stocks included in the index will have holdings adequate to insure sufficient liquidity.

The component stocks within the index will be reviewed periodically and adjusted, if necessary, in order to retain the beta characteristics of the index. Adjustments will also be made for substitution of stocks, additions and deletions of stocks, as well as stock splits or reverse splits, stock dividends, reorganizations, recapitalizations and similar events, upon their occurrence. The component stocks of the index represent twenty-five industry groups. No single stock dominates the index value; in fact, the top three stocks comprise less than 20% of the index value.

Options on this index will be useful to several different kinds of stock investors, particularly as an instrument to hedge the risks associated with more aggressively managed portfolios for which options on other broad-based market indices are not a very satisfactory hedge. Investors with such portfolios are able to hedge only a portion of their market risk with other broad-based index option contracts because many of the stocks they hold are not represented in these indices. For similar reasons, institutional investors holding specialized portfolios, such as sector funds in growth stocks or low capitalization stocks, often cannot use currently available index options for hedging purposes, because these indices reflect the larger capitalized "blue chips". Options on this index will provide these investors with another vehicle to hedge their risks.

Other institutional investors, such as hedge funds, can use options on this index to diversify their portfolios and increase their return without having to acquire the more volatile stocks which would achieve that goal.

The statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934. Trading of options on this index will provide members of the public with useful new hedging and trading oportuntities under a scheme of regulation designed to maintain a fair and orderly market, to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change imposes no burden on competition.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been approved by the NYSE Options Subcommittee on Market Performance, which is comprised of individuals representing members and member organizations. Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation Of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1837 Filed 1-27-86; 8:45 am]

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[9] The BSE guarantees executions up to 2,500 shares in the 100 most actively traded securities.

[10] Agency orders routed from the TSE to Amex are guaranteed an execution at the best available quote on the Amex up to 1,000 shares.

[11] In the over-the-counter ("OTC") market, the National Association of Securities Dealers ("NASD") recently has proposed the use of an automated execution system for OTC options. This system does not provide for protection of customer limit orders. *See* discussion *supra*.

[12] *See* note 3, *supra*.

[Release No. 34-22813; File No. SR-NYSE-86-2]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 10, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as decribed in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Options Allocation Plan through the addition of an entirely new paragraph, as follows:

Options Allocation Plan

Paragraphs A. through I.—No change.

J. This Option Allocation Plan shall not be applicable to the listing or delisting of any option whose underlying stock, at the time the option commences trading on the Exchange, is a "NASDAQ security", as defined by paragraph (a)(3) of Rule 11A a2-1 under the Securities Exchange Act of 1934 as amended (the "Act"), that (a) meets each of the criteria set forth in paragraph (b)(4)(i) of Rule 11A a2-1, and (b) is subject to the reporting of its transactions pursuant to an "effective transaction reporting plan", as defined in Rule 11A a3-1 under the Act, nor shall this Plan become applicable upon the listing on any exchange of such underlying stock.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In it filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In Securities Exchange Act of 1934 Release No. 34-22026 (May 8, 1985), the Securities and Exchange Commission conditionally approved the trading of options on certain NASDAQ securities. One of the conditions was the removal of any barriers to the multiple trading of these options. The SEC specifically noted the Options Allocation Plan as one of these barriers. Responding to the Commission's request, the Exchange stated that it "interprets the Allocation Plan not to apply either (1) to NASDAQ stocks qualified to underlie Exchange options or (2) to listed stocks that were the subject of standardized stock option trading prior to listing." (Letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated May 15, 1985.) The Exchange indicated its willingness to work with the other participants to the Plan on an appropriate amendment.

On September 20, 1985, the Commission noticed a proposed amendment to the Options Allocation Plan submitted by the American Stock Exchange ("Amex") and the Chicago Board Options Exchange ("CBOE") (Release No. 34-22438). In this release, the Commission required that the Plan specifically exclude options on NASDAQ securities. The SEC indicated that exclusion from the Plan should continue for an OTC stock underlying stock options even after the stock subsequently lists on an exchange.

The Exchange has discussed its proposed amendment with the other participants to the Plan. All participants have agreed to the new language in this filing. This language meets the SEC's requirements that any NASDAQ security "selected for standardized options trading by one or more exchanges will, even upon its subsequent listing on an exchange, continue to be eligible for selection by any other marketplace."

The statutory basis of the proposed change to the Plan is sections 6(b) and 11A of the Securities Exchange Act of 1934 (the "Act"), in general, and in particular, section 6(b)(5) and its requirement that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market and a national market system.

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B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burdens on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Particpants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation Of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-1838 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22814; File No. SR-PSE-85-39]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated ("PSE")

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1986, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On September 14, 1984, the Securities and Exchange Commission ("SEC" or "Commission") approve a rule filing submitted by the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") (Release No. 21208, SR-PSE-84-14), which amended the PSE Securities Communication Order Routing and Execution System ("SCOREX"). In that filing, the SCOREX System was changed so that exposure time for SCOREX orders was decreased from thirty seconds to fifteen seconds. The SEC approved this change on a one year basis so that the SEC could formulate a uniform policy on automatic exposure orders by studying the SCOREX system along with that of the NYSE's "R4" System, PHLX's PACE System, and other small execution systems. The SEC wished to await permanent approval until such a Commission review was completed. The PSE is requesting that this Pilot be extended for an additional year pending the Commission's review of these systems.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On July 26, 1984, the PSE filed with the Commission a rule filing (SR-PSE-84-14) which proposed amending portions of the PSE Securities Communication Order Routing and Execution System ("SCOREX"). SCOREX is an automatic execution system which is available to all member organizations and provides automatic execution of market orders.

SCOREX orders are generally transmitted directly from a member firm to the Exchange computer system and displayed on the appropriate specialist's CRT System. Round-lot market orders currently received after the primary market opening are displayed on the appropriate specialist's screen, identifying the name of the member firm entering the order, whether the order is a buy or sell, the number of shares represented by the order, the stock symbol, and the price at which SCOREX will execute the order should the specialist take no action within fifteen seconds.

At its inception, the SCOREX automatic removal system had a thirty second limit, but the 1984 filing was submitted to decrease this to the now current fifteen second time. On September 14, 1984, the Commission approved this fifteen second limitation on a pilot basis, instead of a permanent one, because the Commission wished to study SCOREX along with the other automatic execution systems used by the other exchanges, e.g. NYSE's "R4" System, PHLX's PACE System. At the current time, the Commission is still conducting its review; so the PSE wishes to extend this system for another year.

The PSE believes that this rule filing is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 ("Act"), in that it will facilitate transactions in securities traded on the PSE.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

To permit the execution system to remain in effect without interruption and because this filing maintains an existing rule, the PSE has requested that this filing be approved on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication on notice of filing thereof, in that it will provide the Exchange with the additional time necessary to review proposed amendments to the Pilot Program and to submit any necessary filings to the Commission while permitting the Pilot Program to remain in effect without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 18, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 21, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-86-1839 Filed 1-27-86; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Hearings and Written Comments on U.S. Negotiations With the United States of Mexico (Mexico) in the Context of the Possible Accession of Mexico to the General Agreement on Tariffs and Trade (GATT)

Summary: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting public comments on Mexico's announced intention to accede to the GATT and on the bilateral negotiations that will accompany Mexican accession, and will conduct public hearings on this issue. Comments received will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Mexican accession and for the bilateral negotiations.

1. Public Comments

The Chairman of the Trade Policy Staff Committee invites public comments on the issues that will be addressed in the course of examination by the Contracting Parties to the GATT of the request by Mexico for accession to the General Agreement and during bilateral negotiations in the context of Mexican accession to the GATT addressing possible Mexican tariff concessions. The Committee is particularly interested in views on the impact on U.S. trade of Mexican accession to the GATT, on specific bilateral issues that should be addressed in the accession negotiations, and on particular problems and experiences of U.S. firms in trading with Mexico. Those parties who have already submitted briefs and statements with regard to the proposed U.S.-Mexico Framework Agreement (FR Notice, September 23, 1985) and wish these statements to be considered in the context of this request for comments should reference these documents in their current submissions. It is not necessary to resubmit the previous comments. All comments will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Mexican accession and for bilateral negotiations.

2. Requests To Participate in Public Hearings

Hearings will be held in the following locations:

In Washington, DC on February 25, 1986, beginning at 10:00 a.m. in room 403, Office of the U.S. Trade Representative, 600 Seventeenth Street, NW. The hearing will continue on February 26, if necessary.

In San Antonio, Texas, on March 6, 1986, beginning at 10:00 a.m. in room A206, Federal Building, 727 East Durango Boulevard. The hearing will continue on March 7, if necessary.

Requests to present oral testimony in connection with these public hearings should be made in writing by noon, Thursday, February 13, 1986, to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, Room 521, 600 Seventeenth Street, NW., Washington, DC 20506, giving:

(1) The name, address, telephone number, and business affiliation of the person wishing to testify;

(2) The city in which they will attend the hearing; and

(3) A brief summary of the intended testimony.

Those parties presenting oral testimony must submit complete written statements or briefs, in twenty copies, in English, by noon, Tuesday, February 18, 1986, for the Washington, DC hearing, and by noon, Monday, February 24, 1986, for the hearing in San Antonio, Texas. Remarks at the hearings should be limited to a 15 minute summary of the written statement to allow for possible questions from the Chairman of the TPSC and the interagency panel.

Persons not wishing to participate at the hearings but wishing to submit comments should provide a written statement, in twenty copies, by noon, Monday, March 10, 1986, to Carolyn Frank, TPSC Secretary, at the address listed above.

Procedures relating to TPSC public hearings can be found in section 2003 of Title 15 of the Code of Federal Regulations.

3. Background

On November 26, 1985, Mexico informed the GATT Contracting Parties of its desire to accede to the General Agreement. A Working Party to examine this request is expected to be established at the next meeting of the GATT Council in February. The Working Party, composed of interested GATT members, will consider the application of Mexico for accession, examine its foreign trade regime, and submit to the GATT Council

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recommendations that will include a draft Protocol of Accession.

The Protocol of Accession will set forth the agreed terms of Mexico's GATT membership, including the relationship of its forign trade regime to the Articles of the General Agreement. As part of the accession process and in recognition of the benefits of GATT membership, Mexico will also initiate bilateral negotiations with interested GATT members to formulate a schedule of tariff concessions that will become part of its Protocol of Accession to the General Agreement. These concessions will consist of tariff reductions and bindings on specific items in trade.

The advantages of GATT membership are several. As a GATT member, Mexico will enjoy a multilateral guarantee of most-favored-nation treatment that is more comprehensive than that available through bilateral negotiations. The bindings on tariffs maintained in the tariff schedules of other GATT contracting parties will be extended to Mexican imports. Mexico will also have recourse to GATT procedures to protect itself from unfair or unreasonable trade actions by its trading partners. Through the dispute settlement provisions in the General Agreement, member countries are able to utilize a multilateral forum, largely independent of the political pressures influencing bilateral relationships, to resolve disputes. As a GATT member, Mexico will also have the opportunity to fully participate in all aspects of the New Trade Round of Multilateral Negotiations. This will include revision of the existing rules and principles underlying the international trading system, as well as the formulation of new rules to address emerging trade problems.

In return for these benefits, and in addition to Mexican tariff concessions negotiated at the time of accession, Mexico will be expected to conduct its trade policies in accordance with the rules set out in the General Agreement.

4. Additional Information

Any questions with regard to the proposed accession of Mexico to the GATT should be directed to Cecilia Leahy Klein, Director for GATT Affairs, Office of the U.S. Trade Representative, Room 513, 600 Seventeenth Street NW., Washington, DC 20506; telephone (202) 395-3063.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86-1758 Filed 1-27-86; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending January 17, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Jan. 15, 1986	43728 R-1—R-10	Members of International Air Transport Association	1986/87 within Africa fare structure	Apr. 1, 1986.
Do.	43729	do	Amend Japan/Korea to Mid-East GIT fares	Mar. 31, 1986.
Do.	43730	do	Adopt new BEY-DAM +45kg GCRs	Feb. 1, 1986.
Do.	43731	do	Inc. Columbia-NYC via MEX excursion fares	Do
Jan. 16, 1986	43736 R-1—R-36	do	1986/87 TC1-TC2 via SATL fare structure	Jan. 1, 1986.
Do.	43737	do	Amend LON-REK —100 and +100 GCRs Jan. 20, 1986	Jan. 20, 1986.
Do.	43738	do	SCR's Belgium to NYC for Item No. 2192	Jan. 1, 1986.
Do.	43739	do	Increase currency adjustment factors from Lebanon	Jan. 30, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-1845 Filed 1-27-86; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q; Week Ended January 17, 1986

Subpart Q Applications

The due date for answers, conforming application or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (See 14 CFR 302.1701 et. seq.).

Date filed	Docket No.	Description
Jan. 14, 1986	43722	Hawaiian Airlines, Inc., c/o James Lawrence Smith, 7955 NW., 12th Street, Suite 312, Miami, Florida 33126. Application of Hawaiian Airlines, Inc., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations, requests issuance of a certificate of public convenience and necessity which would authorize it to engage in scheduled foreign air transportation of persons, property and avail as follows: Between Honolulu, Hawaii on the one hand and directly and via Pago Pago, American Samoa to the terminal point Apia, Western Samoa, on the other. Conforming Applications, Motions to Modify Scope and Answers may be filed by February 11, 1986.
Do.	43725	General Aerospace Inc., c/o Nathaniel P. Breed, Jr., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW. Washington, DC 20036. Application of General Aerospace Inc. pursuant to section 402 of this Act and Subpart Q of the Regulations, to authorize it to engage in foreign scheduled air transportation of persons and property between Buffalo, New York and Toronto, Ontario. Answers may be filed by February 11, 1986.
Jan. 14, 1986	43726	Pan American World Airways, Inc., c/o David M. O'Connor, Suite 901, 1660 L Street, NW., Washington, DC 20036. Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests amendment of its certificate of public convenience and necessity for Route 132 (U.S.-Finland, Scandinavia).

Date filed	Docket No.	Description
Jan. 15, 1986	43732	Conforming Applications, Motions to Modify Scope and Answers may be filed by February 12, 1986. Polskie Linie Lotnicze "LOT", c/o Robert Reed Gray, Winthrop, Stimson, Putnam & Roberts, 1155 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of "LOT" pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a route for the designated Polish carrier for a carriage of international traffic in passengers, cargo and mail, separately or in combination: From points in Poland via intermediate points in Denmark, Sweden, Norway, Finland, Federal Republic of Germany, Czechoslovakia, Hungary, Romania, Austria, Switzerland, The Netherlands, Belgium, Spain, Ireland, Iceland and Montreal to New York and one other point in the United States to be selected by the Government of Poland. Answers may be filed by February 12, 1986.
Jan. 17, 1986	43740	Pan American World Airways, Inc., c/o David M. O'Connor, Suite 901, 1660 L Street, N.W., Washington, D.C. 20036. Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for renewal of its certificate of public convenience and necessity for Route 216 (Miami, Florida-London, United Kingdom). Conforming Applications, Motions to Modify Scope and Answers may be filed by February 14, 1986.
Do.	43741	Statewest Airlines, Inc., c/o Richard A. Fitzgerald, 223 Cypress Hills Court, San Ramon, California 94583. Application of Statewest Airlines, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests authority to engage in interstate and overseas (Scheduled and Charter) air transportation of persons, property and mail: Between any point in any State in the United States or the District of Columbia, or any Territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by February 14, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-1844 Filed 1-27-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Meeting To Assign Withdrawal Priorities to High Density Traffic Airports Slots

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting to assign withdrawal priorities to High Density Traffic Airport Slots.

SUMMARY: On December 16, 1985, the Department issued a final rule establishing procedures for the allocation and transfer of operating slots at Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that slots will be allocated to those carriers holding the slots as of December 16, 1985, and that unallocated and returned slots will be distributed by lottery. Slots may be withdrawn from domestic operators if needed for international operations, essential air service operations, or other purposes. The rule provides that each slot will be assigned a withdrawal priority number, by random lottery, to determine the order of withdrawal of slots if necessary.

This notice announces a meeting to conduct the withdrawal priority assignment lottery at FAA Headquarters on February 6, 1986.

DATE: The meeting will be held on Thursday, February 6, 1986, at 8:30 a.m.

ADDRESS: The meeting will be held at FAA Headquarters, Third Floor Auditorium, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Manager, Airspace and Air Traffic Law Branch, AGC-230, Telephone: (202) 426-3691, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of Amendment No. 93-49, "High Density Traffic Airports; Slots Allocation and Transfer Methods," by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426-3958. Communications must identify the amendment number of the document.

Background

On December 16, 1985, the Department of Transportation issued Amendment No. 93-49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new Subpart S to Part 93 of the Federal Aviation Regulations (FAR), 14 CFR Part 93, Subpart S. The amendment establishes procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under the Density Rule, 14 CFR Part 93, Subpart K: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that slots will be allocated to those carriers holding the slots as of December 16, 1985, and that unallocated and returned slots will be distributed by lottery. Beginning April 1, 1986, slots may, with certain exceptions, be bought, sold, or traded for any consideration.

In order to honor international obligations and to provide operating authority for carriers providing service under the Essential Air Service (EAS) Program, the rule provides that slots may be withdrawn from domestic operators if needed for international or EAS operations. Slots may also be withdrawn for other agency operational needs not foreseen at this time. Slots will be withdrawn for the above purposes, if necessary, in the order of withdrawl priority numbers assigned to each slot. The rule provides that each slot will be assigned a withdrawal priority number by random lottery.

Separate slot pools will be maintained for air carriers and commuter operators at each of the four high density airports. A separate lottery will be conducted for air carriers and for commuter operators at each airport. Once designated, the slot withdrawal priority number for each slot will be permanent. The number will be included in the designation of each slot which will consist of the airport, type of carrier (air carrier or commuter operator), time period, and withdrawal priority number. This number must be included in all communications with the agency concerning that slot, including utilization reports and requests for confirmation of transfers. A list of the withdrawal priority numbers will be made available to the public.

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Public Meeting

This notice announces a meeting to conduct the lotteries to assign slot withdrawal priority numbers for each category of carrier at each high density airport. The meeting is open to the public and all interested persons are invited to attend. The meeting will begin at 8:30 a.m. on February 6, 1986, at FAA Headquarters, Third Floor Auditorium. The meeting will continue on February 7 if necessary.

No slots will be withdrawn at this meeting.

Lottery Procedures

Procedures for conduct of the lotteries will be as follows.

1. The lotteries will be conducted in the following order:
(a) Kennedy Airport air carriers.
(b) Kennedy Airport commuter operators.
(c) National Airport air carriers.
(d) National Airport commuter operators.
(e) LaGuardia Airport air carriers.
(f) LaGuardia Airport commuter operators.
(g) O'Hare Airport air carriers.
(h) O'Hare Airport commuter operators.

2. The FAA has prepared a separate list of slots for each airport and carrier category indicating the existing allocation of each slot which was allocated to a carrier on December 16, 1985. Slots are listed in order of hour or half-hour, and within the hour or half-hour in alphabetical order of the carrier to which they are allocated. Unallocated slots are listed at the end of each hour or half-hour. The lists may be obtained by contacting the office listed above under "Availability of Documents."

3. A slot pool will consist of all air carrier or all commuter slots at a particular airport, including international, EAS, and unallocated slots. A card will be prepared for each slot in a pool, identifying the slot by the hour or half-hour and the current slot holder. (The card will be marked "U" if the slot is not currently allocated.)

4. The card for each slot will be placed in a separate envelope. The envelopes will be identical and unmarked. Each envelope will be placed in a drum with all other envelopes for the same slot pool.

5. The envelopes will be drawn from the drum, one at a time, by a representative of the Office of the Secretary or the Federal Aviation Administration. As each envelope is drawn, the slot identification will be announced and recorded, and the number of the selection will be assigned to that slot as its slot withdrawal priority number. The first slot drawn will be withdrawal priority number 1, the second drawn will be withdrawal priority number 2, and so on.

6. Example: The drawing for air carriers at National Airport begins as follows:

The first slot drawn has an identifier of Eastern Air Lines 1800. The permanent designation of that slot becomes "DCA/A/1800/0001." (The identifier of the holder—"EA"—may be added to the end of the permanent designation but would change if the slot is transferred.) This slot would be the first National Airport air carrier slot to be withdrawn if an 1800 air carrier slot at National satisfied the need for which the slot was being withdrawn.

The second slot drawn is identified as United Airlines 0900. The permanent designation would be recorded as "DCA/A/0900/0002."

7. Each lottery will continue until all slots for that slot pool are assigned withdrawal priority numbers.

8. The meeting will continue until all slot pool receives slot allocation priority sequences.

9. In accordance with 14 CFR 93.223(d), if an operator has more than one slot in a specific time period in which it also has one or more slots being used for international or essential air service operations, the slots used for international or EAS service shall be assigned the lowest priority (i.e., the last to be withdrawn) of that carrier's slots in that hour.

Issued in Washington, DC, on January 22, 1986.

E. Tazewell Ellett,
Chief Counsel.

[FR Doc. 86-1767 Filed 1-27-86; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in December 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2709-X	DOT-E 2709	Independent Explosives Co. of Pennsylvania, Scranton, PA.	49 CFR 173.52, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To authorize use of DOT Specification 6J/2S or 6D/2S metal drum/polyethylene containers or non DOT specification drums, for shipment of Class A and B explosive liquids. (Mode 1.)
3128-P	DOT-E 3128	Valcor Engineering Corp., Springfield, NJ	49 CFR 173.304, 175.3	To become a party to Exemption 3128. (Modes 1, 2, 3, and 4.)
4291-X	DOT-E 4291	Kerr-McGee Chemical Corp., Oklahoma City, OK.	49 CFR 173.239a(a)(2)	To authorize use of a non-DOT specification aluminum portable tank, for transportation of a certain oxidizer. (Modes 1 and 2.)
4453-P	DOT-E 4453	Thermex Energy Corp., Dallas, TX	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453. (Mode 1.)
4453-X	DOT-E 4453	Mt. State Bit Service, Inc., Morgantown WV.	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Mode 1.)
4661-X	DOT-E 4661	Foote Mineral Co., Exton, PA	49 CFR 173.34(e)(1)	To authorize transport of butyl lithium in petroleum solvent in DOT Specification 4BA240 cylinders with alternative retest procedures. (Modes 1, 2, and 3.)
4932-X	DOT-E 4932	Federal Laboratories, Inc., Saltsburg, PA	49 CFR 172.101, 173.365(a), 175.3	To authorize shipment of tear gas devices in a telescopic type, cylindrical, wound-kraft container fitted with metal ends overpacked in DOT Specification 12B fiberboard box. (Modes 1, 2, and 4.)
5112-X	DOT-E 5112	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.62(a), 177.834(L)(1), 177.835(k).	To authorize use of specially designed kettle drum type aluminum containers, for transportation of Class A explosives. (Mode 1.)
5112-X	DOT-E 5112	Austin Powder Co., Cleveland, OH	49 CFR 173.62(a), 177.834(L)(1), 177.835(k).	To authorize use of specially designed kettle drum type aluminum containers, for transportation of Class A explosives. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5122-X	DOT-E 5122	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.314(c)	To authorize transport of a certain nonflammable compressed gas, in DOT Specification 106A500X and 110A500W multiunit tank car tanks. (Modes 1 and 2.)
5206-P	DOT-E 5206	Thermex Energy Corp., Dallas, TX	49 CFR 173.114a	To become a party to Exemption 5206. (Mode 1.)
5951-X	DOT-E 5951	Ashland Chemical Co., Columbus, OH	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxide, in DOT Specification 106A type tanks. (Modes 1 and 2.)
5967-X	DOT-E 5967	Rocket Research Corp., Redmond, WA	49 CFR 173.304(a)(2), 175.3, 178.44	To authorize use of non-DOT specification cylinders, for transportation of nonflammable gases. (Modes 1, 2, 4, and 5.)
6016-X	DOT-E 6016	Airco, Inc., Murray Hill, NJ	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6228-X	DOT-E 6228	Airco Welding Products, Murray Hill, NJ	49 CFR 173.301(f)(4)	To authorize use of DOT Specification 8 or DOT Specification 8AL cylinders which are manifolded, for shipment of a flammable compressed gas. (mode 1.)
6530-X	DOT-E 6530	Liquid Air Corp., San Francisco, CA	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinders. (Modes 1 and 2.)
6530-X	DOT-E 6530	Union Carbide Corp., Danbury, CT	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinders. (Modes 1 and 2.)
6530-X	DOT-E 6530	Messer Griesheim Industries, Valley Forge, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinders. (Modes 1 and 2.)
6530-X	DOT-E 6530	Liquid Carbonic Corp., Chicago, IL	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX, or 3AAX steel cylinders. (Modes 1 and 2.)
6759-P	DOT-E 6759	Explosives, Inc., Clarksburg, WV	49 CFR 173.87, 177.835(g)(2)	To become a party to Exemption 6759. (Mode 1.)
6765-X	DOT-E 6765	Bureau of Mines, Amarillo, TX	40 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1 and 3.)
6765-X	DOT-E 6765	Teisan K.K. Tokyo, Japan	49 CFR 173.316(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1 and 3.)
6816-X	DOT-E 6816	General Dyamics/Convair Division, San Diego, CA.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, and 3.)
6826-X	DOT-E 6826	Atlantic Research Corp., Gainesville, VA	49 CFR 173.92(b), 175.3	To authorize use of DOT Specification 15A wooden boxes, for shipment of a Class B explosive. (Modes 1 and 4.)
6826-X	DOT-E 6826	McDonnell Douglas Astronautics Co., Huntington Beach, CA.	49 CFR 173.92(b), 175.3	To authorize use of DOT Specification 15A wooden boxes, for shipment of a Class B explosive. (Modes 1 and 4.)
6861-P	DOT-E 6861	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.65(a)	To become a party to Exemption 6861. (Mode 1.)
6861-X	DOT-E 6861	Teledyne McCormick Selph, Hollister, CA	49 CFR 173.65(a)	To authorize use of DOT Specification 21P fiber drums with DOT Specification 2SL or 2U polyethylene liners, for transportation of certain Class A explosives. (Mode 1.)
6971-X	DOT-E 6971	PolyScience Corp., Niles, IL	49 CFR Parts 100–199	To authorize transport of small quantities of reagent chemicals in inside glass bottles packed in metal boxes, overpacked in a strong wooden or fiberboard box. (Modes 1, 2, 3, 4, and 5.)
7052-X	DOT-E 7052	Jet Propulsion Laboratory, Pasadena, CA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Tadiran, Ltd., Port Washington, NY	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	General Dynamics, Fort Worth, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Allen-Bradley Co., Milwaukee, WI	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Altus Corp., San Jose, CA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Union Carbide Corp., Danbury, CT	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Power Conversion, Inc., Elmwood Park, NJ.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Honeywell, Inc., Horsham, PA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	In-Situ, Inc., Laramie, WY	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Electrochem Industries, Inc., Clarence, NY.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Gearhart Industries, Inc., Fort Worth, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	General Electric Co., Philadelphia, PA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	NL Industries, Inc., Houston, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Magnavox Government & Industrial Electronics Corp., Fort Wayne, IN.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	The Boeing Co., Seattle, WA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	National Aeronautics and Space Administration, Washington, DC.	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Martin Marieta Corp., Denver, CO	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Halliburton Services, Duncan, OK	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Flow Research Corp., Houston, TX	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	A/S Hellesens, Soborg, Denmark	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Gould, Inc., Andover, MA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7052-X	DOT-E 7052	Battery Engineering, Inc., Hyde Park, MA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials classed as a flammable solids. (Modes 1, 2, 3, and 4.)

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RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7205–X	DOT–E 7205	U.S. Department of Defense, Falls Church, VA.	49 CFR 46 CFR 146.29–99	To authorize certain stowage deviations in the transportation of military explosives by vessel. (Mode 3).
7080–X	DOT–E 7280	....do	49 CFR 176.905(c), 176.905(d)	To authorize fule tanks to be ¾ full instead of ¼ full and vehicles to be transported with battery cables connected if the holds or compartments of a vessel in which vehicles are loaded are mechanically ventilated. (Mode 3.)
7446–X	DOT–E–7446	Kaiser Aluminum & Chemical Corp., Erie, PA.	49 CFR 173.302(a)(1), 173.304(a), 178.38.	To authorize manufacture, marking and sale of dry powder-fire extinguishant or bromotrifluoromethane charged with compressed air or nitrogen, in non-DOT specification seamless aluminum cylinders. (Modes 1, 2, and 3.)
7536–X	DOT–E–7536	U.S. Department of Defense, Falls Church, VA.	49 CFR 146.29–41	To authorize an increase to the maximum allowable draft weights for five and ten ton rated booms, for shipment of military explosives. (Mode 3.)
7542–X	DOT–E–7542	U.S. Cylinders, Inc., Citronelle, AL	49 CFR 173.303(a)	To authorize manufacture, marking and sale of non-DOT specification steel cylinders, for transportation of certain flammable gases. (Modes 1, 2, and 3.)
7549–X	DOT-E7549	Stauffer Chemical Co., Westport, CT	49 CFR 173.245a(a), 176.245	To authorize use of non-DOT specification 316L stainless steel portable tank, for shipment of a certain corrosive material. (Modes 1, 2, and 3.)
7578–X	DOT-E7578	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.93(a(10)	To authorize shipment of propellant explosive in naide viscosd rayon bags, packed in DOT Specification 21C fiber drums. (Mode 2.)
7616–X	DOT-E7617	Consolidated Rail Corp., Philadelphia, PA	49 CFR 172.204(a), 172.204(d)	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certian hazardous materials by rail. (Modes 2.)
7741–X	DOT-E7741	Bell Aerospace Textron, Buffalo, NY	49 CFR 173.306(a), 173.302(a), 173.34(d), 175.3, 175.30.	Request increase in combination of propellant cylinders not to exceed 27.30 pints of anhydrous hydrazine plus one helium sphere per shipment. (Modes 1, 3, and 4.)
7951–P	DOT-E7951	Longlife Dairy Products Co., Inc., Jacksonville, FL.	49 CFR 173.306(b)(1), 175.3, 178.33	To become a party to Exemption 7951. (Modes 1, 2, 3, 4, and 5.)
8013–P	DOT-E8013	Union Carbide Corp., Danbury, CT	49 CFR 173.302, 173.304, 175.3	To become a party to Exemption 8013. (Modes 1, 4, and 5.)
8059–X	DOT-E8059	EFI Corp., San Jose, CA	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To increase oxygen content from 30 percent to 39, to delete requirement to examine the grain structure of every lot of cylinders and to authorize other independent inspection agencies. (Modes 1, 2, 3, 4, and 5.)
8063–X	DOT-E8063	Taylor-Wharton Division of Harsco Corp., Indianapolis, IN.	49 CFR 173.304(a)	To authorize use of a vacuum insulated DOT Specification 4L welded cylinder for transportation of certain nonflammable gases. (Mode 1.)
8091–X	DOT-E8091	Restor Communications, Inc., Portland, OR.	49 CFR Parts 100–177	To become a party to Exemption 8091. (Modes 4 and 5.)
8213–X	DOT-E8213	Trailmaster Tanks, Inc., Fort Worth, TX	49 CFR 173.119 (a), (m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC–307/MC–312 except for bottom outlet valve variations, for transportation of flammable or corroeive waste liquids or semisolids. (Mode 1.)
8214–X	DOT–E 8214	Morton Thiokol, Inc., Ogden, UT	49 CFR 173.153, 173.154,. 175.3	To renew, to authorize certain mechanical modification of the inflator system and to use DOT Specification 15A wooden box as packaging for module. (Modes 1, 2, 3, and 4.)
8230–X	DOT-E8230	G. Fredrick Smith Chemical Co., Columbus, OH.	49 CFR 173.266(b)(6), 173.269(a) (4)	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, and 4.)
8230–X	DOT-E8230	Seastar Chemicals, Division of Seastar Instruments, Sidney, S.C., Canada.	49 CFR 173.266(b)(6), 173.269(a)(4)	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, and 4).
8264–X	DOT–E 8264	Hercules, Inc., Wilmington, DE	49 CFR 173.93	To authorize shipment of certain solid propellant explosives (Class B) and smokeless powders for small arms (flammable solids), in non-DOT specification fiber cans or tubes packed in fiberboard boxes. (Modes 1 and 2.)
8265–X	DOT–E 8265	....do	49 CFR 173.197a, 173.93, 177.838(g)	To authorize shipment of certain solid propellant explosives and smokeless powders for small arms in non-DOT specification fiber tubes packed in telescoping DOT Specification 12B fiberboard boxes, and certain smokeless powders for small arms in DOT–21C fiber drums packed in fiberboard boxes. (Modes 1 and 2.)
8269–X	DOT–E 8269	M–D Trailer Co., Fort Worth, TX	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340–7, 178.342–5, 178.343–5.	To authorize manufacture, marking and sale of certain non-DOT specification cargo tanks complying with DOT Specification MC–307/MC–312 except for bottom outlet valve variations, for transportation of flammable, corroives, poison waste liquid or semi solids. (Mode 1.)
8273–X	DOT–E 8273	TRW Vehicle Safety Systems Division, Washington, MI.	49 CFR 173.153, 173.154, 175.3	To authorize transport of a passive restraint module, and the inflator therefore, containing a Class B explosive as a flammable solid. (Modes 1, 2, 3, and 4.)
8279–X	DOT–E 8279	Hamler Industries, Inc., Chicago Heights, IL.	49 CFR 178.337–17	To authorize use of a DOT Specification MC–330 cargo tank with a reproduced identification plate, for shipment of a nonflammable gases. (Mode 1.)
8287–X	DOT–E 8287	Rohm & Haas Co., Philadelphia, PA	49 CFR 173.245(a)(16), 173.245(a)(26), 178.19–4(c), 178.35a–2(b).	To authorize shipment of a corroeive liquid in a DOT Specification 6D/2SL composite container or DOT Specification 34 drum equipped with a bung vent, or in a DOT Specification 12B fiberboard box with no more than four inside polyethylene bottles with vented closures. (Modes 1, 2, and 3.)
8307–X	DOT–E 8307	U.S. Department of Energy, Washington, DC.	49 CFR 173.21, 173.247, 173.25(b), 175.3.	To authorize shipment of nonpyrotechnic smoke generators consisting of cylinder reservoirs, containing titanium tetrachloride, ammonium hydroxide, an explosive valve and nitrogen. (Modes 1, 2, 3, and 4.)
8314–X	DOT–E 8314	Barber Steamship Lines, Inc., New York, NY.	49 CFR 176.905(L)	To authorize stowage of refrigerating machinery and motor vehicles in the same hold or compartment. (Mode 3.)
8377–X	DOT–E 8377	Teledyne McCormick Selph, Hollister, CA	49 CFR 172.101, 173.113, 175.3	To authorize transport of devices described as detonating fuzes, Class C explosives, in non-DOT specification fiberboard boxes packed in non-DOT specification strong wooden boxes. (Modes 1 and 4.)
8445–P	DOT–E 8445	Aqua-Tech, Inc., Port Washington, WI	49 CFR Part 173, Supart D, E. F, and H	To become a party to Exemption 8445. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8465–X	DOT–E 8465	Chase Bag Co., Oak Brook, IL	49 CFR 173.182(b)(6)(i), 173.234, 178.241.	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44P), for shipment of ammonium nitrate fertilizers and sodium nitrite mixtures. (Modes 1, 2, and 3.)
8465–X	DOT–E 8465	C-I-L Inc., Brampton, Ontario, Canada, PA.	49 CFR 173.182(b)(6)(i), 173.234, 178.241.	To authorize manufacture, marking and sale of non-DOT specification plastic bags (comparable to a DOT Specification 44P), for shipment of ammonium nitrate fertilizers and sodium nitrite mixtures. (Modes 1, 2, and 3.)
8525–X	DOT–E 8525	ABC Containerlines, N.V. Antwerp, Belgium.	49 CFR 173.389(c)(1), 173.392(c), 176.700(h)(1), 176.700(h)(2).	To authorize shipment of mineral monazite sand, classed as radioactive material, low specific activity, n.o.s. under modified exclusive use provisions. (Modes 1, 2, and 3.)
8526–P	DOT–E 8526	Rohm & Haas Co., Philadelphia, PA	49 CFR 177.834(L)(2)(i)	To become a party to Exemption 8526. (Mode 1.)
8526–P	DOT–E 8526	Kan-Dale Express, Inc., Cleveland, OH	49 CFR 177.834(L)(2)(i)	To become a party to Exemption 8526. (Mode 1.)
8645–X	DOT–E 8645	Belmont Mine Supply Co., Inc., Flushing, NY.	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8645–X	DOT–E 8645	Northern Ohio Explosives, Inc., Forest, OH.	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8645–X	DOT–E 8645	Armstrong Explosives Co., Kittanning, PA	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8645–X	DOT–E 8645	Wampum Manufacturing Co., Senecaville, OH.	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8645–X	DOT–E 8645	Wampum Supplies Co., New Galilee, PA	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8645–X	DOT–E 8645	A&M Contracting, Grove City, PA	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8645–X	DOT–E 8645	Wampum Distributing Co., New Galilee, PA.	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC–307 or MC–311 insulated cargo tanks at ambient temperature. (Mode 1.)
8674–P	DOT–E 8674	Thermex Energy Corp., Dallas, TX	49 CFR 173.114a(b)	To become a party to Exemption 8674.
8718–X	DOT–E 8718	Structural Composite Industries Inc., Pomona, CA.	49 CFR 173.302(a), 173.304(a), 175.3	To authorize incease in service pressure limit of cylinders and to allow the addition of another fiber material for construction. (Modes 1, 2, 3, 4, and 5.)
8758–X	DOT–E 8758	Union Carbide Corp., Danbury, CT	49 CFR 173.318(a)	To authorize manufacture, marking and sale of non-DOT specification portable tanks, for transportation of certain nonflammable gases. (Mode 1.)
8787–X	DOT–E 8767	Hydraulic Research-Textron, Pacoima, CA.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure nonrefillable cylinders, for shipment of nonflammable, nonliquefied gases. (Modes 1, 2, and 4.)
8779–X	DOT–E 8779	Acme Resin Corp., Forest Park, IL	49 CFR 173.349	To authorize use of DOT Specification 57 portable tanks for shipment of posion B liquids. (Mode 1.)
8915–P	DOT–E 8915	Airco, The BOC Group, Inc. Murray Hill, NJ.	49 CFR 173.301(d), 173.302(a)(3)	To become a party to Exemption 8915. (Modes 1 and 3.)
9070–X	DOT–E 9070	Warner Bros. Inc., Sunderland, MA	49 CFR 173.119, 173.32(a)(1)	To authorize use of non-DOT specification steel portale tanks, for transportation of a flammable liquid. (Mode. 1.)
9080–X	DOT–E 9080	Henderson's Welding & Manufacturing Corp., Seminole, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of four non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corroeive liquids. (Mode 1.)
9108–X	DOT–E 9108	The Ensign Bickford Co., Simsbury, CT	49 CFR 173.77	To authorize transport of pentaerythrite tetranitrate wet with 25 pct water in plastic bags in 4 mil polyethylene bags, placed in a DOT Specification 12H65 fiberboard box. (Mode 1.)
9144–X	DOT–E 9144	Cajun Bag & Supply Co., Crowley, LA	49 CFR 173.154, 173.164, 173.178, 173.182, 173.234, 173.245b.	To authorize manufacture, marking and sale of large, non-DOT specification collapsible polyethylene-lined woven polypropylene bulk bags, having a capacity of approximately 2,200 pounds each, for shipment of oxidizers and corroeive solids. (Modes 1 and 2.)
9145–X	DOT–E 9145	Exxon Pipeline Co., Houston, TX	49 CFR 173.119, 173.304, 173.315	To authorize use of a non-DOT specification container, for shipment of flammable gases. (Mode 1)
9158–X	DOT–E 9158	National Beryllia Corp., Haskell, NJ	49 CFR 173.365	To authorize shipment of solid waste materials contaminated with beryllium oxide, in a non-DOT specification roll-on, roll-off, bulk container. (Mode 1.)
9174–X	DOT–E 9174	McDonnell Douglas Corp., St. Louis, MO	49 CFR 173.302(a)	To authorize use of non-DOT specification cylindrical and spherical pressure vessels, for transportation of helium and nitrogen. (Mode 1.)
9362–X	DOT–E 9362	Nowsco Services, Inc., Houston, TX	49 CFR 172.101 column 8, 173.315, 175.30.	To renew exemption issued on emergency basis to accommodate shipment of nitrogen refrigerated liquid in non-DOT specification portable tank of up to 500 gallon capacity by cargo aircraft. (Mode 4.)
9367–X	DOT–E 9367	Marino Technology/Champion International Corp., Wet Nyack, NY.	49 CFR 173.182, 173.217, 173.245b	To authorize cargo vessel as an additional mode of transportation. (Modes 1, 2, and 3.)
9490–P	DOT–E 9490	National Refrigerants, Inc., Radnor, PA	49 CFR 173.315, 178.245	To become a party to Exemption 9490. (Modes 1, 2, and 3.)
9530–P	DOT–E 9530	....do	49 CFR 173.315, 178.245	To become a party to Exemption 9530. (Modes 1, 2, and 3.)

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New Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9192-N	DOT-E 9192	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.304(a)(2)	To authorize shipment of various refrigerated compressed gases classed as flammable gas in DOT Specification 4L-112 cylinders. (Mode 1.)
9400-N	DOT-E 9400	Poly Processing Co., Inc., Monroe, LA	49 CFR 173.119, 173.125, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, spherical polyethylene portable tank enclosed in a steel skid unit, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, and 3.)
9432-N	DOT-E 9432	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a), 175.3, 178.44	To authorize manufacture, marking and sale of non-DOT specification girth welded stainless steel cylinders, for transportation of a compressed gas. (Modes 1, 2, and 4.)
9456-N	DOT-E 9456	Dow Corning Corp., Midland, MI	49 CFR 173.245, 173.260	To authorize use of DOT specification MC-330 and MC-331 cargo tanks, for transportation of certain corrosive materials. (Mode 1.)
9462-N	DOT-E 9462	Aztec Metal Fabricating, Odessa, TX	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.)
9479-N	DOT-E 9479	Great Lakes Chemical Corp., West Lafayette, IN.	49 CFR 173.315, 178.245	To authorize use of DOT specification 51 portable tanks modified to have bottom outlets, for transportation of a nonflammable gas. (Modes 1, 2, and 3.)
9480-N	DOT-E 9480	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(a)(5)	To authorize transport of tetrafluoromethane in DOT Specification 3AL cylinders. (Modes 1, 2, and 3.)
9488-N	DOT-E 9488	Conference of Radiation Control Program Directors, Frankfort, KY.	49 CFR 173.415(a), 173.431	To authorize use of specially sealed specification 2R containers in concrete filled steel drums, for one-time transport for disposal of not more than 500 millicuries of radium-226 in normal or special form without each shipper keeping a package test performance certification file. (Mode 1.)
9489-N	DOT-E 9489	Custom Air Service, Howell, MI	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
9490-N	DOT-E 9490	ANF-Industrie Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for shipment of flammable and nonflammable liquefied compressed gases. (Modes 1, 2, and 3.)
9527-N	DOT-E 9527	Carolina Aircraft Corp. Ft. Lauderdale, FL	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
9530-N	DOT-E 9530	ANF-Industrie, Paris, France	49 CFR 173.315, 178.245	To authorize use of non-DOT specification IMO Type 5 portable tanks, for transportation of nonflammable liquefied compressed gases. (Modes 1, 2, and 3.)
9535-N	DOT-E 9535	SKF Industries, Inc., Philadelphia, PA	49 CFR 173.154	To authorize transport of a mixture of nitrates and nitrites fused solid in large non-DOT specification steel tanks. (Mode 1.)
9536-N	DOT-E 9536	Transway Systems Inc., Stoney Creek, Ont. Canada.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tank, patterned after the MC-307 or MC-312 specifications with certain exceptions, for transportation of certain hazardous materials. (Mode 1.)
9541-N	DOT-E 9541	Ashland Chemical, Dublin, OH	49 CFR 177.848, Part 107, Appendix B	To authorize transport of poisonous gases on a specially constructed vehicle with other hazardous materials. (Mode 1.)

Emergency Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 7052-P	DOT-E 7052	XCELATRON, Inc., Chimacum, WA	49 CFR 172.101, 172.420, 175.3	To become a party to Exemption 7052. (Modes 1, 2, 3, and 4.)
EE 9545-N	DOT-E 9545	Medical Diagnostics, Inc., Columbia, MD	49 CFR 173.118(a)	To authorize 4 ounces of a 95.5 percent acetone and 0.5 percent p-Toluene sulfonic acid mixture, classed as both flammable and corrosive, to be shipped under the limited quantity provisions for a flammable liquid. (Mode 1.)
EE 9558-N	DOT-E 9558	Day & Zimmerman, Inc., Parsons, KS	49 CFR 173.56(a), 173.56(c)(1), 173.86(b).	To authorize non-DOT specification packaging for transportation of explosives projectiles. (Modes 1, 2, and 3.)
EE 9559-N	DOT-E 9559	Pecten Chemicals, Inc., Houston, TX	49 CFR 173.365, 175.3	To authorize use of non-DOT specification fiber drums with plastic heads, for transportation of methomyl pesticide solid (Mode 4.)

Withdrawals

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7052-X	Honeywell, Inc., York, PA	49 CFR 172.101, 172.420, 175.3	To authorize shipment of batteries containing lithium and other materials, classed as a flammable solids. (Modes 1, 2, 3, and 4.)
7638-P	Big Three Industries, Inc., Houston, TX	49 CFR 173.316(a), 175.3	To become a party to Exemption 7638. (Modes 1, 2, 3, and 4.)
9057-P	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.315(i) (13), 173.33(f)(9), 173.33(h)(5)(ii).	To become a party to Exemption 9057. (Mode 1.)
9404-N	Luxfer USA Limited, Riverside, CA	49 CFR 173.302, 173.304, 178.46	To manufacture, mark and sell aluminum cylinders complying with DOT Specification 3AL except for a modified base shape, for shipment of these hazardous materials authorized in DOT specification 3AL. (Modes 1, 2, 3, and 4.)

Denials

9311-N Request by Aero-Structures Company, Tarzana, CA to authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment denied December 27, 1985.

Issued in Washington, DC, on January 10, 1986.

J.R. Grothe,

Chief Exemptions Branch Office of Hazardous Materials Transportation.

[FR Doc. 86-1755 Filed 1-27-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 15, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Air Force Technology Efforts to Support the Strategic Defense Initiative (SDI) Program has requested that they be permitted to conduct a closed meeting at the Pentagon, Washington, DC on February 11 and 12, 1986, from 8:30 a.m. to 5:00 p.m. both days.

The purpose of the meeting will be to receive classified briefings on Air Force technology programs which directly support the Strategic Defense Initiative. Additionally, the committee will receive selected briefings from the SDI Office on their programs.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-1977 Filed 1-27-86; 11:27 am]

BILLING CODE 3910-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 18
Tuesday, January 28, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ENERGY REGULATORY COMMISSION

January 22, 1986.

TIME AND DATE: January 29, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 828th Meeting—January 29, 1986, Regular Meeting (10:00 a.m.)

CAP–1. Project No. 8256–003, Electro Technologies, Ltd.; Project No. 8244–002, Hydropool
CAP–2. Project No. 2570–006, Ohio Power Company
CAP–3. Project No. 2503–011, Duke Power Company
CAP–4. Project No. 4148–004, Van Buren Township, Michigan
CAP–5. Project No. 4114–004, Long Lake Energy Corporation
CAP–6. Docket No. EL84–3–001, Clifton Power Corporation
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CAP–15. Docket Nos. ER85–691–001 and ER86–20–001, Southern California Edison Company
CAP–16. Docket No. ER85–468–003, Southwestern Electric Power Company
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CAP–21. Docket No. QF85–684–000, Wyoming Wind Power, Inc.
CAP–22. Docket No. EL85–37–000, Marjorie Linder Cooley v. Clifton Power Corporation

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CAM–2. Docket No. FA85–18–000, Transcontinental Gas Pipe Line Corporation
CAM–3. Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Northwest Central Pipeline Corporation)
CAM–4. Docket No. RM85–1–000 (Parts A–C), regulation of natural gas pipeline after partial wellhead decontrol (Columbia Gas Transmission Corporation)
CAM–5. Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipeline after partial wellhead decontrol (Air Products and Chemicals, Inc.)
CAM–6. Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Columbia Gulf Transmission Company and Columbia Gas Transmission Corporation); Docket No. RP86–14–001, Columbia Gulf Transmission Company; Docket No. RP86–15–001, Columbia Gas Transmission Corporation
CAM–7. Docket Nos. RM79–76–091 (Texas-10 Addition), RM79–76–094 (Texas-19), RM79–76–161 (Texas-7 Addition III), RM79–76–172 (Texas-21 Addition Nacogdoches County) and RM79–76–173 (Texas-34), high-cost gas produced from tight formations
CAM–8. Docket No. RM79–76–246 (Oklahoma-7), high-cost gas produced from tight formations
CAM–9. Docket No. GP81–2–000, Compass Petroleum Industries, Inc.
CAM–10. GP86– , Minerals Management Service, Louisiana § 102(d) NGPA Determination, Taylor Energy Company, West Delta Block 133, MMS Docket G4–4428, FERC No. JD85–31411, MMS Docket G4–4581, FERC No. JD86–01397, MMS Docket G4–4433, FERC No. JD86–01398, MMS Docket G4–4328, FERC No. JD86–01399.
CAM–11. Docket No. GP83–3–000, State of New Mexico, Perry R. Bass, Section 102 NGPA Determination, Big Eddy Unit Well No. 65, FERC No. JD81–42412
CAM–12. Docket No. RO85–23–002, Petrotech Trading Company and David L. Hooper
CAM–13. Docket No. RO84–13–000, TEXFEL Petroleum Corporation and IU International OIL & GAS, Inc.
CAM–14. Docket Nos. RM85–1–139 and RM85–1–142 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (El Paso Natural Gas Company, Pacific Gas and Electric Company and Valley Gas Company)

Consent Gas Agenda

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CAG–2. Docket No. RP86–34–000, Western Transmission Corporation
CAG–3. Docket No. RP86–35–000, Great Lakes Gas Transmission Company
CAG–4. Omitted
CAG–5. Docket Nos. TA86–1–52–000 and 001, Western Gas Interstate Company
CAG–6. Docket Nos. TA86–1–61–000, 001 and TA85–2–61–002, Bayou Interstate Pipeline System
CAG–7. Docket Nos. TA86–3–16–000, 001 (PGA86–2) and TA85–2–16–004, National Fuel Gas Supply Corporation
CAG–8. Docket Nos. TA86–3–18–000 and 001, Texas Gas Transmission Corporation
CAG–9. Docket Nos. TA86–2–17–000, 001 TA85–4–17–003, TA85–4–17–005 and 006, Texas Eastern Transmission Corporation
CAG–10. Omitted

CAG–11. Docket No. TA86–1–15–000 and 001 (PGA86–1 and IPR86–1), Mid Louisiana Gas Company
CAG–12. Docket No. TA82–1–21–020, Columbia Gas Transmission Corporation
CAG–13. Docket No. TA86–1–59–002, Northern Natural Gas Company, a division of Internorth, Inc.
CAG–14. Docket Nos. RP85–58–007, 009, 010, 011, 012, 013 and 014, El Paso Natural Gas Company
CAG–15. Docket No. RP79–10–021, Great Lakes Gas Transmission Company
CAG–16. Docket No. CP79–115–024, Northwest Pipeline Corporation
CAG–17. Docket No. TA85–2–31–002, Arkla Energy Resources
CAG–18. Docket No. TA86–1–33–005, EL Paso Natural Gas Company
CAG–19. Docket Nos. TA84–1–53–015, TA83–1–53–004, TA82–1–53–002, TA81–1–53–006 and RP82–8–003, K N Energy, Inc.
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CAG–25. Docket No. RP85–194–000, Panhandle Eastern Pipe Line Company
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CAG–32. Docket Nos. CI85–633–001, 002 and CI85–632–001, Tenneco Oil Company, et al.; Docket No. CI86–19–002, Amoco Production Company; Docket No. CI84–556–006, Cenergy Exploration Company.
CAG–33. Docket No. G–7004–006 through 038, Pennzoil Company
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CAG–46. Docket No. CP85–473–000, (Phase II), Colorado Interstate Gas Company; Docket No. CP85–553–000 (Phase II), El Paso Natural Gas Company
CAG–47. Docket Nos. CI84–10–001, through 004, Felmont Oil Corporation and Essex Offshore, Inc.

I. Licensed Project Matters

P–1. (A) Project Nos. 2062–001 through 007, Public Utility District No. 1 of Okanogan County, Washington. (B) Project No. 7037–000, Public Utility District No. 1 of Okanogan County, Washington
P–2. Project Nos. 8820–001 and 8822–001, City of New York, New York
P–3. Project No. 6279–001, F. & T. Services Corporation
P–4. Project No. 3161.001, John M. Jordan
P–5. Project No. 199–029, South Carolina Public Service

II. Electric Rate Matters

ER–1. Docket No. ER86–76–000, Commonwealth Edision Company
ER–2. Docket No. QF85–172–001, Power Developers, Inc.
ER–3. Docket No. QF85–678–000, Northeastern Power Company

Miscellaneous Agenda

M–1. Docket No. RM83–63–000, Automatic Authorization for Holding certain positions that require Commission approval under section 305(b) of the Federal Power Act
M–2. Reserved
M–3. Reserved
M–4. Omitted
M–5. Omitted
M–6. Docket No. GP85–32–000, Mountaineer Gas Company

I. Pipeline Rate Matters

RP–1. Project No. RP84–59–003, Northwestern Pipeline Corporation v. Colorado Interstate Gas Company

II. Producer Matters

CI–1. Project Nos. CI86–54–000 and CI86–57–000, Pennzoil Producing Company and Pennzoil Gas Marketing Company
CI–2. Omitted
CI–3. Docket Nos. G–4579–033 and CI85–222–001, Cities Service Oil and Gas Corporation

III. Pipeline Certificate Matters

CP–1. Docket Nos. RP83–3–003, 004 and 005, et al. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Docket Nos. CP84–441–004, 005 and 006, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Docket No. CP85–264–001, Transcontinental Gas Pipe Line Corporation
CP–2. Docket Nos. CP84–429–004, 005 and 007, Texas Eastern Transmission Corporation and Columbia Gas Transmission Corporation; Docket No. CP84–441–009, Tennessee Gas Pipeline Company, a division of Tenneco Inc.; Docket Nos. CP84–654–005 and 007, Algonquin Gas Transmission Company; Docket No. CP85–161–001, CP85–264–002, 003, CP85–294–001 and 002, Transcontinental Gas Pipeline Corporation
CP–3. Docket No. CP86–143–000, Texas Gas Transmission Corporation

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CP–4. Docket Nos. CP85–828–000, CP86–10–000 and CP86–85–000, ANR Pipeline Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1915 Filed 1–24–86; 3:58 pm]

BILLING CODE 6717–01–M

2

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, February 4, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave. SW., Washington, DC 20594.

STATUS: The first two items on the agenda are open to the public; the last three items are closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report:* Derailment of New York City Transit Authority Subway Train near the DeKalb Avenue Station, May 15, 1985.

2. *Marine Accident Report:* Explosion and Fire On Board the U.S. Mobile Offshore Drilling Unit GLOMAR ARTIC II, in the North Sea, 130 Nautical Miles East-Southeast of Aberdeen, Scotland, January 15, 1985.

3. *Opinion and Order:* Administrator v. Christopherson, Docket SE–6028; disposition of respondent's appeal.

4. *Opinion and Order:* Administrator v. Wright, Docket SE–6578; disposition of the appeals of both parties.

5. *Opinion and Order:* Administrator v. Meyering, Docket SE–6721; disposition of the appeals of respondent and the Administrator.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa, (202) 382–6525.

Dated: January 24, 1986.

Catherine T. Kaputa,

Federal Register Liaison Officer.

[FR Doc. 86–1863 Filed 1–24–86; 10:26 am]

BILLING CODE 7533–01–M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 27, February 3, 10, and 17, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 27

Tuesday, January 28

2:00 p.m.: Discussion on Design Basis Threat (Closed—Ex. 1).

Wednesday, January 29

10:00 a.m.: Discussion/Possible Vote on Full Power Operating License for Millstone-3 (Public Meeting).

2:00 P.M.: Discussion of Management/Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).

3:30 p.m.: Affirmation/Discussion and Vote (Public Meeting)—

a. "60 Minutes" Broadcast on Shoreham Construction (Postponed from January 23).

b. Final Rule, "Limitation on the Use of Highly Enriched Uranium (HEU) in Research and Test Reactors".

Week of February 3—Tentative

Thursday, February 6

2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Friday, February 7

2:00 p.m.: Briefing on Staff Activities Regarding TVA (Public Meeting).

Week of February 10—Tentative

Tuesday, February 11

10:00 a.m.: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).

2:00 p.m.: Briefing by AIF on Technical Specification Improvements (Public Meeting).

Wednesday, February 12

2:00 p.m.: Discussion of Staff Recommendations on Enforcement Policy (Public Meeting).

Thursday, February 13

2:00 p.m.: Status Briefing on Fermi (Open/Portion May Be Closed—Ex. 5 & 7).

3:15 p.m.: Status of Pending Investigations (Closed Ex. 5 & 7).

3:30 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Week of February 17

Tuesday, February 18

2:00 p.m.: Briefing by TVA on Status, Plans and Schedules (Public Meeting).

Wednesday, February 19

10:00 a.m.: Staff Briefing on Integrated Safety Assessment Program (Public Meeting).

Thursday, February 20

10:00 a.m.: Report on Safety Goal Evaluation (Public Meeting).

2:00 p.m.: Briefing by Incident Investigation Team on Status of Rancho Seco (Public Meeting).

3:30 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Friday, February 21

10:00 a.m.: Briefing by Southern California Edison Co. on San Onofre (Public Meeting).

ADDITIONAL INFORMATION: Title change of affirmation item "Final Regulations on No Significant Hazards Consideration (The "Sholly Amendment")" meeting held on January 23. Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2, 5, 6, & 7) scheduled to be held on January 24.

To verify the status of meetings call (recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,

Office of the Secretary.

[FR Doc. 86–1694 Filed 1–24–86; 3:57 pm]

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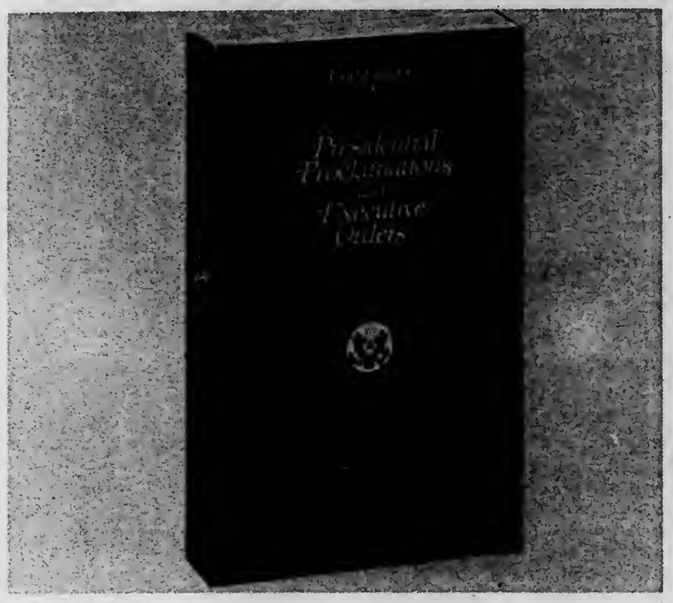
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Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

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Environmental Protection Agency
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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Public Lands
Land Management Bureau
Refugees
Social Security Administration
Trade Practices
Federal Trade Commission

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center,
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1924

Construction and Repair; Administrative Instructions

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its Construction and Repair regulations to provide for a change in administrative instructions to this subpart. This action is necessary because of the addition of Guide 4 to Subpart A of Part 1924 of this chapter. The intended effect is to reference a Guide for FmHA field personnel use to assist applicants in modifying the American Institute of Architects (AIA) Document B141, 1977 Edition, Standard Form of Agreement Between Owner and Architect, to comply with FmHA regulations and policy.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Vernon M. Rozas, Architect, Program Support Staff, FmHA, USDA, 14th and Independence Avenue, SW., Washington, DC 20250—Telephone (202) 382–1499.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established by Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking, since it involves internal Agency management and publication for comment is unnecessary.

Guide 4 is intended for the use of FmHA field offices staff in assisting the applicant. The Guide contains information and suggestions for modifications to the provisions of the AIA Document B141 to achieve compliance with FmHA regulations and policy which pertain to such services. The use of the information in the Guide is not mandatory but is intended to serve as a uniform model for FmHA field personnel in modifying architect's services agreement primarily for FmHA Rural Rental Housing Loan Program projects. (Guides 2 and 3 are reserved for future publication).

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.415 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

This final action has been reviewed in accordance with FmHA Instruction 1940–G "Environmental Program." FmHA has determined that this final rule action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1924

Construction and repair, Energy conservation, Housing, Loan programs—Housing and community development, Low and moderate income housing. Accordingly, Subpart A of Part 1924 of Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301, 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

§ 1924.13 [Amended]

2. In § 1924.13, the introductory text of paragraph (a) is amended by adding the following sentence to the end of the text:

(a) * * * See Guide 4, Attachment 1, "Attachment to AIA Document—Standard Form of Agreement Between Owner and Architect" for further information (Guide 4 is available in any FmHA office.)

* * * * *

Dated: January 9, 1986.

Vance L. Clark,
Administrator, Farmers Home Administration.

[FR Doc. 86–1943 Filed 1–28–86; 8:45 am]
BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 85–035I]

Streamlined Inspection System for Broilers and Cornish Game Hens

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations to establish a method of post-mortem inspection known as the "Streamlined Inspection System" (SIS). The new system is to be implemented in establishments now operating under Modified Traditional Inspection. SIS incorporates new post-mortem inspection prodedures requiring one or two inspectors and a Finished Product Standards (FPS) program for evaluating the wholesomeness and acceptability of finished product. Establishments are responsible for performing the necessary trim of designated defects on passed carcasses and for operating the FPS program. The new system will allow increased efficiency in the use of FSIS resources and those of the poultry industry, while still providing consumers with wholesome and unadulterated products. This system is an outcome of recent work by FSIS veterinarians and technical experts. The new system is being established on an emergency

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basis in response to suddenly increased demands on Agency resources. At the same time, the Agency is soliciting comments to determine what changes to the new system will be necessary before the interim rule is made final.

DATES: Effective January 29, 1986; comments must be received on or before March 31, 1986.

ADDRESS: Written comments to: U.S. Department of Agriculture, Food Safety and Inspection Service, Policy Office, ATTN: Hearing Clerk, Room 3803, South Agriculture Building, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Dr. Douglas L. Berndt, (202) 447-3219. (See "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Service, FSIS, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3219.

Executive Order 12291 and Effect on Small Entities

The Administrator of FSIS has determined that immediate implementation of this rule on an interim basis is necessary to provide FSIS and the poultry industry with an inspection procedure for broilers and cornish game hens that meets the requirements for inspection within available resources.

Analysis of the procedures set forth in this rule under Executive Order 12291 and the Regulatory Flexibility Act is not practicable at this time since stringent budgetary limitations on FSIS require immediate inspection workforce reductions while meeting the inspection demands of increased poultry production and consumption. Certain changes in plant facilities will be required in the near future of establishments that operate under SIS; however, these changes, which are proposed elsewhere in this issue of the **Federal Register** are expected to result only in minor expenditures. The industry may realize some gains through reduced charges for overtime inspection (because there will be fewer inspectors per line), reduced workspace requirements for inspection teams, and increased productivity by maintaining optimal line speeds. Until the facility requirements are implemented, establishments operating under SIS will follow the current Modified Traditional Inspection (MTI) facility requirements and in addition must meet the space and facility requirements for trimming and for performing carcass reinspection.

Pursuant to the provisions for emergency rules in section 8 of the Executive Order and 5 U.S.C. 608, there is an urgent need to provide a revised inspection procedure for broilers and cornish game hens. The required analyses will be made prior to publication of a final rule.

Comments

Interested persons are invited to submit comments concerning this action within a period of 60 days after publication of this interim rule. Written comments must be sent in duplicate to the address shown above and should reference the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Dr. Berndt so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted pursuant to this action will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, conduct a post-mortem inspection of the carcass of each bird processed in every official establishment that processes poultry for commerce or that is otherwise subject to the Act and the condemnation of adulterated product. The post-mortem inspection is performed by veterinarians or trained food inspectors under veterinary supervision. Working at a moving production line, inspectors view the exterior, interior, and viscera (internal organs) of each bird slaughtered for the purpose of detecting disease or other conditions that might render the carcass or any part thereof unfit for human food or otherwise adulterated. In carrying out the examination, the inspectors follow standardized inspection procedures and initiate actions consistent with their findings. The procedures are designed to assure that only wholesome and unadulterated carcasses and carcass parts are passed for human food.

Post-mortem inspection of livestock and poultry accounts for the largest portion of the Department's expenditures for meat and poultry inspection. Therefore, use of the most efficient and effective post-mortem inspection procedures and staffing standards is essential to minimizing costs while protecting the public health.

The responsibility of the Department to make the most efficient use of its resources is now more important than ever because FSIS's resources are decreasing at the same time that demands for inspection services have been increasing. On September 19, 1985, a hiring freeze on permanent full-time (PFT) employment by FSIS was ordered to reflect a potential fiscal year (FY) 1986 operating budget that could be $10 million less than necessary to support current employment. At the time the freeze was ordered, action by the House of Representatives showed a proposed budget of $358.5 million for FSIS, while the Senate has approved $370 million.

In addition to freezing PFT employment, the hiring freeze restricted the conversion of temporary, intermittent, or part-time employees to PFT status. Also, use of part-time and other employment was to be held at 1985 levels. Personnel actions that involved moving employees between major program areas, from the field to headquarters, and from line to staff positions were also frozen.

Since the beginning of FY 1986, FSIS has been subject to the terms of a series of Continuing Resolutions which have had the effect of restricting the funds available to the Agency to the amount appropriated by the House of Representatives ($358.5 million). This amount is $6.1 million below the 1985 appropriation.

On November 15, FSIS found it necessary to order additional cost-saving measures beyond those then in place to be able to operate within available funding levels. These measures included a continuation of the freeze on PFT employment, a one-third reduction in non-inspection-related travel, suspension of all non-technical training, and reductions in various contracts. All other costs were limited to the 1986 base level or below (1985 level less any non-recurring activities).

For at least the first part of calendar year 1986, the Agency expects to be operating at an authorized level of $362.1 million, which is less than the FY 1985 funding level. The Congressional Record of December 19, 1985 (S 18131), indicates that additional money may become available later on in the fiscal year after a formal Administration request for supplemental appropriation. However, it is not certain that such a request will be made and if additional funds do become available, a short fall would still exist. The Agency's funding level has necessitated a continuation of the hiring freeze and consequent reduction in employment. This reduction is influenced by such economic factors

as inflation and rising employee benefit costs. However, even if the Agency were able to maintain last year's employment level, it would still be unable to meet the rising industry demands for inspection service.

Besides the budget short fall that has arisen in the wake of this year's appropriation process, the Agency faces long-term constraints on its operations. The passage of the Gramm-Rudman-Hollings Balanced Budget Amendment of 1985 makes it likely that FSIS will be compelled to economize much further in the coming years. Appropriations for FY 1986 are expected to be subject to reductions of as much as 4.6 percent to meet the requirements of Gramm-Rudman-Hollings, and increasingly larger cuts are mandated for the following fiscal years.

FSIS spends about 85 percent of its operating budget on employee salaries and benefits. This makes it impossible to absorb funding reductions or accommodate increased costs except through personnel reductions. The great majority of Agency staff are field inspectors and veterinarians. Thus, any budgetary reductions are almost immediately felt in day-to-day inspection operations.

Even though the Agency continues to operate under severe budgetary constraints, it must fulfill its responsibilities under the law. A House-Senate Conference deliberating on one of the Continuing Resolutions recently took the position that "in administering the Federal Meat Inspection Act and the Poultry Products Inspection Act, the Administrator of FSIS is expected to take whatever action is necessary to ensure that requests for inspection service required by law are promptly accommodated. On-site inspection should receive priority over some other Agency functions."

At the same time that the Agency has been confronted with new budgetary limits, the poultry industry has been demanding increased inspection service. The operators of federally inspected poultry processing establishments have requested inspectional coverage for new production lines and expanded operations. Many establishments that have previously operated single-working shifts have expanded to two shifts or are planning to do so in the near future. The growth of the poultry products industry is accelerating. Production in FY 1985 was increased 5.5 percent over production in FY 1984 and is expected to increase by a similar percentage in FY 1986. In previous years, poultry production had increased by smaller percentages. In terms of per capita consumption, poultry is now second only to beef among all meat and poultry food products.

To accommodate the demands of increasing consumption and production and to absorb workforce reductions without denying inspection service, the Agency must take immediate action to revise its poultry inspection procedures. FSIS believes that this change can be brought about through the introduction of a new system in establishments that slaughter broilers and cornish game hens. These establishments constitute the largest section of the poultry industry in terms of output. The revision of inspection procedures in these establishments will enable the Agency to shift qualified inspection personnel to areas where their services can be more efficiently and productively employed. This change has become possible not merely because of the exigencies of present and future budgets, but because of the useful experience the Agency has gained over recent years in operating several types of poultry inspection.

Before this interim rule, there were three systems used for the inspection of broilers and cornish game hens, namely traditional inspection, modified traditional inspection, and the "New Line Speed" (NELS) inspection system. Also, a New Turkey Inspection (NTI) system was recently implemented in turkey slaughter establishments. SIS is a new method that has been developed on the basis of experience gained in operating the previous inspection systems.

A. Traditional Inspection

Under traditional inspection, one inspector examines a whole bird and is responsible for the proper disposition of the bird, including any required trimming, before it leaves the inspection station. Traditional inspection was satisfactory to FSIS and the poultry industry for many years and is still performed in some slaughter establishments.

B. Modified Traditional Inspection (MTI)

In the middle 1970's, the development of automated evisceration equipment, as well as improvements in genetics, nutrition, health, and flock management, allowed the poultry industry to present uniform lots of birds to inspectors faster than inspectors could properly inspect the birds under the traditional methods. Therefore, a new inspection procedure known as "Modified Traditional Inspection" was developed in 1978 which allowed better use of inspection resources and permitted the poultry industry to take advantage of these new technologies and production improvements. MTI allowed industry to run an eviscerating line at speeds of up to 70 birds per minute.

MTI reduces the number of motions required for each of three inspectors on the line by splitting post-mortem inspection into two functional tasks. One task (performed by one inspector) is the outside inspection of each uneviscerated prepositioned carcass, using a mirror to observe surfaces not directly visible. The second task (performed by two inspectors), inside/viscera inspection, is performed after the bird is eviscerated and establishment personnel reposition the carcass and its attached viscera. The trimming of carcass defects is performed by establishment employees, known as helpers or trimmers, who are positioned next to and act under the direction of the inspectors.

C. New Line Speed (NELS) Inspection System

After the implementation of MTI, the poultry industry continued to make significant technological advances. Consequently, many establishments were able to present uniform lots of birds to inspectors faster than 70 birds per minute. This advance was made possible by improved automated equipment and better control of the production process. In these establishments, the inspection process again became a limiting factor in establishment productivity and restricted the return-on-investment for the development and installation of modern, innovative equipment and facilities. It became apparent to the Agency that these restraints could not be overcome through expanded use of MTI. Also, various studies had shown that Federal inspection was more efficient and effective in establishments where quality control was emphasized.

Establishments without the facilities, personnel, or procedures necessary to assure the highest practicable degree of quality control sometimes tended to rely on Federal inspection as a substitute for the proper control of their own operations. In those establishments, Federal inspectors were sometimes placed in a burdensome, quasi-supervisory role not appropriate under the PPIA.

The NELS system eliminated much of the need for post-mortem inspectors to act in such a role. In requires that participating establishments have and maintain good control of their facilities, personnel, and processing procedures, as spelled out in a written partial quality control agreement with the Agency. This agreement assures the inspector-in-

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charge that all functions critical to the processing of an acceptable product are being effectively performed by the establishment.

The NELS inspection system uses three post-mortem inspectors on each eviscerating line. Each inspects the outside (with the aid of a mirror), the inside, and the viscera of every third bird presented. The inspectors determine whether the bird should be condemned, salvaged, retained for disposition by a veterinarian, reprocessed, or permitted to move down the line as a passed bird subject to trim and reinspection. After post-mortem inspection is completed at the inspection station, establishment employees perform any necessary trim on all passed carcasses after the giblets are harvested.

The complete NELS inspection system consists of three inspectors performing the NELS inspection procedure and one inspector monitoring the application of an approved partial quality control (QC) program designed to assure that the production process is under control and producing acceptable product. This program—the Poultry Carcass On-Line Quality Control (PCOLQC) Program—is a statistically based sampling system designed to assure the control of an establishment's processing operations. It is the basis for the approval of the use of the NELS inspection system in any establishment.

The maximum line speed achievable under NELS is 91 birds per minute. This speed may be reached when all plant conditions are optimal. The inspector-in-charge is responsible for reducing the line speed when, in his or her judgment, the existing NELS system does not permit adequate inspection because the birds are not presented properly or the health conditions of a particular flock dictate a need for a more extended inspection procedure.

D. New Turkey Inspection (NTI) System

For many years, the traditional inspection procedure was the only one available to turkey processors, and was satisfactory to both FSIS and the turkey industry. As in the traditional procedure applied to broilers and cornish game hens, traditional turkey inspection involved the examination of the whole bird by one inspector who was responsible for proper disposition of the bird, including any required trim, before the bird left the inspection station. In the last several years, the turkey industry has grown and matured to the point that merely expanding the use of the traditional procedure would be impractical and inefficient, and would place demands on resources that would be difficult for the Agency to meet. Therefore, in September of last year, FSIS established the NTI system.

As in NELS, the NTI system places upon establishments the responsibility of developing and maintaining good control of their facilities, personnel, and processing procedures, as detailed in a written partial quality control program, approved by the Agency, that assures the inspector-in-charge that critical processing functions are being effectively performed by the establishment. The NTI system requires one or two inspectors on each eviscerating line. The inspector inspects the outside, inside, and viscera of every bird presented. The inspector determines whether the bird should be condemned, salvaged, retained for disposition by a veterinarian, reprocessed, or permitted to move down the line as a passed bird subject to trim and reinspection.

After post-mortem inspection has been completed at the inspection station(s), establishment employees perform any necessary outside trim on all passed carcasses after the giblets are harvested. Under traditional inspection, the inspector is responsible for identifying those carcasses that must be trimmed, directing the establishment employee to trim the defects, and verifying that the bird has been properly trimmed. However, NTI shifts the responsibility of performing specific outside trim to the establishment employees.

The complete NTI system is like NELS in that it consists of one or two inspectors performing whole bird inspection, and one inspector monitoring the application of an approved partial quality control program to assure that the program is being followed. As in NELS, an acceptable poultry carcass on-line quality control program is the basis for approving use of the NTI system in any establishment. Under NTI, FSIS inspectors are responsible for inspecting the carcasses, monitoring the establishment's application of the partial QC program, conducting regular verification and evaluation sampling and observations to assure that the establishment's data are accurate and truthful, and assuring that ready-to-cook poultry conforms to all applicable regulatory requirements.

The NELS and NTI systems were subject to effectiveness studies comparing them with previously existing inspection procedures. Thus, NELS was operationally tested in three establishments and compared with both MTI and traditional inspection. Similarly, effectiveness studies to test the NTI system and compare it with the traditional inspection procedure were conducted in three establishments. The effectiveness test results indicated that there were no significant differences between NELS, MTI, and traditional inspection for broilers and cornish game hens, or between NTI and traditional inspection for turkeys.

The NELS and NTI systems represent notable advances in the development of efficient, scientifically based inspection systems. The tests conducted on these systems were the most exhaustive ever performed on new inspection procedures. The valuable lessons gained from the development and application of the systems have enabled FSIS to prepare for future inspection systems that will rely extensively on automated equipment and the analysis of computerized data for objective monitoring of inspection performance and the incidence of carcass defects and disease conditions. Moreover, the experience gained by FSIS in operating NELS and NTI has provided the basis for developing SIS.

Development of SIS

Since the inception of NELS and NTI, top Agency veterinarians and technical specialists have devoted many hours to the analysis of work measurement studies, disposition data, and other information from tests of the systems and from inplant operations. The specialists found that a new sequence of hand-eye movements would provide the most efficient and effective inspection procedures.

The analysis of technical information from the NELS and NTI tests, including the new work measurement findings, enabled the Agency to begin preliminary work on a two-inspector NELS system in May 1984. Since that time, the Agency has explored other one- and two-inspector procedures.

Work measurement studies on the two-inspector NELS procedure were begun last year and were carried out over several months. On the basis of these studies, the Agency informed the broiler industry of the potential availability of one- or two-inspector NELS systems. The implementation of these systems would permit additional establishments operating under the older MTI procedure to convert to the NELS system. In addition to permitting increased productivity in the poultry industry, FSIS would be able to fulfill its inspection responsibilities in a more uniform manner within NELS establishments and from establishment to establishment.

The two-inspector NELS system has not yet been formally proposed or

implemented because of a few unresolved problems in establishing uniform approaches to inspection in various settings. Also, during the short time in which the system has been under development there has been no opportunity to demonstrate the two-inspector system under operational conditions.

Nevertheless, the experience gained in developing this system has enabled the Agency to conceive an innovative approach to poultry inspection. Rather than being implemented in the NELS setting, however, the new Streamlined Inspection System is to be applied in MTI establishments. In those establishments, the Agency has accumulated vast inspection experience and is able to sustain a uniform approach to inspection.

SIS includes an inspection procedure that involves whole bird disposition in which each inspector examines the viscera and the inside and outside surfaces of the carcass. The innovation represented by SIS, besides enhancing inspection productivity in existing MTI establishments, may also provide some incentive to establishments now operating under traditional inspection to convert to a system that can permit them to increase their output.

After post-mortem inspection under SIS has been completed at the inspection station(s), establishment employees perform any necessary outside trim on all passed carcasses after all the giblets are harvested. The inspector's helper may perform some trim if time permits.

SIS is being implemented in official establishments now processing broilers and cornish game hens under the MTI procedure. While SIS is an alternate inspection method, its use is not voluntary in those establishments; the new system will be implemented in existing MTI establishments on the basis of the Administrator's determination that SIS will increase inspector efficiency. Establishments not yet operating under MTI may request the implementation of SIS; the request will be approved if the Administrator determines that the system will result in no loss of inspector efficiency.

The chief difference between SIS and MTI is that under the new system there is no mirror inspection station. Rather, there are one or two inspection stations located on the processing line after the birds have been eviscerated. Each inspector examines the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS–1; the two-inspector configuration is known as SIS–2. Inspection under both SIS–1 and SIS–2 is conducted in two phases—a post-mortem inspection phase and a reinspection phase. Under SIS–1, every bird on each production line is presented to a single inspector for examination. Under SIS–2, there are two inspection stations at which each inspector examines the outside, inside, and viscera. Every other bird on the moving production line is presented to each inspector with the backside of the carcass toward the inspector and the viscera uniformly trailing or leading. In both SIS–1 and SIS–2, an establishment employee (termed a helper) is positioned next to each inspector. The maximum inspection rate for SIS–1 is 35 birds per minute; the maximum inspection rate for SIS–2 is 70 birds per minute per inspector team—the same maximum rate as that permitted under MTI.

The inspection rates, or line speeds, are determined by the inspector-in-charge of an official establishment on the basis of his or her professional judgment. Line speeds are dependent on the appropriate presentation of carcasses for inspection. The adequacy of carcass presentation, in turn, depends on such factors as disease conditions in poultry flocks, plant operating conditions, lighting, and facilities. The Agency has developed guidelines for the presentation of carcasses in official poultry slaughter establishments.[1] These guidelines provide objective criteria for determining acceptable presentation and for reducing the line speeds when presentation is less than acceptable for inspecting birds at 70 birds per minute. These guidelines will be applied by the Agency as a part of the SIS.

In the inspection phase of SIS, inspectors determine which birds must be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to be moved down the line as a passed bird subject to reinspection. If an inspector finds that some poultry carcasses have certain defects not requiring condemnation of the whole carcass, the inspector may pass the carcass, which is then subject to reinspection to assure that the defects are physically removed. The helper, at the inspector's direction, marks these carcasses for trim unless the defects are obvious. Trimming of birds passed subject to reinspection is performed by establishment employees after all giblets have been harvested. The inspector's helper may perform some trim if time permits.

The reinspection station or stations are located at the end of the processing lines and after each chiller. At the prechill station, inspectors examine carcasses that have been passed subject to reinspection by visually monitoring, checking data, or gathering samples at the station. SIS incorporates a Finished Product Standards program which is analogous to the Acceptable Quality Limits (AQL) program in the traditional and modified traditional systems and to the Finished Product Standards in the NELS system. The Finished Product Standards program for SIS is applied in two phases, before and after the carcass chilling process. In the prechill phase, the carcasses are checked for processing and trimming defects; in the postchill phase, the birds are checked for defects caused by the chilling operation.

The AQL program used in the traditional inspection systems was designed to be applied either before or after the chilling process. In practice, the AQL has been applied almost exclusively after the chill. (Some turkey processing establishments conduct prechill AQL checks.) The poultry industry has chosen to have AQL checks made after chilling because of production line configurations and space availability. Under the traditional system, the trimming of carcasses was not the responsibility of the establishment, and the performance of AQL checks after the chilling process was therefore acceptable to the Agency. Under this arrangement, however, problems that necessitated a large amount of reworking of product occasionally developed because the finished products were found not to be in compliance with AQL standards.

With the advent of NELS and NTI, the responsibility for trimming carcasses was shifted from Agency inspectors to the establishment. The Agency's experience in developing the finished product standards for NELS and NTI and in applying the PCOLQC program for those systems led to the conclusion that a more responsive system is now available to keep the amount of product rework to a minimum. Data collected during the development of the finished product standards showed that the poultry chilling system itself contributes to carcass defects. The postchill AQL program applied under the traditional systems checks for defects that occur during processing and chilling. It was found that applying the PCOLQC and the finished product standards for NELS and NTI involved the use of two product-checking systems—a prechill

[1] These guidelines are available for public inspection in the office of the FSIS Hearing Clerk. Copies may be obtained free upon request from the Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250

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system and postchill system. The prechill system measures the degree of product nonconformance with processing and trimming standards, while the postchill system measures product nonconformance that occurs in the chilling process.

The prechill and postchill testing systems for NELS and NTI were designed to allow the industry to enhance its responsiveness to process changes and to minimize the amount of rework. As in NELS and NTI, the Finished Product Standards program for SIS includes a prechill test that measures the effectiveness of processing controls and a postchill test that reflects changes taking place during the chilling process.

Products not complying with the finished product standards will be determined by the Agency to be adulterated. The standards for nonconformance used in the Finished Product Standards program for SIS are adapted from those applied in the NELS and NTI systems. These standards were based on data collected on passed birds in a group of (15) randomly selected broiler establishments. In developing the standards, all defects and trimming errors found on the passed birds were recorded. The birds were then passed through the chilling process. Data from observations of the processed birds were compared with data used to set the AQL standards for the traditional inspection systems. The NELS and NTI finished product standards were then provisionally established, after consultation with industry, using criteria similar to those used for the existing AQL. The standards were compared under plant operating conditions with the existing AQL standards and found to be valid. Product evaluated under the new finished product standards was equivalent in quality to product evaluated according to the old AQL standards. Thus, the specific values in the finished product standards and the list of nonconformances for SIS are the same as those already in use in the NELS system, and are based on studies and experience with that system over the last 2 years.

The operation of the Finished Product Standards program is the responsibility of the official establishment. Under SIS, data on the finished product evaluations are recorded using the cumulative sum (CUSUM) concept. In the CUSUM statistical method, the data collected on a given day are compared with previously collected data to determine the establishment's conformity with product standards. Guidelines on the Finished Product Standards program are available upon request from the Slaughter Inspection Standards and Procedures Division at the address given in footnote 1. These guidelines include information on form preparation and CUSUM calculations, and provide examples to clarify the application of the Finished Product Standards program.

SIS–1 requires that the establishment provide one inspection station for each line and reinspection facilities adequate for the removal and examination of carcasses from each line of evaluation. SIS–2 requires the establishment to provide two inspection stations for each line and similarly adequate reinspection facilities. The implementation of SIS will thus entail certain facility changes in the affected establishments. As mentioned previously, the SIS requirements for facilities at the inspection and reinspection stations are proposed in a separate document in this issue of the **Federal Register**. Until these requirements are made final, the facility requirements listed under 9 CFR 381.36(c) for MTI shall be applied for SIS, and in addition establishments must meet the space and facility requirements for trimming and for performing carcass reinspection.

The Interim Rule

In summary, FSIS believes that the recent imposition of budgetary constraints and the demands by the poultry industry for increased inspection service provide the justification and opportunity for innovative change in the inspection of broilers and cornish game hens. The agency is compelled to make substantial economies and to increase productivity with limited resources. At the same time, because of significant advances in poultry inspection methodology—especially the development and implementation of the NELS and NTI systems—it is now possible to apply more efficient inspection systems in establishments where MTI and traditional systems have been in operation. In the professional judgment of senior FSIS veterinarians and technical specialists, the new systems assure consumers of a wholesome, unadulterated product. The new budgetary situation, industry demands, and the recent technical achievements of the Agency combine to make immediate implementation of SIS urgently essential.

List of Subjects in 9 CFR Part 381

Poultry products inspection, Post-mortem.

The Poultry products inspection regulations (9 CFR Part 381) are amended as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq;* 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Section 381.76 (9 CFR 381.76) is amended by revising the heading and paragraph (b) as follows:

§ 381.76 Post-mortem inspection, when required; extend; traditional, Streamlined Inspection System (SIS), New Line Speed (NELS) Inspection System and the New Turkey Inspection (NTI) System; rate of inspection.

* * * * *

(b)(1) There are four systems of post-mortem inspection: Streamlined Inspection System (SIS) and the New Line Speed (NELS) Inspection System, both of which shall be used only for broilers and cornish game hens; the New Turkey Inspection (NTI) System, which shall be used only for turkeys; and Traditional Inspection.

(i) The SIS shall be used only for broilers and cornish game hens if:

(*a*) The Administrator determines that SIS will increase inspector efficiency; or

(*b*) The operator requests SIS and the Administrator determines that the system will result in no loss of inspection efficiency.

(ii) The NELS Inspection System shall be used only for broilers and cornish game hens if:

(*a*) The operator requests the NELS Inspection System, and

(*b*) The Administrator determines that the establishment has the intent and capability to operate at line speeds greater than 70 birds per minute, and meets all the facility requirements in § 381.36(d) and receives approval of its partial quality control program as specified in paragraph (c) of this section.

(iii) The NTI System shall be used only for turkeys if:

(*a*) The operator requests it, and

(*b*) The Administrator determines that the establishment meets all the facility requirements in § 381.36(e), and receives approval of its partial quality control program as specified in paragraph (c) of this section.

(iv) Traditional inspection shall be used for turkeys when the NTI System is not used. For other classes of poultry, Traditional Inspection shall be used when neither the SIS nor the NELS Inspection System is used.

(2) The requirements of paragraph (a) of this section are applicable to all four inspection systems.

(3) The following requirements are applicable to SIS:

(i) *Definitions.* For purposes of this subparagraph, the following definitions shall apply:

(*a*) *Cumulative sum (CUSUM).* A statistical concept used by the establishment and monitored by the inspector whereby compliance is determined based on sample results collected over a period of time. For purposes of determining compliance with the finished product standards, the CUSUM is equal to the sum of prior test results plus the weighted result of the current test minus the tolerance, with the condition that the resulting CUSUM cannot go below zero.

(*b*) *Tolerance number.* A weighted measure that equates to product being produced at a national product quality level. See Table 2.

(*c*) *Action number.* A level reached by the CUSUM where the process is out of control and product action is required by the establishment or the inspector. See Table 2.

(*d*) *Start number.* A value halfway between zero and the action number used to determine the CUSUM for the following shift and to reset the CUSUM after reaching the action number. See Table 2.

(*e*) *Subgroup.* A 10-bird sample collected before product enters the chiller and after product leaves the chiller.

(*f*) *Subgroup absolute limit.* The tolerance number plus 5. See Table 2.

(*g*) *Prechill testing.* Testing conducted by the establishment to determine the CUSUM on consecutive 10-bird subgroup samples collected prior to product entering the chilling system.

(*h*) *Postchill testing.* Testing conducted by the establishment to determine the CUSUM on consecutive 10-bird subgroup samples collected as the product leaves the chilling system.

(*i*) *Rework.* Reprocessing the product to correct the condition or conditions causing the nonconformances listed in Table 1.

(ii) *General.*

(*a*) Under SIS, one inspector inspects the outside, inside, and viscera of each bird. There may be two inspectors on one processing line, each inspecting every other bird. For the establishment to run its processing line(s) at maximum speed, optimal conditions must be maintained so that inspection may be conducted efficiently. The inspector in charge determines the speed at which each processing line may be operated to permit inspection. A variety of conditions may affect this determination including the health of each flock and the manner in which birds are being presented to the inspector for inspection.

(*b*) SIS may be performed by one inspector (SIS–1) or two inspectors (SIS–2). SIS–1 requires that the establishment provide one inspection station for each line and adequate reinspection facilities so carcasses can be removed from each line for evaluation. The maximum line speed for SIS–1 is 35 birds per minute. SIS–2 requires that the establishment provide two inspection stations for each line and adequate reinspection facilities so carcasses can be removed from each line for evaluation. The maximum line speed for SIS–2 is 70 birds per minute.

(*c*) Under all inspection systems, including SIS, inspectors conduct post-mortem inspection and look for a number of conditions, as specified elsewhere in this subpart, which may indicate adulteration. Adulterated product is condemned and destroyed, except that carcasses and parts which may be made unadulterated by reprocessing (reworking) may be so reprocessed under the supervision of an inspector and reinspected. Under SIS, inspectors also reinspect product by sampling finished birds (both before and after chilling) for nonconformances with finished product standards (see Table 1). If such nonconformances are present at certain statistical levels, it may indicate process difficulties requiring corrective action by the establishment. If the establishment does not take adequate corrective action, the inspector shall initiate corrective actions such as conducting closer post-mortem inspections and requiring reprocessing and reinspection of previously processed carcasses and parts. Thus, SIS is conducted in two phases—a post-mortem inspection phase and a reinspection phase. The following paragraphs describe the inspection requirements (not addressed elsewhere in this subpart) under each.

(iii) *Post-mortem inspection.*

(*a*) Facilities: Each inspection station must comply with the facility requirements in § 381.36(c).

(*b*) Presentation: Each inspector shall be flanked by an establishment employee assigned to be the inspector's helper. The one inspector on the SIS–1 line shall be presented every bird. Each inspector on the SIS–2 line shall be presented every other bird on the line. An establishment employee shall present each bird to the inspector properly eviscerated with the back side toward the inspector and the viscera uniformly trailing or leading. Each inspector shall inspect the inside, viscera, and outside of all birds presented.

(*c*) Disposition: The inspector shall determine which birds shall be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to proceed down the line as a passed bird subject to trim and reinspection. Carcasses with certain defects not requiring condemnation of the entire carcass shall be passed by the inspector, but shall be subject to reinspection to ensure the physical removal of the defects. The helper, under the supervision of the inspector, shall mark such carcasses for trim when the defects are not readily observable. Trimming of birds passed subject to reinspection shall be performed by: (*1*) the helper, time permitting, and (*2*) one or more plant trimmers positioned after all giblets are harvested and prior to reinspection.

(iv) *Reinspection.*

(*a*) Facilities: Reinspection stations are required at both the prechill and postchill locations. The Agency will determine the number of stations needed in those establishments having more than one processing line or more than one chiller. One or more prechill reinspection stations shall be conveniently located at the end of the line or lines prior to chilling. One or more postchill stations must be conveniently located at the end of the chiller or chillers. The prechill and postchill reinspection stations must meet the following provisions:

(*1*) Floor space shall consist of 3 feet along each conveyor line. The space shall be level and protected from all traffic and overhead obstructions.

(*2*) A table at least 2 feet wide and 2 feet deep and 3 feet in height designed to be readily cleanable and drainable shall be provided for reinspecting the sampled birds.

(*3*) A minimum of 200 foot-candles of shadow-free lighting with a minimum color rendering index of 85 on the table surface.

(*4*) A separate clip board holder shall be provided for holding the recording sheets.

(*5*) Hangback racks designed to hold 10 carcasses shall be provided for and positioned within easy reach of the person at the station.

(*b*) Disposition: An inspector shall monitor the establishment's application of the Finished Product Standards program and shall take corrective action including retaining product to prevent adulterated product from leaving the establishment when the inspector determines that the establishment has

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failed to apply the program as prescribed in paragraph (b)(3)(iv)(*c*).

(*c*) Finished Product Standards: Finished Product Standards (FPS) are criteria applied to processed birds before and after chill to ensure that the product being produced is consistently wholesome and unadulterated. These criteria consist of nonconformances (listed in Table 1), the incidence of which is determined from 10 bird subgroup samples, reduced to a CUSUM number, and measured against the standards (Table 2). The standards are applied to permit the Agency to estimate when the production process is in control and when it is out of control. The establishment is responsible for maintaining FPS which, in turn, is monitored by the inspector. FPS is applied in two separate parts. The first is called prechill testing. It is designed to ensure that the slaughter and evisceration procedures are in control. Compliance is measured by determining the CUSUM on consecutive 10-bird subgroup samples collected prior to product entering the chilling system. The second part of the FPS is called postchill testing. It is designed to monitor the production through the chill system to ensure that it meets the postchill FPS. This test is independent of the prechill test. Compliance is measured by determining the CUSUM on consecutive 10-bird subgroup samples as they exit the chilling system. When the system is operating within compliance, the establishment applies the FPS to product samples at the prechill reinspection station. Testing time and time between tests are such that birds represented by the test are still within the chiller. If an out-of-compliance condition is found, the product leaving the chiller is segregated for rework and retested before it may proceed into commerce. A second 10 bird subgroup sample of the birds is taken after they leave the chiller to ensure that the product meets the postchill FPS. Since the product is closer to the end of processing, the controls on releasing reworked product are stricter than controls under prechill testing, again to ensure that no adulterated product enters into commerce.

(*d*) *Prechill testing.* The prechill FPS have been divided into processing and trim categories. The processing category is designed to monitor the output of the dressing and evisceration procedures. The trim category monitors the establishment's ability to remove unwholesome lesions and conditions from inspected and passed carcasses. Each category is monitored independently of the other category using a separate CUSUM for each category.

(*1*) *Actions to be taken when the process is in control.* If the CUSUM is less than the action number and the subgroup absolute limit is not exceeded, the process is judged to be in control.

(*i*) Establishment Actions. The establishment shall:

(*a*) Randomly select and record subgroup sampling times for each production unit of time before product reaches the prechill reinspection station on the production line. In no case shall the time between tests exceed 1 hour of production time.

(*b*) Conduct a 10-bird subgroup test at a random time on each poultry slaughter line. These times are preselected by the establishment and available to the inspector prior to the start of the shift/day's operations. All 10 samples of the subgroup shall be collected at the random time.

(*c*) Obtain the weighted value of each nonconformance by multiplying the number recorded for each nonconformance by the "factor" in Table 1, sum the total of all the nonconformances, and calculate the CUSUM value for that test.

(*ii*) Inspector actions. The inspector shall:

(*a*) Select random times for monitoring subgroup tests for each half-shift on the evisceration line. In establishments that have multiple evisceration lines on a production shift, monitor all lines of product at the random times.

(*b*) Collect the subgroup samples to be monitored at preselected times. All 10 samples of the subgroup shall be collected at the random time selected in (*ii*)(*a*) above.

(*c*) Conduct the 10-bird monitoring subgroup test.

(*2*) *Actions to be taken when the subgroup absolute limit is exceeded.* If either an inspector or establishment subgroup test exceeds the subgroup absolute limit of tolerance plus 5 (T+5), the establishment shall determine if any of the immediate past 5 plant prechill subgroups for that category (processing or trim) resulted in a CUSUM above the start number.

(*a*) If all of the past 5 plant prechill subgroups are at or below the start number, the establishment shall immediately conduct a retest subgroup on that category of prechill to determine sample validity. If retest subgroup total equals tolerance or less, the establishment resumes random time testing. If the retest subgroup total exceeds tolerance, the establishment shall proceed as if CUSUM reaches the action number and shall begin process actions as set forth in paragraph (b)(3)(iv)(*d*)(*4*). In either case, the prechill retest results will be used to calculate CUSUM.

(*b*) If any of the past 5 plant prechill subgroups resulted in a CUSUM above the start number, the establishment shall proceed as if CUSUM reaches the action number and shall begin process actions as set forth in paragraph (b)(3)(iv)(*d*)(*4*).

(*3*) *Actions to be taken when a trimmable lesion/condition is found.* If either inspection or plant monitoring finds any trimmable lesion or condition as specified in item B(7) of Table 1 during a prechill subgroup test, the establishment shall immediately conduct an additional prechill subgroup test for the same trimmable lesion/condition category. This is a requirement on the subgroup testing for the prechill trim nonconformance that is in addition to the CUSUM test described in subdivision (*1*).

(*a*) If no additional item in the same category is found on retest, the establishment shall resume random time sampling.

(*b*) If an additional item in the same category is found on retest, the establishment shall proceed as if CUSUM reaches the action number and shall initiate corrective action set forth in paragraph (b)(3)(iv)(*d*)(*4*) for this category only.

(*4*) *Actions to be taken when the CUSUM reaches the action number.* Once CUSUM reaches the action number, the process is judged to be not in control.

(*i*) Establishment Actions. The establishment shall:

(*a*) Immediately notify the inspector in charge and the production supervisor responsible for the affected evisceration line.

(*b*) Suspend random time prechill testing of the affected nonconformance category (processing or trim). Suspend random time postchill subgroup testing when the processing category is the affected nonconformance category.

(*c*) Conduct subgroup retests on carcasses leaving the chill system. Apply the prechill criteria in Table 1 (A) or (B), depending upon which category caused the action, and apply prechill Finished Product Standards as listed in Table 2 to determine product compliance. In no case shall the time between retests exceed 30 minutes of production time. Apply prechill standard criteria at the postchill location after notifying the establishment's production supervisor. If any of these subgroup retests on product leaving the chill system result in a subgroup total exceeding tolerance, identify for rework

subsequent product at the postchill location. All noncomplying product will be brought into compliance prior to release into commerce. Product from the chiller will continue accumulating for rework until a subsequent subgroup test results in a subgroup total equal to or less than tolerance.

(*d*) Conduct additional subgroup tests at the prechill reinspection station to determine the adequacy of production corrective action. If the prechill tests results in a subgroup total exceeding the tolerance, notify the production supervisor. The number of additional tests at the postchill reinspection station using prechill standards is increased as required to include the product in the chiller represented by this additional prechill test.

(*e*) After two consecutive additional prechill subgroup tests result in subgroup totals equal to or less than tolerance:

(*1*) Resume random time prechill subgroup testing as set forth in actions to be taken when the process is in control at paragraph (b)(3)(iv)(*d*)(*1*).

(*2*) Identify product entering the chill system that will mark the end of the retest action upon arrival at the postchill sampling location. Such identification may include tagging or empty space in chillers, depending upon the establishment's identification method.

(*3*) If two consecutive additional prechill subgroup tests demonstrate process control with subgroup totals equal to or less than tolerance, but they do not cause CUSUM to fall to the start line or below, reset CUSUM at the start number.

(*ii*) Inspector Actions. The inspector shall monitor product and process actions by making spot-check observations to ensure that all program requirements are met.

(*e*) *Postchill testing.* Postchill subgroups shall be collected after the product leaves the chiller but before the product is divided into separate processes. Each bird sampled shall be observed and its conformance measured against the postchill criteria. The subgroup nonconformance weights shall be totaled and the CUSUM calculated by subtracting the tolerance from the sum of the subgroup total and the starting CUSUM.

(*1*) *Actions to be taken when the process is in control.* If the CUSUM is less than the action number and the subgroup absolute limit is not exceeded, the process is judged to be in control.

(*i*) Establishment Actions. The establishment shall conduct a 10-bird subgroup test for each chiller system at a randomly selected time of production. In no case shall the time between tests exceed 2 hours of production time.

(*ii*) Inspector Actions. The inspector shall:

(*a*) Select random times for postchill monitoring.

(*b*) Monitor each chill system twice per shift.

(*c*) Conduct subgroup tests at preselected random times.

(*2*) *Actions to be taken when the subgroup absolute limit is exceeded.* If either an inspector or establishment subgroup test exceeds the subgroup absolute limit of tolerance plus 5(T+5), the establishment shall determine if any of the last 5 postchill monitoring subgroups resulted in a CUSUM above the start number.

(*a*) If all of the past 5 postchill monitoring subgroups resulted in a CUSUM at or below the start number, the establishment shall immediately retest a subgroup to determine sample validity. If this retest subgroup total exceeds tolerance, the establishment shall proceed as if CUSUM reaches the action number and shall begin process actions as set forth in paragraph (b)(3)(iv)(*e*)(*3*).

(*b*) If any of the past 5 postchill monitoring subgroups resulted in a CUSUM above the start number, the establishment shall proceed as if CUSUM reaches the action number and shall begin process actions as set forth in paragraph (b)(3)(iv)(*e*)(*3*).

(*3*) *Actions to be taken when the CUSUM reaches the action number.* Once CUSUM reaches the action number, the process is judged to be not in control.

(*i*) Establishment Actions. The establishment shall:

(*a*) Notify the inspector in charge and the production supervisor responsible for product in the chiller.

(*b*) Suspend random time postchill subgroup testing.

(*c*) Immediately conduct an additional postchill subgroup test. If the retest subgroup total exceeds tolerance, the establishment shall identify subsequent product for rework. Product will continue accumulating for rework until a subsequent subgroup test results in a subgroup total equal to or less than tolerance.

(*d*) After two consecutive additional postchill subgroup tests results in subgroup totals equal to or less than tolerance:

(*1*) Resume random time postchill subgroup testing as set forth in actions to be taken when the process is in control at paragraph (b)(3)(iv)(*e*)(*1*).

(*2*) If the two consecutive additional postchill subgroup totals equal to or less than tolerance do not cause CUSUM to fall to the start number or below, reset CUSUM at the start number.

(*ii*) Inspector Actions. The inspector shall monitor product and process actions to ensure that program requirements are met.

(*v*) When the prechill or postchill product has been identified as having been produced when the process was not in control, additional online subgroup testing by the establishment is required to determine its conformance to the standard. If any of the additional plant subgroup testing results in a subgroup total exceeding tolerance, offline product corrective actions must take place. The responsibilities of the establishment and the inspector change depending on the CUSUM.

All corrective actions such as identifying affected product, segregating product, and maintaining control through rework actions are the establishment's responsibility. Corrective actions by the inspector depends upon the establishment's ability to control rework of affected product. If the establishment fails in its responsibilities, the inspector will identify, segregate, and retain affected product to prevent adulterated product from reaching consumers.

(*a*) Offline product. The establishment shall identify the affected product so that it may be segregated and accumulated offline for rework. The inspector shall spot check the establishment's identification, segregation, and control of reworked product to ensure that program requirements are met.

(*b*) Reworked product. Reworked product must be tested by the establishment with a randomly selected subgroup test of the accumulated reworked lot. Before product is released, the random subgroup test must result in a subgroup total equal to or less than tolerance. If the subgroup test of a reworked lot results in a subgroup total exceeding tolerance, the lot must be reworked again before another subgroup is selected. The following actions are required.

(*1*) Establishment Actions. The establishment shall:

(*i*) Select the random subgroup from throughout the lot only after the total lot has been reworked.

(*ii*) Conduct the subgroup test using the same criteria (prechill or postchill) that resulted in the rework action.

(*iii*) Release the lot if the reworked subgroup test resulted in a subgroup total equal to or less than tolerance.

(*iv*) Identify and control the lot to be reworked if the reworked subgroup total again exceeds tolerance.

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(2) Inspector Actions: The inspector shall spot check the rework procedure to ensure that plant monitoring and production meet the requirements of the program.

(vi) After the 10 bird subgroup tests are completed, the prechill and postchill processing nonconformances shall be corrected on all bird samples prior to returning the samples to the product flow. Samples with trim nonconformances shall be returned to the trim station for correction prior to their return to the product flow.

Table 1.—*Definitions of Nonconformances*

A Processing Nonconformances

1 Extraneous material <⅛"
—Include any specks, tiny smears, or stains of material that measure ⅛" or less in the greatest dimension.
Examples: Ingesta, feces, unattached feathers, grease, bile remnants, and/or whole gall bladder or spleen, embryonic yolk, etc.
—Factor is one.
—1 to 5=1 defect; 6 to 10=2 defects; 11 or more=3 defects. A maximum of three incidents per carcass.

2 Extraneous material >⅛" to 1"
—The same material as line 1, but measuring >⅛" to 1" in the longest dimension.
—Factor is one.
—A maximum of three incidents per carcass.
Note: Feces that is ⅛" or greater should be classified under number 8 Feces.

3 Extraneous material >1"
—The same material as lines 1 to 2, but measuring greater than one inch.
—Factor is two.
—A maximum of two incidents per carcass.

4 Oil glands remnant—less than two whole glands
—Recognizable fragment(s) of one or both oil glands equals one incident.
—Factor is one.
—Maximum of one incident per carcass.

5 Oil glands—(two whole glands
—Both whole oil glands with no missing fragments equals one incident. If the oil glands are cut, but no fragment is removed, consider them to be whole. But if even a small fragment is removed, use line 4.
—Factor is two.
—A maximum of one incident per carcass.

6 Lung >¼" whole
—Any portion less than a whole lung, and equal to or greater than ¼" at the greatest dimension, equals one incident.
—Factor is one.
—A maximum of two incidents per carcass.

7 Lung—whole
—Each whole lung equals one incident.
—Factor is two.
—A maximum of two incidents per carcass.

8 Feces >⅛"
—Any material determined to be from the lower gastrointestinal tract, measuring ⅛" or more, equals one incident.
—Factor is five.
—A maximum of one incident per carcass.

9 Intestine
—Any identifiable portion of the terminal portion of the intestinal tract with a lumen (closed circle) present, or split piece of intestine large enough to be closed to form a lumen.
—Factor is five.
—A maximum of one incident per carcass.

10 Cloaca
—Any identifiable portion of the terminal portion of the intestinal tract with mucosal lining.
—Factor is five.
—A maximum of one incident per carcass.

11 Bursa of Fabricius
—A whole rosebud, or identifiable portion with two or more mucosal folds.
—Factor is two.
—A maximum of one incident per carcass.

12 Esophagus
—Any portion of the esophagus with identifiable mocosal lining.
—Factor is two.
—A maximum of one incident per carcass.

13 Crop—partial—with mucosa
—Any portion of the crop that includes the mucosal lining.
—Factor is two.
—A maximum of one incident per carcass.

14 Crop—whole
—Any complete crop.
—Factor is five.
—A maximum of one incident per carcass.

15 Trachea <1"
—Identifiable portion of trachea less than or equal to one inch long.
—Factor is one.
—A maximum of one incident per carcass.

16 Trachea >1"
—Identifiable portion of trachea greater than one inch.
—Factor is two.
—A maximum of one incident per carcass.

17 Hair >⅛" 26 or more.
—Hair which is one-fourth inch long or longer measured from the top of the follicle to the end of the hair. 26 or more hairs equal one incident.
—Factor is one.
—A maximum of one incident per carcass.

18 Feather and/or Pinfeathers <1"
—Attached feathers or protruding pinfeathers less than or equal to one inch long. Scored 5 to 10 per carcass as one incident, 11 to 15 per carcass as two incidents, and 16 or more as three incidents.
—Factor is one.
—A maximum of three incidents per carcass.

19 Feathers >1"
—Attached feathers longer than one inch. Scored 1 to 3 per carcass as one incident 4 to 6 per carcass as two incidents, and 7 or more as three incidents.

20 Long Shank—both condyles covered
—If the complete tibiotarsal joint is covered, it equals one incident.
—Factor is two.
—A maximum of two incidents per carcass.

B Trim nonconformances

1 Breast blister
—Inflammatory tissue, fluid, or pus between the skin and keel must be trimmed if membrane "slips" or if firm nodule is greater than ½" in diameter (dime size).
—Factor is two.
—A maximum of one incident per carcass.

2 Breast blister—partially trimmed
—All inflammatory tissue, including that which adheres tightly to the keel bone, must be removed.
—Factor is two.
—A maximum of one incident per carcass.

3 Bruise ½" to 1"
—Blood clumps or clots in the superficial layers of tissue, skin, muscle or loose subcutaneous tissue may be slit and the blood completely washed out. When the bruise extends into the deeper layers of muscle, the affected tissue must be removed. Very small bruises less than ½" (dime size) and areas showing only slight reddening need not be counted as defects.
—Factor is one.
—A maximum of five incidents per carcass.

4 Bruise >1"
—Same criteria as in line three, but greater than one inch in greatest dimension.
—Factor is two.
—A maximum of three incidents per carcass.

5 Bruise black/green ¼" to 1"
—Bruises ¼" to 1" that have changed from red to a black/blue or green color due to age.
—Factor is two.
—A maximum of three incidents per carcass.

6 Bruise Black/green >1"
—Same as line 5, but measuring greater that 1" in greatest dimension.
—Factor is five.
—A maximum of two incidents per carcass.

7 Trimmable lesions/Condition
—A tumor or identifiable portion of a tumor on any part of the carcass.
—Synovitis/airsacculitis lesions that have not been removed.
—Factor is five.
—A maximum of one incident per carcass.

8 Failure to complete task as indicated by marking system
Example: Synovitis, airsacculitis, inflammatory process, contamination, etc.
—When plants have an approved marking system, the helper, under the inspector's direction, will apply a mark to the carcass, indicating to the trimmer(s) that specific action must be taken on that carcass. When airsac and kidney cleanout, or synovitis part removal, or carcass removal from the line is not completed, or only partially completed, this occurrence is recorded as one defect.
—Factor is five.
—A maximum of one incident per carcass.

9 Compound fracture
—Any bone fracture (i.e., leg or wing) that has caused an opening through the skin. May be accompanied with a bruise, but not always. Do not count the bruise in line 3 of 4 if it is associated with the compound fracture.

10 Wingtip compound fracture
—Same criteria as line 9, but only for wingtips.
Note: Bruises not associated with the fracture should be recorded in the appropriate lines.
—Factor is one.
—A maximum of two incidents per carcass.

11 Untrimmed short hock
—When no cartilage of the hock surface is present and no tendons are attached to the bone.
—Factor is two.
—A maximum of two incidents per carcass.

12 Sores, scabs, inflammatory process, etc. <½"
—Any defects such as sores, abscesses, scabs, wounds, dermatitis, inflammatory process, that measure less than or equal to ½" in the greatest dimension.
—Factor is two.
—A maximum of two incidents per carcass.

13 Sores, scabs, inflammatory process, etc. >½"
—Same as line 12, but greatest dimension is greater than ½", or a cluster of smaller lesions in close proximity >½", this category also includes turkey leg edema.
—Factor is five.
—A maximum of one incident per carcass.

14 External mutilation
—Mutilation to the skin and/or muscle that is caused by the slaughter, dressing or eviscerating processes. Skinned elbows (bucked wings) do not trim require unless affected wing joint capsule is also opened.
—Factor is one.
—A maximum of three incidents per carcass.

C Postchill nonconformances—(Designed to monitor those nonconformances added to product during the chilling process)

1 Extraneous material <⅛"
—Include specks, grease, or unidentifiable foreign material that measure ⅛" or less in the greatest dimension.
—Example: Ingesta, grease, or unidentifiable foreign material.
—Factor is one.
—3 to 7=1 defect; 8 to 12=2 defects; 13 or more=3 defects. A maximum of three incidents per carcass.

2 Extraneous material >⅛" to 1"
—This includes ingesta, grease, or unidentifiable foreign material measureing >⅛" to 1" longest dimension.
—Factor is one.
—A maximum of three incidents per carcass.

3 Extraneous material >1"
—The same material as line 2, but measuring greater than one inch.
—Factor is two.
—A maximum of two incidents per carcass.

Table 2.—*Finished Product Standards*

	SIS
Prechill Processing Nonconformance	
Tolerance number (T)	25
Subgroup Absolute Limit (T+5)	30
Action number	22

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Table 2.—*Finished Product Standards*—Continued

	SIS
Start number	11
Prechill Trim Nonconformance	
Tolerance number (T)	12
Subgroup Absolute Limit (T+5)	17
Action number	15
Start number	8
Postchill Nonconformance	
Tolerance number (T)	5
Subgroup Absolute Limit (T+5)	10
Action number	10
Start number	5

* * * * *

Pursuant to the authority in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this amendment at this time are impracticable and contrary to public interest, and good cause is found for making this amendment effective less than 30 days after publication of this document. A final document discussing comments received and any amendment required will be published in the **Federal Register** as soon as possible.

Done at Washington, DC, on: January 13, 1986.

Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 86-1883 Filed 1-28-86; 8:45 am]
BILLING CODE 3410-DM-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3175]

Federated Department Stores, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Cincinnati, Ohio retailer and its division operating 14 department stores in Texas (Foley's), among other things, to inform rejected credit applicants if it used information from credit reporting agencies as a basis for denying credit, and the name and address of the credit reporting agencies used. The order requires respondents to comply with the provisions of the Fair Credit Reporting Act, and is binding on all of Federated's divisions. Additionally, Foley's is required to review all credit applications rejected between January 1983 and February 1985 and spend appropriate FCRA notices to all consumers who did not receive them.

DATE: Complaint and Order issued December 30, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Kristen L. Malmberg, Dallas Regional Office, Federal Trade Commission, 8303 Elmbrook Dr., Dallas, TX 75247, (214) 767-7050.

SUPPLEMENTARY INFORMATION: On Wednesday, Aug. 28, 1985, there was published in the **Federal Register**, 50 FR 34859, a proposed consent agreement with analysis In the Matter of Federated Department Stores, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its modified order to cease and desist, as set forth below, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; 13.382–5 Formal regulatory and/or statutory requirements; 13.382–5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–37 Formal regulatory and/or statutory requirements; 13.533–45 Maintain records. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1852 Formal regulatory and/or statutory requirements.

List of Subjects in 16 CFR Part 13

Consumer credit, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128–36; 15 U.S.C. 1681–1681t)

Emily H. Rock,
Secretary.

[FR Doc. 86-1885 Filed 1-28-86; 8:45 am]
BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

16 CFR Part 13

[Dkt. 9162]

Welder Health and Fitness, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Woodland Hills, Calif. manufacturer and distributor of nutrient supplements and three corporate officers, among other things, to make refunds to purchasers of "Anabolic Mega-Pak" or "Dynamic Life Essence." If the refunds total less than $400,000, respondents are required to donate the difference to fund research on the relationship of nutrition to muscle development. Respondents are required to publish notices of the refund offer in two bodybuilding magazines. Additionally, respondents are prohibited from: (1) Making unsubstantiated claims that its products promote muscular development, produce human-growth hormone or that its products are unique; and (2) misrepresenting any scientific test, research article, survey or other scientific opinion or data as it applies to their products.

DATE: Complaint issued July 26, 1984. Decision issued December 11, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Michael Sirota, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353-4423.

SUPPLEMENTARY INFORMATION: On Wednesday, August 21, 1985, there was published in the **Federal Register**, 50 FR 33778, a proposed consent agreement with analysis In the Matter of Weider Health and Fitness, Inc., a corporation, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E., Holding Co. Ltd., a corporation, and Ben Weider, individually and as a director of Weider Health and Fitness, Inc., and as an officer of M.L.E. Holding Co. Ltd., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form

[1] Copies of the Complaint and Decision and Order are filed with the original document.

contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: 13.170 Qualities or properties of product or service; 13.170–52 Medicinal, therapeutic, healthful, etc. Subpart—Corrective Actions and/or Requirements: 13.533 Corrective actions and/or requirements; 13.533–45 Maintain records; 13.533–45(a) Advertising substantiation.

List of Subjects in 16 CFR Part 13

Nutrient supplements, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,
Secretary.

[FR Doc. 86-1888 Filed 1-28-86; 8:45 am]
BILLING CODE 6750-01-M

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.
ACTION: Publication of ranges of comparability for dishwashers.

SUMMARY: Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of energy costs for dishwashers have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on November 17, 1983 remain in effect until new ranges are published.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: James Mills or Lucerne D. Winfrey, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 376-8934.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates for each product type.[4] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for dishwashers have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges of November 17, 1983.[5]

In consideration of the foregoing, the present ranges for dishwashers will remain in effect for the next year.

List of subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Emily H. Rock,
Secretary.

[FR Doc. 86-1887 Filed 1-28-86; 8:45 am]
BILLING CODE 6750-01-M

[1] Pub. L. 94-163, 89 Stat. 871, 42 U.S.C. 6201 (1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furneces are due by May 1; reports for dishweshers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers ere due by August 1.

[5] 48 FR 52292 (November 17, 1983).

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM80-53]

Natural Gas: Ceiling Prices; Maximum Lawful Prices and Inflation Adjustment Factors

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order of the director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 357.307(1), the Director of the Office of Pipeline and Producer Regulation revises and publishes the maximum lawful prices prescribed under Title I of the Natural Gas Policy Act (NGPA) for the months of February, March and April, 1986. Section 101(b)(6) of the NGPA requires that the Commission compute and publish the maximum lawful prices before the beginning of each month for which the figures apply.

EFFECTIVE DATE: February 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Director, OPPR, (202) 357-8500.

Order of the Director, OPPR

In the matter of Publication of prescribed maximum lawful prices under the Natural Gas Policy Act of 1978; Docket No. RM80-53.

Issued: January 24, 1986.

Section 101(b)(6) of the Natural Gas Policy Act of 1978 (NGPA) requires that the Commission compute and make available maximum lawful prices and inflation adjustments prescribed in Title I of the NGPA before the beginning of any month for which such figures apply.

Pursuant to this requirement and § 375.307(1) of the Commission's regulations, which delegates the publication of such prices and inflation adjustments to the Director of the Office of Pipeline and Producer Regulation, the maximum lawful prices for the months of February, March and April, 1986 are issued by the publication of the price tables for the applicable quarter. Pricing tables are found in § 271.101(a) of the Commission's regulations. Table I of § 271.101(a) specifies the maximum lawful prices for gas subject to NGPA sections 102, 103(b)(1)(2), 105(b)(3), 106(b)(1)(B), 107(c)(5), 108 and 109. Table II of § 271.101(a) specifies the maximum lawful prices for sections 104 and 106(a) of the NGPA. Table III of § 271.102(c) contains the inflation adjustment factors. The maximum lawful prices and the inflation adjustment factors for the periods prior to February 1986 are found in the tables in §§ 271.101 and 271.102.

List of Subjects in 18 CFR Part 271

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

§ 271.101 [Amended]

1. Section 271.101(a) is amended by inserting the maximum lawful prices for February, March and April, 1986 in Tables I and II.

* * * * *

TABLE I.—NATURAL GAS CEILING PRICES

[Other than NGPA sections 104 and 106(a)]

Subpart of Part 271	NGPA Section	Category of Gas	Maximum lawful price per MMBtu for deliveries in—		
			February 1986	March 1986	April 1986
B	102	New Natural Gas, Certain OCS Gas[4]	$4.191	$4.216	$4.241
C	103(b)(1)	New Onshore Production Wells[5]	3.074	3.083	3.092
	103(b)(2)	New Onshore Production Wells[5]	3.633	3.650	3.667
E	105(b)(3)	Intrastate Existing Contracts	4.149	4.171	4.193
F	106(b)(1)(B)	Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas[1]	1.759	1.764	1.769
G	107(c)(5)	Gas Produced from Tight Formations[2]	6.148	6.166	6.184
H	108	Stripper Gas	4.486	4.513	4.540
I	109	Not Otherwise covered	2.546	2.553	2.560

[1] Section 271.602(a) provides that for certain gas sold under an intrastate rollover contract the maximum lawful price is the higher of the price paid under the expired contract, adjusted for inflation or an alternative Maximum Lawful Price specified in this Table. This alternative Maximum Lawful Price for each month appears in this row of Table I. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's regulations.)

[2] The maximum lawful price for tight formation gas is the lesser of the negotiated contract price or 200% of the price specified in Subpart C of Part 271. The maximum lawful price for tight formation gas applies on or after July 16, 1979. (See § 271.703 and § 271.704.)

[4] Commencing January 1, 1985, the price of natural gas finally determined to be new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's regulations.)

TABLE II.—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(A)

[Subpart D, Part 271]

Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in—		
		February 1986	March 1986	April 1986
Post-1974 gas	All producers	$2.546	$2.553	$2.560
1973-1974 Biennium gas	Small producer	2.153	2.159	2.165
	Large producer	1.644	1.649	1.654
Interstate Rollover gas	All producers	.946	.949	.952
Replacement contract gas or recompletion gas	Small producer	1.208	1.211	1.214
	Large producer	.927	.930	.933
Flowing gas	Small producer	.613	.615	.617
Certain Permain Basin gas	Large producer	.515	.516	.517
	Small producer	.720	.722	.724
Certain Rocky Mountain gas	Large producer	.639	.641	.643
	Small producer	.720	.722	.724
Certain Appalachian Basin gas	Large producer	.813	.815	.817
	North subarea contracts dated after 10-7-69	.582	.584	.586
Minimum rate gas [1]	Other contracts	.537	.539	.541
	All producers	.317	.318	.319

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.

* * * * *

§ 271.102 [Amended]

2. Section 271.102(c) is amended by inserting the inflation adjustment for the months of February, March and April, 1986 in Table III.

* * * * *

TABLE III—INFLATION ADJUSTMENT

Month of delivery 1986	Factor by which price in preceding month is multiplied
February	1.00287
March	1.00287
April	1.00287

[FR Doc. 86-1913 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM79-14]

Natural Gas Policy Act; Publication of Incremental Pricing Acquisition Cost Thresholds

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: February 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

Order of the Director, OPPR

In the matter of publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978; Docket No. RM79-14.

Issued: January 24, 1986.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of February 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The threshold price for February which is based upon 130% of the cost of No. 2 fuel oil landed in New York City reflects data gathered by the Energy Information Administration for an earlier month and may not be truly indicative of actual experience for the month of February, particularly in view of the recent decline in crude oil prices. Nevertheless, the threshold price is meaningful for its purpose which is to establish a level above which amounts paid for high-cost gas would be subject to an incremental pricing surcharge. Since little, if any, natural gas is being purchased at prices even approximating the threshold, there should be no impact upon the pipelines and their customers.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Calendar Year 1985												
Incremental Pricing Threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA Section 102 Threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA Section 109 Threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140
Calendar Year 1986												
Incremental Pricing Threshold	$2.460	$2.467										
NGPA Section 102 Threshold	4.166	4.191										
NGPA Section 109 Threshold	2.539	2.546										
130% of No. 2 Fuel Oil in New York City Threshold	7.370	7.930										

[FR Doc. 86-1923 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8072]

Income Taxes; Temporary Regulations Under Section 338(b) of the Internal Revenue Code of 1954; Basis of Target Corporation Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to section 338(b) of the Internal Revenue Code of 1954 ("Code") as added by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"). This document also contains amendments to other temporary regulations under section 338. The temporary regulations provide guidance to taxpayers concerning the application of section 338. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

DATES: These regulations are effective January 29, 1986. These temporary regulations under section 338(b) and the amendments to the temporary regulations generally apply to stock acquisitions made after August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Patricia Wendlandt or Bennett C. Steinhauer of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (202-566-3458, not a toll-free number).

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SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulations §§ 1.338(b)–1T through 1.338(b)–3T to Part 1 of Title 26 of the Code of Federal Regulations to implement section 338(b) of the Code. Section 338(b) was originally added by section 224 of TEFRA (Pub. L. 97–248; 96 Stat. 485) and was amended by section 712(k) of the Tax Reform Act of 1984 (TRA) (Pub. L. 98–369; 98 Stat. 948).

Explanation of Provisions

Introduction

Section 338, generally, provides that, if the stock of a corporation ("target") is acquired by another corporation ("purchasing corporation") in a qualified stock purchase, the purchasing corporation may elect (or may be deemed to elect under certain consistency rules) to have the target treated as if it had sold in a single transaction all of its assets (as "old target") and then purchased those assets (as "new target"). The deemed sale of assets by old target takes place at the close of the day on which the purchase occurred ("acquisition date") and generally is governed by the nonrecognition provisions of section 337. New target is deemed to purchase those assets ("acquisition date assets") at the beginning of the day after the acquisition date. Section 338(b) sets forth the framework for determining the aggregate amount of new target's deemed purchase price of old target's assets ("adjusted grossed-up basis") and allocating this amount among new target's acquisition date assets.

The temporary regulations implement section 338(b) in three sections. The first, § 1.338(b)–1T, provides rules to determine adjusted grossed-up basis generally as of the beginning of the day after the acquisition date. Section 1.338(b)–2T provides rules for allocating adjusted grossed-up basis, as determined under § 1.338(b)–1T, among the acquisition date assets of new target. Sections 1.338(b)–1T and 1.338(b)–2T also apply to certain increases (or decreases) in adjusted grossed-up basis that are attributable to increases (or decreases) in amounts paid for old target's stock, to reductions in old target's liabilities that were taken into account in determining adjusted grossed-up basis, or to liabilities of old target that become fixed and determinable if such events (collectively referred to as "adjustment events") occur during new target's first taxable year. The third, § 1.338(b)–3T, provides rules for determining and allocating adjusted grossed-up basis attributable to adjustment events occurring after new target's first taxable year.

Adjusted Grossed-Up Basis

Adjusted grossed-up basis is the sum of (1) the basis of target's recently purchased stock (grossed-up to account for minority interests by multiplying the basis by the fraction set forth in section 338(b)(4)), (2) the basis of target's nonrecently purchased stock, (3) the liabilities of new target as of the beginning of the day after the acquisition date (other than liabilities that were not liabilities of old target), and (4) other relevant items. As previously stated, adjusted grossed-up basis is ordinarily determined at the beginning of the day after the acquisition date. However, adjustment events occurring by the close of new target's first taxable year are taken into account in determining adjusted grossed-up basis as if they had occurred at the beginning of the day after the acquisition date.

The liabilities of target accounted for in adjusted grossed-up basis include the liabilities to which its assets are subject. Except in the case of a qualified stock purchase for which an election is made under section 338(h)(10), liabilities also include income tax liabilities of old target resulting from the deemed sale of its assets. For a liability to be included in adjusted grossed-up basis, it must be a bona fide liability of target at the beginning of the day after the acquisition date that is properly includible in basis under principles of tax law that would apply if target had acquired its assets as of the beginning of the day after the acquisition date from an unrelated party and, as part of the transaction, had assumed or taken property subject to the liability. Liabilities excluded under that rule, however, are taken into account under principles of tax law that would apply if target had acquired its assets from an unrelated person and, as part of the transaction, had assumed or taken property subject to those liabilities. See § 1.338(b)–3T for application of these principles of tax law to certain contingent liabilities that are initially excluded from adjusted grossed-up basis.

Grossed-up basis is also adjusted for "other relevant items." For this purpose, "other relevant items" include adjustment events occurring after new target's first taxable year. The rules governing the timing and allocation of these adjustments are in § 1.338(b)–3T. If the amount of adjusted grossed-up basis of a target allocated to the stock of its subsidiary that is also a target is subsequently increased (or decreased) by reason of an other relevant item, the grossed-up basis of the subsidiary's stock (and adjusted grossed-up basis) is also increased (or decreased) as if the increase (or decrease) in basis of the subsidiary's stock was an adjustment to the purchase price deemed paid by the target parent.

Upon the examination of a return the Internal Revenue Service also may increase (or decrease) adjusted grossed-up basis under the authority of section 338(b)(2) for other items and allocate such amounts to target assets under the authority of section 338(b)(5) so that adjusted grossed-up basis and the basis of target assets properly reflect the purchasing corporation's cost of those assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by the purchasing corporation after the acquisition date from minority shareholders at an average price which is lower than the average cost of recently purchased stock. In determining whether an adjustment is appropriate when stock is purchased after the acquisition date from minority shareholders at an average price which is lower than the average cost of recently purchased stock, the Internal Revenue Service will take into account all the facts and circumstances, which may include the amount of the price differential and the reason therefor, the number of shares purchased after the acquisition date, the timing of the purchase, and the source of the additional shares.

Allocation of Adjusted Grossed-Up Basis

Adjusted grossed-up basis is generally allocated among the target assets as of the beginning of the day after the acquisition date. Prior to any allocation, adjusted grossed-up basis is reduced by the amount of cash, deposits in banks and similar depository institutions, and any other similar cash items designated by the Internal Revenue Service ("Class I assets"). The balance is generally allocated among the remaining assets of

target in proportion to their fair market values as of the beginning of the day after the acquisition date in the following order:

1. Certificates of deposit, U.S. government securities, certain readily marketable stocks and securities, foreign currency, and any other similar items designated by the Internal Revenue Service ("Class II assets");

2. All other assets of target except assets in the nature of goodwill and going concern value ("Class III assets"); and

3. Intangible assets in the nature of goodwill and going concern value ("Class IV assets").

Because of the difficulty in valuing goodwill and going concern value, it was decided to value and assign basis to other assets first, with the residual excess (*i.e.*, the amount of adjusted grossed-up basis over the amount allocated to those other assets), if any, being assigned to goodwill and going concern value.

Section 1.338(b)–2T(c)(3) prescribes a special rule (the pro rata rule) for allocation of adjusted grossed-up basis when the purchasing corporation holds nonrecently purchased stock with an average basis lower than the average basis of its recently purchased stock. This special rule is provided in order to prevent an insufficient allocation of basis to assets in the nature of goodwill or going concern value. Solely for the purpose of allocating adjusted grossed-up basis, the fair market value of goodwill or going concern value is deemed to be the excess, if any, of the hypothetical purchase price (determined in accordance with § 1.338(b)–2T(c)(3)(ii)) over the sum of the amount of Class I assets and the fair market values of Class II and III assets. The hypothetical purchase price is the basis of recently purchased stock (grossed-up to account for minority interests and nonrecently purchased stock), plus target's liabilities and other relevant items that are taken into account in determining adjusted grossed-up basis. Finally, adjusted grossed-up basis is allocated (after reduction by the amount of Class I assets of target) among the Class II, III, and IV assets in proportion to their fair market values as of the beginning of the day after the acquisition date. Changes in the price paid for recently or nonrecently purchased stock after the close of new target's first taxable year are not taken into account in determining whether this special basis allocation rule applies.

The amount of adjusted grossed-up basis allocated to an asset, other than those in the nature of goodwill and going concern value, cannot exceed its fair market value. The "fair market value" of an asset is its fair market value determined without regard to mortgages, liens, pledges, or other liabilities.

Under the foregoing allocation rules (and unlike the rules under pre-TEFRA section 334(b)(2)), liabilities to which an asset is subject are no longer to be specifically allocated to the asset. The so-called specific lien rule has not been followed for purposes of allocating basis because in certain circumstances the rule could inappropriately shift the allocation of basis from some assets to others.

In general, § 1.1001–2(a)(3) provides that the discharge of a liability incurred by reason of the acquisition of property is not included in the amount realized from the sale or other disposition of the property to the extent the liability was not taken into account in determining the transferor's basis of such property. For purposes of applying § 1.1001–2(a) in determining the amount realized on a sale or other disposition of property deemed purchased by new target, the amount of any liability included in adjusted grossed-up basis is considered to be an amount taken into account in determining new target's basis in the property which is secured by such liability. Thus, if a liability is included in adjusted grossed-up basis, § 1.1001–2(a)(3) shall not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4).

If the amount of basis of an asset acquired in a sale or exchange is limited under a provision of the Internal Revenue Code or principles of tax law, then the amount of adjusted grossed-up basis allocated to the asset is so limited. Thus, for example, the amount of the adjusted grossed-up basis allocated to a player contract described in section 1056 cannot exceed the limitation imposed by that section.

Amendments are made to § 1.338–4T to require, in cases in which section 338(h)(10) is not elected, that the fair market value of an asset (other than goodwill or going concern value) used to determine the amount of any gain (or loss) recognized under section 338 (a)(1) or (c)(1) to be the same as the fair market value used to allocate basis under these temporary regulations. Similarly, the allocation fraction described in § 1.338–4T(h)(3) *answer 2* (vi)(E) (relating to allocation of aggregate deemed sale price under the elective formula under section 338(h)(11)) must assign the same fair market value to a given asset that is assigned to such asset for purposes of the basis allocation rules. The amounts assigned as fair market values are subject to section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness).

Section 1.338–4T is also amended to prescribe that aggregate deemed sale price calculated under the elective formula must be allocated in a manner consistent with the allocation of adjusted grossed-up basis. Thus, aggregate deemed sale price, after reduction for Class I assets, generally is allocated among Class II assets, then among Class III assets, with the residual excess, if any, allocated to Class IV assets.

Subsequent Adjustments to Adjusted Grossed-Up Basis

Section 1.338(b)–3T provides rules for adjustments to adjusted grossed-up basis for adjustment events occurring after the close of new target's first taxable year. It also provides rules for the allocation of those adjustments among target's acquisition date assets. These rules provide for the incorporation of general principles of tax law which are applicable to the determination of the basis of assets acquired in actual asset purchases. See the discussion in the following section for the application of similar principles with respect to adjustments of the aggregate deemed sale price of old target's assets.

Contingent amounts paid by the purchasing corporation for target stock held on the acquisition date and liabilities of old target that become fixed and determinable after the close of new target's first taxable year (basis increase amounts) are taken into account in adjusted grossed-up basis when the amount becomes fixed and determinable. Basis increase amounts are allocated among target's acquisition date assets in accordance with the general allocation rules set forth in § 1.338(b)–2T, subject to the limitation rules contained in that section. Thus, in general, the aggregate amount of adjusted grossed-up basis allocated to an acquisition date asset may not exceed the asset's fair market value at the beginning of the day after the acquisition date, except for assets in the nature of good will or going concern value.

If an acquisition date asset has been disposed of (or depreciated, amortized, or depleted) before a basis increase amount is included in adjusted grossed-up basis, the amount of adjusted grossed-up basis that would otherwise be allocated to the asset under § 1.338(b)–2T is treated under principles of tax law applicable when part of the cost of an asset is paid after the asset

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has been disposed of (or depreciated, etc.). Thus, for example, an amount of adjusted grossed-up basis otherwise allocable to a disposed of capital asset may be deducted by new target as a capital loss. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952).

The rule for reductions (or rebates) in the amount paid for target stock held on the acquisition date and reductions in old target's liabilities that were taken into account in determining adjusted grossed-up basis (basis decrease amounts) is similar to the one for basis increase amounts, except that basis decrease amounts are allocated to target's acquisition date assets in the reverse of the order in which adjusted grossed-up basis is allocated under §1.338(b)–2T. Thus, as general rule, basis decrease amounts are allocated first among the acquisition date assets in the nature of goodwill and going concern value to the extent of their bases, and then as a reduction in the basis of target's other acquisition date assets.

The basis decrease amount is taken into account for purposes of calculating adjusted grossed-up basis and basis of target's assets when the reduction occurs. Similar principles of tax law apply to amounts that are allocable to acquisition date assets that have been disposed of (or depreciated, etc.) as those that apply to basis increase amounts.

If the pro rata rule was used to allocate basis, special rules apply to account for basis increase amounts (or basis decrease amounts).

The temporary regulations provide a special rule for allocating a basis increase amount (or basis decrease amount) resulting from adjustment events that directly relate to the income produced by a particular intangible asset, such as a patent, copyright, or secret process ("contingent income assets"), as along as the basis increase amount (or basis decrease amount) does not relate to other target assets. Subject to the limitations in § 1.338(b)–2T(c) (1) and (2), the basis increase amount (or basis decrease amount) is first allocated to the contingent income asset and then to other target assets. Solely for purposes of applying the various limitation rules to a contingent income asset, its fair market value may be redetermined as of the time when the basis increase amount (or basis decrease amount) is taken into account. In appropriate cases, the Internal Revenue Service may apply the principles of this provision to reallocate a basis increase amount (or basis decrease amount) among some of target's assets to the extent such allocation is necessary to reflect properly the consideration that relates to each of those assets.

Old Target's Deemed Sale

Section 1.338(b)–3T(h) provides that the price at which old target is deemed to have sold its assets must be adjusted to take into account events occurring after the acquisition date as required under general principles of tax law. In making this determination, the recognition of income, loss, or other amount shall not be precluded because old target is treated as a new corporation after the acquisition date. For example, if an elective formula under section 338(h)(11) is used to determine the aggregate deemed sale price, that price generally must be increased by the amount of any additional payments made to the seller for recently purchased stock. Accordingly, to the extent general tax law principles would require seller to account for adjustment events, target (or a member of the selling consolidated group in the event of an election under section 338(h)(10)] must make such an accounting, which may result in reporting income, loss, or other amount.

If no election is made under section 338(h)(10), any income, loss, or other amount resulting from such change is included in new target's income tax return for the taxable year in which the adjustment event occurs. Although included in new target's return, such income, loss, or other amount is separately accounted for as an item of income, loss, or other amount of old target. Therefore, such income, loss, or other amount may not be offset by income, loss, etc. of new target. Any increase (or decrease) in new target's income tax liability by reason of this rule is allocated among new target's acquisition date assets. Also, if no election is made under section 338(h)(10), net operating losses and net capital losses of old target may be carried forward to offset income items described above. Similarly, any ordinary or capital loss of old target accounted for as a separate item after the acquisition date may be carried back to taxable years of old target. For these purposes, new target's taxable years shall not be taken into account in applying the taxable-year limitation (generally 15 years for ordinary losses and 5 years for capital losses) on loss carryovers or the taxable-year limitation (generally 3 years) on loss carrybacks. Thus, if old target has an unexpired net operating loss at the close of its taxable year in which the deemed asset sale occurred which could have been carried forward to a subsequent taxable year, such loss may be carried forward until it is absorbed by old target's income. A similar rule allows tax credit carryovers of old target to offset any tax on the income items of old target described above.

If an election is made under section 338(h)(10), any income, loss, or other amount resulting from such change is accounted for and reported by the appropriate member of the selling consolidated group for the taxable year in which the adjustment event occurs. In applying carryover and carryback limitations in such cases, the special rules relating to the application of the taxable-year limitation for losses provided in the preceding paragraph are inapplicable.

Amendments to § 1.338(h)(10)–1T

Section 1.338(h)(10)–1T is amended to provide rules for the adjustment of the selling consolidated group's basis in unacquired target stock when the MADSP formula election is made or revoked after disposition of the unacquired stock. The amendment provides that if such unacquired target stock has been disposed of before the adjustment to the basis of such stock is made, the adjustment shall be treated under principles of tax law applicable when part of the cost of an asset is paid after the asset has been disposed of.

Comments Requested

Comments are requested on the contingent payment, etc. rules of § 1.338(b)–3T with a view toward simplifying the method of taking such payments, etc. into account and allocating them to target's assets. Such comments should address the concern that any simplified method should not distort the character of the gain (or loss) recognized by a taxpayer. For example, if the general rules of § 1.338(b)–3T would treat a basis increase amount as a capital loss with respect to an acquisition date asset that had been disposed of, the simplified method should not transmute that capital loss into a reduction of ordinary income as might occur if the basis increase amount were merely allocated to other depreciable assets held by target when the adjustment event occurs.

Comments are also requested on the need for an adjustment to adjusted grossed-up basis when stock is purchased from minority shareholders after the acquisition date at an average price greater than the purchaser's average per share basis in recently purchased stock. If such adjustment is considered appropriate, commentators should recommend the appropriate mechanism for implementing such adjustment. In this regard, commentators should address the manner in which all other relevant adjustments (*e.g.*, depreciation) should be made.

The temporary regulations reject the specific lien rule by providing that liabilities to which an asset is subject are not specifically allocated to the asset. Comments are requested on under what circumstances, if any, it may be appropriate to follow the specific lien rule for purposes of allocating adjustment grossed-up basis.

Regulatory Flexibility Act; Executive Order 12291

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal authors of these temporary regulations are Bennett C. Steinhauer and Patricia Wendlandt of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.301–1—1.383–3

Income taxes, Corporations, Corporate adjustments, Reorganizations.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805; * * * §§ 1.338(b)–1T through 1.338(b)–3T, 1.338–1T, 1.338–4T, and 1.338(h)(10)–1T are also issued under 26 U.S.C. 338.

Par. 2. Section 1.338–1T is amended as follows:

1. The first sentence of paragraph (b)(8) is amended by inserting "for the taxable year ending at the close of the acquisition date" after " income tax return of old target".

2. Paragraph (f)(3)(i) is amended by inserting a new sentence at the end thereof, to read as set forth below.

3. Paragraph (f) is amended by adding a new paragraph (9) at the end thereof, to read as set forth below.

§ 1.338–1T Elections under section 338(g) of the Internal Revenue Code of 1954 (temporary).

* * * * *

(f) *Certain consequences of section 338 election.* * * *

(3) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* * * * A "deemed sale return" includes a "combined return" as defined in § 1.338–4T(k)(6).

* * * * *

(9) *Cross reference.* See § 1.338(b)–3T(h) for certain rules relating to any change in the aggregate deemed sale price of old target's assets.

* * * * *

Par. 3. Paragraph (h) of § 1.338–4T is amended as follows:

1. A new sentence is added at the end of paragraph (h)(1) to read as set forth below.

2. A new sentence is added at the end of paragraph (h)(2)(i) to read as set forth below.

3. The last two sentences of paragraph (h)(2)(iii) are revised to read as set forth below.

4. New subdivision (vi) is added at the end of paragraph (h)(2) to read as set forth below.

5. The last sentence of paragraph (h)(3) *Answer 1* (i) is removed and in its place two new sentences are added to read as set forth below.

6. The first two sentences of paragraph (h)(3) *Answer 2* (vi) are removed and in their place three new sentences are added to read as set forth below.

7. *Example (1)* (ii) in paragraph (h)(3) *Answer 2* (vi) is amended by removing the second sentence and by adding two new sentences at the end to read as set forth below.

8. In *Example (2)* in paragraph (h)(3) *Answer 2* (vi)—

a. The first word of the footnote is removed and there is added in its place the words "For an item of section 1245 property, section".

b. Two new sentences are added at the end thereof to read as set forth below.

9. In *Example (3)* in paragraph (h)(3) *Answer 2* (vi)—

a. The first table is amended by removing the word "Goodwill" and adding in its place the word "Land".

b. Two new sentences are added immediately before the words "The following table breaks the ADSP of $190,173 down". The new sentences read as set forth below.

10. New *Examples* (4) through (9) are added at the end of paragraph (h)(3) *Answer 2* (vi) to read as set forth below.

11. Paragraph (j)(1) is amended by adding after the second sentence a new sentence to read as set forth below.

12. A new sentence is added at the end of paragraph (j)(2) *Answer 6* to read as set forth below.

§ 1.338–4T Questions and answers relating to miscellaneous issues under section 338 (temporary).

* * * * *

(h) *Determination of section 338(a)(1) deemed sale price*—(1) *Introduction.* * * * See § 1.338(b)–3T (h) and (j) for certain rules and examples relating to any change in the aggregate deemed sale price of old target's assets.

(2) *Definitions*—(i) *ADSP.* * * * In the absence of a subscript, "ADSP" refers to ADSP for Class III assets only. See § 1.338(b)–2T(b).

* * * * *

(iii) *Allocable ADSP amount.* * * * Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), the ADSP is allocated among T assets for this purpose in accordance with the rules in § 1.338(b)–2T (without regard to § 1.338(b)–2T(c)(2)). Recapture gain on a T asset under the elective ADSP formula is computed by reference to the allocable ADSP amount for that asset.

* * * * *

(vi) *Classes of assets.* The four classes of assets are defined in § 1.338(b)–2T(b). Examples of each class are: Class I, cash; Class II, marketable securities; Class III, assets other than Classes I, II, and IV; and Class IV, goodwill and going concern value.

(3) *Determination of ADSP.*

Question 1: * * *

Answer 1: (i) *General rule.* * * * Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), for assets other than Class IV assets (*i.e.*, goodwill and going concern value), the same fair market values shall be used for purposes of this paragraph (h) (old T's aggregate deemed sale price) and for purposes of § 1.338(b)–2T (b) and (c)(1) or (c)(3) (allocating new T's adjusted grossed-up basis to its assets). If the elective ADSP formula is not used, a proper appraisal of Class IV assets will

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be considered evidence of their fair market value.

* * * * *

Question 2: * * *

Answer 2: * * *

(vi) *Sample elective ADSP formula.* The sample ADSP formual shown below takes into account the existence of recapture gain arising under sections 1245 and 338(c)(1). For illustrative purposes, *Examples (1)* through *(3)* of this subdivision (vi) assume that the target has only Class III assets (*e.g.*, property other than certain cash items, certain securities, and goodwill, etc.). For examples illustrating the effect on the elective ADSP formula of Class I, II, or IV assets, see *Examples (4)* through (9) of this subdivision (vi). * * *

Exmple (1). * * *

(ii) * * * Since the ADSP for T ($86,616) does not exceed the fair market value of T's one asset ($100,000), a Class III asset, its entire ADSP is allocated to that asset. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation).

Example (2). * * * Since the ADSP for T ($89,127.12) does not exceed the fair market value of T's one asset ($100,000), a Class III asset, its entire ADSP is allocated to that asset. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation).

Example (3). * * * Since the ADSP for T ($190,172.76) does not exceed the sum of the fair market values of all of T's assets ($215,000), and those assets are all Class III assets, its entire ADSP is allocated to those assets. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation). * * *

Example (4). Assume the same facts as in *Example (1)*, except that P purchases all of the stock of T for $85,000 and that T has $10,000 of cash, a Class I asset. The sample elective ADSP formula as applied to these facts is modified by referring to the amount of the Class I assets as "I". This modified formula is as follows:

$ADSP = G - I + L + t_R \times [(\text{Lesser of R or } ADSP) - B]$

$ADSP = (\$85,000/1) - \$10,000 + \$0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400]$

$ADSP = \$75,000 + 0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400]$

The remainder of the calculation and result are the same as in *Example (1).*

Example (5). Assume the same facts as in *Example (2)*, except that P purchases the 80 shares for $68,000 and that T has $10,000 of cash, a Class I asset. The elective ADSP formula used in *Example (4)* as applied to these facts is as follows:

$ADSP = G - I + L + t_R \times [(\text{Lesser of R or } ADSP] - B] + C \times t_R \times (ADSP - Cb)$

$ADSP = (\$68,000/.8) - \$10,000 + 0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) \times \$50,400] + .20 \times .28 \times [ADSP - (\text{Lesser of } \$80,000 \text{ or } ADSP)]$

$ADSP = \$85,000 - \$10,000 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400] + .20 \times .28 \times [ADSP - (\text{Lesser of } \$80,000 \text{ or } ADSP)]$

$ADSP = \$75,000 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400) + .20 \times .28 \times [ADSP - (\text{Lesser of } \$80,000 \text{ or } ADSP)]$

The remainder of the calculation and result are the same as in *Example (2).*

Example (6). Assume the same facts as in *Example (5)*, except that T does not hold any cash. Assume further that T holds marketable securities, a Class II asset, it acquired 10 years ago having a fair market value of $10,000 and a basis of $4,000. The sample elective ADSP formula as applied to these facts is modified by referring to the fair market value of the Class II asset as "II" and the basis of that asset as "B_{II}." This modified formula for calculating the ADSP of the section 1245 property is as follows:

$ADSP = G - II + L + t_R \times [(\text{Lesser of R or } ADSP) - B] + C \times t_R \times [(ADSP - Cb) + (II - B_{II})]$

$ADSP = (\$68,000/.8) - \$10,000 + 0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - \$50,400] + .20 \times .28 \times [ADSP - (\text{Lesser of } \$80.000 \text{ or } ADSP)] + (\$10,000 - \$4,000)]$

In this case, assume that for the item of section 1245 property, the recomputed basis is less than the allocable ADSP amount for that item. The elective ADSP formula computation, as applied to this assumption, is as follows:

$ADSP = \$85,000 - \$10,000 + 46 \times (\$80,000 - \$50,400) + 056 \times [(ADSP - \$80,000) + (\$6,000)]$

$ADSP = \$75,000 + (.46 \times 29,600) + .056ADSP - \$4,480 + \$336$

$ADSP = \$75,000 + \$13,616 + 056ADSP - \$4,480 + \$336$

$ADSP - .056ADSP + \$84,472$

$.944ADSP/.944 = \$84,472/.944$

$ADSP = \$89,483.05$

Since the ADSP for T's Class III asset ($89,483.05) does not exceed its fair market value, its entire ADSP for its Class III assets is allocated to its one asset in the class. See § 1.338(b)–2T (b) and (c)(1). The deemed selling price for the marketable securities (Class II assets) is their fair market value ($10,000).

Summary of Calculation

1. Grossed-up basis of P's recently purchased T stock	$85,000.00
2. Less: Deemed selling price of Class II assets	10,000.00
3. Subtotal	75,000.00
4. Tax on section 1245 depreciation recapture gain	13,616.00
5. Tax on section 338(c)(1) gain on all property (531.05* + $336)	867.05
6. ADSP for Class III property (Sum of lines 3+4+5)	89,483.05

*.056 × ($89,483.05 + $80,000).

Example (7). Assume the same facts as in *Example (1)*, except that T has goodwill with an appraised value $10,000. The result is the same as in *Example (1)* when the elective ADSP formula is used because the appraised value of goodwill is not taken into account under the formula, and, so long as the ADSP for T's Class III asset does not exceed its fair market value, goodwill does not arise under the formula.

Example (8). Assume the same facts as in *Example (7)*, except that P purchases all of the stock of T for $100,000 and the recomputed basis of the section 1245 property is $210,000. The elective ADSP formula as applied to these facts is as follows:

$ADSP = G + L + t_R \times [(\text{Lesser of R or } ADSP) - B]$

$ADSP = (\$100,000/1) + \$0 + .46 \times [(\text{Lesser of } \$210,000 \text{ or } ADSP) - \$50,400]$

ADSP—Recomputed basis measurement:

$ADSP = \$100,000 + .46 \times (\$210,000 - \$50,400)$

$ADSP = \$173,416$

ADSP—ADSP measurement:

$ADSP = \$100,000 + .46(ADSP - \$50,400)$

$ADSP = \$100,000 + (.46 \times ADSP) - \$23,184$

$ADSP = \$76,816 + .46\ ADSP$

$ADSP - .46\ ADSP = \$76,816$

$.54ADSP/.54 = \$76,816/.54$

$ADSP = \$142,251.85$

Accordingly, under the elective ADSP formula, as initially applied, the ADSP of T would be $142,251.85, *i.e.*, the ADSP measurement ($142,251.85) which is less than the recomputed basis measurement ($173,416). Since this ADSP for T ($142,251.85) exceeds the fair market value of T's Class III ($100,000), ADSP allocated to that asset is limited to the asset's fair market value under § 1.338 (b)–2T(c)(1). Thus, the elective ADSP formula must be applied to compute the ADSP for T's Class IV property (*e.g.*, goodwill). The sample ADSP formula as applied to this computation is modified by using III to refer to the fair market value of the Class III asset (*i.e.*, the section 1245 property) and $ADSP_{IV}$ to refer to the ADSP for Class IV property. This modified formula is as follows:

$ADSP_{IV} = G - III + L + t_R \times [(\text{Lesser of R or } III) - B]$

$ADSP_{IV} = \$100,000 - \$100,000 + 0 + .46 \times (\text{Lesser of } \$210,000 \text{ or } \$100,000) - \$50,400)$

$ADSP_{IV} = .46 - (\$100,000 - \$50,400)$

$ADSP_{IV} = \$22,816$

Thus, the ADSP for the Class IV property is $22,816. Note that the appraised value of the goodwill is irrelevant.

Summary of Calculation

1. Grossed-up basis of P's recently purchased stock	$100,000
2. Less: Deemed selling price of Class III property	100,000
3. Subtotal	0
4. Tax on section 1245 recapture gain	22,816
5. ADSP for Class IV property	22,816

Example (9). Assume the same facts as in *Example (8)*, except that P purchases only 80 of the 100 outstanding shares of T's only class of stock for $96,000. Assume further that T's assets, all of which have been held for more than one year, are as follows:

	Class	Basis	Fair market value
1. Cash	I		*$10,000
2. Marketable security	II	$4,000	10,000
3. Section 1245 property (recomputed basis $210,000).	III	50,400	100,000
4. Goodwill	IV	3,000	**15,000

*Amount.
**Appraised value.

The elective ADSP formula as applied to these facts is modified by referring to items for a class of property by using Roman subscripts. (Since there is only one asset in each class, subscripts as used in *Example (3)* are not necessary.) The modified formula is as follows:

$ADSP = G - I - II + L + t_R \times [(\text{Lesser R or } ADSP) - B_{III}] + C \times t_R \times [(ADSP - Cb_{III}) + (II - B_{II})]$

$ADSP = [(\$96,000/.8) - \$10,000 - \$10,000 + 0 + .46 \times [(\text{Lesser } \$210,000 \text{ or } ADSP) - \$50,400] + .20 \times .28 \times [(ADSP - [\text{Lesser of } \$210,000 \text{ or } ADSP)) + (\$10,000 - \$4,000)]$

In this case, the allocable ADSP amount for the one Class III asset is less than its recomputed basis. The modified elective ADSP formula, based on these assumptions, is applied as follows:

$ADSP = \$120,000 - \$0,000 + .46(ADSP - \$50,400) + .20 \times .28 \times (\$10,000 - \$4,000)$* * *)

* * *Section 338(c)(1) gain does not exist in this case since the measure of section 1245 depreciation recapture is the ADSP measure. See the footnote in *Example (2).*

$ADSP = \$100,000 + .46ADSP - \$23,184 + .056 \times (\$6,000)$

$ADSP = \$100,000 + .46ADSP - \$23,184 + \$336$

$ADSP = .46ADSP = \$77,152$

$.54ADSP/.54 = \$77,152/.54$

$ADSP = \$142,874.07$

Accordingly, under the modified elective ADSP formula, as initially applied, the ADSP of T would be $142,874.07, an amount that exceeds the fair market value of T's one Class III asset ($100,000). Thus, ADSP allocated to that asset cannot exceed $100,000 under § 1.338(b)(–2T(c)(1). It follows that the elective ADSP formula must be applied to compute the ADSP for T's Class IV property (e.g. goodwill). The modified ADSP formula, as used initially in this example, is further modified in the manner shown in *Example (8).* In this example, the application of this further modified formula assumes that the measure of section 1245 depreciation recapture is fair market value so that section 338(c)(1) gain cannot exist. (See the preceding footnote.) This further modified formula is as follows:

$ADSP_{IV} = G - I - II - III + L + t_R \times [(III - B_{III}) + C \times t_R \times [(II - B_{II})(ADSP_{IV} \text{ or } B_{IV})]$

$AD6P_{IV} = \$120,000 - \$10,000 - \$10,000 - \$100,000 + 0 + .46 \times [\$100,000 - \$50,400) + .20 \times .28 \times [(\$10,000 - \$4,000) + (ADSP_{IV} - \$3,000)]$

$ADSP_{IV} = .46 \times \$49,600 + .056 \times (\$6,000 + ADSP_{IV} - \$3,000)$

$ADSP_{IV} = \$22,616 + \$336 + .056ADSP_{IV} - \$168$

$ADSP_{IV} = .056ADSP_{IV} = \$22,984$

$.944ADSP_{IV}/.944 = \$22,984/.944$

$ADSP_{IV} = \$24,347.46$

Thus, the ADSP for the Class IV property is $24,347.46. Note that the appraised value for the goodwill is irrelevant.

Summary of calculation:

1. Grossed-up basis of P's recently purchased stock	$120,000.00
2. Less: deemed selling price of—	
a. Class I property	10,000.00
b. Class II property	10,000.00
c. Class III property	100,000.00
d. Total	120,000.00
3. Subtotal	0
4. Tax and section 1245 recapture gain	22,816.00
5. Tax on section 338(c)(1) gain on—	
a. Class II property	336.00
b. Class IV property	1,195.46*
c. Total	1,531.46
6. ADSP for Class IV property (Sum of lines 3 + 4 + 5)	24,347.46

*.056 x ($24,347.46=$3,000).

(j) *Determination of basis of target assets after section 338 election*—(1) *Introduction.* * * * Rules relating to allocation of adjusted grossed-up basis among T's assets are provided in §§ 1.338(b)–2T and 1.338(b)–3T. * * *

(2) *Determination of adjusted grossed-up basis.*

* * * * *

Question 6: * * *

Answer 6: * * * See also § 1.338(b)–1T(d)(2).

* * * * *

Par. 4. § 1.338(h)(10)–1T is amended by adding a new sentence at the end of paragraph (f)(4) and by adding a new paragraph (f)(5). The added provisions read as follows:

§ 1.338(h)(10)–1T Elective recognition by selling consolidated group of deemed sale gain or loss on target's assets (temporary).

* * * * *

(f) *Deemed sale price.* * * *

(4) *Procedure for electing MADSP formula and revoking that election.* * * * If such unacquired T stock has been disposed of before the adjustment to its basis is made, the members of the S group shall treat the adjustment under principles of tax law that apply when the purchase price of an asset is changed after the asset has been disposed of.

(5) *Cross-reference.* See § 1.338(b)–3T(h) for adjustments to the aggregate deemed sale price of old target's assets because of events occurring after the acquisition date.

* * * * *

Par. 5. There are added in the appropriate place the following new sections to read as follows:

§ 1.338(b)–1T Adjusted grossed-up basis (temporary).

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis of a target for which a section 338 election is made. Adjusted grossed-up basis is allocated among the assets of target in accordance with § 1.338(b)–2T to determine the price at which the assets of the target are deemed to have been purchased. Subsequent adjustments to grossed-up basis and the allocation of such adjustments to target's assets may be made under § 1.338(b)–3T. This section does not apply to transactions to which section 224(d)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 (as added by section 306(a)(8)(B)(i) of the Technical Corrections Act of 1982) applies. For rules relating to such transactions, see § 1.338–2T.

(b) *Nomenclature and definitions*—(1) *Nomenclature.* The nomenclature set out in § 1.338–4T(b)(1) also applies to this section.

(2) *Definitions*—(i) *In general.* The definitions in section 338 and §§ 1.338–1T and 1.338–4T also apply to this section.

(ii) *Adjustment events.* "Adjustment events" are increases (or decreases) in the consideration paid for recently or nonrecently purchased stock, reductions in target's liabilities included in adjusted grossed-up basis as of the beginning of the day after the acquisition date, and old target liabilities that become fixed and determinable.

(c) *General rule*—(1) *Adjusted grossed-up basis.* "Adjusted grossed-up basis" is the sum of (i) the grossed-up basis of recently purchased stock (as defined in paragraph (d) of this section), (ii) the basis of nonrecently purchased stock (as defined in paragraph (e) of this section), (iii) the liabilities of target (as defined in paragraph (f) of this section), and (iv) other relevant items (as defined in paragraph (g) of this section).

(2) *Time when adjusted grossed-up basis determined.* Adjusted grossed-up basis is initially determined at the beginning of the day after the acquisition date of target. However, adjustment events that occur during new target's first taxable year are taken into account for purposes of determining adjusted grossed-up basis and basis of target's assets as if they had occurred at the beginning of the day after the acquisition date.

(d) *Grossed-up basis of recently purchased stock*—(1) *In general.* The

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term "grossed-up basis of recently purchased stock" means the product of (i) the basis of the recently purchased stock at the beginning of the day after the acquisition date, multiplied by (ii) the fraction set forth in section 338(b)(4). For further detail, see § 1.338–4T(j)(2) *Answer 1* (ii).

(2) *Target subsidiary.* If a target (T) owns stock in an affected target (T1), the grossed-up basis of the recently purchased T1 stock is the product of—

(i) The basis of the T1 stock in the hands of T as of the beginning of the day after T's acquisition date, multiplied by

(ii) The fraction set forth in section 338(b)(4).

Thus, for example, if T is deemed to purchase 80 percent (by value) of T1's stock by reason of section 338(h)(3)(B), the grossed-up basis of recently purchased T1 stock is determined by multiplying 100/80 times the amount of adjusted grossed-up basis of T's stock allocated to T1's stock under § 1.338(b)–2T. See also § 1.338–4T(j)(2) *Answer 6.*

(e) *Basis of nonrecently purchased stock.* In the absence of an election under section 338(b)(3) ("gain recognition election"), the basis of nonrecently purchased stock is the historic basis in that stock. See § 1.338–4T(j)(2) for rules relating to the gain recognition election.

(f) *Liabilities of target*—(1) *In general.* The liabilities of target include its liabilities (and the liabilities to which the target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject). Unless an election is made under section 338(h)(10), liabilities of target also include income tax liabilities resulting from the deemed sale of its assets under section 338(a)(1).

(2) *Excluded obligations*—(i) *In general.* In order to be included in adjusted grossed-up basis at the beginning of the day after the acquisition date, an obligation must be a bona fide liability of target as of that date which is properly includable in basis under principles of tax law that would apply if new target had acquired old target's assets from an unrelated person and, as part of the transaction, had assumed or taken property subject to the obligation. Thus, for example, if, as of the beginning of the day after the acquisition date, the amount of a contingent or speculative obligation of target is not properly includable in basis under the preceding sentence, the obligation is not initially included in adjusted grossed-up basis.

(ii) *Time when excluded obligations taken into account.* Obligations that, under this subparagraph (2), are initially excluded from adjusted grossed-up basis, shall be taken into account in redetermining adjusted grossed-up basis and the basis of target's assets under principles of tax law that would apply if new target had acquired old target's assets directly from an unrelated person and, as part of the transaction, had assumed or taken property subject to those obligations. For the application of these principles of tax law to certain contingent liabilities that are initially excluded from adjusted grossed-up basis under this subparagraph (2), see § 1.338(b)–3T.

(3) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, the entire amount of any liability included in adjusted grossed-up basis is considered to be an amount taken into account in determining new target's basis in property which secures such liability for purposes of applying § 1.1001–2(a). Thus, if a liability is included in adjusted grossed-up basis, § 1.1001–2(a)(3) shall not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4) as a result of new target's sale or disposition of the property which secures such liability.

(g) *Other relevant items*—(1) *In general.* Adjusted grossed-up basis may be increased (or decreased) for "other relevant items." For this purpose, other relevant items may only arise from adjustment events that occur after the close of new target's first taxable year and adjustments under paragraph (g)(3) of this section. See § 1.338(b)–3T (relating to the treatment of certain subsequent adjustments to adjusted grossed-up basis).

(2) *Flow-through of relevant item adjustment to target subsidiary.* If the amount of adjusted grossed-up basis of a target (T) allocated to the stock of an affected target (T1) is subsequently increased (or decreased) by reason of an other relevant item under this paragraph (g), the grossed-up basis of the T1 stock (and T1's adjusted grossed-up basis) is then also increased (or decreased) as if the increase (or decrease) in the basis of the stock was an adjustment to the purchase price deemed paid by T for such stock. The resulting increase (or decrease) in adjusted grossed-up basis of T1 is then allocated among T1's assets in accordance with §§ 1.338(b)–2T and 1.338(b)–3T.

(3) *Adjustments by the Internal Revenue Service*—(i) *In general.* In connection with the examination of a return, the District Director may increase (or decrease) adjusted grossed-up basis for items other than those described in paragraph (g) (1) and (2) of this section under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that adjusted gross-up basis and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by purchasing corporation after the acquisition date from minority shareholders at an average price lower than the average cost of recently purchased stock. In determining whether an adjustment is appropriate when stock is purchased after the acquisition date from minority shareholders at a price lower than the cost of recently purchased stock, the District Director will take into account all the facts and circumstances of the particular case. Relevant facts and circumstances may include the amount of the price differential and the reason therefor, the number of shares purchased after the acquisition date, the timing of the purchase, and the source of the additional shares.

(ii) *Examples.* The principles of this subparagraph (3) may be illustrated by the following examples:

Example (1). (i) On January 1, 1988, P purchases one-third of the sole class of outstanding stock of T for $300,000. T has no liabilities. On March 1, 1988, T distributes a dividend to all its shareholders consisting of property with a fair market value of $210,000 of which P receives $70,000. On April 15, 1988, P purchases the remaining T stock for $480,000 and makes an express election for T.

(ii) In appropriate circumstances, the District Director may decrease the adjusted grossed-up basis ("AGUB") of T by $50,500 (the nontaxed portion of the dividend, as defined in section 1059(b)) in order to properly reflect the cost to P of its interest in T's assets which P is deemed to have purchased.

Example (2). (i) T's sole asset is a building worth $100,000. It has no liabilities. T has 100 shares of a single class of stock outstanding. On August 1, 1988, P purchases 10 shares of T stock for $6,000. On June 1, 1989, P purchases 50 shares of T stock for $50,000. On June 14, 1989, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30 1989, P purchases the remaining 40 shares of T stock for $40,000 and makes an express election for T.

(ii) In order to prevent the shifting of basis from the contributed property to other assets of T, the District Director may specifically allocate part of T's AGUB to the contributed property as shown in subdivisions (iii) and (iv) of this example.

(iii) The AGUB of T is $108,800.

(iv) $10,800 of the AGUB is allocated to the land, leaving $98,000 to be allocated among T's other assets, here, only the building.

§ 1.338(b)–2T Allocation of adjusted grossed-up basis among target assets (temporary).

(a) *Introduction*—(1) *In general.* This section prescribes rules under section 338(b)(5) for allocating adjusted grossed-up basis among the assets of a target for which a section 338 election is made.

(2) *Nomenclature and definitions*—(i) *In general.* The nomenclature set out in § 1.338–4T(b)(1) also applies to this section. The definitions in section 338 and §§ 1.338–1T, 1.338–4T, and 1.338(b)–1T also apply to this section.

(ii) *Fair market value.* The "fair market value" of an asset is the gross fair market value of that asset (*i.e.*, fair market value determined without regard to mortgages, liens, pledges, or other liabilities).

(b) *General rule for allocating adjusted grossed-up basis*—(1) *Cash and other items designated by the Internal Revenue Service.* Adjusted grossed-up basis is first reduced by the amount of Class I assets. Class I assets are cash, demand deposits and similar accounts in banks, savings and loan associations (and other similar depository institutions), and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(2) *Other assets*—(i) *In general.* Subject to the limitations and other special rules of paragraph (c) of this section, adjusted grossed-up basis (as reduced by Class I assets) is allocated among Class II assets of target held at the beginning of the day after the acquisition date in proportion to their fair market values at such time, then among Class III assets so held in such proportion, and finally to Class IV assets so held in such proportion.

(ii) *Class II assets.* Class II assets are certificates of deposit, U.S. Government securities, readily marketable stock or securities (within the meaning of § 1.351–1(c)(3)), foreign currency, and other items designated in the Internal Revenue Bulletin by the Internal Revenue Service.

(iii) *Class III assets.* Class III assets are all assets of target (other than Class I, II, and IV assets), both tangible and intangible (whether or not depreciable, depletable, or amortizable).

(iv) *Class IV assets.* Class IV assets are intangible assets in the nature of goodwill and going concern value.

(c) *Certain limitations and special rules for basis allocable to an asset*—(1) *Basis not to exceed fair market value.* The amount of adjusted grossed-up basis allocated to an asset (other than Class IV assets) shall not exceed the fair market value of that asset at the beginning of the day after the acquistion date. In assigning fair market values to Class II or III assets for purposes of this paragraph (c), the fact that the target has assets in the nature of goodwill or going concern value (Class IV assets) must be taken into account. For modification of this fair market value limitation with respect to certain contingent income assets, see § 1.338(b)–3T(g).

(2) *Assets subject to other limitations.* The amount of adjusted grossed-up basis allocated to an asset shall be subject to the limitations under the provisions of the Internal Revenue Code or principles of tax law in the same manner as if such asset were acquired from an unrelated person in a sale or exchange. For example, if the deemed sale (and purchase) of assets is a transaction described in section 1056(a) (relating to basis limitation for player contracts transferred in connection with the sale of a franchise), the amount of adjusted grossed-up basis allocated to a contract for the services of an athlete shall not exceed the limitation imposed by that section. For another example, see § 1.338(b)–1T(f)(2), relating to excluded obigations.

(3) *Special rule for allocating adjusted grossed-up basis when purchasing corporation has nonrecently purchased stock*—(i) *Scope.* This paragraph (c)(3) applies if at the beginning of the day after the acquisition date (A) the purchasing corporation holds nonrecently purchased stock for which a gain recognition election under section 338(b)(3) and § 1.338–4T(j)(2) is not made and (B) the hypothetical purchase price determined under paragraph (c)(3)(ii) of this section exceeds the adjusted grossed-up basis determined under § 1.338(b)–1T(c)(1). The determinations required under the preceding sentence shall be made without regard to adjustment events occurring after the close of new target's first taxable year.

(ii) *Determination of Hypothetical purchase price.* Hypothetical purchase price is the sum of the grossed-up basis of recently purchased stock as determined under § 1.338–4T(h)(3) *Answer 2* (ii) and liabilities of target.

(iii) *Allocation of adjusted grossed-up basis.* Subject to the limitations in paragraph (c) (1) and (2) of this section, adjusted grossed-up basis (after reduction by the amount of Class I assets) is allocated among Class II, III, and IV assets of target held at the beginning of the day after the acquisition date in proportion to their fair market values at such time. For this purpose, the fair market value of Class IV assets is deemed to be the excess, if any, of the hypothetical purchase price over the sum of (A) the amount of the Class I assets and (B) the fair market values of Class II and III assets.

(d) *Examples.* The provisions of this section and § 1.338(b)–1T may be illustrated by the following examples:

Example (1). (i) T owns 90% of the only class of outstanding stock of T1. P purchases 100% of the only class of outstanding stock of T for $2,000 and makes an express election for T. The express election for T causes a deemed election for T1 under section 338(f)(1). The grossed-up basis of the T stock is $2,000 *i.e.*, $2,000×1/1.

(ii) Assume that the liabilities of T as of the beginning of the day after the acquisition date (including income tax liabilities arising on the deemed sale of its assets) are as follows:

Liabilities (nonrecourse mortgage plus unsecured liabilities)	$700
Taxes payable	300
Total	1,000

(iii) The adjusted grossed-up basis ("AGUB") of T is determined as follows:

Grossed-up basis	$2,000
Total liabilities	1,000
AGUB	3,000

(iv) Assume that, at the beginning of the day after the acquisition date, T's cash and the fair market values of T's Class II and III assets are as follows:

Asset class	Asset	Fair market value
I	Cash	*$200
II	Portfolio of marketable securities	300
III	Inventory	300
III	Accounts receivable	600
III	Building	1,800
III	Land	200
III	Investment in T1	450
	Total	2,850

*Amount.

(v) Under paragraph (b)(2) of this section the amount of AGUB allocable to T's Class II and III assets is reduced by the amount of cash to $2,800, *i.e.*, $3,000−$200. $300 of AGUB is then allocated to marketable securities. Since the remaining amount of AGUB is $2,500 (*i.e.*, $3,000−($200+$300)), an amount which exceeds the sum of the fair market values of T's Class III assets, the amount allocated to each Class III asset is its fair market value:

Inventory	$300
Accounts receivable	600
Building	800
Land	200
Investment in T1	450
Total	2,350

(vi) The amount allocated to T's Class IV assets (assets in the nature of goodwill and going concern value) is $150, *i.e.*, $2,500−$2,350.

(vii) The grossed-up basis of the T1 stock is $500, *i.e.*, $450×1/.9.

(viii) Assume that the liabilities of T1 as of the beginning of the day after the acquisition date (including income tax liabilities arising on the deemed sale of its assets) are as follows:

General liabilities	$100
Taxes payable	20
Total	120

(ix) The AGUB of T1 is determined as follows:

Grossed-up basis of T1 stock	$500
Liabilities	120
AGUB	620

(x) Assume that at the beginning of the day after the acquisition date, T1's cash and the fair market values of its Class III assets are as follows:

Asset class	Asset	Fair market value
I	Cash	*$50
III	Patent	350
III	Equipment	200
	Total	600

*Amount.

(xi) The amount of AGUB allocable to T1's Class III assets is first reduced by the $50 of cash.

(xii) Since the remaining amount of AGUB ($570) is an amount which exceeds the sum of the fair market values of T1's Class III assets, the amount allocated to each Class III asset is its fair market value:

Patent	$350
Equipment	200
Total	550

(xiii) The amount allocated to T1's Class IV assets (assets in the nature of goodwill and going concern value) is $20, *i.e.*, $570—$550.

Example (2). (i) Assume that the facts are the same as in *Example (1)* except that P has, for five years, owned 20% of T's stock, which has a basis in P's hands at the beginning of the day after the acquisition date of $100, and P purchases the remaining 80% of T's stock for $1,600. P does not make a gain recognition election under section 338(b)(3).

(ii) Under paragraph (d) of § 1.338(b)-1T, the grossed-up basis of recently purchased T stock is $1,600, *i.e.*, $1,600×(1−.2)/.8.

(iii) The AGUB of T is determined as follows:

Grossed-up basis of recently purchased stock	$1,600
Basis of nonrecently purchased stock	100
Liabilities	1,000
AGUB	2,700

(iv) Since P holds nonrecently purchased stock, the hypothetical purchase price of the T stock must be computed and is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338-4T(h) ($1,600/.8)	$2,000
Liabilities	1,000
Total	3,000

(v) Since the hypothetical purchase price ($3,000) exceeds the AGUB (and no gain recognition election is made under section 338(b)(3)), AGUB is allocated under paragraph (c)(3) of this section.

(vi) The amount of AGUB ($2,700) available to allocate to T's assets is reduced by the amount of cash to $2,500 *i.e.*, $2,700−$200. This $2,500 balance is then allocated among the Class II, III, and IV assets in proportion to, and not in excess of, their fair market values.

(vii) Under paragraph (c)(3) of this section, the fair market value of Class IV assets is deemed to be $150, *i.e.*, the $3,000 hypothetical purchase price minus $2,850 (the sum of T's cash, $200, and the fair market values of its Class II and III assets, $2,650). The allocation is as follows:

Portfolio of marketable securities	*$268
Inventory	268
Accounts receivable	536
Building	714
Land	178
Investment in T1	402
Goodwill (and going concern value)	134
Total	2,500

*All numbers rounded for convenience.

(viii) If the AGUB of T is increased (or decreased) as a result of a subsequent adjustment, the hypothetical purchase price and the deemed fair market value of the Class IV assets shall be redetermined and the increase (or decrease) in AGUB shall be allocated among T's acquisition date assets pursuant to § 1.338(b)-3T(f). The increase (or decrease) in AGUB is allocated pursuant to § 1.338(b)-3T(f) even if the hypothetical purchase price, as redetermined, no longer exceeds AGUB, as redetermined.

§ 1.338(b)-3T Subsequent adjustments to adjusted grossed-up basis (temporary).

(a) *Scope*—(1) *In general.* This section provides rules for redetermining adjusted grossed-up basis to account for adjustment events that occur after the close of new target's first taxable year. These adjustments must be made upon the payment of contingent amounts for recently or nonrecently purchased stock, the change in a contingent liability of old target to one which is fixed and determinable, reductions in the amounts paid for recently or nonrecently purchased stock, and reductions in liabilities of target (and the liabilities to which its assets are subject) that were taken into account in determining adjusted grossed-up basis. Adjusted grossed-up basis is redetermined under this section only if such an adjustment would be required, under general principles of tax law, in connection with an actual asset purchase by new target from an unrelated person. This section also provides rules for the allocation of such adjustments subsequent to the close of new target's first taxable year. For the treatment of adjustments prior to the close of new target's first taxable year, see §§ 1.338(b)-1T and 1.338(b)-2T.

(2) *Exceptions to applicability of section.* This section does not apply to a reduction in indebtedness that is (1) includible in gross income as discharge of indebtedness income (or would be includible but for section 108(a)), (2) due to a contribution to capital, (3) payment of a liability, or (4) the discharge of a liability within the meaning of § 1.1001-2.

(3) *Adjustment of aggregate deemed sale price.* See paragraph (h) of this section for certain rules relating to a change in the aggregate deemed sale price of target's assets.

(b) *Nomenclature and definitions*—(1) *Nomenclature.* The nomenclature set out in § 1.338-4T(b)(1) also applies to this section.

(2) *Definitions*—(i) *In general.* The definitions in section 338 and §§ 338-1T, 1.338-4T, 1.338(b)-1T, and 1.338(b)-2T also apply to this section.

(ii) *Contingent liability.* A contingent liability is a liability of target at the beginning of the day after the acquisition date that is not fixed and determinable by the close of new target's first taxable year.

(iii) *Contingent amount.* The term "contingent amount" means the amount of the consideration to be paid for recently or nonrecently purchased stock that is not fixed and determinable by the close of new target's first taxable year, plus contingent liabilities of target.

(iv) *Reduction amount.* The term "reduction amount" means a reduction after the close of new target's first taxable year in either (A) the consideration paid for recently or nonrecently purchased stock, or (B) a liability of target (or a liability to which one or more of its assets are subject) that has been taken into account in determining adjusted gross-up basis.

(v) *Acquisition date asset.* The term "acquisition date asset" means any asset held by new target at the beginning of the day after the acquisition date (other than Class I assets).

(c) *General rule*—(1) *Time when increases in adjusted gross-up basis token into account.* A contingent amount that is taken into account for purposes of calculating adjusted grossed-up basis and the bases of assets of target is taken into account at the time at which such amount becomes fixed and determinable.

(2) *Time when decreases in adjusted grossed-up basis taken into account.* A reduction amount is taken into account for purposes of calculating adjusted grossed-up basis and the bases of assets of target when the reduction in the consideration paid or the reduction of the liability occurs.

(3) *Amount of increases and decreases in adjusted grossed-up basis.* The amount of an increase (or decrease) in adjusted grossed-up basis described in paragraph (c) (1) or (2) of this section is the difference between (i) adjusted grossed-up basis immediately before the increase (or decrease) and (ii) adjusted gross-up basis recomputed by taking into account the increase (or decrease). For example, if an additional amount is paid for recently purchased stock of target, grossed-up basis of recently purchased stock and adjusted grossed-up basis are recomputed by applying the fraction in section 338(b)(4) to the basis of the recently purchased stock at the beginning of the day after the acquisition date, adjusted for additional amounts paid. Any other adjustments required by a change in grossed-up basis would also be taken into account in making the recomputation, such as a change in the basis of nonrecently purchased stock under section 338(b)(3) and, if there has not been a section 338(h)(10) election, any additional income tax liabilities of target resulting from the additional payment.

(d) *Allocation of increases in adjusted grossed-up basis*—(1) *In general.* An increase in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is allocated among target's acquisition date assets under § 1.338(b)-2T. Amounts allocable to an acquisition date asset (or with respect to a disposed-of acquisition date asset) are subject to the fair market value limitation and other limitations in § 1.338(b)-2T(c) (1) and (2). Except as provided in paragraph (g) of this section, for the purpose of applying § 1.338(b)-2T(c) (1) and (2), the fair market value is determined at the beginning of the day after the acquisition date. If adjusted grossed-up basis was allocated among target's assets pursuant to § 1.338(b)-2T(c)(3), an increase in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is accounted for in accordance with the rules of paragraph (f) of this section.

(2) *Effect of disposition or depreciation of acquisition date assets.* If an acquisition date asset has been disposed of, depreciated, amortized or depleted by new target before a contingent amount is taken into account in redetermining adjusted grossed-up basis, the contingent amount otherwise allocable to such asset is treated under principles of tax law applicable when part of the cost of an asset (not previously reflected in its basis) is paid after the asset has been disposed of, depreciated, amortized or depleted.

(e) *Allocation of decreases in adjusted grossed-up basis*—(1) *In general.* If adjusted grossed-up basis was allocated in accordance with the rules of § 1.338(b)-2T(b)(2), a decrease in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is allocated in the following order: (i) first, as a reduction in the bases of target's Class IV acquisition date assets, (ii) second, as a reduction of the bases of target's Class III acquisition date assets in proportion to their fair market values at the beginning of the day after the acquisition date, and (iii) finally, as a reduction of the bases of target's acquisition date assets that are Class II assets in proportion to their fair market values at the beginning of the day after the acquisition date. The decrease in adjusted grossed-up basis allocated to an asset shall not exceed the adjusted grossed-up basis of target previously allocated to the asset. If adjusted grossed-up basis was allocated among target's assets pursuant to § 1.338(b)-2T(c)(3), a decrease in adjusted grossed-up basis (as determined under paragraph (c)(3) of this section) is accounted for in accordance with the rules of paragraph (f) of this section.

(2) *Effect of disposition of assets or reduction of basis below zero.* If an acquisition date asset has been disposed of, depreciated, amortized, or depleted by new target before a reduction amount is taken into account in adjusted grossed-up basis, the decrease in adjusted grossed-up basis attributable to such reduction amount otherwise allocable to such asset is treated under principles of tax law applicable when the cost of an asset (previously reflected in its basis) is reduced after the asset has been disposed of or depreciated, amortized, or depleted. For purposes of this subparagraph (2), an asset is considered to have been disposed of to the extent that its allocable portion of the decrease in adjusted grossed-up basis would reduce its basis below zero.

(3) *Section 38 property.* Section 1.47-2(c) applies to a reduction in basis of section 38 property under this section.

(f) *Special rule for allocation of increases (or decreases) in adjusted grossed-up basis when hypothetical purchase price was used in allocating adjusted grossed-up basis.* (1) *Scope.* This paragraph (f) applies if (i) adjusted grossed-up basis was allocated among new target's Class II, III, and IV assets in accordance with § 1.338(b)-2T(c)(3) and (ii) an adjustment event occurs after the close of new target's first taxable year.

(2) *Allocation of increases (decreases) in adjusted grossed-up basis.* If an adjustment event after the close of new target's first taxable year increases (or decreases) adjusted grossed-up basis, the following items shall be redetermined, taking into account such adjustment event: (i) The hypothetical purchase price, (ii) the deemed fair market value of Class IV assets, and (iii) the adjusted grossed-up basis allocable to each acquisition date asset under § 1.338(b)-2T(c)(3) (the redetermined (c)(3) amount). (The redetermination of the deemed fair market value of Class IV assets under this subparagraph (2) is made by taking into account the target's Class I assets and the fair market values of its Class II and III assets at the beginning of the day after the acquisition date). If the redetermined (c)(3) amount for an acquisition date asset exceeds the amount of adjusted grossed-up basis previously allocated to such asset (taking into account prior adjustments under this paragraph (f)), an amount of adjusted grossed-up basis equal to such excess shall be allocated to such asset. If the amount of adjusted grossed-up basis previously allocated to an acquisition date asset (taking into account prior to adjustments under this paragraph (f)) exceeds the redetermined (c)(3) amount for that asset, an amount equal to such excess shall be allocated as a reduction in the basis of such asset. The rules of paragraph (d)(2) (or (e)(2)) apply for the treatment of amounts allocable under this paragraph (f) to an acquisition date asset that has been disposed of, depreciated, amortized, or depleted.

(3) *Allocation to contingent income assets.* For modification of this rule with respect to certain assets, see paragraph (g) of this section.

(g) *Special rule for allocation of increases (or decreases) in adjusted grossed-up basis to specific assets*—(1) *Patents and similar property*—(i) *Scope.* The rules of this paragraph (g)(1) apply for purposes of allocating an increase (or decrease) in adjusted grossed-up basis to the extent (A) the contingency that results in the increase (or decrease) directly relates to income produced by a particular intangible asset ("contingent income asset"), such as a patent, a

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secret process, or a copyright, and (B) the increase (or decrease) is related to such contingent income asset and not to other target assets. Adjusted grossed-up basis, as determined under § 1.338(b)–1T at the beginning of the day after the acquisition date, and any increase (or decrease) to adjusted grossed-up basis to which this paragraph (g) does not apply, are allocated among target's acquisition date assets (including contingent income assets) in accordance with the provisions of § 1.338(b)–2T and paragraph (d), (e), or (f) of this section.

(ii) *Specific allocation.* Subject to the fair market value limitation and other limitations in § 1.338(b)–2T(c) (1) and (2), any increase (or decrease) to adjusted grossed-up basis to which this paragraph (f) applies is allocated (A) first, specifically to the contingent income asset to which the increase (or decrease) relates and, then, (B) in accordance with the provisions of paragraph (d), (e), or (f) of this section. Solely for purposes of applying the fair market value limitation and other limitations of § 1.338(b)–2T(c) (1) and (2) to a contingent income asset, the fair market value of such asset may be redetermined as of the time when the contingent amount (or reduction amount) is taken into account under paragraph (c) of this section. However, the fair market value limitation and other limitations of § 1.338(b)–2T(c) (1) and (2) as they apply to target's other acquisition date assets are not affected by such adjustments.

(2) *Internal Revenue Service authority.* In connection with the examination of a return, the District Director, in appropriate cases, may apply the principles of paragraph (g)(1) of this section to allocate an increase (or decrease) in adjusted grossed-up basis among particular of target's acquisition date assets to the extent such allocation is necessary to reflect properly the consideration that relates to each of those assets.

(h) *Changes in old target's aggregate deemed sale price of assets*—(1) *General rule*—(i) *In general.* Pursuant to general principles of tax law, the price at which old target is deemed to have sold its assets shall be adjusted to take into account adjustment events occurring after the acquisition date. In making such an adjustment, recognition of income (or loss) under this paragraph (h) with respect to the deemed sale of assets is not precluded because the target is treated as a new corporation after the acquisition date. To the extent general tax law principles require seller to account for adjustment events, target (or a member of the selling consolidated group in the event of an election under section 338(h)(10)) shall make such an accounting, which may result in reporting income, loss, or other amount.

(ii) *Redetermination of aggregate deemed sale price if the elective formula under section 338(h)(11) is used.* If the elective formula under section 338(h)(11) is used to determine the aggregate deemed sale price, that price generally shall be redetermined under § 1.338–4T(h) (or § 1.338(h)(10)–1T(f)(2) if an election under section 338(h)(10) is in effect) to take into account, to the extent required by general principles of tax law, adjustment events occurring after the acquisition date. For example, the aggregate deemed sale price generally shall be redetermined to take into account any additional payments made to the seller for recently purchased stock. If an increase (or decrease) in adjusted grossed-up basis is specifically allocated to a contingent income asset (or other asset) under paragraph (g) of this section, then any redetermination of the fair market value of the asset under that paragraph (g) is taken into account in making adjustments to the aggregate deemed sale price allocable to such asset.

(iii) *Redetermination of aggregate deemed sale price if the elective formula under section 338(h)(11) is not used.* If the elective formula under section 338(h)(11) is not used to determine the aggregate deemed sale price, an adjustment to aggregate deemed sale price may be required under this paragraph (h) only with respect to assets described in paragraph (g) (1)(i) and (2) of this section. In such a case, the adjustment to the portion of the aggregate deemed sale price allocable to such asset shall be the amount of the increase (or decrease) in adjusted grossed-up basis specifically allocated to the asset. However, the amount of the increase (or decrease) allocated to such asset shall not increase (or decrease) the portion of the aggregate deemed sale price allocable to the asset (taking into account all previous adjustments under this paragraph (h)) above or below the fair market value of such asset as of the date an adjustment under this paragraph (h) is required.

(2) *Procedure for transactions in which section 338(h)(10) is not elected—(i) Income or loss included in new target's return.* If an election under section 338(h)(10) is not made, any income, loss, or other amount of old target resulting from a change in the aggregate deemed sale price of old target's assets pursuant to paragraph (h)(1) of this section shall be included in new target's income tax return for new target's taxable year in which such change occurs. The amount of such income, loss, or other amount is determined with reference to old target's deemed sale of assets on the acquisition date. Thus, for example, if after the acquisition date there is an increase in the allocable aggregate deemed sale price of section 1245 property for which the recomputed basis (but not the adjusted basis) exceeded the portion of the aggregate deemed sale price allocable to that particular asset on the acquisition date, the additional gain shall be treated as ordinary income to the extent it does not exceed such excess amount. See paragraph (h)(2)(ii) for the special treatment of old target's carryovers and carrybacks. Although included in new target's income tax return, such income, loss, or other amount is separately accounted for as an item of old target and may not be offset by income, loss, credit, or other amount of new target. The amount of tax on income of old target recognized pursuant to this paragraph (h) is determined as if such income had been recognized in old target's taxable year ending at the close of the acquisition date. Any increase (or decrease) in new target's income tax liability by reason of this paragraph (h)(2)(i) shall be allocated among new target's acquisition date assets in accordance with paragraph (d), (e), (f), or (g) of this section when such liability becomes fixed and determinable.

(ii) *Carryovers and carrybacks*—(A) *Loss carryovers to new target taxable years.* A net operating loss or net capital loss of old target may be carried forward to a taxable year of new target, under the principles of section 172 or 1212, as the case may be, but is allowed as a deduction only to the extent of any recognized income of old target for such taxable year, as described in paragraph (h)(2)(i) of this section. For this purpose, however, taxable years of new target shall not be taken into account in applying the 15-taxable-year limitation (or other similar limitation) in section 172(b)(1) or the 5-taxable-year limitation (or other similar limitation) in section 1212(a)(1)(B). In applying sections 172(b) and 1212(a)(1), only income, deductions, and other amounts of old target shall be taken into account. Thus, if old target has an unexpired net operating loss at the close of its taxable year in which the deemed asset sale occurred that could be carried forward to a subsequent taxable year, such loss may be carried forward until it is absorbed by old target's income.

(B) *Loss carrybacks to taxable years of old target.* An ordinary loss or capital loss accounted for as a separate item of old target under paragraph (h)(2)(i) of this Action may be carried back to a taxable year of old target under the principles of section 172 or 1212, as the case may be. For this purpose, taxable years of new target shall not be taken into account in applying the 3-taxable-year limitation (or other similar limitation) in section 172(b) or 1212(a).

(C) *Credit carryovers and carrybacks.* The principles described in paragraph (h)(2)(ii) (A) and (B) of this section apply to carryovers and carrybacks of amounts for purposes of determining the amount of a credit allowable under part IV, subchapter A, chapter 1 of the Code. Thus, for example, credit carryovers of old target may only offset income tax attributable to items described in paragraph (h)(2)(i) of this section.

(3) *Procedure for transactions in which section 338(h)(10) is elected*—If an election under section 338(h)(10) is made, any income, loss, or other amount resulting from a change in the aggregate deemed sale price of old target's assets pursuant to paragraph (h)(1) of this section shall be accounted for in determining the taxable income (or other amount) of the member of the selling consolidated group (or other person) to which such income, loss, or other amount is attributable for the taxable year in which such change occurs. The amount of such income, loss, or other amount is determined with reference to old target's deemed sale of assets on the acquisition date.

(i) [Reserved]

(j) *Examples.* This section is illustrated by the following examples. Any contingent amount or reduction amount described in the following examples is exclusive of interest. For rules characterizing deferred contingent payments as principal or interest, see regulations under section 1274 and 1275 (d) or 483.

Example (1). (i) T's assets and their fair market values at the beginning of the day after the acquisition date are as follows:

Asset class	Assets	Fair market value
III	Building	$100
III	Stock of X (not a target)	200
IV	Goodwill (and going concern value)	35
	Total	335

T has no liabilities other than a contingent obligation and T does not use the elective formula under section 338(h)(11).

(ii) On January 1, 1988, P purchases all of the outstanding stock of T for $270 and makes an express election for T. The grossed-up basis of the T stock and T's adjusted grossed-up basis ("AGUB") are both $270. The AGUB is ratably allocated among T's Class III assets in proportion to their fair market values as follows:

Asset:	Basis
Building ($270 x 100/300)	$90
Stock ($270 x 200/300)	180
Total	270

No amount is allocated to the Class IV assets. New T is a calendar year taxpayer. Assume that the X stock is a capital asset in the hands of new T.

(iii) On January 1, 1990, New T sells the X stock and uses the proceeds of the sales to purchase inventory.

(iv) On June 30, 1991, the contingent liability of old T becomes fixed and determinable. The amount of the liability is $60.

(v) T's AGUB increases by $60 from $270 to $330. This $60 increase in AGUB is first allocated among T's acquisition date assets in accordance with the provisions of § 1.338 (b)–2T. Since the redetermined AGUB for T ($330) exceed the sum of the fair market values at the beginning of the day after the acquisition date of the Class III acquisition date assets ($300), AGUB allocated to those assets is limited to those fair market values under § 1.338(b)–2T(c)(1). The remaining AGUB of $30 is allocated to goodwill and going concern value (Class IV assets). The amount of increase in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase in AGUB
Building	$90	$100	$10
X stock	180	200	20
Goodwill and good concern value	0	30	30
Total	270	330	60

(vi) Since the X stock was disposed of before the contingent liability became fixed and determinable, no amount of the increase in AGUB attributable to such stock may be allocated to any T asset. Rather , such amount, $20, is allowed as a capital loss to T for the taxable year 1991 under the principles of *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952). In addition, the $10 increase in AGUB allocated to the building is treated as a basis redetermination in 1991. See paragraph (d)(2) of this section.

Example (2). (i) On January 1, 1988, P purchases all of the outstanding stock of T for $270 and makes an express election for T. T does not use the elective formula under section 338 (h)(11). Assume that the AGUB of T is $500 and is allocated among T's acquisition date assets as follows:

Asset class	Asset	Basis
III	Machinery	$150
III	Land	250
IV	Goodwill and going concern value	100
	Total	$500

(ii) On June 1, 1994, P filed a claim against the selling shareholders of T in a court of appropriate jurisdiction alleging fraud in the sale of the T stock.

(iii) On January 1, 1995, the former shareholders refund part of the purchase price to P in a settlement of the 1994 lawsuit. This refund results in a decrease of T's AGUB of $140.

(iv) Under paragraph (e)(1) of this section, the decrease in AGUB is allocated among T's acquisition date assets. First, assuming the basis of the goodwill and going concern value on January 1, 1995, is still $100, then $100 of the decrease in AGUB is allocated to that asset. The remaining decrease in AGUB ($40) is allocated to the Class III assets in proportion to their fair market value at the beginning of the day after the acquisition date. Thus, $15 is allocated to the machinery ($40 x $150/$800) and $25 to the land ($40 x $250/$800).

(v) Assume that, as a result of deductions under section 168, the adjusted basis of the machinery immediately before the decrease in AGUB is zero. The machinery, therefore, is treated as if it were disposed of before the decrease is taken into account. T recognizes ordinary income of $15 for the taxable year 1995 under the principles of *Arrowsmith* v. *Commissioner*, 344 U.S. 6 (1952). And the tax benefit rule. No adjustment to the basis of T's assets is made for any tax paid on this amount.

(vi) In summary, the basis of T's acquisition date assets, as of January 1, 1995, is as follows:

Asset:	Basis
Machinery	0
Land	$225
Goodwill and going concern value	0

Example (3). (i) Assume that the facts are the same as in *Example* (2) of § 1.338(b)–2T (d) except that the recently purchased stock is acquired for $1,600 plus certain additional payments which are contingent upon T's future earnings. Thus, T's AGUB, determined as of the beginning of the day after the acquisition date (after reduction by T's cash of $200), is $2,500 and is allocated among T's Class II, III, and IV acquisition date assets pursuant to § 1.338(b)–2T(c)(3)(iii) as follows:

Portfolio of marketable securities	*$288
Inventory	288
Accounts receivable	536
Building	714
Land	178
Investment in T1	402

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Goodwill (and going concern value) ...	134
Total ...	2,500

*All numbers rounded for convenience.

(ii) Subsequent to the close of new target's first taxable year, P pays an additional $200 for its recently purchased T stock.

(iii) T's AGUB increases by $200, from $2,700 to $2,900. This $200 increase in AGUB is accounted for in accordance with the provisions of § 1.338(b)–2T (c)(3)(iii) and paragraph (f) of this section.

(iv) The hypothetical purchase price of the T stock is redetermined as follows:

Crossed-up basis of recently purchased stock as determined under § 1.338–4T(h) ($1,800/.8) ...	$2,250
Liabilities ...	1,000
Total ...	3,250

(v) Under § 1.338(b)–2T (c)(3) the redetermined fair market value of Class IV assets is deemed to be $400, *i.e.*, the hypothetical purchase price, as redetermined, of $3,250 minus $2,850 (the sum of T's cash, $200, and the fair market values of its Class II and III assets, $2,650).

(vi) The amount of AGUB available to allocate to T's Class II, III, and IV acquisition date assets is $2,700 (*i.e.*, redetermined AGUB reduced by cash). AGUB allocable to each of T's acquisition date assets (*i.e.*, the redetermined (c)(3) amount) is redetermined using the deemed fair market value of the Class IV asset from subdivision (v) as follows:

Portfolio of marketable securities ...	*$266
Inventory ...	266
Accounts receivable ...	531
Building ...	708
Land ...	177
Investment in T1 ...	398
Goodwill (and going concern value) ...	354
Total ...	2,700

*All numbers rounded for convenience.

(vii) As illustrated by this example, the application of paragraph (f) of this section results in a basis increase for some assets and a basis decrease for other assets. The amount of increase (or decrease) in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined (c)(3) amount	Increase (or Decrease) in AGUB
Portfolio of marketable securities ...	$268	$266	$(2)
Inventory ...	268	266	(2)
Accounts receivable ...	536	531	(5)
Building ...	714	708	(6)
Land ...	178	177	(1)
Investment T1 ...	402	398	(4)
Goodwill (and going concern value) ...	134	354	220
Total ...	2,500	2,700	200

(viii) If P made a gain recognition election under section 338 (b)(3) with respect to its nonrecently purchased stock, paragraph (f) of this section would be inapplicable.

Example (4). (i) On January 1, 1987, P purchases all of the outstanding T stock and makes an express election for T. The fair market value of T's assets (other than goodwill and going concern value) as of the beginning of the following day is as follows:

Asset class	Assets	Fair market value
III ...	Equipment ...	$200
III ...	Accounts receivable ...	100
III ...	Building ...	500
	Total ...	800

(ii) T has elected the elective ADSP formula, in accordance with § 1.338–4T(h)(3) *Answer 2* (ii) (B), to determine the aggregate deemed sale price of old T's assets. Assume that the ADSP as so determined is $700. Assume also that the AGUB is equal to $700. T has no liabilities.

(iii) The AGUB of $700 is ratably allocated among T's Class III acquisition date assets in proportion to their fair market values as follows:

Asset:	Basis
Equipment ($700 × 200/800) ...	$175.00
Account receivable ($700 × 100/800) ...	87.50
Building ($700 × 500/800) ...	437.50
Total ...	700.00

No amount is allocated to goodwill (or going concern value).

(iv) P and T file a consolidated return for 1987 and each following year with P as the common parent of the affiliated group.

(v) In 1990, a contingent amount of $117 is paid by P for the stock of old T. As a result, additional income is recognized under section 1245 by old T for 1990 on the deemed sale of old T's assets. This income must be reported on the consolidated return of new T for 1990, but it is separately accounted for and may not be absorbed by losses or deductions of P or of new T. Assume that the tax on this income is $3.

(vi) In 1990, there is an increase in T's AGUB of $120, *i.e.*, $117 + $3. The amount of this increase allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Equipment ...	$175.00	$200.00	$25.00
Accounts receivable ...	87.50	100.00	12.50
Building ...	437.50	500.00	62.50
Goodwill (and going concern value) ...	0.00	20.00	20.00
Total ...	700.00	820.00	120.00

Example (5). (i) On June 1, 1990, P purchases all of the stock of T and makes an express election for T. T has one item of section 38 property whose basis on June 2, 1990 is $100,000. An investment credit of $8,000 is allowed to new T for the equipment because of an election under section 48 (q)(4).

(ii) In 1992, part of the purchase price of the T stock is refunded to P. Assume that the amount of the resulting decrease in AGUB allocated to the machinery is $7,000. Pursuant to § 1.47–2(c), the machinery ceases to be section 38 property to the extent of $7,000 of its original basis.

(iii) The additional tax of $560 (8% × $7,000) resulting from the machine ceasing to be section 38 property is reported on T's return for 1992. Such amount is not an adjustment to AGUB.

Example (6). (i) T has three assets (other than goodwill and going concern value) whose fair market values as of the beginning of the day after the acquisition date are as follows:

Asset Class	Assets	Fair market value
III ...	Building ...	$100
III ...	Equipment ...	50
III ...	Secret process ...	50
	Total ...	200

T has no liabilities. Assume that no election under section 338 (h) (10) or (h) (11) is in effect.

(ii) On January 1, 1989, P purchases all of the outstanding T stock for $225 plus 50 percent of the net profits generated by the secret process for each of the next three years, determinable and payable on January 1 of each following year.

(iii) As of the beginning of January 2, 1989, T's AGUB is $225, allocated as follows:

Asset class	Assets	Basis
III ...	Building ...	$100
III ...	Equipment ...	50
III ...	Secret Process ...	50
IV ...	Goodwill and going concern value.	25
	Total ...	225

(iv) On January 1, 1990, $5 is paid by P for the T stock by reason of the net profits from the secret process. The payments are not attributable in any respect to any of T's other acquisition date assets. As a result, T's AGUB on January 1, 1990, is increased by $5.

(v) Assume that as of January 1, 1990, the fair market value of the secret process is determined to be $52.

(vi) On January 1, 1990, only $2 of the $5 increase in AGUB is allocated to the secret process because the increase in AGUB so allocated cannot increase the basis of the secret process above its redetermined fair market value ($52). The balance of the increase is allocated to goodwill and going concern value because the fair market value limitation of § 1.338 (b)–2T(c) (1) precludes allocating additional AGUB to the Class III assets.

(vii) The price for which old target is deemed to have sold the secret process is increased to reflect the $2 allocated to its basis to new target. See § 1.338–4T (h) (3) and paragraph (h) (1) of this section.

(viii) If the fair market value of the secret process as of January 1, 1990, is unchanged from its fair market value as of the beginning of the day after the acquisition date, then the $5 increase in AGUB is allocated to T's goodwill and going concern value.

Example (7). (i) The facts are the same as in *Example (6)* except that—

(A) The secret process is valued at $75 as of the beginning of the day after the acquisition date, and,

(B) P pays $250 for the T stock and the former T shareholders agree to refund a portion of the purchase price to P for each of the three years that the net income from the secret process is less than $15 per year, determinable and payable on January 1 of the next year.

(ii) Assume the net income from the process is less than $15 for 1989, and on January 1, 1990, P receives a refund that reduces the stock purchase price by $3.

(iii) Assume that as of January 1, 1990, the fair market value of the secret process is redetermined to be $65.

(iv) As of January 1, 1990, the AGUB of T is decreased by $3. This decrease is allocated to the secret process, whose basis becomes $72, (*i.e.*, $75 – $3, assuming no adjustments thereto other than the decrease in AGUB).

(v) The price for which old target is deemed to have sold the secret process is decreased to reflect the $3 decrease allocated to its basis to new target. See § 1.338–4T(h)(3) and paragraph (h) of this section.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: January 18, 1986.

J. Roger Mentz,
Acting Assistant Secretary of the Treasury.

[FR Doc. 86–1848 Filed 1–23–86; 4:49 pm]
BILLING CODE 4830–01–M

26 CFR Part 51

[T.D. 8056]

Excise Taxes; Definitions Relating to Exemptions From the Windfall Profit Tax

Correction

In FR Doc. 85–23936, beginning on page 40966, in the issue of Tuesday, October 8, 1985, make the following corrections:

On page 40968, first column, § 51.4994–1(c)(1)(i), third line "1PO" should read "170"; and in the same column, in the first line of paragraph (c)(1)(ii)(A), the section reference is corrected to read, "170(b)(1)(A)(ii)".

BILLING CODE 1505–01–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Freedom of Information Act, Implementation; Fee Schedule

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The schedule of fees charged by the National Labor Relations Board for document search conducted in response to requests for documents made pursuant to the Freedom of Information Act has not been changed since initially established in February 1975. These revisions serve only to change the rule to reflect the direct personnel cost of document searches under current salary levels.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254–8430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (61 Stat. 136; 29 U.S.C. 156), and in accordance with the requirements of section 552(a)(4)(A) of the Freedom of Information Act, the National Labor Relations Board is amending its rule establishing a uniform schedule of fees to provide for recovery of the direct costs of record search and duplication incurred in responding to requests for Agency records, made pursuant to section 552(a) (2) and (3) of the Freedom of Information Act, as amended (5 U.S.C. 552(a) (2) and (3)).

The present fee schedule as set forth in § 102.117(c)(2)(iv)(a) of the Board's rules was established in 1975 after rulemaking proceedings (40 FR 2591–2592, January 14, 1975; 40 FR 7290–7291, February 19, 1975) and provides for charges of $1.10 for each one-quarter hour or portion thereof of clerical time and $2.85 for each one-quarter hour or portion thereof of professional time. As stated in the rulemaking notice (40 FR 2582) the charges were based upon the cost to the Agency at that time of salary and personnel benefits for clerical employees at the GS–5 salary level and professional employees at the GS–13 salary level. Current experience is that these grade levels continue to represent the average level at which this work is being performed. The 1985 cost to the Agency of salary and personnel benefits for employees at those grade levels, computed on the basis of 225 days (1800 hours) on-duty time per year, will be $10.15 per hour for clerical employees at Grade 5, Step 5, and $26.51 per hour for a professional employee at Grade 13, Step 5. Therefore, on December 17, 1985, the Board proposed that the schedule of fees be revised to provide for a charge of $2.50 for each one-quarter hour or portion thereof of clerical time and a charge of $8.60 for each one-quarter hour or portion thereof of professional time. The Board did not receive any comments on its proposed revisions. The revisions to the rule will be effective immediately upon publication. The other elements of the schedule of fees, including the 10-cent-per-page charge for duplication of records, will remain unchanged.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Freedom of Information.

Accordingly, 29 CFR Part 102, § 102.117(c)(2)(iv)(a), is amended to read as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for Part 102 is revised to read as follows:

Authority: Section 6 of the National Labor Relations Act, 61 Stat. 136, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under section 552(a)(4)(A) of the Freedom of Information Act, 80 Stat. 383, as amended (5 U.S.C. 552(a)(4)(A).

2. Section 102.117 is amended by revising paragraph (c)(2)(iv)(*a*) to read as follows: (The introductory text of (c)(2)(iv) is shown for the convenience of the reader and remains unchanged.)

§ 102.117 Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.

* * * * * *

(c) * * *

(2) * * *

(iv) Persons requesting records from this agency shall be subject to a charge of fees for the direct cost of document search and duplication in accordance with the following schedules, procedures, and conditions:

(a) Schedule of charges:

(1) For each one-quarter hour or portion thereof of clerical time $2.50

(2) For each one-quarter hour or portion thereof of professional time $8.60

(3) For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records $0.10

(4) All other direct costs of search or duplication shall be charged to the requester in the same amount as incurred by the agency.

* * * * *

Dated: Washington, DC, January 22, 1986.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 86-1877 Filed 1-28-86; 8:45 am]

BILLING CODE 7545-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP5F3295/R811; FRL-2960-1]

Pesticide Tolerance for Diclofop-Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide diclofop-methyl and its metabolites in or on the raw agricultural commodity flaxseed. This regulation to establish a maximum permissible level for residues of the herbicide in or on flaxseed was requested in a petition submitted by American Hoechst Corp.

EFFECTIVE DATE: Effective on January 29, 1986.

ADDRESS: Written objections, identified by the document control number [PP5F3295/R811], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT:

By mail:

Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 9, 1985 (50 FR 41216), which announced that American Hoechst Corp., Agricultural Division, Rte. 202-206, North Somerville, NJ 08876, had filed pesticide petition 5F3295 to EPA proposing to amend 40 CFR 180.385 by establishing a tolerance for the combined residues of the herbicide diclofop-methyl (methyl 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoate) and its metabolites 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoic acid and 2-[4-(2,4-dichloro-5-hydroxyphenoxy)phenoxy] propanoic acid, each expressed s diclofop-methyl, in or on the commodity flaxseed at 0.1 part per million (ppm). No comments were received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the tolorance include a rat oral median lethal dose (LD_{50}) with an LD_{50} of 557 to 580 milligrams per kilogram (mg/kg); a dominant lethal mutagenicity study, negative at 100 mg/kg/day (highest level tested); a micronucleus mutagenicity study, negative at 100 mg/kg/day (highest level tested); an Ames test, negative at 5.0 mg/plate (highest level tested); a mutagenicity study with *Schizosaccharomyces pombe*, negative; a gene conversion study in *Saccharomyces cerevisiae*, negative; an unscheduled DNA synthesis study, negative; a rat teratology study with a teratogenetic no-observed-effect level (NOEL) of 100 ppm (highest dose tested) (equivalent to 5.0 mg/kg of body weight (bwt)); a rabbit teratology study with a teratogenetic NOEL of 3 mg/kg/day (highest dose tested) and a NOEL for fetotoxicity of 3.0 mg/kg/day; a 3-generation rat reproduction study with NOEL of 30.0 ppm (1.5 mg/kg of bwt); a 2-year rat feeding/oncogenicity study with a NOEL of 20 ppm (1.0 mg/kg of bwt) (highest level tested); a 2-year mouse feeding/oncogenicity study with systemic NOEL of 2 ppm (0.3 mg/kg of bwt) and a significant increase in liver neoplasms in males and females at the highest dose tested, 20 ppm (2.5 mg/kg/day); and a 15-month dog feeding study with a NOEL of 8 ppm (0.2 mg/kg of bwt).

The Agency has evaluated dietary exposure to diclofop-methyl residues for the commodities proposed. Assuming that 100 percent of the crop will have residues at the tolerance level (0.1 ppm), using a multi-stage model the "worst case" dietary oncogenic risk is calculated to be one incidence in a million. Actual risk will be less, since not all of the flax crop will be treated and those crops treated and sold will have residues less than 0.1 ppm (the level of sensitivity). The incremental increase in risk for flaxseed in the diet is 0.29 percent of the theoretical maximum residue concentration (TMRC) and does not change the calculated total dietary "worst case" risk from already established tolerance.

Based on the NOEL of 2 ppm in the chronic mouse-feeding study and a 100-fold safety factor, the acceptable daily intake (ADI) has been set a 0.003 mg/kg/day with a maximum permissible intake (MPI) of 0.18 mg/day for a 60-kg person. This tolerance and previously established tolerances result in a TMRC of 0.01711 mg/day in a 1.5-kg diet and use 9.50 percent of the ADI.

The pesticide is considered useful for the purpose for which the tolerance is sought. The metabolism of the pesticide is adequately understood, and an adequate analytical method, gas chromatography using an electron-capture detector, is available for enforcement purposes. There is no expectation of secondary residues in meat, milk, poultry, and eggs. There are no regulatory actions pending against the continued registration of the pesticide. Based on the information cited above, the Agency has determined that the establishment of the tolerance will protect the public health and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section of 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 15, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.385 is amended by adding and alphabetically inserting the commodity flaxseed, to read as follows:

§ 180.385 Diclofop-methyl; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Flaxseed	0.1
* * * * *	

[FR Doc. 86-1682 Filed 1-28-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2620 and 2910

[Circular No. 2574]

State Grants and Leases; Removal of Provisions Covering Patents for Granted School Sections and Small Tract Act Lease or Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking removes the existing regulations covering Patents for Granted School Sections—43 CFR Subpart 2624 and Small Tract Act—43 CFR Subpart 2913. These regulations are no longer needed because the Federal Land Policy and Management Act of 1976 repealed the Act of June 21, 1934, and the Act of June 1, 1938, as amended by the Act of June 8, 1954. Both of these subparts have been retained to facilitate the handling of applications pending at the time the Acts were repealed.

EFFECTIVE DATE: February 28, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (320), Bureau of Land Management, Room 3643, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary L. Rowe, (202) 343-8693.

SUPPLEMENTARY INFORMATION: This final rulemaking removes from the existing regulations provisions covering patents for grant school sections authorized by the Act of June 21, 1934 (43 U.S.C. 871(a)), contained in 43 CFR Subpart 2624. It also removes from the existing regulations the provisions covering the sale or lease of five acre parcels as authorized by the Act of June 1, 1938 (52 Stat. 609), as amended by the Act of June 8, 1954 (43 U.S.C. 682(a)). These statutes have been repealed by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), but the regulatory provisions have been retained to facilitate the processing of applications that were pending at the time the statutes were repealed. All pending actions have been completed and the regulations are no longer needed. This administrative action removes these regulations from the Code of Federal Regulations. Even though all actions covered by these statutes have been completed, rights granted pursuant to the statutes might still exist. The Bureau of Land Management does not expect any issues to arise under these existing rights requiring consideration under the regulations being removed by this final rulemaking. However, should any questions arise concerning rights previously granted under these regulations, earlier editions of the Code of Federal Regulations will remain available to assist in interpretation.

The principal author of this final rulemaking is Gary L. Rowe, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no information collection requirements contained in this final rulemaking requiring the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2620

Alaska, Intergovernmental relations, Public lands—grants, Public lands—mineral resources.

43 CFR Part 2910

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). Part 2620, Group 2600 and Part 2910, Group 2900, both of Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below.

James E. Cason,

Deputy Assistant Secretary of the Interior.

January 16, 1986.

PART 2620—[AMENDED]

1. The authority citation for Part 2620 continues to read:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

Subpart 2624—[Removed]

2. Part 2620 is amended by removing Subpart 2624 in its entirety.

PART 2910—[AMENDED]

3. The authority citation for Part 2910 is added to read:

Authority: 49 U.S.C. 211—214; 43 U.S.C. et seq., 48 U.S.C. 360, 361.

Subpart 2913—[Removed]

4. Part 2910 is amended by removing Subpart 2913 in its entirety.

[FR Doc. 86-1908 Filed 1-28-86; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6612

[AR 032636]

Modification of Public Land Order No. 3305; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order as to 73.647 acres to change the purpose from a Federal Bureau of Investigation training facility to a Federal corrections facility under the Department of Justice's Bureau of Prisons. The land has been and remains closed to surface entry, mining, and mineral leasing.

EFFECTIVE DATE: January 29, 1986.

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FOR FURTHER INFORMATION CONTACT: John T. Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85014 (602) 241–5531.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 3305, which withdrew lands for the Department of Justice, Federal Bureau of Investigation, for a law enforcement training facility, is hereby modified insofar as it affects the following described land to change the purpose to a Federal corrections facility under the administrative jurisdiction of the Department of Justice, Bureau of Prisons.

Gila and Salt River Meridian

T. 6 N., R. 2 E.
Sec. 28, that portion of the N½SW¼ and the S½NW¼ more particularly described as follows:

Beginning at the Southwest corner of the North half of the Southwest quarter of said Section 28; Thence, North along the West line of the Southwest quarter of said Section 28 a distance of 1,319.84 feet to the Northwest corner of the Southwest quarter of said Section 28; Thence, North 00 degrees 01'20" West along the West line of the Northwest quarter of said Section 28 a distance of 1,320.06 feet to the Northwest corner of the South half of the Northwest quarter of said Section 28; Thence, South 89 degrees 59'15" East along the North line of the South half of the Northwest quarter of said Section 28 a distance of 1,301.04 feet; Thence, South 00 degrees 00'45" West, 488.24 feet; Thence, South 60 degrees 00'00" West, 760.00 feet; Thence, South 30 degrees 00'00" East, 1,010.00 feet; Thence, South 40 degrees 00'00" East, 1,040.00 feet; Thence, East 590.00 feet; Thence, South 100.00 feet to a point on the South line of the North half of the Southwest quarter of said Section 28; Thence, West along said South line a distance of 2,405.75 feet to the point of beginning.

The area described contains 73.647 acres in Maricopa County.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–1909 Filed 1–28–86; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6698]

Suspension of Community Eligibility; Rhode Island et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the third column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body has adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the third column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable floodplain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of Flood Insurance in community	Special flood hazard areas identified	Date [1]
Region I				
Rhode Island: Westerly, Town of, Washington County.	445410C	Aug. 14, 1970, Emerg.; July 28, 1972, Reg.; Feb. 5, 1986, Susp.	July 26, 1972, July 1, 1974, Dec. 26, 1975, Oct. 1, 1983 and Feb. 5, 1986.	Feb. 5, 1986.
Region II				
New York:				
Fenner, Town of, Madison County	360399B	Mar. 19, 1976, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Sept. 13, 1974, May 26, 1976 and Feb. 5, 1986.	Do.
St. Armand, Town of, Essex County	361157B	Aug. 10, 1984, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Oct. 25, 1974, July 2, 1976 and Feb. 5, 1986	Do.
Region V				
Ohio:				
Killbuck, Village of, Holmes County	390279B	Aug. 27, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	May 3, 1974, May 21, 1976 and Feb 5, 1986	Do.
Mount Blanchard, Village of, Hancock County.	390248B	Jan. 13, 1976, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Aug. 9, 1974, May 21, 1976 and Feb 5, 1986	Do.
Wisconsin: LaCrosse, City of, LaCrosse County.	555562B	Dec. 4, 1970, Emerg.; Jan. 15, 1971, Reg.; June 25, 1985, Susp.; July 3, 1985, Rein.; Feb. 5, 1986, Susp.	Jan. 15, 1971, July 1, 1974, May 14, 1976 and May 15, 1985.	Do.
Region VII				
Kansas:				
Hoisington, City of, Barton County	200020C	Feb. 21, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Feb. 22, 1974, Oct. 24, 1975, May 24, 1977 and Feb. 5, 1986.	Do.
Salina, City of, Saline County	200319B	July 2, 1974, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	May 24, 1974, Jan. 2, 1976 and Feb. 5, 1986	Do.
Saline County, Unincorporated Areas.	200316B	May 5, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	June 26, 1977 and Feb. 5, 1986	Do.
Region VIII				
Colorado:				
Carbondale, Town of, Garfield County.	080234A	Feb. 7, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Aug. 29, 1975 and Feb. 5, 1986	Do.
Palisade, Town of	080196A	Sept. 27, 1982, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Feb. 5, 1986	Feb. 5, 1987
Region X				
Oregon: Hubbard, City of, Marion County.	410161B	Apr. 22, 1975, Emerg., Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	May 10, 1974, July 11, 1975 and Feb. 5, 1986.	Feb. 5, 1986.
Washington: Chewelah, City of, Stevens County.	530186B	June 26, 1975, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	June 7, 1974, Jan. 2, 1976 and Feb. 5, 1986.	Do
Minimal Conversions				
Region VIII				
Colorado: Crook, Town of, Logan County.	080111	May 6, 1977, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Nov. 8, 1974 and Feb. 5, 1986	Do.
Utah: Marysvale, Town of, Piute County	490096A	May 6, 1977, Emerg.; Feb. 5, 1986, Reg.; Feb. 5, 1986, Susp.	Feb. 11, 1977 and Feb. 5, 1986	Do.
Region I				
Connecticut: Westbrook, Town of, Middlesex County.	090070D	Mar. 9, 1973, Emerg.; Dec. 1, 1982, Reg.; Feb. 19, 1986, Susp.	Nov. 23, 1973, Oct. 15, 1976 and Feb. 19, 1986.	Feb. 19, 1986.
Rhode Island: Jamestown, Town of, Newport County.	445399B	Nov. 20, 1970, Emerg.; Apr. 21, 1972, Reg.; Feb. 19, 1986, Susp.	Apr. 20, 1972, July 1, 1974, Feb. 27, 1976 and Feb. 19, 1986.	Do.
Region II				
New Jersey: Englewood, City of, Bergen County.	340031C	Dec. 29, 1972, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Oct. 29, 1976 and Feb. 19, 1986	Do.
Region IV				
Alabama:				
Elmore County, Unincorporated Areas.	010406B	Jan. 18, 1980, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Dec. 15, 1978 and Feb. 19, 1986	Do.
Citronelle, City of, Mobile County	010277B	July 23, 1975, Emerg.; June 17, 1977, Reg.; Feb. 19, 1986	Jan. 31, 1975 and Feb. 19, 1986	Do.
Florida: Marineland, Town of, Flagler County.	120570B	Oct. 8, 1982, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	June 10, 1977 and Feb. 19, 1986	Do.
Kentucky: Martin County, Unincorporated Areas.	210166C	Apr. 14, 1977, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Dec. 13, 1974, June 10, 1977, Dec. 2, 1977 and Feb. 19, 1986.	Do.
Georgia: Burnswick, City of	170656B	Mar. 6, 1974, Emerg.; June 19, 1985, Reg.; Feb. 28, 1986, Susp.	May 24, 1974, Jan. 9, 1976 and June 19, 1985.	Feb. 28, 1986.
Region V				
Illinois: Union County, Unincorporated Areas.	170656B	May 1, 1984, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Nov. 29, 1974, Sept. 17, 1976 and Feb. 19, 1986.	Feb. 19, 1986.
Michigan: Hamburg, Township of, Livingston County.	260118C	July 23, 1974, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	July 19, 1974, Jan. 21, 1977, Aug. 29, 1980 and Feb. 19, 1986.	Do.
Wisconsin: Lincoln County, Unincorporated Areas.	550585B	Mar. 8, 1976, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Sept. 22, 1978 and Feb. 19, 1986	Do.
Region X				
Washington: Mukilteo, City of, Snohomish County.	530235A	Feb. 3, 1977, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	July 11, 1975 and Feb. 19, 1986	Do.
Minimal Conversions				
Region I				
Maine: Hope, Town of, Knox County	230226A	Apr. 5, 1976, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Feb. 21, 1975 and Feb. 19, 1986	Do.
Region II				
New York:				
Altmar, Village of, Oswego County	360646B	Jan. 12, 1976, Emerg.; Feb. 5, 1986, Reg.; Feb. 19, 1986, Susp.	June 25, 1976, Nov. 15, 1974 and Feb. 5, 1986.	Do.
Orwell, Town of, Oswego County	361262A	Jan. 3, 1977, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Oct. 25, 1974, June 4, 1976 and Feb. 19, 1986.	Do.
Parish, Village of, Oswego County	361575B	Nov. 19, 1975, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Oct. 29, 1976 and Feb. 19, 1986	Do.
St. Johnsville, Village of, Montgomery County.	360457B	Oct. 23, 1974, Emerg.; Feb. 19, 1986, Reg.; Feb. 19, 1986, Susp.	Feb. 15, 1974, June 18, 1976 and Feb. 19, 1986.	Do.
Region V				
Wisconsin: Genoa City, Village of, Walworth County.	550465B	Mar. 5, 1975, Emerg.; Sept. 4, 1985, Reg.; Feb. 19, 1986, Susp.	Jan. 9, 1974, May 15, 1976 and Sept. 4, 1985.	Do.

[1] Certain Federal assistance no longer available in special flood hazard areas.

Code for reading 5th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

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Issued: January 23, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-1893 Filed 1-28-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950-5182]

Fishery Conservation and Management; Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the Eastside Section of the Kodiak District of Registration Area J must be closed in order to protect the Tanner crab stock. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the Eastside Section. This action is intended as a management measure to conserve Tanner crabs.

DATE: This notice is effective at noon, Alaska Standard Time (AST), January 24, 1986. Public comments on this notice of closure are invited until February 10, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., A.s.t., weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska, which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(e) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district. One of these districts is the Kodiak District, which is further subdivided into eight sections also to prevent overfishing of individual Tanner crab stocks. Desired harvest levels are established on the basis of pot and trawl index surveys conducted by the Alaska Department of Fish and Game. The optimum yield for the entire Kodiak District is 11 to 33 million pounds. A preseason guideline harvest forecast for the Kodiak District was 7.5 to 7.65 million pounds, with 2.2 million pounds projected for the Eastside Section, based on the 1985 crab index survey. The 1986 fishing season began on January 15 (50 FR 47549, November 19, 1985). Reasons for the closure follow.

In the Eastside Section, approximately 1.2 million pounds of Tanner crabs have been delivered through January 20. The catch per unit of effort (CPUE) declined from approximately 65 crabs per pot on January 16 to less than 10 crabs per pot on January 20. About 110 vessels with 15,000 pots registered to fish the Eastside Section during the 1986 season. This effort is approximately two-thirds greater than the effort in 1985. To date, most of the larger vessels in the fleet have not made deliveries. Based on the fleet's hold capacity, the preseason guideline harvest estimate of 2.2 million pounds is believed already to have been greatly exceeded. This unexpected level of catch has resulted in the removal of a greater number of Tanner crabs from the population than the preseason forecasts indicated was biologically acceptable. This unanticipated excessive level of catch, therefore, has resulted in the stock conditions in the Eastside Section being substantially different from the condition anticipated at the beginning of the fishing year; i.e., the removal of only 2.2 million pounds. The Eastside Section, therefore, is closed.

In light of this information, the Regional Director has determined that the condition of the Tanner crab stock in the Eastside Section of the Kodiak District is substantially different from the condition anticipated at the beginning of the fishing year and that this difference reasonably supports the need to protect this Tanner crab stock by closing the Eastside Section, as defined in § 671.26(f)(1)(i), from noon, A.s.t., January 24, 1986, until noon, Alaska Daylight Time, April 30, 1986, at which time the closure of this section prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

The Tanner crab stock in the Eastside Section of the Kodiak District will be subject to damage by overfishing unless the closure takes effect promptly. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice of closure is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 24, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-1953 Filed 1-24-86; 4:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 19
Wednesday, January 29, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Key Element Reporting System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Child Care Food Program (CCFP) regulations to incorporate a Key Element Reporting System (KERS) into the CCFP review requirements. Under KERS, all agencies which administer the CCFP at the State level will be required to report to the Department specified information on program operations collected during normal reviews conducted through December 31, 1987. This system is designed to (1) improve the evaluation and monitoring process at the institutional level, (2) focus review efforts on those deficiencies that most significantly affect the quality of the program and the efficient use of funds, (3) help program administrators at all levels to evaluate institutional management and compliance with program requirements, and (4) enable the Department to assess the need for specific performance standards.

DATES: To be assured of consideration, comments must be postmarked on or before March 31, 1986.

ADDRESS: Comments should be addressed to Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking has been reviewed in accordance with Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign based enterprises. This rule has also been reviewed with regard to the requirements of Pub. L. 97-354. The Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping requirements that are included in this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval. They are not effective until OMB approval has been obtained.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate and any subsequent notices that may apply.)

Background

Under current CCFP regulations, State agencies are required to conduct administrative reviews annually of one-third of all participating institutions, including a sample of facilities administered by sponsoring organizations. In conducting these reviews, State agencies must assess the institutions' compliance with all requirements of the CCFP regulations and instructions. The most significant of these requirements involve meal patterns, financial management standards, family size and income documentation, and non-discrimination regulations. States must maintain documentation of these reviews and of any corrective action and follow-up activity related to them for a period of three years, as specified in the Department's Uniform Federal Assistance Regulations (7 CFR 3015.21).

While this review requirements provides for reasonable coverage of the program, the Department's Office of the Inspector General and the General Accounting Office have, in the past, expressed concern that the effectiveness of the review system as an administative tool is limited by inconsistent administration from State to State and by varying degrees of evaluation by the Department. Historically, the Department has been handicapped in its effort to monitor CCFP operations because of a lack of data which is uniform in type, universally available, and usable as a tool to evaluate program administration. Although several major studies of the CCFP have been conducted by the Department since the program came into existence in 1975, none of them included a comprehensive evaluation of the administration of the program at the institution level. Consequently, the Department has had little objective information to serve as a basis for judging the effectiveness of local program administration.

To remedy this situation, the Department is proposing to implement an information reporting system which is intended to serve as a source of consistent and uniform data. Under this system, States will report the results of all institution and facility reviews and verification reviews, if separate, conducted through December 31, 1987. This data will allow the Department to do a number of things including assessing program administration on the local, State, regional and national levels; evaluating the effectiveness of program regulations and guidance materials; making determinations relative to the need for legislative changes in the program; and developing comprehensive performance standards applicable to the CCFP review system.

In developing this system, the Department has identified a number of "key elements" which are good indicators of the quality of the program administered by an institution. Compliance with the requirements represented by these elements indicates that the insitution is delivering program benefits properly; noncompliance is indicative of potential loss to the program or inadequate delivery of benefits to children. These key elements,

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which occupy a significant portion of the State's review of an institution, include compliance with meal component and quantity requirements, verification of free and reduced price applications and maintenance of enrollment, attendance and meal service records adequate to support reimbursement claims. The reporting of data on these key elements will provide the Department with a significant tool for evaluating the overall condition of the program and pursuing remedies, where appropriate. The Department recognizes that State agencies must review program areas not included among these key elements (e.g., procurement standards, health and sanitation, civil rights compliance), and the Department is not proposing to require States to report data on these areas.

The following list represents the data elements which the Department is proposing to have reported through KERS:

I. Center Sponsor/Independent Center

A. Identifying Information—Includes name, address, and (for sponsors) number of centers by type.
B. Income Eligibility.
1. Total number of free and reduced price applications on file.
2. Total number of applications incorrectly classified per review, including the results of income verification in pricing programs.
C. Enrollment—Free, reduced price and paid, per claim and per review.
D. Meal Counts—The total meals/supplements per claim and per review (Claiming Percent/Blended Rate System) or the total number of free, reduced price, and paid meals per claim and per review (Count by Category System).
E. Menus/Meal Patterns—The number of menus reviewed and the number with missing components broken out by breakfasts, AM and/or PM Supplements and lunches/suppers.
F. Title XX Documentation (if applicable).
1. Total number of children enrolled.
2. Total number of documented Title XX eligibles enrolled.
G. Financial Documentation—Does Sponsor/Center maintain cost records as prescribed by the State agency financial management system?
H. Training (Sponsor Only)—Has the Sponsoring Organization conducted staff training within the past 12 months as required? Has it been documented?
I. Monitoring (Sponsors Only)—How many reviews were required by regulation in the last 12 months? How many were completed?

II. Center Facility Under a Center Sponsor

A. Identifying Information—Includes name, address and center type.
B. Enrollment/Attendance.
1. Are daily attendance records maintained?
2. Are enrollment records maintained?
C. Meal Counts.
1. Are meal counts taken at point of service?
2. Are meal counts recorded and maintained?
D. Meal Observed on Day of Visit.
1. Type.
2. Number served to eligible children.
3. Number for which sufficient quantities were prepared.
4. Number for which all components were served to eligible children.
E. Training—Has a representative received training conducted by the sponsor within the last 12 months?
F. Monitoring—Has center received a monitoring visit from sponsor within the last 6 months (3 months if Outside-School-Hours Center)?

III. Day Care Home Sponsor

A. Identifying Information—Includes names and address.
B. Homes Data.
1. Number of approved homes reported as participating in test month.
2. Number of approved homes verified as participating in the test month with current agreements on file.
C. Enrollment—Are enrollment records maintained for all homes?
D. Income Eligibility.
1. Total number of free and reduced price applications on file for all homes.
2. Total number of free and reduced price applications incorrectly approved.
E. Meal Counts—The number of breakfasts, AM and/or PM supplements and lunches/suppers served, per claim and per review.
F. Menus—The number of menus reviewed and the number with missing components broken out by breakfasts, AM and/or PM supplements and lunches/suppers.
G. Administrative Cost Documentation.
1. Costs claimed and costs verified.
2. Do the documented expenses exceed the reimbursement received? If so, is excess covered by a non-USDA funding source?
H. Training—Does the sponsor conduct the required annual training? Has such training been documented?
I. Monitoring—Has the sponsor conducted all required monitoring visits within the past 12 months?
J. Use of Funds.
1. Does the sponsor receive operating advances?
2. If yes, is the full amount of advance due to the homes disbursed?
3. If no,
a. Is the full amount of reimbursement due to the homes disbursed?
b. Are homes reimbursed within 5 days after the sponsor is in receipt of funds?

IV. Day Care Home

A. Identifying Information—Includes name and address.
B. Income Eligibility.
1. Are provider's own children claimed?
2. If yes, is a properly approved application for them on file at the sponsoring organization?
3. Are they claimed only when other enrolled children are in attendance?
C. Attendance—Are daily attendance records maintained?
D. Meal Counts.
1. Are meal counts taken at point of service?
2. Are meal counts recorded and maintained?
E. Meal Observed on Day of Visit.
1. Type.
2. Number served to eligible children.
3. Number for which sufficient quantities were prepared.
4. Number for which all components were served to eligible children.
F. Training—Has the provider received required annual training conducted by the sponsor?
G. Monitoring—Has the provider received a monitoring visit from the sponsor within the past 6 months?

This list is a preliminary one. The particular items described above represent the data which, in the Department's judgement, would provide the best indication of overall program operations. The list has been included in this preamble in order to facilitate commenters' discussion of the proposed system. The Department solicits comments on the appropriateness of these items and encourages commenters to suggest other data elements which should be reported as part of KERS. The Department emphasizes, however, that it is not bound to regard this list as a final, all-inclusive itemizing of KERS data. Additional data elements could be included or certain of these elements could be deleted on the basis of public comments, experience with the system or future changes in program requirements.

The data obtained through KERS will provide the Department with a tool for analyzing the delivery of benefits by all types of institutions and facilities. This analysis, in turn, will enable the Department to target training and other technical assistance to areas where such efforts are most needed. Given the necessity to use limited funds as efficiently as possible, the Department believes KERS will prove to be highly valuable in this respect. The Department also believes that the data will allow the Department to determine the extent to which policies are applied and enforced throughout the program. Most importantly, the data will provide the Department with a tool for analyzing the effectiveness of the current regulatory requirements for review activity in the CCFP. The Department intends to study the States' data carefully to determine the extent of noncompliance in key areas throughout the program. Based on the results of this study, the Department will then consider the possibility of modifying the current review system to incorporate specific performance standards and guidelines which would be employed by States when reviewing institutions and deciding whether to establish overclaims or conduct follow-up reviews. At that time, the Department will also assess the possibility of incorporating KERS as a permanent feature of the CCFP.

To ensure continuous, orderly processing of information the Department is proposing to require States to report data on key elements within 30 days of the collection of the information. For the most part, therefore, States will report their data on key elements within 30 days of completion of each administrative review. The Department recognizes, however, that some States have elected to collect information on certain key elements in a manner other than administrative reviews. To provide States with needed flexibility, the Department permits States to perform verification of free and reduced price eligibility through audits or separate verification reviews, rather than as part of their administrative reviews. This proposal would not restrict States from electing one of these verification options, but States which do not include verification as part of their administrative reviews would be required to observe the following requirements. First, the verification activity would have to be completed in the same fiscal year as the administrative review, and secondly, the State would have to ensure that the verification data and the key element data collected during the administrative review are reported on one form within 30 days of the date on which complete information becomes available. In this way, the Department can ensure the comparability of data from different fiscal years.

Finally, to ensure uniform reporting of the data, the Department is proposing to require States to use a standard form provided by the Department to organize and report findings on the key elements. These forms will facilitate the process of transferring the data to computers, and this requirement will not create any significant additional reporting burden for State agencies. While the Department acknowledges that KERS would entail some additional reporting burden for State agencies, the Department considers that any increase would be relatively slight, since States will merely complete and mail the form. The Department emphasizes that there will be no increase in the burden associated with collecting the data, because States are already required to review all program requirements, including those reported under KERS. Moreover, there would be no change in the frequency with which States must conduct reviews. Consequently, no significant expenditures in staff time would be necessary because of KERS.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PART 226—CHILD CARE FOOD PROGRAM

Accordingly, the Department is proposing to amend 7 CFR Part 226 as follows:

1. The Authority citation for Part 226, continues to read as follows:

Authority: Sections 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); Section 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. Section 226.2 is amended by adding the definition of "Key Element Reporting System" in alphabetical order, to read as follows:

§ 226.2 Definitions.

* * * * *

"Key Element Reporting System" (KERS) means a comprehensive national system for reporting critical key element performance data on the operation of the program in institutions.

* * * * *

3. Section 226.6 is amended by adding a new paragraph (o) to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(o) Following its reviews of institutions and facilities under §§ 226.6(k) and 226.23(h) conducted prior to January 1, 1988, the State agency shall report data on key elements of program operations on a form designated by FNS. These key elements include but are not limited to the program areas of meal requirements, determinations of eligibility for free and reduced price meals, and the accuracy of reimbursement claims. These forms shall be submitted within 30 days of the completion of each review, except that if the State has elected to conduct reviews of verification separate from its administrative reviews, the State shall retain review data until all key elements have been reviewed and shall report all data for each institution within 30 days of completion of reviews of all key elements. States shall also ensure that all key element data for an institution is collected during the same fiscal year.

Dated: January 22, 1986.

Sonia P. Crow,

Acting Administrator.

[FR Doc. 86–1836 Filed 1–28–86; 8:45 am]
BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. HRPCIA–1]

Proposed Honey Research, Promotion, and Consumer Information Order; Recommended Decision and Opportunity To File Written Exceptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions to a proposed Honey Research, Promotion, and Consumer Information Order. The proposed program would authorize establishment of projects relating to research, consumer education, advertising, sales promotion, producer information, and market development to assist, improve, or promote the marketing, distribution, and utilization of honey and honey products. This program was proposed by the American Beekeeping Federation, Inc.

DATE: Written exceptions to this recommended decision must be filed by February 28, 1986.

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ADDRESSES: Send four copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, D.C. 20250, where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 475–3918.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Pre-notice press release issued May 29, 1985; Notice of Hearing—Issued June 25, 1985, and published June 28, 1985 (50 FR 26942). Correction of Docket Number, published July 12, 1985 (50 FR 28404).

Preliminary Statement: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is not subject to the requirements of Executive Order 12291.

This notice is issued pursuant to the applicable rules of practice and procedure governing proceedings to formulate and amend an order (7 CFR Part 1200). Any order that may result from this proceeding would be effective pursuant to the provisions of the Honey Research, Promotion, and Consumer Information Act, hereafter referred to as the "Act" (7 U.S.C. 4601–4612).

The proposed order was formulated on the record of a public hearing with sessions in Washington, DC, on July 16, 1985, and Denver, Colorado, on July 30, 1985. Notice of the sessions was published in the June 28, 1985, issue of the **Federal Register** (50 FR 26942). That notice contained a proposed order submitted by the American Beekeeping Federation, Inc. (ABF).

Small Business

As stated in the notice of hearing interested persons were invited to present evidence at the hearing on the probable regulatory regulatory and informational impacts of the proposed changes on small business. Based on the record evidence, a sizeable majority of the honey producers and handlers could be considered small businesses for the purposes of the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). In that regard testimony was presented that the production, harvesting, and preparation of honey for market were relatively similar among all honey producers. No clear relationship could be drawn between the size of producers and the corresponding costs. No testimony was presented on handler costs or variations of these costs.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to persons covered under the order. Promotion orders and implementing rules are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are usually compatible with respect to small business entities. Since the handlers to be covered under this promotion order are predominately small businesses, the order proposed in this proceeding would impose no disproportionate regulatory burdens on any groups of small entities within the industry.

While the order imposes certain regulations on affected businesses and the number of businesses may be substantial, any added burden resulting from these changes should not be significant when compared to the benefits which should accure to such businesses. All entities, small and large, would be treated equitably under the order. Furthermore, the Act and the order clearly provide for the exemption of all honey producers and importers who produce or import less than 6,000 pounds of honey annually. This exemption was included in the Act to reduce the burden on small businesses who would otherwise be required to file reports and keep records under the Act and the order.

Materiol Issues: The material issues of record are as follows:

(1) The existence of the right to exercise Federal jurisdiction in this instance;

(2) The need for the proposed research, promotion, and consumer information order to effectuate the declared policy of the Act;

(3) The specific terms and provisions of the proposed order including:

(a) Definitions of the commodity, the area, the persons to be assessed, and the other terms set forth in the notice of hearing which are applicable to the provisions of the proposed program;

(b) The establishment, composition, maintenance, powers, duties, and operation of a "Honey Board" which shall serve as the administrative agency of the order;

(c) The authority to establish sales promotion, consumer education, research, marketing, and development projects for honey and honey products;

(d) The authority for the Honey Board to incur expenses and for the Secretary of Agriculture to levy assessments on producers and importers;

(e) The authority to exempt from assessments a producer who produces or an importer who imports less than 6,000 pounds of honey annually and honey exported from the United States;

(f) The procedure for making refunds of assessments to producers and importers who request them;

(g) The authority to establish an operating monetary reserve and set aside funds in the reserve to defray any authorized expenses;

(h) The establishment of reporting and recordkeeping requirements; and

(i) The establishment of other miscellaneous provisions which are set forth in the notice of hearing as §§ 1240.60 through 1240.67.

Findings and Conclusions: The following findings and conclusions on the material issues are based on the record of hearing:

1. Honey is produced and/or marketed in all fifty states including the District of Columbia and the Commonwealth of Puerto Rico. The top twenty honey producing states produce about 80 percent of the total domestic honey production. The record shows that substantial quantities of honey and honey products are imported into and exported from the United States. The record also indicates that there are numerous honey handlers who receive honey from producers, process it, and market it. At least one of these handlers has nationwide distribution.

It was also testified that most of the honey imported was imported by a few large importing companies and sold to handlers for further processing and distribution. There is ample evidence in the record to show that honey is shipped in intrastate, interstate, and foreign commerce and that the intrastate and interstate handling is so inextricably intermingled that all such handling burdens, obstructs, or affects the handling of honey in interstate or foreign commerce. This would require the regulation of honey moving in intrastate, as well as interstate and foreign commerce.

2. Honey production in the United States approximates 200 million pounds annually, although there is some year-to-year fluctation due to weather conditions. The 1981 value of U.S. production of honey was about $90.1 million. This was based on 4.2 million colonies of bees with an average honey yield per colony of 44 pounds.

The record evidence shows that the honey industry is made up of many small entities; and some larger entities, engaged in the production and marketing of honey. In general, there are three categories of honey producers; the hobbyist, the part-time beekeeper or sideliner, and commercial beekeepers. Because the order exempts persons who produce or import less than 6,000 pounds of honey per year, hobbyist beekeepers and a significant number of sideline beekeepers would not be required to pay assessments under this order. One witness cited a 1975 International Trade Commission study which estimated that there were about 10,000 sideline beekeepers and about 1600 commercial beekeepers in the United States at that time.

Some sideline and commercial beekeepers sell their production locally, thereby acting as handlers on all or a portion of their crop. Many others sell the bulk of their production to handlers who further process the honey, package it, and distribute it for consumption. The major outlets for honey are bakeries, cereal manufacturers, meat processors, and the Federal government.

Beekeeping is labor intensive and most commercial beekeepers employ from one to twenty full time employees and additional seasonal help during honey harvesting. Many beekeeping operations are migratory because the beekeepers move their bees from one area to another several times a year to follow seasonal honey flows and pollinate crops.

The record indicates that the world market price of honey is now far below the cost of production in the U.S. This, coupled with the strength of the U.S. dollar relative to other currencies, has encouraged large quantities of honey to be imported into the United States. According to the record evidence, importations of honey have increased from 10.6 million pounds in 1973 to 128.6 million pounds in 1984. During this period, honey under government loan with the Commodity Credit Corporation increased from zero during the 1970's to almost 115 million pounds in 1984.

The record indicates that various organizations operate promotional activities. Most States have state beekeeping associations which represent a group of people with a common interest, namely to promote honey and beekeeping in that particular State. Some state associations collect an assessment for promotional purposes. The California Honey Advisory Board, which is funded through an assessment program, has been in operation since 1952. It has conducted several honey promotion campaigns and published a well-known honey cook book.

At one time, the American Honey Institute conducted a national promotion effort, which was funded through a voluntary check-off plan. It published recipes and provided information on uses of honey through food service editors. After several years of operation, the contributors became disillusioned with the program and the Institute ceased operations. Since then, the only national promotional effort has been by the American Beekeeping Federation (ABF), which devotes about one-third of its annual budget to promotion. Its promotional efforts include the American Honey Queen Program, printing and distribution of bulk recipes to school food service personnel.

While the efforts of the ABF and others have been helpful, the record evidence is that much more must be done to increase domestic consumption. Statistics in the record indicate that the total per capita consumption of all sweeteners, including honey, in the U.S. is 128 pounds annually. Of that amount, slightly more than one pound is honey, which compares with over three pounds per person in other countries. The evidence of record is that the American honey industry needs a program to promote the domestic consumption of honey and honey products through promotion and advertising and market research to increase consumer awareness of honey and increase its consumption. The evidence also is that funds to finance these activities must be obtained by the honey industry through a structure such as the proposed order to assure industry-wide participation and sufficient income on a regular basis to finance those activities.

It was testified that additional promotion would benefit the honey industry by enabling it to reach more potential consumers. Also, the industry would benefit from an organization unifying those in the industry desiring to promote honey and honey products. This would be achieved by making the contribution of funds by producers and importers mandatory. However, these contributors should have the right to obtain a refund of their assessments if they choose not to support the program.

Evidence indicates that there is a great potential for increasing domestic honey consumption. The changes taking place in the marketing of food products and the eating habits of consumers make it essential that investigations and studies of markets and consumer attitudes be implemented and the results be made available prior to initiating large expenditures for promotion. Research under the order could identify the factors that are important to consumers in purchasing honey and honey products. For example, with such knowledge, producers would have the ability to segregate their floral sources of honey to increase profitability or target promotional efforts to appeal to consumers more effectively. Research could also provide knowledge as to the kinds of information that would be desirable or helpful to consumers. Evidence indicates that many consumers know little about the diverse types of honey, each with its own characteristic flavor, which is determined by the predominant floral source.

Finally, testimony indicates that much of the data available to the honey industry is limited or incomplete. Through reports submitted by handlers, the order could enable the Board to develop more reliable aggregate statistical information and make this available to the honey industry to help it plan its marketing activities.

The record indicates that the research, promotion, and consumer information order proposed at the hearing could provide a method for increasing U.S. per capita honey consumption and reduce the industry's market problems.

3. Certain terms are used frequently throughout the order. These terms are defined as follows to clearly delineate their meaning and to simplify the subsequent provisions in which they are used:

(a) Thus, "Secretary" should be defined to include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for this order, but also, in recognition of the fact that it is physically impossible for the Secretary to perform personally all functions and duties imposed by law, any other officer or employee of the U.S. Department of Agriculture who is, or who may be, authorized to act for the Secretary.

The definition of "Act" provides the correct legal citation for the Honey Research, Promotion, and Consumer Information Act, the statute pursuant to which the proposed order may be put into effect and operated, and avoids the need to refer to the citation each time it is used. "Act" should also be defined to include any future amendments that may be made to the Honey Research, Promotion, and Consumer Information Act.

"Person" should be defined in the order to mean any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. This definition conforms with the definition set forth in the Act.

The term "honey" should be defined to mean the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb by honey bees. "Honey products" should be defined to mean products wherein honey is a principal ingredient. These

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definitions identify the two types of commodities which would be assessed under the proposal. The definitions closely follows the definitions set forth in the Act. Honey may be in the comb, liquid, granulated, whipped or spun for crystallization, and in combinations such as chunks of comb honey with liquid, or comb honey with crystallized or granulated honey. Each of these honeys may have different flavors and color due to different floral sources. This description is not intended to limit the definition of honey to the forms cited, and all forms, flavors, and colors of honey should be subject to the provisions of this order.

Honey is frequently used in combination with other foods for the manufacture of food products because of its favorable image and quality enhancement when used as an ingredient. Because products using honey as an ingredient would be benefitted in the marketplace by the order's promotion activities, it is equitable to assess honey which is used as a principal ingredient in products. In the Act, the term honey products is defined as meaning products produced in whole or in part from honey. The Act does not limit the quantity of honey in products and thus, products containing honey in minimal quantities would be subject to assessment. Since the costs incurred by the Honey Board in collecting assessments on these products could be disproportionately high in relation to the assessments collected, the term "honey products" should be limited to products wherein honey is a principal ingredient. Since the Honey Board, the administrative agency established under the order, would be composed of honey industry representatives with extensive knowledge of the honey market, it should determine the level at which honey becomes a principal ingredient in honey products. This level should be set through the promulgation of rules by the Honey Board, with the Secretary's approval.

"Producer" should be defined in the order to mean any person who produces honey in any State for sale in commerce, and should include any person who harvests honey domestically or owns or shares in the ownership of honey producing equipment so that he/she receives a portion of the crop. The same should be true for persons who lease out colonies of bees for honey production and obtain a portion of that production as rental. According to the record, any person who owns or rents farmland resulting in ownership of any honey or honey products produced thereon should clearly be considered a producer. The same should be true for the person who owns land, but does not farm it. That person may obtain ownership of a portion of the honey and/or honey products produced on it as rental and thus should be regarded as the producer of that portion. A person who receives only a fixed sum in rent on land which is used to produce honey, however, should not be considered a producer. In each of the above situations the person involved in the production, regardless of whether an individual, partnership, association, corporation, or other business entity should be defined in the order as a "person" and should be considered as one producer.

"Handle" should be defined in the order to mean to process, package, sell, transport, purchase or in any other way to place honey or honey products, or cause them to be placed, in the current of commerce. This definition should include selling unprocessed honey that will be consumed without further processing or packaging. However, this term should not include the transportation of unprocessed honey by the producer to a handler, or transportation by a commercial carrier of honey, whether processed or unprocessed, for the account of the handler or producer.

"Handler" should be defined as any person who handles honey or honey products and should be defined to designate the person who is to collect the assessment levied on producers and importers.

"Producer-Packer" should be defined as any person who is both a producer and a handler of honey or honey products. Should the producer-packer also be the first handler of honey, he/she should collect the assessment.

"Importer" should be defined as any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States. The importer should be considered the first handler of honey or honey products. The term "importer" identifies the person eligible to vote in referenda, responsible for the payment of assessments on foreign-produced honey and honey products imported into the United States, subject to certain recordkeeping requirements, and entitled to vote for nominees for membership on the Board and to be nominated for such membership. The term "importer" should apply to all persons who import honey and honey products. Importation occurs when the commodities originating outside of the United States are released from Customs by the U.S. Customs Service and introduced into the stream of commerce in the United States.

Persons who hold title to foreign-produced honey and honey products immediately upon release by the Customs Service clearly are importers and would be subject to the order. However, a person need not take title to honey or honey products to be an importer. Any person who acts on behalf of others as their agents, brokers, or consignees would be importers if honey or honey products released from Customs as a result of their efforts were introduced into commerce.

The terms "promotion", "research", and "consumer education" should be defined to indicate the types of activities authorized by the order. The definitions of these terms follow those appearing in the Act, except that the order's definition of "research" specifically provides for the systematic study or investigation, and/or the evaluation of any study or investigation to more clearly define the objectives of the order and the Act. The inclusion of this specific activity serves as clarification and does not change the meaning of the term set forth in the Act.

A definition of the term "marketing" should be included in the order to identify those transactions the Board may seek to expand through its activities. Such transactions include not only the sale of honey and/or honey products, but also other disposition of these commodities, such as barter, rental, and donations.

"Committee" should be defined under the order to mean the National Honey Nominations Committee, which will consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State association.

"State association" or "association" should be defined as the organization which is the most representative of the beekeepers in a State. A number of States have several beekeeping organizations whose membership may vary from hobbyist to commercial beekeepers. Should more than one organization submit nominations to the National Honey Nominations Committee in any one State, testimony indicates the State associations should choose a common delegate, or the Secretary should contact the Secretary of each State association submitting nominations to determine which organization is most representative of persons to be assessed.

The term "Honey Board" should be synonymous with "Board" and should

be defined to identify the administrative agency established under the order. The Board is authorized by the Act, and the definition set forth in the order eliminates the necessity of repeating the Board's full name each time it is used.

"State" should be defined to include all 50 States of the United States, Puerto Rico, and the District of Columbia because honey is produced and/or sold in all of these jurisdictions.

The terms "fiscal period" and "marketing year" should be defined to mean the twelve month period ending on December 31 or such other period as shall be recommended by the Board and approved by the Secretary. This would provide sufficient flexibility to authorize the Board of the Secretary to set the beginning of the fiscal period on the date most practicable and appropriate, and would permit change in the date should experience in operating indicate such changes are needed.

"Plans" and "projects" should be defined to mean those activities established pursuant to §§ 1240.38 and 1240.39 of the order. These "projects" and "plans" refer to the research, promotion, and consumer education studies, programs, and other activities designed to carry out the declared purpose of the Act. One witness pointed out that the reference to § 1240.39 within the definition of "plans" and "projects" was inadvertently omitted in the proposed order as it appeared in the notice of hearing. This reference should be incorporated into the order.

The terms "part" and "subpart" should be defined in the order. "Part" should mean the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder. The order should be a "subpart" of such part.

(b) An administrative agency known as the "Honey Board" should be established to administer the order. As provided in the Act, the Honey Board should be composed of 13 members selected by the Secretary from nominations submitted by the "National Honey Nominations Committee".

The "Honey Board" should include seven members and seven alternates who are honey producers, two members and two alternates who are honey handlers recommended to the Committee by industry organizations representing handler interests, two members and two alternates who are honey importers that were recommended by industry organizations representing importer interests, one member and one alternate who are officers or employees of a honey marketing cooperative, and one member and one alternate who will represent the general public. As discussed later, the seven producer members and alternate members of the Board should be nominated from and represent seven regions in the United States; one member and alternate from each region. The remaining six Board members should be nominated by the Committee from names submitted by the industry organizations to represent their respective interests and should be selected from any of the States without regard to those seven regions. In order to enable the Board to carry out its duties and functions, the Committee should nominate persons with the skills and expertise to aid in planning projects in research, promotion, and consumer education.

Board members and their alternates should serve for terms of three years, except that the members of the initial Board should serve as follows: Four members and alternates should serve one-year terms; four members and four alternates should serve two-year terms; and five should serve for three-year terms. Staggered terms would lend continuity to the Board by ensuring that some experienced members would be on the Board at all times. However, so that there is a continual turnover in membership and infusion of new ideas, the order should provide that no member or alternate should serve more than two consecutive terms, except that those members and alternates serving the initial term of one year may serve two additional consecutive three-year terms. After serving two consecutive terms, Board members should be eligible to serve as alternates, or alternates to serve as Board members.

The terms of office for the initial Board should begin immediately on appointment by the Secretary. In subsequent years the terms of office should begin on April 1, unless the Board recommends, and the Secretary approves some other date that will tend to more effectively carry out the declared policy of the Act. Each member and alternate should serve until his/her successor is selected and has accepted. This stipulation would prevent unnecessary vacancies from occurring on the Board. In those circumstances, the member or alternate should remain in office for part of a third consecutive term until a successor has been selected and has accepted.

All nominations to the Board should be made by the National Honey Nominations Committee. The Committee's sole purpose should be to nominate Board members to be recommended to the Secretary for appointment. The Committee should be composed of one member from each State, nominated by the State association within the State, and appointed by the Secretary. In the event more than one beekeepers' organization within a State submits nominations for that State, the Secretary should designate the organization most representative of the honey producers, handlers, and imports not exempt from assessment under this order to make nominations for that State. In the event a State association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent it on the Committee. However, should a State that is not one of the top twenty honey producing States fail to nominate a member to represent the State, as is specified in the Act, record evidence indicates that the subject State should not be represented on the Committee. The top twenty States, for the initial Committee, should be determined by utilizing the most recent USDA statistics introduced at the hearing. Subsequent determinations of the top twenty honey producing States should occur by using the total assessments collected by each State to determine honey production.

Members of the Committee should serve for three year terms, except members of the initial Committee should serve as follows: One-third of the members should serve one-year terms, one-third should serve two-year terms, and one-third should serve three-year terms. If the total number of delegates are not divisible by three, the Committee should apportion the members into three groups of approximately the same size. One method would be for the Committee to draw lots to determine which Committee members serve the initial one, two, and three year terms. No member should serve more than two consecutive three-year terms, except that those members serving the initial one-year term may serve two additional consecutive three-year terms. The terms of office of the initial members should begin immediately upon appointment by the Secretary. Thereafter, the terms should begin January 1.

The Committee should select its chairperson by a majority vote. The members of the Committee should serve without compensation but should be reimbursed for necessary and reasonable expenses incurred by them and approved by the Board while performing their duties as Committee members. These expenses should be paid from assessment funds collected by the Board.

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The duties of the Committee include nominating members and their alternates to the Honey Board, and promptly notifying the Secretary of the nominations. As the same time, the Committee should also submit a list of candidates to the Secretary for the public member and alternate public member position. However, the Secretary should not be bound by that list, and the order should provide that the Secretary may choose from that list or, at the Secretary's discretion, select other candidates to fill the public member and alternate member position.

The Committee should meet annually to make such nominations, except after the first annual meeting, at the determination of the chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting. This would relieve the Committee of the time and expense of physically meeting to conduct the nominations. A majority of the Committee should constitute a quorum for voting at an annual meeting. In those circumstances when the Committee conducts its nominations by mail, votes must be received from a majority of the Committee to constitute a quorum. In addition, when voting for Board members, at least 50 percent of the top twenty producing States should vote in order that participation is reasonably representative of the honey industry.

For the purpose of nominating producer members of the Board, the Act specifies that there shall be seven geographic regions established based on the production of honey. One producer member should represent each of these regions. Based on the most recent three years for which official Statistical Reporting Service estimates are available, the following regions would have about equal production and should be set forth in the order.

Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii. Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico. Region 3: North Dakota and South Dakota. Region 4: Minnesota, Iowa, Wisconsin, and Michigan. Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama. Region 6: Florida, Georgia, and Puerto Rico. Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine. These regions should be established as the initial seven nomination regions.

Every five years, the Board should review the established regions to determine whether new regions should be established. In making its review the Board should give consideration to the average quantity of honey produced during the most recent three years, shifts and trends in quantities of honey produced, the equitable relationship of Board membership and regions, and other relevant factors. This would allow the honey industry to update the regions to reflect changes in production, and other factors which may have a bearing on the necessity of revising the boundaries of the seven regions. Based on this review the Board may recommend for the Secretary's approval the reestablishment of regions so that reestablished regions will be in place in time for nominations to be conducted and before the new nominees are selected and take office. Any establishment of the regions should be made at least 6 months prior to the date on which terms of office of the Board begin each year and should become effective at least 30 days prior to such date.

In order that the membership of the Board can be selected by the Secretary and begin functioning reasonably soon after the order becomes effective, the Committee should meet and submit nominations for the Board within 90 days after issuance of the order or some other time period prescribed by the Secretary if that period is impractical. So that all interested persons will be apprised of the nominations, adequate notice should be provided to producers, importers, and the Secretary, of each nomination meeting. For subsequent years, the Committee should submit its nominations to the Secretary one month before new Board terms begin. The nomination should be in accordance with the composition of the Board as previously discussed.

The record indicates that the Board should recommend, and the Secretary approve, rules and regulations prescribing procedures for situations in which the industry or certain industry organizations are unable to jointly nominate individuals for membership. If the industry is unable to jointly nominate individuals for nominations to an initial Board, the Secretary should select nominees on the basis of the best information available.

In the event that a producer is eligible to represent more than one region on the Board, or a person is eligible to represent more than one industry group (e.g., producer and importer), that person should choose the position he/she desires to represent on the Board prior to being considered as a nominee.

Each person selected as a Board member should qualify by filing with the Secretary a written acceptance indicating a willingness to serve in such capacity. This requirement is necessary so the Secretary will know whether or not a position has been filled. Such an acceptance should be filed within 30 days after notification of appointment so that the composition of the Board will not be unduly delayed.

In the event a vacancy occurs, a successor should be nominated in accordance with procedures established within the order. The order provides for the automatic replacement of a Board member with his/her alternate should such member cease to be a member in his/her category of selection, should such person fail to carry out his/her office, or should his/her office be vacated by death, resignation, or disqualification. A nominee for the alternate position should be chosen at the Committee's next meeting, unless the position of the member and the respective alternate position are both vacated. Should this occur, the Committee should nominate persons to fill the vacant offices as soon as practicable, unless six months or less remain in the vacator's unexpired term. It should be unnecessary to fill an unexpired term of six months or less because the nominations for the successor would be held fairly soon within that period.

The procedure for conducting meetings of the Board should conform with the bylaws to be adopted by the Board. However, such matters as the method of voting and what constitutes a quorum should be set forth in the order. The order should provide that any action taken by the Board require the concurrence of a majority of the votes cast. Nine members of the Board should constitute a quorum at an assembled meeting of the Board, and any action of the Board should require the concurring votes of at least seven members. At any assembled meeting, all votes should be cast in person. The Board should be authorized to vote by mail, telephone, telegraph, or other means of communication when a matter to be considered is so routine that it would be unnecessary or not cost-effective to call an assembled meeting, or when rapid action is necessary because of an emergency. Any votes cast by telephone should be confirmed promptly in writing to provide a written record of the votes so cast.

The Act requires reimbursement of members of the Board, and the members of any special panel, for reasonable out-of-pocket expenses incurred when performing Board business. This is supported by the evidence. It would be unfair to require such persons to bear such expenses personally.

The Board should have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members. This provision would allow the Board to receive additional input from the industry when discussing important or controversial issues.

The powers of the Board enumerated in the Act should be repeated in the order, but subject to the order provisions that all fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board should be submitted to the Secretary for his/her approval. Thus, the Board should have the power to administer the order in accordance with the Act. The Board should also have the power to develop and recommend rules and regulations which will specify the procedures by which it will carry out its responsibilities under the order. Such rules and regulations would cover a number of items, especially procedures which must still be worked out, such as when and how producers and importers would pay assessments. Any rules or regulations should be submitted to the Secretary for approval and issuance. It is possible that violations of the regulations may occur. It is the responsibility and duty of the Board to promptly investigate violations and rumors of violations. A policy should be established and a procedure developed for handling violations. The Board should make every effort to collect assessments and settle alleged violations. In those cases when the Board cannot effect proper settlement, it should after completely investigating and documenting such violations, report them to the Secretary for appropriate action. Finally, the Board should have the power to recommend to the Secretary amendments to the order and to the supplementary regulations issued under the order.

The duties of the Board should be set forth in the order to enable it to discharge its responsibilities. These duties are similar to those generally specified for administrative agencies of this character. They are reasonable and necessary if the Board is to function in the manner prescribed under the Act. These specified duties are not necessarily all inclusive, and the Board may have other duties as well as those enumerated.

Thus, the Board should meet and organize and select from among its members a chairperson and such other officers as may be necessary; to select Board members and consultants to serve on Committees and subcommittees and special panels; to recommend to the Secretary such rules and regulations as may be necessary to administer the program; and to adopt such rules and bylaws for its conduct as it may deem advisable.

Since day-to-day activities of the Board cannot be performed by Board members, another duty of the Board should be to employ such persons as the Board deems necessary and to determine the compensation and define the duties of each. The Board should also take steps to protect the handling of Board funds through fidelity bonds.

To enable the Board and all persons paying assessments to plan accordingly, the Board should prepare and submit to the Secretary for his/her approval a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment.

The Board should also develop programs and projects and enter into contracts or agreements with the approval of the Secretary for the development and execution of programs or projects of research, development, advertising, promotion, or education, and the payment of the cost thereof with funds collected pursuant to the order.

The Board must maintain records of its activities and disbursement of funds. Accordingly, it should maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board.

Periodically, the Board should prepare reports of its activities and account on an annual basis for funds it has received and expended. This information should be made available to producers and importers so they are aware of the Board's actions and how their funds are being spent.

In conjunction with the duty to provide an accounting of funds received and spent, the Board should cause its books to be audited by a certified public accountant at the end of each fiscal period and submit a copy of each audit to the Secretary. If a copy of the audit report is made available for inspection by members or alternate members of the Board, and information of a confidential nature should be removed from the report.

So that the Secretary or his/her representative may attend Board meetings, the Board should give the Secretary notice of meetings, and furnish the Secretary with information he/she may request. These provisions are necessary so that the Secretary is able to perform oversight responsibilities.

The Board should keep minutes, books, and records which will clearly reflect all of its acts and transactions and should make such minutes, books, and records available for examination by the Secretary at all times. Minutes assist in answering questions and avoiding confusion as to what transpired at a given meeting and should be kept for both Board and subcommittee meetings. Minutes should include important points of discussion, motions, the results of any vote, and resolutions adopted. Copies of minutes should be furnished to the Secretary and to all members and alternates as soon as practicable following each meeting. The term "books" refers principally to financial records, and the Board should keep a complete set of such records in accordance with established bookeeping procedures. Records should be kept of all other transactions engaged in by the Board.

The Board should notify honey producers, producer-packers, handlers, and importers of all Board meetings. Sufficient advance notice should be provided for all meetings. This could be done through press releases and other means. All Board meetings should be open to the public, and interested persons should be afforded the opportunity to attend and to participate to the extent appropriate.

The Board should be authorized to appoint such subcommittee(s) and special panels as it may deem necessary. Such an arrangement would provide the Board with the advice of knowledgeable persons in all segments of the industry, leading to better informed decisions. Any actions taken by subcommittee(s) or panels should however, be subject to the approval of the Board. Subcommittees should normally be composed of Board members and alternates. However, there may be producers, handlers, or other individuals who are not members or alternates but who are knowledgeable in a particular subject matter or who could serve the Board in a unique way. The Board should be authorized to appoint such individuals as consultants.

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and consultants should be permitted to serve on subcommittees in a non-voting capacity. Consultants should also be permitted to serve in an advisory capacity to the Board. Consultants should be paid for any necessary and reasonable expenses they incur while acting in that capacity.

Additionally, utilization of consultants and special panels would provide the Board with a vehicle through which it can coordinate its efforts with those of other industry organizations involved in similar activities. This would aid in eliminating wasteful duplication, especially in the areas of consumer education and marketing research.

(c) The Board should have the authority to determine the types of research, promotion, and consumer education activities to be undertaken, and it should be charged with the responsibility for initiating and recommending to the Secretary the establishment of any plans or projects as are authorized by the Act.

The order should provide for the establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products. The authority should be broad and flexible to enable the Board to use the most efficient and effective methods for carrying out the purposes and policy of the Act.

Consumer education, advertising, and promotion plans or projects should be designed to stimulate everyday use of honey and could aid in increasing per capita consumption of honey. Such plans or projects could provide a means whereby consumers could be informed of the proper care and handling of honey and honey products and of the wide number of variations in color and taste of honey available.

The use of various promotional techniques, including paid advertising, merchandising and public relations, as contemplated under the order, would provide the Board with a means of stimulating sales and enhancing returns to producers. Therefore, the use of promotional activities to increase consumer knowledge and awareness of honey products and their uses should be authorized.

The evidence indicates that the end purposes of marketing research and development projects should be (1) The acquisition of knowledge pertaining to honey and honey products or how their consumption and use may be encouraged or expanded, and (2) that the marketing and utilization of honey and honey products may be encouraged, expanded, improved, or made more efficient. Since this order deals exclusively as a research, promotion, and consumer education program, any quality control grade standards, supply management, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as part of, the order.

Through studies of consumer buying habits, certain segments of the market which need to be strengthened could be identified. Similar research could be used to determine areas in which the consumer education is needed. In addition, information gathered on consumer preference could aid processors in making decisions regarding the types of products to produce and how they should be distributed.

It is not possible to anticipate all the promotion, consumer education, and research activities that may be required to meet the needs of the industry. Therefore, the authority for the Board to establish such projects should be broad and flexible, and available to the extent permitted under the Act, including the development and expansion of honey and honey product sales in foreign markets.

Record evidence indicates that the Board, in its advertising or other promotion efforts, should treat all honey and honey products covered by the order fairly and equitably. Since references to private brand or trade names could serve to further the interest of individual producers or importers at the cost of the entire industry, such references are prohibited by the Act. In addition, any false or unwarranted claims on behalf of honey or its products, or false or unwarranted statements with respect to the attributes or use of any competing products should be prohibited.

The prohibition on the use of false or misleading claims with respect to honey and honey products or competing products is appropriate and necessary for proper administration of the order. This provision is a safeguard against the possibility of over-zealous claims on behalf of honey and honey products and serves to prevent derogatory statements about competing products.

Although the Board should promote honey and honey products in general, there may be instances where promoting particular products would be reasonable and necessary. The fact that any person dissatisfied with the Board's programs could obtain an assessment refund would further motivate the Board to design a program which is fair and equitable to everyone.

The record also indicates that advertising on a national level may not be effective in cases where differences exist in regional tastes and preferences. The Board should have the discretion to advertise on a regional basis, when circumstances so warrant.

Prior to engaging in any promotion, consumer education, or research projects, the Board should submit the plans for each project to the Secretary for approval. The costs of such a project should be included in the budget submitted for approval, and should be defrayed by the use of assessment funds as authorized by the Act. After a project has been initiated, it should be evaluated periodically and terminated if the Board or the Secretary finds that the project does not further the purposes of the Act.

The record evidence shows that the Board will contract for some or all of its promotion, consumer education, and research projects with private and governmental agencies which are properly staffed and equipped to do the type of work needed. Prior to such contracting, the approval of the Secretary should be obtained to insure that the plans and projects contemplated are consistent with the terms and conditions of the order.

(d) The Board should be authorized to incur such expenses for research, promotion, and consumer education and such other expenses for the administration, maintenance, and functioning of the Board and the Committee as are approved by the Secretary.

The funds to cover the expenses of the Board should be obtained through assessments collected from producers and importers. In addition, testimony from sellers of bees and beekeeping equipment indicates a strong desire to voluntarily contribute to this program in order to assure its success. Thus, provisions for the Board to accept donations of funds from such sources should be included in the order. The Board may obtain additional funds through interest on money, such as the operating reserve placed in savings or other interest-bearing accounts. These funds should also be available to pay Board expenses. The Act specifically authorizes the Secretary to approve the incurring of such expenses by any authority or agency established under an order, and require that an order contain provisions requiring producers and importers to pay their pro rata share of the assessment.

The evidence of record indicates that the first handler should be responsible for the collection of assessments on all domestic and imported honey and/or honey products. The first handler should collect the assessments and remit such monies to the Board together with a report of honey acquired through handling as may be requested by the Board. Each handler must inform the Board of the quantity of honey handled so that the appropriate total assessment to be paid by the handler can be determined. Since Board members and their alternates include handlers, importers, and producers, they should not have access to any data that would disclose the business operations of others and give Board members and alternates an unfair advantage over their competitors. All reports filed by handlers must be kept in strictest confidence and cannot be disclosed to any person, including Board members, except the Secretary.

The Board should prepare a budget at the beginning of each fiscal period showing estimates of the income and expenditures necessary for the administration of the order during such period. Each such budget should be submitted to the Secretary with an analysis of its components. After each year of operation the Board should, as part of this budget and report, recommend to the Secretary the rate of assessment believed necessary to secure the income required for that period. The Board, because of its knowledge of research and promotion needs, would be in a good position to ascertain the necessary assessment rate and make recommendations in this regard.

The evidence is that the Board should reimburse the Secretary for administrative costs incurred by the Department in administering the order and in the conduct of referenda.

The rate of assessment should be established by the Secretary on the basis of the Board's recommendation, or other available information. In order to assure the continuance of the Board, the payment of assessments should continue even if particular provisions of the order are suspended or become inoperative.

The order should require each producer and importer to pay to the Board, upon demand, his/her pro rata share of such expenses as may be approved by the Secretary. Assessments should be based upon the volume of honey, including the honey equivalent in honey products.

Because honey tends to lose its identity as it passes from producers through processers to consumers, the order should logically require, with certain exceptions, that the first handler of honey or honey products collect assessments from the producer and pay such assessments to the Board. Importers of honey should pay the assessments due the Board at the time of entry of honey and/or honey products into the United States and producer-packers who act as first handlers should also be responsible for the collection of assessments. Separate records should be kept by the first handler for each person assessed under the order to provide the Board with the assurance that the proper amount has been collected from each producer and importer and to enable the Board to verify the proper amount of refunds that may be made to a producer or importer requesting a refund.

Whenever honey is placed under loan with the Honey Loan Price-Support Program, the Secretary should deduct the assessment from the proceeds of the loan, and forward it to the Board. However, to avoid double assessments on producer members of a honey marketing cooperative, this should not apply if the cooperative deducted the assessment from its members' proceeds. These procedures would ensure that assessments are paid by the handler in the event the producer elects to forfeit the honey placed under loan. Should the loan be redeemed, the Secretary would provide the producer with proof of payment of assessment so that he/she could obtain a refund of such assessment if the producer requests it.

The Act provides that the rate of assessment shall be set a $0.01 per pound of honey for the first fiscal period after an order is approved to provide the income to finance a national honey promotion program during this period. Testimony indicates that based on two hundred million pounds at one cent per pound assessment, and assuming no refunds, two million dollars would be available to begin operations. Thereafter, the Board should be allowed to increase the assessment rate by up to one-half cent per pound per year, but in no event to increase the assessment rate above $.04 per pound. Such a restriction on the assessment rate is necessary so producers and importers would know the maximum assessment which can be levied upon them. This restriction should still provide a sufficient level of assessments to finance a coordinated national program of research, promotion, and consumer information.

Should it develop that assessment income during a fiscal period would not provide sufficient income to meet expenses, the order should authorize the Board to obtain the funds to cover such expenses by increasing the rate of assessment, subject to the limitations discussed in the preceding paragraph. The increased assessment rate should be applied to all honey and honey products sold in the States during the particular fiscal period so that the total payments by each person during each fiscal period will be proportional to the total volume of the honey and honey products sold during that period. A proponent also testified that the Board should be authorized to accept interest free advance payment of funds by handlers, importers, or producer-packers which shall be credited to any amount for which such persons may become liable, and to borrow money to cover administrative expenses until assessments can be collected. The principal purpose of borrowing monies is to cover the cost of initiating this program and any action taken should be subject to approval of the Secretary.

Marketing practices differ among different segments of the honey industry and among various producing areas of the United States. Honey is marketed in specialty shops, in supermarkets, and in other mass merchandising outlets. Testimony also indicates that an individual producer may even sell portions of his/her crop in different outlets or in a different manner. In order to best deal with these differences, the Board should issue regulations governing collection of assessments. Such regulations should describe the producer and/or importer responsible for remitting assessments to the Board and the proper determination of the assessments that are due. However, such regulations should not be a condition precedent to the levying and collection of assessments since the Board will not have the time or expertise to issue such regulations for the first fiscal period, and may not have sufficient experience to have such regulations in place for the following year.

The evidence of record is that a late payment charge should be imposed on any handler, importer, or producer-packer who fails to pay all assessments due to the Board before the due date to be established by the Board. In addition, the Board should also charge interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The Secretary, in order to perform necessary oversight responsibilities, should approve any late payment provisions and interest provisions before they are put into effect. The rate of interest should be determined by the Board, but should not exceed the maximum legal limit, if any, as established by Congress.

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(e) The Act requires that the order provide exemption from assessment payments for all producers or producer-packers who produce, or handle, or produce and handle, or any importer who imports less than 6,000 pounds of honey per year. Thus, a producer who is also a packer should be exempt only if the producer/packer produced and handled less than 6,000 pounds annually. The exemption is desirable to ease the paperwork burden on small businesses, hobbyists, and others not producing honey or honey products for profit. To be exempted from assessment, producers and importers should submit an application to the Board stating their yearly production or importation is less than 6,000 pounds. If the producer or importer is a corporation, total production or importation should include any volume attributable to any subsidiary firms controlled by such corporation.

The Board should be authorized to recommend that sales to persons or organizations in foreign countries be exempt from assessment because this would provide an incentive for developing the export honey business by making the exporter more competitive in the world market. The Board may prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as are necessary to clarify exemption provisions granted to exporters to prevent honey and honey products from being improperly assessed or exempted from assessments.

To reduce the assessment burden on producers in those States operating programs with objectives comparable to those in the program established under the Act, the evidence indicates that the Board shall recommend exemption of the producers in those States from a portion of the assessments under the Federal order, provided the State programs meet all of the criteria specified in the Act and the order. State programs must meet the following criteria:

(1) The program is comparable to the program established under this Act; and

(2) The program was in existence and in operation on January 1, 1985.

The amount of the assessment subject to exemption should not exceed the amount authorized by the State plan on January 1, 1985, or a State can provide evidence that it was in the process of promulgating a different assessment level on January 1, 1985. These criteria are intended to provide for the continuation of any State programs in effect before January 1, 1985, and to prevent abuse of this exemption. The new assessment level will be exempt upon approval of the honey producers in that State. Producers having an exemption from a portion of the assessment under this plan due to payment of an assessment to a State plan should be required to furnish evidence to the Board that the assessment to the State plan has been paid.

(f) Provision for making refunds of assessments to producers and importers who request them should be included in the order. The Act provides that any person promptly remitting assessments to the Board who is not in favor of supporting the order should have the right to demand and receive from the Board a refund of such assessment. The demand should be made to the Board by the individual producer or importer in accordance with regulations and on a form prescribed by the Board. To conform with the Act, up to 7 months may be allowed from the date payment was due to submit a request, and upon proof satisfactory to the Board that the producer paid the assessment, a refund must be made within the time prescribed in the order.

To safeguard the refunding process, for example, the person requesting the refund must provide the necessary information to show that he/she paid the assessment. Associations, cooperatives, or others should only be entitled to request refunds on behalf of producers or importers if specifically authorized by such producers or importers. In any event, a person should not be eligible for a refund unless the person actually paid the assessment or the assessment was deducted from proceeds from the sale of the person's honey and honey products.

Furthermore, the Act and the order provide that during any year, the amount of refunds made to importers, as a percentage of total assessments collected from importers, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. In order to minimize the impact on the Board of computing and administering the refund provisions, the order should provide the refunds to producers and importers be made by the Board in June and December of each year.

The Board should recommend, and the Secretary approve, regulations governing the disbursal of refunds. The regulations should describe the producer and importer eligible to receive refunds and the proper determination of the refunds that are due.

States that are operating programs similar to this order, and were in existence and in operation on January 1, 1985, should be allowed to obtain a refund of the monies collected in that State by the Board pursuant to this order. However, refunds requested by producers and importers under the Federal order should be deducted from total assessments collected in that State before the requesting State's assessment is refunded. This would insure that producers and importers could not receive refunds in an amount greater than contributions. Such refunds should not be included in the formula pertaining to importer refunds.

(g) The Board should have authority to establish an operating monetary reserve and set aside funds in the reserve to defray any authorized expenses. The purpose of this fund would be to enable the Board to carry on an effective and continuous coordinated program of research, promotion, and consumer information in years when the production and assessment income may be reduced. Furthermore, it is conceivable that research and promotion efforts in a given year may have to be financed, in part, by funds collected in the previous year. The operating reserve would provide the funds necessary for such financing.

The Board should include an item in its budget to obtain funds for the operating reserve. In addition, any unexpended assessments at the end of a fiscal period should be included in the operating reserve. Those funds would arise if assessment income for a fiscal year is larger than originally estimated by the Board because (1) honey production during the year is larger than originally estimated, or (2) expenses are less than those estimated and budgeted by the Board. The order does not provide for a refund of such excess assessments to the persons from whom collected or credited to their account and thus, placing such funds in the operating reserve would be appropriate. The record evidence is that a reserve not exceeding one year's expenses would be needed to ensure that projects already begun may be completed, or that assessments could be reduced or waived for one year without disrupting Board programs if the industry is experiencing financial difficulties.

(h) The Board should have authority, with the approval of the Secretary, to require each handler, importer, and producer-packer of honey and/or honey products to submit to the Board such reports and information as may be needed for the performance of its duties under the order. Most handlers have such necessary information in their possession, and the requirements that they furnish such information to the Board in the form of reports should not constitute an undue or onerous burden. At a minimum, the board will require information on the utilization, receipt, and disposition of honey, on the amount of assessments paid and payable, and on persons claiming exemption from assessments. However, it is difficult to anticipate every type of report or kind of information which the Board may require to carry out its duties. Therefore, as a minimum, the order should require each handler, importer, and producer-packer of honey and/or honey products to furnish upon request of the Board such reports and information as are necessary to enable the Board to perform its duties.

In order for the Board to effectively investigate and verify compliance to this order, each first handler (i.e., handler, importer, and producer-packer) of assessable honey and/or honey products should be required to maintain for each fiscal period complete records on the utilization and disposition of honey and honey products. Such records should be retained for not less than two years after the end of the fiscal period in which the transaction occurred, so that if needed in connection with enforcement, the requisite records will be available for that purpose.

Any reports and records submitted for Board use by the first handler should remain confidential and be disclosed to no person other than the Secretary and persons authorized by the Secretary. Under certain circumstances, the release of information compiled from reports may be helpful to the Board and the industry generally in planning for operations under the order. Section 1240.52(c) of the proposal included in the notice of hearing stated that the names and addresses of those persons receiving refunds should not be considered confidential information. Moreover, testimony given at the hearing supported the release of the names of those persons. However, the Act specifically states that all information obtained from handlers should be kept confidential and released only on a composite basis, and such release of information should disclose neither the identity of the person furnishing the information nor the individual operations. This is necessary to prevent the disclosure of information that may affect the trade or financial position or the business operations of individual producers, producer-packers, and importers. Therefore, § 1240.52(c) should not be included in the order.

(i) Consistent with the Act, the order should prohibit the use of assessment funds to influence government policy or action. The only exception should be that funds collected under the order may be used in recommending amendments to such order. Furthermore, the Board should exercise care to avoid entering into contracts with organizations which engage in efforts to influence government action or policy.

The order should require the submission of all fiscal matters, programs or projects, rules or regulations, reports or other related actions proposed by the Board to the Secretary for approval. The Secretary should not determine how the Board might best conduct a program of research, promotion, and consumer information, but only ensure that program options are in accordance with the Act, order, and applicable rules and regulations. These provisions are necessary and appropriate because the Secretary is charged by law with the responsibility for the administration of the program in accordance with the policy and provisions of the Act, order, and rules issued under the order.

The provisions of §§ 1240.62 through 1240.67 which involve suspension, termination, liability, separability, patents, and copyrights are generally included in research and promotion programs. Several, such as § 1240.62, are required by the Act; others are necessary for administration of the order. All such provisions are incidental to and not inconsistent with the terms and conditions of the Act, and necessary to effectuate the other provisions of the order. Testimony at the hearing supports the inclusion of each such provision, and they should be included in the order.

Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed August 30, 1985, as the final date for interested parties to file proposed findings, conclusions, and written arguments or briefs based upon the evidence received at the hearing.

No briefs were filed.

General Findings

Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said order regulates the marketing of honey and honey products in the "States" in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed order upon which a hearing has been held;

(3) The said order is limited in its application to the only marketing area which is practicable consistent with carrying out the declared purposes of the Act; and

(4) The marketing of honey and honey products in the "States," as defined in said order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market development, and Consumer information.

Recommended Order

The following order is recommended as the detailed means by which the foregoing conclusions may be carried out:

It is proposed that Chapter XI of Title 7 be amended by adding Part 1240 to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION AND CONSUMER INFORMATION ORDER

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1240.1 Secretary.
1240.2 Act.
1240.3 Person.
1240.4 Honey.
1240.5 Honey products.
1240.6 Producer.
1240.7 Handle.
1240.8 Handler.
1240.9 Producer-packer.
1240.10 Importer.
1240.11 Promotion.
1240.12 Research.
1240.13 Consumer education.
1240.14 Marketing.
1240.15 Committee.
1240.16 State association.
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1240.18 State.
1240.19 Fiscal period and marketing year.
1240.20 Plans and projects.
1240.21 Part and subpart.

Honey Board

1240.30 Establishment and membership.
1240.31 Term of office.
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1240.34 Vacancies.
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1240.36 Attendance.
1240.37 Powers.
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Research, Promotion, and Consumer Education

1240.39 Research, promotion, and consumer education.

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Sec.
1240.42 Exemption from assessment.
1240.43 Producer, importer and State assessment plan refund.
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Reports, Books and Records

1240.50 Reports.
1240.51 Books and records.
1240.52 Confidential treatment.

Miscellaneous

1240.60 Influencing governmental action.
1240.61 Right of the Secretary.
1240.62 Suspension or termination.
1240.63 Proceedings after termination.
1240.64 Effect of termination or amendment.
1240.65 Personal liability.
1240.66 Separability.
1240.67 Patents, copyrights, inventions, and publications.

Authority: Honey Research, Promotion, and Consumer Information Act 7 U.S.C. 4601–4612.

Definitions

§ 1240.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his/her stead.

§ 1240.2 Act.

"Act" means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590) and any amendments thereto.

§ 1240.3 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1240.4 Honey.

"Honey" means the nectar and saccharine exudations of plants which are gathered, modified, and stored in the comb of honey bees.

§ 1240.5 Honey products.

"Honey products" means products wherein honey is a principal ingredient.

§ 1240.6 Producer.

"Producer" means any person who produces honey in any State for sale in commerce.

§ 1240.7 Handle.

"Handle" means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in the current of commerce. Such term shall include selling unprocessed honey that will be consumed without further processing or packaging. Such term shall not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the handler or producer.

§ 1240.8 Handler.

"Handler" means any person who handles honey or honey products.

§ 1240.9 Producer-packer.

"Producer-packer" means any person who is both a producer and handler of honey or honey products.

§ 1240.10 Importer.

"Importer" means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who prodcues honey outside of the United States for sale in the United States.

§ 1240.11 Promotion.

"Promotion" means any action, including paid advertising and public relations, to present a favorable image for honey or honey products to the public with the express intent of improving the competitive position and stimulating sales of honey or honey products.

§ 1240.12 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of honey or honey products.

§ 1240.13 Consumer education.

"Consumer education" means the act of providing information to the public on the usage and care of honey and honey products.

§ 1240.14 Marketing.

"Marketing" means the sale or other disposition in commerce of honey or honey products.

§ 1240.15 Committee.

"Committee" or the "National Honey Nominations Committee" means the Committee established pursuant to § 1240.32.

§ 1240.16 State association.

"State association" or "association" means that organization of beekeepers in a State which is generally recognized as representing the beekeepers of that State.

§ 1240.17 Honey Board.

"Honey Board" or the "Board" means the administrative body established pursuant to § 1240.30.

§ 1240.18 State.

"State" means any of the fifty States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1240.19 Fiscal period and marketing year.

"Fiscal period" and "marketing year" means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1240.20 Plans and projects.

"Plans" and "projects" mean those research, promotion, and consumer education plans, studies, or projects established pursuant to §§ 1240.38 and 1240.39.

§ 1240.21 Part and Subpart.

"Part" means the Honey Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the order shall be a "subpart" of such part.

Honey Board

§ 1240.30 Establishment and membership.

A Honey Board (hereinafter called the "Board") is hereby established to administer the terms and provisions of this part. The Board shall consist of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers, two members and two alternates shall be honey handlers, two members and two alternates shall be honey importers, one member and one alternate shall be an officer or employee of a honey marketing cooperative, and one member and one alternate shall be selected to represent the general public. The Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee pursuant to § 1240.32.

§ 1240.31 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except the members of the initial Board shall be designated for, and shall serve terms as follows: Four members and alternates shall serve for one-year terms; four shall serve for two-year terms; and five shall serve for three-year terms. No member or alternate shall serve more than two consecutive terms: *Provided*, That those members and alternates serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Board shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on April 1. Each member and alternate member shall continue to serve until his/her successor is selected and has accepted.

§ 1240.32 Nominations.

All nominations to the Board authorized under § 1240.30 herein shall be made in the following manner.

(a) Establishment of National Honey Nominations Committee.

(1) There is hereby established a National Honey Nominations Committee, hereinafter called the "Committee", which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, and importers not exempt under § 1240.42(a) to make nominations for that State.

(2) If a State Association does not submit a nomination for the Committee, the Secretary may select a member of the honey industry from that State to represent that State on the Committee. However, if a State which is not one of the top twenty honey producing States (as determined by the Secretary) does not submit a nomination, such State shall not be represented on the Committee.

(3) Members of the Committee shall serve for three-year terms, except members of the initial Committee shall serve for terms as follows: One-third of such members shall serve one-year terms; one-third shall serve two-year terms; and one-third shall serve three-year terms. No member shall serve more than two consecutive three-year terms: *Provided*, That those members serving the initial term of one year may serve two additional consecutive three-year terms. The term of office for the initial Committee shall begin immediately on appointment by the Secretary. In subsequent years, the term of office shall begin on January 1.

(4) The Committee shall select its Chairperson by a majority vote.

(5) The members of the Committee shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred in performing their duties as members of the Committee and approved by the Board. Such expenses shall be paid from funds collected by the Board pursuant to § 1240.41.

(b) Nominations to the Board.

(1) Except for the member and alternate who represent the general public, the Committee shall nominate the members and alternate members of the Honey Board and submit such nominations promptly to the Secretary for approval. The Committee shall also submit a list of candidates to the Secretary for the public member and alternate public member position. The Secretary may choose from that list of names or, at his/her discretion, choose other candidates to fill the public member and alternate position.

(2) After the first meeting, the Committee shall meet annually to make such nominations, or at the determination of the Chairperson, the Committee may conduct its business by mail ballot in lieu of an annual meeting.

(3) A majority of the Committee shall constitute a quorum for voting at an annual meeting. In the event of a mail ballot, votes must be received from a majority of the Committee to constitute a quorum.

(4) At least 50 percent of the members from the twenty leading honey-producing states must vote in any nomination of members to the Board.

(5) For the purpose of nominating producer members to the Board, the Secretary shall establish seven regions on the basis of the production of honey. For the purpose of facilitating initial nominations to the Honey Board, the following regions shall be the initial regions: Region 1: Washington, Oregon, Idaho, California, Nevada, Utah, Alaska, and Hawaii. Region 2: Montana, Wyoming, Nebraska, Kansas, Colorado, Arizona, and New Mexico. Region 3: North Dakota and South Dakota. Region 4: Minnesota, Iowa, Wisconsin, and Michigan. Region 5: Texas, Oklahoma, Missouri, Arkansas, Tennessee, Louisiana, Mississippi, and Alabama. Region 6: Florida, Georgia, and Puerto Rico. Region 7: Illinois, Indiana, Ohio, Kentucky, Virginia, North Carolina, South Carolina, West Virginia, Maryland, District of Columbia, Delaware, New Jersey, New York, Pennsylvania, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and Maine.

(6) Every five years, the Board shall review the regions to determine whether new regions should be established. In making such review, it shall give consideration to: (i) The average quantity of honey produced during the most recent three years; (ii) shifts and trends in quantities of honey produced; (iii) the equitable relationship of Board membership and districts; and (iv) other relevant factors. As a result of this review, the Board may recommend for the Secretary's approval the reestablishment of such regions. Any such reestablishment of regions shall be made at least six months prior to the date on which terms of office of the Board begin each year and shall become effective at least 30 days prior to such date.

(7) The initial Committee shall within 90 days of the announcement of issuance of this order, or such other period as prescribed by the Secretary, submit in a manner prescribed by the Secretary the following nominations:

(i) One producer member and one alternate producer member from each of the seven regions established by the Secretary;

(ii) Two handler members and two alternate handler members from recommendations made by industry organizations representing handler interests;

(iii) Two importer members and two alternate importer members from recommendations made by industry organizations representing importer interests; and

(iv) One member and one alternate who are officers or employees of honey marketing cooperatives.

(v) For subsequent years, the Committee shall submit its nominations to the Secretary one month before the new Board term begins.

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that he/she be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, he/she shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. At its next meeting, the Honey Nominations Committee shall nominate a replacement for said alternate. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired term of such member and alternate shall be nominated and appointed in the manner specified in §§ 1240.30 and 1240.32, except that said nomination and replacement shall not be required if said

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unexpired terms are less than six months.

§ 1240.35 Procedure.

(a) A majority of the members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* That such alternates shall serve only whenever the member is absent from a meeting or is disqualified. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may act upon the concurring votes of a majority of its members by mail, telephone, telegraph, or by other means of communication: *Provided,* That each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Board minutes.

§ 1240.36 Attendance.

Members of the Board and the members of any special panels shall be reimbursed for reasonable out-of-pocket expenses incurred when performing Board business. The Board shall have the authority to request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 1240.37 Powers.

The Board shall have the following powers subject to § 1240.61:

(a) To administer this subpart in accordance with the terms and provisions of the Act;

(b) To make rules and regulations to effectuate the terms and conditions of this subpart;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1240.38 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and consultants; to adopt such rules, regulations, and by-laws for the conduct of its business as it may deem advisable.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for his/her approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To investigate violations of the order and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the order.

(e) To develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of research, development, advertising, promotion, or education, and the payment of the costs thereof with funds collected pursuant to this part;

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(g) To periodically prepare and make public and to make available to producers and importers, reports of its activities carried out, and at least once each fiscal period to make public an accounting of funds received and expended;

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(i) To give to the Secretary the same notice of meetings of the Board and subcommittees as is given to members in order that representatives of the Secretary may attend such meetings;

(j) To submit to the Secretary such information pertaining to this subpart as he/she may request;

(k) To notify honey producers, producer-packers, handlers, and importers of all Board meetings through press releases or other means;

(l) To appoint and convene, from time to time, working committees drawn from producers, honey handlers, importers, exporters, members of the wholesale or retail outlets for honey, or other members of the public to assist in the development of research, promotion, and consumer education programs for honey; and

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of projects or activities to effectuate the declared purpose of the Act.

Research, Promotion, and Consumer Education

§ 1240.39 Research, promotion, and consumer education.

The Board shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate plans or projects for consumer education, advertising, and promotion of honey and honey products designed to strengthen the position of the honey industry in the marketplace and to maintain, develop, and expand markets for honey and honey products;

(b) The establishment and conduct of marketing research and development projects to the end that the acquisition of knowledge pertaining to honey and honey products or their consumption and use may be encouraged or expanded, or to the end that the marketing and utilization of honey and honey products may be encouraged, expanded, improved or made more efficient: *Provided,* That quality control, grade standards, supply management, or other programs that would otherwise limit the right of the individual honey producer to produce honey shall not be conducted under, or as a part of this subpart;

(c) The development and expansion of honey and honey product sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any false or unwarranted claims on behalf of honey or its products or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each plan or project authorized under this part to insure that each plan or project contributes to an effective and coordinated program of research, education, and promotion and submit such evaluation to the Secretary. If the Board or the Secretary finds that a plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and consumer education, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1240.41.

Expenses and Assessments

§ 1240.40 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order, including expenses of the Committee and probable costs of research, promotion, and consumer education.

(b) The Board is authorized to icur expenses for research, promotion, and consumer education, such other expenses for the administration, maintenance, and functioning of the Board and the Committee as may be authorized by the Secretary, any opeating reserve established pursuant to § 1240.44, and those administrative costs incurred by the Department specified in paragraph (c) of this section. The funds to cover such expenses shall be paid from assessments collected pursuant to §1240.1, donations from any person not subject to assessment under this order and other funds available to the Board including those collected pursuant to § 1240.67 and subject to the limitations contained therein.

(c) The Board shall reimburse the Department from assessments for administrative costs incurred by the Department with respect to this order after its promulgation. The Department shall also be reimbursed for administrative expenses incurred by it for the conduct of referenda.

§ 1240.41 Assessments.

(a) Each producer and importer shall pay to the Board, upon demand, his/her pro rata share of such expenses as may be approved by the Secretary pursuant to § 1240.40. Such pro rata share shall be the amount established by the Secretary purusant to paragraph (c) of this section.

(b) Except as provided in §1240.42 and in paragraphs (e), (f), and (g) of this section, the first handler shall be responsible for the collection of such assessment from the producer and payment thereof to the Board. The first handler shall maintain separate records for each producer's honey handled, including honey produced by said handler.

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey or honey used in honey products during the first fiscal period (or portion thereof) after this order is approved in referendum. After that first year, the Board may request the Secretary to increase the assessment rate not more than $0.005 per pound of honey per year: *Provided,* That the assessment never exceeds $0.04 per pound of honey per year. After the first year, the Board may request the Secretary to decrease the assessment rate by any amount it sees fit.

(d) Should a deficit occur during any fiscal period, funds to cover the deficit may be otained by increasing the rate of assessment subject to the limitations in paragraph (c) of this section. The increased rate of assessment shall be applied to all honey and the honey used in products wherein honey is the primary ingredient sold in the States during that particular fiscal period so that the total payments by each person during each fiscal period will be proportional to the total value of the honey and honey products sold during that period.

(e) The importer of imported honey and honey products shall pay the assessment to the Board at the time of entry of such honey and honey products into any State.

(f) Producer-packers shall pay to the Board the assessment on the honey for which they act as first handler.

(g) Whenever a loan is made on honey under the Honey Loan-Price Support Program, the Secretary shall provide that the assessment be deducted from the proceeds of the loan, and that the amount of such assessment shall be forwarded to the Board, except that the assessment shall be not be deducted by the Secretary in the case of a honey marketing cooperative that has alrady deducted the assessment. When such loan is redeemed, the Secretary shall provide the producer with proof of payment of the assessment.

(h) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different handler, importer, or producer-packer payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(i) There shall be a late payment charge imposed on any handler, importer, or producer-packer who fails to remit to the Board the total amount for which any such handler, importer, or producer-packer is liable on or before the payment due date established by the Board under paragraph (h) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(j) There shall also be imposed on any handler, importer, or producer-packer subject to a later payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler, importer, or producer-packer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary, but shall not exceed the maximum legal rate of interest, if any, as established by Congress.

(k) The Board is hereby authorized to accept advance payment of assessments by handlers, importers, or producer-packers that shall be credited toward any amount for which the handlers, importers or producer-packers may become liable. The Board is not obligated to pay interest on any advance payment.

(l) The Board is hereby authorized to borrow money for the payment of expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year shall be exempt from the assessment.

(b) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating that his/her production, handling or importation of honey shall not exceed 6,000 pounds for the year for which the exemption is claimed.

(c) The Board may recommend to the Secretary that honey exported from the States be exempted from the provisions of this order, and include procedures for the refund of assessments on such honey and such safeguards as may be necessary to prevent improper use of this exemption.

(d) The Board shall determine those States that are operating a program with objectives comparable to the objectives of the Act and recommend to the Secretary that they be exempted from a portion of the assessments collected by the Federal program. The amount of such assessments subject to exemption shall not exceed the amount authorized by the State plan on January 1, 1985, unless a State provides evidence that it was in the process of promulgating a different assessment level on January 1, 1985, then the new assessment level promulgated will be exempt upon approval of the honey producers in that State. Producers having an exemption from a portion of the assessments under this order, due to payment of assessments to a State plan, shall be required to furnish evidence to the Board that the assessments to the State plan have been paid.

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§ 1240.43 Producer, importer, and State assessment plan refund.

(a) Any producer or importer who pays an assessment under the authority of this part shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof to the staff of the Board that the producer or importer paid the assessment for which refund is sought, except that producers who have honey pledged as collateral for a loan under the Honey Loan-Price Support Program and therefore have paid the assessment, shall not be eligible for a refund until the loan has been repaid, or the honey has been turned over to the Commodity Credit Corporation. The amount of refunds during any year made to importers, as a percentage of total assessments collected from all importers, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Any demand for refund shall be made by the producer or importer within the time and in the manner prescribed by the Board and approved by the Secretary. Refunds made in accordance with this section shall be paid by the Board in June and December of each year.

(b) Any State authority operating pursuant to a State assessment plan satisfying the conditions of subparagraph (1) of this paragraph may obtain a refund of assessments collected by the Board on honey and/or honey products produced in that State except as provided in subparagraph (2) of this paragraph.

(1) Refunds shall be paid only if the Secretary certifies that the State assessment plan: (i) Is comparable to the program established under the Act and this part; and (ii) was in existence and in operation on January 1, 1985.

(2) Refunds shall be made directly to States, except that any refunds due directly to producers under this part shall take precedence over State programs and in no event exceed the amount collected by the Board on honey produced in the requesting State, and the amount of any refund shall be limited in accordance with the provisions of this subpart.

(3) Refunds made to a State authority pursuant to this paragraph shall not be included in the formula pertaining to importer refunds as set forth in paragraph (a) of this section.

§ 1240.44 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

Reports, Books, and Records

§ 1240.50 Reports.

Each handler, importer, and producer-packer who is subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For handlers and producer-packers; total quantity of honey acquired during the reporting period; total quantity handled during period; amount of honey acquired from each producer, giving name and address of each producer, including those producers who claim exemption from assessment; copy of statement claiming exemption from assessment from those who claim such exemption; assessments collected or collectable during the reporting period; quantity of honey processed for sale from producer-packer's own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) For importers; total quantity of honey imported during the reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

§ 1240.51 Books and records.

Each handler, importer, and producer-packer shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1240.52 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 1240.50 and 1240.51 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit (a) the issuance of general statements based upon the reports of a number of handlers or importers subject to any order, if such statements do not identify the information furnished by any person; or

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person.

(c) Any disclosure of any confidential information by any employee of the Board shall be considered willful misconduct.

Miscellaneous

§ 1240.60 Influencing governmental actions.

No funds collected by the Board under this order shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided for in this subpart.

§ 1240.61 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for his/her approval.

§ 1240.62 Suspension or termination.

(a) The Secretary shall, whenever he/she finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provisions thereof.

(b) Five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the continuation, termination, or suspension of this subpart.

(c) The Secretary shall hold a referendum on the request of the Board, or when petitioned by 10 percent or more of the honey producers and importers to determine if the honey producers and importers favor termination or suspension of this subpart.

§ 1240.63 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1240.38; (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (4) upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the honey research or education programs hitherto authorized.

§ 1240.64 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of any person, with respect to any such violation.

§ 1240.65 Personal liability.

No member, alternate member, or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, or employee, except for acts of dishonesty or willful misconduct.

§ 1240.66 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1240.67 Patents, copyrights, inventions, and publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

Signed this day at Washington, DC, January 23, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-1682 Filed 1-28-86; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 85-036P]

Facility and Equipment Requirements for the Streamlined Inspection System for Broilers and Cornish Game Hens

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal poultry products inspection regulations by establishing facility and equipment requirements for establishments operating under the Streamlined Inspection System (SIS) for broilers and cornish game hens. The proposed regulation would specify certain critical dimensions for facilities at the inspection and reinspection stations for SIS that the Agency deems to be appropriate and essential to assure optimum inspection performance under the new system. It would require the installation of an appropriately designed, adjustable platform at each inspector's station. In addition, the proposed regulation would provide for carcass selection devices known as selectors or "kickouts" to be installed at inspection stations. The proposal would also require equipment appropriate to ensure adequate lighting, handwashing, and the handling of carcasses and parts, including the proper disposal of condemned carcasses and parts.

DATE: Comments must be received on or before February 28, 1986.

ADDRESS: Written comments to Policy Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act should be directed to: Dr. Douglas L. Berndt, (202) 447-3219. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule is issued in conformance with Executive Order 12291, and has been determined not to be a "major rule." The proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This proposal would impose certain facility and equipment

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requirements upon establishments operating under SIS. However, the costs related to complying with these requirements are expected to be minor and would be counterbalanced by positive economic benefits such as reduced overtime inspection because of fewer inspectors, reduced workspace, and increased productivity by maintaining optimal line speeds.

The Agency is interested, however, in receiving comments by the affected industry on likely economic impacts of this proposal. Such comments may produce more substantive data as a basis for the Administrator's determination.

Comments

Interested persons are invited to submit comments concerning this action. Written comments must be sent in duplicate to the Policy Office and should bear reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views should make such request to Dr. Berndt so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted pursuant to this action will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) (PPIA) requires, among other provisions, that the Secretary of Agriculture, through appointed inspectors, conduct a post-mortem inspection of the carcass of each bird processed in every official establishment that processes poultry for commerce or that is otherwise subject to the Act, and condemn adulterated product. The PPIA also requires FSIS inspect establishments and equipment to assure that both are clean and sanitary and will not result in the processing of adulterated product. To assure that premises, facilities, and equipment are so maintained, the Agency requires the approval of all blueprints before construction or alterations and publishes a list of approved equipment. In addition, rules of sanitary practice have been established to assure that poultry products are produced in a sanitary manner and environment. Further, as part of its responsibility, FSIS determines the facility and equipment requirements for operations to be conducted under the various post-mortem inspection systems.

Elsewhere in this issue of the **Federal Register**, FSIS is promulgating an interim rule amending the Federal poultry products inspection regulations immediately to establish a new Streamlined Inspection System (SIS) for broilers and cornish game hens. The new system is to be implemented in establishments now operating under modified traditional inspection procedures. In addition, the new system requires a Finished Product Standards (FPS) program for evaluating the wholesomeness and acceptability of finished product. Establishments are responsible for performing the necessary trim of certain defects on passed carcasses and for operating the FPS program. The new system will allow increased efficiency in the use of Agency resources and those of the poultry industry, while providing consumers with wholesome and unadulterated products. The new system is being implemented on an emergency basis, in response to suddenly increased demands on Agency resources and as an outcome of recent work by FSIS veterinarians and technical experts. At the same time, the Agency is soliciting comments on the interim rule to determine what changes, if any, to the new system are necessary before the rule is made final.

SIS is being implemented in official establishments now slaughtering broilers and cornish game hens under the MTI procedure. The chief difference between SIS and MTI is that under the new system there is no mirror inspection station. Rather, there are one or two inspection stations at which each inspector examines the outside, inside, and viscera of the birds presented for inspection. The one-inspector form of SIS is known as SIS–1, the two-inspector configuration is known as SIS–2. Inspection under both SIS–1 and SIS–2 is conducted in two phases—a post mortem inspection phase and a reinspection phase. Under SIS–1, every bird on each production line is presented to a single inspector for examination. Under SIS–2, there are two inspection stations at which each inspector examines the outside, inside, and viscera of every other bird processed. Every other bird on the moving production line is presented to each inspector with the backside of the carcass toward the inspector and the viscera uniformly trailing or leading. In both SIS–1 and SIS–2, an establishment employee (a helper) is positioned next to each inspector. The maximum inspection rate for SIS–1 is 35 birds per minute; the maximum for SIS–2 is 70 birds per minute per inspector team—the same maximum rate as that permitted under MTI.

In the post mortem inspection phase of SIS, the inspectors determine which birds must be salvaged, reprocessed, condemned, retained for disposition by the veterinarian, or allowed to be moved down the line as a passed bird subject to trim and reinspection. If an inspector finds that some poultry carcasses have certain defects not requiring condemnation of the whole carcass, the inspector may pass the carcass, which is then subject to trim and reinspection to assure that the defects are physically removed. The helper, at the inspector's direction, marks these carcasses for trim unless the defects are obvious. Trimming of birds passed but subject to reinspection is performed by establishment employees after all the giblets are harvested and, if time permits, by the inspector's helper.

The reinspection station or stations are located at the end of the processing lines and after each chiller. At the prechill station, inspectors examine the carcasses for processing and trimming nonconformances that have been passed subject to reinspection by visually monitoring, checking data, or gathering samples at the station.

SIS–1 requires that the establishment provide one inspection station for each line and reinspection facilities adequate for the removal of carcasses from each line for evaluation. SIS–2 requires the establishment to provide two inspection station for each line and similarly adequate reinspection facilities. The implementation of SIS will thus entail certain facility modifications in affected establishments.

As noted in the document announcing the interim rule establishing SIS, the new inspection system is made possible by the analysis of data gathered in the development and implementation of the New Line Speed (NELS) inspection system for broilers and cornish game hens and the New Turkey Inspection (NTI) system. The tests conducted on these systems were the most exhaustive ever performed on new inspection procedures. The experience gained from working with these systems enabled top Agency veterinarians and technical experts to design new one- and two-inspector systems, including SIS.

The analysis of technical information from the NELS and NTI tests, including work measurement findings, as well as previous experience with MTI, has convinced FSIS that appropriate facilities and equipment are essential to assuring optimum inspection performance under the new systems. Consequently, in developing the SIS approach to inspection, FSIS experts determined that facility and equipment standards prescribed for NELS should be adapted to SIS. A number of specific provisions in the proposed regulation, including the requirements for adjustable inspection platforms, carcass selection devices, and lighting, have been implemented with considerable success in the NELS and NTI systems.

The proposed rule would establish facility and equipment requirements for inspection and reinspection stations in SIS. Each inspection station would be at least 8 feet in length along the poultry conveyor line; the inspector would be allotted 4 feet, and the inspector's helper another 4 feet. At least 16 feet of lengthwise floor space would be required along the conveyor line for two inspection stations in establishments operating under SIS–2. At each inspection station, a platform which is easily and rapidly adjusted from the platform would have to be installed. The platform, provided for use by the inspector, would be 4 feet long and 2 feet wide, and would be placed so that its lengthwise dimension is parallel to the conveyor line. The platform would be required to have a vertical adjustment of at least 14 inches.

The platform would be equipped with a 42-inch high rail in back and with half-inch foot bumpers on both sides and the front to permit safe working conditions. Stop/start switches for the conveyor line would be located within easy reach of the inspector. The conveyor line itself would be required to be level for the entire length of the inspection station. The vertical distance from the bottom of the shackles to the top of the adjustable platform at its lowest position would have to be at least 60 inches.

Beneath the conveyor, a trough or other facilities would have to be installed. The construction of such facilities must comply with § 381.53(9)(4) of the regulations. The trough required for SIS would be similar to that in use under other inspection systems. It would be provided to maintain proper sanitation during the evisceration and further handling of carcasses. The trough would extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point where trimming is performed. The trough would be wide enough to prevent trimmings, drippage, and debris from accumulating on the inspection platforms or the floor. Also, there would have to be sufficient clearance between the suspended carcasses and the trough to prevent contamination of carcasses by splashing.

In establishments operating under SIS–2, carcass selection devices, known as selectors or "kickouts," would be required. The selectors would be mounted so that the inspection stations would receive birds on 12-inch centers with no intevening birds to impede inspection. The selectors would be capable of keeping birds parallel to one another and of moving them to the edge of the trough for examination or handling by the inspector and the helper. The selectors must be smooth, steady, and consistent in operation, and capable of selecting birds for inspection and releasing them smoothly without swinging.

In addition to the provisions for conveyors, platforms, and troughs, the inspection stations would be equipped with on-line hand-rinsing facilities. The facilities would provide a continuous flow of water and would be within easy reach of the inspectors and helpers. Handback racks for questionable carcasses would be set up within easy reach of the helpers. Each inspection station would also be provided with receptacles for condemned carcasses and parts.

Reinspection stations would be required at both the prechill and postchill lpcations. The FSIS would determine the number of stations needed in those plants having more than one processing line or more than one chiller. One or more prechill reinspection stations should be conveniently located at the end of the line or lines prior to chilling. One or more postchill stations should be conveniently located at the end of the chiller or chillers.

For the reinspection stations, 3 feet of lengthwise floor space would be provided along each conveyor like and after each chiller. The floor space would have to be level and protected from traffic and overhead obstructions. The vertical distance from the bottom of the shackles to the floor would be at least 48 inches. For the reinspection of sampled birds, a table at least 2 feet wide, 2 feet deep, and 3 feet high would be provided. Hangback racks designed to hold 10 carcasses would be placed within easy reach of persons operating at the reinspection station. A separate clipboard holder, at which recording sheets would be kept, would be placed at the stations. Handwashing facilities and table rinsing capability also would be required.

For both the inspection and reinspection stations, the proposed rule would establish requirements for adequate lighting. A minimum of 200 foot-candles of shadow-free lighting with a minimum color rendering index of 85 would be required to facilitate carcass inspection at the inspection station. The same kind and intensity of lighting would be required at the reinspection station to illuminate the table surface. These provisions are essentially the same as those for the NELS and NTI Systems but differ from the lighting requirements for the traditional inspection systems. Nevertheless, studies by the FSIS have shown that these lighting requirements are necessary for optimal inspection efficiency and effectiveness, particularly at the inspection rates permitted under NELS, NTI, and SIS.

Proposed Rule

List of Subjects in 9 CFR Part 381

Carcasses and parts, Facilities, Poultry products inspection.

Accordingly, it is proposed to amend the poultry products inspection regulations as follows:

PART 318—[AMENDED]

1. The authority citation for Part 381 continues to read:

Authority. 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*, 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Section 381.36(c) would re revised to read as follows:

§ 381.36 Facilities required.

* * * * *

(c) Facilities for the Streamlined Inspection System (SIS). The following requirements for lines operating under SIS are in addition to the normal requirements to obtain a grant of inspection. The requirements for the SIS in § 381.76(b) also apply.

(1) The following provisions shall apply to every inspection station:

(i) The conveyor line shall be level for the entire length of the inspection station. The vertical distance from the bottom of the shackles to the top of the adjustable platform (subparagraph (iv)) in its lowest position shall not be less than 60 inches.

(ii) Floor space shall consist of 4 feet along the conveyor line for the inspector, and 4 feet for the establishment helper. A total of at least 8 feet along the conveyor line shall be supplied for one inspection stations and 16 feet for two-inspection stations.

(iii) Selectors or "kickouts" shall be installed in establishments with two inspection stations on a line so each inspector will receive birds on 12-inch centers with no intervening birds to impede inspection. The selector must move the bird to the edge of the trough

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for the inspector and establishment helper. The selectors must be smooth, steady, and consistent in moving the birds parallel and through the inspection station. Birds shall be selected and released smoothly to avoid swinging when entering the inspection station.

(iv) Each inspector's station shall have a platform which is easily and rapidly adjusted from the platform, with a minimum of 14 inches of vertical adjustment, which covers the entire length of the station (4 feet) and has a minimum width of 2 feet. The platform shall be designed with a 42-inch high rail on the back side and with ½-inch foot bumpers on both sides and front to allow safe working conditions.

(v) Conveyor line stop/start switches shall be located within easy reach of each inspector.

(vi) A trough or other facilities complying with § 381.53(g)(4) of this Part shall extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point where the trimming has been performed. The trough must be of sufficient width to preclude trimmings, drippage, and debris from accumulating on the floor or platforms. The clearance between the suspended carcasses and the trough must be sufficient to preclude contamination of carcasses by splash.

(vii) A minimum of 200-footcandles of shadow-free lighting with minimum color rendering index value of 85 [1] where the birds are inspected to facilitate inspection, notwithstanding the requirement of § 381.52(b).

(viii) "Online" handrinsing facilities with a continuous flow of water shall be provided for and within easy reach of each inspector and each establishment helper.

(ix) Hangback racks shall be provided for and positioned within easy reach of the establishment helpers.

(x) Each inspection station shall be provided with receptacles for condemned carcasses and parts. Such receptacles shall conform to the requirements of § 381.53(m).

(2) The following provisions shall apply only to prechill and postchill reinspection stations:

(i) Floor space shall consist of 3 feet along each conveyor line and after each chiller. The space shall be level and protected from all traffic and overhead obstructions.

(ii) The vertical distance from the bottom of the shackles to the floor shall not be less than 48 inches.

(iii) A table, at least 2 feet wide, 2 feet deep, and 3 feet high designed to be readily cleanable and drainable shall be provided for reinspecting the sampled birds.

(iv) A minimum of 200-footcandles of shadow-free lighting with a minimum color rendering index of 85 on the table surface.

(v) A separate clip board holder shall be provided for holding the recording sheets.

(vi) Handwashing facilities shall be provided for and shall be within easy reach of persons working at the station.

(vii) Hangback racks designed to hold 10 carcasses shall be provided for and positioned within easy reach of the person at the station.

* * * * *

Done at Washington, DC, on January 13, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-1884 Filed 1-28-86; 8:45 am]

BILLING CODE 3410-DM-M

[1] This requirement may be met by deluxe cool white type of flourescent lighting.

DEPARTMENT OF ENERGY

10 CFR Part 762

Proposed Uranium Enrichment Services Criteria

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to modify the criteria under which it provides uranium enrichment services. Under the proposed criteria, DOE would negotiate individual enrichment services contracts in accordance with an overall approach intended to maintain the long-term competitive position of the United States in the world market, while obtaining the recovery of the Government's costs for providing enrichment services. The proposed criteria would provide flexibility concerning price, as well as other terms and conditions, in enrichment services contracts. The proposed criteria would continue the existing policy against restrictions on the enrichment of uranium from foreign countries for domestic use, as well as the existing prohibition against discriminatory pricing.

The proposed criteria are responsive to the realities of today's marketplace and will enable DOE to carry out more effectively its statutory mandate under the Atomic Energy Act of 1954 (AEA) to encourage the development and utilization of atomic energy for peaceful purposes. They are consistent with and supportive of the Department's view that civilian nuclear energy has a key role to play in assuring the Nation's energy security and strength, and that continued prominence in providing enrichment services will further non-proliferation of nuclear weapons capabilities. They reinforce continuing efforts to conduct the Department's enrichment activities in a more businesslike, competitive manner and thus will allow the United States to employ its strengths and assets in the context of the highly competitive marketplace that exists today.

DATE: Written comments must be received by February 28, 1986.

DOE will hold a public hearing on the proposed criteria on March 18–19, 1986. Requests for an opportunity to speak at this hearing must be received by DOE on or before March 4, 1986.

ADDRESSES: All comments should be identified as "Comments On Proposed Uranium Enrichment Services Criteria" and submitted to NE–34, Room A–172, GTN, U.S. Department of Energy, Germantown, Maryland 20545

Hearing Location: U.S. Department of Energy, Forrestal Building, DOE Auditorium, Room GE–086, 100 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Ben McRae, Office of General Counsel, U.S. Department of Energy, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6667

Lawrence Leiken, Office of General Counsel, U.S. Department of Energy, Room 6B–256, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6975

John Thereault, Division of Technology Deployment and Strategic Planning, Office of Uranium Enrichment, Room A–172, Germantown, Maryland 20545, (301) 353–4610

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the AEA, DOE is responsible for producing enriched uranium for civilian and defense uses. In this Notice, DOE is proposing to modify the criteria which set forth the terms and conditions under which DOE provides enrichment services for civilian customers.

In developing the proposed criteria, DOE has been mindful of the many objectives set forth in the AEA and the significant role uranium enrichment activities can play in achieving them. These objectives include the peaceful use of atomic energy throughout the world, the encouragement of scientific and industrial progress, and the development of a healthy atomic energy industry, including the mining and milling of uranium. By offering enrichment services to other countries, DOE can help to control the development and flow of nuclear material and guard against the proliferation of nuclear weapons. By offering reliable and reasonably priced enrichment services, DOE can enhance the utilization of atomic energy. And by engaging in the provision of enrichment services, DOE can support scientific and industrial progress. Of course, enrichment services first must serve the paramount objective of ensuring the common defense and security. The attainment of the other goals must be consistent with, and not detrimental to, our national security.

The proposed criteria represent a well-reasoned response to the profound changes that have occurred in the marketplace for enrichment services in the last decade. Originally, the U.S. held a near monopoly on providing enriched uranium. However, during the 1970's, the U.S. lost that position due to a number of factors. Beginning in the mid-1970's competition developed as two European consortia and the Soviet Union began supplying foreign nuclear facilities with enriched uranium. By the 1980's, DOE has become the highest priced primary supplier of enrichment services, charging $138 per separative work unit (SWU) [1] in 1984.[2] As a result, DOE's foreign competitors have captured about 60 percent of the total foreign market and have made significant inroads into the domestic markets.

Prospects for the nuclear power industry in this country also have changed dramatically since the early 1970's because of reduced growth in consumer demand for electricity, combined with higher costs for capital expenditures, construction delays, NRC licensing deferrals and controversy over nuclear power in general. As a result, many nuclear plants were delayed and/or cancelled. Likewise, the nuclear programs of other nations generally have not expanded at the rate formerly anticipated.

By the late 1970's utilities, both foreign and domestic, found themselves committed to long-term contracts for enrichment services they no longer needed. According to DOE estimates, a worldwide surplus of about 39 million SWU's existed by 1984. This in turn, led to the emergence of a secondary market in which utilities have been willing to sell their surplus SWU's to other utilities at discounts of $30 per SWU and more.

As a result of these market changes, DOE found itself in a relatively non-competitive position. DOE's response has been to conduct its enrichment activities in a more businesslike, competitive manner and to develop strategies to employ its strengths and assets. The proposed criteria are intended to reinforce DOE's continuing efforts to provide enrichment services in the context of the highly competitive marketplace that exists today.

II. Background

In order to understand better the proposed criteria, it is necessary to discuss briefly (1) the enrichment process, (2) the statutory framework under which DOE provides enrichment services, and (3) the history of enrichment service criteria.

A. Enrichment Process

Uranium as it occurs in nature contains two principal isotopes: U-235 and U-238. Naturally occurring uranium contains 0.7 percent of the U-235 isotope and 99.3 percent of the U-238 isotope. Only the U-235 isotope can fission, or split apart easily, when bombarded by neutrons. When an isotope fissions, it releases a tremendous amount of heat. As a result, uranium fuel can be used in a nuclear power plant to produce heat, generate steam and drive a turbine to produce electrical power.

Naturally occurring uranium does not contain sufficient U-235 to be used as fuel in nuclear power plants of the type built in the United States. Rather, the U-235 must be concentrated so that it comprises about three percent of the total uranium. The resultant uranium is usually called "enriched uranium." To produce enriched uranium, a very specialized facility called uranium enrichment plant must be used. In such a plant, specially prepared natural uranium (known as "feed material") is processed in a way to increase its content of U-235 and decrease its content of U-238.

The effort that a uranium enrichment plant uses to enrich a quantity of uranium feed material is measured in SWU's. In this process, the feed material is separated into two fractions. The enriched uranium fraction (product) contains a higher concentration of U-235 than the uranium feed material, and the depleted uranium fraction (tails) contains a lower concentration of U-235.

The relative amounts of SWU and natural uranium used to produce a unit of enriched uranium are determined by the amount of U-235 remaining in the depleted tails from the enrichment plant. The fraction of U-235 in the tails is called the "tails assay." A low tails assay requires more SWU and less natural uranium to produce a unit of enriched product. On the other hand, if the tails assay is high, fewer SWU's and more natural uranium is required to produce the same unit of enriched product.

B. Statutory Framework

The Atomic Energy Act of 1946 established a government monopoly over the ownership of all production and utilization facilites and all "special nuclear material" (fissionable material). This monoploy was promulgated in an environment when atomic energy was a relatively new and little understood force, when fissionable materials were scarce, and when the use of atomic energy for the economic generation of electric power was a goal in the distant future.

By 1954, the nuclear environment had changed. American industry had attained substantial experience in the design, construction and operation of nuclear reactors, and the first commercial atomic powered electric generating plant was under construction. With the intention of encouraging the peaceful use of nuclear energy, Congress amended the 1946 Act through the enactment of the Atomic Energy Act of 1954 (AEA). Under the AEA, private industry would, for the first time, own reactors and possess and use fissionable materials in these reactors under license for DOE's predecessor agency, the Atomic Energy Commission (AEC).[3]

In 1964, Congress enacted the Private Ownership of Special Nuclear Materials Act, Pub. L. 88–489, ("1964 Act"), which permitted, for the first time, private

[1] The capacity of plants used for producing enriched uranium is defined in terms of separative work units. Such units measure the amount of effort expended to separate a given amount of natural uranium into two components—one having a higher concentration of fissionable uranium-235.

For a discussion of the enrichment process, see the Background section of this Notice.

[2] In 1984, DOE's competitors were charging $105–115 per SWU.

[3] The Energy Reorganization Act of 1974, Pub. L. No. 93–438, abolished the AEC and created the Energy Research and Development Administration (ERDA) which assumed all but the licensing and regulatory functions of the AEC. The licensing and regulatory functions were vested in the Nuclear Regulatory Commission which was also established by the 1974 Act, while ERDA undertook the military and production activities and the general research activities of the AEC. ERDA became effective on January 19, 1975. ERDA was in turn abolished by the Department of Energy Organization Act Pub. L. No. 95–91, 42 U.S.C. 7100 *et seq.*, which created the DOE. Section 301(a) of the DOE Act transferred all functions of ERDA to DOE. DOE began operations on October 1, 1977.

In this Notice, the term "DOE" shall be used unless the discussion deals specifically with one of DOE's predecessors.

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ownership of fissionable materials in the United States. The 1964 Act also added Section 161(v) to the AEA, authorizing DOE to "enter into contracts to provide . . . for the producing or enriching of special nuclear material." 42 U.S.C. 2201(v).

Section 161(v) requires DOE to establish guidelines, or "criteria," describing how the government would provide private customers with enrichment services. Specifically, Section 161(v) of the 1964 Act provides that:

> [DOE] shall establish criteria in writing setting forth the terms and conditions under which [uranium enrichment] services . . . shall be made available.

These criteria must be submitted to the appropriate Congressional committees, originally the Joint Committee on Atomic Energy (JCAE)[4], for a period of 45 days prior to the time DOE actually establishes the critiera. Section 161(v) also provides that prices for enrichment services "shall be established on a nondiscriminatory basis" and that DOE restrict the enrichment of uranium from foreign countries for domestic use "to the extent necessary to assure [the] maintenance of a viable domestic uranium industry."

As originally adopted, section 161(v) provided that prices for enrichment services be established on a basis which would result in "reasonable compensation to the Government." The JCAF Report on the 1964 Act expressed the Committee's awareness that it might not always be practicable for enrichment services prices to recover costs fully. It concluded that, in establishing prices, "[DOE] will have to consider not only the Government's costs in providing enrichment services but also the national interest in the development and utilization of nuclear power."[5] S. Rep. No. 1325, 88th Cong., 2nd Sess., reprinted in 1964 U.S. Code Cong. & Ad. News, 3109, 3121–3122.

In response to an AEC proposal to establish prices on the basis of hypothetical prices in a non-existent domestic commercial enrichment industry, Congress adopted the current version of section 161(v) which provides that prices for enrichment services "shall be on a basis of recovery of the Government's costs over a reasonable period of time." Pub. L. 91–560, Sec. 8 ("1970 Amendment"). The 1970 Amendment expressed Congressional misgivings over the establishment of enrichment prices significantly higher than the Government's actual costs which, at best, gave minimal consideration to the other objectives of the AEA. The JCAE Report on the 1970 Amendment emphasizes the change was a clarification to implement the intent of Congress when it originally enacted section 161(v) and thus preserved DOE's considerable flexibility to determine the most effective means to recover the Government's costs and carry out its responsibilities under the AEA. (H. Rep. No. 91–1470, 91st Cong., 2nd Sess., reprinted in 1970 U.S. Code Cong. & Ad. News, 4961, 5002–5003, 5012.)

C. History of Uranium Enrichment Criteria

On December 23, 1966, pursuant to Section 161(v), following review by the JCAE, the AEC established the Uranium Enrichment Services Criteria ("criteria"). These criteria set forth the terms and conditions applicable to the sale of uranium enrichment services, including the use of two standard types of contracts: (1) Firm Quantities and (2) Customer's Requirements, or a combination of the two. (31 FR 16479, Dec. 23, 1966). The criteria also provided for delivery schedules, chemical form and specifications of material, charges for enrichment services, a ceiling price, termination provisions, delivery of materials, changes in charges and specifications, and a restriction on the enrichment of foreign uranium for use in domestic reactors.

In 1970, the AEC proposed a change in the basis for computing the price for enrichment services (35 FR 13546). The proposed change never became effective because, as discussed previously, Congress determined the change would permit a pricing increase which wholly disregarded the Government's actual costs and thus violate the intent of the 1964 Act. As a result of this proposed change, Congress enacted the 1970 Amendment. On March 9, 1971, the AEC adopted criteria consistent with the 1970 Amendment (36 FR 4562).

On August 23, 1973, the AEC published revised criteria (38 FR 12180). The modification prescribed the fixed commitment contract as the primary contracting vehicle in order to provide greater assurance that new enrichment capacity would be available in the 1980's on a timely basis. The revised criteria also deleted the requirement of a ceiling price.

On October 25, 1974, the criteria were revised to phase out restrictions on the amount of natural uranium of foreign origin which could be enriched for use in domestic reactors (39 FR 38016). The amount of foreign origin material allowed in 1977 was 10 percent and, under the schedule adopted in 1974, was allowed to grow to 80 percent in 1963. Thereafter, no restrictions were to be applied.

On June 27, 1978, the criteria were revised once again to permit DOE to use authorized plant capacity as a basis for offering to provide enrichment services (43 FR 27886). There was also a change to establish the variable tails assay option.

On May 17, 1979, the current version of the criteria was published in the Federal Register (44 FR 28875). The only substantive change was the inclusion of imputed interest on the cost of natural uranium contained in inventories at DOE enrichment plants as a cost to be recovered in the charge for enrichment services. In addition, "Department of Energy" was substituted for "Atomic Energy Commission" where appropriate.

III. Proposed Criteria

In early 1984, DOE announced a major initiative to restore the competitive position of the United States in the world enrichment market in order to maintain DOE's role as a provider of enrichment serivces. The elements of the Department's initiative were: to stabilize DOE's market share through the offering of new more competitive enrichment contracts;[6] to reduce prices; to enhance DOE customer services and marketing activities; and to reduce program costs in all major areas, including diffusion

[4] The Joint Committee on Atomic Energy provided oversight of AEC activities until it was abolished, pursuant to Pub. L. 93–110, in 1977. It functions, including the review of uranium enrichment criteria, have been assigned to other committees of the House and Senate.

[5] DOE is aware that the General Accounting Office (GAO) believes this language applies only to the situation that existed during the period from 1964 through the early 1970's when the emphasis of U.S. enrichment activities was shifting from military to civilian objectives. DOE believes GAO has read the intent of Congress too narrowly. The JCAE Report made clear that the basis for establishing prices under section 161(v) "is flexible." S. Rep. No. 1325, 88th Cong., 2nd Sess., reprinted in 1964 U.S. Code Cong. & Ad. News, 3109, 3122. While the JCAE Report indicated this flexibility would permit the AEC to deal with the problems encountered in the shift from military to civilian operations, it did not indicate that the flexibility was intended for that problem alone. DOE believes that if Congress had intended to limit this flexibility as narrowly as GAO contends, it would have included specific language to that effect in section 161(v). By not limiting DOE's flexibility to specific situations, Congress granted DOE considerable discretion to determine, in the first instance, the best pricing approach and which costs are appropriate for recovery in an ever changing environment.

[6] Several groups have challenged these contracts as violating the existing criteria. DOE disagrees and is involved currently in litigation over the validity of these contracts. DOE believes the contracts resulted from a proper reading of the existing criteria in light of the circumstances existing when the contracts were entered into.

operations and advanced technology research and development activities.

The existing criteria may not comprise the best basis for the approaches which DOE may have to take to carry out its mission under the AEA. DOE believes it is appropriate to propose criteria which interpret and apply the requirements of the AEA in light of today's market.

In the following section, DOE discusses the provisions of the proposed criteria. Where appropriate, DOE discusses how the proposed criteria differ from the existing criteria and why this change is proper in light of current conditions and statutory requirements.

"General." Paragraph a sets forth the statutory basis for the criteria. Paragraph b specifies those customers to which DOE can provide enrichment services. These customers are (1) licensees under section 53, 63, 103, or 104 of the AEA and (2) persons covered by cooperative agreements. The Paragraph restates the statutory requirement that persons covered by cooperative agreements can obtain enrichment services only while comparable services are available to licensees under Section 53, 63, 103, or 104 and can obtain such services at prices no less than the prices charged licensees. Paragraph c provides that DOE can not enter into contracts in excess of its available capacity. Paragraph d provides that the criteria, unless specificaly stated, do not affect DOE's ability to sell, lease, or barter special nuclear material. Paragraph e states that the criteria are subject to change and that any change shall be made pursuant to applicable administrative procedures and after submission to Congress.

"Definitions." This section sets forth the definition of several technical terms used in the criteria, such as "enrichment services" and "separative work unit (SWU)."

"Enrichment of Uranium of Foreign Origin." This section continues the current policy of not imposing restrictions on enriching feed material of foreign origin destined for domestic use. It adds a new requirement that a domestic customer must certify the country of origin of feed material delivered to DOE. DOE believes this identification requirement will enhance its ability to monitor the effects of foreign uranium on the domestic mining and milling industry.

Section 161(v) provides that DOE, "to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer . . . [enrichment] services for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the U.S." On September 26, 1985, the Secretary of Energy issued a determination pursuant to Section 170B of the AEA that the domestic uranium mining and milling industry was not viable in calendar year 1984. DOE does not believe this determination, standing alone, either authorizes or requires imposing restrictions on the enrichment of feed material of foreign origin under section 161(v) of the AEA. Instead, it indicates that DOE should continue its analysis by considering, in the words of the statute, "the extent" to which restricting enrichment of foreign source material for domestic end use will, in fact, "assure the maintenance of a viable domestic uranium industry." DOE's preliminary view is that restrictions would not assist the domestic mining and milling industry in any meaningful way.

Import restrictions on foreign uranium would not assure the viability of the domestic mining and milling industry. The difficulties currently facing the domestic mining and milling industry appear to stem from various factors, including the disparity between the production cost of domestic and foreign uranium, shrinkage in the demand for nuclear power, excess uranium inventories, excess production capacity, and cancellation of powerplants due to cost overruns and licensing delays.

Import restrictions would have no long term positive effect on the consumption of domestic uranium. As long as DOE's enrichment services costs are competitive with foreign services, customers will procure either domestic or foreign uranium for feed material based solely on economic considerations.[7] They will seek enrichment services from the cheapest source and use the cheapest uranium, foreign or domestic. In the short-term, an import ban might increase consumption of domestic uranium temporarily since existing DOE customers would weigh the costs of terminating their contracts against the comparative prices of domestic and foreign uranium. The costs of terminating contracts would, in effect, subsidize some higher priced domestic uranium. This effect would be temporary and could not assure the long-term viability of the domestic industry.

Import restrictions would have undesirable effects on both the U.S. uranium industry and the DOE enrichment business. A sweeping limitation likely would cause many of DOE's customers to reconsider their enrichment contracts with DOLE. Many of these customers currently may be paying a premium for the reliability they expect from dealing with the U.S. Government. The uncertainty about the future operation of the U.S. enrichment program engendered by an import embargo would diminish their willingness to pay such a premium and thus increase the likelihood they might seek enrichment services from abroad. Information available to DOE suggests that for a uranium price difference of as little as ten dollars per pound, a U.S. utility could cancel its DOE enrichment contract, pay the termination fee, buy enrichment services overseas, and save money. Lost sales resulting from such terminations could reach at least $300 million annually by 1988. Losses of this magnitude would force DOE to further curtail operations at its enrichment plants, increasing the unit cost of production.

These developments would be detrimental to the U.S. mining and milling industry. Most domestic DOE enrichment customers currently obtain a large percentage or all of their uranium requirements from domestic sources whereas the customers of DOE's competitors almost invariably use foreign ore. If DOE customers were to terminate their contracts in favor of overseas enrichers, they might obtain all of their natural uranium from foreign producers who offer attractively priced package deals. Thus, the loss of enrichment sales to domestic utilities by DOE could further damage the U.S. mining industry.

While DOE does not believe restrictions to be appropriate at this time, it has taken steps to help the domestic uranium mining and milling industry, including offering a limited free variable tails option and requesting an examination of the issues by the United States Trade Representative. Specifically, the Secretary formally requested the Trade Representative to undertake an examination of imports of uranium to ascertain the appropriate available courses of action under the U.S. trade laws with respect to importation of source material or special nuclear material. In his letter to the Trade Representative, the Secretary expressed his belief that examination of trade matters in the first instance by those familiar with the issues was preferable to an independent finding of

[7] If DOE's enrichment services were priced less then those of its foreign competitors, then restrictions on imports could increase consumption of domestic uranium since customers would be willing to pay a premium for domestic uranium to order to obtain enrichment services from DOE. In today's competitive market, however, it is unlikely DOE will underprice its competitors sufficiently to make it economical to pay a premium for domestic uranium.

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injury by DOE under Section 170B which automatically would trigger an investigation under Section 201 of the Trade Act of 1974.

In his December 26, 1985 response, the Trade Representative stated that

> action under the U.S. trade statutes does not appear to be appropriate in regard to both the short and long-term problems facing the domestic uranium mining and milling industry. Moreover, any remedy granted under existing law which might provide the extent of relief requested by the industry would only be short term, while at the same time having an adverse impact on our trade and other relations with important trading partners without resolving the long-term problems of the industry.

The Trade Representative found the principal cause of the problems in the domestic mining and milling industry to be the failure of anticipated demand to materialize and the resultant excess inventory. The response did not recommend import restrictions under section 161(v) of the AEA, and found the major consequence of any such restrictions "would be the shift of enrichment activity from U.S. government facilities to foreign facilities, thereby eroding the position of U.S. enrichment enterprises."

DOE believes its actions concerning the domestic mining and milling industry are entirely consistent with, and supportive of, Congressional intent. In 1982, Congress considered and specifically rejected legislation to require mandatory restrictions on importation of foreign origin uranium. A proposed amendment to the Nuclear Regulatory Commission Authorization Act would have required the Nuclear Regulatory Commission (NRC) to issue criteria restricting the importation of source material and special nuclear material.[8] 128 Cong. Rec. S. 2968–2970 (daily ed. Mar. 30, 1982). The conference committee rejected this amendment and reported a bill which contained a provision to require the Secretary, when foreign uranium imports reached a level of 37.5 percent, to revise DOE's enrichment criteria "so as to encourage the use of domestic origin uranium in domestic nuclear powerplants." 128 Cong. Rec. S. 13054 (daily ed. Oct. 1, 1982) (remarks of Senator Domenici); *see also,* 128 Cong. Rec. H. 8803 (daily ed. Dec. 2, 1982) (remarks of Rep. Udall and Rep. Lujan). This provision, however, was rejected by the House of Representatives, *Id.* at H. 8809, and a substitute provision was agreed to by both Houses. 128 Cong. Rec. S. 15316 (daily ed. Dec. 16, 1982). In the substitute measure, section 170B of the AEA (codified at 42 U.S.C. 2210(b)), Congress deleted all references to mandatory import restrictions and, instead, provided for, *inter alia,* (1) the annual viability determination by the Secretary, (2) the possibility of an investigation under section 201 of the Trade Act, and (3) the Secretary to request the Secretary of Commerce to initiate an investigation pursuant to 19 U.S.C. 1862 if uranium imports from executed contracts or options are projected at a level of 37.5 percent for a consecutive two-year period.

"Prices." This section describes the approach DOE will follow in establishing prices for providing enrichment services. As discussed previously, the AEA does not mandate any particular form of pricing. Rather, it grants DOE considerable flexibility to determine what prices best achieve the objectives of the AEA, including recovery of the Government's costs over a reasonable period of time.

DOE believes today's highly competitive marketplace calls for a pricing approach which can respond to the challenge from abroad. Therefore, the proposed criteria make clear DOE's flexibility to respond to changing market conditions by negotiating the price in each contract. DOE will negotiate prices in accordance with an overall approach intended to maintain its long-term competitive position. DOE believes pursuing such an approach is the best way to maximize revenues and thus to recover the Government's costs over a reasonable period of time, as well as to fulfill its other responsibilities under the AEA. Such an approach will permit DOE to pursue a vigorous program to regain market share, increase its revenue, and assure to a higher degree the recovery of the Government's costs.

Under the proposed criteria, there is no fixed price or pricing mechanism which must be used in each and every contract. Thus, as under the existing criteria, an individual contract could include a ceiling price above which the contract price could not rise. Or the price could be indexed to market conditions.

DOE does not believe the reference to "recovery of the Government's costs over a reasonable period of time" mandates a pricing mechanism which explicitly calculates the price in each contract solely on the basis of certain specified costs. The accounting concept of allocating specific costs to particular prices is not synonymous with the statutory concept of recovery of costs over a reasonable period of time. Compliance with the statutory mandate can be judged only by looking at the overall performance of DOE's enrichment activities over a period of time, taking into account the many objectives of the AEA.

In the past, DOE did determine the price per SWU by dividing projected demand over the next ten years into the sum of certain specified costs. Such utility-type pricing was appropriate when the U.S. held a monopoly over enrichment services. However, it is not mandated by either the AEA or the existing criteria and, in today's competitive market, is not well suited to the recovery of the Government's costs over a reasonable period of time. Use of a mechanical accounting formula in today's market would result in further erosion of DOE's market share of enrichment services and prolong the period over which the Government's costs are recovered, if ever.

"Costs." A primary objective of DOE's enrichment activities is the recovery of appropriate Government costs to the extent they reasonably relate to providing enrichment services to civilian customers. In order to permit DOE and Congress, as well as other interested parties, an opportunity to appraise the extent to which DOE is establishing charges for enrichment services which recover appropriate Government costs over a reasonable period of time, the proposed criteria list all costs arguably related to the provision of civilian enrichment services. These costs include expenses incurred in providing enrichment services to civilian customers, as follows:

(1) Electric power and all other costs, direct and indirect, or operating the enrichment plants; (2) depreciation of enrichment plants; (3) costs of process development; (4) costs of DOE administration and other Government support functions; and (5) imputed interest on investment in plant, working capital, the natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services, and the separative work costs of preproduced inventories.

The costs specified in the proposed criteria essentially repeat the costs which appear in the existing criteria. These costs reflect DOE's belief that civilian customers should pay a price which reflects only the actual costs of providing enrichment services. The costs of items which are not, and most likely will not, be used in providing enrichment services to current civilian customers are not appropriate for consideration in determining the exent to which Government's costs are recovered over a reasonable period of time. In this regard, DOE has determined that none of the costs of the Gas Centrifuge Plants and only forty percent of the costs of the Gaseous Diffusion Plants are used to provide enrichment services to civilian customers. Accordingly, only these latter costs are appropriate for determining the extent to which the Government's costs are recovered over a reasonable period of time.

"Recovery of Prior Government Costs." DOE is committed to the recovery of appropriate Government costs over a reasonable period of time. To assist in the attainment of this objective, the proposed criteria set forth in section 762.6 a mechanism for the recovery of prior Government costs. This mechanism would establish reserves sufficient to return to the U.S. Treasury, over a reasonable period of time, previously unrecouped and unrecovered costs associated with the provision of enrichment services to civilian customers.

Under this mechanism, DOE proposes to repay the U.S. Treasury, over a reasonable period of time, $3,457 million of the $7,522 million in prior unrecovered Government costs remaining as of September 30, 1985. The reduction of $4,065 million in the amount to be recovered is the equivalent of writing off plant capacity that will not be used in current or future enrichment operations. Interest will be added to the amount to be recovered by applying to the average annual outstanding balance an interest rate of 6.319 percent, the weighted average of Treasury interest rates applicable in the years in which net increases in Government costs occurred.

Repayments to the Treasury will be made annually. From fiscal years 1987–1991, the amount of the annual repayment is expected to be a $150 million minimum plus a percentage of gross commercial revenues—eight percent in 1987 and eleven percent thereafter. Beyond fiscal year 1991, the annual repayment is expected to be the $150 million minimum plus half the savings from projected decreases in TVA demand charges for electricity.

"Non-discrimination." DOE believes section 161(v) requires all customers to be afforded an opportunity to strike a bargain equal in attractiveness to those available to other customers. Accordingly, the proposed criteria provide that DOE shall negotiate price, as well as other terms and conditions of a contract, on a non-discriminatory basis. The section defines non-discrimination to be the availability of the same prices, terms, and conditions to all similarly situated customers.

"Amendment of Contract." This section continues the policy of the existing criteria to permit contract amendment without penalty. This section also makes clear that contracts can provide for renegotiation at specified times or upon notice by either party. DOE believes the ability to amend and renegotiate contracts is a very important element of maintaining competitive viability.

"Termination by DOE." This section continues the policy of the existing criteria.

"Termination by Customer." This section makes clear the charge to a customer for terminating a contract shall be the subject of negotiation between DOE and the customer and, unlike the termination charges in existing contracts, need not be based exclusively on costs. DOE believes termination charges should assist it in retaining customers. Termination charges should give customers an incentive to continue or, at least, to renegotiate their existing contract, rather than seek a new contract with a new supplier.

"Quantities of Feed and Product Material." This section continues the policy of the existing criteria. Under this section, DOE can continue to offer customers the variable tails assay option which can reduce their costs. This section also makes clear that the criteria only relate to how DOE offers enrichment services and not to how it runs its plants. Specifically, it provides that the criteria do not affect DOE's ability to reduce its operating costs by pursuing a policy of split tails or of using preproduced inventory.

"Customers Option to Acquire Tails Material." This section continues the policy in the existing criteria.

"Responsibility for Materials Meeting Specifications." This section continues the policy in the existing criteria.

"Other Terms." This section makes clear that a contract can contain terms and conditions not specified in the criteria. No prohibition against a term or condition is intended by its non-inclusion in the proposed criteria. For example, the existing criteria provide for advanced payments, while the proposed criteria do not mention advanced payments. After the adoption of the proposed criteria, DOE and its customers will be free to negotiate advanced payments, even though the proposed criteria do not address advanced payments explicitly. The terms and conditions in a contract, however, cannot be inconsistent with the criteria.

"Prior Contracts." This section makes clear that the adoption of the new criteria does not invalidate any prior contract. All contracts under which DOE has been providing enrichment shall continue to be effective after the adoption of these criteria. However, prior contracts can be amended to conform to the new criteria without penalty, if both parties agree.

IV. Public Comment Procedures

A. Written Comments

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this notice. All comments should be submitted by 4:30 p.m., e.s.t., of the day specfied in the "DATES" section to the address indicated in the "ADDRESS" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Comments on Proposed Uranium Enrichment Criteria." Ten copies should be submitted. All comments received by DOE will be available for public inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Avenue S.W., Washington, D.C. between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Any information on data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. Public Hearing

1. *Procedure for requests to make oral presentations.* Requests to speak should be in writing and contain a telephone number where you may be contacted during the day prior to the hearing. Request must be submitted to the address indicated in the "ADDRESS" section of this preamble and received by DOE by 4:30 p.m., e.s.t., on March 4, 1986.

If you are selecteds to be heard at the hearing, we will notify you before the date of the hearing. You will be required to submit 50 copies of your statement to DOE prior to the date of the hearing.

2. *Conduct of the hearing.* We reserve the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation

[8] The AEA permits denial of a license for the importation of natural uranium only when, in the opinion of the NRC, the import would be inimical to the common defense and security or the health and safety of the public. 42 U.S.C. 2099.

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may be limited, based upon the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the DOE and made available for inspection in the DOE Freedom of Information Office, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. You may purchase a copy of the transcript from the reporter.

V. Procedural Matters

A. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981), requires an agency to prepare a regulatory impact analysis for any proposed major rule. DOE has determined that this proposal does not constitute a "major rule," as defined in the Executive Order, because: (1) The proposed criteria will not directly result in the level of impact necessary to meet the definition of a "major rule"; and (2) in keeping with the purpose and intents of the Executive Order, the proposed criteria will not increase the regulatory burdens on American society.

B. Atomic Energy Act

Under Section 161(v) of the Atomic Energy Act, 42 U.S.C. 2201 (v), DOE must submit criteria to the appropriate Congressional committees for a period of forth-five days prior to the time DOE actually establishes the criteria. Pursuant to this requirement, DOE will submit the cirteria which it decides to adopt to the proper committees at least forty-five days prior to their actual effective date.

C. National Environmental Policy Act

In accordance with the regulations of the Council of Environmental Quality (40 CFR Parts 1500–1808) implementing the National Environmental Policy Act of 1969, as amended, 40 U.S.C. 4221 *et seq.*, DOE prepared an Environmental Assessment (EA) on the proposed revision to the criteria. Based upon this EA, DOE issued a Finding of No Significant Impact (FONSI) concluding that the proposed revision to the criteria is not a major federal action significantly affecting the quality of the human environment. This FONSI is being published as an appendix to this Notice.

D. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, DOE certifies that the proposal will not have a significant economic impact on a substantial number of small entities because: (1) The proposed criteria will not directly result in the level of impact required to meet the standard set forth in the Regulatory Flexibility Act; (2) to the extent the proposed criteria may have any direct impact, such impact will not be adverse to small entities; and (3) the number of small entities that may be affected by the proposed criteria is not large enough to meet the standard set forth in the Regulatory Flexibility Act.

E. Paperwork Reduction Act

The proposed criteria do not directly provide for the collection of information. The contracts that will be based on the criteria will be used to collect certain information, and at the appropriate time DOE will submit the collection of information requests contained in the contracts to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

List of Subjects in 10 CFR Part 762

Uranium.

For the reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is proposed to be amended as follows.

Issued in Washington, DC, on January 24, 1986.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

1. Chapter III of Title 10 is amended by adding a new Part 762 to read as follows:

PART 762—URANIUM ENRICHMENT SERVICES CRITERIA

Sec.

762.1 General
762.2 Definitions
762.3 Enrichment of Uranium of Foreign Origin
762.4 Prices
762.5 Costs
762.6 Recovery of Prior Unrecouped Government Costs
762.7 Non-discrimination
762.8 Amendment of Contract
762.9 Termination by DOE
762.10 Termination by Customer
762.11 Quantities of Feed and Product Material
762.12 Customer's Option to Acquire Tails Material
762.13 Responsibility for Material Meeting Specifications
762.14 Other Terms
762.15 Prior Contracts

Authority: Sec. 161(u), Atomic Energy Act of 1954, 68 Stat. 921 (42 U.S.C. § 2201(u)).

§ 762.1 General.

(a) *Authority.* These criteria set forth the general terms and conditions applicable to the provision of uranium enrichment services in facilities owned by DOE, as authorized by the Atomic Energy Act of 1954, as amended (the Act). Specifically, these criteria are established pursuant to section 161(v) of the Act, which was added by Pub. L. 88–489, the "Private Ownership of Special Nuclear Materials Act."

(b) *Eligible customers.* DOE may enter into contracts for providing enrichment services with licensees and cooperative agreement customers. Enrichment services can be offered to cooperative agreement customers only while comparable services are available to licensees and cannot be offered for prices less than the prices for services to licensees.

(c) *Capacity limitations.* DOE will not enter into contracts in excess of the available capabilities of DOE. Available capability consists of inventories of material available or committed to DOE and the physical capability of existing and authorized enrichment plants, fully powered and operated without limitation as to mode of operation, but as reduced by potential commitments involving forecasts of Government needs.

(d) *Sale limitations.* Except as specifically provided, nothing in this notice shall be deemed to affect the sale or leasing of special nuclear material by DOE or the entering into "barter" arrangements whereby special nuclear material is distributed pursuant to Section 54 of the Act and source material is accepted in part payment therefore.

(e) *Revision of criteria.* The criteria contained in this notice are subject to change by DOE from time to time; however, any such changes shall be developed in conformance with applicable administrative guidelines and shall be submitted to the Committees of the Senate and House of Representatives which under the rules of the Senate and House have jurisdiction for review in accordance with the Act.

§ 762.2 Definitions.

(a) "Enrichment services" means the separative work necessary to enrich or further enrich uranium in the isotope U–235.

(b) "Cooperative agreement customer" means a person receiving enrichment services pursuant to an agreement for cooperation arranged pursuant to section 123 of the AEA.

(c) "Licensee" means a person licensed under sections 53, 63, 103 or 104 of the AEA.

(d) "Separative work" means the measure of the effort required to separate a quantity of uranium feed material into (1) an enriched fraction containing a higher concentration of U-235 than the feed material and (2) a tails fraction containing a lower concentration of U-235.

§ 762.3 Enrichment of uranium of foreign origin.

A domestic customer shall certify the country of origin of feed material delivered to DOE.

§ 762.4 Prices.

DOE shall negotiate prices in individual enrichment services contracts in accordance with an overall approach intended to maintain the long-term competitive position of DOE while obtaining the recovery of the Government's costs over a reasonable period of time.

§ 762.5 Costs.

DOE will establish charges for enrichment services on a basis that recovers appropriate Government costs over a reasonable period of time. Such costs will be determined on a basis that includes the costs incurred in providing enrichment services to civilian customers, as follows:

(a) Electric power and all other costs, direct and indirect, of operating the enrichment plants;

(b) Depreciation of enrichment plants;

(c) Costs of process development;

(d) Cost of DOE administration and other Government functions in support of the Enrichment Program; and

(e) Imputed interest on investment in plant, working capital, the natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services, and the separative work costs of preproduced inventories.

§ 762.6 Recovery of prior unrecouped Government costs.

In establishing prices for providing enrichment services for civilian customers DOE will establish reserves sufficient to return to the Treasury of the United States, over a reasonable period of time, previously unrecouped and unrecovered costs associated with provision of enrichment services to civilian customers. The estimate of such costs will include costs attributable to plant capacity used to provide enrichment services for civilian customers, but will not necessarily include costs attributable to plant capacity or other investments not properly allocable to the Government's costs associated with providing enrichment services to civilian customers.

§ 762.7 Non-discrimination.

The same prices, as well as other terms and conditions, shall be available to all similarly-situated customers on a non-discriminatory basis, reflecting the cost of the enrichment services supplied to those customers.

§ 762.8 Amendment of contract.

At the request of either DOE or the customer, the parties will negotiate and, to the extent mutually agreed, amend the contract without additional consideration. A contract may provide for renegotiation of prices, as well as other terms and conditions, at specified times or upon request by either party.

§ 762.9 Termination by DOE.

(a) The contract may be terminated by DOE without cost to DOE upon reasonable notice at such time as commercial enrichment services are provided by another domestic source: Provided, however, that DOE will upon request by the customer rescind any notice of termination and will continue to furnish the services specified in the contract if the services of the domestic source are not available to the customer; (1) to the extent provided for in the DOE contract during the remainder of its terms; and (2) on terms and conditions, including charges, which are considered by the DOE to be reasonable and nondiscriminatory.

(b) DOE may terminate the contract without cost to DOE in the event the customer loses its right to possess enriched uranium, or defaults on its contractual obligations, or becomes involved in bankruptcy proceedings. In such instances, the customer will be required to pay a termination charge determined as if the customer had terminated the contract.

§ 762.10 Termination by customer.

The contract shall provide the circumstances under which the customer may terminate the contract in whole or in part. Reasonable and appropriate charges for termination as are negotiated shall be specified in the contract.

§ 762.11 Quantities of feed and product material.

The quantity of material to be furnished by the customer in relationship to the quantity of enriched uranium to be delivered by DOE and the related amount of separative work to be performed by DOE normally will be determined in accordance with the then current standard table of enriching services published by DOE. DOE may agree to perform such services in accordance with such other table as is within its capability. DOE will not necessarily use the specific feed material or quantity of material furnished by the customer in producing the enriched uranium delivered to the customer.

§ 762.12 Customer's option to acquire tails material.

The customer shall be granted an option to acquire tails material (depleted uranium) resulting from the performance of enrichment services. The option as to quantity (kg U) of tails material desired by the customer, within the maximum quantity subject to the option, must be exercised at the time of delivery of the related quantity of feed material. The U-235 assay of the tails material delivered to the customer will be within the sole discretion of DOE. The maximum quantity of depleted uranium subject to the option will be equal to the difference between the total uranium supplied by the customer as feed material and the total enriched uranium furnished to the customer, less processing losses as established from time to time by DOE. Delivery of tails material will normally be at the same time as delivery of enriched uranium.

§ 762.13 Responsibility for materials meeting specifications.

The customer warrants that all feed material meets specifications and, with stated exceptions, agrees to hold DOE and its representatives harmless from all damages, liabilities, or costs arising out of a breach of the warranty where such

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damages, liabilities, or costs are incurred prior to final acceptance of the feed material by DOE. However, the customer is not deprived of any rights under indemnification agreements entered into pursuant to section 170 of the Act (Price-Anderson indemnification). DOE's obligation to furnish specification material to the customer terminates upon final acceptance of such material by the customer.

§ 762.14 Other terms.

A contract may contain terms and conditions not specified in these criteria, so long as the terms and conditions are not inconsistent with these criteria.

§ 762.15 Prior contracts.

All contracts under which DOE was providing enrichment services prior to the adoption of these criteria are valid. These prior contracts may be amended to conform to these criteria without penalty, if both parties agree.

Appendix—Finding of No Significant Impact Proposed Revision to the Uranium Enrichment Service Contract

Note.—This appendix will not be printed in the Code of Federal Regulations.

I. Declaration of Finding

The Department of Energy (DOE) has prepared an Environmental Assessment (EA) (DOE/EA–0279), which is available to the public on request, on the proposed revision to the Uranium Enrichment Services Criteria. Based on the findings of the EA, DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act of 1969. Therefore, no environmental impact statement is required.

II. Description of the Proposed Action

DOE proposes to revise the current Uranium Enrichment Services Criteria to explicitly address the realities of today's highly competitive market for enrichment uranium. In addition to minor conforming amendments, the proposed Criteria provide contracting flexibility to enable DOE to provide enrichment services under terms which are consistent with the Atomic Energy Act, responsive to the needs of enrichment customers, and which maximize the long term competitive position of the United States in the world market. The revised Criteria would also continue the existing policy against restrictions on the enrichment of foreign uranium for use in domestic reactors.

Additional details regarding the description of the proposed action can be found in the Environmental Assessment on Proposed Revision to the Uranium Enrichment Services Criteria.

III. Alternatives Considered

Two reasonable alternatives exist to revising the Uranium Enrichment Services Criteria. They are:

- Do not revise the Uranium Enrichment Services Criteria (No action).
- Revise the Uranium Enrichment Services Criteria, but in a different manner.

No action regarding revision of the Criteria is not a desirable option if the United States is to remain a viable supplier of uranium enrichment services. The impact of not revising the Criteria would probably result in DOE eventually losing some of their customers to foreign uranium enrichment suppliers.

The Criteria could be revised in other ways than those that are proposed. One apparent way that might be proposed during the rulemaking process is to include restrictions on the enrichment of foreign uranium for use in domestic reactors. The domestic uranium mining industry argues that import restrictions would benefit the industry. DOE strongly believes that import restrictions would be detrimental to both DOE and the domestic mining industry. Therefore, DOE believes that import restrictions are not a desirable option.

Additional details on alternatives can be found in the Environmental Assessment on Proposed Revision to the Uranium Enrichment Services Criteria.

IV. Description of Impacts and Justification for Conclusion of No Significance

Operation of the DOE gaseous diffusion plants for uranium enrichment have impacts on the environment, which include impacts on air quality, water quality, land use, and aquatic and terrestrial biota. Operation also requires large amounts of electrical energy. DOE monitors the diffusion plant effluents to assure compliance with environmental standards.

A summary of the environmental impacts of plant operations can be found in the Environmental Assessment on Proposed Revision to the Uranium Enrichment Services Criteria.

The proposed Criteria will reinforce DOE's continuing efforts to conduct enrichment activities in a more businesslike manner. There will be no environmental impacts directly attributable to the proposed revision to the Criteria. The revised Criteria will not affect the impacts previously assessed for operating enrichment plants. Although the flexibility permitted by the revised Criteria may prevent the U.S. from losing more of its current market share, and possibly may increase the anticipated share over the long term, the enrichment plants currently are operating so far below full capacity that no need for additional plants beyond that previously assessed is anticipated in the near future. Therefore, it is concluded that revising the Criteria as proposed is not a major Federal action with a significant effect on the quality of the human environment.

Single copies of the Environmental Assessment on Proposed Revision to the Uranium Enrichment Services Criteria are available from: John P. Thereault, Office of Technology Deployment and Strategic Planning; NE–34, Office of Uranium Enrichment, U.S. Department of Energy, Washington, DC 20545, (301) 353–4710.

FOR FURTHER INFORMATION CONTACT: Robert J. Stern, Director, Office of Environmental Guidance, EH–23, U.S. Department of Energy, Washington, DC 20585, (202) 252–4600.

Date issued: January 10, 1986.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 86–2030 Filed 1–27–86; 12:02 pm]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 5H5462/P383; FRL–2960–8]

Pesticide Tolerance for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the establishment of a food additive regulation for the combined residues of the fungicide 3-[3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (referred to in the preamble of this document as vinclozolin) and its 3,5-dichloroaniline containing metabolites in or on the food commodity prunes. This regulation to establish the maximum permissible level for residues of the fungicide in or on prunes was requested by BASF Wyandotte Corp. A related document, proposing a tolerance on stone fruits, appears elsewhere in this issue of the **Federal Register**.

DATE: Comments, identified by the document control number [FAP 5H5462/P383], must be received on or before February 28, 1986.

ADDRESS: Written comments by mail to: Information Services Section, Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 8, 1985 (50 FR 19444), that announced that BASF Wyandotte Corp., submitted food additive petition 4H5462 to the Agency proposing to amend 21 CFR Part 193 by establishing a regulation permitting the combined residues of the fungicide vinclozolin and its 3,5-dichloroaniline containing metabolites in or on the commodity dried prunes at 75.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in a related document (PP 2F2650/P383) appearing elsewhere in this issue of the **Federal Register**.

The metabolism of vinclozoline is adequately understood, and an adequate analytical method, gas chromatography with electron capture detector, is available for enforcement purposes.

Based on the information considered, the Agency concludes that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973, 7 U.S.C. 136a *et seq.*) Therefore, it is proposed that the food additive regulation be established as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [FAP 5H5462/P383]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations proposing the establishment of new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: January 16, 1986.

Douglas D. Compt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 21 CFR Part 193 be amended as follows:

PART 193—[AMENDED]

1. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 193.137 is added to read as follows:

§ 193.137 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione.

Tolerances are established for combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on the following food commodities:

	Parts per million
Foods:	
Prunes	75.0

[FR Doc. 86–1811 Filed 1–28–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF STATE

Assistance Secretary for Consular Affairs

22 CFR Part 71

[No. SD–195]

Emergency Medical/Dietary Assistance for U.S. Citizens Incarcerated Abroad

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of State proposes to modify an existing limitation on emergency medical loans to U.S. citizens incarcerated abroad. Under certain conditions, loans are now available to transport U.S. citizen prisoners incarcerated abroad to medical facilities within a consular district if necessary to prevent death or permanent disablement. This modification would ensure that eligible American prisoners abroad receive without delay needed life- or limb-saving care by permitting loans for transportation to medical facilities both within and outside the consular district.

This rule would also provide that Department of State funds may be used to treat both physical and mental conditions that are life-threatening. Although it has been the Department of State's view that any illness that is life- or limb-threatening qualifies an indigent U.S. citizen incarcerated abroad for assistance, the current regulation can arguably be interpreted to refer only to physical distress. The proposed change would eliminate that ambiguity by making clear, for example, that an indigent incarcerated American whom competent authorities believe to be in need of emergency psychiatric treatment or care is eligible for assistance on the same basis as the prisoner who needs an emergency appendectomy.

Finally, the Department proposes to delete certain ambiguous language regarding the short-term full diet program which implies that promissory notes may not be required in certain

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cases if the amount to be expended does not exceed an amount established by the Department. The change would make clear that promissory notes are required for all loans regardless of the amount involved.

DATE: Comments must be received on or before March 31, 1986.

ADDRESS: Written comments should be addressed to John H. Adams, Director, Citizens Emergency Center, Overseas Citizens Services, Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Thomas L. Randall, Jr., Chief, Latin America and the Caribbean, Citizens Emergency Center, Department of State, Washington, DC 20520, (202) 632-5225.

SUPPLEMENTARY INFORMATION: Loans for emergency medical assistance to eligible incarcerated U.S. citizens abroad are made possible by Pub. L. 95-45, as amended (22 U.S.C. 2670(j)). The statute authorized the Department of State to provide emergency assistance to incarcerated Americans for purposes such as transportation to a medical facility. The law does not require that the medical facility be located within the consular district.

In administering the program, the Department has found that the current language in § 71.10(b)(7) limiting loans for transport to a medical facility within the consular district where the U.S. prisoner is located is unduly restrictive and does not accurately reflect the intent of the Congress. In January 1985 there were more than 1,400 Americans incarcerated abroad, many in areas remote from medical facilities or from hospitals that could provide life-saving equipment or techniques such as renal dialysis or open heart surgery. Under the current rule, if an appropriate medical facility is not available within the consular district, we would be unable to provide emergency medical assistance.

The Department has determined that the proposed change will ensure that eligible American prisoners abroad in need of emergency assistance will more expeditiously be transported to appropriate medical facilities.

Two minor changes are also proposed to ensure that the emergency medical and dietary assistance programs are implemented uniformly worldwide. Since the programs' inception in 1977, regulations governing implementation have not been modified or clarified based on the Department's experiences in more than 170 countries. The proposed changes formalize practices that have already been implemented in light of that experience and thus reflect current practice.

To comply with federal statutes, 22 CFR 71.11(a)(3) would be modified to require that where possible, and prior to the expenditure of any funds, indigent prisioners must execute promissory notes agreeing to repay the U.S. Government for all fund expended for the emergency dietary assistance provided to them.

Finally, 22 CFR 71.10(a)(1) would be clarified to specify that funds may be used to treat both physical and mental illnesses that are potentially life- or limb-threatening.

The Department believes that these proposed changes fulfill the intent of Congress and will not adversely affect any of the potential applicants for the emergency medical and dietary assistance programs for incarcerated U.S. citizens abroad.

List of Subjects in 22 CFR Part 71

Protection and welfare of U.S. citizens abroad, Emergency medical and dietary assistance.

For the reasons set out in the summary, Part 71 of Subchapter H, Chapter I, Title 22 of the Code of Federal Regulations would be amended as follows:

PART 71—[AMENDED]

1. The authority citation for 22 CFR Part 71 would be revised to read as follows:

Authority: Sec. 4 of the Act of May 26, 1949, as amended, 63 Stat 111, 22 U.S.C. 2658; Sec. 2, Pub. L. 95-45, 91 Stat 221, 22 U.S.C. 2670(j).

2. By revising § 71.10 (a)(1), (b)(7), and § 71.11(a)(3) to read as follows:

§ 71.10 Emergency medical assistance.

(a) * * *

(1) Adequate treatment for a physical or psychiatric condition cannot or will not be provided by prison authorities or the host government.

* * * * *

(b) * * *

(7) Transportation for the U.S. Citizen and attendant(s) designated by incarcerating officials between the place of incarceration or site where the injury/illness occurred and the place(s) of treatment;

* * * * *

§ 71.11 Short-term full diet program.

(a) * * *

(3) Whenever competent to do so, the prisoner executes a promissory note for funds expended, since the assistance is on a reimbursable basis.

* * * * *

Dated: July 29, 1985.

Joan M. Clark,

Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 86-1868 Filed 1-28-86; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-191-82]

Income Taxes; section 338(b), Basis of Target Corporation Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the Federal Register, the Internal Revenue Service is issuing temporary regulations that add new §§ 1.338 (b)-1T through 1.338 (b)-3T, relating to the determination of the basis of assets of a target corporation, and that amend existing temporary regulations § 1.338-4T, relating to miscellaneous matters under section 338. The text of the new and revised sections also serves as the comment document for this notice of proposed rulemaking.

DATES: Proposed Effective Date: The final regulations under section 338 (b) are effective January 29, 1986, and to apply generally to stock acquisitions made after August 31, 1982.

Dates for Comments and Requests for a Public Hearing: Written comments and requests for a public hearing must be delivered or mailed by March 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR-191-82], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Bennett C. Steinhauer or Patricia Wendlandt of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) or telephone 202-566-3458 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register add new temporary regulations §§ 1.338 (b)-1T through 1.338 (b)-3T to Part 1 of Title 26 of the Code of the Federal Regulations ("CFR") and amend temporary regulations §§ 1.338-1T through 1.338-4T. The final regulations that are proposed to be based on the new and amended temporary regulations would be added to Part 1 of Title 26 of the CFR. Those final regulations would provide guidance on the determination of the basis of the assets of a target corporation for which an election is made under section 338 of the Internal Revenue Code. Section 338 (b) was added by section 224 of the Tax Reform and Fiscal Responsibility Act of 1982 ("TEFRA") (Pub. L. No. 97-248; 96 Stat. 485) and was amended by section 712 (k) of the Tax Reform Act of 1984 (Pub. L. No. 98-369; 98 Stat. 948). For the text of the new and amended temporary regulations, see T.D. 8072, published in the Rules and Regulations portion of this issue of the Federal Register. The preamble to the temporary regulations explains the additions to the regulations.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal authors of these proposed regulations are Bennett C. Steinhauer and Patricia Wendlandt of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-1849 Filed 1-23-85; 4:49 pm]

BILLING CODE 4830-01-M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1609, 1618, 1621, 1624, 1630, 1633, 1636, 1639, 1642, 1648, 1651, 1653, 1656, and 1657

Selective Service Regulations; Processing of Registrants; Extension of Comment Period

AGENCY: Selective Service System.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In the Federal Register of December 27, 1985 (50 FR 52955) the Selective Service System proposed amendments to the above listed parts of 32 CFR. The Selective Service System provided that comments received on or before January 27, 1986 would be considered. It appears that additional time should be allowed for public comment.

DATE: The period for submitting written public comments is hereby extended to February 27, 1986. Written comments received on or before February 27, 1986 will be considered.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724-1167.

Dated: January 23, 1986.

Thomas K. Turnage,

Director.

[FR Doc. 86-1891 Filed 1-28-86; 8:45 am]

BILLING CODE 8015-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2F2650/P382; FRL-2960-9]

Pesticide Tolerance for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (referred to in the preamble of this document as vinclozolin) and its metabolites containing the 3,5-dichloroaniline moiety in or on stonefruits. This regulation, to establish the maximum permissible level for residues of vinclozolin on stonefruits, was requested by BASF Wyandotte Corp. A related document, proposing a tolerance on prunes, appears elsewhere in this issue of the Federal Register.

DATE: Comments, identified by the document control number [PP 2F2650/P382], must be received on or before February 28, 1986.

ADDRESS: Written comments by mail to:

Information Services Section, Program Management and Support Division (TS-767C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW.

In person bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM #2 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of June 23, 1982 (47 FR 27126), that announced that BASF Wyandotte Corp., Agriculture Chemical Division, 110 Cherry Hill Road, Parsippany, New Jersey 07054 submitted pesticide petition 2F2650 proposing to amend 40 CFR

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180.380 by establishing a tolerance for the combined residues of the fungicide vinclozolin and its 3,5-dichloroaniline containing metabolites in or on the raw agricultural commodities peaches and cherries at 4.0 parts per million (ppm) and plums at 1.0 ppm. The petition was subsequently amended (47 FR 57129; December 22, 1982) by deleting cherries, peaches, and plums and substituting the raw agricultural group stonefruit at 25 ppm.

A related document, [FAP 5H5462/P383], proposing a tolerance for the food commodity prunes at 75.0 ppm, appears elsewhere in this issue of the Federal Register.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 90-day rat feeding study with a NOEL of 450 ppm (22.5 mg/kg/day) the highest dose tested.
2. A 90-day dog feeding study with a NOEL of 300 ppm (7.5 mg/kg/day).
3. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day).
4. A mouse teratology study with a NOEL for teratogenicity of 6,000 ppm (900 mg/kg/day) highest dose tested, and a NOEL for fetotoxicity of 600 ppm (90 mg/kg/day).
5. A rabbit teratology study with a NOEL for teratogenicity of 360 ppm (80 mg/kg/day), the highest dose tested and a NOEL for fetotoxicity of 80 mg/kg/day.
6. A chronic feeding/oncogenicity study in rats for 103 weeks, with a NOEL of 486 ppm (24 mg/kg), and no compound-related oncogenic effects under the conditions of the study at doses up to 1,458 ppm (73 mg/kg bw/day), the highest dose tested.
7. A chronic feeding/oncogenicity study in mice for 26 months, with a NOEL greater than 486 ppm (73 mg/kg) and no compound-related oncogenic effects under the conditions of the study at doses up to 1,458 ppm (219 kg/mg bw/day), the highest dose tested. A discussion of this study follows.
8. A dominant lethal assay in mice negative at 2,000 mg/kg for 5 days.
9. Sister chromatid exchange study in the bone marrow of the Chinese hamster was negative.
10. Reverse mutation test with and without a metabolic activation system which was negative for mutagenic effects.

A primary rat hepatocyte unscheduled DNA synthesis assay and a mouse lymphoma forward mutation assay on vinclozolin have been received and are currently undergoing review and evaluation.

The mouse oncogenicity study was carried out for 26 months (item 7 of preceeding toxicology data) using the NMRI strain of mice at doses of 0, 162, 486, 1458, and 4,347 ppm. In its evaluation of this study, the Agency raised some questions about the significance of increases in liver tumors and leukemia/lymphomas in male mice and lung adenomas in female mice treated with vinclozolin. To further evaluate the concerns raised in this review, the Agency requested, and received, historical control data from eight studies run in the same laboratory during the same timeframe for incidence of leukemia/lymphoma, liver tumors, and lung adenomas/carcinomas.

The Agency has now concluded that the small increased incidences of both leukemia/lymphomas and liver tumors in the vinclozolin-treated male mice did not appear to be treatment-related, based on the following. First, the historical control data for leukemia/lymphoma indicated vinclozolin-treated male mice were within the spontaneous tumor rate range for that laboratory, whereas, the concurrent control rate was low for leukemia/lymphoma. Second, the vinclozolin-treated high dose male mice showed a 6 percent (3/50) incidence of liver tumors (adenomas), which was at the high end of, but nevertheless within, the historical control rates for that laboratory (0 to 6 percent). Third, no progression of these benign liver tumors to malignancy was evident (of the three mice with liver tumors, one each died in week 96, 103, and 105 of the experiment).

The only other issue in the initial Agency evaluation which remained unresolved was the biological significance of the statistically significant, dose-related increase in incidences of lung adenomas in female mice. An increase in the incidence of this tumor was seen in female mice treated with vinclozolin (0 percent in the control, 2 percent at 162 ppm, 2 percent at 486 ppm, 6 percent at 1,458 ppm, and 10 percent at 4,347 ppm). A re-evaluation of the lung adenoma slides by pathologists at the Experimental Pathology Laboratory (EPL) showed three less adenomas in treated mice as indicated below.

MOUSE LUNG ADENOMAS

	Controls	Dose groups			
		162	486	1,458	4,347
BASF	0(0%)	1(2%)	1(2%)	4(8%)	5(10%)
EPL	0(0%)	0(0%)	1(2%)	3(6%)	4(8.6%)

In addition, the pathologist at EPL did not observe any differences in the hyperplasia of the lung in the treated versus control groups. An oncogenic effect associated with a treatment-related increase in tumors is generally corrolated with an increase of hyperplastic changes in the same tissues.

Therefore, based on (1) the absence of any differences in lung hyperplasia in vinclozolin-treated animals and the controls; (2) the fact that the incidence of lung adenomas in treated females was within the spontaneous control rate, which shows a fairly wide variation, for this (0 to 9 percent) and other testing laboratories (as high as 25.5 percent); (3) the fact that the lung tumors were benign (adenomas) and had not progressed to malignancy (carcinomas); and (4) the absence of any significant increased incidence of lung tumors in treated male mice as compared to controls, the Agency has concluded that vinclozolin does not show an oncogenic potential in the mouse under the conditions of the study, and that the apparent dose-related increase in tumors is attributable to chance. Furthermore, the conclusion that vinclozolin is not a potential human oncogen is further supported by the lack of oncogenic activity in a chronic feeding/oncogenicity study in the rat and the absence of mutagenic activity in mammalian systems. The Agency has decided to seek public comment on these conclusions.

Based on the NOEL of 100 ppm in the 6-month dog feeding study, and using a 100-fold safety factor, the acceptable daily intake (ADI) for vinclozolin is calculated to be 0.25 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.2507 mg/day. The proposed lactation would increase the TMRC to 0.2967 mg/day, which utilize 19.8 percent of the ADI or an additional 3.1 percent of the ADI.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using an electron capture detector, is available for enforcement purposes. There is no reasonable expectation of residues in eggs, milk, or poultry from this use in stonefruit.

Based on the data and information considered, the Agency concludes that the proposed tolerance would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this proposed rule be referred to an advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 2F2650/P382]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 16, 1986

Douglas D. Campt,

Director, Registration Division Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

Part 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.380 is amended by adding, and alphabetically inserting, the commodity stonefruits to read as follows:

§ 180.380 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Stonefruits	25.0
* * * * *	

[FR Doc. 86-1813 Filed 1-28-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6690]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 50 FR 49958 on December 6, 1985. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the City of Kirbyville, Jasper County, Texas.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Kirbyville, previously published at 50 FR 49958 on December 6, 1985, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. In FR Doc. 85-28938, in the Federal Register of Friday, December 6, 1985, on page 49958, column 1, correct the entry for Pin Oak Creek to read as follows:

Source of flooding and location	Elevation in feet—national geodetic vertical datum
Pin Oak Creek:	
Approximately .4 mile downstream of Gulf Colorado and Santa Fe Railroad	*99
Approximately .6 mile upstream of most upstream corporate limits	*1111

Issued: January 17, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-1769 Filed 1-28-86; 8:45 am]

BILLING CODE 6718-03-M

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Notices

Federal Register
Vol. 51, No. 19
Wednesday, January 29, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Forms Under Review by Office of Management and Budget

January 24, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; ATTN: Desk Officer for USDA.

If you participate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

New

• Food and Nutrition Service, Child Care Food Program Study/Mail Survey of Day Care Providers. One time only.

Non-profit institutions; Small businesses or organizations; 3,675 responses; 919 hours; not applicable under 3504(h), Jerry Burns (703) 756–3128.

Revision

• Food Safety Inspection Service, Regulations Governing Poultry Inspection, FSIS 6800–2, 6800–3, 6800–4, 6800–5, 6800–8, MP–112, –230, –231, –232, –505, –514–2, –526, and –528.

Daily

State or local governments; Small businesses or organizations; 401,760 responses; 33,480 hours; not applicable under 3504(h), Roy Purdie, Jr. (202) 447–5372.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 86–1944 Filed 1–28–86; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 3–86]

Proposed Foreign-Trade Zone, Brevard County, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Canaveral Port Authority, a Florida public corporation, requesting authority to establish a general-purpose foreign-trade zone in Brevard County, Florida, within the Canaveral Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 21, 1986. The applicant is authorized to make this proposal under Chapter 28922, Laws of Florida, Special Acts of 1953.

The proposed foreign-trade zone will cover 50 acres in the southwest portion of the 800-acre Canaveral Port Authority complex on George King Blvd., in Brevard County. The Port Authority will select a private operator for the zone.

The application contains evidence of the need for zone services in the Cape Canaveral area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of products such as computer, telecommunication, and other electronic equipment. No approvals for manufacturing are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th ST., Miami, FL 33131; and Colonel Charles T. Meyers, III, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Fl 32232.

As part of its investigation, the examiners committee will hold a public hearing on February 25, 1986, beginning at 1:00 p.m., in Commissioners Hearing Room of the Canaveral Port Authority Administrative Building, 200 George King Blvd., Cape Canaveral, Florida.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by February 17. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through March 31, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 120 George King Blvd., Port Canaveral, FL 32970.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: January 24, 1986.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 86–1928 Filed 1–28–86; 8:45 am]
BILLING CODE 3510–25–M

[Docket No. 2–86]

Proposed Foreign-Trade Zone, Palm Beach County, FL; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Palm Beach District, a Florida public corporation, requesting authority to establish a general-purpose foreign-trade zone in Palm Beach County, Florida, within the West Palm Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 21, 1986. The applicant is authorized to make this proposal under § 228.36 of the Florida Statutes.

The proposed foreign-trade zone involves 2 sites totalling 180 acres. Site 1 covers 112 acres within the Port of Palm Beach terminal area, located about 1 mile from the Lake Worth Inlet to the Atlantic Ocean. Site 2 covers 68 acres on in industrial area about 2 miles due west of the terminal at Interstate–95 and Highway 710. An existing 10,000 square foot warehouse is available at the latter site for initial zone activity. The Port plans to designate CHO Properties, Inc. as zone operator.

The application contains evidence of the need for zone services in the Palm Beach area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of products such as elevator systems, telephone and telecommunication equipment, building materials, metal shutters, and boat components. No approvals for manufacturing are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th St., Miami, FL 33131; and Colonel Charles T. Meyers III, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, FL 32232.

As part of its investigation, the examiners committee will hold a public hearing on February 26, 1986, beginning at 9:00 a.m., in the Port of Palm Beach Commission Meeting Room (5th Floor), Port Executive Building, Four East Port Road, Riviera Beach.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by February 19. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through March 31, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, P.O. Box 9906, Riviera Beach, FL 33424.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: January 24, 1986.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 86–1929 Filed 1–28–86; 8:45 am]
BILLING CODE 3510–DS–M

[Order No. 324]

Resolution and Order Approving the Application of the Chicago Regional Port District for a Special-Purpose Subzone at the Ford Motor Company Plant in Chicago, IL

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 16, 1934, as amended (19 U.S.C. 81a–81U), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Chicago Regional Port District, grantee of Foreign-Trade Zone 22, filed with the Foreign-Trade Zones Board (the Board) on May 28, 1985, requesting special-purpose subzone status for Ford Motor Company's auto assembly plant in Chicago, Illinois, within the Chicago Customs port of entry area, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish a Foreign-Trade Subzone at a Ford Motor Company Plant in Chicago, IL

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Chicago Regional Port District, grantee of Foreign-Trade Zone No. 22, has made application (filed May 28, 1985, Docket 12–85, 50 FR 23752) in due and proper form to the Board for authority to establish a special-purpose subzone at the auto manufacturing plant of Ford Motor Company in Chicago, Illinois;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed May 28, 1985, the Board hereby authorizes the establishment of a subzone at the Ford auto plant in Chicago, designated on the records of the Board as Foreign-Trade Subzone No. 22B, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to

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the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC this 15th day of January 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-1926 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 325]

Resolution and Order Approving the Application of the Indianapolis Airport Authority for Special-Purpose Subzones at Three Chrysler Corp. Plants in the Indianapolis, IN, Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders: After consideration of the application of the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, filed with the Foreign-Trade Zones Board (the Board) on May 28, 1985, requesting special-purpose subzone status for three automobile components manufacturing plants in the Indianapolis Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority to Establish Foreign-Trade Subzones at Chrysler Corporation Plants in the Indianapolis, IN Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone No. 72, has made application (filed May 28, 1985, Docket 13–85, 50 FR 23752) in due and proper form to the Board for authority to establish special-purpose subzones at auto component manufacturing plants of Chrysler Corporation in Indianapolis, Kokomo, and New Castle, Indiana, adjacent to the Indianapolis Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, in accordance with the application filed May 28, 1985, the Board hereby authorizes the establishment of subzones at Chrysler plants in Indianapolis, Kokomo, and New Castle, Indiana, designated on the records of the Board as Foreign-Trade Subzones Nos. 72E, 72F and 72G, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineers with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC this 15th day of January 1986, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-1927 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-791-502]

Antidumping Duty Order; Low-Fuming Brazing Copper Rod and Wire From South Africa

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning low-fuming brazing copper rod and wire from South Africa, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that this product is being sold at less than fair value and that sales of this product from South Africa are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of low-fuming brazing copper rod and wire from South Africa made on or after September 23, 1985, the date on which the Department published its "Preliminary Determination" notice in the Federal Register, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Mary S. Clapp, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2613 or 377–1769.

SUPPLEMENTARY INFORMATION: The merchandise covered by this order is low-fuming brazing copper rod and wire from South Africa, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified under item numbers 612.6205, 612.7220, and 653.1500 of the Tariff Schedules of the United States Annotated (TSUSA). The chemical composition of the products under investigation is defined by Cooper Development Association (CDA) standards 680 and 681.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on September 23, 1985, the Department published its preliminary determination that there was reason to believe or suspect that low-fuming brazing copper rod and wire from South Africa was being sold at less than fair value (50 FR 38567). On December 6, 1985, the Department published its final determination that these imports were being sold at less than fair value (50 FR 49973).

On January 17, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of low-fuming brazing copper rod and wire from South Africa. These antidumping duties will be assessed on all unliquidated entries of the product entered, or withdrawn from warehouse, for consumption on or after September 23, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (50 FR 38567).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-averaged antidumping duty margin as noted below.

Manufacturers Producers/Exporters Weighted-Average Margin (%)

McKechnie Brothers S.A. (Pty.) Ltd., 3.30
All other Manufacturers/Producers/Exporters, 3.30

This determination constitutes an antidumping duty order with respect to low-fuming brazing copper rod and wire from South Africa, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies for the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 22, 1986.

[FR Doc. 86-1937 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

Brookhaven National Laboratory; for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 84–163. Applicant: Brookhaven National Laboratory, Upton, NY 11973. Instrument: Vivitron Portico Intershield Assembly. Manufacturer: Vivirad, France. Intended Use: See notice at 49 FR 19563.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The application relates to accessories specifically designed to enhance the accelerating potential of Van de Graaff accelerators. The accessories are pertinent to the applicant's intended uses, and we know of no comparable domestic accessories.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1932 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California at Berkeley; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 86–012. Applicant: University of California at Berkeley, Berkeley, CA 94720. Instrument: X-Ray Streak Camera, Model LMSC. Manufacturer: Kentech Instruments, United Kingdom. Intended Use: See notice at 50 FR 46807.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument is capable of measuring the pulse duration of short pulse (10^{-12}) second x-rays. This capability is pertinent to the applicant's intended purpose. We known of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

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(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1933 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago, Operator of Argonne Nat'l Laboratory; Decision of Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 86-1411, beginning on page 3091 in the issue of Thursday, January 23, 1986, make the following correction: On page 3092, in the first column, the last word in the ninth line should read "Superconducting".

BILLING CODE 1505-01

University of Hawaii; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 86-017. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Electro-Ultrafiltration Unit, Model 724. Manufacturer: Vogel Medizinische Technik & Electronik, West Germany. Intended Use: See notice at 50 FR 46149.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article enables the measurement of desorption and solubility rates of soils and the separation of several nutrient fractions in a single extraction run. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1934 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Maryland; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-294. Applicant: University of Maryland, College Park, MD 20742. Instrument: Fast-Scanning Michelson Interferometer, Model #40501l Manufacturer: Analytical Accessories, Limited, United Kingdom, Intended Use: See notice at 50 FR 41381.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides fast-scanning (35 hertz) of electron cyclotron emission spectra over the range of 2.0 to 60.0 cm^{-1} with a resolution of 0.1 cm^{-1}. The National Bureau of Standards advises in its memorandum dated December 23, 1985 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manfactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1935 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Utah; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-004. Applicant: University of Utah, Salt Lake City, UT 84112. Instrument: Shielded Demagnetizer, Model MSA2. Manufacturer: Molspin Limited, United Kingdom. Intended use: See notice at 50 FR 45647.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a very high magnetic moment sensitivity for in situ measurements of sample specimens. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value fo the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-1936 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Ms. Susan Kruse and Dr. William R. Doyle (P374)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Ms. Susan Kruse and Dr. William R. Doyle, Institute of Marine Sciences.

b. Address Long Marine Laboratory, Santa Cruz, California 95064

2. Type of Permit: Scientific Research.

3. Name and number of Marine Mammals: Risso's Dolphin (Grampus griseus), 9900.

4. Type of Take: Incidental harassment in the course of behavioral observations from boats.

5. Location of Activity: Southern California Bight and Monterey Bay, California.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Wahington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Services.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and

Director, Soughwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 23, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1903 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Dr. Warren M. Zapol, Dr. Robert C. Schneider, and Dr. Donald B. Siniff; Modification No. 1 to Permit No. 526

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 526 issued to Drs. Warren M. Zapol and Robert C. Schneider, Department of Anesthesia, Massachusetts General Hospital, Boston, Massachusetts 02114, and Dr. Donald B. Siniff, Department of Ecology and Behavioral Biology, 108 Zoology Building, University of Minnesota, Minneapolis, Minnesota 55455, on October 11, 1985 (50 FR 42747), is modified as follows:

Section B is modified by adding:

"5. In addition to the drugs described in the application, animals may be immobilized using the Taser device described in the modification request.

6. Of the animals authorized in Section A and B.5, up to six (6) of each species may be taken initially for evaluation as to the effectiveness of the technique.

If considered successful use of the Taser may continue. The use of this device shall be under the supervision of Dr. Robert Schneider.

7. No attempts to use the Taser immobilization device shall be made on animals that have been actively pursued and are in a stressed or severely excited condition. Attempts shall be made to remove the barbed electrodes to avoid infection, and to disentangle animals that have become entangled in the wires.

8. The report required by section B.2 shall include a detailed description of the use of the Taser immobilization device.

9. Animals killed as a result of the use of the Taser device shall be counted against the number of animals authorized in section A.1.b, A.2b and A.3.b."

This modification is effective as of January 23, 1986.

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street N.W., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930-3799.

Dated: January 23, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-1904 Filed 1-28-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Air Force Reserve Officer Training Corps Advisory Committee

Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act, notice is hereby given that the Air Force Reserve Officer Training Corps Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

This committee will review the programs, policies, and objectives of the Air Force Reserve Officer Training Corps (AFROTC), and make recommendations to the Commander, Air Training Command.

This committee will serve the public interest by seeking to improve the AFROTC program and the quality of its product—commissioned officers in the United States Air Force.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 23, 1986.

[FR Doc. 86-1890 Filed 1-28-86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board; Meeting

AGENCY: Ada Joint Program Office (AJPO).

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Board will be held Monday, 3 March 1986 from 9:00 A.M. to 5:00 P.M. at the IDA Skyline Facility in Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine McDonald, Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia, 22311, (703) 845-2213.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 23, 1986.

[FR Doc. 86-1894 Filed 1-28-86; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 5 March 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers.

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The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: January 24, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-1914 Filed 1-28-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; U.S. Refinery Capability Task Group; Meeting

Notice is hereby given that the U.S. Refinery Capability Task Group will meet in February 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The U.S. Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The U.S. Refinery Capability Task Group will hold its eleventh meeting on Thursday, February 6, 1986, starting at 8:30 a.m., in the Matagora Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas.

The tentative agenda for the U.S. Refinery Capability Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review of the work of the Task Group.
3. Discussion of any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the U.S. Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the U.S. Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 22, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-1938 Filed 1-28-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-79-112-B]

Modifications to Affordable Housing Through Energy Conservation; Notice of Extension

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of availability of additional research materials and reopening of public comment period.

SUMMARY: The Department of Energy announced on October 31, 1985, in the Federal Register (50 FR 45469), the availability of a draft revision of portions of the draft guide for homebuilders entitled "Affordable Housing Through Energy Conservation: A Guide to Designing and Constructing Energy Efficient Homes." The Notice of Inquiry solicited public comment on the draft revision to the draft guide concerning heavy mass construction. The purpose of this Notice is to provide additional documentation for public comment and to provide an additional public comment period. The draft guidelines provide a simiplified calculation technique for analyzing whether the design of a house meets an energy consumption goal which might be desired by a homebuilder, financial institution, or a home buyer. The draft revision to the guide incorporates the results of research analyzing the design of high mass houses, those built with double layers of bricks, concrete blocks, logs, or other forms of massive construction.

The comment period closed on November 30, 1985. Two commenters requested DOE to provide additional documentation, and several others requested an extension of the comment period. Accordingly, DOE has agreed to furnish this documentation to all persons who attended the public briefing conducted on October 31, 1985, and place a copy at the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6020—9:00 a.m.-4:00 p.m. Copies may also be obtained by writing to the Hearings and Docket Branch at the address indicated in this Notice. To enable interested persons to comment, DOE is reopening the comment period until March 28, 1986. Because supplies of the document are limited, interested persons are asked to request the document only if they plan to submit comments. Date: Written comments must now be received no later than March 28, 1986, in order to receive consideration by the Department.

ADDRESS: Send written comments (seven copies) to: Conservation and Renewable Energy, Hearings and Dockets Branch, U.S. Department of Energy, Docket Number CAS-RM-79-112-B, 1000 Independence Avenue, S.W., Room 6B-025, Washington, D.C. 20585 (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Marvin Gorelick, Architectural and Engineering Systems, Department of Energy—Room GF-253, 1000 Independence Ave., S.W., Washington, D.C. 20585 (202) 252-9837.

Richard Kessler, Esq., Office of General Counsel, GC-33, Department of Energy, 1000 Independence Ave., S.W., Washington, D.C. 20585 (202) 252-9519.

SUPPLEMENTARY INFORMATION:

I. Comment Procedures

All interested persons are invited to submit written comments to DOE. The correspondence should be mailed to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, Department of Energy, 1000 Independence Avenue, SW., Room 6B-025, Washington, DC 20585. Comments should be indentified on the document and envelopes submitted to DOE with the designation "Updated Portions of Affordable Housing through Energy Conservation." Seven (7) copies should be submitted. All written comments and related information should be received by DOE no later than March 28, 1986, in order to receive consideration.

Submit in writing one copy of any information or data considered by the person furnishing it to be confidential and identify it as such. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination, pursuant to DOE's regulations on confidentiality (10 CFR Part 1004).

Issued at Washington, DC., January 23, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-1949 Filed 1-28-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-04-NG]

Gas Ventures, Inc.; Receipt of Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 14, 1986, of the application of Gas Ventures, Inc. (Gas Ventures), for blanket authorization to import Canadian natural gas for individual short-term and spot sales. Authorization is requested to import up to 250 MMcf of gas a day and a maximum of 182.5 Bcf during a two-year term beginning on the date of first delivery of the import. Gas Ventures intends to sell the gas obtained from its Canadian affiliate corporation, Precambrian Shield Resources Limited, and various other Canadian suppliers to a wide range of markets in the United States, including local distribution companies and end-users. Gas Ventures would also act as as agent for its U.S. purchaser clients and the Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis including the price and volumes. According to Gas Ventures, the transactions it contemplates will utilize existing pipeline facilities and will not require the construction of new facilities. Gas Ventures proposes to submit quarterly reports to the ERA giving the specific details of each transaction. Gas Ventures has requested expeditious treatment of its application.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to filed no later than 4:30 p.m., on February, 28, 1986.

FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9482

Diane J. Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The appplicant asserts that this import arrangement is competitive. Parties opposing the arrangement hear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must be meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., February 28, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why and oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for trial-type hearing must show that there are factual issues genuinely in dispute that are relevent and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Gas Venture's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, January 22, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Adminstration.

[FR Doc. 86-1897 Filed 1-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86.03-NG]

Midwestern Gas Transmission Co.; Receipt of Application To Import Natural Gas From Canada for Short-Term and Spot Sales; Natural Gas Imports

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

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SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 14, 1986, of an application from Midwestern Gas Transmission Company (Midwestern), a wholly-owned subsidiary of Tenneco Inc., for blanket authorization to import Canadian natural gas for supplemental system supply or on behalf of other domestic purchasers. Authorization is requested to import up to 200 Bcf of Canadian natural gas during a two-year term beginning on the date of first delivery of the import. Midwestern proposes to purchase individual volumes of natural gas from various reliable producers and/or pipeline sources in the Canadian spot market and arrange for delivery of the gas to U.S. border points of entry. Midwestern proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than February 28, 1986.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–8162

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures.

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protest, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.s.t., February 28, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Midwestern's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, January 21, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–1898 Filed 1–28–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–05–NG]

Northwest Pipeline Corp.; Receipt of Application To Amend Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration, Energy.

ACTION: Notice of application to amend authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of receipt on January 15, 1986, of the application of Northwest Pipeline Corporation (Northwest) for an amendment to ERA Opinion and Order No. 87 (Order No. 87) issued September 10, 1985 (1 ERA ¶70,604). The application requests the ERA to extend Northwest's authority granted in Order No. 87 to import Canadian gas from its Canadian supplier, Westcoast Transmission Company Limited (Westcoast) for nine months from January 31, 1986, to October 31, 1986. This would extend the demand-commodity pricing structure and take provisions approved in Order No. 87 for nine additional months while Northwest and Westcoast complete their negotiations for a competitive long-term arrangement.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are due to be filed no later than 4:30 p.m. on February 28, 1986.

FOR FURTHER INFORMATION CONTACT:

Clifford Tomaszewski, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–9760

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: Northwest is currently authorized to import gas from Westcoast under Order No. 87, which was extended for three months to January 31, 1986, by DOE Opinion and Order No. 92 (Order No. 92) on December 10, 1985. The authorization allows Northwest to import gas from Westcoast under the terms of an October 1, 1984, letter of agreement which amends Northwest's previous import arrangements. Under these previous arrangements Northwest is authorized to import gas through October 31, 1987. The letter of agreement establishes a two-part, demand-commodity pricing structure. The demand charge is $6 million per month. The commodity charge was initially $2.78 per MMBtu, subject to quarterly adjustment based upon the price of No. 6 fuel oil in the Seattle-Portland area, and currently is $2.37 per MMBtu. The agreement may be renegotiated if either party determines that a price change is necessary to respond to changing market circumstances. The agreement requires that Northwest purchase a minimum daily volume of 130 MMcf and a minimum annual volume of (1) 42.5 percent of Northwest's actual sales up to 262 Bcf, plus (2) 75 percent of Northwest's actual sales over 262 Bcf.

Northwest and Westcoast found that they were unable to conclude a new long-term sales agreement due to market and regulatory uncertainties and on September 24, 1985, Northwest applied to the ERA for an extension of Order No. 87 until January 31, 1986. On December 10, 1985, in Order No. 92 the ERA approved that extension. Northwest and Westcoast have still not been able to conclude a long-term sales agreement and therefore they entered into an agreement on December 20, 1985, that extends their September 17, 1985, agreement which extended their October 1, 1984 agreement. In the current application Northwest asks that the term of Order No. 87 be extended until October 31, 1986, or until such time as Northwest and Westcoast conclude a new long-term sales agreement whichever occurs first.

The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., February 28, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The Docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 22, 1986.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 86–1899 Filed 1–28–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–85–011; OFP Case No. 55118–9270–01–12]

General Electric Co.; Granting of Exemption

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order granting to General Electric Company and exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to General Electric Company (GE) a permanent site limitation exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), for a major fuel burning installation (MFBI) to be located in Fitchburg, Massachusetts. The exemption granted permits the use of natural gas as the primary energy source for its proposed primary boiler.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on March 30, 1986.

The public file containing a copy of this order and other documents and

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supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–045, Washington, DC 20585, Telephone (202) 252–8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: The GE plant at Fitchburg is an engineering and manufacturing facility for the production of mechanical drive turbines and compressors.

GE has certified that due to the specific physical limitations enumerated below, the criteria for a permanent exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned new boiler was furnished.

The facility is located in the town of Fitchburg, Worcester County, Massachusetts. The plant is bounded on the north by the city of Fitchburg, on the ease, south, and west by the Nashua River. The southern boundary of the plant is adjacent to railroad lines of Conrail.

The proposed plant upgrade would install a boiler with a rated output of 100,000 lb/hr steam at 850 psig/950 ° F. This would become the primary boiler with an existing Erie City boiler as backup.

The physical limitations addressed by the petitioner are that a coal fired boiler along with handling equipment, ash removal equipment and a coal pile must be located in the vicinity of the powerhouse. Coal fired boilers are larger than oil/gas fired boilers of comparable rating. Space in the boiler house is very limited, and the oil/gas fired boiler fits between all existing piping and building supports with only limited clearance. A coal fired boiler of the same capacity would be much taller and could not be fully enclosed by the building. Additional area would also be required to stockpile coal.

GE certified that: 1. The site limitation criteria contained in 10 CFR 503.33(a) are satisfied by the boiler for which exemption is sought and the plant where it will be installed;

2. The mixtures use criteria set forth in 10 CFR 503.9(a) are satisfied by the boiler for which the exemption is sought and the plant at which it will be installed.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the proposed unit in the **Federal Register** on June 7, 1985 (50 FR 24022), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency and the Federal Trade Commission, respectively, for comments. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on July 22, 1985. No comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that General Electric has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.33. Therefore, pursuant to section 212(a) of FUA, ERA hereby grants a permanent site limitation exemption to General Electric to permit the use of natural gas as the primary energy source for its new primary boiler to be located at Fitchburg, Massachusetts.

Pursuant to section 702(c) of the Act and 10 CFR 501.68, any person aggrieved by this section may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC on January 22, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–1900 Filed 1–28–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–247–000 et al.]

Electric Rate and Corporate Regulation Filings; Consumers Power Co. et al.

Take notice that the following filings have been made with the Commission:

1. Consumers Power Company

[Docket No. ER86–247–000]

January 24, 1986.

Take notice that Consumers Power Company ("Consumers") on January 13, 1986 tendered for filing Consumers' Coordinated Operating Agreement ("Operating Agreement") with the Members of the Municipal and Cooperative Pool ("MCP") dated as of September 1, 1981.

Supplemental Agreement No. 6 increases transmission service rates contained in Service Schedules A, B and D of the Operating Agreement.

The extent of transactions among the parties under Service Schedules A, B and D for the next twelve months is not known at the present time as such transactions will only be scheduled from time to time as load and capacity conditions on either system dictate. Accordingly, it is not possible to estimate the transactions for such period.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Columbus and Southern Ohio Electric Company

[Docket No. EC86–13–000]

January 24, 1986.

Take notice that on January 15, 1986, The Cincinnati Gas & Electric Company (CG&E), The Dayton Power and Light Company (DP&L) and Columbus and Southern Ohio Electric Company (CSOE) filed a Joint Application pursuant to Section 203 of the Federal Power Act seeking authority for CG&E to sell and DP&L and CSOE to purchase an interest in certain transmission facilities and rights of way and other property rights for facilities associated with Unit No. 1 at the William H. Zimmer Generating Station, which facilities, rights of way and property rights shall be used in the transmission of electrical energy in interstate commerce.

The transmission facilities consist of a portion of the Zimmer-Port Union Line, and rights of way and other property rights with respect to the Zimmer-Red Bank Line and the Red Bank-Terminal Line. The transmission lines and rights of way and other property rights involved in the Application were constructed and purchased, respectively, to serve the W. H. Zimmer Generating Plant located on the Ohio River near Moscow, Ohio. This Application reflects the ownership in such lines, rights of way and property rights agreed to by CG&E, DP&L and CSOE relative to such facilities and properties.

Comment date: January 31, 1986, in accordance with Standard Paragraph E at the end of this notice.

Consolidated Edison Company of New York, Inc.

[Docket No. EL86–18–000]

January 24, 1986.

Take notice that Consolidated Edison Company of New York, Inc. (Con Edison), on January 16, 1986, filed a petition for an exemption from the Form 580 filing requirement. The Commission requires submission of Form 580 as part of its implementation of Section 208 of the Public Utility Regulatory Policies Act. That statute requires the Commission to review the fuel-purchasing and operating practices of public utilities under automatic adjustment clauses.

In its petition, Con Edison states that it should not be required to file the Form 580 information because the Form-580 review process duplicates a review conducted by the New York Public Service Commission (NY PSC). Con Edison states that the NY PSC conducts a detailed review of the same fuel-purchasing and operating practices that are covered by the Form 580 filing, and that the NY PSC review is conducted pursuant to the same statute, and applies the same standards, as the Commission's review. Con Edison further states that submission of the Form 580 is unnecessary because of the assurances of efficiencies that are inherent in the transactions affected by the fuel-purchasing and operating practices in question.

Comment date: February 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Gulf States Utilities Company

[Docket No. EL86–17–000]

January 24, 1986.

Take notice that on January 15, 1986, Gulf States Utilities Company (Gulf States) tendered for filing a petition seeking a declaratory order to remove uncertainty. Gulf States herein seeks a declaration by the Commission that its retention of an investment banking firm to perform for a fee certain financial consultation services for it will not have the adverse consequence of such investment banking firm being prohibited under 18 CFR 34.2(c) from bidding or negotiating for the placement of securities issued by Gulf States.

Comment date: February 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of Oklahoma

[Docket No. ER86–250–000]

January 24, 1986.

Take notice that on January 16, 1986, Public Service Company of Oklahoma ("PSO") tendered for filing a Notice of Cancellation of PSO's Power Sales and Service Agreement with the Anadarko Public Works Authority ("APWA"). As of December 31, 1985, APWA began taking service from Western Farmers Electric Cooperative ("WFEC") and ceased taking service from PSO. PSO requests an effective date of December 31, 1985, and, accordingly, requests waiver of the Commission's notice requirements.

Copies of the filing have been served on APWA, on WFEC and on the Oklahoma Corporation Commission.

Comment date: February 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER86–249–000]

January 24, 1986

Take notice that on January 15, 1986 Puget Sound Power and Light Company (Puget) tendered for filing documents demonstrating the calculation of Average System Cost (ASC) for Puget for the Exchange Period effective June 1, 1985 through September 30, 1985. This filing is made pursuant to the Revised ASC methodology which was approved by the Federal Energy Regulatory Commission effective October 1, 1984.

Comment date: February 3, 1986, in accordance with Standard Paragraph E at the end of this document.

7. PacifiCorp Doing Business as Pacific Power & Light Company

[Docket No. ES86–24–000]

January 22, 1986.

Take notice that on January 10, 1986, PacifiCorp doing business as Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing it to negotiate privately the terms for the offering and sale in one or more public offerings or private placements prior to December 31, 1987, $210,000,000 aggregate principal amount of fixed rate long-term debt (or its equivalent amount in, or based upon, foreign currencies determined at the time of issue) and to negotiate privately the terms of one or more currency exchanges pursuant to 18 CFR 34.2(b)(2).

Comment date: February 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1911 Filed 1–28–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–259–000 et al.]

Natural Gas Certificate Filings; K N Energy, Inc. et al.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP86–259–000]

January 22, 1986.

Take notice that on January 3, 1986, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86–259–000 a request

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pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for 7 agricultural customers and one small commercial customer, under the certificate issued in Docket Nos. CP83–140–000 and CP83–140–001, as amended in Docket No. CP83–140–002, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to construct and operate sales taps in order to sell and deliver various estimated amounts of natural gas to each of the following agricultural customers: (1) 520 Mcf per year to Alfred Winderlin of Scott County, Kansas; (2) 880 Mcf per year to Karl Ludwig of Nuckolls County, Nebraska; (3) 800 Mcf per year to Harry Ratzlaff of York County, Nebraska; (4) 880 Mcf per year to Orville Pohlman of Thayer County, Nebraska; (5) 880 Mcf per year to Galen and Rodney Achterberg of Thayer County, Nebraska; (6) 640 Mcf per year to Nesmith, Inc. in Thayer County, Nebraska; and (7) 800 Mcf per year to Kenneth Gillan of Fillmore County, Nebraska. K N also proposes to install a sales tap in order to sell approximately 36,000 Mcf per year to Diamond Shamrock, a small commercial customer in Natrona County, Wyoming.

K N states that it would charge the customers prices in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction. It is further stated that the proposed sales taps are not prohibited by any of K N's existing tariffs and that the sales taps would have no significant impact on K N's peak day and annual deliveries.

Comment date: March 10, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation.

[Docket No. CP86–258–000]

January 23, 1986.

Take notice that on December 31, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP86–258–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas under revised service agreements with Acme Natural Gas Company (Acme), Baltimore Gas and Electric Company (BG&E), The Cincinnati Gas and Electric Company (CG&E), Columbia Gas of Kentucky, Inc. (CKY), Columbia Gas of Maryland, Inc. (CMD), Columbia Gas of New York, Inc. (CNY), Columbia Gas of Ohio, Inc. (COH), Columbia Gas of Pennsylvania, Inc. (CPA), Columbia Gas of Virginia, Inc. (CVA), Dayton Power and Light Company (DP&L), Mountaineer Gas Company (Mountaineer), UGI Corporation (UGI), The Union Light, Heat & Power Company (Union Light), and West Ohio Gas Company (West Ohio), all existing wholesale customers of Columbia, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to sell natural gas under

1. A revised service agreement with Acme effectuating a decrease in its contract demand under Rate Schedule CDS of 1,355 dt equivalent of gas per day, from 21,215 to 19,860 dt equivalent per day, in Zone 6.

2. A revised service agreement with BG&E effectuating a decrease in its contract demand under Rate Schedule CDS of 24,175 dt equivalent of gas per day, from 335,000 to 310,825 dt equivalent per day in Zone 2.

3. A revised service agreement with CG&E effectuating a decrease in its contract demand under Rate Schedule CDS of 30,150 dt equivalent of gas per day, from 80,500 to 50,350 dt equivalent per day in Zone 4.

4. A revised service agreement with CKY effectuating a decrease in its contract demand under Rate Schedule CDS of 1,840 dt equivalent of gas per day, from 27,140 to 25,300 dt equivalent per day, in Zone 1; and a decrease of 11,340 dt equivalent per day, from 95,500 to 84,160 dt equivalent per day in Zone 3.

5. A revised service agreement with CMD effectuating a decrease in its contract demand under Rate Schedule CDS of 2,850 dt equivalent of gas per day, from 36,900 to 34,050 dt equivalent per day, in Zone 6.

6. A revised service agreement with CNY effectuating a decrease in its contract demand under Rate Schedule CDS of 5,720 dt equivalent of gas per day, from 79,210 to 73,490 dt equivalent per day; an increase in its maximum daily quantity under Rate Schedule WS of 5,720 dt equivalent of gas per day, from 23,300 to 29,020 dt equivalent per day; and an increase in its winter contract quantity under Rate Schedule WS of 386,000 dt equivalent of gas from 1,165,000 dt equivalent to 1,451,000 dt equivalent, all in Zone 7.

7. A revised service agreement with COH effectuating a decrease in its contract demand under Rate Schedule CDS of 3,200 dt equivalent of gas per day, from 39,800 to 36,600 dt equivalent per day, in Zone 1; and a decrease of 120,235 dt equivalent of gas per day, from 1,221,430 to 1,101,195 dt equivalent per day in Zone 4.

8. A revised service agreement with CPA effectuating a decrease in its contract demand under Rate Schedule CDS of 38,780 dt equivalent of gas per day, from 494,240 to 455,460 dt equivalent per day; an increase in its maximum daily quantity under Rate Schedule WS of 14,540 dt equivalent of gas per day, from 203,800 to 218,340 dt equivalent per day; and an increase in winter contract quantity under Rate Schedule WS of 727,000 dt equivalent of gas from 10,190,000 dt to 10,917,000 dt equivalent, all in Zone 6.

9. A revised service agreement with CVA effectuating a decrease in its contract demand under Rate Schedule CDS of 4,690 dt equivalent of gas per day, from 62,020 to 57,330 dt equivalent per day, in Zone 2.

10. A revised service agreement with DP&L effectuating a decrease in its contract demand under Rate Schedule CDS of 10,000 dt equivalent of gas per day, from 281,500 to 271,500 dt equivalent per day, in Zone 4.

11. A revised service agreement with Mountaineer effectuating a decrease in its contract demand under Rate Schedule CDS of 24,590 dt equivalent of gas per day, from 157,300 to 132,710 dt equivalent per day, in Zone 1.

12. A revised service agreement with UGI effectuating a decrease in its contract demand under Rate Schedule CDS of 110 dt equivalent per day, from 237,280 to 237,170 dt equivalent per day; a decrease in its maximum daily quantity under Rate Schedule WS of 15,900 dt equivalent of gas per day, from 50,900 to 35,000 dt equivalent per day; and a decrease in winter contract quantity under Rate Schedule WS of 795,000 dt equivalent of gas, from 2,545,000 to 1,750,000 dt equivalent, all in Zone 6.

13. A revised service agreement with Union Light effectuating a decrease in its contract demand under Rate Schedule CDS of 11,610 dt equivalent of gas per day, from 74,700 to 63,090 dt equivalent per day, in Zone 3.

14. A revised service agreement with West Ohio effectuating a decrease in its contract demand under Rate Schedule CDS of 5,105 dt equivalent of gas per day, from 55,000 to 49,895 dt equivalent per day, in Zone 4.

The service revisions requested by Columbia's customers are said to have been made pursuant to Article VIII of a stipulation and agreement in Columbia's Docket No. TA82–1–21–001, *et al.*, as approved by the Commission on June 14, 1985 (31 FERC ¶ 61,307), and certain other changes in service levels under Columbia's Rate Schedule WS. Columbia requests authorization for the revised service agreements to be effective on April 1, 1986.

Comment date: February 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. K N Energy, Inc.

[Docket No. CP86–238–000]

January 23, 1986.

Take notice that on December 13, 1985, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86–238–000 an application pursuant to section 7(c) of the Natural Gas Act for certificate of public convenience and necessity authorizing the acquisition, construction and operation of certain facilities related to the Huntsman storage facility (Huntsman) near Sidney, Nebraska, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N states that Huntsman and the West Engelland Field (West Engelland) behave as a single field and that the integration of West Engelland into Huntsman is needed to restore the integrity of the storage field. As a result of the settlement of litigation over the migration of storage gas into West Engelland, K N states that it has been assigned the leases covering the productive limits of West Engelland and other acreage. K N proposes to incorporate this acreage into Huntsman and to construct certain facilities to permit the operation of West Engelland as part of Huntsman.

K N states that it seeks authority to acquire, develop and operate as a part of Huntsman certain additional acreage including the acquisition of storage rights therein, the reworking of existing wells, the recompletion of previously plugged and abandoned wells and the drilling of a new well. K N further states that it seeks authority to install 2.0 miles of 8-inch pipeline and 1.5 miles of 4-inch pipeline and appurtenant facilities to connect the West Engelland wells to the Huntsman compressor station and tank battery in the West Engelland field for storage operation. The estimated cost of the project would be approximately $2,245,000. K N states that it would finance the cost out of internally generated funds or from interim bank loans which at a later date may be funded through a security issue.

Comment date: February 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Co.

[Docket No. CP86–256–000]

January 23, 1986.

Take notice that on December 26, 1985, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86–256–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of General Motors (GM) and for permission and approval to abandon such services on June 30, 1986, all as more fully set forth in the application which is on file with the Commission and open for inspection.

Applicant requests Commission authorization to implement a transportation agreement among Applicant, Michigan Gas Storage Company (Michigan Gas) and GM dated December 13, 1985. It is explained that this agreement represents the same terms as the previous transportation authority granted in Docket No. CP85–273–000 pursuant to § 157.209 of the Regulations. Pursuant to the agreement, Applicant proposes to transport on behalf of GM a daily volume of natural gas not to exceed 17,500 Mcf of natural gas from various existing points of receipt located in Hansford County, Texas, and Kingfisher, Major, Beaver, Woodward, Alfalfa and Texas Counties, Oklahoma, to the existing point of interconnection of the facilities of Michigan Gas and Applicant in Oakland County, Michigan. Applicant states the Michigan Gas is an existing sales customer of Applicant and would make ultimate delivery of the gas to GM for its ultimate end-use.

Applicant indicates that the transportation rate for this service is pursuant to Applicant's currently effective Rate Schedule OST. Applicant also requests authority to terminate these services on June 30, 1986, authority to add points of receipt and delivery subject to certain reporting requirements, and authority to construct new points of receipt subject to the annual reporting requirements for construction activity pursuant to its blanket certificate in Docket No. CP83–83–000.

Comment date: February 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1912 Filed 1–28–86; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TA86-8-20-000 & 001]

Algonquin Gas Transmission Co., Proposed Changes in FERC Gas Tariff

January 24, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on January 17, 1986 tendered for filing Sixth Revised Sheet No. 204 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Sixth Revised Sheet No. 204 is being filed to reflect in Algonquin Gas' Rate Schedule F-3, revised rates in National Fuel Gas Supply Corporation's ("National Fuel") underlying Rate Schedule RQ.

Algonquin Gas requests that the Commission accept such tariff sheet, to be effective February 1, 1986 to coincide with the proposed effective date of National Fuel's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 31, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-1920 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-169-002]

Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 24, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on January 17, 1986, filed a revised tariff sheet pursuant to section 4 of the Natural Gas Act. The revisions, shown on Substitute Seventh Revised Sheet No. 31 to Original Volume No. 1 of Consolidated's tariff, provide for a 3 cent per dekatherm voluntary reduction in the non-gas commodity component of Consolidated's sales rate schedules from the rates placed into effect on January 1, 1986, in compliance with the suspension order in this proceeding.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before January 31, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1921 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-39-000]

East Tennessee Natural Gas Co.; Petition for Authority to Institute Direct Billing Procedures for Retroactive Order No. 94 Costs

January 24, 1986.

Take notice that on January 21, 1986, East Tennessee Natural Gas Company (East Tennessee) filed a petition for authority to institute direct billing procedures for the recovery of retroactive Order No. 94 costs that have been billed to East Tennessee by its pipeline supplier, Tennessee Gas Pipeline Company (Tennessee), pursuant to Tennessee's Commission-approved direct billing procedure. Under the proposed procedure, East Tennessee will: (1) Flow-through the retroactive Order No. 94 billings received from Tennessee on a direct basis; (2) allocate such billings to East Tennessee customers based on the ratio of each customer's purchases for the retroactive period August 1980 through January 1984 to total purchases by all customers for that same period; (3) recover these costs as an Order No. 94 Surcharge which will in no way affect East Tennessee's PGA; (4) not charge its customers any additional interest since they will be providing a current funding of East Tennessee's obligation to Tennessee; and (5) report these Order No. 94 Surcharges concurrent with East Tennessee's semi-annual PGA filings.

East Tennessee in its petition in support of this direct billing mechansim states that its proposal; (1) is in accordance with current Commission precedent and policy; (2) is necessary to prevent to distortion in current gas prices; (3) charges customers for their share of the costs actually incurred on their behalf; and (4) merely tracks Tennessee's Commission-approved direct billing procedure.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214. All such motions or protests may be filed on or before February 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1925 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

January 24, 1986.

Take notice that Great Lake Gas Transmission Company ("Great Lakes"), on January 21, 1986, tendered for filing Fifty-Fifth-A Revised Sheet No. 57 and Substitute Fifty Sixth Revised Sheet No. 57 to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that the filing provides for a new pricing arrangement related to gas purchased from Great Lakes by Natural Gas Pipeline of America ("Natural"). Under the new proposed arrangement, the monthly demand component of the gas cost component of the gas price will initially be reduced from the current $15.21 per Mcf (of contract quantity) per month to $12.35 per Mcf per month. The commodity component will be reduced from a rate that varied between $2.50 and $4.25 per MMBtu to a rate that varies between $2.05 and $2.35 per MMBtu. On an annual basis, for anticipated volumes of 46.8 Bcf, the estimated savings to Natural would be $30,400,000. Prices are subject to monthly adjustment by application of an index designed to create prices competitive in the markets that Natural serves.

Great Lakes is requesting an effective date of December 19, 1985, for Fifty-Fifth-A Revised Sheet No. 57 and of January 1, 1986 for Substitute Fifty-Sixth Revised Sheet No. 57. In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing substantial reduction in purchased gas cost as soon as possible.

On December 13, 1985, Great Lakes filed, to be effective January 1, 1986, Fifty-Sixth Revised Sheet No. 57 to its FERC Gas Tariff, First Revised Volume No. 1, to reflect the GRI adjustment related to the Gas Research Institute's 1986 Research and Development Program. On December 27, 1985, the Commission acccepted that tariff sheet. The filing of Fifty-Fifth-A Revised Sheet No. 57 filed to implement the new pricing arrangements for Natural effective December 19, 1985 required a change to the GRI tariff filing of December 13, 1985. Accordingly, Great Lakes also filed Substitute Fifty-Sixth Revised Sheet No. 57 to be effective January 1, 1986 and which reflected the current PGA rates for Natural.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1924 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-26-002]

Natural Gas Pipeline Co. of America; Change in Rates

January 22, 1986.

Take notice that on January 17, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective January 1, 1986.

Substitute Sixtieth Revised Sheet No. 5.

Substitute Twenty-seventh Revised Sheet No. 5A.

Natural states that the purpose of the revised tariff sheets is to amend Natural's out-of-cycle PGA filing of December 3, 1985 in the above-referenced docket (Original Filing). The amendment is necessitated by a court decision rendered in *U.S.A., et al. vs. Great Plains Gasification Associates, et al. (Great Plains* Decision) on January 14, 1986. In the *Great Plains* Decision, the Court rejected Natural's position that it pay the market value price reflected in the Original Filing for Great Plains gas. The Court determined that Natural is required to pay the higher contract price and such higher price is applicable during the pendency of the rates at issue in the Original Filing. The instant amendment is intended to reflect the rate impact in the subject docket of the higher price for Great Plains gas required to be paid by the court decision.

A copy of the filing is being mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before January 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1916 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-1997-002]

Frederick W. Mielke, Jr.; Filing of Application

January 24, 1986.

Take notice that on October 3, 1985, Frederick W. Mielke tendered for filing an application to hold interlocking positions. Mr. Mielke, who is currently Chairman of the Board of Directors and Chief Executive Officer of Pacific Gas and Electric Company, seeks the approval of the Commission for the authority to serve on the Board of Directors of Amfac, Inc.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 3, 1986. Protests will be considered the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1931 Filed 1-28-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-206-000]

Northern Natural Gas Co.; Informal Settlement Conference

January 24, 1986.

On January 30, 1986, at 2:00 p.m. and January 31, 1986, at 9:00 a.m. an informal settlement conference will be convened in the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

All interested parties and the Staff are invited to attend; however, attendance will not confer party status. Any person wishing to become a party must file a Motion to Intervene in accordance with 18 CFR 385.214 (1985). For further information contact Daniel Watkiss

(202) 357–8549, Sandra Delude (202) 357–5737 or Peter G. Hirst (202) 357–8419.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1930 Filed 1–28–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA86–3–29–000, 001 and CP84–146–004]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

January 22, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on January 14, 1986, tendered for filing Second Substitute Thirty-Eighth Revised Sheet No. 12 to its FERC Gas Tariff, Second Revised Volume No. 1. The proposed effective date of this tariff sheet is January 1, 1986. The revised tariff sheet reflects a net rate decrease, in accordance with Section 4.1(c) of Transco's Rate Schedule LSS, which is attributable to the following:

(1) To reflect the actual cost of facilities constructed on Transco's Leidy Line and market area facilities which were authorized in Docket Nos. CP84–146–000, *et al.*, and CP84–223–000;

(2) To reflect the elimination of the 12% reduction of contract demand, which was in effect for the 1984–1985 contract year, now that all the necessary facilities have been completed;

(3) To reflect a rate reduction in the monthly capacity charge for storage service purchases from Penn-York Energy Corporation (Penn-York) as a result of a settlement in Docket No. RP85–69–002; and

(4) To reflect a rate increase in the monthly capacity charge for storage service purchases from Consolidated Gas Transmission Corporation (Con Gas) as a result of the motion rate filed in Docket No. RP85–169–000.

Transco further states that copies of the instant filing have been mailed to each of its customers and State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1930 Filed 1–28–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–175–003]

Transwestern Pipeline Co.; Motion To Make Effective Settlement Rates and Tariff Sheets on an Interim Basis

January 22, 1986

Take notice that Transwestern Pipeline Company (Transwestern) on January 16, 1986 tendered for filing as part of its FERC Gas Tariff, the tariff sheets set forth hereunder:

Second Revised Volume No. 1

Cover Sheet
Substitute 4th Revised Sheet No. 1
Substitute Original Sheet No. 1A
Substitute 3rd Revised Sheet No. 2
Substitute 4th Revised Sheet No. 4
Substitute 30th Revised Sheet No. 5
Substitute 1st Revised Sheet No. 5A
Substitute 1st Revised Sheet No. 5B
Substitute 28th Revised Sheet No. 6
Substitute 1st Revised Sheet No. 7
Substitute 1st Revised Sheet No. 8
Substitute 1st Revised Sheet No. 10
Substitute 1st Revised Sheet No. 13
Substitute 1st Revised Sheet No. 14
Substitute 2nd Revised Sheet No. 24
Substitute 3rd Revised Sheet No. 25
Substitute 1st Revised Sheet No. 28
1st Revised Sheet No. 29
1st Revised Sheet No. 30
1st Revised Sheet No. 30A
Original Sheet No. 30B
Substitute 1st Revised Sheet No. 31
1st Revised Sheet No. 32
1st Revised Sheet No. 33
1st Revised Sheet No. 34
Original Sheet No. 34A
Substitute 1st Revised Sheet No. 35
1st Revised Sheet No. 36
1st Revised Sheet No. 37
4th Revised Sheet No. 38
Substitute Original Sheet Nos. 39–47
Substitute 1st Revised Sheet No. 48
Substitute 6th Revised Sheet No. 74
Substitute 2nd Revised Sheet No. 76A
4th Revised Sheet No. 80
2nd Revised Sheet No. 81
1st Revised Sheet No. 116
1st Revised Sheet No. 126
1st Revised Sheet No. 127
1st Revised Sheet No. 128
3rd Revised Sheet No. 147

Original Volume No. 2

Substitute 14th Revised Sheet No. 1

Transwestern states that the tariff sheets are being filed in order to effectuate on an interim basis the provisions of the Stipulation and Agreement including the settlement rates which were filed concurrently with the instant Motion. According to Transwestern the settlement rates being filed represent a significant reduction compared to the filed rates adjusted to reflect the conditions of the Commission's August 29, 1985 Order in the above-captioned docket.

Transwestern further states that it agrees that the settlement rates will be collected subject to refund during the interim period and that it will not collect or charge any surcharge for the difference between the settlement rates and the adjusted filed rates during the period of time that the settlement rates are in effect on an interim basis.

The proposed effective date of the tariff sheets being filed is February 1, 1986.

Copies of this filing were served on Transwestern's jurisdictional customers and interested parties and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedures. All such motions or protests should be filed on or before January 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1917 Filed 1–28–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–3–42–000,001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 22, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on January 16, 1986 tendered for filing as part of its FERC GAS TARIFF, SECOND REVISED VOLUME No. 1, 31st Revised Sheet No. 5.

The above mentioned tariff sheet was filed to reflect the reduction in Transwestern's cost of gas from $2.7223/dth to $2.6384/dth or a $0.0839/dth decrease to the commodity sales rate. This reduction is a result of market out actions taken by Transwestern in certain of its gas purchase contracts. The resulting reduction in gas cost is being applied to the proposed settlement rates in Docket No. RP85–175 which were proposed to be effective on an interim basis by Motion of Transwestern filed concurrently with the instant out-of-cycle PGA filing. Transwestern has requested the Federal Energy Regulatory Commission (Commission) to waive its Regulations as may be necessary to approve the instant filing to become effective February 1, 1986.

Copies of this filing were served on Transwestern's jurisdictional customers and interested parties and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 29, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1919 Filed 1–28–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA 86–2–30–000,001]

Trunkline Gas Co.; Change in Tariff

January 24, 1986.

Take notice that on January 14, 1986 Trunkline Gas Company (Trunkline) tendered for filing Forty-Ninth Revised Street No. 3–A and Twelth Revised Sheet No. 3–B to its FERC Gas Tariff, Original Volume No. 1.

The proposed effective date on these revised tariff sheets is March 1, 1986.

Trunkline states that these revised tariff sheets reflect no change in Trunkline's currently effective Demand and Commodity rates.

Although the revised tariff sheets contained in the instant filing reflect no change in the presently effective Commodity rates, the components of the Commodity rates include the following adjustments:

(1) A (29.52¢) per Dt. decrease in the projected purchased gas cost component;

(2) A (37.06¢) per Dt. increase in the surcharge for the recovery of the deferred account balance; and

(3) A (7.54¢) per Dt. decrease in the surcharge to flow-through the carrying cost surcharge account balance.

Additionally, the revised tariff sheets filed herewith refect Projected Incremental Pricing Surcharges in acordance with Section 21 of the General Terms and Conditions of Trunkline's Tariff.

Pursuant on the Commissioner's Order Approving Settlement, As Modified, dated: October 25, 1985 in Docket Nos. RP83–93–93 (Phase I) and RP83–51, *et al.*, Trunkline is filing in this PGA revised tariff sheets to be effective on March 1, 1986 in accordance with article V, section 6 and article VIII of the Stipulation and Agreement dated March 22, 1985 (Stipulation an Agreement). This instant six (6) month PGA period will end on August 31, 1986 at which time Trunkline will return to an annual PGA cycle effective September 1, 1986.

In accordance with Article V, section 3 of the Stipulation and Agreement, Trunkline has suspended new deferrals of its current purchased gas costs to Account No. 191 for the period March 1, 1985, until March 1, 1986. Pursuant to Articles V and IX of the Stipulation and Agreement, Trunkline will not flow through to its customers during this period ending March 1, 1986 any actual gas costs in excess of $2.57 per Mcf. Trunkline will, upon receipt of the data for the month of February 1986, file the report as contemplated by Article IX of the Stipulation and Agreement.

Pursuant to article V, section 4 of the Stipulation and Agreement, Trunkline will contiue to credit each applicable sub-account with the deferred account surcharges and carrying cost surcharges contained in its curent rates until Trunkline's instant PGA filing herein becomes effective on March 1, 1986. As provided for in Article V. section 5 of the Stipulation and Agreement, Trunkline is applying the negative balance in the current deferred sub-accounts and carrying cost balances to the remaining positive balance in Account No. 191. The balance of the current sub-accounts are negative (i.e., overrecovered) on November 30, 1985 as a result of the extended recovery period beyon September 1, 1985. Trunkline has also included the additional recoveries of these sub-accounts for the months of December 1985 and January and February 1986 in order to expedite the flowthrough of these additional recoveries to its customers.Trunkline's filing reflects the final portion of the three-year amortization of the deferred account balance on May 31, 1983 as approved by Commission Order dated August 31, 1983 in Docket No. TA83–2–30–000. Associated carrying charges for the twenty-four month period, beyond the initial twelve-month period; which were approved in Docket No. TA83–2–30–000 by Commission order dated October 28, 1985, are currently pending the Commission's order on rehearing dated December 27, 1985 and are not included in the instant filing.Trunkline's filing herein is without prejudice to its recovery of these carrying charges as approved by the Commisssion's order dated October 28, 1985 upon conclusion of the pending rehearing procedure.

These revised tariff sheets reflect the termination of the (7¢) negative surcharge related to the absorption by Trunkline of approximately one-half of the balance of the current Deferred Account Balance May 31, 1984. Trunkline completed recording the recovery of the $39.2 million balance on May 31, 1984 (Sub-Account 191.1006) in December 1985. In accordance with Article V, section 4 of the Stipulation and Agreement the recovery rate utilized for recovery of this sub-account balance for the remainiing months (December, 1985—February, 1986) was adjusted accordingly.

Trunkline has included in this filing projected gas purchase volumes from its producer-suppliers for the six (6) month period commencing March 1, 1986, as detailed in section 18, Schedule A. Additionally, Trunkline has included in its projected cost of gas a line-item adjustment which reflects a potential purchased gas cost reduction of approximately $68.1 million. This produces a negative (29.52¢) per Dt in the otherwise applicable commodity rates for this six (6) month PGA period.

On May 30, 1985 the Commission issued Order No. 423 in Docket No. RM83–53–000 which requires interstate pipelines to include with their future PGA filings a report which shows producer-suplier refunds recovered through billing adjustments. Trunkline has not recovered producer-supplier refunds through billing adjustments during the deferred period herein and accordingly no such schedules are being submitted herewith.

Trunkline's Schedule A included herein, reflects costs under the Commission's Order No. 94–A for gas to be purchased by Trunkline during the six-month period commencing March 1, 1986. Trunkline will supply to the Commission within thirty days hereof, under separate cover, additional workpapers containing the information required under § 271.1104(f) of the Commission's Regulations for

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production-related costs reflected in this filing to the extent such information has not already been provided.

In view of the Commission's order of October 25, 1985, approving the Stipulation and Agreement in Docket Nos. RP83–93, *et al.*, Trunkline is submitting these revised tariff sheets that reflects the results of that approval in anticipation that any rehearing applications objecting to the Stipulation and Agreement will be resolved prior to March 1, 1986. Trunkline respectfully requests waiver of the Commission's Regulations as may be necessary to permit such action, together with any other such waivers as may be necessary for the acceptance of these tariff sheets to become effective March 1, 1986.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rule of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1922 Filed 1–28–86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–756–DR]

Florida; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–756–DR), dated December 3, 1985, and related determinations.

DATED: January 22, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice.—The notice of a major disaster for the State of Florida, dated December 3, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 3, 1985: Calhoun County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86–1889 Filed 1–28–86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Notice of Application for Certificate [Performance]; Windstar Cruises I, Ltd. and Windstar Sail Cruises Ltd.

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Windstar Cruises I, Limited, and Windstar Sail Cruises Limited, 7415 Northwest 19th Street, Ste. B, Miami, FL 33126.

Dated: January 21, 1986.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 86–1946 Filed 1–28–86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Fidelcor, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) (2) or (f) of the Board's Regulation Y (12 CFR 225.25(a) (2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 10, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania, to acquire Florida Commercial Mortgage Corporation, Orlando, Florida, and thereby engage in making and servicing loans, providing investment or financial advice, arranging commercial real estate equity financing, and performing real estate appraisals.

Board of Governors of the Federal Reserve System, January 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1940 Filed 1–28–86; 8:45 am]

BILLING CODE 6210-01-M

Financial Services Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 20, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Finonciol Services Bancorp, Inc.*, Scranton, Pennsylvania; to acquire 100 percent of the voting shares of Third National Bank and Trust Company of Scranton, Scranton, Pennsylvania.

2. *Yardville Notional Bancorp*, Yardville, New Jersey; to acquire 100 percent of the voting shares of The Yardville National Bank, Yardville, New Jersey. Comment period on this application ends February 12, 1986.

B. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to acquire 100 percent of the voting shares of Purdue National Corporation, Lafayette, Indiana, and thereby indirectly acquire Purdue National Bank of Lafayette, Lafayette, Indiana.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois, 60690:

1. *Fort Wayne National Corporation*, Fort Wayne, Indiana; to acquire Auburn Financial Corp., Auburn, Indiana, thereby indirectly acquiring The Auburn State Bank, Auburn, Indiana.

2. *Fort Wayne National Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Churubusco Bancorp, Churubusco, Indiana; thereby indirectly acquiring Churubusco State Bank Churubusco, Indiana.

3. *Fort Wayne National Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Dekalb Financial Corp, Waterloo, Indiana, thereby indirectly acquiring Citizens State Bank, Waterloo, Indiana.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *R & C Bancorp, Inc.*, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Rockwell, Bank, N.A., Oklahoma City, Oklahoma, and Choctaw Bancorp, Inc., Oklahoma, thereby indirectly acquire Choctaw State Bank, Chocktaw Oklahoma.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *General Bancshares, Inc.*, Caldwell, Texas; to acquire 100 percent of the voting shares of Peoples National Bank, Caldwell, Texas.

2. *Interfirst Corporation*, Dallas, Texas; to acquire *de novo* 100 percent of the voting shares of Interfirst Bank Delaware, New Castle, Delaware.

3. *New Braunfels Bancshares, Inc.*, New Braunfels, Texas; to acquire *de novo* 100 percent of the voting shares of Citizens National Bank, New Braunfels, Texas.

4. *Promenade Bancshares, Inc.*, Richardson, Texas; to acquire *de novo* 100 percent of the voting shares of Plano National Bank, Plano, Texas.

5. *Texas Community Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of BancTexas Sulphur Springs, N.A., Sulphur Springs, Texas.

Board of Governors of the Federal Reserve System, January 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1941 Filed 1–28–86; 8:45 am]

BILLING CODE 6210-01-M

Key Bancshares of New York Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an applicaiton under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C 1843(c)(8)) and seciton 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummaiton of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Key Bancshares of New York Inc.*, Albany, New York; to engage *de novo* through its subsidiary Key Bank Life Insurance, Ltd. Phoenix, Arizona, in underwriting, as reinsurer, of the credit life and credit accident and health insurance directly related to extensions of credit by its subsidiaries.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NBSC Corporation*, Sumter, South Carolina; to engage *de novo* through its subsidiary Sumbank Life Insurance Company, Phoenix, Arizona, in acting as an underwriter and reinsurer for certain credit life insurance, credit accident and health insurance and other life insurance related aervices pertaining to the extension of credit to the full extent permitted by the provisions of § 225.25(b) of Regulation Y, as amended, of the Board of Governors of the Federal Reserve System.

Board of Governors of the Federal Reserve System, January 24, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1942 Filed 1–28–86; 8:45 am]

BILLING CODE 6210-01-M

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Transaction and Waiting Period Terminated Effective

(1) 86-0133—USLICO Corporation's proposed acquisition of voting securities of International Bank, November 15, 1985
(2) 86-0183—RREEF USA Fund—III's proposed acquisition of assets of Homart Development Co., (Sears, Roebuck & Co., UPE), November 15, 1985
(3) 86-0184—RREEF USA Fund—III's proposed acquisition of assets of Homart Development Co., (Sears, Roebuck & Co., UPE), November 15, 1985
(4) 86-0190—Dominion Resources, Inc.'s proposed acquisition of voting securities of Rincon Securities, Inc., (Tucson Electric Power Company, UPE), November 18, 1985
(5) 86-0154—Societe National Elf Aquitaine's proposed acquisition of voting securities of The Williams Companies, November 15, 1985
(6) 86-0155—The Williams Companies proposed acquisition of voting securities of Texasgulf, Inc., (Societe Nationale Elf Aquitaine, UPE), November 19, 1985
(7) 86-0201—Freeport—McMoRan Inc.'s proposed acquisition of voting securities and assets of Geysers Geothermal Company, (Phillips Petroleum Company, UPE), November 19, 1985
(8) 86-0209—Western Gas Processors, Ltd.'s proposed acquisition of assets of MGPC, Inc. and voting securities of MIGC, Inc. and MGTC, Inc; (Federated Development Co., UPE), November 15, 1985
(9) 86-0213—Bell & Howell Company's proposed acquisition of voting securities of Bekins Record Management Company, (Minstar, Inc., UPE), November 19, 1985
(10) 86-0230—West-Point-Pepperell, Inc.,'s proposed acquisition of voting securities of Cluett, Peabody & Co., In., November 19, 1985
(11) 86-0231—TeleScripps Cable Company's proposed acquisition of assets of ACC of Virginia, ACC of Greater Bluefield, and ACC of Tennessee, (American Cablesystems Corporation, UPE), November 19, 1985
(12) 86-0248—UNC Resources' proposed acquisition of voting securities of Airwork Corporation and Pacific Airwork Corp. (Purex Industries, Inc., UPE), November 19, 1985
(13) 86-0253—Supermarkets General Corporation's proposed acquisition of voting securities of Angelo's Supermarkets, Inc. (Ralph Tedeschi, UPE), November 19, 1985
(14) 86-0164—First National Trust Company's (Gary D. Pentecost, UPE) proposed acquisition of assets of AGRI Export Cooperative, (American Grain and Related Industries, UPE), November 20, 1985
(15) 86-0165—First National Trust Company's, (J.B. Westmoreland, UPE, proposed acquisition of assets of AGRI Export Cooperative, (American Grain and Related Industries, UPE), November 20, 1985
(16) 86-0187—Amoco Production Co.'s proposed acquisition of assets of Sun Company, Inc., November 20, 1985
(17) 86-0221—Amoco Corporation's proposed acquisition of assets of Carolyn Hunt Trust Estate, November 20, 1985
(18) 86-0170—Colgate—Palmolive Company's proposed acquisition of assets of American Hospital Supply Co., November 21, 1985
(19) 86-0174—American Hospital Supply Co.'s proposed acquisition of assets of Colgate—Palmolive Company, November 21, 1985
(20) 86-0216 —The Sanwa Bank, Limited's proposed acquisition of assets of Commercial Credit Equipment Corporation and CCEC, Inc. (Control Data Corporation, UPE), November 21, 1985
(21) 86-0257—Ply-Gem Industries, Inc.'s proposed acquisition of voting securities of Allied Plywood Corporation, November 21, 1985
(22) 86-0265—Morton Thiokol, Inc.'s proposed acquisition of voting securities of Supelco, Inc., November 21, 1985
(23) 86-0113—Blue Circle Industries plc's proposed acquisition of voting securities of Williams Bros., Inc., November 22, 1985
(24) 86-0143—Proven Properties, Inc.'s proposed acquisition of assets of Chevron Corporation, November 22, 1985
(25) 86-0197—Penske Corporation's proposed acquisition of voting securities and assets of D. Longo, Inc., (Lena Longo, UPE), November 22, 1985
(26) 86-0198—Penske Corporation's proposed acquisition of voting securities and assets of D. Longo, Inc., (Lena Longo, a natural person and trustee of Longo Family Trust, UPE), November 22, 1985
(27) 86-0219—British Telecommunications plc's proposed acquisition of voting securities of Mitel Corp., November 22, 1985
(28) 86-0249—Louis J. Roussel's proposed acquisition of voting securities of United Fidelity Life Insurance Company, (Western Preferred Corporation, UPE), November 22, 1985
(29) 86-0266—Voest-Alpine A.G.'s proposed acquisition of voting securities of Bayou Steel Corporation, (of La Place), November 22, 1985
(30) 86-0269—Amerada Hess Corp.'s proposed acquisition of voting securities of Monsanto Oil Co. (Monsanto Oil Company of the U.K., Inc., UPE), November 22, 1985
(31) 86-0236—Nationwide Mutual Insurance Company's proposed acquisition of voting securities of Employers Insurance of Wausau, A Mutual Company, November 25, 1985
(32) 86-0273—Inspiration Resources Corporation's proposed acquisition of voting securities of The Prospect Group, Inc., November 25, 1985
(33) 86-0175—Ford Motor Company's proposed acquisition of assets of Sperry New Holland Division, (Sperry Corporation, UPE), November 26, 1985
(34) 86-0176—Bristol-Meyers Co.'s proposed acquisition of voting securities of Genetic Systems Corp., November 26, 1985
(35) 86-0202—Purdue National Corp.'s proposed acquisition of assets of Home Federal Savings and Loan Association, November 26, 1985
(36) 86-0275—Doskocil Companies, Incorporated's proposed acquisition of voting securities of Stoppenbach, Inc., November 26, 1985
(37) 86-0171—Mobil Corp.'s proposed acquisition of assets of Texaco Inc., November 27, 1985
(38) 86-0172—Texaco Inc.'s proposed acquisition of assets of Mobil Corp., November 27, 1985

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-1886 Filed 1-28-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0023]

Feldene (Piroxicam), a Drug for Human Use; Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) announces a public hearing to solicit information and views of interested persons on the

nonsteroidal anti-inflammatory drug piroxicam. The drug is marketed by Pfizer, Inc., 235 East 42nd St., New York, NY 10017, under the brand name Feldene. On January 8, 1986, Public Citizen Health Research Group (HRG), 2000 "P" St., NW., Washington, DC 20036, submitted a petition to the Secretary of Health and Human Services asking the Secretary "to immediately ban, as an imminent hazard to the public health, the use of . . . Feldene (piroxicam) in people ages 60 and older." FDA will use information presented at the public hearing, together with other data and information, to develop recommendations to the Secretary on whether the drug as currently labeled presents an imminent hazard to the public health.

DATES: Written notices of participation should be filed by February 21, 1986. The hearing will begin at 9 a.m. on February 28, 1986. The record of the hearing will remain open until March 17, 1986, by which date any additional written material must be submitted.

ADDRESSES: The public hearing will be held at the Food and Drug Administration, Conference Room D, 5600 Fishers Lane, Rockville, MD 20857. Written notices of participation and comments should be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Douglas Ellsworth or Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: Piroxicam is a nonsteroidal anti-inflammatory drug product indicated for acute or long term use in the relief of signs and symptoms of osteoarthritis and rheumatoid arthritis. Its current labeling includes a warning that "[p]eptic ulceration, perforation, and [gastrointestinal] bleeding—sometimes severe, and, in some instances fatal—have been reported with patients receiving Feldene." The labeling also cautions that "[p]atients with impaired renal function and on diuretics as well as elderly patients who have decreased renal function are more at risk [and] . . . lower doses of piroxicam should be anticipated in patients with impaired renal function and they should be carefully monitored." FDA approved the drug for marketing on April 6, 1982.

On January 8, 1986, the Secretary of Health and Human Services received a petition from HRG asking the Secretary "to immediately ban, as an imminent hazard to the public health, the use of Feldene (piroxicam) in people ages 60 and older" under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) (the act).

Relying on documents obtained from Pfizer, Inc., adverse reaction data obtained from FDA, results of surveys conducted by drug regulatory agencies in Great Britain and Sweden, and a review of the published medical literature, HRG contends (1) that gastrointestinal toxicity is more common and servere with piroxicam than with similar arthritis drugs, particularly in elderly patients; (2) that elderly people were found to have markedly higher blood levels of piroxicam than younger people, suggesting delayed clearance of the drug from the body; (3) that gastrointestinal side effects and ulceration from piroxicam are dose related, so a normal dose to someone with a decreased ability to eliminate the drug, such as an elderly person, may be equivalent to administering a higher dose; and (4) that piroxicam's long half-life is the reason older arthritis patients are more vulnerable to toxic effects from piroxicam than from other nonsteroidal anti-inflammatory drugs.

HRG refers to actions taken by the governments of Ireland, Belgium, West Germany and Canada in response to reports of severe adverse reactions and deaths associated with the use of piroxicam.

HRG asks that FDA warn health professionals in the United States (1) to avoid using piroxicam in people over 60 and in patients of any age with active peptic ulcers, a history of peptic ulcers, or compromised kidney function and (2) to monitor all other patients closely, particularly those with small body size. HRG also asks that Pfizer be required to provide a patient package insert with every prescription. In addition, HRG requests that FDA investigate reports that piroxicam causes unusually high rates of phototoxic skin reactions and congestive heart failure, and appropriately revise the drug's labeling.

HRB concludes that the large number of deaths and other severe reactions reported to FDA, in addition to information from foreign drug regulatory agencies and from clinical studies, demonstrate that piroxicam's use should be contraindicated in older people. Thus, HRG asks that Secretary declare the use of piroxicam in people aged 60 and older an imminent hazard to the public health.

The act requires FDA to withdraw approval of the application for product if, among other things, information shows that the product is unsafe or ineffective. The usual administrative procedure for withdrawing approval of a product includes notice to the applicant of an opportunity for hearing, an administrative determination of whether a hearing is justified, the conduct of a full evidentiary public hearing before a presiding officer or the preparation of an order denying a hearing, and a decision by the Commissioner of Food and Drugs based on the administrative record. This procedure usually requires at least 6 months, and sometimes much longer. A drug may remain on the market for years while withdrawal proceedings are underway.

The act also provides in section 505(e) that approval of a new drug may be suspended, and the product immediately removed from the market, if it presents an "imminent hazard to the public health." The authority to suspend approval is placed by law in the Secretary (or in the absence of the Secretary, in the officer acting as Secretary) and may not be delegated. If new evidence or further analysis of existing evidence indicates that a life-threatening or other serious risk is present, the summary suspension procedure allows the Secretary to put a prompt end to that risk. If approval is suspended, the Secretary must provide the holder of the new drug application with an opportunity for an expedited hearing on whether the application should be withdrawn and the product permanently removed from the market. The Secretary has invoked the imminent hazard provision only once, on July 25, 1977, by suspending approval of the new drug applications for phenformin, a drug indicated for use in diabetes. The HRG petition asks that the Secretary now invoke the imminent hazard provision of the act to ban the use of piroxicam in persons aged 60 and older.

The Secretary has asked FDA to advise him promptly of the action the agency believes should be taken in response to the HRG petition. A decision to invoke the imminent hazard provision as requested by HRG would result in immediate withdrawal of approval of the new drug application for piroxicam and removal of the product from the market until labeling changes could be made to contraindicate the use of the drug by persons 60 and older. Such an action would have an impact on patients now taking the drugs, their physicians, and the involved manufacturer. Before preparing its recommendations to the Secretary, FDA believes that these and other interested persons should have an opportunity to comment to the agency on the petition. Accordingly, a public hearing will be held, on an expedited basis, before the Director of the Center for Drugs and

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Biologics to provide an opportunity for such comment. A copy of the HRG petition is available from the Dockets Management Branch (address above).

Previous imminent hazard petitions have asked the Secretary to immediately and permanently remove a drug from the marketplace by suspending approval of its new drug application. This petition is different because it asks the Secretary to invoke the imminent hazard proceeding to require labeling changes.

In order to focus participation at the public hearing, participants should be aware of the following criteria. The validity of using these five criteria in immiment hazard proceedings under the act was reviewed and upheld in the phenformin proceeding (*Forsham* v. *Califano*, 442 F. Supp. 203 (D.D.C. 1977)). These criteria will be used by the agency in framing its recommendation on the HRG petition:

(1) The likelihood that, after the customary administrative process is completed, the product will be withdrawn from the market.

(2) The severity of the harm that could be caused by the drug during the completion of customary administrative proceedings to withdraw the product from the market.

(3) The likelihood that the product will cause such harm while the administrative process is being completed.

(4) The risk to the health of patients currently taking the product that might be occasioned by the immediate removal of the product from the market, taking into account the availability of other alternatives to the product and the steps necessary for affected persons to adjust to these other alternatives.

(5) The availability of other approaches to protect the public health.

The hearing will be held on February 28, 1986. The hearing will begin at 9 a.m. The presiding officer will be Harry M. Meyer, Jr., M.D., Director of the Center for Drugs and Biologics.

The procedures governing the hearing are found at 21 CFR Part 15.

Persons who wish to participate are requested to file a notice of participation with the Dockets Management Branch (address above) on or before February 21, 1986. To assure timely handling, any outer envelope should be clearly marked with Docket No. 86P-0023 and the statement "Piroxicam Hearing". The notice of participation should contain the interested person's name, address, telephone number, any business affiliation of the person desiring to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation. FDA asks that groups having similar interests consolidate their comments and present them through a single representative. FDA will allocate the time available for the hearing among the persons who properly file notices of participation. If time permits, FDA may allow interested persons attending the hearing who did not submit a written notice of participation to make an oral presentation at the conclusion of the hearing.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. The hearing schedule will be available at the hearing, and after the hearing it will be placed on file in the Dockets Management Branch under Docket No. 86P-0023.

To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open for 15 days following the hearing. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above) by March 17, 1986. To assure timely handling, any outer envelope should be clearly marked with Docket No. 86P-0023 and the statement "Piroxicam Hearing".

Dated: January 23, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-1865 Filed 1-28-86; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Eligibility for Scholarship Consideration Under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians, and the Indian Health Scholarship Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of eligibility requirements for consideration of support under Indian Health Service (IHS) Scholarship Programs.

SUMMARY: So that individuals interested in applying for support under health education scholarship programs of the IHS may be informed, the Service is publishing this notice of disciplines which will be considered for academic support beginning in the school year 1986-1987 only.

DATE: This IHS policy is effective on January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Please address inquiries to Mr. Larry Thomas, Indian Health Service, Parklawn Building, Room 7-16, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301-443-4367.

SUPPLEMENTARY INFORMATION: The Health Professions Preparatory and Pregraduate Scholarship Programs for Indians are authorized by section 103 of the Indian Health Care Improvement Act, Pub. L. 94-437 as amended by Pub. L. 96-537, Indian Health Care Amendments of 1980. The Indian Health Scholarship Program was initially authorized by section 104 of Pub. L. 94-437, but is now authorized by section 338G [formerly section 757] of the Public Health Service Act. Both programs are intended to encourage Indians to enter the health professions and to assure the availability of Indian health professionals to serve Indians. The list below is based upon the needs of the IHS as well as upon the needs of the Indians for additional service by specific health professions.

Regulations at 42 CFR 36.304 provide that the IHS shall, from time to time, publish a list of health professions eligible for consideration for the award of Health Professions Preparatory Scholarships for Indians and Indian Health Scholarships. Also, Section 338G(b) of the Public Health Service Act [42 U.S.C. 194y-1] authorizes the determination of specific health professions for which Indian Health Scholarships will be awarded.

Pending the availability of funds, consideration will be given to qualified applicants for scholarship support under the above-named scholarship programs in the following health profession categories:

Priority Categories

Section 103—Health Professions Preparatory Scholarship Program for Indians

A. Pre-Nursing.

B. Pre-Accounting.

Section 103—Pre-Graduate Program

A. Pre-Medicine: Junior/Senior level only.

B. Pre-Dentistry: Junior/Senior level only.

Section 104—Health Professional Scholarship Program

A. Medicine: Allopathic and Osteopathic.

B. Nursing: ADN, BSN, and MS Degrees—National League for Nursing Accredited Schools.

C. Public Health (MPH): To be eligible for consideration applicants must have:

1. Terminal Degree in a health discipline; and

2. Minimum of two (2) years of health delivery experience.

D. Health Records: Registered Records Administrator level only.

E. Pharmacy: Junior/Senior level.

F. Engineering: Civil, Environmental and Mechanical—Junior/Senior level.

G. Dietician/Nutrition: Junior/Senior level.

H. Sanitarian: Environmental Health, Environmental Science, and Occupational Safety and Health—Junior/Senior level.

I. Medical Technologist: BS Degree—Junior/Senior level.

J. Denistry.

K. Accounting: Junior/Senior level.

L. Health Administration: MS/MA Degree.

M. Statistician: BS/MA Degree—Junior/Senior level.

N. Dental Hygiene: Junior/Senior level.

Interested individuals are reminded that the list of eligible allied health and health professions is effective for the applicants in the 1986-1987 academic year only.

The Health Professions Preparatory and Pregraduate Scholarship Program for Indians is listed as No. 13.971 in the OMB Catalog of Federal Domestic Assistance. The Indian Health Scholarship Program is listed as No. 13.972 in the Catalog.

Dated: January 24, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86-1905 Filed 1-28-86; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

National Advisory Council on Health Care Technology Assessment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of February 1986:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: February 4, 1986, 8:30 a.m.

Place: Park Terrace Hotel, Terrace Ball Room, 1515 Rhode Island Avenue, Northwest, Washington, D.C.

Closed February 4, 11:30 AM to 12:00 Noon.

Open for remainder of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The open session will focus on Council discussion of medical coverage issues related to health care technology assessment functions. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Assistant Secretary for Health has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Mr. William M. Whorton, Jr., National Center for Health Services Research and Health Care Technology Assessment, Stop 318 #2, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2345.

Agenda items are subject to change as priorities dictate.

Note.—Due to difficulty in locating meeting room space, we missed the 15 days' notification period.

Dated: January 17, 1986.

John E. Marshall,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-1895 Filed 1-28-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-85-1583]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OBM) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) The agency form number, if applicable; (4) How frequently information submissions will be required; (5) What members of the public will be affected by the proposal; (6) An estimate of the total number of hours needed to prepare the information submission; (7) Whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

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Submission of Proposed Information Collection to OMB

Proposal: Contract and Subcontract Activity Report for Public and Indian Housing Programs.
Office: Public and Indian Housing.
Form Number: HUD–2516.
Frequency of Submission: Quarterly.
Affected Public: State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations.
Estimated Burden Hours: 6,600.
Status: New.
Contact: Patricia G. Hampton, HUD, (202) 755–5383; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: January 22, 1986.

Submission of Proposed Information Collection to OMB

Proposal: Premium Reconcilement.
Office: Administration.
Form Number: HUD–239A.
Frequency of Submission: Monthly.
Affected Public: Businesses or Other For-Profit.
Estimated Burden Hours: 1,500.
Status: Reinstatement.
Contact: Frances Jones, HUD, (202) 755–7022; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: January 22, 1986.

Submission of Proposed Information Collection to OMB

Proposal: Contract and Subcontract Reporting for Housing's Multifamily and Single Family Programs.
Office: Housing.
Form Number: HUD–2516.
Frequency of Submission: Quarterly.
Affected Public: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.
Estimated Burden Hours: 65,258.
Status: New.
Contact: David Nimmer, HUD, (202) 755–6142; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: January 22, 1986.

Submission of Proposed Information Collection to OMB

Proposal: Survey of Pension Funds.
Office: Housing.
Form Number: None.
Frequency of Submission: Quarterly.
Affected Public: Businesses or Other For-Profit, and Small Businesses or Organizations.
Estimated Burden Hours: 157.
Status: Extension.
Contact: John N. Dickie, HUD, (202) 755–7270; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: January 22, 1986.

Submission of Proposed Information Collection to OMB

Proposal: Manufactured Housing Complaint Index—State Administrative Agencies (SAA) Reports.
Office: Housing.
Form Number: HUD–54888.
Frequency of Submission: Quarterly.
Affected Public: State or Local Governments.
Estimated burden hours: 2,975.
Status: Extension.
Contact: Stuart Margulies, HUD (202) 755–6584; Robert Fishman, OMB (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: December 24, 1985.

Submission of Proposed Information Collection to OMB

Proposal: HUD Application for Property Appraisal and Commitment; Master Conditional Procedure.
Office: Housing.
Form Number: HUD–91322, 91322.1, 91322.2, 91322.3, 92800, 92800–5a, 92800–5n, and 92800–OT.
Frequency of submission: On Occasion.
Affected Public: Businesses or Other For-Profit.
Estimated burden hours: 500,000.
Status: Revision.
Contact: Daniel T. Berry, HUD, (202) 755–6702; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: December 19, 1985.

Submission of Proposed Information Collection to OMB

Proposal: Application for Indian Housing Authorities (IHAs) for Indian Low-income Housing Program.
Office: Public and Indian Housing.
Form Number: HUD–52730.
Frequency of submission: Annually.
Affected Public: Non-Profit Institutions.
Estimated burden hours: 960.
Status: Extension.
Contact: John V. Meyers, HUD (202) 755–1015; Robert Fishman, OMB (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: December 15, 1985.

Dennis F. Geer,
Director, Office of Information Policies and Systems.

[FR Doc. 86–1662 Filed 1–28–86; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Environmental Assessment; Finding of No Significant Impact for the Chopaka Mountain Wilderness Study, Upper Columbia

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of finding of no significant impact availability for review.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and the Council on Environmental Quality Guidelines (40 CFR Part 1500), the Bureau of Land Management, U.S. Department of the Interior, gives notice that an environmental impact statement is not being prepared to analyze the impacts of designating or not designating the Chopaka Mountain Wilderness Study Area as wilderness. This WSA is located in Okanogan County, Washington.

The environmental assessment of this Wilderness Study and Management Framework Plan Amendment indicates that none of the entire alternatives would cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Joseph K. Buesing, District Manager, Spokane District, has determined that the preparation of an environmental impact statement to evaluate the potential impacts of these alternatives would not be necessary.

The environmental assessment and the notice of a Finding of No Significant Impact (FONSI) has been sent to various federal, state, and local agencies and interested parties who participated in the wilderness study process. A limited number of copies of the FONSI are available to fill the single copy requests at the address indicated below.

This FONSI is being made available for public review for 30 days after the date of this publication in the Federal Register before BLM will make recommendation to Congress.

DATE: Comments on the FONSI must be received in the Spokane district office no later than March 21, 1986.

ADDRESS: Comments should be sent to Joseph K. Buesing, District Manager, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202.

For further information, contact Gary Yeager, Planning and Environmental Coordinator, at the above address (telephone: (509) 456–2570).

Joseph K. Buesing,
District Manager.

[FR Doc. 86–1975 Filed 1–28–86; 8:45 am]
BILLING CODE 4310–33–M

[CA 17921]

Notice of Exchange of Public and Private Lands in Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—CA 17921

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 6S., R. 8E.
Sec. 14: Lots 1–4, inclusive.
Containing 80.54 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from The Nature Conservancy:

San Bernardino Meridian, California

T. 4S., R. 7E.
Section 6: S½ of Lot 2 of the SW¼, W½NE¼NW¼SE¼, SE¼NW¼SE¼, SW¼SE¼.
Containing 97.99 acres of private land.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a portion of the non-federal lands within the proposed 13,000 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is federally listed as threatened and State listed as endangered. The ultimate goal of the Bureau of Land Management is to acquire approximately 6,700 acres within the preserve. Other Federal and State agencies will acquire the remaining portion of the preserve. The public interest will be well served by completing the exchange.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or 2 years from the date of publication, whichever occurs first.

The exchange will be on an equal value basis. Full equalization of value will be achieved by a cash payment to the United States by The Nature Conservancy in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership. Lands transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

2. An existing drainage right-of-way granted to Coachella Valley Water District, its successors and assigns, by right-of-way grant CA 17773, under the Act of October 21, 1976 (43 U.S.C. 1761).

FOR FURTHER INFORMATION CONTACT: Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: December 9, 1985.

Gerald E. Hillier,
District Manager.

[FR Doc. 86–1870 Filed 1–28–86; 8:45 am]
BILLING CODE 4310–40–M

Intent to Prepare the Arcata Resource Management Plan; Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 40 CFR 1501.7 and 43 CFR 1601.3, notice is hereby given that the Arcata Resource Area, Ukiah District, California, will prepare a Resource Management Plan (RMP), which will include portions of the Clear Lake Resource Area.

DATES: The resource management planning process is scheduled to be completed by October 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Arcata Resource Area Manager, 1585 J Street, Arcata, CA 95521. Telephone: (707) 822–7648.

SUPPLEMENTARY INFORMATION: The major thrust of this Resource Management Plan (RMP) is to address the viability of intensively managing timber resources within Sustained Yield Unit 13 as specified in the 1981 Record of Decision. Since 1981, the complexion of Sustained Yield 13 has been significantly affected by Bureau-initiated exchanges, wilderness designation, State of California in-lieu selections, and the increased occurrence of sensitive animal species found on or near forest lands.

The combination of these factors has resulted in a reduction in the availability of timber from public lands, has reduced flexibility in managing old-growth related animal species vis-a-vis timber production, and increased the total of nonstocked acres.

In addition to the intertwined issues of timber management, land tenure, and sensitive species, the RMP will address the wilderness suitability of that portion of the Big Butte wilderness study area (CA–050–211) that was not designated wilderness in the California Wilderness Act of 1984. Other wilderness suitability studies in progress, (Red Mountain, CA–050–132; Eden Valley, CA–050–214; Thatcher Ridge, CA–050–212) will be incorporated into the RMP but no suitability analysis will be done as part of the RMP.

Management Framework Plans superseded by this RMP are East Mendocino, Red Mountain and Scattered Blocks. The Red Mountain Planning Amendment currently in progress (see 50 FR 4601) is cancelled and the decisions will become part of the Arcata RMP.

Opportunities for public input and comment will be announced through the media, mailings, and personal contacts. Some public meetings are planned: times and locations to be announced.

Dated: January 16, 1986.

Van W. Manning,
District Manager.

[FR Doc. 86–1866 Filed 1–28–86; 8:45 am]
BILLING CODE 4310–40–M

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[I-19668A, I-19668C, I-19668D, I-19668E, I-20341, I-19670, I-19675 and I-20813]

Sale of Public Lands in Oneida and Power Counties, ID

Correction

In FR Doc. 86-920 appearing on page 2442 in the issue of Thursday, January 16, 1986, make the following correction: In the second column, in the fifth complete paragraph, in the fifth line, "I-19668D" should read "I-19668C".

BILLING CODE 1505-01-M

National Park Service

Appalachian National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Appalachian National Scenic Trail Advisory Council will be held in Washington, DC, on February 13, from 10:00 a.m. to 3:30 p.m. The agenda of the meeting will include a discussion of long-range planning for protection of the Appalachian Trail.

The meeting will be open to the public, although space will be limited. Persons will be accommodated on a first-come, first-served basis. Any person may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements, may contact David A. Richie, Project Manager, Appalachian Trail Project Office, Harpers Ferry Center, Harpers Ferry, West Virginia 25425, at Area Code (304) 535-2346.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the above address. Copies of the minutes will also be available from Room 3120, Interior Building, 18th and C Streets NW., Washington, DC 20240, and at the headquarters of the Appalachian Trail Conference, Washington Street, Harpers Ferry, West Virginia 25425.

Dated: January 23, 1986.

David A. Richie,

Project Manager.

[FR Doc. 86-1956 Filed 1-28-86; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Authorization; Dudley Food and Beverage, Inc.

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession authorization with Dudley Food and Beverage, Inc., authorizing it to continue to provide the sale of refreshments, sundries and beach equipment rental, as authorized by a concession permit, for the public in the Rosamond Johnson area of Gulf Islands National Seashore for a period of approximately six (6) years from date of execution through February 28, 1992.

This authorization has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on June 30, 1985, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the authorization.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contract the Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303, for information as to the requirements of the proposed authorization.

Dated: July 5, 1985.

Frank Catroppo,

Acting Regional Director, Southeast Region.

[FR Doc. 86-1957 Filed 1-28-86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, Clean Water Act, Safe Drinking Water Act; Aerojet-General Corp.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on January 15, 1986, a proposed Consent Decree in *United States v. Aerojet-General Corp. and Cordova Chemical Co.*, and *People of the State of California, et al v. Aerojet and Cordova*, Civil Action Nos. Civ. S-86-0063, Civ. S-86-0064, was lodged with the United States District Court for the Eastern District of California. The proposed Consent Decree concerns the facility owned by Aerojet in Sacramento County, California at which hazardous substances were disposed. The proposed Consent Decree requires the defendants to investigate environmental and public health hazards presented by the Aerojet facility and to implement any remedial actions necessary to clean up the facility. The Decree requires payment of up to $7.15 million in settlement funds to the Environmental Protection Agency and the State of California.

The Department of Justice will receive for a period of one hundred and twenty (120) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Aerojet*, D.J. Ref. 90-7-1-74.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814 and at Region IX, Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1644, Tenth Street and Pennsylania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, at the above address. In requesting a copy, please enclose a check of $13.70 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-1672 Filed 1-28-86; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 35-85]

Privacy Act of 1974; Modified Systems of Records

Pursuant to the Privacy Act of 1974 [5 U.S.C. 552a) the Department of Justice is republishing a number of its Privacy Act systems of records to make changes which clarify and more accurately describe the character of the systems. The most significant changes are briefly described as follows. The Department is adding a new routine use to certain

systems which will permit it to release records to an appropriate court during litigation; the Federal Bureau of Investigation is adding a routine use to provide that certain records may be disseminated to persons injured by violation of the trademark statutes. The systems have been reprinted below, and all changes have been italicized. The systems affected are:

Antitrust Division Expert Witness File, JUSTICE/ATR-001 (last published February 4, 1983, 48 FR 5330)
Congressional and White House Referral Correspondence Log File, JUSTICE/ATR-002 (last published August 28, 1984, 49 FR 34107)
Index of Defendants in Pending and Terminated Antitrust Cases, JUSTICE/ATR-003 (last published September 30, 1977, 42 FR 53393)
Statements by Antitrust Division Officials (ATD Speech File), JUSTICE/ATR-004 (last published September 30, 1977, 42 FR 53374)
Antitrust Information Management System (AMIS)—Time Reporter, JUSTICE/ATR-005 (last published November 17, 1980, 45 FR 75899)
Antitrust Information Management System (AMIS)—Monthly Report, JUSTICE/ATR-006 (last published February 4, 1983, 48 FR 5331)
Antitrust Division Case Cards, JUSTICE/ATR-007 (last published September 30, 1977, 42 53395)
Freedom of Information/Privacy Requests/Subject Index File, JUSTICE/ATR-008 (last published August 7, 1985, 50 FR 31935)
Accounting System for the Offices, Boards and Divisions and the United States Marshals Service, JUSTICE/JMD-007 (last published December 12, 1983, 48 FR 5666)
Expert Consultant/Witness File, JUSTICE/JMD-006 (last published December 9, 1984, 49 49393)
Department of Justice Controlled Parking Records, JUSTICE/JMD-017 (last published December 9, 1981, 46 FR 60328)
Freedom of Information Act/Privacy Act (FOIA/PA) Request letters, JUSTICE/JMD-020 (last published February 4, 1983, 48 FR 5362)
Executive Clemency Files, JUSTICE/OPA-001 (last published December 9, 1981, 46 FR 60334)
Bankruptcy Case Files and Associated Records, JUSTICE/UST-001 (last published February 4, 1983, 48 FR 5390)
The FBI Central Records System, JUSTICE/FBI-002 (last published April 20, 1984, 49 FR 16663)
National Center for the Analysis of Violent Crime (NCAVC), JUSTICE/FBI-015 (last published February 28, 1985, 50 FR 7842)
United States Marshals Service Badge and Credentials File, JUSTICE/USM-001 (last published on December 9, 1981, 46 FR 60343)
Internal Inspections System, JUSTICE/USM-002 (last published as the Internal Investigations System of January 26, 1983, 48 FR 3684)
United States Marshals Service Prisoner Transportation System, JUSTICE/USM-003 (last published on December 9, 1981, 46 FR 60344)
Special Deputy File JUSTICE/USM-005 (last published on December 9, 1981, 46 FR 60345)
Special Detail System, JUSTICE/USM-005 (last published on December 9, 1981, 46 FR 60346)
United States Marshals Service Training Files, JUSTICE/USM-006 (last published on December 9, 1981, 46 FR 60346)
Witness Security File Information System, JUSTICE/USM-008 (last published on December 9, 1981, 46 FR 60347)
Equipment Inventory, JUSTICE/OJP-001 (last published on December 9, 1981, 46 60329)
Grants Management Information System (PROFILE), JUSTICE/OJP-004 (last published on December 9, 1981, 46 FR 60329)
Financial Management System, JUSTICE/OJP-005 (last published on December 9, 1981, 46 60330.)
Congressional and Public Affairs System, JUSTICE/OJP-006 (last published on November 17, 1980, 48 FR 75936)
Civil Rights Investigative System, JUSTICE/OJP-008 (last published on February 4, 1983, 48 FR 5364)
Federal Advisory Committee Membership Files, JUSTICE/OJP-009 (last published on February 4, 1983, 48 FR 5364)
Technical Assistance Resource Files, JUSTICE/OJP-010 (last published on February 4, 1983, 48 FR 5365)
Registered Users File—National Criminal Justice Reference Service (NCJRS), JUSTICE/OJP-011 (last published on December 9, 1981, 46 FR 60332)
Public Safety Officers Benefits System, JUSTICE/OJP-012 (last published on February 4, 1983, 48 FR 5366)
The INTERPOL—United States National Central Bureau (INTERPOL-USNCB) (Department of Justice) Records System, JUSTICE/INTERPOL-001 (last published September 13, 1984, 49 FR 36028)

5 U.S.C. 552a(e) (4) and (11) provide that the public be provided a 30-day period in which to comment on the new routine uses. Please submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, 601 D Street, NW., Room 9002, Washington, DC 20530 by February 28, 1986.

Dated: December 11, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/ATR-001

SYSTEM NAME:

Antitrust Division Expert Witness File.

SYSTEM LOCATION:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have served in the capacity of an "expert" for the Department of Justice in connection with civil or criminal antitrust litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the names of persons used by the Antitrust Division in an expert capacity and also indicates the area of their specialty, the type of service rendered, the fees paid, and the dates on or during which such services were performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exists under 44 U.S.C. 3101 and 28 U.S.C. 522.

ROUTINE USES OF RECORDS MAINTENANED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system is routinely used by trial attorneys of the Antitrust Division when considering the selection of experts as consultants or expert witnesses for the development or presentation of specific antitrust cases. The system also serves as a reference resource for Division personnel in compiling statistical information or reports regarding the actual or anticipated costs of litigation.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news medias and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an

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unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in this system is contained in documents orgainzed in individual file folders.

RETRIEVABILITY:

Information is retrieved primarily by using the name of the individual retained as a consultant or called as an expert witness for the Government in antitrust cases brought by the Department.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to that area are locked.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue MW., Washington, DC 20530.

RECORD ACCESS PROCEDURE:

Requests for access to a record from this system shall be in writing and be clearly identified as a "Privacy Access Request". Including in the requests should be the name of the person retained as a consultant or presented as an expert witness for the Government and the name of the case in which such services were rendered. The requester should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager and state clearly and concisely when information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in this system are those records reflecting the commitment between the individual and the Department of Justice (including matters of compensation etc.) and staff attorneys or other employees directly involved with the individual in the preparation or conduct of the litigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATIONS:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress and citizens whose correspondence is referred by Congressional or White House staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to inquiries or referrals of citizen correspondence from members of the Congress and White House staff.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exist under 44 U.S.C. 3101 and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system is maintained as a record of inquiries or referrals by members or committees of the Congress and by White House staff. Routine use is made of this file by Antitrust Division personnel incident to monitoring the response status of or identifying other material related to such inquiries or referrals.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permited to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration; A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in file folders; abbreviated or summarized information is stored on manual index cards and on magnetic disks and tapes.

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, suject matter, control number, etc. Summary data on inquiries received prior to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, summary data is retrieved from magnetic disks and tapes. Summary data consists of such data elements as Congressional Member or constituent name, subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust Division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Unit; Antitrust Division; U.S. Department of Justice; 10th & Constitution Avenue, NW.; Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access for a record from this system shall be written and clearly identified as "Privacy Access Request". The request should include the name of the member of Congress or White House staff originating a request or referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Source of information maintained in the system are those records (e.g., that Congressional or White House correspondence), reflecting inquiries or referrals of citizen correspondence by members of Congress or White House staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-003

SYSTEM NAME:

Index of Defendants in Pending and Terminated Antitrust Cases.

SYSTEM LOCATION:

U.S. Department of Justice; 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual defendants in pending and terminated criminal and civil cases brought by the United States under the antitrust laws.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index reference to the case in which an individual (or corporation) is or was a defendant; included in information is proper case name, the judicial district and number of the case, and the date filed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this index system exists under 28 U.S.C. 522 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use of this cross index system is generally made by Department personnel for reference to proper case name. In addition a compilation of antitrust cases filed is prepared semi-annually showing the names of all defendants in pending civil and criminal Government antitrust cases. This compilation is utilized within the Department and distributed to some 30 other Government agencies for reference and statistical purposes.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is maintained on index cards.

RETRIEVABILITY:

Information in the system is retrieved by reference to the name of individual or corporate defendants in antitrust cases.

SAFEGUARDS:

Information contained in the system is unclassified and of a public nature. During working hours access to the index is monitored by Antitrust Division personnel; during non-duty hours the area in which the system is maintained is locked.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legal Procedure Unit; Antitrust Division; U.S. Department of Justice; 10th and Constitution Avenue, NW., Washington, DC 20530.

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NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; U.S. Department of Justice; Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Requests for access to a record from this system shall be in writing and be clearly identified as a "Privacy Access Request". Included in the request should be the name of the defendant in pending or terminated Government antitrust litigation. Requesters should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this index are complaints filed under the antitrust laws by the United States and from Department records relating to such cases.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-004

SYSTEM NAME:

Statements by Antitrust Division Officials (ATD Speech File).

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue NW., Washington DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Past and present employees of the Antitrust Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record for each public statement or speech issued or made by employees of the Antitrust Division.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Department personnel for the identification of the subject matter of and persons originating public statements by Antitrust Division employees; such reference is utilized in aid of compliance with requests from the public and within the agency for access to texts of such statements.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the index system is maintained on index cards.

RETRIEVABILITY:

This reference index utilizes name of present and former employees making or issuing statements as well as the subject matter or title of the statement.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours personnel monitor access to this index; the area is locked during non-duty hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legal Procedure Unit, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing and be clearly identified as a "Privacy Access Request". Included in the request should be the name of the Antitrust Division employee making or issuing a public statement. Requesting should indicate a return address. Requests will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in the index are those recos reflecting public statements issued or made by Antitrust Division employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/ATR-005

SYSTEM NAME:

Antitrust Information Management System (AMIS)—Time Reporter.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Ave., N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Antitrust Division of the U.S. Department of Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the employees' name and allocations of his/her work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The file will be established and maintained pursuant to the following authorities: 28 CFR 0.40(f), 28 U.S.C. section 522, 31 U.S.C. section 11, 31 U.S.C. section 66a, 5 U.S.C. section 301, and 2 U.S.C. section 601.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file is used by Antitrust Division personnel to keep track of resources and as a basis for determining Antitrust Division allocations of resources (professional time) to particular products and industries (e.g., oil, auto, chemicals) and to broad categories of resource use such as conspiratorial conduct, oligopoly and monopoly, civil cases, criminal cases, and proceedings before regulatory agencies. In addition, the file will be employed in the preparation of reports for the Division's budget requests and to the Attorney General and Congress.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from the system of records may be disclosed the National Archives and Records Administration (NARA) for records management inspections conducted under the authority of 44 U.S.C. Secs. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in the ACES computerized information system.

RETRIEVABILITY:

Information is retrieved by a variety of key words, including names of individuals.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Access to the file is limited to those employees whose official duties require such access.

RETENTION AND DISPOSAL:

Information contained in the file is retained for 24 months or the life of the matter to which the employee is assigned, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Support Group, Antitrust Division, U.S. Department of Justice, Room 1018, Safeway Building, 521 12th Street, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

Same as Notification.

CONTESTING RECORD PROCEDURES:

Same as Notification.

RECORD SOURCE CATEGORIES:

Information on time allocation is provided by Antitrust Division section and field office chiefs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/ATR-006

SYSTEM NAME:

Antitrust Information Management System (AMIS)—Monthly Report.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional employees (lawyers and economists) of the Antitrust Division of the U.S. Department of Justice and individual defendants and investigation targets involved in past and present Antitrust investigations and cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of Division employees and their case/investigation assignments and the names of individual defendants/investigation targets as they relate to a specific case/investigation. In addition, information reflecting the current status and handling of Antitrust cases/investigations is included within this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The file is established and maintained pursuant to 28 CFR 40(f), 28 U.S.C. 522, and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The file is used by Antitrust Division personnel as a basis for determining Antitrust Division allocation of resources to particular products and industries (e.g., oil, autos, chemicals), to broad categories of resource use such as civil cases, criminal cases, regulatory agency cases, and Freedom of Information Act requests. It is employed by the section chiefs, the Director and Deputy Director of Operations, and other Division personnel to ascertain the progress and current status of cases and investigations within the Division. In addition, the files will be employed in the preparation of reports for the Division's budget requests and to the Attorney General and Congress.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public

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pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released purusant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically in the *Information systems support group's* ACES Computerized information system.

RETRIEVABILITY:

Information is retrieved by a variety of key words.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized information. Access to the file is limited to those persons whose official duties require such access and employees of the Antitrust Division.

RETENTION AND DISPOSAL:

Information contained in the file is retained for 14 months or the life of the specific case/investigation, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Support Group; Antitrust Division; U.S. Department of Justice; Safeway Building, 521 12th Street, N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, Washington, D.C. 20530.

RECORD SOURCE CATEGORIES:

Information for the monthly reports is provided by the Antitrust Division section and field office chiefs.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(4)(G)–(H), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e) and have been published in the Federal Register.

JUSTICE/ATR–007

SYSTEM NAME:

Antitrust Division Case Cards.

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual defendants in pending and terminated criminal and civil cases brought by the United States under the antitrust laws where the defendant's name appears in the case title.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index reference to the case in which an individual (or corporation) is or was a defendant; included information is proper case name, the judicial district, number of the case, the commodity involved, each alleged violation, the section of the Antitrust Division responsible for the matter, and the disposition of the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 44 U.S.C. 3101 and 28 U.S.C. 522.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Department personnel. It is utilized for referrals to case names, the preparation of speeches and to aid in determinations of the antitrust histories of companies.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is maintained on index cards.

RETRIEVABILITY:

Information is retrieved by case name.

SAFEGUARDS:

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Antitrust Division personnel in the area where the system is maintained. This area is locked during non-duty hours.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legal Procedure Unit, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington DC 20530/

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing and be clearly identified as a "Privacy Access Request." Included in the request should be the name of the defendant appearing in the title of the pending or terminated Government antitrust litigation. Requester should indicate a return address. Requests will be directed to the System Manager above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information maintained in the index are those records reflecting litigation conducted by the Antitrust Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE–ATR–008

SYSTEM NAME:

Freedom of Information/Privacy Requester/Subject Index File

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested information under the Freedom of Information and Privacy Acts from files maintained by the Antitrust Division and individuals about whom material has been requested under the above acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a record of every FOIA/PA request made, along with the response, copies of documents which have been requested, and internal memoranda or other records related to the initial processing of such request, subsequent appeals and/or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This index is maintained for ready reference by Division personnel for the identification of the subject matter of and persons orginating Freedom of Information and Privacy Act requests. Such reference is utlized in aid of access to files, maintained by the Freedom of Information and Privacy Unit, for purposes of reference to requests on appeal, questions concerning pending or terminated requests, and compliance with requests similar or identical to past requests.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from the systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwaranted invasion of personal privacy.

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof: or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Paper documents are stored in file folders; abbreviated or summarized information is stored on manual index cards and on magnetic disks and tapes.

RETRIEVABILITY:

Request files are retrieved by case number or through a cross reference to the manual and automated indexes which are accessed by name. Summary data on requests received through July 31, 1983, is retrieved from the index cards; summary data as of August 1, 1983, is retrieved from magnetic disks and tapes. Summary data consists of such data elements as name of requester, date and subject of request, date assigned, response date (and a brief description of the response), case number, and date appealed, if applicable.

SAFEGUARDS

Information contained in the system is unclassified. During duty hours access to this system is monitored and controlled by Antitrust Division personnel in the area where the system is maintained. The area is locked during non-duty hours. In addition, only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS

Freedom of Information and Privacy Acts Control Officer, Antitrust Division, U.S. Department of Justice, 10th and Constitition Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE

Address inquiries to the Assitant Attorney General, Antitrust Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

RECORD ACCESS PROCEDURES

Request for access to a record from this system should be made in writing

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and be clearly identified as a "Privacy Access Request." Included in the request should be the name of the individuals having made the Freedom of Information request and/or the individual about whom the records were requested. Requesters should indicate a return address. Requesters will be directed to the System Manager shown above.

CONTESTING RECORD PROCEDURE

Individuals desiring to contest or amend information maintained in the index should direct their request to the System Manager and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES

Source of the information maintained in the system are those records derived from the receipt and processing of Freedom of Information and Privacy Act requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT

The Attorney General has examined this system of records from subsections (c)(3), (d), (e)(4)(G) and (H), and (f) of the Privacy Act. This system is exempted pursuant to 5 U.S.C. 552a(k)(2) to the extent that the records contained in the system reflect Antitrust Division law enforcement and investigative information. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in the Federal Register.

JUSTICE/JMD–007

SYSTEM NAME:

Accounting System for the Offices, Boards and Divisions and the United States Marshals Service.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals on whom vouchers are submitted requesting payment for goods or services rendered (except payroll vouchers for Department of Justice employees,) including vendors, contractors, experts, witnesses, court reporters, travelers, and employees.

CATEGORIES OR RECORDS IN THE SYSTEM:

All vouchers processed, i.e., all documents required to reserve, obligate, process and effect collection or payment of funds. (Excluded from the system are payroll vouchers.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

After processing the vouchers, the records are used to maintain individual financial accountability; to furnish statistical data (not identified by personal identifiers) to meet both internal and external audit and reporting requirements; and to provide Administrative Officers from the Offices, Boards and Divisions and the United States Marshals Service with information on vouchers by name and social security number.

Release of information to the news media. Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from system of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration a record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Release of taxpayer mailing address information. Information contained in the system or records may be disclosed to the Internal Revenue Service (IRS) to obtain taxpayer mailing addresses for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer.

Release of information to consumer reporting agencies. Information directly related to the identity of debtors and the history of claims contained in the system or records may be disclosed to consumer reporting agencies for the purpose of encouraging repayment of overdue debts. Such disclosures will be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt. Addresses of taxpayers obtained from the Department of the Treasury will be disclosed to consumer reporting agencies only for the purpose of allowing such agencies to prepare a commercial credit report on the taxpayer for use by the Department.

Release of information about debtors. Information contained in the system of records may be disclosed in order to effect salary or administrative offsets to satisfy a debt owed the United States by that person. Such disclosures will be made only when all procedural steps established by the Debt Collection act have been taken.

Release of information to debt collection agencies. Information contained in the system of records may be disclosed to a person or organization with whom the head of the agency has contracted for collection services to recover indebtedness owed to the United States. Addresses of taxpayers obtained from the Department of the Treasury will also be disclosed, but only where necessary to locate such taxpayer to collect or compromise a Federal claim.

Release of information to United States Attorneys. Information contained in the system of records may be disclosed to United States Attorneys' offices for litigation and enforced collection.

Release of information in a proceeding before a court or adjudicative body. Records within this system, or any facts derived therefrom, may be disseminated before a court or adjudicative body before which the Justice Management Division is authorized to appear when i. the Justice Managment Division, or any subdivision thereof, or ii. any employee of the Justice Management Division in his or her official capacity, or iii. any employee of the Justice Management Division in his or her individual capacity where the Department of Justice has agreed to represent the employee, or iv. the United States, where the Justice Management Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Justice Management Division to be arguably relevant to the litigation.

STORAGE:

Magnetic disks, magnetic tapes, microfilm, and file folders.

RETRIEVABILITY:

Records on magnetic tapes and disks are primarily retrieved by social security number or digital identifiers. Records covering all fiscal years prior to Fiscal Year 1983 are maintained in paper form; as of Fiscal Year 1983 paper records have been converted to microfilm. Records in paper form and on microfilm are retrieved by batch and controlled by schedule on which paid.

SAFEGUARDS:

Information contained in the system is unclassified. Operational access to information maintained on magnetic disks is controlled by the convention of the operating system utilized. This is normally by password key. These passwords are issued only to employees who have a need to know in order to perform job functions relating to financial management and accountability. Records are also safeguarded in accordance with organizational rules and procedures. Access is limited to personnel of the Department of Justice who have a need for the records in the performance of their official duties.

RETENTION AND DISPOSAL:

Magnetic disks, magnetic tapes, microfilm, and paper documents are retained for a period of six years and three months and subsequently destroyed in accordance with regulations prescribed by the General Accounting Office and promulgated by the General Services Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance Staff: Office of the Controller, Justice Management Division; U.S. Department of Justice; 10th & Constitution Avenue, NW.; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the System Manager.

RECORD ACCESS PROCEDURE:

Same as the System Manager.

CONTESTING RECORD PROCEDURES:

Same as the System Manager.

RECORD SOURCE CATEGORIES:

Submitted by operating accounting personnel or individual of record.

SYSTEMS EXEMPTED FROM CERYAIN PROVISIONS OF THE ACT:

None.

Justice/JMD–006

SYSTEM NAME:

Expert Consultant/Witness File.

SYSTEM LOCATION:

U.S. Department of Justice; 10th and Constitution Ave., NW., Washington, DC 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have, *as of* FY84, been employed as expert consultants and/or witnesses in litigation pursued by the Department of Justice throughout the nation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Expert consultant/witness's name, address, phone number, fee, field(s) of expertise, date of most recent employment, names of cases for which employed, name of division and/or U.S. Attorney's Office served.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Justice Attorneys will consult this file to identify potential experts who might be available for employment. Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy. Information, not otherwise required to be released pursuant to 5 U.S.C. 552, may be available to a member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record. A record may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are maintained on magnetic media.

RETRIEVABILITY:

Information is retrieved by a variety of keywords including, but not limited to, the name of the consultant and/or witness, location, field(s) of expertise and fee.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded in accordance with Department security regulations for systems of records.

RETENTION AND DISPOSAL:

Records are retained until such time as the Department or the expert consultant and/or witness determines he or she should no longer be used in government litigation.

SYSTEM MANAGER AND ADDRESS:

Director, Litigation Systems Staff, Office of Information Technology, Justice Management Division, U.S. Department of Justice, Room 129, Chester Arthur Building, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing to the system manager with the envelope and the letter clearly marked "Privacy Access Request." The request shall identify the system and sufficiently describe the record sought.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individuals covered by the system.

SYSTEMS EXEMPT FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/JMD–017

SYSTEM NAME:

Department of Justice Controlled Parking Records.

SYSTEM LOCATION:

U.S. Department of Justice: 10th Street and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Justice employees who have applied for vehicle parking space

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which is assigned and controlled by the Department of Justice, per Department of Justice Order 2540.2D, Dec. 20, 1977.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains copies of Form DOJ-362, Department of Justice Parking Space Application (DOJ Space), and *DOJ OT-90*, Department of Justice Parking Space Application (DOJ Carpool Space), which have been completed and submitted by Department of Justice employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained in accordance with 5 U.S.C. 301 and Federal Property Management Regulation 41 CFR 101–20.1. Operating procedures contained in Department of Justice Order 2540.2D, Dec. 20, 1977.

PURPOSE OF THE SYSTEM:

Justice Management Division personnel use these records to assign, identify and control the use of vehicle parking space for which the Department of Justice is responsible.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a locked file cabinet.

RETRIEVABILITY:

These records are indexed alphabetically by the last name of the applicant, within the organizational element.

SAFEGUARDS:

Information contained in this system is unclassified and is disseminated on a need to know basis by the Office of the Director, *General Services Staff, Office of Personnel and Administration, Justice Management Division.*

RETENTION AND DISPOSAL:

Although these records are currently retained as long as applicants remain as employees of the Department of Justice, inactive records are disposed of in accordance with the General Records Schedule, 41 CFR Part 101–11.

SYSTEM MANAGER(S) AND ADDRESS:

General Services Staff, Office of Personnel and Administration, Justice Management Division; U.S. Department of Justice; 10th Street and Constitution Avenue, NW.; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURES:

Same as System Manager.

CONTESTING RECORD PROCEDURES:

Same as System Manager.

RECORD SOURCE CATEGORIES:

Applications from employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Justice/JMD–020

SYSTEM NAME:

Freedom of Information *Act*/Privacy Act (FOIA/PA) Request letters.

SYSTEM LOCATION:

FOIA/PA referral unit, *Mail, Fleet and Records Management Services, General Services Staff, Justice* Management Division, Department of Justice (DOJ). Washington, D.C. 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons making *FOIA/PA* requests to the Department. (The names of persons making requests directly to the Board of Immigration Appeals (BIA), individual United States Attorneys' Offices, or a Department bureau, i.e. the Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation, the Office of Justice Assistance, Research and Statistics, and the Immigration and Naturalization Service, will not usually be in this system, except in those rare instances where these organizations may forward a request to the Department for appropriate referral.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Paper documents consist of written *FOIA/PA* requests for Department records not addressed to a specific DOJ component and therefore forwarded to the unit for assignment and referral; forms indicating the DOJ components to which requests have been referred; acknowledgement/referral advisory letters to requesters; and other related correspondence, e.g., letters to requesters seeking additional information and the responses thereto. (This system contains no replies which grant or deny access to records, nor any other records relating to the individual other than as stated here.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 5 U.S.C. 552 and 552a; 28 CFR 16.1–.10; and 28 CFR 16.40–.57.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are not disseminated outside the Department *except as indicated below.* They are accessed only by Department personnel with a need to know, i.e., requests are referred by the *FOIA/PA* referral unit to the appropriate Department component(s) to respond, or to the Civil Division and/or United States Attorney to prepare the Department's defense in *FOIA/PA* litigation.

Release of information to the news media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information in this system may be disclosed as is necessary to appropriately respond to Congressional inquiries on behalf of constitutents.

Release of Information to the National Archives and Records Administration

A record may be disclosed as a routine use to the National Archieve and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders in filing cabinets.

RETRIEVABILITY:

A record is retrieved by name of the individual making the request.

SAFEGUARDS:

Records are stored in file cabinets in an office which is occupied during the day and locked at night.

RETENTION AND DISPOSAL:

Records are retained in the FOIA/PA mail referral section for approximately one year. Records are then transferred to the Federal Records Center for storage in accordance with the General Services Administration's General Records Schedule 14, item 18(a) which provides for a disposal date of five years from the date of the most recent request being stored.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Mail, Fleet and Records Management Services, General Services Staff, Justice Management Division, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Inquiries as to whether the system contains a record of a request from an individual should be addressed to the Assistant Director, Mail, Fleet and Records Management Services, General Services Staff (GSS), Justice Management Division, Department of Justice, Room 7317, 10th and Constitution Avenue, NW., Washington, D.C. 20530. To enable the GSS to identify whether the system contains a request from the individual, the individual must provide the name of the person who made the request, the date of the request, and, if appropriate, the date of the Assistant Director's letter to the requester acknowledging receipt and referral of the request

RECORD ACCESS PROCEDURE:

Persons desiring to access a record shall submit a request in writing to the Assistant Director at the address indicated under "Notification Procedure" above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Request from individuals for DOJ records under the Freedom of Information and Privacy Acts.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OPA–001

SYSTEM NAME:

Executive Clemency Files.

SYSTEM LOCATION:

Office of the Pardon Attorney; U.S. Department of Justice; Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or been granted Executive clemency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the individual petitions for Executive clemency (OPA–6 or 13) submitted by the applicants and accompanying oath and character affidavits (OPA 11), investigatory material, evaluative reports, official and other correspondence, both solicited and unsolicited, interagency and intragency correspondence and memoranda relating to individual petitions for clemency. The system includes President Clemency Board files transferred to the Office of the Pardon Attorney upon termination of the Board's existence on September 15, 1975.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with the United States Constitution, Article II, section, 2 Executive Order of the President dated June 16, 1983, Order No. 288–62, 27 FR 11002, November 19, 1962, as codified in 28 CFR 1.1 et seq. and E.O. 11878 dated September 10, 1975.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Executive clemency files are used to (a) to enable the Attorney General to investigate each petition for Executive clemency, to review each petition and information developed by his investigation thereof and to advise the President whether, in his judgement, the request for clemency is of sufficient merit to warrant favorable action by the President; (b) to prepare notices to the public of the name of each grantee of clemency, date of Presidential action, nature of clemency granted, nature of grantee's offense, date and place of sentencing, description of sentence imposed, and names of character affiants and interested members of Congress; and disclose similar information to that specified above with respect to denials of general public interest if the disclosure does not constitute an unwarranted invation of privacy; (c) to prepare bound and indexed volumes containing photocopies of the official warrant of clemency granted each recipient of celemency as a public and official record of Presidential action; (d) upon request of the President and members of his staff, to make available to them individual clemency fiels; (e) upon specific request, to advise the requestor whether a named person has applied for, been granted or denied clemency, the date thereof and the nature of the clemency granted or denied; (f) upon specific request, to make closed files available for historical research purposes when the public interest and in conformity with Department of Justice policy; and (g) upon request or otherwise, to make any information which indictes a violation or apparent violation of law, whether civil, criminal or regulatory in nature, availabe to the appropriate agency, whether Fedreal state, local or foreign.

Release of information in adjudicative proceedings: Records in the system, or any information derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Office of the Pardon Attorney is authorized to appear when (1) one of the following is a party to or has an interest in the litigation: i. The Office of the Pardon Attorney; ii. any employee of the Office of the Pardon Attorney in his or her official capacity; iii. any employee of the Office of the Pardon Attorney in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or, iv. the United States, where the Office of the Pardon Attorney determines that it is likely to be affected by the litigation; and (2) the records, or information derived therefrom, are determined by the Office of the Pardon Attorney to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon

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the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 20904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in the Office of the Pardon Attorney and in Archives.

RETRIEVABILITY:

Information is retrieved by reference to the file number assigned to the name of each applicant for clemency.

SAFEGUARDS:

Information contained in the system is safeguarded and protected in accordance with Department of Justice Rules Governing Petitions for Executive Clemency, specifically, 28 CFR 1.5. Executive clemency files are maintained in the Office of the Pardon Attorney and are not commingled with Department of Justice records.

RETENTION AND DISPOSAL:

Records are stored in the Office of the Pardon Attorney and closed cases are transferred to the Federal Archives Records Center when five years old. Except for the "letter of advice" furnished to the President in connection with clemency *applications, Presidential responses, warrants or other documents signifying the President's action in a clemency case* and cases designated by the Pardon Attorney as having significant public interest, records are destroyed after 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Pardon Attorney; Office of the Pardon Attorney; Department of Justice; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Pardon Attorney; Department of Justice; Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

While the Attorney General has exempted Executive Clemency files from the access provisions of the Privacy Act, requests for discretionary releases of records contained in the system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document and the name of the clemency applicant in whose file it is contained. The requestor will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted Executive Clemency files from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records contained in this system should be directed to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individual applicants for clemency, Federal Bureau of Investigation or other official investigatory reports, Bureau of Prisons records, armed forces reports, probation or parole reports and reports from *individuals* or non-Federal organizations, both solicited and unsolicited.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

Justice/UST-001

SYSTEM NAME:

Bankruptcy Case Files and Associated Records.

SYSTEM LOCATION:

Ten offices of the United States Trustees, the three offices of Assistant United States Trustees. In addition, the Executive Office for United States Trustees maintains duplicate copies of certain pleadings and materials relating to specific cases or entities. (See appendix identified as JUSTICE/UST-999.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in bankruptcy proceedings (under Chapters 7, 11 and 13 of 11 U.S.C.) subsequent to September 30, 1979, including but not limited to debtors, creditors, bankruptcy trustees, agents representing debtors, creditors, and trustees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Petitions/orders for relief, (b) schedules of assets and liabilities of bankrupts, (c) lists of creditors, (d) statements of debtors' financial affairs, (e) docket cards (UST–001, 002, 003, and any alterations thereof), (f) alphabetical cross-reference index cards, (g) general correspondence regarding cases, (h) miscellaneous investigative records, (i) copies of certain petitions, pleadings or other papers filed with the court, including UST recommendations to court for appointment of trustee or examiner in Chapter 11, recommendations for dismissal or conversion, recommendations as to dischargeability, (j) appraisal reports, (k) names of approved depositories and amounts of funds deposited therein, (l) names of sureties and amounts of trustees' bonds, (m) tape or other recordings of creditors' meetings called pursuant to Section 341 of Title 11, U.S.C., for the purpose of examination of debtors by creditors, trustee and others, (n) plans filed under Chapters 11 or 13, (o) lists of persons serving as counsel, trustee, or other functionaries in bankruptcy cases, including compensation earned or sought by each, (p) lists of attorneys representing creditors in bankruptcy cases.

AUTHORITY FOR MAINTENENACE OF THE SYSTEM

These systems are established and maintained pursuant to 28 U.S.C. 586 and 11 U.S.C., especially Chapter 15 thereof.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

The records are used by personnel of the Executive Office and the United States Trustee field offices to determine the existence of a case, to ascertain the status of actions with respect to a case, and to ensure that timely action is taken as appropriate, and to determine the involvement by agents or other representatives of parties in such cases.

As provided in 11 U.S.C. 107, a paper filed in a case and the dockets of the bankruptcy court are public records and open to examination except when the court acts to protect an entity with respect to a trade secret or confidential research, development, or commercial information; or to protect a person with respect to scandalous or defomatory matter contained in a paper filed in a case under title 11. If the court enters such a protective order, that portion of the record is only available upon the consent of the entity, so protected.

In addition, except when the court has moved to protect an entity, the records will be disseminated as a routine use of such records as follows: (1) A record, or any facts derived therefrom, may be disseminated in a proceeding before a court, an adjudicative body or any proceeding relevant to the administration of a case or any proceeding relevant to the administration of a case filed under title 11 of the United States Code in which the United States Trustees are authorized to appear, when (i) the United States Trustees, or (ii) any employee of the United States Trustees in his or her official capacity, or (iii) any employee of the United States Trustees in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (iv) the United States, where the United States Trustees determine that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the United States Trustees to be arguably relevant to the litigation; (2) a record, or any facts derived therefrom, may be disseminated in a proceeding before a court, an adjudicative body or any proceeding relevant to the administration of a case filed under title 11 of the United States Code in which the United States Trustee is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the United States Trustees to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 et seq., may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Administration: A record from the system of records may be disclosed to the National Archives and Records Administration (NARA) for records management inspections conducted under the authority of 44 U.S.C. Secs. 2904 and 2906.

Release of information to law enforcement or regulatory agencies: Information obtained by the U.S. Trustees will be transmitted to appropriate state, local, Federal or other law enforcement or regulatory agencies whenever a U.S. Trustee or the Director, Executive Office for U.S. Trustees or his designee believes that such transmittal in public interest except to the extent that such transmittal would conflict with any immunity granted by a court of competent jurisdiction in accordance with the provisions of Title 11, U.S.C.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All information, except that specified below in this paragraph is recorded on basic paper/cardboard material and maintained within metal file boxes, file cabinets, electric file/card retrievers or safes. Certain information from the documents, forms, lists and reports described under "categories of records in the system" will be entered into an automated information system and, stored on magnetic disks for reproduction in report form at various times. This includes the case number, debtor's name, case status, type of case, assets of estate, dates of reports filed, trustee bonds, debtor's attorney's name and fees, calendar of meetings and hearings, creditor's committee status, plan and schedule due dates, and trustee/examiner names and dates appointed.

RETRIEVABILITY:

Banks, is maintained alphabetically. (Case files maintained in the Executive Office are assigned sequential file numbers and are cross referenced alphabetically by name of the debtor.) Automated information is retrieved by case number or report number.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures governing the handling of office records and computerized information. During duty hours access to this system is monitored and controlled by U.S. Trustee office personnel. During nonduty hours offices are locked.

RETENTION AND DISPOSAL:

Maintenance and disposition schedules are being developed within the Executive Office for U.S. Trustees. There is presently no authority to destroy any information within this system except those documents which are duplicates of records for which the bankruptcy courts maintain the official record copies.

SYSTEM MANAGER(S) AND ADDRESS:

System manager for the system in each office is the U.S. Trustee and in the Executive Office, the Chief, Management and Budget Section. (See appendix of addresses indentified as JUSTICE/UST–999.)

NOTIFICATION PROCEDURE:

Address inquires to the System Manager for the judicial district in which the case is pending, or was administered. (See appendix of addresses identified as JUSTICE/UST–999.)

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall ordinarily be made in person at the U.S. Trustee office in which the case is filed.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager (see appendix of addresses identified as JUSTICE/UST–999), stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in this record are generally limited to debtors, creditors, trustees, examiners, attorneys, and other agents participating in the administration of a case, judges of the bankruptcy courts and employees of the U.S. Trustee offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/FBI–002

SYSTEM NAME:

The FBI Central Records System.

SYSTEM LOCATION:

a. Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 10th and Pennsylvania Avenue, NW.,

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Washington, DC 20535; b. 59 field divisions (see Appendix); c. *13* Legal Attaches (see Appendix).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Individuals who relate in any manner to official FBI investigations including, but not limited to suspects, victims, witnesses, and close relatives and associates who are relevant to an investigation.

b. Applicants for and current and former personnel of the FBI and persons related thereto who are considered relevant to an applicant investigation, personnel inquiry, or persons related to personnel matters.

c. Applicants for and appointees to sensitive positions in the United States Government and persons related thereto who are considered relevant to the investigation.

d. Individuals who are the subject of unsolicited information, who offer unsolicited information, request assistance, and make inquiries concerning record material, including general correspondence, contacts with other agencies, businesses, institutions, clubs, the public and the news media.

e. Individuals, associated with administrative operations or services including pertinent functions, contractors and pertinent persons related thereto.

(All manner of information concerning individuals may be acquired in connection with and relating to the varied investigative responsibilities of the FBI which are further described in "Categories of Records in the System." Depending on the nature and scope of the investigation this information may include, among other things, personal habits and conduct, financial information, travel and organizational affiliation of individuals. The information collected is made a matter of record and placed in FBI files.)

CATEGORIES OF RECORDS IN THE SYSTEM:

The FBI Central Records Systems—The FBI utilizes a central records system of maintaining its investigative, personnel, applicant, administrative, and general files. This system consists of one numerical sequence of subject matter files, an alphabetical index to the files, and a supporting abstract system to facilitate processing and accountability of all important mail placed in files. This abstract system is both a textual and an automated capability for locating mail. Files kept in FBI field offices are also structured in the same manner, except they do not utilize an abstract system.

The FBI has 255 classifications used in its basic filing system which pertain primarily to Federal violations over which the FBI has investigative jurisdiction. However, included in the 255 classifications are personnel, applicant, and administrative matters to facilitate the overall filing scheme. These classifications are as follows (the word "obsolete" following the name of the classification indicates the FBI is no longer initiating investigative cases in these matters, although the material is retained for reference purposes):

1. Training Schools; National Academy Matters; FBI National Academy Applicants. Covers general information concerning the FBI National Academy, including background investigations of individual candidates.

2. Neutrality Matters. Title 18, United States Code, Sections 956 and 958–962; Title 22, United States Code, Sections 1934 and 401.

3. Overthrow or Destruction of the Government, Title 18, United States Code, Section 2385.

4. National Firearms Act; Federal Firearms Act; State Firearms Control Assistance Act; Unlawful Possession or Receipt of Firearms. Title 26, United States Code, Sections 5801–5812; Title 18, United States Code, Sections 921–928; Title 18, United States Code, Sections 1201–1203.

5. Income Tax. Covers violations of Federal income tax laws reported to the FBI. Complaints are forwarded to the Commissioner of the Internal Revenue Service.

6. Interstate Transportation of Strikebreakers, Title 18, United States Code, Section 1231.

7. Kidnaping. Title 18, United States Code, Sections 1201 and 1202.

8. Migratory Bird Act. Title 18, United States Code, Section 43; Title 16, United States Code, Section 703 through 718.

9. Extortion, Title 18, United States Code, Sections 876, 877, 875, and 873.

10. Red Cross Act. Title 18, United States Code, Sections 706 and 917.

11. Tax (Other than Income). This classification covers complaints concerning violations of Internal Revnue law as they apply to other than alcohol, social security and income and profits taxes, which are forwarded to the Internal Revenue Services.

12. Narcotics. This classifications covers complaints received by the FBI concerning alleged violations of Federal drug laws. Complaints are forwarded to the Administration (DEA), or the nearest district office of DEA.

13. Miscellaneous. Section 125, National Defense Act, Prostitution; Selling Whiskey Within Five Miles Of An Army Camp. 1920 only. Subjects were alleged violators of abuse of U.S. flag, fraudulent enlistment, seling liquor and operating houses of prostitution within restricted bounds of military reservations. Violations of Section 13 of the Selective Service Act (Conscription Act) were enforced by the Department of Justice as a war emergency measure with the Bureau exercising jusrisdiction in the detection and prosection of cases within the purview of that Section.

14. Sedition. Title 18, United States Code, Sections 2387, 2388, and 2391.

15. Theft from Interstate shipment Title 18, United States Code, Section 659; Title 18 United States Code, Section 660; Title 18, United States Code, Section 2117.

16. Violation of Federal injunction (obsolete). Consolidated into Classification 69, "Contempt of Court".

17. Fraud Against the Government—Veterans Administration, Veterans Administration Matters. Title 18, United States Code, Section 287, 289, 290, 371, or 1001; and Title 38, United States Code, Sections 787(a), 787(b), 3405, 3501, and 3502.

18. May Act Title 18, United States Code, Section 1384.

19. Censorship Matter (obsolete). Pub. L. 354, 77th Congress.

20. Federal Grain Standards Act (obsolete) 1920 only. Subjects were alleged violators of contracts for sale, shipment of interstate commerce, Section 5, U.S. Grain Standards Act.

21. Food and Drugs. This classification cover complaints received concerning alleged violations of the Food, Drug and Cosmetic Act; Tea Act; Import Milk Act Caustic Poison Act; and Filled Milk Act. These complaints are referred to the Commissioner of the Food and Drug Administration or the field component of that Agency.

22. National Motor Vehicle Traffic Act, 1922–27 (obsolete). Subjects possible violators of the National Motor Vehicle Theft Act; Automobiles seized by Prohibition Agents.

23. Prohibition. this classification covers complaints received concerning bootlegging activities and other violations of the alcohol tax laws. Such complaints are referred to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, or field representatives of the Agency.

24. Profiteering 1920.42 (obsolete) Subjects are possible violators of the Lever Act—Profiteering in food and clothing or accused company was subject of file. Bureau conducted investigations to ascertain profits.

25. Selective Service Act; Selective Training and Service Act Title Selective Training and Service Act Title 50, United States Code, Section 462; Title 50, United States Code, Section 459.

26. Interstate Transportation of Stolen Motor Vehicle; Interstate Transportation of Stolen Aircaft Title 18, United States Code, Sections 2311 (in part), 2312, and 2313.

27. Patent Matter. Title 35, United States Code, Sections 104 and 105.

28. Copyright Matter, Title 17, United States Code, Sections 104 and 105.

29. Bank Fraud and Embezzlement, Title 18, United States Code, Sections 212, 213, 215, 334, 655–657, 1004–1006, 1008, 1009, 1014, and 1306; Title 12, United States Code, Section 1725(g).

30. Interstate Quarantine Law, 1922–25 (obsolete). Subjects alleged violators of Act of February 15, 1893, as amended, regarding interstate travel of persons afflicted with infectious diseases. Cases also involved unlawful transportation of animals. Act of Feburary 2, 1903. Referral were made to Public Health Service and the Depatment of Agriculture.

31. White Slave Traffic Act. Title 18, United States Code, Sections 2421–2424.

32. Identification (Fingerprint Matters). This classification covers general information concerning Identification (fingerprint) matters.

33. Uniform Crime Reporting. This classification covers general information concerning the Uniform Crime Reports, a periodic compilation of statistics of criminal violations throughout the United States.

34. Volation of Lacy Act. 1922–43. (obsolete) Unlawful trasportation and shipment of black bass and fur seal skins.

35. Civil Service. This classification covers complaints received by the FBI concerning Civil Service matters which are referred to the Office of Personnel Management in Washington or regional offices of that Agency.

36. Mail Fraud. Title 18, United States Code, Section 1341.

37. False Claims Against the Government. 1921–22. (obsolete) Subjects submitted claims for allotment, vocational training, compensation as veterans under the Sweet Bill. Letters were generally referred elsewhere (Veterans Bureau). Violators apprehended for violation of Article No. 1, War Risk Insurance Act.

38. Application for Pardon to Restore Civil Rights. 1921–35. (obsolete) Subjects allegedly obtained their naturalization papers by fraudulent means. Cases later referred to Immigration and Naturalization Service.

39. Falsely Claiming Citizenship. (obsolete) Title 18, United States Code, Sections 911 and 1015(a)(b).

40. Passport and Visa Matter. Title 18, United States Code, Sections 1451–1546.

41. Explosives (obsolete). Title 50, United States Code, Sections 121 through 144.

42. Deserter; Deserter, Harboring. Title 10, United States Code, Sections 808 and 885.

43. Illegal Wearing of Uniforms; False Advertising or Misuse of Names, Words, Emblems or Insignia; Illegal Manufacture, Use, Possession, or Sale of Emblems and Insignia; Illegal Manufacture Possession, or Wearing of Civil Defense Insignia; Miscellaneous, Forging or Using Forged Certificate of Discharge from Military or Naval Service; Miscellaneous, Falsely Making or Forging Naval, Military, or Official Pass; Miscellaneous, Forging or Counterfeiting Seal of Department or Agency of the United States; Misuse of the Great Seal of the United States or of the Seals of the President or the Vice President of the United States; Unauthorized Use of "Johnny Horizon" Symbol; Unauthorized Use of Smokey Bear Symbol. Title 18, United States Code, Sections 702, 703, and 704; Title 18, United States Code, Sections 701, 705, 707, and 710; Title 36, United States Code, Section 182; Title 50, Appendix, United States Code, Section 2284; Title 46, United States Code, Section 249; Title 18, United States Code, Sections 498, 499, 506, 709, 711, 711a, 712, 713, and 714; Title 12, United States Code, Sections 1457 and 1723a; Title 22, United States Code, Section 2518.

44. Civil Rights; Civil Rights, Election Laws, Voting Rights Act, 1965, Title 18, United States Code, Sections 241, 242, and 245; Title 42, United States Code, Section 1973; Title 18, United States Code, Section 243; Title 18, United States Code, Section 244, Civil Rights Act—Federally Protected Activities; Civil Rights Act—Overseas Citizens Voting Rights Act of 1975.

45. Crime on the High Seas (Includes stowaways on boats and aircraft). Title 18, United States Code, Sections 7, 13, 1243, and 2199.

46. Fraud Against the Government; (Includes Department of Health, Education and Welfare; Department of Labor (CETA), and Miscellaneous Government Agencies) Anti-Kickback Statute; Dependent Assistance Act of 1950; False Claims, Civil; Federal-Aid Road Act; Lead and Zinc Act; Public Works and Economic Development Act of 1965; Renegotiation Act, Criminal; Renegotiation Act, Civil; Trade Expansion Act of 1962; Unemployment Compensation Statutes; Economic Opportunity Act. Title 50, United States Code, Section 1211 et seq.; Title 31, United States Code, Section 231; Title 41, United States Code, Section 119; Title 40, United States Code, Section 489.

47. Impersonation. Title 18, United States Code, Sections 912, 913, 915, and 916.

48. Postal. Violation (Except Mail Fraud). This classification covers inquiries concerning the Postal Service and complaints pertaining to the theft of mail. Such complaints are either forwarded to the Postmaster General or the nearest Postal Inspector.

49. National Bankruptcy Act. Title 18, United States Code, Sections 151–155.

50. Involuntary Servitude and Slavery. U.S. Constitution, 13th Amendment; Title 18, United States Code, Sections 1581–1588, 241, and 242.

51. Jury Panel Investigations. This classification covers jury panel investigations which are requested by the appropriate Assistant Attorney General as authorized by 28 U.S.C. 533 and AG memorandum #781, dated 11/9/72. These investigations can be conducted only upon such a request and consist of an indices and arrest check, and only in limited important trials where defendant could have influence over a juror.

52. Theft, Robbery, Embezzlement, Illegal Possession or Destruction of Government Property. Title 18, United States Code, Sections 641, 1024, 1660, 2112, and 2114. Interference With Government Communications, Title 18, U.S.C., Section 1632.

53. Excess Profits On Wool. 1918 (obsolete). Subjects possible violator of Government Control of Wool Clip of 1918.

54. Customs Laws and Smuggling. This classification covers complaints received concerning smuggling and other matters involving importation and entry of merchandise into and the exportation of merchandise from the United States. Complaints are referred to the nearest district office of the U.S. Customs Service or the Commissioner of Customs, Washington, DC.

55. Counterfeiting. This classification covers complaints received concerning alleged violations of counterfeiting of U.S. coins, notes, and other obligations and securities of the Government. These complaints are referred to either the Director, U.S. Secret Service, or the nearest office of that Agency.

56. Election Laws. Title 18, United States Code, Sections 241, 242, 245, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, and 607; Title 42, United States Code, Section 1973; Title 26, United States Code, Sections 9012 and 9042; Title 2, United States

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Code, Sections 431, 432, 433, 434, 435, 436, 437, 438, and 441.

57. War Labor Dispute Act (obsolete). Pub. L. 89—77th Congress.

58. Bribery; Conflict of Interest. Title 18, United States Code, Sections 201–203, 205–211; Pub. L. 89–4 and 89–136.

59. World War Adjusted Compensation Act 1924–44. (obsolete) Bureau of Investigation was charged with the duty of investigating alleged violations of all sections of the World War Adjusted Compensation Act (Pub. L. 472, 69th Congress (H.R. 10277)) with the exception of Section 704.

60. Anti-Trust. Title 15, United States Code, Sections 1–7, 12–27, and 13.

61. Treason or *Misprision* of Treason. Title 18, United States Code, Sections 2381, 2382, 2389, 2390, 756, and 757.

62. Administrative Inquiries. Misconduct Investigations of Officers and Employees of the Department of Justice and Federal Judiciary; Census Matters (Title 13, United States Code, Sections 211–214, 221–224, 304, and 305) Domestic Police Cooperation; Eight-Hour-Day Law (Title 40, United States Code, Sections 321, 322, 325a, 326); Fair Credit Reporting Act (Title 15, United States Code, Sections 1681q and 1681r); Federal Cigarette Labeling and Advertising Act (Title 15, United States Code, Section 1333); Federal Judiciary Investigations; Kickback Racket Act (Title 18, United States Code, Section 874); Lands Division Matter, other Violations and/or Matters; Civil Suits—Miscellaneous; Soldiers' and Sailors' Civil Relief Act of 1940 (Title 50, Appendix, United States Code, Sections 510–590); Tariff Act of 1930 (Title 19, United States Code, Section 1304); Unreported Interstate Shipment of Cigarettes (Title 15, United States Code, Sections 375 and 376); Fair Labor Standards Act of 1938 (Wages and Hours Law) (Title 29, United States Code, Sections 201–219); Conspiracy (Title 18, United States Code, Section 371 (formerly Section 88, Title 18, United States Code); effective September 1, 1948).

63. Miscellaneous—Nonsubversive. This classification concerns correspondence from the public which does not relate to matters within FBI jurisdiction.

64. Foreign Miscellaneous. This classification is a control file utilized as a repository for intelligence information of value identified by country. More specific categories are placed in classification 108–113.

65. Espionage. Attorney General Guidelines on Foreign Counterintelligence; Internal Security Act of 1950; Executive Order 11905.

66. Administrative Matters. This classification covers such items as supplies, automobiles, salary matters and vouchers.

67. Personnel Matters. This classification concerns background investigations of applicants for employment with the FBI.

68. Alaskan matters (obsolete). This classification concerns FBI investigations in the Territory of Alaska prior to its becoming a State.

69. Contempt of Court. Title 18, United States Code, Sections 401, 402, 3285, 3691, 3692; Title 10, United States Code, Section 847; and Rule 42, Federal Rules of Criminal Procedure.

70. Crime on Government Reservation. Title 18, United States Code, Sections 7 and 13.

71. Bills of Lading Act, Title 49, United States Code, Section 121.

72. Obstruction of Criminal Investigations; Obstruction of Justice, Obstruction of Court Orders. Title 18, United States Code, Sections 1503 through 1510.

73. Application for Pardon After Completion of Sentence and Application for Executive Clemency. This classification concerns the FBI's background investigation in connection with pardon applications and requests for executive clemency.

74. Perjury. Title 18, United States Code, Sections 1621, 1622, and 1623.

75. Bondsmen and Sureties. Title 18, United States Code, Section 1506.

76. Escaped Federal Prisoner, Escape and Rescue; Probation Violator, Parole Violator; Parole Violator; Mandatory Release Violator. Title 18, United States Code, Sections 751–757, 1072; Title 18, United States Code, Sections 3651–3656; and Title 18, United States Code, Sections 4202–4207, 5037, and 4161–4166.

77. Applicants (Special Inquiry, Departmental and Other Government Agencies, except those having special classifications). This classification covers the background investigations conducted by the FBI in connection with the aforementioned positions.

78. Illegal Use of Government Transportation Requests. Title 18, United States Code, Section 287, 495, 508, 641, 1001 and 1002.

79. Missing Persons. This classification covers the FBI's Identification Division's assistance in the locating of missing persons.

80. Laboratory Research Matters. At FBI Headquarters this classification is used for Laboratory research matters. In field office files this classification covers the FBI's public affairs matters and involves contact by the FBI with the general public, Federal and State agencies, the Armed Forces, corporations, the news media and other outside organizations.

81. Gold Hoarding. 1933–45. (obsolete) Gold Hoarding investigations conducted in accordance with an Act of March 9, 1933 and Executive Order issued August 28, 1933. Bureau instructed by Department to conduct no further investigations in 1935 under the Gold Reserve Act of 1934. Thereafter, all correspondence referred to Secret Service.

82. War Risk Insurance (National Life Insurance (obsolete)). This classification covers investigations conducted by the FBI in connection with civil suits filed under this statute.

83. Court of Claims. This classification covers requests for investigation of cases pending in the Court of Claims from the Assistant Attorney General in charge of the Civil Division of the Department of Justice.

84. Reconstruction Finance Corporation Act (obsolete). Title 15, United States Code, Chapter 14.

85. Home Owner Loan Corporation (obsolete). This classification concerned complaints received by the FBI about alleged violations of the Home Owners Loan Act, which were referred to the Home Owners Loan Corporation. Title 12, United States Code, Section 1464.

86. Fraud Against the Government—Small Business Administration. Title 15, United States Code, Section 645; Title 18, United States Code, Sections 212, 213, 215, 216, 217, 657, 658, 1006, 1011, 1013, 1014, 1907, 1906 and 1909.

87. Interstate Transportation of Stolen Property (Heavy Equipment—Commercialized Theft). Title 18, United States Code, Sections 2311, 2314, 2315 and 2318.

88. Unlawful Flight to Avoid Prosecution, Custody, or Confinement; Unlawful Flight to Avoid Giving Testimony. Title 18, United States Code, Sections 1073 and 1074.

89. Assaulting or Killing a Federal Officer, Congressional Assassination Statute. Title 18, United States Code, Sections 1111, 1114, 2232.

90. Irregularities in Federal Penal Institutions. Title 18, United States Code, Sections 1791 and 1792.

91. Bank Burglary; Bank Larceny; Bank Robbery. Title 18, United States Code, Section 2113.

92. Racketeering Enterprise Investigations. Title 18, United States Code, Section 3237.

93. Ascertaining Financial Ability. This classification concerns requests by the Department of Justice for the FBI to ascertain a person's ability to pay a claim, fine or judgment obtained against him by the United States Government.

94. Research matters. This classification concerns all general correspondence of the FBI with private individuals which does not involve any substantive violation of Federal law.

95. Laboratory Cases (Examination of Evidence in Other Than Bureau's Cases). The classification concerns non-FBI cases where a duly constituted State, county or a municipal law enforcement agency in a criminal matter has requested an examination of evidence by the FBI Laboratory.

96. Alien Applicant (obsolete). Title 10, United States Code, Section 310.

97. Foreign Agents Registration Act. Title 18, United States Code, Section 951; Title 22, United States Code, Sections 611–621; Title 50, United States Code, Sections 851–857.

98. Sabotage. Title 18, United States Code, Sections 2151–2156; Title 50, United States Code, Section 797.

99. Plant Survey (obsolete). This classification covers a program where in the FBI inspected industrial plants for the purpose of making suggestions to the operations of those plants to prevent espionage and sabotage.

100. Domestic Security. This classification covers investigations by the FBI in the domestic security field. e.g., Smith Act violations.

101. Hatch Act (obsolete). Pub. L. 252. 76th Congress.

102. Voorhis Act, Title 18, United States Code, Section 1386.

103. Interstate Transportation of Stolen Livestock. Title 18, United States Code, Sections 667, 2311, 2316 and 2317.

104. Servicemen's Dependents Allowance Act of 1942 (obsolete). Pub. L. 625, 77th Congress, Sections 116–119.

105. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

106. Alien Enemy Control; Escaped Prisoners of War and Internees. 1944–55 *(obsolete)*. Suspects were generally suspected escaped prisoners of war, members of foreign organizations, failed to register under the Alien Registration Act. Cases ordered closed by Attorney General after alien enemies returned to their respective countries upon termination of hostilities.

107. Denaturalization Proceedings (obsolete). This classification covers investigations concerning allegations that an individual fraudulently swore allegiance to the United States or in some other manner illegally obtained citizenship to the U.S., Title 8, United States Code, Section 738.

108. Foreign Travel Control (obsolete). This classification concerns security-type investigations wherein the subject is involved in foreign travel.

109. Foreign Political Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign political matters broken down by country.

110. Foreign Economic Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign economic matters broken down by country.

111. Foreign Social Conditions. This classification is a control file utilized as a repository for intelligence information concerning foreign social conditions broken down by country.

112. Foreign Funds. This classification is a control file utilized as a repository for intelligence information concerning foreign funds broken down by country.

113. Foreign Military and Naval Matters. This classification is a control file utilized as a repository for intelligence information concerning foreign military and naval matters broken down by country.

114. Alien Property Custodian Matter (obsolete). Title 50, United States Code, Sections 1 through 38. This classification covers investigations concerning ownership and control of property subject to claims and litigation under this statute.

115. Bond Default; Bail Jumper. Title 18, United States Code, Sections 3146–3152.

116. Department of Energy Applicant; Department of Energy, Employee. This classification concerns background investigations conducted in connection with employment with the Department of Energy.

117. Department of Energy, Criminal. Title 42, United States Code, Sections 2011–2281; Pub. L. 93–438.

118. Applicant, Intelligence Agency (obsolete). This classification covers applicant background investigations conducted of persons under consideration for employment by the Centeral Intelligence Group.

119. Federal Regulations of Lobbying Act, Title 2, United States Code, Sections 261–270.

120. Federal Tort Claims Act. Title 28, United States Code, Sections 2671 to 2680. Investigations are conducted pursuant to specific request from the Department of Justice in connection with cases in which the Department of Justice represents agencies sued under the Act.

121. Loyalty of Government Employees (obsolete). Executive Oder 9835.

122. Labor Management Relations Act, 1947. Title 29, United States Code, Sections 161, 162, 176–178 and 186.

123. Special Inquiry, State Department, Voice of America (U.S. Information Center) (Pub. L. 402, 80th Congress) (obsolete). This classification covers loyalty and security investigations on personnel employed by or under consideration for employment for Voice of America.

124. European Recovery Program (International Cooperation Administration), formerly Foreign Operations Administration, Economic Cooperation Administration or E.R.P., European Recovery Programs; A.I.D., Agency for International Development (obsolete). This classification covers security and loyalty investigations of personnel employed by or under consideration for employment with the European Recovery Program, Pub. L. 472, 80th Congress.

125. Railway Labor Act; Railway Labor Act—Employer's Liability Act Title 45, United States Code. Sections 151–163 and 181–188.

126. National Security Resources Board, Special Inquiry (obsolete). This classification covers loyalty investigations on employees and applicants of the National Security Resources Board.

127. Sensitive Positions in the United States Government, Pub. L. 266 (obsolete). Pub. L. 266, 81st Congress.

128. International Development Program (Foreign Operations Administration) (obsolete). This classification covers background investigations conducted on individuals who are to be assigned to duties under the International Development Program.

129. Evacuation Claims (obsolete). Pub. L. 886, 80th Congress.

130. Special Inquiry. Armed Forces Security Act (obsolete). This classification covers applicant-type investigations conducted for the Armed Forces security agencies.

131. Admiralty Matter. Title 46, United States Code, Sections 741 to 752 and 781 to 799.

132. Special Inquiry, Office of Defense Mobilization (obsolete). This classification covers applicant-type investigations of individuals associated with the Office of Defense Mobilization.

133. National Science Foundation Act. Applicant (obsolete). Pub. L. 507, 81st Congress.

134. Foreign Counterintelligence Assets. This classification concerns individuals who provide information to the FBI concerning Foreign Counterintelligence matters.

135. PROSAB (Protection of Strategic Air Command Bases of the U.S. Air Force) (obsolete). This classification covered contacts with individuals with the aim to develop information useful to

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protect bases of the Strategic Air Command.

136. American Legion Contact (obsolete). This classification covered liaison contacts with American Legion officers.

137. Informants, Other Than Foreign Counterintelligence Assets. This classification concerns individuals who furnish information to the FBI concerning criminal violations on a countinuing and confidential basis.

138. Loyalty of Employees of the United Nations and Other Public International Organizations. This classification concerns FBI investigations based on referrals from the Civil Service Commission wherein a question or allegation has been received regarding the applicant's loyalty to the U.S. Government as described in Executive Order 10422.

139. Interception of Communications (Formerly, Unauthorized Publication or Use of Communications). Title 47, United States Code, Section 605; Title 47, United States Code, section 501; Title 18, United States Code, Sections 2510–2513.

140. Security of Government Employees; S.G.E.; Fraud Against the Government, Executive Order 10450.

141. False Entries in Records of Interstate Carriers. Title 47, United States Code, Section 220; Title 49, United State Code, Section 20.

142. Illegal Use of Railroad Pass. Title 49, United State Code, Section 1.

143. Interstate Transportation of Gambling Devices. Title 15, United State Code, Sections 1171 throgh 1180.

144. Interstate Transportation of Lottery Tickets. Title 18, United State Code, Section 1301.

145. Interstate Transportation of Obscene Language. Title 18, United State Code, Sections 1462, 1464 and 1465.

146. Interstate Transportation of Prison-Made Goods. Title 18, United State Code, Sections 1761 and 1762.

147. Fraud Against the Government—Department of Housing and Urban Development, Matters. Title 18, United State Code, Sections 1010, 709, 657 and 1006; Title 12, United State Code, Sections 1715 and 1709.

148. Interstate Transportation of Fireworks. Title 18, United State Code, Section 836.

149. Destruction of Aircraft or Motor Vehicles. Title 18, United State Code, Sections 31 through 35.

150. Harboring of Federal Fugitives, Statistics (obsolete).

151. (Referral cases received from the Office of Personnel Management under Pub. L. 298). Agency for International Development; Department of Energy; National Aeronautics and Space Administration; National Science Foundation; Peace Corps; Action; U.S. Arms Control and Disarmament Agency; World Health Organization; International Labor Organization; International Communications Agency. This classification covers referrals from the Civil Service Commission where as allegation has been received regarding an applicant's loyalty to the U.S. Government. These referrals refer to applicants from Peace Corps.; Department of Energy, National Aeronautics and Space Administration, Nuclear Regulatory Commission, United States Arms Control and Disarmament Agency and the International Communications Agency.

152. Switchblade Knife Act. Title 15, United State Code, Sections 1241 through 1244.

153. Automobile Information Disclosure Act. Title 15, United States Code, Section 1231, 1232 and 1233.

154. Interstate Transportation of Unsafe Refrigerators. Title 15, United States Code. Section 1211 through 1214.

155. National Aeronautics and Space Act of 1958. Title 18, United States Code, Section 799.

156. Employee Retirement Income Security Act. Title 29, United States Code, Sections 1021–1029, 1111, 1131, and 1141; Title 18, United States Code. Sections 644, 1027, and 1954.

157. Civil Unrest. This classification concerns FBI responsibility for reporting information on civil disturbances or demonstrations. The FBI's investigative responsibility is based on the Attorney General's Guidelines for Reporting on Civil Disorders and Demonstrations Involving a Federal Interest which became effective April 5, 1976.

158. Labor-Management Reporting and Disclosure Act of 1959 (Security Matter (obsolete). Pub. L. 86–257, Section 504.

159. Labor-Management reporting and Disclosure Act of 1959 (Investigative Matter). Title 29, United States Code. Sections 501, 503, 504, 522, and 530.

160. Federal Train Wreck Statute. Title 18, United States Code, Section 1992.

161. Special Inquiries for White House, Congressional Committee and Other Government Agencies. This classification covers investigations requested by the White House, Congressional committees or other Government agencies.

162. Interstate Gambling Activities. This classification covers information acquired concerning the nature and scope of illegal gambling activities in each field office.

163. Foreign Police Cooperation. This classification covers requests by foreign police for the FBI to render investigative assistance to such agencies.

164. Crime Aboard Aircraft. Title 49, United States Code, Sections 1472 and 1473.

165. Interstate Transmission of Wagering Information. Title 18, United States Code, Section 1064.

166. Interstate Transportation in Aid of Racketeering. Title 18, United States Code, Section 1952.

167. Destruction of Interstate Property. Title 15, United States Code, Sections 1281 and 1282.

168. Interstate Transportation of Wagering Paraphernaila. Title 18, United States Code, Section 1953.

169. Hydraulic Brake Fluid Act (obsolete); 76 Stat. 437, Pub. L. 87–637.

170. Extremist Informants (obsolete). This classification concerns individuals who provided information on a continuing basis on various extremist elements.

171. Motor Vehicle Seat Belt Act (obsolete). Pub. L. 88–201, 80th Congress.

172. Sports Bribery. Title 18, U.S. Code, Section 224.

173. Public Accommodations, Civil Rights Act of 1964 Public Facilities, Civil Rights Act of 1964 Public Education, Civil Rights Act of 1964 Employment, Civil Rights Act of 1964. Title 42, United States Code, Section 2000; Title 18, United States Code, Section 245.

174. Explosives and Incendiary Devices; Bomb Threats (Formerly, Bombing Matters; Bombing Matters, Threats). Title 18, United States Code, Section 844.

175. Assaulting, Kidnapping or Killing the President (or Vice President) of the United States. Title 18, United States Code, Section 1751.

176. Anti-riot Laws. Title 18, United States Code, Section 245.

177. Discrimination in Housing. Title 42, United States Code, Sections 3601–3619 and 3631.

178. Interstate Obscene or Harrassing Telephone Calls. Title 47, United States Code, Section 223.

179. Extortionate Credit Transactions. Title 18, United States Code, Sections 891–896.

180. Desecration of the Flag. Title 18, United States Code, Section 700.

181. Consumer Credit Protection Act. Title 15, United States Code, Section 1611.

182. Illegal Gambling Business; Illegal Gambling Business, Obstruction; Illegal Gambling Business, Forfeiture. Title 18, United States Code, Section 1955; Title 18, United States Code, Section 1511.

183. Racketeer, Influence and Corrupt Organizations, Title 18, United States Code, Sections 1961–1968.

184. Police Killings. This classification concerns investigations conducted by the FBI upon written request from local Chief of Police or duly constituted head of the local agency to actively participate in the investigation of the killing of a police officer. These investigations are based on a Presidential Directive dated June 3, 1971.

185. Protection of Foreign Officials and Officials Guests of the United States. Title 18, United States Code, Sections 112, 970, 1116, 1117 and 1201.

186. Real Estate Settlement Procedures Act of 1974. Title 12, United States Code, Section 2602; Title 12, Unites States Code, Section 2606, and Title 12, United States Code, Section 2607.

187. Privacy Act of 1974, Criminal. Title 5, United States Code, Section 552a.

188. Crime Resistance. This classification covers FBI efforts to develop new or improved approaches, techniques, systems, equipment and devices to improve and strengthen law enforcement as mandated by the Omnibus Crime Control and Safe Streets Act of 1968.

189. Equal Credit Opportunity Act. Title 15, United States Code, Section 1691.

190. Freedom of Information/Privacy Acts. This classification covers the creation of a correspondence file to preserve and maintain accurate records concerning the handling of requests for records submitted pursuant to the Freedom of Information—Privacy Acts.

191. False Identity Matters. (obsolete) This classification covers the FBI's study and examination of criminal elements efforts to create false identities.

192. Hobbs Act—Financial Institutions; Commercial Institutions. Title 18, United States Code, Section 1951.

193. Hobbs Act—Commercial Institutions (obsolete). Title 18, United States Code, Section 1951; and Title 47, United States Code, Section 506.

194. Hobbs Act—Corruption of Public Officials, Title 18, United States Code, Section 1951.

195. Hobbs Act—Labor Related. Title 18, United States Code, Section 1951.

196. Fraud by Wire. Title 18, United States Code, Section 1343.

197. Civil Actions or Claims Against the Government. This classification covers all civil suits involving FBI matters and most administrative claims filed under the Federal Tort Claims Act arising from FBI activities.

198. Crime on Indian Reservations. Title 18, United States Code, Sections 1151, 1152, and 1153.

199. Foreign Counterintelligence—Terrorism. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

200. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

201. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

202. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

203. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

204. Federal Revenue Sharing. This classification covers FBI investigations conducted where the Attorney General has been authorized to bring civil action whenever he has reason to believe that a pattern or practice of discrimination in disbursement of funds under the Federal Revenue Sharing status exists.

205. Foreign Corrupt Practices Act of 1977. Title 15, United States Code, Section 78.

206. Fraud Against the Government—Department of Defense, Department of Agriculture, Department of Commerce, Community Services Organization, Department of Transportation. (See classification 46 (supra) for statutory authority for this and the four following classifications.

207. Fraud Against the Government—Environmental Protection Agency. National Aeronautics and Space Administration, Department of Energy. Department of Transportation.

208. Fraud Against the Government—General Services Administration.

209. Fraud Against the Government—Department of Health, and Human Services (Formerly, Department of Health, Education, and Welfare).

210. Fraud Against the Government—Department of Labor.

211. Ethics in Government Act of 1978, Title VI (Title 28, Sections 591–596).

212. Foreign Counterintelligency—Intelligence Community Support. This is an administrative classification for the FBI's operational and technical support to other Intelligence Community agencies.

213. Fraud Against the Government—Department of Education.

214. Civil Rights of Institutionalized Persons Act (Title 42, United States Code, section 1997).

215. Foreign Counterintelligence Matters. Attorney General Guidelines on Foreign Counterintelligence. Executive Order 11905.

216. Foreign Counterintelligence Matters. (Same authority as 215)

217. Foreign Counterintelligence Matters. (Same authority as 215)

218. Foreign Counterintelligence Matters. (Same authority as 215)

219. Foreign Counterintelligence Matters. (Same authority as 215)

220. Foreign Counterintelligence Matters. (Same authority as 215)

221. Foreign Counterintelligence Matters. (Same authority as 215)

222. Foreign Counterintelligence Matters. (Same authority as 215)

223. Foreign Counterintelligence Matters. (Same authority as 215)

224. Foreign Counterintelligence Matters. (Same authority as 215)

225. Foreign Counterintelligence Matters. (Same authority as 215)

226. Foreign Counterintelligence Matters. (Same authority as 215)

227. Foreign Counterintelligence Matters. (Same authority as 215)

228. Foreign Counterintelligence Matters. (Same authority as 215)

229. Foreign Counterintelligence Matters. (Same authority as 215)

*230. thru 240. FBI Training Matters

241. DEA Applicant Investigations

242. Automation Matters

243. Intelligence Identities Protection Act of 1982

244. Hostage Rescue Team

245. Drug Investigative Task Force

246. thru 248. Foreign Counterintelligence Matters (Same authority as 215)

249. Toxic Waste Matters—Investigations involving toxic or hazardous waste violations.

250. Tampering With Consumer Products (Title 18, U.S. Code, Section 1365)

251. Controlled Substance—Robbery;—Burglary (Title 18, U.S. Code, Section 2118)

252. Violent Crime Apprehension Program (VICAP). Case folders containing records relevant to the VICAP Program, in conjunction with the National Center for the Analysis of Violent Crime Record System at the FBI Academy, Qantico, Virginia.

253. False Identification Crime Control Act of 1982 (Title 18, U.S. Code, Section 1028—Fraud and Related Activity in Connection With Identification Documents, and Section 1738–Mailing Private Identification Documents Without a Disclaimer)

254. Destruction of Energy Facilities (Title 18, U.S. Code, Section 1365)

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relates to the destruction of property of nonnuclear energy facilities.

255. Counterfeiting of Stole and Corporote Securities (Title 18, U.S. Code, Section 511) covers counterfeiting and forgery of all forms of whot is loosely interpreted os securities.

256. Hostage Taking—Terrorism (Title 18, U.S. Code, Section 1203) prohibits taking of hostage(s) to compel third party to do or refroin from doing any act.

Records Maintained in FBI Field Divisions—FBI field divisions maintain for limited periods of time investigative, administrative and correspondence records, including files, index cards and related material, some of which are duplicated copies of reports and similar documents forwarded to FBI Headquarters. Most investigative activities conducted by FBI field divisions are reported to FBI Headquarters at one or more stages of the investigation. There are, however, investigative activities wherein no reporting was made to FBI Headquarters, e.g., pending cases not as yet reported and cases which were closed in the field division for any of a number of reasons without reporting to FBI Headquarters.

Duplicate records and records which extract information reported in the main files are also kept in the various divisions of the FBI to assist them in their day-to-day operation. These records are lists of individuals which contain certain biographic data, including physical description and photograph. They may also contain information concerning activities of the individual as reported to FBIHQ by the various field offices. The establishment of these lists is necessiated by the needs of the Division to have immediate access of Pertinent information duplicative of data found in the central Records without the delay caused by a time-consuming manual search of central indices. The manner of segregating these individuals varies depending on the particular needs of the FBI Divison. The information pertaining to individuals who are a part of the list is derivative of information contained in the Central Records System. These duplicative records fall into the following categories:

(2) Listings of individuals used to assist in the location and apprehension of individuals for whom legal process is outstanding (fugitives):

(2) Listings of individuals used in the identification of particular offenders in cases where the FBI has jurisdiction. These listings include various photograph albums and background data concerning persons who have been formerly charged with a particular crime and who may be suspect in similar criminal activities; and photographs of individuals who are unknown but suspected of involvement in a particular criminal activity, for example, bank surveillance photographs:

(3) Listings of individuals as part of an overall criminal intelligence effort by the FBI. This would include photograph albums, lists of individuals known to be involved in criminal activity, including theft from interstate shipment, interstate transportation of stolen property, and individuals in the upper echelon of organized crime.

(4) Listings of individuals in connection with the FBI's mandate to carry out Presidential directives on January 8, 1943, July 24, 1953. December 15, 1953, and February 18, 1976, which designated the FBI to carry out investigative work in matters relating to espionage, sabotage, and foreign counterintelligence. These listings may include photograph albums and other listings containing biographic data regarding individuals. This would include lists of identified and suspected foreign intelligence agents and informants:

(5) Special notices duplicative of the central indices used to access the Central Records System have been created from time to time in conjunction with the administration and investigation of major cases. This duplication and segregation facilities access to documents prepared in connection with major cases.

In recent years, as the emphasis on the investigation of white collar crime, organized crime, and hostile foreign intelligence operations has increased, the FBI has been confronted with increasingly complicated cases, which require more intricate information processing capabilities. Since these complicated investigations frequently involve massive volumes of evidence and other investigative information, the FBI uses its computers, when neccessary to collate, analyze, and retrieve investigative information in the most accurate and expeditious manner possible. It should be noted that all investigative information, which is placed in computerized form, is actually extracted from the main files and that the duplicative computerized information is only maintained as necessary to support the FBI's investigative activities. Information from these internal computerized subsystems of the "Central Records System" is not accessed by any other agency. All disclosures of computerized information are made in printed form in accordance with the routine uses which are set forth below.

Records also are maintained on a temporary basis relevant to the FBI's domestic police cooperation program, where assistance in obtaining information is provided to state and local police agencies.

Also, personnel type information dealing with such matters as attendance and producton and accuracy requirements is maintained by some divisions.

(The following chart identifies various listings or indexes maintained by the FBI which have been or are being used by various divisions of the FBI in their day-to-day operations. The chart identifies the list by name, description and use, and where maintained, i.e, FBI Headquarters and/or Field Office. The number in parenthesis in the field office column indicates the number of field offices which maintain these. The chart indicates, under "status of index," those indexes which are in current use (designated by the word "active") and those which are no longer being used, although maintained (designated by the word "inactive"). There are 27 separate indices which are classified in accordance with existing regulations and are not included in this chart. The following indices are no longer being used by the FBI and are being maintained at FBIHQ pending receipt of authority to destroy: Black Panther Party Photo Index; Black United Front Index; Security Index; and Wounded Knee Album.

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Administrative Index (ADEX)	Consists of cards with descriptive data on individuals who were subject to investigation in a national emergency because they were believed to constitute a potential or active threat to the internal security of the United States. When ADEX was started in 1971, it was made up of people who were formerly on the Security Index, Reserve Index, and Agitator Index. The index is maintained in two separate locations in FBI Headquarters. ADEX was discontinued in January 1978.	Inactive	Yes	Yes (29).

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
Anonymous Letter File	Consists of photographs of anonymous communications and extortionate credit transactions; kidnapping, extortion and threatening letters.	Active	Yes	No.
Associates of DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of individuals whom DEA has identified as associates of Class 1 Narcotics Violators.	Active	Yes	Yes (59).
Background Investigation Index—Department of Justice.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with Department of Justice, such as U.S. Attorney, Federal judge, or a high level Department position.	Active	Yes	No.
Background Investigation Index—White House, Other Executive Agencies, and Congress.	Consists of cards on persons who have been the subject of a full field investigation in connection with their consideration for employment in sensitive positions with the White House, Executive agencies (other than the Department of Justice) and the Congress.	Active	Yes	No.
Bank Fraud and Embezzlement Index.	Consists of individuals who have been the subject of "Bank Fraud and Embezzlement" investigation. This file is used as an investigative aid.	Active	No	Yes (1).
Bank Robbery Album	Consists of photos of bank robbers, burglars, and larceny subjects. In some field offices it will also contain pictures obtained from local police departments of known armed robbers and thus potential bank robbers. The index is used to develop investigative leads in bank robbery cases and may also be used to show to witnesses of bank robberies. It is usually filed by race, height, and age. This index is also maintained in one resident agency (a suboffice of a field office).	Active	No	Yes (47).
Bank Robbery Nickname Index	Consists of nicknames used by known bank robbers. The index card on each would contain the real name and method of operation and are filed in alphabetical order.	Active	No	Yes (1).
Bank Robbery Note File	Consists of photographs of notes used in bank robberies in which the suspect has been identified. This index is used to help solve robberies in which the subject has not been identified but a note was left. The note is compared with the index to try to match the sentence structure and handwriting for the purpose of identifying possible suspects.	Active	Yes	No.
Bank Robbery Suspect Index	Consists of a control file or index cards with photos, if available, of bank robbers or burglars. In some field offices these people may be part of the bank robbery album. This index is generally maintained and used in the same manner as the bank robbery album.	Active	No	Yes (33).
Car Ring Case Photo Album	Consists of photos of subjects and suspects involved in a large car theft ring investigation. It is used as an investigative aid.	Active	No	Yes (3).
Car Ring Case Photo Album and Index.	Consists of photos of subjects and suspects involved in a large car theft ring investigation. The card index maintained in addition to the photo album contains the names and addresses appearing on fraudulent title histories for stolen vehicles. Most of these names appearing on these titles are fictitious. But the photo album and card indexes are used as an investigative aid.	Active	No	Yes (1).
Car Ring Case Toll Call Index	Consists of cards with information on persons who subscribe to telephone numbers to which toll calls have been placed by the major subjects of a large car theft ring investigation. It is maintained numerically by telephone number. It is used to facilitate the development of probable cause for a court-approved wiretap.	Active	No	Yes (2).
Car Ring Theft Working Index	Contains cards on individuals involved in car ring theft cases on which the FBI laboratory is doing examination work.	Active	Yes	No.
Cartage Album	Consists of photos with descriptive data of individuals who have been convicted of theft from interstate shipment or interstate transportation of stolen property where there is a reason to believe they may repeat the offense. It is used in investigating the above violations.	Active	No	Yes (3).
Channelizing Index	Consists of cards with the names and case file numbers of people who are frequently mentioned in information reports. The index is used to facilitate the distributing or channeling of informant reports to appropriate files.	Active	No	Yes (9).
Check Circular File	Consists of fliers filed numerically in a control file on fugitives who are notorious fraudulent check passers and who are engaged in a continuing operation of passing checks. The fliers which include the subject's name, photo, a summary of the subject's method of operation and other identifying data is used to alert other FBI field offices and business establishments which may be the victims of bad checks.	Active	Yes	Yes (43).
Computerized Telephone Number File (CTNF) Intelligence.	Consists of a computer listing of telephone numbers (and subscribers' names and addresses) utilized by subjects and/or certain individuals which come to the FBI's attention during major investigations. During subsequent investigations, telephone numbers, obtained through subpoenas, are matched with the telephone numbers on file to determine connections or associations.	Active	Yes	No.
Con Man Index	Consists of computerized names of individuals, along with company affiliation, who travel nationally and internationally while participating in large-dollar-value financial swindles.	Active	Yes	No.
Confidence Game (Flim Flam) Album.	Consists of photos with descriptive information on individuals who have been arrested for confidence games and related activities. It is used as an investigative aid.	Active	No	Yes (4).
Copyright Matters Index	Consists of cards of individuals who are film collectors and film titles. It is used as a reference in the investigation of copyright matters.	Active	No	Yes (1).
Criminal Intelligence Index	Consists of cards with name and file number of individuals who have become the subject of an antiracketeering investigation. The index is used as a quick way to ascertain file numbers and the correct spelling of names. This index is also maintained in one resident agency.	Active	No	Yes (2).
Criminal Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
DEA Class 1 Narcotics Violators Listing.	Consists of a computer listing of narcotic violators—persons known to manufacture, supply, or distribute large quantities of illicit drugs—with background data. It is used by the FBI in their role of assisting DEA in disseminating intelligence data concerning illicit drug trafficking. This index is also maintained in two resident agencies.	Active	Yes	Yes (59).
Deserter Index	Contains cards with the names of individuals who are known military deserters. It is used as an investigative aid.	Active	No	Yes (4).
False Identities Index	Contains cards with the names of deceased individuals whose birth certificates have been obtained by other persons for possible false identification uses and in connection with which the FBI laboratory has been requested to perform examinations.	Inactive	Yes	No

Title of index	Description and use	Status of index	Maintained at—	
			Headquarters	Field office
False Identities List	Consists of a listing of names of deceased individuals whose birth certificates have been obtained after the person's death, and thus whose names are possibly being used for false identification purposes. The listing is maintained as part of the FBI's program to find persons using false identities for illegal purposes.	Inactive	No	Yes (31).
False Identity Photo Album	Consists of names and photos of people who have been positively identified as using a false identification. This is used as an investigative aid in the FBI's investigation of false identities.	Inactive	No	Yes (2).
FBI/Inspector General (IG) Case Pointer System (FICPS).	Consists of computerized listing of individual names of organizations which are the subject of active and inactive fraud investigations, along with the name of the agency conducting the investigation. Data is available to IG offices throughout the federal government to prevent duplication of investigative activity.	Active	Yes	No.
FBI Wanted Persons Index	Consists of cards on persons being sought on the basis of Federal warrants covering violations which fall under the jurisdiction of the FBI. It is used as a ready reference to identify those fugitives.	Active	Yes	No.
Foreign Counterintelligence (FCI)	Consists of cards with identity background data on all active and inactive operational and informational assets in the foreign counterintelligence field. It is used as a reference aid of the FCI Asset program.	Active	Yes	No.
Fraud Against the Government Index.	Consists of individuals who have been the subject of a "fraud against the Government" investigation. It is used as investigative aid.	Active	No	Yes (1).
Fugitive Bank Robbers File	Consists of fliers on bank robbery fugitives filed sequentially in a control file. FBI Headquarters distributes to the field offices fliers on bank robbers in a fugitive status for 15 or more days to facilitate their location.	Active	Yes	Yes (43).
General Security Index	Contains cards on all persons that have been the subject of a security classification investigation by the FBI field office. These cards are used for general reference purposes.	Active	No	Yes (1).
Hoodlum License Plate Index	Consists of cards with the license plates numbers and descriptive data on known hoodlums and cars observed in the vicinity of hoodlum homes. It is used for quick identification of such person in the course of investigation. The one index which is not fully retrievable in maintained by a resident agency.	Active	No	Yes (3)
Identification Order Fugitive Flier File.	Consists of fliers numerically in a control file. When immediate leads have been exhausted in fugitive investigations and a crime of considerable public interest has been committed, the fliers are given wide circulation among law enforcement agencies throughout the United States and are posted in post offices. The fliers contain the fugitive's photograph, fingerprints, and description.	Active	Yes	Yes (49).
Informant Index	Consists of cards with the name, symbol numbers, and brief background information on the following categories of active and inactive informants, top echelon criminal informants, security informants, criminal information, operational and informational assets, extremist informants (discontinued), plant informant—informants on and about certain military bases (discontinued), and potential criminal informants.	Active	No	Yes (59).
Informants in Other Field Offices, Index of.	Consists of cards with names and/or symbol numbers of informants in other FBI field offices that are in a position to furnish information that may be of value to other field offices. Basic background information would also be included on the index card.	Active	No	Yes (15).
Interstate Transportation of Stolen Aircraft Photo Album.	Consists of photos and descriptive data on individuals who are suspects known to have been involved in interstate transportation of stolen aircraft. It is used as an investigate aid.	Active	No	Yes (1).
IRS Wanted List	Consists of one-page fliers from IRS on individuals with background information who are wanted by IRS for tax purposes. It is used in the identification of persons wanted by IRS.	Active	No	Yes (11)
Kidnapping Book	Consists of data, filed chronologically, on kidnappings that have occurred since the early fifties. The victims' names and the suspects, if known, would be listed with a brief description of the circumstances surrounding the kidnapping. The file is used as a reference aid in matching up prior methods of operation in unsolved kidnapping cases.	Active	Yes	No.
Known Check Passers Album	Consists of photos with descriptive data of persons known to pass stolen, forged, or counterfeit checks. It is used as an investigative aid.	Active	No	Yes (4).
Known Gambler Index	Consists of cards with names, descriptive data, and sometimes photos of individuals who are known bookmakers and gamblers. The index is used in organized crime and gambling investigations. Subsequent to GAO's review, and at the recommendation of the inspection team at one of the two field offices where the index was not fully retrievable, the index was destroyed and thus is not included in the total.	Active	No	Yes (5).
La Cosa Nostra (LCN) Membership Index.	Contains cards on individuals having been identified as members of the LCN index. The cards contain personal data and pictures. The index is used solely by FBI agents for assistance in investigating oranized crime matters.	Active	Yes	Yes (55)
Leased Line Letter Request Index	Contains cards on individuals and organizations who are or have been the subject of a national security electronic surveillance where a leased line letter was necessary. It is used as an administrative and statistical aid.	Active	Yes	No.
Mail Cover Index	Consists of cards containing a record of all mail covers conducted on individuals and groups since about January 1973. It is used for reference in preparing mail cover requests.	Active	Yes	No.
Military Deserter Index	Consists of cards containing the names of all military deserters where the various military branches have requested FBI assistance in locating. It is used as an administrative aid.	Active	Yes	No.
National Bank Robbery Album	Consists of fliers on bank robbery suspects held sequentially in a control file. When an identifiable bank camera photograph is available and the case has been under investigation for 30 days without identifying the subject. FBIHQ sends a flier to the field offices to help identify the subject.	Active	Yes	Yes (42).
National Fraudulent Check File	Contains photographs of the signatures on stolen and counterfeit checks. It is filed alphabetically but there is not way of knowing if the names are real or fictitious. The index is used to help solve stolen check cases by matching checks obtained in such cases against the index to identify a possible suspect.	Active	Yes	No.

Title of index	Description and use	Status of index	Maintained at—	
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National Security Electronic Surveillance Card File.	Contains cards recording electronic surveillances previously authorized by the Attorney General and previously and currently authorized by the FISC; current and previous assets in the foreign counterintelligence field; and a historical, inactive section which contains cards believed to record nonconsented physical entries in national security cases, previous toll billings, mail covers and leased lines. The inactive section also contains cards reflecting previous Attorney General approvals and denials for warrantless electronic surveillance in the national security cases.	Active	Yes	No.
Night Depository Trap Index	Contains cards with the names of persons who have been involved in the theft of deposits made in bank night depository boxes. Since these thefts have involved various methods, the FBI uses the index to solve such cases by matching up similar methods to identify possible suspects.	Active	Yes	No.
Nonjack Index	Contains cards with information regarding possible suspects and individuals who furnish information relative to the investigation of the 1972 hijacking of a Northwest Orient Airlines flight by an unknown subject with alias of "D. B. Cooper".	Active	No	Yes (1).
Organized Crime Photo Album	Consists of photos and background information on individuals involved in organized crime activities. The index is used as a ready reference in identifying organized crime figures within the field offices' jurisdiction.	Active	No	Yes (13).
Photospread Identification Elimination File.	Consists of photos of individuals who have been subjects and suspects in FBI investigations. It also includes photos received from other law enforcement agencies. These pictures can be used to show witnesses of certain crimes.	Active	No	Yes (14).
Prostitute Photo Album	Consists of photos with background data on prostitutes who have prior local or Federal arrests for prostitution. It is used to identify prostitutes in connection with investigations under the White Slave Traffic Act.	Active	No	Yes (4).
Royal Canadian Mounted Police (RCMP) Wanted Circular File.	Consists of a control file of individuals with background information of persons wanted by the RCMP. It is used to notify the RCMP if an individual is located.	Active	No	Yes (17)
Security Informant Index	Consists of cards containing identity and brief background information on all active and inactive informants furnishing information in the criminal area.	Active	Yes	No.
Security Subjects Control Index	Consists of cards containing the names and case file numbers of individuals who have been subject to security investigations check. It is used as a reference source.	Active	No	Yes (1)
Security Telephone Number Index	Contains cards with telephone subscriber information subpenaed from the telephone company in any security investigation. It is maintained numerically by the last three digits in the telephone number. It is used for general reference purposes in security investigations.	Active	No	Yes (1)
Selective Service Violators Index	Contains cards on individuals being sought on the basis of Federal warrants for violation of the Selective Service Act.	Active	Yes	No.
Sources of Information Index	Consists of cards on individuals and organizations such as banks, motels, local governments that are willing to furnish information to the FBI with sufficient frequency to justify listing for the benefit of all agents. It is maintained to facilitate the use of such sources.	Active	No	Yes (10).
Special Services Index	Contains cards of prominent individuals who are in a position to furnish assistance in connection with FBI investigative responsibility.	Active	No	Yes (28).
Stolen Checks and Fraud by Wire Index.	Consists of cards on individuals involved in check and fraud by wire violations. It is used as an investigative aid.	Active	No	Yes (1).
Stop Notices Index	Consists of cards on names of subjects or property where the field office has placed a stop at another law enforcement agency or private business such as pawn shops in the event information comes to the attention of that agency concerning the subject or property. This is filed numerically by investigative classification. It is used to insure that the agency where the stop is placed is notified when the subject is apprehended or the property is located or recovered.	Active	No	Yes (43).
Surveillance Locator Index	Consists of cards with basic data on individuals and businesses which have come under physical surveillance in the city in which the field office is located. It is used for general reference purposes in antiracketeering investigations.	Active	No	Yes (2).
Telephone Number Index—Gamblers.	Contains information on persons identified usually as a result of a subpena for the names of subscribers to particular telephone numbers or toll records for a particular phone number of area gamblers and bookmakers. The index cards are filed by the last three digits of the telephone number. The index is used in gambling investigations.	Active	No	Yes (2).
Telephone Subscriber and Toll Records Check Index.	Contains cards with information on person identified as the result of a formal request or subpena to the phone company for the identity of subscribers to particular telephone numbers. The index cards are filed by telephone number and would also include identity of the subscriber, billing parties identity, subscribers address, date of request from the telephone company, and file number.	Active	No	Yes (1).
Thieves Couriers and Fences Photo index.	Consists of photos and background information on individuals who are or are suspected of being thieves, couriers, or fences based on their past activity in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Toll Record Request Index	Contains cards on individuals and organizations on whom toll records have been obtained in national security related cases and with respect to which FBIHQ had to prepare a request letter. It is used primarily to facilitate the handling of repeat requests on individuals listed.	Active	Yes	No.
Top Burglar Album	Consists of photos and background data of known and suspect top burglars involved in the area of interstate transportation of stolen property. It is used as an investigative aid.	Active	No	Yes (4).
Top Echelon Criminal Informer Program (TECIP) Index	Consists of cards containing identity and brief background information on individuals who are either furnishing high level information in the organized crime area or are under development to furnish such information. The index is used primarily to evaluate, corroborate, and coordinate informant information and to develop prosecutive data against racket figures under Federal, State, and local statutes.	Active	Yes	No.
Top Ten Program File	Consists of fliers, filed numerically in a control file, on fugitives considered by the FBI to be 1 of the 10 most wanted. Including a fugitive on the top 10 usually assures a greater national news coverage as well as nationwide circulation of the flier.	Active	Yes	Yes (44).

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Top Thief Program Index	Consists of cards of individuals who are professional burglars, robbers, or fences dealing in items likely to be passed in interstate commerce or who travel interstate to commit the crime. Usually photographs and background information would also be obtained on the index card. The index is used as an investigative aid.	Active	No	Yes (27).
Truck Hijack Photo Album	Contains photos and descriptive data of individuals who are suspected truck hijackers. It is used as an investigative aid and for displaying photos to witnesses and/or victims to identify unknown subjects in hijacking cases.	Active	No	Yes (4).
Truck Thief Suspect Photo Album	Consists of photos and background data on individuals previously arrested or are currently suspects regarding vehicle theft. The index is used as an investigative aid.	Active	No	Yes (1).
Traveling Criminal Photo Album	Consists of photos with identifying data of individuals convicted of various criminal offenses and may be suspects in other offenses. It is used as an investigative aid.	Active	No	Yes (1).
Veterans Administration (VA)/Federal Housing Administration Matters (FHA) Index.	Consists of cards of individuals who have been subject of an investigation relative to VA and FHA matters. It is used an an investigative aid.	Active	No	Yes (1).
Wanted Fliers File	Consists of fliers, filed numerically in a control file, on badly wanted fugitives whose apprehension may be facilitated by a flier. The flier contains the names, photographs, aliases, previous convictions, and a caution notice.	Active	Yes	Yes (46).
Wheeldex	Contains the nicknames and the case file numbers of organized crime members. It is used in organized crime investigations.	Active	No	Yes (1).
White House Special Index	Contains cards on all potential White House appointees, staff members, guests, and visitors that have been referred to the FBI by the White House security office for a records check to identify any adverse or derogatory information. This index is used to expedite such check in view of the tight time frame usually required.	Active	Yes	No.
Witness Protection Program Index	Contains cards on individuals who have been furnished a new identity by the U.S. Justice Department because of their testimony in organized crime trials. It is used primarily to notify the U.S. Marshalls Service when information related to the safety of a protected witness comes to the FBI's attention.	Active	Yes	No.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Records Act of 1950 Title 44, United States Code, Chapter 31, Section 3101; and Title 41, Code of Federal Regulations Subpart 101–11.202, requires Federal agencies to insure that adequate and proper records are made and preserved records are made and preserved to document the organization, functions, policies, decisions, procedures and transactions and to protect the legal and financial rights of the Federal Government. Title 28, United States Code, Section 534, delegates authority to the Attorney General to acquire, collect, classify, and preserve identification, criminal identification, crime and other records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, both investigative and administrative, are maintained in this system in order to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who have need of the information in the performance of their official duties.

Personal information from this system may be disclosed as a routine use to any Federal agency where the purpose in making the disclosure is compatible with the law enforcement purpose for which it was collected, e.g., to assist the recipient agency in conducting a lawful criminal or intelligence investigation, to assist the recipient agency in making a determination concerning an individual's suitability for employment and/or trustworthiness for employment and/or trustworthiness for access clearance purposes, or to assist the recipient agency in the performance of any authorized function where access to records in this system is declared by the recipient agency to be relevant to that function.

In addition, personal information may be disclosed from this system to members of the Judicial Branch of the Federal Government in response to a specific request, or at the initiation of the FBI, where disclosure appears relevant to the authorized function of the recipient judicial office or court system. An example would be where an individual is being considered for employment by a Federal judge.

Information in this system may be disclosed as a routine use to any state or local government agency directly engaged in the criminal justice process, e.g., police, prosecution, penal, probation and parole, and the judiciary, where access is directly related to a law enforcement function of the recipient agency, e.g., in connection with a lawful criminal or intelligence investigation, or making a determination concerning an individual's suitability for employment as a state or local law enforcement officer. Disclosure to a state or local government agency, (a) not directly engaged in the criminal justice process or, (b) for a licensing or regulatory function, is considered on an individual basis only under exceptional circumstances, as determined by the FBI.

Information in this system pertaining to the use, abuse or traffic of controlled substances may be disclosed as a routine use to federal, state or local law enforcement agencies and to licensing or regulatory agencies empowered to engage in the institution and prosecution of cases before courts and licensing boards in matters relating to controlled substances, including courts and licensing boards responsible for the licensing or certification of individuals in the fields of pharmacy and medicine.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit Systems Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding, or if deemed necessary to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example would be where the activities of an individual are disclosed to a member of the public in order to elicit his/her assistance in our apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, to the extent the information is relevant to the protection of life or property.

Information in this system may be disclosed to legitimate agency of a foreign government where the FBI determines that the information is relevant to that agency's responsibilities, and dissemination serves the best interests of the U.S. Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest, e.g., to assist in the location of Federal fugitives, to provide notification of arrests, and where necessary for protection from imminent threat of life or property.

A record relating to an actual or potential civil or criminal violation of the copyright statute, Title 17, United States Code, *or the trademark statutes, Titles 15 and 17, U.S. Code*, may be disseminated to a person injured by such violation to assist him/her in the institution or maintenance of a suit brought under such titles.

The FBI has received inquiries from private citizens and Congressional offices on behalf of constitutents seeking assistance in locating individuals such as missing children and heirs to estates. Where the need is acute, and where it appears FBI files may be the only lead in locating the individual, consideration will be given to furnishing relevant information to the requester. Information will be provided only in those instances where there are reasonable grounds to conclude from available information the individual being sought would want the information to be furnished, e.g., an heir to a large estate. Information with regard to missing children will not be provided where they have reached their majority.

Release of Information to Members of Congress:

Information contained in this system, the release of which is required by the Freedom of Information-Privacy Acts, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information in behalf of and at the request of the individual who is the subject of the record.

Release of Information to the National Archives and Records Administration:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906, to the extent that legislation governing the records permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The active main files are maintained in hard copy form and some inactive records are maintained on microfilm. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on a computer printed listing.

RETRIEVABILITY:

The FBI General Index must be searched to determine what information, if any, the FBI may have in its files. The index cards are on all manner of subject matters, but primarily a name index of individuals. It should be noted the FBI does not index all individuals *who* furnish information or names developed in an investigation. Only that information that is considered pertinent and relevant and essential for future retrieval, is indexed. In certain major cases most persons contacted are indexed in order to facilitate the proper administrative handling of a large volume of material. The FBI is in the process of automating the General Index and, therefore, the retrieval of certain information from the main files will be accomplished through the use of peripheral computer equipment, that is, Cathode Ray Tubes (CRTs) and printers. Automation will not change the "Central Records System"; it will only facilitate more economic and expeditious access to the main files. The automated general Index will not cause the "Central Records System" to be interfaced with any other system of records, nor will it allow any outside agency to access FBI information. Since the General Index of all of the field offices will not be automated for quite some time, certain complicated investigative matters are presently supported with special computerized indices which allow retrieval of information from the main files. These special indices are either maintained on printed listings or on disk storage and then accessed through the use of CRTs.

The FBI will transfer historical records to the National Archives consistent with 44 U.S.C. 2103. No record of individuals or subject matter will be retained for transferred files; however, a record of the file numbers will be retained to preserve the integrity of the filing system.

SAFEGUARDS:

Records are maintained in a restricted area and are accessed only by FBI employees. All FBI employees receive a complete background investigation prior to being hired. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statues providing maximum severe penalties of a ten thousand-dollar fine or 10 years' imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the job. Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices, is transmitted in encrypted form to prevent interception and interpretation. Information transmitted in teletype form is placed in the main files of both the receiving and transmitting field offices. Field officer involved in certain complicated investigative matters may be provided with on-line access to the duplicative computerized information which is maintained for them on disk storage in the FBI Computer Center in Washington, D.C., and this computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

All FBI records destruction programs relevant to this system were suspended as a result of a court order, issued January 10, 1980, in the U.S. District Court for the District of Columbia, enjoining the FBI from destroying or otherwise disposing of any FBI records

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until such times as detailed records retention plans and schedules are developed by NARS and the FBI, and are submitted to and approved by the Court. With the exception of certain limited record categories, this court order prohibits records destruction at both FBI Headquarters and FBI field offices.

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. Section 2104.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation; Washington, D.C. 20535.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request". Include in the request your full name, complete address, date of birth, place of birth, notarized signature, and other identifying data you may wish to furnish to assist in making a proper search of our records. Also include the general subject matter of the document or its file number. The requester will also provide a return address for transmitting the information. Access requests can be addressed to the Director, Federal Bureau of Investigation, Washington, D.C., 20535, *and* individually to one or more of the FBI field divisions or Legal Attachés listed in the appendix to this system notice.

PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, D.C., 20535, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

CATEGORIES:

The FBI, by the very nature and requirement to investigate violations of law within its investigative jurisdiction and its responsibility for the internal security of the United States, collects information from a wide variety of sources. Basically, it is the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, and the general public, informants, witnesses, and public source material.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3)(d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(8), (f), (g), of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e).

Appendix of Field Divisions for the Federal Bureau of Investigation Field Office—

502 U.S. Post Office and Court House, Albany, N.Y. 12207.
301 Grant Ave., N.E., Albuquerque, N. Mex. 87102.
Room 500, 300 North Lee Street, Alexandria, Va. 22314.
Federal Building, Room E–222, 701 C Street, Anchorage, Alaska 99513.
275 Peachtree Street, N.E., Atlanta, Ga. 30303.
7142 Ambassador Road, Baltimore, Md. 21207.
Room 1400–2121 Building, Birmingham, Ala. 35203.
John F. Kennedy Federal Office Building, Boston, Mass. 02203
Room 1400–111 West Huron Street, Buffalo, N.Y. 14202.
115 U.S. Court House and Federal Building, Butte, Mont. 59702
6010 Kenley Lane, 28210, Charlotte, N.C.
Room 905, Everett McKinley Dirksen Building, Chicago, Ill. 60604.
Room 9023, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202.
3005 Federal Office Building, Cleveland, Ohio 44199.
1529 Hampton Street, Columbia, S.C. 29201.
1801 North Lamar, Suite, 300, Dallas, Tex. 75202.
Room 1823, Federal Office Building, Denver, Colo. 80202.
Patrick V. McNamara Building, 477 Michigan Avenue, Detroit, Mich. 48226.
202 U.S. Court House Building, El Paso, Tex. 79901.
Kalanianaole Federal Building, Room 4307, 300 Ala. Moana Boulevard, Honolulu, Hawaii 96850.
6015 Federal Building and U.S. Court House, Houston, Tex. 77002.
575 No. Pennsylvania St., Room 679, Indianapolis, Ind. 46204.
Federal Building, Room 1553, 100 W. Capitol St., Jackson, Miss. 39269.
Oaks V, Fourth Floor, 7820 Arlington Expressway, Jacksonville, Fla. 32211.
Room 300—U.S. Courthouse, Kansas City, Mo. 64106.
Room 800, 111 Northshore Drive, Knoxville, Tenn. 37919.
Room 219, Federal Office Building, Las Vegas, Nev. 89101.
215 U.S. Post Office Building, Little Rock, Ark. 72201.
11000 Wilshire Boulevard, Los Angeles, Calif. 90024.
Room 502, Federal Building, Louisville, Ky. 40202.
841 Clifford Davis Federal Building, Memphis, Tenn. 38103.
3801 Biscayne Boulevard, Miami, Fla. 33137.
Room 700, Federal Building and U.S. Court House, Milwaukee, Wis. 53202.
392 Federal Building, Minneapolis, Minn. 55401.
U.S. Court House, 113 St. Joseph St., Mobile, Ala. 36602.
Gateway I. Market Street, Newark, N.J. 07102.
Federal Building, 150 Court Street, New Haven, Conn. 06510.
701 Loyola Avenue, New Orleans, La. 70113.
26 Federal Plaza, New York, N.Y. 10278.
Room 839, Granby Mall, Norfolk, Va. 23510.
50 Penn Place, N.W., 50th at Pennsylvania, Oklahoma City, Okla. 73118
Room 7401, Federal Building, 215 North 17th Street, Omaha, Nebr. 66102.
8th Floor, Federal Office Building, 800 Arch Street, Philadelphia, Pa. 19106.
2721 North Central Avenue, Phoenix, Ariz. 85004.
1300 Federal Office Building, Pittsburgh, Pa. 15222.
Crown Plaza Building, Portland, Oreg. 97201.
200 West Grace Street, Richmond, Va. 23220
Federal Building, 2800 Cottage Way, Sacramento, Calif. 95825.
2704 Federal Building, St Louis, Mo. 63103.
3203 Federal Building, Salt Lake City, Utah 84138.
433 Federal Building, Box 1630, San Antonio, Tex. 78296.
Federal Office Building, Room 0531, 880 Front Street, San Diego, Calif. 92188.
450 Golden Gate Avenue, San Francisco, Calif. 94102.
U.S. Courthouse and Federal Building, Room 526, Hato Rey, P.R. 00918.
5401 Paulsen Street, Savannah, Ga. 31405.
915 Second Avenue, Seattle, Wash. 98174.
535 West Jefferson Street, Springfield, Ill. 62702.
Room 610, Federal Office Building, Tampa, Fla. 33602.

Washington Field Office, Washington D.C. 20535.
Federal Bureau of Investigation Academy, Quantico, Va. 22135.
Legal Attaché [AH c/o the American Embassy for the Cities Indicated):
Bern, Switzerland.
Bogota, Colombia.
Bonn, Germany (Box 310, APO, New York 09080).
Canberra, Australia (APO, San Francisco 96404).
Hong Kong, B.C.C. (FPO, San Francisco 96659).
London, England (Box 40, FPO, New York 09510).
Mexico City, Mexico.
Montevideo, Uruguay (APO, Miami 34035).
Ottawa Canada.
Panama City, Panama.
Paris, France (APO, New York 09777).
Rome, Italy (APO, New York 09794).
Tokyo, Japan (APO, San Francisco 96503).

JUSTICE/FBI–015

SYSTEM NAME:

National Center for the Analysis of Violent Crime (NCAVA).

SYSTEM LOCATION:

Federal Bureau of Investigation, Training Division, FBI Academy, Behavioral Science Unit, Quantico, Virginia 22135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who relate in any manner to official FBI investigations into violent crimes including, but not limited to, suspects, victims, witnesses, close relatives, medical personnel, and associates who are relevant to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals who are the subject of violent crime research studies including, but not limited to, criminal personality profiles, scholarly journals, and news media references.

CATEGORIES OF RECORDS IN THE SYSTEM:

The National Center for the Analysis of Violent Crime will maintain in both manual and automated formats case investigation reports on all forms of solved and unsolved violent crimes. These violent crimes include, but are not limited to, acts or attempted acts of murder, kidnapping, incendiary arson or bombing, rape, physical torture, sexual trauma, or evidence of violent forms of death.

A. Violent Criminal Apprehension Program (VICAP) case reports submitted to the FBI by a duly constituted Federal, State, county, or municipal law enforcement agency in any violent criminal matter. VICAP reports include, but are not limited to, crime scene descriptions, victim and offender descriptive data, laboratory reports, criminal history records, court records, news media references, crime scene photographs, and statements.

B. Violent crime case reports submitted by FBI headquarters or field offices.

C. Violent crime research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to NCAVC personnel.

D. An index of all detected trends, patterns, profiles and methods of operation of known and unknown violent criminals whose records are maintained in the system.

E. An index of the names, addresses, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the FBI's NCAVC operation.

F. An index of public record sources for historical, statistical and demographic data collected by the U.S. Bureau of the Census.

G. An alphabetical name index pertaining to all individuals whose records are maintained in the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C., Section 3101; 41 CFR Subpart 101–11.2 and 28 U.S.C., Section 534.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As currently envisioned, the NCAVC will be administered by the FBI through its Training Division's Behavioral Science Unit located at the FBI Academy, Quantico, Virginia. Its primary mission is to consolidate research, training, and operational support activities for the express purposes of providing expertise to any legitimate law enforcement agency confronted with unusual, bizarre, and/or particularly vicious or repetitive violent crimes.

Records described above are maintained in this system to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, the information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who need the information to perform their official duties.

Information in this system may be disclosed as a routine use to any Federal, State, local, or foreign government agency directly engaged in the criminal justice process where access is directly related to a law enforcement function of the recipient agency in connection with the tracking identification, and apprehensive of persons believed to be engaged in repeated or exceptionally violent acts of criminal behavior.

Information in this system may be disclosed as a routine use in a proceeding before a court or adjudicative body, e.g., the Equal Employment Opportunity Commission and the Merit System Protection Board, before which the FBI is authorized to appear, when (a) the FBI or any employee thereof in his or her official capacity, or (b) any employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is a party to litigation or has an interest in litigation and such records are determined by the FBI to be relevant to the litigation.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding or, if deemed necessary, to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example could be where the activities of an individual are disclosed to a member of the public to elicit his/her assistance in FBI apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest. Examples would include: to obtain public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of violent criminal behavior; to notify the public and/or media of arrests; to protect the public from imminent threat to life or property

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where necessary; and to disseminate information to the public and/or media to obtain cooperation with violent crime research, evaluation, and statistical programs.

Information in this system may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 to the extent that legislation governing the record permits.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored manually in locked file cabinets, either in its natural state or on microfilm, at the NCAVC in Quantico, Virginia. The active main files are maintained in hard copy form and some inactive records are maintained on microfilm.

In addition, some of the information is stored in computerized data storage devices at the NCAVC and FBI Computer Center in Washington, D.C. Investigative information which is maintained in computerized form may be stored in memory on disk storage on computer tape, or on computer printed listings.

RETRIEVABILITY:

On-line computer access to NCAVC files is achieving by using the following search descriptors:

A. A data base which contains the names of individuals, their birth dates, physical descriptions, and other identification numbers such as FBI numbers, if such have been assigned.

B. Summary variables contained on VICAP reports submitted to the NCAVC as previously described.

C. Key words citations to violent crime research studies, scholarly journal articles, textbooks, training materials, and media references.

SAFEGUARDS:

Records are maintained in restricted areas are accessd only by FBI employees. All FBI employees receive a complete pre-employment background investigation. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Dapartment of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years' imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the job.

Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices and to and from FBI Headquarters, is transmitted in encrypted form to prevent interception and interpretation.

Information transmitted in teletype form between the NCAVC in Quantico, Virginia and the FBI Computer Center in Washington, D.C., is encrypted prior to transmission at both places to ensure confidentiality and security of the data.

FBI field offices involved in certain complicated, investigative matters may be provided with on-line access to the computerized information which is maintained for them on disc storage in the FBI Computer Center in Washington, D.C. This computerized data is also transmitted in encrypted form.

RETENTION AND DISPOSAL:

All FBI records destruction programs relevant to this system were suspended as a result of a court order issued January 10, 1980, in the U.S. District Court for the District of Columbia, enjoining the FBI from destroying or otherwise disposing of any FBI records until such time as detailed records retention plans and schedules are developed by NARA and the FBI, and are submitted to and approved by the Court. With the exception of certain limited record categories, this court order prohibits records destruction at both FBI Headquarters and FBI field offices.

As the result of an extensive review of FBI records conducted by NARA, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. Section 2104.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue, NW., Washington; D.G. 20535.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

RECORDS ACCESS PROCEDURES:

Requests for access to records in this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." The request must provide the full name, complete address, date of birth, place of birth, and notarized signature of the individual who is the subject of the record requested. The request should also include the general subject matter of the document or its file number—along with any other known information which may assist in making a search of the records. The request must also provide a return address for transmitting the information. Access requests should be addressed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

CONTESTING RECORD PROCEDURE:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. The request should state clearly and concisely (1) the reasons for contesting the information, and (2) the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The FBI, by the very nature of its responsibilities to investigate violations of law within its investigative jurisdiction and ensure the internal security of the United States, collects information from a wide variety of sources. Basically, information is obtained, as a result of investigative efforts, from other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e).

JUSTICE/USM—001

SYSTEM NAME:

United States Marshals Service Badge & Credentials File.

SYSTEM LOCATION:

United States Marshals Service; *One Tyson Corner Center, McLean, Virginia 22102.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Marshals Service *(USMS) Personnel.*

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel data system established to control issuance of badges and credentials to U.S. Marshals Service personnel *which contains photographs of all employees and hand receipts showing the employee's name, title, duty location, badge and credential numbers, and date of issuance.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This file serves as a record of issuance this is requested by various law enforcement agencies, e.g. FBI Secret Service, states, county & Municipal police.

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 C.F.R. 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUNTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records *Administration:* A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in standard file folders.

RETRIEVABILITY:

Indexed by name of *individual and numerical order of badges and credentials.*

SAFEGUARDS:

Access restricted to personnel of *the Procurement and Property Management Division. Records are maintained in metal filing cabinets which are locked during non-duty hours.*

RETENTION AND DISPOSAL:

Records are kept for duration of employee's tenure in the Service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, *Procurement and Property Management* Division; United States Marshals Service, U.S. Department of Justice; *One Tyson Corner Center, McLean, Virginia 22102.*

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request.' It should clearly indicate name of requestor, the nature of the record sought and approximately dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Record of Notification of Employment by U.S. Marshals Service Personnel Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-002

SYSTEM NAME:

Internal *Inspections* System.

SYSTEM LOCATION:

United States Marshals Service: Department of Justice: One Tysons Corner Center, McLean Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Marshals Service *(USMS)* employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Internal *Inspections* System contains reports prepared by the Office of Internal *Inspections*, United States Marshals Service on findings of alleged misconduct of U.S. Marshals, Service employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(n)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information gathered is used by U.S. Marshals Service in disciplinary proceedings against employees. *To the extent that investigations reveal actual or potential violations of criminal or civil laws, the information is used by other Federal law enforcement agencies for further investigations.*

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

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Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records *Administration:* A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Originals stored in *standard file folders.*

RETRIEVABILITY:

Information is retrieved by name of employee.

SAFEGUARDS:

Records are stored in locked safe.

RETENTION AND DISPOSAL:

Records are retained for *24* months and then referred to Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Internal *Inspections* U.S. Marshals Service; U.S. Department of Justice, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURES:

To the extent that this system is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of the requestor, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information derived from investigation of alleged malfeasance, by U.S. Marshals Service Office of Internal *Inspections*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). To the extent that investigations reveal actual or potential criminal or civil violations, this system is additionally exempt from subsection (e)(8) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/USM-003

SYSTEM NAME:

United States Marshals Service Prisoner Transportation System.

SYSTEM LOCATION:

United States Marshals Service *(USMS),* Department of Justice; 324 East 11th Street, Kansas City, Missouri 64106

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners taken into U.S. Marshal custody.

CATEGORIES OF RECORDS IN THE SYSTEM:

D.J. 100's; Compilation of identifying information for each prisoner taken into U.S. Marshal custody, when and where the prisoner is taken into custody, what he is charged with and where he is moved to. These files provide a ready reference source on the prisoner for purposes of arranging prisoner transportation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(k).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as working files in the transporting of prisoners, by U.S. Marshals Service, Bureau of Prisons and other federal, state and local law enforcement officials.

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records *Administration*: A record from a system of records may

be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in standard file cabinets.

RETRIEVABILITY:

Information is retrieved by name of prisoner and number.

SAFEGUARDS:

Aocess restricted to Operations Personnel. *File cabinets are locked during non-duty hours.*

RETENTION AND DISPOSAL:

Records are disposed of after *6 months.*

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Prisoner Transportation *and Air Operations* Division, United States Marshals Service; U.S. Department of Justice; 324 East 11th Street, Kansas City, Missouri 64106.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request.' It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Identifying material of each prisoner taken into custody by the U.S. Marshal.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-004

SYSTEM NAME:

Special Deputy File.

SYSTEM LOCATION:

United States Marshals Service (USMS), Department of Justice; One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Special Deputies, who are selected law enforcement officers or employees of the U.S. Government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Special Deputization file contains oath of office of persons utilized as deputy marshals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 CFR Subpart T. Section 0.112, 28 U.S.C. 562.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Federal agencies for whom the Marshals Service has deputized employees would have access to this system.

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicated body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records *Administration:* A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration* (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are filed in standard file cabinets.

RETRIEVABILITY:

Files are indexed by name and by government department.

SAFEGUARDS:

Records are kept in a locked file.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, U.S. Marshals Service; U.S. Department of Justice: One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURES:

Address inquiries to: System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked 'Privacy Access Request.' The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager lised above, stating cearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

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RECORD SOURCE CATEGORIES:

Federal agencies requesting special deputations provide all necessary information required by the Marshals Service in making the special deputations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-005

SYSTEM NAME:

Special Detail System.

SYSTEM LOCATION:

United States Marshals Service (USMS); Department of Justice; One Tysons Corner Center, McLean, Virginia 22102. Each of the 94 district offices maintain their own files.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system: Deputy United States Marshals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include a compilation of deputies' special assignments; e.g., civil disturbances, special trials, witness security, process serving, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and, 28 CFR 0.111 (a) through (g).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Special Detail System provides background data on what details were made; who went where, etc. This information may be used in Civil Service Commission hearings and court cases involving the Marshals Service or its personnel.

Records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that released of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in standard file folders.

RETRIEVABILITY:

Records are retrieved by name of deputy.

SAFEGUARDS:

Records are kept in a locked file cabinet.

RETENTION AND DISPOSAL:

Dispose after 10 years; transfer to Federal Records Center after 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Special Assignments. U.S. Marshals, Service; U.S. Department of Justice, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURES:

Address inquiries to: System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of the requestor, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information provided by designated U.S. Marshals Service Personnel in each district who work on special details.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM—006

SYSTEM NAME:

United States Marshals Service Training Files.

SYSTEM LOCATION:

United States Marshals Service (USMS) Training Academy, Department of Justice Building 70 Glynco, Georgia 31524.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Trainees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Individual United States Marshals Service training files contain information on the individual's educational background and training history, and an individual development plan; (2) Skills files identify special skills possessed by the individual United States Marshals Service employee.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(h).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are used as training histories; (2) records are used to determine training eligibility; and (3)

records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration. (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Standard file folders containing original documents.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are kept in locked files.

RETENTION AND DISPOSAL:

Training files are maintained until the employee leaves the Service.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, U.S. Marshals Service Training Academy, U.S. Department of Justice; Building 79, Glynco, Georgia 31524.

NOTIFICATION PROCEDURE:

Address inquiries to: System Manager.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requestor shall also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

(1) The forms, documentation of skills, etc. which are completed by a new trainee; (2) documentation of skills by Training Personnel; (3) evaluation reports prepared by the Combined Federal Law Enforcement Training Academy.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USMS—008

SYSTEM NAME:

Witness Security Files Information System.

SYSTEM LOCATION:

United States Marshals Service (USMS), Department of Justice; One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government witnesses, who are participants in the Federal Witness Security Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Request to enter program; (2) background information (education, experience, medical history, names, relatives, etc.); (3) funding information; (4) moving information; (5) documentation of all the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the Witness Security Program is 28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; 28 CFR 0.111(c); 28 U.S.C. 524; 18 U.S.C. prec 3481.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Background for planning working files; (2) Used to accomplish major functions of witness security e.g. protection of government witnesses and their families; and (3) records or information may be disclosed as a routine use in a proceeding before a Court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are kept in file folders.

RETRIEVABILITY:

Filed according to ID special number.

SAFEGUARDS:

Locked files limited access—(Witness Security Personnel).

RETENTION AND DISPOSAL:

All records at this time are being indefinitely maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Witness Security Division; U.S. Marshals Service; U.S. Department of Justice; One Tysons Corner Center, McLean, Virginia 22102.

RECORD SOURCE CATEGORIES:

All identifying background criteria of individual: (1) education; (2) job history; (3) medical history; (4) history of residence; (5) relatives, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (2) and (3), (e)(4) (G) and (H), (e)(8), (f)(2) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

JUSTICE/OJP-001

SYSTEM NAME:

Equipment Inventory.

SYSTEM LOCATION:

Office of Justice Programs; 633 Indiana Avenue, N.W.; Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have filed the following forms in the Office of Operations Support: Government Parking Spaces, Form GSA 7415; Property Sign-out, LEAA Form 1820/4; Equipment Control Records, LEAA Form 1820/5;

CATEGORIES OF RECORDS IN THE SYSTEM:

Government Parking Spaces, Form GSA 7415; Property Sign-out, LEAA Form 1820/4; Equipment Control Records, LEAA Form 1820/5;

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 5 U.S.C. 301, 1302.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The property data is used for inventory control, parking space control.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in system is stored in file, folders and index cards.

RETRIEVABILITY:

Information is retrieved by name of employee.

SAFEGUARDS:

Data is maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Documents relating to equipment control and are closed when employee leaves agency. Records are destroyed three years thereafter. Operating files are destroyed when an individual resigns, transfers or is separated from Federal service.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Administrator; Office of Operations Support; Office of Justice Programs; 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from the system shall be in writing, with the envelope and letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Individual to whom record pertains, employee's supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-004

SYSTEM NAME:

Grants Management Information System (PROFILE).

SYSTEM LOCATION:

Office of Justice Programs; 633 Indiana Avenue, NW.; Washington, D.C. 20531

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Included are recipients (grantees) of OJP funds. These include grantees of the Notional Institute of Justice, the Bureau of Justice Statistics, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Office of Victims of Crime, and the now defunct Office of Justice Assistance, Research, and Statistics, and the Law Enforcement Assistance Administration. Also included are project monitors and project directors of these grants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grantee and Project Audit File, Financial and Programmatic Compliance Records of the Grantee, Grant Applications, and Grant/Contract Award Computer Data File.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with U.S.C. 301, 44 U.S.C. 3101, and 31 U.S.C. 3512.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records from this system of records may be disclose for the purpose of technical review and fiscal or program evaluation to experts in particular subject areas related to the substantive or fiscal components of the program.

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminote them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguobly relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permited to be released to the new media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice not otherwise required to be released pursuant to 5 U.S.C. 522, may be disclosed as a routine use to a member of Congress or staff acting upon the member's behalf when the member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records *Administration.* A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration (NARA)* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored on computer disc for use in a computer environment.

RETRIEVABILITY:

Data is retrievable by name *of individual covered by the system.*

SAFEGUARDS:

Information in the system is safeguarded and protected by computer password key. Direct access is limited to computer personnel.

RETENTION AND DISPOSAL:

Data is maintained for current fiscal year and previous fiscal years in master file. Data is not destroyed, but maintained for historical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller: *Office of Justice Programs;* 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." Include in the request the name and grant/contract number. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are *grantees, applicants for award, and OJP project monitors.*

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-005

SYSTEM NAME:

Financial Management System.

SYSTEM LOCATION:

Office of Justice Programs (OJP); 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of *OJARS, LEAA, NIJ, BJS and OJJDP* funds; Employees.

This system contains information concerning (a) current and past recipients of OJP funds, including those from the National Institute of Justice, the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the now defunct Office of Justice Assistance, Research, and Statistics, and Law Enforcement Assistance Administration; (b) OJP employees; and (c) all individuals on whom vouchers are submitted requesting payment for goods or services rendered (except payroll vouchers for Department of Justice employees), including vendors, contractors, travelers, and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee Travel files; time and attendance files; Government transportation Request; Paid Vendor Documents File, all vouchers processed, i.e., all documents required to reserve, obligate, process and effect collection or payment of funds. (Excluded from the system are payroll vouchers.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 31 U.S.C. 3512, and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

After processing the vouchers, OJP uses the records to maintain individual financial accountability; to furnish statistical data (not identified by personal identifiers); to meet both internal and external audit and reporting requirements; and to provide Administrative Officers from the Offices, Boards, and Divisions and the OJP with information on vouchers by name and social security number for agency financial management.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archieves and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized discs, filed folders.

RETRIEVABILITY:

Name, social security numbers, digital identifiers assigned by accounting office.

SAFEGUARDS:

Information contained in the system is unclassified and maintained in accordance with OJP procedures. Manual information in the system is safeguarded in locked file cabinets. Operational access to information maintained on computer discs is controlled by password key. These keys are issued only to employees who have a need to know to perform job functions relating to financial management and accountability. Access to manual files is also limited to employees who have a need for the records in the performance of their official duties.

RETENTION AND DISPOSAL:

Employee travel files, time and attendance files and Government transportation files are closed at end of fiscal year, held three years thereafter.

Payment documents are retained for three fiscal years (current and two years). The payment documents and the aforementioned files are then shipped to a General Services Administration's Federal Records Center for storage and subsequent destruction in accordance with instructions of the General Accounting Office. Computerized discs are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller; *Officer of Justice Programs;* 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendments to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are the individuals tdo whom the information pertains.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE-OJP-006

SYSTEM NAME:

Congressional and Public Affairs System

SYSTEM LOCATION:

Office of Justice Programs (OJP); 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress, and other public figures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with Congressional Committees, members of Congress, and the general public. The file also contains biographical data, speeches, press releases, and photograph files relating to public figures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system is used or may be used in response to inquiries from the general public or member of Congress.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is indexed on a correspondence control log and stored in file folders.

RETRIEVABILITY:

Information is retrieved by name of the member of Congress who is the correspondent, or by the name of the public figure.

SAFEGUARDS:

Records are maintained in file cabinets. Entrance to the building is controlled by required employee identification or security clearance procedures. Records are used by employees on a need to know basis only.

RETENTION AND DISPOSAL:

Records are retained for two years, then retired to Federal Records Center. Six years thereafter records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director: Office of Congressional Liaison: *Office of Justice* Programs, 633 Indiana Avenue NW., Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from the system shall be in writing, with the envelope and letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are congressional members.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-008

SYSTEM NAME:

Civil Rights Investigative System.

SYSTEM LOCATION:

Office of Justice Programs (OJP).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affected by any OJP project for which the agency has compliance responsibility, including grantees, subgrantees, contractors, subcontractors, employees, and applicants, who have made complaints of discrimination. OJP includes the National Institute of Justice, the Bureau of Justice Statistics, the Bureau of Justice Assistance, the Office of Juvenile Justice and Deliquency Prevention, and the Office for Victims of Crime. Also included are individuals who are the subjects of civil rights compliance records of the now defunct Office of Justice Assistance, Research, and Statistics, and the Law Enforcement Assistance Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Civil Rights Complaint Control Files; Civil Rights Litigation Reference Files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 3789d *42, U.S.C. 10604(e), 29 U.S.C. 794, 42 U.S.C. 2000d, 20 U.S.C. 1681, 42 U.S.C. 5601, and 42 U.S.C. 1601.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

OJP uses information in this system to investigate complaints and to obtain compliance with civil rights laws. Other such users of the information are appropriate State agencies, Civil Rights Division of the Justice Department, State Governors and Attorneys General, Office of Federal Contract Compliance, Equal Employment Opportunity Commission, Office of Federal Revenue Sharing, and the United States Commission on Civil Rights, Department of Health and Human Services, Department of Education and OJP. OJP may also use this information for agency project evaluation, technical assistance, and training.

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant; to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records *Administration (NARA)* in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored in file folders and on index cards.

RETRIEVABILITY:

Information is retrieved by name of *the individual or organization against whom the complaint is made.*

Complaint case files are not retrievable by information identifiable to the individual complainant.

SAFEGUARDS:

Information is kept in locked file cabinets and combination safe. Access is limited to investigative personnel.

RETENTION AND DISPOSAL:

All investigative information is destroyed ten years after the investigation is completed.

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SYSTEM MANAGER(S) AND ADDRESS:

Office of Civil Rights Compliance: Office of Justice Programs; 633 Indiana Avenue NW; Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

A request for access to a record containing civil rights investigatory material shall be made in writing with the envelope and letter clearly marked "Privacy Access Request" to the Civil Rights System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The information contained in this system was received from individual complainants, witnesses, grant files, respondents, official State and Federal records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(K)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/OJP-009

SYSTEM NAME:

Federal Advisory Committee Membership Files.

SYSTEM LOCATION:

Office of Justice *Programs (OJP);* 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been or are presently members of or are being considered for membership on advisory committees within the jurisdiction of the *OJP.*

OJP includes the former Office of Justice Assistance, Research, and Statistics, the former Law Enforcement Assistance Administration, National Institute of Justice, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and the Office of Victims of Crime.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, documents relating to committee members, *biographical data, and Committee membership forms.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Advisory Committee Act, 5 U.S.C. App. I et seq.; *5 U.S.C. 301; 44 U.S.C. 3101.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Annual Report to the President; administrative reports to OMB and other federal agencies.

Release of information to the news media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to the National Archives and Records Administration.

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Release of Information to Congress.

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in system is stored in file folders.

RETRIEVABILITY:

Information is retrieved by name of individual.

SAFEGUARDS:

Data is maintained in file cabinets. The entrance to the building requires building pass or security sign-in.

RETENTION AND DISPOSAL:

The data is placed in an inactive file upon discontinuance of membership, held for two years and then retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Advisory Committee Officer; Office of General Counsel; Office of Justice Programs; 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are supplied directly by individuals about whom the record pertains, references, recommendations, program personnel, and biographical reference books.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-010

SYSTEM NAME:

Technical Assistance Resource Files.

SYSTEM LOCATION:

Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Consultants with expertise in criminal justice systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of resumes and other documents related to technical assistance requests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is maintained under authority of 44 U.S.C. 3101 and 42 U.S.C. 5614(b)(6).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used to determine the qualifications and availability of individuals for technical assistance assignments. Users are State Criminal Justice Councils, and the Office of Juvenile Justice and Delinquency Prevention.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in the system is on hard copy and stored in file cabinets.

RETRIEVABILITY:

Information is manually retrieved by the name of the individual.

SAFEGUARDS:

Records are stored in file cabinets. Admittance to the building in which they are stored requires a building pass or an individual signature at the main entrance to the building.

RETENTION AND DISPOSAL:

Records are placed in an inactive file at the end of the fiscal year in which final use was made. They are held two years in the inactive file; then transferred to the Federal Records Center. Records are destroyed after six years.

SYSTEM MANAGER(S) AND ADDRESS:

Technical Assistance Coordinator; Division Director of Program area in which records are sought in the Office of Juvenile Justice and Delinquency Prevention. Office of Justice Programs, 633 Indiana Avenue, NW., Washington, DC 20531.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager(s) at the above address.

RECORD ACCESS PROCEDURES:

A request for access to a record contained in this system shall be made in writing with the envelope and letter clearly marked "PRIVACY ACCESS REQUEST." Include in the request the name and grant/contract number for the record desired. Access requests will be directed to the system manager(s) listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the system manager(s) listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are those individuals to whom the information pertains.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP-011

SYSTEM NAME:

Registered Users File—National Criminal Justice Reference Service (NCJRS).

SYSTEM LOCATION:

National Criminal Justice Reference Service; 1600 Research Blvd., Rockville, MD 20850.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains information on those individuals engaged in criminal justice activities, citizen groups and academicians.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system provides a record of registrants who request reference services and products from NCJRS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is maintained and established in accordance with 42 U.S.C. *3721.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the system is used as a mailing list to supply registrants requesting services from NCJRS with information or products.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 29 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Information is stored on magnetic disc pack for use in a computer environment.

RETRIEVABILITY:

Information is retrieved by the name and user identity number of the individual or organization requesting information.

SAFEGUARDS:

Information is maintained in the Justice Data Services Center which is a secured area. Special identity cards are required for admittance to the area.

RETENTION AND DISPOSAL:

Information is retained until the individual no longer wishes to utilize the service. Upon notification by an individual that he no longer wishes to

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use the service, or by lack of response of user to Annual Renewal, his record is electronically purged from the film.

SYSTEM MANAGER(S) AND ADDRESS:

Operation Services Supervisor, National Criminal Justice Reference Service; P.O. Box 6000, Rockville, MD 20850

NOTIFICATION PROCEDURE:

Address inquiries to the system manager(s) at the above address.

RECORD ACCESS PROCEDURES:

A request for access to a record contained in this system shall be made in writing with the envelope and letter clearly marked. 'PRIVACY ACCESS REQUEST.' Access requests will be directed to the system manager(s) at the above address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the system manager(s) listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources for the information contained in this system are those individuals covered by the system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OJP–012

SYSTEM NAME:

Public Safety Officers Benefits System.

SYSTEM LOCATION:

Bureau of Justice Assistance, Office of Justice Programs, (OJP), 633 Indiana Avenue, NW., Washington, D.C. 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Public Safety Officers who died while in the line of duty and their surviving beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index by claimant and deceased Public Safety Officers: case files of eligibility documentation; and benefit payment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 42 U.S.C. 3796 and 44 U.S.C. 3103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information contained in this system is used or may be used to determine and record eligibility of Public Safety Officers under the Public Safety Officers Benefits Act. It may be released to:

(1) State and local agencies to verify and certify eligibility for benefits; (2) researchers for the purpose of researching the cause and prevention of public safety officer line of duty deaths; (3) appropriate Federal agencies to coordinate benefits paid under similar programs; and (4) Members of Congress or staff acting upon the member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is a party in interest.

RELEASE OF INFORMATION IN AN ADJUDICATIVE PROCEEDING:

It shall be a routine use of records within this system or any facts derived therefrom, to disseminate them in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when—

i. The OJP, or any subdivision thereof, or

ii. Any employee of the OJP in his or her official capacity, or

iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions,

is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on a master index, in folders and on computer magnetic tape.

RETRIEVABILITY:

Information is retrievable by name of claimant, name of deceased Public Safety Officer, and case file number.

SAFEGUARDS:

Computerized information is safeguarded and protected by computer password key and limited access. Noncomputerized data is safeguarded in locked cabinets. All files are maintained in a guarded building.

RETENTION AND DISPOSAL:

Files are retained in the Public Safety Officer Benefits (PSOB) Office on hard copy. No program for disposal has been promulgated. Files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

PSOB Program Officer Bureau of Justice Assistance Office of Justice Programs, 633 Indiana Avenue, NW., Washington, D.C. 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing with the envelope and the letter clearly marked "Privacy Access Request" Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above and state clearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Public agencies including employing agency, beneficiaries, educational institutions, physicians, hospitals, official state and Federal documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/INTERPOL–001

SYSTEM NAME:

The INTERPOL-United States National Central Bureau (INTERPOL–USNCB) (Department of Justice) INTERPOL–USNCB Records System.

SYSTEM LOCATION:

INTERPOL–U.S National Central Bureau, Department of Justice, Room 800, Shoreham Bldg., Washington, DC 20530

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been convicted or are subjects of a criminal investigation with international aspects; specific deceased persons in connection with death notices; individuals who may be associated with certain weapons, motor vehicles, artifacts, etc., stolen and/or involved in a crime; victims of criminal violations in the United States or abroad; and INTERPOL–USNCB personnel involved in litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The program records of the INTERPOL–USNCB consists of criminal and non-criminal case files. The files contain fingerprint records, photographs, criminal investigative reports, radio messages (international), teletype messages (internal U.S.), log sheets, computer printouts, letters, memoranda, and statements of witnesses and parties to litigation.

These records relate to fugitives, wanted persons, lookouts (temporary and permanent), specific missing persons, deceased persons in connection with death notices. Information about individuals includes names, alias, date of birth, address, physical description, various identification numbers, reason for the record or lookout, and details and circumstances surrounding the actual or suspected violation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 263a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event of record(s) in this system of records indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute, or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use to the appropriate law enforcement and criminal justice agencies whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulations or order issued pursuant thereto. A record may be disclosed to federal, state or local agencies maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license grant or other benefit; to federal agencies in response to their request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. A record may be disclosed to appropriate parties engaged in litigation or in preparation of prossible litigation, e.g., to potential witnesses for the purpose of securing their testimony when necessary before courts, magistrates or administrative tribunals; to parties and their attorneys for the purpose of proceeding with litigation or settlement of disputes; to individuals seeking information by using established discovery procedures, whether in connection with civil, criminal, or regulatory proceedings; to foreign governments in accordance with formal or informal international agreements; to local, state, federal and foreign agents; to the Treasury Enforcement Communications System [TECS] (Treasury/CS 00.244); to the International Criminal Police Organization (INTERPOL) General Secretariat and National Central Bueaus in member countries; *to the INTERPOL Supervisory Board, an international board comprised of three judges having oversight responsibilities regarding the purpose and scope of personal information maintained in the international archives of INTERPOL;* to employees and officials of financial and commercial business firms and private individuals where such release is considered reasonably necessary to obtain information to further investigative efforts or to apprehend criminal offenders; to other third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and to translators of foreign languages as necessary. *In addition, records are accessed by INTERPOL–USNCB employees and by volunteer students and students working under a college work-study program who have a need for the records in the performance of their duties.*

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information in behalf of and at the request of the individual who is the subject of the record.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in file folders *in the INTERPOL—United States National Central Bureau, and in file folders, in microfilm records* and on magnetic disks *in the INTERPOL Case Tracking System (ICTS) at the INTERPOL–*United States National Central Bureau, and certain limited data, *e.g.*, that which concerns fugitives and wanted persons, is stored in the Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244, a system published by the U.S. Department of the Treasury.

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RETRIEVABILITY:

Information is retrieved primarily by name, file name, system identification number, personal identification number, and by weapon or motor vehicle number or by other identifying data. *Prior to 1975, case files were arranged by name of subject. Since 1975, files have been arranged by year, month and sequential number.*

SAFEGUARDS:

Information maintained on magnetic disks is safeguarded and protected in accordance with Department rules and procedures governing the handling of computerized informaiton. Only those individuals specifically authorized and assigned an identification code by the system manager wil have access to the computer. Identification codes will be assigned only to those *INTERPOL–USNCB* employees who require access to the information to perform their official duties. In addition, access to the information must be accompanied through a terminal which is located in the *INTERPOL–USNCB* office that is occupied during the day and locked at night. Information in file folders *and in microfilm records* is stored in file cabinets in the same secured area.

RETENTION AND DISPOSAL:

Case files opened after April 5, 1982 have been stored on microfilm (41 CFR Sec. 101–11.506). In addition, records that were closed prior to April 5, 1982 but are recalled from the Federal Archives and Records Center (FARC) are also microfilmed.

Case files that were closed prior to April 5, 1982 are transferred to the FARC five years from the date the case is closed and are destroyed ten years thereafter, if there has been no recall from the FARC and no case activity.

Case files closed as of April 5, 1982 and thereafter are disposed of as follows: The hard copy (paper record) of the case file may be destroyed when the microfilm records have been verified for clearness, completeness and accuracy. The microfilm record of the case file is destroyed ten years after closing of the case, if there has been no case activity.

SYSTEM MANAGER(S) AND ADDRESS:

*Chief, INTERPOL–*United States National Central Bureau, Department of Justice, Room 800, Shoreham Building, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Inquiries regarding whether the system contains a record pertaining to an individual may be addressed to the Chief, INTERPOL–United States National Central Bureau, Department of Justice, Room 800, Shoreham Building, Washington D.C. 20503. To enable INTERPOL–USNCB personnel to determine whether the system contains a record relating to him or her, the requester must submit a written request identifying the record system, indentifying the category and type of records, sought, and providing the individual's full name and at least two items of secondary information (data of birth, social security number, employee identification number, or similar identifying information).

RECORD ACCESS PROCEDURES:

Although the Attorney General has exempted the system from the access, contest and amendment provisions of the Privacy Act, some records may be available under the Freedom of Information Act. Inquiries should be addressed to the official designated under "Notification procedure" above. The letter and envelope should be clearly marked "Freedom of Information Request" and a return address provided for transmitting any information to the requester.

CONTESTING RECORD PROCEDURES:

See "Access procedures" above.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system include investigative reports of federal, state, local, and foreign law enforcement agencies (including investigative reports from a system of records published by Department of Treasury entitled Treasury Enforcement Communications System (TECS) TREASURY/CS 00.244): other non-Department of Justice investigative agencies; client agencies of the Department of Justice; statements of witnesses and parties; and the work product of the staff of the United States National Central Bureau working on particular cases. Although the organization uses the name INTERPOL–USNCB for purposes of public recognition, the INTERPOL–USNCB is not synonymous with the International Criminal Police Organization (ICPO–INTERPOL), which is a private, intergovernmental organization headquartered in St. Cloud, France. The Department of Justice INTERPOL–USNCB serves as the United States liaison with the INTERPOL General Secretariat and works in cooperation with the National Central Bureaus of other member countries, but is not an agent, legal representative, nor organizational subunit of the International Criminal Police Organization. The records maintained by the INTERPOL–USNCB are separate and distinct from records maintained by the International Criminal Police Organization, and INTERPOL–USNCB does not have custody of, access to, nor control over the records of the International Criminal Police Organization.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has *exempted* this system from subsections (c) (3) and (4), (d), (e), (1), (2) and (3), (e)(4) (G) and (H), (e) (5) and *(8)*, (f), and (g) if the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2) and (k)(5). *Rules have been* promulgated In accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and *have been* published in the **Federal Register.**

[FR Doc. 86–1673 Filed 1–28–86; 8:45 a.m.]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

Report of an Ad Hoc Group on the Legal Issues Relating to the Consideration of Adherence by the United States to the Berne Convention; Availability and Invitation To Comment

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public availability of a Report and invitation to comment.

SUMMARY: By this Notice, the Copyright Office, in cooperation with the Department of State, announces the public availability of the Draft Report of the Ad Hoc Working Group on United States Adherence to the Berne Convention. Following receipt of comments from members of the public a final Report will be prepared. In this Report, the Ad Hoc Group analyzes the United States Copyright Act of 1976 (title 17 U.S.C.) other Federal and State statutes, and the common law, and compares them with the provisions and obligations of the Berne Convention for the Protection of Literary and Artistic Works (Paris, 1971 version). The Ad Hoc Group attempts to identify legal issues regarding the extent to which the United States copyright and other laws are or are not compatible with the Berne Convention.

DATE: Written comments should be submitted on or before March 31, 1986.

ADDRESSES: Copies of the Report are available for public inspection and copying in Room LM–401 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue, SE., Washington, DC. To the extent of available stock, copies may be requested by writing to: Ralph Oman, The Register of Copyrights, Library of Congress, Department D.S., Washington, DC 20540.

Written comments should be addressed to: Harvey J. Winter, Office of Business Practices, Department of State, Washington, DC 20520.

Comments sent to the United States Copyright office will be shared with the Department of State and the members of the Ad Hoc Working Group, who will consider the comments in connection with the preparation of its final Report and publish all comments as an appendix to the Final Report. The Copyright Office will receive copies of comments sent to the Department of State. All comments will be made available for public inspection and copying in the Public Information Office of the Copyright Office, Room 401 of the James Madison Memorial Building of the Library of Congress, First Street and Independence Avenue SE., Washington, DC.

SUPPLEMENTARY INFORMATION: The Berne Copyright Convention for the Protection of Literary and Artistic Works is one of two global, multilateral copyright conventions. It was originally signed at Berne, Switzerland on September 9, 1886, and has been revised at periodic intervals since then. The latest text of the Berne Convention is that agreed to at Paris in 1971. The United States is not a member of this Convention,[1] largely because many copyright scholars and government officials thought that the United States copyright law was incompatible with certain obligations of the Berne Convention. As a result of the general revision of the United States copyright law in 1976, some of the incompatibility has been eliminated, and United States adherence to Berne would now require fewer changes in United States law.

As the Berne Convention enters its centennial year, many artists and writers, and the copyright industries generally, have expressed renewed interest in United States accession to the Convention. At the request of the Department of State, several individuals with long experience in international copyright joined together as an "Ad Hoc Working Group" to identify those provisions of United States law that were incompatible with the Berne Convention, and that might require changes in United States law. The Group addressed this overriding issue: do the United States Copyright Act, other Federal and State statutes, and common law provide protection of the nature required by the Convention for works originating in other Berne member countries?

The Ad Hoc Group prepared a Report on this technical legal issue that might assist both Houses of Congress, the Executive Branch, and the public in their consideration of United States adherence to Berne. Further information about the composition of the Group, and its methodology and purpose, may be found in an extensive foreword to the Report. Representatives of the Department of State, the Copyright Office, and the Patent and Trademark Office participated as *ex officio* members of this private sector Group.

The Report analyzes fourteen basic subjects: Compulsory Cable License; Exemptions; Jukebox License; Manufacturing Clause; Mechanical License; Moral Rights; Notice; Public Broadcasting License; Registration, Recordation, and Deposit; Renewal and Duration; Retroactivity; Self-Execution; Subject Matter; and Works-Made-for-Hire.

The purpose of this Notice is both to inform the public of the availability of the Ad Hoc Group's Report, and to invite them to submit written comment on any or all of it. The Report, along with the public comments, will be made available to Congress as it considers the question of United States adherence to the Berne Convention.

Dated: January 24, 1986.

Ralph Oman,

Register of Copyrights.

[FR Doc. 86–1682 Filed 1–28–86; 8:45 am]

BILLING CODE 1410–01–M

[1] The United States is, and has been since its inception in 1955, a member of the other international copyright convention, the Universal Copyright Convention (Geneva 1952 and Paris 1971 versions).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–08]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review), may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by February 10, 1986. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Michael Weinstein, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl Steinmetz, NASA Agency Clearance Officer, (202) 453–1090.

Reports

Title: Non-Discrimination in Federally Assisted Programs.

Type of Request: New.

Frequency of Report: As Required.

Type of Respondent: Non-profit Institutions and Small Businesses or Organizations.

Annual Responses: 2,640.

Annual Burden Hours: 31,680.

Abstract-Need/Uses: Records and reports relating to Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, and facilities and recipients of the Federal Financial Assistance are required to comply with the objectives of the statutes and NASA implementing regulations.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 86–1674 Filed 1–28–86; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee (IES) of the National

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Security Telecommunications Advisory Committee (NSTAC) will be held Thursday, March 6, 1986. The meeting will be held at the MITRE Corporation, 1820 Dolley Madison Boulevard, McClean, Virginia 22102. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.
B. Administrative remarks.
C. Briefings on industry and government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692–9274 or write the Manager, National Communications System, Washington, DC 20305–2010.

David C. Brown,

Captain, USN, Chief, Joint Secretariat.

[FR Doc. 86–1864 Filed 1–28–86; 8:45 am]

BILLING CODE 3610–05–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029]

Yankee Atomic Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the technical requirements of Appendix R to 10 CFR Part 50 to Yankee Atomic Electric Company (the licensee), for the Yankee Nuclear Power Station (Yankee) located in Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The exemption would provide alternatives, in specific areas of the plant, to the requirements for: (1) Separation of cables and equipment and associated non-safety circuits or redundant trains by a fire barrier having a 3-hour rating; (2) separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards; or (3) enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing level of fire protection and proposed modifications at the plant are the most practical method of meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protective capability.

Environmental Impacts of the Proposed Action

The proposed exemption would provide a degree of fire protection equivalent to that required by Appendix R such that there would be no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases would not be greater than previously determined. Neither does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environment impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts associated with fire protection modifications and would result in a much larger expenditure of licensee resources to comply with the Commission's regulations.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated December 28, 1984, as amended April 30 and November 7, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland, this 22nd day of January, 1986.

For the Nuclear Regulatory Commission.

George E. Lear,

Director, Project Directorate #1, Division of PWR Licensing–A.

[FR Doc. 86–1691 Filed 1–28–86; 8:45 am]

BILLING CODE 1590–01–M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on January 15, 1986 (50 FR 1868), through January 17, 1986.

Notice of consideration of issuance of amendment to facility operating license and proposed no significant hazards consideration determination and opportunity for hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed

amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By February 28, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petiton and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirement described above.

Not later than fifteen (15) days prior to the first prehearing conference schedule in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of amendments request: December 16, 1985.

Description of amendments request: The licensee proposed changes to Technical Specifications (TS) to revise

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the Limiting Condition of Operation (LCO) and Surveillance Requirements (SR) for the reactor trip breakers including the automatic shunt trip feature modifications. The modifications resulted from the Commission staff's Generic Letter (GL) 83–28 dated July 8, 1983, based on generic implications of the Salem ATWS events. Item 4.3 of GL 83–28 required that Westinghouse reactor plants designs be modified to add automatic reactor trip by means of a shunt trip device. This modification for the Farley Nuclear Plant was approved by Commission letter dated September 20, 1983. Item 4.3 also required addition TS to assure operability and surveillance of the modified design.

By GL 85–09 dated May 23, 1985, licensees were instructed to submit TS changes per model TS attached to the generic letter. These changes to the LCO and SR were to explicitly require independent testing of the undervoltage and shut trip attachments during power operation and independent testing of the control room manual switch contacts during each refueling outage. The licensee has administratively implemented testing of the modified reactor trip breakers, the bypass breakers, and the main control board switches. Following GL 85–09 and subsequent discussions with the Commission staff, the licensee proposes related TS changes being considered by the staff.

Basis for proposed no significant hazards consideration determination: By Attachment 2 to the licensee's December 16, 1985 letter, an analysis of a no significant hazards consideration was provided. We reviewed the licensee analysis and concur with the finding. In addition, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The example of actions involving no significant hazards consideration include: "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement." The proposed change fits this example in that the proposed change adds additional operability and surveillance requirements on the reactor trip bypass breakers and the undervoltage and shunt trip logic as well as an additional surveillance requirement on the manual trip switch circuitry. Therefore, on this basis the staff proposes to determine that the applicant does not involve a significant hazards consideration.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Attorney for licensee: George F. Trowbridge, Espuire, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Carolina Power & Light Company, Docket Nos. 50–324 and 50–325, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: November 25, 1985.

Brief description of amendment: The proposed amendment would relocate a footnote from item 1.c.1 of Table 3.3.2–1 to item 1.c.1 of Table 4.3.2–1 to ensure that required surveillance testing of mechanical vacuum pumps is identified.

Currently, footnote d from item 1.c.1 of Table 3.3.2–1 indicates that upon receipt of the high radiation trip signal from the main steam line, the mechanical vacuum pumps are tripped. The proposed amendment deletes footnote d from Table 3.3.2–1 and adds it to item 1.c.1 of Table 4.3.2–1 to indicate that surveillance testing is required to verify the main steam line high radiation trip of the mechanical vacuum pumps. In addition, the footnote has been revised to include verification of the mechanical vacuum pump line value closing.

Basis for proposed no significant hazards consideration determination: The Carolina Power & Light Company (the licensee) has determined that: 1. The requested amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because relocating the footnote from the LCO table (Table 3.3.2–1) to the surveillance table (Table 4.3.2–1) does not require the modification or revision to any plant configuration, system function, operating parameters or setpoints.

2. The requested amendment does not create the possibility of a new or different kind of accident than previously evaluated for the same reasons as already discussed by item (1) above.

3. The requested amendment does not involve a significant reduction in a margin of safety. The proposed TS does not change any surveillance testing requirements; it only clarifies and highlights the need for verifying that the mechanical vacuum pump will trip and the mechanical vacuum pump line will close on main steam line monitor high radiation isolation signal during the surveillance test for the main steam line radiation monitor. Therefore, the margin of safety is maintained.

Based on the above, CP&L has determined that the proposed change meets the criteria of 10 CFR 50.92(c) and, therefore, does not involve significant hazards consideration.

The staff has reviewed the application and significant hazards review submited by the licensee and finds the application and the significant hazards review acceptable.

Based on the staff review of the application and the significant hazards determination above, the Commission proposed to determine that the application does not involve a significant hazard condition.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: December 10, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant Unit Nos. 1 and 2 that would make clarifications to ambiguous wording of footnotes in Specification 3/4.5.3.1.

Specification 3.5.3.1 deals with the core sprat system. Operability of the core spray system is required while in operational conditions 1, 2, 3, 4, or 5. When in operational condition 5, the core spray system need not be operable provided that the reactor vessel head is removed, the cavity is flooded, the spend fuel pool gates are removed, and the water level is maintained within specified levels. The note allowing this exception currently states in part: "The core spray system is not required to be OPERABLE when the suppression pool is inoperable provided . . .". This footnote is inconsistent with the guidance provided in the BWR/4 Standard Technical Specifications (NUREG–1234). The footnote is being revised to delete reference to supression pool operability.

When the core spray system is inoperable in operational condition 5, the reactor vessel must be flooded and the fuel pool gates removed. With the suppression pool operable, additional assurance of core flooding is provided by one low pressure cooling injection (LPCI) loop. The plant is in a more conservative condition with the suppression pool operable than inoperable since an additional source of makeup water is available to the LPCI system. This is consistent with the basis of Specification 3.5.3.1 which does not consider suppression pool operability with regard to core spray system operability. Additionally, the revision of this footnote will minimize operator confusion and ensure operational flexibility for modification and maintenance of the core spray system. This change clarifies the footnote, removing the implication that core spray may not be inoperable while the suppression pool is operable.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 FR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee evaluated this request and has determined that:

1. The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated because the changes do not result in any physical alterations of the plant configuration or changes to setpoints or operating parameters.

2. The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated for the same reasons as stated in item (1).

3. The proposed amendment does not involve a significant reduction in a margin of safety because rewording of ambiguous statements will help to avoid the possibility of operator confusion, thereby increasing the margin of safety.

Based on the above reasons, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the licensee significant hazards consideration and finds it acceptable. Based on the above discussion the Commission proposes to determine that the proposed amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 13, 1985.

Description of amendment request: The proposed amendment would revise Technical Specifications (TS) for the H.B. Robinson Steam Electric Plant Unit No. 2. The proposed revision involves deleting Technical Specification requirements for monitoring a highly borated water inventory and its associated limiting conditions for operation and surveillance.

Carolina Power and Light's (CP&L) submittal is in response to Generic Letter 85–16 which highlighted incidents at operating plants in which boric acid has crystallized in the internals of vital safety related pumps and piping thereby rendering those systems inoperable. In addition, licensees of Westinghouse plants have requested that they be allowed to either physically remove the boron injection tank from safety injection piping or reduce boron concentrations in the tank to levels safely used in other sections of the safety injection piping and refueling water storage tank. To support their request, licensees have submitted new analyses of the steamline break event that demonstrated that their purposed change involves no significant hazards consideration. The staff has review these analyses and granted these requests.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards of 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). One of the examples (vi) of actions not likely to involve significant hazards consideration relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP).

CP&L has submitted an analysis of the steamline break event with boron injection tank (BIT) removal or dilution to zero concentration boric acid for H.B. Robinson Unit 2. Although the concentration of the BIT has some potential implications or consequences of an accident, this impact is limited or bounded by the steamline break event. The CP&L analysis demonstrated that removal of capacity to inject highly borated water into the core does not produce a significant reduction in minimium departure from nucleate boiling ratio when compared to the large margin to fuel failure which remains.

The proposed changes fit example (vi) described above since the changes are clearly within all acceptable criteria with respect to the system or component specified in the SRP. On this basis, therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Attorney for licensee: Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: December 20, 1985.

Description of amendment request: The proposed amendments to Operating License NPF–11 and Operating License NPF–18 would revise the La Salle Units 1 and 2 Technical Specifications to reflect Commonwealth Edison's (licensee) management organizational changes both at the corporate level and at the La Salle County Station as a result of a reorganization. The licensee indicates that all functions performed by individuals meet the minimum acceptable levels described in Section 4.2.4 of ANSI N18.1–1971, for each respective requirement.

Basis for proposed no signifcant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (i) stated, "A purely administrative change to the Technical Specifications." These proposed

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amendments fall under this example since these changes are administrative in nature.

Accordingly, the Commission proposes that the changes would fall into the category of a no significant hazards consideration determination since the changes are administrative.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket No. 50–373, La Salle County, Station, Unit 1, La Salle County, Illinois

Date of amendment request: January 9, 1986.

Description of amendment request: The proposed amendment to Operating License NPF-11 would revise the La Salle Unit 1 Technical Specification to change the instrument response time for the main steam line low pressure trip function in Table 3.3.2–3 from 1 to 2 seconds.

La Salle Unit 1 is in a refueling outage, and is in the process of updating unqualified equipment with environmentally qualified equipment. The licensee is replacing the Barksdale main steam line low pressure switches, similarly as was done in Unit 2, with environmentally qualified SOR switches which cannot consistently meet the less than or equal to 1 second response time required by the Technical Specifications in Table 3.3.2–3. As a consequence, analyses were performed using the new response time in order to confirm that the prvious analyses were still applicable. No new nor unanalyzed safety issue results from the extension of this sensor response time to 2 seconds versus 1 second. The purpose of this low pressure isolation is to protect the fuel by restricting reactor operation to pressure regimes covered by the data base for the GEXL correlation.

The use of 2 seconds for instrument response, as determined according to Technical Specification definitions, does not challenge nor violate this fuel protection criteria.

Basis for proposed no signficant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences for an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the revised response time for the main steam line low pressure switches is bounded by the original analysis performed by General Electric for pressure regulatory failure-high.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident is possible by the required response time. No plant equipment is removed.

3. Involve a significant reduction in the margin of safety because the original design function is not affected and the increased response time is bounded by the original analysis.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room Locations: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln, and Beale, Suite 840, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036.

NRC Project Director: Elinor G. Adensam.

Commonwealth Edison Company, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: October 29, 1985.

Description of amendment request: This amendment would (1) delete from the Technical Specifications (TS) maximum average planar linear heat generation rate (MAPLHGR) curves for two fuel types that will be vacated from the core (2) incorporate into the TS MAPLHGR curves for two new fuel types to be used for cycle operation (3) extend the MAPLHGR curve for one fuel type now in the core from 45,000 megawatt days per short ton (MWD/ST) to 55,000 MWD/ST to extend the protective thermal limit to higher values of average planar exposure and thereby extend the useful life of the fuel.

In addition to the above change, all MAPLHGR curves would be reissued unchanged (except as noted above) but with the curves replotted for clarity and with page numbers and sheet numbers adjusted as required to reflect the above additions and deletions.

Basis for proposed no significant hazards consideration determination: The licensee has evaluated the proposed Technical Specification amendment and has determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration set forth in 10 CFR 50.92(c), operation of Quad Cities Unit in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

(a) The amendment involves restrictions on the reactor power distribution during normal operation which of itself cannot initiate an accident and therefore does not increase the probability of an accident, and

(b) These restrictions on power distribution are based on a reanalysis of accidents in accordance with NRC-approved methods, and are specific to ensure that the consequences of LOCA remain within the existing accident criteria established for Quad Cities in the FSAR; or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated for the same reason as (1)(a). above; or

3. Involve a significant reduction in the margin of safety since the amendments are specifically intended to ensure that the 10 CFR 50.46 ECC criteria continue to be protected.

With regard to the second part of the proposed amendment, i.e., incorporation in the TS MAPLHGR curves for two new fuel types for use in the upcoming operating cycle, the Commission has provided guidance concerning the application of standards for determining whether a significant hazard consideration exists by providing specific examples (48 FR 14870). Example (iii) of actions not likely to involve significant hazards considerations is a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. Each of the two new fuel types is a barrier-type fuel having properties similar to fuel already in the core. Each has the same physical configuration, and similar material composition and isotopic enrichment as fuel already analyzed and approved for previous reloads. Because the proposed use of the new fuel types is encompassed by example (iii), this action is not likely to involve significant hazards considerations.

In addition to the above changes, all other MAPLHGR curves now in the TS would be reissued unchanged but replotted for clarity, and page and sheet numbers would be adjusted to reflect the additions and deletions discussed above. Since example (i) of actions not likely to involve a significant hazards consideration includes "a purely administrative change to technical specifications", these changes to achieve clarity and consistency are purely administrative in nature, and therefore involve no significant hazards considerations.

The staff has reviewed the licensee's no significant hazards considerations determination and, based on this review, the staff has made a proposed determination that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Moline Public Library, 504–17th Street, Moline, Illinois 61265.

Attorney for licensee: Mr. Robert G. Fitzgibbons, Jr., Isham, Lincoln & Beale, Three First National Plaza, Suite 5300, Chicago, Illinois 60602.

NRC Project Director: John A. Zwolinski.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: December 6, 1985, as modified January 7, 1986.

Description of amendment request: The proposed amendment would (1) permit the repair of degraded steam generator tubes by installing metal sleeves in the degraded tubes rather than removing them from service by plugging them, (2) change the definition of tube degradation (3) add additional reporting requirements dealing with tube sleeving and (4) renumber existing technical specification pages.

Basis for proposed no significant hazards consideration determination: Item (1) of the proposed amendment, as identified above, would change the technical specifications to allow repair of defective steam generator tubes by either sleeving or plugging. Tube plugging is currently permitted by the existing technical specifications. For tube sleeving, the licensee intends to repair selected degraded steam generator tubes by installing a metal sleeve (Inconel 690) between the tube sheet and the first tube support to provide an elevated resistance to pitting experienced on the secondary side of the steam generator tube bundle. The sleeving materials and installation techniques to be applied are similar to those previously evaluated and accepted by the staff at Millstone Unit 2.

The staff has reviewed the licensee's application and based upon the information provided therein concludes that the proposed amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

These conclusions are based on the fact that sleeve design, installation, testing and inspection procedures will assure that the required steam generator is structurally sound. Further, the proposed method of repairing the degraded tubes will restore the original capabilities of the tubes and will provide a level of safety in operation commensurate with that anticipated for the facility had it not experienced the need to repair the steam generators.

With regard to items 2, 3 and 4, as identified above, the Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples not likely to involve significant hazards considerations is example (i) which relates to an administrative change to the technical specifications. We have reviewed the licensee's proposed definition change, the addition of reporting requirements for tube sleeving, and technical specification page renumbering and conclude that these changes fall within the envelope of example (i) because they are simple administrative changes to the plant technical specifications.

Based on the above, the staff proposes to determine that the license amendment requests involve no significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Gimes.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: December 11, 1985.

Description of amendment request: The proposed license amendment would change technical specifications that are directly related to the fuel cycle design and safety analyses for Cycle 14. The technical specification changes include: (1) The definition of quadrant power tilt ratio; (2) setpoints for protection instrumentation; (3) isothermal coefficient of reactivity; (4) limiting heat generation rates; (5) power distribution monitoring and controls; (6) reactor coolant system flow, temperature and pressure.

Basis for proposed no significant hazards consideration determination: The new fuel assemblies are identical to the fuel assemblies that were approved and inserted into the Haddam Neck core for fuel Cycle 13. (Operation in Cycle 13 is expected to end on January 4, 1986). The licensee, using calculational methods previously accepted by the staff, has calculated new technical specification values that maintain the current safety margins.

On the basis of its analysis, the licensee has concluded that the proposed amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or differenct kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has reviewed the proposed changes in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration. The basis for this conclusion is that the criteria of 10 CFR 50.92(c) are not compromised, a conclusion which is supported by the licensee's determinations made pursuant to 10 CFR 50.59.

In addition, the Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). The proposed changes to the technical specifications fall within the envelope of example (iii) in that they involve changes resulting from a nuclear reactor core reloading and no fuel assemblies are involved which are significantly different from those found acceptable to the NRC for a previous core at the Haddam Neck Plant. No significant changes have been made to the acceptance criteria for the technical specifications, and the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed from those which

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the NRC has previously found to be acceptable.

Based on the information provided by the licensee, the staff proposes to determine that the license amendment request involves no significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City, Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Detroit Edison Company, Docket No. 50–341, Fermi–2, Monroe County, Michigan

Date of amendment request: December 23, 1985.

Description of amendment request: The proposed amendment to Operating License NPF–43 would revise the Fermi–2 Technical Specifications to change the minimum rod block trip setpoint in Table 3.3.6–2 and in Specifications 4.3.7.6 and 4.9.2 from 0.7 counts per sound (CPS) to 0.3 CPS.

Since receiving its low power license in March 1985 and the full power license in July 1985, the Fermi–2 Unit has not been operated at power levels sufficent to maintain the strength of the startup sources. The licensee estimates that the source strength may be insufficient to meet the present minimum setpoint value of 0.7 CPS after mid-February 1986.

The plant was shutdown in early October 1985 to install environmentally qualified equipment and to install an independent, alternate shutdown system for fire protection. Subsequent problems with the emergency diesel generators (EDG's) will probably delay restart of the facility to mid-February 1986. The licensee's proposed revision to the Fermi–2 Techical Specifications is for a limited amount of time and only for the first core.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences for an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the source range monitors (SRM's) which register the count rate, are not required to perform any protective fuction. Accordingly, the evaluation of accidents did not rely on either their presence or functioning.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed lower value of the rod block monitor setpoint is within the demonstrated operating range of the SRM's to detect neutron levels in the reactor core. This is ensured by the licensee's determination that it can satisfy the minimum signal to noise ratio of 2 even at a count rate three times lower (i.e., 0.1 CPS) than the proposed lower setpoint value of 0.3 CPS.

Additionally, the method of achieving criticality in the reactor is by introducing small reactivity additions by withdrawing one rod at a time through a relatively small distance. This method ensures that the reactor will go critical with a relatively long period which can be confirmed by the SRM's

3. Involve a significant reduction in the margin of safety because the SRM setpoint change does not affect the protective function of the reactor protection system. This protective function is provided by the intermediate range monitors (IRM's), and they are unaffected by the proposed revision.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for licensee: John Flynn, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Elinor G. Adensam.

Duke Power Company, et al., Docket No. 50–413 Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of Amendment Request: July 31, 1985.

Description of Amendment Request: The proposed amendment would revise Technical Specifications (TS) 6.5, 6.6, 6.8 and 6.10, concerning "Administrative Controls." This proposed amendment would (1) seek to add the Superintendent of Integrated Scheduling to TS 6.5.1.3, 6.5.1.5, 6.6.1b., 6.8.2, and 6.8.3c, (2) seek to add the Superintendent of Station Services to TS 6.5.1.8 and 6.8.1c, and (3) change the record retention period in TS 6.10.2 for records of quality assurance activities required by the QA Manual. The effect of the first part would be to allow the Superintendent of Integrated Scheduling to review and/or approve modifications of safety-related structures, systems or components (TS 6.5.1.3), proposed tests and experiments which affect nuclear safety and are not addressed in the FSAR or the Station Technical Specifications (TS 6.5.1.5), Reportable Events (6.6.1b), and procedures specified under Specification 6.8.1 and changes thereto (TS 6.8.2 and 6.8.3), if so designated by the Station Manager. The second part is outside the scope of this notice. Regarding the third part of the proposed amendment, Specification 6.10.2 presently requires that the records of the quality assurance activities be retained for the duration of the Operating License. The proposed change would substitute a new Specification 6.10.3 requiring that these records be retained for the period specified by ANSI N45.2.9–1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records of Nuclear Power Plants."

Basis for proposed no significant hazards consideration: The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve significant hazards consideration by providing certain examples (48 FR 14870). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to administrative changes to the technical specifications.

The proposed amendment to TS 6.5, 6.6 and 6.8 is an example of (i) because the change relates to an increase in the number of supervisory positions. Since this new supervisory position is required to meet the same qualifications as the other existing supervisory positions, there would be no loss of technical review capability, and there would be no adverse impact on safety. The proposed change to TS 6.10 would involve only the substitution of a more specific and more appropriate requirement for QA records retention pursuant to a standard accepted by the NRC staff. Because this substitution would not shorten the retention period for those types of QA records which the Commission has determined should be retained for the plant lifetime, and does appropriately recognize that some of the QA record types have limited significance and may be retained for lesser periods, the proposed change has no adverse impact on safety and matches the example. Therefore, the Commission proposes to determine that this request does not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. William L. Porter, Duke Power Company, P O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director B.J Youngblood.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: August 20, 1985 as supplemented November 6, 1985.

Description of amendment request: The proposed amendments would increase the containment overall integrated leakage rate in Technical Specification 3.6.1.2 from its current L_a value of 0.20% per day to 0.30% per day, and from its current L_t value of 0.14% to 0.21% per day. (See Appendix J to 10 CFR 50 for definitions of L_a and L_t, corresponding at McGuire to containment pressures of 14.8 psig and 7.4 psig, respectively).

Basis for proposed no significant hazards consideration determination: The licensee provided revised radiation exposure calculations for a design basis LOCA using the methodology from Revision 1 of the Standard Review Plan (SRP), Section 6.5.2. SRP Section 6.5.2 recognizes that containment spray systems with boric acid spray solutions have been shown to be effective for removal of elemental and particulate iodine. The revised analyses demonstrate for thyroid doses that the proposed 50% increase in the containment leakage rate would be nearly offset by the effect of the spray system. This permits the licensee to take credit for the iodine removal effect of the boric acid which is contained in containment spray water for other reasons. Since noble gases are unaffected by containment sprays, an increased containment leakage rate would result in increased whole body and skin doses. However, for the McGuire Nuclear Station, thyroid radiation exposure is the limiting criteria, and the licensee's calculations show that the whole body and skin doses would remain well below the acceptance criteria in Appendix A of SRP Section 15.6.5 for offsite exposure (i.e., 10 CFR 100.11 values) and acceptance criteria in SRP 6.4 (i.e., GDC 19) for control room personnel.

The results of the licensee's calculations of onsite dose inside the control room are as follows: The whole body dose increases from 0.2 to 0.3 rem, which is less than the allowable limit of 5 rem; the skin dose increases from 4 to 6 rem, which is less than the allowable limit of 30 rem; and the thyroid dose decreases from 26 to 19 rem, which is less than the allowable limit of 30 rem.

The results of the licensee's calculations of offsite dose at the exclusion area boundary are as follows: The whole body dose increases from 3 to 4 rem, which is less than the allowable limit of 25 rem; and the thyroid dose increases from 198 to 208 rem, which is less than the allowable limit of 300 rem. The results of the licensee's calculations of offsite dose at the low population zone are as follows: The whole body dose increases from 0.6 to 0.7 rem, which is less than the allowable limit of 25 rem; and the thyroid dose decreases from 65 to 51 rem, which is less than the allowable limit of 300 rem.

Preliminary review and separate calculations by the NRC support these results and statements by the licensee.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870) of actions involving no significant hazards considerations. One of the examples (vi) involves a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable crtieria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The proposed amendments match the example because, as noted above, the doses after a design basis LOCA with the increased containment leakage rate, but with allowance for the containment spray system, would remain below the acceptance criteria for radiological exposure in Appendix A of SRP 15.6.5 and in SRP 6.4. Other criteria in the SRP sections would not be affected by the proposed change. Therefore, the Commission proposes to determine that the change involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director: B. J. Youngblood.

Louisiana Power and Light Company, Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Paris, Louisiana

Date of Amendment Request: December 2, 1985.

Description of Amendment Request: The proposed change would revise the Appendix A Technical Specifications by correcting a typographical error in Section 6.4.1 "ADMINISTRATIVE CONTROLS."

Adminstrative Control 6.4.1 describes the requirements for the retraining and replacement training program at Waterford 3, including reference to ANSI 3.1–1978, "For Selection and Training of Nuclear Power Plant Personnel."

To meet the intent of Administrative Control 6.4.1, the correct citation in ANSI 3.1–1978 is Section 5.5 entitled "Operator Retraining and Replacement Training." However, due to a typographical error, Administrative Control 6.4.1 presently incorrectly cites Section 5.2 of ANSI 3.1–1978 entitled "Training of Personnel to be Licensed by the NRC". The proposed change corrects this error by referencing Section 5.5 of ANSI 3.1–1978.

Basis for Proposed No Significant Hazards Considerations Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazrds consideration exists by providing certain examples (49 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to technical specifications, correction of an error, or change in nomenclature.

The proposed change to Administrative Control 6.4.1, as described above, will correct a typographical error by citing the proper section of ANSI 3.1–1978. Therefore, the proposed change is similar to example (i).

This change is solely for the purpose of correcting typographical error and has no effect on plant operations. Therefore, the proposed change will not: (1) Involve an increase in the probability or consequences of any accident previously evaluated; (2) create the possibility of a new or different kind of acident from any accident previously evaluated; or (3)

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involve a reduction in a margin of safety.

As the change requested by the licensee's December 2, 1985 submittal fits the example provided, as well as satisfies the criteria of 50.92, it is concluded that: (1) The proposed change does not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed change; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment as described in the NRC Final Environmental Statement.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M St. NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee, Atomic Power Station, Lincoln County, Maine

Date of amendment request: September 6, 1985 as suplemented October 3 and December 16, 1985.

Description of amendment request: This proposed amendment provides Technical Specification changes needed to require that the auxiliary turbine driven auxiliary be operable during plant operation. This proposed amendment would require that the reactor shall not be maintained in a power operation condition unless at least three independent steam generator auxiliary or emergency feedwater pumps and associated flow paths are operable to supply emergency feedwater to all three steam generators with:

1. Two emergency feedwater pumps, each capable of being automatically powered from separate operable emergency busses, and
2. One auxiliary feedwater pump capable of being powered from an operable steam supply system, and
3. An inventory of over 100,000 gallons of primary grade feedwater.

If one auxiliary or emergency feedwater pump is inoperable, it is to be restored to operable status within 168 hours or the plant is to be in at least hot standby status within the next 6 hours and hot shutdown within the following 6 hours.

With one emergency feedwater and one auxiliary feedwater pump inoperable, be in HOT STANDBY in 24 hours and in HOT SHUTDOWN within the following 6 hours.

With two emergency feedwater pumps inoperable be in at least HOT STANDBY within 6 hours and in HOT SHUTDOWN within the following 6 hours.

With all three auxiliary and emergency feedwater pumps inoperable, immediately initiate corrective action to restore at least one pump to OPERABLE status as soon as possible.

With the emergency feedwater flow path to a steam generator out of service, return the flow path to service within 168 hours, or be in HOT STANBY within 6 hours and in HOT SHUTSOWN within the following 6 hours.

Basis for proposed non significant hazards consideration determination: The licensee persented the following basis for no significant hazards consideration determination:

1. Discussion of the Proposed Change:

The proposed change adds a limiting condition for operation for the turbine driven auxiliary feedwater pump. Operation of the plant is allowed for up to 168 hours with the pump out of service and for up to 24 hours with the turbine driven auxiliary feedwater pump and one of the motor driven emergency feedwater pumps out of service. The current Technical Specifications do not address operability of the auxiliary feedwater pump.

The proposed change also includes minor changes to the existing Technical Specifications on the motor-driven emergency feedwater pumps, in order to improve consistency with the standard specifications for CE plants.

2. Does the proposed change involve a significant increase in the probability or the consequences of an accident previously analyzed?

No, it does not. The only design basis accident potentially affected by this change is postulated loss of main feedwater. The probability of a loss of main feedwater is not affected. The proposed change increases the reliability of the feedwater supply and could decrease the consequences of certain loss of feedwater scenarios which are beyond the design basis of the plant.

3. Does the proposed change create the possibility of a new or different kind of accident from any accident previously analyzed?

No it does not. The requirement for the turbine driven feedpump to be operable could mitigate a postulated loss of all AC power. The proposed change does not create the possibility of any non-design basis accident.

4. Does the proposed change involve a significant reduction in a margin of safety?

No it does not. The requirement for the auxiliary feedwater pump to be operable should result in an increase in the margin of safety.

5. Does the proposed change involve a significant hazards consideration as defined by 10 CFR 50.92?

Based on the above, the licensee has concluded that the proposed change does not involve a significant hazards consideration as defined by 10 CFR 50.92.

The staff agrees with the licensee's conclusion.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscassett, Maine.

Attorney for licensee: J. A. Ritscher, Esq., Ropes & Gray 225 Franklin Street Boston, Massachusetts 02210.

NRC Project Director: Ashok C. Thadani.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: August 6, 1981 as supplemented by letter dated December 2, 1985.

Description of amendment request: Revises earlier Technical Specification change request regarding the verification of drywell-suppression chamber vacuum breakers closures.

Basis for proposed no significant hazards consideration determination: The proposed amendment would incorporate the following changes to the Technical Specifications (TSs) in addition to those previously noticed in the Federal Register June 20, 1984 (49 FR 25368)

1. Delete the licensee's original proposal permitting continuous operation with one drywell-suppression chamber vacuum breaker in the position between "fully closed" and "3 degrees open."
2. Require initiation of the bypass area leakage test within 8 hours of detection of a "not fully seated" position indication.
3. Require a bypass area leakage test within 24 hours following the operability test of vacuum breakers if a "not fully seated" position indication exists.
4. Require periodic bypass area leakage tests for the duration of a "not fully seated" position indication.

Further, the licensee requests several minor editorial and typographical

corrections. Typical of these requested editorial changes is a change from 'will' to 'shall' and the addition of the word 'outage' as in refueling outage.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One of the examples of an action not involving a significant hazards consideration includes a change (ii) that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications: For example, a more stringent surveillance requirement. The major changes (items 2,3,4) described above matches this example in that they would add further operational restrictions not presently included in the TSs.

The licensee also withdrew a previously proposed TS change request as discussed in Item above. Based upon the above, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment requests: February 11, 1982, as amended on August 24, 1983 and November 1, 1985.

Description of amendment requests: Proposed addition of Technical Specification (TSs) provisions covering overtime work restrictions for certain plant personnel in accordance with NUREG–0737, Item I.A.1.3. The proposed amendment would add overtime work restrictions for certain plant personnel to Section 6 (Administrative Controls) of the Peach Bottom Technical Specification in accordance with Generic Letter 83–02 (NUREG–0737 Technical Specifications, January 10, 1983). The above cited Generic Letter provided Standard Technical Specifications for certain NUREG–0737 requirements, including the overtime limits identified in NUREG–0737, Item I.A.1.3. The proposed amendment would incorporate the major provisions of these Standard TSs as requested by the staff in Generic Letter 83–02.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain example (48 FR 14870). One of the examples of actions involving no significant hazards considerations is (ii) a change that constitutes and additional limitation, restriction, or control not presently included in the Technical Specifications for example, a move stringent surveillance requirement. Since the current TSs do not have requirements limiting overtime of certain plant personnel, these requested changes represent additional limitations and restrictions not presently found in the Peach Bottom TSs.

Since the application for amendment involves proposed changes that are similar to the example cited above for which no significant hazards considerations exists, the Commission proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment requests: November 18, 1985.

Description of amendment requests: Certain changes regarding plant organization as specified in Section 6 (Administrative Controls) and revised organization charts. The proposed revisions to the Technical Specifications (TSs) involve the following:

1. A division of the Health Physics and Chemistry organization into two groups, each directed by a senior level supervisor;
2. A reorganization of station upper management through the introduction of two new position: Superintendent Operations and Superintendent Plant Services;
3. A new station organization chart;
4. A The addition of the Administrative Engineer, Assistant Maintenance Engineer, Outage Planning Engineer, and ALARA—Health Physicist to the station organization chart;
5. A revision to the licensed operator staffing requirements during period when both units are shutdown;
6. A provision to permit certain changes to the organization chart and onsite safety review committee composition without prior NRC approval;
7. A change in several titles on the organization charts;
8. A revision to the composition of the onsite safety review committee;
9. A provision to incorporate several minor changes in order to establish consistency between the Peach Bottom TSs and the Limerick TSs;
10. A revision to clarify the person authorized to approve procedures; and
11. A revision to the Management Organization Chart to reflect reorganization and title changes.

All of the above proposed changes would affect Section 6 (Administrative Controls) of the current Peach Bottom TSs.

Basis for proposed no significant hazards consideration determination: The proposed amendment to the TSs would permit the following:

1. Currently, Figure 6.2–2, Organization for Conduct of Plant Operations, shows the Senior Health Physicist as being responsible for both the Health Physics and Chemistry programs. The proposed change to figure 6.2–2 would divide the organization into two groups, each directed by a senior level supervisor. Health Physics activities would continue to be supervised by the Senior Health Physicist. A new position of Senior Chemist would be established with the responsibility for the supervision of the radiochemistry and conventional chemistry activities. The individual assigned to the new position of Senior Chemist meets the qualifications of Regulatory Guide 1.8, September 1975, "Personnel Selection and Training."
2. The licensee proposes changing the title of "Station Superintendent" to "Manager—Nuclear Plant" and the creation of two positions (Superintendent—Operations, and Superintendent—Plant Services) at the superintendent level to handle the plant management responsibilities previously handled in a single line organization through an Assistant Superintendent to the Station Superintendent. The Licensee indicates that Reorganization is intended to better focus management attention on the performance of each of

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the primary plant organizations essential to safe and effective operations. The individuals to be assigned to the positions of Superintendent—Operations, and Superintendent—Plant services are the Assistant Superintendent and Technical Engineer, respectively. The position of Manager—Nuclear Plant will be filled by the incumbent Station Superintendent.

3. The licensee proposes to show the position of Administration Engineer, Outrage Planning Engineer, and ALARA-Health Physicist on the organization chart. The duties of the Administration Engineer include the administration of security, clerical, and selected regulatory activities. The duties of the Outrage Planning Engineer involve the planning, coordination, and management of plant outrage activities. Both positions are currently held by individuals holding an SRO license; although, this is not a requirement. The licensee indicates that the position of ALARA-Health Physicist would enhance the implementation of the Peach Bottom ALARA program.

4. The organization chart in Figure 6.2–2 has been redrawn using a new format to improve clarity and depict the plant organization more accurately.

5. The licensee proposes a change in the minimum licensed operator staffing requirements for the control room. Currently, Figure 6.2–2 requires two senior licensed operators (SRO) and three licensed operators (RO) per shift at all times. The proposes change, as stated in Note 3 on Figure 6.2.–2, would reduce the requirements to one SRO and two RO's during periods when Peach Bottom Units 2 and 3 are both in the shutdown or refuel mode. The licensee states the proposed staffing requirements are consistent with the Standard Technical Specifications and the Commission's regulation (10 CFR 50.54m).

6. Licensee proposes a change to Section 6.2.2 (page 243) that would permit certain revisions to the organization charts without prior NRC approval. The licensee states that the revisions would be limited to changes that do not decrease the effectiveness of the organization. The proposed revisions would require the reporting of changes to the NRC within 30 days, followed by a license amendment application within 4 months. The licensee proposes a similar provision regarding changes to the composition of the PORC (page 246). These provisions would permit minor revisions, and improvements, in the staff organization without the implementation delays inherent in the current license amendment process.

7. The licensee proposes changes to the organization chart on Figures 6.2–1, 6.2–2 and 7.1.1, and to pages 243, 246, 247, 248, and 254, to reflect the following title changes: "Station Superintendent" to "Manager—Nuclear Plant," and "Results Engineer" to "Performance Engineer". These proposed changes represent only a change in nomenclature, as the responsibilities of these two positions remain unchanged.

8. Licensee proposes revisions to the onsite safety review committee (PORC) composition depicted in specification 6.5.1.2 (page 246) to reflect the addition of the Superintendent—Operations, Superintendent—Plant Services, Outage Planning Engineer, and Senior Chemist to the organization as previously described. The licensee states that their experience and knowledge of nuclear plant activities would enhance the review capabilities of the PORC. To accommodate these additions, the positions of Assistant Superintendent, Results (Performance) Engineer, Reactor Engineer, and Instrument and Controls Engineer are being proposed for removal as primary PORC members. The number of PORC members is not changed by this application. These four individuals would fill senior plant management positions and the licensee states that they meet the qualifications of ANSI/ANS 3.1–1978 and ANSI N18.1 1971 for comparable positions.

9. The licensee has proposed certain changes to the Peach Bottom TS organization charts as the result of NRC staff comments dated March 18, 1985. These changes would add the position of Assistance Maintenance Engineer and delete a footnote to establish consistency with the organization chart in the Limerick TSs. In addition, minor additions have been proposed to Section 6.5.1.4, 6.5.1.6 and 6.8.2 to provide consistency within the Peach Bottom TSs and consistency between the Peach Bottom TSs and consistency between the Peach Bottom TSs and the Standard Technical Specifications (NUEREG–0123, Revision 3.)

10. A further revision to Section 6.8.2 is proposed that would explicitly permit the Plant Manager to delegate approval authority for selected procedures to the PORC member who has primary responsibility for implementation of the procedures. The licensee states that the current specification is unclear regarding the delegation of approval authority, and the proposed change would avoid interpretational problems. The licensee further states that the proposed revisions do not impact the review and approval responsibilities of procedures by PORC, and current administrative controls will continue to ensure PORC approval prior to the final signoff by the responsible PORC member. The revision would distribute this administrative task among several members of the senior plant staff and would expedite completing the approval process for needed revisions. The proposed approval process utilizes the PORC member who is most familiar with activities governed by the procedures and their revision.

11. In addition to the proposed changes described in items (6) and (7) above, Figure 6.2–1, Management Organization Chart is revised to depicit the splitting of the Generation Division into separate Fossil/Hydro and Nuclear groups, and the formation of a Nuclear Services group. The NRC was previously informed of this reorganization in letters dated April 4, 1983 and May 29, 1984. The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility is in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has determined per 10 CFR 50.92 the following:

The organizational changes described in requests 1, 2, 3, 8, and 11 do not involve a significant increase in the probability or consequences of an accident previously evaluated because they will enhance station management control over plant activities essential to safe and effective operations. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they likewise enhance station management control over plant activities essential to safe and effective operations. The changes do not involve a significant reduction in a margin of safety because they are intended to better focus management attention on the performance of each of the primary plant organizations essential to safe and effective operations.

Changes 4 and 7, involving a new format for the organization chart and title revisions, do not involve a significant increase in the probability or consequences of an accident previously evaluated because they improve clarity and are revisions in nomenclature only. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they are administrative changes only and will improve clarity. The changes do not involve a significant reduction in a margin of safety because they are revisions in nomenclature only.

Change 5 regarding licensed operator staffing requirements does not involve a significant increase in the probability or consequences of an accident previously evaluated because it applies only to the shutdown or refuel mode of operation and conforms to the Commission regulation (10 CFR 50.54m). The change does not create the possibility of a new or different kind of accident from any accident previously evaluated because it applies only to the shutdown or refuel mode at operation. The change does not involve a significant reduction in a margin of safety because it conforms with the Commission's regulation (10 CFR 50.54m).

Changes 6, 9, and 10 which streamline the licensing process for minor revisions and establish consistency with the Standard Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated because they would permit organizational and procedural improvements without the implementation delays inherent in the current license amendment process. These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they would permit organizational (administrative) and procedural improvements without the implementation delays inherent in the current license amendment process. The changes do not involve a significant reduction in a margin of safety because they permit manpower resources in both the utility and NRC to concentrate on issues of safety significance rather than the administrative burden of processing minor revisions to the Operating License.

The licensee has determined and the NRC staff concurs that these changes have little safety significance and that the proposed amendment will not alter any of the accident analyses.

Based on our review of the proposed modifications, the staff finds that there exists reasonable assurance that the proposed changes in Section 6 (Administrative Controls) will have little or no impact on the public health and safety.

Accordingly, the Commission proposes to determine that the proposed changes to the Peach Bottom TSs involve no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Daniel R. Muller.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 1, 1985.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) to clarify the function of the Plant Operating Review Committee (PORC). The existing wording in Section 6.5 of the TS implies that the PORC performs both a review and an audit function. Although this dual function does apply to the Safety Review Committee (SRC), the PORC performs only a review function. The proposed revision, by making this clarification, makes the TS consistent with the licensing basis of the plant.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One example of actions involving no significant hazards consideration if (i) A purely administrative change to the Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The proposed revision is clearly encompassed by this example.

Based on the foregoing, the Commission has made a proposed determination that the proposed license amendment does not involve significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Daniel R. Muller.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: November 15, 1985.

Brief description of amendment: The purpose of the proposed amendment is to revise technical specifications 4.6.1.1.c, 3.6.1.2.a, 3.6.1.2.b, 4.6.1.2.a, 4.6.1.2.d, 3.6.1.3.b, 4.6.1.3.b, and 4.6.1.7.2 to indicate that containment leak rate testing (Type A, B, C tests per 10 CFR Part 50, Appendix J) is to be performed at the calculated peak containment internal pressure (P_a) of 48.1 psig. This value for P_a is a result of containment pressure/temperature analyses in the SNUPPS FSAR (refer to Section 6.2.1.4.3.3 and Table 6.2.1–2).

Basis for proposed no significant hazards consideration determination: The licensee states that this change has no effect on the Integrated Containment Leakage Rate Test results submitted via the referenced letter (ULNRC–794). This Type A test was performed at 50.05 psig. However, all Local Leakage Rate Tests (Type B and C) have been performed at the current Technical Specification value of P_a (i.e., 48.0 psig). To reconcile the use of this slighly lower test pressure, an evaluation was performed to determine the impact on meeting the acceptance criteria for Type B and C tests. The results of this evaluation indicated a negligible effect on meeting the acceptance criteria (i.e., a 0.1% increase in the total leakage for Type B and C tests which remains 25% of all the allowable value of $0.6L_a$). Therefore, the error estimated to result from performing the Local Leakage Rate Test at 48.0 psig is within the uncertainty associated with the test method and is considered to be insignificant. The technical specification changes requested will ensure that future testing is performed at the correct pressure. These changes will have no effect on plant design or operation.

On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This amendment request is similar to the example of a purely administrative change to the technical specifications; specifically a change to achieve consistency between the technical specifications and the FSAR. Based on the above, the requested amendment does not involve a significant licensee consideration.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251

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and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of application for amendment: November 18, 1985.

Brief description of amendment: The purpose of the proposed amendment is to revise Technical Specification Figures 6.2-1 and 6.2.2 and Section 6.5.1.2 to reflect the Nuclear Function Quality Assurance organizational changes associated with the establishment of a new corporate Quality Systems Department.

Basis for proposed no significant hazards consideration determination: The Quality Systems Department will implement a quality improvement process on a corporate basis, assist various corporate functions in developing and implementing quality services programs, and be responsible for the quality assurance activities of the Nuclear Function. Nuclear Quality Assurance Division revisions reflect changes in personnel assignments and in paths of reporting relationships. Figure 6.2-1 is revised to: Delete the position of Assistant Manager, Quality Assurance; to indicate that the Manager, Quality Assurance reports to the newly created position of General manager, Quality System; to show that the Manager, QA is located at the Callaway site; to indicate that the Manager, QA is assisted by staff permanently located onsite and staff located at the general office building; and, finally, to show that the General Manager, Quality Systems has a direct path to the Vice President, Nuclear on all quality assurance matters. The General Manager, Quality Systems and the Vice President, Nuclear report to the Executive Vice President. Figure 6.2-2 is revised to show that the Manager, QA is located onsite and reports to the General Manager, Quality Systems located offsite. In addition, the Manager, QA has direct access to the Manager, Callaway Plant on all quality assurance matters. Technical Specification 6.5.1.2 is revised to indicate that quality assurance membership on the Onsite Review Committee is held by the Superintendent-Operations Support, QA.

These organizational changes were made to enhance the effectiveness and capability of the Union Electric Quality Assurance Program. While the revisions represent changes in reporting relationships, they do not represent a change in organizational commitments. While personnel assignments are changed, the revisions do not reduce commitments to minimum qualifications. The location of the Manager, QA at the site does not negatively impact the Quality Assurance Program. The Quality Assurance Division has more personnel onsite than in the general office, and the physical distance (approximately two hours by automobile) is not prohibitive for the frequent presence of the Manager, QA at both the site and the general office. Two site Superintendent positions will effectively replace the former Assistant Manager, QA position. This change will increase quality assurance management resources and at the same time offer promotional and career path options to enhance personnel reetention and experience. The two site Superintendents will meet the same minimum qualification requirements as the former Assistant Manager, QA. The site QA staff previously reported via three Supervising Engineers and one QA supervisor to the Assistant Manager, QA. The site QA staff will now report via four Supervising Engineers to the two Superintendents who report directly to the Manager, QA. The corporate QA staff will report to the Manager, QA through a Superintendent and two Supervising Engineers. Finally, the revisions do not alter the independent reporting paths between the Nuclear Quality Assurance and Nuclear Operations Departments. Under the new organization, the independence of the Quality Assurance reporting path is enhanced. The Manager, QA previously reported fully and directly to the Vice President, Nuclear. Now, the Manager, QA reports to the General Manager, Quality Systems and has direct access to the Manager, Callaway Plant on all Quality Assurance Program matters. The General Manager, Quality Systems reports to the Executive Vice President and has direct access to the Vice President, Nuclear on all QA Program matters.

In summary, the licensee concludea from the above dissusion that while personnel assignments are revised and reporting relationships are changed, the commitments to minimum qualifications and basic organizational reporting requirements are unchanged. While many of the changes are administrative in nature, the new organization does provide additional structural controls not presently included in the technical specifications.

On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This amendment request is in some respects similar to the example of a purely administrative change to the technical specifications. This amendment request is in other respects similar to the example that constitutes an additional limitation, restriction or control not presently included in the technical specification, Based on the above, the requested amendment does not involve a significant hazards consideration.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Vermont Yankee Neclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: November 15, 1985.

Description of amendment request: By letter dated November 15, 1985, the licensee, Vermont Yankee Nuclear Power Corporation, submitted a proposed license amendment for NRC review and approval which would revise the Vermont Yankee Technical Specifications to delete sections associated with the requirement that valves in the equalizer piping between the recirculation loops be closed during reactor operation. The valves were required to be closed in order to isolate the recirculation loops. The equalizer piping, including the valves, will be removed during the present pipe replacement outage. This will accomplish the desired isolation without the requirements that the values be closed.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (vi) of actions not likely to involve a significant hazards consideration is a change which may result in some increase to the probability or consequences of a previously-analyzed accident or may

reduce in some way a safety margin, but where the results are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. This proposed Technical Specification Change deletes the requirement that equalizer valves be closed in order to isolate recirculation loops, because the new physical configuration of the piping accomplishes isolation by the absence of connecting piping. The Commission's staff concludes that any change in the safety margin will be small and the change is clearly within acceptable criteria as specified in the Standard Review Plan. Therefore, the change is similar to Commission example (vi). Accordingly, the Commission proposes to determine that this amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: October 4, 1985, and supplemented on December 5, 1985.

Description of amendment request: This proposed amendment, if approved, will change §§ 3/4.3.5 (Reactor Core Isolation Cooling (RCIC) System Actuation Instrumentation), and 3/4.7.3 (Reactor Core Isolation Cooling System) of the WNP-2 Technical Specifications. The change would remove some of the Technical Specifications requirements pertaining to the RCIC system, reflecting a system downgrade as a result of modifications to the Automatic Depressurization System (ADS) logic. These modifications were previously approved and incorporated as Amendment No. 11 to the WNP-2 Operating License, NPF-21.

As a result of Amendment No. 11, the Supply System was authorized and required to implement an option proposed by the BWR Owners Group to eliminate the high drywell pressure trip portion of the existing ADS logic and to add a manual inhibit switch. These modifications satisfied the NRC-mandated change to the existing ADS system logic which was a condition of the WNP-2 license, License Condition 2.C(18). As a result of these changes, the ADS is now responsive to a wider range of transients and, in conjunction with the low pressure Emergency Core Cooling System (ECCS), provides an independent and separate backup to the High Pressure Core Spray (HPCS) system for high pressure events. Therefore, the scope of the requirement for RCIC as an HPCS backup is reduced.

Elimination of the need for RCIC to mitigate design basic events allows those components necessary for RCIC system operation with no other safety function to be removed from the WNP-2 equipment qualification program. Those RCIC components still required to isolate primary or secondary containment, or whose failure can result in the loss of other Class 1 functions, will remain in the equipment qualification program.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Supply System has determined and the staff agrees that it does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, because the same safety functions previously provided by the RCIC system are performed by the ADS in combination with the Low Pressure Injection Systems.

2. Create the possibility of a new or different kind of accident than previously evaluated, because no system design functions have been changed.

3. Involve a significant reduction in a margin of safety, because ADS, in combination with Low Pressure Injection Systems, provides the same function previously accomplished by the RCIC system with no change to overall system performance criteria.

Based on staff review of the requested modifications, the Commission proposes to determine that the requested changes to the WNP-2 Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036.

NRC Project Director: E. Adensam.

Washington Public Power Supply System, Docket No. 50-397, WNP-2 Richland, Washington

Date of amendment request: October 28, 1985.

Description of amendment request: This proposed amendment, if approved, will change a license condition of the WNP-2 Operating License NPF-21. Attachment 2, paragraph 3.(b) of License Condition 2.C.(16), as amended, now requires that the licensee shall implement (install or upgrade) requirements of Regulatory Guide 1.97, Rev. 2, for flux monitoring prior to startup following the first refueling outage. The licensee has requested that implementation of this requirement be delayed until the second refueling outage.

Technical difficulties with both of the available monitor designs require resolution before a commitment is prudent. One of the two available detector designs (external core) is currently being tested on Boiling Water Reactors and apparently, has sensitivity problems at low power and low moderator temperatures. The other detector (incore) installs from the top of the reactor vessel requiring reactor vessel head removal for maintenance and neutron activation would complicate the maintenance procedures A timely resolution of these concerns does not appear imminent at this time. Given procurement lead times, the unresolved technical concerns and the need for a deliberate engineering evaluation and selection process, installation by the first refueling outage is not practical.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

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The Supply System has determined, and the staff agrees, that the proposed change does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the existing instrumentation consists of four redundant safety-related channels. Additionally, there are unrelated systems in place to provide operators with sufficient data to assess reactor conditions (e.g., control rod position monitors, reactor vessel level and pressure monitors) in the unlikely event of an accident condition prior to replacement. (2) Create the possibility of a new or different kind of accident, because no function of the flux monitor system is being changed; therefore, no new or different kind of accident is conceivable. (3) Involve a significant reduction in a safety margin as adequate instrumentation is provided to allow the operator to assess reactor conditions without this monitor in the unlikely event of an accident condition that could cause the monitor currently in-place to fail prior to replacement.

Based on staff review of these proposed modifications, the Commission proposes to determine that the requested change to the WNP-2 License involve no significant hazards considerations.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorney for licensee: Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036.

NRC Project Director: E. Adensam.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: January 6, 1986.

Description of amendment request: The proposed change would modify the Technical Specifications (TS) to allow submission of a supplement to the January 1 semiannual radioactive effluent release report. The supplement would contain the dose and meteorological summary report, and would be required within 150 days of January 1 each year.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). Example (i) of actions involving no significant hazards consideration involves a change that constitutes a purely administrative change to the TS; for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature. The administrative controls section of the current TS requires the submission of the radioactive effluent release report within 60 days after January 1 and July 1 each year. The January 1 report currently is required to include a summary of the previous year's hourly meteorological data, and an assessment of radiation doses from radioactive liquids and gases. The proposed change would allow an additional 90 days (total of 150 days) after January 1 to provide the hourly meteorological data and dose assessment. This proposed change does not modify the information to be submitted, only the date of submission. This proposed change constitutes an administrative change to the TS.

Based on this discussion, the staff proposed to determine that the requested action could not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARD CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, et al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Dates of amendment requests: March 15, August 7, October 30, November 7, December 17, December 20 and December 23, 1985.

Brief description of amendment request: The amendment would revise the Unit 1 Technical Specifications to eliminate typographical errors, provide additional clarification, improve consistency, adjust nomenclature, bring portions of the specifications into conformance with current NRC staff positions, incorporate Unit 2 information where appropriate, and make other minor changes.

Date of publication of individual notice in **Federal Register:** January 6, 1986 (51 FR 455).

Expiration date of individual notice: February 6, 1986.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearings or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluation and/or Environmental

Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Baltimore Gas & Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 26, 1985.

Brief description of amendments: The amendments revised the Technical Specifications to allow completion of the third containment Integrated Leak Rate Test prior to the 10-year Inservice Inspection outage.

Date of issuance: January 8, 1986.

Effective date: January 8, 1986.

Amendment Nos.: 112 and 95.

Facility Operating License Nos. DPR–53 and DPR–69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46208 at 46210).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendments request: October 11, 1985.

Brief Description of amendments: The amendments to Operating License NPF–11 and Operating License NPF–18 revise the La Salle Units 1 and 2 Technical Specifications to remove during refueling (or unloading) of the first (last) fuel assemblies adjacent to the Source Range Monitors (SRM) the requirement that the SRM meet a minimum count rate with fuel in the core. Other loading requirements will be unchanged. The primary reason for the licensee wanting to change is to eliminate the need for sources and to minimize the need for Fuel Loading Chambers during loading operations. The primary basis for the safety of the requested change is that the core will be well subcritical during the loading of the initial assemblies, and subsequent loading will be well monitored by the SRM.

Date of issuance: January 7, 1986.

Effective date: January 7, 1986.

Amendment Nos.: 32 and 18.

Facility Operating License Nos. NPF–11 and NPF–18. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 48211)

Comments received: Yes. Source: State of Illinois by telecon.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: May 2, 1983.

Brief description of amendments: The amendments incorporate changes to the Technical Specifications which impose more stringent surveillance requirements on the use of the Economic Generation Control System for each unit.

Date of issuance: January 14, 1986.

Effective date: January 14, 1986.

Amendment Nos.: 91 and 88.

Facility Operating License Nos. DPR–29 and DPR–30. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43131). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Moline Public Library, 504–17th Street, Moline, Illinois 61265.

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Benton County, Illinois

Date of application for amendments: August 19, 1985.

Brief description of amendments: The amendments would change specimen capsule withdrawal schedule to reflect low leakage loading patterns and requirements of 10 CFR Part 50, Appendix H.

Date of issuance: January 16, 1986.

Effective date: January 16, 1986.

Amendment Nos.: 92 and 82.

Facility Operating License Nos. DPR–39 and DPR–48. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41245) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Zion Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendments: August 6, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to include anticipatory Technical Specifications to include anticipatory reactor trip upon turbine trip. The change was directly requested by the Nuclear Regulatory Commission by Generic Letter dated September 20, 1982 and is required to satisfy NUREG–0737 "Clarification of TMI Action Plan Requirements" Item II.K.3.12. In addition the amendment includes a modification to bypass (block) the anticipatory reactor trip upon turbine trip below 35% power. The 35% power level was chosen because at this level the elimination of reactor trip on turbine trip will not challenge the probability of a small-break LOCA resulting from a stuck-open pressurizer PORV. The purpose of the modification is to increase plant availability by reducing the length of time required to restart following a readily correctable turbine trip at low power.

Date of issuance: January 13, 1986.

Effective date: January 13, 1986.

Amendment Nos.: 107.

Facilities Operating License Nos DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38913).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

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Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: April 2, 1985.

Brief description of amendments: The amendments revise a surveillance requirement and footnote associated with Technical Specification ¾.1.3.3, Rod Position Indication System to allow closing of the reactor trip breakers to perform required surveillance. Action on that part of the proposed amendments which would have added "Control Rod Drive System capable of rod withdrawal" has been deferred pending receipt of further information from the licensee.

Date of issuance: January 9, 1986.

Effective date: January 9, 1986.

Amendment Nos.: 50 and 31.

Facility Operating License Nos. NPF–9 and NPF–17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46212). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: July 19, 1985.

Brief description of amendment: The amendment revised the Technical Specifications to permit continued operation at rated thermal power for a specified time following a dropped control element assembly and reformulates the action statements of Technical Specification 3.1.3.1.

Date of issuance: January 15, 1986.

Effective Date: January 15, 1986.

Amendment No.: 71.

Facility Operating License No. DPR–67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37072 at 37081).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: October 22, 1985.

Brief description of amendment: The amendment revised the Technical Specifications to support the installation of the safety grade Auxiliary Feedwater Actuation System that has been installed to satisfy the requirements of NUREG–0737, Action Item II.E.1.2. The changes revised, and added to, Tables 3.3–3, 3.3–4, 3.3–5 and 4.3–2 and listed an additional responsibility for the Facility Review Group in Technical Specification 6.5.1.6.

Date of issuance: January 15, 1986.

Effective Date: January 15, 1986.

Amendment No.: 72.

Facility Operating License No. DPR–67: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49779 at 49785).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: August 23, 1985.

Brief description of amendments: The amendments revise the TSs for Hatch Units 1 and 2 to add and delete valves listed in the containment isolation valve tables to reflect drywell pneumatic system modifications that were made to Unit 2 and that will be made to Unit 1 during the outage scheduled to begin in December, 1985.

Date of issuance: December 26, 1985.

Effective Date: December 26, 1985.

Amendment Nos.: 120 and 59.

Facility Operating License No. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38916).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 26, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366 Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application for amendment: May 9, 1985, as supplemented August 30, 1985.

Brief description of amendments: The amendment revises the TSs to delete the breaker setpoints from Table 3.6.2.6–2, to remove the reference to these setpoints from the surveillance requirements, and to add a requirement that the breakers be tested as specified by NEMA AB–2–1980. It also corrects several erroneous identification numbers listed in Table 3.6.2.6–1.

Date of issuance: January 9, 1986.

Effective Date: January 9, 1986.

Amendment No.: 60.

Facility Operating License No. NPF–5: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38915)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: June 19, 1985.

Brief description of amendment: Authorizes changes to the Appendix A Technical Specifications which are new requirements pertaining to the Post Accident Sampling System. These changes are to Section 6, Administrative Controls.

Date of issuance: January 14, 1986.

Effective Date: January 14, 1986.

Amendment No.: 98.

Provisional Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34941).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 14, 1986. No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: November 13, 1985.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate corrections to Radiological Effluent Technical Specifications (RETS) (a) for the Steam Air Ejector Post-treatment Monitor, (b) to reflect actual design and operating conditions, (c) for the use of vendor process control programs, and (d) of the errors of grammar and typing.

Date of issuance: January 4, 1986.

Effective date: January 4, 1986.

Amendment No.: 128.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985, (50 FR 49785) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 4, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 17, 1984.

Brief description of amendment: This amendment revises the Technical Specifications to incorporate an action statement in Section 3,7.C, defining the actions which will be taken if the stated limiting conditions for operation cannot be met.

Date of issuance: January 9, 1986.

Effective date: January 9, 1986.

Amendment No.: 129.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1984 (49 FR 50806) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 9, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: April 26, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to: (1) add the requirement for maintaining the suppression pool temperature within specified limits, and (2) delete the requirement of maintain a drywell to suppression chamber differential pressure.

Date of issuance: January 7, 1986.

Effective date: January 7, 1986.

Amendment No.: 76.

Facility Operating License No. DPR–63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49786). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 7, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Oswego, Penfield Library—Documents, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station Unit No. 2, Town of Waterford, Connecticut

Date of application for amendment: July 24, 1985, supplemented and clarified by letters dated September 16, October 17 and 28, November 25 and 27, and December 3, 1985.

Brief description of amendment: The amendment authorized the licensee to increase the spent fuel pool storage capacity from 667 to 1112 fuel assemblies.

Date of issuance: January 15, 1986.

Effective date: January 15, 1986.

Amendment No.: 109.

Facility Operating License No. DPR–65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37072 at 37085) and November 4, 1985 (50 FR 45877). Letters received on November 25 and 27, 1985 and December 3, 1985 were for clarification only and did not materially affect the application as previously noticed; and therefore, the application remains within the scope of the previous notices.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 16, 1985.

No significant hazards consideration comments received: No.

Attorney for licensee: Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: July 11, 1985.

Brief description of amendment: The amendment changed the reactor vessel materials surveillance capsule removal schedule.

Date of issuance: January 10, 1986.

Effective date: January 10, 1986.

Amendment No.: 94.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37072 at 37068).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 10, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pacific Gas and Electric Company, Docket Nos. 50–272 and 50–311, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 20, 1985.

Brief description of amendments: The amendments change the combined Technical Specifications for Units 1 and 2 concerning the time interval for performing the first visual inservice inspection of safety related snubbers.

Date of issuance: January 7, 1986.

Effective date: January 7, 1986.

Amendment Nos. 5 and 3.

Facility Operating Licenses Nos. DPR–80 and DPR–82: Amendments revising the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43033) The Commission's related evaluation of

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the amendments is contained in a Safety Evaluation dated January 7, 1986.

No significant hazards consideration comments recieved: No.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: September 30, 1985.

Brief description of amendment: This amendment deletes License Condition. 2.C(14) of the Susquehanna Steam Electric Station Operating License NPF-22.

License Condition 2.C(14) previously read as follows:

(14) *Control of Heavy Loads (Section 9.1.4, SSER#6)*

Prior to startup following the first refueling outage, PP&L shall submit commitments necessary to implement changes in modifications required to fully satisfy the guidelines of Section 5.1.2 through 5.1.6 of NUREG 0612 (Phase II-nine month response to the NRC generic letter dated December 22, 1980).

Based on Generic Letter 85-11, dated June 28, 1985, "Completion of Phase II of 'Control of Heavy Loads at Nuclear Power Plants' NUREG-0612" the staff has found this License Condition to no longer be necessary. Generic Letter 85-11 concluded, based on the improvements in heavy loads handling obtained from the implementation of NUREG 0612, Phase I, further action is not required to reduce the risks associated with the handling of heavy loads. Specifically, it was concluded that a detailed Phase II review of heavy loads is not necessary and Phase II is to be considered complete.

Date of issuance: January 9, 1986.

Effective date: Upon issuance.

Amendment No.: 21.

Facility Operating License No. NPF-22: Amendment deleted License Condition 2.C.(14).

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46216).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 9, 1986.

No comments were received regarding the Commission's proposed no significant hazards consideration determination.

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: November 24, 1982; October 21, 1983; February 29, 1984.

Brief description of amendment: The amendment modifies a license condition to change the monitoring and inspection of the service water intake structure.

Date of issuance: December 20, 1985.

Effective date: December 20, 1985.

Amendment No. 48.

Facility Operating License No. NPF-12. Amendment revised the license.

Date of initial notice in **Federal Register:** May 23, 1984 (49 FR 21839).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 20, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendment: August 5, 1985.

Brief description of amendment: The amendments change the Technical Specifications to permit offgas post-treatment and main stack radiation monitors to be considered operable for up to 1 hour during purging of the instruments. The Note 4 to Table 3.2.D, requested in TVA's submittal, has not been included. It would be redundant to Limiting Condition for Operation 3.2.D.1(b).

Date of issuance: January 13, 1986.

Effective date: 90 days from the date of issuance.

Amendment Nos. 126, 121 and 97.

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41256) and December 4, 1985 (50 FR 49792).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of applications for amendments: October 2 and November 7, 1984.

Brief description of amendments: The amendments change the Technical Specifications to delete the table listing Containment Penetration Conductor Overcurrent Protection Devices and to make them meet the intent of the NRC model Radiological Effluent Technical Specifications for PWRs.

Date of issuance: January 14, 1986.

Effective date: January 14, 1986.

Amendment Nos. 42 and 34.

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 31, 1984 (49 FR 50826).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 30, 1985.

Brief description of amendments: The amendments revise the NA-1&2 TS in accordance with the current TS and with 10 CFR Part 50, Appendices G and H. The amendments update the pressure-temperature limit curves to be applied during heatup and cooldown. The updated curves, which are valid through 10 Effective Full Power Years for NA-1&2, are based on conservative extrapolated vessel irradiation levels which reflect the results of evaluations of the first surveillance capsules removed from both NA-1&2. The removal and evaluation of these capsules constitutes part of the Reactor Vessel Materials Surveillance Program established by Virginia Electric and Power Company in accordance with 10 CFR Part 50, Appendix H. Based on the revised pressure-temperature limit curves, accompanying changes have also been made to the reactor heatup rate limits and low temperature overpressure protection setpoints.

Date of issuance: January 15, 1986.

Effective date: NA-1 within 30 days from date of issuance, NA-2 prior to restart after the forthcoming 5th refueling outage.

Amendment Nos.: 74 and 60.

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 30, 1985 (50 FR 31075).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: August 9, 1985, as supplemented November 8, 1985.

Brief description of amendments: These amendments define the minimum reactor coolant temperature for criticality to be 522°F.

Date of issuance: December 31, 1985.

Effective date: December 31, 1985.

Amendment Nos. 105.

Facility Operating License Nos. DPR-32 and DPR-37: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41257).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of Application for Amendment: July 19, 1985.

Brief Description of Amendment: The amendment deletes the Technical Specification requirements for inspection of control rod shroud tube assemblies and the pressurizer intervals.

Date of Issuance: January 15, 1986.

Effective Date: January 15, 1986.

Amendment No. 91.

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41258). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By February 28, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing

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Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference schedule in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: October 17, 1985.

Brief description of amendment request: This amendment revises the WNP-2 license by modifying the Technical Specifications to change the Limiting Condition of Operation, 3.3.7.7, to permit Local Power Range Monitor (LPRM) calibration in some instances with fewer than five operable Traversing In-core Probe (TIP) detector channels.

Date if issuance: January 7, 1986.

Amendment No.: 20.

Effective date: October 18, 1985.

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated January 7, 1986.

Attorney for the licensee: Bishop, Liberman, Cook, Purcell & Reynolds 1200 Seventeenth Street, NW., Washington, DC 20036.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethesda, Maryland this 23rd day of January, 1986.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of Boiling Water Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86-1829 Filed 1-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309, License No. DPR-36, EA 85-106]

Maine Yankee Nuclear Power Co. and Maine Yankee Atomic Power Plant; Order Imposing a Civil Monetary Penalty

I

Maine Yankee Atomic Power Company, Augusta, Maine 04336, (the licensee) is the holder of License No. DPR-36 (the license) issued by the Nuclear Regulatory Commission (the Commission or NRC) which authorizes the licensee to operate the Maine Yankee Atomic Power Plant, Wiscasset, Maine, in accordance with the conditions specified therein.

II

On August 8-16, and September 3-4, 1985, an NRC inspection was conducted to review the circumstances associated with two violations of the licensee's technical specifications involving the inoperability of the low steam generator trip function for both the Reactor Protective System and the Feedwater Trip System. A written Notice of Violation and Proposed Imposition of a Civil Penalty was served upon the licensee by letter dated October 29, 1985. The Notice states the nature of the violation, the provisions of the Nuclear Regulatory Commission requirements that the licensee had violated, the aggregate severity level of the violations, and the amount of civil penalty proposed for the violations. An answer dated November 27, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalty was received from the licensee urging that the aggregate severity level of the violations be reduced.

III

Upon consideration of the answers received and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalty contained therein, as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement has determined that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Eighty Thousand Dollars ($80,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: (a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty; and (b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland this 22 day of January 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix.—Evaluation and Conclusion

In their November 27, 1985 response to the Notice of Violation and Proposed Imposition of Civil Penalty for Maine Yankee Atomic Power Company, dated October 29, 1985, the licensee admits the occurrence of the violations, but requests that consideration be given to reclassification of the aggregate violations from Severity Level II to Severity Level III. Provided below are (1) restatement of each violation, (2) a summary of the licensee's response in support of this request, and (3) the NRC evaluation of the licensee's response.

Restatement of Violation

A. Technical Specification Limiting Condition for Operation (LCO) 3.9, and Table 3.9.1, Instrument Operating Requirements for the Reactor Protective System, requires that whenever the reactor is in power operation, a minimum of three of the Reactor Protective System channels must be operable for low Steam Generator Pressure.

Contrary to the above, from June 22, 1984 until August 7, 1985, with the reactor in power operations, all four channels of the Reactor Protective System for each of the three steam generators were inoperable for low Steam Generator Pressure.

B. Technical Specification LCO 3.22, Feedwater Trip System, requires that whenever the reactor coolant boron concentration is less than that required for hot shutdown, the feedwater trip system shall be operable to assure automatic shutdown of all main feedwater pumps, automatic closure of all main feedwater valves, and automatic closure or all auxiliary feedwater valves.

Contrary to the above, from June 20, 1984 until August 7, 1985, with the reactor coolant boron concentration less than that required for hot shutdown, three of the four channels for the Feedwater Trip System for each of the three steam generators were inoperable for low Steam Generator Pressure.

Collectively, these violations have been categorized as a Severity Level II problem (Supplement I).

(Civil Penalty—$80,000.)

Summary of Licensee Response

The licensee admits that the violations occurred as stated and acknowledges the seriousness of the violations. However, the licensee requests reconsideration of the aggregate severity level classification of the violations from Severity Level II to Severity Level III, claiming that the violations did not result in the complete loss of a primary trip function, nor did they result in a system not being able to perform its intended safety function as expressed in 10 CFR Part 2, Appendix C (1985).

The licensee claims that the two protective features provided by the inoperable instrumentation still existed. These features were: (1) Provide input to the Reactor Protective System (RPS) to shut down the reactor in the event of a low steam generator (SG) pressure condition, and (2) provide input to the Feedwater Trip System to shut down the feedwater system to mitigate the severity of a cooldown transient associated with a steam line break. In the former case the licensee indicates that other redundant instrumentation would have provided an equivalent function in that even if the steam generator channels were assumed not to be operable, other RPS subsystems would have resulted in shutdown of the reactor. In the latter case the licensee asserts that the instruments were in fact sufficiently operable to provide a trip of the feedwater system because of valve leakage, although the trip would be delayed. Further, the licensee asserts that other cooldown mitigation equipment, which comprised the original plant design or licensing basis, was unaffected by the violations and, therefore, the cooldown transient on the reactor pressure vessel resulting from the inoperability of the feedwater trip system would not have been more severe than that calculated in the latest licensing case.

NRC Evaluation of Licensee Response

The NRC accepts the licensee's argument, as indicated in the October 29, 1985 letter, that other trip inputs would have resulted in a trip of the Reactor Protective System, even with the low SG pressure instrumentation inoperable. However, the licensee has not shown that redundant protection existed for the Feedwater Trip System to mitigate the consequences of a cooldown transient, nor have they presented a reasonable argument to demonstrate why the instrumentation could be considered operable.

In addition, this response does not provide a reasonable or sufficient analytical basis to support the contention that a cooldown transient on the reactor vessel would not be more severe than that calculated in the latest licensing case. The licensee provided a best estimate case analysis which concluded that a cooldown transient resulting from failure to trip the feedwater system would not be severe. However, the basis and assumptions used in this type of analysis differ from the assumptions used during licensing in a design basis event analysis. The design basis analysis uses assumptions containing sufficient conservatism to justify the ability of the plant to safely withstand a cooldown transient. Therefore, the licensee's analysis does not provide adequate justification that

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the cooldown transient resulting from a failure to trip the feedwater system would be acceptable.

Although the low SG pressure trip of the feedwater pumps was not part of the initial design or licensing basis, it was specifically added because of a post TMI modification which required the installation of an automatic start feature for the auxiliary pumps in the event of a low water level condition in the SG. Absent the automatic start features of the auxiliary feed pump, the NRC would agree that a low SG pressure trip of the auxiliary feedwater pump was unnecessary. However, given an automatic start of the feedpumps, and given the inoperability of the low SG pressure instrumentation, no redundant automatic instrumentation exists to shut down the pumps.

NRC Conclusion

The licensee has not provided a sufficient basis for reduction of the aggregate severity level of the violation. Therefore, the aggregate violations remain classified at Severity Level II and an $80,000 civil penalty is being imposed.

[FR Doc. 86-1910 Filed 1-28-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 040-08406, License No. STB-1254, EA 85-122]

METCOA, Inc., Order Modifying License; Effective Immediately

I

METCOA, Inc., fdba as the Pesses Company, 1127 Euclid Avenue, Cleveland, OH 44115, (the licensee) is the holder of source material License No. STB-1254, which authorizes the licensee to possess a maximum of 2,000 kilograms of thorium and to metallurgically treat and/or reprocess scrap thorium alloy containing not more than 2% thorium by weight for distribution to authorized recipients. The license was issued on September 23, 1975 with an expiration date of September 30, 1980. The license has remained in effect based on a timely renewal request by the licensee in 1980. The license permits use of material at the licensee's facility at Route 551 and Metallurgical Way, Pulaski, Pennsylvania.

II

On September 21, 1984, an NRC inspector was sent to the licensee's facilities in Pulaski, Pennsylvania to conduct a routine NRC inspection of licensed activities. Upon arrival at the facility, the NRC inspector observed that the property appeared to have been abandoned. The inspector performed radiation surveys of the perimeter of the fenced area of the property, did not observe any radiation levels above instrument background, and left the site.

Subsequently, the inspector telephonically contacted Dr. Marvin Pesses, the individual listed on the license application as President of the Company, who stated that he was no longer associated with the Pesses Company, that the company was in bankruptcy proceedings, and that licensed material had not been used within the previous year.

The NRC has been informed that Pesses Company had, at some time prior to 1983, merged with METCOA Inc., retained the name METCOA Inc., conducted licensed activities under that name, and that METCOA Inc. had entered bankruptcy proceedings in mid-1983. The NRC was never notified of these events by the licensee.

During a December 1984 NRC inspection, the inspector performed surveys at selected areas both within and outside of the site boundaries. The inspector identified (1) several contaminate areas within the fenced area of the site boundary with radiation levels between 0.04 and 0.6 mrem/hour, (2) one contaminated area outside the fenced area but within the site boundary with a radiation level of 2 mrem/hour, and (3) two contaminated areas within one of the buildings on the property with radiation levels of 0.04 mrem/hour and a 0.1 mrem/hour. No contaminated areas were identified outside the site boundary. The inspector also determined that a large volume of contaminated material, equivalent to approximately 300 drums, was located within the fenced area of the site boundary and that the gates to fences and doors to the buildings were locked.

On October 9, 1985, another inspection of the facility was performed and the inspector found the facility to be in essentially the same condition that existed during the December 1984 inspection.

III

10 CFR 40.42 requires each licensee to notify the Commission immediately in writing and request termination of the license when the licensee decides to terminate all activities involving materials authorized under the license. A licensee is required by 10 CFR 40.42 to maintain access control over licensed material until radioactive contamination attributable to licensed activities is removed and the NRC terminates the license in writing. The NRC has determined that (1) the licensee and/or its legal successor in interest abandoned the licensed facility during or before 1983, (2) licensed material authorized by the license is no longer in the possession of the licensee and/or its legal successor in interest, (3) radiation levels resulting from contamination at several locations on the site are in excess of regulatory limits for release for unrestricted use, and (4) the licensee never notified the NRC or requested termination of its license in accordance with 10 CFR 40.42. As a result, there is no reasonable assurance that sufficient measures are in place (1) to prevent the unauthorized transfer of licensed material to unauthorized individuals, (2) prevent the unauthorized access of individuals to contaminated areas, or (3) to decontaminate and decommission the facility. In light of the above and in light of the apparent willfulness of the violations, I have determined that the public health and safety requires that this Order be issued and made immediately effective.

Accordingly, pursuant to sections 62, 63, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 30, it is hereby ordered, effective immediately, that the licensee and/or its legal successor in interest shall:

A. Submit a decontamination plan for the Pulaski facility to the NRC Region I office within 30 days from the date of this Order for review and approval. This plan shall contain:

(1) A complete characterization of the facility, with a description of the location and levels of all sources of radiation and contamination;

(2) A timetable for decontamination activities and transfer of contaminated waste and other licensed material to an authorized recipient; and

(3) The estimated costs and the source of funding.

B. Complete the decontamination effort within 90 days after the Regional Administrator's approval of the decontamination plan.

C. Submit to Region I office within 30 days of completion of the decontamination effort a survey report of the facility verifying that (1) contamination and radiation levels existing are within the levels specified in Option 1 of the Branch Technical Position "Disposal or Onsite Storage of Thorium or Uranium Waste from Past Operations," published in the Federal Register on October 23, 1981, 46 FR 52061, and "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of

Licenses for Byproduct, Source, or Special Nuclear Material," and (2) all materials have been transferred to an authorized recipient.

D. Control entry to restricted areas until they are suitable for unrestricted use and until the NRC has confirmed in writing that successful decontamination has been completed.

E. The Regional Administrator, Region I may for good cause relax or rescind any of the above conditions.

V

The licensee and/or its legal successor in interest or any other person whose interest is adversely affected by this Order may request a hearing on this Order within 25 days of its issuance. Any request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the request shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the effectiveness of this order.

If a hearing is requested by the licensee and/or its legal successor in interest, the Commission will issue and Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland, this 22nd day of January 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-1695 Filed 1-28-86; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Co., Susquehanna Steam Electric Station, Units 1 and 2; Denial of Amendments to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part requests by the licensee for amendment to Facility Operating License Nos. NPF-14 and NPF-22, issued to the Pennsylvania Power and Light Company, for operation of the Susquehanna Steam Electric Station, Units 1 and 2 located in Luzerne County, Pennsylvania. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on October 9, 1985 (50 FR 41251).

The amendment proposed by the licensee, would change the Unit 1 and Unit 2 Technical Specification as follows: (1) Page ¾ 8-2—revising Action d to allow only three diesels to be operable instead of four. The licensee also proposed to change the time necessary to restore both offsite circuits and has included a statement which would allow a diesel (the diesel removed from service for tie-in work) to remain inoperable provided it is inoperable for work connected with the tie-in work. The staff has denied this change the Action d based on the fact that the licensee's proposal would allow the operation of 2 Units in a condition in which A.C. power sources have been severely degraded. The staff has denied this change so that the licensee must abide by the previously issued Action d which does not allow the plants to remain at power for any appreciable amount of time if both offsite circuits are inoperable unless all diesel generators are operable. (2) ¾ 8-2—revising Action e to clarify that when the three diesel generators have been restored, a diesel generator may remain inoperable provided it is inoperable for work connected with the preparation for the installation of the fifth diesel generator. Additionally, the licensee would delete the requirement to perform Surveillance requirement 4.8.1.1.2.a.4 for one diesel generator at a time, within two hours. The staff has denied the licensee's proposal to delete this surveillance requirement. The Technical Specifications for both Units presently require doing this surveillance when in Action e, which is encountered when two or more of the required diesels are inoperable. The licensee proposed to delete Surveillance Requirement 4.8.1.1.2.a.4 because one of the diesels would be declared inoperable because of the tie-in work. The staff believes that the reason for a diesel being out of service has no bearing on and does not justify deleting this requirement. The staff finds it unacceptable to reduce testing during an extended outage for one of the diesel generators when the reduced testing has not safety benefit. All other portions of the proposed amendments were granted on December 3, 1985, Amendment Nos. 51 and 19 to Units 1 and 2, respectively. Notice of issuance of Amendment Nos. 51 and 19 were published on December 18, 1985 (50 FR 51638).

By Feburary 24, 1986, the licensee may demand a hearing with respect to the denials described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must comply with the requirements of the Commission's Rules of Practice, 10 CFR Part 2, and must be filed with the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

For further details with respect to this action see (1) the application for amendments dated December 21, 1984, as supplemented on July 1, August 7, August 23, and September 4, 1985, and (2) the Commission's letter to the licensee dated December 3, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Osterhout Free Library, Reference Department, 71 South Frankin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Bethesda, Maryland, this 24th day of January 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3 Division of BWR Licensing.

[FR Doc. 86-1692 Filed 1-28-86; 8:45 am]
BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 659, Docket No. A86-8]

Post Office Closings, Order Accepting Appeal and Establishing Procedural Schedule; Quaker Street, NY

Issued: January 22, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket No. A86-8.

Name of affected Post Office: Quaker Street, New York 12141.

Name(s) of petitioner(s): John D. Peters and others.

Type of determination: Closing.

Date of filing of initial appeal papers: January 16, 1986.

Categories of issues apparently raised:

1. Compliance with required procedure [39 U.S.C. 404(b) (1), (3) and (4)].

2

Effect on postal services [39 U.S.C. 404(b)(2)(C)].

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Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission Orders

(A) The record in this appeal shall be filed on or before January 31, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

January 16, 1986—Filing of Petition;
January 22, 1986—Notice and Order of Filing of Appeal;
February 10, 1986—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].
February 20, 1986—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)];
March 12, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)];
March 27, 1986—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
April 3, 1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
May 16, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-1871 Filed 1-28-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 23, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

CNW Corporation
Class A Common Stock, $.28 Par Value (File No. 7-8774)
GAP, Inc. (The)
Common Stock, $.05 Par Value (File No. 7-8775)
Walgreen Co.
Common Stock, $1.25 Par Value (File No. 7-8776)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 13, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 86-1954 Filed 1-28-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 23, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Patrick Petroleum Company (New)
Common Stock, $.02 Par Value (File No. 7-8777)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 14, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1955 Filed 1-28-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 5-86]

Treasury Notes, Series V-1988

Washington, January 23, 1986.

The Secretary announced on January 22, 1986, that the interest rate on the notes designated Series V-1988, described in Department Circular—Public Debt Series—No. 5-86 dated January 16, 1986, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-1901 Filed 1-28-86; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

International Exchange of Athletes; Reimbursement of Expenses

Pursuant to Public Law 99-93, The United States Information Agency will consider requests for reimbursement of expenses associated with the international exchange of athletes, coaches and officials for international games for the handicapped held in the United States.

Reimbursements to specific organizations named in the Congressional Record of December 16, 1985, shall not exceed amounts specified therein. Other eligible requests will also be considered.

Claims will be reviewed by USIA auditors and reimbursement amounts will be determined within 30 days after the deadline for submission of claims to the U.S. Information Agency.

For information on procedures and standards for reimbursement, write to the United States Information Agency, Office of Private Sector Programs, 301 Fourth Street SW., Washington, DC 20547. Applications for reimbursement must be received by February 28, 1986.

Dated: January 24, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-1896 Filed 1-28-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 19
Wednesday, January 29, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

January 23, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 30, 1986, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Legislative Proposal Package. Summary: The Commission will consider whether to submit to Congress a request for various amendments of the Communications Act of 1934, as amended.

Private Radio—1—Title: Notice of Proposed Rule Making to amend Part 90 of the Commission's Rules to restrict the use of radio equipment with external frequency controls that would permit the selection of unauthorized frequencies. Summary: The Commission will consider adoption of a NPRM which proposes to restrict the use of radio transmitters with external frequency controls that would permit the selection of unauthorized frequencies. The Commission has concern because of the grave potential for interference this equipment presents for accidental or intentional off-frequency operation.

Private Radio—2—Title: Creation of a new Consumer Radio Service. Summary: The Commission will decide whether to adopt a Notice of Inquiry to consider restructuring the General Mobile Radio Service.

Common Carrier—1—Title: Report and Order detariffing the maintenance and installation of inside wiring. Summary: The Commission will consider whether to detariff the maintenance and installation costs associated with inside wiring. The Commission will also consider whether to require relinquishment of ownership of telephone company provided inside wiring.

Common Carrier—2—Title: In the Matter of Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers. Summary: The Commission will consider AT&T's Petition for Waiver of the Phase I Order in CC Docket 84-800.

Mass Media—1—Title: Reconsideration of the *Second Report and Order* in MM Docket No. 83-523, concerning the Instructional Television Fixed Service. Summary: The Commission considers petitions for reconsideration and clarification of certain rules and policies adopted in the ITFS *Second Report and Order.*

Mass Media—2—Title: Amendment of Part 73 of the Commission's Rules Relating to the Non-network Program Territorial Exclusivity Rules. Summary: The Commission will consider the Mass Media Bureau's recommendation to delete the rule limiting territorial exclusivity in non-network television program arrangements.

Mass Media—3—Title: Tender Offers and Proxy Contests (MM Docket No. 85-218). Summary: The Commission will consider the matters raised in the *Notice of Inquiry* relating to the procedures to be used in connection with tender offers and proxy contests involving corporate licensees.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Issued: January 23, 1986.

FR Doc. 86-1973 Filed 1-27-86; 9:56 am]

BILLING CODE 6712-01-M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, February 3, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 24, 1986.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 86-1947 Filed 1-27-86; 8:55 am]

BILLING CODE 6210-01-M

3

NATIONAL COUNCIL ON THE HANDICAPPED

TIME AND DATE:

11:00 a.m.-5:30 p.m.—January 29, 1986
9:00 a.m.-5:00 p.m.—January 30, 1986

PLACE: Salons F & G, Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037 (202) 872-1500.

STATUS: Open Meeting

MATTERS TO BE CONSIDERED:

General Business including: Approval of Minutes
Presentations by: Louis Harris Associates, National Rehabilitation Hospital, Statue of Liberty/Ellis Island Foundation and the National Park Service

PLEASE NOTE: Any person requiring an interpreter or other special services, please contact NCH Staff no later than January 28, 1986.

CONTACT FOR MORE INFORMATION: Lex Frieden, Executive Director, National Council on the Handicapped (202) 453-3846.

Lex Frieden,

Executive Director, National Council on the Handicapped.

[FR Doc. 86-1958 Filed 1-27-86; 8:57 am]

BILLING CODE 6820-GS-M

4

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:30 a.m., Wednesday, January 29, 1986.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254-9430.

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Dated: Washington, DC, January 24, 1986.
By direction of the Board.
John C. Truesdale,
Executive Secretary, National Labor Relations Board.
[FR Doc. 86–1952 Filed 1–27–86; 8:56 am]
BILLING CODE 7545-01-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Closed/open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, January 17, 1986.

CHANGE IN THE MEETING: Additional items.

The following additional item will be considered at a closed meeting scheduled for Tuesday, January 28, 1986, at 2:30 p.m.

Modification of administrative proceeding of an enforcement nature.

The following additional item will be considered at an open meeting scheduled for Thursday, January 30, 1986, at 10:00 a.m.

Consideration of: (1) A proposal by the Philadelphia Stock Exchange, Inc. to trade options on the European Currency Unit (File No. SR–Phlx–85–10) and (2) a proposal by the Option Clearing Corporation to issue, clear and settle such options (File No. SR–OCC–85–14). For further information, please contact Alden Adkins at (202) 272–2843.

Commissioner Grundfest, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Gerald Laporte at (202) 272–3085.

Dated: January 23, 1986.

John Wheeler,
Secretary.

[FR Doc. 86–1939 Filed 1–24–86; 4:09 pm]
BILLING CODE 8010-01-M

federal register

Wednesday
January 29, 1986

Part II

Environmental Protection Agency

40 CFR Part 763
Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing Importation and Processing Prohibitions

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62036; FRL 2947-3]

Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing, Importation, and Processing Prohibitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a rule under section 6 of the Toxic Substances Control Act (TSCA) to prohibit the manufacture, importation, and processing of asbestos in certain products and to phase out the use of asbestos in all other products. The products EPA proposes to ban are asbestos-cement pipe and fittings, roofing felts, flooring felts (and felt-backed sheet flooring), vinyl-asbestos floor tile, and asbestos clothing. Under this rule, EPA would also allow only those persons with permits issued by EPA to mine or import asbestos for use in products that are not banned. Eventually, all mining or importation of asbestos would be prohibited, except for that mining or importation allowed under an exemption process. EPA is proposing this rule to reduce the serious unreasonable risk to human health presented by exposure to asbestos. As an alternative, EPA is considering prohibiting the manufacture, importation and processing of categories of asbestos products at staged intervals. EPA is considering banning the manufacture, importation, and processing of asbestos construction products and asbestos clothing soon after the rule's promulgation with the category of asbestos friction products banned about 5 years later, and other asbestos products banned at a later time. EPA believes that this alternative approach would also be an effective way of reducing the serious unreasonble risk presented by exposure to asbestos and specifically requests comment on a staged ban of asbestos product categories. Finally, under both this alternative and the proposed approach, EPA is considering requiring labeling for all asbestos products that are not banned, including products manufactured pursuant to permits issued by EPA during the phase-down period, or pursuant to an exemption process. The Agency requests comments on the feasibility and effectiveness of such a requirement.

DATES: Public hearings will be held beginning approximately May 14, 1986. The exact times and locations of the hearings will be available by calling EPA's TSCA Assistance Office. Comments on this proposed rule and requests to participate in the informal hearings must be submitted by April 29, 1986. Reply comments made in response to issues raised at each hearing must be submitted no later than 1 week after the close of that hearing.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St. SW., Washington, DC 20460.

Comments should include the docket control number OPTS-62036. Nonconfidential comments and nonconfidential versions of confidential comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, Toll free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Introduction

Asbestos, since the advent of its large scale use, has resulted in thousands of painful, premature deaths from lung cancer and other diseases. Because of the widespread use of asbestos and its particular nature, piecemeal control of the risks it presents is not satisfactory; only elimination of asbestos to the extent feasible will produce acceptable reduction of risks. Prevention of further deaths, therefore, requires forceful, integrated action against asbestos risks. To achieve this end, EPA has established a coordinated asbestos program, aimed at controlling exposure to asbestos from products already in use and eliminating risks from future uses. The rule EPA is proposing today, which would ban certain uses of asbestos and phase out all other uses, forms a central element of this program. Regulatory alternatives, which are discussed in this notice and which involve staged bans of various asbestos product categories, could also form a central element of the program.

The risks EPA is addressing in this proposal and its overall asbestos program are serious and well documented. Asbestos is a known human carcinogen that causes lung cancer, mesothelioma (a cancer of the chest and abdominal lining) and is also linked to other cancers. It has been estimated that 3,300 to 12,000 cancer cases a year occur in the United States as a result of past exposure to asbestos; almost all of these cancer cases are fatal. In addition, asbestos causes asbestosis (a serious lung disorder). About 65,000 persons in the United States are estimated to be suffering from asbestosis today. Assuming current exposure levels, EPA estimates that about 2,560 persons will develop lung cancer or mesothelioma as a result of exposure to asbestos from products made over the next 15 years, unless asbestos exposures are reduced through regulatory action. As discussed later, even with a relatively low workplace PEL of 0.2 f/cc, EPA estimates that almost 1,325 cancers will result from asbestos products made over the next 15 years. The underlying data upon which the risk assessments for asbestos are based come from a number of high quality epidemiologic studies. Unlike most potential carcinogens, asbestos has been studied often and thoroughly for its effects on humans.

Asbestos presents a particularly insidious threat because of the unique quality of its fibers. These fibers are small, colorless, odorless, often invisible except through a microscope, and indestructible in most uses. They can be transported on clothes and other materials, and they have aerodynamic features that allow them to be easily suspended and resuspended in the air and to travel long distances. Once released, asbestos fibers are difficult to detect and contain, and they readily enter the ambient air. Thus persons are exposed not only at the time and place of release, but long after the release has occurred and far from its source. There is constant renewal of risk as asbestos fibers reenter the atmosphere repeatedly over time.

Despite the known risks of asbestos, substantial amounts of the material are still mined, imported, and used in commercial products. About 240,000 metric tons, for example, were used domestically in 1984. Hundreds of products are still made with asbestos, including paper and textiles, cement pipe and sheets, tiles and felts, and automobile brakes. Asbestos fibers are released to the air at many stages of the commercial life of these products. Typical activities that lead to the release of asbestos include the mining of asbestos, fiber processing into products, installation of products (e.g., the sawing, drilling, and sanding associated with asbestos-cement products), product use (e.g., release of fibers during use of asbestos cloth), product maintenance (e.g., buffing and scraping of vinyl-asbestos floor tile or repair of asbestos-containing brakes), dismantling and removal of products (e.g., removal of asbestos roofing felts), and disposal.

Release of fibers from these activities is substantial, resulting in exposure to both workers and non-workers. EPA estimates that about 700 metric tons are released to the air during mining and milling each year, about 100 metric tons during product manufacture, and about 18 metric tons from landfills. These estimates are probably low because they do not include releases from secondary fabrication of such products as millboard and asbestos-cement sheet, much of which is done in small shops with inadequate emission controls. Observations that levels of asbestos in the air near manufacturing plants and in cities are considerably greater than rural background levels seem to confirm that these releases occur and are significant.

Release of asbestos fibers occurs not only in the manufacture and processing of asbestos products, but also in their use and maintenance. This release can occur without the knowledge of the user or maintenance personnel. For example, construction workers tap into asbestos-cement pipes already in place. The workers often do not know that the pipe contains asbestos and thus do not take steps to limit fiber release. Similarly, significant releases occur as a result of the use and repair of asbestos brakes and other friction products, which constituted about 22 percent of the total asbestos market in 1984. Ambient levels of asbestos are elevated near freeways, presumable due to release from asbestos brakes.

Thus, the manufacture, processing, and use of asbestos products leave a legacy of asbestos in the ambient air. This ambient loading, while difficult to quantify, is a significant problem. The National Academy of Sciences, after analyzing studies of outdoor air, estimated typical concentrations of asbestos in outdoor ambient air in urban areas to be approximately 0.00007 f/cc (Ref. 6). Many millions of people are daily exposed to these levels of asbestos in the air. The National Academy of Sciences has also estimated that persons in urban areas face a lifetime risk of between about 1 in 100,000 to about 7 in 100,000 of developing cancer as a result of asbestos in the ambient air both indoors and outside of buildings (Ref. 6). Therefore, any comprehensive control strategy must take into account the potential for exposure during the entire lifecycle of asbestos products.

To date, EPA has focused its attention primarily on asbestos in buildings, a major source of asbestos release into the ambient environment. In the 1970s, EPA banned the use of sprayed-on asbestos and asbesto-containing pipe lagging under the Clean Air Act, and since then has taken steps to reduce risks from asbestos already in place in buildings. It has issued an air standard to reduce emissions from asbestos removal and renovation projects in buildings; issued a rule requiring inspection of schools for friable asbestos; and established an extensive technical assistance program, which provides guidance to public and private building owners on the identification and safe removal of asbestos. EPA has also proposed an immediately effective regulation to protect State and local public employees who take part in asbestos abatement activities.

These actions are primarily remedial, addressing risks from asbestos already in place; they do no address the substantial risks that will result from the continued manufacture and use of asbestos. Several other Federal agencies have already taken steps that partially reduce these risks. The Occupational Safety and Health Administration (OSHA) has an occupational standard for asbestos with a permissible exposure limit (PEL) of 2.0 f/cc. OSHA has proposed to lower this standard to either 0.2 or 0.5 f/cc. In addition, the Consumer Product Safety Commission (CPSC) has banned use of respirable asbestos in consumer patching compounds and artifical emberizing materials. However, substantial risk to workers and the general population remains. For this reason, EPA believes that only a major regulatory initiative under TSCA leading to the eventual elimination of most asbestos product manufacture and importation can satisfactorily reduce the overall risk to all segments of the population.

The limitations of exposure-based regulations in preventing asbestos-fiber release, and the need for more comprehensive action under TSCA, are illustrated by the use of PELs to control workplace exposure. In the first place, it appears infeasible to set a PEL for asbestos low enough to reduce risk to a satisfactory level. Even at 0.2 f/cc, the lowest PEL proposed by OSHA, OSHA, using the same lung cancer and mesothelioma models used by EPA, estimates that about 7 in 1,000 asbestos workers may die from an asbestos-related disease. Furthermore, it is unreasonable to assume complete compliance with a PEL of 0.2 f/cc, especially given the nature of the asbestos industry. Many of the workers exposed are in the service and construction industries, where worksites change frequently and the worker population is transient. Also, workers often do not know they are exposed to asbestos and therefore will not take the necessary precautions. As a result, PELs and other exposure controls are difficult to apply and enforce. Beyond these considerations, a workplace-based approach does not address risks to the general population. EPA estimates that, even if OSHA reduces the PEL to 0.2 f/cc, almost 1,325 cancers will still result from asbestos products made over the next 15 years.

Because of this residual risk, EPA is proposing under section 6 of TSCA a ban on the manufacture, importation, and processing of asbestos-cement pipe and fittings, roofing felts, flooring felts (and felt-backed sheet flooring), vinyl-asbestos floor tile, and asbestos clothing. These uses would be banned because safer, economically competitive substitutes are available, and because these asbestos uses are likely to contribute large amounts of asbestos to the ambient environment or present disproportionately high risk.

In addition, EPA is proposing to establish a permit system to phase out all other asbestos products. Under this system, EPA would allocate permission to mine or import a specific volume of asbestos to current miners and importers. The amount of asbestos a miner or importer would be allowed to mine or import would decline every year until after 10 years no mining or importation would be allowed, except under a specific exemption. This permit system would allow the market to allocate asbestos, based on the availability and cost of asbestos substitutes. After 10 years, EPA would put in place an exemption system for those asbestos applications for which no substitutes had been developed. EPA anticipates that there will be few such applications, because the permit system would create strong incentives for the development of substitutes. EPA is also considering a requirement that all asbestos products that are not banned be labeled as containing asbestos. This would apply to products made pursuant to permits issued by EPA to mine or import asbestos, and to products made pursuant to an exemption process.

In encouraging the development of substitutes, EPA will be promoting a

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significant reduction in risk. Currently, all products that are replacing asbestos in its many uses appear to present lower risk. However, EPA will monitor the development of substitutes during the 10-year phase-down period, and will use section 4 of TSCA to require testing of substitutes if necessary to ensure their safety.

As explained more fully later, EPA is also actively considering other approaches to carry out a regulatory policy of phasing out the manufacture, importation, and processing of asbestos products. Approaches under consideration include banning categories of asbestos products at staged intervals. Two categories under consideration are asbestos construction products and asbestos friction products. Under this approach, EPA would ban the manufacture, importation, and processing of all asbestos products within the category at the same time.

EPA is considering this category approach because products within each of the categories have similar exposure patterns, raise similar exposure control issues, and have similar substitutes. EPA believes that it may be good public policy to ban such categories of products at the same time. This approach would address similar exposure patterns in the same way and treat all parts of an industry sector similarly. In addition, both the construction products category and the friction products category contain products that could substitute for other products in the category if all are not banned. Thus, a ban of the entire category may be necessary to reduce risk most effectively.

EPA also considered referring asbestos risks to OSHA and CPSC under section 9 of TSCA. EPA decided against this approach because OSHA and CPSC, in EPA's opinion, cannot adequately reduce the risk, given their authority and current control technologies. These agencies cannot comprehensively reduce the total volume of asbestos in commerce and cannot protect all of the many population groups at risk. Thus, action by these agencies under their separate authorities would still leave a large residual risk to workers and the general population. EPA concluded, therefore, that this approach would not adequately address the risks to society posed by the continued manufacture, processing, and use of asbestos-containing products. EPA is convinced that restrictions on the manufacture, importation, and processing of asbestos and asbestos products is the surest and most effective strategy for eliminating these risks.

II. Background

EPA announced that it was exploring possible use of TSCA to reduce the risk to human health from exposure to asbestos in an Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** of October 17, 1979 (44 FR 60061). Following publication of the ANPR, EPA investigated industrial and commercial uses of asbestos. Under section 8(a) of TSCA, EPA promulgated an asbestos reporting rule under 40 CFR 763.60 published in the **Federal Register** of July 30, 1982 (47 FR 33207). This rule required miners, millers, importers, and processors of asbestos to report information concerning (1) quantities of asbestos used in product manufacture, (2) employee exposure to asbestos, (3) waste disposal practices, and (4) emission control practices. The information reported under that rule has been used with other data to evaluate the risks and benefits of asbestos use.

Under section 21 of TSCA, a person may petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under various sections of TSCA. On June 21, 1979, EPA was petitioned to prohibit the future use of asbestos-cement pipe in water systems. EPA granted that petition by a notice published in the **Federal Register** of October 18, 1979 (44 FR 60155). On September 12, 1984, the Natural Resources Defense Council (NRDC) petitioned EPA to prohibit further use of asbestos in motor vehicle brakes. EPA granted that petition by a notice published in the **Federal Register** of December 18, 1984 (49 FR 49311). This proposal is in part a result of the proceedings conducted after granting those two petitions. EPA has identified effective substitutes for asbestos-cement pipe and is proposing to ban that product. EPA analyzed the availability of substitutes for asbestos in brakes but is not prepared to propose an immediate ban. Effective substitutes are still not available for many applications of asbestos in brakes. Instead, EPA is proposing to phase out use of asbestos in brakes and use market forces to encourage the more rapid development of substitutes. As an alternative, EPA is considering a ban of asbestos friction products about 5 years after this rule is promulgated. This alternative would also encourage the rapid development of substitutes.

III. Regulatory Assessment

Section 6 of the TSCA authorizes EPA to prohibit or limit by rule the amount of a chemical substance which may be manufactured, processed, or distributed in commerce if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment.

Under section 6(c)(1) of TSCA, EPA must consider the following factors when determining whether a chemical substance or mixture presents an unreasonable risk:

(1) The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such substance or mixture.

(2) The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture.

(3) The benefits of such substance or mixture for various uses and the availability of substitutes for such uses.

(4) The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

After considering the above factors, EPA presents the following findings concerning the unrestricted mining and importation of asbestos, including asbestos imported in products.

A. Health Effects and Magnitude of Exposure to Asbestos

1. *Health effects.* This unit summarizes the health effects of asbestos. Detailed discussion and assessment of the health effects of asbestos may be found in the "Report to the United States Consumer Product Safety Commission (CPSC) by the Chronic Hazard Advisory Panel on Asbestos" (CHAP) (Ref. 1), "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings," (Ref. 4) and the "Report of the (National Research Council) Committee on Nonoccupational Health Risks of Asbestiform Fibers" (Ref. 6).

EPA finds that the adverse human health effects from exposure to asbestos are extremely serious. Asbestos is a known human carcinogen that also causes other lung diseases. Asbestos has been thoroughly examined in numerous epidemiology studies. The life-threatening diseases that have been repeatedly identified are asbestosis, lung cancer, and mesothelioma. Also associated with asbestos exposure in some studies are cancers of the larynx, pharynx, gastrointestinal tract, kidney, and ovary and respiratory dieseases such as pneumonia. Major health effects are discussed below.

Lung cancer is currently responsible for the largest number of deaths from exposure to asbestos. It has been associated with exposure to all the principal commercial asbestos fiber types. Excess lung cancer has been documented in groups involved with the mining and milling of asbestos and the manufacture and use of asbestos products. Studies in which the extent of exposure can be approximated provide evidence that lung cancer increase linearly with both level and duration of exposure. Cigarette smoking and asbestos have a strong synergistic interaction in development of lung cancer. Asbestos exposure appears to multiply the underlying risk of lung cancer. Consequently, when exposed to asbestos, the risk of lung cancer for smokers (for whom the risk of lung cancer is already high) is much higher than that for nonsmokers exposed to asbestos. Most persons who develop lung cancer die within 2 year.

Many human studies have also shown that exposures to asbestos produce mesotheliomas, which are cancers that occur as thick diffuse masses in the serous membranes (mesothelia) that line body cavities. Mesotheliomas occur in the pleura (the membrane that surrounds the lungs and lines the lung cavity) and the peritoneum (which surrounds the abdominal organs and lines the abdominal cavity). Most persons who develop mesothelioma die within the first 2 years after diagnosis, often after having been in constant pain. Epidemiology studies suggest that the incidence of mesothelioma is related to dose and time from first exposure. Association of mesothelioma with smoking is weak or nonexistent. Asbestos fibers appear, by far, to be the most common cause of mesotheliomas.

Asbestosis, which involves fibrosis of lung and pleural tissues, is another serious chronic disease associated with exposure to asbestos. There is no effective treatment for asbestosis and it is often disabling or fatal. Asbestosis is diagnosed from findings which may include radiographic changes, breathlessness, and abnormal lung function. Since some clinical symptoms of asbestosis are similar to those of other fibrosing lung diseases, a history of occupational exposure to asbestos is often a key feature of its diagnosis. Asbestosis can appear and progress decades after exposure to asbestos fibers. Under working conditions where average fiber concentrations in the air were high (more than 10 fibers per cubic centimeter (f/cc)) asbestosis has accounted for more than 7 percent of observed deaths (Ref. 11). It is apparently less common than lung cancer or mesothelioma at exposures lower than the current Occupational Safety and Health Administration (OSHA) workplace standard of 2.0 f/cc. Some recent data on the incidence of asbestosis appear compatible with a linear exposure-response relationship with no threshold (Ref. 12). However, it is still considered uncertain whether asbestosis occurs as a result of nonoccupational expesures.

In occupational studies where the primary route of exposure is through inhalation, lung cancer and mesotheliomas usually account for about 90 percent of the excess cancers seen among workers exposed to asbestos. However, as noted in the CHAP report (Ref. 1), a number of other cancers, principally of the gastrointestinal tract, have been associated with asbestos exposure. These are cancers of the larynx, pharynx, oral cavity, esophagus, stomach, colon, and rectum. Statistically significant excesses of cancers of the kidney and ovary have also been shown. In addition, the excess of cancers at all other sites combined is statistically significant in some studies.

The conclusions from epidemiology studies concerning the health effects of asbestos are also supported by results of laboratory studies. Animals treated with asbestos have shown increased incidence of fibrosis, lung cancer, and mesotheliomas. All commercial forms and several other types of asbestos are implicated from a variety of modes of exposure.

Most occupational studies have been conducted on populations exposed to high airborne concentrations of asbestos for relatively long periods of time. However, short-term occupational exposures have also been shown to increase the risk of lung cancer and mesothelioma. One group of asbestos factory workers with less than 2 months of occupational exposure had a twofold increase in lung cancer risk (Ref. 9). In addition, there are many documented cases of mesothelioma linked to extremely brief exposure to high concentrations of asbestos or long-term exposure to low concentrations (Ref. 4).

Direct evidence of adverse health effects from non-occupational asbestos exposure also exists. Persons who lived in the households of asbestos workers have developed pleural mesothelioma and asbestos-related radiographic changes. In an ongoing study, 4 cases of mesothelioma have been diagnosed among 626 family contacts of amosite workers (Ref. 10). These figures are much higher than that expected to be found among the general population. In addition, 35.9 percent of the contacts showed chest x-ray abnormalities as compared with 4.6 percent of control subjects drawn from the same community. A number of mesotheliomas have also been documented among populations whose only identified exposure was from living near asbestos mining areas, asbestos product factories, or shipyards where asbestos use had been very heavy (Ref. 4). An estimated 1,600 cases of mesothelioma occur yearly in the U.S. among various populations exposed to asbestos (Ref. 6).

In addition to exposure to asbestos fibers in the air, the general population is also exposed through various oral sources, including drinking water containing asbestos. Because of the potential for oral exposure as well as the excess of gastrointestinal tract cancers that has frequently been found in occupational groups exposed to asbestos in the air, there has been much study of the possible health effects of ingestion of asbestos fibers. Despite those efforts, evidence showing health effects from ingestion is still ambiguous.

2. *Concer risk extrapolotion.* As discussed above, numerous human studies have demonstrated that exposure to asbestos has increased the risk of cancer and asbestosis. Since a number of epidemiology studies indicate a positive relationship between asbestos exposure and the risk of lung cancer, several models may be used to extrapolate from risk at higher exposure to risk at lower exposure. The model that EPA believes is most consistent with the available human and animal data is the linear non-threshold dose/response model. This model assumes that (1) any exposure increases risk, and (2) the increase in risk is proportional to the background risk in the nonexposed population and to the level of exposure, defined as duration of exposure times concentration of asbestos fibers to which populations may be exposed.

The choice of the linear model is reasonable since there is no evidence for a threshold level of asbestos exposure below which there is no increased risk. It is further supported by evidence of cancers among populations whose asbestos exposure is believed to have been lower than levels reported in the epidemiology studies of asbestos workers mentioned above.

The model adopted by EPA to estimate excess mesothelioma incidence due to asbestos exposure relates disease

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incidence to dose and the time from first exposure (minus 10 years) raised to the third power. This model reflects a delay (or minimum latency period) of 10 years between first exposure and the likely earliest possible appearance of the disease. Both the lung cancer and mesothelioma models have also been adopted by OSHA (Ref. 12). The National Research Council Committee on Nonoccupational Health Risks of Asbestiform Fibers also adopted a similar linear no-threshold model to estimate risk to nonoccupational populations from exposure to asbestos (Ref. 6). The derivation and validation of the models is discussed in detail in the CHAP report (Ref. 1) and in EPA's "Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products" (RIA) (Ref. 3).

Although EPA believes that excess mortality from asbestosis and cancers other than lung cancer and mesothelioma will occur from exposure to asbestos released during the lifecycle of the products under study, EPA has not attempted to quantify that excess mortality. Thus, the model could understate the risk to humans from exposure to asbestos.

The risk of asbestos-induced disease may be modified by several factors. As mentioned in the earlier discussion on lung cancer, smoking drastically increases the risk of developing lung cancer from exposure to asbestos. Because of their lower underlying risk, the absolute increase of incidence of lung cancer in nonsmokers is about one-tenth of that in smokers. However, even complete control of the smoking factor (if possible) would leave a substantial health risk since the risk of mesothelioma (which is apparently unaffected by smoking) and the risk of lung cancer to nonsmokers would still remain.

Another factor that may affect the risk of asbestos-induced disease is the possible differences in biological potency among the different fiber types. The National Research Council (Ref. 6) studied this issue and concluded:

> Results of studies of various groups of workers indicate that it is extremely difficult to assess the role of fiber type (e.g., chrysotile or crocidolite) in determining the risk for developing either lung cancer or mesothelioma. Analysis of the epidemiological studies is complicated because of variations in type of industry, the diverse fiber characteristics within an industry, and the usual inadequacy of exposure data. Some scientists have interpreted the available epidemiological data to indicate that chrysotile asbestos, the asbestos type most commonly used in the United States, is less hazardous than the other types of asbestos, especially crocidolite. Such arguments have been used in the United Kingdom and other countries to rationalize different regulatory controls for crocidolite and chrysotile. However, in view of the laboratory evidence and great uncertainty about the nature of the fibers of asbestos to be found in nonoccupational exposure situations, the committee decided not to differentiate among them in the quantitative risk assessment. Furthermore, some of the apparent discrepancies may be explained by differences in physical properties of the fibers, their concentrations, and their characteristics in the different environments. These possibilities need further testing.

In view of this uncertainty about the relative potency of the various asbestos types and in view of the well-documented health hazard of the most common commercial form of asbestos, EPA has concluded that it is prudent to treat all asbestos fiber types as having equivalent biological activity.

Fiber morphology has also been suggested as a factor that may affect incidence of asbestos-induced disease. Animal studies in which asbestos fibers were applied by injection or implantation suggest that longer and finer fibers are more carcinogenic than shorter and coarser fibers. This has not, however, been confirmed by inhalation studies. EPA has not differentiated among fiber sizes in assessing the potential risk of asbestos. First, asbestos fibers released during the life cycle of asbestos products consist of a great range of dimensions, including those suggested as most dangerous. Second, it has not been clearly shown that short fibers pose a significantly smaller risk. No dimensional threshold for potency has been established.

3. *Magnitude of human exposure.* Asbestos fibers are released to the air during all stages of the lifecycle of asbestos products. Fiber release to the air occurs during normal operations of mining and milling, fiber processing into products, installation of products, product use, maintenance, renovation, dismantling, removal, and disposal. Asbestos fibers have special characteristics that affect exposure. They are colorless, odorless, and frequently invisible except by microscope, thus presenting risk to persons who are not aware that they may be exposed. Asbestos fibers are extremely durable and have aerodynamic properties that allow them to remain suspended in the air for a long time. They are basically nonbiodegradable and therefore persist for a very long time in the environment.

Asbestos fibers easily reenter the atmosphere after settling out and can travel long distances through the air. A report from Finland found that asbestos had traveled as far as 27 kilometers from a mine under study. Persons can be exposed to asbestos fibers long after those fibers have been released to the ambient air and a considerable distance from the source of the release. Asbestos fiber concentrations have been measured in areas far from obvious asbestos sources. Atmospheric sampling programs conducted in remote rural areas in the United States and Germany have found asbestos fiber levels between 0.01 and 0.12 nanogram/meter^3 (ng/m^3) (1 ng is one billionth of a gram). Conversion factors between asbestos fiber counts and mass counts are variable. However, EPA estimates that 1 ng of asbestos in air equals about 30 fibers visible by light microscopy. Using this conversion factor for asbestos in outdoor air, then the above measurements are the equivalent of about 3×10^{-7} to 3.6×10^{-6} f/cc. In areas of higher human population density, measured asbestos concentrations in the air are typically much greater. A survey of large cities showed mean readings of 2.6 to 5.0 ng/m^3 (7.8×10^{-5} to 1.5×10^{-4} f/cc). Measurements taken in New York City ranged from means of 8 to 30 ng/m^3 (2.4×10^{-4} to 9×10^{-4} f/cc). Typical fiber concentrations are much higher in densely populated areas because of fiber release from construction work (including renovation or demolition), from asbestos-containing brakes of motor vehicles, and from other activities during the lifecycle of asbestos products. In general, levels of asbestos in the air in cities and near manufacturing plants are considerably greater than rural background levels.

Thus, throughout their entire lifecycle, that is throughout their manufacture, processing, use, and disposal, asbestos products leave a legacy of asbestos in the ambient air. This ambient load, while difficult to quantify, is a significant problem. The National Academy of Sciences, after analyzing studies of outdoor air, estimated typical concentrations of asbestos in outdoor ambient air in urban areas to be approximately 0.00007 f/cc (Ref. 6). Many millions of people are exposed to those levels of asbestos in the air each day. Therefore, any comprehensive control strategy must take into account the potential for exposure during the entire lifecycle of asbestos products.

Some products do not present as much potential for releases to the ambient air during certain stages of their lifecycle. For example, there are likely to be releases to the ambient air during the manufacture, processing, installation, and repair of asbestos-cement pipe. However, there generally will be no release of asbestos to the ambient air during actual use of asbestos-cement

pipe since it is commonly buried in the ground.

A large proportion of the U.S. population is at risk from this asbestos in the air. Tables I through III show the numbers of persons exposed to asbestos during the more readily quantifiable stages of the lifecycle of asbestos products and the levels to which they are exposed. Exposure levels are "best estimates" based on monitoring studies. Additional information can be found in Refs. 2 and 3 which are included in the rulemaking record. To avoid disclosing confidential business information, the tables sometimes use a range rather than a single number. The notation NA means that data are not available.

TABLE I.—EXPOSURE DATA FOR MANUFACTURING—OCCUPATIONAL

Asbestos product	Primary manufacturing	
	Exposure level (10^6 f/yr)	Number of persons exposed
Commercial paper	5,691	0–150
Millboard	682	0–150
Pipeline wrap	307	0–150
Beater-add gasket paper	495	264
High-grade electrical paper	5,934	47
Unsaturated roofing felt	540	0–150
Saturated roofing felt	1,313	0–200
Flooring felt	NA	NA
Specialty paper	381	82
V/A floor tile	802	580
Felt-backed vinyl flooring	NA	NA
Asbestos/cement pipe	581	837
Flat A/C sheet	1,016	0–150
Corrugated A/C sheet	2,778	46
A/C sheet shingle	766	0–150
Drum brake lining	1,447	1,222
Disc brakes (LV)	1,568	1,036
Disc brakes (HV)	1,005	0–150
Brake blocks	1,608	456
Clutch facings	1,374	418
Friction products—automatic transmission	538	186
Friction products—commercial	1,361	479
Cloth	2,216	0–150
Thread	3,302	150–300
Sheet gasketing	780	105
Packing	1,084	247
Surface coatings	854	500
Sealants	636	709
Plastics	695	568
Insulation	438	0–150
Mixed fiber	1,348	150–300
Other	641	1,020

TABLE II.—EXPOSURE DATA FOR MANUFACTURING—AMBIENT

Asbestos product	Primary manufacturing	
	Exposure level (10^6 f/yr)	Number of persons exposed
Commercial paper	.00168	10,000
Millboard	.00168	30,000
Pipeline wrap	.00168	150,000
Beater-add gasket paper	.00168	350,000
Electrical paper	.00168	10,000
Unsaturated roofing felt	.00168	200,000
Saturated roofing felt	.00168	60,000
Flooring felt	NA	NA
Specialty paper	.00168	10,000
V/A floor tile	.0495	660,000
Felt-backed vinyl flooring	NA	NA
A/C pipe	3.07	1,700,000
Flat A/C sheet	3.07	790,000

TABLE II.—EXPOSURE DATA FOR MANUFACTURING—AMBIENT—Continued

Asbestos product	Primary manufacturing	
	Exposure level (10^6 f/yr)	Number of persons exposed
Corrugated A/C sheet	3.07	70,000
A/C sheet single	3.07	310,000
Drum brake lining	.0089	720,000
Disc brakes (LV)	.0089	320,000
Disc brakes (HV)	.0089	NA
Brake blocks	.0089	450,000
Clutch facings	.0089	70,000
Friction products—automatic transmission	.0089	NA
Friction products—commercial	.0089	90,000
Cloth	.0554	24,000
Thread	.0554	180,000
Sheet gasketing	.7326	690,000
Packing	.7326	90,000
Surface coatings	.00002	2,000,000
Sealants	.00002	4,350,000
Plastics	.00002	1,320,000
Insulation	NA	NA
Mixed fiber	NA	NA
Other	NA	NA

Table III.—Exposure Data For Installation, Use, Repair, and Disposal

Asbestos product	Installation		Repair/disposal	
	Exposure level (10^6 f/yr)	Number of persons exposed	Exposure level (10^6 f/yr)	Number of persons exposed
Commercial paper	NA	NA	NA	NA
Millboard	107	75	NA	NA
Pipeline wrap	NA	NA	NA	NA
Beater-add gasket paper	NA	NA	NA	NA
Electrical paper	120	16	NA	NA
Unsaturated roofing felt	160	7,577	NA	NA
Saturated roofing felt	160	2,423	NA	NA
Flooring felt	NA	NA	NA	NA
Specialty paper	130	75	NA	NA
V/A floor tile	90	5,100	NA	NA
Felt-backed vinly flooring	NA	NA	NA	NA
A/C pipe	5,000	27,520	NA	NA
Flat A/C sheet	4,700	6,147	NA	NA
Corrugated A/C sheet	4,700	758	NA	NA
A/C sheet shingle	4,700	3,095	NA	NA
Drum brake lining	NA	NA	250	385,149
Disc brakes (LV)	NA	NA	105	164,822
Disc brakes (HV)	NA	NA	105	1,145
Brake blocks	NA	NA	NA	NA
Clutch facings	NA	NA	250	36,184
Friction products—automatic transmission	NA	NA	NA	NA
Friction products—commercial	NA	NA	NA	NA
Cloth	675	850	675	850
Thread	NA	NA	NA	NA
Sheet gasketing	1,380	4,586	NA	NA
Packing	12	2,914	NA	NA
Surface coatings	120	100,000	NA	NA
Sealants	NA	NA	NA	NA
Plastics	NA	NA	NA	NA
Insulation	NA	NA	400	3,000
Mixed fiber	NA	NA	NA	NA
Other	NA	NA	NA	NA

4. *Exposure from imported and exported asbestos and asbestos products.* EPA has determined that significant exposure is likely from imported asbestos products. Although some exposure to United States populations is avoided when asbestos products are manufactured abroad and imported rather than manufactured domestically, significant exposures will still occur after their import into this country. Exposures will occur during installation and use of the product; maintenance of the product; and during dismantling, removal, and disposal of the product. Much asbestos can be released to the ambient air as a result of these activities. Large numbers of people are exposed to asbestos during these activities and the level of exposure can be quite high.

Significant exposures will also occur during the domestic life cycle of bulk asbestos and asbestos products manufactured in this country for export abroad. These exposures will occur during the mining and milling of asbestos fiber and during the processing of fiber into products. There is much exposure to workers during the mining and milling of asbestos and manufacture of asbestos products. In addition, families of workers, and populations living near mining and manufacturing sites are also exposed to asbestos as a result of these activities.

5. *Exposure from various categories of asbestos products.* EPA has noted that various categories of asbestos products present very similar exposure patterns. For example, the products within the construction products category all present significant potential for fiber release to the air and subsequent human exposure during their installation, repair, removal, and disposal. These products are often cut, torn, sawed, and drilled during installation repair, and removal. All of these activities can release fibers to the air. In addition, sanding of these products during use often releases fibers to the air.

Similarly, products within the friction products category all present significant potential for fiber release and subsequent exposure during use and repair. Friction products wear down during use, often releasing fibers to the air either during actual use of the product or during maintenance or repair operations in which previously confined asbestos-containing dust is disturbed and becomes airborne.

Often, fiber releases from asbestos products in these categories occur in close proximity to other products within the same category, making it difficult to attribute observed fiber levels to a particular product. For example, EPA used monitoring data from automobile repair shops to estimate asbestos exposures resulting from repair of asbestos disc brakes, drum brakes, clutch facings, and automatic transmission friction components. Because there are no data available to estimate differences in fiber releases in the various repair activities, EPA

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developed exposure estimates for each product using a weighting scheme based on the relative production volumes of each of the friction products which are the sources of the exposure. Similarly, it is common for many of the asbestos construction products to be used at one building site, making it difficult to attribute fiber release to one particular product. The estimation of ambient exposures due to releases from individual construction products, such as the various flooring products, was difficult since monitoring data were gathered in buildings where more than one type of asbestos flooring product was in place.

For these reasons, EPA believes that it may be appropriate to consider a categorial approach to analyze the risk presented by asbestos products and to control that risk. Table IV lists the products that are included in the construction products and friction products categories.

TABLE IV—EXAMPLES OF ASBESTOS PRODUCT CATEGORIES

Asbestos product category	Asbestos product
Construction product category.	Unsaturated roofing felt, Saturated roofing felt, Flooring felt, Vinyl asbestos floor tile, Felt-backed vinyl flooring, A/C pipe, Corrugated A/C sheet, Flat A/C sheet, A/C sheet shingle.
Friction products category.	Drum brake lining, Disc brakes (LV), Disc brakes (HV), Brake blocks, Clutch facings, Friction products—automatic transmission, Friction products—commercial.

6. *Quantitative cancer risk estimates.* As discussed above, there exist many asbestos exposure-producing activities to which many kinds of populations are exposed. Applying the cancer models described above to the available data on exposure and populations, EPA has estimated the number of cancers that may be avoided by implementing the EPA's proposed regulatory program. (A full discussion of the risk estimates is contained in the "Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products (Ref. 3)". Using available data and assuming current exposure levels, EPA calculates that about 2,560 lung cancers and mesotheliomas in the United States would result from production of asbestos products over 15 years without EPA action under TSCA. EPA calculates that this rule would avoid about 1,930 of those potential cancers. Assuming that OSHA achieves strict compliance with a PEL of 0.2 f/cc, EPA calculates that about 1,325 lung cancers and mesotheliomas would result unless EPA takes action under TSCA. EPA calculates that this rule would avoid about 1,000 of those potential cancers.

EPA also calculated the number of potential cancers avoided by the regulatory alternatives discussed later. Assuming current exposure levels, alternative 1, which would ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule and ban the asbestos friction products category about 5 years later, would avoid about 2,100 cancers; alternative 2, which would ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule, ban the asbestos friction products category about 5 years later, and ban the remaining asbestos products about 10 years later, would avoid about 2,120 cancers; and alternative 3, which would ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule and cover all other asbestos products under the phase-down, would avoid about 2,020 cancers.

EPA believes these estimates of potential number of cancers, and therefore the potential number of cancers avoided, may be low for the following reasons:

a. The estimate is based only on exposures resulting from manufacture of asbestos products through the year 2000. Without regulatory action, manufacture of asbestos products may continue beyond that date.

b. The risk estimates often do not include cancers from consumer and other nonoccupational exposures to asbestos since data are either unavailable or uncertain. However, EPA believes that many people in these categories are at risk. An estimated lifetime risk of cancer of about 1 in 100,000 to about 7 in 100,000 exists for anyone who merely resides in a major city from exposure to asbestos in the ambient air both indoors and outside of buildings. (Ref. 6). Any additional exposure from asbestos products, such as consumer renovation of a house containing asbestos products, residing or working near plants that manufacture asbestos products, or residing or working in the vicinity of a construction project where asbestos-containing products are being installed or removed, will add to the risk of cancer. This additional exposure could increase the lifetime risk of cancer by more than an order of magnitude.

c. The risk estimates did not include all workers whose occupation causes them to come in contact with asbestos products. For example, the estimates do not include occupational exposure during repair, removal, and disposal of asbestos products other than friction products and cloth.

d. EPA did not make a worst case estimate of asbestos risk. Rather, the risk estimates were based on a relatively conservative interpretation of the dose-response relationship for mesothelioma and lung cancer. Risk estimates more than four times as high could be justified (Ref. 3).

e. EPA did not attempt to quantify reductions of cases of asbestosis and cancers other than mesothelioma and lung cancer. These diseases may add 10 to 20 percent more deaths to the total. OSHA estimates that at an exposure of 0.5 f/cc over a working career, 12 workers per 1,000 will develop asbestosis (Ref. 12). Thus, incidence of asbestosis could be significant among worker populations and possibly among other populations as well. In addition, in a major study of insulation workers exposed to asbestos, about 10 percent of all excess deaths were attributed to cancers other than lung cancer and mesothelioma (Ref. 11).

B. Environmental Effects

Section 6(c) of TSCA requires that EPA state the relevant environmental factors and key considerations which form the basis for regulatory action under section 6(a). The unreasonable risk finding of this proposal is based solely on risks to human health since these risks are by far the most serious consequence of commercial use of asbestos and are sufficient to support this proposed action.

C. Benefits of Asbestos Products and Availability of Substitutes

The benefits of the asbestos-containing products affected by the proposed rule are discussed below. Overall, EPA finds that the benefits to society of these asbestos-containing products are small since suitable substitutes are now available for most uses and applications of asbestos, and products are being developed that will replace almost all uses and applications of asbestos during the phase-down period of this proposal.

1. *Substitutes.* The detailed results of EPA's analysis of the availability of suitable substitutes for asbestos-containing products are reported in Appendix H, "Asbestos Products and Their Substitutes," of the RIA (Ref. 3) and are summarized in Table V.

TABLE V—SUMMARY TABLE OF ASBESTOS PRODUCTS, THEIR MAJOR USES, AND THE EXTENT TO WHICH THEY CAN BE SUBSTITUTED

Asbestos product	Major uses	Extent to which substitutes are available to replace asbestos products	
		Entirely	Partially
Asbestos cement pipe & fittings.	Water & sewer pipe.	X	
Flooring felt	Backing for vinyl sheet flooring products.	X	
Saturated roofing felt.	Construction of built-up roofing.	X	
Unsaturated roofing felt.	Production of saturated roofing felt.	X	
Vinyl/asbestos floor tile.	Floor tile for buildings.	X	
Asbestos-felt-backed vinyl sheet flooring.	A general floor surfacing medium.	X	
Adhesives & sealants.	Binding surfaces (adhesive) filling gaps in equipment & building construction (sealants).		X
Corrugated asbestos cement sheet.	Siding & roofing for buildings.	X	
Flat asbestos cement sheet.	Wall linings in buildings.	X	
Asbestos cement shingles.	Siding & roofing on buildings.	X	
Asbestos-reinforced plastics.	Components of appliance, electrical, automotive & printing equipment.		X
Friction components—transmission.	To dissipate heat when gears are changed.		X
Beater-add gaskets.	To provide nonleaking joints.		X
Brake blocks	To provide protection against heat & wear caused by braking in vehicles.		X
Asbestos textiles—cloth.	Material in safety curtains, fire blankets, & safety clothing.		X
Clutch facings	Friction materials in manual transmissions.		X
Commercial paper	General insulation paper & muffler paper.	X	
Corrugated paper	Pipe covering & block insulation.	X	
Disc brake pads (heavy vehicles).	Components of brakes in heavy vehicles.		X
Disc brake pads (light & medium vehicles).	Components of brakes in light & medium vehicles.		X
Drum brake linings (light & medium vehicles).	Components of brakes in light & medium vehicles.		X
Friction materials—industrial & commercial.	Materials that support braking & gear changing in vehicles & industrial equipment.		X
High grade electrical paper.	Electrical conductor fire insulation.		X
Millboard	To protect a supporting structure against heat, corrosion, moisture.		X
Asbestos packing	To seal fluids in applications where motion takes place.		X
Paints & surface coatings.	Protect surfaces from corrosion & water. Surfaces include chimneys, tanks, pipes, appliances.		X
Pipeline wrap	Wraps for gas, oil, hot water, & steam piping; primarily underground.		X
Rollboard	Protection against fire, heat, corrosion & moisture in industrial & office equipment & residential items.	X	
Sheet gasketing	Material used to seal fluids.		X
Specialty papers	Filters to purify or clarify liquids; cooling tower fill; & diaphragms for electrolytic cells.		X
Textiles—thread, yarn lap, roving, cord, & wick.	Insulation for wiring & electrical conductors; reinforcement for plastics; insulation for tools, packings, seals, & tape.		X
Total number		13	18

The following examples illustrate the types of substitutes available for those asbestos products EPA proposes to ban, either in this proposal or in one of the 3 regulatory alternatives described in this proposed rule, including the category of asbestos construction products and the category of asbestos friction products. A more complete analysis can be found in the Regulatory Impact Analysis (RIA) (Ref. 3).

a. *Friction products.* Substitutes exist or are being developed for almost all uses of asbestos in friction products. Replacement of asbestos in friction products has been more difficult than in the other asbestos product categories because of the unique combination of physical properties of asbestos which make it so well suited for friction products, e.g., heat resistance, corrosion resistance, high tensile strength, thermal stability, and processability. However, substitutes which are nearly as cost-effective as asbestos products have been developed for most uses of asbestos in friction products.

Asbestos automatic transmission friction components are currently being replaced with cellulose-based friction components. Only one of three domestic manufacturers of clutch facings makes them using asbestos. Clutch facings made of fiberglass and textile fibers have begun to replace asbestos facings to a significant extent. However, these substitutes are inferior to the asbestos clutch facings in durability, quietness, and tensile strength. Product development is continuing, however, to improve fiberglass facings to increase strength, wear, and ability to withstand heat through the use of special binders. Aramid-fiber-based clutch facings are also being developed. However, these have been relatively expensive compared to the asbestos and fiberglass clutch facings.

Semi-metallic disc brake pads have largely replaced asbestos disc brake pads in domestic cars with front wheel drive. Currently, about 85 percent of new domestic cars have front wheel drive and are equipped with semi-metallic front disc pads. Also, a number of brake manufacturers have begun to introduce an aramid fiber into production of disc brake pads.

The development of substitutes for asbestos drum brake linings has not been nearly as successful as it has been for disc brakes. Manufacturers have reported problems in processing nonasbestos fibers and problems in meeting standards of durability and heat resistance. There has been limited progress to date. One automobile manufacturer has reported that its new minivans are equipped with semi-metallic drum brake linings and one brake manufacturer has begun marketing aramid fiber-based linings for the replacement brake market. In addition, one automobile manufacturer has reported progress in developing a nonasbestos drum brake lining using an aramid fiber. However, domestic car manufacturers have not begun installing aramid-based or semi-metallic-based drum brakes linings on new vehicles except in very limited applications. A number of other substitute fibers are being tested by manufacturers and may have potential as a substitute for asbestos in brakes.

b. *Asbestos cloth products.* Asbestos cloth has been used as a final product in safety curtains, fire blankets, protective clothing, and high-temperature conveyor belts. Asbestos cloth is used as an input product in gaskets, packing, friction materials, and thermal and electrical insulation.

There currently are a number of substitute fibers for asbestos use in

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cloth. These include glass fibers, ceramic fibers, carbon fibers, organic fibers, quartz fibers and cotton fibers. Replacement fibers for asbestos in cloth uses depend upon the specific application.

Substitutes appear to be available for almost all high-temperature applications of asbestos cloth. If asbestos cloth were not available, EPA expects that the following substitutes would replace asbestos cloth as follows:

Fiberglass cloth products: 50 to 60 percent.

Aramid cloth products: 20 to 25 percent.

Carbon/graphite cloth products: 5 to 10 percent.

Ceramics and silicon-based cloth products: 10 to 15 percent.

Because of their temperature and flame resistance, asbestos clothing products protect wearers from fire and heat. However, substitute products have been developed for asbestos clothing products. Aramid cloth products can substitute for asbestos in protective garments, but are more expensive. Some other textile products made without asbestos are less expensive than the counterpart product made with asbestos cloth. Substitute products for asbestos clothing include nomex, fiberglass, and zetex. Asbestos clothing has been replaced by substitutes in most or all firefighting and industrial applications.

c. *Asbestos-cement pipe and fittings.* Products in this category are manufactured for various uses. Most pipe is used to carry water or sewage. A small amount is used to carry chemicals or is used as air ducts. Pipe varies in construction depending on use and such factors as how deep it will be buried, the rate of fluid transmitted and whether it is under pressure.

EPA believes that at least one suitable substitute is available for each of the many pipe types and sizes. Based on information from manufacturers, EPA concluded that operation and maintenance costs and service life of all products are essentially similar. Asbestos-cement pipe does not dominate any segment of the pipe market, but is popular for certain applications such as carrying water at low pressure. If this rule is promulgated, EPA expects that the following substitutes will replace asbestos-cement pipe as follows:

Polyvinyl chloride (PVC) pipe	72 percent
Ductile iron pipe	23 percent
Prestressed concrete pipe	4.2 percent
Reinforced concrete pipe	0.15 percent

These estimates are only approximate and do not take into account other possible substitutes that EPA considered somewhat less suitable than those noted above. These include various plastic and vitrified clay pipes.

All of the substitutes considered are well established in the pipe market and can be joined to or replaced existing asbestos-cement pipe sections.

d. *Roofing felt.* Asbestos roofing felt is used for built-up roofing, primarily on flat roofs. "Built-up" refers to the practice of layering felt lengths on top of each other with hot roofing tar or asphalt mopped between layers of adhesion and additional weather protection.

Currently, less than 10 percent of roofing felt sold contains asbestos. Organic felt, fibrous glass felt, and single-ply membrane roofing all have greater shares of the flat roof market than asbestos felt.

Of these three well-established products, fibrous glass felt most closely approximates asbestos roofing felt in purchase and installation prices and service life. Organic felt has a lower purchase price, but has lower insulation value and moisture resistance and a somewhat shorter service life. Single-ply membrane roofing consists of a laminate of a modified bitumen or polymeric system such as polyvinyl chloride or ethylene propylene diene monomer. A typical product consists of a five-layer laminate composed of a thick plastic core protected on each surface by a layer of modified bitumen and an outer film of polyethylene. The purchase price of single-ply membrane roofing is several times that of asbestos felt, is about as expensive to install, but is expected to have a longer service life. Single-ply membrane also has the advantage of not requiring the use of hot asphalt during installation.

e. *Flooring felt and felt-backed vinyl sheet flooring.* Asbestos flooring felt was used as a backing for vinyl sheet flooring products. The felt confers dimensional stability and helps prolong floor life when moisture from below the surface is a problem. EPA does not believe that flooring felt is currently being produced in the U.S.

A large number of non-asbestos vinyl flooring products have entered the market in the last 5 years. These products include sheet backed with felt containing fibrous glass, cellulose, polyethylene or polypropylene fibers, ceramic fibers, and plastic foam. Also available are unbacked sheet and numerous traditional flooring products such as ceramic tiles, capeting, and wood flooring. Among these many products, consumers will find adequate substitutes for any particular use of asbestos containing felt or felt-backed flooring.

EPA has found that price differentials between asbestos and non-asbestos vinyl sheeting are negligible. Overall, the backing is a small part of the total cost for vinyl sheet products. Maintenance and service life are not materially affected by the backing. The wide range of prices found among various vinyl flooring products are mostly attributable to the colors and patterns of the vinyl as well as the wear-layer thickness.

f. *Vinyl-asbestos floor tile.* Vinyl-asbestos floor tile is used in numerous applications, but has been especially popular for use in heavy traffic areas such as in stores, kitchens, and entry ways. Addition of fiber contributes to abrasion and indentation resistance, dimensional stability, and resistance to moisture, heat, and oil.

Currently, the most suitable available substitutes for vinyl-asbestos floor tiles are various asbestos-free vinyl composition floor tiles. In place of asbestos fibers, manufacturers are using synthetic fibers including fibrous glass, polypropylene, polyethylene, and cellulose.

There are also several types of vinyl tiles that contain various fillers and resins in place of fiber. Many non-asbestos vinyl tile products have been on the market for only a few years. Consequently their service lives are not well established. Some industry contacts believe the non-asbestos tiles will last as long as the asbestos tiles, while others believe service lives will be shorter. EPA currently assumes that service lives of the non-asbestos tiles will be about one-third shorter than for the asbestos tiles.

g. *Asbestos-cement sheet.* There are a number of cost competitive substitutes for asbestos-cement sheet. These include both products using substitute fibers and other product substitutes. Glass-reinforced concrete is suitable for most corrosion and heat-resistant applications where asbestos-cement sheet is now used. Glass-reinforced concrete is widely available at a price that has been declining relative to that of asbestos-cement sheet. Cement-wood board is suitable for the general construction applications of asbestos-cement sheet. The use of resins and surface coatings with cement-wood board makes the product suitable in weather-resistant applications.

In the siding market, asbestos-cement products have no cost advantage over galvanized steel, aluminum, or concrete. However, asbestos-cement sheet may have greater corrosion resistance than the other products. In cooling towers, polyvinyl chloride products or ceramic tile products are cost competitive and are suitable for most applications. There are also a number of products that can substitute for asbestos-cement sheet as a laboratory desk top and fume hood bench. However, it appears that comparably priced products may not fully match the qualities of asbestos-cement sheet in these applications.

h. *Asbestos-cement shingles.* There are substitutes for asbestos-cement shingles for both roofing and siding applications. The primary substitutes for asbestos-cement roofing shingles are asphalt-fiberglass composition shingles, cedar wood shingles, and various synthetic and natural tiles, such as Monray roofing tile and concrete tile. Asphalt-fiberglass composition shingles cost about half as much as asbestos-cement shingles in terms of purchase and installation costs but have only about half the operating life. Cedar wood shingles have a slightly greater cost then asbestos-cement shingles but have a greater operating life.

Substitutes for asbestos-cement shingle siding include wood, wood shingles, aluminum siding, PVC siding, stucco or concrete block, vinyl, and brick. Aluminum and PVC siding are both virtually identical to asbestos-cement shingles in terms of price and durability. Cedar shingle siding is also very competitive in terms of price, but it is somewhat less durable.

The total substitute market for both applications is approximately as follows:

Asphalt/fiberglass	50 percent
Wood products	30–35 percent
Aluminum siding	5–10 percent
PVC siding	5–10 percent
Brick, tile	5 percent

2. *Possible hazards of substitutes.* EPA has analyzed available data on the health effects of major substitutes for asbestos (Ref. 14). Some of the substitutes such as wood-based products (e.g., cellulose fiber products) and construction products made of brick and concrete appear to present little risk. While other substitutes present some risk, EPA has concluded that the available information suggests that none of the substitutes appear to present as great a potential for risk to human health as asbestos. EPA made extensive use of the work of the National Research Council and agrees with their conclusion that: "Current population risk from exposures to the various substances considered, including fibrous glass, attapulgite, and carbon fibers, appears to be much less than for risk from asbestos, especially chrysotile" (Ref. 6). The conclusions of EPA's analysis of specific substitutes follows.

a. Fibrous glass appears to be considerably less hazardous than asbestos based on (1) morbidity and mortality studies in workers, (2) *in vivo* and *in vitro* experimental data, (3) the order of magnitude lower exposure potential in the workplace, (4) the generally less respirable nature of the airborne fibers, and (5) the less durable nature of the fibers in the lungs.

b. Mineral wood does not appear to present the significant risks that asbestos does based on (1) limited animal data and morbidity and mortality studies for workers, and (2) the lower exposure potential in the workplace.

c. Ceramic fibers do not appear to present a comparable risk to that of asbestos based primarily on (1) the moderate workplace concentrations, and (2) the specialized applications which include its encapsulation or incorporation into products.

d. Carbon/graphite fibers are probably not a significant health risk based on the (1) use of coatings on the fibers which may reduce their respirability, and (2) low intrinsic respirability characteristics.

e. Aramid fibers appear to present relatively low risk because they are basically nonrespirable as currently produced and processed.

f. Polyethylene and polypropylene pulps and fibers appear to present relatively little risk since they appear to be relatively nontoxic and nonrespirable.

g. Attapulgite has large general exposure potential but available evidence suggests that attapulgite from U.S. mines may present little hazard. In addition, attapulgite is not a major substitute for asbestos.

h. Polyvinylcholoride does not appear to present a health hazard comparable to asbestos, although vinyl chloride, the monomer used to produce polyvinylchloride, is a carcinogen. The polyvinylchloride product itself presents little risk and workplace exposures are apparently adequately controlled.

i. Ductile iron pipe does not present a health hazard comparable to that of asbestos.

EPA recognizes that some asbestos substitutes may be new chemical substances for which a premanufacture notice (PMN) must be submitted under section 5 of TSCA. A goal of EPA's PMN review program is to encourage the development of new chemical substances that are less hazardous than the chemical substances they replace. EPA encourages the development of less hazardous new chemical substances as asbestos replacements. Potential developers of new chemical substances intended as asbestos substitutes may wish to discuss their plans with EPA during a prenotice consultation. Such a consultation can be arranged by contacting the Prenotice Communications Coordinator by telephone at (202–382–3745) or by writing to the Prenotice Communications Coordinator, Chemical Control Division (TS–794), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Through a prenotice consultation, EPA can inform potential PMN submitters of legal requirements, possible EPA health concerns about the substance, and possible test data that EPA may believe necessary to evaluate the risk potential of the substance. During a prenotice consultation and any PMN review of a new chemical substance that is intended as a substitute for asbestos, EPA will consider the relative risks presented by asbestos and potentially presented by the asbestos substitute. EPA will make every reasonable effort to provide prompt and clear information concerning the likely result of PMN review in view of EPA's policy of encouraging less hazardous substitutes for asbestos.

D. Economic Effects of Proposed Rule

This portion of the preamble presents EPA's determination of the "reasonably ascertainable economic consequences of the rule" as required by section 6(c)(1)(D) of TSCA.

EPA has prepared a "Regulatory Impact Analysis of Controls on Asbestos Products" (Ref. 3) which analyzes the potential economic impact of this proposed rule. The economic impact is summarized and explained below.

Estimated costs are mainly from 1981 data obtained under EPA's section 8(a) asbestos reporting rule (40 CFR 763.60). Some of the data were adjusted to reflect more current information on production of asbestos products. Specifically, EPA gathered more current information on the use of asbestos clothing and asbestos flooring felt and then adjusted the estimated costs and benefits of the rule to reflect declining use of these products. The sources of the information are noted in the record for this rule. The costs are presented as the net present value of costs incurred due to changes in asbestos product production between 1985 and 2000. Costs are likely to be overstated since the baseline production levels used in the cost model probably overstate production in the future. In addition, the cost estimation model assumes that the relative prices of substitutes for

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asbestos products will remain constant over the time period used for measurement of costs. Actually, price differentials are likely to decrease over time.

Two types of costs are estimated in the RIA: (1) Costs to consumers and (2) costs to producers. These are discussed below. The costs represent the present value of losses incurred over the 15-year period from 1985 to 2000, using a discount rate of 10 percent.

1. Consumer losses due to the rule would result from increases in costs incurred for asbestos products or substitutes for asbestos products and from inferior performance of substitute products. Total consumer losses due to the rule are estimated to be $1.77 billion. However, this loss would be spread across the entire consumer population and would average less than $10 per consumer over 15 years. This rule would not cause dramatic cost increases in typical consumer products.

2. Losses would accrue to producers as a result of the rule when producers are forced to forgo some portion of the return on their capital stock used to produce asbestos products. Owners of equipment which can be readily converted to make other products are not expected to lose nearly as much as owners of equipment which cannot be easily converted. Total producer costs are estimated to be about $209 million for the rule.

3. In addition, the rule would result in transition costs to workers who are displaced by phasing down production of asbestos products. These losses are incurred in the form of lost wages and job search costs. EPA believes that transition costs of the phase-down will be relatively modest since the rule would allow industry to scale back production gradually and shift production to other products and that the transition costs from the proposed product bans will be small in comparison to the consumer and producer costs.

The sum of these costs, about $1.98 billion, represents the estimated total real resource costs of the rule. This cost would be spread over 15 years. The cost will also be spread over a large population and the impact on most persons would be negligible.

In addition, EPA estimated the real resource costs of the product bans proposed in this rule. These estimates are shown below:

Product	Real resource cost
A/C Pipe	$165.4 Million
Floor tile	$119.5 Million
Flooring felt	No Cost
Asbestos clothing	$.1 Million
Roofing felt	$4.2 Million

The above costs of the rule will be offset to some extent by the following avoided costs.

By reducing the amount of asbestos-related deaths and illnesses this rule would reduce the cost to society of the health resources used to treat asbestos-related illnesses (e.g., hospital and medical treatment) and the productivity (wages and lost work capacity of sick workers, etc.) lost as a result of illness caused by asbestos exposure. EPA estimates that the avoided morbidity cost is about $1,275 per case. This is measured in 1985 dollars using a 10-percent discount rate.

This figure is relatively low because people generally contract mesothelioma or lung cancer after a long latency period. Thus most medical costs occur far in the future and are therefore discounted heavily.

EPA did not attempt to value the loss of life itself. In addition, no value was assigned to "pain and suffering," "loss of 'leisure time,'" and other similar losses.

Substantial asbestos removal and disposal costs would be avoided as a result of this proposed rule. These include avoided expenses as well as avoided health risks for people exposed during removal and disposal activities. Use of nonasbestos products in construction reduces demolition and disposal costs in the future. Removal and disposal costs of products are likely to be considerably higher for asbestos products than nonasbestos substitutes because of the extra precautions required to meet OSHA and Clean Air Act (CAA) requirements. Avoided removal and disposal costs are a major benefit of this proposed regulation. These costs can be substantial. EPA has estimated that removing asbestos from school buildings costs between $2 and $13 per square foot of asbestos removed.

OSHA and EPA both have regulations to limit asbestos exposure at work sites. Certain costs related to compliance with these regulations would be avoided as a result of this rule. To comply with OSHA's current workplace standard for asbestos, employers incur expenses related to:

a. Monitoring for fibers.

b. Providing engineering methods to control exposures (this includes enclosing or isolating asbestos fiber generating activities, providing exhaust ventilation, dust collection, etc.)

c. Providing hand tools such as saws, scorers, drills, and abrasive wheels that have local exhaust ventilation systems.

d. Modifying work practices to reduce exposure.

e. Providing special clothing, change rooms, lockers, and special laundering.

f. Labeling asbestos material and posting caution signs.

g. Providing special procedures for collection and processing of asbestos waste.

h. Providing medical examinations for employees exposed to asbestos.

i. Responding to recordkeeping and reporting requirements.

EPA's CAA regulations require that activities during milling, manufacture, demolition and renovation, waste disposal, and some other asbestos-related activities release "no visible emissions." To comply with this requirement, persons must obtain and maintain air-cleaning devices such as filters and may be required to modify work and waste disposal practices to reduce emissions.

In addition, both OSHA and EPA may require stricter workplace controls for asbestos in the near future. The costs of complying with those requirements would be avoided at least in part by this rule.

United States courts and workman's compensation boards have been inundated with thousands of claims for compensation for deaths and illnesses caused by exposure to asbestos. Some past producers of asbestos products have declared bankruptcy because of these many claims. The continued use of asbestos can only exacerbate the problem. Each case of disease avoided relieves the various systems affected of a considerable burden. This rule, by reducting exposure to asbestos and reducing the number of asbestos-related illnesses and deaths, would reduce these costs.

As required by section 6(c)(1)(D) of TSCA, EPA has analyzed the economic impact of this proposed rule on small businesses. The effect of this rule on such businesses is expected to be small because (1) there are few small businesses producing asbestos products and (2) producer losses are expected to be small since capital equipment for production of most asbestos products can be converted fairly easily to other forms of production. A maximum of 27 out of the 212 primary processors of asbestos products are small businesses. EPA acknowledges that these 27 companies could incur losses under the rule. EPA was unable to determine how many of the secondary processors of asbestos products are small businesses.

However, EPA acknowledges that a higher percentage of secondary processors are likely to be small businesses than the percentage of primary processors that are small businesses. In addition, 5 of the 11 companies that manufacture the products that this rule proposes to ban are small businesses. This proposed rule could have significant impact on these few companies.

The estimated costs of the rule could be seen as significant. However, the overall benefits to society of asbestos-containing products are diminishing with the current availability and the continued development of various nonasbestos substitutes. The costs of the rule are speculative and probably are overestimated. In addition, many economic impacts of this rule are likely to be short-term and spread across large populations with only negligible impact on the typical consumer. This rule is not expected to cause dramatic price increases in typical consumer products. Consumer losses caused by this rule would be spread across the entire consumer population. Jobs displaced by this rule are likely to be offset by increased employment in companies producing substitutes for asbestos products. Potential consumer and producer costs are likely to be offset by the economic costs avoided by this rule, i.e., avoidance of the morbidity costs of asbestos-related diseases; the cost of removal and disposal of asbestos products; the costs of special control to reduce exposure to asbesto; and costs associated with legal actions seeking compensation for asbestos-related illnesses and deaths. Finally, the estimated costs of this rule appear reasonable in view of the unreasonably large number of asbestos-related deaths and serious illnesses that would occur without a phase-out of asbestos.

EPA expects that this proposed rule would have a positive impact on technological innovation and encourage the continued rapid development of nonasbestos substitute products. This development of new products is likely to involve significant technological innovation.

IV. Other Options Considered

Section 6 of TSCA requires that EPA apply the least burdensome requirements to reduce an unreasonable risk. EPA is considering a number of options for implementing the regulatory policy of phasing out the manufacture and importation of asbestos products. These options involve staged bans of categories of asbestos products. This approach would ban the manufacture, importation, and processing of all asbestos products within a certain category at the same time. EPA is considering a category approach for groups of asbestos products with similar exposure patterns, similar exposure control issues, and similar substitutes. Examples of categories under consideration are construction products and friction products. EPA believes it may be good public policy to ban categories of products at the same time. This approach would address similar exposure patterns in the same way and treat all parts of an industry sector similarly. In addition, both the construction products category and the friction products category contain products that could substitute for other products in the category if all are not banned. Thus, a ban of the entire category may be necessary to reduce risk most effectively.

One option under active consideration in addition to the ones embodied in the proposal is banning the manufacture, importation, and processing of the asbestos construction products category and asbestos clothing with the ban effective soon after promulgation of the rule; banning the manufacture, importation, and processing of the asbestos friction products category about 5 years after promulgation of the rule; and gathering up-to-date production, exposure, and use data on the remaining asbestos products under section 8(a) of TSCA to support possible bans of other asbestos products at that time. Another option is banning the manufacture, importation, and processing of the asbestos construction products category, asbestos clothing, and the asbestos friction products category as stated above and banning the remaining asbestos products at a later time (e.g., 10 years), thus allowing time for the development of effective substitutes while strongly encouraging substitute development. A third option is banning the manufacture, importation, and processing of the asbestos construction products category and asbestos clothing as stated above and covering all other asbestos products under the phase-down. Under each of the options, EPA is also considering a requirement that products not banned soon after promulgation be labeled as containing asbestos.

EPA is actively considering these options as alternatives to this proposed rule and specifically requests comment on these alternatives. EPA may adopt a final rule based closely on one or a combination of these alternatives. These alternatives are discussed more fully below.

1. *Ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule, ban the asbestos friction products category about 5 years later, and gather additional information on other asbestos products.* Under this alternative, EPA would ban the manufacture, importation, and processing of the asbestos construction products category (i.e., asbestos-cement pipe and fittings, roofing felts, flooring felts and felt-backed sheet flooring, vinyl-asbestos floor tile, corrugated asbestos-cement sheet, flat asbestos-cement sheet, and asbestos-cement shingles) and asbestos clothing soon after promulgation of the rule. Effective substitutes exist for these products. The rule would also ban the manufacture, importation, and processing of the asbestos friction products category (i.e., drum brake linings, disc brake pads for light, medium, and heavy vehicles, brake blocks, clutch facings, automatic transmission friction components, and industrial and commercial friction materials) 5 years after promulgation of the rule. This alternative would reduce exposure to asbestos without the administrative burden of EPA establishing and operating a permit system as in the proposed approach. This alternative, by banning asbestos friction products 5 years after promulgation, would strongly encourage the rapid development of additional effective substitutes for asbestos friction products. The 5-year delayed ban would also allow time for expansion of production capacity for non-asbestos friction products.

EPA estimates that this alternative, assuming current exposure levels, would avoid about 2,100 cancer cases that EPA can quantify while costing about $2.11 billion. This is a cost of about 1.01 million per cancer case avoided.

Because OSHA has proposed lowering the workplace PEL for asbestos to 0.2 f/cc, EPA also estimated the numbers of cancer cases avoided assuming strict compliance with this lower PEL. Assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 1,060 cancer cases that EPA can quantify, while costing about $2.11 billion. This is a cost of about $2.00 million per cancer case avoided.

To determine how sensitive the cost per cancer case avoided was to the banning of particular products, EPA conducted a sensitivity analysis, excluding asbestos-cement pipe from the ban.

Without a ban of asbestos-cement pipe and assuming strict compliance

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with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 840 cancer cases that EPA can quantify, while costing about $1.87 billion. This is a cost of about $2.22 million per cancer case avoided.

EPA believes that effective substitutes are increasingly becoming available for asbestos friction products and will be readily available by the date the delayed ban would become effective. However, EPA is considering an exemption process for essential uses without substitutes. One area EPA is studying in particular is the aftermarket for asbestos brakes. Some persons have stated that asbestos brakes now in use cannot safely be replaced by asbestos-free brakes when they wear out, while others have disagreed with this assertion. EPA is aware of the potential risk to the public from poorly performing brakes. EPA specifically requests comment on this issue.

EPA considered various approaches for addressing the risk presented by asbestos products not banned either soon after promulgation or 5 years after promulgation under this alternative. One approach would be to propose and promulgate a rule under section 8(a) of TSCA to gather contemporaneous data concerning the production and use of and exposure to these products at the time the first products ban rule becomes effective or at a date a few years later. EPA would analyze that data and then decide whether to ban additional asbestos products. EPA would also determine the date of these bans, which may be at staged intervals. After deciding these issues, EPA would propose and promulgate the bans of these asbestos products. Another approach for addressing the risk presented by these remaining asbestos products is discussed as alternative 2 below.

2. *Ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule, ban the asbestos friction products category about 5 years later, and ban remaining asbestos products about 10 years later.* Under this alternative, as in alternative 1, EPA would ban the manufacture, importation, and processing of the asbestos construction products category and asbestos clothing soon after promulgation of the rule, and ban the manufacture, importation, and processing of the asbestos friction products category 5 years after promulgation of the rule. This alternative would also ban the manufacture, importation, and processing of all other asbestos products 10 years after promulgation of the rule. This alternative would relatively quickly ban a number of asbestos products for which effective substitutes exist while strongly encouraging the rapid development of effective substitutes for other asbestos products.

This alternative, unlike alternative 1, avoids the necessity of future rulemakings to gather additional data and then ban additional products. It would also provide greater certainty about the status of all asbestos products and more strongly encourage the development of substitutes for all applications of all products.

As in alternative 1, EPA is considering the need for an exemption process for asbestos friction products in connection with the staged product bans.

EPA estimates that this alternative, assuming current exposure levels, would avoid about 2,120 cancer cases that EPA can quantify while costing about $2.29 billion. This is a cost of about $1.08 million per cancer case avoided.

Assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 1,070 cancer cases that EPA can quantify, while costing about $2.29 billion. This is a cost of about $2.13 million per cancer case avoided.

Without a ban of asbestos-cement pipe and assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 950 cancer cases that EPA can quantify, while costing about $2.02 billion. This is a cost of about $2.12 million per cancer case avoided.

3. *Ban the asbestos construction products category and asbestos clothing soon after promulgation of the rule and cover all other asbestos products under the phase-down.* Under this alternative EPA would ban the manufacture, importation, and processing of the asbestos construction products category and asbestos clothing soon after the promulgation of the rule and cover all other asbestos products under the phase-down.

This alternative, unlike the current proposal, would ban all asbestos-cement products at the same time, thus addressing similar exposure patterns in the same way and treating all parts of an industry sector similarly. The phase-down would operate to restrict use of asbestos in other industry sectors.

EPA estimates that this alternative, assuming current exposure levels, would avoid about 2,020 cancer cases that EPA can quantify while costing about $2.01 billion. This is a cost of about $1.00 million per cancer case avoided.

Assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 1,010 cancer cases that EPA can quantify while costing about $2.01 billion. This is a cost of about $1.98 million per cancer case avoided.

Without a ban of asbestos-cement pipe and assuming strict compliance with an OSHA PEL of 0.2 f/cc, EPA estimates that this alternative would avoid about 950 cancer cases that EPA can quantify while costing about $1.86 billion. This is a cost of about $1.95 million per cancer case avoided.

The following Table VI summarizes the estimated costs and estimated cancer cases avoided that EPA could quantify for the proposal and the three alternatives discussed earlier, first assuming current exposure levels and then assuming strict compliance with an OSHA PEL of 0.2 f/cc.

TABLE VI—ESTIMATED COSTS AND CANCER CASES AVOIDED

	Proposal	Alt. 1	Alt. 2	Alt. 3
Assuming Current Exposures				
Cost (billions)	$1.98	$2.11	$2.29	$2.01
Cancer cases avoided	1,930	2,100	2,120	2,020
Cost per cancer case avoided (millions)	$1.02	$1.01	$1.08	$1.00
Assuming Strict Compliance With an OSHA PEL of 0.2f/cc				
Cost (billions)	$1.90	$2.11	$2.29	$2.01
Cancer cases avoided	1,000	1,060	1,070	1,010
Cost per cancer case avoided (millions)	$1.99	$2.00	$2.13	$1.98

Alternative 1—Ban asbestos construction products and asbestos clothing soon after promulgation and ban asbestos friction products in five years.
Alternative 2—Ban asbestos construction products and asbestos clothing soon after promulgation, ban asbestos friction products in five years and ban remaining products in ten years.
Alternative 3—Ban asbestos construction products and asbestos clothing soon after promulgation and cover remaining products under the phase-down.

4. *Require labeling of asbestos products subject to a ban.* As part of this alternative, EPA also proposes and requests comment on a labeling requirement. In particular, it is proposed that products not immediately banned but subject to regulation 5 or 10 years from now be labeled in the interim. The labeling would advise purchasers that the product contains asbestos. EPA requests comments on this proposal, in particular on (1) the appropriateness of this proposal for all or some subset of the products in this category; (2) the appropriateness of a simple content warning as opposed to a more extensive labeling provision; and (3) the extent to which labeling would serve to reduce exposure to asbestos.

EPA also considered a number of alternatives for implementing the phase-down. These include options concerning the following: who would be assigned permits; how persons would be granted permits; whether permits would be transferable; whether permits would be bankable; and how imported products containing asbestos would be treated. EPA also considered a number of options before adopting its current regulatory strategy for controlling the risk from asbestos. These options are discussed in documents which are included in the rulemaking record.

V. Finding of Unreasonable Risk

EPA has weighed the health risks from continued use of asbestos and asbestos-containing products against the costs attributable to the proposed regulation. EPA has concluded, that the avoidance of about 1,930 cancer cases that can be quantified assuming current exposure levels, or the 1,000 cancer cases that can be quantified assuming strict compliance with an OSHA PEL of 0.2 f/cc, many other cancer cases that cannot be quantified, and many cases of asbestos-related disease substantially outweigh the costs to consumers, producers, and users of asbestos products from the proposed regulation. Therefore, EPA finds that the continued mining and importation of asbestos and asbestos products in the United States for domestic use and for export present an unreasonable risk to human health. The finding is based on the following points:

1. The health effects from asbestos exposure are very serious. Asbestos is a demonstrated human carcinogen. The cancers caused by asbestos are usually fatal and cause much pain and suffering. In addition, asbestos causes other lung diseases such as asbestosis.

2. Available evidence supports the conclusion that there is no safe level of exposure to asbestos. This conclusion is consistent with present theory of cancer etiology and is further supported by the many documented cases where low or short-term exposure has been shown to cause asbestos-related disease.

3. Models developed to estimate the relative risk of developing cancer from exposure to asbestos show a linear dose-response relationship. Based on data from epidemiology studies, these models predict that humans exposed to very low levels of asbestos incur some risk. Individuals frequently exposed to levels typically found at asbestos worksites are estimated to have very high risks of contracting cancer, perhaps greater than 1 in 100.

4. Asbestos fibers are colorless, odorless, and frequently invisible, thus presenting risk to persons not aware that they may be exposed. Asbestos fibers are extremely durable and have aerodynamic properties that allow them to remain suspended in the air for a long time. Asbestos fibers easily reenter the atmosphere after settling out and can travel long distances through the air.

5. Health risks from exposure to asbestos fibers during the lifecycle of the asbestos products covered by this proposed rule occur to many population groups during many activities. Persons can be exposed to asbestos fibers long after those fibers have been released to the air and at a considerable distance from the source of release. The vast majority of the general population of the U.S. is exposed to asbestos in the air. More than 40,000 workers are exposed during manufacture and processing of asbestos products covered by this proposal. Many additional thousands of workers and consumers are exposed during product installation, use, maintenance, renovation, removal, and disposal of asbestos products. Finally, many millions of people who reside near asbestos worksites are also exposed to significant concentrations of asbestos in the air.

6. Using typical, rather than worst-case, data and assumptions, EPA has estimated that this proposed rule banning certain asbestos products and phasing out all others, if promulgated, would avoid approximately 1,930 cases of cancer which would otherwise result from exposure to asbestos between the years 1985 to 2000. EPA underestimated the number of cancer cases avoided because of the lack of comprehensive data on releases of asbestos to the ambient air from many activities. EPA estimates that the following numbers of cancer cases would be avoided as a result of the proposed product bans, assuming both current exposure levels and strict compliance with an OSHA PEL of 0.2 f/cc.

Product	Cancer cases avoided	
	Current exposure	At 0.2 f/cc
Asbestos clothing	1	0
A/C pipe	533	82
Floor tile	469	468
Flooring felt	0	0
Roofing felt	4	4

These estimates of cancer cases avoided by the product bans should not be viewed in isolation, since asbestos use in other product sectors would theoretically decrease at less than the current rate unless all asbestos use is phased out.

7. Even if OSHA promulgates and achieves strict compliance with a PEL of 0.2 f/cc, almost 1,325 cancers would still result from asbestos products made over the next 15 years. This rule would avoid about 1,000 of those cancer cases.

8. The estimated costs of this proposed rule are reasonable in view of the number of cancers and other adverse health effects that would be avoided. Substitutes for asbestos are readily available for many products and can be expected to become available during the phase-down period for most, if not all, other uses. Even though the costs are probably overestimated, the cost per cancer case avoided, assuming current exposure levels, that EPA can quantify, is about $1.02 million. Even if OSHA promulgates and achieves strict compliance with a PEL of 0.2 f/cc, the cost per cancer case avoided that EPA can quantify is about $1.99 million. If all cancer cases and the incidence of other diseases could be quantified, the cost per case of disease prevented would be substantially lower. In addition, the overall costs of the rule are spread over a large population so that the cost to any individual would be negligible. Further, EPA expects substantial savings to result from this rule from such factors as avoided costs in treating asbestos related diseases, avoidance of lost productivity caused by these diseases, avoided costs in asbestos removal and disposal, and avoidance of litigation costs resulting from asbestos disease claims.

EPA also finds that the costs of alternatives 1, 2, and 3 are reasonable in view of the numbers of cancers and other adverse health effects that they would avoid. The costs per cancer case avoided that EPA can quantify of these alternatives are approximately the same as for the proposed rule.

As discussed earlier, EPA conducted a sensitivity analysis to see how sensitive the cost per cancer case avoided by this rule and the cost per cancer avoided by the regulatory alternatives discussed earlier were to the banning of particular products. Specifically, EPA analyzed the cost per cancer case avoided for the proposal and the other options excluding asbestos-cement pipe or vinly-asbestos floor tile from the bans. Even with these relatively high exposure products excluded from the bans, the cost per cancer case avoided by the proposal and the alternatives are similar.

For example, without a ban of asbestos-cement pipe and assuming strict compliance with an OSHA PEL of 0.2 f/cc, this proposed rule would cost about $1.96 million per cancer case avoided that EPA can quantify. Without a ban of vinyl-asbestos floor tile and assuming strict compliance with an OSHA PEL of 0.2 f/cc, this proposed rule

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would cost about $2.28 million per cancer case avoided that EPA can quantify.

VI. Other EPA Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce the risks from asbestos to a sufficient extent.

Several EPA statutes have been used to limit asbestos exposure. In 1973, EPA used the authority of the CAA to list asbestos as a hazardous air pollutant, establish a "no visible" emission standard for manufacturers, and ban the use of spray-applied asbestos-containing material as insulation in buildings, published in the **Federal Register** of April 6, 1973 (38 FR 8826). EPA amended this regulation in 1975 to ban asbestos-containing pipe lagging, by a rule published in the **Federal Register** of October 12, 1975 (40 FR 48292); and in 1978, extended the ban to all uses of sprayed-on asbestos by a rule published in the **Federal Register** of June 19, 1978 (43 FR 26372). The CAA rule, which was last amended on April 5, 1984 (49 FR 13658), also regulates the removal of asbestos from buildings and the disposal of wastes generated by removal.

However, the CAA has limitations. The CAA does not apply directly to indoor air in the workplace or home. Consequently, any possible additional use of that statute may leave many workplace or home exposure situations inadequately controlled.

Another EPA statute that could be used to limit asbestos exposure is the Safe Drinking Water Act (SDWA). EPA announced its intention to consider asbestos for inclusion in its proposed National Revised Primary Drinking Water Regulations by a Notice published in the **Federal Register** of October 5, 1983 (48 FR 45502). However, even if the SDWA is used to set a drinking water standard for asbestos, it would necessarily ignore the inhalation risk associated with asbestos.

An additional EPA statute that could be used to limit asbestos exposure is the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA could list asbestos as a hazardous waste and subject asbestos waste to general RCRA requirements designed to reduce exposure. However, such action under RCRA would only reduce exposure during the disposal of asbestos and asbestos products.

VII. Analysis Under Section 9(a) of TSCA

Under section 9(a)(1) of TSCA, the Administrator is required to submit a report to another Federal agency when two determinations are made. The first determination is that the Administrator has reasonable basis to conclude that a chemical substance or mixture presents or will present an unreasonable risk of injury to health or the environment. The second determination is that the unreasonable risk may be prevented or reduced to a sufficient extent by action taken by another Federal agency under a Federal law not administered by EPA. Section 9(a)(1) provides that where the Administrator makes these two determinations, EPA must provide an opportunity to the other Federal agency to assess the risk described in the report, to interpret its own statutory authorities, and to initiate an action under the Federal laws that it administers. Section 9(a) of TSCA thus requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or sufficiently reduce unreasonable risk. The following unit summarizes past and contemplated action by other agencies and then discusses why those agencies are not able to prevent or sufficiently reduce the unreasonable risk presented by asbestos.

A. Other Authorities Affecting Asbestos

Under the authority of the Consumer Product Safety Act (CPSA, 15 U.S.C. 2051) the CPSC has issued rules banning consumer patching compounds containing respirable asbestos (16 CFR Part 1304) and artificial emberizing materials containing respirable asbestos (16 CFR Part 1305). The CPSC took those actions based on findings that the use of those products in the household would result in increased risk of cancer. Earlier, the Food and Drug Administration under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261) banned "general-use garments containing asbestos other than garments having a bona fide application for personal protection against thermal injury and so constructed that the asbestos fibers will not become airborne under reasonably foreseeable conditions of use" (16 CFR 1500.17). The FHSA is now administered by the CPSC.

In 1980, CPSC issued a general order requiring persons to furnish information on the use of asbestos in certain consumer product categories. CPSC has also measured potential consumer exposure to asbestos from such products as asbestos millboard, asbestos paper products, and stove door gaskets.

OSHA began to regulate asbestos in the workplace in 1971 under the Occupational Safety and Health Act (29 U.S.C. 51, OSHAct). Since the first workplace standard setting a limit of 12 f/cc was promulgated in May 1971, the workplace standard has been twice revised and is now 2 f/cc (TWA). An Emergency Temporary Standard (ETS) establishing a permissible level of 0.5 f/cc was published in the **Federal Register** of November 4, 1983 (48 FR 51086), but the ETS was found invalid by a court. OSHA proposed a revised standard in the **Federal Register** of April 10, 1984 (49 FR 14116).

The Mine Safety and Health Administration (MSHA) acting under the Mine Safety and Health Act has adopted workplace standards designed to protect workers engaged in pit and underground mining and milling. The MSHA standards are similar to those administered by OSHA for other workplaces. The MSHA standard was last amended in 1976 and calls for a PEL of 2 f/cc.

Possible jurisdiction over other aspects of asbestos risk may lie with still other Federal agencies. For example, the Asbestos Information Association (AIA), commenting before a Senate subcommittee on early versions of TSCA, noted that the Federal Trade Commission may have authority to require labeling, distribution, and marketing of asbestos products and that the Department of Transportation has authority to control transportation of hazardous substances, such as asbestos. 1971 Senate Hearings at 224–227.

State and local public employees are generally excluded from coverage under the OSHAct. However, under section 19 of the OSHAct, OSHA has approved State plans for 23 States and two territories, thus effectively extending OSHA protections to State and local public employees in the jurisdictions. EPA has proposed a rule to establish requirements similar to those of the OSHA Asbestos Standard for State and local public employees not under a State plan who conduct asbestos abatement work. However, other public employees, such as firefighters, are not covered by this rule.

B. EPA's Determination Under Section 9(a) of TSCA

EPA is not required to submit a report to other agencies under section 9(a) on the asbestos risks described in this notice since EPA has determined that such risks cannot be prevented or reduced to a sufficient extent by actions taken under a Federal law not administered by EPA. Certain activities involving asbestos present risks that fall under the jurisdiction of a number of different Federal laws such as the OSHAct, the Consumer Product Safety Act, and the Clean Air Act, but no one statute, other than TSCA, can adequately address all its risks. Referral would result in fragmented assessment of risks and potentially duplicative regulatory efforts, inefficient control of risk, and an adverse effect on public health. Furthermore, even if EPA were to refer asbestos risks to other agencies, action taken by those other agencies would still leave a substantial residual risk. EPA's reasons for reaching this conclusion are set forth below.

1. *Interpretation of section 9(a) of TSCA.* The comprehensive nature of TSCA has long been recognized. TSCA allows regulation of a chemical substance based on all its risks and, thereby, allows the Government to remedy the deficiencies in other statutes that can deal only with parts of the risk. (Statement of the President on signing S. 3149 Into Law, October 12, 1976, Weekly Compilation of Presidential Documents, vol. 12, No. 42, Oct. 18, 1976, at 1489; S. Rep. No. 94–698, 94th Cong., 2d Sess. at 2.) The need for a total exposure approach to chemical regulation and the dangers of a fragmented regulatory approach were recognized even during the early congressional hearings on TSCA. See, e.g. 1973 Senate Hearings at 212–214; 1972 House Hearings at 65–67. No other single law provides authority to deal comprehensively with multi-media hazards.

In particular, Congress designed TSCA to deal with chemical substances for which the most appropriate remedy would be a total ban on their production and distribution in commerce. In this regard, Congress focused on the risk of asbestos and the dangers of fragmented regulation of asbestos during the legislative hearings. See 1971 Senate Hearings and 1973 Hearings. Asbestos risks were described in the workplace and in over 3,000 uses that could present risks to the general population. (H.R. Rep. No. 94–1341, 94th Cong., 2d Sess., at 5 (1976).) Members of Congress believed it intolerable that no agency could deal comprehensively with chemical risks, including the risk from asbestos. See 1973 Senate Hearings at 319–320 (Letter from Senator Tunney to Dow Chemical Company); 1975 Senate Hearings at 131–133 (Remarks of Senator Tunney).

EPA's decision not to refer the risks associated with asbestos is divided into two parts. First, EPA determines that there is no other Federal authority capable of addressing the combination of activities involving asbestos. Section 9(a) requires EPA to consider the issues necessary to make this determination because the Agency believes that the combination of asbestos activities, under the jurisdiction of a number of Federal laws, presents an unreasonable risk. Second, EPA examines the residual risks that would remain if other agencies were to regulate asbestos and determines that such residual risks would still be unreasonable.

2. *Capability of other Federal authorities to deal with the combination of asbestos activities.* EPA has concluded that asbestos is a clear example for TSCA action rather than referral to other agencies. It is a substance for which there is broad exposure to populations in numerous situations—in the workplace, through ambient concentrations, and from consumer products. With the exception of TSCA, there is no one unified authority to deal with these multiple exposures. No one of the other potential Federal regulatory authorities, in looking at its specific part of the overall exposures, can either evaluate or deal with the totality of the risk presented. Thus, OSHA may set exposure limits for workers, but there may be venting of asbestos into the atmosphere; EPA, under the Clean Air Act, may regulate ambient emissions, but not workplace or consumer exposures; and in each step of the process, only a fraction of the risk is evaluated. Only EPA under TSCA may look across the range of asbestos use to evaluate whether it presents an unreasonable risk. There is no other Act that affords such authority and, accordingly, referral is inappropriate.

EPA's analysis of the jurisdiction over the risks presented by asbestos among a number of agencies and statutory authorities is set out below. OSHA has authority under the OSHAct for risk presented to private sector manufacturing, construction, and service employees from workplace exposures, and may approve State plans covering State and local public employees. CPSC has authority under the CPSA and FHSA concerning risk presented to consumers from consumer products. The Mine Safety and Health Administration has authority under the Mine Safety and Health Act concerning risk presented during the mining and milling of asbestos. State and local public employees, such as firefighters who may wear asbestos clothing, in about half the States are not covered even indirectly by OSHA regulations and are subject to State authority.

3. *Residual risks.* Even if other Federal agencies took additional action to reduce the risk associated with asbestos during the various stages of the lifecycle of asbestos products clearly within their jurisdiction, a substantial and unreasonable residual risk would still remain.

Many groups outside of OSHA jurisdiction are at risk from exposure to asbestos. State and local public employees, such as firefighters, are not protected by OSHA regulations in about half the States. The general population is exposed to asbestos in the ambient air as a result of release during the manufacture, processing, use, repair, and disposal of asbestos products. EPA estimates that about 540 persons will develop cancer as a result of exposure to asbestos in the ambient air as a result of releases associated with products imported or manufactured over the next 15 years.

Even if OSHA promulgates and achieves strict compliance with a PEL of 0.2 f/cc, a substantial and unreasonable residual risk would remain. About 1,325 persons would still develop cancer as a result of exposure to asbestos in products imported or manufactured over the next 15 years. These include cancers in populations totally outside of OSHA's jurisdiction. Even with a lower workplace PEL, EPA estimates that about 540 persons will develop cancer from exposure to asbestos in the ambient air. In addition, at a PEL of 0.2 f/cc, EPA estimates that about 785 workers under OSHA jurisdiction would develop cancer as a result of workplace exposure to asbestos in products imported or manufactured in the next 15 years.

EPA calculated these figures using well-accepted models. EPA used the Nicholson relative risk model to estimate the number of lung cancer cases and the Nicholson absolute risk model to estimate the number of mesothelioma cases. The dose-response constants used in the risk assessment were those estimated by Selikoff in a study of asbestos insulation workers (Ref. 11). A number of epidemiological studies have estimated dose-response constants for asbestos-related diseases and estimates vary by as much as an order of magnitude. The Selikoff estimates fall approximately in the middle of the ranges of dose-response estimates for both lung cancer and mesothelioma. In addition, the Selikoff estimates have the lowest variance among all of the estimates. These models and dose response constants were recommended by the CPSC's Chronic Hazard Advisory Panel on

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asbestos (Ref. 1) and were also used by OSHA to estimate the risk posed by asbestos in support of the proposed revision of OSHA's asbestos standard.

OSHA's choice of 0.2 f/cc as a proposed PEL was based on the feasibility of measuring asbestos levels in the workplace. At a level of 0.2 f/cc, OSHA, using the same lung cancer and mesothelioma models as EPA, estimates that there would be 670 excess cancer deaths per 100,000 workers exposed over a working career (Ref. 12). In 1980, a joint NIOSH/OSHA Asbestos Work Group stated that there was no level of exposure to asbestos below which clinical effects did not occur and recommended a PEL of 0.1 f/cc based on the limitation of current technologies for measuring air concentrations of asbestos (Ref. 7). Even a level of 0.1 f/cc, OSHA estimates that there could be 336 excess cancer deaths per 100,000 workers exposed over a working career (Ref. 12).

It is likely that a PEL of 0.2 f/cc will be exceeded in many cases since it is particularly difficult to apply the PEL in the construction and service sectors. Many of the workplace exposures to asbestos occur downstream in the construction and service sectors rather than the manufacturing sector. Over 80 percent of workers exposed to asbestos are in the construction and service sectors. Employees in those sectors often do not know when they are exposed to asbestos because they do not know that they are working with asbestos products. Compliance inspections are also difficult in the construction and service sectors since employees frequently do not have a fixed worksite. In fact, the current PEL of 2.0 f/cc has been exceeded in many cases in these sectors. Thus, it is likely that many workers in the construction and service sectors will develop cancer unless EPA takes action. Finally, many asbestos control measures, in particular, the use of respirators, only put the asbestos exposure problem elsewhere because they do not control the release of large quantities of asbestos to the ambient environment, where it continues to present a risk both to other workers and the general population.

Similarly, CPSC cannot evaluate or deal with the totality of the risk presented by asbestos. CPSC may ban or require safety standards for asbestos-containing consumer products based exclusively on risk to consumers. CPSC is unable to consider risk to other groups from releases of asbestos during the lifecycle of those products.

After carefully analyzing other Federal authorities, EPA concludes that action under TSCA is appropriate to reduce the unreasonable risk to human health posed by asbestos. Use of other Federal authorities cannot reduce risk to a reasonable level because (1) they cannot reduce the total volume of asbestos in commerce, (2) they cannot protect the many population groups at risk, and (3) they all have jurisdictional gaps.

VIII. Provisions of the Proposed Rule

A. Product Prohibitions

EPA proposes to prohibit the manufacture, importation, and processing of several asbestos products. The prohibitions will take effect at the same time that the restrictions on the mining and importation of all asbestos and asbestos products become effective. Thus, when this rule becomes operational, no person could mine or import asbestos without a permit issued by EPA. In addition, no person could manufacture, import, or process the following asbestos containing products: Asbestos cement pipe and fittings, roofing felts, flooring felts (and felt-backed sheet flooring), vinyl-asbestos floor tile, and asbestos clothing. EPA is proposing to ban asbestos clothing because it presents a particularly serious risk because of high exposure potential. EPA is proposing to ban the other products because effective substitutes are currently available for all applications. As an alternative, EPA is considering banning these several asbestos products by a date soon after the promulgation of this rule.

B. Mining and Import Restrictions

EPA proposes to prohibit the mining or importation of bulk asbestos, and the importation of the asbestos products listed in § 763.145 of the proposal, unless the miner or importer holds a permit issued by EPA allowing mining or importation of that quantity of asbestos. EPA is considering the requirement that products made under the permitting system be labeled as containing asbestos. Labeling would ensure that persons working with or otherwise handling the products would know that the products contained asbestos, and it would enable them to take steps to reduce the likelihood of exposure.

EPA proposes to reduce the amount of asbestos that may be imported or mined in set decrements each year for 10 years. EPA proposes to define "mine" as "to produce asbestos other than as an unintended contaminant or impurity by extracting asbestos-containing ore so that the ore may be (1) distributed in commerce or (2) milled for distribution in commerce." Thus, the unintentional mining of asbestos in connection with mining of another substance such as vermiculite would not be covered by this proposal unless the asbestos were later milled or sold for use. EPA is concerned about possible unintended asbestos contamination of vermiculite and other minerals. However, any attempt to cover the unintentional mining of asbestos under this rule would complicate the operation of the rule considerably and perhaps make it unworkable.

The proposal defines "import" as "to bring into the customs territory of the United States except for (1) shipment through the customs territory of the United States for export without any domestic use or processing; or (2) entering the customs territory of the United States as part of a product during normal personal or business activities involving use of the product." Thus, asbestos that is shipped through the United States for export without any domestic processing or use would not be covered by this proposed rule. The proposed rule also excludes from coverage situations where an item, such as an automobile containing asbestos, travels across the United States border in the course of normal personal or business activities. In addition, asbestos contained in products that are imported in small quantities solely for personal use by consumers would not be covered by the proposal. Thus, under this provision an individual could bring an item such as a consumer appliance containing asbestos into the United States for his or her own use without obtaining a permit. EPA believes that any attempt to cover these situations would make this rule very complex and difficult to administer. However, EPA specifically requests comment on whether, in view of the serious health hazard posed by asbestos, all asbestos products should be covered by this rule.

This proposal covers mining and importation of asbestos and the importation of specific asbestos products. EPA proposes to define "asbestos" as "the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite that are mined or milled." EPA requests comment on this definition, including whether asbestos which has been chemically treated or altered should be included within the definition. EPA also proposes to cover under this phase-down the asbestos contained in a number of products listed in § 763.145 of this proposal. Persons would be allowed to import these products only if they held permits allowing the importation of the amount of asbestos contained in the products. EPA is covering these particular products in this proposal because they represent the largest quantities of asbestos imported as part of products. EPA is proposing to cover asbestos in products because of the risk posed by possible asbestos exposure during use and disposal of the products and to treat domestic producers and importers of these products similarly.

To implement this program, EPA is proposing that importers of listed products estimate the typical asbestos content of the products. To aid those estimates, EPA has ascertained the typical asbestos content of the asbestos products covered by this proposal. If persons do not know the exact asbestos content of products they import, they can rely on the EPA figures to estimate the amount of asbestos they import. EPA would allow persons to use an amount other than the EPA figure if they can show that their imported product contains a different amount of asbestos. Such persons would be required to maintain records supporting their determinations of typical asbestos content and would be subject to appropriate enforcement action if EPA discovered that their imported products actually had a higher asbestos content than they estimated. EPA believes that this is a practical way to implement the phase-down of asbestos use.

C. Permits to Mine or Import Asbestos

EPA proposes to issue current miners and importers of asbestos permits that would allow those persons to mine or import set amounts of asbestos. The permit would be letters from EPA stating the amount of asbestos that a person may import or mine during each year of the 10-year phase-down period. The "permitted" amount of mining or importation would be a uniform percentage of the average amount of asbestos each person mined or imported yearly during the base period of 1981, 1982, and 1983. The "permitted" amount of asbestos would be 30 percent of the person's average base year volumes during the first year of the phase-down period and would decline to 27 percent of average base year volumes during the second year, 24 percent during the third year and so on until it reached 3 percent in year 10. EPA chose these "permitted" amounts based on projections of future asbestos use after analysis of current use trends, publicly available information on asbestos use, and information reported under the section 8(a) asbestos reporting rule. In addition, the "permitted" amounts chosen reflect the EPA has proposed to ban certain high volume uses of asbestos where suitable substitute products are avilable.

Persons would apply to EPA for permits, listing in their applications their mining or import volumes during those years. Persons who do not apply for permits would not be granted any. EPA would compare volume information included in applications with information reported under the section 8(a) asbestos reporting rule, which covered 1981, United States Customs Service data, and Bureau of Mines data. Persons who include false information in their application would be subject to enforcement action, including criminal prosecution in appropriate cases.

EPA would similarly cover importers of asbestos contained in the products listed in this rule. Those persons would apply for permits, including in their application the total amount of asbestos in their imported products during the base years 1981, 1982, and 1983. Those persons could use EPA's estimates of typical asbestos content of products if they do not know the typical asbestos content of their product.

The proposal contains an appeals procedure for persons who disagree with EPA's allocation of permits to them. However, since the proposed rule would allocate each miner and importer a uniform percentage of their base volume levels, EPA would expect few appeals. The only issue in an appeal would be whether EPA allocated permits based on the correct base years' volume information.

Persons would be allowed to transfer their permission to mine or import asbestos to other persons, including persons who were not issued permits by EPA. Permits issued to miners, importers of bulk asbestos, and importers of asbestos in products would be interchangeable. Persons could transfer all or only part of their yearly permitted amount to one person or a number of persons. Persons transferring all of part of their permitted amount would be required to report each transfer to EPA.

Persons would also be allowed to reserve or "bank" permisison to import asbestos during any year of the phase-down period for use during any later year of the phase-down period. Persons would be required to report each "banking" of asbestos permits to EPA. A person who banks permission to mine or import a certain amount of asbestos would be allowed to use only part of that amount during later years of the phase-down period. The amount of asbestos mining or importation permitted by banked permits would decline yearly at a rate of 10 percent. Permits not used by the conclusion of the 10-year phase-down period would no longer permit the holder to import or mine asbestos in any quantity and would have no value of any kind for any purpose.

EPA is considering an alternative of having banked permits not decline in value. This alternative would provide greater incentive for the banking of permits and thus incentive for greater reductions in asbestos mining and importation in early years of the phase-down period.

Under the proposed approach, at the end of the 10-year phase-down period, all mining or importation of asbestos would be banned except that allowed under an exemption procedure. EPA would consider applications for exemptions and grant them for essential uses of asbestos for which substitutes are not available. In addition, EPA is considering a requirement that products not banned be labeled as containing asbestos. This requirement could be imposed as part of this rulemaking or by a separate rulemaking.

As an alternative, EPA is considering allowing a residual amount of asbestos mining and importation after the 10-year phase-down period. This general approach would avoid the potentially heavy administrative burden and expense of an exemption process. As part of this alternative, EPA is considering allowing permits banked during the 10-year phase-down period to continue to be used during the later period when a much smaller percentage of base years volume is permitted. Such an approach would provide additional incentive for the banking of permits and thus additional incentive for greater reductions in asbestos mining and importation during early years of the phase-down period.

EPA specifically requests comment on this series of alternatives to a ban with an exemption process after the 10-year phase-down period.

D. Reporting

EPA proposes to require persons to report the amount of asbestos imported during each import transaction. EPA specifically requests comment on whether this report should be sent directly to EPA or whether persons should turn the report over to the United States Customs Service, which would forward the report to EPA. Requiring the report to be turned over to the Customs Service as part of each import transaction may facilitate enforcement of the rule.

The proposal also would require persons to report to EPA each transfer of permission to mine or import asbestos. This reporting would be under authority of section 8(a) of TSCA and

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would apply to all importers, including small businesses. Section 8(a) exempts small businesses from reporting in certain cases. However, EPA may require miners and importers of a substance subject to a rule under section 6 of TSCA to report. Since asbestos is already subject to rules under section 6 and would be subject to this one, the small business exemption of section 8(a) would not apply. EPA believes that these reporting requirements represent very little burden and are necessary for effective enforcement of the phase-down rule. EPA would use the information in these reports to maintain a computerized record of the quantities of asbestos each person is permitted to mine or import as compared to the actual level of mining or importation. EPA would investigate cases where the quantity of asbestos mined or imported appears to exceed the quantity of asbestos that a person is permitted to mine or import and take appropriate enforcement action for any violation of the phase-down rule.

To facilitate the transfer of permits, EPA is considering making readily available to interested parties information concerning the persons holding permits and the quantities they hold. EPA may allow persons computer access to an EPA data bank if this would not reveal confidential business information. EPA specifically requests comment on whether EPA should facilitate the transfer of permits and on ways for EPA to accomplish this without revealing confidential business information.

E. Recordkeeping

EPA proposes to require persons to retain documentation of information concerning all transfers of permission to mine or import asbestos and the amount of asbestos mined or imported each year. The proposal would require these records to be kept for 5 years after the end of the last year of the phase-down period covered by the rule. Importers of asbestos contained in products covered by this proposal would also have to keep records concerning their levels of importation. EPA believes that these recordkeeping provisions would be essential to enforcement of this proposed rule.

IX. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, any failure to comply with this proposed rule when it becomes effective would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by this rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule when it becomes effective could constitute a separate violation. Knowing or willful violations of this rule when it becomes effective could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injuction to restrain violations of this rule when it becomes effective and seizing any chemical substance or mixture manufactured or imported in violation of this rule when it becomes effective.

Individuals, as well as corporations, could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, EPA may proceed against individuals who report false information or cause it to be reported.

X. Confidentiality

A person may assert a claim of confidentiality for any information, including public comments, submitted to EPA in connection with this proposed rule or in connection with this rule after it is promulgated. Any person who submits a confidential public comment must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons would claim information confidential by circling, bracketing, or underlining it and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR Part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS—62040). A public version of the record, without any confidential business information, is available in the Office of Toxic Substances Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E–107, 401 M St., SW., Washington, D.C.

The record includes information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information: (1) **Federal Register** notices, (2) support documents, (3) reports, and (4) memoranda and letters.

EPA will identify the complete rulemaking record by date of promulgation. EPA will accept additional material for inclusion in the record at any time between this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

XII. References

(1) USCPSC. Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos. July 1983.

(2) USEPA, OPTS, OTS, Exposure Assessment for Asbestos. Draft January 9, 1984.

(3) USEPA, OPTS, OTS. Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products. January 1986.

(4) USEPA, OPTS, OTS. Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings—Health Effects and Magnitude of Exposure. January, 1982.

(5) National Research Council. "Asbestos" *In*: "Drinking Water and Health." Vol. 3. National Academy Press. Washington, D.C. (1982): 223–263.

(6) National Research Council. "Nonoccupational Health Risks of Asbestiform Fibers." National Academy Press. Washington, D.C. (1984).

(7) NIOSH–OSHA Asbestos Work Group. Workplace Exposure to Asbestos: "Review and Recommendations" DHHS (NIOSH) Publication No. 81–103, U.S. Government Printing Office, Washington, D.C. 20402. (1980).

(8) OSHA. "Quantitative Risk Analysis for Asbestos-Related Cancers: A Preliminary Report." (1983).

(9) Seidman, H. Selikoff, I.J., Hammond, E.C., "Short-Term Asbestos Work Exposure and Long-Term Observation." *Annals of the New York Academy of Science*, 330 (1979): 61–89.

(10) Selikoff, I.J., Anderson, H.A., Seidman, H. "Asbestos Disease Among Household Contacts of Asbestos Workers" *In:* "Disability Compensation for Asbestos-Associated Disease in the U.S.," edited by I.J. Selikoff. Environmental Sciences Laboratory, Mount Sinai School of Medicine of the City University of New York. (1982): 73–76.

(11) Selikoff, I.J., Hammond, E.C., Seidman H., "Mortality Experience of Insulation Workers in the U.S. and Canada, 1943–1976." *Annals of the New York Academy of Science*, 330 (1979): 91–116.

(12) USDOL, OSHA. "Occupational Exposure to Asbestos; Emergency Temporary Standard." (November 4, 1983; 48 FR 51086).

(13) USDOL, OSHA. "Occupational Exposure to Asbestos; Proposed Rule and Notice of Hearing" (April 10, 1984; 49 FR 14116).

(14) USEPA, OPTS, OTS. Asbestos Substitutes and Related Materials. April 24, 1985.

XIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA has determined that this proposed rule is a "Major Rule" and has developed an RIA. The RIA estimates that this proposed rule would cost about $1.98 billion over 15 years. However, the RIA also estimated that this proposed rule, if promulgated, would avoid approximately 1,930 cases of cancer. As shown in Unit V above, EPA believes that these costs are reasonable and that this proposed action is a cost-effective way of reducing the unreasonable risks related to asbestos.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this proposed rule on small businesses. A summary of EPA's analysis appears in Unit III.

C. Paperwork Reduction Act

The reporting and recordkeeping provisions in this proposed rule will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs at OMB and marked Attention: Desk Officer for EPA. Any final rule will explain EPA's response to OMB and public comments on the proposed reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Asbestos.

Dated: January 22, 1986.

Lee M. Thomas,

Administrator.

PART 763—[Amended]

Therefore, it is proposed that 40 CFR Part 763 be amended as follows:

1. The authority citation for Part 763 is revised to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. By adding new Subpart H to read as follows:

Subpart H—Asbestos Mining and Import Restrictions

Sec.

763.140 Scope.
763.143 Definitions.
763.145 Mining and import restrictions.
763.147 Permits to mine or import asbestos.
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Subpart H—Asbestos Mining and Import Restrictions

§ 763.140 Scope.

This Subpart prohibits the mining or importation of asbestos, including asbestos in certain asbestos products, unless authorized by a permit issued by EPA.

§ 763.143 Definitions.

The definitions in section 3 of TSCA, 15 U.S.C. 2602, apply to this Subpart. In addition, the following definitions apply:

(a) The terms "act," "article," "byproduct," "customs territory of the United States," "EPA," "importer," "manufacturer," "persons," and "United States" have the same meanings as in § 720.3 of this chapter.

(b) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite, (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite that are mined or milled.

(c) "Asbestos product" means any mixture or article containing asbestos.

(d) "Consumer" means a natural person who uses a product for personal rather than business purposes.

(e) "Import" means to bring into customs territory of the United States for any purpose except (1) for shipment through the customs territory of the United States for export without any domestic use or processing; or

(2) entering the customs territory of the United States as part of a product during normal personal or business activities involving use of the product.

(f) "Milled" means the separation of asbestos fibers from asbestos ore, the grading and sorting of asbestos fibers, or the fiberizing of asbestos ore.

(g) "Mine" means to produce asbestos other than as an unintended contaminant or impurity by extracting asbestos-containing ore so that the ore may be (1) distributed in commerce or (2) milled for distribution in commerce.

(h) "Miner" means a person who mines asbestos.

§ 763.145 Mining and import restrictions.

(a) Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person other than a person authorized by a permit issued by EPA as provided in this part may:

(1) Mine asbestos in the United States or

(2) Import asbestos, including asbestos in an asbestos product listed in this section, except in small quantities solely for personal consumer use, into the customs territory of the United States.

(b) The following asbestos products may not be imported into the customs territory of the United States except in small quantities by a consumer solely for his or her personal use unless authorized by a permit issued by EPA as provided in this Subpart:

(1) Appliances.
(2) Pipeline wrap.
(3) Thread, yarn, lap, roving, cord, rope, or wick.
(4) Sheet gasketing, rubber encapsulated compressed.
(5) Disc brake pads (light-medium vehicles).
(6) Cloth, other than asbestos clothing.
(7) Brake blocks.
(8) Millboard.
(9) Packing.
(10) Mixed or repackaged asbestos fiber.
(11) Thermoplugs.
(12) Tape.
(13) Roof coatings.
(14) Clutch facings.
(15) Automotive gasket kit.
(16) Drum brake linings.
(17) Yarn.
(18) Automobiles and other motor vehicles.

§ 763.147 Permits to mine or import asbestos.

(a) Persons may mine in the United States or import into the customs

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territory of the United States only the quantity of asbestos for which they hold permits issued under this Subpart.

(b) The amount of asbestos contained in imported product listed in § 763.145 will count toward the total amount of asbestos a person may mine or import during a year.

(c) Persons must estimate typical asbestos content of imported asbestos products covered by this rule. Persons may use EPA's estimate of typical asbestos content if they are not certain of the typical asbestos content of a product.

§ 763.148 Issuance of permits.

(a)(1) EPA will issue permits for the mining or import of asbestos, including asbestos contained in the asbestos products listed in § 763.145.

(2) Applications for permits must be sent to the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, D.C. 20460.

(b)(1) Persons must apply to EPA for permits by 30 days after the effective date of this rule.

(2) Persons must list in their application for permits the amount of asbestos, including asbestos contained in the asbestos products listed in § 763.145, that they imported or mined during 1981, 1982, and 1983.

(c) If an application is mailed to EPA, the application must be postmarked by 30 days after the effective date of this rule.

(d) EPA will allocate to persons who apply for permits a uniform percentage of the amount of asbestos those persons reported mining or importing during 1981, 1982, and 1983.

(e) Each permit will allow a person to mine or import the following percentages of the average amount of asbestos he or she mined or imported yearly during 1981, 1982, and 1983.

Year 1—30 percent.
Year 2—27 percent.
Year 3—24 percent.
Year 4—21 percent.
Year 5—18 percent.
Year 6—15 percent.
Year 7—12 percent.
Year 8—9 percent.
Year 9—6 percent.
Year 10—3 percent.

§ 763.149 Appeals concerning permits.

(a) A person may appeal EPA's initial disposition of his or her application for a permit.

(b) The person must appeal in writing to the Director of the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, DC 20460, within 20 days after receipt of EPA's announcement of the disposition of his or her application. If the appeal is mailed, the letter must be postmarked within 20 days after receipt of EPA's announcement of disposition.

(c) A person must indicate in an appeal why he or she should receive a permit or be allowed to mine or import additional asbestos under the permit.

(d) The Director of the EPA Office of Toxic Substances will either grant or deny the appeal within 60 days after its receipt. The disposition of the appeal will be announced by letter to the person making the appeal.

§ 763.150 Transfer of permits.

(a) A person issued a permit by EPA to mine or import a quantity of asbestos may transfer that permit in whole or in part to another person.

(b) A person who transfers a permit to mine or import a quantity of asbestos and a person who receives such a transferred permit must report that transfer to the Office of Toxic Substances (TS–792), EPA, 401 M St., SW., Washington, DC 20460, within 10 days of the transfer.

(c) The parties involved in a transfer may report either jointly or separately.

(d) If a report is mailed to EPA, the report must be postmarked within 10 days of the transfer.

§ 763.151 Banking of permits.

(a) Persons issued permits by EPA to mine or import a quantity of asbestos during one particular year may reserve or "bank" all or part of the permitted amount and use it to mine or import asbestos during a later year during the 10-year phase-down period.

(b) The amount of asbestos that a person is permitted to mine or import will decline from year to year when it is reserved or "banked" at a rate of 10 percent per year.

(c) A person who "banks" a permit in whole or in part must report that "banking" to the Office of Toxic Substances (TS–792), EPA, 401 M St. SW., Washington, DC 20460, within 60 days of the end of the year for which the permit was issued.

(d) If a report is mailed to EPA, the report must be postmarked within 60 days of the end of the year for which the "banked" permit was issued.

§ 763.153 Recordkeeping.

(a) Any person who mines or imports asbestos or any asbestos product listed in § 763.145 must retain in one location documentation of information showing:

(1) The name of any person to whom he or she transferred permission to mine or import asbestos.

(2) The name of any person from whom he or she received permission to mine or import asbestos.

(3) The amount of asbestos mined or imported each year, including asbestos imported in any asbestos product listed in § 763.145.

(4) The typical asbestos content of any asbestos product listed in § 763.145.

(5) The number of individual asbestos products listed in § 763.145 imported each year.

(b) This information must be retained for 5 years from the end of the last year of the 10-year phase-down period covered by this rule.

§ 763.154 Reporting.

(a) Any person who imports asbestos, including asbestos in an asbestos product listed in § 763.145, must report to the Office of Toxic Substances (TS–792), EPA, 401 M. St. SW., Washington, DC 20460, within 2 days of the day of import indicating:

(1) The person's name.

(2) The amount of asbestos imported.

(3) The number of individual asbestos products listed in § 763.145 imported.

(4) A certification that the person was either issued a permit by EPA to import at least that amount of asbestos that year or obtained that permission from another person as provided in § 763.148.

(b) Within 60 days of the end of each year covered by this Subpart, each person who mines or imports asbestos including asbestos in an asbestos product listed in §763.145 must report to the Office of Toxic Substances (TS–792), EPA, 401 M. St., SW., Washington, DC 20460:

(1) The total amount of bulk asbestos that person mined or imported that year.

(2) The total amount of asbestos that person imported in asbestos products listed in §763.145 that year.

(3) The number of individual asbestos products listed in §763.145 that person imported that year.

(4) The amount of asbestos that person had permission to mine or import that year.

(c) If a report is mailed to EPA, the report must be postmarked within 60 days of the end of each year covered by this Subpart.

§ 763.156 Enforcement.

(a) Failure to comply with any provision of this Subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin the mining or import of asbestos or asbestos products in violation of this Subpart, or act to seize any asbestos or asbestos products in violation of this Subpart, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.157 Inspections.

EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this Subpart and to verify that information submitted to EPA under this Subpart is correct.

§ 763.159 Confidentiality and public access to information.

(a) A person may assert a claim of confidentiality for any information he or she submits to EPA under this Subpart.

(b) Any claim of confidentiality must accompany the information when it is submitted to EPA.

(c) EPA will disclose information subject to a claim of confidentiality asserted under this section only to the extent permitted by TSCA and Part 2 of this title.

(d) If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

3. By adding new Subpart I to read as follows:

Subpart I—Prohibition of the Manufacture, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products

Sec.
763.160 Scope.
763.163 Definitions.
763.165 Manufacture—prohibitions.
763.167 Processing—prohibitions.
763.169 Enforcement.

Subpart I—Prohibition of the Manufacture, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products

§ 763.160 Scope.

This Subpart prohibits the manufacture, importation and processing, of the following categories of asbestos-containing products: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile and asbestos-cement pipe and fittings and asbestos clothing.

§ 763.163 Definitions.

The definitions in section 3 of the Toxic Substances Control Act and the following definitions apply to this subpart.

(a) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite.

(b) "Asbestos-cement pipe and fittings" means an asbestos-containing product that contains cement and is intended to transmit water or sewage; for use as conduit pipe for the protection of electrical or telephone cable; or for use as air ducts.

(c) "Asbestos clothing" means an asbestos-containing product made of cloth and designed to be worn by individuals.

(d) "Asbestos-containing product" means any material which contains more than 1.0 percent asbestos by weight.

(e) "Flooring felt" means an asbestos-containing product made of paper felt and intended as an underlayment for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

(f) "Roofing felt" means an asbestos-containing product made of paper felt and intended for use on building roofs as a covering or underlayment for other roof coverings.

(g) "Vinyl-asbestos floor tile" means an asbestos-containing product composed of vinyl resins, containing fillers, stabilizers and pigments and used as floor tile.

§ 763.165 Manufacture—prohibitions.

Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person shall manufacture or import the following asbestos-containing products either for use in the United States or for export: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile, asbestos-cement pipe and fittings, and asbestos clothing.

§ 763.167 Processing—prohibitions.

Beginning the first day of the calendar year after this rule becomes effective, or if this rule becomes effective during the last 4 months of a calendar year, beginning the first day of the second calendar year after this rule becomes effective, no person shall process the following products, either for use in the United States or for export: asbestos-containing roofing felt, asbestos-containing flooring felt (including vinyl sheet flooring backed with flooring felt), vinyl-asbestos floor tile, asbestos-cement pipe and fittings, and asbestos clothing.

§ 763.169 Enforcement.

(a) Failure to comply with any provision of this Subpart is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin the manufacture or import of asbestos products in violation of this Subpart, or act to seize any asbestos products in violation of this Subpart, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

[FR Doc. 86–1881 Filed 1–28–86; 8:45 am]
BILLING CODE 6560–50–M

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Reader Aids

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For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center.
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center.
303-236-7181

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Title 3—

The President

Proclamation 5434 of January 28, 1986

Death of American Astronauts on Board Space Shuttle Challenger

By the President of the United States of America

A Proclamation

As a mark of respect to the memory of Francis R. Scobee, Michael J. Smith, Ellison S. Onizuka, Ronald E. McNair, Judith A. Resnik, Gregory B. Jarvis, and Sharon Christa McAuliffe who gave their lives during the mission of the Space Shuttle Challenger on January 28, 1986, I hereby order, by the authority vested in me as President of the United States of America, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal government in the District of Columbia and throughout the United States and its Territories and Possessions through Monday, February 3, 1986. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of January, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-2241
Filed 1-29-86; 11:24 am]
Billing code 3195-01-M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Suspension of Certain Provisions on Pricing Reserve Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends one sentence in § 989.67(j) of the marketing order for raisins produced from grapes grown in California. That sentence deals with the pricing of reserve raisins offered to handlers for free use. Suspension of that sentence will allow the Raisin Administrative Committee (Committee) to continue for another year the inventory adjustment program for Zante Currants implemented last season. The proposal was recommended by the Committee, which works with USDA in administering the marketing order.

EFFECTIVE DATE: January 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, F&V Division, AMS, USDA, Washington, DC 20250. Telephone: (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will have an impact on a substantial number of small entities but, the impact will not be significant. The net proceeds to equity holders resulting from the sale of 1985 crop reserve Zante Currant raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions. Allowing the use of 1985 Zante Currant reserves to average down the value of the unadjusted balance of the 1983 crop carryover will significantly offset the financial losses incurred by packers in connection with the sale of those raisins in competition with lower-priced foreign-produced Zante Currants. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased marketing of raisins at reduced prices.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules proposed under the Agricultural Marketing Agreement Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 23 handlers of raisins will be subject to regulation under the Marketing Order for Raisins Produced from Grapes Grown in California during the course of the current season and that the great majority of this group may be classified as small entities.

It is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553). Producers and handlers of Zante Currant raisins have been conducting their operations on the premise that the Zante Currant inventory adjustment program would be continued into the 1985-86 crop year and no useful purpose would be served by delaying the effective date of this action.

This final rule would suspend for Zante Currant raisins, through July 31, 1986, the penultimate sentence in § 989.67(j) of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989; 50 FR 1830), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). That sentence provides that: "However, such raisins shall not be sold at a price below that which the Committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current corp year up to the time of any offer for sale of reserve tonnage by the Committee, to which shall be added the costs to the equity holders incurred by the Committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest: Provided, That where the outlook for the next crop year or other factors have cause a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the Committee."

Notice of this action was published in the Federal Register on November 1, 1985 (50 FR 45627). Interested persons were invited to submit written comments by December 2, 1985. Two comments were received in favor of the proposal.

The carryover into the 1984–85 crop year from the 1983 Zante Currant production totalled 2,472 tons and was valued at $1,150 per ton (producer's price) while the 1984 producer price was only $625 per ton. Although an inventory adjustment program was initiated last season, a significant portion of that carryover was not adjusted because only 524 tons of 1984 crop reserve Zante Currants were available for the program. Continuation of that program will allow handlers the opportunity to continue to adjust the value of their 1983 crop carryover of Zante Currant raisins by authorizing the purchase of 1985–86 reserve Zante Currants at $100 per ton for each ton of 1983 crop Zante Currant

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raisins held in inventory on July 31, 1984, thereby averaging the price per ton for the 1983 crop inventory down to $625. Allowing the use of 1985–86 crop Zante Currant reserves to average down the value of the unadjusted balance of the 1983 crop carryover will significantly offset financial losses incurred by handlers in connection with the sales of those raisins during the 1984–85 crop year.

The sentence to be suspended would require reserve raisins to be offered at a price well above the $100 level needed to devalue the 1983 crop carryover inventory and thus would not allow the necessary price adjustments to be accomplished.

Producers and handlers of Zante Currant raisins have been conducting their operations based on the premise that the Zante Currant inventory adjustment program would be continued into the 1985–86 crop year if a reserve was established. In price negotiations between raisin handlers and the bargaining association, handlers agreed to the 1984 crop free tonnage price of $625 contingent upon the establishment of the Zante Currant inventory adjustment program. Without such a program, handlers would have accepted 1984 crop Zante Currants only on a consignment basis.

Therefore, after consideration of all relevant matter presented, including that of the notice, the information and recommendation submitted by the Committee, the comments, and other information, it is determined that (1) there has been a change of economic or marketing conditions so as to warrant the sale of Zante Currant reserve raisins to handlers to provide them with raisins to sell as free tonnage pursuant to 989.67(j), and (2) under the conditions presently existing in the raisin industry, the penultimate sentence in § 989.67(j) does not now tend to effectuate the declared policy of the act and is hereby suspended with regard to Zante Currant raisins pursuant to § 989.91(b). However, such suspension shall continue only through July 31, 1986, at which time it shall terminate and the suspended sentence will become operative again beginning August 1, 1986.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 989—[AMENDED]

2. The suspension is as follows:

§ 989.67 [Amended]

The penultimate sentence in § 989.67(j) is hereby suspended for Zante Currant raisins through July 31, 1986.

Dated: January 27, 1986.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–2097 Filed 1–29–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWA–2]

Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the descriptions of the Will Rogers World Airport, Oklahoma City, OK; Tinker Air Force Base (AFB), OK; Burbank-Glendale-Pasadena Airport, CA; El Toro Marine Corps Air Station (MCAS), Santa Ana, CA and Ontario International Airport, CA, Airport Radar Service Areas (ARSA). In the final rule, errors were made in the descriptions of excluded airspace at Will Rogers World Airport, Oklahoma City, OK; Tinker AFB, OK; Ontario, CA, and Burbank-Glendale-Pasadena Airport, CA. An error was made in the relative bearings from El Toro MCAS, Santa Ana, CA. This action corrects those errors.

EFFECTIVE DATE: 0901 UTC, March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85–29125 was published on December 9, 1985, that establishes the Will Rogers World Airport, Oklahoma City, OK; Tinker AFB, OK; Burbank-Glendale-Pasadena Airport, CA; El Toro MCAS, CA, and Ontario International Airport ARSA's (50 FR 50254). In the rule, omissions were made in the descriptions of Will Rogers World Airport, Oklahoma City, OK, and Tinker AFB, ARSA's. In the case of Burbank-Glendale-Pasadena, CA, Airport, the location of Whiteman Airport was in error. The exclusions of the 5- to 10-mile area of Ontario International Airport were misstated. In the case of El Toro MCAS, Santa Ana, CA, the relative bearings from the airport were in error. This action corrects those errors.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85–29125, as published in the **Federal Register** on December 9, 1985, (50 FR 50254) is corrected as follows:

PART 71—[CORRECTED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Burbank-Glendale-Pasadena Airport, CA [Amended]

By removing the words "long. 118°25'45" W." and by substituting the words "long. 116°24'45" W."

El Toro MCAS, Santa Ana, CA [Amended]

By removing the words "the 255° bearing" and by substituting the words "the 241° bearing" and by removing the words "the 335° bearing" and by substituting the words "the 331° bearing".

Ontario International Airport, CA [Amended]

By removing the words "on the east clockwise to the 314° bearing from the airport"

Tinker AFB, OK [Amended]

By removing the words "extending upward from 2,500 feet MSL within a 10-mile radius of Tinker AFB" and by substituting the words "extending upward from 2,500 feet MSL to and including 5,300 feet MSL" and by removing the words "excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL within 1½ miles of Interstate 35" and by substituting the words "excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL west of line 1½ miles east of Interstate 35" and by removing the words "and excluding that airspace designated as the Will Rogers World Airport, OK, Airport Radar Service Area" and by substituting the words "and excluding that airspace within 5 to 10 miles from Tinker AFB designated as the Will Rogers World Airport, Oklahoma City, OK, Airport Radar Service Area"

Will Rogers World Airport, Oklahoma City, OK [Revised]

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Will Rogers World Airport (lat. 35°23'35" N., long. 97°36'02", excluding that airspace within a 1-mile radius of Downtown Airpark (lat. 36°26'57" N., long. 97°31'58" W.) and that airspace extending upward from the surface to but not including 3,000 feet MSL within one and one-half miles either side to Interstate 35; and that airspace extending upward from 2,500 feet MSL to and including 5,300 feet MSL within a 10-mile radius of Will Rogers World Airport, excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL east of line beginning at a point on the 033° bearing from Will Rogers World Airport at the 5-mile arc from the airport extending to the 10-mile arc from the airport parallel to Runway 17/35 and west of a line 1½ miles west of Interstate 35, and excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL within one and one-half miles either side of Interstate 35, and excluding that airspace extending upward from 2,500 feet MSL to but not including 3,000 feet MSL within a 3-mile radius of the University of Oklahoma Westheimer Airpark (lat. 35°15'00" N., long. 97°28'00" W.), and excluding that airspace within 5 miles of Tinker AFB, OK.

Issued in Washington, DC, on January 23, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–2012 Filed 1–29–86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33–6621; 34–22820; IC–14906; FR–24; File No. S7–29–85]

Disclosure Amendments to Regulation S–X Regarding Repurchase and Reverse Repurchase Agreements

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is today amending the disclosure requirements of Regulation S–X to require disclosure regarding the nature and extent of registrants' repurchase and reverse repurchase agreements and the degree of risk involved in these transactions.

DATE: These amendments are effective for financial statements covering fiscal years ending on or after February 28, 1986. Earlier application is strongly encouraged.

FOR FURTHER INFORMATION CONTACT: Wayne G. Pentrack or Laurel R. Bond, Office of the Chief Accountant (202–272–2130) or Alexander G. Shtofman, Divison of Corporation Finance (202–272–2997), Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Commission is amending Regulation S–X to require disclosure in certain circumstances of the nature and extent of registrants' repurchase and reverse repurchase agreements and the degree of risk associated therewith.

Specifically, the amendments require that where the higher of carrying or market value of assets sold under repurchase agreements or the carrying value of reverse repurchase agreements exceeds 10% of total assets, the amounts involved should be disclosed as a separate line item in the balance sheet.

Where the higher of the carrying value of market value of assets sold under repurchase agreements exceeds 10% of total assets, footnote disclosures are required regarding the assets sold and the terms of the agreements. (Repurchase agreements that involve the sale of securities or other assets for which unrealized changes in market value are reported in current income, or which were obtained pursuant to reverse repurchase agreements, need not be considered for purposes of this requirement.)

Where the carrying value of reverse repurchase agreements exceeds 10% of total assets, footnote disclosures are required regarding the registrant's policies with respect to taking possession of the underlying assets and the existence and nature of provisions, if any, to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty.

Where the risk of loss (as defined) under repurchase or reverse repurchase agreements with an individual counterparty or group of related counterparties exceeds 10% of shareholders' equity (or, in the case of management investment companies, net asset value), footnote disclosure of certain information regarding the agreements, including the identity of the counterparty, is required.

II. Background

A. Repurchase Agreements

Generally, selling owned securities or other assets with an unconditional agreement to repurchase the same securities or assets at a specified date has been considered a collateralized borrowing for accounting purposes. Such transactions are commonly referred to as "repurchase agreements."[1]

Although financing treatment may be both logical and appropriate when an asset is sold under agreement to repurchase, and the same asset is in fact repurchased within a very short period of time, it appears that the seller generally loses control over and access to the assets sold. This exposes the seller to a risk of loss (measured by the difference between the carrying value of the assets sold, including accrued interest, plus any cash or other assets on deposit to secure the repurchase obligation, less the amount received in the transaction) in the event that the

[1] Throughout this release, a sale with an agreement to repurchase the same or substantially the same asset will be designated as a "repurchase agreement," and a purchase with an agreement to sell back will be designated as a "reverse repurchase agreement." Certain entities (e.g., savings and loans and investment companies) may use different terminology to describe the same transaction. [*See* Investment Company Act Release No. 10666 (April 18, 1979) 44 FR 25128.]

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counterparty to the transaction does not fulfull its part of the agreement.

In contrast to the more simple form of repurchase agreement described above, the Commission has seen transactions where (1) The initial term of the agreement was not for a very short period of time, but rather was for as long as a year (and the agreement could be extended at maturity), (2) the same mortgage-backed securities were not to be repurchased ("dollar" repurchase agreements) and (3) the initial purchase of specifically identified mortgage-backed securities was financed by a repurchase agreement (selling the purchased securities to the dealer with a simultaneous agreement to buy them back at a later date). Further, when the transactions are dollar repurchase agreements involving mortgage-backed securities (i.e., GNMAs), the seller relinquishes the right to receive principal and interest payments on the subject securities because the mortgage pools underlying the securities are no longer specifically identified and the securities are no longer registered in the seller's name.

B. Reverse Repurchase Agreements

Purchasing securities or other assets with an unconditional agreement to sell the same securities or other assets back to the seller at an agreed upon later date is generally considered for accounting purposes to be a short-term investment/lending secured by the underlying assets. These transactions are generally referred to as "reverse repurchase agreements."

The accounting and disclosure questions regarding reverse repurchase agreements center on whether the purchaser's interest in securities or other assets purchased is in fact adequate and, if so, whether the market value of the underlying securities or other assets is sufficient to protect the purchaser in the event of default by the seller.

C. Recent Developments

Following certain recent developments in the government securities market, both the accounting profession and the private-sector standard setters initiated various projects relating to repurchase and reverse repurchase agreements. On several occasions the Commission's staff met with representatives of certain specialized industry committees of the American Institute of Certified Public Accountants ("AICPA"), the Financial Accounting Standards Board ("FASB"), the AICPA's Anditing Standards Board ("ASB") and the Governmental Accounting Standards Board ("GASB") to emphasize the staff's concerns about accounting, auditing and disclosure issues.

The Commission notes that the following private sector initiatives have been undertaken:

• The ASB formed a special task force to review the auditing issues. In a published report,[2] the task force concluded that while existing general auditing standards are adequate, additional educational guidance is needed. Further, the report states that although broad guidance regarding loss contingences is provided in FASB Statement of Financial Accounting Standards No. 5,[3] the task force believes that more specific guidance is needed for financial statement preparers and auditors of these transactions. The task force also recommended, among other things, that a special task force be formed to monitor developments in the area of financial instruments and that this task force provide timely auditing guidance, as needed, when new financial products are introduced.

• The AICPA Savings and Loan Associations Committee recently published an exposure draft of a Statement of Position [4] concerning disclosure issues related to certain repurchase and reverse repurchase agreements which are prevalent in the thrift industry. This document would supplement their recently issued Statement of Position No. 85–2, "*Accounting for Dollar Repurchase-Dollor Reverse Repurchase Agreements by Sellers-Borrowers*" on accounting for certain repurchase agreements.

• The GASB has published an exposure draft of a Statement of Governmental Accounting Standards [5] on accounting and disclosure for repurchase-reverse repurchase agreements and has established a special task force and has held a public hearing to address these issues.

Recognizing that repurchase and reverse repurchase agreements can involve significant risks, the Federal Financial Institutions Examination Council ("FFIEC") recently published a Supervisory Policy to establish minimum guidelines for managing credit risk exposure and controlling the assets transferred under these transactions. These guidelines have been adopted by the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the National Credit Union Administration and have been proposed for comment by the Federal Home Loan Bank Board.

D. Existing Disclosure Requirements

To some extent, existing requirements of Regulation S–X either directly or indirectly address disclosures of repurchase and reverse repurchase agreements. Articles 4 and 5 (17 CFR 210.4–01 et seq. and 210.5–01 et seq., respectively) in certain instances require cost and market value disclosure of investment securities as well as a description of assets subject to lien. Article 9 (17 CFR 210.9–01 et seq.), which applies to bank holding companies, specifically requires cost and market vlaue of certain obligations of the U.S. Government as well as balance sheet disclosure of repurchase and reverse repurchase agreements. Finally, Schedule 12 of Article 12 (17 CFR 210.12–12), which applies to management investment companies, specifically requires the following information for each agreement under which securities purchased are subject to resale: (1) The name of the party or parties to the agreement, (2) the date of the agreement, (3) the total amount to be received at termination of the agreement, (4) the termination date and (5) a description of the securities subject to the agreement.[6]

In addition, under Item 303 of Regulation S–K (17 CRF 299.303), registrants have an obligation to include in the management's discussion and analysis ("MD&A") appropriate disclosure of any material impact on liquidity and operations, or risk due to significant exposure as a result of repurchase and reverse repurchase agreements. The fact that these transactions can be timed to close at particular points in time does not affect this obligation.

III. Consideration of Comments Received and Changes From Amendments as Originally Proposed

The amendments were originally proposed in Release No. 33–6590, published on June 27, 1985. The

[2] *Report of the Special Task Force on Audits of Repurchase Securities Transactions* (New York: AICPA, 1985)

[3] *Statement of Financial Accounting Standards No. 5: Accounting for Contingencies* (Stamford, CT: FASB, 1975)

[4] *Proposed Statement of Position: Reporting Repurchase-Reverse Repurchase Agreements and Mortgage-Backed Certificates by Savings and Loan Associations* (New York: AICPA, 1985)

[5] *Proposed Statement of Governmental Accounting Standards: Accounting and Financial Reporting for Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements* (Stamford, CT: GASB, 1985)

[6] To the extent that the amendments adopted today would elicit the same information that is presently required by Schedule 12 to Article 12, it is expected that management investment companies would continue to comply with the requirements of that schedule.

Commission received thirty-one letters of comment in response to the proposed amendments. The following paragraphs summarize the main points raised by the respondents and any changes adopted in consideration of their views.

A. Threshold Tests for Repurchase Agreements

The proposed threshold tests for determining reportable amounts of repurchase agreements and the amount at risk (as defined) pursuant thereto were based solely on the carrying amounts of assets sold under agreements to repurchase. Certain respondents indicated that basing the tests on the market value of assets sold (where assets are not carried at market) would more appropriately measure the economic significance of repurchase agreements and the resultant risk. Although the Commission recognizes this point, it notes that basing the tests solely on market values would not appropriately measure significance in relation to total assets as reported in financial statements in cases where the market value of assets sold is less than their carrying amounts. Therefore, the final amendments require the higher of the carrying amounts or market values of assets sold under repurchase agreements to be used in applying the threshold tests.

B. Application of Footnote Disclosures Regarding Repurchase Agreements

The proposal would have required footnote disclosure of the nature and characteristics of securities or other assets sold pursuant to repurchase agreements and maturities and interest rates on the corresponding repurchase liabilities, in all cases where the liability under repurchase agreements was required to be separately reported in the balance sheet. Certain respondents representing the securities dealer community objected to that part of the proposal on the basis that the disclosures would have provided their competitors with what they believe to be significant proprietary information regarding trading strategies for major portions of their businesses.

As a result of weighing these concerns against the intended benefits of the disclosures, which are to provide shareholders with the information necessary to assess the overall economic impact of registrants financing significant portions of their assets with repurchase agreements, the Commission has determined to base the footnote disclosure requirement on the method of accounting for the assets sold under repurchase agreements. The Commission notes that the overall economic impact is reflected in reported results of operations of registrants (including securities dealers) who, under generally accepted accounting principles, account for trading assets on a marked-to-market basis and report unrealized changes in the market value of trading assets sold under repurchase agreements in current income. The same is not necessarily true for registrants who utilize some other basis of accounting for the assets they sell under repurchase agreements.[7] The Commission believes that in such instances the information required by the footnote will aid shareholders in assessing the overall economic impact of the transactions.

Accordingly, in determining whether a registrant's repurchase agreement activity meets the threshold levels for the footnote disclosures regarding securities or other assets sold pursuant to repurchase agreements and the maturities of and interest rates on the corresponding repurchase liabilities, registants are not required by the amendments to include repurchase agreements where unrealized changes in the market value of the securities or other assets subject to the repurchase agreements are reported in current income. Furthermore, in the event that a registrant has repurchase agreement activity above the threshold levels involving securities or other assets for which it does not report unrealized changes in market value in current income, any agreements involving securities or other assets for which it does report such unrealized changes need not be included in this footnote disclosure.

Additionally, the Commission is clarifying in the final amendments that this footnote disclosure regarding assets is not required where the securities or other assets sold pursuant to repurchase agreements were obtained in reverse repurchase agreements.[8] Large amounts of repurchase agreements involving such securities or other assets are entered into by certain registrants, particularly those that are government securities dealers. However, unrealized changes in the market value of those securities or other assets which have been purchased under agreements to resell generally are not reported in current income. Thus, basing this footnote disclosure regarding repurchase agreements solely on the method of accounting for the securities or other assets sold would result in disclosure regarding securities or other assets obtained under reverse repurchase agreements. Inclusion of such securities or other assets purchased under agreements to resell in this footnote disclosure would not be particularly meaningful. Accordingly, the final rule clarifies that, in determining the threshold levels for this footnote disclosure regarding repurchase agreements, securities or other assets obtained under reverse repurchase agreements that have been sold in repurchase agreements need not be included nor need they be included in the footnote disclosure in the event that the threshold levels are otherwise met.

[7] For these registants, reported results of operations for a given period would reflect the overall economic impact only if, by chance, the market value of the assets sold under agreements to repurchase was the same at the beginning and end of the period.

[8] The Commission notes, however, that repurchase agreements involving securities or other assets purchased in reverse repurchase agreements remain subject to the disclosure requirements based on "amount at risk" (as defined) because the risk to a registrant due to the potential of counterparty failure is the same regardless of the source of the assets involved in the repurchase agreement. Furthermore, the liabilities relating to such repurchase agreements also remain subject to the balance sheet disclosure required by the amendments.

C. Footnote Disclosure of Yield on Assets Sold

Although certain respondents agreed with the proposed inclusion of yield on assets sold in the footnote disclosure discussed above under paragraph III.B., many respondents stated that disclosure of the yield on such assets is not necessary to evaluate the transactions in light of the other information required in the footnote. The Commission believes that disclosure of carrying value and market value for each type of asset sold in conjunction with information concerning the terms and maturities of the repurchase agreements is sufficient without disclosure of the yield on the assets sold. Accordingly, the final amendments do not require disclosure of the yield on assets sold under repurchase agreements.

D. Threshold for Disclosure of Risk Relating to Repurchase and Reverse Repurchase Agreements

The proposal would have required certain disclosures in the event that the amount at risk (as defined) under repurchase agreements with any one counterparty or group of related counterparties exceeded 5% of stockholder's equity[9] or if the aggregate amount of reverse repurchase agreements with any one counterparty or group of related counterparties

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exceeded 5% of stockholders' equity [10] and the assets subject to these agreements were not in the possession of the registrant or a third party agent that had affirmatively agreed to act as custodian for the registrant. Several respondents specifically endorsed the reasonableness of 5% of stockholders' equity as a threshold for the determination of amount at risk. However, several respondents expressed their belief that 5% of stockholders' equity would be too low. Although there was support at both the 5% and the the 10% level, the Commission believes that investors are adequately protected if the threshold for this disclosure is 10% and the amendments reflect this change.

E. Disclosure of Risk Relating to Repurchase Agreements

The proposed amendments would have required presentation of the footnote disclosures discussed in paragraphs III.B. and III.C. above, separately, for repurchase agreements with each individual counterparty for whom the "amount at risk' threshold test were met, as well as the identity of each such counterparty. The Commission continues to believe that it is necessary to disclose information concerning material concentrations if the registrant is exposed to risk of loss in the event that the counterparty fails to fulfill its parts of the agreement(s). The Commission has determined that the information which is necessary to facilitate shareholders' assessment of this risk with respect to repurchase agreements with one counterparty or group of related counterparties is the identity of the counterparty with whom the risk exists, the amount at risk with each such counterparty and the weighted average maturity of repurchase agreement with each. Accordingly, disclosure of this information is required and the repetition of the footnote disclosure is not required as proposed.

The disclosure of counterparty name is consistent with current reporting requirements. Article 12, Schedule 12 of Regulation S–X requires, among other disclosures, naming by management investment companies of the counterparty to each reverse repurchase agreement. In addition, Item 101(c) (vii) of Regulation S–K requires registrants to name each customer from whom 10% or more of consolidated revenues are derived if loss of the customer would have a material adverse effect.

Some respondents suggested that the risk disclosure under the amendments being adopted today should acknowledge the existence of such counterparties but not name them. They cited in support of this view the requirement of FASB Statement of Financial Accounting Standards No., 14,[11] as amended, which requires disclosure of existence of major customers. However, none of these respondents noted the current requirements of Regulation S–K which require disclosure of the names of major customers.

The Commission has considered the views of certain respondents that naming counterparties in this context would affect confidential business relationships, and thus affect competition, and has weighed those views against the intended benefits of the disclosure. The Commission believes that disclosure of these material risks is necessary for investor protection and that, in order to provide meaningful disclosure, the identity of the counterparty is necessary for investors to evaluate the risk entailed.

F. Footnote Disclosures Regarding Reverse Repurchase Agreements

Where a separate caption was required in the balance sheet for reverse repurchase agreements, the proposal would have required footnote disclosure of the registrant's policy with regard to taking possession of the assets purchased and the terms of reverse repurchase agreements (including, at a minimum, the maturities, interest rates and whether or not there are any provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of the default of the counterparty and, if so, the nature of those provisions).

As indicated in paragraph III.G. below, the adequacy of a registrant's interest in a sufficient amount of the assets purchased and the subsequent fluctuations in the market value of such assets are directly relevant to the risk of loss involved in such transactions and such information is necessary for shareholders to evaluate registrants' activities at material levels. However, certain respondents objected to the proposed disclosure of other terms of the reverse repurchase agreements, specifically maturities and interest rates, on the grounds that significant proprietary information would thereby be disclosed.

The Commission has weighed these objections against the incremental value of requiring these maturity and interest rate disclosures in addition to other disclosures which will be required, and has decided that shareholders will be adequately protected if the maturities and interest rates are not disclosed in this context. However, as discussed in paragraph III G. below, the Commission continues to believe that certain information relating to the terms of the agreements should be disclosed in the event that the amount at risk with any one counterparty of group of counterparties exceeds the applicable threshold level. Further, the Commission emphasizes that material deviations from a stated policy regarding taking possession of assets under reverse repurchase agreements are required to be disclosed. Also, the disclosure of provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of counterparty default must be sufficiently detailed to accurately reflect registrants' positions.

G. Disclosure of Risk Under Reverse Repurchase Agreements

Where the aggregate carrying amount of reverse repurchase agreements with one counterparty or group of related counterparties exceeded 5% of stockholders' equity[12] and the assets subject to those agreements were not in the possession of the registrant or its agent, the proposal would have required disclosure of each such counterparty's identity, the carrying amount of the agreements with each and the terms of the agreements with each.

The risk that a loss will result from counterparty default under a reverse repurchase agreement is a function of the value of the assets subject to the agreement in which the registrant has assured an interest relative to the carrying amount of the agreement. Thus, in the event that the registrant's interest has not been assured in a sufficient amount of assets, or that the market value of the assets in which such interest has been assured does not remain sufficient, the registrant is at risk in the event that the counterparty does not fulfill its obligations under the agreement. The risk, if any, to the registrant in that event, however, is not affected if the value of the assets remains sufficient and the registrant's interest in the assets has been assured

[9] In the case of investment companies, 5% of net asset value.

[10] In the case of investment companies, 5% of net asset value.

[11] *Statement of Financial Accounting Standards No. 14: Financial Reporting for Segments of a Business Enterprise* (Stamford, CT: FASB, 1976)

[12] In the case of investment companies, 5% of net asset value.

but the registrant or its agent does not retain possession of the assets but delivers them in another transaction.[13] Such practice is common in operations where securities or other assets obtained from one counterparty in a reverse repurchase agreement are sold to another counterparty in a repurchase agreement or when securities obtained are delivered to cover a short sale.

In Release No. 33–6590, the Commission stated that the accounting and disclosure questions regarding reverse repurchase transactions center on whether the purchaser's interest in securities or other assets purchased is in fact secured and, if so, whether the market value of the underlying assets is sufficient to protect the purchaser in the event of default by the seller. Furthermore, the Commission stated that the proposed disclosure would include the registrant's policies regarding taking possession of the underlying assets and provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty.

Notwithstanding these references in Release No. 33–6590 to the importance of maintaining an interest in assets of sufficient market value, certain respondents noted that the proposed threshold for counterparty risk disclosure could be read not to consider risk due to decline in market value of assets in the possession of the registrant or its agent.[14] Accordingly, the amendments being adopted today have been clarified to reflect the intent that declines in market value of assets purchased under agreements to resell are to be considered in the determination of amount at risk. In addition, the amendments have been clarified to indicate that the fact that the registrant does not retain possession of assets purchased from and delivered by the selling counterparty need not be considered in determining amount at risk unless the assets are returned to the selling counterparty for less than their approximate market value.

The Commission has determined that disclosure related to amounts at risk under reverse repurchase agreements should consist of only the name of each counterparty or group of related counterparties with whom such amount is at risk, the amount at risk with each and the weighted average maturity of the agreements with each. This is consistent with the corresponding required disclosures regarding amounts at risk under repurchase agreements.

H. Parenthetical Disclosure of Market Value of Assets Purchased Under Agreements To Resell

In addition to the requirement for a separate balance sheet caption where the carrying amount of assets purchased under agreements to resell exceeded 10% of total assets, the proposal would have required parenthetical disclosure on the face of the balance sheet of the aggregate market value of such assets held by the registrant or its agent. The Commission recognizes that this proposed requirement would have resulted in disclosure that would not have been meaningful in certain circumstances and the final amendments do not include this requirement.

For the reasons noted in paragraph III.G. above, registrants that do not retain possession of the securities or other assets obtained from the counterparty to the reverse repurchase agreement throughout the term of the reverse repurchase agreement do not necessarily subject themselves to risk of reverse repurchase agreement counterparty default. Where such assets are not retained, disclosure concerning aggregate amounts held by the registrant or its agent would not be meaningful. Furthermore, the relationship of the market value of the aggregate amount of assets held in comparison to the corresponding aggregate amount of reverse repurchase agreements does not necessarily reflect the relationship of the value of assets held in connection with individual agreements or aggregate agreements with the same counterparty.

Respondents differed in their suggestions regarding this aspect of the proposal. In addition, the Commission notes that other aspects of the proposal (the disclosure of material amounts at risk with one counterparty, and the required disclosure of the registrant's policy with regard to taking possession of securities or other assets purchased and whether the agreements contain provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and the nature of any such provisions) should provide shareholders with sufficient information to assess any risks posed by registrants' activities.

I. Other

Other views expressed by respondents include: (a) new disclosure requirements for repurchase and reverse repurchase agreements are not necessary, given the existing requirements that are discussed in paragraph II.D. above; (b) any new disclosure requirements should be based on average amounts rather than balance sheet date amounts; and (c) any newly-required disclosures should be made in the MD&A rather than in the basic financial statements and financial statement footnotes.

As stated in paragraph II.D. above, registrants do have an obligation to include in their MD&A disclosure of any material impact on liquidity or operations and risk resulting from involvement with repurchase and reverse repurchase agreements. In addressing the impact on operations for any given period, registrants would, of course, have to consider all transactions during the period—not only those existing at the balance sheet date.

Notwithstanding these previously-existing requirements [which are unaffected by the amendments being adopted today], the Commission continues to believe, after considering the balance of respondents' views, that: (a) More useful and uniform disclosures by registrants are necessary for enabling shareholders to better assess significant involvement with repurchase and reverse repurchase agreements and the resultant risk (as defined), if any; and (b) given that the disclosures are required only where significant amounts are involved, these disclosures should be made in the basic financial statements and financial statement footnotes.

IV. Certain Findings

Section 23(a)(2) of the Securities Exchange Act ("the Act") [15] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments and additions to Regulation S–X in light of the standard cited in Section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

[13] If such delivery is to the same counterparty to the reverse repurchase agreements, however, such delivery would have to be in exchange for the approximate market value of the assets delivered in order for the risk not to be affected.

[14] One respondent suggested that market value should be computed as of the date of inception of the reverse repurchase agreement and not reconsidered subsequently. The Commission rejects this suggestion and notes that one of the primary objectives of these amendments is disclosure of registrants' efforts to ensure that market value remains sufficient over the life of the agreement.

[15] 15 U.S.C. 78w(a)(2).

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V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act [15 U.S.C. 605(b)], the Chairman of the Commission previously certified that adoption of these amendments will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

VI. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) (47 FR 21028) is updated to:

1. Add a new § 501.07, entitled "Disclosures Relating to Use of Repurchase and Reverse Repurchase Agreements".

2. Include in § 501.07 the following two paragraphs (which are taken from discussions in previous sections of this Release):

Under Item 303 of Regulation S–K, registrants have an obligation to include in the management's discussion and analysis ("MD&A") appropriate disclosure of any material impact on liquidity and operations, or risk due to significant exposure as a result of repurchase and reverse repurchase agreements. In addressing the impact on operations for any given period, registrants would, of course, have to consider all transactions during the period—not only those existing at the balance sheet date.

Repurchase and reverse repurchase agreements can be timed to close at particular points in time. This fact does not affect the obligation to include in the MD&A appropriate disclosure of any material impact on liquidity and operations, or risk due to significant exposure as a result of repurchase and reverse repurchase agreements.

Material deviations from a stated policy regarding taking possession of assets under reverse repurchase agreements are required to be disclosed. Also, the disclosure of provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of counterparty default must be sufficiently detailed to accurately reflect registrants' positions.

VII. Statutory Basis of Amendments

These amendments are being adopted pursuant to authority in sections 6, 7, 8, 19 and 19(a) [15 U.S.C. 77f, 77g, 77h, 77j, 77s and 77s(a)] of the Securities Act of 1933; sections 12, 13, 14, 15(d) and 23(a) [15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a)] of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) [15 U.S.C. 79e(b), 79n, 79t(a)] of the Public Utility Holding Company Act of 1935; and sections 8, 30, 31 and 38(a) [15 U.S.C. 80a-8, 80a-29, 80a-30, 80a-37(a)] of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 210

Accounting, Reporting and recordkeeping requirements, Securities.

VIII. Text of Amendments

The Commission hereby amends 17 CFR Chapter II as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: Sections 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933, 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26); sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a); sections 5(b), 10(a), 14 and 20(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79j(a), 79n, 79t(a); and sections 8, 20, 30, 31 and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–8, 80a–20, 80a–29, 80a–30, 80a–37a, unless otherwise noted.

§ 210.4–08 [Amended]

2. By adding paragraph (m) to § 210.4–08 to read as follows:

* * * * *

(m) *Repurchase and reverse repurchase agreements.* (1) *Repurchase agreements (assets sold under agreements to repurchase).* (i) If, as of the most recent balance sheet date, the carrying amount (or market value, if higher than the carrying amount or if there is no carrying amount) of the securities or other assets sold under agreements to repurchase ("repurchase agreements") exceeds 10% of total assets, disclose separately in the balance sheet the aggregate amount of liabilities incurred pursuant to repurchase agreements including accrued interest payable thereon.

(ii)(A) If, as of the most recent balance sheet date, the carrying amount (or market value, if higher than the carrying amount) of securities or other assets sold under repurchase agreements, other than securities or assets specified in (1)(ii)(B) of this section, exceeds 10% of total assets, disclose in an appropriately captioned footnote containing a tabular presentation, segregated as to type of such securities or assets sold under agreements to repurchase (e.g., U.S. Treasury obligations, U.S. Government agency obligations and loans), the following information as of the balance sheet date for each such agreement or group of agreements (other than agreements involving securities or assets specified in (1)(ii)(B) of this section) maturing (*1*) overnight; (*2*) term up to 30 days; (*3*) term of 30 to 90 days; (*4*) term over 90 days and (*5*) demand:

(i) The carrying amount and market value of the assets sold under agreement to repurchase, including accrued interest plus any cash or other assets on deposit under the repurchase agreements; and

(ii) The repurchase liability associated with such transaction or group of transactions and the interest rate(s) thereon.

(B) For purposes of (1)(ii)(A) of this section only, do not include securities or other assets for which unrealized changes in market value are reported in current income or which have been obtained under reverse repurchase agreements.

(iii) If, as of the most recent balance sheet date, the amount at risk under repurchase agreements with any individual counterparty or group of related counterparties exceeds 10% of stockholders' equity (or in the case of investment companies, net asset value), disclose the name of each such counterparty or group of related counterparties, the amount at risk with each, and the weighted average maturity of the repurchase agreements with each. The amount at risk under repurchase agreements is defined as the excess of carrying amount (or market value, if higher than the carrying amount or if there is no carrying amount) of the securities or other assets sold under agreement to repurchase, including accrued interest plus any cash or other assets on deposit to secure the repurchase obligation, over the amount of the repurchase liability (adjusted for accrued interest). (Cash deposits in connection with repurchase agreements shall not be reported as unrestricted cash pursuant to rule 5–02.1.)

(2) *Reverse repurchase agreements (assets purchased under agreements to resell).* (i) If, as of the most recent balance sheet date, the aggregate carrying amount of "reverse repurchase agreements" (securities or other assets purchased under agreements to resell) exceeds 10% of total assets: (A) disclose separately such amount in the balance sheet; and (B) disclose in an appropriately captioned footnote: (*1*) the registrant's policy with regard to taking possession of securities or other assets purchased under agreements to resell; and (*2*) whether or not there are any provisions to ensure that the market value of the underlying assets remains sufficient to protect the registrant in the event of default by the counterparty and if so, the nature of those provisions.

(ii) If, as of the most recent balance sheet date, the amount at risk under reverse repurchase agreements with any individual counterparty or group of related counterparties exceeds 10% of stockholders' equity (or in the case of investment companies, net asset value), disclose the name of each such counterparty or group of related counterparties, the amount at risk with each, and the weighted average maturity of the reverse repurchase agreements with each. The amount at risk under reverse repurchase agreements is defined as the excess of the carrying amount of the reverse repurchase agreements over the market value of assets delivered pursuant to the agreements by the counterparty to the registrant (or to a third party agent that has affirmatively agreed to act on behalf of the registrant) and not returned to the counterparty, exept in exchange for their approximate market value in a separate transaction.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

January 22, 1986.

[FR Doc. 86–2085 Filed 1–29–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19]

Project Cost Limits Under Blanket Certificates; Publication

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order of the Director, OPPR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(t), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION, CONTACT: Kenneth A. Williams, Director, OPPR (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued January 22, 1986.

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect to 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(t) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1986, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I

Year	Limit	
	Auth. proj. cost limit (col. 1)	Prior notice proj. cost limit (col. 2)
1982	$4,200,000	$12,000,000
1983	4,560,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,108,800	14,300,000

TABLE II

Year	Limit
1982	$2,760,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000

[FR Doc. 86–2073 Filed 1–29–86; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 85F–0376]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the use of ethylene terephthalate-isophthalate copolymers that contain at least 98 weight percent of polymer units derived from ethylene terephthalate. This action responds to a petition filed by American Enka Co.

DATES: Effective January 30, 1986; objections by March 3, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 4, 1985 (50 FR 35867), FDA announced that a petition (FAP 5B3671) had been filed by American Enka Co., Enka, NC 28728, proposing that § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) be amended to provide for an increase in the weight percent of polymer units derived from ethylene terephthalate in ethylene terephthalate-isophthalate copolymers.

On review, FDA has determined that the notice of filing did not adequately describe the petition. FDA's regulations currently provide for the use of ethylene terephthalate-isophthalate copolymers that contain 77 to 83 weight percent of polymer units derived from ethylene terephthalate. The petition sought approval of certain uses of ethylene terephthalate-isophthalate copolymers that contain at least 98 weight percent of polymer units derived from ethylene terephthalate.

FDA has evaluated the data in the petition and other relevant material. Based on its evaluation, the agency concludes that the use of ethylene terephthalate-isophthalate copolymers that contain at least 98 weight percent of polymer units derived from ethylene

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terephthalate is safe in certain circumstances, and that the regulations should be amended as set forth below.

FDA is also making an editorial change in the paragraph on ethylene terephthalate-isophthalate copolymers.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before March 3, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in suport of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subject, in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1630 is amended in paragraph (e)(4)(i) by revising the entry for "Ethylene terephthalate-isophthalate copolymers" to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(e) * * *

(4) * * *

LIST OF SUBSTANCES AND LIMITATIONS

(i) Base sheet:

* * * * *

Ethylene terephthalate-isophthalate copolymers: Prepared by the condensation of dimethyl terephthalate or terephthalic acid and dimethyl isophthalate or isophthalic acid with ethylene glycol. The finished copolymers contain either (*a*) 77–83 weight percent or (*b*) at least 98 weight percent of polymer units derived from ethylene terephthalate. Copolymers containing a minimum of 98 weight percent of polymer units derived from ethylene terephthalate are limited to use with food of types I, II, IV–B, VI–B, VII–B, and VIII as described in Table 1 of § 176.170(c) of this chapter and under use conditions E, F, and G, as described in Table 2 of § 176.170(c) of this chapter.	

* * * * *

Dated: January 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–1991 Filed 1–29–86; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 600, 606, 610, 620, 630, 640, and 660

[Docket No. 80N–0053]

Changes in Proper Names of Certain Biological Products; Delay of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing a delay in the effective date for a final rule concerning changes in proper names for certain biological products. The new effective date for blood and blood components intended for transfusion is September 2, 1986, rather than January 29, 1986. The agency is taking this action in response to requests from major blood banking organizations to reduce economic burdens caused by additional labeling changes required by a second final rule affecting blood and blood components.

DATES: Effective date: September 2, 1986, for all blood and blood components intended for transfusion initially introduced or initially delivered for introduction into interstate commerce. Comments by March 3, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 29, 1985 (50 FR 4128), FDA amended the proper names for certain biological products by updating all applicable regulations in 21 CFR Parts 600 through 660 to reflect the new proper names. Most of the proper name changes in the final rule affect blood and blood products. In addition, the final rule requires name changes for certain other viral and bacterial products. The final rule has an effective date of January 29, 1986, for required labeling changes.

In the **Federal Register** of August 30, 1985 (50 FR 35458), FDA published a final rule on uniform blood labeling which requires additional labeling changes in the container labels and in the instruction circulars for blood and blood components intended for transfusion. The final rule on uniform blood labeling has an effective date of September 2, 1986.

Major blood banking organizations have recently requested FDA to delay the effective date of the proper names final rule to coincide with the effective date of the uniform blood labeling final rule to minimize required labeling changes. Because both final rules require labeling changes for blood and blood components, FDA believes that the economic impact placed on blood banking establishments for printing new labels twice in a 7-month period should be eased. Extension of the effective date of the proper names final rule as it applies to blood and blood products intended for transfusion to coincide with the effective date of the uniform blood labeling rule will require manufacturers to change their labeling only once during this short period, thus reducing waste. FDA believes that a single effective date for these products will provide for more efficient implementation of both rules by manufacturers. FDA's reason for the proper names rule was to reduce the length of a name, to identify a product more accurately, or to make the name more consistent with the name of the same product in the United States Pharmacopeia or in the United States Adopted Names. FDA notes that the extension of the effective date of this rule to September 2, 1986, will not have any adverse public health consequences. Accordingly, FDA is announcing a delay of the effective date until September 2, 1986, for all blood and blood components that are affected by both final rules. These products include whole blood (21 CFR 640.1), red blood cells (21 CFR 640.10), platelets (21 CFR 640.20), plasma (21 CFR 640.30), and cryoprecipitated AHF (21 CFR 640.50). The effective date for proper name changes for all products other than blood and blood products intended for transfusion remains January 29, 1986.

The Commissioner of Food and Drugs finds for good cause under 5 U.S.C. 553(b)(B) and 21 CFR 10.40(e)(1) that notice and comment rulemaking to extend the effective date is impracticable, contrary to the public interest, and unnecessary. Because of the imminence of the effective date, the significant economic burden that would be imposed on manufacturers if required to relabel blood and blood products intended for transfusion twice within a 7-month period, the efficiency of a single effective date, and the relatively short delay of the effective date, the Commissioner finds good cause exists to delay the effective date for blood and blood products intended for transfusion to coincide with the September 2, 1986, effective date for uniform blood labeling.

The agency, nevertheless, is providing a 30-day comment period during which it will accept comments on the rule. Interested persons may, on or before March 3, 1986, submit to the Dockets Management Branch (address above) written comments regarding this action. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. If FDA decides on the basis of the comments received that any change is necessary, it will publish the change in the **Federal Register.**

Dated: January 28, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–2168 Filed 1–28–86; 3:31 pm]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8070]

Income Tax; Coordination of Loss Deferral and Wash Sale Rules and Treatment of Holding Periods and Losses Under Section 1092

Correction

In FR Doc. 86–726, beginning on page 1785, in the issue of Wednesday, January 15, 1986, make the following corrections on page 1787:

1. In the second column, in § 1.1092(b)–1T(g), Example (21), last line, the word "in" should read "to".

2. In the third column, the second line, after the word acquired, add the word "on".

3. In the third column, in Example (24), in the twenty-second line, "1986" is removed.

BILLING CODE 1505–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–222; Re: Notice No. 564]

Alcoholic Beverages; Application of State Laws and Regulations to Wine Labeled With a Viticultural Area Appellation of Origin

AGENCY: Bureau of Alcohol, Tobacco and Firearms (AFT), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule amends regulations on labeling wines with American Viticultural Area appellations of origin. There is no longer a Federal requirement that wines comply with State laws and regulations when labeled with American Viticultural Area appellations of origin. Under the previous requirements, a Federal regulation imposed the laws and regulations of one state upon activities occurring in another state in cases involving multistate viticultural areas. This imposed an unfair compliance burden on wineries located in multistate viticultural areas in comparison to wineries located in other viticultural areas. For example, wines produced in the Washington portion of the multistate Columbia Valley viticultural area were required, by Federal regulation, to comply with the laws and regulations of the State of Oregon. The regulations of Oregon are more restrictive than the regulations of Washington, and the Oregon requirements should not apply to wine made entirely within the State of Washington. Therefore, the requirement to comply with State laws and regulations is removed as a Federal requirement. The State laws and regulations remain in effect and will continue to be enforced by the agencies of the states involved in winemaking.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background, T.D. ATF–53

Prior to Treasury Decision ATF–53 [August 23, 1978, 43 FR 37675], appellations of origin for domestic wines were generally names of states or in a few cases "regions" or "places." The previous regulation required those wines

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to be made in conformity with the laws and regulations of such "place" or "region" governing the composition, manufacture and designation of wines. Since many domestic wines claimed State appellations of origin such as "California" or "New York," this regulation generally required compliance with State laws and regulations. This policy recognized the state interest in insuring the quality and integrity of wine bearing that state's name.

With T.D. ATF-53, viticultural areas were established as appellations of origin. American viticultural areas are defined in § 4.25a(e)(1)(i) as delimited grape growing regions distinguishable by geographical features, and recognized in 27 CFR Part 9. Because they are grape growing regions rather than political divisions such as counties or states, their boundaries have no relationship to political boundaries. Ten approved viticultural areas occupy portions of two or more states.

One Federal requirement for use of an American viticultural area was conformity with the laws and regulations of the state in which the viticultural area was located [§ 4.25a(e)(3)(v)]. Thus, wine claiming a "Napa Valley" appellation was required by Federal regulation to conform to California law. Similarly, this Federal requirement existed when a viticultural area encompasses more than one state. For example, wine claiming a "Lake Erie" viticultural area appellation was required to conform to New York, Pennsylvania, and Ohio laws and regulations.

Multistate Viticultural Areas

The Columbia Valley viticultural area, approved in T.D. ATF-190 [November 13, 1984, 48 FR 38497], surfaced a problem with the labeling of wine with multistate viticultural areas. This viticultural area was established in portions of both Oregon and Washington on the basis of geographical features which affect viticultural features. However, laws of both states require an appropriate regulatory agency to issue standards of identity, and regulations of Oregon and Washington differ greatly regarding the production and labeling of wine. Oregon regulations are more stringent than Federal regulations. Since § 4.25a(e)(3)(v) required compliance with laws and regulations of *all* states within a multistate viticultural area, regardless of where the wine is fermented or finished, wine made from grapes originating and fermented in Washington, and finished and bottled within Washington was, nevertheless, subjected to Oregon law and regulations if the wine claimed a multistate viticultural area appellation such as Columbia Valley.

As a result, the Federal regulation appeared to place an unfair burden on some wineries within multistate viticultural areas by subjecting a winery in one state to laws and regulations issued by another state even when the grapes or wine do not enter the other state during the course of wine production. A Federal requirement for compliance with State laws and regulations is both unnecessary and difficult for the Federal Government to enforce due to the multitude of state and local laws and regulations.

Moreover, ATF does not believe that Federal regulation should impose the State laws or regulations of one state upon transactions occurring in other states. State laws and regulations of the state in which the wine was fermented or finished will, of course, continue to apply to the producing winery. These state laws and regulations are enforced by the state involved.

The deletion of this Federal requirement has no bearing on wines labeled with the name of a viticultural area located entirely within a single state. Since § 4.25a(e)(3)(iv) requires a wine claiming a viticultural area appellation to be fully finished within one of the states in which the viticultural area is located, State laws or regulations of that state would apply at the bonded winery where the wine is produced.

Rulemaking Procedure

Based on the foregoing, ATF published a notice of proposed rulemaking [Notice No. 564, May 8, 1985, 50 FR 19384], proposing to amend § 4.25a(e)(3) by deleting paragraph (v) which required compliance with the laws and regulations of all of the States contained in the viticultural area. In response to Notice No. 564, ATF received one comment from Heublein, Inc., supporting the proposed change. Therefore, paragraph (e)(3)(v) is removed from § 4.25a as proposed.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal authors of this document are Charles N. Bacon and John A. Linthicum, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

27 CFR PART 4—LABELING AND ADVERTISING OF WINE is amended as follows:

1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 4.25a [Amended]

2. Section 4.25a is amended—

(a) By adding the word "and" after the semi-colon at the end of paragraph (e)(3)(iii),

(b) By replacing the semi-colon and the word "and" with a period at the end of paragraph (e)(3)(iv), and

(c) By removing paragraph (e)(3)(v).

Signed: December 17, 1985.
Stephen E. Higgins,
Director.
Approved: January 10, 1986.
Francis A. Keating, II,
Assistant Secretary (Enforcement and Operations)
[FR Doc. 86-1878 Filed 1-29-86; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CCGD 11-85-05]

Safety Zone; Santa Cruz Island, CA

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: A safety zone is being established in the territorial waters south of Santa Cruz Island. Tests of submerged and semisubmerged vessels will be conducted during a three month period. There will also be placement of fixed underwater sound systems making transit, anchoring or fishing hazardous. Limiting access to this area will serve to protect vessels and sensitive underwater gear.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) John Czaimanske, U.S. Coast Guard Reserve, Marine Safety Division, Eleventh Coast Guard District, Long Beach, California. Telephone: (213) 590-2301.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days from the date of publication. This regulation is exempt from certain provisions of 5 U.S.C. 553 because it involves a foreign or military affairs function of the United States. Following normal rulemaking procedures also would have been impracticable because the request for this regulation was not received until December 15, 1985 and there was not sufficient time remaining to publish a proposal in advance of the events for which the regulation is needed. Furthermore, there was not sufficient time to provide for a delayed effective date. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) John Czamanske, U.S. Coast Guard Reserve, Project Officer, Eleventh Coast Guard District Marine Safety Division and Lieutenant Joseph R. McFaul, U.S. Coast Guard, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

This regulation establishes a safety zone in territorial waters south of Santa Cruz Island, California. Tests of submerged and semi-submerged vessels will be conducted. Much of the testing equipment will be undetectable by surface vessels making transit, anchoring or fishing hazardous. Limiting access to the area will protect vessels and sensitive equipment. Similar safety zones have been established in this area in the past year (50 FR 35555). Entry into the zone will be permitted if testing permits and there are no hazards to transiting vessels or test equipment. A "hot-line" will be established so that adverse effects on potential users will be minimized. Additionally, users will be informed by the Local Notice of Mariners if there will be prolonged periods where entry will be permitted.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security Measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: (33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.T1199 is added to read as follows:

§ 165.T1199 Santa Cruz Island.

(a) A safety zone is established to include all waters enclosed within lines drawn from the following points: beginning from a point on land located approximately at Latitude 33-57-33 N, Longitude 119-43-15 W, then due south to a point on the territorial sea located approximately at Latitude 33-54-33 N, Longitude 119-43-15 W, then following the limit of the territorial sea in an easterly direction to a point approximately located at Latitude 33-57-15 N, Longitude 119-31-44 W, then due north to a point on land located approximately at Latitude 33-59-42 N, Longitude 119-33-45 W, then returning along the shore to the beginning point.

(b) No person may swim, skin dive or scuba dive in the waters within the safety zone.

(c) No vessel may navigate, transit, fish, anchor or drift in the waters within the safety zone.

(d) Any vessel within the zone shall follow the directions of the patrolling Coast Guard cutter.

(e) In accordance with the general provisions in § 165.23 of this part, entry into this zone is prohibited unless authorized by the District Commander.

(f) This regulation is effective on January 27, 1986 and remains continuously in force until April 30, 1986.

Dated: January 23, 1986
A.B. Beran,
Rear Admiral (lower half), U.S. Coast Guard, Commander, Eleventh Coast Guard District.
[FR Doc. 86-2086 Filed 1-29-86; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Diego Reg. 85-11]

Security Zone Regulations; San Diego Bay, CA; Pacific Ocean

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Air Station San Diego, Coronado, California, consisting of the water area within 100 feet (30 meters) of Bravo Pier. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Air Station North Island.

EFFECTIVE DATE: This regulation is effective on March 3, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: On 25 November 1985, the Coast Guard

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published a notice of proposed rulemaking in the Federal Register for these regulations (50 FR 48434).

Interested persons were invited to submit comments, and one comment was received.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

One telephone commenter expressed the view that reducing the usable water area available for pleasure boats to pass Bravo pier would cause a hardship to local boaters. It was pointed out that the bay at this point is approximately 2400 feet wide (the usable water area) and that this regulation would affect only 100 feet of this width. The commenter agreed that only a small area was affected and that the national security considerations were significant. No written comments were received.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a very small area outside all fairways and shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be no effect on routine navigation.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 3, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. Section 165.1106 is added to read as follows:

§ 165.1106 Security Zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 feet (30 meters) of Bravo Pier, bounded by the following points:

(1) Latitude 32°41'51.3" N, longitude 117°13'34.0" W;
(2) Latitude 32°41'51.3" N, longitude 117°13'38.5" W;
(3) Latitude 32°41'45.8" N, longitude 117°13'38.5" W; and
(4) Latitude 32°41'45.8" N, longitude 117°13'35.0" W.

(b) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Air Station North Island. Section 165.33 also contains other general requirements.

Dated: January 22, 1986.

E. A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–2088 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–2962–4; GA–008]

Approval and Promulgation of Implementation Plans; Georgia; Extended VOC Compliance Schedule for GM's Lakewood Assembly Plant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today disapproving a State Implementation Plan (SIP) revision submitted by Georgia, pursuant to the requirements of Part D of Title I of the Clean Air Act of 1977, for the control of volatile organic compound (VOC) emissions. The revision provided an extended compliance schedule for General Motors' Lakewood, Geogria Assembly Plant. Under the proposed revision General Motors would have until 1987 to comply with Georgia rule 391–1–.02(t), VOC emissions from Automobile and Light Duty Truck Manufacturing. EPA is disapproving the SIP revision because the facility is located in an ozone nonattainment area without an approvable attainment demonstration.

DATE: This action is effective March 3, 1986.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Georgia Department of Natural Resources, Environmental Protection Division, 270 Washington Street SW., Atlanta, Georgia 30334

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Cook, Air Management Branch, EPA Region IV, at the above address, telephone (404) 881–2864 (FTS 257–2864).

SUPPLEMENTARY INFORMATION: On December 18, 1984 (49 FR 49114), EPA proposed to disapprove a Georgia SIP revision involving the VOC compliance schedule for the General Motors assembly plant in Lakewood, Georgia. Briefly, the revision extended the compliance date for certain miscellaneous metal parts coating and top coating operations to 1987.

Specifically, General Motors (GM) requested a delay in the final compliance date for the electrophoretic (ELPO) prime operation for passenger cars at their Lakewood Plant from December 31, 1982, to December 31, 1987. Such a delay would be accompanied by a delay in the December 31, 1982 interim date for conversion to a higher solids primer-surfacer coating since that conversion would accompany the installation of the ELPO prime system. In other words, all of the interim dates in GM's previously agreed to schedule (part of GM's national agreement with EPA) would be changed to a final compliance date of December 31, 1987.

Additionally, GM proposed to delay compliance of certain coating operations governed by Rule 391–3–1.02(ii), Surface Coating of Miscellaneous Metal Parts and Products, of the Georgia Rules for Air Quality Control. The largest VOC emitter of such operations is the flow coat prime operation which is used for the priming of both hoods and fenders and many miscellaneous small parts. Due to the nature of the flow coat process, a large quantity of organic solvent has to be added to the flow coat bath and, consequently, the "pounds of VOC per gallon coating applied excluding water" is higher than State regulations allow.

GM indicated it would probably have to convert to a different system of priming in order to comply. Such a conversion (e.g., to ELPO prime) would involve a multimillion dollar expenditure. When the car body ELPO prime system goes into operation by December 31, 1987, the hoods and fenders would be primed along with the car bodies. Thus, the State of Georgia felt it was appropriate to parallel miscellaneous metal parts compliance with that of the car body ELPO prime system. Therefore, December 31, 1987, was included in the new GM permits for the final compliance date for the flow coat prime operation.

General Motors further requested an indefinite delay in compliance for two other miscellaneous metal parts coating operations (i.e., the zinc-rich primer application and the anti-corrosion coating application). Total emissions from these two sources equaled 24 tons per year.

The state concurred in the request, but conditioned the company's permit so that GM was required to replace those coatings with lower VOC coatings upon development. All other affected miscellaneous metal parts coating operations, except those mentioned above, came into compliance on or before September 1, 1983.

As EPA reviewed the State's proposed extended compliance schedule for this VOC source located in the Atlanta ozone nonattainment area, the 1982 summer ozone monitoring data began to raise concerns because of the magnitude and number of exceedances being recorded. It became apparent that the Atlanta nonattainment area was not going to demonstrate attainment by December 31, 1982. On February 24, 1984, EPA called for a revision to Atlanta's ozone state implementation plan (SIP) under authority of section 110(a)(2)(H) of the Clean Act, as amended in 1977.

EPA policy (46 FR 61387, October 20, 1981) does allow approval of a deferred compliance schedule for ELPO past 1984 in a few specific circumstances (e.g., where significant expenses can be eliminated, not just postponed at plants that are scheduled for renovation, scheduled for shutdown, or which propose to use an alternate compliance technique). However, there was no evidence in the record that GM-Lakewood met the policy's requirements. Since the extension for GM did not meet the October 20, 1981, policy for extensions, and since Atlanta is an ozone nonattainment area without an approvable attainment demonstration, EPA proposed disapproval of the requested relaxation.

Two comments were received on this proposal, one from the Natural Resources Defense Council, Inc. (NRDC), and one from General Motors Corporation (GM).

NRDC Comment

NRDC expressed support for EPA's proposed disapproval of the extended compliance schedule. In NRDC's view it would be inappropriate to approve any relaxation of a SIP for an area without an approved demonstration of attainment.

GM's Comment

GM addressed two parts of the proposal. First, they wanted to clarify the record as to the fact that the top coat and final repair coat compliance date for the Lakewood Assembly plant was always December 31, 1987. This date was approved as part of the GM National Agreement. GM felt compelled to make the clarification because the wording of the proposal incorrectly implied that compliance for topcoating and repair coating operations were being postponed, along with priming and surfacer operations, when, in fact, they were always set at 1987.

Second, GM wanted to note that the purpose in requesting the delay in the compliance date for electrodeposition prime (EDP) was to eliminate significant capital expenditures in a situation involving shutdown or renovation consistent with EPA's previously cited October 20, 1981, Federal Register policy statement regarding extension of EDP compliance dates beyond 1984. That policy statement essentially says that EPA will consider a delayed compliance schedule going to December 1987 for EDP operations as expeditious if the delay would eliminate significant costs. Specific circumstances for applying the policy were also outlined (i.e., the plant is applying an alternate compliance technique; scheduled for shutdown; scheduled for renovation). Accordingly, GM claimed that they would realize an estimated ten million dollars saving by not constructing a conveyor line from their car assembly line to the existing EDP tank located on the plant's inactive truck assembly line. This savings would be realized if GM made the decision to shut down the Lakewood plant instead of reconstruction and modernizing it. They stated further that even if they renovated the plant, the conveyorized system would not be needed, and so the ten million dollars expense could also be saved under the reconstruction option.

EPA Response

EPA concurs with GM's first comment and has modified this notice to clearly indicate that prime operations are the only affected operations proposed for delay in the existing schedule. With respect to GM's second comment, EPA's position is that the policy statement of October 20, 1981 (46 FR 51387), explicitly states that extensions beyond 1984 would be found to be appropriate where a plant is "scheduled for renovation or closing . . . or where a plant applying an alternative compliance technique can eliminate (not just postpone) significant expense." GM's proposal indicated a specific dollar amount of savings but did not provide a "specific" shutdown or renovation date. The proposal also failed to specify an alternative compliance technique. Accordingly, the SIP record does not support application of this policy.

Moreover, EPA's October 20, 1981, policy states that, among other things, in order to approve extensions for automotive assembly plant paint shop operations, the "SIPs will need to assure continued compliance with the statutory provisions of sections 110 and 172 of the Clean Air Act. These revisions will need to be evaluated in light of their impact on the overall plan and the individual elements, including emission reductions necessary to demonstrate reasonable further progress toward attainment of standards."

Since Atlanta clearly has a shortfall in emission reductions needed to attain the national ambient air quality standard for ozone (EPA called for an ozone plan revision on February 24, 1984) and the State is in the process of revising their ozone SIP, it would be inappropriate for EPA to approve a compliance date extension in the absence of an approvable attainment demonstration.

Final Action

Based on the foregoing, EPA hereby disapproves the extended compliance schedule for General Motors' Lakewood Assembly Plant.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Hydrocarbons.

Dated: January 22, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart L—Georgia

2. Section 52.576 is amended by adding paragraph (b) as follows:

§ 52.576 Compliance schedules.

* * * * *

(b) The extended compliance schedule for the General Motors Lakewood Assembly Plant submitted on July 30, 1982, is disapproved because the State has failed to show that the schedule would not interfere with the attainment of the ozone standard in the Atlanta nonattainment area.

[FR Doc. 86–2039 Filed 1–29–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW–5–FRL–2963–4]

Illinois: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Illinois' Application for Final Authorization.

SUMMARY: Illinois has applied for final authorization under the Resource Conservation and Recovery Act, as amended (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Illinois' application and found it includes all the information necessary for final authorization. U.S. EPA is granting final authorization to the State of Illinois to operate its hazardous waste management program in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: The final authorization for Illinois takes effect 1:00 p.m., Eastern Standard Time on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Russell, Illinois Regulatory Specialist, Solid Waste Branch, U.S. EPA Region V, 230 South Dearborn, Chicago, Illinois, 60604, (312) 886–6940 (FTS: 8–886–6940).

SUPPLEMENTARY INFORMATION: Section 3006 of the RCRA allows U.S. EPA to authorize a State hazardous waste management program to operate in a State in lieu of the Federal hazardous waste management program. To qualify for final authorization, a State's program must: (1) Be equivalent to the Federal program; (2) Be no less "stringent" than the Federal program; (3) Be consistent with the Federal program and other authorized State programs; (4) Provide for adequate enforcement authority; and (5) Provide for public participation in the permit process. (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On July 29, 1985, the State of Illinois submitted a complete application to obtain final authorization to administer the RCRA program. After completion of a comprehensive review of the State's official application, U.S. EPA forwarded comments to the State on September 10, 1985. These comments reflected the remaining areas which the State needed to further address. Illinois and the Attorney General responded satisfactorily to U.S EPA's comments in letters dated October 7, 24, and November 14, 1985. Region V conducted a comprehensive Capability Assessment evaluating past State program performance and present resource capability for future program implementation. The Capability Assessment together with the Letter of Intent, highlighted the areas in which Illinois needed improvement and the measures U.S EPA and Illinois will take to ensure that these improvements are implemented. These areas were Closure Management and Maintenance of Enforcement Related Records. Since the publication of the tentative determination, Region V has continued to monitor the progress in these areas as well as in escalation of enforcement. Region V has found that Illinois continues to make progress in these areas. Therefore, following a detailed review of the complete application and the development of a Capability Assessment, U.S EPA published a notice on November 19, 1985, announcing its tentative determination to grant final authorization to the State of Illinois. Further background on the tentative determination to grant final authorization appears in the November 19, 1985 **Federal Register**, (50 FR 47566). That **Federal Register** notice summarized all major issues raised in U.S EPA's review of the complete application.

Along with the notice of tentative determination, U.S EPA announced the availability of Illinois' application for public inspection and copying; the date of the public comment period; the date of the public hearing on Illinois' application; and U.S EPA's tentative determination to grant final authorization. A Public Notice ran in four newspapers in Illinois and one newspaper in Missouri. This Notice was mailed to all individuals and organizations on the Region V Illinois mailing list. The public hearing was held on December 20, 1985, in Chicago, Illinois. Fifteen people attended the public hearing. Five oral and eight written comments were presented at the public hearing or during the public comment period. U.S EPA's responses to comments it has received are contained in the Responsiveness Summary. A copy of the Responsiveness Summary is available from Barbara Russell, Illinois Regulatory Specialist, at the United States Environmental Protection Agency, 230 South Dearborn, 5HS–JCK–13, Chicago, Illinois, (312) 886–6940.

Decision

After reviewing the public comments and the changes the State has made to its application since the tentative decision, I conclude that Illinois' application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Illinois is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Illinois now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. Illinois also has primary enforcement responsibility, although U.S EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA. Illinois is not authorized to operate the RCRA program on Indian lands, and this authority will remain with the U.S EPA.

As stated above, Illinois' authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the U.S EPA. The Federal requirements no longer applied in the authorized State, and U.S EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted those requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim.

As a result of HSWA, there will be a dual State/Federal regulatory program in Illinois. To the extent the authorized State program is unaffected by HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, U.S EPA will administer and enforce them in Illinois until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Illinois.

Illinois is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State will assist U.S EPA's implementation of the HSWA under a Cooperative Agreement.

U.S EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985 **Federal Register** (50 FR 28702), and should be referred to for further information.

EFFECTIVE DATE: 40 CFR 23.4 provides that the grant of final authorization under section 3006 takes effect 2 weeks after the date of **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date January 31, 1986, is necessary in this instance: Illinois currently has interim authorization for Phase I of the RCRA program. Since interim authorization expires by statute on January 31, 1986, Illinois must have authority to administer the final authorization program, on that date, or the RCRA program will revert to EPA. To avoid the problem of a short-term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3, Executive Order 12291.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Illinois' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), EPA Delegation 8–7.

Dated: January 21, 1986.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 86–2037 Filed 1–29–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW–10–FRL–2963–6]

Oregon; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Oregon's application for final authorization.

SUMMARY: The State of Oregon has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Oregon's application and has reached a final determination that Oregon's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program, in lieu of the Federal hazardous waste program in its jurisdiction, subject to the limitations imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final Authorization for Oregon shall be effective at 1 p.m., e.s.t., on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: David Hanline, M/S 530, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442–2858 (FTS 399–2858).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On June 1, 1984, Oregon submitted a complete application for final authorization. On December 6, 1985, EPA published a tentative decision announcing its intent to grant Oregon final authorization. Further background information on EPA's tentative decision to grant final authorization appears at 50 FR 49947, December 6, 1985.

In addition to announcing its tentative determination, EPA announced the availability of the application for public review and comment. Also it was announced that a public hearing would

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be held if sufficient public interest was expressed. No requests for a hearing were received. Only one letter of comment was submitted—a general statement in support of EPA's tentative decision.

II. Decision

I conclude that Oregon's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oregon is granted final authorization to operate its hazardous waste program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Oregon now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. Oregon also has primary enforcement responsibility, although EPA retains the right to conduct inspections and gather information under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA. Oregon is not authorized by the Federal government to operate the RCRA program on Indian lands; this authority remains with EPA.

As stated above, Oregon's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Oregon. To the extent the authorized State program is unaffected by the HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in Oregon until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable Subtitle C requirements in Oregon.

This authorization of Oregon's hazardous waste program includes two Federal regulatory promulgations pursuant to the HSWA—the listing of and special management standards for dioxin-containing wastes (50 FR 1978) and the paint filter liquids test (50 FR 18370). Thus the Federal program in those areas will not apply to Oregon. Once Oregon is authorized to implement other HSWA requirements or prohibitions, the State program in those areas will operate in lieu of the Federal provisions. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Arrangement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and their effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

III. Effective Date

40 CFR 23.4 provides that the grant of final authorization under section 3006 takes effect two weeks after the date of the **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date, January 31, 1986, is necessary in this instance. Oregon currently has interim authorization for Phase I of the RCRA program. Because interim authorization expires by statute on January 31, 1986, Oregon must have final authority to administer the finally authorized program on that date or the RCRA program will revert to EPA. To avoid the problems caused by a short term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Oregon's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 27, 1986.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 86–2036 Filed 1–29–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW–1–FRL–2961–5]

Rhode Island; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Rhode Island's Application for Final Authorization.

SUMMARY: Rhode Island has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Rhode Island's application and has reached a final determination that Rhode Island's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for Rhode Island shall be effective at 1:00 p.m. Eastern Standard Time on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Battaglia, State Waste Programs Branch, U.S. EPA, Room 1903, JFK Federal Building, Boston, MA 02203, telephone: (617) 223–1910.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) Be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On June 29 1984, Rhode Island submitted an official application to obtain final authorization to administer the RCRA program. On December 3, 1985, EPA published a tentative decision announcing its intent to grant Rhode Island final authorization. Further background on the tentative decision to grant authorization appears at **Federal Register** Vol. 50, No. 232, pages 49561–49563, December 3, 1985.

Along with the tentative determination EPA announced the availability of the application for public comment and the date of a public hearing on the application if sufficient public interest in holding a hearing is expressed. The public hearing was cancelled since no public interest in holding a hearing was communicated to EPA.

The only outstanding issue at the time of publication of the tentative determination was the necessity for the draft regulatory amendments to be legally adopted and effective prior to this final determination being published. The regulatory amendments were legally adopted on January 9, 1986, and will become effective on January 29, 1986.

II. Decision

After reviewing the public comments and the changes the State has made to its application/program since the tentative decision, I conclude that Rhode Island's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Rhode Island is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Rhode Island now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, subject to the HSWA. Rhode Island also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA. Rhode Island is not authorized by the Federal government to operate the RCRA program on Indian lands. This authority remains with EPA.

As stated above, Rhode Island's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Rhode Island. To the extent the authorized State program is unaffected by the HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in Rhode Island until the State receives authorization to do so. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable Subtitle C requirements in Rhode Island.

Rhode Island is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702–28755, July 15, 1985.

III. Effective Date

40 CFR 23.4 provides that the grant of final authorization under section 3006 takes effect two weeks after the date of **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date—January 31, 1986—is necessary in this instance. Rhode Island currently has interim authorization for Phases I and IIA of the RCRA program. Since interim authorization expires by statute on January 31, 1986, Rhode Island must have authority to administer the program under final authorization on that date or the RCRA program will revert to EPA. To avoid the problems of a short-term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Rhode Island's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous Waste, Indian lands, Inter-governmental

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relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 9, 1986.

Michael R. Deland,

Regional Administrator.

[FR Doc. 86-2033 Filed 1-29-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-10-FRL-2963-5]

Washington; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Washington's application for final authorization.

SUMMARY: The State of Washington has applied for final authrorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Washington's application and has reached a final determination that Washington's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program, in lieu of the Federal hazardous waste program in its jurisdiction, subject to the limitations imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final Authorization for Washington shall be effective at 1 p.m. e.s.t. on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Michael A. Bussell, M/S 530, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-2857, (FTS 399-2857).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must: (1) B "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

On July 2, 1984, Washington submitted an official application for final authorization. On December 6, 1985, EPA published a tentative decision announcing its intent to grant Washington final authorization. Further background information on EPA's tentative decision to grant final authorization appears at 50 FR 49949, December 6, 1985.

In addition to announcing its tentative determination, EPA announced the availability of the application for public review and comment. EPA also announced that a public hearing would be held if sufficient public interest was expressed.

II. Response to Public Comments

On December 6, 1985, (50 FR 49949), a notice was published in the **Federal Register** that invited the public to submit written comments on the Washington application by January 6, 1986, and provided for a public hearing if sufficient public interest was expressed in holding a hearing. In addition, EPA published the notice of determination in a sufficient number of newspapers of general circulation to ensure state-wide coverage. Further, EPA mailed these notices to persons on State and EPA mailing lists.

Sufficient public interest in holding a public hearing was not expressed, thus, a hearing was not held. However, several written comments were received, none of which opposed EPA's tentative determination. One commentor supported EPA's tentative determination citing considerable benefit to both the public and regulated community. Another commentor, while not opposing EPA's tentative decision, expressed concern on the appropriateness of State enforcement actions and State compliance inspection capability. This commentor also stated the need for a strong Federal compliance and enforcement oversight role in Washington, after authorization. Finally, four commentors supported EPA's decision that the State's demonstration of jurisdiction is insufficient for EPA to authorize the State's program for non-Indian hazardous waste management activites on Indian lands, and EPA's tentative decision to retain jurisdiction for regulation of all hazardous management activities on Indian lands.

Prior to publishing its tentative determination to authorize Washington, EPA conducted a capability assessment of the State's hazardous waste compliance and enforcement programs. As the result, EPA found that Washington has made significant progress in the implementation of their compliance and enforcement programs in the fiscal year (FY) 1985. More specifically, substantial improvement was demonstrated in the quality of compliance inspections and in the appropriateness and timeliness of enforcement follow-up. Furthermore, in FY 85, the State developed an enforcement response policy that provides for consistent and predictable enforcement response. To assure continued improvement in State compliance inspection and enforcement efforts, the State and EPA have jointly developed and signed a Letter of Intent that addresses specific State and EPA measures, along with schedules, to enhance State compliance and enforcement program capabilities over time.

After authorization, EPA will continue to maintain an oversight role in Washington to assure that the goals of RCRA are being met. EPA will maintain its oversight role in part through the Federal grant process which requires periodic evaluations of State performance and which will provide the support and incentives to assure a quality State program and continued enhancement of State capabilities. Additionally, EPA retains the authority to conduct independent inspections, collect information and initiate enforcement actions. In instances where State enforcement is not timely or appropriate, EPA will exercise this authority.

III. Decision

After reviewing public comments, I conclude that Washington's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Washington is granted final authorization to operate its hazardous waste program in lieu of the Federal regulatory program promulgated up to December 31, 1984, pursuant to RCRA, 42 U.S.C. 6901 et seq., subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA). This means that Washington now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of RCRA program, subject to the HSWA. Washington also has primary enforcement responsibility, although EPA retains the right to gather information and conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA. Washington is not authorized by the Federal government to operate the RCRA program on Indian lands; this authority remains with EPA.

As stated above, Washington's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 1984 HSWA amendments to RCRA. Prior to that date, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still, adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Washington. To the extent the authorized State program is unaffected by the HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, EPA will administer and enforce them in Washington until the State receives authorization to do so. When Washington is authorized to implement a HSWA requirement or prohibition, the State program in the area will operate in lieu of the Federal program. Washington is not being authorized today for any requirement implementing the HSWA. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Arrangement. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State program define the applicable RCRA Subtitle C requirements in Washington.

EPA has published a **Federal Register** notice that explains in detail the HSWA and their effect on authorized States. That notice was published at 50 FR 28702-28755, July 15, 1985.

IV. Indian Lands

In the final authorization application, the State has asserted authority and intent to regulate hazardous waste management activities on Indian lands. The State also asserted such authority in its interim authorization application. For interim authorization, EPA concluded that the State had not adequately demonstrated it had such authority. In granting interim authorization, EPA therefore retained jurisdiction for regulating hazardous waste management activities on Indian lands. The State appealed this decision to the Ninth Circuit Court of Appeals; the Ninth Circuit upheld EPA's decision (Department of Ecology v. EPA, 752 F 2d 1465 (1985)). Based on the Court's decision, the State amended their application to focus their assertion on authority to cover non-Indian hazardous waste management activities on Indian lands. EPA will therefore retain jurisdiction for regulation of hazardous waste management activities on Indian lands. EPA view "Indian lands" to mean all lands (including fee lands) within Indian reservations, dependent Indian communities, and Indian allotments to which Indians hold title.

V. Effective Date

40 CFR 23.4 provides that the grant of final authorization under Section 3006 takes effect two weeks after the date of the **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date, January 31, 1986, is necessary in this instance. Washington currently has interim authorization for Phase 2 A and B of the RCRA program. Because interim authorization expires by statute on January 31, 1986, Washington must have final authority to administer the RCRA program on that date or the program will revert to EPA. To avoid the problems caused by a short term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Washington's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: January 27, 1986.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 86-2035 Filed 1-29-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-5-FRL-2963-3]

Wisconsin: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Wisconsin's application for final authorization.

SUMMARY: Wisconsin has applied for final authorization under the Resource Conservation and Recovery Act, as amended (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Wisconsin's application and found it includes all information necessary for RCRA final authorization. U.S. EPA is granting final authorization to the State of Wisconsin to operate its hazardous waste management program, in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: The final authorization for Wisconsin takes effect 1:00 p.m., Eastern Standard Time on Janaury 31, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilk, Wisconsin Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn, Chicago, Illinois, 60604, (312) 886-4177 (FTS: 8-886-4177).

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SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows U.S. EPA to authorize a State hazardous waste management program to operate in a State in lieu of the Federal hazardous waste management program. To qualify for final authorization, a State's program must: (1) Be equivalent to the Federal program; (2) Be no less "stringent" than the Federal program; (3) Be consistent with the Federal program and other authorized State program; (4) Provide for adequate enforcement authority; and (5) Provide for public participation in the permit process. [Section 3006(b) of the RCRA, 42 U.S.C. 6926(b).]

On July 26, 1985, the State of Wisconsin submitted a complete application to obtain final authorization to administer the RCRA program. Region V conducted a comprehensive Capability Assessment evaluating past State program performance and present resource capacity for future program implementation. The Capability Assessment, which documents that Wisconsin continues to demonstrate a commitment to effective implementation of the Hazardous Waste Management program, was transmitted to the State on November 1, 1985, together with a Letter of Intent. The Letter of Intent highlights the areas in which Wisconsin needs improvement and the measures U.S. EPA and Wisconsin will take to ensure that these improvements are implemented. These areas are Compliance and Enforcement, and Management and Reporting. Following the detailed review of the complete application and the development of a Capability Assessment evaluating past State program performance and present resource capacity for future program implementation, U.S. EPA published a notice in the **Federal Register** on November 27, 1985, announcing its tentative determination to grant final authorization to the State of Wisconsin. Further background on the tentative determination to grant or deny final authorization appears in the November 27, 1985, **Federal Register**, (50 FR 48601). That **Federal Register** notice summarized all major issues raised in U.S. EPA's review of the complete application and the State's responses to these issues.

Along with the notice of tentative determination, U.S. EPA announced the availability of Wisconsin's application for public inspection and copying, the date of the public comment period, the date of the public hearing on Wisconsin's application, and U.S. EPA's tentative determination to grant Wisconsin final authorization. The public hearing was held on December 26, 1985, in Madison, Wisconsin. Twelve people attended the public hearing.

Seven oral or written comments were presented at the public hearing or during the public comment period. U.S. EPA's responses to comments it has received are contained in the Responsiveness Summary. A copy of the Responsiveness Summary is available from Charles Wilk, Wisconsin Regulatory Specialist, United States Environmental Protection Agency, 230 South Dearborn Street, 5HS–JC–13, Chicago, Illinois, (312) 886–4177.

Decision

After reviewing the public comments and the minor changes the State has made to its application since the tentative decision, I conclude that Wisconsin's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Wisconsin is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984, (Pub. L. 98–616, November 8, 1984) (HSWA). Wisconsin now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program subject to the HSWA. Wisconsin also has primary enforcement responsibility, although U.S. EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA. Wisconsin is not authorized to operate the RCRA program on Indian lands, and this authority will remain with the U.S. EPA.

As stated above, Wisconsin's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 8, 1984, HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted those requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim.

As a result of HSWA, there will be a dual State/Federal regulatory program in Wisconsin. To the extent the authorized State program is unaffected by HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, U.S. EPA will administer and enforce them in Wisconsin until the State receives authorization to do so. Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program define the applicable Subtitle C requirements in Wisconsin.

Wisconsin is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State will assist U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

U.S. EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985 **Federal Register** (50 FR 28702), and should be referred to for further information.

EFFECTIVE DATE: 40 CFR 23.4 provides that the grant of final authorization under Section 3006 takes effect 2 weeks after the date of **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date January 31, 1986, is necessary in this instance. Wisconsin currently has interim authorization for Phase I of the RCRA program. Since interim authorization expires by statute on January 31, 1986, Wisconsin must have authority to administer the final authorization program, on that date, or the RCRA program will revert to EPA. To avoid the problem of a short-term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3, Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Wisconsin's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, amended, by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6926, and 6974(b), EPA Delegation 8–7.

Dated: January 17, 1986.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 86–2034 Filed 1–29–86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 169, 170, 171, and 173

[CGD 83–005]

Sailing School Vessel Regulations

Correction

In FR Doc. 86–176, beginning on page 888, in the issue of Thursday, January 9, 1986, make the following corrections:

1. On page 891, first column, twenty-eighth line of the second paragraph, "January 11, 1988" should have read "January 9, 1988".

2. On page 897:

a. In the first column, last line, in the entry for § 169.809, "natural" should have read "nautical";

b. In the third column, § 169.107(d), "(publication date)", "(one year from publication date)", and "(two years from publication date)" should have read "January 9, 1986", "January 9, 1987", and "January 9, 1988" respectively.

3. On page 904, first column, § 169.311(a), tenth line, "an" should read "than".

4. On page 911, § 169.567(a), Table 169.567(a) should have appeared as follows:

TABLE 169.567(A)

Space protected	Total number extinguishers required	Type extinguishers permitted		Coast Guard classification
		Medium	Minimum size	
Living space and open boats	1 per 1000 cu. ft. of space	Halon 1211 or 1301	2½ pounds	
		Foam	1¼ gallons	
		Carbon dioxide	4 pounds	B–I.
		Dry chemical	2 pounds	
Propulsion machinery space with fixed CO_2 or halon system.	1	Foam	1¼ gallons	B–I
		Carbon dioxide	4 pounds	
		Dry chemical	2 pounds	
Propulsion machinery space without fixed CO_2 or halon system.	2	Halon 1211 or 1301	2½ pounds	
		Foam	2½ gallons	
		Carbon dioxide	15 pounds	B–II
		Dry chemical	10 pounds	
		Halon 1211 or 1301	10 pounds	
Galley (without fixed system)	1 per 500 cu. ft.	Foam	2½ gallons	
		Carbon dioxide	15 pounds	B–II.
		Dry chemical	10 pounds	
		Halon 1211 or 1301	10 pounds	

5. On page 923, second column, in § 170.055(a), "(publication date)", "(one year from publication date)", and "(two years from publication date)" should have read "January 9, 1986", "January 9, 1987", and "January 9, 1988" respectively.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 85–104; RM–4872; FCC 86–35]

Amendment of the Rules To Permit Telephony Operation in the 7075–7100 kHz Frequency Band in the Caribbean Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Final rules; proceeding terminated.

SUMMARY: This document adopts rules to permit telephony operation by FCC-licensed General, Advanced and Amateur Extra operators transmitting from the Commonwealth of Puerto Rico, Navassa Island and the United States Virgin Islands in the 7075–7100 kHz frequency band. These rules are being adopted in order to improve

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communications effectiveness between amateur operators licensed by the FCC and by other nations in the Caribbean and surrounding regions.

DATE: This rule change is effective 0001 UTC February 28, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Emissions, Radio.

Report And Order

In the matter of Amendment of Part 97 of the Commission's Rules to Permit Telephony Operation in the 7075-7100 kHz Frequency Band in the Caribbean Insular Areas; PR Docket No. 85-104, RM-4872.

Adopted: January 16, 1986.
Released: January 22, 1986.

By the Commission.

Background

1. On November 6, 1984, David Novoa filed a Petition for Rule Making (RM-4872) in which he requested that telephony privileges be authorized for General, Advanced and Amateur Extra operators using the 7075-7100 kHz frequency band when their stations are in the Caribbean Insular Areas (the Commonwealth of Puerto Rico, Navassa Island and the United States Virgin Islands). After evaluating the comments filed in response to this petition, we released a *Notice of Proposed Rule Making*, 50 FR 15195, April 17, 1985, proposing to permit radio-telephony operation in the 7075-7100 kHz frequency band by General, Advanced or Amateur Extra control operators at stations transmitting from any location other than the forty-eight contiguous states.

2. Twenty-one comments and reply comments were filed.[1] Nineteen comments favored some version of the proposal; two opposed it. The American Radio Relay League (the ARRL) supported the proposal provided that it would be modified to restrict maritime mobile amateur telephony near the continental United States. The Puerto Rico Amateur Radio Club and the DX Club of Puerto Rico supported expansion of the proposed telephony subband to 7050-7100 kHz for Advanced and Amateur Extra operators and 7075-7100 kHz for General, Advanced and Amateur Extra operators. David Popkin and Philip E. Galasso supported extension of telephony privileges in the 7075-7100 kHz band without geographical limitation. Robert G. Wheaton supported the proposal, but in addition advocated extension of telephony privileges in the 7075-7100 kHz band to all areas that were within the claimed boundaries of the former Republic of Texas at the time of its annexation by the United States in 1845.[2]

Discussion

3. The reasons advanced in the *Notice* for proposing to expand telephony privileges in the 7075-7100 kHz segment of the 40 meter band in the Caribbean Insular Areas were: (1) Stations in the Caribbean which transmit on the 7100-7300 kHz band are experiencing interference from broadcast stations, particularly at night; (2) almost all emergency, weather and DX nets in the Caribbean transmit between 7000 and 7100 kHz in order to avoid broadcast interference; (3) FCC-licensed amateurs in the Commonwealth of Puerto Rico and the U.S. Virgin Islands are excluded from Caribbean emergency nets and drills because the frequency segment used for this purpose is 7075-7100 kHz; (4) U.S. jurisdictions in the Caribbean are the only locations in the Caribbean where telephony is completely prohibited between 7000 kHz and 7100 kHz; and (5) extension of telephony privileges in the 7075-7100 kHz frequency band to FCC-licensed amateur operators would promote international goodwill.

4. The DX Club of Puerto Rico concurred with this position in its comments, in which it concluded: ". . . there is a real need for a telephony segment in the 40 meter band below 7100 kHz, due to the interference suffered in this area; that operating conditions here are similar to those in the Pacific where identical privileges were granted; that international goodwill would be promoted; that we would be better prepared to provide emergency communications and that no detrimental interference to other users of the same frequencies would occur." In its comments, the Puerto Rico Amateur Radio Club, Inc., noted that ". . . almost all traffic, weather reports and emergency nets are organized below 7100 kHz to avoid the heavy interference received from broadcast stations from Regions 1 and 3."

5. John H. Parrott, Jr., and David L. Reasoner opposed extension of telephony privileges in the 7075-7100 kHz frequency band to FCC-licensed amateur operators in the Caribbean Insular Areas. Reasoner stated: "This band segment is used primarily for radioteletype transmissions by Amateurs in the forty-eight contiguous states . . . . [T]he effect of adoption of this NPRM would only be detrimental to these operations."

6. In his Petition for Rule Making David Novoa stated that the proposal would not cause detrimental interference to telegraphy operators in the continental United States because of the limited number of potential users. In its Comments, the ARRL concurred with this analysis. Additionally, Philip E. Galasso maintained in his comments that "[m]ost radiotelegraph stations already move below 7050 kHz at night in order to avoid the powerful Canadian (and other foreign) radiotelephone stations."

7. As of the end of October, 1985, our data base reflects 146 Amateur Extra, 356 Advanced and 489 General FCC-licensed amateur operators in the Caribbean Insular Areas. Presumably, not all of these amateur operators are active. Moreover, of those who are active, not all have the equipment necessary to transmit on or desire to use the 7075-7100 kHz frequency band. We conclude that the number of potential users of radiotelephony in the 7075-7100 kHz band in the Caribbean Insular Areas is sufficiently small that little additional interference to amateur operation in the continental United States should be expected.

8. The ARRL expressed concern that the rule as proposed would "significantly increase the radiotelephony use of the 7075-7100 kHz segment beyond that envisioned by the petitioner and beyond that necessary at present to accomplish the desired objective of allowing stations in Caribbean Insular Areas to effectively communicate with other Caribbean countries." Specifically, the ARRL contended that by allowing such telephony operation anywhere outside the continental United States we would also permit maritime mobile amateur operation far closer to the continental United States than either the current exceptions or Caribbean Insular Area operation would allow. We agree, and we will instead adopt a rule which defines the area of permissible operation in the Caribbean Insular Areas by specifying a northern boundary of a specific latitude. We note that the petitioner originally requested such a northern boundary at 17 degrees North latitude, but later amended his petition to request a boundary of 19 degrees North latitude. The ARRL recommended a boundary of 20 degrees North latitude. We are adopting the boundary of 20 degrees North latitude as the easiest to determine and comply with for amateur operators and because it permits the widest possible area of operation to the north of the Caribbean Insular Areas without causing harmful interference to telegraphy operations in the continental United States.

9. In our *Notice* we requested comment on Randall F. Sobol's recommendation that we expand the proposed telephony segment to 7050-7100 kHz. Sobol sought the addition of the 7050-7075 kHz frequency band to the proposed telephony segment because authorization was pending for a commercial shortwave station to operate above 7100 kHz. Seven commenters supported addition of the 7050-7075 kHz band for telephony use, including the DX Club of Puerto Rico and the Puerto Rico Amateur Radio Club., Inc. Reasons advanced for such an expansion included: (1) Pending shortwave station authorizations; (2) better Caribbean emergency preparedness; and (3) minimization of interference to continental U.S. telegraphy operations by spreading Caribbean 40 meter telephony over twice the amount of spectrum.

10. The ARRL opposed addition of the 7050-7075 kHz band for telephony use, on the basis that: "[f]urther expansion would disrupt existing telegraphy and RTTY operation to a greater extent than necessary to accomplish the goal of the proposal, without providing any significant marginal benefit." Robert A. Scupp commented that such an expansion would be contrary to our professed intention of limiting this proceeding's impact upon telegraphy operation in the continental U.S. Since we anticipated that the number of likely Caribbean telephony users even in the proposed 25 kHz frequency segment would not cause harmful interference to telegraphy operations in the continental U.S., we see no advantage to be derived from spreading them across twice the amount of spectrum. Rather, we conclude that the increased likelihood of interference to additional telegraphy operations militates in favor of not expanding the proposed telephony band.

11. In the *Notice* we also requested comment on whether expanded 40 meter telephony privileges for the Caribbean Insular Areas should be limited to Advanced and Amateur Extra operators. None of the comments in response to the *Notice* supported completely excluding General operators from using these new telephony privileges. However, in conjunction with their support of a 7050-7100 kHz telephony band, seven comments suggested limiting the 7050-7075 kHz band to Advanced and Amateur Extra operators while permitting General, Advanced and Amateur Extra operators in the 7075-7100 kHz band. The commenters supporting such subbands argued that they would be consistent with the concept of incentive licensing.

12. The ARRL commented that excluding General operators from any Caribbean telephony privileges would be inconsistent with the object of this proceeding: to promote network operation and regional communication in the Caribbean Insular Areas. Sobol maintained that there is no reason whatever to exclude General class operators from any regional weather nets, and that reservation of any telephony subband for exclusively Advanced or Amateur Extra operator use would be elitist. The 7075-7100 kHz frequency band is currently available to General, Advanced and Amateur Extra operators. As we have previously noted the number of General operators licensed by the FCC in the Caribbean Insular Areas is roughly equal to the number of Advanced and Amateur Extra operators combined. The primary objective of this proceeding is to facilitate inter-nation and regional communication in the Caribbean. In light of this, we believe that all FCC-licensed amateur operators authorized to operate in the 7075-7100 kHz band in the Caribbean should also be authorized to use all permissible emissions, including telephony emissions, in that band. Therefore, we are adopting rules which include General class telephony privileges for the 7075-7100 kHz frequency band in the Caribbean Insular Areas.

13. Two commenters recommended that there be no geographical limitation upon that portion of the 40 meter band in which we authorize telephony. Popkin stated that the interference concerns raised by this docket are equally applicable throughout most U.S. jurisdictions, and that authorization of 40 meter telephony privileges throughout the United States would facilitate communications with geographically proximate nations. Galasso stated that the United States is the only country in the world which does not allow telephony in this segment. Wheaton, in support of his proposal to extend these telephony privileges to those portions of the United States formerly within the Republic of Texas, cited our common border with Mexico and the strong Hispanic ties of that region.

14. The ARRL concurred that "the argument that amateurs in Caribbean Insular Areas should be given relief from the broadcast and other interference above 7100 kHz is equally applicable to the forty-eight contiguous states." However, the ARRL stated that there is good reason to give the relief proposed in the *Notice* which is unique to the Caribbean: (1) The number of potential users of radiotelephony at 7075-7100 kHz in the Caribbean Insular Areas is sufficiently small that little interference to telegraphy operation in the contiguous United States would be expected; and (2) it permits FCC-licensed Caribbean amateurs to communicate with their geographically proximate counterparts in other locations in the Caribbean on weather and emergency networks on the appropriate network frequencies. These arguments are not equally applicable to the mainland United States. The goal of this proceeding, to facilitate Caribbean Insular Area regional communication, can be achieved without the further-reaching proposals of Sobol, Popkin or Wheaton. We therefore decline to adopt rules extending 40 meter telephony privileges to FCC-licensed amateur operators transmitting from the mainland United States. In his comments in this matter Galasso also proposed to eliminate all amateur emission subbands. This recommendation goes far beyond the scope of this proceeding and we will not consider it.

15. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605) we certified in the *Notice of Proposed Rule Making, supra*, in this proceeding that these rules would not, if promulgated, have a significant

[1] Robert G. Wheaton filed a Motion to Accept Late Filed Pleading with his comment filed on June 19, 1985. Although this comment was filed two days after the comment period had expired, it was filed within the reply comment period. In the interest of a full public record and because it will best conduce to the dispatch of Commission business, we grant Wheaton's motion and accept his comments for filing. For the same reasons we also accept for filing all late-filed comments which were filed during the reply comment period.

[2] Wheaton advanced this proposal in a separate petition for rule making. Because of its close relationship to the matters in this docket, we will consider Wheaton's petition in the context of this proceeding.

economic impact on a substantial number of small entities, because these entities may not use the Amateur service for commercial radiocommunication (see 47 CFR 97.3(b)). The Chief Counsel for Advocacy of the Small Business Administration has been so notified.

16. The new rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Conclusion

17. We are amending the Part 97 Amateur Radio Service Rules consistent with the previous discussion in order to permit telephony operation by General, Advanced and Amateur Extra operators in the 7075–7110 kHz frequency band in the Caribbean Insular Areas. It appears that amateur stations which transmit on 40 meters are experiencing increasing interference from broadcast stations in ITU Regions 1 and 3. However, this interference is not unique to the Caribbean and would not alone warrant a rule change. We take this action because we believe it will significantly improve international communication in the Caribbean without creating additional interference to amateur operation in the continental United States.

18. Accordingly, it is ordered, that effective 0001 UTC February 28, 1986, Part 97 of the Commission's Rules (47 CFR Part 97) is amended as shown in the Appendix attached hereto. The authority for this action is found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

19. It is further ordered, that this proceeding is terminated.

20. For further information concerning this document, contact John J. Borkowski, (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303.

§ 97.61 [Amended]

2. The phrase "or south of 20 degrees North latitute" is added to the end of paragraph (b)(1) of § 97.61.

[FR Doc. 86–1984 Filed 1–29–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 173

[Docket No. HM–196; Amdt. Nos. 172–99 and 173–190]

Packaging and Placarding Requirements for Liquids Toxic by Inhalation

Correction

In FR Doc. 85–23977 beginning on page 41096 in the issue of Tuesday, October 8, 1985, make the following correction: On page 41096, in the second column, in § 173.3a(b)(1), in the fifth line, "173.254" should read "173.245".

BILLING CODE 1505–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41276–4176]

Fishery Conservation and Management; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA Commerce.

ACTION: Notice of initial specifications.

SUMMARY: 50 CFR 611.20(c) requires that the specifications of optimum yield (OY), initial estimates of U.S harvests, and total allowable levels of foreign fishing (TALFF) be published at the beginning of the relevant fishing year. Therefore, NOAA issues this notice presenting the numbers, as of January 1, 1986, for 1986 for all foreign fisheries.

EFFECTIVE DATE: January 1, 1986. Comments will be accepted until March 3, 1986.

ADDRESSES: Send comments on interim specifications to the appropriate NMFS Regional Director listed below.

For current apportionments at any time during the year contact the Regional Director.

Mr. Richard Schaefer, Acting Director, Northeast Region, NMFS, 14 Elm Street, Federal Building, Gloucester, MA 01930, 617–281–3600

Mr. Jack T. Brawner, Director, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, 813–893–3141

Mr. Robert W. McVey, Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, AK 99802, 907–586–7221

Mr. Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115, 206–526–6150

Mr. E. Charles Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731, 213–548–2575.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Haynes (Fisheries Management Specialist), 202–634–7432.

SUPPLEMENTARY INFORMATION: This notice announces initial 1986 specifications for all fisheries having a foreign fishing component.

1. Northwest Atlantic Ocean Fisheries (Northeast Region)

Foreign fishing regulations for Atlantic hake, river hearring and other finfish, and mackerel, squid, and butterfish appear at §§ 611.50 and 611.51.

The hake and river herring fisheries are managed under preliminary management plans in which the initial annual specifications remain constant from year to year. Therefore, the numbers shown for these species in the table below are final for 1986.

The mackerel, squid, and butterfish fisheries are managed under one combined fishery management plan (FMP). Procedures for determining OY for these species each year are described in § 655.20. The preliminary initial annual amounts are scheduled to be published by February 1 for the fishing year beginning April 1, 1986. Therefore, the numbers shown in the table below are the current specifications for the fourth quarter of the 1985–86 fishing year ending March 31, 1986. Comments are invited regarding specifications for the 1986–87 fishing year.

2. Atlantic and Gulf Fisheries (Southeast Region)

Foreign fishing regulations for the Atlantic shark and royal red shrimp fisheries appear at §§ 611.61 and 611.62.

The shark fishery is managed under a multi-year preliminary management plan in which the specifications remain constant from year to year. Therefore, the numbers shown for sharks in the table below are final for 1986.

The royal red shrimp fishery is managed under the FMP for the Shrimp Fishery of the Gulf of Mexico. The TALFF established in the FMP and its implementing regulations (46 FR 27489, May 20, 1981) for this species has continued without change from year to year. Therefore, the numbers shown for royal red shrimp in the table below may be considered final for 1986.

3. Alaska Fisheries (Alaska Region)

Foreign fishing regulations for groundfish fisheries off Alaska appear at §§ 611.72 and 611.75.

The snail fishery in the Gulf of Alaska is managed under a multi-year preliminary management plan in which the specifications remain constant from year to year. Therefore, the numbers shown for snails in the table below are final for 1986.

A. Bering Sea and Aleutian Islands Groundfish Fisheries.

Specifications published for these fisheries (50 FR 956, January 9, 1986) and repeated in the table below are interim pending consideration of public comments on initial apportionment of the reserve invited in the interim notice and on these specifications for 30 days. Final specifications, expected to be essentially the same as these interim amounts, will be published after the end of the comment period.

B. Gulf of Alaska Groundfish Fisheries.

Specifications published for these fisheries (51 FR 956, January 9, 1986) and repeated in the table below are interim pending amendment of the FMP to revise OYs for several species based on more recent scientific information. Public comments on these specifications and possible revisions are invited for 30 days. Final specifications for 1986 will be published when the amendment is implemented.

4. Northeast Pacific Ocean Fisheries (Northwest Region)

Foreign fishing regulations for these fisheries appear at § 611.70. Final specifications for 1986 were published January 10, 1986 (51 FR 1255), and are repeated in the table below.

5. Western Pacific Ocean Fisheries (Southwest Region)

Foreign fishing regulations for these fisheries appear at §§ 611.80 and 611.81. These fisheries are managed under multi-year preliminary management plans in which the specifications remain constant from year to year. Therefore, the numbers shown for the various species in the table below are final for 1986.

INITIAL (AS OF JAN. 1, 1986) OPTIMUM YIELD (OY) OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS

Species	Species code	Areas	OY or TAC [1]	DAH	DAP	JVP	Reserve	TALFF
1. NORTHEAST REGION								
Northwest Atlantic Ocean Fisheries (§§ 611.50 and 611.51)								
A. Hake fishery:								
(Source: 50 FR 468, January 4, 1985):								
Hake, silver	104	NW Atlantic I–IV [2]	30,000	20,600	5,600		0	9,400
		NW Atlantic V	13,000	9,000	2,000		0	4,000
Hake, red	105	NW Atlantic I–IV	16,000	13,000	13,000	0	0	3,000
		NW Atlantic V	6,000	500	500	0	3,000	2,500
B. Trawl fishery:								
(Source: 50 FR 468, January 4, 1985):								
Herring, river	309		8,000	7,800	7,800	0	0	200
Other finfish	499		247,000	200,200	180,000	20,200	0	46,800
C. Mackerel fishery:								
(Source: 51 FR 959, January 9, 1986; fourth quarter, fishing year ends March 31, 1986):								
Atlantic mackerel	204		[3] 225,300	[3] 123,200	13,000	100,000	51,050	51,070
D. Squid fishery:								
(Source: 51 FR 959, January 9, 1986; fourth quarter, fishing year ends March 31, 1986):								
Squid, *Loligo*	502		[3] 44,000	22,500	20,500	20,000	0	7,725
Squid, *Illex*	504		[3] 30,000	16,000	11,500	4,600	0	3,900
E. Butterfish fishery:								
(Source: 51 FR 959, January 9, 1986; fourth quarter, fishing year ends March 31, 1986):								
Butterfish [4]	212		[3] 16,000	11,000	11,000	[5]	0	[3] 1,145
2. SOUTHEAST REGION								
Atlantic and Gulf Fisheries (§§ 611.61 and 611.62)								
A. Atlantic billfish and sharks fishery:								
(Source: 48 FR 3371, January 25, 1983):								
Sharks	469		6,150	5,000			0	1,150
B. Shrimp fishery of the Gulf of Mexico:								
(Source: 46 FR 27489, May 20, 1981):								
Royal red shrimp	630		177.8	111.6			0	66.2
3. ALASKA REGION								
Alaska Fisheries (§§ 611.92 and 611.93)								
A. Bering Sea and Aleutian Islands Groundfish Fishery								
(Source: 51 FR 958; January 9, 1986):								
Pollock	701	Bering Sea [6]	[3] 1,200,000	831,775	141,775	690,000	(7)	186,245
		Aleutians [6]	[3] 100,000	26,843	18,039	10,804	(7)	56,157
Pacific ocean perch [8]	780	Bering Sea	[3] 825	770	576	194	(7)	55
		Aleutians	[3] 6,800	6,800	6,340	460	(7)	50
Other rockfish	849	Bering Sea	[3] 825	781	648	143	(7)	50
		Aleutians	[3] 5,800	5,800	5,791	9	(7)	50
Sablefish	703	Bering Sea	[3] 2,250	2,072	1,826	246	(7)	95
		Aleutians	[3] 4,249	4,199	4,159	40	(7)	50
Pacific cod	702		[3] 229,000	184,224	133,394	50,830	(7)	[3] 32,406
Yellowfin sole	720		[3] 209,500	126,330	1,030	127,300	(7)	49,745
Greenland turbot	721		[3] 33,000	10,414	5,414	5,000	(7)	17,636
Arrowtooth flounder	118		[3] 20,000	3,472	1,805	1,667	(7)	13,528
Other flatfish	129		[3] 124,200	93,742	4,192	89,550	(7)	11,826

INITIAL (AS OF JAN. 1, 1986) OPTIMUM YIELD (OY) OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS—Continued

Species	Species code	Areas	OY or TAC [1]	DAH	DAP	JVP	Reserve	TALFF
Atka mackerel	207		[1] 30,600	30,600	10	30,790	(9)	50
Squid	509		[1] 5,000	60	10	50	(9)	4,210
Other species [8]	499		[1] 27,600	7,110	110	7,000	(9)	16,520
B. Gulf of Alaska Groundfish fishery (Source: 51 FR 856, January 9, 1986):								
Pollock	701	Western/Central [9]	305,000	289,000	204,000	85,000	16,000	0
		Eastern [9]	16,600	13,280	13,280	0	3,320	0
Pacific cod	702	Western	16,560	13,248	10,727	2,521	3,320	0
		Central	33,540	26,832	23,873	2,959	6,708	0
		Eastern	9,900	7,920	7,920	0	1,980	0
Flounders	129	Western	10,400	8,320	7,284	1,036	2,080	0
		Central	14,700	11,770	10,686	1,084	2,930	0
		Eastern	8,400	6,720	6,720	0	1,680	0
Pacific ocean perch [4]	780	Western	1,302	1,302	1,302	0	0	0
		Central	3,906	3,906	3,906	0	0	0
		Eastern	675	675	675	0	0	0
Other rockfish [7]	849	Gulf-wide	4,400	4,400	4,400	0	0	0
		Central S.E. Outside	600	600	600	0	0	0
Sablefish [5]	703	Western	1,670	1,670	1,670	0	0	0
		Central	3,060	3,060	3,060	0	0	0
		West Yakutat [6]	1,680	1,680	1,680	0	0	0
		East Yakutat [5]	850 to 1,135	850 to 1,135	850 to 1,135	0	0	0
		Southeast Outside [6]	470 to 1,435	470 to 1,435	470 to 1,435	0	0	0
Atka mackerel	207	Western	4,676	3,752	10	3,742	926	0
		Central	500	400	370	30	100	0
		Eastern	100	80	80	0	20	0
Thornyhead rockfish	749	Gulf-wide	3,750	3,000	1,500	1,500	750	0
Squid	509	Gulf-wide	5,000	4,000	2,000	2,000	1,000	0
Other species [8]	499	Gulf-wide	22,460	17,968	9,074	8,894	4,492	0
C. Snail fishery: (Source: 46 FR 1738, January 7, 1981):								
Snails (meats)	673		3,000	0	0	0	0	3,000
4. NORTHWEST REGION								
Northeast Pacific Ocean Fisheries (§ 611.70)								
Pacific Coast Groundfish Fishery (Source: 51 FR 1255; January 10, 1986):								
Pacific whiting	704		227,500	135,000	15,000	[1] 120,000	45,500	47,000
Sablefish	703		[11] 13,600	13,600	13,600	(10)	0	(10)
Pacific ocean perch (POP)	780		[10] 1,550	1,550	1,550	(10)	0	(10)
Shortbelly rockfish	850		10,000	6,000	1,000	5,000	2,000	2,000
Widow rockfish			10,200	10,200	10,200	0	0	0
Jack mackerel	208		12,000	0	0	0	0	[10] 0
Other species	499		(12)					
5. SOUTHWEST REGION								
Western Pacific Ocean Fisheries (§§ 611.60 and 611.61)								
A. Seamount Groundfish Fishery: (Source: 46 FR 7386, January 23, 1981):								
Armorheads	200							
Alfonsins	201							
Other groundfish	499		[14] 2,000	0	0	0	0	2,000
B. Pacific Billfish and Sharks Fishery: (Source: 46 FR 1738, January 7, 1981):								
Swordfish	264	West Coast	318.4	[10] 350.2			0	0
		Hawaii & Midway	93.6	5.9			8.8	78.9
		Guam & N. Marianas	4.1	0.2			0.4	3.5
		American Samoa	2.4	0			0	2.4
		U.S. Possessions	28.1	0			0	28.1
Blue marlin	260	West Coast						
		Hawaii & Midway	612.0	603.4			8.6	0
		Guam & N. Marianas	26.9	3.0			23.9	0
		American Samoa	37.2	2.3			0	34.9
		U.S. Possessions	76.3	0			0	76.3
Black marlin	253	West Coast						
		Hawaii & Midway	97.7	[10] 104.7			0	0
		Guam & N. Marianas	0.6	0			0.1	0.5
		American Samoa	5.3	0			0	5.3
		U.S. Possessions	6.2	0			0	6.2
Striped marlin	261	West Coast	43.2	[10] 47.5			0	0
		Hawaii & Midway	223.2	67.9			15.5	139.8
		Guam & N. Marianas	5.0	0.3			0.5	4.2
		American Samoa	7.6	0			0	7.6
		U.S. Possessions	46.6	0			0	46.6
Sailfish	252	West Coast						
Spearfish	262	Hawaii & Midway	42.7	23.4			1.8	17.4
		Guam & N. Marianas	4.8	0.2			0.5	4.1
		American Samoa	3.5	1.3			0	2.2
		U.S. Possessions	14.3	0			0	14.3
Sharks 263, 265, 266, 267, 469		West Coast	27.6	[10] 30.4			0	0
		Hawaii & Midway	1,111.6	0			111.1	1,000.5
		Guam & N. Marianas	31.9	0			0	31.9
		American Samoa	101.6	0			0	101.6
		U.S. Possessions	651.4	0			0	651.4
Wahoo	256	West Coast						
		Hawaii & Midway	266.9	[10] 317.8				0
		Guam & N. Marianas	25.1	27.6				0

INITIAL (AS OF JAN. 1, 1986) OPTIMUM YIELD (OY) OR TOTAL ALLOWABLE CATCH (TAC), ESTIMATED DOMESTIC ANNUAL HARVEST (DAH), ESTIMATED DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), RESERVE, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS—Continued

Species	Species code	Areas	OY or TAC [1]	DAH	DAP	JVP	Reserve	TALFF
Mahimahi	237	American Samoa	4.6	2.6				2.0
		U.S. Possessions						
		West Coast						
		Hawaii & Midway	105.0	[16] 115.5			0	0
		Guam & N. Marianas	18.9	[15] 20.8			0	0
		American Samoa	6.4	4.4			0	20
		U.S. Possessions						

Footnotes:

[1] *OY* means optimum yield (in the Atlantic mackerel, squid, and butterfish fishery, the OY shown is the maximum allowed by the FMP); *TAC* means total allowable catch determined annually within an established range of a multi-year, multi-species OY for the Bering Sea and Aleutian Islands area groundfish complex.

[2] *Northwest Atlantic* means foreign fishing areas I to IV or V in § 611.9, Appendix II, figure I; *Bering Sea* means fishing areas I, II, and III, and *Aleutian Islands area* means fishing area IV in § 611.8, figure 2.

[3] For the Atlantic mackerel fishery, DAH includes a projected recreational catch of 10,200 mt. For the butterfish fishery, JVP is conditional and TALFF is determined by a fixed percentage of the amount of other species allocated to foreign fishing vessels under § 655.21(b)(3)(iii).

[4] In Alaskan fisheries, the category "Pacific ocean perch" includes *Sebastes alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleutianus* (rougheye rockfish), *S. borealis* (shortraker rockfish), and *S. zacentrus* (sharpchin rockfish). In the Pacific coast groundfish fishery, POP is *S. alutus*.

[5] The category "other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus. The OY for Gulf of Alaska "other species" equals 5% of the OYs for target species.

[6] See Figure 1 of § 611.92(a) for description of regulatory areas and districts.

[7] The category "other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch", as defined in footnote 5 above, and *Sebastolobus* (thornyhead rockfish).

[8] Excludes values for the Southeast Inside District, which is not governed by these regulations.

[9] 15% of the TAC, or 300,000 metric tons, is apportioned to the initial pooled reserve and the remaining TAC is apportioned to DAP, JVP, or TALFF as needed. TALFFs of Pacific cod, Pacific ocean perch, other rockfish contain amounts from the initial pooled reserve.

[10] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) follow: sablefish 0.173%, Pacific ocean perch 0.062%, rockfish excluding POP 0.738%, flatfish 0.1%, jack mackerel 3.0%, and other species 0.5%. In foreign trawl and joint venture fisheries, "other species" means all species, including non-groundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding POP, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions of the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[11] Of the 13,600 mt, 2,500 mt is for part of the Monterey subarea. See § 633.21(a)(2).

[12] Of the 1,550 metric tons, 600 metric tons is for the Vancouver subarea and 950 metric tons is for the Columbia subarea. POP from other subareas are included in the OY for "other species". See § 663.21(a)(3).

[13] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 633. See § 663.2 for species listing.

[14] OY includes all seamount groundfish resources.

[15] Estimated DAH exceeds OY for this fishery.

Other Matters

This notice is issued under 50 CFR Part 611 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 27, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-2061 Filed 1-29-86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 20
Thursday, January 30, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708

Merger of Credit Unions; Proposed revision

AGENCY: National Credit Union Adminstration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA requests comments on its proposal to revise Part 708, Mergers of Credit Unions, of the National Credit Union Administration's Rules and Regulations. Basically, the proposed revisions would (1) provide discussion on the one percent NCUSIF deposit, (2) shorten from 120 days to 60 days the length of time permitted between the date of approval of the merger by NCUA and the time it must be presented for membership vote by the merging credit union, (3) establish a time frame for notifying NCUA of the results of a membership vote, (4) establish a time frame for notifying NCUA of the completion of the merger, and (5) eliminate the requirement that financial statements, a certification of completion from the merging credit union, and the merging credit union's charter and insurance certificate be sent to NCUA upon completion of the merger. The proposed revision will also clarify certain ambigious words and statements and make grammatical and technical changes. Comments are requested on these matters as well as on any other issues of concern to the public with respect to mergers. This notice of proposed rulemaking will be followed by a final rule.

DATE: Comments must be received on or before March 30, 1986.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456. Telephone: (202) 357–1100.

FOR FURTHER INFORMATION CONTACT: Harvey J. Baine III, Regional Director, Region II (Capital), at Suite 700, 1776 G Street, NW., Washington, D.C. 20006, or telephone: (202) 682–1900.

SUPPLEMENTARY INFORMATION: Part 708 of the National Credit Union Administration Rules and Regulations sets forth procedural requirements for a credit union to merge with another credit union. The proposed revision is the result of NCUA's ongoing review of regulations. The regulation was reviewed to determine whether it could be further simplified or whether further mandatory requirements were necessary. The number of mergers has increased greatly in recent years. This trend reflects more aggressive efforts by agency personnel to arrange mergers for troubled credit unions and broadened field-of-membership policies. Prior to 1982, section 109 of the Federal Credit Union Act (12 U.S.C. 1759), which addresses Federal Credit Union membership, was narrowly interpreted by NCUA. In April 1982, NCUA deregulated its field-of-membership policy. Because of these more flexible membership policies, a credit union seeking a merger partner can now merge with a credit union nearby. Our experience indicates that most mergers involve small credit unions merging with a larger nearby credit union for the purpose of expanding services to the membership of the merging credit union. Our experience also indicates that most mergers are consummated by the credit unions involved within two months of NCUA approval. Due to the lack of time frames or unnecessarily long time frames contained in the existing regulations, it frequently takes extensive followup to obtain the necessary documentation to finalize the merger and eventually cancel the merging credit union's charter and/or insurance certificate. We believe that the changes will help to improve this situation. Also contributing to this problem is the requirement that the continuing credit union submit various documents to NCUA upon completion of the merger. This puts an unnecessary burden on both the credit union and NCUA personnel who must follow up to obtain the documentation. We propose that the credit union simply certify the completion of the merger to NCUA.

The following substantive changes are made in the proposed regulation: (1) Language in § 708.1(a)(3) of the current regulation concerning credit unions in the Panama Canal Zone and former Department of Defense credit unions has been deleted; (2) language concerning capitalization assessment and refund of the NCUSIF insurance premium is added to § 708.3 of the regulation. This addition is neccessary due to the recent capitalization of the share insurance fund; (3) a sentence is added to § 708.4(a)(10) of the regulation to clarify that charter amendments included in a proposed merger plan will usually pertain to the name of the credit union and its field of membership; (4) shorten from 120 days to 60 days the length of time permitted between date of approval of the merger NCUA and the time it must be presented for membership vote by the merging credit union in § 708.7(a)(1) of the regulation; (5) establish a time frame of 10 days for the merging Federal credit union to certify to NCUA the results of the membership vote in § 708.8 of the regulation; (6) eliminate the requirements that financial statements, a certification of completion from the merging credit union and the merging credit union's charter and insurance certificate be sent to NCUA upon completion of the merger in § 708.9 of the regulation. In addition to these substantive changes, several technical and grammatical corrections are made in the proposed regulation.

Regulatory Procedures

The NCUA Board hereby certifies that any proposed change to the regulation, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposed changes are merely procedural changes. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This proposed rule would eliminate a paperwork requirement currently in place thereby reducing the paperwork burden of federally-insured credit unions.

List of Subjects in 12 CFR Part 708

Credit Unions, Mergers of Credit Unions, Reporting and recordkeeping requirements.

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By the National Credit Union Administration on the 16th day of January, 1986.

Rosemary Brady,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

It is proposed that Part 708 be revised to read as follows:

PART 708—MERGERS OF CREDIT UNIONS

Sec.

708.0 Scope.
708.1 Definitions.
708.2 When permissible.
708.3 Special provisions for National Credit Union share insurance.
708.4 Preparation of merger plan.
708.5 Submittal of merger proposal to Administration.
708.6 Approval of merger proposal by NCUA.
708.7 Approval of the merger proposal by members.
708.8 Certificate of vote on merger proposal.
708.9 Completion of merger.

Authority. 12 U.S.C. 1757, 1766 and 1789.

§ 708.0 Scope.

(a) This Part prescribes the procedures that enable one or more credit unions to merge with a single continuing credit union where at least one of the merging credit unions or the continuing credit union is a Federal credit union or a federally-insured state credit union.

(b) Nothing in this Part shall operate as a restriction or otherwise impair the authority of NCUA to approve a merger pursuant to the provision of section 205(h) of the Act.

§ 708.1 Definitions.

(a) As used herein:

(1) The continuing credit union is that credit union which will continue in operation after the merger.

(2) The merging credit union is that credit union which will cease to exist as an operating credit union at the time of the merger.

(3) State credit union means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, state means the appropriate regulatory or supervisory authority for any such credit union.

§ 708.2 When permissible.

(a) When the requirements enumerated herein have been met, merger may be effected if:

(1) There has been compliance with National Credit Union Administration (NCUA) chartering policies (where the continuing credit union is a Federal credit union); or

(2) Permitted by state law or authorized by the state supervisory authority (where the continuing or merging credit union is a state credit union).

(b) In any case where the continuing credit union is federally-insured, and the merging credit union is not federally-insured, a determination shall be made by NCUA as to the potential risk to the National Credit Union Share Insurance Fund (NCUSIF).

§ 708.3 Special provisions for National Credit Union share insurance.

(a) Where the continuing credit union is not federally-insured, but the share accounts of the merging credit union are so insured, such insurance ceases as of the effective date of the merger. Members of the merging credit union shall be notified accordingly prior to any required voting activity to approve the merger.

(b) When a credit union's insurance is terminated in accordance with paragraph (a) of this section, the continuing credit union is entitled to a refund of the NCUSIF deposit required by § 741.5 (12 CFR 741.5) and to a refund of the unused portion of the NCUSIF share insurance premium (if any).

(c) Where the merging credit union is federally-insured and the continuing credit union is not so insured, but desires to be insured as of the date of the merger, an application shall be submitted to NCUA when the merging credit union requests its approval of the merger proposal. An NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on the additional share accounts insured as a result of the merger.

(d) Where the federally-insured credit union will be the continuing one, an NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on the additional share accounts insured as a result of the merger of a non federally-insured credit union with a federally-insured credit union.

§ 708.4 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, a plan for the proposed merger shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Provisions with respect to notification and payment of creditors;

(8) Explanation of any changes relative to insurance of member accounts;

(9) Provisions for insuring that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a Federal credit union); and

(10) Proposed charter amendments (where the continuing credit union is a Federal credit union). These amendments, if any, will usually pertain to the name of the credit union and the definition of its field of membership.

§ 708.5 Submittal of merger proposal to Administration.

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the following information will be submitted to NCUA:

(1) The merger plan, as described in this part;

(2) Resolutions of the boards of directors;

(3) Proposed Merger Agreement;

(4) Proposed Notice of Special Meeting of the Members (for merging Federal credit unions);

(5) Copy of the form of Ballot to be sent to the members (for merging Federal credit unions);

(6) Evidence that the state's supervisory authority is in agreement with the merger proposal (for states which require such agreement prior to NCUA approval); and

(7) Application and Agreements for Insurance of Member Accounts (for continuing state credit unions desiring to become federally-insured).

§ 708.6 Approval of merger proposal by NCUA.

(a) If NCUA finds that the merger proposal complies with this and other parts of these regulations, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger. Provided, however, that in the event NCUA determines that the merging credit union, if it is a Federal credit union, is in danger of insolvency, and that the proposed merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund, NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging Federal credit union, notwithstanding the provisions of § 708.7.

(b) Any proposed charter amendments for a continuing Federal credit union will be approved contingent upon the completion of the merger.

§ 708.7 Approval of the merger proposal by members.

(a) When the merging credit union is a Federal credit union, the members shall:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of such approval, or by mail ballot postmarked no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting at which the merger proposal is to be submitted, in accordance with the provisions of Article V, Meetings of Members, Federal Credit Union Bylaws. The notice shall:

(i) Specify the purpose of the meeting and the time and place;

(ii) Include a summary of the merger plan, which shall contain, but not necessarily be limited to, current financial reports for each credit union, a combined financial report for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance of member accounts;

(iii) State reasons for the proposed merger;

(iv) Provide name and location (to include branches) of the continuing credit union;

(v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be postmarked no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(vi) Be accompanied by a Ballot for Merger Proposal.

(b) The merger proposal of a merging Federal credit union must be approved by affirmative vote of a majority of the members of the credit union who vote on the proposal.

§ 708.8 Certificate of vote on merger proposal.

The board of directors of the merging Federal credit union shall certify the results of the membership vote to NCUA within 10 days after the vote is taken.

§ 708.9 Completion of merger.

(a) Upon approval of the merger proposal by NCUA and by the state supervisory authority (where the continuing or merging credit union is a state credit union) and by the members of each credit union where required, action may be taken to complete the merger.

(b) Upon completion of the merger, the board of directors of the continuing credit union shall certify the completion of the merger to NCUA within 30 days after the effective date of the merger.

(c) Upon NCUA's receipt of a certification that the merger has been completed, then the charter of the merging Federal credit union (if applicable), and the insurance certificate of any merging federally-insured credit union will be cancelled.

[FR Doc. 86-1906 Filed 1-29-86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-86-1]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of disposition of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before March 31, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-240), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 24, 1986.

John H. Cassedy,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24784	Icarus Executive Services	Description of the petition: Petitioner proposes amendments that would require each certificate holder to periodically undergo a comprehensive inspection and evaluation to demonstrate continuing full compliance with Part 135 regulatory requirements. Petitioner further proposes that the periodic inspection may be completed by persons or organizations other than the FAA unless, in a particular instance, such is found not to be in the public interest. Additionally, the cost of the inspections by persons other than the FAA is to be borne by the certificate holder. Regulations Affected: 14 CFR 135.73. Petitioner's reason for rule: The FAA would enhance the entire program of air carrier inspection and evaluation while reducing the cost to the government of the FAA inspection program.
24827	Pan American World Airways	Description of the petition: Petitioner requests amendments to clarify the meaning of the words "7 consecutive days," insofar as it determines the timeframe for the required 24 consecutive hours of rest for international flying. Petitioner also requests a stay of enforcement of the FAA interpretation issued on December 6, 1977, for § 121.471(a) and 121.483(b). Petitioner interprets the phrase "7 consecutive days" to mean "a 168-hour period which begins at the commencement of duty immediately following a 24-consecutive-hour duty free period.

PETITIONS FOR RULEMAKING—Continued

Docket No.	Petitioner	Description of the petition
24520	Aviation Training Academy	Regulations affected: 14 CFR 121.481(d) & 121.483(b). Description of the petition: To allow the use of aviation red or aviation white or a combination thereof for the approved anticollision light(s) required for nighttime operation. Regulations affected: 14 CFR 27.1401(d). Petitioner's reason for rule: Petitioner contends that by allowing the use of aviation white or a combination of aviation white and aviation red that safety will be enhanced.

PETITIONS FOR RULEMAKING: WITHDRAWN OR DENIED

Docket No.	Petitioner	Description and disposition of the rule requested
18591	Transamerica Airlines, Inc. & World Airways.	Description and disposition of the rule requested: The changes would allow scheduled air carriers to use the procedures that are now applicable to supplemental air carriers. These changes would provide the petitioner's permanent relief from those sections, as was provided by three exemptions (Nos. 2680, 2696, and 2696A) held by the petitioner's at the time of the petition. The petition also proposes to make changes in other related section, replace them with new proposed sections, or to make them conform in terminology with the major proposed changes. Regulations affected: 14 CFR Part 121. Denied 1/3/86.
23273	Air Transport Association of America.	Description and disposition of the rule requested: To eliminate the practical test requirements for issuing type ratings to pilots. The petitioner suggests three alternative regulatory proposals. Pilots who already hold an Airline Transport Pilot (ATP) certificate and a jet transport type rating who are employed by a Part 121 operator and have successfully completed an approved aircraft qualification course and a flight check administered by the operator could: 1) be issued a type rating by the FAA after a flight check administered by the operator; 2) serve a pilot in command (PIC) for that operator without additional Federal Aviation Administration (FAA) certification, if the pilots holds at least one type rating in the same airplane group; or 3) be issued a type rating by the FAA after being observed by an FAA inspector on at least one leg of the pilot's initial operating experience (IOE). Regulations affected: 14 CFR 61.31(a), 61.157, and 121.437(a). Denied 1/13/86.

[FR Doc. 86-2013 Filed 1-29-86; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-50]

Proposed Alteration of VOR Federal Airway V-532—KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-532 by extending that airway from Salina, KS, direct to Lincoln, NE. Pilots routinely request direct routing between Salina and Lincoln. This action would expedite traffic, aid flight planning, and save fuel by eliminating the current dogleg via Pawnee City, NE.

DATES: Comments must be received on or before March 17, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Central Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-50, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-50." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-532 by extending that airway from Salina, KS, direct to Lincoln, NE. The Minneapolis Air Route Traffic Control Center has received numerous requests from pilots for direct routing from Lincoln direct to Salina. In order to assist users, we propose to designate an airway in that area where radar vectors are normally applied. This action would save fuel, reduce controller workload and aid flight planning. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-532 [Amended]

By removing the words "to Salina." and by substituting the words "Salina; to Lincoln, NE."

Issued in Washington, DC, on January 23, 1986.

Daniel J. Peterson,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-2011 Filed 1-29-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 145

[Docket No. 85N-0502]

Canned Fruit Cocktail; Advance Notice of Proposed Rulemaking on the Possible Amendment of the U.S. Standards of Identity, Quality, and Fill of Container; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; Extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its advance notice of proposed rulemaking on the possible amendment of the U.S. standards for canned fruit cocktail. This action is based on a request for an extension of the comment period.

DATE: Comments by March 31, 1986.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Catharine R. Calvert, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0121.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 29, 1985 (50 FR 49066), FDA published an advance notice of proposed rulemaking offering interested persons an opportunity to review the Codex Standard for Canned Fruit Cocktail (Codex Standard 78-1981) (Codex Standard) and to comment on the desirability of, and need for, amendment of the U.S. standards of identity, quality and fill of container for canned fruit cocktail. FDA requested comments by January 28, 1986.

The National Food Processors Association (NFPA), on behalf of its member companies, submitted a request for a 60-day extension of the comment period. The purpose of the request is to allow the industry adequate time to properly evaluate the Codex standard and determine a proper course of action.

FDA concludes that NFPA has provided adequate justification for its request. Therefore, FDA is extending the comment period for 60 days to March 31, 1986.

Interested persons may, on or before March 31, 1986, submit to the Dockets Management Branch (address above) written comments regarding this advance notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above betwen 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 1986.

Sanford A. Miller,
Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-1978 Filed 1-27-86; 10:29 am]
BILLING CODE 4160-01-M

21 CFR Part 163

[Docket No. 85N-0501]

Chocolate Products; Possible Amendment of the U.S. Standards of Identity; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice; Extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its advance notice of proposed rulemaking on the possible amendment of the U.S. standard for chocolate products. This action is based on a request for an extension of the comment period.

DATES: Comments by April 30, 1986.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 2, 1985 (50 FR 49398), FDA published an advance notice of proposed rulemaking offering interested persons an opportunity to review the Codex Standard for Chocolate (Codex standard) and to comment on the desirability of, and need for, amendment of the U.S. standards of identity for chocolate products to achieve consistency with the Codex standard. FDA requested comments by January 31, 1986.

The Chocolate Manufacturers Association of the United States of America (CMA) has requested a 90-day extension of the comment period. The purpose of the request is to allow the industry adequate time to properly review the Codex Standard and determine a proper course of action.

FDA concludes that CMA has provided adequate justification for its request. Therefore, FDA is extending the comment period for 90 days to April 30, 1986.

Interested persons may, on or before April 30, 1986, submit to the Dockets Management Branch (address above) written comments regarding this advance notice. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-1992 Filed 1-29-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-95-84]

Limitations on Alternative Benefits; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to certain restrictions on an employee's right to receive alternative forms of benefit under qualified plans. They reflect changes made by the Retirement Equity Act of 1984 (REA). The regulations will generally affect sponsors of, and participants in, pension, profit-sharing and stock bonus plans, and they provide plan sponsors with guidance necessary to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered or mailed March 31, 1986. These regulations are proposed to be effective January 30, 1986, except as otherwise specified in these regulations.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-95-84) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Nancy J. Marks of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T). Telephone 202-566-3903 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 401 and 411 of the Internal Revenue Code of 1954 (Code). Generally, the proposed regulations under section 401(a)(4) clarify existing law. The proposed regulations under sections 401 and 411 conform the regulations to section 301 of the Retirement Equity Act of 1984 (REA). The regulations are proposed to be issued under the authority of Code section 411(d)(6) and 7805 (98 Stat. 1450, 68A Stat. 917; 26 U.S.C. 411(d)(6), 7805).

Nondiscrimination Requirements

Section 401(a)(4) of the Code provides that a qualified plan must provide either contributions or benefits that do not discriminate in favor of employees who are officers, shareholders or highly compensated (the prohibited group).

Rev. Rul. 85-59, 1985-19 I.R.B. 4, considered whether plans providing actuarially equivalent forms of benefit that are subject to certain conditions (including a requirement that the trustee approve a participant's request to receive a single sum distribution) would satisfy section 401(a)(4). Rev. Rul. 85-59 held that these restrictions on a plan participant's ability to receive a single sum distribution may be discriminatory under section 401(a)(4).

The proposed regulations generally restate the position taken in Rev. Rul. 85-59. However, they provide that this position will be applied only prospectively with respect to existing conditional alternative forms of benefit. Thus, with respect to such benefits, Rev. Rul. 85-59 will not be applied until these regulations are effective.

REA Requirements

Rev. Rul. 79-90, 1979-1 C.B. 155, held that a defined benefit pension plan violates the definitely determinable benefits requirement of section 401 and Treas. Reg. § 1.401-1(b)(1)(i) unless, whenever the amount of any optional or early retirement benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a manner that precludes employer discretion. For this purpose employer discretion includes discretion of the employer, plan administrator, fiduciary, actuary or other person.

Rev. Rul. 81-12, 1981-1 C.B. 228, considered whether plan amendments that changed actuarial factors directly or indirectly affected the computation of a participant's accrued benefit in a manner that violated section 411(d)(6) of the Code. Rev. Rul. 81-12 held that a change in acturarial factors that affects the calculation of a participant's optional or early retirement benefit is subject to the protective language of section 411(d)(6). Thus, a change in actuarial factors that could result in the decrease of a participant's accrued benefit, including an optional or early retirement benefit, would result in plan disqualification.

Section 401(a)(25) of the Code, added by section 301 of REA, affirms the Service's application (in Rev. Ruls. 79-90 and 81-12) of the section 401(a) definitely determinable benefit requirement. Section 401(a)(25) provides that a defined benefit plan shall not be treated as providing definitely determinable benefits unless any actuarial assumptions used to determine the amount of any benefit are specified in the plan in a way that precludes employer discretion.

Section 411(d)(6) of the Code, as amended by section 301 of REA, provides that, in general, a plan will not satisfy the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA). Section 411(d)(6) also provides that a plan amendment that has the effect of eliminating or reducing an early retirement benefit or, under certain conditions, a retirement-type subsidy or an optional form of benefit, with respect to benefits attributable to service before the amendment, shall be treated as impermissibly reducing accrued benefits. An exception is provided to the extent that such amendments are permitted under regulations promulgated by the Secretary under the grant of regulatory authority contained in section 411(d)(6).

The proposed regulations provide that the definitely determinable benefit requirement precludes a pension plan provision that allows employer consent or discretion with respect to the availability or payment of any alternative forms of benefit. The proposed regulations further provide

that any qualified plan, including any profit-sharing or stock bonus plan that is not subject to the definitely determinable benefit requirement, may not contain these types of employer consent or discretion provisions. These provisions would effectively enable an employer to eliminate or reduce the availability of alternative forms of benefit without regard to the protection given to plan participants under section 411(d)(6) that such accrued benefits not be eliminated or reduced. However, the proposed regulations clarify that a qualified plan may condition the availability of an alternative form of benefit on satisfaction of objective and clearly ascertainable criteria specifically set forth in the plan, including, for example, the insurability of the employee or the existence of extreme financial need. The prohibition on employer consent or discretion is not violated where the employer reasonably and consistently applies such objective and clearly ascertainable criteria.

Title I of ERISA

The proposed regulations under section 411 are also applicable to identical provisions of Title I. Thus, these requirements also apply to employee plans subject to Title I of ERISA. Under section 101 of Reorganization Plan No. 4 of 1978 [43 FR 47713], the Secretary of the Treasury has jurisdiction over the subject matter addressed in these regulations. Therefore, under section 104 of the Reorganization Plan, these regulations apply when the Secretary of Labor exercises authority under Title I of ERISA.

Plan Amendments

Existing plans that contain alternative forms of benefit that are subject to consent or discretion provisions, or other conditions that discriminate, must be amended by the first day of the first plan year for which these regulations are effective, such amendments to be effective as of that day. These amendments must eliminate (a) employer discretion or consent provisions applicable to the availability of alternative forms of benefit, and (b) other conditions with respect to such alternative forms of benefit that discriminate. Alternatively, the plan must be amended to eliminate the alternative forms of benefit that are subject to such discretion or consent provisions or other conditions that discriminate. In addition, existing plans that contain conditions applicable to alternative forms of benefit that may reasonably be expected to discriminate may be amended either to eliminate such conditions or to eliminate the alternative forms of benefit subject to such conditions. Furthermore, plans may not be amended to add employer discretion or consent provision or other conditions that discriminate with respect to an alternative form of benefit.

Effective Dates of This Regulation

Section 1.401(a)-4 of these regulations is generally proposed to be effective January 30, 1986, in the case of plans either adopted or made effective on or after that date. With respect to plans in existence (adopted and in effect) prior to January 30, 1986, the following effective dates are applicable. In the case of existing plans that are amended to add discriminatory provisions or conditions relating to the availability of an alternative form of benefit, of the type described herein, the regulation is proposed to be effective January 30, 1986, with respect to such alternative form of benefit. In the case of existing non-collectively bargained plans, the regulation is proposed to be effective for the second plan year commencing on or after January 30, 1986. For existing collectively bargained plans, the regulation is proposed to be effective for the earlier of (a) the third plan year commencing on or after January 30, 1986, or (b) the second plan year beginning after the expiration of the last of the collective bargaining agreements, in effect on January 30, 1986, pursuant to which the plan is maintained.

Section 1.411(d)-4 is proposed, except in the case of adoptions of certain master or prototype plans, to be effective August 1, 1986 in the case of plans either adopted or effective on or after that date. Employers who adopt a master or prototype plan for which a sponsor applied to the Service for an opinion letter or or before December 31, 1984, and for which a favorable opinion letter was received after that date are deemed to have existing plans for purposes of this regulation. However, such adopting employers who cease to be covered under such a master or prototype plan prior to the proposed applicable effective date for their plan will be treated as though they had a new plan as of the date they cease to be so covered.

With respect to existing plans, other than master or prototype plans that are deemed to be existing plans, the following effective dates are applicable. In the case of existing plans that are amended to add provisions or conditions relating to the availability of an alternative form of benefit, of the type described herein, the regulation is proposed to be effective the first day of the first month commencing on or after six months after January 30, 1986, with respect to such alternative form of benefit. In the case of existing non-collectively bargained plans, the regulations are proposed to non-collectively bargained plans, the regulations are proposed to be effective for the second plan year commencing on or after January 30, 1986. For existing collectively bargained plans, these regulations are proposed to be effective for the earlier of (a) the third plan year commencing on or after January 30, 1986 or (b) the second plan year beginning after the expiration of the last of the collective bargaining agreements, in effect on January 30, 1986, pursuant to which the plan is maintained. However, in the case of employers who adopt master or prototype plans that are deemed to be existing plans, the effective date will be the earlier of the second plan year commencing on or after January 30, 1986 or the first plan year commencing on or after January 30, 1987.

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. The transitional rule provisions of these regulations, allowing plan amendments described above, are immediately effective. Thus, existing plans may make the plan amendments described above, thereby eliminating certain benefit alternatives, prior to the general effective date of these new rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All Comments will be available for public inspection and copying. A public hearing will be held upon written

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request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Nancy J. Marks of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–1–1.425–1

Income taxes, Employee benefit plans, Pensions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.411(d)–4 also issued under 26 U.S.C. 411(d)(6).

Par. 2. A new § 1.401(a)–4 is added immediately after § 1.401(a)–3 to read as follows:

§ 1.401(a)–4 Limitations on availability of alternative forms of benefit.

Q–1: Does a pension, profit-sharing or stock bonus plan satisfy section 401(a)(4) if, in form or operation, the availability of an alternative form of benefit favors the prohibited group?

A–1: No. Section 401(a)(4) provides that a qualified plan must provide either contributions or benefits that do not discriminate in favor of employees who are officers, shareholders, or highly compensated (the prohibited group). When a plan provides for alternative forms of benefit, i.e., different forms of distribution commencing at the same time or the same form of distribution commencing at different times (see definition in § 1.411(d)–4, Q&A–1), the availability of each of these alternative forms of benefit is subject to this nondiscrimination requirement. Thus, the availability of such alternative forms of benefit may not favor the prohibited group. For example, a plan may not condition the availability of a single sum optional benefit in a manner that favors the prohibited group. This is true whether or not the particular benefit option is the actuarial equivalent of any other form of benefit under the plan.

Q–2: How is it determined whether or not a plan conditions the availability of alternative forms of benefit in a manner that violates, or may reasonably be expected to violate, the nondiscrimination requirements of section 401(a)(4)?

A–2: This determination must be based on all the surrounding facts and circumstances of the employer maintaining the plan. However, a condition is discriminatory if the group of employees to whom the benefit is available does not satisfy either the seventy percent test of section 410(b)(1)(A) or the nondiscriminatory classification test of section 410(b)(1)(B). Thus, the availability of a particular alternative form of benefit will not be considered discriminatory if the benefit is available to seventy percent or more of all employees. If the seventy percent test is not satisfied, the condition limiting availability will be discriminatory if it results in more than a reasonable difference between (a) the ratio of prohibited group employees to whom a particular alternative form of benefit is available to all prohibited group employees and (b) the ratio of employees (other than prohibited group employees) to whom the same alternative form of benefit is available to all employees (other than prohibited group employees). A condition with respect to the availability of a particular alternative form of benefit may reasonably be expected to violate the nondiscrimination requirements of section 401(a)(4) if, under the applicable facts and circumstances, there is a reasonable expectation that the condition will result in the benefit not being available to a group of employees that meets the requirements of section 410(b)(1) (A) or (B) set forth above. The following examples are illustrative:

Example (1). A plan conditions the availability of a single sum benefit alternative by limiting it either to (a) employees earning $50,000 or more in the final year of employment, (b) employees who furnish evidence that they have a net worth above a certain specified amount, or (c) employees who present a letter from an accountant or attorney declaring that it is in the employee's best interest to receive a single sum distribution. Whether such conditions are permissible depends on all the facts and circumstances of the employer maintaining the plan. However, all three of these conditions may reasonably be expected to discriminate in favor of the prohibited group in operation because of the probability of a significant positive correlation between the ability to meet these requirements and membership in the prohibited group.

Example (2). A plan limits the availability of a single sum optional benefit to employees employed in one particular division of the employer's company. All the employees of the company are participants in the plan. The division currently employs individuals who represent a nondiscriminatory classification of that company's employees and is unlikely to cease employing such a nondiscriminatory classification in the future. This condition with respect to availability does not result in discrimination nor may it reasonably be expected to do so.

Q–3: May a pension, profit-sharing or stock bonus plan provide that the employer or some other person, other than the participant (and, where relevant, other than the participant's spouse), through withholding consent or otherwise exercising discretion, may deny a participant an alternative form of benefit for which the participant is otherwise eligible?

A–3: No. Even though in certain circumstances this type of provision may satisfy the nondiscrimination requirements of section 401(a)(4), the provision results in the failure of the plan to satisfy section 401(a), including the requirements set forth in sections 401(a)(25) and 411(d)(6). *See* § 1.411(d)–4 Q&As 2–5. This result is true whether the consent or discretion in question is vested in the employer or in some other person. *See* § 1.411(d)–4 Q&A–4. The applicable effective dates with respect to such rules relating to consent or discretion are set forth in § 1.411(d)–4 Q&A–8.

Q–4: Will a plan provision violate section 401(a)(4) merely because it mandates a single sum distribution in the event that the present value of a participant's nonforfeitable accrued benefit is not more than $3,500?

A–4: No. A provision that mandates a single sum distribution if the present value of a participant's nonforfeitable accured benefit is not more than $3,500 will be deemed not to be discriminatory under section 401(a)(4). This is an exception to the general principles of this section based on sections 411(a)(11) and 417(e).

Q–5: If a plan contains a provision with respect to the availability of alternative forms of benefit that discriminates or may reasonably be expected to discriminate, what acceptable alternatives exist for amending the plan without violating section 411(d)(6)?

A–5: (a) The following transitional rules apply for purposes of making necessary amendments to existing plans, as defined in Q&A–6 of this section, that contain conditions governing the availability of one or more alternative forms of benefit that violate the nondiscrimination requirements of section 401(a)(4) or may reasonably be expected to violate such requirements. These transitional rules are provided under the authority of section 411(d)(6), which allows the elimination of optional forms of benefits if permitted by regulations, and section 7805(b).

(b) If an existing plan conditions the availability of an alternative form of benefit in a manner that discriminates, the plan must be amended to eliminate such condition. Alternatively, the plan must be amended to eliminate the alternative form of benefit subject to such condition, including any early or late retirement benefit which is so conditioned. If an existing plan conditions the availability of an alternative form of benefit in a manner that may reasonably be expected to discriminate, the plan may be amended to either eliminate such condition or eliminate the alternative form of benefit subject to such condition.

(c) Any amendment permitted under paragraph (b) of this Q&A–5 to eliminate an alternative form of benefit must be made on or before the applicable effective date for the plan as determined under Q&A–6 of this section. Thus, after the applicable effective date, any amendment that eliminates an alternative form of benefit, whether or not such form of benefit is subject to conditions that discriminate or may reasonably be expected to discriminate, will violate the requirements of section 411(d)(6) to the extent that such alternative form of benefit is protected by section 411(d)(6).

Q–6: What are the effective dates for the rules in this section?

A–6: (a) *New plans.* This section is effective January 30, 1986, in the case of plans which are either adopted or made effective on or after such date. This effective date is applicable to such plans whether or not they are collectively bargained.

(b) *Existing plans.* Existing plans, for purposes of this section, are plans which are both adopted and in effect prior to January 30, 1986. Subject to the limitaitons in paragraph (c) of this Q&A–6, the following effective dates apply to existing plans for purposes of this section.

(1) *Non-collectively bargained plans.* In the case of existing non-collectively bargained plans, the regulation is effective for the first day of the second plan year commencing on or after January 30, 1986.

(2) *Collectively bargained plans.* in the case of existing collectively bargained plans, the regulation is effective for the first day of the earlier of (i) the third plan year commencing on or after January 30, 1986. or (ii) the second plan year beginning after the expiration of the last of the collective bargaining agreements in effect on January 30, 1986, pursuant to which the plan is maintained. Extensions of a collective bargaining agreement, if ratified on or after January 30, 1986, are disregarded.

(c) The delayed effective dates in paragraph (b) (1) and (2) of this Q&A–6 for existing plans are only applicable with respect to an alternative form of benefit if (1) both the alternative form of benefit and the condition to which it is subject were adopted and in effect prior to January 30, 1986, and (2) the condition to which it is subject is either discriminatory or may reasonably be expected to discriminate. If the conditions in the preceding sentence are not satisfied with respect to a particular alternative form of benefit, then this section is effective with respect to such alternative form of benefit as if the plan were a new plan.

(d) The transitional rule provided in Q&A–5 of this section is effective January 30, 1986.

Par. 3. A new § 1.411(d)–4 is added immediately after 1.411(d)–3T to read as follows:

§ 1.411(d)–4 Alternative forms of benefit.

Q–1: What is meant by "alternative forms of benefit" for purposes of this section?

A–1: This term encompasses the different forms of benefit payment available under a plan which provides that (a) a participant's benefits under the plan may be paid in more than one form (for example, life annuities, installment payments and single sum distributions), or (b) payment of a particular form of benefit may commence at some time earlier or later than the normal date for the commencement of such benefit. For example, a life annuity beginning at early retirement age and life annuity beginning at normal retirement age are alternative forms of benefit for purposes of this section.

Q–2: May a pension, profit-sharing or stock bonus plan provide that the employer may, through withholding consent or otherwise exercising discretion, deny a participant an alternative form of benefit for which the participant is otherwise eligible?

A–2: No. Such a provision will violate the requirements of section 411(d)(6), which applies to accrued benefits of pension, profit-sharing and stock bonus plans, to the extent that the consent or discretion may be exercised with respect to an alternative form of benefit protected by section 411(d)(6). In addition, in the case of a pension plan, such a provision violates the "definitely determinable" requirement of section 401(a), which applies to any alternative form of benefit available to participants under the plan, not merely to accrued benefits under section 411(d)(6). *See* § 1.401–1(b)(1)(i). However, see Q&A–5 of this section regarding the application of objective and clearly ascertainable conditions on the availability of an alternative form of benefit.

Q–3: Is the result in Q&A–2 of this section any different if the plan specifically limits the employer's exercise of discretion to choosing among alternative forms of benefit that can be demonstrated to be actuarially equivalent based on reasonable actuarial assumptions set forth in the plan?

A–3: No.

Q–4: Is the answer in Q&A–2 of this section any different if a plan permits the exercise of discretion by, or requires consent from, some person or persons other than the employer and the participant (and, where relevant, other than the participant's spouse)?

A–4: No. The term "employer" includes plan administrator, fiduciary, trustee, actuary and other persons for purposes of applying the rules of this section and § 1.401(a)–4. Thus, provisions permitting any person, other than the participant (and, where relevant, other than the participant's spouse), to deny the participant an alternative form of benefit otherwise available to the participant under the plan, violate the requirements of sections 401(a), including sections 401(a)(25) and 411(d)(6).

Q–5: May a pension, profit-sharing or stock bonus plan condition the availability of an alternative form of benefit on objective criteria that are specifically set forth in the plan?

A–5: Yes. Such provisions do not violate the requirements of section 411(d)(6) provided the criteria are objective, ascertainable, clearly set forth in the plan and not subject to the employer's discretion. For example, a plan may deny a single sum optional benefit to participants for whom life insurance is not available at standard rates provided this provision is specifically set forth in the plan. As another example, a plan may provide that an otherwise permissible single sum distribution alternative, based on

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separation from service, may be available only in the event of extreme financial need, after taking into account the employee's other assets available to meet those needs, determined under standards specifically set forth in the plan. On the other hand, a plan may not condition the availability of alternative forms of benefits permitted under the plan on factors that are within the employer's discretion. For example, the availability of alternative forms of benefit in a defined benefit plan may not be conditioned on a determination with respect to the level of the plan's funded status because the amount of plan funding is within the employer's discretion.

Q–6: May a plan be amended to add a consent or discretion provision or other condition to an alternative form of benefit?

A–6: No. Adding a consent or discretion provision or other conditions with respect to the availability of an employee's accrued benefit in an alternative form of benefit that is within section 411(d)(6) effectively enables an employer to elminate or reduce an employee's accrued benefit within the meaning of such section. However, an amendment of the type described in Q&A–5 of this section that adds one or more objective and clearly ascertainable conditions on the availability of an employee's accrued benefit in an alternative form of benefit may be made with respect to benefits accrued after the later of the effective date of the amendment or the date such amendment is adopted. Also, after the effective date of this section, with respect to a pension plan, consent or discretion provisions may not be added with respect to any alternative form of benefit.

Q–7: If a plan contains discretion or consent provisions which violate the requirements of section 401(a), including sections 401(a)(25) and 411(d)(6), and this section, what acceptable alternatives exist for amending the plan without violating the requirements of section 411(d)(6)?

A–7: (a) The following transitional rules apply for purposes of making necessary amendments to existing plans, as defined under the effective date provisions in Q&A–8 of this section, that contain discretion or consent provisions with respect to the availability of alternative forms of benefit that violate the requirements of section 401(a), including sections 401(a)(25) and 411(d)(6), and this section. These transitional rules are provided under the authority of section 411(d)(6), which allows the elimination of optional forms of benefits if permitted by regulations, and section 7805(b).

(b) If an existing plan provides for employer consent or discretion with respect to the availability of an alternative form of benefit, the plan must be amended to eliminate such consent or discretion provision. Alternatively, the plan must be amended to eliminate the alternative form of benefit subject to a consent or discretion provision, including any early or late retirement benefit that is so conditioned.

(c) Any amendment permitted under paragrarph (b) of this Q&A–7 to eliminate an alternative form of benefit must be made on or before the applicable effective date for the plan as determined under Q&A–8 of this section. Thus, after the applicable effective date, any amendment that eliminates an alternative form of accrued benefit, whether or not such form of benefits is subject to employer consent or discretion, will be a violation of section 411(d)(6).

Q–8: What are the effective dates for the rules in this section?

A–8: (a) *New plans.* This section is effective August 1, 1986, in the case of plans that are either adopted or made effective on or after such date. This effective date is applicable to such plans whether or not they are collectively bargained.

(b) *Existing plans.* Existing plans, for purposes of this section, are those plans, with the exception of certain plans which are adoptions of master or prototype plans, which are both adopted and in effect prior to August 1, 1986. Employers who adopt a master or prototype plan for which a sponsor applied to the Service for an opinion letter on or before December 31, 1984, and for which a favorable opinion letter was received after that date, will be deemed to have existing plans for purposes of this section. *See* sections 4.01 and 4.02 of Rev. Proc. 84–23, 1984–1 C.. 457, 459, for the definitions of master and prototype plans. However, if such adopting employers cease to be covered under a plan which is an adoption of a master or prototype plan of the type described above, as a result of amendment of the plan or adoption of a new plan, prior to the effective date of this section with respect to their plan, then the effective date for such employers will be determined as though the plan were a new plan as of the date of such amendment or adoption of a new plan. Subject to the limitations in paragraph (c) of this Q&A–8, the following effective dates apply to existing plans for purposes of this section:

(1) *Non-collectively bargained plans.* In the case of existing plans other than collectively bargained plans this section is effective for the first day of the second plan year commencing on or after January 30, 1986.

(2) *Collectively bargained plans.* In the case of existing collectively bargained plans this section is effective for the first day of the earlier of (i) the third plan year commencing on or after January 30, 1986 or (ii) the second plan year beginning after the expiration of the last of the collective bargaining agreements, in effect January 30, 1986, pursuant to which the plan is maintained. Extensions of a collective bargaining agreement, if ratified on or after August 1, 1986, are disregarded.

(3) *Master and prototype plans.* In the case of plans which are adoptions of master or prototype plans that are deemed to be existing plans under the provisions of this paragraph (b), the effective date will be the earlier of the second plan year commencing on or after January 30, 1986, or the first plan year commencing on or after January 30, 1987.

(c) The delayed effective dates in paragraph (b) (1) and (2) of this Q&A–8 for existing plans are only applicable with respect to an alternative form of benefit if both the alternative form of benefit and the consent or discretion provision or other condition to which it is subject are adopted and in effect prior to August 1, 1986. If the conditions set forth in this paragraph are not satisfied with respect to a particular alternative form of benefit, then this section is effective with respect to such alternative form of benefit as if the plan were a new plan.

(d) The transitional rule provided in Q&A–7 of this section is effective January 30, 1986.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 86–1959 Filed 1–29–86; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 772, 773, 774, 779, 780, 783, and 784

Surface Coal Mining Permit Applications and Coal Exploration, Historic Preservation Requirements; Petition for Rulemaking

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision on petition for rulemaking.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) makes available to the public its final decision on a petition for rulemaking from the Society of Professional Archeologists (SOPA). The petition requested that OSMRE revise the historic preservation requirements found throughout various sections of 30 CFR Chapter VII by amending 30 CFR Parts 772, 773, 779, 780, 783, 784, and 788 (now 774). On December 13, 1985, the Director made a decision granting the petition in principle.

ADDRESS: Copies of the petition, and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSMRE, Administrative Record, Room 5315L, 1100 L Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Annetta Cheek, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; telephone 202–343–7951.

SUPPLEMENTARY INFORMATION:

I. Petition for Rulemaking Process

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act, any person may petition the Director of OSMRE for a change in OSMRE's regulations. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, the Director must first determine whether the petition has a reasonable basis. If the petition has a reasonable basis, notice is published in the **Federal Register** seeking comments on the petition and the Director may hold a public hearing, conduct an investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under § 700.12(d), the Director's decision constitutes the final decision for the Department of the Interior.

II. The SOPA Petition

OSMRE received a letter dated September 15, 1983, from SOPA presenting a petition for revision of the historic preservation requirements found throughout various sections of 30 CFR Ghapter VII by amending 30 CFR Parts 772, 773, 774 (formerly 788), 779, 780, and 784. Part 783 for underground mines would be subject to the same changes as Part 779 for surface mines.

On January 13, 1984, the Director notified SOPA that the petition was being rejected. Subsequently, SOPA requested that the petition be reconsidered. SOPA was notified that the petition would be reconsidered; however, because several of the issues addressed by the petition were at that time before the District Court of the District of Columbia, and SOPA was a party to the litigation, OSMRE postponed further consideration of the petition pending a decision in the litigation. On July 15, 1985, the District Court issued its decision. *In Re: Permanent Surface Mining Regulation Litigation (II),* No. 79–1144 (D.D.C. 1985).

On August 9, 1985, the Director determined that the petition for amendment of the regulations had a sufficient basis to seek comments on the proposed rule changes. Accordingly, on August 23, 1985, OSMRE published in the **Federal Register** (50 FR 34167) a request for public comments on the amendments suggested by SOPA. The comment period began August 23, 1985, and was closed on October 7, 1985. The notice presented the petition and noted the availability of the OSMRE staff to meet with the public on the petition until the close of the comment period. Fifty-six persons submitted written comments during the public comment period.

The December 13, 1985, decision announced here the petition in principle. The decision accepts the general concerns of the petitioner while rejecting the specific language changes suggested by the petitioner. As a result of this decision, OSM will initiate rulemaking proceedings and publish a Notice of Proposed Rulemaking with an appropriate public comment period prior to the issuance of the final rulemaking notice.

The Director's letter response to the petitioner on this rulemaking petition appears as an appendix to this notice. This letter reports the Director's decision to the petitioner. It also contains a summary description of the issues raised by the petitioner, a discussion of the applicability of section 106 of the National Historic Preservation Act, OSMRE's current regulatory program, an analysis of the petitioner's proposed regulatory changes, and a discussion of the comments received on the petition.

Dated: January 24, 1986.

Jed D. Christensen,
Acting Director, Office of Surface Mining Reclamation and Enforcement.

Mr. Charles Niquette, Society of Professional Archeologists, 626 Portland Drive, Lexington, Kentucky 40503.

Dear Mr. Niquette: This letter is in response to the September 15, 1983, petition for rulemaking to the Office of Surface Mining Reclamation and Enforcement (OSMRE) on behalf of the Society of Professional Archeologists (SOPA) requesting amendments to certain rules promulgated as part of the Federal regulatory program.

On January 13, 1984, the Director notified SOPA that the petition was being rejected. On March 9, 1984, SOPA requested that the petition be reconsidered. In July of 1984, OSMRE determined that the petition should be reconsidered; however, because several of the issues addressed by the petition were at that time before the District Court of the District of Columbia, and SOPA was a party to the litigation. OSMRE postponed further consideration of the petition pending a decision in the litigation. On July 15, 1985, the District Court issued its decision. *In Re Permanent Surface Mining Regulation Litigation (II),* No. 79–1144 (D.D.C. 1985).

On August 9, 1985, the Director determined that the petition for amendment of the regulations had a sufficient basis to seek comments on the proposed rule changes. Accordingly, on August 23, 1985, OSMRE published in the **Federal Register** (50 FR 34167) a request for public comments on the amendments suggested by SOPA. The comment period began August 23, 1985, and was closed on October 7, 1985. Fifty-seven persons submitted written comments during the comment period. This letter informs you of my decision which, as provided in 30 CFR 700.12(d), constitutes the final decision for the Department of the Interior.

This letter is divided into six parts. The first part, Final Decision, summarizes this decision. The second part, Substance of the Petition, is a discussion of issues raised by the petitioner and the requested amendments. The third part discusses the Applicability of Section 106 of the National Historic Preservation Act (NHPA); the fourth describes the Current OSMRE Regulatory Program, and the fifth provides the Analysis of SOPA's Recommended Regulatory Changes. The sixth part, Comments Received, discusses comments submitted by persons other than the petitioner.

Final Decision

I am granting the petition to initiate rulemaking in principle. As a result, rulemaking will be initiated to address the concerns of the petitioner. As discussed herein, the specific language suggested by the petitioner is apparently premised on a misconstruction of the applicability of section 106 of the NHPA and, if implemented, would lead to unreasonable compliance costs that would not be commensurate with the benefits obtained. Although the specific language suggested by SOPA is not acceptable, certain of the petitioner's concerns are valid. Thus, OSMRE is developing appropriate regulatory language to address these concerns.

Substance of the Petition

The petitioner expressed concern that OSMRE's existing regulations are silent as to:

(a) How properties eligible for but not yet listed in the National Register of Historic Places are to be identified by applicants to conduct surface mining operations, and

(b) What a State regulatory authority is to do when mining will impact such a property.

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The petitioner stated that absent guidance from the regulations on these matters, some States have reached the conclusion that they should establish procedures parallel with those used by the Department of the Interior and the Advisory Council on Historic Preservation (ACHP); other States require consideration only of properties already entered into the National Register of Historic Places (National Register) and exclude from any consideration in coal mine operation planning all historic properties except those that are publicly owned and included in the National Register. The petitioner requested that OSMRE provide clear guidance as to how properties eligible to but not yet listed on the National Register are to be identified and considered during the permit decision process, so that such properties are not lost without prior scientific study.

The petitioner suggested that the following language be inserted into the existing regulations to resolve its concerns.

(1) Amend 30 CFR 772.12(b)(8)(ii), 779.12(b), and 788.12(b) (now 774) by adding language similar to the following:

"To identify resources eligible for listing on the National Register of Historic Places, the applicant shall review files and publications made available by the State Historic Preservation Officer and other authorities on the history, prehistory, architectural history, and archaeology of the region in which the permit area lies, and conduct such field inspections as the State Historic Preservation Officer recommends in a manner consistent with applicable Department of the Interior and Advisory Council on Historic Preservation standards and guidelines."

(2) Amend 30 CFR 772.12(b)(8) by adding language similar to the following:

"A program, developed in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the relevant State Historic Preservation Officer, to ensure that cultural, historical, and archaeological resources are not adversely affected during the proposed exploration or, if adverse effect is unavoidable, that the effect is appropriately mitigated."

(3) Amend 30 CFR 780.11 and 784.11 by adding language similar to the following:

"A program, developed in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the relevant State Historic Preservation Officer, to ensure that properties included in and eligible for the National Register of Historic Places and known archaeological sites are physically preserved or subjected to such recordation and data recovery as is necessary to preserve their research and other values in the public interest."

(4) Amend 30 CFR 773.12 by adding language similar to the following:

"Pursuant to Section 106 of the National Historic Preservation Act, the Advisory Council on Historic Preservation and the State Historic Preservation Officer will be afforded the opportunity to consult with the regulatory authority and the applicant regarding the applicant's program for preserving historic properties under § 772.12(b)(8), § 780.11, or § 784.11, whichever is applicable."

Each of these four suggested amendments would impose additional obligations on applicants for surface coal mining or coal exploration permits.

Applicability of Section 106 of the National Historic Preservation Act

All of the specific suggestions offered by the petitioner are apparently based on the premise that permits to conduct surface coal mining operations issued by State regulatory authorities are subject to the provisions of section 106 of the NHPA. This section requires the head of any Federal agency, prior to authorizing the expenditure of Federal funds or prior to issuing a Federal license, to consider the effects of the Federal or federally assisted undertaking on historic resources. The section further requires that the ACHP be given a reasonable opportunity to comment on the undertaking.*

However, section 106 of the National Historic Preservation Act does not apply to the issuance of permits to conduct surface coal mining operations by State regulatory authorities. Although section 106 does apply to the Secretary's approval of State regulatory programs, surface coal mining operations permitted under those programs are not Federal or federally assisted or licensed undertakings. There is, therefore, no legal requirement in section 106 of the NHPA for including in OSMRE's permanent program regulations provisions necessitating consultation with the ACHP during permit processing or authorizing the State Historic Preservation Officer (SHPO) to establish requirements for field inspections, mitigation, or other activities related to the protection of historic properties.

Current OSMRE Regulatory Program

Although section 106 of the NHPA does not apply directly to State issuance of coal mining or exploration permits, OSMRE has provided for State protection of important historic resources, both under its current program and in grants to the States. In accepting financial assistance for its program, a State assures the Director of OSMRE that it will assist in OSMRE's compliance with section 106 by consulting with the SHPO on the identification of properties listed on or eligible for listing on the National Register of Historic Places and by complying with OSMRE's requirements to avoid or mitigate adverse impacts upon such properties. This assurance is required to be included in every Federal grant by the Office of Management and Budget (Circular A–102, attachment M).

On at least one occasion, OSMRE has specifically reminded a State of its obligation to satisfy this grant condition. OSMRE's regulatory program provides the basis and authority for State programs to assist OSMRE in protecting historic properties. Under 30 CFR 732.15(a), State programs must contain regulations that are no less effective than OSMRE's permanent program regulations. As part of the permanent program regulations, numerous provisions exist which authorize and direct State regulatory authorities to collect necessary information on historic properties, and to consider such properties during the permit decision process. This fact was recognized by the court in *In Re: Permanent II*, Mem. Op. at 73. The general policy is set forth at 30 CFR 773.12. This section states that, to avoid duplication, each State regulatory program shall provide for the coordination of review and issuance of surface coal mining permits with applicable requirements of the National Historic Preservation Act. Additionally, the regulations impose the following specific requirements:

- Applicants for a permit must identify eligible and listed sites based on all available information. [30 CFR 779.12(b), 779.24(i), 783.12(b), and 783.24(i)]. The regulations further specify that information is to include, but not be limited to, data of State and local preservation agencies.
- The SHPO is notified of all permit applications, and given an opportunity to comment. [30 CFR 773.13(a)(3)(ii) and 773.13(b)]
- The public is also notified in a local newspaper of the complete permit application and given an opportunity to comment. [30 CFR 773.13]
- Any person having an interest that may be adversely affected may request an informal conference to submit information to the regulatory authority. [30 CFR 773.13(c)]
- The regulatory authority, based on such comments, records of any informal conferences, and on the information in the application, may require modification of the permit application. [30 CFR 773.15]. This modification could include a requirement to obtain additional information and conduct new analyses. The use of a field survey could be required by the regulatory authority at this time and would be one of the tools available to develop a complete application.
- Regulatory authorities should be able to demonstrate through the record of their decision that they have given consideration to a SHPO's well reasoned comments. [30 CFR 773.15]
- The regulatory authority has the authority to require the operator to conduct appropriate mitigation measures. [30 CFR 773.15]
- Procedures are available for the administrative and judicial review of decisions on permits. [30 CFR part 775]

As demonstrated in the preceding paragraphs, ample authority is provided to State regulatory authorities to protect both listed sites and those eligible for listing on the National Register. With regard to any specific permit, the regulatory authority is given discretion as to the level of required additional information, analyses, and mitigation. Such flexibility is appropriate because of the diversity among the regions, States, and within the States of types and sizes of mining operations and the physical variability of the lands they affect. This is recognized in section 101(f) of the Surface Mining Control and Reclamation Act of 1977 (Surface Mining Act). However, such flexibility is not unbridled. In reviewing the States' implementation of their programs OSMRE would expect to find that the recommendations of the SHPO have been given consideration. If a regulatory authority were to consistently ignore well reasoned recommendations, it would not be in compliance with OSMRE's requirements for State programs, nor would it be fulfilling its obligation to assist the Director of OSMRE in compliance with section 106 of the NHPA as is required when the State accepts Federal financial support for its programs.

*The text of section 106 of the NHPA reads as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Analysis of SOPA's Recommended Regulatory Changes

SOPA suggests that under 30 CFR 772.12(b)(8), 779.12(b), and 788.12(b) (now 774), permit applicants be required to (1) review the SHPO's files and publications, and (2) conduct whatever field inspections the SHPO recommends.

As to the suggested file review, the applicant for a permit is currently required to identify the nature of cultural and historic resources listed or eligible for listing on the National Register and known archeological features within the proposed permit and adjacent areas. The description is to be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies. This would include the SHPO. There is not specific requirement for the applicant to search files, and typically this activity is performed by the SHPO in response to an applicant's inquiry, or if the applicant has neglected to contact the SHPO, in response to the regulatory authority's inquiry. The petitioner has not demonstrated any compelling reason why this aspect of the current rules is inadequate.

The new feature in the petitioner's proposal would be to require the permit applicant to conduct whatever field surveys the SHPO recommends. Under the current process, the SHPO does not have this decisionmaking authority. Rather, the State regulatory authority must consider the SHPO's request and determine the appropriate action, if any. The petitioner's language would change the existing decisionmaking process by giving the SHPO's more authority over this part of the permitting process than they now have, and more authority under State programs than they have under *any* Federal program. Under current rules, the SHPO advises the State regulatory authority. There is no authority in either the Surface Mining Act or the NHPA that would allow OSMRE to delegate the suggested authority to the SHPO. Additionally, the proposal would be a change away from a central decisionmaking authority, the State regulatory authority, and could confuse those involved in the process.

In its suggested amendments to 30 CFR 772.12(b)(8), 780.11 and 784.11 SOPA also requests that permit applicant's and State regulatory authorities be required to provide the ACHP and the SHPO an opportunity to consult regarding a program applicants would have to develop to preserve historic properties in the permit area. This suggestion would (1) require applicants to develop an historic preservation plan for *all* permit areas, and (2) establish a process similar to the process developed to implement section 106 of the NHPA by giving the SHPO and the ACHP an expanded role in the permitting process. The suggested language would give those two groups more authority than they have over Federal undertakings pursuant to section 106, since 106 requires only that the Council be given an opportuntiy to comment, not to consult.

At present, there is no requirement in the OSMRE's regulations for applicants to develop a program, during the permit application process, to address the preservation of historic properties. Such a plan would place a new and frequently unnecessary burden on applicants. Under existing rules the regulatory authority may, if appropriate, require an applicant to provide information on how harm to historic properties will be minimized or mitigated. Also, the current regulations would not prevent the applicant from developing a mitigation program in consultation with the SHPO and the ACHP and including it in the permit application. Moreover, as shown earlier, there is ample opportunity under current rules for the SHPO to consult with the regulatory authority regarding the presence and disposition of historic properties, especially because both are part of the same State government. The petitioner's language would change the existing decisionmaking process by giving the SHPO and the ACHP more authority over this part of the permitting process by establishing procedures closely resembling the Federal procedures for implementing section 106 of the NHPA. OSMRE is not convinced of the inadequacy of the current rules under which the State regulatory authority has the authority and responsibility to determine on a case-by-case basis what further action is needed. Imposition of a general requirement for all applicants would impose an additional regulatory burden the incremental benefits of which are far from certain.

Comments Received

OSMRE received 57 comments on the petition for rulemaking. These comments can be divided into two major groups: those in favor of the rulemaking and those against. Most of the former came from students of archeology, State Historic Preservation Officers, State archeologists, university faculty in anthropology and archeology, and various archeological and preservation professional groups. The comments opposed to the rulemaking came from individual industry commenters and from groups representing the coal industry.

Those in favor of the rulemaking were concerned with the vagueness of the current program, and with the variety of interpretations being given to this program by State regulatory authorities. The commenters pointed out that while some States are enforcing preservation aspects of the program stringently, others are doing little or nothing regarding the application or enforcement of their own State regulations concerning historic properties. Many commenters saw this as providing economic advantage to operators in some States while penalizing others in States where enforcement is stringent.

Additionally, many of the commenters in favor of the rulemaking asserted that numerous historic properties were being destroyed without recordation and study, resulting in a loss of a portion of America's heritage. Several stated that the lands' unsuitable petition process for preserving historic properties is lengthy and cumbersome. The respondents favoring regulation changes called for a national and uniform set of regulations that deals with the identification, evaluation, and treatment of significant historic properties. Some commenters stated that input by the SHPO and ACHP was lacking. Others believed that this involvement might not be appropriate, but offered suggested additions to the existing regulations to resolve the problems of vagueness and inconsistency in identification, evaluation, and treatment of important historic properties.

The comments from industry representatives opposed to the proposed rulemaking were more varied than the comments from those favoring rulemaking. They stated that there was not a problem with the regulations dealing with historic properties, but a problem in the implementation and administration of the regulations on a State-by-State basis. They suggested that this be resolved during the oversight process in which OSMRE annually reviews the operation of the State programs, and suggested that modifications should be specific to problem States, rather than nationwide. Industry commenters stated that the petitioner's suggested revisions would increase the costs and delays involved in surface coal mining and introduce an additional level of review, while failing to set limits on what could be required of the coal industry to protect historic properties. One commenter noted that issuance of permits to conduct coal operations issued by State regulatory authorities were not Federal undertakings and were therefore not subject to the same requirements to protect historic properties that Federal agencies must follow. Another pointed out that the petitioner's proposed language emphasized protection of currently unknown resources, and stated that it was the intent of Congress to protect only known resources.

All of the comments received have been carefully considered in OSMRE's analysis of the petition. Although the comments submitted by both those in favor of and those opposed to the proposed rulemaking were highly varied, a common theme occurs: the process for protecting important historic properties is unclear and is not applied in a uniform manner by the various State regulatory authorities. This is consistent with OSMRE's observations in correspondence with various State regulatory authorities,

industry, State Historic Preservation Officers, and other preservation professionals.

Based on the foregoing, I have concluded that (1) a need to initiate rulemaking exists to clarify existing provisions in OSMRE's permanent program regulations to ensure appropriate consideration of important historic properties by the State regulatory authorities; and (2) it would be inappropriate to propose the specific provisions suggested by the petitioner.

Sincerely,

Ted O. Christensen,

Acting Director.

[FR Doc. 86-2069 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 901

Permanent Regulatory Program; Public Comment Period

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and public hearing on the substantive adequacy of a proposed program amendment submitted by the State of Alabama to modify the Alabama permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment modifies requirements for operations extracting coal incidental to extraction of other minerals (Sub-chapter 880-X-2E). This notice sets forth the times and locations that the Alabama program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures for the hearing, if requested.

DATES: Written comments, data or other relevant information relating to the proposed amendment not received on or before 4:00 p.m. on March 3, 1986, will not necessarily be considered.

A public hearing on the proposed amendment has been scheduled for February 24, 1986, at the address listed below under **"ADDRESSES."**

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business February 14, 1986.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. John T. Davis, Director, Birmingham Field Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

The public hearing will be held at the Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program and all written comments received in response to this notice, will be available for review and copying at the OSMRE Field Office, the OSMRE Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the amendment by contacting the OSMRE, Birmingham Field Office.

Office of Surface Mining, Reclamation and Enforcement, Birmingham Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 "L" Street, NW., Washington, DC 20240.

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Birmingham Field Office will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the date listed under *"DATES."* If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submmission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions. The public hearing will continue on the special date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notice of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program, can be found at 47 FR 22020-22058 (May 20, 1982) and 48 FR 34206 (July 27, 1983).

III. Proposed Amendment

On December 30, 1985, Alabama submitted a proposed amendment to its approved regulatory program to modify requirements for operations extracting coal incidental to extraction other minerals (Sub-chapter 880-X-2E). The rules outline the informational requirements necessary for such applications and criteria to be used by the Alabama Surface Mining Commission (ASMC) to determine the eligibility for the proposed operation for exemption, and establish conditions and requirements for maintaining such eligibility during the conduct of such operations.

The approval of the previous ASMC rules on incidental extraction was announced by OSMRE in a Federal Register notice on July 19, 1985, 50 FR 29379. The December 30, 1985 submission differs from the previously approved rules in the following ways:

1. The paragraphs are renumbered due to the addition of pargraph 2E-.02, Definitions, which is reserved for future use.

2. A change is made in paragraph 880-X-2E-.05(1)(a) concerning when applications for exemptions should be submitted.

3. Paragraphs 2E-.06(1) (b) and (c) are amended by rearranging language requiring that the 16⅔ percent be calculated by using only those minerals extracted from the same area as the coal that is extracted, and by deleting the requirement that the economic basis for the operation is the commercial use of sale of minerals other than coal.

Therefore, the Director OSMRE is seeking public comment on the adequancy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 901

Coal mining, Intergovernmental relations, Surface mining Underground mining.

Dated: January 24, 1986.

James W. Workman,

Deputy Director, Program Operations and Inspection.

[FR Doc. 86-2063 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 181

[CGD 81-023]

Personal Flotation Device Pamphlet Content; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard, in cooperation with Underwriters Laboratories (UL), will hold a meeting to discuss revision of the text of the personal flotation device (PFD) pamphlet which is provided with each PFD sold for use on recreational boats. Some of the information currently in this pamphet is out of date and other information could be presented more effectively. All interested parties may present data, views, and comments, orally or in writing, on the required text. All information received will be considered in deciding on whether and how to revise the above mentioned regulation.

DATES: 1. *Meeting:* March 7, 1986, beginning at 9:00 a.m. The meeting is expected to end in the early afternoon.

2. *Notice of intent to attend:* To ensure that space is available contact Mr. Robert Scott, by February 19, 1986, at the address or phone number listed under **ADDRESSES.**

ADDRESSES: 1. *Meeting location:* Admiral Benbow Inn, 1200 N. Westshore Boulevard, Tampa, FL 33607.

2. *Notice of intent to attend:* Seating capacity is limited. To assure adequate meeting arrangements and to obtain a copy of proposed revisions to Underwriters Laboratories (UL) Standard 1123, persons wishing to attend are requested to contact: Mr. Robert Scott, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062, Phone (312) 272-8800.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Wehr, Office of Merchant Marine Safety (G-MVI-3/14), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 426-1444. Normal office hours are between 7:00 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Coast Guard, in cooperation with Underwriters Laboratories, will hold a meeting to discuss revision of the required text of the personal flotation device (PFD) pamphlet which is provided, pursuant to 33 CFR Part 181, Subpart G, with each PFD sold for use on recreational boats. The text of the current pamphlet may be found in Section 25 of UL Standard 1123 and in 33 CFR Part 181, Subpart G. This meeting is open to the public.

The agenda for the meeting will be as follows:

1. Information to be provided in the pamphlet.

a. General topics.

b. Format.

c. Content under each topic.

2. Reading level at which the information should be presented.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 86-2046 Filed 1-29-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6682]

Proposed Flood Elevation Determinations; Virginia

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 50 FR 41712 on October 15, 1985. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for Rockingham County, Virginia.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in Rockingham

County, Virginia, previously published at 50 FR 41712 on October 15, 1985, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood Plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Source of flooding and location	Elevation in feet National Geodetic Vertical Datum
North Fork Shenandoah River:	
At downstream County Boundary	*952
Downstream side of State Route 617	*1,036
Downstream side of State Route 612	*1,143
At confluence of Capon Run	*1,332
At confluence of German River	*1,413
Little Dry River:	
At confluence with North Fork Shenandoah River	*1,171
Approximately 50 feet upstream of State Route 631	*1,469
At confluence of Old Road Hollow	*1,576
Approximately 30 feet upstream of confluence of Big Bear Hollow	*1,875
German River:	
At confluence with North Fork Shenandoah River	*1,413
Upstream side of State Route 780	*1,514
Downstream side of State Route 826 (Second crossing)	*1,604
At confluence of Persimmon Run	*1,681
At confluence of Cold Spring River	*1,769
Bennett Run:	
At confluence with Crab Run	*1,432
At confluence of Overly Run	*1,508
Downstream side of State Route 865	*1,569
Downstream side of State Route 824 (First crossing)	*1,660
Downstream side of State Route 824 (Second crossing)	*1,723
Elk Run:	
Confluence with South Fork Shenandoah River	*952
At confluence of West Swift Run	*1,069
Downstream side of State Route 624	*1,170
Approximately 1.2 miles upstream of State Route 624	*1,356
South Branch Naked Creek:	
At confluence with Naked Creek	*1,075
Approximately .6 mile upstream of confluence with Naked Creek	*1,110
Approximately 1.2 miles upstream of confluence with Naked Creek	*1,166
Dry Run:	
At confluence with South Fork Shenandoah River	*947
Approximately 1.2 miles downstream of State Route 759	*1,070
Upstream side of State Route 759	*1,178
Approximately 1.1 miles upstream of State Route 759	*1,300
Approximately 2.2 miles upstream of State Route 758	*1,443
Big Run:	
Confluence with South Fork Shenandoah River	*1,014
Approximately .9 mile upstream of U.S. Route 340	*1,089
Madison Run:	
At confluence with South Fork Shenandoah River	*1,059
Approximately 1.0 mile upstream of U.S. Route 340	*1,191
Approximately 2.1 miles upstream of U.S. Route 340	*1,272
Cub Run:	
At confluence with South Fork Shenandoah River	*1,016
Upstream side of State Route 652	*1,059
Approximately 99 feet upstream of State Route 672	*1,100
Approximately 150 feet upstream of State Route 695	*1,174
At Chesapeake and Western Railway	*1,293
Approximately 1.8 miles upstream of Chesapeake and Western Railway	*1,405
Stony Run:	
At confluence with South Fork Shenandoah River	*1,005
Approximately 75 feet upstream of State Route 641	*1,050
Approximately 100 feet upstream of State Route 908	*1,126
Approximately 1.2 miles upstream of State Route 23	*1,295
Congers Creek:	
At confluence with Mill Creek	*1,120
Approximately 1.9 mile downstream of State Route 276	*1,179
Approximately .7 mile upstream of State Route 276	*1,278
Pleasant Run:	
At confluence with North River	*1,138
Approximately 90 feet downstream of state Route 988 (Second crossing)	*1,214
Approximately .5 mile upstream of State Route 704 (Second crossing)	*1,327
Blacks Run:	
At confluence with Cooks Creek	*1,171
Upstream side of State Route 704	*1,190
Approximately 675 feet upstream County Boundary	*1,207
Dry River:	
At confluence with North River	*1,199
Upstream side of State Route 752	*1,293
Approximately 75 feet downstream of State Route 613	*1,430
Approximately 2.0 miles upstream of State Route 613	*1,581
Approximately 1.2 miles upstream of State Route 647	*1,676
Snapp Creek:	
At confluence with Muddy Creek	*1,409
Approximately .9 mile upstream of State Route 752 (Second crossing)	*1,488

Jeriffrey S. Bragg,

Administrator, Federal Insurance Administration.

Issued January 22, 1986.

[FR Doc. 86-2017 Filed 1-29-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 86-10; RM-5101; FCC 86-27]

Provision of Access for 800 Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action initiates a rulemaking proceeding to consider the long-term obligations of exchange carriers under the Communications Act to provide 800 service access to interexchange carriers.

This action is taken by the Commission to determine whether a uniform, nationwide system of 800 access is necessary for an economically viable, nationwide service to be offered by multiple interexchange carriers, to determine which access features should be mandatory and which optional, and to determine how the costs of such access should be recovered.

This action will allow the Commission to take whatever actions are necessary to ensure that consumers throughout the nation will be able to take advantage of 800 service in a timely, efficient manner.

DATES: Comments are due on or before March 4, 1986, and reply comments on or before April 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Schlichting, Common Carrier Bureau, (202) 632-6342.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

In the Matter of Provision of Access for 800 Service (CC Docket No. 86-10, RM 5101).

Adopted: January 14, 1986.

Released: January 23, 1986.

By the Commission.

I. Introduction

1. On July 12, 1985, the Bell Atlantic Telephone Companies (Bell Atlantic) filed a petition (the Petition) asking this Commission to initiate a rulemaking proceeding to consider the obligations of exchange carriers under the Communications Act to provide 800 service access to interexchange carriers (IXCs). Twelve parties filed comments in response to the Petition; seven parties filed reply comments; and Bell Atlantic and GTE Corporation filed further responses to comments on the Petition.[1] By this Notice, we initiate a rulemaking proceeding on the long-term 800 access obligations of exchange carriers, but deny the Petition with respect to the obligations of exchange carriers in the short-term.

II. Background

A. Current Provision of 800 Service

2. 800 service (or INWATS) is an interexchange service in which the called party, rather than the calling

[1] In this order, we grant motions by Bell Atlantic and GTE Corporation to file further responses to comments. A list of parties filing pleadings in this proceeding is attached as Appendix A.

party, subscribes to the service and pays for calls. The service provides businesses and other organizations a means of providing potential customers, or other persons with whom they wish to communicate, a convenient and free method of contacting them. An 800 service subscriber may choose to pay for incoming calls from any telephone in the country or may decide to limit its coverage to telephones in one or more of five concentric geographic bands around the subscriber's receiving location. 800 service is one of the fastest growing telephone services, with revenues that were in excess of $3 billion in 1983 and were increasing at the rate of 15-20% per year.[2]

3. From 1967, when AT&T first introduced 800 service, until 1981, calls were handled by designated originating and terminating switching offices that employed a special 800-NXX routing and screening methodology that would verify that the call originated from a subscribed service area and route the call over the network for completion. The system was quite inflexible because every digit in the 800 number had significance for the screening and routing functions. As a result, subscribers had no choice of 800 numbers and had to use different 800 numbers for interstate and intrastate calls. In addition, any change in the receiving location or in the geographic bands of coverage required a change in the 800 number.

4. In 1981, AT&T began providing 800 service using its Common Channel Interoffice Signaling (CCIS) system and a data base containing 800 service information. Under this system, an 800 call is routed to an Originating Screening Office (OSO). The call is held at the OSO while the 800 number and the 3-digit Numbering Plan Area, or area code, of the call's origin are provided to the 800 service data base through the CCIS signalling system. The data base not only checks to ensure that the call is from a service area for which the subscriber has paid, but also translates the 800 number into a standard ten-digit number, which is returned to the OSO for routing over AT&T's regular network to the subscriber's local exchange carrier for termination over a service-dedicated line.

5. The data base system is a significant improvement over the previous system. A customer may now use a single 800 number for both interstate and intrastate calls and may choose its own 800 number for marketing purposes, such as 800-CLUB-MED. It may retain that number even if it changes its receiving locations or the geographic bands from which 800 calls are authorized. A subscriber may also allocate certain fixed percentages of calls to different receiving locations or even route calls to different receiving locations depending on the originating area or the time of day.

B. Consideration of 800 Access in the Antitrust Proceeding

6. The District Court and the Department of Justice (DOJ) have extensively considered various 800 access issues under the *Modification of Final Judgment (MFJ)* and the Plan of Reorganization in the AT&T antitrust proceeding.[3] Most importantly, the Plan provided that the 800 service data base system would belong to AT&T because it performed interexchange, and not exchange access, functions. AT&T must lease access to the system to the Bell Operating Companies (BOCs) for provision of intraLATA 800 service, but it need not allow the BOCs to use the system in a way that allows direct or indirect access by other IXCs (OCCs). The Plan also determined that the 800 prefix is not AT&T's property, so that both the BOCs and the OCCs are entitled to use it for INWATS service. The Plan established as well that the BOCs' Central Staff Organization (now Bell Communications Research, or "Bellcore") will administer the North American Numbering Plan to assign 800 numbers and that 800 directory assistance will be an interexchange, interLATA service and thus beyond the authority of any BOC.

7. In December 1983, DOJ filed a motion asking the Court to grant the BOCs access to AT&T's CCIS data base system so they could route 800 calls for the OCCs while the BOCs develop their own data base facilities. DOJ contended that the requested amendment of the Plan and temporary waiver of the *MFJ* prohibition against BOC provision of interLATA services were necessary to allow the BOCs to provide equal 800 access to the OCCs and to permit competition to develop in the lucrative 800 market. Otherwise, DOJ contended, the BOCs would be forced to implement a less desirable NXX interim access plan, under which the first three digits of the 800 number would identify the IXC chosen by the subscriber. The DOJ motion was supported by the BOCs and several OCCs, including GTE Sprint, MCI, Western Union, and SBS.

8. In January 1985, the Court denied DOJ's motion.[4] It found that the NXX access plan provided the OCCs with a level of signal quality equivalent to that provided to AT&T and that the NXX plan could be provided with minimal disruption. The Court also found that the NXX plan would not violate the equal access provisions of the decree because the BOCs would provide both AT&T and the OCCs with the identical signal—the dialed 800 number. The Court further relied on the absence of any contention that the cost to the OCCs of developing their own data bases in the interim would entirely frustrate entry during the interim period or that any delay in the availability of competitive 800 service would preclude long-term competition. The Court noted as well that DOJ's plan might conflict with the Consent Decree by permitting the BOCs to provide interexchange services. The Court did find that the BOCs were entitled to obtain from AT&T the hardware, software, and know-how necessary to develop their own data base system.

C. Current BOC Efforts To Provide 800 Access

9. The BOCs have under development a data base plan for 800 access that would be very similar in certain respects to the CCIS data base system. Under the plan, the BOCs would establish a coordinated system of data bases and and a signaling system to handle 800 calls. The originating BOC would route an 800 call to one of its Service Switching Points (SSPs), which would query that BOC's data base. At minimum, the data base would inform the SSP which IXC was to carry the call so that the SSP could route the call to the IXC for completion. The BOC data base system also could determine whether the call was from a subscribed area, translate the 800 number to a standard ten-digit number for further routing, route the call to different IXCs or to different receiving locations based on the time of day or the call's origin, provide automatic least-cost routing, or provide statistical information to subscribers on the nature of their 800 traffic. Thus, like AT&T's data base system, the BOC data base system would allow customers to select a single, verbally significant 800 number and make various changes in service without changing that number. In addition, the BOC data base system would allow a customer to change IXCs

[2] Bell Atlantic Petition for rulemaking at 3.

[3] *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (*MFJ*); *United States v. American Tel. and Tel. Co.*, 569 F. Supp. 1057 (D.D.C.), *aff'd sub nom. California v. United States*, 104 S.Ct. 542 (1983) (approval of Plan of Reorganization).

[4] *United States v. American Tel. and Tel. Co.*, 604 F. Supp. 316 (D.D.C. 1985).

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or have different IXCs provide service from different locations or at different times of day under a single, nationwide 800 number.

10. The development and implementation of the BOC data base plan will take some time. While estimates vary, it apparently will not be available until late 1987 or even late 1988. As for BOC provision of 800 access in the short term, since the issuance of the Court's decision denying them interim access to AT&T's data base, the BOCs have started updating their equal access compliance plans. Although some initially questioned the wisdom of using the NXX plan for the period preceding implementation of their data base plan, all the BOCs apparently have now agreed to provide that form of access in the short term.

D. 800 Access Issues in OCC Joint Petition

11. On June 17, 1985, GTE Sprint Communications Corporation, US Telecom, Inc., Allnet Communication Services, Inc., and United States Transmission Systems, Inc. (OCC petitioners) filed a joint petition that raised significant questions about access for 800 service (Joint Petition). The petitioners contended that the 800 data base system is an AT&T "monopoly endowment" that threatens effective long-distance competition. As a remedy, they asked that AT&T be required to permit the OCCs access to the 800 data base in order to allow competitive provision of 800 service until the OCCs build their own data bases. The OCC petitioners' primary legal argument was that all ratepayers should be allowed to benefit from the 800 data base because it is a quasi-public asset funded by those ratepayers. AT&T responded that (i) the 800 data base system belongs to AT&T's shareholders and not to ratepayers; (ii) the Commission lacks authority to grant the requested relief because it cannot disturb the District Court's assignment of assets under the MFJ and Plan of Reorganization or alter the corporate structure of AT&T; and (iii) granting such access would remove incentives for AT&T and the OCCs to innovate.

12. On November 14, 1985, we adopted a Notice of Proposed Rulemaking in response to the Joint Petition. We there decided to consider the OCC petitioners' request for access to AT&T's 800 service data base in this proceeding.[5]

[5] *GTE Sprint Communications Corporation, US Telecom, Inc., Allnet Communications Services, Inc. and United States Transmission Systems, Inc.: Joint Petition for Expedited Rulemaking,* CC Docket No. 85-346, FCC 85-604 (released Dec. 5, 1985) (hereinafter *Joint Petition NPRM*).

III. The Long-Term Obligations of Exchange Carriers to Provide 800 Access

13. In its Petition, Bell Atlantic requests that this Commission initiate a rulemaking proceeding to adopt policies or rules on the long-term obligations of exchange carriers to provide 800 access so that there can be a single, nationwide form of 800 access. Such uniform system of access allegedly is essential to competitive 800 service. Bell Atlantic advocates that this Commission require all exchange carriers to provide 800 access through the BOCs' coordinated data base plan.

A. Comments

14. The following parties, representing a vast majority of those filing comments, favor a rulemaking proceeding on long-term 800 access issues: the Ameritech Operating Companies (Ameritech); BellSouth Corporation; Pacific Bell and Nevada Bell (PacTel); Southwestern Bell Telephone Company (Southwestern Bell); GTE Corporation; Lexitel Corporation; the United Telephone System, Inc. (United Telephone); and US Telecom, Inc. They all agree that express Commission policies are essential to ensure universal, uniform 800 access. Most strongly favor the BOC data base plan. Southwestern Bell and GTE, however, urge us to require only the provision of those aspects of BOC data base access essential to adequate, nondiscriminatory service and to let the market determine the availability of more sophisticated vertical services. United Telephone suggests that this Commission defer any rulemaking proceeding on long-term 800 access until exchange carriers have had a reasonable opportunity to resolve questions about the economics of the BOC data base plan.

15. Only two parties totally oppose a rulemaking proceeding on the form of long-term 800 access—Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company (US West); and American Telephone and Telegraph Company (AT&T). They contend that there is no need for express Commission policy because the BOCs already are developing a coordinated data base plan that will assure uniformity among the BOCs. US West argues that this Commission should defer action until there is an exchange carrier refusal to connect an interexchange carrier for 800 service. AT&T suggests that CC Docket 78-72, Phase III, is the appropriate forum if consideration of independent exchange carrier obligations to provide 800 access is judged necessary.

B. Discussion

16. By this Notice, we initiate a rulemaking proceeding on the long-term oligations of exchange carriers under the Communications Act to provide access for 800 service to all interexchange carriers requesting such access. We tentatively conclude that a uniform, nationwide system of 800 access is necessary for an economically viable, nationwide 800 service to be offered by multiple interexchange carriers. We also tentatively conclude that the BOC data base plan appears to have substantial benefits for 800 service subscribers. For instance, the plan would allow number portability and a multiple-carrier capability that would enable subscribers to choose different interexchange carriers for calls from different areas or at different times-of-day on one 800 number. In addition, if exchange carriers offered number translation and the ability to screen calls to ensure they are from subscribed areas, small interexchange carriers could provide unadorned, but competitive 800 service without having to invest substantially in their own data bases.

17. We also conclude that the current efforts by the BOCs to develop a coordinated data base plan do not obviate the need for a rulemaking proceeding. First, the BOC data base plan under development potentially offers a wide variety of features, many of which may not be necessary to establish a basic 800 access service. In a rulemaking proceeding, we can consider whether we should specify which features will be mandatory and which optional. Second, a Commission determination of how the costs of developing and implementing a data base plan will be recovered would appear to be useful for reasoned decisionmaking by the BOCs in their development efforts. Third, a rulemaking proceeding is necessary to consider how and when the independent exchange carriers should provide 800 access. Their provision of compatible 800 access would appear to be necessary to ensure that consumers throughout the nation will be able to take advantage of 800 service, and we know of no commitment to provide such access.

18. Although we have tentatively concluded that the BOCs should be required to implement a data base system for 800 access, there are several specific issues that need to be addressed:

(a) Whether detailed Commission rules are necessary concerning the implementation of any exchange carrier long-term 800 access obligation under the Communications Act, including a schedule for such implementation;[6]

(b) Whether any such obligation should be limited to a simple ten-digit screening of calls for routing to an interexchange carrier selected by the subscriber;

(c) Whether exchange carriers should be permitted, or required:

(i) To screen 800 calls to ensure they are from locations for which the subscriber has paid;

(ii) To offer interstate 800 subscribers multiple-carrier capabilities;

(iii) To offer interstate 800 subscribers least-cost routing; and

(iv) To offer 800 number translation capabilities;

(d) What obligations should be imposed on independent exchange carriers to provide 800 access to interexchange carriers, and on what schedule;

(e) The amount of the costs of implementing any mandatory or voluntary 800 access and how they should be recovered from 800 access and any other services to be provided via the data base plan;[7] and

(f) If certain capabilities are held to be optional, how their pricing should be unbundled.

19. We seek comments on these specific issues as well as on the general question of the appropriate long-term obligation of exchange carriers to provide 800 access. Finally, we invite comment on whether any of the proposals under consideration might conflict with the *MFJ*.

IV. Denial of Bell Atlantic's Petition With Respect to Interim 800 Access

20. With respect to interim 800 access, Bell Atlantic urges us to initiate a rulemaking proceeding because, it alleges, "there is disagreement over the need to offer interim short-term access and, if there is such a need, how that access should be provided."[8] Bell Atlantic advocates that we decide in such a rulemaking proceeding that the Communications Act permits exchange carriers to forgo providing interim access in order to devote their resources to rapid implementation of the BOC data base plan. Bell Atlantic further argues that if we conclude that interim 800 access is nevertheless necessary, we order AT&T to make its 800 data base system available to the BOCs for that purpose and allow Bell Atlantic to recover its costs from all interexchange carriers that avail themselves of 800 access.

A. Comments

21. Seven commenters favor such a rulemaking proceeding: BellSouth, PacTel, Southwestern Bell, GTE, Lexitel, US Telecom, and United Telephone. In summary, they argue that this Commission needs to resolve the current controversy about exchange carriers' interim 800 access obligations to ensure that such access, if provided, is uniform and universal.

22. MCI and SBS both urge that action on interim access be deferred until DOJ reaches a conclusion concerning the BOCs' interim access obligations under the *MFJ*. Both contend, however, that some form of interim 800 access is essential and recommend that this Commission use the OCCs' Joint Petition, if necessary, to ensure that access is provided.

23. AT&T and US West oppose a rulemaking proceeding on the interim 800 access obligations of exchange carriers. AT&T argues that the District Court already has decided that exchange carriers have duties under the *MFJ* to provide interim 800 access and to use the NXX plan, and that this Commission has no authority to grant any relief from those obligations. Several parties, including Bell Atlantic, PacTel, US West, GTE, Lexitel, and SBS, appear to contest AT&T's interpretation of the *MFJ* and the Court's decision on DOJ's motion on interim 800 access and argue generally that it does not legally restrict this Commission's options under the Communications Act. US West argues that a rulemaking proceeding is unnecessary because implementation of interim NXX access is underway and because questions concerning cost recovery can be addressed during review of its NXX access tariff filing.

24. The parties disagree about whether there should be any interim access. Bell Atlantic, BellSouth, PacTel, and US Telecom all argue there should be no interim access. They claim it will divert significant resources from development of the data base plan and thus substantially delay its implementation. United Telephone similarly argues that it, as an independent exchange carrier, should have no interim access obligation because such access would be costly and burdensome and of dubious benefit given the limited OCC presence in United Telephone areas. By contrast, AT&T, Ameritech, Southwestern Bell, US West, MCI, and SBS contend that interim service (in the form of the NXX plan) can be implemented relatively quickly and inexpensively. GTE argues that NXX access will be costly, but that some form of interim access is necessary because the BOC data base plan will not be available until late 1988.

25. The parties also disagree about Bell Atlantic's request in the alternative that, if there is to be interim access, this Commission require AT&T to allow use of its 800 data base system. Only Lexitel and US Telecom join in this request. GTE advocates that we order that the data base be used to sort calls among interexchange carriers, but that no number translation or time-of-day routing be allowed. GTE asserts that such a limited order would avoid problems under the *MFJ*, speed the availability of interim service, and make it less expensive. AT&T argues that the District Court's ruling prohibits BOC use of the data base for interim 800 access. AT&T, Ameritech, and US West contend that interim use of the data base is not feasible at this point because it would take too long to implement.

26. On the question of pricing, Bell Atlantic asks that costs be recovered from all IXCs requesting 800 access (presumably including AT&T) on a traffic-sensitive basis. Southwestern Bell and US West state that they plan to recover their costs from all IXCs through cost-based access charges, with no discounts. MCI and GTE urge that the OCCs be given a discount if interim NXX access is provided because that access is inferior to that provided AT&T.

27. In further response, Bell Atlantic and GTE state that they have decided to provide interim NXX access. They both still urge the Commission to initiate a rulemaking proceeding to ensure the universal availability of interim 800 access.

B. Discussion

28. We have decided that a rulemaking proceeding on interim 800 access is unnecessary. The question of interim 800 access has been extensively considered in the antitrust proceeding

[6] At least two sets of comments raise questions about the level of AT&T's cooperation with the BOCs in the development of the BOC data base system. On the assumption that we decide that the BOC data base system should be implemented on a nationwide basis, we invite comments with respect to actions this Commission can and should take in expediting implementation of that system.

[7] For instance, should mandatory 800 access costs be recovered from all interexchange carriers or only those carriers offering 800 service? Should AT&T be exempted, either wholly or partially, on the grounds that it already has developed its own 800 data base system? Persons who comment on this question are encouraged to suggest amendments to the Part 69 access charge rules that would implement a decision to recover 800 access costs in a particular manner.

[8] Bell Atlantic Petition for Rulemaking at 1.

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since December 1983. We understand that the BOCs, including Bell Atlantic, have recently informed the DOJ that they will provide interim 800 access under the NXX plan. GTE also will be providing interim NXX access. The record before us indicates that the NXX access plan should be able to provide relatively quick and inexpensive 800 access. By contrast, it is unclear that access to the AT&T data base system could be implemented significantly before implementation of a long-term access plan. We see little, if anything, to be gained by commencing a rulemaking proceeding on interim 800 access that may in itself inhibit the provision of any form of interim 800 access to the OCCs.[9]

29. We also deny Bell Atlantic's request that we initiate a rulemaking proceeding to decide how the costs of providing interim 800 access should be recovered. Bell Atlantic has estimated that its costs to provide NXX access will amount only to $3 million. Southwestern Bell has stated that implementation of NXX access will not require significant resources. US West has represented that tariffs for such cost recovery will be filed shortly. The Part 69 access charge rules apportion all exchange carrier interstate costs, including costs that may not have been anticipated at the time those rules were adopted, among the access elements and the interexchange category. The petition and comments do not demonstrate that application of the present access charge rules to the costs of providing interim 800 access will produce any signficant distortion that would warrant changes in those rules.[10]

V. Ordering Clauses

30. Accordingly, it is hereby ordered that the Petition for Rulemaking requested by Bell Atlantic is granted to the extent indicated herein and otherwise denied.

31. It is further ordered that the requests concerning AT&T's 800 service data base system in the Joint Petition for Expedited Rulemaking filed by GTE Sprint Communications Corp., US Telecom, Inc., Allnet Communications Services, Inc., and United States Transmission Systems, Inc. (RM 5057) are denied.

32. Accordingly, it is ordered that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on the actions proposed in this Notice on or before March 4, 1986, and reply comments on or before April 1, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

33. It is further ordered that the motions by Bell Atlantic and GTE Corporation to file further responses to comments are granted.

34. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission, whichever comes earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff that addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.

35. It is further ordered that the Secretary of the Federal Communications Commission shall effect publication of this Notice of Proposed Rulemaking in the **Federal Register**.[11]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

The following parties filed comments on the petition for rulemaking filed by the Bell Atlantic Telephone Companies (Bell Atlantic):

American Telephone and Telegraph Company (AT&T);
The Ameritech Operating Companies (Ameritech);
BellSouth Corporation;
GTE Corporation;
Lexitel Corporation;
MCI Telecommunications Corporation (MCI);
Pacific Bell and Nevada Bell (PacTel);
Satellite Business Systems (SBS);
Southwestern Bell Telephone Company (Southwestern Bell);
US Telecom, Inc.;
Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (US West); and
United Telephone System, Inc. (United Telephone).

The following parties submitted reply comments:

AT&T;
Bell Atlantic;
GTE;
PacTel;
SBS;
Southwestern Bell; and
US West.

Bell Atlantic and GTE filed further responses to comments, along with motions for leave to file those responses.

[FR Doc. 86-1982 Filed 1-29-86; 8:45 am]
BILLING CODE 6712-01-M

[9] We also reject the OCCs' argument that they should be granted interim access to AT&T's 800 data base on the grounds that it is a quasi-public monopoly endowment. In the *Joint Petition NPRM*, we rejected the "monopoly endowments" argument as applied to the joint petitioners' request for access to AT&T's advanced operating systems for automated credit card service, 900 service, and interLATA coin-sent paid service. We reasoned that this argument, if unqualified, proves too much because it would appear to entitle the OCCs to access to virtually all of AT&T's corporate property. In addition, it is not clear under this argument when AT&T's development efforts ceased being quasi-public in character. Because AT&T is still subject to rate regulation, the argument might even require OCC access to systems currently under development. *Joint Petition NPRM* at para. 55 n.50. Thus, we here reaffirm our decision not to accept the argument that the OCCs should be permitted unfettered access to those systems simply because AT&T developed certain operating systems in a less competitive environment than prevails today.

[10] On December 31, 1985, US West filed a petition with us seeking waiver of certain sections of Part 69 of our rules to the extent necessary to allow the introduction of a separate rate element for recovery of the costs incurred in the provision of exchange access for 800 service. We have not considered in this proceeding, and express no opinion on, the propriety of permitting an exchange carrier to employ a separate rate element for recovering the costs of providing interim NXX access.

We decline as well to initiate a rulemaking proceeding solely to consider the interim 800 access obligations of independent exchange carriers not a party to the AT&T antitrust proceeding. GTE will be providing interim NXX access. We understand as well that many independent exchange carriers now use the BOCs to route their originating 800 calls and thus presumably will provide interim access through the BOCs' NXX system. Other independent exchange carriers may find it in their economic interest to provide interim 800 access through their own implementation of the NXX system. We therefore conclude that a rulemaking proceeding on the interim access obligations of independent exchange carriers is not likely to increase the availability of 800 access significantly beyond that which would otherwise occur during the transition to implementation of a data base plan.

[11] The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-12, are not applicable to this proceeding. This Commission has found that local exchange carriers, the parties directly subject to our access rules, do not come within the Act's definition of a "small entity." *Id.* section 601; *see MTS/WATS Market Structure*, 93 F.C.C.2d 241, at paras. 358-62 (1983).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of change of location for a public hearing.

SUMMARY: In reference to a notice of public hearings that was published January 23, 1986, 51 FR 3087, the Gulf of Mexico Fishery Management Council has changed the location for the public hearing to be held February 18, 1986, to review Amendment 1 to the Spiny Lobster Fishery Management Plan.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 813-228-2815.

In FR Doc. 86-1421 appearing on page 3087 in the issue of January 23, 1986, the following change is made: On page 3087, column 3 under the **"SUPPLEMENTARY INFORMATION"** heading, the location for the hearing scheduled for February 18, 1986, is changed to Franklin County Courthouse, Main Street (U.S. 98), Apalachicola, Florida.

Dated: January 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-2062 Filed 1-29-86; 8:45 am]
BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 20
Thursday, January 30, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donation for the Colville Reservation Indian Tribe in Washington State

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Colville Indian Tribe of the Colville Indian Reservation in Washington has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Colville Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of this tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. This donation by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1986, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, DC, on January 27, 1986.

Milton J. Hertz,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-2098 Filed 1-29-86; 8:45 am]
BILLING CODE 3410-05-M

Soil Conservation Service

Metaline Falls Critical Area RC&D Measure Plan Environmental Assessment; Metaline Falls, WA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Metaline Falls Critical Area Treatment RC&D Measure Plan—Environmental Assessment, Pend Oreille County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn A. Brown, State Conservationist, Soil Conservation Service, West 920 Riverside, Room 360, Spokane, Washington 99201-1080; telephone 509-456-3711.

SUPPLEMENTARY INFORMATION: The environmental assessment and measure plan of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan to minimize the occurrence of, and damages from, landslides along the highway and railroad south of Metaline Falls that threaten life, reduce visual quality and damage the county highway and railroad system. This objective agrees with the USDA National Program for Soil and Water Conservation, Soil and Water Resource Conservation Act of 1977 (RCA) and the Idaho-Washington Resource Conservation and Development Area Plan.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action on the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: January 21, 1986.

Lynn A. Brown,
State Conservationist.

[FR Doc. 86-1964 Filed 1-29-86; 8:45 am]
BILLING CODE 3410-16-M

Wellpinit Flood Prevention RC&D Measure Plan Environmental Assessment; Wellpinit, WA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wellpinit Flood Prevention RC&D Measure Plan—Environmental Assessment, Stevens County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn A. Brown, State Conservationist, Soil Conservation Service, West 920 Riverside, Room 360, Spokane, Washington 99201-1080; telephone 509-456-3711.

SUPPLEMENTARY INFORMATION: The environmental assessment and measure plan of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing damages to Tribal buildings from flooding due to snowmelt, storm runoff and high-intensity rainstorms. The planned works of improvement include the installation of drain tile, rain gutters, sump pump and a water collection system at the Tribal Center.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill fingle copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action on the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: January 21, 1986.

Lynn A. Brown,
State Conservationist.

[FR Doc. 86-1970 Filed 1-29-86; 8:45 am]
BILLING CODE 3410-16-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Meeting

Time and Date: Sunday, February 2, 1986 at 1:00 p.m., and Monday, February 3, 1986 at 8:30 a.m.

Place: Sunday meeting, Feburary 2, to be held at More Hall, University of San Diego Law School, in the Grace Court Room. Monday meeting, February 3, to be held at Camino Hall, Camino Theater, University of San Diego, Alcala Park, San Diego, California 92110.

Status: The meeting on February 2 will be an executive session. The meeting on February 3 will be open to the public.

Matters to be Considered:

Executive Session

Status of personnel, staffing evaluations, budget, fundraising, office space problems, review of proposed publication drafts, evaluation of pending proposals for project recognition.

Open Session

Report of committees on progress in commemorative plans and projects, status of legislation and appropriations, announcement of project recognition decisions, discussion and reception of testimony on proposals, discussion of plans for regional and national bicentennial projects.

Contact Person For More Information: Gene Mater, Special Assistant to the Director, 734 Jackson Place, NW., Washington, DC 20503 Tel. (202) USA-1787.

Supplementary Information: The purpose of this meeting is to give the Commission an opportunity to review the current status of operations and report on activities. It will also provide a further opportunity for witnesses and others to advise the Commission on programs.

Dated: January 27, 1986.

Mark W. Cannon,
Director.

[FR Doc. 86-2018 Filed 1-29-86; 8:45 am]
BILLING CODE 6340-01-M

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m., on February 19, 1986, at the Yale University, Ray Tompkins House, Varsity Room, Tower Parkway, New Haven, Connecticut. The purpose of the meeting is to review plans for a proposed study of affirmative action in the construction industry.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Stewart or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1986.

Bert Silver,
Assistant Staff Director for Regional Programs.

[FR Doc. 86-1965 Filed 1-29-86; 8:45 am]
BILLING CODE 6335-01-M

Florida Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 5:00 p.m., on February 22, 1986, at the Jacksonville Airport Hilton Hotel, 1400 Dixie Clipper Drive, Jacksonville, Florida. The purpose of the meeting is to plan for the Orlando and Jacksonville community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Paul Porter, or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1986.

Bert Silver,
Assistant Staff Director for Regional Programs.

[FR Doc. 86-1966 Filed 1-29-86; 8:45 am]
BILLING CODE 6335-01-M

Oregon Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m., on February 21, 1986, at the Portland Building, 1120 S.W. Fifth Avenue, Room "A", Portland, Oregon. The purpose of the meeting is to plan programs for the remainder of FY '86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442-1246, (TDD 206/442-4744). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1967 Filed 1-29-86; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning subcommittee of the West Virginia Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 11:00 a.m., on February 20, 1986, at the KB&T Center, Wheat First Securities, 10th Floor Conference Room, 500 Virginia Street, Charleston, West Virginia. The purpose of the meeting of the meeting is to plan future activities of the advisory committee related to administration of justice, housing, employment, education and voting.

Persons desiring additional information, or planning a presentation to the Committee, should contact subcommittee Chairperson, Marcia Pops or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254-6717 (TDD 202/254-5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1968 Filed 1-29-86; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:30 p.m., on February 20, 1986, at the Christ Church United Methodist Building, Quarrier and Morris Streets, Charleston, West Virginia. The purpose of the meeting is to review subcommittee recommendations for future activities and to hear from Federal, State and local officials concerning the use of Community Development Block Grant funds to establish and operate local human rights commissions in West Virginia.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adam Kelly or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254-6717, (TDD 202/254-5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-1969 Filed 1-29-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

[Docket No. 51223-5223]

National Oceanic and Atmospheric Administration

An Evaluation of the Implementation of the Magnuson Fishery Conservation and Management Act; Availability of Paper and Inquiry

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a draft discussion paper, "An Evaluation of the Implementation of the Magnuson Fishery Conservation and Management Act;" request for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration announces the availability for review and comment of a draft discussion paper concerning the effectiveness of the institutional arrangements and the fishery management process under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The paper was prepared by a NOAA/Council Task Group established by the NOAA Administrator and composed of representatives of the National Marine Fisheries Service and the Regional Fishery Management Councils. Copies of the paper may be obtained from the address below.

DATE: Comments should be submitted on or before April 30, 1986.

ADDRESS: Comments should be sent to Richard B. Roe, Director, Office of Fisheries Management, National Marine Fisheries Service F/M1, Washington, DC 20235. Write on the envelope "Comments on the Task Group Discussion Paper."

FOR FURTHER INFORMATION CONTACT: Richard B. Roe, (202-634-7218).

SUPPLEMENTARY INFORMATION: In January 1985, the NOAA Administrator established a small Task Group to review and evaluate the effectiveness of the existing institutional structures, roles, and relationships and the fishery management planning and regulatory process under the Magnuson Act. The objective of the evaluation is to recommend actions necessary to improve the agency's management of the planning and regulatory process under the Magnuson Act. The Task Group has completed a draft discussion paper, based upon its review and evaluation, which is available for public comment. The Task Group is interested in providing all interested individuals and organizations the opportunity to review and comment on the draft discussion paper. All public comment will be considered by the Task Group in preparing its final paper.

Dated: January 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-2068 Filed 1-29-86; 8:45 am]

BILLING CODE 3510-22-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 85-4 84CD]

1984 Cable Royalty Distribution

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Room 450, Washington, DC 20036, (202) 653-5175.

SUMMARY: In accordance with 17 U.S.C. 111(d)(5)(B), the Copyright Royalty Tribunal (Tribunal) directs that claimants to royalty fees paid by cable operators for secondary transmissions during 1984 shall submit not later than 5:00 p.m. on Monday, March 3, 1986 any comments concerning whether a controversy exists with regard to the distribution of the 1984 royalty fees. Claimants shall, by the same time, advise the Tribunal of their views concerning partial distribution of the 1984 royalty funds, and their views concerning hearing schedules and procedures if the Tribunal determines that a controversy exists.

Dated: January 27, 1986.

Edward W. Ray,

Chairman.

[FR Doc. 86-2060 Filed 1-29-86; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Institute of Technology Subcommittee of the Air University Board of Visitors; Open Meeting

January 6, 1986.

The Air Force Institute of Technology Subcommittee of the Air University Board of Visitors will hold an open meeting on 16-19 March 1986 in Building 125, Wright-Patterson Air Force Base, Ohio. Meeting begins at 6:30 PM, 16 March 1986.

The purpose of the meeting is to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the Subcommittee will also be reported to the Commander, Air University, Maxwell Air Force Base, Alabama, at the next regularly scheduled meeting of the Air University Board of Visitors.

For futher information on this meeting, contact Major Rich Cote, Air Force Institute of Technology, Directorate of Educational Plans and Programs, Wright-Patterson Air Force Base, Ohio 45433-6583, telephone (513) 255-5760.

Patsy J. Conners,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-1979 Filed 1-29-86; 8:45 am]

BILLING CODE 3910-01-M

Air University Board of Visitors; Open Meeting

January 6, 1986.

The Air University Board of Visitors will hold an open meeting on 6-9 April 1986 at Maxwell Air Force Base, Alabama. Meeting begins at 6:30 PM, 6 April 1986 at the Maxwell Officers Club.

The purpose of this meeting is to give the board an opportunity to review Air University educational programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112-5001, telephone (205) 293-5157.

Patsy J. Conners,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-1980 Filed 1-29-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

January 22, 1986.

The USAF Scientific Advisory Board Aeronautical Systems Division (ASD) Advisory Group will meet March 18, 1986, from 8:00 a.m. to 4:30 p.m., and March 19, 1986 from 8:00 a.m. to 3:00 p.m., at ASD Headquarters, Building 14, Room 222 and 203, respectively, at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to receive briefings and to advise the commander on various programs of the Aeronautical Systems Division.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-1976 Filed 1-29-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Direct Service Industry Options, Draft Environmental Impact Statement; Notice of Availability

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice is hereby given that the Bonneville Power Administration, in compliance with the National Environmental Policy Act of 1969 (NEPA), has prepared a draft environmental impact statement (EIS) entitled "Direct Service Industry Options."

SUMMARY: The EIS examines three potential actions (and alternatives) by which BPA hopes to reduce load fluctuations and revenue uncertainty resulting from its electrical service to 10 aluminum smelters. Options discussed include a variable power rate tied to the price of aluminum; a formal link between the Industrial Firm Power and the rate to the preference utilities; and partial BPA support for aluminum smelter modernization/conservation. BPA believes these actions, or combinations of them, will give BPA greater ability to plan for power needs and help to maintain its relatively strong financial position during this current period of power surplus, enhancing BPA's ability to repay the U.S. Treasury. In turn, BPA rates to its utility and other nonindustrial customers would stabilize.

Copies of the draft EIS are available for public review at major libraries in California, Idaho, Montana, Oregon, and Washington, and at locations listed below:

Reading Rooms:

Library, FOI—Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C.

Bonneville Power Administration, Washington, D.C. Office, Room 8G033, Forrestal Building, 1000 Independence Avenue SW, Washington, D.C.

Additional Review Locations. The document may be inspected at the following BPA offices.

Mr. George Gwinnuttt, Area Manager, Suite 288, 1500 NE Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. George Eskridge, District Manager, 800 Kensington, Missoula, Montana, 59801, 406-329-3880.

Mr. Ronald K. Rodewald, District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, Ext. 379.

Mr. George T. Reich, Acting Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206-442-4130.

Mr. Frederick D. Rettenmund, District Manager, Federal Building, Room 376, 550 W. Fort Street, Boise, Idaho 83724, 208-334-9137.

Mr. Thomas Wagenhoffer, Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-552-6226.

Mr. Robert N. Laffel, District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

FOR FURTHER INFORMATION CONTACT: Requests for copies, questions, or comments regarding the EIS should be directed to Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208; phone 503-230-

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5136. The comment period on the draft EIS ends February 21, 1986.

Issued in Portland, Oregon on January 22, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86-2032 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-24; OFP Case No. 64012-9295-24-24]

Powerplant and Industrial Fuel Use; Klondike Equity Enterprises; Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Klondike Equity Enterprises, Inc.

SUMMARY: On January 7, 1986, Klondike Equity Enterprises, Inc. (KEE), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its Klondike VI facility in City of Industry, California from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR § 503.37.

The proposed powerplant for which the petition was filed is an approximately 27.6 MW (net) cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, and absorption refrigeration package, and ancillary equipment.

The plant will be constructed at a facility consisting of two ice rinks, a healthclub, swimming pool, and restaurant. The plant will burn natural gas. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to Southern California Edison Company, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within 6 months after the end of the period for public comment and hearing unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefore, would be published in the **Federal Register.**

DATES: Written comments are due on or before March 17, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Docket No. ERA-C&E-86-24 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: KEE proposes to construct and operate a cogeneration facility in City of Industry, California, which will (1) generate electrical power for sale to Southern California Edison Company and (2) produce steam to meet the requirements of the adjoining recreational complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package, and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a) (1), KEE has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), KEE has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that KEE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2104 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-25; OFP Case No. 64012-9295-25-24]

Powerplant and Industrial Fuel Use; Klondike Equity Enterprises, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Klondike Equity Enterprises, Inc.

SUMMARY: On January 7, 1986, Klondike Equity Enterprises, Inc. (KEE), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its Klondike VII facility in San Diego, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 27.6 MW (net) cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, an absorption refrigeration package, and ancillary equipment.

The plant will be constructed at a facility consisting of two ice rinks, a healthclub, swimming pool, and restaurant. The plant will burn natural gas. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to San Diego Gas and Electric Company, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within 6 months after the end of the period for public comment and hearing unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before March 17, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-25 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SE., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: KEE proposes to construct and operate a cogeneration facility in San Diego, California, which will (1) generate electrical power for sale to San Diego Gas and Electric Company and (2) produce steam to meet the requirements of the adjoining recreational complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package, and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), KEE has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), KEE has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS): (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption

would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that KEE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2105 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration Final Consent Order With Marathon Petroleum Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed consent order between the Department of Energy (DOE) and Marathon Petroleum Company (Marathon) shall be made final as proposed. The consent order resolves, with certain exceptions, matters relating to Marathon's compliance with the federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. Marathon will pay to the DOE $20 million, plus interest from the date the proposed consent order was executed by DOE. Persons claiming to have been harmed by Marathon's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Marathon consent order final was made after a full review of written comments from the public and oral testimony received in a public hearing.

FOR FURTHER INFORMATION CONTACT: Emily E. Sommers, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, D.C. 20585. (202) 252-6727.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

I. Introduction

On August 28, 1985, ERA issued a notice announcing a proposed consent order between DOE and Marathon which, with certain exceptions, would resolve matters relating to Marathon's compliance with federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 50 FR 34901 (August 28, 1985). The proposed order, which requires Marathon to pay 20 million,[1] is for the settlement of Marathon's potential liability for $13.5 million in alleged overcharges plus attributable interest. The August 28 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the settlement should be made final. The notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. That hearing was held on September 30, 1985.

II. Comments Received

ERA received nine written comments. Three oral presentations were given at the September 30, 1985 hearing. All written and oral comments were considered in making the decision as to whether or not the proposed consent order should be made final.

The written and oral comments can be divided into four subject categories. One category consists of one comment that addressed the Office of Hearings and Appeals' ultimate disposition of the Marathon settlement funds. The second category includes three comments which addressed the use of OHA Subpart V procedures to distribute the settlement monies. The third category consists of four comments which addressed certain consent order provisions. The last category contains one comment directed at the adequacy of the settlement amount.

One comment was received from the following group which expressed its views on OHA's ultimate disposition of the funds that Marathon is to pay pursuant to the settlement:

State of Indiana.

Comments addressing the use of Subpart V procedures for distribution of the settlement fund were submitted by the following three groups:

Ad Hoc Committee of Marathon Customers, Attorney General of the States of Askansas, Delaware, Iowa, Kansas, Louisiana, North Dakota, Rhode Island and West Virginia, National Council of Farmer Cooperatives.

The four comments that addressed certain consent order provisions were received from: Congressmen Robert H. Michel, Edward R. Madigan and Thomas J. Tauke, Growmark, Inc., Petroleum Marketers Association, Research Fuels, Inc.

The comments submitted by these parties did not question the basis of the settlement or adequacy of the settlement amount, but only offered suggestions on the distribution of the settlement funds that were different from the consent order provisions requiring disbursement through OHA administrative claims proceedings or suggested clarification of various aspects of the proposed consent order.

The one comment that addressed the adequacy of the proposed settlement amount was submitted by: Attorneys General of the States of Michigan and Indiana.

III. Analysis of Comments

The August 28 notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed consent order should be finalized as proposed, modified or rejected. To ensure greater public understanding of the basis for the proposed settlement, the August 28 notice provided detailed information regarding Marathon's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This expanded settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The State of Indiana's comment relating to OHA's ultimate distribution of the funds if the Marathon consent order is finalized was not germane to the basis or adequacy of the settlement. The distribution of the settlement funds will be the subject of a separate administrative proceeding conducted by the Office of Hearings and Appeals, to be initiated shortly after publication of this notice. Comments on the actual disbursement of the monies by OHA will not be addressed here, but will be referred to OHA for consideration in the Marathon consent order claims proceeding.

[1] The $20 million, plus interest accrued from the date the proposed consent order was executed by DOE, will be disbursed to DOE within 30 days of publication of this Notice.

Several commenters objected to the provision in the consent order that requires the DOE's Office of Special Counsel (OSC) to petition the OHA to implement special refund procedures under Subpart V (10 CFR Part 205) to distribute the settlement fund. Two of these groups expressed the view that use of the Subpart V procedure was unnecessary and that the consent order itself should direct refunds to parties who may have been overcharged. The ERA believes as a general policy that the Subpart V procedures are best suited for cases such as Marathon, where ERA could not readily identify the injured parties or their relative amount of economic harm. These commenters may most appropriately present their claim for monies from the consent order fund in that forum.

Another commenter in this group, the National Counsel of Farmer Cooperatives ("Cooperatives"), while supporting the disbursement of settlement funds attributable to refined products through OHA's Subpart V procedures, objected to referral of the crude oil portion of the consent order fund to OHA, rather than directing it through the consent order, in light of the DOE Statement of Restitutionary Policy issued on June 21, 1985. 50 FR 27400 (July 2, 1985) (Policy Statement). The Policy Statement was based upon the findings of fact contained in the June 19, 1985, report of the Office of Hearings and Appeals to the Kansas district court in *In re: the Department of Energy Stripper Well Exemption Litigation*, MDL No. 378, in which OHA found that it was impossible to trace specific crude oil overcharges through an individual refiner's marketing system to the ultimate consumer. In the Policy Statement, DOE announced that crude oil overcharge funds that had been spread through the entitlements program would be placed in an escrow account to allow Congress to decide upon an appropriate form of indirect restitution. If, by the fall of 1986, Congress does not act, the DOE intends to pay the money to the general fund of the U.S. Treasury for the benefit of the American public. In the Federal Register notice containing the policy statement, OHA announced that it planned to apply that policy to Subpart V proceedings involving overcharge funds representing entitlements period crude oil miscertification violations.

The DOE believes that referral of the entire Marathon settlement fund to OHA is entirely appropriate. While it would be possible for ERA to apply the Policy Statement directly by itself holding in escrow the funds attributable to the crude oil portion of the Marathon consent order, ERA believes that filing a Subpart V petition with respect to the entire Marathon settlement will avoid needless duplication and allow the OHA, the part of the Department with the broadest experience in administering overcharge and settlement funds, to do so in this case. This is especially appropriate in a consent order case, where there is no specific allocation of the settlement amount to crude oil or refined product.

The next group of comments addressed various aspects of the proposed consent order and suggested clarifications which should be made. Research Fuels, Inc. ("RFI") noted that while the proposed consent order resolves all matters relating to Marathon's compliance with the petroleum price and allocation regulations, it does not assign any monetary value to possible violations of the allocation regulations. RFI proposes that in the OHA Subpart V proceeding it be allowed to seek restitution from the remainder of the $20 million fund after refunds are paid to direct applicants whom OHA finds may have been overcharged in purchases of crude oil or refined petroleum products. DOE wishes to make clear that the apportionment of money in the the proposed consent order (and in the Federal Register notice)[2] to Marathon's alleged violations of the refiner pricing and crude oil regulations does not determine the ultimate distribution of this money. That is a matter which will be decided by OHA in a separate proceeding under Subpart V. RFI is free to press its arguments that it is entitled to refunds for Marathon's possible violations of the allocation regulations during that proceeding.

Another commenter in this group questioned whether the definition of Marathon in paragraph 203 of the consent order included certain companies controlled by Marathon and also suggested that the record retention provision of paragraph 601 should require Marathon to retain the data until the conclusion of the Subpart V proceeding and to provide that data to claimants which requested it. The definition of Marathon in the consent order is very broad and includes the company, its parent and subsidiaries, affiliates, and predecessors and Marathon in certain of its petroleum related activities. If the companies in question properly belong in one of these categories, they are covered by the consent order. The record retention provision of the consent order allows the OHA to require Marathon to retain the specified data as long as OHA needs it and to make the data available to OHA upon request. This language allows for the complete conduct of a Subpart V proceeding in a flexible manner while not burdening the company with unnecessary record retention or record provision requirements.

Two other commenters, Growmark, Inc. and Congressmen Michel, Madigan and Tauke, addressed the exclusion of the Growmark class of purchaser litigation, presently before OHA, from the settlement. These commenters expressed concern that DOE's settlement of matters concerning Marathon's cost banks and retention of records in all other proceedings would have an impact on the remedial portion of the Growmark litiation. The commenters explained that the settlement might encourage Marathon to object to the remedy proposed by ERA in the Growmark proceeding—a refund based upon the difference between the price of petroleum products Marathon actually charged Growmark on May 15, 1973 and the price it should have charged Growmark on that date, multiplied by the gallons of product sold to Growmark. Instead, the commenters believe that Marathon might now seek to have OHA apply the deemed recovery rule—Marathon would be deemed to have recovered the same product and non-product cost increments from its other customers that it recovered from Growmark—a remedy the commenters feel would have had substantial impact on Marathon's banks prior to settlement but would have limited consequence after the settlement, especially if Marathon is allowed to destroy records relating matters settled by the consent order. The commenters propose that the consent order should be renegotiated to include a provision binding Marathon to a computation of damages that accords with the method argued by ERA in the Growmark litigation, or that the proposed consent order should be rejected.

The DOE believes the proposed consent order as it is presently structured is in the best interest of the public while fully protecting the Growmark litigation. The consent order clearly states DOE's intention that the Marathon settlement does not affect issues or claims arising from or pending in the Growmark case, and Marathon is bound by that language as well. ¶ 501(a). That specific language is not affected by

[2] Another commenter raised a similar concern with respect to the language in the August 28 Federal Register notice.

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the more general consent order language in paragraph 501 which resolves all other matters between DOE and Marathon. Thus, if Marathon sought to have the deemed recovery rule applied to compute its liability in the OHA proceeding, the ERA would be free to apply that methodology as though the consent order did not exist. Were Marathon to destroy any records relevant to those calculations, the issue of application of the deemed recovery rule would become moot. Therefore, because the Growmark litigation is fully preserved by the consent order, renegotiation or rejection of the proposed settlement would neither be useful nor beneficial to the public.

On December 1, 1985, ERA received a letter from Growmark expressing the company's most recent views on the proposed Marathon consent order in light of an OHA discovery order issued to Marathon on November 14, 1985.[3] Growmark stated its concern that since OHA preliminarily determined that Marathon placed Growmark in the proper class of purchaser—the wholesale reseller class—and that the legal theory advanced by ERA in the Growmark litigation could not be sustained, exclusion of the Growmark litigation from the consent order might no longer be appropriate. Growmark suggested that in the event OHA issues a final order to this effect, ERA renegotiate the consent order to include the Growmark litigation and take into account any overcharges to Growmark. Growmark also expressed the view that since the OHA discovery order preliminarily indicated that ERA should recalculate Marathon's May 15, 1973 prices to its wholesale reseller class to include transactions with Growmark, the maximum amount Marathon could have overcharged that class, and perhaps even the basis for deeming recoveries, could change. Growmark, therefore, requested that the proposed consent order be withdrawn or at least not finalized until after oral argument on the validity of OHA's preliminary legal determinations, scheduled for January 28, 1986.

After analyzing Growmark's letter, ERA has determined that finalization of the proposed consent order would be in the best interest of the public. The existence of a discovery order containing preliminary legal conclusions does not affect the bargained-for agreement between Marathon and DOE since, as previously discussed, the Growmark litigation is entirely excluded from coverage under the consent order. Thus, DOE did not get and Marathon did not give up anything for this litigation which would be affected by any final OHA order. Furthermore, it is unlikely that there will be a final OHA determination requiring a recalculation of Marathon's May 15, 1973 prices to its wholesale reseller class of purchaser to include the prices Marathon charged Growmark since the DOE has no evidence of any transaction between Marathon and Growmark at each terminal on (or most recently prior to) that date, while transactions between Marathon and other members of the class did occur. See Ruling 1979–1. thus, whatever the final outcome of the Growmark litigation, it is unlikely to result in a need to determine new base prices for the wholesale reseller class.

The final commenter, the Attorneys General of the States of Michigan and Indiana ("Michigan and Indiana"), was the only one which addressed the adequacy of the settlement amount. Michigan and Indiana questioned the appropriateness of considering Marathon's banks in calculating the overcharge liability resulting from the alleged violations and incorporated by reference the comments filed previously by the Controller of the State of California in the ARCO consent order proceeding.

As DOE has previously explained in the ARCO **Federal Register** notice, 50 FR 26603 (June 24, 1985), in response to the same argument, there is a difference between the DOE's method of assessing regulatory compliance and resulting potential overcharge liability as outlined in the August 28 notice and the analysis sometimes used in Subpart V proceedings by OHA for determining the extent to which overcharges were absorbed by the first purchaser. Indiana and Michigan seem to assume that these two analytical processes should be the same. The two approaches are not the same. In fact, the processes must be different because they serve different purposes.

Subpart V proceedings are designed to determine the amount of economic injury which potentially overcharged customers may have absorbed. In these proceedings, refiners making claims particularly have urged OHA to consider their "banks" of unrecouped costs as evidence conclusively demonstrating that they were injured by the full measure of overcharges they incurred. OHA has consistently maintained that the absence of banks simply shows that all cost increases by a firm (whether lawful or consisting of overcharges) were passed on, and that the mere presence of banks means that only some cost increases (whether lawful or whether the result of overcharges) were not recovered as calculated under the regulatory scheme. In a number of cases OHA has found that lawful cost increases and alleged overcharges incurred by a purchaser were commingled and lost their identity. Accordingly, in the context of a proceeding conducted to make an equitable distribution of refunds, the mere fact that a refiners' banks exceeded the amount it was overcharged would not demonstrate the extent, if any, to which the refiner had been harmed.

OHA performs this analysis of banks and cost passthroughs in an effort to assure that first purchasers who are not end-users do not reap the benefits of consent orders at the expense of other persons who are economically injured further along in the distribution chain. In fact, if the mere existence of banks were proof that overcharges had been absorbed, each firm in the distribution chain that had such banks could each assert that they had absorbed the same overcharges.[4]

In contrast, the liability phase of the enforcement process, whether through litigation or settlement, assesses potential overcharge liability in the context of the refiner pricing regulations which were in effect during the period of price controls. From an enforcement standpoint the principal question is the degree to which overcharges were committed by the seller, not the distribution of that harm throughout the purchasing distribution chain, as is the case in Subpart V proceedings.

In the August 28 **Federal Register** notice, ERA sought to provide the maximum amount of information possible, and to address Marathon's actual financial liability resolved by the proposed consent order and to explain the difference between "overcharges" and "cost violations." A review of the scope of disclosure in the August 28 notice and the fact that only one

[3] ERA has determined it will treat this letter as a late-filed comment on the proposed consent order.

[4] The States also suggest that a recent decision, *Atlantic Richfield Co. v. DOE*, C.A. Nos. 84–190/84–735 (D. Del. Sept. 25, 1985), might encourage ERA to agree with the States. The ARCO case referred to was a challenge to an OHA Subpart V Decision and Order which refused, among other things, to consider the existence of ARCO's banks alone as conclusive evidence that ARCO had absorbed overcharges. The Delaware district court, in upholding the OHA Decision and Order, found OHA's requirement that ARCO provide proof of nonpassthrough of overcharges to be entirely reasonable in the context of Subpart V proceedings, as distinguished from enforcement proceedings. This decision simply reaffirms the position taken by OHA in numerous Subpart V proceedings, as discussed above.

commenter in any way addressed the adequacy of the settlement amount has resulted in ERA's belief that the August 28 notice provided the public with sufficient information to assess its adequacy. Therefore, the ERA will not repeat its explaination concerning the basis for the settlement, but will refer any member of the public who is interested in that matter to the August 28 **Federal Register** notice, which contains a thorough discussion.

The review and analysis of all the written and oral comments did not provide any information that would support the modification or rejection of the proposed consent order with Marathon. Accordingly, ERA concludes that the consent order is in the public interest and should be made final.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed consent order between Marathon and DOE executed on June 6, 1985 is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register**.

Issued in Washington, D.C. on January 24, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86–2050 Filed 1–29–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–02–NG]

Carson Water Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 10, 1986, of an application filed by Carson Water Company (Carson) a wholly-owned subsidiary of Southwest Gas Corporation, for blanket authorization to import up to 100 Bcf per year up to a total of 200 Bcf of natural gas over a two-year period beginning on the date of first delivery. Carson would import the natural gas for sale in the spot and short-term market, either for its own account, or on behalf of U.S. purchaser customers or Canadian producer-marketer suppliers. The price charged to customers for the imported gas would be market-based with the producer price calculated on a net-back basis. Carson proposed to file quarterly reports with the ERA givng the specific terms of each import and sale, including the price and volumes.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to invervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than March 3, 1986).

FOR FURTHER INFORMATION CONTACT:

Olga Ronkovich, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–8116.

Diana Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984).

Parties that may oppose this application should comment in their responses on the issue of the competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. March 3, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervening may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Carson's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, January 23, 1986.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 86–2051 Filed 1–29–86; 8:45 am]

BILLING CODE 6450–01–M

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[Docket No. C&E-85-021; OFP Case No. 64011-3194-01-12]

LTV Steel Co., Inc.; Order Granting Exemption

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to LTV Steel Company, Inc. Exemption from the Prohibition of the Powerplant and Industrial Fuel Use Act of 1978 and Rescission of an Order Granting a Permanent Fuel Mixtures Exemption for the Same Facility.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to LTV Steel Company, Inc. (LTV or "the petitioner"), succesor by merger to Jones and Laughlin Steel, Inc. (J&L). The permanent exemption permits the use of natural gas as the primary energy source for a boiler located at its Aliquippa Works in Aliquippa, Pennsylvania, based on the lack of alternate fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours annually. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on March 31, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, DC 20585. Phone (202) 252-1774.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585. Phone (202) 252-6985.

SUPPLEMENTARY INFORMATION: On May 15, 1985, LTV petitioned ERA under section 212 of FUA and 10 CFR 503.32(c) for a permanent exemption to permit the use of natural gas in an existing boiler. The petition for exemption based on the lack of an alternate fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours annually was filed simultaneously with a request that ERA, pursuant to 10 CFR 501.000 *et seq.*, rescind a Permanent 25 percent Fuel Mixtures Exemption previously granted by ERA to J&L on November 20, 1981 applicable to the same boiler.[1] Since ERA is granting the petition pursuant to 10 CFR 503.32(c), the Rescission Order will be effective contemporaneously. The project for which the exemption is requested is a boiler located at LTV's Aliquippa Works. The unit, which is already in place, is designated as Boiler No. 61, and will burn natural gas.

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR § 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 13, 1985 (50 FR 37399), commencing a 45-day public comment period. In that notice, ERA announced its intent to rescind the Fuels Mixture Exemption for Boiler #61, contingent on granting LTV's petition for a 1,500 hour full load exemption.

A copy of the petition was provided to the Enviornmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on October 28, 1985; no comments were received and no hearing was requested.

Rescission Request

ERA hereby grants LTV's request for Rescission of Permanent 25 percent Fuel Mixtures Exemption Applicable to Boiler No. 61. LTV's request for rescission was based on its determination that significantly changed circumstances as defined in 10 CFR § 501.102(b) exist with respect to the applicability of the Fuel Mixtures Exemption to LTV. Accordingly, pursuant to 10 CFR § 501.101(f), LTV submitted documentation supporting its Request for Rescission. It was originally anticipated that operation of Boiler No. 61, a given steaming capacity would be necessary at various times to meet the then anticipated demand at the plant. However, subsequent to commencement of commercial operations, LTV has determined that the plant would be operated more efficiently if Boiler No. 61 were permitted to operate with a 1500 hour full load exemption.

[1] OFP Case No. 55368-3194-01-12, 46 FR 57110 (November 20, 1981).

Basis For Permanent Exemption Order

The permanent exemption order is based upon evidence in the record that shows that in accordance with the requirements of 10 CFR 503.32(c), LTV has certified that:

1. The unit will be operated less than 1500 full load hours annually;
2. The use of mixtures is not feasible, as required under § 503.9; and
3. Prior to operation, all applicable environmental certifications will be secured.

The last certification is required under 10 CFR 503.13(b)(1). In further compliance with that section, LTV submitted and certified as accurate the information required by the environmental checklist in § 503.13(b)(2).

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that LTV has satisfied the eligibility requirements for the requested permanent exemption, as set forth in 10 CFR 503.32(c). Therefore, pursuant to section 212 of FUA, ERA hereby grants a permanent exemption to LTV to permit the use of natural gas as the primary energy source for a 1500 hour full load equivalent exemption for Boiler No. 61 at its Aliquippa Works, Aliquippa, Pennsylvania.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C., on January 23, 1986.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 86-2052 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-04; 85-OFP Case No. 66017-9266-01-23]

Powerplant and Industrial Fuel Use; Power Developers, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of extension of decision period on petition for exemption by Power Developers, Inc. for a Proposed Facility near Scottsdale, Arizona.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by ninety (90) days of April 21, 1986, the Decision Period within which to either grant or deny the request for a permanent exemption from the prohibitions to Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) (FUA) filed by Power Developers, Inc. for its proposed electric power production facility to be near and east of Scottsdale, Arizona.

Section 501.68(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a specified date by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension by ERA of the decision period to grant or deny the petition is necessary to allow further consultation with the Federal Energy Regulatory Commission as required by the FUA.

Issued in Washington, DC on January 17, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2106 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Remedial Order; O.K. Oil and Gas, Inc. and Jack D. Pointer, Jr.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to O.K. Oil and Gas, Inc. and Jack D. Pointer, Jr.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of an Proposed Remedial Order which was issued to: O.K. Oil and Gas, Inc. (O.K.) and Jack D. Pointer, Jr. (Pointer) 800 S. I-35, Suite 106, Oklahoma City, Oklahoma 73149.

This Proposed Remedial Order alleges that O.K. and Pointer charged prices in excess of ceiling prices in first sales of domestically produced crude oil in violation of 10 CFR 212.79 during the period June 1979 through December 1980 in the amount of $261,495.84, plus interest. A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the: Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585; in accordance with the provisions of 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections.

Pursuant to 10 CFR 205.193(c), a person who files a Notice of Objection shall on the same day serve a copy of the Notice upon the person to whom the Proposed Remedial Order is directed; upon:

Ben L. Lemos, Director, Office of Field Operations, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, 2d Floor, Dallas, Texas 75207;

and upon:

Carl A. Corrallo, Esquire, Chief Counsel for Administration Litigation, Economic Regulatory Administration, U.S. Department of Energy, Room 3H-017, RG-15, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC on the 17 day of January, 1986.

James Solit,

Acting Director of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 86-2053 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding $568,000 obtained by the DOE as the result of a lawsuit involving Juniper Petroleum Corporation concerning that firm's treatment of certain crude oil as stripper well crude oil. This money is being held in escrow for disposition in accordance with the DOE's Statement of Restitutionary Policy, 50 FR 27400 (1985).

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with section 205.283(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to funds obtained as a result of a judgment entered by the United States District Court for the District of Delaware in *Juniper Petroleum Corporation* v. *DOE*, No. 80-617 (D. Del.). In that lawsuit, Juniper challenged the DOE regulations governing the sale of crude oil produced from "stripper well properties." In upholding the DOE regulations, the court ordered Juniper to pay to the Department an amount equal to the difference between the ceiling price for "old" oil and the stripper well price for each barrel of crude oil at issue in the lawsuit, plus interest on that amount. The amount refunded was to be distributed in a Subpart V proceeding.

The Decision and Order establishes procedures under which no claims for direct restitution will be accepted, in accordance with the DOE's Statement of Restitutionary Policy, 50 FR 27400 (1985). The *Juniper* funds will therefore be held in escrow for disposition in accordance with departmental policies.

Dated: January 21, 1986.

George B Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy Special Refund Procedures

January 21, 1986.

Name of Firm: Juniper Petroleum Corporation.

Date of Filing: April 12, 1985.

Case Number: HEF-0579.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received from enforcement proceedings designed to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a court order involving Juniper Petroleum Corporation. Pursuant to the court order, the firm was required to make refunds totaling approximately $568,000 in principal and interest for actual violations of the DOE pricing and certification regulations. Those funds are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.

Background

In 1980, Juniper filed a lawsuit against the Department of Energy challenging

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the DOE regulations governing the sale of crude oil produced from "stripper well properties." *Juniper Petroleum Corporation v. DOE*, No. 80-617 (D. Del.). Juniper's suit was stayed pending the outcome of related multidistrict litigation challenging the stripper well regulations. However, when the Temporary Emergency Court of Appeals upheld the regulations, *In re: The Department of Energy Stripper Well Exemption Litigation*, 690, f.2d 1375 (Temp. Emer. Ct. App. 1982), *cert. denied*, 103 S. Ct. 763 (1983), the United States District Court for the District of Delaware entered judgment for the DOE in the *Juniper* proceeding. It therefore ordered Juniper to pay to the Department an amount equal to the difference between the ceiling price for "old" oil and the stripper well price for each barrel of crude oil at issue in the lawsuit, plus interest on that amount. The amount refunded was to be distributed in a Subpart V proceeding.

On May 28, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the funds that Juniper had paid to the DOE. 50 FR 26615 (June 27, 1985). In that proposed decision, we noted that as a producer of crude oil, Juniper was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212,[1] including the crude oil certification requirements contained in 10 CFR 212.131(a)(4). To the extent that Juniper miscertified old crude oil as stripper well crude oil, the impact of the violations was spread to all participants in the Entitlements Program. As we noted in the Proposed Decision and Order, it is probable that over the long run at least some part of these cost increases were passed through to the consuming public in the form of higher prices. At the time the Proposed Decision was issued, we were actively considering whether the impact of identical stripper well miscertification violations could be traced with precision. We noted in the PD&O that we anticipated adopting a refund procedure in the *Juniper* proceeding which was consistent with that recommended to the District Court in the Stripper Well Exemption Litigation.

A. The OHA Stripper Well Report

After the PD&O was issued, the OHA completed its fact-finding in the *Stripper Well* proceeding. *See Report of the Office of Hearings and Appeals, In re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Stripper Well Report). In its report, the OHA discussed at length the general effect of crude oil miscertifications on the Entitlements Program. *Id.* at 90,260. The OHA noted that the Entitlements Program dispersed the stripper well overcharges at issue in that case equally among all barrels of crude oil refined in the United States. Thus, each refiner *initially* bore that part of the overcharges which was proportional to its pro rata share of the crude oil runs to stills covered by the Program in a given month. *Id.* at 90,621. Although the OHA Stripper Well Report fund, using marginal econometric analysis, that refiners *as a class* absorbed a small percentage of the overcharges that were spread by the Entitlements Program, it also concluded that it is impossible to trace the specific impact on individual refiners of Entitlements-period crude oil miscertification violations. *Id.* at 90,620.

B. DOE Policy Regarding Crude Oil Overcharges

The findings in the OHA Stripper Well Report formed the basis for DOE's establishment of a restitutionary policy regarding overcharge funds associated with Entitlements-period crude oil miscertifications. 50 FR 27400 (1985), Fed Energy Guidelines ¶90,508 (1985). The policy statement announced that the Department would maintain such overcharges in escrow to afford the Congress the opportunity to select the means of making indirect restitution. In light of the DOE policy determination, the OHA issued an order in June 1985 announcing that it intended to apply the policy in special refund proceedings involving overcharge funds attributable to Entitlements-period crude oil certification violations. 50 FR 27402 (1985). It also solicited comments from potentially aggrieved parties. Comments opposing the OHA's application of the policy to pending refund proceedings were considered and rejected in *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985). Thus, the OHA has determined that it will apply the DOE policy in implementing special refund procedures in all cases like the present one.

Refund Procedures

We have reviewed comments filed on behalf of the States of Texas, California, Arkansas, Delaware, Iowa, Louisiana, North Kakota, Rhode Island, and West Virginia which argue that restitution for crude oil overcharges is best effected through distribution of funds to the States for use in energy-related programs. However, in view of OHA's decision in *Amber Refining*, we have determined that the *Juniper* funds should be pooled with other crude oil consent order funds and judgments resulting from litigation for distribution in accordance with departmental policies. *See* 50 FR 27402 (1985); 50 FR 27400 (1985); 50 FR 1919 (1985).

It is therefore ordered that:

The refund amount provided in conjunction with the court's order in *Juniper Petroleum Corporation v. DOE*, Civil Action No. 80-617 (D. Del.) shall be distributed in the manner set forth in the foregoing Decision and Order.

Dated: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2054 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[1] The DOE regulations, in effect until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil. The regulations permitted producers to sell certain other crude oil, such as crude oil produced from a "stripper well property," at market price levels. When a producer sold crude oil, it was required to certify in writing to the purchaser the respective volumes of crude oil included in each purchase. When a refiner processed the crude oil, it was required to report these certifications to the DOE to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures to be followed in refunding approximately $1,912,000 obtained by the DOE as the result of settlement agreements involving Brownlie, Wallace, Armstrong & Bander, Inc. (Case No. HEF-0564) and Cordele Operating Company (Case No. HEF-0565) and from the issuance of a Remedial Order to H. H. Gungoll & Associates on April 5, 1984 (Case No. HEF-0572). In each case, audits of the firm revealed actual or alleged violations of the Mandatory Petroleum Price Regulations with respect to first sales of domestic crude oil. The money is being held in escrow for disposition in accordance with the DOE's Statement of Restitutionary Policy, 50 FR 27400 (1985).

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to funds obtained as a result of consent orders involving Brownlie, Wallace, Armstrong & Bander, Inc. and Cordele Operating Company. It also relates to funds obtained by the DOE as a result of a Remedial Order issued on April 5, 1984 to H. H. Gungoll & Associates.

The Decision and Order establishes procedures under which no claims for direct restitution will be accepted, in accordance with the DOE's Statement of Restitutionary Policy, 50 FR 27400 (1985). The funds received from the three firms will therefore be held in escrow for disposition in accordance with departmental policies.

Dated: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 21, 1986.

Names of Firms: Brownlie, Wallace, Armstrong and Bander, Inc., Cordele Operating Company, H.H. Gungoll & Associates.

Dates of Filing: February 26, 1985. February 26, 1985. March 18, 1985.

Case Numbers: HEF-0564. HEF-0565. HEF-0572.

The procedural regulations of the Department of Energy permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement a process to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, the ERA filed Petitions for the Implementation of Special Refund Procedures in connection with remedial orders or consent orders involving Brownlie, Wallace, Armstrong & Bander, Inc. (BWAB) and the firms listed above.[1] Pursuant to these orders, the firms were either required or agreed to make refunds totaling approximately $1,912,000 for actual violations or to settle alleged violations of the DOE pricing regulations. Those funds, at least some portion of which have already been paid to the DOE, are being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.

Background

As part of its enforcement activities, the DOE and its predecessor agencies conducted audits of BWAB, Cordele Operating Company, and H.H. Gungoll & Associates. Those investigations revealed actual or alleged violations of the Mandatory Petroleum Price Regulations with respect to first sales of domestic crude oil. The types of violations involved in cases concerning producers of crude oil for the most part fall into two general categories. The first type of violation commonly referred to as a "miscertification" involves sales of crude oil at the wrong regulatory price "tier." The second general category of violation involves sales of crude oil at the wrong "ceiling price" for crude oil of a given tier. Both types of alleged crude oil producer violations are involved in the present cases. For example, in the course of remedial order proceedings, H.H. Gungoll & Associates was found to have miscertified price-controlled crude oil produced from its Van Deventer Quarter property during the period January 1, 1975 through December 31, 1976, and to have overcharged purchasers by an amount per barrel which represents the difference between the "new" or "stripper well" prices and the ceiling price permitted for "old" oil. Cordele Operating Company allegedly sold crude oil at prices in excess of the applicable ceiling price in violation of 10 CFR Part 212, Subpart D and predecessor regulations during the entire period of federal crude oil price controls. Similarly, BWAB was alleged to have miscertified crude oil procedure from its Burlington Northern 11-21 property during the period January 1, 1979 through January 27, 1981. In order to remedy the effects of the alleged or actual violations, the firms paid into escrow funds for distribution to injured parties.

On April 4, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the funds that the three firms had paid to the DOE. 40 FR 14429 (April 12, 1985). In that proposed decision, we noted that as producers of crude oil, the firms were subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.[2] To the extent that the firms miscertified old crude oil as new or stripper well crude oil, the impact of the violations was spread to all participants in the Entitlements Program. Thus, it is probably that over the long run at least some part of these costs increases were passed through to the consuming public in the form of higher prices.

In the Proposed Decision, we announced our intention to implement refund procedures modeled on those outlined in *A. Johnson & Co.*, 12 DOE ¶ 85,102 (1984); *Office of Enforcement*, (DOE ¶ 82,521 (1982) (*Alkek*); and *Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (*Adams*). Specifically, we proposed to require an applicant to demonstrate that it was *injured* by the alleged or actual overcharges. At the time the Proposed Decision was issued, however, we were actively considering in the context of the *Stripper Well Litigation* proceeding whether the impact of similar crude oil miscertification violations could be traced. Because of our findings in that case, and subsequent developments in DOE's policy regarding refunds in crude oil overcharge cases, we have determined that it is appropriate to revise the refund procedures which had been previously proposed in this case.

A. The OHA Stripper Well Report

After the PD&O was issued, the OHA completed its fact-finding in the *Stripper Well* proceeding. *See Report of the Office of Hearings and Appeals, In re The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 (1985) (the OHA Stripper Well Report). In its report, the OHA discussed at length the general effect of crude oil miscertifications on the Entitlements Program. *Id.* at 90,620. The OHA noted that the Entitlements Program dispersed the stripper well overcharges at issue in that case equally among all barrels of crude oil refined in the United States. Thus, each refiner *initially* bore that part of the overcharges which was proportional to its pro rata share of the crude oil runs to stills covered by the Program in a given month. *Id.* at 90,621. Although the OHA Stripper Well Report found, using marginal econometric analysis, that

[1] The OHA determined in its April 4, 1985 Proposed Decision and Order in this proceeding that the prerequisites to its acceptance of jurisdiction has been satisfied.

[2] The DOE regulations, in effect from August 19, 1973 until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil. The regulations permitted producers to sell certain other crude oil, such as crude oil produced from a "stripper well property," at market price levels. When a producer sold crude oil, it was required to certify in writing to the purchaser the respective volumes of crude oil included in each purchase. When a refiner processed the crude oil, it was required to report these certifications to the DOE to enable the agency to administer the Entitlements Program, 10 CFR 211.67.

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refiners *as a class* absorbed a small percentage of the overcharges that were spread by the Entitlements Program, it also concluded that it is impossible to trace the specific impact on individual refiners of Entitlements-period crude oil miscertification violations. *Id.* at 90,620.

B. DOE Policy Regarding Crude Oil Overcharges

The findings in the OHA Stripper Well Report formed the basis for DOE's establishment of a restitutionary policy regarding overcharge funds associated with Entitlements-period crude oil miscertifications whose impact was spread through the Entitlements Program. 50 FR 27400 (1985), Fed. Energy Guidelines ¶ 90,508 (1985). The policy statement announced that the Department would maintain such overcharges in escrow to afford the Congress the opportunity to select the means of making indirect restitution. In light of the DOE policy determination, the OHA issued an order in June 1985 announcing that it intended to apply the policy in special refund proceedings involving overcharge funds attributable to Entitlements-period crude oil certification violations. 50 FR 27402 (1985). It also solicited comments from potentially aggrieved parties. Comments opposing the OHA's application of the policy to pending refund proceedings were considered and rejected in *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985). Thus, the OHA has determined that it will apply the DOE policy in implementing special refund procedures in all cases like the present one.

Refund Procedures

We have reviewed comments filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia which argue that restitution for crude oil overcharges is best effected through distribution of funds to the States for use in energy-related programs. However, in view of OHA's decision in *Amber Refining*, we have determined that the funds obtained from BWAB, Cordele Operating Company, and H.H. Gungoll & Associates should be pooled with other crude oil consent order funds and judgments resulting from litigation for distribution in accordance with departmental policies. *See* 50 FR 27402 (1985); 50 FR 27400 (1985); 50 FR 1919 (1985).

It is therefore ordered that:

(1) The refund amount provided in conjunction with the consent order entered into between the Economic Regulatory Administration (ERA) and Brownlie, Wallace, Armstrong & Bander, Inc. on August 28, 1984 shall be distributed in the manner set forth in the foregoing Decision and Order.

(2) The refund amount provided in conjunction with the consent order entered into between the Economic Regulatory Administration (ERA) and Cordele Operating Company on May 31, 1984 shall be distributed in the manner set forth in the foregoing Decision and Order.

(3) The refund amount provided in conjunction with the Remedial Order issued to H.H. Gungoll & Associates on April 5, 1984 shall be distributed in the manner set forth in the foregoing Decision and order.

Dated: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2055 Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $1,041,462.73 (plus accrued interest) obtained as the result of a consent order which the DOE entered into with Crystal Oil Company (Case No. HEF-0204), located in Shreveport, Louisiana. The funds will be available to customers that purchased refined petroleum products from Crystal during the period August 19, 1973 through December 31, 1975.

DATE AND ADDRESS: Applications for refund of a portion of the Crystal consent order funds must be filed within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Crystal Oil Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-2004.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to a consent order entered into by Crystal Oil Company (Crystal) of Shreveport, Louisiana, which settled possible pricing violations with respect to the firm's sales of refined petroleum products during the period August 19, 1973 through December 31, 1975. Under the terms of the consent order, $1,041,462.73 has been remitted by Crystal and is being held in an interest-earning escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established two-stage refund procedures and solicited comments from interested parties concerning the proper disposition of the Crystal consent order funds. The Proposed Decision and Order discussing the distribution of the funds remitted by Crystal was issued on May 2, 1985. 50 FR 20002 (May 13, 1985).

The Decision and Order published with this Notice reflects an analysis of comments received from interested parties. As the Decision indicates, applications for refunds from the Crystal consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased refined petroleum products from Crystal during the consent order period. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

January 21, 1986.

Name of Firm: Crystal Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0204.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the DOE in connection with a Consent Order entered into with Crystal Oil Company

(Crystal). The Petition requests that the OHA formulate and implement procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations.

I. Background

Crystal is a "refiner" of "crude oil" as those terms were defined at 10 CFR 212.31, and is headquartered in Shreveport, Louisiana.[1] The firm was subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212, Subpart E until January 28, 1981, when refined petroleum products were exempted from price and allocation controls. Exec. Order 12287, 46 FR 9909 (January 30, 1981). A DOE audit of Crystal revealed possible pricing violations in Crystal's sales of refined petroleum products. In order to settle all claims and disputes between the ERA and the firm with respect to its sales of refined petroleum products during the period August 19, 1973 through December 31, 1975 (the consent order period), Crystal and the DOE entered into a Consent Order effective March 9, 1981.[2] Pursuant to that Consent Order, Crystal remitted to the DOE $1,041,462.73 to be deposited into an interest-bearing escrow account for ultimate distribution by the DOE.[3] In addition, under the terms of the Crystal Consent Order, the firm reduced its "bank" of unrecouped increased costs allocable to motor gasoline by $5 million. By its terms, the Crystal Consent Order constitutes neither an admission by Crystal nor a finding by the DOE that Crystal violated the price regulations during the consent order period. This Decision and Order concerns the distribution of the $1,041,462.73 consent order amount plus accrued interest.

On May 2, 1985, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who were injured by Crystal's alleged regulatory violations. *See Crystal Oil Co.*, 6 Fed. Energy Guildelines ¶ 90,065 (Proposed Decison, May 2, 1985).[4] In the PDO, we described a two-stage process for distribution of the Crystal consent order funds. Specifically, we proposed to distribute funds in the first stage to claimants who could demonstrate that they were injured by Crystal's alleged overcharges during the consent order period. We further stated that any money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process.

The purpose of this Decision and Order is to establish the final procedures to be used for filing and processing claims in the first stage of the Crystal refund proceeding. This Decision sets forth the information that a purchaser of refined petroleum products from Crystal should submit in order to establish eligibility for a portion of the consent order fund. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the PDO.[5] We will not, however, determine second-stage procedures in this Decision. Our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9 DOE ¶82,508 (1981) (*Coline*). It would therefore be premature for us to address issues raised by commenters concerning the proposed disposition of funds remaining after all meritorious first-stage claims have been paid.

II. Jurisdiction

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan for distribution of funds received as part of a settlement agreement or pursuant to a Remedial Order. It is DOE policy to use the Subpart V process to distribute such funds. *See Office of Enforcement*, 9 DOE ¶82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Coline* and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

We have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Crystal consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Determination of Injury and Refund Amounts

Potential claimants in this proceeding will fall into the following categories: (i) Resellers (including retailers and refiners acting in the capacity of resellers) of refined petroleum products, and (ii) firms, individuals, or organizations that were consumers of those products. The refined petroleum products must have been purchased either directly from Crystal or in a chain of distribution leading back to Crystal.[6] As explained below, the consent order funds will be distributed to eligible claimants who demonstrate that they were injured by Crystal's alleged overcharges.

In general, resellers who file refund claims will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased petroleum products from Crystal, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will generally be required to show that they had "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶85,029 at 88,125 (1982). The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron, Inc.*, 10 DOE ¶85,014 (1982).

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[1] During the period covered by the Crystal Consent Order, the firm also had marketing operations in Arkansas, Texas, Indiana, Ohio, Michigan, Florida, Mississippi, Alabama, and Georgia.

[2] The Crystal Consent Order does not specify that it is limited to sales of refined petroleum products and Crystal apparently sold some crude oil during the consent order period. However, we have concluded that this special refund proceeding should be limited to refined products in light of the fact that Crystal in 1976 entered into a separate consent order that specifically covered crude oil sales. In fact, the Federal Register notice of the proposed Crystal Consent Order that is the subject of this proceeding referred only to sales of refined petroleum products. 46 FR 3050 (January 19, 1981).

[3] In the Consent Order, Crystal agreed to place $1 million into private escrow account when that Order was signed. The $1,041,462.73 amount includes interest accrued on that account prior to its remission to the DOE when the Consent Order became effective.

[4] The Crystal PDO also proposed refund procedures to distribute funds received as the result of two other consent orders. Because the number of claims likely to be received in each of the three proceedings is relatively large, we have decided in the interest of clarity to finalize refund procedures separately for each consent order fund.

[5] We received comments concerning our first-stage proposal from one potential first-stage claimant and from the State of Texas. In addition, comments concerning second-stage procedures were filed by Texas as well as the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

[6] Claimants may have purchased from a number of Crystal subsidiaries. Those subsidiaries are: Mercury Discount Co., Berry Petroleum Corp., Tulsa Oil Corp., Crystal Petroleum Co., Inc., Eastern Petroleum Co., Longview Refining Co., Adobe Refining Co., Stone's Independent Oil, Inc., Stone's Independent Oil Distributors, Inc., Triangle Oil Co., Joe E. Hutchison Distributing Co., Hi-Octane Terminal Co., Panhandle Towing Co., and Crystal-Princeton.

Several of these subsidiaries were acquired by Crystal during the consent order period. Specifically, the Longview Refining Co. was acquired in October 1973, the Adobe Refining Co. in November 1973, and Crystal-Princeton in December 1973. Refunds based on purchases from these Crystal subsidiaries will only be available for purchases occurring after those acquisition dates.

1. Small Claims Presumption

As we proposed in the PDO, we intend to adopt a presumption of injury for small claims under which resellers whose claims do not exceed a threshold amount will be presumed to have absorbed any overcharges and will be exempt from the general requirement that resellers make a detailed demonstration that they did not pass through to their own customers the increased costs associated with the alleged covercharges.

The State of Texas filed comments in opposition to our proposed presumption of injury for small claims. We have considered and rejected similar comments from Texas in many prior proceedings. *See, e.g., Blaylock Oil Co.*, 13 DOE ¶85,223 (1985). The DOE procedural regulations expressly permit the use of presumptions in refund proceedings precisely because of the problems inherent in reconstructing pricing practices during past periods. *See* 10 CFR § 205.282(e) and *Office of Special Counsel*, 10 DOE ¶85,048 at 88,207 (1982). As we stated in the PDO, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of the alleged overcharges, some of which in this case may have taken place nearly thirteen years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain refunds. The use of presumptions is also desirable from an administrative standpoint because it allows the OHA to process a large number of routine refund claims quickly, and therefore to use its limited resources more efficiently. We therefore reject Texas' contention that it would be inappropriate to adopt a presumption of injury for small claims.

Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes unless its volumetric refund exceeds $5,000.[7] *See Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984).

[7] Resellers that were spot purchasers from Crystal will be ineligible to receive any refunds, even refunds below the threshold level, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, a purchaser generally would not have made spot market purchases at increased prices unless it was able to pass through to its customers the full amount of those prices. *See Vickers*, 8 DOE at 85,396-97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

2. Volumetric Presumption

In the PDO, we also proposed to adopt a presumption that the alleged overcharges were dispersed equally in all of Crystal's sales during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. We have received no comments in opposition to it, and we shall adopt the volumetric presumption in this proceeding. To determine the per gallon volumetric factor in the instant proceeding, the $1,041,462.73 consent order amount will be divided by the total volume of refined petroleum products sold by Crystal during the consent order period. This results in a volumetric amount of $0.00121 per gallon ($1,041,462.73 divided by 858,727,230 gallons of refined petroleum products). Refunds will be calculated by multiplying the volumetric factor by the total amount of refined petroleum products that an applicant purchased from Crystal. The interest which has accrued on the money in the escrow account will be distributed to each successful claimant in proportion to its refund amount.

3. End-users

In addition to the presumptions were are adopting in this proceeding, we are adopting our proposed finding that end-users or ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled by the Crystal Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of refined petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of refined petroleum products covered by the Crystal Consent Order need only document their purchase volumes from Crystal in order to make a sufficient showing that they were injured by the alleged overcharges.[8]

C. Minimum Refund

Finally, we shall establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85, 225; *see also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

Having considered the comments received concerning the first-stage procedures tentatively adopted in our May 2, 1985 Proposed Decision, we have concluded that applications for refund should now be accepted from parties who purchased refined petroleum products from Crystal during the consent order period. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. An application must be in writing, signed by the applicant, and specify that it pertains to the Crystal Oil Company Consent Order Fund, Case No. HEF-0204.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is believed to be privileged or confidential.

Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Crystal Oil Company Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of the Crystal consent order funds, the following subjects should be covered in applications for refund:

A. Each applicant should report its purchase volumes of refined petroleum products from Crystal for each month of the period it is claiming that it was injured by the alleged overcharges.[9]

B. Each applicant should specify how it used the product(s)—i.e., whether it was a reseller or an end-user.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(i) State whether it maintained banks of unrecouped increased product costs from the date of the alleged violation until the product was decontrolled, and furnish OHA will quarterly bank calculations;

(ii) Submit evidence to establish that it did not pass through the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. Each applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It is therefore ordered that:

(1) Applications for Refunds from the fund remitted to the Department of Energy by Crystal Oil Company pursuant to the Consent Order executed on March 9, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Date: January 21, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2056, Filed 1-29-86; 8:45 am]

BILLING CODE 6450-01-M

[8] Even though they operate as resellers, cooperatives will be excused from the requirement that they make a detailed showing of injury with respect to that portion of their purchases that was resold to their members, since any refunds received by cooperatives will inure to the benefit of their customers, who typically are also their member-owners. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982).

[9] One potential claimant in this proceeding commented that it might not be able to locate records of all of its purchases for Crystal during the consent order period. While we do not accept *unsubstantiated* estimates of purchase volumes, in certain cases we have exercised or discretion to accept reasonable methods of estimation. *See Standard Oil Co. (Indiana)/Smith's Sons Amoco*, 11 DOE ¶ 85,108 (1983); *Standard Oil Co. (Indiana)/Christensen Oil Co.*, 11 DOE ¶ 85,108 (1983). Claimants who are unable to provide actual purchase volumes from Crystal for all or part of the consent order period should therefore explain the method used in calculating any estimates of their purchase volumes.

Federal Energy Regulatory Commission

[Docket No. CI86-169-000]

Natural Gas Companies; Application of Tenngasco Corp. and Tenngasco Exchange Corp. for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Pre-granted Abandonment

January 27, 1986.

Take notice that on January 17, 1986, Tenngasco Corporation and Tenngasco Exchange Corporation (hereinafter referred to collectively as "Tenngasco") pursuant to sections 4 and 7 of the National Gas Act, 15 U.S.C. 717-717z (1982)(NGA) and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by Tenngasco, and certain producers from whom Tenngasco purchases natural gas who have received abandonment approval from the Commission in a separate proceeding, (2) authorizing sales for resale of natural gas in interstate commerce by certain producers through Tenngasco acting as their agent, and (3) authorizing pre-granted abandonment of such sales.

Applicants state that such authorities, if granted, will enable Tenngasco to sell natural gas in the spot market which it purchases from certain producers who have received appropriate abandonment authorizations from the Commission. Such authority will also enable Tenngasco to act as agent for various producers who have received such abandonment authorizations in the sale for resale of their gas on the spot market. Therefore, the sources of gas eligible for the sales and pre-granted abandonment authority will be those supplies for which a producer has received abandonment authorization from the Commission, including those granted pursuant to § 2.77 of the Commission's regulations. As such, many of these sources shall involve situations where abandonment authorization has been granted to (1) producers who were subject to substantially reduced takes without payment; or (2) the parties have entered into a take-or-pay buy-out pursuant to § 2.76 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2061 Filed 1-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol Northwest Central Pipeline Corp.; Order Granting Request for Waiver

Issued: January 24, 1986

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 8, 1986, Northwest Central Pipeline Corporation filed a request for waiver of the restrictions in the transitional provisions of §§ 284.105 and 284.223(g)(1) of Order No. 436.[1] We will grant Northwest Central's request.

Prior to October 9, 1985, Northwest Central commenced transporting gas to Faustina Pipe Line Company, Northern Gas Marketing, Inc., and Scissortail Natural Gas Company under section 311 of the Natural Gas Policy Act of 1978 or

[1] 23 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

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former § 157.209(a)(1) of the Commission's Regulations. The gas Northwest Central transports to Faustina, Northern Gas, and Scissortail originates with six producers in Kansas and Oklahoma.[2]

Prior to October 9, 1985, Northwest Central entered into written agreements with the six producers to construct new taps and metering facilities in order for the producers to deliver gas into Northwest Central's system. The producers made an initial payment of between $32,800 and $61,000 to Northwest Central for constructing the taps.[3] With one exception, these payments were made before October 9. Northwest Central did not complete construction of the taps until after October 9. In addition, by October 9 the producers had "completed or substantially completed" gathering systems connecting their wells to the new taps. Costs for the gathering systems ranged from approximately $10,000 to $1,188,000. Northwest Central states that there will be no changes in the volumes of gas transported to Faustina, Northern Gas, and Scissortail as a result of the new taps.

In *Judel Glossware Co., Inc.*, 33 FERC ¶ 61,386 (December 17, 1985), we established an economic substance test for grant of a waiver from the restrictions in the transitional provisions of Order No. 436. We stated that a "purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9." This test is meant to grant relief from the transitional provisions of Order No. 436 without defeating its objectives.

We conclude that the six producers have shown that they have expended substantial funds or constructed significant facilities prior to October 9 in reliance on transportation contracts. Accordingly, we hereby waive the restrictions in §§ 284.105 and 284.223(g)(1) to the extent necessary to permit the transportation transactions to continue.

[2] The six producers are J.E.B. Gas, Inc., S.E. Kansas Company, Inc., Sevco Energy Corporation, Tag Petroleum, Elgin Gas Company, and Antioch Gathering Company. J.E.B. Gas, S.E. Kansas, Tag, Elgin, and Antioch have filed answers in support of Northwest Central's request.

[3] Northwest Central states that it will bill the producers for any differences between the initial payment and the final cost of construction. Ownership of the taps will remain with Northwest Central.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-2071 Filed 1-29-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. QF86-476-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Champlin Petroleum Co., et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

January 22, 1986.

Take notice that the following filings have been made with the Commission.

1. Champlin Petroleum Company

[Docket No. QF86-476-000]

On January 6, 1986, Champlin Petroleum Company (Applicant), of 5800 Quebec Street, P.O Box 1257, Englewood, Colorado 80150 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle Harbor Cogeneration Project will be located near the cities of Los Angeles and Long Beach in Los Angeles County, California. The facility will include a combustion turbine-generator, and a Heat Recovery Steam Generator (HRSG). The steam from the HRSG will be used for thermally enhanced oil recovery. The electric power production capacity of the facility will be 80 MW. The primary energy source will be natural gas supplemented with refinery gas. The facility will be owned by a California partnership to be formed between entities including Champlin Energy Company, a wholly owned subsidiary of Champlin Petroleum Company, and South Coast Energy Company (SCEC), a wholly owned subsidiary of Southern California Edison Company. SCEC will own thirty percent of the facility. The installation of the facility will commence in November, 1986.

2. General Electric Company, Martinez Cogen, Pacific Gas & Electric Company

[Docket No. QF86-484-000]

On January 7, 1986, General Electric Company et al. (Applicant), of One River Road, Schenectady, New York 12345 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in Martinez, California. The facility will consist of a combustion turbine-generator, a heat recovery steam generator (HRSG) with supplementary firing and an extraction steam turbine-generator. The extracted steam is used in the refining and processing of crude oil in the Shell Oil Company's manufacturing plant. The net electrical power production capacity of the facility will be 49,900 kW. The primary energy source will be natural gas or refinery by-product gas or a combination thereof. Fifty percent of the facility will be owned by the Pacific Gas and Electric Company. The installation of the facility is expected to commence in July 1986.

3. Chester Solid Waste Associates—Project A—Project B

[Docket Nos. QF86-481-000, and QF86-482-000]

On December 31, 1985, Chester Solid Waste Associates (Applicant), of Front & Thurlow Streets, Chester, Pennsylvania 19103 submitted for filing two applications for certification of facilities as qualifying small power production facilities pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittals constitute complete filings.

Both the Project A and Project B will each be part of a water wall, mass burn, solid waste disposal and resource recovery facility located in Chester, Pennsylvania. The net power production capacity of each project will be 24 MW. The primary energy source will be biomass in the form of municipal solid waste.

4. The City of Boulder, Colorado

[Docket No. QF86-473-000]

On January 6, 1986, the City of Boulder, Colorado (Applicant), of Department of Utilities, P.O. Box 791, Boulder, Colorado 80306 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility located at the City's 75th Street Wastewater Treatment Plan, 4049 75th Street, Boulder, Colorado, will consist of two engine-generator units rated at 300 kW each for methane gas and 350 kW for natural gas for each generator, for a total installed capacity of 600 kW for methane and 700 kW natural gas. Wastewater Treatment Plant anaerobic digester produced methane will be the primary source of fuel. Heat recovered from the engines will normally maintain the optimum process temperature of the digesters at 95 degrees °F and will also heat the Wastewater Treatment Plant buildings. Supplemental heat, when required, will be supplied by an existing natural gas auxiliary boiler or by using natural gas to operate the engine-generators at a higher load than methane alone can produce.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-2075 Filed 1-29-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA82-1-21-017, et al.]

Columbia Gas Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

January 27, 1986.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 7, 1986. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

APPENDIX

Filing Date	Company	Docket No.	Type filing
9-30-85	Columbia Gas Transmission Corp.	TA82-1-21-017	Report.
10-15-85	Williston Basin Interstate Pipeline Co.	RP85-97-003	[1] Btu.
1-09-86	K.N. Energy, Inc.	RP85-96-002	[1] Btu.
1-10-86	Granite State Gas Transmission, Inc.	RP73-17-011	[1] Btu.
1-15-86	Mid-Louisiana Gas Co.	RP85-82-003	[1] Btu.
1-15-86	Tennessee Gas Pipeline Co.	RP81-54-022	Report.

[1] Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings will receive new sub-docket numbers.

[FR Doc. 86-2076 Filed 1-29-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. FA84-15-000]

Minnesota Power & Light Co.; Order to Show Cause and Instituting Proceedings Under Part 41 of the Commission's Regulations

Before Commissioners: A. G. Sousa, Acting Chairman, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Issued: January 24, 1986.

On September 18, 1985, the Commission issued a letter order in which it noted Minnesota Power & Light Company's (MP&L) disagreement with two items contained in a Commission staff report prepared following an audit of the company's books and records. The disagreement relates to MP&L's accounting and wholesale fuel adjustment clause (FAC) treatment for (1) payments to outside attorneys to litigate the Montana coal severence tax, and (2) payments to outside attorneys and company administrative and general expenses (A&G) incurred to litigate the propriety of Burlington Northern tariff increases.[1]

On October 14, 1985, MP&L responded to the letter order stating that it consents to the disposition of the above issues in accordance with the shortened procedures provided for under section 41.3 of the Commission's regulations under the Federal Power Act.[2] Accordingly, the Commission hereby institutes proceedings under Part 41 of its regulations to determine the appropriate accounting treatment of the above items.

Additionally, resolution of these accounting items may have rate implications requiring refunds under sections 205 and 206 of the Federal Power Act. For this reason, the Commission orders Minnesota Power & Light Company, as part of its initial brief in this proceeding, (1) to show cause why it should not be required to make refunds of any amounts found to have been improperly collected due to an inappropriate accounting treatment of these items, and (2) to propose an allocation of refunds among customers in the event that they are ultimately ordered pursuant to the treatment previously specified by the Commission staff.

Any interested person seeking to participate in this docket shall file a motion to intervene under Rule 214 of the Commission's Rules of Practice of Procedure (18 CFR 385.214) no later than 15 days after the date of publication of this order in the Federal Register.

The following procedural schedule is established:

(1) Minnesota Power & Light Company, and interested person and the Commission's staff shall file initial briefs in response to this order on the accounting and refund issues no later than 45 days after the date of publication of this order in the Federal Register.

(2) Reply briefs shall be due no later than 20 days thereafter.

All briefs must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission orders:

(A) Proceedings under Part 41 of the Commission's regulations are hereby instituted with regard to Tariff

[1] See Tariff Compliance Exceptions Nos. 1 and 2 which are set forth in Schedule No. 4 of the audit report attached to this order. The audit report describes MP&L's treatment of these items and the treatment deemed appropriate by the Commission staff under the Uniform System of Accounts and §35.14(a)(6) of the Commission's regulations [18 CFR 35.14(a)(6)]. The attachments are not being published in the Federal Register, but are available from the Commission's Public Reference Branch.

[2] 18 CFR 41.3 (1985).

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Compliance Exceptions Nos. 1 and 2 as described in Schedule No. 4 of the audit report attached to this order.

(B) Minnesota Power & Light Company is ordered, as part of its initial brief in this proceeding, (1) to show cause why it should not be required to make refunds of any amounts found to have been improperly collected due to an inappropriate accounting treatment of the items in Tariff Compliance Exceptions Nos. 1 and 2, and (2) to propose an allocation of refunds among customers in the event that refunds are ultimately ordered pursuant to the treatment previously specified by the Commission staff.

(C) The procedural schedule set forth in the body of this order is hereby adopted.

(D) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2077 Filed 1-29-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST86-354-000, et al.]

Panhandle Eastern Pipe Line Co., et al.; Self-Implementing Transactions

January 27, 1986.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Part 157 and Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "C/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before February 12, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date * *	Transportation rate (cents per MMBtu)
ST86-354	Panhandle Eastern Pipe Line Co	James River Corp	11-01-85	F(157)	0	
ST86-355	Valero Transmission Co	Pacific Lighting Gas Supply Co	11-01-85	C	D	
ST86-356	ANR Pipeline Co	Federal Mogul/Bower Roller Bearing	11-01-85	F(157)	D	
ST86-357	do	Providence Gas Co	11-01-85	B		
ST86-358	El Paso Natural Gas Co	Black Mountain Gas Co	11-01-85			8
ST86-359	do	Giant Industries, Inc	11-01-85	F(157)		
ST86-360	do	Westar Transmission Co	11-01-85	B		
ST86-361	do	City of Lordsburg	11-01-85	B		
ST86-362	do	Gas Company of New Mexico	11-01-85	B		
ST86-363	do	City of Las Cruces	11-01-85	B		
ST86-364	do	Navajo Tribal Utility Authority	11-01-85	B		
ST86-365	do	City of Willcox	11-01-85	B		
ST86-366	Valero Interstate Transmission Co	Big Sandy Gas Corp	11-01-85	B		
ST86-367	Valero Transmission Co	Valero Interstate Transmission Co	11-01-85	C		
ST86-368	United Gas Pipe Line Co	Consolidated Gas Transmission Co	11-01-85	G		
ST86-369	Texas Gas Transmission Corp	Buckman Laboratories, Inc	11-01-85	F(157)		
ST86-370	Transcontinental Gas Pipe Line Corp	Nabisco Brands, Inc	11-01-85	F(157)		
ST86-371	do	Union Carbide Corp	11-01-85	F(157)		
ST86-372	Michigan Gas Storage Co	Consumers Power Co	11-01-85	B		
ST86-373	do	Dow Corning Corp	11-01-85	F(157)		
ST86-374	do	Hemlock Semiconductor Corp	11-01-85	F(157)		
ST86-375	do	Michigan Sugar Co	11-01-85	F(157)		
ST86-376	Transcontinental Gas Pipe Line Corp	Consolidated Gas Transmission Corp	11-06-85	G		

[1] Notice of transactions does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985).

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date * *	Transportation rate (cents per MMBtu)
ST86-377	do	Columbia Gas Transmission Co	11-06-85	G		
ST86-378	do	Consolidated Gas Transmission Corp	11-06-85	G		
ST86-379	Westar Transmission Co	Pacific Lighting Co	11-06-85	C		
ST86-380	Texas Gas Transmission Corp	Crucible Magnetics Corp	11-07-85	F(157)		
ST86-381	Texas Eastern Transmission Corp	Allied Corp., *et al*	11-07-85	F(157)		
ST86-382	ANR Pipeline Co	Pacific Lighting Gas Supply Co	11-07-85	B		
ST86-383	Northwest Central Pipeline Corp	Kansas Power and Light Co	11-06-85	B		
ST86-384	Rockland Pipeline System	Northern Natural Gas Co	11-01-85	C		
ST86-385	Tennessee Gas Pipeline Co	Energy North, Inc	11-06-85	B		
ST86-386	Texas Gas Transmission Corp	Faustina Pipe Line Co	11-06-85	B		
ST86-387	do	Ralston Purina Co	11-06-85	F(157)		
ST86-388	United Gas Pipeline Co	Mississippi River Transmission Corp	11-06-85	G		
ST86-389	do	Al Tech Specialty Steel Corp	11-06-85	F(157)		
ST86-390	do	NGP Pipeline Co	11-06-85	B		
ST86-391	do	Connecticut Natural Gas Co	11-06-85	B		
ST86-392	do	Ohio Cumberland Gas Co	11-06-85	B		
ST86-393	do	Jeannette Sheet Glass Corp	11-06-85	F(157)		
ST86-394	do	Central Illinois Public Service Co	11-06-85			
ST86-395	do	Alabama Gas Corp., *et al*	11-06-85	B		
ST86-396	do	Transcontinental Gas Pipe Line Corp	11-06-85	G		
ST86-397	Colorado Interstate Gas Co do	Pacific Lighting Gas Supply Co	11-06-85	B		
ST86-398	do	Public Service Co. of New Mexico	11-06-85	F(157)		
ST86-399	Tennessee Gas Pipeline Co	Alabama Tennessee Natural Gas Co	11-06-85	G		
ST86-400	do	Valley Gas Co	11-12-85	B		
ST86-401	Southern Natural Gas Co	Columbus Mills, Inc	11-12-85	F(157)		
ST86-402	United Gas Pipe Line Co	Clark-Mobil Counties Gas District	11-12-85	B		
ST86-403	do	Mobile Gas Service Corp	11-12-85	B		
ST86-404	Tennessee Gas Pipeline Co	Fitchburg Gas & Electric Co	11-12-85	B		
ST86-405	Trunkline Gas Co	Transcontinental Gas Pipe Line Corp	11-12-85	G		
ST86-406	Panhandle Eastern Pipe Line Co	East Ohio Gas Co	11-12-85	B		
ST86-407	do	McGraw-Edison Co	11-12-85	F(157)		
ST86-408	do	Kraft, Inc	11-12-85	F(157)		
ST86-409	do	Hayes-Albion Corp	11-12-85	F(157)		
ST86-410	do	Dow Corning Corp	11-12-85	F(157)		
ST86-411	do	Coldwater Rendering Co., Inc	11-12-85	F(157)		
ST86-412	do	Hemlock Semiconductor Corp	11-12-85	F(157)		
ST86-413	Trunkline Gas Co	Atlanta Gas Light Co	11-12-85	B		
ST86-414	Tennessee Gas Pipeline Co	Midwestern Gas Transmission Co	11-12-85	G		
ST86-415	do	Niagara Mohawk Power Corp	11-12-85	B		
ST86-416	Panhandle Eastern Pipe Line Co	Michigan Sugar Co	10-30-85	F(157)		
ST86-417	do	National Steel Corp	10-30-85	F(157)		
ST86-418	Trunkline Gas Co	do	10-30-85	F(157)		
ST86-419	Panhandle Eastern Pipe Line Co	Interlake, Inc	10-30-85	F(157)		
ST86-420	Trunkline Gas Co	do	10-30-85	F(157)		
ST86-421	Michigan Gas Storage Co	Michigan Sugar Co	11-01-85	F(157)		
ST86-422	El Paso Natural Gas Co	Southern Union Gas Co	11-04-85	B		
ST86-423	Delhi Gas Pipeline Corp	Pacific Lighting Gas Supply Co. *et al*	11-04-85	C		
ST86-424	do	Texas Eastern Trans. Corp., *et al*	11-04-85	C		
ST86-425	Trunkline Gas Co	Interlake, Inc	11-04-85	F(157)		
ST86-426	Panhandle Eastern Pipe Line Co	do	11-04-85	F(157)		
ST86-427	Mountain Fuel Resources, Inc	Northwest Pipeline Corp	11-04-85	G		
ST86-428	Northern Natural Gas Co	Energas Co	11-04-85	B		
ST86-429	Southern Natural Gas Co	Florida Gas Transmission Co	11-04-85	G		
ST86-430	Texas Eastern Transmission Corp	Orange and Rockland Utilities, Inc	11-04-85	B		
ST86-431	do	Owens-Corning Fiberglas Corp	11-04-85	F(157)		
ST86-432	do	Fall River Gas Co	11-04-85	B		
ST86-433	do	UGI Corp., *et al*	11-04-85	B		
ST86-434	do	Providence Gas Co	11-04-85	B		
ST86-435	do	Connecticut Natural Gas Corp	11-04-85	B		
ST86-436	Dow Pipeline Co	Phillips Gas Pipeline Co	11-04-85	C		
ST86-437	Florida Gas Transmission Co	Panhandle Gas Co	11-04-85	B		
ST86-438	Williston Basin Inter. Pipeline Co	Terra Chemicals International, Inc	11-05-85	F(157)		
ST86-439	Columbia Gulf Transmission Co	Exxon Company, U.S.A	11-05-85	F(157)		
ST86-440	Panhandle Eastern Pipe Line Co	Pekin Energy Co	11-13-85	F(157)		
ST86-441	Southern Natural Gas Co	Alabama Kraft Corp	11-13-85	F(157)		
ST86-442	Tennessee Gas Pipeline Co	Energy North, Inc	11-14-85	B		
ST86-443	National Fuel Gas Supply Corp	Granite State Gas Transmission, Inc	11-14-85	G		
ST86-444	Tennessee Gas Pipeline Co	Q.O. Chemicals, Inc., *et al*	11-14-85	F(157)		
ST86-445	Midwestern Gas Transmission Co	Peoples Gas Light and Coke Co	11-14-85	B		
ST86-446	Tennessee Gas Pipeline Co	T.W. Phillips Gas & Oil Co	11-14-85	B		
ST86-447	El Paso Natural Gas Co	Petrofina Gas Pipeline Co	11-15-85	B		
ST86-448	do	Transwestern Pipeline Co	11-15-85	G		
ST86-449	do	Salt River Project Agricultural Improvement and Power District	11-15-85	B		
ST86-450	Southern Natural Gas Co	Vista Polymers, Inc	11-15-85	F(157)		
ST86-451	Northern Natural Gas Co	Krause Milling Co	11-15-85	F(157)		
ST86-452	do	Northern States Power of Wisconsin	11-15-85	C		
ST86-453	Delhi Gas Pipeline Corp	Texas Eastern Transmission Corp	11-15-85	C		
ST86-454	United Gas Pipe Line Co	Baltimore Gas and Elect. Co., *et al*	11-15-85	B		
ST86-455	Tennessee Gas Pipeline Co	North Penn Gas Co	11-15-85	B		
ST86-456	do	Berkshire Gas Co	11-15-85	B		
ST86-457	United Gas Pipe Line Co	Long Island Lighting Co	11-15-85	B		
ST86-458	Northern Natural Gas Co	Nekoosa Papers, Inc	11-15-85	F(157)		
ST86-459	ANR Pipeline Co	Appleton Papers, Inc	11-18-85	F(157)		
ST86-460	Tennessee Gas Pipeline Co	Central Hudson Gas and Electric Co	11-18-85	B		
ST86-461	Texas Eastern Transmission Corp	Amstar Corp	11-14-85	F(157)		
ST86-462	Colorado Interstate Gas Co	Cascade Natural Gas Corp	11-14-85	B		
ST86-463	Southern Natural Gas Co	Englehard Corp	11-19-85	F(157)		
ST86-464	United Gas Pipe Line Co	Great Lakes Sugar Co	11-19-85	F(157)		
ST86-465	do	Consolidated Gas Transmission Corp	11-19-85	G		
ST86-466	Southern Natural Gas Co	Richtex Brick Corp	11-19-85	F(157)		
ST86-467	Northwest Central Pipeline Corp	Bethlehem Steel Corp	11-19-85	F(157)		
ST86-468	Valero Interstate Transmission Co	THC Pipeline Co	11-20-85	B		

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Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date * *	Transportation rate (cents per MMBtu)
ST86-469	Valero Transmission Co	Richardson Fuels, Inc	11-20-85	C		
ST86-470	Seagull Energy Corp	Seagull Interstate Corp	11-20-85	C		
ST86-471	Transcontinental Gas Pipe Line Corp	City of Kings Mountain	11-20-85	B		
ST86-472	ANR Pipeline Co	Longhorn Pipeline Co	11-20-85	B		
ST86-473	Columbia Gas Transmission Corp	Shawnee Public Schools, Lima, OH	11-21-85	F(157)		
ST86-474	do	GTE Products Corp	11-21-85	F(157)		
ST86-475	do	Brockway, Inc	11-21-85	F(157)		
ST86-476	do	Bethlehem Steel Corp	11-21-85	F(157)		
ST86-477	do	Armco, Inc	11-21-85	F(157)		
ST86-478	Colorado Interstate Gas Co	Pubic Service Co. of Colorado	11-21-85	B		
ST86-479	do	People Natural Gas Co	11-21-85	B		
ST86-480	Natural Gas Pipeline Co. of America	Faustina Pipeline Co	11-21-85	B		
ST86-481	Colorado Interstate Gas Co	Wycon Chemical Co	11-21-85	F(157)		
ST86-482	Tennessee Gas Pipeline Co	E.I. Dupont De Nemours and Co	11-21-85	F(157)		
ST86-483	Colorado Interstate Gas Co	Southwest Gas Corp	11-21-85	B		
ST86-484	Columbia Gulf Transmission Co	U.S.S. Chemicals	11-21-85	F(157)		
ST86-485	do	Sun Refining and Marketing Co	11-21-85	F(157)		
ST86-486	do	St. Joe Resources	11-21-85	F(157)		
ST86-487	do	Shawnee Public Schools, Lima, OH	11-21-85	F(157)		
ST86-488	do	GTE Products Corp	11-21-85	F(157)		
ST86-489	do	Certain Teed Corp	11-21-85	F(157)		
ST86-490	do	Bethlehem Steel Corp	11-21-85	F(157)		
ST86-491	do	U.S. Steel Corp	11-21-85	F(157)		
ST86-492	do	Armco, Inc	11-21-85	F(157)		
ST86-493	Columbia Gas Transmission Corp	Sun Refining and Marketing Co	11-21-85	F(157)		
ST86-494	do	St. Joe Minerals Corp	11-21-85	F(157)		
ST86-495	Northern Natural Gas Co	Energy North Co	11-22-85	B		
ST86-496	ANR Pipeline Co	Peoples Natural Gas Co	11-22-85	B		
ST86-497	do	Wisconsin Natural Gas Co	11-22-85	B		
ST86-498	Mid Louisiana Gas Co	Tennessee Gas Pipeline Co	11-22-85	G		
ST86-499	East Ohio Gas Co	Transcontinental Gas Pipeline Corp	11-22-85	G(HT)		
ST86-500	Delhi Gas Pipeline Corp	South Jersey Gas Co	11-25-85	C		
ST86-501	do	Long Island Lighting Co	11-25-85	C		
ST86-502	ANR Pipeline Co	Uniroyal, Inc	11-25-85	F(157)		
ST86-503	do	Barmet of Indiana, Inc	11-25-85	F(157)		
ST86-504	do	Michigan Consolidated Gas Co	11-25-85	G		
ST86-505	Transcontinental Gas Pipe Line Corp	Hoffman-LaRoche	11-25-85	F(157)		
ST86-506	Tennessee Gas Pipeline Co	New York State Elect. and Gas Corp	11-25-85	B		
ST86-507	do	Corpus Christi Gas Gathering Inc	11-26-85	B		
ST86-508	do	Humco, Div. of Whitco Chemicals	11-26-85	F(157)		
ST86-509	do	Orange and Rockland Utilities	11-26-85	B		
ST86-510	Northern Natural Gas Co	Energy North Co	11-26-85	B		
ST86-511	ANR Pipeline Co	Patrick Cudahy, Inc	11-26-85	F(157)		
ST86-512	do	P.H. Glatfelter Co	11-26-85	F(157)		
ST86-513	do	Fort Howard Paper Co	11-26-85	F(157)		
ST86-514	do	Ladish Co., Inc	11-26-85	F(157)		
ST86-515	Consolidated Gas Transmission Corp	Phoenix Glass Co	11-26-85	F(157)		
ST86-516	Texas Gas Transmission Corp	Judel Glassware Co., Inc	11-26-85	F(157)		
ST86-517	Consolidated Gas Transmission Corp	Metaltech	11-26-85	F(157)		
ST86-518	United Gas Pipe Line Co	Jersey Central Power and Light Co	11-26-85	F(157)		
ST86-519	do	Lukens Steel Co	11-26-85	F(157)		
ST86-520	Consolidated Gas Transmission Corp	Transcontinental Gas Pipe Line Corp	11-26-85	G		
ST86-521	do	Borg-Warner Chemicals, Inc	11-26-85	F(157)		
ST86-522	do	Consolidated Aluminum Corp	11-26-85	F(157)		
ST86-523	do	Diamond-Bathurst, Inc	11-26-85	F(157)		
ST86-524	do	St. Joe Resources Co	11-26-85	F(157)		
ST86-525	do	Bethlehem Steel Corp	11-26-85	F(157)		
ST86-526	United Gas Pipe Line Co	Conley Frog and Switch Co	11-26-85	F(157)		
ST86-527	Consolidated Gas Transmission Corp	Johnstown Corp	11-26-85	F(157)		
ST86-528	do	Pittsburgh Comm. Heat Treating Co	11-26-85	F(157)		
ST86-529	do	Xerox Corp	11-26-85	F(157)		
ST86-530	do	Darlington Brick and Clay Prod. Co	11-26-85	F(157)		
ST86-531	do	Judel Glassware Co., Inc	11-26-85	F(157)		
ST86-532	ANR Pipeline Co	PPG Industries, Inc	11-27-85	F(157)		
ST86-533	Michigan Gas Storage Co	Consumers Power Co	[1] 10-13-83	F(157)		
ST86-534	Columbia Gulf Transmission Co	Libbey Owens Ford Co	11-27-85	F(157)		
ST86-535	do	Luynchburg Gas Co	11-27-85	F(157)		
ST86-536	Columbia Gas Transmission Corp	do	11-27-85	B		
ST86-537	United Gas Pipe Line Co	Louisiana Power and Light Co	11-27-85	F(157)		
ST86-538	do	Allied Corp	11-27-85	F(157)		
ST86-539	Arkla Energy Resources	International Paper Co	11-27-85	F(157)		
ST86-540	do	do	11-27-85	F(157)		
ST86-541	Northwest Pipeline Corp	CPEX Pacific, Inc	11-27-85	F(157)		
ST86-542	do	Cascade Steel Rolling Mills, Inc	11-27-85	F(157)		
ST86-543	do	Boise Cascade Corp	11-27-85	F(157)		
ST86-544	do	Phillips Pacific Chemical Co	11-27-85	F(157)		
ST86-545	do	Washington Water Powr Co	11-27-85	B		
ST86-546	do	Washington Natural Gas Co	11-27-85	B		
ST86-547	ANR Pipeline Co	Bucyrus Erie Co	11-27-85	F(157)		
ST86-548	Northwest Pipeline Corp	CP National Corp	11-27-85	B		
ST86-549	do	Pacific Gas and Electric Co	11-27-85	B		
ST86-550	ANR Pipeline Co	Rockwell International	11-27-85	F(157)		
ST86-551	do	GAF Corp	11-27-85	F(157)		
ST86-552	do	The Larsen Co	11-27-85	F(157)		
ST86-553	do	ARCO Metals Co	11-27-85	F(157)		
ST86-554	do	Miller Brewing Co	11-27-85	F(157)		
ST86-555	do	Vulcan Materials Co	11-27-85	F(157)		
ST86-556	do	Pfister and Vogel Tanning Corp	11-27-85	F(157)		
ST86-557	do	A/C Spark Plug Div., GM Corp	11-27-85	F(157)		
ST86-558	do	Ore-Ida Foods, Inc	11-27-85	F(157)		
ST86-559	do	J.I. Case	11-27-85	F(157)		
ST86-560	do	American Motors Corp	11-27-85	F(157)		

Docket No.	Transporter/seller	Recipient	Date filed	Subpart	Expiration date * *	Transportation rate (cents per MMBtu)
ST86-561	do	Western Publishing Co., Inc	11-27-85	F(157)		
ST86-562	do	Mercy Medical Center	11-27-85	F(157)		
ST86-563	do	Milwaukee Metro. Sewerage Dist	11-27-85	F(157)		
ST86-564	do	Lake to Lake, Dis. Land O'Lakes, Inc	11-27-85	F(157)		
ST86-565	do	Fox River Paper Co	11-27-85	F(157)		
ST86-566	do	S.C. Johnson & Son, Inc	11-27-85	F(157)		
ST86-567	do	Wisconsin Tissue Mills	11-27-85	F(157)		
ST86-569	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	11-29-85	B		
ST86-570	Tennessee Gas Pipeline Co	ANR Pipeline Co	11-29-85	G		
ST86-571	Sun Gas Transmission Co., Inc	Transcontinental Gas Pipe Line Corp	11-29-85	C	04-29-86	28.90
ST86-572	do	do	11-29-85	C	04-29-86	28.90

* Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85).

** The intrastate pipeline has sought Commission approval of its transportation rate pursuant to Section 284.123(b)(2)) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[1] The filing (ST86-533, Michigan Gas Storage Co. for Consumers Power Co.) is being noticed out of sequence because it did not receive a docket number when it was originally filed in 1983.

[Docket No. G-3895-003, et al.]

Phillips Petroleum Co., Succ. in Interest to Phillips Oil Co.; Application to Amend Certificates of Public Convenience and Necessity, To Amend Applications, To Redesignate Rate Schedules, and to Redesignate Pending Proceedings

January 27, 1986.

Take notice that on January 2, 1986, Phillips Petroleum Company (Applicant) of 336 HS&L Building, Bartlesville, Oklahoma 74004 filed and application pursuant to section 7 of the Natural Gas Act and § 157.23(b) and 157.24 of the Commission's Regulations for Certificate of Public Convenience and Necessity to Render Service Previously Authorized by the Commission in Certificates of Public Convenience and Necessity heretofore issued to Phillips Oil Company, and requests that Applicant be substituted for Phillips Oil Company in any related proceedings presently pending before the Commission and requests Redesignation of Phillips Oil Company's Rate Schedules, shown in Exhibit "A" and Exhibit "C" attached hereto, all as more fully described in the application which is on file with the Commission and open to public inspection.

Effective as of August 1, 1985, Phillips Petroleum Company and Phillips Oil Company merged pursuant to Delaware law. As a result of the merger, applicant has succeeded to the properties and interests of Phillips Oil Company.

The rate schedules and certificates identified in Exhibit "C" were assigned by Phillips Oil Company to applicant under the terms of various assignments executed from March through May 1985, all effective as of January 1, 1985.

Applicant requests that the successor certificate to be issued relating to the certificates and rate schedules identified in Exhibit "A" be effective as of August 1, 1985, and that the successor certificate issued relating to the certificates and rate schedules identified in Exhibit "C" be made effective as of January 1, 1985.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 11, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

EXHIBIT A

Phillips Oil Co. RS No.	Purchaser	Phillips Oil Co. certificate docket
1	United Gas Pipeline Co	G-3895
2	Kansas Nebraska Natural Gas Co.	G-3895
[1] 3	Texas Eastern Transmission Corp.	G-3895
6	Southern Natural Gas Co	G-18054
7	El Paso Natural Gas Co	G-18549
8	United Gas Pipeline Co	C160-149
[1] 9	Arkansas Louisiana Gas Co	C160-149
10	United Gas Pipeline Co	G-19284
13	Transcontinental Gas Pipe Line Corp.	C161-182, C163-1309
14	Arkansas Louisiana Gas Co	C162-218
15	Mississippi River Trans. Corp	G-5965
17	Arkansas Louisiana Gas Co	C161-1017
[1] 18	Columbia Gas Transmission Corp.	C163-896
[1] 21	do	C164-364
22	Warren Petroleum Corp	C164-657
28	Transcontinental Gas Pipe Line Corp.	C168-686
30	United Gas Pipeline Co	C168-862
32	ANR Pipeline Co	C171-846
[1] 33	Southern Natural Gas Co	C171-855

EXHIBIT A—Continued

Phillips Oil Co. RS No.	Purchaser	Phillips Oil Co. certificate docket
35	Texas Gas Transmission Corp	CI-73-243
36	Arkansas Louisiana Gas Co	G-3895
37	do	G-5873, G-5885
38	United Gas Pipeline Co	C161-516, C161-1230, C162-1502, C167-179
39	do	C176-136, G-15479, C160-149, C172-252
42	Transwestern Pipeline Co	C177-256
44	do	C177-443
46	El Paso Natural Gas Co	C177-453
52	Transcontinental Gas Pipeline Corp.	C160-37
56	Columbia Gas Transmission Corp.	C160-243
61	United Gas Pipeline Co. and Southern Natural Gas Co.	C161-54
62	do	C161-55
67	Transcontinental Gas Pipeline Corp.	C162-221
68	Tennessee Gas Pipeline Co	C162-333
70	El Paso Natural Gas Co	C164-200
71	Columbia Gas Transmission Corp.	C164-201
72	Southern Natural Gas Corp	C164-202
73	do	C164-203
74	Trunkline Gas Co	C164-247
75	Northern Natural Gas Co	C164-226
76	Transcontinental Gas Pipe Line Corp.	C167-1645
78	do	C167-1744
79	Southern Natural Gas Co	C164-351
80	United Gas Pipeline Co	C164-354
81	Florida Gas Transmission	C164-436
82	Transcontinental Gas Pipeline Corp.	C176-772
83	El Paso Natural Gas Co	G-13963
84	Mesa Petroleum Co	C165-280

[1] Denotes Operator, et al.

PDC.RS No. *	Aminoil RS No.	Purchaser	Certificate docket
85	1	Northwest Central Pipeline Corp.	G-2570
86	[1] 4	El Paso Natural Gas Co	G-11627
87	8	Williston Basin Interstate Pipeline Co.	C161-1271
88	[1] 10	Northwest Central Pipeline Corp.	C164-612
89	14	Lone Star Gas Co	G-3978
90	15	do	C162-98
91	16	do	C163-394
92	[1] 17	Transcontinental Gas Pipe Line Corp.	C168-639
93	[1] 20	Sea Robin Pipeline Co	C168-849
94	[1] 21	Southern Natural Gas Co	C169-1097

POC.RS No. *	Aminoil RS No.	Purchaser	Certificate docket
95	24	Lone Star Gas Co.	CI66-20
96	26	Panhandle Eastern Pipe Line Co.	CI70-374
97	27	....do	CI70-375
98	29	Lone Star Gas Co.	G-6668
99	30	....do	CI62-739
100	31	....do	CI63-577
101	33	....do	G-6668
102	34	....do	CI66-20, CI71-226
103	35	....do	CI71-910
104	39	Texas Eastern Transmission Corp	CI74-735
105	40	Tennessee Gas Pipeline Co	CI75-225
106	41	El Paso Natural Gas Co.	CI75-484
107	42	Northwest Pipeline Corp.	CI78-166
108	43	Texas Eastern Transmission Corp	CI77-855
109	45	Florida Gas Transmission Co.	CI78-1081
110	46	Texas Eastern Transmission Corp	CI78-1279
111	47	....do	CI79-137
112	48	Natural Gas Pipeline Co. of America.	CI79-170
113	50	Transcontinental Gas Pipe Line Corp.	CI79-577
114	51	United Gas Pipe Line Co.	CI78-910
115	52	Tennessee Gas Pipeline Co.	CI80-457
116	53	....do	CI80-458
117	54	ANR Pipeline Co.	CI80-452
118	55	....do	CI80-453
119	56	Columbia Gas Transmission Corp.	CI80-486
120	58	Texas Eastern Transmission Corp	CI81-367
121	59	....do	CI81-407
122	60	....do	CI77-244
123	61	....do	CI77-853
124	62	Natural Gas Pipeline Co. of America.	CI76-209
125	63	Trunkline Gas Co	CI76-379
126	64	Transcontinental Gas Pipe Line Corp	CI76-327
127	65	Natural Gas Pipeline Co. of America.	CI77-656
128	67	....do	CI78-751
129	68	....do	CI78-752
130	69	....do	CI78-135
131	70	....do	CI78-90
132	71	Transcontinental Gas Pipe Line Corp	CI79-171
133	72	Natural Gas Pipeline Co. of America.	CI79-454
134	73	....do	CI79-455
135	74	....do	CI79-459
136	75	....do	CI79-576
137	76	....do	CI79-579
138	77	Sea Robin Pipeline Co	CI80-451
139	78	Natural Gas Pipeline Co. of America.	CI81-118
140	79	ANR Pipeline Co	CI81-358
141	80	Tennessee Gas Transmission Co.	CI60-399
142	61	Southern Natural Gas Co.	CI61-173
143	83	....do	CI68-536
144	84	....do	CI68-1218
145	85	....do	CI60-607
146	86	Tennessee Gas Pipeline Co	CI60-204
147	87	Natural Gas Pipeline Co. of America	CI62-215
148	88	Tennessee Gas Pipeline Co	CI62-209
149	89	Trunkline Gas Co	CI62-303
150	91	Transcontinental Gas Pipeline Corp	CI62-313
151	92	....do	CI62-315
152	93	....do	CI62-357
153	94	....do	CI62-358
154	95	Natural Gas Pipeline Co. of America	CI79-219
155	96	Texas Eastern Transmission Corp	CI64-333
156	97	Neches Gas Distribution Co	G-2570
157	98	The city of Long Beach CA	CI65-93

! Denotes operator, et al.
* Tentatively designated.

EXHIBIT C

Phillips Oil Co. RS No.*	Aminoil Inc. RS No.	Purchaser	Aminoil, Inc. Certificate Docket No.
92	17	Transcontinental Gas Pipe Line Corp.	CI68-639
93	20	Sea Robin Pipeline Co.	CI69-949
106	41	El Paso Natural Gas Co.	CI75-484
110	48	Texas Eastern Transmission Corp.	CI78-1279
113	50	Transcontinental Gas Pipe Line Corp.	CI79-577
117	54	ANR Pipeline Co.	CI80-452
120	58	Texas Eastern Transmission Corp.	CI81-367
126	67	Natural Gas Pipeline Co. of America.	CI78-751
129	68	....do	CI78-752
130	69	....do	CI78-135
132	71	Transcontinental Gas Pipe Line Corp.	CI79-171
133	72	Natural Gas Pipeline Co. of America.	CI79-454
134	73	....do	CI79-455
135	74	....do	CI79-459
138	77	Sea Robin Pipeline Co.	CI80-451
139	78	Natural Gas Pipeline Co. of America.	CI81-118
140	79	ANR Pipeline Company	CI81-356
147	87	Natural Gas Pipeline Co. of America.	CI62-215
154	95	....do	CI79-219

* Tentatively designated.

[FR Doc. 86-2079 Filed 1-29-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI64-1057-000, et al.]

Tenneco Oil Co., et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

January 27, 1986.

Take notice that each of the Applicants listed herein has failed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 11, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI64-1057-000, D, Dec. 24, 1985	Tenneco Oil Co., P.O. Box 2511, Houston, TX 77001	Texas Eastern Transmission Corp., Bethany-Longstreet Field, Caddo, Parish, LA.	(1)	
CI64-1069-000, D, Dec. 24, 1985	....do	Texas Eastern Transmission Corp., Bethany-Longstreet Field, Desoto, Parish, LA.	(1)	
CI66-470-000, D, Jan. 6, 1986	Sun Exploration and Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Arkla Energy Resources, Bokoshe, South Field, Le Flore County, OK.	(2)	
CI66-1328-000, D, Jan. 6, 1986	....do	Panhandle Eastern Pipe Line Co., Tangier Area, Ellis and Woodward County, OK.	(3)	
CI67-1085-002 D, Jan. 6, 1986	....do	Ringwood Gathering Co., Ringwood Field, Major County, OK.	(4)	
CI72-519-002, D, Nov. 27, 1985	Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, OK 74102.	Washington Ranch Field, Eddy County, NM	(5)	
CI77-422-002, D, Dec. 11, 1985	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	Transcontinental Gas Pipe Line Corp., High Island Block 111 Field, Block 137 and North Half of Block 138, Offshore TX.	(6)	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI79-435-001 D, Dec. 11, 1985	....do	Transco Gas Supply Co., West Cameron Area Blocks 402 and 405, Offshore LA.	(7)	
CI84-160-002, D, Oct. 10, 1985	Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180.	Texas Eastern Transmission Corp., Mississippi Canyon 280 Field, Offshore LA.	(8)	
CI66-142-000, A, Jan. 8, 1986	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Tennessee Gas Pipeline Co., East Cameron Block 33 "D", Offshore LA.	(9)	14.73
CI66-153-000, F, Jan. 13, 1986	Shell Offshore Inc. (Succ. in interest to Petro-Lewis Corp., P.O. Box 4480, Houston, TX 77210.	Transcontinental Gas Pipe Line Corp., Mississippi Canyon Block 194 Field, Offshore LA.	(10)	14.73
CI66-154-000, (CI77-243), B, Jan. 13, 1986.	Sun Exploration & Production Co.	Panhandle Eastern Pipe Line Co., South Peek Field, Ellis, County, OK.	(11)	
CI66-155-000 (G-13362), B, Jan. 13, 1986.	....do	Trunline Gas Co., Clear Creek Field, Beauregard Parish, LA.	(12)	
CI66-156-000 (CI75-417), B, Jan. 13, 1986.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	Mountain Fuel Supply Co., South Baggs Field, Carbon County, WY.	(13)	
CI66-163-000 F, Jan. 15, 1986	TXO Production Corp., First City Center LB 10, 1700 Pacific Avenue, Dallas, TX 75201.	ANR Pipeline Co., Laverne Field, Harper County, OK.	(14)	14.73
CI66-164-000 (CI77-666), B, Jan. 16, 1986.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94210-7309.	ANR Pipeline Co., West Cameron Block 265, OCS-G-2537, Offshore LA.	(15)	
CI66-166-000, B, Jan. 17, 1986	Conoco Inc., P.O. Box 2197, Houston, TX 77252	Shell Oil Co. and Exxon Co. U.S.A. (Succ. in interest to The Carter Oil Co.), Bayou Field, Carter County, OK.	(16)	
CI66-167-000 (CI75-20), B, Jan. 17, 1986.	Sun Exploration & Production Co.	United Gas Pipe Line Co., East Dykesville Field, Claiborne Parish, LA.	(17)	
CI66-169-000 (CI61-979), B, Jan. 17, 1986.	Union Texas Petroleum Corp., P.O. Box 2120, Houston, TX 77252-2120.	Cities Service Gas Co., North Norman Field, Cleveland County, OK.	(18)	
CI66-170-000 (G-19644), B, Jan. 17, 1986.	....do	El Paso Natural Gas Co., Jack Herbert Field, Upton County, TX.	(19)	

[1] Depletion in the lease dedication.
[2] Partial Assignment and Bill of Sale covering Sun's interest in the Kinsey Odie Unit to Landmark Exploration Company.
[3] Partial Assignment and Bill of Sale covering the F. W. Moore Unit to Oilsearch Corp.
[4] Partial Assignment and Bill of Sale covering the Hutchings wells to Entex Energy Operating, Ltd.
[5] Three leases in the Washington Ranch Field, Eddy County, New Mexico, were jointly owned with El Paso Exploration and held beyond their 1976 expiration dates by El Paso's production from its Miller #1 gas well. When El Paso plugged and abandoned its Miller #1 well, these leases expired due to lack of production and were released by Cities Service.
[6] Federal Lease (OCS-G-3234 (High Island Block 137) was released on 11-2-82.
[7] Federal Lease (OCS-G-2643 West Cameron Block 402 was released on 11-30-79.
[8] Exxon is desirous of using gas produced from the field for injection, from time to time, into reservoirs underlying the South Pass 89 Field since this injection program will increase the oil and gas reserves to be recovered from the fields. Gas from South Pass 89 Field will be sold to Texas Eastern Transmission Corporation under a certificate applied for in Docket No. CI85-643-000. Exxon will maintain records of the gas injected, by source, in each field and will sell the reproduced gas to Texas Eastern under the terms of the contract pertaining to the field from which the gas was originally produced as such contract exists at the time the gas is sold.
[9] Applicant is filing under Gas Purchase and Sales Agreement dated 12-2-85.
[10] Effective as of 12-31-84, Florida Offshore Productive, Inc. (FOPI) assigned to SOI an undivided .2704 percent interest in three leases in the Mississippi Canyon Block 194 Field, Offshore Louisiana.
[11] Last producing property under contract sold 8-1-84.
[12] Clear Creek Unit sold to Union Oil Company 2-1-85. It was the only producing property under contract.
[13] Last producing properties under contract sold.
[14] By an Assignment effective 11-15-84, Applicant acquired from Dan E. Archer and Delbert Davis certain property that had been previously committed to a Gas Purchase Contract dated 2-22-67 between Dan E. Archer and Delbert Davis, Seller, and Michigan Wisconsin Pipe Line Company, Buyer.
[15] Acreage pubject to Rate Schedule 518 was assigned to Walter Oil and Gas Corporation effective 7-23-85.
[16] Normal depletion and contract passed its primary term.
[17] J.W. Prather #1 and L. T. Waller #1 have been plugged and abandoned. Contract expired 8-24-84.
[18] The Contract expired by its own terms on 12-6-80. No deliveries have been made to Cities from the acreage dedicated to the Contract since December, 1982.
[19] Production has ceased from the Windham R-S-#1 well and the leases from the NE/4 Section 106 Block D and S/2 Section 103 Block D have expired in 1972 & 1969 respectively. There is no production from the SW/4 Section 107 Block D and the well was plugged and abandoned on 2-7-72.
Filing Code: A—Initial Service; B—Abandoned; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession

[FR Doc. 86-2080 Filed 1-229-86 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP86-276-000]

Transwestern Pipeline Co.; Application

January 27, 1986.

Take notice that on January 16, 1986, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77001, filed in Docket No. CP86-276-000 an application pursuant to sections 7(b) and (c) of the Natural Gas Act for permission and approval to (a) abandon of the sale of natural gas by Transwestern to Northwest Central Pipeline Corporation (Northwest Central) under Transwestern's Rate Schedule CDQ-2 and the termination of the certificate of public convenience and necessity issued in Docket No. G-20464 which authorized such sale, and (b) abandon partially, to a reduced firm contract demand of 127,214 dt equivalent of gas per day, the sale of natural gas by Transwestern to Northwest central under Transwestern's Rate Schedule CDQ-3 which was authorized by certificate granted to Transwestern in Docket Nos. CP67-220 and CP67-339 and for a certificate of public convenience and necessity authorizing additional points of delivery and certain other revisions to Transwestern's Rate Schedule CDQ-3, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that on July 30, 1985, Transwestern filed a major rate increase with the Commission in Docket No. RP85-175-000. Transwestern states that this filing resulted in an Order dated August 29, 1985, wherein the Commission accepted certain of the tariff sheets for filing to become effective February 1, 1986. Transwestern states that, subsequent to the Order, a settlement was negotiated between Transwestern and other participants to the proceeding, and a stipulation and agreement was filed on January 16, 1986. It is stated that the stipulation and agreement provides for the termination of Rate Schedule CDQ-2 and the underlying contract and service agreement and for Transwestern to file for abandonment of all sales service to Northwest Central under Rate Schedule CDQ-2. It is further stated that the stipulation and agreement provides for reduction of the contract demand in the Transwestern/Northwest Central contract under Rate Schedule CDQ-3 to 127,214 dt equivalent of gas per day and for the contract underlying Rate Schedule CDQ-3 to be subject to early termination beginning February 1, 1989, upon one year's prior written notice to Transwestern, as well as the addition of Rate Schedule CDQ-2 points of delivery as additional authorized points of delivery under Rate Schedule CDQ-3.

Transwestern states that, in compliance with the stipulation and agreement, it has filed in Docket No. CP86-276-000 for authorization to abandon its sales service obligation of up to 100,000 Mcf of gas per day to Northwest Central under Rate Schedule CDQ-2 and to terminate Rate Schedule

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CDQ–2 as of February 1, 1986, as agreed to in the stipulation and agreement. Transwestern also proposes to abandon partially its sales obligation to Northwest Central under Rate Schedule CDQ–3 by reducing the firm contract demand quantity to 127,214 dt equivalent of gas per day, effective as of February 1, 1986. Transwestern additionally proposes to add two delivery points to the sale to Northwest Central under Rate Schedule CDQ–2. It is stated that these new delivery points are the points of delivery that existed under Rate Schedule CDQ–2 and are located at the points of interconnection of Transwestern's and Northwest Central's facilities in the Northwest quarter of section 5, Township 27N, Range 24W in the Doby Springs field, Harper County, Oklahoma, and Section 30, Township 5N, Range 27E in the Mocane and Laverne Fields, Beaver County, Oklahoma.

Finally, Transwestern proposes that the contact and service agreement between Transwestern and Northwest Central underlying Rate Schedule CDQ–3 be subject to early termination at Northwest Central's option on February 1, 1989, February 1, 1990, or February 1, 1991, upon one year's prior written notice to Transwestern.

Transwestern states that Northwest Central has notified Transwestern that it does not desire to continue receiving service under Rate Schedule CDQ–2 and that it desires to reduce its contract quantity under Rate Schedule CDQ–3. Transwestern states that this proposal would allow Transwestern to reduce its certificate obligations to Northwest Central to a level which more accurately reflects Northwest Central's market requirements.

Transwestern states that its proposal is contingent upon Commission approval of the stipulation and agreement in Docket No. RP85–175–000. Transwestern states that, in the event that the stipulation and agreement does not become effective according to its terms, then Transwestern advises that the agreements to terminate, reduce, and otherwise revise the CDQ–2 and CDQ–3 Rate Schedules, contracts, and service agreements would no longer be valid and that this application would be rendered moot.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 7, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for a leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2072 Filed 1–29–86; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–140073; FRL 2964–3]

TSCA confidential Business Information; Revised Contractor Security Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has adopted revisions to its procedures for requesting approval for contractor access to confidential business information (CBI) under the Toxic Substances Control Act (TSCA) and to its procedures for CBI handling by contractor employees. These revised procedures are set forth in a new Contractor Requirements for the Control and Security of TSCA Confidential Business Information Security Manual (Contractor Security Manual), the availability of which is announced by this notice.

DATE: The requirements of the revised Contractor Security Manual will be effectively January 31, 1986.

FOR FUTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substance, Environmental Protection Agency, Rm. E–543, 401 M. St., SW., Washington, DC 20460, Toll-Free: (800–424–9065), In Washington, DC: (544–1404), Outside the USA: (Operator–202–544–1404).

SUPPLEMENTARY INFORMATION: This notice announces the availability of a revised editor of the Contractor Security Manual. The revised Contractor Security Manual supersedes the previous edition of the Manual, which was announced in the **Federal Register** of October 8, 1981 (46 FR 49942). It describes procedures to be followed for requesting TSCA CBI access authority for contractors and subcontractors and employees of contractors and subcontractors and describes procedures to be followed by contractor and subcontractor employees in handling TSCA CBI.

In the **Federal Register** of November 14, 1985, (50 FR 47108), EPA announced the availability of a revised TSCA Confidential Business Information Security Manual for Federal Employees (Federal Employees Manual). The revised Contractor Security Manual follows closely the procedures in the Federal Employees Manual. Reference to contractors and subcontractors and the procedures for such contracts and subcontracts contained in previous editions of the Federal Employees Manual were deleted from the revised 1985 edition and now appear, where appropriate, in the revised Contractor Security Manual.

A number of changes from the 1981 edition of the Contractor Security Manual have been made as a result of EPA's continuing review of the procedures for handling TSCA CBI. These changes are designed to improve the TSCA CBI security system. Some of the changes reflect use of an automated Document Tracking System at EPA Headquarters and the possible use of such system at contractor facilities. Changes or clarifications of note include:

1. The Manual has been reformatted. Many provisions of the Manual have been rewritten to clarify language and make the description of procedures more specific.

2. EPA has clarified the steps it will take when it learns of violations of the Manual's procedures, unaccounted for CBI documents, or unauthorized disclosures of CBI.

3. A weekly report must be prepared by Contractor Document Control Officers identifying documents that have been checked out and are overdue from a Document Tracking System.

4. The roles and duties of EPA Projects Officers and Contractor Document Control Officers have been clarified.

5. The description of procedures for performing annual inventories of CBI materials in a Document Tracking System has been expanded. Inventories must be completed by July 31 of each year.

6. The concept of "personal working papers" is introduced. Personal working papers are CBI documents that remain within the author's possession and control. They are exempt from the requirement that TSCA CBI documents be logged into a Document Tracking System.

7. Document authors may provide CBI materials to an authorized typist within the author's immediate office without logging the materials into a Document Tracking System.

8. CBI materials may be photocopied in secure storage areas or locations approved by the TSCA Security Staff.

9. CBI telephone conversations with someone outside the employee's facility must be noted in a telephone log.

10. Procedures for double-wrapping CBI materials in the possession of employees on travel have been clarified.

11. There have been several changes in terminology. "Open storage areas" are now called "secure storage areas." Persons referred to as "Document Control Assistants (DCAs)" in previous editions of the Manual are now referred to as "Document Control Officers (DCOs)." "Security IMD" is now referred to as the "TSCA Security Staff."

12. A number of forms have been modified and several new ones have been added. All forms are included as appendices to the Manual.

These and other changes are designed to improve security of TSCA CBI while recognizing EPA's need to have contractors and subcontractors work with such CBI to perform the Agency's statutory duties.

EPA is printing and distributing copies of the revised Contractor Security Manaul to affected EPA offices and contractors and subcontractors. The provisions of the revised Manual will take effect on January 31, 1986. Copies of the revised Manual are available to the public by contacting the TSCA Assistance Office at the address above.

Dated: January 24, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86–2157 Filed 1–29–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Arctic Broadcasting Assoc.; et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. David A. Rawley; Anchorage, AK.	BPH–831116AJ	85–369
B. Arctic Broadcasting Association; Anchorage, AK.	BPH–831113OAA	
C. Borealis Broadcasting, Inc.; Anchorage, AK.	BPH–840223AA	
D. Alaska Northwest LTD, A Limited Partnership; Anchorage, AK.	BPH–840719IE	
E. Linda Patterson & Larry Bissey d/b/a Mat-su Broadcasting Co; Anchorage, AK.	BPH–840719IF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A,B
2. Air Hazard, A
3. Comparative, A,B,C,D
4. Ultimate, A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, DC 20554, Telephone (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If a final environmental impact statement is issued with respect to A (Rawley) or B (Arctic) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment.

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 86–1986 Filed 1–29–86; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 21, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submissions are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231.

OMB Number: 3060–0281
Title: Section 90.651, Supplemental reports required of licensees authorized under this subpart
Action: Extension
Respondents: Licensees in the Private Land Mobile Radio Services
Estimated Annual Burden: 4,355 Responses; 727 Hours

OMB Number: 3060–0284
Title: Section 94.25(f), (g), & (i), Filing of applications
Action: Extension
Respondents: Applicants for authorizations in the Private Operational-Fixed Microwave Service
Estimated Annual Burden: 25 Responses; 13 Hours

OMB Number: 3060–0272

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Title: Section 94.31, Supplemental information
Action: Extension
Respondents: Applicants for authorizations in the Private Operational-Fixed Microwave Service
Estimated Annual Burden: 4,300 Responses; 8,600 Hours
OMB Number: 3060–0300
Title: Section 94.107, (Private Microwave) Posting of station authorization
Action: Extension
Respondents: Stations in the Private Operational-Fixed Microwave Service
Estimated Annual Burden: 4,700 Recordkeepers; 7 Hours
OMB Number: 3060–0291
Title: Section 90.477, Private land mobile interconnected systems
Action: Extension
Respondents: Licensees in the Private Land Mobile Radio Services
Estimated Annual Burden: 1,000 Recordkeepers; 1,000 Hours.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86–1985 Filed 1–29–86; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Bankvermont Corp.; Application To Engage in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage either directly or through a subsidiary, in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 1986.

A. Board of governors of the Federal Reserve System. (William W. Wiles, Secretary) Washington, DC 20551:

1. *Bank Vermont corporation,* Burlington, Vermont; to retain ownership of Future Planning Associates, Inc. and Madison Group, Inc., both of Burlington, Vermont, and thereby engage in: (a) Designing: employee benefit plans, including determining actuarial funding levels and cost estimates; (b) providing assistance in implementing plans, including assistance in the preparation of plan documents and the implementation of employee benefit administration systems; (c) developing employee communication programs with respect to plans; (d) providing administrative services with respect to plans, including record-keeping services; calculating and certifying employe benefits, and preparing periodic actuarial and other reports and government filings pursuant to ERISA; and (e) informing clients of developments in the field of employee benefit programs. These services would be provided from an office in Burlington, Vermont, serving customers nationwide.

This application may be inspected at the Federal Reserve Bank of Boston. This activity has been approved by Board Order as permissible for bank holding companies. *Norstar Bancorp, Inc.*, 71 Federal Reserve Bulletin 656 (1985).

Board of Governors of the Federal Reserve System, January 24, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86–1987 Filed 1–29–86; 8:45 am]
BILLING CODE 6210–01–M

Interchange Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842 (c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 24, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Interchange Financial Services Corporation,* Saddle Brook, New Jersey; to become a bank holding company by acquiring 100 percent of the shares of Interchange State Bank, Saddle Brook, New Jersey.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Comm. Bancorp, Inc.*, Forest City, Pennsylvania; to acquire 23.9 percent of the shares of the First National Bank of Nicholson, Nicholson, Pennsylvania.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bancorp of Rontoul, Inc.* Mahomet, Illinois; to become a bank holding company by acquiring 100 percent of the shares of Bank of Rantoul, Rantoul, Illinois.

Board of Governors of the Federal Reserve System, January 24, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86–1988 Filed 1–29–86; 8:45 am]
BILLING CODE 6210–01–M

Ormside Proprietary, Ltd. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Board indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comments on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 13, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1 *Ormside Proprietary Limited,* Melbourne, Australia; *Overseas Finance Holdings Proprietary Limited,* Melbourne, Australia; *Alyworth Proprietary Limited,* Melbourne, Australia; *Costa Mesa Limited,* London, England; *Costa Mesa Holdings N.V.,* Curacao, Netherland Antilles; *Citizens Financial Holdings B.V.*, Amsterdam, Netherlands; and *Citizens Holdings,* Brea, California; to become a bank holding company by acquiring at least 80 percent of the voting shares of Citizens Bank of Costa Mesa, Costa Mesa, California.

Board of Governors of the Federal Reserve System, January 28, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86–2173 Filed 1–28–86; 3:50 pm]
BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget; Matrices/Color Code Identification Program for GSA Multiple Award Schedules

AGENCY: Office of Administration, GSA.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to review an existing collection in use without a control number.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Gareth G. Wells, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of Acquisition Policy, (202–566–1224).

SUPPLEMENTARY INFORMATION:

A. *Purpose.* This collection is used by Federal agencies to identify and order the lowest priced products which meet their needs.

b. *Annual reporting burden.* Respondents and responses 5,375 each; hours 2,687.

c. *Copies of proposal.* Copies may be obtained from the Directives and Reports Management Branch (CAID), Room 3013, GS Building, Washington, DC 20405 (202–566–0666).

Dated: January 22, 1986.
Johnny T. Young,
Acting Director, Information Management Division.
[FR Doc. 86–1972 Filed 1–29–86; 8:45 am]
BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol Drug Abuse, and Mental Health Administration

Advisory Committee Meetings

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration ADAMHA), HHS.
ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b((6) and 5 U.S.C. app. 2§ 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: Neurobehavioral Research Subcommittee of the Neurosciences Research Review Committee.
Date and Time: February 6–8; 8:30 a.m.
Place: The Wellington Hotel, Suite 705, 2505 Wisconsin Avenue, NW., Washington, DC 20007.
Status of Meeting: Open—February 6; 9:00–10:00 a.m. Closed—Otherwise.
Contact: Dorothy Tengood, Room 9C26, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.
Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee Name: Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee.
Date and Time: February 7; 10:00 a.m.
Place: The Canterbury Hotal, 1733 N Street, NW. Washington, DC 20036.
Status of Meeting: Open—February 7; 1:30–2:30 p.m. Closed—Otherwise.
Contract: Barbara McCracken, Room 9C05, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.
Purpose: The Committee is charged with the initial review of applicetions for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychiatry and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

* * * * *

Committee Name: Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee.
Date and Time: February 7–8; 8:00 a.m.
Place: the Canterbury Hotel, 1733 N Street, N.W. Washington, DC 20036.
Status of Meeting: Open—February 7; 1:30–2:30 p.m. Closed—Otherwise.
Contact: Barbara McCracken, Room 9C05, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.
Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology and the behavioral sciences, with recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

* * * * *

Committee Name: Subcommittee on Aging of the Life Course and Prevention Research Review Committee.
Date and Time: February 20–22; 9:15 a.m.
Place: The Omni Shoreham, 2500 Calvert Street, NW, Washington, DC 20008
Status of Meeting: Open—February 20; 9:15–10:30 a.m. Closed—Otherwise.
Contact: Jean Byrne, Room 9C18, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

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Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee Name: Research Scientist Development Review Committee.

Date and Time: February 19; 10:00 a.m.–6:00 p.m. February 20–21; 9:00 a.m.–6:00 p.m.

Place: Omni Shoreham, 2500 Calvert Street, NW. Washington, DC 20008.

Status of Meeting: Open—February 19; 10:00–11:00 a.m. Closed—Otherwise.

Contact: Linda Rainey, Room 9C15, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support and individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee Name: Applied Behavioral Sciences Subcommittee of the Mental Health Research Education Review Committee.

Date and Time: February 24; 9:15 a.m.

Place: The Omni Shoreham, 2500 Calvert Street, NW. Washington, DC 20008

Status of Meeting: Open—February 24; 9:15–10:30 a.m. Closed—Otherwise.

Contact: Jean Byrne, Room 9C18, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Helth Council for final review.

* * * * *

Summaries of the meetings and rosters of committee members may be obtained from Ms. Helen Garrett, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Meeting notice are late because committee members changed meeting dates.

Dated: January 24, 1986.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–1989 Filed 1–29–86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 85F–0578]

EMS-CHEMIE AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that EMS–CHEMIE AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a nylon 6/69 polymer manufactured by the condensation of *epsilon*-caprolactam, hexamethylenediamine, and azelaic acid for use in laminates that may contact food at temperatures not to exceed 212 °F.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Comestic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3852) has been filed by EMS–CHEMIE AG, Ch–7013 Domat/Ems, Switzerland, proposing that § 177.1390 *High-temperature laminates* (21 CFR 177.1390) be amended to provide for the safe use of a nylon 6/69 polymer manufactured by the condensation of *epsilon*-caprolactam, hexamethylenediamine, and azelaic acid for use in laminates that may contact food at temperatures not to exceed 212 °F.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: January 21, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–1993 Filed 1–29–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N–0102]

Cumulative List of Orphan Products Designations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) previously announced the availability of a list to be updated quarterly identifying the drugs and biological products granted orphan designation in accordance with section 526 of the Federal Food, Drug, and Cosmetic Act (see the **Federal Register** of April 13, 1984 (49 FR 14808)). By this notice, FDA is publishing a cumulative list of designated orphan drugs and biological products.

ADDRESS: A copy of the list for the current calendar year is available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Roger C. Gregorio, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development reviews and takes final action on applications submitted by sponsors seeking orphan designation pursuant to the interim guidelines for section 526 of the Federal Food, Drug, and Cosmetic Act (the act). In accordance with section 526 of the act, which requires public notification of designations, FDA maintains a list identifying designated orphan drugs and biological products for the current calendar year. The list is available upon request from FDA's Dockets Management Branch (address above) under docket number 84N–0102. The list is updated on a quarterly basis. The agency intends to continue to publish in the **Federal Register** at the end of each calendar year a cumulative list of designated orphan drugs or biological products, to include sponsor name and specific disease/condition, for which designations have been granted.

In the **Federal Register** of February 4, 1985 (50 FR 4914), FDA published the first cumulative list of designations. The February 4, 1985, notice listed those products designated as orphan drugs or biological products through 1984. This notice lists those products designated as orphan drugs or biological products through December 31, 1985, and, therefore, updates the February 4, 1985, publication. The designation of a drug or biological product applies only to the sponsor who requested the designation. Each sponsor interested in developing an orphan product must apply for designation for its product. Copies of the interim guidelines for use in compiling an application for designation may be obtained from the Office of Orphan Products Development (HF–35) (address above).

Orphan Drug and Biological Product Designations thru 1985

BIOLOGICAL PRODUCT DESIGNATIONS

Name of biological product	Proposed use	Sponsor's name and address
Generic—Alpha-1-anti-trypsin (recombinant DNA origin) *Trade*—not established.	Supplementation therapy for alpha-1 antitrypsin deficiency in the ZZ phenotype population.	Cooper Biomedical, Inc., 3145 Porter Dr., Palo Alto, CA 94304.
Generic—Alpha-1-proteinase inhibitor (Alpha-1 PI) *Trade*—Not established.	Replacement therapy in the Alpha 1 PI congenital deficiency state.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—Antimelanoma antibody XMMME–001–DTPA–In_{111} *Trade*—Same as generic.	Diagnostic use in imaging systemic and nodal melanoma metastasis.	Xoma Corp., 3516 Sacramento St., San Francisco, CA 94118.
Generic—Antimelanoma antibody XMME–001–RTA *Trade*—Same as generic.	Treatment of Stage III melanoma not amenable to surgical resection.	Xoma Corp., 3516 Sacramento St., San Francisco, CA 94118.
Generic—Antithrombin III (AT–III) *Trade*—Not established.	For use as replacement therapy in congenital deficiency of AT–III for prevention and treatment of thrombosis and pulmonary emboli.	Cutter Laboratories, P.O. Box 1986, Berkeley, CA 94701.
Generic—Antithrombin III concentrate I.V *Trade*—Kybernin.	Prophylaxis and treatment of thromboembolic episodes in patients with genetic AT–III deficiency.	Hoechst-Roussel Pharmaceuticals, Inc., Route 202–206 North Somerville, NJ 08876.
Generic—Antithrombin III (human) *Trade*—*Antithrombin.*	Hereditary AT–III deficiency	Kabi Vitrum Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
Generic—Botulinum A toxin *Trade*—Oculinum.	Treatment of strabismus and blepharospasm	Alan B. Scott, 2232 Webster St., San Francisco, CA 94115.
Generic—Digoxin-specific antibody fragments *Trade*—Digibind.	Treatment of potentially life-threatening digitalis intoxication in patients who are refractory to management by conventional therapy.	Burroughs-Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Erwinia L-Asparaginase *Trade*—*Not established.*	Acute lymphoblastic leukemia	Lypho Med, Inc. 2020 Ruby St., Melrose Park, IL 60160.
Generic—Factor XIII, *Trade*—*Fibrogammin.*	Congenital Factor XIII deficiency	Hoechst-Roussel Pharmaceuticals, Inc., Route 202–206 North, Somerville, NJ 08876.
Generic—Hemin.[1] [2] *Trade*—Panhematin.	Amelioration of recurrent attacks of acute intermittent porphyria temporally related to the menstrual cycle in susceptible women and similar symptoms which occur in other patients with acute intermittent porphyria, porphyria variegata, and hereditary coproporphyria.	Abbott Laboratories; North Chicago, IL 60064.
Generic—Pentastarch *Trade*—Not established.	For use an adjunct in leukapheresis, to improve the harvesting and increase the yield of leukocytes by centrifugal means.	American Critical Care, 1600 Waukegan Rd., McGaw Park, IL 60085.
Generic—Sheep antidigoxin Fab *Trade*—Digidote.	Life-threatening acute cardiac glycoside intoxication manifested by conduction disorders, ectopic ventricular activity, and (in some cases) hyperkalemia.	Boehringer Mannhein Corp., 1301 Piccard Dr, Rockville, MD 20850.

[1] Approved for marketing.
[2] Exclusive approval.

DRUG PRODUCT DESIGNATIONS

Name of drug product	Proposed use	Sponsor's name and address
Generic—Allopurinol riboside *Trade*—Not established.	Treatment of Cutaneous and viaceral leishmaniasis and Chagas' disease.	Burroughs-Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Amsacrine *Trade*—Amsidyl.	Treatment of patients with acute adult leukemia	Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
Generic—Anagrelide *Trade*—Not established.	Treatment of poly-cythemia vera	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221–4755.
Generic—Antipyrine *Trade*—Not established.	Antipyrine test as an index of hepatic drug-metabolizing capacity.	Upsher-Smith Laboratories, Inc., 14905 23d Ave. North, Minneapolis, MN 55441.
Generic—Bacitracin, U.S.P *Trade*—Not established.	Antibiotic-associated pseudomembranous enterocolitis caused by toxins A and B elaborated by *Clostridium difficile.*	A.L. Laboratories, Inc., 452 Hudson Terrace, P.O. Box 1621 Englewood Cliffs, NJ 07632.
Generic—BW A509U *Trade*—Not established.	Treatment of acquired immunodeficiency syndrome (AIDS)	Burroughs-Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—BW B759U *Trade*—Not established.	Treatment of severe human cytomegalo-virus infections (HCMV) in specific immunoeuppressed patient populations (e.g., bone marrow transplant recipients and AIDS).	Burroughs-Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Chenodiol.[1] [2] *Trade*—Chenix.	For patients with radiolucent stones in well opacifying gallbladders, in whom elective surgery would be undertaken except for the presence of increased surgical risk due to systemic disease or age.	Rowell Laboratories, Inc., 210 Main St. West, Baudette, MN 56623.
Generic—Clofazimine *Trade*—Lamprene.	Treatment of leprosy resistant to Dapsone and the ENL and lepra reaction.	Pharmaceuticals Division, Ciba-Geigy Corp., 556 Morris Ave., Summit, NJ 07901.
Generic—Clofazimine *Trade*—Not established.	For use in arresting the progression of neurologic disability caused by chronic progresave multiple sclerosis.	Pharmacontrol Corp., P.O. Box 931, 661 Palisade Ave., Englewood Cliffs, NJ 07632.
Generic—Cromolyn Sodium *Trade*—Cromoral.	Mastocytosis	Fisons Corp., 2 Preston Ct., Bedford, MA 01730.
Generic—Cromolyn Sodium 4% ophthalmic solution *Trade*—Opticrom 4% Ophthalmic Solution.[1]	Treatment of vernal keratoconjunctivitis (VKC)	Fisons Corp., 2 Preston Ct., Bedford, MA 01730.
Generic—Cyproterone acetate *Trade*—Cyproteron/Androcur.	Treatment of severe hirsutism	Berlex Laboratories, Inc., 110 East Hanover Ave., Cedar Knolls, NJ 07927.
Generic—Diaziquone *Trade*—Not established.	Treatment of primary brain malignancies (Grade III–IV astrocytomas.	Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
Generic—Deftbrotide *Trade*—Not established.	Treatment of thrombotic thrombocytopenic purpura	Crinos International, Via Belvedere 1, 22079 Villa Guardia (Como), Italy.
Generic—Epoprostenol prostacyclin, PGI_2, PGX *Trade*—Flolan.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Epoprostenol *Trade*—Cyclo-Prostin.	Replacement of heparin in patients requiring hemodialysis and who are at increased risk of hemorrhage.	The Upjohn Co., 301 Henrietta St., Kalamazoo, MI 49001.
Generic—Epoprostenol, prostacyclin, PGI_2, PGx *Trade*—Flolan.	For use in the treatment of primary pulmonary hypertension (PPH).	Burroughs Wellcome Co., 3030 Cornwallis Rd., Research Triangle Park, NC 27709.
Generic—Ethanolamine oleate *Trade*—Not established.	Bleeding esophageal varices	Glaxo, Inc., P.O. Box 13960, Five Moore Dr., Research Triangle Park, NC 27709.
Generic—Flumecinol *Trade*—Zixoryn.	Hyperbilirubinemia in newborn infants unresponsive to phototherapy.	Farmacon, Inc., P.O. Box 586, Westport, CT 06881.

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DRUG PRODUCT DESIGNATIONS—Continued

Name of drug product	Proposed use	Sponsor's name and address
Generic—Glucocare-broidase/beta-glucosidase (placenta-derived). *Trade*—Not established.	Replacement therapy in patients with Gaucher's Disease Type I.	Genzyme Corp., 75 Kneeland St., Boston, MA 02111.
Generic—HPA-23 *Trade*—Not established.	Treatment of acquired immunodeficiency syndrome (AIDS)	Rhone-Poulenc Pharmaceuticals, Division of Rhone Poulenc, Inc., P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852.
Generic—Hexamethyl-melamine *Trade*—Hexastat.	Treatment of advanced adenocarcinoma of the ovary	Ives Laboratories, 685 Third Ave., New York, NY 10017.
Generic—Human epidermal growth factor (urogastrone) *Trade*—Not established.	Acceleration of corneal epithelial regeneration and healing of stromal incisions from corneal transplant surgery.	Chiron Corp., 4560 Horton St., Emeryville, CA 94608.
Generic—Human epidermal growth factor (urogastrone) *Trade*—Not established.	Promotion of cutaneous wound healing in extreme burn treatment protocols.	Chiron Corp., 4560 Horton St., Emeryville, CA 94608.
Generic—Human superoxide dismutase (hSOD) *Trade*—Not established.	Protection of donor organ tissue from damage or injury mediated by oxygen-derived free radicals that are generated during the necessary periods of ischemia (hypoxia, anoxia), and especially reperfusion, associated with the operative procedure.	Chiron Corp., 4560 Horton St., Emeryville, CA 94608.
Generic—Hydroxyco-balamin/sodium thiosulfate *Trade*—Not established.	Treatment of severe acute cyanide poisoning	Evreka, Inc., P.O. Box 1513, 1990 Broadway, New York, NY 10023.
Generic—Ifosfamide *Trade*—Not established.	Treatment of soft tissue and bone sarcomas	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—L-alpha-acetyl-methadol (LAAM) *Trade*—Not established.	Treatment of heroin addicts suitable for maintenance on opiate agonists.	Dixon and Williams Pharmaceutical Co., Inc., 43 Old Wood Rd., Bernardsville, NJ 07924.
Generic—L-carnitine *Trade*—Not established.	Genetic carnitine deficiency	American McGaw, Division of American Hospital Supply Corp., 2525 McGaw Ave., Irvine, CA 92714.
Generic—L-carnitine.[1] [2] *Trade*—Not established.	Primary and secondary carnitine deficiency of genetic origin	Sigma Tau, Inc., 723 North Beers St., Holmdel, NJ 07733.
Generic—L-5 Hydroxy-tryptophan (L-5HTP) *Trade*—Not established.	Treatment of postanoxic intention myoclonus	Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726.
Generic—Mesna *Trade*—Uromiexan.	For use in inhibiting the urotoxic effects induced by ifosfamide	Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755.
Generic—Methotrexate sodium *Trade*—Methotrexate.	Treatment of osteogenic sarcoma	Lederle Laboratories, Pearle River, NY 10965.
Generic—Midodrine HCl *Trade*—Midamine.	Treatment of idiopathic orthostatic hypotension	Roberts Laboratories, Inc., 230 Half Mile Rd., Red Bank, NJ 07701.
Generic—Monoclonal Antiendotoxin Antibody XMMEN-0E5 *Trade*—Same as generic.	Treatment of patients with gram-negative sepsis which has progressed to shock.	Xoma Corp., 2910 Seventh St., Berkeley, CA 94710.
Generic—Monooctanoin *Trade*—Moctan.[1] [2]	Dissolution of cholesterol gallstones retained in the common bile duct.	Ascot Pharmaceuticals, Inc., 7701 North Austin Ave., Skokie, IL 60077.
Generic—Naltrexone HCl *Trade*—Trexan.[1] [2]	Blockade of the pharmacological effects of exogenously administered opioids as an adjunct to the maintenance of the opioid-free state in detoxified formerly opioid-dependent individuals.	E.I. du Point De Nemours, Inc., dba Du Pont Pharmaceuticals, 1000 Stewart Ave., Garden City, NY 11530.
Generic—Oxymorphone HCl *Trade*—Numorphan H.P.	Relief of serve intractable pain in narcotic-tolerant patients	Du Pont Pharmaceuticals, Inc., P.O. Box 12, Manati, Puerto Rico 00701.
Generic—PEG-adenosin deaminase (PEG-ADA) *Trade*—Imudon.	For use as enzyme replacement therapy for ADA deficiency in patients with severe combined immunodeficiency (SCID).	Enzon, Inc., 300C Corporate Court, South Plainfield, NJ 07080.
Generic—Pentamidine isethionate *Trade*—Pentam 300.[2] [3]	Pneumocystis carinii pneumonia	LyphoMed, Inc., 2020 Ruby St., Melrose Park, IL 60160.
Generic—Pentamidine isethionate *Trade*—Not established.	Pneumocystis carinii pneumonia	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic—Physostigmine salicylate *Trade*—Antilirium.	Friedreich's and other inherited ataxies	Forrest Pharmaceuticals, Inc., 2510 Metro Blvd., Maryland Heights, MO 63043-99.
Generic—Potassium citrate *Trade*—Urocit-K.[1] [2]	Prevention of calcium stones in patients with hypocitraturia and for the avoidance of the complication of calcium stone formation in patients with uric lithiasis.	Charles Y. C. Pak, The University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—Potassium citrate *Trade*—Urocit-K.[1] [2]	Prevention of uric acid nephrolithiasis	Charles Y. C. Pak, The University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235.
Generic—Prehnimustine *Trade*—Sterecyd.	Treatment of malignant non-Hodgkin's lymphomas	Smith Kline and French Laboratories, 1500 Spring Garden St., Philadelphia, PA 19101.
Generic—Quinacrine HCl *Trade*—Not established.	For use in the prevention of recurrence of pneumothorax in patients at high risk of recurrence, e.g., patients with cystic fibrosis.	LyphoMed, Inc., 2020 Ruby St., Melrose Park, IL 60160.
Generic—RS 21 592-000 (DHPG) *Trade*—Not established.	Treatment of cytomegalovirus (CMV) infections of a serious life- or sight-threatening nature in immuno-compromised patients.	Syntex (USA), Inc., 3401 Hillview Ave., Palo Alto, CA 94304.
Generic—Rifampin *Trade*—Rifadin I.V.	For use as anti-tuberculosis treatment where use of the oral form of the drug is not feasible.	Merrell Dow Pharmaceuticals, 2110 East Galbraith Rd., Cincinnati, OH 45215.
Generic—Rifampin, isoniazid, pyrazinamide *Trade*—Rifater 'V'.	Short-course treatment of tuberculosis	Merrell Dow Research Institute, 2110 East Galbraith Rd., Cincinnati, OH 45215.
Generic—Selegiline HCl *Trade*—Deprenyl.	Adjuvant to levodopa or levodopa and carbidopa treatment of idiopathic Parkinson's disease (paralysis agitans), postencephalitic parkinsonism, and symptomatic parkinsonism.	S.C. Johnson and Son, Inc., 1525 Howe St., Racine, WI 53403-5011.
Generic—Sodium gamma hydroxybutyrate (GHB) *Trade*—Not established.	Narcolepsy and the auditary symptoms of cataplexy, sleep paralysis, hypnagogic hallucinations, and automatic behavior.	Sigma F and D Division, Ltd., Sigma Chemical Co., 3050 Spruce St., St. Louis, MO 63103.
Generic—Sodium monomercapto-undecahydro-closo-dodecaborate. *Trade*—Borolite.	Treatment of glio-blastoma multiforme as an alternative to conventional photon therapy.	Nuclear Medicine, Inc., 300 Atlantic Dr. NW., Atlanta, GA 30332.
Generic—Sodium pentosan polysulphate *Trade*—Elmiron.	Treatment of interstitial cystitis	Pharmacia, Inc., 800 Centennial Ave., Piscataway, NJ 08854.
Generic—Somatrem.[1] [2] *Trade*—Protropin.	For long-term treatment of children who have growth failure due to a lack of adequate endogenous growth hormone secretion.	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—Somatrem *Trade*—Protropin.	Short stature associated with Turner's syndrome	Genentech, Inc., 460 Point San Bruno Blvd., South San Francisco, CA 94080.
Generic—Spiramycin *Trade*—Rovamycine.	For use in the symptomatic relief and parasitic cure of chronic cryptosporidiosis in patients with immunodeficiency.	Rhone-Poulenc, Inc., 52 Vanderbilt Ave., New York, NY 10017.
Generic—Surface active extract of saline lavage of bovine lungs. *Trade*—Infasurf.	Treatment and prevention of respiratory failure due to pulmonary surfactant deficiency in preterm infants.	ONY Inc., TDC Incubation Center, 2211 Main St., Buffalo, NY 14214.
Generic—Teniposide (VM-26) *Trade*—Not established.	Treatment of refractory childhood acute lymphocytic leukemia (ALL).	Bristol-Myers Co., Pharmaceutical Research and Development Division, P.O. Box 4755, Syracuse, NY 13221-4755.

DRUG PRODUCT DESIGNATIONS—Continued

Name of drug product	Proposed use	Sponsor's name and address
Generic—Thymone (TRH) *Trade*—Protirelin.	Amyotrophic lateral sclerosis (ALS)	Abbott Laboratories, North Chicago, IL 60064.
Generic—Tranexamic acid *Trade*—Cyklokapron.	Treatment of hereditary angioneurotic edema and for patients with congenital coagulopathies who are undergoing surgical procedures, e.g., dental extractions.	Kabi Vitrum, Inc., 1311 Harbor Bay Parkway, Alameda, CA 94501.
Generic—Tretinoin *Trade*—Not established.	Treatment of squamous metaplasia of the ocular surface epithelia (conjunctive and/or cornea) with mucous deficiency and keratinization.	S.C.G. Tseng, M.D., Ph.D., Eye Research Institute of Retina Foundation, 20 Staniford St., Boston, MA 02114.
Generic—Trientine HC1 *Trade*—Cuprid.[1] [2]	Treatment of patients with Wilson's disease who are intolerant or inadequately responsive to penicillamine.	Merck Sharp and Dohme Research Laboratories, Division of Merck and Co., Inc., West Point, PA 19486.
Generic—Trimetrexate glucuronate *Trade*—Not established.	Treatment of metastatic colorectal adenocarcinoma, metastatic carcinoma of the head and neck (i.e., buccal cavity, pharynx, and larynx), and pancreatic adenocarcinoma.	Warner-Lambert Co., 2800 Plymouth Rd., P.O. Box 1047, Ann Arbor, MI 48106.
Generic—Viloxazine hydrochloride *Trade*—Vivalan.	Treatment of narcolepsy and cataplexy	Stuart Pharmaceuticals, Division of ICI Americas Inc., Wilmington, DE 19897.
Generic—Zinc acetate *Trade*—Not established.	For use in the treatment of Wilson's disease	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
Generic—[131] I-Meta-iodobenzylguanidine *Trade*—Not established.	Diagnostic adjunct in patients with pheochromocytoma	William H. Beierwaltes, Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 East Ann St., Ann Arbor, MI 48109.
Generic—[131] I-6β-Iodomethyl-19-norcholesterol *Trade*—Not established.	Adrenal cortical imaging	William H. Beierwaltes, Physician-in-charge, Nuclear Medicine, University of Michigan Medical Center, 1405 East Ann St., Ann Arbor, MI 48109.
Generic—2,3-Dimercaptosuccinic Acid (DMSA) *Trade*—Not established.	Treatment of lead poisoning in children	Johnson and Johnson, Baby Products Co., Grandview Rd., Skillman, NJ 08558.

[1] Approved for marketing.
[2] Exclusive approval.

Dated: January 23, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1994 Filed 1-29-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79N-0113; DESI 2847]

Drugs for Human Use; Certain Parenteral Multivitamin Products; Withdrawal of Approval of Pertinent Parts of a New Drug Application

Correction

In FR Doc. 86-30550, beginning on page 53014 in the issue of Friday, December 27, 1985, make the following corrections: On page 53014, in the middle column, in the paragraph headed "Summary", the initials at the end of the fifth line should read "USV" and the first word in the last line of the paragraph should read "reformulation".

BILLING CODE 1505-01-M

Public Health Service

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that, pursuant to section 13 of Pub. L. 92-463, the Annual Reports for the following Office of the Assistant Secretary for Health Federal Advisory Committees have been filed with the Library of Congress: Health Services Research and Developmental Grants Review Committee, Health Care Technology Study Section.

Copies are available to the public for inspection at the Library of Congress, Special Forms Reading Room, Main Building, on weekdays between 9 AM and 4:30 PM at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, Southwest, Washington, D.C. 20201, telephone (202) 245-6791. Copies may be obtained from Mr. John D. Gallicchio, National Center for Health Services Research and Health Care Technology Assessment, Stop 152, Park Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-3091.

Dated: January 23, 1986.

John E. Marshall, Ph.D.,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-2058 Filed 1-29-86; 8:45 am]

BILLING CODE 4160-17-M

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the Executive Subcommittee of the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, February 5, 1986 from 4:00 p.m. to 6:00 p.m. in Room 405A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Executive Subcommittee will review future workplans for the National Committee on Vital and Health Statistics.

Further information regarding the Subcommittee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: January 22, 1986.

Robert A. Israel,

Acting Director, National Center for Health Statistics.

[FR Doc. 86-2059 Filed 1-29-86; 8:45 a.m.]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Inspector General

[Docket No. N-86-1578; FR-2169]

Privacy Act; Program of Matching for HUD Rehabilitation Loan Debtors

AGENCY: Office of Inspector General, HUD.

ACTION: Notice of Matching Program—HUD Rehabilitation Loan Debtors.

SUMMARY: In accordance with the Privacy Act of 1974, and the Office of Management and Budget's Revised Supplemental Guidance for Conducting Matching Programs (47 FR 21656, May 19, 1982), the Department is issuing public notice of its intent to conduct a computer matching program. Under the program, HUD's Office of Inspector General will conduct or directly supervise computer matches of data on debtors having defaulted notes under

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section 312 of the Housing Act of 1964 (42 U.S.C. 1452b) [HUD/DEPT–29 Rehabilitation Grants and Loan Files] against systems of records of current employees and retirees provided by the Office of Personnel Management, the United States Postal Service and the Department of Defense. The purpose of the program is to obtain salary and benefit attachments to discharge debts owed to the Federal government. A report on the design of the matching program is set forth in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Steven A. Switzer, Office of Inspector General, Room 8284, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755–6364. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information supplied below is required by paragraph 5.f.1. of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). In accordance with the Revised Supplemental Guidance, copies of this report are being sent to the Office of Management and Budget and both Houses of Congress.

This matching program is exempt under 24 CFR 50.20(k) from the requirements for an environmental review under the National Environmental Policy Act 42 U.S.C. 4321.

Dated: January 24, 1986.

Paul A. Adams,

Inspector General.

Report of a Matching Program Department of Housing and Urban Development Rehabilitation Loan Debtors

A. *Authority:* The matching program will be conducted under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b); and debt collection provisions at 31 U.S.C. 3701, 3711, 3716, and 3718 and 5 U.S.C. 5514.

B. *Purpose:* This matching program will identify debtors with section 312 defaulted loans who are United States government or postal service employees or retirees. The purpose of the match is to discharge debts owed to the United States government through salary and benefit offsets.

HUD's Office of Inspector General will conduct or directly supervise the match of the Department's existing system of records [HUD/DEPT–29 Rehabilitation Grants and Loan Files) with systems of records provided by the Office of Personnel Management (OPM), the United States Postal Service USPS) and the Department of Defense (DOD). The OPM systems of records to be used are the General Personnel Records (OPM/GOVT–1) and the Civil Service Retirement and Insurance Records (OPM/CENTRAL–1). The USPS system of records to be used is the Records-Payroll System (USPS–050.020). The DOD system of records to be used is the Defense Manpower Data Center Database (S322.10, DLA–LZ).

Routine uses of the agencies' automated files are provided at 50 FR 18933, 18935 (May 3, 1985) (HUD/Dept–29); 49 FR 36949, 36954–57 (September 20, 1984) (OPM/GOVT–1); 49 FR 36949, 36950–52 (September 20, 1984) (OPM/Central–1); 49 FR 30834, 30852–54 (August 1, 1984) (S322.10 DLA–LZ); and 50 FR 28862 (July 16, 1985) (USPS 050.020).

After the Department has obtained a match, HUD will verify each debt. In those cases involving a current or former employee of the U.S. Government or postal service who does not have a current repayment plan for a defaulted Section 312 note, the Department intends to arrange attachment of salary or benefit payments in order to discharge the debt, if some other repayment plan cannot be arranged after first consulting the debtor.

C. *Period of Match:* The matching program will begin in the second quarter of Fiscal Year 1986 and will be continuing. Follow-up work on resultant matches is expected to be completed within 6 months after completion of each match.

D. *Security:* To protect the identity of debtors, HUD will restrict access to both the information provided by other sources for the purpose of the matching program and the resulting case match data. The following measures will be taken to assure compliance with the Privacy Act:

If HUD performs the computer match, it will agree in writing to conditions listed below governing the use of information from another source. If another government agency performs the match, HUD will require the agency to agree in writing to the conditions listed below governing the use of both the source data provided by HUD and the case match data. This agreement will be executed before HUD discloses to that agency data from its machine-readable debtor files.

The conditions included for the written agreements will include that:

(1) The files to be matched will remain the property of the original sources and will be returned or destroyed at the end of a particular matching program;

(2) The agency performing the match will take sufficient physical, technical and administrative safeguards to maintain reasonable security over data in its possession provided for the match and over data created as a result of a particular matching program;

(3) The records will be used and accessed only to match the file(s) previously agreed to;

(4) The agency performing the match will not use the records to extract information for any purpose concerning individuals who were not a case match;

(5) Machine-readable matching files and any printed form of the data on these files will not be duplicated or disseminated within the agency performing the match for purposes other than the matching program or outside the agency for any purpose, unless authorized by the original source; and

(6) When the debtor data and case match data is used for statistical purposes, all personnel identifiers will be deleted.

Records created from the computer matching program (case matches and follow-up data) will be included in the "Investigation Files, HUD/DEPT–24" category. Routine uses of these files are described in 48 FR 10372 (March 20, 1984).

F. *Disposition of Records:* Upon completion of the match and related follow-up work, all source data received for this matching will be return to the appropriate government agencies or destroyed. Case match data records will be kept by HUD only so long as administrative investigation is active and will be disposed of in accordance with the requirements of the Privacy Act of 1974 and the Federal Records Schedule.

[FR Doc. 86–2038 Filed 1–29–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[C–40672]

Emergency Coal Lease Re-Offering by Sealed Bid; Colorado

U.S. Department of the Interior, Bureau of Land Management, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

Notice is hereby given that certain coal resources in the lands hereinafter described in Routt County, Colorado will be re-offered for competitive lease by sealed bid. On December 19, 1985, these resources were offered for competitive lease by sealed bid to the qualified bidder of the highest cash amount provided that the high bid met the fair market value of the coal resources as determined by the authorized officer after the sale. Cyprus Western Coal Company was the only bidder. The bid submitted was in the amount of $375.00 per acre for a total of $392,250.00. The bid did not meet the fair market value established for this tract. Therefore, the bid was rejected. This re-offering is made as a result of a re-filing of the emergency application by Cyprus Western Coal Company. The sale will be held at 2:00 p.m., March 6, 1986 in the Eleventh Floor Conference Room at the above address.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the coal resource. The minimum bid is $100 per acre, or fraction thereof. No bid less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., March 6, 1986, to the Colorado State Office, 1037 20th Street, Denver, Colorado 80202. Bids received after that time will not be considered.

Coal Offered: The coal resource to be offered is limited to coal recoverable by surface mining methods from the Wadge and Wolf Creek Seams in the following lands located approximately 17 miles southwest of Steamboat Springs, Colorado:

Township 4 North, Range 86 West, 6th P.M.,
Sec. 18, all that part of the W½ lot 11 and of lot 12 lying south of a line beginning at the southwest corner of lot 12 of Sec. 19, thence N. 53° 29' E. to the west boundary of the E½ lot 11 of said section and lots 13 and 14; *and that portion of lands lying below the bottom of the Wadge coal seam* in the E½ lot 11 and that part of the NW¼ lot 11 and of lot 12 lying north of the line previously described;
Sec. 30, lots 3 and 4.
Township 4 North, Range 87 West, 6th P.M.,
Sec. 23, S½S½NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, SW¼SW¼NE¼, SE¼NE¼, SE¼NE¼SW¼, E½SE¼SW¼, and SE¼;
Sec. 24, all the S½S½NW¼NW¼, S½N½S½S½, S½S½S½, and that part of the S½S½NE¼SE¼ and the N½N½SE¼SE¼ lying south of a line beginning at the southwest corner of the N½N½SE¼SE¼ of Sec. 24, thence N. 63° 16' E. approximately 1473 feet to the northeast corner of the S½S½NE¼SE¼ of said section; *and that portion of lands lying below the bottom of the Wadge coal seam* in the SW¼NW¼, S½S½NE¼SW¼, NW¼SW¼, N½N½S½SW¼, S½N½NE¼SE¼, N½S½NE¼SE¼, S½S½NW¼SE¼, N½N½SW¼SE¼, and that part of the S½S½NE¼SE¼ and the N½N½SE¼SE¼ lying north of the line described herein;
Sec. 25, N½N½, N½N½SW¼NE¼, N½N½SE¼NE¼, N½SW¼NW¼, and N½N½SE¼NW¼;
Sec. 26, N½NE¼NE¼, SE¼NE¼NE¼, N½NW¼NE¼, NE¼SE¼NE¼, and NE¼NE¼NW¼.

The 1045.90-acre tract contains an estimated 12,310,700 tons of recoverable coal.

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal produced. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed coal lease are available at the Colorado State Office. Case file documents are also available for public inspection at that office.

Richard E. Richards,

Acting Chief, Mineral Leasing Section.

[FR Doc. 86–1995 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–JB–M

[A–20229]

Arizona; Notice of Conveyance

January 22, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Charles Edward Towner, 400 Heather Drive, Sierra Vista, Arizona 85635 has purchased by direct sale, at the fair market value of $40,252.00, public land situated in Cochise County described as follows:

Gila and Salt River Meridian, Arizona

T. 23 S., R. 20 E.,
Section 1, SW¼SW¼.
Containing 40.00 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–1996 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–32–M

[A–18822–H]

Arizona; Notice of Conveyance

January 22, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Alice S.L. Soong, 1765 Oakwood Avenue, Arcadia, California 91006, has purchased by competitive sale, at the fair market value of $12,050.00, public land situated in Mohave County described as follows:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 18 W.,
Section 34, NW¼.
Containing 160.00 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–1997 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–32–M

[A–20632]

Arizona; Notice of Conveyance

January 22, 1986.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), Marcellus W. DuBois and Eva F. DuBois, P.O. Box 897, Willcox, Arizona 85643, have purchased by direct sale, at the fair market value of $8,950.00, public land situated in Cochise County described as follows:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 24 E.,
Section 31, lots 6 and 11.
Containing 81.01 acres.

The purpose of the Notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–1996 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–32–M

Intent to Prepare an Environmental Impact Statement; Teton County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an environmental impact statement.

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SUMMARY: Notice is hereby given that the Bureau of Land Management will prepare an environmental impact statement (EIS) concerning the continuation of development of a gas field about 20 miles northwest of Choteau, Montana. In Teton County, the area to be analyzed in the EIS includes approximately 40,370 acres of Federal mineral estate. The U.S. Forest Service will be a cooperating agency. The State of Montana Department of Fish, Wildlife and Parks will provide a team member.

DATE: Comments should be submitted by March 15, 1986.

ADDRESS: Contact Blackleaf Project Office, Bureau of Land Management, Great Falls Resource Area, Drawer 2865, Great Falls, Montana 59403.

SUPPLEMENTARY INFORMATION: Alternatives will include No Action and a range of development scenarios that are responsive to issues raised. Major issues are threatened and endangered species, big game animals and associated recreation, economic consideration of development and existing activity.

Dated: January 22, 1986.

Glenn W. Freeman,

District Manager.

[FR Doc. 86-1999 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-DN-M

[CA-17695]

Exchange of Public Lands in San Diego, County and Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: CA 17695, Amendment of Notice of Realty Action; Exchange of Public Lands in San Diego County and Riverside County, California.

SUMMARY: This document amends and corrects a Notice of Realty Action published in the **Federal Register** on December 27, 1985 (50 FR 53021-22). The notice concerned an exchange of public lands in San Diego County, California. The legal description of those lands included T.17S., R.1E., SBM., Section 29; W½, W½SE¼. The correct description of the public land in Section 29 is the W½SE¼ only (80 acres).

The notice of December 27, 1985, is hereby amended to include additional public and private lands in the exchange. The additional public lands to be traded are located in San Diego and Riverside Counties. These lands were previously identified for disposal by sale in 50 FR 23770-23774, with the provision that unsold parcels would be available for Bureau—benefitting land exchanges. No bids were received for these parcels during the sale period. These lands will therefore be part of the exchange with the Trust for Public Land described in 50 FR 53021-53022. The United States will receive additional private lands around Eagle Lake, in Lassen County, California, and in the Western Otay Mountain Wilderness Study Area, in San Diego County, California.

The additional public lands to be exchanged are as follows:

a. *Riverside County*

San Bernardino Meridian, California

T. 8 S., R. 1 E.
Sec. 10: Lots 3 and 4;
Sec. 15: Lots 1-5, 7, 8 and 12;
Sec. 16: E½;
Sec. 17: SE¼SE¼;
Sec. 20: NE¼, E½NW¼, NW¼SE¼;
Sec. 21: N½, N½SW¼, SE¼.

b. *San Diego County*

San Bernardino Meridian, California

T. 10 S., R. 3 W.
Sec. 33: NW¼NW¼.
Containing 40 acres.

There will be reserved to the United States in these public lands a right-of-way thereon for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945). The geothermal resources will also be reserved to the United States, but only on the lands in T. 8 S., R. 1 E., SBM, described above, in Riverside County.

The publication of this amended notice in the **Federal Register** segregates the public lands described herein from all other forms of appropriation and entry under the public land laws, including the mining laws, for a period of two years from the date of publication of this amendment.

The additional private lands to be acquired are as follows:

a. *Lassen County, Eagle Lake*

Mt. Diablo Meridian, California

T. 33 N., R. 11 E.
Sec. 21; Portions of Lot 1;
Sec. 28; Portions of Lots 1, 2, 3 and 5;
Sec. 27; Lot 2.

b. *San Diego County, Western Otay WSA*

San Bernardino Meridian, California

T. 18 S., R. 2 E.
Sec. 19, E½E½;
Sec. 20, W½W½;
Sec. 29; W½W½;
Sec. 30; E½E½.

The United States will acquire fee title to these lands in this exchange.

DATE: For a period of 45 days from the date of publication of this amended notice in the **Federal Register**, interested parties may submit comments to the Deputy State Director, Division of Operations, California State Office of the Bureau of Land Management.

ADDRESS: Comments should be sent to: Deputy State Director (CA-943.1), Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, California 95825. (Reference exchange number CA-17695.) Objections will be evaluated by the California State Director of the Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Peter Humm or Jacqueline Gratton, Susanville District Office, 705 Hall St., Susanville, CA 96130, at (916) 257-5381.

Dated: January 24, 1986.

Bruce P. Conrad,

Deputy State Director, Division of Operations.

[FR Doc. 86-2000 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-40-M

Realty Action; Proposed Exchange in Itasca County, MN

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Exchange ES-32999.

SUMMARY: The following 629.12 acres of BLM administered public lands have been found suitable for exchange under section 206(c) of the Federal Land Policy and Management Act of 1976 (43 USC 1716):

4th P.M.

T.54 N., R.23 W.,
Sec. 4: Lots 1, 2, 3, 4.
T.59 N., R.22 W.,
Sec. 3: SE¼SE¼.
T.61 N., R.22 W.,
Sec. 21: SW¼SW¼;
Sec. 26: SW¼SE¼;
Sec. 33: W½SE¼, NE¼SE¼;
Sec. 34: SE¼NE¼, N½SW¼, SE¼SW¼, W½SW¼.
T.61 N., R.23 W.,
Sec. 35: NW¼SW¼.

Itasca County is offering the following 888.44 acres of non-Federal lands in exchange:

4th P.M.

T.57 N., R.26 W.,
Sec 9: NW¼SW¼, SW¼SE¼;
Sec. 17: NW¼NW¼.
T.58 N., R.25 W.,
Sec. 11: SW¼SE¼.
T.58 N., R.26 W.,
Sec. 1: Lot 1.
T.58 N., R.27 W.,
Sec. 3: SW¼NE¼.
T.59 N., R.26 W.,
Sec. 27: NW¼NW¼.
T.59 N., R.27 W.,
Sec. 23: SE¼SW¼;
Sec. 35: SW¼NW¼.
T.60 N., R.27 W.,
Sec. 2: Lot 2, 8, 9;
Sec. 3: Lot 11;
Sec. 13: NW¼SE¼;
Sec. 22: NE¼NE¼;
Sec. 23: NW¼NW¼.

5th P.M.

T.148 N., R.25 W.,
Sec. 14: NW¼NW¼;
Sec. 31: SE¼NW¼.
T.149 N., R.26 W.,
Sec. 13: NW¼SW¼.

including the railroad grades across the following lands:

4th P.M.

T.58 N., R.27 W.,
Sec. 1: S½SW¼;
Sec. 14: E½SW¼, W½SE¼;
Sec. 23: NE¼NW¼;
Sec. 35: E½NW¼, SW¼SW¼.
T.59 N., R.26 W.,
Sec. 19: W½SE¼;
Sec. 30: Lot 3.
T.59 N., R.27 W.,
Sec. 25: N½SW¼, NE¼SE¼;
Sec. 26: SW¼NW¼.

5th P.M.

T.147 N., R.25 W.,
Sec. 1: Lot 5.
T.148 N., R.25 W.,
Sec. 1: Lot 5.
T.148 N., R.25 W.,
Sec. 5: SW¼SW¼;
Sec. 6: NE¼SE¼;
Sec. 8: SW¼NW¼;
Sec. 17: E½NE¼, NE¼SE¼;
Sec. 21: NW¼NW¼;
Sec. 27: Lot 1, 2;
Sec. 28: Lot 1.
T.149 N., R.25 W.,
Sec. 31: Lot 2, 3, NE¼SW¼.

The purpose of the exchange is to acquire non-Federal lands within the Chippewa National Forest in order to consolidate ownership, eliminate isolated holdings and facilitate more efficient management. After acquisition of these lands BLM will transfer jurisdiction to the Department of Agriculture, Forest Service. The exchange is consistent with BLM's land use plans. The value of the lands are approximately equal. The acreage may be adjusted or money used to equalize values, if necessary. Title to both the BLM and non-Federal lands will be issued subject to valid existing rights and a reservation of minerals.

Upon publication of this Notice, the BLM lands will be segregated from all appropriations under the public land laws, except exchange, for a period of two (2) years, or upon issuance of patent, whichever occurs first.

Comments: For a period of 45 days from the publication of this Notice interested parties may submit comments to: District Manager, Milwaukee District Office, P.O. Box 631, Milwaukee, Wisconsin 53201-0631. Any adverse comments will be evaluated by the State Director who may vacate or modify this decision. In the absence of any action by the State Director this Realty Action will become the final determination of the Department of the Interior.

Detailed information concerning this exchange is available for review at the Chippewa National Forest Supervisor's Office, Rural Route Box 244, Cass Lake, Minnesota 56633 and at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 or by calling Priscilla McLain at (414) 291-4427.

Leon R. Kabat,

Acting District Manager.

[FR Doc. 86-2001 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-GJ-M

[OR 19474]

Oregon; Boardman Bombing Range Land Withdrawal; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A public meeting has been scheduled for March 25, 1986, to provide an opportunity for public involvement regarding the Navy's proposal to continue the Boardman Bombing Range land withdrawal.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Officer, P.O. Box 2965, Portland Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public involvement regarding the Department of Navy's proposal to continue the land withdrawal for 25 years as to 37,400.31 acres of public domain lands within the Naval Weapons Systems Training Facility, Boardman, also known as the Boardman Bombing Range, Morrow County, Oregon.

The meeting will begin at 7 pm, Tuesday, March 25, 1986, in the auditorium of Riverside High School, 210 Boardman Avenue, N.E., Boardman Oregon. The agenda will include (1) an information briefing by the Bureau of Land Managment, (2) an information briefing by the Navy, (3) oral statements by interested parties, and (4) question and answer period. The duration of the meeting will be approximately two hours.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Oregon State Office. Oral statements should be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management before any recommendation concerning the future status of the land withdrawal is submitted to the Secretary of Interior, the President, and Congress for final action under the withdrawal review authority of section 204(1) of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579).

Dated: January 22, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-2005 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-33-M

Rules of Conduct and Supplemental Rules, California Desert District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of developed recreation areas and establishment of supplementary rules.

SUMMARY: The purpose of these supplementary rules is to provide for the protection of person, property, and public lands and resources. More specifically the purposes fall into the following categories:

a. *Implementation of Management Plans*—Certain prohibited activities have been recommended in resource management plans for Areas of Critical Environmental Concern, Habitat Management Areas, and Resource Management Areas. Plan amendments and recommendations are not enforceable as published. In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of the supplemental rules section of 43 CFR subpart 8365, is the most appropriate way of implementing these recommendations. Rationale for these recommendations are presented in their entirety in the final management plan for the specific area.

b. *Mitigation of User Conflict*—Certain other supplementary rules are recommended because of specific user conflict problems in the field. Prohibiting the reservation of camping space in

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developed campgrounds will allow such space to be available on first come, first serve basis. This will prevent a few persons from monopolizing the use of limited developed camping space. Motorized vehicle freeplay is recommended as a prohibited act to minimize the noise and nuisance factor that such activity represents in a developed recreation site.

The comment section of the Final Rule Making for 43 CFR subpart 8365 recommends that if such prohibition is necessary that it should be implemented in the form of a specific supplementary rule.

c. *Public Health and Safety*—The landing and taking off of aircraft within our developed recreation sites has been an historic problem in the CDD. Although this practice has not yet caused any incidents of injury or death, the potential continues to exist. Also, the erection and maintenance of temporary toilet facilities on the public lands represents a major threat to public safety due to the concentration of human wastes. We wish to deal with this on a case by case basis and only when appropriate state and local permits have been obtained.

It should be noted that all of the shooting restrictions recommended, *do not* prohibit legitimate hunting activities, and therefore do not conflict with State Fish and Game Regulations. The degree to which these rules will be enforced will not defer from normal patrol procedures. As always, violations will be handled by rangers on a case by case basis. Recreational shooters will be encourage to use public lands where such shooting restrictions do not apply. Shooting conflict is an issue that was specifically addressed in the Desert Plan, yet remains one of our greatest resource destruction, user conflict, and citizen complaint problems.

d. *Complimentary Rules*—Some supplementary rules are recommended to compliment those of state and local agencies. Because these rules provide for the protection of persons and resources and in the interest and spirit of cooperation with the responsible agencies, these supplementary rules are deemed necessary. This includes limiting shooting in the southern Barstow Resource Area to shotgun only as required by San Bernardino County ordinance, and the prohibition of camping at wildlife watering places as provided by Title 14 of the California Administrative Code, Fish and Game Commission, section 730.

The following areas are designated developed recreation sites and areas for the purpose of applying the rules of conduct contained in 43 CFR 8365.2:

Area	Type	Location
1. desert Tortoise	Area of critical environmental concern	T. 30 S., R. 38 E., (MDM); Sec. 24, 26, 34. T. 31 S., R. 38 E., (MDM); Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 16, 20, 22, 24, 26, 28, 30, 32, 34. T. 32 S., R. 38 E., (MDM); Sec. 4, 6.
2. Rainbow Basin/Owl Canyon	Area of critical environmental concern	T. 11 N., R. 1 W., (SBM); Sec. 18, 19, 29, 30. T. 11 N., R. 2 W., (SBM); Sec. 23, 24, 26.
3. Calico Early Man Site	Area of critical environmental concern	T. 10 N., R. 2 E., (SBM); Sec. 15, 22.
4. Ft. Soda	Area of critical environmental concern	T. 12 N., R. 6 E., (SBM); Sec. 2, 3, 10, 12, 14, 15, 22, 23.
5. Afton Canyon	Area of critical enviromental concern, campground	T. 13 N., R. 8 E., (SBM); Sec. 26, 27, 34, 35 T. 11 N., R. 5 E., (SBM); Sec. 14, 24.
6. Hole-in-the-Wall	Campground	T. 11 N., R. 8 E., (SBM); Sec. 14, 15, 18, 20, 22, 26.
7. Midhills	Campground	T. 11 N., R. 15 E., (SBM); Sec. 7, 8, 17, 18.
8. Corn Springs	Area of critical environmental concern, campground	T. 12 N., R. 14 E., (SBM); Sec. 12, 13.
9. Gecko	Recreation area	T. 6 S., R. 15 E., (SBM); Sec. 22, 23, 24. T. 6 S., R. 16 E., (SBM); Sec. 19, 20, 21, 22, 26, 27, 28, 29, 30. T. 14 S., R. 17 E., (SBM); Sec. 1. T. 14 S., R. 18 E., (SBM); Sec. 1, 7, 8, 17, 18, 20, 21, 41.
10. Lark Canyon	Campground	T. 17 S., R. 7 E., (SBM); Sec. 4.
11. Cottonwood	Campground	T. 15 S., R. 6 E., (SBM); Sec. 34, 35. T. 16 S., R. 8 E., (SBM); Sec. 2, 3.

In addition to the regulations contained in 43 CFR 8365.2 the following supplemental rules will apply to the developed recreation sites listed above:

1. Reserving camping space is prohibited. Camping space will be allocated on a first come, first served basis.

2. Motorized vehicle freeplay is prohibited. Motorized vehicles will be used for access to and from the campsite only.

3. Equestrian use is subject to authorization by the local Area Manager.

4. Taking off or landing of aircraft, including ultra-lites, is prohibited.

Other supplementary rules applicable to all public lands of the California Desert District are as follows:

1. Camping or occupying between 10 p.m. and 6 a.m. is prohibited in:

Area	Type	Location
1. Throughout CA Desert District	Wildlife watering places	Camp or occupy for more than 30 minutes within 200 yards of any waterholes, springs, seeps, and man-made watering devices for wildlife such as guzzlers, horizonal wells and small impoundments of less than one surface acre in size.
2. Eureka Valley (except in designated places)	Area of critical environmental concern	T. 10 S., R. 39 E., (MDM); Sec. 1, 2, 11, 12, 13, 14, 23, 24.
3. Saline Valley (except in designated places)	Area of critical environmental concern	T. 13 S., R. 37 E., (MDM); Sec. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35. T. 14 S., R. 37 E., (MDM); Sec. 2, 3, 4, 5, 9, 10, 15, 22, 26, 27, 35.
4. Darwin Falls (except in designated places)	Area of critical environmental concern	T. 18 S., R. 41 E., (MDM); Sec. 25, 26, 27, 34, 35.
5. Surprise Canyon (except in designated places)	Area of critical environmental concern	T. 19 S., R. 41 E., (MDM); Sec. 2, 3, 9, 10, 11, 14, 15, 21, 22. T. 21 S., R. 44 E., (MDM); Sec. 12, 13, 14, 23, 24.
6. Amargosa Canyon	Area of critical environmental concern	T. 21 S., R. 45 E., (MDM); Sec. 1, 2, 3, 4, 5, 8, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24. T. 19 N., R. 7 E., (MDM); Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 21, 22, 26. T. 19½ N., R. 7 E., (MDM); Sec. 32, 33, 34, 35. T. 20 N., R. 7 E., (MDM); Sec. 15, 21, 22, 25, 26, 27, 28, 29.
7. Grimshaw Lake	Area of critical environmental concern	T. 20 N., R. 7 E., (MDM); Sec. 3, 4, 5, 8, 9, 10. T. 21 N., R. 7 E., (MDM); Sec. 28, 29, 32, 33, 34.
8. Horse, Sage, and Cowhave Canyons (except in designated places).	Area of critical environmental concern	T. 27 S., R. 36 E., (MDM); Sec. 11, 12, 13, 14, 21, 22, 23, 24, 25. T. 27 S., R. 37 E., (MDM); Sec. 4, 5, 7, 8, 9, 16, 17, 18, 19, 20, 21, 29, 30.

Area	Type	Location
9. Desert Tortoise	Area of critical environmental concern	T. 30 S., R. 38 E., (MDM); Sec. 24, 26, 34. T. 31 S., R. 38 E., (MDM); Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 16, 20, 22, 24, 25, 28, 30, 32, 34. T. 32 S., R. 38 E., (MDM); Sec. 4; 6.
10. Chuckwalla Wells and Mesquite Springs	Area of critical environmental concern	T. 6 S., R. 17 E., (SBM); Sec. 28, 29, 32, 33.
11. Harper Lake Marsh	Area of critical environmental concern	T. 11 N., R. 4 N., (SBM); Sec. 22, 26, 27, 28.
12. Rainbow Basin (except in Owl in Canyon campground).	Area of critical environmental concern	T. 11 N., R. 1 W., (SBM); Sec. 18, 19, 20, 30. T. 11 N., R. 2 W., (SBM); Sec. 23, 24, 26.
13. McCain Valley (except in Lark Canyon Cottonwood Campgrounds or walk-in-camping).	Resource conservation area	T. 15 S., R. 6 E., (SBM); Sec. 26, 27, 31, 32, 34, 35. T. 15 S., R. 7 E., (SBM); Sec. 31, 32, 33, 34, 35. T 16S., R.6E., (SBM); Sec. 1, 2, 3, 4, 9, 10, 11, 12,13, 14, 15, 21. T. 16 S., R. 7 E., (SBM); Sec. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 32, 33, 34, 35. T. 17 S., R. 7 E., (SBM); Sec. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 21, 23, 24, 26.
14. Table Mountain (where posted closed)	Area of critical environmental concern	T. 18 S., R. 41 E., (SBM); Sec. 28.

1. Shooting (except for legitimate hunting) is prohibited in:

Area	Type	Location
1. Darwin Falls	Area of critical environmental concern	T.18 S., R. 41 E., (MDM); Sec. 25, 26, 27, 34, 35.
2. Steam Well	Area of critical environmental concern	T. 19 S., R. 41 E., (MDM); Sec. 2, 3, 9, 10, 11, 14, 15, 21, 22. T. 29 S., R. 41 E., (MDM); Sec. 25, 26.
3. Santa Rosa Mountains	Habitat management area	All public lands in T. 5 S., R. 5 E., T. 6 S., R. 5 E., T. 6 S., R. 6 E., T. 6 S., R. 7 E., T. 7 S., R. 6 E., T. 7 S., R. 7 E., T. 8 S., R. 5 E., T. 6 S., R. 6 E., T. 8 S., R. 7 E., (SBM).
4. McCain Valley	Resource conservation area	All public lands in T. 5 S., R. 5 E.; T. 6 S., R. 5 E; T. 6 S., R. 6 E; T. 6 S., R. 7 E; T. 7 S., R. 6 E.; T. 7 S., R. 7 E.; T. 8 S., R. 5 E.; T. 8 S., R. 6 E.; T. 8 S., R. 7 E., (SBM).
5. Rainbow Basin/Owl Canyon	Area of critical environmental concern	T. 11 N., R. 1 W.; (SBM); Sec. 18, 19, 20, 30. T. 11 N., R. 2 W., (SBM); Sec. 23, 24, 26.
6. Big Morongo Canyon	Area of critical environmental concern	T. 15 S., R. 4 E., (SBM); Sec. 26, 27, 33, 34, 35. T. 2 S., R. 4 E., (SBM); Sec. 2, 4, 10.
7. Mapah Spring Canyon	Area of critical environmental concern	T. 3 N., R. 21 E., (SBM); Sec. 27, 28, 29, 32, 33, 34. T. 2 N., R. 21 E., (SBM); Sec. 3, 4.

3. Fossil collection is prohibited in Rainbow Basin/Owl Canyon Area of Critical Environmental Concern.

4. Firewood collection is prohibited in Surprise Canyon Area of Critical Environmental Concern.

5. Open campfires are prohibited except in fire rings provided for such purpose, in the smugglers cave portion of the Jacumba Outstanding Natural Area.

6. Shooting; except shotguns firing shot shells no larger than ½ the diameter of the bore, is prohibited in the southern portion of the Barstow Resource Area in the "Desert Area" defined in San Bernardino County Ordinance 22.011.

7. The lower Warm Springs and Palm Springs areas of Saline Valley, Located in Inyo County, T. 13 S., R. 39 E., Section 18 (MDM), for a radius of 300 yards of each spring, are hereby designated as a Special Management Area, known as the Saline Valley Management Area. Long term camping and the leaving of personal property will be allowed to occur for a maximum of 180 days during the time period of November 1st to April 30th. During the rest of the year, from May 1st to October 31st, the California Desert District 14 day camping limit and the prohibition on leaving personal property unattended longer than 10 days will be in effect.

8. Motorized vehicles are prohibited on El Mirage Dry Lake when and where the surface is wet.

9. It is prohibited to erect or maintain any toilet, showers, permanent structure, or other sanitary facilities on the public lands of the California Desert District without authorization.

EFFECTIVE DATE: January 30, 1986.

FOR FURTHER INFORMATION, CONTACT: Dennis McLane, District Ranger, Bureau of Land Management, 1695 Spruce Street, Riverside, California 92507. (714) 351–6419.

SUPPLEMENTAL INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1–6. These rules have been recommended and adopted through the development of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected. These rules will also be posted near and/or within the lands, sites, or facilities affected.

Date: January 23, 1986.

Ed Hastey,

State Director.

[FR Doc. 86–1971 Filed 1–29–86; 8:45 a.m.]

BILLING CODE 4310–40–M

Grand Resource Area Management Plan, Grand and San Juan Counties, UT; Intent for Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent—Plan Amendment for the Grand Resource Area, Resource Management Plan, Grand and San Juan Counties, Utah.

SUMMARY: This notice of intent is to advise the public that the Bureau of Land Management (BLM) intends to amend an existing planning document.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the 1985 Grand Resources Area Resource Management Plan which involves portions of Grand and San Juan Counties, Utah. The purpose of the amendment would be to identify certain lands as suitable for disposal. Such identification would allow disposal by sale, exchange or other means, pursuant to applicable law. The lands comprise 210.82 acres in the vicinity of Thompson, Utah, described as follows:

Salt Lake Meridian

T. 21 S., R. 20 E.,
Sec. 20, SW¼ SW¼;
Sec. 28, lots 1 and 2;
Sec. 29, lots 1, 2, 3, 4 and 5.

BEST COPY AVAILABLE

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The existing plan identifies these lands for retention. However, because of the location, potential for development, and other characteristics, these lands may be more suitable for disposal.

For 30 days from the date of publication of this notice the BLM will accept comments on this proposal. There will also be opportunity for public comment on the final planning decision.

Existing planning documents and information are available at the Grand Resource Area, P.O. Box M, Sand Flats Road, Moab, Utah 84532, phone: (801) 259–8193.

FOR FURTHER INFORMATION CONTACT: Colin P. Christensen, Grand Resource Area Manager.

Dated: January 21, 1986.

Gene Nodine,

District Manager.

[FR Doc. 86–2002 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–DQ–M

Filing of Plats of Surveys; New Mexico

January 22, 1986.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on January 22, 1986.

A survey representing the dependent resurvey of a portion of the Town of Manzano Grant and the survey of the Quari Unit of the Salinas National Monument and the former Quari Ruins State Monument within the Town of Manzano Grant, Township 4 North, Range 6 East, New Mexico Principal Meridian, under Group 825 NM.

This survey was requested by the National Park Service.

A survey representing the dependent resurvey of a portion of the south boundary of the Fort Stanton Military Reservation, portions of the north and east boundaries, a portion of the subdivisional lines and the survey of Tract 38, Township 10 South, Range 14 East, New Mexico Principal Meridian, New Mexico, and the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the survey of Tracts 38 and 39, Township 10 South, Range 15 East, New Mexico Principal Meridian, New Mexico, under Group 853 NM.

This survey was requested by the Roswell District Manager, Bureau of Land Management.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O., Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 86–2003 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–FB–M

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon, on January 3, 1986.

Willamette Meridian

OR T. 30 S., R. 7 W.,
OR T. 35 S., R. 8 W.,
OR T. 12 S., R. 45 E.

All of the above listed plats represent dependent resurvey of subdivisional lines and amended lottings.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 22, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–2004 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through March 1986

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract excution. The Bureau of Reclamation announcements or irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the six Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during January, February, or March of 1986. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the addresses and telephone numbers given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notice of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR)	**Federal Register**
(ID)	**Irrigation District**
(IDD)	**Irrigation and Drainage District**
(M&I)	**Municipal and Industrial**
(D&MC)	**Drainage and Minor Construction**
(R&B)	**Rehabilitation and Betterment**
(O&M)	**Operation and Maintenance**
(CAP)	**Central Arizona Project**
(CVP)	**Central Valley Project**
(P–SMBP)	**Pick-Sloan Missouri Basin Program**

Acronym Definitions Used Herein—Continued

(CRSP)	Colorado River Storage Project
(SRPA)	Small Reclamation Projects Act

Pacific Northwest Region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 334–9011.

1. Boise Cascade Corporation, Columbia Basin Project, Washington; Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.

2. Five ID's, Boise Project, Idaho-Oregon; Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir.

3. Brewster Flat ID, Chief Joseph Dam Project, Washington; Amendatory repayment contract; Land reclassification of approximately 360 acres to irrigable; Repayment obligation to increase by $189,000.

4. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon and Washington; Temporary (interim water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Rogue River Basin water users, Rogue River Basin Project, Oregon; Water service contracts; $5 per acre-foot or $20 minimum per annum, not to exceed 320 acres of 1,000 acre-feet of water per contractor for terms up to 40 years.

6. Willamette Basin water users, Willamette Basin Project, Oregon; Water service contracts; $1.50 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

7. Fifty-three Palisades Reservior Spaceholders, Minidoka Project, Idaho-Wyoming; Contract amendments to extend term for which contract water may be subleased to other parties.

8. Cascade Reservior water users, Boise Project, Idaho; Repayment contracts for irrigation and M&I water; 59,721 acre-feet of stored water in Cascade Reservoir.

9. Boise Water Corporation, Boise Project, Idaho; Short-term (2 years) M&I water service contract; up to 1,000 acre-feet annually from stored water in Anderson Ranch Reservior for a term of up to 40 years.

10. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

11. Columbia Basin Project Water Users, Columbia Basin Project, Washington; Water service contracts for approximately 6,000 acre-feet of irrigation water provided from Banks Lake with terms up to 40 years; Prior to contract execution, water users will have to come under provisions of the Reclamation Reform Act of 1982 (Pub. L. 97–293).

12. South Columbia Basin ID, Columbia Basin Project, Washington; Supplemental repayment contract for Irrigation Block 24; 1,892 irrigable acres.

13. City of Boise, Boise Project, Idaho; M&I water service contract, 340 acre-feet annually from stored water in Anderson Ranch Reservoir for a term of up to 40 years.

14. Douglas County, Galesville Project, Oregon; SRPA cost escalation loan repayment contract; $1,000,000 proposed obligation.

Mid-Pacific Region: Bureau of Reclamation, (Federal Office Building) 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5030.

1. 2047 Drain Water Users Association, CVP, California; Water right settlement contract; FR notice published July 25, 1979, Vol. 44, Page 43535.

2. Tuolumne Regional Water District, CVP, California; Water service contract; 3,200 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California; Water service contract; 400 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year: Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. El Dorado ID, Sly Park Unit, CVP, California; D&MC contract to allow the District to accomplish the construction work with the remaining funds from the distribution system contract, and amend the Unit 4 portion of its existing repayment contract to pay interest on actual M&I use.

6. South San Joaquin ID and Oakdale ID, CVP, California; Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. San Luis Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. Mid-Valley Water Authority, CVP, California; Temporary water supplies up to 100,000 acre-feet.

9. City of Avenal, CVP, California; Amendment of existing water service contract to provide for furnishing project power to city canalside relift facilities and change the point of diversion.

10. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

11. United Water Conservation District, SRPA, California; Loan repayment contract, $18,730,000 proposed obligation.

12. State of Hawaii, Molokai Project, SRPA; Contract amendment to provide for use of facilities for M&I purposes.

13. State of California, CVP, California; contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the current draft of the Coordinated Operations Agreement.

14. Pixley ID, SRPA, California; Loan repayment contract, $12,300,000 proposed obligation.

15. Kaiser Development Company, CVP, California; Sacramento River water right contract; Suspension of agricultural contract and execution of M&I contract.

16. Madera ID, Madera Canal, CVP, California, Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

17. Hills Valley ID, CVP, California; Amendatory water service contract, additional 400 acre-feet and reallocate 800 acre-feet of water from the Ducor ID for a total increase of 1,200 acre-feet.

18. Tri-Valley Water District, CVP, California; Amendatory water service contract, additional 160 acre-feet.

19. County of Tulare, CVP, California; Amendatory water service contract, additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

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20. Truckee-Carson ID, Newlands Project, Nevada; Emergency Loan contract; Contract will assure repayment of funds to be provided by the United States for the emergency repair of the right sluice and right cylinder gates on Lahontan Dam and Reservoir.

21. Truckee-Carson ID, Newlands Project, Nevada; Warren Act contract to wheel 9,500 acre-feet of nonproject water through project facilities.

22. Westlands Water District, CVP, California; $3,700,000 loan for drain research.

23. Colusa County WD, CVP, California; Proposed contract amendment to permit delivery of M&I water through existing 9(d) system.

24. Colusa County WD, CVP, California; Proposed contract amendment to provide M&I water to existing contract service area.

25. ID's and similar water user entities; Amendatory water service contracts; Purpose is to change the definition of "year".

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Upper Colorado Region, Utah, Wyoming, Colorado, and New Mexico; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. M&I water users, Navajo Unit, CRSP, New Mexico; Negotiate or amend long term contracts for M&I water with current long-term and short-term contractors or new contractors pursuant to section II or Pub. L. 87–483 and Hydrologic Determination date January 29, 1985.

3. Animas-La Plata Conservancy District, Animas-La-Plata Project, Colorado; Water service contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation, Contract terms dependent upon final non-Federal up-front cost sharing agreement.

4. La Plata Conservancy District. Animas-La Plata Project, New Mexico; Repayment contract; 16,000 acre-feet per year for irrigation. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

5. City of Farmington, Animas-La Plata Project, New Mexico; M&I repayment contract; 19,700 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

6. City of Aztec, Animas-La Plata Project, New Mexico; M&I repayment contract; 5,800 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

7. City of Bloomfield, Animas-La Plata Project, New Mexico; M&I repayment contract; 5,300 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

8. Central Utah Project, Bonneville Unit, Utah; Supplemental M&I repayment contract for 94,100 acre-feet per year; FR notice published August 22, 1980, Vol. 45, No. 165, page 56199. Special election on contract passed November 19, 1985, and contract executed on November 26, 1985. Contract congressional review.

9. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado; Repayment contract for 26,500 acre-feet per year for M&I use and 3,300 acre-feet per year for irrigation use. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

10. Grand Valley Project, Colorado; Contract to continue operation and maintenance of Grand Valley powerplant.

11. State of Wyoming, Seedskadee Project, Wyoming; one contract for repayment or reimbursable cost associated with the modification of Fontenelle Dam pursuant to the Reclamation Safety of Dams Amendments of 1984 (Pub. L. 98–404); one amendatory repayment contract to increase existing repayment contract ceiling.

12. Miscellaneous water users, Upper Colorado Region, Blue Mesa Reservoir, Colorado River Storage Project, Colorado, M&I uses, 20 acre-feet and less for 20–40 years.

13. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

14. Bonneville Unit, Central Utah Project, Utah; Two repayment contracts for repayment of Jordan Aqueduct with Salt Lake County Water Conservancy District and the Metropolitan Water District. Contracts expected to be executed during January 1986.

15. Upper Yampa Water Conservancy District, Colorado; Repayment contract to repay a loan of $4,478,000 for the construction of Stagecoach Dam and Reservior pursuant to the SRPA of 1956, Pub L. 84–984, as amended.

16. Ute Mountain Ute Tribe, Animas-LaPlata Project, Colorado and New Mexico; Repayment Contract: 6,000 acre-feet per year for M&I use in Colorado; 25,800 acre-feet per year for irrigation use in Colorado; 800 acre-feet per year for irrigation use in New Mexico.

17. Navajo Indian Tribe, New Mexico; Repayment Contract for 7,600 acre-feet per year for M&I use.

18. Ute Mountain Ute Indian Tribe, Dolores, Project, Colorado; Repayment contract for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, telephone (702) 293–8536.

1. Salt River Project, and cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale and Tempe, Plan 6, CAP, Arizona; Contract for purchase by the above cities of the entire yield from additional conservation storage capacity of Cliff Dam and modified Roosevelt Dam and establishment of operating criteria for those facilities.

2. Agricultural and M&I water users, CAP, Arizona; Water service subcontracts; A certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Settlement Act; Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River in Arizona, Boulder Canyon Project; Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community CAP, Arizona; Water service contract; Contract for delivery of up to 173,100 acre-feet per year.

6. Sunset Mobile Home Park, Boulder Canyon Project, Arizona; M&I water service contract for delivery of 30-acre feet of water per year pursuant to recommendation of Arizona Department of Water Resources.

7. ID's and similar water user entities, Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

8. Eastern Municipal Water District, Hemet, California; repayment contract for $8.3 million SRPA escalation loan.

9. Indian and non-Indian agricultural and M&I water users, CAP, Arizona, Contracts for repayment of Federal expenditures for construction of distribution systems.

10. Gila River Indian Community, Arizona; Contract for the repayment of a $6,574,000 SRPA loan.

11 Water delivery contracts with the State of Arizona, the Bureau of Land Management, and several private entities which are in the process of being organized for a yet undetermined amount of Colorado River water for M&I use. The purpose of these contracts is to afford legal status to various noncontractual water users within the State of Arizona.

12. Contract with the State of Arizona for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

13. Western States Minerals, Arizona; Contract for M&I Water for mining operation in Mohave County; 70 acre-feet of Colorado River water per year.

Southwest Region: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378–5430.

1. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use.

2. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract for remedial work.

3. Vermejo Conservancy District, Vermejo Project, New Mexico; Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

4. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas; Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

5. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Tom Green Water Improvement District, San Angelo Project, Texas; Amendatory contract to defer payment of construction charges associated with the 1985 crop year due to the nonavailability of irrigation water for use by the District's water users.

7. Rio Grande Water Conservation District, Alamosa, Colorado; Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

8. Water sales contracts with water users along the Rio Grande below Fort Quitman, Texas, for purchase of surplus Rio Grande Project water to be released to accommodate spring runoff.

Missouri Basin Region: Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, Montana 59103, Telephone (406) 657–6413.

1. Individual irrigators, M&I and miscellaneous water users, Upper Missouri Region, Montana, Wyoming, North Dakota, and South Dakota; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P–SMBP, North Dakota; Industrial water service contract; Up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana; R&B loan repayment contract; Up to $1.5 million.

4. ID's and similar water user entities; Amendatory repayment and water service contract; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P–SMBP, South Dakota; Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–273 with South Dakota Board of Water and Natural Resources and Spink County and West Brown Irrigation Districts.

6. Owl Creek ID, Owl Creek Unit, P–SMBP, Wyoming; Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Almena ID No. 5, Almena Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1985.

8. Purgatoire River Water Conservancy District, Trinidad Project, Colorado; Amendatory repayment contract for extension of the development period and revision of the repayment determination methodology.

9. Corn Creek ID, New Grattan Ditch Company, and Earl Michael, Glendo Unit, P–SMBP, Wyoming, and Nebraska; Irrigation contracts.

10. Webster ID No. 4, Webster Unit, P–SMBP, Kansas; Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $970,816 outstanding.

11. Green Mountain Reservoir, Colorado-Big Thompson Project; Proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River drainage of western Colorado.

12. Individual irrigators, M&I, and miscellaneous water users, Lower Missouri Region, southeastern Wyoming, Colorado, Nebraska, and northern Kansas; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

13. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

14. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, P–SMBP, narrows Unit, Colorado; Water service contracts for repayment of costs and cost sharing agreement.

15. Kirwin ID No. 1, Kirwin Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1985.

16. Kirwin ID No. 1, Kirwin Unit, P–SMBP, Kansas; Irrigation water service and repayment contract and Emergency Drought Act loan contract amendment to adjust payments due to reduced water supply, $666,231 outstanding.

17. Cedar Bluff ID No. 6, Cedar Bluff Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1985.

18. Webster ID No. 4, Webster Unit, P–SMBP, Kansas; Deferment of repayment obligation for 1985.

19. Fryingpan-Arkansas Project, Colorado; East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for long-term storage contracts.

20. Twin Loups Reclamation District, P–SMBP, D&MC contract and a sole source contract for correction of initial construction deficiencies and monitoring during initial filling, priming and puddling activities of the project. Proposed contracts are to be $500,000 and $1,439,000, respectively.

21. Farwell Irrigation District, Nebraska; D&MC contract for the correction of drainage and seep area on the project.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

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(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary. Factors which shall be considered in making such a determination shall include, but are not limited to (i) the significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

Dated: January 22, 1986.

William C. Klostermeyer,

Acting Commissioner of Reclamation.

[FR Doc. 86-2028, Filed 1-29-86; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

ACTION: Notice of availability of environmental documents prepared for Outer Continental Shelf (OCS) mineral prelease and exploration proposals on the Alaska OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related environmental assessments (EA's) and findings of no significant impact (FONSI's) prepared by the MMS for the following oil and gas prelease and exploration activities proposed on the Alaska OCS. The listing includes all proposals for which environmental documents were prepared by the Alaska OCS Region in the 3-month period preceding this notice.

Activity/Operator

Modification of Exploration Drilling Program in the Beaufort Sea (Sale 87) for Shell Western E and P, Inc., as operator for itself and others. Shell has an Exploration Plan approved on April 12, 1985, to drill up to six exploratory wells from an ice-strengthened drillship. Shell has submitted an amendment to their approved Exploration Plan. The amendment is for an exception to the seasonal drilling stipulation and for conduct of a study on the possible effects of drilling noise from their drillship on migrating bowhead whales. The proposal will require a one-time exception from the requirements of Sale 87, Stipulation 4 which prohibits exploratory drilling during the bowhead whale migration. This FONSI and associated EA address the possible effects of the exception.

Location

Lease	Blocks
OCS-Y 0871	678

Environmental Assessment

Addendum to EA No. AK 85-05.

FONSI Date

October 9, 1985.

Activity/Operator

Exploration Drilling Program for Beaufort Sea (Sale 71) Amoco Production Company, as operator for itself and others.

Location

Amoco is proposing to drill one exploratory well from a man-made spray ice island. The location of Amoco's lease is described as follows:

Lease and Block Numbers

Lease	Blocks
OCS-Y 0302	139 and 140

Environmental Assessment

No. AK 85-09.

FONSI Date

October 21, 1985.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS.

The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA's are used as a basis for determining whether or not approval of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis of that finding and includes a summary or copy of the EA.

The FONSI and associated EA for the activity listed above are available for public inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508, Phone: (907) 261-4435.

Persons interested in reviewing specific environmental documents, or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS, are encouraged to contact the above listed MMS office.

This notice constitutes the public notice of availability of environmental documents required under the NEPA regulations.

Irven F. Palmer, Jr.,

Acting Regional Director.

[FR Doc. 86-2006 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Louisiana

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 7613, Block 312, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on January 23, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendment of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 24, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-2007 Filed 1-29-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the seventy-fifth meeting of the Board for International Food and Agricultural Development (BIFAD) on February 25, 1986.

The purpose of the meeting is threefold. The Board will be presented with a Budgetary Outlook by Marshall Brown, Kelly Kammerer, Allison Herrick and Tom Rollis, all from the Agency for International Development. Mr. Robert Berg, Co-Director of the Committee on African Development Strategies will present the Board with an overview of the *Compact for African Development* study. Thirdly, a Status Report on AID Agricultural Research and Faculty Development Plan for Africa will be presented by Alexander Love, Keith W. Sherper and Nyle C. Brady.

The meeting will begin ast 1:30 p.m., and adjourn at 4:30 p.m., and will be held in Conference Room B, Pan American Health Organization, 525 23rd Street, NW., Washington, DC. The meeting is open to the public. Any interested person may attend, may file written statements with the Board, before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Director, Research and University Relations, Bureau for Science and Technology, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, DC 20523, or telephone him at (703) 235-8929.

Dated: January 24, 1986.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 86-2064 Filed 1-29-86; 8:45 am]

BILLING CODE 9116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with the investigation of processed mushrooms (Inv. No. 332-206) pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), in accordance with a request by the President on March 10, 1977, and amplified by the Office of the United States Trade Representative (USTR) in letter of March 30, 1977 and January 14, 1985.

Summary of Proposals

(1) Number of forms submitted: One.

(2) Title of form: Processed Mushrooms—Annual Report on Production, Sales, and Inventories.

(3) Type of request: Reinstatement.

(4) Frequency of use: Annually.

(5) Description of respondents: U.S. mushroom processors.

(6) Estimated number of respondents: 40.

(7) Estimated total number of hours to complete the forms: 40 annually.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Addition Information or Comment: Copies of the proposed form and supporting documents may be obtained from Joan M. Gallagher, USITC (tel. no. 202-724-1756). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Francine Picoult, Desk Officer for the U.S. International Trade Commission, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503. If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent within two

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weeks of the date this notice appears in the **Federal Register**. Ms. Picoult's telephone number is 202–395–7231. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436).

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: January 27, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2019 Filed 1–29–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–270 (Final)]

Import Investigations; 64K Dynamic Random Access Memory Components (DRAM's) From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–270 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of 64K dynamic random access memory components (DRAM's) of the N-channel metal oxide semiconductor type, provided for in item 687.74 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV) (50 FR 50649, Dec. 11, 1985). Commerce has extended its investigation and will make its final LTFV determination on or before April 23, 1986 (51 FR 234, Jan. 3, 1986). The Commission will make its final injury determination by June 6, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 11, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–523–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of 64K DRAM's from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on June 24, 1985, by Micron Technology, Inc., of Boise, ID. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 32778, Aug. 14, 1985).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on April 15, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on April 30, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 11, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. April 15, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 25, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 7, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 7, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 22, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1960 Filed 1–29–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–239]

Certain Non-Contact Laser Precision Dimensional Measuring Devices and Components Thereof; Investigation; Mitutoyo Manufacturing Co., Ltd.

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 23, 1985, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C 1337), on behalf of Techmet Company, 6060 Executive Boulevard, Dayton, Ohio 45424. A supplement to the complaint was filed on January 10, 1986. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain non-contact laser precision dimensional measuring devices and components thereof into the United States, or in their sale, by reason of alleged (1) infringement of claim 21 of U.S. Letters Patent 3, 765,774; and (2) misappropriation of trade secrets. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., or Stephen L Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, Telephone 202–523–1273 and 202–523–0419, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation: Having considered the complaint, The U.S. International Trade Commission, on January 22, 1986, ORDERED THAT:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain non-contact laser precision dimensional measuring devices and components thereof into the United States, or in their sale, by reason of alleged (1) infringement of claim 21 of U.S. Letters Patent 3, 765,774; and (2) misappropriation of trade secrets, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Techmet Company, 6060 Executive Boulevard, Dayton, Ohio 45424.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Mitutoyo Manufacturing Co., Ltd., 33–7 Shiba 5-chome, Minato-ku., Tokyo, Japan;

Mitutoyo Corporation, 16935 East Gale Ave., City of Industry, California 91744;

MTI Corporation, 18 Essex Road, Paramus, New Jersey 07652;

MTI Engineering Corporation, 16935 East Gale Ave., City of Industry, California 91744.

(c) Gary Rinkerman, Esq., and Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, United, States International Trade Commission, 701 E Street NW., Rooms 128 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation;

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge; and

(4) The following entities are not named as respondents in this investigation but shall be served with a copy of the notice of investigation, the complaint, and section 210.26 of the rules:

A.J. Rod Co., Inc., 418 West Main, Box 1467, Grand Prairie, Texas 75051–1467;

Omron Company, 1 East Commerce Drive, Schaumburg, Illinois 60195.

Reponses must be submitted by the named respondents in accordance with section 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21) Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR. 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential infomation contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission

Issued: January 24, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2020 Filed 1–29–86; 8:45 am]

BILLING CODE 7220–02–M

[Investigation No. 337–TA–227]

Certain One Piece Cold Forged Bicycle Cranks; Commission Decision not to Review Initial Determination

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined not to review the administrative law judge's initial determination granting respondent's motion for summary determination of noninfringement and has vacated as moot the administrative law judge's initial determination denying complainant's motion for temporary relief under section 337 of the Tariff Act of 1930 and 19 U.S.C. 1337a in the above-captioned investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), 19 U.S.C. 1337a, and in §§ 210.53, 210.54, and 210.56 of the Commission's Rules of Practice and Procedure (19 CFR 210.53, 210.54, and 201.56)

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0375.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the presiding administrative law judge issued an initial determination (ID) granting respondents' motion for summary determination and an ID denying complainant's motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(e), (f)). Complainant filed a petition for review of the ID on summary determination pursuant to § 210.54(a) of the Commission's rules. Respondents and the Commission investigative attorney filed responses to that petition. No petitions for review of the ID denying temporary relief were filed, nor were any Government agency comments received with respect to either ID.

Having examined the record, including the petition for review and the responses thereto, the Commission has determined not to review the ID on summary determination and to vacate the ID on temporary relief as moot.

Notice of this investigation was published in the **Federal Register** of August 21, 1985 (50 FR 33861).

Copies of the nonconfidential versions of the administrative law judge's initial determinations and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: January 22, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1962 Filed 1–29–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–265–266 (Preliminary) and 731–TA–297–99 (Preliminary)]

Porcelain-on-Steel Cooking Ware From Mexico, the People's Republic of China, and Taiwan

Determination

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930, that there is a reasonable indication that industries in the United States are materially injured by reason of imports from Mexico and Taiwan of porcelain-on-steel cooking ware,[3] provided for in item 654.06 of the Tariff Schedules of the United States, which are allegedly being subsidized.[4] [5] The Commission also determines,[3] pursuant to section 733(a) of the Act, that there is a reasonable indication that industries in the United States are materially injured by reason of such imports from Mexico, the People's Republic of China, and Taiwan, which are allegedly being sold at less than fair value (LTFV).[4] [5]

Background

The Commission instituted these investigations on December 4, 1985, following the receipt of a petition from General Housewares Corp., Terre Haute, IN, which alleged that subsidized imports of porcelain-on-steel cooking ware from Mexico and Taiwan and LTFV imports of such articles from Mexico, the People's Republic of China, and Taiwan are being sold in the United States and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 12, 1985 (50 FR 50855). The conference was held in Washington, DC, on December 27, 1985, and all person who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 21, 1986. The views of the Commission are contained in USITC Publication 1800 (January 1986), entitled "Porcelain-on-Steel Cooking Ware from Mexico, The People's Republic of China, and Taiwan: Determinations of the Commission in Investigations Nos. 701–TA–265 and 266 (Preliminary) and Determinations of the Commission in Investigations Nos. 731–TA–297, 298, and 299 (Preliminary), Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: January 22, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1963 Filed 1–29–86; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

[2] Commissioner Brunsdale did not participate in these investigations.

[3] Cooking ware, including teakettles, not having self-contained electric heating elements, all the foregoing of steel and enameled or glazed with vitreous glasses, but not including kitchen ware (currently reported under item 654.0828 of the Tariff Schedules of the Untied States Annotated).

[4] Commissioner Eckes determines there is a single domestic industry producing porcelain-on-steel cooking ware, and make his affirmative finding accordingly.

[5] Chairwoman Stern, in accordance with section 171(4)(D), found one domestic industry.

[Investigation No 731–TA–266 (Final)]

Certain Steel Wire Nails From the People's Republic of China

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–266 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of one-piece steel wire nails made of round steel wire, provided for in items 646.25 and 646.26 of the Tariff Schedules of the United States (TSUS), and similar steel wire nails of one-piece construction, of any diameter, provided for in item 646.30 of the TSUS, two-piece steel wire nails, provided for in item 646.32 of the TSUS, and steel wire nails with lead heads, provided for in item 646.36 of the TSUS, and of which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before March 18, 1986, and the Commission will make its final injury determination by May 8, 1986, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 9, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–523–0369), Office of Investigations, U. S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be otained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain steel wire nails from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on June 5, 1985, on behalf of Atlantic Steel Co., Atlas Steel & Wire Corp., Continental Steel Corp., Dickson Weatherproof Nail Co., Florida Wire & Nail Co., Keystone Steel & Wire Co., Northwestern Steel & Wire Co., Virginia Wire & Fabric Co., and Wire Products Co. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 31057, July 31, 1985).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on March 18, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on April 3, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 14, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on March 18, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 28, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 10, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 10 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: January 23, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–1961 Filed 1–29–86; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85–53]

Felix Sesin, M.D.; Denial of Application

On October 18, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Felix Sesin, M.D. (Respondent) of 225 60th Street, West New York, New Jersey 07093, an Order to Show Cause proposing to deny his application, executed on June 7, 1985, for registration as a practitioner under 21 U.S.C. 823(f).

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The statutory basis for the proposed action was that the registration of Dr. Sesin would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4), as evidenced by, but not limited to, Dr. Sesin's experience in dispensing controlled substances and his failure to comply with applicable state law relating to the dispensing of controlled substances.

In a letter dated November 7, 1985, Respondent's counsel requested an extension of time to respond to the Order to Show Cause. This request was granted by Administrative Law Judge Francis L. Young, and the matter was placed on Judge Young's docket. On December 9, 1985, Respondent's counsel specifically waived Respondent's opportunity for a hearing and instead submitted a written statement regarding Respondent's position on the matters of fact and law involved pursuant to 21 CFR 1301.54(c). The Administrator enters his final order in this matter based on the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that an undercover investigation of Respondent was conducted by New Jersey state and county investigators between April 29, 1982 and March 16, 1983. During the investigation, four undercover agents made a total of eleven visits to Respondent's medical office. On the first visit of each of the four agents, the "patient" informed Dr. Sesin of recent or current drug use, including heroin or methadone, or described symptoms which Respondent allegedly identified during the visit as withdrawal symptoms. In most instances, Respondent made no attempt to physically examine the patient. On at least one occasion, Dr Sesin did ask to listen to an agent's heart. However, Dr. Sesin accepted the agent's statement that he did not want an examination. When Dr. Sesin did perform a physical examination of one of the agents, it was cursory at best.

On each occasion, Respondent either dispensed or prescribed a variety of Schedule III and IV controlled substances to the undercover agents, including Vicodin, Valrelease, Paxipam, Centrax, Valium and Darvocet N–100. In addition, Respondent often either dispensed or prescribed various non-controlled substances, including Sinequan and Vistaril. On at least one occasion, Respondent told the undercover agent to go to a different drugstore with the new prescription. In another instance, Respondent wrote an undercover agent a prescription for Paxipam while Respondent was in his car on the street. From numerous conversations between Dr. Sesin and the undercover agents, it was evident that Dr. Sesin knew or should have known that the drugs would be illicitly consumed or distributed.

On or about August 4, 1983, the Hudson County Grand Jury returned a 17 count indictment against Felix Sesin, charging him with unlawful distribution of controlled substances. Dr. Sesin was subsequently admitted into a pre-trial intervention program. Dr. Sesin complied with the directives imposed by that program and the indictment was dismissed in July 1985.

On November 9, 1983, the New Jersey State Board of Medical Examiners ordered Dr. Sesin's controlled substance privileges temporarily suspended pending the final determination of the Board regarding Dr. Sesin. On August 10, 1984, the New Jersey State Board of Medical Examiners entered a final order regarding Dr. Sesin. The Board ordered, among other things, that:

1. Respondent's license to practice medicine and surgery be suspended for one year, effective July 15, 1984, with the last ten months of the suspension stayed.

2. The Board would retain Respondent's state and federal controlled substance registrations which were surrendered to the Board on November 9, 1983.

3. On September 14, 1984, Respondent's state and federal controlled substance registrations would be returned to him and he would be able to prescribe controlled substances during the remainder of the period of suspension subject to the following conditions and restrictions: Respondent shall be restrained and enjoined from administering, prescribing and/or dispensing any and all controlled substances, except that Respondent may write orders for controlled substances in the hospital charts for patients admitted to St. Mary's Hospital in Hoboken, New Jersey, who are being cared for by him during their hospital stay.

New Jersey has reinstated Dr. Sesin's controlled substance privileges. Dr. Sesin now wishes to once again be registered with the Drug Enforcement Administration and therefore submitted the application for registration that is the subject of this final order.

In his written statement, Respondent contends that his "weakness" related to a lack of knowledge regarding controlled substances. To remedy this situation, Dr. Sesin enrolled in a 114 hour mini-residency in the use and abuse of controlled substances given at the University of Medicine and Dentistry of New Jersey. Respondent states that as a result of this mini-residency, his knowledge in the use or abuse of controlled substances has substantially improved. The Administrator commends Respondent's efforts to become better educated regarding controlled substances. However, the Administrator finds it hard to believe that Respondent's prescribing and dispensing practices to the undercover agents were due solely to his lack of knowledge regarding controlled substances. Dr. Sesin is a trained medical professional. As such, Dr. Sesin must certainly have been aware that it is not legitimate medical practice to prescribe or dispense controlled substances to a patient without first performing a physical examination or at the very least inquiring into the medical history of the patient so as to determine whether the patient has medical need for the drug. Additionally, Dr. Sesin must have known that it is not acceptable to write a controlled substance prescription, or any prescription, while sitting in his car.

The Administrator concludes that Dr. Sesin knew that what he was doing was wrong. On at least one occasion, Dr. Sesin told one of the undercover agents to make sure to go to a different drugstore with the new prescription. This statement clearly shows that Dr. Sesin was attempting to cover up his illegal prescribing practices. He did not want to arouse any suspicions. On another occasion, Dr. Sesin asked the undercover agent what the agent was doing with all the medication. The undercover agent replied that he was getting rid of some of the drugs in order to pay some of his bills. Dr. Sesin asked the agent if he was giving any of it to his friends and the agent answered that he was.

In his written statement, Respondent contends, "that to impose any further punishment upon him at this juncture is manifestly unfair." The "punishment" that Dr. Sesin has already endured was for past misdeeds. This administrative decision looks prospectively. Its purpose is the future exercise of effective control over dangerous drugs. The Administrator is charged with protecting the public health and safety from the illicit diversion of controlled substances. The facts of this case, as set forth above, indicate that Dr. Sesin lacks the necessary awareness of the responsibilities imposed by DEA registration. The evidence which Dr. Sesin has presented in this matter is inadequate to overcome the foregoing conclusion. Therefore, the Administrator concludes that at this point in time, Dr. Sesin has not demonstrated that he should be entrusted with a DEA registration and the responsibilities attendant to such registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application of Felix Sesin, M.D., for registration under the Controlled Substances Act, be, and it hereby is denied.

Dated: January 27, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–2065 Filed 1–29–86; 8:45 am]

BILLING CODE 4410–09–M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Advisory Board; Meeting

The Missing Children's Advisory Board will meet in Washington, DC, on March 7 and 8, 1986. The meeting will take place at the Hotel Washington, 15th Street and Pennsylvania Avenue, NW., Washington, DC 20004. The public is welcome to attend.

The Board will discuss its annual Comprehensive Plan and other issues related to missing and exploited children.

For further information, please contact Michelle Easton, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20531, (202) 724–7655.

Dated: January 24, 1986.

Approved:

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86–2021 Filed 1–29–86; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Justice

Solicitation; Applied Research Grants

The National Institute of Justice is soliciting a proposal for applied research grants in the following area:

Program	Due date (1986)
Supplementing the National Crime Survey	May 2.

Multiple awards are planned in this area. Description of the program and the application process may be obtained from the National Criminal Justice Reference Service. Interested organizations should write to: NCJRS, P.O. Box 6000, Rockville, Maryland 20850. Attn: Program Solicitations.

James K. Stewart,

Director.

[FR Doc. 86–2009 Filed 1–29–86; 8:45 am]

BILLING CODE 4410–18–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400–OL (ASLBP No. 82–472–03 OL)]

Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency (Shearon Harris Nuclear Plant); Order (Setting Times for Prehearing Filings and Hearing)

January 24, 1986.

Before Administrative Judges: James L. Kelley, Chairman, Dr. James H. Carpenter, and Glenn O. Bright.

On January 23, 1986, the Board and parties participated in a telephone conference call to discuss dates for the reopened hearing on Eddleman Contention 57–C–3 called for by the Board's Order of January 16, 1986. This Order confirms the dates established and sets the place for hearing.

Identification of voluntary witnesses—Feb. 7

Requests for subpoenas—Feb. 12

Prefiled testimony on:

(1) Tone alert radios—Feb. 18

(2) Other issues—Feb. 21

Hearing—March 4

All of the above dates apply to *all* parties, subject to the possibility of a change for good cause shown. The Board regards the March 4 hearing date as firm and not subject to change except for extraordinary cause.

The hearing will be held at the Holiday Inn Downtown, 320 Hillsborough Street, Raleigh, NC 27602 (Phone No. (919) 832–0501) on March 4, 1986, beginning at 8:30 a.m. Note that this Holiday Inn is downtown and not the same Holiday Inn as the last hearing.

The discovery dispute between Mr. Eddleman and FEMA will be resolved in a further telephone conference in the near future.

For the Atomic Safety and Licensing Board.

James L. Kelley,

Chairman, Administrative Judge.

Bethesda, Maryland.

[FR Doc. 86–2099 Filed 1–29–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

General Public Utilities Nuclear Corp., et al. (Three Mile Island Nuclear Station, Unit 2); Issuance of Amendment to Facility Operating License

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR–73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI–2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

II

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292).

The new requirements imposed on the licensee by the February 11, 1980 Order of the Director of Nuclear Reactor Regulation were issued as the Recovery Mode Proposed Technical Specifications (PTS), and have been revised, in part, in subsequent Amendments of Order. In response to the notice of opportunity to request a hearing provided by the Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, several petitions for leave to intervene were filed and a prehearing conference was conducted on July 7, 1980. Subsequent to that time, discussions with the recognized parties have led to mutual agreement in the areas of concern, resulting in the resolution of all outstanding issues and the withdrawal of all petitions.

On November 8, 1985, the Atomic Safety and Licensing Board issued an Order entitled "Granting Joint Motion to Approve Stipulation, Dismissing ECNP and Dismissing Proceeding." This order approved the joint stipulation entered into by the Environmental Coalition on

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Nuclear Power (ECNP) the last remaining intervenor, the NRC Staff and the Licensee for the purpose of resolving all remaining proposed contentions and consequently terminated the proceeding.

III

In light of the termination of this proceeding, the NRC staff is now formally amending the License (Facility Operating License No. DPR–73) to include those Proposed Technical Specifications issued by the Order of the Director, Nuclear Reactor Regulation, dated February 11, 1980, as amended from time to time by Amendments of Order. Each of these revisions to the PTS was issued with a supporting staff safety evaluation as were the corresponding Amendments of Order. Appropriate environmental reviews of each action were performed as well. The staff has concluded in these safety evaluations that the PTS, as amended, impose appropriate limitations on the licensee to assure the continued maintenance of the facility in a safe shutdown condition.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, Facility Operating License No. DPR–73 is hereby amended to incorporate the Recovery Mode Proposed Technical Specifications as Appendix A to said license. The supporting documents approving the previous provisions to the Proposed Technical Specifications are available for inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. This license amendment is effective as of the date of its issuance.

Dated at Middletown, Pennsylvania, this 27th day of January, 1986.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, TMI–2 Cleanup Project Directorate, Division of PWR Licensing–B, Office of Nuclear Reactor Regulation.

[FR Doc. 86–2100 Filed 1–29–86; 8:45 am]

BILLING CODE 7590–01–M

Radioactive Waste; Low-Level Waste Compacts; NRC Technical Assistance Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of NRC Low-Level Waste Technical Assistance Program.

SUMMARY: This notice is to inform the public of the Nuclear Regulatory Commission's (NRC) ongoing regulatory assistance program to provide technical guidance to States and compact organizations in developing and regulating new low-level radioactive waste (LLW) disposal facilities. The purpose of this NRC technical assistance effort is to promote timely implementation of the Low-Level Radioactive Waste Policy Act, as amended, which assigns States the responsibility to provide for disposal of commercial LLW. Assistance is available to State and compact entities with disposal capacity development responsibilities, to NRC Agreement State programs with regulatory responsibilities, and to States intending to establish Agreement State status. Due to resource limitations, NRC will target technical assistance to those States and compact regions in which substantive progress is taking place toward the siting and development of new LLW disposal facilities.

DATES: Assistance will be available on a continuing basis.

ADDRESSEE: Comments regarding this notice may be directed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission.

FOR FURTHER INFORMATION CONTACT: Donald A. Nussbaumer, Assistant Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7767.

SUPPLEMENTARY INFORMATION: The Low-Level Radioactive Waste Policy Act, as amended, assigns States the responsibility to provide for disposal of commercial LLW, and encourages the formation of interstate compacts to meet this responsibility. NRC intends, within its statutory responsibility, to minimize uncertainty and promote predictability in the licensing and regulation of new LLW facilities. NRC will assist States and compact organizations involved in developing and regulating disposal site development. Attachment A is the letter sent to all Agreement State and non-Agreement State regulatory programs highlighting the NRC Low-Level Waste Technical Assistance Program and Attachment B is the letter sent to the Low-Level Radioactive Waste Compacts and those States not presently in compacts on the same subject.

Dated at Bethesda, Maryland, this 23rd day of January 1986.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Attachment A.—Nuclear Regulatory Commission

January 22, 1986.

All Agreement and Non-Agreement States

NRC Low-Level Waste Technical Assistance Program

As you are aware, the Low-Level Radioactive Waste Policy Act, as amended, assigns States the responsibility to provide for disposal of commercial LLW, and encourages the formation of interstate compacts to meet this responsibility. State activity following passage of the original Policy Act in 1980 has generally focused on formation of compacts and consideration of approaches for designating States to host new LLW disposal facilities. Certain States have elected to develop their own disposal capacity rather than joining a compact. The critical measure of success in implementing the Low-Level Radioactive Waste Policy Act is the establishment of new disposal capacity in those States and compact regions that are currently without such capacity.

NRC intends, within its statutory responsibility, to minimize uncertainty and promote predictability in the licensing and regulation of new LLW facilities. The NRC also recognizes that timely and understandable regulatory guidance is needed to assist States and compacts as they proceed toward the development of new disposal facilities. States that plan to expand their regulatory programs in response to low-level waste disposal responsibility may also need NRC assistance and advice.

The purpose of this letter is to highlight the availability of NRC regulatory assistance, to describe the nature of such assistance and to further encourage Agreement States and those non-Agreement States anticipating low-level waste regulatory authority under a 274b agreement to contact NRC to facilitate assistance activities. NRC staff has met with officials from a variety of States and LLW compacts in the past several months to describe the type and level of assistance NRC is prepared to provide. Also, ongoing technical assistance activities are underway in several States.

The scope of available NRC technical assistance includes regulatory related topics associated with disposal site selection, design, licensing and operation. For Agreement States or States seeking low-level waste regulatory authority under a 274b agreement, assistance may include but would not necessary be limited to:

1. Guidance in assessing staff technical capability needs and overall staffing requirements;
2. Assistance in evaluating contractor capabilities and/or proposals;
3. Assistance in evaluating disposal site license applications and environmental assessments; and
4. Assessment of the performance of unique wastes in the disposal environment.

NRC intends to coordinate its technical assistance activities with the Department of Energy Low-Level Waste Management Program to help ensure that relevant data and analyses developed by the two Federal agencies are shared with States, compacts, and other parties interested in successful implementation of the Low-Level Radioactive Waste Policy Act as amended.

Please contact the NRC Regional State Agreement Representative for your State to explore specific technical assistance needs. I would be pleased to receive any general comments you may have regarding NRC's effort in this area.

G. Wayne Kerr,

Director, Office of State Programs.

Attachment B.—Nuclear Regulatory Commission

January 22, 1986.

Memorandum For: Addressees

From: G. Wayne Kerr, Director, Office of State Programs

Subject: NRC Low-Level Waste Technical Assistance Program

The critical measure of success in implementing the Low-Level Radioactive Waste Policy Act, as amended, is the establishment of new disposal capacity in those States and compact regions that are currently without such capacity.

NRC intends, within its statutory responsibility, to minimize uncertainty and promote predictability in the licensing and regulation of new LLW facilities. The NRC also recognizes that timely and understandable regulatory guidance is needed to assist States and compacts as they proceed toward the development of new disposal facilities. States that plan to expand their regulatory program in response to low-level waste disposal responsibilities may also need NRC assistance advice.

The purpose of this letter is to highlight the availability of NRC regulatory assistance, to describe the nature of such assistance, and to further encourage States and compacts to contact the NRC to facilitate assistance activities. NRC staff has met with officials from a variety of States and LLW compacts in the past several months to describe the type and level of assistance NRC is prepared to provide. Also, ongoing technical assistance activities are underway in several States.

The NRC intends to concentrate limited staff resources on those specific States and compacts in which substantive progress toward siting and development of new disposal facilities is taking place. Assistance may be provided through staff meetings to discuss technical and licensing topics, supplying NRC staff as resource personnel to advisory bodies or LLW symposia, development of technical studies and related regulatory guidance documents addressing specific inquiries, and other means capable of effectively meeting State needs. Your comments are invited on the assistance considered to be most relevant to your needs.

The scope of available NRC technical assistance includes regulatory-related topics associated with disposal site selection, design, licensing and operation. For States and compact entities with developmental responsibilities, this may include but would not necessarily be limited to:

1. Prelicensing guidance on the applicability of existing NRC regulatory requirements to alternative LLW disposal methods;
2. Guidance on development of site selection criteria consistent with the NRC 10 CFR Part 61 regulation, and application of such criteria to site screening studies;
3. Guidance on characterizing candidate disposal sites and preparing environmental impact report documents;
4. Guidance on disposal site modeling and performance assessment; and
5. Guidance on license application content requirements.

The NRC does not intend to provide technical assistance for developing regional management plans nor designation of States to host new LLW disposal facilities. The NRC also will not undertake detailed engineering design work nor research on reference concept designs for commercial disposal facilities. These developmental activities are considered inconsistent with NRC's regulatory role. Rather, NRC anticipates providing detailed regulatory analyses of various disposal facility design concepts that may be submitted by compacts or by individual States to NRC. We anticipate that NRC guidance would be most useful in cases where detailed information is provided by those entities pursuing disposal site development.

NRC intends to cooperate closely with States and compacts pursuing disposal site development. NRC also intends to coordinate its technical assistance activities with the Department of Energy Low-Level Waste Management Program to help ensure that relevant data and analyses developed by the two Federal agencies are shared with States, compacts, and other parties interested in successful implementation of the Low-Level Radioactive Waste Policy Act as amended.

Please contact your NRC Regional State Liaison Officer (RSLO) to explore specific technical assistance needs. I would also be pleased to receive any general comments you may have regarding NRC's efforts in this area.

G. Wayne Kerr,

Director Office of State Programs.

[FR Doc. 86–2102 Filed 1–29–86; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reestablishment of an Intergovernmental Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish an Intergovernmental Policy Advisory Committee on Trade. This Committee will be chartered pursuant to section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 9(a)(2)). The charter of this Committee will be filed 15 days from the date of this notice.

The Committee will advise, consult with, and make recommendations to the U.S. Trade Representative and relevant Cabinet agencies on policy issues including, but not limited to, statutes and/or regulations enacted or promulgated by state and local governments that may affect U.S. trade policy objectives, as well as statutes, regulations, and other acts promulgated or enacted by the federal government that may affect the relationship between international trade and state and local governments.

The Committee will meet approximately three or four times per year, depending on the needs of the U.S. Trade Representative. The U.S. Trade Representative or his designee will convene meetings of the Committee.

Members of the Committee shall be appointed by, and serve at the discretion of the U.S. Trade Representative. Individuals wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600 17th Street, NW., Washington, DC 20506, (202) 395–6120.

Phyllis O. Bonanno,

Director, Office of Private Sector Liaison.

[FR Doc. 86–2086 Filed 1–29–86; 8:45 am]

BILLING CODE 3190–01–M

POSTAL RATE COMMISSION

[Docket No. SS86–1]

Preferred Rate Study

January 24, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

The Postal Rate Commission will undertake to study the use of most categories of "preferred rate" mail, which currently enjoy reduced rates of postage supplemented by federal subsidies. The study is being done at the joint request of the Chairman of the Committee on Post Office and Civil Service of the House of Representatives, and the Chairman of the Subcommittee on Civil Service, Post Office and General Services, Committee on Governmental Affairs of the Senate, for use in the FY 1987 budget process. A copy of the request is Attachment A to this notice. The study will address all of the topics described in section 15103 of the Conference Reconciliation Bill (Consolidated Omnibus Budget Reconciliation Act of 1985.) Attachment B to this notice, as explained by the

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Statement of Managers of the bill, Attachment C to this notice.

The Commission welcomes comments from interested persons, and will maintain and review a public file of comments received on issues involved in this study. The Commission also expects to hold public hearings to enable interested persons to discuss in-depth all of the matters under consideration. Any person wishing to be informed of Commission activities and scheduled hearings, or to provide written comments for Commission consideration, should write: Postal Rate Commission, Office of the Secretary, 1333 H Street NW., Washington, DC 20268–0001.

Charles L. Clapp,

Secretary.

Attachment A

Congress of the United States
House of Representatives
Washington, DC 20515

January 10, 1986

The Honorable Janet D. Steiger,
Chairman, Postal Rate Commission, 1333 H Street NW., Washington, D.C. 20268–0001

Dear Chairman Steiger: Section 15103 of the Conference Report accompanying H.R. 3128, the Consolidated Omnibus Budget Reconciliation Act of 1985, would direct the Postal Rate Commission to conduct a study and submit to the Congress a report concerning several important matters affecting the authorization for the annual revenue forgone appropriation. A copy of the text of section 15103 and of the relevant portion of the Statement of Managers is enclosed for your reference.

As you know, the First Session of the 99th Congress adjourned prior to final action on the Conference Report. Consideration is expected to resume when Congress reconvenes later this month.

Because of the importance of the issues which would be addressed in the study, and the desirability of obtaining the Commission's findings and recommendations in time for consideration during the FY 1987 budget cycle, we respectfully request the Commission to proceed immediately with the study as if section 15103 had been enacted. We ask also that the Commission be further guided by the portion of the Statement of Managers pertaining to section 15103. The Postmaster General will be informed of our request and will be asked to ensure that the Commission receives the Postal Service's full cooperation, as called for by section 15103.

We sincerely appreciate your efforts.

With kind regards,

Sincerely,

William D. Ford,
Chairman, Committee on Post Office and Civil Service, U.S. House of Representatives.

Ted Stevens,
Chairman, Subcommittee on Civil Service, Post Office and General Services, Committee on Governmental Affairs, U.S. Senate.

cc: The Honorable Albert V. Casey

Attachment B

Sec. 15103. Study and Report.

(a) Period of Study.—The Postal Rate Commission shall study and, within 6 months after the date of the enactment of this Act, transmit to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a written report on the matters described in subsection (b).

(b) Purpose of Study.—The purpose of the study under this section is—

(1) to develop recommendations for legislation which would reduce the amount of revenue forgone with respect to former sections 4355(a), 4355(b), 4358(d), 4452(b), 4452(c), 4554(b) and 4554(c) of title 39, United States Code, by changing the eligibility requirements under which the reduced rates of postage under those sections would apply to mail which advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements;

(2) (A) to identify the kinds of mailers which are the most frequent users of, or which otherwise significantly benefit from, rates for mail under subsections (a), (b), and (c) of former section 4358 of title 39, United States Code; and

(B) to examine the arguments for and against making the eligibility requirements for the rates referred to in subparagraph (A) more stringent, taking into consideration—

(i) the findings under subparagraph (A);

(ii) costs and benefits to the public; and

(iii) any other factor which may be appropriate; and

(3) to develop one or more alternatives for the method currently used by the United States Postal Service in computing revenue forgone (as determined with respect to the provisions of law referred to in section 2401(c) of title 39, United States Code) and to determine the advantages and disadvantages of each such alternative.

(c) In preparing its report under this section, the Postal Rate Commission shall invite and consider the views of interested parties.

(d) The United States Postal Service shall, upon request of the Postal Rate Commission, cooperate in the conduct of the study and the preparation of the report under this section.

Attachment C—Postal Service Issues

1. Reduction of Authorization for Revenue Forgone

House Provision: The House bill (Sec. 7104(a)) limits the FY 1986 authorization for the "revenue forgone" appropriation to $749 million. (The revenue forgone appropriation subsidizes the postage rates paid by nonprofit organizations and other "preferred rate" mailers.)

Senate Provision: The Senate bill (Sec. 801) contains a substantially similar provision.

Conference Agreement: The conference agreement contains the House language.

2. Reduction of Transitional Appropriation

House Provision: The House bill (Sec. 7104(b)) reducea to zero the amount authorized to be appropriated for FY 1986 for the transitional appropriation to the Postal Service. (The transitional appropriation is used by the Postal Service to reimburse the Department of Labor for workers' compensation costs arising from injuries to employees of the pre-1971 Post Office Department). The House bill further provides that the amount which would have been authorized for this appropriation for FY 1986 shall be authorized for FY 1989, in addition to the amount already authorized for FY 1989 pursuant to 39 U.S.C. 2004. The House bill provides further that the Postal Service's obligations for FY 1986 shall be met using any amounts in the Postal Service Fund.

Senate Provision: The Senate bill (Sec. 802) provides that no funds shall be appropriated for the FY 1986 transitional appropriation prior to FY 1989.

Conference Agreement: The conferees agree to delete both provisions.

3. Delay of Step 16 Rates to January 1, 1986

Senate Provision: The Senate bill (Sec. 803) provides that the increase in postage rates for nonprofit organizations and certain other mailers announced by the Postal Service Board of Governors on September 6, 1985, shall not take effect until January 1, 1986. The Senate bill also amends section 3626(a) of title 39, United States Code, to eliminate the rate "phasing" schedule and provide that effective January 1, 1986, the rates paid by nonprofit organizations and other affected mailers will recover the full costs attributable to their mail.

House Provision: The House has no comparable provision.

Conference Agreement: The House recedes and concurs with an amendment making it clear that the rate increase announced by the Board of Governors in Resolution No. 85–7 shall not take effect before January 1, 1986 and that any changes in rates shall be established in accordance with chapter 36 of title 39, United States Code. Additional, in order to obtain needed savings, the conferees agree to eliminate the authorization for that part of the revenue forgone appropriation which makes possible the "limited circulation" second-class rate. The conferees intend that this rate be eliminated upon enactment.

4. Appropriation Ceiling and Study Concerning Third-Class Commercial Materiol Mailed at Reduced Rates

Senate Provision: The Senate bill (Sec. 804) reduces by 50 percent the authorized appropriation for FY 1987 and FY 1988 for third-class nonprofit bulk rate mail which advertises or promotes the sale of, recommends the purchase of, or announces the availability of any article, product, service, insurance, or travel arrangements. The Senate bill also directs the Postal Rate Commission to prepare and transmit to Congress within 6 months of enactment a report containing legislative recommendations to achieve the required 50 percent savings. The Commission's study shall also include second-class nonprofit rate and fourth-class library rate mail. The Commission is to invite and consider the views of all interested parties.

House Provision: The House has no comparable provision.

Conference Agreement: The House recedes and concurs with an amendment striking the mandatory authorization reduction but directing that the Postal Rate Commission conduct an expanded study covering three subject areas. The first subject shall be the use of third-class nonprofit bulk rate mail, second-class nonprofit mail, and fourth-class library rate mail for advertising, promotion, and solicitation purposes (as provided for and defined in the Senate bill). The second subject shall be the general use of the second-class "in-county" publication rate. The focus of the Commission's inquiry in this area shall be the accumulation and synthesis of data and information concerning the number and types of publications which use this subsidized rate, the users' needs for this rate, and the potential impact both on the publications and on their readers of further modification or total elimination of the authorization for this rate. The conferees take specific note of their agreement in section 15104 to amend the Senate bill's provision concerning eligibility for the in-county rate by deleting the limit of 20,000 copies per issue. The conferees hereby direct the Postal Rate Commission to include in its study a specific determination of the number and types of publications which would have been adversely affected had the 20,000 "cap" remained in the new 39 U.S.C. 3626(f). The third subject for the Commission's study is the accuracy, or inaccuracy, of the current method of computing revenue forgone and the development and assessment of alternative methods. The Postal Service is to cooperate fully in the conduct of every phase of the study (including the provision to the Commission of adequate financial, technical, and personnel resources).

5. Restriction of Eligibility for In-County Second-Class Rates of Postage

Senate Provision: The Senate bill (Sec. 805) amends 39 U.S.C. 3626 by limiting application of the in-county rate (which is subsidized by the revenue forgone appropriation). The rate shall not apply to an issue of a publication if the number of copies of that issue distributed within the county of publication is less than half of the issue's total paid circulation. This limitation shall not apply if the issue's total paid circulation is less than 10,000 copies. In no case shall the rate apply to more than 20,000 copies of an issue.

House Provision: The House has no comparable provision.

Conference Agreement: The House recedes and concurs with an amendment striking the Senate provision which would have limited applicability of the subsidized rate to not more than 20,000 copies of any issue. The conferees note that this provision will be a subject of the study to be conducted by the Postal Rate Commission pursuant to section 15103.

6. Curbing of Subsidies for Advertising/Oriented "Plus Issues" Mailed to Subscribers at In-County Rates

Senate Provision: The Senate bill (Sec. 806) further amends 39 U.S.C. 3626 with regard to application of the subsidized in-county rate to nonsubscriber copies of subscription publications. The number of nonsubscriber copies to which the rate is applied in any calendar year may not exceed 10 percent of the number of copies mailed to subscribers in that year.

House Provision: The House has no comparable provision.

Conference Agreement: The House recedes.

[FR Doc. 86–2010 Filed 1–29–86; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14909; File No. 812–6195]

Application and Opportunity for Hearing; Century Life of America et al.

January 22, 1986.

Notice is hereby given that Century Life of America (the "Company"), Century Variable Account (the "Separate Account") and Century Investors of America, Inc., (the "Underwriter") underwriter of the Separate Account (the Company, the Separate Account and the Underwriter are collectively referred to as "Applicants"), at Heritage Way, Waverly, Iowa 50677, filed an application on September 3, 1985, and amendments thereto on November 21, 1985, and December 18, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) of the Act and Rules 22c–1, 6e–3(T)(b)(12)(ii) and 6e–3(T)(b)(13)(iv) thereunder, to permit the deduction of a contingent deferred administrative charge in connection with Applicants' offering of flexible premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and rules thereunder for the complete text of those provisions that are relevant to the application.

Applicants propose to offer certain flexible premium variable life insurance contracts ("Contracts") funded by the Separate Account. The Separate Account, which is registered as a unit investment trust under the Act, will invest in shares of Ultra Series Fund. Ultra Series Fund is an open-end diversified management investment company comprised of four different series: Money Market Series, Common Stock Series, Balanced Series and Bond Series.

The Contract provides death protection until the Contract anniversary following the insured's 95th birthday. Subject to certain limitations, a Contractowner may vary the frequency, timing and amount of premium payments. The amount that

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underlines a Contract is referred to as the Accumulated Value. The Cash Value of the Contract is the Accumulated Value less the deferred charges, described below. The Net Cash Value of the Contract is the Cash Value minus any Contract indebtedness. The Contract provides that the owner may withdraw all or a part of the Net Cash Value of the Contract.

Applicants propose that in the event of a total withdrawal of Net Cash Value and termination of the Contract prior to the end of the 9th Contract year, a deferred administrative charge ("Deferred Charge") be deducted from the Cash Value that is paid to the owner. The amount of this charge would accrue at the time the Contract is issued. Collection of the charge, however, would be deferred until such time as the Contract is surrendered and contingent in that it would not be collected unless the Contract is surrendered during the first nine years following its issuance. There is also assessed a deferred sales charge which is applied in a similar manner.

Applicants state that accrual of the Deferred Charge increases monthly during the first Contract year in twelve equal increments to the total first year Deferred Charge set out in the Contract, which is a charge per $1,000 of Specified Amount based on issue age. Then the Deferred Charge decreases annually after the first Contract year. If the Specified Amount is increased after the Contract's date of issue, an additional Deferred Charge will be assessed as though a new Contract had been issued for the amount of the increase. This additional Deferred Charge will decrease over nine years from the date of the increases as if it were assessed to a new Contract. Applicants state, however that no additional Deferred Charge will be assessed for increases in Specified Amount due to changes from death benefit option 2 to death benefit option 1. There is no decrease in the deferred charge if the Specified Amount is decreased.

Applicants state that they intend to have the Deferred Charge set aside in a portion of the general account of the Company, which Applicants refer to as the Deferred Charges Account. The Deferred Charges Account is intended for both the Deferred Charge and the deferred sales charge. Applicants propose to place the first month's portion of the Deferred Charge in the Deferred Charges Account at the time the Contract is issued or the Specified Amount is increased. This amount will earn interest at a minimum rate of 4% per annum, with the Company crediting additional interest, at its option from time to time. At the next monthly anniversary, taking into account the interest earned, the Company will transfer from the Separate Account the amount necessary to equal the then current Deferred Charge. The Company will do the same each month during the first year of the Contract. The Deferred Charge for the second Contract year are 95% of the first year Deferred Charge. Therefore, the Company will release on the first monthly anniversary of the second Contract year that amount in the Deferred Charges Account that is in excess of 95% of the first Contract year Deferred Charge, taking into account the interest earned. This process will continue each year until the Deferred Charges Account becomes zero at the end of ten years or until the Contract is surrendered. If an additional Deferred Charge is incurred, it will be treated in the same manner.

Applicants request exemption from sections 2(a)(32), 22(c), 27(c)(1), 27(d) and Rules 22c-1, 6e-3(T)(b)(12)(ii) and 6e-3(T)(b)(13)(iv) thereunder to the extent necessary to permit the deduction of the Deferred Charge in the manner described in the application.

Applicants state that permitting the Deferred Charge upon lapse or total surrender of the Contract has several advantages over a charge that is deducted entirely from premiums in the first year, which is the conventional way of making this charge. Applicants assert that Contractowners benefit by having the charge deferred because the amount of the Deferred Charge is set aside in the Deferred Charges Account and earns interest. The Deferred Charge is released from the Deferred Charges Account to the Separate Account until the amount to be assessed by the Company upon lapse or complete surrender is zero. Thus, if a Contractowner does not lapse or completely surrender his Contract prior to the end of the ninth year, he will not be subject to a lump sum payment of the costs of Contract issuance. In addition, if the insured dies within the first nine years, the Company does not assess the Deferred Charge from any death benefit payable under the Contract. An additional benefit, Applicants argue, is that the deductions for the cost of insurance may be lower because the net amount at risk may be less when administrative charges are deferred rather than deducted up front. Applicants state that the Contract has been designed to "phase-in" the first year Deferred Charge, which benefits the Contractowners by not having the entire amount set aside in the Deferred Charges Account at the time the Contract is issued. Applicants represent that if a Contractowner surrenders during the first year the Company forebears the collection of that portion of the first year charge that has not yet been transferred to the Deferral Charges Account. Applicants represent that other Contractowners are not assuming any shortfall when this occurs.

Applicants state that the use of the Deferred Charges Account enables the Company to offer a Contract with deferred charges because when the underlying assets constituting the portion of the Contract values needed to secure the Company's right to deferred charges are held in a separate account, statutory reserve laws and regulations for life insurance companies in most jurisdictions ignore the value of what amounts to the Company's funded claim for such deferred charges. Instead, they require that the entire amount held in the separate account be reported as an unqualified reserve liability. Furthermore, Applicants assert, the financial impact of this accounting treatment is exacerbated because the actual expenses which the Company incurs when it sells and issues the Contract serve to reduce surplus. Applicants state that these considerations led to the product design feature of segregating the deferred charges in the Company's general account.

Applicant state that in addition to the Deferred Charge, there is a Monthly Policy Fee of $6.25 which is deducted each month from the Accumulated Value of the Contract. Applicants represent that the Monthly Policy Fee is guaranteed for the life of the Contract. Applicants state that it has been set at a level to cover the annual cost of Contract maintenance, to reimburse the Company for first year administrative expenses, and to contribute to the surplus of the Company to the extent necessary to cover the anticipated increase in expenses in the future, thus enabling them to guarantee this charge. Applicants state that in establishing the level of the constant Monthly Policy Fee, the Company took into account, among other things, the amortization of the first year administrative fee, as well as an expected inflation factor used in the determination of the portion of the Monthly Policy Fee covering the annual cost of Contract maintenance. Applicants represent that the Monthly Policy Fee, in conjunction with the Deferred Charge and the manner in which it is deducted, has been designed so that the Company only recovers once its first year administrative costs.

Applicants state that the Company, in establishing these charges, did so with the intent of complying with the "at cost" requirement of Rule 6e-3(T). Applicants assert that the deduction of the Deferred Charge only upon lapse or complete surrender is fair to both surrendering and persisting contractowners. Applicants state that while the Company is willing to finance these costs out of its surplus and then recover the cost out of the Monthly Policy Fee for Contractowners who persist, it is not possible to so recover such costs from Contractowners who lapse or surrender in the early years of the contract. If the Company is not permitted to charge for these first year expenses in the form of a charge deducted upon lapse or surrender, Applicants state, it would have to deduct such a charge from all Contractowners at the time the Contract is issued, thus denying persisting Contractowners the benefit of having such costs amortized and deducted as part of the Monthly Policy Fee. Applicants represent that the Deferred Charge does not take into account the likelihood that not all Contractowners will lapse or surrender their Contracts (which would increase the charge for those surrendering or lapsing over what they would have paid had all Contractowners been required to pay this charge).

Applicants further represent that the Deferred Charge and the Monthly Policy Fee do not take into account the time-value of money (which would increase the charges to factor in the investment costs to the Company of deferring the charge).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2091 Filed 1-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14910 (No. 812-6198)]

Paine Webber Inc., et, al.; Application for an Order Amending an Existing Order and Permitting Certain Additional Offer of Exchange

January 22, 1986.

Notice is Hereby Given that Paine, Webber Municipal Bond Fund Series, The Municipal Bond Fund Series, The Municipal Bond Trust Series, The Municipal Bond Trust Insured Series, The Municipal Bond Trust Multiple Maturity Series, The Multi-State Program Series, The Municipal Bond Trust Discount Series; The Corporate Bond Trust Series, The Corporate Bond Trust Discount Series; The PaineWebber Pathfinders Trust, Treasury and Growth Stock Series; The PaineWebber Federal Government Trust, Stripped Treasury Series, The PaineWebber Equity Trust (any one individually, the "Trust", or, collectively, the "Trusts"), all unit investment trusts registered or to be registered under the Investment Company Act of 1940 (the "Act") and PaineWebber Incorporated, sponsor of the Trusts (the "Sponsor") (collectively with the Trusts, "Applicants"), c/o PaineWebber Inc., 1285 Avenue of the Americas, New York, NY 10020, filed an application on September 10, 1985, and an amendment thereto on December 27, 1985, for an order of the Commission pursuant to section 11 of the Act: (1) Amending a prior order issued by the Commission approving certain offers of exchange (the "Exchange Option"); (2) approving, on substantially identical terms, an offer of exchange for Trusts not included in the prior order, including future unit investment trusts to be sponsored by the Sponsor (the "Future Trusts"), and (3) approving an additional offer of exchange that Applicants propose to extend to holders of any registered unit investment trust with a minimum sales load of 3%, exclusive of any available sales charge discounts such as volume discounts, employee discounts and exchange option discounts (the "Conversion Option"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants state that each Trust is a separate unit investment trust created by a separate trust agreement, each series of which has different investment objectives. Applicants also state that purchasers of units of any of the Trusts ("Certificateholders") will receive interest and principal distributions on a monthly or semi-annual basis, such distributions representing their proportionate share of interest and principal received in the respective Trust net of expenses and amounts required for redemptions of units.

Applicants represent that the Future Trusts will also be registered unit investment trusts under the Act, and that the Future Trusts will be structured and will function in substantially the same manner as the Trusts. With respect to the prospective relief sought on behalf of the Future Trusts, Applicants under take to limit their activities, as they relate to the Exchange and Conversion Options, to the terms and conditions represented in the application.

By an order issued on September 10, 1980 (Investment Company Act Release No. 11344), the Commission permitted certain Trusts to participate in an Exchange Option. Applicants now request approval to expand this Exchange Option to all Trusts and Future Trusts (Trusts and Future Trusts, collectively, "Exchange Trusts"), subject to the modifications and conditions set forth in the application.

According to the application, although the composition of particular Exchange Trusts and the particular series thereof differ in various respects depending on the nature of the underlying portfolios, their structures are substantially the same. The Sponsor acquires a portfolio of securities that it believes satisfies the standards applicable to the investment objectives of the particular series; the securities are then deposited in trust with the Trustee in exchange for certificates representing units of undivided interest in the deposited portfolio ("Units"). These Units are then offered to the public at a public offering price that is based upon the offering prices of the underlying securities plus a sales charge, which is generally 4.50% of the public offering price.

Under the Exchange Option, Certificateholders may exchange Units that they hold in any one of the Trusts for Units of other series of the same Trust or of any of the other Trusts that the Sponsor has repurchased and has not tendered for redemption. Although the Sponsor is not legally obligated to do so, the Sponsor intends to maintain a secondary market for Units of the

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Exchange Trusts and to continuously offer to purchase Units at prices based upon the market value determined in the manner set forth in the prospectus. The Exchange Option would apply only to Units of the Exchange Trusts for which a primary or secondary market is being maintained by the Sponsor. Upon notifying the Sponsor of a desire to exercise the Exchange Option, a Certificateholder will be delivered a current prospectus for one or more series of the Exchange Trusts for whcih the Certificateholder has indicated an interest and for which the Sponsor has Units available to offer in exchange for the Units being tendered.

Applicants contend that the Exhange Option transactions will operate in a manner essentially identical to secondary market transactions, except that the Sponsor intends to impose a reduced sales charge on certain exchanges. Generally, Units repurchased by the Sponsor have been resold by the Sponsor at a public offering price based upon the market value of the underlying securities plus a sales charge of up to 5.50% of the public offering price. Pursuant to the Exchange Option, Applicants intend to permit the Sponsor to sell Units of the Exchange Trusts at the net asset value per Unit (the "Unit Offering Price"), plus a fixed sales charge of $15 per Unit or per 1,000 Units for a series whose Units cost approximately $1.00 (the "Reduced Sales Charge"). Applicants represent that the Reduced Sales Charge can be expected to approximate 1.5% of the Unit Offering Price.

Applicants represent that a Certificateholder who purchased Units of a series and paid a per Unit or per 1,000 Unit sales charge that was less than the per Unit or per 1,000 Unit sales charge of the series of the Exchange Trusts for which such Certificateholder desires to exchange into, will be allowed to exercise the Exchange Option at the Unit Offering Price plus the Reduced Sales Charge, provided the Certificateholder held the Units for at least five months. Any such Certificateholder who has not held the Units to be exchanged for the five-month period will be required to exchange them at the Unit Offering Price plus a sales charge based on the greater of the Reduced Sales Charge, or an amount which, together with the intial sales charge paid in connection with the acquisition of the Units being exchanged, equals the sales charge of the series of the Exchange Trust for which the such Certificateholder desires to exchange into, determined as of the date of the exchange.

According to the application, the minimum period for differentiating between short-term and long-term capital gains and losses under the Internal Revenue code of 1954 ("Code") for property acquired on or after June 23, 1984, and before January 1, 1988, is currently "more than six months," increased from "more than one year." Applicants submit that many exchanges between Exchange Trusts may be motivated by the desire to take profits as soon as the preferential long-term capital gains treatment under the Code is available; or conversely, to realize short-term capital losses to be applied to reduce taxable income—an objective which could be impeded by an Exchange Option holding period requirement that exceeds six months. Therefore, in order to permit the Exchange Option to be utilized without forfeiting any such tax benefits, Applicants proposed that the five-month holding period described above be instituted in place of the present eight-month holding period requirement in the prior order. Applicants assert that this modification would not materially reduce the protection against unfair pricing afforded by the holding period requirement, and that it would meet the objective of conforming such requirement to the terms of current federal income tax policy.

Under the Exchange Option, Certificateholders will be further permitted to tender cash to make up any difference between the value of the Units being submitted for exchange and the value of the Units being acquired up to the next highest number of whole Units. Applicants assert that permitting Certificateholders to round up to the next highest number of Units does not create any significant potential for abuse or unfairness in pricing.

In addition to the Exchange Option, Applicants request an order to permit the Exchange Trusts to offer, on terms substantially the same as those applicable to the Exchange Option (including the ability to round up to the next highest number of whole Units), Units in exchange for beneficial interests in any and all registered unit investment trusts that were initially offered to the public at a minimum sales charge of 3%, exclusive of customary sales charge discounts, such as volume discounts, employee discounts or exchange option discounts (the "Conversion Trusts"). Applicants submit that the minimum sales load condition applied to the Conversion Option diminishes any potential for unfairness or price discrimination and discourages Certificateholders from converting their units merely to pay a lower aggregate sales charge.

Applicants represent that unit investment trusts promoted by the Sponsor, but not included among the Exchange Trusts, may nonetheless be Conversion Trusts. All holders of Conversion Trusts will be eligible to participate in the Conversion Option regardless of whether they are or were the Sponsor's retail customers, and regardless of whether the Sponsor participated as an underwriter or dealer in the original public offering of any of the Conversion Trusts. While holders of Conversion Trusts interests will, in general, be eligible to acquire Units of an Exchange Trust based on the Reduced Sales Charge, Applicants represent that in the future, and as a condition to the granting of the order requested, the Sponsor will not charge more than five dollars per Unit more for exercise of the Conversion Option than the corresponding fee being charged for excercise of the Exchange Option. The Sponsor intends to hold the Exchange and Conversion Options open under most circumstances, but reserves the right to modify, suspend or terminate them subject to the terms and conditions of Rule 22d-1 under the Act.

Applicants submit that the Reduced Sales Charge is a reasonable and justifiable expense to be allocated to the professional assistance and operational expenses contemplated in connection with the Exchange and Conversion Options. Applicants also submit that it is not abusive or unfair to permit purchasers who originally acquire Units at a discounted sales charge to participate in the proposed offers of exchange. The Sponsor represents that it will not solicit Certificateholders with respect to the Exchange or Conversion Options with a view to churning Certificateholders' accounts and that the proposed transactions will be done for the benefit of Certificateholders and in accordance with their investment objectives.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later than February 14, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-2092 Filed 1-29-86; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments must be received within 15 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer Promptly.

COPIES: Copies of the survey, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538;

OMB Reviewer: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-3785;

Title: Survey of small federal contractors denied contracts awards on the basis of the Walsh-Healey Public Contracts Act;

Frequency: One time, non-recurring;

Description of Respondents: Small firms denied contracts on the basis of Walsh-Healy.

Annual Responses: 30;

Annual Burden Hours: 7.5;

Type of Request: New Collection.

Dated: January 22, 1986.

Richard Vizachero,
Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-2023 Filed 1-29-86; 8:45 am]
BILLING CODE 8025-01-M

Designation of Disaster Loan Area # 2220; New Jersey

The area affected is 613-647 Mattison Avenue, Asbury Park, Monmouth County, New Jersey. This constitutes a disaster area because of damage resulting from a fire which occurred on November 25, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on March 24, 1986, and for economic injury until the close of business on September 2, 1986, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410.

or other locally anounced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222605 for physical damage and for economic injury the number is 636300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 23, 1986.

Robert A. Turnbull,
Acting Administrator.

[FR Doc. 86-2026 Filed 1-29-86; 8:45 am]
BILLING CODE 8025-01-M

[License No. 02/02-0339]

Sprout Capital Corp.

Notice is hereby given that Sprout Capital Corporation, 140 Broadway, New York, New York 10005, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958 (the Act). Sprout Capital Corporation was licensed on May 2, 1978.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender to the license was accepted on January 7, 1986, and accordingly all rights and privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Program No. 59.011, Small Business Investment Companies).

Dated: January 21, 1986.

Robert G. Lineberry,
Deputy Associates Administrator for Investment.

[FR Doc. 86-2027 Filed 1-29-86; 8:45 am]
BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The President Advisory Committe on Small and Minority Business Ownership, located in Washington, DC, will meet on February 24, 1986, at 9:00 a.m. until 5:00 p.m., 200 North Spring Street, City Hall, City Council Chambers, Room 340, Los Angeles, California 90012, with Committee members, representatives from the large corporate sector, small and small minority entrepreneurs, local officials and associations to discuss availability of procurement, capitalization and marketing assistance from the private sector. The meeting will be open to all interested persons, however, space is limited.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Private Industry Programs, Small Business Administration, Room 602, 1441 L Street, NW., Washington, DC 20416, telephone (202) 653-6528.

Dated: January 22, 1986.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 86-2024 Filed 1-29-86; 8:45 am]
BILLING CODE 8025-01-M

Small Business Investment Co.; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in

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terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective February 1, 1986, and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 9.365% per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling that the Regulation imposes. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by Pub. L. 99–226, December 28, 1985, to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: January 23, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86–2025 Filed 1–29–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 86–010]

Aquatic Resources Trust Fund; Availability of Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: The Boat Safety Account of the Aquatic Resources Trust Fund; Notice of Availability of Fiscal Year 1986 Funds for financial assistance to national nonprofit public service organizations.

SUMMARY: Pursuant to Title 46 United States Code section 13103(c), the Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities.

Applicability

The Coast Guard has fiscal year 1986 funds available to provide financial assistance to national nonprofit public service organizations to help them conduct selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level. Innovative approaches are welcome.

Statement of Funds Availability

Title 26, United States Code, section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 per cent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $750,000 is available for the fiscal year ending September 30, 1986. This amount is subject to change based on impacts of the Balanced Budget and Emergency Deficit Control Act of 1985. Sixteen grant awards totaling $650,000 were made in fiscal year 1985; awards ranged from $10,000 to $66,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount. Applicants must be responsible, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope. It is anticipated that several awards will be made by the Chief, Office of Boating, Public, and Consumer Affairs, U.S. Coast Guard.

DATE: All proposals must be submitted by April 25, 1986.

Applications, Instructions and Forms

Specific information on organization eligibility, proposal requirements, award procedures, financial administration procedures and application forms (SF424) may be obtained from Commandant (G–BP/42), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593 or by telephoning Mr. Ladd Hakes at (202) 426–1062.

Federal Domestic Assistance Catalog

The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 24, 1986.

L.C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Booting, Public, and Consumer Affairs.

[FR Doc. 86–2093 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–14–M

[CGD 86–005]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on 27 February 1986 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m and end at 4:00 p.m. The agenda is expected to be as follows:

1. TSAC discussion and/or deliberation concerning the following past agenda items:
(a) Air Quality: Vapor Control/Recovery
(b) Revisions of Rules for Cargo Barges Carrying Dangerous Bulk Liquid Cargoes
(c) IMO Status Report
(d) Tankerman Requirements: Qualifications of Persons in Charge of Oil Transfer Operations
(e) Intervals for Drydocking and Tailshaft Inspections
(f) Licensing of Maritime Personnel
(g) Certification of Seamen
(h) Waste Reception Facilities
(i) Licensing of Pilots; Manning of Vessels—Pilots
(j) Inspection Intervals for Pressure Vessels and Cargo Tanks
(k) Vessel Documentation

2. Presentation of the following new items:
(a) Coastwise Loadline Certificates for Certain Barges
(b) Tug-Rider Program
(c) Maritime Occupational Health Statistics
(d) OSHA's Proposed Benzene Standard
(e) Any other matter properly brought before the committee.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than the day before the meeting.

For further information contact: Captain R. F. Ingraham, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593, (202) 426–1477.

Dated: January 27, 1986.

R. F. Ingraham,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 86–2094 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–14–M

[CGD 86–006]

Towing Safety Advisory Committee; Meeting of Subcommittees

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on 28 February 1986 in Room 3328–30 of the Department of Transportation Headquarters (NASSIF) Building, 400 7th Street, SW., Washington, D.C. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of the following topics:
(a) Air Quality: Vapor Control/Recovery
(b) Vapor Emissions from Vessels
(c) Tankerman Requirements
(d) Intervals for Drydocking and Tailshaft Examination on Inspected Vessels
(e) Inspection Intervals for Pressure Vessels and Cargo Tanks
(f) Licensing of Pilots; Manning of Vessels–Pilots
3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained form Captain R.F. Ingraham, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593 or by calling (202) 426–1477.

Dated January 27, 1986.

R.F. Ingraham,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 86–2095 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C App. I) notice is hereby given of a meeting of RTCA Special Committee 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on February 25–26, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Committee Meeting Held on November 7–8, 1985; (3) Review of Task Assignments from Previous Meeting; (4) Continue Drafting the Final Committee Report; (5) Assignment of Tasks, and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on January 21, 1986.

Karl F. Bierach,

Designated Officer.

[FR Doc. 86–2014 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Wasatch County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wasatch County, Utah.

FOR FURTHER INFORMATION CONTACT: William R. Gedris, Environmental Coordinator, Federal Highway Administration, 125 South State Street, P.O. Box 11563, Salt Lake City, Utah 84147, Telephone: (801) 524–6446, or R. James Naegle, Engineer for Location and Environmental Studies, Utah DOT, 4501 South 2700 West, Salt Lake City, Utah 84119, Telephone: (801) 965–4160.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Highway 189 in Wasatch County, Utah. The proposed improvement would involve the upgrading of the existing 15-mile roadway segment between Wildwood and Heber City. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands, improve safety, eliminate substandard geometrics and reduce maintenance costs.

Alternatives under consideration include: (1) Taking no action; (2) reconstruction along existing facility; (3) spot improvements to correct deficiencies of the existing roadway; (4) a new routing to the east of the existing roadway (along the east canyon wall); and, (5) a new routing to the west of the existing roadway (continuing along the west shore of the Deer Creek Reservoir). Incorporated into and studies with the various build alternatives will be design variations of roadway cross section and construction methods.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A formal scoping meeting with appropriate agencies will be held in early 1986. A series of public meetings will be held between February and December, 1986. In addition a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: January 24, 1986.

Daniel Dake,

Division Administrator, FHWA.

[FR Doc. 86–2015 Filed 1–29–86; 8:45 am]

BILLING CODE 4910–22–M

Urban Mass Transportation Administration

Intent to Prepare an Environmental Impact Statement; San Francisco, CA

Pursuant to the National Environmental Policy Act (42 U.S.C. 4321) and the Council on Environmental Quality's implementing regulations (40 CFR Part 1500), the Urban Mass Transportation Administration (UMTA) gives notice that an Environmental Impact Statement is being prepared for the proposed San Francisco Municipal Railway (MUNI) Metro Turnaround Project in downtown San Francisco, California.

The San Francisco Municipal Railway (Muni), an operational branch of the City and County of San Francisco Public Utilities Commission (PUC), proposes to construct a track extension and turnaround facility for the Market Street subway with UMTA federal capital grant assistance and local funding. The proposed action would provide a more

efficient and flexible track configuration with needed storage and maintenance facilities beyond the downtown terminus of the existing MUNI Metro subway. While the proposed action would also allow for a future southerly extension of the MUNI Metro System, such extension is not being considered as part of this proposed action.

A range of alternatives will be considered and evaluated in the EIS. The alternatives in the EIS include the no action alternative and the following alternatives: a stub end turnback facility and three loop turnaround facility concepts under lower Market Street, Justin Herman Plaza, the surface trolley bus turnaround, and Steuart Street.

The proposed action would be entirely underground, with the exception of street level vents and emergency access provision. It would be constructed by tunnelling and/or cut and cover methods. During construction, impacts could be expected in the general area of lower Market Street, Justin Herman Plaza and portions of Steuart Street. Such impact would include noise and vibration during construction, traffic and pedestrian disruption, interruption of public use of portions of Justin Herman Plaza, potential for movement of BART tunnels, potential for settling of some adjacent buildings, and possible disruption of buried archaeological resources in the area. After completion of construction, no significant long term adverse impacts are currently expected. Beneficial impacts resulting from improved transit service would occur.

To effect scoping, UMTA hereby solicits comments for consideration and possible incorporation in the Draft EIS. As indicated in the Council on Environmental Quality's guidelines, issues and impacts shall be discussed in proportion to their significance. A public meeting will be held during the scoping period to facilitate receipt of comments. The scoping meeting is Wednesday, March 5, 1986, 7:00 P.M. at Port Commission Hearing Room Suite 3100, Ferry Building, San Francisco, California. In order that comments may be considered in a timely fashion, correspondence should be received not later than 30 days after the scoping meeting. A more detailed description of the proposed project, alternatives and expected impacts will be available at the scoping meeting.

Comments and questions regarding this Environmental Impact Statement should be addressed to:

Mr. Everett M. Hintze, Project Manager, Utilities Engineering Bureau, San Francisco Public Utilities Commission, 693 Vermont Street, San Francisco, CA 94107, (415) 550-6530

or

Mr. Stuart Eurman, Urban Mass Transportation Administration, 211 Main Street, Suite 1160, San Francisco, CA 94105, (415) 974-7543

Copies of an information packet which gives more detailed information about the project, alternatives and expected impacts are available at the above address.

Dated: January 22, 1986.

Brigid Hynes-Cherin,

Regional Administrator, UMTA Region IX.

[FR Doc. 86-2101 Filed 1-29-86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center; National Center for State and Local Law Enforcement Training Advisory Committee; Meeting

AGENCY: Advisory Committee to the National Center for State and Local Law Enforcement Training, Treasury.

ACTION: Notice of meeting.

SUMMARY: The agenda of this meeting includes opening remarks by the Director and Deputy Director of the Federal Law Enforcement Training Center and Committee Co-Chairs; summary of present and past training activities; and old and new business.

DATE: February 19, 1986.

ADDRESS: Auditorium, Building 18, Federal Law Enforcement Training Center, Pinal Air Park, Marana, Arizona 85653.

FOR FURTHER INFORMATION CONTACT: R. J. Miller, Assistant Director, Office of State and Local Training, Federal Law Enforcement Training Center, Glynco, GA 31524 (912-267-2345).

Signed: January 15, 1986.

Charles F. Rinkevich,

Director.

[FR Doc. 86-1239 Filed 1-29-86; 8:45 am]

BILLING CODE 4810-32-M

UNITED STATES INFORMATION AGENCY

Grants; Fulbright Teacher Exchange Program

The United States Information Agency seeks to secure the services of two institutions of higher education to coordinate and implement orientation/workshop programs in the United States for the Fulbright Teacher Exchange Program. The Fulbright teacher Exchange Program provides opportunities for U.S. teachers to exchange positions with foreign counterpart teachers for an academic year.

Universities or colleges in metropolitan Washington, DC, with schools or colleges of education and located within reasonable proximity of Washington, DC's international gateway airports are invited to submit project proposals for a grant. Universities and colleges in California with schools or colleges of education and located in San Francisco or Los Angeles or within reasonable proximity of one of those cities' international gateway airports are invited to submit project proposals for a grant. We anticipate the grant period running from May, 1986, through July, 1987. Primary activity periods will be from May, 1986, through October, 1986, and March 1987, through May, 1987.

For an application, please contact Mr. David N. Levin no later than February 14, 1986, at the following address: Teacher Exchange Branch (E/ASX), Office of Academic Programs, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-2555.

Dated: January 27, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-2066 Filed 1-29-86; 8:45 am]

BILLING CODE 8230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held February 5, 1986, in Room 600, 301 4th Street, SW., Washington, DC at 10:45 a.m.

The Commission will meet with Mr. Stanley Silverman, Director, Office of the Comptroller, USIA, to discuss the impact of the Gramm-Rudman legislation on USIA's budget. The Commission will also meet with Mr. Charles Horner, Associate Director for Programs, Mr. Michael Schneider, Deputy Associate Director for Programs, and Mr. John Kordek, Director, Office of European Affairs, to discuss U.S. public diplomacy programs relating to the economic and U.S./Soviet summit meetings in 1986.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: January 27, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86-2067 Filed 1-29-86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Rescheduled Meeting

The meeting of the advisory Committee on Former Prisoners of War originally scheduled for January 21 and 22, 1986 (51 FR 810, January 8, 1986) has been rescheduled for March 19 and 20, 1986. The sessions will be held in the Omar Bradley Conference Room, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC. All sessions will be open to the public and will be held from 9 a.m. to 4 p.m.

Dated: January 22, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-2031 Filed 1-29-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 20
Thursday, January 30, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:52 p.m. on Friday, January 24, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Utah FirstBank, Salt Lake City, Utah, which was closed by the Commissioner of Financial Institutions for the State of Utah on Friday, January 24, 1986; (2) accept the bid for the transaction submitted by Citibank (Utah), Salt Lake City, Utah, a newly-chartered State nonmember bank; (3) approve the applications of Citibank (Utah), Salt Lake City, Utah, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in Utah FirstBank, Salt Lake City, Utah, for consent to establish the sole branch of Utah FirstBank as a branch of Citibank (Utah), and for consent to interchange and redesignate the main office location at 3135 South 1300 East, Salt Lake City, Utah, as a branch and the branch location at Two Main Street, Salt Lake City, Utah, as the main office; and (4) provide such financial assistance, prusuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Pioneer State Bank, Salt Lake City, Utah, which was closed by the Commissioner of Financial Institutions for the State of Utah on Friday, January 24, 1986; (2) accept the bid for the transaction submitted by Zions First National Bank, Salt Lake City, Utah; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 28, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-2169 Filed 1-28-86; 2:53 pm]

BILLING CODE 6714-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 4, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-2156 Filed 1-28-86; 1:23 pm]

BILLING CODE 6715-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m. February 5, 1986.

PLACE: Hearing Room One 1100 L Street, NW., Washington, DC 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Discussion of the Jurisdictional Aspects of Effective Agreement No. 231-010846: Marine Terminal Conference Agreement Between Maryland Port Administration and Baltimore Marine Terminal Association.
2. Proposed Rulemaking to Revise Service Contract Regulations.

CONTRACT PERSON FOR MORE INFORMATION: John Robert Ewers, Secretary (202) 523-5725.

John Robert Ewers,

Secretary.

[FR Doc. 86-2170 Filed 1-28-86; 3:02 p.m.]

BILLING CODE 6730-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 23, 1986.

TIME AND DATE: 9:30 a.m., Thursday, February 20, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Local Union 2274, UMWA v. Clinchfield Coal Co., Docket No. VA 83-55-C;
2. Local Union 1889, UMWA v. Westmoreland Coal Company, Docket No. WEVA 81-256-C;
3. Local Union 1609, UMWA v. Greenwich Collieries, Docket No. PENN 84-158-C. (Issues in these cases involve the interpretation and application of 30 U.S.C. 821, the compensation provisions of the Mine Act.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)). A majority of Commissioners voted to close this portion of the meeting.

MATTERS TO BE CONSIDERED: The Commissioners will consider and act upon the above listed cases.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-2109 Filed 1-28-86; 10:27 am]

BILLING CODE 6735-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 23, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, February 12, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. U.S. Steel Mining Co., Inc., Docket No. PENN 84-89. (Issues include whether the administrative law judge properly concluded that the operator violated its roof control plant and that it was negligent in connection with another violation of its roof control plan.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)). A majority of Commissioners voted to close this portion of the meeting.

MATTERS TO BE CONSIDERED: The Commissioners will consider the following:

1. U.S. Steel Mining Co., Inc., Docket No. PENN 84-89.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR. Doc. 86-2107 Filed 1-28-86; 10:25 am]

BILLING CODE 6735-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 23, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, February 19, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Cotter Corporation, Docket No. WEST 84-26-M. (Issues include whether the administrative law judge properly concluded that the operator violated 30 CFR 57.18-25 (1984), a mandatory safety standard dealing with miners who are working alone.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)). A majority of Commissioners voted to close this portion of the meeting.

MATTERS TO BE CONSIDERED: The Commissioners will consider the following:

1. Cotter Corporation, Docket No. WEST 84-26-M.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202-653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-2108 Filed 1-28-86; 10:26 am]

BILLING CODE 6735-01-M

7

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

INSTITUTE OF MUSEUM SERVICES

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATE: 10:00 a.m. February 28, 1986.

STATUS: Open and Closed.

ADDRESS: Members Room, Administration Building, Atlanta Botannical Garden, 1345 Piedmont Road, Atlanta, GA 30357.

FOR FURTHER INFORMATION CONTACT: Mr. Robin N. Rapp, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board.

The meeting of February 28, 1986 will be open to the public from 10:00 a.m. through discussion of agenda item number IV. The meeting will be closed to the public for a review of agenda item number V pursuant to paragraphs 6, 9 (B), and other relevant provisions of subsection (c) of Section 552 of Title 5, United States Code because the Board will consider information that may disclose: Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy; and information the disclosure of which might significantly impede impementation of proposed agency actions related to the grant award process.

National Museum Services Board

February 28, 1986 Meeting Agenda

I. Approval of Minutes of November 8, 1985 NMSB Meeting
II. Director's Report
III. Program Report
  A. GOS
  B. CP
  C. MAP
IV. Other Business
V. Closed Session

Dated: January 28, 1986.

Monika Edwards Harrison,

Acting Director.

[FR Doc. 86-2149 Filed 1-28-86; 12:44 pm]

BILLING CODE 7036-01-M

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federal register

Thursday
January 30, 1986

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 3160
Onshore Oil and Gas Operations; Site Security and Noncompliance Provisions; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

Onshore Oil and Gas Operations; Amendment Revising the Regulations Implementing the Federal Oil and Gas Royalty Management Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would revise the existing regulations implementing the Federal Oil and Gas Royalty Management Act of 1982 that were added to the Code of Federal Regulations by final rulemakings that were published in the Federal Register on July 11, 1983 (48 FR 31789) and September 21, 1984 (49 FR 37356). The proposed rulemaking addresses provisions for site security; noncompliance with the provisions of the Act, any mineral leasing law, any regulation, order or notice issued thereunder, or the terms of any lease or permit issued thereunder; the assessments and penalties for such noncompliance or nonabatement; and the procedures for review or relief. The proposed rulemaking also would make nonsubstantive technical corrections such as the updating of form numbers and correction of errors.

DATE: Comments should be submitted by March 31, 1986.

Comments received or postmarked after this date may not be considered in the decisionmaking process on issuance of a final rulemaking.

In addition, the Bureau of Land Management will conduct public hearings on this proposed rulemaking at the times and addresses set out in the address section of this preamble. Transcripts will be made of the public hearings and will be considered in the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be submitted to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, N.W., Washington, D.C. 20240.

The location and dates of the public hearings are as follows:

Washington D.C., Department of the Interior Auditorium, 1800 C Street, N.W., Washington, D.C. 20240, March 12, 1986, 9:30 a.m.

Denver, Colorado, Executive Towers, 1405 Curtis, Denver, Colorado 80202, (303) 571–0300, March 18, 1986, 9:00 a.m.

Albuquerque, New Mexico, Albuquerque Hilton, 1901 University Blvd., N.E., Albuquerque, New Mexico 87102, (505) 884–2500, March 19, 1986, 9:30 a.m.

Bakersfield, California, Hilton Inn, Sycamore Room, Sutter Street Bar & Grill, 3535 Rosedale Highway, Bakersfield, California 93308, (805) 327–0681, March 20, 1986, 9:00 a.m.

Casper, Wyoming, Holiday Inn, 300 West F Street, Casper, Wyoming 82601, (307) 235–2531, March 19, 1986, 9:00 a.m.

Billings, Montana, Northern Hotel, Broadway & First Avenue North, Billings, Montana 59101, (406) 245–5121 March 20, 1986, 1:00 p.m.

Salt Lake City, Utah, BLM State Office, 4th Floor Conference Room, 342 South State Street, Salt Lake City, Utah 84111, (801) 524–3000, March 19, 1986, 10:00 a.m.

FOR FURTHER INFORMATION CONTACT:

Frank Salwerowicz, (303) 294–7136
or
Stephen Spector, (202) 653–2147
or
Robert C. Bruce, (202) 343–8735

SUPPLEMENTARY INFORMATION: This proposed rulemaking would revise the regulations in 43 CFR Part 3160 which incorporate the operational requirements of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) and also would revise the regulations that implement provisions of the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.). The implementation of these regulations has been criticized as being unnecessarily complex, exceeding the Congressional intent, and being inadequate or vague in dealing with several of the requirements of the Act.

On January 12, 1983, the Federal Oil and Gas Royalty Management Act was signed into law. The purposes of the Act are to assure proper and timely revenue accountability, address Outer Continental Shelf matters and lease reinstatement, and to prescribe onshore field operations requirements for inspections and enforcement actions, to establish the basis for cooperation with States and Indian Tribes, and to establish duties of lessees, operators and other persons involved in production, storage, measurement, and transportation or sale of oil and gas.

A final rulemaking implementing the site security aspects of the Federal Oil and Gas Royalty Management Act was published in the Federal Register on July 11, 1983 (48 FR 31978), with an effective date of September 9, 1983. A final rulemaking implementing the penalty and other provisions of the Act relating to onshore operations was published in the Federal Register on September 21, 1984 (49 FR 37356), with an effective date of October 22, 1984. On January 4, 1985, a cap on assessments was instituted by a policy directive from the Director, Bureau of Land Management.

As a result of the numerous concerns expressed by both Bureau of Land Management officials and representatives of the oil and gas industry, the Bureau held a number of public meetings during January and February 1985, to allow concerned members of the public to identify the specific issues which they felt needed review. Approximately 145 individuals presented comments at the eight public meetings held on impact of the Federal Oil and Gas Royalty Management Act regulations. The major concerns expressed at these public meetings were that: the regulations exceeded Congressional intent by establishing immediate assessments for certain acts of noncompliance, particularly for minor violations; the amount of assessments under 43 CFR 3163.3 are not related to loss or damages; the Act was designed to assure correction of serious violations, therefore, penalties are incorrectly applied to minor violations; the terms "knowingly or willfully" and "new or resumed production" are vague and needed clarification; requirements for seals are too complex; enforcement of the regulations was inflexible and provided little discretion for Bureau officials to consider appropriate mitigating factors; penalty point systems are unworkable and too complex; holding lessees responsible for operators' noncompliance has an adverse effect on capital; penalties should not continue while a case is under technical and procedural review or appeal; any list of potential violations should be developed in accordance with the Administrative Procedure Act; compliance on minor items that do not affect royalty are not cost effective; and some Bureau inspectors lack technical background and training.

As a result of the comments received at these public meetings, the Bureau of Land Management established certain interim procedures and published a Notice of Intent to Propose Rulemaking in the Federal Register on March 22, 1985 (50 FR 11517). The Notice requested suggestions from interested parties regarding the extent to which the regulations needed to define more clearly operational requirements of the Federal Oil and Gas Royalty Management Act and other oil and gas leasing laws, and regarding the development of a list of potential violations. A total of 68 comments were received, which included written summaries of meetings conducted in accordance with the invitation contained in the Notice of Intent to Propose Rulemaking.

In addition to requesting public input through the Notice of Intent to Propose Rulemaking, the Bureau of Land Management also has taken interim actions to:

(1) suspend the use of the assessment for noncompliance provisions of 43 CFR 3163(c) through (j); (2) suspend the application of administrative penalties under 43 CFR 3163.4–1(a), except for failure to abate major violations that are required to be corrected in less than 20 days and which have the immediate potential to affect public health and safety, cause significant environmental damage, affect production or royalty accountability, or those where drilling or other operations are conducted without prior approval; (3) delay processing of assessments made for noncompliances and nonabatement for the period of October 22, 1984 to January 4, 1985, pending a rule from the Comptroller General regarding the Bureau's authority to give retroactive application to the new "cap" policy on all prior Bureau assessments; (4) clarify the meaning of the term "knowingly or willfully"; (5) clarify the requirement for fifth business day notification of new or resumed production pursuant to 43 CFR 3163.4–1[b]; and (6) clarify circumstances which can be considered under the technical and procedural review provisions of 43 CFR 3165.3.

Of the 68 comments received in response to the Notice of Intent to Proposed Rulemaking, 39 were from individual operators and lessees supporting the specific recommendations provided jointly by the Rocky Mountain Oil and Gas Association, the Independent Petroleum Association of Mountain States, the Independent Petroleum Association of America and the Independent Petroleum Association of New Mexico. The joint industry trade associations' workgroup reviewed and analyzed the existing regulations and provided specific comments. In addition, several other comments provided detailed proposals and rationale for amending the existing regulations.

Several comments suggested changes in the provisions in the existing regulations dealing with Applications for Permits to Drill, Subsequent Well Operations and other existing regulations that do not deal with issues related to the Federal Oil and Gas Royalty Management Act. These issues are not included in this proposed rulemaking and are being referred to appropiate Bureau of Land Managment officials to consider whether they should be made part of a proposed rulemaking at a later date.

Comments

Definitions—§ 3160.0–5

"New or Resumed Production"

Several comments suggested that the regulations more clearly define when the fifth business day notification is required (i.e., when a well begins production or resumes production). This suggestion has been adopted in the proposed rulemaking. With minor modifications, the definition of such New or Resumed Production that appeared in the interim guidelines has been included in this section of the proposed rulemaking.

"Gravity of Violations"

Several comments expressed concern that the basis for classifying violations as minor, moderate or major was not clear, and requested further definition of those terms. To simplify the enforcement process, the proposed rulemaking drops the "moderate" classification of violation and defines the terms "major violation" and "minor violation".

"Knowingly or Willfully"

At least 18 comments expressed concern that the phrase "knowingly or willfully," as used in the penalty provisions of section 109 (c) and (d) of the Federal Oil and Gas Royalty Management Act, was too vague and should be defined to include only intentional acts. In response to these comments, the proposed rulemaking includes a definition of the term "knowingly or willfully" which would make it clear that this term does not encompass the performance of a prohibited act or the non-performance of a required duty whenever such a violation results from mere inadvertence or an honest mistake. However, the term "knowingly or willfully" does not require a specific intent to violate the law or criminal purpose. A voluntary or conscious performance of the act which is prohibited, or a failure to act in the case of a required duty, with disregard of or indifference as to whether the behavior is lawful, or as demonstrated by repeated behavior, is sufficient to constitute a violation "knowingly or willfully" committed.

Lessees and operators of Federal oil and gas leases are charged with the responsibility of being knowledgeable of the rules which regulate their operations. The Bureau of Land Management has determined for some requirements, such as the fifth business day notice of new or resumed production required by section 102(b)(3) of the Federal Oil and Gas Royalty Management Act, that it may be appropriate to give further, specific notice to lessees and operators. In cases where such actual notice is given, any subsequent or continued violations in that respect necessarily will be construed as having been "knowingly or willfully" committed.

Jurisdiction—Section 3161.1

The preamble to the final rulemaking published on September 21, 1984, stated that the Bureau of Land Management had limited authority over non-Federal and non-Indian sites within federally supervised unit and communitization agreements. It did not specify which regulations were applicable to such operations. This proposed rulemaking clarifies that, unless additional responsibilities are specified in the formal agreement, regulations related to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells or facilities on State or privately-held mineral lands which affect Federal or Indian interests through unitization, communitization, or similar agreements.

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Site Security, Seals and Signs—Sections 3162.6 and 3162.7

Numerous comments were received on site security, seals and signs, with more than 24 comments being received on site security issues, 16 comments were received on seals and 16 comments were received on signs.

Several comments suggested that the Bureau of Land Management revise the regulations so that they more closely follow the intent of the law as to site security and seals. Several comments noted that "the regulations should be focused on site security and on preventing theft." Other comments indicated that the seals and records mandated by § 3162.7–4(b) of the existing regulations, provide accountability, but do not prevent theft. Others comments stated that "seals should be required only on high visibility points where there is a potential for large volume theft. Seals should only be required on storage tanks, not on treaters, separators, headers, equalizer lines etc." Numerous comments stated that the use of seals required too much paperwork and expense, did not prevent theft and that there was a lack of uniform enforcement.

The Bureau of Land Management has reviewed all of the comments in the context of the intent and actual requirements of the Federal Oil and Gas Royalty Management Act. After a review with Bureau field officials and visits to oil fields, it was determined that the regulations relating to site security and seals should be revised to follow more closely the intent and language of the Act, to emphasize production accountability, and to provide local flexibility to Bureau managers to address the varying oil field characteristics and differences. The proposed rulemaking revises the requirement for seals so that they would be applicable to the storage and sales facilities only and would clarify the existing regulations to provide uniformity in use and enforcement. While the use of seals was never intended to prevent theft, their use is considered to provide accountability and to serve as a deterrent, as well as a detection mechanism of theft. The proposed rulemaking would not require the sealing of thief hatches. However, the public is invited to provide its comments and recommendations about whether the minimum standards should include protection of thief hatches, or other possible access points.

Conduct of Operations—Section 3162.3

The provisions covering the serving of orders, instructions, or notices that appear in § 3162.3(b) of the existing regulations would be removed from that section by the proposed rulemaking and combined into a single § 3163.5(a) in the proposed rulemaking.

Well Identification—Section 3162.6

Several comments expressed concerns over well identification signs. One comment expressed the view that many citations relating to well signs were for defects which are "cosmetic" in nature. Another comment suggested that a better approach to the well sign issue would be to have only one key sign on each lease site giving full identification with individual wells identified only with their unique number. The authorized officer then could assess individual situations and give approval to modify sign requirements based on individual unique site conditions. Since it is the intent of these regulations that transporters, purchasers, government inspectors and other concerned parties be able to properly identify the well site or facility for operational purposes, the proposed rulemaking has adopted these suggestions. Identification of facilities would be deleted from § 3162.7–4(b)(6) of the existing regulations and added to this section by the proposed rulemaking so that all such requirements would be in one place in the regulation.

Site Security—Section 3162.7–4

This section would be revised by the proposed rulemaking to clarify the circumstances under which variances could be granted. Generally, it is expected that the minimum seal standards would apply to operations nationwide, but that variances may be granted to all or part of the seal requirements if an operator requests a variance in writing and presents an acceptable program and plan to minimize the possibility of oil theft, to ensure production and sales accountability, or to ensure internal control procedures to greatly limit outside access. It is intended that the variance provision, as it relates to site security and seal standards could allow for a situation where an operator would submit a program for fenced, 24-hour guarded facilities with internal company control procedures identified to meet the goals of the regulations in lieu of the minimum seal and other security standards. Such an alternative to the minimum standards should meet, or exceed, the objectives of the minimum standards with emphasis on preventing theft by external and internal company persons, ensuring proper accountability for all production and sales, and maintaining limited access to sites. The authorized officer would approve or disapprove such a proposal pursuant to § 3162.7–4 (c) and (d) of the proposed rulemaking.

Several comments suggested that 30 days after a well or facility is either completed or comes under Federal jurisdiction was not sufficient time to provide facility diagrams and to prepare site security plans. This suggestion was adopted and the proposed rulemaking would change the requirement for such diagrams and plans to 60 days. However, site security and measurement requirements would remain effective from the start of production.

Also, several comments suggested that site security diagram and plan requirements should not apply to dry gas wells. The Bureau of Land Management accepts this comment and will continue the existing practice in most States that only those gas wells that have storage facilities for condensate will require compliance with the minimum site security requirements. The definition of the term "oil" in § 3000.0–5(b) includes all non-gaseous hydrocarbons.

Assessments—Section 3163.3

Almost every comment raised objections to the assessments under this section and their relationship to the penalties under the various Acts for the leasing of minerals as well as the Federal Oil and Gas Royalty Management Act. The assessments for specific acts of noncompliance were not changed by the final rulemaking of September 21, 1984, except that assessments on a daily basis were reduced to one-time charges. These assessments were a direct continuation of liquidated damages, under former 30 CFR § 221.52, which have been part of the oil and gas lease operating regulations since at least 1942. It should be noted that the assessment of damages for a violation of operating rules or orders under the Mineral Leasing Act of 1920 has been upheld by the United States Court of Appeals for the Ninth Circuit (*Forbes* vs. *U.S.* , 125 F. 2d 404 (C.A. 9, 1942)). In that case, the assessment was upheld pursuant to section 189 of the Mineral Leasing Act which authorizes the Secretary of the Interior to prescribe "necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act." The primary change occurred when these assessments were

administratively made automatic, without an opportunity for prior corrective action. This policy change occurred at the same time the new penalty system became effective, and the result was to magnify the effect of each. While comments expressed almost unanimous objection to the imposition of automatic assessments for minor violations, many saw the continuing need for immediate assessments as an effective regulatory tool for the more serious major violations. The comments of the joint industry workgroup suggested significantly increased amounts for certain major violations.

In response to these comments, the proposed rulemaking would retain automatic assessments on a daily basis for certain specific major violations and would cap them at specified amounts. However, the suggestion to distinguish between automatic assessment amounts for unauthorized drilling based on whether or not a plan has been filed has not been adopted in the proposed rulemaking. The controlling issue is drilling without approval and no distinction should be made based on whether or not a plan has been filed. In addition to assessments previously discussed, the Bureau of Land Management's predecessors (the Minerals Management Service during 1982 and the Conservation Division of the U.S. Geological Survey prior to January 1982) imposed penalties under the same authority discussed above and under 30 U.S.C. 188(a), which provides that "the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof." Since oil and gas leases specifically incorporate the operating regulations by reference, and a more effective enforcement provision was deemed necessary, that provision was promulgated as 30 CFR 221.53 in the regulations finalized October 27, 1982 (47 FR 47758). It should be noted that this provision was issued as a proposed rulemaking on November 17, 1981 (46 FR 56564).

Upon the enactment of the Federal Oil and Gas Royalty Management Act, these penalties were continued in the regulations at 43 CFR 3163.4–1(a) and the amount modified to be consistent with the new penalties under the Act. The retention of the penalties under the Mineral Leasing Act was necessary for the 20 day period preceding the ability to impose penalties under the Federal Oil and Gas Royalty Management Act to provide a method of dealing with those major violations which, if not sooner corrected, could subject either the environment, public health and safety or Federal royalty interest to unacceptable levels of loss or damage. It was felt that the retention of the Mineral Leasing Act assessments and penalties was authorized by section 304(a) of the Federal Oil and Gas Royalty Management Act which states that the penalties provided therein are "supplemental to, and not in derogation of, any penalties or authorities contained in any other provisions of law."

It should be noted that the imposition of assessments and penalties under this section are not limited to the Mineral Leasing Act and/or statutes which adopt that Act's procedures by reference. These penalties apply to operations conducted on any onshore oil and gas lease administered by the Bureau of Land Management. For this reason, the proposed rulemaking deletes any reference to the "Mineral Leasing Act." The public should note that the proposed rulemaking supersedes the penalty provisions relating to Indian lands found in 25 CFR 211.22 to the extent that they apply to oil and gas lease operations (See 43 CFR 3165.2). The Department of the Interior does not intend to have this proposed rulemaking weaken in any way its enforcement responsibility on Indian leases. However, maintaining a uniform assessment system will promote the effectiveness and the efficiency of enforcement activity everywhere and will avoid confusion among the operators as to which regulations govern their activity.

While some comments questioned the legal basis for penalties under the various Acts authorizing the leasing of minerals in light of the specific grant of authority in the Federal Oil and Gas Royalty Management Act, the joint industry association workgroup comments, as well as a significant number of those commenting and speaking at the public meetings who addressed this issue, proposed retaining these penalties for those limited situations where enforcement is needed in less than 20 days. The proposed rulemaking retains the "penalties" imposed by the various Acts authorizing mineral leasing for nonabatement of major violations which have the immediate potential to affect public health and safety, cause significant environmental damage, or to affect royalty income, or for conducting operations without prior approval, and for continuous disregard of orders. This proposed rulemaking would combine this provision and the provisions for assessments into one section.

The Bureau of Land Management's responsibility for verifying production from Federal and Indian oil and gas leases requires that information contained on the Monthly Report of Operations (Form 3160–6) be timely and accurately submitted as required by § 3162.4–3 of the existing regulations. Although no specific provision is included in this proposed rulemaking, the public is specifically requested to comment on whether the failure or repeated failure to file Form 3160–6 should result in automatic assessments under § 3163.3 and, if so, what assessment amount would be appropriate.

As intended by § 3165.2 of the existing regulations, the assessment and penalty provisions of these regulations (both in §§ 3163.3 and 3163.4) will be used by authorized officers of the Bureau of Land Management for noncompliance and nonabatement of violations on Federal and Indian leases. Any penalty provisions contained in Title 25 of the Code of Federal Regulations will be used only by the superintendent or his/her representative with regard to noncompliance with any lease terms or regulations in Title 25.

Penalties—Section 3163.4

There were numerous comments urging that the operator be given warning or notice before a penalty is imposed. For violations subject to penalties pursuant to §§ 3163.4–1(a) and 3163.4–1(b)(1) and (2) of the existing regulations, warning and notice are provided, since the penalties would be imposed only if the operator failed to abate within the time allowed.

In the proposed rulemaking, the same type of notice and time for abatement would be included for similar types of violations. However, in §§ 3163.4–1(b)(4) through (6) of the existing regulations, penalties are implemented immediately upon discovery. These violations are specified in the Federal Oil and Gas Royalty Management Act and no grace period is suggested or required. They are not normal "operating" violations, but include transporting oil without appropriate documentation and knowingly or willfully handling or selling stolen oil. The proposed rulemaking would contain similar language.

A few comments stated that the current penalties do not allow for timely effort to comply. The existing regulations require that an abatement period by indicated on the notice of the violation to the operator/lessee. It is implicit that the abatement period be reasonable. This understanding is

reinforced by the requirement in both the existing regulations and the proposed rulemaking that the reasonableness of the abatement period is a factor to be considered on review.

Numerous comments alleged that the "penalty formula," and related tables were too complex, without statutory foundation, arbitrary and violated the Federal Oil and Gas Royalty Management Act. The proposed rulemaking does not include a "penalty formula" system but instead, would provide that the initial proposed penalty shall be at the appropriate maximum rate contained in the regulation, subject to adjustment by the State Director in the administrative review process.

A few comments suggested that penalties should apply only to violations involving loss, or potential loss, of royalty. Section 109(a)(1) of the Federal Oil and Gas Royalty Management Act defines coverage for penalties to include "* * * this Act or any mineral leasing law, any rule or regulation thereunder, or the terms of any lease or permit issued thereunder * * *" Accordingly, the proposed rulemaking would continue the current broader coverage.

Two comments pointed out that penalties must be significant, in order to discourage theft and noncompliance. On the other hand, two comments suggested that penalties should not exceed the potential loss to the United States. Penalties, by definition, are punitive and are not solely to recover cost or damage. The legislative history of the Federal Oil and Gas Royalty Management Act supports this view, as do the specific penalty provisions of the Act. The penalties provided in this proposed rulemaking are those suggested by the Act and are supported by numerous comments, including the joint industry association workgroup. Accordingly, the proposed rulemaking uses the same penalty ranges included in the Act.

The provision of § 3163.4–1(d) of the existing regulations concerning the establishment of a detailed list of potential violations would be deleted by the proposed rulemaking. The inclusion of items in a listing of common violations does not, in and of itself, constitute a sufficient reason for those listed items to be considered violations in every instance. The list used by the Bureau of Land Management to provide guidance to its field personnel, as well as to operators, has resulted in a great deal of misunderstanding as to its application. It did not receive public review or comment prior to its issuance. Accordingly, the Bureau is withdrawing the list and intends to provide necessary guidance and standards through development of Onshore Oil and Gas Orders.

Orders will be developed for all appropriate phases of drilling and production and will contain the requirements and standards applicable to such operations on Federal and Indian lands. The Orders will also describe enforcement actions to be taken if violations occur, as well as provisions for variances or adoption of local standards. Initial Orders likely will deal with site security, oil and gas measurement, drilling operations, water disposal, and operations in a hydrogen sulfide enviroment. Comments are specifically requested on which phases of industry's operations should have priority in development of these Orders, and on how current industry standards (API, AGA, etc.) should be incorporated. As described in § 3164.1 of the existing regulations, all Orders will be published for public comment prior to being finalized. After development of appropriate Orders, all requirements and standards will be compiled into a document which would be available to all interested parties. During the interim period, existing manuals, instruction memoranda, and other documents will continue to be used to provide guidance to field mangers.

Notice, Review, and Appeal—Section 3165.3

Several comments suggested that more flexibility be given to the local level for consideration of extenuating circumstances in the review process. These suggestions have been adopted by the proposed rulemaking. Section 109(e) of the Federal Oil and Gas Royalty Management Act provides that no penalty shall be assessed until the involved person has been given an opportunity for a hearing on the record. This has been interpreted as a hearing before an Administrative Law Judge. However, in an effort to provide for a review by Bureau of Land Management officials, and thereby reduce the need for subsequent administrative reviews before final resolution, the proposed rulemaking provides that any aggrieved party contesting a notice of violation, assessment or penalty shall first request a review by the State Director. Thereafter, any party aggrieved by the decision of the State Director may, in the case of: (1) a notice of violation or assessment, appeal that decision to the Interior Board of Land Appeals; or (2) a penalty, may request a hearing on the record before an Administrative Law Judge or appeal directly to the Interior Board of Land Appeals. However, since section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review of a proposed penalty only where a person has requested a hearing on the record, an election to appeal a decision of the State Director on a penalty directly to the Interior Board of Land Appeals could preclude further appeal to the District Court. The public is specifically requested to comment on this issue.

The factors to be considered in this administrative review have been expanded by the proposed rulemaking to include any relevant facts. One comment proposed that the operator be given the option of an immediate appeal to the inspector to clarify issues. This was not considered appropriate because the inspector's function is to identify the violation and the operator is given the opportunity for both a review and an appeal to other higher levels. However, operators are encouraged to discuss issues and conflicts informally with local Bureau of Land Management officials prior to initiating the formal review, hearing or appeal process.

Several comments were received proposing that reasonable abatement times be given. The existing regulations already provide for this. Some comments proposed that the instruction or order appealed and the penalty for nonabatement be automatically suspended during the review or appeal period. This proposal has not been adopted in the proposed rulemaking since the current regulations provide the reviewing official with the option to suspend on a case-by-case basis, and because there may be some cases where automatic suspension may not be appropriate.

Technical Corrections

In several places, the proposed rulemaking makes "technical" corrections, such as changing from numbers from Geological Survey numbers to Bureau of Land Management numbers or changing the term "supervisor" to "authorized officer."

In past revisions of the regulations in 43 CFR Part 3160, the requirements for prior approval of commingling of production and for off-lease storage and measurement of production were inadvertently omitted. These requirements would be reinstated by this proposed rulemaking, since both proper production and royalty accounting could be affected.

One comment requested that the proposed rulemaking allow operators of wells on State lands or on privately—owned minerals which are committed to a Federal unit or communitization agreement a 60-day grace period following such commitment to come into

compliance with applicable Federal regulations. This request has not been adopted by the proposed rulemaking because of the Federal responsibility for verification, well and facility identifications and site security. The Bureau of Land Management has immediate responsibility to ensure site security, measurement and production accountability for all wells producing from, or allocating production to, Federal and/or Indian leases. The Bureau cannot allow the production from such wells to be potentially mishandled, mismeasured, or to be vulnerable to undetected theft for 60 days. The existing regulations already provide a timeframe for the completion of site security plans and diagrams and this proposed rulemaking would extend that period to 60 days, but the minimum standards for actual compliance at the site must be met. However, the public is invited to comment on the issue because it is recognized that there is some additional burden on the operators of such wells at the time they are formally committed to federally approved unit or communitization agreements.

Encouraging Operator Self Compliance

The Bureau of Land Management encourages operators to take initiatives to identify and report violations of the regulations and to take prompt and effective corrective action. Encouragement of self compliance by operators appears to have been the intent of parts of the Federal Oil and Gas Royalty Management Act and the Linowes Report. Comments are solicited on benefits that might be given to operators who initiate reporting of violations and demonstrate an active interest in self compliance.

Although not currently a part of the proposed rulemaking, the following examples illustrate possible methods of encouraging self compliance:

(a) The authorized officer will not use such reported violations in making operator compliance profiles and history for the purpose of determining frequency of inspections for leases;

(b) The authorized officer will utilize this demonstration of cooperation by the operator as a positive factor in mitigating the amount of any proposed penalty if the reported violation, assessment, or penalty is later challenged in any appeal proceeding; and

(c) The authorized officer will not count a self initiated report of a major violation toward the requirement in section 3163.3(a)(4) of the proposed rulemaking providing for immediate assessment for a third or subsequent violation, except that under no circumstance shall more than two such exceptions be allowed in any 24-month period. Under this section of the proposed rulemaking, no immediate assessment would be imposed until the fifth major violation (two reported by the operator) and each subsequent occurrence of any major violation per lease, per operator have occurred.

Significant Differences Between Proposed and Previous Rulemakings

The significant changes contained in this proposed rulemaking relate to site security requirements (§ 3162.7–4), assessments under the various Acts authorizing the leasing of minerals (§ 3163.3), penalties under the Federal Oil and Gas Royalty Management Act (§ 3163.4) and technical procedural review procedures (§ 3165.3).

Site security requirements have been simplified and clarified by the proposed rulemaking to require that all lines entering or leaving tanks shall be effectively sealed during the production or sales phases, as appropriate. Those components of Automatic Custody Transfer (ACT) metering systems that affect volume or quality determinations also would be required to be sealed. Provisions for obtaining variances also would be clarified and certain requirements for dry gas wells would be deleted.

Assessments under the various Acts authorizing the leasing of minerals would be modified by the proposed rulemaking to eliminate automatic assessments for non-compliance involving violations of §§ 3163.3 (d), (e), (g), (h), and (j) of the existing regulations. Certain specified serious violations would result in assessments upon finding. Nonabatement of any major violations within the time allowed for correction would result in daily assessments of $500 per violation through the 20th day. Disregard of an order to correct a minor violation would be subject to a single assessment of $250 for nonabatement within the time provided. Penalties under the Federal Oil and Gas Royalty Management Act for continued nonabatement beyond 20 days would be at the rate of $500 per day for each major violation and $50 per day for each minor violation. Major violations would be capped at $1,000 per operator, per lease, per day and minor violations would be capped at $100 per operator, per lease, per day; therefore, a total cap of $1,100 per day (two majors plus two minors) would be applicable for nonabatement of both major and minor violations per operator, per lease. If nonabatement continues beyond 40 days, the penalty in the proposed rulemaking would be $5,000 per day for each major violation and $500 per day for each minor violation to a maximum of 60 days. A total cap of $11,000 per day would be applicable for nonabatement of both major and minor violations per operator, per lease. The penalty point tables have been deleted by the proposed rulemaking and maximum amounts would be used.

The technical and procedural review process would be modified by the proposed rulemaking to provide that an operator may request an administrative review by the State Director. The factors to be considered during review would be modified so that all appropriate relevant factors may be considered in reviewing both the violation and penalty.

When reviewing this proposed rulemaking, it should be remembered that the existing definition of the term "lease" in 43 CFR 3160.0–5 includes unit and communitization agreements approved under the various Acts authorizing the leasing of minerals.

The principal authors of this proposed rulemaking are Frank Salwerowicz, Gene Daniel, and Tom Leshendok, members of the Bureau of Land Management's Task Force responsible for reviewing and analyzing the issues involved with implementing the Federal Oil and Gas Royalty Management Act. The Task Force was assisted by Bureau field officials from the Montana, Wyoming, Colorado, Utah, New Mexico, California, and Eastern States offices, by officials of the Washington office, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior. Ken Moyers, Minerals Management Service, was also part of the Task Force and provided input on royalty accounting issues.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The cost or economic effect of the proposed rulemaking will be minimal or nonexistent so long as operators comply with the requirements or take corrective action in a timely manner.

There are no additional information collection requirements contained in this proposed rulemaking requiring the

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approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 3160

Government contracts, Indian lands—mineral resources, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), it is proposed to amend Part 3160, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of May 21, 1930, (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (25 U.S.C. 396); the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q); the Act of February 28, 1891, as amended (25 U.S.C. 397); the Act of May 29, 1924 (25 U.S.C. 398); the Act of March 3, 1927 (25 U.S.C. 398a–398e); the Act of June 30, 1919, as amended (25 U.S.C. 399); R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41); the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.); the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.); the Act of December 12, 1980 (42 U.S.C. 6508); the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Note 1, *Operating Forms,* is amended as follows:

A. In the first column, the number "9–330" is removed and replaced with the number "3160–4", the number "9–329/329A" is removed and replaced with the number "3160–6", the number "9–331" is removed and replaced with the number "3160–5" and the number "9–331C" is removed and replaced with the number "3160–3";

B. In the middle column, in the second paragraph, the word "production" is removed and replaced with the word "operation" and in the fourth paragraph the word "Due" is removed and replaced the word "Filed"; and

C. In the third column, the number "1010–0004" is removed and replaced with the number "1004–0137", the number "1010–0005" is removed and replaced with the number "1004–0138", the number "1010–0002" is removed and replaced with the number "1004–0135" and the number "1010–0003" is removed and replaced with the number "1004–0136".

3. Note 1, *Other Operating Requirements,* is amended by removing from where it appears the phrase "Clearance Number 1010–0001" and replacing it with the phrase "Clearance Number 1004–0134".

§ 3160.0–5 [Amended]

4. Section 3160.0–5 is amended by:

A. Amending the term "*avoidably lost*" by removing from where it appears the word "Supervisor" and replacing it with the phrase "authorized officer";

B. Amending the term "*notice to lessees and operators (NTL)*" by removing from where it appears the word "DMM" and replacing it with the phrase "authorized officer" and by removing from where it appears the phrase "Region or portion thereof" and replacing it with the phrase "State, District or Area";

C. Amending the term "*waste of oil or gas*" by removing from where it appears the word "Supervisor" and replacing it with the pharse "authorized officer";

D. Adding the following terms to read:

"*Knowingly or willfully.* A voluntary or conscious performance of an act which is prohibited, or a failure to act in the case of a required duty, with disregard of or indifference as to whether that behavior is lawful, or as demonstrated by repeated behavior, is sufficient to constitute a violation 'knowingly or willfully' committed. It does not require a specific intent to violate the law or criminal purpose, and the knowing or willful nature of a prohibited act or failure to act is not negated or mitigated by a belief that the behavior is reasonable or legal.".

"*Major violation.* Noncompliance which has the immediate potential to affect public health and safety, cause significant environmental damage, or affect production accountability or royalty income.";

"*Minor violation.* Noncompliance which does not have the immediate potential for loss or damage as described by the definition of 'major violation.' ";

"*New or resumed production under section 102(b)(3) of the Federal Oil and Gas Royalty Management Act.* The date on which a well commences production, or resumes production after having been off production for more than 90 days, is to be construed as follows:

(a) For an oil well, the date on which liquid hydrocarbons are first sold or shipped from a temporary storage facility, such as a test tank, or the date on which liquid hydrocarbons are first produced into a permanent storage facility, whichever first occurs;

(b) For a gas well, the date on which gas is first measured through sales metering facilities or the date on which associated liquid hydrocarbons are first sold or shipped from a temporary storage facility, whichever first occurs. For purposes of this provision, a gas well shall not be considered to have been off of production unless it is incapable of production.

5. Section 3161.1 is revised to read:

§ 3161.1 Jurisdiction.

(a) All operations conducted on a Federal or Indian oil and gas lease by, or on behalf of, the lessee are subject to the regulations in this part.

(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

6. Section 3161.2 is amended by removing from where it appears the phrase "to assess monetary penalties or liquidated damages;" and replacing it with the phrase "to impose monetary assessments or penalties;".

§ 3161.3 [Amended]

7. Section 3161.3(b) is revised to read:

* * * * *

(b) In accomplishing the inspections, the authorized officer may utilize Bureau personnel, may enter into cooperative agreements with States or Indian Tribes, may delegate the inspection authority to any State, or may contract with any non-Federal Governmental entities. Any cooperative agreement, delegation or contractual arrangement shall not be effective without concurrence of the Secretary and shall include applicable provisions of the Federal Oil and Gas Royalty Management Act.

§ 3162.3 [Amended]

8. Section 3162.3(b) is amended by removing the last two sentences.

§ 3162.3–1 [Amended]

9. Section 3162.3–1(d) is amended by removing from where it appears the phrase "Form 9–331c" and replacing it with the phrase "Form 3160–3."

§ 3162.3–2 [Amended]

10. Section 3162.3–2 is amended by removing from where it appears in paragraphs (a) and (b) the phrase "Form 9–331" and replacing it with the phrase "Form 3160–5" and further amending paragraph (a) by removing the phrase "shut off conversion" and replacing it with the phrase "shut off, commingling production between intervals, conversion".

§ 3162.3–3 [Amended]

11. Section 3162.3–3 is amended by removing from where it appears the phrase "Form 9–331" and replacing it with the phrase "Form 3160–5".

§ 3162.4–1 [Amended]

12. Section 3162.4–1(b) is amended by removing from where it appears the phrase "Form 9–330" and replacing it with the phrase "Form 3160–4".

§ 3162.4–3 [Amended]

13. Section 3162.4–3 is amended by:

A. Amending the title by removing from where it appears the phrase "(Form 9–329 Public; Form 9–329A Indian)" and replacing it with the phrase "(Form 3160–6)"; and

B. Amending the initial paragraph of the section by removing from where it appears the phrase "Form 9–329" and replacing it with the phrase "Form 3160–6", by removing from where it appears the phrase "in duplicate" and by removing from where it appears the phrase "production month" and replacing it with the phrase "operation month".

14. Section 3162.6 is revised to read:

§ 3162.6 Well identification.

(a) Every well within a Federal or Indian lease or supervised agreement shall have a well indentification sign. All signs shall be maintained in a legible condition.

(b) For wells located on Federal and Indian lands, lessees shall properly identify, by a sign in a conspicuous place, each drilling, producing, injection, or abandoned well. The well sign shall include the well number, the name of the operator, the lease serial, unit or communitization agreement number, the surveyed location (the quarter-quarter section, section, township and range or other authorized survey designation acceptable to the authorized officer; such as metes and bounds). When approved by the authorized officer, individual well signs may display only a unique well name and number. When specifically requested by the authorized officer, the sign shall include the name of the Indian allottee lessor(s) preceding the lease serial number. In all cases, individual well signs now in place which do not have quarter-quarter identification will satisfy these requirements until such time as the sign is replaced. All new signs shall have identification as above, including quarter-quarter section.

(c) All facilities at which Federal or Indian oil is stored shall be clearly identified with a sign that contains the name of the operator, the lease serial number or communitization or unit agreement identification number, as appropriate, and in public land states, the quarter-quarter section, township, and range. On Indian leases, the sign also shall include the name of the appropriate Tribe and whether the lease is tribal or allotted. For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) of this section may be met by 1 sign as long as it includes the information required by both paragraphs. In addition, each storage tank shall be clearly identified by a unique number. All identification shall be maintained in legible condition and shall be clearly apparent to any person at or approaching the sales or transportation point. With regard to the quarter-quarter designation and the unique tank number, any such designation established by state law or regulation shall satisfy this requirement.

(d) All adandoned wells shall be marked with a permanent monument containing the information in paragraph (b) of this section. The requirement for a permanent monument may be waived in writing by the authorized officer.

§ 3162.7–2 [Amended]

15. Section 3162.7–2 is amended by removing from where it appears the phrase "measured by" and replacing it with the phrase "measured on the lease by".

§ 3162.7–4 [Amended]

16. Section 3162.7–4 is amended by:

A. Amending paragraph (a) by removing in their entirety from where they appear the terms "closed system" and "open system" and the term "appropriate valves" is revised to read "*Appropriate valves.* Those valves in a particular piping system, i.e., fill lines, equalizer or overflow lines, sales lines, circulating lines, and drain lines that shall be sealed during a given operation."; and

B. Revising paragraphs (b) through (d) to read:

* * * * *

(b) *Minimum Standards.* Each operator of a Federal or Indian lease shall comply with the following minimum standards to assist in providing accountability of oil or gas production:

(1) All lines entering or leaving oil storage tanks shall have valves capable of being effectively sealed during the production and sales operations unless otherwise modified by other subparagraphs of this paragraph, and any equipment needed for effective sealing shall be located at the site. For a minimum of 6 years the operator shall maintain a record of seal numbers used and shall document on which valves or connections they were used as well as when they were installed and removed. The site facility diagram(s) shall show which valves will be sealed in which position during both the production and sales phases of operation.

(2) Each Automatic Custody Transfer (ACT) system shall employ meters that have non-resettable totalizers. There shall be no by-pass piping around the ACT. All components of the ACT that are used for volume or quality determinations of the oil shall be effectively sealed. For systems where production may only be removed through the ACT, no sales or equalizer valves need be sealed. However, any valves which may allow access for removal of oil before measurement through the ACT shall be effectively sealed.

(3) There shall be no by-pass piping around gas meters. Equipment which permits changing the orifice plate without bleeding the pressure off the gas meter run is not considered a by-pass.

(4) Where oil is soil via hand gauged volumes, the operator shall minimize the time that oil is stored on leases to that time needed to accumulate an economic run, except that the operator may retain whatever oil is needed for use on the lease and store oil to provide for proper delivery of royalty oil. For oil measured and sold by hand gauging, all appropriate valves, including sales and equalizer valves shall be sealed during the production or sales phase, as applicable.

(5) Circulating lines having valves which may allow access to remove oil from storage and sales facilities to any other source except through the treating equipment back to storage shall be effectively sealed as near the storage tank as possible.

(6) The operator shall deal promptly with any accumulations of oil in pits or tanks in accordance with the provisions of § 3162.7–1 of this title and applicable NTLs or onshore Orders.

(7) The operator, with reasonable frequency, shall inspect all leases to determine production volumes and that the minimum site security standards are being met. The operator shall retain records of such inspections and measurements for 6 years from generation. Such records and measurements shall be available to any authorized officer or authorized representative upon request.

(8) Any person removing oil from a facility by motor vehicle shall possess the identification documentation required by applicable NTL's or onshore Orders while the oil is being removed and transported.

(9) Theft or mishandling of oil from a Federal or Indian lease shall be reported to the authorized officer as soon as discovered, but not later than the next business day. Said report shall include an estimate of the volume of oil involved. Operators also are expected to report such thefts promptly to local law enforcement agencies and internal company security.

(10) Any operator may request the authorized officer to approve a variance from any of the minimum standards prescribed by this section. The variance request shall be submitted in writing to the authorized officer who may consider such factors as regional oil field facility characteristics and fenced, guarded sites. The authorized officer may approve a variance if the proposed alternative will ensure measures equal to or in excess of the minimum standards provided in paragraph (b) of this section will be put in place to detect or prevent internal and external theft, and will result in proper production accountability.

(c) *Site security plans.* (1) Site security plans, which include the operator's plan for complying with the minimum standards enumerated in paragraph (b) of this section for ensuring accountability of production are required for all facilities and such facilities shall be maintained in compliance with the plan. For new facilities, notice shall be given that it is subject to a specific existing plan, or a notice of a new plan shall be submitted, no later than 60 days after completion of construction or first production or following the inclusion of a well on committed non-Federal lands into a federally supervised unit or communitization agreement, whichever occurs first, and on that date the facilities shall be in compliance with the plan. At the operator's option, a single plan may include all of the operator's leases, unit and communitized areas, within a single BLM district, provided the plan clearly identifies each lease, unit, or communitized area included within the scope of the plan and the extent to which the plan is applicable to each lease, unit, or communitized area so identified.

(2) The operator shall retain the plan but shall notify the authorized officer of its completion and which leases, unit and communitized areas are involved. Such notification is due at the time the plan is completed as required by paragraph (c)(1) of this section. Such notification shall include the location and normal business hours of the office where the plan will be maintained. Upon request, all plans shall be made available to the authorized officer.

(3) The plan shall include the frequency and method of the operator's inspection and production volume recordation. The authorized officer may, upon examination, require adjustment of the method or frequency of inspection.

(d) *Site facility diagrams.* (1) Facility diagrams are required for all facilities which are used in storing oil/condensate produced from, or allocated to, Federal or Indian lands. Facility diagrams shall be filed within 60 days after new measurement facilities are installed or existing facilities are modified or following the inclusion of the facility into a federally supervised unit or communitization agreement.

(2) No format is prescribed for facility diagrams. They are to be prepared on 8½" x 11" paper, if possible, and be legible and comprehensible to a person with ordinary working knowledge of oil field operations and equipment.

(3) A site facility diagram shall accurately reflect the actual conditions at the site and shall, commencing with the header if applicable, clearly identify the vessels, piping, and metering system which apply to the handling and disposal of oil, gas and water. The diagram shall indicate which valves shall be sealed in either the opened or closed position during the production or sales phase. The diagram shall clearly identify the lease on which the facility is located and the site security plan to which it is subject, along with the location of the plan.

§ 3163.1 [Amended]

17. Section 3163.1 is amended by removing from where it appears the phrase "and to assess penalties and/or liquidate damages" and replacing it with the phrase "and to impose assessments or penalties."

18. Section 3163.3 is revised to read:

§ 3163.3 Assessments.

(a) Certain instances of noncompliance are violations of such a serious nature as to warrant the imposition of immediate assessments upon discovery. The following violations shall result in immediate assessments, which may be retroactive, upon discovery in the following specified amounts per violation:

(1) For failure to install blowout preventer or other equivalent well control equipment, as required by the approved drilling plan, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(2) For drilling without approval or for causing surface disturbance on Federal or Indian surface preliminary to drilling without approval, $500 per day for each day that the violation existed, including days the violation existed prior to discovery, not to exceed $5,000;

(3) For failure to obtain approval of a plan for well abandonment prior to commencement of such operations, $500;

(4) For the third and each subsequent occurrence of any major violation other than those listed in subparagraphs (1) through (3) of this paragraph, per lease, per operator during a 24-month period, $500 upon discovery, with a cap of $1,000 per inspection. Failure to abate shall be subject to paragraph (c) of this section and § 3163.4 of this title, as appropriate;

(b) Other instances of noncompliance shall be subject to the following assessments:

(1) For failure to comply with a notice, written order or instruction of the authorized officer, $250 upon discovery of nonabatement for a minor violation. For a major violation, failure to abate within the time allowed shall be subject to paragraph (c) of this section and § 3163.4 of this title, as appropriate;

(2) For failure to perform any operation ordered in writing by the authorized officer, if said operation is thereafter performed by or through the authorized officer, the actual cost of the performance and an additional 25 percent of such amount to compensate the United States for administrative costs;

(3) Where actual losses or damages to the lessor can be ascertained in amounts larger than those set forth above, such larger amounts shall be assessed;

(c) Upon finding of any major violation requiring an abatement period of less than 20 days from the date of notice, a notice shall be issued describing the violation, setting forth that abatement period and indicating a daily assessment of $500 for each day

nonabatement continues from the end of the abatement period through the 20th day following the date of receipt of the notice. Should nonabatement continue beyond the 20th day, penalties provided in § 3163.4 of this title shall be implemented and shall supersede the assessments provided in this paragraph. Assessments under this section shall not exceed $1,000 per day, per operator, per lease for each inspection.

19. Section 3163.4–1 is redesignated as § 3163.4 and is revised to read:

§ 3163.4 Penalties.

(a) Whenever a lessee fails or refuses to comply with any applicable requirements of the Federal Oil and Gas Royalty Management Act, any mineral leasing law, any regulation thereunder, or the terms of any lease or permit issued thereunder, the authorized officer shall notify the lessee in writing of the violation, unless the violation was discovered and reported to the authorized officer by the liable person or the notice was previously issued under § 3163.3 of this title. If the violation is not corrected within 20 days of such notice or report, or such longer time as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $500 per violation for each day such violation continues, dating from the date of such notice or report.

(b) If the violation specified in paragraph (a) of this section is not corrected within 40 days of such notice or report, or a longer period as the authorized officer may agree to in writing, the lessee shall be liable for a civil penalty of up to $5,000 per violation for each day the violation continues, not to exceed a maximum of 60 days, dating from the date of such notice or report.

(c) In the event the authorized officer agrees to an abatement period of more than 20 days, the date of notice shall be deemed to be 20 days prior to the end of such longer abatement period for the purpose of civil penalty calculation.

(d) Whenever a transporter fails to permit inspection for proper documentation by ~~any~~ authorized representative, as provided in § 3162.7–1(c) of this title, the transporter shall be liable for a civil penalty of up to $500 per day for the violation, not to exceed a maximum of 20 days, dating from the date of notice of the failure to permit inspection and continuing until the proper documentation is provided.

(e) Any person shall be liable for a civil penalty of up to $10,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Fails or refuses to permit lawful entry or inspection authorized by § 3162.1(b) of this title; or

(2) Knowingly or willfully fails to notify the authorized officer by letter or Sundry Notice, Form 3160–5 or orally to be followed by a letter or Sundry Notice, not later than the 5th business day after any well begins production on which royalty is due, or resumes production in the case of a well which has been off of production for more than 90 days, from a well located on a lease site, or allocated to a lease site, of the date on which such production began or resumed.

(f) Any person shall be liable for a civil penalty of up to $25,000 per violation for each day such violation continues, not to exceed a maximum of 20 days if he/she:

(1) Knowingly or willfully prepares, maintains or submits false, inaccurate or misleading reports, notices, affidavits, records, data or other written information required by this part; or

(2) Knowingly or willfully takes or removes, transports, uses or diverts any oil or gas from any Federal or Indian lease site without having valid legal authority to do so; or

(3) Purchases, accepts, sells, transports or conveys to another any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted from a Federal or Indian lease site.

(g) Determinations of Penalty Amounts for this section are as follows:

(1) For major violations, all initial proposed penalties shall be at the maximum rate provided in paragraphs (a), (b), and (d) through (f) of this section, i.e., in paragraph (a) of this section, the initial proposed penalty for a major violation shall be at the rate of $500 per day through the 40th day of a noncompliance beginning after service of notice, and in paragraph (b) of this section, $5,000 per day for each day the violation remains uncorrected after the date of notice or report of the violation. Such penalties shall not exceed a rate of $1,000 per day, per operator, per lease under paragraph (a) of this section or $10,000 per day, per operator, per lease under paragraph (b) of this section. For paragraphs (d) through (f) of this section, the rate shall be $500, $10,000, and $25,000, respectively.

(2) Where a penalty under paragraph (a) or (b) is imposed for a minor violation, it shall be imposed only after the operator/lessee has failed to correct the violation within the initial abatement period allowed, and specific notice to the operator/lessee has been provided granting an extension of the abatement period which will not be less than 20 days. Failure to correct the violation within this subsequent abatement period will subject the operator/lessee to civil penalties under paragraph (a) and/or (b) of this section. Under paragraph (a) of this section, the initial penalty shall be at a daily rate of $50 and under paragraph (b) of this section at a daily rate of $500. Such penalties shall not exceed a rate of $100 per day, per operator, per lease under paragraph (a) of this section, or $1,000 per day, per operator, per lease under paragraph (b) of this section.

(h) On a case-by-case basis, the Secretary may compromise or reduce civil penalties under this section. In compromising or reducing the amount of a civil penalty, the Secretary shall state on the record the reasons for such determination.

(i) Civil penalties provided by this section shall be supplemental to, and not in derogation of, any other penalties or assessments for noncompliance in any other provision of law.

(j) If the violation continues beyond the 60-day maximum specified in paragraph (b) of this section or beyond the 20 day maximum specific in paragraphs (e) and (f) of this section, lease cancellation proceedings shall be be initiated under either Title 43 or Title 25 of the Code of Federal Regulations.

(k) If the violation continues beyond the 20-day maximum specified in paragraph (d) of this section, the authorized officer shall revoke the transporter's authority to remove crude oil or other liquid hydrocarbons from any Federal or Indian lease under the authority of that authorized officer or to remove any crude oil or liquid hydrocarbons allocated to such lease site. This revocation of the transporter's authority shall continue until compliance is achieved and related penalty paid.

20. Section 3163.4–2 is redesignated as § 3163.4–1.

21. A new § 3163.4–2 is added to read:

§ 3163.4–2 Failure to pay.

If any person fails to pay an assessment or a civil penalty under § 3163.3 or § 3163.4 of this title after the order making the assessment or penalty becomes a final order, and if such person does not file a petition for judicial review in accordance with this subpart, or, after a court in an action brought under this subpart has entered a final judgment in favor of the Secretary, the court shall have jurisdiction to award the amount assessed plus interest from the date of the expiration of the 90-day period provided by § 3165.3(c)(4) of this title. The Federal Oil and Gas Royalty Management Act requires that

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any judgment by the court shall include an order to pay.

§ 3163.5 [Amended]

22. Section 3163.5 is amended by removing from where it appears in paragraph (b) the citation "3163.4–1" and replacing it with the citation "3163.4" and by removing from where it appears in paragraph (c) the citation "3163.4–1(b)" and replacing it with the citation "3163.4".

23. Section 3165.3 is revised to read:

§ 3165.3 Notice, review and appeal.

Whenever a lessee fails to comply with any provisions of the lease, the regulations in this part, applicable orders or notices, or any other appropriate orders of the authorized officer, written notice shall be given the lessee to remedy any defaults or violations.

(a) *Notice.* Written orders or a notice of violation or proposed penalty shall be issued and served by personal service by an authorized officer or by certified mail. Service shall be deemed to occur when received or 5 business days after the date it is mailed, whichever is earlier. Any person may designate a representative to receive any notice on his/her behalf. If no designation pertaining to the lease has been filed, any person authorized by the lessee to submit reports, notices, affidavits, records, or other information required by regulations in this part or who is authorized by the lessee to conduct or supervise operations subject to regulations in this part may receive the notices. Notice of a major violation may also be served on any operator's representative as previously described. A copy of all orders, notices, or instructions served on any contractor shall also be mailed to the lessee or the lessee's designated representative as described above. Any notice involving a civil penalty shall be mailed to the lessee of record.

(b) *Review.* A person charged with a violation and served with a notice of assessment or penalty under this section may request a review before the State Director as provided herein within 10 business days of receipt of notice.

(1) *Review of notices of violations and assessments.* Any aggrieved person who contests a notice of violation or assessment shall request an administrative review, before the State Director, either with or without oral argument. Such request, including all supporting documentation, shall be filed in writing within 10 business days of the date such notice of violation or assessment was received or considered to have been received and shall be filed with the appropriate State Director. Such review shall include all relevant factors including, but not limited to, the following:

(i) Whether a violation actually existed and, if so, whether the corrective action required was reasonable, whether gravity attached to the violation was appropriate, and whether a reasonable abatement period was prescribed.

(ii) Effect of the assessment and/or proposed penalty on the continued operation of the well or lease for the conservation of oil and gas.

(iii) Potential for loss or damage to the resource, the public, the environment or the Federal or Indian interest due to the nonabatement.

(iv) Extenuating circumstances which hampered or delayed a good faith effort by the operator to achieve compliance timely.

(v) Any person who is aggrieved by the State Director's decision may appeal that decision to the Interior Board of Land Appeals under part 4 of this title.

(2) *Review of penalties.* Any aggrieved person wishing to contest a notice of proposed penalty shall request an administrative review before the State Director, as provided in paragraph (b)(1) of this section. Any person aggrieved by the State Director's decision on the proposed penalty, may request a hearing on the record before an Administrative Law Judge or may appeal that decision directly to the Interior Board of Land Appeals under part 4 of this title. If such party elects to request a hearing on the record, such request shall be filed in the office of the State Director having jurisdiction over the lands covered by the lease within 30 days of receipt of the State Director's decision on the notice of proposed penalty. No civil penalty shall be assessed under this section until the party charged with the violation has been given the opportunity for a hearing on the record in accordance with section 109(e) of the Federal Oil and Gas Royalty Management Act. Where a hearing on the record is requested, the State Director shall refer the complete case file to the Office of Hearings and Appeals for a hearing before an Administrative Law Judge in accordance with part 4 of this title. A decision shall be issued following completion of the hearing and shall be served on the parties. Any party, including the United States, adversely affected by the decision of the Administrative Law Judge may appeal to the Interior Board of Land Appeals under part 4 of this title. In lieu of a hearing on the record, any party aggrieved by the State Director's decision on a proposed penalty may appeal directly to the Interior Board of Land Appeals under part 4 of this title. However, if the right to a hearing is waived, further appeal to the District Court under section 109(j) of the Federal Oil and Gas Royalty Management Act may be precluded.

(c) *Action on request for administrative review.* The State Director shall issue a final decision within 10 business days of the receipt of a request for administrative review or, where oral argument has presented, within 10 business days therefrom. Such decision shall represent the final decision from which an appeal may be taken under part 4 of this title, or in the case of a proposed penalty, from which either a hearing on the record may be requested or an appeal taken.

(d) *Appeals.* (1) Any request for an administrative review, hearing on the record, or appeal under this section shall not result in a suspension of the requirement for compliance with the notice of violation or stop the daily accumulation of assessments or penalties, unless the official to whom the request is made or appeal is taken so determines.

(2) Any person who is aggrieved by a final order of the Secretary under this section may seek review of such order in the United States District Court for the judicial district in which the alleged violation occurred. Because section 109 of the Federal Oil and Gas Royalty Management Act provides for judicial review only where a person has requested a hearing on the record, a waiver of such review shall preclude further appeal to the district court. Review by the district court shall be on the administrative record only and not de novo. Such an action shall be barred unless filed within 90 days after issuance of the Secretary's final order.

§ 3165.4 [Amended]

24. Section 3165.4 is amended by revising the first sentence thereof to read "Instructions, orders or decisions issued by the authorized officer may be appealed in accordance with the provisions of part 4 of this title."

J. Steven Griles,

Assistant Secretary of the Interior.

December 20, 1985.

[FR Doc. 86–2070 Filed 1–29–86; 8:45 am]

BILLING CODE 4310–84–M

federal register

Thursday
January 30, 1986

Part III

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 369 and 376

Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth; Final Rule

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 369 and 376

Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations for the Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth program under section 311(c) of the Rehabilitation Act of 1973, as amended. This program provides grants to State and other public and nonprofit agencies and organizations for transitional rehabilitation service projects that provide job training for handicapped youths and prepare them for entry into the labor force, including competitive or supported employment.

These regulations include information about the kinds of projects supported under this program, the application requirements, and the selection criteria for evaluating applications.

EFFECTIVE DATE: These final regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Albert Rotundo, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3229, Washington, DC 20202, (202) 732-1299.

SUPPLEMENTARY INFORMATION: The Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth is authorized by section 311(c) of the Rehabilitation Act of 1973. Section 311(c) was added to the Act by the Rehabilitation Amendments of 1984, Pub. L. 98-221, enacted on February 22, 1984. This program supports special projects and demonstrations to provide job training for handicapped youths and prepare them for entry into the labor force. A summary of the regulations follows:

Part 369—Vocational Rehabilitation Service Projects

Part 369 is amended to include appropriate references to the new Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth under 34 CFR Part 376.

Part 376—Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

Subpart A—General

Section 376.1 describes the purpose of the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth.

Section 376.2 identifies the parties that are eligible to receive grants under this program.

Section 376.3 identifies the regulations that apply to this program, including the Education Department General Administrative Regulations.

Section 376.4 provides definitions of terms applicable to this program. Section 376.4(b) (1) and (2) sets out the same definitions of "handicapped youth" and "supported employment" that are included in final regulations for the Secondary Education and Transitional Services for Handicapped Youth Program under section 626 of the Education of the Handicapped Act published in the Federal Register on July 11, 1984 at 49 FR 28380.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Section 376.10 identifies various types of activities that may be supported under this program.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Section 376.30 authorizes the Secretary, for any fiscal year, to give priority to one or more areas of project activity. This provision is necessary to ensure that the Secretary can meet program needs as they change from year to year. The funding priorities for this program include the following: (1) Community-Based Transitional Rehabilitation Service Delivery; (2) Statewide Transitional Rehabilitation Service Delivery; (3) Transitional Rehabilitation Services for Handicapped Youth with Special Needs; (4) Transitional Rehabilitation Services for Institutionalized Persons; (5) Transitional Rehabilitation Services for Unemployed Handicapped Youth; and (6) Home Based Transitional Rehabilitation Services.

Section 376.31 contains the selection criteria that the Secretary will use to evaluate applications and award new grants under this program. The criteria reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected.

Subpart E—What Conditions Must Be Met by a Grantee?

Section 376.40 establishes matching requirements for grantees.

Section 376.41 reflects a statutory requirement for cooperation between grantees and other agencies and organizations. Summary of Comments and Responses.

The following is a summary of public comments concerning the notice of proposed rulemaking for Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth published on July 12, 1985 (50 FR 28412) and the Secretary's responses to these comments. A total of five comments from a variety of public and private non-profit agencies were received on or before the closing date.

General

Comment. Two commenters pointed out that there was no reference in the proposed rulemaking to Section 311(c)(3) of the legislation which reads "The Commissioner shall assure that these projects shall be coordinated with other projects assisted under Section 626 of the Education of the Handicapped Act." The commenters recommended that appropriate reference be included in the final rules.

Response. No change has been made. The statutory requirement in Section 311(c)(3) is imposed on the Commissioner. The Commissioner intends to implement this requirement by coordinating the development of funding priorities, peer review of grant applications, scheduling of pre-award and other conferences with grant project directors and other similar activities under this section with those conducted under Section 626 of the Education of the Handicapped Act. A reference in the regulations is therefore unnecessary.

Section 376.10

Comment. Two commenters raised questions concerning the demonstration models described in this section. One questioned the appropriateness of existing models for use with blind persons. The other questioned the appropriateness of models which require continual grant funding for continuation.

Response. No change has been made. There is nothing in the regulations which limits project activities to any particular demonstration model. The intent is to encourage applicants to prepare and demonstrate whatever model is appropriate to the applicant community and the population to be served. Section 376.10 merely describes project purposes and authorized activities.

Section 376.10(a)(2)

Comment. Two commenters noted that the list of agencies cited relative to cooperative efforts did not include reference to "organizations representing labor" and suggested that such a reference be included in the final regulations.

Response. A change has been made. The phrase "organizations representing labor" which is specifically mentioned in the legislation, has been added to the regulations in § 376.10(a)(2).

Section 376.30(f)

Comment. One commenter questioned the inclusion of the phrase "particularly those residing in rural areas" since home-based transitional rehabilitation services are also important to urban areas.

Response. A change has been made. Although home-based transitional services may represent a significant option for persons residing in rural areas, such services are also important in urban areas. Therefore, the word "particularly" has been deleted and the word "including" has been inserted.

Other Changes. Some additional technical and clarifying changes have been made in the regulations, but no substantive revision is intended.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Assessment of Educational Impact

In the Notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the comments on the proposed rules and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 376

Vocational rehabilitation, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

Dated: January 24, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by amending Part 369 and adding a new Part 376 as follows:

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

1. The authority citation for Part 369 continues to read as follows:

Authority: Secs. 12(c), 130, 305, 311(a)(1), 311(a)(3), 312, 316, and 621 of the Act; 29 U.S.C. 711(c), 750, 775, 777a(a)(1), 777a(a)(3), 777(b), 777f, and 795g, unless otherwise noted.

2. In § 369.1, a new paragraph (b)(6) is added to read as follows and the current paragraphs (b)(6) and (b)(7) are redesignated as (b)(7) and (b)(8) respectively:

§ 369.1 What are the Vocational Rehabilitation Service Projects?

* * * * *

(b) * * *

(6) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth (34 CFR Part 376).

* * * * *

3. In § 369.2, a new paragraph (h) is added to read as follows:

§ 369.2 Who is eligible for assistance under these programs?

* * * * *

(h) *Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth.* State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Sec. 311(c) of the Act; 29 U.S.C. 777a(c))

(4.) Section 369.3 is revised to read as follows:

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs listed in § 369.1(b):

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 369.

(c) The regulations in 34 CFR Parts 371, 372, 373, 374, 375, 376, 378, and 379, as appropriate.

(Sec. 12(c) of the Act; 29 U.S.C. 711(c))

5. In § 369.30, paragraph (a) is revised to read as follows:

§ 369.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria in § 369.31 and specific selection criteria in 34 CFR Part 371, 372, 373, 374, 375, 376, 378, and 379. The maximum possible score for each complete criterion under each Vocational Rehabilitation Service Project category is stated in parentheses in §§371.30, 372.30, 373.30, 374.30, 375.30, 376.31, 378.30, and 379.30. The number of points awarded under each criterion depends on how well the application meets all the elements under that criterion.

* * * * *

6. In § 369.32, the introductory paragraph is revised to read as follows:

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 369.31 and 34 CFR Parts 371, 372, 373, 374, 375, 376, 378, and 379, the Secretary, in making awards under these programs, considers such factors as—

* * * * *

7. A new Part 376 is added to read as follows:

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO HANDICAPPED YOUTH

Subpart A—General

Sec.

376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?
376.2 Who is eligible for assistance under this program?
376.3 What regulations apply to this program?
376.4 What definitions apply to this program?

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Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Sec.
376.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

376.30 What priorities are considered for support by the Secretary under this part?
376.31 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

376.40 What are the matching requirements?
376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Authority: Sec. 311(c) of the Rehabilitation Act of 1973, Pub. L. 93–112, as added by sec. 136(c) of Pub. L. 98–221, 98 Stat. 26 (29 U.S.C. 777a(c)), unless otherwise noted.

Subpart A—General

§ 376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?

This program is designed to provide job training for handicapped youths to prepare them for entry into the labor force, including competitive or support employment.

(Sec. 311(c); 29 U.S.C. 777a(c))

§ 376.2 Who is eligible for assistance under this program?

State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Sec. 311(c); 29 U.S.C. 777a(a))

§ 376.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 369.

(b) The regulations in this Part 376.

(Sec. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program:

(1) "Handicapped youth" means any handicapped child who is between the ages of twelve and 26.

(2) "Supported employment" means paid work in a variety of settings, particularly regular work sites, especially designed for handicapped persons—

(i) For whom competitive employment at or above the minimum wage is not immediately obtainable; and

(ii) Who, because of their disability, need intensive ongoing support to perform in a work setting.

(3) "Transitional rehabilitation services" means any vocational rehabilitation services available under the State plan for vocational rehabilitation services under 34 CFR Part 361 or the State plan for independent living services under 34 CFR Part 365 and may also include—

(i) Jobs search assistance;

(ii) On-the-job training;

(iii) Job development, including worksite modification and use of advanced learning technology for skills training; and

(iv) Follow-up services for individuals placed in employment.

(Sec. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 376.10 What types of projects are authorized under this program?

(a) This program supports special projects and demonstrations, including research and evaluation, for the following purposes:

(1) To demonstrate effective ways in which to provide job training, placement, and other transitional rehabilitation services to handicapped youth to prepare them for entry in the labor force, including competitive or supported employment.

(2) To demonstrate service programs for handicapped youth reflecting cooperative efforts between local educational agencies, business and industry, vocational rehabilitation agencies, facilities, parent groups, public or other nonprofit developmental disabilities agencies, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(3) To develop and implement new patterns or practices of transitional rehabilitation service delivery and to conduct the field-testing and evaluation of these patterns or practices to determine the efficacy of their being replicated in other settings.

(b) Research and evaluation activities carried out under this program must be specifically related to a transitional rehabilitation service model under which direct services are provided.

(c) Projects funded under this part must serve handicapped youths.

(d) A project funded under this part may include dissemination of information on project activities to business and industry.

(Sec. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 376.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually in a Notice published in the **Federal Register**, one or more of the following priority areas for funding under this program:

(a) *Community-based transitional rehabilitation service delivery.* This priority supports projects that demonstrate exemplary models for developing and establishing community-based transitional rehabilitation service programs that result directly in competitive or supported employment for handicapped youth within the labor force.

(b) *Statewide transitional rehabilitation service delivery.* This priority supports projects that demonstrate effective Statewide approaches to transitional rehabilitation service delivery for handicapped youth and demonstrate cooperative efforts between State agencies responsible for service to handicapped youth, including but not limited to, special education, vocational rehabilitation, and day services for adults with developmental disabilities.

(c) *Transitional rehabilitation services for handicapped youth with special needs.* This priority supports projects that demonstrate transitional rehabilitation service programs focused on meeting the special job training and placement needs of one or more groups of individuals with physical or mental disabilities which present unusual and difficult rehabilitation problems including, but not limited to, blindness, cerebral palsy, deafness, epilepsy, mental illness, mental retardation, and learning disability.

(d) *Transitional rehabilitation services for institutionalized persons.* This priority supports projects that demonstrate effective ways to assist youths and young adults who are institutionalized, including those residing in skilled nursing or intermediate care facilities, to return to community living and competitive or supported employment.

(e) *Transitional rehabilitation services for unemployed handicapped youth.* This priority supports projects that demonstrate ways to train and place in competitive or supported employment handicapped youth who were unable to participate in special education programs or who recently graduated from those programs but have been unable to secure and maintain employment.

(f) *Home-based transitional rehabilitation services.* This priority supports projects that demonstrate ways in which handicapped youth, including those residing in rural areas, who because of the severity of their disabilities are precluded from employment in the community, could be gainfully employed in home settings.

(Sec. 311(c); 29 U.S.C. 777(a), (c))

§ 376.31 What selection criteria does the Secretary use under this program?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation* (20 points). The Secretary reviews each application in accordance with the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Impact* (20 points).

(1) The Secretary reviews each application to determine the probable impact of the proposed project on rehabilitation programs for handicapped youth.

(2) The Secretary considers—

(i) The contribution that the project findings will make to current rehabilitation practice; and

(ii) The extent to which findings and products can be used for the benefit of other groups of handicapped youth.

(g) *Innovativeness* (20 points).

(1) The Secretary reviews each application to determine the innovativeness of the proposed project.

(2) The Secretary considers—

(i) The approach to be used in the proposed project in providing transitional rehabilitation services is innovative and appropriate to the special needs of the groups of handicapped youth being served; and

(ii) The approach can be replicated in other service settings.

(h) *Likelihood of sustaining the program* (15 points).

(1) The Secretary reviews each application to determine the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary considers the extent to which—

(i) The applicant agency intends to continue to operate the service program after the termination of the project;

(ii) There is a sufficient base of service programs and work opportunities to ensure a lasting change in the way transitional rehabilitation services are provided to handicapped youths in the project area; and

(iii) Agencies in the project area with responsibilities which relate to the purpose of the project are actively collaborating in service delivery and project management.

(Sec. 311(c); 29 U.S.C. 777a(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 376.40 What are the matching requirements?

The Secretary may pay all or part of the costs of activities funded under this program. Where part of the costs is to be borne by a grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sec. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Each project must be designed to demonstrate a cooperative effort between local educational agencies, business and industry, vocational rehabilitation programs, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(Sec. 311(c); 29 U.S.C. 777a(c))

[FR Doc. 86–2062 Filed 1–29–86; 8:45 am]

BILLING CODE 4000–01–M

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Federal Register

Thursday
January 30, 1986

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Postsecondary Education Programs for Handicapped Persons; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Postsecondary Education Programs for Handicapped Persons; Regional Centers for Deaf Individuals

AGENCY: Department of Education.

ACTION: Notice of Proposed Establishment of Geographic Regions.

SUMMARY: The Secretary proposes to establish geographic regions for Fiscal Year 1986 awards under the Postsecondary Education Programs for Handicapped Persons—Regional Centers for Deaf Individuals. The Secretary intends to support the operation of four regional centers for deaf individuals, including models of comprehensive supportive services to those individuals.

DATE: Comments must be received on or before March 3, 1986.

ADDRESS: Comments should be addressed to: Dr. Joseph Rosenstein, Postsecondary Education Programs for Handicapped Persons, Division of Innovation and Development, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: Under section 625(a)(2) of Part C of the Education of the Handicapped Act, the Secretary gives priority consideration for four regional centers for deaf individuals, in addition to other activities supported under section 625 of the Act. Three years ago, the Department began making the four awards on a competitive, open basis.

In Fiscal year 1983, the Department published a notice which established two regions for the purpose of making the four awards under this program in that fiscal year. This notice proposes the same regional structure as the basis for making the four awards in Fiscal Year 1986.

Projects that operate regional centers for deaf individuals provide regional models of comprehensive supportive services to deaf students who desire postsecondary education and vocational technical training. Comprehensive supportive services for deaf students in postsecondary regional educational settings may include: interpreters, tutors, notetakers, counseling, placement, speech, and hearing services, special classes, vocational development, supervised housing, and opportunities for faculty and students to learn special techniques for communicating with the deaf students with whom they come into contact.

Postsecondary Education Programs for Handicapped Persons—Regional Centers for Deaf Individuals. The program regulations at 34 CFR 338.10(a)(1) and 338.30(a) establish that the Secretary gives priority consideration to four regional centers for deaf individuals, including models of comprehensive supportive services to those individuals.

In accordance with the Education Department General Adminsitrative Regulations at 34 CFR 75.105(b)(2)(i), the Secretary proposes to issue these awards on the basis of geographical regions, as listed below. The making of awards on a regional basis is contemplated by the authorizing legislation and is consistent with program history. *See, also,* S. (conference) Rep. No. 1028, 93rd Cong., 2nd Sess. 194 (1974). Each application will be considered in competition with those of applicants from the same region. The Secretary proposes to make two awards per region, but will not make any award for a region for which he determines that no application is of sufficient quality to merit approval.

The regions are:

Western Region: Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Northern Marianas, Oklahoma, Oregon, South Dakota, Texas, Trust Territories of the Pacific Islands, Utah, Washington, and Wyoming.

Eastern Region: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, South Carolina, Rhode Island, Tennessee, Vermont, Virginia, Virgin Islands, West Virginia, and Wisconsin.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the composition of the geographical regions.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4084, Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1424a)

(Catalog of Federal Domestic Assistance Number 84.078; Postsecondary Education Programs for Handicapped Persons)

Dated: January 24, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–2084 Filed 1–29–85; 8:45 am]

BILLING CODE 4000–01–M

Postsecondary Education Programs for Handicapped Persons

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under the Postsecondary Education Programs for Handicapped Persons: Projects for Centers Serving Deaf Individuals for Fiscal Year 1986.

Programmatic and Fiscal Information

The purpose of this notice is to invite applications for four new projects under the Postsecondary Education Programs for Handicapped Persons: Centers for Deaf Individuals authorized by Section 625 of the Education of the Handicapped Act. Under Section 625(a), the Secretary is authorized to make grants to State education agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies for the operation of four regional centers that include models of comprehensive supportive services to deaf students in postsecondary, vocational, technical, continuing, or adult education (20 U.S.C. 1424a).

The Secretary proposes to issue awards for four centers for deaf students according to the notice of proposed establishment of geographic regions published in this issue of the **Federal Register.**

It is estimated that approximately $2,000,000 will be available for support of the four centers to be awarded at an average of $500,000 for Fiscal Year 1986. Awards will be made for a 36-month period.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before March 17, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center,

Attention: CFDA No. 84.078, 400 Maryland Avenue, SW., Washington, DC 20202.

Each lat applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the postsecondary Education Programs for Handicapped Persons in 34 CFR Part 338. A Notice of Proposed Establishment of Geographic Regions is published in this issue of the **Federal Register.** Applicants should prepare their applications based on that notice. If there are any substantive changes made in the proposed geographic regions when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

Intergovernmental Review

This program is subject to the requirements of the Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, reigonal, and local entities must be mailed or hand delivered by May 16, 1986 to the following address: The Secretary, U.S. Deparment of Education, Room 4181, CFDA No. 84.078, 400 Maryland Avenue, SW., Washington, DC 20202.

Please note that the above address is not the same address as the one to which the applicant submits its application. *Do not send applications to the above address.*

Application Forms

Application forms and program information packages are expected to be available by February 7, 1986. These may be obtained by writing to the Postsecondary Education Program for Handicapped Persons, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building Room 3511—M/S 2313) Washington, DC 20202.

Further Information: For further information contact Dr. Joseph Rosenstein, Postsecondary Education Programs for Handicapped Persons, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1176.

Program Authority: 20 U.S.C. 1424a

(Catalog of Federal Domestic Assistance No. 84.078 Postsecondary Education Programs for Handicapped Persons)

Dated: January 24, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–2083 Filed 1–29–86; 8:45 am]

BILLING CODE 4000–01–M

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federal register

Thursday
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Part V

Department of Health and Human Services

Social Security Administration

45 CFR Part 400
Refugee Resettlement Program; Final Rule and Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 400

Grants to States, Child Welfare Services, and Federal Funding for Assistance and Services for Refugees

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Final rule.

SUMMARY: This final regulation sets forth requirements governing quarterly grants to States for assistance and services under the Refugee Resettlement Program. The regulation includes requirements concerning general administration of State programs, submittal and approval of State plans, immigration status and identification of refugees, child welfare services (including services to unaccompanied minors), and Federal funding for a State's expenditures. This final rule implements Chapter 2 of title IV of the Immigration and Nationality Act, added by section 311(a)(2) of the Refugee Act of 1980, Pub. L. 96–212, and amended by the Refugee Assistance Amendments of 1982, Pub. L. 97–363.

EFFECTIVE DATE: April 30, 1986.

ADDRESS: Office of Refugee Resettlement, Department of Health and Human Services, Switzer Building, Room 1229, 330 C Street SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Christie Cohagen (202) 245–1059.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1980, the Immigration and Nationality Act (the Act) was amended by the Refugee Act of 1980 (Pub. L. No. 96–212) to revise procedures for the admission of refugees and to establish a uniform base for the provisions of assistance to refugees. Section 311 of Pub. L. 96–212 added Chapter 2 to title IV of the Act to establish the Office of Refugee Resettlement (ORR) in HHS. The function of ORR is to fund and administer domestic refugee resettlement programs of the Federal Government.

Prior to enactment of the Refugee Act of 1980, which authorized the provision of assistance and services to refugees in the United States without regard to their national origin, assistance was provided through three separate programs for refugees:

1. The Cuban Refugee Program, which began in 1961 and was administered primarily by States, and for which a phasedown in funding was initiated in 1978.

2. The Indochinese Refugee Assistance Program (IRAP), which began in 1975 and was also primarily State administered.

3. A program of matching grants to national voluntary refugee resettlement agencies, which began in 1979, for assistance and services to Soviet and other non-Cuban, non-Indochinese refugees.

On August 29, 1980, ORR issued a program instruction (ORR–AT–80–6) to States on the effect of the Refugee Act on these programs. Policies which had applied to IRAP were extended to cover assistance and services to refugees in the United States regardless of national origin.

After a further phasedown, under section 313(c) of the 1980 Act, the Cuban Refugee Program was terminated at the end of fiscal year 1981.

On September 9, 1980 (45 FR 59318), ORR issued final regulations which set forth plan and reporting requirements that States must meet as a condition for receiving Federal funds for assistance to refugees under title IV of the Act. On March 12, 1982 (47 FR 10841), ORR issued interim final regulations revising cash and medical assistance policies for both the Refugee Resettlement Program (RRP) and the Cuban/Haitian Entrant Program (CHEP). A notice of proposed rulemaking on refugee placement policy was published on December 12, 1983 (48 FR 55300).

Discussion of Changes

The most significant change in the proposed rule was a consolidated, or per capita, grant to States which was designed to replace the separate grants for refugee cash assistance (RCA) and refugee medical assistance (RMA), social services, education assistance for refugee children, targeted assistance, and child welfare services (except services for unaccompanied minors). However, specific language in section 101(c) of the second continuing resoluton for fiscal year 1984 (Pub. L. 98–151) prohibited the Administration from spending funds to implement the proposed consolidated grant. That prohibition has remained in effect under Pub. L. 98–473 and Pub. L. 99–190, the continuing resolutions for FY year 1985 and FY 1986. Consistent with current law and congressional intent, we have deleted from this final regulation the proposed section 400.11(a) which would have provided for quarterly consolidated grants to States.

Because the section on the consolidated grant has been eliminated, the regulation now clarifies that current policy is continued under which States may claim Federal funding for RCA and RMA provided to eligible refugees during the 18-month period after the refugee entered the United States and for general assistance during the 18-month period beginning with the 19th month after the refugee entered the U.S.

The final regulation also makes clear that States shall submit a final financial status report for each fiscal year describing their actual expenditures within 90 days after the end of the fiscal year, not 30 days.

We have clarified that when States notify voluntary resettlement agencies regarding a refugee's use of cash assistance, they provide the refugee's current address and telephone number to the resettlement agency. We have also changed the title of § 400.27 to "Safeguarding *and sharing* of information" (inserting the words italicized here) in order to clarify that we are giving equal emphasis to the importance of the appropriate sharing of information between State agencies and voluntary resettlement agencies.

Finally, in response to comments about the difficulty of obtaining and reporting information on the nationality of recipients of medical assistance separately by each type of medical assistance program (Medicaid, general assistance, or refugee medical assistance), we have revised the regulation to eliminate the requirement.

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order. This regulation for the most part ratifies practices already in place under the program and therefore would not be creating costs.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 505(b)), the Secretary certifies that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule will indirectly affect small entities because some services funded under the RRP are provided by not-for-profit institutions under contract with the State. However, nothing in the rule imposes a significant burden on these small entities, and the rule, therefore, does not meet the threshold for regulatory flexibility analysis.

Sections 400.4, 400.5, 400.11(b) and (c), 400.28 (a) and (b), 400.118, and 400.120 of this rule contain collection-of-information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, we submitted a copy of the proposed rule to the Office of Management and Budget (OMB) at the time of publication. OMB did not approve the reporting and recordkeeping contained in the proposed regulation at that time, noting comments about the difficulty of providing information on the nationality of recipients of medical assistance, provided separately for those receiving Medicaid, GA, and other assistance. We concur that such reporting would be burdensome. We do not currently require this kind of reporting nor do we intend to require it in the future. In the final rule, we have therefore deleted this wording from § 400.28(b).

Statutory Authority

Section 412(a)(9) of the Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Description of the Regulation

Under predecessor refugee programs, policy was transmitted to States in the form of action transmittals (ATs) from the Social and Rehabilitation Service and the Social Security Administration, HHS. Subsequent to the Refugee Act of 1980, some aspects of the RRP have been covered in regulations (as indicated in the previous section on "Background") while other aspects have continued to depend on ATs. This regulation represents a further step in codifying program policy in regulatory form.

This final regulation restates some current policies and modifies or augments others. In this preamble, we will discuss rules that incorporate current policy and explain policy changes contained in the regulation which were necessary as a result of the Refugee Act of 1980, the 1982 Amendments, or as a result of re-evaluation of the program and its goals.

To the extent possible, we have tied the Refugee Resettlement Program to the administrative and delivery systems of existing public assistance programs in the States, both to reduce the administrative burden on States and in an attempt to achieve equality between the assistance available to refugees and other needy individuals in the United States. However, the initial needs of refugees are different from those of needy Americans, and existing programs are not in all cases appropriate to meet these initial needs. Therefore, some policies differ from those of other assistance programs.

Subpart A—Introduction (Sections 400.1 and 400.2)

This subpart essentially repeats the rules that appear in subpart A of the current State plan regulation.

We have expanded the list of definitions in § 400.2 to include several abbreviations which we use in these rules as well as a few terms applicable to the Refugee Resettlement Program. Significant among these is the definition of "refugee" which incorporates the definition in section 101(a)(42) of the Act, so that all aliens whom the Immigration and Naturalization Service (INS) identifies as refugees are considered to be refugees for purposes of the Refugee Resettlement Program. We have deleted from this subpart the section specifying other HHS regulations that apply, which appears as § 400.3 in the current State plan regulation, and have substituted an asurance of compliance with Federal laws and regulations which appears in § 400.5.

We have also revised the definition of "State agency" by adding "or agencies" to make clear that, in the absence of a Federal statutory requirement for a single State agency, a Governor may designate more than one agency to plan and carry out different aspects of the RRP.

The definition of "refugee medical assistance" which was contained in the proposed rule erroneously referred to two sections which were not included in the proposal; it has been corrected by substituting a reference to Action Transmittal SRS–AT–75–27. The definition represents no change from current policy.

Subpart B—Grants to States for Refugee Resettlement

A. The State Plan (Sections 400.4 through 400.9)

This portion of the regulation retains much of the substance of the current State plan regulation but makes some changes to minimize the burden of the State and allow State flexibility.

We have revised § 400.4, which describes the purpose of the plan. We published the existing regulation before the States' October 1, 1980, deadline to submit their plan (see section 313(d) of Pub. L. 96–212). Now that participating States have filed plans, § 400.4 provides that, once approved, a plan will remain in effect until either (1) a State amends or revokes its plan or (2) ORR notifies the State, in accordance with § 400.8, that the plan no longer complies with the statute or applicable regulations. Thus States do not have to file a new State plan each fiscal year. However, because of the additional State plan requirements contained in this regulation, a State may have to amend its plan when this regulation becomes final.

We revised § 400.5, which describes the content of the plan, to delete the requirement that the plan specify the composition of the State advisory council required under § 400.9 of the previous regulation. In the interest of minimizing the burden on States, especially those with small refugee populations, we will no longer require States to establish a State advisory council. However, a State may establish a council and charge the reasonable and necessary administrative expenses of such a council against its ORR grants.

We also have clarified some aspects of the plan content by requiring States to include descriptions of various aspects of the program.

Finally, we have added a requirement that a State will assure that meetings are held between local representatives of voluntary refugee resettlement agencies and representatives of State and local governments to plan and coordinate refugee placement, unless the Director exempts the State from this requirement. This provision reflects a requirement added by the Refugee Assistance Amendments of 1982 that the Director of ORR provide for a mechanism to accomplish such meetings.

We have changed section 400.7, Submittal of the State plan and plan amendments for Governor's review, by adding that the Governor, or his or her desginee, must sign a plan or plan amendment.

Evaluation, Review, and Coordination of Federal and Federally Assisted Programs and Projects. Section 400.8 is a new provision that describes the method by which ORR will approve State plans and plan amendments. The procedure follows that used in the AFDC program (see 45 CFR Part 201—Subpart A). The State must submit a plan or plan amendment to the Director of ORR, or his or her designee, who must approve or disapprove the plan within 45 days and promptly notify the State of such action. An approved State plan or plan amendment cannot be effective before the first day of the calendar quarter in which the State submits it, unless otherwise approved by the Director.

The new § 400.9 sets out the process for initial administrative review of ORR decisions on approval of State plans or plan amendments. A State dissatisfied with an ORR determination may petition

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the Director of ORR within 60 days after it receives notification of the decision. The State may, but is not required to, request that a hearing be held. If a hearing is requested, the Director, or his or her designee, will then notify the State of the time and location within 30 days after receiving the petition. The hearing will be scheduled not less than 30 days nor more than 60 days from the date the State receives the notice of hearing. The hearing follows the AFDC procedures in 45 CFR Part 213. The Director will affirm, modify, or reverse the original decision within 60 days of receipt of the State's petition, or if a hearing is held, within 60 days after the conclusion of the hearing.

B. Award of Grants to States (Section 400.11 and 400.12)

Section 400.11 is a new provision explaining the method by which ORR makes grant awards to States with approved State plans.

Language describing a new consolidated grant to States, which was contained in § 400.11(a) of the proposed rule, has been deleted, as explained previously, and the other paragraphs have been redesignated.

Under § 400.11(a), ORR will, subject to the availability of funds, provide quarterly grants to States for assistance and services for unaccompanied minors; for the State cost of assistance provided to refugees, during their first 36 months in the U.S., under the programs of AFDC, SSI, adult assistance in the territories (i.e., aid to the aged, blind, and disabled, aid to the blind, aid to the permanently and totally disabled, and old-age assistance), and Medicaid; for the costs of refugee cash assistance (RCA) and refugee medical assistance (RMA) provided during a refugee's first 18 months in the U.S.; and for the cost of cash or medical assistance provided under a State or local general assistance (GA) program of general applicability during a refugee's second 18 months of residence in the United States.

Section 400.11(b) (1) and (2) represents current ORR policy on State submittals of requests for reimbursement. States must submit yearly estimates of reimbursable costs for the fiscal year 45 days prior to the beginning of that fiscal year, and adjustments to any quarterly estimate 30 days prior to the beginning of that quarter. Under § 400.11(c), States must submit a financial status report describing their actual expenditures within 30 days of the close of the quarter, except for the final report for each fiscal year which shall be due 90 days after the end of the fiscal year. These reports are described in departmental grants administration rules at 45 CFR 74.73(a).

After ORR reviews a State's submittals, it will compute the grant award and transmit the notification of award to the State.

Section 400.12 provides States an opportunity to informally appeal adverse determinations in post-award disputes. Departmental grant appeals policies mandate an appellant to exhaust any preliminary appeal process required by regulation before a formal appeal to the Grants Appeals Board will be allowed (see 45 CFR 16.3(c)). The preliminary appeal process established in § 400.12 for the Refugee Resettlement Program is modeled on, but not identical to, that used by the Public Health Service (see 42 CFR Part 50, Subpart D, Public Health Service Grant Appeals Procedure, § 50.401 et seq.). If the informal appeal results in an adverse determination, the State may appeal to the Departmental Grant Appeals Board under Part 16 of Title 45.

Subpart C—General Administration

This subpart contains several administrative rules, most of which appeared in the previous State plan regulation at 45 CFR Part 400. Section 400.27 regulates the safeguarding and sharing of information, currently set forth in § 400.11 of the State plan regulation.

The subpart also contains some new provisions and additions to the existing regulation.

Section 400.22 requires the State agency to maintain oversight responsibility for the program.

Section 400.23(a) requires States to provide hearings utilizing the same procedures and standards as those used for the AFDC program and set forth in 45 CFR 205.10(a).

At the same time, we have made clear in § 400.23(b) that if the date of entry of a refugee is at issue, this is a matter for prompt factual determination based on documentation, and not a subject for a hearing. Again, we have based this on policies applicable to the AFDC program.

Section 400.25 prohibits States from imposing durational residency requirements on applicants for assistance and services. This prohibition is based on those in the AFDC and Medicaid programs.

Section 400.27(b) is intended to assure that a State provides information on cash assistance utilization, essential to a voluntary agency's carrying out its responsibilities, to the voluntary resettlement agency that arranged for the resettlement of a given refugee.

Section 400.28 incorporates the maintenance of records and reporting requirements that appear at § 400.10 of the current State plan regulation.

We have developed forms for reporting statistical and program information under § 400.28(b) determined necessary to fulfill our responsibilities under the Act. These forms, which have been approved by OMB, are currently in use.

We have eliminated the requirement for submittal of annual financial and performance reports (section 400.11(c) and (d) of the previous regulation) because quarterly financial and performance reports are now required under §§ 400.11(c) and 400.28(b) of this regulation.

Subpart D—Immigration Status and Identification of Refugees

In order to assure that all refugees are eligible to apply for benefits, the new § 400.43 includes forms of documentation that INS gave individuals both before and after enactment of the 1980 Act.

Section 400.43(b) provides that the Director will issue instructions specifying the documentation that applicants for assistance or services must submit. This formulation allows the Director maximum flexibility to respond quickly to any changes INS might make in the forms of documentation it provides refugees.

Subparts E–G—(Reserved)

Subpart H—Child Welfare Services

This subpart sets forth the requirements concerning grants to States for child welfare services to refugee unaccompanied minors under section 412(d)(2)(B) of the Act.

We have inserted in this subpart § 400.112, which reflects current policy on child welfare services for children other than unaccompanied minors, and § 400.113(a), which reflects the statutory limitation on RRP funding for such services for such children. These provisions were omitted from the proposed regulation because child welfare services for these minors were then being proposed for inclusion within the consolidated grant to States.

A. Definition of Unaccompanied Minor (Sections 400.111 and 400.113)

The definition in this regulation is a change from current policy. It is intended to clarify which refugee children, under what circumstances, may be considered to be unaccompanied minors. The definition reflects the intent of the legislative history of the 1980 Act which makes clear that "unaccompanied" means refugee children who "enter the United States unaccompanied by their parents or other adult guardians" (H. Report No. 96-608, p. 27). The definition also provides that an unaccompanied minor is one who is not "destined to" a parent, a close adult relative willing and able to care for the child, or any other adult having legal custody since such a child might actually enter the U.S. unaccompanied but his entry would be for the purpose of family reunification.

The definition also requires that the child must have been identified as "unaccompanied" by the Immigration and Naturalization Service but would permit the Director of ORR to determine on the basis of information provided by a State that a particular child should have been, but was not, classified as unaccompanied. This provision will enable States to identify specifically those children whom they may consider unaccompanied. Finally, the definition permits a State to continue to consider as unaccompanied any minors who were properly so classified under Action Transmittal SSA-AT-79-04 prior to the effective date of this regulation.

Section 400.113 is intended to clarify specifically the circumstances under which a child's status as "unaccompanied" is terminated—by age, by reunification with parent(s), or by being united with a non-parental adult who is granted legal custody or guardianship under State law.

B. Legal Responsibility for Unaccompanied Minors (Section 400.115)

This section requires a State to initiate procedures for establishing legal responsibility for an unaccompanied minor within 30 days after the minor arrives at the resettlement location. Current policy does not mandate a specific deadline.

Paragraph (c) of this section clarifies that, in certain rare cases, adoption of unaccompanied minors may be permitted under State law. In general, such minors are not eligible for adoption since they are only temporarily separated from their parents or close adult relatives and since family reunification is the objective of the program.

C. Services to Unaccompanied Minors (Sections 400.116 through 400.120)

A State must provide an unaccompanied minor with the same range of child welfare benefits and services available in foster care cases to other children in the State and may provide additional services if the Director approves, in writing, the provision of such services. A State may provide services directly or through arrangements with licensed public or private child welfare agencies in the State.

(a) *Case planning (Section 400.118).* The State, or the agency with which it has made an arrangement to provide services, must develop, implement, and review an appropriate plan for the care and supervision of, and services provided to, each unaccompanied minor. Special attention must be given in the plan to family reunification, orientation of the minor to American culture, preservation of ethnic and religious heritage, appropriate placement, health screening and treatment, and preparation for independent living.

We have added to section 400.18(b) that the case plan must address preservation of a child's ethnic and religious heritage. This is included in current policy and was referred to in the preamble to the proposed regulation but accidentally omitted from the text.

(b) *Interstate movement (Section 400.119).* A State must use the same procedures that govern the movement of nonrefugee foster care cases to other States when an unaccompanied minor, after initial placement in the State, is resettled in another State.

(c) *Reporting requirements (Section 400.120).* The regulation contains requirements for State reports required by sections 412(d)(2)(B)(iv) and 413(a)(2)(G) of the Act. A State must submit the reports required by the regulation. Two reporting forms for State use to meet these replacements have been approved by OMB.

Subpart J—Federal Funding (FF)

Subpart J regulates Federal funding under the RRP and represents no change from current policy. Language in the proposed rule regarding consolidated grants to States has been deleted.

Quarterly grants to States, subject to the availability of funds, provide reimbursement for: The State share of AFDC costs, Medicaid costs, and adult assistance costs in the territories, including administrative costs, during a refugee's first 36 months; State supplementary payment to refugee SSI recipients during that period; the cost of RCA and RMA during a refugee's first 18 months in the U.S.; the cost of cash or medical assistance provided under a State or local GA program during the second 18 months; and the cost of assistance and services to refugee unaccompanied minors.

Funding is available for assistance and services provided to unaccompanied minors under §§ 400.115 through 400.120, including the cost of establishing legal responsibility for a minor, until the refugee's status as an unaccompanied minor terminates.

Subpart K—Waivers

Current regulations do not contain a provision for waivers. Subpart K permits a waiver by the Director if a State demonstrates to the Director's satisfaction that it cannot reasonably comply with a requirement of the regulations. We believe that such a provision is necessary in recognition of the wide variations from State to State in legislative and administrative requirements and programmatic circumstances. This allows a degree of flexibility for specific exceptions when the Director determines that a particular exception in a given State would advance the purposes of the refugee program and the intent of the Act. No waiver could be considered when a requirement of the regulations reflects a specific statutory requirement.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Discussion of Comments

We received 82 letters from State and local government agencies, national and local voluntary resettlement agencies, service providers, coalitions and forums concerned with refugee resettlement, and refugee mutual assistance associations.

The following sections address specific points which commenters raised:

Single State Agency

Comment: A few commenters felt that the elimination of the single State agency requirement would further decentralize and fragment the program.

Response: It is our opinion that HHS does not have the statutory authority to require a State to use a single State agency as a condition of participation in the refugee resettlement program. States, however, may exercise the option of using a single State agency to administer the program, and ORR recommends that States choose to do so in the interest of efficient program management.

Advisory Council

Comment: Some commenters opposed the proposed elimination of the requirement that States establish a State Advisory Council. They suggested that because the councils could serve a valuable purpose in the refugee

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program, their existence should not be a matter of State discretion but a continuing Federal requirement.

Response: We do not believe that the existence of the State Advisory Council should be mandated by the Office of Refugee Resettlement for the reasons stated previously in the preamble. The elimination of the requirement is intended to reduce the burden on States with small refugee programs. However, all States have the option, under the regulation, of retaining the State Advisory Councils and may continue to claim reasonable and necessary administrative expenses associated with the Councils.

Quarterly Meetings

Comment: ORR received several comments which stated that quarterly meetings on refugee placement might be excessive and even unnecessary given the decreased numbers of new refugee arrivals. Some commenters also suggested that the holding of quarterly meetings, together with other aspects of implementing placement policy, be a Federal responsibility.

Response: The Refugee Assistance Amendments of 1982 (Pub. L. 97–363) require that quarterly meetings on refugee placement be held between State and local government representatives and representatives of local affiliates of voluntary agencies. Action Transmittal ORR–AT–83–5 implements this requirement. The Action Transmittal (AT) also provides authority, as does this regulation, for the Director of ORR to waive the quarterly meeting requirement if the State does not consider the meetings necessary due to the absence of problems associated with the planning and coordination of refugee placement. We believe that the waiver authority, which has already been used under the AT, provides the flexibility needed to avoid unnecessary meetings. We do not concur with the recommendation that the Federal Government be responsible for convening the quarterly meetings between State and local public and voluntary agency representatives because of ORR's limited staff resources. ORR will, however, continue to participate in such consultations to the extent that the availability of staff permits, and ORR expects to continue to sponsor certain consultations.

State Plans

Comments: One commenter expressed opposition to the requirement that a State be responsible for coordinating public and private resources when States do not have the authority to sanction voluntary agencies.

Response: This provision is required by section 412(a)(6)(A)(iii) of the Immigration and Nationality Act and was reflected in previous ORR regulations at 45 CFR 400.5(d).

Comment: One commenter asked that the regulation include a clear description of the required contents of the State plan and recommended that the ORR Director be required to notify a State in writing of all actions taken by ORR or HHS regarding State plans.

Response: ORR does not include detailed guidelines for the preparation of State plans in the regulation because of the burden this would impose on States. It will continue to be ORR practice to communicate in writing any actions it takes regarding State plans or plan amendments.

Comment: One commenter stated that it was onerous to require that the State plan provide for and describe: (1) Procedures established to identify refugees who at the time of resettlement in the State are determined to have medical conditions requiring observation or treatment, and (2) procedures established to monitor any necessary treatment or observations. The commenter indicated that this responsibility should lie with the voluntary agencies and with the Public Health Service.

Response: The regulation reflects the requirement of section 412(a)(6)(A)(v) of the Immigration and Nationality Act that a State submit a plan which provides for "the identification of refugees who at the time of resettlement in the State are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation and such monitoring of such treatment or observation as may be necessary." We believe State responsibility in this area to be consonant with the overall State role in coordinating the refugee program.

Comment: Three commenters noted the difficulties of providing information on the number of refugees identified as having medical problems on arrival in the State and the kinds of services, assistance, and followup provided to them. Another commenter suggested that the benefits from having this information would outweigh the cost involved in obtaining it.

Response: ORR currently requires the States to provide this information on the quarterly performance report (Form ORR–6 as approved by OMB under No. 0960–0317). We believe that the State's oversight role in this area, which has a clear statutory basis in section 412(a)(6) of the Act, is essential even though much of the actual activity involves the Public Health Service and local voluntary agencies. Reporting by the States on the services and assistance provided is necessary, reasonable, and consistent with the existing legislation.

Comment: One commenter objected to the requirement that State plans and amendments be approved by ORR, stating that if ORR were to withhold funds as a result of disapproval, some States would not be able to operate the refugee program.

Response: ORR approves State plans and amendments to the plan to be sure that they conform with Federal statutes and regulations. The purpose of the review is not to withhold Federal funds but to work with a State to develop acceptable plans and subsequent amendments.

Definitions of Cash and Medical Assistance

Comment: One commenter requested that the regulation clarify whether refugee cash assistance (RCA) and refugee medical assistance (RMA) are to be included under the definitions of "cash assistance" and "medical assistance."

Response: We have added language in § 400.2 making clear that RCA and RMA are included under these definitions.

Consolidated Grant

Comment: The majority of commenters expressed opposition to the section of the proposed regulation regarding the consolidated grant program.

Response: This proposal has been deleted in response to language in section 101(k) of the continuing resolution for FY 1985 (Pub. L. 98–473) which prohibits spending funds to implement a consolidated grant.

Reporting and Recordkeeping Requirements

Comment: Two commenters noted the difficulty in providing quarterly program and financial reports 30 days after the end of each quarter. Both noted internal State procedures or organization (e.g., a county-administered system) that precluded the completing of reports within 30 days.

Response: The submission of quarterly performance and financial reports within 30 days after the end of the quarter is standard practice in Departmental grants administration. ORR has allowed extensions of at least 30 days when demonstrably necessary and has also used a waiver procedure as a longer term solution. Such a waiver procedure is included in this regulation at § 400.300. We believe such provisions are sufficient for the resolution of the

kind of problems noted by the commenters, and are preferable to an overall change in established grants administration practices.

Comment: One commenter noted that proposed § 400.11(d) implied that the final financial report for the fiscal year is due 30 days after the end of the fourth quarter, whereas the final report should be due 90 days after the end of that quarter.

Response: The commenter is correct. The following phrase has been added in this regulation to the section now redesignated 400.11(c): "except for the final report for each fiscal year which shall be due 90 days after the end of the fiscal year."

Comment: Two commenters suggested that ORR consider the use of sampling for collecting data to determine the effectiveness of the program. Both commenters indicated that efforts to track all refugees within their State through different programs such as cash assistance and service provision would be extremely difficult.

Response: The reporting and recordkeeping requirements at Section 400.28 do not in themselves require the tracking of refugees through different programs. We therefore do not believe any change in the wording of the regulation is necessary.

Comment: Several commenters raised objections to reporting and recordkeeping requirements in the NPRM which they felt were excessive, impractical, or beyond what is currently required under the refugee resettlement program. One commenter noted that the regulation increases requirements in several areas (notably assistance by nationality) and suggested sampling and more discretion to States in producing the desired data. One commenter feared that additional data development would not be reimbursable. One objected to the overall requirement of providing data on assistance by nationality for those refugees receiving assistance under categorical programs. Finally, one commenter suggested that the requirement to count separately refugees who are secondary migrants was too burdensome.

Response: This regulation is not intended to expand the recordkeeping and reporting requirements for the refugee program, or to exceed what is required by law or contained in existing regulations. In order to clarify this, we have removed the detailed listing of types of data which appeared in the proposed regulation at 400.28(b)(2); this makes clear that we are leaving in place the currently approved reporting requirements. Costs incurred by grantees in obtaining, maintaining, and reporting these data are allowable and reimbursable administrative costs. States already are required to provide data on assistance by nationality and on secondary migrants by the Refugee Assistance Amendments of 1982. ORR understands that the gathering and/or maintenance of some of the required data might be difficult and has traditionally provided for sampling when necessary and reasonable. However, grantee deviation from normal reporting requires prior approval by ORR. We do not believe that a blanket prior approval of undefined grantee flexibility would constitute responsible Federal management of this program.

Safeguarding of Information

Comment: One commenter suggested that the provision be broadened to include the refugee's current address and telephone number and any information necessary to make training referrals.

Response: ORR is aware of the importance of sharing information between a State and a refugee's sponsoring resettlement agency as to the refugee's current location. The relevant section has been revised specifically to recognize this.

Durational Residency Requirements

Comment: One commenter believed that the section prohibiting States from imposing durational residency requirements on applicants for assistance or services would contravene the spirit of the consolidated grant, which would give more flexibility to States and localities. Another commenter expressed concern that the requirement would not only establish a prohibition on minimum residency but also prevent a State from establishing maximum residency requirements for delivery of services.

Response: The Department has deleted the proposed consolidated grant. The regulation does specify that a State may not impose a requirement concerning duration of residence in order for an individual to participate in the State's program for the provision of assistance or services. This provision is intended to avoid a potential arbitrary impediment to needy refugees' receiving necessary assistance or services and is consistent with similar prohibitions found in the AFDC and Medicaid programs. This requirement does not affect a State's prerogative to designate priority categories for services to refugees which take length of U.S. residency into account.

Hearings

Comment: A few commenters recommended that the provision requiring States to allow for hearings for refugee applicants for, or recipients of, assistance, which uses the same procedures and standards as those for the AFDC program, should not be applicable to general assistance (GA) programs in the State.

Response: The requirement in this regulation relating to hearings applies only to the specific refugee programs of RCA, RMA, and refugee support services. It does not affect other programs for which refugees may qualify, such as GA programs.

Comment: One commenter objected to § 400.23(b) of the regulation which provides that if a refugee's date of entry is at question, the matter is to be resolved through prompt factual determination based on documentation issued by the Immigration and Naturalization Service. The commenter expressed his opinion that ORR should allow the individual the opportunity to contest a date as furnished by INS, otherwise, he suggested, ORR would be denying that individual due process.

Response: The authority and responsibility for determining dates of entry, as well as other matters related to immigration status, rest with the Immigration and Naturalization Service rather than with ORR or with a State or local welfare agency. Therefore a refugee must seek correction of any documentation errors through INS.

Definition of Unaccompanied Minor

Comment: A few commenters commented that the definition of a refugee unaccompanied minor should require a child to meet the definition of a refugee.

Response: Subpart D, on immigration status and refugee documentation, applies to all aspects of the refugee program, including unaccompanied minors.

Comment: Two commenters suggested that the term "close adult relative" be defined in the same manner as the caretaker relative in the AFDC program.

Response: We believe that the AFDC definition of caretaker relative (see section 406(a) of the Social Security Act) is too restrictive for this special and unique population of minors, frequently with extended family ties, for whom greater flexibility is needed. By using the statutory term "close adult relative" (section 412(d)(2)(B)(i) of the Immigration and Nationality Act), we allow more discretion in placing the

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minor with an appropriate nonparental family member.

Comment: With respect to the question of a child who, it is believed, was not, but should have been, classified as an unaccompanied minor by INS, some commenters recommended that the ORR Regional Director or his/her designee be authorized to change the classification of the child and that a request for such reclassification be determined within prescribed timelines—e.g., within 30 days.

Response: ORR does not plan to delegate this authority since the potential number and complexity of such requests is not known. At this time we are not able to estimate a time-frame for determinations since such decisions may require ORR consultation with INS. However, we will make every attempt to respond promptly to requests for reclassification. A State should make any request for reclassification to unaccompanied minor status to the ORR Regional Director.

Comment: One commenter asked whether the effective date of the provision dealing with the reclassification of children as unaccompanied minors applied retroactively or prospectively, and another commenter recommended that it apply retroactively with retroactive Federal reimbursement. A third commenter recommended that it be implemented retroactively in order to support the interpretation given verbally by ORR since the issuance of SSA–AT–79–04.

Response: This rule applies prospectively since previous determinations were made in accordance with Action Transmittal SSA–AT–79–04. We believe that the third commenter's concern is addressed by the provision in section 400.111 that permits the continuation of unaccompanied minor status for "a child who was correctly classified as 'unaccompanied' by a State in accordance with Action Transmittal SSA–AT–79–04 (and official interpretations thereof by the Director)."

Comment: A commenter asked whether a child who is institutionalized but who also has natural parents in the United States would be considered an unaccompanied minor.

Response: Such a child would not be considered an unaccompanied minor.

Comment: One commenter believed that the definition of an unaccompanied minor would be in conflict with State law, possibly jeopardizing the care of certain refugee minors, and recommended amending the definition to read: ". . . entered the country neither unaccompanied by nor destined to (a) parent, or (b) other legally responsible relative under the statutes of the State of residency, or (c) any adult with a clear and court-verified claim to custody of the child." The commenter agreed with the placement of children with extended family members but at the same time felt that the Federal Government should provide financial support to these families just as the State should monitor the cases.

Response: We believe that the definition of unaccompanied minor contained in this regulation correctly reflects the language, intent, and legislative history of section 412(d)(2)(B) of the Federal statute. The statute authorizes child welfare services under section 412(d)(2)(A) and thus recognizes that children other than those who meet the definition of unaccompanied minor may require protective services.

Comment: It was suggested by one commenter that ORR use the same definition for both refugee unaccompanied minors and Cuban/Haitian entrant unaccompanied minors.

Response: We decided not to change the final rule because the Cuban/Haitian entrant unaccompanied minor classification was a one-time classification for such children. Currently, there are very few entrant minors in the Cuban/Haitian entrant unaccompanied minors program, and most of these minors are nearing the age of emancipation in their respective States of placement.

Comment: According to one commenter, § 400.111 does not specifically state who has the authority to determine whether a nonparental adult relative is willing and able to care for a minor. Such a determination, the commenter suggested, should be under the jurisdiction of the State court.

Response: The language in §§ 400.111 and 400.113 is constructed to provide that the determination of "the willing and able" status of a nonparental adult relative be decided in a State court.

Benefits for Unaccompanied Minors

Comment: A commenter suggested that we add the word "benefits," to § 400.113, entitled "Duration of eligiblity," which states: "An unaccompanied minor continues to meet the definition of unaccompanied minor and is eligible for services under §§ 400.115 through 400.120. . . ." The commenter felt that this addition would provide clarity to the statement.

Response: We agree. This change has been made in the final rule.

Legal Responsibility

Comment: Two commenters questioned the reasonableness of the requirement that States initiate legal responsibility procedures within 30 days after an unaccompanied minor arrives at the location of resettlement, citing the steps required before such procedures can be initiated. A third commenter stated that the requirement would not be unreasonable if the 30-day period were counted from the date that the sponsoring voluntary agency notifies the State that a minor is ready for transfer to the State or county agency.

Response: Because of the importance of establishing legal responsibility, ORR believes that it is appropriate to retain the 30-day requirement and to address the exceptional circumstances, as necessary, through the waiver provision of § 400.300.

Adoption

Comment: A commenter recommended that the final rule clearly state that termination of parental rights be determined pursuant to State law. Further, the commenter said that the use of the language "clear expression" of the termination of parental rights, suggests a new standard which may be at variance with existing State statutes. Another commenter stated that the issue of adoption of State wards is strictly a State court responsibility, and therefore it is unclear whether the Federal Government has the ability to allow, or limit, adoption.

Response: We determined that the use of the term "clear expression" could be confusing and have deleted it. With reference to the second issue, we acknowledge that the adoption of State wards is a State court responsiblity. In discussing adoption, § 400.115(c) clearly states "pursuant to adoption laws in the State of resettlement." However, we believe that it is essential to emphasize that most of these children are temporarily separated from their natural parents and/or close adult relatives; consequently, unaccompanied minors are not generally eligible for adoption. Family reunification is the goal of the unaccompanied minors program.

Comment: A few commenters asked whether an unaccompanied minor would retain the status of "unaccompanied minor" if an adoption had been petitioned but not finalized.

Response: Yes, the minor would remain in unaccompanied status until the adoption was finalized (unless unaccompanied minor status otherwise terminated under § 400.113).

Services for Unaccompanied Minors

Comment: Concrete goals for assisting unaccompanied minors in becoming self-supporting at the time of emancipation should be defined, according to one commenter. Issues such as cultural preservation and the use of ethnic-specific services should be addressed also.

Response: We believe that § 400.118, entitled "Case planning," adequately responds to the commenter's concerns.

Reporting on Unaccompanied Minors

Comment: Three commenters objected to aspects of the reporting requirements on unaccompanied minors. One suggested that States be allowed to provide reports on minors by using their own existing State forms; one noted the difficulty in providing information on changes in a minor's status within 30 days; and one noted the problem of providing information on particular assistance provided (e.g., assistance under the AFDC and RCA programs).

Response: We do not believe that it is advisable to allow States to provide information on minors on forms of their own choosing. ORR currently has two forms that have OMB approval for reporting the status and progress of these minors, and these forms are currently in use. States and other members of the public have had opportunities to comment on the specific nature and structure of these forms during the course of the normal reports clearance process as laid out in the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and 5 CFR Part 1320. They will have similar opportunities periodically in the future. ORR, however, acknowledges that 30 days may be too short a time within which to report any change in a minor's status; this time period has therefore been changed to 60 days. Finally, the information on minors to which the one commenter objected has been required since the fall of 1982 on ORR's quarterly performance report (Form ORR–6 as approved by OMB under No. 0960–0317). These reporting and time-frame requirements, by and large, correspond to State child welfare requirements. We attempted to make the information-updating requirements a simple checklist approach, thereby facilitating State reports and eliminating any duplicative reporting.

The Department must require additional information on these special children in order to meet our statutory data-gathering and reporting requirements. Therefore, we are not in a position to make exceptions to this regulation.

Federal Funding for Unaccompanied Minors

Comment: A few Commenters recommended that the final rule specify the availability of Federal funding to cover placement costs of unaccompanied minors, pending the establishment of legal responsibility for the minors in the State of placement.

Response: The regulation addresses this issue in § 400.205. ORR currently reimburses States for such costs and will continue to do so under this regulation.

Comment: Two commenters inquired whether Federal funding (FF) would be available if a child is eligible for assistance under a State adoption assistance program.

Response: FF would not be available to provide reimbursement to States for State adoption assistance for unaccompanied minors. However, FF would continue to be available to States during the pre-adoption period (assuming unaccompanied minor status did not otherwise terminate under section 400.113), which is generally 6–12 months from the filing of the adoption petition in the appropriate State court to the legal finalization of that adoption.

Time Limit on Filing State Claims

Comment: A few commenters opposed the provision in the proposed regulation which stipulated that State claims for expenditures for assistance and services be filed no later than 1 year after the end of the Federal fiscal year in which the expenditure was made. One commenter recommended that the requirement be removed in order to allow for an open-ended claims filing system similar to that used in the AFDC program. Another recommended that claims be open-ended for at least 36 months. A third simply objected to the 1-year limitation, stating that it was inadequate because State regulations allowed State contractors 2 years for billing

Response: We have revised this section to correspond to current policy which allows (a) 1 year after the year in which a grant is awarded for the filing of a final expenditure report with respect to grants for cash assistance, medical assistance, and related administrative costs, and (b) 2 years with respect to grants for social (support) services.

45 CFR Part 400 is amended as follows:

1. The Table of Contents is revised to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

Subpart A—Introduction

Sec.
400.1 Basis and purpose of the program.
400.2 Definitions.
400.3 [Reserved]

Subpart B—Grants to States for Refugee Resettlement

The State Plan

400.4 Purpose of the plan.
400.5 Content of the plan.
400.6 [Reserved]
400.7 Submittal of the State plan and plan amendments for Governor's review.
400.8 Approval of State plans and plan amendments.
400.9 Administrative review of decisions on approval of State plans and plan amendments.
400.10 [Reserved]

Award of Grants to States

400.11 Award of grants to States.
400.12 Adverse determinations concerning State grants.

Subpart C—General Administration

400.20 [Reserved]
400.21 [Reserved]
400.22 Responsibility of the State agency.
400.23 Fair hearings.
400.24 [Reserved]
400.25 Residency requirements.
400.26 [Reserved]
400.27 Safeguarding and sharing of information.
400.28 Maintenance of records and reports.

Subpart D—Immigration Status and Identification of Refugees

400.40 Scope.
400.41 Definitions.

Documentation of Refugee Status

400.43 Requirements for documentation of refugee status.
400.44 Restriction.

Subpart E—Refugee Cash and Medical Assistance

400.62 Refugee cash and medical assistance: Need standards; consideration of income and resources; payment levels, and duration of eligibility.

Subpart F–G—[Reserved]

Subpart H—Child Welfare Services

400.110 Basis and scope.
400.111 Definitions.
400.112 Child welfare services for refugee children.
400.113 Duration of eligibility.
400.114 [Reserved]
400.115 Establishing legal responsibility.
400.116 Services for unaccompanied minors.
400.117 Provision of care and services.
400.118 Case planning.
400.119 Interstate movement.
400.120 Reporting requirements.

Subpart I—[Reserved]

Subpart J—Federal Funding

400.200 Scope.

Federal Funding in Expenditures for Determining Eligibility and Providing Assistance and Services

400.202 Extent of Federal funding.
400.203 Federal funding for cash assistance.

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400.204 Federal funding for medical assistance.
400.205 Federal funding for assistance and services for unaccompanied minors.
400.206 [Reserved]
400.207 Federal funding for administrative costs.
400.208 Claims involving filing units which include both refugees and nonrefugees.
400.209 Claims involving filing units which include refugees who have been in the United States more than 36 months.
400.210 Time limit for filing of State claims.

Subpart K—Waivers

400.300 Waivers.

Authority: (Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9))

2. Sections 400.1 and 400.2 of Subpart A are revised to read as follows:

Subpart A—Introduction

§ 400.1 Basis and purpose of the program.

(a) This part prescribes requirements concerning grants to States under title IV of the Immigration and Nationality Act.

(b) It is the purpose of this program to provide for the effective resettlement of refugees and to assist them to achieve economic self-sufficiency as quickly as possible.

(c) Under the authority in sec. 412(a)(6)(B) of the Immigration and Nationality Act, the Director has established the provision of employment services and English language training as a priority in accomplishing the purpose of this program.

§ 400.2 Definitions.

The following definitions are applicable for purposes of this part:

"AABD" means aid to the aged, blind, and disabled under title XVI of the Social Security Act.

"AB" means aid to the blind under title X of the Social Security Act.

"Act" means the Immigration and Nationality Act.

"AFDC" means aid to families with dependent children under title IV–A of the Social Security Act.

"APTD" means aid to the permanently and totally disabled under title XIV of the Social Security Act.

"Cash assistance" means financial assistance to refugees, including AFDC, SSI, refugee cash assistance, and general assistance, as defined herein, under title IV of the Act.

"Director" means the Director, Office of Refugee Resettlement.

"Federal Funding" or "FF" means Federal funding for a State's expenditures under the refugee resettlement program.

"General assistance program" means a financial and/or medical assistance program existing in a State or local jurisdiction which: (a) Is funded entirely by State and/or local funds; (b) is generally available to needy persons residing in the State or locality who meet specified income and resource requirements; and (c) consists of one-time emergency, or ongoing assistance intended to meet basic needs of recipients, such as food, clothing, shelter, medical care, or other essentials of living.

"HHS" means the Department of Health and Human Services.

"Medical assistance" means medical services to refugees, including Medicaid, refugee medical assistance, and general assistance, as defined herein, under title IV of the Act.

"OAA" means old age assistance under title I of the Social Security Act.

"ORR" means the Office of Refugee Resettlement.

"Plan" means a written description of the State's refugee resettlement program and a commitment by the State to administer or supervise the administration of the program in accordance with Federal requirements in this part.

"Refugee" means an individual who meets the definitions of a refugee under section 101(a)(42) of the Act.

"Refugee cash assistance" ("RCA") means cash assistance provided under section 412(e) of the Act to refugees who are ineligible for AFDC, OAA, AB, APTD, AABD, or SSI and who have resided in the United States for less than an 18-month period from their initial entry into the country.

"Refugee medical assistance" ("RMA") means: (a) Medical assistance provided under section 412(e) of the Act to refugees who are ineligible for the Medicaid program and who have resided in the United States for less than an 18-month period from their initial entry into the country; and (b) services provided in accordance with the final paragraph of the section "Medical Assistance" of Action Transmittal SRS–AT–75–27 (June 9, 1975).

"Secretary" means the Secretary of HHS.

"Sponsor" means an individual, church, civic organization, State or local government, or other group or organization which has agreed to help in the reception and initial placement of refugees in the United States.

"SSI" means supplemental security income under title XVI of the Social Security Act.

"State" means the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and the Trust Territories of the Pacific.

"State agency" means the agency (or agencies) designated by the Governor or the appropriate legislative authority of the State to develop and administer, or supervise the administration of, the plan and includes any local agencies administering the plan under supervision of the State agency.

"State Coordinator" means the individual designated by the Governor or the appropriate legislative authority of the State to be responsible for, and who is authorized to, ensure coordination of public and private resources in refugee resettlement.

"Support services" means services provided or contracted for by a State, which are designed to meet resettlement needs of refugees, for which funding is available under title IV of the Act.

"Title IV of the Act" means title IV, Chapter 2, of the Immigration and Nationality Act.

"Voluntary resettlement agency" or "voluntary agency" or "resettlement agency" means one of the national resettlement agencies (or its local affiliate or subcontractor) or a State or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate Federal agency to provide for the reception and initial placement of refugees in the United States.

3. Section 400.3 is removed and reserved.

§ 400.3 [Reserved]

4. The title of Subpart B is revised, an undesignated center heading is added, and § 400.4 is revised to read as follows:

Subpart B—Grants to States for Refugee Resettlement

The State Plan

§ 400.4 Purpose of the plan.

(a) In order for a State to receive refugee resettlement assistance from funds appropriated under sec. 414 of the Act, it must submit to ORR a plan that meets the requirements of title IV of the Act and of this part and that is approved under section 400.8 of this part.

(b) An approved plan continues in effect until the State expressly amends or revokes the plan or ORR notifies the State in accordance with section 400.8 of this part that the plan no longer meets the requirements of title IV of the Act and of this part.

5. Section 400.5 is revised to read as follows:

§ 400.5 Content of the plan.

The plan must:

(a) Provide for the designation of, and describe the organization and functions of, a State agency (or agencies) responsible for developing the plan and administering, or supervising the administration of, the plan;

(b) Describe how the State will coordinate cash and medical assistance with support services to ensure their successful use to encourage effective refugee resettlement and to promote employment and economic self-sufficiency as quickly as possible.

(c) Describe how the State will ensure that language training and employment services are made available to refugees receiving cash assistance, and to other refugees, including State efforts to actively encourage refugee registration for employment services;

(d) Identify an individual designated by the Governor or the appropriate legislative authority of the State, with the title of State Coordinator, who is employed by the State and will have the responsibility and authority to ensure coordination of public and private resources in refugee resettlement in the State;

(e) Provide for, and describe the procedures established for, the care and supervision of, and legal responsibility (including legal custody and/or guardianship under State law, as appropriate) for, unaccompanied refugee children in the State;

(f) Provide for and describe (1) the procedures established to identify refugees who, at the time of resettlement in the State, are determined to have medical conditions requiring, or medical histories indicating a need for, treatment or observation, and (2) the procedures established to monitor any necessary treatment or observation;

(g) Provide that assistance and services funded under the plan will be provided to refugees without regard to race, religion, nationality, sex, or political opinion; and

(h) Provide that the State will, unless exempted from this requirement by the Director, assure that meetings are convened, not less often than quarterly, whereby representatives of local affiliates of voluntary agencies meet with representatives of State and local governments to plan and coordinate the appropriate placement of refugees in advance of the refugee' arrival.

(i) Provide that the State will: (1) Comply with the provisions of title IV of the Act and official issuances of the Director; (2) meet the requirements in this part; (3) comply with all other applicable Federal statutes and regulations in effect during the time that it is receiving grant funding; and (4) amend the plan as needed to comply with standards, goals, and priorities established by the Director.

(Approved by the Office of Management and Budget under Control number 0980–0418)

6. Section 400.6 is removed and reserved.

§ 400.6 [Reserved]

7. Section 400.7 is revised to read as follows:

§ 400.7 Submittal of the State plan and plan amendments for Governor's review.

A plan or plan amendment under title IV of the Act must be submitted to the State Governor or his or her designee, for review, comment, and signature before the plan is submitted to ORR.

8. Section 400.8 is redesignated as § 400.200 and revised and the text of the section is set out under Subpart J, below. A new § 400.8 is added to read as follows:

§ 400.8 Approval of State plans and plan amendments.

(a) The State agency must submit the State plan and plan amendments which have been signed by the Governor, or his or her designee, together with one copy of such plan or amendment, to the Director of ORR, or his or her designee, for approval. States are encouraged to consult with the Director, or his or her designee, when a plan or amendment is in preparation.

(b) The Director, or his or her designee, may initiate any necessary discussions with the State agency to clarify aspects of the plan.

(c) No later than 45 days after the State plan or plan amendment is submitted, the Director, or his or her designee, will—(1) Determine whether a State plan or plan amendment meets or continues to meet requirements for approval based on relevant Federal statutes and regulations, and (2) approve or disapprove the plan or plan amendment.

(d) The Director, or designee, will notify the State agency promptly of all actions taken on State plans and amendments.

(e) The effective date of an approved State plan or plan amendment may not be earlier than the first day of the calendar quarter in which the State agency submits the plan or plan amendment, except as otherwise approved by the Director.

9. Section 400.9 is revised to read as follows:

§ 400.9 Administrative review of decisions on approval of State plans and plan amendments.

(a) Any State dissatisfied with a determination by the Director, or his or her designee, under § 400.8 with respect to any plan or plan amendment may, within 60 days after the date of notification of such determination, file a petition with the Director, or designee, for reconsideration of the determination.

(b) A State may request that a hearing be held, but it is not required to do so.

(c) If a State requests a hearing, the Director, or designee, will notify the State within 30 days after receipt of such a petition, of the time and location of the hearing to reconsider the issue.

(d) The hearing must be held not less than 30 days nor more than 60 days after the date the notice of the hearing is furnished to the State, unless the Director, or designee, and the State agree in writing on another time.

(e) The hearing procedures in Part 213 of this title will be used except that:

(1) "The Director" is substituted where there is a reference to "the Administrator," and

(2) "ORR Hearing Clerk" is substituted where there is reference to the "SRS Hearing Clerk."

(f) The Director will affirm, modify, or reverse the original decisions within 60 days of the receipt of the State's petition or, if a hearing is held, within 60 days after the hearing.

(g) The initiable determination by the Director, or designee, that a plan or amendment is not approvable shall remain in effect pending the reconsideration.

(h) If the Director reverses the original decision, ORR will reimburse any funds incorrectly withheld or otherwise denied.

§ 400.10 [Reserved]

10. Section 400.10 is redesignated as § 400.28 and revised and the text is set out under subpart C, below. Section 400.10 is therefore reserved.

11. Section 400.11 is redesignated as § 400.27 and revised and the text of the section is set out under subpart C, below. An undesignated center heading and new §§ 400.11 and 400.12 are added to read as follows:

Award of grants to States.

§ 400.11 Award of Grants to States

(a) *Quarterly grants.* Subject to the availability of funds, ORR will make quarterly grants to eligible States for the following purposes (and in accordance with the limitations of subpart J of this part): Cash assistance provided by a State or local public agency under the program of aid to families with dependent children (AFDC) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the

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Immigration and Nationality Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of Pub. L. 93–66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State. ORR will compute the amount of the quarterly award based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

(b) *Form and manner of State application for grant award.*

(1) *Estimates of reimbursable costs.* For quarterly grants under paragraph (a), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, and a justification statement in support of the estimates, no later than 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Quarterly adjustments.* If a State revises its quarterly estimates required in paragraph (b)(1), it must submit to the Director, or designee, the revisions, accompanied by a justification statement, no later than 30 days prior to the beginning of the quarter in which the revision or adjustment applies.

(c) *Financial status report.* A State must submit to the Director, or designee, a financial status report described in § 74.73(a) of this title, no later than 30 days after the end of each quarter, except for the final report for each fiscal year which shall be due 90 days after the end of the fiscal year.

(d) *Review.* ORR will determine whether the State's description of services, estimates, other relevant information, and any adjustments to be made for prior periods meet the requirements under this part, and will compute the quarterly award.

(e) *Grant award.* (1) ORR will transmit to the State the grant award form showing, by type of assistance, the amount of the award.

(2) The State may draw funds, under the Department's Payment Management System (PMS), as needed, to meet the Federal share of disbursements.

(Approved by the Office of Management and Budget under Control number 0960–0418.)

§ 400.12 Adverse determinations concerning State grants.

(a) *Policy.* The Secretary has established a Departmental Grant Appeals Board for the purpose of reviewing and providing hearings on post-award disputes which may arise in the administration of certain grant programs by constituent agencies of HHS. Section 16.3(c) of this title mandates an appellant to exhaust any preliminary appeal process required by regulation before a formal appeal to the Board will be allowed. Paragraph (d) of this section provides an informal preliminary appeal process for resolution of such disputes within ORR prior to appeal to the Board.

(b) *Scope.* Adverse determinations to which this procedure is applicable are as follows:

(1) Termination, in whole or in part, of a grant for failure of the grantee to carry out its approved project or program in accordance with applicable law and the terms and conditions of such assistance or for failure of the grantee otherwise to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.

(3) The disapproval of a grantee's written request for permission to incur an expenditure during the term of a grant.

(4) A determination that a grant is void because the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

(c) *Notice of adverse determination.* If the Director, or his or her designee, makes an adverse determination with respect to a grant, he or she shall promptly issue a notice of adverse determination to the State which contains the reasons for the determination in sufficient detail to enable the State agency to respond and informing the State agency of the opportunity for review under paragraph (d) of this section.

(d) *Request for review of an adverse determination.* (1) If the State agency wants a review of the determination, it must submit a request for such review to the Director no later than 30 days after the postmark on the notice, unless an extension of time is granted for good cause.

(2) The request for review must contain a full statement of the State's position with respect to the determination being appealed and the pertinent facts and reasons in support of such position. The State agency must attach to the submission a copy of the notice.

(3) The Director may, at his or her discretion, invite the State to discuss pertinent issues and to submit such additional information as he or she deems appropriate.

(4) Based on his or her review, the Director will send a written response to the State. If the response is adverse to the State's position, the correspondence shall state the State's right to appeal to the Departmental Grant Appeals Board, pursuant to Part 16 of this title.

(e) *Request for appeal of an adverse determination.* (1) To appeal an adverse determination, a State agency must file an appeal with the Departmental Grant Appeals Board, in accordance with requirements contained in Part 16 of this title.

(2) The State's application for review must be postmarked no later than 30 days after the postmark on the Director's response to the State's request for review in paragraph (d)(4) of this section.

12. Section 400.62 is transferred to New Subpart E—Refugee Cash and Medical Assistance

12a. Section 400.62 is amended by removing paragraphs (a)(2), (3), and (4) and paragraph (f).

13. New Subparts C, D, J and K are added to read as set forth below and new Subparts F, G and I are added and reserved.

Subpart C—General Administration

§ 400.20–400.21 [Reserved]

§ 400.22 Responsibility of the State agency.

(a) The State agency may not delegate, to other than its own officials, responsibility for administering or supervising the administration of the plan.

(b) The State agency must have—

(1) Methods for informing staff of State policies, standards, procedures, and instructions; and

(2) systematic planned examination and evaluation of operations in local offices.

§ 400.23 Hearings.

(a) A State must provide applicants for, and recipients of, assistance and services under the Act with an opportunity for a hearing to contest adverse determinations using hearing procedures set forth in § 205.10(a) of this title for public assistance programs.

(b) If the issue is the date of entry into the United States of an applicant for or recipient of assistance or services, the State must provide for prompt resolution of the issue by inspection of the individual's documentation issued by the Immigration and Naturalization Service (INS) or by information obtained from INS, rather than by hearing.

§ 400.24 [Reserved]

§ 400.25 Residency requirements.

A State may not impose requirements as to duration of residence as a condition of participation in the State's program for the provision of assistance or services.

§ 400.26 [Reserved]

§ 400.27 Safeguarding and sharing of information.

(a) Except for purposes directly connected with, and necessary to, the administration of the program, a State must ensure that no information about, or obtained from, an individual and in possession of any agency providing assistance or services to such individual under the plan, will be disclosed in a form identifiable with the individual without the individual's consent, or if the individual is a minor, the consent of his or her parent or guardian.

(b) The provision by a State to a voluntary resettlement agency, as defined in § 400.2, of information as to whether an individual has applied for or is receiving cash assistance and the individual's address and telephone number is to be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program during the first 36 months after such individual's entry into the United States.

§ 400.28 Maintenance of records and reports.

(a) A State must provide for the maintenance of such operational records as are necessary for Federal monitoring of the State's refugee resettlement program in accordance with Part 74, Subpart D, of this title. This recordkeeping must include:

(1) Documentation of services and assistance provided, including identification of individuals receiving those services;

(2) Records on the location, progress, and status of unaccompanied minor refugee children, including the last known address of parents; and

(3) Documentation that necessary medical followup services and monitoring have been provided.

(b) A State must submit statistical or programmatic information that the Director determines to be required to fulfill his or her responsibility under the Act on refugees who receive assistance and services which are provided, or the costs of which are reimbursed, under the Act.

(Approved by the Office of Management and Budget under control number 0960–0418).

Subpart D—Immigration Status and Identification of Refugees

§ 400.40 Scope.

This subpart sets forth requirements concerning the immigration status and identification of eligible applicants for assistance under title IV of the Act.

§ 400.41 Definitions.

For purposes of this subpart—

"Applicant for asylum" means an individual who has applied for, but has not been granted, asylum under section 208 of the Act.

"Asylee" means an individual who has been granted asylum under section 208 of the Act.

Documentation of Refugee Status

§ 400.43 Requirements for documentation of refugee status.

(a) An applicant for assistance under title IV of the Act must provide proof, in the form of documentation issued by the Immigration and Naturalization Service (INS), of one of the following statuses under the Act as a condition of eligibility:

(1) Paroled as a refugee or asylee under section 212(d)(5) of the Act;

(2) Admitted as a conditional entrant under section 203(a)(7) of the Act;

(3) Admitted as a refugee under section 207 of the Act;

(4) Granted asylum under section 208 of the Act;

(5) Admitted with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980, as specified by the Director; or

(6) Admitted for permanent residence, provided the individual previously held one of the statuses identified above.

(b) The Director will issue instructions specifying the documentation that applicants for assistance must submit.

§ 400.44 Restriction.

An applicant for asylum is not eligible for assistance under title IV of the Act.

Subparts F–G—[Reserved]

Subpart H—Child Welfare Services

§ 400.110 Basis and scope.

This subpart prescribes requirements concerning grants to States under section 412(d)(2)(B) of the Act for child welfare services to refugee unaccompanied minors.

§ 400.111 Definitions.

For purposes of this subpart—

"Child welfare agency" means a agency licensed or approved under State law to provide child welfare services to children in the State.

"Unaccompanied minor" means a person who has not yet attained 18 years of age (or a higher age established by the State of resettlement in its child welfare plan under title IV–B of the Social Security Act for the availability of child welfare services to any other child in the State); who entered the United States unaccompanied by and not destined to (a) a parent or (b) a close nonparental adult relative who is willing and able to care for the child or (c) an adult with a clear and court-verifiable claim to custody of the minor; and who has no parent(s) in the United States. *Limitation:* No child may be considered by a State to be "unaccompanied" for the purpose of this part unless such child was identified by INS at the time of entry as "unaccompanied," except that a child who was correctly classified as "unaccompanied" by a State in accordance with Action Transmittal SSA–AT–79–04 (and official interpretations thereof by the Director) prior to the effective date of this definition may continue to be so classified until such status is terminated in accordance with § 400.113(b) of this subpart; and the Director may approve the classification of a child as "unaccompanied" on the basis of information provided by a State showing that such child should have been classified as "unaccompanied" at the time of entry.

"Title IV–B plan" means a State's plan for providing child welfare services to children in the State under part B of title IV of the Social Security Act.

§ 400.112 Child welfare services for refugee children.

(a) In providing child welfare services to refugee children in the State, a State must provide the same child welfare services and benefits to the same extent as are provided to other children of the same age in the State under a State's title IV–B plan.

(b) A State must provide child welfare services to refugee children according to the State's child welfare standards, practices, and procedures.

(c) Foster care maintenance payments must be provided under a State's program under title IV–E of the Social

Security Act if a child is eligible under that program.

§ 400.113 Duration of eligibility.

(a) Except as specified in paragraph (b), a refugee child may be eligible for services under § 400.112 of this part during the 36-month period beginning with the first month the child entered the United States.

(b) An unaccompanied minor continues to meet the definition of "unaccompanied minor" and is eligible for benefits and services under §§ 400.115 through 400.120 of this part until the minor—

(1) Is reunited with a parent; or

(2) Is united with a nonparental adult (relative or nonrelative) willing and able to care for the child to whom legal custody and/or guardianship is granted under State law; or

(3) Attains 18 years of age or such higher age as the State's title IV–B plan prescribes for the availability of child welfare services to any other child in the State.

§ 400.114 [Reserved]

§ 400.115 Establishing legal responsibility.

(a) A State must ensure that legal responsibility is established, including legal custody and/or guardianship, as appropriate, in accordance with applicable State law, for each unaccompanied minor who resettles in the State. The State must initiate procedures for establishing legal responsibility for the minor, with an appropriate court (if action by a court is required by State law), within 30 days after the minor arrives at the location of resettlement.

(b) In establishing legal responsibility, including legal custody and/or guardianship under State law, as appropriate, the minor's natural parents should not be contacted in their native country since contact could be dangerous to the parents.

(c) Unaccompanied minors are not generally eligible for adoption since family reunification is the objective of the program. In certain rare cases, adoption may be permitted pursuant to adoption laws in the State of resettlement, provided a court finds that: (1) Adoption would be in the best interest of the child; and (2) there is termination of parental rights (for example, in situations where the parents are dead or are missing and presumed dead) as determined by the appropriate State court. When adoption occurs, the child's status as an unaccompanied minor terminates.

§ 400.116 Service for unaccompanied minors.

(a) A State must provide unaccompanied minors with the same range of child welfare benefits and services available in foster care cases to other children in the State. Allowable benefits and services may include foster care maintenance (room, board, and clothing) payments; medical assistance; support services; services identified in the State's plans under titles IV–B and IV–E of the Social Security Act; services permissible under title XX of the Social Security Act; and expenditures incurred in establishing legal responsibility.

(b) A State may provide additional services if the Director, or his or her designee, determines such services to be reasonable and necessary for a particular child or children and provides written notification of such determination to the State.

§ 400.117 Provision of care and services.

(a) A State may provide care and services to an unaccompanied minor directly or through arrangements with a public or private child welfare agency approved or licensed under State law.

(b) If a State arranges for the care and services through a public or private nonprofit child welfare agency, it must retain oversight responsibility for the appropriateness of the unaccompained minor's care.

§ 400.118 Case planning.

(a) A State, or its designee under § 400.117, must develop and implement an appropriate plan for the care and supervision of, and services provided to, each unaccompanied minor, to ensure that the child is placed in a foster home or other setting approved by the legally responsible agency and in accordance with the child's need for care and for social, health, and educational services.

(b) Case planning for unaccompanied minors must, at a minimum, address the following elements:

(1) Family reunification;

(2) Appropriate placement of the unaccompanied child in a foster home, group foster care, residential facility, supervised independent living, or other setting, as deemed appropriate in meeting the best interest and special needs if the child.

(3) Health screening and treatment, including provision for medical and dental examinations and for all necessary medical and dental treatment.

(4) Orientation, testing, and counseling to facilitate the adjustment of the child to American culture.

(5) Preparation for participation in American society with special emphasis upon English language instruction and occupational as well as cultural training as necessary to facilitate the child's social integration and to prepare the child for independent living and economic self-sufficiency.

(6) Preservation of the child's ethnic and religious heritage.

(c) A State, or its designee under section 400.117 of this part, must review the continuing appropriatness of each unaccompanied minor's living arrangement and services no less frequently than every 6 months.

(Approved by the Office of Management and Budget under control number 0960–0418).

§ 400.119 Interstate movement.

After the initial placement of an unaccompanied minor, the same procedures that govern the movement of nonrefugee foster cases to other States apply to the movement of unaccompanied minors to other States.

§ 400.120 Reporting requirements.

A State must submit to ORR, on forms prescribed by the Director, the following reports on each unaccompanied minor:

(a) An initial report within 30 days of the date of the minor's placement in the State;

(b) A progress report every 12 months beginning with 12 months from the date of the initial report in paragraph (a);

(c) A change of status report within 60 days of the date that—

(1) The minor's placement is changed;

(2) Legal responsibility of any kind for the minor is established or transferred; or

(d) A final report within 60 days of the date of that the minor—

(1) Is reunited with a parent; or

(2) Is united with an adult, other than a parent, in accordance with section 400.113(b) or 400.115(c) of this part.

(3) Is emancipated.

(Approved by the Office of Management and Budget under control number 0960–0418).

Subpart I—[Reserved]

Subpart J—Federal Funding

§ 400.200 Scope.

This subpart specifies when, and the extent to which, Federal funding (FF) is available under this regulation in expenditures for determining eligibility and for providing assistance and services to refugees determined eligible under this part, and prescribes limitations and conditions on FF for those expenditures.

Federal Funding for Expenditures for Determining Eligibility and Providing Assistance and Services

§ 400.202 Extent of Federal funding.

Subject to the availability of funds and under the terms and conditions approved by the Director, FF will be provided for 100 percent of authorized allowable costs of determining eligibility and providing assistance and services in accordance with this part.

§ 400.203 Federal funding for cash assistance.

(a) Federal funding is available for cash assistance provided to eligible refugees during the 36-month period beginning with the first month the refugee entered the United States, as follows—

(1) If a refugee is eligible for AFDC, adult assistance programs, or foster care maintenance payments under title IV–E of the Social Security Act, FF is available only for the non-Federal share of such assistance.

(2) If a refugee is eligible for SSI, FF is available for any supplementary payment a State may provide under that program.

(b) Federal funding is available for refugees cash assistance (RCA) provided to eligible refugees during the 18-month period beginning with the first month the refugee entered the United States.

(c) Federal funding is available for general assistance (GA) provided to eligible refugees during the 18-month period beginning with the 19th month after the refugee entered the United States.

§ 400.204 Federal funding for medical assistance.

(a) Federal funding is available for the non-Federal share of medical assistance provided to refugees who are eligible for Medicaid or adult assistance programs during the 36-month period beginning with the first month the refugee entered the United States.

(b) Federal funding is available for refugee medical assistance (RMA) provided to eligible refugees during the 18-month period beginning with the first month the refugee entered the United States.

(c) Federal funding is available for a State's expenditures for medical assistance under a general assistance (GA) program during the 18-month period beginning with the 19th month after the refugee entered the United States.

§ 400.205 Federal funding for assistance and services for unaccompanied minors.

Federal funding is available for a State's expenditures for service to unaccompanied minors under §§ 400.115 through 400.120 of this part until the minor's status as an unaccompanied minor is terminated as specified by § 400.113.

§ 400.206 [Reserved]

§ 400.207 Federal funding for administrative costs.

Federal funding is available for reasonable and necessary indentifiable administrative costs of providing assistance and services under this part, and such costs may be included in a State's claims against its quarterly grants for the purposes set forth in §§ 400.203 through 400.205 of this part.

§ 400.208 Claims involving filing units which include both refugees and nonrefugees.

(a) Federal funding is available for a State's expenditures for assistance and services to a filing unit which includes a refugee parent or two refugee parents and one or more of their children who are nonrefugees, including children who are United States citizens.

(b) Federal funding is not available for a State's expenditures for assistance and services provided to a nonrefugee adult member of a filing unit or to a nonrefugee child or children in a filing unit if one parent in the filing unit is a nonrefugee.

§ 400.209 Claims involving filing units which include refugees who have been in the United States more than 36 months.

Federal funding is not available for State expenditures for cash and medical assistance and child welfare services (except services for unaccompanied minors) provided to any refugee within a filing unit who has been in the United States

(a) more than 36 months if the filing unit is eligible for AFDC, SSI, Medicaid, GA, or child welfare services (except services for unaccompanied minors), or

(b) more than 18 months if the filing unit is eligible for RCA or RMA. A State agency must exclude expenditures made on behalf of such refugees from its claim.

§ 400.210 Time limit for filing of State claims.

Federal funding is available for a State's expenditures for assistance and services to eligible refugees for which a claim is filed no later than

(a) one year after the end of the Federal fiscal year in which the grant was awarded in the case of a grant for cash assistance, medical assistance, and related administrative costs, and

(b) two years in the case of a grant for social (support) services.

Subpart K—Waivers

§ 400.300 Waivers.

If a State agency administering a plan approved under this part demonstrates, to the satisfaction of the Director, that it cannot reasonably comply with a requirement of this part, the Director may waive such requirement with respect to such State, unless required by statute, if the Director determines that such waiver will advance the purposes of this part.

(Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)))

Approved: July 25, 1985.

Margaret M. Heckler,

Secretary of the Department of Health and Human Services.

[FR Doc. 86–1718 Filed 1–29–86; 8:45 am]

BILLING CODE 4150–11–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 400

Refugee Resettlement Program: Refugee Cash Assistance; Requirements for Job Search, Employability Services, and Employment; Refugee Medical Assistance; and Refugee Support Services

AGENCY: Social Security Administration (SSA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation sets forth requirements governing refugee cash assistance; job search, employability services, and employment on the part of applicants for, and recipients of, refugee cash assistance; refugee medical assistance; and refugee support (social) services.

This regulation would complete the issuance of comprehensive regulations covering the basic operation of the State-administered Refugee Resettlement Program (RRP). Regulations covering other aspects of the program are published elsewhere in this issue of the Federal Register, covering grants to States, general administration, immigration status and identification of refugees, child welfare services, and Federal funding. An existing regulation on refugee cash and medical assistance and Federal funding may be found at 45 CFR 400.62. In addition to covering a number of aspects of the RRP not included in the previous regulations, the present proposal would revise some policies previously set forth in Action Transmittals to the States and would also make a few modifications in the existing regulations, including the final rule published elsewhere in this issue.

DATE: To assure consideration, comments should be received by April 30, 1986.

ADDRESSES: Comments should be addressed to Christie Cohagen, Office of Refugee Resettlement, Department of Health and Human Services, Room 1229 Switzer Building, Washington, DC 20201.

If you prefer, you may deliver your comments to Room 1229–A Switzer Building, 330 C Street SW., Washington, DC.

Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately one month after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4:00 p.m., except Federal holidays.

Because of the large number of comments expected, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received during the comment period and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Christie Cohagen, (202) 245–1059.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act to revise procedures for the admission of refugees and to establish a uniform base for the provision of assistance and services to refugees in the United States regardless of their country of origin. Previously, refugees in the United States had been aided under separate programs for (1) Cuban refugees, (2) Indochinese refugees, and (3) Soviet and other non-Cuban, non-Indochinese refugees. Those programs were regarded as temporary, and, therefore, the issuance of program instructions to the States through Action Transmittals, rather than regulations, was considered appropriate. With the enactment of comprehensive authority in 1980, the RRP began the issuance of formal regulations, at 45 CFR Part 400, the first of which was published on September 9, 1980 (45 FR 59323), covering State plan and reporting requirements. Subsequent regulations covered cash and medical assistance and Federal funding, published March 12, 1982 (47 FR 10841), and the subjects cited above under Summary which are published elsewhere in this issue.

Regulatory Procedures

Under Executive Order 12291, we must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This regulation does not meet the definition of a "major" regulation contained in the Executive Order. This regulation for the most part ratifies practices already in place and therefore would not be creating costs. To the extent that changes from current policy are proposed, the regulation would be intended to reduce costs by aiding refugees to achieve earlier employment and self-support.

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 505(b)), the Secretary certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The rule will indirectly affect small entities because some services funded in the RRP are provided by not-for-profit institutions under contract with the States. However, nothing in the rule imposes a significant burden on these small entities, and the rule therefore does not meet the threshold for regulatory flexibility analysis.

Sections 400.11, 400.55, 400.64, 400.79, 400.82, 400.94, and 400.147 of this rule contain collection-of-information requirements. As required by the Paperwork Reduction Act of 1980, we will submit a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these reporting and recordkeeping requirements. Organizations and individuals desiring to submit comments on these collection-of-information requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN Desk Officer for HHS/SSA.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act authorizes the Secretary of HHS to issue regulations needed to carry out the program.

Description of the Regulation

This proposed regulation restates some current policies and modifies or augments others. The changes in policy which are proposed here have one central aim: To aid refugees in achieving earlier employment and self-support.

Throughout the Nation there is wide variation in the extent to which, and rapidity with which, refugees find employment and become self-supporting. In some States, this occurs relatively quickly; in others, a substantial portion of the refugee population may spend its first three years in the United States receiving fully federally funded welfare assistance and, after the completion of that statutory three-year period, may continue on assistance, usually financed by a combination of Federal and State funds and sometimes by local funds as well.

Refugee dependency rates, as measured by the portion of the refugee population that has been in this country less than three years and is receiving cash assistance, range from a high of over 80 percent in two States to less than 20 percent in several other States. These wide differences among States do not appear to be fully explainable by differences in the employment situation in various States, or by differences in the scope and benefit levels of existing

welfare programs, or by differences in the background, training, and work experience of the refugees themselves.

At the same time, there are substantial differences in the ways in which different States carry out the RRP. In some States, refugee services (such as English language training) are widely available outside normal working hours, refugees are referred to job opportunities soon after their arrival in the U.S., become employed, and are able to continue their training. In other States, refugee services tend to be available only during working hours, refugees are enrolled for services and training on a relatively long-term basis, are not required to seek employment, and referrals to job opportunities do not occur until much later. This regulation attempts to address these problems by including more specific requirements for the way in which the RRP is to be carried out by States and the employment-related requirements that apply to a refugee who is receiving refugee cash assistance (RCA).

Thus Subpart F, Requirements for Job Search, Employability Services, and Employment, proposes substantial changes from current requirements. Subpart F would: Require a continuing program of job search by an RCA recipient; specify that the job search requirements can be offset only by certain specific employment services which are themselves directed toward effective job search and placement; and provide that, in general, training which is offered during normal working hours cannot substitute for job search and job acceptance. These proposals are intended to give priority to the earliest possible employment and to require that priority be given to those activities by which people usually get jobs—employment services and actual contacts with potential employers. At the same time, the proposals are intended to assure that needed services are available to refugees who become employed by giving priority to the provision of those services outside normal working hours.

Subpart I, Refugee Support Services, would regroup the designation of support (social) services to fit in with the requirements of Subpart F and the current requirement (50 FR 8194, February 25, 1985) that a State use 85 percent of its ORR refugee support (social) service allocations for employment services, English language training, and case management—identified herein as "employability services."

As a result of the changes proposed in subparts F and I, we believe that most of the specific eligibility requirements for particular services (as currently set forth in Action Transmittals SSA–AT–79–33, August 24, 1979; ORR–AT–80–1, March 26, 1980; and ORR–AT–80–2, April 28, 1980) could be dropped, simplifying the administration of the support service program for States and service providers while assuring that services would be directed toward the major objective of the program—the early employment of refugees.

We especially invite comments on the new elements contained in this proposal and encourage commenters who may take exception to aspects of the proposal to suggest alternative means of addressing the serious problems faced by refugees who are not being helped to become employed and move toward self-support under current practices.

Other changes which this proposal introduces are described in the sections which follow on the several subparts.

Subpart A—Introduction (Section 400.2)

Two changes are made in the list of definitions in § 400.2: A definition of "case management services" is inserted in the definitions in § 400.2, and these services are further addressed in §§ 400.154(j) and 400.155(g) of Subpart I. The definition of "refugee medical assistance" is updated to include references to the appropriate sections of Subpart G.

Subpart B—Grants to States for Refugee Resettlement (Sections 400.11 and 400.13)

Section 400.11(a) is revised to conform with ORR's present policy, begun in fiscal year 1985, of issuing two types of basic grants to States for the operation of the State-administered refugee program: (1) CMA grants, covering funding for cash assistance, medical assistance, the program for refugee unaccompanied minors, and related State administrative costs; and (2) support (social) services grants to fund the activities identified in Subpart I.

Section 400.11(b) is revised to require a State to submit an annual State administrative costs budget as part of its application for CMA and support services funds. This requirement is in accordance with HHS grant regulations at 45 CFR Part 74 and would use the, Standard Form 424. This requirement is intended to provide ORR with information needed to assist it in carrying out its responsibility of assuring the allowability and appropriate allocation of anticipated administrative costs and their compatibility with the approved State plan.

A new § 400.13 is added on cost allocation. This provision would place in regulatory form ORR's current cost-allocation guidelines which were issued after consultation with the States. A principal purpose of the guidelines is to assure that costs are correctly allocated between the RRP and other programs administered by the State and, within the RRP, between the CMA and support services grants. Paragraph (c) of this section would continue to permit certain overall management costs to be charged against the CMA grant. Paragraph (d) identifies the circumstances under which certain case management costs may be charged against the CMA grant, again reflecting current policy.

Subpart C—General Administration (Section 400.27)

A new paragraph (c) is added to § 400.27, "Safeguarding and sharing of information," to clarify that information concerning persons who have applied for or received assistance or services under the RRP may be released for any of the same purposes as are permissible under the AFDC program, as set forth in 45 CFR 220.50(a). Such purposes include: Any investigation, prosecution, or criminal or civil proceeding in connection with the administration of the program; any other Federal or federally assisted, needs-based assistance or service program; any audit or similar activity; and the location or apprehension of a fugitive felon.

Subpart E—Refugee Cash Assistance (§§ 400.50 throught 400.64)

Subpart E proposes rules governing refugee cash assistance. *The term "refugee cash assistance" refers specifically to cash assistance to needy refugees who do not meet all eligibility requirements for the programs of aid to families with dependent children (AFDC) and supplemental security income (SSI) for the aged, blind, and disobled.* The provisions of this subpart do not govern the receipt of assistance by refugees who qualify for AFDC or SSI; they must meet the requirements of those programs which apply to refugees and nonrefugees alike.

Current regulations at 45 CFR 400.62 set forth the basic policies with respect to the provision of refugees cash assistance (RCA) and the extent and duration of Federal refugee program funding for RCA and other cash assistance programs for which refugees may qualify. The present regulation restates, but does not change, those rules.

The major changes proposed in this subpart relate to considering a household, rather than a family unit, as the filing unit for RCA (§ 400.63) and

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requiring (rather than leaving as an option) the application of certain additional AFDC provisions to the RCA program (§ 400.64).

A. Recovery of Overpayments and Correction of Underpayments (§ 400.52)

Section 400.52 confirms current practice by applying AFDC rules when overpayments or underpayments occur.

B. Applications, Determinations of Eligibility, and Furnishing Assistance (§§ 400.55 through 400.57)

Under current policy, when a refugee applies for cash assistance a State must first determine his or her eligibility under other federally aided public assistance programs (i.e., AFDC, SSI, or—in Guam, Puerto Rico, and the Virgin Islands—old age assistance (OAA), aid to the blind (AB), aid to the aged, blind, and disable (AABD), or aid to the permanently and totally disabled (APTD)). States must comply with regulations governing applications, determinations of eligibility, and furnishing assistance under the AFDC program at 45 CFR Part 206.

If a refugee is eligible under one of the above programs, a State must provide assistance to that refugee under the appropriate program. If a refugee does not meet the categorical requirements of these other public assistance programs (i.e., family composition, the presence of children, age, disability, etc.), the State must determine eligibility for RCA.

In determining RCA eligibility, a State is required to contact an applicant's sponsor or the resettlement agency to determine the amount of assistance, if any, being provided to the refugee and to inquire whether the applicant has voluntarily quit employment or refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application. This requirement ensures that States verify at the time of application that a refugee has not refused to accept an offer of employment within 30 days prior to the date of application for assistance, in accordance with current policy contained in § 400.77(a) of the proposal.

Section 400.55(d) clarifies existing policy by requiring a State to distinguish clearly, in its applications for assistance and notices to recipients, between RCA, AFDC, and GA. The purpose of this requirement is to assure that clients are appropriately informed of their eligibility or ineligibility and receive information sufficiently specific to enable them to exercise their right to appeal if they wish to do so.

C. Conditions of Eligibility for Refugee Cash Assistance (§§ 400.60 through 400.64)

Under current policy, refugees who are ineligible for AFDC, SSI, OAA, AB, AABD, or APTD, but who meet the AFDC need standard in their State of residence, after consideration of income and resources in accordance with 45 CFR 233.20(a) (3) through (11) (except that the two earned income disregards of $30 and of $30 plus one-third at § 233.20(a)(11)(ii)(B) are not applied), are eligible for refugee cash assistance if they have resided in the U.S. less than 18 months following their initial entry into this country. In determining financial eligibility, a State may not consider income and resources of a refugee's sponsor which are not contributed to the refugee, or a refugee's resources which are not readily accessible to the refugee—e.g., resources in the refugee's country of origin. A State may not apply to applicants for or recipients of refugee cash assistance the rule under the AFDC unemployed parents program at 45 CFR 233.100(a)(1) that generally defines unemployment as employment less than 100 hours a month. Eligible refugees receive benefits and services at levels equivalent to those provided under the State's AFDC program. This regulation would continue the current policy.

Section 400.60(a)(5)) adds a requirement that a refugee provide the name of the resettlement agency which was responsible for his or her resettlement. This information is needed to enable the State to verify any assistance being provided and to determine whether the refugee has quit or refused employment, as required under § 400.55(b) (3) and (4). Section 400.60(a)(5) places on the refugee the responsibility for providing the name of the resettlement agency by making this a condition of eligibility. This requirement would not apply to asylees since persons granted asylum under section 208 of the Act do not usually have a sponsoring resettlement agency.

D. Use of Household Filing Unit (§ 400.53)

A major change is proposed in the definition of a filing unit (assistance case) under the RCA program. Under current policy, a State may, but is not required to, use a household, rather than a smaller case unit, as the filing unit for RCA. Under this proposal, the State would be required: (1) To consider as a single filing unit two or more RCA applicants or recipients living in the same household; and (2) in a household including persons other than the RCA applicants or recipients, to take into account the needs, resources, and income (including payment received under other programs) of all persons living in the household in determining the eligibility and amount of assistance to the RCA applicants or recipients, except that the amount of the RCA payment could not exceed that which would be arrived at by considering only the RCA filing unit.

We believe that this use of the household concept will result in more fair and equitable levels of assistance which are generally more in line with assistance available to nonrefugees. The household concept is used by States in the food stamp program—including the eligibility of refugees for food stamps—and we do not believe that it will impose a burden if applied to the RCA program.

Use of the household concept will not affect the amount of assistance provided to refugees who are eligible under the programs of AFDC, SSI, GA, or adult assistance in the territories, except as might otherwise be provided in the eligibility and benefit criteria for those programs. In a household which includes such assistance units as well as RCA recipients, the amount of assistance to only the RCA recipients will be affected by the household concept.

E. Other AFDC requirements applicable to refugee cash assistance (§400.64).

This section would formalize the applicability of certain additional AFDC requirements to the RCA program with respect to budgeting methods, determining eligibility, computing the assistance payment, recovering overpayments and correcting underpayments, and identifying and dealing with fraud.

This section would also apply to RCA the AFDC requirements regarding monthly reporting. Monthly reporting is especially applicable to caseloads in which changes in employment and income are likely to occur—such as the RCA caseload which excludes the aged, blind, and disabled who are covered under SSI and the one-parent families which are covered under AFDC.

Subpart F—Requirements for Job Search, Employability Services, and Employment

Refugees who apply for or receive refugee cash assistance (RCA) must meet the requirements in Subpart F of these rules. These proposed rules are based on requirements of the Refugee Act, as amended. The rules in Subpart F apply to RCA applicants and recipients. Refugees who receive AFDC must meet the requirements of that program rather than Subpart F.

A. Arrangements for Employability Services (§ 400.72)

Section 400.72 of the proposed regulation allows States to make certain arrangements with appropriate agencies to provide refugees with required employability services as defined in § 400.71. It also formalizes a requirement that an agency providing employability services, in order to qualify to receive referrals of employable refugees by the State agency, must agree to advise the State agency whenever a refugee fails or refuses to partiolpate in the required services or to accept an offer of employment.

Employable applicants for or recipients of refugee cash assistance must meet the requirements in Subpart F concerning registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

B. Registration for Employment Services, Participation in Employability Service Programs, and Acceptance of Offers of Employment (§ 400.75)

Section 400.75 generally reflects § 412(e)(2)(A) of the Immigration and Nationality Act, which, except for good cause shown, conditions the receipt of cash assistance by an employable refugee on that refugee's registration with an agency offering employment services specifically designed to assist refugees in attaining economic self-sufficiency. If no such agency is available, the refugee must register with the State or local employment service. Section 412(e)(2)(A) of the Act also conditions receipt of cash assistance on the participation of employable refugees in available and appropriate social service programs, funded under § 412(c) of the Act, which provide job or language training.

Section 400.75 clarifies the registration requirement by specifying that an "appropriate agency providing employment services" means (as defined in § 400.71) an agency whose services must include "an established program of job referral to, and job placement with, private employers" and "must be determined acceptable by the State." Previous studies have shown that some referrals for employment services were being made to agencies whose services did not include job referral and placement.

This section also requires that an employable refugee must participate in a continuing program of job search, described subsequently in § 400.80. These proposed requirements are intended to encourage early employment.

C. Criteria for Exemption from Registration (Section 400.76)

Section 400.76 exempts certain individuals from registration for employment services and required social services because of age, full-time attendance at school or training, health, disability, or responsibility for the care of a child or another member of the household. These exemptions, which are contained in current policy, are modeled after exemptions which apply to AFDC recipients.

Inability to communicate in English does not exempt a refugee from registration.

D. Effect of Nonparticipation in Services and of Quitting Employment (§ 400.77)

Under current policy, employable refugees may not, without good cause, within 30 consecutive days prior to the date of application, or at any time when receiving refugee cash assistance, have voluntarily quit employment or refused to accept an appropriate offer of employment services, training, or employment. Section 400.77 formalizes these requirements.

E. Service Requirements for Employed RCA Recipients (Section 400.78)

A recipient of refugee cash assistance who is employed less than 30 hours a week must accept appropriate part-time English language training or other employment-related training if available.

Under current policy, a State may encourage but not require part-time English or other employment-related training if a recipient is employed full time. Section 400.78(b) would revise this to permit a State to require part-time training in this circumstance. We believe that providing this flexibility to a State is in keeping with the self-sufficiency objective of the refugee program since such training can aid a refugee who is partially supported by cash assistance to acquire additional skills which may lead to advancement, higher income, and full self-support.

Language has also been included to provide that employed recipients may not be required to accept services which interfere with their jobs.

F. Development of an Employability Plan (§ 400.79)

Section 400.79 formalizes current practice in the refugee program by requiring the State agency, or its designee, to develop an employability plan for each registrant if such a plan has not been developed by the resettlement agency. This requirement is based on similar requirements applicable to AFDC recipients under the WIN program.

Section 400.79 clarifies current practice by requiring that the employability plan be designed to lead to the earliest possible employment and contain a definite employment goal that would be attainable in the shortest possible time period consistent with a refugee's employability and the local job market. This section also imposes a new requirement, by providing that the employability plan must enable the individual to meet the job search requirements of § 400.80.

We believe that this focus is essential to promoting early employment. Information has shown that, under existing practices, employability plans are often constructed which defer job search and employment for all or nearly all of the 18-month period of potential eligibility for RCA.

G. Job Search Requirements (§ 400.80)

Although current policy emphasizes employment and self-support and requires registration for employment services and acceptance of job offers, it does not contain specific requirements for a job search program to be carried out by RCA applicants and recipients.

Section 400.80 specifically requires an employable applicant for or recipient of refugee cash assistance to carry out a continuing job search program of at least 20 hours of employer contacts per week (including necessary travel time). The time requirement may be expressed in terms of number of employer contacts, at the discretion of the State agency.

Necessary employment services, employability assessment services, and on-the-job training (but not other types of services) may be counted against the job-search time (or number-of-contacts) requirements.

These provisions for job search are intended to reflect the primary emphasis of the resettlement program on early employment and, together with other requirements, to result in a required, focused program consisting of the services and activities necessary to achieving early job placement: Employability assessment and planning; employment services to provide the orientation, information, and guidance necessary for effective job search; referrals to employment opportunities; and contacts with potential employers until job placement is achieved.

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H. Criteria for Appropriate Employability Services and Employment § 400.81).

Section 412(e)(2)(B) of the Act conditions receipt of refugee cash assistance (RCA), except for good cause shown, on a refugee's acceptance of appropriate offers of employment. Under current policy, criteria and standards adapted from regulations governing WIN (45 CFR 224.34), and referenced in § 400.81, are used by the State agency or its designee to determine if a particular job or training opportunity is appropriate.

Existing policy does not require an RCA recipient to accept a job if he or she is receiving training as part of an employability plan approved by the welfare agency. Section 400.81(c) changes current policy by requiring a refugee to accept an appropriate job offer even if it interrupts participation in a program of services unless such services are being provided on evenings or weekends. This section also prohibits the scheduling or provision of services at times which would interfere with a refugee's required job search activities. Exceptions are made for employment services, employability assessment services, and on-the-job training (as described in paragraphs (a), (b), and (c) of § 400.154) since these services are specifically directed toward effective job search and job placement, and for refugee professionals who are enrolled full-time in an approved professional recertification program intended to assist them in becoming relicensed in order to practice their professions in the United States (as described in section 400.81(b)).

I. Failure or Refusal to Carry out Job Search or to Accept Employability Services or Employment §§ 400.82 and 400.83)

Under current policy, if an employable recipient of cash assistance refuses to register for or to accept or continue an employment or training opportunity without good cause, the State agency must terminate assistance with the month of such refusal. This sanction remains in effect for 3 payment months in the first instance, and for 6 payment months in any subsequent instance. Current policy also includes a provision for hearings, as contained in § 400.83.

Under existing policy, only the individual who fails to meet the employment and service requirements is sanctioned. By referencing sanctions applicable to the employment search program under AFDC, § 400.82(b)(3) would require the State agency to designate a "principal earner" in the filing unit (if the unit contains an employable person) and to sanction the entire filing unit based on the failure of that individual to meet requirements.

The inclusion of failure or refusal to carry out job search as a basis for sanction is also a change from current policy, reflecting the addition of job search requirements by § 400.80.

Subpart G—Refugee Medical Assistance

A State must provide a program of refugee medical assistance (RMA) in accordance with the rules in Subpart G.

A. Applications, Determinations of Eligibility, and Furnishing Assistance (Sections 400.93 and 400.94)

Under current policy, a State must first determine the eligibility of each applicant for Medicaid, complying with regulations governing applications, determinations of eligibility, and furnishing Medicaid under 42 CFR Part 435, Subpart J (in the States and the District of Columbia), and 42 CFR Part 436, Subpart J (in Guam, Puerto Rico, and the Virgin Islands). A State with a medically needy program under 42 CFR Part 435, Subpart D, must also determine a refugee's eligibility under that program.

A State must provide Medicaid to eligible refugees. If a refugee is determined ineligible for Medicaid, the State must determine eligibility for refugee medical assistance (RMA).

As set forth in the definition under section 400.2 of this part, the term "refugee medical assistance" (RMA) refers specifically to medical assistance to refugees who do not meet all eligibility requirements for Medicaid, to services provided under section 400.106 to refugees who are eligible either for RMA or for Medicaid, and to services provided under section 400.107.

Section 400.93(d) requires a State to distinguish clearly, in its applications for medical assistance and notices to recipients, between RMA and Medicaid. This is identical to the requirement concerning cash assistance at § 400.55(d).

B. Conditions of Eligibility for Refugee Medical Assistance (Sections 400.100 through 400.104)

Under current policy, a State must determine eligibility for refugee medical assistance of refugees who are ineligible for Medicaid. Recipients of refugee cash assistance are eligible for refugee medical assistance. Also, refugees who are eligible for but not receiving refugee cash assistance are eligible for refugee medical assistance, and States may not require them to actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance. Medicaid categorical eligibility requirements (family composition, age, disability, or blindness) are not applied to applicants for refugee medical assistance.

In States with Medicaid medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's medically needy financial eligibility standards under Medicaid regulations at 42 CFR Part 435, Subpart I, and regulations governing determining income eligibility in 42 CFR 435.831, as reflected in the State's approved title XIX State Medicaid plan.

In States without medically needy programs, to determine financial eligibility for refugee medical assistance a State must use the State's AFDC need standard established under 45 CFR 233.20(a)(2) and regulations governing consideration of income and resources under the AFDC program in 45 CFR 233.20(a) (3) through (11) except that the $30 and one-third disregard does not apply. In addition, under section 400.103 of this proposed regulation, if an applicant for refugee medical assistance in a State without a medically needy program does not meet the State's AFDC need standard, the State must allow the applicant to "spend down" to the AFDC need standard using methods for deducting incurred medical expenses in 42 CFR 435.831(c). This means that an applicant with income in excess of the AFDC need standard may deduct from his or her countable income any incurred medical expenses, thereby lowering the amount of countable income to the AFDC need standard and potentially qualifying the applicant for refugee medical assistance.

Section 400.100(a)(4), a proposed change from current policy, has been included to make clear that a State may not determine a refugee to be eligible for medical assistance if the refugee's eligibility for cash assistance has been terminated because of failure or refusal to carry out job search or to accept employability services or employment. We do not believe it would be appropriate for a refugee to continue to be eligible for either cash or medical assistance in the event of refusal to carry out employment-related requirements.

Section 400.104, a new proposal, would extend the medical assistance eligibility of an RMA recipient who became ineligible solely because of increased earnings from employment. The period of extension would be for nine months or until the refugee reached the end of his or her 18-month period in the United States, the termination date for RMA eligibility—whichever occurred first. This RMA proposal is patterned after a Medicaid "work transition" provision enacted by section 2624 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) amending section 402(a) of the Social Security Act. However, the RMA proposal differs from the Medicaid provision enacted by section 2624 in that the latter is related specifically to the termination of an AFDC income disregard which is not applied in the RCA and RMA programs; therefore the RMA proposal relates to the closely comparable situation in which eligibility results from increased earnings. The Medicaid provision also allows States to continue the eligibility extension for a total period of 15 months. Taking into account that 18 months represents a refugee's total potential eligibility for RMA, we consider it appropriate to allow in RMA only the basic 9-month extension which applies in the Medicaid program.

Thus this, RMA provision would continue the RRP's established policy of generally following Medicaid provisions in the RMA program, with modifications where specific factors relate to the situation of refugees or to the nature of the refugee program requires differences.

C. Scope of Medical Services (Sections 400.105 through 400.107)

A State must provide refugees eligible for refugee medical assistance at least the same services in the same manner and to the same extent as are provided under the State's Medicaid program. If refugees need medical services which are beyond the scope of the State's Medicaid program, but which are available to destitute U.S. citizens in the State through public facilities, such as county hospitals, the State agency may provide such services to eligible refugees through public facilities in order to avoid refugees' becoming a burden on publicly funded local facilities.

Section 400.107 clarifies current policy with respect to health assessments of newly arrived refugees by specifically permitting such assessments as part of the scope of services of the RMA program if they are provided in accordance with requirements established by, and with the approval of, the Director. If such an assessment is done during a refugee's first 90 days in the United States, it could be provided as part of the RMA program without prior determination of the refugee's eligibility for RMA or Medicaid and without regard to whether the refugee is subsequently determined eligible for either RMA or Medicaid.

Subpart I—Refugee Support Services

A State must provide refugee support services in accordance with the rules in subpart I.

A. Applications, Determinations of Eligibility, and Provision of Services; Funding and Service Priorities; and Purchase of Services (Sections 400.145 through 400.148)

Under current policy, States follow procedures established for their social service programs under title XX of the Social Security Act with respect to providing refugees with the opportunity to apply for services, determining eligibility, and providing services. States currently purchase services for refugees from public and private service providers or provide services directly. The proposed rule does not change these current practices.

Section 412(a)(6)(B) of the Immigration and Nationality Act authorizes the Director to develop, and require States to meet, "Standards, goals, and priorities . . . which assure the effective resettlement of refugees and which promote their economic self-sufficiency as quickly as possible and the efficient provision of services." Under this authority, the Director previously established as a priority "the provision of English language training and employment services" (section 400.1(c) of the existing regulations, unchanged in this proposed rule), section 412(a)(6)(A)(ii) of the Act requires that plans submitted by States contain "a description of how the State will insure that language training and employment services are made available to refugees receiving cash assistance" (reflected in § 400.5(c) of the existing regulations).

In light of the intent of the Act, the number of refugees dependent on cash assistance, and the limited funds available for training and services, §§ 400.146 and 400.147 establish funding and service priorities.

Section 400.146, reflecting current policy, requires States to use at least 85 percent of their support service grants to provide employability services (specified by § 400.154) and not more than 15 percent to provide other services (specified by § 400.155).

Previously, in a statement of program goals, priorities, and standards issued to States—first in August 1982 and with revisions in March 1984—the Director of ORR set as objectives that 85 percent of ORR support service funds be targeted for employment services and English language training and that services be focused on the earliest possible movement of refugees from cash assistance to self-sufficiency. Subsequently, this was established as a requirement by notice in the Federal Register (50 FR 8194, February 28, 1985) after consideration of public comments Section 400.146 reflects this current policy. We would continue to consider waivers (under 45 CFR Part 400, Subpart K) in accordance with the following criteria stated in the Federal Register notice:

ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must be able to demonstrate to the satisfaction of the Director, ORR, that two of the following three conditions exist: The cash assistance rate for time-eligible refugees in the State is below the national average for all time-eligible refugees in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees; and/or there are nonemployment-related service needs which are so extreme as to justify an allowance above the basic 15 percent. [*Idem.*]

Section 400.147 proposes revisions in current policy:

Section 400.147(a) requires that a State's support service program use an appropriate portion of funds to provide services to newly arriving and recently arrived refugees. This is intended to avoid a situation, which has sometimes occurred, in which employment-directed services are concentrated on refugees around the time that their 18-month eligibility for RCA or their 36-month eligibility for fully federally funded cash assistance expires rather than at or near the time of their arrival.

Section 400.147(b) would continue the existing priority for the provision of services to cash assistance recipients. It would also require that a higher priority be given to those refugee assistance recipients who are within their first 36 months in the United States (and are therefore receiving fully federally funded cash assistance) than to those recipients who have been here for more than 36 months. This emphasis is important to achieving early employment and reducing both Federal assistance costs and State/local assistance costs that occur after the period of full Federal funding has terminated if employment has not previously been attained.

Section 400.147(c), also directed toward helping refugees to achieve early self-support, would require that support services (except for certain emergency services) be provided only to refugees who have been in the United States less than 36 months unless the State is able to demonstrate that there are "extreme

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and unusual needs" among its refugees who have been here for a longer period of time.

B. Conditions of Eligibility for Refugee Support Services (Sections 400.150 through 400.152)

Under existing policy, a refugee who meets immigration status and documentation requirements may receive any social service permissible under a State's title XX program. In addition, certain specific services are identified as "refugee support services" (previously termed "refugee social services") and may be provided in accordance with eligibility criteria based on receipt of cash assistance, family income, age, and employment status. The existing criteria are as follows:

—The following refugee support services may be provided to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, without regard to other criteria: English language training; career counseling; job orientation; and job placement and followup.

—In addition to the age/nonstudent criterion previously stated, refugees who are unemployed or receiving cash assistance may receive the following services: Employability assessment; development of an individual employability plan.

—In addition to the age/nonstudent criterion previously stated, refugees who are within the family income limit (not more than 90 percent of a State's median family income) or receiving cash assistance (but not necessarily unemployed) may receive the following services: Job development; vocational training; and skills recertification.

—To receive the following, service refugees must be within the family income limit or receiving cash assistance (but other criteria do not apply): Day care; transportation; and translation/interpreter services.

—The following services may be provided to refugees without regard to any of the above eligibility criteria: Outreach; social adjustment.

Under the present proposal, employability services (section 400.154) would continue to be limited to persons 16 years of age or older who are not full-time students in elementary or secondary school, except that employment services could be provided to enable a student to obtain part-time or summer work or full-time permanent employment upon completion of schooling. In addtion, title XX social services provided under § 400.155(h) would be subject to whatever limitations apply under a State's title XX program.

The requirements for all other specific eligibility limitations would be removed (i.e., receipt of cash assistance, unemployment, and income limitations). We believe that this step—when combined with the requirements that 85 percent of support service funds be used for employability services, that an appropriate portion be used for newly arriving and recently arrived refugees, that priority be given to cash assistance recipients, and that support services be generally limited to refugees who have less than 36 months' U.S. residence—can improve the focus of support services and at the same time provide greater flexibility to, and less complexity for, States in designing and implementing their programs in order to achieve the most effective outcomes in terms of increased employment and self-support and reduced dependency.

C. Scope of Refugee Support Services (Sections 400.154 and 400.155)

Under current policy, refugees may receive any service which is permissible under a State's title XX program. In addition, refugees may receive any of a specified list of refugee support services which a State may provide regardless of whether these services are included in the State's title XX program.

Under this proposal, the scope of allowable services remains unchanged from current policy, except for the limitation in § 400.156(a), described below. In addition, "case management services" has been added to the list, recognizing an already allowable service not previously specifically identified.

However, the allowable services have been regrouped and in some instances slightly redefined in accordance with the employment objective of the program: Section 400.154, "Employability services," identifies and defines those services directed toward refugee employment, for which at least 85 percent of a State's support service funds must be used. Section 400.155, "Other services," identifies and defines those services not necessarily specifically directed toward employment, for which not more than 15 percent of support service funds may be used.

D. Limitation and Restrictions (Section 400.156)

Under current guidance, States have been instructed to avoid duplication of services and to provide English language training generally outside normal working hours. Section 400.156 would formalize, and add to, the existing guidance.

Section 400.156(a) prohibits a State from using support services funds to provide orientation to Western culture or basic local orientation since this is a responsibility of a refugee's sponsoring resettlement agency under its agreement with the Department of State. This specific limitation will aid in clarifying roles and averting potential duplication.

Paragraph (b) of this section formalizes the requirement that English language instruction be provided to the fullest extent feasible outside normal working hours and applies the same requirement to vocational training. This will be beneficial to refugees in becoming employed and continuing their training, particularly in light of the new rules which require a program of job search by cash assistance recipients and which provide that training offered during daytime hours on weekdays may not be a substitute for job search and employment.

Under existing practices, many training courses are offered during daytime hours, making it difficult for refugees to accept employment without having to terminate their participation in English or other training. Resettlement workers have frequently cited this as a basic problem. In addition, in the Refugee Assistance Amendments of 1982, Congress made clear its intent that English language training should be provided "in nonwork hours where possible" and that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" (section 412(a)(1) of the Act as amended by section 3(a) of the 1982 Amendments). This proposed regulation addresses these needs.

Paragraph (c) of this section requires a State to take into account services which a resettlement agency may be required to provide for a refugee and not to duplicate those services through its support service program.

Subpart J—Federal Funding

A new § 400.206 is added in Subpart J to cover funding for support services, and a new § 400.220 is added to clarify the calculation of refugee time-eligibility. Both of these sections represent existing policy.

List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

45 CFR Part 400 is amended as follows:

1. The Table of Contents is revised to read as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

Subpart A—Introduction

Sec.
400.1 Basis and purpose of the program.
400.2 Definitions.
400.3 [Reserved]

Subpart B—Grants to States for Refugee Resettlement

The State Plan

400.4 Purpose of the plan.
400.5 Content of the plan.
400.6 [Reserved]
400.7 Submittal of the State plan and plan amendments for Governor's review.
400.8 Approval of State plans and plan amendments.
400.9 Administrative review of decisions on approval of State plans and plan amendments.
400.10 [Reserved]

Award of Grants to States

400.11 Award of grants to States.
400.12 Adverse determinations concerning State grants.
400.13 Cost allocatiop.

Subpart C—General Administration

400.20 [Reserved]
400.21 [Reserved]
400.22 Responsibility of the State agency.
400.23 Fair hearings.
400.24 [Reserved]
400.25 Residency requirements.
400.26 [Reserved]
400.27 Safeguarding and sharing of information.
400.28 Maintenance of records and reports.

Subpart D—Immigration Status and Identification of Refugees

400.40 Scope.
400.41 Definitions.

Documentation of Refugee Status

400.43 Requirements for documentation of refugee status.
400.44 Restriction.

Subpart E—Refugee Cash Assistance

400.50 Basis and scope.
400.51 Definitions.
400.52 Recovery of overpayments and correction of underpayments.

Applications, Determinations of Eligibility, and Furnishing Assistance

400.55 Opportunity to apply for cash assistance.
400.56 Determination of eligibility under other programs.
400.57 Emergency cash assistance to refugees.

Conditions of Eligibility for Refugee Cash Assistance.

400.60 General eligibility requirements.
400.61 Consideration of income and resources.
400.62 Need standards and payment levels.
400.63 Filing unit.
400.64 Other AFDC requirements applicable to refugee cash assistance.

Subpart F—Requirements for Job Search, Employability Services, and Employment

400.70 Basis and scope.
400.71 Definitions.
400.72 Arrangements for employability services.

General Requirements

400.75 Registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.
400.76 Criteria for exemption from registration for employment services and social services.
400.77 Effect of quitting employment or failing or refusing to participate in required services.
400.78 Service requirements for employed recipients of refugee cash assistance.
400.79 Development of an employability plan.

Job Search Requirements.

400.80 Job search requirements.

Criteria for Appropriate Employability Services and Employment

400.81 Criteria for appropriate employability services and employment.

Failure or Refusal To Carry Out Job Search or To Accept Employability Services or employment.

400.82 Failure or refusal to carry out job search or to accept employability services or employment.
400.83 Hearings.

Subpart G—Refugee Medical Assistance

400.90 Basis and scope.
400.91 Definitions.

Applications, Determinations of Eligibility, and Furnishing Assistance

400.93 Opportunity to apply for medical assistance.
400.94 Determination of eligibility for Medicaid.

Conditions of Eligibility for Refugee Medical Assistance

400.100 General eligibility requirements.
400.101 Financial eligibility standards.
400.102 Consideration of income and resources.
400.103 Coverage of refugees who spend down to AFDC need standard.
400.104 Transitional coverage of recipients who receive increased earnings from employment.

Scope of Medical Services

400.105 Mandatory services.
400.106 Additional services.
400.107 Health assessments.

Subpart H—Child Welfare Services

400.110 Basis and scope.
400.111 Definitions.
400.112 Child welfare services for refugee children.
400.113 Duration of eligibility.
400.114 [Reserved]
400.115 Establishing legal responsibility.
400.116 Services for unaccompanied minors.
400.117 Provision of care and services.
400.118 Case planning.
400.119 Interstate movement.
400.120 Reporting requirements.

Subpart I—Refugee Support Services

400.140 Basis and scope.
400.141 Definitions.

Applications, Determinations of Eligibility, and Provisions of Services

400.145 Opportunity to apply for services.

Funding and Service Priorities

400.146 Use of funds.
400.147 Priority in provision of services.

Purchase of Services

400.148 Purchase of services.

Conditions of Eligibility for Refugee Support Services

400.150 General eligibility requirements.
400.152 Limitations on eligibility for specific services.

Scope of Refugee Support Services

400.153 Title XX social services.
400.154 Employability services.
400.155 Other services.
400.156 Limitations and restrictions.

Subpart J—Federal Funding

400.200 Scope.

Federal Funding in Expenditures for Determining Eligibility and Providing Assistance and Services

400.202 Extent of Federal Funding.
400.203 Federal Funding for cash assistance.
400.204 Federal Funding for medical assistance.
400.205 Federal Funding for assistance and services for unaccompanied minors.
400.206 Federal Funding for support services.
400.207 Federal Funding for administrative costs.
400.208 Claims involving filing units which include both refugees and nonrefugees.
400.209 Claims involving filing units which include refugees who have been in the United States more than 36 months.
400.210 Time limit for filing of State claims.
400.220 Counting time-eligibility of refugees.

Subpart K—Waivers

400.300 Waivers.

Authority: Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

§ 400.21 [Amended]

2. Section 400.2 is amended by alphabetically adding the definition for the term "case management services", and by revising paragraph (b) of the definition of the term "Refugee medical assistance" to read as follows:

"Case management services" means the determination of which service(s) to refer a refugee to, referral to such

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service(s), and tracking of the refugee's participation in such service(s).

* * * * *

"Refugee medical assistance" * * * (b) services provided in accordance with sections 400.106 and 400.17 of this part.

* * * * *

3. Section 400.11 is amended by revising paragraphs (a) and (b)(1), by redesignating existing paragraph (b)(2) as (b)(3), and by adding new paragraphs (b)(2) and (b)(4) to read as follows:

§ 400.11 [Amended]

(a) *Quarterly grants.* Subject to the availability of funds (and in accordance with the limitations of Subpart J of this part), ORR will make two types of quarterly grants to eligible States:

(1) *Grants for cash assistance, medical assistance, and related administrative costs ("CMA grants"),* for the following purposes: Cash assistance provided by a State or local public agency under the program of aid to families with dependent children (AFDC) under part A of title IV of the Social Security Act, under the adult assistance programs (AABD, AB, APTD, or OAA) in the territories, or under section 412(e) of the Immigration and National Act; foster care maintenance provided under part E of title IV of the Social Security Act; State supplementary payments under section 1616(a) of the Social Security Act or section 212 of Pub. L. 93–66; medical assistance under title XIX of the Social Security Act or under section 412(e) of the Immigration and Nationality Act; assistance and services to unaccompanied minors under section 412(d)(2)(B) of the Immigration and Nationality Act; and cash or medical assistance provided under a public assistance program established under authority other than Federal law and under which such assistance is generally available to needy individuals or families in similar circumstances within the State; and

(2) grants for support services; as set forth in this part. ORR will compute the amount of the quarterly awards based on documents submitted by the State agency in accordance with this section and such other pertinent facts as the Director may find necessary.

* * * * *

(b) *Form and manner of State application for grant award.* (1) *CMA grants.* For quarterly grants for cash assistance, medical assistance, and related administrative cost, including assistance and services to unaccompanied minors (hereafter, "CMA grants"), a State must submit to the Director, or designee, yearly estimates for reimbursable costs for the fiscal year, identified by type of expense, including a State administrative costs budget, and a justification statement in support of the estimates no later than 45 days prior to the beginning of the fiscal year on a form prescribed by the Director.

(2) *Grants for refugee support services.* For quarterly grants for refugee support services, a State must submit to the Director, or designee, an annual application, including a State administrative costs budget, no later than 45 days prior to the beginning of the fiscal year on Standard Form 424 or such other form as might subsequently be prescribed by the Director.

* * * * *

(4) The State administrative costs budgets included under paragraphs (b)(1) and (2) must be of sufficient descriptive detail to enable determination of the allowability and allocability of the charges anticipated and the compatibility of administrative activities with the approved State plan.

* * * * *

4. A new § 400.13 is added in Subpart B, to read as follows:

§ 400.13 Cost allocation.

(a) A State must allocate costs, both direct and indirect, appropriately between the RRP and other programs which it administers.

(b) Within the RRP, a State must allocate costs appropriately between its CMA grant, support services grant, and any other RRP grants which it may receive, as prescribed by the Director.

(c) Certain administrative costs incurred for the overall management of the State's refugee program (e.g., development of the State plan, overall program coordination, and salary and travel costs of the State Refugee Coordinator), as identified by the Director, may be charged to the CMA grant. All other costs must be allocated between the CMA grant, support services grant, and any other RRP grants.

(d) Costs of case management services, as defined in § 400.2, may not be charged to the CMA grant except where all of the following criteria are met: (1) The case management activities are targeted to time-eligible cash/medical assistance recipients for the purpose of assisting such recipients to obtain employment and to become economically self-sufficient; (2) such case management activities are provided under formal and functional linkages with the appropriate local welfare agency and employment service programs; and (3) such linkages include required reporting to the welfare agency when a refugee is offered a job, placed in a job, or fails to participate in the required employability services.

Subpart C—General Administration

5. A new paragraph (c) is added to existing section 400.27, to read as follows:

§ 400.27 Safeguarding and sharing of information.

* * * * *

(c) The disclosure of information for any purpose set forth in § 205.50(a) of this title shall be considered undertaken for a purpose directly connected with, and necessary to, the administration of the program.

6. Subpart E is revised and new Subparts F, G and I are added to read as follows:

Subpart E—Refugee Cash Assistance

§ 400.50 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA).

§ 400.51 Definitions.

For purposes of this subpart—

"Filing unit" means the individual or individuals whose needs are considered in determining eligibility for, and the amount of, an assistance payment for which FF [Federal funding] is claimed under this part.

"Household" means the individual or individuals living in a housing unit.

§ 400.52 Recovery of overpayments and correction of underpayments.

The State agency must comply with regulations at § 233.20(a)(13) of this title governing recovery of overpayments and correction of underpayments in the AFDC program.

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.55 Opportunity to apply for cash assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply for cash assistance and determine the eligibility of each applicant.

(b) In determining eligibility for cash assistance, the State must—

(1) Comply with regulations at Part 206 of this title governing applications, determinations of eligibility, and furnishing assistance under public assistance programs, as applicable to the AFDC program;

(2) Determine eligibility for other cash assistance programs in accordance with § 400.56 of this part;

(3) Verify with the applicant's sponsor or the resettlement agency the amount of financial assistance the sponsor or resettlement agency is actually providing to the applicant and count any such assistance, provided either in cash or in kind, in considering income and resources of applicants under § 400.61 of this part; and

(4) Contact the applicant's sponsor or the resettlement agency concerning offers of employment and inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with § 400.77(a) of this part.

(c) Notwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for cash assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee cash assistance and other programs such as AFDC and GA. For example, if a refugee applies for assistance, is determined ineligible for AFDC but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to AFDC and to refugee cash assistance. Similarly, to cite another example, if a recipient of refugee cash assistance is notified of termination because of reaching the time limit, and the State reviews the case file to determine possible eligibility for AFDC or GA, the notice to the recipient must indicate the result of that determination as well as the termination of refugee cash assistance.

§ 400.56 Determination of eligibility under other programs.

(a) *AFDC.* (1) The State must determine eligibility under the AFDC program for refugees who apply for cash assistance.

(2) A State must provide cash assistance under the AFDC program to all refugees who apply for and are eligible under that program.

(3) If the appropriate State agency determines that the refugee applicant is not eligible for cash assistance under the AFDC program, the State must determine eligibility for refugee cash assistance in accordance with § 400.60.

(b) *Cash assistance to the aged, blind, and disabled.* (1) *SSI.* (i) The State agency must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration, HHS, to apply for cash assistance under the SSI program.

(ii) If the State agency determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) *OAA, AB, APTD, or AABD.* In Guam, Puerto Rico, and the Virgin Islands—(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years old or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.57 Emergency cash assistance to refugees.

If the State agency determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as quickly as possible and issue the initial payment to the refugee on an emergency basis.

Conditions of Eligibility for Refugee Cash Assistance

§ 400.60 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are ineligible for cash assistance under the AFDC, SSI, OAA, AB, APTD, and AABD programs but meet refugee cash assistance need standards;

(2) Meet immagination status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart; and

(4) Meet the requirements contained in Subpart F of this part for: Registration for and participation in employment services, including job search; acceptance of employment; and participation in employability service programs.

(5) Provide the name of the resettlement agency which resettled them.

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part.

(b) A refugee may be eligible for refugee cash assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

§ 400.61 Consideration of income and resources.

(a) In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must apply the regulations at § 233.20(a) (3) through (11) of this title for considering income and resources of AFDC applicants, except that the State agency may not apply the earned income disregard of $30 plus one-third of the remainder of the earnings or the disregard of $30 set out in § 233.20(a)(11)(B) of this title.

(b) The State agency may not consider any resources remaining in the applicant's country of origin to be accessible to an applicant for or recipient of refugee cash assistance.

(c) The State agency may not consider the income and resources of a sponsor to be accessible to an applicant for or recipient of refugee cash assistance.

§ 400.62 Need standards and payment levels.

(a) In determining need for refugee cash assistance, a State agency must use the State's AFDC need standards established under § 223.20(a) (1) and (2) of this title.

(b) In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the standards in paragraph (a) and applying the consideration of income and resources in § 400.61, a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

§ 400.63 Filing unit.

(a) In a household which includes more than one applicant for or recipient of refugee cash assistance, the State agency must consider all such applicants or recipients as one filing unit.

(b) In a household which includes persons other than those who are

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applicants for or recipients of refugee cash assistance, the State agency must, in determining eligibility for and amount of refugee cash assistance, take into consideration the needs, resources, and income (including counting as income any assistance received under other programs) of all persons residing in the household except that the amount of assistance provided to a refugee cash assistance recipient may not exceed the amount which would be payable if the needs, resources, and income (including counting as income any assistance received under other programs) of only the refugee cash assistance filing unit were considered.

§ 400.64 Other AFDC requirements applicable to refugee cash assistance.

In administering the program of refugee cash assistance, the State agency must also apply the following AFDC regulations in this title:

233.31 Budgeting methods for AFDC.
233.32 Payment and budget months (AFDC).
233.33 Determining eligibility prospectively for all payment months (AFDC).
233.34 Computing the assistance payment in the initial one or two months (AFDC).
233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).
233.36 Monthly reporting (AFDC).
233.37 How monthly reports are treated and what notices are required (AFDC).
235.110 Fraud.

Subpart F—Requirements for Job Search, Employability Services, and Employment

§ 400.70 Basis and scope.

This subpart sets forth requirements for applicants for and recipients of refugee cash assistance concerning registration for employment services, participation in social services, and acceptance of appropriate employment under section 412(e)(2)(A) of the Act. A refugee who is an applicant for or recipient of refugee assistance must comply with the requirements in this subpart. (A refugee who is an applicant for or recipient of AFDC must meet the requirements of the AFDC program instead of the requirements in this subpart; a refugee who is an applicant for or recipient of GA must meet the requirements of the GA program instead of the requirements in this subpart.)

§ 400.71 Definitions.

For purposes of this subpart and subpart I—

"Appropriate agency providing employment services" means an agency providing services specified under § 400.154(a) of this part which are specifically designed to assist refugees in becoming employed, which must include an established program of job referral to, and job placement with, private employers, and which must be determined acceptable by the State.

"Designee," when referring to the State agency's designee, means an agency designated by the State agency for the purpose of carrying out the requirements of § 400.72(a) of this subpart.

"Employability plan" means an individualized written plan for a refugee registered for employment services that sets forth a program of job search and employment services intended to result in the earliest possible employment of the refugee. Such plan may also include other employability services provided at such times as not to interfere with job search or employment.

"Employability services" means services, as specified in § 400.154 of this part, designed to enable an individual to obtain employment and to improve the employability or work skills of the individual.

"Employable" means not exempt from registration for employment services under § 400.76 of this part.

"Employment services" means the services specified in § 400.154(a) of this part.

"Registrant" means an individual who has registered for employment services under § 400.75 of this part.

§ 400.72 Arrangements for employability services.

(a) The State agency must make such arrangements as are necessary to enable refugees to meet the requirements of, and receive the employability services specifies in, this subpart.

(b) If a State agency makes such arrangements with another agency or agencies, it must retain responsibility for meeting the requirements in this subpart.

(c) In order for an agency to qualify to receive referrals from the State agency of refugees required to register for employability services, such agency must agree to advise the State agency whenever such a refugee fails or refuses to participate in the required services or to accept an offer of employment.

General Requirements

§ 400.75 Registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

(a) As a condition for receipt of refugee cash assistance, an applicant or recipient who is not exempt under section 400.76 of this subpart must, except for good cause shown—

(1) Register with an "appropriate agency providing employment services," as defined in § 400.71, and participate in the employment services provided by such agency, as defined in § 400.154(a) of this part, and must carry out a continuing program of job search, as described in § 400.80.

(2) Accept at any time, from any source, an offer of employment, as determined to be appropriate by the State agency or its designee.

(3) Participate in any employability service program which provides job or language training in the area in which the refugee resides, which is funded under section 412(c) of the Act, and which is determined to be available and appropriate for that refugee; or if such a program funded under section 412(c) is not available or appropriate in the area in which the refugee resides, any other available and appropriate program in such area.

(b) The State agency must permit, but may not require, the voluntary registration for employment services of an applicant or recipient who is exempt under § 400.76 of this part.

§ 400.76 Criteria for exemption from registration for employment services and social services.

(a) The State agency must consider an applicant for or recipient of refugee cash assistance to be employable and require him or her to meet the requirements of § 400.75(a) unless the applicant or recipient is—

(1) Under age 16.

(2) Under age 18 and a full-time student (as defined by the State for its AFDC program); or (if the State's AFDC program extends coverage to this group) age 18 and a full-time student in secondary school or in the equivalent level of vocational or technical training (as defined by the State for its AFDC program) and reasonably expected to complete the program before reaching age 19.

(3) Ill, when determined by the State agency on the basis of medical evidence or on another sound basis that the illness or injury is serious enough to temporarily prevent entry into employment or training.

(4) Incapacitated, when determined by a physician or licensed or certified psychologist and verified by the State agency, that a physical or mental impairment, by itself or in conjunction with age, prevents the individual from engaging in employment or training.

(5) 65 years of age or older.

(6) Caring for another member of the household who has a physical or mental impairment which requires, as determined by a physician or licensed or certified psychologist and verified by the State agency, care in the home on a substantially continuous basis, and no other appropriate member of the household is available.

(7) A parent or other caretaker relative of a child under age 6 who personally provides full-time care of the child with only very brief and infrequent absences from the child.

(8) Working at least 30 hours a week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days. Or

(9) Pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would otherwise be required or within the 3-month period immediately following such month.

(b) Inability to communicate in English does not exempt a refugee from registration for employment services, carrying out a job search program, and acceptance of appropriate offers of employability services and employment.

§ 400.77 Effect of quitting employment or failing or refusing to participate in required services.

(a) As a condition of eligibility for refugee cash assistance, an employable *applicant* may not, without good cause, within 30 consecutive calendar days immediately prior to the application for assistance (or such longer period required by § 400.82(b)(3)(ii), if applicable), have voluntarily quit employment or have refused to accept an offer of employment determined to be appropriate by the State agency or its designee, using criteria set forth in § 400.81. This requirement applies regardless of whether the quitting or refusal occurred in the State of application or in another State.

(b) As a condition of continued receipt of refugee cash assistance, an employable *recipient* may not, without good cause, voluntarily quit employment or fail or refuse to meet the requirements of § 400.75(a).

§ 400.78 Service requirements for employed recipients of refugee cash assistance.

(a) As a condition of continued receipt of refugee cash assistance, a recipient who is not exempt under § 400.76 of this part and who is employed less than 30 hours a week must accept part-time employability services, as available and as determined to be appropriate, using criteria set forth in § 400.81 of this part, provided that such services must not interfere with the recipient's job.

(b) A State agency may, but is not required to, require part-time employability services if a recipient of refugee cash assistance is employed at least 30 hours a week, provided that such services must not interfere with the recipient's job.

§ 400.79 Development of an employability plan.

(a) An individual employability plan must be developed for each applicant for or recipient of refugee cash assistance who is not exempt under § 400.76 of this part.

(b) If such a plan has not been developed by the resettlement agency which sponsored the refugee, or its designee, as part of its responsibility under section 412(b)(7)(D) of the Act, then the State agency, or its designee, must develop the employability plan.

(c) The employability plan must—

(1) Enable the individual to meet the job search requirements of § 400.80 of this part;

(2) Be designed to lead to the earliest possible employment and not be structured in such a way as to discourage or delay employment or job-seeking; and

(3) Contain a definite employment goal, attainable in the shortest time period consistent with the employability of the refugee in relation to job openings in the area.

Job Search Requirements

§ 400.80 Job search requirements.

(a) An employable applicant for or recipient of refugee cash assistance must carry out a continuing job search program beginning at the time he or she files an application for assistance.

(b) Such job search program shall, except as specified in paragraph (c) of this section, comprise at least 20 hours of employer contacts per week (including the time of travel required for such purpose). The State agency may express this requirement in terms of the number of employer contacts required.

(c) The amount of time required for the receipt of employment services, employability assessment, and on-the-job training, as described in paragraphs (a), (b), and (c) of § 400.154, may be substituted for the time required for employer contacts (or the number of such contacts required).

(d) The State agency must provide for methods to ensure that requirements for participation in job search are met, including procedures enabling it to verify participation in the program.

Criteria for Appropriate Employability Services and Employment

§ 400.81 Criteria for appropriate employability services and employment.

The State agency or its designee must determine if employability services and employment are appropriate in accordance with the following criteria:

(a) The services or employment must meet the appropriate work and training criteria applied under the WIN program and contained in § 224.34 of this title, except that the reference to an "income disregard" in paragraph (b)(3) of § 224.34 is not applicable to refugee cash assistance and paragraph (b)(5)(iii) of § 224.34 does not apply.

(b) If an individual is a professional in need of professional refresher training and other recertification services in order to qualify to practice his or her profession in the United States, the training may consist of full-time attendance in a college or professional training program, approved as part of the individual's employability plan by the State agency, or its designee, which does not exceed one year's duration (including any time enrolled in such program in the United States prior to the refugee's application for assistance), which is specifically intended to assist the professional in becoming relicensed in his or her profession, and which, if completed, can realistically be expected to result in such relicensing.

(c) A job offered, if determined appropriate under the requirements of this subpart, is required to be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress unless (1) such services are provided on evenings or weekends (i.e., outside normal working hours) or (2) the refugee is enrolled full-time in a professional recertification program which meets the requirements of paragraph (b) of this section.

(d) No employability service, as designated by § 400.154 of this part, may be scheduled or provided at such time as to interfere with a refugee's required job search activities, except for employment services, employability assessment services, and on-the-job training, as described in paragraphs (a), (b), and (c) of § 400.154.

Failure or Refusal To Carry Out Job Search or To Accept Employability Services or Employment

§ 400.82 Failure or refusal to carry out job search or to accept employability services or employment

(a) *Voluntary registrant.* When a voluntary registrant—i.e., a recipient of

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refugee cash assistance who is exempt from registration under § 400.76 of this part—has failed or refused to carry out job search, to participate in appropriate employability services, or to accept an appropriate offer of employment, the State agency, or its designee, must deregister the individual for 90 days from the date of determination that such failure or refusal has occurred, but the individual's cash assistance may not be affected.

(b) *Mandatory registrant.* (1) *Termination of assistance.* When, without good cause, a mandatory registrant—i.e., an employable recipient of refugee cash assistance who is not exempt from registration under § 400.76 of this part—has failed or refused to carry out job search, to participate in appropriate employability services, or to accept an appropriate offer of employment, or has voluntarily quit a job, the State must terminate assistance, in accordance with paragraphs (b) (2) and (3) of this section, with the month in which such failure or refusal occurred.

(2) *Notice of intended termination.* (i) Within two working days after determining that such failure or refusal has occurred, the State agency must mail to the registrant by registered mail notice of intended termination.

(ii) The written notice must include—

(A) An explanation of the reason for the action and the consequences of such failure or refusal; and

(B) Notice of the registrant's right to a hearing under § 400.83 of this part.

(3) *Sanctions.*

(i) The State must apply sanctions in accordance with paragraphs (1) through (3) of § 240.22(a) of this title.

(ii) The sanction applied in paragraph (b)(3)(i) of this section shall remain in effect for 3 payment months for the first such failure and 6 payment months for any subsequent such failure.

§ 400.83 Hearings.

The State must provide an applicant for or recipient of refugee cash assistance an opportunity for a hearing, using the same procedures and standards set forth in § 205.10(a) of this title, to contest a determination concerning employability, or failure or refusal to carry out job search or to accept an appropriate offer of employability services or employment, resulting in denial or termination of assistance.

Subpart G—Refugee Medical Assistance

§ 400.90 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee medical assistance (RMA), as defined at § 400.2 of this part.

§ 400.91 Definitions.

For purposes of this subpart—

"Medically needy" means individuals who are eligible for medical assistance under Medicaid regulations at 42 CFR Part 435, Subpart D.

"Spend down" means to deduct from countable income incurred medical expenses, thereby lowering the amount of countable income to a level that meets financial eligibility requirements in accordance with 42 CFR 435.831 (or, as applicable to Guam, the Virgin Islands and Puerto Rico, 42 CFR 436.831).

Applications, Determinations of Eligibility, and Furnishing Assistance

§ 400.93 Opportunity to apply for medical assistance.

(a) A State must provide any individual wishing to do so an opportunity to apply to medical assistance and must determine the eligibility of each applicant.

(b) In determining eligibility for medical assistance, the State agency must comply with regulations governing applications, determinations of eligibility, and furnishing Medicaid (including the opportunity for fair hearings) in the States and the District of Columbia under 42 CFR Part 435, Subpart J, and in Guam, Puerto Rico, and the Virgin Islands under 42 CFR Part 436, Subpart J, and 42 CFR Part 431, Subpart E.

(c) Nothwithstanding any other provision of law, the State must notify promptly the agency (or local affiliate) which provided for the initial resettlement of a refugee whenever the refugee applies for medical assistance.

(d) In providing notice to an applicant or recipient to indicate that assistance has been authorized or that it has been denied or terminated, the State must specify the program(s) to which the notice applies, clearly distinguishing between refugee medical assistance and Medicaid. For example, if a refugee applies for assistance, is determined ineligible for Medicaid but eligible for refugee medical assistance, the notice must specify clearly the determinations with respect both to Medicaid and to refugee medical assistance.

§ 400.94 Determination of eligibility for Medicaid.

(a) The State must determine eligibility under its Medicaid State plan for refugees who apply for medical assistance.

(b) A State that provides Medicaid to medically needy individuals in the State under its State plan must determine a refugee applicant's eligibility for Medicaid as medically needy.

(c) A State must provide medical assistance under the Medicaid program to all refugees eligible under its State plan.

(d) If the appropriate State agency determines that the refugee applicant is not eligible for Medicaid under its State plan, the State must determine eligibility for refugee medical assistance.

Conditions of Eligibility for Refugee Medical Assistance

§ 400.100 General eligibility requirements.

(a) Eligibility for refugee medical assistance is limited to those refugees who—

(1) Are ineligible for Medicaid but meet the financial eligibility standards under § 400.101;

(2) Meet immigration status and identification requirements in Subpart D of this part or are the dependent children of, and part of the same filing unit as, individuals who meet the requirements in Subpart D, subject to the limitation in § 400.208 of this part with respect to nonrefugee children;

(3) Meet eligibility requirements and conditions in this subpart;

(4) Have not been denied, or terminated from, refugee cash assistance under § 400.82 of this part;

(5) Provide the name of the resettlement agency which resettled them; and

(6) Are not full-time students in institutions of higher education, as defined by the Director, except where such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee under § 400.79 of this part or a plan for an unaccompanied minor in accordance with § 400.112.

(b) A refugee may be eligible for refugee medical assistance under this subpart during the 18-month period beginning with the first month the refugee entered the United States.

(c) The State agency may not require that a refugee actually receive or apply for refugee cash assistance as a condition of eligibility for refugee medical assistance.

(d) All recipients of refugee cash assistance are eligible for refugee medical assistance.

§ 400.101 Financial eligibility standards.

In determining eligibility for refugee medical assistance, the State agency must use—

(a) In States with medically needy programs under 42 CFR Part 435, Subpart D, the State's medically needy financial eligibility standards established under 42 CFR Part 435, Subpart I, and as reflected in the State's approved title XIX State Medicaid plan; and

(b) In States without a medically needy program, the State's AFDC need standards established under § 233.20(a)(2) of this title.

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraph (b) of this section, in considering financial eligibility of applicants for refugee medical assistance, the State agency must use—

(1) In States with medically needy programs, the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan; and

(2) In States without medically needy programs, the standards governing consideration of income and resources of AFDC applicants in § 233.20(a) (3) through (11) of this title, except as specified in § 400.81(a) of this part.

(b) The State may not consider in-kind services and shelter provided to an applicant by a sponsor or resettlement agency in determining eligibility for and receipt of refugee medical assistance.

§ 400.103 Coverage of refugees who spend down to AFDC need standard.

In States without a medically needy program, if an applicant for refugee medical assistance does not meet the appropriate AFDC need standard, the State agency must allow that individual to spend down to the AFDC need standard using the methods for deducting incurred medical expenses set forth in 42 CFR 435.831(c).

§ 400.104 Transitional coverage of recipients who receive increased earnings from employment.

If a refugee who is receiving medical assistance becomes ineligible solely by reason of increased earnings from employment, the refugee's refugee medical assistance eligibility shall be extended by a period of nine months or until the refugee reaches the end of his or her 18-month period in the United States, in accordance with § 400.100(b), whichever comes first.

Scope of Medical Services

§ 400.105 Mandatory services.

In providing refugee medical assistance to refugees, a State must provide at least the same services in the same manner and to the same extent as under the State's Medicaid program, as delineated in 42 CFR Part 440.

§ 400.106 Additional services.

If a State or local jurisdiction provides additional medical services beyond the scope of the State's Medicaid program to destitute residents of the State or locality through public facilities, such as county hospitals, the State may provide to refugees who are determined eligible under § 400.94 or 400.100 of this part the same services through public facilities.

§ 400.107 Health assessments.

(a) As part of its medical assistance program, a State may provide a health assessment to a refugee, provided—

(1) The assessment is in accordance with requirements prescribed by the Director, or his or her designee; and

(2) Written approval for the assessment program or project has been provided to the State by the Director, or designee.

(b) If such assessment is done during the first 90 days after a refugee's initial date of entry into the United States, it may be provided without prior determination of the refugee's eligibility under § 400.94 or § 400.100 of this part.

Subpart I—Refugee Support Services

§ 400.140 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(c) of the Act for refugee support services.

§ 400.141 Definitions.

For purposes of this subpart—

"Refugee support services" means any title XX social services as defined below or any service set forth in § 400.154 or 400.155 of this subpart.

"Title XX social services" means any service which is permissible in the State under the State's annual pre-expenditure report under title XX of the Social Security Act.

Applications, Determinations of Eligibility, and Provision of Services

§ 400.145 Opportunity to apply for services.

(a) A State must provide any individual wishing to do so an opportunity to apply for services and determine the eligibility of each applicant.

(b) Except as otherwise specified in this subpart, a State must determine eligibility for and provide refugee support services specified in §§ 400.154 and 400.155 in accordance with the same procedures which it follows in its social service program under title XX of the Social Security Act with respect to determining eligibility, acting on applications and requests for services, and providing notification of right to a hearing.

Funding and Service Priorities

§ 400.146 Use of funds.

A State must use at least 85 percent of its support service grants to provide employability services as set forth in § 400.154 of this subpart. A State may not use more than 15 percent of such grants to provide other services as set forth in § 400.155.

§ 400.147 Priority in provision of services.

(a) A State must plan its support service program and allocate its support service funds in such a manner that an appropriate portion of funds, based on population, is used to provide services to newly arriving refugees and to other refugees who have been in the United States less than one year. The portion proposed for such use must be specified and justified as part of the State's application under § 400.11(b)(2) of Subpart B.

(b) In providing employability services, a State must give priority to a refugee who is receiving cash assistance which is funded, in whole or in part, under this part.

(c) A State may not provide services under this subpart (except for emergency services under § 400.155(c)(1) to refugees who have been in the United States for more than 36 months except to meet extreme and unusual needs to the extent that such needs, and the amount of funds proposed to address them, have been specified and justified as part of the State's application under § 400.11(b)(2) of Subpart B.

Purchase of Services

§ 400.148 Purchase of services.

A state may provide services directly or it may purchase services from public or private service providers.

Conditions of Eligibility for Refugee Support Services

§ 400.150 General eligibility requirements.

Eligibility for refugee support services is limited to those refugees who—

(a) Meet immigration status and identification requirements is Subpart D of this part;

(b) Meet other eligibility requirements and conditions in this subpart.

§ 400.152 Limitations on eligibility for specific services.

(a) A statement may provide the support services defined in § 400.154 to

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refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school, except that such a student may be provided services under § 400.154 (a) and (b) in order to obtain part-time or temporary (e.g., summer) employment while a student or full-time permanent employment upon completion of schooling.

(b) A state may provide the support services defined in § 400.155 to refugees without eligibility limitations, except for such limitations as may apply to title XX services provided under § 400.155(h).

Scope of Refugee Support Services

§ 400.153 Title XX social services.

A State may provide the same services in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under the program.

§ 400.154 Employability services.

A State may provide the following employability services, for which at least 85 percent of a State's support service funds must be used—

(a) *Employment services,* including development of an individual employability plan, world-of-work and job orientation, job clubs, job workshops, job development, referral to job opportunities, job search,and job placement and followup.

(b) *Employability assessment services,* including aptitude and skills testing.

(c) *On-the job training,* when such training is provided at the employment site and is expected to result in full-time, permanent, unsubsidized employment with the employer providing the training.

(d) *English language instruction,* with an emphasis on English as it relates to obtaining and retaining a job.

(e) *Vocational training,* including driver education and training when provided as part of an individual employability plan.

(f) *Skills recertification,* when such training meets the criteria for appropriate training in § 400.81(b) of this part.

(g) *Day care,* when necessary for participation in an employability service or for the acceptance or retention of employment.

(h) *Transportation,* when necessary for participation in an employability service.

(i) *Translation and interpreter services,* when necessary in connection with employment or participation in an employability service.

(j) *Case management services,* as defined in § 400.2 of this part, for refugees who are considered employable under § 400.76, provided that such services are directed toward a refugee's attainment of employment as soon as possible after arrival in the United States.

Note.—Under circumstances specified in § 400.13(d), a State may, but is not required to, charge certain case management services to its CMA grant rather than its support services grant.)

§400.155 Other services.

A State may provide the following services, for which not more than 15 percent of a State's support service funds may be used—

(a) *Information and referral services.*

(b) *Outreach services,* including activities designed to familiarize refugees with available services.

(c) *Social adjustment services,* including:

(1) *Emergency services,* as follows: Assessment and short-term counseling to persons in a perceived crisis; referral to appropriate resources; and the making of arrangements for necessary services.

(2) *Health-related services,* as follows: Information; referral to appropriate resources; assistance in scheduling appointments and obtaining services; and counseling to individuals or families to help them understand and identify their physical and mental health needs and maintain or improve their physical and mental health.

(3) *Home management services,* as follows: Formal or informal instruction to individuals or families in management of household budgets, home maintenance, nutrition, housing standards, tenants' rights, and other consumer education services.

(d) *Day care,* when necessary for participation in a service other than an employability service.

(e) *Transportation,* when necessary for participation in a service other than an employability service.

(f) *Translation and interpreter services,* when necessary for a purpose other than in connection with employment or participation in an employability service.

(g) *Case management services,* when necessary for a purpose other than in connection with employment or participation in employability services.

(h) *Title XX social services,* which may be provided in the same manner and to the same extent as are permissible under the State's title XX social service program to refugees who meet the eligibility requirements applicable to services under that program.

§ 400.156 Limitations and restrictions.

(a) A State may not use its support service funds to provide orientation services which are designed to familiarize refugees with Western culture or to provide basic local orientation since this responsibility rests with the resettlement agency which sponsors a refugee.

(b) In order to avoid interference with refugee job search and employment, English language instruction and vocational training funded under this part must be provided to the fullest extent feasible outside normal working hours.

(c) In planning and providing services under §§ 400.154 and 400.155, a State must take into account those services which a resettlement agency may be required to provide for a refugee whom it sponsors (e.g., development of an employability plan and monitoring of such plan) and not duplicate such services to such refugee.

9. Section 400.206 is added in Subpart J to read as follows:

§ 400.206 Federal funding for support services.

Federal funding is available for refugee support services as set forth in Subpart I of this part, including the reasonable and necessary identifiable administrative costs of providing such services, in accordance with allocations determined by the Director.

10. A new § 400.220 is added in Subpart J to read as follows:

§ 400.220 Counting time-eligibility of refugees.

A State may calculate the time-eligibility of a refugee under this part in either of the following ways:

(a) On the basis of calendar months, in which case the month of arrival in the United States must count as the first month; or

(b) On the basis of the actual date of arrival, in which case each month will be counted from that specific date.

(Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)))

Approved: November 6, 1985.

Margaret M. Heckler,

Secretary of the Department of Health and Human Services.

[FR Doc. 86-1719 Filed 1-29-86; 8:45 am]

BILLING CODE 4150-11-M

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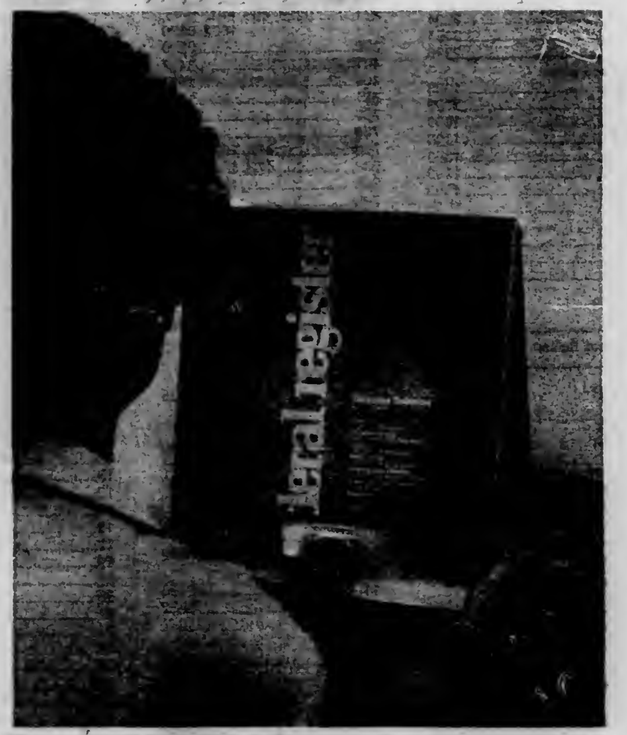
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Army Department
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Denver Federal Information Center.
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Vol. 51, No. 21
Friday, January 31, 1986

Presidential Documents

Title 3—

The President

Proclamation 5435 of January 29, 1986

American Heart Month, 1986

By the President of the United States of America

A Proclamation

Cardiovascular diseases, which include heart disease, stroke, and other vascular disorders, account for almost as many deaths in this Nation as all other causes combined. In fact, almost one out of every two deaths can be attributed to cardiovascular disease. As recently as 1983, heart and blood vessel diseases killed nearly one million Americans—more people than cancer, accidents, pneumonia, and influenza combined. Even more tragic is the fact that one-fifth of all people killed by cardiovascular diseases are younger than 65.

Heart and blood vessel diseases are not only deadly—they are pervasive. More than one-fourth of the current U.S. population, or more than 63 million of our citizens, suffer from some form of these diseases. Their toll in human suffering can never be calculated.

The economic loss to the Nation is also high. Some $78.6 billion will be spent in 1986 for physician and nursing services, hospital and nursing home care, medications, and in lost productivity due to disability related to these maladies.

But progress is being made. The American Heart Association, a not-for-profit volunteer health agency, and the Federal government, through the National Heart, Lung and Blood Institute, have combined forces since 1948 to find better ways both to treat and prevent cardiovascular diseases and to educate the medical community about the most effective techniques.

Because of important advances made by medical science in recent years, premature death and disability have declined. From 1973 to 1983 the death rate from cardiovascular diseases dropped 29 percent.

Doctors are seeking to reduce the risk of heart disease, stroke, and atherosclerosis (hardening of the arteries) in their patients by encouraging them to lower their blood pressure, stop smoking, and reduce the amount of cholesterol and saturated fats in their diets. The American Heart Association has contributed to this effort by its continued support of research and its commitment to educating Americans about the need to adopt healthful habits of living.

The Federal government, meanwhile, continues to support a large array of cardiovascular research projects. It also encourages all Americans to take responsibility for their own well-being by maintaining good health habits.

Recognizing that Americans everywhere have a role to play in this continuing battle against a major killer, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of February 1986 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to the resolution of the nationwide problem of cardiovascular diseases.

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IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of January, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-2310
Filed 1-29-86; 4:18 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5436 of January 29, 1986

Sesquicentennial Year of the National Library of Medicine, 1986

By the President of the United States of America

A Proclamation

One hundred fifty years ago, in 1836, what is now the largest and most distinguished medical library and medical communications center in the world was only a small collection of medical books in the office of the United States Army Surgeon General. That transition is an inspiring story—one that speaks of both the need of health professionals and researchers for rapid access to information and of the response to that need by a succession of dedicated and visionary leaders of the National Library of Medicine.

The National Library of Medicine responded to the need for medical information in part by building an exhaustive collection of the published literature of medicine. Through pioneering research into the latest communications technology, the Library also developed the renowned MEDLARS systems, which provides researchers and health professionals around the world with almost instantaneous access to the biomedical literature. Its publications, like *Index Medicus*, are essential tools for health sciences research. The Library has developed a network throughout the United States—the Regional Medical Library Network—to provide efficient information services to doctors, researchers, students and others, no matter how far they may be from a medical center.

American citizens, for whom the health of their loved ones is always of primary concern, can take great pride in their National Library of Medicine, which takes life-giving knowledge from research, organizes it, and transmits it to those who can best use it to fight disease and disability and to improve the quality of life for all of us.

The Congress, by Senate Joint Resolution 198, has designated 1986 as the "Sesquicentennial Year of the National Library of Medicine" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim 1986 as the Sesquicentennial Year of the National Library of Medicine. I call upon the people of the United States to observe this occasion with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of January, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-2311
Filed 1-29-86; 4:19 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 51, No. 21
Friday, January 31, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 624]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 624 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 31 through February 6, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 624 (§ 907.924) is effective for the period January 31-February 6, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-447-5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985-86 adopted by the Navel Orange Administrative Committee. The committee met publicly on January 28, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges is weak. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

1. The authority citation for 7 CFR 907 continues to read:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.924 Navel Orange Regulation 624 is hereby added to read:

§ 907.924 Navel Orange Regulation 624.

The quantities of navel oranges grown in California and Arizona which may be handled during the period January 31, 1986, through February 6, 1986, are established as follows:

(a) *District 1:* 1,600,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

Dated: January 29, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-2301 Filed 1-30-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 982

Filberts/Hazelnuts Grown in Oregon and Washington; Final Free and Restricted Percentages for the 1985-86 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes free and restricted marketing percentages for domestic inshell filberts for the marketing year which began July 1, 1985. The action is taken to promote orderly marketing conditions for the 1985 crop and is based on recommendations of the Filbert/Hazelnut Marketing Board which works with the USDA in administering the program.

DATES: Effective July 1, 1985 to June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, AMS, USDA, Washington, D.C. 20250, (202) 447-5053.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the REA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

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It is estimated that approximately 14 handlers of filberts/hazelnuts will be subject to regulation under the marketing order for filberts/hazelnuts grown in Oregon and Washington during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers the added burden on small entities if present at all is not significant.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking on establishing final free and restricted percentages and that good cause exists for not postponing the effective time of the establishment of the marketing percentages until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Establishment of the percentages is needed promptly to dispel any uncertainties about volume regulation for the 1985–86 marketing year and to maintain orderly marketing conditions for the 1985 crop; (2) growers and handlers have been conducting their operations in anticipation of the establishment of the free and restricted percentages contained in this document; (3) this action must be taken promptly to achieve its purpose of releasing the full 1985–86 trade demand quantity established November 20, 1985 (50 FR 48371); and (4) the 1985–86 marketing year began July 1, 1985, and the percentages established herein apply to all merchantable filberts handled from the beginning of the marketing year.

This action establishes free and restricted percentages of 20 percent and 80 percent, respectively, for the 1985–86 marketing year. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The marketing percentages were recommended by the Filbert/Hazelnut Marketing Board, which works with USDA in administering the order.

Section 982.40(b) of the order prescribes that prior to August 1 of a marketing year, the Filbert/Hazelnut Marketing Board shall recommend establishment of an inshell trade demand for that year to the Secretary. If the Secretary finds, on the basis of the Board's recommendation or other information, that volume regulation for that marketing year would tend to effectuate the declared policy of the act, the Secretary shall establish the trade demand. On November 20, 1985, a trade demand of 5,000 tons was established because anticipated inshell supplies were expected to be far in excess of inshell needs, and volume regulation appeared appropriate for the 1985–86 marketing year.

Under § 982.40(c), the trade demand is used in the computation of preliminary free and restricted percentages and final free and restricted percentages. The preliminary percentages do not have to be approved by the Secretary but the final percentages do have to be approved. In accordance with these provisions, the Board computed and announced preliminary free and restricted percentages of 16 percent and 84 percent, respectively, to release 80 percent of its recommended trade demand. On November 14, 1985, the Board met and recommended final free and restricted percentages of 20 percent and 80 percent to release 100 percent of the trade demand of 5,000 tons to the Secretary for approval.

In calculating the percentages, the Board considered the following supply and demand information for the 1985–86 marketing year:

Inshell Supply	*Tons*
(1) Total production	24,000
(2) Less substandard, farm use, etc.	2,402
(3) Merchantable production	21,598
(4) Plus carryover July 1, 1985, subject to regulation	0
(5) Supply subject to regulation (item 3 plus item 4)	21,598
Inshell Requirements	
(6) Trade demand	5,000
(7) Less carryover July 1, 1985, not subject to regulation	736
(8) Adjusted trade demand	4,264
Percentages	*Percent*
(9) Free percentage (item 8 divided by item 5)	20
(10) Restricted percentage (100 percent minus 20 percent)	80

Pursuant to § 982.40(c), at any time prior to February 15 of the marketing year, the Board may recommend a revision in its marketing policy. The Board plans to meet later to modify its marketing policy to make a carryout available for early shipments next season.

The free percentage prescribes that portion of the total merchantable supply subject to regulation which may be handled as inshell filberts. The restricted percentage prescribes that portion which must be withheld from such handling. Restricted filberts may be shelled (for domestic or foreign consumption), exported, or disposed of in outlets determined by the Board to be noncompetitive with normal market outlets for inshell filberts.

After consideration of all relevant matter presented, the information and recommendations submitted by the Board, and other available information, it is found that the establishment, under § 982.40, of free and restricted percentages, as hereinafter set forth, for the 1985–86 marketing year will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 982

Marketing agreement and order, Filberts, Hazelnuts, Oregon, and Washington.

PART 982—[AMENDED]

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Therefore, paragraph (b) is added to § 982.235 to read as follows: (The following section is not published in the Code of Federal Regulations).

§ 982.235 Trade demand and free and restricted percentages for the 1985–86 marketing year.

* * * * *

(b) The final free and restricted percentages for merchantable filberts/hazelnuts for the 1985–86 marketing year shall be 20 percent and 80 percent, respectively.

Dated: January 27, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86–2143 Filed 1–30–86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221 and 224

[Regulations G, T, U and X]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The List of Marginable OTC Stocks is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective November 12, 1985 and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: February 11, 1986.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202)–452–2781.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of Marginable OTC Stocks. A copy of the complete List incorporating these additions and deletions was filed with the original of this document. This List supersedes the last complete List which was effective November 12, 1985 (50 FR 45398, October 31, 1985). The List includes those stocks that the Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U and X (12 CFR 207, 220, 221 and 224, respectively). It also includes, as a result of an amendment to the margin regulations (49 FR 35756, September 12, 1984), any stock designated under an SEC rule as qualified for trading in a national market system (NMS Security). The List of Marginable OTC Stocks, as it is now called, is a composite of the List of OTC Margin Stocks and all NMS securities. Additional OTC securities may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable at broker-dealers upon the effective date of their designation. The names of these securities are available at the Board and the Securities and Exchange Commission and will be subsequently incorporated into the Board's next quarterly List. Copies of the current List may be obtained from any Federal Reserve Bank.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the List specified in 12 CFR 207.6 (a) and (b), 220.17 (a) and (b), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Part 207

Banks, Banking; Credit, Federal Reserve System, Margin, Margin requirements, National Market System (NMS Security), Reporting requirements, Securities

12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting requirements, Securities

12 CFR Part 221

Banks, Banking, Credit, Federal Reserve System, Margin, Margin requirements, Securities, National Market System (NMS Security); Reporting Requirements

12 CFR Part 224

Banks, Banking, Borrowers; Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 207.2(k) and 6(c) of Regulation G, 220.2(s) and 17(c) of Regulation T, and 221.2(j) and 7(c) of Regulation U, there is set forth below a listing of additions to and deletions from the Board's List:

Additions

Aegon N.V.
Ordinary Shares, Dfl 5 nominal value
Alabama Federal Savings & Loan Association
$.01 par common
American Cellular Telephone Corporation
Class A, $.01 par common
American Insured Mortgage Investors
Depository units of limited partnership
American Savings Bank, FSB (New York).
No par common
American Savings Bank, F.S.B. (Washington).
$1.00 par common
American Technical Ceramics Corp.,
$.01 par common
Americare Health Corporation
No par common
Anitec Image Technology Corp.
$.10 par common
Ark Restaurants Corp.
$.01 par common
Autodesk, Inc.
No par common
B.M.J. Financial Corp.
$5.00 par common
BNH Bancshares, Inc.
$8.00 par common
Barrister Information Systems Corporation
$.24 par common
Beaman Corporation
$1.00 par common
Ben & Jerry's Homemade, Inc.
$.033⅓ par common
Bindley Western Industries Inc.
8¾% convertible subordinated debentures
Binghamton Savings Bank
$1.00 par common
Birmingham Steel Corporation
$.01 par common
Braintree Savings Bank, The (Massachusetts)
$1.00 par common
Bond Insulations, Inc.
$.10 per common
Brentwood Instruments, Inc.
No par common
Brintec Corporation
$.01 par common
Bull & Bear Group, Inc.
Class A, $.01 par common
Capital Federal Savings & Loan Association (California)
$1.00 par common
Carver Corporation
$.01 par common
Central Sprinkler Corporation
$.01 par common
Child World, Inc.
$.10 par common
Circadian Inc.
No par common
Circle Express, Inc.
No par common
Citizens and Southern Corporation, The (South Carolina)
8¾% convertible subordinate debentures
City Investing Company Liquidating Trust
Units of beneficial interest
Classified Financial Corp.
$3.00 par common
Coast Savings & Loan Association
No par common
Cochrane Furniture Company, Inc.
No par common
Colonial Group, Inc., The
Class A, $.10 par common
Columbia First Federal Savings & Loan Association (Washington, D.C.)
$.01 par common
Columbia Savings & Loan Association (California)
Warrants (expire 05–15–93)
Compaq Computer Corporation
9¼% convertible subordinate debentures
Concord Computing Corporation
$1.00 par common
Conseco, Inc.
No par common
Co-Operative Bank of Concord, The
$1.00 par common
Costco Wholesale Corporation
$.01 par common
Crossland Savings, FSB (New York)
No par common
Dairy Mart Convenience Stores, Inc.
Class A, $.01 par common
Days Inns Corporation
$.04 par common
De Tomaso Industries, Inc.
$2.50 par common
Defiance Precision Products, Inc.

$.05 par common
Derby Savings Bank
$1.00 par common
Dest Corporation
$.01 par common
Diversified Human Resources Group, Inc.
$.10 par common
E & B Marine, Inc.
$.01 par common
Eaton Vance Corporation
Non-voting, $.25 par common
Electronic Tele-Communications, Inc.
Class A, non-voting, $.01 par common
Engineered Support Systems, Inc.
$.01 par common
Financial Trust Corp.
$5.00 par common
First Indiana Bancorp
$10.00 par common
Frost & Sullivan, Inc.
$.01 par common
Fulton Financial Corporation
$2.50 par common
GWC Corporation
$.01 par common
Gateway Bank (Connecticut)
$1.00 par common
Gentex Corporation
$.06 par common
Geodynamics Corporation
No par common
Goodmark Foods, Inc.
$.01 par common
Grist Mill Company
$.10 par common
Guaranty Bancshares Corporation
No par common
Haber, Inc.
Voting, $2.00 par cumulative convertible preferred, Warrants (expire 11–26–86)
Hal Roach Studios, Inc.
$.001 par common
Haryln Products, Inc.
$.10 par common
Healthcare Services of America, Inc.
$1.00 par common
Healthco International, Inc.
$.05 par common
Healthways Systems, Inc.
$.01 par common
Heart Federal Savings & Loan Association (California)
$1.00 par common
Home Federal Savings Bank of Georgia
$1.00 par common
Horizon Air Industries Inc.
$1.20 cumulative convertible preferred
Horizons Research, Inc.
No par common
Hytek International corporation
$.05 par common
Illinois Marine Bancorp, Inc.
$10.00 par common
Investors Savings and Loan Association (Virginia)
Series A, $.95 par cumulative convertible preferred
Iverson Technology Corp.
$.01 par common
Jaguar, PLC
Ordinary Shares, par value 25 pence
John Adams Life Corporation
No par common
Leader Development Corporation
No par common
Luskin's, Inc.
$.01 par common
Machine Vison International Corporation
$.10 par common
Maxicare Health Plans, Inc.
7% convertible subordinate debentures
Maxtor Corporation
No par common
Med-Chem Products, Inc.
$.01 par common
Meditrust Corporation
No par shares of beneficial interest
Mercury General Corporation
$1.00 par common
Met-Coil Systems Corporation
$.01 par common
Metropolitan Federal Savings and Loan Association (Tennessee)
$1.00 par common
Metropolitan Savings & Loan Association (Texas)
$1.00 par common
Morgan Products Ltd.
$.10 par common
Mt. Baker Bank, a Savings Bank (Washington)
$5.00 par common
National Guardian Corporation, The
$.10 par common
New York Marine and General Insurance Company
$1.00 par common
Noble Drilling Corporation
$1.00 par common
North American Holding Corp.
$.01 par common
Occidential/Nebraska Federal Savings Bank
$1.00 par common
Occupational Medical Corporation of America, Inc.
No par common
Old Republic International Corporation
Series F, convertible preferred, stated value $50
Old Spaghetti Warehouse, Inc.
$.01 par common
Opto Mechanik, Inc.
$.10 par common
Orange Julius international, Inc.
$.001 par common
PNC Financial Corp
Services C, $1.60 par cumulative convertible preferred
Pacificare Health Systems, Inc.
$.50 par common
Palmetto Federal Savings Bank of South Carolina
$1.00 par common
Plains Resources Inc.
$1.00 par preferred stock
Poughkeepsie Savings Bank, F.S.B., The (New York)
$.01 par common
Progressive Corporation, The (Ohio)
7% convertible subordinate debentures
QED Exploration, Inc.
No par common
Rectisel Corporation
$.10 par common
Regina Company, Inc., The
$.0001 par common
Republic Pictures Corporation
Class A, $.01 par common
Ridgewood Properties, Inc.
$.01 par common
Rogers Cablesystems, Inc.
Class B, no par common
Rogers Cablesystems of America, Inc.
Class A, $1.00 par common
Rotech Medical Corporation
$.0002 par common
Roto-Rooter, Inc.
$1.00 par common
SCOA Industries, Inc.
Series B, $.01 par cumulative exchangeable preferred
SHL Systemhouse Inc.
No par common
S–K–I Ltd.
$.10 par common
Seaman Furniture Company, Inc.
$.01 par common
Sierra Real Estate Equity Trust '83
No par shares of beneficial interest
Sierra Real Estate Equity Trust '84
No par shares of beneficial interest
Silvar–Lisco
No par common
Southbrook International Television Company PLC
Ordinary Shares, par value 10 pence
Southern United Life Insurance Company
No par common
Southwest National Corporation
$10.00 par common
Spearhead Industries, Inc.
$.05 par common
Sporting Live, Inc.
$.01 par common
Stanline, Inc.
$.01 par common
Steel Technologies, Inc.
No par common
Stereo Village, Inc.
$.01 par common
Stockton Savings & Loan Association (California)
$.33⅓ par common
Stokely USA, Inc.
$.20 par common
Sunworld International Airways, Inc.
$.20 par common
Svenska Cellulosa Aktiebolaget SCA
Non-restricted Class B shares, SEK 25 nominal value
Sylvan Learning Corp.
$.01 par common
Telepictures Corporation
8¾% convertible subordinate debentures
TRI–Star Pictures Inc.
$.10 par common
USbancorp, Inc.
Class A, $2.125 par convertible preferred
VM Software, Inc.
$.01 par common
Vail Associates, Inc.
No par common
Virginia First Savings, F.S.B.
$4.00 par common
Western Financial Corporation
$1.00 par common
Wood Bros. Homes, Inc.
$.01 par common

Deletions From List

Stocks Removed for Foiling Continued Listing Requirements

Adventure Lands of America, Inc.
No par common
Aztec International, Ltd.
$1.00 par common
Besicorp Group, Inc.
$.01 par common
Continental Steel Corporation
$1.00 par common
Denelcor, Inc.
No par common
Eagle Computer, Inc.
No par common
First Data Resources, Inc.
$.01 par common
First Jersey National Corporation
Series A, $1.00 par Cumulative convertible preferred
Florida Gulf Realty Trust
$.10 par shares of beneficial interest
Forum Group, Inc.
Warrants (expire 12–31–85)
Good Taco Corporation, The
$.01 par common
Harken Oil & Gas, Inc.
$1.00 par common
Info Designs, Inc.
$.001 par common
Intermagnetics General Corporation
Warrants (expire 11–02–88)
KRM Petroleum Corporation
$.10 par common
Midland Capital Corporation
$1.00 par common
Ohio Ferro-Alloys Corporation
$1.00 par common
Oxygen Enrichment Company, Ltd.
$.01 par common
Peoples Restaurants, Inc.
$1.00 par common
Petromac Energy, Inc.
No par common
Pullman Peabody Co.
Warrants (expire 02–24–88)
Schaak Electronics, Inc.
$.10 par common
Space Mircrowave Laboratories, Inc.
No par common
Toledo Technology, Inc.
$.50 par common
Topsy's International Inc.
Class A, $.10 par common
Twin City Barge Inc.
$1.00 par common
Unioil
$.01 par common
United States Sugar Corporation
$1.00 par common
Vector Graphics, Inc.
No par common
Weatherford, R.V. Co.
No par common
Westside Bancorporation, Inc.
$.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Atlantic Bancorporation
$1.00 par common
Bankers Trust of South Carolina
$10.00 par common
Banknorth Group, Inc.
$1.00 par common
Bibb Company, The
No par common
Chyron Corporation
$.01 par common
Columbia Savings & Loan Association (California)
$1.00 par common
Compaq Computer Corporation
$.01 par common
Dallas Federal Financial Corporation
$1.00 par common
Educational Computer Corporation
$.10 par common
Financial Institution Services, Inc.
$.10 par common
First Capital Holdings Corporation
$.01 par common
Gott Corporation
No par common
Hoover Company, The
$2.50 par common
Hungrey Tigger Inc.
$.05 par common
International Bank (Washington, D.C.)
$1.00 par common Class A, $1.00 par common
International Technology Corporation
$1.00 par common
Jefferson National Life Insurance Company
$1.00 par capital
Lori Corporation, The
$.01 par common
Magnet Bank, F.S.B. (West Virginia)
$.01 par common
Maine National Corporation
$5.00 par common
Mcfaddin Ventures, Inc.
$.10 par common
Metropolitan Financial Corporation
$.01 par common
Morgan Keegan, Inc.
$.625 par common
Nico, Inc.
$.01 par common
Northwestern Financial Corporation
$1.00 par common
Nutri-Foods Int'l., Inc.
$.01 par common
PLM Financial Services, Inc.
No par common
Pansophics Systems, Inc.
No par common
Perfect Fit, Inc.
$.01 par common
Photon Sources, Inc.
No par common
Pullman Peabody Co.
$.10 par common
Riht Financial Corp.
$1.00 par common
Restaurant Systems, Inc.
$.05 par common
Second National Corporation (Michigan)
$12.50 par common
Shop & Go, Inc.
$.01 par common
Spectrum Group Inc.
$.01 par common
Standum Inc.
$1.00 par common
Storer Communications, Inc.
Warrants (expire 05–15–88)
TLS, Co.
No par common
Times Fiber Communications, Inc.
$1.00 par common
Tofu Time, Inc.
$.01 par common
Union Trust Bancorp
$5.00 par common
West Chemical Products, Inc.
$.50 par common

By order of the Board of Governors of the Federal Reserve System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)(18)), January 27, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc 86–1907 Filed 1–28–86; 9:15 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–CE–43–AD; Amdt. 39–5225]

Airworthiness Directives; Cessna Model T303 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 85–23–06, applicable to Cessna Model T303 airplanes and codifies the corresponding emergency AD letter dated November 14, 1985, into the Federal Register. This AD requires a one time inspection for evidence of exhaust gas leakage and a leak check of the engine fuel metering unit tee fittings. The AD is needed to preclude the possibility of a fire in this area.

EFFECTIVE DATE: February 5, 1986, to all persons except those persons to whom it was made immediately effective by priority letter from the FAA dated November 14, 1985. Compliance: As indicated in the body of the AD.

ADDRESSES: A copy of the information pertaining to the AD is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles D. Riddle, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION: This AD, applicable to certain Cessna Model T303 airplanes, is necessary because there is a possibility that the fuel metering unit tee fitting, located at the rear of each engine, may be leaking fuel into the engine compartment. The National Transportation Safety Board (NTSB) initially reported to the FAA that their investigation of recent Model T303 accident showed evidence of an inflight engine fire due to both a cracked engine fuel metering unit tee fitting and exhaust leakage from the turbocharger.

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However, the FAA determined from subsequent investigation of the accident wreckage that equally strong evidence exists that the reported fire may have occurred after the airplane impacted the ground. The NTSB has acknowledged this subsequent evidence and is investigating. In addition, the information currently available may not fully substantiate that an exhaust leak contributed to the cause of this particular accident. The NTSB and the FAA are continuing to investigate the circumstances of this accident but in the interest of aviation safety, the FAA determined that an immediate inspection of the exhaust system and the tee fitting was warranted to preclude the possibility of a fire in this area. Therefore, AD 85-23-06 was issued via priority mail requiring a one time inspection for evidence of exhaust leakage and a leak check of the engine fuel metering unit tee fittings on Cessna Model T303 airplanes.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corresponding action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by priority mail letter dated November 14, 1985. The AD became effective immediately as to these individuals upon receipt of that letter and is identified as AD 85-23-06. Since the unsafe condition described herein may still exist on other Cessna Model T303 airplanes, the AD is hereby published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective as to all persons who did not receive the priority letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to Model T303 (Serial Numbers T30300001 thru T30300315) airplanes certificated in any category.

Compliance: Required within the next 10 hours time-in-service from the effective date of this AD, unless already accomplished.

To preclude the possibility of the fuel metering unit tee fittings from leaking and causing a fire, accomplish the following:

(a) Remove both engine cowlings to the extent required to adequately examine the turbocharger inlet area and fuel metering units. Visually inspect the turbocharger inlet and surrounding area for evidence of significant damage caused by exhaust gas leakage. If noted, prior to future flight, repair the damage and eliminate the cause of the leak.

(b) With the aircraft auxiliary fuel pumps on and the mixture control in the idle cutoff position, visually inspect the fuel metering unit tee fitting for cracking and leakage in the threaded area that goes into the fuel metering unit. If a crack and resultant leak is detected, prior to further flight replace the fitting, using a wrench on the fitting, to isolate the effects of attaching and tightening the fuel lines. Do not over torque the fitting when installing it on the metering unit.

(c) The aircraft may be flown in accordance with the FAR 21.197 to a location where this AD can be accomplished.

(d) Within five (5) days of accomplishing this AD, report, in writing, all defects found during accomplishment of this AD to the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. (Reporting approved by the Offices of Management and Budget under OMB No. 2120-0056).

(e) An equivalent method of compliance may be used when approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

This amendment becomes effective on February 5, 1986, to all persons except those persons to whom it has already been made effective by priority letter from the FAA dated November 14, 1985, and is identified as AD 85-23-06.

Issued in Kansas City, Missouri, on January 21, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-2185 Filed 1-30-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ANE-48; Amdt. 39-5209]

Airworthiness Directives; Hamilton Standard Model 54H60-77, -81, -123, -125, -131, -133 Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and replacement of certain P/N valve housing cover input gears on Hamilton Standard 54H60 series propellers. The AD is needed to prevent slippage of the gears which could result in improper blade schedule during ground operation, inability to feather during electrical power loss, high negative torques, power lever binding, and possible overspeed at, or slightly above, flight idle position.

DATES: Effective January 31, 1986.

Compliance required within the next 30 days after the effective date of this AD unless already accomplished.

Incorporation by Reference—Approved by the Director of the **Federal Register** effective January 31, 1986.

ADDRESSES: The applicable alert service bulletin (ASB) may be obtained from: Hamilton Standard, Division of United Technologies Corporation, Windsor Locks, Connecticut 06096.

A copy of the ASB is contained in the Rules Docket, Office of the Regional Counsel, Attn: Rules Docket 85-ANE-48, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Engine and Propeller Standards Staff, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7079.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain propeller control lever input gears have been improperly machined. The improper machining can cause misassembly with the mating gears. If misassembled, slippage of the propeller control lever can occur. Slippage can result in loss of propeller control input datum. This may cause the propeller to be inadvertently put into the ground handling pitch range with possible overspeed when pulling the power lever toward flight idle. In addition, during an increase in power, the propeller can be inadvertently feathered. Both conditions can lead to loss of aircraft control with possible loss of aircraft. Therefore an immediate adopted rule is being issued which requires functional checks and replacement of the propeller valve housing cover input gear on certain model 54H60 propellers.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amenement effective in less than 30 days.

Conclusion

The FAA has determined that this regulation is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Propellers, Engines, Air transportation, Aircraft, Aviation safety. Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 1345(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD to § 39.13.

Hamilton Standard: Applies to Hamilton Standard model 54H60-77, -81, -123, -125, -131, and -133 propellers with propeller control S/N 850901 or lower installed on, but not limited to, CV580, L188 and Guppy aircraft.

Compliance is required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of aircraft control and possible loss of aircraft, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, conduct a functional check of the propeller valve housing cover input gear in accordance with Hamilton Standard 54H60 ASB No. 61-A119, Paragraph 2.A dated December 10, 1985, or FAA-approved equivalent.

(1) If the application of less than 36 pounds of load causes slippage of the input lever, remove the valve housing cover assembly prior to further flight.

(2) If 36 to 38 pounds can be maintained without slippage of the input lever, mark the valve housing cover in accordance with Paragraph 2.D.(1) and return to service.

(b) At the next component maintenance/propeller after completing the above functional check or by January 15, 1988, whichever occurs sooner, inspect the valve housing cover in accordance with Paragraphs 2.B and 2.C of 54H60 ASB No. 61-A119. Remove from service all input gears with change letter "G" indicated and replace with a serviceable gear. Mark the valve housing cover in accordance with Paragraph 2.D.(2).

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine and Propeller Standards Staff, ANE-110, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine and Propeller Standards Staff may adjust the compliance time specified in this AD.

Hamilton Standard 54H60 ASB No. 61-A119, dated December 10, 1985, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Hamilton Standard, Division of United Technologies Corporation, Windsor Locks, Connecticut 06096. This document also may be examined at the Office of the Regional Counsel, Attn: Rules Docket 85-ANE-48, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amended becomes effective on January 31, 1986.

Issued in Burlington, Massachusetts, on December 24, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-2186 Filed 1-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-25]

Alteration of Transition Area; Shelbyville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Shelbyville, Illinois, transition area to accommodate a proposed NDB-A Standard Instrument Approach Procedure (SIAP) to Shelby County Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 GMT, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, December 10, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Shelbyville, Illinois, transition area (50 FR 50310).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

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Expect for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Shelbyville, Illinois, transition area to accommodate a proposed NDB–A SIAP to Shelby County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Shelbyville, Illinois

That airspace extending upward from 700 feet above the surface, within a 5 mile radius of Shelby County Airport (lat. 39°24'44" N., long. 88°50'38" W.) and within 3 miles west to 3.5 miles east of the 186° bearing from the Shelbyville (SYZ) NDB facility extending from the 5 mile radius area to 8.5 miles south.

Issued in Des Plaines, Illinois, on January 21, 1986.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 86–2174 Filed 1–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–ANM–5]

Amendment to Douglas, WY, Transition Area

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to amend the 700' transition area at Douglas Wyoming. This action is necessary due to the relocation of the Converse County Airport, Douglas, Wyoming. This action will ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. The area will be depicted on aeronautical charts enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules.

EFFECTIVE DATE: 0901 GMT, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Bob Brown, Airspace & Procedures Specialist, ANM–534, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone (206) 431–2530.

SUPPLEMENTARY INFORMATION:

History

On Monday, July 15, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the 700' transition area for Douglas, Wyoming (50 FR 28590).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the Douglas, Wyoming 700' transition area. This action is necessary due to the relocation of the Converse County Airport, Douglas, Wyoming.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Douglas, Wyoming, Transition Area [Amended]

That airspace extending upward from 700' above the surface within a 10.5 mile radius of the Converse County Airport, Douglas, Wyoming, (lat. 42°47'46" N./long. 105°23'08" W.); and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at a point at (lat. 43°28'30" N./long. 104°30'00" W.)., east to the Wyoming-Nebraska State boundary, south to the north edge of V–100, west to the west edge of V–19, northwest to (lat. 42°27'30" N./long. 105°52'05" W.); thence to point of beginning, excluding the Casper, Wyoming, and Cheyenne, Wyoming, transition areas.

Issued in Seattle, Washington, on December 16, 1985.

Wayne J. Barlow,

Director, Northwest Mountain Region (Acting).

[FR Doc. 86–1869 Filed 1–30–86; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1209

Boards and Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1209 by revising Subpart 4, "Inventions and Contributions Board," to reflect the change in the Board's responsibilities with regard to patent licenses pursuant to 14 CFR Part 1245 Subpart 2, "Licensing of NASA Inventions." Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

EFFECTIVE DATE: January 31, 1986.

ADDRESS: Chairperson, Inventions and Contributions Board, Code NB, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Joseph Labow, 202–453–2892. The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 C. R Part 1209

Board of Contract Appeals, Organizations and functions, Government agencies.

PART 1209—BOARDS AND COMMITTEES

14 CFR Part 1209 is amended by revising Subpart 4 to read as follows:

Subpart 4—Inventions and Contributions Board

Sec.

1209.400 Scope.
1209.401 Establishment.
1209.402 Responsibilities.
1209.403 Organizational location.
1209.404 Membership.
1209.405 Supporting services.

Authority: 42 U.S.C. 2457(f) and 2458.

Subpart 4—Inventions and Contributions Board

§ 1209.400 Scope.

This Subpart describes the functions, authority, and membership of the NASA Inventions and Contributions Board (hereafter referred to as "the Board").

§ 1209.401 Establishment.

Pursuant to the authority of the National Aeronautics and Space Act of 1958 as amended (42 U.S.C. 2457(f) and 2458) and the Government Employees Incentive Awards Act of 1954 (5 U.S.C. 4501–6), the Board was established on December 4, 1958, and is further continued in effect by this Subpart 4.

§ 1209.402 Responsibilities.

(a) *Waiver of rights in inventions.* Under the authority of 42 U.S.C. 2457(f) and pursuant to 14 CFR Part 1245 Subpart 1 (NASA Management Instruction 5109.2), the Board will receive and evaluate petitions for waiver of rights of the United States to inventions, accord each interested party an opportunity for a hearing, and transmit to the Administrator its findings of fact as to such petitions and its recommendations for action to be taken with respect thereto.

(b) *Patent licenses.* Under the authority of 35 U.S.C. 207(b) and pursuant to 14 CFR Part 1245 Subpart 2 (NASA Management Instruction 5109.3), the Board will accord a licensee or applicant for license an opportunity for a hearing with respect to an appeal which raises a dispute over material facts and will be responsible for making findings of fact and forwarding them to the Administrator or designee.

(c) *Monetary awards for scientific and technical contributions.* (1) Under the authority of 42 U.S.C. 2458 and pursuant to 14 CFR Part 1240 (NASA Management Instructions 5700.1 and 5700.3), the Board will receive and evaluate each application for award for any scientific or technical contribution to the Administration which is determined to have significant value in the conduct of aeronautical and space activities, will accord each applicant an opportunity for a hearing upon such application, and will then transmit to the Administrator its recommendation as to the amount of the monetary award and terms of the award, if any, to be made for such contribution.

(2) If the contribution is made by a Government employee, the Board is also authorized to consider such contribution for award under the incentive awards program and to make an award, if any, on its own cognizance, up to the amount of $10,000 in accordance with NASA supplements to Chapter 451 of the Federal Personnel Manual covering this subject.

§ 1209.403 Organizational location.

The Board is established within the Office of Management.

§ 1209.404 Membership.

(a) The Board will consist of a full-time Chairperson and at least six members appointed by the Administrator from within NASA. One of the members will be designated by the Chairperson as Vice-Chairperson. The Chairperson is responsible directly to the Administrator.

(b) The Chairperson of the Board is appointed for an unlimited period. All other Board members normally will be appointed initially for a period of 3 years. The Chairperson is authorized to extend the initial appointment of any Board member for an additional period of service. If a member resigns or is otherwise unable to participate in the Board's activities, a replacement may be appointed for the remainder of the uncompleted term and, with the approval of the Chairperson, may be appointed for a full 3-year term upon the expiration of the original term. This procedure will provide the Board with a continual infusion of new members with a variety of professional backgrounds and interests. Duties performed by the members of the Board will be in addition to their regular duties.

(c) The Chairperson is authorized to:

(1) Assemble the Board as required to discharge the duties and responsibilities of the Board;

(2) Establish such panels as may be considered necessary to discharge the responsibilities and perform the functions of the Board; and

(3) Issue implementing rules and procedures, and take such other actions as are necessary to perform the Board's functions.

§ 1209.405 Supporting services.

(a) The staff of the Board is established to assist the Board in discharging its functions and responsibilities. The staff will:

(1) Prepare analyses of petitions for waiver of rights to inventions for the consideration of the Board;

(2) Prepare evaluation of proposed awards;

(3) Document Board actions; and

(4) Perform such other functions as may be required.

(b) A full-time director of the staff will serve as a nonvoting member of the Board, and will direct the activities of the staff of the Board.

(c) The director of the staff of the Board will report to the Chairperson of the Board.

William R. Graham,

Acting Administrator.

January 22, 1986.

[FR Doc. 86–2131 Filed 1–30–86; 8:45 am]

BILLING CODE 7510–01–M

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14 CFR Part 1240

Inventions and Contributions

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1240 by revising Subpart 2, "Awards for Reported Scientific and Technical Contributions—NASA and Contractor Employees," in order to effect an increase in the amount of initial awards.

The regulations for the granting of monetary awards to employees of NASA and employees of NASA contractors for reported scientific and technical contributions are revised as follows:

1. Initial awards for the filing of U.S. patent applications and for the publication of NASA Tech Briefs are increased to agree with the amounts being granted under current operating procedures, i.e., at least $500 and $150, respectively.

2. Designees of the Administrator authorized to grant to inventors and innovators monetary awards of $1,000 or less are the Associate Administrator for Management, or the Chairperson, Inventions and Contributions Board.

Since this requirement is administrative in nature and does not affect existing regulations, notice and public comment are not required.

EFFECTIVE DATE: January 31, 1986.

ADDRESS: Chairperson, Inventions and Contributions Board, Code NB, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Joseph Labow, 202–453–2892. The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subject in 14 CFR Part 1240

Inventions and Contributions Board, Monetary awards: Inventions and patents, Monetary awards: Scientific and technical contributions, Space Act monetary awards program, Decorations, medals, awards, Government contracts, Inventions and patents.

PART 1240—INVENTIONS AND CONTRIBUTIONS

14 CFR Part 1240 is amended by revising Subpart 2 to read as follows:

Subpart 2—Awards for Reported Scientific and Technical Contributions—NASA and Contractor Employees

Sec.

1240.200 Scope.
1240.201 Applicability.
1240.202 Policy.
1240.203 General procedures.
1240.204 Presentation of awards.
1240.205 Financial accounting.
1240.206 Delegation of authority.

Authority: Section 306 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2458).

Subpart 2—Awards for Reported Scientific and Technical Contributions—NASA and Contractor Employees

§ 1240.200 Scope.

This Subpart outlines the present policy and revises the procedures for granting monetary awards to employees of NASA and employees of NASA contractors for scientific and technical contributions which are reported to NASA, and are determined to have significant value in the conduct of aeronautical and space activities.

§ 1240.201 Applicability.

This Subpart relates to the granting of monetary awards for any scientific or technical contribution which is a significant development that:

(a) Advances the state of knowledge in space or aeronautical activities; or

(b) Is the subject of a United States patent application that has been authorized for filing by NASA; or

(c) Is the subject of a selected NASA Tech Brief that has been approved for publication.

§ 1240.202 Policy.

Monetary awards are authorized and will be made to employees of NASA and employees of NASA contractors for a scientific or technical contribution to NASA, whether patentable or not, upon a determination that the contribution is of significant value in the conduct of aeronautical and space activities.

§ 1246.203 General procedures.

(a) A NASA Headquarters office, a NASA field installation, or a NASA contractor will submit to the Inventions and contributions Board (hereafter referred to as "the Board") an application for an award identifying the originator(s) of any scientific or technical contribution conceived or developed during the performance of a NASA program or contract, and which is considered to be of value in advancing the state of knowledge in space or aeronautical activities, whether or not the contribution is the subject of a NASA Tech Brief or of a U.S. patent application. The Board will recommend an award for such contribution when, upon evaluation of its scientific and technical merits, it is determined to warrant an award of at least $250. Following determination of the specific amount of an award by the Board, its recommendation in that amount will be submitted to the Administrator or designee for approval. If two or more persons are the originators of the contribution, the Board will recommend the amount to be awarded to each person.

(b) When the Board receives written notice (NASA Form 1546) that the Assistant General Counsel for Patent Matters at NASA Headquarters or the cognizant Patent Counsel at a NASA field installation has authorized the filing of a U.S. patent application for an invention made and reported by an employee of NASA or an employee of a NASA contractor, the Board will recommend to the Administrator or designee that an initial award of at least $500 be granted to a sole inventor, and an award in the amount of a least $250 will normally be granted to each of joint inventors. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the invention.

(c) When the Board receives written notice (NASA Form 1546) that the Technology Utilization Officer at a NASA field installation has approved for publication a selected NASA Tech Brief based on an innovation made and reported by an employee of NASA or a NASA contractor, the Board will recommend to the Administrator or designee that an initial award of at least $150 be granted, and an award in at least that amount will be granted to each originator of the innovation. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the innovation.

(d) When a selected NASA Tech Brief has been approved for publication and the filing of a U.S. patent application has been authorized for the same contribution, the initial awards authorized in paragraphs (b) and (c) of this section will be cumulative.

(e) Award authorized in paragraphs (a), (b), and (c) of this section will not be granted to a contributor who has previously received full compensation for, or on account of, the use of such a contribution by the United States.

(f) If a contribution, as first reported and evaluated, is judged not to merit a supplemental award, as provided for in paragraph (a), (b), or (c) of this section, and the contribution is later proved to be of significant value, it may be submitted for reevaluation. Responsible NASA and NASA contractor officials are encouraged to review periodically such reported contributions, and to resubmit them for reconsideration through the same channels as originally reported.

§ 1240.204 Presentation of awards.

(a) Monetary awards and accompanying written acknowledgments to employees of NASA will be presented in a formal ceremony by the appropriate Official-in-Charge at the Headquarters Office, or by the Director of the cognizant field installation or designee.

(b) Monetary awards and accompanying written acknowledgments to employees of NASA contractors will be forwarded to contractor officials for suitable presentation.

§ 1240.205 Financial accounting.

(a) An Award Check Receipt (NHQ DIV Form 622), which accompanies the transmittal of each group of award checks from the Board, will be dated and signed by the responsible Award Liaison Officer/Technology Utilization Officer and returned to the Board without delay.

(b) Not later than December 10 of each year, the responsible field installation official will submit a report certifying that all award checks, which were issued and received by the field installation during the year, have been delivered to the proper employees of NASA and employees of NASA contractors. In the case of those checks that have not been delivered by December 10, the certification report will be accompanied by all undelivered checks and a brief explanation of the reasons for the failure to make delivery. This annual certification report is essential in order to assure that income and withholding tax totals for all awardees are correct and complete at the close of each calendar year.

§ 1240.206 Delegation of authority.

(a) The Associate Administrator for Management is delegated authority to execute grants of awards for significant scientific or technical contributions not exceeding $1000 per contributor, when in accordance with the recommendation of the Board and in conformity with applicable law and regulations.

(b) The Chairperson, Inventions and Contributions Board, is delegated authority to execute grants of initial awards upon the decision to file for a U.S. patent application, and upon approval to publish a selected NASA Tech Brief.

(c) No redelegation is authorized except by virtue of succession.

(d) The Chairperson, Inventions and Contributions Board, will ensure that feedback is provided so that the Administrator, through official channels, is currently informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated in this section.

William R. Graham,
Acting Administrator.
January 22, 1986.

[FR Doc. 86–2133 Filed 1–30–86; 8:45 am]
BILLING CODE 7510–01–M

14 CFR Part 1240

Inventions and Contributions; Awards Criteria and Reconsideration

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR Part 1240 by revising Subpart 1, "Awards for Scientific and Technical Conributions" to clarify the criteria for awards, and to establish procedures for reconsideration and oral hearing by applicants for awards.

EFFECTIVE DATE: January 31, 1986.

ADDRESS: Chairperson, Inventions and Contributions Board, Code NB, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Joseph Labow, 202–453–2982.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration had determined that: 1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1240

Inventions and Contributions Board, Monetary awards—inventions and patents, Monetary awards—scientific and technical contributions, Space Act monetary awards program, Decorations, Medals, Awards, Government contracts, Inventions and patents.

PART 1240—INVENTIONS AND CONTRIBUTIONS

14 CFR Part 1240 is amended by revising Subpart 1 to read as follows:

Subpart 1—Awards for Scientific and Technical Contributions

Sec.

1240.100. Purpose.
1240.101. Scope.
1240.102. Criteria.
1240.103. Applications for awards.
1240.104. Review and evaluation of contributions.
1240.105. Notification by the Board.
1240.106. Reconsideration.
1240.107 Hearing procedure.
1240.108 Recommendation to the Administrator.
1240.109 Release.

Authority: Secs. 305 and 308, National Aeronautics and Space Act, as amended (42 U.S.C. 2457 and 2458).

Subpart 1—Awards for Scientific and Technical Contributions

§ 1240.100 Purpose.

This subpart prescribed procedures for the granting of monetary awards by the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities.

§ 1240.101 Scope.

This subpart applies to any scientific or technical contribution which is determined by the Administrator to have significant value in the conduct of aeronautical and space activities for which an application for award has been submitted to NASA.

§ 1240.102 Criteria.

(a) Only those contributions to the Administration which have been (1) used in a NASA program or adopted or sponsored or supported by NASA, and (2) found to have significant value in the conduct of aeronautical and space activities, will be recommended for award under this subpart.

(b) In determining the terms and conditions of any award, the following criteria will be considered:

(1) The value of the contribution to the United States;

(2) The aggregate amount of any sums which have been expended by the applicant for the development of such contribution;

(3) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contributions by the United States; and

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(4) Such other factors as the Administrator shall determine to be material.

§ 1240.103 Applications for awards.

(a) *Eligibility.* Applications for award may be submitted by any person including any individual, partnership, corporation, association, institution, or other entity.

(b) *Information required.* Applications for award should be addressed to the Inventions and Contributions Board (herein referred to as the Board), National Aeronautics and Space Administration, Washington, D.C. 20546, and will contain:

(1) The name and address of the applicant, the person's relationship to the contributor if the contribution is made by one other than the applicant, and the names and addresses of any others having an interest in the contribution;

(2) A complete written description of the contribution, in the English language, accompanied by drawings, sketches, diagrams, or photographs illustrating the nature of the contribution and the technical and scientific principles upon which it is based, any available test or performance data or observations of pertinent scientific phenomena, and the aeronautics or space application of the contribution;

(3) The date and manner of any previous submittal of the contribution to any other United States Government agency, and the name of such agency;

(4) The aggregate amount of any sums which have been expended by the applicant for the development of the contribution;

(5) The nature and extent of any known use of the contribution by the United States and by any agency of the United States Government;

(6) The Amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contribution by the United States;

(7) Identification of any United States and foreign patents applied for or issued relating to the contribution; and

(8) An agreement to surrender all claims which such applicant may have for the use of such contribution by the Government.

(c) *General.* (1) Each contribution will be made the subject of a separate application in order that each contribution may be evaluated individually.

(2) Material constituting a possible hazard to safety or requiring unusual storage facilities should not be submitted, and will not be accepted. Models or intricate exhibits demonstrating the contribution will not be accepted unless specifically requested by the Board. In those few cases where such models or exhibits have been submitted pursuant to a request made by the Board, the same will be returned to the applicant upon written request from the applicant.

(3) It is the policy of the Board to use or disclose information contained in applications for awards for evaluation purposes only. Applications for awards submitted with restrictive legends or statements differing from this policy will be treated in accordance with the Board's policy.

§ 1240.104 Review and evaluation of contributions.

(a) A contribution will be initially reviewed by the Board on the basis of the material submitted by the applicant under § 1240.103(b).

(b) If it is determined that the contribution has been used in a NASA program, or adopted or sponsored or supported by NASA, the contribution will be evaluated for its significant value in the conduct of aeronautical or space activity.

§ 1240.105 Notification by the Board.

With respect to each complete application, the Board will notify the applicant:

(a) Where the Board has recommended to the Administrator the granting of an award, and the Administrator has approved such award, the amount and terms of the award, together with a statement of the reasons for such recommendation;

(b) Where the Board does not propose to recommend to the Administrator the granting of an award and include a brief statement of the reasons for such decision.

§ 1240.106 Reconsideration.

(a) In those cases where the Board does not recommend an award, the applicant may, within such period as the Board may set but in no event less than 30 days from notification, request reconsideration of the Board's decision.

(b) If reconsideration has been requested within the prescribed time, the applicant will, within 30 days from the date of the request for reconsideration, or within any other time as the Board may set, file its statement setting forth the issues, points, authorities, arguments, and any additional material on which it relies.

(c) Upon filing of the reconsideration statement by the applicant, the case will be assigned for reconsideration by the Board upon the contents of the application, the record, and the reconsideration statement submitted by the applicant.

(d) If after reconsideration, the Board again does not propose to recommend the granting of an award, the applicant, after such notification by the Board, may request an oral hearing within the time set by the Board.

§ 1240.107 Hearing procedure.

(a) Oral hearings held by the Board will be in accordance with the following procedures:

(1) If the applicant requests a hearing within the time set in accordance with § 1240.106(d), the Board will set a place and date for such hearing and notify the applicant.

(2) The applicant may be represented by attorneys or any other appropriately designated persons.

(3) Hearings will be open to the public unless the applicant requests that a closed hearing be held.

(4) Hearings may be held before the full membership of the Board or before any panel of Board members designated by the Chairperson.

(5) Hearings will be conducted in an informal manner with the objective of providing the applicant with a full opportunity to present evidence and arguments in support of the application. Evidence may be presented through means of such witnesses, exhibits, and visual aids as are arranged for by the applicant. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the applicant, and the Board may, at its option, utilize the assistance of technical advisors or other experts.

(6) Subject to the provisions of § 1240.103(c)(2), the applicant will submit a copy of any exhibit or visual aid utilized unless otherwise directed by the Board. The Board may, at its discretion, arrange for a written transcript of the proceedings and a copy of such transcript will be made available by the recorder for purchase by the applicant.

(7) No funds are available to defray traveling expenses or any other cost incurred by the applicant.

§ 1240.108 Recommendation to the Administrator.

Upon a determination by the Board that a contribution merits an award, the Board will recommend to the Administrator the terms and conditions of the proposed award. The recommendation of the Board to the Administrator will reflect the views of the majority of the Board members. Dissenting views may be transmitted with the majority opinion.

§ 124.109 Release.

Under subsection 306(b)(1) of the National Aeronautics and Space Act of 1958, as amended, no award will be made to an applicant unless the applicant submits a duly executed release, in a form specified by the Administrator, of all claims the applicant may have to receive any compensation (other than the award recommended) from the United States Government for use of the contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to any existing or future treaty or agreement with the United States, within the United States or at any other place.

William R. Graham,

Acting Administrator.

January 22, 1986.

[FR Doc. 86-2132 Filed 1-30-86; 8:45 am]

BILLING CODE 7510-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9089]

Atlantic Richfield Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: The Federal Trade Commission has set aside a 1979 order with Atlantic Richfield Co. (ARCO), so that the company is no longer required to divest its half-interest in Anamax, a joint venture. The Commission cited developments in the copper industry as rendering the Anamax divestiture and the original order unnecessary.

DATES: Order issued Oct. 29, 1979. Set Aside Order issued Dec. 30, 1985.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, FTC/L-301, Washington, DC 20580. (202) 634-4604.

SUPPLEMENTARY INFORMATION: In the Matter of Atlantic Richfield Company, a corporation. The prohibited trade practices and/or corrective actions, as set forth at 44 FR 67643, are deleted.

List of Subjects in 16 CFR Part 13

Copper, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

United States of America

Before Federal Trade Commission

Order Terminating Decision and Order Issued October 29, 1979

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the Matter of Atlantic Richfield Company, a corporation; Docket No. 9089.

On August 30, 1985, Atlantic Richfield Company ("Arco") filed its "Request To Reopen And Set Aside Consent Order" ("Request"). The Request was submitted pursuant to Paragraphs XV and XVI of the Commission's Decision and Order issued on October 29, 1979, ("the Order") and also pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the proceeding and terminate the Order in its entirety. After reviewing respondent's Request and other relevant information, the Commission has concluded that Arco has made a satisfactory showing that changed conditions of fact and public interest considerations require that the Order be terminated.

This proceeding arose out of Arco's merger with The Anaconda Company ("Anaconda") in 1976. The complaint was issued under section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act and charged that Arco's acquisition of Anaconda would eliminate three forms of competition: (1) Actual competition between Arco and Anaconda in the production and sale of uranium oxide; (2) potential competition between Arco and producers of uranium oxide, including Anaconda; and (3) potential competition between Arco and producers of copper, including Anaconda, in copper mine production and in the production and sale of refined copper. At the time the complaint was issued, Arco, in addition to being a petroleum company, was a producer of uranium oxide through a joint venture operating in Clay West, Texas, with Niagara Mohawk Power Company and United States Steel Corporation. Anaconda was both a producer of uranium oxide and a miner and refiner of copper.

On November 2, 1976, a hearing was held in the United States District Court for the Eastern District of Virginia on the Commission's motion for a preliminary injunction against the merger pending completion of the Commission's administrative lawsuit. On the same day, Arco announced a plan to sell its interest in the Clay West uranium joint venture to Niagara Mohawk and United States Steel. Later that day the district court denied the Commission's motion. The sale of Arco's Clay West interest was consummated on December 6, 1976. Thereafter, on January 12, 1977, the United States Court of Appeals for the Fourth Circuit affirmed the judgment of the district court, and the merger was consummated later that same day. *FTC v. Atlantic Richfield Company*, 549 F.2d 289 (4th Cir. 1977). The Commission's administrative proceeding continued and the parties subsequently entered into settlement negotiations. On October 29, 1979, the Commission issued its Order in this matter.

The Order required the divestiture of five specified copper interests that had been owned by Anaconda at the time it was acquired by Arco. These interests were the Heddleston copper and molybdenum mineral property; the Ann Mason copper mineral property; the Bear copper mineral property; its 20 percent stock holding in Inspiration Consolidated Copper Company; and its 50 percent joint venture interest in the Anamax Mining Company ("Anamax"), a copper miner and producer of copper concentrate and electrowon refined grade copper. The time allowed for Arco to accomplish divestiture ranged from a minimum of one year for the Inspiration stock to five years for the Anamax interest. The Order also imposed an acquisition ban and joint venture restrictions on Arco during a "limitation period" defined in the Order. The limitation period was to expire after five years (on October 29, 1984), but was subject to a proviso extending the period for as much as an additional five years if the required divestitures had not been completed in accordance with a specified timetable.

Arco has accomplished all of the divestitures required by the Order with the exception of its interest in Anamax. Arco sold its interest in Inspiration Consolidated Copper Company prior to issuance of the Order. The Ann Mason and Bear properties were sold on August 25, 1981. The Heddleston property was sold to Asarco with the prior approval of the Commission as required by the Order in September 1981. Since Arco did not divest its interest in Anamax within four years of the effective date of the Order, the limitation period has yet to expire.

Respondent has established that there have been significant changes in the factual circumstances that prevailed at the time the complaint and Order issued so that it is now appropriate to terminate the Order. These changes include a decline in the market position of United States copper producers in

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general; a decline in the scope of Arco's copper operations; and a sharp curtailment in the copper operations of Anamax.

Perhaps the most significant development since the Order issued has been the inability of U.S. copper producers to sustain the two-tier pricing system which historically kept the U.S. price substantially above the price of copper sold outside the United States. Request, pp. 23–24. Imports of refined copper accounted for 27 percent of domestic refined copper consumption in 1983 as compared with 10 percent in 1979 and 9 percent in 1975. Request, p. 25 and Table I. The major exporting nations have kept producing at high levels while United States producers have been forced to cut back output. According to the International Trade Commission

> In a broad sense, the copper market is a world market. Both tariffs and transportation costs are small compared with the value of copper. As a result, arbitrage keeps the price of copper relatively the same throughout the world.

ITC, *Unwrought Copper: Report to the President on Investigation No. TA–201–52 Under Section 201 of the Trade Act of 1974* at A–56 (July 1984) (hereinafter "*ITC Report*"). U.S. producers "have no choice but to follow the depressed and declining world price of copper." *ITC Report* at 43–44. According to the ITC

> The current depressed state of the domestic copper industry reflects existing world market conditions and, therefore, is predominantly due to the low level of world prices which are transmitted to the U.S. industry through imports. Current world prices have been driven low by a combination of world overproduction and a decline in demand. In particular, a number of developing countries, with copper as their main source of foreign exchange, are continuing to produce and market increasing quantities of copper despite a worldwide glut, with plans to expand capacity even further in the near future.

ITC Report at 6–7. A substantial number of domestic copper production facilities have been permanently closed since 1979. *ITC Report* at A–22, A–23.

These developments have also had a significant adverse effect on Arco's own copper operations. In the period since the Order was issued Arco has shut down all of its wholly-owned copper mines and has closed and scrapped its copper smelter and copper refinery. Apart from its interest in Anamax, respondent has not produced refined copper since the fall of 1980 and has not mined copper since June 1983. Arco has written down all of its copper and other non-coal mineral operations and is in the process of permanently exiting from these businesses. Request, p. 3. Likewise, the Anamax copper operations have been sharply curtailed. The only active Anamax copper operation is the processing of stockpiled copper oxide ore at the Twin Buttes oxide plant. Request, p. 36. In the opinion of the Commission, the developments referred to above have rendered the divestiture of Arco's interest in Anamax unnecessary and have also made it appropriate to terminate the restriction on acquisitions and joint ventures imposed by the Order.

Accordingly, it is ordered that this matter be, and it hereby is, reopened, and that the Commission's Decision and Order issued on October 29, 1979, shall terminate as of the effective date of this order.

By the Commission.

Issued: December 30, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 86–2152 Filed 1–30–86; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–2965]

General Mills Fun Group, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has released General Mills, Inc. from its responsibilities under a 1979 consent order that prohibited misrepresentations in advertising by its toy producing subsidiary, but has said the order remains binding on the subsidiary's successor. (44 FR 37200) General Mills intends to spin off its toy-producing subsidiary, General Mills Fun Group, Inc., as an independent company called Kenner Parker Toys, Inc., and has no intention of reentering the toy business following the corporate action.

DATES: Consent Order issued May 15, 1979. Modifying Order issued Dec. 11, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, FTC/B–425, Washington, DC 20580, (202) 376–2891.

SUPPLEMENTARY INFORMATION: In the Matter of General Mills Fun Group, Inc. The prohibited trade practices and/or corrective actions, as set forth at 44 FR 37200, remain unchanged.

List of Subjects in 16 CFR Part 13

Advertising, Toys, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

United States of America Before Federal Trade Commission

Order Reopening the Proceeding and Modifying Cease and Desist Order

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the matter of General Mills Fun Group, Inc.; Docket No. C–2965.

On September 20, 1985, General Mills, Inc.'s (Petitioner) request to reopen and modify the consent order entered against General Mills Fun Group, Inc. (respondent) by the Commission on May 15, 1979, in the above-captioned matter was placed on the public record for 30 days pursuant to Rule 2.51(c) of the Commission's Procedures and Rules of Practice. That order proscribes representing the performance, operation, use, size, or appearance of toys or related products which (1) cannot be duplicated by children in ordinary use; or (2) through the use of any commercial production technique misrepresents to children these characteristics, or (3) fails to disclose the need for human or mechanical assistance, when such failure, in the context of the advertisement as a whole, misrepresents to children such toy's performance or operation. Part III of that order applies the same proscriptions against Petitioner if it should engage in the advertising of toys, directly or through a subsidiary other than respondent. A second provision of Part III would make Petitioner liable for any penalties or other legal or equitable relief under the order if for any reason respondent or other subsidiary advertising toys while owned by Petitioner is not amenable to suit or execution of full judgment.

The respondent, General Mills Fun Group, Inc., through a series of name changes has become Kenner Parker Toys Inc. (Kenner Parker or respondent). On November 7, 1985, Petitioner spun-off Kenner Parker as a free-standing corporate entity that is now independent of Petitioner through a distribution of Kenner Parker's stock to Petitioner's stockholders of record. The newly independent Kenner Parker, with fiscal 1985 sales of $638 million and assets of $499 million, will be one of the largest toy companies in the world. As a result of this spin-off, Petitioner will no longer be engaged in the toy business and has stated that it has no present intent to reenter that business in the future. In addition, Petitioner is not in a position to oversee either the management or

advertising of respondent Keener Parker, formerly General Mills Fun Group, Inc. As a consequence of the foregoing, Petitioner requests that it be relieved of its responsibilities under the order by the setting aside of Part III.

Upon consideration of Petitioner's request and supporting materials, and other relevant information, the Commission finds pursuant to Rule 2.51 of the Commission's Procedures and Rules of Practice, 16 CFR 2.51 that changed conditions of fact and the public interest warrants reopening and modification of the order in the manner requested. In doing so, the Commission notes that Kenner Parker, as a successor corporation, remains bound by the terms of the order and that a specific covenant to that effect was contained in the transfer documents between Petitioner, General Mills, Inc., and Kenner Parker.

It is therefore ordered, that the proceeding is hereby reopened and the order issued May 15, 1979 in Docket No. C–2965 as hereby modified by setting aside Part III thereof.

By direction of the Commission.

Issued: December 11, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 86–2154 Filed 1–30–86; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Docket No. C–3167]

Hospital Corp. of America; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has approved Hospital Corp. of America's proposed divestiture of a hospital in Midland, Texas, to ClayDesta Corp. The Commission also modified the 1985 consent order requiring the divestitute, so that HCA may retain the land that is the location for a planned hospital in Midland. (50 FR 42010.)

DATES: Consent Order issued Sept. 30, 1985. Modifying Order issued Dec. 16, 1985.

FOR FURTHER INFORMATION CONTACT: Daniel P. Ducore, FTC/L–301, Washington, DC 20580, (202) 634–4642.

SUPPLEMENTARY INFORMATION: In the Matter of Hospital Corporation of America, a corporation. The prohibited trade practices and/or corrective actions, as set forth at 50 FR 42010, remain unchanged.

List of Subjects in 16 CFR Part 13

Hospitals, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

United States of America Before Federal Trade Commission

Order Modifying Cease and Desist Order Issued on September 30, 1985

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the matter of Hospital Corporation of America, a corporation; Docket No. C–3167.

By a petition filed on November 12, 1985, Hospital Corporation of America ("HCA") requests that the Commission reopen the proceeding in Docket No. C–3167 and modify the order issued by the Commission on September 30, 1985, to remove a parcel of land held by Doctors' Hospital of the Permian Basin, Inc. ("Doctors' Hospital") from the assets to be divested pursuant to Paragraph II of the order. Pursuant to § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51 (1985), HCA's petition was placed on the public record for comments. No comments were received.

After reviewing HCA's petition and HCA's September 26, 1985, application for approval of the divestiture of its Parkview Hospital and the planned Doctors' Hospital, the Commission has concluded that the public interest warrants reopening and modification of the order. In the context of HCA's September 26, 1985, divestiture proposal, elimination of the requirement that HCA divest the parcel of land owned by Doctors' Hospital would facilitate the proposed divestiture which, in turn, will help achieve the remedial purposes of the order. HCA proposes to divest Doctors' Hospital to ClayDesta Corporation, an acquirer who intends to locate Doctors' Hospital on a site of its own choosing within the relevant geographic market. Therefore, ClayDesta does not desire to acquire the Doctors' Hospital land.

Consequently, divestiture of the parcel of land currently owned by Doctors' Hospital is not essential to achieving the remedial goals of the order. Eliminating the requirement that HCA divest the Doctors' Hospital parcel of land, in the context of the proposed divestiture, does not appear to have any adverse competitive significance.

Accordingly,

It is ordered that this matter be, and it hereby is, reopened and that *Schedule A: Stock and Assets to be Divested*, Paragraph A 2., of the order in Docket No. C–3167, be modified to read as follows:

2. Doctors' Hospital of the Permian Basin, in Midland, Texas (a planned new facility which, if and when it is completed, will replace Parkview Hospital). Provided, however, that HCA need not divest the parcel of land owned by Doctors' Hospital if the acquirer of Doctors' Hospital possesses another site within the Midland/Odessa area, intends to locate the hospital at that other site and, therefore, chooses not to acquire the Doctors' Hospital land.

By direction of the Commission.

Issued: December 16, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 86–2153 Filed 1–30–86; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Compliance Exemptions

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS NIAGARA FALLS (AFS 3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a combat stores vessel. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: January 8, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the

Secretary of the Navy has certified that USS NIAGARA FALLS (AFS3) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a) pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a combat stores vessel. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table Five of § 706.2 is amended by adding the following vessel to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, Sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, Sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. (3)(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS NIAGARA FALLS	AFS 3							X	97.9

Dated: January 8, 1986.
John Lehman,
Secretary of the Navy.
[FR Doc. 86-2136 Filed 1-30-86; 8:45 am]
BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-6-FRL-2964-2]

Final Decision on Revisions to the State's Hazardous Waste Management Program, Texas

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on revisions to Texas' final authorization.

SUMMARY: On October 4, 1985, the Environmental Protection Agency (EPA) published an Interim Final Decision approving revisions to the State of Texas' hazardous waste management program authorized pursuant to the Resource Conservation and Recovery Act (RCRA). EPA, after providing opportunity for public comment, has finalized this decision.

EFFECTIVE DATE: Final Authorization of the revision to the Texas program was effective October 4, 1985.

FOR FURTHER INFORMATION CONTACT: H.J. Parr, State Programs Section (6H-HS), Hazardous Waste Programs Branch, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2645.

SUPPLEMENTARY INFORMATION: On September 4, 1985, EPA published a notice in the **Federal Register** (50 FR 35798) describing the changes enacted by the Sixty-Ninth Legislature for the State of Texas which impact the State's authorized hazardous waste management program. The notice also described the manner in which EPA and the State would address those changes and provided for public inspection of the State's Legislation and a draft of the State's program revision.

The Texas Legislature enacted legislation (Senate Bill 249) reorganizing the Texas Department of Water Resources (TDWR), responsible for the industrial waste management program, renaming it the Texas Water Commission (TWC) and, in addition, tranferring to the TWC from the Texas Department of Health (TDH) the administration of the municipal hazardous waste program. This transfer was effective September 1, 1985.

Senate Bill 249 contains a provision (Section 10.004(f)) that the reorganization of the TDWR into the TWC does not affect or impair any act done, bonds authorized or issued, or penalty that has occurred or that exists under the authority of the TDWR as it existed before the effective date of Senate Bill 249, and those bonds, obligations, rights, permits, licenses, standards, rules, and criteria remain in effect until such time as they are paid, recalled, changed, altered, renewed, amended, cancelled, revoked, repealed, or abolished under the water code or other State laws.

There is no provision, however, in Senate Bill 249 continuing in effect the municipal hazardous waste program after September 1, 1985. The statute is quite clear that, after September 1, 1985, authority for the regulation of municipal hazardous waste lies with the TWC and all TDH municipal hazardous waste authority ceases.

The revisions of the industrial waste management program made as a result of the reorganization and remaining of the TDWR do not fall within the ambit of 40 CFR 271.21(c). This section states that whenever there is a transfer of all or part of a program from an approved State agency to another State agency, the new agency is not authorized to administer the program until approved by EPA under 40 CFR 271.21(b). EPA does not view the reorganization of the TDWR into the TWC with the attendant savings clause of Section 10.004(f) of Senate Bill 249 as a transfer within the purview of 40 CFR 271.21(c). Thus, the authorized industrial hazardous waste program will continue in the State of Texas without interruption.

EPA does consider the transfer of the municipal hazardous waste program from the TDH to the TWC to fall within the meaning of 40 CFR 271.21(c). Since the TDH authority ceased and the TWC authority for municipal hazardous waste is not authorized until approved by EPA, there has been a lapse in authority to operate a RCRA program for municipal hazardous waste in Texas until the TWC is authorized by EPA for this program. The TWC did not issued RCRA permits to municipal hazardous waste management facilities during this period. In order to minimize any significant impact this lapse of authority had on the program, EPA and the State committed to an aggressive plan of action to keep the lapse time as short as possible. This plan included submitted a draft of the program revision to EPA in mid-August, a final program revision in mid-September, and a decision as noticed in the September 4, 1985, **Federal Register** to publish an immediately effective Interim Final Determination by EPA as close to the end of September as possible if the revisions were approvable.

Comments

On October 4, 1985, EPA published a notice in the **Federal Register** (50 FR 40526) of an Interim Final Decision approving the revisions made necessary by the transfer of authority for the municipal hazardous waste program from the TDH to the TWC and of the opportunity to comment on the Interim Final Decision. The comment period ended November 18, 1985. EPA received no comments or requests for a public hearing.

Decision

The Interim Final Decision, published on October 4, 1985, is made final with the effective date remaining October 4, 1985.

List of Subjects in 40 CFR Part 271

Administrative practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 2912(a), 6926, 6974(b) and EPA delegations 8-7.

Dated: January 21, 1986.

Frances E. Phillips,
Acting Regional Administrator.
[FR Doc. 86-2162 Filed 1-30-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[SW-5-FRL-2964-5]

Indiana: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on Indiana's Application for Final Authorization.

SUMMARY: Indiana has applied for final authorization under the Resource Conservation and Recovery Act, as amended (RCRA). The United States Environmental Protection Agency (U.S. EPA) has reviewed Indiana's application and found it includes all information necessary for RCRA final authorization. U.S. EPA is granting final authorization to the State of Indiana to operate its hazardous waste management program, in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

EFFECTIVE DATE: The final authorization for Indiana takes effect 1:00 p.m., Eastern Standard Time on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Mike Ohm, Indiana Regulatory Specialist, Solid Waste Branch, U.S. EPA, Region V, 230 South Dearborn, Chicago, Illinois, 60604 (312) 886-1657 (FTS: 8-886-1657).

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act as amended, (RCRA) allows U.S. EPA to authorize a State hazardous waste management program to operate in a State in lieu of the Federal hazardous waste management program. To qualify for final authorization, a State's program must: (1) Be equivalent to the Federal program; (2) be no less "stringent" than the Federal program; (3) be consisent with the Federal program and other authorized State programs; (4) provide for adequate enforcement authority; and (5) provide for public participation in the permit process. [Section 3006(b) of the RCRA, 42 U.S.C. 6926(b).]

On August 5, 1985, the State of Indiana submitted a complete application to obtain final authorization to administer the RCRA program. After completion of a comprehensive review of the State's official application, U.S. EPA forwarded comments to the State on September 17, 1985. These comments reflected the remaining areas which the State needed to further address. Indiana responded satisfactorily to U.S. EPA's comments in a letter dated November 4, 1985. Region V conducted a comprehensive Capability Assessment evaluating past State program performance and present resource capacity for future program implementation. The Capability Assessment, together with the Letter of Intent, highlighted the areas in which Indiana needed improvement and the measures U.S. EPA and Indiana will take to ensure that these improvements are implemented. These areas were completing and documenting the reviews of permit applications, and hiring and training staff. Since the publication of the tentative determination, Region V has continued to monitor the progress of the Indiana program in the above-noted areas of concern. Region V has found that Indiana continues to make progress in these areas, therefore, following the detailed review of the complete application and the development of a Capability Assessment evaluating past State program performance and present resource capacity for future program implementation, U.S. EPA published a notice in the **Federal Register** on November 19, 1985, announcing its tentative determination to grant final authorization to the State of Indiana. Further background on the tentative determination to grant or deny final authorization appears in the November 19, 1985, **Federal Register** (50 *FR* 47567). That **Federal Register** notice summarized all issues raised in U.S. EPA's review of the complete application.

Along with the notice of tentative determination, U.S. EPA announced the availability of Indiana's application for public inspection and copying, the date of the public comment period, the date of the public hearing on Indiana's application, and U.S. EPA's tentative determination to grant Indiana final authorization. The public notice ran in eleven newspapers in Indiana and was mailed to all individuals and organizations on the Region V Indiana mailing list. The public hearing was held on December 20, 1985, in Indianapolis, Indiana. Twenty-two people attended the pubic hearing. Twenty-two oral or written comments were presented at the public hearing or during the public comment period.

U.S. EPA's response to comments it has received is contained in the Responsiveness Summary. A copy of the Responsiveness Summary is available from Michael Ohm, Indiana Regulatory Specialist, at the United States Environmental Protection Agency, 230 South Dearborn Street, 5HS-JCK-13, Chicago, Illinois, (312) 886-1657.

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Decision

After reviewing the public comments and the changes the State has made to its application since the tentative decision, I conclude that Indiana's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Indiana is granted final authorization to operate its hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984, (Pub. L. 98-616, November 8, 1984) (HSWA). Indiana now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program subject to the HSWA. Indiana also has primary enforcement responsibility, although U.S. EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA. Indiana is not authorized to operate the RCRA program on Indian lands, and this authority will remain with the U.S. EPA.

As stated above, Indiana's authority to operate a hazardous waste program under Subtitle C of RCRA is limited by the November 8, 1984, HSWA amendments to RCRA. Prior to that date a State with Final Authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted those requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial Federal permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA provisions apply in authorized States in the interim.

As a result of HSWA, there will be a dual State/Federal regulatory program in Indiana. To the extent the authorized State program is unaffected by HSWA, the State program is authorized to operate in lieu of the Federal program. Where HSWA-related requirements apply, however, U.S. EPA will administer and enforce them in Indiana until the State receives authorization to do so. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in HSWA and the approved State program defines the applicable Subtitle C requirements in Indiana.

Indiana is not being authorized now for any requirement implementing HSWA. Once the State is authorized to implement an HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time the State will assist U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

U.S. EPA has published a **Federal Register** notice that explains in detail HSWA and its effect on authorized States. That notice was published in the July 15, 1985 **Federal Register** (50 FR 28702), and should be referred to for further information.

Effective Date

40 CFR 23.4 provides that the grant of final authorization under Section 3006 takes effect 2 weeks after the date of **Federal Register** publication unless the **Federal Register** notice specifically provides otherwise. I have determined that a different effective date January 31, 1986, is necessary in this instance. Indiana currently has interim authorization for Phase I of the RCRA program. Since interim authorization expires by statute on January 31, 1986, Indiana must have authority to administer the final authorization program, on that date, or the RCRA program will revert to EPA. To avoid the problem of a short-term reversion, I have decided to shorten the period during which my decision will take effect.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3, Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 505(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Indiana's program, thereby; eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative Practice and Procedure, Confidential Business Information, Hazardous Materials Transportation, Hazardous Waste, Indian Lands, Intergovernmental Relations, Penalties, Reporting and Recordkeeping Requirements, Water Pollution Control, Water Supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, amended, by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6926, and 6974(b), EPA Delegation 8-7.

Dated: January 24, 1986.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 86-2255 Filed 1-30-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 272

[SW FRL-2961-6]

Hazardous Waste Management Program; Approved State Hazardous Waste Programs for Montana and Delaware

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. This action establishes Part 272 for codification of the decision to authorize a State program and for incorporation by reference of those provisions of State statutes and regulations that EPA will enforce under Sections 3008, 3013, and 7003 of RCRA. As part of this initial action Part 272 codifies EPA's prior final authorization of the Montana and Delaware State programs and incorporates by reference appropriate provisions of State statutes and regulations.

DATES: This regulation is effective as of January 31, 1986. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of January 31, 1986.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346 or in Washington, DC at (202) 382-3000, or Mr. Chaz Miller, USEPA, Office of Solid Waste, (202) 382-2220.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6926 et seq., allows the Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. On June 8, 1984, and July 11, 1984, EPA published **Federal Register** notices announcing its decision to grant final authorization to Delaware and Montana, respectively (see 49 FR 23837 and 49 FR 28245).

Since that time EPA has decided to codify its approval of State programs in a new Part 272 of Title 40, Code of Federal Regulations and to incorporate by reference the State statutes and regulations that EPA will enforce under Section 3008 of RCRA. Today's initial codification reflects the State programs in Delaware and Montana that were in effect when EPA granted the State final authorization under Section 3006(b). As appropriate, the Code of Federal Regulations will subsequently be amended to reflect revisions to the authorized State program. Until a Delaware or Montana State provision is approved and codified by EPA, it is not part of the authorized program and will not be enforced by EPA. Codification will thus provide clearer notice to the public of the content of the authorized program.

The public needs to be aware, however, that some State provisions incorporated by reference may in fact be enforced solely by the State, and not by EPA. Although "more stringent" State requirements are part of the authorized program, State provisions which are "broader in scope" than the Federal program are not part of the authorized program. (See 40 CFR § 271.1(i).) Therefore, if a State provision is determined to be broader in scope, it will not be enforced by EPA. The State, however, will continue to enforce such provisions.

A further point concerns the effect of the 1984 RCRA amendments (the Hazardous and Solid Waste Amendments of 1984 (HSWA) Pub. L. 98-616, Nov. 8, 1984) on authorized State programs. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time it takes effect in non-authorized States. Thus, the HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision, even if previously authorized. See 50 FR 28702, July 15, 1985. Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. Instead of amending Part 272 every time a new HSWA provision takes effect, EPA will wait until the State receives authorization for its analogue to the new HSWA provision to amend Part 272. In the interim, persons wanting to know whether a HSWA requirement is in effect will need to read 40 CFR § 271.1(j), as amended, which lists each such provision.

Some State requirements may be similar to HSWA requirements that are in effect. However, no State is authorized to implement its analogue to a HSWA provision until the Regional Administrator has published his final decision to authorize the State for specific HSWA requirements. Neither Delaware nor Montana has sought or received authority to implement any HSWA provision.

The codification of State programs should substantially enhance the public's ability to discern the current status of the authorized State program. This will be particularly true as more and more State program revisions are submitted to adopt HSWA provisions.

In order to codify Delaware and Montana, EPA is adding Part 272 to Subchapter I, listing Delaware and Montana as Subparts I and BB respectively and reserving the other Subparts for the remaining States and territories. EPA is not proposing today's action since codification is an Agency procedure exempted from notice and comment requirements by 5 U.S.C. 553. Notice and opportunity for comment were provided earlier on the Agency's decisions to approve the Delaware and Montana programs.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It codifies the decisions already made to authorize the Delaware and Montana State programs and has no effect on handlers of hazardous waste in either State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: January 6, 1986.

Lee M. Thomas,

Administrator.

A new Part 272 is added to 40 CFR Subchapter I to read as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

Subpart A—General Provisions

Sec.
272.1 Purpose an Scope
272.2–272.49 [Reserved]

Subpart B—Alabama

272.50–272.99 [Reserved]

Subpart C—Alaska

272.100–272.149 [Reserved]

Subpart D—Arizona

272.150–272.199 [Reserved]

Subpart E—Arkansas

272.200–272.249 [Reserved]

Subpart F—California

272.250–272.299 [Reserved]

Subpart G—Colorado

272.300–272.349 [Reserved]

Subpart H—Connecticut

272.350–272.399 [Reserved]

Subpart I—Delaware

272.400 State Authorization
272.401 State-Administered Program: Final Authorization
272.402–272.499 [Reserved]

Subpart J—District of Columbia

272.450–272.499 [Reserved]

Subpart K—Florida
272.500–272.549 [Reserved]
Subpart L—Georgia
272.550–272.599 [Reserved]
Subpart M—Hawaii
272.600–272.649 [Reserved]
Subpart N—Idaho
272.650–272.699 [Reserved]
Subpart O—Illinois
272.700–272.749 [Reserved]
Subpart P—Indiana
272.750–272.799 [Reserved]
Subpart Q—Iowa
272.800–272.849 [Reserved]
Subpart R—Kansas
272.850–272.899 [Reserved]
Subpart S—Kentucky
272.900–272.949 [Reserved]
Subpart T—Louisiana
272.950–272.999 [Reserved]
Subpart U—Maine
272.1000–272.1049 [Reserved]
Subpart V—Maryland
272.1050–272.1099 [Reserved]
Subpart W—Massachusetts
272.1100–272.1149 [Reserved]
Subpart X—Michigan
272.1150–272.1199 [Reserved]
Subpart Y—Minnesota
272.1200–272.1249 [Reserved]
Subpart Z—Mississippi
272.1250–272.1299 [Reserved]
Subpart AA—Missouri
272.1300–272.1349 [Reserved]
Subpart BB—Montana
272.1350 State Authorization
272.1351 State-Administered Program: Final Authorization
272.1352 272.1399 [Reserved]
Subpart CC—Nebraska
272.1400–272.1449 [Reserved]
Subpart DD—Nevada
272.1450–272.1499 [Reserved]
Subpart EE—New Hampshire
272.1500–272.1549 [Reserved]
Subpart FF—New Jersey
272.1550–272.1599 [Reserved]
Subpart GG—New Mexico
272.1600–272.1649 [Reserved]
Subpart HH—New York
272.1650–272.1699 [Reserved]
Subpart II—North Carolina
272.1700–272.1749 [Reserved]
Subpart JJ—North Dakota
272.1750–272.1799 [Reserved]
Subpart KK—Ohio
272.1800–272.1849 [Reserved]
Subpart LL—Oklahoma
272.1850–272.1899 [Reserved]
Subpart MM—Oregon
272.1900–272.1949 [Reserved]
Subpart NN—Pennsylvania
272.1950–272.1999 [Reserved]
Subpart OO—Rhode Island
272.2000–272.2049 [Reserved]
Subpart PP—South Carolina
272.2050–272.2099 [Reserved]
Subpart QQ—South Dakota
272.2100–272.2149 [Reserved]
Subpart RR—Tennessee
272.2150–272.2199 [Reserved]
Subpart SS—Texas
272.2200–272.2249 [Reserved]
Subpart TT—Utah
272.2250–272.2299 [Reserved]
Subpart UU—Vermont
272.2300–272.2349 [Reserved]
Subpart VV—Virginia
272.2350–272.2399 [Reserved]
Subpart WW—Washington
272.2400–272.2449 [Reserved]
Subpart XX—West Virginia
272.2450–272.2499 [Reserved]
Subpart YY—Wisconsin
272.2500–272.2549 [Reserved]
Subpart ZZ—Wyoming
272.2550–272.2599 [Reserved]
Subpart AAA—Guam
272.260–272.2649 [Reserved]
Subpart BBB—Puerto Rico
272.2650–272.2699 [Reserved]
Subpart CCC—Virgin Islands
272.2700–272.2749 [Reserved]
Subpart DDD—American Samoa
272.2750–272.2799 [Reserved]
Subpart EEE—Commonwealth of the Northern Mariana Islands
272.2800–272.2849 [Reserved]

Authority: Sec. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart A—General Provisions

§ 272.1 Purpose and scope.

(a) This part sets forth the applicable State hazardous waste management programs under Section 3006(b) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6926, and 40 CFR 260.10. "State" is defined in 42 U.S.C. § 1004(31) as "any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands."

(b) Material incorporated by reference is available for inspection in the Library of the appropriate EPA Regional Office, in the Library of EPA Headquarters, 401 M St. SW, Washington, D.C. and at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW, Washington, D.C.

Subpart B—Alabama

§§ 272.50—272.99 [Reserved]

Subpart C—Alaska

§§ 272.100—272.149 [Reserved]

Subpart D—Arizona

§§ 272.150—272.199 [Reserved]

Subpart E—Arkansas

§§ 272.200—272.249 [Reserved]

Subpart F—California

§§ 272.250—272.299 [Reserved]

Subpart G—Colorado

§§ 272.300—272.349 [Reserved]

Subpart H—Connecticut

§§ 272.350—272.399 [Reserved]

Subpart I—Delaware

§§ 272.400 State Authorization.

(a) The State of Delaware is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA) (Pub. L. 98–616, November 8, 1984), 42 U.S.C. 6926 (c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR 271.9–271.17 and 271.21. The State's program, as administered by the Delaware Department of Natural Resources and Environmental Control, was approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this Chapter. EPA's approval was effective on June 22, 1984, 48 FR 23837.

(b) Delaware is not authorized to implement any HSWA requirement in lieu of EPA unless EPA has explicitly indicated its intent to do so in a **Federal Register** notice granting Delaware authorization.

(c) Delaware has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities, including conducting inspections under Section 3007, 42 U.S.C. 6927, and taking enforcement actions under Sections 3008, 3013, and 7003, 42 U.S.C. 6928, 6934 and 6973, as well as under other Federal laws and regulations.

(d) Delaware must revise its approved program to adopt new changes to the Federal Subtitle C program in accordance with section 3006(b) of RCRA and 40 CFR Part 271, Subpart A. Delaware must seek final authorization for all program revisions pursuant to Section 3006(b) of RCRA, but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(g) of RCRA, 42 U.S.C. § 6926(g). If Delaware obtains final authorization for the revised requirements pursuant to section 3006(b) of RCRA, the newly authorized provisions will be listed in § 272.401. If Delaware obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.402.

§ 272.401 State-Administered Program: Final Authorization

Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b), Delaware has final authorization for the following elements as submitted to EPA in Delaware's program application and approved by EPA.

(a) *State Statutes and Regulations.* (1) The requirements in the Delaware statutes and regulations cited in this paragraph are incorporated by reference and made a part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Federal Register January 31, 1986.

(i) 7 Delaware Code Annotated §§ 6301 through 6307 and 6310 through 6317 (1983 Replacement Volume).

(ii) Delaware Department of Natural Resources and Environmental Control Regulations Governing Hazardous Waste, Parts 260–265, 122 and 124, Order Number 83–SW–1, July 28, 1983. (Copies are available from the Delaware Department of Natural Resources and Environmental Control, PO Box 1401, Dover, Delaware 19901.)

(2) The following statutes and regulations, although not incorporated by reference, are part of the authorized State program.

(i) 7 Delaware Code Annotated sections 6308 and 6309 (1974 and Supp. 1983).

(ii) Delaware Administrative Procedures Act, 7 Delaware Code Annotated sections 10101 through 10161 (1974 and Supp. 1983).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the Delaware Department of Natural Resources and Environmental Control, signed by the EPA Regional Administrator on December 14, 1983.

(c) *Statement of Legal Authority.* (1) "Attorney General's Statement for Final Authorization", signed by the Attorney General of Delaware of July 26, 1983.

(2) Letter from the Attorney General of Delaware to EPA, April 2, 1984.

(d) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto.

§§ 272.402–272.449 [Reserved]

Subpart J—District of Columbia

§§ 272.450–272.499 [Reserved]

Subpart K—Florida

§§ 272.500–272.549 [Reserved]

Subpart L—Georgia

§§ 272.550–272.599 [Reserved]

Subpart M—Hawaii

§§ 272.600–272.649 [Reserved]

Subpart N—Idaho

§§ 272.650–272.699 [Reserved]

Subpart O—Illinois

§§ 272.700–272.749 [Reserved]

Subpart P—Indiana

§§ 272.750–272.799 [Reserved]

Subpart Q—Iowa

§§ 272.800–272.849 [Reserved]

Subpart R—Kansas

§§ 272.850–272.899 [Reserved]

Subpart S—Kentucky

§§ 272.900–272.949 [Reserved]

Subpart T—Louisiana

§§ 272.950–272.999 [Reserved]

Subpart U—Maine

§§ 272.1000–272.1049 [Reserved]

Subpart V—Maryland

§§ 272.1050–272.1099 [Reserved]

Subpart W—Massachusetts

§§ 272.1100–272.1149 [Reserved]

Subpart X—Michigan

§§ 272.1150–272.1199 [Reserved]

Subpart Y—Minnesota

§§ 272.1200–272.1249 [Reserved]

Subpart Z—Mississippi

§§ 272.1250–272.1299 [Reserved]

Subpart AA—Missouri

§§ 272.1300–272.1349 [Reserved]

Subpart BB—Montana

§ 272.1350 State Authorization

(a) The State of Montana is authorized to administer and enforce its hazardous waste management program in lieu of the program under Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6921 *et seq.*, subject to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA) (Pub. L. 98–616, November 8, 1984), 42 U.S.C. 6926 (c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR 271.9–271.17 and 271.21. The State's program, as administered by the Montana Department of Health and Environmental Services, was approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this Chapter. EPA's approval was effective on July 11, 1984, 48 FR 28245.

(b) Montana is not authorized to implement any HSWA requirement in lieu of EPA unless EPA has explicitly indicated its intent to do so in a **Federal Register** notice granting Montana authorization.

(c) Montana has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities, including conducting inspections under Section 3007, 42 U.S.C. 6927 and to take enforcement actions under sections 3008, 3013 and 7003, 42 U.S.C. 6928, 6934

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and 6973, as well as under other Federal laws and regulations.

(d) Montana must revise its approved program to adopt new changes to the Federal Subtitle C program in accordance with section 3006(b) of RCRA and 40 CFR Part 271, Subpart A. Montana must seek final authorization for all program revisions pursuant to section 3006(b) of RCRA, but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to section 3006(g) of RCRA, 42 U.S.C. 6926(g). If Montana obtains final authorization for the revised requirements pursuant to section 3006(b) of RCRA, the newly authorized provisions will be listed in § 272.1351. If Montana obtains interim authorization for the revised requirements pursuant to section 3006(g), the newly authorized provisions will be listed in § 272.1352.

§ 272.1351 State-Administered Program: Final Authorization

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Montana has final authorization for the following elements, as submitted to EPA in Montana's program application and any subsequently approved revisions thereto.

(a) *State Statutes and Regulations.* (1) The requirements in the Montana statutes and regulations cited in this paragraph are incorporated by reference and made a part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* This incorporation by reference was approved by the Director of the Office of the **Federal Register** effective January 31, 1986.

(i) Montana Hazardous Waste Act, Montana Code Annotated, §§ 75–10–401 through 75–10–413 and 75–10–419 through 75–10–421 (1983).

(ii) Administrative Rules of Montana, Health and Environmental Sciences, §§ 16.44.101 through 16.44.911 (1983) and amendments to §§ 16.44.104, 106., 108, .109, .202, .811, .817, and .819 adopted on January 16, 1984.

(2) The following statutes and regulations, although not incorporated by reference, are part of the authorized State program.

(i) Montana Hazardous Waste Act, Montana Code Annotated, §§ 75–10–414 through 418 (1983).

(ii) Montana Public Records Act, Montana Code Annotated, §§ 2–6–101 through 307 (1983).

(iii) Montana Administrative Procedures Act, Montana Code Annotated, sections 2–4–101 through 705 (1983).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VIII and the Montana Department of Health and Environmental Services, signed by the EPA Regional Administrator on June 16, 1984.

(c) *Statement of Legal Authority.* Letter from the Attorney General of Montana to EPA, June 7, 1984, with attached Statement of Independent Legal Counsel, dated June 1, 1984.

(d) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto.

§§ 272.1352–272.1399 [Reserved]

Subpart CC—Nebraska

§§ 272.1400–272.1449 [Reserved]

Subpart DD—Nevada

§§ 272.1450–272.1499 [Reserved]

Subpart EE—New Hampshire

§§ 272.1500–272.1549 [Reserved]

Subpart FF—New Jersey

§§ 272.1550–272.1599 [Reserved]

Subpart GG—New Mexico

§§ 272.1600–272.1649 [Reserved]

Subpart HH—New York

§§ 272.1650–272.1699 [Reserved]

Subpart II—North Carolina

§§ 272.1700–272.1749 [Reserved]

Subpart JJ—North Dakota

§§ 272.1750–272.1799 [Reserved]

Subpart KK—Ohio

§§ 272.1800–272.1849 [Reserved]

Subpart LL—Oklahoma

§§ 272.1850–272.1899 [Reserved]

Subpart MM—Oregon

§§ 272.1900–272.1949 [Reserved]

Subpart NN—Pennsylvania

§§ 272.1950–272.1999 [Reserved]

Subpart OO—Rhode Island

§§ 272.2000–272.2049 [Reserved]

Subpart PP—South Carolina

§§ 272.2050–272.2099 [Reserved]

Subpart QQ—South Dakota

§§ 272.2100–272.2149 [Reserved]

Subpart RR—Tennessee

§§ 272.2150–272.2199 [Reserved]

Subpart SS—Texas

§§ 272.2200–272.2249 [Reserved]

Subpart TT—Utah

§§ 272.2250–272.2299 [Reserved]

Subpart UU—Vermont

§§ 272.2300–272.2349 [Reserved]

Subpart VV—Virginia

§§ 272.2350–272.2399 [Reserved]

Subpart WW—Washington

§§ 272.2400–272.2449 [Reserved]

Subpart XX—West Virginia

§§ 272.2450–272.2499 [Reserved]

Subpart YY—Wisconsin

§§ 272.2500–272.2549 [Reserved]

Subpart ZZ—Wyoming

§§ 272.2550–272.2599 [Reserved]

Subpart AAA—Guam

§§ 272.2600–272.2649 [Reserved]

Subpart BBB—Puerto Rico

§§ 272.2650–272.2699 [Reserved]

Subpart CCC—Virgin Islands

§§ 272.2700–272.2749 [Reserved]

Subpart DDD—American Samoa

§§ 272.2750–272.2799 [Reserved]

Subpart EEE—Commonwealth of the Northern Mariana Islands

§§ 272.2800–272.2849 [Reserved]

[FR Doc. 86–1879 Filed 1–30–86; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 435

Eligibility in the States, District of Columbia and the Northern Mariana Islands

CFR Correction

In the October 1, 1985 revision of Title 42 (Part 430 to End) of the Code of Federal Regulations, on page 98, § 435.732 was inadvertently omitted. For the convenience of the user, the section is republished in its entirety.

§ 435.732 Procedures for determining income eligibility.

The agency must determine income eligibility of individuals in the categories specified in § 435.731 in the following manner:

(a) *Determining countable income.* The agency must deduct the following amounts from income to determine the individual's countable income:

(1) Any SSI benefit the individual receives.

(2) Any optional State supplement the individual receives.

(3) Increases in OASDI that are deducted under §§ 435.134 and 435.135(c) for individuals specified in those sections.

(4) Other deductions from income applied under the Medicaid plan.

(b) *Eligibility based on countable income.* If countable income determined under paragraph (a) of this section is equal to or less than the applicable income standard established under § 435.121 the individual is eligible for Medicaid.

(c) *Deduction of incurred medical expenses.* (1) If countable income exceeds the income standard, the agency must deduct from income expenses incurred by the individual or financially responsible relatives for necessary medical and remedial services that are recognized under State law and are not subject to payment by a third party, including Medicare and other health insurance premiums, deductibles or coinsurance charges, and copayments or deductibles imposed under § 447.51 or § 447.53 of this subchapter.

(2) The agency may set reasonable limits on the amounts of incurred medical expenses to be deducted from income.

(d) *Eligibility based on incurred medical expenses.* If, after incurred medical expenses are deducted, remaining income is equal to or less than the income standard, the individual is eligible for Medicaid.

[45 FR 24884, Apr. 11, 1980]
BILLING CODE 1505–02–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; Colorado et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
COLORADO	
Denver (City), Denver County	
Clear Creek: Intersection of the stream and the center of West 52nd Avenue	*5,267
Bear Creek: 50 feet upstream from the center of South Sheridan Boulevard (State Highway 95)	*5,340
Cherry Creek:	
30 feet upstream from the center of Larimer Street	*5,196
50 feet upstream from the center of South Holly Street	*5,373
Lakewood Gulch: Intersection of the stream and the center of Perry Street	*5,267
Lakewood Gulch Overflow: 60 feet east along West 13th Avenue from the intersection of West 13th Avenue and West Myrtle Place	*5,195
Dry Gulch (Lakewood Gulch Tributary): Intersection of the stream and the center of Perry Street	*5,269
Harvard Gulch:	
Intersection of South Marion Street and Wesley Avenue	*5,328
Intersection of South Broadway Street and Iliff Avenue	#1
Harvard Gulch Overflow:	
Intersection of South Corona Street and Wesley Avenue	*5,325
Intersection of Wesley Avenue and South Ogden Street	#1
Dry Gulch (Harvard Gulch Tributary):	
Intersection of Harvard Avenue and South Pearl Street	*5,305
Intersection of Harvard Avenue and South Washington Court	#2

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
West Harvard Gulch:	
Intersection of West Water Avenue and South Zuni Street	*5,346
100 feet northeast along West South Platte River Drive from the Culvert at West Harvard Gulch	#1
Goldsmith Gulch:	
Intersection of Mexico Avenue and Colorado Drive	*5,410
Intersection of South Tamarac Drive and Princeton Avenue	*5,526
Intersection of South Monaco Street Parkway and Iowa Avenue	#2
Southmoor Park Tributary: Intersection of the stream and the center of Eastman Avenue	*5,486
Sanderson Gulch:	
Intersection of the stream and the center of West Arkansas Avenue	*5,280
Intersection of West Florida Avenue and South Raritan Street	#1
Weir Gulch: Intersection of South Weir Drive and South Vrain Street	*5,316
Dakota Avenue Tributary: Intersection of West Alaska Place and South Yates Street	#1
First Avenue Tributary: Intersection of West 1st Avenue and Stuart Street	*5,302
Sand Creek:	
50 feet upstream from the center of Quebec Street	*5,230
100 feet west along Smith Road from its intersection with Havana Street	#3
Maps available for inspection at Wastewater Management Division, 3840G York Street, Denver, Colorado and Planning Department, 1445 Cleveland Place, Denver, Colorado.	
FLORIDA	
Collier County (Unincorporated Areas) (FEMA Docket No. 6560)	
Gulf of Mexico:	
At intersection of Tamiami Trail and State Road 29	*7
At the intersection of U.S. Route 41 and Pelton Street	*8
At the intersection of County Highway 901 and 100th Avenue	*11
Along the shoreline from the intersection of Park Shore Drive and Gulf Shore Boulevard to Blind Pass	*15
Along shoreline from northern county boundary to the intersection of Seagate Drive and Seashore Avenue	*17
Maps available for inspection at the Planning, Building and Zoning Department, Government Complex, 3301 East Tamiami Trail, Naples, Florida.	
Everglades (City), Collier County (FEMA Docket No. 6499)	
Gulf of Mexico:	
About 2,000 feet north of the intersection of Collier Avenue and Datura Street	*8
At the mouth of Barron River	*13
Maps available for inspection at the City Hall, Everglades, Florida.	
Naples (City), Collier County (FEMA Docket No. 6485)	
Gulf of Mexico:	
Just east of the intersection of State Road 31 and Prospect Avenue	*7
At the intersection of 12th Avenue South and 8th Street	*11
Along shoreline within community	*15
Maps available for inspection at the City Hall, 735 Eighth Street, South, Naples, Florida.	
KANSAS	
Sedgwick County (Unincorporated Areas) (FEMA Docket No. 6648)	
Arkansas River:	
Just upstream of State Highway 53	*1,229
About 0.7 mile upstream of Washington Street	*1,252
About 1.85 miles downstream of 47th Street South	*1,256
Just downstream of Kansas Turnpike	*1,273
About 2.15 miles downstream of State Highway 96	*1,322
About 0.3 mile upstream of State Highway 96	*1,329
Spring Creek:	
At mouth	*1,235
About 0.6 mile upstream of Woodlawn Avenue	*1,261
Dry Creek:	
Just downstream of Madison Road	*1,266
About 840 feet downstream of Farm Road	*1,267
About 1,250 feet upstream of Farm Road	*1,293
Dry Creek Tributary:	
About 1,600 feet downstream of Windmill Road	*1,282
Just downstream of Windmill Road	*1,293
Cowskin Creek:	
About 2,000 feet upstream of Pawnee Avenue	*1,308
About 0.53 mile downstream of Maple Street	*1,314
Just downstream of Maple Street	*1,319
Just upstream of Central Avenue	*1,326
Just downstream of 21st Street North	*1,345
About 6,850 feet downstream of State Highway 296	*1,366
About 6,400 feet upstream of State Highway 296	*1,378
Cowskin Creek South:	
About 2,700 feet downstream of 95th Street South	*1,243
Just upstream of Seneca Street	*1,259
Calfskin Creek:	
About 3,400 feet upstream of mouth	*1,318
Just downstream of US Highway 54	*1,322
North Fork Calfskin Creek:	
At mouth	*1,320
About 1.2 miles upstream of confluence of Middle Fork Calfskin Creek	*1,340
Middle Fork Calfskin Creek:	
About 370 feet upstream of mouth	*1,324
About 4,400 feet upstream of mouth	*1,340
Big Slough North:	
At mouth	*1,256
Just upstream of 13th Street North	*1,317
Just downstream of 45th Street North	*1,337
Just downstream of 53rd Street North	*1,346
Big Slough South:	
At mouth	*1,256
Just upstream of Hydraulic Avenue	*1,264
Just downstream of 55th Street South	*1,267
Little Slough:	
At mouth	*1,332
Just downstream of 53th Street North	*1,342
Chisholm Creek:	
Just upstream of Interstate 35	*1,349
Just upstream of 77th Street North	*1,370
West Branch Chisholm CreeK:	
At mouth	*1,332
About 0.45 mile upstream of 77th Street North	*1,343
West Fork Chisholm Creek:	
At mouth	*1,357
Just downstream of 77th Street North	*1,363
Middle Branch Gypsum Creek:	
About 3,150 feet downstream of 13th Street North	*1,350
About 4,050 feet upstream of 13th Street North	*1,364
Fourmile Creek:	
Just downstream of Harry Street	*1,286
Just upstream of Central Avenue	*1,317
About 400 feet upstream of Burlington Northern Railroad	*1,345
West Fork Fourmile Creek:	
At mouth	*1,321
Just downstream of Burlington Northern Railroad	*1,348
Just upstream of Burlington Northern Railroad	*1,354
About 2,650 feet upstream of Burlington Northern Railroad	*1,355
Brookhaven Creek:	
At mouth	*1,290
Just downstream of Interstate 35	*1,321
Just upstream of Interstate 35	*1,329
Just downstream of 13th Street North	*1,332
Middle Fork Chisholm Creek:	
About 1.0 mile about mouth	*1,332
Just downstream of State Highway 254	*1,339
Just downstream of State Highway 254 (upstream crossing)	*1,361
East Fork Chisholm Creek:	
About 550 feet downstream of Woodlawn Avenue	*1,357
About 1,350 feet upstream of Woodlawn Avenue	*1,361
Just upstream of 45th Street North	*1,377
About 1,300 feet upstream of 53rd Street North	*1,403
Gypsum Creek:	
About 1,100 feet downstream of Harry Street	*1,319
Just downstream of Harry Street	*1,320
Center Drain East Tributary:	
About 3,700 feet downstream of 37th Street North	*1,332
About 6,300 feet upstream of Hillside Avenue	*1,373
Spring Branch:	
Just upstream of 159th Street East	*1,290
About 3,000 feet upstream of Greenwich Road	*1,340
Spring Branch Tributary No. 1:	
At mouth	*1,291
Just downstream of Pawnee Avenue	*1,309
Spring Branch Tributary No. 4:	
At mouth	*1,294
About 200 feet downstream of Interstate 35	*1,324
Just upstream of Interstate 35	*1,332
Just downstream of Earth Dam	*1,335
Just upstream of Earth Dam	*1,342
About 1,750 feet upstream of Earth Dam	*1,343
Wichita-Valley Center Floodway:	
Just downstream of Seneca Street	*1,270
About 0.8 mile downstream of Zoo Boulevard	*1,317
About 2.3 miles upstream of Missouri Pacific Railroad	*1,324
Clearwater Tributary 1:	
About 1,300 feet downstream of Tracy Avenue South	*1,262
About 650 feet upstream of Rose Avenue	*1,269
Pleasant Valley Tributary: Within Unincorporated Area	*1,325
West Branch Gypsum Creek: Within Unincorporated Area	*1,357
Little Arkansas River:	
About 1.0 mile upstream of confluence with Wichita-Valley Center Floodway	*1,325
About 2,700 feet upstream of Hoover Street	*1,364
At upstream County Boundary	*1,374
Shallow Flooding (ponding from rainfall):	
At intersection of Seneca Street and 63rd Street South	*1,265
About 2,600 feet west of intersection of Broadway and 63rd Street South	*1,265
About 1,200 feet sourth of 63rd Street South, just west of Broadway	*1,265
Maps available for inspection at the Sedgwick County Building, Sedgwick County Public Works Department, Wichita, Kansas.	
Wichita (City), Sedgwick County (FEMA Docket No. 6645)	
Arkansas River:	
About 1.9 miles downstream of 47th Street South	*1,258
About 0.4 mile upstream of State Highway 18	*1,330
Little Arkansas River:	
Mouth at Arkansas River	*1,294
Just downstream of Control Structure No. 1	*1,310
Just upstream of Control Structure No. 1	*1,325
Dry Creek:	
Mouth at Gypsum Creek	*1,290
At confluence of East Branch Dry Creek	*1,339
East Branch Dry Creek:	
At confluence with Dry Creek	*1,339
Just downstream of Central Avenue	*1,365
West Branch Dry Creek:	
At confluence with Dry Creek	*1,339
Just downstream of 13th Street	*1,366
Wichita Drainage Canal:	
Mouth at Arkansas River	*1,274
At confluence of Center Drain Tributary	*1,305
Center Drain Tributary:	
At confluence with Wichita Drainage Canal	*1,305
Just downstream of Missouri Pacific Railroad	*1,308
Center Drain East Tributary:	
Mouth at Storm Water Management Basin	*1,317
About 6,100 feet upstream of mouth	*1,336
East Fork Chisholm Creek:	
At confluence with Wichita Drainage Canal	*1,304
Just upstream of Hillside Avenue	*1,339
Just downstream of Missouri Pacific Railroad	*1,366
Just upstream of Missouri Pacific Railroad	*1,378

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 0.36 mile upstream of Missouri Pacific Railroad	*1,377
East Fork Chisholm Creek Tributary No. 3:	
Mouth at East Fork Chisholm Creek	*1,340
Just downstream of 37th Street North	*1,371
East Fork Chisholm Creek Tributary No. 5:	
Mouth at East Fork Chisholm Creek	*1,346
Just upstream of Woodlawn Avenue	*1,359
East Fork Chisholm Creek Tributary No. 7:	
Mouth at East Fork Chisholm Creek	*1,362
Just downstream of Missouri Pacific Railroad	*1,368
Middle Fork Chisholm Creek:	
Mouth at Wichita-Valley Center Floodway	*1,325
About 0.11 mile upstream of Atchison Topeka & Santa Fe Railway	*1,328
Just upstream of Hydraulic Avenue	*1,338
Just downstream of State Route 254	*1,343
Main Fork Chisholm Creek: Within Community	*1,325
Gypsum Creek:	
Mouth at Wichita Drainage Canal	*1,279
At confluence of West Branch Gypsum Creek	*1,340
West Branch Gypsum Creek:	
At confluence with Gypsum Creek	*1,340
Just upstream of Farmview Drive	*1,381
Middle Branch Gypsum Creek:	
At confluence with Gypsum Creek	*1,340
Just downstream of 21st Street	*1,376
East Branch Gypsum Creek:	
At Confluence with Gypsum Creek	*1,335
Just downstream of Central Avenue	*1,346
Armour Branch Gypsum Creek:	
Mouth at Gypsum Creek	*1,320
Just downstream of Rockwood Road	*1,366
Fabrique Branch Gypsum Creek:	
Mouth at Gypsum Creek	*1,315
About 100 feet upstream of Zimmerly Avenue	*1,325
Rock Road South Tributary Gypsum Creek:	
At confluence with Gypsum Creek	*1,325
Just downstream of Harry Street	*1,325
Just upstream of Harry Street	*1,330
About 0.75 mile upstream of Harry Street	*1,344
Hoover Street Drain-Dugan Tributary:	
Just upstream of Control Structure	*1,304
Just upstream of Ridge Road	*1,319
Calfskin Creek:	
Mouth at Cowskin Creek	*1,314
Just downstream of US Highway 54	*1,322
North Fork Calfskin Creek:	
Just upstream of Maple Street	*1,321
About 1,500 feet upstream of confluence of Middle Fork Calfskin Creek	*1,326
Middle Fork Calfskin Creek: Within Community	*1,324
Cowskin Creek:	
Just upstream of Tyler Road	*1,303
About 0.6 mile upstream of 13th Street North	*1,339
Westlink Tributary to Cowskin Creek:	
Mouth at Cowskin Creek	*1,317
About 1,800 feet upstream of 13th Street North	*1,341
Third Street Drain:	
Mouth at Wichita Drainage Canal	*1,297
About 250 feet upstream of Lorraine Street	*1,324
Big Slough North:	
Mouth at Wichita-Valley Center Floodway	*1,310
Just downstream of 13th Street North	*1,317
About 1.5 miles upstream of 13th Street North	*1,322
Big Slough South:	
About 3,400 feet downstream of Hydraulic Avenue	*1,259
About 0.52 mile upstream of Meridian Avenue	*1,267
Pleasant Valley Tributary:	
Just upstream of Control Structure	*1,321
About 1,750 feet upstream of Interstate 235	*1,325
Wichita-Valley Center Floodway—Little Arkansas River:	
About 0.5 mile downstream of Atchison Topeka and Santa Fe Railway	*1,296
About 1.4 miles upstream of Interstate 235	*1,325
Frisco Ditch: Within community	#1
Chisholm Creek:	
Just south of Interstate 235	#1
Just north of Interstate 235	#1
Spring Branch Tributary No. 4: Within community	*1,332
Maps available for inspection at the Engineering Department, City Hall, 455 North Main Street, Wichita, Kansas.	
MASSACHUSETTS	
Marshfield (Town), Plymouth County (FEMA Docket No. 6676)	
Hannah Eames Brook:	
Upstream side of Damons Point Road	*21
Approximately 1,300 feet upstream of New Main Street (State Route 3A)	*48
Massachusetts Bay:	
Shoreline at Careswell Street (extended)	*24
Shoreline at Saltuclet Avenue (extended)	*30
At the intersection of Surf Avenue and Monitor Road	*7
Shoreline at Parker Street (extended)	*15
Massachusetts Bay Shallow Flooding:	
Area along Bay Avenue	#2
Area between Plymounth Avenue and Foster Avenue, and between Surf Avenue and seawall	#2
Area approximately 200 feet east of Rawleigh Road	*12
Area along East Street	*15
North River:	
Confluence with South River	*14
Shoreline at Main Street bridge	*10
Upstream corporate limits	*9
South River:	
Northeast shoreline of Troyant's Island	*16
Confluence of Littles Creek	*12
Shoreline at Bayberry Road bridge	*10
Shoreline at Bourne Park Avenue (extended)	*9
At downstream side of Main Street	*8
Green Harbor River:	
Shoreline at Beach Street (extended)	*13
At intersection of South and Island Streets	*10
Shoreline at Webster Street crossing	*4
Pine Point River:	
Shoreline at Elmhurst Avenue (extended)	*9
Downstream corporate limits	*12
Little Wood Island River: Shoreline at Perry Way (extended)	*11
Bourne Wharf River:	
Upstream side of Colby Howitt Lane	*9
Downstream corporate limits	*11
Maps available for inspection at Marshfield Planning Board, Marshfield, Massachusetts.	
OHIO	
Chillicothe (City), Ross County (FEMA Docket No. 6568)	
Scioto River:	
About 0.6 mile downstream of Norfolk Southern Railroad	*625
About 1.2 miles upstream of U.S. Route 35	*631
Maps available for inspection at the City Hall, 35 South Paint Street, Chillicothe, Ohio.	
TEXAS	
Kendall County, (FEMA Docket No. 6640)	
Cibolo Creek:	
Approximately 250 feet upstream of Herff Road	*1,383
Approximately 140 feet upstream of John Street	*1,408
Approximately 200 feet upstream of Interstate Highway 10	*1,443
Currey Creek:	
Approximately 500 feet upstream of Southern Pacific Railroad	*1,399
Just upstream of Adler Street	*1,428
Cypress Creek: Approximately 420 feet upstream of State Highway 27	*1,423
Dry Creek:	
Approximately 150 feet upstream of Southern Pacific Railroad	*1,422
Just upstream of 2nd Street	*1,449
Frederick Creek: Approximately 150 feet upstream of School Street	*1,400
Guadalupe River (at the crossing): Approximately 150 feet downstream of FM 3160	*1,118
Guadalupe River (at Amman Crossing): Just upstream of FM 474	*1,214
Guadalupe River (at Waring): Approximately 180 feet upstream of San Antonio Road	*1,334
Guadalupe River (at Comfort):	
Approximately 20 feet upstream of Interstate Highway 10	*1,411
Approximately 1,800 feet upstream of U.S. Highway 87	*1,415
Unnamed Tributary No. 2: Approximately 1,060 feet above mouth	*1,335
Maps available for inspection at Kendall County Courthouse, Boerne, Texas.	
Shady Shores (Town), Denton County (FEMA Docket No. 6658)	
Lynchburg Creek:	
Upstream side of Shady Shores Road at corporate limits	*537
Approximately 1,000 feet downstream of upstream corporate limits	*537
At upstream corporate limits	*540
Stream LC-1:	
Confluence with Lynchburg Creek	*537
Approximately 0.54 mile upstream of confluence with Lynchburg Creek	*537
Upstream side of Shady Shores Road	*548
Upstream side of Denton-Shady Shores Road	*559
Approximately 140 feet upstream of corporate limits	*560
Stream PEC-1:	
Approximately .42 mile downstream of most downstream corporate limits	*537
At most downstream corporate limits	*537
Approximately 0.35 mile downstream of Shady Shores Road	*549
Approximately 0.26 mile downstream of Shady Shores Road	*550
Approximately 700 feet downstream of Shady Shores Road	*552
At most upstream corporate limits (downstream side of Shady Shores Road)	*555
Lewisville Lake: Entire shoreline within community	*537
Maps available for inspection at the Community Building, 101 South Shores Road, Shady Shores, Texas.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Paradise Valley (Town), Maricopa County (FEMA Docket No. 6676)	
Indian Bend Wash:	
3 feet upstream from center of Invergordon Road	*1,319
38 feet upstream from center of Double Tree Ranch Road	*1,330
Bernell Channel: 9 feet upstream from center of Double Tree Ranch Road	*1,325
Echo Canyon Wash: 50 feet upstream from center of Tatum Road	*1,324
Maps available for inspection at Office of the Town Engineer, 6401 East Lincoln Drive, Paradise Valley, Arizona.	
CALIFORNIA	
Capitola (City), Santa Cruz County (FEMA Docket No. 6678)	
Pacific Ocean: 100 feet south of intersection of Esplande with San Jose Avenue	*17
Maps available for inspection at the City Planning Department, 420 Capitola Avenue, Capitola, California.	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Del Mar (City), San Diego County (FEMA Docket No. 6676)	
Pacific Ocean:	
200 feet west from the center of the intersection of 27th Street and Ocean Front	*8
300 feet west from the center of the intersection of Ocean Avenue and Atchison, Topeka & Santa Fe Railroad	*9
450 feet west from the center of the intersection of Ocean Avenue and 13th Street	*10
375 feet west from the center of the intersection of Grand Avenue and Carmel Valley Road	*11
580 feet west from the center of the intersection of 7th Street and Stratford Court	*12
Soledad Canyon: 600 feet southwest from the center of the intersection of Carmel Valley Road and Grand Avenue	*11
San Dieguito River: 50 feet upstream from the center of Jimmy Durante Boulevard	*18
Maps available for inspection at City Hall, 1050 Camino Del Mar, Del Mar, California.	
Del Norte County (Unincorporated Areas) (FEMA Docket No. 6676)	
Pacific Ocean: At the shoreline east of Crescent City's eastern boundary	*13
Maps available for inspection at Planning Department, 700 5th Street, Crescent City, California.	
Escondido (City), San Diego County (FEMA Docket No. 6676)	
Citrus Wash:	
At the intersection of Obisidan Glen and Diamond Glen	#1
Just downstream of the intersection of Valley Parkway and Midway Drive	*686
South Midway Wash: At the intersection of Kingston Drive and Midway Drive	#1
Maywood Wash and Midway Wash:	
At the intersection of Fern Street and Lincoln Avenue	#1
At the intersection of Tennyson Street and La Honda Drive	#1
100 feet southwest from the intersection of Midway Drive and Washington Avenue	
Country Club Creek:	
200 feet southwest from the intersection of Gary Lane and Country Club Lane	*691
500 Feet northwest from the intersection of Bernie Place and Cheshire Way	*702
Unnamed Tributary: At the intersection of El Norte Parkway and Country Club Lane	*702
Maps available for inspection at Public Works Department, 620 North Ash Street, Escondido, California.	
Eureka (City), Humboldt County (FEMA Docket No. 6676)	
Humboldt Bay: At the western terminus of Del Norte Street	*8
Maps available for inspection at Department of Community Development, 531 K Street, Eureka, California.	
Half Moon Bay (City), San Mateo County (FEMA Docket NO. 6676)	
Pacific Ocean: Intersection of Santa Rosa Avenue and Balboa Boulevard	*27
Maps available for inspection at City Hall, Half Moon Bay, California.	
Mendocino County, (Unincorporated Areas) (FEMA Docket No. 6676)	
Gualala River: At State Route 1	*17
Maps available for inspection at Department of Planning and Building Services, Mendocino County Courthouse, Ukiah, California.	
Monterey (City), Monterey County (FEMA Docket No. 6676)	
Pacific Ocean: 400 Feet north of the intersection of Cortes Street and Del Monte Avenue	*19
Maps available for inspection at Public Works Department, City Hall, Monterey, California.	
Point Arena (City), Mendocino County (FEMA Docket No. 6676)	
Pacific Ocean: At the mouth of Point Arena Creek	*20
Maps available for inspection at the City Hall, Point Arena, California.	
Sand City (City), Monterey County (FEMA Docket No. 6676)	
Pacific Ocean: Intersection of Bay Avenue and Vista Del Mar Street	*24
Maps available for inspection at Planning Department, 1 Sylvan Park Street, Sand City, California.	
Santa Cruz (City), Santa Cruz County (FEMA Docket No. 6676)	
Pacific Ocean: 300 feet south of the intersection of Beach Street and Riverside Avenue	*15
Maps available for inspection at City Planning Department, 809 Center Street, Room 10, Santa Cruz, California.	
Santa Cruz County, (Unincorporated Areas) (FEMA Docket No. 6665)	
Aptos Creek: 20 feet upstream from center of State Highway 1 (Cabrillo Freeway)	*24
Arana Gulch: Intersection of Arana Gulch and center of State Highway 1 (Cabrillo Freeway)	*65
Carbonera Creek at Santa Cruz: 450 feet east from intersection of Plymouth Street and Emeline Avenue	*42
Carbonera Creek at Scotts Valley: 460 feet downstream from center of State Highway 17	*462
Corralitos Creek:	
50 feet upstream from center of Green Valley Road	*108
50 feet upstream from center of Brown Valley Road	*240
Coward Creek: Intersection of Coward Creek and center of Riverside Road	*40
Harkins Slough: Intersection of Harkins Slough and Harkins Slough Road	*14
Pajaro River: 200 feet upstream from center of State Highway 1	*27
Pajaro River—Without Consideration of Levee: Intersection of West Beach Street and Thurwachter Road	*14
Rodeo Creek Gulch: 190 feet upstream from center of State Highway 1	*78
Salsipuedes Creek: Intersection of College Road and Cutter Dirve	*62
San Lorenzo River:	
150 feet upstream from center of Ocean Street	*66
110 feet upstream from center of Brimblecom Road	*492
Intersection of San Lorenzo River and center of McGaffigan Mill Road	*656
San Vicente Creek: 85 feet upstream from center of State Highway 1	*25
Schwans Lagoon: Intersection of Schwans Lagoon and center of East Cliff Drive	*13
Soquel Creek: Intersection of Soquel Drive and Porter Street	*40
Struve Slough: Intersection of Struve Slough and center of State Highway 1	*15
Thomasello Creek: Intersection of Thomasello Creek and center of Riverside Road	*54
Thompson Creek: 10 feet upstream from center of Riverside Road	*51
Watsonville Slough: Intersection of Watsonville Slough and center of Ford Street	*23
Zayante Creek: 50 feet upstream from center of Quail Hollow Road	*336
College Lake: Intersection of Laken Drive and Laken Court	*70
Lake Tynan: Along entire lake shoreline	*42
Pacific Ocean: Intersection of Beach Drive and Rio Del Mar Boulevard	*17
Maps available for inspection at County Planning Department, 701 Ocean Street, Santa Cruz, California.	
Vista (City), San Diego County (FEMA Docket No. 6676)	
Buena Vista Creek: 100 feet upstream from the center of Indian Avenue crossing	*334
Shallow Flooding:	
100 feet northeast from the center of the intersection of West Broadway and Atchison, Topeka & Santa Fe Railroad	*321
200 feet northwest from the center of the intersection of Mesa Avenue and Vista Way	#1
Buena Vista Creek Tributary 1: 50 feet upstream from the center of Chelsea Court crossing	*433
Shallow Flooding: 60 feet southeast from the center of the intersection of Alta Calle and South Santa Fe Avenue	381
Buena Vista Creek Tributary 3: At the intersection of East Drive and Santa Fe Avenue	*345
Maps available for inspection at Public Works Department, 600 Eucalyptus Avenue, Vista, California.	
COLORADO	
Federal Heights (Town), Adams County (FEMA Docket No. 6665)	
Tributary M of Niver Creek: Intersection of Holiday Loop and Holiday Parkway	*5,335
Maps available for inspection at City Manager's Office, 2380 West 90th Avenue, Federal Heights, Colorado.	
CONNECTICUT	
Avon (Town), Hartford County (FEMA Docket No. 6676)	
Farmington River (Eastern Segment):	
At Avon-Simsbury corporate limits	*163
Approximately 200 feet upstream of U.S. Route 44	*166
At Old Farms Road	*168
At Avon-Farmington corporate limits	*169
Farmington River (Western Segment):	
At Farmington-Avon corporate limits	*208
At confluence of Hawley Brook	*232
Approximately 2.5 miles upstream of Farmington-Avon corporate limits	*260
Upstream side of Lower Collins Dam	*275
At most upstream corporate limits	*278
Roaring Brook:	
At downstream corporate limits	*240
At upstream side of Hollister Drive West	*252
Approximately 50 feet upstream of Country Club Road	*274
At upstream corporate limits	*285
Nod Brook:	
At confluence with Farmington River	*163
Upstream side of State Route 10	*174
Upstream side of Ensign Drive	*189
Upstream side of U.S. Route 44 (1st upstream crossing)	*215
At Darling Drive	*238
Downstream side of U.S. Route 44 (2nd upstream crossing)	*254
Upsteam corporate limits	*255
Thompson Brook:	
At confluence with Farmington River	*168
Downstream side of Old Farms Road (2nd upstream crossing)	*202
At confluence with Big Brook and Chidsey Brook	*259
Chidsey Brook:	
At confluence with Thompson Brook	*259
Downstream side of State Route 167	*285
Approximately 25 feet upstream of Country Club Road	*293
Hawley Brook.	
At confluence with Farmington River	*232
At Bottonwood Hill Road	*300
Approximately 650 feet upstream Edwards road	*378

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Big Brook:	
At confluence with Thompson Brook	*259
Approximately 30 feet upstream of West Avon Road	*274
Approximately 60 feet upstream of Haynes Road (1st upstream crossing)	*320
At Haynes Road (2nd upstream crossing)	*342
Lake Erie Brook:	
At confluence with Farmington River	*163
Approximately 0.3 mile upstream of confluence with Farmington River	*168
Maps available for inspection at the Town Clerk's Office, Avon, Connecticut.	
CONNECTICUT	
Simsbury (town), Hartford County (FEMA Docket No. 6676)	
Hop Brook:	
At confluence with the Farmington River	*157
At upstream side of Hopmeadow Road	*162
At upstream side of dam	*185
At upstream side of West Street	*200
At upstream side of Cedar Glen Road	*225
At upstream side of Hop Brook Road	*249
At upstream side of Old Farms Road	*299
Approximately 250 feet upstream of West Ledge Road	*320
Stratton Brook:	
At confluence with Hop Brook	*209
At upstream side of Stratton Brook Road	*240
At upstream side of Town Forest Road	*256
At upstream side of dam above John Peel Road	*297
At upstream side of dam above West Mountain Road	*324
At upstream side of Shingle Mill Road	*336
At downstream side of Woodchuck Hill Road	*460
Nod Brook:	
At downstream corporate limits	*255
At upstream side of Farmwood Drive (west)	*279
At upstream side of Notch Road	*309
Approximately 50 feet upstream of Rocklyn Drive	*329
Minister Brook:	
At confluence with Farmington River	*161
At upstream side of CONRAIL	*173
At upstream side of Red Stone Drive	*240
Approximately 1,200 feet downstream of Pine Glen Road	*306
Approximately 60 feet downstream of Park Road	*337
Munnisunk Brook:	
At confluence with Farmington River	*154
At upstream side of dam above CONRAIL	*169
At downstream side of County Road	*279
Maps available at the Town Clerk's Office, Town Hall.	
FLORIDA	
Bay County (Unincorporated Areas) (FEMA Docket No. 6676)	
Econfina Creek:	
At downstream county boundary	*81
About 3.4 miles upstream of Scott Road	*147
Sweetwater Creek:	
At confluence with Econfina Creek	*106
About 3.2 miles upstream of confluence with Econfina Creek	*172
Juniper Creek:	
At downstream county boundary	*139
About 300 feet upstream of Atlanta and St. Andrews Bay Railroad	*158
Bear Creek:	
Just downstream of County Highway 2301	*8
Just downstream of Atlanta and St. Andrews Bay Railroad	*127
Just upstream of Atlanta and St. Andrews Bay Railroad	*132
About 1.1 miles upstream of Atlanta and St. Andrews Bay Railroad	*137
Little Bear Creek:	
At confluence with Bear Creek	*26
About 400 feet upstream of confluence of Double Branch	*57
Little Bear Creek Tributary:	
At confluence with Little Bear Creek	*51
About 500 feet upstream of U.S. Route 231	*56
Deer Point Lake: Along entire shoreline	*8
Double Branch:	
At confluence with Little Bear Creek	*56
About 2,300 feet upstream of confluence with Little Bear Creek	*63
Clear Creek:	
At confluence with Bear Creek	*10
About 2.3 miles upstream of Camp Flowers Road	*49
Bayou George:	
Just upstream of U.S. Route 231	*8
Just downstream of John Pitz Road	*16
Mill Bayou:	
Just upstream of County Highway 390	*7
About 0.7 mile upstream of confluence of Mill Bayou Tributary	*38
Mill Bayou Tributary:	
At confluence with Mill Bayou	*28
About 1.060 feet upstream of Avon Road	*34
Callaway Bayou Tributary:	
About 1,390 feet downstream of County Highway 22	*25
Just downstream of County Highway 22	*28
Callaway Creek:	
About 0.6 mile upstream of County Highway 22	*4
About 3.1 miles upstream of County Highway 22	*26
Choctawhatchee River:	
About 1.1 miles downstream of Walton County-Washington County	*16
About 8 miles upstream of Washington County-Walton County boundary	*21
Martin Lake: Entire shorelone	*10
West Bay:	
Along shoreline from Hathaway Bridge to about 700 feet south of Shell Point	*4
At the mouth of Burnt Mill Creek	*11
Along shoreline from the mouth of Intracoastal Waterway near the Town of West Bay to the mouth of Big Crooked Creek	*12
North Bay:	
Along shoreline from Pretty Bayou to Posten Bayou	*4
At mouth of Alligator Bayou	*7
At north end of the west side of North Bay Bridge	*9
Along shoreline from Gainer Bayou to Beatty Bayou	*11
St. Andrew Bay:	
Along shoreline from Dupont Bridge to Davis Point	*4
Along shoreline from Beecon Beach to Davis Point	*6
Along shoreline just southeast of Beacon Beach	*7
East Bay:	
Along shoreline from Dupont Bridge to Strange Bayou	*4
Along the shoreline from Murray Bayou to Allanton	*7
Along shoreline from mouth of Horseshoe Bayou to the mouth of Wetappo Creek	*10
Gulf of Mexico:	
Along shoreline beginning about 8,500 feet southeast of St. Andrew Bay inlet to a point about 9,000 feet southeast of Crooked Island Point	*7
Along shoreline in the vicinity of Laguna Beach	*9
Maps available for inspection at the Bay County Building Department, 517 East 9th Street, Panama City, Florida	
Bunnell (Town), Flagler County (FEMA Docket No. 6676)	
Black Branch:	
About 0.8 mile downstream of Old Haw Creek Road	*15
About 3,000 feet upstream of Old Haw Creek Road	*17
Maps available for inspection at the Town Hall, Bunnell, Florida.	
Callaway (City), Bay County (FEMA Docket No. 6676)	
East Bay:	
Along shoreline of Callaway Bayou from about 0.5 mile south of Boat Race Road to State Road 22	*4
Along shoreline from about 0.25 mile west of South Gay Avenue to mouth of Dotys Cove	*6
St. Andrew Bay: Along shoreline of Pitts Bayou within corporate limits	*4
Martin Lake: Within corporate limits	*10
Callaway Bayou Tributary:	
Just upstream of Berthe Avenue	*4
Just downstream of Old Dam at Sudduth Pond	*10
Just upstream of Old Dam at Sudduth Pond	*17
Just downstream of Cherry Street	*17
Just upstream of Cherry Street	*22
About 0.5 mile upstream of Cherry Street	*26
Maps available for inspection at the City Building, Callaway, Florida.	
Freeport (City), Walton County (FEMA Docket No. 6676)	
Choctawhatchee Bay: Along Lafayette and Four-mile Creeks downstream of State Road 20	*6
Maps available for inspection at the City Building, Freeport, Florida	
Lynn Haven (City), Bay County (FEMA Docket No. 6676)	
North Bay:	
Just south of the intersection of 5th Street and Virginia Avenue	*6
Just east of Haven Point	*9
Maps available for inspection at the City Building, 825 Ohio Avenue, Lynn Haven, Florida.	
Mexico Beach (Town) Bay County (FEMA Docket No. 6676	
Gulf of Mexico:	
Along entire shoreline of inland canal system	*6
Along entire shoreline within community	*9
Maps available for inspection at the Town Hall, Mexico Beach, Florida.	
Panama City (City), Bay County (FEMA Docket No. 6676)	
St. Andrew Bay:	
Entire shoreline of Lake Huntington	*4
Along shoreline from Hannah Avenue to one block west of Michigan Avenue	*6
North Bay:	
Along shoreline from about 950 feet southwest of mouth of Robinson Bayou to southwestern corporate limits	*4
Along shoreline from mouth of Robinson Bayou to Goose Bayou	*7
Maps available for inspection at City Hall, Panama City, Florida.	
Panama City Beach (City), Bay County (FEMA Docket No. 6676)	
Gulf of Mexico:	
Just west of intersection of Seventh Street and Georgia Avenue	*5
Along shoreline from De Luna Place to about 1,000 feet northwest of Gulf Resort Beach	*9
St. Andrew Bay: Just west of State Route 392 near Grand Lagoon	*4
Maps available for inspection at City Hall, 100 South Arnold Road, Paname City Beach, Florida.	
Parker (City), Bay County (FEMA Docket No. 6676)	
Along shoreline of Parker Bayou	*4
Along shoreline from Martin Lake to Parker Bayou	*5
East Bay:	
Along shoreline from Long Point to about 1.2 miles northeast of Long Point	*4

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Along shoreline from about 1.2 miles northeast of Long Point to about 1.25 miles northeast of Long Point	*8
Martin Lake: Within Community	*10
Maps available for inspection at City Hall, Parker, Florida.	
Walton County (Unincorporated Areas), (FEMA Docket No. 6670)	
Choctawhatchee:	
About 500 feet upstream River of mouth	*8
At upstream county boundary	*52
Alaqua Creek:	
At mouth	*5
About 2,000 feet upstream of State Road 20	*7
Choctawhatchee Bay:	
At shoreline about 0.8 mile north of Stewart Lake	*2
Northern shoreline at eastern county boundary	*4
At Little Bayou	*8
At Motes Point	*8
At mouth of Choctawhatchee River	*10
Gulf of Mexico:	
At Oyster Lake	*5
At shoreline about 1,500 feet south of Morrison Lake	*9
Maps available for inspection at the Building Official's Office, County Courthouse, Defuniak Springs, Florida.	
ILLINOIS	
Crawford County (Unincorporated Areas), (FEMA Docket No. 6682)	
Embarras River:	
About 4.1 miles downstream of confluence of Honey Creek	*439
About 4.3 miles upstream of County Route 1	*458
Hutson Creek: Within community	*447
Lamotte Creek:	
At mouth	*440
At confluence with Tributary A	*441
Sugar Creek:	
At mouth	*440
About 0.74 mile upstream of County Route 5	*451
Tributary A:	
At confluence of Lamotte Creek	*441
About 0.9 mile upstream of Main Street	*443
Wabash River:	
About 3.2 miles downstream of confluence of Sugar Creek	*434
About 1.8 miles upstream of confluence of Raccoon Creek	*450
Maps available for inspection at the County Clerk's office, Crawford County Courthouse, Robinson, Illinois.	
Galatia (Village), Saline County, (FEMA Docket No. 6682)	
Gasaway Branch:	
About 1,000 feet downstream of Public Road	*386
About 1,700 feet upstream of confluence of Tributary B	*405
Tributary A:	
At mouth	*396
About 260 feet upstream of McKinley Street	*431
Tributary B:	
At mouth	*400
Just downstream of McKinley Street	*436
Maps available for inspection at Brown-Ruffman Consulting Engineers, Inc., 500 Poplar, Harrisburg, Illinois.	
Hancock County (Unincorporated Areas) (FEMA Docket No. 6676)	
Mississippi River:	
About 16.5 miles downstream of Toledo, Peoria and Western Railroad	*495
About 8 miles upstream of Atchison, Topeka, and Santa Fe Railway	*528
Maps available for inspection at the Supervisor of Assessments Office, Hancock County Courthouse, Carthage, Illinois.	
Monroe County (Unincorporated Areas), (FEMA Docket No. 6682)	
Mississippi River:	
About 2.9 miles downstream of southern county boundary	*402
About 2.4 miles upstream of U.S. Route 50	*421
Kaskaskia River: Within county boundary	*395
Maps available for inspection at the County Commissioner's Office, Monroe County Courthouse, Waterloo, Illinois.	
Unincorporated Areas of Randolph County, (FEMA Docket No. 6682)	
Mississippi River:	
At southern county boundary	*385
At northern county boundary	*408
Maps available for inspection at the Data Processing Office, 2nd Floor, Randolph County Courthouse, Chester, Illinois.	
Washington (City), Tazewell County, (FEMA Docket No. 6682)	
Farm Creek:	
About 0.9 mile downstream of Peoria Street	*705
About 400 feet downstream of Toledo Peoria and Western Railroad (near Peoria Street)	*717
Just upstream of Toledo Peoria and Western Railroad (near Peoria Street)	*726
Just downstream of Abandoned Railroad	*727
Just upstream of Abandoned Railroad	*732
About 2,300 feet upstream of Lawndale Avenue	*742
Tributary No. 1:	
At mouth	*727
About 1,600 feet upstream of Westgate Road	*749
Maps available for inspection at the City Administrator's Office, City Hall, 115 West Jefferson Street, Washington, Illinois.	
Whiteside County (Unincorporated Areas), (FEMA Docket No. 6682)	
Mississippi River:	
About 6.1 miles downstream of Chicago and North Western railroad	*587
About 2.1 miles upstream of Lock and Dam No. 13	*594
Rock River:	
About 2.0 miles downstream of Hurd Road	*583
At upstream county boundary	*643
Maps available for inspection at the Zoning Administrator's Office, Whiteside County Courthouse, Morrison, Illinois.	
KANSAS	
Ellis County (Unincorporated Areas), (FEMA Docket No. 6682)	
Big Creek:	
About 1,900 feet upstream of Toulon Road	*1,936
About 9,600 feet upstream of Munjor Road	*1,954
About 2,700 feet downstream of confluence of Chetolah Creek	*1,977
About 800 feet upstream of Old U.S. Highway 40 (near intersection of U.S. Highway 70 and Old U.S. Highway 40)	*2,046
About 3,900 feet downstream of East 6th Street	*2,105
About 1.2 miles upstream of confluence of Big Creek Tributary No. 2	*2,131
Big Creek (Landward of Levee):	
Just upstream of South Main Street	*1,992
Just downstream of West 8th Street	*1,998
Big Creek Tributary No. 1:	
Mouth at Big Creek	*2,011
Just downstream of Interstate 70	*2,040
Big Creek Tributary No. 2:	
About 1,400 feet upstream of confluence with Big Creek	*2,123
About 3,300 feet upstream of confluence with Big Creek	*2,131
Big Creek Tributary No. 3:	
At confluence with Big Creek	*2,111
About 5,000 feet upstream of confluence with Big Creek	*2,116
Big Creek Overflow:	
At confluence with Big Creek	*2,105
At divergence from Big Creek	*2,110
Lincoln Draw Diversion:	
About 1,100 feet downstream of divergence from Lincoln Draw	*1,965
At divergence from Lincoln Draw	*1,968
Chetolah Creek:	
At confluence with Big Creek	*1,978
Just downstream of Interstate 70	*2,025
Lincoln Draw: Within community	*1,968
Maps available for inspection at the County Courthouse, Hays, Kansas.	
Ford County (Unincorporated Areas), (FEMA Docket No. 6682)	
Arkansas River:	
About 1.3 miles downstream of Coronado Road	*2,429
About 2.8 miles upstream of 14th Avenue	*2,506
Tributary A:	
At mouth	*2,456
About 8.9 miles upstream of Wilroads Garden Road	*2,557
Tributary B:	
At mouth	*2,455
About 1.2 miles upstream of Wilroads Garden Road	*2,468
Sand Creek:	
At mouth	*2,437
About 1.6 miles upstream of Wilroads Garden Road	*2,468
Maps available for inspection at the County Clerk's Office, County Courthouse, Dodge City, Kansas.	
Hays (City), Ellis County, (FEMA Docket No. 6682)	
Chetolah Creek:	
Mouth at Big Creek	*1,978
Just downstream of East 27th Street	*2,016
Big Creek:	
At confluence of Chetolah Creek	*1,978
About 1.1 miles upstream of West 12th Street	*2,004
Big Creek (Landward of Levee):	
Just upstream of U.S. Highway 183 Alternate	*1,969
Just downstream of West 8th Street	*1,998
Lincoln Draw Diversion:	
Mouth at Chetolah Creek	*1,979
At divergence from Lincoln Draw	*1,988
Lincoln Draw:	
Mouth at Big Creek	*1,988
Just downstream of 27th Street	*2,011
Just upstream of 27th Street	*2,019
Just downstream of 41st Street	*2,041
Shallow Flooding (overflow from storm sewer on Lincoln Draw):	
About 200 feet upstream of Union Pacific Railroad	*1,969
At intersection of West 19th Street and Ash Street	*2,006
Maps available for inspection at the City Hall, Hays, Kansas.	
Pawnee Rock (City), Barton County, (FEMA Docket No. 6682)	
Ash Creek Tributary B:	
About 300 feet northeast of intersection of Bismark Avenue and Barton Street	*1,945
About 300 feet north of the western end of Bismark Avenue	*1,959
Maps available for inspection at City Hall, Pawnee Rock, Kansas.	
KENTUCKY	
Henderson (City), Henderson County, (FEMA Docket No. 6682)	
Ohio River:	
About 2.8 miles downstream of Louisville and Nashville Railroad	*376
About 2.6 miles upstream of Louisville and Nashville Railroad	*377
Canoe Creek:	
Just downstream of U.S. Route 60	*376
About 1.7 miles upstream of confluence of North Fork Canoe Creek	*381
North Fork Canoe Creek:	
At mouth	*379
Just downstream of Kimsey Lane	*387

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Sugar Creek:	
At mouth	*377
About 0.6 mile upstream of Marywood Drive	*408
Adams Street Tributary:	
At mouth	*385
About 0.73 mile upstream from mouth	*399
Highway 60 Tributary:	
About 500 feet downstream of Gaslight Drive	*414
About 500 feet upstream of Gaslight Drive	*420
Kimsey Lane Right Tributary: Within community	*387
Kimsey Lane Left Tributary:	
At mouth	*387
Just upstream of Kimsey Lane	*389
Highway 812 Tributary:	
At mouth	*379
Just downstream of State Route 812	*383
North Fork Canoe Creek Tributary:	
At mouth	*383
About 0.15 mile upstream of Clark Street	*389
Audubon Park Creek:	
About 0.54 mile downstream of U.S. Route 41	*377
About 850 feet upstream of Watson Lane	*422
Maps available for inspection at the Municipal Center, 222 First Street, Henderson, Kentucky.	
Winchester (City), Clark County, (FEMA Docket No. 6682)	
Strodes Creek:	
Just upstream of Interstate 64	*915
Just downstream of Chessie System	*927
Tributary S1:	
At mouth	*921
Just downstream of Chessie System	*924
Tributary S2:	
At mouth	*922
Just downstream of Chessie System	*933
Just upstream of Chessie System	*953
Tributary S3:	
At mouth	*916
Just downstream of Van Meter Road	*916
About 450 feet upstream of U.S. Route 60	*929
About 500 feet upstream of Kittison Drive	*962
Tributary S4:	
Just upstream of Interstate 64	*939
About 220 feet upstream of Bon Haven Avenue	*965
Tributary S5:	
At mouth	*918
About 1,000 feet upstream of mouth	*920
Town Branch:	
About 200 feet upstream of the confluence of Tributary T3	*914
Just downstream of the Louisville and Nashville Railroad	*926
Just upstream of the Louisville and Nashville Railroad	*937
About 400 feet upstream of Pearl Street	*939
Tributary T1:	
At mouth	*937
Just upstream of Washington Street	*953
Tributary T2:	
At mouth	*918
Just downstream of Interstate 64	*920
Just upstream of Interstate 64	*926
Just downstream of U.S. Route 60	*947
Just upstream of U.S. Route 60	*952
About 250 feet upstream of Mutual Avenue	*954
Tributary T3:	
Just upstream of Interstate 64	*934
About 700 feet upstream of Waveland Avenue	*969
Tributary T4:	
At mouth	*945
Just upstream of West Washington Street	*954
Lower Howard Creek:	
About 250 feet upstream of confluence of Tributary H5	*908
Just downstream of State Route 1958	*913
Just upstream of State Route 1958	*921
Just upstream of Lina Lane	*956
Tributary H1:	
At mouth	*941
Just downstream of Hood Avenue	*955
Just upstream of Hood Avenue	*960
About 500 feet upstream of Boone Avenue	*972
Tributary H2:	
At mouth	*939
Just downstream of Colby Road	*950
Just upstream of Colby Road	*959
About 500 feet upstream of Colby Road	*961
Tributary H3:	
About 500 feet upstream of mouth	*930
About 400 feet upstream of Ashford Drive	*949
Tributary H4:	
At mouth	*921
Just downstream of Windridge Drive	*936
Just upstream of Windridge Drive	*945
Tributary H5:	
About 175 feet upstream of mouth	*908
About 800 feet upstream of confluence of Tributary H6	*934
Tributary H6:	
At mouth	*924
Just downstream of Vaught Road	*925
Just upstream of Vaught Road	*930
Just downstream of Vocational School Road	*930
Just upstream of Vocational School Road	*935
About 1,100 feet upstream of Vocational School Road	*945
Sinkhole A:	
Just upstream of Louisville and Nashville Railroad	*960
About 200 feet upstream of Rowland Avenue	*964
Maps available for inspection at the Planning Department, City Hall, Winchester, Kentucky.	
MAINE	
Boothbay (Town), Lincoln County (FEMA Docket No. 6658)	
Atlantic Ocean:	
Shoreline at Dry Point on Reed Island	*16
Shoreline at Emerson Road (extended)	*21
Shoreline at west end of Middle Road (extended)	*17
Shoreline approximately 1,200 feet south of Spruce Shores	*10
Shoreline at Paradise Point	*16
Shoreline 400 feet east of junction of County Routes 840 and 452	*13
Atlantic Ocean: Sheepscot River:	
Entire shorelines of Sheepscot River within community, Back River and Cross River	*10
Atlantic Ocean: Damariscotta River:	
Shoreline at Farnham Point	*10
Shoreline at northern corporate limits	*10
Shallow Flooding	#1
Maps available for inspection at the Boothbay Town Hall, Boothbay, Maine.	
Boothbay Harbor (Town), Lincoln County (FEMA Docket No. 6648)	
Atlantic Ocean (Linekin Bay):	
Shoreline at eastern corporate limits	*14
Shoreline at Wall Point Road (extended)	*12
Shoreline at Spruce Point	*19
(Boothbay Harbor):	
Shoreline approximately 400 feet south of Factory Cove Road (extended)	*26
Shoreline approximately 400 feet southeast of Commercial Street (extended)	*17
(Townsend Gut):	
Shoreline at Juniper Point	*16
Shoreline at western corporate limits	*10
Southwestern shoreline of Isle of Springs	*21
Shallow Flooding:	
Dunes in the vicinity of Factory Cove Road	#2
Maps available for inspection at the Boothbay Harbor Town Hall, Boothbay Harbor, Maine.	
Howland (Town) Penobscot County (FEMA Docket No. 6645)	
Penobscot River:	
Downstream corporate limits	*147
At State Route 155	*150
Upstream side of Stanford Dam	*162
Approximately 2.23 miles upstream of Stanford Dam	*166
Upstream corporate limits	*171
Piscataquis River:	
At confluence with Penobscot River	*150
Approximately .81 mile upstream of confluence with Penobscot River	*160
Upstream side of Interstate 95 (southbound)	*166
At Seboeis Road (extended)	*170
At upstream corporate limits	*175
Maps available for inspection at the Town Manager's Office, Lincoln Maine.	
MARYLAND	
Rising Sun (Town), Cecil County (FEMA Docket No. 6682)	
Stone Run Tributary 1:	
Approximately .06 mile downstream of CONRAIL	*312
Downstream side of CONRAIL	*328
Approximately 0.2 mile upstream of State Route 273	*352
Stone Run Tributary 2:	
Approximately 0.4 mile downstream of State Route 273	*281
Approximately 930 feet downstream of State Route 273	*298
Approximately 130 feet upstream of State Route 273	*311
Maps available for inspection at the Town Hall, 114 South Queen Street, Rising Sun, Maryland.	
MASSACHUSETTS	
Dennis (Town), Barnstable County (FEMA Docket No. 6640)	
Nantucket Sound:	
Shoreline at western corporate limits	*15
Area between Starboard Way and Port Way	*10
Shoreline at Beaten Road (extended)	*17
Shoreline at Sea Street (extended)	*20
Shoreline at eastern corporate limits	*15
Shallow Flooding:	
Dune area approximately 100 feet north of shoreline between Miramar Avenue and Swan Pond River	#2
Dune area between shoreline and Chase Avenue	#1
Cape Cod Bay:	
Shoreline at western corporate limits	*15
Shoreline at Pilgram Road (extended)	*16
Shoreline at Windy Hill (extended)	*17
Area at intersection of Salt Works Road and Cold Storage Road	*11
Low tide shoreline at Delton Lane (extended)	*18
Shoreline at northeastern corporate limits	*15
Bass River:	
Shoreline at Davis Beach Road (extended)	*13
At Main Street bridge Shoreline of Follins Pond at Peter Oliver Road (extended)	*5
Shoreline at Captain Nickerson Lane (extended)	*7
Maps available for inspection at the Engineering Office, Town Hall, South Dennis, Massachusetts.	
Duxbury (Town), Plymouth County (FEMA Docket No. 6625)	
Massachusetts Bay:	
Shoreline at most southern corporate limits	*17
Shoreline approximately 1.2 miles north of southern corporate limits	*18
Duxbury Beach approximately 0.9 mile south from Powder Point bridge	*15
Shoreline at northern corporate limits	*19
Duxbury Bay:	
Shoreline at southern corporate limits	*10
Shoreline at Water Road (extended)	*13
Shoreline at Spring Street (extended)	*14
Kingston Bay:	
Shoreline at Howlands Landing (extended)	*11
Shoreline at Landing Road (extended)	*14
Shoreline at Mortons Hole (extended)	*13
Shallow Flooding:	
Between shorelines at Duxbury Beach	#1-2
Between seawall and Gurnet Road	#2
Jones River: Corporate limits approximately 400 feet west of Parks Street	*9
Bluefish River:	
Approximately 1,000 feet downstream of Washington Street bridge	*12
Upstream side of Washington Street bridge	*10

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.4 mile upstream of Washington Street bridge	*9
Pine Point River:	
At mouth of Pine Point River	*12
At northern corporate limits	*11
Little Wood Island River:	
At mouth of Little Island Wood River	*11
At northern corporate limits	*11
Duck Hill River: Shoreline at Cove Street (extended)	*11
Maps available for inspection at the Duxbury Town Clerk's Office, Tremont Street, Duxbury, Massachusetts.	
Eastham (Town), Barnstable County (FEMA Docket No. 6640)	
Cape Cod Bay:	
Shoreline at Sunset Village Road (extended)	*20
Shoreline at Thumpertown Road (extended)	*25
Shoreline at Campground Road (extended)	*17
Area approximately 470 feet southeast from intersection of Samoset Road and Sunset Village Road	*11
Shoreline at northern corporate limits	*17
Ponding area between Valley McGuerty and Campground Road	*13
West of Marmes Way	#2
Hatches Creek:	
Shoreline at downstream Creek corporate limits	*14
Area between Marmes Way and North Sunken Meadow Road	*11
Area north of Massasoit Road at northern corporate limits	*12
Herring River:	
Area 800 feet northwest of intersection of Bridge Road and Governor Pence Road	*11
Shoreline at Samoset Road (extended)	*14
Boat Meadow River:	
Shoreline at confluence with Cape Cod Bay	*15
Downstream side of Bridge Road crossing	*14
Upstream side of Bridge Road crossing	*11
Rock Harbor Creek:	
Entire shoreline within community	*12
Shoreline at confluence with Cape Cod Bay	*15
Atlantic Ocean:	
Shoreline at mouth of Salt Pond Bay	*17
Shoreline at Salt Pond Bay at Herman Way Road (extended)	*13
Shoreline at Nauset Bay at Pinecrest Drive bridge	*10
Shoreline at approximately 2.1 miles north of southern corporate limits	*15
Shoreline at Doane Road (extended)	*25
Shoreline approximately 2.0 miles south of southern corporate limits	*39
Shoreline east of north end of Nauset Light Road	*32
Shoreline at northern corporate limits	*24
West of shoreline approximately 1.6 miles north of southern corporate limits	#1
West of shoreline approximately 1.9 miles north of southern corporate limits	#1
Shallow flooding east of Nauset Bay approximately 2.3 miles north of southern corporate limits	#2
Ponding area west of shoreline approximately 1.6 miles south of northern corporate limits	*11
Shallow flooding west of shoreline approximately 1.6 miles south of northern corporate limits	#2
Town Cove:	
Shoreline at southern corporate limits	*12
Shoreline approximately 1.0 mile northeast of southern corporate limits	*11
Maps available for inspection at the Town Clerk's Office, Eastham, Massachusetts.	
Everett (City), Middlesex County (FEMA Docket No. 6682)	
Atlantic Ocean: Entire shorelines of Mystic River and Island End River within community	*10
Malden River:	
Upstream side of Amelia Earhart Dam	*4
At northwestern corporate limits (extended), located approximately 775 feet north of Woodville Street (extended)	*4
Maps available for inspection at the City Engineering Department, Everett, Massachusetts.	
Falmouth (Town), Barnstable County (FEMA Docket No. 6685)	
Buzzards Bay:	
Shoreline at County Road (extended)	*19
Shoreline at Circle Drive (extended)	*22
Area 0.4 mile southeast of Crow Point	#2
Shoreline 1 mile southeast of Chappaquoit Point	*22
Shoreline 0.25 mile northeast of Hamlin Point	*24
Shoreline 700 feet south of Hamlin Point	*26
Shoreline 0.28 mile south of Hamlin Point	*22
Shoreline at north end of Racing Beach Avenue (extended)	*19
Shoreline at The Knob	*26
Shoreline 0.47 mile southeast of Gansett Point	*14
Shoreline at Gansett Point	*20
Shoreline 0.34 mile southwest of Gansett Point	*23
Shoreline 0.79 mile southwest of Gansett Point	*13
Shoreline 500 feet northwest of Penzance Point	*18
Vineyard Sound:	
Northwest shoreline of Ram Island	*12
Shoreline at Goenold Road (extended)	*17
Shoreline at Juniper Point	*21
Shoreline at Nobska Point	*27
Shoreline 1.3 miles north of Nobska Point	*17
Ponding area 400 feet east of intersection of Oyster Pond Road and Fay Road	*15
Shoreline 0.3 mile east of mouth of Falmouth Inner Harbor	*27
Shoreline of Devils Foot Island	*17
Maps available for inspection at the Town Clerk's Office, Town Hall, Falmouth, Massachusetts.	
Goenold (Town), Dukes County (FEMA Docket No. 6678)	
Vineyard Sound:	
Approximately 0.5 mile west of Jobs Neck	*11
Shoreline at Fox Point	*16
Shoreline of Nashawena Island south of Middle Pond	*26
Shoreline of Cuttyhunk Island south of intersection of Bayberry Hill Road and Bayview Drive	*30
Buzzards Bay:	
Shoreline at Knox Point	*11
Shoreline of Western Pond	*12
Shoreline at Timmy Point	*13
Entire shoreline of Weepecket Islands	*14
Shoreline of Nashawena Island east of North Point	*16
Maps available for inspection at the Town Hall, Cuttyhunk, Massachusetts.	
Hingham (Town), Plymouth County (FEMA Docket No. 6645)	
Weymouth Back River:	
Shoreline at Beal Cove	*12
Shoreline at Foley Beach Road (extended)	*15
Hingham Bay:	
Shoreline at Malcolm Street (extended)	*15
West shoreline at Worlds End	*11
Hingham Harbor:	
Shoreline at Ship Street (extended)	*14
Shoreline at Justice Cushing Way (extended)	*11
Weir River:	
East shoreline at Worlds End	*14
Shoreline at Gilford Road (extended)	*11
Shoreline at Cliff Road (extended)	*12
Foundry Pond	*16
Upstream side of State Route 228	*22
Upstream side of Leavitt Street	*27
Crooked Meadow River:	
Upstream side of Free Street	*29
Downstream side of Cushing Pond Dam	*44
Approximately 90 feet upstream of State Route 228	*29
Plymouth River:	
Upstream side of Ward Street	*56
Downstream side of Ward Street	*51
Upstream side of Old Ward Street	*62
Approximately 0.39 mile upstream of Old Ward Street	*65
Town Brook:	
Upstream end of channel leading to culvert to Hingham Harbor	*11
Downstream side of South Street	*19
Approximately 0.19 mile upstream Country Club entrance	*22
Accord Brook:	
Mast Hill Road (extended)	*106
Upstream side of Prospect Street	*114
Approximately 200 feet upstream of Main Street (State Route 28)	*125
Eel River:	
Approximately 100 feet downstream of Cushing Street	*50
Upstream side of Stagecoach Road	*56
Approximately 800 feet upstream of Brewster Road	*100
Turkey Hill Run:	
Upstream Rockland Street	*12
Downstream side of Hull Street	*16
At CONRAIL	*36
Approximately 100 feet upstream of East Street	*39
Maps available for inspection at the Hingham Planning Board, Hingham, Massachusetts.	
Lincoln (Town), Middlesex County (FEMA Docket No. 6604)	
Sudbury River:	
Downstream corporate limits	*122
Approximately 2,800 feet upstream of South Great Road	*122
Farrar Pond Brook:	
Confluence with Farrar Pond	*122
Upstream of second Earth Dam	*164
Farrar Pond/Pole Brook:	
Confluence with Sudbury River	*122
Approximately 300 feet downstream of Concord Road	*146
Lincoln Road (upstream side)	*166
Hobbs Brook:	
Downstream corporate limits	*173
Approximately 2,000 feet upstream of Mill Street	*182
Stony Brook:	
Approximately 970 feet downstream of Tower Road	*169
Tower Road (upstream side)	*176
Ballfield Road (upstream side)	*206
Approximately 600 feet upstream of Sandy Pond Road	*236
Valley Pond: Entire shoreline within corporate limits	*176
Maps available for inspection at the Clerk's Office, Lincoln, Massachusetts.	
Medford (City), Middlesex County (FEMA Docket No. 6682)	
Mystic River:	
At southern corporate limits and upstream side of MBTA Bridge	*4
Upstream side of High Street	*9
Lower Mystic Lake: North of Lake View Road and south of Mystic River Road (extended)	*9
Upper Mystic Lake: North of Mystic River Road (extended) and west of Mystic Valley Parkway	*14
Malden River:	
At southern corporate limits and downstream side of MBTA Bridge	*4
At eastern corporate limits and approximately 3,900 feet north of Revere Beach Parkway	*4
Maps available for inspection at the Community Development Department, City Hall, Medford, Massachusetts.	
Nantucket (Town), Nantucket County (FEMA Docket No. 6658)	
Atlantic Ocean:	
Shoreline at Great Point	*15
Shoreline at Quidnet Road (extended)	*16
Shoreline at Hoicks Hollow Road (extended)	*20
Shoreline at confluence of Sesachacha Pond	*11
Shoreline at New Street (extended)	*15
Shoreline at Jonathan Road (extended)	*11
Shoreline at Central Avenue (extended)	*28
Shoreline at Wannacomet Street (extended)	*14

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Shoreline at Somerset Road (extended)	*13
Shoreline at Sheep Pond Road (extended)	*13
Shoreline at Miacomet Pond approximately 700 feet north of Atlantic Ocean	*7
Atlantic Ocean: Shallow Flooding:	
Dune Area east of intersection of Great Point Road and Wauwinet Road	#1
Dune Area approximately 1,300 feet north of intersection of Chase Lane and Squam Road	#2
Dune Area approximately 600 feet south of intersection of Madaket Road and Chicago Street	#1
Shallow flooding approximately 250 feet east of end of New South Road	*13
Shallow flooding at Mixes Pond	*9
Shallow flooding at Sheep Pond	*7
Shallow flooding at Reedy Pond	*9
Nantucket Sound:	
Wharf between Straight Wharf and Commercial Wharf and east of New Whale Street	*11
Entire shoreline of Coskata Pond	*8
Shoreline at Proprietor's Road (extended)	*8
Entire shoreline at Polpis Harbor	*8
Shoreline at Five Finger Point	*10
Shoreline at Pocomo Head	*8
Maps available for inspection at the Office of Nantucket Planning and Economic Development Office, Town & County Building, Nantucket, Massachusetts.	
Stoneham (Town), Middlesex County (FEMA Docket No. 6682)	
Sweetwater Brook:	
Approximately 400 feet downstream of Maple Avenue	*49
Upstream side of Montvale Avenue	*54
Approximately 270 feet downstream of Lindenwood Road	*55
Downstream side of Lindenwood Road	*61
Approximately 70 feet upstream of Lindenwood Road	*65
Maps available for inspection at the City Clerk's Office, 35 Central Street, Stoneham, Massachusetts.	
Yarmouth (Town), Barnstable County (FEMA Docket No. 6645)	
Nantucket Sound:	
Shoreline at Bayview Street (extended)	*16
Shoreline at Beach Road (extended)	*13
Shoreline at Smith's Road	*10
Shoreline at Point Gammon	*19
Shoreline 500 feet west of Bass River Light	*15
Cape Cod Bay:	
Shoreline at mouth of Lone Tree Creek	*15
Shoreline at mouth of Chase Garden Creek	*17
Bass River:	
Shoreline at Bass River Terrace (extended)	*13
Shoreline at Highland Avenue (extended)	*9
Shoreline at Oyster Cove Road (extended)	*7
Entire shoreline of Follins Pond	*5
Parkers River:	
Shoreline at Compass Drive (extended)	*11
South end of Niagra Lane	*13
Entire shoreline of Swan Pond	*9
Maps available for inspection at the office of Mr. Ed Donnelly, Town Planner, Yarmouth Town Hall, South Yarmouth, Massachusetts.	
MINNESOTA	
Big Stone County (Unincorporated Areas) (FEMA Docket No. 6682)	
Minnesota River:	
At eastern county boundary	*945
Just downstream of U.S. Highway 75 dam	*948
Just upstream of U.S. Highway 75 dam	*957
At Big Stone Lake inlet	*970
Little Minnesota River:	
At Big Stone Lake inlet	*970
At northern county boundary	*971
Maps available for inspection at Big Stone County Courthouse, 20 S.E. Street, Ortonville, Minnesota.	
Browns Valley (City), Traverse County (FEMA Docket No. 6682)	
Little Minnesota River:	
About 0.4 mile downstream of Fourth Street	*976
About 0.7 mile upstream of Broadway	*986
Unnamed Coulee:	
About 1,500 feet downstream of Broadway	*978
About 350 feet upstream of Burlington Northern railroad	*980
Maps available for inspection at the City Hall, 3rd Street South, Browns Valley, Minnesota.	
Chippewa County (Unincorporated Areas) (FEMA Docket No. 6682)	
Minnesota River:	
At downstream county boundary	*881
Just downstream of Northern States Power Company Dam	*886
Just upstream of Northern States Power Company Dam	*893
At upstream county boundary	*943
Maps available for inspection at the Chippewa County Courthouse, Montevideo, Minnesota.	
Ortonville (City), Big Stone County (FEMA Docket No. 6682)	
Minnesota River:	
About 0.50 mile downstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad (near Mill Road)	*964
About 1.90 miles upstream of County Highway 30	*970
Maps available for inspection at the City Hall, 315 Madison Avenue, Ortonville, Minnesota.	
Swift County (Unincorporated Areas) (FEMA Docket No. 6648)	
Lac Qui Parle: Within community	*943
Minnesota River:	
About 1,700 feet downstream of State Highway 119	*943
Just downstream of Marsh Lake Dam	*944
Marsh Lake: Within community	*946
Pomme de Terre River:	
About 2.2 miles downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*972
About 2.4 miles upstream of Burlington Northern railroad	*1,062
Maps available for inspection at the Swift County Courthouse, 301 14th Street North, Benson, Minnesota.	
MISSOURI	
Fulton (City), Callaway County (FEMA Docket No. 6676)	
Stinson Creek:	
About 1,800 feet downstream of the confluence of Smith Branch	*692
About 1,000 feet upstream of U.S. Highway 54	*770
Smith Branch:	
At mouth	*696
Just downstream of County highway O	*721
About 0.7 mile upstream of Westminster Avenue	*820
Whallow Branch:	
At mouth	*712
Just downstream of Mokane Road	*724
Just upstream of Mokane Road	*730
About 900 feet upstream of East Reed Street	*794
Big Hollow Creek:	
About 700 feet downstream of Cote Sans Dessein Road	*780
About 270 feet downstream of U.S. Highway 54	*782
Just upstream of U.S. Highway 54	*789
About 500 feet upstream of U.S. Highway 54	*801
Westminster Branch:	
At mouth	*735
About 1,200 feet upstream of West Seventh Street	*782
Dunlap Creek:	
Just upstream of Old Herring Mill Road	*772
About 1.4 miles upstream of Old Herring Mill Road	*833
Maps available for inspection at City Hall, Corner of 4th & Market Streets, Fulton, Missouri.	
NEBRASKA	
Blue Springs (City), Gage County, (FEMA Docket No. 6682)	
Big Blue River:	
About 0.45 mile downstream of the confluence of Bills Creek	*1,216
About 0.44 mile upstream of Broad Street	*1,218
Maps available for inspection at the City Hall, Blue Springs, Nebraska.	
Stromsburg (City), Polk County (FEMA Docket No. 6682)	
Big Blue River:	
About 3.39 miles downstream of U.S. Highway 81	*1,614
About 1.36 miles upstream of U.S. Highway 81	*1,626
Maps available for inspection at the City Hall, Stromsburg, Nebraska.	
NEW HAMPSHIRE	
Hampton (Town), Rockingham County (FEMA Docket No. 6649)	
Atlantic Ocean:	
Shoreline at southern corporate limits	*14
Area west of shoreline at southern corporate limits and east of Ocean Drive	*12
West side of U.S. Route 1A bridge over Hampton Harbor	*9
Downstream of Towle Farm Road bridge over Taylor River	*9
Area east of U.S. Route 1A and west of shoreline approximately 1.0 mile north of southern corporate limits	*11
Shoreline at North Beach	*20
Shoreline approximately 0.3 mile south of northern corporate limits	*24
Shoreline at northern corporate limits	*14
Shallow Flooding:	
Area between shoreline of Hampton Harbor Inlet and Thornton Avenue	#2
Area west of Great Boars Head on U.S. Route 1A	#1
Area west of shoreline and east of Meadow Pond	#1
Area approximately 0.34 mile south of northern corporate limits west of shoreline and east of Ocean Boulevard	#1
Area west of shoreline and east of Ocean Boulevard	#1
Maps available for inspection at the Town Clerk's Office, Hampton, New Hampshire.	
North Hampton (Town), Rockingham County (FEMA Docket No. 6649)	
Winnicut River:	
At downstream corporate limits	*41
Upstream side of Walnut Avenue	*49
Upstream side of North Hampton Road	*53
At upstream corporate limits	*57
Little River:	
Upstream side of Woodland Road	*16
Approximately .5 mile upstream of Woodland Road	*17
Approximately 80 feet downstream of upstream dam	*27
Upstream side of upstream dam	*35
Approximately 65 feet upstream of Mill Road	*39
Shallow Flooding:	
Southeast of intersection of Appledore Avenue with Ocean Boulevard	#1
West side of Ocean Boulevard from intersection with Willow Avenue to northern corporate limits	#1
Atlantic Ocean:	
Area in the vicinity of Philbrick Pond	*9
Area in the vicinity of Little River downstream of Woodland Road	*9

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Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Shoreline at northern corporate limits	*19
Shoreline approximately 500 feet south of northern corporate limits	*23
Shoreline at Atlantic Avenue (extended)	*19
Shoreline at southern corporate limits	*14
Maps available for inspection at the Town Clerk's Office, Town Hall, North Hampton, New Hampshire.	
Rye (Town), Rockingham County (FEMA Docket No. 6662)	
Atlantic Ocean:	
Shoreline at Causeway Road (extended)	*19
Entire shoreline of Eel Pond	*9
Shoreline at Cable Road (extended)	*17
Shoreline at Concord Point	*14
Shoreline approximately 700 feet south of intersection of Pioneer and Parsons Roads	*22
Shoreline at Sheales Point	*12
Entire shoreline of Sagamore Creek within community	*9
Entire shoreline of Lunging Island	*15
Entire shoreline of White Island	*20
Eastern shoreline of Star Island	*20
Shallow Flooding:	
Area along Ocean Boulevard from Causeway Road to Jenness Road	#1
Area along Old Beach Road	#1
Rye Harbor Road near mouth of Rye Harbor	#2
Area along Ocean Boulevard approximately .2 mile south of Concord Point	#1
Area along Pioneer Road between Fairhill Avenue and Tuna Drive	#1
Area approximately 0.2 mile south of Frost Point and 300 feet from shoreline in Fort Dearborn	#1
Maps available for inspection at the Planning Board, Town Clerk's Office, Town Hall, Rye, New Hampshire.	
Seabrook (Town), Rockingham County (FEMA Docket No. 6662)	
Atlantic Ocean:	
Shoreline at north corporate limits	*14
Approximately 1,700 feet east of Eisenhower Street along corporate limits	*12
Shoreline at south corporate limits	*14
Entire shoreline of Mill Creek	*9
Entire shoreline of Brown River within community	*9
Entire shoreline of Blackwater River within community	*9
Maps available for inspection at the Building Inspector's Office, Town Hall, 99 Lafayette Road, Seabrook, New Hampshire.	
NEW JERSEY	
Fairfield (Township), Essex County (FEMA Docket No. 6676)	
Passaic River:	
Downstream corporate limits	*171
Upstream corporate limits	*174
Deepavaal Brook:	
At confluence with Passaic River	*172
Approximately 200 feet downstream of Clinton Road	*173
Green Brook:	
At confluence with Deepavaal Brook	*172
Downstream side of Passaic Avenue	*180
At upstream corporate limits	*227
Maps available for inspection at the Municipal Building, 230 Fairfield Road, Fairfield, New Jersey.	
Oradell (Borough), Bergen County (FEMA Docket No. 6676)	
Hackensack River:	
Downstream corporate limits	*12
Upstream side of New Milford Avenue Dam	*18
Upstream side of Oradell Reservoir Dam	*25
Upstream corporate limits	*25
Hackensack River Bypass:	
At downstream confluence with Hackensack River	*12
Upstream side of Elm Street	*14
At upstream confluence with Hackensack River	*16
Maps available for inspection at the Oradell Borough Hall, Oradell, New Jersey.	
Pequannock (Township), Morris County (FEMA Docket No. 6645)	
Pompton River:	
At downstream corporate limits	*181
Approximately 200 feet upstream of State Route 23	*183
At confluence with Pequannock River and Ramapo River	*186
Pequannock River:	
At confluence with Pompton River	*186
At upstream corporate limits	*189
Ramapo River:	
At confluence with Pompton River	*186
At upstream corporate limits	*186
East Ditch:	
At downstream corporate limits	*180
Approximately 200 feet upstream of Sunset Road	*189
At downstream side of Mountain Avenue	*196
West Ditch:	
At downstream corporate limits	*193
Downstream side of Sunset Road	*208
At upstream corporate limits	*216
Tributary to East Ditch:	
At confluence with East Ditch	*191
Approximately 300 feet upstream of Mountain View Road	*236
Maps available for inspection at the Pequannock Municipal Building, 530 Newark Pompton Turnpike, Pequannock, New Jersey.	
NEW YORK	
Attica (Town), Wyoming County (FEMA Docket No. 6676)	
Tonawanda Creek:	
Downstream corporate limits	*975
Approximately 200 feet downstream of Dunbar Road bridge	*984
Approximately 100 feet upstream of Dunbar Road bridge	*990
Approximately 3,800 feet downstream of State Route 98 bridge	*997
Approximately 2,500 feet downstream of State Route 98 bridge	*1,003
Approximately 200 feet downstream of State Route 98 bridge	*1,008
Maps available for inspection at the Town Clerk's Office, 108 West Avenue, Attica, New York 14001.	
Attica (Village), Wyoming and Genesee Counties (FEMA Docket No. 6676)	
Tonawanda Creek:	
Approximately 450 feet downstream of corporate limits	*954
Upstream side of Main Street	*968
Approximately 350 feet upstream of corporate limits	*975
Maps available for inspection at the Village Hall, 9 Water Street, Attica, New York.	
Bolton (Town), Warren County (FEMA Docket No. 6662)	
Schroon River:	
Downstream corporate limits	*689
Upstream side of Bolton-Riverbank Road	*709
Upstream corporate limits	*728
Maps available for inspection at the Bolton Town Hall, Stewart Avenue, Bolton Landing, New York.	
Dresden (Town), Washington County (FEMA Docket No. 6662)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Clemons, New York.	
Easton (Town), Washington County (FEMA Docket No. 6662)	
Hudson River:	
Downstream corporate limits	*94
At confluence of Flately Brook	*98
Upstream corporate limits	*101
Maps available for inspection at the Easton Town Hall, Easton, New York.	
Goshen (Town), Orange County (FEMA Docket No. 6645)	
Walkill River:	
At downstream corporate limits	*366
Upstream side of New York Routes 6 and 17M	*376
Upstream side of Maple Avenue	*382
Rio Grande:	
Confluence with Wallkill River	*368
Upstream side of 6½ Station Road	*380
At Village of Goshen corporate limits	*412
Quaker Creek:	
Approximately 1,500 feet downstream of Pulaski Highway	*384
Downstream side of Pumpkin Swamp Road	*387
At confluence of Brown Creek	*400
Brown Creek:	
At confluence with Quaker Creek	*400
Upstream side of First Private Drive	*422
Approximately 0.8 mile upstream of New York Route 94	*447
Otter Kill:	
At downstream corporate limits	*366
Upstream side of Craigville Road	*374
Upstream side of Old Chester Road	*408
Approximately 0.4 mile upstream of Maple Avenue	*435
Otter Kill, Tributary 12:	
Confluence with Otter Kill	*368
Upstream side of Coleman Road	*382
Approximately 50 feet upstream of Craigville Road	*396
Black Meadow Brook:	
Confluence with Otter Kill	*379
Upstream side of Old Chester Road	*387
At upstream corporate limits	*405
Maps available for inspection at the Clerk's office and the Building Inspector's office, Goshen Town Hall, Goshen, New York.	
Goshen (Village), Orange County (FEMA Docket No. 6648)	
Rio Grande:	
At downstream corporate limits	*412
Approximately 520 feet upstream of Greenwich Avenue	*433
Maps available for inspection at the Village Hall, Goshen, New York.	
Greenwich (Town), Washington County (FEMA Docket No. 6662)	
Hudson River:	
Downstream corporate limits	*101
Approximately 600 feet downstream of Thomson Dam	*102
Upstream side of Thomson Dam	*109
Upstream corporate limits	*112
Maps available for inspection at 2 Academy Street, Greenwich, New York.	
Hamptonburgh (Town), Orange County (FEMA Docket No. 6658)	
Wallkill River:	
Downstream corporate limits	*359
Upstream side of CONRAIL	*361
Upstream corporate limits	*363

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Otter Kill:	
Downstream corporate limits	*323
Upstream side of second upstream crossing of CONRAIL	*348
Upstream side of second crossing of Route 207	*358
Upstream corporate limits	*366
Otter Kill Tributary 11:	
Confluence with Otter Kill	*366
Approximately 1,550 feet upstream of Purgatory Road	*366
Cromline Creek:	
Downstream corporate limits	*322
Approximately 0.5 mile upstream of upstream corporate limits	*325
Maps available for inspection at the Town Hall, Hamptonburgh, New York.	
Lake George (Town), Warren County (FEMA Docket No. 6676)	
Schroon River:	
At downstream corporate limits	*687
Approximately 92 feet upstream side of U.S. Route 9	*688
At upstream corporate limits	*689
Maps available for inspection at the Town Center, Old Post Road, Lake George, New York.	
North Salem (Town), Westchester County (FEMA Docket No. 6665)	
Titicus River:	
At confluence with Titicus Reservoir	*326
Upstream side of June Road	*343
Upstream side of New York Route 121	*377
Upstream side of dam	*456
Upstream side of Keeler Lane	*461
Upstream side of Norton Lane	*493
At upstream corporate limits	*498
Crook Brook:	
At confluence with Titicus River	*331
Approximately 1,600 feet downstream of New York Route 121	*356
Upstream side, most downstream crossing of Hewley Road	*366
Upstream side, most upstream crossing of Hewley Road	*452
Maps available for inspection at the Town House, c/o Town Clerk, North Salem, New York.	
Patterson (Town), Putnam County (FEMA Docket No. 6665)	
East Branch Croton River:	
At downstream corporate limits	*429
At confluence with Haviland Hollow Brook	*431
At upstream corporate limits	*435
Haviland Hollow Brook:	
At confluence with East Branch Croton River	*431
Upstream side of Brimstone Road	*461
At upstream corporate limits	*503
Muddy Brook:	
At confluence with East Branch Croton River	*433
Upstream side of CONRAIL	*450
First crossing of upstream side of New York Route 311	*470
Upstream side of second crossing of New York Route 311	*516
Muddy Brook Tributary 1:	
At confluence with Muddy Brook	*433
Upstream side of New York Route 311	*454
Upstream side of New York Route 292	*550
At upstream corporate limits	*813
Stephens Brook:	
At confluence with East Branch Croton River	*433
Upstream side of New York Route 22	*462
Upstream side of Old New York Route 22	*475
Maps available for inspection at the Town Clerk's Office, Town Hall, Patterson, New York.	
Whitehall (Town), Washington County (FEMA Docket No. 6662)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Whitehall Town Hall, Whitehall, New York.	
NORTH CAROLINA	
Brunswick County (Unincorporated Areas) (FEMA Docket No. 6676)	
Atlantic Ocean:	
About 1 mile south of the mouth of New Inlet at Cape Fear River	*9
At Bowen Point	*14
At confluence of Lockwoods Folly River	*15
Along southern shoreline at Fort Caswell	*17
State Boundary line at southernmost tip of County	*19
Indian Creek:	
At mouth	*8
At 0.5 mile upstream of State Road 1453	*12
Cherry Tree Prong:	
About 2,300 feet downstream of State Route 1426	*12
Just downstream of State Route 1426	*13
About 0.9 mile upstream of State Route 1426	*27
Jackeys Creek:	
At mouth	*10
About 2,100 feet upstream of U.S. abandoned railroad	*22
Lookout Creek:	
At mouth	*11
About 1,700 feet upstream of NC 130	*37
Mallory Creek:	
At mouth	*10
Just upstream of Wire Spur Road	*22
Mallory Creek Tributary	
At mouth	*10
Just upstream of wire Road	*23
Mulberry Branch:	
At mouth	*11
About 1,550 feet upstream of SR 1348	*20
Calabash Creek: Within community	*13
Calabash River: Within community	*13
Lockwoods Folly River:	
About 3,000 feet upstream of NC 211	*9
About 400 feet downstream of SR 1401	*32
Pinch Gut Creek:	
About 400 feet downstream of SR 1401	*32
Just upstream of Rourark Road	*49
Sharron Creek: Along shoreline from the mouth to about 2.3 miles upstream	*11
Shallotte River:	
About 0.6 mile downstream of U.S. Route 17	*11
About 2,400 feet upstream of U.S. Route 17	*13
At mouth	*14
Shallotte Creek:	
At mouth	*12
Just downstream of NC 130	*20
Just upstream of NC 130	*25
About 0.9 mile upstream of NC 130	*33
Shallotte Creek Tributary:	
At mouth	*12
Just downstream of NC 130	*18
Just upstream of NC 130	*22
About 1.0 mile upstream of NC 130	*29
Sturgeon Creek:	
At mouth	*9
Just upstream of State Route 1438	*29
Town Creek: Within community	*10
Mill Creek:	
About 1.0 mile upstream of State Route 1112	*12
At mouth	*14
Cape Fear River:	
At confluence with Indian Creek	*8
At Campbell Island	*10
Maps available for inspection at the Brunswick County Governmental Center, Bolivia, North Carolina.	
Caswell Beach (Town), Brunswick County (FEMA Docket No. 6676)	
Atlantic Ocean:	
About 0.8 mile West of Oak Island Coast Guard Station along NC 133	*11
At confluence of Intracoastal Waterway with Elizabeth River	*14
Along shoreline from eastern corporate limits to about 1.6 miles west	*17
Along shoreline from western corporate limits to about 1 mile east	*19
Maps available for inspection at the Town Hall, Caswell Beach, North Carolina.	
Kure Beach (Town), New Hanover County (FEMA Docket No. 6665)	
Atlantic Ocean:	
About 200 feet east of the intersection of U.S. Highway 421 and Dow Avenue	*14
About 50 feet east of the intersection of M Avenue and Atlantic Avenue	*14
Along shoreline	*16
Maps available for inspection at Town Hall, 115 North 3rd Street, Kure Beach, North Carolina.	
Unincorporated Areas of New Hanover County (FEMA Docket No. 6676)	
Atlantic Ocean:	
Along Seaws Cut shoreline from U.S. Route 421 crossing to about 2,000 feet east	*10
Along eastern shoreline of Intracoastal Waterway from Nixon Channel to Carolina Beach Inlet	*12
Along shoreline from about 4.4 miles northeast of Carolina Beach Inlet to the Southern County boundary	*16
Along shoreline from about 3.5 miles southwest of Masonboro Inlet to about 1.2 miles northeast of Bridge Road	*17
Northeast Cape Fear River:	
Along shoreline from the confluence of Island Creek to the confluence of Prince George Creek	*8
At mouth	*10
Cape Fear River:	
At confluence Catfish Creek	*9
At confluence of Northeast Cape Fear River	*10
Bradley Creek:	
Just downstream of U.S. Route 76	*11
About 2,800 feet upstream of Mallard Street	*21
Bradley Creek Tributary:	
At mouth	*11
Just upstream of Eastwood Road	*19
Island Creek:	
At confluence with Northeast Cape Fear River	*8
Just downstream of Sidbury River	*18
Kings Grant Tributary:	
At mouth	*10
Just downstream of Gordon Road	*32
Murrayville Tributary:	
At mouth	*20
About 1,100 feet upstream of Murrayville Road	*27
Ness Creek:	
At confluence with Northeast Cape Fear River	*9
About 200 feet upstream of Castle Hayne Road	*26
Prince George Creek:	
At mouth	*8
Just downstream of Sidbury Road	*28
Prince George Creek Tributary:	
At mouth	*15
Just upstream of Parmele Road	23
Smith Creek:	
At mouth	*9
About 1.75 miles upstream of confluence of Murrayville Tributary	*36
Spring Branch:	
At mouth	*9
Just downstream of College Road	*21
Watt Creek:	
At mouth	*10
Just upstream of South College Road	*21
Maps available for inspection at the New Hanover County Administration Building, 320 Chestnut Street, Wilmington, North Carolina.	
Wilmington (City), New Hanover County (FEMA Docket No. 6665)	
Spring Branch:	
At mouth	*9
About 5,750 feet upstream of mouth	*18
Burnt Mill Creek:	
About 350 feet downstream of Seaboard Coast Line Railroad	*9
Just downstream of Hoggard Drive	*33

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Greenfield Lake, North Branch:	
At mouth	*10
Just upstream of East Lake Shore Drive	*14
About 150 feet upstream of 16th Street	*16
Greenfield Lake, North Branch Tributary:	
At mouth	*15
About 200 feet upstream of 16th Street	*24
Bradley Creek:	
About 300 feet upstream of Mallard Street	*13
About 2,650 feet upstream of Mallard Street	*21
Northeast Cape Fear River:	
From 3rd Street to confluence of Smith Creek	*9
Along Smith Creek from mouth to confluence of Spring Branch	*9
From mouth to 3rd Street	*10
Cape Fear River:	
Along shoreline	*10
Along Greenfield Lake shoreline	*10
Along Barnards Creek	*10
Atlantic Ocean: Along Hewletts Creek	*11
Maps available for inspection at City Hall, Wilmington, North Carolina.	
Wrightsville Beach (Town), New Hanover County (FEMA Docket No. 6665)	
Atlantic Ocean:	
Along Lumina Avenue	*11
About 1,250 feet southwest of the intersection of Short Street and Marina Street	*11
At intersection of Island Drive and U.S. 76	*11
Along Intracoastal Waterway	*12
About 250 feet southeast of South Channel Drive and North Channel Drive	*12
Along the shoreline	*17
Maps available for inspection at Town Hall, Wrightsville Beach, North Carolina.	
OHIO	
Bucyrus (City), Crawford County, (FEMA Docket No. 6682)	
Sandusky River:	
About 2,700 feet upstream of Kersetter Road	*970
About 1.0 mile upstream from Norfolk Southern Railway	*985
Maps available for inspection at the Engineer's Office, 500 South Sandusky Avenue, Bucyrus, Ohio.	
Cuyahoga County (Unincorporated Areas), (FEMA Docket No. 6676)	
West Branch Rocky River:	
About 1,500 feet downstream of Lewis Road	*667
About 2.5 miles upstream of Lewis Road	*696
Plum Creek:	
About 1.3 miles downstream of Interstate 80	*759
Just downstream of Sprague Road	*779
Chagrin River:	
Just downstream of downstream Village of Moreland Hills corporate limits	*792
At upstream Village of Moreland Hills corporate limits	*798
Maps available for inspection at the Regional Planning Commission, 415 The Arcade, Cleveland, Ohio.	
Dresden (Village) Muskingum County, FEMA Docket No. 6682).	
Main Ditch:	
About 750 feet downstream of 12th Street	*738
About 450 feet upstream of 11th Street	*740
Muskingum River:	
About 2,250 feet downstream of State Route 208	*714
About 1,000 feet upstream of confluence of Wakatamika River	*716
Maps available for inspection at the Municipal Building, Ninth and Chestnut, Dresden, Ohio.	
Marysville (City), County (FEMA Docket No. 6665).	
Mill Creek:	
About 1,900 feet downstream of confluence of Infirmary Ditch	*971
About 1.5 miles upstream of Maple Street	*988
Maps available for inspection at the City Hall, 111 West 6th Street, Marysville, Ohio.	
Seville (Village) Medina County, (FEMA Docket No. 6676)	
Chippewa Creek:	
About 1,600 feet downstream of Main Street	*962
About 0.9 mile upstream of Greenwich Road	*990
Hubbard Creek:	
At mouth	*966
About 2,650 feet upstream of Liberty Street	*994
Unnamed Tributary:	
At mouth	*988
Just upstream of Greenwich Road	*1,028
Maps available for inspection at the Village Hall, 6 Spring Street, Seville, Ohio.	
Tiffin (City) Seneca County (FEMA Docket No. 6682)	
Sandusky River:	
About 2,950 feet downstream of Huss Street	*719
Just upstream of Water Plant Dam	*744
Maps available for inspection at the Engineer's Office, Municipal Building, Tiffin, Ohio.	
OREGON	
Lane County: (Unincorporated Areas) (FEMA Docket No. 6682)	
Siuslaw River: 250 feet north from the intersection of Duncan Island Road and Bernhardt Creek Road	*14
Willamette River: 250 feet south from the intersection of Compton Lane and Riverview Drive	*346
Coast Fork Willamette: 150 feet north from the intersection of River Drive and Orchard Avenue	*548
Coast Fork Willamette River Overflow: 100 feet southwest from the intersection of Patricia Lane and North Delight Valley Road	*598
Oxley Slough: 200 feet downstream from the center of Seavey Loop Road	*459
Berkshire Slough: 200 feet west from the intersection of Pioneer Road and Matthews Road	*492
Row River: At the intersection of Snauer Lane and Oregon Pacific and Eastern Railroad	*662
Silk Creek: At the center of Gowdyville Road	*657
Middle Fork Willamette River (Near Springfield): 200 feet upstream of the center of Southern Pacific Railroad	*547
Middle Fork Willamette River Overflow: 100 feet west from the intersection of Mahogany Lane and Springfield—Creswell Highway	*497
Fall Creek: 50 feet upstream from the center of Place Road	*581
Middle Fork Willamette River (Near Oakridge): 50 feet downstream from the center of Willamette Highway	*1,073
North Fork Middle Fork Willamette River: 50 feet upstream from the intersection of the center of Southern Pacific Railroad	*1,075
Salmon Creek—With Levees: 25 feet upstream from the center of the downstream Southern Pacific Railroad	*1,199
Salmon Creek—Without Consideration of Levees: 700 feet southwest from the intersection of Salmon Creek Road and Southern Pacific Railroad	*1,210
McKenzie River:	
100 feet upstream from the center of Bridge Street	*652
100 feet downstream from the center of McKenzie Highway	*1,361
McKenzie River East Channel: 350 feet southwest from the intersection of McKenzie Highway and McKenzie River Drive	*1,192
Mohawk River: At the intersection of Goats and Sunderman Road	*489
Amazon Creek: 100 feet upstream from the center of Southern Pacific Railroad	*384
Long Tom River: 100 feet upstream from the center of Territorial Highway (State Highway 126)	*382
Maps available for inspection at the Department of Land Management, 125 E. 6th Street, Eugene, Oregon.	
Oakridge (City), Lane County (FEMA Docket No. 6682)	
Salmon Creek: Center of Hill Street, approximately 1,100 feet east of its intersection with Beach Meadow Way	*1,189
Middle Fork Willamette River: At the intersection of Beaver Street and Garden Road	*1,117
Maps available for inspection at the City Manager's Office, City Hall, Oakridge, Oregon.	
PENNSYLVANIA	
Bentleyville (Borough), Washington County (FEMA Docket No. 6682)	
Pigeon Creek:	
Downstream corporate limits	*907
Confluence with North Branch Pigeon Creek	*923
Upstream side of Main Street (1st crossing)	*934
Upstream side of Main Street (2nd crossing)	*947
Upstream corporate limits	*956
Maps available for inspection at the Municipal Building, 900 Main Street, Bentleyville, Pennsylvania.	
Bradys Bend (Township), Armstrong County (FEMA Docket No. 6682)	
Sugar Creek:	
Confluence with Allegheny River	*829
Upstream side of third upstream crossing of State Highway 68	*880
Upstream side of the seventh upstream crossing of State Highway 68	*946
Upstream side of T-338	*986
Upstream side of Kaylor Road	*1,112
Approximately .34 mile upstream of the eleventh upstream crossing of State Highway 68 (near intersection with T-324)	*1,152
Maps available for inspection at the Bradys Bend Township Secretary's House, R.D. #1, Box 49, East Brady, Pennsylvania.	
Conewago (Township), Dauphin County (FEMA Docket No. 6676)	
Conewago Creek East:	
Downstream corporate limits	*388
Approximately 150 feet upstream of Mill Road	*395
At State Route 283	*417
Maps available for inspection at Conewago Township Building, Conewago, Pennsylvania.	
Fountain Hill (Borough), Lehigh County (FEMA Docket No. 6676)	
Lehigh River:	
Upstream corporate limits	*239
Downstream corporate limits	*239
Maps available for inspection at the Office of Ralph Hutchison, Borough Manager, Fountain Hill, Pennsylvania.	
Freeport (Borough), Armstrong County (FEMA Docket No. 6682)	
Allegheny River:	
Downstream county boundary	*769
Upstream corporate limits	*770
Shoreline of Buffalo Creek from its confluence with Allegheny River to approximately 1.1 miles upstream	*769
Maps available for inspection at the Municipal Building, 414 Market Street, Freeport, Pennsylvania.	
Kittanning (Borough), Armstrong County (FEMA Docket No. 6682)	
Allegheny River:	
Downstream corporate limits	*793
Approximately 60 feet downstream of Lock and Dam No. 7	*795
Approximately 60 feet upstream of Lock and Dam No. 7	*798
Upstream corporate limits	*801
Maps available for inspection at the Borough Building, 300 South McKean Street, Kittanning, Pennsylvania.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Meyersdale (Borough), Somerset County (FEMA Docket No. 6682)	
Casselman River:	
Approximately 0.6 mile downstream of Chessie System bridge	*1,944
Upstream side of Broadway Street	*1,948
Approximately 840 feet upstream of Eighth Street (extended)	*1,953
Flaugherty Creek:	
At confluence with Casselman River	*1,948
Upstream side of Beachley Street	*1,954
Upstream side of Walnut Street	*1,966
Upstream corporate limits	*1,977
Maps available for inspection at the Meyersdale Borough Building, 151 Center Street, Meyersdale, Pennsylvania.	
Monongahela (City), Washington County (FEMA Docket No. 6682)	
Monongahela River:	
Downstream corporate limits	*754
Upstream corporate limits	*755
Entire shoreline of Pigeon Creek within community	*755
Maps available for inspection at the City Hall, 449 West Main Street, Monongahela, Pennsylvania.	
New Berlin (Borough), Union County (FEMA Docket No. 6676)	
Penns Creek:	
At upstream corporate limits	*495
At downstream corporate limits	*493
Maps available for inspection at the Community Center, 318 Vine Street, New Berlin, Pennsylvania.	
Roaring Creek (Township) Columbia County (FEMA Docket No. 6676)	
Roaring Creek:	
At Legislative Route 19009	*874
Approximately 0.5 mile downstream of Legislative Route 19008	*896
Approximately 80 feet downstream of Legislative Route 19008	*921
Maps available for inspection at the Office of Township Secretary, Chatawissa, Pennsylvania.	
Southampton (Township), Franklin County, (FEMA Docket No. 6676)	
Conodoguinet Creek:	
Downstream corporate limits	*545
Approximately 0.7 mile downstream of McClays Mill Road (Legislative Route 28010)	*548
At upstream side of McClays Mill Road (Legislative Route 28010)	*555
Approximately 1.3 miles downstream of Roxbury Road (Legislative Route 28009)	*559
Approximately 100 feet upstream of Roxbury Road (Legislative Route 28009)	*568
Approximately 1,200 feet upstream of confluence of Muddy Run	*577
Approximately 0.6 mile downstream of Tan Yard Hill Road (State Route 433)	*585
Approximately 400 feet upstream of Tan Yard Hill Road (State Route 433)	*591
Approximately 0.7 mile downstream of upstream corporate limits	*597
Upstream corporate limits	*603
Middle Spring Creek:	
At confluence with Conodoguinet Creek	*545
Approximately 0.9 mile upstream of confluence with Conodoguinet Creek	*551
Approximately 1.9 miles upstream of confluence with Conodoguinet Creek	*561
Approximately 0.7 mile downstream of McClays Mill Road (Legislative Route 28010)	*566
Upstream side of McClays Mill Road (Legislative Route 28010)	*575
Upstream side of dam just upstream of Stonewall Road (Township Route 626)	*586
Approximately 1.5 miles downstream of Bard Road	*592
Approximately 0.7 mile downstream of Bard Road	*605
At downstream side of Bard Road	*616
At downstream side of Hot Point Road	*630
Approximately 1,300 feet downstream of Olde Scotland Road (State Route 896)	*657
Downstream side of Olde Scotland Road (State Route 896)	*666
At confluence of Gum Run	*669
Approximately 340 feet upstream of confluence of Gum Run	*671
Gum Run:	
Confluence with Middle Spring Creek	*669
Downstream side of Mainsville Road (Legislative Route 28018)	*676
Approximately 0.4 mile upstream of Mainsville Road (Legislative Route 28018)	*695
Upstream side of Access Road approximately 0.6 mile upstream of Mainsville Road (Legislative Route 28018)	*704
Approximately 125 feet downstream of Interstate 81	*711
Muddy Run:	
Confluence with Conodoguinet Creek	*575
Upstream side of Ornstown Road (State Route 533)	*580
At confluence of Rowe Run	*586
Approximately 100 feet upstream of Rowe Run Road (State Route 433)	*593
Approximately 500 feet upstream of Muddy Run Road (Township Route 604)	*602
Rowe Run:	
Confluence with Muddy Run	*586
Approximately 0.9 mile upstream of confluence with Muddy Run	*589
Approximately 700 feet downstream of Pinola Road (Legislative Route 28015)	*598
Approximately 1,500 feet upstream of Pinola Road (Legislative Route 28015)	*608
Approximately 0.5 mile downstream of upstream corporate limits	*618
Upstream corporate limits	*625
Maps available for inspection at the Municipal Building, Shippensburg, Pennsylvania.	
South Greensburg (Borough), Westmoreland County (FEMA Docket No. 6682)	
Jacks Run:	
Downstream corporate limits	*976
Approximately 100 feet downstream of Keystone Avenue bridge	*977
Upstream side of CONRAIL bridge	*979
Approximately 300 feet downstream of Huff Avenue bridge	*982
Approximately 50 feet upstream of Huff Avenue bridge	*983
Upstream corporate limits	*986
State Creek:	
Downstream corporate limits	*976
Downstream side of State Route 819	*976
Upstream corporate limits	*980
Maps available for inspection at the Municipal Building, 1515 Poplar Street, South Greensburg, Pennsylvania.	
Stonycreek, Township, Cambria County (FEMA Docket No. 6401)	
Stony Creek:	
Downstream corporate limits	*1,198
Chessie System bridge	*1,204
Upstream of Boone Street	*1,209
Upstream corporate limits and Kringa Highway	*1,241
Maps available for inspection at the Township Building, 1810 Bedford Street, Stonycreek, Pennsylvania.	
Washington (Township), Franklin County (FEMA Docket No. 6676)	
West Branch Antietam Creek:	
Approximately .35 mile downstream of Marsh Road	*589
Upstream side of State Route 16/Buchanan Trail East	*608
Upstream side of Western Maryland Railroad	*623
Upstream side of Wayne Highway/State Route 316	*632
At upstream corporate limits	*645
East Branch Antietam Creek:	
Approximately 600 feet downstream of Goods Dam Road	*577
At upstream side of Anthony Highway/State Route 997	*593
Approximately 300 feet upstream of State Route 16/Buchanan Trail East	*622
At upstream of Eigenbrode Lane	*673
At downstream side of Mentzer Gap Road/LR28024	*686
Approximately .19 mile downstream of upstream corporate limits	*753
Red Run:	
At confluence with East Branch Antietam Creek	*599
Approximately 200 feet upstream of Baer Road/T-370	*606
Approximately 500 feet upstream of Amsterdam Road	*665
Approximately 75 feet downstream of Skiway Drive	*776
Falls Creek:	
At confluence with Red Run	*652
At downstream side of Midvale Road/LR28024	*667
At downstream side of Penmar Road/LR28026	*765
Maps available for inspection at the Municipal Building, Waynesboro, Pennsylvania.	
Washington (Township), Snyder County (FEMA Docket No. 6676)	
Middle Creek:	
Downstream corporate limits	*441
Upstream side of State Route 35	*446
Upstream side of Creek Road	*456
Upstream corporate limits	*458
Maps are available for inspection at R.D. 3, Middleburg, Pennsylvania.	
Waynesburg (Borough), Greene County (FEMA Docket No. 6682)	
South Fork Tenmile Creek:	
Downstream corporate limits	*934
Confluence of Purman Run	*936
Upstream side of Morgan Street bridge	*937
Upstream corporate limits	*940
Purman Run:	
Downstream side of Green Street bridge	*936
Upstream side of High Street bridge	*938
Approximately 100 feet downstream of East Street bridge	*940
Approximately 50 feet upstream of East Street bridge	*942
Upstream corporate limits	*965
Maps available for inspection at the Waynesburg Borough Building, 90 East High Street, Waynesburg, Pennsylvania.	
Zelienople (Borough), Butler County (FEMA Docket No. 6682)	
Connoquenessing Creek:	
Downstream corporate limits	*899
Upstream side of Beaver Road over Muntz Run	*899
Upstream side of Market Street over Glade Run	*900
Upstream side of State Route 288/588	*902
Upstream corporate limits	*906
Maps available for inspection at the Municipal Building, 111 West New Castle Street, Zelienople, Pennsylvania.	
RHODE ISLAND	
Charlestown (Town), Washington County (FEMA Docket No. 6668)	
Block Island Sound:	
Entire shoreline within community	*16
Intersection of Buddington and Overlook Avenue	*12
Pawcatuck River:	
Downstream corporate limits	*39
Upstream side of State Route 91	*52
Downstream side of Shannock Road (upstream crossing)	*74
Approximately 1,500 feet upstream of Biscuit City Road	*90

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the Building Inspector's Office, South County Trail, Route 2, Charlestown, Rhode Island.	
Providence (City), Providence County (FEMA Docket No. 6676)	
Providence River:	
Upstream side of Fox Point Hurricane Barrier	*5
At confluence of Moshassuck River	*6
Shoreline 1,000 feet west of southern most tip of Fields Point	*21
Shoreline at Sassafras Point	*17
Intersection of Allens Avenue and Henderson Street	*16
Woonasquatucket River:	
Approximately 500 feet downstream of Francis Street	*6
Upstream side of Acorn Street	*9
Downstream side of Paragon Dam	*24
Upstream side Glenbridge Avenue	*49
At upstream corporate limits	*60
Moshassuck River:	
At confluence with Woonasquatucket River	*6
Upstream side of Randall Street	*27
Upstream side of Interstate Route 95 entrance ramp	*30
Upstream side of Cemetery Street	*33
At upstream corporate limits	*34
West River:	
Downstream side of Interstate Route 95	*30
Upstream side of Charles Street	*33
Downstream side of Hawkins Street	*35
Approximately 100 feet downstream of Branch Avenue	*41
Downstream side of Veazie Street	*51
Downstream side of Whipples Pond Dam	*60
At upstream corporate limits	*78
Upper Canada Pond Brook:	
At Confluence with West River	*38
Upstream side of Upper Canada Pond Dam	*58
Pocasset River:	
At upstream corporate limits	*75
At downstream corporate limit	*75
Seekonk River:	
Shoreline at Goose Point	*20
Shoreline at east end of George H. Henderson Memorial Bridge	*19
Intersection of Gano Street and Wickenden Street	*16
Ponding Area: 100 feet northeast of intersection of Derry Street and Oregon Street	*25
Sheet flow: Along Amtrak from 900 feet north of Charles Street to 50 feet south of Smith Street	#2
Maps available for inspection at the Department of Inspection and Standards, 60 Eddy Street, Providence, Rhode Island.	
West Warwick (Town), Kent County (FEMA Docket No. 6676)	
Pawtuxet River:	
At downstream corporate limits	*38
Crest of Natick Dam	*55
Confluence with North and South Branch Pawtuxet River	*56
North Branch Pawtuxet River:	
Confluence with Pawtuxet River	*56
Upstream side of Main Street bridge	*63
At upstream corporate limits	*102
South Branch Pawtuxet River:	
Confluence with Pawtuxet River	*56
Crest of Dam Number 147	*84
Upstream side of Dam Number 148	*130
Upstream corporate limits	*147
Lippitt Brook:	
Approximately 35 feet downstream of the downstream face of the Main Street culvert	*85
Upstream side of Packard Street bridge	*87
Downstream face of Bettez Street culvert	*109
Lippitt Brook: Sheet Flow:	
Along Main Street	#1
Between Main Street and Dam Number 155	#1
Hardig Brook:	
Upstream face of Quaker Lane culvert	*122
Upstream face of Glen Drive culvert	*129
Downstream side of Revere avenue bridge	*163

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Hardig Brook: Sheet Flow: On top of Colt Avenue culvert	#1
Hawkinson Brook:	
Confluence with South Branch Pawtuxet River	*147
Crest of Dam Number 195	*157
Crest of dam located approximately 700 feet upstream of turner Drive	*197
Approximately 550 feet downstream of Green Bush Road	*199
Tributary to Masterchugg River:	
Upstream side of Quaker Lane culvert	*227
Upstream face of westbound Interstate 95 culvert	*244
Baker Street Brook:	
Confluence with South Branch Pawtuxet River	*130
Downstream face of CONRAIL culvert	*136
Upstream face of CONRAIL culvert	*149
Maps available for inspection at the Building Inspector's Office, Town Hall, West Warwick, Rhode Island (c/o John J. O'Hare, Town Planner).	
TEXAS	
Corinth (Town), Denton County (FEMA Docket No. 6682)	
Bryant Branch:	
At downstream corporate limits	*537
Upstream face FM 2181	*547
Upstream face Lake Sharon Dam Road	*573
At upstream corporate limits	*574
Griffins Creek:	
At confluence with Veal Springs Branch	*537
Upstream face FM 2181	*557
Approximately 1,440 feet upstream of FM 2181	559
Lynchbury Creek:	
Approximately 400 feet downstream of downstream corporate limits	*539
Approximately .54 mile downstream of Missouri-Kansas Texas Railroad	*553
Upstream face Missouri-Kansas Texas Railroad	*566
Upstream face Interstate Route 35	*574
Approximately 100 feet upstream of South Corinth Street	*579
Stream PEC-1: Entire length affecting community	*594
Swisher Creek:	
Approximately 100 feet downstream of corporate limits	*556
Approximately 200 feet upstream of Missouri-Kansas Texas Railroad	*566
At Interstate Route 35 & U.S. Route 77	*575
Approximately 150 feet upstream of South Garrison Drive	*578
Veal Springs Branch:	
At downstream corporate limits	*537
Approximately 660 feet downstream of FM 2181	*544
Approximately 100 feet upstream of FM 2181	*563
Lewisville Lake: Entire shoreline	*597
Maps available for inspection at the City Hall, 2003 South Corinth, Route 3, Denton, Texas.	
Garden Ridge (City), Comal County (FEMA Docket No. 6676)	
Garden Ridge Tributary (Apple Run):	
Approximately 250 feet downstream of corporate limits	*834
At Sundew Lane	*861
Approximately .4 mile upstream of Sundew Lane	*884
Maps available for inspection at the City Hall, Garden Ridge, Texas.	
New Braunfels (City), Comal County (FEMA Docket No. 6625)	
Alligator Creek:	
Approximately 0.44 mile upstream of corporate limits (extended)	*627
Approximately .82 mile upstream of corporate limits (extended)	*632
Approximately 1.37 miles upstream of corporate limits (extended)	*638
Comal River:	
At confluence with Guadalupe River	*604
At confluence of Old Channel Comal River	*611

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Dry Comal Creek:	
At confluence of Old Channel Comal River	*611
Downstream side of Missouri-Pacific Railroad	*622
Downstream side of North Live Oak Avenue	*634
Upstream side of State Loop 337	*641
Downstream side of Missouri-Kansas-Texas Railroad	*650
At upstream corporate limits	*663
Old Channel Comal River:	
At confluence with Comal River	*611
At confluence of New Channel Comal River	*622
Comal Springs:	
At confluence with New Channel Comal River	*622
At Klingermann Street	*633
Bleders Creek:	
Approximately 840 feet downstream of Lakeview Boulevard	*633
At upstream corporate limits	*654
Guadalupe River:	
At downstream corporate limits	*586
At confluence of North Guadalupe Tributary	*591
Upstream side of U.S. Route 81	*599
Downstream side of East Common Street	*607
Upstream side of State Loop 337	*612
At upstream corporate limits	*625
North Guadalupe Tributary:	
At confluence with Guadalupe River	*591
Approximately .75 mile upstream of confluence with Guadalupe River	*603
Downstream side of Seguin Avenue	*614
Upstream side of McQueeny Road	*625
Approximately .43 mile upstream of McQueeny Road	*630
Downstream side of Mesquite Avenue	*652
Approximately 50 feet upstream of Farm Road 1044	*679
South Guadalupe Tributary:	
At confluence with North Guadalupe Tributary	*596
Downstream side of Seguin Avenue	*614
Upstream side of McQueeny Road	*626
Approximately .65 mile upstream of McQueeny Road	*640
At upstream corporate limits	*659
Maps available for inspection at the New Braunfels City Hall, New Braunfels, Texas.	
Pasadena (City), Harris County (FEMA Docket No. 6645)	
Galveston Bay (F200-00-00):	
Shoreline at El Jardin Drive (extended)	*18
At confluence of Barge Canal with Boggy Bayou	*12
Clear Creek (Clear Lake) (A100-00-00):	
Shoreline at Denton Drive (extended)	*15
Approximately 100 feet northeast of NASA Road at mouth of Forrest Lake	*12
Taylors Bayou (A104-00-00):	
Downstream corporate limits	*11
Unstream corporate limits	*11
Tributary 3.93 to Taylors Bayou (A104-07-00):	
At downstream corporate limits	*11
Approximately 120 feet upstream of corporate limits	*11
Forrest Lake-Armand Bayou (B100-00-00):	
Approximately 550 feet upstream of NASA Road	*11
At Confluence of Horsepen Bayou (B104-00-00)	*11
Approximately 0.47 mile upstream of confluence of Spring Gully (B109-00-00)	*15
Upstream side of Genoa-Red Bluff Road	*20
Approximately 800 feet upstream of Fairmont Parkway	*25
Approximately 350 feet upstream of Dupont Street	*30
Horsepen Bayou (B104-00-00):	
At confluence with Armand Bayou (B100-00-00)	*11
Approximately 1,500 feet upstream of Escuela Lane	*16
Big Island Slough (B106-00-00):	
At confluence with Armand Bayou (B100-00-00)	*12
At upstream corporate limits	*17
Spring Gully (B109-00-00):	
At confluence with Armand Bayou (B100-00-00)	*15

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Upstream side of northbound Red Bluff Road	*15
Tributary 9.40 to Armand Bayou (B110-00-00):	
At confluence with Armand Bayou (B100-00-00)	*19
Upstream corporate limits	*19
Willow Springs Bayou (B112-00-00):	
At confluence with Armand Bayou (B100-00-00)	*21
Upstream corporate limits	*21
Tributary 10.46 to Armand Bayou (B113-00-00):	
At confluence with Armand Bayou (B100-00-00)	*22
Upstream side of Jana Lane	*27
Approximately 0.51 mile upstream of Jana Lane	*29
Tributary 12.18 to Armand Bayou (B115-00-00):	
At confluence with Armand Bayou (B100-00-00)	*26
Downstream side of Beltway 8 (southbound)	*30
Buffalo Bayou (W100-00-00): At confluence of Tributary 6.77 to Buffalo Bayou	*12
Glenmore Ditch (G108-00-00):	
At downstream corporate limits	*16
Upstream side of Port Terminal Railroad	*23
Approximately 500 feet upstream of State Route 225	*29
Tributary 6.77 to Buffalo Bayou:	
At downstream corporate limits	*12
Approximately 780 feet upstream of downstream corporate limits	*12
Tributary 8.17 to Buffalo Bayou:	
At downstream corporate limits	*12
Approximately 50 feet downstream of Port Terminal Railroad crossing	*12
Vince Bayou (I100-00-00):	
At downstream corporate limits	*12
At State Route 225	*14
Approximately 300 feet downstream of West Harris Avenue	*16
At West Southmore Avenue	*24
Upstream side of Queens Road	*29
Approximately 1,500 feet upstream of Spencer Highway	*33
Approximately 100 feet upstream of Fairmont Parkway	*35
Little Vince Bayou (I101-00-00):	
At downstream corporate limits	*12
Upstream side of West Shaw Avenue	*19
At Jackson Avenue	*25
At Jenkins Road	*28
Approximately 250 feet upstream of Blake Avenue	*30
Downstream side of Wichita Street	*33
Maps available for inspection at 1211 East Southmore, Pasadena, Texas.	
Westworth Village (City), Tarrant County (FEMA Docket No. 6682)	
West Fork Trinity River:	
Approximately 150 feet downstream of downstream corporate limits	*552
Upstream side of channel dam located approximately 110 feet upstream of River Oaks Boulevard	*556
Approximately 40 feet upstream of upstream corporate limits	*558
Farmer's Branch:	
At confluence with West Fork Trinity River	*556
At Texas and Pacific Railroad	*572
At upstream corporate limits near Loop 341	*635
Kings Branch:	
At most downstream Government Property line	*566
Upstream side of Roaring Springs Road	*582
Approximately 140 feet upstream of upstream corporate limits	*595
Maps available for inspection at the City Hall, 311 Burton Hill Road, Fort Worth Village, Texas.	
VERMONT	
Bennington (Town) Bennington County (FEMA Docket No. 6649)	
Walloomsac River:	
At downstream corporate limits	*517
Downstream side of Henery Covered Bridge	*540
Downstream side of Murphy Road	*553

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Upstream side of Paper Mill Bridge	*562
Upstream side of Robinson Covered Bridge	*567
Upstream side of Hicks Avenue Foot Bridge	*610
Confluence with Roaring Branch	*618
South Stream:	
Confluence with Roaring Branch	*618
Approximately 65 feet upstream of Hunt Street	*625
Upstream side of Leonard Street	*642
Upstream side of Benmont Avenue	*661
Upstream side of U.S. Route 7	*680
Upstream side of Park Street	*699
Upstream side of State Route 9	*734
Approximately 0.8 mile upstream of State Route 9	*752
Roaring Branch:	
Confluence with Walloomsac River	*618
Upstream side of Park Street	*665
Upstream side of Brooklyn Drive	*750
Downstream side of State Route 9	*914
Approximately 0.5 mile upstream of State Route 9	*970
Furnace Brook:	
Confluence with Walloomsac River	*575
Downstream side of Morse Borrow Pit Bridge	*578
Upstream side of Orchard Road	*613
Upstream side of Park Street	*650
Approximately 1,400 feet upstream of Park Street	*644
Maps available for inspection at the Zoning Administration Office, Bennington, Vermont.	
St. Johnsbury (Town), Caledonia County (FEMA Docket No. 6682)	
Passumpsic River:	
Downstream corporate limits	*537
Upstream side of interstate 91	*548
Upstream side of Portland Street	*560
Upstream side of Arnold Falls Dam	*579
Upstream side of St. Johnsbury Center bridge	*591
Upstream side of U.S. Route 5	*595
Upstream of Pierce Mills Dam	*613
Upstream corporate limits	*620
Moose River:	
Confluence with Passumpsic River	*561
Upstream side of Portland Street	*604
Upstream of U.S. Route 2 (downstream crossing)	*726
Upstream side of of Locke Bridge	*750
Approximately 180 feet upstream, of East St. Johnsbury bridge	*792
Upstream corporate limits	*800
Sleepers River:	
Confluence with Passumpsic River	*553
Upstream side of Danville Road	*581
Upstream side of Interstate 91	*584
Approximately 1,500 feet upstream of Al Wright bridge	*686
Maps available for inspection at the Town Manager's Office, Municipal Building, St Johnsbury, Vermont.	
VIRGINIA	
Craigsville (Town), Augusta County (FEMA Docket No. 6640)	
Grassy Run:	
At downstream corporate limits	*1,503
At confluence of Sulphur Springs Hollow	*1,519
At confluence of Stuples Hollow	*1,547
Approximately 175 feet upstream of upstream corporate limits	*1,573
Taylor Hollow:	
At confluence with Grassy Run	*1,512
Upstream side of Railroad Avenue	*1,530
Approximately 500 feet upstream of corporate limits	*1,556
Staples Hollow:	
At confluence with Grassy Run	*1,547
Approximately 30 feet upstream of Madison Street	*1,585
At upstream corporate limits	*1,627
Sulphur Springs Hollow:	
At confluence with Grassy Run	*1,519
At confluence of Staples Hollow	*1,536
Approximately 40 feet upstream corporate limits	*1,566
Staples Hollow:	
At confluence with Sulphur Springs Hollow	*1,536
At Howald Street	*1,560
At upstream corporate limits	*1,582
Maps available for inspection at the Craigsville Town Hall, Craigsville, Virginia.	
WASHINGTON	
Eatonville (Town), Pierce County (FEMA Docket No. 6682)	
Mashel River: 25 feet downstream from center of Eatonville-LaGrande Highway	*772
Maps available for review at Town Hall, Eatonville, Washington.	
Ruston (Town), Pierce County (FEMA Docket No. 6682)	
Puget South (Commencement Bay): Approximately 1,050 feet east of the intersection of Bennett Street and North 54th Street, extended to shoreline of Commencement Bay	*9
Maps available for inspection at Ruston Town Hall, Tacoma, Washington.	
Woodway (Town), Snohomish County) (FEMA Docket No. 6682)	
Puget Sound: At Deer Creek Confluence	*10
Maps available for inspection at Woodway Town Hall, Edmonds, Washington.	

Issued: January 22, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-2016 Filed 1-30-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 212, 217, 219, and 225

[FRA Docket No. RSOR-6, Notice No. 14]

Second Notice of Revised Effective Dates; Control of Alcohol and Drug Use in Railroad Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of revised effective dates and conforming amendments.

SUMMARY: This notice sets forth new effective dates for the final rule on Control of Alcohol and Drug Use in Railroad Operations, including miscellaneous related amendments to FRA safety regulations. The final rule had been suspended in compliance with a stay pending appeal issued by the U.S. Court of Appeals for the Ninth Circuit. The Supreme Court has vacated the stay, which permits FRA to put the rule into effect while the pending litigation continues.

DATES: Part 219 is effective on February 10, 1986. However, compliance by a

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railroad with Subpart C is not mandatory until March 10, 1986; and compliance by a railroad with Subpart F is not mandatory until May 1, 1986. The final rule amendments to Parts 212, 217, and 225 are effective on February 10, 1986.

FOR FURTHER INFORMATION CONTACT:
Walter C. Rockey, Jr., Executive Assistant to the Associate Administrator for Safety, FRA (Telephone: 202–426–0895), or Grady C. Cothen, Jr., Special Assistant to the Chief Counsel (Telephone: 202–426–9416).

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1985, FRA issued a final rule on Control of Alcohol and Drug Use in Railroad Operations (50 FR 31508; Aug. 2, 1985), which included a new Part 219 in Title 49, Code of Federal Regulations, and certain amendments to Parts 212, 217, 218, and 225 of that title. FRA published technical corrections and amendments on September 24, 1985 (50 FR 38660) and October 31, 1985 (50 FR 45406).

With certain exceptions, the final rule became effective on November 1, 1985. On that date the U.S. District Court of the Northern District of California (Judge Legge) issued a temporary restraining order (TRO) that prohibited FRA from continuing in effect or further implementing any portion of the final rule. The TRO issued on application of the plaintiffs in *Railway Labor Executives' Association* v. *Dole*, Civil Action No. 85–7958. In compliance with the TRO, FRA published a notice suspending the operation of the final rule, pending further notice, on November 5, 1985 (50 FR 45917).

On November 26, 1985, the court heard arguments on cross motions for summary judgment filed by the plaintiff unions and the Government defendants. At the conclusion of the arguments, Judge Legge ruled orally that the final rule was valid in all respects and that the Government's motion for summary judgment should be granted. On December 9, 1985, the court entered a final order and judgment in the Government's favor and dissolved the TRO, thus allowing FRA to make the final rule effective at its discretion. Judge Legge also denied the plaintiff unions' motion to stay his decision (and enjoin the regulations) pending appeal.

On December 12, 1985, FRA published Notice No. 12 (50 FR 50868), containing a new schedule of effective dates for this rule. Under that notice, Part 219 was to have become effective on January 6, 1986. Post-Accident Toxicological Testing under Subpart C would have been authorized as of January 6, but would not have been mandatory until February 1, 1986. Pre-Employment Drug Screens would not have been mandatory until April 1, 1986. Conforming amendments to related FRA regulations in Parts 212, 217, and 225 were to have become effective, and did become effective, on January 1, 1986. An editorial amendment to the title of Part 218 was effective on December 12, 1985, the date of publication of Notice No. 12 (and is not affected by this notice).

On December 16, 1985, plaintiffs filed a notice of appeal with the Ninth Circuit. *Railway Labor Executives' Association* v. *Dole*, No. 85–2891. On that same date plaintiffs filed an Emergency Motion For Order Restoring or Granting Injunction Pending Appeal, asking the court to enjoin implementation of the rule while the appeal is being briefed and decided. The Government defendants filed their opposition to that motion on December 19. The court issued an order granting the motion on January 3, 1986. In response to the order, FRA published Notice No. 13 on January 8, 1986. That notice again suspended the final rule, retroactive to January 3, pending further notice (51 FR 756).

On January 15, 1986, the Solicitor General filed an application with the Supreme Court to vacate the Ninth Circuit stay order, which would permit the rule to go into effect during the period of appellate review. Under the Supreme Court rules, this application was presented to Justice William H. Rehnquist, as Circuit Justice for the Ninth Circuit, for action. On January 22, Justice Rehnquist referred the Government's application to vacate the Ninth Circuit "stay pending appeal" to the full Supreme Court. On January 27, 1986, the Court issued an order granting the Government's motion to vacate the stay, an action which permits FRA to put the final rule into effect while judicial review proceeds.

Rule Made Effective

FRA has determined that the several regulations contained in the final rule should be promptly implemented in order to make maximum contribution to the safety of persons and property. Railroads and their employees have participated in a necessarily lengthy rulemaking process and a series of regional seminars conducted by FRA in September and October of 1985. All parties benefited from the preparation made possible during the interval between issuance of the rule on August 2, 1985, and the original effective date of November 1, 1985. The interval between the district court's dissolution of the TRO (on December 9, 1985) and the Ninth Circuit stay order of January 3, 1986, provided additional opportunity to prepare for compliance. Accordingly, those provisions most recently scheduled to go into effect on January 1, 1986, or January 6, 1986, are made effective on February 10, 1986. FRA would make these rules effective forthwith were it not for the need to provide an appropriate period for the railroads and the labor organizations to disseminate appropriate information concerning the new effective date throughout the national rail system.

By the same token, FRA, is aware that the planning time so essential for compliance with the requirements for Post-Accident Toxicological Testing and Pre-Employment Drug Screens has now twice been interrputed by factors beyond the control of FRA and the railroads. The safety goals of these provisions cannot be realized unless these measures are undertaken with care and with appropriate consideration for the rights of employees and applicants. This will require, among other steps, a renewed and sustained effort by the railroads to finelize arrangements with health care facilities that will collect body fluid samples. Accordingly, the requirement that railroads conduct Post-Accident Toxicological Testing will be mandatory as to specified accidents/incidents occurring on and after March 10, 1986; and the requirement that railroads conduct Pre-Employment Drug Screens will be mandatory as to hiring conducted on and after May 1, 1986. Again, railroads that are prepared to implement these measures prior to those dates are authorized to do so on and after February 10, 1986.

The following table summarizes the new effective date schedule.

Part 219—Control of Alcohol and Drug Use

Subparts A and B (General, Prohibition), February 10, 1986
Subpart C (Post-Accident Tox. Testing))
(authorized), February 10, 1986
(mandatory), March 10, 1986
Subpart D (Authorization to Test for Cause), February 10, 1986
Subpart E (Identification of Troubled Employees), February 10, 1986
Subpart F (Pre-Employment Drug Screens)
(authorized), February 10, 1986
(mandatory), May 1, 1986

Part 212—State Safety Participation Regulations

(Amendments to State Participation Regulations), February 10, 1986

Part 217—Railroad Operating Rules

(Amendments to § 217.13 and Appendix A, regarding annual reports of operational tests and inspections), February 10, 1986

Part 225—Railroad Accident/Incidents: Reports, Classification, and Investigations

(Amendment to § 225.17 re: alcohol/drug involvement in train accidents), February 10, 1986

Regulatory Impact

The changes in regulatory language made by this notice deal exclusively with effective dates and therefore are non-major under Executive Order 12291. Although the final rule in this proceeding was deemed to be significant under DOT policies and procedures (44 FR 11034), the amendments related to effective dates are not deemed to be significant and will have no economic impact.

FRA determines that there is good cause for making certain portions of the final rule effective less than 30 days after publication of this notice in the **Federal Register**, since the regulations were initially published more than 30 days prior to such dates and since the regulated industry has already had adequate opportunity to prepare for implementation of those provisions.

The effective date amendments will not increase the economic burden of the existing regulation for any person. Accordingly, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In addition, these amendments do not contain directly or indirectly provisions concerning the collection of information that are subject to the Paper Work Reduction Act of 1980 (5 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 219

Railroad safety, Control of alcohol and drug use.

Issued in Washington, DC, on January 29, 1986.

John H. Riley,
Federal Railroad Administrator.

Certain of the effective date provisions in the new Part 219 were incorporated in the rule text, which was previously amended (50 FR 50888, 50889; Dec. 12, 1985). Therefore, in consideration of the foregoing, Part 219, title 49 Code of Federal Regulations, is further amended as follows:

PART 219—[AMENDED]

1. The authority for Part 219 continues to read as follows:

Authority: Secs. 202 and 209, Pub. L. No. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49. Subpart C also issued under sec. 286, Pub. L. No. 91–458, 84 Stat. 974, as amended (48 U.S.C. 437)

2. The suspension appearing in the Federal Register of January 6, 1986 (51 FR 756) on Part 219 and the Amendments to Parts 212, 217, and 225 is removed.

§ 219.11 [Amended]

3. Section 219.11 is amended by removing "January 6, 1986" from paragraphs (a) and (f) and by inserting in lieu thereof "February 10, 1986".

§ 219.201 [Amended]

4. Section 219.201 is amended by removing "February 1, 1986" in paragraph (a) and by inserting in lieu thereof "March 10, 1986".

§ 219.501 [Amended]

5. Section 219.501 is amended by removing "April 1, 1986" in paragraph (a) and by inserting in lieu thereof "May 1, 1986".

[FR Doc. 86-2248 Filed 1-29-86; 12:14 pm]
BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 51, No. 21
Friday, January 31, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y; Docket No. R-0567]

Bank Holding Companies and Change in Bank Control; Capital Maintenance; Supplemental Adjusted Capital Measure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: In April 1985, the Board announced revised Guidelines for minimum and appropriate levels of capital for bank holding companies and state chartered banks that are members of the Federal Reserve System. (50 Fed. Reg. 16057 (1985)) These revised Guidelines, contained in Appendix A to the Board's Regulation Y, 12 CFR Part 225, were designed to establish, in conjunction with other federal bank regulatory agencies, uniform capital standards for all federally regulated banking organizations regardless of size. These uniform capital standards were based on ratios of primary and total capital to total assets.

The Board believes that there is a need to modify its capital policies to be more explicitly and systematically sensitive to the risk exposure of individual banking organizations. Consequently, the Board is proposing to amend its current Guidelines by adding the following supplemental adjusted capital measure that the Board would consider in tandem with existing minimum primary and total capital-to-total assets ratios in analyzing the capital levels of bank holding companies and state chartered banks that are members of the Federal Reserve System.

DATE: Comments must be received by April 25, 1986.

ADDRESS: All comments, which should refer to Docket No. R-0567, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the Office of the Secretary, Room 2200, Eccles Building, 20th and Constitution Avenue, NW., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room 1122, Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Richard Spillenkothen, Deputy Associate Director (202/452-2594), Anthony G. Cornyn, Assistant Director (202/452-3354), or Catherine Piché, Financial Analyst (202/728-5871), Division of Banking Supervision and Regulation or James E. Scott, Senior Attorney, Legal Division (202/452-3513) of the Board's staff; or Andrew Spindler, Vice President, Federal Reserve Bank of New York (212/791-5846).

SUPPLEMENTARY INFORMATION:

1. Background

The Need for a Supplemental Adjusted Capital Measure

In announcing its revised Capital Adequacy Guidelines in April 1985, 50 FR 16057, the Board expressed its continuing concern that the emphasis in the Guidelines on ratios based on the total amount of assets should not be interpreted to exclude considerations of risk. The Board proposed to deal with the issue of risk on a case-by-case basis, stating: (1) That it would assess the overall capital position of a banking organization by taking account not only of the volume of the organization's risk assets but also of its off-balance-sheet risks (although such risks were not explicitly included in the capital ratios); (2) that the Guideline ratios were minimums and banking organizations with high levels of on- or off-balance-sheet risk would be expected to operate above the minimum ratios, and (3) that the banking organizations would be expected to avoid the practice of attempting to meet the minimum ratios by decreasing the level of liquid assets relative to total assets. The Board also indicated that it would continue to review the need for more explicit procedures for factoring on- and off-balance-sheet risks into the assessment of capital adequacy.

In response to comments received in connection with the 1985 revisions to the Capital Adequacy Guidelines, the Board acknowledged that, in addition to an assessment of minimum and adequate capital levels based solely upon the total quantity of assets, there would be significant analytical value to a systematic evaluation of appropriate capital levels based upon consideration of the degree of risk associated with such assets.

Several developments over the last few years suggest the need to modify the Board's capital policies to make them more sensitive to certain risk exposures of individual banking organizations. First, there has been a substantial growth in off-balance-sheet risks—a phenomenon that does not appear to have been significantly tempered by the subjective factoring of these risks into overall assessments of capital adequacy. One indication of this trend has been the growth in standby letters of credit issued by multinational banks, which have increased, on average, from 5.8 percent of the aggregate assets of those banking organizations at the end of 1981 to 11.4 percent of assets at midyear 1985. Among multinational bank holding companies, this one category of off-balance-sheet risk ranges from less than five percent to well over 15 percent of total assets. In absolute terms, the volume of standby letters of credit for the multinational institutions has more than doubled from $49 billion in 1981 to $105 billion at midyear 1985.

Significant growth has also occurred in legally binding loan commitments, including those issued in connection with commercial paper programs and Euromarket note issuance facilities. The advent of other financial innovations, such as interest rate swaps, has also had the result of creating significant off-balance-sheet exposure. Taken together, off-balance-sheet items represent a very substantial exposure that is not now factored *explicitly* into the Federal Reserve's minimum capital ratios.

Second, there is some evidence that the holdings of low-risk, liquid assets in relation to total assets, particularly by the larger organizations, have declined over recent years. This suggests that, while capital to *total* assets ratios may have improved over time, capital in relation to risk exposure may not have improved commensurately. For the multinational banks, liquid assets (defined as bank certificates of deposit, Fed funds sold and securities maturing within one year) have declined as a percent of total assets from 15.6 percent

at the end of 1981 to 12.8 percent at June 30, 1985. Beyond this, examiners have generally observed decreases in liquid assets at banks regarded as more aggressive with respect to capital management and growth, and it has been argued that existing capital policies provide incentives to deemphasize low-risk, low-yield business.

While there may be a number of reasons for these balance sheet adjustments, the Board is concerned that they may be, in part, a response to the imposition of capital requirements that do not distinguish explicitly among various risk categories of assets and that do not make explicit allowance for the lessened threat to capital inherent in low-risk activities. Thus, some banking organizations appear to be reducing their holdings of low-risk assets and deemphasizing their conduct of low-risk activities in an effort to meet more stringent capital requirements. Although these adjustments may improve or otherwise maintain capital ratios at what appear to be acceptable levels, they do not, especially in conjunction with the growth in off-balance-sheet risks, strengthen an organization's risk profile. Indeed, such adjustments could, under certain circumstances, undermine an organization's financial condition.

Third, increased international competition points toward the need for a greater degree of convergence in the policies of various countries for supervising the capital adequacy of multinational banking organizations. In this regard, many European countries have developed risk-based capital measures, and a similar supervisory approach is evolving in Japan.

Finally, the growth and change in the nature of risks to which banking organizations have become exposed suggest the need to provide more explicit guidance to bankers and examiners for assessing capital needs in relation to risk.

The purpose of the Proposed Supplemental Adjusted Capital Measure

The Board believes that adoption of a supplemental adjusted capital measure based upon an assessment of distinct but necessarily broad risk categories could provide a valuable additional analytical tool in assessing the financial strength and stability of individual organizations and the banking system as a whole. Even such a limited risk-adjusted measure of capital adequacy would provide the Board with a supplemental means of assessing whether the capital level of individual banks and bank holding companies is fully adequate to serve the key functions of capital, namely to provide a buffer to absorb losses in times of poor performance, to promote the safety of depositors' funds, to help maintain public confidence in banking organizations, and to support the reasonable growth of such organizations. To achieve these purposes, it is essential that an organization's capital base bear a reasonable relationship to the risk profile of that organization.

In addition to providing another tool for assessing capital adequacy, the proposed supplemental adjusted capital measure will further certain policy objectives. By including an assessment of off-balance-sheet risk as part of the supplemental adjusted capital ratio, this measure would permit the Board to address off-balance-sheet exposures, which, as indicated above, have expanded rapidly over the last several years. The proposed measure would also temper somewhat the disincentives inherent in the existing Guidelines to hold low-risk, relatively liquid assets. In addition, adoption of this proposal would begin to move capital adequacy policies in the United States more closely in line with those of other major industrial countries. Finally, the proposed measure would provide more explicit guidance to bankers and examiners for relating capital to risk profiles.

2. Description of the Proposal

Introduction and Overview

This proposal involves a risk-sensitive capital measure that would supplement the Board's existing Capital Guidelines. The proposal is based upon an additional capital ratio, in this case a ratio of primary capital to total assets adjusted for risk, that the Board will consider in tandem with, rather than in place of, the minimum primary and total capital ratios defined in the current Guidelines. The proposed supplemental adjusted capital measure would be incorporated as an additional section of the current Capital Adequacy Guidelines, Appendix A to Regulation Y, 12 CFR Part 225.

Moreover, while the proposal endeavors to relate in a more *systematic* fashion an organization's capital needs to its overall risk profile, the proposed supplemental adjusted capital ratio does not purport to take explicit account of *all* of the many types of risks to which banking organizations are exposed. For example, the proposal does not take explicit account of the risks associated with significant asset concentrations, or with exposure to interest rate changes. In addition, the measure is not intended to substitute for examiner judgment in the assessment of an organization's capital adequacy. If the supplemental capital measure is adopted, examiners and regulators will still be required to consider the entire range of qualitative and subjective factors, such as the quality of an organization's management, internal systems and controls, and lending standards, as well as other relevant financial factors, such as the quality of assets and the strength, trend and variability of earnings and liquidity, in order to assess fully an organization's capital adequacy.

The Supplemental Adjusted Capital Ratio

The proposed supplemental adjusted capital measure would relate primary capital, as defined in the Board's current Guidelines, to total assets weighted for risk considerations. To determine the asset portion of the supplemental adjusted capital ratio, assets and certain off-balance-sheet items are assigned to one of four broad risk categories and weighted according to the relative risk of that category. The determination of asset groupings and the assignment of weights primarily reflect credit risk considerations, with some sensitivity to liquidity concerns. The types of assets and off-balance-sheet items in each category and the rationale for assigning certain items to a particular category are discussed below. The proposed amendment to the Guidelines contains a listing of the components of each risk category and the weight assigned to that category.

a. *Category I: Cash and equivalents.* This category includes assets generally considered to be riskless such as vault cash and balances due from Federal Reserve Banks, balances due from foreign central banks in immediately available funds, and "near cash" assets, such as cash items in the process of collection and transaction accounts due from U.S. depository institutions.[1] In addition, United States Treasury securities held in the investment account with original or remaining maturities of one year or less are included in this category. These items are assigned a zero weight.

[1] The terms U.S. banks and U.S. depository institutions for purposes of this proposal refer to depository institutions chartered under the laws of the United States and include the foreign branches of these institutions. While banks chartered in the U.S. that are subsidiaries of foreign banking organizations are also included in the definition, U.S. branches and agencies of foreign banks are *not* considered to be U.S. banks or depository institutions for purposes of the supplemental adjusted capital measure.

b. *Category II: Money market risk.* The assets included in this category generally have little or not risk of default and a high degree of liquidity. This category includes all holdings of long-term (remaining maturity of over one year) United States Treasury securities, all United States government agency securities, and those portions of loans that are fully guaranteed by the United States government, as well as short-term (90 days of less) claims on U.S. depository institutions. Other money market instruments comprise a significant portion of the remaining assets in this category, including acceptances of other U.S. banks, all Fed funds sold, loans to broker/dealers secured by United States Treasury or agency securities, and securities purchased under agreements to resell. In addition, this category includes all trading account assets, which are typically marked to market on a regular basis. Finally, all legally binding loan commitments, including note issuance facilities [2] are included in this category. These items are assigned a 30 percent risk weight.

c. *Category III: Moderate risk.* This category is composed on those assets with more credit and liquidity risk than those in Category II, but significantly less risk than the standard commercial bank loan portfolio. Included in this category are: all state, county, and municipal ("SCM") securities (excluding industrial development bonds); longer-term claims (over 90 days) of U.S. depository institutions; all claims on governments and banks in industrial countries (as defined herein); holdings of acceptances of banks in industrial countries; and local currency claims on governments and banks of non-industrial countries to the extent funded by local currency liabilities.[3] Also included are loans to broker/dealers collateralized by other marketable securities (as defined by the SEC), commercial letters of credit, and standby letters of credit which are performace-related, or issued on a secured basis to support broker/dealers, or issued in support of SCM securities (excluding those supporting industrial developent bonds). This risk category is assigned a 60 percent weight.

[2] A note issuance facility is a medium-term (5 to 7 years) commitment to help a borrower obtain short-term financing. Participating banks commit to provide funds under a revolving credit or standby arrangement if the client fails to sell notes within a range of predetermined contractual rates.

[3] "Banks" are defined to include their foreign branches and are categorized by the country under whose laws they are chartered.

d. *Category IV: Standard risk.* This category generally comprises those assets found in a typical bank loan portfolio and those not included in the categories above. Thus, this category includes commercial and industrial loans and leases, loans to individuals, loans secured by real estate, farm-related loans, and all other claims on foreign borrowers. This category also includes loans to nondepository financial institutions including insurance companies, mortgage companies, finance companies and bank holding companies. The category is further comprised of all corporate securities and commercial paper, industrial development bonds, and all other standby letters of credit (including those backing industrial development bonds) that are not included in categories above. Finally, the category includes loans sold with recourse, including those that, in the case of bank holding companies, may not, under generally accepted accounting principles, be retained as assets on the balance sheet. (Under bank call report instructions, loans sold with recourse are not removed from the balance sheet.) This risk group contains the bulk or banking assets, including many of significantly dissimilar risk characteristics. This category is assigned a 100 percent risk weight.

Table I contains a list of the types of assets and off-balance-sheet items found in each risk category and the weighting of each category.

Table I.—*Risk Categories and Weights*

Cash and Equivalents (Weight 0%):
- U.S. currency and coin and balances due from Federal Reserve banks.
- Cash items in process of collection and transaction accounts due from U.S. depository institutions.*
- Short-term** U.S. Treasury securities in investment account.
- Foreign currency and balances due from central banks in immediately available funds.

Money Market Risk (Weight 30%):
- Long-term U.S. Treasury securities held in investment account.
- U.S. Government agency securities held in investment account.
- Those portions of loans that are fully guaranteed by U.S. Government.
- Short-term claims (90 days or less) on U.S. depository institutions.
- Acceptances of other U.S. banks.
- All Fed funds sold.

Table I.—*Risk Categories and Weights*—Continued

- Loans to broker/dealers collateralized by U.S. Treasury and agency securities, and securities purchased under agreement to resell (RPs).
- Assets held in trading account.
- Legally binding loan commitments (including note issuance facilities).

Moderate Risk (Weight 60%)
- All state, county and municipal (SCM) securities held in investment account (excluding industrial development bonds).
- All other claims on U.S. depository institutions
- All claims on governments and banks of industrial countries.
- Acceptances of banks in industrial countries.
- Local currency claims on governments and banks of non-industrial countries.***
- Loans to broker/dealers collateralized by other marketable securities.
- Commercial letters of credit.
- Standby LCs (net) backing SCM securities (excluding those backing industrial development bonds), supporting broker/dealers on secured basis for performance related.

Standard Risk (Weight 100%)
- All assets found in a typical bank loan portfolio, incuding:
- All commercial and industrial loans and leases.
- Residential real estate and individual loans.
- Loans to nondepository financial institutions.
- All other claims on foreign obligors.
- Corporate securities and commercial paper, and industrial development bonds.
- Customers' acceptance liabilities.****
- All assets not included elsewhere.
- All other standby LCs (net), including those backing industrial devlopment bonds
- Loans sold with recourse.*****

*U.S. depository institutions refers to depository institutions chartered under the laws of the United States and the foreign branches of those institutions and such U.S. depository institutions that are subsidiaries of foreign banking organizations. U.S. branches and agencies of foreign banks are not U.S. depository institutions.

**Short-term Treasury securities are those with an original or remaining maturity of one year or less.

***To the extent funded by local currency liabilities. If not funded by local currency liabilities, such local currency claims are included in the Standard Risk category.

****Include customers' liabilities associated with acceptance participations purchased. Participations sold are included in Money Market Risk if the purchaser is a U.S. depository institution, Moderate Risk if the purchaser is a bank in an industrial country, and Standard Risk for all other purchasers.

*****Include loans involved in transactions of the type that are required to be reported as borrowings (as opposed to sales) under bank call report instructions. For purposes of the supplemental adjusted capital measure, bank holding companies should include the same type of items in this category even if, under generally accepted accounting principles, such loans sold with recourse may be treated as sales and removed from the balance sheet.

The aggregate dollar value of the items in each category would be multiplied by the weight assigned to that category. The sum of these weighted values would be the weighted risk asset and off-balance sheet total against which actual primary capital would be compared. The ratio derived by dividing primary capital by this weighted total would be defined as the supplemental adjusted capital ratio. Table II provides an example of how this supplemental adjusted capital ratio would be calculated.

TABLE II.—ILLUSTRATION OF CALCULATION OF SUPPLEMENTAL ADJUSTED CAPITAL MEASURE

Risk category	Dollar amount of items in category	×	Risk weight	Weighted risk assets and off-balance sheet items
Cash and equivalents	5,000	×	0	0
Money market, risk	35,000	×	.30	10,500
Moderate risk	30,000	×	.60	18,000
Standard risk	60,000	×	1.00	80,000
Total (including $100,000 in aggregate assets and $50,000 in off-balance sheet items)	150,000			108,500
Aggregate primary capital	7,000			

Primary capital to total assets ratio (as defined under existing Guidelines): $\frac{7{,}000}{100{,}000} = 7.0\%$

Supplemental adjusted capital ratio (as proposed): $\frac{7{,}000}{108{,}500} = 6.5\%$

Note.—This example assumes a bank with total assets (before deducting the loan loss reserve) of $100,000, off-balance sheet items of $50,000, and primary capital $7,000.

The choice of groupings for assets and off-balance-sheet items reflects an effort to delineate reasonable risk categories while avoiding excess complexity. In addition, the Board paid close attention to the treatment afforded assets and off-balance-sheet items in similar risk asset systems abroad. Finally, decisions on where to slot certain items and where to set relative risk weights were influenced by a desire to avoid artificial pricing distortions which might lead to awkward or undesirable changes in credit flows or financing practices, and to temper the gradation of implied capital costs between items in the various risk categories.

In developing this proposal, the Board made difficult policy decisions involving the treatment of country risk and off-balance-sheet items. First, the proposal draws a distinction between claims on governments and banks in industrial countries, i.e., those presently designated as such by the International Monetary Fund (IMF) and World Bank, versus claims on governments and banks in all other countries.[4] This distinction represents the most acceptable alternative among a variety of possible groupings intended to distinguish, in a broad sense, among differences in transfer risk, that is, the possibility that an asset cannot be serviced in the currency of payment because of a lack of foreign exchange needed for payment in the country of the obligor. The Board views the approach embodied in this proposal as more workable than a country by country evaluation of transfer risk that would require frequent updating and revision.

All claims on banks and governments in industrial countries would be included in the Moderate Risk category. This treatment is designed to minimize the possible distortions in credit flows in the international interbank money market which would result from substantially different capital requirements for claims on domestic and foreign banks competing alongside one another in the market. The list of industrial countries includes just about all countries with significant international banks, while excluding the countries viewed by the market as likely to entail a meaningful degree of transfer risk. Claims involving transfer risk on banks and governments in non-industrial countries, and all claims on *private* nonbank borrowers in foreign countries, would be included in the Standard Risk category. Although the proposed group of industrial countries for risk asset purposes currently comprises those nations designated as such by the IMF and World Bank, developments in the future could warrant a modification of this designation. Thus, the designation for risk asset purposes may not at all times coincide with the IMF and World Bank lists.

The proposed treatment of claims on foreign banks incorporated in this proposal differs from the typical approach in risk-based capital measures used in other industrial countries. Generally speaking, those measures assign a very low (often zero) risk weight to claims on their own government, while assigning claims on all other governments to the equivalent of a standard risk category. In terms of interbank claims, however, the typical approach is to combine claims on *all* foreign and domestic banks and place both of these types of assets in the same relatively low risk category. By and large, this latter approach was developed prior to the advent of significant concerns over country or transfer risk. Therefore, it does not recognize how claims on banks in different countries can be affected by transfer risk, including those claims on banks in the less developed countries which have been involved in extensive debt restructurings. Moreover, such an approach has the anomalous effect of placing claims on foreign banks in a lower risk category than claims on the governments that are generally viewed as providing the safety net for these banks. Finally, assigning a lower risk treatment to claims on foreign banks than on their governments could create unintended incentives to substitute claims on banks for claims on other parties that may be involved in debt restructurings. For these reasons, the Board felt it necessary to depart from the more or less typical approach to the treatment of interbank claims.

The Board also made certain basic decisions involving the treatment of various types of off-balance-sheet items. The proposal divides standby letters of credit into two broad components. The first such component, which is included in the Moderate Risk category, consists of performance bonds, secured letters of credit supporting broker/dealers, and standbys supporting state and local government securities (excluding those supporting industrial development bonds). The second component, which would be assigned to the Standard Risk category, consists of all other standbys, including those backing commercial

[4] Industrial countries as currently designated by the IMF and World Bank include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom, West Germany.

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paper, industrial development bonds, and other financial instruments and loans included in the Standard Risk category. This broad distinction is based on the nature of the underlying credit risk and how that risk would be treated if it were on the balance sheet. The distinction also is generally consistent with the way in which comparable off-balance-sheet items are treated in risk asset frameworks abroad.

The proposal places two other off-balance-sheet items, legally binding commitments and note issuance facilities in the Money Market Risk category. The placement of these items in the Money Market Risk category, rather than a higher risk category, was influenced by the following considerations: (1) These commitments often retain a conditional, as well as contingent, character as a consequence of "adverse material change" clauses and other covenants which may enable banks to avoid losses by avoiding or curtailing drawdowns; (2) unlike standby letters of credit, when drawings on commitments do occur they carry a greater likelihood that the resulting assets will be of higher quality; (3) supervisors should be evaluating the volume of these commitments in terms of the overall funding capacity of a bank, not just its capital adequacy; and, perhaps most importantly, (4) it seems more appropriate to impose a relatively low capital charge to give banks time to adjust their commitment policies to any amendment to the Guidelines that includes off-balance-sheet risk.

There are other aspects of off-balance-sheet risk associated with securities and foreign exchange trading activities and managing interest rate risk, including interest rate swaps. In this regard, adoption of a supplemental capital measure that takes account of some types of risk may require the use of more refined supervisory techniques to measure (1) risk involved in securities and foreign exchange trading activities at those banking organizations which are heavily involved in such activities, and (2) interest rate exposure resulting from the rate sensitivity of assets, liabilities and off-balance-sheet activities. As discussed below, the Board is seeking comment on how some of these risks might be assessed within the proposed supplemental adjusted capital framework.

Administration of a Risk-Based Capital Measure

As the current Guidelines emphasize with respect to primary and total capital ratios, the proposed supplemental adjusted capital ratio would be used as a guideline in the assessment of capital adequacy. The Board wishes to emphasize that the introduction and calculation of a supplemental capital measure adjusted to account for some forms of risk would in no way lessen the need for supervisors and examiners to make judgments on capital adequacy—judgments which reflect a broad mix of qualitative and quantitative considerations. Thus, in assessing an organization's capital adequacy, examiners must consider, among other things, the quality, trend and variability of earnings; liquidity and the structure of liabilities; vulnerability to interest rate changes; the quality of management, internal systems and controls and operating procedures; the effectiveness of loan and investment policies; and the quality of loans and investments.

In the assessment of capital adequacy, asset quality considerations are especially critical. These include the risk composition and profile of the loan portfolio, credit and sovereign risk concentrations, and the level and severity of examiner classified and criticized assets. Before an overall assessment of capital adequacy can be made, therefore, examiners must take into account all of these factors, including, in particular, the level and severity of classified assets.

The Board proposes to use the supplemental adjusted capital ratio in tandem with the current primary and total capital-to-total assets ratios. Thus, if this proposal is adopted, individual banking organizations would still be subject to an overall constraint on total leverage, with the supplemental adjusted capital measure used as an additional guideline designed to encourage banking organizations to make appropriate adjustments in either the risk composition of their portfolios or their overall level of primary capital. To minimize public confusion and facilitate tandem operation, this proposal contemplates eliminating existing *zones* for *total* capital, while retaining the current minimum guidelines for the primary and total capital ratios, at 5.5 percent and 6.0 percent, respectively, for all banking organizations.

As is the case under the Board's current Guidelines, this proposal envisions that supplemental adjusted capital ratios would be calculated for all state member banks and bank holding companies on a consolidated basis. (Bank holding companies with less than $150 million in consolidated assets would be exempt under the same terms and conditions as provided in the current Guidelines.) The risk asset framework would be employed to evaluate the capital of all banking organizations regardless of size since the rationale for relating capital needs to risk profiles applies to both large and small institutions. Nonetheless, it is important to point out that many of the considerations driving the development of this supplemental adjusted capital measure at this time are primarily operative at larger banking organizations. In particular, these institutions have been the primary participants in those off-balance-sheet activities that the proposed standards seeks to address, and these organizations in recent years have also decreased their relative holdings of liquid assets.

In light of these considerations, the Board proposes to establish numerical zones for the supplemental adjusted capital ratio, but to limit the application of such zones to banking organizations with assets of $1 billion or more (the regional and multinational institutions). For smaller organizations, those with assets totaling less than $1 billion, supplemental adjusted capital ratios would be computed in the same manner as for larger institutions, but zones would not be employed. Rather a smaller organization's supplemental adjusted capital ratio would be calculated and considered in light of the quality and diversification of its loan portfolio and other local risk considerations. In this regard, it is important to note that the proposed risk-adjusted asset measure is not particularly sensitive to large concentrations of exposure within local communities and lending markets—exposures to which small banks are particularly susceptible. Therefore, small (as well as large) organizations with significant asset concentrations will generally be expected to operate above minimum primary and total capital-to-total assets ratios, even if they have relatively high supplemental adjusted capital ratios.

For organizations with assets of $1 billion or more, the tandem operation of the supplemental adjusted capital ratio and the minimum primary capital ratio is illustrated by the following proposed zone descriptions for the supplemental adjusted capital ratio:

1. *Zone 1*—Organizations with supplemental adjusted capital ratios in this zone would be presumed to have adequate capital in relation to risk, *barring* significant asset quality or other financial or operating concerns, including excessive asset concentrations. For these organizations, assets could be increased even if the primary capital-to-total asset ratio dropped close to the existing minimum threshold of 5.5 percent.

2. *Zone 2*—Organizations with supplemental adjusted capital ratios in this zone would be considered to have acceptable capital in relation to risk, *depending* upon where they were within the zone, as well as how the institution fared on the basis of qualitative and financial considerations. Particularly for organizations in the upper half of the zone, there might be scope for asset growth and declines in the primary capital-to-total asset ratio, *barring* asset quality or other financial concerns.

3. *Zone 3*—Supplemental adjusted capital ratios in this zone would be below the *minimum* acceptable level. Organizations with such supplemental adjusted ratios would be presumed to have inadequate capital in relation to risk even if their primary capital-to-total assets ratios were above the 5.5 percent minimum. Such organizations would be expected to develop and submit to their supervisory authorities plans to bring their supplemental adjusted ratios to an adequate level, either by raising new capital or by adjusting the risk profile of their activities.

The proposal does not specify at this time the actual ratio cutoffs for the various supplemental adjusted capital zones. Instead, it would appear to be more appropriate to receive and evaluate public comments on the supplemental adjusted capital measure and to use the information received in establishing numerical zones. The Board hopes to encourage commenters to focus their comments on the underlying policy considerations of this proposal rather than on the mechanical features. The Board will provide an additional opportunity for public comment on the numerical zones.

The Board does invite comment on the factors that it should consider in setting the numerical zones. To that end, the Board offers the following comments on how it proposes to set the zones. Since a principal goal of the supplemental adjusted capital measure is to relate capital needs to risk profiles, the Board will attempt to establish zones at levels that would affect primarily any institution with assets in excess of $1 billion whose capital position is less than fully adequate in relation to its risk profile. Moreover, the Board will attempt to establish numerical zones that are broadly consistent with prevailing aggregate capital levels in the banking system and with the banking system's ability to generate capital from retained earnings and from the issuance of primary capital securities.

Banking organizations will be able to comply with supplemental adjusted capital measures in several ways, some of which do not require raising new external capital. For example, institutions can moderate their growth and/or increase their earnings retention. More importantly, however, within a risk sensitive capital framework, an organization can raise its supplemental adjusted capital ratio by reducing its risk profile over time, even though such on- or off-balance-sheet adjustments may not necessarily result in lower total assets. This could be done by reducing off-balance-sheet risk or by placing proportionately greater emphasis on those balance sheet activities that carry lower risk weights.

For all of these reasons, it is not possible to state with certainty how much, if any, additional capital would have to be raised in response to the advent of this proposal. It can be said, however, that a measure that relates capital needs to risk profiles should temper the unintended incentives associated with sole reliance on capital-to-total asset ratios and will encourage those organizations with high risk profiles either to raise additional primary capital to support their risk-bearing activities or to curtail the scope of these activities. The Board believes both of these responses will enhance the financial strength of individual organizations and promote the safety and soundness of the banking systems.

3. Issues for Further Consideration

While seeking public comments on all aspects of the proposal, the Board requests comment in six specific areas as described below.

First, should the Board further refine the Standard Risk category by adding an additional category that would contain certain specified assets that entail risks higher than those typically associated with the Standard Risk group? In particular, should the Board include a category to take account of the higher risks associated with certain nonbanking activities and the holding of nontraditional loans or assets?

The Board could, for example, assign a weight substantially above 100 percent for all assets held by a particular banking organization in connection with certain high risk activities not considered traditional activities for banking organizations. In the alternative, the Board could consider such nontraditional, high risk activities on a nonconsolidated basis and require appropriately higher capital levels for these nontraditional assets separate and apart from the capital required to support the other assets of the banking organization. Another option would be to deduct the capital invested in these high risk subsidiaries from the consolidated organization's primary capital before calculating the supplemental adjusted capital ratio.

Similarly, the Board seeks comments on whether it should attempt to identify certain types of loans that would be moved from the Standard Risk category and placed in a separate category with a risk weight below 100 percent.

By grouping together a wide array of risks in the Standard Risk category, the proposed supplemental adjusted capital measure could still have some unintended incentives for banks to pursue riskier types of lending or high risk nontraditional activities to bolster income, while, possibly, curtailing loans to high quality, low risk borrowers. In light of this concern, consideration was given to grouping certain assets felt to be significantly riskier than others in a separate high risk category with a risk weight above 100 percent. Similarly, as already noted, several types of assets included in the Standard Risk category, such as loans to high quality, high rated borrowers, arguably could be included in a lower risk category. The principal benefit of such an approach would be that it would relate capital needs more closely to an organization's risk profile. It could also serve to discourage certain high risk activities while avoiding disincentives to direct bank lending to high quality, low risk customers.

The major practical drawback, on the other hand, would be the difficulty of defining the boundary line between the types of financing activities that would be included in high or low risk categories. More importantly, this approach could heighten concern over the potential for the supplemental adjusted capital measure evolving into a credit allocation device, and could be interpreted by some institutions as an indication that they were free to expand the volume of high risk lending provided they held the "correct" amount of capital to support that lending. This would go far beyond the intent of the proposed supplemental adjusted capital measure and could potentially undercut other sources of supervisory discipline designed to limit excessive risk-taking. For these reasons the Board did not propose the division of the Standard Risk category into either an additional higher or lower risk category.

Second, should the supplemental adjusted capital measure attempt to take account of concentration of assets? A major factor in analyzing the overall risk of banking organizations is the degree of diversification in the loan and investment portfolios. Because undue asset concentrations violate the widely accepted principle of risk diversification, in theory the supplemental adjusted capital ratio could be further refined by including an

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explicit factor for the level of asset concentrations. Practical difficulties exist, however, in defining appropriate business categories for risk assessment purposes and in assigning a meaningful primary business classification to companies that have diversified into many different types of financial and nonfinancial activities. While the proposal contemplates continuation of the current policy whereby examiners subjectively evaluate asset concentrations, the Board seeks comment on whether asset concentrations should be factored *explicitly* into the supplemental adjusted capital ratio and, if so, how this might be done on a practical basis.

Third, the treatment of country risk in the proposal represents a choice among imperfect alternatives. The decision to segregate industrial economies from all others was based on the view that, among the alternatives considered, it would minimize possible distortions in credit flows within the interbank market and among countries. The Board also seeks comment on the most appropriate way to deal with broad country risk considerations.

Fourth, while the supplemental adjusted measure attempts to deal with the major forms of off-balance sheet risk, some off-balance sheet activities that typically involve credit risk are not included in the frame work. For example, interest rate swaps, in which a bank acts as a counterparty in arranging the change of interest payment streams between two third-party borrowers, can involve risk if one party defaults and the bank is obligated to assume the role of the defaulting party and replace the stream of cash flows at current market rates. In light of these considerations, the Board seeks comment on how best to assess and incorporate the credit risks associated with interest rate swaps into the proposed supplemental adjusted capital measuer. Moreover, commenters are also asked to identify other significant types of off-balance-sheet risks not addressed by the proposal and how such risks could best be factored into the proposed measuer.

An additonal example of risk exposure not captured in the proposed supplement adjusted capital measure involves unconsolidated joint ventures. Banking organizations can be exposed to considerable risks through such unconsolidated joint ventures if these entities issue significant amounts of debt and undertake risk-bearing activities. Despite the fact that such risks may not be fully reflected on the bank's consolidated balance sheet, the banking organization may, in effect, be obligated to support at least its proportionate share of the risk assets of the joint venture or all of the joint venture's assets if the joint venture encounters problems and the other joint venture partners are unable to provide assistance. The Board Seeks public comment on whether to deduct investments in unconsolidated joint ventures from primary capital for the purpose of calculating supplemental adjusted capital ratios or whether to employ an alternative technique to capture the exposure of banking organizations to such joint ventures.

Fifth, it would be desirable to supplement the proposed capital measure with more refined techniques to measure the risk involved in securities and foreign exchange trading activities at those banking organizations which are heavily involved in these activities. This could entail applying to banking organizations some of the guidelines and principles on evaluating trading risks that have been developed by the Federal Reserve Bank of New York for evaluating risk at U.S. Government securities dealers. Thus, the Board seeks comment on techniques for evaluating foreign exchange risk, including how the supplemental adjusted capital measure could treat (i) exchange rate and interest rate, risk, (ii) counterparty credit risk, and (iii) futures, options and swaps used in foreign exchange operations.

Similarly, it may be appropriate to develop a more systematic approach to assessing overall interest rate risks (as distinct from credit risks) resulting from the rate of assets, liabilities, and off-balance-sheet activities. Such an approach might be used in conjunction with an adjusted capital measure to evaluate vulnerability to changes in interest rates. Therefore, the Board seeks comment on how to factor interest rate risk into the assessment of capital adequacy.

Finally, the Board seeks comment on the long-run administration of the supplemental adjusted capital measure in relation to the existing minimum primary and total capital-to-total assets ratios. As indicated above, the supplemental adjusted capital ratio is to be used in tandem with the Board's existing minimum primary and total capital ratios. However, as banking organizations restructure their balance sheets and reduce their risk profiles, the minimum capital-to-total assets ratio may become binding and prevent further leveraging, even though an individual organization may have a high and strong supplemental adjusted capital ratio. As experience is gained with the supplemental adjusted capital measure, it may be appropriate to place greater emphasis on this measure over time relative to the capital-to-total assets ratios. In this regard, it may be appropriate in the long-run to reconsider the role of the capital-to-total assets ratios, expecially if the supplemental adjusted ratio proves to be a reliable measure of capital needs in relation to overall risk.

Regulatory Flexibility Act Analysis

The Board does not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities in this case small bank holding companies and state member banks, within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While all bank holding companies and state member banks would presumably be required to revise their reporting requirements to permit quarterly tracking of Supplemental adjusted capital ratios, the proposal contemplates only for regional and multinational banking organizations (that is, those in excess of $1 billion in assets) the establishment of objective zones for the proposed supplemental adjusted capital ratio.

In addition, this proposal clearly indicates that it is designed primarily to take account of those practices, such as the increased use of off-balance-sheet risk and the decline in the holdings of low-risk, liquid assets, which have been engaged in primarily by certain larger banking organizations and that it is directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles. Moreover, the Board has indicated that zones would be established at levels that are broadly consistent with prevailing aggregate capital levels in the banking industry and with the banking system's ability to generate capital from retained earnings and from the issuance of primary capital securities. It is not anticipated, therefore, that adoption of this proposal would require a substantial number of banking organizations, including smaller banking organizations, to raise additional capital.

This proposal contemplates a new measure of capital adequacy that supplements, but does not replace, existing capital measures. This proposal does not duplicate, overlap or conflict with any existing federal laws and regulations governing state member banks and bank holding companies.

List of Subjects in 12 CFR Part 225

Banks, banking; Federal Reserve System; Holding companies, Capital adequacy, State members banks.

For the reasons outlined above, the Board proposes to amend Appendix A of 12 CFR Part 225 (Regulation Y) as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for Part 225 is revised to read as follows:

Authority: 12 U.S.C. 1844(b), 3106, 3108, 1817(j)(13), 1818(b), 3907 and 3909.

2. In Part 225, it is proposed to amend Appendix A by remaining the description of total capital zones as follows (Current regulatory language proposed to be deleted appears in brackets.)

Appendix A—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks

* * *

Capital Guidelines

The Board has established a minimum level of primary capital to total assets of 5.5 percent and a minimum level of total capital to total assets of 6.0 percent. Generally, banking organizations are expected to operate above the minimum primary and total capital levels. Those organizations whose operations involve or are exposed to high or inordinate degrees of risk will be expected to hold additional capital to compensate for these risks.

[In addition, the Board has established the following three zones for total capital for banking organizations of all sizes:

	Total Capital Ratio
Zone 1	Above 7.0%
Zone 2	6.0% to 7.0%
Zone 3	Below 6.0%]

The capital guidelines assume adequate liquidity and a moderate amount of risk in the loan and investment portfolios and in off-balance sheet activities.* * *

* * * * *

Supervisory Action

The nature and intensity of supervisory action will be determined by an organization's compliance with the required minimum primary capital ratio as well as by the zone in which the company's total capital ratio falls. Banks and bank holding companies with primary capital ratios below the 5.5 percent minimum will be considered undercapitalized unless they can demonstrate clear extenuating circumstances. Such banking organizations will be required to submit an acceptable plan for achieving compliance with the capital guidelines and will be subject to denial of applications and appropriate supervisory enforcement actions.

[The zone in which an organization's total capital ratio falls will normally trigger the following supervisory responses, subject to qualitative analysis:

For institutions operating in Zone, 1, the Federal Reserve will:

—consider that capital is generally adequate if the primary capital ratio is acceptable to the Federal Reserve and is above the 5.5 percent minimum.

For institutions operating in Zone 2, the Federal Reserve will:

—pay particular attention to financial factors, such as asset quality, liquidity, off-balance sheet risk, and interest rate risk, as they relate to the adequacy of capital. If these areas are deficient and the Federal Reserve concludes capital is not fully adequate, the Federal Reserve will intensify its monitoring and take appropriate supervisory action.

For institutions operating in Zone 3, the Federal Reserve will:

—consider the institution is undercapitalized, absent clear extenuating circumstances;
—require the institution to submit a comprehensive capital plan, acceptable to the Federal Reserve, that includes a program for achieving compliance with the required minimum ratios within a reasonable time period; and
—institute appropriate supervisory and/or administrative enforcement action, which may include the issuance of a capital directive or denial of applications, unless a capital plan acceptable to the Federal Reserve has been adopted by the institution.]

* * * * *

3. In Part 225, it is proposed to amend Appendix A by adding a Supplemental Adjusted Capital Measure to the end of the Appendix as follows:

Supplemental Adjusted Capital Measure

In addition to its reliance on the ratios of primary capital and total capital to total assets, the Board will assess the capital adequacy of bank holding companies and state chartered banks that are members of the Federal Reserve System, on the basis of a ratio of primary capital to total assets (including certain off-balance sheet items) adjusted for risk. For purposes of the supplemental adjusted capital ratio "primary capital" is comprised of the same components and calculated in the same manner as defined above in the section of these Guidelines entitled "Definition of Capital to be Used in Determining Capital Adequacy of Bank Holding Companies and State Member Banks."

The assets component of the supplemental adjusted capital ratio is computed in accordance with the following list of risk categories and weights. The assets of a bank holding company or state member bank, as well as certain off-balance-sheet items are assigned to one of four broad risk categories. The aggregate dollar value of the assets and off-balance-sheet items in each category is multiplied by the weight assigned to that category. The sum of these weighted values would be the weighted risk asset and off-balance sheet total against which actual capital is compared. The ratio derived by dividing primary capital by this weighted total is the supplemental adjusted capital ratio.

Table I.—*Risk Categories and Weights*

Cash and Equivalents (Weight 0%):
- U.S. currency and coin and balances due from Federal Reserve banks
- Cash items in process of collection and transaction accounts due from U.S. depository institutions*
- Short-term** U.S. Treasury securities in investment account
- Foreign currency and balances due from central banks in immediately available funds

Money Market Risk (Weight 30%):
- Long-term U.S. Treasury securities held in investment account
- U.S. Government agency securities held in investment account
- Those portions of loans that are fully guaranteed by U.S. Government
- Short-term claims (90 days or less) on U.S. depository institutions
- Acceptances of other U.S. banks
- All Fed funds sold
- Loans to broker/dealers collateralized by U.S. Treasury and agency securities, and securities purchased under agreement to resell (RPs)
- Assets held in trading account
- Legally binding loan commitments (including note issuance facilities)

Moderate Risk (Weight 60%):
- All state, county and municipal (SCM) securities, held in investment account (excluding industrial development bonds)
- All other claims on U.S. depository institutions
- All claims on governments and banks of industrial countries
- Acceptances of banks in industrial countries
- Local currency claims on governments and banks of non-industrial countries***.
- Loans to broker/dealers collateralized by other marketable securities
- Commercial letters of credit
- Standby LCs (net) backing SCM securities (excluding those backing industrial development bonds), supporting broker/dealers on secured basis or performance related

Standard Risk (Weight 100%):
- All assests found in a typical bank loan portfolio, including:
  - All commercial and industrial loans and leases
  - Residential real estate and individual loans
  - Loans to nondepository financial institutions
- All other claims on foreign obligors
- Corporate securities and commercial paper, and industrial development bonds
- Customers' acceptance libilities***
- All assests not included elsewhere

Table I.—*Risk Categories and Weights*—Continued

All other standby LCs (net), including those backing industrial development bonds	100%
Loans sold with recourse*****	100%

*U.S. depository institutions refers to depository institutions chartered under the laws of the United States and the foreign branches of those institutions, and such U.S. depository institutions that are subsidiaries of foreign banking organizations. U.S. branches and agencies of foreign banks are not U.S. depository institutions.

**Short-term Treasury securities are those with an original or remaining maturity of one year or less.

***To the extent funded by local currency liabilities. If not funded by local currency liabilities, such local currency claims are included in the Standard Risk category.

****Include customers' liabilities associated with acceptance participations purchased. Participations sold are included in Money Market Risk if the purchaser is a U.S. depository institution, Moderate Risk if the purchaser is a bank in an industrial country, and Standard Risk for all other purchasers.

*****Include loans involved in transactions of the type that are required to be reported as borrowings (as opposed to sales) under bank call report instructions. For purposes of the supplemental adjusted capital measure, bank holding companies should include the same type of items in this category even if, under generally accepted accounting principles, such loans sold with recourse may be treated as sales and removed from the balance sheet.

TABLE II.—ILLUSTRATION OF CALCULATION OF SUPPLEMENTAL ADJUSTED CAPITAL MEASURE

Risk category	Dollar amount of items in category	×	Risk weight	Weighted risk assets and off-balance sheet items
Cash and equivalents	5,000		0	0
Money market risk	35,000		.30	10,500
Moderate risk	30,000		.60	18,000
Standard risk	80,000		1.00	80,000
Total (including $100,000 in aggregate assets and $50,000 in off-balance sheet items)	150,000			108,500
Aggregate primary capital	7,000			
Primary capital to total assets ratio (as defined under existing Guidelines)	7,000 / 100,000	=	7.0%	
Supplemental adjusted capital ratio (as proposed)	7,000 / 108,500	=	6.5%	

Note.—This example assumes a bank with total assets (before deducting the loan loss reserve) of $100,000, off-balance sheet items of $50,000, and primary capital of $7,000.

Supervisory Action

While the supplemental adjusted capital ratio establishes a guideline for assessing the capital adequacy of individual banking organizations, the ratio measures only certain types of risk in a general and relatively broad manner. The Board will continue to make judgments on capital adequacy in individual cases, judgments which reflect a broad mix of qualitative and quantitative considerations that may not be contained in the ratio. The Board will continue to consider, among other things, the quality, tend and variability of earnings; liquidity and the structure of liabilities; vulnerability to interest rate changes; the quality of management, internal systems and controls, and operating procedures; the effectiveness of loan and investment policies; and the quality of loans and investments. Asset quality considerations are especially critical in the assessment of capital adequacy. these include the risk composition and profile of the loan portfolio, credit and sovereign risk concentrations, and the level and severity of examiner classified and criticized assets. The Board will continue to assess capital adequacy by (1) calculating and assessing the supplemental adjusted capital ratio, (2) evaluating all other risk factors and, in particular, (3) taking into account the *level* and *severity* of classified assets.

The supplemental adjusted capital ratio is to be used in tandem with the primary and total capital-to-total asset ratios as a guide in determining minimum capital requirements. Individual banking organizations will continue to be subject to constraints on total leverage, with the supplemental adjusted capital ratio as an additional guideline to encourage banking organizations to make appropriate adjustments in either the risk composition of their portfolios or the overall level of primary capital. Banking organizations, however, will be required to maintain primary and total capital ratios at least equal to the minimum levels set forth in these Guidelines.

Supplemental adjusted capital ratios should be calculated for all state-member banks and bank holding companies on a consolidated basis.[6] The Board will use the supplemental adjusted capital measure to evaluate the capital of all banking organizations regardless of size, but it has established certain objective standards for the ratios of regional and multinational organizations, i.e., those with more than $1 billion in consolidated assets.

For organizations with assets of $1 billion or more, the tandem operation of the supplemental adjusted capital ratio and the minimum primary capital ratio is illustrated by the following zone descriptions for the supplemental adjusted capital ratio.

1. *Zone 1*—Organizations with supplemental adjusted capital ratios in this zone would be presumed to have adequate capital in relation to risk, *barring* significant asset quality or other financial or operating concerns, including excessive asset concentrations. For these organizations, assets could be increased even if the primary capital-to-total asset ratio dropped close to the existing minimum threshold of 5.5 percent.

2. *Zone 2*—Organizations with supplemental adjusted capital ratios in this zone would be considered to have acceptable capital in relation to risk, *depending* upon where they were within the zone, as well as how the institution fared on the basis of qualitative and financial considerations. Particularly for organizations in the upper half of the zone, there might be scope for asset growth and declines in the primary capital-to-total asset ratio, *barring* asset quality or other financial concerns.

3. *Zone 3*—Supplemental adjusted capital ratios in this zone would be below the *minimum* acceptable level. Organizations with such supplemental adjusted ratios would be presumed to have inadequate capital in relation to risk even if their primary capital-to-total assets ratios were above the 5.5 percent minimum. Such organizations would be expected to develop and submit to their supervisory authorities plans to bring their supplemental adjusted ratios to an adequate level, either by raising new capital or by adjusting the risk profile of their activities.

Since the supplemental adjusted capital ratio does not take explicit account of all risk factors, banking organizations with financial or operating characteristics that are cause for supervisory concern, including significant asset problems (as reflected in the level and severity of classified assets), and undue asset concentrations, will be expected to operate above minimum primary and total capital ratios and, if applicable, above the minimum supplemental adjusted capital ratio.

Board of Governors of the Federal Reserve System, January 24, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-1945 Filed 1-30-86; 8:45 am]

BILLING CODE 6210-01-M

[6] The supplemental adjusted capital ratio for bank holding companies with less than $150 million in consolidated assets should be calculated on a *bank only* basis unless (1) the holding company or any nonbank subsidiary is engaged directly or indirectly in any nonbank activity involving significant leverage or (2) the holding company or any nonbank subsidiary has outstanding significant debt held by the general public.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-02-AD]

Airworthiness Directives; Cessna 150, A150, F150, FA150, FRA150, 152, F152, FA152, A152, 170, 172, F172, FR172, P172, R172, 175, 177, F177, 180, 182, F182, FR182, R182, TR182, 185, A185, 188, A188, T188, 190, 195, 205, 206, P206, U206, TU206, TP206, 207, T207, 210, P210, T210, 336, 337, F337, FP337, P337, T337, and T303 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Cessna 150, A150, F150, FA150, FRA150, 152, F152, FA152, A152, 170, 172, F172, FR172, P172, R172, 175, 177, F177, 180, 182, F182, FR182, R182, TR182, 185, A185, 188, A188, T188, 190, 195, 205, 206, P206, U206, TU206, TP206, 207, T207, 210, P210, T210, 336, 337, F337, FP337, P337, T337, and T303 series airplanes. This AD would require relocation of seat stops on certain models, installation of a warning placard concerning proper locking of the seats on all models, and inspection of seat rails and locking mechanism for all models. The FAA has received reports of the seat cushion binding against the door post and cracks in the seat rails which could possibly prevent positive engagement of the seat pin. The actions specified in the proposed AD are necessary to preclude possible inadvertent slippage of the pilot's seat due to improper engagement of the latching mechanism which could result in loss of airplane control.

DATES: Comments must be received on or before May 21, 1986.

ADDRESSES: Cessna Single Engine Service Bulletin SEB85-6 dated March 22, 1985, and Service Information Letter SE83-6 dated March 11, 1983, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, P.O. Box 1521, Wichita, Kansas 67201, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-02-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-CE-02-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: During the past five years there have been 12 accidents/incidents in which slippage of the pilot's seat was considered contributory. The models involved were Cessna 150K, 150L, 152, 170A, 172F, 172M, 175, 180A, 182H, 185E and A185F airplanes. In addition, during this same period there were 21 Malfunction or Defect reports, involving 14 airplanes, describing cracked and worn seat rails which could possibly lead to failures and seat slippage. These occurrences have been on Cessna 150, 152, 172, 175, 180, 182, 185, and 210 series airplanes. Defective seat rails, whether cracked or worn, could possibly result in a seat lock pin slipping out of place. Further, certain Cessna 172, 180, and 185 series airplanes have seat cushions that could contact the front door post and possibly give a false sensation that the seat lock pin is in place. In either case, seat slippage is a potential. This unexpected seat movement could cause the pilot to lose control with subsequent possible loss of the airplane.

Since this unsafe condition could occur on any of these airplanes, an AD is being proposed to require inspection and maintenance in accordance with Cessna Single Engine Service Information Letter SE83-6, installation of a seat lock warning placard on all affected airplanes, and reposition of the seat stops on those airplanes identified in Cessna Single Engine Service Bulletin SEB85-6. Repositioning of the seat stops in accordance with this bulletin moves the forward seat stop aft one inch.

The seat rail is an extruded shape which has been installed on all Cessna single engine airplanes built since 1948 with the exception of the Model 208. Twin engine Cessna 336, 227 series and T303 also utilize the same design seat rail. This proposal is applicable to seats with one or two seat locking pin mechanisms.

The FAA has determined there are approximately 170,000 airplanes affected by the proposed AD. The cost of inspecting and modifying these airplanes as required by the proposed AD is estimated to be $86 for inspections and an additional $30 for those airplanes requiring modification. The placard Part Number (P/N) 0705097-1 is furnished by Cessna free of charge. The annual cost of inspection is estimated to be $11,220,000 and a one time estimated modification cost of $699,000 to the private sector.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting in Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

CESSNA: Applies to the following airplanes, certificated in any category:

Models	Serial Nos.
150, 150A	17001 thru 17999; 59001 thru 59018.
150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, 150L, 150M.	15059019 thru 15079405.
A150K, A150L, A150M	A1500001 thru A1500734.
152, A152	All.
170, 170A, 170B	18000 thru 27169.
172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q.	All.
P172	P17257120 thru P17257189.
R172, R172E, R172F, R172G, R172H, R172J.	All.
R172K	R1722000 thru R1723454.
175, 175A	55001 thru 56777.
175B, 175C	17556778 thru 17557119.
177, 177A, 177B, 177RG	All.
180, 180A	30000 thru 32999.
180A, 180B, 180C	50000 thru 50911.
180D, 180E, 180F, 180G, 180H, 180J, 180K.	18050912 thru 18053203.
182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, T182, R182, TR182.	All.
185, 185A, 185B, 185C, 185D, 185E, A185E, A185F.	All.
188, A188, A188A, 188B, A188B, T188C.	All.
190, 195, 195A, 195B	7001 thru 7994; 16000 thru 18183.
205, 205A	205-0001 thru 205-0577.
206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206D, TU206E, TU206F, TU206G.	All.
P206, P206A, P206B, P206C, P206D, TP206A, TP206B, TP206C, TP206D.	P206-0001 thru P206-0603.
P206E, TP206E	P20600604 thru P20600647.
207, T207, 207A, T207A	All.
210, 210A, 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, P210N, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, 210R, T210R, P210R.	All.
336	336-0001 thru 336-0195.
337, 337A, 337B, 337C, 337D, 337E, 337F, 337G, 337H, T337C, T337D, T337E, T337F, T337G, T337H, P337H, T337H-SP.	All.
T303	All.
F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FRA150L, FRA150M.	All.
FA152, F152	All.
FP172	FP172-0001 thru FP172-0003.
F172D, F172E, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K.	All.
F177RG	All.
F182P, F182Q	All.
FR182G	All.
F337E, F337F, F337G, F337H.	All.
FP337	All.

Compliance: Required as indicated in the body of the AD, unless previously accomplished.

To assure proper engagement of the seat locking mechanism to preclude inadvertent seat slippage, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, install on the instrument panel, in full view of the pilot, Cessna placard part number 0705097-1, or fabricate and install a placard with a minimum letter of ⅛ inch which states: "WARNING: ASSURE THAT SEAT IS LOCKED IN POSITION PRIOR TO TAXI, TAKEOFF, AND LANDING", and operate in accordance with this warning.

The holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplane owned or operated by him may fabricate and install the above placard. The person accomplishing this must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(b) For airplanes having less than 1,000 hours TIS on the effective date of this AD, prior to accumulating 1,100 hours TIS and each 100 hours TIS thereafter, accomplish the following:

(1) Inspect the seat rails for cracks per Cessna Single Engine Service Information Letter SE83-6 dated March 11, 1983. Prior to further flight replace seat rails exceeding the crack criteria as specified in the above Service Information Letter within an airworthy part.

(2) Visually inspect the seat rails holes for dirt and any debris which may preclude engagement of seat locking pin(s). Prior to further flight remove any such dirt or debris.

(c) For aircraft having more than 1,000 hours TIS on the effective date of this AD, within the next 100 hours TIS and each 100 hours TIS thereafter, accomplish the visual inspection and, if necessary, the specified repairs listed in paragraph (b)(1) and (b)(2) of this AD.

(d) For Models 172K, 172L, 172M, 172N, (serial numbers 17258487 thru 17272884); R172G, R172H, R172J, (serial numbers R1720410 thru R1720625 (T-41's)); R172K, (serial numbers R1722000 thru R1723199); 180H, 180J, 180K, (serial numbers 18052104 thru 18053203); 185E, 185F, (serial numbers 1851600 thru 1854418); F172H, F172K, F172L, F172M, F172N, (serial numbers F17200655 thru F17201909); and FR172G, FR172H, FR172J, FR172K, (serial numbers FR17200146 thru FR17200655) airplanes, within the next 100 hours TIS after the effective date of this AD, reposition the seat stops in accordance with Cessna Single Engine Service Bulletin SEB85-6, dated March 22, 1985.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Cessna Aircraft Company, Customer Service, P.O. Box 1521, Wichita, Kansas 67201 or Federal Aviation Administration, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 21, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86-2184 Filed 1-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-7]

Proposed Alteration of Control Zone, Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This action withdraws a proposal published in the **Federal Register** on April 1, 1985 (50 FR 12818), to amend Part 71 of the Federal Aviation Regulations. The proposed amendment would have altered the two control zones which are associated with Page Field and Southwest Florida Regional Airport, Fort Myers, Florida. These proposed alterations would have resulted from a planned relocation of the Fort Myers VORTAC facility from its present position adjacent to Page Field to a new site near Southwest Florida Regional Airport. Subsequent to the publication of the Notice of Proposed Rulemaking, it was determined that the planned relocation, which was to have occurred in November 1985, has been post-poned until mid-1987. As a result, the FAA has determined that the proposed alterations are not appropriate at this time. When more definitive plans for the VORTAC relocation are developed, the FAA will issue another Notice of Proposed Rulemaking concerning this matter.

DATE: Withdrawal effective February 28, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Withdrawal of the Proposal

Pursuant to the authority delegated to me under 14 CFR 11.65, effective February 28, 1986, the proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as described in Airspace Docket No. 85-ASO-7, and published in the **Federal Register** on Monday, April 1, 1985 (50 FR 12818), is hereby withdrawn.

Issued in East Point, Georgia, on January 15, 1986.

William H. Pollard,

Acting Director, Southern Region.

[FR Doc. 86-2177 Filed 1-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AAL-2]

Proposed Establishment of Quinhagak, AK, Transition Area—AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area with a base 700 feet above the surface at Quinhagak, AK, (lat. 59°45'24" N., long. 161°52'48" W.). A public instrument approach procedure has been developed and a transition area is needed to provide protected airspace for the approach/departure and missed approach procedures.

DATES: Comments must be received on on before March 17, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaska region, attention: Manager, Air Traffic Division, Docket No. 85-AAL-2, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washingto D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Commits that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AAL-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affaris, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area with a base 700 fet above the surface at Quinhagak, AK, (lat. 59°45'24" N., long. 161°52'48" W.). A public instrument approach procedure has been developed and a transition area is needed to provide protected airspace for the approach/departure and missed approach procedures. Section 71.161 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter thet will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11

BEST COPY AVAILABLE

apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Quinhagak, AR [New]

That airspace extending upward from 700 feet above the surface within a 5–mile radius of the Quinhagak Airport (lat. 59°45'24" N., long. 161°52'48" W.) and within 9.5 miles northwest and 4.5 miles southeast of the 051°T(033° M) radial from the Quinhegak VOR (lat. 59°45'09" N., long. 161°53'6" W.) extending from the VOR to 18.5 miles northeast of the VOR.

Issued in Washington, DC., on January 23, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–2179 Filed 1–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AGL–31]

Proposed Transition Area Revocation, Hettinger, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revoke the transition area currently designated for Hettinger, North Dakota by returning the associated 700-foot area to a non-controlled status and redescribing the 1,200-foot transition area.

DATES: Comments must be received on or before March 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 85–AGL–31, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The Hettinger, North Dakota 1,200-foot and 700-foot transition areas were established in anticipation that an instrument approach procedure would be developed for Hettinger Municipal Airport and that the areas would be needed to ensure the segregation of aircraft utilizing the instrument approach from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace. That approach procedure was never developed and there is no pending action for any such development. Therefore, the 700-foot area is neither necessary or warranted.

The controlling facility for the area has identified a requirement to retain the 1,200-foot designated airspace for the area; therefore, the 1,200-foot Hettinger, ND, transition area will be retained.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AGL–31." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person m,ay obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the designated 700-foot transition area for Hettinger, ND.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By Amending Section 71.181 as follows:

Hettinger, ND

That airspace extending upward from 1,200 feet above the surface of Hettinger Municipal Airport (lat. 46° 00'51" N., long. 102°39'14" W.), bounded on the north by the Dickinson VORTAC 079 radial and the Bismarck VOR/DME 263 radial, on the east by the Bismarck VOR/DME 192 radial and the Dupree VORTAC 013 radial, on the south by the Dupree VORTAC 285 radial, to the Bowman, ND 1,200 foot transition area, and on the west by the Bowman, ND and the Dickinson, ND 1,200 foot transition areas, excluding all airspace overlying federal airways.

Issued in Des Plaines, Illinois, on January 17, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86–2181 Filed 1–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AGL–30]

Proposed Transition Area Revocation; New Town, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revoke the transition area currently designated for New Town, North Dakota by returning the associated 700-foot area to a non-controlled status and redescribing the 1200-foot transition area.

DATES: Comments must be received on or before March 7, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 85–AGL–30, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The New Town, North Dakota 1,200-foot and 700–foot transition areas were established in anticipation that an instrument approach procedure would be developed for New Town Municipal Airport and that the areas would be needed to ensure the segregation of aircraft utilizing the instrument approach from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace. That approach procedure was never developed and there is no pending action for any such development. Therefore, the 700–foot area is neither necessary or warranted.

The controlling facility for the area has identified a requirement to retain the 1,200–foot designated airspace for the area; therefore, the 1,200–foot New Town, ND, transition area will be retained.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AGL–30." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR

Part 71) to revoke the designated 700-foot transition area for New Town, ND.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

PART 71—AVIATION SAFETY/ TRANSITION AREAS

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

New Town, ND

That airspace extending upward from 1200 feet above the surface of New Town Municipal Airport (lat. 47°58'01" N., long. 102°28'39" W.), bounded on the east by the Minot, ND 1,200 foot transition area and the Minot VORTAC 203 radial, on the south and west by the Bismarck VOR/DME 295 radial and the Williston VORTAC 109 radial, and on the north by the Williston VORTAC 074 radial and the Minot VORTAC 258 radial excluding the Williston, ND 1,200 foot transition area and all airspace overlying federal airways.

Issued in Des Plaines, Illinois, on January 17, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86-2160 Filed 1-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-31]

Proposed Alternation of Wenatchee, Washington, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to alter the transition area at Wenatchee, Washington, to accommodate a new VOR/DME-C instrument approach procedure to the Pangborn Field Airport at Wenatchee, Washington. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before March 3, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-31, 17900 Pacific Highway South, C-68966 Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM-534, Federal Aviation Administration, Docket No. 85-ANM-31, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2534.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interest parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-31". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Procedures Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 1,200 foot and 700 foot transition area at Wenatchee, Washington. This action will expand the present transition area to provide controlled airspace for aircraft executing a new VOR/DME-C instrument approach procedure to the Pangborn Field Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

The proposed amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a) 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Wenatchee, Washington, Transition Area (Revised)

That airspace extending upward from 700 feet above the surface within 4 miles each side of the Wenatchee VOR 124° radial, extending from the VOR to 12.5 miles southeast of the VOR and that airspace between the 5-mile radius circle of the Pangborn Field Airport (lat. 47°23'56" N., long. 120°12'20" W.) and the 11 DME arc of the Wenatchee VOR/DME bounded by the north edge of V-120 clockwise to the Wenatchee VOR/DME 327 °T(305 °M) radial, including that airspace within a 1-mile radius of Francher Field, Washington, (lat. 47°26'55" N., long. 120°16'40" W.); that airspace extending upward from 1,200 feet above the surface within 5 miles south and 8 miles north of the Wenatchee VOR 092° and 272° radials, extending from 7 miles west to 14 miles east of the VOR and within 5 miles southwest and 9.5 miles northeast of the 124° radial, extending from the VOR to 23 miles southeast of the VOR and that airspace between the 11 DME and the 19 DME arcs of the Wenatchee VOR/DME bounded by the north edge of V-120 clockwise to the Wenatchee VOR/DME 327 °T(305 °M) radial.

Issued in Seattle, Washington, on December 4, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2175 Filed 1-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-34]

Proposed Amendment of Transition Areas; Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the 700 foot, and establish a 1,200 foot transition area to provide additional controlled airspace for aircraft executing a new instrument approach procedure to Gunnison Airport. The purpose is to segregate aircraft operating in instrument weather and other aircraft operating in visual weather conditions. The areas will be shown on aeronautical charts enabling pilots to circumnavigate controlled airspace or otherwise comply with instrument flight rules.

DATES: Comments must be received on or before February 27, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-34, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-533, Federal Aviation Administration, Docket No. 85-ANM-34, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Procedures Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace which would encompass a new instrument approach procedure.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition area, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

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Gunnison, Colorado [Amended]

That airspace extending upward from 700 feet above the surface within 9.5 miles northwest and 6 miles southeast of the Gunnison VORTAC 045° and 225° radials extending from 12 miles northeast to 19 miles southwest of he VORTAC, and within a 16.5 mile radius of the VORTAC clockwise between the 264° and 294° radials; and that airspace extending upward from 1,200 feet above the surface within a 23-mile radius of the VORTAC clockwise between the 204° and 275° radials.

Issued in Seattle, Washington on December 13, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2176 Filed 1-28-86; 4:52 pm]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 85-ASO-16]

Proposed Revocation, Realignment and Establishment of Restricted Areas; North Carolina; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces extension of the comment period on an NPRM which proposes to revoke, realign, establish and increase the size of three Restricted Areas in eastern North Carolina at the request of the U.S. Navy.

DATES: Comments must be received on or before March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 85-ASO-16, published on December 16, 1985, (50 FR 51260) proposed to redesignate and realign R-5301, Albemarle Sound, NC, and R-5302, Harvey Point, NC. Additionally, and increase in the size of R-5313 is proposed. The Continental Control Area would be adjusted according to these actions and the Stumpy Point Military Operations Area would no longer be required and would be cancelled (50 FR 51260). In response to a request from the state of North Carolina, this action extends the comment period closing date to allow for a 75-day comment period instead of the existing 45-day comment period on Airspace Docket No. 85-ASO-16.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and restricted areas.

Extension of Comment Period

The comment period for Airspace Docket No. 85-ASO-16 is is extended to close on March 3, 1986.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

Issued in Washington, D.C., on January 27, 1986.

Daniel J. Peterson,

Management, Airspace Rules and Aeronautical Information Division.

[FR Doc. 86-2178 Filed 1-28-86; 4:47 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-248 (Oklahoma-8)]

High-Cost Gas Produced From Tight Formations; Oklahoma

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982) to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR § 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Oklahoma that the Cherokee Group be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on March 13, 1986.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on February 11, 1986.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357-9114, or C.W. Gray, Jr., (202) 357-8731.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking by Director, OPPR

Issued January 27, 1986.

I. Background

On December 13, 1985, the Oklahoma Corporation Commission (Oklahoma) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), that the Cherokee Group located in Roger Mills County, Oklahoma, be designated as a tight formation. This Notice of Proposed Rulemaking is issued under § 271.703(c)(4) to determine whether Oklahoma's recommendation that the Cherokee Group be designated a tight formation should be adopted. Oklahoma's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Oklahoma has recommended that the Cherokee Group in Township 15 North, Range 22 West, sections 19-23, 28-29, and 31-33 in Roger Mills County, Oklahoma be designated as a tight formation.

The Cherokee Group represents the middle and lower Desmoines Series of the Pennsylvania System in western Oklahoma. It occurs as interbedded sandstone, siltsone, and shale. The recommended group is overlain by the Marmation Group and underlain by the Atokan Series.

The thickness of the Cherokee Group ranges from 1,400 to 1,600 feet and the depth to the top of the group ranges from 9,000 to 9,200 feet below sea level.

III. Discussion of Recommendation

Oklahoma claims in its submission that evidence gathered through information and testimony presented at a public hearing in Oklahoma City, Oklahoma convened by Oklahoma on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, or wells completed for production from the recommended group, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended group is expected to produce more than five (5) barrels of oil per day.

Oklahoma further asserts that existing State and Federal Regulations assure that development of this information will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97. [Reg. Preambles 1977-1981] FERC Stats. and Regs. ¶ 30,160 (1980), the Director gives notice of the proposal submitted by Oklahoma that the Cherokee Group, as described and delineated in Oklahoma's recommendation as filed with the Commission, be designated as a tight formation under § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before March 13, 1986. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-248 (Oklahoma-8) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC, during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they want to make an oral presentation and so request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than February 11, 1986.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, will be amended as set forth below, in the event the Commission adopts Oklahoma's recommendation.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended adding paragraph (d)(214) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(214) *Cherokee Group in Oklahoma.* RM79-76-248 (Oklahoma-8).

(i) *Delineation of formation.* The Cherokee Group is located in Township 15 North, Range 22 West, Sections 19-23, 28-29, and 31-33 in Roger Mills County, Oklahoma.

(ii) *Depth.* The depth of the top of the Cherokee Group ranges from 9,000 to 9,200 feet below sea level. The thickness ranges from 1,400 to 1,600 feet. The Cherokee Group is overlain by the Marmaton Group and underlain by the Atokan Series.

[FR Doc. 86-2074 Filed 1-30-86; 6:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 7

[LR-106-77]

Qualified Possession Source Investment Income

Correction

In FR Doc. 86-1236 beginning on page 2726 in the issue of Tuesday, January 21, 1986, make the following correction:

On page 2726, third column, **DATES,** last line, "December 31, 1985" should read "December 31, 1975".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2889-6(a)]

Standards of Performance for New Stationary Sources Industrial Surface Coating; Plastic Parts for Business Machines

Correction

In FR Doc. 86-340 beginning on page 854 in the issue of Wednesday, January 8, 1986, make the following corrections:

§ 60.723 [Corrected]

On page 867, column one, § 60.723(b)(2), in the sixth line after the first equation, the parenthesis ")" should be a zero "0"; in column two, paragraph (ii), third line, "atmoshpere" should read "atmosphere"; and in the third column, paragraph (iii), first line, remove the "*I*".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Docket No. 60107-6007]

Foreign Fishing; Atlantic Mackerel, Squid, and Butterfish Fisheries

Correction

In FR Doc. 86-1287 beginning on page 2929 in the issue of Wednesday, January 22, 1986, make the following correction: On page 2930, in the first column, in paragraph 6, in the second line, insert "U.S. Commercial," after "among".

BILLING CODE 1505-01-M

50 CFR Part 651

[Docket No. 51190-5190]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Withdrawal of proposed rulemaking.

SUMMARY: NOAA withdraws the proposed rule to implement the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) that appeared at page 49582 in **Federal Register** of Tuesday, December 3, 1985 (50 FR 49582). The FMP was disapproved by the Regional Director, Northeast Region, National Marine

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Fisheries Service, Under section 304(b)(3) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) January 23, 1986, because it is not consistent with the national standards for fishery conservation and management of the Magnuson Act and Fails to meet the requirements of Excecutive Order 12291 and the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT:
Peter D. Colosi, Jr., Multispecies Plan Coordinator, Northeast Region, NMFS, 617–281–3600, ext. 252.

(16 U.S.C. 1801 *et seq.*)

Dated: January 28, 1986

William. G. Gordon,

Assistant Administrator For Fisheries. National Marine Fisheries Service.

NOAA by this document withdraws the proposed rule that appeared at page 49582 in the **Federal Register** of Tuesday, December 3, 1985 (50 FR 49582.)

[FR Doc. 86–2187 Filed 1–30–86; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 51, No. 21
Friday, January 31, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Oglethorpe Power Corp.; Finding of No Significant Import

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500–1508) and REA's Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to a proposed project by Oglethorpe Power Corporation (OPC). The project consists of construction of 10.9 kilometers (6.8 miles) of 230 kV transmission line from a proposed 230/12 kV substation at Rosier Road, through a proposed 230/12 kV substation at Boykin Road, to the existing Peach Orchard 230 kV Substation, all in Richmond County, Georgia.

FOR FURTHER INFORMATION CONTACT:
REA's Finding of No Significant Impact and Environmental Assessment (EA) and OPC's Borrower's Environmental Report (BER) may be reviewed in the Office of the Chief, Distribution and Transmission Engineering Branch, Southeast Area-Electric, Room 0270, South Agriculture Building, REA, Washington, DC 20250, telephone (202) 382–8436, or at OPC's office (Mr. F.F. Stacy, Jr., Manager), 2100 East Exchange Place, Tucker, Georgia 30085–1349, telephone (404) 496–7600.

SUPPLEMENTARY INFORMATION: REA has reviewed OPC's BER and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The proposed project will consist of approximately 10.9 kilometers (6.8 miles) of 230 kV line, a 230/12 kV substation at Rosier Road on approximately 2.6 hectares (6.6 acres) of land, a 230/12 kV substation at Boykin Road on approximately 1.8 hectares (4.5 acres) of land, and modifications to the Peach Orchard Substation to accommodate this line. REA determined that the proposed project is not likely to affect any threatened or endangered species or critical habitat; it will have no effect upon any property listed or eligible for listing in the National Register of Historic Places; it will have no effect upon any river section in the Nationwide Inventory of Wild and Scenic Rivers; it will not occur in a unit of the Coastal Barrier Resources System; and it will not directly affect the coastal zone.

The proposed transmission line will cross approximately 4.3 acres of wetlands and floodplains. Neither the proposed transmission line nor the substations are critical action facilities. Most of the 100-year floodplains and wetlands will be crossed at existing rights-of-way and the floodplains and wetlands can be spanned. The Spirit Creek 100-year floodplain and wetland will require clearing for new right-of-way, and a structure will be located in the 100-year floodplain and wetland. There are no practicable alternatives to locating in the 100-year floodplain and wetland, and all practicable means to minimize harm will be taken.

The proposed transmission line will cross approximately 3.5 hectares (8.53 acres) of prime farmland and 22.3 hectares (55 acres) of prime forestland. About half of the prime farmland can be crossed adjacent to road or transmission rights-of-way. Much of the farmland in the right-of-way can stay in production for the life of the project. The proposed project will convert prime forestland and a small amount of prime farmland to other uses, but there is a demonstrated significant need for and no practicable alternative to the proposed action, which avoids conversion of these lands or which reduces the area so converted or encroached upon.

Alternatives to the proposed 230 kV transmission line and substations were considered, such as no action, electrical alternatives, alternative sites and alternative routes.

Based upon OPC's BER and supporting documents, REA prepared an EA concerning the proposed project and its impacts. In accordance with REA's 7 CFR Part 1794, OPC advertised and requested comments on the environmental aspects of the proposed project. No comments were received. REA concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not necessary. This program is listed in the Catalog of Federal Domestic Assistance as 18.850–Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: January 27, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86–2142 Filed 1–30–86; 8:45 am]

BILLING CODE 3410–15–M

Forest Service

Intent To prepare an Environmental Impact Statement; Lewis and Clark National Forest; Great Falls, MT

The Department of Agriculture, Forest Service, will prepare an enviromental impact statement identifyng the planned method for controlling noxious weeds on the Lewis and Clark National Forest during the five-year period, 1986–90. This program is a continuation of an on-going control effort. About 360 acres per year were treated on the Forest during the five-year period 1981–85.

Spotted knapweed, leafy spurge and other noxious weeds have invaded about 1000 acres of the Lewis and Clark National Forest, and threaten to reduce the productivity and recreation value of these lands. A range of alternatives for treating these sites will be considered. Alternatives tobe evaluated will include:

1. No Action.
2. Cultural control by mechanical hand grubbing of weeds.
3. Chemical control by the ground application of herbicides by hand-held sprayer Biological control methods underway on the Forest will be continued under all alternatives. Health

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and safety considerations, including an analysis of the health risks to the applicator and the public will be evaluated.

Federal, State, and local agencies, and other individuals or organizations who may be interested in, or affected by, the decisions are invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be considered in depth.
3. Elimination of insignificant issues of those which have been covered by a previous environmental review.

If significant potential impact on threatened and endangerd species, or their habitat, are determined during the environmental assessment process, the Fish and Wildlife Service, Department of the Interior, will be consulted for a biological opinion.

The public is invited to comment. Written commnets should be mailed by February 7, 1986 to the responsible official: John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, P.O. Box 871, Great Falls, Montana 59403.

The draft environmental impact statement should be available for public review by March, 1986. The final environmental impact statement is scheduled to be completed by May, 1986.

Questions about the proposed action and environmental impact statement should be directed to Wayne Phillips, Ecosystem Coordinator, Lewis and Clark National Forest, P.O. Box 871, Great Falls, Mt. 59403. Phone (406) 727-0901.

Dated: January 21, 1986.

John D. Gorman,

Forest Supervisor.

[FR Doc. 86-2141 Filed 1-30-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to California Dried Fruit Export Trading Company ("CDFETC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

California raisins, raisin products and products derived from raisins, and California prunes, prune products and products derived from prunes.

Export Trade Facilitation Services (as They Relate to the Export of Products)

Consulting; international market research; advertising; marketing; insurance; product research and design; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), Canada, Mexico, all islands adjacent to these countries and all Caribbean islands north of the 12th Parallel but not excluding those islands on the Continental Shelf of South America.

Export Trade Activities and Methods of Operation

1. Each Member idependently will dedicate the quantity of Products that it may make available from time to time for sale in the Export Markets, and determine whether any part of such quantity will be sold independently by the Member, be sold in cooperation with some or all of the other Members, or be made available to CDFETC for sale in the Export Markets. CDFETC may not require any Member to export any minimum quantity of Products.

2. CDFETC and its Members may enter into agreements wherein CDFETC and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for the quantity of Products dedicated by each Member for sale by CDFETC or any Member(s) in that country or market. In such agreements, (i) CDFETC or the Member(s) acting as exclusive Export Intermediary may agree not to represent any other Supplier for sale in the Export Markets and (ii) Members may agree that they will export the quantity dedicated for sale in these Export Markets only through CDFETC or the Member(s) acting as exlcusive Export Intermediary, and that they will not export independently, either directly or through any other Export Intermediary.

3. CDFETC and/or one or more of its Members may engage in joint bidding or selling arrangements for the Export Markets and allocate sales resulting from such arrangements among the Members.

4. The Members may refuse to deal with Export Intermediaries other than CDFETC and its Members.

5. CDFETC may, for itself and on behalf of its Members, by agreement with its distributors or agents in the Export Markets or with the Members' distributors or agents in the Export Markets, or on the basis of its own determination:

a. Establish the prices at which Products will be sold in the Export Markets;

b. Establish target prices for sales of Products by the Members in the Export Markets, with each Member being free to deviate from such target prices by whatever amount it sees fit;

c. Subsequent to each Member independently dedicating the quantity of Products it may export pursuant to paragraph 1 above and subject to the other limitations set forth in paragraph 1, establish the quantity of Products to be sold in the Export Markets;

d. Allocate the Export Markets or customers in the Export Markets among its Members;

e. Refuse to quote prices for, or to market or sell, Products in the Export Markets; and

f. Enagage in joint promotional activities aimed at developing existing or new Export Markets, such as advertising and trade shows.

6. Subsequent to each Member independently dedicating the quantity of Products it may export pursuant to paragraph 1 above and subject to the other limitations set forth in paragraph 1, CDFETC and its Members may agree on the quantities of Products and the prices at which CDFETC and its Members may sell Products in and for the Export Markets, and may also agree on territorial and customer allocations in the Export Markets among the Members.

7. CDFETC and its Members may enter into exclusive and nonexclusive agreements appointing Export Intermediaries for the sale of Products in the Export Markets. Such agreements may contain the price, quantity, territorial and customer restrictions for the Export Markets contained in paragraph 6 above.

8. CDFETC and its Members may solicit individual non-Member packers or handlers of Products either to sell such Products to CDFETC for sale in the Export Markets or otherwise to combine those non-Member Products with those of some or all of the Members for sale in the Export Markets.

9. CDFETC and its Members may exchange and discuss the following types of information:

a. Information about sales and marketing efforts for the Export Markets, activities and opportunities for sales of Products in the Export Markets, selling strategies for the Export Markets, sales for the Export Markets, contract and spot pricing in the Export Markets, projected demands in the Export Markets for Products, customary terms of sale in the Export Markets, prices and availability of Products from competitors for sales in the Export Markets, and specifications for Products by customers in the Export Markets;

b. Information about the price, quality, quantity, source, and delivery dates of Products available from the Members for export;

c. Information about terms and conditions of contracts for sales in the Export Markets to be considered and/or bid on by CDFETC and its Members;

d. Information about joint bidding or selling arrangements for the Export Markets and allocation of sales resulting from such arrangements among Members, including each Member's share of the previous calendar year's total domestic acquisitions (in tons);

e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans- or intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customers, duties, and taxes;

f. Information about U.S. and foreign legislation and regulations, including Federal marketing order programs, affecting sales for the Export Markets; and

g. Information about CDFETC's or its Members' export operations, including without limitation, sales and distribution networks established by CDFETC or its Members in the Export Markets, and prior export sales by Members (including export price information).

10. CDFETC and its Members may prescribe conditions for withdrawal of Members from and admission of Members to CDFETC, including the following:

a. Each Member shall have the right to withdraw at any time without further liability to pay dues or assessments except to pay to the association any remaining amounts due under a written subscription signed by the Member agreeing to make such a contribution; and

b. Membership shall be limited to persons, firms, or organizations who meet the definition of "packer," as defined in 7 CFR 989.14 or "handler" as defined in 7 CFR 993.14.

11. CDFETC and its Members may meet to engage in the activities described in paragraphs one through ten above.

Definitions

"Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

"Supplier" means a person who produces, provides, or sells Products.

Members

A & M Farms, Inc., American Raisin Packers, Boghosian Raisin Packing Co., Inc., Bonner Packing Company, California Prune Packing Co., Caruthers Raisin Packing Company, Central California Raisin Packing Company, Champion Raisin International, Chooljian & Sons dba Del Rey Packing Company, Chooljian Bros. Packing Co., Inc., Enoch Packing Co., Inc., Lion Enterprises, Inc. (d/b/a Lion Dehydrator, Lion Packing Company, Lion Ranches), Lion Packing Company, National Raisin Company, Prize Exports, Inc., Sun-Diamond Growers of California, Sun-Maid Growers of California, Sunsweet Growers Inc., Tagus Ranch Packing, Victor Packing, Inc.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: January 27, 1986.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 86-1867 Filed 1-30-86; 8:45 am]

BILLING CODE 3510-DR-M

Exporters' Textile Advisory Committee; Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on March 11, 1986 from 2:30 p.m. to 4:30 p.m., Room 4830, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, D.C. 20230. The Committee provides advice about ways to promote increased exports of U.S. textiles and apparel.

Agenda: Review of export data; report on conditions in the export market; recent foreign restrictions affecting textiles; export expansion activities; and other business.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Helen Le Grande (202/377-3737).

Dated: January 23, 1986.

Walter C. Lenahan,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. 86-2202 Filed 1-30-86; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting at the King's Grant Inn, Danvers, MA, to discuss reports of the surf clam/ocean quahog; lobster; scallop; foreign fishing/squid, mackerel, butterfish; large pelagics, and groundfish oversight committees, as well as to discuss other fishery management and administrative matters. The public meeting will convene on February 11, 1986, at 10 a.m., and will adjourn on February 12, 1986, at approximately 5

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p.m., unless the meeting is extended into February 13, due to disapproval of the Atlantic Demersal Finfish Fishery Management Plan by the National Marine Fisheries Service. For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 91906; telephone: (617) 231–0422.

Dated: January 28, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–2188 Filed 1–30–86; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustacean Plan Development Team will convene a public meeting, January 30, 1986, at 12:30 p.m., at the Council's Headquarters, 1164 Bishop Street, Room 1405, Honolulu, HI, to review the validity of logbook data regarding reproductive conditions of spiny lobsters; the need for management measures for slipper lobsters; the economic condition of the fishery for lobsters in the Northwestern Hawaiian Islands, and possible revision of permit applications and data submission forms presently in use. For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368 or FTS: (808) 546–8923.

Dated: January 24, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–2189 Filed 1–30–86; 8:45 am]

BILLING CODE 3510-22-M

Foreign Fishing Permits; Summary of Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235; or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422;

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/674–2331;

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–1366;

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–6910;

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815;

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, 2000 S.W. First Avenue, Portland, OR 97201, 503/221–6352;

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274–4563;

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–634–7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1986 have been received from the Governments shown below.

Dated: January 28, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code fishery	Regional fishery management councils
ABS Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA Gulf of Alaska	North Pacific.
NWA Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA Snails (Bering Sea)	North Pacific.
WOC Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel(s) in support of U.S. vessels (Joint Venture).

Vessel name and type	Application No.	Fishery	Activity
Government of Spain			
Beiramar Dos, Medium Stern Trawler.	SP–86–0179	NWA	1*
Ria Deponteveda, Medium Stern Trawler.	SP–86–0076	NWA	1*
Isla Montana Clara, Medium Stern Trawler.	SP–86–0128	NWA	1*
Government of German Democratic Republic			
Hans Marchwitza, Large Stern Trawler.	GC–86–0052	NWA	1*
Stubnitz, Factory Ship.	GC–86–0047	NWA	1*
Ludwig Renn, Large Stern Trawler.	GC–86–0054	NWA	1*
Granitz, Large Stern Trawler.	GC–86–0051	NWA	1*
Breitling, Cargo/Transport Vessel.	GC–86–0012	NWA	1*
Lutten Klein, Cargo/Transport Vessel.	GC–86–0026	NWA	1*
Lichtenhagen, Cargo/Transport Vessel.	GC–86–0055	NWA	1*
Willi Bredel, Large Stern Trawler.	GC–86–0024	NWA	1*
Government of Italy			
Carlo Difazio, Medium Stern Trawler.	GC–86–0015	NWA	1*

Joint Venture

German Democratic Republic

The Government of the German Democratic Republic (GDR) has submitted permit applications for the fishery year beginning April 1, 1986, to engage in joint venture activities in the Northwest Atlantic Ocean fisheries. The applications request that vessels of East Germany receive 3,000 mt. of U.S. harvested Atlantic Mackerel. Directed fishing of the same species is also included in this request. The designated American partner is Joint Trawlers, Gloucester, MA.

Spain

The Government of Spain has submitted permit applications to engage in joint venture activities for the fishery year beginning April 1, 1986, in the Northwest Atlantic Ocean fisheries. The applications request that Spanish vessels receive transshipments of U.S. harvested squid during the periods noted in the following amounts:

May 1 through October 1, 1986.
—300 mt *Loligo* squid
—1500 mt *Illex* squid

The application also states 2500 mt of *Loligo* squid will be purchased from U.S. fish processors from April 1, 1986, through March 31, 1987.

The operation also proposes directed fishing for both *Loligo* and *Illex* squid. The American partner designated is Stonavar Trading, Inc., Bristol, Rhode Island.

Italy

The Government of Italy has submitted permit applications for the fishery year beginning April 1, 1986, to engage in joint venture activities in the Northwest Atlantic Ocean fisheries. The applications request that Italian vessels receive transshipments of U.S. harvest squid in the following amounts: 1500 mt *Loligo* and 1500 mt *Illex*. Dogfish is also included in that request in the amount of 1000 mt.

The operation also proposes directed fishing for both *Loligo* and *Illex* squid, and commits to purchase 1000 mt of *Illex* squid from U.S. processors. The American partner designated is IST Corporation, Inc., Cape May, New Jersey.

[FR Doc. 86–2125 Filed 1–30–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Consultations With the Government of the People's Republic of China Concerning Category 659 pt. (Infants' Sets)

January 28, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 3, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 27, 1985, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of man-made fiber infants' sets in Category 659 pt. (only T.S.U.S.A. Nos. 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359, 384.9365), produced or manufactured in China and exported to the United States.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55807), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Anyone wishing to comment or provide data or information regarding the treatment of this category under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The People's Republic of China is obligated under the consultation provision of the bilateral agreement, to limit its exports to the United States of these products during the ninety-day period which began on December 27, 1985 and extends through March 26, 1986 to the following level:

Category	90-day level
659pt.	317,706 pounds.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation period to the following:

Category	12-month level [1]
659pt.	1,001,981 pounds.

[1] March 27, 1986–March 26, 1987.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Category 659pt., exported during the ninety-day period at the level described above.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for the ninety-day period is exceeded, such excess amount, if allowed to enter at the end of the restraint period, shall be charged to the level (described above),

defined in the agreement for the subsequent twelve-month period.

Ronald I. Levin.

Acting Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 659–I—Infant's Sets—Man-Made Fiber

December 1985.

Summary and Conclusions

U.S imports of Category 659–I from China were 907,736 pounds (256,000 dozens) during the year ending October 1985. These compare with 507,519 pounds (119,000 dozens) imported a year earlier. Imports from China were 401,564 pounds in 1983 and 592,946 pounds in 1984.

This sharp and substantial increase in imports of low-valued infant's sets from China is disrupting the U.S. market for such sets.

U.S. Production and Market Share

U.S production data are available only in dozens. Production was 3,825,000 dozens in 1982; 3,631,000 dozens in 1983; and 3,854,000 dozens in 1984. Although the domestic production was virtually unchanged from 1982 to 1984, the domestic producers lost market share from 69 percent in 1982 to 58 percent in 1984. According to industry reports on shipments, production declined in 1985. With the substantial import increase, the domestic producers share of the market dropped to about one-half in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 659–I increased from 1.7 million dozens (4.2 million pounds) in 1982 to 2.7 million dozens (9.0 million pounds) in 1984. Imports for the year ending October 1985 were 3.1 million dozens compared with 2.4 million a year earlier.

The ratio of imports to domestic production must be calculated from the data in dozens since production data in pounds are not available. The ratio increased from 44.5 percent in 1982 to 71.3 percent in 1984. It probably was near 100 percent in 1985.

Duty-Paid Values and U.S. Producer Prices

Approximately 72 percent of the Category 659–I imports from China enter under TSUSA No. 384.2646—Infant's sets of man-made fiber, wholly of woven construction, ornamented. The remainder is entered under TSUSA No. 384.8651—infant's sets of man-made fiber, wholly of knit construction, not ornamented. These garments are landed at duty-paid value well below the U.S. producer prices for comparable garments.

Committee for the Implementation of Textile Agreements

January 28, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended and extended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 3, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 659pt.[1] produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on December 27, 1985 and extends through March 26, 1986, in excess of the following level of restraint:

Category	90 Day Level [2]
659pt.[1]	317,706 pounds.

Textile products in Category 659pt.[1] which have been exported to the United States prior to the first day of the indicated ninety-day period shall not be subject to this directive.

Textile products in Category 659pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–2203 Filed 1–30–86; 8:45 am]

BILLING CODE 3510–DR–M

[1] In Category 659, only T.S.U.S.A. numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359 and 384.9365).

[2] The level has not been adjusted to account for any imports exported after December 26, 1985.

Request for Public Comment on Bilateral Negotiations During 1986; Correction

January 28, 1986.

In FR Doc. 86–236, beginning on page 667 in the issue of Tuesday, January 7, 1986, make the following correction:

On page 667, third column, first paragraph, add the following expiring bilateral agreements for which the U.S. Government anticipates holding negotiations during 1986. (The date in parenthesis indicates the date of expiration.)

Panama (November 30, 1986)
Yugoslavia (December 31, 1986)

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–2204 Filed 1–30–86; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Canadian Market Portfolio Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade ("CBT") has applied for designation as a contract market in the Canadian Market Portfolio Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 1, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT Canadian Market Portfolio Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7227.

Copies of the terms and conditions of the proposed CBT Canadian Market Portfolio Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of its application for contact market designation may by available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in its support of its application; should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by April 1, 1986.

Issued in Washington, D.C., on January 27, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86–2137 Filed 1–30–86; 8:45 am]

BILLING CODE 6351–01–M

Pacific Futures Exchange; Pacific Stock Exchange Technology Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Pacific Futures Exchange ("PFE") has applied for designation as a contract market in the Pacific Stock Exchange ("PSE") Technology Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 1, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the PFE PSE Technology Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7303.

Copies of the terms and conditions of the proposed PFE PSE Technology Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the PFE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145,5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the PFE in support of its applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., 20581, by April 1, 1986.

Issued in Washington, D.C. on January 27, 1986.

Paula A. Tosini

Director, Division of Economic Analysis.

[FR Doc. 86–2138 Filed 1–30–86; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)

Dates of meeting: Tuesday–Friday, 18–21 February 1986

Times of meeting: 0800–1700 hours

Places: Kwajalein Missile Range

Agenda: The Army Science Board Special Panel on Ballistic Missile Defense will meet to discuss instrumentation of Kwajalein Missile Range. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–2167 Filed 1–30–86; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $1.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. Request for copies of patent applications must include the patent application serial number. Claims are deleted from patent application copies sold to avoid premature disclosure.

For further information contact: Dr. A.C. Williams, Staff Patent Adviser, Office of the Chief of Naval Research (Code 16P3), Ballston Tower No. 1, Arlington, Virginia 22217–5000, Telephone No. 202–696–4005.

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List of Patents

1. Patent 4,334,812: Adjustable Container Bulkhead Assembly. Filed August 3, 1979, patented June 15, 1982.
2. Patent 4,404,244: System for Rapid Repair of Damaged Airfield Runways. Filed October 27, 1982, patented September 13, 1983.
3. Patent 4,445,733: Grounding Ring for Double Shielded Cable. Filed June 17, 1982, patented May 1, 1984.
4. Patent 4,448,000: High Temperature Ultra-High Vacuum Infraread Window Seal. Filed April 27, 1982, patented May 15, 1984.
5. Patent 4,449,105: Passive Maser using Timesharing for Control of the Cavity and Control of the Oscillator on the Line of Simulated Emission. Field May 19, 1981, patented May 15, 1984.
6. Patent 4,452,533: External Cavity Diode Laser Sensor. Filed July 22, 1981, patented June 5, 1984.
7. Patent 4,452,998: Fluorinated Diacrylic Esters. Filed August 8, 1982, patented June 5, 1984.
8. Patent 4,453,238: Apparatus and Method for Determining the Phase Sensitivity of Hydrophones. Filed April 15, 1982, patented June 5, 1984.
9. Patent 4,456,086: Integrated Wheelchair and Ambulator. Filed August 1, 1979, patented June 26, 1984.
10. Patent 4,456,583: Preparation of Simple Nitronium Salts. Filed June 29, 1983, patented June 26, 1984.
11. Patent 4,456,889: Dual-Gate Mesefet Variable Grain Constant Output Power Amplifier. Filed June 4, 1981, patented June 26, 1984.
12. Patent 4,459,700: Adaptive MTI System. Filed May 28, 1975, patented July 10, 1984.
13. Patent 4,459,935: Phanton Computer Gating System. Filed January 29, 1982, patented July 17, 1984.
14. Patent 4,462,256: Lightweight, Broadband Rayleigh Wave Transducer. Filed December 27, 1982, patented July 31, 1984.
15. Patent 4,462,330: Current Stablized Underwater Platform. Filed July 30, 1979, patented July 31, 1984.
16. Patent 4,463,264: Lightweight Neutron Detector. Filed June 7, 1982, patented July 31, 1984.
17. Patent 4,463,496: Deep Submergence Vehicle (DSV) Lightweight Cable Cutter. Filed November 1, 1982, patented August 7, 1984.
18. Patent 4,463,678: Hybrid Shaped-Charge/Kinetic/Energy Penetrator. Filed April 1, 1980, patented August 7, 1984.
19. Patent 4,464,065: Fast Granular Superconducting Bolometer. Filed August 9, 1982, patented August 7, 1984.
20. Patent 4,464,739: Sampled Towed Array Telemetry. Filed July 26, 1982, patented August 7, 1984.
21. Patent 4,464,768: Adaptive Preprocessing System. Filed May 28, 1975, patented August 7,1984.
22. Patent 4,466,003: Compact Wideband Multiple Conductor Monopole Antenna. Filed Feburary 9, 1982, patented August 14, 1984.
23. Patent 4,468,635: Transmission Line Biased Coherent Array of Josephson Oscillators. Filed April 29, 1981, patented August 28, 1984.
24. Patent 4,468,780: Directional Line-Hydrophone Array Calibrator. Filed June 29, 1982, patented August 28, 1984.
25. Patent 4,468,794: Digital Coherent Detector. Filed January 11, 1984, patented August 28, 1984.
26. Patent 4,468,851: Process for Making a Heterojunction Source Drain Insulated Gate Field-Effect Transistors Utilizing Diffusion to Form the Lattice. Filed December 14, 1981, patented September 4, 1984.
27. Patent 4,469,399: Method of Making an Undersea, High Pressure Bulkhead Penetrator for use with Fiber Optic Cables. Filed December 30, 1981, patented September 4, 1984.
28. Patent 4,469,443: Atmospheric Transmissionmeter. Filed June 1, 1982, patented September 4, 1984.
29. Patent 4,469,536: Alloys and Method of Making. Filed November 10, 1982, patented September 4, 1984.
30. Patent 4,469,977: Superlattice Ultrasonic Wave Generator. Filed October 19, 1982, patented September 4, 1984.
31. Patent 4,470,022: Pseudo Atmospheric Noise Generator having Variable Amplitude Probability Distributions and Discharge Fine Structure. Filed June 4, 1982, patented September 4, 1984.
32. Patent 4,470,023: Coherent array of Josephson Oscillators with External Bias Leads. Filed April 29, 1981, patented September 4, 1984.
33. Patent 4,470,562: Polaris Guidance System. Filed October 22, 1965, patented September 11, 1984.
34. Patent 4,471,219: Amplitude Mode Magnetic Sensors. Filed March 8, 1982, patented September 11, 1984.
35. Patent 4,471,340: Analog to Digital Converter. Filed June 2, 1981, patented September 11, 1984.
36. Patent 4,471,359: Dual Band, Low Sidelobe, High Efficiency Mirror Antenna. Filed June 15, 1982, patented September 11, 1984.
37. Patent 4,472,719: ECM Multiple-Target Retrodirective Antenna. Filed January 15, 1973, patented September 18, 1984.
38. Patent 4,473,896: Tactical Expendable Device. Filed May 19, 1982, patented September 25, 1984.
39. Patent 4,475,792: High Resolution Diffraction Grating. Filed July 27, 1982, patented October 9, 1984.
40. Patent 4,475,816: Method for Determining in Situ the Absorption Coefficient of Particulate Media using Pulsed Laser Technique. Filed February 15, 1980, patented October 9, 1984.
41. Patent 4,478,285: Rubber Modified Epoxy Adhesive. Filed March 2, 1983, patented October 9, 1984.
42. Patent 4,476,549: Calibration Method for Acoustic Scattering Measurements using a Spherical Target. Filed March 31, 1982, patented October 9, 1984.
43. Patent 4,477,643: Fluorinated Polyurethanes. Filed April 20, 1984, patented October 16, 1984.
44. Patent 4,477,781: Combined Microwave Parallel Amplifier-RF Attenuator Modulator. Filed February 17, 1983, patented October 16, 1984.
45. Patent 4,478,890: Low Temperature Deposition of Nickel Films. Filed September 12, 1983, patented October 23, 1984.
46. Patent 4,480,323: Remote Self-Contained Undersea Monitor. Filed June 7, 1982, patented October 30, 1984.
47. Patent 4,481,421: Lithium-6 Coated Wire Mesh Neutron Detector. Filed May 24, 1982, patented November 6, 1984.
48. Patent 4,481,475: Betatron Accelerator having High Ratio of Budker Parameter to Relativistic Factor. Filed August 5, 1982, patented November 6, 1982.
49. Patent 4,481,485: Optically Triggered Transferred-Electron Device Micro-Wave Burst and Single Pulse Generators. Filed February 3, 1982, patented November 6, 1984.
50. Patent 4,482,205: Temperature-Insensitive Optical Fibers. Filed October 18, 1982, patented November 13, 1984.
51. Patent 4,482,702: FL Polyesters. Filed December 20 1983, patented November 3, 1984.
52. Patent 4,483,582: Wavelength Multiplexer-Demultiplexer. Filed April 23, 1980 patented November 20, 1984.
53. Patent 4,484,618: Thermochemical Energy Transport Using a Hydrogen Rich Working Fluid. Filed May 13, 1982, patented November 27, 1984.
54. Patent 4,486,657: Phase-Lock Fiber Optic Interferometer. Filed May 27, 1982, patented December 4, 1984.
55. Patent 4,486,683: Piexoelectric Transducer using Electrically Poled Nylon II. Filed October 26, 1981, patented December 4, 1984.
56. Patent 4,487,293: Elevator/Hatch Controller Platform Leveling Logic with Safety Features. Filed March 24, 1983, patented December 11, 1984.

57. Patent 4,488,271: Deep Ocean Wide Band Acoustic Baffle. Filed June 20, 1983, patented December 11, 1984.
58. Patent 4,488,691: Torso Restraint System. Filed December 27, 1982, patented December 16, 1984.
59. Patent 3,489,049: Solid State Hydrogen Pumping and Storage Material. Filed June 9, 1982, patented December 18, 1984.
60. Patent 4,489,274: Rotating Squid Magnetometers and Gradiometers. Filed December 10, 1980, patented December 18, 1984.
61. Patent 4,489,320: Interference Suppressor for Radar MTI. Filed August 7, 1981, patented December 18, 1984.
62. Patent 4,489,392: Orthogonalizer for Inphase and Quadrature Digital Data. Filed June 9, 1982, patented December 18, 1984.
63. Patent 4,490,016: Polarimetric Image Recorder. Filed July 6, 1982, patented December 25, 1984.
64. Patent 4,491,413: Fiber Optic Gyroscope with Alternating Output Signal. Filed April 22, 1982, patented January 1, 1985.
65. Patent 4,491,765: Quasioptical Gyroklystron. Filed September 2, 1982, patented January 1, 1985.
66. Patent 4,492,866: Method for Predicting the Performance of Cathode Materials, patented January 8, 1985.
67. Patent 4,492,875: Wave Powered Buoy Generator. Filed December 2, 1982, patented January 8, 1985.
68. Patent 4,492,960: Switching Mixer. Filed January 18, 1982, patented January 8, 1985.
69. Patent 4,493,047: Real Time Data Smoother and Significant Values Selection. Filed April 5, 1982, patented January 8, 1985.
70. Patent 4,493,114: Optical Non-Line-Of-Sight Covert, Secure High Data Communication System. Filed May 2, 1985, patented January 8, 1985.
71. Patent 4,493,664: Sonobuoy Float Inflation and Depth Selection Initiators. Filed May 3, 1982, patented January 15, 1985.
72. Patent 4,494,039: Gyrotron Traveling-Wave Device including Quarter Wavelength Anti-Reflective Dielectric Layer to Enhance Microwave Absorption. Filed October 19, 1982, patented January 15, 1985.
73. Patent 4,494,117: Dual Sense Circularly Polarized Helical Antenna. Filed July 19, 1982, patented January 15, 1985.
74. Patent 4,494,211: Balanced System for Ranging and Synchronization between Satellite Paris. Filed November 24, 1982, patented January 15, 1985.
75. Patent 4,495,256: Dual Electrochemical System. Filed January 26, 1984, patented January 22, 1985.
76. Patent 4,495,411: Fiber Optic Sensors Operating AT DC. Filed October 27, 1982, patented January 22, 1985.
77. Patent 4,496,878: Frequency Spreading Coupler. Filed September 23, 1982, patented January 29, 1985.
78. Patent 4,498,491: Thermo-Electric Valve. Filed June 8, 1983, patented February 12, 1985.
79. Patent 4,499,481: Heterojunction Schottky Gate Mesfet with Lower Channel Ridge Barrier. Filed September 14, 1983, patented February 12, 1985.
80. Patent 4,503,403: Optical Injection Locking of Solid-State Oscillators by Frequency-Multiplexed Injection-Locked, Laser Diodes. Filed September 28, 1983, patented March 5, 1985.
81. Patent 4,503,541: Controlled-Linewidth Laser Source. Filed November 10, 1982, patented March 5, 1985.
82. Patent 4,504,835: Low Sidelobe, High Efficiency Mirror Antenna with Twist Reflector. Filed June 15, 1982, patented March 12, 1985.
83. Patent 4,505,544: Spatial Frequency Multiplexed Coherent Optical Processor for Calculating Generalized Moments. Filed June 10, 1982, patented March 19, 1985.
84. Patent 4,506,234: Amplitude and Phase Modulation in Fin-Lines by Electrical Tuning. Filed June 17, 1983, patented March 19, 1985.
85. Patent 4,506,668: Physiochemically Controlled Scour Jet Array System. Filed February 29, 1984, patented March 26, 1985.
86. Patent 4,508,055: Device for Cryogenically Fabricating Source Material for Plasma X-Ray Lasers. Filed June 3, 1983, patented April 2, 1985.
87. Patent 4,508,294: Air Bag Restraint System. Filed May 2, 1983, patented April 2, 1985.
88. Patent 4,508,590: Method for the Deposition of High-Quality Crystal Epitaxial Films of Iron. Filed September 16, 1983, patented April 2, 1985.
89. Patent 4,509,051: Phase-Coded Pulse Expander-Compressor. Filed September 20, 1982, patented April 2, 1985.
90. Patent 4,509,131: Geomagnetic Velocimeter. Filed June 1, 1982, patented April 2, 1985.
91. Patent 4,509,522: Infrared Optical Measurement of Blood Gas Concentrations and Fiber Optic Catheter. Filed December 15, 1981, patented April 9, 1985.
92. Patent 4,512,197: Apparatus for Generating a Focusable and Scannable Ultrasonic Beam for Non-Destructive Examination. Filed September 1, 1983, patented April 23, 1985.
93. Patent 4,512,660: Picosecond Cars Probe using the Picosecond Continuum. Filed April 14, 1983, patented April 23, 1985.
94. Patent 4,512,825: Recovery of Fragile Layers Produced on Substrates by Chemical Vapor Deposition. Filed April 12, 1983, patented April 23, 1985.
95. Patent 4,513,087: Reversible Optical Waveguide Vapor Sensor. Filed January 31, 1983, patented April 23, 1985.
96. Patent 4,513,208: A biological Sensor for the Detection of Toxicant. Filed October 4, 1984, patented April 23, 1985.
97. Patent 4,513,280: Method and Apparatus for the Detection of Toxicants. Filed October 4, 1984, patented April 23, 1985.
98. Patent 4,513,289: P1 Polyphase Code Expander-Compressor. Filed May 11, 1982, patented April 23, 1985.
99. Patent 4,513,308: P–N junction Controlled Field Emitter Array Cathode. Filed September 23, 1982, patented April 23, 1985.
100. Patent 4,518,915: Test Device for Expendable Bathythermograph Set (XBT). Filed February 2, 1983, patented May 21, 1985.
101. Patent 4,521,779: Pulse Compression System. Filed April 24, 1980, patented June 4, 1985.
102. Patent 4,521,887: W Shaped Diffused Stripe GAAS/ALGAAS Laser. Filed September 7, 1982, patented June 4, 1985.
103. Patent 4,522,495: Optical Sensing Devices. Filed June 13, 1983, patented June 11, 1985.
104. Patent 4,523,469: Laser Generation of Ultrasonic Waveform Reconstructions. Filed January 19, 1983, patented June 18, 1985.
105. Patent 4,524,322: Fiber Optic System for Measuring Electric Fields. Filed November 18, 1982, patented June 18, 1985.
106. Patent 4,524,362: Phase Coded Pulse Expander-Compressor. Filed May 11, 1982, patented June 18, 1985.
107. Patent 4,524,363: P2 Polyphase Code Expander-Compressor. Filed May 11, 1982, patented June 18, 1985.
108. Patent 4,524,463: P2 Polyphase Code Expander-Compressor. Filed May 11, 1982, patented June 18, 1985.
109. Patent 4,525,013: Demountable Coaxial Electrical Connector for In-Line Amplifiers. Filed January 17, 1984, patented June 25, 1985.
110. Patent 4,534,338: Servio Operated Anti-G Suit Pressurization System. Filed May 24, 1984, patented August 13, 1985.
111. Patent 4,534,648: A Gryo Sensor Block Suspension. Filed November 7, 1983, patented August 13, 1985.

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List of Patent Applications

1. Patent application 459,073: Laser Generation of Ultrasonic Waveform Reconstructions. Filed January 19, 1983.
2. Patent application 491,941: A Transistor Oscillator/Doubler. Filed May 5, 1983.
3. Patent application 519,421: Aircraft Barricade. Filed August 1, 1983.
4. Patent application 528,710: Computer-Aided Process for generating Camera-Ready Graphical Artwork. Filed September 1, 1983.
5. Patent application 531,097: Deployment Sequence Mode Selection System for Aircraft Ejection Seat. Filed September 12, 1983.
6. Patent application 548,047: Multi-Directional Straddle-Lift Carrier. Filed November 2, 1983.
7. Patent application 548,468: Loop Radiating Elements. Filed November 3, 1983.
8. Patent application 562,336: Three Dimensional Orthogonal Delay Line Bootlace Lens Antenna. Filed December 16, 1983.
9. Patent application 575,425: A New Free Electron Laser using a Relativistic Beam with Spiralling Electron. Filed Janaury 31, 1984.
10. Patent application 576,229: Dynamic Pressure Test Unit-Ratio Method. Filed February 2, 1984.
11. Patent application 577,437: Improved Ship Deck Lifeline. Filed February 6, 1984.
12. Patent application 581,168: Matrix-Matrix Multiplication using an Electrooptical Systolic/Engagement Array Processing Architecture. Filed February 17, 1984.
13. Patent application 582,238: Variable Length and Sensor Spacing Thermistor Array. Filed February 22, 1984.
14. Patent application 582,412: Method for Determining Mesoscale Dynamic Topography. Filed February 22, 1984.
15. Patent application 596,786: Moisture Absorbing Anti-Arcing Coating and Method for Applying Same. Filed April 4, 1984.
16. Patent application 597,966: In-Situ Annular Face. Filed April 9, 1984.
17. Patent application 600,876: Composition and Method for Cleaning Embedded Soil from Surfaces having Low Gloss Coatings. Filed April 16, 1984.
18. Patent application 605,317: (VINYLOXY) CHLOROCYCLOTRIPHOSPHAZENES. Filed April 30, 1984.
19. Patent application 607,477: Connector/Nitinol Contace Force Device. Filed May 7, 1984.
20. Patent application 609,940: Process for Preparation of Cross-Linked Poly (tri-n-butyltin) Methacrylate with Simultaneous Particle Size Reduction. Filed June 18, 1984.
21. Patent application 611,611: Nonlinear Technique for High-Resolution Data Processing. Filed May 18, 1984.
22. Patent application 612,528: Phased Locked Array Laser System. Filed May 21, 1984.
23. Patent application 617,049: Precise Bearing Support Ditherer. Filed June 4, 1984.
24. Patent application 617,659: Bragg Cell Spectrum Analyzer. Filed June 5, 1984.
25. Patent application 619,436: A Broadband Matching Network. Filed June 11, 1984.
26. Patent application 620,646: A Low Perturbation Electron Injector for Cyclic Accelerators. Filed June 14, 1984.
27. Patent application 622,368: Programmable Multichannel Sonobouy Transmitter. Filed June 20, 1985.
28. Patent application 622,369: Programmable Multichannel Sonobouy Transmitter. Filed June 20, 1984.
29. Patent application 622,370: Electronic Module Insertion and Retraction Mechanism. Filed June 20, 1984.
30. Patent application 626,510: 1-FLUORO-1,1,5-TRINITRO-3-OXA-5-AZAHEXANE and Method of Preparation. Filed June 29, 1984.
31. Patent application 627,307: Airspeed Sensing Pressure Valve System. Filed July 2, 1984.
32. Patent application 627,936: Padlock Shackle. Filed July 5, 1984.
33. Patent application 627,939: An Automatic Pattern Recognition Apparatus. Filed July 5, 1984.
34. Patent application 628,093: A Scanning Alarm Electronic Processor. Filed July 5, 1985.
35. Patent application 630,049: Quasi-Optical Harmonic Gyrotron and Gyroklystron. Filed July 12, 1984.
36. Patent application 632,983: Fuel Efficient Propulsor for Motor Boats. Filed July 20, 1984.
37. Patent application 635,693: Optical Fibers with Reduced Pressure Sensitivity to High Frequency Acoustic Field. Filed July 30, 1984.
38. Patent application 635,866: Adhesive Joint Formation under Field Conditions. Filed July 30, 1984.
39. Patent application 636,036: Battery Charger. Filed July 30, 1984.
40. Patent application 637,238: Improved Arresting and Recovery System for Test Missiles. Filed August 2, 1984.
41. Patent application 640,178: A Coaxial Probe for Measuring the Current Density Profile of Intense Electron Beams. Filed June 19, 1984.
42. Patent application 643,216: Improved Real-Time Ultra-High Resolution Image Projection Display using Laser-Addressed Liquid Crystal Light Valve. Filed October 29, 1984.
43. Patent application 643,327: Method of Preparing Single Crystalline Cubic Silicon Carbide Layers. Filed August 22, 1984.
44. Patent application 645,888: Laser Vibrometer. Filed August 31, 1984.
45. Patent application 647,777: A Method for Automatic Water Mass Classification. Filed September 6, 1984.
46. Patent application 651,399: Improved Operation of Transversely Exited N_2O Lasers. Filed September, 17, 1984.
47. Patent application 654,926: Triple Matrix Product Optical Processors using Combined Time-and-Space Integration. Filed September 27, 1984.
48. Patent application 656,814: Visible and Ultraviolet Lasers Based on Excimer Transitions in the Homonuclear Halogens. Filed October 1, 1984.
49. Patent application 657,115: Wear Improvement in Titanium Alloys by Ion Implantation. Filed October 3, 1984.
50. Patent application 657,641: Improvements in Linked-Spar Motion-Compensated Lifting System. Filed October 4, 1984.
51. Patent application 660,349: Remote Optical Crack Sensing System. Filed October 12, 1984.
52. Patent application 661,836: IREB Converter to AC Pulses. Filed October 17, 1984.
53. Patent application 662,122: Pivotable Support Rescue Hoist. Filed October 18, 1984.
54. Patent application 662,933: Hot Rolling of Ceramics by the use of Self Propagating Synthesis. Filed September 17, 1984.
55. Patent application 665,866: Thrust Vectoring Apparatus for Maneuvering Missile in Flight. Filed October 29, 1984.
56. Patent application 666,597: Ion Beam Neutralizer. Filed October 31, 1984.
57. Patent application 667,685: Passive Arm Retention Curtain. November 2, 1984.
58. Patent application 670,083: Coherent Receiver Phase and Amplitude Alignment Circuit. Filed November 13, 1984.
59. Patent application 676,044: Optical 3-D Signature Device for Detecting Chemical Agents. Filed November 29, 1984.
60. Patent application 677,136: Parallel Local Interface Bus. Filed November 29, 1984.

61. Patent application 684,207: High Switching Speed Electrically Tuned Microwave Magnetic Resonance Devices. Filed December 20, 1984.
62. Patent application 684,529: Transversely Reinforced Piezoelectric Composites. Filed December 21, 1984.
63. Patent application 690,015: Processable and Stable Conductive Polymers. Filed January 9, 1985.
64. Patent application 695,327: A Collective Interaction Klystron. Filed January 28, 1985.
65. Patent application 698,199: Confretization of High Level Radioactive Source in Marine Sediment. Filed February 4, 1985.
66. Patent application 698,476: Detection of Neutral Species in Complex Matricles by Sims.
67. Patent application 700,246: BN Coating of Ceramic Fibers for Ceramic Fiber Composites. Filed February 11, 1985.
68. Patent application 702,091: Expedient Runway Surfacing with Post Tensioning System for Expeditionary Airfields. Filed February 11, 1985.
69. Patent application 704,124: Low Profile Fastener. Filed February 22, 1985.
70. Patent application 704,454: High Accuracy Digital Acousto-Optic Matrix Computer. Filed February 1985.
71. Patent application 705,760: Opacity Control Technique for Jet Engine Test Cells. Filed February 25, 1985.
72. Patent application 706,811: Polyethylene Imine-Metal Salt Solid Electrolyte. Filed March 1985.
73. Patent application 709,251: Optical Wavequide Sensor for Methane Gas.
74. Patent application 709,476: Self-Aligned GAAS Fet with Low 1/F Noise. Filed March 1985.
75. Patent application 714,411: Magnetically-Localizable Polymerized Lipid Vesicles and Method of Disrupting Same. Filed March 21, 1985.
76. Patent application 714,666: Method of Reducing Impurity and Anti-Site Defects in Semiconductor Crystal Materials, and Device and Apparatus Respectively Produced from and Utilizing Same. Filed March 22, 1985.
77. Patent application 714,775: Dual Drain Mosfet Detector for Crosstie Memory Systems. Filed March 22, 1985
78. Patent application 714,779: Method for Producing High Quality Germanium Nitride Interfaces for Germanium Semiconductors and Devices Produces thereby. Filed March 22, 1985.
79. Patent application 715,786: Analog Frequency Modulated Laser using Magnetostriction. Filed March 1985.
80. Patent application 715,992: Constant Rise AGC Device. Filed March 25, 1985
81. Patent application 717,365: Extended Precision in Video Bandwidth Analog to Digital Converter using Optical Techniques. Filed March 28, 1985.
82. Patent application 718,399: Airboc Chaff Deployment System. Filed April 21, 1985.
83. Patent application 718,762: Marginal Terrain Straddle-Lift Container Handler.
84. Patent application 719,403: Atomically Mixed Alloy Coated Cathodes. Filed April 4, 1985.
85. Patent application 722,579: Rusty Bolt Intermodulation Interference Ruducer. Filed April 12, 1985.
86. Patent application 722,580: Techniques for the Reduction of Fading in Interferometers. Filed April 12, 1985.
87. Patent application 725,710: Sump Arrangement for Snorkel Intake. Filed April 22, 1985.
88. Patent application 726,563: Chemical Bonding Agent for the Supression of "Rusty Bolt" Intermodulation Interference. Filed April 23, 1985.
89. Patent application 729,725: Low Temperature Inflator Apparatus. Filed May 20, 1985.
90. Patent application 729,761: High Current Fiber Brush Collector and Method for Making Same. Filed May 2, 1985.
91. Patent application 729,849: Passivation of Steel with Aqueous Amine Solutions Preparatory to Application of Non-Aqueous Protective Coatings. Filed April 1985.
92. Patent application 731,700: Original Method of Drydocking Ships. Filed May 8, 1985.
93. Patent application 732,330: High Output Programmable Signal Current Source for Low Output Impedance Application. Filed May 10, 1985.
94. Patent application 734,986: Time resolved Extended X-Ray Absorption Find Structure Spectrometer. Filed May 17, 1985.
95. Patent application 737,753: Gas Recirculator for Acyclic Machines. Filed May 28, 1985.
96. Patent application 739,354: Conductive Heterocyclic Ladder Polymers. Filed May 30, 1985.
97. Patent application 739,355: Moldable Electrically Conductive Polymer Compositions. Filed May 30, 1985.
98. Patent application 740,115: Suspension Method of Impregnating Active Material into Composite Nickel Plaque. Filed May 29, 1985.
99. Patent application 741,784: Liquid Phase Epitaxy (LPE) of silicon Carbide. Filed June 6, 1985.
100. Patent application 744,084: Expendable Bathytheromograph for Measuring Light Attenuation & Temperature below the Ocean Surface. Filed June 12, 1985.
101. Patent application 745,739: Nozzle for Self-Contained Cutting Torches. Filed June 17, 1985.
102. Patent application 746,704: Optoelectronic Integrated Circuit Multiplexer. Filed June 20, 1985.
103. Patent application 747,220: Variable Temperature Trap. Filed June 21, 1985.
104. Patent application 748,094: Latch for Detachably Securing Electronic Cards Along Orthogonal Loading Axes. Filed June 24, 1985.
105. Patent application 748,871: Method of Preparing Tetrahydrofuran. Filed June 28, 1985.
106. Patent application 749,238: A TIW Diffusion Barrier for AuZu OHMIC Contacts to P-Type InP. Filed June 27, 1985.
107. Patent application 749,340: Fiber Optic as an Angular Sensor. Filed June 27, 1985.
108. Patent application 749,661: Enhancement of Specific Antibody Production with Anti-IGD Antibodies. Filed June 27, 1985.
109. Patent application 749,705: Epoxy Phthalonitrile. Filed June 28, 1985.
110. Patent application 750,218: A Method for Melt-Coating a Surface. Filed July 1, 1985.
111. Patent application 750,630: An Integrated Wavelength Demultiplexer. Filed July 1, 1985.
112. Patent application 751,346: Oil Content Monitor/Control System and Method. Filed July 2, 1985.
113. Patent application 751,347: An Oil/Water Disperser Device for use in an Oil Content Monitor/Control System. Filed July 2, 1985.
114. Patent application 752,867: Generation of a Modulated Ireb with a Frequency Tunable by a Magnetic Field. Filed July 8, 1985.
115. Patent application 755,757: Microwave Recursive Filter. Filed July 17, 1985.
116. Patent application 761,648: Multiple Channel Fast Orthogonalization Network. Filed August 2, 1985.
117. Patent application 762,365: Multilayer Superconducting Shield and Method of Manufacturing Same. Filed August 5, 1985.
118. Patent application 768,004: Mixed Semiconductor Film Divice for Monitoring Same. Filed August 21, 1985.

Dated: January 24, 1986.
William F. Roos, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.
[FR Doc. 86-2135 Filed 1-30-86; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations, Executive Panel Advisory Committee, Anti-Submarine Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Anti-Submarine Warfare Task Force will meet February 19–20, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy anti-submarine warfare long term strategies. The entire agenda for the meeting will consist of discussions of key issues related to anti-submarine warfare and related intelligence. These matters constitute classified information that is specially authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: January 28, 1986.
William F. Roos, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liason Officer.
[FR Doc. 86-2127 Filed 1-30-86; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee, National Energy Security Policy Task Force; Closed Meeting; Correction

Notice was given January 7, 1986, at 51 FR 673 of a meeting of the Chief of Naval Operations Executive Panel Advisory Committee National Energy Security Policy Task Force on January 23–24, 1986, from 9 a.m. to 5 p.m. each day. The dates and times for the meeting have been changed to April 3–4, 1986, from 9 a.m. to 5 p.m. All other information in the previous notice remains effective.

For further information on this meeting contact Lieutenant Paul G. Butler, Executive Secretary of the Chief of Naval Operations Executive Panel Advisory Committee, telephone (703) 756–1205.

Dated: January 28, 1986.
William F. Roos, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.
[FR Doc. 86-2128 Filed 1-30-86; 8:45 am]
BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee, Personal Excellence and National Security Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Personal Excellence and National Security Task Force will meet February 21, 1986, from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed the to public.

The purpose of this meeting is to examine Navy personnel policies and programs. The entire agenda for the meeting will consist of discussions of key issues regarding future U.S. and Soviet naval manpower requirements, the national security implications of the dwindling quantity of quality youth in the U.S. and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: January 28, 1986.
William F. Roos, Jr.,
Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.
[FR Doc. 86-2129 Filed 1-30-86; 8:45 am]
BILLING CODE 3810-AE-M

DEFENSE LOGISTICS AGENCY

Cooperative Agreements

AGENCY: Defense Logistics Agency.

ACTION: Cooperative Agreements; Proposed Revised Procedure.

SUMMARY: This proposed reviews procedure implements Chapter 142, Title 10, U.S.C., as amended, which authorizes the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cost sharing Cooperative Agreements to support procurement technical assistance programs established by state and local governments and private non-profit organizations. Subpart III of this issuance establishes the administrative procedures proposed to be implemented by the Defense Logistics Ageney (DLA) to enter into such agreements for this purpose. Comments will be accepted until March 3, 1986.

DATE: The proposed effective date is March 10, 1986.

FOR FURTHER INFORMATION CONTACT: John McCallum, Program Officer, Office of Small & Disadvantaged Business Utilization (DLA-US), Defense Logistics Agency, Alexandria, VA 22304-6100, Telephone (202) 274-6471.

I. Background Information

The Department of Defense (DoD) has developed programs designed to expand the industrial base and increase competition for its requirements for goods and services, thereby reducing the cost of maintaining a strong national security. Its efforts to increase competition among the private sector have been supplemented by many state and local governments and other entities where their interest in improving the business climate and economic development in their communities is compatible with these DoD objectives. To assist in furthering this mutual interest, a Cooperative Agreement Program has been established by which the DoD can share the cost of supporting existing procurement technical assistance programs being conducted by state and local governments and private non-profit organizations and encourage other state and local governments and private non-profit organizations to consider establishing similar programs in their communities.

The Fiscal Year (FY) 1985 DoD Authorization Act, Pub. L. 98-525, amended Title 10, U.S.C., by adding a Chapter 142 which authorized the Secretary of Defense, acting through the Director, Defense Logistics Agency (DLA), to enter into cooperative agreements with state and local governments (hereinafter referred to as eligible entities as defined in section 3 of this regulation) to establish and conduct a procurement technical assistance program during FY 85. Title 10, U.S.C. as amended provides for continuation of the program during FY 86.

The Congress has authorized a total of $5 million to support the program during FY 86. Of this total, $3,000,000 is to be divided between existing programs and new starts on a 75% and 25% basis, with the remaining $2 million being available for either existing programs or new starts. The Act further anticipates a continuation of funding for the program through FY87. Each of the nine Defense Contract Administration Services Regions (DCASRs) within DLA will be authorized to award approximately $555,000 of the $5 million authorized for FY 86 as its share of program costs to applicants within the geographic area under their cognizance to support existing programs and new starts. In cases where the area being or to be serviced by the eligible entity encompasses more than one DCASR's area of geographic cognizance, eligible entities are to submit their proposals to the one DCASR having cognizance over the preponderant part of the area being or to be serviced. Only one proposal will be accepted from a single eligible entity. The addresses and geographical areas under the cognizance of each of the DCASRs, together with the name of the Associate Director for Small Business who is designated the Cooperative Agreement Program Manager, follows:

State or area	DCASR	Associate Director for Small Business
Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico.	DCASR Atlanta, 805 Walker Street, Marietta, GA 30060-2789.	Mr. Harold Watson, Telephone (404) 429-6195.
Connecticut, Maine, New Hampshire, Massachusetts, New York (all counties except Bronx, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester), Rhode Island Vermont.	DCASR Boston, 495 Summer Street, Boston, MA 02210-2184.	Mr. Edward Fitzgerald, Telephone (617) 451-4318.
Illinois (Northern Area), Indiana, Wisconsin.	DCASR Chicago, O'Hara Int'l Airport, P.O. Box 66475, Chicago, IL 60666-0475.	Mr. James Kleckner, Telephone (312) 694-6020.
Kentucky, Michigan, Ohio, Pennsylvania (Crawford, Erie, and Mercer Counties only).	DCASR Cleveland, Federal Office Bldg., 1240 East 9th Street, Room 1661, Cleveland, OH 44199-2063.	Ms. Wilma Combs, Telephone (216) 522-5122.
Arizona, Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	DCASR Dallas, 1200 Main Street, Dallas, TX 75202-4399.	Mr. Ken Strack, Telephone (214) 670-9205.
Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	DCASR Los Angeles, 11099 South LaCienega, Blvd., Los Angeles, CA 90045-6197.	Mr. S. L. Ganalon, Telephone (213) 643-0620.
New Jersey (Northern 12 Counties), New York (Bronx, Kings, New York, Nassau, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester Counties only).	DCASR New York, 201 Varick St., Room 1061 New York, NY 10014-4811.	Mr. John Mulreany, Telephone (212) 807-3050.
Delaware, District of Columbia, Maryland, New Jersey (Except for Northern 12 Counties) Pennsylvania, (All Counties except Crawford, Erie and Mercer), Virginia, West Virginia.	DCASR Philadelphia, 2800 South 20th St., Philadelphia, PA 19101-7478.	Mr. Roger Rhyner, Telephone (215) 952-4906.
Colorado, Illinois, (Southern Half), Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Utah, Wyoming.	DCASR St. Louis, 1136 Washington Ave., St. Louis, MO 63101-1194.	Mr. Thomas Moore, Telephone (314) 263-6617.

Additional Limitations placed on these funds follow:

(a) DoD cost sharing shall not exceed 50% of the total cost of a single program, excluding any Federal funds, except that the DoD share may be increased to no more than 75% for any existing program or new start that qualifies as a distressed entity. In no event, shall the DoD share of the total program cost exceed $150,000.

(b) Eligible entities are not to subcontract more than 10% of their total costs for private consulting services to support the program.

The DoD presently provides procurement and technical assistance to business firms through its network of Small Business Specialists located in industrial centers around the country. The Associate Directors of Small Business located in these industrial centers at the DCASRs will be available to provide eligible entities such assistance as necessary to explain and interpret the solicitation requirements when issued and to provide general guidance in preparing proposals.

Procurement technical assistance given to clients for marketing their goods and services to other Federal Agencies and/or state and local governments will not be considered when evaluating proposals. However, eligible entities are encouraged to consider supplementing their DoD program to include those marketing opportunities for business firms located in the area being or to be serviced.

The purpose of this proposed revised regulation is to make available to all eligible entities the prerequisite requirements and policies which govern the award of cooperative agreements by the DLA. This regulation is necessary to establish a permanent regulation which governs the award and administration of cooperative agreements.

Although this regulation will affect all eligible entities desiring to enter into a cooperative agreement with DLA, the DLA has determined that this rule does not involve a substantial issue of fact or law, and that it is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. This determination is based on the fact that this proposed Cooperative Agreement Regulation implements policies already published by the Office of Management and Budget pursuant to Chapter 63, Title 31, U.S.C., Using Procurement Contracts and Grant and Cooperative Agreements. In addition, DLA Cooperative Agreements will be entered into pursuant to the authorities and restrictions in the annual DoD Authorization and Appropriation Acts.

II. Other Information

The language contained in the current Cooperative Agreement Regulation limited the period of coverage to the FY 85 Program in that it addressed the FY 85 Authorization Act requirements in specific terms, including the exact dollar amounts of funding applicable to the Program. This proposed revision to regulation will provide general guidance for cooperative agreements entered into by the DLA and will become a permanent document for the duration of the program.

DLA has determined that the proposed regulation does not involve substantial issues of fact or law and the regulation is unlikely to have a substantial or major impact on the Nation's economy or large numbers of individuals or businesses. Therefore, public hearings were not conducted.

Since this is DLA's permanent regulation covering cooperative agreements pursuant to 31 U.S.C. 6301 et seq. using Procurement Contracts and

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Grant and Cooperative Agreements, additional comments are invited on the regulation and are to be submitted to the Defense Logistics Agency, ATTN: DLA-US, Cameron Station, Alexandria, VA 22304–1600. All comments received by 3 March 1986 will be evaluated to determine if any revisions should be made to Subpart III.

Issued in Alexandria, VA, on 24 January 1986.

For the Defense Logistics Agency.

Ray W. Dellas,

Staff Director, Office of Small and Disadvantaged Business Utilization.

III. Proposed Revision to DLA Regulation—Cooperative Agreements

1. Scope

(a) This regulation implements Chapter 142 of Title 10, U.S.C., as amended, and establishes requirements for the award and administration of Cost Sharing Cooperative Agreements entered into between the Defense Logistics Agency (DLA) and eligible entities. Under these agreements Department of Defense (DoD) financial assistance will be provided to recipients. Such assistance will cover the DoD share of the cost of establishing new and/or maintaining existing Procurement Technical Assistance (PTA) Programs for furnishing PTA to business entities.

(b) A cooperative agreement is a binding legal instrument which reflects a relationship between the DLA and a cooperative agreement recipient for the purpose of transferring money, property, services or anything of value to the recipient for the accomplishment of the requirements described therein. The requirement shall be authorized by Federal statute and substantial involvement shall be anticipated between the DLA and the recipient during performance of the agreement.

(c) When proposals for cooperative agreements are obtained through the issuance of a DLA program solicitation, this regulation shall be incorporated into the program solicitation by reference or by attachment as an appendix thereto for the purpose of establishing administrative provisions for the execution and administration of DLA Cooperative Agreements. Program solicitations may include additional administrative provisions when such provisions are required by program legislation or program regulations not included herein.

(d) The DoD share of an eligible entity's proposal and award recipient's program cost shall not exceed 50%, except in the case of a distressed entity (as defined in paragraph 3 below) the DoD share may be increased to an amount not to exceed 75%. However, in no event is the DoD share of any single program cost to exceed $150,000.

(e) During each fiscal year (FY) for which funding is authorized for the PTA program at least one cooperative agreement for either an existing program or a new start shall be awarded within the geographic cognizance of each of the 9 Defense Contract Administration Services Regions (DCASRs) within the DLA. In cases where the area being or to be serviced by an eligible entity encompasses more than one DCASR's area of geographic cognizance, the eligible entity should submit its applications to the one DCASR having cognizance over the majority of the area being or to be serviced. Only one application will be accepted from a single eligible entity.

2. Policy

(a) It is the DLA policy to encourage and maximize open and fair competition when awarding cooperative agreements for establishing or maintaining existing PTA programs. Cooperative agreements will be awarded on a competitive basis consistent with the best interests of the Government as a result of the issuance of Solicitations for Cooperative Agreement Proposals (SCAPs).

(b) SCAPs inviting the submission of proposals shall be given the widest practical dissemination to all known eligible entities and to those that request copies of the SCAP subsequent to its issuance. All eligible entities that have advised the DCASR of their interest in submitting a proposal under the SCAP will be invited to participate in a presolicitation conference to be held at a location to be designated by the DCASR at least 30 calendar days prior to the SCAP closing date.

(c) Any solicitation issued in accordance with this regulation shall not be considered to be an offer made by the DoD and will not obligate the DLA to make any awards under this program. The DoD is also not responsible for any monies expended or expense incurred by applicants prior to the award of any cost sharing cooperative agreement.

(d) The award of a cooperative agreement under this program shall not in any way obligate the DoD to enter into a contract or give preference for the award of a contract to a concern or firm which becomes a client of the award recipient.

(e) The Federal Acquisition Regulation (FAR) contains numerous clauses and provisions which provide operational guidance and spell out rights and obligations of parties in Federal Procurement transactions. Although the regulation is not applicable per se to cooperative agreements, some of the provisions contained in the Regulation may be suitable for inclusion in cooperative agreements. Therefore, the clauses and provisions contained therein may be made a part of all cooperative agreement solicitations and awards with eligible entities other than those covered under Office of Management and Budget (OMB) Circulars A–102 (Uniform Administrative Requirements for Grants-In-Aid to State and Local Governments) and A–110 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-profit Organizations). Where appropriate, the language of the clauses will be modified to change "contract" to "cooperative agreement" and "contractor" to "participant" as necessary. Clauses and provisions specified as mandatory are not subject to negotiations. The clauses and provisions will only be used if the applicable dollar threshold is met. For example, if there is a $100,000 threshold for applying the clause, that particular clause will only be used in the cooperative agreement if the total cost of the project (including both the proposer's and DoD's share of total costs) exceeds that threshold. However, the addition of any clauses and provisions not identified in the solicitation or the modification of clauses and provisions which are not designated as being mandatory will be subject to negotiations.

(f) Award recipients are not required to obtain or retain private consulting services for any extended period of time. Accordingly, any cost being proposed for such services are not to exceed 10% of the total program cost. Costs in excess of 10% included in the eligible entity's proposal will not be allowed.

(g) Reasonable quantities of government publications, such as "Selling to the Military" may be furnished to award recipients at no cost, subject to availability.

(h) For the purpose of executing cooperative agreements, the DCASR Associate Director of Small Business who has been delegated the authority to execute the cooperative agreement shall not require the appointment as a contracting officer.

3. Definitions

The following definitions apply for the purpose of this regulation.

(a) *Client*—A recognized business entity, including corporations, partnerships, or sole proprietorship

organized for profit, which are small and other than small, that have the potential or are seeking to market their goods or services to the DoD.

(b) *Cooperative Agreement Offer/Application/Proposal*—An eligible entity's response to the SCAP describing their PTA program being operated or being planned. The offer binds the eligible entity to perform the services described therein if selected for an award, and upon the proposal being incorporated into the cooperative agreement award document.

(c) *Distressed Entity*—Local government (as defined in Part 3(d)(ii) below) whose total geographic area being or to be serviced under a proposed PTA program, either:

(1) Has a per capita income of 80% or less of that State's average, or

(2) Has an unemployment rate at least 1% above the national average for the most recent 24-month period for which statistics are available from the U.S. Department of Labor.

(d) *Eligible Entities* include:

(1) *State Government*—A State of the United States, the District of Columbia, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

(2) *Local Government*—A unit of government in a State, a local public authority, a special district, an intrastate district, a council or governments, a sponsor group representative organization, an interstate entity, or another instrumentality of a local government.

(3) *Private, non-profit organization*—Any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3)–(6) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual.

(e) *Existing Program*—Includes any PTA type program that has been established and operated by an eligible entity for at least 12 months prior to the closing date for submission of proposals to the DLA, as well as all recipients of cooperative agreements with the DLA, regardless of the length of time their PTA program has been in operation.

(f) *In-kind Contributions*—Represent the value of noncash contributions provided by the eligible entity and non-Federal parties. Only when authorized by Federal legislation may property purchased with Federal funds be considered as in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefitting and specifically identifiable to the project or program.

(g) *New Starts*—Includes all eligible entities that have not had an established and operating PTA program for a full 12-month period prior to the closing date for submission of proposals under a SCAP. It also includes any eligible entities' program that otherwise meets the definition of an existing program, but whose proposal anticipates expanded geographical coverage or a significant increase in scope of operations. However, recipients of cooperative agreements with the DLA will not be eligible for consideration as a new start.

(h) *Private Consultant Services*—Services offered by private profit seeking individuals, organizations or otherwise qualified business entities to provide marketing and technical assistance to business firms seeking contracts with Federal, State and local government organizations.

(i) *Solicitation for Cooperative Agreement Proposals (SCAP)*—A document issued by DLA containing provisions and evaluation criteria applicable to all applicants that apply for a PTA cooperative agreement.

(j) *Direct Cost*—Any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective.

(k) *Indirect Cost*—Any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost.

4. Program Description

The objective of the PTA Program is to assist eligible entities in providing marketing and technical assistance to businesses, hereinafter referred to as clients, in selling their goods and services to the DoD, thus assisting the DoD in its acquisition goals and at the same time enhancing the business climate and economies of the communities being served. Specific program requirements to accomplish this objective will vary, depending on location, the types of industries and business firms within the community, the level of economic activity in the community, and many other factors. However, the SCAP will describe the minimum features that a comprehensive PTA Program should generally include, as follows:

(a) *Personnel*—Professional personnel qualified to counsel and advise clients regarding DoD procurement policies and procedures. The areas of consideration should relate to marketing techniques and strategies, pricing policies and procedures, preaward procedures, postaward contract administration, quality assurance, production and manufacturing, financing, subcontracting requirements, bid preparation, and specialized acquisition reqirements for such things as construction, research and development and data processing.

(b) *Marketing Tools*—Should include, as a minimum, the Commerce Business Daily, Federal Acquisition Regulation, DoD FAR Supplement, commodity listings from DoD contracting activities, Federal and military specifications and standards, and other Federal Government publications.

(c) *Networking*—Techniques for providing assistance throughout the area being serviced by locating assistance offices in areas of industrial concentration, arrangements with other entities or organizations, establishing data links, and through other appropriate means.

(d) *Fee and Service Charges*—In the event the applicant presently charges or plans to charge clients a fee or service charge, details as to the basis for and amount of the fee to be charged must be described.

(e) *Performance Measurement*—Should include a means of periodically measuring program effectiveness in achieving the objectives decribed above. Factors to consider in establishing this performance measurement system should include the number and types of clients assisted, including size and social status; the types of assistance rendered, such as marketing and accounting; the number of clients added to the DoD and other Federal Agency bidders mailing lists, the Vendor Profile System of the Minority Business Development Agency, and the Procurement Automated Source System (PASS) of the Small Business Administration, and the value of prime and subcontract awards received by clients resulting from the program.

5. Solicitation for Cooperative Agreement Proposals and Award

(a) The SCAP shall be prepared by the HQ DLA Cooperative Agreement Policy Council and will be issued through each DCASR. The Policy Council will be comprised of representatives from the HQ DLA Offices of General Counsel, Contracting, Comptroller, Congressional Affairs and Small Business. The Staff Director, Small and Disadvantaged

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Business Utilization shall serve as General Counsel Chairman. The Council will be responsible for development of the SCAP, including the provisions, specifications, project objectives, proposal evaluation criteria and schedule.

(b) The evaluation of proposals and selection of award recipients resulting from responses submitted to a SCAP shall be conducted as detailed below:

(1) Proposals will be evaluated by a specially constituted evaluation panel established at each DCASR. The panel will be comprised of a small business specialist, contract management specialist, comptroller, and other personnel deemed appropriate by the DCASR Commander. However, the DCASR Associate Director of Small Business, who has been delegated the authority to execute the cooperative agreement, shall not serve as a panel member. A member of the Office of Counsel will be appointed on the panel, but shall serve in an advisory capacity only.

(2) Prior to making a comprehensive evaluation of a proposal, the evaluation panel shall make an initial evaluation to determine if the proposal contains sufficient technical, cost, and other information, has been signed by a responsible official authorized to bind the eligible entity and whether it generally meets all requirements of the SCAP. If the proposal does not meet those requirements, a comprehensive evaluation shall not be made. In such case, a prompt reply shall be sent to the proposer indicating the reason for its proposal not being acceptable. Revised proposals will not be accepted from applicants whose proposals are rejected after the initial evaluation unless the revised proposal is postmarked or is hand delivered prior to the closing date of the SCAP. Any proposal received which is unsigned will not be given additional review consideration and will be returned to the applicant.

(3) The initial evaluation of acceptable proposals will include a review to verify the accuracy of the classification of the proposal concerning the entity's stated program status as existing or a new start. In the event the evaluation panel considers the proposal status misclassified, it will review the matter with the applicant. In the event of disagreement, the panel's determination of the applicant's classification shall be final and not subject to further review.

(4) Proposals which pass the initial evaluation phase will be subjected to a comprehensive evaluation. The basic purpose of the comprehensive evaluation is to assess the relative merits of the proposals to determine which offer the greatest likelihood of achieving the stated program objectives, considering technical, quality, personnel qualifications, estimated cost, and other relevant factors. Proposal evaluations shall consist of three steps. First, each proposal will be evaluated by the panel in accordance with stated criteria and ranked in order of excellence. Second, the panel will consider the proposal's relevant program objectives to determine which will best further specific program goals. Third, the panel will determine whether sufficient funds have been allocated to the DCASR to cover the DoD share of costs. All findings and recipient selections will be documented, signed, and retained to provide an adequate record to support the panel's decisions.

(c) The Policy Council in developing its recommendation will consider additional factors, such as the extent of geographic overlap among eligible entities and economic downturns in selected geographic areas resulting from base closures or terminations of major DoD contracts.

(d) Upon completion of its review, the evaluation panel will submit the panel results and its recommendations to HQ DLA for review by the Cooperative Agreement Policy Council and for fund control. Upon completion of the Council's review, the results will be submitted to the Commander of the cognizant DCASR for approval.

(e) After approval by the DCASR Commander, the cooperative agreement will be executed by the DCASR Associate Director of Small Business.

6. Evaluation Criteria

(a) The evaluation factors for an existing program and for a new start shall be specified in the SCAP, along with a narrative description of their relative importance.

(b) The following evaluation factors are listed in their order of relative importance and will be considered as the evaluation criteria for new starts:

(1) The types and qualifications of personnel assigned or to be assigned to the program.

(2) The quality of the PTA Program.

(3) The number of clients in the geographic area being or to be serviced.

(4) The percentage of total program costs to be shared by DoD.

(5) The level of unemployment in the area being or to be serviced.

(c) In addition to the above 5 factors, the evaluation criteria for an existing program will include the following factors:

(1) The eligible entity's development, performance and effectiveness in conducting its PTA Program, including achievements against established goals. This factor will be given more weight than any other single factor during the evaluation of existing programs.

(2) The amount of subcontracting to private consultants. This factor will be given the least weight of any of the 7 factors applicable to an existing program.

(d) As this program applies both to existing PTA Programs and to those being planned, certain of these evaluation factors will be evaluated based upon stated implementation policy for programs being planned. For example, the types and qualifications of personnel assigned will require appliants that do not presently have established but are planning programs to identify the standards to be used in selecting the personnel.

(e) The amount of subcontracting to private consultants is limited to no more than 10% of total program costs. In evaluating this factor for existing programs the smaller the amount of such subcontracting the greater the weight that will be given. However, in the case of new starts, equal weight will be given to all offers, subject only to the 10% limitation.

7. DoD Funding

(a) DoD Authorization and Appropriation Acts may authorize different amounts as the DoD share of costs to support the program each FY. Of the total amount authorized in any FY, a specific percentage is required to be allocated to support existing programs, with the balance being allocated to support new starts.

(b) Any funds authorized for the PTA program will be allocated approximately equally among the nine DCASRs to cover the DoD share of the PTA program cost for existing programs and for new starts. The SCAP will identify the total amount of funds authorized for the related FY, as well as the specific amounts of funds allocated for existing programs and new starts, and the amounts allocated to each DCASR.

(c) The SCAP will, as appropriate, also identify any funding being considered for the program in future years.

8. Cost Sharing Criteria and Limitations

(a) This section sets forth the policy on cost sharing by the Government under DLA Cooperative Agreements. Cost sharing is a generic term denoting any situation wherein the Government does not fully fund the participant's total allowable costs required to accomplish the defined project or effort. The term encompasses concepts such as cost participation, cost matching, cost limitations (direct or indirect), and participation in kind.

(b) The DoD share of program costs shall not exceed 50%, except in the case of an eligible entity meeting the criteria of a distressed entity. When the prerequisite conditions to qualify as a distressed entity are met, the DoD share may be increasd to an amount not to exceed 75%.

(c) In no event shall the DoD share of program costs exceed $150,000 for any single proposal.

(d) Cost contributions may be to either direct or indirect costs, provided such costs are otherwise allowable in accordance with the cost principles applicable to the award. Allowable costs which are absorbed by the eligible entity as its share of costs may not be charged directly or indirectly or may not have been charged in the past to the Federal Government under other contracts, agreements, or grants.

(e) The SCAP will require applicants to submit an annualized estimated budget, which may include cash contributions, in-kind contributions, and any other Federal Agency funding (including grants, loans, and cooperative agreements). The type and value of any in-kind contribution will be limited to no more than 25% of the total annual budget. However, Federal funds provided under another Federal financial assistance award, including loans (but not including loan guarantee agreements since these do not provide for disbursement of Federal funds) are not acceptable for calculating cost contributions of the eligible entity, but may be included in the annualized estimated budget if the terms of the other award instrument allow such use or written advice from the Agency(s) providing such other funds is obtained which would permit such use. Any method used by the eligible entity in providing the required funds which relies upon Federal funds must be disclosed and identified in the eligible entity's proposal.

(f) Recipients of cooperative agreements shall be required to maintain records adequate to reflect the nature and extent of their costs and to insure that the required cost participation is achieved.

(g) The SCAP will also provide that indirect costs are not to exceed 100% of direct costs.

(h) In the event the applicant charges or plans to charge a fee or service charge for PTA given to clients, or to receive any other income as a direct result of operating the PTA Program, the estimated amount of such reimbursement is to be clearly identified in the proposed budget and shall be credited against total budgeted costs.

(i) The Federal cost principles as stated in the regulations listed below will be used as guidelines to determine allowable costs in performance of:

(1) OMB Circular A–21 Educational Institutions.

(2) OMB Circular A–87 (FMC 74–4) Cost Principles for State and Local Governments.

(3) OMB Circular A–122. Cost Principles for Non-Profit Organizations.

9. Administration

(a) Cooperative agreements will be assigned to the cognizant DCASR for payment and postaward administration by the Associate Director of Small Business.

(b) The Associate Director of Small Business at the cognizant DCASR will be responsible for periodically reviewing recipient performance, to include a review of budgeted versus actual expenditures, progress being made in meeting goals, compliance with certificates and representations, and other performance factors.

(c) For eligible entities covered by OMB Circular A–102, Uniform Administrative Requirements for Grants-In-Aid to State and local Governments, or OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations, the administrative requirements specified in those circulars will apply.

[FR Doc. 86–1902 Filed 1–30–86; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests Under OMB Review

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Service invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before March 3, 1986.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 18, 1986.

George P. Sotos,

Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review Requested: NEW
Title: National Assessment of Educational Progress Field Testing—Higher Order Skill Assessment in Mathematics, Science and Technology
Agency Form Number: ED 2371–HOS
Frequency: Non-recurring
Affected Public: Individuals or households; State or local governments
Reporting Burden
Responses: 3,000
Burden Hours: 3,000
Recordkeeping Burden
Recordkeepers: 0
Burden Hours: 0

Abstract: Under a grant for research on the assessment of higher order skills

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in mathematics and science, the National Assessment of Educational Progress (NAEP) will be field testing a variety of innovative test exercises that will attempt to measure problem solving, critical thinking and reasoning skills in a national sample of students from different backgrounds in grades 3, 7 and 11.

Office of Postsecondary Education

Type of Review Requested:
EXTENSION
Title: Student Confirmation Report
Agency Form Number: 1072
Frequency: Semi-annually
Affected Public: Businesses, and non-profit institutions
Reporting Burden
Responses: 22,500
Burden Hours: 16,875
Recordkeeping Burden
Recordkeepers: 11,250
Burden Hours: 16,225
Abstract: The Student Confirmation Report is completed twice a year by postsecondary institutions and records information on the status of a borrower who has a Federal Insured Student Loan (FISL). This document is the only vehicle in use to collect FISL information on borrowers. It is used in conjunction with other FISL documents to transmit status information to lenders.

[FR Doc. 86-2155 Filed 1-30-86; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Final marketing criteria and call for applications for power.

SUMMARY: The Post-1989 General Power Marketing and Allocation Criteria (Criteria) for the sale of energy with capacity from the Pick-Sloan Missouri Basin Program-Western Division (P-SMBP-WD) and the Fryingpan-Arkansas Project (Fry-Ark) by the Western Area Power Administration (Western) is published herein, together with a discussion of the issues raised during the public comment process, and a discussion of revisions made to the Proposed Post-1989 General Power Marketing Criteria (Proposed Criteria) published in the **Federal Register** on August 23, 1983 (48 FR 38279). Most of the current contracts for the two projects expire at the end of the 1989 summer billing period; therefore, Western's Loveland Area Office (LAO), formerly known as the Loveland-Fort Collins Area Office, will market energy with capacity under these Criteria beginning no later than the 1989-90 winter season. The LAO expects the allocations to be completed and the contracts ready for signature by allottees in 1987.

EFFECTIVE DATE: March 3, 1986.

DATES: Applications for an allocation of both energy and associated capacity must be received in Western's LAO by close of business on April 1, 1986. See V.E. for further details.

Signed contracts for previously allocated long-term energy and/or capacity from the LAO must be received in Western's LAO by close of business April 1, 1986, to establish eligibility as an existing contractor under these criteria.

Applicant Profile Data must be submitted by potential applicants in the southwest portion of Kansas by April 1, 1986. Applicant Profile Data requirements may either be obtained from the Area Manager, Loveland Area Office, or found at 48 FR 38279, 38282 (August 23, 1983). The southwest portion of Kansas is defined as the area south of the Missouri River Basin and west of the eastern boundaries of the counties intersected by the 100th Meridian.

FOR FURTHER INFORMATION CONTACT: Mr. Mark N. Silverman, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224-7201.

SUPPLEMENTARY INFORMATION:

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1. General Contract Terms.
2. Long-Term Firm Energy with Capacity Obligations.
3. Scheduling, Accounting, and Billing.
4. Delivery Conditions.
E. Application Procedures.
VI. Appendix A—Derivation of Marketable Resources.
VII. Appendix B—Market Area Map.

I. Regulatory Procedural Requirements

A. Determination Under Executive Order 12291: The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has been exempted from sections 3, 4 and 7 of Executive Order 12291.

B. Regulatory Flexibility Analysis: Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the marketing plan relates to electric services provided by Western. Under 5 U.S.C. 601(2), services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

C. Environmental Assessment: An Environmental Assessment (EA) (DOE/EA-0266) was prepared by Western in April of 1985. Further refinements to the Criteria necessitated supplemental environmental analysis, which was completed in December of 1985. A Finding of No Significant impact (FONSI) determination covering the EA and the supplemental analysis has been made by the Department of Energy in accordance with the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 (NEPA), 40 CFR Parts 1500-1508. The EA evaluates the potential environmental effects of the Criteria. Copies of the EA and FONSI may be obtained by contacting the LAO Area Manager whose address appears above.

D. Statutory Basis of the Criteria: These Criteria are based upon the provisions of the Reclamation Act of 1902, approved June 17, 1902 (ch. 1093, 32 Stat. 388); the Reclamation Project Act of 1939, approved August 4, 1939 (43 U.S.C. 485h(c)); and the Department of Energy Organization Act of 1977, approved August 4, 1977 (42 U.S.C. 7152, 7191); and are more specifically based upon the provisions of the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 891); the Fryingpan-Arkansas Project Acts of 1962 and 1974, approved August 16, 1962 (Pub. L. 87-590, 76 Stat. 389), and October 27, 1974 (Pub. L. 93-493, 88 Stat. 1497); and acts amending or supplementing all of the foregoing legislation.

II. Background of the Development of the Criteria

The LAO is responsible for marketing power in a region encompassing portions of Colorado, Wyoming, Nebraska, and Kansas, which is roughly equivalent to the Lower Missouri River Basin and the Arkansas River Basin in Colorado and Kansas. The power resources to be marketed pursuant to these Criteria are produced by 18 federally owned and constructed powerplants located in Colorado, Wyoming, and Montana. All but one of the powerplants were constructed as features of the North Platte, Shoshone, Riverton, Kendrick, and Colorado-Big Thompson Projects and the Pick-Sloan Missouri Basin Program (P-SMBP). In the 1950's the first five of these projects were integrated with the power features of the P-SMBP for marketing purposes. They are sometimes referred to as the Integrated Projects for this reason. The power features of all six of these projects are collectively referred to as the Pick-Sloan Missouri Basin Program-Western Division. the addition of the words "Western Division" to the project name distinguishes these powerplants from those P-SMBP powerplants whose output is marketed by Western's Billings Area Office in the Eastern Division.

The remaining powerplant, Mt. Elbert, is the principal power feature of Fry-Ark located in central Colorado.

The development of these Criteria began with the identification of 24 alternative marketing plans, which were presented at a February 18, 1982, public information forum. The LAO held this forum to discuss potential criteria for the marketing of Federal hydroelectric power resources. Interested parties were requested to submit written comments by March 20, 1982, and data on their loads and resources by April 8, 1982. After analyzing the data and considering all public comments, both written and oral, the LAO began to draft the proposed Criteria. The Proposed Criteria were published in the **Federal Register** on August 23, 1983 (48 FR 38279). This same publication included an announcement of public information and public comment forums on the Proposed Criteria and a final request for Applicant Profile Data. These Applicant Profile Data were necessary for any applicant to be considered eligible for an allocation of energy with capacity from P-SMBP-WD and Fry-Ark under the Proposed Criteria. Interested parties were initially given until November 15, 1983, to submit this data. The deadline was later extended to December 30, 1983 (48 FR 54880, December 7, 1983). A second public information forum was held on September 8, 1983. At that forum, the Proposed Criteria were presented and questions from contractors and other interested parties were addressed. A public comment forum was held on October 4, 1983. At this forum, contractors and other interested parties were invited to state their views on the Proposed Criteria. In addition to public comments presented at this forum, written comments were accepted until November 15, 1983.

The Applicant Profile Data and the comments from all meetings and correspondence have been analyzed. The Crtieria for marketing energy with capacity from P-SMBP-WD and Fry-Ark are published herein. They supersede the 1962 P-SMBP-WD power marketing plan; the June 23, 1981, power marketing plan for Fry-Ark; and the August 30, 1982, power marketing plan for the sale of P-SMBP-WD excess capacity (P-SMBP-WD Excess).

III. Summary of Revisions

Certain editorial and format changes have been made to the Proposed Criteria for the sake of clarity and consistency. Other changes were made after evaluating all of the comments received. The major revisions to the Proposed Criteria are:

A. The Term of Contract article has been modified to provide for a contract term of 15 years, but with provision for Western to adjust contracted amounts of capacity and energy at the end of 10 years based on the marketable resource. (See IV.A. for further discussion.)

B. Allocation priorities and eligibility requirements have been clarified and modified to recognize a third level of priority for nonpreference entities acting as agents for public entities over other nonpreference entities. Western's Salt Lake City Area Office (SLCAO) has received an application for an allocation from an investor-owned utility on behalf of 143 cities, counties, and towns. Western believes this application does not constitute a situation meriting equal eligibility with consumer-owned utilities, but the arguments in its favor persuade Western that such an arrangement is superior to direct sales to investor-owned utilities and should have priority within the nonpreference category.

C. Special eligibility requirements for wholesale utilities have been eliminated in favor of contract provisions applicable to all contractors. (See IV.B.2.b. for further discussion.)

D. Certain entities who have taken significant and tangible steps to acquire the means to receive and distribute power within a designated period of time are now recognized as qualified applicants for Federal power, provided they meet other applicable requirements as described in V.B.5.b. of the Criteria.

E. The proposed options to purchase and allocate approximately 308 gigawatthours (GWh) of additional energy and to purchase offpeak energy required for maintenance of contractors' pumped-storage energy accounts have been combined and simplified. Western may purchase energy over and above the amount of Western's firm monthly energy obligation, at the contractor's request and on a passthrough cost basis, up to an amount associated with the contractor's load factor and its firm Federal capacity entitlement from the LAO. Western will honor individual contractor energy requests until the LAO system capability to support such purchases is reached. (See IV.D.2.b. for further discussion.)

F. Modifications were made to certain generation capacity, energy production capability, and marketable resource quantities contained in Appendix A. The generation capacity of the P-SMBP-WD and Fry-Ark were modified to reflect recent changes in the maintenance schedules for these powerplants by the Bureau of Reclamation (Reclamation).

The annual energy production capability of the Mt. Elbert Powerplant (table 1, appendix A) has been reduced from 63,751 MWh to 58,247 MWh based on updated information concerning the energy production capability of flowthrough water provided by Reclamation. Certain project and

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existing special use designations, which the generation capacity and energy production capability quantities in proposed appendix A were subject to, have been defined and quantified in the final appendix A.

In table 1 of appendix A, the energy requirements for the P-SMBP-WD pumps at Lake Granby, Willow Creek, and Flatiron were added to the available energy of the P-SMBP-WD and subtracted as project use load. This was done so as to be consistent in the handling of project and existing special use loads. Reserve requirements have been reduced from 100 MW to 48 MW. (For further discussion of reserves, see IV.D.2.c.)

G. Statements were added to indicate that diversity among capacity allocations will be retained by Western and that long-term capacity commitments will be subject to reductions if diversity and losses are not equal, as assumed.

H. A statement was added indicating that a reasonable opportunity to discuss contract provisions would be provided prior to Western's contract offer. Allottees will have 6 months to accept the contract offer or until September 30, 1987, whichever is later.

I. The Criteria now state that the right to receive power pursuant to a contract would terminate if means to receive and distribute power are not acquired by September 30, 1988, unless the LAO agrees otherwise in writing.

J. The marketing area for LAO resources has been modified to include the Mountain Parks Rural Electric Association (Mountain Parks REA) service territory, which is located in Colorado, west of the Continental Divide. Mountain Parks REA is a long-standing firm power contractor for capacity and energy from the P–SMBP–WD as a member of Tri-State Generation and Transmission Association, Inc., and the exclusion of this territory in the Proposed Criteria was an oversight.

Additionally, the southwestern portion of Kansas has been added to the marketing area. This part of the State was excluded in the Proposed Criteria. It is currently part of the Fry-Ark marketing area, and Western believes the integration of the P–SMBP–WD and Fry-Ark resources in these Criteria indicates the need to combine the marketing areas as well. Because the marketing area defined in the Proposed Criteria did not include this section of Kansas, entities in this section were not afforded an opportunity to submit Applicant Profile Data. We believe it is appropriate, therefore, to accpet Applicant Profile Data from entities in Kansas who are located west of the eastern borders of the counties intersected by the 100th Meridian, and south of the Missouri River Basin until 60 days after publication of the Criteria in the **Federal Register**. The deadline for entities in all other portions of the marketing area to submit Applicant Profile Data was December 30 1983.

K. The statement that purchase costs incurred in meeting Western's energy and capacity commitments would be on a passthrough cost basis for contractors desiring the service has been modified. Western will purchase any energy required to meet its monthly obligations based upon average water conditions (firming energy) and will not pass the cost through directly to contractors. The rate charged to the contractor for these purchases will be the firm energy rate. The anticipated costs for firming energy purchases will be considered when the firm energy rate is established. Costs incurred by Western in purchasing capacity required to meet its contractors' monthly entitlements due to adverse hydrologic conditions (firming capacity), up to a maximum of 37 MW for any month of the winter season and 38 MW for any month of the summer season, will continue to be on a passthrough cost basis for the contractors who request this service. The maximum monthly capacity purchase each contractor would be subject to, on a passthrough cost basis, will be specified in each electric service contract. While passthrough costs will be incurred as a result of capacity purchase expenses up to the 90-percent probability of exceedence level, purchases up to 99-percent probability water conditions would be blended into the firm power rate.

L. The statement that capacity entitlements would be limited to the allottee's average seasonal demand for 1980, 1981, and 1982 has been changed to indicate the limitation will be on the energy allocation instead of the capacity entitlement. The limitation provision now indicates that no applicant will receive a seasonal energy allocation from the LAO that, when combined with its post-1989 firm energy entitlements from other Federal sources, exceeds its average use for 1980, 1981, and 1982. It also indicates that the historical energy use figures will be adjusted to include additional energy which the applicant can demonstrate was not used during that period as a result of its conservation or energy management efforts. The change was made necessary by the fact that limiting the capacity entitlement after an energy allocation had been made resulted, in certain instances, in a relatively large energy allocation being associated with a relatively small capacity entitlement. The load factor associated with such an allocation could be greater than 100 percent. This change is in keeping with the original intent of the limitation in that it tends to redistribute any inordinately large allocations that may have been made in the past. (See IV.G. for further discussion.)

IV. Public Comment Issues

A. Ten-Year Contract Term

Western proposed to offer resources for sale for a 10-year period beginning in October 1989 and ending in September 1999.

1. *Comments:* a. A 10-year contract term is too short. It should be extended to 20 years.

b. A 10-year contract term requires and excessive administrative and financial expense on the part of Western and its contractors in almost continual allocation proceedings. The contract term should be at least 20 years even if this means adjustment of allocations after 10 years due to system hydrology.

2. *Discussion:* The proposed term of contract was a subject of comment by many of the respondents, most of whom urged a term of 20 years or longer. A few of the respondents proposed the adjustment of amounts of energy with capacity under contract during the contract period based on changed hydrologic conditions. This suggestion offers a potential middle ground, removing the concern Western has about being locked into contractual commitments not supportable by current hydrology. However, the concept of adjusting the amounts of energy and capacity under contract based solely upon "changed hydrology" does not give Western the flexibility to meet potentially changed circumstances other than hydrology. These include, but are not limited to, possible future allocations in support of conservation and renewable energy projects or changing national priorities or economic conditions that would be likely to occur in a 20-year or longer contract term.

Western recognizes the strong desire of contractors to have as much certainty as possible about future resources. However, there is no absolute certainty about the long-term availability of any resource. Federal power offers some obvious benefits over construction of additional general generating facilities, principally its reasonable cost. In addition, Western is willing to obtain firming capacity or energy in the event the hydroelectric resources are not available when required.

One of the drawbacks of Federal power is the limited time for which it is committed.

A 15-year contract term with the provision of Western to adjust allocations after 10 years provides a reasonable planned commitment. Since commitments are planned to be made in the early part of 1986 for the period ending in the latter part of 2004, the know commitment will actually be for nearly 19 years.

Western is also interested in minimizing administrative procedures which are costly and will not unnecessarily initiate the development of new marketing criteria. However, it is equally important that Western reserve options so that Federal resources in the future can be applied where they are required to meet changing requirements.

While Western does not now foresee any conditions which might dictate the need to adopt policies other than those expressed in these Criteria and in the discussion of Criteria issues, it is prudent that Western retain the flexibility which will enable it to be responsive to future changing circumstances. Western, therefore, cannot support a contract term of 20 years or longer.

3. *Summary and Conclusion:* After consideration of the many comments provided, Western concludes that the most prudent course of action is to offer a 15-year of contract with provision for adjustment of contract commitments (due to changes in the marketable resource) at the end of 10 years. Western will provide contractors with a minimum of 3 years' notice of any necessary changes and the changes will be made through an appropriate public process. This compromise will give Western the flexibility to meet changed circumstances, which may impact the availability of resources.

B. Applicant Qualifications

In the Proposed Criteria, Western stated that resources would be allocated in accordance with preference provisions of Reclamation law in the following order of priority: (1) Preference entities in the market area; (2) preference entities outside the market area; and (3) nonpreference entities. To have been eligible for an allocation, a preference entity must be an electric utility, a Federal or State ultimate consumer load of a defined type, or an existing LAO contractor for long-term firm power. For an entity to have been considered as an existing contractor under the Proposed Criteria, that entity must have had an executed contract for capacity and/or energy from the P-SMBP-WD or Fry-Ark generation resources as of July 15, 1984.

The Proposed Criteria also contained special requirements for potential new contractors and wholesale utilities. Potential new contractors must have had a 1982 load greater than 100 kilowatts and, except for State or Federal ultimate consumer type loads, all potential contractors must take steps no later than April 1, 1986, to achieve utility status by September 30, 1988. Wholesale utilities were required to satisfy Western's Administrator: (1) That the benefits of federal financed power are distributed at the lowest possible rates to consumers consistent with sound business principles; (2) that consumers can identify their true power supply costs from all sources so that the costs of growth and the benefits of conservation are identifiable; and (3) that "accountability" for the cost and management of the Federal investment is directly linked between Western and the retailing utility, so that retailing utilities can identify cost and other significant characteristics of each of its power supplies.

1. *Comments:*

—Criteria for eligibility of wholesale utilities are not clear, are unfair, unnecessary, and unduly burdensome. The methods that will be used to apply the criteria are uncertain and these criteria could create legal and financial problems for some existing contractors.

—Objectives that the Administrator would use to evaluate wholesale utility applications have been accomplished by contract terms.

—Conservation and renewable energy criteria should be established for determining eligibility for an allocation.

—Support Conservation and Renewable Energy (C&RE) program and concur with these provisions as proposed.

—Contractors who have executed Fry-Ark or P–SMBP–WD Excess contracts anytime prior to executing post-1989 contracts should be defined as existing contractors.

—In order to be eligible as an existing contractor, an entity should be required to have executed Fry-Ark or P–SMBP–WD Excess contracts prior to July 15, 1984.

—In order to be eligible as an existing contractor, an entity should be required to have executed Fry-Ark or P–SMBP–WD Excess contracts prior to August 23, 1983.

—In order to be eligible as an existing contractor, an entity should be required to have executed a Fry-Ark contract by October 4, 1983, or a P–SMBP–WD Excess contract prior to December 1983.

—Allocations to existing contractors should not be reduced.

—Inclusion of Fry-Ark in the allocation formula reduces the capacity and energy allocations to existing contractors.

—Allocations should not be made to new contractors.

—Allocation formula should be the same for new and existing contractors and allocations should be based on need.

—Support allocations to new and existing contractors in proportions proposed.

—Oppose any allocation directly to members of a joint action group.

2. *Discussion:* The comments have been grouped for discussion into the following categories:

a. Distribution among Qualified Preference Entities;

b. Special Eligibility Requirements for Wholesale Utilities;

c. Other Special Eligibility Requirements.

a. *Distribution among Qualified Preference Entities:* Western is mindful of the need to balance the requirements of existing purchasers of Federal power against the requirements of potential new purchasers. Existing contractors will, in most cases under the Criteria, experience a limited reduction in individual allocations. This reduction is a result of the expansion of the number of qualified existing contractors who will receive energy allocations and of offering some benefits to potential new contractors.

The amount of energy available to each potential new contractor is limited to the energy associated with 5 MW of capacity at the LAO system plant factor; 7,295 MWh in the winter season and 8,059 MWh in the summer season. These amounts are probably not sufficient to encourage entities without distribution systems to acquire a system in order to qualify for a share of the available Federal power. This limitation is appropriate because it would be unduly disruptive economically to wtihdraw large amounts of Federal power from existing contractors. In addition, since the commitment of Federal power is for a limited contract period only, the prospect of acquiring a Federal power allocation today may not be a prudent basis for making a decision to create a consumer-owned utility. Amounts available to potential new contractors are intended to provide some benefit to those preference entities who, for some other reason, have already initiated actions to acquire utility systems or who already have utility systems. On the other hand, it would be equally unjust to

completely exclude qualified preference organizations from participating in the benefits of Federal power simply because the economic circumstances of past years precluded purchasing Federal power. The appropriate distribution of power between existing contractors and potential new contractors is a discretionary decision committed by law to this agency. Western's distribution between these two groups reflects our best judgment of what is appropriate and fair under the circumstances.

Western has extended the deadline for execution of P–SMBP–WD Excess or Fry-Ark contracts in order to be eligible for existing contractor status under these Criteria. This was considered appropriate because these contracts were the first offered by the LAO that had no provisions for delivery of power to load, other than for Colorado River Storage Project (CRSP) power. Instead, the contracts offered delivery only to specified points on the P–SMBP–WD transmission system, leaving the transmission to load as the responsibility of the contractor. Western's Administrator approved the reallocation of Fry-Ark resources on July 31, 1984. Western believes that it is reasonable to offer additional time for execution of these contracts in light of the need for the arrangement for delivery of this power. The Criteria identifies the deadline as 60 days after publication of the Criteria in the Federal Register, rather than the previously stated date of July 15, 1984.

b. *Special Eligibility Requirements for Wholesale Utilities:* This proposed requirement was opposed by some wholesale utilities.

Western is committed to promoting the objectives of assuring that the benefits of federally financed power are distributed as widely as possible to consumers and that power supply cost information is available to retailing utilities and retail level consumers. In pursuing these objectives, Western previously singled out wholesale utilities because they add another organizational level through which these objectives must be filtered. The suggestion that requirements should be the same for retail and wholesale utilities is well taken. The basic objectives apply to both types of utilities.

The observation that the objectives proposed for use by the Administrator of Western to evaluate wholesale utility applications are related to existing contract terms is accurate. The existing resale of electric energy provision in existing contracts promotes these objectives, but does not provide for any penalties in the event of noncompliance. Since the exact requirements of this provision have been questioned in the past, a detailed discussion of it is warranted.

The existing resale of electric energy provision requires the Federal power contractor to take five steps to encourage the widespread use of low-cost Federal power.

First, the contractor contractually agrees to make the benefits of Federal power available at fair and reasonable terms to all of its customers at the lowest possible rates consistent with sound business principles. Second, the contractor agrees to maintain books of account in accordance with the system of accounts prescribed for public utilities and licensees by the Federal Energy Regulatory Commission. Third, the contractor agrees to provide Western with copies of its schedules of retail rates. Fourth, the contractor agrees to submit to Western as annual statement indicating, among other things, that the charges to contractors are consistent with the principles set forth in the first subsection of the resale provision. Firth, the contractor agrees either to publish operating and financial data annually in a newspaper of general circulation in the member's electrical service area, or to furnish such information by mailing copies of the data to each of its electrical customers.

The underlying philosophy of the existing resale provision is set forth in section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s). This philosophy requires the passing on of the benefits of low-cost Federal power to consumers, under fair and reasonable terms, at the lowest possible rates consistent with sound business principles. This concept is related to the preference clause, but goes beyond the establishment of preference to public bodies and cooperatives. This principle allows Western to verify that the ultimate consumer is receiving the benefits of low-cost Federal power.

Western believes there is merit in comments made by wholesale utilities objecting to the use of the resale of electric energy provisions as a criterion for allocation. Since the objectives of the resale provision can be accomplished through appropriate contractual language, Western has eliminated the special eligibility requirements for wholesale utilities as a criterion for allocation prior to the signing of a contract. Rather, Western will develop contractual provisions to be used with both wholesale and retail utilities to achieve the goals of ensuring that the benefits of Federal power are passed on to consumers and informing consumers of the source and cost of various components of their power supply. While the existing principles contained in the resale contractual article will be part of this new language, emphasis will be placed on providing information to the power consumer in accordance with flexible but objectively defined standards.

Noncompliance with the contractual provision may result in a penalty of the loss of all or a part of the contractor's energy allocation and associated capacity.

As a result of the deletion of the resale provision as a criterion for allocation to wholesale entities, Western has deleted the provision in the Criteria that provided for allocation directly to the members of a wholesale entity in the event the wholesale entity were to be disqualified for an allocation. As a matter of general policy, however, Western expects the benefits of Federal power will be distributed proportionally by a wholesale entity to each of its preference members who are located within the marketing area of the resource being distributed.

c. *Other Special Eligibility Requirements:* Western received several comments about adopting eligibility requirements which might more effectively encourage conservation and the development of renewable energy resources. It was suggested that Federal hydropower be sold to those preference entities that develop the best Conservation and Renewable Energy programs. Under this approach, conservation would become an eligibility criterion rather than a goal to be encouraged after an allocation is made and a contract signed.

Western fully supports the need to utilize energy efficiently and the importance of encouraging cost-effective and meaningful conservation efforts, as well as the development of alternative methods for the generation of power. However, Western believes that its C&RE program is effective in attaining national, regional, and agency conservation goals. In the absence of an acceptable program, the contractual penalty provision of a potential reduction in the amount of power sold to a contractor offers an adequate incentive to develop C&RE programs of particular relevance to each contractor and its consumers.

Western also believes that Congress has endorsed this approach in encouraging C&RE efforts through contractual provision, as opposed to making conservation an allocation criterion. In the course of debate on the floor of the House of Representatives on the Hoover Power Plant Act of 1984, a conservation amendment was offered by Representative Udall of Arizona. 130 Cong. Rec. H3336–37 (May 3, 1984). That conservation amendment, which applied to all power sold by Western, adopted the approach of striving for conservation goals through contractual provisions with a power allottee with reductions if predefined goals are not realized. The amendment was approved by Congress and became Title II of the Hoover Power Plant Act of 1984. Given the congressional passage of affirmative legislation which requires accomplishing conservation through contractual provisions, Western believes that it is inappropriate to modify long-standing allocation practices by making conservation the overriding factor in allocating all Federal power resources. (See IV.H. for further discussion of C&RE.)

3. *Summary and Conclusion:* Some commenters pointed out the lack of clarity in defining eligibility requirements for receiving an allocation of long-term firm resources. Western recognizes the need for further clarification. The applicant qualifications have been revised to include the following:

a. Each potential applicant must have submitted substantially complete Applicant Profile Data to the LAO on or before December 30, 1983. The only exceptions to this deadline being those potential applicants in the southwest portion of Kansas, who must submit substantially complete Applicant Profile Data by April 1, 1986.

b. Each potential applicant must have had a 1982 load greater than 100 kilowatts.

c. Each potential applicant must be an existing contractor for LAO long-term firm power or, by April 1, 1986, must:

(1) Be a utility, primarily engaged in retail or wholesale sales of electricity, with power supply responsibility for the load to be served; or

(2) Be a Federal or State ultimate consumer type load, including such loads of State agencies whose use of power enhances the available Federal power resource; or

(3) Have taken significant and tangible steps to acquire the means to distribute power by September 30, 1988, or have taken initial steps to acquire the means to distribute power by that date and have requested an extension of time for taking significant and tangible steps.

Contractors must have the means to receive and distribute power by September 30, 1988, in order to avoid termination of a contract right to receive power unless the LAO specifically agrees otherwise in writing prior to this date.

In response to the potential hardships of requiring wholesale utilities, for the purpose of qualifying for an allocation, to verify their compliance with the proposed special eligibility requirements for wholesale utilities which identified several specific objectives (selling Federal power at the lowest possible rates to consumers consistent with sound business principles, assuring that consumers can identify true power costs from all sources and assuring that retailing utilities have provided detailed power supply information), Western will depend instead upon contract provisions to accomplish these objectives.

The Criteria have been revised to indicate that the contracts will contain a resale of electric energy provision requiring purchasers of Federal power to demonstrate that:

(1) The benefits of Federal power are distributed to its customers at the lowest possible rates consistent with sound business principles.

(2) Consumers can identify the costs of Federal power and non-Federal power.

When the contractor consists of members or principals who are retail distributors of Federal power, these retail distributors as well as the parent organization will be directly accountable to Western for complying with these requirements. One of the ways these requirements may be satisfied by the contractor and its members or principals is to furnish to customers, on a seasonal basis, a breakdown of the amounts and costs of Federal power and non-Federal power and of the magnitude and type of other costs which constitute the composite costs charged to the customer. Failure to comply with this provision may result in the loss of all or a part of the resources committed to the contractor.

Finally, because of Western's view that there has been congressional support for the approach taken in its existing C&RE program, these Criteria continue to reflect the approach of encouraging conservation efforts through contractual provisions as opposed to making conservation a criterion for allocation.

C. LAO Project Integration

The Criteria reflect the consolidation of the P–SMBP–WD with the Fry-Ark Project to increase the firm marketable resources, simplify contract development and administration, and establish a blended rate for LAO power. Repayment requirements would continue to be determined separately.

1. *Comments:*

—Oppose operational integration. The resulting blended rate will penalize existing P–SMBP–WD contractors who have not elected to purchase Fry-Ark pumped storage capacity.

—Blended rate is contrary to statutory restrictions, and the resulting reduction in rates to Fry-Ark contractors encourages consumption rather than conservation with subsequent adverse impact on the environment.

—Support operational integration and blended rate because it achieves the widest practicable and beneficial use of available resources and assures long-term sources of revenue to repay all projects.

—Oppose operational integration and blended rate because of the difficulty in determining who actually uses the power from Fry-Ark. This power will no longer be cost-based, and this will confuse Fry-Ark's repayment status.

2. *Discussion:* Western does not agree that a blended rate among projects will encourage consumption. The principal purchasers of LAO power draw on a variety of other resources to meet their power needs. Because the rate paid by the end-user is a blend of these various wholesale rates, the impact of the proposed rate change will be greatly reduced by the time the end user receives the blended product. Moreover, the marginal prices paid by the LAO's contractors for new resources to meet load growth promotes conservation over consumption.

The conservation provision, which will be incorporated into Western's electric service contracts, further encourages efficient consumption. Furthermore, Western's environmental analysis indicates that the proposed integration and blended rate will have no significant impact on the environment.

Western sees no legal obstacles to the integration of the resources as reflected in these Criteria with the power marketed at a uniform, blended rate. No provision in Reclamation law prohibits such an integration. In fact, rates for two Western projects have been administratively integrated with smaller Federal power resources in the past.

The integration of the Colorado-Big Thompson, Kendrick, North Platte, and Shoshone Projects into the power repayment study for the P–SMBP–WD is one example. The integration of the Pacific Northwest-Pacific Southwest intertie into the Central Valley Project repayment study is a second instance where administrative intergration took place. Under Reclamation law, the Secretary of the Department of Energy has the authority to perform "any and all acts" for the purpose of putting his statutory responsibilities into full force

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and effect (43 U.S.C. 485i; 43 U.S.C. 373). In Western's judgment, this flexibility includes the ability to integrate projects and to charge a uniform rate for the resulting power.

Western also does not agree that operational integration and a blended rate, as reflected in these Criteria, will cause difficulty in determining who is using power from Fry-Ark and that Fry-Ark will no longer be cost based, thereby confusing its repayment status. Under these Criteria, firm resources from Fry-Ark will be proportionally allocated to all firm power contractors. Therefore, there will be no need to differentiate between the firm energy with capacity allocated from the two projects. The blended rate will be determined by the individual power repayment studies (PRS) and revenues from the integrated projects will be divided between the projects in the proportions dictated by these individual PRS. Since these PRS are based on project costs, the blended rate and revenues provided for repayment will be cost based. Part of the administrative cost benefits associated with integration of the projects is reflected in the fact that there is no longer a need for differentiating between the firm power from the two projects. There will no longer be a need to account for interchanges between the projects as capacity and energy sales from one project to the other. Integration will therefore simplify the need for determining who uses firm power from Fry-Ark. The requirement for contractors to submit hourly schedules 24 hours in advance for the use of the pumped-storage energy features of Fry-Ark will make accounting for this use manageable.

Integration of the projects will assure repayment of project costs. The slight additional cost to current P–SMBP–WD contractors under an integrated marketing approach is reasonable considering the efficiencies and additional power to be gained.

3. *Summary and Conclusion:* Western concludes that operational integration of the LAO resources and the blended rate achieves the widest practical and most beneficial use of the available resource and assures long-term sources of revenue to repay all projects. Western believes that these benefits outweigh the opposition to integrating the resource as proposed.

D. Derivation of marketable resources

Western proposed on August 23, 1983, that capacity available from the LAO projects would be based on the maximum operating capacity of Fry-Ark and on the capacity of the P–SMBP–WD powerplants based on a 90-percent probability level. Energy would be based on forecasts of average hydrologic conditions. Western proposed to purchase firming capacity and energy on a passthrough cost basis and to allocate approximately 308 GWh of purchased energy.

1. *Comments:*

—Support opinion to purchase energy to increase the load factor of the available resource.

—Oppose purchase energy option. Suggest purchasing energy only for those contractors who request it.

—Western should base its reserve requirements on its share of the projected Inland Power Pool (IPP) total reserve obligation and market the resulting additional capacity.

—The combined total reserve of 200 MW for the Loveland Area and Salt Lake City Area could be reduced by 50 MW if the operations of the two Areas were integrated.

—Western should use a hydrologic probability lower than 90 percent. This would increase available capacity by 15 to 20 MW.

—Opposes marketing maximum amounts of capacity and energy because that may affect the environment. Maximum amounts are reduced only in 1 month to reflect adverse hydrologic conditions.

2. *Discussion:* These comments have been grouped for discussion into the following categories:

a. Hydrology Studies
b. Purchases
c. Reserves

a. *Hydrology Studies:* The proposed Criteria indicated that the generation capacity of the P–SMBP–WD would be marketed based upon a 90-percent probability level (i.e., 10-percent risk each year of having insufficient capacity available). The formula used, however, for determining the marketable capacity of the integrated resources defined marketable capacity as the lesser of the maximum available capacity minus reserves, or the capacity at the 90-percent probability level. After reviewing the comments and reevaluating this position, Western has determined that this method resulted in a higher risk of not being able to meet its contractors' monthly entitlements than was intended under the 90-percent probability level scenario. Western has therefore modified appendix A. Marketable capacity is now determined by subtracting reserves, project use, and existing special use loads from the capacity determined to be available using 90-percent hydrologic probability. A column was added to the capacity table in appendix A to indicate the magnitude of the project use and existing special use loads. The values for the monthly 90-percent hydrologic probability quantities now include reductions for scheduled maintenance.

Western was influenced by a number of factors in adopting the use of a 90-percent hydrologic probability as a basis for determination of marketable capacity. Recognition of the need to provide existing contractors a resource as similar as possible to their current supply and the need to offer new contractors an opportunity to participate in the post-1989 allocation induced Western to depart from the historic policy of using "most adverse" as marketable capacity.

The 90-percent probability level represents a statistical application for P–SMBP–WD only. Fry-Ark is included at maximum operating capacity because of the pumped-storage nature of this resource.

When the 10-percent risk condition of being short of capacity occurs and/or hydroelectric energy is in short supply because a less than average water year has occurred, thermal resources are often called upon to meet the loads normally served from hydrogeneration. This reduces the availability of thermal generation and could increase its cost. If poor hydrologic conditions are experienced in adjoining river basins, the situation is worsened as far as the costs related to the risks are concerned. When other utilities in the area are also experiencing heavy demand and competing for any remaining resources the possibility of capacity not being available at any price must also be considered in determining the marketable resource. For this reason, Western concluded that it would not be prudent to offer marketable capacity with a higher risk of unavailability than 10 percent.

b. *Purchases:* The proposed option to purchase and allocate approximately 308 GWh of additional energy received wide support from commenters, although some contractors voiced concern over the impact it could have on the rates of those contractors who might not want or need this additional allocated energy. They suggested that additional energy be purchased and paid for by only those contractors who requested such service. These comments are well taken and the Criteria has been modified to reflect the fact that the purchase energy option has been adopted in a modified form reflecting the comments received.

Western is not persuaded by comments that question the legal authority to purchase capacity and energy supplemental to the Federal resource. Power marketing administrations have inherent authority to purchase capacity and/or energy reasonably incidental to the integrated marketing of power from a hydroelectric project. Kansas City Power and Light Company v. McKay, 115 F. Supp. 402 (D.D.C. 1953), judgment vacated for lack of standing to sue, 225 F.2d 924 (D.C. Cir.), cert. denied, 350 U.S. 884 (1955). The past practice had been to sell hydroelectric energy based upon average water conditions. For many years, the United States has purchased energy to firm up commitments under electric service contracts. In fact, the practice of maximizing the amount of power to be sold at firm power rates is statutorily required for the Colorado River Storage Project. 43 U.S.C. 620f. The final criteria constitute a reasonable extension of these same historical purchase principles. Western believes that full legal authority exists to market capacity which is available 90 percent of the time and energy which is available much of the time.

c. *Reserves:* Western is a participant in the IPP and a member of the Western System Coordinating Council (WSCC). The requirements of the IPP are identified in the revised IPP Agreement dated November 23, 1983, and the WSCC criteria contain prescribed reserve requirements. The revised IPP Agreement states that IPP reserve requirements will always meet or exceed WSCC requirements. The IPP reserve requirements are currently about 30 MW. IPP reserve requirements are subject to change depending on the largest single hazard in the pool and on the size of the membership. Since the members of the pool have the latitude to withdraw their membership under certain conditions, Western has determined it to be prudent to establish its reserve requirement in the post-1989 period based on IPP requirements and on the assumption that Western's Salt Lake City, Loveland, and Boulder City Area Offices would be the only remaining members of the pool. Under this approach, the Loveland Area Office's reserve requirement would be 48 MW.

3. *Summary and Conclusion:* In response to comments received, Western will purchase energy over and above the amount of Western's firm monthly energy obligation, at the contractor's request and on a passthrough cost basis, up to an amount associated with the contractor's capacity entitlement at the contractor's load factor, until the limit of the LAO system to support such purchases is reached. This procedure will remove this purchased energy from the allocation process, allow the contractor to use the energy in ways it deems appropriate under contractual restrictions, including use as pump-back energy, and allow the contractor to decide on the amount of energy required.

Western is interested in marketing the maximum amount of capacity it can without assuming a level of risk that could be harmful to either Western or its contractors. After weighing the various probability levels, Western concludes that the use of the 90 percent probability as a basis for determining marketable capacity is appropriate. The use of average hydrology is considered a reasonable basis for determining marketable energy.

After carefully considering the various needs and requirements relative to reserves, Western has provided for a reserve level of 48 MW for the LAO. This will meet the WSCC and IPP requirements and should give Western sufficient flexibility throughout the contract term to maintain adequate reserves.

E. Classes of Service

Western will offer long-term firm energy with capacity, short-term firm capacity with or without energy, or with the return of energy, and other services such as providing pumped-storage energy, sales of surplus energy, delivering or receiving interchange, emergency assistance, maintenance service, and transmission service.

1. *Comment:* Short-term power should be used in the resource coordination program only after it is offered for sale to preference contractors.

2. *Discussion:* In the past, when Western determined that short-term firm capacity with or without energy was available for sale, such resources were offered to preference contractors first. Under these Criteria, such resources will be marketed in accordance with the same allocation priorities as any other "available resource."

3. *Summary and Conclusion:* Western will market short-term capacity with or without energy, or with the return of energy in accordance with priorities presented in V.B.5.a. of the Criteria.

F. Reallocation

The LAO's Proposed Criteria indicated in Part III.C. "Reallocations," that:

> Long-term firm energy with associated capacity available for marketing because an allocation(s) has been reduced or withdrawn may be administratively reallocated by Western's Administrator without further public process.

1. *Comments:* Request a statement be included to define how reallocations will be made. Suggest reallocations be distributed on a pro-rata basis to the allottees found eligible during the initial applicatoin of this Criteria.

2. *Discussion:* Western believes that reallocating on a pro-rata basis to those entities who were found to be eligible under initial application of these Criteria is one appropriate way of redistributing energy or capacity made available because an allocation has been reduced or rescinded. Although this is the method that will be used in most cases, flexibility of the Criteria would be lost if such a statement were included. For instance, if a municipal contractor were to fail to sign an offered contract that contained a relatively small allocation, it would not be prudent to expend the resources that would be required to redistribute such a small amount of energy on a pro-rata basis to all initially eligible contractors. Such a redistribution could be administratively burdensome.

3. *Summary and Conclusion:* Western intends to make reallocations, whenever possible, on a pro-rata basis to applicants who were found to be eligible for an allocation of power under initial application of these Criteria. We have, however, retained the original language in the reallocations section which states that reallocations may be made by the Administrator of Western without further public process. This was done in order to retain flexibility to cover situations such as the one discussed as well as any unforeseen situations that may arise.

G. Limitation of Allocations

Western has proposed a capacity allocation limitation from combined Federal sources based on the average of 1980 through 1982 average peak demands.

1. *Comment:* Limitation should be based on 1989 loads. Some contractors have been purchasing peaking capacity that has not yet been fully utilized.

2. *Discussion:* The purpose of the proposed limitation is to ensure fair and equitable distribution of Federal resources. Since final allocations are planned to be prepared in 1986, 1989 loads would be projected figures. Western feels that the variety of forecasting techniques and the inherent uncertainty of forecasting in general would insert an unacceptable measure of uncertainty into the allocation process. The only disadvantage in the proposed limitation would be to entities

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that have experienced faster growth than the average applicant in the years since 1980. Administrative delays in the finalization of the Criteria have forced this limitation to be based on data that is more historic than was originally anticipated, but Western feels that requesting updated Applicant Profile Data would be unduly burdensome to Western and the applicants for post-1989 Federal resources. Western has, however, become aware that this restriction may be unfair to some applicants whose 1980 through 1982 loads were reduced through conservation or load management efforts. The Criteria have been modified to account for such reductions. Applicants for power who have experienced historical load reductions due to C&RE efforts are encouraged to substantiate such a reduction as part of the application for energy. In recognition of the fact that energy is the commodity being allocated pursuant to these criteria, the capacity limtation has been changed to an energy limitation.

3. *Summary and Conclusion:* To ensure equitable distribution of Federal resources, Western believes the most prudent course of action is to retain the limtation, modified as indicated in the discussion in section III.L. and as follows:

No applicant will receive a seasonal allocation of energy from Western that, when combined with its total post-1989 Federal firm energy entitlements from all Federal sources, exceeds its average seasonal total energy use for 1980, 1981, and 1982. The average seasonal total energy use for 1980, 1981, and 1982 will be adjusted to include additional energy which the applicant can demonstrate was not used during that period as a result of its conservation or energy management efforts.

H. Shaping and Storage for Renewable Energy Resources

Westen currently supports renewable energy projects by contractually allowing integration of these resources into the LAO power system.

1. *Comment:* Western should actively pursue the means to effectively integrate renewable resources that may be seasonal in nature into the Criteria.

2. *Discussion:* Western supports the need to develop cost-effective renewable energy resources. Support of this activity through Criteria provisions would require that a capacity reservation be set aside for this use. This capacity reservation would be deducted from the total available resource and would result in a reduction in the allocations to all preference contractors. Western is considering the institution of a program of this type in the Salt Lake City Area, in which approximately 30 MW may be allocated to entities who have exemplary conservation programs or who participate in renewable energy projects which meet specific criteria. Western believes, however, that a program of this type is premature in the Loveland Area due to the limited availability or resources in this Area.

3. *Summary and Conclusion:* Western believes its most prudent course of action in the Loveland area, for the period 1989 to 2004, is to allocate the available resource without a reservation for promotion of C&RE projects and to continue to support conservation and renewable energy projects that provide an economic resource to Western and its contractors through separate agreements. This will permit Western to support these projects on a case-by-case basis.

V. Post-1989 General Power Marketing and Allocation Criteria

A. General:

1. *Applicability:* These Post-1989 General Power Marketing and Allocation Criteria (Criteria) of the Western Area Power Administration's (Western) Loveland Area Office (LAO) are established in accordance with the provisons of the Reclamation Project Act of 1902, approved June 17, 1902 (ch. 1093, 32 Stat. 388); the Reclamation Act of 1939, approved August 4, 1939 (43 U.S.C. 485h(c)); and the Department of Energy Organization Act of 1977, approved August 4, 1977 (42 U.S.C. 7152), 7191); and are more specifically based upon the provisions of the Flood Control Act of 1944, approved December 22, 1944 (58 Stat. 891); the Fryingpan-Arkansas Project Acts of 1962 and 1974, approved August 16, 1962 (Pub. L. 87-590 76 Stat. 389), and October 27, 1974 (Pub. L. 93-493 88 Stat. 1497); and acts amending or supplementing all of the foregoing legislation.

These Criteria shall become effective on the first day of the October 1989 billing period and will apply to all power marketed by Western's LAO other than power from the Colorado River Storage Project (CRSP). Contract arrangements existing on the effective date of these criteria will only be affected upon amendment by the parties. These Criteria will supersede the 1962 Pick-Sloan Missouri Basin Program-Western Divison (P-SMBP-WD) power marketing plan, the Fryingpan-Arkasas Project (Fry-Ark) power marketing plan for the sale of power from the Mt. Elbert Pumped-Storage Powerplant of Fry-Ark effective June 23, 1981, and the power marketing plan for the sale of excess capacity in the P-SMBP-WD effective August 30, 1992. These criteria are subject to change upon reasonable notice by the Administrator of Western and the opportunity for comment by interested parties.

2. *Marketable resources:* a. *PO-SMBP-WD Resources:* The LAOP markets power penetrated at 17 P-SMBP-WD powerplants situated in Colorado, Wyoming, and Montana. The energy production and generation capacity capability of these resources are:

	Winter	Summer
Energy (MWh)[1]	1,022,100	1,254,400
Capacity (MW)[2]	484.0	557.0

[1] At plant annual energy production based on average year water, from table 1, appendix A.
[2] Generation capacity based on 90-percent hydrologic probability, from tabre 2, appendix A.

b. *Fry-Ark Resources:* The Mt. Elbert Powerplant, with two 100-MW reversible pump/turbines, comprises the power feature of Fry-Ark. The energy production and generation capacity capability of these units are:

	Winter	Summer
Energy (MWh)[1]	33,478	24,769
Pumped Storage Energy (MWh)[2]	2,800	2,800
Capacity (MW)[3]	200	200

[1] At plant annual energy production of flowthrough water from table 1, appendix A.
[2] Energy available each time the reservoir is refilled. Return energy of 3,920 MWh is required to refill the reservoir.
[3] Maximum available capacity from table 2, appendix A

c. *Operationally Integrated Resources:* More effective utilization of the resources of the P-SMBP-WD and Fry-Ark will be achieved by continuing the operational integration of the two projects.

The marketable resources available annually at load by operationally integrating the projects are found in table 3 of appendix A, and are summarized below:

	Winter	Summer
Energy Production (MWh)	932,541	1,155,300
Generation Capacity (MW)	638.5	716.5

The P-SMBP-WD energy production and generation capacity capabilities are subject to completion of the Shoshone Project modifications, water from the Windy Gap Project, as well as various upgrades scheduled for completion before 1989. Should Congress authorize any future P-SMBP-WD irrigation projects requiring pumping power, such power will be purchased until a new marketing plan is developed.

In addition to the marketable resources to be allocated under these Criteria, Western will offer the pumped-storage energy feature of Fry-Ark to its contractors under the following conditions:

At the beginning of the contract period for contracts executed pursuant to these Criteria, each contractor will be deemed to have 4.4 kWh/kW of their seasonal capacity entitlements for the winter season and 3.9 kWh/kW of their seasonal capacity entitlement for the summer season as pumped-storage energy in an energy account. Each contractor may schedule energy into and out of its energy account by mutually agreed upon hourly schedules which must be submitted to Western 24 hours in advance. The energy account may never exceed the initial value and the account must be restored to these initial levels at the end of each season. Enery may be scheduled out of the energy account only when there is a positive balance in the account. The combined rates of delivery of the pumped-storage energy and the firm energy scheduled from combined LAO sources may never exceed the contractor's monthly capacity entitlement. For every kWh scheduled out of the energy account, 1.4 kWh must be scheduled into the account. Energy will normally be scheduled into the energy account during offpeak hour, which, for pump-back purposes, are initially defined as the hours between 2200 hours on any day to 0800 hours of the next succeeding day. These hours are subject to change should operating experience indicate that such a change is necessary. Contractors, may schedule energy into the energy account at times other than offpeak hours when special circumstances warrant, subject to Western's approval. For contractors that are not directly interconnected with Western's transmission system at Malta Substation, losses and wheeling over the Public Service Company of Colorado sysstem will be assessed on schedules into and out of pumped-storage energy accounts. The rate of energy scheduled into the energy account during any season may not exceed 1.4 times the contractor's capacity entitlement for that season unless the LAO grants prior written permission for a contractor to do so.

d. *Future Resources:* New or revised marketing criteria will be developed as necessary when future power resources are available and offered for sale.

B. Marketing Considerations

1. *Market Area:* The market area for power from the LAO is described as the portion of the State of Wyoming east of the Continental Divide, the portion of the State of Colorado east of the Continental Divide, Mountain Parks REA's service territory in Colorado west of the Continental Divide, the portion of the State of Nebraska west of the 101st Meridian, the portion of the State of Kansas located in the Missouri River Basin, and the portion of the State of Kansas west of the eastern borders of the counties intersected by the 100th Meridian. These marketing area boundaries are approximated on the map in appendix B.

2. *Service Seasons:* a. *Winter Season:* The winter season is defined as the 6-month period from the first day of the October billing period of any calendar year through the last day of the March billing period of the next succeeding calendar year.

b. *Summer Season:* The summer season is defined as the 6-month period from the first day of the April billing period of any calendar year through the last day of the September billing period of the same calendar year.

3. *Classes of Service:* The classes of service to be offered by the LAO are based upon operational integration of the P-SMBP-WD and the Fry-Ark resources.

a. *Long-Term Firm Energy With Capacity:* The LAO will offer firm energy commitments based on average hydrologic conditions. Any energy in excess of that available which is required by the LAO to meet its firm energy commitments under these Criteria, would be purchased by Western. The rate charged to the contractor for these purchases will be the firm energy rate. The anticipated costs for firming energy purchases will be considered when the firm energy rate is established.

Generation capacity offered by the LAO will be based upon the installed capacity of Fry-Ark and upon the 90-percent probability level of the powerplants of the P-SMBP-WD. A portion of any generation capacity which may be required by the LAO to meet its monthly obligations, due to unfavorable hydrologic conditions, would be purchased by Western's contractors or by Western on a passthrough cost basis upon the contractor's request. The portion of these purchases that would be subject to passthrough costs is that portion between the 99-percent and the 90-percent probability level, which amounts to a maximum purchase risk to all contractors, collectively, of 37 MW for the worst case month of the winter season and 38 MW for the worst case month in the summer season. Any costs associated with required capacity purchases up to a 99-percent probability level will be incorporated into the rate base for the LAO blended rate. The maximum purchase for each month that every contractor would be subject to on a passthrough cost basis will be specified in each electric service contract.

Western may utilize the pumped-storage feature of Fry-Ark during onpeak hours to firm its long-term firm energy with capacity commitments. Offpeak energy purchasers will be required to replenish any water used during these onpeak hours. The costs for these purchasers will be incorporated into the LAO blended rate base.

Table 3 of appendix A shows the seasonal energy production and generation capacity to be allocated with the long-term firm energy with capacity class of service.

b. *Short-Term Firm Energy and/or Capacity:* To the extent that project and existing special uses, as estimated in appendix A, have not developed and/or annual stream-flow conditions and reservoir operations result in the production of greater amounts of power than is committed on a long-term basis, short-term firm energy and/or capacity may be offered for sale on a monthly or seasonal basis. Such offers will be for firm energy with or without capacity, capacity with the return of energy, or capacity without energy. These resources may be integrated with the resources of other entities.

c. *Other Services:* In addition to marketing these classes of service, the LAO will engage in other trans-actions, such as providing pumped-storage energy as described in V.A.2.b. and c., sales of surplus energy, delivering or receiving interchange, emergency assistance, maintenance service, and/or regulation services to the extent that resources permit.

Western will purchase energy over and above the amount of Western's firm monthly energy obligation, at the contractor's request and on a passthrough cost basis, up to an amount associated with the contractor's monthly Federal capacity entitlement at the contractor's load factor. Western will honor individual contractor energy purchase requests until the LAO hydroelectric system capability to support such purchasers is reached.

In order to conserve fossil fuels, enhance the environment, and/or ensure the availability to preference contractors of contracted amounts of energy and capacity, Western may purchase or exchange energy and/or capacity, as necessary or desirable to supplement its resources. Nonfirm energy service may be available as a

result of these purchases or exchanges. To the extent that transmission capacity is determined to be available, the LAO will provide firm and nonfirm transmission service.

4. *Derivation of Marketable Resources:* Capacity available from LAO resources will be based on the installed capacity of Fry-Ark along with the capacity of the P–SMBP–WD powerplants based on 90-percent hydrologic probability. Energy available for load will be based on average hydrologic conditions. Energy with associated capacity will be reserved for certain project use and existing special use requirements.

The derivation of the marketable resources for LAO, the availability of these resources by seasons, and indentification of project use and existing special use loads is contained in appendix A.

5. Allocation Priorities: a. Available resources will be allocated in accordance with these Criteria and the preference provisions of Federal law in the following order of priority:

(1) Preference entities within the LAO market area.

(2) Preference entities outside the LAO market area.

(3) Nonpreference entities acting as agents for public entities without distribution systems.

(4) Nonpreference entities acting on their own behalf.

These priorities may be recognized within pricing blocks for nonfirm energy.

b. *Applicant Qualifications:* The following requirements must be met in order to be eligible for an allocation of long-term LAO resources:

(1) Each potential applicant must have submitted substantially complete Applicant Profile Data to the LAO on or before December 30, 1983. The only exceptions to this deadline are those potential applicants in the southwest portion of Kansas, who must submit substantially complete Applicant Profile Data by April 1, 1986.

(2) Each potential new contractor must have had a 1982 load greater than 100 kW.

(3) Each potential applicant must be an existing LAO contractor for long-term firm power or, by April 1, 1986, must:

(a) Be a utility, primarily engaged in the retail or wholesale sale of electricity, with responsibility for the load being served; or

(b) Be a Federal or State agency with an ultimate consumer type load, including such loads of State agencies whose use of power enhances the available Federal power resource; or

(c) Have provided evidence to the LAO that significant and tangible steps to acquire the means to distribute power by September 30, 1988, have been taken, or provided evidence that initial steps to acquire the means to distribute power by that date have been taken and the contractor has requested an extension of time for taking significant and tangible steps.

Significant and tangible steps toward becoming a utility would include one, or some combination, of the following:

(i) Evidence of a financial commitment to purchase or construct a transmission system to distribute power;

(ii) Evidence of negotiations with a utility regarding distribution system acquisition;

(iii) Action before a public service or public utility commission to acquire a distribution system;

(iv) Initiation of condemnation proceedings; and/or

(v) Construction of a distribution system.

C. Allocation of Marketable Resources

1. *Basis of Allocation:* To ensure widespread distribution of the benefit of Federal power, the LAO will divide its net resources into two parts representing a reservation for new contractors and a reservation for existing contractors. Existing contractors are defined as those eligible applicants in the market area described in V.B.1. who have a contract for long-term firm capacity and/or energy from the P–SMBP–WD or Fry-Ark generation resources as of April 1, 1986. The reservations for each group are detailed in table 3 of appendix A. The portion of total seasonal resources to be reserved is based upon the ratio of energy currently available to existing contractors and the total energy available for allocation: 1,918,247/2,087,841 MWh. Each contractor's monthly capacity entitlement will be a percentage of the seasonal capacity entitlement. These percentages are shown in appendix A, table 2, column (7).

a. *Allocation Criteria for New Contractors:* The seasonal energy reserved for new contractors, table 3 of appendix A, will be allocated according to the proportion each new contractor's average energy consumption in 1980, 1981, and 1982 bears to the total of all new contractors' average energy consumption in the same period.

Eligible applicants may request capacity with allocated energy based upon its individual system characteristics. If there is insufficient capacity in the reservation for this group to satisfy all of the capacity requests, the LAO may limit the capacity entitlement, but not below the capacity associated with the plant factors of the resources reserved for this group: 33.4 percent in the winter season and 36.7 percent in the summer season.

New contractors may not receive a seasonal allocation of energy greater than the energy associated with 5 MW of capacity at the seasonal plant factors specified above: 7,295 MWh in the winter season and 8,059 MWh in the summer season.

b. *Allocation Criteria for Existing Contractors:* The seasonal energy reserved for existing contractors, table 3 of appendix A, will be allocated according to the proportion each existing contractor's long-term firm Contract Rate of Delivery (CROD), in effect at the close of business on April 1, 1986, from P–SMBP–WD and Fry-Ark resources, bears to the total of all existing contractors' long-term firm CRODs.

Eligible applicants may request capacity with allocated energy based upon its individual system characteristics. If there is insufficient capacity in the reservation for this group to satisfy all of the capacity requests, the LAO may limit the capacity entitlement, but not below the capacity associated with the plant factors of the resources reserved for this group: 33.4 percent in the winter season and 36.7 percent in the summer season.

2. *Limit on Energy Allocation:* No applicant will receive a seasonal allocation of energy from Western that, when combined with its total post-1989 Federal firm energy entitlements from all Federal sources, exceeds its average seasonal total energy use for 1980, 1981, and 1982. The average seasonal total energy use for 1980, 1981, and 1982 will be adjusted to include additional energy the applicant can demonstrate was not used during that period as a result of its conservation or energy management efforts. Entities applying for power are encouraged to document any conservation impact on historical energy consumption as part of any application for power.

3. *Reallocations:* Long-term firm energy with associated capacity made available for marketing because an allocation(s) has been reduced or withdrawn may be administratively reallocated by Western's Administrator without further public process.

D. Contract Arrangements

Those entities receiving an allocation and taking any other required steps, will be offered an electric service contract for the allocated resources based on these Criteria after reasonable opportunity to discuss proposed

contract language has been provided to allottees. Allottees will have 6 months to sign the offered contract or until September 30, 1987, whichever is later.

1. *General Contract Terms:* a. *Effective Date and Contract Term:* Existing contracts will be allowed to expire by their own terms. Contracts offered for the sale of newly allocated long-term firm energy with capacity will become effective on the first day of the October 1989 billing period (or upon expiration of an existing contract, if later) and will terminate on the last day of the September 2004 billing period. However, at the end of the 1999 summer season billing period, the provisions of the contracts concerning the amounts of energy and capacity committed will be subject to revision based on the marketable resource. Any necessary revisions to these contract provisions will be determined by Western and presented to the contractors by the end of the 1996 summer season billing period.

b. *Power Receipt and Distribution:* Contractors must have the means to receive and distribute power by September 30, 1988, in order to avoid termination of contract rights unless the LAO specifically agrees otherwise in writing prior to this date.

c. *Conservation and Renewable Energy (C&RE) Program:* An "Announcement of Final Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs" was originally published in the Federal Register (46 FR 56140) on November 13, 1981, and amended in the Federal Register on August 21, 1985 (50 FR 33892). To achieve the stated purposes, the LAO will guide and assist its firm contractors in their C&RE development, as requested and to the extent possible. As specified in the "Final Guidelines," failure to develop a C&RE program that meets Western's Acceptance Criteria may subject a contractor to the potential loss of up to 10 percent of its allocation.

Existing contractors will implement the terms of Western's C&RE program, or any that may supersede it, within 1 year of the date of contract execution. New contractors will implement a C&RE program no later than 1 year subsequent to the date of execution of a contract for Federal power. The development of the program is the responsibility of each contractor receiving long-term firm energy with capacity and its member systems, if any, benefiting from the purchase of Federal long-term firm power.

d. *Allottee Purchasing Agents:* Western may contract with a single purchasing agent for two or more allottees, under these Criteria, upon request of the allottees. Western, however, will not be willing to eliminate load diversity that permits it to meet its operating obligations.

e. *Load Diversity Adjustment:* Contract provisions shall permit Western to adjust monthly capacity entitlements downward on a proportional basis in the event total system load diversity does not cover transmission system losses or other operating requirements.

f. *Resale Provisions:* All contracts for long-term firm energy with capacity under these Criteria will contain a resale of electric energy provision. Existing contractors will implement the terms of this resale provision upon contract execution. New contractors will implement them upon receipt of Federal power. The resale of electric energy provision will include, among other things, a requirement that the contractor demonstrate that:

(1) The benefits of Federal power are distributed to the contractors' consumers at the lowest rates consistent with sound business principles, and

(2) Consumers can identify the costs of Federal power and non-Federal power.

When the contractor consists of members or principals who are retail distributors, of Federal power, these retail distributors, as well as the parent organization, will be directly accountable to Western for complying with the resale provisions. One of the ways these requirements may be satisfied by the contractor and its members or principals is to provide cost information semiannually to their customers, including a breakdown of the amounts and costs of Federal power and non-Federal power, and of the magnitude and type of other costs which constitute the composite costs charged to the customer.

Failure to comply with the resale provisions may result in the loss of all or part of the resources committed to the contractor.

2. *Long-Term Firm Energy With Capacity Obligations:* a. Monthly long-term firm energy delivery obligations with associated capacity for each season will be set forth in each contractor's electric contract. Western's monthly energy obligation will reflect the same monthly distribution of seasonal energy allocation as shown in table 1 of appendix A for the monthly distribution of total marketable energy at load. Monthly capacity entitlements will reflect the same monthly distribution of seasonal capacity entitlements as is shown in table 2 of appendix A for the monthly distribution of marketable capacity.

Western's capacity obligation for a given hour will be limited to the capacity scheduled during that hour; i.e., contractors will not be entitled to claim unscheduled capacity as operating expenses.

b. The monthly energy obligations may be increased at Western's discretion, should short-term conditions allow. If the established limit is increased for any month, it may be subsequently decreased at Western's discretion to the normal monthly energy delivery obligations set forth in the electric service contract.

3. *Scheduling, Accounting, and Billing:* The LAO its contractors will establish mutually agreeable scheduling and accounting procedures, based upon accepted utility industry practices, which will privide efficient and practicable utilization of energy and capacity. These procedures will be set forth in Western contracts or in separate written agreements made a part thereof.

a. *Scheduling:* (1) Each contractor's maximum scheduled rate of delivery for long-term firm energy in each billing period will be the monthly capacity entitlements as indicated by the percentages of seasonal capacity entitlement in column (7) of table 2 of appendix A.

(2) All long-term energy with capacity contractors will be required to maintain a minimum power schedule in order to meet water release constraints and permit offpeak purchase of energy which may be required to meet Western's total energy or capacity obligations. The minimum schedule requirement may be changed as necessary to meet changing water release constraints, resource constraints, or seasonal variation in hydrologic conditions. Upon request by the contractor, the LAO may waive or reduce the requirement for a minimum schedule.

(3) The monthly minimum percentage of each contractor's seasonal capacity entitlement which must be scheduled is:

Winter season/percentages	Summer season/percentages
October—19	April—19
November—19	May—21
December—22	June—24
January—21	July—32
February—17	August—25
March—17	September—17

(4) Each contractor electing to utilize the pumped-storage energy feature of Fry-Ark must schedule this energy into and out of the energy account as described in part V.A.2.c. of these Criteria.

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b. Accounting and Billing: (1) The amounts of capacity to be paid for by the contractor will be determined in accordance with accounting procedures set forth in the contracts and will be based on the seasonal capacity entitlement. Said accounting procedures will include determining the amounts of energy delivered to the contractor at each point of delivery and shall establish the amounts of Federal energy delivered over the LAO transmission system to each contractor at each point of delivery.

(2) Firm energy with associated capacity will be billed at a blended P–SMBP–WD and Fry-Ark rate to recover the revenue requirements of the individual projects.

(3) These procedures will also provide for billing at multiple points of delivery. If the contractor's distribution system is operated as to permit power to flow between points of delivery, accounting and billion will be on a coincidental basis. Otherwise, accounting and billing will be on a noncoincidental basis.

(4) The cost of energy purchased on behalf of a contractor, as specified in V.B.3., "Other Services," each month by the LAO in excess of that necessary to meet LAO contractual obligations shsll be the average cost of such purchases during the month. The cost of capacity purchased on a passthrough cost basis on behalf of a contractor each month by the LAO to meet LAO contractual obligations shall also be the average cost of such purchases during the month. Western's allocable costs will be added to the cost of these purchases. These costs shall be accrued during the month in which they are incurred. To the extent they were not anticipated and collected during the same month, they will be billed to contractors during the following month or portion thereof, as the LAO deems appropriate, along with the regular monthly power bill. Trust funds will be established prior to Western's expenditures for such purchases.

4. *Delivery Conditions:* a. *Location and Voltage:* All delivery points will be on the LAO transmission system. Normal delivery will be made at LAO transmission system voltages. Deliveries may continue to be made at subtransmission voltages at power-plant, substation, and tap locations where contractors already have systems operating at such lower voltage levels.

b. *Modifications to Facilities:* Modifications to existing facilities and alternate or additional delivery points requested by contractors may be permitted at the discretion of the LAO, with costs for such modifications being assigned to the appropriate parties. Requests for substations or taps will be considered on a case-by-case basis, with final determination by the LAO.

c. *Federal Transmission:* Energy other than LAO energy will be transmitted over the LAO transmission system to the extent that transmission capacity is determined by the LAO to be available. The contractor shall pay for such service at the established rate for LAO transmission service.

d. *Delivery Beyond the LAO Transmission System:* All costs, including losses, for delivery of energy beyond the LAO transmission system will be the responsibility of the contractor.

The following alternatives are available to contractors for accomplishing delivery of LAO energy beyond the LAO transmission system:

(1) The contractor(s) may construct all facitlities to accept delivery from the LAO transmission system at established voltage(s). The basic design of any facilities which interconnect with the LAO transmission system is subject to LAO approval.

(2) Arrangements may be made with a third party to transmit and deliver energy to a contractor's point of use. Such arrangements will normally be made by the contractor, or by a group of contractors. When the contractor makes its own transmission arrangements, the contractor will be billed directly by the transmission agent and will pay the transmission charges directly to the transmission agent. If the LAO contracts for the transmission on behalf of the contractor or group of contractors, the LAO will pass the costs, along with associated allocable costs, to the contractor(s).

(3) The LAO may construct the transmission facilities required beyond the existing LAO transmission system. Payment for the constructed facilities may be borne by the P–SMBP–WD, Fry-Ark, future projects, or the beneficiaries thereof, as determined by Western.

E. Application Procedures

Western hereby requests all qualified applicants to apply to the Area Manager, Loveland Area Office, in writing, for an allocation of energy and capacity under these Criteria. Applications from each potential allottee must be received in Western Loveland Area Office at P.O. Box 3700, Loveland, Colorado 80539, no later than the close of business on April 1, 1986. Applicants must be identify the kWh/kW desired for both the summer and winter seasons. Western's Administrator will allocate the available resources under the terms of these Criteria only to those applicants who are qualified and who provide a request for energy by the specified data. Proposed allocations will be published in the **Federal Register** for public comment prior to finalization.

VI. Appendix A—Derivation of Marketable Resources:

A. Derivation of P–SMBP–WD Marketable Resources

Western and Reclamation have conducted a series of joint studies to quantify post-1989 water systems operations and the corresponding capabilities of the P–SMBP–WD power system, including its capabilities for hydrothermal. This summary describes the methodology and procedures for defining and quantifying the power resources of the P–SMBP–WD for the post-1989 time period.

1. *At-Plant Capability Basis for Existing Allocations:* The firm power allocations established in 1962 were based on Reclamation's 1956 hydrology study. The results of that study are summarized in table 2 of "Level 1 Report, Hydropower Capability and energy of P–SMBP–WD, August 1980." After considering losses and pumping requirements, the average year energy production capability was 1,860 GWh. Based on the projected load pattern of its preference contractors at that time, Reclamation determined that this average year energy production capability would support firm power allocations of 346 MW in the winter season and 384 MW in the summer season. This allocation of resources included project use loads.

After the allocations were made, each contractor's Federal entitlement was a proportionate share of its total load. The proportionate share was determined by the ratio of the contractor's seasonal CROD to its seasonal peak demand.

From 1962 until 1983, the difference between the firm generation capacity allocated and the actual available generation capacity was marketed on a seasonal basis.

Since Reclamation's 1956 hydrology study and the 1962 allocation, there have been many changes on the P–SMBP–WD system. Contractor loads and load patterns have changed substantially. The expiration of most existing contracts in 1989 and the requirement to develop a post-1989 marketing plan in conjunction with these changes and proposed further changes before 1989 promoted the need for an update of the 1956 Reclamation hydrology study.

Western and Reclamation determined that three levels of study effort were required. The first level was an update of the 1956 study assuming initial water conditions and the system configuration existing in 1980. The second level of effort was a followup of the 1980 update to determine the hydrothermal integration capability of the P–SMBP–WD system. The purpose of that effort was to provide the hydrologic and load obligation basis for marketing unallocated firm generation capacity and energy production capability between 1983 and 1989.

Following the second level study, additional generation capacity of 72 MW in the winter season and 79 MW in the summer season with non-Federal energy supplied by other entities was allocated to preference contractors through 1989. The total capacity allocated through the 1989 summer season now is 418 MW in the winter season and 463 MW in the summer season. The total energy obligation associated with this generation capacity is 1,860 GWh/year.

2. *At-Plant Capability for Projected 1990 Conditions:* The third level of study effort was a long-term hydrology study using a projected 1990 system configuration and an update of the hydrothermal integration capability reflecting 1990 conditions (Task No. 2 Report, Hydrothermal Integration Capability-Study of the P–SMBP–WD, June 1983). Table 1, column (1), summarizes the results of this effort and is the basis for determining the P–SMBP–WD resource to be allocated in the post-1989 period.

B. Derivation of Fry-Ark Resources

The Fry-Ark resources available were computed by Western, based upon a 1974 Reclamation study and an updated study done in 1983 by the Fry-Ark Project Office. These studies determined average inflows available for energy production at the Mt. Elbert Powerplant.

C. Derivation of marketable Resources From Operational Integration of P–SMBP–WD and Fry-Ark Resources

Table 1 shows the at-plant and at-load energy production capability of the operationally integrated P–SMBP–WD and Fry-Ark resources. These resources, available for marketing, consist of the integrated energy production capability of LAO resources minus losses, project use, and existing special use loads.

Table 2, column (6), shows the marketable generation capacity of the operationally integrated resources. The resources thus available for marketing consist of the integrated generation capacity of LAO resources minus necessary reserves, project use and existing special use loads.

Table 3 shows the reservations of marketable long-term firm energy with capacity for new and existing contractors.

Project use and existing special use loads are quantified in tables 1 and 2 and are defined as:

Project Use

1. *P–SMBP–WD Pumps:* Pumps at Lake Granby, Willow Creek, and Flatiron operated by Reclamation, which are an integral part of the P–SMBP–WD system. Power is supplied to operate these pumps as project use under Federal Reclamation law.

2. *Burlington Northern Railroad:* A Reclamation contract, with no expiration date, for electric service for light and ventilation in Boysen Tunnel; entered into as compensation for inundation of the original tunnel by Reclamation when Boysen Dam was constructed.

3. *Colorado River Improvement Pumps:* Seven Reclamation contracts with no expiration date, for power to operate pumps used for gravity irrigation purposes along the Colorado River. These contracts were made as compensation for depletions of the Colorado River caused by the Colorado-Big Thompson Project.

Existing Special Use

1. *Highland Honover Irrigation District, Owl Creek Irrigation District, Upper Bluff Irrigation District:* Three Reclamation contracts which Reclamation has advised Western to treat as project use loads.

2. *Goshen Irrigation District, Midvale Irrigation District:* Two Western contracts which will not expire prior to the effective date of these criteria.

3. *U.S. Forest Service:* Two Western contracts for electric service to the Forest Service's Blue Ridge Repeater Station and to Arapahoe National Recreation Area which will not expire prior to the effective date of these Criteria.

4. *U.S. National Park Service:* A Western contract with no expiration date, for electric service to Rocky Mountain National Park.

Issued at Golden, Colorado January 17, 1986.

William H. Clagett,

Administrator.

Appendix A

TABLE 1.—ENERGY CAPABILITY WITH OPERATIONAL INTEGRATION OF P–SMBP–WD AND FRY-ARK (MWH)

	At plant energy P–SMBP–WD[1]	At plant energy Fry-Ark[2]	At plant total energy	Total energy at load[3]	Project and existing special use loads	Total marketable energy at load	Percent
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
October	172,400	5,957	178,357	166,423	8,464	157,960	16.9
November	173,800	5,617	179,417	167,430	9,479	157,951	16.9
December	186,700	5,542	194,242	181,288	9,215	172,073	18.5
January	184,500	5,504	190,004	177,329	9,868	167,461	18.0
February	144,500	5,429	149,929	139,879	7,492	132,387	14.2
March	158,200	5,429	163,629	152,663	8,173	144,510	15.5
Winter total	1,022,100	33,478	1,055,578	985,031	52,490	932,541	100
April	186,400	4,562	190,962	178,266	9,077	169,188	14.6
May	194,800	1,093	199,893	186,798	9,435	177,333	15.3
June	219,300	3,732	223,032	206,275	5,199	203,076	17.6
July	272,800	4,939	277,739	259,349	5,517	253,832	22.0
August	218,100	5,844	223,944	209,033	5,159	203,874	17.8
September	159,000	4,599	163,599	152,692	4,695	147,996	12.9
Summer total	1,254,400	24,769	1,279,169	1,194,383	39,082	1,155,300	100
Total	2,276,500	58,247	2,334,747	2,179,414	91,573	2,087,841	

[1] From Table 10 Task No. 2 Report. Annual energy of 80,100 Mwh has been added to column (1) figures and subsequently added to the figures in column (5). This is the load of the P–SMBP–WD pumps.
[2] Based on long-term hydrology study performed by Bureau of Reclamation—Fryingpan-Arkansas Project Office.
[3] Total energy at load = [(col 2/1.05)+col 1]/1.07.

TABLE 2.—CAPACITY WITH OPERATIONAL INTEGRATION OF P–SMBP–WD AND FRY-ARK (MW)

	P–SMBP–WD Capacity at 90% probability	Fry-Ark capacity	Maintenance required[1][2]	Reserves required	Project and existing special use required	Marketable capacity	Percent maximum
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
October	464.0	200.0	67.7	48.0	1.023	591.3	92.6
November	477.0	200.0	70.3	48.0	0.413	582.3	91.2
December	483.0	200.0	20.0	48.0	0.532	[3] 636.5	100.0
January	476.0	200.0	32.0	48.0	0.604	621.4	97.3
February	466.0	200.0	64.5	48.0	0.447	577.1	90.4
March	480.0	200.0	131.8	48.0	0.399	523.8	82.0
April	467.0	200.0	50.0	48.0	1.401	591.6	92.6

TABLE 2.—CAPACITY WITH OPERATIONAL INTEGRATION OF P-SMBP-WD AND FRY-ARK (MW)—Continued

	P-SMBP-WD Capacity at 90% probability	Fry-Ark capacity	Maintenance required[1][3]	Reserves required	Project and existing special use required	Marketable capacity	Percent maximum
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
May	497.0	200.0	115.0	48.0	2.635	555.4	77.5
June	517.0	200.0	23.1	48.0	3.251	666.6	93.0
July	557.0	200.0	13.0	48.0	3.533	[2] 716.5	100.0
August	531.0	200.0	73.0	48.0	3.266	629.8	87.9
September	505.0	200.0	65.0	48.0	3.223	612.2	85.4

[1] Total reserve requirement is 48 MW—half of this total required to be spinning, therefore only half, or 24 MW depletes the available water supply and only half is subtracted from the available capacity.
[2] In December and July, the Contractor's monthly capacity entitlement will equal its seasonal capacity entitlement. In the other months it will be the indicated percentage of the appropriate seasonal entitlement.
[3] Includes no reduction for P-SMBP-WD pumps. These are operated only during offpeak hours.

TABLE 3.—RESERVATION OF RESOURCES

	Winter		Summer		Year
	Energy (MWh)	Capacity (MW)	Energy (MWh)	Capacity (MW)	Energy (MWh)
New Contractors	[2] 75,750	[4] 51.9	[2] 93,844	[4] 58.2	[2] 169,594
Existing Contractors	[2] 856,791	[4] 586.6	[2] 1,061,456	[4] 658.3	[4] 1,918,247
Totals	[1] 932,541	[3] 638.5	[1] 1,155,300	[3] 716.5	[1] 2,087,841

[1] Marketable Energy at Load from Column 6, Table 1.
[2] Difference of total energy reserved for existing contractors (see note 6) and total annual energy resource.
[3] Marketable seasonal capacity (100% months, Table 2).
[4] Capacity reservations for each contractor group are the product of the total seasonal capacity and the ratio of each contractor group's annual energy reservation to the total annual energy reservation.
[5] Energy reservations for each contractor group are the product of the total seasonal energy and the ratio of each contractor group's annual energy reservation to the total annual energy reservation.
[6] Annual energy reserved for existing contractors is equal to the energy available for allocation in 1962 from the P-SMBP-WD (1,960 GWh) plus the flowthrough energy from Fry-Ark (58.247 GWh).

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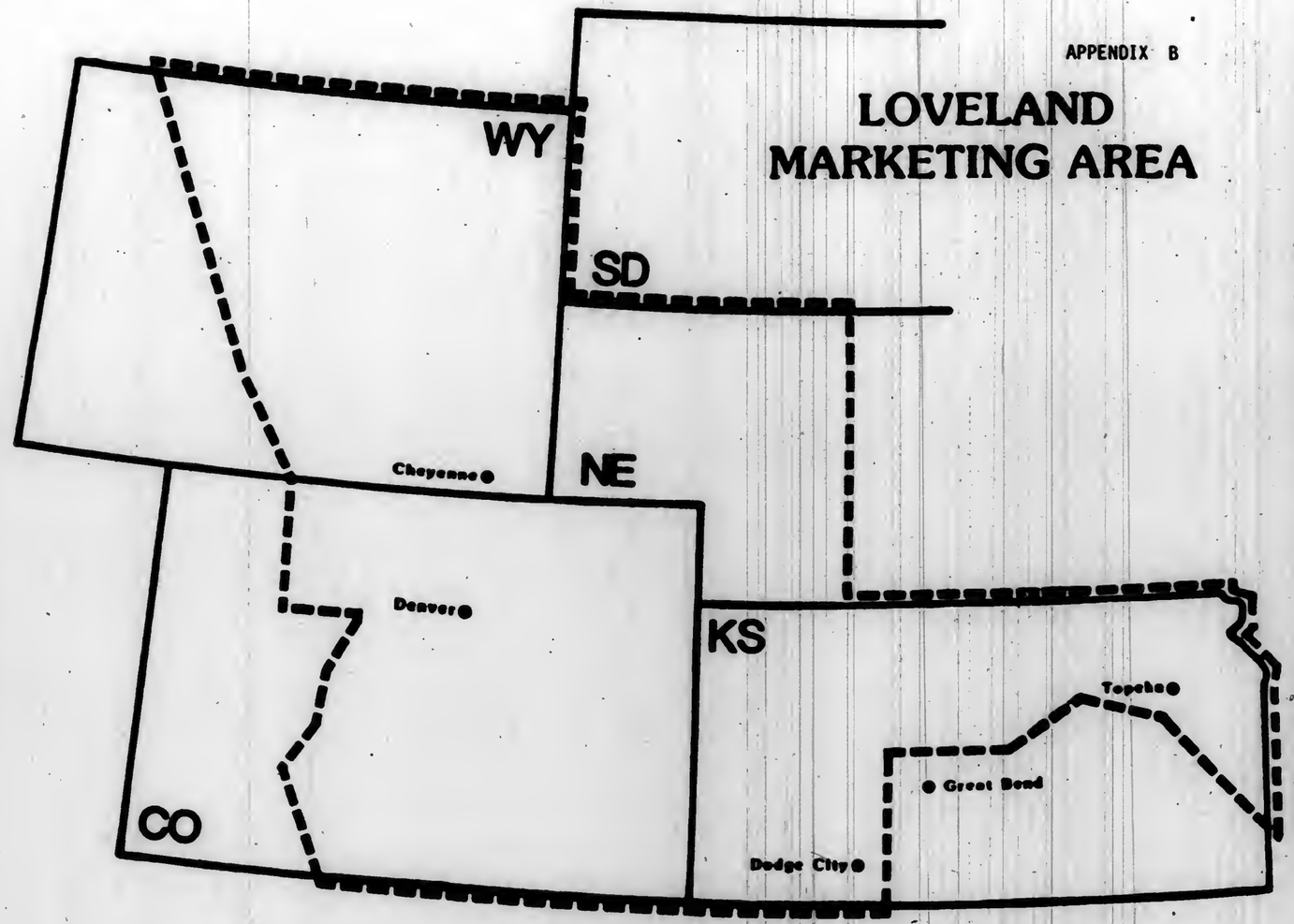
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APPENDIX B

LOVELAND MARKETING AREA



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ENVIRONMENTAL PROTECTION AGENCY

[OAR-FRL-2964-1]

Access to Confidential Business Information by Comptroller General

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY. The Comptroller General has required access to gasoline lead additive reports and supporting documents submitted to EPA by gasoline refiners, importers, and others. This information would be reviewed as part of an examination by the General Accounting Office of an Agency program that allows such refiners and importers to "bank" lead usage rigths for future case. This examination is being performed at the request of the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce. Many refiners, importers, and lead additive manufacturers have claimed confidentiality for the information contained in the gasoline lead additive reports. Pursuant to Agency regulations, the GAO was allowed access to these reports on January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Robert E. Kenney, Senior Staff Attorney, Field operations and support division (EN-397F), 401 M Street, SW., Washington D.C. 20460. Telephone: FTS 382-2633 or 202-382-2633.

SUPPLEMENTARY INFORMATION: In a January 13, 1986 memorandum to the Agency, an official of the U.S. General Accounting Office ("GAO"), pursuant to authority delegated by the Comptroller General, requested access to all gasoline lead additive reports and supporting documents filed by gasoline refiners, importers, and others. The GAO has informed EPA that these reports would be reviewed as part of an examination of the banking of lead usage rigths program authorized by an EPA regulation, 40 CFR 80.20(e). This examination was requested by the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce. In its memorandum, the GAO requested that it be allowed access to the reports and supporting documents by January 17, 1986, in order to meet its reporting requirements to the Chairman.

Quarterly gasoline lead additive reports must be submitted to the Agency by gasoline refiners and importers pursuant to regulations promulgated under 211 of the Clean Air Act, 40 CFR 80.20(a)(3) and (c)(3). Quarterly reports must also be submitted by lead additive manufacturers pursuant to 40 CFR 80.25. Many refiners, importers, and lead additive manufacturers have claimed confidentiality for the information contained in these reports.

EPA regulations at 40 CFR 2.209(b), as amended effective January 17, 1986 (50 FR 51654, December 18, 1985), provide that, upon receipt of a written request by the Comptroller General, EPA will disclose business information to that official. 40 CFR 2.209(b)(2) requires that, if the request is for business information claimed as confidential or determined to be confidential, the Agency shall provide notice to each affected business of the type of information disclosed and to whom it is disclosed.

Pursuant to the deadline in its January 13, 1986 memorandum, the GAO was provided access to the requested reports and supporting documents on January 17, 1986. At that time, in accordance with 40 CFR 2.209(b)(3), the GAO was informed of the confidentially claims that had been made for many of the reports and documents, and of any final determinations of entitlement to confidential treatment.

In accordance with amended § 2.209(b)(2), because the deadline for access established by GAO did not allow advance notice, the Agency is hereby providing notice to all gasoline refiners, gasoline importers, and lead additive manufacturers that access to all gasoline lead additive reports submitted to EPA has been provided to the GAO.

Dated: January 22, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-2163 Filed 1-30-86- 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2963-8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed January 21, 1986 through January 24, 1986, pursuant to 40 CFR 1506.9.

EIS No. 860019, Final, SCS, TN, MS, Wolf and Loosahatchie River Basins Multipurpose Land and Water Management Plan, Due: March 3, 1986, Contact: Donald Bivens (615) 251-5471.

EIS No. 860020, Draft, SCS, MS, Riverside-Black Bayou Watershed Protection and Flood Prevention Plan, Bolivar and Washington Cos., Due: March 17, 1986, Contact: A. E. Sullivan (601) 965-5205.

EIS No. 860021, Final, AFS, MT, Flathead National Forest, Land and Resource Management Plan, Due: March 3, 1986, Contact: Edgar Brannon (406) 755-5401.

EIS No. 860022, Final, COE, PA, Francis E. Walter Dam and Reservoir Modifications, Lehigh River, Delaware River Basin, Carbon, Luzerne and Monroe Cos., Due: March 3, 1986, Contact: J. Jeffrey Radley (215) 597-4833.

EIS No. 860023, Draft, BPA, ID, MT, OR, WA, Direct Service Industry Options on Reducing Load Fluctuation and Revenue Uncertainty, Due: March 17, 1986, Contact: Anthony Morrell (503) 230-5136.

EIS No. 860024, Final, FHW, TX, Beltway 8 (Section III) Construction, US 59 South to I-10 West, Harris County, Due: March 3, 1986, Contact: John Inabinet (512) 482-5516.

Dated: January 28, 1986.

William Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 86-2190 Filed 1-30-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2963-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 13, 1986 through January 17, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-J65144-UT, Rating EC2, Dixie Nat'l Forest, Land and Resource Mgmt. Plan, UT. Summary: EPA expressed concern over the incorporation of EPA and State antidegradation requirements in water quality management programs. EPA recommends that a more extensive discussion of erosion and sediment control measures be included in the Forest Plan.

ERP No. D-FHW-E40690-FL, Rating EC2, Business US 41 Bridge/Edison Bridge Replacement, Upgrading, Market St. to Mariana Ave., Caloosahatchee, R., FL. Summary: EPA is concerned with proposed noise impacts and potential impacts on water quality (dredging and spoil disposal); and loss of mangrove, seagrass, and shallow water Caloosahatchee River habitats. Additional information is requested on wetland and noise mitigation, seagrass impacts, spoil disposal, and fisheries.

Final EISs

ERP No. F-BLM-J70002-WY, Kemmerer Resource Area, Land and Resource Mgmt. Plan, WY. Summary: EPA has several unresolved concerns. Water quality standards and any known impairments to designated uses should be addressed for the planning area. Other unresolved concerns include: Protection of water quality standards and ground water, salinity control, watershed planning, contingency planning for sulfur dioxide emissions from sour gas processing plants well flaring, range and riparian-wetland area management, and monitoring. Additionally, EPA recommends that more thorough responses are still needed, and recommends a response to help resolve the concerns.

ERP No. F-MMS-A02197-AK, 1986 Norton Basin OCS Oil and Gas Sale No. 100, Lease Offering, Bering Sea, AK. Summary: EPA recommends that the lease sale exclude the Expanded Western Deferral Area (Alternative VIII) and the Expanded Yukon Delta Deferral Area (Alternative VII).

Regulation

ERP No. R-DOE-A22104-00, Byproduct Material, Clarification, 10 CFR Part 962 (50 FR 45736). Summary: EPA objects to a regulatory approach to delineate the boundary between RCRA and the Atomic Energy Act. EPA suggests that a memorandum of understanding be developed between the Department of Energy (DOE) and EPA to delineate the regulatory boundary between the DOE and EPA jurisdictions for hazardous and radioactive wastes.

Dated: January 28, 1986.

William Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 86-2191 Filed 1-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2961-7]

Ocean Dumping Permit Program; Research Permit for Incineration of Chemical Wastes at Sea; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period on EPA's tentative determination to issue a research permit for the incineration of chemical wastes at sea.

SUMMARY: EPA is extending the public comment period on its tentative determination to issue a research permit for the incineration of chemical wastes that was published in the Federal Register on December 16, 1985. (50 FR 51360.)

DATE: The comment period on EPA's tentative determination is extended to February 15, 1986.

FOR FURTHER INFORMATION CONTACT: David P. Redford, Office of Marine and Estuarine Protection (WH-558M), EPA, Washington, DC, 20460, (202) 755-9231.

SUPPLEMENTARY INFORMATION: On December 16, 1985, EPA published in the Federal Register for public comment a tentative determination to issue a research permit to Chemical Waste Management, Inc., Oak Brook, Illinois, for the *Vulcanus II* to transport and incinerate materials as authorized by the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, and announced public hearings to receive comments on this determination. The comment period was to end on January 31, 1986.

The Agency recently received a request from the Gulf Coast Coalition for Public Health (GCCPH) to extend the comment period to March 15, 1986. The reasons for GCCPH's request were the possible delays resulting from the holiday season. The Agency has reviewed GCCPH's request and has decided that a 45-day extension is unwarranted but has agreed to extend the comment period 15 days. This will allow a total of 60 days for the submittal of public comments which the Agency believes is a sufficient amount of time to address the issues raised by its tentative determination to issue this one research permit.

Dated: January 13, 1986.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 86-1880 Filed 1-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59210; FRI-2962-9]

Certain Chemicals Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: February 18, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59210]" and the specific TME number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 86-10

Close of Review Period: March 6, 1986.

Manufacturer. Confidential.

Chemical. (G) Modified, maleated metal resinate.

Use/Production. (G) Industrial publication gravure printing inks. Prod. range: Confidential.

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Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers.
Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/batch to land. Disposal by sanitary landfill.

T 86-11

Close of Review Period: March 8, 1986.
Manufacturer. Confidential.
Chemical. (G) Modified, maleated metal resinate.
Use/Production. (G) Industrial publication gravure printing inks. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers.
Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/batch to land. Disposal by sanitary landfill.

Dated: January 24, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86-2047 Filed 1-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59750; FRL-2963-1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMSs and provides a summary

DATES: Close of Review Period: Y 86-58 and 86-59; February 6, 1986. Y86-60; February 11, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-58

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Polymer used in product formulation having a partially contained use. Prod. range: 5,000-13,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-59

Manufacturer. Bostwick Division of USM Corporation.
Chemical. (G) Polyamide.
Use/Production. (G) Adhesive, open, non-dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Environmental Release/Disposal. No release.

Y 86-60

Manufacturer: Confidential.
Chemical. (S) Polymer of neopentyl glycol, adipic acid, trimethylol ethane, dimethyl proprionic acid and phthalic anydride.
Use/Production. (G) Polymer for industrial baked coatings. Prod. range. 108,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 3 hrs/da.
Environmental Release/Disposal. Release to air and landfill. 20 kg/batch incinerated.

Dated: January 24, 1986.

V. Paul Fushchini,

Acting Director, Information Management Division.

[FR Doc. 86-2048 Filed 1-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51606; FRL-2963-2]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-eight PMNs and provides a summary of each.

DATES: Close of Review Period: P 86-394, 86-395, 86-396, 86-397, 86-398, 86-399, 86-400, 86-401, 86-402, 86-403, and 86-404, April 19, 1986. P 86-405, 86-406, 86-407, 86-408, 86-409, 86-410, 86-411, 86-412, 86-413, 86-414, 86-415, and 86-416, April 20, 1986. P 86-417, 86-418, 86-419, 86-420, 86-421, 86-422, 86-423, 86-424, 86-425, 86-426, 86-427, 86-428, 86-429, 86-430 and 86-431, April 21, 1986.

Written comments by: P 86-394, 86-395, 86-396, 86-397, 86-398, 86-399, 86-400, 86-401, 86-402, 86-403 and 86-404, March 20, 1986. P 86-405, 86-406, 86-407, 86-408, 86-409, 86-410, 86-411, 86-412, 86-413, 86-414, 86-415, and 86-416, March 21, 1986. P 86-417, 86-418, 86-419, 86-420, 86-421, 86-422, 86-423, 86-424, 86-425, 86-426, 86-427, 86-428, 86-429, 86-430 and 86-431, March 22, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51608]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Enviropmental Protection Agency, Rm. E-611, 401 M St., SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public

Reading Room E-107 at the above address.

P 86-394

Importer. Naarden International.
Chemical. (S) 2-ethoxy-4-methyl phenol.
Use/Import. (S) Consumer fragrance ingredient for use in fragrance compounds. These will be used to perfume a variety of consumer end products such as soaps, detergents, household products, and cosmetics. Import range: Confidential.
Toxicity Data. Acute oral: 1.73 ml/kg; Irritation: Skin—Moderate, Eye—Severe; Ames test: Non-mutagenic; Skin sensitization: (Maximization test) Sensitizer, (Buehler test) Non-sensitizer.
Exposure. Use: dermal, a total of 7 workers, up to 5 hrs/da, up to 6 da/yr.
Environmental Release/Disposal. 10 to 50 parts per million (ppm) released to air.

P 86-395

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Aromatic polyamide.
Use/Production. (G) Membranes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86-396

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Aromatic polyamide.
Use/Production. (G) Membranes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86-397

Importer. Confidential.
Chemical. (G) Substituted sodium benzoate.
Use/Import. (G) Intermediate. Import range: Confidential.
Toxicity Data. Acute oral: 5.0 gm/kg; Irritation: Skin—Irritant, Eye—Irritant.
Exposure. Processing: dermal, a total of 10 workers, up to 1 hr/da, up to 3 da/yr.
Environmental Release/Disposal. No release.

P 86-398

Manufacturer. Confidential.
Chemical. (G) l-(carbomonocyclicaminoalkylene) polysubstituted heterocycle.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. Ames test: Negative.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. 8 kg/batch released with 2 kg/batch to water. Disposal by incineration and biological treatment.

P 86-399

Manufacturer. Confidential.
Chemical. (G) N-substituted dialkylenetriamine.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. Ames test: Negative.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. 8 kg/batch incinerated. Disposal by incineration.

P 86-400

Manufacturer. Confidential.
Chemical. (G) Dialkylenetriamine
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. Ames test: Negative.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. 11 kg/batch incinerated.

P 86-401

Manufacturer. Confidential.
Chemical. (G) Modified, maleated metal resinate.
Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 8 workers.
Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/batch to land.

P 86-402

Manufacturer. Confidential.
Chemical. (G) Trisubstituted triazine.
Use/Production. (G) Stabilizer for polymers. Prod. range: Confidential.
Toxicity Data. Acute oral: Male—1.05 g/kg, Female—1.35 g/kg, Combined—1.23 g/kg; Acute dermal: <2.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Negative; Skin sensitizer: Not a sensitizer; LC $_{50}$ 96 hr (Freshwater fish): <1,000 mg/1; LC $_{50}$ 96 hr (bluegill): <1,000 mg/L.
Exposure. Manufacture and processing: dermal.
Environmental Release/Disposal. 1 kg/batch released to water. Disposal by incineration an biological treatment.

P 86-403

Manufacturer. Confidential.
Chemical. (G) Modified acrylic terpolymer.
Use/Production. (G) Thickener for aqueous mixtures, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 5 workers.
Environmental Release/Disposal. Confidential. Dosposal by publicly owned treatment works (POTW).

P 86-404

Manufacturer. Confidential.
Chemical. (G) Modified acrylate terpolymer.
Use/Production. (G) Thickening compound for aquaeous systems, dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 5 workers.
Environmental Release/Disposal. Disposal by POTW.

P 86-405

Manufacture. Products Research & Chemical Corporation.
Chemical. (G) Mercaptan terminated polyether, polythioether, polysulfide.
Use/Production. (S) Industrial polymer for sealants and adhesives. Prod. range: 140,000-900,000 kg/yr.
Toxicity Data. Acute oral: <5g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant: Ames test: Negative.
Exposure. Manufacture and processing: dermal, a total of 47 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 0.7 to 1.5 kg/batch released to land. Disposal by landfill.

P 86-406

Manufacturer. Confidential.
Chemical. (G) Water reducible acrylic copolymer alkyd.
Use/Production. (S) Water reducible industrial air-dry enamels. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

P 86-407

Manufacturer. Confidential.
Chemical. (G) Site-limited alkyd resin.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers.
Environmental Release/Disposal. Confidential.

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P 86-408

Manufacturer. Hanna Chemical Coatings Corporation.
Chemical. (G) Silicone modified polyester.
Use/Production. (S) Industrial polyester vehicle for use in pigmented decorative coatings. Prod. range: 12,000–48,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: a total of 8 workers, up to 2 hrs/da, up to 12 da/yr.
Environmental Release-Disposal. .35 to 1.35 kg/batch released to air with 1 to 9.4 kg/batch to land. Disposal by approved landfill.

P 86-409

Manufacturer. Confidential.
Chemical. (G) Substituted arylalkylene dicarboxylate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Acute dermal: >2,000 mg/kg; Skin sensitization: Low.
Exposure. Manufacture, processing and use: dermal.
Environmental Release/Disposal. Less than 2 to less than 55 kg/batch released to water. Disposal by incineration and biological treatment.

P 86-410

Importer. Confidential.
Chemical. (S) Reaction product of N,N'-ditallowalkylaminopropylethylenediamine with propylene oxide and ethylene oxide.
Use/Import. (G) Dispersing agent. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No release.

P 86-411

Manufacturer. PMC Specialties Group, Inc.
Chemical. (G) Substituted alkyl benzotriazole.
Use/Production. (S) Commercial metal corrosion inhibitor for copper and alloys. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-412

Manufacturer. PMC Specialties Group, Inc.
Chemical. (G) Substituted alkyl benzotriazole.
Use/Production. (S) Commercial metal corrosion inhibitor for copper and alloys. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-413

Manufacturer. Rexnord.
Chemical. (G) Acrylic oligomeric copolymer.
Use/Production. (S) Plasticizers for sealants for industrial, commercial and consumer use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal.
Environmental Release/Disposal. 0.5 to 10 kg/batch released to land. Disposal by licensed burial.

P 86-414

Manufacturer. Hach Company.
Chemical. (S) 1-2'-hydroxy-5'-sulfophenylazo)-2-hydroxy-naphthalene-3,6-disulfonic acid.
Use/Production. (S) Industrial reagent for hardness analysis in water of brine. Prod. range: 100–300 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 workers, up to 8 hrs/da, up to 8 da/yr.
Environmental Release/Disposal. Release to water. Disposal by POTW.

P 86-415

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified Acrylic polymer.
Use/Production. (G) Coatings additive in open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.
Exposure. Manufacture: dermal, a total of 48 workers.
Environmental Release/Disposal. Release to land. Disposal by approved landfill.

P 86-416

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified Acrylic polymer.
Use/Production. (G) Coatings additive in open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-Irritant.
Exposure. Manufacture: dermal, a total of 48 workers.
Environmental Release/Disposal. Release to land. Disposal by approved landfill.

P 86-417

Importer. Confidential.
Chemical. (G) Vinylsiloxano-organo-platinum complex.
Use/Import. (S) Industrial catalyst for curing sllicone polymers. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 4 workers, up to 1 hr/da.
Environmental Release/Disposal. 1.0 kg released. Disposal by approved landfill.

P 86-148

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amide substituted imidazolidines.
Use/Production. (S) Industrial corrosion inhibitor for downhole petroleum or geothermal production. Prod. range: Confidential.
Toxicity Data. Acute oral: >4,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Eye—Slight to severe, Skin—Slight; Inhalation: No adverse effects.
Exposure. Manufacture: dermal, a total of 13 workers.
Environmental Release/Disposal. Release to air. Disposal by incineration.

P 86-419

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amide substituted imidazolidines.
Use/Production. (S) Industrial corrosion inhibitor for downhole petroleum or geothermal production. Prod. range: Confidential.
Toxicity Data. Acute oral: >4,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Eye—Slight to severe, Skin—slight; Inhalation: No adverse effects.
Exposure. Manufacture: dermal, a total of 13 workers.
Environmental Release/Disposal. Release to air. Disposal by incineration.

P 86-420

Manufacturer. The Dow Chemical Company.
Chemical. (G) Amide substituted imidazolidines.
Use/Production. (S) Industrial corrosion inhibitor for downhole petroleum or geothermal production. Prod. range: Confidential.
Toxicity Data. Acute oral: >4,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Eye—Slight to severe; Skin—Slight; Inhalation: No adverse effects.
Exposure. Manufacture: dermal, a total of 13 workers.
Environmental Release/Disposal Release to air. Disposal by incineration.

P 86-421

Manufacturer. Confidential.
Chemical. (G) Modified, maleated metal resinate.
Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.
Toxicity Data. No data substance submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da.
Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/batch to land. Disposal by sanitary landfill.

P 86-422

Importer. Confidential.
Chemical. (G) Modified polycarbonate.
Use/Import. (S) Industrial plastic material for injection molding and sheet extrusion. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 3–5 workers.
Environmental Release/Disposal. Disposal by approved landfill.

P 86-423

Manufacturer. Confidential.
Chemical. (S) Mixed thiodiphenol oligomers.
Use/Production. (G) Anti-foulant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-424

Manufacturer. Confidential.
Chemical. (S) Mixed thiodiphenol oligomers sodium salts.
Use/Production. (G) Anti-foulant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-425

Manufacturer. Confidential.
Chemical. (S) Mixed thiodiphenol oligomers ammonium salts.
Use/Production. (G) Anti-foulant. Prod. range: Confidential.
Toxicity Data. Acute oral: Male—9.85 gm/kg, female—6.50 gm/kg; Acute dermal: >2.0 gm/kg; Irritation: Skin—Nonirritant, Eye—Irritant; Ames test: Non-mutagenic; Skin sensitization: Negative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-426

Importer. Hitachi Chemical Company America, Ltd.
Chemical. (G) Acrylonitrile-acrylic-styrene-polymer A.
Use/Import. (S) Commerical and consumer molded parts for electronic, automotive and construction applications. Import range: 40,000–100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-427

Importer. Hitachi Chemical Company America, Ltd.
Chemical. (G) Acrylonitrile-acrylic-styrene-polymer B.
Use/Import. (S) Commerical and consumer molded parts for electronic, automotive and construction applications. Import range: 10,000–60,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-428

Import. Hitachi Chemical Company America, Ltd.
Chemical. (G) Acrylonitrile-acrylic-styrene-polymer C.
Use/Import. (S) Commerical and consumer molded parts for electronic, automotive and construction applications. Import range: 10,000–60,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-429

Import. Hitachi Chemical Company America, Ltd.
Chemical. (G) Poly(ether-ester-amide).
Use/Import. (S) Site-limited and industrial insulation varnish for semiconductor. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-430

Import. Hitachi Chemical Company America, Ltd.
Chemical. (G) Poly(ether silicone amide).
Use/Import. (S) Site-limited and industrial insulation varnish for semiconductor. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-431

Import. Hitachi Chemical Company America, Ltd.
Chemical. (G) Poly(ether amide).
Use/Import. (S) Site-limited and industrial insulation varnish for semiconductor. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated January 24, 1986.

V. Paul Fuschini,
Acting Director, Information Management Division.

[FR Doc. 86-2049 Filed 1-30-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51607; FRL-2960-2]

Certain Pesticides and Toxic Substances; Receipt of Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(c)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-two PMNs and provides a summary of each.

DATES: Close of Review Period: P 86-372, 86-373 and 86-374 April 8, 1986; P 86-375, and 86-376 April 11, 1986; P 86-377, 86-378, 86-379, 86-380, 86-381, 86-382, 86-383, and 86-384, April 12, 1986; P 86-385, 86-386, 86-387, and 86-388 April 13, 1986; P 86-389, 86-390, 86-391, 86-392, and 86-393 April 14, 1986.

Written comments by: P 86-372, 86-373 and 86-374 March 9, 1986; P 86-375, and 86-376 March 12, 1986; P 86-377, 86-378, 86-379, 86-380, 86-381, 86-382, 86-383, and 86-384 March 13, 1986; P 86-385, 86-386, 86-387, and 86-388 March 14, 1986; P 86-389, 86-390, 86-391, 86-392, and 86-393 March 15, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51607]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential

Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 86-372

Importer. Kay-Fries, Inc.
Chemical. (S) Ethanol, potassium salt.
Use/Import. (S) Industrial chemical manufacturing intermediate. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: inhalation, a total of 1 worker, up to 1 hr/da, up to 1 da/yr, 4 da/yr.
Environmental Release/Disposal. No data submitted.

P 86-373

Importer. Confidential.
Chemical. (G) Methylene bis (substituted benzene).
Use/Import. (G) Destructive use. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-374

Manufacturer. Confidential.
Chemical. (G) Blocked isocyanate.
Use/Production. (s) Wire enamel. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-375

Importer. Confidential.
Chemical. (G) Dialkylpentasulphide.
Use/Import. (S) Industrial extreme pressure additive for metal working oil. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal.
Environmental Release/Disposal. No data submitted.

P 86-376

Manufacturer. Confidential.
Chemical. (G) Caprolactam-blocked TDI prepolymer.
Use/Production. (S) Industrial crosslinker for one-component polyurethane coatings. Prod. range: 300,000-365,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 45 workers, up to 6 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. 0.1 to 90 kg/batch released to air with 10 kg/batch to water. Disposal by incineration and on site biological treatment plant.

P 86-377

Manufacturer. E.I. du Pont de Nemours & Company, Inc.
Chemical. (G) Monosubstitutedalkylbenzenediazonium chloride.
Use/Production. (S) Site-limited intermediate. Prod range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86-378

Importer. Confidential.
Chemical. (G) Reaction product of urea, formaldehyde, dialdehyde and diol.
Use/Import. (S) Industrial textile auxiliary. Import range: 25,000-250,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Processing: dermal, a total of 6 workers, up to 100 hrs each.
Environmental Release/Disposal. Trace release.

P 86-379

Importer. Confidential.
Chemical. (G) Oxirane polymer with dialkylcarbomonocyclicoxysubstituted propanol.
Use/Import. (S) Industrial emulsifier. Import range: 1,000-3,000 kg/yr.
Toxicity Data. Acute oral: 4,060 mg/kg; Irritation: Skin—Slight; Eye—Non-irritant; LC_{50} 96 hr (Rainbow trout: < 220 mg/L.
Exposure. Processing: dermal.
Environmental Release/Disposal. Little release.

P 86-380

Manufacturer. American Hoechst Corporation.
Chemical. (S) 2-Naphthalenediazonium, 1-sulfo-6-(2-sulfooxyethyl)sulfonyl)-, hydrogen sulfate.
Use/Production. (S) Site-limited dye intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 3 workers, up to 2 hrs/da, up to 9 da/yr.
Environmental Release/Disposal. 150 kg/batch released to water. Disposal by biological waste treatment.

P 86-381

Importer. Kay-Fries, Inc.
Chemical. (G) Polyester resin of aryl alkane dicarboxylic acids plus alkane diols.
Use/Import. (S) Industrial metal coating. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Unknown.
Environmental Release/Disposal. Unknown.

P 86-382

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified trisphenol epoxy novolac.
Use/Production. (S) Industrial manufacture of structural composite, transfer molding of electronic parts and manufacture of printed circuit board. Prod. range: Confidential.
Toxicity Data. Acute dermal: < 2,000 mg/kg; Skin—Non-irritant, Eye—Very slight.
Exposure. Manufacture: dermal, a total of 10 workers.
Environmental Release/Disposal. Up to 1 lb sample/batch released to air and land with < 0.01 kg/batch to water. Disposal by incineration, landfill and navigable waterway after treatment.

P 86-383

Manufacturer. The Dow Chemical Company.
Chemical. (G) Modified trisphenol novolac.
Use/Production. (S) Site-limited intermediate for epoxy resin. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and use: dermal, a total of 5 workers.
Environmental Release/Disposal. Release to air, water and land. Disposal by navigable waterway after treatment, incineration and landfill.

P 86-384

Manufacturer. Confidential.
Chemical. (G) Substituted aldehyde.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 42 workers, up to 4 hrs/da, up to 125 da/yr.
Environmental Release/Disposal. Release to air, water, and land. Disposal by landfill, or burned in accordance with the stringent requirements of the Clean Air Act, Clean Water Act and/or Resource Conservation and Recovery Act (RCRA).

P 86-385

Manufacturer. Confidential.
Chemical. (G) Acrylic ester.
Use/Production. (S) Used in tandem with other vehicles in the manufacture of inks. Prod. range. Confidential.
Toxicity Data. Irritation: Skin—Mild.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-386

Manufacturer. Confidential.
Chemical. (G) Modified acrylic ester.
Use/Production. (S) Used in tandem with other vehicles in the manufacture of inks. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-387

Manufacturer. Confidential.
Chemical. (G) Modified acrylic ester.
Use/Production. (S) UV cure product to be used in making inks. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Moderate.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-388

Manufacturer. Confidential.
Chemical. (G) Polyurethane prepolymer.
Use/Production. (G) Wood coating. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86-389

Manufacturer. Confidential.
Chemical. (G) Azxoybis[(substituted phenyl] azo]bis[substituted naphthalenesulfonic acid, salt].
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-390

Manufacturer. Confidential.
Chemical. (G) Azoxybis[(substituted phenyl]azo]bis[substituted napthalenesulfonic acid, salt].
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-391

Manufacturer. Confidential.
Chemical. (G) Azoxybis[(substituted phenyl)azo]bis[substituted naphthalenesulfonic acid, salt].
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-392

Manufacturer. Velsicol Chemical Corporation.
Chemical. (S) Methyl carbamic acid, phenyl ester.
Use/Production. (S) Site-limited intermediate in the synthesis of another organic compound. Prod. range: Confidential.
Toxicity Data. Acute oral: 540 mg/kg.
Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 1 hr/da, up to 295 da/yr.
Environmental Release/Disposal. Confidential.

P 86-393

Manufacturer. Confidential.
Chemical. (G) Poly acrylate.
Use/Production. (G) Polymer for industrial finishing. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 1 hrs/da, up to 7 da/yr.
Environmental Release/Disposal. 20 kg/batch released to air and landfill. Disposal by publicly owned treatment works (POTW) and incineration.

Dated: January 20, 1986.

Linda A. Travers,
Acting Director, Information Management Division.

[FR Doc. 86-1660 Filed 1-30-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59749; FRL-2959-9]

Certain Pesticides and Toxic Substances; Receipt of Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt for four such PMN and provides a summary.

DATES: Close of Review Period:
Y 86-54—January 30, 1986.
Y 86-55 and 86-56—February 3, 1986.
Y 86-57—February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-54

Importer. Kay-Fries, inc.
Chemical. (G) Polyester resin of an aryl dicarboxylic acid and alkane diol.
Use/Import. (S) Industrial metal coating Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Unknown.
Environmental Release/Disposal. Unknown.

Y 86-55

Importer. BASF Systems Corporation.

Chemical. (G) Hydroxy functional polyurethane.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted
Environmental Release/Disposal. No data submitted.

Y 86-56

Manufacturer. S.C. Johnson & Son, Inc.
Chemical. (G) Amine salt of styrene acrylic polymer.
Use/Production. (G) A resin solution in the form of the monoethanol amine salt for formulating aqueous flexographic inks and overprint varnishes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

Y 86-57

Manufacturer. Confidential.
Chemical. (G) Acrylate copolymer.
Use/Production. (G) Dispersive water treatment. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

Dated: January 20, 1986

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 86-1681 Filed 1-30-86; 8:45 am]

BILLING CODE 6560-31-M

EXPORT-IMPORT BANK

Use of Penalty Mail in the Location and Recovery of Missing Children—S. 1195, Pub. L. 99-87, 99 Stat. 290 (August 9, 1985)

Notice is hereby given by the Export-Imiport Bank of the United States (Eximbank) that because Eximbank does not use penalty mail in its operations, Eximbank will not publish regulations required under Pub. L. 99-87 and the implementing guidelines established by the Justice Department's Office of Juvenile Justice and Delinquency Prevention, which will govern the use of penalty mail for specified purposes. Eximbank exclusively uses prepaid mail that does not carry penalty indicia, pursuant to the Domestic Mail Manual, Section 137.23.

Hart Fessenden,

General Counsel.

[FR Doc. 86-2103 Filed 1-30-86; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to taken any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction and Waiting Period Terminated Effective

(1) 86-0405—Fieldcrest Mills, Inc.'s proposed acquisition of voting securities of Cannon Mills Company, (David H. Murdock, UPE), January 10, 1986;
(2) 86-0441—Bowater Industries, plc's proposed acquisition of voting securities of Star-Tex Corporation, (Laitala Family Investment, Inc., UPE), January 10, 1986;
(3) 86-0492—adidas Sportschuhfabriken Adi Dassler Stifting & Co. KG's proposed acquisition of assets of Closs Co., Inc., (Clossco, UPE), January 10, 1986;
(4) 86-0488—AB Electrolux's proposed acquisition of assets of Medford Corporation, (The 1964 Simmons Trust, UPE), January 13, 1986;
(5) 86-0494—The Friday Trust's proposed acquisition of voting securities of Banner Industries, Inc., January 13, 1986;
(6) 86-0500—TLC Associates' proposed acquisition of voting securities of Minstar, Inc., January 13, 1986;
(7) 86-0524—Federal—Mogul Corporation's proposed acquisition of voting securities of Carter Automotive Company, (Carl Icahn, UPE), January 13, 1986;
(8) 86-0530—Grow Group, Inc.'s proposed acquisition of voting securities of Perrigo Company, January 13, 1986;
(9) 86-0538—Tesoro Petroleum Corporation's proposed acquisition of voting securities of NRG Gathering Company, January 13, 1986;
(10) 86-0495—Viacom International, Inc.'s proposed acquisition of assets of KMOX-TV in St. Louis, Missouri, (CBS, Inc., UPE), January 14, 1986;
(11) 86-0491—FoxMeyer Corporation's proposed acquisition of voting securities of Jefferson Drug Company, (The Procter Company, UPE), January 15, 1986;
(12) 86-0533—Imperial Group plc's proposed acquisition of voting securities of United Biscuits (Holdings) plc, January 15, 1986;
(13) 86-0522—Getty Petroleum Corporation's proposed acquisition of voting securities of Aero Oil Company, (Phillips Petroleum Company, UPE), January 16, 1986;
(14) 86-0554—Ivaco Inc.'s proposed acquisition of voting securities of Canron Inc., January 16, 1986;
(15) 86-0476—Archer-Daniels-Midland Company's proposed acquisition of voting securities of Krause Milling Company, January 17, 1986;
(16) 86-0509—Red Apple Supermarkets, Inc.'s (John Catsimatidis, UPE) proposed acquisition of voting securities of Bay Pride, Inc. and assets of Pantry Pride, Inc., January 17, 1986;
(17) 86-0510—Sumitomo Metal Mining Co., Ltd.'s proposed acquisition of assets of Phelps Dodge Corporation, January 17, 1986;
(18) 86-0512—Sumitomo Metal Mining Co., Ltd.'s proposed acquisition of voting securities of Sumitomo Metal Mining Arizona, Inc., (Sumitomo Metal Mining Co., Ltd, UPE), January 17, 1986;
(19) 86-0501—TLC Associates proposed acquisition of voting securities of Brae Corporation, January 21, 1986;
(20) 86-0511—Edwin T. McBirney's proposed acquisition of voting securities of KDI Corporation, January 21, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC. 20580 (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-2150 Filed 1-30-86; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective—
(1) 86-0206—Peerless Importers, Inc.'s proposed acquisition of assets of Knickerbocker Liquors Corporation, Knickerbocker Warehousing Corporation Mohawk Valley Merchandisers Corporation and Erie Liquor Company, Inc., (Gilbert Rosenberg, UPE).	Jan. 2, 1986.
(2) 86-0391—Argyll Group PLC's proposed acquisition of voting securities of The Distillers Company PLC.	Do.
(3) 86-0424—Century Communications Corp.'s proposed acquisition of assets of Group W Cable, Inc., (Westinghouse Electric Corporation, UPE).	Do.
(4) 86-0433—Commercial Shearing, Inc.'s proposed acquisition of voting securities of MIN Specialty Materials, Inc., (Minstar, Inc., UPE).	Do.
(5) 86-0472—GATX Corporation's proposed acquisition of assets of Itel's Portfolio Management Division, (Itel Corporation, UPE).	Do.
(6) 86-0474—Heritage Communications, Inc.'s proposed acquisition of voting securities of Gill Industries, Inc., (Allen T. Gilliland and Gloria R. Gilliland, UPE's).	Do.
(7) 86-0490—L.B. Foster Company's proposed acquisition of assets of Hardware and Banking Equipment Segment of Kidde, (Kidde, Inc., UPE).	Do.
(8) 86-0505—Parker Penn Limited's proposed acquisition of assets of Parker Penn Company.	Jan. 3, 1986.
(9) 86-0486—American Financial Corporation's proposed acquisition of voting securities of The Circle K Corporation.	Jan. 6, 1986.
(10) 86-0487—The Albert Fisher Group PLC's proposed acquisition of voting securities of The Ziff Company, (Albert M. Tapper and Charles N. Tapper, UPE).	Do.
(11) 86-0397—James River Corporation's proposed acquisition of assets of subsidiaries of Preco Corporation, (Joseph H. Torras, UPE).	Jan. 7, 1986.
(12) 86-0398—Joseph H. Torras' proposed acquisition of voting securities of James River Corporation of Virginia.	Do.
(13) 86-0455—Continental Telecom Inc.'s proposed acquisition of assets of Cantel Supply Company, (Cantel Corporation, UPE).	Do.
(14) 86-0468—LLC Corporation's proposed acquisition of voting securities of Sea-Land Corporation.	Do.
(15) 86-0473—Envirodyne Industries, Inc.'s proposed acquisition of assets related to Union Carbide Corporation's film packaging business, the assets include the voting securities of three foreign companies, (Union Carbide Corporation, UPE).	Do.
(16) 86-0240—Proposed formation of a joint venture named Lincoln National Health Care Insurance Co. by United States Health Care Systems, Inc. and Lincoln National Corp.	Jan. 8, 1986.
(17) 86-0454—Proposed formation of a joint venture named Lincoln National Health Care Insurance Company by United States Health Care Systems, Inc. and Lincoln National Corporation.	Do.
(18) 86-0498—Cummins Engine Co., Inc.'s proposed acquisition of assets of Koppers Company, Inc.	Do.
(19) 86-0503—Seimer Sande Inc.'s (Erik Sande, UPE) proposed acquisition of voting securities of E W Howell Co., Inc.	Do.
(20) 86-0446—MFC, Inc.'s voting trust of assets of Cox Cable Yakima, (Cox Enteprises, Inc., UPE).	Jan. 9, 1986.
(21) 86-0477—Canberra Industries, Inc.'s proposed acquisition of voting securities of Packard Instrument Company, Inc., Packard Instrument International S.A. and Packard Instrument B V (United Technologies Corporation, UPE).	Do.
(22) 86-0478—Hanson Trust PLC's proposed acquisition of voting securities of Imperial Group.	Jan. 9, 1986.
(23) 86-0490—Tyco Laboratories, Inc.'s proposed acquisition of assets of Columbia, PA Foundry of ITT Grinnell Corporation, Manufacturing and Supply Division, (ITT Corporation, UPE).	Do.
(24) 86-0499—Empire of America Federal Savings Bank's proposed acquisition of voting securities of Relocation Realty Service, (Control Data Corp., UPE).	Do.
(25) 86-0517—Dominion Resources, Inc.'s proposed acquisition of assets of PEPCO's service territory in Virginia, (Potomac Electric Power Company, UPE).	Do.

For further information contact: Sandra M. Peay, Legal Technician, Premerger Notification Officer, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-2151 Filed 1-30-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86M-0069]

Corometrics Medical Systems, Inc.; Premarket Approval of Corometrics® Neotrak™ 515 Neonatal Monitor With $tcPCO_2$ Capability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application of Corometrics Medical Systems, Inc., Wallingford, CT, for premarket approval, under the Medical Device Amendments of 1976, of the Corometrics® Neotrak™ 515 Neonatal Monitor With $tcPCO_2$ capability. After reviewing the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petition for administrative review by March 3, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petition for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael S. Gluck, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION: On August 7, 1984, Corometrics Medical Systems, Inc., Wallingford, CT 06492-0333, submitted to CDRH an application for premarket approval of the Corometrics® Neotrak™ 515 Neonatal Monitor With $tcPCO_2$ capability. The device is a transcutaneous PCO_2 ($tcPCO_2$) sensor and circuitry. The device is indicated for use as a trend monitor for carbon dioxide tension at the skin surface ($tcPCO_2$) of neonates and infants as an adjunct to arterial PCO_2 measurements. The Corometrics® Neotrak™ 515 Neonatal Monitor with electrocardiogram, respiration rate, heart rate, blood pressure, temperature, and transcutaneous oxygen monitor capabilities, but without the $tcPCO_2$ capability, previously has been determined to be substantially equivalent to a preamendments device.

On December 4, 1984, the Anesthesiology and Respiratory Therapy Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 6, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Michael S. Gluck (HFZ-430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent

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advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 3, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 23, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–2111 Filed 1–30–86; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Announcement of Completed Short-term Toxicology Studies on Seven Chemicals; Request for Comments

As part of an effort to inform the public and allow interested parties to comment and provide information on chemicals prior to designing of studies for long-term toxicology and carcinogenesis studies, the National Toxicology Program (NTP) will routinely announced in the **Federal Register** the list of chemicls for which short-term toxiciology studies have been completed.

Short-term toxicology studies on the chemicals listed in this announcement have been completed and the National Institute of Environmental Health Sciences (NIEHS)/National Toxicology Program (NTP) is in the process of evaluating the results. A decision on whether additional studies including long-term toxicology and carcinogenicity studies are needed will soon be made by the NTP. If you have relevant information (such as current production, use pattern, exposure levels, toxicological data) to share with the NTP on any of these chemicals, please contact the responsible NTP Scientist within 30 days of the appearance of this announcement by telephone or by mail to: NIEHS/NTP. P.O. Box 12233, Research Triangle Park, North Carolina 27709. The information provided will be considered by the NTP while determining which chemicals require additional studies and in designing these studies.

1. *9-Aminoacridine Hydrochloride* (134–50–9): 14-day dermal, 14-day feed, and 90-day feed studies in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. W. Eastin, Telephone # 919–541–7941.

2. *Benzethonium Chloride* (121–54–0): 14-day and 90-day dermal in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. W. Eastin, Telephone 919–541–7941.

3. *Bromobenzene* (108–86–1): 4-day dermal, 4-day inhalation, 90-day dermal and 90-day gavage in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. J. Roycroft, Telephone # 919–541–3627.

4. *Butyl Benzyl Phthalate* (85–68–7): 180D-day feed study in male Fischer 344 rats. Contat Person: Dr. E. Rauckman, Telephone #919–541–7981.

5. *Codeine* (76–57–3): 14-day and 90-day feed studies in Fischer 344 rats and B6C3F mice. Contact Person: Dr. J. Dunnick, Telephone # 919–541–4811.

6. *D-Alpha-Tocopheryl Acetate* (58–95–7): 90-day gavage in Sprague-Dawley and Fischer 344 rats. Contact Person: Dr. K. Abdo, Telephone #919–541–7819.

7. *Tricresyl Phosphate* (1330–78–5): 14-day gavage, 14-day feed, 90-day gavage, and 90-day feed in Fischer 344 rats and B6C3F$_1$ mice. Contact Person: Dr. R. Irwin, Telephone #919–541–3340.

Please submit all comments and suggestions on chemical(s) by telephone or by mail to the responsible scientist (listed above) within 30 days of publication of this notice. Any submissions received after the above data will be accepted and utilized if possible.

Dated: January 23, 1986.

David P. Rall, M.D., Ph.D.

Director, National Toxicology Program.

[FR Doc. 86–2128 Filed 1–30–86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Closure of Public Lands in Ada County, ID

Correction

In FR Doc. 86–421 beginning on page 1044 in the issue of Thursday, January 9, 1986, make the following corrections:

On page 1044, third column, twelfth line from the bottom, remove the dagger "†".

On the same page, third column, eighth and ninth lines from the bottom should be corrected to read "Section 8, W½W½, SW¼SE¼NW¼, W½E½ SW¼, SE¼SW¼,".

BILLING CODE 1505-01-M

Conservation and Recreation Areas; Intent for 1986 Amendment Review of the California Desert Plan

AGENCY: Bureau of Land Management, Interior.

SUMMARY: Notice is hereby given that the Bureau of Land Management is initiating the 1986 Review of the California Desert Conservation Area Plan in accordance with the amendment procedures outlined in Chapter 7 of the Plan. The purpose of this review is to consider the need for possible amendments to the Plan based on requests from individuals, public and private organizations, and the Bureau's own observations.

DATE: Proposed amendments are being accepted fron the Public until March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: Requests for amendments or changes in the California Desert Plan are now being accepted from public agencies, interested individuals, and organizations. Supporting rationale should be provided for each proposed change. Requests will be considered in light of the following criteria:

(1) Is the proposed amendment based on new data not considered when the Plan was developed?

(2) Does the information represent a change in legal or regulatory mandate?

(3) Is the supporting detail sufficient and the problem clearly stated so that the request can be considered?

(4) Does the information represent a formal change in State or local government or agency plans?

The California Desert District Advisory Council will review the suggested amendments at its public meeting on April 10–11, 1986 in Riverside, California. This meeting will serve as a scoping meeting for the environmental document to be prepared on the amendments.

Please send your comments and proposals to the following address: 1986 PLAN AMENDMENTS, Bureau of Land Management, California Desert District, 1695 Spruce Street, Riverside, CA 92507; (714) 351–6428.

Dated: January 23, 1986.

H.W. Riecken,

Acting District Manager.

[FR Doc. 86–2120 Filed 1–30–86; 8:45 am]

BILLING CODE 4310-40-M

Rose Spring Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the Rose Spring Area of critical environmental concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the Rose Srping ACEC as an area with significant cultural resources which require special management attention. The Rose Spring ACEC includes 840 acres of public land managed by the Bureau of Land Management in T. 21 S., R. 37 E., Sec. 2, 3, 10, 11, 14, and 15 MDM, Inyo County. The authorities for the Management Plan are 43 CFR 8000.0–6, 8341, 8342, 8364, and 8365; Archaeological Resources Protection Act of 1979; Federal Land Policy and Management Act of 1976; and National Environmental Policy Act of 1970.

The development of the Management Plan included public involvement. The Management Plan makes recommendations for the protection of cultural resources within the Rose Spring ACEC. The protective measures are compatible with other uses, such as conservation of wildlife, mining, recreation, and management of the Los Angeles Aqueduct system. The ACEC will remain open to uses not in conflict with the Management Plan. The plan recommend installation of information, entrance, and closure signs to advise the public of the status of the land and cultural resources; monitoring of cultural recources; a complete inventory of cultural resources within the ACEC; nominiation of the resources to the National Register of Historic Places; and data recovery of cultural resources if other protective measures are not successful.

Authorized persons may drive within the closure. Any person who, without authorization, drives into the closure or adversely affects cultural resources may be subject to presecution under the appropriate regulations and laws cited above.

EFFECTIVE DATE: Immediately.

ADDRESS: The Management Plan, including a map of the ACEC and public comments, will be available at the Ridgecrest Resource Area office, 112 E. Dolphin Street, Ridgecrest, CA 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION, CONTACT: Joan Oxendine at the above address (619) 375–7125.

Dated: January 22, 1986.

Hugh Riecken,

Acting District Manager.

[FR Doc. 86–2119 Filed 1–30–86; 8:45 am]

BILLING CODE 4310-40-M

[INT DEIS 85–49]

Colorado; Availability of the Draft Little Snake Resource Management Plan/Environmental Impact Statement and Wilderness Technical Supplement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement and Wilderness Technical Supplement and notice of 13 proposed special management areas considered for designation as Areas of Critical Environmental Concern (ACEC) and Research Natural Areas (RNA) or Outstanding Natural Areas (ONA) in one or more alternatives in this Draft Resource Management Plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, The Bureau of Land Management has prepared the Draft Little Snake Resource Management Plan/Environmental Impact Statement (RMP/EIS) and Wilderness Technical Supplement.

DATE: Comments must be received by May 9, 1986.

ADDRESS: Comments should be sent to: Little Snake RMP Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

FOR FURTHER INFORMATION CONTACT: Duane Johnson, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625. Telephone: (303) 824–8261.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has prepared a Draft RMP/EIS and Wilderness Technical Supplement for the management of the Little Snake Resource Area in northwest Colorado. This statement analyzes the environmental, social, and economic impacts of six alternatives for multiple-use management of the Little Snake Resource Area. The RMP alternatives are designed to provide overall multiple-use objectives and management direction for all resource uses or values. Major issues addressed in the RMP include: management of forage for livestock, wildlife, and wild horses; suitability of eight wilderness study areas (WSAs) for designation as wilderness; determination of acceptability of lands for further consideration for federal coal leasing; and leasing of federal oil and gas. Also discussed is management of other minerals, threatened or endangered plants and animals, soils, water, forests, fire, recreation, off-road vehicles, cultural resources, rights-of-way, access to federal lands, and acquisition and disposal of federal lands.

Wilderness

The eight WSAs contain 92,087 acres. The proposed action recommends 36,240 acres as suitable for wilderness and 55,847 acres as nonsuitable for wilderness.

Areas of Critical Environmental Concern

Thirteen areas proposed for possible designation as ACECs and RNAs or ONAs are also evaluated and analyzed in this plan. Detailed information on the sites listed can be found in Chapter 2 and Appendix 22 of the RMP.

Resource-Use Limitations

The following resource-use limitations would apply to all ACECs, except for those differences listed for each site. Avoidance stipulations would be placed on new federal oil and gas leases to protect the specific values for which each ACEC would be designated. No harvesting of forest products would be allowed, and vehicle use would be restricted to designated roads and trails. Other uses would be allowed as long as they did not detract from the resource values for which each area would be designated.

In addition to the above ACEC resource-use limitations, those ACECs also designated as RNAs would have the following resource-use limitations: A no-surface-occupancy stipulation would

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be attached to new oil and gas leases, and avoidance of important resource values would be required during development of existing oil and gas leases; no livestock, wildlife, soil, or watershed projects would be allowed; no livestock grazing or wild horse use would be allowed; no developed recreational sites or intensive recreation use would be allowed; no vehicle use would be allowed, except for permitted uses; and no major rights-of-way or land disposals would be allowed.

The area proposed for ONA designation would have the following resource-use limitations, in addition to those listed above for ACECs and RNAs; except, livestock grazing would be allowed. Leasing or sale of federal minerals (except oil and gas) would not be allowed.

The Preferred Alternative, found in Chapter 2 of the RMP, considers alternative resource-use limitations for some ACECs.

Site Name: Irish Canyon

Designation, Acreage, Location

ACEC—11,400 acres, in T. 9 N., R. 100 W., secs. 5–8, and in t. 10 N., R. 100 W., secs. 30, 31, and in T. 9 N., R. 101 W., secs. 1–3, 1, 12, and in T. 10 N., R. 101 W., secs. 2–5, 8–11, 13–16, 21–27, 34–36, and in T. 11 N., R. 101 W., secs. 19, 20, 29, 30, 32–35, 6th P.M., Moffat County, Colorado.

Resource Values

This site provides scenic views of Irish Canyon and 12 geologic formations. Three remnant plant associations are found: *Juniperus osteosperma/Agropyron spicatum, Artemisia nova/Agropyron spicatum,* and *Juniperus osteosperma-Pinus edulis/Cercocarpus ledifoluis* var. *intricatus* associations. There are also five Colorado BLM sensitive plant species: *Penstemon yampaensis, Parthenium ligulatum, Eriogonum tumulosum, Trifolium ondinum,* and *Cryptantha caespitosa.*

Site Name: Limestone Ridge

Desigrtion, Acreage, Location

ACEC and RNA—1,350 acres, in T. 10 N., R. 101 W., secs. 8, 9, 15, 16, 21, 22, and in T. 11 N., R. 101 W., secs. 19, 20, 29, 30, 32, 6th P.M., Moffat County, Colorado.

Resource Values

Limestone Ridge has high-scenic qualities and is a prominent landmark in northwest Colorado. The area is winter range for elk. Five remnant plant associations are found: *Juniperus osteosperma-Pinus edulis/Artemisia nova/Agropyron spicatum, Juniperus osteosperma/Agropyron spicatum, Cercocarpus ledifolius* var. *intricatus/Agropyron spicatum, Agropyron spicatum-Arenaria hookeri,* and *Cercocarpus ledifolius/Artemisia tridentata* ssp. *wyomingensis-Symphoricarpos oreophilus/Agropyron spicatum* associations. *Penstemon yampaensis,* a Colorado BLM sensitive plant species, is also found on the site.

Site Name; Ink Springs

Designation, Acreage, Location

ACEC and RNA—280 acres, in T. 9 N., R. 101 W., secs. 2, 3, and in T. 10 N., R. 101 W., secs. 34 and 35, 6th P.M., Moffat County, Colorado.

Resource Values

Two remnant plant associations occur on this site: *Juniperus osteosperma-Pinus edulis/Artemisia novo/Agropyron spicatum* and Artemisia nova/Stipa comata associations. *Penstemon yampaensis* and *Eriogonum tumulosum,* two Colorado BLM sensitive plant species, are also found on this site.

Site Name: Horse Draw

Designation, Acreage, Locotion

ACEC and RNA—690 acres, in T. 11 N., R. 96 W., secs. 8, 17, 19, 20, 29, 30, 6th P.M., Moffat County, Colorado.

Resource Values

Horse Draw has scenic qualities resulting from its topography, which ranges from flat land to steep, spectacular cliffs. Two remnant plant associations occur on this site: *Atriplex confertifolia/Stipa comota* and *Atriplex gordneri/Elymus salina* associations. *Cryptantha caespitosa,* a Colorado BLM sensitive plant species, also occurs on this site.

Site Name: Vermillion Creek

Designation, Acreage, Location

ACEC and RNA—200 acres, in T. 9 N., R. 101 W., secs. 17 and 18, 6th P.M., Moffat County, Colorado.

Resource Values

The Vermillion Creek site contains the best condition example of the *Artemisia tridentata* ssp. *wyomingensis/Atriplex confertifolia/Grayia spinosa/Stipa comata* plant association currently known in the world.

Site Name: Ace in the Hole

Designation, Acreage, Location

ACEC and RNA—260 acres, in T. 11 N., R. 97 W., sec. 3, 6th P.M., Moffat County, Colorado.

Resource Values

The Ace-in-the-Hole site contains the best condition example of the *Atriplex gardneri/Oryzopsis hymenoides* remnant plant association currently known in the world.

Site Name: Vermillion Bluffs

Designation, Acreage, Location

ACEC and RNA—580 acres, in T. 10 N., R. 100 W., secs. 11–14, 6th P.M., Moffat County, Colorado.

Resource Values

The Vermillion Bluffs site contains the *Atriplex onfertifolia/Agropyron spicatum* remnant plant association.

Site Name: Hells Canyon

Designotion, Acreage, Location

ACEC—280 acres in T. 12 N., R. 99 W., secs. 16, 17, 20, and 21, 6th P.M., Moffat County, Colorado.

Resource Values

The Hells Canyon site contains the Colorado BLM sensitive plant species, *Eriogonum acaule* and *Cryptantha caespitosa.*

Site Name: Lookout Mountain

Designation, Acreage, Location

ACEC—6,500 acres in T. 10 N., R. 99 W., secs. 2–6, 8–10, 15, and 16, and in T. 11 N., R. 98 W., secs. 19, 20, 29–31, and in T. 11 N., R. 99 W., secs. 24–26, 32–36, 6th P.M., Moffat County, Colorado.

Resource Values

Lookout Mountain is a prominent landmark in northwestern Moffat County with high scenic qualities because of its dramatic steep slopes and cliffs and views of large areas of northwestern Colorado and Wyoming. Two remnant plant associations are found on the site: *Juniperus osteosperma/Agropyron spicatum* and *Atriplex confertifolia/Agropyron spicatum.* Four Colorado BLM sensitive plant species also occur on the site: *Astragalus detritalis, Cryptantha caespitosa, Sphaeromeria capitota,* and *Townsendia strigoso.*

Site Name: Calico Draw

Designation, Acreage, Location

ACEC and RNA—650 acres in T. 5 N., R. 99 W., secs. 3–5, 9, 10, and 16, and in T. 6 N., R. 99 W., secs. 33, 6th P.M., in Moffat County, Colorado.

Resource Values

The Morrison Formation at this site contains fossil Jurassic reptilian fauna of unknown significance.

Resource-Use Limitations

The resource-use limitations for the Calico Draw site would be the same as those listed above for ACECs and RNAs, except livestock grazing and livestock, wildlife, and soils and watershed projects would be allowed.

Site Name: Cross Mountain Canyon

Designation, Acreage, Location

ACEC—3,000 acres, in T. 6 N., R. 96 W., secs. 11–15, 22–24, and 26, and in T. 6 N., R. 97 W., secs. 7, 18, and 19, 6th P.M., Moffat County, Colorado.

Resource Values

Cross Mountain Canyon is a high-visual quality canyon with steep rock cliffs that tower above the Yampa River. This section of the Yampa River is on the Nationwide Rivers Inventory List. The area is habitat for bighorn sheep, elk, and mule deer. Three federally listed endangered species, the Colorado squawfish, humpback chub, and peregrine falcon, and one state listed threatened species, the razorback sucker, are found within this site. The area contains *Penstemon yampaensis* and *Leptodactylon watsonii,* two Colorado BLM sensitive plant species.

Resource-Use Limitations

In addition to those resource use limitations listed above for ACEC's there would be a no-surface-occupancy stipulation on new federal mineral leases.

Site Name: G Gap

Designation, Acreage, Location

ACEC and RNA—275 acres in T. 10 N., R. 100 W., secs. 26, 27, 34, and 35, 6th P.M., Moffat County, Colorado.

Resource Values

This site contains two remnant plant associations: *Juniperus Osteosperma/Agropyron spicatum* and *Artemisia tridentata* ssp. *wyomingensis/Agropyron spicatum* associations. *Cymopterus duchesnensis,* a Colorado BLM sensitive plant species, is also found on this site.

Site Name: Little Yampa Canyon

Designation, Acreage Location

ACEC and ONA—12,000 acres in T. 5 N., R. 92 W., secs. 6, 7, and 18, and in T. 5 N., R. 93 W., secs. 1–6, 10–13, and in T. 6 N., R. 92 W., sec. 31, and in T. 6 N., R. 93 W., secs. 19–22, 26–36, and in T. 6 N., R. 94 W., secs. 23 and 24, 6th P.M., Moffat County, Colorado.

Resource Values

The Little Yampa Canyon site has high recreational use potential. The Yampa River, which flows through the canyon, is on the Nationwide Rivers Inventory List. The canyon has high-scenic qualities that enhance the recreational river boating experience. In addition, approximately 25 cultural resource sites have been identified in this area, and the potential for more sites is high.

Availability

Single copies of the Draft Little Snake RMP/EIS and Wilderness Technical Supplement may be obtained from the address listed above, or from:

Bureau of Land Management, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

Public Hearings

Public hearings to receive oral and/or written comments on this RMP/EIS and the Wilderness Technical Supplement will be held at 7:00 p.m. at the following locations:

March 10, 1986: Denver Colorado—Foothills Ramada Inn, 11595 West 6th Avenue (6th Avenue and Simms St.)

March 12, 1986: Craig Colorado—Moffat County Courthouse, 221 West Victory Way, 2nd Floor Auditorium

March 13, 1986: Vernal, Utah—Bureau of Land Management, Vernal District Office, 170 South 500 East

A time limit may be placed on oral comments, depending on the number of people who wish to make a statement. Oral comments should be accompanied by a written synopsis of the presentation.

Dated: January 24, 1986.

Bob Moore,

Associate State Director, Colorado State Office.

[FR Doc. 86–2124 Filed 1–31–86; 8:45 am]

BILLING CODE 4310-JB-M

[M 59763]

Order Providing for Opening of Public Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Order Providing for Opening of Public Land in Teton and Lewis and Clark Counties, Montanaa.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701, et seq. to the operation of the public land laws.

DATE: At 9 a.m. on February 28, 1986, the following lands reconveyed to the United States shall be open to the operation of the public land laws subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. No minerals were transferred by either party in the exchange:

Principal Meridian, Montana

T. 24 N., R. 8 W.,
Sec. 5, Part of lot 1, and lots 5, 6, SW¼NE¼, SE¼NW¼, N½SW¼, SW¼SW¼, and NW¼SE¼;
Sec. 6, lot 7, SE¼NE¼SW¼ and SE¼SW¼SE¼;
Sec. 7, lots 1, 2, NE¼ and E½NW¼;
Sec. 8, W½NW¼.

Aggregating 974.51 acres.

SUPPLEMENTARY INFORMATION: The following described land was segregated from settlement, sale, location, and entry, including the mining laws by the Notice of Realty Action published in the Federal Register on November 28, 1984, but was not used in the exchange:

Principal Meridian, Montana

T. 20 N., R. 5 W.,
Sec. 32, W½NW¼.

Containing 80.00 acres.

At 9 a.m. on February 28, 1986, the segregated land not used in the exchange will be open to the operation of the public land laws, including the mining laws.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Lands Adjudication Section, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, Phone (406) 657–6062.

Dated: January 17, 1986.

John A. Kwiatkowski,

Deputy State Director, Land and Renewable Resources.

[FR Doc. 86–2121 Filed 1–30–86; 8:45 am]

BILLING CODE 4310-DN-M

[N–21758]

Nevada; Order Providing for Opening of Public Lands

January 22, 1986.

The following described lands were reconveyed to the United States on September 13, 1982:

Mount Diablo Meridian, Nevada

T. 35 N., R. 18 E.,
Sec. 2, SW¼SW¼;
Sec. 4, SE¼SW¼;
Sec. 9, NW¼NE¼;
Sec. 10, SE¼NW¼;
Sec. 11, SE¼NW¼, SE¼SW¼;
Sec. 12, SW¼SW¼, NW¼SE¼, SE¼SE¼;
Sec. 13, NW¼NW¼.
T. 35½ N., R. 18 E.,

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Sec. 32, tract 37.
T. 36 N., R. 18 E.,
Sec. 32, tracts 60 and 61.
T. 35 N., R. 18 E.,
Sec. 24, SW¼NW¼.
T. 36 N., R. 19 E.,
Sec. 16, NW¼SW¼;
Sec. 17, SE¼NE¼, N½NW¼, NE¼SE¼;
Sec. 25, S½NE¼, SE¼NW¼, W½SE¼, NE¼SE¼.

The area described contains approximately 969.68 acres.

All minerals were reconveyed to the United States.

On the 30th day, commencing with the date of this publication, the land described above will be open to the operation of the public land laws, subject to valid existing rights, existing classifications, and the requirements of applicable laws. All valid applications received from the date of this publication and until the opening of business on the 30th day, will be considered as simultaneously filed. Those received thereafter shall be considered in the order of filing.

On the 30th day, commencing with the date of this publication, the land described above will be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Inquiries concerning this land should be addressed to District Manager, Bureau of Land Management, Susanville District Office, P.O. Box 1090, Susanville, California 96130.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 86-2196 Filed 1-30-86; 8:45 am]

BILLING CODE 4310-HC-M

[OR 36609, OR 37058]

Modification of Realty Action; Competitive/Modified Competitive/ Direct Sale of Public Lands in Malheur County; OR

The Notices of Realty Action—Competitive/Modified Competitive/ Direct Sale—Lands in Malheur County, Oregon published in the **Federal Register**, Volume 49, No. 142 on July 123, 1984, at page 29684 and Volume 49, No. 191 on October 1, 1984 at page 38715, for sale no. OR 36609 and OR 37058, respectively, are hereby modified. The parcels originally described and offered for sale, but which were not sold, have been reappraised and are reoffered for sale as follows:

Parcel No.	Legal description	Acreage	Appraised value	Minimum bid deposit (%)
OR-36609-1.	T. 14 S., R. 41 E., W.M. Section 22, E½SE¼	80	$8,000	30
OR-36609-3.	T. 17 S., R. 44 E., W.M. Section 2, SW¼	160	20,000	20
OR-36609-5.	T. 16 S., R. 46 E., W.M. Section 23, SE¼SE¼	40	4,000	30
OR-36609-6.	T. 16 S., R. 46 E., W.M. Section 27, S½	320	32,000	20
OR-36609-8.	T. 19 S., R. 46 E., W.M. Section 8, S½SE¼	80	10,000	20
OR-36609-10.	T. 14 S., R. 41 E., W.M. Section 34, S½NW¼μ	80	8,000	30
OR-37058-2.	T. 14 S., R. 41 E., W.M. Section 17, SW¼SW¼	40	4,000	30

Except for the provisions of Section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750; 43 U.S.C. 1713), the above described lands are hereby segregated from appropriations under the public land laws, including the mining laws.

The parcels have been available for sale on a sealed bid basis pursuant to the original sale notice and will continue to be available, subject to the modifications made by this notice. Sealed bids for these parcels will now be accepted in the Vale District Office. Bids may be submitted by qualified persons either by mail or delivered in person during regular business hours. Bids will not be accepted for less than the minimum bid listed for each parcel.

All bids received will be opened the first Wednesday of each month. To be considered, bids must be received by 10:00 a.m. on the day of the bid opening. Each bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check, made payable to the Bureau of Land Management for not less than 20 percent of the amount of the bid for parcel nos. OR-36609—3, 6, and 8. Parcel nos. OR-36609—1, 5, 10; and OR-37058—2 require a deposit of not less than 30 percent of the bid amount. Bids must be enclosed in a sealed envelop marked in the lower left-hand corner as follows: "Public Sale Bid, Serial No. ———." If two or more envelopes are received each containing acceptable bids of the same amount for the same parcel, the successful bid shall be determined by drawing. In all cases the higher sealed bid will determine the successful purchaser. The successful purchaser will be notified in writing and will be required to submit the remainder of the amount bid within 180 days. Failure to submit the full sale price within 180 days shall result in cancellation of the sale and the bidder's deposit will be forfeited. All unsuccessful bids will be returned.

Bidders must be U.S. citizens, 18 years of age or more, a state or a state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the sale land is offered.

All other applicable terms and conditions published in the original notices remain unchanged.

The parcels will remain available for purchase as described above until sold or withdrawn from sale by the Authorized Officer.

Bids and requests for information on the above parcels should be directed to the Vale District Office, 100 Oregon Street, P.O. Box 700, Vale, Oregon 97918, telephone 503/473-3144.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Vale District Office. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 17, 1986.

David P. Lodzinski,

District Manager.

[FR Doc. 86-2122 Filed 1-30-86; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Working Group; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463. A meeting of the Outer Continental Shelf Board's Gulf of Mexico Regional Technical Working Group will be held on March 18-20, 1986, in Metairie, Louisiana. The agenda of the meeting is as follows:

March 18—9:00 a.m.-5:00 p.m.: Gulf of Mexico Ternary Studies Meeting.

March 19—8:30 a.m.-5:00 p.m.: Regional Technical Working Group Business Meeting.

A. Administrative Items.

B. Current Gulf of Mexico Regional Activities.

C. Draft Regional Studies Plan FY '88.

March 20—9:00 a.m.-12 noon: Conclusion of Regional Technical Working Group Business Meeting.

The meeting will be held in the Landmark Hotel, 2601 Severn Avenue, Metairie, Louisiana. All sessions are open to the public, and interested persons may make oral or written presentations at the Business Meeting upon request. Such requests, or general questions about the meeting, should be made not later than March 10, 1986, to Ms. Eileen P. Angelico, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Boulevard, PLO. Box 7944, Metairie, Louisiana 70010, or telephone (504) 838-0627.

A tape cassette transcript and compete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

Dated: January 23, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region, Minerals Management Service.

[FR Doc. 86-2114 Filed 1-30-86; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Marathon Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Marathon Oil Company, Unit Operator of the Vermilion Block 389 Federal Unit Agreement No. 14-08-0001-16149, submitted on January 14, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Vermilion Block 389 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 22, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-2115 Filed 1-30-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Pelto Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pelto Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4076, Block 105, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on January 21, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0675.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of title 30 of the CFR.

Dated: January 22, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-2116 Filed 1-30-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

January 28, 1986.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary	Jurisdiction of incorporation
Ashland Chemical, Inc.	Delaware.
Ashland Development, Inc.	Delaware.
Ashland Ethanol, Inc.	Delaware.
Ashland Oil and Transportation Company.	Kentucky.
Ashland Petroleum, Inc.	Delaware.
Ashland Pipe Line Company	Ohio.
Inland Towing Company	Delaware.
Mid-Valley Supply Co.	Kentucky.
Southern Oil Company of New York, Inc.	New York.

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Subsidiary	Jurisdiction of incorporation
Tri-State Marketing Services, Inc	Delaware.
APAC—Alabama, Inc	Delaware.
APAC—Arkansas, Inc	Delaware.
APAC—Carolina, Inc	Delaware.
APAC—Georgia, Inc	Delaware.
APAC, Inc	Delaware.
APAC—Kansas, Inc	Delaware.
APAC—Mississippi, Inc	Delaware.
APAC—Tennessee, Inc	Delaware.
APAC—Texas, Inc	Delaware.
APAC—Virginia, Inc	Delaware.
MacAsphalt, Inc	Delaware.
MacDonald Construction, Inc	Georgia.
Megaw Construction, Inc	Indiana.
Megaw Hot Mix, Inc	Indiana.
Muncie Paving Asphalt, Inc	Indiana.
Reg X Condor, Inc	Delaware.
Scurlock Oil Company	Delaware.
TAP-CO, Inc	North Carolina.
Algonquin Pipe Line Company	Illinois.
Ohio River Pipe Line Company	Delaware.
Owensboro-Ashland Company	Delaware.
SOCO Pipeline Company	Texas.
Transport Supply Company, Inc	Texas.
Blanton Marine Corp	Texas.
Rich Oil, Inc	Delaware.

1. Parent Corporation and address of principal office: Cardinal Industries, Inc., 2040 South Hamilton Road, Columbus, Ohio 43232, An Ohio Corporation.

2. Wholly-owned subsidiaries which will participate in the operations and States of incorporation:

(a) Cardinal Furniture Leasing Co.—An Ohio Corporation.

(b) Cardinal Parts Service Co.—An Ohio Corporation.

(c) Cardinal Industries Services Corporation—An Ohio Corporation.

(d) Columbus Construction, Inc.—An Ohio Corporation.

(e) Cardinal Industries of Florida, Inc.—A Florida Corporation.

(f) Cardinal Industries of Georgia, Inc.—A Georgia Corporation.

1. Parent corporation and address of principal office: Hydrite Chemical Company, 2655 North Mayfair Road, Milwaukee, Wisconsin 53226.

2. Wholly owned subsidiaries which will participate in the operations, and states of incorporation:

(A) United States Chemical Corporation of Wisconsin, Inc., 316 Hart Street, Watertown, Wisconsin 53094, State of incorporation: Wisconsin.

(B) Avganic Industries, Inc., 114 North Main Street, Cottage Grove, Wisconsin 53527, State of incorporation: Wisconsin.

1. Parent corporation and address of principal office: Sound Distributing Corporation, 100 Electra Lane, Yonkers, New York 10704.

2. Wholly-owned subsidiary which will participate in the operations and the state of its incorporation:

(i) Electra Snacks Corporation, 200 Electra Lane, Yonkers, New York 10704, incorporated in the State of New York.

James H. Bayne,

Secretary.

[FR Doc. 86-2144 Filed 1-30-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30772]

Cuyahoga Valley Railway Co.; Granting of Trackage Rights; by Baltimore and Ohio Railroad Co.

The Baltimore and Ohio Railroad Company has agreed to grant overhead trackage rights of approximately 1,750 feet to Cuyahoga Valley Railway Company between Cleveland (P.S. 250+68) and Cuyahoga Heights (O.P. 20+73), OH. The trackage rights became effective January 21, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: January 24, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-2146 Filed 1-30-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-No. 110)A]

Buffalo, Rochester and Pittsburgh Railway Co. and Baltimore and Ohio Railroad Co. Abandonment and Discontinuance in Indiana County, PA; Findings

The Commission has issued a certificate authorizing the Buffalo, Rochester and Pittsburgh Railway Company to abandon, and The Baltimore and Ohio Railroad Company to discontinue, service over 2.24 miles in Indiana County, PA between: (a) Valuation station 930+16 and valuation station 910+067 at Indiana, PA, a distance of 0.38 miles; and (b) milepost 0.00 at Lucerne Junction and the end of the line a milepost 1.86 (Lucerne Branch), a distance of 1.86 miles. The certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicants no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: Rail Section, AB-OFA". Any offer previously made must be made within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86-2299 Filed 1-30-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-79)]

The Chesapeake and Ohio Railway Co., Abandonment in Greenbrier County, WV; Findings

The Commission has issued a certificate authorizing The Chesapeake and Ohio Railway Company to abandon its 3.06-mile rail line between Whitcomb (valuation station 0+00)(milepost 0.00) and North Caldwell (valuation station 161+43)(milepost 3.06) in Greenbrier County, WV. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) It is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 86-2145 Filed 1-30-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-10 (Sub-38)

Norfolk & Western Railway Co. Discontinuance of Service in Madison County; IL; Findings

The Commission has issued a certificate authorizing the Norfolk & Western Railway Company to discontinue service over its 25.3-mile rail line between Wanda (milepost A9.7) and McKinley Junction (milepost A35.0) in Madison County, IL. The certificate will become effective 30 days after this publication unless the Commission also finds that: (1) a financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed to bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

FR Doc. 86-2147 Filed 1-30-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; E.I. DuPont De Nemours and Co., Inc.

By notice dated October 29, 1985, and published in the **Federal Register** on November 15, 1985; (50 FR 47292), E.I. DuPont De Nemours and Company, Inc., D/B/A, DuPont Pharmaceuticals, Pharmaceuticals Chemical Facility, Chamber Works Building J-24, Deepwater, New Jersey 08023, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 27, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-2165 Filed 1-30-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration; Sigma Chemical Co.

By Notice dated May 21, 1985, and published in the **Federal Register** on May 31, 1985; (50 FR 23202), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Morphine-3-glucuronide (9329)	II
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
Methaqualone (2565)	I

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated January 27, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-2166 Filed 1-30-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective

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from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA86-1 (Jan. 3, 1986)..... p. 347.
Pennsylvania
PA86-1 (Jan. 3, 1986)..... pp. 795-796. pp. 799-802.
Pennsylvania
PA86-4 (Jan. 3, 1986)..... pp. 821-822.
Virginia
VA86-14 (Jan. 3, 1986)..... p. 1086.

Volume II

Iowa
IA86-5 (Jan. 3, 1986) ..... p. 45.
Louisiana
LA86-4 (Jan. 3, 1986)..... pp. 355-358.
Louisiana
LA86-5 (Jan. 3, 1986)..... pp. 360-367, p. 374.
Texas
TX86-19 (Jan. 3, 1986)..... p. 894.
Listing by Location (index)..... p.xxxix-x1, p. xlii.

Volume III

Arizona
AZ86-1 (Jan. 3, 1986)..... pp. 11-12.
Arizona
AZ86-3 (Jan. 3, 1986)..... pp. 30.
California
CA86-4 (Jan. 3, 1986)..... pp. 65, 68, 70-72, 79-81.
Washington
WA86-1 (Jan. 3, 1986)..... p. 301.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Deteminations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage deteminations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C., this 24th day of January 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-1950 Filed 1-30-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-85-180-C]

Kintzel Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Kintzel Coal Company, R.D. #2 Box 533, Pine Grove, Pennslyvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Lykens No. 6 Mine (I.D. No. 36-01886) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute; and that the minimum quantity of air reaching each working face by 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203 All comments must be postmarked or received in that office on or before March 3, 1986. Copies of the petition are available for inspection at that address.

Dated: January 24, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-2198 Filed 1-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-190-C]

Kitt Energy Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kitt Energy Corporation, 333 West Vine Street, Lexington, Kentucky 40507 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Kitt No. 1 Mine (I.D. No. 46-04168) located in Barbour County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings.

2. As an alternate method, petitioner proposes to install a longwall mining unit with cables and equipment designed to conduct 2300 volts A.C. to be located and used inby the last open crosscut and within 150 feet of pillar workings. The cables will be designed and constructed to withstand the conditions of an underground mining environment and will enter the permissible equipment through approved stuffing box lead entrances or approved couplers. Each power conductor will be surrounded by a grounded metal shield within a protective cover that is protected by a ground fault monitoring system.

3. A methane monitoring system will be built into the high voltage system on working sections so that the high voltage cables and equipment on the longwall face will be de-energized at the controller when methane is found in excess of 2% in the working area where high voltage equipment is located.

4. Petitioner states that use of a high voltage system will increase the measure of protection to miners because a decrease in current loads to obtain equivalent power output would reduce fire hazards due to heating of cables and other electrical components and would reduce the number and/or size of cables needed to supply power to the system thus requiring less cables to be handled. There would be fewer components to be maintained therefore less exposure and less risk of fire, explosion or injury.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 3, 1986. Copies of the petition are available for inspection at that address.

Dated: January 24, 1987.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-2199 Filed 1-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-195-C]

Scotts Branch Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Scotts Branch Mining Company, Route 1, Box 819, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1700 (oil ang gas wells) to its Scotts Branch Mine (I.D. No. 15-08079) located in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to clean out and plug oil and gas wells using the following technique and procedures:

a. The well bore would be cleaned out to its total depth or to a minimum of 300 feet below the seam being mined;

b. The well bore would be filled with inert material to 300 feet below the floor of the coal seam being mined. An expanding cement plug would be placed between 300 and 100 feet below the seam being mined and would be a minimum of 200 feet in length;

c. The well bore may be reserved for uses connected with the extraction of coal such as a gas bleeder borehole, water borehole, power borehole or degasification borehole;

d. The plug of inert material would extend to at least 100 feet above the coal seam being mined; and

e. The petitioner would attempt to remove any casing at or near the seam being mined if practical or to rip or fracture the casing to allow for ease of removal during the mining cycle.

3. Petitioner would instruct all personnel in the affected area to proceed with caution when mining near, through or into the well supporting portion of the coal seam, as well as the expected place of mining through the gas or oil well. A special effort would be made to assure a gas-free atmosphere.

4. Sufficient supplies of roof support, ventilation materials and fire fighting materials would be available near the working place.

5. Face equipment would be checked for permissibility and serviced on the shift prior to the possible mine-through and the methane monitor on the mining machine would be calibrated and tested on the shift prior to the possible mine-through.

6. Tests for methane would be made at least every ten minutes once the mining has reached the distance from the well that requires extra safety precautions.

7. The area would be as free as possible from accumulations of coal dust and coal spillage and rockdust would be maintained on the roof, ribs and floor to within twenty feet of the face.

8. If and when the well bore is intersected, all equipment on the section would be idled and de-energized and the place thoroughly examined and determined safe before mining on the section is resumed. Any well casing would be removed and no open flame would be permitted in the area if more than 1% methane could be detected.

9. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 3, 1986. Copies of the petition are available for inspection at that address.

BEST COPY AVAILABLE

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Dated: January 24, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-2200 Filed 1-30-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-09]

NASA Advisory Council (NAC) Space and Earth Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee (SESAC).

DATE AND TIME: February 25, 1986, 9:30 a.m. to 5:30 p.m.; February 26, 1986, 8:30 a.m. to 5:45 p.m.; February 27, 1986, 8:30 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1410).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The committee is chaired by Dr. Louis Lanzerotti and is composed of 30 members. The committee operates both through a number of informal subgroups and as a whole. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including committee members and other participants).

Type of Meeting: Open.

Agenda

February 25, 1986

9:30 a.m. Announcements; Review of Agenda.

9:45 a.m. Office of Space Science and Applications (OSSA) Program Status and Budget; FY 1986 Operating Plan; FY 1987 Budget Proposal; Implications of Gramm-Rudman-Hollings Balanced Budget Act; General Budget Climate and its Impact on Long Range Planning.

1 p.m. Reports from Study Team Chairpersons on Study Activities and Progress.

2:30 p.m. Splinter Meetings by Study Teams.

5:30 p.m. Adjourn.

February 26, 1986

8:30 p.m. Splinter Meetings by Study Teams.

1:30 p.m. Meeting with the Acting NASA Administrator.

2:15 p.m. Status of the Space Science Board Major Directions Study.

3:15 p.m. Splinter Meetings by Study Teams.

4:45 p.m. Plenary Session. Reports from Study Team Chairperson.

5:45 p.m. Adjourn.

February 27, 1986

8:30 a.m. Report on Congressional Science Policy Study.

10:30 a.m. Splinter Meetings by Study Teams.

11:15 a.m. Plenary Session: Study Status and Planning; Plans for Next Meeting; Meeting Summary.

12:30 p.m. Adjourn.

Dated: January 24, 1986.

Richard L. Daniels,

Depury Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 86-2130 Filed 1-30-86; 8:45 am]

BILLING CODE 7510-10-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Fairview, NJ; Aircraft Accident

In connection with its investigation of the accident involving a Nabisco Brands, Inc., Falcon 50, N784B, and Air Pegasus Corp., Piper PA28-181 Archer, N1977H midair collision near Teterboro Airport, New Jersey, November 10, 1985, the National Transportation Safety Board will convene a public hearing at 9 a.m., (local time) on February 24, 1986, in the Plaza Rooms of the Sheraton Heights Hotel, 650 Terrace Avenue, Hasbrouck Heights, New Jersey 07604. For more information, contact Mr. Brad Dunbar, Office of Government and Public Affairs, National Transportation Safety Board 800 Independence Avenue, SW., Washington, D.C. 20594, telephone (202) 382-6600.

Catherine T. Kaputa,

Federal Register Liaison Officer.

January 24, 1986.

[FR Doc. 86-2140 Filed 1-30-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-347]

Washington Public Power Supply System; WPPSS Nuclear Project No. 2; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-21, issued to Washington Public Power Supply System (the licensee), for operation of the WPPSS Nuclear Project No. 2 located in Benton County near Richland, Washington.

The amendment would change the Drywell and Suppression Chamber Purge System Limiting Condition for Operation, section 3.61.8, and the associated Surveillance Requirements, section 4.61.8.3, of the WNP-2 Technical Specifications. Specifically, the proposed changes would permit purging through the standby gas treatment system for a total of 150 hours, instead of 90 hours, during any 365-day period prior to the first refueling outage.

WNP-2 has been experiencing vibration problems with Recirculating Pump B. Investigations of these problems have required numerous containment reentries during the past several months. Each reentry requires deinerting and reinerting of the containment which in turn requires purging through the standby gas treatment system. As a result, approximately 80 hours of the 90 hours per 365-days currently permitted by the Technical Specification have been used. Normal operation requires purging for one or two hours per week to maintain acceptable oxygen concentrations within the containment and a single additional reentry will exceed the presently allowable limit and preclude restarting without relaxation of this 90 hour per year limit. This amendment is in accordance with the licensee's applications for amendment dated December 20 and 31, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means

that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

If a loss of coolant accident should occur while the purge valves are open, increasing the purge time increases the probability of some release of radioactivity during this period; however, since there is substantial time between the initation of many accidents and the onset of severe core damage, the overall probability and risk of release of radioactivity to the atmoshphere remains low and acceptable.

Accordingly, the licensee has determined and the staff agrees that the requested amendment does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the primary containment integrity continues to be maintained by the operable isolation function of the valves; therefore the overall probability of release of radioactivity to the atmosphere remains low and within acceptable limits; or (2) Create the possibility of a new or different kind of accident from an accicent previously evaluated because no new designs, plant operating modes or the scope of the Limiting Conditions for Operation are affected; or (3) Involve a significant reduction in a margin of safety because the proposed amendment does not affect the ability to achieve primary containment integrity and the availability of the standby gas treatment system is not affected.

The Commission has identified examples of amendments that are considered not likely to involve significant hazards considerations (Federal Register Vol. 48, No. 67, April 6, 1983). Example vi reads as follows: "A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method." As indicated above, increasing purge time may increase the probability of some release of radioactivity if a LOCA occurs while the purge valves are open, but this increase is small and the overall probability remains acceptable.

Based on staff review of the proposed modification involving a one time only increase in the allowable purging time through the standby gas treatment system, the Commission proposes to determine that the requested changes to the WNP-2 Technical Specifications match example vi and, therefore, involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

By March 3, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose inerest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is

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that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Saftey and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Local Public Document Room, Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethesda, Maryland, this 28th day of January 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86–2201 Filed 1–30–86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 642; Docket No. A86–7]

Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5); Longstreet, LA 71050 (Mrs. H.E. Denison, Petitioner

Issued: January 24, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86–7.

Name of affected Post Ofice: Longstreet, Louisiana 71050.

Name(s) of petitioner(s): Mrs. H.E. Denison.

Type of determination: Consolidation.

Date of filing of appeal papers: January 16, 1986.

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before January 31, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix—Docket No. A86–7, Longstreet, Louisiana 71050

January 16, 1986—Filing of Petition.

January 24, 1986—Notice and Order of Filing of Appeal.

February 10, 1986—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].

February 20, 1986—Petitioner's Participant Statement or Initial Brief [*See* 39 CFR 3001.115(a) and (b)].

March 12, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

March 27, 1986—(1) Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

April 3, 1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

May 16, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b) (5)].

[FR Doc. 86–2113 Filed 1–30–86; 8:45 am]

BILLING CODE 7715-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Subcommittee on Diagnostic and Therapeutic Practices; Meeting

Notice is hereby given of a meeting of the Subcommittee on Diagnostic and Therapeutic Practices of the Prospective Payment Assessment Commission scheduled for Friday, February 14, 1986. The meeting will convene at 9:30 a.m. in the BOAC room of the Hyatt Regency O'Hare in Chicago, Illinois, and will be open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 86–2242 Filed 1–30–86; 8:45 am]

BILLING CODE 6820-BW-M

RAILROAD ACCOUNTING PRINCIPLES BOARD

Establishment of Cost Accounting Principles for Rail Carriers

AGENCY: Railroad Accounting Principles Board.

ACTION: Request for responses to issues and questions.

SUMMARY: The Railroad Accounting Principles Board (RAPB) will issue on January 31, 1986, a discussion memorandum (DM) which identifies various issues and questions regarding railroad accounting and cost information used for certain regulatory purposes. The RAPB developed the DM as part of its effort to obtain public input into the priniciples the RAPB should establish. By this notice, the RAPB invites all interested parties to participate in this process by submitting their responses to the issues and questions presented. Responses to the DM will aid the RAPB in considering the range of factors which should be incorporated into the principles.

DATES: Written responses to the issues and questions presented in the DM shall be submitted to the RAPB by March 31, 1986. Due to the comprehensive nature of the DM, responses to the issues and questions contained in Chapters III and IV will be accepted until April 30, 1986.

ADDRESS: Responses should be sent to: Railroad Accounting Principles Board, PO Box 50608, Washington, DC 20004.

TO RECEIVE THE DM AND FOR FURTHER INFORMATION CONTACT: Charles R. Yager, Executive Director, (202) 275–1635.

SUPPLEMENTARY INFORMATION: The Railroad Accounting Principles Board has the statutory responsibility to establish, for rail carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission, principles governing the determination of economically accurate railroad costs associated with the movements of goods. In developing these principles, the the Board must take into account, among other things, the specific regulatory purposes for which railroad costs are required, the degree of accuracy of the requried cost information, the benefits and costs of requiring the data, and the means of maintaining confidentiality.

The RAPB expects to establish the principles and report to Congress in early 1987. After the principles are established, the Interstate Commerce Commission is responsible for promulgating the rules necessary to implement and enforce the principles. For a more detailed explanation of the history, status, and responsibilities of the RAPB, see 50 FR 7153 (Feb. 20, 1985).

The RAPB prepared a discussion memorandum to solicit public comment on appropriate approaches for establishing acccounting and cost principles. After an introductory chapter, the DM addresses regulatory measurement principles in Chapter II, costing principles in Chapter III, and other relevant issues in Chapter IV. Each chapter presents issues and questions relevant to the subject of the chapter. In view of the limited time available, the complexity of some matters, and the possibility that certain matters my be best left to other forums, the RAPB will not be able to resolve all the issues raised in the DM. Nevertheless, the DM is a comprehensive presentation of issues and questions so that RAPB will have a broad perspective for its subsequent consideration of prospective principles.

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In its February 20, 1985, **Federal Register** notice, the RAPB invited interested parties to suggest the issues the RAPB should address. The DM is being mailed directly to the parties who responded to that notice or are otherwise known to the RAPB to be interested in responding to the DM. This notice invites other interested parites to also participate in this process. Parties wishing to receive the DM or confirm that they have been mailed the DM are invited to contact the RAPB.

Dated: January 24, 1986.

Charles A. Bowsher,

Chairman, Railroad Accounting Principles Board.

[FR Doc. 86–2148 Filed 1–30–86; 8:45 am]

BILLING CODE 1610-01-M

Establishment of cost Accounting Principles for Rail Carriers

AGENCY: Railroad Accounting Principles Board.

ACTION: Request for responses to issues and questions.

SUMMARY: The Railroad Accounting Principles Board (RAPB) will issue on January 31, 1986, a discussion memorandum (DM) which identifies various issues and questions regarding railroad accounting and cost information used for certain regulatory purposes. The RAPB developed the DM as part of its effort to obtain public input into the priniciples the RAPB should establish. By this notice, the RAPB invites all interested parties to participate in this process by submitting their responses to the issues nd questions presented. Responses to the DM will aid the RAPB in considering the range of factors which should be incorporated into the principles.

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The RAPB expects to establish the principles and report to Congress in early 1987. After the principles are established, the Interstate Commerce Commision is responsible for promulgating the rules necessary to implement and enforce the principles. For a more detailed explanation of the history, status, and responsibilities of the RAPB, see 50 FR 7153 (Feb. 20, 1985).

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Dated: January 24, 1986.

Charles A. Bowsher,

Chairman, Railroad Accounting Principles Board.

[FR Dc. 86–2148 Filed 1–30–86; 8:45 am]

BILLING CODE 1610-01-M

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SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3879]

Application to Withdraw From Listing and Registration; Dynalectron Corp., Common Stock, Par Value $.10 Per Share

January 24, 1986.

The Above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The issuer considered the direct and indirect costs and expenses attendant on maintianing the dual listing of its common stock on the New York Stock and the American Stock Exchange. The issuer does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 14, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2216 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5441]

Notice of Application To Withdraw From Listing and Registration; Marshall Industries; Common Stock, Par Value $1.00 Per Share

January 24, 1986.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Pacific Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The issuer considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange and the American and Pacific Stock Exchanges. The issuer does not see any particular advantage in the dual trading of its stock. The issuer believes that listing solely on the New York Stock Exchange provides the issuer with sufficient order depth and liquidity, that dual listing would result in inappropriate additional costs, and that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 14, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2217 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24001; 70-7195]

Allegheny Power System, Inc.; Proposed Issuance and Sale of Short-Term Notes to Banks and Commercial Paper to Dealers; Exception From Competitive Bidding

January 27, 1986.

Allegheny Power System, Inc. ("Allegheny"), 320 Park Avenue, New York, New York 10022, a registered holding company, has filed an application with this Commission pursuant to section 6(b) of the Public Utility Holding Company Act of 1985 ("Act") and Rule 50(a)(5) thereunder.

Allegheny proposes to issue and sell short-term notes from time to time to banks and to dealers in commercial paper through September 30, 1987, in an aggregate principal amount not to exceed $110 million. This amount includes any short-term debt still outstanding under this Commission's prior authorization in HCAR No. 23395, August 14, 1984. The effective cost of bank borrowings under the lines of credit would be 9.79% based on a prime rate of 9.5%.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 20, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2211 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24000; 70-7217]

Consolidated Natural Gas Co.; Proposed Amendment of Certificate of Incorporation, Issuance of Common Stock in Connection With Two-For-One Stock Split; Authorization for Solicitation of Proxies

January 27, 1986.

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 thereunder.

Consolidated proposes to amend its Certificate of Incorporation to increase and reclassify its authorized common stock from 50,000,000 shares ($4 par value) to 100,000,000 shares ($2.75 par value), primarily for the purpose of effecting a two-for-one stock split by

changing each share of issued and unissued $4 par value common stock into two shares of $2.75 par value common stock. In connection therewith, Consolidated proposes to issue on or after May 20, 1986, such additional number of shares of common stock, $2.75 par value, as shall equal the total number of common shares outstanding on May 20, 1986, to common stockholders of record on that date. The company expects to have approximately 41,390,000 shares, $4 par value, outstanding on May 20, 1986. The excess of shares over those required for the stock split will be available to Consolidated for issuance in connection with its stockholder and employee plans and other corporate purposes.

Consolidated proposes to solicit proxies regarding the proposed amendment to its Certificate of Incorporation with respect to the annual meeting of common stockholders to be held May 20, 1986.

The declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 20, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended declaration, as filed or as it may be further amended, may be permitted to become effective.

It appearing to the Commission that Consolidated's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2210 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14919 (File No. 812-6202)]

Criterion Bond Fund; Application and Opportunity for Hearing

January 27, 1986.

Notice is hereby given that Criterion Bond Fund ("Applicant"), 333 Clay Street, Suite 4300, Houston, Texas 77002, an open-end, diversified, management investment company, filed an application on September 19, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting two of its three portfolios, the U.S. Government High Yield Trust ("High Yield Trust") and Criterion U.S. Government Institutional Trust ("Institutional Trust", collectively "Portfolios"), from the provisions of section 19(b) of the Act and Rule 19b-1 thereunder to the extent necessary to permit the Portfolios to make monthly distributions of certain long-term capital gains realized by the Portfolios in certain transactions in options. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions thereof.

According to the application Applicant was incorporated in the State of Texas on March 4, 1980, and reorganized as a Massachusetts business trust under the laws of the Commonwealth of Massachusetts on February 20, 1985. The application states that the Portfolios' primary investment objective is to seek a high level of current income, consistent with safety of principal. The Portfolios seek to achieve their investment objective by investing primarily in debt obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities. Applicant represents that a substantial portion of the High Yield Trust's assets are invested in certificates of the Government National Mortgage Association ("GNMA"). It is currently anticipated that a substantial portion of the Institutional Trust's assets will be invested in certificates of GNMA. Applicant states that the Portfolios also engage in the purchase and writing of put and call options on debt securities. Applicant further states that, to protect against changes in the general level of interest rates, the Portfolios may engage in the purchase and sale of interest rate futures contracts and options on such futures contracts.

Applicant states that the realization of gains from option transactions is a primary investment technique utilized by the High Yield Trust, and intended to be utilized by the Institutional Trust, in pursuing their investment objectives. Applicant further states that the High Yield Trust has followed the practice, and the Institutional Fund intends to follow the practice, of making monthly distributions of net short-term capital gains. Applicant notes that effective July 1984, the Tax Reform Act of 1984 (the "1984 Amendments") amended section 1256 of the Internal Revenue Code and significantly altered the tax treatment of capital gains from options on U.S. Government securities, all of which have become Section 1256 contracts. Prior to the 1984 Amendments, gain or loss recognized with respect to options on U.S. Government securities was treated as short-term capital gain or loss. As a result of the 1984 Amendments, 60% of the gain or loss recognized with respect to options is now treated as long-term capital gain (or loss) and 40% is treated as short-term capital gain (or loss).

Applicant states that it understands that this change in the tax law was designed to eliminate certain tax abuses relating to the realization of short-term capital losses from options transactions. Applicant states, however, that the new characterization of 60% of the gain from options transactions as long-term capital gain would cause section 19(b) of the Act and Rule 19b-1 thereunder to apply to such transactions, which were not previously affected thereby. Applicant asserts that were the Portfolios able to distribute regularly capital gains from transactions in options, the investment policies of the Portfolios and the interests and goals of investors in the Portfolios would be better served.

Applicant represents that the Portfolios have the power to elect out of section 1256 with respect to covered options which are "mixed straddles" under section 1256(d), in which case all net gains from such options transactions would be treated as short-term capital gains and, hence, not restricted by section 19(b) of the Act or Rule 19b-1 thereunder. Such election, however, Applicant asserts, would deprive investors in a Portfolio of the benefits of the lower rates applicable to long-term capital gains on a portion of such Portfolio's distributions out of gains on such options transactions.

Applicant submits that the purposes of section 19(b) of the Act and Rule 19b-1 thereunder would not be served by a strict application of these provisions to 60% of the capital gains generated by options transactions, which are, as a result of the 1984 Amendments, now treated as long-term capital gains under Section 1256 of the Internal Revenue

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Code, as amended. Applicant asserts that the characterization of these gains as long-term capital gains will not cause Portfolio shareholders to confuse such gains with dividends out of net interest income, since the Portfolios declare dividends of substantially all of their interest income, after expenses, on each day the New York Stock Exchange is open for business; distributions out of long-term capital gains on options transactions would be made monthly, along with distribution out of short-term capital gains. In addition, Applicant represents, the Portfolios will distinguish distributions of capital gains from distributions out of net interest income in an accompanying notice from the Portfolios to their shareholders as required by section 19(a) of the Act and Rule 19a–1 thereunder.

Applicant represents that the recharacterization of 60% of the capital gains from options transactions as long-term capital gain will affect neither the investment decisions nor distribution practices of the portfolio. Applicant asserts that the monthly distribution of long-term capital gains from options transactions will not materially increase administrative expenses of the Portfolio, because the High Yield Trust already distributes, and expects to continue to distribute, and the Institutional Trust intends to distribute, monthly short-term capital gains distributions.

Applicant believes that none of the policies underlying section 19(b) of the Act and Rule 19b–1 thereunder are applicable to the Portfolios' monthly distributions of gains from options transactions. Furthermore, Applicant believes that designating an appropriate part of each monthly distribution of gains from options transactions as long-term capital gain is in the best interest of its shareholders, since it will spread the benefit of the lower capital gains tax rate to persons who are shareholders at various points during the year. Applicant states that alternatively, the Portfolios would be required to designate their final distributions of gains with respect to each fiscal year, which are made shortly after the close of the fiscal year, as being the distribution of long-term capital gains. Applicant asserts that this approach would be disadvantageous to the Portfolios' shareholders since, for one thing, they might not receive the full tax benefit that section 1256 provides because a portion of the long-term capital gain realized on options transactions may not be designated as such if the portion exceeds the amount of the final distribution.

Applicant submits that an order granting it an exemption from section 19(b) of the Act and Rule 19b–1 thereunder to enable the Portfolios to make monthly distributions of long-term capital gains from transactions in options on certain U.S. Government securities, including GNMAs, would be appropriate in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 14, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–2218 Filed 1–30–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14914 (812–6214)]

Equitec Siebel Total Return Fund, Inc.; Application for Order Permitting Assessment (and Waiver) of a Contingent Deferred Sales Charge

January 27, 1986.

Notice is hereby given that Equitec Siebel Total Return Fund, Inc. ("Applicant"), 7677 Oakport Street, P.O. Box 2470, Oakland, CA 94614, filed an application on September 30, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from the provisions of section 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 under the Act to the extent necessary to permit Applicant to assess a contingent deferred sales charge on certain redemptions of its shares, and to waive the contingent deferred sales charge in certain circumstances. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable statutory provisions.

Applicant states that it is an open-end, diversified, management investment company that was organized as a California corporation on October 9, 1984, and on December 4, 1985, its shareholders approved its reorganization into a series of a Massachusetts business trust offering several different classes of shares, each constituting a separate investment portfolio. Applicant will constitute one of the investment portfolios in the new series fund. Applicant seeks a Commission order on its own behalf and on behalf of any successor fund or funds organized as part of the series. Applicant states that its sponsor is Equitec Financial Group, Inc. ("Equitec"), a diversified financial services firm located in Oakland, CA; its investment adviser is Siebel Capital Management, Inc., a wholly-owned subsidiary of Equitec, and its distributor is Equitec Securities Corp. ("Distributor"), another wholly-owned subsidiary of Equitec.

Applicant states that it currently offers its shares for sale with a traditional front-end sales charge and it is now proposing to offer its shares without an initial sales charge but a sales charge may later be deducted from the proceeds of certain redemptions of shares of the Applicant if the shares are redeemed within five years of purchase. Applicant represents that the contingent deferred sales charge would be imposed if a shareholder redeems an amount which causes the current value of the shareholder's account with Applicant to fall below the total dollar amount of purchase payments made by the shareholder during the preceding five years. No contingent deferred sales charge will be imposed when the net asset value of the shares redeemed does not exceed: (i) The current net asset value of shares purchased more than five years prior to redemption, plus (ii) the current net asset value of shares purchased through reinvestment of dividends or distributions, plus (iii) increases in the net asset value of the shareholder's account above the total amount of payments for the purchase of Applicant's shares made during the preceding five years. Applicant states that at no time will such charge exceed 5% of the aggregate purchase payments made by the shareholder. Applicant proposes to waive the contingent deferred sales charge on certain redemptions described below.

According to the application, when determining the applicability of a contingent deferred sales charge to each redemption, shares will be redeemed first whose value equals the amount of any increase in the net asset value of the shareholder's account above the amount of the total payments for the purchase of shares within the last five years. In the event the redemption amount exceeds such increase in value, the next portion of the amount redeemed will be the amount which represents the net asset value of the shares purchased more than five years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions. Any portion of the amount redeemed which exceeds an amount which represents both such increase in value and the value of shares purchased more than five years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions will be subject to a contingent deferred sales charge.

When a contingent deferred sales charge is imposed, the amount of the charge will depend on the number of years that the redeemed shares have been held since their original purchase. During the first year after purchase, the charge would be five percent of the amount redeemed. That amount would drop by one percent per year until five years thereafter, at which time no charge would be imposed upon redemption. The amount of the contingent deferred sales charge (if any) is calculated by determining the date of the purchase payment which is the source of the shares to be redeemed and applying the appropriate percentage to the amount of the redemption subject to the charge.

Applicant proposes to finance its own distribution expenses pursuant to a plan (the "Plan") adopted pursuant to Rule 12b–1 under the Act. Applicant states that, under the Plan, Applicant will pay an annual fee of one percent to the Distributor for expenses incurred in connection with the offering of Applicant's shares. The Distributor also will receive the proceeds of the contingent deferred sales charge upon any redempttion.

Applicant proposes to waive the contingent deferred sales charge with respect to the following redemptions of Applicant's shares: (i) Redemptions following the death or disability of a shareholder, (ii) redemptions in connection wth certain distributions under a tax-deferred retirement plan, IRA, Keogh, or custodial account, (iii) redemptions of shares purchased for personal investment purposes by officers and directors of Applicant, (iv) mandatory redemptions of small shareholder accounts, and (v) redemtions the procees of which are reinvested in Applicant's shares within 30 days pursuant to the one-time reinvesttment privilege offered by Applicant.

The application also states that with respect to Applicant's existing shareholders who will already have paid an initial sales charge at the time the contingent deferred sales charge is implemented, Applicant's Distributor proposes to refun approximately 58.5% of any initial sales charge paid by them. Their shares will then become subject to the contingent deferred sales charge. In order to preserve for Applicant's shareholders the benefit of any discount in the initial sales charge that they may have received by purchasing larger amounts of Fund shares, Applicant will waive that portion of any contingent deferred sales charge which, when combined with the portion of their initial sales charge which was not refunded, results in a total sales charge that exceeds the initial sales charge they agreed to pay.

Applicant does not propose to treat as redemptions or impose any contingent deferred sales charge on exchanges of shares between it and any other funds or series offered by its Distributor which have similar plans of distribution and which impose similar contingent deferred sales charges, although a $5.00 service fee will be charged on such exchanges. For purposes of determining any contingent deferred sales charge applicable to the redemption of exchanged shares, the date of purchase of the original fund or series shares will be used to measure the holding period of the redeemed shares.

Applicant submits that the exemptions requested are appropriate and in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Nonetheless, to avoid any possibility that questions may be raised as to the various definitional and regulatory sections of the Act, Applicant seeks an exemption to the extent necessary or appropriate from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1.

Applicant contends that the imposition of the contingent deferred sales charge is fair and is in the best interests of all its shareholders. The proposed contingent deferred sales charge permits shareholders to have the advantages of greater investment dollars working for them from the time of their purchase of the shares. Moreover, because the contingent deferred sales charge applies only to redeemptions of amounts representing purchase payments, it does not apply to increases in the value of a shareholder's account through increases in net asset value per share, or to amounts representing reinvestment of distributions or dividends. Applicant further submits that waiver of the contingent deferred sales charge under the above-described circumstances will not harm Applicant or its remaining shareholders or unfairly discriminate among shareholders or purchasers. Additionally, Applicant represents that it will fully disclose all of the waiver provisions in its Propsectus and Statement of Additional Information.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 21, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–2219 Filed 1–30–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14911; 812–6271]

IRI Stock Fund, Inc., et al.; Application for an Order Pursuant to Section 11(a) of the Investment Company Act of 1940 Permitting Certain Offers of Exchange

January 24, 1986.

Notice is hereby given that IRI Stock Fund, Inc. ("Stock Fund"), Midas Gold Shares & Bullion, Inc. ("Midas") and IRI Securities Corporation (the "Underwriter"), (Stock Fund, Midas and the Underwriter, collectively, "Applicants") each at One Appletree Square, Minneapolis, Minnesota 55420, filed an application on December 27, 1985, and an amendment thereto on

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January 17, 1986, for an order of the Commission pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") permitting certain offers of exchange. Applicants also request that such approval be made applicable to future open-end investment companies ("Additional Funds") for which the Underwriter serves as principal underwriter or distributor (Stock Fund, Midas and Additional Funds, collectively, the "Funds"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants represent that Stock Fund and Midas are open-end investment companies that have filed registration statement under the Act and the Securities Act of 1933. Applicants further represent that said registration statements are currently effective and that shares of Stock Fund and Midas are being offered to the public on a continuous basis.

Applicants state that Fund/Plan Services, Inc. presently acts as transfer agent for Stock Fund and Midas and will also act as transfer agent for any Additional Funds. Applicants further state that the Underwriter serves as principal underwriter for Stock Fund and Midas, and that the Underwriter intends to maintain a continuous public offering of shares of Stock Fund and Midas at their respective net asset values per share plus a sales load. According to the application, the sales load for shares of Stock Fund is a percentage of the public offering price of such shares, which percentage varies with the amount of the investment in such shares in accordance with the following table:

Amount of investment	Sales charge as percentage of public offering price
Less than $20,000	4.50
$20,000 but less than $35,000	4.00
$35,000 but less than $50,000	3.50
$50,000 but less than $75,000	3.00
$75,000 but less than $100,000	2.50
$100,000 but less than $200,000	2.00
$200,000 but less than $400,000	1.75
$400,000 but less than $700,000	1.50
$700,000 but less than $1,000,000	1.00
$1,000,000 or more	.25

Applicants state that the sales load for shares of Midas is also a percentage of the public offering price of such shares, which percentage varies with the amount of the investment in such shares in accordance with the following table:

Amount of investment	Sales charge as percentage of public offering price
Less than $20,000	6.00
$20,000 but less than $35,000	5.50
$35,000 but less than $50,000	5.00
$50,000 but less than $75,000	4.50
$75,000 but less than $100,000	4.00
$100,000 but less than $200,000	3.00
$200,000 but less than $400,000	2.00
$400,000 but less than $700,000	1.00
$700,000 but less than $1,000,000	.50
$1,000,000 or more	.25

In addition, Applicants state that the Underwriter proposes to maintain in the future a continuous public offering of shares of the Additional Fund priced either: (i) At their respective net asset values per share plus a sales load not in excess of 8.5% of the public offering price of such shares or (ii) at their respective net asset values per share without a sales load.

Applicants seek authority to permit exchange offers under the following terms:

(1) Shares of any Fund held for six months or more prior to the exchange may be exchanged for shares of any other Fund on the basis of the relative per share net asset values of the respective Funds at the time of the exchange without a sales charge.

(2) Shares of any Fund held for less than six months prior to the exchange may be exchanged for: (a) Shares of any other Fund with an equivalent, lower or not sales charge on the basis of the relative per share net asset values of the respective Funds at the time of the exchange without a sales charge or (b) shares of any other Fund with a higher sales charge on the basis of relative per share net asset values of the respective Funds at the time of the exchange plus the difference between the sales charge applicable to the Fund whose shares are being acquired and the sales charge previously paid with respect to the shares being exchanged.

(3) In cases in which shares of a Fund have been acquired by exchange from a Fund having a higher sales charge, the higher sales shall be considered to have been previously paid in determining whether any additional sales charge is payable in the event such shares are further exchanged for shares of another Fund.

(4) Where fewer than all of a shareholder's shares are exchanged, those for which no or a lower additional sales charge would be payable will be exchanged first.

(5) Rights of accumulation and other arrangements described in the respective prospectuses allowing for reduced sales charges are applied to determine the sales charge applicable to share of a Fund being acquired by exchange.

(6) An exchanging shareholder is charged an administrative fee of $7.50 by the transfer agent of the Fund whose shares are being acquired. Applicants believe that the administrative fee is reasonable in light of the expenses incurred by the transfer agent in making book entries and taking such other action as is necessary to effect exchanges.

Applicants assert that the purpose of the exchange offers is to permit a shareholder of any one of the Funds to transfer into another Fund in the event that the shareholder's investment objectives change and to receive credit for any sales charge previously paid. Applicants further assert that the terms of exchange offers provide an equitable basis for an exchange of shares that do not discriminate unjustly against any class of investors. Applicants undertake that the order sought herein on behalf of the Additional Funds will be used only under the terms and conditions described in the application.

Applicants state that the Underwriter has the exclusive right to distribute shares of each of the Funds directly and through unaffiliated dealers who have sales agreements with the Underwriter. According to the application, where the shareholder is charged a differential in sales charge upon an exchange, the commission paid to the sales representative is less than it would be on a direct purchase of the shares being acquired. Therefore, Applicants do not believe there is sufficient financial incentive for a sales representative of the Underwriter to initiate exchanges for his or her own benefit. Applicants represent that the Underwriter has established sufficient internal monitoring and review procedures to ensure that exchanges are made at the request of the shareholder and not for the Underwriter's sales representative's personal gain.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order

disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2220 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14912; (File No. 811-4112)]

Newton Tax-Free Fund, Inc.; Application for an Order Declaring That Applicant has Ceased to be an Investment Company

January 24, 1986.

Notice is hereby given that Newton Tax-Free Fund, Inc. ("Applicant"), 733 North Van Buren Street, Milwaukee, Wisconsin 53202, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on January 9, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the applicable provisions thereof.

Applicant states that it is registered under the Act and filed a registration statement pursuant to section 8(b) of the Act on September 19, 1984, has not more than 100 securityholders for purposes of section 3(c)(1) of the Act and rules thereunder, has never made a public offering of its securities, and does not propose to make a public offering or engage in business of any kind. Applicant further states that it has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant, that it is not a party to any litigation or administrative proceeding and does not propose to engage in any business activities other than those necessary for winding-up its affairs. Finally, Applicant represents that it is incorporated in good standing under Maryland state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 18, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2221 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23998; 70-7196]

Vermont Yankee Nuclear Power Corp.; Proposal To Issue and Sell Short-Term Notes to Banks

January 27, 1986.

Vermont Yankee Nuclear Power Corporation ("Vermont Yankee"), Brattleboro, Vermont, a nuclear generating subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed a declaration with this Commission subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(2) thereunder.

Vermont Yankee proposes to issue and sell $16 million of short-term notes to banks (which would exceed 5% of the principal amount and par value of other securities of Vermont Yankee) through August 31, 1987. Assuming full borrowings under the lines and a prime rate of 9.5% per annum, the highest effective rate paid by Vermont Yankee for borrowings from any of the banks would be 10.05%.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 20, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2212 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22833; File No. SR-CBOE-85-52]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to Currency Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Definitions

Rule 22.1. No change except to (b).

European Option

(b) The term "European option" means an option contract that [can be exercised only on the last trading day prior to the day it expires] *cannot be exercised before the last trading day prior to its expiration.*

Terms of Currency Option Contracts

Rule 22.4. No change (except to the last sentence as follows).

Currency options [can be exercised only on the last trading day prior to the option's expiration] *cannot be exercised before the last trading day prior to its expiration.*

Exercise of Currency Option Contracts

Rule 22.19 The exercise cutoff time specified in Rule 11.1 shall not apply to currency option contracts.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to allow persons wishing to exercise currency option contracts to have as much time as possible to do so consistent with the rules of the Options Clearing Corporation, since the underlying foreign currencies continue to trade after the general exercise cutoff time established by Exchange Rule 11.1. The statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate transactions in foreign currency options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any pesons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-2207 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22835; File No. SR-CBOE-85-47]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Notice of Filing and Order Granting Immediate Effectiveness to Proposed Rule Change; Relating to Transaction Fees on Foreign Currency Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Pursuant to rule change filing SR-CBOE-85-37, the Exchange is not charging transaction fees on foreign currency option contracts until January 2, 1986. By this filing, the Exchange extends that date through Friday, February 28, 1986.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Bosis for, the Proposed Rule Change

The purpose of this proposed rule change is to encourage the trading of foreign currency option contracts. The statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate transactions in foreign currency options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change creates any burden on competition not necessary or appropriate under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Formal comments on the rule-change filing were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4 because it establishes or changes a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Publication of the submission is expected to be made in the **Federal Register** during the week of January 27, 1986. Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 24, 1986.

John Wheeler,

Secretary.

FR Doc. 86-2208 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22836; File No. SR-CBOE-86-2]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to Terms of Currency Options Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1986, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Terms of Currency Option Contracts

Rule 22.4. The Exchange shall determine the fixed-point intervals of exercise prices for currency option contracts. The exercise price of each series of currency options normally shall be fixed at a price per unit which is reasonably close to the range between the spot and the six-month forward prices. Currency options shall expire on the Saturday preceding the third Wednesday in the months designated by the Exchange, not to exceed six at any one time *and not more than 12 months out.* [The months available for trading will be the nearby two months and three further out months from the March cycle, except that initially the months of November, December, March, June and September will be available for trading.] Currency options can be exercised only on the last trading day prior to the option's expiration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections, (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to give the Exchange the flexibility to have up to six expiration months in currency option contracts, ranging from one to twelve months out. The proposed rule change is designed to facilitate trading in currency option contracts by enabling the Exchange to list those expiration months in which the most interest is expected to exist. Therefore, the statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition, but rather believe that it will enhance competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 24, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-2209 Filed 1-30-86; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-22634; File No. SR-PSE-85-36]

Proposed Rule Change by the Pacific Stock Exchange Inc.; Relating to the Increased Usage of Hand Signals as a Means of Communications on the Options Floor

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1985, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") proposes to amend Options Floor Procedure Advice F-5, to permit increased usage of hand signals as a means of communications on the Options Floor. Currently, Exchange rules permit only the communication via handsignals of quotes and sizes, changes of price limits of orders, or their reduction in size or cancellation. The Exchange proposes through this rule change to additionally permit the increasing of an order's size and/or the activation of an order to market price by means of hand signals.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The PSE is proposing to change its rule with respect to the use of hand signals on the Options Floor to better facilitate the communication of order instructions across the trading floor. On September 8, 1984, the PSE relocated its Options Floor to a facility twice as large as its previous Floor. As a result, Floor Brokers and/or their clerks are required to travel further distances from booth to trading crowd in order to effect changes to existing orders. By adopting the proposed rule change, the PSE believes it will be reducing the amount of time required to effect such changes to outstanding orders in the crowd, hence benefitting the investing public.

The PSE notes that with one exception the proposed rule change will permit the same use of hand signal communication as provided for in the Chicago Board Options Exchange ("CBOE") Rule 6.24, Interpretation and Policy .02. Unlike the CBOE provision, however, the PSE proposal will not allow for the initiation of orders through the use of hand signals. Consequently, while the proposed rule change will expand the use of hand signals on the PSE Options Trading Floor, PSE rules will still be more stringent than that found on other exchanges.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the proposed rule change was considered and approved by the Board of Governors at its meeting of November 21, 1985.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

January 24, 1986.

[FR Doc. 86-2206 Filed 1-30-86; 8:45 am]
BILLING CODE 8010-01-M

[1] Amendment No. 1 to the proposed rule change was filed on January 6, 1986.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 24, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Marshall Industries
Common Stock, $1.00 Par Value (File No. 7-8779)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 14, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-2213 Filed 1-30-86; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 27, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Carter Hawley Hale Stores, Inc.
Common Stock, $5.00 Par Value (File No. 7-8780)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 17, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-2214 Filed 1-30-86; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 24, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

General Motors Corporation
Class H Common Stock, $.10 Par Value (File No. 7-8778))

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 14, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

FR Doc. 86-2215 Filed 1-30-86; 8:45 am]
BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Form Under Review by the Office of Management and Review

AGENCY: Tennessee Valley Authority.

ACTION: Forms Under Review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524, FTS 858-2524.

Type of Request: Regular Submisson.

Title of Information Collection: Power Distribution Monthly Report to TVA.

Frequency of Use: Monthly.

Type of Affected Public: Businesses or other for-profit and small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 1920.

Estimated Total Annual Burden Hours: 960.

Need For and Use of Information: This monthly collection supplies TVA with financial information to assist is making timely management decisions on electric power rates, finances, and other long- and short-term plans.

Type of Request: Regular Submisson.

Title of Information Collection: Power Distributors Annual Report to TVA.

Frequency of Use: Annually.

Type of Affected Public: Businesses or other for-profit and small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 160.

Estimated Annual Burden Hours: 3200.

Need For and Use of Information: This annual collection supplies TVA with detailed financial and accounting information to ensure that electric power produced by TVA is sold to consumers at rates which are as low as feasible.

Date: January 23, 1986.

John W. Thompson,
Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-2112 Filed 1-30-86; 8:45 am]
BILLING CODE 8120-01-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Access and Capacity; Public Hearing

Summary: The Federal Aviation Administration (FAA) will hold three public hearings to receive comments, suggestions, and information on a proposed airport access and capacity policy published in the **Federal Register** on January 22, 1986, (51 FR 2985). The public is encouraged to attend and present their views at these hearings. The first meetings are scheduled for two days each in Washington, DC, and Denver, Colorado.

The Washington, DC, hearings will be held in the auditorium (3rd floor) at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, on February 20 and 21. The Denver, Colorado, hearings will be held in the lecture hall of building 25 at the Denver, Colorado, hearings will be held in the lecture hall of building 25 at the Denver Federal Center, 6th Avenue and Kipling Street, Denver, Colorado, on March 5 and 6.

Both hearings will be open to the public from 9 a.m. to approximately 5 p.m. on the scheduled days. The second day of each meeting will be ended after all present have been given an opportunity to speak.

A third public hearing will be held in Los Angeles, California, in late March or early April. The date and location of this hearing will be published in the **Federal Register** at least 30 days in advance of the hearing.

Background: The FAA intends to clarify the Federal position on provision and management of capacity in the National Airport and Airway System. In developing the Federal position, the FAA has published a proposed policy that describes a possible Federal position on airport access and capacity issues and requests public comments on the proposed policy and on issues relevant to developing an airport access and capacity policy to serve the public interest.

The public hearings scheduled above afford interested parties equitable opportunity to present their views on the issues and the policy proposed by the FAA. Persons wishing to make a presentation at either scheduled hearing should advise Carol Strong, Office of Aviation Policy and Plans, Federal Aviation Administration, Washington, DC 20591, Telephone: (202) 426–3331.

Address: Send written comments on the proposed airport access and capacity policy (51 FR 2985) in duplicate to: Gary L. Olin, Economic Analysis Branch (APO–220), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may be examined at the above address, Room 915G, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. For further information, contact Gary L. Olin at (202) 426–3420. Issued in Washington, DC, on January 27, 1986.

John M. Rodgers,

Acting Director of Aviation Policy and Plans.

[FR Doc 86–2182 Filed 1–30–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Weight-Distance Truck Tax Study; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: Section 933 of the 1984 Deficit Reduction Act (DRA), requires the Secretary of Transportation in consultation with the Secretary of the Treasury to conduct a study to evaluate the feasibility and ability of a Federal weight-distance tax to: (1) Provide the greatest degree of equity among users; (2) ease the cost of compliance for Federal highway use taxes; (3) improve the efficiency by which the use taxes might be administered; (4) evaluate the evasion potential; and (5) assess the benefits to interstate commerce.

It is intended that the Federal weight-distance tax would replace all Federal heavy vehicle taxes (other than fuel) and would apply only to heavy vehicles where the fuel tax did not generate sufficient revenues to cover their cost responsibility. The report is due to Congress by October 1, 1987.

The purpose of this notice is to announce a public meeting to hear comments on the study approach.

DATE: The meeting will be held from 9:00 a.m. to 4:00 p.m. on March 19, 1986, in Washington, DC.

ADDRESS: The meeting will be held in Room 2230 of the Department of Transportation's Headquarters Building (Nassif Building), 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: In FHWA: Mr. James R. Link, Chief, Highway Revenue Analysis Branch, (202) 426–0570; or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426–0570, 400 Seventh Street, SW., Washington, DC 20590. In the Internal Revenue Service (IRS): Mr. Milton Wells, Legislative Analysis Division, (202) 566–4096, 1111 Constitution Avenue NW., Room 3238, Washington DC 20224.

SUPPLEMENTARY INFORMATION:

Background

Sections 933 of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 494) directs the DOT, in consultation with the Secretary of the Treasury to conduct a study of the feasibility and ability of weight-distance truck taxes to provide equity among highway users, to ease compliance costs, and improve administrative efficiency. Further, the study is to evaluate the evasion potential of such taxes and assess the benefits to interstate commerce of replacing all Federal heavy vehicle taxes, except the fuel taxes, with a weight-distance tax. A final report on this subject, together with recommendations the Secretary of Transportation may deem advisable, is to be submitted to Congress no later than October 1, 1987.

The FHWA has explicitly structured the study to keep the public informed and to solicit their comments. The FHWA published an initial study plan in the **Federal Register** on April 17, 1985 (50 FR 15270), and requested comments to the Docket (85–20) which is open until October 1, 1986. The FHWA has consulted with the trucking industry, State transportation departments and State tax representatives, and will continue to do so in a variety of ways throughout the study. Methods of consultation include:

—Asking individuals and organizations to review draft interim study reports.

—Holding at least one public meeting.

—Sponsoring a workshop for Federal, State, and trucking industry representatives to evaluate five alternative Federal/State administrative plans.

—Making presentations to relevant advisory committees and professional organizations regarding the study.

—Meeting with interested organizations to discuss the attached detailed work plan.

Study Approach

The FHWA is the lead agency for the national weight-distance tax study. The overall technical approach is to:

—Prepare a working paper to analyze alternative weight-distance tax options.

—Document the administrative procedures for the current Federal truck taxes (heavy vehicle use, truck sales, tire and diesel differential).

—Identify at least two weight-distance tax options and develop at least two plans for administering a national weight-distance tax. One plan would involve only Federal agencies and the other plan would be a Federal/State cooperative effort.

—Assess the feasibility of the tax options and administrative plans using the criteria provided by the Congress under Section 933 of the 1984 DRA.

—Compare the existing tax structure to alternative weight-distance tax and the existing administrative structure to alternative weight-distance tax administrative plans.

Briefing Package

A briefing package describing the study approach in more detail was distributed to industry representatives and others in December 1985 by FHWA. The package contains four sections:

Section 1—Overall study approach;

Section 2—Chronology of completed work;

Section 3—Tasks underway and future direction of the study;

Section 4—Request for comments on the weight-distance tax study approach and activities presented.

Working Paper

In February 1986, the FHWA will make available a working paper that will focus on the development and screening of alternative national weight-distance taxes. It will summarize:

Past major weight-distance tax studies;

—Characteristics of State weight-distance taxes;

—Components of a national weight-distance tax;

—Analysis of tax options based upon the criteria provided by Congress;

—Recommended tax options;

—Approach for developing tax rates and schedules.

Public Meeting

A public meeting will be held March 19, 1986, in Washington, DC, to discuss the overall approach, the working paper and findings to date of the national weight-distance tax study. The meeting will be conducted by representatives from the Department of Transportation and the Internal Revenue Service. The meeting will enable participants to present their written comments and make an oral summation for the record that should not exceed 10 minutes in duration. The public meeting is a forum for presentation not debate. The presentations that will be the most helpful are those supported by factual material. Statements should be based on a review of the study approach described in the briefing package and the working paper. The briefing package is available now and the working paper will be available in February. Both may be requested from Mr. James R. Link whose address is provided in the section titled, "For Further Information Contact." Those wishing to speak should contact Mr. Link in advance of the meeting to be placed on the roster. Oral presentations will be recorded and transcribed. Written statements sent by mail to Mr. Link will be accepted.

Issued: January 23, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86–2110 Filed 1–30–86; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

Hazardous Materials; List of Excepted Thermal Protection Systems for Tank Cars

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Announcement of current list of excepted thermal protection systems for DOT Specification 105, 111, 112 and 114 tank cars.

SUMMARY: This notice announces the current list of thermal protection systems which may be used without further test verification on DOT Specification 105, 111, 112 and 114 tank cars to satisfy thermal protection retrofit requirements published under Docket HM–144, Docket HM–174 and HM–175. The current list of 36 Thermal protection systems includes the 20 systems previously announced and adds systems 21 through 36.

ADDRESS: The current list of excepted systems and the test results upon which the list is based are available for public review during the hours 8:30 a.m.—5 p.m., Monday through Friday in the Dockets Branch, Room 8426, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (202–426–3148).

FOR FURTHER INFORMATION CONTACT: Alfred Brooks, Office of Safety, Federal Railroad Administration, Washington, DC 20590, 202–426–0912.

SUPPLEMENTARY INFORMATION: The thermal protection systems listed herein do not require further test verification under § 179.105–4 (d) and (e), Title 49, Code of Federal Regulations (49 CFR), because they have been shown to meet those requirements by tests conducted at the Federal Railroad Administration's Transportation Test Center in Pueblo, Colorado. In addition, systems 16 through 26 inclusive and 30 through 36 inclusive listed herein meet the requirements of § 179.105–7(c)(2) and § 179.105–7(d)(2). Systems 1 through 4 were listed in the preamble of Docket HM–144, Amdt. No. 179–9, which imposed certain retrofit requirements on the use of DOT Specification 112 and 114 tank cars (42 FR 46306, September 15, 1977). An editorial document correcting the manufacturer's name in system 1 and correcting the name of a component material in system 3 was published on January 16, 1978, (43 FR 2180). Systems 5 through 7 were listed in a notice published November 2, 1978, (43 FR 51162). Systems 8 through 10 were listed in a notice published on July 2, 1979, (44 FR 38693). System 11 was listed in a notice published on May 5, 1980, (45 FR 29655). Systems 12 through 20 were listed in a notice published on August 23, 1984, (49 FR 33524).

Systems 21 through 36 are new and have not been previously published. This list of thermal protection systems remains open for additional entries. Systems that may be submitted to the Federal Railroad Administration in the future and which are shown to meet the test specifications in 49 CFR 179.105–4 will also be excepted from the test verification requirements and added to this list. The current list follows:

List of Excepted Thermal Protection Systems for DOT Specification 105, 111, 112 and 114 Tank Cars

1. One inch minimum thickness Deltaboard (12 pounds per cubic foot, 15 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer, (Deltaboard), Rock Wool Manufacturing Company, Leeds, Alabama.

2. The tank car external surface is prepared by sandblasting to remove all existing paint, primer, grease and loose material. Two mils (dry) of "Thermolag Primer-351" is applied to the clean surface. One hundred sixty-five mils (dry) of "Thermolag 330–1 Subliming Compound" is next applied to the primed surface. Five mils (dry) of "Thermoiag Topcoat 350" is applied to the subliming coating. Manufacturer, TSI–Inc., St. Louis, Missouri.

3. The tank car external surface is prepared by sandblasting to remove all existing paint, primer, oil, grease and loose material. Three mils (dry) of primer (Military Standard MIL–P–5219B) are applied to the clean surface. Chicken wire (1" hexagonal, 22-gauge) is next attached to the primed surface. One hundred eighty mils (dry) of Chartek 59 thermal coating is then applied. Three mils (dry) of a topcoat (AMERCOAT 383) is then apllied. Topcoat manufacturer, Ameron, Brea, California.

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Manufacturer (Chartek 59), Avco, Lowell, Massachusetts.

4. The tank car external surface paint, primer, grease and loose material. Seven-tenths mil (dry) of primer (a 2:1 ratio by volume of 513-003 base component and 9110 x 350. activator component) is applied to the clean surface. Two hundred thirty-five mils (dry) of thermal shield coating (a nominal 5:1 ratio by volume of 821 x 359 base component and 9110 x 407 activator component) is next applied to the primed surface. Two mils (dry) of topcoat (a 2:1 ratio by volume of 821 x 317 base component and 9110 x 376 activator component) is applied to the thermal shield material.

5. One inch minimum thickness of Kaowool Blanket B (minimum density of 4.5 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer (Kaowool Blanket B), Babcock & Wilcox, Augusta, Georgia.

6. Sixty-five one hundredths inch minimum thickness Fiberfrax tank car insulation (minimum density of 4.5 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer, (Fiberfrax), Carborundum Company, Niagara Falls, New York.

7. One inch minimum thickness of HILBLOK 1212 (minimum density of 12.5 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer (HILBLOK 1212), Holmes Insulations Limited, Toronto, Ontario, Canada.

8. One and one-half inches minimum thickness of Tank Wrap Insulation (minimum density of six pounds per cubic foot) compressed to a 1 inch thickness and encased in an 11-gauge steel jacket. Manufacturer (Tank Wrap Insulation), Forty-Eight Insulations, Inc., Aurora, Illinois.

9. Six-tenths inch minimum thickness of Cerawool Blanket (minimum density of four pounds per cubic foot) and 0.4 inches minimum thickness of air encased in an 11-gauge steel jacket. Manufacturer (Cerawool Blanket), Johns-Mansville, Denver, Colorado.

10. Fifty-two one hundredths inch minimum thickness of Kaowool Blanket B (minimum density of 4.8 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer (Kaowool Blanket B), Babcock and Wilcox Refractories Division.

11. One inch minimum thickness of "Thermafiber Tank Car Fireproofing" (minimum density of seven pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer, United States Gypsum Company, Chicago, Illinois.

12. Two inches minimum thickness of fiberglass encased in an 11-gauge steel jacket with 0.004 inches minimum dry film thickness of "Thermo-Lag 351–3 Primer" applied to the steel jacket and 0.125 inches minimum dry film thickness of "Thermo-Lag 330–3 Subliming Coating" applied over the primer and 0.005 inches minimum thickness of "Thermo-Lag 350–3 Topcoat" applied over the coating. Manufacturer, TSI-Inc., St. Louis, Missouri.

13. Two inches minimum thickness of polyurethane encased in an 11-gauge steel jacket with 0.004 inches minimum dry film thickness of "Thermo-Lag 351–3 Primer "applied to steel jacket and 0.125 inches minimum dry film thickness of "Thermo-Lag 330–3 Subliming Coating" applied over the primer and 0.005 inches minimum thickness of "Thermo-Lag 350–3 Topcoat" applied over the coating. Manufacturer, TSI–Inc., St. Louis, Missouri.

14. Two inches minimum thickness of fiberglass encased in an 11-gauge steel jacket with 0.004 inches minimum dry film thickness of "Thermo-Lag 351–3 Primer" applied to the steel jacket and 0.135 inches minimum dry film thickness of "Thermo-Lag 330–3 Subliming Coating" applied over the primer and 0.005 inches minimum thickness of "Thermo-Lag 350–3 Topcoat" applied over the coating. Manufacturer, TSI-Inc., St. Louis, Missouri.

15. Two inches minimum thickness of polyurethane encased in an 11-gauge steel jacket with 0.004 inches minimum dry film thickness of "Thermo-Lag 351–3 Primer" applied to the steel jacket and 0.135 inches minimum dry film thickness of "Thermo-Lag 330–30 Subliming Coating" applied over the primer and 0.005 inches minimum thickness of "Thermo-Lag 350–3 Topcoat" applied over the coating. Manufacturer, TSI–Inc., St. Louis, Missouri.

16. Two inches minimum thickness of fiberglass encased in an 11-gauge steel jacket with 0.004 inches minimum dry film thickness of "Thermo-Lag 351–3 Primer" applied to the steel jacket, and 0.188 inches minimum dry film thickness of "Thermo-Lag 330–3 Subliming Coating" applied over the primer, and 0.005 inches minimum dry film thickness of "Thermo-Lag 350–3 Topcoat" applied over the coating. Manufacturer, TSI-Inc., St. Louis, Missouri.

17. Two inches minimum thickness of polyurethane encased in an 11-gauge steel jacket with 0.004 inches minimum dry film thickness of "Thermo-Lag 351–3 Primer "applied to the steel jacket, and 0.188 inches minimum dry film thickness of "Thermo-Lag 330-3 Subliming Coating" applied over the primer, and 0.005 inches minimum dry film thickness of "Thermo-Lag 350–3 Topcoat" applied over the coating. Manufacturer, TSI-Inc., St. Louis, Missouri.

18. Two inches minimum thickness of polyurethane foam insulation encased in an 11-gauge steel jacket. The external jacket surface is blasted to the requirements of Steel Structures Painting Council Surface Preparation Specification Number six. A minimum dry film thickness of 0.002 inches of polyamide cured expoxy primer. (Military Standard MIL–)–52192B, Mobil 13–R–56, or equivalent) is applied to the clean surface. A minimum dry film thickness of 0.210 inches of Chertek 59 fireproofing is then applied to the cured primer surface. Manufacturer, AVCO, Inc., Lowell, Massachusetts.

19. Two inches minimum thickness of fiber glass insulation encased in an 11-guage steel jacket. The external jacket surface is blasted to the requirements of Steel Structures Painting Council Surface Preparation Specification Number six. A minimum dry film thickness of 0.002 inches of polyamide cured expoxy primer (Military Standard MIL–P–52192B, Mobil 13–R–56, or equivalent) is applied to the clean surface. A minimum dry film thickness of 0.180 inches of CHARTEK 59 fireproofing is then applied to the cured primer surface. Manufacturer, AVCO, Inc., Lowell, Massachusetts.

20. One inch minimum thickness of "Thermafiber Tank Car Fireproofing" (minimum density of seven pounds per cubic foot) with a foil scrim polyethylene facing; and 4 inches minimum thickness, compressed to 3 inches, of fiberglass; encased in an 11-gauge steel jacket. The Thermafiber is to be placed adjacent to the tank car tank surface and the fiberglass is to be placed adjacent to the jacket surface. Manufacturer, United States Gypsum Company, Chicago, Illinois.

21. Two inches minimum thickness of polyurethane foam insulation encased in an 11-gauge steel jacket. The external jacket surface is blasted to the requirements of Steel Structures Painting Council Surface Preparation Specification Number six. A minimum dry film thickness of 0.002 inches of polyamide cured epoxy primer (Military Standard MIL–P–52192B, Mobil 13–R–56, or equivalent) is applied to the clean surface. A minimum dry film thickness of 0.18 inches of CHARTER 59 fireproofing is then applied to the cured primer surface.

22. One-half inch minimum thickness of Fiberfrax tank car insulation (minimum density of 4.5 pounds per cubic foot and compressed to no less than one-quarter inch) encased in an 11-gauge steel jacket with froth-in-place rigid urethane foam. The total thickness of Fiberfrax insulation and the urethane foam to be no less than 2 inches. Manufacturer, Carborundum Company, Niagara Falls, New York.

23. One-inch minimum thickness of Fiberfrax tank car insulation (minimum density of 4.5 pounds per cubic foot and compressed to no less than 0.54 inches) encased in an 11-gauge steel jacket with froth-in-place rigid urethane foam. The total thickness of the Fiberfrax insulation and the urethane foam to be no less than 2 inches. Manufacturer, Carborundum Company, Niagara Falls, New York.

24. Fifty hundredths inch minimum thichness of Fiberfrax tank car insulation (minimum density of 4.3 pounds per cubic foot) and four inches minimum thickness of fiberglass (compressed to 3.5 inches), encased in an 11-gauge steel jacket. The Fiberfrax is to be placed adjacent to the tank car surface and the fiberglass is to be placed adjacent to the jacket. Manufacturer (Fiberfrax), The Carborundum Company, Niagara Falls, New York.

25. One and one-half inches minimum thickness of "Tank Car Insulation" (minimum density of six pounds per cubic foot) and three inches minimum thickness of fiberglass (compressed to two and one-half inches encased in an 11-gauge steel jacket. Manufacturer (Tank Car Insulation), Fibrex Inc., Aurora, Illinois.

26. One inch minimum thickness of "Thermafiber Tank Car Fireproofing" (minimum density of seven pounds per cubic foot) with a foil scrim polyethylene facing; and one inch minimum thickness of polyethylene facing; and one inch minimum thickness of polyurethane foam; encased in an 11-gauge steel jacket. The Thermafiber is to be placed adjacent to the jacket surface. Manufacturer, United States Gypsum Company, Chicago, Illinois.

27. Two inches minimum thickness of fiberglass encased in an 11-gauge steel jacket with 0.004 inches minimum dry film thickness of "Thermo-Lag 351–3 Primer" applied to the steel jacket and 0.180 inches minimum dry film thickness of "Thermo-Lag 330–30 Subliming Coating" applied over the primer and 0.005 inches minimum thickness of "Thermo-Lag 350–3 Topcoat" applied over the coating. Manufacturer, TSI–Inc., St. Louis, Missouri.

28. One inch minimum thickness of polyurethane encased in an 111-gauge steel jacket with 0.004 inches minimum dry film thickness of "Thermo-Lag 351–3 Primer" applied to the steel jacket and 0.180 inches minimum dry film thickness of "Thermo–Lag 330.30 subliming Coating" applied over the Primer and 0.005 inches minimum thickness of "Thermo-Lag 350–3 Topcoat" applied over the coating. Manufacturer, TSI–Inc., St. Louis, Missouri.

29. One-half inch minimum thickness Fiberfrax tank car insulation (minimum density of 4.5 pounds per cubic foot) encased in an 11-gauge steel jacket. Manufacturer (Fiberfrax), Carborundum Company, Niagara Falls, New York.

30. The tank car external surface is prepared by sandblasting to move all existing paint, primer, oil, grease and loose material. Three mils (dry) of primer (Military Standard MIL–P–52192B) are applied to the clean surface. Chicken wire mesh (1" hexagonal, 22 gauge) may next be attached to the primed surface if desired. One hundred eighty mils (dry) of Chartek 59 thermal coating is then applied. Three mils (dry) of a topcoat (AMERICOAT 383) is then applied. Topcoat manufacturer, Ameron, Brea, California. Manufacturer (Chartek 59), AVCO, Lowell, Massachusetts.

31. Two inches minimum thickness of polyurethane foam insulation encased in an 11-gauge steel jacket. The external jacket surface is blasted to the requirements of Steel Structures Painting Council Surface Preparation Specification Number six. A minimum dry film thickness of 0.002 inches of MIL–P–52192B, Mobil 13–R–56, or equivalent, is applied to the clean surface. Chicken wire mesh (1" hexagonal, 22-gauge) may next be attached to the primed surface if desired. A minimum dry film thickness of 0.180 inches of Chartex 59 fireproofing is then applied to the cured primer surface. Manufacturer, AVCO Inc., Lowell, Massachusetts.

32. One-inch minimum thickness of Kaowool Blanket B (minimum density of 4.5 pounds per cubic foot) and four inches minimum thickness of fiberglass (compressed to 3.0 inches), encased in an 11-gauge steel jacket. The Kaowool is to be placed adjacent to the tank car surface and the fiberglass is to be placed adjacent to the jacket. Manufacturer (Kaowool), Babcock and Wilcox, Augusta, Georgia; and

33. Fifty-two hundredths inch minimum thickness of Kaowool Blanket B (minimum density of 4.8 pounds per cubic foot) and four inches minmum thickness of fiberglass (compressed to 3.5 inches), encased in an 11-gauge steel jacket. The Kaowool is to be placed adjacent to the tank car surface and the fiberglass is to be placed adjacent to the jacket. Manufacturer (Kaowool) Babcock and Wilcox, Augusta, Georgia.

34. Two inches minimum thickness of fiberglass insuletion encased in an 11-gauge steel jacket. The external jacket surface is blasted to the requirements of steel structures painting council surface preparation specification number six. A minimum dry film thickness of 0.002 inches of polyamide cured epoxy primer. (Military Standard MIL–P–52192B, Mobil 13–R–56, or equivalent) is applied to the clean surface. Chicken wire mesh (1" hexagonal, 22 gauge) may next be attached to thickness of 0.180 inches of Chartex 59 fireproofing is then applied to the cured primer surface. Manufacturer, AVCO, Inc., Lowell, Massachusetts.

35. One-inch minimum thickness of Kaowool Blanket B (minimum density of 4.5 pounds per cubic foot) and four inches minimum thickness of fiberglass (compressed to 3.0 inches), encased in an 11-gauge steel jacket. The Kaowool is to be placed adjacent to the tank car surface and the fiberglass is to be placed adjacent to the jacket. Manufacturer (Kaowool), Babcock and Wilcox, Augusta, Georgia; and

36. 0.52 inch minimum thickness of Kaowool Blanket B (minimum density of 4.8 pounds per cubic foot) and four inches minimum thickness of fiberglass (compressed to 3.5 inches), encased in an 11-gauge steel jacket. The Kaowool is to be placed adjacent to the tank car surface and the fiberglass is to be placed adjacent to the jacket. Manufacturer (Kaowool) Babcock and Wilcox, Augusta, Georgia.

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A. to Part 1, paragraph (a)(4) of App. A to Part 106.

Issued in Washington, DC, on January 23, 1986.

Alan L Roberts,

Director, Office of Hazardous Materials Transportation.

[FR. Doc. 86–2118 Filed 1–30–86; 8:45am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 86–11]

Recordation of Trade Name—"Supreme Import Export Co., Inc.,"

AGENCY: Customs Service, Treasury.

ACTION: Notice of recordation.

SUMMARY: On March 14, 1985, a notice of application for the recordation uder section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Supreme Import Export Co., Inc." was published in the Federal Register (50 FR 10341). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in opposition to

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the recordation and received not later than May 31, 1985.

Supreme International Corporation commented in opposition to the recordation of the trade name citing concern that because "Supreme Import Export Co., Inc.," is confusingly similar to Supreme International Corporation it might be restrained from participating in import transactions uder their established name.

Supreme Import Export Co., Inc. has indicated that it has no objection to goods arriving in the United States for Supreme International Corporation. Therefore, goods bearing the name "Supreme International Corporation" shall not be seized or detained as confusingly similar to "Supreme Import Export Co., Inc."

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "Supreme Import Export Co., Inc." is recorded as the trade name used by Supreme Import Export Co., Inc., a corporation organized under the laws of the State of New York, located at 900 Broadway, New York, New York 10003. The trade name is used in connection with the following merchandise manufactured in Hong Kong, Korea, Japan, Taiwan and the Philippines; playing cards; cigarette lighters; cellophane tape; toothbrushes; padlocks; cassette tapes; pens; batteries; cameras and curling irons.

EFFECTIVE DATE: January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–5765).

Dated: January 24, 1986.

Edward T. Rosse,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 86–2139 Filed 1–30–86; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Grants Program; Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private Organizations", expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

Enhancement Program on the Study and Formulation of United States Foreign Policy: The Office of Private Sector Programs (E/P) plans to support a fourteen day international exchange program for temporary resident Chinese scholars and graduate students in the social sciences. This program, tentatively scheduled for May or June 1986, will include an introductory workshop, a delegation visit to one or two university centers, and a series of meetings and briefings in Washington, DC. Discussions will focus on the study of foreign policy and the relationship between domestic and international issues. Participants will also explore several case studies on U.S. foreign policy decision making, and examine the role and significance of private sector research institutions and foreign affairs organizations. Institutions choosing to compete for this program must demonstrate both logistical and administrative capability as well as programmatic competence.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA. Furthermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming; and with organizations that have potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information.

To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

This is a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

Dated: January 24, 1986.

Albert Ball,

Deputy Director, Office of Private Sector Programs.

[FR Doc. 86–2226 Filed 1–30–86; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

New Medical Center, Palm Beach County, FL; Availability of the Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Draft Environmental Impact Statement, Veterans Administration Medical Center, Palm Beach County, Florida," dated January 1986, has been prepared as required by the National Environmental Policy Act of 1969. The document is in two volumes: The body of the report and the appendices.

The Environmental Impact Statement evaluates the potential environmental impacts of development of a new Veterans Administration Medical Center at any of five alternative locations in northeastern Palm Beach County. The "No Action" alternative is also included in the evaluation.

The document is available for public examination in the Veterans Administration office in Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Director, Office of Environmental Affairs (068B), Room 419, Veterans Administration, 811 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2922. Questions or requests for single copies of the Environmental Impact Statement and/or the Appendices may be addressed to the above office.

Dated: January 27, 1986.

By direction of the Administrator.

Everett Alvarez, Jr.

Deputy Administrator.

[FR Doc. 86–2164 Filed 1–30–86; 8:45 am]

BILLING CODE 8320–01–M

Guidelines for Compliance With Equal Opportunity Laws by Proprietary Educational Institutions

AGENCY: Veterans Administration.

ACTION: Notice of Guidelines and Request for Comments.

SUMMARY: These guidelines are published to promote compliance with equal opportunity laws which prohibit discrimination on the grounds of race, color, national origin, sex, handicap, and age by proprietary educational institutions whose programs are approved for training veterans and other eligible beneficiaries under chapters 15, 30, 31, 32 34, 35 and 36 of title 38, United States Code. These guidelines also apply to certain educational programs and activities receiving Federal financial assistance from the Department of Education. Civil rights laws from which these guidelines are derived include: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975.

DATE: Comments must be received on or before March 3, 1986.

ADDRESS: Comments on these proposed guidelines should be submitted to: Veterans Assistance Service (273), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Melvin T. Jackson, (202) 389–2095.

SUPPLEMENTARY INFORMATION: By authority of Executive Order 12250 (November 2, 1980) and Federal Regulations codified in 28 CFR Part 41 and Part 42, Subpart F, the Attorney General provided guidelines and instructions for compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681 et seq.), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794). Similarly, the Secretary of HHS (Department of Health and Human Services) through governmentwide regulations codified in 45 CFR Part 90, established guidelines for compliance with the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.).

Governmentwide guidelines established by the Attorney General and the Secretary of the HHS direct Federal departments and agencies to develop regulations to implement the laws cited above and to publish guidelines for each type of program to which they extend Federal financial assistance. Agency guidelines are to provide detailed information on compliance requirements for Title VI, Title IX, Section 504, and the Age Discrimination Act.

The Veterans Administration issues these guidelines in accordance with governmentwide directives for the purpose of providing instructions to proprietary educational institutions which receive Federal financial assistance from the Veterans Administration or the Department of Education, and which offer courses not leading to a standard college degree. These guidelines describe the general requirements for compliance with applicable civil rights laws, procedures followed by the Veterans Administration to assure compliance, examples of prohibited practices, and requirements related to covered employment, data collection, and complaint processing procedures.

Dated: January 27, 1986.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Guidelines for Compliance With Equal Opportunity Laws by Proprietary Educational Institutions

I. Scope and Coverage
1. Purpose and Application.
2. Nature of Equal Opportunity Coverage.
3. Definitions.
II. Prohibition Against Discrimination
1. Discrimination Prohibited.
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III. Recipient Compliance Responsibilities
1. Data Collection and Reporting.
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IV. Compliance Procedures
1. Recipient Compliance Requirements.
2. Agency Compliance Requirements.
3. Complaint Processing Procedures.
4. Procedures for Effecting Compliance.

Authority: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.; E.O. 12250, 45 FR 72995, November 4, 1980; Department of Justice Coordination Regulations, 28 CFR Part 41 and Part 42, Subpart F; Department of Health and Human Services Governmentwide Age Discrimination Regulations, 45 CFR Part 90; Veterans Administration Regulations, 38 CFR Part 18.

I. Scope and Coverage

1. Purpose and Application

(a) The purpose of these guidelines is to provide detailed information on the compliance requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 which prohibit discrimination on the grounds of race, color, national origin (Title VI), sex (Title IX), handicap (Section 504), and age (Age Discrimination Act) in any program or activity receiving Federal financial assistance.

(b) These guidelines apply to proprietary educational institutions whose programs are approved for training veterans and other eligible beneficiaries under chapters 15, 30, 31, 32, 34, 35, and 36 of Title 38, United States Code. The Secretary of the ED (Department of Education) has delegated to the Administrator of Veterans Affairs the authority to perform responsibilities of the ED under Title VI with respect to: proprietary (i.e., other than public or nonprofit) educational institutions, except if operated by a hospital; and postsecondary, nonprofit educational institutions other than colleges and universities, except if operated by a college or university, a hospital, or a unit of State or local government (i.e., those operating such institutions as an elementary or secondary school, an area vocational school, or a school for the handicapped).

(c) These guidelines are provided to ensure that Federal employees, applicants for, recipients and beneficiaries of, and other persons affected by or interested in Federal financial assistance extended by the VA (Veterans Administration) and the ED in support of education and training programs in proprietary educational institutions are aware of rights and responsibilities under Title VI, Title IX, Section 504, and the Age Discrimination Act.

2. Nature of Equal Opportunity Coverage

(a) The Department of Veterans Benefits is responsible for ensuring equal opportunity compliance in proprietary, NCD (non-college degree), educational institutions. In keeping with the delegation agreement between the VA and ED, VA's responsibility to ensure equal opportunity compliance also extends to those proprietary, NCD institutions which receive Federal

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financial assistance from or through the ED.

(b) In 1968, the Attorney General ruled that educational institutions which trained veterans and other eligible beneficiaries under programs which make education benefit payments directly to veterans or eligible beneficiaries were themselves in receipt of Federal financial assistance as a result of the payments made to veterans and other eligible beneficiaries. This principle was upheld in *Bob Jones University v. Johnson*, 396 F. Supp. 597 (D.S.C. 1974), aff'd per curiam, 529 F. 2d 514 (4th Cir. 1975). Thus, Title VI, Section 504, Title IX and the Age Discrimination Act apply to educational institutions attended by veterans or eligible beneficiaries who receive educational benefit payments from the VA. The law protects aliens as well as United States citizens, and every applicant or enrollee, not just those who receive Federal benefit payments.

3. *Definitions.* (For the purposes of these guidelines):

(a) "Administrator" means the Administrator of Veterans Affairs, U.S. Veterans Administration.

(b) "Admission" means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, matriculation, or participation in or at an educational program or activity operated by a recipient.

(c) "Age" means how old a person is or the number of years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term (for example, "18 or over").

(e) "Agency" means the Veterans Administration.

(f) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(g) "Applicant" means one who submits an application, request, or plan required to be approved by an agency official or by a recipient as a condition for eligibility for Federal financial assistance.

(h) "Covered employment" means employment practices covered by Title VI, Title IX, Section 504, and the Age Discrimination Act. Such practices are those which refer to the normal employment activities of the recipient, those that exist in a program where a primary objective of the Federal financial assistance is to provide employment, or those which cause discrimination on the basis of race, color, national origin, sex, handicap, or age with respect to beneficiaries or potential beneficiaries of the assisted program.

(i) "Facility" refers to any educational institution which receives Federal financial assistance from the VA or ED.

(j) "Federal financial assistance" includes: (i) Grants of Federal funds, (ii) grants or donations of Federal property or interests in property, (iii) detail of Federal personnel, (iv) the sale of, lease of, and the permission to use (on other than a casual or transient basis) Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (v) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(k) "Handicapped person" means any person who: (i) Has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having an impairment.

(l) "Normal operation" means the operation of a program of activity without significant changes that would impair its ability to meet its obligations.

(m) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term includes, but it not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism, when current use of drugs and/or alcohol is not detrimental to or does not interfere with one's performance, does not constitute a direct threat to property or safety of others, or does not involve an illegal use of a controlled substance.

(n) "Program," except those specifically excluded in 38 CFR 18.2, includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals conducted under a law administered by the VA, including, but not limited to, the programs and activities listed in Appendix A to 38 CFR Part 18.

(o) "Proprietary educational institution" means a privately owned school.

(p) "Qualified handicapped person" means: (1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question and (2) with respect to other services, a handicapped person who meets the essential requirements for the receipt of such services.

(q) "Recipient" means any State, political subdivision of any State, instrumentality of any State or political subdivision, any public or private agency, institution, organization, any other entity, or any individual in the United States to whom Federal financial assistance is extended directly or through another recipient for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any program.

(r) "Responsible agency official," with respect to any program receiving Federal financial assistance, means the Administrator or other official of the VA or an official of another department or agency to the extent the Administrator has delegated authority.

(s) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose, legislative body.

II. Prohibition Against Discrimination

1. Discriminotion Prohibited

(a) General. No person in the United States, including a qualified handicapped person, shall, on the ground of race, color, national origin, handicap, sex or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) Specific Discriminatory Actions Prohibited. A recipient, under any program providing an aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, in the following or in other instances, on the ground of race, color, national origin, handicap, sex, or age:

(i) Deny a person, including a qualified handicapped person, the opportunity to participate in a program or benefit from the aid, benefit, or service which is equal to that afforded others;

(ii) Afford a person, including a qualified handicapped person, an opportunity to participate in a program or benefit from the aid, benefit or service which is not equal to that afforded others;

(iii) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(iv) Deny a person, including a qualified handicapped person, the opportunity to participate as a member of a planning or advisory board;

(v) In determining the site or location of a facility, make selections with the purpose or effect of excluding individuals, including qualified handicapped individuals, or denying them the benefits of or subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance;

(vi) Use criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, national origin, handicap, sex, or age or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, sex, or age or individuals having a particular handicap;

(vii) Treat an individual differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefits provided under the program or activity;

(viii) Apply different rules concerning the domicile or residence of a student or applicant;

(ix) Provide toilet, locker room, and shower facilities for students of one sex which are not comparable to similar facilities for students of the other sex;

(x) Provide any course or otherwise carry out any of its education program or activity separately on the basis of sex or require or refuse participation by any of its participants on that basis, except in physical education activities which involve bodily contact.

(xi) Discrimination against any person in counseling or guidance;

(xii) Discriminate in providing a medical, hosital, accident or life insurance benefit service, policy, or plan to any of its students; or

(xiii) Discriminate against any student or trainee or exclude any student or trainee from its education program or activity, including any class, training session, or extra-curricular activity, on the basis of the trainee's or student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

2. Exceptions to the Prohibitions Against Discriminotion

(a) General. Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 prohibit discrimination on the grounds of sex, handicap and age, respectively, in programs or activities receiving Federal financial assistance. Each of these laws, however, provides for certain exceptions to the prohibitions against discrimination.

(b) Specific exceptions to the prohibitions against discrimination. A recipient, under certain conditions, may take an action otherwise prohibited by Title IX, Section 504, and the Age Discrimination Act. Specific exceptions to the prohibitions against discrimination which are applicable to proprietary educational institutions include, but are not limited to:

(i) *Title IX.*—(A) Educational institutions controlled by religious organizations if the application of the law would conflict with the religious tenets of the organization;

(B) Educational institutions whose main purpose is the training of individuals for the U.S military services or the merchant marines;

(C) Membership practices of social fraternities and sororities and certain other voluntary youth organizations exempted by Pub. L. 93–568, 88 Stat. 1855;

(D) In admissions, inquiries as to the sex or marital status of an applicant, but only if the inquiry is made of all applicants and if the results of the inquiry are not used in connection with discrimination;

(E) Separate housing on the basis of sex, but only if housing for both sexes is proportionate in quantity, quality, and cost; and

(F) Separate toilet, locker room and shower facilities on the basis of sex, but only if the facilities are comparable in number, quality, and cost.

(ii) *Section 504.—(A) Exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons;*

(B) In preemployment inquiries, solicitation of information as to an applicant's ability to perform job-related functions;

(C) When taking remedial action to correct the effects of past discrimination, invitation to applicants for employment to indicate whether, and to what extent, they are handicapped. A recipient must state clearly that the information requested is intended for use solely in connection with its remedial action obligations or voluntary affirmative action efforts and will be kept confidential;

(iii) *Age Discrimination Act.*—(A) program or activity established under authority of law (Federal, State or local) which provides benefits to persons based on age or establishes criteria for participation in age-related terms;

(B) An action otherwise prohibited if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity; or

(C) An action otherwise prohibited which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages and only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

3. Covered Employment

(a) Discrimination in employment is generally prohibited by Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The Age Discrimination Act applies to employment only when the primary purpose of the program is to provide employment (to program beneficiaries) but does not apply to other employment practices of the employer, employment agency, labor organization or labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act of 1982. (29 U.S.C. 1501; 96 Stat. 1322).

(b) Employment practices covered include, but are not limited to: recruitment, recruitment advertising, hiring, layoff or termination, upgrading

or promotion, transfer or demotion, training, participation in upward mobility programs, rates of pay or other forms of compensation, use of facilities, job assignments, job classifications, organizational structures, position descriptions, lines of progression, leaves of absence, fringe benefits, or employer sponsored social or recreational activities.

(c) With respect to covered employment, Title VI, Title IX, Section 504, and the Age Discrimination Act vary in their application and in the requirements each imposes to ensure compliance by recipients of Federal financial assistance. The application and extent of coverage of Title VI, Title IX, Section 504, and the Age Discrimination Act are as follows:

(i) *Title VI and the Age Discrimination Act.*—(A) Title VI and the Age Discrimination Act apply to the recipient's employment practices when the primary objective of the Federal financial assistance granted to the recipient is to provide employment.

(B) When employment is not a primary objective, Title VI and the Age Discrimination Act apply to employment practices which tend to discriminate on the basis of race, color, national origin, or age against beneficiaries of the program or activity receiving Federal financial assistance.

(ii) *Title IX.*—Title IX coverage extends to a recipient's employment practices whether or not the primary purpose of the Federal financial assistance granted to the recipient is to provide employment. The Supreme Court held, in *North Haven Board of Education, et al., v. Terrel H. Bell, Secretary, Department of Education,* 456 U.S. 512, 102 S. Ct. 1912, 50 U.S.L.W. 4501, May 17, 1982, that, while Title IX (Sec. 901(a)) does not expressly include employees within its scope or expressly exclude them, its broad directive that "no person" may be discriminated against on the basis of gender, on its face, includes employees as well as students.

(iii) *Section 504.*—(A) Section 504 applies to a recipient's employment partices whether or not the primary purpose of the Federal financial assistance granted to the recipient is to provide employment.

(B) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee, unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Reasonable accommodation may include: (1) making facilities used by employees readily accessible to an useable by handicapped persons: and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or intepreters, and other similar actions.

(C) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination in employment. The relationships referred to include relationships with employment and referral agencies, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

III. Recipient Compliance Responsibilities

1. Data Collection and Reporting

(a) The VA may request data which reflect the recipient's compliance with Title VI, Title IX, Section 504, and the Age Discrimination Act. Proprietary educational institutions are expected to compile and maintain a confidential record on the race, color, national origin, sex, and, in certain circumstances, handicap and age of their employees and students.

(b) Data pertaining to handicap status will not be obtained from applicants for employment or services unless the educational institution is taking remedial action to correct the effects of past discrimination or is taking voluntary affirmative action to overcome the effects of conditions that resulted in limited participation by the handicapped in the Federally assisted program. Data pertaining to age will not be obtained from applicants for employment or services unless the educational institution operates a program which permits the use of age as a factor necessary to the normal operation of a program or activity or the achievement of any statutory objective.

(c) Proprietary educational institutions will provide the VA with all information concerning complaints of discrimination on the grounds of race, color, national origin, sex, handicap, and age that have been filed against them and any subrecipients under Title VI, Title IX, Section 504, and the Age Discrimination Act.

(d) Proprietary educational institutions will advise applicants, employees, and beneficiaries of the requirement for the recipient to collect and report data required in (a) and (b) above and, when appropriate, will ask them to provide the necessary information. If applicants, employees, or beneficiaries refuse to furnish the information, the recipient will report information to the limits afforded by observation.

(e) The racial, national origin, handicap, sex, and age data gathered by proprietary educational institutions should reflect the following categories:

(i) Black, not of Hispanic origin (A person having origins in any of the black racial groups of Africa.);

(ii) Hispanic (A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.);

(iii) Asian or Pacific Islander (A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. These areas include, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.);

(iv) American Indian or Alaskan Native (A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.);

(v) White, not of Hispanic origin (A person having origins in any of the original peoples of Europe, North Africa or the Middle East.);

(vi) Type of handicap (if appropriate);

(vii) Sex; and

(viii) Age (if appropriate).

(f) The records of racial, national origin, sex, handicap, and age data shall be kept separate from other personnel records and recipients should provide for confidential handling of these documents by an official responsible for equal opportunity matters. The information will not be made a basis for employment, for the provision of services, or for any other purpose that could result in a discriminatory practice, except when a program or activity established under authority of any law provides benefits on the basis of handicap or age or in age-related terms.

2. Dissemination of Information

(a) Each proprietary eduational institution shall inform employees, applicants, and beneficiaries of benefits or services that the benefits and services of the program are provided without discrimination on the basis of race, color, national origin, sex, handicap, or age. In order to provide for the dissemination of this information, the VA will issue a poster to an appropriate official of the institution. The poster will also inform the public of procedures to follow if they believe they have knowledge of discrimination in the provision of services or benefits by the recipient. Each recipient will display the poster in a conspicuous place at the location where benefits or services are provided to applicants, enrollees, and employees.

(b) Each proprietary educational institution shall make these guidelines available to employees, applicants, and beneficiaries of benefits or services. Additional copies may be obtained from the local VA field station.

3. Self-Evaluation

(a) Recipients of Federal financial assistance from the VA must conduct a self-evaluation of their compliance with section 504 of the Rehabilitation Act of 1973, in accordance with 38 CFR 18.406(e).

(b) In conducting a self-evaluation, proprietary educational institutions shall:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, their current policies and practices and the effects of the policies and practices that do not meet the requirements of VA regulations (38 CFR Part 18, Subpart D); and

(ii) After consultation with interested persons, including handicapped persons or organizations representing handicapped persons, modify the policies and practices that do not meet the requirements of VA regulations, and take appropriate remedial steps to eliminate the effects of discrimination that resulted from adherence to those policies and practices.

(c) Recipients employing 15 or more persons shall, for at least three years following completion of the evaluation, maintain on file, make available for public inspection, and provide the VA upon request the following information:

(i) A list of interested persons consulted;

(ii) A description of the area examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

(d) VA compliance personnel will make available to recipients a form which may be used to complete the self-evaluation. Where a recipient employing 15 or more persons uses the VA form to complete its self-evaluation, the recipient will retain the form for a period of three years following completion of the evaluation and submit a copy to VA compliance personnel, upon request, at anytime during that period.

(e) As part of the compliance review or complaint investigation, a recipient employing the equivalent of 15 or more employees, may be required to complete a written self-evaluation of any age distinction established in its programs and activities receiving Federal financial assistance from the VA. When a recipient's self-evaluation indicates a violation of the Age Discrimination Act or VA regulations which implement the Act, the recipient shall take corrective action.

IV. Compliance Procedures

1. Recipient Compliance Requirements

(a) Proprietary educational institutions, as a condition of approval for Federal financial assistance, are required to sign a written statement of assurance that their educational programs will be conducted and their facilities operated in compliance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The statement of assurance is a one-time submission, after which no additional statement is required.

(b) An initial preaward compliance review, consisting of verification of a signed Statement of Assurance of Compliance with Equal Opportunity Laws (VA Form 27–8206), a review of a Compliance Report of Proprietary Institutions (VA Form 27–4274), and a review of any outstanding complaints of discrimination, will be made by appropriate VA compliance personnel. A proprietary educational institution which does not meet the preaward civil rights compliance requirements may be approved for Federal financial assistance if the recipient agrees, in writing, to take the necessary steps within a stated period of time to comply with the requirements.

2. Agency Compliance Requirements

(a) Designated VA compliance personnel will conduct periodic onsite postaward compliance reviews of proprietary educational institutions to assure their compliance with Title VI, Title IX, Section 504, and the Age Discrimination Act. Onsite reviews will consist of an evaluation of the recipient's facilities, a review of pertinent records, and interviews with administrative staff and instructors as well as participants in the facility's program. Each recipient shall permit access by VA compliance personnel during normal business hours to the sources of information which are necessary to ascertain the recipient's compliance with equal opportunity laws.

(b) The VA will provide written notification regarding the results of onsite equal opportunity compliance reviews to each recipient. If evidence of discrimination is found during the onsite review, the recipient will be asked to comply voluntarily. If voluntary compliance with equal opportunity laws is not obtained, a notice of the recipient's failure to comply will be referred to the VA General Counsel for further action under 38 CFR 18.8 through 18.11.

3. Complaint Processing Procedures

(a) Employees and applicants for employment (except under the Age Discrimination Act), beneficiaries, or any other persons who believe a proprietary educational institution has discriminated or is discriminating against any individual or class of individuals in its employment practices or in the delivery of services or benefits on the basis of race, color, national origin, sex, handicap, or age, may file a complaint of discrimination under Title VI (race, color, national origin), Title IX (sex), Section 504 (handicap), or the Age Discrimination Act (age). A complaint should be filed within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, the agency may extend this time limit.

(b) The Age Discriminating Act covers the filing of complaints which allege discrimination on the basis of age in the delivery of services or benefits. The Act does not apply to employment practices of any employer, except when a primary purpose of the program is to provide employment. Other types of employment and employment practices are covered by the Age Discrimination in Employment Act (ADEA), December 25, 1967 (Pub. L. 90–202), which is administered by the Equal Employment Opportunity Commission. The ADEA protects persons between the ages of 40 and 70 from discriminations in employment based on age in non-Federal employment.

(c) Complaints alleging discrimination on the ground of age in the delivery of services or in employment, when the primary purpose of the program is to provide employment, will be screened by the Veterans Assistance Service, Department of Veterans Benefits, and then forwarded to the Federal Mediation and Conciliation Service for mediation. Both the complainant and the facility will participate in the mediation process though they need not meet with the mediator at the same time.

(d) When there has been no settlement reached by the mediator or when there is a violation of a mediation

agreement, the VA will attempt to reach an informal settlement between the complainant and the recipient. The VA will institute formal investigation of the complaint if no formal settlement is reached.

(e) Complaints alleging discrimination against proprietary educational institutions must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible VA official or a designee. Upon receipt of a complaint under Title VI, Title IX, and Section 504, the responsible agency official or designee shall:

(i) Promptly determine whether the VA has jurisdiction over matters pertaining to the alleged discriminatory practices;

(ii) If the VA does not have jurisdiction, refer the complaint to the Federal agency having jurisdiction and advise the complainant of the referral within 15 days after receipt of the complaint by the official responsible for the referral;

(iii) If the VA had jurisdiction, notify the complainant and the facility alleged to be discriminating of receipt of the complaint within 15 days; and

(iv) Initiate an investigation.

(f) Complaints alleging employment discrimination on the ground of race, color, national origin, or sex only, under Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972, and which are also subject to processing under Title VII of the Civil Rights Act of 1964 or the Equal Pay Act of 1973, shall be forwarded, within 10 days of receipt, to the Veterans Assistance Service, Equal Opportunity Staff (273), for transferal to the Equal Employment Opportunity Commission.

4. Procedures for Effecting Compliance

(a) The VA will notify the principal facility official whenever there is a finding of noncompliance with Title VI, Title IX, Section 504 of the Rehabilitation Act, or the Age Discrimination Act. If there is a finding of noncompliance, the VA compliance specialist will ask that the facility officials comply voluntarily, to cease the discriminatory practice, or to provide required data to assure compliance. The compliance specialist, to the fullest extent practical in obtaining compliance, shall provide assistance and guidance to the recipient.

(b) If there is a failure to comply with equal opportunity laws and compliance cannot be obtained voluntarily, enforcement of the laws may be effected by the suspension, termination or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law.

(c) Once a finding of noncompliance has been made, no order to suspend, terminate, refuse to grant, or to continue Federal financial assistance shall become effective until:

(i) The responsible agency official has advised the applicant or recipient of the failure to comply and had determined that compliance cannot be obtained by voluntary means;

(ii) The applicant or recipient has been given an opportunity for a hearing;

(iii) The action has been approved by the Administrator of Veterans Affairs pursuant to VA regulation 38 CFR 18.9;

(iv) The Administrator has filed with the committees of the House of Representatives and the Senate having legislative jurisdiction over the program involved a full written report of the circumstances and the grounds for such action; and

(v) Thirty days have expired following submission of the report by the Administrator to the appropriate committees of the Hose and Senate.

[FR Doc. 86-2158 Filed 1-30-86; 8:45 am]

BILLING CODE 8320-01-M

Guidelines for Compliance With Equal Opportunity Laws by State Employment Service and Recognized Service Organizations

AGENCY: Veterans Administration.

ACTION: Notice of Guidelines and Request for Comments.

SUMMARY: These guidelines are published to promote equal opportunity compliance as it applies to State employment services and recognized service organizations whose representatives are afforded the use of Federally-owned property, administered by the Veterans Administration without charge, under sections 244(1) and 3402(a)(2) of title 38, United States Code. These guidelines derive from Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794), the Age of Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107), Executive Order 12250 (45 FR 72995, November 4, 1980), coordinating regulations of the DOJ (Department of Justice) (28 CFR Parts 41 and 42, Subpart F), the HHS (Department of Health and Human Services (45 CFR Part 90), and inplementing regulations of the Veterans Administration (38 CFR Part 18).

DATE: Comments must be received on or before March 3, 1986.

ADDRESS: Comments on these proposed guidelines should be forwarded to: Veterans Assistance Service (273), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Melvin T. Jackson, (202) 389–2095.

SUPPLEMENTARY INFORMATION: By authority granted under governmentwide guidelines, issued by the DOJ in 28 CFR Parts 41 and 42, Subpart F and the HHS in 45 CFR Part 90, the Attorney General and the Secretary of the HHS, respectively, directed Federal departments and agencies which extend Federal financial assistance to issue regulations and develop guidelines for the implementation of equal opportunity laws concerning nondiscrimination in Federally assisted programs. These guidelines are developed in accordance with the governmentwide guidelines cited above and provide detailed information on the compliance requirements of the following laws as they apply to State employment services and recognized service organizations: Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, as amended, and the Age Discrimination Act of 1975 as amended. These guidelines are issued for use by Federal employees; applicants and recipients of Federal financial assistance; officials and employees of State employment services and recognized service organizations; beneficiaries of Federal financial assistance; and other persons affected by or interested in the programs administered by the Veterans Administration.

Dated: January 27, 1986.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

1. Purpose and Application

(a) Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 provide that no person in the United States shall, on the ground of race, color, national origin, handicap or age be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Each Federal department and agency is responsible for ensuring compliance with laws prohibiting discrimination in programs or activities which it assists. The Secretary of the HHS (Department of Health and Human Services), as Federal coordinator for the Age Discrimination Act under 45 CFR Part 90 and the Attorney General, as Federal coordinator for Title VI and section 1504 under Executive Order 12250, issued governmentwide guidelines which directed each Federal agency to issue regulations and program guidelines.

(b) The VA (Veterans Administration) issued implementing regulations for Title VI, section 504, and the Age Discrimination Act in Part 18, Title 38 of the Code of Federal Regulations. In a Memorandum of Understanding between the Department of Justice and the VA, the VA agreed to notify recognized service organizations of the nondiscriminatory requirements attached to their use of Federal facilities, to supply equal opportunity posters and to require their display by the service organizations. Appendix A to Subparts A, D, and E of 38 CFR Part 18 lists space and office facilities for representatives of State employment services as covered by Title VI, section 504, and the Age Discrimination Act. The purpose of these guidelines is to ensure that representatives of State employment services and recognized service organizations, Federal employees, and other persons affected by or interested in these services are aware of their rights and responsibilities under Title VI, section 504, and the Age Discrimination Act.

(c) The VA is responsible for ensuring compliance under Title VI, Section 504, and the Age Discrimination Act in all programs and activities for which it provides Federal financial assistance. Representatives of State employment services are afforded the use of Federally owned property in their use of VA office space and equipment, without charge, under the authority of section 244(l) of title 38, United States Code and representatives of recognized service organizations are afforded the use of such property under section 3402(a)(2) of title 38. These agencies are, accordingly, recipients of Federal financial assistance within the meaning of Title VI, Section 504, and the Age Discrimination Act.

2. Definitions

As used in these guidelines, the term:

(a) "Administrator" means the Administrator of Veterans Affairs, Veterans Administration.

(b) "Age" means how old a person is or the number of years from the date of a person's birth.

(c) "Age Distinction" means any action using age or an age-related term (for example, "18 or over").

(d) "Agency" means the Veterans Administration.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children,)"

(f) "Applicant" means one who submits an application, request, or plan required to be approved by an agency official or by a "adult," "older persons," but not "student").

(f) "Applicant" means one who submits an application, request or plan required to be approved by an agency official or by a recipient as a condition of eligibility for Federal financial assistance.

(g) "Facility" includes all or any portion of structures, equipment, or other real or personal property or interest therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(h) "Federal financial assistance" includes: (1) Grants of Federal funds, (ii) grant or donation of Federal property and interests in property, (iii) detail of Federal personnel, (iv) the sale, lease of, and the permission to use (on other than a casual or transient basis) Federal property or any interest in such property without consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such aale or lease to the recipient, and (v) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(i) "Handicapped Person" means any person who: (i) Has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment.

(j) "Normal Operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(k) "Program," except those specifically excluded in 38 CFR 18.2, includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals conducted under a law administered by the Veterans Administration, including, but not limited to, the programs and activities listed in Appendix A to Subparts A, D, and E of 38 CFR Part 18. The services, financial aid, or other benefits to individuals provided under a law administered by the Veterans Administration, including, but not limited to, the programs and activities listed in Appendix A to 38 CFR 18. The services, financial aid or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or any non-Federal resources.

(l) "Qualified Handicapped Person" means: (i) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essentail functions of the job in question and, (ii) with respect to other services, a handicapped person who meets the essential requirements for the receipt of such services.

(m) "Recipient" means any State, political subdivision of any State, instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity or any individual in the United States to whom Federal financial assistance is extended directly or through another recipient for any program, including any successor, assignee, or transferee thereof, but the term does not include any ultimate beneficiary under any program.

(n) "Responsible Agency Official," with respect to any program receiving Federal financial assistance, means the Administrator or other official of the Veterans Administration or an official of another department or agency to the extent the Administrator has delegated authority to such official.

(o) "Statutory Objective" means any purpose of a program or activity expressly stated in any Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body.

3. Discrimination Prohibited

(a) General. No person in the United States, including a qualified handicappted person, shall, on the ground of race, color, national origin, handicap, or age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) Specific Discriminatory Actions Prohibited. A recipient under any program providing an aid, benefit, or service may not directly or through contractual, licensing or other arrangements, in the following or in

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other instances, on the ground of race, color, national origin, handicap, or age:

(i) Deny a person, including a qualified handicapped person, the opportunity to participate in a program or benefit from the aid, benefit or service which is equal to that afforded others;

(ii) Afford a person, including a qualified handicapped person, an opportunity to participate in a program or benefit from the aid, benefit or service which is not equal to that afforded others;

(iii) Provide a person, including a qualified handicapped person, with an aid, benefit, or service which is different, not as effective or is provided in a different manner from that provided to others under the program;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a person, including a qualified handicapped person, the opportunity to participate as a member of a planning or advisory board;

(vi) In determining the site or location of a facility, make selections with the purpose or effect of excluding individuals, including qualified handicapped individuals, or deny them the benefits of or subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance;

(vii) Utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, national origin, handicap, or age or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, age, or individuals having a particular handicap; or

(viii) Treat an individual differently from others in determining whether he/she satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program or activity.

4. Property

Where Federal assistance is in the form of real or personal property to be used by a State employment service or a recognized service organization, the obligation not to discriminate will apply to the recipient and to any transferee as long as the property is used for the purpose for which the assistance was extended, for similar benefits, or for as long as the recipient retains possession of the property, whichever is longer.

5. Employment

Representatives of State employment services and recognized service organizations shall not refer or deny referral of veterans or their beneficiaries to employers on the basis of race, color, national origin, handicap, or age and shall not refer veterans or their beneficiaries to employers who are known to discriminate on the basis of race, color, national origin, handicap, or age.

6. Communications

State employment services and recognized service organizations shall take appropriate action to ensure that effective communications are provided to applicants, employees and beneficiaries of a program or activity receiving Federal financial assistance, particularly to those persons with impaired vision and hearing and limited English language skills.

7. Data Collection and Reporting

(a) Periodically, the VA will request data which reflect the recipient's Title VI, section 504, and Age Discrimination Act compliance status.

(b) State employment services and recognized service organizations will obtain information and maintain a confidential record on the race, color, national origin, handicap, or age of each:

(i) Representative employed by the recipient;

(ii) Applicant for employment as a representative;*

(iii) Person recently hired as a representative;

(iv) Applicant for services;* and

(v) Beneficiary of services.

(*Data pertaining to handicap status will not be obtained from applicants for employment or services unless the organization is taking remedial action to correct the effects of past discrimination or is taking voluntary action to overcome the effects of conditions that resulted in limited participation by the handicapped in its Federally assisted programs. Data pertaining to age will not be obtained from applicants for employment or services unless the recipient operates a program which permits the use of age as a factor necessary to the normal operation or achievement of any statutory objective.)

(c) State employment services and recognized service organizations will provide the agency with information concerning complaints of discrimination on the basis of race, color, national origin, handicap, or age that have been filed against them under sections 244(l) and 3402(a)(2) of title 38, United States Code.

(d) State employment services and recognized service organizations will advise applicants, employees, and beneficiaries of the need of the recipient to collect and report these data and will ask them to provide the information in writing or verbally. If applicants, employees, or beneficiaries refuse to provide the information, State employment services and recognized service organizations will report information to the limits afforded by observation.

(e) The racial, national origin, handicap and age data gathered by State employment services and recognized service organizations should reflect the following categories:

(i) Black, not a Hispanic origin (A person having origins in any of the black, racial groups of Africa);

(ii) Hispanic (A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture origin, regardless of race);

(iii) Asian or Pacific Islander (A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. These areas include, for example, China, India, Japan, Korea, the Philippine Islands and Samoa);

(iv) American Indian or Alaskan Native (A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition);

(v) White, not of Hispanic origin (A person having origins in any of the original peoples of Europe, North Africa or the Middle East);

(vi) Type of handicap (if appropriate); and

(vii) Age (if appropriate)

(viii) The records of racial, national origin, handicap, and age identification should be kept separate from other personnel records and recipients should provide for confidential handling of these documents by an official responsible for equal opportunity matters. The information will not be made a basis for employment, for the provision of services, or for any other purpose that could result in a discriminatory practice, except when a program or activity established under authority of any law provides benefits on the basis of handicap or age or in age-related terms.

8. Dissemination of Information

(a) Each State employment service and recognized service organization shall inform applicants for services or benefits and beneficiaries that the benefits or services are provided without discrimination on the basis of race, color, national origin, handicap, or age. In order to provide for the dissemination of this information, the VA will issue a poster to the senior representative of each State employment service and recognized service organization at each VA-funded facility. The poster will inform readers that services or benefits are provided on an equal opportunity basis and will provide advice for visitors, applicants and beneficiaries concerning complaint procedures if they believe they have knowledge of discrimination in the provision of services or benefits by the recipient. Each recipient will display the poster in a conspicious place at the location where benefits or services are provided to veterans and other beneficiaries.

(b) Each State employment service and recognized service organization shall provide a copy of these guidelines to applicants and beneficiaries of benefits or services upon request. Additional copies may be obtained from the local VA regional office or medical and regional office center.

9. Self-Evaluation

(a) Recipients of Federal financial assistance from the VA must conduct a self-evaluation of their compliance with section 504 of the Rehabilitation Act of 1973, in accordance with 38 CFR 18.406(e).

(b) In conducting a self-evaluation, State employment services and recognized service organizations shall:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, their current policies and practices and the effects of the policies and practices that do not meet the requirements of VA regulations (38 CFR Part 18, Subpart D); and

(ii) After consultation with interested persons, including handicapped persons or organizations representing handicapped persons, modify the policies and practices that do not meet the requirements of VA regulations, and take appropriate remedial steps to eliminate the effects of discrimination that resulted from adherence to those policies and procedures.

(c) Recipients employing 15 or more persons shall, for at least three years following completion of the evaluation, maintain on file, make available for public inspection, and provide the VA upon request the following information:

(i) A list of interested persons consulted;

(ii) A descripiton of the areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

(d) VA compliance personnel will make available to recipients a form which may be used to complete the self-evaluation. Where a recipient employing 15 or more persons uses the VA form to complete its self-evaluation, the recipient will retain the form for a period of three years following completion of the evaluation and submit a copy to VA compliance personnel, upon request, at any time during that period.

(e) *Structural Modifications:* It is recognized that since the Federal financial assistance granted to State employment services and recognized service organizations is the use of Federal space, these recipients should not be held responsible for physical alterations to the space which may be necessary to make their programs and activities accessible to the physically handicapped. The Federal agency extending use of the space to these recipients will be responsible for meeting this requirement.

(f) As part of a compliance review or complaint investigation, a recipient, employing the equivalent of 15 or more employees, may be required to complete a written self-evaluation of any age distinction established in its programs or activities receiving Federal financial assistance from the VA. When a recipient's self-evaluation indicates a violation of the Age Discrimination Act or VA regulations which implement the Act, the recipient shall take corrective action.

10. Compliance Procedures

(a) Every application to the VA for use of space or office facilities by a State employment service or a recognized service organization, or for the extension of such use, shall, as a condition of its approval or the extension of such use, be accompanied by a written statement of assurance that the program will be conducted or the facility operated in compliance with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The statement of assurance is a one-time submission, after which no additional statement is required.

(b) An initial preaward compliance review and subsequent periodic onsite postaward reviews of the manner in which benefits and services are provided by State employment services and recognized service organizations located at VA field stations will be conducted by designated VA compliance representatives. Each recipient shall permit access by VA representatives during normal business hours to its sources of information and its facilities as may be pertinent to determine compliance with Title VI, section 504, and the Age Discrimination Act.

(c) Each State employment service and recognized service organization shall notify the VA of any complaint or lawsuit filed against it which alleges discrimination on the ground of race, color, national origin, handicap, or age. Such complaints, when filed with the VA, will be investigated by designated VA representatives.

(d) The VA will provide written notification regarding the results of onsite equal opportunity compliance reviews or investigations of complaints to the appropriate State employment service or recognized service organization representative. If there is evidence of discrimination, the recipient will be asked to comply voluntarily. Reponsibility for obtaining voluntary compliance is delegated by VA regulations to the Chief Benefits Director (38 CFR 18a.2) and the Chief Medical Director (38 CFR 18a.3).

(e) If the Chief Benefits Director or Chief Medical Director is unable to obtain voluntary compliance, notice of the failure to comply will be referred to the General Counsel for further action under 38 CFR 16.6, 18.8 through 18.11, and 18.461. Administrative action taken to enforce compliance shall include an opportunity for a hearing.

11. Complaint Processing Procedures

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with the VA if he/she believes that a State employment service or recognized service organization has violated Title VI, section 504, the Age Discrimination Act, or 38 CFR Part 18.

(b) A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by a responsible agency official or a designee.

(c) Complaints of discrimination filed against State employment services and recognized service organizations on the ground of race, color, national origin (Title VI) or handicap (section 504), will

be investigated by personnel from the VA Central Office, Department of Veterans Benefits (DVB), Veterans Assistance Service (VAS). The investigation will include a review of the pertinent practices and policies of the recipient, the circumstances under which the alleged noncompliance occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with Title VI or section 504.

(d) Complaints of discrimination on the ground of age (Age Discrimination Act) will be screened by the VAS/DVB and then forwarded to the Federal Mediation and Conciliation Service for mediation. Both the complainant and the recipient shall participate in the mediation process, though they need not meet with the mediator at the same time.

(e) When there has been no settlement reached by the mediator or when there is a violation of a mediation agreement, the VA will attempt to reach an informal settlement between the complainant and the recipient. The VA will institute formal investigation of the complaint if no formal settlement is reached.

12. Administrative Hearings

If a recipient fails to comply with the requirements of Title VI, section 504, the Age Discrimination Act, or Federal regulations implementing these laws (38 CFR Part 18), and the noncompliance cannot be corrected by informal means, compliance may be effected by the suspension or termination of or refusal to grant or continue Federal financial assistance. Procedures applicable to implementation of administrative hearings, when noncompliance cannot be corrected, may be found in 38 CFR 18.9–18.11 and 38 CFR Part 18b.

[FR Doc. 86–2159 Filed 1–30–86; 8:45 am]

BILLING CODE 8320–01–M

Schedule of Productivity Improvement (A–76) Reviews for the Department of Memorial Affairs and the Offices of Administration, Procurement and Supply, Data Management and Telecommunications, and Personnel and Labor Relations

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: In accordance with OMB Circular No. A–76 the Veterans Administration, Department of Memorial Affairs and the Offices of Administration, Procurement and Supply, Data Management and Telecommunications, and Personnel and Labor Relations will be conducting productivity reviews and A–76 cost comparisons at various field stations and Central Office to determine the most efficient organization (MEO) and the feasibility of contracting out specific commercial activities to private contractors.

Two schedules of commercial activities are shown: (1) A schedule of productivity (MEO) reviews which will not the be cost compared with private industry; and (2) a schedule of A–76 reviews which will undergo cost comparison with private industry. Activities are listed first by Department or Staff Office, second by commercial activity and third by field facility. Specific invitations for bids or requests for proposals will be announced in the Commerce Business Daily (CBD) to ascertain bidder interest in contracting with the Government to perform the commercial activities scheduled for an A–76 cost comparison. No later than the deadline provided in the CBD advertisement, two or more responsible business firms must indicate their interest in order for the review to proceed to a full cost comparison. If two or more potential bidders express interest, competitive bids will be solicited. These bids will be based upon VA's specifications called a performance work statement (PWS). Also, government contracting procedures will be followed. Concurrently, using the same PWS, the VA will prepare an in-house cost estimate. Formal bids received from interested firms will be cost compared with the VA bid in accordance with OMB's Cost Comparison Handbook, supplement to OMB Circular A–76 and 38 U.S.C. 5010.

VA employees adversely affected or separated as a result of the conversion to contract must be offered the right of first refusal for employment openings under the contract for which they are qualified.

Should it become necessary to substantially change this schedule, appropriate notice will be posted herein.

FOR FURTHER INFORMATION CONTACT: Questions relating to the schedule of reviews for the Department of Memorial Affairs may be directed to Charles W. Eyman at (202) 275–0557; Office of Administration to Gary J. Rivelle at (202) 389–2673; Office of Data Management and Telecommunications to Larry W. Flagg at (202) 389–5308; and Office of Procurement and Supply to Robert P. Craig at (312) 681–6844.

Requests for single copies of the schedule should be made in this writing to: Director, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Questions relating to local matters in about "contracting out" should be referred to the Director of the VA facility concerned.

Dated: January 27, 1986.

By direction of the Administration.

Everett Alvarez, Jr.,

Deputy Administrator.

SCHEDULE OF PRODUCTIVITY REVIEWS, DEPARTMENT OF MEMORIAL AFFAIRS; CEMETERY OPERATIONS:

[Not to be cost compared with private industry]

Field facility	Start	Completion
Fiscal Year 1986		
Alexandria (LA)	Nov. 20, 1985	Jan. 13, 1986.
Barrancas (FL)	Dec. 2, 1985	Feb. 13, 1986.
Baton Rouge (LA)	Nov. 18, 1985	Apr. 21, 1986.
Bay Pines (FL)	Jan. 6, 1986	Feb. 10, 1986.
Beaufort (SC)	Dec. 9, 1985	Feb. 3, 1986.
Beverly (NJ)	Dec. 2, 1985	Dec. 6, 1985.
Biloxi (MS)	Jan. 20, 1986	Feb. 14, 1986.
Camp Butler (IL)	May 1, 1986	May 2, 1986.
Camp Nelson (KY)	Feb. 3, 1986	Feb. 28, 1986.
Chattanooga (TN)	Dec. 19, 1985	Feb. 10, 1986.
Corinth (MS)	Feb. 3, 1986	Feb. 28, 1986.
Dayton (OH)	Feb. 3, 1986	Feb. 5, 1986.
Fayetteville (AR)	May 13, 1986	June 12, 1986.
Florence (SC)	June 2, 1986	July 1, 1986.
Fort Gibson (OK)	July 1, 1986	July 31, 1986.
Fort Sam Houston (TX)	Mar. 17, 1986	Apr. 18, 1986.
Fort Smith (AR)	Aug. 4, 1986	Aug. 29, 1986.
Golden Gate (CA)	Sept. 1, 1986	Sept. 5, 1986.
Houston (TX)	Apr. 15, 1986	May 15, 1986.
Knoxville (TN)	Sept. 1, 1986	Sept. 30, 1986.
Little Rock (AR)	July 15, 1986	Aug. 17, 1986.
Los Angeles (CA)	Jan. 13, 1986	Jan. 17, 1986.
Natchez (MS)	Jan. 17, 1986	Feb. 3, 1986.
Port Hudson (LA)	Nov. 21, 1985	Jan. 21, 1986.
Raleigh (NC)	Apr. 1, 1986	Apr. 30, 1986.
Rock Island (IL)	July 1, 1986	July 4, 1986.
San Francisco (CA)	July 1, 1986	July 4, 1986.
Santa Fe (NM)	Nov. 6, 1985	Nov. 6, 1986.
St. Augustine (FL)	Mar. 3, 1986	Mar. 28, 1986.
Wilmington (NC)	May 1, 1986	May 30, 1986.
Wood (WI)	May 1, 1986	Sept. 1, 1986.
Fiscal Year 1987		
Baltimore Complex (MD)[1]	Oct. 1, 1986	Oct. 5, 1986.
Bath/Woodlawn (NY)	July 1, 1987	July 5, 1987.
Black Hills (SD)	Jan. 2, 1987	Jan. 5, 1987.
Danville (IL)	Oct. 1, 1986	Oct. 5, 1986.
Eagle Point (OR)	Jan. 2, 1987	Jan. 5, 1987.
Finn's Point (NJ)	Oct. 1, 1986	Oct. 1, 1986.
Fort Custer (MI)	Apr. 1, 1987	Apr. 5, 1987.
Fort McPherson (NE)	Sept. 8, 1987	Sept. 10, 1987.
Fort Scott (KS)	Sept. 1, 1987	Sept. 3, 1987.
Fort Snelling (MN)	July 1, 1987	July 5, 1987.
Grafton (WV)	July 1, 1997	July 2, 1987.
Indiantown Gap (PA)	Apr. 1, 1987	Apr. 5, 1987.
Lebanon (KY)	Oct. 6, 1986	Oct. 31, 1986.
Marietta (GA)	Sept. 1, 1987	Sept. 30, 1987.
Massachusetts (MA)	July 1, 1987	July 5, 1987.
Memphis (TN)	Nov. 17, 1986	Dec. 15, 1986.
Mountain Home (TN)	Jan. 19, 1987	Feb. 20, 1987.
NMCP (HI)	Mar. 7, 1987	Mar. 5, 1987.
New Albany (IN)	Apr. 6, 1987	Apr. 30, 1987
New Bern (NC)	Apr. 4, 1987	Apr. 28, 1987.
Puerto Rico (PR)	June 1, 1987	June 26, 1987.
Quantico (VA)	Jan. 2, 1987	Jan. 5, 1987.
Salisbury (NC)	July 6, 1987	July 31, 1987.
Springfield (MO)	Aug. 3, 1987	Aug. 28, 1987.
Willamette (OR)	Mar. 1, 1987	Mar. 5, 1987.
Zachary Taylor (KY)	Apr. 6, 1987	Apr. 30, 1987.

[1] Includes Baltimore, Annapolis and Loudon Park National Cemeteries.

SCHEDULE OF A–76 COST COMPARISONS

Facility	Study start date	Bid opening date
Office of Administrations		
Warehouse Services: Forms/ Publication Depot.	September 1985	July 1986.
Audiovisual Services: VA Central Office.	March 1986	December 1986.
Mail Services: VA Central Office.	October 1986	June 1987.
Motor Vehicle Services: VA Central Office.	October 1986	June 1987.
Office of Procurement and Supply		
Warehouse Services:		
Hines Supply Depot, IL.	March 1986	September 1986.
Somerville Supply Depot, NJ.	March 1986	September 1986.
Bell Supply Depot, CA.	March 1986	September
Office of Data Management and Telecommunications Data Processing Center		
ADP Operations & Programming; Mail & File Operations; Facilities/ Grounds Maintenance; Warehouse Services; Motor Vehicles:		
Hines, IL	July 1985	January 1987.
Austin, TX	March 1986	July 1987.
Philadelphia, PA	May 1986	July 1987.
Office of Personnel and Labor Relations		
Training: VA Central Office.	April 1985	July 1986.

[FR Doc. 86–2160 Filed 1–30–86; 8:45 am]

BILLING CODE 8320–01–M

VOL 51 ISS 21 JA 31 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 21
Friday, January 31, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, February 5, 1986.

LOCATION: Third Floor Heaing Room, 1111—18th Street, NW., Washington, DC

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. NEISS Pilot Project on Causality

The Commission will consider a proposed second phase of a pilot study to test the feasibility and cost of collecting additional data relating to the cause of product-related accidents.

Closed to the Public

2. Management Review: Matrix Management Discussion

The Commission will consider issues related to matrix management as a part of the ongoing management review.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: January 29, 1986.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 86–2008 Filed 1–29–86; 11:16 am]

BILLING CODE 6355–01–M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, February 5, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–2249 Filed 1–29–86; 12:46 pm]

BILLING CODE 6210–01–M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 3, 1986.

A closed meeting will be held on Tuesday, February 4, 1986, at 2:30 p.m. An open meeting will be held on Friday, February 7, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 4, 1986, at 2:30 p.m., will be:

Formal orders of investigation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Access to investigative files by Federal, State, or Self-Regulatory authorities.
Chapter 11 proceeding.

The subject matter of the open meeting scheduled for Friday, February 7, 1986, at 10:00 a.m., will be:

1. Consideration of whether to issue a release that would: approve three depository rule changes that implement an agreement among the depositories not to charge each other fees for interdepository book-entry movements of securities and related funds; approve a Depository Trust Company ("DTC") proposal to charge a fee to National Securities Clearing Corporation ("NSCC") for book-entry movements to or from NSCC's DTC account for certain regional interface transaction settlements; and institute proceedings to determine whether to disapprove a DTC proposal that would authorize DTC to surcharge its participants for interdepository book-entry movements of securities and related funds. For further information, please contact Jerry Greiner at (202) 272–2066.

2. Consideration of whether to issue two releases that would: (1) Adopt amendments to Rule 17Ad–5 requiring transfer agents to respond to securityholder inquiries concerning unpaid dividend and interest claims within certain time frames and adopt amendments to Rule 17Ad–10 extending the time frame within which transfer agents must buy in securities in the event of certain actual overissuances from 30 to 60 calendar days; and (2) propose amendments to Rule 17Ad–1 revising the definition of "item" so that each line on a depository shipment control list is considered a separate item. For further information, please contact Jerry Greiner at (202) 272–2066 or Ester Saverson, Jr. at (202) 272–2906.

3. Consideration of whether to grant the applications, filed by New York Stock Exchange, Inc. ("NYSE") floor brokers, William Higgins and Michael Robbins, for Commission review of actions by the NYSE which denied Higgins' and Robbins' requests to establish communication links with their off-floor non-member customers. For further information, please contact Donald Nisonoff at (202) 272–2888.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alan Dye at (202) 272–2014.

Dated: January 27, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–2305 Filed 1–29–86; 4:01 pm]

BILLING CODE 8010–01–M

VOL
51

ISS
21

JA
31

1986

UMI

federal register

Friday
January 31, 1986

Part II

Department of Defense

Department of the Army

32 CFR Part 588

Equal Employment Opportunity Discrimination Complaints; Policies and Procedures; Final Rule

VOL 51 ISS 21 JA 31 1986 UMI

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 588

[Army Regulation 690–600]

Equal Employment Opportunity Discrimination Complaints

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This rule gives the Department of the Army's policies and procedures on the filing, processing, investigating, and settling of equal employment opportunity discrimination complaints. It is designed for Army Commanders, equal employment opportunity officials, investigators, civilian personnel officers, labor counselors, managers, supervisors, employees, and applicants for employment. It implements Federal Law and Equal Employment Opportunity Commission regulation contained at 29 CFR Part 1613. It applies to all discrimination complaints based on race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal.

EFFECTIVE DATE: January 31, 1986.

ADDRESS: Office of the Secretary of the Army, Attn: SFCR, Washington, D.C. 20310–1813.

FOR FURTHER INFORMATION CONTACT: Cpt. Paul B. Martins, (202) 695–5704.

SUPPLEMENTARY INFORMATION: 32 CFR Part 588 is added to show the Department of the Army's equal employment opportunity discrimination complaint policies and procedures. Army Regulation 690–600 applies to all Department of the Army appropriated or nonappropriated fund activities, their civilian employees, and applicants for employment. It also applies to employees from other Federal agencies receiving Army Support under a servicing agreement who allege discrimination in a matter controlled by the Army. It does not apply to persons employed or applying for positions in the Army and Air Force Exchange System. It also does not apply to non-United States citizens employed by the Army outside of the United States.

The Office of the Secretary of the Army has certified that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612.

Pursuant to 5 U.S.C. 605(b), the regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

List of Subjects in 32 CFR Part 588

Equal employment opportunity, Employment, Discrimination in employment, Civil Rights, Labor.

Accordingly, new Part 588 is added to Title 32 CFR to read as follows:

PART 588—EQUAL EMPLOYMENT OPPORTUNITY DISCRIMINATION COMPLAINTS

Subpart A—General Provisions

Sec.
588.1 Purpose.
588.2 Prescribed forms.
588.3 Explanation of abbreviations and terms.
588.4 Responsibilities.
588.5 Authority.
588.6 Policy statements.
588.7 EEO counselor training.
588.8 Venue.
588.9 Complaints involving the Secretary of the Army or officials of the Office of the Secretary of the Army.
588.10 Complaints involving the Chief of Staff, Army; MACOM commanders; officials of the Army Staff; and its Staff support or field operating agencies.
588.11 Complaints involving the U.S. Army Civilian Personnel Center (CIVPERCEN).

Subpart B—Individual Complaints of Discrimination

588.12 Who may file a complaint.
588.13 Precomplaint processing.
588.14 Filing a formal complaint.
588.15 Criteria for acceptance.
588.16 Acceptance and rejection of formal complaints.
588.17 Arranging for the investigation.
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588.19 Conducting the investigation.
588.20 Informal adjustment and offer of hearing.
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588.24 Arranging for a hearing.
588.25 The hearing.
588.26 Final Army decision.
588.27 Avoiding delays.
588.28 Canceling a complaint.
588.29 Consolidation of complaints.
588.30 The complaint file.

Subpart C—Class Complaints of Discrimination

588.31 General guidance.
588.32 Precomplaint processing.
588.33 Filing a formal class complaint.
588.34 Designating the Army representative.
588.35 Criteria for acceptance.
588.36 Acceptance, rejection, or cancellation of the formal complaint.
588.37 Notification and opting out.
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Authority: 42 U.S.C. 2000e and 29 U.S.C. 621 et. seq.

Subpart A—General Provisions

§ 588.1 Purpose.

This regulation prescribes policies and procedures for filing, processing, investigating, and settling Equal Employment Opportunity (EEO) complaints. The processing of all EEO complaints filed by civilian Army employees or applicants for employment will be governed by this regulation. This regulation will be revised to reflect changes made by the EEOC in its regulations and/or through the issuance of new or revised directives.

§ 588.2 Prescribed forms.

The following forms are contained in Appendix P to this part.

(a) DA Form 2590–R, Formal Complaint of Discrimination.

(b) DA Form 5492–R, Precomplaint Counseling Data Sheet.

(c) DA Form 5493–R, Individual Complaint Data Sheet.

(d) DA Form 5494–R, Class Complaint Data Sheet.

(e) DA Form 5495–R, Chronology of Individual EEO Complaint.

(f) DA Form 5496–R, Chronology of Class EEO Complaint.

(g) DA Form 5497–R, Disposition of Complaint of Discrimination.

§ 588.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in Appendix O.

§ 588.4 Responsibilities.

(a) The Army Director of Equal Employment Opportunity, referred to in 29 CFR 1613.204, will be designated by the Secretary of the Army to set EEO policy. This individual will ensure that—

(1) Army programs conform to this policy.

(2) Adequate resources are available to implement the Army's EEO program.

(3) A system to process EEO complaints exists.

(b) The Director of Equal Employment Opportunity Compliance and Complaints Review Agency (EEOCCRA) will—

(1) Develop Army policy and programs to process discrimination complaints.

(2) Manage and operate the Army discrimination complaint system for individual and class complaints from Army civilian employees and applicants.

(3) Process and prepare final Army decisions on individual and class complaints of discrimination for approval by the Secretary of the Army or his or her designee.

(4) Process requests from the EEOC for case files on complaints that are appealed to EEOC.

(5) Receive and implement appellate decisions rendered by EEOC and process requests for reopening and reconsidering EEOC decisions.

(6) Provide guidance to subordinate Army activities on the discrimination complaint system.

(c) The Administrator of the U.S. Army Civilian Appellate Review Agency (USACARA) will—

(1) Conduct investigations of civilian employee complaints of discrimination.

(2) Prepare reports of findings including recommendations on corrective actions to be taken by the activity.

(d) The Civilian personnel Officer (CPO) will—

(1) Ensure that EEO officers, EEO counselors, and investigators are given appropriate access to personnel records and copies of records relevant to the complaint without an inordinate invasion of privacy.

(2) Perform personnel regulatory reviews and technical support to labor counselors, EEO counselors, and EEO officers.

(e) The Activity Commander responsible for the discrimination complaint program for all serviced and tenant organizations.

(1) Ensure that sufficient resources are available to EEO program official to manage and operate the discrimination program effectively.

(2) Ensure that supervisors and managers understand and meet their responsibilities in the discrimination complaint program.

(3) Stress the need for prompt processing and informal resolution of discrimination complaints.

(4) Ensure that management is adequately represented at all steps in the complaint procedure where representation is authorized.

(5) Make timely recommendations and decisions on complaints of discrimination and awards of attorney fees.

(6) Ensure that Army and EEOC decisions are implemented promptly.

(7) Ensure that the following information is regularly publicized and permanently posted on official bulletin boards, with easy access to all employees and to applicants for employment with the Army:

(i) The name and address of the Army Director of Equal Employment Opportunity.

(ii) The names, addresses, and telephone numbers of the activity EEO officials, including the EEO officer and EEO counselors.

(iii) Where applicable, a list of the organization each counselor services.

(iv) A statement that a counselor must be consulted before a formal discrimination complaint is filed under this regulation. (Where applicable, employees should also be advised that discrimination may be grieved under the negotiated grievance procedure or through Merit Systems Protection Board (MSPB) appellate procedures.)

(v) The time limits to start action and to file and process a complaint under this regulation. When applicable, employees should also be advised of time limits for filing allegations of discrimination under the negotiated grievance procedure or MSPB appellate procedures.

(f) The major Army command (MACOM) EEO officer will—

(1) Advise the MACOM commander on the resources required in the command to manage the discrimination complaint program effectively.

(2) Ensure that the EEO complaint processing program is operated effectively and efficiently throughout the MACOM.

(3) Ensure that reports and files are submitted accurately and promptly.

(4) Make on-site evaluations of activity level effectiveness and give staff assistance as needed.

(5) Ensure that all time limits set forth in this regulation are met.

(g) The activity EEO officer will—

(1) Manage the Activity complaint processing program and advise the Activity Commander on EEO matters that require his or her attention.

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(2) Advise the Activity Commander to ensure that adequate resources are available in the activity to manage the complaint program effectively.

(3) Recommend the Availability or adequate EEO counselors to provide effective counseling services. As a guide, there should be one counselor for about every 500 serviced employees. This ratio may vary depending on local need.

(4) Supervise EEO counselors to ensure that they perform effectively and are trained in all phases of complaint processing. Refer to assign EEO counselors for precomplaint counseling.

(5) Ensure that counselors and investigators are given administrative and logistical support, including appropriate access to personnel records and copies of records relevant to the complaint, without an unwarranted invasion of privacy.

(6) Make the final decision on behalf of the Secretary of the Army to reject, in whole or in part, individual complaints at the activity; also accepts complaints provisionally subject to final decision by the Secretary of the Army or his or her designee.

(7) Ensure that complaints are processed promptly and that all requirement for precomplaint counseling and for processing complaints of discrimination are met.

(8) Ensure that every reasonable effort is made to reach an informal resolution of the complaint. He or she will advise the Activity Commander on proposed dispositions.

(9) Arrange for USACARA investigations, EEOC hearings and provide for court reporters, making sure that the EEOC complaints examiner is correctly advised to direct his or her report to EEOCCRA and that the correct number of transcripts are ordered.

(10) Ensure that all copies of case files misdirected to the installation by complaints examiners are returned to the complaints examiner with instructions to send the files to EEOCCRA.

(11) Send legible copies of complaint files to EEOCCRA as fast as possible.

(12) Prepare and submit the required reports.

(13) Maintain and safeguard complaint files.

(h) The EEO counselor will—

(1) Advise complainant and management officials of their rights, inquire into allegations of discrimination raised under this regulation, and try to resolve discrimination complaints at the precomplaint stage.

(2) Keep records indicating when the aggrieved person first contacted the counselor. These records will document the inquiry methods used to reach a solution and the result of the inquiry. Such records will provide specific facts to be included in the counselor's written report to the EEO officer upon completion of counseling.

(i) The servicing legal officer/Staff Judge Advocate (SJA) will—

(1) Provide legal advice on EEO matters to the Activity Commander, the CPO, and EEO officials.

(2) Act as the Army's activity-level legal representative in hearings on individual complaints and in class action proceedings.

(3) Review for legal sufficiency, as requested, proposed informal adjustments or settlement agreements, proposed disposition letters, and final decision letters.

(4) Advise the Activity Commander regarding settling claims of attorney fees and costs. The counselor will forward with analysis and recommendations to the Department of the Army (DA), through the Labor and Civilian Personnel Law Office (DAJA-LC), Office of the Judge Advocate General, for final decision, all claims for attorney fees and/or costs that are not settled at the activity level. (See§ 588.54)

(j) Managers and supervisors will act promptly to prevent or correct situations that may give rise to complaints of discrimination. All members of the work force will refrain from actions or comments that might be viewed as discriminatory. Supervisors will allow employees with collateral EEO duties enough duty time to perform their EEO functions. They will also ensure that, at the precomplaint and the formal stages of the complaint, complainants and their representatives are allowed to use a reasonable amount of duty time to work on their complaints. Managers, supervisors, and employees must cooperate fully with counselors, EEO officers, investigators, and examiners.

§ 588.5 Authority.

This regulation implements the directives of the Equal Employment Opportunity Commission which is charged by statute with the enforcement of equal employment opportunity in the Federal Government. Discrimination complaints filed under this regulation are processed under the guidance of EEOC regulations contained in Part 1613 of title 29, Code of Federal Regulations (29 CFR Part 1613). This regulation will be revised to reflect changes in EEOC directives and regulations.

§ 588.6 Policy statements.

(a) Persons who take part in presenting or processing discrimination complaints will be free from restraint, interference, coercion, harassment, discrimination, and reprisal.

(b) A discrimination complaint will be processed with due regard for the rights of persons against whom allegations have been made.

(c) Complaints will be processed promptly and impartially.

(d) Complaints should be resolved at the earliest possible stage; informal resolution can occur at any stage of processing. Early resolution of complaints achieves better employee relations, cuts administrative costs, and is consistent with the Army's commitment to equal employment opportunity.

(e) This regulation does not affect the rights granted unions that have exclusive recognition in the Army. Further, this regulation is not intended to affect the rights of an employee represented by such a union from exercising the option to file—

(1) A discrimination complaint under this regulation.

(2) A grievance under a negotiated procedure.

(3) An appeal under the appellate provisions of the MSPB regulations.

(4) Sufficient resources, in terms of personnel and funds, will be made available at all levels of command to assure the success of the Army's Equal Opportunity Program.

(5) Suspenses imposed by this regulation are purely administrative and were established by the EEOC and the Army. They are designed to encourage prompt resolution of complaints. Failure to meet such a suspense will not nullify any administrative proceeding. All "days" referred to in this regulation are calender days.

§ 588.7 EEO counselor training.

All EEO counselors will be given the required training as soon as possible after their appointment, within time limits set by the major command. Training will at least include completion of the basic EEO counseling course given by regional offices of the Office of Personnel Management or any comparable course, and courses in EEO and civilian personnel management, as appropriate. Additional and refresher training will be determined by command policy. All Army training should stress the Army policy to seek informal resolution at the earliest possible stage of complaint.

§ 588.8 Venue.

EEO complaints will generally be processed at the activity where the alleged discrimination occurred. The complaint may be processed at a different location designated by the MACOM EEO officer if processing is impractical at the activity where the alleged discrimination occurred. (See §§ 588.9 and 588.69)

§ 588.9 Complaints involving the Secretary of the Army or officials of the Office of the Secretary of the Army.

(a) Precomplaint counseling that involves official at the Secretary of the Army level will be coordinated with the EEO officer, Office of the Secretary of the Army, regardless of where in the Army the counseling may arise. The EEO officer at the activity where the aggrieved person is employed or has applied for employment will be responsible for ensuring that local counseling is conducted in accord with §§ 558.13 and 588.32. The coordination will be accomplished before the activity EEO counselor conducts the final interview. Coordination may be on an informal basis using the most expeditious means of communication.

(b) Formal complaints that involve actions taken by the Secretary of the Army or an official of the Office of the Secretary of the Army will be forwarded for acceptance and processing to the EEO officer, Office of the Secretary of the Army, regardless of where in the Army they arise. The activity EEO officer will issue a letter to the complainant acknowledging receipt of the complaint and informing the complainant of the referral to the Office of the Secretary of the Army. The letter must state that such acknowledgment does not constitute acceptance of the complaint. The activity EEO officer must forward to the EEO officer, Office of the Secretary of the Army, the following documents:

(1) The complaint.

(2) A copy of the acknowledgment or receipt.

(3) A recommendation as to the acceptance or rejection of the complaint, along with an analysis in support of the recommendation.

(4) A copy of the EEO counselor's report.

§ 558.10 Complaints involving the Chief of Staff, Army; MACOM commanders; officials of the Army Staff; and its Staff support or field operating agencies.

(a) Precomplaint counseling that involves the Chief of Staff, Army; MACOM commanders; official of the Army Staff; or its Staff support and field operating agencies (unless these activities have been designated to be serviced by an EEO officer other than the EEO officer for the Military District of Washington (MDW), will be coordinated with the EEO officer for MDW regardless of where in the Army the counseling may arise. The EEO officer at the activity where the aggrieved person is employed, or has applied for employment, will be responsible for ensuring that local counseling is conducted in accord with §§ 588.13 and 588.32, and that the required coordination is accomplished before the activity EEO counselor conducts the final interview. Coordination may be on an informal basis using the most expeditious means of communication.

(b) Formal complaints that involve actions actually taken by the Chief of Staff, Army; MACOM commanders; officials of the Army Staff; or its Staff support and field operating agencies (unless these activities have been designated to be serviced by an EEO officer other than the MDW EEO officer), will be forwarded for acceptance and processing to the MDW EEO officer, regardless of where in the Army the counseling may arise. The letter must state that such acknowledgment does not constitute acceptance of the complaint. The Activity EEO officer must forward to the EEO officer, MDW, the following documents:

(1) The complaint.

(2) A copy of the acknowledgment of receipt.

(3) A recommendation as to the acceptance or rejection of the complaint, along with an analysis in support of the recommendation.

(4) A copy of the EEO counselor's report.

§ 588.11 Complaints involving the U.S. Army Civilian Personnel Center (CIVPERCEN).

(a) The Chief, CIVPERCEN will render the proposed disposition if a complaint challenges all of the following:

(1) The rating, ranking, and referral process at the Army-wide referral level.

(2) Actions taken by DA Career Program administrators and/or Career Program screening panels.

(3) The complainant was not included on the referral list.

(b) The Activity Commander responsible for the nonselection will render the proposed disposition if a complaint challenges all of the following:

(1) The rating, ranking, and referral process at the Army-wide referral level.

(2) Actions taken by DA Career Program administrators and or Career Program screening panels.

(3) The complainant was included on the referral list but not selected.

(c) Pertinent information will be provided by CIVPERCEN or other DA level referral offices, as appropriate, to include in the Activity Commander's proposed disposition.

Subpart B—Individual Complaints of Discrimination.

§ 588.12 Who may file a complaint?

Any employee, former employee, or applicant for employment covered by this regulation, who believes he or she has been discriminated against because of race, color, religion, sex, national origin, physical or mental handicap, age, and/or reprisal in an employment matter subject to the control of the Army, may file an individual complaint of discrimination. The complaint may also be filed for the complainant, by a representative designated in writing by the complainant. (The summarized, step-by-step complaint procedure at Appendix A and the flow chart at Appendix C may be reproduced locally and given to the complainant.)

§ 588.13 Precomplaint processing.

(a) Before a formal complaint can be filed, the complainant must first present the matter to an EEO counselor for inquiry within 30 calendar days from the date of the alleged discriminatory event, the effective date of a personnel action, or the date that the aggrieved person became aware or reasonably should have become aware, of the discriminatory event or personnel action. Matters raised after the 30-day time limit will be counseled by the EEO counselor even though a formal complaint may later be rejected for untimeliness.

(b) At the initial interview, the EEO counselor will inform the aggrieved person of the following matters:

(1) The aggrieved person may be accompanied, represented, and advised at all counseling interviews by a representative designated in writing in accord with § 588.71.

(2) The aggrieved person will waive the right to file a formal complaint under this regulation and its procedures if he or she files or has already filed a grievance on the same allegations of discrimination under a negotiated grievance procedure or an appeal with the MSPB. The counselor will give the aggrieved person a handout similar to that contained in Appendix D which informs the individual of the other procedures available for filing allegations of discrimination. If the aggrieved person has already filed an appeal with the MSPB or a written grievance under a negotiated procedure on the same issue, the EEO officer will reject a formal complaint under this regulation.

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(3) The counselor will not reveal the aggrieved person's identity to anyone unless the aggrieved person gives written permission or a formal complaint is accepted.

(4) The counselor will define and record the dates and facts of the specific incidents or personnel actions that are the basis of the discrimination complaint. The aggrieved person must cooperate with the counselor in clearly defining issues for investigation.

(5) If the aggrieved person believes that a particular person discriminated against him or he, then that individual may be identified as the alleged discriminating official (ADO).

(6) If an EEO counselor has filed a discrimination complaint individually or as a class agent then, at the discretion of the activity EEO officer, he or she may be precluded from counseling any other person concerning a complaint until that counselor's complaint is resolved by a final Army decision and all appeals have been exhausted. An activity EEO officer may preclude an EEO counselor from counseling based on actual or perceived conflict of interest.

(c) The EEO counselor's duties during inquiry are as follows:

(1) the counselor will inquire into the specific incidents and actions indentified by the aggrieved person at the initial interview. The counselor should interview persons who can give direct information on the allegations. If the aggrieved person has named an ADO or an ADO is otherwise identified, the counselor must interview that person unless the counselor has information that clears the ADO from any alleged discrimination to the satisfaction of the aggrieved person. Before any interview with an ADO, the counselor must advise that individual of his or her rights and the nature of the accusations in accord with § 588.61.

(2) The counselor's inquiry should be designed to obtain only that information necessary to reach an informal resolution of the aggrieved person's allegations. Usually such inquiries are to be completed within a matter of days. The inquiry should not be as extensive as an investigation under § 588.19. The counselor should function as a mediator between the aggrieved person and management and should seek a reasonable informal resolution.

(3) The counselor should prepare a written report of all actions taken during the inquiry and of the advice, if any, given to the aggrieved person and the activity.

(d) The EEO counselor's duties at the final interview are as follows:

(1) The counselor should conduct the final interview with the aggrieved person within 21 days after the matter was first called to the counselor's attention, absent extraordinary circumstances that must be documented by the counselor. At that time, the counselor will tell the aggrieved person of the results of the inquiry and discuss proposed solutions. Upon completion of the final interview, the counselor will—

(i) Inform the aggrieved person, in writing, of the right to file a formal complaint within the next 15 calendar days. This formal notice should be given to the aggrieved person by the use of the sample letter in Appendix E. The counselor must not try to influence the aggrieved person on whether or not to file a formal complaint and must emphasize that the decision to file rests solely with the aggrieved person.

(ii) Stress that a formal complaint must give specific information on the alleged acts of discrimination and must be limited to the issues discussed with the counselor in the precomplaint procedure. A formal complaint that is not specific or does not define the issues will be returned for clarification and canceled if not properly defined.

(iii) Inform the aggrieved person that he or she must inform the EEO officer immediately in writing if legal counsel or any other representative is retained for a formal complaint. (See § 588.71)

(2) If the final interview is not held within 21 calendar days of initial contact with the EEO counselor and if the matter has not previously been resolved to the satisfaction of the aggrieved person, the counselor will inform the aggrieved person in writing, in the 21st day, of the right to file a formal complaint of discrimination. (See Appendix F.) The counselor must not try to influence the aggrieved person on whether or not to file a formal complaint and must emphasize that the decision to file rests solely with the aggrieved person.

(3) Upon completion of counseling, the counselor will prepare a written report of all actions taken during the inquiry, and of the advice, if any, given to the aggrieved person and to management. The counselor will provide this report to the EEO officer along with a copy of the written Notice of Final Interview. The EEO counselor will also complete DA Form 5492–R (Precomplaint Counseling Data Sheet) and appropriate portions of DA Form 5493–R (Individual Complaint Data Sheet). The DA Form 5492–R will be prepared for each reportable contact at the time the Notice of Final Interview is issued. These documents will be submitted to the EEO officer along with his or her report. DA Form 5492–R and DA Form 5493–R will be reproduced locally on 8 ½- by 11-inch paper.

(e) All Army personnel will fully cooperate with and support the EEO counselor in the performance of his or her duties under this regulation. The EEO counselor will be free from restraint, interference, harassment, coercion, discrimination, or reprisal in connection with the performance of his or her duties.

§ 588.14 Filing a formal complaint.

(a) A formal complaint must be filed within 15 calendar days after the date of receipt of the notice of final interview with the EEO counselor. The formal complaint must be filed in writing by the complainant. If vague or general allegations are contained in the complaint, the complainant will be given an opportunity to provide specific information that will clearly define the issues. If specific information is not provided, the vague or general allegations of the complaint will be canceled for failure to prosecute.

(b) Complaints should be submitted on DA Form 2590–R (Formal Complaint of Discrimination). Complaints submitted in letter form, while not preferred, will be accepted if they meet the other requirements of this regulation. However, in this situation, the EEO officer will complete a DA Form 2590–R and attach it to the letter. DA Form 2590–R will be reproduced locally on 8½- by 11-inch paper. A copy of DA Form 2590–R is located at the back of this regulation.

(c) Persons to whom complaints may be submitted are as follows:

(1) A formal complaint may be submitted to the Army official listed below:

(i) Activity EEO officer.

(ii) Activity Commander.

(iii) Federal Woman's Program Manager.

(iv) Director of Equal Employment Opportunity.

(v) Secretary of the Army.

(2) All activity publication will request the complainant to submit a copy of his or her complaint to the activity EEO officer regardless with whom it is filed. Anyone other than the activity EEO officer who receives a complaint will immediately transmit the complaint to the activity EEO officer, indicating the date of receipt of the complaint if it is not postmarked. EEO counselors should encourage aggrieved persons to submit their complaints to the activity EEO officer to assure timely processing.

(3) A formal complaint is deemed filed on the date that it is postmarked or, if there is no postmark, on the date it is received by one of the officials listed in

c(1) above. The activity EEO officer will acknowledge receipt of the formal complaint in writing. (See Appendix G.)

(4) Upon reciept of the formal complaint, the EEO officer will indicate the MACOM against which the complaint is filed, code the matters giving rise to the complaint, ensure the DA Form 2590–R is completed, and immediately submit one copy of the completed DA Form 2590–R to EEOCCRA.

§ 588.15 Criteria for acceptance.

(a) A complaint will be accepted by the EEO officer (subject to final decision by the Secretary of the Army or his or her designee) unless the complaint contains one or more of the following:

(1) Refers to a situation over which the Army has no jurisdiction.

(2) Is not based on the complainant's race, color, religion, sex, age, national origin, physical or mental handicap, and/or reprisal. Complaints of discrimination because of age are accepted only if the complaint was at least 40 years of age when the action complained of occurred.

(3) Sets forth matters identical to those in a previous complaint filed by the same complainant and which has been, or is being, processed.

(4) Sets forth matters identical to those in a grievance filed in writing by the same complainant under a negotiated grievance procedure.

(5) Sets forth matters which also form the basis of an appeal filed before the MSPB by the same complainant.

(6) Is untimely.

(i) The matters in a complaint must have been brought to the attention of an EEO counselor within 30 calendar days after the incident, effective date of a personnel action, or the date the aggrieved person became aware of reasonably should have been aware, of the discriminatory event of personnel action.

(ii) Formal compliants must be filed within 15 calendar days after receipt of the Notice of Final Interview.

(iii) The Activity Commander or his or her EEO officer will waive the time limits of this paragraph if the complainant can show either—

(A) That he or she was not notified of the time limits and was not otherwise aware of them.

(B) That he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits of this section.

(C) The time limits of this paragraph may be waived for reasons deemed sufficient at the discretion of the Activity Commander or his or her designee.

(D) The letter accepting the complaint will state the specific basis for any waiver of time limits.

(b) The Secretary of the Army or his or her designee reserves the right to reject a complaint previously accepted by an EEO officer when making the final Army decision on the Basis of one or more of the grounds specified in a above.

§ 588.16 Acceptance and rejection of formal complaints.

(a) As soon as the EEO officer accepts a formal complaint, he or she will give a copy of the EEO counselor's written report on the precomplaint counseling to the complainant. The original report will be kept in the complaint file.

(b) The EEO officer will review the complaint against the criteria of § 588.15 and determine which allegations should be accepted or rejected. The EEO officer will ensure that the complainant was informally counseled on each matter accepted in the formal complaint.

(1) The EEO officer may ask the complainant to give more specifics on allegations or meet with the EEO counselor on a matter not previously discussed in the precomplaint counseling.

(2) The EEO officer may cancel a complaint for failure of the complainant to prosecute his or her complaint if the complainant does not provide the needed information to the EEO officer in the time specified.

(c) The EEO officer will decide whether to accept or reject a complaint in whole on in part. When appropriate, the EEO officer will coordinate acceptance or rejection of a complaint with the labor counselor. The acceptance of any complaint shall always be conditioned upon the final decision of the Secretary of the Army or his or her designee in accord with § 588.15(b).

(d) The EEO officer will provide the complainant and his or her representative, if any, a written decision within 5 calendar days after the complaint is received. The decision will be either hand-delivered to the complainant or sent by certified mail. The complainant must acknowledge receipt of the decision in writing. The decision must specify which allegations or parts of a complaint were accepted and explain the grounds for any rejection or cancellation. The decision will also advise the complainant of the right to appeal the rejections or cancellations.

(e) If a complaint has been rejected in whole or in part, the EEO officer will process the closure in accord with § 588.99(b). The case file will be retained by the EEO officer for 2 years from the date of the final Army decision or until all administrative and judicial appeals are exhausted, whichever is longer.

(f) If any part of a complaint is accepted by the EEO officer, a copy of the complaint will be sent directly to the appropriate USACARA Regional office by the EEO officer requesting the assignment of an investigator and citing applicable funds for payment of travel and per diem. As indicated in § 588.17 the transmittal letter will identify the part(s) of the compliant which have been accepted for investigation.

(g) Immediately upon acceptance of a formal complaint, the Activity Commander should designate the activity labor counselor as the Army representative. An ADO may not serve as an Army representative. At the request of the labor counselor, the Activity Commander may also appoint a personnel specialist or other activity personnel to assist the labor counselor.

§ 588.17 Arranging for the investigation.

(a) Within 3 calendar days after acceptance of a formal complaint, the EEO officer will request the assignment of a USACARA investigator. (See Appendix K.) A copy of the request letter without enclosures will be provided to the complainant, his or her representative, and the labor counselor. The request must contain the following information:

(1) A clear statement of the issues that were accepted.

(2) A statement of the parts of the complaint that were rejected.

(3) The complainant's organization, work location, mailing address, and telephone numbers (both AUTOVON and commercial).

(4) The complainant's designation of a representative, including the representative's work and mailing addresses and telephone numbers (both AUTOVON and commercial).

(5) A fund citation for travel and per diem.

(6) A specific point of contact within the activity EEO office.

(7) Legible copies of the following documents:

(i) The formal complaint.

(ii) The EEO counselor's report.

(iii) Any relevant documents.

(b) The EEO officer or a designee will arrange for the investigator's visit. This may include—

(1) Arranging for quarters and transportation.

(2) Providing a private office, clerical help, and access to a telephone.

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(3) Making sure that all named witnesses and ADO's are readily available.

(4) Giving the investigator any other administrative help needed to conduct an efficient investigation.

(c) The EEO officer should provide the labor counselor with at least 10 days advance notice of the dates, time, and location of the USACARA investigation.

(d) To avoid the appearance of impropriety, no activity personnel, to include EEO, CPO, management, or labor personnel will express an opinion regarding perceived merits of a complaint, or lack thereof, with the USACARA investigator. However, activity personnel may disclose facts that would assist the USACARA investigator at any time prior to the completion of the investigation and receipt of the USACARA Report of Investigation (ROI).

§ 588.18 Authority assigned to the USACARA investigator.

By designation of the Secretary of the Army, USACARA investigators are authorized to act as shown below.

(a) Investigate all aspects of a complaint. This includes reviewing and copying all records judged by the investigator to be pertinent to the investigation. Classified documents may be examined only by an investigator who possesses the appropriate security clearance.

(b) Require all Army personnel to copperate with the investigator in conducting the investigation.

(c) Require Army personnel who have any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence, unless this testimony would result in self-incrimination.

(d) Administer oaths.

(e) Issue an ROI containing conclusions and recommendations.

§ 588.19 Conducting the investigation.

The investigator—

(a) Collects facts and develops information on each accepted allegation in the Complaint and reviews the circumstances under which the discrimination is alleged to have taken place. The investigator does not have the authority to expand the scope of the investigation to include any charges of allegations that were not included in the formal complaint or for which precomplaint counseling was not given. The obligation of the investigator to collect facts and develop information does not lessen the responsibility of the complainant and management to prepare, present, and explain their positions as the disputes.

(b) Administers oaths and obtains statements from witnesses under oath or affirmation. The investigator determines the witnesses whose testimony is necessary to the investigation and interviews and obtains affidavits from only these witnesses whose testimony is necessary to the investigation and interviews and obtains affidavits from only these witnesses. Affidavits are included in the investigative file only if the investigator deems the testimony relevant and necessary. The investigator documents for the record the reason any witness identified by the complainant or by management was not interviewed and the reason evidence that was offered was not accepted.

(c) Gives the ADO, if named or identified, full opportunity to review documents and respond to all allegations made against him or her in accord with § 588.62.

(d) Collects and analyzes information on how members of the complainant's group are treated compared to other employees in the organization where the discrimination is alleged to have occurred. This information may include, for instance, statistical data on promotions, disciplinary actions, awards, or other personnel actions.

(e) Investigates work policies and practices relevant to the accepted allegations of the complaint.

(f) Collects information needed to review the merit of mixed case issues that are included under § 588.46.

(g) Is independent of control by any of the parties to the complaint, but is entitled to the full cooperation of all parties and their representatives.

(h) Sends the ROI to the EEO officer, with a copy of the report without attachments to the EEO officer at the next higher level of command within 45 days after assignment of the case. This 45-day time limit is purely administrative in nature. Failure to process a USACARA investigation within this time frame will not prevent the administrative processing of any complaint of discrimination. Included in the file are the investigator's findings and recommendations and other relevant documents as described in § 588.76.

§ 588.20 Informal adjustment and offer of hearing.

(a) The EEO officer will thoroughly review the ROI to ensure that the ADO was given an opportunity to respond to each allegation as described in § 588.62(c) and that the investigation is comprehensive and adequately addresses all issues accepted in the complaint. The EEO officer may return an ROI to USACARA for further investigation if the ROI is inadequate. The EEO officer will specify the additional issues to be investigated or evidence to be gathered.

(b) Within 5 calendar days after receipt of the USACARA ROI, the EEO officer will send a complete copy of the USACARA ROI to the complainant and his or her representative, if any, with an offer to meet and discuss an informal adjustment of the complaint. The ROI may be sent by certified mail, return receipt requested, or be personally delivered by an Army official. If the ROI is personally delivered, the complainant and the representative will acknowledge receipt in writing. If the complainant or the representative declines to sign a receipt, the server will sign and indicate to whom and when the ROI was served. The receipt will be filed in the complaint file.

(c) If the complainant agrees, an adjustment meeting should be held within 10 calendar days after receipt of the USACARA ROI by the EEO officer. The Activity Commander, or a designee, should consult with the EEO officer, the labor counselor, and the CPO, on the proposed terms of the adjustment. The adjustment meeting should be accomplished by the least costly method while protecting the rights of the complainant. Adjustment meetings may be conducted by conference call or correspondence if the concerned parties are not readily available. The commander or a designee may also consult the ADO on the subject. Offers of settlement and the details of negotiations about settlement offers will not be included in the complaint file.

(d) If a tentative settlement is reached, its proposed terms are coordinated by the EEO officer with the labor counselor and the CPO as appropriate before it is finalized. It is then signed by the complainant and the Activity Commander, or a designee, and made part of the complaint file. A copy of the terms of the settlement will be given to the complainant, his or her representative, and the ADO. (See Appendix H.)

(e) An informal adjustment may include an award of attorney fees and/or costs if there was a finding or admission of discrimination. (See § 588.55 for special procedures on no-fault settlements without a finding or admission of discrimination.) If the parties agree on an adjustment of the complaint, but cannot agree on the issue of attorney fees and/or costs, that issue will be handled separately. The issue of attorney fees and costs will then be the subject of the final decision by the Secretary of the Army or his or her designee. (See § 588.51 for guidance.)

(f) If the complainant does not agree to meet, or if an adjustment is not reached, the Activity Commander will give the complainant a Notice of Proposed Disposition of Discrimination Complaint with a copy furnished to the ADO. (See Appendix I.) The notice, which must first be reviewed by the labor counselor for legal sufficiency, will—

(1) Indicate the date a meeting was held to attempt adjustment or that the complainant refused to meet.

(2) Notify the complainant of his or her right to a final Army decision with or without a hearing, and of the 15-calendar-day time limit to make the request. Decisions regarding attorney fees and/or costs will be made in accord with §§ 588.54 and 588.55.

(3) Contain an analysis of the case and the rationale for the proposed disposition.

(4) Be issued within 20 calendar days of receipt by the EEO officer of the USACARA ROI.

(g) If the complainant does not respond within 15 calendar days from receipt of the Notice of Proposed Disposition, the Activity Commander will adopt the proposed disposition as the final Army decision and notify the complainant accordingly, advising him or her of the right to appeal to the Office of Review and Appeals, Equal Employment Opportunity Commission, and the right to file a civil action (app B). Although complaint adjustments are specificially provided for in this paragraph, the activity should continue to be alert to the possibility of adjustments at any stage of the complaint process.

§ 588.21 MACOM review of proposed dispositions.

When a USACARA investigator recommends a finding of discrimination and the Activity Commander rejects that recommendation in favor of a proposed disposition finding no discrimination, that proposed disposition (along with the complaint file) will be forwarded to the Activity Commander's MACOM commander for review. The MACOM review will be performed within 30 calendar days after the issuance of the proposed disposition. The MACOM commander's review of the proposed disposition will be made a part of the complaint file. The MACOM review will be performed concurrent with the processing of a complaint for a hearing in accord with § 588.24 or as part of the processing of a complaint for an Army decision without a hearing in accord with § 588.16.

§ 588.22 Failure to carry out the terms of the adjustment.

If the activity does not carry out, or if it cancels, any action specified by the adjustment, for any reason not due to acts or conduct of the complainant, the complaint will be reinstated for further processing at the written request of the complainant. The complaint should be reinstated at the point where processing stopped. If the Activity Commander determines that the terms of the adjustment have been implemented, a decision declining to reinstate the complaint will be issued. Documents evidencing implementation will be attached to the decision with an advisement of appeal rights to the EEOC.

§ 588.23 Request for Army decision without a hearing.

When the complainant, dissatisfied with the Activity Commander's proposed disposition asks for an Army decision without a hearing, the EEO officer sends the original and one copy of the complaint file the ERROCCRA, ATTN: SFCR, WASH, DC 20310-1813. (For a list of the contents of the complaint file, see § 588.76. The EEO officer ensures that all copies of the file are complete, legible, and identical.

§ 588.24 Arranging a hering.

(a) When the complainant asks for a hearing, the EEO officer requests assignment of a complaints examiner from the EEOC District Office that has geographic jurisdiction over the activity where the hearings is to be held. (See Appendix L.) The hearing will usually be held at the activity where the complaint if permanently assigned or has applied for employment. If another location is preferred, the written request to EEOC will specify the alternative location. However, EEOC will decide where a hearing is to be held. For travel funding and other costs, see § 588.79.

(b) The written request to EEOC will include the original complaint file (See § 588.76). In addition, one copy of the tabbed complaint file will be sent to EEOCCRA.

(c) The request to the EEOC will ask that the complaints examiner send the complaint file with the final report and four copies of the hearing transcript to the Director, EEOCCRA, ATTN: SFCR, WASH, DC 20310-1913. When there is more than one complainant, the EEO officer will ask that an additional copy of the report and transcript be sent to EEOCCRA for each additional complainant. If the complaints examiner sends the report to the activity rather than to EEOCCRA, the EEO officer will immediately return the file to the EEOC by certified mail, return receipt requested, with instructions to transmit it to the Director, EEOCCRA, ATTN: SFCR, WASH, DC 20310-1813.

(d) The request to the EEOC will also provide the name, title, address, and telephone number of the labor counselor as the Army representative at the hearing. A copy of the request will be given to the complainant.

(e) The EEO officer will arrange for the services of a court reporter at the hearing. Activities may not use Army court reporters and should attempt to arrange for a court reporter from Navy or Air Force installations under an interservice support agreement. If no reporter is available, the activity may then contract for a court reporter through their contracting office using the General Services Administration (GSA) Federal Supply Schedule.

§ 588.25 The hearing.

(a) The hearing is conducted by an EEOC complaints examiner subject to EEOC regulations and procedures. This paragraph is provided for information and general guidance and does not control the EEOC complaints examiner's activities.

(b) Before scheduling the hearing, the complaints examiner reviews the complaint file to determine if further investigation is needed and, if so, asks the activity to conduct the additional investigation. If a complaints examiner asks an activity to conduct further investigation, the EEO officer will promptly forward the request to the responsible USACARA Regional Office with an information copy of the transmittal letter furnished the complainant and the complaints examiner. The examiner may also ask the activity to arrange for the witnesses needed to testify at the hearing. (See § 588.70) If a prehearing adjustment of the complaint is reached, the original copy of the agreement will be forwarded immediately to the activity EEO officer who will send necessary closeout document to EEOCCRA.

(c) Attendance at the hearing is limited to persons determined by the complaints examiner to have a direct connection with the complaint. The activity will make available all DA personnel called as witnesses for a hearing, unless the presence of a prospective witness is administratively impractical. The complaint examiner conducts the hearing to bring out pertinent facts and accept pertinent document. Rules of evidence are not

applied strictly, but the examiner will exclude irrelevant or unduly repetitious evidence. Information that has a bearing on the complaint, including employment policies or practices relevant to the complaint, will be received in evidence. The complainant, his or her representative, if any, and the labor counselor at the hearing are given the opportunity to cross-examine witnesses who appear and testify. Testimony is given under oath or affirmation. (See § 588.64 for the right of the ADO at the hearing.)

(d) The hearing is recorded and transcribed verbatim. All documents accepted by the examiner at the hearing are made part of the record. If the labor counselor submits a document that is accepted, a copy of the document shall be furnished to the complainant. If the complainant submits a document that is accepted, he or she shall make the document available to the labor counselor for reproduction.

(e) The complaints examiner considers all documents in the complaint file, including the record of the hearing, in making his or her findings, and analysis, and recommendation. The examiner then sends the complaint file to EEOCCRA with the required number of copies of the examiner's report and hearing transcript, and notifies the complainant of the date that this is done. The report may include recommended remedial action, if proper, regarding the matter that gave rise to the complaint. Also, the examiner may send EEOCCRA a separate letter concerning conditions in the activity that do not have a direct bearing on the complaint.

§ 588.26 Final Army decision.

(a) The Director of EEO or another person designated by the Secretary of the Army makes the final decision, in writing, for the Army. The decision, based on information in the complaint file, is sent to the complainant and his or her representative, if any, by certified mail, return receipt requested. Copies are sent to the MACOM and activity EEO officer. The decision may also be personally delivered to the complainant and the representative by an Army official. If so, the complainant and the representative acknowledge receipt by signing and dating the official copy, and the server signs it and indicates on the copy to whom and when the decision was served. The receipt or the signed copy is filed in the complaint file.

(b) If a hearing was not held, the decision will specify the reasons for the decision and any remedial action to be taken.

(c) If a hearing was conducted, the complainant and the activity will receive a copy of the findings, analysis, and recommendations of the complaints examiner with a copy of the hearing record. The final Army decision may adopt, reject, or modify the decision recommended by the complaints examiner. If the examiner has recommended a finding of discrimination and if the final Army decision letter will give the specific reasons for the rejection or modification. A complaints examiner's recommended finding of discrimination will become final and binding on the Army if 180 calendar days have elapsed since the complaint was filed and the Army has not issued a final decision concerning the recommendation within 30 calendar days after its receipt.

(d) The Army decision will require any remedial action authorized by law that is judged to be necessary or desirable to resolve issues of discrimination and to promote EEO policy.

(e) If discrimination of reprisal is found and there is an attorney of record, the Army decision will advise the complainant and his or her representative that attorney fees and/or costs maybe awarded and that any request for this award must be documented and filed within 20 calendar days after receiving the notice. Where the Army determines not to award attorney fees and/or costs to a prevailing complainant represented by an attorney, the decision will state the specific reasons for denying the award. Attorney fees and/or costs are not authorized in age discrimination complaints.

(f) The Army decision will inform the complainant of the right to appeal the decision to the EEOC, of the right to file a civil action, and of the applicable time limits. (For appeal and civil action procedures, see § 588.57.)

(g) Section 588.65 of this regulation addresses the rights of the ADO when a final decision is made.

§ 588.27 Avoiding delays.

(a) Complainants and management officials must not only comply with the time limits specified in this section and Army directives, they should also process a complaint without delay so that it may be resolved within 180 days after the formal complaint is filed. This includes the time spent by the complaint examiner in processing the complaint. In mixed cases covered by § 588.42, the Army decision should be given within 120 days.

(b) If the activity has not issued a decision and has not asked for a complaints examiner within 75 calendar days from the date a formal complaint was filed, the EEOC may require the Army to take steps to make sure the complaint is processed promptly. Alternatively, the EEOC may assume the complaint's processing. This assumption may include an EEOC investigation that will be paid for by the activity.

§ 588.28 Canceling a complaint.

(a) If a complainant fails to prosecute the complaint prior to the issuance of the USACARA ROI, the EEO officer will notify the complainant of the possibility of cancellation if the complainant does not proceed within a specified time period. If the complaint is canceled, the EEO officer will notify the complainant, in writing, of the cancellation, and of his or her right to appeal to the EEOC or to file a civil action. The notice will also give the time limits for filing an appeal or civil action.

(b) If the complainant fails to prosecute the complaint and it has been investigated by USACARA, the EEO officer should send the file to EEOCCRA and request that the Secretary of the Army or his or her designee issue a final decision.

§ 588.29 Consolidation of complaints.

(a) Two or more complaints of discrimination filed by different Army employees, former employees, or applicants for employment, making substantially similar allegations of discrimination, may, with written permission of the complainants, be consolidated for processing by any of the following individuals:

(1) EEO officer.
(2) Activity Commander.
(3) USACARA investigator.
(4) EEOC complaints examiner.

(b) Two or more complaints of discrimination from the same employee or applicant may, at the discretions of the EEO officer, Activity Commander, USACARA investigator, or EEOC complaints examiner, be joined for processing after notifying the individual that his or her complaints will be processed jointly.

§ 588.30 The complaint file.

The complaint file will be indexed and tabbed in reverse chronological order and will contain legible copies of the documents listed in § 588.76.

Subpart C—Class Complaint of Discrimination

§ 588.31 General guidance.

(a) An employee or applicant who wishes to be an agent for a class and who believes the class has been discriminated against because of race, color, religion, sex, national origin, physical or mental handicap, age, and/or reprisal in an employment matter controlled by the Army, may file a class complaint of discrimination. An agent must be a member of the class and must allege that he or she has been personally harmed by a personnel policy or practice that the Army has the authority to change or eliminate.

(b) EEO personnel trained in handling class complaints serve as the counselors for class complaints.

(c) Agents of the class should be thoroughly familiar with the criteria in § 588.33 before they file a class complaint.

(d) The summarized step-by-step procedure in Appendix B, and the flow chart at Appendix J may be reproduced locally and used as a handout.

§ 588.32 Precomplaint processing.

(a) An employee or applicant for employment who wishes to be an agent in a class complaint must consult with the responsible activity's designated EEO counselor for class complaints. Contact must be made within 90 calendar days from one of the following dates:

(1) The date of the matter giving rise to the allegation of individual discrimination.

(2) The effective date of a personnel action.

(3) The date that the aggrieved person became aware, or reasonably should have become aware.

(b) The counselor should advise all aggrieved persons orally and in writing of the following:

(1) The discrimination complaint procedures.

(2) The criteria for the acceptance of class complaints.

(3) The aggrieved person's right to anonymity during the precomplaint process unless disclosure is authorized by the aggrieved person or a formal complaint is filed.

(4) The aggrieved person's right to anonymity during the precomplaint process unless disclosure is authorized by the aggrieved person or a formal complaint is filed.

(c) EEO counselor duties. The EEO counselor will—

(1) Make whatever inquiry is necessary to clarify and define the issues.

(2) Counsel the aggrieved person concerning the issues involved.

(3) Inform the EEO officer and the CPO and other affected officials when corrective action is believed necessary.

(4) Attempt informal resolution through discussions with appropriate officials of the responsible activity. When involved in such discussions, the counselor may seek advice from the servicing legal office.

(5) Keep records of all counseling activities.

(6) Summarize in writing actions and advice given, if any, concerning the issues in the personnel management policy or practice.

(7) Provide sufficient information to the EEO officer so that he or she may notify by electrical transmission the Director of EEOCCRA (EEOCCRA/SFCR/WASH DC 20310–1813) and OTJAG (DAJA/LTC/WASH DC 20310–2210) within 5 calendar days after the start of precomplaint processing. The information provided must identify precisely all matters raised in the complaint. The right of anonymity during the precomplaint processing will be observed unless disclosure is authorized by the class agent. If possible, the counselor should reach a mutual agreement with the class agent and his or her representative, if any, as to the specific issues to be considered. This agreement will be in writing and signed by the parties concerned with a copy provided to the complainant and his or her representative. Information provided to the Director, EEOCCRA, will identify precisely all matters raised in the complaint, except that anonymity during the precomplaint processing will be observed unless disclosure is authorized by the class agent.

(8) Conduct the final interview and terminate counseling with the class agent not later than 30 calendar days after the date on which the allegation was first called to the counselor's attention. This interview will take place whether or not the matter has been resolved. At this final interview, the counselor informs the aggrieved person in writing that—

(i) Counseling is over.

(ii) The class agent has the right to file a formal class complaint of discrimination within the next 15 days.

(iii) The class agent must immediately inform the EEO officer if he or she hires legal or other representation.

(iv) A formal complaint must specifically describe the acts of alleged discrimination.

(v) Only matters discussed with the EEO counselor will be considered in a formal complaint.

(9) Avoid influencing the class agent in any way regarding the filing of a class complaint.

(10) Not reveal the identity of the class agent during the precomplaint processing stage, except when authorized to do so by the class agent.

(11) Prepare and submit a counselor's report to the activity EEO officer within 5 calendar days after the final interview.

§ 588.33 Filing a formal class complaint.

(a) The complaint must be filed in writing by the class agent or a representative and be signed by the class agent.

(b) It must described specifically the policy of practice that gave rise to the complaint and the resultant personnel action or matter that harmed the class agent.

(c) It must be filed no later than 15 calendar days after the class agent has received the notice of final interview from the EEO counselor. For that purpose, the date a complaint is filed is the date of the postmark, or, if no postmark, the date the complaint is received by one of the officials listed in d below.

(d) Persons to whom class complaints may be submitted.

(1) A formal class complaint may be filed with any of the following:

(i) The responsible activity EEO officer.

(ii) The director of EEO.

(iii) The Secretary of the Army.

(2) EEO activity publications and the EEO counselor will request the class agent to submit a copy of his or her class complaint to the responsible activity EEO officer in every case. Any of the officials listed above will immediately transmit the complaint by the fastest means possible to the responsible activity EEO officer, indicating the date of receipt of the complaint if it is not postmarked.

(e) At all stages, in the preparation and presentation of a complaint, the class agent will have the right to be represented, accompanied, and advised by a representative of his or her own choosing, provided the choice does not involve a conflict of interest or position. The designation of the representative must be made in writing and made part of the class complaint file.

(f) If the agent is employed by the army, he or she will have a reasonable amount of official time to prepare and present his or her complaint. Employees who represent fellow Army employees in discrimination complaint cases must be permitted to use a reasonable amount of official time to carry out that responsibility, whenever it is not inconsistent with the performance of their duties. (See § 588.71(d).) Army employees who represent non-Army employees in a complaint will be granted, at their request, a reasonable

amount of annual leave or leave without pay for this purpose.

(g) Upon receipt of the class complaint, the responsible EEO officer will immediately send a copy of the complaint to EEOCCRA (EEOCCRA/SFCR/WASH DC 20310–1813) and OTJAG (DAJA/LTC/WASH DC 20310–2210). Receipt of the complaint will be acknowledged, in writing, by EEOCCRA. The acknowledgement will contain a docket number assigned to the case which will be used in processing the class complaint.

§ 588.34 Designating the Army representative.

The activity labor counselor should be designated by the Activity Commander as the Army representative. At the request of the labor counselor, the Activity Commander may also appoint a personnel specialist or other activity personnel to assist the labor counselor.

§ 588.35 Criteria for acceptance.

A class complaint or any part of it may be accepted unless it contains one or more of the following:

(a) Refers to a situation over which the Army has no jurisdiction.

(b) Is not based on the class or agent's race, color, religion, sex, age, national origin, physical or mental handicap, and/or reprisal. Complaints of discrimination because of age are accepted only if the class agent and the class were at least 40 years of age when the action occurred.

(c) Consists of allegations identical to those made in a previous class complaint, filed for the same class, that is pending or has been resolved by the Army or other proper authority.

(d) Is untimely.

(1) Class complaints must be brought to the attention of an EEO counselor within 90 calendar days after the incident, effective date of a personnel action, or the date that the aggrieved person became aware, of the discriminatory event or personnel action.

(2) Formal class complaints must be filed within 15 calendar days after the date of the final interview with the EEO counselor.

(e) Lacks specificity and detail.

(f) Was no filed in writing or was not signed by the class agent.

(g) Designates a class that is small enough that a consolidated complaint of the members of the class would be practical. (See § 588.29.)

(h) Alleges no questions of fact common to the class.

(i) Asserts claims of the class agent that are not typical of the claims of the class.

(j) Specifies a class agent or representative that will not protect the interests of the class fairly and adequately.

§ 588.36 Acceptance, rejection, or cancellation of the formal complaint.

(a) The activity EEO officer will review the class complaint, along with the EEO counselor's report and all other available evidence relevant to the acceptance of the class status of the complaint as specified in § 588.35. The EEO officer should coordinate with the servicing legal office and CPO for their comments to the EEOC complaints examiner on accord with b(4) below.

(b) The EEO officer must forward the following items to the EEOC district officer having geographic jurisdiction over the activity (Appendix M.) within 10 calendar days after receipt of the class complaint.

(1) The Class complaint.

(2) The EEO counselor's report.

(3) Any other information that may help the EEOC complaints examiner determine whether the complaint meets the criteria for acceptance specified in § 588.35.

(4) Any brief prepared by the labor counselor regarding the acceptability of the class status of the complaint. At the request of the labor counselor, a personnel specialist may be appointed to assist the labor counselor in the preparation of the brief.

(5) A written instruction that the EEOC complaints examiner send the recommended decision on acceptance, rejection, or cancellation of the class complaint directly to EEOCCRA, ATTN: SFCR, WASH DC 20310–1813.

(c) If an allegation is not included in the EEO counselor's report, the EEOC complaints examiner gives the class agent 15 calendar days to explain whether it was discussed and, if not, the reason it was not discussed. If the explanation is not satisfactory, the complaints examiner may recommend that the Army reject the allegation. If the explanation is satisfactory, the complaints examiner may refer the allegation back to the EEO counselor for further counseling of the agent.

(d) If an allegation is not specific and lacks detail, the complaints examiner gives the agent 15 calendar days to correct it. If the agent does not give the required information within that time, the complaints examiner may recommend that the Army reject the complaint. If the information given makes new allegations outside the scope of the complaint, the examiner advises the agent to file and individual or class complaint based on these allegations.

(e) The complaints examiner may recommend that the Army extend the time limits for filing a complaint and for consulting with an EEO counselor. This may be done when the agent or the representative establishes either of the following:

(1) The class agent was not notified of the prescribed time limits and was not otherwise aware of them.

(2) The class agent was prevented by circumstances beyond his or her control from acting within the time limits.

(f) The complaints examiner may recommend that the Army cancel a complaint if the agent fails to prosecute the complaint. This action may be taken when the agent fails to respond, within 15 calendar days, to a written request from the complaints examiner to give information or proceed with the complaint. No complaint may be canceled unless the class agent is first notified, in writing, that failure to proceed within a specified time may result in cancellation of the class complaint.

(g) When requesting information under d or e above, the complaints examiner informs the class agent that the complaint may be rejected if the information is not provided.

(h) The complaints examiner's written recommendation to accept, reject, or cancel a class complaint is sent to the Director, EEOCCRA, the class agent, and the agent's representative.

(i) Upon receiving the complaint examiner's recommendation, the EEOCCRA reviews the recommendations and the case file. The EEOCCRA recommends to the Secretary of the Army or his or her designee whether to accept, reject, or cancel the class complaint.

(j) The Secretary of the Army or his or her designee will notify the class agent, the agent's representative and the complaints examiner of the Army decision, and will send a copy of the notice to the MACOM and activity EEO officer.

(k) The notice of decision to reject or cancel must inform the class agent of all of the following:

(1) The right to proceed with an individual complaint of discrimination.

(2) The right to appeal the Army decision to the EEOC Office of Review and Appeals.

(3) The right to file a civil action. In age discrimination complaints, the agent must appeal a rejection or cancellation to the EEOC before he or she may file a civil action.

(l) The complaint examiner's recommendation to accept, reject, or cancel the complaint becomes the Army decision unless it is accepted, modified, or rejected by the Secretary of the Army or his or her designee within 10 calendar days after its receipt.

(m) Acceptance of a class complaint by the Secretary of the Army or his or her designee for purposes of administrative processing under this regulation is not an admission of class status within the meaning of Rule 23 of the Federal Rules of Civil Procedure for purposes of litigation within a Federal District Court.

§ 588.37 Notification and opting out.

(a) Upon notification of acceptance of a class complaint, the activity EEO officer will immediately make reasonable efforts to notify all class members of the existence of a class complaint. The notice will advise class members of their right to remove themselves from the class by notifying the Army within 30 calendar days after the notice is issued. The EEO officer will determine the reasonable means such as delivery, mailing distribution, or posting, for notifying the class members.

(b) The notice will contain the following:

(1) The name of the agency or organizational segment, its location, and the date the class complaint was accepted by the Army.

(2) A description of the issues accepted in the class complaint.

(3) An explanation that class members may remove themselves from the class by notifying the activity EEO officer within 30 calendar days after the issuance of the notice.

(4) An explanation of the binding nature of the final decision on the formal class complaint.

§ 588.38 Avoiding delay.

A class complaint must be processed promptly. All parties will proceed with the complaint without delay so that the time limits imposed by the complaints examiner will be met and the complaint will be processed within 180 calendar days after filing.

§ 588.39 Developing evidence.

(a) The complaints examiner gives the labor counselor and the class agent and his or her representative, if any, 60 calendar days to prepare their cases and develop the evidence based on EEOC regulations. The complaints examiner may extend this time if requested by either party.

(b) During the time allowed to develop the evidence, the complaints examiner may, at his or her discretion, direct that an investigator trained or certified by the EEOC, investigate facts relevant to the class complaint or to any portion of it. In this event, the labor counselor will immediately notify the EEO officer who will request, in writing, within 3 days of receipt of the examiner's directive, the assignment of an investigator by the appropriate USACARA Regional Office citing applicable funds for travel and per diem.

(c) Both parties will give the examiner all materials that they wish examined and other material the examiner may request.

§ 588.40 Resolution of the complaint.

(a) The complaints examiner gives the class agent, or his or her representative, and the labor counselor a copy of all materials obtained. Also, the examiner provides an opportunity for the class agent to discuss these materials with the labor counselor and to try to resolve the complaint.

(b) Though an opportunity to resolve the complaint is specifically provided at this stage, both parties may agree to resolution at any time after the complaint has been accepted.

(c) If the complaint is resolved, the terms of the resolution will be put in writing and signed by the class agent and the Activity Commander, after coordination with the EEO officer, the labor counselor, and the CPO. A written resolution may include a finding on the issue of discrimination and an award of attorney fees and/or costs. It must also include any corrective action agreed on. The corrective action must be consistent with the law, executive orders, negotiated agreements, and Federal regulations, rules, and instructions. A copy of the signed resolution will be given to the class agent.

(d) Notice of the resolution will be given to all class members in the same way as the notification of the acceptance of the class complaint. This notice will state the terms of the corrective action, if any, to be granted by the Army. A resolution binds all members of the class, except those who have properly removed themselves.

(e) If the Army does not carry out, or rescind, any action specified by the resolution, for reasons not due to acts or conduct of the class agent, the representative, or class members, it will reinstate the complaint for processing at the class agent's written request. The complaint should be reinstated at the point where processing stopped. The agent may appeal to the EEOC Office of Review and Appeals the Army's failure to reinstate the complaint.

§ 588.41 Procedures for the hearing.

(a) At the end of the period allowed to prepare the case, the complaints examiner will set a date for a hearing. Witnesses and representatives at the hearing are authorized as provided for a Subpart H. Only persons directly connected to the complaint (as determined by the examiner) may attend the hearing.

(b) The complaints examiner will conduct the hearing and give an opportunity to the parties to introduce evidence and to cross-examine witnesses. Testimony will be under oath or affirmation. Rules of evidence are not applied strictly, but the complaints examiner may exclude irrelevant or unduly repetitious evidence. The examiner may also exclude any person from the hearing for conduct that obstructs the hearing.

(c) The hearing is recorded verbatim and the transcript is made a part of the record. The complaints examiner sends to EEOCCRA the record of the hearing, the report of findings, and a recommended decision on the complaint. This decision includes corrective action where appropriate. The examiner notifies the class agent of the date the report of findings and recommendations was sent to the EEOCCRA.

§ 588.42 Final Army decision.

(a) Within 30 calendar days after the Army receives the examiner's report, the Secretary of the Army or his or her designee must issue a written decision to accept, reject, or modify the findings and recommendations of the examiner.

(b) The decision is sent to the class agent and to his or her representative, with a copy of the transcript of the hearing and of the findings and recommendations of the examiner.

(c) If the Army decision is to reject or modify the findings and recommendations of the complaints examiner, the decision must state, in detail, the specific reasons for the Army action.

(d) If the Army has not issued a decision within 30 calendar days after receiving the examiner's report, the findings and recommendations of the examiner will become the final Army decision. This decision and the record of the hearing must then be sent by EEOCCRA to the class agent or his or her representative. A copy of the final Army decision will be sent to the MACOM, the Activity Commander, and to the activity EEO officer.

(e) Within 10 calendar days of the transmittal of the final Army decision to the class agent, the EEO officer will notify all members of the class of the final Army decision by the same means used to notify the class of the existence of the class complaint. (See § 508.31(a))

(f) The final Army decision will direct any remedial action authorized by law determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal employment opportunity. When discrimination is found, the notice of decision will—

(1) Advise the class agent and his or her representative, if any, the attorney fees and/or costs may be awarded. The payment of attorney fees and/or costs is not authorized in administrative complaints of age discrimination.

(2) State that a request for such award must be filed within 20 calendar days after receipt.

(3) List the documents that must be sent with the request. (See § 588.54.)

(g) The notice of decision must inform the class agent and his or her representative, if any, of the right to appeal the Army decision to the EEO Office of Revenue and Appeals, of the right to file a civil action, and of the applicable time limits. (For details on appeals and civil actions, see Subpart F.)

(h) A final Army decision on a class complaint filed under this regulation is binding on the Army and all members of the class, except those who have properly removed themselves from the class.

§ 588.43 Corrective action.

(a) If discrimination is found, the Army must eliminate or change the personnel policy or practice that gave rise to the complaint, so that the policy or practice will no longer cause such discrimination. Also, the Army must provide individual remedial action to the class agent including an award of attorney fees and/or costs, as appropriate, as provided in Subpart E. (The Army must fulfill obligations to consult or negotiate with the unions that have exlusive recognition before doing away with or changing personnel policies or practices.)

(b) If discrimination is found and a class member believes that, but for that discrimination, he or she would have been given employment or an employment benefit, the class member may file a written claim within 30 calendar days with any of the persons listed below. The claim will be filed within 30 calendar days after the notification.

(1) The activity EEO officer.

(2) The director of EEOCCRA.

(3) The director of EEO for the Army.

(4) The Secretary of the Army.

(c) The claim must include details showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within no more than 135 calendar days before the class complaint was filed.

(d) The Army will try in good faith to resolve the claim within 60 calendar days of receipt. If the Army and the claimant do not agree that the claimant is a member of the class or do not agree on the relief to which the claimant is entitled, the Army will refer the claim, with its recommendations, to the complaints examiner

(e) The complaints examiner will notify the claimant of the right to a hearing on the claim and will give the parties to the claim an opportunity to submit evidence and representations on the claim. If a hearing is requested, it will be conducted in accord with § 588.25. If a hearing is not requested, the complaints examiner, at his or her discretion, may hold a hearing to obtain the necessary evidence on the claim.

(f) The complaints examiner will issue a report of findings and recommendations on the claim to the Director, EEOCCRA. The Army will issue a final decision within 30 calendar days of receipt of the examiner's report. If a decision is not issued within 30 calendar days, the examiner's findings and recommendations will become the final decision.

(g) If the complaints examiner determines that the claimant is not a member of the class or that the claim was not filed in a timely manner, he or she will recommend rejection of the claim and give notice of this action to the Army, the claimant, and the claimant's representative. The notice will inform the claimant of the right to appeal to the EEOC Office of Review and Appeals or to file a civil action in accord with Subpart F.

§ 588.44 The complaint file.

The complaint file will be indexed and tabbed in reverse chronological order and will contain legible copies of the documents listed in § 588.76.

Subpart D—Miscellaneous Complaints

§ 588.45 Reprisal.

A complainant, his or her representative, a witness, or an EEO official may allege restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation or processing of a complaint of discrimination. An allegation of reprisal may be processed under this regulation, a negotiated grievance procedure where applicable, or the appellate provisions of the MSPB (mixed case).

§ 588.45 Mixed cases.

(a) A mixed case complaint is either—

(1) A complaint of employment discrimination or reprisal filed under this regulation, related to or stemming from an action taken by the Army against the complainant, which action may be appealed to the MSPB pursuant to any law, rule, or regulation.

(2) A complaint of sex-based wage discrimination filed with the EEOC, related to or stemming from an action taken by the Army against a complainant, which may be appealed to the MSPB, pursuant to any law, rule, or regulation.

(b) Examples of action appealable to the MSPB are removals, suspensions for more than 14 days, reductions in grade (demotion), reductions in force, denials of within-grade increases, and furloughs for 30 days or less.

(c) *Mixed case appeals.* (1) A mixed case appeal is an appeal filed with the MSPB which alleges that an Army action resulted, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, mental or physical handicap, age, and/or reprisal, or alleges that such Army action resulted in sex-based wage discrimination.

(2) If an employee files an appeal with the MSPB on a mixed case, before filing a formal complaint of discrimination with the Army, the Army activity must reject or cancel any complaint on the same matter, regardless of whether the allegation of discrimination is raised in the appeal to the MSPB. Upon such rejection or cancellation, the Army activity must advise the employee to raise the allegation of discrimination in connection with his or her appeal to the MSPB. If the employee first files a formal complaint with the Army under this regulation, before filing an appeal on the same matter to MSPB, the Army must advise the MSPB and request that it dismiss the appeal without prejudice. The Army, thereafter, shall process the complaint in a manner similar to any other complaint, except that there will be no hearing before the EEOC and the complaint's appeal rights will be to the MSPB, not to the EEOC.

(d) *Election.* A mixed case complaint may be presented initially as a discrimination complaint under this regulation or under a negotiated grievance procedure, if applicable, or as part of an appeal to the MSPB as set forth in FPM Supplement 990–1, MSPB regulations, or Part 1201, title 5, Code of Federal Regulations (5 CFR Part 1201). Employees who wish to appeal must choose the system under which they wish to proceed. Whichever formal action the employee files first is considered an election to proceed in that forum as to the alleged discrimination. The Army will inform every employee who is the subject of an action which is appealable to the MSPB, of the right to file a mixed case complaint with the Army, or to file a mixed case appeal with MSPB if the employee has raised the issue of discrimination during the processing of the personnel action but prior to the decision to effect that personnel action.

(e) *Timely processing.* A mixed case complaint will be processed in a timely manner, so that the final Army decision is issued within 120 calendar days from the date the complaint was filed.

(f) *Processing complaints on proposals.* (1) Any complaint filed in connection with an Army proposal to take an action that is appealable to the MSPB will be consolidated with any subsequent mixed case complaint filed in connection with the Army's decision to take such an action, either as proposed or as modified during the processing of the proposal.

(2) If, following a complaint on a proposal, the complainant files an appeal with the MSPB on the subsequent Army decision resulting from that proposal, the EEO officer will cancel the complaint on the proposal. The complainant will be advised by the EEO officer that any allegations of discrimination contained in that complaint should be raised with the MSPB in connection with the pending appeal.

(3) When a complaint concerning a proposal to take an action appealable to the MSPB is combined with a mixed case complaint concerning an Army decision appealable to the MSPB, the 120-calendar-day time frame for processing the consolidated complaint begins as of the date the complaint concerning the Army decision is filed.

(4) When a complaint is filed on a proposal, and no appeal or complaint is filed with the NSPB or the Army on the subsequent appealable Army decision resulting from that proposal, the complaint on the proposal will include the final appealable Army decision as an issue. The 120-calendar-day timeframe will begin as of the effective date of the final appealable decision.

(g) *Mixed case advise.* Sample language advising complainants of their rights under mixed case procedures is at appendix D. In age discrimination complaints, a complainant must appeal the Army decision to the EEOC or MSPB before filing a civil action in a Federal District Court.

§ 588.47 Negotiated grievance procedure.

A complainant who is covered by a collective bargaining agreement may file allegations of discrimination or reprisal under the negotiated grievance procedure instead of filing under this regulation. The complainant has this grievance option if the negotiated grievance procedure does not exclude allegations of discrimination or reprisal. When using the negotiated grievance procedure, a complainant is bound by the negotiated agreement.

§ 588.48 Election of forum.

(a) In a mixed case, the complainant may initially choose either the individual complaint procedure as described in Subpart B of this regulation, appeal the the MSPB, or use the negotiated grievance procedure. The rules for choosing the procedure are not the same in all situations. An election will have been made when the following action occur:

(1) An MSPB appeal will not be accepted if a timely discrimination complaint or a grievance under the negotiated procedure has been filed in writing.

(2) A discrimination complaint will not be accepted if a timely appeal to the MSPB or a timely grievance under the negotiated procedure has been filed in writing.

(3) A grievance under the negotiated procedure will not be accepted if a timely appeal to the MSPB has been filed in writing or if the complainant has initiated timely action under Subpart B of this regulation. If the negotiated grievance procedure is used, the employee may ask the MSPB to review the final decision made under the negotiated procedure. (See § 588.49.)

(b) In a matter involving discrimination covered by the negotiated grievance procedure, but not appealable to the MSPB, the complainant may choose either the complaint procedure as described in Subpart B or use the negotiated grievance procedure.

(1) The choice is made when a timely grievance is filed in writing under a negotiated procedure or when the employee files a formal complaint under Subpart B.

(2) An employee who chooses the negotiated grievance procedure may ask the EEOC to review the final decision made under that negotiated procedure. (See § 588.49.)

§ 588.49 Final decision under the negotiated grievance procedure.

For seeking review by the EEOC or the MSPB, a final decision under the negotiated grievance procedure is defined as one of the following:

(a) The final grievance decision rendered by the activity, if the union fails to invoke arbitration of the grievance (an employee cannot individually invoke arbitration.)

(b) The award rendered by an arbitrator, if neither the union nor management files an exception to the award with the Federal Labor Relations Authority (FLRA) (an employee cannot individually appeal an arbitration award to the Authority) or an arbitrator's award that cannot be appealed to the FLRA.

(c) The decision of the FLRA on appeal of an arbitration award.

§ 588.50 General allegations of discrimination.

General allegations of discrimination made by persons and special interest organizations, that are not within the scope of individual or class complaints, will be promptly answered by the Activity Commander or a designee. A copy of the response to the general allegation will be sent to the MACOM EEO officer and the Director of EEOCCRA.

Subpart E—Remedial Actions

§ 588.51 General guidance.

(a) Upon a finding of discrimination, a complainant is entitled to remedial action that makes him or her whole unless the record establishes by clear and convincing evidence that the action complained of would have occurred even absent the identified discrimination. The aim of remedial action is to "make the complainant whole" or, to place the complainant in the situation he or she would be in if there had been no discrimination. Attorney fees and/or costs may also be awarded as outlined in § 588.54. Remedial action may include—

(1) Retroactive appointment or promotion with back pay.

(2) An opportunity for the complainant to have the benefit that had been denied, such as training, overtime scheduling, detailing, or other employment benefits.

(3) Cancellation of an unwarranted personnel action and expunction from the Army's records of any reference to, or any record of, an unwarranted disciplinary action that is not a personnel action.

(b) Corrective action may also be taken to change or eliminate personnel policies or practices and to take disciplinary action against ADOs. Disciplinary action against an ADO is not a personal remedy that may be requested by a complainant. It is, therefore, not an issue for decision in a

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hearing or inquiry and is not to be specified in a decision on the complaint.

(c) The Army may also resolve complaints informally and award back pay and other remedial relief including attorney fees and/or costs without a finding of discrimination. The monetary award in such settlements, however, may not exceed the maximum backpay or other amount that would be recoverable under this regulation if a finding of discrimination had been made. The requirements of §§ 588.20(d), 588.20(e), 588.55 apply to such settlements.

§ 588.52 Remedial action involving an applicant.

Upon a finding of discrimination, the Army will offer the applicant the position denied him or her or employment of the type and grade denied him or her, unless the record contains clear and convincing evidence that the applicant would not have been hired even without discrimination. The remedial relief available to the applicant will conform to the following guidance:

(a) The offer is made in writing, giving the applicant 15 calendar days from receipt to accept or decline the offer. Failure to notify the Army of a decision within the 15-day period will be considered a declination of the offer, unless the applicant can show that circumstances beyond his or her control did not permit responding within the time limit.

(1) If the offer is accepted, the appointment is retroactive to the date the applicant would have been hired, subject to the limitation in b below. Back pay is awarded from the beginning of the retroactive period, subject to the same limitation, until the date the person actually enters on duty. The applicant is deemed to have worked for the Army during the (retroactive) period for all purposes except for meeting service requirements for completion of a probationary or trail period as required.

(2) If the offer is declined, the Army awards the applicant a sum equal to the back pay he or she would have received. Back pay will be computed from the date he or she would have been appointed until the date the offer was made, subject to the limitation of b below. The Army informs the applicant, in its offer, of his or her right to this award if the offer of employment is declined.

(b) Back pay may not accrue from a date earlier than 2 years before the date the complaint was initially filed by the applicant.

(c) If the Army or a Federal Court finds that discrimination existed at the time the applicant was considered for employment, but also finds clear and convincing evidence that the applicant would not have been hired even without discrimination, the Army will consider the applicant for any existing vacancy of the type and grade for which he or she was considered initially and is qualified, before considering other candidates. If the applicant is not selected, the reasons for nonselection are recorded and made a part of the complaint file. If there is no vacancy, the Army gives the applicant priority consideration for the next vacancy for which he or she is qualified. This will take precedence over other priorities.

§ 588.53 Remedial action involving an employee.

Upon a finding of discrimination, the Army will take remedial actions that may include one or more of the following:

(a) Retroactive promotion. A retroactive promotion or assignment with back pay to the position denied the employee or an equivalent position may be provided as a remedy unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade even without discrimination. The back pay liability may not accrue from a date earlier than 2 years before the date the discrimination complaint was filed; however, in no case will the back pay liability accrue from a date before the earliest date the complainant could have been promoted.

(b) Priority consideration. A first consideration action (in connection with an initial hire, reassignment, or promotion) before other applicants or candidates are considered.

(c) Cancellation. Cancellation of an unwarranted personnel action and restoration of the employee.

(d) Deletion. The deletion from Army records of any reference to, or any record of, an unwarranted disciplinary action.

(e) Participation. Full opportunity to participate in the benefit denied complainant (for example, training or preferential work assignments).

§ 588.54 Award of attorney fees and/or costs.

(a) In complaints of discrimination, the Army or a Federal Court may award the applicant or employee who is represented by an attorney reasonable attorney fees and/or costs as a part of the remedial relief under this regulation. Except as provided in § 588.55, Army decisions will make such awards only when a finding or admission of discrimination is made. The award of attorney fees and/or costs is not available in administrative cases of discrimination based on age.

(b) Attorney fees are paid only for services performed after a formal complaint has been filed under this regulation and after the complainant has notified the Army that he or she is represented by an attorney. However, the attorney may be compensated for a reasonable amount of time spent to make the decision to represent the complainant. Written submissions to the Army that are signed by the attorney shall be deemed to constitute notice of representation. Attorney fees are allowable only for services of members of the bar and law clerks, paralegals, or law students supervised by members of the bar. No award will be made for the services of any employee of the Federal Government. Attorney fees and/or costs are paid by the activity where the discrimination took place. Requests for attorney fees and/or costs will include all of the following:

(1) A statement of the number of hours spent in preparing and presenting the case. This must specify the dates that work was done on the case and detail the work performed. It must also describe the training and experience of each person who worked on the case and the number of hours spent by each.

(2) A sworn statement of the attorney's usual and customary hourly charge, and the usual fee for each person who worked on the case.

(3) A sworn statement explaining all of the following:

(i) Whether the fee for the case was fixed or contingent.

(ii) Whether the handling of the case prevented other employment.

(iii) The nature and length of the professional relationship with the client.

(iv) Any other factors that might affect the amount of the award.

(4) Sworn statements by other attorneys or the local bar association in the relevant geographic area, who work in employment discrimination, setting forth all of the following:

(i) The customary fee for such work.

(ii) The desirability of the case.

(iii) Awards in similar cases.

(iv) The reputation, ability, and experience of the attorney requesting the fees.

(5) Other information in the form required by courts in the awarding of attorney fees and costs.

(c) The complainant and his or her representative, if any, files a verified statement of attorney fees and/or costs as described in b above with the activity EEO officer within 20 days of receipt of the decision. The EEO officer will immediately submit the request and supporting documents to the activity labor counselor for review and recommendation. The labor counselor will review and analyze in writing the request and supporting documents in accord with relevant judicial requirements and all the following:

(1) *Attorney fees.* (i) The time and labor required.

(ii) The novelty and difficulty of the questions.

(iii) The skill requisite to perform the legal service properly.

(iv) The preclusion of other employment by the attorney due to acceptance of the case.

(v) The customary fee.

(vi) Whether the fee is fixed or contingent.

(vii) Time limitations imposed by the client or the circumstances.

(viii) The amount involved and the results obtained.

(ix) The experience, reputation, and ability of the attorney.

(x) The undesirability of the case.

(xi) The nature and length of the professional relationship with the client.

(xii) Awards in similar cases.

(2) Costs (as authorized by section 1920, title 28, United States Code (28 U.S.C. 1920)).

(i) Fees of the reporter for all or any of the stenographic transcripts necessarily obtained for use in the case.

(ii) Fees and disbursements for printing and witnesses.

(iii) Fees for exemplification and copies of papers necessarily obtained for use in the case.

(iv) Witness fees will be awarded in accord with the provisions of 28 U.S.C. 1821, except that no award will be made for a Federal employee who is in a duty status when made available as a witness.

(d) If the complaint is resolved at the activity, with a finding of discrimination, the Activity Commander or his or her designee, in consultation with the EEO officer and the labor counselor, is authorized to award attorney fees and/or costs provided agreement is reached on the amount of fees and/or costs and the amount is less than $5,000. In cases where agreement cannot be reached, or where the amount is $5,000 or more, the final award will be made by the Secretary of the Army or his or her designee. If the parties agree that attorney fees should not be awarded, the settlement agreement should include an explicit waiver of the complainant's right to seek fees.

(e) If the activity cannot reach a settlement on the fees and/or costs or the amount requested is $5,000 or more, the activity labor counselor will review the amount claimed and make a recommendation. This recommendation will be sent through the Labor and Civilian Personnel Law Office, Office of the Judge Advocate General, ATTN: DAJA–LC, WASH 20310–2209, for final decision by the Secretary of the Army or his or her designee as follows:

(1) If agreement is not reached at the activity within 20 calendar days after receiving the verified statement, upon receipt of the labor counselor's recommendations, the Secretary of the Army or his or her designee will issue a written final Army decision to the complainant on the amount of fees and/or costs.

(2) The decision should be issued within 30 calendar days after receipt of the verified statement.

(3) The decision will give specific reasons for the amount of the award and state the complainant's right to appeal the decision to EEOC or file a civil action in a Federal District Court.

(f) If the complaint of discrimination is resolved on the merits by a decision of the Secretary of the Army or his or her designee, the award of attorney fees and/or costs must also be made by the Secretary of the Army or his or her designee in accord with the procedures outlined in (e) above.

(g) All payment of attorney fees and/or costs will be made payable jointly to the complainant and the attorney of record.

§ 588.55 Informal no-fault settlement.

(a) Informal settlements of complaints may be reached though the Army need not admit fault, wrongdoing, or discrimination provided that the ROI indicates some merit to the allegation of wrongful action.

(b) The standard for informal settlement awards is stated in § 588.51.

(c) The Activity Commander, or his or her designee, in consultation with the EEO officer and the labor counselor, has authority to award attorney fees and/or costs as part of an informal settlement if agreement is reached between the parties and the amount to be awarded is less than $5,000. If the parties do not reach agreement, or the amount is $5,000 or more, the final award will be made by the Secretary of the Army or his or her designee.

Subpart F—Appeals and Civil Actions

§ 588.57 Appealing an Army decision.

(a) A complainant in an individual complaint of discrimination or a class agent in a class complaint may appeal to the EEOC Office of Review and Appeals, 2401 E Street, NW, WASH DC 20507, the Army decision—

(1) To reject or cancel the complaint in whole or in part.

(2) To refuse to reinstate the complaint for further processing.

(3) On the merits of the complaint, the issue of attorney fees and/or costs, or the remedial action.

(b) A claimant in a class complaint may appeal to the EEOC Office of Review and Appeals, 2401 E Street, NW, WASH DC 20507, the Army decision—

(1) To cancel or reject a claim for individual relief.

(2) On the merits of the claim for individual relief or the issue of attorney fees and/or costs.

(c) Except as provided in § 588.57(f) complainant in an individual complaint of discrimination may file a notice of appeal with the EEOC any time after receiving the Army Notice of Final Decision on his or her complaint but not later than 20 calendar days after receiving the decision. A notice of appeal will be deemed filed on the date it is postmarked or, without a postmark, on the date it is received by the EEOC. Any statement or brief to support the appeal must be sent to the EEOC and to EEOCCRA, ATTN: SFCR, WASH DC 20310–1813, within 30 calendar days after the date the notice of appeal was filed.

(d) On receiving the complainant's statement or brief, EEOCCRA will ask the activity to send management comments and copies of the case file. These comments must be coordinated between the activity EEO officer, labor counselor, and CPO, and must be received by EEOCCRA early enough for EEOCCRA to meet the EEOC suspense date. Comments will be prepared in a format that will permit forwarding to EEOC without editing or retyping.

(e) Except as in § 588.57(f) an agent or a claimant in a class complaint may file an appeal at any time after receiving a final Army decision, but not later than 15 calendar days after receiving the decision. An appeal will be deemed filed on the date it is postmarked or, without a postmark, on the date it is received by the EEOC.

(f) Usually, the time limits for filing a notice of appeal will not be extended by the EEOC. However, the EEOC, at its discretion, may extend the time limits and accept an appeal based on a written statement by the complainant. The statement must show that the complainant was not notified and not otherwise aware of the prescribed time limits, or that circumstances beyond his or her control prevented filing a notice of appeal or an appeal within the prescribed time limits.

(g) The EEOC Office of Review and Appeals reviews the complaint file and all relevant written representations made by the parties. The office may return the complaint to the Army for further investigation or for a new hearing, or may have an EEOC investigator look into the case. The office issues a written decision that sets forth its reasons for the decision and sends copies of the decision to the complainant, the designated representative and EEOCCRA. EEOCCRA will send the decision to the activity. If corrective action is ordered, the activity must take the action. The activity will promptly report to the EEOC compliance officer, with copies to the complainant, the MACOM, and EEOCCRA, that the action has been taken.

(h) For purposes of an appeal to the EEOC, the Army decision is final only when all issues in the complaint, including the award of attorney fees and/or costs, have been resolved. If fees and/or costs are to be awarded, the decision will not be final until the procedure for determining the amount of the award has been completed.

§ 588.58 Review by the EEOC commissioners.

(a) The EEOC commissioners may, at their discretion, reopen and reconsider any previous decision when the requesting party files written argument or evidence that tends to establish one or more of the following:

(1) New and material evidence is available that was not readily available when the previous decision was issued.

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy.

(3) The previous decision may set a precedent involving a new or unreviewed policy consideration that may have effects beyond the case at hand or, is otherwise of such an exceptional nature as to merit the special attention of the Commission.

(b) A copy of any statement or brief in support of a request to reopen and reconsider must be submitted to the EEOCCRA as well as to the activity EEO officer.

(c) An Activity Commander or a designee who wishes to request reopening will consult the labor counselor to determine if the request meets the requirements of this paragraph. If so, the commander will send the request to EEOCCRA for action. Any Army request to reopen and reconsider must be made within 30 days of the date of the EEOC Office of Review and Appeals decision.

(1) The request will be fully self-contained and will explain how the criteria of above applies to the case. It will be prepared to show an Army position rather than a local position and will be typed on plain bond paper.

(2) The request will be sent to EEOCCRA as early as possible but not later than 7 work days before the 30-calendar-day time limit for requesting reopening and reconsideration expires.

(3) The request to reopen and reconsider will be prepared in a format that will permit forwarding to EEOC without editing or retyping.

(4) EEOCCRA will check the submission for consistency with the case file and, if otherwise proper, will obtain approval from the Director of EEO.

(i) An Army request to reopen and reconsider may be submitted to EEOC only if approved by the Director of EEO.

(ii) Approval will be granted only when the Director of EEO finds that the submission is timely, meets EEOC criteria, and is in the best interest of the Army. Approval will not be granted routinely.

§ 588.59 Civil actions.

(a) A complainant in an individual complaint or an agent in a class complaint has the right to file a civil action in a Federal District Court. Time limits for filing, except for complaints based on age (see § 588.6(c)(1)(iii)), are as follows:

(1) Within 30 calendar days after receiving the notice of the final Army decision on the complaint or claim.

(2) After 180 calendar days from the date of filing a complaint with the Army if there has been no decision.

(3) Within 30 calendar days after receiving the notice of the final EEOC decision on the complaint.

(4) After 180 calender days from the date of filing an appeal with the EEOC if the EEOC has not made a decision.

(b) In complaints alleging age discrimination, the complainant can file a civil action in Federal District Court 30 days after providing notice to the EEOC of his or her intent to file a civil action. Such notice must be given to the EEOC within 180 days of the occurrence of the alleged discriminatory act. If a complainant elects to pursue his or her age complaint through the administrative procedures outlined in Subpart B then he or she may not file a civil action in Federal District Court until all administrative remedies (including an appeal of the final Army decision to the EEOC) have been exhausted.

(c) All Army decisions must notify the complainant of the right to file a civil action and of the time limits for doing so. For civil action purposes, the Army decision is final only when a determination has been made on all the issues in the complaint, including whether or not to award attorney fees and/or costs. If attorney fees and/or costs are to be awarded, the decision will not be final until the procedure outlined in Subpart E for determining the amount of the award has been followed.

(d) The labor counselor will inform the activity EEO officer and the EEOCCRA (ATTN: SFCR, WASH DC 20310–1813) when litigation is initiated on any EEO complaint. The following will be provided:

(1) EEOCCRA docket number.

(2) Federal Court docket number.

(3) Federal Court where the suit has been filed.

(4) Date of filing.

(5) Copy of Federal Court complaint.

(6) Date suit terminated.

(7) Copy of court order terminating suit.

Subpart G—Participation by the Alleged Discriminating Official

§ 588.60 General guidance.

(a) The purpose of the discrimination complaint procedure is to determine whether discrimination has occurred so that appropriate remedial action can be taken. Investigations and hearings in discrimination complaint cases are essentially fact-finding processes. Their purpose is to develop and record evidence on which an informed and impartial decision can be based. It is not the purpose of the complaint procedure to try individual officials. Complaints are lodged "against" the Army, not "against" individuals.

(b) Employees and applicants must be free to avail themselves of the discrimination complaint procedures without fear of reprisal. However, ensuring these rights of complainants is not done without regard for the rights of persons against whom allegations of discrimination have been made. Persons, named or otherwise, identified as ADOs have clearly defined rights and a significant role in the complaint process.

(c) A complainant cannot always be expected to know which person, if any, might have been responsible for a specific action or policy. Therefore, a complainant must not be required to identify ADO(s) in complaints of discrimination, but may do so if he or she believes particular persons have discriminated against him or her.

(d) The Army must ensure that persons named as ADOs are informed of all allegations made against them and are given a full and fair opportunity to respond to these allegations.

§ 588.61 The ADO at the informal stage.

(a) The informal counseling stage, the EEO counselor must solicit the views of an identified ADO unless the counselor obtains and provides information which clears the official to the satisfaction of the aggrieved person.

(b) Before the counselor interviews the ADO, the ADO must be told that he or she has been identified as a potential ADO. The ADO must be informed of the nature of any allegations made and must be told of the right to have a representative at the interview to advise him or her on how to respond to any questions the counselor may ask.

(c) The counselor must not reveal the identity of the aggrieved person when the aggrieved person has not authorized him or her to do so.

§ 588.62 The ADO during the USACARA investigation.

(a) The USACARA investigator must give an ADO the opportunity to respond to all allegations made against him or her and to review all documents that name or implicate the ADO and are to be included in the investigative file. Names and other identifying information of persons other than the complainant and the ADO will be deleted by the investigator from the copies shown to the ADO to protect these persons from an unwarranted invasion of their privacy. The investigator must also advise the ADO of his or her right to have a representative present.

(b) The investigator must give the ADO full opportunity to state the facts as he or she understands them, in affidavit form, for inclusion in the investigative file, and to name witnesses who might be questioned. The investigator must inform the ADO that only witnesses whose testimony is considered necessary to the investigation will be interviewed. Also, the investigator must tell the ADO that the only testimony to be obtained in affidavit form and included in the investigative file is that which the investigator deems relevant and necessary to the investigation.

(c) The activity EEO officer must keep the ADO informed of the progress of the investigation. When the investigation is completed, the EEO officer must review the investigative file to ensure that the ADO has had the opportunity to provide his or her version of the facts in response to each allegation. If the file shows that the ADO was not given this opportunity, the EEO officer will return the case file to USACARA for appropriate action.

§ 588.63 Informal adjustment and proposed disposition.

(a) The Activity Commander or a designee may, at his or her discretion, consult with the ADO on the terms under which the activity will try to informally resolve the complaint.

(b) If an informal adjustment is agreed upon, the Activity Commander or his or her designee must inform the ADO of the terms of the agreement.

(c) If an agreement is not reached, the Activity Commander or a designee will give the ADO a copy of the proposed disposition.

§ 588.64 The ADO at a hearing.

(a) The ADO has the right to testify at the hearing and comment for the record on any allegations against him or her including new allegations made at the hearing. If the ADO has not been called to testify, the activity EEO officer must tell the ADO how and where to contact the labor counselor and the hearing examiner to arrange to testify or comment.

(b) The presence of the ADO and his or her representative, if any, at the hearing is limited to the time the ADO appears as a witness.

§ 588.65 The final Army decision.

(a) If the final Army decision finds discrimination, the Activity Commander or his or her designee will review the entire file and determine whether disciplinary action against the ADO is appropriate and record the basis for its decision. The decision shall not be included in the complaint file. If the decision is to take disciplinary action, the entire complaint file will be made available to the ADO for review. If no disciplinary action is taken against the ADO after a finding of discrimination, the complaint file will be made available to the ADO for review but names and identifying information of persons other than the complainant and the ADO will be deleted from the file. This action will be taken to protect such persons from an unwarranted invasion of privacy.

(b) If the activity takes or proposes adverse or other corrective action against the ADO based on the evidence developed in processing the complaint, the Activity Commander or his or her designee will make the entire complaint file, without deletions, available to the ADO for review. Corrective action may include requiring the ADO to complete EEO training or temporarily or permanently withdrawing the ADO's selection or disciplinary authority. Though not disciplinary, such actions constitute censure and correction of the ADO's conduct or performance.

(c) If the final decision concludes there was no discrimination, the Activity Commander or his or her designee will give the ADO a copy, sanitized in accord with a, above, of the final Army decision only.

§ 588.66 Appeals to the EEOC.

If a complainant appeals the Army decision to the EEOC Office of Review and Appeals, the EEO officer must give the ADO a copy of the EEOC decision. If the decision of the EEOC reverses or modifies the Army decision with a finding of discrimination, the EEO officer will make the complaint file available to the ADO.

§ 588.67 Representing the ADO.

(a) The ADO has a right to have a representative present to advise him or her any time when the ADO must provide information during the complaint process. This includes the informal stage, the investigation, and the hearing.

(b) The role of the ADO representative at all stages of the EEO complaint process is limited to advising the ADO on how to respond to questions. The representative does not have the right to examine and cross-examine witnesses at the EEOC hearing (as may be done by the complaints examiner and the representatives of the complainant and the Army) because the ADO is not a party to the complaint.

§ 588.68 The ADO's role in class complaints of discrimination.

The principles and procedures in this chapter on the ADO's role in individual complaints of discrimination also apply to class complaints.

§ 588.69 Conflicts of interest.

When a person involved in the EEO complaint process (for example, EEO officer, Activity Commander, MACOM EEO officer) is named as an ADO, the procedures below will be followed in order to avoid a possible conflict of interest:

(a) *EEO Officer.* If an EEO officer is named as an ADO in a discrimination complaint based on actions he or she has taken against the complainant, that officer's function in the processing of that complaint will be performed by the EEO officer at the next higher level. If the EEO officer is named as an ADO merely by virtue of his or her position, then he or she may continue to process the complaint.

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(b) *Activity Commander.* If an Activity Commander is name as an ADO in a discrimination complaint based on actions he or she has taken against the complainant, that commander's function in the processing of that complaint will be performed by the commander at the next higher level. If the Activity Commander is named as an ADO merely by virtue of his or her position, then he or she may continue to process the complaint.

(c) *Staff Judge Advocate (SJA).* If the SJA or senior legal officer of the servicing legal office is named as an ADO in a discrimination complaint based on actions he or she has taken against the complainant, legal advice to the command in the processing of that complaint will be provided by the servicing legal office of the next higher level of command. If the SJA or senior legal officer is named as an ADO merely by virtue of his or her position, then he or she may continue to provide advice on the complaint.

(d) *Civilian Personnel Officer (CPO).* If the CPO is named as an ADO in a discrimination complaint based on actions he or she has taken against the complainant, the CPO at the next higher level of command will provide personnel advice to the complaint.

(e) *MACOM EEO officer.* If a MACOM EEO officer is named as an ADO in a discrimination complaint based on actions he or she has taken against the complainant, that officer's function within the processing of that complaint will be performed by a special EEO officer designated by the MACOM commander. If the MACOM EEO officer is named as an ADO merely by virtue of his or her position, then he or she may continue to process the complaint.

(f) *MACOM commander.* If a MACOM commander is named as an ADO in a particular discrimination complaint based on actions he or she has taken against the complainant, that commander's function within the processing of that complaint will be performed by the Vice Chief of Staff of the Army. If the MACOM commander is named as an ADO merely by virtue of his or her position, then he or she may continue to process the complaint.

(g) *Director of EEO/Secretary of the Army.* If the Secretary of the Army or the Director of EEO is named as an ADO in a discrimination complaint based on actions he or she has taken against the complainant, the Secretary of the Army will designate a DA official to perform the functions of the official named as an ADO. If the Secretary of the Army or the Director of EEO is named as an ADO merely by virtue of his or her position, then he or she may continue to process the complaint.

Subpart H—Witnesses, Representation, Administrative Procedures, and Reports

§ 588.70 Arranging for witnesses.

(a) Army military and civilian personnel requested as witnesses by the EEO officer, the investigator, or the EEOC complaints examiner will be made available unless it is administratively impractical. If a needed Army witness is not under local administrative control, the Activity Commander or the EEO officer may ask the witness' commander to make that person available. Denials will be promptly referred to the EEO officer of the next higher level command of the requested witness. If the denial is not justified, the next higher level command will direct the organization to make the witness available.

(b) If a needed witness is employed by another Federal agency or has left Federal employment, he or she will be contacted by the EEO officer. The EEO officer will make every reasonable effort to ensure the presence of the witness. If the witness refuses to appear, the EEO officer will refer the matter to the investigator or the complaints examiner.

(c) A Federal employee is in an official duty status when he or she appears as a witness or is required to provide a statement under oath or affirmation.

§ 588.71 Complainant's and class agent's representative.

(a) A complainant or an agent in a class complaint has the right to be accompanied, represented, and advised by a representative of his or her own choice at any stage of the complaint process, including the informal counseling stage. No employee or military member is obligated to serve as a representative.

(b) The complainant or the class agent will designate the representative in writing. Any change will be reported in writing to the EEO officer, with copies to the counselor, investigator, or complaints examiner, as appropriate.

(c) The Army must be notified when an attorney is retained to represent a complainant or class agent. Written submissions to the Army that are signed by the representative are deemed to constitute notice of representation. This notice is required to establish the attorney's eligibility to claim fees and/or costs.

(d) After consulting with the SJA or senior legal officer of the servicing legal office, the Activity Commander or his or her designee may deny permission to an Army employee or military member to serve as a representative if this would constitute a conflict of interest. This denial will be made in a letter to the complainant stating the reasons. The letter must tell the complainant that an appeal of the denial may be filed with the EEO officer within 5 working days after receipt of the denial. The denial and the appeal are then sent immediately to the Director, EEOCCRA, ATTN: SFCR, WASH DC 20310–1813, for decision.

§ 588.72 Representing the Army in individual complaints.

(a) The Army is represented in complaint proceedings by the labor counselor (a judge advocate or a civilian attorney from the SJA or legal office). The labor counselor's role is to ensure that the Army's position is based on a sound legal theory and supported by competent evidence at both the investigative and hearing stages. The labor counselor does not represent the ADO.

(b) The labor counselor may have a CPO technical adviser at the hearing.

§ 588.73 Representing the Army in class complaints.

(a) The EEO counselor may seek legal advice from the servicing legal office during the informal stage of class discrimination complaints after consulting with his or her EEO officer.

(b) When an individual or class complaint is filed formally, the Activity Commander will appoint an Army judge advocate or civilian attorney as the labor counselor to represent the Army at the activity level as described in §§ 588.2 and 588.3.

§ 588.74 Using official time.

Under 29 CFR 1613.214, complainants, agents, and representatives who are Army employees have the right to a reasonable amount of duty time to prepare and present a complaint filed under this regulation. Employees must arrange in advance with their supervisors to use this duty time. Disagreements as to what is "reasonable" time are resolved by the Activity Commander or a designee. "Reasonable duty time" includes all time actually spent in meetings and hearings required by an Army or EEOC official plus a reasonable amount of preparation time. Reasonable time for preparation purposes is generally defined in terms of hours rather than days, weeks, or months.

§ 588.75 Hearing arrangements.

(a) Expenses incurred in the administrative processing of an EEO complaint will be borne by the activity against which the complaint is lodged.

(b) The servicing activity EEO officer will ensure that a court reporter is provided for the hearing and that the transcripts are sent directly to the EEOC complaints examiner. Use of Army employees to transcribe hearings is prohibited by the EEOC. However, interservice support agreements with the Navy and Air Force may be used instead of contracting for such services.

(c) All requests to the EEOC for a hearing will contain instructions that the completed case file, with all copies of the transcript and the complaints examiner's recommended decision is to be sent to the Director, EEOCCRA, ATTN: SFCR, WASH DC 20310–1813. If the examiner erroneously transmits the case file to the activity EEO officer, the case must be returned immediately to EEOC by registered mail with instructions for transmission to the Director, EEOCCRA.

§ 588.76 Complaint file.

(a) The EEO officer will compile a complaint file that will include all documents pertinent to the complaint except for the Army decision regarding action against the ADO.

(b) The file will not contain any document that has not been made available to the complainant or his or her representative.

(c) The file will be indexed. The file will also be tabbed in reverse chronological order and will contain legible copies of the following documents, when applicable, and in the order listed below:

(1) Tab O.

(i) EEO Complaint Data Sheet: DA Form 5493–R (Individual Complaint Data Sheet) or DA Form 5494–R (Class Complaint Data Sheet).

(ii) Complaint Chronology Sheet: DA Form 5495–R (Chronology of Individual EEO Complaint) or DA Form 5496–R (Chronology of Class EEO Complaints).

(iii) DA Form 5497–R (Disposition of Complaint of Discrimination).

(2) Tab N.

(i) Final Army decision.

(ii) Return receipt or other evidence of complainant's receipt of final Army decision.

(3) Tab M. EEOC complaints examiner's report of findings, analysis, and recommendations.

(4) Tab L. Verbatim transcript of EEOC hearing and all exhibits.

(5) Tab K. EEO officer's letter to EEOC requesting assignment of a complaints examiner.

(6) Tab J.

Request for Army decision without a hearing.

Request for hearing before EEOC.

(7) Tab I.

(i) Proposed disposition.

(ii) Notice to complainant of adoption of proposed disposition as Army final decision if complainant has failed to respond within 15 days.

(8) Tab H.

(i) Record of adjustment conference.

(ii) Settlement agreement is signed by all parties and documents showing implementation.

(iii) Written withdrawal of complaint by complainant, if applicable.

(9) Tab G.

(i) Record of transmittal of USACARA ROI to activity.

(ii) Record of transmittal of USACARA ROI to complainant.

(10) Tab F. Entire investigator's report including exhibits tabbed as received from the investigator.

(11) Tab E.

(i) EEO Officer's request to USACARA for appointment of an investigator.

(ii) USACARA response to EEO officer.

(iii) EEO officer's notice to labor counselor of date, time, and location of USACARA investigation.

(12) Tab D.

(i) Appointment letter of labor counselor as Army representative.

(ii) Written designation by complainant of his or her representative

(13) Tab C.

(i) Formal EEO complaint, DA Form 2590–R.

(ii) EEO officer's acknowledge receipt of the formal complaint.

(iii) EEO officer's acceptance of the formal complaint.

(iv) EEO officer's rejection or cancellation of the formal complaint.

(14) Tab B.

(i) Notice of Final interview.

(ii) EEO counselor's final report.

(iii) 21-day letter, if applicable.

(15) Tab A. All allied papers (all documents relevant to the case but not specifically included in the above section attached in reverse chronological order).

(d) All EEOC appellate documents will be tabbed in reverse chronological order with Arabic numerals.

(e) All civil litigation documents will be tabbed in reverse chronological order with Roman numerals.

(f) When the complainant requests a decision by the Secretary of the Army or his or her designee on the basis of the record as it stands, or after a hearing, the original case file will be clearly indexed and tabbed as described in paragraph c above and all pages will be clearly legible.

(1) Every complaint file will contain an EEO complaint data sheet. See DA Form 5493–R for individual EEO complaints and DA Form 5494–R for class EEO complaints. The data sheet will be filled out by the EEO counselor and the activity EEO officer. Any entry contrary to the provisions of this regulation should be explained by the responsible EEO official in the "Remarks" section of the data sheet. These DA Forms will be reproduced locally on 8 ½– by 11-inch paper. Copies for reproduction purposes are located at the back of this regulation.

(2) Every complaint file will contain an EEO chronology sheet completed by the activity EEO officer and the EEOCCRA. See DA Form 5495–R for individual EEO complaints and DA Form 5496–R for class EEO complaints. The chronology sheet will account for the processing time from the date of the alleged discriminatory action to the final Army decision and any administrative or judicial appeal. Failure to meet any administrative suspense established by this regulation should be fully explained in the "Remarks" section of this chronology sheet. These DA Forms will be reproduced locally on 8½– by 11-inch paper. Copies for reproduction purposes are located at the back of this regulation.

§ 588.77 Complaints reporting.

(a) The EEO counselor will complete DA Form 5492–R at the time of the final interview and submit it to the EEO officer in accord with § 588.13(d). The EEO officer will transmit copies of this report to EEOCCRA and the MACOM of the activity against which the complaint is lodged upon termination of counseling.

(b) *Individual formal complaint reporting.* (1) Immediately upon receipt of a formal EEO complaint (DA Form 2590–R), the activity EEO officer will complete and dispatch a copy of the formal complaint to the Director, EEOCCRA, ATTN: SFCR, WASH DC 20310–1813. Receipt of the complaint will be acknowledged, in writing, by EEOCCRA. The acknowledgment will contain a docket number assigned to the case by EEOCCRA which will be used throughout the processing of the EEO complaint. This docket number does not replace the docket number assigned by USACARA, rather it is used as a control to identify the records in EEOCCRA.

(2) After receiving the EEOCCRA docket number, the EEO officer will use the docket number on all documents generated or submitted by the activity

EEO officer in the processing of the complaint.

§ 588.78 Disposition of complaints of discrimination

(a) When action on a complaint of discrimination has been completed at the activity level, the case record will be promptly forwarded to the Director, EEOCCRA, ATTN: SFCR, WASH DC 20310–1813. When the case has been closed at the activity, instructions set forth in § 588.78(b) will be followed. When a hearing is requested, one copy of the file, similarly compiled, will be forwarded to the EEOC district office that will provide the complaints examiner. Additionally, one copy of the file, similarly compiled, will be forwarded to EEOCCRA. In all cases, the chronology of events will be completed and included in the case file. (See § 588.76) This will apply whether forwarded to the EEOC complaints examiner for a hearing or to the EEOCCRA for a decision on the record.

(b) Cases closed at the activity level are as follows:

(1) Cases are closed at the activity level as a result of rejection, cancellation, withdrawal, termination, adjustment, or decision on the merits.

(2) If a formal EEO complaint is closed in whole at the activity level, the EEO officer will submit the original file and one copy to EEOCCRA, compiled in accord with § 588.66, and DA Form 5497–R. Submissions will be made within 10 days after the complaint is closed. If the complaint has been closed in part, two legible copies of the file will be forwarded to EEOCCRA within 10 days, compiled in accord with § 588.66 along with DA Form 5497–R. Such case files will be notated as partial closure.

(c) Activities and MACOMs will be notified of cases closed at the DA level by receipt of a copy of the final Army decision signed by the Secretary of the Army or his or her designee.

§ 588.79 Travel and other costs.

For individual complaint as well as class complaints of discrimination, travel and other related expenses will be as follows:

(a) Travel and per diem expenses of USACARA investigators will be funded by the activity against which the alleged discrimination is lodged.

(b) Expenses of the Army investigators, counselors, or investigators from other Federal agencies will be funded by the activity where the alleged discrimination took place.

(c) Expenses of the EEOC complaints examiner are paid for by EEOC.

(d) Travel expenses of Army personnel (complainants, representative, or witnesses), whose travel is required by a complaints examiner or other authorized official, will be funded by the activity against which the complaint is lodged.

(e) Travel expenses of non-Army personnel (applicants/complainants) will not be paid in advance by the Army. Nor, if they are Federal employees, can their expenses be paid by their agencies unless their role concerns official business of the current employers. A successful applicant/complainant, may, however, be reimbursed for such travel expenses as part of his or her costs.

(f) If a complaint of discrimination is filed against a tenant organization, the tenant organization will pay the hearing costs, investigative costs, attorney fees and/or costs unless otherwise provided for in a host-tenant agreement. Problems that develop between host and tenant organizations will be promptly referred for resolution to the parent MACOM.

(g) If the complaint involves a nonappropriated fund (NAF) activity, the costs will be borne by the host activity (that is, the appropriated fund activity that heads the installation where the NAF is assigned).

Appendix A—Steps in Individual Complaints of Discrimination

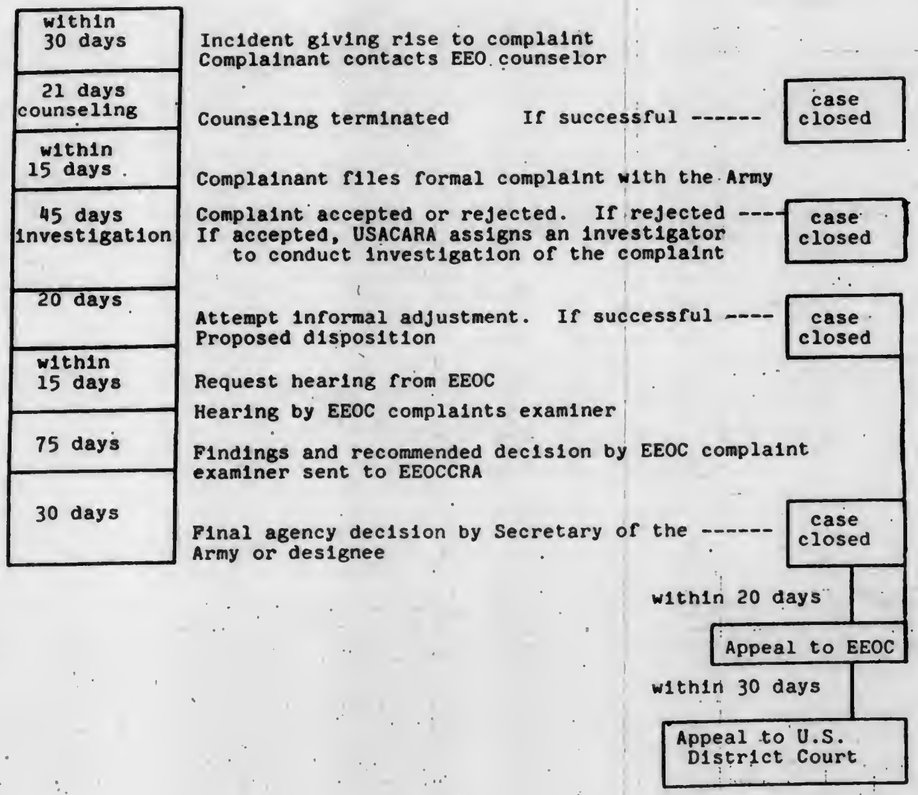
Action	Time limits
1. Employee or applicant must see EEO counselor or EEO officer.	Within 30 calendar days after the alleged discrimination, personnel action, or when the complainant becomes aware or reasonably should have become aware of the action.
2. EEO counselor makes inquiry, tries to resolve complaint informally, conducts final interview, and, if complaint is not resolved, gives complainant written notice of right to file formal complaint.	Within 21 calendar days after matter first called to EEO counselor's attention.
3. Complainant files formal complaint (DA Form 2590–R) in writing with EEO officer or other designated official. Must advise EEO officer if he or she obtains legal or other representation.	Within 15 calendar days after receipt of the Notice of Final Interview or if final interview not held, anytime after 21 days from initial contact with the EEO counselor.
4. EEO officer accepts or rejects the formal complaint in whole or in part.	Within 5 calendar days after receipt of complaint.
5. EEO officer sends file to USACARA requesting assignment of an investigator if any part of complaint is accepted. If complaint is rejected, EEO officer notifies complainant and representative.	Within 3 calendar days after acceptance.
6. USACARA investigator completes investigation and sends ROI to activity.	Within 45 calendar days from assignment.
7. USACARA ROI furnished to complainant and an adjustment meeting offered.	Within 5 calendar days after receipt of USACARA ROI.
8. If adjustment meeting held and adjustment reached—	
a. Written agreement specifying terms of proposed disposition is signed by both parties. Copy is given to complainant.	
b. Activity Commander takes action agreed upon.	
9. If adjustment meeting is not held or no adjustment is reached—	
a. Activity Commander issues a proposed disposition, including finding issues of discrimination and proposed remedial action including appeal rights.	Within 20 calendar days from receipt of USACARA ROI.
b. Complainant informed of right to request EEOC hearing or Army decision without hearing.	Same as a above.
c. If complainant fails to respond, Activity Commander adopts proposed disposition as final Army decision and notifies complainant and representative.	Within 15 calendar days after notice proposed disposition.
d. If complainant asks for decision without hearing, EEO officer sends complaint file (original and one copy) to EEOCCRA.	Same as c above.
e. If complainant requests hearing, EEO officer requests complaints examiner from EEOC.	Same as c above.
10. Hearing held and findings and recommendations sent by EEOC complaints examiner to EEOCCRA.	
11. Army final decision by the Director of EEO to include appeal right.	Within 180 calendar days after the date that the formal complaint was filed or 30 days after receipt of the examiner's report recommending a finding of discrimination.
12. Appeal to EEOC:	
a. Complainant sends notice of appeal to EEOC with copy to EEOCCRA.	Within 20 calendar days after receiving Army final decision.
b. Complainant sends statement or brief to support appeal of Army decision to EEOC, with a copy to EEOCCRA.	Within 30 calendar days after filing Notice of Appeal.
13. Civil action by complainant:	
a. Before final Army decision	After 180 calendar days after filing formal complaint.
b. Instead of appeal to EEOC after Army final decision.	Within 30 calendar days after receiving Army decision.
c. Before EEOC final decision or appeal.	After 180 calendar days after filing appeal to EEOC.
d. After EEOC final decision on appeal.	Within 30 calendar days after receiving EEOC decision.

Note.—In age complaints, a complainant must appeal the Army decision to the EEOC before filing a civil action in a Federal District Court.

Appendix B—Steps in Individual Complaints of Discrimination

Action	Time limits
1. Class agent contacts EEO counselor about class complaint.	Within 90 calendar days after the alleged discriminatory matter, personnel action, or the date that the aggrieved person became aware or reasonably should have become aware of the discriminatory event or personnel action.
2. EEO counselor makes inquiry, attempts informal resolution, and conducts final interview, informs class agent, in writing, of right to file formal complaint.	Within 30 calendar days after contact by class agent.
3. Class agent files formal complaint with EEO officer. Notifies EEO officer if legal representation is obtained.	Within 15 calendar days after receiving Notice of Final Interview.
4. EEO officer coordinates with labor counselor on class status of complaint.	
5. EEO officer sends complaint file, including a brief if deemed necessary, to EEOC district office for assignment of complaints examiner.	Within 10 calendar days after receiving complaint.
6. Allegations not discussed with EEO counselor or nonspecific allegations are returned by EEOC complaints examiner for additional information.	Within 15 calendar days for response from activity or class agent.
7. Complaints examiner recommends to the Secretary of the Army or his or her designee to accept, reject or cancel complaint. Sends copy to agent.	
8. Secretary of the Army or his or her designee decides to accept, reject, or cancel complaint. If decision is to reject or cancel, advises class agent of right to file individual complaint and appeal to EEOC.	EEOC recommendation becomes Army decision unless Secretary of the Army or designee rejects or modifies it within 10 calendar days after receipt.
9. If complaint accepted, the EEO officer notifies all class members of existence of class complaint and right to opt out. Activity Commander designates Army representative.	Within 15 calendar days after acceptance.
10. Class members may opt out. (Final decision binding on all members who do not opt out.).	Within 30 calendar days after issuance of notice.
11. All parties to complaint develop evidence and send it to EEOC. Complaints examiner may direct investigation.	Within 60 calendar days after notification by the EEOC complaints examiner.
12. Informal resolution attempted by class agent and Army.	
13. If no resolution, hearing by EEOC complaints examiner.	
14. EEOC complaints examiner's findings and recommendations forwarded to EEOCCRA.	
15. Final Army decision. Agent informed of right to appeal to EEOC and file civil action in Federal District Court.	Within 30 calendar days after receiving complaints examiner's report. If no decision within 30 calendar days, then the complaints examiner's findings and recommendations become the final Army decision.
16. All class members notified of the final Army decision by EEO officer.	Within 10 calendar days.
17. Individual class members may file written claim.	Within 30 calendar days after Army decision. Persons must have been affected no more than 135 calendar days before filing of class complaint.
18. Army tries to resolve claim at activity level.	Within 60 calendar days after date claim filed.
19. Hearing held by EEO complaints examiner if no resolution.	
20. Complaints examiner's report of findings and recommendations forwarded to Army EEOCCRA.	
21. Final Army decision made by Secretary of the Army or his/her designee.	Time limits as in step 15.
22. Appeals and Civil Action Rights:	
a. Class agent may appeal to EEOC when—	
(1) Complaint rejected or canceled by the Army.	Within 15 calendar days after the Army decision.
(2) Army refuses to reinstate complaint for processing after agent alleges that Army has not carried out terms of resolution.	
(3) Army issues decision on merits of complaint or corrective action.	
b. Claimant may appeal to EEOC when—	
(1) Army rejects claim for individual relief.	
(2) Army decides on adjustment of claim for individual relief.	
c. Class agent and claimants may file a civil action when—	
(1) Army issues final decision on complaint or claim.	Within 30 calendar days.
(2) There has been no Army decision on complaint or claim.	After 180 calendar days from date of filing formal complaint or claim with Army.
(3) EEOC issues decision on appeal.	Within 30 calendar days.
(4) Appeal was made to EEOC and no decision has been given.	After 180 calendar days from date of filing formal complaint or claim with EEOC.

Note.—In age discrimination complaints, an agent must appeal the Army decision to the EEOC before filing a civil action in a Federal District Court.



Notes:

1. In age discrimination complaints, a complainant must appeal the Army decision to the EEOC before filing a civil action in a Federal District Court.

2. All "days" refer to calendar days.

Appendix C—Procedural Steps in an Individual Discrimination Complaint

Appendix D—Sample Format: Avenues of Redress for Army Employees

Subject: Avenues of redress for Army employees

From: EEO officer

To: (Name of person counseled)

1. Grounds for discrimination complaint. If you believe you have been discriminated against because of race, color, religion, sex, national origin, age, physical or mental handicap and/or reprisal, or in an employment matter subject to the control of the Army, you may have the choice of more than one route to file a complaint and have it resolved.

2. Options for employees outside of the bargaining unit. If you are not a member of a bargaining unit covered by a union contract, you may select one of the following options:

a. The discrimination complaint procedure (covered by AR 690–xxx). Your first step under that procedure is to contact an EEO counselor within 30 calendar days from the date the act of discrimination took place or the date you became aware, or reasonably should have become aware, of the act of discrimination. If the counselor cannot resolve your problem, you may file a formal complaint. The counselor will tell you with whom to file your complaint and will explain complaint procedures. These include an investigation by the U.S. Army Civilian Appellate Review Agency, a hearing by the Equal Employment Opportunity Commission (EEOC), and a final decision by the Army.

b. The Merit Systems Protection Board (MSPB) appeal procedure. This procedure is available to you only if the alleged discriminatory action can be appealed to the MSPB, such as a removal, a suspension for more than 14 days, or any other appealable action. (Usually, you will be notified in writing of your right to appeal to the MSPB.) The time limit for appeal to the MSPB is 20 days after the effective date of the personnel action which you believe discriminated against you. Under an MSPB appeal, you are entitled to a hearing by the MSPB. You may ask the EEOC to review the final decision of the MSPB.

3. Options for employees within the bargaining unit. If you are a member of a bargaining unit covered by a union contract and if the negotiated grievance procedure in that contract does not exclude discrimination issues, you may have the following options:

a. In actions under 5 U.S.C. Section 7512 (Removal, supension for more than 14 days, reduction in grade, reduction in pay, furlough for 30 days or less) and 5 U.S.C. Section 4303 (Removal or reduction in grade for unacceptable performance), you have the following options. First, you may follow the discrimination complaint procedure described in paragraph 2a above. Second, you may follow the MSPB procedures described in paragraph 2b above. Third, you may follow the negotiated grievance procedure. Your union contract outlines the steps involved in a negotiated grievance procedure, which include an informal and a formal grievance with specific time limits for filing, and a decision by Army management. The next step, arbitration, may be requested only by the union or by the Army, not by you. If you choose the negotiated grievance procedure, you have the right to appeal the final Army decision or the arbitration award to the EEOC. Note that decisions in 5 U.S.C. Section 7512 or 4303 cases are not appealable to the Federal Labor Relations Authority (FLRA).

b. In actions not covered by 5 U.S.C. section 7512 or 4303, but otherwise appealable to MSPB, you have access to the MSPB procedures only if such actions are excluded from the grievance procedure. If they are covered by the grievance procedure, the option is between the discrimination complaint procedure under AR 690–xxx or the negotiated grievance procedure. If you choose the negotiated grievance procedure, you have the right to appeal the final decision (Army decision, arbitration award, or FLRA decision) to the EEOC or MSPB, as appropriate. Note that in actions not appealable to the MSPB, but covered by the grievance procedure, you may choose between the grievance procedure or the complaint procedure under AR 690–xxx.

4. Election of avenues of redress.

a. Your appeal to the MSPB will not be accepted if you have filed a timely formal complaint in writing, under AR 690–xxx or a timely written grievance under the negotiated procedure.

b. A discrimination complaint under AR 690–xxx will not be accepted if you have filed a timely appeal to the MSPB or a timely written grievance under the negotiated procedure.

c. A grievance under the negotiated procedure will not be accepted if you have filed a timely appeal to the MSPB or if you have initiated action under the discrimination complaint procedure in AR 690–xxx.

5. Additional information on avenues of redress. If you have any other questions on this matter, you may contact the management/employee relations section of the civilian personnel office, your union representative, or your activity EEO office.

Appendix E—Sample Format: Notice of Interview With EEO Counselor

Subject: Notice of Final Interview

From: EEO Counselor

To: (Name of Person Counseled)

1. This is notice that on the above date the final counseling interview was held in connection with the matter you presented to me as an EEO counselor. You initially contacted me on (DATE). You alleged that you were a victim of (SPECIFY) discrimination in the following action(s): (SPECIFY THE FACTS THAT ARE THE BASIS OF THE DISCRIMINATION COMPLAINT.)

2. If you believe you have been discriminated against on the basis of race, color, religion, sex, age, national origin, mental/physical handicap, and/or reprisal for participation in a Title VII activity, you have the right to file a *complaint of discrimination within 15 calendar days after receipt of this notice.*

3. This complaint must be in writing, preferably on a DA Form 2950–R, which can be obtained from the Equal Employment Opportunity Office. Your complaint must be filed in person or by mail with the following officials authorized to receive discrimination complaints:

a. Equal Employment Opportunity Officer
(ADDRESS)
b. Activity Commander
(ADDRESS)
c. Federal Woman's Program Manager
(ADDRESS)
d. Director of Equal Employment Opportunity, Department of the Army
ATTN: SFCR
WASH, DC 20310–1813
e. Secretary of the Army
ATTN: SFCR
WASH, DC 20310–1813

4. The formal complaint should specify the issues which form the basis for the complaint and the matter giving rise to the complaint which were discussed with the EEO counselor. If you add issues not counseled, the formal complaint will be returned to you for further counseling.

5. If an attorney is retained as a representative, you must notify the EEO officer (NAME AND ADDRESS).

(SIGNATURE BLOCK)
EEO counselor

Notes:

1. This notice is to be given to the person counseled at the final interview.

2. A copy of this notice will be provided to the EEO officer with the counselor's report and made part of file.

Appendix F—Sample Format: Notice of Right To File a Discrimination Complaint

Subject: Notice of Right To File a Discrimination Complaint

From: EEO Counselor

To: (NAME OF PERSON COUNSELED)

1. Although my inquiry into the matter you brought to my attention has not

been completed, 21 calendar days have passed since you first contacted me and you are now entitled to file a discrimination complaint based on race, color, religion, sex, national origin, physical or mental handicap, age, and/or reprisal. If you do not file a complaint at this time, my inquiry will continue and your right to file a complaint will continue until 15 calendar days after the final interview with me. I will inform you in writing when the final interview is conducted. If you file a complaint, it must be in writing, preferably using DA Form 2590–R, and filed in person or by mail with the following officials authorized to receive discrimination complaints:

a. Equal Employment Opportunity Officer
(ADDRESS)
b. Activity Commander
(ADDRESS)
c. Federal Women's Program Manager
(ADDRESS)
d. Director of Equal Employment Opportunity
Department of the Army
ATTN: SFCR
WASH, DC 20310–1813
e. Secretary of the Army
ATTN: SFCR
WASH, DC 20310–1813

2. If you file your complaint with one of the officials listed above, it will be sent to the activity EEO officer for processing. Therefore, if you choose to file your complaint with any of the officials listed above be sure to provide a copy of your complaint to the EEO officer to ensure prompt processing of your complaint.

3. The complaint must be specific and must be limited to the matters discussed with me. It must also state whether or not you have filed a formal grievance or an appeal to the Merit Systems Protection Board on the same matters. Additionally, you must state whether you are having this matter considered under a negotiated grievance procedure.

4. You or your representative must immediately notify the EEO officer, in writing, if you retain an attorney or any other person to represent you.

(SIGNATURE)
EEO counselor

Notes:

1. This notice is to be given to the person counseled 21 days after the counselor was first contacted on this matter by the complainant.

2. A copy of this notice will be provided the EEO officer with the counselor's report and made a part of the complaint file.

Appendix G—Sample Format: Notice of Receipt of Discrimination Complaint

Subject: Notice of Receipt of Discrimination Complaint
From: EEO Officer
To: (COMPLAINANT)

1. This notice acknowledges receipt of your discrimination complaint dated (DATE), and gives you a written notice of your rights and the time requirements for exercising these rights. If you have further questions, please ask your EEO counselor or contact me.

2. If your complaint is accepted, it will be investigated. Based on the information developed by the investigation, an attempt will be made to resolve your complaint informally. You will receive a copy of the investigative report and have an opportunity to discuss it with an Army official.

3. If your complaint, or any allegation contained in it, is rejected, the rejection is considered to be a final Army decision on the complaint or that part of the complaint which is rejected. You will receive a notice by separate letter if your complaint or any part of it is rejected. You will be advised at that time of your rights of appeal.

4. If a complaint is settled, the terms of the settlement will be stated in writing and you will be given a copy.

5. If a complaint is not settled you will be notified in writing of the proposed disposition of the complaint. You will also be notified of your right to a hearing by an Equal Employment Opportunity Commission (EEOC) complaints examiner who will recommend a decision to the Army, or to a decision by the Army without a hearing, you must notify the Army in writing within 15 days after receiving the proposed disposition of your complaint. Your request for a hearing or for an Army decision without a hearing must be addressed to me in order that I can make the necessary arrangements.

6. If, within 15 days after your receipt of the proposed disposition, you fail to request a hearing or to ask for a decision by the Army without a hearing, that disposition will become the final Army decision.

7. If you are dissatisfied with the final Army decision (with or without a hearing), you may file a notice of appeal to the EEOC Office of Review and Appeals within 20 calendar days after receiving the decision. A copy of the notice should be sent to EEOCCRA ATTN: SFCR, WASH DC 20310–1813. Also, you may submit a brief or statement to support your appeal within 30 calendar days after filing the notice of appeal. At the same time, you must furnish a copy of the supporting brief or statement to EEOCCRA.

8. Any appeal to the EEOC should be addressed to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW., Wash D.C. 20506. The appeal and any representations in its support must be filed in duplicate.

9. Instead of an appeal to the EEOC, you may file a civil action in a proper Federal District Court within 30 calendar days after receiving the Army decision or, if the Army has not issued a final decision on your complaint, after 180 calendar days from the date the formal complaint was filed.

10. If you decide to appeal to the EEOC Office of Review and Appeals, you will still have an opportunity to file a civil action in a Federal District Court within 30 calendar days after receiving the EEOC's final decision, or 180 calendar days after the date of your initial appeal to the Commission if EEOC has not rendered a final decision.

(SIGNATURE BLOCK)
EEO Officer

Notes:

1. The notice is sent by certified mail, return receipt requested, or personally delivered to both complainant and representative. If the notice is personally delivered, the complainant and his or her representative will acknowledge receipt by signing and dating the official file copy of the notice. If they decline to sign the copy, the server will sign it and indicate to whom and when the notice was served.

2. A copy of the notice given to the complainant will be filed in the complaint file. In age discrimination cases, references to the right to file a civil action (paras 4 and 5) will specify that the complainant can file a civil action in a Federal District Court 30 days after providing notice to the EEOC of his or her intent to file a civil action. Such notice must be given to the EEOC within 180 days of the occurrence of the allleged discriminatory act. If a complainant elects to pursue his or her age discrimination complaint through the administrative procedures outlined in chapter 2, then he or she may not file a civil action in a Federal District Court until all administrative remedies (including an appeal of the final Army decision to the EEOC) have been exhausted.

Appendix H—Negotiated Settlement Agreement

NEGOTIATED SETTLEMENT AGREEMENT

IN THE MATTER OF:
(NAME)
Complainant
AND
(NAME OF ORGANIZATION)

1. In the interest of promoting its Equal Employment Opportunity Program and to avoid protracted litigation, the Army agrees to settle the above-captioned complaint on the basis shown below.

2. By entering this settlement, the Army does not admit that it has violated the Civil Rights Act of 1964, as amended, or any other Federal or State statute or regulation.

3. The Army agrees to (SPECIFY REMEDY TO BE PROVIDED AND PROCESS BY WHICH REMEDY IS TO BE PROVIDED).

4. Complainant's signature on this agreement constitutes the withdrawal of his or her complaint. In addition, the complainant agrees that he or she waives his or her right to sue over the matters raised in this complaint and that will not be made the subject of future litigation.

5. If the Army does not carry out, or rescind, any action specified by the terms of the adjustment for any reason not attributable to acts or conduct of the complainant, the Army shall, upon the complaint's written request, reinstate the complaint for further processing from the point processing ceased under the terms of the adjustment. If the Activity Commander determines that the terms of the adjustment have been implemented, a decision declining to reinstate the complaint will be issued and the complainant will be advised of his/her appeal rights to EEOC.

6. I have read the Negotiated Settlement Agreement and accept and agree to its provisions.

For the Army
(ACTIVITY COMMANDER'S SIGNATURE)
Date _____

Complainant
(Complainant's signature)
(Signature of Complainant's representative, if any)
Date _____

Appendix I—Sample Format—Notice of Proposed Disposition of Discrimination Complaint

Subject: Notice of Proposed Disposition of Discrimination Complaint
From: Activity Commander
To: (COMPLAINANT)

1. This notice is to inform you of the proposed disposition of your discrimination complaint and of your rights if you are dissatisfied with the proposed disposition.

a. Proposed disposition. (STATE THE SPECIFIC PROPOSED DISPOSITION OF THE COMPLAINT. INCLUDE A LEGAL ANALYSIS OF THE COMPLAINT, DISCUSSION OF THE FACTS, FINDING ON THE ISSUE OF DISCRIMINATION, AND A STATEMENT OF PROPOSED REMEDIAL ACTION IF APPLICABLE.)

b. Right to a hearing.

(1) If your are dissatisfied with the proposed disposition, you may request a hearing by the Equal Employment Opportunity Commission (EEOC) and a decision by the Army if you notify the EEO officer (PROVIDE SPECIFIC MAILING ADDRESS) within 15 calander days after receiving this notice, that you desire such a hearing.

(2) If you request a hearing, you are expected to proceed without delay in presenting your complaint before the assigned EEOC complaints examiner. If you plan to have a representative, you should immediately obtain representation. You should also begin preparing a list of proposed witnesses with a summary of the testimony you believe each would present at the hearing. The complaints examiner will request this list immediately after being assigned to your case.

(3) The failure to prosecute your complaint in a timely fashion may be grounds for the complaints examiner to return your case to the Army. The Army may then cancel your complaint or issue a final decision based on the evidence present in the complaint file.

c. Right of decision without a hearing. If you are dissatisfied with the proposed disposition, you may request a decision by the Secretary of the Army or his or her designee without a hearing, based on the evidence in the complaint file. This request must be made to (ACTIVITY EEO OFFICER) within 15 calendar days after receiving this notice.

d. Right of appeal. If you fail to notify the EEO officer of your intentions within the 15-day period, I or my designee may adopt as the Army final decision the proposed disposition shown above and will so notify you in writing. On receiving notification, you may file a notice of appeal to the EEOC Office of Review and Appeals within 20 calendar days. You may also submit a brief or statement to the EEOC to support your appeal within 30 calendar days after filing the notice of appeal. You must furnish the Equal Employment Opportunity Compliance and Complaint Review Agency (EEOCCRA); ATTN: SFCR WASH DC 20310–1813, with a copy of your appeal and a brief or statement. Instead of an appeal to the EEOC, you may file a civil action in a proper Federal District Court within 30 calendar days after you receive the final Army decision. If the Army has not issued a final decision, a civil action may be filed 180 calendar days after the date you filed your formal complaint.

2 If you appeal to the EEOC, you may still file a civil action within 30 calendar days after receiving the EEOC decision. You may also file a civil action 180 days after your appeal to EEOC if you have not received a final decision.

(SIGNATURE BLOCK)
Activity Commander.

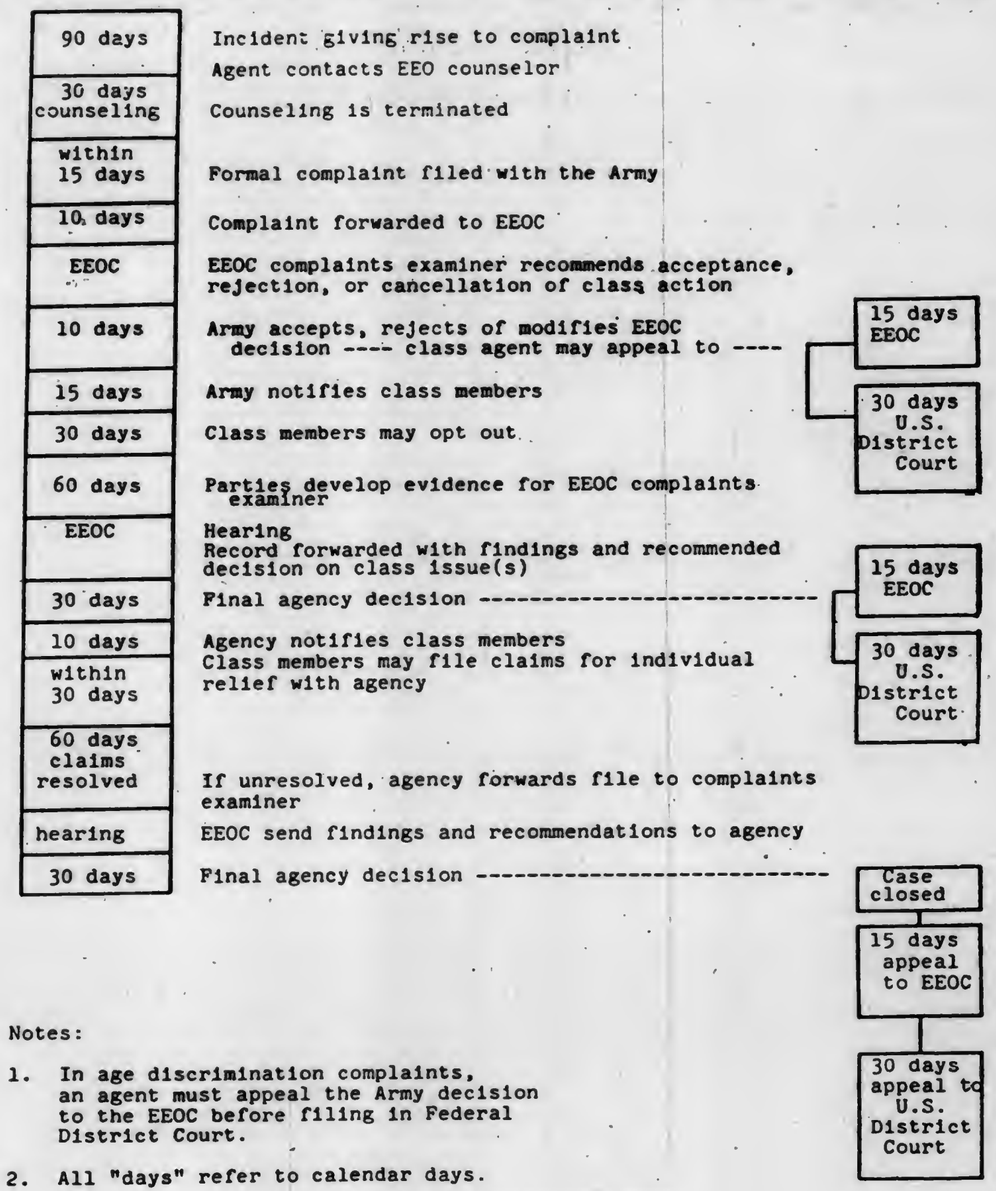
Notes:

1. The notice is sent by certified mail, return receipt requested, or personally delivered to both complainant and representative if any. If the notice is personally delivered, the complainant and his or her representative, if any, will acknowledge receipt by signing and dating the official file copy of the notice. If they decline to sign the copy, the server will sign it and indicate to whom and when the notice was served.

2. A copy of the notice given to the complainant will be filed in the complaint file. In age discrimination cases, references to the right to file a civil action (paras 1d and 2) will specify that the complainant can file a civil action in Federal District Court only after all administrative remedies (INCLUDING AN APPEAL OF THE FINAL ARMY DECISION TO THE EEOC) have been exhausted.

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Notes:

1. In age discrimination complaints, an agent must appeal the Army decision to the EEOC before filing in Federal District Court.

2. All "days" refer to calendar days.

Appendix J—Procedural steps in a class action determinatioo complaint

Appendix K—Addresses and Geographic Jurisdiction of U.S. Army Civilian Appellate Review Regional Offices

USACARA investigators are assigned to investigate discrimination complaints from various regional offices located throughout the United States and Europe. When an EEO officer must obtain the services of a USACARA investigator in accord with paragraph 2–6 (individual complaints) he or she should contact the USACARA regional office with jurisdiction over the activity.

The USACARA regional officers are as follows:

USACARA: 5611 Columbia Pike, Room 434, Falls Church, VA 22041–5091, AV: 289–1423, (703) 756–1423
Geographic Jurisdiction: USACARA Headquarters.
USACARA–GC: Gorman Plaza Bldg., Suite 100, 8950 Old Annapolis Road, Columbia, MD 21045, (301) 995–0069, (202) 621–5170
Geographic Jurisdiction: Delaware, Maryland, Ohio, Virginia, District of Columbia, West Virginia.
USACARA–SE: Citizens Trust Bldg., Room 450, 75 Piedmont Ave., NE, Atlanta, GA 30303, AV: 797–5801, (404) 363–5801
Geographic Jurisdiction: Alabama, Florida, Georgia, Mississippi, South Carolina, Puerto Rico, Panama.
USACARA–SW: Federal Bldg, 1100 Commerce Street, Room 6B25, Dallas, TX 75242, (214) 767–0287
Geographic Jurisdiction: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.
USACARA–MW: 405 S. Tucker Blvd., Room 4118, St. Louis, MO 63102–1132, AV: 693–0427, (314) 263–0427
Geographic Jurisdiction: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, New England, Tennessee, Wisconsin.
USACARA–WE: 801 "I" Street, Room 498, Sacramento, CA 95814, (916) 551–1073, FTS: 460–1073
Geographic Jurisdiction: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming.
USACARA–EU: APO NY 09102–0007, Heidelberg Military 8968/6351
Geographic Jurisdiction: Europe, Africa, North East, Atlantic Area, Middle East.
USACARA–PA: P.O. Box 50041, Honolulu, HI 96850–0001, (808) 546–8344
Geographic Jurisdiction: Hawaii, Far East, Pacific Area.
USACARA–NE: 766 Shrewsberry Ave., 3rd Floor, Tinton Falls, NJ 07724, (201) 741–1900
Geographic Jurisdiction: Pennsylvania, New Jersey, Maine, Massachusetts, New Hampshire, Vermont, Rhode Island, Connecticut, New York.

Appendix L—Sample format for Notice of Final Action

Section I

Format for the Final Army Decision Letter

1. Use

The notice of final Army decision is to be used under the following circumstances:

a. If a discrimination complaint is rejected or canceled.

b. If a proposed disposition is adopted after the complainant has failed to request a hearing or a decision by the Army without a hearing.

c. If an activity rejects a written request to reinstate a complaint for further processing.

2. Delivery

The notice of final Army decision is sent by certified mail, return receipt requested, or personally delivered to both complainant and representative, if any. If the notice is personally delivered, the complainant and his or her representative, if any, will acknowledge receipt by signing and dating the official file copy of the notice. If they decline to sign the copy, the server will sign it and indicate to whom and when the notice was served.

3. Filing

A copy of this notice will be filed in the complaint file.

4. Preparation of the Notice of Final Army Decision

The notice of final Army decision should contain the notice itself and one of the three appeal rights.

Section II

Appeal Rights

5. Use

When a notice of final Army decision is issued by an activity it must contain an appropriate advisement of appellate rights. Use one of the following appellate rights as appropriate:

a. Use figure L–2 for complaints that allege discrimination based on any of the following:
(1) Race.
(2) Color.
(3) Religion.
(4) Sex.
(5) National origin.
(6) Physical or mental handicap.
(7) Reprisal.

b. Use figure L–3 for complaints that allege age discrimination as their only bases.

c. Use figure L–4 for complaints that allege age discrimination and any of the following:
(1) Race.
(2) Color.
(3) Religion.
(4) Sex.
(5) National origin.
(6) Physical or mental handicap.
(7) Reprisal.

Figure L–1

Subject: Notice of final Army decision, (*Docket number).*
From: (ACTIVITY COMMANDER).
To: (COMPLAINANT)

This is the Army's final decision on your equal employment opportunity complaint, dated (date). You alleged (specify type of discrimination) when (state the wrong allegedly suffered by the complainant.)

Based on my evaluation of your complainant and pursuant to my authority to issue a final decision in this matter in accord with paragraph 2–9g, AR 690–600, I have decided you (were or were not) subjected to prohibited discrimination in the matter at issue.

(Specify the reasons for the decision and the documents, or reports relied upon in reaching your decision.)

If you are dissatisfied with this final Army decision, you have the following appeal rights: (See figs L–2, L–3, or L–4.)

Figure L–2

Regular Appeal Rights

(for all allegations of discrimination other than age)

Appeal Rights

1. An appeal may be filed with the equal employment Opportunity Commission within *20 calendar days* of receipt of this decision. The *20-day* period for filing an appeal begins on the date of receipt of this decision. The appeal must be postmarked, or in the absence of a postmark, received by the Commission within *20 calendar days* of the date of receipt of this decision. Statements or briefs in support of the appeal may be submitted up to *30 calendar days* from the date the appeal is filed. The regulation providing for appeal rights, section 1613.233, title 29, Code of Federal Regulations (29 CFR 1613.233), is reproduced below pursuant to 29 CFR 1613.221(e).

"Section 1613.233 Time limits.

(a) Except as provided in paragraph (c) of this section, a complainant may file a Notice of Appeal at any time up to

20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within *30 calendar days* of filing the Notice of Appeal. For purposes of this Part, the decision of an agency shall be final only when the agency makes a determination on all of the issues in the complaint, including whether or not to award attorney's fees or costs. If a decision to award attorney fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in Section 1613.271(c).

(b) When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a Notice of Appeal of such issues up to 20 days after:

(1) Receipt of an agency decision on the grievance and expiration of the time during which the union and the agency may move the matter to the next stage of the grievance process;

(2) Receipt of an arbitrator's award; or

(3) receipt of the decision of the FLRA on exceptions to the arbitrator's award.

(c) The 20-day time limit within which a Notice of Appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the Appeal."

2. In lieu of an appeal to the Commission, a civil action may be filed in an appropriate United States District Court within *30 calendar days* of receipt of the decision.

3. If an appeal to the Commission is filed, a civil action may be filed in a United States District Court within *30 calendar days* of receipt of the Commission's final decision.

4. A civil action may also be filed any time after *180 calendar days* of the date of initial appeal to the Commission, if a decision has not been rendered.

5. If a civil action is filed, and complainant does not have or is unable to obtain the services of a lawyer, the complainant may request the court to appoint a lawyer to represent him/her. In such circumstances as the court may deem just, the court may appoint a lawyer and may authorize the commencement of the action without the payment of fees, costs, or security. Any such request *must* be made within the above referenced *30-day* time limit for filing suit and in such form and manner as the court may require.

6. Appeals to the Commission should be forwarded to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW, WASH DC 20507. Any statement or brief in support of the appeal must be submitted to the Commission with two copies to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency, Department of the Army, ATTN: SFCR, WASH DC 20310-1813, within *30 calendar days* of filing the Notice of Appeal.

Docket Number

The docket number identified in the upper right hand corner of page 1 of this letter should be used on all correspondence to the Director of Equal Employment Opportunity or the Director, Equal Employment Opportunity Compliance and Complaints Review Agency.

Sincerely,

(Signature block)

Figure L-3. Age Appeal rights

Age Only Appeal Rights

(for allegations of age discrimination)

Appeal Rights

1. An appeal may be filed with the Equal Employment Opportunity Commission within *20 calendar days* of receipt of this decision. The 20-day period for filing an appeal begins on the date of receipt of this decision. The appeal must be postmarked, or in the absence of a postmark, received by the Commission within 20 calendar days of the date of receipt of this decision. Statements or briefs in support of the appeal may be submitted up to 30 calendar days from the date the appeal is filed. The regulation providing for appeal rights, section 1613.233, title 29, Code of Federal Regulations (29 CFR 1613.233), is reproduced below pursuant to 29 CFR, 1613.221(e).

"Section 1613.233 Time limits.

(a) Except as provided in paragraph (c) of this section, a complainant may file a notice of appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the notice of appeal. For purposes of this part, the decision of an agency shall be final only when the agency makes a determination on all of the issues in the complaint, including whether or not to award attorney's fees or costs. If a decision to award attorney fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in § 1613.217(c).

(b) When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a Notice of Appeal of such issues up to 20 days after: (1) receipt of an agency decision on the grievance and expiration of the time during which the union and the agency may move the matter to the next stage of the grievance process; (2) receipt of an arbitrator's award; or (3) receipt of the decision of the FLRA on exceptions to the arbitrator's award.

(c) The 20-day time limit within which a notice of appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the Appeal."

2. Appeals to the Commission should be forwarded to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW, WASH DC 20507. Any statement or brief in support of the appeal must be submitted to the Commission with two copies to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency, Department of the Army, ATTN: SFCR, WASH DC 20310-1813, within *30 calendar days* of filing the Notice of Appeal.

3. Attorney fees are not allowable for age discrimination complaints in the administrative process.

Docket Number

The docket number identified in the upper right hand corner of page 1 of this letter should be used on all correspondence to the Director of Equal Employment Opportunity or the Director, Equal Employment Opportunity Compliance and Complaints Review Agency.

Sincerely,

(Signature block)

Figure L-4. Combined appeal rights

Combined Appeal Rights

(for allegations of age plus race, color, religion, sex, national origin, physical or mental handicap, and/or reprisal)

Appeal Rights-Age Discrimination

1. An appeal may be filed with the Equal Employment Opportunity Commission within *20 calendar days* of receipt of this decision. The *20-day* period for filing an appeal begins on the date of receipt of this decision. The appeal must be postmarked, or in the absence of a postmark, received by the Commission within *20 calendar days* of the date of receipt of this decision. Statements or briefs in support of the appeal may be submitted up to *30 calendar days* from the date the appeal is filed. The regulation providing for appeal rights, section 1613.233, title 29, Code of Federal Regulations (29 CFR 1613.233), is reproduced below pursuant to 29 CFR 1613.221(e).

"Section 1613.233 Time limits.

(a) Except as provided in paragraph (c) of this section, a complainant may file a notice of appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the notice of appeal. For purposes of this part, the decision of an agency shall be final only when the agency makes a determination on all of the issues in the complaint, including whether or not to award attorney's fees or costs. If a decision to award attorney's fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in § 1613.271(c).

(b) When issues of discrimination have been raised in a negotiated grievance process, a complainant may file a Notice of Appeal of such issues up to 20 days after: (1) receipt of an agency decision on the grievance and expiration of the time during which the union and the agency may move the matter to the next stage of the grievance process; (2) receipt of an arbitrator's award; or (3) receipt of the decision of the FLRA on exceptions to the arbitrator's award.

(c) The 20-day time limit within which a notice of appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the appeal."

2. Appeals to the Commission should be forwarded to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW, WASH DC 20507. Any statement or brief in support of the appeal must be submitted to the Commission with two copies to the Director, Equal Employment Opportunity Compliance and Compliants Review Agency, Department of the Army, ATTN: SFCR, WASH DC 20310-1813, within *30 calendar days* of filing the Notice of Appeal.

3. Attorney fees are not allowable for age discrimination complaints in the administrative process.

Appeal Rights—Other

1. An appeal may be filed with the Equal Employment Opportunity Commission within *20 calendar days* of receipt of this decision. The *20-day* period for filing an appeal begins on the date of receipt of this decision. The appeal must be postmarked, or in the absence of a postmark, received by the Commission within *20 calendar days* of the date of receipt of this decision. Statements or briefs in support of the appeal may be submitted up to *30 Calendar days* from the date the appeal is filed. The regulation providing for appeal rights, section 1613.233, title 29 Code of Federal Regulations (29 CFR 1613.233), is reproduced below pursuant to 29 CFR 1613.221(e).

"Section 1613.233 Time limits.

(a) Except as provided in paragraph (c) of this section, a complaint may file a notice of appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the notice of appeal. For purposes of this Part, the decision of an agency shall be final only when the agency makes a determination on all of the issues in the complaint, including whether or not to award attorney fees or costs. If a decision to award attorney's fees or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in § 1613.271(c).

(b) When issues of discrimination have been raised in a negotiated grievance process, a complaint may file a Notice of Appeal of such issues up to 20 days after:

(1) receipt of an agency decision on the grievance and expiration of the time during which the union and the agency may move the matter to the next stage of the grievance process; (2) receipt of an arbitrator's award; or (3) receipt of the decision of the FLRA on exceptions to the arbitrator's award.

(c) The 20-day time limit within which a notice of appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the Appeal."

2. In lieu of an appeal to the Commission, a civil action may be filed in an appropriate United States District Court within *30 calendar days* of receipt of the decision.

3. If an appeal to the Commission is filed, a civil action may be filed in a United States District Court within *30 calendar days* of receipt of the Commission's final decision.

4. A civil action may also be filed any time after *180 calendar days* of the date of initial appeal to the Commission, if a decision has not been rendered.

5. If a civil action is filed, and complainant does not have, or is unable to obtain the services of a lawyer, the complainant may request the court to appoint a lawyer to represent him/her. In such circumstances as the court may deem just, the court may appoint a lawyer and may authorize the commencement of the action without the payment of fees, costs or security. Any such request *must* be made within the above referenced *30-day* time limit for filing suit and in such form and manner at the court may require.

6. Appeals to the Commission should be forwarded to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW, WASH DC 20507. Any statement or brief in support of the appeal must be submitted to the Commission with two copies to the Director, Equal Employment Opportunity Compliance and Complaints Review Agency

Department of the Army, ATTN: SFCR. WASH DC 20310–1613, within *30 calendar days* of filing the Notice of Appeal.

Docket Number

The docket number identified in the upper right hand corner of page 1 of this letter should be used on all correspondence to the Director of Equal Employment Opportunity or the Director, Equal Employment Opportunity Compliance and Complaints Review Agency.

Sincerely,

(Signature block)

Appendix M—Addresses and Geographic Jurisdiction of EEOC District Offices

Addresses and Geographic Jurisdictions of EEOC District Offices

C–1. EEOC complaints examiners are assigned to hear discrimination complaints from various district offices located throughout the United States. When an EEO officer must obtain the services of an EEOC complaints examiner to conduct a hearing in accord with paragraph 2–13 (individual complaints) or paragraph 3–6 (class action complaints), he or she should contact the EEOC district office with jurisdiction over the activity.

C–2. The EEOC district offices are as follows:

Atlantic District Office

District Director, EEOC, Citizens Trust Bldg., 10th Fl., 75 Piedmont Avenue, NE., Atlanta, Georgia 30335, (404) 212–6091, FTS 242–6091.
Geographic Jurisdiction: States of Georgia and South Carolina.

Baltimore District Office

District Director, EEOC, 109 Market Pl., Suite 4000, Baltimore, Maryland 21201, (301) 962–3932, FTS 922–3932.
Geographic Jurisdiction: States of Maryland and Virginia, District of Columbia, Europe.

Birmingham District Office

District Director, EEOC, 2121 Eighth Ave., North, Birmingham, Alabama 35203, (205) 254–1166, FTS 229–1166.
Geographic Jurisdiction: States of Alabama and Mississippi.

Charlotte District Office

District Director, EEOC, 1301 East Morehead Street, Charlotte, North Carolina 28204, (704) 371–6437, FTS 672–6455.
Geographic Jurisdiction: State of North Carolina.

Chicago District Office

District Director, EEOC, Federal Bldg., Room 930A, 536 S. Clark Street, Chicago, Illinois 60605, (312) 353–2712, FTS 353–2713.
Geographic Jurisdiction: State of Illinois, except counties of Alexander, Bond, Calhoun, Clinton, Greene, Jackson, Jersey, Macoupin, Madison, Monroe, Perry, Pulaski, Randolph, St. Clair, Union, and Washington.

Cleveland District Office

District Director, EEOC, One Playhouse Square, 1375 Euclid Avenue, Room 600, Cleveland, Ohio 44115, (216) 522–7425, FTS 942–4784.
Geographic Jurisdiction: State of Ohio.

Dallas District Office

District Director, EEOC, 8303 Elmbrook Dr., 2nd Floor, Dallas, Texas 75247, (214) 767–7015, FTS 729–7015.
Geographic Jurisdiction: States of Oklahoma and Texas counties of: Anderson, Archer, Armstrong, Bailey, Baylor, Bell, Borden, Bosque, Bowie, Briscoe, Brown, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Coke, Coleman, Collin, Collingsworth, Comanche, Cooke, Coryell, Cottle, Crath, Crosby, Dallas, Deafsmith, Delta, Denton, Dickens, Donley, Ellis, Falls, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Garza, Glasscock, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Henderson, Hill, Hood, Hopkins, Howard, Houston, Hunt, Hutchinson, Irion, Jack, Jonson, Jones, Kaufman, Kent, King, Knox, Lamar, Lampasas, Leon, Limestone, Lipscomb, Madison, Marion, McLennan, Mehannan, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacogdoches, Navarro, Nolam, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randall, Regean, Red River, Robertson, Rockwall, Runnels, Rusk, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Throckmorton, Titus, Tom Green, Upshur, Van Zandt, Wheeler, Wichita, Wilbarger, Wise, Wood, Young, Andrews, Cochran, Crane, Culberson, Dawson, Ector, El Paso, Gaines, Hockley, Hudspeth, Loving, Lubbock, Lynn, Martin, Midland, Reeves, Terry, Upton, Ward, Winkler, Yoakum.

Denver District Office

District Director, EEOC, 1531 Stout Street, 6th Floor, Denver, Colorado 80202, (303) 844–2711, FTS 564–2771.
Geographic Jurisdiction: States of Colorado, Wyoming, Montana, North Dakota, South Dakota.

Detroit District Office

District Director, EEOC, McNamara Federal Building, 477 Michigan Avenue, Room 1540, Detroit, Michigan 48226, (313) 226–7636, FTS 226–7636.
Geographic Jurisdiction: State of Michigan.

Houston District Office

District Director, EEOC, 405 Main Street, 6th Floor, Houston, Texas 77002, (713) 226–5601, FTS 526–5601.
Geographic Jurisdiction: State of Texas, counties of: Angelina, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galverston, Grimes, Hardin, Harris, Jasper, Jefferson, Liberty, Matagorda, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walder, Waller, Warton.

Indianapolis District Office

District Director, EEOC, Federal Building, U.S. Courthouse, 46 E. Ohio Street, Room 456, Indianapolis, Indiana 46204, (317) 269–7212, FTS 331–7212.
Geographic Jurisdiction: States of Indiana and Kentucky.

Los Angeles District Office

District Director, EEOC, 3255 Wilshire Blvd., 9th Floor, Los Angeles, California 90010, (213) 798–3400, FTS 798–3400.
Geographic Jurisdiction: State of Nevada, and California counties of: Los Angeles, San Bernadino, Ventura, Kern, San Luis Obispo, Santa Barbara, Orange, Riverside, Imperial, San Diego.

Memphis District Office

District Director, EEOC, 1407 Union Avenue, Suite 502, Memphis, Tennessee 38104, (901) 521–2617, FTS 222–2617.
Geographic Jurisdiction: States of Tennessee and Arkansas.

Miami District Office

District Director, EEOC, Metro—Mall Building, 1 NE First Street, Miami, Florida 33132, (305) 350–4949, FTS 350–4491.
Geographic Jurisdiction: State of Florida, and Panama Canal Zone.

Milwaukee District Office

District Director, EEOC, 310 West Wisconsin Ave., Suite 800, Milwaukee, Wisconsin 53203, (414) 291–1111, FTS 362–1111.
Geographic Jurisdiction: States of Wisconsin, Minnesota, and Iowa.

New Orleans District Office

District Director, EEOC, F. Edward Herbert Federal Bldg., 600 South Street, New Orleans, Louisiana 70130, (504) 589–3842, FTS 682–3842.
Geographic Jurisdiction: State of Louisiana.

New York District Office

District Director, EEOC, 90 Church St., Room 501, New York, New York 10007, (804) 441–3470, FTS 827–3470.
Geographic Jurisdiction: States of New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine; and Puerto Rico and the Virgin Islands.

Philadelphia District Office

Acting District Director, EEOC, 127 N. 4th Street, Suite 300, Philadelphia, Pennsylvania 19106, (215) 597–7784, FTS 597–7784.
Geographic Jurisdiction: States of Pennsylvania, New Jersey, Delaware, and West Virginia.

Phoenix District Office

District Director, 135 North Second Ave., 4th Floor, Phoenix, Arizona 85003, (602) 261–3882, FTS 261–382.
Geographic Jurisdiction: States of Arizona, New Mexico, and Utah.

San Antonio District Office

District Director, EEOC, 727 East Durango, Suite B–601, San Antonio, Texas 78206, (512) 229–6051.
Geographic Jurisdiction: State of Texas, counties of: Aransas, Atascosa, Bandera, Bastrop, Bee, Bexar, Blanco, Brazos, Brewster, Brooks, Burleson, Burnet, Caldwell, Calhoun, Cameron, Comal, Commcho, Crockett, De Witt, Dimmit, Duval, Dewards, Fayette, Frio, Gillespie, Goliad, Gonzalos, Guadalupe, Hays, Hildalgo, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Lee, Live Oak, Llano, Mason, Maverick, Medina, Menard, McCulloch, McMullen, Neuces, Pecos, Presidio, Real, Refugio, San Patricio, San Saba, Scheleicher, Starr, Sutton, Terrell, Travis, Uvalde, Val Verde, Victoria, Washington, Webb, Willacy, Williamson, Wilson, Zapata, Zavala.

San Francisco District Office

District Director, EEOC, 10 United Nations Plaza, 4th Floor, San Francisco, California 94102, (415) 556–0260, FTS 556–0260.
Geographic Jurisdiction: State of Hawaii, Pacific Far East, and California counties of: Colusa, Del Norte, Glenn, Humbott, Lake, Marlin, Mendocino, Napa, San Francisco, San Mateo, Solana, Sonoma, Trinity, Yolo, Fresno, Inyo, Kings, Madera, Alameda, Alpine, Amador, Calaveras, Contra Costa, Mono, San Joaquin, Stanislaus, Tuolumne, Butte, El Dorado, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Yung, Monterey, Santa Clara, Santa Cruz.

Seattle District Office

District Director, EEOC, Arcade Plaza Building, 7th Floor, Seattle, Washington 98101, (206) 442–0968, FTS 339–0968.
Geographic Jurisdiction: States of Washington, Oregon, Idaho, and Alaska.

St. Louis District Office

District Director, EEOC, Central West Plaza Bldg., 4th Floor, 625 N. Euclid Street, St. Louis, Missouri 63108, (314) 425–6585, FTS 279–6585.
Geographic Jurisdiction: States of Missouri, Kansas, and Illinois counties of: Alexander, Bond, Calhoun, Clinton, Greene, Jackson, Jersey, Macoupin, Madison, Monroe, Perry, Pulaski, Randolph, St. Clair, Union, Washington.

Appendix N—Sample advice—Mixed cases

N–1. The following advice should be attached verbatim to all Army decisions on personnel actions that are appealable to the MSPB where the employee has raised the issue of discrimination, either orally or in writing, during the processing of the personnel action but prior to the Army decision to effect that personnel action:

If you believe that this personnel action discriminated against you on the basis of your race, color, religion, sex, national origin, age, physical or mental handicap and/or reprisal, you may file a complaint of discrimination with the following person (activity EEO officer) or you may file an appeal with the Merit Systems Protection Board, as previously described. You may not, however, file both. Should you elect to file a complaint of discrimination, your complaint will be processed in accordance with Equal Employment Opportunity Commission regulations at section 1613.401, title 29, Code of Federal Regulations (29 CFR 1613.401.) Should you elect to file an appeal, your appeal will be processed in accordance with MSPB regulations at 5 CFR 1201.

N–2. The following advice is applicable to mixed case complaints and should be attached to all decisions where the Army rejects the complaint pursuant to 29 CFR 1613.405(a) (that is, where the complainant has previously appealed the matter which forms the basis of the complaint to the MSPB):

Should you wish to proceed further with this matter, you must bring the allegations of discrimination contained in this rejected complaint to the attention of the MSPB as part of your appeal, pursuant to 5 CFR 1201.155.

N–3. The following advice is applicable to mixed case complaints filed on or after May 2, 1983, and should be attached to all decisions where the Army canceled the complaint pursuant to 29 CFR 1613.405(b) (that is, where the Army learns, after accepting a complaint, that the complainant previously filed an appeal on the same matter with the MSPB):

Should you wish to proceed further with this matter, you must bring the allegations of discrimination contained in this canceled complaint to the attention of the MSPB as part of your appeal to them, pursuant to 5 CFR 1201.155.

N–4. The following advice shall be made a part of all letters notifying the complainant of the acceptance of a mixed case complaint for processing pursuant to 29 CFR 1613.405(e):

Your complaint shall be processed in accordance with 29 CFR 1613.405(e) of Equal Employment Opportunity Commission (EEOC) regulations. If you do not receive a final agency decision on this complaint within 120 calendar days of the date of the filing of this complaint, you may appeal the matter to the Merit Systems Protection Board at any time thereafter, up to, but not later than, 1 year from the filing of the complaint, or you may file a civil action, as specified at 29 CFR 1613.417(g). If you are dissatisfied with the Army's eventual decision on this complaint, you may appeal that decision to the MSPB (not the EEOC) within 20 calendar days of receipt of the decision.

N–5. The following advice shall be made a part of the letter notifying the complainant of the proposed disposition of a mixed case complaint:

If you are dissatisfied with this proposed disposition, you are entitled to request a final discision (without a hearing by the EEOC) from the Secretary of the Army or his or her designee. If, thereafter, you should be dissatisfied with that final decision, you may appeal that decision to the MSPB within 20 calendar days of receipt of that decision. You may, in connection with any such appeal, request a hearing before the MSPB. In addition, if the Army's final decision has not been issued within 120 calendar days of the date on which you originally filed your complaint, you may appeal directly to the MSPB (not the EEOC) at the expiration of 120 calendar days, up to 1 year after filing the complaint. You may also file a civil action in Federal District Court within 30 calendar days of receipt of the final Army decision if you do not file an appeal with the MSPB.

N–6. The following advice shall be made a part of the letter notifying the complainant of the final agency decision on a mixed case complaint:

If you are dissatisfied with this decision you have the right to appeal the matter to the Merit Systems Protection Board (not the Equal Employment Opportunity Commission). within 20 calendar days of receipt. You also have the right to file a civil action in Federal District Court within 30 calendar days of receipt of this decision and as further described at 29 CFR Section 1613.417(a).

N–7. The following advice shall be made a part of the letter notifying the complainant of the cancellation pursuant to 29 CFR 1613.406(a)(2). This applies when a complaint on a proposal to take an appealable action is canceled because the complainant has subsequently filed an appeal with the MSPB on the agency decision to effect that proposal):

The allegation(s) of discrimination contained in this canceled complaint should be raised with the MSPB in connection with your pending appeal of the Army's decision to effect the action which formed the basis of this complaint.

Appendix O—Glossary

Section I

Abbreviations

ADO—alleged discriminating official
CIVPERCEN—U.S. Army Civilian Personnel Center
CPO—civilian personnel officer
DA—Department of the Army
EEO—equal employment opportunity
EEOC—Equal Employment Opportunity Commission
EEOCCRA—Equal Employment Opportunity Compliance and Complaints Review Agency
FLRA—Federal Labor Relations Authority
MACOM—major Army command
MSPB—Merit Systems Protection Board
NAF—nonappropriated fund
ROI—report of investigation
SJA—Staff Judge Advocate
USACARA—U.S. Army Civilian Appellate Review Agency

Section II

Terms

Activity Commander. The Army Commander who has delegated appointing authority for the civilian work force and has a CPO, a labor counselor, and an EEO officer available for advice.

Age discrimination. A claim of discrimination based on age by an individual who is at least 40 years of age at the time of the alleged discriminatory act.

Agent of the class. A member of a class who files the complaint and acts for the class during the processing of the class complaint. This person alleges that an Army personnel practice or policy discriminates against the class on the basis of race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal.

Alleged discriminating official. A person identified or implicated by the complainant as responsible for the specific act or policy alleged to be discriminatory.

Allegation of reprisal. A claim of restraint, interference, coercion, discrimination, or retaliation in connection with presenting or processing a complaint. Reprisal claims can be brought by complainants, their representatives, witnesses, and personnel involved in the complaint process.

Arbitration. The final resolution of a grievance filed under a negotiated grievance procedure by an impartial person (an arbitrator) selected by labor and management. If allegations of discrimination are not excluded from a negotiated grievance procedure, they may be filed under such procedure and eventually may be decided through arbitration. An employee cannot individually invoke arbitration. Only labor and management may invoke arbitration to resolve a grievance.

Civilian personnel officer. The individual who is designated by the commander to administer the civilian personnel program.

Class. A group of Army employees, former Army employees, or applicants for Army employment, who allege that they have been, are being, or may be adversely affected by an Army personnel management policy or practice which the Army has authority to rescind or modify. The policy or practice must allegedly discriminate against the group based on their common race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal.

Class complaint. A written discrimination complaint filed on behalf of a class by the agent of the class alleging that an Army personal policy or practice discriminates against the class, and fulfills all of the following elements:

a. The class is so numerous that a consolidated complaint of the class is impractical.

b. There are questions of fact common to the class.

c. The individual claim of discrimination of the agent of the class is typical of the claims of the class.

d. The agent of the class, and his or her representative, if any, will fairly and adequately protect the interests of the class.

Complainant. An Army employee, a former Army employee, or an applicant for Army employment who files a formal complaint of discrimination based on his or her race, color, religion, sex, national origin, age, physical or mental handicap, and/or reprisal.

Complaints examiner. An official assigned by the EEOC to hold hearings on formal complaints of discrimination and otherwise process individual and class complaints for the EEOC.

Director of Equal Employment Opportunity. The official designated by the Secretary of the Army, to administer the Army's EEO program in accordance with 29 CFR 1613.204.

Discrimination. Any act or failure to act, impermissibly based in whole or in part on a person's race, color, religion, national origin, sex, age, physical or mental handicap, and/or reprisal; that adversely affects privileges, benefits, working conditions; results in disparate treatment; or has a disparate impact on employees or applicants.

Equal Employment Opportunity Commission. The Federal agency responsible for issuing policy and regulations on the discrimination complaint system established by an agency in the Federal service. The EEOC holds hearings and makes findings and recommendations. The EEOC Office of Review and Appeals makes final decisions on discrimination complaints that have been appealed. It also reviews, upon request, decisions of negotiated grievances and Merit Systems Protection Board appeals if they include issues of discrimination.

Equal Employment Opportunity Compliance and Complaints Review Agency. The Army Organization responsible for the management of the Army's EEO complaint system. EEOCCRA also prepares the final Army decision in EEO complaints for the approval and signature of the Secretary of the Army or his or her designee.

EEO counselor. An Army employee (or an employee of a serviced Department of Defense activity), working under the direction of the EEO officer, who makes informal inquiries and seeks resolution of informal complaints. EEO counselors may be assigned to full-time or part-time EEO counselor positions or be given collateral EEO duties and responsibilities. (In the latter case, the EEO counseling duties are officially added to the counselor's position description.) In performing the EEO functions, the counselor is guided by the EEO officer.

EEO officer. The individual designated by the Activity Commander to administer the activity's EEO Program. This includes managing and operating the complaint processing system, supervising EEO counselors, and advising the Activity Commander on the proposed disposition of complaints.

Federal Labor Relations Authority. The Federal agency responsible for deciding appeals of arbitration awards filed by a union or an agency regarding grievances filed under the negotiated grievance procedure.

Final Army decision. The decision, with or without a hearing, of the Army on a complaint of discrimination.

Formal individual discrimination complaint. A written complaint (ordinarily, a DA Form 2590–R) filed under this regulation, alleging that a specific act of discrimination or reprisal has taken place that is personal to the individual.

Handicapped person. a. A person who—

(1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities.

(2) Has a record of such an impairment.

(3) Is regarded as having such an impairment.

b. Physical or mental impairment.

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

(a) Neurological.
(b) Musculoskeletal.
(c) Special sense organs.
(d) Cardiovascular.
(e) Reproductive.
(f) Digestive.
(g) Genito-urinary.
(h) Hemic and lymphatic.
(i) Skin.
(j) Endocrine.

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. Major life activities. Functions include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

d. Has a record of such an impairment. The person has a history of, or has been classified (or misclassified) as having, a mental or physical impairment that substantially limits one or more major life activities.

e. Is regarded as having such an impairment. This term is defined as one of the following:

(1) A physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation.

(2) A physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment.

(3) None of the impairments defined in (2) above but is treated by an employer as having such an impairment.

Informal individual discrimination complaint. A matter of alleged discrimination which is brought to the attention of an EEO counselor by an aggrieved person before a formal discrimination complaint is filed. Contact with the EEO counselor may be oral or in writing.

Investigative report. In the Army, the report of investigation prepared by a USACARA investigator after the filing of a formal EEO complaint.

Labor counselor. An attorney working in the legal office servicing an activity who advises and represents the Activity Commander in labor matters, to include EEO complaints.

Merit Systems Protection Board. The Federal agency responsible for deciding appeals of personnel actions and mixed case complaints.

Mixed case complaint. A complaint involving an action appealable to MSPB which alleges that the action was taken because of discrimination. Actions appealable to the MSPB include removals, demotions, suspensions for more than 14 days, reductions-in-force, and furloughs for 30 days or less.

Mixed case appeals. An appeal filed with the MSPB which alleges that an Army action resulted, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, mental or physical handicap, age, and/or reprisal, or alleges that such Army action resulted in sex-based wage discrimination.

Negotiated grievance procedure. A grievance procedure contained in a collective bargaining agreement negotiated between the Army and a recognized labor organization. An allegation of discrimination may be processed under a negotiated grievance procedure as provided for by section 7121(d), title 5, United States Code. Unless specifically excluded by agreement between labor and management, an allegation of discrimination may be processed under a negotiated grievance procedure or this regulation, but not both.

Notice of proposed disposition. The notification from the commander to the complainant, after an informal adjustment attempt, of his or her findings and disposition of the complaint. The notice advises the complainant of the right to request a final Army decision, with or without a hearing, from the Department of the Army.

Qualified handicapped person. With respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of himself, herself, or others and who, depending upon the type of appointing authority being used, either—

a. Meets the experience or education requirements (which may include passing a written test) of the position in question.

b. Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

Remedial action. May include, but is not limited to, retroactive appointment or promotion, back pay, attorney fees and/or costs, cancellation of an unwarranted personnel action, or expunction from the Army's records of any reference to, or any record of, an unwarranted disciplinary action that is not a personnel action.

Reportable contact. A reportable contact is any contact with an EEO counselor by an aggrieved person who alleges discrimination on the bases of race, color, religion, sex, age, mental or physical handicap, national origin, or reprisal.

Sexual harassment. Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when one or more of the following occurs:

a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

U.S. Army Civilian Appellate Review Agency. The Army organization that investigates and makes recommendations on formal EEO complaints filed against the Army.

Appendix P—Prescribed forms

BILLING CODE 3710-08-M

FORMAL COMPLAINT OF DISCRIMINATION

For use of this form, see AR 690-600; the proponent agency is the Office of the Secretary of the Army

(Please print or type)

PRIVACY ACT STATEMENT
(5 U.S.C. 552a)

AUTHORITY: *Public Law 93-361*

PRINCIPAL PURPOSE: *Formal filing of allegation of discrimination because of race, color, religion, sex, handicap, age, national origin or reprisal.*

ROUTINE USES: *This form and the information on this form may be used (a) as a data source for complaint information for production of summary descriptive statistics and analytical studies of complaints processing and resolution efforts and may also be used to respond to general requests for information under the Freedom of Information Act, (b) to respond to requests from legitimate outside individuals or agencies (for example: Members of Congress, The White House, and the Equal Employment Opportunity Commission) regarding the status of the complaint or appeal and, (c) to adjudicate complaint or appeal.*

DISCLOSURE: *Voluntary; however, failure to complete all appropriate portions of this form may lead to rejection of complaint on the basis of inadequate data on which to determine if complaint is acceptable.*

1. NAME OF COMPLAINANT (Last, First, Middle) COMPLAINANT'S SSN	2. COMPLAINANT'S TELEPHONE NUMBERS WORK HOME
3. COMPLAINANT'S ADDRESS *(Include City, State, ZIP Code)*	4. IS COMPLAINANT BEING REPRESENTED YES NO IF YES, NAME OF REPRESENTATIVE
5. NAME OF ARMY ORGANIZATION YOU BELIEVE DISCRIMINATED AGAINST YOU	6. ADDRESS OF ALLEGED DISCRIMINATION ORGANIZATION *(Include City, State, ZIP Code)*
7. MAJOR ARMY COMMAND OF ACTIVITY YOU BELIEVE DISCRIMINATED AGAINST YOU	8. DATE ON WHICH MOST RECENT ALLEGED DISCRIMINATION OCCURRED
9. ARE YOU WORKING FOR THE FEDERAL GOVERNMENT / / YES (Answer items 10, 11 and 12) / / NO (Skip to item 13)	10. NAME OF AGENCY WHERE YOU ARE CURRENTLY EMPLOYED
11. ADDRESS OF YOUR CURRENT EMPLOYER *(Include City, State, ZIP Code)*	12. TITLE AND GRADE OF YOUR CURRENT JOB

13. CHECK BELOW WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST, BECAUSE OF YOUR

/ / RACE. IF SO, STATE YOUR RACE
/ / COLOR. IF SO, STATE YOUR COLOR
/ / HANDICAP, MENTAL/PHYSICAL (CIRCLE ONE)
/ / NATIONAL ORGIN. IF SO, STATE YOUR NATIONAL ORIGIN
/ / SEX. IF SO, STATE YOUR SEX
/ / RELIGION. IF SO, STATE YOUR RELIGION
/ / AGE. IF SO, STATE YOUR AGE
/ / REPRISAL

14. I HAVE DISCUSSED MY COMPLAINT WITH AN EQUAL EMPLOYMENT OPPORTUNITY COUNSELOR *(See reverse)* / / YES / / NO	15. NAME OF COUNSELOR

16. DATE OF FINAL INTERVIEW

17. EXPLAIN SPECIFICALLY HOW YOU WERE DISCRIMINATED AGAINST, THAT IS, TREATED DIFFERENTLY FROM OTHER EMPLOYEES OR APPLICANTS. BECAUSE OF YOUR: RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, MENTAL OR PHYSICAL HANDICAP, OR REPRISAL. *(If your complaint involves more than one basis for your dissatisfaction, list and number each such allegation separately and furnish specific, factual information in support of each. You may continue your answer on another sheet of paper if you need more space.)*

ALLEGATION NUMBER 1:

18. LIST BELOW THE NAMES OF YOUR WITNESSES AND WHAT FACTUAL INFORMATION EACH WILL BE EXPECTED TO CONTRIBUTE THROUGH HIS/HER TESTIMONY TO THE INVESTIGATION OF YOUR COMPLAINT *(Include in REMARKS)*

19. WHAT SPECIFIC CORRECTIVE ACTION DO YOU WANT TAKEN ON YOUR COMPLAINT *(If more than one allegation is being made, state overall corrective action desired and the specific corrective action desired for each separate allegation)*

DA FORM 2590-R, Dec 85 Edition of 1 Jun 73 is obsolete

BILLING CODE 3710-08-C

20. HAVE THE MATTERS LISTED IN ITEM 17 BEEN APPEALED TO THE MERIT SYSTEM PROTECTION BOARD OR FILED UNDER A NEGOTIATED GRIEVANCE PROCEDURE: IF YES, EXPLAIN

REMARKS *(Continue on white bond paper if necessary)*

21. DATE THIS COMPLAINT FORM WAS SIGNED BY THE COMPLAINANT (Month, Day, and Year)	22. SIGNATURE OF COMPLAINANT

TO BE COMPLETED BY THE ORGANIZATION'S EQUAL EMPLOYMENT OPPORTUNITY OFFICER (EEOO)

I CERTIFY THAT (1) THE COMPLAINANT HAS REAFFIRMED THIS COMPLAINT IN MY PRESENCE AND HAS STATED THAT THE FACTS CONTAINED THEREIN ARE TRUE TO THE BEST OF HIS/HER KNOWLEDGE, (2) A DETERMINED EFFORT AT INFORMAL RESOLUTION OF THIS COMPLAINT FAILED TO PRODUCE A SOLUTION SATISFACTORY TO THE COMPLAINANT AND, (3) LOCAL MANAGEMENT IN THE APPROPRIATE CHAIN OF COMMAND HAS BEEN INFORMED CONCERNING THE COMPLAINT AND ITS SUBMISSION IN THE ABOVE FORMAT:

22. SIGNATURE OF EEOO	23. TYPED NAME, TITLE, AND ADDRESS OF EEOO
24. DATE COMPLAINT FILED WITH EEOO	25. TELEPHONE NO. OF EEOO PROCESSING COMPLAINT

26. SUBJECT MATTER CODES:

THE MATTER(S) GIVING RISE TO THE COMPLAINT WILL BE CODED USING ONE OR MORE OF THE FOLLOWING CODES: APPOINTMENT (1); PROMOTION (2); REASSIGNMENT (3); SEPARATION/TERMINATION (4); SUSPENSION (5); REPRIMAND (6); EVALUATION/APPRAISAL (7); DUTY HOURS (8); TRAINING (9); TIME AND ATTENDANCE (10); RETIREMENT (11); ASSIGNMENT OF DUTIES (12); EXAM/TEST (13); WORK CONDITIONS (14); HARASSMENT (15); SEXUAL HARASSMENT (16); REPRISAL (17); PAY, INCLUDING OVERTIME (18); CONVERSION TO FULL TIME/CAREER CONDITIONAL (19); REINSTATEMENT (20); AWARDS (21); OR, OTHER (22) (specify).

INFORMATION CONCERNING THE PROCESSING OF YOUR COMPLAINT OF DISCRIMINATION.

THIS FORM WILL BE USED ONLY IF YOU, AS AN ARMY EMPLOYEE OR AS AN APPLICANT FOR FEDERAL EMPLOYMENT, THINK YOU HAVE BEEN TREATED UNFAIRLY BECAUSE OF YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, MENTAL OR PHYSICAL HANDICAP, OR REPRISAL. IF YOU HAVE ANY QUESTIONS CONCERNING THE COMPLETION OF THIS FORM, YOU MAY CONTACT THE EQUAL EMPLOYMENT OPPORTUNITY OFFICER (EEOO) AT YOUR ACTIVITY.

YOUR WRITTEN FORMAL COMPLAINT MUST BE FILED WITHIN 15 CALENDAR DAYS OF THE DATE OF YOUR FINAL INTERVIEW WITH THE EEO COUNSELOR. IF THE MATTER HAS NOT BEEN RESOLVED TO YOUR SATISFACTION WITHIN 21 CALENDAR DAYS OF YOUR FIRST INTERVIEW WITH THE EEO COUNSELOR AND THE FINAL COUNSELING INTERVIEW HAS NOT BEEN COMPLETED WITHIN THAT TIME, YOU HAVE A RIGHT TO FILE A COMPLAINT AT ANY TIME THEREAFTER UP TO 15 DAYS AFTER THE FINAL INTERVIEW. YOUR WRITTEN FORMAL COMPLAINT MUST BE FILED WITHIN 15 CALENDAR DAYS OF THE DATE OF YOUR FINAL INTERVIEW WITH THE EEO COUNSELOR. THIS TIME LIMIT MAY BE EXTENDED IF YOU CAN GIVE A GOOD REASON FOR NOT SUBMITTING THE COMPLAINT WITHIN THE 15 CALENDAR DAY TIME LIMIT.

YOU MAY HAVE A REPRESENTATIVE AT ALL STAGES OF THE PROCESSING OF YOUR COMPLAINT. YOU OR YOUR REPRESENTATIVE SHOULD PERSONALLY FILE YOUR COMPLAINT WITH THE EEOO OF YOUR ACTIVITY.

IF YOUR COMPLAINT IS ACCEPTED, YOU WILL HAVE AN OPPORTUNITY TO TALK WITH AN INVESTIGATOR FROM THE U.S. ARMY CIVILIAN APPELLATE REVIEW AGENCY AND TO GIVE HIM ALL THE FACTS YOU HAVE WHICH YOU BELIEVE WILL SUPPORT YOUR COMPLAINT. IF YOUR COMPLAINT IS REJECTED, YOU WILL BE ADVISED IN WRITING OF THE REASON(S) AND ADVISED OF THE RIGHT TO APPEAL. UPON COMPLETION OF THE INVESTIGATION OF YOUR COMPLAINT, YOU WILL RECEIVE A COPY OF THE INVESTIGATOR'S REPORT AND AN ATTEMPT WILL BE MADE TO RESOLVE THE COMPLAINT THEN.

IF YOUR COMPLAINT CANNOT BE SETTLED INFORMALLY ON THE BASIS OF THE INVESTIGATION, YOU MAY REQUEST A REVIEW OF YOUR RECORD BY THE DEPARTMENT OF THE ARMY DIRECTOR OF EQUAL EMPLOYMENT OPPORTUNITY, OR YOU MAY REQUEST A HEARING AT THIS STAGE. IF A HEARING IS REQUESTED, IT WILL BE CONDUCTED BY A COMPLAINTS EXAMINER DESIGNATED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. THE FINDINGS, ANALYSIS, AND RECOMMENDATION WILL BE FORWARDED TO THE DIRECTOR OF EQUAL EMPLOYMENT OPPORTUNITY FOR DECISION. YOU WILL BE ADVISED BY THE DIRECTOR OF THE DECISION AND PROVIDED A COPY OF THE CASE RECORD.

IF YOU ARE NOT SATISFIED WITH THE DIRECTOR'S DECISION, YOU WILL HAVE THE RIGHT TO APPEAL TO THE OFFICE OF REVIEW AND APPEALS OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 2401 E STREET, N.W., WASHINGTON DC, 20507 WITHIN 20 CALENDAR DAYS AFTER RECEIPT OF THE DECISION.

PLEASE BE SPECIFIC IN STATING THE FACTS CONCERNING YOUR COMPLAINT IN ITEMS 14 THROUGH 20 ON THE REVERSE OF THIS FORM.

DA Form 2590-R, Dec 85 (Reverse)

PRECOMPLAINT COUNSELING DATA SHEET
For use of this form, see AR 690-600; the proponent agency is the Office of the Secretary of the Army

DATE

INSTRUCTIONS
The EEO Counselor will complete all items except those which will be completed by the EEO Officer, which are: (1) identifying the MACOM of the activity against which the inquiry was raised and, (2) reporting the amount of backpay awarded or to be awarded, if any.

MACOM

BASIS OF COMPLAINT

For the appropriate box(es) below, enter the applicable code as follows:

CATEGORY	SPECIFIC	CODE	CATEGORY	SPECIFIC	CODE
R/C (RACE/COLOR)	Black	1	Rlgn (Religion)	Enter the religion	X
	Hispanic	2	Sex	Female	F
	American Indian	3		Male	M
	Oriental	4	Age	Enter the age	—
	Aleut (Alaska only)	5	Hdcp (Handicap)	Mental	M
	Eskimo (Alaska only)	6		Physical	P
	White	7	Nat'l Orgn	Enter national origin	X
	Non-Hispanic (P.R. only)	8	Reprisal	Reprisal	X
	None of the above	9			

RACE	COLOR	RELIGION	HANDICAP	SEX	NATIONAL ORIGIN	AGE	REPRISAL

MATTER GIVING RISE TO THE COMPLAINT

The matter(s) giving rise to the complaint will be coded using one or more of the following codes: APPOINTMENT (1); PROMOTION (2); REASSIGNMENT (3); SEPARATION/TERMINATION (4); SUSPENSION (5); REPRIMAND (6); EVALUATION/APPRAISAL (7); DUTY HOURS (8); TRAINING (9); TIME AND ATTENDANCE (10); RETIREMENT (11); ASSIGNMENT OF DUTIES (13); EXAM/TEST (13); WORK CONDITIONS (14); HARASSMENT (15); SEXUAL HARASSMENT (16); REPRISAL (17); PAY, INCLUDING OVERTIME (18); CONVERSION TO FULL TIME/CAREER CONDITIONAL (19); REINSTATEMENT (20); AWARDS (21) AND/OR OTHER (22) (specify)

ENTER CODE(S) FOR MATTER(S) GIVING RISE TO THE COMPLAINT

DATE OF ALLEGED INCIDENT	DATE COUNSELOR CONTACTED	DATE OF 21-DAY LETTER

DATE OF FINAL INTERVIEW	WAS COMPLAINT RESOLVED
	YES / / NO / /

CORRECTIVE ACTION TAKEN
(Check appropriate box)

A-1 PERFORMANCE RE-EVALUATED		B-2 ADVERSE MATERIAL REMOVED FROM OPF		C-1 CEASE PRACTICE COMPLAINED OF	
D-2 AGENCY IMPROVEMENTS PERSONNEL PRACTICES		D-3 AGENCY IMPROVEMENT WORKING COND/PERS PRAC		E-1 RETROACTIVE HIRE WITH BACKPAY	
E-2 RETROACTIVE HIRE WITHOUT BACKPAY		E-3 NON-RETROACTIVE HIRE		E-4 NON-RETROACTIVE PROMOTION	
E-5 MODIFY DISCIPLINARY ACTION		F-1 REASSIGNMENT - SAME DUTY STATION		F-2 REASSIGNMENT DIFFERENT DUTY STATION	
G-1 RETROACTIVE PROMOTION WITH BACKPAY		G-2 RETROACTIVE PROMOTION WITHOUT BACKPAY		H-1 ADVERSE ACTION RESCINDED WITH BACKPAY	
H-2 ADVERSE ACTION RESCINDED WITHOUT BACKPAY		J-1 PRIORITY CONSIDERATION		K-1 REINSTATEMENT WITH BACKPAY	
K-2 REINSTATEMENT WITHOUT BACKPAY		AMOUNT OF BACKPAY AWARDED		OTHER (Explain)	

REMARKS *(Continue on white bond paper if necessary)*

SIGNATURE OF EEO OFFICER

DA FORM 5492-R, Dec 85

INDIVIDUAL COMPLAINT DATA SHEET
For use of this form, see AR 690-600; the proponent agency is the Office of the Secretary of the Army

EEOCCRA DOCKET NO.

NAME (Last, First, Middle Initial)	SSN	RANK/GRADE	ORGANIZATION

INSTRUCTIONS
Items 1 through 15c will be filled out by both the EEO Counselor and the EEO Officer. Items 16a through 39d will be filled out by the EEO Officer only. When an item is not applicable to the particular EEO complaint being reviewed, the proper square will be marked with a diagonal line. All references are to paragraphs of AR 690-600, Equal Employment Opportunity Discrimination Complaints.

	EEO COUNSELOR		EEO OFFICER	
	YES	NO	YES	NO
SECTION A. PRECOMPLAINT PROCESSING (PARA 2-2)				
1. DID THE AGGRIEVED PERSON CONTACT THE EEO COUNSELOR WITHIN 30 DAYS OF THE ALLEGED DISCRIMINATION, EFFECTIVE DATE OF THE PERSONNEL ACTION, OR THE DATE THAT THE AGGRIEVED PERSON BECAME AWARE OR REASONABLY SHOULD HAVE BECOME AWARE OF THE DISCRIMINATORY EVENT OR PERSONNEL ACTION				
2. WAS THE AGGRIEVED PERSON ADVISED OF THE RIGHT TO HAVE A REPRESENTATIVE ACCOMPANY HIM/HER AT ALL STAGES OF THE COMPLAINT PROCESS				
3. WAS THE AGGRIEVED PERSON INFORMED OF ALTERNATE PROCEDURES FOR FILING ALLEGATIONS OF DISCRIMINATION				
4. HAS THE AGGRIEVED PERSON FILED AN APPEAL WITH THE MSPB ON THE SAME ISSUE				
5. HAS THE AGGRIEVED PERSON FILED A WRITTEN GRIEVANCE UNDER A NEGOTIATED GRIEVANCE PROCEDURE ON THE SAME ISSUE				
6. WAS THE AGGRIEVED PERSON'S NAME REVEALED TO ANYONE WITHOUT WRITTEN PERMISSION IN THE PRECOMPLAINT PROCESSING? IF YES, EXPLAIN IN REMARKS				
7a. DID THE EEO COUNSELOR DEFINE AND RECORD THE SPECIFIC DATE AND FACTS THAT FORM THE BASIS OF THE COMPLAINT				
b. WAS THIS DOCUMENT REVIEWED BY THE AGGRIEVED PERSON				
8. DID THE AGGRIEVED PERSON NAME AN ADO				
9. DID THE EEO COUNSELOR INQUIRE INTO THE SPECIFIC INCIDENTS AND ACTIONS IDENTIFIED BY THE AGGRIEVED PERSON				
10. DID THE EEO COUNSELOR INTERVIEW THE ADO, IF NAMED				
11. DID THE EEO COUNSELOR ADVISE THE ADO OF HIS/HER RIGHTS AND THE NATURE OF THE ACCUSATION				
12. IS THE EEO COUNSELOR'S REPORT TABBED IN THE COMPLAINT FILE				
13. WAS AN ATTEMPT MADE AT INFORMAL RESOLUTION				
14a. WAS THE FINAL INTERVIEW CONDUCTED WITHIN 21 DAYS AFTER THE MATTER WAS FIRST CALLED TO THE EEO COUNSELOR'S ATTENTION				
b. IF NOT, WAS THE AGGRIEVED PERSON INFORMED IN WRITING ON THE 21ST DAY OF THE RIGHT TO FILE A FORMAL COMPLAINT				
c. IS THE NOTICE TABBED IN THE COMPLAINT FILE				
15. AT THE FINAL INTERVIEW WAS THE AGGRIEVED PERSON INFORMED IN WRITING OF THE FOLLOWING				
a. THE RIGHT TO FILE A FORMAL COMPLAINT				
b. THE REQUIREMENT THAT A FORMAL COMPLAINT SPECIFICALLY DESCRIBE THE ACTS OF ALLEGED DISCRIMINATION				
c. THE REQUIREMENT THAT ONLY ISSUES DISCUSSED WITH THE EEO COUNSELOR BE CONSIDERED IN A FORMAL COMPLAINT				
SECTION B. FORMAL COMPLAINT PROCESSING (PARA 2-3 TO 2-13) *(Items 16a through 39d will be filled out by the EEO Officer only.)*				
16a. DID THE COMPLAINANT FILE AND SIGN A FORMAL WRITTEN COMPLAINT ON DA FORM 2590-R				
b. DID THE EEO OFFICER CODE DA FORM 2590-R				
17a. WAS THE COMPLAINT FILED WITH THE LOCAL EEO OFFICER				
b. IF NOT, WAS IT FORWARDED IMMEDIATELY TO THE RESPONSIBLE EEO OFFICER				
18. DID THE EEO OFFICER ACKNOWLEDGE RECEIPT OF THE COMPLAINT IN WRITING				
19. WAS THE EEO OFFICER IDENTIFIED AS AN ADO IN THE COMPLAINT				
20. WAS THE ACTIVITY COMMANDER IDENTIFIED AS AN ADO IN THE COMPLAINT				
21. WAS THE COMPLAINT ACCEPTED BY THE EEO OFFICER IN WHOLE OR IN PART				

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22a. DID THE EEO OFFICER SEND WRITTEN NOTICE TO THE COMPLAINANT OF HIS/HER DECISION TO ACCEPT, REJECT, OR CANCEL THE COMPLAINT		
b. IS THE DECISION LETTER TABBED IN THE COMPLAINT FILE		
c. DOES THE DECISION SPECIFY WHICH ISSUES WERE ACCEPTED		
d. DOES THE DECISION LETTER ADVISE THE COMPLAINANT OF THE RIGHT TO APPEAL THE REJECTIONS OR CANCELLATIONS		
23a. WAS THE COMPLAINT FILE SENT TO AN APPROPRIATE USACARA REGIONAL OFFICE REQUESTING ASSIGNMENT OF AN INVESTIGATOR		
b. IS THE REQUEST LETTER TABBED IN THE COMPLAINANT FILE		
24. WAS AN INVESTIGATOR FROM USACARA ASSIGNED TO THE COMPLAINT		
25. WAS AN INVESTIGATION CONDUCTED		
26. WERE ALL ALLEGATIONS ADEQUATELY INVESTIGATED BY USACARA		
27. WAS THE ADO GIVEN FULL OPPORTUNITY TO REVIEW DOCUMENTS AND RESPOND TO ALL ALLEGATIONS MADE AGAINST HIM/HER		
28. WAS THE INVESTIGATOR UNDER THE RATING CONTROL OF ANY PARTIES TO THE COMPLAINT		
29. WAS THE ROI SENT TO THE EEO OFFICER AND THE ACTIVITY COMMANDER OR A DESIGNEE WITHIN 45 DAYS AFTER ASSIGNMENT		
30. DOES THE INVESTIGATION INCLUDE THE INVESTIGATOR'S FINDINGS AND RECOMMENDATION		
31. WAS THE ROI SENT BY THE EEO OFFICER TO THE COMPLAINANT AND REPRESENTATIVE WITH AN OFFER TO MEET AND DISCUSS AN INFORMAL ADJUSTMENT TO THE COMPLAINT		
32a. DID THE CONCERNED PARTIES AGREE ON THE ADJUSTMENT		
b. IF SO, WERE THE TERMS OF THE ADJUSTMENT FIRST COORDINATED WITH THE LABOR COUNSELOR AND CPO		
c. IF SO, WAS THE ADJUSTMENT SIGNED BY THE COMPLAINANT AND THE ACTIVITY COMMANDER		
d. DID THE ADJUSTMENT INCLUDE AN AWARD OF ATTORNEY'S FEES AND/OR COSTS		
e. IS THE ADJUSTMENT TABBED IN THE COMPLAINT FILE		
33. WAS NOTICE OF PROPOSED DISPOSITION GIVEN TO THE COMPLAINANT AND THE ADO		
34. WAS THE COMPLAINANT INFORMED OF THE RIGHT TO REQUEST A HEARING OR AN ARMY DECISION WITHOUT A HEARING		
35. WAS THE COMPLAINANT INFORMED HE/SHE HAD 15 CALENDAR DAYS IN WHICH TO REQUEST A HEARING OR AN ARMY DECISION WITHOUT A HEARING		
36. IS THE NOTICE OF PROPOSED DISPOSITION TABBED IN THE COMPLAINT FILE		
37a. DID THE COMPLAINANT RESPOND TO THE NOTICE OF PROPOSED DISPOSITION WITHIN 15 CALENDAR DAYS		
b. IF NOT, DID THE ACTIVITY COMMANDER ADOPT THE PROPOSED DISPOSITION AS THE FINAL ARMY DECISION AND NOTIFY THE COMPLAINANT ACCORDINGLY		
38a. IF THE COMPLAINANT REQUESTED AN ARMY DECISION WITHOUT A HEARING, DID THE EEO OFFICER SEND THE ORIGINAL AND ONE COPY OF THE COMPLAINT FILE TO EEOCCRA		
b. IS THE REQUEST TABBED IN THE COMPLAINT FILE		
39. IF THE COMPLAINANT REQUESTED A HEARING		
a. DID THE EEO OFFICER REQUEST ASSIGNMENT OF AN EEOC COMPLAINTS EXAMINER		
b. IS A COPY OF THE REQUEST TO EEOC TABBED IN THE COMPLAINT FILE		
c. DID THE EEO OFFICER ASK THE EEOC COMPLAINTS EXAMINER TO SEND THE COMPLETE FILE AND FOUR COPIES OF THE FINAL REPORT AND HEARING TRANSCRIPT TO EEOCCRA		
d. WAS THE HEARING RECORDED		

REMARKS (Continue on white bond paper if necessary)

DATE	SIGNATURE OF EEO COUNSELOR
DATE	SIGNATURE OF EEO OFFICER
FINAL ARMY ACTION	
DATE	ACTION
SIGNATURE OF EEOCCRA REVIEWING OFFICIAL	

DA Form 5493-R, Dec 85 (Reverse)

CLASS COMPLAINT DATA SHEET
For use of this form, see AR 690-600; the proponent agency is the Office of the Secretary of the Army

EEOCCRA DOCKET NO.

NAME (Last, First, Middle Initial)	SSN	RANK/GRADE	ORGANIZATION

INSTRUCTIONS
Items 1 through 12d will be filled out by both the EEO Counselor and the EEO Officer. Items 13a through 24 will be filled out by the EEO Officer only. When an item is not applicable to the particular EEO complaint being reviewed, the proper square will be marked with a diagonal line. All references are to paragraphs of AR 690-600, Equal Employment Opportunity Discrimination Complaints.

	EEO COUNSELOR		EEO OFFICER	
	YES	NO	YES	NO
SECTION A. PRECOMPLAINT PROCESSING (PARA 3-2)				
1. DID THE CLASS AGENT CONTACT A DESIGNATED EEO COUNSELOR WITHIN 30 DAYS OF THE ALLEGED DISCRIMINATION, THE EFFECTIVE DATE OF THE PERSONNEL ACTION, OR THE DATE THAT THE AGGRIEVED PERSON BECAME AWARE OR REASONABLY SHOULD HAVE BECOME AWARE OF THE DISCRIMINATORY EVENT OR PERSONNEL ACTION				
2. WAS THE CLASS AGENT ADVISED IN WRITING OF a. DISCRIMINATION COMPLAINT PROCEDURES				
b. THE CRITERIA FOR THE ACCEPTANCE OF CLASS COMPLAINTS				
c. THE RIGHT TO BE REPRESENTED THROUGHOUT THE PRECOMPLAINT AND COMPLAINT PROCESS				
d. THE RIGHT TO NOT HAVE HIS/HER NAME REVEALED ONLY DURING THE PRECOMPLAINT PROCESS				
3. WAS THE DIRECTOR OF EEOCCRA AND OTJAG NOTIFIED WITHIN 5 CALENDAR DAYS AFTER START OF THE PRECOMPLAINT PROCESS BY THE EEO OFFICER				
4a. DID THE EEO COUNSELOR DEFINE AND RECORD THE SPECIFIC DATES AND FACTS THAT FORM THE BASIS OF THE COMPLAINT				
b. WAS THIS DOCUMENT REVIEWED BY THE CLASS AGENT				
5. WAS AN ADO IDENTIFIED				
6. DID THE COUNSELOR INQUIRE INTO THE SPECIFIC INCIDENTS AND ACTIONS IDENTIFIED BY THE CLASS AGENT				
7. DID THE COUNSELOR INTERVIEW THE ADO, IF NAMED				
8. DID THE COUNSELOR ADVISE THE ADO OF HIS/HER RIGHTS AND THE NATURE OF THE ACCUSATION				
9. IS THE COUNSELOR'S REPORT TABBED IN THE COMPLAINT FILE				
10. WAS AN ATTEMPT AT INFORMAL RESOLUTION MADE				
11a. WAS A FINAL INTERVIEW CONDUCTED WITHIN 30 CALENDAR DAYS AFTER THE MATTER WAS FIRST CALLED TO THE COUNSELOR'S ATTENTION				
b. IS THE NOTICE OF FINAL INTERVIEW TABBED IN THE COMPLAINT FILE				
12. AT THE FINAL INTERVIEW, WAS THE CLASS AGENT INFORMED IN WRITING OF a. THE RIGHT TO FILE A FORMAL COMPLAINT WITHIN THE NEXT 15 CALENDAR DAYS				
b. THE REQUIREMENT THAT THE CLASS AGENT IMMEDIATELY INFORM THE EEO OFFICER IF HE/SHE RETAINS A LEGAL REPRESENTATIVE				
c. THE REQUIREMENT THAT A FORMAL COMPLAINT SPECIFICALLY DESCRIBES THE ACTS OF THE ALLEGED DISCRIMINATION				
d. THE REQUIREMENT THAT ONLY ISSUES DISCUSSED WITH THE EEO COUNSELOR BE CONSIDERED				
SECTION B. FORMAL COMPLAINT PROCESSING (PARA 3-3 TO 3-11) *(Items 13a through 24 will be filled out by the EEO Officer only)*				
13a. DID THE CLASS AGENT FILE A FORMAL CLASS COMPLAINT ON DA FORM 2590-R				
b. IS THE CLASS COMPLAINT SIGNED BY THE AGENT AND HIS/HER REPRESENTATIVE, IF ANY				
c. IS THE CLASS COMPLAINT TABBED IN THE COMPLAINT FILE				
14. WAS THE COMPLAINT FILED WITHIN 15 CALENDAR DAYS AFTER THE CLASS AGENT RECEIVED NOTICE OF THE FINAL INTERVIEW				
15. DOES THE COMPLAINT SPECIFICALLY DESCRIBE IN DETAIL THE POLICY OR PRACTICE THAT GAVE RISE TO THE COMPLAINT AND THE RESULTING PERSONNEL ACTION OR MATTER THAT HARMED THE AGENT				
16. IF THE CLASS AGENT HAS A REPRESENTATIVE, IS THE DESIGNATION IN WRITING AND MADE PART OF THE COMPLAINT FILE				

DA FORM 5494-R, Dec 85

17. WAS THE COMPLAINT SENT TO EEOC FOR RECOMMENDATIONS ON ACCEPTANCE OR REJECTION WITHIN 10 DAYS AFTER RECEIPT		
18a. WAS THE COMPLAINT ACCEPTED OR REJECTED WITHIN 10 DAYS AFTER RECEIPT OF EEOC'S RECOMMENDED ACCEPTANCE OR REJECTION		
b. IS THE ACCEPTANCE/REJECTION TABBED IN THE COMPLAINT FILE		
19. DID THE EEO OFFICER MAKE A REASONABLE EFFORT TO NOTIFY ALL CLASS MEMBERS OF THE EXISTENCE OF A CLASS COMPLAINT WITHIN 15 DAYS AFTER ITS ACCEPTANCE		
20. DID THE NOTICE TO CLASS MEMBERS INFORM THEM OF THEIR RIGHT TO REMOVE THEMSELVES FROM THE CLASS WITHIN 30 DAYS AFTER RECEIPT OF NOTICE		
21a. WAS A LABOR COUNSELOR DESIGNATED BY THE ACTIVITY COMMANDER		
b. IS THE APPOINTMENT TABBED IN THE COMPLAINT FILE		
22. WAS THERE ANY ATTEMPT AT INFORMAL ADJUSTMENT OR SETTLEMENT		
23a. WAS THERE AN INFORMAL ADJUSTMENT REACHED BETWEEN THE PARTIES		
b. IF SO, WERE THE TERMS OF THE RESOLUTION PUT IN WRITING AND SIGNED BY THE PARTIES		
c. DOES THE RESOLUTION INCLUDE ANY CORRECTIVE ACTION AGREED UPON		
d. HAS A COPY OF THE RESOLUTION BEEN GIVEN TO THE AGENT OF THE PARTIES		
e. WAS NOTICE OF THE RESOLUTION GIVEN TO ALL CLASS MEMBERS IN THE SAME WAY AS THE NOTIFICATION OF ACCEPTANCE OF THE CLASS COMPLAINT		
f. DOES THE NOTICE OF THE CLASS CONTAIN THE TERMS OF THE CORRECTIVE ACTION, IF ANY		
g. WERE THE TERMS OF THE ADJUSTMENT FIRST COORDINATED WITH THE EEO OFFICER, LABOR COUNSELOR, AND THE CPO		
h. DID THE ADJUSTMENT INCLUDE AN AWARD OF ATTORNEY'S FEES AND/OR COSTS		
i. IS THE ADJUSTMENT AND CLASS NOTICE TABBED IN THE COMPLAINT FILE		
24. WAS A HEARING CONDUCTED BY THE EEOC HEARING EXAMINER		

REMARKS *(Continue on white bond paper if necessary)*

DATE	SIGNATURE OF EEO COUNSELOR
DATE	SIGNATURE OF EEO OFFICER
FINAL ARMY ACTION	
DATE	ACTION
SIGNATURE OF EEOCCRA REVIEWING OFFICIAL	

DA FORM 5494-R, Dec 85 (Reverse)

CHRONOLOGY OF INDIVIDUAL EEO COMPLAINT

For use of this form, see AR 690-600; the proponent agency is the Office of the Secretary of the Army.

EEOCCRA DOCKET NO.

NAME (Last, First, Middle Initial)	SSN	RANK/GRADE	ORGANIZATION

INSTRUCTIONS

The days listed in parentheses are administrative suspense goals established by EEOC or the Army. Failure to meet any of the listed suspenses should be explained in the remarks section of this form or on a continuation sheet, if necessary. All days referred to in this form are calendar days. In computing days between dates, disregard the first day and count the last day. The actual number of days in each month will be counted.

ACTIONS	DATE: 19____	CUMULATIVE ELAPSED DAYS
1. DATE OF ALLEGED DISCRIMINATORY ACTION		
2. DATE COUNSELOR CONTACTED (30 DAYS)		
3. DATE OF 21-DAY LETTER (21 DAYS)		
4. DATE OF COUNSELOR'S FINAL INTERVIEW		
5. DATE OF FORMAL COMPLAINT (15 DAYS)		
6. DATE FORMAL COMPLAINT RECEIVED		
7. DATE COMPLAINT ACCEPTED/REJECTED (5 DAYS)		
8. DATE INVESTIGATOR REQUESTED (3 DAYS)		
9. DATE INVESTIGATOR ASSIGNED		
10. DATE(S) OF INVESTIGATION		
11. DATE ACTIVITY RECEIVED REPORT OF INVESTIGATION (ROI)		
12. DATE COMPLAINANT RECEIVED ROI (5 DAYS)		
13. DATE ATTEMPT AT INFORMAL ADJUSTMENT (15 DAYS)		
14. DATE OF PROPOSED DISPOSITION (20 DAYS AFTER RECEIPT OF ROI)		
15. DATE COMPLAINANT REQUESTED HEARING OR DECISION WITHOUT HEARING (15 DAYS)		
16. DATE COMPLAINTS EXAMINER REQUESTED		
17. DATE(S) OF HEARING		
18. DATE REPORT RECEIVED BY ARMY		
19. DATE OF FINAL ARMY DECISION		
20. TOTAL PROCESSING DAYS FROM DATE COMPLAINT WAS FILED		
21. DATE APPEALED TO EEOC OFFICE OF REVIEW AND APPEALS		
22. DATE EEOC REQUESTED RECORDS		
23. DATE DA FORWARDED RECORDS TO EEOC		
24. DATE DECISION BY EEOC OFFICE OF REVIEW AND APPEALS		
25. LITIGATION: DATE SUIT FILED		
26. DATE COURT DECISION		

REMARKS *(Continue on white bond paper if necessary)*

DATE	SIGNATURE OF EEO OFFICER
DATE	SIGNATURE OF EEOCCRA OFFICIAL COMPLETING CHRONOLOGY SHEET

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CHRONOLOGY OF CLASS EEO COMPLAINT For use of the form, see AR 690-600; the proponent agency is the Office of the Secretary of the Army.			EEOCCRA DOCKET NO
NAME (Last, First, Middle Initial)	SSN	RANK/GRADE	ORGANIZATION

INSTRUCTIONS

The days listed in parentheses are administrative suspense goals established by EEOC or the Army. Failure to meet any of the listed suspenses should be explained in the remarks section of this form or on a continuation sheet, if necessary. All days referred to in this form are calendar days. In computing days between dates, disregard the first day and count the last day. The actual number of days in each month will be counted.

ACTIONS	DATE: 19____	CUMULATIVE ELAPSED DAYS
1. DATE OF ALLEGED OFFENSE/PERSONNEL ACTION		
2. DATE COUNSELOR CONTACTED (90 DAYS)		
3. DATE OF FINAL INTERVIEW (30 DAYS)		
4. DATE OF FORMAL COMPLAINT (15 DAYS)		
5. DATE COMPLAINT FORWARDED TO EEOC (10 DAYS)		
6. DATE EEOC COMPLAINTS EXAMINER NOTIFIES ARMY OF RECOMMENDED ACCEPTANCE OR REJECTION OF CLASS COMPLAINT		
7. DATE OF ARMY ACCEPTANCE OR REJECTION OF CLASS COMPLAINT (10 DAYS)		
8. DATE ARMY NOTIFIES CLASS MEMBERS (15 DAYS)		
9. DATE OF EEOC HEARING		
10. DATE EEOC COMPLAINTS EXAMINER NOTIFIES ARMY OF DFININGS AND RECOMMENDATION ON CLASS ISSUES		
11. DATE FINAL ARMY DECISION (30 DAYS)		
12. TOTAL PROCESSING DAYS FROM DATE CLASS COMPLAINT WAS FILED		
13. DATE OF APPEAL TO EEOC OFFICE OF REVIEW AND APPEALS		
14. DATE EEOC REQUEST RECORDS		
15. DATE ARMY FORWARDED RECORDS TO EEOC		
16. DATE DECISION BY EEOC OFFICE OF REVIEW AND APPEALS		
17. LITIGATION: DATE SUIT FILED		
18. DATE COURT DECISION		

REMARKS *(Continue on white bond paper if necessary)*

DATE	SIGNATURE OF EEO OFFICER
DATE	SIGNATURE OF EEOCCRA OFFICIAL COMPLETING CHRONOLOGY SHEET

DA FORM 5496-R, Dec 85

DISPOSITON OF COMPLAINT OF DISCRIMINATION For use of this form, see AR 690-600; the proponent agency is the Office of the Secretary of the Army		REQUIREMENT CONTROL SYMBOL 0288-EEO-SA
NAME OF COMPLAINANT (Last, First, Middle Initial) COMPLAINANT'S SSN	ACTIVITY	EEOCCRA DOCKET NO.
COMPLAINANT'S JOB TITLE AND GRADE		DATE COMPLAINT FILED

BASIS OF DISCRIMINATION COMPLAINT
(Check appropriate box)

RACE	COLOR	RELIGION	SEX (Male) (Female)		HANDICAP (Mental) (Physical)		AGE (STATE)	NATIONAL ORIGIN (STATE)	REPRISAL

ALLEGATION(S) OF DISCRIMINATION (SUMMARIZE) *(Continue on white bond paper if necessary)*

IF AN INVESTIGATION WAS CONDUCTED, DID THE INVESTIGATOR FIND DISCRIMINATION
/ / YES / / NO / / NO DISCRIMINATION BUT RECOMMENDED CORRECTIVE ACTION

CONCERNING THE USACARA RECOMMENDATION, DID THE COMMANDER, IN THE PROPOSED DISPOSITION (CHECK ONE)
/ / REJECT IT / / ACCEPT IT / / MODIFY IT

DID THE COMPLAINANT (CHECK ONE)
/ / FAIL TO RESPOND TO THE NOTICE OF PROPOSED DISPOSITION
/ / REQUEST DECISION BY THE DIRECTOR OF EEO WITHOUT HEARING
/ / REQUEST A HEARING AND SUBSEQUENT REVIEW AND DECISION BY THE DIRECTOR OF EEO

IF NO HEARING WAS HELD, OR THE HEARING WAS NOT COMPLETED, DID THE AGENCY MAKE A DECISION ON THE MERITS (CHECK ONE) / / YES / / NO / / PROPOSED DISPOSITION ADOPTED AS THE AGENCY FINAL DECISION

WHERE DISCRIMINATION IS FOUND, REPORT REASONS FOR TAKING OR NOT TAKING DISCIPLINARY ACTION

DESCRIPTION OF ANY DISCIPLINARY ACTION TAKEN AS A RESULT OF THE COMPLAINT (CHECK APPROPRIATE BOXIES)
/ / SEPARATION / / INVOLUNTARY DOWNGRADE / / REASSIGNMENT TO NON-SUPERVISORY POSITION
/ / SUSPENSION / / LATERAL REASSIGNMENT / / WRITTEN REPRIMAND / / TRAINING
/ / ORAL REPRIMAND / / COUNSELING / / NONE / / OTHER (SPECIFY)

DESCRIPTION OF ANY REMEDIAL OR CORRECTIVE ACTION TAKEN INCLUDING THOSE COMPLAINTS WITHDRAWN BY THE COMPLAINANT AND THOSE CANCELLED FOR FAILURE TO PROSECUTE

NATURE OF CLOSING ACTION
(Check one)

REJECTION (UNTIMELY)		REJECTION (OUTSIDE PURVIEW)		REJECTION (IDENTICAL TO PREVIOUS COMPLAINT)		SETTLEMENT	
WITHDRAWAL		DECISION ON MERITS		CANCELLATION (FAILURE TO PROSECUTE)		CANCELLATION – MSPB/ LITIGATION DECISION	

TOTAL PROCESSING DAYS (FROM DATE OF FORMAL COMPLAINT TO CLOSURE)

NAME, TITLE AND TELEPHONE NUMBER OF AGENCY OFFICIAL PREPARING REPORT

INDICATE AMOUNT OF MONETARY RELIEF PROVIDED

BACKPAY (RETROACTIVE HIRE)	BACKPAY (RETROACTIVE PROMOTION	BACKPAY (RESCIND DISCIPLINARY ACTION)
$	$	$
BACKPAY (REINSTATEMENT)	BACKPAY (OTHER)	TOTAL ATTORNEY FEES AND COSTS AWARDED
$	$	$

REMARKS *(Continue on white bond paper if necessary)*

SIGNATURE OF EEO OFFICER

DA FORM 5497-R, Dec 85

John O. Roach II,
Department of the Army Liaison Officer with the Federal Register.

[FR Doc. 86-1842 Filed 1-30-86; 8:45 am]
BILLING CODE 3710-08-M

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ISS
21

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31

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UMI

federal register

Friday
January 31, 1986

Part III

Environmental Protection Agency

40 CFR Part 271
Reversion of State Hazardous Waste Management Programs; Notice of Expiration of RCRA Interim Authorization

BEST COPY AVAILABLE

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SWH-FRL 2964-4]

Reversion of State Hazardous Waste Management Programs

AGENCY: Environmental Protection Agency.

ACTION: Notice of expiration of RCRA interim authorization.

SUMMARY: This notice announces the expiration of interim authorization in States which have not received final authorization under the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. These States received interim authorization under RCRA to operate all or part of the RCRA hazardous waste management program in lieu of EPA operating the Federal program. However, the Hazardous and Solid Waste Amendments of 1984 (HSWA) provide that interim authorization terminates on January 31, 1986. If a State has not received final authorization by that date, authority to implement the RCRA hazardous waste management program reverts to EPA. EPA must administer the Federal program in that State until the State receives final authorization. This notice indentifies the States in which operation of the RCRA program will revert to EPA on January 31, 1986.

EFFECTIVE DATE: Interim authorization will expire at 1:00 p.m. Eastern Standard Time, on January 31, 1986, for any interim authorized State which has not received final authorization. As of that date, EPA will be responsible for operating the Federal hazardous waste program in those States. The State programs will continue in effect under State legal authorities.

ADDRESSES: Listed below are addresses and telephone numbers of EPA Regional Office contacts who can provide additional information on States whose RCRA programs revert to EPA on January 31, 1986:

California: EPA Region IX, 215 Fremont Street, San Francisco, CA 94105, Attention: Karen Ueno, (415) 974-8160

Connecticut: EPA Region I. John F. Kennedy Bldg., Boston, MA 02203, Attention: Gerard Sotolongo, (617) 223-1724

Maine: EPA Region I, John F. Kennedy Bldg., Boston, MA 02203, Attention: Paul Bedrosian, (617) 223-1915

New York: EPA Region II, 2AWM-SW. 9th floor, 26 Federal Plaza, New York, NY 10278, Attention: Evan Liblit, (212) 264-1317

Ohio: EPA Region V, 230 So. Dearborn Street, Chicago, IL 60604, Attention: Charles Wilk, (312) 886-4177

Puerto Rico: EPA Region II, 2AWM-SW. 9th floor, 26 Federal Plaza, New York, NY 10278, Attention: Fred Kozak, (212) 264-0547

West Virginia: EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107, Attention: Renee Gruber, (215) 597-3436

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346, or in Washington, D.C., at 382-3000 or Martha A. Madison, State Programs Branch (WH-563-B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2210.

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize States to operate State hazardous waste management programs in lieu of the Federal program. Under RCRA section 3006(c)(1), the Agency has the authority to grant interim authorization to State programs that are "substantially equivalent" to the Federal program. Under RCRA section 3006(b), EPA grants final authorization to State hazardous waste programs that: (1) Are equivalent to the Federal hazardous waste program; (2) are consistent with the Federal program and other State programs which have received final authorization; and (3) provide adequate enforcement.

Section 3006(c)(1) of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), provides that interim authorization under Section 3006(c)(1) automatically expires on January 31, 1986. On that date authority to administer and enforce the entire RCRA program reverts to the Federal government unless the State has been granted final authorization. Authority to run the RCRA program will return to the State when it obtains final authorization. EPA may not extend the January 31 deadline administratively.

Seven States with interim authorization have not received final authorization as of this date. RCRA authority for those States reverts to EPA on January 31, 1986. The purpose of this notice is to alert the public about the reversion of the RCRA program in those States and to explain EPA's plans for assuming responsibility for those programs. This notice lists those States whose RCRA programs are reverting to EPA.

The regulated community should take particular note that beginning January 31, hazardous waste handlers in States whose interim authorization expires will be required by law to comply with the Federal regulations in Title 40 of the Code of Federal Regulations, Part 124, 260-265 and 270, as well as the State regulations. (Copies of the Code of Federal Regulations are available for sale in two volumes (Parts 100 to 149 and Parts 190 to 399) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) The State will continue to implement its State hazardous waste program, as this program remains in effect under State law.

The expiration of RCRA interim authorization in a State poses significant practical problems for EPA, the State, and the regulated community. Because most States are actively pursuing final authorization, reversion of RCRA authority to EPA is likely to be temporary. EPA must reconcile its legal responsibility to implement and enforce the Federal RCRA program, the practical impossibility of fully implementing the Federal program for what generally will be a brief period, and the need to minimize conflicts with the States. Note that in cases where the reversion will be less than 90 days it is considered a short term reversion, and EPA will make every effort to avoid disrupting the State program during this limited period of time. For a description of the manner in which EPA intends to administer the program, set priorities and use its enforcement discretion, see 50 FR 48406, November 25, 1985. For information regarding a specific State, contact the appropriate Regional Office listed in the Addresses section.

The States listed below will not receive final authorization by January 31, 1986 and, therefore, their interim authorization will expire on that date.

I. States whose RCRA programs are expected to revert for less than 90 days—Connecticut, New York, West Virginia.

II. States whose RCRA programs are expected to revert for more than 90 days—California, Maine, Ohio, Puerto Rico.

In States whose programs are expected to revert to EPA for less than 90 days, regulated parties should continue to send reports required by EPA to the States and not to EPA. In States whose RCRA programs are expected to revert to EPA for more than 90 days, reports should be sent to the appropriate EPA Regional Office. (See **"FOR FURTHER INFORMATION CONTACT"** Section for names and addresses). Those States are likely to assist the Region in implementing the Federal hazardous waste program until the time

they receive final authorization. The appropriate Regional Offices will be notifying the regulated community regarding RCRA program reversions, and will provide a list of reporting requirements with the notification.

Dated: January 27, 1986.

Jack W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86-2161 Filed 1-30-86; 8:45 am]

BILLING CODE 6560-50-M

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federal register

Monday
February 3, 1986

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U.S. Government Printing Office
(ISSN 0097-6326)

VOL
51

ISS
22

FE
3

19 86

UMI

2-3-86
Vol. 51 No. 22
Pages 4131-4286

federal register

Monday
February 3, 1986

Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

Airports
Customs Service
Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Communications Common Carriers
Federal Communications Commission
Fisheries
National Oceanic and Atmospheric Administration
Food Additives
Food and Drug Administration
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Organization and Functions (Government Agencies)
Customs Service
Packaging and Containers
Customs Service
Postal Service
Postal Service
Radio
Federal Communications Commission

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Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Radio Broadcasting
Federal Communications Commission
Surface Mining
Surface Mining Reclamation and Enforcement Office
Television
Federal Communications Commission
Loan Programs—Agriculture
Farmers Home Administration

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center,
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center,
303-236-7181

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL LABOR RELATIONS AUTHORITY, GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY, AND FEDERAL SERVICE IMPASSES PANEL

5 CFR Ch. XIV

Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Final rule.

SUMMARY: This document amends Appendix A, paragraph (d)(2)(a) (45 FR 80467) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.*, (1985) to establish a new location and mailing address for the Authority's Philadelphia, Pennsylvania Sub-Regional Office within the Authority's New York, New York Regional Office. The Philadelphia, Pennsylvania Sub-Regional Office telephone numbers have not been changed.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel (202) 382–0634.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location and mailing address of the Philadelphia, Pennsylvania Sub-Regional Office of the Authority. The Philadelphia, Pennsylvania Sub-Regional Office telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(2)(a) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1985)) is amended to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The Office addresses of Regional Directors of the Authority are as follows:

* * * * *

(2) * * *

(a) *Philadelphia PA Sub-Regional Office*—105 S. 7th Street, 5th Floor, Philadelphia, Pennsylvania 19106, Telephone: FTS—597–1527, Commercial—(215) 597–1527.

(5 U.S.C. 7134)

Dated: January 28, 1986.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 86–2254 Filed 1–31–86; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 420, 421, 424, 425, 431, and 432

[Doc. No. 3124S]

Grain Sorghum, Cotton, Rice, Peanut, Soybean, and Corn Crop Insurance Regulations; Sales Closing Date Extension

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Extension of sales closing date.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the extension of sales closing date for accepting applications for grain sorghum, cotton, rice, peanut, soybean, and corn crop insurance in certain south Texas counties wherein such insurance is offered, effective for the 1986 crop year only. This action is necessary because actuarial data filings in such counties have been delayed which has the effect of foreshortening the sales period. Therefore, additional time for applications to be accepted is being provided accordingly. The intended effect of this notice is to advise all interested parties of the extension of the sales closing date and to comply with the provisions of the grain sorghum, cotton, rice, peanut, soybean, and corn crop insurance regulations with respect to the Manager's authority to extend sales closing dates.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: The sales closing date for accepting applications for crop insurance on grain sorghum, cotton, rice, peanut, soybean, and corn crop insurance in certain south Texas counties, on file in the service offices, is February 15, 1986. Because of a delay in filing actuarial data in such counties, resulting in a foreshortened marketing period, FCIC is extending the sales closing date in the counties listed below wherein such crop insurance is offered to March 3, 1986. Under the provisions of 7 CFR 420.7(b), 421.7(b), 424.7(b), 425.7(b), 431.7(b), and 432.7(b), the sales closing date for accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension. If adverse conditions develop during the extended period, FCIC will immediately discontinue acceptance of applications.

Notice

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith gives notice that the sales closing date of February 15, 1986, for accepting applications for grain sorghum, cotton, rice, peanut, soybean, and corn crop insurance under the provisions of 7 CFR Parts 420, 421, 424, 425, 431 and 432, respectively, in the following south Texas counties.

Aransas	Bexar
Atascosa	Brooks
Bandera	Calhoun
Bee	Cameron

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Dimmit	McMullen
Duval	Maverick
Edwards	Medina
Frio	Nueces
Goliad	Real
Hidalgo	Refugio
Jackson	San Patricio
Jim Hogg	Starr
Jim Wells	Uvalde
Karnes	Val Verde
Kendall	Victoria
Kenedy	Webb
Kerr	Willacy
Kinney	Wilson
Kleberg	Zapata
La Salle	Zavala
Live Oak	

is hereby extended through the close of business on March 3, 1986, effective for the 1986 crop year only.

(Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended. (7 U.S.C. 1506, 1516))

Done in Washington, DC, on January 23, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-2239 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Parts 1822, 1872, 1900, 1903, 1924, 1927, 1943, 1945, 1951, 1955, 1962 and 1965

Servicing of Real Estate Security

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises and redesignates its regulations regarding servicing of loans by real estate. This action is being taken to comply with an overall restructuring of FmHA regulations, and to incorporate the provisions of enacted legislation affecting these regulations. The intended effect of this action is to provide more responsive and equitable credit service to farmers and other rural residents.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, Chief, Emergency Loan Servicing and Property Management Branch, FmHA, USDA, Room 5432, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1648.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." This action has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. FmHA revises and redesignates its regulations on servicing and liquidation of real estate security and certain note-only cases from Subpart A of Part 1872, to new Subpart A of Part 1965, Chapter XVIII, Title 7, Code of Federal Regulations. Also, amendments are made to other Parts to change references from Subpart A of Part 1872 to Subpart A of 1965 and to update references to FmHA forms.

Subpart A of Part 1900 is amended to state that non-program loan debtors/applicants are not eligible to receive any program benefits such as appeal rights. This subpart has also been amended to set forth the notification process to be used to notify borrowers of FmHA farmer program servicing options where FmHA holds a lien and another lienholder is proceeding in a foreclosure action to be consistent with Subpart A of Part 1965.

Subpart A of Part 1951 is amended to treat mineral royalty payments as income which may be used for prospective payments on FmHA loans. Also, lease payments can be used for prospective payments on FmHA loans.

Subpart A of Part 1955 is amended to provide a notification process for farmer program borrowers regarding adverse action and require that farmer program appeals be concluded before any adverse action is taken. Also, Subpart B of Part 1955 is amended to provide a notification process to farmer program borrowers of FmHA loan servicing options and notice to take adverse action in cases of abandoned security property.

Implementation of Subpart A of Part 1965 is imperative for present and future FmHA borrowers to fully utilize resources and maximize credit availability in times of economic stress. Many farmers must avail themselves of these authorities to continue in agriculture during this time of severe economic stress in the industry.

Many servicing actions permitted by Subpart A of Part 1872 required approval by the National Office. The submission of individual cases to the National Office for review was a time consuming process. In Subpart A of Part 1965, approval authorities are placed within various field offices to expedite servicing actions. County and District Offices are able to carry out actions which formerly required State or National Office concurrence. This will eliminate considerable time in documentation, correspondence, and mailing delays.

Subpart A of Part 1965 enables FmHA farmer program loans secured by real estate to be serviced in compliance with the applicable statutory authorities and administrative requirements implemented since the last major revisions to the regulation in 1975. In order for borrowers to be successful in their farming operations, they must be able to manage both real estate and debts secured by real estate. Subpart A of Part 1965 prescribes the authorities, policies, and routines for servicing loans secured by real estate. These servicing authorities provide borrowers with the opportunity to be successful and allow FmHA to protect the Government's interest. Subpart A of Part 1965 clarifies the servicing of loans to partnerships, cooperatives and corporations. It also specifically provides for the transfer and assumption of Emergency loss loans and Economic Emergency loans.

FmHA has reviewed the changes and determined that they are cost-effective since they will afford both individual and entity type farm borrowers the additional opportunity to maintain their property serving as security for FmHA loans, utilize the property to obtain other essential credit or dispose of all or part of the property by partial sale or transfer to other parties.

Various sections of Subpart A of Part 1965 incorporate the provisions of the Agricultural Credit Act of 1978 and the Emergency Agricultural Credit Adjustment Act of 1978, Pub. L. 95-334, Title II.

Discussion of Final Rule

A proposed rule was published in the **Federal Register** (49 FR 26072) on June 26, 1984. The proposal provided for a 60-day comment period. The comment period ended August 27, 1984. Comments were received from FmHA personnel who will administer the regulation. No comments were received from the public.

A summary of the major comments received and actions taken follows:

1. The use of proceeds from the sale of a portion of the security should be expanded to allow for the payment of junior liens and judgments necessary to clear title. Section 1965.13(f)(2) has been expanded to allow using proceeds to pay junior liens and judgment liens.

2. FmHA should not have to give post consent to a junior lien when a borrower places a junior lien on property securing an FmHA loan.

Section 1965.16(b) gives the conditions for continuing loans with borrowers who place junior liens on security without FmHA consent.

The existence of a junior lien is not treated as a default provided the borrower pays FmHA loans as agreed, maintains the security, and meets all other conditions of the loan. The County Supervisor will continue to serve the loan to protect the Government's security interest.

3. In regard to FmHA's consent to borrowers' leasing security the requirement that the borrower or the borrower's immediate family continue to occupy the security as a home should be modified for cases where inability to occupy as a home is due to reasons beyond their control.

The requirement in § 1965.17(b) for the continued occupancy of the security as a home is changed to preclude the initiation of liquidation action provided the borrower does not enter into a lease for a term of more than 3 years or does not enter into a lease containing an option to purchase.

4. ORE loans should have their own classification code. ORE loans have been renamed Non-Program (NP) loans. The Finance Office's new accounting system will provide an NP code for previously classified ORE loans.

5. In regard to subordinations, use of a 2-year-old appraisal should be permitted provided the appraiser documents that the appraisal reflects current market value and is adequate to describe the value of the security.

The recent history of changing market values of farm real estate indicates a 2-year period is too long for valid current market value determinations. Some areas of the United States have experienced as much as a 15 percent decline in values in consecutive years. Therefore, § 1965.12(d) remains unchanged and requires a current appraisal report when the existing appraisal report is more than 1 year old.

6. When real estate is taken as additional security for an annual operating advance, the mortgage filed should not list on the face of the instrument the other real estate mortgages. This only complicates the release of that mortgage when the annual operating loan is paid in full.

When making a servicing decision, FmHA considers the borrower's total FmHA debt. The current practice provides broader security coverage and encourages graduation which furthers FmHA's loan objectives.

7. Provisions for dwelling retention need to be expanded. The provisions for dwelling retention which were in the proposed rule have been deleted. Amendments to this regulation will be made to incorporate the provision of the Homestead Protection provision, Section 1321 of Pub. L. 99-198, signed into law by President Reagan on December 23, 1985.

Other major changes from the proposed rule are as follows:

1. Section 1965.1 is revised to identify the specific program loans covered by this regulation and to make editorial changes.

2. Section 1965.2 is revised to further clarify the general policies for servicing real estate security and to make editorial changes.

3. Section 1965.7(d) is added to include a definition for Farmer Program loans.

4. Section 1965.7(d) is redesignated as paragraph (e).

5. Section 1965.7 (e) and (f) are revised and redesignated as paragraphs (f) and (g).

6. Section 1965.7(h) is added to include a definition for Non-Program (NP) loans.

7. Section 1965.7 (g), (h) and (i) are redesignated as paragraphs (i), (j) and (k) respectively.

8. Section 1965.11(b) is revised for clarification and to refer to other FmHA regulations. Paragraph (b)(1) has been redesignated (b)(3), paragraph (b)(2) has been redesignated (b)(4), and paragraph (b)(3) has been redesignated (b)(2).

9. Section 1965.11(c) (2)(i) through (2)(iii) are revised. Paragraph (c)(2)(i) is retitled "Decision to pay off the Prior Lien." Paragraph (c)(2)(ii) is retitled "Decision not to pay off the Prior Lien" and provides instructions on how borrowers will be notified by the County Supervisor when FmHA decides not to pay off the prior liens. Paragraphs (c)(2)(ii) and (iii) are redesignated paragraphs (c)(2)(ii) (A) and (B) respectively and paragraph (c)(8) is retitled as "Acquisition of Property by Exercise of Government Redemption Rights" and redesignated as paragraph (c)(2)(iii). Paragraph (c)(2)(i) has been eliminated, and the reference to bidding is now found in paragraph (c)(2)(ii)(A).

10. Section 1965.11(c)(3) has been revised to provide for notifying borrowers of various servicing alternatives when FmHA learns that a junior lienholder is foreclosing or has foreclosed and the property is sold subject to an FmHA mortgage, and to reference applicable portions of § 1955.15 of Part 1955 of this chapter.

11. Section 1965.11(d) has been revised to further clarify the actions to be taken on servicing security after divorce.

12. Section 1965.12(b)(3) is revised to include Special Livestock (SL), Economic Opportunity (EO), and Rural Housing Loans for farm service buildings (RHF). This paragraph permits FmHA to subordinate its lien to another lender if the other lender's funds will be used to reduce the FmHA debt.

13. Section 1965.12(g) is retitled "Reamortizing Existing FmHA Debts other than SFH."

14. Section 1965.13(a) is revised to state that the sale of minerals by unit or lump sum payments will be considered as disposition of a portion of the security, *except:* For Farmer Program loans approved after Decembr 23, 1985, the sale of such products will be considered a disposition of security *only* if the rights to the products were specifically included as part of the appraised value of the real estate securing the loan. This revision was made to comply with Section 1305 of Pub. L. 99-198 regarding mineral rights as collateral.

15. Section 1965.13(b) is revised for clarification to provide guidance for handling of easements and rights-of-way.

16. Section 1965.13(e)(1) is changed to clarify that loan approval authorities in Exhibit C of FmHA Instruction 1901-A cannot be exceeded.

17. Section 1965.13(e)(3)(i)(A) and (B) are revised to make editorial changes and to refer to § 1965.110 of Subpart C of Part 1965 of this chapter. Paragraph (e)(3)(i)(B) of this section is revised to state for Farmer Program loans approved after December 23, 1985, if the rights to minerals were not included in the appraisal, then FmHA has no lien on the right to minerals located under the real estate.

18. Section 1965.13(f) is revised to further clarify the use of proceeds from the sale of security property. Paragraph (f)(2) of this section is revised to state that any funds not needed for taxes will be applied in the manner set out in this paragraph (f). The reference to annual installments and extra payments has been removed.

19. Section 1965.13(f) is revised to remove the requirement that any amounts not applied to any prior lien, inadequately secured FmHA loans, other creditor or used for development, must be applied to the FmHA lien with the highest priority.

20. Section 1965.13(i) is added to state that if FmHA is unable to approve a partial sale, the partial sale cannot be used as the basis for liquidation provided the spouse or children become the owners of the property, or an intervivos trust becomes the owner of the property, so long as the borrower is a beneficiary and there is no change in occupancy of the property.

21. Section 1965.16 is revised for clarification. Paragraph (a)(5) is

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removed and the reference to 502 and 504 RH loans is discussed in the introductory text of this section.

22. Section 1965.17 is retitled "Lease of Security" and rewritten for clarification. Paragraphs (a) through (d) of this section are revised to set forth the criteria used when the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security. Accordingly, paragraph (a) states the general provisions for leasing of security; paragraph (b) states what conditions the initiation of liquidation would be taken; (c) provides for leasing of Non-Program (NP) loan security; and (d) provides for the leasing of mineral rights. Paragraph (d) specifically states that a borrower does not need FmHA's consent to lease the mineral rights securing a farmer program loan approved after December 23, 1985, unless the rights were included on FmHA's real estate appraisal. Also, if FmHA consent is needed and consent is given, lease payments can be used for prospective payments on FmHA loans. This revision complies with Section 1310 of Pub. L. 99–198 regarding the leasing of mineral rights.

23. Section 1965.21 is retitled "Assignment and Release of Soil Conservation or Similar Programs" and revised to further clarify the action the County Supervisor may take regarding the assignment on income to be received by borrowers under USDA programs or similar contracts to protect the financial interest of the Government or to facilitate loan servicing.

24. Section 1965.23 is revised to refer the servicing of SFH loans to Subpart C of Part 1965 of this chapter.

25. Section 1965.26, the introductory paragraph is removed and the information therein has been clarified and included in paragraphs (a) through (f) of this section. Paragraph (a)(1) and (2) have been revised to make editorial changes. Paragraph (a)(3) of this section is redesignated as paragraph (b) and retitled "*Involuntary Liquidotion*" and revised to set forth the criteria for notifying borrowers of FmHA's intent to take adverse action and loan servicing actions available to the borrower. Paragraph (c) of this section is retitled "Multiple Loans and Loans Secured by Both Real Estate and Chattels," and revised to establish criteria for continuing with a borrower who has one or more FmHA loans secured by real estate. Paragraph (d) of this section has been rewritten to provide guidance to County Supervisors on how to service a borrower's farmer program loan(s) if the borrower no longer operates the farm. Paragraph (e) of this section is revised for clarification and sets forth the criteria to permit a borrower to pay the account under an accelerated repayment agreement if the borrower is able to graduate to other credit. Paragraph (a)(9) is redesignated as paragraph (f) and the provision on dwelling retention has been deleted. This subject will be covered in a regulation to be published containing provisions of the Homestead Protection Amendment of Section 1321 of the Food Security Act of 1985.

26. Section 1965.27, the introductory paragraph is revised for clarification and states that farmer program borrowers must be notified of loan servicing options within 3 work days after the borrower contacts the County Supervisor inquiring about a transfer. Paragraph (a) of this section has been revised to clarify that loan approval authorities in Exhibit C of FmHA Instruction 1901–A cannot be exceeded. Paragraph (b)(4) of this section has been redesignated paragraph (b)(5) and paragraph (b)(4) of this section retitled "Payment of Costs" to clarify how costs in transfers and assumptions will be handled.

27. Section 1965.27(b)(6) is retitled "Transfer of a Portion of the Security," and redesignated as paragraph (b)(6) and paragraph (b)(5)(vii) is revised to clarify that new stockholders, members, or partners entering the organization entity must assume personal liability on the loan in transfer and assumption situations.

28. Section 1965.27(b)(8) is retitled "Partial Transfer and Assumption."

29. Section 1965.27(b)(8) and (9) are redesignated paragraphs (b) (9) and (10) respectively.

30. Section 1965.27(b)(9) is retitled "Consent of Other Lienholders" and redesignated paragraph (b)(11).

31. Section 1965.27(b) (10) through (17) are redesignated paragraphs (b) (12) through (19).

32. Section 1965.27(b)(20) entitled "Environmental Requirements" is added referring to the applicable environmental requirements of Subpart G of Part 1940 of this chapter.

33. Section 1965.27(c) is retitled "Assumption of Loans by Eligible Transferees" and rewritten to clarify how a loan may be assumed on eligible rates and terms. Paragraph (l)(i) has been retitled "SFH Assumptions," to refer only to single family housing loans. Paragraph (l)(ii) has been retitled "NP loans" and paragraph (l)(iii) has been retitled, "EE, SL, and Other Emergency Type Loans No Longer Being Made," to specifically include EE loans.

34. Section 1965.27(d) is retitled, "Assumption of Loans By Ineligible Transferees," and has been revised to clarify the procedure for processing assumptions of loans to ineligible transferees. Paragraph (d)(2) of this section has been retitled "Terms—Other Than SFH;" paragraph (d)(3) has been retitled, "Terms—SFH Loans;" paragraph (d)(5) has been retitled "NP Loans."

35. Section 1965.27(e) is revised to clarify the action to be taken by the County Supervisor when a borrower conveys security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with FmHA regulations.

36. Section 1965.27(f) if revised to state that the Administrator must approve the release of liability when the transferor's remaining outstanding FmHA debt after a transfer and assumption exceeds $25,000.

37. Section 1965.27(g) is revised to clarify how funds in the supervised bank account will be applied to FmHA loans in transfer and assumption situations.

38. Section 1965.27(g)(2)(iv) is rewritten and the table used as a guide by the County Supervisor to distribute forms is now Exhibit C of this subpart (available in any FmHA office). Paragraph (g)(2)(v) is added to identify the transfer docket items to be included in the preparation and distribution of a transfer docket.

39. Section 1965.27(g)(10), "Transfer of Unused Development Funds," is now covered under paragraph (g)(1).

40. Section 1965.31(c) is revised to clarify provisions to be placed on notes evidencing FmHA loans when additional security will be taken.

41. Section 1965.33 is retitled "Cosigners SFH loans."

42. Section 1965.34 is retitled "Non-Program (NP) loans" which were previously classified as ORE loans. Paragraphs (a) through (c) of this section have been rewritten to clarify how NP loans will be serviced. Paragraph (a) specifies how subordinations will be handled; paragraph (b) sets forth when consent may be given for partial release, sale, exchange or other disposition of a portion of or interest in security. Paragraph (c) states when voluntary conveyance will be approved; paragraph (d) explains when transfers may be approved. Paragraph (e) covers action to be taken by FmHA in cases of default. Paragraph (f) explains leases; and paragraph (g) states that NP debtors are not subject to the graduation requirements in Subpart F of Part 1951 of this chapter.

43. Section 1965.35 is revised to clarify the Administrator's authority to make an exception to any requirements of this Subpart not inconsistent with the authorizing statute if the Administrator finds that application of the requirements would adversely affect the interest of the Government.

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.410—Low Income Housing Loans
10.416—Soil and Water Loans
10.417—Very Low-Income Housing Repair Loans and Grants

Intergovernmental consultation in accordance with 7 CFR Part 3015, Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" is not applicable, except in the case of soil and water (SW) loans. This program is listed in the Catalog of Federal Domestic Assistance under No. 416 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1965

Foreclosure, Loan programs—agriculture, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. The authority citation for Part 1822 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

2. Section 1822.275 is amended by revising paragraph (c) to read as follows:

§ 1822.275 Actions after sites are developed.

* * * * *

(c) The proceeds from sale of the building sites will be applied on the RHS loan and any prior lien or, with the prior approval of the National Office, used in a manner consistent with the purpose of the loan and the security interest of the Government. The sites will be released from the mortgage in accordance with § 1965.110 of Subpart C of Part 1965 of this chapter or otherwise in accordance with prior approval of the National Office.

PART 1872—[REMOVED]

3. The authority citation for Part 1872 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

3a. Part 1872 is removed and reserved.

PART 1900—GENERAL

4. The authority citation for Part 1900 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Farmers Home Administration Appeal Procedure

5. Section 1900.53 is amended by revising paragraph (a)(15) to read as follows:

§ 1900.53 Decisions which are not appealable.

(a) * * *

(15) Non-Program loan debtors are not eligible to receive any program benefits such as appeal rights.

* * * * *

PART 1903—VOLUNTARY DEBT ADJUSTMENT

6. The authority citation for Part 1903 is revised to read as follows:

Authority: 7 U.S.C. 1989; CFR 2.23, 2.70.

Subpart A—Voluntary Debt Adjustment

7. Section 1903.2 is amended by revising paragraph (b) to read as follows:

§1903.2 Policy.

* * * * *

(b) Debts owed to the FmHA will not be adjusted pursuant to this subpart but will be considered for settlement in accordance with Part 1864 of this chapter (FmHA Instruction 456.1) or for release of personal liability in accordance with Subpart A of Part 1965 of this chapter.

PART 1924—CONSTRUCTION AND REPAIR

8. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

9. Section 1924.5 is amended by revising paragraph (g)(4) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(g) * * *

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedures contained in Subpart A of Part 1965 of this chapter, or Subpart C of Part 1965 of this chapter, as appropriate.

* * * * *

Subpart B—Management Advice to Individual Borrowers and Applicants

10. Section 1924.51 is revised to read as follows:

§ 1924.51 General.

This subpart sets forth policies for providing management advice to farmer programs loan individual applicants and borrowers. The term "individual" as used in this subpart applies to individuals and to farming partnerships, corporations and cooperatives. The term "farmer program loan" as used in this subpart includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), and Economic Opportunity (EO) loans, and/or (RHF) Rural Housing Loans for farm service buildings. This subpart applies to insured farmer program loan applicants/borrowers who depend on farm income for loan repayment. It also includes Rural Housing (RH) borrowers who are also indebted for a Farmer Program loan that is not collection-only or a judgment account, and those FO, SW and/or OL loan applicants and borrowers who use the services of a "New Full-Time Family Farmer and Rancher Development Committee." (See Exhibit A of this subpart). This subpart does not apply to individuals who owe non-program loans (defined in § 1965.7(h) of Subpart A of Part 1965 of this chapter).

11. In Section 1924.72 the introductory text is revised to read as follows:

§ 1924.72 Borrowers who receive Forms FmHA 1924–25 and 1924–26.

Borrowers will receive Forms FmHA 1924–25 and 1924–26 along with form FmHA 1924–14 before a farmer program loan is involuntarily liquidated (see § 1965.26(b) of Subpart A of Part 1965 of this chapter and §§ 1962.40 and 1962.49 of Subpart A of Part 1962 of this chapter) and when an account is more than $100

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delinquent on December 31 (see § 1924.71 of this subpart). These forms will also be provided to borrowers who have made unauthorized dispositions of security, who have stopped farming, or who have otherwise breached their loan agreements with FmHA. These forms will be provided, for information only, when a farmer program loan borrower files bankruptcy (see § 1962.47 of Subpart A of Part 1962 of this chapter). Form FmHA 1924–25 tells borrowers that FmHA intends to liquidate their loans (which will include terminating any previously agreed-upon releases of sales proceeds) and tells borrowers exactly why FmHA plans to take such action. The form explains that the servicing options described in Form FmHA 1924–14 are available, and also explains that FmHA will proceed to liquidate a borrower's loans unless the borrower applies for at least one of the servicing options, appeals the adverse action using FmHA's administrative appeals procedure (found at Subpart B of Part 1900 of this chapter), cures existing defaults, or liquidates the loans. Borrowers who receive Form FmHA 1924–25 will also receive Form FmHA 1924–26. This form must be completed to show whether the borrower wants to apply for servicing options, to appeal, to cure the default or to liquidate.

* * * * *

PART 1927—FEDERAL STATUTE OF LIMITATIONS

12. The authority citation for Part 1927 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Federal Statute of Limitations

13. Section 1927.7, is amended by revising paragraph (c)(3) to read as follows:

§ 1927.7 Servicing contract claims.

* * * * *

(c) * * *

(3) Settling the debt according to Part 1864 of this Chapter (FmHA 456.1) when the borrower is eligible; or

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

14. The authority citation for Part 1943 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

15. Section 1943.38 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 1943.38 Loan closing actions.

* * * * *

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

* * * * *

16. Section 1943.42 is revised to read as follows:

§ 1943.42 Servicing.

FO loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for FO loans will be serviced in accordance with Subpart A of Part 1962 of this chapter.

17. Section 1943.44 is revised to read as follows:

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

18. Paragraph III of Exhibit A to Part 1943 is revised to read as follows:

Exhibit A—Farmers Home Administration Loans to Entrymen on Unpatented Public Lands

* * * * *

III. *Mortgage on Real Estate for Additional Security.* When it is deemed advisable to take a mortgage on the homestead or desertland entry as additional security or to otherwise protect the interests of the FmHA, a real estate mortgage will be taken on such entry. The mortgage will be taken as authorized in Subpart A of Part 1965 of this chapter. In such a case, a copy of the real estate mortgage will be sent to BLM and, if the farm is located in Federal reclamation project, a copy of the mortgage also will be sent to the BR.

* * * * *

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

19. Section 1943.88 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 1943.88 Loan closing actions.

* * * * *

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

* * * * *

20. Section 1943.92 is revised to read as follows:

§ 1943.92 Servicing.

SW loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with Subpart A of Part 1962 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See Exhibit A, "Memorandum of Understanding Between the Bureau of Reclamation, Department of Interior, and the Farmers Home Administration, Department of Agriculture" for additional information on these loans.

21. Section 1943.94 is revised to read as follows:

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

22. Section 1943.138 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 1943.138 Loan closing actions.

* * * * *

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with Subpart A of Part 1965 of this Chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with Subpart A of Part 1965 of this chapter.

* * * * *

23. Section 1943.142 is revised to read as follows:

§ 1943.142 Servicing.

Recreation loans will be serviced in accordance with Subpart A of Part 1965 of this chapter. Chattel security for RL loans will be serviced in accordance with Subpart A of Part 1962 of this chapter.

24. Section 1943.144 is revised to read as follows:

§ 1943.144 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with Subpart A of Part 1965 of this chapter.

PART 1945—EMERGENCY

25. The authority citation for Part 1945 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Economic Emergency Loans

26. Section 1945.135 is revised to read as follows:

§ 1943.135 Loan servicing.

Loans will be serviced in accordance with Parts 1806 and 1863 (FmHA Instructions 426.1, and 425.1, respectively) and Subpart A of Parts 1962 and 1965 of this chapter.

Subpart D—Emergency Loan Policies, Procedures, and Authorizations

27. Section 1945.169 is amended by revising paragraph (c)(3) to read as follows:

§ 1945.169 Security requirements.

* * * * *

(c) * * *

(3) When security is taken under this subsection (c) of this section it will be serviced in accordance with Subpart A of Part 1962 of this chapter, if chattels, and Subpart A of Part 1965 of this chapter, if real estate.

* * * * *

28. Section 1945.192 is revised to read as follows:

§ 1945.192 Loan servicing.

Loans will be serviced under Subpart A of Part 1806 (FmHA Instruction 426.1), Part 1863 (FmHA Instruction 425.1), Subpart A of Part 1962 and Subpart A of Part 1965 of this chapter.

PART 1951—SERVICING AND COLLECTIONS

29. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1980; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

30. Section 1951.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income, as defined in § 1962.4(j) of Subpart A of Part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, mineral royalties and income from mineral leases (see § 1965.17(d) of Subpart A of Part 1965 of this chapter), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the Finance Office by direct payment borrowers are considered regular payments.

(b) *Extra payments.* Extra payments are payments derived from:

(1) Sale of chattels other than chattels which will be sold to produce farm income or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of the real estate debt.

(3) Cash proceeds of real property insurance as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(4) A sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(5) Agricultural Conservation Program payments as provided in Subpart A of Part 1941 of this chapter.

(6) Transactions of a similar nature which reduce the value of security other than chattels which will be sold to produce farm income.

* * * * *

31. In Section 1951.33 the introductory text is revised to read as follows:

§ 1951.33 Consolidation and rescheduling of OL, SL, and EO loans, EE operating type loans and EM loans made for Subtitle B purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance the loans. This section explains how to consolidate and reschedule *existing* loans providing the borrower agrees to such actions. Non-Program loan debtors are not eligible to receive any program benefits including consolidation or rescheduling. See § 1965.34 of Subpart A of Part 1965 of this chapter.

* * * * *

32. In Section 1951.40 the introductory text is revised to read as follows:

§ 1951.40 Reamortization of FO, SW, RL, RHF, EE or EM loans made for real estate purposes.

All borrowers are expected to repay their loans according to planned repayment schedules. However, circumstances may occur which will not permit borrowers to pay as scheduled or to refinance loans. This section explains how the County Supervisor can reamortize existing loans. Non-Program loan debtors are not eligible to receive any program benefits including reamortization. See § 1965.34 of Subpart A of Part 1965 of this chapter.

* * * * *

33. Section 1951.44 is amended by revising paragraph (k) to read as follows:

§ 1951.44 Deferral of existing OL, FO, SW, RL, EM, EO, SL, RHF, and EE loans.

* * * * *

(k) *Increase in repayment ability.* At the time the County Supervisor makes the analysis required by Subpart B of Part 1924 of this chapter, the County Supervisor will determine whether the borrower has had a substantial increase in income and repayment ability. If an increase is substantial enough to enable the borrower to graduate, the case will

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be handled in accordance with Subpart F of Part 1951 of this chapter. If an increase would enable the borrower to make some payments during the deferral period, the County Supervisor will ask (in writing) the borrower to sign a Form FmHA 440–9, "Supplementary Payment Agreement," within 30 days of the date of the written request. If the borrower does not sign a Form FmHA 440–9 within the required time, the borrower's account will be liquidated in accordance with Subpart A of Part 1962 or Subpart A of Part 1965 of this chapter.

Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Farmer Programs

34. Section 1951.561, is amended by revising paragraph (a)(1)(i) to read as follows:

§ 1951.561 Servicing options in lieu of liquidation or legal action.

* * * * *

(a) * * * (1) * * *

(i) Execution of Form FmHA 1965–11, "Accelerated Repayment Agreement," according to § 1965.26(e) of Subpart A of Part 1965 of this chapter, for loans secured by real estate, or rescheduling according to Subpart A of this part, for loans not secured by real estate, based on the borrower's repayment ability.

* * * * *

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

35. Section 1951.612 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 1951.612 Servicing options in lieu of liquidation or legal action to collect.

* * * * *

(a) * * *

(1) * * *

(iii) If the recipient was not eligible for a loan, of if the loan was approved for unauthorized purposes as outlined in paragraph (a)(1)(iv) of § 1951.604 of this subpart, the recipient may be allowed to enter into an accelerated repayment agreement according to § 1965.125(a)(4) of Subpart C of Part 1965 of this chapter, if a SFH loan, except that the above-moderate interest rate which was in effect on the date the loan was approved will be used according to Exhibit C of this Subpart (available in any FmHA office). This provision should be used only where repayment ability can be projected. A loan serviced according to paragraph (a)(1)(iii) of this section will be reclassified as an NP loan.

* * * * *

PART 1955—PROPERTY MANAGEMENT

36. The authority citation for Part 1955 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

37. § 1955.2 is revised to read as follows:

§ 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (except for Multiple Family Housing (MFH) loans subject to prepayment restrictions) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to FmHA or by foreclosure as outlined in this subpart. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to FmHA in accordance with applicable portions of § 1955.10 of this subpart. Non-Program loan debtors will be liquidated as provided in § 1965.34(e) of Subpart A of Part 1965 of this chapter.

38. Section 1955.15 is amended by revising paragraph (d)(1) and the introductory text of paragraph (d)(2) to read as follows:

§ 1955.15 Foreclosure by the government of loans secured by real estate.

* * * * *

(d) * * *

(1) *Prior lien(s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA loan(s), either settling the prior lien or foreclosing subject to it. The provisions of § 1965.11(c) of Subpart A of Part 1965 of this chapter must be followed for loans serviced under Subpart A of Part 1965. The assistance of OGC should be obtained in weighing the alternatives, with the objective being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA's position. If State laws affect this action, a State Supplement will be issued with the advice of OGC to establish the procedure to be followed.

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii), of this section, the account will be accelerated using a notice substantially similar to Exhibits B, C, D, or E of this subpart (available in any FmHA office), as appropriate, to be signed by the official who approved the foreclosure. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in accordance with § 1965.26(c) of Subpart A of Part 1965 of this chapter. The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under Subpart A of Part 1962 of this chapter, the Finance Office will be sent a copy of Exhibit D or E. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases). If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official and, *except* for Farmer Program cases, to the hearing officer identified in the notice according to Subpart B of Part 1900 of this chapter. Farmer Program appeals will be concluded before acceleration. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

* * * * *

Subpart B—Management of Property

39. Section 1955.53 is amended by redesignating paragraphs (e) through (n) as (f) through (o) and adding a new paragraph (e) to read as follows:

§ 1955.53 Definitions.

* * * * *

(e) *Farmer program loans.* This includes Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), and Special Livestock (SL) loans, and Rural Housing Loans for farm service buildings (RHF).

* * * * *

40. Section 1955.55 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* (Multiple housing type loans will be handled in accordance with § 1965.75 of Subpart B of Part 1965 of this chapter.) When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s) if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State Supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for its care or sale, it will not be considered abandoned so long as it is adequately secured and maintained. Except for borrowers with Farmer Program loans, if the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of Part 1955 of this chapter. In farmer program cases, borrowers must receive Forms FmHA 1924–14, "Notice—Farmer Program Servicing Options Including Deferrals and Borrower Responsibilities," FmHA 1924–25, "Notice of Intent to Take Adverse Action," and FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action," and any appeal must be concluded before any adverse action can be taken. The County Supervisor will send these forms to the borrower's last known address as soon as it is determined that the borrower has abandoned security property.

(b) * * *

(1) For loans to individuals (except those with Farmer Program loans), if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter, unless the borrower can be located and voluntary liquidation accomplished. Farmer Program loan borrowers will be sent the forms listed in paragraph (a) of this section and the provisions of § 1965.26 will be followed.

* * * * *

PART 1962—PERSONAL PROPERTY

41. The authority citation for Part 1962 is revised to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

42. Section 1962.34 is amended to revise the introductory text and paragraph (a)(2), introductory text of paragraph (b)(3), and paragraphs (f)(8) and (f)(12), and (g)(1) to read as follows:

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under Subpart A of Part 1965 of this chapter. The transferor (borrower) must be sent Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options Including Deferral and Borrower Responsibilities," as soon as the borrower contacts the County Supervisor inquiring about a transfer.

(a) * * *

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. Form FmHA 1965–13, "Assumption Agreement (Farmer Program Loans)," will be used. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 1965–13. The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be placed on new rates and terms.

* * * * *

(b) * * *

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 1965–13. Any deferred interest not paid by the time the transfer takes place must be added to the principle balance. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed. Interest rates to the transferee will be as follows:

* * * * *

(f) * * *

(8) Form FmHA 1965–13.

* * * * *

(12) Form FmHA 1965–13 or Form FmHA 1965–22, "Information on Assumption on New Terms or Other Change of Terms," as appropriate, and Form FmHA 1965–23, "Supplemental Information on Assumption and/or Change of Terms."

* * * * *

(g) * * *

(1) On receipt of Form FmHA 1965–22, and Form FmHA 1965–23 the Finance Office will establish an account in the name of the assuming transferee and will notify the County Supervisor.

* * * * *

43. § 1962.40 is amended by revising paragraph (c) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(c) *Multiple loans and loans secured by both real estate and chattels.* Follow the provisions of § 1965.26(c) of Part 1965 of this chapter for liquidating these loans.

* * * * *

44. Section 1962.46 is amended by revising paragraph (f) to read as follows:

§ 1962.46 Deceased borrower.

* * * * *

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(f) *Liquidation of security.* When probate or administration proceedings have not been started and continuation with a survivor or transfer and assumption by another party will not be approved, chattel security and real estate security will be liquidated promptly in accordance with this subpart and Subpart A of Part 1965 of this chapter, respectively. If the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to FmHA, and other assets are available in the estate or in the hands of heirs from which to collect, the State Director will request OGC to effect collection.

* * * * *

45. Section 1962.47 is amended by revising paragraph (c)(3) to read as follows:

§ 1962.47 Bankruptcy and insolvency.

* * * * *

(c) * * *

(3) In Chapter 11 of Chapter 13 cases, if liquidation is necessary it will be accomplished in accordance with either § 1962.26 of Subpart A of Part 1965 of this chapter of § 1962.40 of this subpart, as applicable. The advice of OGC will be obtained before any notices are sent to the borrower.

* * * * *

PART 1965—REAL PROPERTY

46. The authority citation for Part 1965 continues to read as follows:

Authority 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

47. Subpart A is added to reads as follows:

PART 1965—REAL PROPERTY

Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note-Only Cases

Sec.

1965.1 Purpose.
1965.2 General policies.
1965.3 Borrower's responsibilities.
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1965.5 Servicing certain insured Farm Ownership (FO) loans.
1965.6 Consent of lienholders.
1965.7 Definitions.
1965.8–1965.10 [Reserved]
1965.11 Preservation of security and protection of liens.
1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.
1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.
1965.14 Subordination of FmHA real estate mortgages to easements to the U.S. Fish and Wildlife Service (formerly the Bureau of Sport Fisheries and Wildlife).
1965.15 Subordination of FmHA's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.
1965.16 Consent to junior liens.
1965.17 Lease of security.
1965.18 Transfer of upland cotton, peanut, or tobacco allotments.
1965.19 Severance agreement.
1965.20 [Reserved]
1965.21 Assignment and release of Soil Conservation or similar program payments.
1965.22 Deceased borrower.
1965.23 Bankruptcy and insolvency.
1965.24 Servicing note-only cases.
1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.
1965.26 Liquidation action.
1965.27 Transfer of real estate security.
1965.28–1965.30 [Reserved]
1965.31 Taking liens on real estate as additional security in servicing FmHA loans.
1965.32 [Reserved]
1965.33 Cosigners—SFH Loans.
1965.34 Non-Program (NP) Loans.
1965.35 Exception authority.
1965.36 State Supplements and reference to the OGC.
1965.37 Redelegation of Authority.
1965.38–1965.49 [Reserved]
1965.50 OMB control number.

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

§ 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests and certain note-only cases for Farmers Home Administration (FmHA) Farmer Program loans and Non-Program loans (NP). Security servicing for borrowers who have *both* FmHA Farmer Program, NP and Single Family Housing (excluding Technical Assistance Grants and Site loans) (SFH) loans, will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans *only*, will be according to Subpart C of Part 1965 of this chapter. This subpart does not apply to FmHA guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, Irrigation and Drainage (I&D) loans, or loans to Indian Tribes and tribal corporations.

§ 1965.2 General policies.

FmHA will service real estate security in a manner that best accomplishes the loan objectives and protects the Government's financial interest. To accomplish this, FmHA will service the real estate security in accordance with the security instruments and related agreements, including any authorized modifications and the provisions of this subpart.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

§ 1965.3 Borrower's responsibilities.

Each borrower is responsible for repaying principal and interest on a timely basis pursuant to the loan documents, paying real estate taxes in accordance with Part 1863 of this chapter (FmHA Instruction 425.1), providing adequate property insurance in accordance with Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1), maintaining, protecting, and accounting to the FmHA for all real estate security, and complying with other loan requirements.

§ 1965.4 FmHA's responsibility.

The County Supervisor, District Director or other servicing official is responsible for informing borrowers of their responsibilities in connection with the loan, seeing that the security is being properly maintained and accounted for, and servicing the account and security in accordance with this subpart. When a borrower fails to maintain, protect, or account for the security, as required by the loan documents, or makes unauthorized disposition or use of any security, FmHA will institute prompt action to protect FmHA's interest. The County Supervisor, District Director or other servicing official will obtain any needed legal advice from the Office of the General Counsel (OGC) through the State Director. Once a case has been referred to the OGC for legal action, no further action will be taken by the County Supervisor, District Director or other servicing official without prior

clearance from OGC. If the case has been referred to the U.S. Attorney, clearance with the U.S. Attorney will be obtained through the OGC. All FmHA employees will document actions taken to service a loan in the running case record in the borrower's FmHA file(s). When a servicing action affects a borrower's account (e.g., a foreclosure action is pending), the appropriate FmHA servicing official will notify the Finance Office.

§ 1965.5 Servicing certain insured Farm Ownership (FO) loans.

(a) *Servicing actions.* When an insured FO mortgage running to the lender as mortgagee is not held by the FmHA under trust assignment, or declaration of trust, or in the insurance fund (called insured FO mortgage held by the lender in this subpart) and a written subordination or partial release or other servicing document is requested, the document will be executed by the holder on a form prepared or approved by OGC. In those cases, execution of the document will constitute consent.

(b) *Execution of documents.* The County Supervisor is authorized to execute on behalf of the Government, all necessary forms, statisfactions, releases, and other documents required to complete any transactions in this subpart after the transaction has been approved by the appropriate approving official. The documents will be executed on behalf of the United States in the following form:

(1) "United States of America," when the mortgage names the United States as mortgagee, or when a mortgage running to the lender is not under a trust or declaration of trust and the note is held by the insurance fund.

(2) "United States of America, for Itself and as Trustee," when an FO mortgage is held by the FmHA under a trust assignment or declaration of trust, regardless of whether the note is held by a lender or by the insurance fund.

§ 1965.6 Consent of lienholders.

When this subpart requires the consent of other lienholders, consent will be obtained and furnished in writing to the FmHA by the borrower before the FmHA enters into a transaction which affects its security or its lien. This consent will, unless otherwise provided in a State Supplement, include an agreement as to the disposition of any funds involved in the transaction.

§ 1965.7 Definitions.

(a) *County Supervisor* also includes Assistant County Supervisor who has written delegated authority to carry out purposes of this subpart.

(b) *District Director* also includes Assistant District Director who has written delegated authority to carry out purposes of this subpart.

(c) *FmHA loans, FmHA accounts, FmHA interests, FmHA security, FmHA debts* and similar terms apply to indebtedness owed to, or insured by, the United States of America acting through the FmHA, and to related security instruments.

(d) *Farmer Program Loan* includes only Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), and Special Livestock (SL) loans, and/or Rural Housing Loans for farm service buildings (RHF).

(e) *Foreclosure sale.* The act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

(f) *Leasehold.* A right to use farm property for a specific period of time under conditions provided for a lease agreement.

(g) *Mortgage.* Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(h) *Non-Program (NP) Loan.* An NP loan results when credits are extended to ineligible applicants and/or transferees in connection with loan assumptions and sale of inventory properties.

(i) *Note* includes any note, bond, assumption agreement or other evidence of indebtedness.

(j) *Security.* Property of any kind subject to a real or personal property lien including, among other things, appurtenant rights of development, leasehold, grazing or other use privileges.

(k) *Servicing action* includes, among other things, the cash sale or transfer of real estate and chattel property and the assumption of loans.

§§ 1965.8—1965.10 [Reserved]

§ 1965.11 Preservation of security and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect farm real estate security a minimum of one time every 3 years for accounts that are current. More frequent inspections will be made when a borrower is delinquent or otherwise in default or when problems exist involving the security. If all or part of the security is located in another County Office area, the County Supervisor for that area may be requested to inspect the property. Security on non-farm tracts will be inspected when:

(1) Liquidation action is likely to be taken;

(2) The property has been abandoned;

(3) Necessary to protect the interest of the Government; or

(4) Requested by the borrower.

(b) *Action by FmHA for account of borrower.* When necessary to protect the interest of the Government, action will be taken by FmHA for the account of the borrower as provided below. Any advances made for the following purposes will be considered protective advances and will be paid by Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," or other approved voucher in accordance with FmHA Instruction 2075–A (available in any FmHA office), and forwarded to the Finance Office for issuance of the Treasury Check and charged to the borrower's account.

(1) *Abandoned and Custodial Property.* Determinations of abandonment will be made according to § 1955.55 of Subpart B of Part 1955 of this chapter. Services for the management, care, and maintenance of custodial property will be obtained according to § 1955.55 of Subpart B of Part 1955 of this chapter. Custodial property may be leased according to the provisions of § 1955.66(a)(1) of Subpart B of Part 1955 of this chapter.

(2) *Maintenance.* Complete information concerning the borrower's failure to adequately maintain the security will be documented in the case file. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of this unwillingness to do so should be included in the case file.

(3) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with Part 1863 of this chapter (FmHA Instruction 425.1).

(4) *Insurance.* For FmHA loans secured by liens on real estate, property insurance will be obtained and serviced in accordance with requirements for the kind of loan involved, and in accordance with Subpart A of part 1806 of this chapter (FmHA Instruction 426.1), and when appropriate, Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(c) *Actions by third parties which affect security—*(1) *General provisions.* When third parties bring suit or take any other action which could affect property servicing as security, borrowers are expected to protect their own interests in the property. A few examples of

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actions by third parties are: condemnation proceedings, foreclosure, trespass suits, and actions to quiet title.

(i) *County Supervisor's responsibility.* When the County Supervisor learns of a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the borrower Form FmHA 1924–14, "Notice—Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities." Then the County Supervisor will send the County Office case file, complete with information concerning the action, and recommendation for FmHA servicing action to the State Director. The information sent to the State Director will include a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and any other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility.* The State Director will consult OGC about all lawsuits involving the property. The State Director will also consult OGC about any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. Protective advances will only be authorized to protect the Government's interest. Protective advances will not be authorized for protection of the borrower's interest or the interest of any third party. When foreclosure or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or approving a subordination to permit another lender to make a loan, provided:

(A) A subsequent loan or subordination is necessary to enable the borrower to retain the property.

(B) The borrower has the ability and resources necessary to overcome the problems that caused the foreclosure or other action, and

(C) The third party agrees to postpone further action pending the processing of a subsequent loan or subordination.

(iii) *Other actions.* The State Director may also approve a transfer and assumption under this subpart provided the action will adequately protect the Government's interest and the third party agrees to delay further action pending processing of the transfer and assumption. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(2) *Sale by a prior lien foreclosure.* When FmHA learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness and the estimated cost of a foreclosure sale. An insured note which is not held by the insurance fund will, whenever possible, be assigned to the insurance fund before a foreclosure sale. Otherwise, the assignment will be completed as soon as feasible after the foreclosure sale.

(i) *Decision to pay off the prior lien.* When, under State law, it is necessary prior to foreclosure to acquire the prior lienholder's rights to protect the Government's junior lien interest, title evidence will be obtained. Information clearly supporting the need to acquire the prior lienholder's rights must be documented and made a part of the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery of the secured debt (not an inventory profit) than it could by bidding at the foreclosure sale, and

(B) The FmHA account after acquisition of the prior lien *must* be handled in accordance with § 1965.20(b) of this subpart. No exceptions will be made to this provision (B).

(C) Loans may be reamortized without regard to loan limits to include protective advances when authorized on an individual case basis by the National Office. When continuation with reamortization to include protective advances is recommended, the case file with documentation of all facts of the situation necessitating protective advances, efforts made to obtain a new participating lender, and justification for reamortizing will be submitted to the National Office.

(ii) *Decision not to pay off the prior lien.* If FmHA decides not to pay off the prior lien, the County Supervisor will immediately complete Exhibit B (available in any FmHA office) to this subpart and send it to the borrower, along with Form FmHA 1924–14, a *blank* form FmHA 1924–25, "Notice of Intent to Take Adverse Action," and a *blank* Form FmHA 1924–26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action." Then one of the following actions will be taken.

(A) *Making a bid.* Bidding will be completed in accordance with § 1995.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA enters a bid reporting actions will be taken in accordance with §§ 1955.15(g) and 1955.18 of Subpart A of Part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report.

(iii) *Acquisition of property by exercise of Government redemption rights.* If the Government for any reason did not protect its interest at the time of the foreclosure sale and if the Government has any redemption rights, the State Director will determine whether to redeem the property in accordance with § 1955.13 of Subpart A of Part 1955 of this chapter.

(3) *Foreclosure sale subject to FmHA mortgage.* When FmHA learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower Form FmHA 1924–14. If the borrower contacts FmHA and wants to apply for servicing relief, the request will be processed in accordance with the appropriate FmHA regulation. If the junior lien is foreclosed and the property is sold subject to the FmHA mortgage, the borrower will be sent Forms FmHA 1924–14, 1924–25 and 1924–26. The Form FmHA 1924–25 will list all conditions constituting default, such as delinquency and failure to operate the farm, as reasons for accelerating the account. Acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Part 1955 of this chapter.

(d) *Divorce actions.* See § 1965.27 (b)(5)(iii) of this subpart for directions on servicing security after divorce. A subsequent loan made as a result of a divorce action will be handled in accordance with § 1965.27(b)(13) of this subpart.

§ 1965.12 Subordination of FmHA mortgage to permit refinancing, extension, increase in amount of existing prior lien, to permit a new prior lien, or to permit reamortization.

See § 1965.34(e) of this subpart for requirements concerning subordinations of non-program (NP) loans.

(a) *Conditions for subordination.* A subordination may be granted subject to the following conditions:

(1) The FmHA debt cannot be refinanced on terms which the borrower can reasonably be expected to meet;

(2) The transaction will further the objectives for which the FmHA loan or loans were made;

(3) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them, as well as all other debts;

(4) An assignment of the beneficial interest in any stock required in connection with a loan will be obtained as security, when possible and when needed;

(5) The FmHA indebtedness after the subordination will be adequately secured or will not be adversely affected by the transaction;

(6) The proposed use of the funds including the payment of reasonable costs and expenses incident to the transaction will improve the borrower's ability to repay the FmHA loan(s) or is necessary to place the borrower's operation on a sound basis;

(7) The use of the funds obtained as a result of the subordination will not conflict with loan purposes, restrictions or requirements of the type of loan(s) being subordinated, and

(8) The amount of any prior lien plus the balance of the FmHA debt will not exceed the market value of the security. When the FmHA indebtedness was not fully secured by the market value of the security before the transaction, a subordination may be granted only if the market value of the total security will be increased through improvement or acquisition by an amount at least equal to the additional advance. For Section 502 SFH loans subject to recapture, FmHA indebtedness will be determined in accordance with Subpart I of Part 1951 of this chapter.

(b) *Purpose of subordination.* A subordination may be granted for any of the following purposes:

(1) *Refinance, extend, or reamortize debts of other lenders.* Refinance, extend, or reamortize an existing prior lien provided the amount of the indebtedness secured by the prior lien, as of the date of the transaction, is not increased by more than reasonable costs incidental to loan closing plus funds for the purchase of any required stock.

(2) *Increase the amount of a prior lien or permit a new prior lien when another lender's funds will not be used to reduce the FmHA debt.* The requirements of § 1965.12(a) of this subpart must also be met.

(i) *Nonfarm tract.* When a nonfarm tract secures an SFH loan, the other lender's funds will only be used for the same purposes and with the same limitations that would be applicable if an SFH loan were made.

(ii) *Farm tract.* (A) When a farm tract secures an FO loan only or an FO and any other type FmHA loan, the other lender's funds may be used for any purpose for which an FO loan can be made, regardless of the requirement of § 1965.12(a)(7) of this subpart.

(B) When a farm tract secures other type(s) of FmHA loan(s) currently authorized, the other lender's funds may be used for any purposes for which that type loan is authorized.

(C) When a farm tract secures any FmHA loan and it is determined essential for the borrower to remain in farming, the State Director may approve a subordination for operating credit when no other alternative exists. The reasons and justification supporting the subordination for operating expenses will be fully documented in the case file by the County Supervisor prior to submission to the State Director.

(D) When additional land is to be acquired by use of proceeds from the subordination, Form FmHA 440–2, "County Committee Certification or Recommendation," will be completed before the subordination is approved. A subordination for purchase of additional land will not be approved without favorable recommendation of the County Committee.

(iii) Any proposed development will be planned and performed in accordance with Subpart A of Part 1924 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of Subpart A of Part 1924 of this chapter and is agreed to by FmHA.

(iv) Funds used to develop or to acquire land will be handled as prescribed in Subpart A of Part 1902 of this chapter. If the creditor will not permit the use of a supervised bank account, arrangements satisfactory to the FmHA which will assure that the funds will be spent for the planned purposes may be substituted.

(v) In cases of land purchase or exchange of property, the FmHA will obtain a valid mortgage on the acquired land. Title clearance and loan closing will be required as for an initial or subsequent FO loan, as appropriate. The mortgage will be recorded when the subordination is delivered to the other lenders or immediately after the other lender records its mortgage.

(3) *Increase the amount of a prior lien or permit a new prior lien, when the other lender's funds will be used wholly or in part to reduce the FmHA debt.* Funds of another lender may be used to pay on an FO, SL, SW, RHF, RL, OL, EO, EE, or EM loan. Funds of another lender may also be used to pay the amount delinquent on a SFH loan provided the SFH borrower also owes an FO loan. FmHA may subordinate its lien to that of the other lender, even though the primary purpose of the new loan funds is to reduce the existing FmHA loan. A written justification for allowing the subordination must be prepared and made a part of the borrower's case file. The approval official will decide whether or not to allow the subordination based on the following factors, which should be addressed in the written justification:

(i) The new loan funds must be needed to accomplish the objectives in § 1965.2 of this subpart;

(ii) The new loan funds must be needed to establish the borrower's operation on a sound basis;

(iii) The conditions in paragraph (a) of this section must be met; and

(iv) The restrictions in paragraph (b)(2) of this section apply to any part of the other lender's funds not applied on the FmHA indebtedness.

(c) *Request for subordination.* When a borrower requests the FmHA to subordinate a mortgage, Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," will be prepared. If an agreement to give notice of foreclosure is required for approval of an initial FmHA loan, an agreement with a new prior lienholder will be obtained as required in § 1807.2(f)(5) of Part 1807 of this chapter (FmHA instruction 427.1, paragraph II F 5). In case of an insured mortgage held by the lender, the holder's consent will be obtained in accordance with § 1965.5 of this subpart. Any other lienholder's consent to the transaction and use of the proceeds will be obtained as provided in § 1965.6 of this subpart.

(d) *Appraisal.* A current appraisal report will be prepared in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 442.1) when property is to be purchased or exchanged, or when the existing appraisal report is more than 1 year old or is inadequate to make the determination required in this paragraph. When an appraisal is required by FmHA in connection with a subordination being granted to the Federal Land Bank (FLB), the appraiser may recommend, or the loan approval official may find, the market value of the total security to be equal to the market value of the real estate plus the value of the FLB stock. This determination will be recorded on a separate sheet and attached to the appraisal report. When a subordination is granted in connection with any FmHA loan to permit a loan by

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another lender, the FmHA appraiser is authorized to use the appraisal report prepared for the other lender in determining the recommended market value of the property in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 442.1, Exhibit A available in any FmHA office).

(3) *Approval authority*—(1) *Nonfarm tracts.* County Supervisors and District Directors are authorized to approve subordinations under this section which do not exceed their respective loan approval authorities, as outlined in Exhibit C of FmHA Instruction 1901-A (available in any FmHA Office). State Directors are authorized to approve any subordination which exceeds the approval authority for County Supervisors or District Directors.

(2) *Farm tracts.* County Supervisors and District Directors may approve subordinations for purposes authorized in this subpart when the FmHA indebtedness plus the subordination does not exceed their approval authority for the type of loan or a combination of types of loans as outlined in Exhibit C of FmHA Instruction 1901–A. When more than one type of loan is involved in the subordination, the loan approval authority of County Supervisors and District Directors will be the highest combination amount authorized in Exhibit C of FmHA Instruction 1901–A for any of the loan types involved, except for subordination of real estate security for operating credit, for which the authority is reserved to the State Director. State Directors are authorized to approve any subordination, consistent with this subpart, which exceeds the approval authority of County Supervisors and District Directors.

(f) *Processing.* When the approval of the subordination by the State Director is required or when the County Supervisor or District Director desires advice before approval of the subordination, the borrower's case folder with current documents to support the applicable determinations, such as, where appropriate, Forms FmHA 431–2, "Farm and Home Plan" (or other plan of operation acceptable to FmHA), FmHA 431–1, "Long-Time Farm and Home Plan," FmHA 431–3, "Household Financial Statement and Budget," FmHA 422–1, "Appraisal Report (Farm Tract)," FmHA 1922–8, "Residential Appraisal Report," FmHA 440–2, other necessary forms, and Form FmHA 465–1 will be sent to the State Office. As required by § 1965.12(b)(2)(ii)(D), Form FmHA 440–2 will be completed when a subordination is granted for the purchase of additional land. After approval of the subordination, it will be closed in accordance with State Supplements to the maximum extent possible as provided in § 1965.36 of this subpart. However, when legal advice on an individual case is necessary, Form FmHA 465–1, any subordination form furnished in connection therewith, the original or a copy of the FmHA mortgage, the refinancing mortgage or agreement, and related documents will be submitted to the OGC for review and preparation of the necessary instruments and closing instructions. The documents and closing instructions will be sent to the County Office. If the signature of the State Director is required on some of the instruments, the docket and closing instructions will be routed through the State Office. The subordination will be completed in accordance with the closing instructions.

(g) *Reamortizing existing FmHA debts other than SFH.* The County Supervisor, District Director, or State Director (as appropriate) may consent to a reamortization of an existing FmHA debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only if the borrower cannot reasonably be expected to meet installments when due. Reamortizations of farmer program loans will be processed in accordance with Subpart A of Part 1951 of this chapter. Reamortization of SFH loans will be processed in accordance with Subpart G of Part 1951 of this chapter. Refer to § 1965.34(f) of this Subpart if an NP loan is involved.

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

If an NP loan is involved, see § 1965.34 of this subpart.

(a) *Provisions of FmHA mortgages.* In all FmHA mortgages except SFH loan mortgages prepared before October 1, 1950, and a few OL, EM, Special Livestock (SL), and Water Facilities (WF) loan mortgages, the borrower has agreed not to sell, transfer, assign, mortgage, or otherwise encumber the security or any portion of or interest in it without the prior written consent of the mortgagee. Furthermore, in the case of the few SFH, OL, EM, SL, and WF loan mortgages not requiring FmHA consent, any property, or any part of it or interest in it, which is subject to the FmHA mortgage and which is disposed of by the borrower without consent remains subject to the mortgage lien. In all FmHA mortgages the borrower expressly agrees not to engage, without prior consent, in certain specified transactions, including the cutting or removal of timber, or mining or removal of gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary domestic purposes. The sale of timber (other than harvests for thinning purposes approved by FmHA on a farm plan), mining products, removal of gravel, oil, gas, coal, or other minerals by unit or lump sum payments will be considered as disposition of a portion of the security, *except:* For Farmer Program loans approved after December 23, 1985, the sale of such products, other than timber, will be considered a disposition of a portion of the security *only* if the rights to the products were specifically included as a part of the appraisal value of the real estate securing the loan; if the rights were not included in the appraisal, then FmHA has no lien on the rights to oil, gas or other minerals located under the real estate. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will be assigned to FmHA and will be used to repair the damage or used as authorized in § 1965.13(f) of this subpart. This section explains how and under what circumstances FmHA will grant partial releases, and give its consent to certain transactions affecting the security. Subordinations, transfers, consents to junior liens, leases and severance agreements are discussed individually in other sections of this subpart. Releases granted in connection with a final payment on real estate will be handled in accordance with Part 1866 of this chapter (FmHA Instruction 451.4).

(b) *Conditions of FmHA consent.* A State Supplement will be developed, with guidance of OGC, and issued to provide guidance for handling of easements or rights-of-way in connection with the development, extension, construction or modification of community based programs, such as rural water districts, drainage, and irrigation districts, without requiring monetary consideration or detailed appraisals. Otherwise, FmHA may consent to certain transactions affecting the security (for example, a sale or an exchange of security or granting a right-of-way across security) and/or grant a partial release if:

(1) The transaction will further the objectives for which the FmHA loan or loans were made;

(2) The proposed use of the funds including the payment of reasonable costs and expenses incident to the transaction will improve the borrower's ability to repay the FmHA loan(s) or is necessary to place the borrower's operation on a sound basis;

(3) The consideration is adequate for the security being disposed of or the rights granted (see paragraph (c) of this section);

(4) Orderly repayment of the FmHA indebtedness will not be impaired (does not apply in condemnation cases after final judgment or award which is not appealed);

(5) The transaction will not interfere with successful operation of any farming or other enterprise providing the borrower with repayment ability (does not apply in condemntation cases after final judgment or award which is not appealed);

(6) The market value of the remaining security is adequate to secure the unpaid balance of the FmHA debts, or if the market value of the security before the transaction was inadequate to fully secure the FmHA debts, the FmHA's security interest is not adversely affected;

(7) The requirements of § 1965.6 of this subpart are met; and

(8) The borrower cannot graduate to other credit.

(c) *Exchange of property.* When an exchange of property serving as security for an FmHA loan results in a balance owing to the FmHA borrower, the provisions of this section applicable to a sale of a portion of the security will apply as to disposition of proceeds. When property is exchanged, the property acquired by the FmHA borrower must meet requirements of the program objectives, purposes and limitations outlined in this subpart relating to the type of loan involved as well as respective requirements for appraisal, title clearance and security. Requests for exchange of property which cannot be approved under this section may be submitted to the National Office for consideration, provided the request meets conditions in § 1965.35 of this subpart.

(d) *Appraisals.* When the official authorized to approve the transaction is uncertain whether the proposed consideration is adequate, or for any other reason considers an appraisal necessary to complete Form FmHA 465–1, or when the transaction involves more than $10,000, a new appraisal report will be obtained in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). However, a new appraisal report need not be obtained if there is an appraisal report not over 1 year old in the case file which will permit the official authorized to approve the transaction to make the proper determination of the market value of the property being retained and the market value of the portion to be released. When a new appraisal is not required, the appraiser will indicate the estimate of values and the basis for it in the comments section of the existing appraisal report. The notation will be initialed and dated. When a new appraisal report is required, it will be completed to show the present market value of the property being retained. The rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate securing the loans. Also, the present market value of the property being released will be shown under the comments section of the same appraisal report. Information regarding sales of comparable properties used in arriving at the present market value of the property being released will be shown in the comments section or on an attached sheet.

(1) *Stationary units.* If timber or minerals, including sand, gravel, and stone which appear to be worth more than $2,000 are to be sold on the basis of the timber stand or the mineral deposit rather than the units to be removed, the borrower will be encouraged to obtain the assistance of a qualified technician other than an FmHA employee to provide advice on the quality or value of the timber or minerals, and the manner in which they should be sold. Generally, assistance can be obtained from State or Federal employees who are located in the area, such as U.S. Department of Agriculture Forest Service employees.

(2) *Units removed.* When timber or minerals including sand, gravel, or stone, are to be sold on the basis of the units to be removed, or when an easement or a right-of-way is to be sold or granted, the employee authorized to make the appraisal may insert the date, and initial a notation on the existing appraisal report instead of making a new appraisal report. The notation should show (i) the unit value of timber or minerals, or the value of the easement or right-of-way, based on the consideration being paid for similar items in the area; and (ii) the manner in which the remaining property will be affected. If the market value of the remaining property is significantly decreased, a market value appraisal of the remaining property usually will be required.

(e) *Authority of the County Supervisor and District Director*—(1) *General.* County Supervisors and District Directors may approve transactions for purposes authorized in this subpart when the FmHA indebtedness after the transaction does not exceed their approval authority for the type of loan or a combination of types of loans as outlined in Exhibit C of FmHA Instruction 1901–A (available in any FmHA Office). When more than one type of loan is involved in the transaction, the loan approval authority of County Supervisors and District Directors will be the highest combination amount authorized in Exhibit C of FmHA Instruction 1901–A for any of the loan types involved. State Directors are authorized to approve any transaction, consistent with this subpart, which exceeds the approval authority of County Supervisors and District Directors.

(2) *Forest products.* County Supervisors and District Directors can approve most applications for consent or release involving the harvest or sale of forest products. In the case of 3 percent loans for forestry purposes, applications for consent or release will be forwarded to the State Director for approval if:

(i) The harvest or sale is not in accordance with strict provisions of the initially approval forestry plan,

(ii) Future repayments on the 3 percent advance are scheduled on any basis other than equal annual installments,

(iii) There is a lien on the forest land prior to the lien of the FmHA, or

(iv) There is a delinquency on any FmHA real estate loan.

(3) *Terms of o sale.* County Supervisors and District Directors may approve sales made on the following terms.

(i) Sale of a portion of the security for its market value on the following terms:

(A) For SFH loans, refer to § 1965.110 of Subpart C of Part 1965 of this chapter.

(B) For all other loans, not less than 10 percent (of the purchase price) down and payments not to exceed ten annual installments of principal plus interest at not less than the current rate being charged on regular FO loans plus 1 percent or the rate on the borrower's note(s), whichever is greater. Payments may be in equal or unequal installments with a balloon final installment. For farmer program loans approved after December 23, 1985, the sale of mining products gravel, oil, gas, coal, or other minerals will be considered a sale of security *only* if the rights to such products were specifically included as a part of the appraised value of the real estate securing the loan; if the rights were not included in the appraisal, then FmHA has no lien on the rights to such products located under the real estate.

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(ii) In each case it must be determined that: (A) The government's security rights, including the right to foreclose on either the portion being sold or retained, are not impaired,

(B) The down payment and any subsequent payments are applied to the FmHA debt(s), prior lien(s), or otherwise used as authorized in this section under paragraph (f) of this section, and

(C) If applicable, the requirements of Subpart G of Part 1940 of this chapter must be met.

(iii) In each case the following conditions must be met: (A) Any amount to be paid FmHA from the down payment and subsequent payments must be assigned to FmHA,

(B) The property sold will not be released prior to either full payment of the borrower's account or receipt of full amount of sale proceeds with proper application or release of the proceeds, and

(C) The borrower must agree in writing that the sale proceeds will not affect the borrower's primary and continued obligation for making payments under terms of the note or any other agreements approved by FmHA.

(f) *Use of proceeds.* County Supervisors or District Directors may approve transactions if the proceeds will be used in one of the following ways.

(1) Proceeds may be applied on liens in order of priority. Written consent of any prior or junior lienholder will be obtained by the borrower and delivered to the FmHA if any proceeds are not to be applied in accordance with lien priorities.

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay from personal funds or cannot have the purchaser pay. The costs may, for example, include real estate taxes which must be paid to consummate the transaction; costs of title examination, surveys, abstracts, title insurance, reasonable attorney's fees; reasonable attorney's fees and court costs in condemnation cases; costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber when the necessary appraisal cannot be obtained without costs; real estate broker's commissions; judgment liens and additional income tax which the borrower is required to pay for the year because of the capital gain or other payments from the transaction. The amount of the estimated tax on the particular transaction will be deposited in an interest bearing or supervised bank account, and any deposited funds not needed to pay the borrower's adjusted tax liability for the year of the transaction will be applied in a manner set out in this paragraph (f). In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of a portion of the land from the mortgage, the borrower must pay any costs for postage and insurance of the note while in transit. The County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the costs. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual costs furnished by the payee.

(3) Proceeds may be used for development of land owned by the borrower or for enlargement, if development or enlargement is necessary to improve the borrower's debt-payment ability and to place the borrower's operation on a sound basis, or to otherwise further the objectives of the loan. The use of proceeds for these purposes will not conflict with the loan purposes, restrictions or requirements of the type loan(s) involved. Any proposed development work will be in accordance with Subpart A of Part 1924 of this chapter. Funds to be used for development or enlargement will be handled under Subpart A of Part 1902 of this chapter.

(4) When FmHA loans secured by a lien on real estate will be adequately secured after a transaction affecting the real estate takes place, proceeds may, with the consent of the State Director and other lienholders on the real estate, be used as follows:

(i) Applied to delinquent or unmatured FmHA loan installments when the borrower is otherwise unable to meet the installments.

(ii) For other than SFH loans, applied on debts owed creditors other than FmHA to the extent needed to establish a basis for continuation of the other creditor's account.

(iii) Develop land not owned by the borrower which is essential to the borrower's operation in an amount not to exceed $10,000, provided: the improvements are needed to improve the borrower's repayment ability and the borrower has tenure arrangements which justify the use of the proceeds on the land not owned by the borrower. Development work performed will be in accordance with Subpart A of Part 1924 of this chapter. Funds will be handled under Subpart A of Part 1902 of this chapter.

(5) When liquidation action is pending in accordance with § 1965.26 of this subpart, the County Supervisor or District Director is authorized to approve transactions only when all the proceeds (other than costs authorized in paragraph (f)(2) of this section) will be applied to the liens against the security in the order of their priority.

(g) *Authority of the State Director.* The State Director is authorized to approve transactions that exceed the approval authority granted in paragraph (e) of this section to the County Supervisor and District Director, or that involve an easement or right-of-way granted or conveyed without monetary compensation or for a token consideration. When approving these transactions, the State Director must determine that the requirements of paragraph (b) of this section are met.

(h) *Processing.* FmHA's consent will be given by approving a completed Form FmHA 465–1 if the transaction meets the conditions of paragraph (b) of this section. Also, when requested, FmHA will give a written partial release on Form FmHA 460–1, "Partial Release," or other form approved by OGC. A formal release may not be delivered for 15 days after the payment is received unless payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notification to the requesting party that the release is available. When an insured FO mortgage is held by the lender, the holder's consent will be obtained only if a written partial release or other written servicing document is requested by the borrower. When the approval of a transaction by the State Director is required, or when the County Supervisor or District Director desires advice in connection with approval of a transaction, the borrower's case folder, Form FmHA 465–1, and any other information pertinent to the transaction will be sent to the State Office.

(i) *Liquidation.* If FmHA is unable to approve a partial sale, the partial sale cannot be used as the basis for liquidation in the following circumstances:

(1) The spouse or children of the borrower become the owner of the property.

(2) The sale results from a divorce or legal separation and the spouse of the borrower becomes the owner of the property.

(3) An intervivos trust becomes the owner of the property so long as the borrower is a beneficiary of the trust

and there is no change in occupancy of the property.

§ 1965.14 Subordination of FmHA real estate mortgages to easements to the U.S. Fish and Wildlife Service, (formerly the Bureau of Sport Fisheries and Wildlife.)

Exhibit A (available in any FmHA office) of this subpart, "Memorandum of Understanding between Bureau of Sport Fisheries and Wildlife (now the U.S. Fish and Wildlife Service) and the Farmers Home Administration," outlines the procedure to follow in processing a subordination of an FmHA mortgage on wetlands on which the Bureau of Sport Fisheries and Wildlife requests an easement for waterfowl habitats. The County Supervisor will handle the request in accordance with the steps outlined in Exhibit A and applicable processing portions of § 1965.12 of this subpart.

§ 1965.15 Subordination of FmHA's lien to the Commodity Credit Corporation's (CCC) security interest taken for loans made for farm storage and drying equipment.

The CCC makes loans under its Farm Storage and Drying Equipment Loan Program for the purchase, construction, erection, remodeling, or installment of either farm storage or drying equipment or both and requires that any loan at the discretion of the approving committee, be secured by a lien on the real estate. When the CCC proposes to make a loan to an FmHA borrower and requests a subordination of the FmHA real estate lien, the request will be handled on an individual case basis under § 1965.12 of this subpart. A borrower's request for the FmHA's consent to a severance agreement or other similar instrument for an item or items to be acquired with a CCC loan will be handled under § 1965.19 of this subpart.

§ 1965.16 Consent to junior liens.

As a general policy, FmHA borrowers will be discouraged from giving other creditors junior liens on real estate securing an FmHA loan. (For Sections 502 and 504 loans, see § 1965.111 of Subpart C of Part 1965 of this chapter).

(a) *Processing request.* When consent to a junior lien is requested by a borrower, the County Supervisor may consent by executing Form FmHA 465–1 or other form approved by OGC for use in the state provided:

(1) The terms of the junior lien debt are such that repayment is not likely to jeopardize payment of the FmHA loan;

(2) Operating plans made with the junior lienholder are consistent with plans made with FmHA;

(3) Total debt against the security will not exceed its market value; and

(4) The junior lienholder agrees in writing not to foreclose the mortgage before a discussion with the County Supervisor and after giving a reasonable specified period of written notice to FmHA.

(b) *Consent not requested or granted.* When a junior lien is placed on any property without FmHA consent and consent cannot be granted under this section, FmHA may continue with the loan as long as the borrower pays FmHA loans as agreed, maintains the security, and meets all other conditions of the loan. The existence of a junior lien cannot be treated as a default. The County Supervisor will continue to service the loan to protect the Government's security interest.

§ 1965.17 Lease of security.

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with § 1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification, to the National Office.

(b) *Liquidation.* No action to initiate liquidation based on the lease will be taken unless the borrower:

(1) Enters into a lease for a term of more than 3 years; or

(2) Enters into a lease for any term containing an option to purchase.

(c) *NP loan.* If an NP loan is involved, § 1965.34 of this subpart applies.

(d) *Mineral leases.* When a borrower requests consent to lease the mineral rights to security, the County Supervisor may consent provided the proposed use of the leased rights will not result in the Government's security interest being adversely affected. If applicable, the requirements of Subpart G of Part 1940 of this chapter must be met. A borrower does not need FmHA's consent to lease the mineral rights securing a Farmer Program loan approved after December 23, 1985, unless the oil, gas or other minerals were included on FmHA's real estate appraisal. If FmHA consent is needed and consent is given, lease payments can be used for prospective payments on FmHA loans. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will be assigned to FmHA and will be used to repair the damage or used as authorized in § 1965.13(f) of this Subpart. Form FmHA 465–1 will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on the Government security. Assignment of income will be taken by use of Form FmHA 443–16, "Assignment of Income from Real Estate Security," or other form approved by OGC which is necessary to comply with State law.

§ 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.

(a) *General.* Agriculture Stabilization and Conservation Service (ASCS) regulations, pursuant to approved legislation, permit the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: (1) Sale, (2) lease, or (3) transfer by the owner to another farm owned or controlled by the owner. These regulations require, among other things, that no allotment be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is FmHA's policy to approve the transfer of any crop allotments permitted by the ASCS regulations if the conditions and requirements of this subpart can be met. FmHA personnel should familiarize themselves with the States ASCS policies and requirements concerning the sale, lease, or transfer of allotments to assure compliance with established FmHA policies and servicing of security.

(b) *Authorization.* County Supervisors are authorized to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA 465–1. County Supervisors are also authorized to execute the lienholder or mortgagee agreement on appropriate ASCS forms provided by ASCS for those cases in which a transfer is approved.

(c) *Transfer by sale.* Crop allotments enhance the value of a farm mortgaged to the FmHA and constitute security for the FmHA loan. Accordingly, when a borrower whose farm is mortgaged to the FmHA inquires about the sale of any of the allotted acres or requests the FmHA to sign the required lienholder or mortgagee agreement, the request will be treated the same as for a sale of a

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portion of the security and approval of the sale can be granted only in accordance with the applicable conditions and requirements of § 1965.13 of this subpart. The sale proceeds may be used as authorized in § 1965.13(f) of this subpart.

(d) *Transfer of allotment by lease.* The County Supervisor has the authority to approve a lease of all or a portion of an allotment for a 1 year period, provided the lease or its terms will not adversely affect the repayment of the loan; leasing is not an alternative to or means of delaying liquidation; and the lease and use of proceeds will further the objectives of the loan. If a 1 year lease is approved, the lease proceeds may be used as farm income as outlined in § 1962.17(b) of Subpart A of Part 1962 of this chapter. Leases for a period of more than 1 year will be granted only with the concurrence of the District Director. When a lease is for more than 1 year, an assignment of the rental proceeds should be obtained.

(e) *Transfer of allotment by owner to other land owned or controlled by the owner.* A transfer by an owner to other land owned or controlled by the owner is normally interpreted by the ASCS as a permanent transfer and can be avoided only by stipulating in the mortgage approval that the transfer is to be considered as a lease for the appropriate number of years. This type of transfer will be approved only as a lease under conditions in paragraph (d) of this section to assure that the crop allotment on the security is not adversely affected.

§ 1965.19 Severance agreement.

Form FmHA 440–26, "Consent and Subordination Agreement," will be completed when a borrower requests FmHA's consent to a severance agreement, or other instrument of similar effect, so that items to be acquired by the borrower through other credit and subject to a chattel lien will not become a part of the real estate securing the FmHA debt. Some examples of items which may be acquired subject to a chattel lien are silos, storage bins, bulk milk tanks, irrigation or income producing facilities, non-farm enterprise facilities, and recreational equipment. County Supervisors are authorized to give FmHA consent by executing Form FmHA 440–26 and any necessary severance agreements, provided that the following determinations are made:

(a) The financing arrangements are in the best interest of the Government and the borrower.

(b) The transaction will not adversely affect FmHA's security position and will be within the borrower's debt-paying ability, and

(c) The facility does not exceed the borrower's needs, is modest in cost and design; and is otherwise in line with FmHA financing policies. OGC will be requested to approve any severance agreement submitted by a borrower that is of a type not previously approved for use in the State and, when necessary, to issue closing instructions. The State Director may request the OGC to prepare a severance agreement instrument for use in the State.

§ 1965.20 [Reserved]

§ 1965.21 Assignment and release of Soil Conservation or similar program payments.

The County Supervisor may take an assignment on income to be received under USDA Programs or similar contracts to protect the financial interest of the Government or to facilitate loan servicing. The assignments of all or a portion of the income from the assignment may be released to the borrower by the County Supervisor when not to the financial detriment of the Government, and when payments due on all FmHA loans have been made from other income or the assigned income is needed for family living and farm operating expenses. This income will *not* be shown on Form FmHA 1962–1, "Agreement for the Use of Proceeds/Release of Chattel Security." The receipt of these proceeds and their planned use will be clearly identified on the current farm pan.

§ 1965.22 Deceased borrower.

Deceased borrower cases will be handled under § 1962.46 of Subpart A of Part 1962 of this chapter.

§ 1965.23 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled under § 1962.47 of Subpart A of Part 1962 of this chapter. For SFH loans, refer to Subpart C of Part 1965 of this chapter.

§ 1965.24 Servicing note-only cases.

Each loan made on a note-only basis without real estate security will be serviced in a manner consistent with the best interests of the FmHA.

(a) *Sale of real property on which improvements were made with note-only FmHA funds.* Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, is possible. If collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if the assumption is determined to be in the FmHA's best financial interest. If collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Part 1864 of this chapter (FmHA Instruction 456.1) if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director with the advice of OGC and the U.S. Attorney, will authorize an employee to attend the sale and if appropriate, enter a bid on behalf of the Government under Subpart A of Part 1955 of this chapter.

(b) *Assumption of note-only when real property securing another FmHA loan is involved.* When a borrower has an FmHA loan secured by real estate and another FmHA loan evidenced only by a note and the real estate is to be transferred and the entire secured real estate debt is to be assumed, all or a part of the unsecured note up to the present market value of the property in excess of existing liens must also be assumed.

§ 1965.25 Release of FmHA mortgage without monetary consideration on basis of additional security because of mutual mistake, non-existence of evidence of indebtedness, or valueless liens.

(a) *Additional real estate, chattel, or miscellaneous security.* Real estate, chattels, or miscellaneous items which were taken as additional security for a loan secured by real estate may be released by the State Director without consideration before the loan is paid in full, if the market value of the remaining security for the loan is clearly adequate to secure the unpaid balance of the loan. For any loans made for operating purposes, a real estate lien may be released only if the real estate was considered "additional" security when the loan was made. For the purposes of this paragraph, real estate securing any loan made for real estate purposes is not considered "additional security." Additional security for an SFH non-farm loan is real estate in addition to the tract on which the dwelling is located. Before a release can be granted, there must be reasonable assurance that orderly payments can be made on the FmHA indebtedness, and;

(1) The release is needed in order for FmHA or other creditors to finance the borrower's operations; or

(2) The purpose for which the loan was made would be facilitated; or

(3) The borrower's ability to repay the loan will be improved.

(b) *Release of real estate from mortgage because of mutual mistake.* Land or buildings included in the mortgage through mutual mistake, when substantiated by the facts of the situation, may be released from the mortgage by the State Director. The release is contingent on a determination of the State Director, with the advice of the OGC, that a mutual error existed at the time such property was included in the Government's mortgage.

(c) *No evidence of indebtedness.* The FmHA mortgage may be released by the County Supervisor in situations where there is no evidence of an existing indebtedness secured by the mortgage in the records of the FmHA County, State, and Finance Offices.

(d) *Release of valueless liens.* State Directors are authorized to release FmHA mortgages or other liens which have no present or prospective value or when their enforcement would likely be ineffectual or uneconomical. This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

(1) *Appraisal report.* A market value appraisal report on the security prepared by an FmHA employee authorized to appraise under Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1).

(2) *Lienholders.* The names of the holders of prior liens on the property, the amount secured by each lien which is prior to the FmHA, the amount of taxes or assessments, and other items which might constitute a prior claim. This information will be recorded in the running case record of the borrower's County Office case folder and submitted to the State Director for review.

§ 1965.26 Liquidation action.

(a) *Voluntary liquidation*—(1) *General.* When a borrower contacts FmHA and asks about voluntarily liquidating security, the borrower will be told that liquidation can be accomplished by:

(i) Selling the security under paragraph (f) of this section.

(ii) Transferring the security under § 1965.27 of this subpart.

(iii) Conveying all security to FmHA as outlined in Subpart A of Part 1955 of this chapter.

(iv) Refinancing the FmHA debt with another lender.

The County Supervisor will explain the provisions of these regulations to the borrower.

(2) *Sale or Transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized FmHA employee in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1) and placed in the borrower's case file.

(b) *Involuntary liquidation.* When the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that for other reasons further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account(s) will be accomplished as expeditiously as possible. In former program cases, borrowers must receive Forms FmHA 1924–14, FmHA 1924–25, and FmHA 1924–28, and *any appeal must be concluded before any adverse actions can be taken.* The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate.

(1) *General.* After the borrower is notified that FmHA wants the account liquidated and if the borrower is willing to voluntarily liquidate the account immediately by one of the methods indicated in paragraph (a)(1) of this section, the borrower is allowed 120 days to accomplish such action after the borrower has indicated the action to be taken on Form FmHA 1924–28 and has returned the form to the County Supervisor. If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine the present market value. The appraisal will be completed by an authorized FmHA employee in accordance with subpart A of 1809 of this chapter (FmHA Instruction 422.1) and placed in the borrower's case file.

(2) *Problem case report.* If the borrower is unwilling to voluntarily liquidate or fails to carry out a voluntary liquidation within the time set out in paragraph (b)(1) of this section, the County Supervisor will complete Form FmHA 1955–2, "Report on Real Estate Problem Case," and submit it according to § 1955.15 of Subpart A of Part 1955 of this chapter.

(3) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of section 1955.15 of Subpart A of Part 1955 of this chapter.

(4) *Voluntary liquidation after acceleration.* Granting time for voluntary liquidation after acceleration is not authorized for farmer program loans.

(c) *Multiple loans and loans secured by both real estate and chattels.* (1) When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purpose of other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under Subpart A of Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattel and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1965.27 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the same time the borrower is sent Form FmHA 1924–25.

(2) SFH loans on non-farm tracts should not be routinely liquidated just because the borrower could not be successful in the farming operation. When a borrower is indebted for both farmer program loans and an SFH loan for a dwelling on a non-farm tract, consideration may be given to continuing with the SFH loan when the farmer program loans are liquidated, provided the borrower:

(i) Has acted in good faith;

(ii) Has satisfactorily accounted for all security;

(iii) Has paid in accordance with ability;

(iv) Voluntarily liquidates all security for the loans other than the SFH non-farm security;

(v) Has repayment ability and agrees to continue to pay on the SFH loan;

(vi) Continues to comply with conditions of the SFH loan; and

(vii) Will further agree to compromise or adjust the FP debt on the following terms;

(A) When the market value of the dwelling is greater than the amount of the SFH debt, the borrower will pay an amount equal to the difference between balance owed on the SFH loan and market value of the retained property at the time and any additional amount the borrower is able to pay; or

(B) When the market value of the dwelling is less than the amount of the SFH debt, the borrower will pay any amount the borrower is able to pay.

(d) *Operation of the security.* A borrower with farmer program loan(s) who without FmHA consent does not operate the farm or recreational facility is violating agreements with FmHA.

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After complying with the requirements of § 1965.28(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated in accordance with § 1955.15(d)(2) of Subpart A of Part 1955 of this chapter, based on the failure to operate.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

(1) Authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest,

(2) The borrower can reasonably be expected to meet the accelerated payments, and

(3) The borrower will continue to comply with other requirements of the loans and security instruments.

(4) When an understanding is reached with the borrower, Form FmHA 1965–11, "Accelerated Repayment Agreement," will be prepared and executed in accordance with the Forms Manual Insert (FMI) for each note accelerated. Accounts rescheduled under Form FmHA 1965–11 will be reclassified as NP loans. The balance of the debt will be scheduled for repayment in annual or monthly amortized installments. If the borrower has monthly income, monthly payments will be scheduled. If annual payments are scheduled, the first installment may be less than an equal amortized installment if it is due less than a full year after the date the agreement is executed and the borrower will not be able to pay the first full amortized installment. If the borrower fails to meet any installment when due as provided in the agreement, foreclosure action will be initiated. Rates and terms authorized are:

(i) *Other than SFH loans.* (A) For real estate purpose loans secured by real estate when the remaining repayment period exceeds 10 years, the term generally will not exceed 10 years. In justified cases, the term may be up to 15 years. In no case may the term exceed the final due date of the note. An amortization factor for 20 to 25 years may be used, with a balloon installment due on the final due date. The interest rate will be that in effect for regular FO loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(B) For loans for operating purposes secured by real estate when the remaining repayment period exceeds 2 years, the term may not exceed 5 years and in no case may the term exceed the final due date of the note. The interest rate will be that in effect for regular OL loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(C) For loans for either real estate or operating purposes when the remaining repayment period is less than 10 years or 2 years, respectively, the State Director may authorize a shorter term. For loans made for a combination of loan purposes, the State Director may authorize an accelerated repayment term of up to 10 years, not to exceed the final due date of the note. The interest rate will be as specified in (A) or (B) of this paragraph.

(ii) *Single-family housing (SFH) loans.* For SFH loans, the term may not exceed ten years and the interest rate will be the SFH-ineligible rate in effect on the date the agreement is executed.

(f) *Cash sales.* Before any cash sale, farmer program borrowers must be sent Form FmHA 1924–14. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less than the present market value of the property and to release the borrower(s) from liability and release the Government's liens, provided:

(1) A substantial recovery can be made on the FmHA secured indebtedness based on the recent appraisal report required by paragraph (a)(2) of this section.

(2) All the proceeds are applied on the mortgage debts in accordance with their respective priorities except authorized costs as specified in § 1965.13(f)(2) of this subpart.

(3) Any applicable requirements of Subpart G of Part 1940 of this chapter must be met.

(4) The FmHA liens are not released by the County Supervisor until the appropriate sale proceeds for application on the Government's claim are received. The release will be made on forms approved or prepared by OGC.

(5) When the debt is not paid in full and a deficiency judgment is not to be obtained, a release of liability of the borrower can be processed.

(i) The County Committee has recommended release of liability with the following comment on the County Committee Certification:

In our opinion (*Name of Borrower(s) and any co-signer*) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the convenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion of the transaction.

(ii) When the borrower's remaining outstanding FmHA debt after a cash sale exceeds $25,000, the Administrator must approve the release of liability. The case will be sent through the State Office to the National Office.

(6) If a release from liability cannot be granted, the case will be settled under the provisions of Part 1864 of this chapter (FmHA Instruction 456.1).

§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the FmHA to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farmer program loan borrowers must be sent Form FmHA 1924–14 within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FmHA accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §§ 1965.13 or 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FmHA loan(s) in full. If an NP loan is involved, § 1965.34 of this subpart also applies. When real estate security, including water, access, development or other rights, is to be sold and the mortgage requires FmHA consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart, or will be handled in accordance with § 1965.27(g) of this subpart.

(a) *Authority.* County Supervisors, District Directors, and State Directors are authorized to approve initial and subsequent transfers of real estate security to eligible or ineligible transferees, to approve assumptions in accordance with the respective loan approval authorities in Exhibit C of FmHA Instruction 1901–A (available in any FmHA office) and to release borrowers and co-signers from liability

when applicable, in accordance with paragraph (f) of this section. When a transfer is not within the County Supervisor or District Director's approval authority, the docket and the transferor's case file will be sent to the District Director or State Director, as appropriate, for approval or disapproval. State Directors may approve transfers to eligible transferees not to exceed the maximum statutory loan limits for the total FmHA indebtedness for the loan types involved including the loan(s) being transferred. State Directors may approve transfers to ineligible transferees regardless of the amount of the transfer without the FmHA National Office approval.

(b) *General policies.* The following general policies will be applicable when an FmHA borrower transfers, or proposes to transfer, real estate which is security for an FmHA loan(s). The loan account(s) will be assumed by use of Form FmHA 1965–13, "Assumption Agreement for Farmer Program Loans," or Form FmHA 1965–15, "Assumption Agreement (Single Family) Housing Loans," for SFH loans.

(1) *Agreement.* Form FmHA 465–5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferees. This agreement will not be completed for farmer program loan borrowers until the borrower has received Form FmHA 1924–14.

(2) *Assignment.* If an insured loan is involved, the Finance Office will have the note assigned to the insurance fund when the assumption agreement changes the terms of the note.

(3) *Amount assumed.* All transfers will be based on present market value. When the total secured FmHA debt(s) exceeds the present market value, the transferee will assume an amount of the principal and interest equal to the present market value as determined under § 1965.26(a)(2) of this subpart, less prior liens and any authorized costs. Otherwise, the transferee will assume the total FmHA secured debt(s). The unpaid principal balance and accrued interest will be shown in Table I of Form FmHA 1965–13 and the accrued interest will be computed from Form FmHA 451–26, "Transaction Record," or obtained from the monthly payment account Status Report. The transferee will be informed of the amount of the principal and interest owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period, and any accounts that must be paid to bring any monthly payments up to date. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under § 1951.44 of Subpart A of Part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be assumed on ineligible terms.

(4) *Payment of costs.* The payment of customary incidental costs appropriate to transfer of real estate will be the responsibility of the transferor and transferee. Costs may, for example, include real estate taxes, title examination, title insurance, abstracts, surveys, reasonable attorney's fees, real estate brokers fees and junior liens. State Directors may, in individual cases, approve the payment of transferor's costs by the transferee which are reasonable in amount and which the transferor cannot pay from personal funds provided:

(i) Cash equity due the transferor (if any) is applied first to payment of costs and the transferor will not be receiving any cash payment above costs.

(ii) Payment of any junior liens by the transferee does not exceed $5,000.

(iii) Real estate commission does not exceed the customary rate for the type of property for the area.

(iv) The transferee's personal funds equal to the transferee's costs and transferor's equity (if any) will be held in escrow by an FmHA designated closing agent for disbursal at closing of the transfer.

(v) The transferee will assume the entire FmHA debt less costs and less equity, if any.

(vi) The payment of the costs by the transferee is advantageous to the government. The probability of foreclosure, voluntary conveyance, maintenance and disposal of the security will be considered in making the determination.

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA loan servicing regulations. Except as noted below, Forms FmHA 450–10, "Advice of Borrower's Change of Address or Name," FmHA 465–5, and FmHA 1965–13 must be prepared and distributed in accordance with the FMI in each of the following situations.

(i) EM actual loss loans may be assumed on the same terms by those who were actually involved in the operation at time of the loss and meet one of the following requirements:

(A) If an individual received the actual loss loan, the transferee must be either an individual who is an immediate family member of the borrower or an entity which is made up of only immediate family members of the borrower. Such a transferee can assume the entire amount of the actual loss loan on the same terms.

(B) If a partnership received the actual loss loan, the transferee must be either a partner who was a partner in the partnership at the time the actual loss loan was made or an entity which is made up of only those who were partners in the partnership at the time the actual loss loan was made. Such transferees can assume the entire amount of the actual loss loan on the same terms.

(C) If a corporation/cooperative received the actual loss loan, the transferee must be either a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made or an entity which is made up of only stockholders/members who were stockholders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

(ii) A deceased borrower's spouse, other relative or joint tenant who did not sign the note but who acquires title to the property will be allowed to assume the loan on the same terms. Form FmHA 465–5 will not be completed.

(iii) When one of the joint individual borrowers withdraws from the operation and conveys his or her interest in the security to the remaining borrower who will repay the total indebtedness, an assumption agreement is not required. Partners in a partnership, stockholders in a corporation, or members of a cooperative who signed the note are not joint borrowers, but only co-signers; therefore, this paragraph does not apply to them. The previous joint owner will be released from liability for the indebtedness by completing Parts 1 and

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3 of Form FmHA 1965–8, "Release from Personal Liability," provided:

(A) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(B) The value of the security property is at least equal to the debt;

(C) The withdrawing party's interest in the security property is conveyed to the person with whom the loan will be continued; and

(D) The person with whom the loan will be continued has adequate repayment ability.

(iv) A family member of a borrower who wants to assume a debt with the existing borrower(s) may do so on the same terms. After the transfer, the assuming family member may own the property jointly with the existing borrower(s) or subject to a life estate of the existing borrower.

(v) If there is only one stockholder/member/partner of a corporation/cooperative/partnership who is personally liable on the note and that stockholder/member/partner withdraws from the operation or dies, all of the remaining stockholders/members/partners will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA 465–5 does not have to be processed unless title to the real estate is transferred.

(vi) If a stockholder/member/partner or a corporation/cooperative/partnership buys out the shares of the other stockholders/members/partners and continues to operate the farm, and if the remaining stockholder/member/partner is not personally liable on the note, that stockholder/member/partner will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA 465–5 does not have to be processed unless title to the real estate is transferred.

(vii) New stockholders/members/partners entering the corporation/cooperative/partnership will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA 465–5 does not have to be processed unless title to the real estate is transferred.

(6) *Loan type.* The type(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as NP.

(7) *Transfer of a portion of the security.* Generally, title to all FmHA real estate security, including any water, access, development or other rights, must be conveyed to the transferee not later than the date of closing of the transfer. However, a transfer of a portion of the FmHA real estate security with an assumption of the *total* indebtedness may be approved, provided:

(i) The portion of the FmHA security transferred has a present market value at least equal to the total indebtedness owed by the borrower or such indebtedness is reduced by a cash payment to the present market value of the property;

(ii) The transaction is advantageous to the Government; and

(iii) In cases of SFH loans, the portion of the property improved with SFH funds is conveyed to the person assuming the SFH loan.

(iv) The security retained by the transferor will be released from the Government's lien. The transferor will be released from liability if the conditions of paragraph (f) of this section are met.

(8) *Partial transfer and assumption.* When a request is made by a borrower to transfer a portion of the real estate security the transferee must assume an amount which meet the requirements of paragraph (b)(3) of this section. The considerations for approval will be as set forth in § 1965.13(b) of this subpart. Whole notes must be assumed; notes cannot be split. The portion of the security transferred will be released from the transferor's mortgage by partial release. When the assumption is by an eligible transferee, or by an ineligible transferee on terms of 5 years or less, the transferor may be released of liability on the loans assumed. The transferor will not be released of liability when the transferee is ineligible and terms exceed 5 years. Before approving a partial transfer and assumption it must be determined that the transaction is necessary for the borrower to establish a debt structure compatible with repayment ability, management ability or other limiting factor such as health, labor or markets available.

(9) *Multiple sales and assumptions.* When a request is made by a borrower to transfer the real estate security as parcels to two or more transferees with each assuming a portion of the debt, the County Supervisor may send the proposed action to the State Director for consideration if the County Supervisor recommends that the transaction would be advantageous to the Government. The total debt owed on all outstanding notes must be assumed by the transferees even though a portion of the security may be retained by the transferor. The County Supervisor will submit to the State Director the complete factual information concerning the transaction, including appraisal reports showing the present market value of each portion to be transferred; value of the total unit before subdivision; the amount of indebtedness to be assumed by each transferee; and the cases file with other pertinent information outlining the reasons for the proposed actions. If approved by the State Director, new security instruments will be required for each transferee at closing and any security retained by the transferor will be released from the Government lien. This policy is to permit transfer to two or more transferees when the transferor owes more than one note evidencing indebtedness or the indebtedness on one note is to be divided between transferees. OGC guidance will be requested in these case to ensure enforceable liens are obtained.

(10) *Dual security.* When the account(s) is secured by both chattels and real estate, all the chattel security must be transferred, sold or liquidated by the time of the transfer of real estate, except that in cases of EM, EE, or SL security, the real estate security may be transferred without transfer or liquidation of the chattel security upon prior approval of the National Office.

(11) *Consent of other lienholders.* Written consent to a proposed transfer and assumption must be obtained if required by any other lienholder(s).

(12) *Junior liens.* When the full amount of the FmHA debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA liens being assumed unless the State Director determines that the liens, judgments, or claims will not adversely affect the Government's security interests and that the transferee's ability to pay the FmHA debt will not be impaired. When less than the full amount of the FmHA debt is being assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA loans being assumed.

(13) *Loans.* A loan for which the transferee is eligible may be made in connection with a transfer, subject to the policies and procedures governing the type of loan being made. When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay for the equity in the property being transferred. When real estate security for an SFH loan is transferred to a person eligible under Subpart A of Part 1944 of this chapter for an SFH loan to purchase the real estate, SFH loan funds may be used to pay for the equity in the property being transferred other than income-producing land or buildings. In lieu of a subsequent loan of the kind involved, the Government's lien may be subordinated to enable the transferor to take a first mortgage, or permit another lender to take a first mortgage, in return for furnishing the funds needed in connection with the transfer. In these cases, the subordination will be processed in accordance with the applicable provisions of § 1965.12 of this subpart. For other than SFH loans, the transferor may convey title to the property by warranty deed or by purchase contract or similar instrument which meets the conditions of § 1943.16 (a)(3) of Subpart A of Part 1943 of this chapter. Prior lienholder's agreements will be obtained in accordance with § 1807.2 (f)(5) of Part 1807 of this chapter (paragraph II F 5 of FmHA Instruction 427.1). When necessary to settle a divorce action, a subsequent loan may be made, or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property provided the purchase of land is an authorized loan purpose or the subordination is in accordance with § 1965.12 of this subpart. (Also see § 1965.11(d) of this subpart.)

(14) *Payments.* When a payment is made to the transferor in connection with the transfer and assumption, and the full amount of the FmHA secured debt is not being assumed and other FmHA debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any payment be applied on the debts.

(15) *Down payment.* An eligible transferee who is financially able, will be required to make a downpayment on the FmHA secured debts. When a downpayment is required it will be collected at closing.

(16) *Date.* The effective date of the assumption will be the date on which Form FmHA 1965–13 is signed.

(17) *Nondiscrimination assurance.* When the property transferred will continue to be used for the same or a similar purpose, and the assistance was subject to the Civil Rights Act of 1964 and Subpart E of Part 1901 of this chapter which prohibits discrimination on the basis of race, color, national origin, handicap, age, religion, marital status, or sex in programs or activities receiving Federal financial assistance, the transferees must agree to comply with requirements of the statute and the regulation. The transferee will be required to sign a Form 400–4, "Assurance Agreement."

(18) *Recapture of subsidy.* Recapture of SFH subsidy in connection with assumption will be as provided in Subpart I of Part 1951 of this chapter.

(19) *County Committee.* The County Committee, except for SFH loans, must find that the transferee will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan. (See paragraph (g)(6) of this section.)

(20) *Environmental requirements.* Applicable provisions of Subpart G of Part 1940 of this chapter must be met.

(c) *Assumption of loans by eligible transferees*—(1) *Eligibility.* A loan may be assumed on eligible terms by an applicant (including an entity applicant) who meets all of the eligibility and loan purpose requirements for the type of loan being assumed or whose situation after the transfer of the real estate will satisfy the eligibility and loan purpose requirements. Eligibility and loan purpose requirements can be found in the loan making regulations applicable to the type of loan being assumed. (See paragraph (b)(5) of this section for a list of situations in which the debt can be assumed on the same terms as in the existing note.) Eligible applicants can assume loans so long as their FmHA principal and interest indebtedness after the assumption does not exceed the maximum loan limits for the type(s) of loan(s) involved. Loans may also be assumed on eligible terms under the following conditions:

(i) *SFH assumptions.* An applicant who is eligible for SFH assistance under Subpart A of Part 1944 of this chapter may assume a low-or-moderate, or an above-moderate income SFH loan. An above-moderate loan assumed by a low-or-moderate applicant will be reclassified and serviced as a low-or-moderate loan. Where a property securing an SFH loan is located in an area which has been redesignated from rural to nonrural, the loan may be transferred without regard to the nonrural designation.

(ii) *NP loan.* An NP loan may be assumed by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as "FO" or "SFH", as applicable. See § 1965.34 of this subpart.

(iii) *EE, SL and other type loans no longer being made.* EE, SL and other type loans no longer being made may be assumed in accordance with paragraph (d) of this section. The loan(s) will be serviced in accordance with Section 1965.34 of this subpart.

(iv) *EM actual loss loans.* See paragraph (b)(5)(i) of this section.

(v) *Other loan types currently being made*—(A) *Individual transferees.* If real estate security is transferred to an individual who meets all of the eligibility requirements and loan purpose requirements for the type of loan being assumed, the loan may be assumed on eligible terms. This applies to transfers of real estate from individual borrowers and from entity borrowers, including entities in which the transferee had an interest.

(B) *Entity transferees.* If real estate security is transferred to an entity which meets all of the eligibility requirements and loan purposes requirements for the type of loan being assumed, the loan may be assumed on eligible terms.

(C) *EM non-actual loss loans (if currently being made).* These loans can be assumed on eligible terms. The loan making regulation requirement that an applicant must have suffered an actual loss in order to be eligible for a non-actual loss loan does *not* apply, for the purposes of this paragraph. If EM non-actual loss loans are not currently being made, refer to (c)(1)(iii) of this section.

(2) *Rates and terms.* Except as provided in paragraph (b)(5) of this section and in this paragraph, all loans will be assumed by eligible applicants at the current interest rate in effect for the loan type involved on the date the assumption agreement is signed. The approval official will approve the assumption by executing and delivering a copy of Form FmHA 1940–1, "Request for Obligation of Funds," to the assuming party. Form FmHA 1965–22, "Information on Assumption on New Terms or Other Change of Terms," and Form FmHA 1965–23, "Supplemental Information on Assumption and/or Change of Terms," will be prepared and distributed according to the respective FMI's. The repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, EM—depends on loan purpose and SFH—33 years. An NP loan will be considered an FO or SFH loan as appropriate, if the applicant and the property meet the requirements of paragraph (c)(1) of this section. Above-moderate loans assumed by low-or moderate-income applicants will be assumed at the current low- or moderate-income SFH interest rate. (See Exhibit C to Subpart A of Part 1944 for income categories). See Subparts A of Parts 1941 and 1943 of this chapter for the definition of a limited resource applicant and an explanation of limited resource eligibility criteria; FO and OL loans may be assumed at the current

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rate in effect for limited resource loans if the applicant is a limited resource applicant.

(d) *Assumption of loans by ineligible transferees.* When a borrower sells or proposes to sell the real estate security to a person(s) or entity not eligible to assume the debt under paragraph (b)(5) or (c) of this section and the mortgage requires the Government's consent for the transaction, it will be the policy to permit assumption of the account by an ineligible transferee if it is in the best interest of FmHA. Otherwise, the account will be liquidated as provided for in § 1965.26 of this subpart except as outlined in paragraph (e) or (h) of this section. Types of loans for which there are no existing authorization or eligibility requirements in FmHA regulations may be assumed under the requirements and conditions of this paragraph (see also paragraph (c)(1)(iii) of this section). Forms FmHA 1965–22 and FmHA 1965–23 will be prepared and distributed according to the respective FMI's. If the approval official determines that it is in the best financial interest of FmHA to have the account assumed, the approval official may consent to the initial or subsequent assumption agreement provided that:

(1) *Down payment.* Each assuming party is required to make as large a down payment on the FmHA secured debt as the party is financially able to make under the circumstances. However, no SFH loan may be assumed by an ineligible applicant without at least a 10 percent down payment of the purchase price. No farmer program loan may be assumed without at least a 5 percent down payment of the purchase price.

(2) *Terms—Other than SFH.* The balance of the FmHA debt assumed will generally be scheduled for repayment over a period not to exceed 15 years with amortized annual installments. Form FmHA 1940–17, "Promissory Note," and Form FmHA 440–9, "Supplementary Payment Agreement," if appropriate, will be used in accordance with the provisions of the FMI. Interest on farmer program loans will be at the current rate being charged for regular FO loans, plus 1 percent, or at the rate of interest specified in the note(s) being assumed, whichever is greater. If it is determined that the property cannot be transferred on terms of 15 years or less because of conditions in the area, the State Director may authorize a balloon installment or a longer repayment term not to exceed 25 years. In the case of real estate loan transfers originally made on repayment terms of not more than 15 years, an extension of the repayment period, not to exceed a total of 25 years from the date of the transfer, may be authorized when the borrower, because of crop failure, a natural disaster, or economic condition beyond the borrower's control, is unable to meet the scheduled installment(s). An extension may be granted only if the County Committee and the State Director determine that the extended repayment period is necessary to prevent foreclosure action and that the Government's interest will not be adversely affected. In these cases, the unpaid balance owned may be reamortized over the remainder of the 25 year period, and the borrower will execute a replacement assumption agreement evidencing the debt.

(3) *Terms—SFH loans.* For SHF loans, the balance of the SFH debt assumed will be scheduled for repayment in not more than 10 years with amortized annual or monthly installments. The interest rate charged on the amount assumed will be the current SFH ineligible rate.

(4) *Payment.* The transferee must have the ability to pay the FmHA debt in accordance with the assumption agreement and the legal capacity to enter into the contract.

(5) *NP loan.* An NP loan may be assumed by an applicant on ineligible rates and terms if it is in the best interest of FmHA.

(6) *County Committee.* The County Committee, except for SFH loans, must find that the transferee will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security and carry out other obligations in connection with the loan. (See paragraph (g)(6) of this section.)

(7) *Condition.* The transfer must not adversely affect the FmHA program in the area.

(e) *Consent of FmHA not required to transfer.* When the FmHA mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the FmHA debt in accordance with paragraphs (c) or (d) of this section, the Government will not consent to the sale. However, the sale cannot be used as a reason for liquidation. In such cases involving SFH loans, the County Supervisor will advise the State Director of the sale. If the account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the original FmHA borrower, in the usual manner. In such cases involving farmer program loans, the borrower will be sent Form FmHA 1924–14.

(f) *Release of transferor from liability.* The borrower (and any cosigner for an SFH loan) may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Borrowers, however, will not be released from personal liability to the FmHA when real estate securing loans is transferred to an ineligible transferee under paragraph (d) of this section unless the debt assumed by the transferee is scheduled for repayment in not to exceed 5 years from the date of the Assumption Agreement. When the transferor's remaining outstanding FmHA debt after a transfer and assumption exceeds $25,000, the Administrator must approve the release of liability. Therefore, the case will be sent through the FmHA State Office to the FmHA National Office. When the total outstanding debt is not assumed and a farmer program borrower is not being released from liability, the borrower must be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). When a portion of the real estate is transferred and the total SFH debt is assumed, a release may be granted under paragraph (b)(7)(iii) of this section. When only that portion of the debt equal to the market value of the security is assumed and the borrower is to be released from liability the following conditions must be met:

(1) *Required certification.* (i) Certification by County Committee. The County Committee must determine that the facts in each case support signing a memorandum containing the following statement:

(*Name of transferor and any cosigner*) in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of their ability. Therefore, we recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security.

(ii) The official approving the transfer of SFH loans must also execute a memorandum containing the statement in paragraph (f)(1)(i) of this section.

(2) *Release.* For an SFH loan involving a cosigner, the transferor may be released from personal liability only if the cosigner also can be released (See § 1965.129 of Subpart C of this part).

(g) *Processing transfers and assumptions of indebtedness.* When the transfer is not within the County Supervisor's approval authority, the docket with the transferor's case file will be sent to the District Director or the State Office, as appropriate, for approval or disapproval.

(1) *Refund of unused funds, loan funds not advanced, transaction record.* Unexpended funds in the supervised bank account will be applied as a refund unless FO, SW, RL, or EM security is transferred to an eligible applicant and the funds are needed for completing planned development. Any obligations of or request for loan funds not yet advanced will be cancelled. Form FmHA 451–26, or the monthly payment account Status Report will be used to compute the unpaid balance due on the effective date of the transfer.

(2) *Preparation and distribution of transfer docket.* Loan docket processing and forms required will be the same as for an initial or subsequent loan of the type(s) involved.

(i) *Checking docket forms.* When the transfer docket forms, including those applicable forms, shown in Exhibit C (available in any FmHA office) of this subpart have been completed, the approval official will determine that the proposed transfer conforms to the applicable procedural requirements, each form is prepared correctly in accordance with the FMI or other appropriate instructions, and items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which the items appear.

(ii) *Information on the availability of other credit.* An eligible transferee must meet the "no credit elsewhere" requirements for the type of loan being assumed. The County Supervisor will record in the running case record the pertinent information concerning the negotiations made by an eligible transferee and the discussion by FmHA personnel with the applicant's creditors and other lenders. The investigation and availability of other credit for eligible transferees will be documented as required for the kind of loan being assumed. This must be sufficiently clear and adequate to establish that other credit is not available to pay the debt in full, which would make the transfer unnecessary. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain satisfactory credit elsewhere will be included in the loan docket.

(iii) *Transferor records.* The transferor's copies of notes, mortgages and other instruments in connection with the security are to be made available to the transferee.

(iv) *Distribution of transfer docket forms.* The necessary forms will be distributed in accordance with the appropriate loan processing regulation and the FMI for the form. See Exhibit C (available in any FmHA office) of this subpart which identifies the FmHA forms that will be used as appropriate.

(v) *Other transfer docket items when applicable.* Other transfer docket items may include a mortgage title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract or other instrument of ownership, and information on prior mortgage(s) and cosigner(s). When the County Supervisor is the approval official, in lieu of including the document evidencing ownership, he or she may include a statement in the docket indicating that the document has been seen and reviewed. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making regulation.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA 451–26 will be forwarded to the County Office. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account Status Report, the amount will be deducted from the total amount of principal and interest only when received in the form of currency and coin, treasury check, cashier's check, certified check, postal or bank money order, or bank draft (this figure will be based on the latest information available) before completing the assumption agreement and having it signed. The following will also be done:

(i) *Transaction record.* When the borrower has made a direct payment to the Finance Office and there is no record of the payment in the County Office, the account will be assumed on the basis of the latest record in the County Office. In those cases, the application of the direct payment will be reversed from the account and the assumption agreement will be processed in the Finance Office. The Finance Office will contact the County Supervisor to determine the disposition of the proceeds from the direct payment.

(ii) *Identification of payments.* For payment received on the date of transfer, Form FmHA 451–2, "Schedule of Remittances," will be prepared to show "Transfer in process for account owed by (borrower's name and case number), to be transferred to (name of borrower and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451–2 and the amount paid.

(iii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should, if possible, be collected at the time of transfer and remitted in the name of the transferee.

(4) *Farm and Home plans and financial statements.* When the transfer involves an ineligible transferee, Forms FmHA 431–3 or FmHA 431–2 will be used with Tables A and J completed in the same manner as for any other borrower and other tables and portions of the form will be completed only to the extent necessary to determine the debt paying ability of the transferee and to give sufficient information for completing Table J. Another plan of operation acceptable to FmHA may be used in lieu of Form FmHA 431–2. When an assumption will be of less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA 431–3 or FmHA 431–2 or other plan of operation acceptable to FmHA.

(5) *Appraisal report.* Forms FmHA 422–1 or FmHA 1922–8, as appropriate, will be obtained when the amount to be assumed is less than the full amount of the indebtedness, when required in connection with an initial or subsequent loan to be processed with the transfer, or when the loan approval official requests a current appraisal.

(6) *County Committee certification and recommendation.* The complete transfer docket, except SFH loans, will be presented to the County Committee for review.

(i) The transfer will be contingent upon the County Committee certification

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on Form FmHA 440–2 for an eligible applicant or, when the transfer is to an ineligible applicant, executing a memorandum containing the following statement:

In our opinion, the transferee, (Name of transferee), will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan.

(ii) When the County Committee recommends a release of the transferor and any cosigner from liability when real estate security is being transferred under paragraph (c) or (d) of this section with an assumption of less than the total debt, the provisions of paragraph (f) of this section will be followed.

(iii) When the total outstanding debt is not assumed, a farmer program loan borrower who is not being released from liability must be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter.

(7) *Property insurance.* The transferee will obtain property insurance in accordance with the property insurance requirement for the loan(s) involved. If insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of new coverage by the transferee. The insurance company will be notified by the County Supervisor immediately after completion of the transfer. When the full amount of the FmHA indebtedness is being assumed and an insurance premium has been advanced to the account, the transfer will not be completed until the amount of the premium has been charged to the transferor's account.

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with Part 1807 of this chapter (FmHA Instruction 427.1). When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State Supplements to provide for new mortgages when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when a joint borrower's interest in the security is conveyed to the remaining borrower who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred, Forms FmHA 1965–13; 1965–22 (as applicable); 1965–23; 451–1, "Acknowledgment of Cash Payment;" and 1965–8, will be prepared and distributed according to the FMI.

(b) *Transfer of security without FmHA consent or approval.* When a borrower transfers or proposes to transfer real estate security to another party and FmHA is unable or unwilling to approve the transferee as either an eligible or ineligible applicant, the conveyance cannot be used as the basis for liquidation if the borrower's spouse or children become the owner of the property *or* if an intervivos trust becomes the owner of the property so long as the borrower is a trust beneficiery and there is no change in occupancy of the property. If the transfer is to someone other than a spouse, child or intervivos trust and the County Supervisor determines that it is not in the best interest of FmHA to liquidate to the loan(s) in accordance with § 1965.28 of this subpart, the following actions will be taken in order listed:

(1) The County Supervisor will advise the State Director of the transfer or proposed transfer of the security and reasons why FmHA cannot approve the transferee as eligible or ineligible. Complete details of the transfer conditions, terms and consideration will be submitted to the State Director with the borrower (transferor) file. Current information on status of the loan(s) owed FmHA and of any debts owed other lenders on the property will be included with a current appraisal of the FmHA security and security equity position. The appraisal will be completed in accordance with Subpart A of Part 1809 of this chapter (FmHA Instruction 422.1). Recommendations of the County Committee, County Supervisor, and District Director will be included on the following:)

(i) Reasons why continuation of the loan would be in the best interest of the Government.

(ii) The effect continuation of the account will have on the FmHA program in the area.

(iii) Comments and opinion on adequacy of security and ability of transferor to pay the FmHA debt.

(2) The State Director will review all information submitted and request additional information needed to reach a decision. This includes advice of OGC. After deciding, the State Director will either:

(i) Return the file to the County Supervisor with instructions to proceed with liquidation of the account in accordance with § 1965.28(b) of this subpart and state reasons for the decision; or

(ii) Return the file to the County Supervisor stating reasons for the decision and giving consent to continue the account as an NP loan with instructions for obtaining liability of the transferee, maintaining security position and future servicing. If FmHA is adequately secured and the entire FmHA debt will be paid in 5 years or less from date of the transfer, the borrower-transferor can be released of liability under paragraph (f) of this section and the account serviced in the name of the transferee. If the entire FmHA debt will not be paid within 5 years from date of the transfer, the borrower will not be released of liability, the account will continue to be serviced in the borrower's name and the borrower will remain liable for the debt under the terms of the security instruments. Advice of OGC will be obtained as needed to determine the borrower's continued liability and adequacy of security.

§§ 1965.28–1965.30 [Reserved]

§ 1965.31 Taking liens or real estate as additional security in servicing FmHA loans.

(a) *Liens.* When taking real estate as additional security, the best lien obtainable will be taken on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Normally, the prior concurrence of the District Director will be obtained. Liens will be taken only when:

(1) Present security for the loan is not adequate to protect the interests of the FmHA, and

(2) The borrower has substantial equity in the real estate to be mortgaged and it is determined that the taking of the mortgage will not prevent the making of an FmHA real estate loan, which might be needed in the foreseeable future.

(b) *Real estate.* Before taking real estate as additional security for an FmHA loan the following items will be documented in the running record:

(1) the facts which justify taking the real estate lien;

(2) A conservative estimate of the present market value of the real estate to be mortgaged. (It will not be necessary to submit an appraisal of the property to be mortgaged.);

(3) A brief description of any existing liens on the property, and the repayment terms and the unpaid balance on the debts secured by existing liens, unless this is accurately reflected on a recent financial statement; and

(4) The name of the title holder and how title of the property is held. (Title evidence need not be required.)

(c) *Forms.* Each real estate lien taken as additional security for the FmHA loans will be taken on Form FmHA 427–1 (State), "Real Estate Mortgage for (State)," unless a State Supplement requires the use of a form of mortgage comparable to that which secures the existing loan(s) to be additionally secured. The notes evidencing the FmHA loans for which the additional security will be taken will be described in the same mortgage.

§ 1965.32 [Reserved]

§ 1965.33 Cosigners—SFH Loans.

See § 1965.129 of Subpart C of this part for servicing SFH loans with cosigners.

§ 1965.34 Non-Program (NP) loans.

Except as set out in the following paragraphs, debtors to FmHA for only NP loans are not eligible to receive any program benefits. Such benefits include limited resource interest rates, reamortization, rescheduling, consolidation, deferral, and appeal rights. Any NP debtor with farmer program loans will be serviced in accordance with regulations applicable to those loans. Any servicing to debtors with only NP loans will be limited solely to the following:

(a) *Subordination.* (1) Subordination of FmHA NP loan mortgages may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien *only when the security for the NP loan is also the security for an FmHA Farmer Program loan* and the request for the subordination meets all the requirements for the subordination of the FmHA Farmer Program loan and is in the best interest of the Government. Such actions can only be approved by the State Director.

(2) NP loans of debtors with only NP loans will not be subordinated unless it is in the best interest of the Government.

(b) *Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.* Consent may be given providing that the funds received are applied to the liens in order of lien priority. Such actions can only be approved by the State Director and are subject to the provisions of paragraphs (b) (1) through (5), (d), (h) and (i) of § 1965.13 of this subpart.

(c) *Voluntary conveyance.* Voluntary conveyance of security for NP loans will only be considered when it is clearly in the best interest of the Government. The debtor will not be released from liability for any FmHA debt that exceeds the value of the security plus and additional costs which might result in a charge to the Government such as closing costs and maintenance of the security. Such actions can only be approved by the State Director and will be processed in accordance with the provisions of Subpart A of Part 1955 of this chapter.

(d) *Transfers.* NP loans will not be assumed by an FmHA applicant unless the security and the transferee meet the requirements for an OL or FO loan as applicable. In such cases the transfer will be processed the same as an OL or FO loan being assumed by an eligible applicant. NP loans may be assumed under authorities in § 1965.27(c)(1)(ii) of this subpart. Transfers made without FmHA's approval will be handled under § 1965.27(h) of this subpart.

(e) *Default.* When an NP debtor is in default of the loan and/or security instruments and the default cannot be corrected in a reasonable period of time (usually less than 1 year) the account will be accelerated by the use of Exhibit D and E of Subpart A of Part 1955 (available in any FmHA office). The statement regarding deferrals in Exhibit D will be deleted. If the debtor has not cured the default within the time provided in the acceleration notice, FmHA will proceed with the foreclosure without further notice or any extension of time.

(f) *Leases.* An NP debtor does not need FmHA consent to lease security property.

(g) *Graduation.* NP debtors are not subject to the graduation requirements outlined in Subpart F of Part 1951 of this chapter.

§ 1965.35 Exception authority.

The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator; or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1965.36 State Supplements and reference to the OGC.

State Supplements will be prepared, with the advice of the OGC, as necessary to carry out this subpart and forwarded to the National Office for prior or post approval.

§ 1965.37 Redelegation of authority.

The State Director is authorized to redelegate in writing any authority delegated to the State Director in this subpart to one or more of the following State Office employees: Chief, Farmer Programs; Farmer Programs Specialist.

§§ 1965.38–1965.49 [Reserved]

§ 1965.50 OMB Control Number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0086.

* * * * *

Subpart C—Security Servicing for Single Family Rural Housing Loans

48. Section 1965.101 is amended to revise the introductory text to read as follows:

§ 1965.101 Purpose.

This subpart prescribes policies and procedures for servicing actions related to real estate which secures section 502 and section 504 Rural Housing (RH) loans on nonfarm tracts or on farms when the borrower is indebted to Farmers Home Administration (FmHA) for an RH loan(s) *only*, herein referred to as Single Family Housing (SFH) loan(s). Security servicing for RH loans when the borrower is also indebted for Farmer Program loans is under Subpart A of Part 1965 of this chapter.

* * * * *

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Dated: January 21, 1986.
Vance L. Clark,
Administrator, Farmers Home Administration.
[FR Doc. 86-2029 Filed 1-31-86; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of San Juan Airlines

AGENCY: Immigration and Naturalization Service, Justice.
ACTION: Final rule.

SUMMARY: This rule adds San Juan Airlines to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: December 26, 1985.
FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3048.
SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with San Juan Airlines on December 26, 1985 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

2. In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, San Juan Airlines.

Dated: January 15, 1986.
Richard E. Norton,
Associate Commissioner, Examinations, Immigration and Naturalization Service.
[FR Doc. 86-2296 Filed 1-31-86; 8:45 am]
BILLING CODE 4410-10-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 795

Reporting and Recordkeeping Requirements; OMB Control Numbers and Expiration Dates Assigned Pursuant to the Paperwork Reduction Act

AGENCY: National Credit Union Administration (NCUA).
ACTION: Final rule.

SUMMARY: NCUA amends its table of OMB control numbers to reflect the newly-assigned number to the criminal referral form added in the final rule entitled "Report of Crime or Catastrophic Act."

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.
FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Office of General Counsel, at the above address. Telephone: (202) 357-1030.
SUPPLEMENTARY INFORMATION: On Tuesday, December 31, 1985, the final rule entitled "Report of Crime or Catastrophic Act" (Part 748 of NCUA's Regulations) was published in the **Federal Register** (50 FR 53294). A new OMB control number for collection requirements found in NCUA's new form 2362 was published with the final rule. OMB approved collection requirements for use through July 31, 1988, unless continued and assigned OMB Number 3133-0094 to the collection requirements. Section 795.1(b) of NCUA's Regulations is amended to add the new number. The two preexisting control numbers for other collection requirements found in Part 748 remain in effect.

PART 795—[AMENDED]

1. The authority citation for 12 CFR Part 795 continues to read as follows:

Authority: 12 U.S.C. 1766(a)(11) and 5 U.S.C. 3507(f).

§ 795.1 [Amended]

2. Section 795.1 of the NCUA Regulations lists current OMB control numbers. The following should replace the current display for 12 CFR Part 748 found in § 795.1(b):

12 CFR part or section where identified and described	Current OMB control no.
748	3133-0033, 3133-0034 and 3133-0094.

Dated: January 27, 1986.
Rosemary Brady,
Secretary of the Board.
[FR Doc. 86-2250 Filed 1-31-86; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24900; Amdt. No. 1313]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Incorporation by reference, Standard instrument.

Issued in Washington, DC on January 24, 1986.
John S. Kern,
Acting Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective 13 March, 1986

Anniston, AL—Anniston-Calhoun County, NDB Rwy 5, Amdt. 14, Cancelled
Aspen, CO—Aspen-Pitkin/Sardy Field, VOR/DME-C, Orig.
Cross City, FL—Cross City, VOR Rwy 31, Amdt. 16
Gainesville, FL—Gainesville Regional, LOC BC Rwy 10, Amdt. 6
Perry, FL—Perry—Foley, NDB Rwy 36, Amdt. 3
Tallahassee, FL—Tallahassee Muni, VOR Rwy 18, Amdt. 8
Tallahassee, FL—Tallahassee Muni, LOC BC Rwy 18, Amdt. 14, Cancelled
Tallahassee, FL—Tallahassee Muni, NDB Rwy 36, Amdt. 18
Tallahassee, FL—Tallahassee Muni, ILS Rwy 36, Amdt. 22
Albany, GA—Albany-Dougherty County, VOR or TACAN Rwy 18, Amdt. 24
Albany, GA—Albany-Dougherty County, LOC BC Rwy 22, Amdt. 6
Albany, GA—Albany-Dougherty County, NDB Rwy 4, Amdt. 10
Albany, GA—Albany-Dougherty County, ILS Rwy 4, Amdt. 9
Albany, GA—Albany-Dougherty County, RNAV Rwy 34, Amdt. 2
Augusta, GA—Daniel Field, NDB Rwy 10, Orig.
Augusta, GA—Daniel Field, NDB/DME-C, Orig.
Cordele, GA—Crisp County-Cordele, NDB Rwy 9, Amdt. 2

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Dublin, GA—W.H. "Bud" Barron, VOR-A, Amdt. 3
Eastman, GA—Eastman-Dodge County, RNAV Rwy 2, Amdt. 1
Fitzgerald, GA—Fitzgerald Muni, NDB Rwy 01, Amdt. 3
McRae, GA—Telfair-Wheeler, NDB Rwy 20, Amdt. 7
Metter, GA—Metter Muni, NDB Rwy 09, Amdt. 1
Plains, GA—Peterson Field, VOR/DME-B, Amdt. 1
Savannah, GA—Savannah International, NDB Rwy 9, Amdt. 18
Savannah, GA—Savannah International, ILS Rwy 9, Amdt. 23
Statesboro, GA—Statesboro Muni, LOC Rwy 32, Amdt. 1
Statesboro, GA—Statesboro Muni, NDB Rwy 32, Amdt. 1
Tifton, GA—Henry Tift Myers, VOR Rwy 27, Amdt. 8
Tifton, GA—Henry Tift Myers, VOR Rwy 33, Amdt. 10
Tifton, GA—Henry Tift Myers, NDB Rwy 33, Amdt. 11
Vidalia, GA—Vidalia Muni, NDB Rwy 24, Amdt. 5
Centralia, IL—Centralia Muni, VOR Rwy 36, Amdt. 12, Cancelled
Centralia, IL—Centralia Muni, VOR-A, Orig.
Chicago (Wheeling), IL—Pal-Waukee, ILS Rwy 16, Amdt. 6
Harrisburg, IL—Harrisburg-Raleigh, NDB Rwy 24, Amdt. 8
Pinckneyville, IL—Pinckneyville-Duquoin, NDB Rwy 18, Orig.
Wellington, KS—Wellington Muni, VOR/DME Rwy 17, Orig.
Lake Charles, LA—Lake Charles Muni, LOC BC Rwy 33, Amdt.16
Monroe, LA—Monroe Regional, VOR/DME Rwy 31, Orig.
Battle Creek, MI—W.K. Kellogg Regional, LOC BC Rwy 5, Amdt. 14, Cancelled
Bay City, MI—James Clements Muni, VOR-A, Amdt. 11
Flint, MI—Bishop, VOR Rwy 36, Amdt. 13
Hancock, MI—Houghton County Memorial, VOR Rwy 13, Amdt. 12
Hancock, MI—Houghton County Memorial, VOR Rwy 25, Amdt. 14
Hancock, MI—Houghton County Memorial, VOR Rwy 31, Amdt. 11
Hancock, MI—Houghton County Memorial, VOR/DME Rwy 13, Orig.
Hancock, MI—Houghton County Memorial, VOR/DME Rwy 25, Orig.
Hancock, MI—Houghton County Memorial, VOR/DME Rwy 31, Orig.
Hancock, MI—Houghton County Memorial, LOC-DME BC Rwy 13, Amdt. 8
Hancock, MI—Houghton County Memorial, NDB Rwy 31, Amdt. 8
Hancock, MI—Houghton County Memorial, ILS Rwy 31, Amdt. 9
Houghton Lake, MI—Roscommon County, NDB Rwy 27, Amdt. 8, Cancelled
Mt. Pleasant, MI—Mt. Pleasant Muni, VOR Rwy 27, Amdt. 10
Ontonagon, MI—Ontonagon County, NDB-A, Amdt. 3
Owatonna, MN—Owatonna Muni, VOR Rwy 12, Amdt. 8
Owatonna, MN—Owatonna Muni, VOR/DME Rwy 30, Amdt. 2
Jackson, MS—Allen C. Thompson Field, ILS Rwy 15L, Amdt. 5
West Plains, MO— West Plains Muni, NDB Rwy 36, Orig.
Reno, NV—Reno Cannon Intl, ILS Rwy 16R, Amdt. 7
Lumberton, NJ—Flying W, VOR-A, Orig.
Charlotte, NC—Charlotte/Douglas Intl, VOR Rwy 36R, Amdt. 4
Bismarck, ND—Bismarck Muni, ILS Rwy 31, Amdt. 31
Lancaster, OH—Fairfield County, VOR-A, Amdt. 5
Versailles, OH—Darke County, NDB Rwy 9, Amdt. 6
Pittsburgh, PA—Allegheny County, NDB Rwy 28, Amdt. 22
Pittsburgh, PA—Allegheny County, ILS Rwy 28, Amdt. 27
Melfa, VA—Accomack County, VOR/DME Rwy 3, Amdt. 6
Melfa, VA—Accomack County, NDB Rwy 3, Amdt.6
Newport News, VA—Patrick Henry Intl, LOC BC Rwy 25, Amdt. 12
Newport News, VA—Patrick Henry Intl, NDB Rwy 20, Amdt. 2
Newport News, VA—Patrick Henry Intl, NDB Rwy 25, Amdt. 2
Norfolk, VA—Norfolk Intl, VOR Rwy 23, Amdt. 7
Norfolk, VA—Norfolk Intl, ILS Rwy 23, Amdt. 5
Norfolk, VA—Norfolk Intl, RNAV Rwy 14, Amdt. 4
South Hill, VA—Mecklenburg-Brunswick Regional, NDB Rwy 1, Orig.
Tangier, VA—Tangier Island, VOR/DME Rwy 2, Amdt. 4
Platteville, WI—Grant County, NDB Rwy 25, Amdt. 2
Platteville, WI—Grant County, RNAV Rwy 25, Amdt. 3

Effective 10 January, 1986

Carrollton, OH—Carroll County-Tolson, NDB Rwy 25, Amdt. 4

Note.—The FAA published an amendment in Docket No. 24877, Amdt. No. 1311 to Part 97 of The Federal Aviation Regulations (Vol 51 FR No. 3 Page 341; dated January 6, 1986) under section 97.27 effective February 13, 1986, which is hereby amended as follows: Mountain View, AR—Harry F. Wilcox Mem Fld, NDB-A original rescinded.

[FR Doc. 86-2183 Filed 1-31-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33-6623; 34-22846; 35-24009; IC-14926; IA-1009]

Remittance of Fees to Lockbox

AGENCY: Securities and Exchange Commission.

ACTION: Extension of Temporary Rule.

SUMMARY: The Commission is extending for nine months the effectiveness of a temporary rule, adopted in June 1984, which permits filing and other fees to be remitted to a U.S. Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. This action will permit registrants to continue to use the procedures specified by the temporary rule pending the Commission's consideration of whether to adopt proposed amendments to the rule that will be published in the **Federal Register** within the next two weeks.

EFFECTIVE DATE: February 3, 1986 to November 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel (202-272-2700), Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6540, dated June 27, 1984 [49 FR 27306], the Commission adopted a temporary amendment to rule § 202.3a, to permit filing fees to be remitted to a lockbox depository. Under these amendments, filers may continue to transmit fees along with filings or may transmit required fees to a lockbox depository in Pittsburgh, Pennsylvania either by mail or wire transfer. When the temporary amendments were adopted, the Commission stated that in approximately twelve months, it would consider whether to eliminate payment of fees directly to the Commission and instead mandate payment of fees to a lockbox. On January 30, 1986, the Commission approved issuance of a release that proposes for notice and comment amendments to rule 202.3a which would change its provisions from permissive to mandatory. This release will be published in the **Federal Register** in the near future. Pending its consideration of whether to adopt the proposed changes, the Commission has determined that the effectiveness of temporary rule § 202.3a should be extended for a period of nine months (to November 1, 1986) to permit the continuation of existing procedures.

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that temporary rule 202.3a relates solely to agency organization, procedure or practice and, therefore, advance notice and opportunity for comment is unnecessary in connection with this action.

By the Commission.
Dated: January 30, 1986.
Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 86-2427 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 86-12]

Amendments to the Customs Regulations Concerning Access to Customs Security Areas

AGENCY: Customs Service, Treasury.

ACTION: Interim regulations.

SUMMARY: This document amends the Customs Regulations on an interim basis to require the use and display of a Customs approved identification strip or seal on existing identification cards worn by employees at airports accommodating international air commerce. Uniformed Federal, State, and local enformcement personnel are excepted from the requirement. The additional identification would be required for all non-exempt persons located at, operating out of, or employed by, affected airports, who request access to Customs security areas in order to perform functions associated with their employment. The amendment also requires that an authorized official of the employer attest, in writing, that a background check of employment history and references has been conducted on their affected employees.

DATES: Effective March 5, 1986. Written comments by April 4, 1986.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:
Operational Aspects: Charles P. Bartoldus, Office of Inspection and Control (202-566-2140).
Legal Aspects: Ellen McClain, Office of the Chief Counsel (202-566-2482), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Various provisions of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*), which are made applicable to aircraft by 19 U.S.C. 1644, 49 U.S.C. App. 1509, and § 6.10, Customs Regulations [19 CFR 6.10), provide the statutory authority for Customs officers to control the entry and clearance of aircraft arriving in the U.S. from foreign countries and the inspection of the crew, passengers, baggage, stores, and cargo carried aboard those aircraft. Section 1109 of the Federal Aviation Act of 1985, as amended (49 U.S.C. App. 1509), authorizes the Secretary of Transportation to designate airports as ports of entry for civil air navigation. Section 582, Tariff Act of 1930, as amended (19 U.S.C. 1582), authorizes the Secretary of the Treasury to prescribe regulations for the detention and search of persons and baggage. These regulations are set forth in Parts 6 and 162, Customs Regulations (19 CFR Parts 6 and 162). Implicit in the search and inspection authority and the right to designate airports is the right to maintain a controlled and secure Customs area which facilitates and insures the integrity of the authorized search and inspection.

Customs finds it necessary to improve integrity and security in authorized inspection areas, due in large measure to the recent sharp increases in threats to airport security posed by terrorist organizations. The current regulations in 19 CFR Part 6 are inadequate for controlling access to the Customs security areas to the extent necessary. The arrival of an aircraft from abroad necessitates the services of numerous persons representing various specialties, such as ground crews, refueling personnel, baggage handlers, and food service personnel, among others. While all of these persons may have legitimate business associated with the arrival of an international flight, Customs needs a method by which access to the aircraft and inspection areas will be restricted, as well as some assurance that the service personnel themselves have been found trustworthy by their employers. While the Federal Aviation Administration has general responsibility for security at airports, Customs has determined that it is necessary to amend 19 CFR Part 6 to provide Customs with the needed authority and procedures to achieve these goals at the areas under the Customs jurisdiction. The purpose of this amendment is to establish an identification system for all employees whose duties require access to Customs security areas at airports handling international air commerce, with the exception of uniformed Federal, State, and local enforcement personnel. Because of recent terrorist incidents at foreign airports, threats of violence at U.S. airports, and in an effort to improve the security of these areas by restricting access to authorized employees, Customs will require that employees apply for a Customs approved identification strip or seal to be affixed to existing identification cards once an authorized official of the employer attests that background checks of employment history have been conducted. Customs will issue the identification strip or seal, once satisfied that the issuance of the additional identification will neither endanger the revenue nor threaten the security of the entire security area (which may include the arriving airplane, ramp area, and Customs baggage and passenger inspection facilities).

The requirement for a background investigation of employees will only be required with regard to employees hired after November 1, 1984. For all employees hired before that date, the authorized official of the employer need only attest to the fact that the employee was employed before November 1, 1984.

Further, the amendments provide identification of a "Customs security area" within which the previously described procedures will be enforced. This area may include the deplaning and ramp areas, as defined by the district director of Customs, as well as the baggage and passenger inspection areas. These areas will be posted once designated. In airports with areas dedicated only to international arrivals, the posted area will be restricted at all times. In airports in which international and domestic flights share arrival facilities, the restriction times will be posted to the extent they are identifiable.

Comments

Before adopting the interim regulations as a final rule, Customs will give consideration to any written comments (preferably in triplicate) timely submitted to the Commissioner. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, DC. 20229.

Inapplicability of Notice Provisions

Recent terrorist attacks against European airports and American citizens have pointed out a need to develop adequate and immediate plans for handling high-risk arrivals of

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aircraft. Customs is responsible for the protection of arriving passengers, airport personnel, and federal employees while in the Customs security area.

Therefore, in light of the threat to public safety, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are contrary to the public interest.

E.O. 12291 and Regulatory Flexibility Act

Because the amendment does not meet the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, Customs has not prepared a regulatory impact analysis.

Because of the need to expedite the issuance of this regulation, Customs has not yet been able to determine if the regulation will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612). However, Customs will continue to review this matter and will consider any comments submitted on this aspect of the project before issuing a final rule.

Paperwork Reduction Act

The interim regulations are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Accordingly, an application for approval of the interim regulations has been submitted to the Office of Management and Budget.

List of Subjects in 19 CFR Part 6

Air carriers, Air transportation, Aircraft, Airports.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Controls Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from and other Customs offices participated in its development.

Amendments to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended as set forth below:

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 1644, 49 U.S.C. App. 1474, 1509.

2. Part 6 is amended by adding a new § 6.12a, to read as follows:

§ 6.12a. Access to Customs Security Areas.

(a) For the purposes of this seciton, the term "Customs security area" means the federal inspection services area (as provided for by § 6.12(e) of this part), designated for processing passengers, crew, their baggage and effects arriving from foreign countries, as well as the aircraft deplaning and ramp areas and other restricted areas designated by the district director of Customs. These areas will be posted as restricted to the extent possible, and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

(b) With the exception of uniformed Federal, State, and local enforcement personnel, all persons located at, operating out of, or employed by any airport accommodating international air commerce, or its tenants or contractors, including air carriers, who have unescorted access to the Customs security arees must openly display or produce upon demand, a Customs approved identification card, or strip or seal to be issued and affixed by Customs to existing airport identification cards. The approved identification card, strip or seal, shall be in the possession of the person in whose name it is issued at all times when he is in the Customs security areas. An approved identification card, strip or seal shall not be issued to any person whose employment if necessitating access to the Customs security area will, in the judgment of the district director, endanger the revenue or the security of the areas. Grounds for denial of access shall include, but are not limited to:

(1) Any cause which would justify suspension or revocation of the identification card under the provisions of paragraph (h) of this section;

(2) Evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct. The district director shall give written notification to any person whose application for access to the Customs security area is denied, fully stating the reasons for such denial. The applicant shall have the opportunity to rebut the denial of his application in writing.

(c) A application for an approved identification strip or seal as required by this seciton, shall be filed by the applicant with the district director on Customs Form 3078. For employees hired on or after, November 1, 1984, an authorized official of the employer shall attest in writing that a background check has been conducted on the applicant, to the extent allowable by law, including, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceeding five (5) years. For employees hired before November 1, 1984, the authorized offical of the employer need only attest to the fact that the employee was hired before that date. The authorized official of the employer shall attest that to the best of its knowledge, the applicant meets the conditions necessary to conduct duties in the Customs security area. Records of background investigations must be available for verification by Customs for a period of one year following cessation of employment.

(d) An employee may apply, in writing, for a new application under certain circumstances. In such instances, the approved identification shall be promptly submitted by the empployee to the district director. The circumstances justifying the issuance of a new authorization strip or seal are as follows:

(1) A change in employee name;

(2) A change in employee address;

(3) A change in the name or ownership of his employing company; or

(4) A change in employer or airport authority identification card format.

(e) The identification strip or seal shall be removed by the district director when for security reasons it is necessary to change the nature of the identification.

(f) The loss or theft of an identification card, with strip or seal affixed, shall be promptly reported by the holder to the district director, and may be replaced as provided in paragraph (d) of this section.

(g) If an approved identification card is presented by a person other than the one to whom it was issued, such identification strip or seal shall be forthwith removed and destroyed.

(h) An authorized seal or strip may be removed and the district director may revoke or suspend access to the Customs security area for any of the following reasons:

(1) Such approved identification card was obtained through fraud or the misstatement of a material fact;

(2) The holder of such approved identification card is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(3) The holder permits the approved identification card to be used by any other person, or refuses to openly display or produce it upon the proper demand of a Customs officer;

(4) The continuation of privileges would, in the judgment of the district director, endanger the revenue or security of the area;

(5) The holder refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation; or

(6) The holder no longer requires access to the Customs security area for an extended period of time. If such a holder returns to duties in the Customs security area within 1 year, a Customs Form 3078 as required by paragraph (c) of this section need not be submitted.

(i) The district director shall suspend or revoke access to the Customs security area by serving notice of the proposed action in writing upon the holder of an approved identification card and a copy of such notice to the holder's employer. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the holder unless he shall file with the district director a written notice of appeal within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed, in duplicate, and shall set forth the response of the holder to the statement of the district director. The holder, in his notice of appeal, may request a hearing.

(j) The following procedures will govern the conduct of a hearing requested under paragraph (i) of this section:

(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following application thereof. The holder shall be notified of the time and place of hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of crossexamination. A stenographic record of the proceedins shall be made and a copy furnished to the holder. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the district director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs or his designee, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the holder may submit to the Commissioner of Customs or his designee, in writing, additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the holder nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs or his designee.

(k) The Commissioner or his designee shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the district director. Such decision shall be transmitted to the district director and served by him on the holder.

(l) When an approved identification is required under paragraph (b) of this section, and the district director determines that the application for the identification cannot be administratively processed in a reasonable period of time, any employer may, upon written request, have a temporary approval issued by the district director to his employee if he can show to the satisfaction of the district director that a hardship to his business would result pending issuance of an approved identification.

(1) The temporary identification shall be valid for a period of 60 days. The district director may renew the temporary identification for additional 30-day periods if he determines that the circumstances under which the temporary identification was originally issued continue to exist. The temporary identification strip or seal shall be removed and destroyed by the district director when the permanent approved identification is issued or the privileges granted thereby are withdrawn.

(2) The provisions of this paragraph shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the identification shall be valid for a period of 30 days. In the case of official visitors, the temporary identification strip or seal shall be valid for the day of issuance only, and shall be affixed to a temporary card issued by the district director. Temporary employee and official visitor identifications are renewable for periods equal to their original period of validity.

(3) The temporary identification strip or seal may be removed from any employee or official visitor identification card at any time if, in the judgment of the district director, continuation of the privileges granted thereby would endanger the revenue or if the holder of the temporary identification refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation.

William von Raab,

Commissioner of Customs.

Approved: January 27, 1986.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86–2397 Filed 1–30–86; 3:32 pm]

BILLING CODE 4820-02-M

19 CFR Part 10

[T.D. 86–13]

Customs Regulations Amendment Relating To Marking Requirements For Cargo Containers

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends that Customs Regulations to relieve the owners or operators of certain cargo containers from countries subject to column 1 of the Traffic Schedules of the United States (TSUS), from the burden of affixing certain identifying markings to them. It has been determined that the containers already display the identity of their owner/operator as well as serial numbers which make individual container identification possible. Further, whether of foreign or domestic manufacture, once exported, these containers are entitled to readmission without compliance with the regulatory marking requirements. Accordingly, the markings required will be limited to those unique identifying marks which already appear on the containers.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue N.W., Washington, DC 20229 (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to General Headnote 6, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), containers or holders for imported merchandise, if imported empty; and the usual or ordinary types of shipping or transportation containers or holders, if imported containing or holding articles; and if designed for, or capable of reuse; are subject to tariff treatment as imported articles and as such as are subject to duty upon each importation, unless specifically exempted. Lift vans and other shipping containers of the large ocean-going type are provided for in item 640.30, TSUS, currently dutiable at the rate of 1.3 percent ad valorem, if

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imported from countries subject to column 1 of the tariff schedules.

By section 143 of Pub. L. 97–446 (96 Stat. 2342) dated January 12, 1983, Congress temporarily suspended duty on certain of the large ocean-going freight containers imported from column 1 countries, which would be otherwise dutiable under item 640.30, TSUS. Specifically, a new item 911.80 was added to the TSUS which provided for the duty-free entry until December 31, 1986, of containers specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading. In order to qualify for duty-free treatment under item 911.80, TSUS, a container must have a gross mass rating of at least 40,000 pounds. The legislative history to Pub. L. 97–466 indicates that the subject freight containers will become permanently free of duty on January 1, 1987. (See Presidential Proclamation No. 4707, of December 11, 1979, published in the Federal Register on December 13, 1979 (44 FR 72348)).

Regardless of whether dutiable, containers entering the customs territory of the United States are subject to certain requirements concerning the presence of identifying markings. The marking requirements for imported containers are set forth in § 10.41b, Customs Regulations (19 CFR 10.41b), which provides for the release from Customs custody without payment of duty of serially numbered substantial holders or outer containers. Those containers qualifying for treatment under item 911.80, TSUS, are presently subject to the requirements of § 10.41b.

Section 10.41b includes requirements for all types of substantial holders and outer containers for which duty-free entry is sought under one of the three provisos of item 808.00, TSUS. The first proviso in item 808.00, TSUS, permits duty-free entry for substantial holders and containers which are products of the U.S. The second proviso includes foreign-made containers and holders which have been previously imported with duty, if any, having been once paid. The third proviso covers holders and containers which have been specified by the Secretary of the Treasury as instruments of international traffic, including their repair components and accessories and equipment. These amendments only apply to the first and second proviso. They do not pertain to containers or holders entered under the third proviso, as instruments of international traffic. Section 10.41 requires that containers and holders of all descriptions imported under item 808.00 TSUS, display the designation "808.00 (TSUS)", the district and port code numbers for the customs port of entry, the Customs entry number as well as the last two digits of the fiscal year in which duty was paid, the name of the owner, and the owner-assigned serial number. The purpose of these requirements is to enable Customs to determine that duty, if applicable, has previously been paid at the time of first entry.

In regard to the 40,000 pound rated containers which were the subject of Pub. L. 97–446, it is noted that they already bear the identity of the owner or operator, as well as the owner/operator-assigned serial number. Whether foreign-made or of U.S.-manufacture, the containers, once exported, are entitled to be brought back into the U.S. without entry, and duty-free upon compliance with the marking provisions of § 10.41b. Furthermore, a large number of the subject containers are in use and owing to their existing markings and their size, they are readily distinguishable from other containers and holders to which the marking requirements apply.

In view of the circumstances peculiar to containers which were the subject of Pub. L. 97–446, it has been determined that the generally applicable marking requirements prescribed in § 10.41b(c), Customs Regulations (19 CFR 10.41b(c)), serve no useful purpose, and the subject containers should be relieved of compliance with this burdensome requirement. Accordingly, § 10.41(b) is being amended to reflect this determination.

Inapplicability of Public Notice Requirements

Because this amendment merely implements a statutory requirement, relieves a regulatory burden, and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and an opportunity for public comment are not necessary.

Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 et seq.), or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Packaging and containers.

Amendments to the Regulations

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10, Customs Regulations (19 CFR Part 10), continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.]

2. Section 10.41b is amended by revising paragraph (c) to read as follows:

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

* * * * *

(c)(1) In the case of serially numbered holders or containers of foreign manufacture, other than those provided for in paragraph (c)(2) of this section, for which free clearance under the second provision in item 808.00, Tariff Schedules of the United States (19 U.S.C. 1202), is claimed, the owner shall place thereon the following markings:

(i) 808.00.

(ii) The district and port code numbers of the port of entry, the entry number, and the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid.

(iii) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(iv) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 808.00 * * * 10–1–366–63 * * * Zenda * * * 2468.

(2) In the case of substantial holders or containers of either U.S. or foreign manufacture, specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 40,000 pounds, for which duty-free entry is requested under either the first or the second proviso in item 808.00, Tariff Schedules of the United States (19 U.S.C. 1202), is claimed, only the following clear, conspicuous and durable markings are required to be on the container:

(i) The identity of the owner or operator of the container.

(ii) The serial number assigned by the owner or operator of the container, which shall be one of consecutive numbers and shall not be duplicated.

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: January 14, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 86–2289 Filed 1–31–86; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 84F–0165]

Indirect Food Additives; Polymers

Correction

In FR Doc. 86–410, beginning on page 882 in the issue of Thursday, January 9, 1986, make the following corrections:

On page 883, first column, § 177.1655:

a. In the table in paragraph (b), in the limitations column for the substance Monochlorobenzene, "50" should have read "500";

b. In paragraph (d), "polysulfone" was misspelled.

BILLING CODE 1505–01–M

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Cefadroxil Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bristol Laboratories providing for safe and effective use of cefadroxil tablets for treating certain skin and soft tissue infections of cats.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Bristol Laboratories, Division of Bristol-Meyers Co., P.O. Box 4755, Syracuse, NY 13221–4755, filed supplemental NADA 119–688 providing for safe and effective oral use of 50- and 100-milligram cefadroxil tablets in cats for the treatment of certain skin and soft tissue infections caused by cefadroxil-susceptible organisms. The supplemental NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii)(21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: (Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.314 is amended by revising the introductory text of paragraph (c), by redesignating paragraph (c)(1), (2), and (3) as paragraph (c)(1)(i), (ii), and (iii) and by adding new paragraph (c)(2) to read as follows:

§ 520.314 Cefadroxil tablets.

* * * * *

(c) *Conditions of use.* (1) For use in dogs as follows:

* * * * *

(2) For use in cats as follows:

(i) *Indications for use.* For the treatment of skin and soft tissue infections including abscesses, wound infections, cellulitis, and dermatitis caused by susceptible strains of *Pasteurella multocida, Staphylococcus aureus, Staphylococcus epidermidis,* and *Streptococcus* spp.

(ii) *Amount.* Ten milligrams per pound of body weight once daily.

(iii) *Limitations.* The drug is administered orally. Continue treatment at least 48 hours after the cat has become afebrile or asymptomatic. If no response is seen after 3 days of treatment, therapy should be discontinued and the case reevaluated. Do not treat for more than 21 days. Safety for use in pregnant cats and breeding male cats has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 27, 1986.

Gerald B. Guest,
Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–2237 Filed 1–31–86; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH–FRL–2964–9]

National Primary Drinking Water Regulations Volatile Synthetic Organic Chemicals

December 20, 1985.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the final rule promulgating Recommended Maximum Contaminant Levels (RMCLs) for eight volatile synthetic organic chemicals in drinking water which was published in the Federal Register of November 13, 1985, 50 FR 46880.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, ODW (WH–550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202/382–7575).

EFFECTIVE DATE: The final rule is effective December 13, 1985.

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SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85–26415 appearing on 46880 in the issue of November 13, 1985:

1. On page 46882, column 2, line 31, change "100" to "1000".

2. On page 46883, column 3, line 10, change "is appropriate" to "is not appropriate".

3. On page 46888, column 3, lines 18–26, delete the sentence beginning with "Several animal studies" and ending with "to both sexes of mice and to female rats." Also delete the following sentence beginning with "The Draft results" and ending with "from exposure to the compound." Replace the deleted sentences with "The NTP has carried out a bioassay in which p-dichlorobenzene was administered by gavage to both sexes of mice and to female rats. The final results of this bioassay are not yet available".

4. On page 46889, column 2, line 54, insert "not" between does and constitute.

5. On page 46899, column 3, lines 63 and 64, change "draft Regulatory Impact Analysis" to Economic Impact Analysis".

Dated: January 16, 1986

William B. Hedeman,

Acting Assistant Administrator for Water.

[FR Doc. 86–2256 Filed 1–31–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC–370–N]

Medicare Program; Extension of Delay in Implementing Certain Changes to the Prospective Payment System; Hospital Inpatient Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of legislative postponement of certain effective dates of final rules.

SUMMARY: The Federal fiscal year 1985 rules for determining amounts of Medicare payment to hospitals under the prospective payment system and the rate-of-increase limits for hospitals excluded from that system are extended through March 14, 1986 as a result of the December 23, 1985 enactment of Pub. L. 99–201.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION: On November 12, 1985, we published a notice in the **Federal Register** (50 FR 46651) to alert the public about the provisions of section 5 of the Emergency Extension Act of 1985 (Pub. L. 99–107) and to identify certain Medicare regulations affected by the legislation. Section 5 of Pub. L. 99–107, which was enacted on September 30, 1985, extended through November 14, 1985 the Medicare payment rules for inpatient hospital services that were in effect on September 30, 1985. On November 14, 1985, Congress passed and the President signed the Temporary Debt Limit Extension Act of 1985 (Pub. L. 99–155). Section 2(d) of Pub. L. 99–155 further extended those Medicare payment rules through December 14, 1985. On December 6, 1985, we published a notice in the **Federal Register** (50 FR 49930) to announce this extension.

Since publication of the December 6 notice, the following laws that further delay the implementation of revised Medicare payment rules have been enacted:

- Pub. L. 99–181, enacted December 13, 1985, extended the delay through December 18, 1985.
- Pub. L. 99–189, enacted on December 18, 1985, extended the delay through December 19, 1985.
- Pub. L. 99–201, enacted on December 23, 1985 and effective December 19, 1985, extended the delay through March 14, 1986.

We are issuing this notice to inform the public that, as a result of the December 23 enactment, revised payment rates for hospitals covered by the prospective payment system, the rate-of-increase limits for hospitals excluded from that system, and the amendments to 42 CFR 412.118 (f)(2) and (f)(3), all of which were originally scheduled to be effective on October 1, 1985 under the September 3, 1985 final rule (50 FR 35646), are now postponed through March 14, 1986. This further postponement also applies to the regulations cited in our November 12 notice, which are as follows: §§ 412.63 (c)(3) and (d); 412.70 (c)(3), (c)(4), (d)(2), and (d)(3), 412.73(c)(3); 412.80(a)(1)(ii)(B); and 412.82(c).

(Secs. 1102, 1871, and 1886 of the Social Security Act; 42 U.S.C. 1302, 1395hh, and 1395ww; sec. 5 of Pub. L. 99–107 as amended by sec. 2 of Pub. L. 99–201)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: January 17, 1986.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 86–2205 Filed 1–31–86; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[Gen. Docket No. 85–245; FCC 86–36]

Proposed Modification of the Table of Frequency Allocations

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The Federal Communications Commission amends it's Rules to provide a secondary mobile allocation in the 18168–18780 kHz band. This will make available a full complement of HF frequencies for mobile operations.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology, 1919 M Street NW., Washington, DC 20554, (202) 653–8162.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations.

Report and Order

In the matter of amendment of part to allocate the 18168–18780 kHz band on a secondary basis to the Mobile Service, GEN Docket No. 85–245.

Adopted: January 16, 1986.
Released: January 24, 1986.
By the Commission.

1. This Report and Order (*Order*) allocates the 18168–18780 kHz band on a secondary basis to the mobile service for both government and nongovernment use. The Notice of Proposed Rule Making (*Notice*) in this proceeding was adopted by the Commission on August 12, 1985.[1]

2. Comments were filed by the United States Coast Guard (USCG) and the Radio Technical Commission for Maritime Service (RTCM). No reply comments were received.

3. In the *Notice*, we stated that a complement of frequencies in the HF spectrum (3 to 30 MHz) is needed to meet a requirement of the maritime mobile service. A complement of HF frequencies consists of assignments from different bands in the HF spectrum. It is necessary to have access to a full complement of HF frequencies to insure reliable communications at all times with the mobile units. The ability of any one band to provide communications depends on the propagation conditions, which vary with the time of day and the weather. Therefore, some bands are able to provide satisfactory communications at times when others are not.

[1] See Notice of Proposed Rulemaking in General Docket 85–245, 50 FR 40680 (adopted August 12, 1985).

4. Most of the frequencies of this HF complement were provided for in allocations made in Docket 80–739, Implementation of the 1979 World Administrative Radio Conference.[2] However, the complement of frequencies is incomplete, as no allocation was made for such use between 14990 and 20010 kHz. The U.S. Coast Guard, through the Interdepartment Radio Advisory Committee (IRAC), requested the Commission to initiate a proceeding to amend the Table of Frequency Allocations to include a secondary mobile service allocation in the 18168–18780 kHz band.

5. As we noted in the *Notice*, the band 18168–18780 kHz is allocated on a primary basis to the fixed service for both government and nongovernment use. The main nongovernment application is for long haul common carrier circuits. However, because of the availability of higher quality circuits through satellites or cables, these circuits are infrequently used.

6. The Comments filed by USCG and RTCM in response to the *Notice* supported our proposal for a secondary mobile allocation in this band. Such an allocation will meet the requirements of the maritime mobile service and will have little, if any, impact on the primary fixed use of this band either domestically or internationally. However, if interference should be caused, the secondary mobile operations involved will be required to make any and all necessary adjustments, including terminating operation, to eliminate the interference.

7. The Commission, not having received any objections or alternatives to the proposed allocation, believes that allocating the 18168–18780 kHz band on a secondary basis is the best way to satisfy the HF spectrum requirements of the maritime mobile service and is in the public interest. Therefore, we are modifying § 2.106, the Table of Frequency Allocations, as indicated in the Appendix.

Administrative

8. Regulatory Flexibility Act Final Analysis.

I. Need for and Objective of Final Rules

The objective is to allocate on a secondary basis the band 18168–18780 kHz to the mobile service. This will satisfy the spectrum requirement to provide a complement of HF frequencies for both government and nongovernment maritime mobile operations.

II. Summary of Issues Raised by Public Comments

There were no comments filed addressing the matters discussed in the initial regulatory flexibility analysis.

III. Alternative to the Rule

It does not appear that there are any significant alternatives to the rules proposed in the *Notice* that would accomplish the stated objective.

9. Accordingly, it is ordered, that pursuant to the authority found in section 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, (47 U.S.C. 154(i), 301, 303(r)), Part 2 of the Commission's Rules and Regulations is amended as specified in the Appendix. This amendment becomes effective March 3, 1986.

10. It is further ordered, that this proceeding is terminated.

11. For further information concerning this rule making contact Fred Thomas at (202) 653–8112, Office of Science and Technology, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 2—[AMENDED]

The authority citation in Part 2 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Section 2.106 is amended by adding a secondary mobile allocation at columns 4 and 5 in the 18168–18780 kHz band.

§ 2.106 Table of frequency allocations.

* * * * *

United States Table		FCC use designators	
Government allocation kHz	Non-Government allocation kHz	Rule part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
18168–18780 Fixed mobile	18168–18780 Fixed mobile	Aviation (87) international fixed public (23).	

* * * * *

[FR Doc. 86–2270 Filed 1–31–86; 8:45 am]

BILLING CODE 6712–01–M

[2] See Second Report and Order in General Docket No. 80–739, FCC 83–511, 49 FR 2367 (adopted November 8, 1983).

47 CFR Part 22

[CC Docket No. 83–1096]

Amendment of the Rules To Allow the Selection From Among Mutually Exclusive Competing Cellular Applications

AGENCY: Federal Communications Commission.

ACTION: Interim waiver of rules.

SUMMARY: The requirements of § 22.913(a)(6) are waived on an interim basis, pending action on petitions for reconsideration of the amendment to the financial qualifications rule. Section 22.913(a)(6) requires applicants to submit an exhibit with their applications including full particulars regarding the cost of construction of the proposed facilities and demonstrating how the applicant intends to finance construction. The Commission's recent amendment of § 22.917 (financial qualifications rule) has created uncertainty however, since the amendment provided that for markets below the top 120 only a tentative selectee needs to file a demonstration of financial qualifications. It is not clear whether the Commission intended to defer the filing of cost data until the

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selection of an applicant has been made. Therefore, initial cellular applicants for markets below the top 120 need not submit the exhibit required by § 22.913(a)(8), pending Commission action on reconsideration.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Carmen A.C. Borkowski, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Cellular radio service, Communications common carriers, Radio.

Order

In the matter of amendment of the Commission's rules to allow the selection from among mutually exclusive competing cellular applications using random selection or lotteries instead of comparative hearings; CC Docket No. 83–1096.

Adopted January 23, 1986.
Released January 24, 1986.
By the Chief, Common Carrier Bureau.

1. We have received numerous informal inquiries as to whether applicants for cellular systems in markets below the top 120 must submit an exhibit with their applications, in response to § 22.913(a)(8), which requires "An exhibit including full particulars regarding the cost of construction of the proposed facilities and demonstrating how the applicant intends to finance construction. See § 22.917." The uncertainty arises from the fact that the Commission recently amended § 22.917 to provide that for markets below the top 120 only a tentative selectee, a surviving applicant under a full settlement, or an unopposed applicant needs to file a demonstration of financial qualifications. *Memorandum Opinion and Order on Further Reconsideration*, FCC 85–602, released December 3, 1985, *errata*, mimeo 1576, released December 23, 1985, 50 FR 51522, December 18, 1985. It is clear from the text of that Memorandum Opinion and Order that the demonstration of how the applicant intends to finance construction need not be included in the application, but the text is silent as to whether the Commission intended to defer the filing of cost data until the selection of an applicant has been made.

2. In view of the uncertainty as to whether cost data must be included in the application resulting from the rule changes, we have decided *sua sponte* to waive the requirements of § 22.913(a)(8) of an interim basis, pending action on petitions for reconsideration of the amendment to the financial qualifications rule.[1] Until the Commission has had an opportunity to address the petitions for reconsideration,[2] applicants for markets below the top 120 need not submit the exhibit required by § 22.913(a)(8).

3. Accordingly, it is ordered, that the requirements of 47 CFR 22.913(a)(8) are waived for initial cellular applicants in markets below the top 120, pending Commission action on reconsideration.

Federal Communications Commission.
Albert Halprin,
Chief, Common Carrier Bureau.

[FR Doc. 86–2263 Filed 1–31–86; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 84–791; RM–4807]

TV Broadcast Station in Cedar Rapids, IA

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF television channel 48 to Cedar Rapids, Iowa as that community's fourth commercial television assignment in response to a petition filed by Donna Montgomery.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), table of assignments, TV Broadcast Stations (Cedar Rapids, Iowa): MM Docket No. 84–791, RM–4807.

Adopted: January 17, 1986.
Released: January 24, 1986.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 33466, published August 23, 1984 proposing the assignment of UHF Television Channel 48 to Cedar Rapids, Iowa as that community's fourth commercial television assignment, at the request of Donna Montgomery (Petitioner). Petitioner has filed comments reiterating her intention to apply for the channel, if assigned.[1] No other comments were received.

2. UHF Television channel 48 can be assigned to Cedar Rapids, Iowa in compliance with the minimum distance separation requirements of § 73.610 and § 73.698 of the Commission's Rules.

PART 73—[AMENDED]

3. We believe the assignment of a fourth local commercial television assignment at Cedar Rapids is in the public interest. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g), and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective March 3, 1986, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel no.
Cedar Rapids, IA	2, 9–, 26+, and 48–.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–2267 Filed 1–31–86; 8:45 am]
BILLING CODE 6712–01–M

[1] Petitions requesting reconsideration of the Commission's modification of the financial rule were recently filed by Mobile Communications Corporation of America and the Cellular Telecommunications Industry Association.

[2] The Commission will act expeditiously to address these petitions, once the pleading cycle has closed, in order to set forth clearly what financial showings must be included in applications.

[1] Petitioner's comments were not timely filed, but will be accepted for the purpose of permitting her to reaffirm her interest in the proposed channel.

47 CFR Part 73

[MM Docket No. 85–66; RM–4874]

TV Broadcast Station in Klamath Falls, OR; Correction

AGENCY: Federal Communications Commission.
ACTION: Final rule (corrected).

SUMMARY: This action corrects paragraph two of the Report and Order in this processing concerning the assignment of a TV channel in Klamath Falls, Oregon, published on October 1, 1985, 50 FR 40022.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

Note.—The attached is the complete text of the Final Rule action with the corrected paragraph 2.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations (Klamath Falls, OR); MM Docket No. 85–66, RM–4874.

Adopted: September 19, 1985.
Released: September 25, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 14953, published April 16, 1985, requesting comments on the assignment of UHF TV Channel 31 to Klamath Falls, Oregon, at the request of Sunshine Television, Inc. ("petitioner"). Petitioner filed comments reiterating its intention to apply for the channel, if assigned. No other comments were received. Channel 31 can be assigned to Klamath Falls in compliance with the Commission's minimum distance separation and other technical requirements.

2. We note that the petitioner wishes to utilize Channel 31 at Klamath Falls as a satellite station for its Medford television station, KDRV. In filing an application for this channel, it should be aware that if its proposed satellite use overlaps the coverage now provided by its Medford operation, such applications are considered on a case-by-case basis. See § 73.3555, Note 5 of the Commission's Rules.

PART 73—[AMENDED]

3. We believe the public interest would be served by assigning Channel 31 to Klamath Falls as its second local commercial service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective November 1, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Klamath Falls, OR	2–, *22+, and 31.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–2268 Filed 1–31–86; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–175; RM–4908]

FM Broadcast Station in Sioux Falls, SD

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: Action taken herein allocates FM Channel 261A to Sioux Falls, South Dakota, at the request of Sioux Falls College. The license of Station KCFS, Sioux Falls, is modified to specify operation on the new frequency in lieu of its present Channel 211A.

EFFECTIVE DATE: March 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.202(b), table of allotments, FM broadcast stations, (Sioux Falls, South Dakota); MM Docket No. 85–175, RM–4908.

Adopted: January 17, 1986.
Released: January 28, 1986.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 25430, published June 19, 1985, proposing the allocation of Channel 261A to Sioux Falls, South Dakota, and its possible reservation for noncommercial educational use, at the request of Sioux Falls College ("petitioner"). The Commission also proposed to modify petitioner's license for Station KCFS, Channel 211A, to specify operation on the new frequency. No oppositions were received.

2. Petitioner filed comments supporting the proposal. It states that it currently operates Station KCFS on Channel 211A which serves as the College's campus radio station. The College has also been granted a construction permit for Station KCSD on Channel 215A which will provide Sioux Falls with National Public Radio programming. By the terms of the agreement with Great Plains Educational Trust ("Great Plains"), as detailed in the *Notice*, petitioner must, in the near future, vacate Channel 211A and thus will be able to continue to provide its present level of service to the community absent the allocation of Channel *261A.

3. The *Notice* also sought comments on whether Channel *261A, if allocated, should remain a commercial frequency or whether it should be reserved for noncommercial educational use. Petitioner states that its present plans do not contemplate the provision of any service other than noncommercial educational programming. However, it believes that in future years, should circumstances change, some advantage might accrue to the College if the Commission were to allocate the channel on an unreserved basis.

4. The Commission does not generally reserve channels within the commercial portion of the FM band for noncommercial educational service, unless such use is precluded by a TV Channel 6 station or by Canadian or Mexican allotments. Here, neither of these situations exist. Sioux Falls currently receives commercial FM service from five local stations and non-commercial educational service from four such stations. We believe that the public interest would be served by

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allocating Channel 261A to Sioux Falls but do not believe the channel should be reserved for noncommercial educational use. We shall also modify the license of Station KCFS to operate as a noncommercial station on non-reserved Channell 261A. There remain a number of FM channels available should an interest be expressed in providing an additional commercial service.

PART 73—[AMENDED]

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 6, 1986, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Sioux Falls, SD	223, 226A, 243, 247, 261A, 264.

6. It is further ordered, that pursuant to section 316 of the Communications Act of 1934, as amended, the license of Sioux Falls College for Station KCFS, Sioux Falls, South Dakota, is modified effective March 6, 1986, to specify operation on Channel 261A in lieu of Channel 211A. The license modification for Station KCFS is subject to the following conditions:

(a) The licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. It is further ordered, that the Secretary of the Commission shall send a copy of this *Report and Order* by certified mail, return receipt requested, to Sioux Falls College, 1501 S. Prairie, Sioux Falls, South Dakota 57101, and to petitioner's counsel, Lauren A. Colby, 10 East 4th Street, P.O. Box 113, Frederick, Maryland 21701.

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Medin Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 86–2266 Filed 1–31–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950–5182]

Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fisheries in the Westside and Southeast Sections of the Kodiak District of Registration Area J must be closed in order to protect the Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the Westside and Southeast Sections. This action is intended as a management measure to conserve Tanner Crabs.

DATE: This notice is effective at noon, Alaska Standard Time (AST), January 29, 1986. Public comments on this notice of closure are invited until February 13, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J to independently manage individual Tanner crab stocks. One of these districts is the Kodiak District, which is further subdivided into eight sections enabling management of localized Tanner crab stocks. The 1986 fishing season in these sections began on January 15, (50 FR 47549, November 19, 1985). Reasons for these closures follow.

In the Westside Section, Tanner crabs have been delivered by 14 vessels through January 24. From January 16 to 18, the catch per unit of effort (CPUE) declined from approximately 26 crabs per pot to 6 crabs per pot. Moreover, vessel operators fishing the Westside Section have reported the presence of a substantial number of barren female Tanner crabs. This may indicate that recent reproductive success in this section has been less than originally expected.

In the Southeast Section, approximately 17 vessels have landed Tanner crabs as of January 23; the CPUE declined from about 106 crabs pere pot on January 15 to the current level on January 23 of 20 crabs per pot, indicating a rapid depletion of the available Tanner crab stock.

Based on the rapidly declining CPUE so early in the fishery in both sections and reports of barren females in the Westside Section, the Regional Director has determined that the condition of the Tanner crab stocks in these sections of the Kodiak District are substantially different from the conditions anticipated on November 1, 1985, the beginning of the fishing year, and that these differences reasonably support the need to protect these Tanner crab stocks. These sections, as defined in § 671.26(f)(1)(i), are closed by this notice until noon, Alaska Daylight Time, April 30, 1986, at which time the closure of these sections prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the Federal Register, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Westside and Southeast Sections of the Kodiak District will be subject to damage by overfishing unless this closure takes effect promptly. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice of closure is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of section 305(e) of the Magnuson Act.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–2302 Filed 1–29–86; 4:08 pm]

BILLING CODE 3510–22–M

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Proposed Rules

Federal Register
Vol. 51, No. 22
Monday, February 3, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Change in the Customs Service Field Organization—Brunswick, GA

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations to change the Customs field organization by extending the geographical limits of the port of entry at Brunswick, Georgia. Currently, Customs officers at the port service many locations which are outside the Brunswick city limits, those limits having been the unofficial port limits. This proposed expansion will better serve the public by including several locations routinely requiring Customs service within the official port limits.

DATE: Comments must be received on or before April 4, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending and officially defining the geographical limits of the port of entry of Brunswick, Georgia, located in the Savannah, Georgia, Customs District in the Southeast Region.

Currently, there is no official definition of the Brunswick port limits. The Brunswick city limits have been serving as the port limits. However, Customs officers at the port routinely service many locations which are outside the city limits, and an additional out-of-port terminal facility recently began operation. Therefore, this proposed change would expand the Brunswick port limits to include those several locations now receiving service.

The proposed expanded port limits are as follows: Beginning from the intersection of the boundary between the counties of Camden and Glynn and the Atlantic Ocean, and proceeding in a northwesterly direction along the Little Satilla River to U.S. Highway Interstate 95; then in a northeasterly direction along U.S. Highway Interstate 95 to the boundary between McIntosh and Glynn Counties; then in a easterly direction along the Altahama River to the Atlantic Ocean; then in a southerly direction along the Atlantic coastline to the place of beginning.

If the proposed change is adopted, the list of Customs regions, districts, and ports of entry in § 101.3(b) Customs Regulations, will be amended accordingly.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Authority

This change is proposed under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Brunswick, Georgia, area, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment, if adopted, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the proposed amendment relates to the Customs field organization, pursuant to Section 1 (a) (3) of E.O. 12291 this proposal is not subject to that E.O.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved January 14, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86–2290 Filed 1–31–86; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172, 175, 176, 177, 179, and 181

[Docket No. 75N–0190]

Vinyl Chloride Polymers; Withdrawal of Proposal

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the notice of proposed rulemaking that would have restricted the uses of vinyl chloride polymers in contact with food. The agency is taking this action because, based upon new scientific and legal developments, FDA has decided that the actions outlined in the proposal no longer represent the appropriate course of regulatory action.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food and Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 3, 1975 (40 FR 40529), FDA proposed to prohibit some uses of vinyl chloride polymers (homo- and copolymers), including their use in semirigid and rigid food-contact articles such as bottles and sheet, and to interim list the use of these polymers in water pipe.

Since publication of the proposal, there have been a number of significant developments that bear on the agency's position concerning regulation of vinyl chloride polymers. The major developments include: (1) Vastly improved production technology has made it possible for manufacturers to succeed in reducing the level of residual vinyl chloride monomer in vinyl chloride polymer by a factor of nearly 1 million; (2) the agency has developed a policy concerning the regulation of food and color additives that may contain carcinogenic impurities; and (3) FDA now believes that developments in scientific technology and its experience with risk assessment procedures make it possible for the agency to determine whether the use of additives that contain carcinogenic impurities is safe. As a consequence of these developments, many of the issues raised by the September 1975 proposal and by the comments on that proposal are moot. FDA now believes that the use of vinyl chloride polymers can be regulated provided that such polymers meet certain limitations on the levels of residual vinyl chloride monomer.

In the **Federal Register** of March 15, 1977 (42 FR 14302), FDA reorganized and republished regulations formerly codified in 21 CFR Part 121. In the present document, FDA will refer to the old Part 121 section numbers and, if appropriate, to the recodified section numbers.

Elsewhere in this issue of the **Federal Register**, FDA is proposing: (1) To provide for the safe use of vinyl chloride polymers; (2) to codify all known prior sanctions of vinyl chloride polymers; (3) to provide for the use of certain previously unregulated vinyl chloride polymers in manufacturing vinyl chloride bottles; and (4) to delete vinyl chloride-vinylidene chloride copolymers from the list of materials that may be used as coatings on fresh citrus fruit (21 CFR 172.210).

FDA received 190 comments on the September 1975 proposal. One hundred fifty-four of these comments did not include any data on the use of vinyl chloride polymers. Of these comments, 86 supported the proposal; 57 expressed concern about the risk associated with the use of vinyl chloride polymers; and 11 opposed the proposed ban on rigid and semirigid vinyl chloride polymers. The remaining 36 comments did submit data or legal arguments for FDA's consideration.

In addition, the docket contains 15 supplements to comments; 21 letters from industry, professional societies, public interest groups, and individuals; 11 memoranda of meetings; and 11 memoranda of telephone conversations. None of the additional letters and memoranda contained data, but the 15 supplements to comments contained scientific data that FDA reviewed and evaluated.

All comments received in response to the proposal are addressed in this document.

A. Nomenclature

1. One comment stated that vinyl chloride should be referred to as "vinyl chloride monomer" or as "VCM" in the various proposed regulations to prevent any misunderstanding about what particular substance is being prohibited. The comment further stated that the identification of vinyl chloride monomer should include its chemical formula (C_2H_3Cl), its alternative name "chloroethene," and its Chemical Abstracts Registry Number (CAS Reg. No.).

FDA agrees that it should use the CAS Reg. No. and the term "vinyl chloride monomer" to identify the monomer. It has done so in the proposal published elsewhere in this issue of the **Federal Register**. The term "chloroethene" is not a commonly used term for vinyl chloride. FDA concludes that vinyl chloride is adequately defined by its chemical formula and its CAS Reg. No.

2. One comment stated that vinyl chloride-vinylidene chloride copolymer should be renamed vinylidene chloride-vinyl chloride copolymer to reflect the relative dominance of the monomers. It noted that vinylidene chloride is the more dominant monomer in copolymers of vinyl chloride and vinylidene chloride.

FDA concludes that vinyl chloride-vinylidene chloride copolymers should continue to be so named. Vinyl chloride has customarily been the first monomer cited in industry usage and in food additive regulations when referring to copolymers, regardless of the major component. Although there may be some advantage to naming copolymers by the predominance of monomers, renaming the copolymers would only lead to confusion and unnecessary paperwork.

B. Administrative—Legal

3. Five comments stated that FDA did not have the statutory authority to issue food additive regulations prescribing conditions of use for a substance that may not reasonably be expected to become a component of food. The comments claimed that there was no expectation of migration of vinyl chloride monomer into food from the use of vinyl chloride polymer packaging.

Section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) defines a food additives as "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, and including any source of radiation intended for any such use) * * *" (21 U.S.C. 321(s)). Section 409(d) of the act (21 U.S.C. 348(d)) authorizes FDA to establish regulations prescribing, with respect to any particular use of a food additive, the conditions under which such additive may be safely used.

Vinyl chloride polymer becomes a component of food (a food additive) when the unreacted vinyl chloride monomer trapped in the polymer matrix migrates from the polymer to food. The data, both experimental and theoretical, produced by industry and by FDA laboratories about vinyl chloride polymers demonstrate that, under

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normal conditions of use, migration of vinyl chloride monomer will occur from all types of vinyl chloride polymer food-contact articles, regardless of the levels of the monomer in the articles. The amount of vinyl chloride monomer that migrates to food will depend on the initial residual monomer content, the time and temperature of exposure to food, the thickness of the polymer, and such other properties of the polymers as their permeability and whether they have been plasticized.

One example of the work done on vinyl chloride monomer is that of Ethyle Corp. In a series of reports dating from January 17, 1975, Ethyl proposed and utilized a diffusion model that accurately predicted levels of vinyl chloride monomer migration into food simulating solvents. Based on this model's success in predicting the observed levels of monomer migration, Ethyle's diffusion model can be relied upon to predict the level of such migration even when the monomer is not detectable by current analytical capabilities.

On the basis of existing theories, diffusion models, and available experimental data, FDA concludes that vinyl chloride monomer is capable of migrating into food from vinyl chloride polymers in more than insignificant amounts. The use of models capable of predicting monomer migration has been addressed in *Monsanto* v. *Kennedy*, 613 F.2d 947 (1979), where the court stated: "Nor is it necessary that the level of migration be significant with reference to the threshold of direct detectability, so long as its presence in food can be predicted on the basis of a meaningful projection from reliable data."

FDA has further concluded that, given the fact that vinyl chloride monomer has been shown to be a carcinogen, the projected vinyl chloride monomer migration from vinyl chloride polymers under the conditions of use currently specified in its regulaions is not so small as to present no public health or safety concerns. The agency finds, however, that safety can be assured through the establishment of limits on residual monomer concentrations, as proposed elsewhere in this issue of the **Federal Register**. The agency, therefore, is exercising its authority under section 409 of the act to promulgate regulations that would prevent the marketing of polymers with unsafe levels of vinyl chloride monomer.

4. One comment contended that there was no reasonable expectation of migration and, also, that the polymers were not food additives. The comment requested a hearing if ita point of view was not incorporated into the agency's final action on vinyl chloride polymers.

FDA disagrees with this comment. FDA has explained why it has concluded that the vinyl chloride monomer will migrate in response to the preceding comment. In regard to a request for a public hearing, section 409(f)(1) of the act provides that, within 30 days after publication of a final order on a food additive, any person adversely affected by the order may file objections to the order and may request a public hearing on the matter. There are no provisions in section 409 of the act for requesting a public hearing in response to a notice of proposed rulemaking, although this request may be made in response to final regulations on this subject.

5. Two comments stated that no final action to ban rigid and semirigid vinyl chloride polymers should be taken until an examination has been made of the potential migration from currently produced vinyl chloride polymers that contain low levels of residual vinyl chloride monomer.

FDA has reviewed the data on the migration of vinyl chloride monomer from polymers that contain varying levels of residual monomer (Division of Chemistry and Physics memorandum dated July 27, 1979). The agency concludes that migration of the monomer into food will occur if there is any residual monomer in the polymer. The new proposed regulations published elsewhere in this issue of the **Federal Register** reflect this determination.

6. Two comments objected to permitting any use of vinyl chloride polymers in contact with food because of the presence of a carcinogen (vinyl chloride monomer) in these polymers. The comments claimed that, by permitting the use of these polymers, FDA was, in effect, setting a tolerance for a carcinogen at the level of sensitivity of the analytical methods to detect vinyl chloride monomer. The comment stated that all uses of vinyl chloride polymers should be banned until manufacturers can produce vinyl chloride polymers that contain no vinyl chloride monomer.

FDA agrees that vinyl chloride polymers with unsafe levels of vinyl chloride monomer should not be permitted on the market. However, FDA does not believe that banning vinyl chloride polymers is necessary because these polymers now can be manufactured with residual vinyl chloride monomer levels that are at least one million times lower than the residual monomer levels in polymers that were marketed in the early 1970's. Additionally, since the publication of the 1975 notice of proposed rulemaking, scientific developments, such as improved risk assessment procedures, have led FDA to reconsider how it regulates food and color additives when the additive as a whole contains carcinogenic impurities but has not been shown to be a carcinogen in appropriate testing. As a result of its reconsideration, the agency has decided that it can approve or list the use of such additives when an assessment shows that the risk from the use of these additives, with their carcinogenic impurities, is so low that there is a reasonable certainty of no harm from their use. The application of this approach to vinyl chloride polymers is described in detail in the notice of proposed rulemaking appearing elsewhere in this issue of the **Federal Register**.

7. Four comments suggested that proposed § 121.2009 *Vinyl chloride polymer resins*, which listed the prior-sanctioned uses of vinyl chloride polymers, should be revised to permit the use of polymers listed in that section in articles that will contact all types of food or should be revised to allow the use of additional types of articles produced from vinyl chloride polymers.

The agency finds that such a revision is inappropriate. Proposed § 121.2009 was intended to be a listing of those uses of vinyl chloride polymers that are the subject of prior sanctions, i.e., those uses that were approved by FDA or the U.S. Department of Agriculture (USDA) before September 6, 1958. The list of such uses cannot be altered or expanded to include additional uses without proof that those additional uses were approved by FDA or USDA before that date.

Therefore, the agency cannot expand the prior-sanctioned uses of vinyl chloride polymers to cover contact with all types of food as proposed in these comments.

In the 1975 proposal, FDA listed those prior sanctions for which it could find evidence and explicitly solicited evidence of any additional sanctions. No evidence of other prior sanctions was submitted to FDA. FDA, however, located in its own files evidence of four additional prior sanctions. (1. Letter to Firestone Plastics Co., Pottstown, PA, dated April 20, 1951, permitting the use of vinyl chloride resins as films for food packaging. 2. Letter to Firestone Plastics Co., Pottstown, PA, dated October 5, 1956, permitting the use of rigid polyvinyl chloride (homopolymer) sheet for packaging poultry. 3. Letter to Firestone Plastics Co., Pottstown, PA, dated February 21, 1957, permitting the use of vinyl chloride and vinyl chloride-acetate resins for "food wrapping purposes." 4. Letter of Borden Co., Santa Barbara, CA, dated August 15, 1957, permitting the use of vinyl chloride polymers as tubing for food-contact use.) The agency has included these sanctions in its proposal published elsewhere in this issue of the **Federal Register**. The agency believes that all valid prior sanctions of vinyl chloride polymers are set forth in the new proposal.

8. Two comments stated that the wording of proposed § 121.2009(a)(3) should be revised to provide a proper description of the materials used for coating conveyor belts. The comments asserted that these materials are blends of vinyl chloride homopolymer and butadiene or butadiene/acrylonitrile copolymer rather than "vinyl chloride/butadiene" or "vinyl chloride/butadiene/acrylonitrile" copolymer, as described in the proposal.

The original letters received by FDA on the conveyor belt coatings referred to the coatings as "resins," a term broadly applied to any thermoplastic material. Although the letters that FDA wrote in response refer to the conveyor belt coatings as copolymers, the coatings were never identified as copolymers by the manufacturers. The agency, in reviewing these records, finds that the records contain no data that would limit the prior sanctions to copolymers rather than blends.

Accordingly, in the proposal published elsewhere in this issue of the **Federal Register**, FDA has revised § 181.37 (proposed as § 121.2009(a)(3)) to use the term "resin," rather than "copolymer," to refer to both the resin blend and the copolymer.

9. One comment stated that all food packaged in vinyl chloride polymers or prepared with equipment in which the food will come into contact with vinyl chloride polymers should be so labeled.

FDA has considered this comment and has concluded that the requested labeling is not necessary to ensure the safety of foods that contact vinyl chloride polymers. In a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, FDA sets forth proposed regulations that contain limitations on the amount of residual vinyl chloride monomer that may be present in various types of vinyl chloride food contact surfaces. FDA also sets forth in that proposal the basis on which it has tentatively concluded that vinyl chloride polymers that meet the proposed limitations are safe for food-contact use. Therefore, there is no need to label foods that have contacted vinyl chloride polymers.

10. One comment stated that the use of vinyl chloride polymers as coatings on fresh citrus fruits, which is permitted under 21 CFR 121.1179 (now 21 CFR 172.210), has been discontinued.

After publication of the 1975 proposal, the major producer of vinyl chloride-vinylidene chloride copolymers informed FDA that it was unaware of any market for the coatings on fresh citrus fruit (Telecommunication, M. Flood to J. Cobler, September 30 and October 3, 1983, Dow Chemical Co.). On the basis of this information, the agency is proposing elsewhere in this issue of the **Federal Register** to revoke the regulation for the use of vinyl chloride polymers as coatings on fresh citrus fruit.

11. Four comments were received objecting to the inclusion of rigid and semirigid polymers in § 121.100 *Substances prohibited from use in human food* (now 21 CFR Part 189).

FDA has now completed its evaluation of all safety data pertinent to the use of rigid and semirigid vinyl chloride polymers and has tentatively concluded that safe conditions of use can be prescribed for these polymers. Therefore, rather than banning the use of these polymers, elsewhere in this issue of the **Federal Register**, FDA is proposing to approve certain uses of these substances.

C. Chemistry

12. Seven comments stated that one or more of the proposed regulations should be revised to permit all uses of vinyl chloride polymers for which there is no reasonable expectation of migration of vinyl chloride monomer to food.

Five of these comments contained data for calculations to support the contention that when a food-contact article does not contain detectable levels of vinyl chloride monomer, the potential amount of migration of this monomer is so insignificant as to make it unreasonable to expect that vinyl chloride polymer will become a component of food. One comment further stated that a regulation permitting the use of all vinyl chloride polymers when there was no detectable residual vinyl chloride monomer in the food-contact articles or not detectable migration of vinyl chloride monomer to food would adequately protect the public health.

A number of these comments discussed specific processes used to remove "all" residual vinyl chloride monomer from vinyl chloride polymers. According to the comments, these processes produced polymers in which there were either very low levels (i.e., 2 to 50 parts per billion (ppb)) or no detectable amount of residual vinyl chloride monomer because the steps taken during these fabrication processes were adequate to remove all of the residual vinyl chloride monomer.

On the basis of all available evidence, FDA has concluded that under normal use conditions, migration of vinyl chloride monomer will occur from all types of vinyl chloride polymer articles (see response to comment 3). The amount of vinyl chloride monomer that will migrate is determined by the nature of the articles (e.g., film, bottle, or coating); the residual vinyl chloride monomer content; and the conditions of use (time and temperature of exposure to food).

The agency is aware that over the past 10 years, the manufacturers of vinyl chloride polymer products have succeeded in reducing the levels of residual vinyl chloride monomer by a factor of nearly a million. However, the data that FDA has received from industry clearly establish that vinyl chloride polymers still contain measurable levels of vinyl chloride monomer, and that available diffusion theory relates the level of monomer in the polymer to the level of monomer in the food, even though the level may be below current analytical detection limits. Therefore, FDA concludes that regulation should be based on safe upper limits of migration rather than the level of detectability.

13. One comment stated that as the level of residual vinyl chloride monomer in a vinyl chloride polymer is reduced, there is a corresponding reduction in the migration of the monomer. The comment theorized that there are sites in a polymer to which some monomer can attach. These sites are called "active binding sites." The comment asserted that these active binding sites prevent migration of the monomer when there is less than 0.1 part per million of residual monomer. The comment argued that as a result, FDA had no authority to regulate the polymer when it contained such low levels of the monomer.

FDA finds that the available experimental data on the process of migration of vinyl chloride monomer from vinyl chloride polymers do not support this theory (Division of Chemistry and Physics memorandum dated July 27, 1979).

FDA's evaluation of the data on vinyl chloride migration that were submitted as comments to the 1975 proposal by Ethyl Corp. revealed that under normal use condition, migration of vinyl chloride monomer will occur from all

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types of vinyl chloride polymers, regardless of the monomer level in the polymers. Although the alternative "active site" theory, if correct, would predict zero migration of vinyl chloride monomer to food at some minimum residual monomer level, no experimental data have been submitted to FDA that would confirm the theory. A more detailed discussion of the migration issue is contained in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

14. One comment outlined a mathematical model that reportedly predicted the extractable levels of vinyl chloride monomer from any level of residual vinyl chloride monomer in vinyl chloride polymers. The comment stated that, based on the model and the low concentration of residual vinyl chloride monomer in its product, there is not a reasonable possibility of migration of vinyl chloride monomer.

FDA disagrees and finds, upon evaluation of the model, that the model predicts zero migration only if there is no monomer in the food container (Division of Chemistry and Physics memorandum dated July 27, 1979). FDA is not aware at this time of any manufacturing process that can produce vinyl chloride polymers without some level of residual vinyl chloride monomer being present. The diffusivity of the vinyl chloride monomer is discussed briefly in comment 12 and at length in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

15. Three comments stated that the proposed regulations should be revised to exempt specific types of packaging such as laminates and packaging for dry solids. The comments stated that food packaged in such containers would not be expected to contain vinyl chloride monomer as a result of migration from the packaging materials.

As discussed in response to comment 12, the agency concludes that use of vinyl chloride polymers as components of the types of packaging materials described in these comments will result in low levels of migration of vinyl chloride monomer. However, the agency is proposing to permit such use of vinyl chloride polymers, with limitations on the levels of residual vinyl chloride monomer, as set forth in the proposed rule published elsewhere in this issue of the **Federal Register.**

16. One comment stated that the restrictions on the use of rigid and semirigid articles should be revised to permit their use with dry food, or that the proposed restrictions in the regulations for adjuvants should be eliminated.

As explained in the proposal published elsewhere in this issue of the **Federal Register**, based on the improvements in the manufacturing process for vinyl chloride polymers and on other scientific and legal developments, FDA now believes that it can approve the use of vinyl chloride polymers in rigid and semirigid articles not only with dry food but also with aqueous, alcoholic, and fatty foods. Because FDA is no longer proposing to ban these uses of rigid and semirigid vinyl chloride polymers, the question of restriction of adjuvants for use in rigid and semirigid vinyl chloride polymers is moot. However, FDA is proposing to delete certain adjuvants currently regulated for use in vinyl chloride/vinylidene chloride copolymer coatings for fresh citrus fruit. The use of this copolymer for coating fresh citrus fruit was discontinued several years ago and there is no longer a need for the regulation. The deletion of this use of these adjuvants from FDA's regulations has no effect on their other regulated uses.

D. Toxicology

17. One comment stated that the use of vinyl chloride polymers in rigid and semirigid food-contact articles should be permitted on an interim basis pending the outcome of studies necessary to demonstrate the safety of such polymers. The comment stated that FDA had based the proposed regulations on preliminary reports, speculation, and rumors, and that animal feeding studies to demonstrate the toxicity of vinyl chloride monomer when ingested were now underway and were expected to be completed within 30 months.

Since this comment was submitted, FDA has received four reports of completed bioassay studies on the carcinogenicity of vinyl chloride monomer. These include: (1) Feron et al. chronic rat oral study performed at the CIVO Institute TNO in the Netherlands (*Food and Cosmetics Toxicology*, 19:317–333, 1981); (2) Maltoni et al. rat study on vinyl chloride monomer by both oral ingestion and inhalation routes of exposure (*Annals of the New York Academy of Sciences*, 246:195–218, 1975; *Environmental Health Perspectives*, 41:3–29, 1981); (3) The British Industrial Biological Research Association unpublished rat study on vinyl chloride monomer administered in the drinking water for up to 152 weeks (the final report entitled "An Investigation Into the Carcinogenic Potential of Vinyl Chloride Monomer When Administered to Rats in the Drinking Water for Up to 152 Weeks," dated 1980); (4) CIVO Institute TNO second unpublished rat study on vinyl chloride monomer (the final report entitled "Lifespan Oral Carcinogenicity Study of Vinyl Chloride in Rats," dated September 1983).

The agency has determined that vinyl chloride monomer is a carcinogen via oral route of exposure on the basis of the results from these studies.

Elsewhere in this issue of the **Federal Register**, FDA is proposing to establish safe conditions of use for vinyl chloride polymers. FDA believes that vinyl chloride polymers can be regulated under the agency's carcinogenic impurities policy, which is described elsewhere in this document and in the accompanying notice of proposed rulemaking. FDA has used this policy to regulate food and color additives that contain carcinogenic impurities but which themselves have not been found to be carcinogenic.

The agency's proposed regulations published elsewhere in this issue of the **Federal Register** deal with the uses of vinyl chloride polymers including rigid and semirigid articles and the specific limitations that are needed to ensure their safe use.

E. Environmental Impact

18. One comment stated that, under the proposed regulations, products expected to substitute for vinyl chloride polymer products would have far greater environmental impacts than vinyl chloride polymer. In addition, the comment suggested that vinyl chloride polymer could be efficiently burned in properly designed and operated incinerators.

The agency's proposal, set forth elsewhere in this issue of the **Federal Register**, provides conditions for the safe use of regulated and prior-sanctioned vinyl chloride polymers. This proposed action is in contrast to the 1975 proposal, which would have prohibited certain uses of vinyl chloride polymers. FDA has prepared two documents, an environmental assessment and a finding of no significant impact, that evaluate the potential impact, both adverse and beneficial, expected from the increased use of vinyl chloride polymers. These documents consider the environmental factors addressed in the comment's submission. The environmental assessment and the finding of no significant impact may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

F. Economic Impact

19. One comment stated that the proposed regulations appeared to be more restrictive than necessary to assure protection of the public health from ingestion of vinyl chloride and discussed shortcomings and omissions in FDA's analysis of potential economic impact of the regulations. Another comment contained data concerning the economic impact the proposed regulations would have upon the firm.

FDA has considered these data and comments in preparing the economic assessment on the proposed regulations published elsewhere in this issue of the **Federal Register.** The economic assessment may be seen at the Dockets Management Branch (address above).

G. Conclusions

Since the publication of the September 1975 proposal, there have been significant scientific and legal developments that have caused FDA to reconsider its proposed regulations on the use of vinyl chloride polymers. Improvements in the manufacturing process have enabled vinyl chloride polymer manufacturers to lower greatly the levels of residual vinyl chloride monomer in the polymers. This development, along with procedures for risk assessment, now make it possible for the agency to establish safe conditions of use for vinyl chloride polymers. Details of the scientific and legal developments as well as the risk assessment are set forth in the notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

The agency has also developed a policy for providing for the safe use of food additives and color additives containing low levels of carcinogenic impurities. This policy was set forth in an advance notice of proposed rulemaking published in the **Federal Register** of April 2, 1982 (47 FR 14463). The use of this policy was upheld by the U.S. Court of Appeals in *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984), a case involving FDA's decision to list permanently the use of D&C Green No. 5. This color additive contains a carcinogenic impurity, but when the additive as a whole was tested in laboratory animals it did not induce cancer. This policy is explained in detail in that document (47 FR 14463).

Accordingly, FDA is withdrawing the proposal published in the **Federal Register** of September 3, 1975 (40 FR 40529). Published elsewhere in this issue of the **Federal Register** is a notice of proposed rulemaking that would authorize the safe use of regulated and prior-sanctioned vinyl chloride polymers.

This action is taken under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 402, 409, 701, 52 Stat. 1042, 1046–1047 as amended, 1049, 1055 (21 U.S.C. 321(s), 342, 348, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: January 27, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–2236 Filed 1–31–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 172, 175, 176, 177, 179, and 181

[Docket No. 84N–0334]

Proposed Uses of Vinyl Chloride Polymers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to provide for the safe use of vinyl chloride polymers. The agency is proposing: (1) To provide for the safe use of certain vinyl chloride polymers by establishing limits on the amount of residual vinyl chloride monomer that they may contain; (2) to codify all known prior sanctions for vinyl chloride polymers; (3) to provide for the use of certain previously unregulated vinyl chloride polymers in manufacturing vinyl chloride bottles; and (4) to delete vinyl chloride-vinylidene chloride copolymers from the list of materials that may be used as coatings on fresh citrus fruits. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing the proposal on vinyl chloride polymers that it published in the **Federal Register** of September 3, 1975 (40 FR 40529).

DATE: Comments by April 4, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this proposal is to provide for the safe use of vinyl chloride polymers in contact with food.

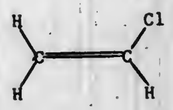
Vinyl chloride is a chemical with the formula C_2H_3Cl used as a monomer in the production of polymers. Other monomers are chemically bonded to this monomer by the process of polymerization to form larger, more complex molecules called "polymers." When all of the monomers that are polymerized together are molecules of the same substance, the resulting molecule is called a "homopolymer." The vinyl chloride homopolymer is sometimes called "polyvinyl chloride" (CAS Reg. No. 9002–86–2).

When molecules of different chemicals are polymerized together, the resulting molecule is called a "copolymer." Thus, when ethylene molecules are polymerized to vinyl chloride molecules, the resulting copolymer is called "ethylene vinylidene chloride."

Elsewhere in this issue of the **Federal Register**, FDA is withdrawing an earlier proposal on vinyl chloride polymers that it published on September 3, 1975. Responses to comments received on the September 3, 1975 proposal are set forth in the withdrawal document.

II. Regulatory History

Vinyl chloride (CAS Reg. No. 75–01–4) is a chemcial with the following structure:



: C_2H_3Cl, Molecular weight: 62.5

A wide variety of vinyl chloride polymers, including homopolymer and various copolymers, are available for use in the production of articles intended to contact food, including food-packaging materials, coatings, plastisols, gaskets, parts for food-processing equipment, flexible tubing, and waterpipe.

Under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)), a substance is excluded from the definition of a "food additive" if its use was sanctioned by

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FDA before September 6, 1958, the date of the enactment of the Food Additives Amendment. FDA issued several sanctions for uses of vinyl chloride polymers before that date. Those sanctions were in the form of letters, advisory opinions, and articles by FDA scientists that appeared in scientific journals. Although currently there is no list of the prior-sanctioned uses of vinyl chloride polymers in the Code of Federal Regulations, FDA is aware of such sanctions for their use as components of film for food wraps, as components of can enamels, and as components of certain types of rigid food-packaging materials, excluding bottles.

Since the enactment of the Food Additives Amendment in 1958, FDA has approved a variety of uses of vinyl chloride polymers in food-contact articles. The regulations codifying these approvals include: § 172.210 *Coatings on fresh citrus fruit* (formerly § 121.1179); § 175.105 *Adhesives* (formerly § 121.2520); § 175.300 *Resinous and polymeric coatings* (formerly § 121.2514); § 175.320 *Resinous and polymeric coating for polyolefin films* (formerly § 121.2569); § 176.170 *Component of paper and paperboard in contact with aqueous and fatty foods* (formerly § 121.2526); § 176.180 *Components of paper and paperboard in contact with dry food* (formerly § 121.2571); § 177.1010 *Acrylic and modified acrylic plastics, semirigid and rigid* (formerly § 121.2591); § 177.1200 *Cellophane* (formerly § 121.2507); § 177.1210 *Closures with sealing gaskets for food containers* (formerly § 121.2550); § 177.1630 *Polyethylene phthalate polymers* (formerly § 121.2524); § 177.1850 *Textryls* (formerly § 121.2545); § 177.1950 *Vinyl chloride-ethylene copolymers* (formerly § 121.2609); § 177.1960 *Vinyl chloride-hexene-1 copolymers* (formerly § 121.2623); § 177.1970 *Vinyl chloride-lauryl; vinyl either copolymers* (formerly § 121.2608); § 177.1980 *Vinyl chloride-propylene copolymers* (formerly § 121.2521); § 177.2250 *Microporous polymeric filters* (formerly § 121.2631); and § 179.45 *Packaging materials used during the irradiation of packaged foods* (formerly § 121.2543). The renumbering of these sections occurred as part of a recodification that FDA announced in the Federal Register of March 15, 1977 (42 FR 14302).

On January 4, 1973, representatives of Schenley Distillers met with FDA to report the results of analyses that showed that alcoholic beverages stored in vinyl chloride polymer bottles for periods of up to 9 months had levels of vinyl chloride monomer as high as 20 parts per million (ppm). Other components of the bottles that gave gin and vodka an off-flavor were also extracted, but these components were not identified. By May 10, 1973, FDA chemists had confirmed that vinyl chloride monomer was present in vinyl chloride polymer liquor bottles, and that it migrated into the liquor.

As a result of these findings, FDA published a notice of proposed rulemaking in the Federal Register of May 17, 1973 (38 FR 12931), to restrict the use of vinyl chloride polymer resins to food-packaging materials that were used with nonalcoholic foods.

By March 1974, the agency had received information from various sources suggesting that the migration of vinyl chloride monomer from vinyl chloride polymer resins was not limited to situations in which the polymer was used in food-contact articles for alcoholic beverages. By this time, vinyl chloride monomer had been linked to liver cancer in humans. Therefore, in the Federal Register of April 22, 1974 (39 FR 14215), FDA proposed to ban vinyl chloride as an aerosol propellant in drug and cosmetic preparations and also requested data from industry about the use of vinyl chloride polymers, the residual concentration of vinyl chloride monomer in vinyl chloride polymers, and the migration of vinyl chloride monomer from vinyl chloride polymer containers.

In the Federal Register of August 26, 1974 (39 FR 30830), the agency issued a final rule that prohibited the use of vinyl chloride as a propellant in aerosol cosmetic products and that required that a manufacturer obtain an approved new drug application before using vinyl chloride as a propellant in aerosol drug products. This action was based on evidence that inhalation of high concentrations of vinyl chloride resulted in acute toxicity that was manifested by an array of symptoms, including unconsciousness, cardiac effects, bone changes, and degenerative changes in the brain, liver, and kidneys.

As a result of the many comments that the agency received on the April 22, 1974 proposal, in the Federal Register of September 3, 1975 (40 FR 40529), FDA proposed further restrictions on the use of vinyl chloride polymers in contact with food.

Under the September 1975 proposal, rigid and semirigid vinyl chloride polymers would have been banned from food-contact use because of possibly unsafe levels of vinyl chloride monomer migration, although continued use of vinyl chloride polymer waterpipe would have been permitted under the an interim regulation.

The September 1975 proposal cited inhalation studies by Dr. Cesare Maltoni, who reported the development of angiosarcomas of the liver along with other types of tumors at levels of atmospheric exposure as low as 250 ppm ("Carcinogenicity Biossay of Vinyl Chloride," *Environmental Research*, 7:387–045, 1974). Since then, vinyl chloride has been shown to be an animal carcinogen both by inhalation and by oral administration and a human carcinogen by inhalation, as discussed below (IARC Monographs, 19:409–412, 1979).

Data Received in Response to Proposal

As a result of the September 3, 1975 proposal, FDA received numerous comments, which are addressed elsewhere in this issue of the Federal Register, and considerable analytical manufacturing and toxicological data bearing on the reduction in the level of vinyl chloride monomer in vinyl chloride polymers. These data led FDA to publish this new proposal on vinyl chloride polymers.

Data submitted by industry in response to the September 1975 proposal showed that manufacturers had succeeded in reducing the vinyl chloride monomer levels in vinyl chloride polymer resin. Before 1975, residual vinyl chloride monomer levels of 1,000 ppm were common. Since then, improved manufacturing procedures have lowered the residual vinyl chloride monomer levels by more than five orders of magnitude.

Although methods for reducing vinyl chloride monomer levels have varied from company to company, such methods generally have involved application of heat and vacuum during processing of the resin. Manufacturers have also taken steps to produce small, porous resin particles, which have facilitated diffusion of the monomer out of the resin.

Substantiation of the reduction in vinyl chloride monomer has been provided by reports of residual vinyl chloride monomer levels of 10 ppb in vinyl chloride polymer bottles (The Society of the Plastics Industry, Inc., November 12, 1982) and an estimated 100 parts per trillion in can coatings (Union Carbide Co., December 12, 1980).

The Society of the Plastics Industry, Inc. (SPI), in a submission (November 12, 1982) on behalf of the vinyl chloride polymer manufacturers, informed the agency "that with respect to vinyl chloride polymer bottles, the industry can provide products with residual monomer levels not exceeding 10 ppb by weight." The SPI submission further stated "the quantity of vinly chloride available to migrate is so low, and the rate of migration of vinyl chloride from vinyl chloride polymer containers made with a residual [vinyl chloride monomer] content of 10 ppb or less is so slow that the concentration of vinyl chloride in the contents even after an exaggerated shelf-life exposure at moderately elevated temperatures will not exceed the safe (0.073 ppb) level."

To monitor the level of residual vinyl chloride monomer in vinyl chloride polymers, the agency has developed a sensitive gas chromatographic method titled "Head Space Sampling and Gas-Solid Chromatographic Determination and Confirmation of >1 ppb Vinyl Chloride Residues in Polyvinyl Chloride Food Packaging" (J.L. Dennison, et al., *Journal of the Association of Official Analytical Chemists*, 61:813–819, 1978). This analytical method has been tested by FDA and by at least one major manufacturer of vinyl chloride polymers and has been found to yield satisfactory analytical results. However, the method has not been tested with all possible vinyl chloride-based food-contact articles. FDA invites comments on the applicability of this analytical method and will consider any comments received in developing a final rule.

III. The Use of Vinyl Chloride Polymers in Food-Contact Articles Will Result in Their Becoming Components of Food

Section 201(s) of the act defines a "food additive" as "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use) * * *" (21 U.S.C. 321(s)).

FDA finds that vinyl chloride polymers used in food-contact articles meet this definition. Existing theory, supported with data produced by indusy and by FDA laboratories, demonstrates that, under normal conditions of use, vinyl chloride monomer will migrate to food from all types of vinyl chloride polymer food-contact articles.

The migration of vinyl chloride monomer from vinyl chloride polymers can be described by Fick's First and Second Laws of Diffusion, first enunciated in 1855 (Crank, J., "The Mathematics of Diffusion," 2d Ed., pp. 2–4, Oxford Press, London, 1976). The differential equations expressing these laws contain a variable called diffusivity. The form of the differential equations derived from Fick's laws depends on the boundary conditions, i.e., monomer concentration inside and outside the bottle wall, and on the conditions existing at the time of initiation of diffusion of vinyl chloride monomer, such as the intitial residual monomer concentation.

When applied to the particular situation of monomer migration from a bottle, such as vinyl chloride monomer from a vinyl chloride polymer bottle, the diffusion equations derived from Fick's Second Law always predict a finite migration of the monomer based on initial monomer concentration in the bottle wall, provided diffusivity is not zero. Only if diffusivity is zero would no migration be likely.

Based on its review of published experimental results and of theoretical calculations based on numberous systems, FDA believes that the diffusivity of vinyl chloride monomer in vinyl chloride polymer will always be greater than zero, and that migration will occur whenever residual vinyl chloride monomer if present in the polymer.

In a series of reports dating from January 17, 1975, Ethyl Corp. proposed and utilized a diffusion model that it has derived from Fick's Second Law. This model can be used to predict monomer levels in various food simulants when the initial residual vinyl chloride monomer concentration in the bottle wall and the diffusivity are known.

Ethyl Corp. originally applied this diffusion model to extraction data derived from bottles containing residual vinyl chloride monomer at levels of from 80 to 330 parts per million (ppm). This model accurately predicted the level of monomer that migrated into food simulating solvents.

FDA also has used sensitive analytical methods to measure the levels of vinyl chloride monomer in extracts from vinyl chloride polymers. those methods have shown that, consistent with Ethyl's model, the levels of monomer in the extract could be related to the intitial residual concentration of the monomer in the polymer. For example, FDA conducted a migration study on two lots of unplasticized polymer sheet. One lot contained 0.44 ppm residual vinyl chloride monomer and the other 0.28 ppm. Samples from each lot were extracted with 50 percent ethanol for 19 days at 49 °C (120 °F). Vinyl chloride monomer levels in the extract from the polymer containing 0.44 ppm averaged 2.4 ppb, while vinyl chloride monomer levels in the extract from the 0.28 ppm sheet averaged 1.6 ppb (Diachenko, et al., *Journal of the Association of Official Analytical Chemists*, 60:570–575, 1977).

The Ethyl predicts that there will be migration, albeit below the limits of detection by current analytical techniques, from vinyl chloride polymers that contain vinyl chloride monomer at the level of less than one ppm. According to the model, as migrant concentration in a polymer is reduced, the contribution to diffusion from the interaction among migrants also decreases. In the limiting case of a single migrant molecule, the only interaction that will occur is between the migrating monomer and the polymer. Even though diffusivity will be reduced to a finite constant in this case, it will not become zero. Thus, even when the polymer contains the monomer at very low levels, the presence of the vinyl chloride monomer in food "* * * can be predicted on the basis of a meaningful projection from reliable data." See *Monsanto Co.* v. *Kennedy*, 613 F.2d 947, 955 (D.C. Cir. 1979).

Therefore, based on the evidence before it, FDA concludes that vinyl chloride polymer will become a component of food, and that the extent to which this will be the case depends, at least in part, on the amount of monomer in the polymer. Given these facts and the fact that vinyl chloride monomer has been shown to be a carcinogen, FDA has decided to regulate the use of vinyl chloride polymers under the act (21 U.S.C. 348) to ensure that the polymer that is marketed does not contain unsafe levels of the monomer.

IV. Carcinogenic Impurities Approach to Safety Evaluation

A. Applicable Legal Standards

FDA, in its evaluation of the safety of vinyl chloride polymers, reviewed, as it does with all indirect food additives, the safety of both the polymer and its possible impurities (e.g., starting materials used to manufacture the additive). As stated above, the polymer is likely to contain residual amounts of a carcinogenic compound, vinyl chloride monomer, that is used in the manufacture of the polymer. The level of residual monomer in polymers is an important factor in assessing safety.

Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the Food Additives Amendment, a food additive cannot be approved for a particular use unless the data presented to FDA establish that the food additive is safe

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for that use. The concept of safety embodied in this requirement was explained in the legislative history of the Food Additives Amendment of 1958. "Safety requires proof of a reasonable certainty that no harm will result from a proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." H. Rept. 2284, 85th Cong., 2d Sess. 1 (1958). This definition of safety is incorporated in FDA's food additive regulations (21 CFR 170.3(i)). The Delaney anticancer clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)) provides further that no food additive can be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA often refused to list a food or color additive that contained or was expected to contain minor amounts of a carcinogenic chemical, even if the additive as a whole had not been shown to cause cancer. As explained below, however, scientific developments and experience with risk assessment procedures have made it possible for FDA, in appropriate circumstances, to approve the use of additives that contain a carcinogenic chemical.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent. Since that decision, FDA has listed, on the same basis, the uses of several color additives that contain carcinogenic impurities, including the use of D&C Green No. 6 for coloring contact lenses (48 FR 13020; March 29, 1983) and the use of D&C Green No. 5 (47 FR 24278; June 4, 1982) and of D&C Red No. 6 and D&C Red No. 7 (47 FR 57661; December 28, 1982) for coloring drugs and cosmetics. (See also the advance notice of proposed rulemaking published in the Federal Register of April 2, 1982 (47 FR 14462).)

The appropriateness of FDA's decision to list the uses of these color additives is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

The Delaney or anti-cancer clause is not triggered unless the additive as a whole is found to induce cancer. An additive that has not been shown to induce cancer but that contains a carcinogenic impurity is properly evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

Therefore, because vinyl chloride polymers, manufactured from the component vinyl chloride monomer, have not been shown to cause cancer, the anticancer clause does not apply. FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. This discussion is presented below.

B. Carcinogenicity Data on Vinyl Chloride Monomer

FDA, since the early 1970's, has been monitoring ongoing animal studies that have investigated the toxicity of vinyl chloride monomer. The agency has reviewed four available oral carcinogenicity studies on vinyl chloride monomer. These four studies are: (1) Cesare Maltoni's vinyl chloride monomer carcinogenicity study (Environmental Health Perspectives, 41:3–29, 1981), (2) the chronic oral study performed by Feron et al. (*Food and Cosmetic Toxicology*, 19:317–333, 1981), (3) The British Industrial Biological Research Association (BIBRA), unpublished study (1980) entitled "An Investigation into the Carcinogenic Potential of Vinyl Chloride Monomer when Administered to Rats in the Drinking Water for up to 152 weeks," and (4) CIVO Institute's TNO unpublished study (1983) entitled "Lifespan Oral Carcinogenicity Study of Vinyl Chloride in Rats."

In the Feron et al. study, Wistar rats were fed a diet containing vinyl chloride monomer in vinyl chloride homopolymer powder or were administered vinyl chloride monomer in soybean oil by gavage. The results of this study show that vinyl chloride monomer is a carcinogen in Wistar rats, inducing neoplastic liver cell nodules, hepatocellular carcinomas, and angiosarcomas of the liver and the lung. The agency chose this study for computation of the risk for human exposure to vinyl chloride monomer because it was a lifetime (135 to 144 weeks) feeding study, and because the individual animal data were available.

In the Maltoni study vinyl chloride monomer was administered by various routes (including oral gavage), doses, and schedules of treatment, to animals of various species, strains, sex, and age. For the oral portion of the study, Sprague-Dawley rats were administered vinyl chloride monomer in olive oil by gavage for 52 weeks (5 times/week) and kept until spontaneous death (136 weeks). The report contains few details on the experimental design. However, the results of the oral portion of this study suggest that vinyl chloride monomer is an animal carcinogen. The results have not been used for the agency's risk assessment because the treatment lasted only 52 weeks. The data from this experiment were also presented by Maltoni at "The Conference to Re-evaluate the Toxicology of Vinyl Chloride Monomer, Polyvinyl Chloride and Structural Analogues" held at the National Institutes of Health, Bethesda, MD, March 20 and 21, 1980, and were published in *Environmental Health Perspectives*, 41:3–29, 1981.

In the BIBRA study, Wistar rats were administered vinyl chloride monomer as solutions in the drinking water for up to 152 weeks. The results show that vinyl chloride monomer is carcinogenic to Wistar rats, inducing predominantly hepatic hemangiosarcomas.

The latest CIVO Institutes TNO study (1983) is actually a repeated study of Feron et al. (1981), but at lower test levels of vinyl chloride monomer. The earlier study (Feron et al., 1981) had shown that liver neoplasia were found to occur at all dose levels. Therefore, in order to provide ideal experimental data for risk extrapolation, a similar life-span oral carcinogenicity study with vinyl chloride monomer in Wistar rats was carried out at lower dose levels at the same laboratory. The results of this study essentially confirmed the results observed in the earlier study in that vinyl chloride monomer, at the lower doses, induced only hepatocellular tumors (neoplastic nodules and hepatocellular carcinomas).

Upon reviewing the results of these studies, the agency concluded that vinyl chloride monomer is an animal liver carcinogen via the oral route of exposure.

An extensive review of the toxicological effects of vinyl chloride monomer has also been presented in International Agency for Research on Cancer (IARC) monograph No. 19 (published February 1979), which was prepared by an IARC evaluation group that met in February 1978. The evaluation group concluded that vinyl

chloride monomer is a carcinogen in animals (both via inhalation and oral routes) and in humans (inhalation). It found that vinyl chloride monomer is carcinogenic by the inhalation route to mice, rats, rabbits, hamsters, and humans. The evaluation group also found that the monomer produces tumors at multiple sites but is most active in induction of the otherwise rare hepatic angiosarcomas.

IARC summarized the data on vinyl chloride monomer as follows (IARC Monographs, Supplement 1, p. 45, 1979):

A. Evidence for Carcinogenicity to Humans (Sufficient)

Vinyl chloride causes angiosarcomas of the liver; it has also been associated with tumors of the brain and lung and of the haematopoietic and lymphatic systems in humans. Reports of increased incidence of tumors of the digestive system, urinary tract, and breast (in women) are inadequate to evaluate the carcinogenicity of vinyl chloride for these sites.

B. Evidence of Carcinogenicity to Animals (Sufficient)

Vinyl chloride is carcinogenic to mice, rats, and hamsters after its administration orally or by inhalation, producing tumors at several sites, including angiosarcomas of the liver.

C. Evidence for Activity in Short Term Tests (Sufficient)

Vinyl chloride induces DNA damage in prokaryotes and in mammalian cells *in vitro*. It was mutagenic to *Salmonella typhimurium* in the absence of an exogenous metabolic activation system and to *Escherichia coli*, *Schizosaccharomyces pombe* and *Saccharomyces cerevisiae* but not to *Neurospora crassa*. It was mutagenic to *Drosophila melonogaster*, inducting sex-linked recessive lethal mutations and to hamster cells *in vitro*. It induced chromosomal aberrations and sister chromatid exchanges in Chinese hamsters exposed *in vivo*. It did not induce dominant lethal or somatic mutations in mice. Vinyl chloride alkylated the liver DNA of rats treated *in vivo*. Chromosomal aberrations and sister chromatid exchanges were induced in workers exposed to vinyl chloride. Most such data were obtained when exposure was to levels of 25 ppm. In follow-up studies, in which workers were exposed to levels that had been reduced to 15 ppm or lower, no aberrations or sister chromatid exchanges were reported. Sister chromatid exchange incidence dropped to a normal level shortly after termination of exposure to higher levels. However, the incidence of chromosomal aberrations returned to normal only after two years. [Thus, although sister chromatid exchanges were not observed in some studies, sampling may have occurred after the level returned to normal.]

The 1979 monograph concluded that, while vinyl chloride monomer is an established animal carcinogen via both inhalation and oral ingestion, its carcinogenic activity in humans has so far been demonstrated only in workers who were involved in the production, polymerization, and processing industries and who were exposed to high environmental concentrations of vinyl chloride monomer vapor. Based on its own review of the data, FDA concurs with this conclusion.

C. Risk Assessment

In assessing the risk presented by vinyl chloride monomer from the use of vinyl chloride polymers, the agency has used risk assessment procedures that are similar to those that it used in evaluating the risk from the minor carcinogenic impurities that may be present in the color additives that FDA discussed above.

The risk evaluation of the carcinogenic constituent has two aspects: (1) Assessment of the probable exposure to the constituent (vinyl chloride monomer) from all the regulated and prior-sanctioned uses of vinyl chloride polymers, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

1. Exposure

The agency has calculated an estimated daily intake for vinyl chloride monomer from known current uses of vinyl chloride polymers as potential well as additional uses taking into account the fraction of the daily diet that might be packaged in materials made of vinyl chloride polymers. Vinyl chloride monomer exposure may be estimated using known vinyl chloride monomer residuals in the vinyl chloride homopolymer or copolymer and survey data for current production levels for these polymers.

The estimated daily intake calculations for vinyl chloride polymers are as follows:

1. *Liquor bottles.* Because this use of vinyl chloride polymers is not permitted by current regulations or by a prior sanction, there are no available marketing data from which the agency might estimate potential vinyl chloride monomer exposure from vinyl chloride polymer liquor bottles. There are several ways of estimating exposure to vinyl chloride monomer from use of these liquor bottles, each using the conservative assumption that all liquor will be packaged in these bottles. In reality, vinyl chloride polymers will compete with other materials such as polyethylene terephthalate and glass, which are currently used for packaging liquor.

A typical vinyl chloride ploymer liquor bottle will weigh approximately 105 grams and have a capacity of 1.75 liters (letter dated August 17, 1983, from The Society of the Plastics Industry, Inc.). If the vinyl chloride monomer residual level is 10 ppb, the proposed limitation in § 177.1975, and if 100 percent migration occurs, the predicted vinyl chloride monomer level in the beverage would be 0.65 ppb. The resulting vinyl chloride monomer levels in the liquor would be below the detection limits of current analytical methods.

The actual migration expected over the shelf life of liquor is likely to be lower based on experimental migration levels from containers having higher residual monomer levels. For example, when bottles containing 0.9 ppm residual vinyl chloride monomer were extracted with 50 percent ethanol for 9 months at 72° F, no vinyl chloride monomer could be detected in the solvent at a level of detection of 10 ppb (Ethyl Corp., report dated September 27, 1976). Therefore, if it is assumed that migration occurs at the level of detection, 5.5 percent of the residual vinyl chloride monomer migrated. Because diffusivity has been shown by Ethyl's work to decrease as the residual vinyl chloride monomer is reduced, the percent migration must also decrease. Therefore, 5.5 percent migration of residual vinyl chloride monomer from bottles containing 10 ppb vinyl chloride monomer is an upper limit. If 5.5 percent of the available vinyl chloride monomer migrates from a 1.75-liter bottle having 10 ppb residual vinyl chloride monomer, the predicted level of vinyl chloride monomer in the packaged food would be 0.036 ppb.

According to available statistics ("Public Revenues from Alcoholic Beverages," p. 26, 1980/1981, Economics and Statistics Division, Distilled Spirits Council of the United States, Inc.), per capita liquor consumption in 1980 was 1.98 gallons or about 19 grams per day. The average vinyl chloride monomer ingested per person per day from this use would be about 0.68 nanogram per day if vinyl chloride monomer migration is 0.036 ppb.

Exposure may also be estimated using the U.S. Department of Agriculture (USDA) Nationwide Food Consumption Survey, 1977–1978. Of the 37,874 individuals surveyed, those who consumed liquor at least once during the 3-day study period consumed an average of 46 grams per day. The 90th percentile intake for users was 98 grams per day. If this latter value is used, vinyl chloride monomer exposure becomes 3.5 nanograms per day. This number is conservative because users who consume liquor less frequently than

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once in 3 days were not included in the survey. The 1977–1978 Market Research Corp. of America (MRCA) survey of food consumed over a 14-day period reports an upper 90th percentile level of only 28 grams per day for brandy, whiskey, rum, and vodka.

2. *Wine bottles.* According to the Distilled Spirits Council of the United States, Inc., 1980 consumption of wine was approximately the same as that of liquor. However, the 90th percentile users' intake reported by USDA is 232 grams per day (USDA Nationwide Food Consumption Survey, 1977–1978). If all this wine contained vinyl chloride monomer at a level of 0.036 ppb (based on the Ethyl Corp. 50 percent ethanol extraction experiments referred to above), ingestion of vinyl chloride monomer would be 8.4 nanograms per day. This number is even more conservative than that calculated for liquor because water does not extract vinyl chloride monomer as well as alcohol, and migration into a beverage containing 14 percent or less alcohol should be lower than migration into beverages containing 50 percent alcohol. Furthermore, as with liquor, the assumption that all wine will be packaged in vinyl chloride polymer bottles is highly conservative. (The corresponding MRCA 14-day survey gives a level of 78 grams per day for the 90th percentile user.)

3. *Oil bottles.* There are vinyl chloride polymer vegetable oil bottles on the market and, although the number of these bottles is small, there are indications that the number will increase. In contrast to the consumption pattern for liquor and wine, fats and oils are consumed by almost the entire population. In 1978, salad and cooking oil consumption (including oils used in commercial salad dressings) averaged 22.6 pounds per person per year ("Fats and Oils Situation," USDA, May 1980) or 28 grams per day per capita. For food items with broad consumption patterns, the 90th percentile users' intake is generally about two times the per capita intake and yields an estimated 56 grams per day for 90th percentile users of salad and cooking oil. (The MRCA 90th percentile level for retail salad and cooking oils is a much lower 5.2 grams per day.)

Experimental results demonstrate that the migration rate of vinyl chloride monomer from a rigid vinyl chloride polymer bottle into a vegetable oil approximates the migration rate into 50 percent alcohol. (See, e.g., extraction results reported by Ethyl Corp. in the April 1975 issue of "Modern Packaging.") From information supplied by The Society of the Plastics Industry, Inc., a typical oil bottle contains 38 ounces of oil and weighs 70 grams. Assuming a migration rate for oil that is identical to that for 50 percent alcohol, the estimated 90th percentile user intake is 2.5 nanograms per day.

4. *Vinyl chloride homopolymer film.* Vinyl chloride monomer levels in plasticized vinyl chloride homopolymer film are lower than those found in rigid vinyl chloride polymer. An upper limit of exposure to vinyl chloride monomer from the film can be obtained by assuming that all of the vinyl chloride monomer in the film migrates into food. For example, a film with a thickness of 1 mil (0.0025 centimeter), a density of 1.26 grams per cubic centimeter, and a vinyl chloride monomer residual of 5 ppb would yield a maximum level in food of 0.010 ppb, if 1 square inch of film contacts 10 grams of food—FDA's usual assumption. Analyses of plasticized film for vinyl chloride monomer have generally shown residual vinyl chloride monomer levels of less than 5 ppb (Dennison, et al., *Journal of the Association of Official Analytical Chemists*, 61:4:813–819, 1978). The assumption of 100 percent migration is likely to be an exaggeration even for use with fatty foods such as meat and poultry, which would extract vinyl chloride monomer to a greater extent than other nonalcoholic foods.

Currently, food packaged in plasticized film is estimated to be about 5 percent of the diet. Industry projections indicate that this percentage may rise to about 7.5 percent in 5 years. FDA used the latter value in computing its estimates.

Considering migration, fraction of the diet packaged in film (7.5 percent), and a total dietary intake of 3,000 grams per day, FDA estimates exposure to vinyl chloride monomer from the use of vinyl chloride homopolymer film to be 2.2 nanograms per day ("Guidelines for Estimating Exposure to Indirect Food Additives," FDA, June 1981).

5. *Vinyl chloride-vinylidene chloride copolymers*—(i) *Films.* Although the use of this type of film with food is more limited than the use of vinyl chloride homopolymer films, residual vinyl chloride monomer levels are higher than those encountered in vinyl chloride homopolymer films. If the vinyl chloride monomer residual is 50 ppb, a level that FDA believes is the lowest level achievable with current technology, a calculation similar to that for homopolymer film yields a level of 0.14 ppb in food from 100 percent migration.

Information submitted by industry indicates that 1.5 percent to 2.8 percent of the total daily diet is packaged in vinylidene chloride-vinyl chloride copolymers. Using the maximum value of 2.8 percent, the migration level of 0.14 ppb, and a total dietary intake of 3,000 grams per day, FDA calculates exposure to vinyl chloride monomer from this use to be 12 nanograms per day.

(ii) *Vinyl chloride-vinylidene copolymer coatings on fresh citrus fruit.* Based on information from a major producer of vinyl chloride-vinylidene chloride copolymer (memorandum of telephone conversation, M. Flood, FDA, and J. Cobler, Dow Chemical Co., September 30 and October 3, 1983), FDA has determined that this copolymer is no longer used as a coating on fresh citrus fruit. Therefore, the agency is proposing to revoke the regulation permitting this use and is not including any contribution of vinyl chloride monomer from this use in its calculation of the estimated daily intake.

6. *Other uses.* FDA has only included the primary probable contributors in estimating the daily intake of vinyl chloride monomer. It has not included other food-contact uses of vinyl chloride homopolymers and copolymers because they contribute such a small amount of vinyl chloride monomer to the diet that, in view of the conservatisms used in estimating exposure from the primary contributors, they can be disregarded. An example of these uses includes vinyl chloride copolymers used as coatings, where heat treatment of the coating after application would reduce vinyl choride monomer in the coating to levels not measurable by current analytical technology. Additionally, uses of vinyl chloride in articles such as water pipe or filters can be disregarded. These articles have a long service life, come into contact with extremely large amounts of water and other food, and will contain small amounts of vinyl chloride monomer. Therefore, FDA believes that these uses will not contribute any measurable amounts of vinyl chloride monomer when used in accordance with the proposed regulations.

To obtain an estimate of the upper limit vinyl chloride monomer exposure from all food-contact uses of vinyl chloride polymers, FDA has summed the upper limit exposures from each of the primary contributors to the exposure. FDA considers it unlikely that a high user of vinyl chloride polymer food-contact products would be exposed at maximum levels of vinyl chloride monomer from each use. Because it is most unlikely that a 90th percentile wine consumer is also a 90th percentile liquor consumer, particularly on a lifetime basis, these two exposure estimates are not added together. Instead, FDA is using the higher value for wine in the vinyl chloride monomer cumulative calculation. FDA conservatively estimates that the lifetime-averaged individual exposure to vinyl chloride monomer from the probable food-contact use of vinyl chloride polymers will not exceed 25 nonograms per day.

2. Extrapolation of Risk

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose in the animal experiment to the very low doses of possible human exposure. This procedure is not likely to underestimate the actual risk from very low doses. In fact, the estimate of the risk is most likely exaggerated because the extrapolation models used are designed to estimate the maximum possible risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the use of vinyl chloride polymers.

FDA has used data from a carcinogenicity bioassay in which vinyl chloride monomer was administered in the diet of rats to estimate the upper level of human risk from exposure to this impurity from the proposed use of vinyl chloride polymers (Feron et al. study and memorandum dated May 27, 1984, from Cancer Assessment Committee to V. Anand, FDA).

FDA has calculated that the individual lifetime risk of cancer from exposure to vinyl chloride monomer at 25 nanograms per day is less than 1 in 10 million. Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure is expected to be substantially less than 25 nanograms per day. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to vinyl chloride monomer that may result from the use of vinyl chloride polymers in food packaging complying with the vinyl chloride monomer limitations set forth in this document.

These limitations on residual vinyl chloride monomer are necessary to ensure that the present and future exposure to vinyl chloride monomer in the daily diet remains within the limits used to conclude that vinyl chloride polymers may be used safely.

V. Prior sanctions

The agency is proposing to establish a listing of all known prior sanctions for the use of vinyl chloride polymers in packaging materials. These prior sanctions include those listed in the 1975 proposal, as well as additional prior sanctions discovered since publication of that proposal.

As discussed above, the use of a substance is excluded from the definition of "food additive" in section 201(s) of the act if that use is in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment. Section 181.5 of FDA's regulations (21 CFR 181.5) provides that a prior sanction exists only for specific uses of a substance; i.e., at the levels required for the technical effects and in the food categories for which there is explicit approval. As a result, some uses of a substance may be food additive uses while other uses may be prior sanctioned. Indeed, FDA regulations list uses of a number of substances, including vinyl chloride polymers, in each category.

The 1975 proposal listed several prior-sanctioned uses of vinyl chloride polymers and requested that firms holding other valid prior sanctions for these polymers forward them to FDA for inclusion in the final regulation. There were no submissions in response to that request.

Subsequently, FDA reviewed its files on all firms that were known to be manufacturing vinyl chloride polymers for use in food-contact articles before the effective date of the Food Additives Amendment to the act. This review revealed the following additional prior sanctions:

1. Letter to Firestone Plastics Co., Pottstown, PA, dated April 20, 1961, permitting the use of vinyl chloride resins as films for food packaging.

2. Letter to Firestone Plastics Co., Pottstown, PA, dated October 5, 1956. Permitting the use of rigid polyvinyl chloride (homopolymer) sheet for packaging poultry.

3. Letter to Firestone Plastics Co., Pottstown, PA, dated February 21, 1957, permitting the use of vinyl chloride and vinyl chloride-acetate resins for "food wrapping purposes."

4. Letter to Borden Co., Santa Barabara, CA, dated August 15, 1957. Permitting the use of vinyl chloride polymers as tubing for food-contact use.

FDA is proposing to establish § 181.37 to cover those uses of these vinyl chloride polymers for which documentation of the prior sanctions is available. FDA's review of its files for all known pre-1958 manufacturers failed to locate any documentation of a prior sanction for a rigid or semirigid vinyl chloride polymer bottle. The only documented prior sanctions for rigid vinyl chloride polymer that the agency found were for waterpipe and poultry packaging trays.

V. Proposed Regulations

A. Currently Regulated Polymers

In order to provide for the safe use of vinyl chloride polymers currently regulated under Title 21 of the Code of Federal Regulations, FDA is proposing the following:

1. In § 172.210 *Coatings on fresh citrus fruit*, FDA is proposing to delete the use of vinyl chloride-vinylidene chloride copolymer, and the adjuvants used in its production, as components of coatings on fresh citrus fruit. The only known manufacturer of this copolymer reported to FDA that the material has not been used to coat fresh citrus fruit for many years, and that there are no plans to market the product for this use in the future. Deletion of the additive vinyl chloride-vinylidene chloride copolymer in this regulatoin will also result in the deletion of polyethylene glycol, polyvinyl-pyrrolidone, potassium persulfate, propylene glycol alginate, and sodium decylbenzene sulfonate from § 172.210, because the only use of these adjuvants permitted by this regulation is in vinyl chloride-vinylidene chloride coplymers. The deletion of these adjuvants has no effect on their status in other food additive regulations.

2. In § 175.105 *Adhesives*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride homo- or copolymer component of the adhesive.

3. In § 175.300 *Resinous and polymeric coatings*, for the vinyl chloride homo- or copolymer component of the coatings, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight.

4. § 175.320 *Resinous and polymeric coatings for polyolefin films*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component of the olefin polymer coating.

5. § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the listed vinyl chloride copolymer components of the paper and paperboard.

6. In § 176.180 *Components of paper and paperboard in contact with dry foods*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride homo- or copolymer component.

7. In § 177.1010 *Acrylic and modified acrylic plastics, semirigid and rigid*, FDA is proposing to establish a limit on residuel vinyl chloride monomer of 5

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ppb by weight of the vinyl chloride copolymer component.

8. In § 177.1200 *Cellophane*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride homo- or copolymer components.

9. In § 177.1210 *Closures with sealing gaskets for food containers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component.

10. In § 177.1630 *Polyethylene phthalate polymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component.

11. In § 177.1850 *Textryls*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component.

12. In § 177.1950 *Vinyl chloride-ethylene copolymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 10 ppb by weight of the vinyl chloride copolymer component.

13. In § 177.1960 *Vinyl chloride-hexene-1 copolymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 10 ppb by weight of the vinyl chloride copolymer component.

14. In § 177.1970 *Vinyl chloride-lauryl vinyl ether copolymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 10 ppb by weight of the vinyl chloride copolymer component.

15. In § 177.1980 *Vinyl chloride-propylene copolymers*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 10 ppb by weight of the vinyl chloride copolymer component.

16. In § 177.2250 *Filters, microporous polymeric*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 50 ppb by weight of the vinyl chloride homo- or copolymer component.

17. In § 179.45 *Packaging materials for use during the irradiation of prepackaged foods*, FDA is proposing to establish a limit on residual vinyl chloride monomer of 5 ppb by weight of the vinyl chloride copolymer component.

B. Polymers Not Previously Regulated

In Part 177, FDA is also proposing to establish new § 177.1975 *Vinyl chloride polymer resins, rigid and semirigid*, to provide for the safe use of rigid and semirigid vinyl chloride polymers that have been marketed based on the belief that they are covered for food use by a valid prior sanction. This regulation provides for the use of those vinyl chloride polymers that are not covered by a valid prior sanction or by existing regulations.

This regulation proposes various specifications, including a residual vinyl chloride monomer limit of 10 ppb by weight of the vinyl chloride polymer.

C. Prior-sanctioned Polymers

FDA is proposing new § 181.37 *Vinyl chloride homo- and copolymer resins*, which sets forth all known prior sanctions for vinyl chloride homo- and copolymers and sets forth limits on residual vinyl chloride monomer in these polymers based on what FDA has determined the manufactuers are capable of achieving. The specific proposed limits, expressed by weight of the vinyl chloride homo- or copolymer component, are as follows:

1. In vinyl chloride homo- or copolymer films and coatings, except as noted below, FDA proposes to limit residual vinyl chloride monomer to 5 ppb by weight of the vinyl chloride homo- or copolymer component.

2. In vinyl chloride-vinylidene chloride films, FDA proposes to limit residual vinyl chloride monomer to 50 ppb by weight of the vinyl chloride copolymer component.

3. In vinyl chloride polymer waterpipe, FDA proposes to limit residual vinyl chloride monomer to 50 ppb by weight of the vinyl chloride homopolymer component.

4. In plasticized vinyl chloride for use as flexible tubing and as gaskets and bottle or jar liners, FDA proposes to limit residual vinyl chloride monomer to 5 ppb by weight of the vinyl chloride polymer components.

5. For rigid vinyl chloride polymer sheet, FDA proposes to limit residual vinyl chloride monomer to 10 ppb by weight of the vinyl chloride polymer component.

VI. Conclusions

Based on available toxicity data, the agency's exposure calcuations, and its estimates of the risk from the carcinogenic constituent, vinyl chloride monomer, in the polymer when the polymer complies with the specifications that the agency is proposing, FDA tentatively concludes that the use of vinyl chloride polymers as food-contact materials, as described above is safe. The agency is, therefore, proposing to amend the food additive regulations and to adopt new regulations to provide for the safe use of vinyl chloride polymers. The agency is also proposing to delete from the current food additive regulations the use of vinyl chloride-vinylidene chloride copolymers as a component of coatings of fresh citrus fruit.

Following publication of the 1975 proposal, the Environmental Protection Agency (EPA), under authority of the 1974 Safe Drinking Water Act, executed a memorandum of understanding (MOU) with FDA (see 44 FR 42775; July 20, 1979). That MOU established an agreement between EPA and FDA with regard to the control of direct and indirect additives in drinking water. According to that MOU, FDA has the regulatory responsibility with respect to water, and substances in water, used in food and food processing, as well as regulatory responsibility for bottled drinking water under the act. The MOU also gives primary regulatory responsibility to EPA for direct and indirect additives in municipal drinking water under the Safe Drinking Water Act, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide and Rodenticide Act. Therefore, FDA has deferred to EPA to prescribe conditions for the safe use of vinyl chloride polymer pipe in municipal water systems.

The agency has carefully considered the potential envoronmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985).

FDA welcomes the submission of any data bearing on the issues and conclusions contained in the finding of no significant impact and the environmental assessment. FDA would particularly like any additional information on the environmental fate (e.g., persistence) of di(2-ethylhexyl) phthalate, di(2-ethylhexyl) adipate, and expoxidized soybean oil in terrestrial and benthic environments, and any additional information on the effects (acute, subacute, and chronic) of these chemicals on representative organisms from those environments. FDA would also like additional information on whether vinyl chloride polymers contribute to the emission of polychlorinated dibenzo-*p*-dioxins and polychlorinated dibenzofurans from municipal solid waste incinerators. FDA will reexamine its conclusions if new information becomes available suggesting that this action will have significant environmental impact.

The agency has prepared an assessment concerning the economic impact of the proposed rule. The cost expected to arise from any final rule based on this proposed rule is the cost of reducing residual vinyl chloride monomer to acceptable levels in food-contact articles containing vinyl chloride. FDA has found that since 1975, most vinyl chloride polymer resin manufacturers and manufacturers of food-contact articles containing vinyl chloride have made the changes in their manfuacturing processes that are necessary to produce vinyl chloride polymers that comply with this regulation. Therefore, this regulation should not produce any new developmental costs for manufacturers. The agency notes, however, that the improved methods of manufacturing vinyl chloride polymers are more expensive than those that were in use before 1975. The agency estimates that these new methods cost about $2.9 million more annually than their predecessors.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will result from this action. A copy of the assessment supporting these determinations may be seen in the Dockets Management Branch (address above).

Interested persons may, on or before April 4, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 172

Food additives.

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 176

Food additives, Food packaging.

21 CFR Part 177

Food additives, Food packaging.

21 CFR Part 179

Food additives, Food packaging, Radiation protection.

21 CFR Part 181

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 172, 175, 176, 177, 179, and 181 be amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 172.210 by removing and reserving paragraph (b)(3) and by revising the introductory text of paragraph (b)(4) to read as follows:

§ 172.210 Coatings on fresh citrus fruit.

* * * * *

(b) * * *

(3) [Reserved]

(4) In lieu of the components listed in paragraph (b)(2) of this section, the following rosin derivatives and either or both of the listed adjuvants:

* * * * *

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

3. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

4. In § 175.105 (c) (5) by revising the item "Vinyl chloride" to read as follows:

§ 175.105

Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * * *	
Polymers. Homopolymers and copolymers of the following monomers:	
* * * * * *	
Vinyl chloride.....	Residual vinyl chloride monomer content determined in the finished adhesives, using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride homo- or copolymer component.
* * * * * *	

* * * * *

5. In § 175.300 by adding new paragraph (j) to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(j) Residual vinyl chloride monomer content determined in the finished coatings, using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride home- or copolymer component.

6. In § 175.320 by redesignating paragraph (c) as paragraph (c)(1) and by adding new paragraph (c)(2) to read as follows:

§ 175.320 Resinous and polymeric coastings for polyolefin films.

* * * * *

(c) * * *

(2) For coatings formulated with a vinyl chloride homo- or copolymer listed in paragraph (b)(3) of this section, residual vinyl chloride monomer content, determined in the finished coatings, using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * *

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

7. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

8. In § 176.170(b)(2) in the table by adding limitations to the items "vinyl chloride copolymers," "Vinyl chloride-vinyl acetate hydroxyl-modified copolymers," "Vinyl chloride-vinyl acetate hydroxyl-modified copolymers reacted with trimellitic anhydride," and "Vinylidene chloride copolymers" to read as follows:

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§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * * * *

(b) * * *
(2) * * *

List of substances	Limitations
* * * * * * *	
Vinyl chloride copolymers * * *	For paper or paperboard in the finished form in which it is to contact food, residual vinyl chloride monomer, determined by the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.
Vinyl chloride-vinyl acetate hydroxyl-modified copolymers.	Do.
Vinyl chloride-vinyl acetate hydroxyl-modified copolymers reacted with trimellitic anhydride.	Do.
Vinylidene chloride copolymers * * *	Do.

* * * * * * *

9. In § 176.180(b)(2) by revising the item "Vinyl chloride" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry foods.

* * * * * * *

(b) * * *
(2) * * *

List of substances	Limitations
* * * * * * *	
Polymers: Homopolymers and copolymers of the following monomers: * * * * * * *	
Vinyl chloride.....	For paper or paperboard in the finished form in which it is to contact food, residual vinyl chloride monomer, determined by the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride homo- or copolymer component.

* * * * * * *

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

10. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

11. In § 177.1010 by revising the introductory tests of paragraph (a) (2) and (4) to read as follows:

§ 177.1010 Acrylic and modified acrylic plastics, semirigid and rigid.

* * * * * * *

(a) * * *

(2) Copolymers produced by copolymerization of one or more of the monomers listed in paragraph (a)(1) of this section with one or more of the following monomers, provided that for any articles that contain a vinyl chloride polymer, residual vinyl chloride monomer, the be determined in the finished form in which the articles are to contact food, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component:

* * * * * * *

(4) Polymers identified in paragraph (a) (1), (2), and (3) of this section are mixed together and/or with the following polymers, provided that no chemical reactions, other than addition reactions, occur when they are mixed; provided further that for any polymers that include a vinyl chloride homo- or copolymer, residual vinyl chloride monomer, to be determined in the finished food-contact article, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride homo- or copolymer component:

* * * * * * *

12. In § 177.1200(c) in the table by removing the item "Polyvinyl chloride," by revising the items "Polyvinyl stearate," "Vinyl acetate-vinyl chloride copolymer resins," "Vinyl acetate-vinyl chloride-maleic acid copolymer resins," "Vinylidene chloride copolymerized with * * *," and "Vinylidene chloride-methacrylic decyloctyl copolymer," and by adding new item "Vinyl chloride homopolymer" to read as follows:

§ 177.1200 Cellophane.

* * * * * * *

(c) * * *

List of substances	Limitations
Polyvinyl stearate.....	As the basic polymer.
Vinyl acetate-vinyl chloride copolymer resins.	As the basic polymer. For the finished cellophane base sheet intended to contact food, residual vinyl chloride monomer, determined by the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.
Vinyl acetate-vinyl chloride maleic acid copolymer resins.	Do.
Vinylidene chloride copolymerized with one or more of the following: Acrylic acid, acrylonitrile, butyl acrylate, butyl methacrylate, ethyl acrylate, 2-ethylhexyl acrylate, 2-ethylhexyl methacrylate, ethyl methacrylate, itaconic acid, methacrylic acid, methyl acrylate, methyl methacrylate, propyl acrylate, propyl methacrylate, vinyl chloride.	Do.
Vinyl chloride homopolymer.....	As the basic polymer. For the finished cellophane base sheet intended to contact food, residual vinyl chloride monomer, determined in the finished sheet, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of vinyl chloride homo- or copolymer component.
Vinylidene chloride-methacrylic decyloctyl copolymer.	As the basic polymer.

* * * * * * *

13. In § 177.1210(b)(5) by revising the item "Vinyl chloride-vinyl stearate copolymer" to read as follows:

§177.1210 Closures with sealing gaskets for food containers.

* * * * * * *

(b) * * *
(5) * * *

List of substances	Limitations (expressed as percent of weight of closure-sealing gasket composition)
* * * * * * *	
Vinyl colorido-vinyl stearate copolymer.	Residual vinyl chloride monomer, determined in the finished closures with sealing gaskets, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

14. In § 177.1630(e)(4)(iii) by revising the item "Vinyl chloride" to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * * * *

(e) * * *
(4) * * *
(iii) * * *

Vinylidene chloride copolymerized with one or more of the following:

* * * * * * *

Vinyl chloride, Residual vinyl chloride monomer, determined in the finished copolymer coating, using the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

15. In § 177.1850 by revising paragraph (c)(2) to read as follows:

§ 177.1850 Textryls.

* * * * * * *

(c) * * *

Substances	Limitations
* * * * * * *	
(2) Fibryls prepared from vinyl chloride-vinyl acetate copolymer.	As the basic copolymer. For textryls containing vinyl chloride-vinyl acetate copolymer, residual vinyl chloride monomer, determined in the finished food-contact article, by the method described in § 177.1975(c), shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

16. In § 177.1950 by adding new paragraph (c)(1)(iii) to read as follows:

§ 177.1950 Vinyl chloride-ethylene copolymers.

* * * * * * *

(c) * * *
(1) * * *

(iii) Residual vinyl chloride monomer, determined in the finished food-contact article, using the method described in § 177.1975(c), shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

17. In § 177.1960 by adding new paragraph (b)(1)(iii) to read as follows:

§ 177.1960 Vinyl chloride-hexene-1 copolymers.

* * * * * * *

(b) * * *
(1) * * *

(iii) Residual vinyl chloride monomer, determined in the finished food-contact article, using the method described in § 177.1975(c), shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

18. In § 177.1970 by adding new paragraph (c)(1)(iii) to read as follows:

§ 177.1970 Vinyl chloride-lauryl vinyl ether copolymers.

* * * * * * *

(c) * * *
(1) * * *

(iii) Residual vinyl chloride monomer, determined in the finished food-contact article, using the method described in § 177.1975, shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

19. By adding a new § 177.1975 to read as follows:

§ 177.1975 Vinyl chloride polyer resins, rigid and semirigid.

Vinyl chloride polymers may be safely used as articles or components of articles intended for use in contact with food subject to the provisions of this section.

(a) *Identity.* Vinyl chloride polymer resins consist of (1) homopolymer resins produced by polymerization of vinyl chloride, which has the molecular formula C_2H_3Cl (CAS Reg. No. 75–01–4). Vinyl chloride polymer resins (molecular formula $(C_2H_3Cl)_n$; Cas Reg. No. 9002–86–2) have a maximum volatility of not over 3 percent when heated for 1 hour at 105 C (221°F) and an inherent viscosity of at least 0.35 when determined by ASTM method D1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Method A), which is incorporated by reference. Copies are available from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St., NW., Washington, DC 20408; and (2) copolymer resins produced by the copolymerization of vinyl chloride with other monomeric polymeric substances.

(b) *Conditions of use.* Vinyl chloride polymers identified in this section may be used alone or admixed with polymer modifiers identified in accordance with the following prescribed conditions:

(1) No chemical reactions, other than addition reactions, occur among the vinyl chloride polymers and the modifying polymers present in the manufacture of the finished food-contact article.

(c) *Limitations.* The finished food-contact articles, semirigid and rigid, for single or repeated use, shall not contain residual vinyl chloride monomer levels in excess of 10 parts per billion by weight of the vinyl chloride polymer component, as determined using the method of analysis titled, "Headspace Sampling and Gas-Solid Chromatographic Determination and Confirmation of > 1 ppb Vinyl Chloride Residues in Polyvinyl Chloride Food Packaging," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

20. In § 1177.1980 by adding new paragraph (c)(1)(iii) to read as follows:

§ 177.1980 Vinyl chloride-propylene copolymers.

* * * * * * *

(c) * * *
(1) * * *

(iii) Residual vinyl chloride monomer, determined in the finished food-contact article, using the method described in § 177.1975(c), shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

21. In § 177.2250 by redesignating existing paragraphs (e), (f), and (g), as paragraphs (f), (g) and (h), respectively, and by adding new paragraph (e) to read as follows:

§ 177.2250 Filters, microporous polymeric.

* * * * * * *

(e) Residual vinyl chloride monomer, determined in the finished microporous polymeric filters, using the method described in § 177.1975(c), shall not exceed 50 parts per billion by weight of the vinyl chloride home- or copolymer component.

* * * * * * *

PART 179—IRRADIATION IN THE PRODUCTION PROCESSING, AND HANDLING OF FOOD

22. The authority citation for 21 CFR Part 179 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

23. In § 179.45 (b)(9) and (c)(2)(iv) by adding a new sentence at the end of each paragraph to read as follows:

§ 179.45 Packaging materials for use during the irradiation of prepackaged foods.

* * * * * * *

(b) * * *

(9) * * * For vinylidene chloride-vinyl copolymer films identified in this paragraph residual vinyl chloride monomer in the finished food-contact article, determined using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

(c) * * *
(2) * * *

(iv) * * * For vinyl chloride-vinyl acetate copolymer film identified in this paragraph residual vinyl chloride monomer in the finished food-contact article, determined using the method described in § 177.1975(c) of this chapter, shall not exceed 5 parts per billion by weight of the vinyl chloride copolymer component.

* * * * * * *

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PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

24. The authority citation for 21 CFR Part 181 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

25. By adding new § 181.37 to read as follows:

§ 181.37 Vinyl chloride homo- and copolymer resins.

(a) *Identity.* Vinyl chloride homopolymers consist of basic resins produced by the polymerization of vinyl chloride monomer (molecular formula C_2H_3Cl; CAS Reg. No. 75–01–4). Vinyl chloride homopolymer resins (molecular formula $(C_2H_3Cl)_n$; CAS Reg. No. 9002–86–2) have maximum volatility of not over 3 percent when heated for 1 hour at 105° C (221 °F) and an inherent viscosity of not less than 0.35 when determined by ASTM Method D 1243–79, "Standard Method of Test for Dilute Solution Viscosity of Vinyl Chloride Polymers" (Method A), which is incorporated by reference. Copies are available from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. Vinyl chloride copolymer resins are the polymers produced by the copolymerization of vinyl chloride monomer with other monomeric or polymeric substances. Vinyl chloride homopolymers and copolymers may be safely used as follows:

(1) *Films.* (i) Vinyl chloride polymers for use in plasticized film in contact with food.

(ii) Vinyl chloride-butadiene-acrylonitrile copolymer for use in plasticized film in contact with oleomargarine.

(iii) Vinyl chloride-vinylidene chloride copolymer for use in plasticized film in contact with food.

(iv) Vinyl chloride-vinyl acetate copolymer for use in plasticized film in contact with food.

(2) *Coatings.* (i)Vinyl chloride for use as a can enamel.

(ii) Vinyl chloride-vinyl acetate copolymer for use as a can enamel.

(iii) Vinyl chloride-butadiene-acrylonitrile resin for use as a component of conveyor belts intended for use with fresh fruits, vegetables, and fish and as a component of coatings for paper and paperboard in contact with meat and lard.

(iv) Vinyl chloride-vinylidene chloride copolymer for use as a liner, i.e., coating for steel pipe.

(3) *Waterpipe.* Vinyl chloride polymer waterpipe used for carrying water inside a food-processing plant.

(4) *Flexible tubing.* Plasticized vinyl chloride homopolymer flexible tubing ranging in internal diameter from 3 to 4 inches for transporting food.

(5) *Gaskets and bottle or jar liners.* Vinyl chloride copolymer resin compositions containing up to 80 percent basic resin for use in contact with food.

(6) *Rigid sheet.* Vinyl chloride-vinyl acetate copolymers as basic resin in containers made from polymeric rigid sheet for packaging poultry only.

(b) *Limitations.* (1) Residual vinyl chloride monomer, determined in the finished food-contact article described in paragraph (a) (1) (i), (ii), (iv) and (2) of this section, using the method described in paragraph (c) of this section, shall not exceed 5 parts per billion by weight of the vinyl chloride homor copolymer component.

(2) For vinyl chloride-vinylidene chloride copolymer film described in paragraph (a)(1)(iii) of this section, residual vinyl chloride monomer, determined in the finished food-contact article using the method described in paragraph (c) of this section, shall not exceed 50 parts per billion by weight of the vinyl copolymer component.

(3) For vinyl chloride polymer waterpipe described in paragraph (a)(3) of this section, residual vinyl chloride monomer, determined in the finished waterpipe using the method described in paragraph (c) of this section, shall not exceed 50 parts per billion by weight of vinyl chloride homoploymer component.

(4) For plasticized vinyl chloride polymer for use as flexible tubing and as gaskets and bottle or jar liners made from vinyl chloride resin compositions described in paragraph (a) (4) and (5) of this section, respectively, residual vinyl chloride monomer determined in the finished food-contact article, using the method described in paragraph (c) of this section, shall not exceed 5 parts per billion by weight of the vinyl chloride polymer component.

(5) For rigid vinyl chloride-vinyl acetate resin sheet described in paragraph (a)(6) of this section, residual vinyl chloride monomer, determined in the finished food-contact article using the method described in paragraph (c) of this section, shall not exceed 10 parts per billion by weight of the vinyl chloride copolymer component.

(c) *Analytical method.* The residual concentration of vinyl chloride monomer in food-contact articles shall be determined by using the method of analysis titled, "Headspace Sampling and Gas-Solid Chromatographic Determination and Confirmation of >1 ppb Vinyl Chloride Residues in Polyvinyl Chloride Food Packaging," which is incorporated by reference. Copies are available from the Division of Food and Color Additives (HFF–330), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Dated: January 27, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–2235 Filed 1–31–86; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 880

[Docket No. 85N–0285]

General Hospital and Personal Use Devices; Premarket Approval of the Infant Radiant Warmer

Correction

In FR Doc. 86–832, beginning on page 1910 in the issue of Wednesday, January 15, 1986, make the following corrections:

1. On page 1910, second column, first complete paragraph, second line, "21 U.S.C. 231(f)" should have read "21 U.S.C. 351(f)".

2. On page 1911, third column, last line "W_{11}" should have read "Wu".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Reopening and Extension of Public Comment Period on a Proposed Amendment to the Ohio Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: By letter dated November 6, 1984, Ohio submitted a program amendment consisting of a revision to rule 1501:13–14–03 concerning civil penalties. OSMRE published a notice in the Federal Register on December 12, 1984, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 48324).

Following a review of the Ohio amendment, OSMRE notified the State on March 11, 1985, of its concerns about the amendment relating to alternative enforcement. On June 21, the State responded by submitting a policy statement addressing the implementation of alternative enforcement measures.

OSMRE reopened and extended the public comment period on July 19, 1985 for 15 days (50 FR 29436).

Additional review of Ohio's amendment and policy statement resulted in a second letter to the State, dated September 25, 1985, identifying concerns and seeking clarification. The State responded on December 19, 1985, with a letter clarifying its policy statement.

Accordingly, OSMRE is reopening and extending the comment period on Ohio's November 6, 1984 amendment as modified on June 21 and December 19, 1985. This action is being taken to provide the public an opportunity to reconsider the adequacy of the proposed amendment.

DATE: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:30 p.m. February 18, 1986, will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to Ms Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

Copies of the Ohio program, the proposed amendment and modification to the program, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters office and the Office of the State regulatory authority listed below, during normal business hours, Monday through Firday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, DC 20240

Ohio Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982. Information pertinent to the general background, revisions, modifications and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 Federal Register (47 FR 34688).

II. Proposed Amendment

By letter dated November 6, 1984, Ohio submitted a proposed program amendment consisting of a revision to rule 1501:13–14–03 concerning civil penalties, setting a 30-day cap on failure-to-abate cessation order assessments and establishing assessment conference procedures. The proposed amendment also provides for alternative enforcement actions to be taken if a violation has not been abated within 30 days.

OSMRE announced receipt of the amendment and initiated a public comment period on December 12, 1984 (49 FR 48324). The comment period closed on January 11, 1985.

During review of the amendment, OSMRE identified one concern. The proposed amendment did not specify how alternative enforcement measures will be implemented at the end of the 30-day abatement period to ensure that violations will be corrected. OSMRE notified Ohio about this concern by letter dated March 11, 1985. On June 21, 1985, Ohio responded by providing a policy statement on the implementation of alternative enforcement measures.

OSMRE announced receipt of the policy statement and initiated a public comment period on July 19, 1985 (50 FR 29438). The comment period closed on August 5, 1985.

OSMRE's review of Ohio's policy statement identified additional concerns. They included a limit on the types of violations for which alternative enforcement would be considered, clarification of public interests which may obviate the need for civil action, and lack of documentation as to alternative enforcement actions taken. Ohio was notified of these concerns in a letter dated September 25, 1985. On December 19, 1985, Ohio responded with a letter providing the clarification OSMRE had requested.

The full text of the proposed amendment and of the subsequent material is available for review at the locations listed above under "ADDRESSES". OSMRE is now seeking public comment on the adequacy of Ohio's November 6, 1984 amendment in light of the June 21, 1985 and December 19, 1985 modifications. If the Director determines that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations, the amendment will be approved and become part of the approved permanent program.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 28, 1986.

Brent Walquist,

Assistant Director, Program Operations.

[FR Doc. 86–2225 Filed 1–31–86; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVCE

39 CFR Part 111

Annual Fee—Third-Class Bulk Rates

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposal is to clarify the intent and effect of the final rule published in the Federal Register on May 17, 1985, concerning annual third-class bulk fees. This proposal will make it clear that when a bulk third-class mailing is made under the permit imprint system, only the individual or organization whose permit imprint is shown on the mailing piece itself and on the mailing statement must pay the annual bulk mailing fee. Currently, a bulk fee must be paid for the person or organization actually entering mailings at the bulk rates at a post office, regardless of the method of postage payment.

DATE: Comments must be received on or before March 5, 1986.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260–5361. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room P220, U.S.

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Postal Service Headquarters, 935 L'Enfant Plaza N., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Beller, (202) 245–4655.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1985, the Postal Service Published a proposed rule in the **Federal Register** recommending that section 641 of the Domestic Mail Manual, be amended in order to achieve consistency in the application of bulk third-class annual fee requirements. (50 FR 12839) After evaluation of all comments, a final rule change was published in the May 17, 1985, **Federal Register.** (50 FR 20567) However, the explanation of that rule change and the rule change itself contained contradictory statements regarding the payment of annual bulk third-class mailing fees. Therefore, this proposed rule is intended to clarify the applicability of the requirement of payment of bulk fees.

The published rule change amended section 641 to require payment of a bulk third-class annual fee only for those individuals or organizations which actually enter mailings at a post office at the bulk third-class rates of postage. For purpose of applying the fee requirememt, the originator of mail and the method of postage payment were irrelevant. However, in responding to a question raised by one of the commenters, the Postal Service stated that when an agent enters a permit imprint mailing which bears the permit imprint of a client on the mailing pieces and on the mailing statement, the client is considered to be the mailer and the annual bulk fee must be paid for the client rather than for the agent entering the mail. This approach takes into consideration the fact that the Postal Service incurs the administrative costs related to maintaining and active permit imprint postage account for those mailers who pay postage under the permit imprint system. However, the language of the regulation, which requires payment of the bulk fee only for the entity actually entering the mailing, is inconsistent with the logical conclusion stated in the explanation. It should be noted that the Postal Service does not incur these administrative costs when postage is prepaid using meter stamps or precanceled stamps.

II. Recommended Change

The Postal Service has concluded that the proposed change, in which only the holder of a permit imprint needs to pay the annual bulk third-class fee for mail bearing his permit imprint, would result in application of the bulk third-class annual fee in a manner which most accurately reflects the legitimate business purposes supporting the fee requirement.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendment of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 6—THIRD-CLASS MAIL

640 Authorizations and Permits

2. Revise 641 to read as follows:

641 Annual Fee—Bulk Rates

Except when a third-class bulk mailing is made under the permit imprint system, each person or organization that enters mailings at the regular or special bulk third-class rates must pay an annual bulk mailing fee at each post office where one or more mailings will be deposited (see 612.1). Persons or organizations paying this fee may enter mail of their clients as well as their own mail. When a third-class bulk mailing is made under the permit imprint system, the person or organization whose permit imprint is on the mailing piece must put his or its permit number on the mailing statement and must pay the annual bulk mailing fee. The annual bulk mailing fee must be paid at or before the time of the first bulk rate mailing of each calendar year. Note: This fee is separate from the fee that must be paid for a permit to mail under the permit imprint system (see 145.2).

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 86–2288 Filed 1–31–86; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–18; RM–4996]

FM Broadcast Station in Twentynine Palms, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 299A to Twentynine Palms, California, as that community's second local FM service, in response to a petition filed by Wayne R. Stenz d/b/a Westwind Radio Company.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b); Table of Assignments, FM Broadcast Stations (Twentynine Palms, California): (MM Docket No. 86–18, RM–4996).

Adopted: January 17, 1986.

Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Wayne R. Stenz, d/b/a/ Westwind Radio Company ("petitioner"), requesting the allotment of Channel 299A to Twentynine Palms, California, as that community's second local FM service. Petitioner states that he will apply for the channel, if assigned.

2. A staff engineering study indicates that Channel 299A can be allotted to Twentynine Palms, California, in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Since the proposed allotment is to be located within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission must obtain the Mexican government's consent thereto.

PART 73—[AMENDED]

3. In view of the fact that the proposal could provide a second local FM service to Twentynine Palms, California, for the expression of diverse viewpoints and programming, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Twentynine Palms, CA	239	239, 299A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: J. Geoffrey Bentley, Esq., Arter and Hadden, 1919 Pennsylvania Ave., NW., Washington, DC 20006 (Counsel for Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202 of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–2272 Fied 1–31–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86–17; RM–4973]

FM Broadcast Station in Kings Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 299A to Kings Beach, California, as that community's first local FM brodcast service, in response to a petition filed by Eric R. Hilding.

DATES: Comments must be filed on or before March 6, 1986, and reply comments on or before March 21, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Kings Beach, California) MM Docket No. 86–17, RM–4973.

VOL 51 ISS 22 FE 3 1986 UMI

Adopted: January 17, 1986.
Released: January 28, 1986.
By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Eric R. Hilding ("petitioner") requesting the allotment of Channel 299A to Kings Beach, California, as that community's first local FM broadcast service. Petitioner failed to specifically state that he will apply for the channel, if allotted. He should do so in his comments to this *Notice*.

2. A staff engineering study reveals that Channel 299A can be allotted to Kings Beach, California in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

PART 73—[AMENDED]

3. In view of the fact that the proposal could provide a first local FM service to Kings Beach, California, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Kings Beach, Cal.		299A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 21 1986, and reply comments on or before April 7, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Eric R. Hilding, P.O. Box 1300, Freedom, California 95019–1300.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, on that parties may comment o them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–2271 Filed 1–31–86; 6:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–13; RM–4962; RM–5065]

FM Broadcast Station in Dawnville and Ringgold, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 270A to either Dawnville or Ringgold, Georgia, in response to petitions filed by Maria Teresa Spina and Bedros D. Daghlian, respectively. The proposals could provide a first local service to either community.

DATES: Comments must be filed on or before March 20, 1986, and reply comments on or before April 4, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and excutive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Dawnville and Ringgold, Georgia); MM Docket No. 86–13, RM–4962, RM 5065.

Adopted: January 21, 1986.
Released: January 27, 1986.
By the Chief, Policy and Rules Division.

1. The Commission herein considers two separate petitions for rule making. The first was filed by Maria Teresa Spina, proposing the allotment of Channel 270A to Dawnville, Georgia. The second petition was filed by Bedros D. Daghlian, proposing to allot Channel 270A to Ringgold, Georgia. The proposals could provide a first local service to either Dawnville or Ringgold. Since the distance between Dawnville and Ringgold is approximately 9 miles instead of the required 65 miles, these proposals are mutually exclusive.

2. A staff engineering study reveals that there are no other channels available to either community. Thus, we shall provide each proponent an opportunity to demonstrate in comments to the *Notice* why its community should receive the allotment. In this regard, the parties should be guided by our action in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

3. Channel 270A can be allotted to both communities in compliance with the requirements of § 73.207 of the Rules. Channel 270A at Ringgold will require a site restriction of 7.8 kilometers (4.9 miles) east of the city to avoid short spacing to Station WDRM, Decatur, Alabama (Channel 271).

PART 73—[AMENDED]

4. In view of the foregoing, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the following cities:

City	Channel No.	
	Present	Proposed
Dawnville, GA or Ringgold, GA		270A 270A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 20, 1986, and reply comments on or before April 4, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

(Dawnville) Nancy L. Wolf, Dow, Lohnes & Albertson, 1255 Twenty-Third St., NW., Washington, D.C. 20037;

(Ringgold) James E. Price, Sterling Communications, Inc., Suite 418—Uptain Building, Chattanooga, Tennessee 37401.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceedings.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.410 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four

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copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 86-2273 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-21; RM-5116]

FM Broadcast Station in Colby, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Class C FM Channel 250 to Colby, Kansas as that community's second commercial FM channel in response to a petition filed by The Bailey Corporation.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations (Colby, Kansas); MM Docket No. 86-21, RM-5116.

Adopted: January 17, 1986.

Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by The Bailey Corporation ("petitioner") requesting the allotment of Class C FM Channel 250 to Colby, Kansas as that community's second FM channel. Petitioner has expressed an intention to apply for the channel, if allocated. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

PART 73—[AMENDED]

2. In view of the fact that the proposed allotment could provide a second FM service to Colby, Kansas the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Colby, KS	262	250, 262

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allocated.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Michael D. Basile, Esq. Dow, Lohnes & Albertson, 1255 Twenty-Third Street, NW., Washington, D.C. 20037 (Counsel to Petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must

be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a) (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 86-2274 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-20; RM-5160]

FM Broadcast Station in Menominee, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Channel 241A for 292A at Menominee, Michigan, in order to permit a change in transmitter site for Station WAPL-FM, Appleton, Wisconsin, in response to a petition filed by Woodward Communications, Inc.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303,. 307, 48 Stat. 1061, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making and Order To Show Cause

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Menominee, Michigan) MM Docket No. 86-20, RM-5160.

Adopted: January 17, 1986.

Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Woodward Communications, Inc. ("petitioner"), requesting the substitution of FM Channel 241A for 292A at Menominee, Michigan. Petitioner is the licensee of FM Station WAPL-FM, Channel 289, Appleton, Wisconsin. Station WAPL-FM has filed an application (BPH-850712LG) to relocate Station WAPL-FM's transmitter to a site which would permit retention of its Class C designation. The new site for Station WAPL-FM's transmitter is located in the vicinity of four tall television broadcast towers in Appleton. However, the site is short spaced to Station WCJL-FM, Channel 292A, Menominee, Michigan. Thus it would be necessary to substitute for the Menominee channel. Channel 241A can be allocated in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Thus, we shall propose the substitution of Channel 241A for existing Channel 292A at Menominee. Since Menominee is located within 320 kilometers (200 miles) of the common U.S. -Canadian border, Canadian concurrence is required.

2. Petitioner has stated that he understands that it would be the responsibility of Station WAPL-FM to reimburse Station WCJL-FM for its reasonable costs in changing frequency.

PART 73—[AMENDED]

3. In view of the foregoing, the Commission proposes to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Menominee, MI	292A	241A

4. It is ordered, that pursuant to § 316(a) of the Communications Act of 1934, as amended, CJL Broadcasting, Inc., the licensee of Station WCJL-FM, Menominee, Michigan, shall show cause why its license should not be modified to specify operation on Channel 241A instead of 292A.

5. Pursuant to § 1.87 of the Commission's Rules, CJL Broadcasting, Inc. may, not later than March 24, 1986, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, CJL Broadcasting, Inc. May, not later than April 8, 1986, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on CJL Broadcasting, Inc. To furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, CJL Broadcasting, Inc. will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

6. It is further ordered, that the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following: CJL Broadcasting Inc., 844 Pierce Avenue, Box 689, Marinette, Wisconsin 54143.

7. The Commission's Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John G. Johnson, Jr., Peggy Kobacker Shiffrin, Rachelle B. Chong, Kadison, Pfaelzer, Woodard, Quinn & Rossi, 2000 Pennsylvania Avenue, NW., Suite 7500, Washington, DC 20006 (Counsel for the Petitioner).

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a

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Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2275 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-16; RM-4976]

FM Broadcast Station in South Sioux City, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 289A to South Sioux City, Nebraska, in response to a petition filed by Rudy LeRoy Spirk. This allotment could provide for a first FM service for the community.

DATES: Comments must be filed on or before March 6, 1986, and reply comments on or before March 21, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Alltoments, FM Broadcast Stations, (South Sioux City, Nebraska), MM Docket No. 86-16, RM-4976.

Adopted: January 17, 1986.
Released: January 28, 1986.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Rudy LeRoy Spirk ("petitioner"), requesting the allotment of FM Channel 289A to South Sioux City, Nebraska, as that community's first broadcast service. Petitioner submitted information in support of the proposal and indicated his intention to file for the channel, if allocated.

2. Channel 289A can be allocated to South Sioux City, Nebraska, consistent wht the minimum distance requirements of the Commission's Rules.

PART 73—[AMENDED]

3. In view of the fact that the proposed allotment could provide a first FM broadcast service to South Sioux City, Nebraska, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
South Sioux City, NE		289A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel is allotted.

5. Interested parties may file comments on or before March 21, 1986, and reply comments on or before April 7, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, Virginia 22553 (Counsel for the petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of allotments, § 73.202(b) of the Commission's Rules.

See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation requred by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rules Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and reply comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other document shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2276 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-19; RM-5061]

FM Broadcast Station in Nags Head, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 222A to Nags Head, North Carolina, as that community's first local FM service, at the request of Winfas, Inc. and Winfas of Belhaven, Inc.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Nags Head, North Carolina) MM Docket No. 86-19, RM-5061.

Adopted: January 17, 1986.
Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Winfas, Inc. and Winfas of Belhaven, Inc. ("petitioner") requesting the allocation of Channel 222A to Nags Head, North Carolina, as that community's first local FM service.[1] Channel 222A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements. Petitioner states that it will apply for the frequency, if allocated.

PART 73—[AMENDED]

2. We believe the public interest would be served by soliciting comments on the allocation as it could provide Nags Head with its first local FM service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules as concerns the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Nags Head, NC		222A

[1] Petitioner filed this request as part of a counterproposal in MM Docket 84-231, *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments*, seeking channel substitutions at Jacksonville and Belhaven, North Carolina, and simultaneous modification of its licenses to specify the higher powered channels. The Nags Head proposal did not conflict with any of the Docket 84-231 proposals and therefore need not be delayed pending action in that proceeding.

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3. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, North Carolina 27103 (Counsel to petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amend, and §§ 0.61, 0.204(b) and 0.238 of the Commission's Rules, it is proposed to amended the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will will be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-2277 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-14; RM-5132]

FM Broadcast Station in Ketchum, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 298C2 to Ketchum, Oklahoma, as the community's first local FM service, at the request of PBL Broadcasting, Inc.

DATES: Comments must be filed on or before March 20, 1986, and reply comments on or before April 4, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ketchum, Oklahoma) MM Docket No. 85-14, RM-5132.

Adopted: January 17, 1986.

Released: January 27, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition for rule making filed by PBL Broadcasting, Inc. ("petitioner") requesting the allocation of Channel 298C2 to Ketchum, Oklahoma, as the community's first local FM service. Petitioner states that he will apply for the channel, if allocated. Channel 298C2 can be allocated to Ketchum in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area to least 14.3 kilometers (8.9 miles) northwest to avoid short-spacings to Stations KAYI, Muskogee, Oklahoma, KINE, Poteau, Oklahoma, and KFKB, Mountain Home, Arkansas.

PART 73—[AMENDED]

2. We believe the public interest would be served by seeking comments on the proposed allotment as it could provide Ketchum with its first local service. Accordingly, we propose to amend the FM Table of Allotments; § 73.202(b) of the Rules, with respect to the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Ketchum, OK		298C2

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before March 20, 1986, and reply comments on or before April 4, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: PBL Broadcasting, Inc., P.O. Box 1236, Bartlesville, Oklahoma 74005.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making prodeedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contract Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307 (b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2278 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-379; RM-5091]

FM Broadcast Station in Franklin, VA

Correction

In FR Doc. 85-29916 beginning on page 51560 in the issue of Wednesday, December 18, 1985, make the following correction:

On page 51560, in the first column, in the third line of DATES, "February 13" should read "February 18".

BILLING CODE 1505-01-M

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47 CFR Part 73

[MM Docket No. 85-15; RM-5067]

TV Broadcast Station in Ozark, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign UHF television Channel 34 to Ozark, Alabama, as that community's first local television broadcast service, in response to petition filed on behalf of Johnny LaCarter.

DATES: Comments must be filed on or before March 20, 1986, and reply comments on or before April 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154,

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303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of Amendment of § 73.606(b), table of assignments, television broadcast stations (Ozark, Alabama); MM Docket No. 86-15, RM-5067.

Adopted: January 17, 1986.
Released: January 27, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Johnny LaCarter ("petitioner") seeking the assignment of UHF television Channel 34 to Ozark, Alabama, as that community's first local television service. Petitioner indicates that he will apply for the channel, if assigned.

2. Ozark (population 13,188),[1] the seat of Dale County (population 47,821), is located in southeastern Alabama, approximately 113 kilometers (70 miles) southeast of Montgomery. Currently, it has no local television assignment.

3. A staff engineering study reveals that proposed Channel 34 can be assigned at Ozark, Alabama consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

PART 73—[AMENDED]

4. In view of the fact that the proposed assignment could provide a first local television service to Ozark, we believe the proposal warrants consideration. Therefore, we shall propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Ozark, Alabama		34

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before March 20, 1986, and reply comments on or before April 4, 1986, and are advised to read the Appendix for the proper procedures.

Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John A. Borsari, Esquire, Joseph P. Benkert, Esquire, Dutton and Overman, 2000 M Street, NW., Suite 260, Washington, DC 20036 (Counsel for Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comments which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or person acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2279 Filed 1-31-86; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures were extracted from the 1980 U.S. Census.

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Notices

Federal Register
Vol. 51, No. 22
Monday, February 3, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Enterprise; Citizens' Advisory Committee on Equal Opportunity; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: April 6-11, 1986.

Place: Altamonte Springs Hilton and Towers 350 South Northlake Boulevard, Altamonte Springs, Florida 32701.

Time: 9:00 a.m.—5:00 p.m.

Purpose:

—Advise the Secretary on the effectiveness of compliance program directives;
—Review all aspects of the Department's policies, practices, and procedures on Equal Opportunity;
—Recommend changes in Department rules, regulations, and orders to assure USDA activities are free from discrimination.

Additionally, will specifically focus on:

—Operational programs and constituent services in the areas of Agricultural Marketing Services, Farmer's Home Administration, Extension Services, and Food and Nutrition Services;
—USDA, and 1890 and 1862 Land Grant Institutions' responsibilities to each other;
—Budget issues affecting USDA/Equal Opportunity;
—Continued outreach efforts in Equal Opportunity that are being initiated by the Committee members;
—Networking with constituents groups that are recipients of USDA services.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Lawrence Bembry, Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 201 14th Street, SW. Room 2305 Auditors Bldg., Washington, DC 20250 (202) 447-5681.

Written statements may be submitted until March 28, 1986.

Lawrence Bembry,
Associate Director, Equal Opportunity Office of Advocacy and Enterprise.

[FR Doc. 86-2297 Filed 1-31-86; 8:45 am]
BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of Frankfort Grain Inspection, Inc. (IN), Jinks Grain Weighing Service (IL), and Paris Illinois Grain Inspection (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Frankford Grain Inspection, Inc. (Frankfort), Jinks Grain Weighing Service (Jinks), and Paris Illinois Grain Inspection (Paris), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: March 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agirculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Frankfort's, Jinks', and Paris' designations terminate on February 28, 1986, and requested applications for official agency designation to provide official services within specified geographic areas in the August 30, 1985, **Federal Register** (50 FR 35276). Applications were to be postmarked by September 30, 1985. Frankfort, Jinks, and Paris were the only applicants for their respective designations and each applied for designation renewal in the areas currently assigned to those agencies.

FGIS announced the applicant names and requested comments on the same in the October 25, 1985, **Federal Register** (50 FR 43427). Comments were to be postmarked by December 9, 1985. No comments were received regarding Frankfort's and Jink's designation renewal. Two comments were received regarding Paris' designation renewal. The commentors questioned the timeliness of service provided by Paris. FGIS has reviewed this matter with the agency. Paris has or will correct any agency procedures as appropriate, to provide timely services.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Frankfort, Jinks, and Paris are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective March 1, 1986, and terminating February 28, 1989, Frankfort will provide official inspection services and Class X of Y weighing services; Jinks will provide Class X or Class Y weighing services; and Paris will provide official inspection services in their specified geographic areas, which are the entire areas previously described in the August 30 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Review Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the appropriate agency at one of the following addresses:

Frankfort Grain Inspection, Inc., R.R. #2, Frankfort, IN 46041;
Jinks Grain Weighing Service, R.R. 1, Box 81, Homer, IL 61849;
Paris Illinois Grain Inspection, 1020 North Central Avenue, Paris, IL 61944.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 22, 1986.

J.T. Abshier,
Director, Compliance Division.

[FR Doc. 86-2192 Filed 1-31-86; 8:45 am]
BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Cedar Rapids Grain Service, Inc. (IA), Champaign-Danville Grain Inspection Departments, Inc. (IL), and Springfield Grain Inspection Department (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Cedar Rapids Grain Service, Inc. (Cedar Rapids), Champaign-Danville Grain Inspection Departments, Inc. (Champaign-Danville), and Springfield Grain Inspection Department (Springfield).

DATE: Comments to be postmarked on or before March 20, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the December 2, 1985, **Federal Register** (50 FR 49435). Applications were to be postmarked by January 2, 1986. Cedar Rapids and Champaign-Danville were the only applicants for their respective designations and each applied for designation renewal in the areas currently assigned to those agencies. We received two applications for the Springfield area. Springfield applied for designation renewal in the area currently assigned to that agency, except for OK Grain Company, Litchfield, Montgomery County. Southern Illinois Grain Inspection Service, Inc., Fairview Heights, Illinois, applied for designation for OK Grain Company, Litchfield, Montgomery County.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 13, 1986.

J.T. Abshier,
Director, Compliance Division.

[FR Doc. 86-2193 Filed 1-31-86; 8:45 am]
BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to Eastern Iowa Grain Inspection and Weighing Service, Inc. (IA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties, including the agency currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agency. The official agency is Eastern Iowa Grain Inspection and Weighing Service, Inc.

DATE: Applications to be postmarked on or before March 5, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), R.R. #1, Box 588, Blue Grass, IA 52726, was designated under the Act as an official agency to provide inspection functions on August 1, 1983.

The official agency's designation terminates on July 31, 1986. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Eastern Iowa, in the States of Illinois and Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

The southern area is:

Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County lines; and

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapellos County lines; and

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Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines, the western Iowa County line north to Interstate 80.

The northern area is:

Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines east to Interstate 94;

Bounded on the East by Interstate 94 south to Interstate 294; Interstate 294 south to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

The following location, outside of the foregoing contiguous geographic area, is presently assigned to Eastern Iowa and is part of this geographic area assignment: Leland Farmers Company, Leland, LaSalle County, Illinois.

Exceptions to the described geographic area are the following locations situated inside Eastern Iowa's area which have been and will continue to be serviced by the following official agencies:

1. McGregor Grain Inspection and Weighing Corporation, Inc., will service Paris and Sons Grain Elevator, Masonville, Delaware County, Iowa;

2. Keokuk Grain Inspection Service will service Central Soya, Inc., Dallas City, and Lomax Grain Elevator, Lomax, both in Henderson County, Illinois.

Interested parties, including Eastern Iowa, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning August 1, 1986, and ending July 31, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: January 13, 1986.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 86-2194 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to Ohio Valley Grain Inspection (IN)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in the geographic area currently assigned to Ohio Valley Grain Inspection (Ohio Valley).

DATE: Comments to be postmarked on or before March 5, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the September 20, 1985, **Federal Register** (50 FR 38146). Applications were to be postmarked by October 21, 1985. We received no applications for the Ohio Valley designation postmarked by that date. As a result, we again asked for applications within the Ohio Valley area in the December 2, 1985, **Federal Register** (50 FR 49434). Applications were to be postmarked by January 2, 1986. Ohio Valley was the only applicant for designation and applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice. In order to facilitate administrative scheduling of this matter in view of the extended period of time for requesting applications, a 30-day comment period is determined to be adequate.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 15, 1986.

Neil E. Porter,

Acting Director Compliance Division.

[FR Doc. 86-2195 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-EN-M

ARMS CONTROL AND DISARMAMENT AGENCY

Hubert H. Humphrey Fellowship Competition

The U.S. Arms Control and Disarmament Agency will conduct a competition in 1986 for one-year Hubert H. Humphrey Fellowships in arms control and disarmament. The fellowships will support unclassified doctoral dissertation research in the field. Law candidates for the Juris Doctor or any higher degree are also eligible, if they are writing a substantial paper in partial fulfillment of degree requirements. The fellowship stipends for Ph.D. candidates will be $5,000, plus applicable tuition and fees up to a maximum of $3,400. Stipends and tuition for law candidates will be prorated according to the credits given for the research paper. Fellows must be citizens or nationals of the United States and degree candidates at a U.S. university. The application deadline for the awards, which are for a 12-month period beginning either September 1986 or January 1987, is March 15, 1986 and announcement of final selection will be on April 30, 1986. For information and application materials write: Hubert H. Humphrey Fellowship Program, Office of Public Affairs, U.S. Arms Control and Disarmament Agency, Washington, DC 20451.

Dated: January 28, 1986.

Joseph Lehman,

Director of Public Affairs.

[FR Doc. 86-2247 Filed 1-31-86; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 43-85]

Foreign-Trade Zone 14—Little Rock, AR; Application for Subzone; Polar Stainless Products Sink Plant: Searcy, AR

The period for comments on the above case, involving a request by the Little Rock Port Authority for a special-purpose subzone at the stainless steel sink manufacturing plant of Polar Stainless Products, Inc. in Searcy, Arkansas (50 FR 52350, 12/23/85) is extended to March 4, 1986, to allow interested parties additional time to comment on the proposal.

Comments are invited in writing during this period. Submissions shall include 5 copies. Materials submitted will be available at Import Administration Central Records Unit, U.S. Department of Commerce, Room B-099, 14th & Pennsylvania Ave., NW, Washington, DC 20230.

Dated: January 28, 1986.

John J. Da Ponte, Jr.,

Executive Secretary

[FR Doc. 86-2309 Filed 1-31-86; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-479-501]

Termination of Antidumping Duty Investigation; Certain Steel Wire Nails From Yugoslavia

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated January 21, 1986, Atlantic Steel Company, Atlas Steel and Wire Corporation, Continental Steel Corporation, Davis-Walker Corporation, Dickson Weatherproof Nail Company, Florida Wire and Nail Company, Keystone Steel Wire Company, Northwestern Steel and Wire Company, Virginia Wire Fabric Company, and the Wire Products Company withdrew their antidumping petition filed on June 5, 1985, with respect to certain steel wire nails from Yugoslavia. Based on this withdrawal, we are terminating our investigation.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Clapp of the Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

Case History

On June 5, 1985, we received an antidumping duty petition filed with respect to certain steel wire nails from Yugoslavia. In compliance with the filing requirements of § 353.36 of our antidumping duty regulations (19 CFR 353.36), the antidumping duty petition alleges that imports of steel wire nails from Yugoslavia are being, or are likely to be, sold at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on June 25, 1985, and notified the International Trade Commission (ITC) of our action (50 FR 27479).

On July 22, 1985, the ITC determined that there is reasonable indication that imports of steel wire nails from Yugoslavia materially injure, or threaten material injury to, a U.S. industry (50 FR 31057). On November 20, 1985, we published an affirmative preliminary antidumping duty determination of sales at less than fair value with respect to steel wire nails (50 FR 47787). The notice stated that if the investigation proceeded normally, we would make our final antidumping duty determination by January 27, 1986.

Scope of Investigation

The products covered by the antidumping duty investigation are one-piece steel wire nails as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA), under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as currently provided for in TSUSA item number 646.3040; two-piece steel wire nails currently provided for in TSUSA item 646.32; and steel wire nails with lead heads currently provided for in TSUSA item number 646.36.

Withdrawal of Petition

On January 21, 1986, we received a letter from the steel wire nail petitioners withdrawing their antidumping duty petition. A copy of petitioners' letter is appended to this notice. Under section 734(a) of the Act, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation and after assessing the public interest as required by the Act. This withdrawal is based on a bilateral arrangement with the Government of Yugoslavia to limit the volume of imports of this product. We have taken into account the public interest factors set out in section 734(a)(2) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultation, we have determined that termination is in the public interest. We have notified all parties to the investigation and the ITC of petitioners' withdrawal of the antidumping duty petition and our intention to terminate. For these reasons, we are terminating our antidumping duty investigation of steel wire nails from Yugoslavia.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 27, 1986.

Contains No Confidential Information
A-479-501

Total Number of Pages: 4

January 21, 1986.

Mr. Gilbert Kaplan,

Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20436

Attention: Central Records Unit B-099

Re: Certain Steel Wire Nails from Yugoslavia; Investigation No. A-479-501

Dear Mr. Kaplan: We have been advised by the United States Trade Representative ("USTR") that an Arrangement concerning trade in certain steel products has been entered into between the governments of Yugoslavia and the United States. Pursuant to this Arrangement, the government of Yugoslavia has agreed to restrain exports of certain steel wire nails for the period of the Arrangement.

The Arrangement requires the withdrawal of the petitions described in paragraph 1 of Appendix A to the Arrangement, including the antidumping duty (A-479-501) petition filed on June 5, 1985 by Atlantic Steel Co.,

BEST COPY AVAILABLE

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Atlas Steel & Wire Corp., Davis Walker Corp., Dickson Weatherproof Nail Co., Florida Wire & Fabric Co., Keystone Steel & Wire Co., Northwestern Steel & Wire Co., Virginia Wire & Nail Co., and Wire Products Co. concerning certain steel wire nails.

Based on the stated purposes of the President's Steel Program, it is the present expectation of the Petitioners that the export ceilings in the Arrangement with Yugoslavia will be the functional equivalent of a suspension of an investigation under section 734(c) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. This expectation assumes that the Arrangement, by removing "unfairly traded" Yugoslav steel wire nails, will ameliorate the effect of less than fair value sales and ensure that there will be no undercutting of domestic price levels by the authorized imports of steel wire nails from Yugoslavia.

With the foregoing considerations in mind, and in reliance on the understandings and conditions expressly set forth herein, you are hereby notified that the Petitioners withdraw the antidumping duty petition described in paragraph 1 of Appendix A. Please be advised that this withdrawal is subject to the following conditions:

1. Published assurance that the Yugoslav Arrangement is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications thereof by side letter or otherwise) that would revise, delay or impair the implementation of the specific restraints concerning steel wire nails.

2. The publication of this letter in the Federal Register, together with the termination notice and the assurances required as a condition to withdrawal.

3. Confirmation that the Arrangement with Yugoslavia is a "bilateral arrangement" within the meaning of Section 804 of the Steel Import Stabilization Act of 1984 and that the President is authorized to enforce the Arrangement pursuant to section 805(a) of said Act. Pursuant to those provisions and the requirements in the terms of the Arrangement, Petitioners further understand that the United States will prohibit entry into this country of steel wire nails from Yugoslavia that (i) are not accompained by an export certificate and (ii) are not consistent with the quantitative limitations specifically applicable to Yugoslavia as defined by the Arrangement.

Petitioners expect that the Arrangement with Yugoslavia will achieve the state purpose of being an equivalent or better alternative to the antidumping investigation that is being withdrawn as a consequence of the entry into force of the Arrangement. For so long as this expectation is realized, Petitioners do not intend to file petitions seeking import relief with respect to steel wire nails from Yugoslavia during the period the Arrangement with Yugoslavia is effective. Should that expectation fail to be realized, Petitioners will consider it their prerogative to file such petitions as they may determine to be appropriate under the trade laws. In any event, petitioners expressly do not waive any statutory right under the trade laws or the right to or take such other steps as may be provided by law.

Respectfully submitted,

David E. Birenbaum,

Counsel for Petitioners.

[FR Doc. 86-2306 Filed 1-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-489-501]

Postponement of Final Antidumping Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products From Turkey

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from a respondent in these investigations that the final determination be postponed until not later than 90 days after the date of publication of the preliminary determinations, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determinations as to whether sales of certain welded carbon steel pipe and tube products from Turkey (pipe and tube) have occurred at less than fair value until not later than April 9, 1986.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5288.

SUPPLEMENTARY INFORMATION: On August 9, 1985, we published a notice in the Federal Register (50 FR 32245) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), antidumping duty investigations to determine whether imports of pipe and tube from Turkey were being, or were likely to be, sold in the United States at less than fair value. One September 11, 1985, the International Trade Commission determined that there is a reasonable indication that imports of these products are materially injuring a U.S. industry. On January 3, 1986, we published preliminary determinations of sales at less than fair value with respect to this merchandise (51 FR 235). The notice stated that if these investigations proceeded normally, we would make our final determinations by March 10, 1986.

On January 15, 1986, counsel for a respondent, which accounts for a significant portion of the merchandise covered by these investigations, requested that we extend the period for the final determinations until not later than 90 days after the date of publication of the preliminary determinations, in accordance with section 735(a)(2)(A) of Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

The respondent is qualified to make such a request since it accounts for a significant amount of exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue final determinations in these cases not later than April 9, 1986.

The public hearing is also being postponed until 10:00 a.m. on March 13, 1986, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NE., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by March 7, 1986.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 27, 1986.

[FR Doc. 86-2307 Filed 1-31-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-517-501]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Saudi Arabia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod. The estimated net bounty or grant is 5.48 percent *ad valorem* for all manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod.

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of carbon steel wire rod from Saudi Arabia that are entered, or withdrawn from warehouse, for consumption and to require a cash deposit on such entries equal to the estimated net bounty or grant of 5.48 percent *ad valorem*.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Barbara Tillman, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1785 or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Government Loan to Hadeed.
- Preferential Provision of Equipment to Hadeed.
- Government Equity Infusions in Hadeed.

We determine that estimated net bounty or grant to be 5.48 percent *ad valorem* for all manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod.

Case History

On June 12, 1985, we received a petition in proper form from Atlantic Steel Company, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod receive bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds for initiating a countervailing duty investigation, and on July 2, 1985, we initiated the investigation (50 FR 28231). We stated that we expected to issue our preliminary determination by September 5, 1985.

Since Saudi Arabia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from Saudi Arabia materially injure, or threaten material injury to, a U.S. industry.

On July 12, 1985, we presented a questionnaire to the Embassy of Saudi Arabia in Washington, DC and requested that the response be submitted by August 12. We presented a supplemental questionnaire on August 19 and requested a response by October 1.

On August 6, we determined that this case is extraordinarily complicated due to the complexity of the alleged subsidy practices and the novelty of the issues presented; we also determined that the government of Saudi Arabia and other parties concerned were cooperating with this investigation. Therefore, we postponed our preliminary countervailing duty determination until not later than November 12 (50 FR 32751).

On October 1, we received responses to our questionnaires from the government of Saudi Arabia and the Saudi Iron and Steel Company (Hadeed). On the basis of the information contained in these responses, we made a preliminary affirmative countervailing duty determination on November 12 (50 FR 47788).

From November 23 through December 4, we verified the responses of the government of Saudi Arabia and Hadeed in Saudi Arabia.

In response to a November 27 request from respondents and a December 2 request from petitioners, we held a public hearing concerning this investigation on December 20. We received pre-hearing briefs on December 17 and post-hearing briefs on January 2, 1986.

Respondents filed a supplemental response incorporating verified information on January 3, 1986.

Scope of Investigation

For purposes of this investigation, the term carbon steel wire rod covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the Federal Register (49 F.R. 18006).

For purposes of this final determination, the period for which we are measuring bounties or grants, the review period, is the 1984 company fiscal year (January 1-December 31, 1984). Hadeed is the only producer in Saudi Arabia exporting carbon steel wire rod to the United States during the review period.

In response to a specific allegation, we have examined whether government equity infusions in Hadeed were made on terms inconsistent with commercial considerations. We have addressed this allegation in the section below on "Government Equity Infusions in Hadeed."

Based upon our analysis of the petition, the responses submitted by the government of Saudi Arabia and Hadeed to our questionnaires, our verification, and the written and oral comments made by the interested parties, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod under the following programs:

A. Government Loan to Hadeed

Although not specifically alleged by petitioners, evidence in the petition indicated that Hadeed might have received loans on terms inconsistent with commercial considerations from the Saudi Industrial Development Fund (SIDF) or from other government agencies. In its response, Hadeed reported that it had not received any loans from SIDF but had received a loan from the Public Investment Fund (PIF).

The PIF was established in 1971 as one of the five specialized credit institutions set up by the Saudi government. The other specialized credit

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institutions are the above-mentioned SIDF, the Saudi Agricultural Bank, the Saudi Credit Bank, and the Real Estate Development Fund. The PIF is funded completely by the Saudi government. The PIF and the other specialized credit institutions are the only sources of long-term financing in Saudi Arabia.

According to its by-laws, the PIF can lend to commercially productive projects in which the Saudi government has some equity participation. There are no legal limitations on the project size or types of products to which PIF can lend. PIF began making loans in 1973 to PETROMIN projects involving products in short supply domestically and to Saudia Airlines for development of the areas served by the airline. Since 1973, a number of loans have been made from the PIF, primarily to PETROMIN, Saudia Airlines, and the Saudi Basic Industries Corporation (SABIC). (SABIC, a part owner of Hadeed, was wholly-owned by the government from its founding in 1976 through early 1984, when SABIC issued new stock and became 70 percent government owned and 30 percent privately owned.) These PIF loans have been used to finance such products as fertilizers, plastics, commercial air transportation, pipelines, steel, construction, petrochemicals, chemical gases, electricity, and refined petroleum products.

In determining whether PIF loans are provided to a specific enterprise or industry, or group of enterprises or industries, we have reviewed PIF's lending activities since its inception. We find that, despite the number of products which have received PIF financing, these loans are given predominantly to finance projects undertaken by PETROMIN, Saudia Airlines, and SABIC. Since 1978, PIF loans have gone exclusively to these three companies' projects. Therefore, we determine that PIF loans are provided to a specific group of enterprises in Saudi Arabia, and that the PIF loan to Hadeed is countervailable to the extent that it is given on terms inconsistent with commercial considerations.

The PIF loan to Hadeed was part of the initial investment package for constructing its direct reduction plant, steel making plant, and rolling mill at Jubail. The PIF loan comprised 60 percent of Hadeed's total capitalization. Repayment of the principal on the loan will begin in 1989, 5.5 years after the October 1983 startup of production at Hadeed. After startup, the service charge on the loan varies according to the rate of return on investment in a given fiscal year. Hadeed did not make a profit during the review period and, therefore, did not pay any service charge on the PIF loan in that period.

In order to determine whether the PIF loan to Hadeed was made on terms inconsistent with commercial considerations, we examined information pertaining to the two primary sources in Saudi Arabia of medium-term (from one to five years) and long-term (over five years) financing: the Saudi commercial banking system and the Saudi government specialized credit institutions.

At verification, we found that Saudi commercial banks are limited in their ability and willingness to make long-term loans. Since interest obligations on loans cannot be enforced in Saudi courts, and because the Saudi government limits the amount of funds which Saudi commercial banks can loan to any one individual or legal entity, Saudi commercial banks cannot lend large amounts of funds over a long period of time for large scale industrial construction projects. We did find, however, that Saudi commercial banks have in recent years started to provide financing for periods of three to seven years to cover the working capital needs of newly constructed industrial and manufacturing companies.

Long-term financing in Saudi Arabia is available from the five specialized credit institutions created by the Saudi government as discrete credit windows for lending government funds in Saudi Arabia: the PIF, the SIDF, the Saudi Agricultural Bank, the Real Estate Development Fund, and the Saudi Credit Bank. Because Islamic law prohibits interest, these institutions cannot and do not charge any interest on their loans. Of these institutions, only the PIF and SIDF provide funding to industrial or manufacturing projects.

At verification, we found that the SIDF was established in 1974 to provide loans to small- and medium-sized private industries. The SIDF is funded by the government, but, since 1980, loan repayments have been adequate to cover loan disbursements, and, thus, no new government funds have been needed.

The SIDF can make loans for up to 15 years to any licensed company in Saudi Arabia which is at least 25 percent domestically owned and which has some private Saudi ownership. The level of financing available is commensurate with the level of domestic ownership. For projects in which domestic ownership constitutes 50 percent or more of total equity, the maximum SIDF loan amount is 50 percent of the total project costs. During the first 10 years of its operations, the SIDF approved loans for 843 projects located in every region of Saudi Arabia, involving numerous industrial sectors including consumer products, chemical products, cement, building materials, and engineered products. These loans were provided to approximately 600 companies.

Based on this information, we find the SIDF loans are available to and are used by a wide variety of industries located throughout Saudi Arabia. Therefore, we determine that SIDF loans are not provided to a specific enterprise or industry, or group of enterprises or industries.

Using the two sources for medium- to long-term financing in Saudi Arabia, the commercial banks and the SIDF, we have constructed a composite benchmark to determine whether the PIF loan to Hadeed is on terms inconsistent with commercial considerations. Since the PIF loan covered 60 percent of Hadeed's total project costs, the benchmark was constructed under the assumption that Hadeed could have financed 50 percent of its total project costs with an SIDF loan (the maximum eligibility for a company with 50 percent Saudi ownership) and the remaining ten percent of project costs with a Saudi commercial bank loan. The SIDF loan was used because, of all of the specialized credit institutions, it is the only fund besides the PIF which lends to industrial or manufacturing projects and, thus, is most representative of what Hadeed would otherwise have had to pay for long-term loans in Saudi Arabia. We used the maximum feasibility fees and average follow-up fees applied to SIDF loans. The commercial bank portion of the benchmark was based on the fees paid by Hadeed on its medium-term commercial bank loan, including an average of the various bank fees charged to service the loan and the average 1984 commission fee. We compared this composite benchmark loan to the terms of the PIF loan taken out by Hadeed. On this basis, we determine that the PIF loan is on terms inconsistent with commercial considerations.

To calculate the benefit to Hadeed, we applied the benchmark loan terms to the total amount of PIF funds drawn down by Hadeed as of the end of the review period. Since Hadeed did not pay any service charges on the PIF loan during the review period, the net benefit to Hadeed during the review period consisted of the entire benchmark loan charges. We divided the benchmark loan charges by the value of Hadeed's sales for the review period to arrive at an estimated net bounty or grant of 4.91 percent *ad valorem*.

B. Preferential Provision of Equipment to Hadeed

Petitioners alleged that the government of Saudi Arabia, through the Royal Commission for Jubail and Yanbu, provides infrastructure benefits, such as roads, ports, low-cost utilities, training centers, and plant sites, to specific enterprises and industries located in Jubail and Yanbu.

As discussed in section II.A below, we have determined that the provision of basic infrastructure has not conferred a bounty or grant on the production or export of carbon steel wire rod from Saudi Arabia. Nevertheless, we have also examined whether the government has provided any specific benefits in Jubail to the carbon steel wire rod industry.

Under a lease/purchase arrangement, the Royal Commission for Jubail and Yanbu built for Hadeed two bulk ship unloaders at the Jubail industrial port for unloading iron ore, and constructed a conveyor belt system for transporting iron ore from the pier to Hadeed's plant in the Jubail Industrial Estate. When construction of these facilities was completed in 1982, the Royal Commission transferred custody to Hadeed under the lease/purchase agreement.

As originally planned, the bulk ship unloader and coneyor system was built to serve both Hadeed and an adjacent plant in the Jubail Industrial Estate. The second plant was not built, however, leaving Hadeed as the sole user of this equipment.

Under the terms of the lease/purchase agreement, Hadeed must repay the equipment and construction costs plus a two percent fee for cost of money in annual installments over a 20-year period. The annual payments are stepped, with the lowest payment levels occurring at the beginning and the highest payment levels occurring at the end of the 20-year period.

At verification, we found that the Royal Commission had built a urea berthside handling system at the Jubail industrial port for the exclusive use of another company located in the Jubail Industrial Estate. The lease/purchase agreement on the berthside handling system called for equal annual repayments covering equipment and construction costs and a two percent fee for cost of money. We also found that the two percent cost of money fee was the standard Royal Commission charge for recovery of costs on other facilities, such as the pipeline corridor, the seawater cooling system, and the industrial potable water plant, which were built by the Royal Commission in the Jubail Industrial Estate.

Of the projects examined, the urea berthside handling system was the most comparable to Hadeed's ship unloader and conveyor system. Therefore, we have compared the repayment schedule for Hadeed's ship unloader and conveyor system to the repayment schedule for the berthside handling system to see whether the ship unloader and conveyor system was provided on preferential terms. Although both agreements carried the standard Royal Commission cost of money fee, Hadeed's end-loaded, stepped repayment schedule was more advantageous than the annuity style repayment schedule on the berthside handling system. We determine, therefore, that Hadeed's ship unloader and conveyor system was provided on preferential terms. Moreover, because the equipment is used exclusively by Hadeed, we find that it is provided to a specific enterprise and, thus, confers a bounty or grant.

In order to calculate the benefit, we compared the principal and fees being paid in each year by Hadeed to the principal and fees that would be paid under the repayment schedule used for the berthside handling system. We allocated the sum of the present values of the differences in the two repayment schedules over 20 years, using a two percent discount rate. The resulting benefit for the review period was divided by the value of Hadeed's sales during the review period to arrive at an estimated net bounty or grant of 0.04 percent *ad valorem*.

C. Government Equity Infusions in Hadeed

Petitioners alleged that the government of Saudi Arabia, through the SABIC, provided equity to Hadeed on terms inconsistent with commercial considerations. Petitioners argued that the lack of commercial viability of the steel mill investment is demonstrated by the fact that SABIC assumed a 90 percent equity participation share in Hadeed, whereas SABIC's joint venture projects are usually structured with 50 percent SABIC equity and 50 percent foreign equity. In Hadeed's case, petitioners argued that no foreign investor was willing to assume a 50 percent equity share because such an investment would not have been commercially sound.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company is a reasonable commercial investment (*i.e.*, equityworthy). Since there are no market-determined prices for equity in Hadeed, we must determine whether Hadeed is equityworty.

We examined two equity infusions by SABIC in Hadeed: the 1979–1983 cash infusions made by SABIC pursuant to its contractual agreements to fund the construction of Hadeed, and the 1982–1983 acquisition by Hadeed of SABIC's shares in the Steel Rolling Company (SULB).

During the 1979–1983 period when these infusions took place, SABIC itself was wholly-owned by the Saudi government. Its Board of Directors consisted of three government ministers and three private individuals appointed by the government. We find, therefore, that the equity infusions by SABIC in Hadeed during this period represented infusions of government funds into Hadeed.

At verification, we found that the amount of equity participation in Hadeed and other SABIC joint venture projects was negotiated between the partners. SABIC's intention was to negotiate equity participation in a given joint venture commensurate with each partner's contribution to the project of required industrial technology, domestic and export marketing skills, experience in the industry, and training capabilities. Purchases of equity by SABIC and the other joint venture partners were found to have been made on the same terms and conditions.

As part of their initial investment analysis of the Hadeed joint venture project and as required in obtaining an industrial license and PIF funding, SABIC and Korf Stahl, the foreign partner in the Hadeed joint venture, commissioned the World Bank to conduct feasibility studies, first on the proposed direct reduction plant and billet mill (completed February 1979), and later on the proposed rolling mill (completed June 1980). Based on our analysis of these feasibility studies, we preliminarily determined that Hadeed had been equityworthy since its inception in 1979.

On the basis of the 1979 and 1980 World Bank studies, SABIC decided to invest in the Hadeed project and entered into joint venture agreements in 1979 and in 1981. The 1979 PIF loan on the original billet mill and the subsequently consolidated PIF loan on the expanded Hadeed project called for staged disbursements of PIF construction funds of a 2 to 1 basis with

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disbursements of Hadeed equity capital during the construction period. Furthermore, negotiated agreements between SABIC and its joint venture partners in the Hadeed project called for periodic increases in Hadeed's authorized capital over the 1979–1983 period to meet construction costs. All of these cash infusions by SABIC consisted of cash contributions in return for new shares of Hadeed stock. All cash infusions by SABIC between 1979–1983 were made pursuant to the 1979 and 1981 joint venture agreements. These infusions were matched on a proportional basis by the other joint venture partners until a predetermined cap on their paid-in capital was reached. Therefore, we determine that the investment decisions made in 1979 and 1981 by SABIC to provide equity to Hadeed during the 1979–83 period were not made on terms inconsistent with commercial considerations.

In December 1982, SABIC decided to transfer its shares in SULB to Hadeed in return for new Hadeed stock. SABIC acquired majority ownership of SULB in 1979 and purchased all of SULB's stock in 1982. SULB has produced steel reinforcing bars using imported billets at its Jeddah rolling mill since the mid-1960's. SULB currently obtains its billets from Hadeed and has no facilities for producing carbon steel wire rod.

The stock transfer, through which SULB became a wholly-owned subsidiary of Hadeed, represented a new investment decision distinct from the decision to construct Hadeed's facilities in Jubail. Therefore, an analysis of the sale of SULB to Hadeed must be based on information available as of December 1982. One of the key indicators used in the World Bank studies of the Hadeed project was the world price of steel reinforcing bars. We examined these price levels, as reported in the *Metals Bulletin*, for the 1979–1985 period. We found that by late 1982 actual world prices had decreased significantly from their levels in 1979 and 1980, when the World Bank studies were conducted. Because of the trend in prices from 1980 through 1982, we find that a reasonable investor would not have relied on these studies for the 1982 SULB investment decision.

Furthermore, the declining world price levels would have made it appear doubtful in late 1982 that prices, during years in which Hadeed would be operating, would reach the level necessary to generate a sufficient rate of return on equity over the life of the project. Therefore, we determine that the transfer of SABIC's shares in SULB to Hadeed in exchange for additional shares in Hadeed was inconsistent with commercial considerations.

To determine the benefit to Hadeed from the acquisition of SULB, we used the rate of return shortfall methodology. We determined the amount of the equity infusion to be the net book value of SULB's equity at the time of the transfer. As best available information on the national average rate of return on equity in Saudi Arabia, we used the 1983 annual average rate of return on U.S. direct investment in Saudi Arabia. This information, the most recent data publicly available from the U.S. Commerce Department's Bureau of Economic Analysis, revealed that the 1983 rate of return was 5.4 percent. We computed the rate of return shortfall by taking the difference between this figure and the 1984 rate of return on equity in Hadeed. We multiplied the rate of return shortfall by the net book value of SULB's equity, and divided the resulting figure by the total value of Hadeed's and SULB's consolidated sales in 1984 to arrive at an estimated net bounty or grant of 0.53 percent *ad valorem*.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod under the following programs.

A. Basic Infrastructure in Jubail and Yanbu

Petitioners alleged that the government of Saudi Arabia, through the Royal Commission for Jubail and Yanbu, provides infrastructure benefits, such as roads, ports, low-cost utilities, training centers, and plant sites, to specific enterprises and industries located in Jubail and Yanbu.

We have consistently held that government activities such as these constitute bounties or grants only when they are limited to a specific enterprise or industry, or group of enterprises or industries. Moreover, we have held that where limitations on use do not result from government activities, but instead result from the inherent characteristics of the good or service being provided, the government action does not confer a countervailable bounty or grant.

Basic infrastructure facilities are, by their very nature, available only for use by companies and individuals located in the vicinity of such facilities. Roads, ports, and training centers established in a given location obviously benefit those located in that area more than they benefit firms and individuals located in other areas. Nevertheless, this does not mean that those located in close proximity to the infrastructure are receiving countervailable bounties or grants. The provision of basic infrastructure does not confer a countervailable bounty or grant when the following three conditions are met: (1) The government does not limit who can move into the area where the infrastructure has been built, (2) the infrastructure that has been built is in fact used by more than a specific enterprise or industry, or group of enterprises or industries, and (3) those that locate there have equal access or receive the benefits of the infrastructure on the basis of neutral criteria.

At verification, we found that, in addition to Jubail and Yanbu, there are eight other industrial estates in Saudi Arabia which were developed over time through the joint efforts of a number of individual Saudi government agencies and which are administered by the Ministry of Industry and Electricity.

We visited one of these eight industrial estates, the Second Riyadh Industrial Estate. We found that this estate contained a number of industries engaged in manufacturing a variety of products, such as electrical transformers, cement, food processing, clothing, furniture, and diapers, and in providing a variety of services, such as printing, advertising, and transportation. The estate is being developed in phases, with the first phase completed in 1980 and the second phase in 1985. During our tour of the estate, we saw large plots of land as yet undeveloped or under construction. Finally, we saw that the estate had a number of infrastructure facilities, including potable and industrial water treatment plants, an electrical power plant, a fire department, a hospital, and an administrative center. The Ministry of Industry and Electricity administers the overall estate, with other government agencies in charge of certain infrastructure facilities.

The Jubail and Yanbu industrial estates were planned during the oil boom years to take immediate advantage of the natural gas feedstock available in Saudi Arabia and to develop expeditiously new harbors needed for oil and gas exports. To meet this need, the Royal Commission for Jubail and Yanbu was established to centralize and expedite the planning and construction of the Jubail and Yanbu estates in a relatively short period of time. As these two industrial estates have become operational, various functions of the Royal Commission have been moved into the regular government agencies in charge of administering the other eight estates.

We toured the Jubail Industrial Estate during the verification visit and found that a variety of industries are located there that manufacture products such as structural steel, petrochemicals, fertilizers, heavy equipment, industrial use oxygen and nitrogen gases, air conditioning units, and cement. In addition, numerous support industries are located there that are engaged in many different production and service activities such as heavy equipment maintenance and sale, lumber yard sales, soil testing laboratories, clothing manufacturing, printing, and green house nursery sales and services. We also saw a number of infrastructure facilities, including a hospital, a fire station, a seawater cooling system, an electrical power plant, a desalination plant, a pipeline corridor, and the industrial port facilities. We found that the Jubail Industrial Estate is being developed in stages, starting with the primary industries and proceeding to the light manufacturing and secondary industries. There also are large tracts of land in the estate which are either undeveloped or under construction.

We held discussions with officials of the Ministry of Industry and Electricity and the Royal Commission, and examined documents concerning the procedures for obtaining industrial licenses, plant site permits, and commercial registrations. The location of an enterprise is determined by the industrial licensing procedure administered by the Ministry of Industry and Electricity. We found that the Ministry has approved industrial licenses to all types of enterprises and industries located in all areas of the Kingdom, both inside and outside the ten industrial estates. We found no evidence that the Ministry has denied or limited the entry of any enterprise or industry into any particular region or industrial estate in Saudi Arabia.

At Jubail, we examined utility service request forms containing the terms and conditions for receiving potable and industrial water, for disposal of sewage and industrial waste, for use of the seawater cooling system, and for use of other infrastructure facilities available in the Jubail Industrial Estate. We found no evidence that any of the primary, light, or support industries in Jubail has been or is being prohibited from using any of the infrastructure facilities in Jubail. We found that the only factors which limit use of the infrastructure facilities in Jubail relate to the technological parameters of the enterprise and its need for and ability to use the facilities. We also ascertained that a wide variety of enterprises and industries use the infrastructure in Jubail.

Finally, we found that the infrastructure in Jubail is available on equal terms for use by all companies and industries locate in that industrial estate. In section II.B below, we discuss the land rental rates and utility rates on water, electricity, and gas available in Jubail and compare these rates to those available in the other industrial estates.

Based on this information, we determine that the Saudi government does not limit who can locate in any of the industrial estates, including Jubail, and that the basic infrastructure built by the government in Jubail is not countervailable as a regional bounty or grant. When a government decides to build industrial cities, industrial estates, or any other type of infrastructure, the government activity is necessarily limited to those sites. To treat this activity as a regional bounty or grant would not be reasonable. Under such logic, the government would have to develop every square foot of the country equally or undertake no development at all in order to avoid providing regional bounties or grants. We cannot accept this interpretation. Insofar as the government does not limit which industries can locate in these areas, and does not apply different criteria for infrastructure use in different areas, then there is no governmental limitation on companies in specific regions. The only limitation is due, again, to the inherent characteristics of the infrastructure. Therefore, we determine that the provision of basic infrastructure in Jubail is not limited to an enterprise or industry, or group of enterprises or industries in a specific region.

Moreover, because restrictions on the use of the infrastructure stem from the inherent nature and location of the facilities and not from any activity or action of the government of Saudi Arabia, and because the infrastructure is provided on equal terms to, and is used by, a wide variety of industries, we determine that the infrastructure in Jubail is not limited to a specific enterprise or industry, or group of enterprises or industries within the meaning of section 771 (5) (B) of the Act.

B. Special Benefits to the Manufacturing Sector in Saudi Arabia

Petitioners alleged that the "manufacturing sector" in Saudi Arabia represents a "group of industries" targeted for development and provided with special incentives under the Law for the Protection and Encouragement of National Industries in the Kingdom of Saudi Arabia. These special incentives include: (1) Duty exemptions on imports of machinery, tools, equipment, spare parts, raw materials, and packaging; (2) provision of water, electricity, and gas at very low rates; and (3) land at nominal rent for factories and employee housing.

To determine whether these incentives confer a bounty or grant, we must first determine whether the manufacturing sector in Saudi Arabia constitutes a "group of industries" as alleged by petitioners.

In order to establish a manufacturing facility in Saudi Arabia, a company must obtain an industrial license. As explained in the previous section, the Ministry of Industry and Electricity administers the licensing procedure. The Ministry does not limit or specify which industries may apply for an industrial license, and at verification, we found that the Ministry has approved licenses for hundreds of companies representing a wide range of industries including the food, textile, pulp and paper, wood products, petrochemical, pharmaceutical, rubber, steel, fabricated metal, machinery and equipment, electrical appliance, and furniture industries. The number and diversity of manufacturing concerns which have received industrial licenses demonstrate that the manufacturing sector in Saudi Arabia does not represent a mere "group of industries" as alleged by petitioners.

Moreover, we determine that industries or firms within the manufacturing sector do not receive preferential treatment under the incentives authorized by the Law for the Protection and Encouragement of National Industries in the Kingdom of Saudi Arabia.

With respect to the first incentive (duty exemptions on imports of machinery, tools, equipment, spare parts, raw materials and packaging), we found that all companies with industrial licenses may apply for duty exemptions by submitting invoices to the Ministry of Industry and Electricity. The exemptions are authorized under Article 4 (for production machinery) and Article 5 (for raw materials) of the Law for the Protection and Encouragement of National Industries. At verification, we found that duty exemptions were granted to hundreds of companies for a variety of products, including spare parts, light bulbs, insulated wire, cable packing, and laboratory equipment. In a very few cases, the exemption was denied. In the few cases where the exemption was denied, the stated reasons were that all exempted goods must be used in the company's production process, there was sufficient

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local supply of the good, or the good was not a "raw material."

To receive an exemption, companies apply in advance of importation and are assigned a total exemption amount based on the stated value of the imports and the applicable duty rates. The exemption remains in effect for a specified time period. The holder of the exemption exhausts it by presenting invoices showing actual value of the goods and the applicable duty. The company must reapply once its exemptions are exhausted. We found that Hadeed's duty exemptions did not exceed the amount of duty payable on the imported goods as specified in the Saudi Arabian tariff schedules.

Based on this information, we determine that the duty exemptions under Articles 4 and 5 are not limited within the manufacturing sector to a specific enterprise or industry, or group of enterprises or industries, and, thus, do not confer a bounty or grant. We also determine that Hadeed's duty exemptions did not result in a bounty or grant because they did not exceed the amount of duty payable on the imported goods.

With respect to the second alleged incentive (provision of water, electricity and gas at very low rates), we found at verification that companies (including Hadeed) located within the industrial estates have equal access to, and pay the standard Kingdom-wide rates for industrial users for, electricity, water (including sewage) and other services. In the Jubail Industrial Estate, companies pay the standard Kingdom-wide rates except on those infrastructure facilities where extra cost recovery charges are added to the Kingdom-wide rate by the Royal Commission. In addition, all customers purchasing gas from the Master Gas System (MGS) pay the same flat rate per million BTU.

The MGS is a gas purification and pipeline system which was originally developed to transport natural gas from the oil fields to gas processing plants and then to port facilities for export. The MGS has since been extended to serve Saudi industrial projects. MGS does not serve households. Officials of the Arabian American Oil Company (Aramco), which operates the MGS under a concession from PETROMIN, told us that the location of the gas system is dictated primarily by the location of a large chain of oil fields in the Eastern Province and by the ports on the Arabian Gulf which are equipped to export liquified natural gas.

Aramco builds secondary transmission lines from the MGS system to its industrial customers at no charge to the customers. Aramco will consider any request regardless of the potential customer's distance from the system if the customer can obtain a right-of-way and if the hookup makes economic sense; that is, it may be uneconomical to build a long transmission line to a small customer, since Aramco recoups its costs only through its monthly gas consumption charges.

As stated in the preliminary determination, we consider that the provision of water, electricity or gas, like the building of infrastructure facilities, cannot be considered countervailable unless the government limits which industries can use the water, electricity, and gas, or unless the government does not provide equal access to the services or does not provide the service to all users on the basis of neutral criteria.

As noted above, we verified that the government has not limited, either *de jure* or *de facto*, which companies or industries are part of the manufacturing sector, or which companies or industries may locate in industrial estates. Furthermore, all companies have equal access to the water, electricity and gas services provided in their respective industrial estates. Finally, all companies (including Hadeed) in all industrial estates pay the same rate for their water, electricity, and gas services. Therefore, since the provision of these services is not limited to a specific enterprise or industry, or group of enterprises or industries, and since Hadeed has not received these services at rates that are preferential to those charged to other companies, we determinie that the provision of gas, water, and electricity does not confer a bounty or grant on the product under investigation.

With respect to the last incentive (land at nominal rents), we verified that the government, which owns all the land in the industrial estates, charges the same rental rate to all companies in all industrial estates. Since the government has neither limited which companies or industries constitute the manufacturing sector, nor limited which companies or industries can locate in the industrial estates, and since all companies (including Hadeed) which rent government-owned land pay the same rental rate, we also determine that the rental rates for land do not confer a bounty or grant.

C. Certain Tax Benefits to Hadeed

Petitioners alleged that SABIC, as a government agency, is exempt from the obligation to pay Zakat, a religious tax for which all Saudi corporations are liable.

At verification, we learned that a corporation's Zakat liability is based on its net worth at the end of the year. For joint ventures with foreign partners, the Zakat liability attaches only to the Saudi-owned portion of the company's equity. The foreign partner pays income tax, not Zakat, on its pro-rata share of the joint venture's net profits at a progressive rate from 25 to 45 percent. Moreover, under Article 7 of the Foreign Capital Investment Law, there is a 10-year income tax holiday for industrial projects with foreign capital. This tax holiday applies only to income taxes that would be owed by foreign owners. It does not apply to the Zakat liability of the Saudi owners.

At verification, we reviewed a letter from the Ministry of Zakat and Income Tax to SABIC stating that SABIC is liable for Zakat owing to its part ownership of Hadeed. SABIC requires its affiliates, including Hadeed, to pay their individual Zakat liabilities and reimburses them. We found that Hadeed had paid the Zakat attributable to SABIC's share of its net worth, and that SABIC had reimbursed Hadeed for that amount.

We also sought to find out whether the foreign shareholding in Hadeed diminishes SABIC's Zakat obligation. Examination of the Zakat regulations and discussions with SABIC's accountants revealed that SABIC's Zakat obligation attaches to 100 percent of the shares it owns in Hadeed. SABIC's Zakat liability is not determined based on the total equity in Hadeed, but only on that portion of Hadeed's equity owned by SABIC. Therefore, SABIC's Zakat obligation is not diminished or otherwise affected by the amount of foreign ownership in Hadeed.

Because SABIC was not exempted from its Zakat obligation during the review period, we determine that Hadeed received no bounty or grant with respect to Zakat.

With regard to the income tax holiday for foreign owners, we verified that Hadeed's German owner was eligible for the tax holiday during the review period. However, since Hadeed was not profitable during its first year of production, there was no income tax liability. Therefore, even if this program could confer a benefit on Hadeed, it was used.

III. Programs Determined Not To Be Used

Based on our verification, we determine that manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod did not use the following programs which were listed in our notice of initiation.

A. Special Benefits to Joint Ventures in Saudi Arabia

Petitioners alleged that Hadeed, a 90 percent Saudi-owned joint venture, enjoys benefits under the Foreign Capital Investment Code and the Saudi Arabian Tenders Regulations which are not available to other joint venture enterprises with lower percentages of Saudi ownership. Petitioners contend that various equity "participation" levels define "groups of industries." The alleged benefits consist of income tax holidays, government procurement preferences, exemptions from posting of tender and performance bonds, and exemptions from payment retentions. The allegation on income tax holidays was discussed in section II.C above.

We preliminarily determined, based on statements in the responses, that Hadeed did not use these programs. At verification, we found that Hadeed did not sell to the Saudi government or any quasi-governmental organization during the review period, and therefore did not take advantage of the preference available to Saudi individuals and businesses under the government procurement code. We also ascertained that the procurement code contains no provisions exempting any government contracts from certain payment retention or performance bond requirements. The code provides that the requirement of a final performance bond of 5 percent of the contract price may be waived if the subject of the contract is consulting work, direct purchase, or purchase of spare parts. However, since Hadeed did not sell to the government, it did not take advantage of this waiver provision.

We, therefore, determine that alleged exemptions from bonding and payment retention and procurement preferences do not confer a bounty or grant because Hadeed did not use them during the period of review.

B. SABIC Loan Guarantees to Hadeed

Petitioners alleged that SABIC may have provided loan guarantees to SULB, a subsidiary of Hadeed.

At verification, we examined the financial statements of Hadeed and SULB and correspondence with SULB's major creditors and found that neither SULB nor Hadeed had received loan guarantees from SABIC. We, therefore, determine that loan guarantees were not used by Hadeed or its subidiary during the period of review.

Petitioners' Comments

Comment 1: Petitioners contend that PIF lending is limited by statute to a specific group of industries: those owned wholly or partly by the government. In practice, the requirement of government ownership assures that PIF loans are extended only to those industries which further government policies. Furthermore, PIF loans also have been limited to industries which are based on Saudi Arabia's oil and natural gas resources.

DOC Position: As discussed above, we determined that PIF loans are limited to projects undertaken by a specific group of enterprises, PETROMIN, Saudia Airlines and SABIC. Therefore, we do not reach the issue of whether "firms in which the government has an equity position" or "industries based on oil and natural gas resources" constitute a specific enterprise or industry, or group of enterprises or industries.

Comment 2: Petitioners contend that the Department should reject respondents' argument that the specialized credit institutions administered by the Saudi government be considered jointly in determining whether PIF loans are provided to a specific enterprise or industry, or group of enterprises or industries. The precedents cited by respondents are inapposite, in petitioners' view.

DOC Position: We have not aggregated the activities of the Saudi government specialized credit institutions in evaluating whether PIF loans are provided to a specific enterprise or industry, or group of enterprises or industries. See DOC position to respondents' Comment 1.

Comment 3: Petitioners argue that, in measuring the benefit conferred by Hadeed's PIF loan, the commercial considerations standard in section 771(5)(B)(i) of the Act requires a commercially-determined benchmark rate. The Department's reliance on SIDF rates in constructing a benchmark is inappropriate because the SIDF program is non-commercial. SIDF loans are restricted to ventures with all least 25 percent Saudi ownership, projects which are capital or power intensive, and projects which offer opportunities for employing and training Saudi citizens. Furthermore, the granting of SIDF loans is discretionary, and the fees charged are so low that they flout commercial considerations. The appropriate commercial benchmark, in petitioners' view, would be the fee charged on the one medium-term loan received by Hadeed from commercial banks, adjusted upward to reflect the large amount and longer terms of the PIF loan. Alternatively, use of an international benchmark would be consistent with *Cabot Corp. v United States*, Slip Op 85-102 (C.I.T., Oct. 4 1985) (Cabot).

DOC Position: In countries where long-term loans or the terms of long-term financing are controlled by the government, it has been the Department's practice to use direct government loans as benchmarks when those loans are provided to more than a specific industry or group of industries (*see, e.g., Cold-Rolled Carbon Steel Flat-Rolled Products from Korea*, 49 FR 47284, and *Certain Textile Mill Products and Apparel from Colombia*, 50 FR 9863). In our view, this benchmark is the best measure of the benefit to the recipient of the subsidized loan because it reflects what the recipient would otherwise have paid for a comparable loan.

The "commercial" benchmark suggested by petitioners would not be an appropriate measure of what Hadeed would otherwise pay. The commercial banking sector in Saudi Arabia is not sufficiently capitalized to supply a loan of the magnitude of the PIF loan. Nor would we use world market interest rates to measure the cost of borrowing riyals in Saudi Arabia.

As discussed above, we found that SIDF loans have been available to, and used by, a wide variety of Saudi industries. We do not consider that the 25 percent minimum Saudi ownership requirement or the domestic materials and training provisions constitute or define a specific enterprise or industry, or group thereof. Furthermore, while SIDF may have diminished its lending to certain sectors, we did not find any evidence that SIDF has channeled its lending into any specific enterprise or industry, or group thereof.

Finally, in light of the Court of International Trade's decision in Carlisle Tire & Rubber Co. v. *United States* (564 F. Supp. 834 (CIT 1983)), (Carlisle), we are not following the standard adopted by the Court in *Cabot*.

Comment 4: Beyond the use of the SIDF rate, petitioners raise two specific objections to the composite used by the Department for the PIF loan to Hadeed. First, the rate on the commercial bank loan received by Hadeed is too low because it does not reflect the risk inherent in lending a large sum of money. Second, the fact that SIDF financing is available for up to 50 percent of the project cost does not justify a 50 percent weight for the SIDF component of the benchmark.

DOC Position: We disagree with both points. With respect to the charge assigned to the commercial loan

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component of the benchmark, the incremental financing needed by Hadeed would not exceed the amount of the loan Hadeed has already received from commercial banks. Therefore, no upward adjustment to that charge is warranted. With respect to the second point, the level of Saudi ownership in Hadeed exceeds 50 percent. Therefore, Hadeed would be entitled to borrow 50 percent of the project's cost from SIDF.

Comment 5: Petitioners contend that in determing the benefit conferred on Hadeed by its PIF loan, the Department should perform its caclulations on a year-by-year basis. Petitioners argue that this methodology is correct since the charges Hadeed pays on the loan in a given year are contingent on Hadeed's profitability for that year.

DOC Position: We agree. See DOC Position to Respondents' Comment 4.

Comment 6: Petitioners argue that the ship unloader and conveyor system provided to Hadeed by the Royal Commission should be considered a countervailable benefit because it is available only to industries located in Jubail. Alternatively, petitioners argue that Hadeed's lease/purchase agreement bestows a countervailable benefit on Hadeed because the terms of repayment are far more favorable to Hadeed than the terms of the lease/purchase agreement on the urea berthside handling system. Moreover, the benchmark for measuring the benefit should not reference the SIDF rate because SIDF does not fund ongoing operations or the purchase of used machinery or equipment. Finally, petitioners ask that the Department deny respondents' claim for proportioning the benefit to reflect less than full-time utilization of the equipment by Hadeed.

DOC Position: We determined that the provision of the ship unloader and conveyor system to Hadeed confers a bounty or grant because the repayment terms of Hadeed's lease/purchase agreement were preferential when compared to the repayment terms of the lease/purchase agreement for the urea berthside handling system. Also, we have used the difference in those terms to measure the benefit to Hadeed. Therefore, SIDF charges, which were used as best information available in our preliminary determination, have not been used for the final determination on this equipment. Finally, we have not proportioned the benefit as requested by respondents.

Comment 7: Petitioners argue that the test for finding Hadeed equityworthy is whether a reasonable commercial investor would be attracted to the investment. No reasonable investor, in their view, would have committed funds to Hadeed because (1) the World Bank's feasibility study, used to justify the Saudi government's equity investments in Hadeed, was flawed since information critical to a complete evaluation of the project was missing, and (2) the project's projected real rate of return was low and was qualified by "major risks." Also, the "feasibility" of the Hadeed project, as analyzed in the World Bank report, was dependent on concessional financing and the provision of infrastructure.

DOC Position: We disagree. As discussed in section I.C. above, we analyzed the World Bank study on Hadeed's direct reduction plant and billet mill and the later World Bank study on Hadeed's rolling mill and found that Hadeed was a reasonable commercial investment. Moreover, the fact that Korf Stahl, an independent private company, decided in 1979–1980 to invest in Hadeed is further evidence of the commercial viability of the Hadeed project.

Comment 8: Petitioners contend that by 1982 and 1983, when a large part of the equity investment was made, the economic situation had changed so that reliance on the earlier studies for investments in 1983 was unwise. Thus, post-1983 investments in Hadeed cannot be considered consistent with commercial considerations.

DOC Position: We agree. Particularly by late 1982, actual world prices of rebar were much lower than the corresponding prices forcast in the 1979–1980 World Bank studies on Hadeed; therefore, an investment decision made in 1982 should not have been based on these outdated price forcasts. See our discussion in section I.C. above.

Comment 9: Petitioners argue that SABIC's equity position in Hadeed gave rise to yet another bounty or grant: the provision of services from SABIC to Hadeed at concessional rates. Petitioners argue that since overhead costs were not included in SABIC's billing charges to Hadeed, a bounty or grant equal to the amount of staff salaries and fringe benefits billed, multiplied by a reasonable overhead factor, was bestowed on Hadeed.

DOC Position: Under a service contract between Hadeed and SABIC, SABIC performs certain services for Hadeed in Riyadh such as obtaining work permits and visas for foreign workers and arranging for customs clearances. Documents obtained at verification show that Hadeed was charged, and paid, for fees covering the salaries, fringe benefits, and overhead allocated to the SABIC employees working on its behalf.

Comment 10: Petitioners claim that the infrastructure, natural gas, utilities, and other benefits provided in Jubail are limited to a specific type of industry because Jubail was planned as a city with primary industry based on oil and natural gas complemented by downstream and supporting industries.

DOC Position: We disagree. There are three broad categories of industries located in Jubail. These are (1) primary: Energy-intensive petroleum and natural gas-based industries; (2) secondary: Downstream industries, particularly those able to use locally produced feedstocks; and (3) support/light manufacturing. We verified that these groups encompass a wide variety of firms and activities. Therefore, any alleged benefits received by virtue of location in Jubail are provided to more than a specific enterprise or industry, or group of enterprises or industries. Moreover, the Saudi government has provided infrastructure in a number of industrial estates throughout the Kingdom, and this infrastructure is used by a wide variety of industries without limitation.

Comment 11: Petitioners contend the Jubail infrastructure confers a regional bounty or grant. In their view, the infrastructure test (stated in full in section II.A of this determination), if intended to address the issue of regional subsidiaries, is inconsistent with *Michelin Tire Corp.* v. *United States* (2 C.I.T. 143 (1980)) (Michelin) because it ignores the differences between the subsidized areas and the rest of the country. That the form of benefit, infrastructure, is different from the benefits in *Michelin* (grants) is irrelevant because regional subsidies are presumptively countervailable. Moreover, the Department's standard ignores the doctrine reaffirmed in *Cabot* that the focus of the inquiry should be on actual, as opposed to nominal, benefits.

DOC Position: We disagree that the Jubail infrastructure provides a regional bounty or grant. Under petitioners' logic, every time a government builds a road or harbor it is providing a regional subsidy to those located in the vicinity of the road or harbor. Our three-part test was developed to avoid this extreme result. Furthermore, the form of the benefit is relevant. In the case of infrastructure, the government is providing goods or services which, by their nature, will benefit firms and individuals located in proximity to the infrastructure. Moreover, *Michelin*, which has been vacated as moot, Slip. op. 85–11 (Ct. Int'l. Trade), is distinguishable because grants, loans and tax benefits are not by their nature limited in use, and, hence, are countervailable if provided on a regional basis. Finally, with respect to actual and nominal benefits; we have found that the ability to locate in Jubail and the other industrial estates is not limited *de jure* or *de facto*. As noted above, in light of the C.I.T.'s decision in *Carlisle*, we are not following the standard adopted by the Court in *Cabot*. Moreover, even assuming *arguendo* that *Cabot* constitutes a correct interpretation of the law, we do not think that this decision results in finding infrastructure to be a subsidy. To the contrary, *Cabot* suggests that the provision of infrastructure is a so-called "general benefit" which is not countervailable.

Comment 12: Petitioners contend that SABIC, the majority shareholder in Hadeed and a wholly-owned government entity until 1984, was exempt from Zakat. In their view, while the exemption formally benefitted SABIC, Hadeed's majority shareholder, a benefit was effectively conferred on Hadeed and should be countervailed.

DOC Position: We disagree. The Department verified that the Zakat was paid on Hadeed's net worth in 1984.

Comment 13: Petitioners contend that respondents have not denied the allegation that enterprises with over 50 percent Saudi ownership are given preference in government procurement and have refused to acknowledge that government agencies (such as pre-1984 SABIC) are part of the Saudi government; thus, respondents' statement that Hadeed does not sell to the government is without substance. The Department should conclude, therefore, that Hadeed received benefits which constitute subsidies from preferences in government procurement.

DOC Position: We disagree. Department officials verified, and petitioners have provided no documentation to the contrary, that Hadeed did not sell in 1984 to the Saudi government, SABIC, PETROMIN, Saudia Airlines, or other quasi-government entities. Therefore, it could not have benefitted from any government procurement preferences.

Comment 14: Petitioners contend that Saudi prohibition on the export of scrap metal confers a countervailable benefit on Hadeed by lowering Hadeed's input costs on scrap metal.

DOC Position: This allegation was first raised by petitioners shortly before the preliminary determination, when they brought to our attention a reference to the law restricting scrap exports. We did not investigate this allegation because petitioners did not show how this type of export prohibition constitutes a bounty or grant. In particular, we have found export taxes to be not countervailable in other cases. (See: "Final Result of Administrative Review; Non-Rubber Footwear from Argentina", (March 16, 1984, 49 FR 9922); "Preliminary Results of Administrative Review; Leather Wearing Apparel from Argentina," (May 14, 1984, 49 FR 20348); "Final Negative Countervailing Duty Determination; Anhydrous and Aqua Ammonia from Mexico", (June 22, 1983, 48 FR 28523); and "Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil", (April 26, 1984, 49 FR 17988") Furthermore, petitioners offered no arguments that the Saudi law was distinuishable from the earlier situations or that the export tax had resulted in lower domestic prices for scrap.

Respondents' Comments

Comment 1: Respondents contend that Hadeed's long-term loan from the PIF, one of Saudi Arabia's five specialized credit institutions, is not countervailable since the Department should consider the lending programs of the specialized credit institutions in the aggregate. Respondents argue that these credit institutions are complementary parts of an overall government lending program which makes loans available to commercial ventures in virtually every industry in Saudi Arabia.

DOC Position: We disagree. The government of Saudi Arabia has established five distinct specialized credit institutions, one of which is the PLF. There is no evidence that PIF loans and loans provided by the other institutions are linked in any way to an overall government lending policy to provide loans on comparable terms to the various groups serviced by these institutions. Therefore, in order to determine whether or not the specificity test is satisfied, we consider each government program saparately. In support of their arguments, respondents cite precedents from *Cold-Rolled Carbon Steel Flat-Rolled Products from Korea* (49 FR 47284, 47289 (December 3, 1984)); *Prestressed Concrete Steel Wire Strand from France* (47 FR 47031, 47032 (Oct. 22, 1982)); and *Certain Textile Mill Products and Apparel from Colombia* (50 FR 9863, 9865 (March 12, 1985)). In the *Korea* case, we examined government loan programs in the aggregate in response to a specific allegation by petitioners that the government was directing credit to the steel industry through government banks and loan programs. However, as specifically stated in the *Korea* case, we also examined each government program separately in order to determine if the individual programs conferred a subsidy. In the *France* case, we examined loans provided through all regional development agencies in France to determine whether they were limited to a specific region. However, we also made a separate determination that the loans themselves were not limited to specific enterprises or industries. In the *Colombia* case, we examined a specific program and found that it was limited to a specific enterprise or industry, or group or enterprises or industries. We aggregated loan programs, in the *Colombia* case only after we determined that those programs were not limited in order to determine the appropriate benchmark with which to compare the loans given under the program that was limited. Accordingly, the specificity test still applies to individual loan programs.

Comment 2: Respondents argue that Hadeed's long-term loan from the PIF is not countervailable because PIF loans are not limited to a specific enterprise or industry, or group or enterprises or industries. Respondents maintain that PIF loans are available for investment in any project of a commercial nature in which there is some public ownership. Respondents dispute petitioners' contention that PIF loans are limited to hydrocarbon-based industries, since some of the PIF loans which have been made were extended to Saudia Airlines, a commercial transportation company.

DOC Position: As discussed above, we determined that PIF loans were provided to finance for projects undertaken by three specific enterprises. While the Fund may be open to investment in any project in which there is some public ownership, the loans, in fact, have been provided only to three companies. See DOC Position to petitioners' Comment 1.

Comment 3: Respondents contend that, because Saudi religious law prohibits interest charges on loans, there are no long-term commercial lending rates against which to measure the terms and conditions of Hadeed's PIF loan. Therefore, respondents argue that PIF loans are not countervailable because there is no alternative source of long-term financing in Saudi Arabia. To support this contention, petitioners argue that the Kingdom's five specialized credit institutions (of which the PIF is one) are the only sources of long-term financing in the country, and all offer long-term financing on substantially similar terms. Respondents further state that Saudi commercial banks did not have sufficient resources in 1979 to extend a loan comparable (in amount or duration) to Hadeed's PIF loan.

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DOC Position: While we agree with respondents that the Sharia has had a fundamental impact on Saudi Arabia's commercial lending practices and that long-term project financing is, for the most part, not available from commercial banks in the Kingdom, we do not agree with respondents that government long-term lending is the *only* appropriate benchmark against which to measure the terms and conditions of Hadeed's PIF loan. Department officials verified that medium-term loans from commercial banks do exist in Saudi Arabia. Furthermore, since the government's SIDF loan program has a lending limitation of 50 percent of project costs, it was necessary to assume that commercial banks would have loaned the remaining funds (*i.e.*, that amount in excess of 50 percent SIDF statutory limit) required for Hadeed's project.

Comment 4: Respondents argue that if the Department finds Hadeed's PIF loan to be countervailable, the benefits must be allocated over the life of the loan, rather than a "snapshot" approach (*i.e.*, a year-by-year approach to the benefits received), as argued by petitioners.

DOC Position: We disagree. In accord with its Subsidies Appendix, the Department allocates subsidies over the life of the loan when the terms of the loan have a "readily identifiable effect on the company over time." (See *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina*, 49 FR at 18019). the terms of Hadeed's PIF loan, however, are not readily identifiable since Hadeed's future payments on the loan depend on future profitability. Computation of the "effect" of the PIF loan on Hadeed, therefore, is not possible except on a year-by-year basis.

Comment 5: Respondents argue that if the Department constructs a benchmark against which to measure any benefit from the PIF loan, it should consider using either a weighted-average composite of the cost of all government loans, or an SIDF loan rate without a maximum percentage limitation. Respondents argue that since Hadeed's PIF loan accounted for less than half of the project's total costs (in 1983), it is inappropriate to compare the PIF loan to a composite SIDF-commercial loan benchmark.

DOC Position: As discussed in Section 1.A above, we used a composite SIDF-commercial loan benchmark in evaluating Hadeed's PIF loan. We chose the SIDF loan because SIDF is the only Saudi specialized credit institution, other than PIF, which provides industrial loans, and we verified that SIDF has provided loans to hundreds of companies in a wide variety of industries. Since the other Saudi specialized credit institutions do not provide industrial loans, we did not use a composite benchmark based on the other credit institutions. Furthermore, the composite SIDF-commercial loan benchmark consists, not of the maximum SIDF feasibility and follow-up fees, but of the maximum feasibility charge pro-rated over the life of the PIF loan and the 1980–1985 average SIDF follow-up fees.

Respondents' claim that the PIF loan covered less than half of project costs is based on year-end 1983 cost figures. While the 50 percent cost figure may be correct for 1983, the Department, when evaluating a loan decision, reviews the actual circumstances and information available when the decision was made. As acknowledged in Hadeed's PIF loan agreement, the amount of the PIF loan comprised 60 percent of Hadeed's total estimated project costs. Thus, we used the 60 percent figure as the basis for our benchmark calculations.

Comment 6: Respondents argue that, in general, the annualized cost of all charges associated with an SIDF loan is less than one percent, a fact which was confirmed by Department officials during verification. Therefore the two percent SIDF financing rate used to calculate the composite SIDF-commercial benchmark for the preliminary determination was incorrect. Respondents argue that, for the final determination, the verified SIDF rate should be used with respect to all calculations involving SIDF loans.

DOC Position: We agree. At verification, we ascertained the maximum allowable charge for the SIDF feasibility study fee, obtained annual follow-up charges actually paid during 1981–1985 on a sample of large SIDF loans, and examined the actual terms and charges paid on a specific SIDF loan. In constructing our composite SIDF-commercial benchmark on Hadeed's PIF loan, we used the verified maximum SIDF feasibility fee, pro-rated over the life of Hadeed's PIF loan, and the average annual SIDF follow-up charge derived from the SIDF loan sample.

Comment 7: Respondents contend that the Department erred in its preliminary determination when it characterized the lease/purchase agreement between Hadeed and the Royal Commission for Jubail and Yanbu as a long-term loan. Respondents further argue that the Department based its preliminary determination concerning Hadeed's lease/purchase agreement on incorrect figures since, as shown at verification, the cost of an SIDF loan is less than two percent per year. Finally, respondents submit that the terms on which the lease/purchase agreement is based (*i.e.*, full cost recovery plus two percent finance charge) do not confer a countervailable benefit because two percent is the standard fee charged by the Royal Commission for the cost of money.

DOC Position: At the time of our preliminary determination, we did not have complete information on the terms of the lease/purchase agreement and, therefore, we treated it as a long-term loan. During verification, we obtained information on fees charged by the Royal Commission to recover the cost of money for facilities provided to companies. We have compared the repayment terms of Hadeed's lease/purchase agreement to the repayment terms on a lease/purchase agreement for a similar piece of equipment, and found the terms of Hadeed's agreement to be preferential. Accordingly, we determined that Hadeed's lease/purchase agreement conferred countervailable benefits because the equipment was provided for the use of only one company and it was provided on preferential terms.

Comment 8: Respondents argue that if the lease/purchase agreement had not been available to finance the unloader/conveyor system, Hadeed would have either leased the equipment or developed a less expensive transport alternative. Respondents further argue that if the Department does not accept full cost recovery plus two percent as the commercial norm for the lease/purchase agreement, a "proportionality factor" should be included in the Department's benefit calculations. This "proportionality factor" should reflect the fact that in 1984, Hadeed used only a fraction of the conveyor's capacity (see *Carbon Steel Wire Rod from Trinidad and Tobago*, 49 FR 482). Finally, respondents state that the unloader/conveyor system was not provided on preferential terms to Hadeed because the cost of the system is disproportionate to its economic benefit.

DOC Position: We disagree. The end results of a firm's economic decisions are irrelevant to the Department's analysis of whether or not a bounty or grant exists. The Department assumes that all contracts or agreements which a company enters into are done so based on the assumption that an economic benefit will ensue. Therefore, the Department, in making its subsidy determinations, must evaluate the actual terms and conditions agreed upon in the contract.

We would not, and did not, proportion the benefit based on Hadeed's actual use of the unloader/conveyor system because Hadeed is the only user of this equipment. Finally, respondents' argument that Hadeed may not be receiving an economic benefit equal to the cost of the system is irrelevant since that is not the standard for determining whether a good or service has been provided at perferential rates

Comment 9: Respondents argue that the Saudi government does not limit who may locate in industrial estates and that there are ten industrial estates located throughout the country; therefore, infrastructure development does not confer a bounty or grant.

DOC Position: We have determined that the provision of infrastructure does not confer a bounty or grant. See our discussion in section II.A above.

Comment 10: Respondents argue that land rental rates and utility rates on gas, water, and electricity do not confer special benefits to the manufacturing sector because land rental and water, electricity, and gas are available at standard Kingdom-wide rate to all industrial users.

DOC Position: We have determined that the provision of land and utility rates are not countervailable. See our discussion in section II.B above.

Comment 11: Respondents contend that the Department's verification team confirmed that Hadeed did not receive any special joint-venture benefits, and that some of the benefits, alleged by petitioners, do not exist.

DOC Position: We Agree. Department Officials verified that Hadeed did not benefit from any income tax holidays since, due to operational losses, it did not incur any tax liability. Department Officials also verified that Hadeed did not receive benefits from government procurement preferences or any exemptions from bonding and payment retention requirements. Based on this verified information, we determined that Hadeed did not receive any special joint-venture benefits.

Comment 12: Respondents argue that the commercial viability of the Hadeed investment has been demonstrated through feasibility studies which satisfied the Ministry of Industry and Electricity, the PIF, and Korf, the independent commercial investor. Furthermore, respondents argue that SABIC's decision to invest in Hadeed, based on its projected economic viability, has been justified because Hadeed's rate of return compares favorably with other SABIC projects. For these reasons, respondents state that Hadeed should be found to be continuously equityworthy since 1979.

DOC Position: We agree that these factors provided a reasonable basis for SABIC's initial decisions in 1979 and 1981 to invest in the construction of Hadeed's steel making facilities and rolling mill in Jubail. However, actual prices during the 1982–1984 period were significantly lower than the price assumptions for rebar the initial feasibility studies. We determined that by late 1982 these feasibility studies no longer constituted a reasonable basis for future investment in Hadeed. Thus, we determined that as of late 1982, Hadeed was unequityworthy.

Comment 13: Respondents argue that SABIC's continuing capital contributions to Hadeed were reasonable commercial investments, since these contributions were made to construct and operate the Jubail rolling mill, a separate project, and to purchase SULB, a wholly-owned subsidiary of Hadeed. Resondents argue that based on precedent (*e.g., Carbon Steel Wire Rod from Trinidad and Tobago*, 49 F.R. 484), a project "must have lost all measure of commercial reasonableness" before subsequent investments are deemed inconsistent with commercial considerations. Based on this standard, the Department should not countervail SABIC's two equity infusions to Hadeed.

DOC Position: We have consistently held that each decision pertaining to equity investment must be examined on its own merits and on the available facts and market conditions prevailing at the time of the investment decision. For this reason, we did not find SABIC's initial 1979–1981 investment decisions to be inconsistent with commercial considerations based on price declines in the 1979–1984 period. However, price decreases through 1982 and any revisions to expectations of future price levels caused by these declines were relevant to SABIC's 1982 decision to transfer its shareholding in SULB to Hadeed. See our discussion in section I.C. above.

Comment 14: Respondents argue that Hadeed's commercial viability was also confirmed by the fact the Korf Stahl, an independent private investor, decided to invest in the project.

DOC Position: We agree. As an independent private investor, Korf Stahl's 1979–1980 decisions to invest in the construction of the Hadeed project were relevant in considering whether the project was made on terms consistent with commercial considerations.

Comment 15: Respondents contend that duty exemptions are available to all "industrial establishments" in Saudi Arabia, and that Department officials confirmed that these duty exemptions are available both nominally and *de facto*.

DOC Position: We agree. See our discussion in section 11.B above.

Comment 16: Respondents argue that the Department should determine that Saudi Arabia's "industrial establishments" are not a "specific group of enterprises or industries," since the Department has previously determined that identifiable groups of industries, both smaller and less varied than the Kingdom's "industrial establishments," fail to constitute specific groups of enterprises or industries.

DOC Position: We have determined that the manufacturing sector in Saudi Arabia does not constitute a specific enterprise or industry, or group of enterprises or industries. See our discussion in section II.B above.

Comment 17: Respondents contend that neither SABIC nor Hadeed is exempt from paying Zakat. In addition, Department officials verified that Hadeed's Zakat obligations were paid in full, as required by the Zakat regulations. Hence, this program is not countervailable.

DOC Position: We agree. See our discussion in section II.C above.

Comment 18: Respondents maintain that SABIC has never guaranteed any of Hadeed's or SULB's government or commercial loans.

DOC Position: We agree. At verification, we found no evidence to substantiate petitioners' allegation.

Verification

In accordance with section 776(a) of the Act, we verified the information and data used in making our final determination. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents as well as on-site inspection of the accounting records of Hadeed, the company producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

In response to a November 27, 1985, request from respondents and a December 2 request from petitioners, we held a public hearing concerning this investigation on December 20. We received pre-hearing briefs on December 17 and post-hearing briefs on January 2, 1986.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination will remain in effect until further notice. The

estimated net bounty or grant is 5.49 percent *ad valorem*.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit for each entry of this merchandise which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

January 27, 1986.

[FR Doc. 86-2306 Filed 1-31-86; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Small ICBMs; Cancellation of Meeting

The meeting notice for the Defense Science Board Task Force on Small ICBMs on 12 February 1986 as published in the Federal Register (Vol. 51, No. 17, Monday, January 27, 1986, FR Doc 86-1700.) has been cancelled. In all other respects the original notice remains unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1986.

[FR Doc. 86-2303 Filed 1-31-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the response to the Recommendations, Requests for Information, and Continuing Concerns made by the Committee at the 1985 Fall Meeting; discuss current issues relevant to women in the Services; and plan the program for the semi-annual spring meeting scheduled for 27 April-1 May 1986 in Washington, DC. All meeting sessions will be open to the public.

DATE: February 24, 1986, 1:30-5:00 p.m. and February 25, 1986, 8:30-11:30 a.m.

ADDRESS: OSD Conference Room 1E801 #7, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

SUPPLEMENTARY INFORMATION: Persons desiring to (1) attend the Executive Committee Meeting or (2) make oral presentations or submit written statements for consideration at the meeting must notify the point of contact listed above no later than February 10, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 29, 1986.

[FR Doc. 86-2304 Filed 1-31-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order; Suburban Propane Gas Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Suburban Propane Gas Corporation concerning propane, butane and natural gasoline resales by the firm, and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATES: Comments by: March 5, 1986.

ADDRESS: Send comments to: Suburban Consent Order Comments, Office of Field Operations, U.S. Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207.

FOR FURTHER INFORMATION CONTACT: Ben L. Lemos, Director, Office of Field Operations, Economic Regulatory Administration, U.S. Department of Energy, 1403 Slocum, Second Floor, Dallas, Texas 75207; Tel: (214) 767-4646. (Copies of the Consent Order may be obtained free of charge by writing or calling this office.)

SUPPLEMENTARY INFORMATION: On October 21, 1985, the ERA executed a proposed Consent Order with Suburban Propane Gas Corporation for $1,800,000. Under 10 CFR § 205.199(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty days after publication of a notice in the Federal Register requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

1. Background

Suburban Propane Gas Corporation (Suburban) was involved in reselling activities during the audit period of November 1973 through October 1978. Suburban consisted of six primary entities which were engaged in the activities or reselling and retailing, producing, gas processing and crude oil refining.

On October 10, 1974, the Federal Energy Administration (FEA), the predecessor agency of the ERA, issued a Notice of Probable Violation (NOPV) to Suburban which alleged that the firm and its subsidiaries should be treated as a refiner under FEA petroleum price regulations. The firm responded and the NOPV was rescinded on December 7, 1978.

Additional audit work undertaken and two NOPV's were given to representatives of Suburban on May 28, 1981. One of the NOPV's (Case No. 733S02013) was resolved by Consent Order on July 29, 1981. The remaining NOPV (Case No. 733V02020), treating three entities of Suburban as one firm, was rescinded on February 25, 1985. This action was based on information provided by Suburban which supported its position that its reseller entity was correctly treated separately under the regulations. As a result, it was determined that Suburban overcharged its customers in its sales of propane for the period November 1973 through October 1978 in the amount of $2,059,997 plus interest.

After additional meetings with the firm, ERA considered further submissions and arguments presented by the firm and concluded that there still remained several unresolved issues concerning Suburban's compliance with the regulations. Included in the issues were:

(1) Whether ERA correctly determined the amount of Suburban's vapor loss and treated it properly in its calculations of the allowable passthrough of costs; and

(2) Whether Suburban was allowed all permissible cost passthroughs for the month of December 1973. ERA also determined that further pursuit of this matter could involve complex and difficult litigation.

In light of the foregoing, it is the opinion of the ERA that a payment of $1,800,000 is a satisfactory compromise of the issues raised in this audit. This amount includes interest.

II. The Consent Order

The proposed Consent Order has been entered into to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to Suburban's compliance in its resales of propane, butane and natural gasoline during the audit period. Although Suburban contends that in all respects it correctly construed and applied the applicable regulations, Suburban has entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by its audit.

III. Refunds

Under the Consent Order, Suburban will pay the sum of $1,800,000 within thirty days of the effective date of the Consent Order. The Administrator (or his designee) of ERA shall direct that these monies be deposited in a suitable account and ERA will petition DOE's Office of Hearings and Appeals to implement special refund procedures pursuant to 10 CFR Part 205, Subpart V, to distribute the monies.

In consideration for Suburban's performance under the Consent Order, the DOE agrees not to pursue any civil claims against Suburban that the DOE may have arising out of the matters covered by the Consent Order.

The foregoing provisions for payment of the refund amount were established because ERA was unable to readily identify the ultimate injured parties due to the nature of the alleged violations and the complexities of petroleum marketing.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. Comments should be identified on the outside of the envelope and on the documents submitted with the designation "Comments on Suburban Propane Gas Corporation Consent Order." The ERA will consider all comments it receives by 4:30 p.m. CST, thirty (30) days after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR § 205.9(f).

Issued in Washington, D.C., on the 15 day of January 1986.

James N. Solit,

Acting Director, Office of Enforcement Programs, Economic Regulatory Administration.

[FR Doc. 86-2324 Filed 1-31-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP86-165-000]

Northwest Alaskan Pipeline Co.; Informal Conference

January 27, 1986.

Take notice that on February 6, 1986, at 10:00 a.m. an informal conference will be convened to discuss the details of the proposal advanced by Northwest Alaskan Pipeline Company in the above-captioned proceeding. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC.

All interested persons and the Commission staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a motion to intervene in accordance with Rule 214(d) of the Commission's rules of practice and procedure (18 CFR 385.214(d)). For further information contact Bob Wolfe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, (202) 357-8598.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2223 Filed 1-31-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9610-000, et al.]

Hydroelectric Applications; Puget Sound Power & Light Co., et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Preliminary Permit.

b. Project No.: 9610-000.

c. Date Filed: November 4, 1985.

d. Applicant: Puget Sound Power & Light Company.

e. Name of Project: Tye River.

f. Location: On the Tye River, tributary to the Snohomish River, near the town of Scenic, in King County, Washington, and affecting lands within the Snoqualmie National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert V. Myers, Puget Power Building, Bellevue, WA 98009.

i. Comment Date: March 6, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 10-foot-high, 37-foot-long, concrete-gravity, overflow-type diversion dam with spillway crest elevation 1,735.5 feet msl; (2) an intake structure at the right (north) bank; (3) an 84-inch-diameter, 9,170-foot-long concrete and steel penstock; (4) a powerhouse containing two generating units each rated at 5.0-MW at a flow of 188 cfs and at a net head of 376 feet; (5) a tailrace; (6) an access road to the powerhouse; (7) a 2,200-foot-long underground 13.8-kV transmission line; and (8) a 13.8/115-kV switchyard.

A preliminary permit, if issued, does not authorize construction. Applicant seeks a 36-month preliminary permit to conduct engineering, economic and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary. The estimated cost of permit activities is $100,000.

k. Purpose of Project: Applicant intends to sell the power produced at the site to its customers. Applicant estimates that the average annual energy production would be 45,400 MWh.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

2a. Type of Application: New Major License.

b. Project No.: P-2302-003.

c. Date Filed: October 8, 1985.

d. Applicant: Central Maine Power Company and Union Water-Power Company.

e. Name of Project: Lewiston Falls.

f. Location: On the Androscoggin River in Androscoggin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Ralph L. Bean, Vice President, Engineering, Central Maine Power Company, Edison Drive, Augusta, Maine 04336.

i. Comment Date: March 6, 1986.

j. Description of Project: The existing project consists of: (1) An existing stone-masonry dam comprised of four main

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sections capped with eight inches of reinforced concrete with a crest elevation of 164.17 feet USGS, the sections are equipped with removable steel pins that support 4-foot-high flashboards, also includes a concrete section with a maximum height of 4 feet with a fixed crest elevation of 166.83 feet USGS; (2) an existing reservoir having a surface area of about 200 acres, a storage capacity of 1600 acre-feet with a full pond elevation of 168.17 feet USGS; (3) two existing gatehouse buildings impounding the reservoir; (4) an existing canal system which is comprised of two main canals; Upper and Lower Canal, and three interconnecting canals; Cross Canals #1, #2, and #3, the canals vary in depth from 10 to 12 feet and in width from 23 to 65 feet and in length from 570 feet to 4400 feet. The licensed project facilities are used to provide water power to various non-project generating facilities on the canal system which have a total installed capacity of about 14,000 kilowatts. The redeveloped project would consist of: (1) The existing canal system; (2) the existing generating facilities which are comprised of the facilities at the Bates Weave Shed, the Hill Mill, the Upper Androscoggin, the Lower Androscoggin, the Continental Mills and the Bates No. 2; (3) two existing penstocks each serving three turbines at the Hill Mill site; (4) an existing powerhouse with a total installed capacity of 880 kW; (5) an existing tailrace; (6) a second powerhouse containing six generating units with a total installed capacity of 1850 kW; (7) an existing station housing three turbine/generators with a total installed capacity of 1,695 kW; (8) an existing station with a total installed capacity of 250 kW with flows discharging back into the Androscoggin River; (9) an existing penstock 10 feet in diameter and 175 feet long; (10) a third existing powerhouse housing one turbine generator with a total installed capacity of 450 kW; (11) an existing tailrace; (12) a fourth powerhouse housing five turbine/generators with a total installed capacity of 1200 kW; (13) an existing tailrace; (14) a new concrete powerhouse containing two new turbine/generators with a total installed capacity of 25,000 kW; (15) a new tailrace; (16) an existing 3 phase, 34.5–kV transmission line will be tapped to transmit the project's output to the utility system; and (17) appurtenant facilities. The dam is owned by Central Maine Power Company.

The Applicant estimates the average annual generation would be 142.7 GWh. The existing project would also be subject to Federal takeover under section 14 and 15 of the Federal Power Act. The Applicant's estimated net investment in the project would amount to $55,000,000.

k. Purpose of Project: Project power would continue to be sold to the customers of Central Maine Power

l. This notice also consists of the following standard paragraphs: A3, A9, B and C.

3a. Type of Application: Relicense (Minor).

b. Project No.: 2428–001.

c. Date Filed: December 21, 1984.

d. Applicant: Aquenergy Systems, Inc.

e. Name of Project: Piedmont.

f. Location: Saluda River, Greenville County, South Carolina.

g. Filed Pursuant To: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph H. Walker, Jr., President, Aquenergy Systems, Inc., P.O. Box 6692, Greenville, SC 29606.

i. Comment Date: March 5, 1986.

j. Description of Project: The existing operating run-of-river project consists of: (1) A 25-foot-high and 600-foot-long stone masonry dam which has a 200-foot-long overflow spillway section fitted with 16-inch flashboards; (2) a reservoir with a surface area of 22 acres at the normal water surface elevation of 774.0 feet (m.s.l.); (3) an open flume intake canal, approximately 144 feet long and 81 feet wide; (4) a powerhouse containing a single generating unit with a rated capacity of 1,000 kW; (5) a tailrace, approximately 180 feet long and 38 feet wide, (6) a 600 Volt transmission line approximately 263 feet long; and (7) appurtenant facilities. The project generates an overage of 6,500,000 kWh annually.

k. Purpose of Project: The project energy is sold to Duke Power Comapny.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

4a. Type of Application: Preliminary Permit.

b. Project No.: 9473–000.

c. Date Filed: September 23, 1985.

d. Applicant: Hope Mills Power Company, Inc.

e. Name of Project: Hope Mills No. 1.

f. Location: Little Rock Fish Creek, Cumberland County, North Carolina.

g. Filed Pursuant To: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles B. Mierek, Hope Mills Power Comany, Inc., Route 2, Box 302A, Spartanburg, SC 29302.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed would consist of: (1) An existing earth dam, 35 feet high and about 250 feet long; (2) an existing reservoir with a surface area of approximately 90 acres and a gross storage capacity of about 1,000 acre-feet; (3) and existing intake structure; (4) an existing powerhouse which would house 3 generating units with a total capacity of 1,000 kW; (5) a proposed 12.5-kV or 23-kV transmission line, about 1,000 feet in length; and (6) appurtenant facilities. The estimated average annual generation is 2.0 GWh.

k. Purpose of Project: The project power would be sold to Carolina Power and Light Company or to North Carolina Electric Membership Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $25,000.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9433–000.

c. Date Filed: September 5, 1985.

d. Applicant: Hope Mills Power Company, Inc.

e. Name of Project: Hope Mills No. 2.

f. Location: Rock Fish Creek, Cumberland County, North Carolina.

g. Filed Pursuant To: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles B. Mierek, Hope Mills Power Company, Route 2, Box 302A, Spartanburg, SC 29302.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed would consist of: (1) An existing breached earth and concrete dam about 30 feet high and 250 feet long, which would be rehabilitated; (2) a reservoir, which would be reestablished following rehabilitation of the project dam, with a surface area of approximately 80 acres and a gross storage capacity of about 1,000 acre-feet; (3) and existing intake structure located at the center of the dam; (4) a proposed powerhouse containing two generating units with a total capacity of 1,400 kW; (5) a proposed 12.5 kV or 23.0 kV transmission line, about 1000 feet in length; and (6) appurtenant facilities.

The estimated average annual generation is 2.8 GWh.

k. Purpose of Project: The project power would be sold to Carolina Power and Light Company or to North Carolina Electric Membership Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $25,000.

6a. Type of Application: Preliminary Permit.

b. Project No.: 9508–000.

c. Date Filed: September 30, 1985.

d. Applicant: Aguenergy Systems, Inc.

e. Name of Project: Piedmont II.

f. Location: Saluda River, Anderson County, South Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph H. Walker, Jr., President, Aguenergy Systems, Inc., P.O. Box 6692, Greenville, SC 29606.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed would consist of: (1) An existing stone masonry dam, approximately 600 feet long and 28 feet high; (2) an existing reservoir with a surface area of approximately 22 acres and a minimal storage capacity; (3) three existing penstocks, each about 7 feet in diameter; (4) an existing brick powerhouse structure, in which it is proposed to install 3 generating units with a total capacity of 900 kW; (5) an existing tailrace, approximately 150 feet long and 60 feet wide; (6) a proposed 12.5-vK transmission line, about 300 feet long; and (7) appurtenant facilities. The estimated average annual generation is 2.8 GWh.

k. Purpose of Project: The project power would be sold to Duke Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $10,000.

7a. Type of Application: Preliminary Permit.

b. Project No.: 9478–000.

c. Date Filed: September 24, 1985.

d. Applicant: Pearch Creek Power Partners.

e. Name of Project: Pearch Creek Hydroelectric.

f. Location: On Pearch Creek, a tributary to Klamath River, near Orleans, within the Six Rivers National Forest, in Humboldt County, California (In sections 32 and 33 of T11N, R6E, H.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, #600, Washington, DC 20005, (202) 457–7500.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) Two 4-foot-high, 40-foot-long, rock diversion dams (one on the North Fork and the other on the South Fork), both at elevation 1,600 feet msl; (2) a 2-foot-diameter, 9,000-foot-long steel penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 700 kW and operating under a head of 875 feet; and (4) a 12.5–kV, 5,000-foot-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line. The project's estimated average annual generation of 6.1 GWh would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $145,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 9573–000.

c. Date Filed: November 1, 1985.

d. Applicant: Upper Slate Creek Associates.

e. Name of Project: Upper Slate Creek.

f. Location: In Nez Perce National Forest on Slate Creek, in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high check dam at elevation 2,560 feet; (2) an 18,000-foot-long, 50-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 4,400 kW and an average annual generation of 14,552 MWh; and (4) a 5-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $12,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

9a. Type of Application: Preliminary Permit.

b. Project No.: 9611–000.

c. Date Filed: November 4, 1985.

d. Applicant: Saywatt Hydro Associates.

e. Name of Project: Mechanicsville Project.

f. Location: On the French River in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas A. Tarpey, 99 North State Street, Concord, NH 03301.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 586-foot-long and 30-foot-high masonry dam with a spillway elevation of 307 feet msl; (2) an existing 44-acre surface area reservoir with a storage capacity of 340-acre-feet with a maximum surface elevation of 307 feet msl; (3) an existing powerhouse to be rehabilitated to contain two turbine/generators for an installed capacity of 320 kW; (4) an existing 50-foot-wide, 6'foot-deep and 120-foot-long tailrace; (5) a proposed 800-foot-long 4.8-kV transmission line; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 1,210,000 kWh under a hydraulic head of

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15 feet. The dam is owned by the Essex Hydro Associates, Inc.

k. Purpose of Project: Project power will be sold to the Northeast Utility Company.

l. This notice also consist of the following standard paragraphs A5, A7, A9, B, C, & D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $20,000.

10a. Type of Application: Preliminary Permit.

b. Project No.: 9553–000.

c. Date Filed: October 24, 1985.

d. Applicant: School Street Hydro Corporation.

e. Name of Project: Cohoes Falls.

f. Location: On the Mohawk River in Saratoga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, NY 10170.

i. Comment Date: March 7, 1986.

j. Description of Project: The Applicant proposes to develop the presently unutilized capacity at the School Street Dam owned and licensed to the Niagara Mohawk Power Corporation for the existing School Street Dam Project No. 2539 which consists of: (1) An existing 280-foot-long, 16-foot-high masonry dam; (2) An existing 100-acre reservoir with a storage capacity of 240 acre-feet; (3) five existing penstocks; (4) an existing powerhouse with five turbine/generators with an installed capacity of 38,800 kW; (5) an existing tailrace; (6) an existing transmission line; and (7) appurtenant facilities. The proposed project would consist of: (1) A proposed gated headworks structure to control flow to the power canal; (2) a proposed 550-foot-extension to the existing dam with a proposed spillway at a crest elevation of 156.1 feet msl; (3) a proposed flap gate bypass which will pass ice and debris; (4) a proposed 4200-foot-long and 100-foot-wide power canal to convey flows to; (5) a proposed gated intake structure to control the flow to; (6) two proposed 100-foot-long penstocks with inside diameters of 22 feet; (7) a proposed powerhouse to contain two turbine-generators for a total installed capacity of 71,900 kW; (8) a proposed tailrace approximately 360 feet long; (9) a new 115-kV transmission line, 1000 feet long; and (10) appurtenant facilities. The estimated average annual energy produced by the project would be 86 million kWh operating under a new hydraulic head of 95 feet.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Corporation.

l. This notice also consist of the following standard paragraphs A5, A7, A9, B, C, & D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $160,000.

11a. Type of Application: Minor License.

b. Project No.: 9282–000.

c. Date Filed: June 10, 1985.

d. Applicant: Winslow H. MacDonald.

e. Name of Project: Pine Valley.

f. Location: On the Souhegan River in Hillsborough County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Winslow H. MacDonald, Trustee, Milford Elm Street Trust, 657 Main Street, Waltham, MA 02154.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 23-foot-high, 200-foot-long concrete, stone, and masonry dam; (2) a reservoir with a water surface area of 7 acres, a storage capacity of 70 acre-feet, and a water surface elevation of 323.6 feet MSL with; (3) 4-foot-high flashboards; (4) two existing steel intake gates; (5) a new 8-foot-diameter, 2,700-foot-long steel penstock; (6) a new generating unit located at the dam and having a generating capacity of 30 kW; (7) an existing powerhouse on the left bank containing two existing generating units with a capacity of 350 kW each for a total installed capacity of 730 kW; (8) an existing 155-foot-long tailrace; (9) two new transmission lines, 200 feet and 1,500 feet long; and (10) appurtenant facilities. The Applicant estimates that the average annual generation would be 2,305,000 kWh. The existing dam is owned by Winslow H. MacDonald, Waltham, Massachusetts.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

12a. Type of Application: Preliminary Permit.

b. Project No.: P–9455–000.

c. Date Filed: September 13, 1985.

d. Applicant: Newburgh Hydro Partners.

e. Name of Project: Newburgh Lock and Dam.

f. Location: On the Ohio River in Henderson County, Kentucky, and Warrick County, Indiana, near Newburgh, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Michael G. LaRow, Mitex, Inc., 91 Newbury Street, Boston, MA 02116.

i. Comment Date: March 6, 1986.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Newburgh Lock and Dam and would consist of: (1) A new submerged powerhouse that would replace approximately 100 feet of the existing dam and spillway adjacent to the left abutment and that would house two 24,000 kW generators for a total generating capacity of 48,000 kW; (2) a proposed 69-kV transmission line approximately four miles long; and (3) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 180,000 MWh. All project energy would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

13a. Type of Application: New License over 5MW.

b. Project No.: 5776–000.

c. Date Filed: August 21, 1985.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Hudson Falls Project (formerly the Baker Falls and Moreau Developments of the Hudson River Project No. 2482).

f. Location: On the Hudson River in the Village of Hudson Falls and the Towns of Moreau and Kingsbury, Saratoga and Washington Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John H. Terry, Senior Vice President, General Counsel, and Secretary, 300 Erie Boulevard West, Syracuse, NY 13202.

i. Comment Date: March 7, 1986.

j. Description of Project: The existing project consists of the following two developments:

Moreau: The development comprises a 770-foot-long and 23-foot high dam, shared with the Bakers Falls development across the river. It is a concrete gravity structure with headgate works at the right bank for the Moreau plant. A 900-foot-long forebay canal parallel with the right bank of the river has a 348-foot spillawy section mounted with 1.5-foot flashboards, a 385-foot non-overflow section and a 167-foot intake gate structure, all of concrete gravity construction. In addition to the three penstocks now in use, the intake gate structure encases four other penstock section which are gated and blocked off. Water is supplied to the powerhouse through two 12-foot diameter and one 5-foot diameter steel penstocks. The latter is for the hydraulic-driven exciter. The 62-foot by 97-foot powerhouse contains two turbines and two generators with total installed capacity of 4,800 kilowatts.

Bakers Falls: The development is located on the left bank of the river opposite the Moreau development with which it shares the dam described above. The headgate structure and the canal forebay walls are of concrete gravity construction. The 570-foot-long forebay canal has an overflow spillway section about 135 feet long directly below the headgate house. Water for the turbines is supplied through three 8-foot diameter steel penstocks. The 68-foot by 49-foot powerhouse contains three turbines and three generators with a total capacity of 2,250 kilowatts, operating under a gross head of 56 feet. Also included are appurtenant transmission facilities.

The redeveloped project would consist of: (1) The existing 770-foot-long, 23-foot-high concrete gravity dam and new 50-foot-long section to seal off the Baker Falls Power Canal; (2) a reservoir having a surface area of 103.3 acres, a storage capacity of 413 acre-feet, and a normal water surface elevation of 207.0 feet USGS datum; (3) the existing 900-foot-long Moreau Power Canal; (4) a new intake structure consisting of three fixed roller lift gates; (5) three new 50-foot-long steel penstock, two being 18 feet in diameter and one being 14 feet in diameter; (6) a new replacement powerhouse containing three generating units having a total installed capacity of 36.1–MW; (7) a new tailrace; (8) a new 3,960-foot-long 34.5–kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 170,000,000–kWh. The existing Baker Falls development would be removed and no redevelopment or power generation would occur at that site.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the license expiration of May 18, 1984, the Applicant's estimated net investment in the project would amount to $3,023,000, and the estimated severance damages would amount to $50,750,000.

k. Purpose of Project: All project energy generated would be utilized by the Applicant for sale to its customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

14a. Type of Application: New License (over 5 MW).

b. Project No.: 5461–000.

c. Date Filed: October 8, 1981.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: South Glens Falls (formerly the South Glens Falls Development of the Hudson River Project No. 2482).

f. Location: On the Hudson River near the Towns of Moreau and Queensbury, the City of Glens Fall, and The Village of South Glens Falls, Warren and Saratoga Counties, New York.

g. Filed Pursuant to: Federal Power Act 16, U.S.C. 791(a)—825(r).

h. Contact Person: John H. Terry, Senior Vice President, General Counsel, and Secretary, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202.

i. Comment Date: March 7, 1986.

j. Description of Project: The existing project consists of: *South Glens Falls:* a gravity multiple-arch dam, 518 feet long and 10 feet high, mounted with 5-foot flashboards, which is jointly owned by the Applicant and Finch, Pruyn & Company, Inc., The Applicant's section of the dam is 330-foot-long. There is a long sluice near the northerly end of the dam and an ice sluice at the southerly end of the headgate structure. A 137-foot-long headgate structure at the southerly end of the dam is of concrete gravity construction from which two 12-foot diameter steel penstocks lead to the powerhouse. At the headgage structure there are four other penstock openings blocked off with timber bulkheads. A concrete retaining wall extends from the southerly end of the headgate structure to a dike on the right bank of the river. The 64-foot powerhouse contains two turbines and two generators with combined capacity of 3,800 kilowatts. Also included are appurtenant transmission facilities.

The redeveloped South Glens Falls Project would consist of: (1) The existing 510-foot-long, 10-foot-high concrete gravity multiple arch dam; (2) 5-foot-high flashboards; (3) a reservoir having a surface area of 167-acres, a storage capacity of 1,063 acre-feet, a normal water surface elevation of 269.1 feet U.S.G.S. datum; (4) the existing intake will be replaced with a new intake containing two verticial roller lift gates; (5) two new 250-foot-long, 16-foot-diameter steel penstocks; (6) a new powerhouse replacing the existing powerhouse containing two generating units having a total installed capacity of 12,000–kW; (7) a new 170-foot-long, 30-foot-deep, and 60-foot-wide tailrace; (8) a new 100-foot-long 34.5-kV transmission line; and (9) appurtenant facilities. The Applicant estimates the average annual generation would be 51,500,000–KWh.

The existing project would also be subject to Federal take-over under Sections 14 and 15 of the Federal Power Act. Based on the license expiration of May 18, 1984, the Applicant's estimated net investment in the project would amount to $1,444,796, and the estimated severance damages would amount to $24,780,000.

k. Purpose of Project: All project energy generated would be utilized by the Applicant for sale to its customers.

l. This notice also consists of the following standard paragraphs: A3, A7, B, C.

15a. Type of Application: Preliminary Permit.

b. Project No.: 9465–000.

c. Date Filed: September 16, 1985.

d. Applicant: Francis A. Smith.

e. Name of Project: Squire Creek.

f. Location: On Squire Creek, a tributary of the Stillaguamish River within the Mount Baker-Snoqualmie National Forest near Darrington, Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

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h. Contact Person: Mr. Francis A. Smith, 3611 23rd Avenue West, Seattle, WA 98199.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam at elevation 1,680 feet; (2) a 2.8-mile long penstock; (3) a powerhouse containing two generating units with a total rated capacity of 9,700 kW; and (4) a 6,000-foot-long transmission line. Applicant estimates the average annual energy production to be 85.1 GWh. A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $100,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16a. Type of Application: New License.

b. Project No. 2431–005.

c. Date Filed: December 27, 1984.

d. Applicant: Central Maine Power Company.

e. Name of Project: West Buxton Project.

f. Location: on the Saco River in the Towns of Buxton, Hollis, and Standish, York and Camberland Counties, ME.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Contact Person: Ralph L. Bean, Vice President, Engineering Central Maine Power Company, Edison Drive, Augusta, ME 04336.

i. Comment Date: March 7, 1986.

j. Description of Project: The existing project consists of: (1) A concrete gravity dam about 585 feet long, and about 30 feet high, consisting of two overflow sections with a total crest length of 333 feet (topped with 4-foot-high pintype flashboards), a gated section containing a 20-foot-wide vertical lift gate, two 40-foot-wide stanchion sections, an 11-foot-wide log sluice section, two gates regulating the flow of water to the lower powerhouse and five gate openings (two are sealed by stop logs) admitting water to the upper powerhouse; (2) a reservoir extending upstream 1.5 miles, and having a surface area of 131 acres at normal pool elevation of 177.8 feet (U.S.G.S. datum); (3) an upper powerhouse integral with the dam containing two generating units rated at 750-kW each and one rated at 1,125-kW; (4) a 241-foot-long concrete conduit leading from the intake structure to a surge chamber and thence to the lower powerhouse; (5) a lower powerhouse containing a generating unit with a capacity of 4,000-kW; (6) the 2.3-kV generator leads from the three units of the upper powerhouse to the 2.3/38-kV step-up transformer in the upper powerhouse; (7) the 2.3/38-kV step-up transformer in the upper powerhouse; (8) the 11-kV generator leads from the unit at the lower powerhouse to the 11/38-kV step-up transformer in the lower powerhouse; (9) the 11/38-kV step-up transformer in the lower powerhouse; (10) the 39-kV connections from the upper and lower powerhouse to the West Buxton switching station; and (11) appurtenant facilities:

The estimated average annual operation is 33,000,000 kWh. The Licensee proposes to make no changes to the existing project in this application for new license.

Project No. 2531 would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. The Applicant has calculated that the estimated net investment in the project would amount to $2,229,803. The Applicant's estimated severance damages would amount to $167,619,086.

k. Purpose of Project: All project energy would be utilized by the Licensee for sale to its customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

17a. Type of Application: Preliminary Permit.

b. Project No.: 9430–000.

c. Date Filed: September 4, 1985.

d. Applicant: Brighten Hydro Limited.

e. Name of Project: Structure 65–E Hydroelectric.

f. Location: On Kissimee Canal in Okeechobee and Highlands Counties, Florida.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, #600, Washington, DC 20005.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed would utilize the existing U.S. Army Corps of Engineers' drop Structure 65–E would consist of: (1) A proposed steel penstock, 25 feet long and 6 feet in diameter; (2) a proposed powerhouse, 50 feet by 30 feet in plan dimensions, and housing a single generating unit with a rated capacity of 2,350 kW; (3) an existing concrete tailrace section, approximately 47 feet long and 30 feet wide; (4) a proposed 125-foot-long, 12.5 kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual generation to be 7.0 GWh.

k. Purpose of Project: The project power would be sold to Florida Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, the Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $140,000.

18a. Type of Application: Amendment of License.

b. Project No.: 2835–001.

c. Date Filed: September 30, 1985.

d. Applicant: New York State Electric & Gas Corporation (Licensee).

e. Name of Project: Rainbow Falls.

f. Location: Ausable River and Black Brook, Clinton and Essex Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. K.L. Small, New York State Electric & Gas Corporation, 4500 Vestal Parkway East, Binghamton, NY 13903.

i. Comment Date: February 28, 1986.

j. Description of Amendment: On September 30, 1985, Licensee filed a request to remove lands from the project boundary of the Rainbow Falls Hydroelectric Project No. 2835. Licensee intends to convey a parcel of land, known as the Taylor Pond property, to the State of New York.

In order to remove lands from the project boundary, the license must be amended to exclude the lands. Licensee states that, while the lands to be removed were originally included in the project for flow augmentation, in practice they have not been used for that purpose. Increased recreational use of Taylor Pond and an agreement with the State of New York limiting water level changes in Taylor Pond have prevented Licensee from using the pond for its original purpose.

Licensee further states that, because the State of New York intends to develop the area for primitive camping (as the surrounding area is currently used), the conveyance of the lands is consistent with Exhibit R, the recreation report of the current license.

k. This notice also consists of the following standard paragraphs: B and C.

19a. Type of Application: Minor License.

b. Project No.: 8958–000.

c. Date Filed: February 15, 1985.

d. Applicant: Hydro Development Incorporated.

e. Name of Project: Macallem Dam.

f. Location: On the Lamprey River in Rockingham County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John N. Webster, P.O. Box 1073, Dover, NH 03820.

i. Comment Date: February 27, 1986.

j. Competing Application: Project No. 6602–003, Date Filed: January 28, 1985.

k. Description of Project: The proposed run-of-river project would consist of: (1) The existing 27-foot-high and 73-foot-long stone masonry Macallen Dam; (2) new 2-foot-high flashboards; (3) an existing 77-foot-long earth-filled section at the right of the dam; (4) a reservoir with a surface area of 140 acres; (5) an existing fish ladder; (6) an existing intake structure; (7) a new forebay; (8) a new powerhouse with a 600-kW turbine-generator unit; (9) an existing tailrace; and (10) other appurtenances. Applicant estimates an average, annual generation of 2,300,000 kWh. The existing facilities are owned by the Essex Group, Inc.

l. Purpose of Project: Project energy would be sold to the Public Service Company of New Hampshire.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

20 a. Type of Application: Amendment of Exemption from Licensing—5MW or less.

b. Project No.: 2695–002.

c. Date Filed: October 22, 1985.

d. Applicant: Hydro Development Group Inc.

e. Name of Project: Dexter.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Mr. John T. Bedard, Hydro Development Group Inc., Box 58, Dexter, New York 13634 phone (315) 639–6700.

i. Comment Date: March 5, 1986.

k. Description of Project: The project consists of: (1) Three existing concrete gravity dams, one 12 feet in height and 142 feet in length, one 6 feet in height and 145 feet in length, and one 12 feet in height and 433 feet in length, each with 30-inch flashboards; (2) an existing 120-acre reservoir at an elevation of 262 feet mean sea level; (3) three existing powerhouses containing six existing turbine generators having a combined capacity of 2320 kW operating at a hydraulic head of 14 feet. The proposed improvements consist of: (1) Proposed structural modification to two existing flumes; (2) the proposed retirement of three existing turbine/generator units with a total capacity of 1600 kW; (3) six proposed turbine/generator units with a total capacity of 3750 kW, operating under 14-foot hydraulic head; (4) a proposed 4500 kVA, 2.4kV/24kV electrical substation; (5) three proposed 2.4kV transmission lines, two of 550-foot length and one of 50-foot length; and (6) appurtenant facilities.

l. Purpose of Project: Project power will continue to be sold to Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: B, C, D3a.

21 a. Type of Application: Declaration of Intention.

b. Project No.: EL86–12–000.

c. Date Filed: November 29, 1985.

d. Applicant: Earl Ausman & Associates.

e. Name of Project: South Fork Eagle River.

f. Location: On the South Fork Eagle River in the Greater Anchorage Area Borough, Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Earl V. Ausman, 3909 Geneva Place, Anchorage, AK 99508.

i. Comment Date: March 6, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 45-foot-long timber diversion dam at elevation 1,185 feet; (2) a 3,900-foot-long, 32-inch-diameter steel penstock; (3) a 20-foot by 36-foot powerhouse at elevation 800 feet containing two or three generating units with a total rated capacity of 1,100 kW; and (4) a 7.2-kV transmission line connecting to the Matanuska Electric Association distribution system.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over a particular hydroelectric project.

k. Purpose of Project: Power would be sold to the Matanuska Electric Association, which is not connected to any interstate power transmission system.

l. This notice also consists of the following standard paragraphs: B, C, D2.

22 a. Type of Application: Conduit Exemption.

b. Project No.: 9281–000.

c. Date Filed: June 7, 1985.

d. Applicant: Utah Power and Light Company.

e. Name of Project: Santa Clara Project.

f. Location: On the Santa Clara River, in Washington County, Utah; Sections 15, 21, 22, 28, 29, and 32 of Township 39 S, Range 16 W; Sections 5, 6, 7, 8, 18, and 19 of Township 40 S, Range 16 W; and Sections 12, 13, 14, 25, 26, 27, and 28 of Township 40 S, Range 17 W. Salt Lake City Base and Meridian.

g. Filed Pursuant to: Section 30 of the Federal Power Act, 16 U.S.C. 823(a)

h. Contact Person: Jody L. Williams, Esquire, Utah Power and Light Company, 1407 West North Temple, Salt Lake City, UT 84116, (801) 535–2851.

i. Comment Date: March 7, 1986.

j. Description of Project: The proposed project would utilize Applicant's existing 15.4-mile-long Santa Clara Aqueduct, 6-foot-high Santa Clara Dam, 3.5-foot-high Veyo Dam, and 2.3-kV transmission line and would consist of: (1) An existing 22-inch-diameter, 1,270-foot-long penstock; (2) the existing 500-kW Santa Clara Generating Unit No. 1; (3) an existing 30-inch-diameter, 13,250-foot-long-penstock; (4) the existing 800-kW Santa Clara generating unit No. 2; (5) an existing 4,045-foot-long, penstock, varying in diameter from 22 inches to 30 inches; and (6) the existing 750-kW Gunlock Generating Unit to be rehabilitated to 800 kW.

The project would be partially located on U.S. Bureau of Land Management lands.

The estimated 4.67 GWh generated annually by the project would be utilized by the Applicant to satisfy its customers' needs.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

23a. Type of Application: Preliminary Permit.

b. Project No.: 9442–000.

c. Date Filed: September 9, 1985.

d. Applicant: Edwin H. Knott, Jr. and Lee A. Mitchell.

e. Name of Project: Sprite Creek.

f. Location: On Sprite Creek, in Fulton County, Near Stratford, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Edwin H. Knott, Jr. P.O. Box 92 Mayfield, NY 12117.

i. Comment Date: March 6, 1986.

j. Competing Application: Project No. 9146–000, Dated Filed: May 1, 1985.

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k. Description of Project: The proposed project would consist of: (1) An existing dam approximately 350 feet long and 40 feet high composed of natural roch and concrete; (2) and existing 1,222 acre reservoir with normal surface elevation of 1,543 feet m.s.l., and a storage capacity of 6,244 acre-feet; (3) approximately 18,500 feet of proposed 60-inch-diameter penstock; (4) an existing powerhouse, approximately 60 feet long and 30 feet wide will be rehabilitated to include a total installed generating capacity of 4.7 MW; (5) another proposed generating unit to be located at the existing dam, for conservation releases which will have a capacity of 14 kW; (6) a proposed 12,500-volt transmission line approximately 5,500 feet in length; (7) and appurtenant facilities. The Applicant estimates that the average annual energy generation would be 16,123 MWh. The owner of the dam is the New York State Department of Environmental Conservation.

l. Purpose of Project: The Applicant anticipates that energy will be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

n. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $30,000.

Standard paragraphs:

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If any agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2 *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 28, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2222 Filed 1-31-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-262-000 et al.]

Natural Gas Certificate Filings; Southwest Gas Corp. et al.

January 27, 1986.

Take notice that the following filings have been made with the Commission:

1. Southwest Gas Corporation

[Docket No. CP86-262-000]

Take notice that on January 10, 1986, Southwest Gas Corporation (Southwest), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP86-262-000 a request pursuant to section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and appurtenant facilities in order to sell and deliver natural gas to Silver Springs/Stagecoach Clinic (SSSC), a new retail customer, under the certificate issued in Docket No. CP84-739-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southwest requests authorization to construct and operate a sales tap to sell natural gas to SSSC, a retail customer not presently served by Southwest at any other location. Southwest states that SSSC is a hospital clinic located in the Silver Springs/Stagecoach area of Lyons County, Nevada, and has requested that Southwest provide it with natural gas service. Southwest further states that the volumes of natural gas to be delivered would be for Priority 1 use as that priority is defined in the Commission's order No. 467-B. Southwest estimates it would deliver 370 Mcf of natural gas per year through the proposed sales tap to SSSC and 3 Mcf on a peak day.

Southwest indicates that it would construct the tap and appurtenant facilities at a point on its northern Nevada system facilities in Lyon County, Nevada. Southwest estimates the total cost of constructing the facilities to be $3,014, for which Southwest would be reimbursed by SSSC.

Southwest states that service to SSSC would be rendered under the regulatory authority of the Public Service Commission of Nevada (PSCN) and in accordance with its rate schedules on file with the PSCN. Southwest asserts it has sufficient capacity available to provide for the proposed deliveries without any detriment or disadvantage to any of its existing customers and that the relatively small volumes of natural gas to be delivered to SSSC would not affect its ability to serve its existing customers.

Comment date: March 13, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. American Distribution Co. (Alabama Division)

[Docket No. CP86-263-000]

Take notice that on January 10, 1986, American Distribution Company (Alabama Division) (Applicant), 333 Clay Street, Suite 1234, Houston, Texas 77002, filed in Docket No. CP86-263-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a sales tap and for amendment to its existing transportation certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to construct and operate a sales tap and appurtenant facilities at a point along its 40-mile jurisdictional pipeline which would permit delivery of up to 3,000 Mcf of gas per day to the municipal facilities of the City of Citronelle, Alabama, for ultimate delivery to Kerr-McGee Chemical Corporation, an industrial customer situated near Citronelle's system. Applicant further states that it seeks authorization to add the Citronelle sales tap as the point of delivery for the account of Collet Ventures, Inc., of up to 3,000 Mcf of natural gas per day, but requests no change in its existing authorization to transport up to 5,000 Mcf of gas per day for the account of Collet to an existing point of interconnection with the facilities of Florida Gas Transmission Company.

Applicant indicates that the requested facilities would cost an estimated

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$18,750, which would be financed from funds on hand.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP86-261-000]

Take notice that on January 9, 1986, National Fuel Gas Supply Corporation (Applicant), 1100 State Street, Erie, Pennsylvania 16501, filed in Docket No. CP86-261-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas for resale to certain of its existing firm customers on a long-term interruptible basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has recently contracted to serve or begun serving six firm customers under its Rate Schedules CDS (1 through 7) pursuant to authorization in Docket Nos. CP84-7-002 and CP84-7-003 (27 FERC ¶ 61,426) and CP84-724-000 (29 FERC ¶ 61,376). Applicant further states that many of these firm customers have requested the opportunity to purchase additional volumes from Applicant on an interruptible long-term basis when Applicant may, from time to time, have volumes available for sale.

Applicant proposes to make sales pursuant to a new Rate Schedule SI, Systems Interruptible Service, which would provide for sales to Applicant's firm customers (excepting full requirements customers)[1] when Applicant has available gas not required for its operations and delivery obligations. Applicant states that when such gas is available for sale, it would first be offered under Rate Schedule SI to firm customers in proportion to their respective maximum daily quantity (MDQ), before being made available for sale pursuant to Applicant's Rate Scehdule I-1 customers. In order that Applicant's firm customers would not be adversely affected, Applicant states that all sales would be subject to curtailment or interruption at any time. It is explained that sales would be made pursuant to advance arrangements only and on any day when the purchaser had taken its MDQ under the purchaser's firm gas sales contract with Applicant.

[1] Applicant states that under Rate Schedule SI, gas is unavailable to Applicant's full requirements customers because such customers can obtain their full requirements on a firm basis at any time at rates equal to or less than rates applicable to interruptible sales under Rate Schedule SI.

Applicant proposes that the rates to be charged under Rate Schedule SI would be equal to the commodity portion of Applicant's RQ rate for sales during the period, April 1 through October 31 of each year, and equal to the rate under Applicant's Rate Schedule I-1 (which is Applicant's 100 percent load factor rate) for sales during the period, November 1 through March 31 of each year.

Applicant states that the commodity portion of Applicant's RQ rate is now $3.1631 per dt equivalent of gas and the I-1 rate is $3.3621 per dt equivalent. Applicant further states that until rates become effective pursuant to a Natural gas Act section 4 proceeding, Applicant proposes to retain the revenues attributable to the proposed sales in accordance with the settlement reached in Applicant's Docket Nos. RP83-63-000, RP83-673-001 and RP83-105-000.

Applicant also states that the source of the gas proposed to be sold would be Applicant's general system supply. The volumes of gas sold would be delivered to purchasers through the facilities of Transcontinental Gas Pipe Line Corporation (Transco); Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee); and/or Texas Eastern Transmission Corporation (TETCO). Applicant further states that in the event Applicant would be directly or indirectly providing storage service for a purchaser, delivery to such purchaser may be made at an undesignated location in Applicant's facilities used for such storage. Applicant states that it is not aware of any need for new facilities to provide interruptible transportation between Applicant's facilities and those of purchasers. Deliveries for transportation would be made to:

(1) Transco at the Wharton interconnection in Potter County, Pennsylvania;

(2) Tennessee at the Ellisburg interconnection in Potter County, Pennsylvania; and/or

(3) TETCO at the Windridge interconnection in Greene County, Pennsylvania.

Gas would be redelivered by such transporters at existing delivery points in the purchaser's service territory.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket No. CP86-236-000]

Take notice that on December 12, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-236-000 an application pursuant to seciton 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation for Natural Gas Pipeline Company of America (Natural) under a service agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently renders natural gas transportation for Natural under Rate Schedule X-210 to its FERC Gas Tariff, Original Volume No. 2, which provides for transportation on a firm basis of a daily contract demand of 24,760 Mcf of gas from Ship Shoal Block 289, offshore Louisiana, to four points of interconnection with Natural in Louisiana and Texas. Applicant states that the subject application for abandonment authorization is being made in conjunction with a memorandum of understanding dated April 6, 1984, between Applicant and Natural (memorandum) which was the result of settlement negotiations between the two companies in connection with Transco's general rate case in Docket Nos. RP83-11 and RP83-30. Applicant states that as part of the consideration of Natural under the memorandum it seeks the authority requested herein, subject to Natural's receipt of Commission approval of the consideration it is providing to Applicant.

More specifically, Applicant seeks authority to abandon service to Natural, currently provided under Rate Schedule X-210, in two stages: (1) Partially abandon service effective April 1, 1984, to effectuate a reduction in service from the presently authorized daily contract quantity of 24,760 Mcf to 15,000 Mcf; and (ii) completely abandon service effective April 1, 1985. Applicant states that abandonment of the subject transportation service would allow it to fulfill partially its obligations to Natural under the memorandum.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-237-000]

Take notice that on December 12, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-237-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas transportation for Natural Gas Pipeline Company of America (Natural) under a service

agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently renders natural gas transportation for Natural under Rate Schedule X-75 to its FERC Gas Tariff, Original Volume No. 2, which provides for transportation on a firm basis of a daily contract demand of 10,000 Mcf of gas from High Island Block 22-L, offshore Texas, to a point of interconnection with Natural in Cameron Parish, Louisiana. Applicant states that the subject application for abandonment authorization is being made in conjunction with a memorandum of understanding, dated April 6, 1984, between Applicant and Natural (memorandum) which was the result of settlement negotiations between the two companies in connection with Transco's general rate case in Docket Nos. RP83-11 and RP83-30. Applicant states that as part of the consideration to Natural under the memorandum it seeks the authority requested herein, subject to Natural's receipt of Commission approval of the consideration it is providing to Applicant.

More specifically, Applicant seeks authority to abandon service, either partially or totally, to Natural, currently provided under Rate Schedule X-75, at one or more points in time in the future when Natural, subject to certain conditions, elects to reduce the daily contract demand quantity under such agreement or to terminate such. Applicant states that abandonment of the subject transportation service would allow it to fulfill partially its obligations to Natural under the memorandum.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-260-000]

Take notice that on January 6, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-260-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain compression and appurtenant facilities in offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Transco proposes to abandon a skid-mounted 78 horsepower natural gas compressor, a meter and regulator used to measure the compressor fuel and appurtenant facilities, all located on the Odeco Oil and Gas Company's (Odeco) OBM#1 production platform in South Pelto (SP) Block 19, offshore Louisiana. Transco states that the facilities were originally installed in anticipation that the maximum operating pressure of Transco's Southeast Louisiana lateral, on which Block SP 19 is located, would have to be increased from 1,000 psig to 1,250 psig in order to accommodate greatly increased volumes of natural gas. However, Transco explains, such increase in the pressure of the Southeast Louisiana lateral was never necessary and the subject facilities have rarely been used.

Transco states that it intends to salvage the compressor unit, meter, regulator and appurtenant facilities from SP 19 for possible use at other locations. In addition, it is explained, Odeco has informed Transco that due to the recent loss of an adjacent header platform during Hurricane Juan, it has an immediate need for the space on the OBM#1 platform which is presently occupied by the facilities sought herein to be abandoned by Transco. Transco estimates that the cost of removal of these facilities would be $15,000 with a salvage value of $78,000.

Comment date: February 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Transcontinental Gas Pipe Line Corp.

[Docket No. CP86-285-000]

Take notice that on January 10, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-285-000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Union Gas Company (Union), on behalf of the New Jersey Zinc Company, Inc. (New Jersey Zinc), and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco requests authority to transport up to the dekatherm equivalent of 4,000 Mcf of gas per day, on an interruptible basis, pursuant to a transportation agreement between Transco, New Jersey Zinc and Union. It is explained that the gas which New Jersey Zinc would purchase from Transco Energy Marketing Company (TEMCO) would be delivered to Transco at the existing points of interconnection between Transco and TEMCO, and equivalent quantities (less quantities retained for compressor fuel and line loss make-up) would be redelivered, on an interruptible basis, at the existing point of delivery to Union at Palmerton near Wind Gap, Monroe County, Pennsylvania; and Union would in turn redeliver such gas to New Jersey Zinc's plant in Palmerton, Pennsylvania (Palmerton plant). The transportation rate for this service is pursuant to Transco's currently applicable Rate Schedule T-1 rate, it is stated.

Transco explains that the subject transportation would be in accordance with Transco's current transportation policy which, among other things, requires that New Jersey Zinc provide Transco with a monthly affidavit which states that, in absence of subsect transportation, New Jersey Zinc would not otherwise purchase equivalent quantities of gas from Union (which purchases gas from Transco and resells gas to New Jersey Zinc) because the Palmerton plant would be closed because of uneconomic energy costs.

Transco also requests flexible authority to add or delete sources of gas and/or receipt points on behalf of New Jersey Zinc. With respect to such flexible authority, Transco states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt points, to file certain specified information with the Commission. Transco submits that any changes made pursuant to such flexible authority would be on behalf of the same end user, New Jersey Zinc, for use at the same end-use location and would remain within the daily maximum transportation volumes proposed in the subject application.

Transco states that the transportation agreement would continue in effect for a primary term ending on December 31, 1986, and year to year thereafter unless terminated by any party giving prior written notice to the other parties of not less than 60 days prior to the end of a calendar year, which termination may be made effective at the end of said primary term or at the end of any year thereafter. Also, it is stated that Transco has the right to terminate the agreement at any time if New Jersey Zinc does not provide the monthly affidavit referred to above. Because of the limited-term nature of the subject transportation arrangement, Transco states in the application that it is requesting pre-granted authority to abandon the transportation service proposed herein at the time of termination of the transportation agreement.

Transco further states that by filing the subject application, it is not electing "non-discriminatory access" as such

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term is described and defined in §§284.8(b) and 284.9(b) of the Commission's Regulations promulgated by Order No. 436.

Comment date: February 13, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2224 Filed 1-31-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board.

Date and Time: Thursday, February 20, 1986, 8:00 a.m.-5:00 p.m.; Friday, February 21, 1986, 8:00 a.m.-12:00 noon.

Place: The Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Contact: Susan D. Heard, Department of Energy, Forrestal Building-6A081, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202-252-8292.

Purpose of the Board

The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda

Thursday, February 20, 1986

- Overview of EES Program
- Briefing on energy education programs
- Review of and revisions to draft Seventh Annual Report
- Public Comment (10 minute rule)

Friday, February 21, 1986

- Revisions to draft of Seventh Annual Report
- Acceptance of Seventh Annual Report
- Public comment (10 minute rule).

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-252-8292. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC, on January 29, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86-2291 Filed 1-31-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 16 Through December 20, 1985

During the week of December 16 through December 20, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Lawrence L.P. Gas Service, 12/19/85; HRA-0010

Lawrence L.P. Gas Service filed an Appeal from a Modified Remedial Order (MRO) changing the remedial provisions of a Remedial Order (RO) issued to it. The RO ordered Lawrence to roll back prices to its customers in order to compensate for overcharges. Stating that Lawrence had not complied with the conditions of the RO, the MRO required the firm to remit the overcharge amount, plus interest, directly to the Department of Energy for distribution pursuant to 10 CFR Part 205, Subpart V. The MRO also altered the method to be used to calculate accrued interest on the overcharge amount. The DOE rejected Lawrence's contentions that (1) the enforcement action was barred due to unreasonable delay, (2) the overcharge amount was overstated, (3) the price regulations were unintelligible, and (4) the MRO was unenforceable because Lawrence's overcharged customers would not benefit from Lawrence's compliance with the MRO. Accordingly, the MRO was issued as a final Remedial Order and Lawrence was ordered to remit $83,058.31 plus accured interest to the Department of Energy.

Mockabee Gas and Fuel Oil Company, 12/19/85; HRA-0014

Mockabee Gas and Fuel Oil Company filed an Appeal of a Modified Remedial Order (MRO), changing the remedial provisions of a Remedial Order (RO) issued to it. The RO ordered the firm to roll back prices to its customers, in order to compensate for overcharges. After stating that Mockabee failed to comply with the remedial provisions of the RO, the MRO required the firm to remit the overcharge amount to the DOE for distribution pursuant to 10 CFR Part 205, Subpart V. The MRO also altered the applicable interest rate of the overcharges. In considering Mockabee's appeal, the DOE found that the firm had failed to substantiate its claim that it had complied with the terms of the RO. Accordingly, the MRO was issued as a final Remedial Order and Mockabee was directed to remit $75,654.54, plus interest, to the DOE.

Requests for Exception

Holy Cross Hospital, 12/16/85; HEE-0163

Holy Cross Hospital filed an application seeking exception from the regulations at 10 CFR Part 455 which govern the Department of Energy's Institutional Building Grants Program. These regulations require that hospital and school buildings which are the subject of grant requests be occupied on or before April 20, 1977. Holy Cross stated in its application that the Sylmar earthquake had destroyed one of its buildings and that the structure had not been renovated until May 1977, one month after the date specified in the regulations. The DOE determined that the application of the Part 455 regulatory base date to Holy Cross Hospital resulted in a "gross inequity" which warranted approval of exeption relief. Accordingly, the Holy Cross Hospital Application for Exception was granted.

LBM Distributors, Inc, 12/16/85; HEE-0162

LBM Distributors, Inc. filed an Application for Exception seeking relief from the requirement that it prepare and file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report" with the DOE Energy Information Administration. In considering the request, the DOE found that there was some merit to the firm's contention that it was burdened by the requirement that it file the form. The DOE noted that the firm's secretary, the only employee familiar with the format of EIA-782B, was to undergo surgery in August 1985 and would be unable to return to her job until October 1985. After balancing this burden against the public interest in gathering reliable energy data, the DOE determined that a limited form of exception relief was appropriate. Accordingly, the exception relief was granted to remove LBM from the list of firms required to submit data on Form EIA-782B to the Energy Information Administration for the months of July 1985 through October 1985.

Request for Temporary Exception

White Consolidated Inc., 12/20/85; KEL-0001

White Consolidated, Inc. filed Applications for Exception and Temporary Exception from the provisions of 10 CFR Subchapter D, Part 430, Subpart B, Appendix A1, in which the firm sought relief from the refrigerator test procedures for its Frigidaire Model FPCI18TDWO. In considering the request, the DOE found that White's adherence to the test procedure set forth in Appendix A1 would not produce accurate results. The DOE therefore determined that White had demonstrated a likelihood of success on the merits of its petition for waiver and that exception relief was in the public interest. Accordingly, the DOE granted temporary exception relief and proposed exception relief, allowing White to use a modified long-time automatic defrost test procedure.

Motion For Discovery

Canal Refining Company, Economic Regulatory Administration, 12/19/85; HRD-0290, HRH-0290, KRZ-0012

Canal Refining Company filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order issued to it by the Economic Regulatory Administration. The Discovery Motion concerned the allegations in the PRO that Canal used reciprocal purchase/sale transactions to circumvent its obligations under the Entitlements Program and that Canal received excessive consideration for price-controlled crude oil in the form of deeply discounted striper well crude oil. The Office of Hearings and Appeals denied Canal's request for discovery regarding similar transactions by other refiners, because such information was irrelevant to the issue of whether Canal violated DOE regulations. The OHA also rejected the firm's request for information demonstrating that the enforcement proceeding was motivated by improper congressional influence, finding that Canal had not made even a threshold showing that such influence had been exerted. Canal's Motion for Evidentiary Hearing was denied on the grounds that the firm failed to identify any disputed factual issues to be resolved. Finally, the OHA granted an ERA Motion to introduce a different method of calculating the allegedly excessive consideration received by Canal for the stripper well crude oil from that set forth in the PRO.

Implementation of Special Refund Procedures

South Hampton Refining Company, 12/17/85; HEF-0222

The DOE issued a Decision and Order setting forth procedures to be used for distributing $325,000 plus accurred interest received from South Hampton Refining Company pursuant to a 1980 consent order. The consent order settled all disputes regarding South Hampton's compliance with the DOE petroleum price regulations. The funds will be available to customers who were injured as a result of their purchases of covered petroleum products from South Hampton during the consent order period. The Decision outlines specific information to be included in refund applications and discusses the presumptions and findings that the DOE will utilize in analyzing the applications.

Refund Applications

Aztex Energy Company/Quickway Market, et al., 12/17/85; RF73-1, et al.

The DOE issued a Decision and Order granting refunds from the Aztex Energy Company consent order fund to seven applicants that were resellers of Aztex motor gasoline, purchased during the January 1, 1979 through December 31, 1979 consent order period. All seven applicants received refunds on the basis of Aztex's alleged overcharges. Each of these refunds was under the $5,000 small claims threshold. In addition, two claimants received refunds based on allocation violations which Aztex allegedly committed during the consent order period. The refunds granted in this Decision and Order totaled $22,455.71 ($14,372.72 principal, plus $8,082.99 interest).

Gulf Oil Corporation/Augy's Gulf Service, et al., 12/19/85; RF40-500, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed by retailers and resellers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $21,738, representing $18,675 in principal and $3,063 in accrued interest.

Gulf Oil Corporation/Russell Stewart Oil Co., et al., 12/18/85; RF40-463, et al.

The DOE issued a Decision and Order concerning Russell Stewart Oil Co. and four other applicants that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $185,869.44, representing $159,690.64 in principal and $26,178.80 in accrued interest.

Gulf Oil Corporation/Sun City Gulf, et al., 12/19/85; RF40-00227, et al.

The DOE issued a Decision and Order concerning 28 Applications for Refund filed by resellers and retailers of Gulf refined products, in accordance with the refund procedures established in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In considering the Applications, the DOE that each of the applicants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the

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refund claimed. Accordingly, the firms were granted refunds totalling $92,078 ($79,112 principal plus $12,966 interest).

Lewtex Oil & Gas Corporation/Gulf Oil Corporation, 12/19/85; RF9-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Gulf Oil Corporation in connection with a consent order fund remitted by Lewtex Oil and Gas Corporation. Using a competitive disadvantage methodology, the DOE found that Gulf experienced an injury as a result of its propane purchases from Lewtex. The firm was therefore granted a refund of $2,082, plus interest, wbti respect to that product. The DOE then found that since Gulf had incurred an injury in connection with 19.6 percent of its propane purchases from Lewtex, it should be presumed to have experienced the sama level of injury with respect to its purchases of other Lewtex NGLPs. Gulf was granted a refund of $3,371 for those purchases. Accordingly, Gulf was granted a refund of $5,453 plus interest of $4,580, or a total rerfund of $10,033. Finally, the DOE stated that Gulf's application was the only one filed in connection with the Lewtex fund and that $245,931.58 in principal remained in the Lewtex escrow account. Accordingly, the DOE announced that it would institute a second stage refund proceeding and seek comments from states and other interested parties regarding disbursement of these remaining funds.

Little America Refining Company/Dawson Tonk Lines, Inc., et al., 12/19/85; RF112-83, et al.

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to three resellers of Larco covered products. All three firms elected to limit their refund claims to the small claims threshold level of $5,000, and were therefore not required to submit detailed evidence of injury. The refunds to these firms total $22,026, representing $15,000 in principal and $7,026 in interest.

Little America Refining Company/Perkins Petroleum, Inc., et al., 12/16/85; RF112-55, et al.

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to 45 purchasers of Larco covered products. All of the applicants submitted claims for less than the $5,000 threshold, and were therefore not required to submit detailed evidence of injury. The refunds to these firms total $85,848, representing $58,575 in principal and $27,273 in interest.

Mississippi River Transmission Corporation/Kerr-Mcgee Corporation, 12/19/85; RF66-1

Kerr-McGee Corporation filed an Application for Refund from the Mississippi River Transmission Corporation consent order fund. Since the firm limited its refund request to the small claims threshold of $5,000, it was not required to submit a detailed proof of injury. Accordingly, the DOE approved a refund of $5,000 plus accrued interest of $3,152.15 or a total of $8,152.15.

Navajo Refining, Inc., Kern Oil & Refining Company, USA Petroleum Corporation, Southland Oil Company/VGS Corporation, 12/16/85; RF171-29, RF171-24, RF171-25, RF171-28

The DOE directed immediate payment of claims that had been filed by certain recipients of exception relief from the Crude Oil Entitlements Program. In *Amber Refining, Inc.*, 13 DOE ¶85,217 (1985), the OHA approved 14 claims filed by holders of "entitlements exception relief receive orders" and segregated funds in the DOE's Deposit Fund Escrow Account sufficient to pay those claims into interest-bearing sub-accounts, under the names of each claimant. These four firms had obtained orders from United States District Courts directing the DOE to implement their entitlements exception relief, and the OHA ordered immediate payment to these firms.

R.V. Whitmer Thermogas Company/Pike-Delta-York Local Schools, 12/18/85; RF144-1

Pike-Delta-York Local Schools (PDYLS) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with R.V. Whitmer Thermogas Company. The DOE determined that PDYLS was and end user of the propane purchased from Whitmer and was therefore entitled to a refund. The DOE therefore granted PDYLS a refund of $1,568.75 in principal and $708.76 in accrued interest for a total refund of $2,277.51.

Tenneco Oil Company/Champlin Petroleum Company, Ashland Oil, Inc., Commonwealth Oil Refining Company, Inc., 12/20/85; RF7-57, RF7-60, RF7-79

Champlain Petroleum Company, Ashland Oil, Inc. and Commonwealth Oil Refining Company, Inc. filed Applications for Refund from a consent order fund made available by Tenneco Oil Company. The refiners requested refunds based upon claimed injuries related to Tenneco's possible violations of the DOE crude oil price regulations which allegedly affected them through the operation of the Crude Oil Entitlements Program, 10 CFR 211.67. The decision noted that the three refund applications could have been denied solely on the basis of DOE's Statement of Restitutionary Policy regarding crude oil overcharges whose impact was spread by operation of the Entitlements Program, 13 DOE ¶90.508 (1985). The DOE also found that although each firm presented evidence relating to its banks of unrecouped product increases, none presented evidence demonstrating that it was injured by Tenneco's alleged crude oil overcharges. The DOE therefore determined that the applications for refund should be denied.

U.S. Oil Company, Inc. Herbst Oil, Inc., Swifty Oil Company, Inc./Orbit Oil Company, 12/18/85; RF110-0002, RF159-0001.

Herbst Oil, Inc. filed an Application for Refund seeking a portion of the funds obtained by the DOE through a consent order entered into the U.S. Oil Company, Inc. Orbit Oil Company filed an Application for Refund seeking a portion of the funds obtained in a similar manner from Swifty Oil Company, Inc. Since the applicants' allocable shares of the available consent order funds were both less than the $5,000 small claims threshold established in the order implementing the U.S. Oil and Swifty refund procedures, Herbst and Orbit were not required to submit detailed evidence of injury. Accordingly, Herbst received a refund of $267 in principal and $138 in interest from the U.S. Oil fund, while Orbit received $385 in principal and $50 in interest from the Swifty fund.

Dismissals

The following submissions were dismissed:

Name and Case No.

Anthony Di Paula; RF215-1
Beffa's APCO; RF83-0025
Bennett's APCO; RF83-0041
Bill's APCO; RF83-0023
Charles J. Phillips; RF215-2
Culp's Oil Company; RF83-0039
Fleming Companies, Inc.; RF216-1
George's APCO Service; RF83-0032
Glenn's APCO; RF83-0035
J.J. APCO; RF83-0044
Jack's Truck Stop; RF83-0043
Jake's APCO; RF83-0033
Lawson's APCO; RF83-0024
Nuttle's APCO; RF83-0022
Paul's Pro Service; RF83-0027
Pete's APCO; RF83-0034
Pollocks Gulf Service; RF40-3069
Ranger Oil Company; RF83-0038
Robson Oil Company, Inc.; RF83-0037
Roby's Station; RF83-0042
Ron's APCO; RF83-0045
SO-CO Oil Company; RF83-0040
Whitey's APCO; RF83-0021

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 24, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2234 Filed 1-31-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeal, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds currently totalling approximately $15 million obtained from Earth Resources Company/Delta Refining Company in settlement of all issues regarding the firm's application of the federal petroleum price and allocation regulations during the period August 19, 1973 through January 28, 1981.

DATE AND ADDRESS: Applications for refund must be postmarked by May 5, 1986, should conspicuously display a reference to case number HEF-0205, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order establishes procedures to distribute funds obtained as a result of a consent order between the DOE and Earth Resources Company/Delta Refining Company (ERC). The consent order settled all disputes between the DOE and ERC concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period August 19, 1973 to January 28, 1981.

Any members of the public who believe that they are entitled to refunds in this proceeding may file Applications for Refund. Specific information to be included in Applications for Refund is set forth in Section III of the Decision and Order. All Applications should be postmarked by May 5, 1986, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: January 23, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

January 23, 1986.

Name of Case: Earth Resources Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0205.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of enforcement proceedings involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Earth Resources Company (ERC). Under the terms of the consent order, ERC agreed to refund a total of $15.3 million, including payments to the DOE, in settlement of all civil and administrative claims by the DOE relating to ERC's compliance with the federal petroleum price and allocation regulations applicable to refiners of petroleum products during the period August 19, 1973 through January 28, 1981 (the consent order period).

I. Background

ERC was a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, ERC was engaged in the production, refining and marketing of products covered by the federal petroleum price and allocation regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.[1]

The ERA audited ERC to detrmine the firm's compliance with these regulations. During the course of the audit, ERC entered into a consent order with the DOE, whereby the firm agreed to refund a total of $15.3 million to various parties to resolve all issues regarding ERC's application of the regulations during the consent order period. Notice of this proposed consent order was published for public comment at 45 FR 81258 (1980). Comments were filed by seven interested parties. The proposed consent order was adopted without modification as a final order of the DOE on January 27, 1981. 45 FR 8647 (1981).

The consent order set forth various methods for refunding the settlement funds to different categories of ERC customers. ERC paid refunds to retail purchasers of motor gasoline at company-owned stations through a $5 million price reduction plan.[2] ERC also agreed to make $1,874,000 in refund payments to another ultimate consumer, the United States Defense Fuel Supply Center (DFSC).[3] ERC also deposited $7,875,000 into a DOE escrow account for distribution to other adversely affected purchasers of ERC refined petroleum products. Finally, in settlement of alleged violations of the DOE Crude Oil Entitlement Program, ERC paid $626,000 into the DOE escrow account.[4]

On October 11, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the ERC consent order fund. 50 FR 43449 (October 25, 1985).

In the PD&O, we described a two-stage process for disbursing refunds. In the first stage, refunds would be made to identifiable purchasers of ERC covered products that may have been injured by the firm's pricing practices during the consent order period. This decision describes the information that purchasers of ERC products should submit in order to demonstrate eligibility for a portion of the consent order fund. After these meritorious claims are paid, a second stage may become necessary if funds remain.

Comments were solicited regarding the proposed refund procedures outlined in the PD&O. Seven interested parties, including four states, filed comments in response to the PD&O.[5] These comments are discussed in the following presentation of the procedures we are adopting. In addition, each of the four states commented on the distribution of residual funds in a second-stage

[1] ERC marketed all of its petroleum products under the name Delta Refining Company. On November 13, 1980, MAPCO, Inc. (MAPCO) acquired more than 50 percent of ERC's outstanding capital stock, and ERC was merged fully into MAPCO soon thereafter. However, the consent order with ERC only pertains to sales by ERC as an independent entity.

[2] A portion of the $5,000,000 price reduction to retail gasoline purchasers was never implemented due to the deregulation of petroleum products on January 28, 1981. *See* Executive Order 12287, 46 FR 9909 (January 30, 1981). This portion—$896,496.51—was deposited into the DOE escrow account established for the ERC consent order.

[3] As of March 31, 1982, ERC had paid $356,521.89 in credit to DFSC. On April 1, 1982, ERC deposited the remaining $1,540,631.67 due DFSC (including interest accrued since the beginning of the credit payment period) into the DOE escrow account. As discussed *infra*, we have determined that DFSC, as an ultimate consumer of ERC products, is entitled to this sum plus accrued interest.

[4] As of December 31, 1985, the ERC consent order escrow account contained $10,938,130.16 in principal and $5,113,475.75 in accumulated interest, for a total of $16,051,605.93 (hereinafter referred to as the consent order fund).

[5] The seven commenters were: Marathon Petroleum Company, the National Council of Farmer Cooperatives, the Earth Resources/Delta Marketers and Jobbers' Group, the States of California, Florida, and Texas, and the Commonwealth of Pennsylvania.

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proceeding. The formulation of procedures for the final disposition of any funds remaining after meritorious claims have been paid will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by the states' comments concerning disposition of second-stage funds.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing plans to distribute funds received as a result of an enforcement proceeding. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may be eligible to receive refunds as a result of enforcement proceedings or to ascertain readily the amounts that such persons should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

A. Crude Oil Claims

The ERC consent order resolves the firm's alleged violations of both the petroleum price and allocation regulations. As stated *supra*, with regard to the crude oil regulations, the consent order stipulated that ERC pay $626,000 to the DOE in settlement of allegations concerning ERC's compliance with the DOE Crude Oil Entitlements Program. This figure represents funds to be set aside to provide restitution for the effects of ERC's alleged Entitlements Program violations.

In the PD&O, we tentatively decided to pool the crude oil portion of the ERC consent order fund with other crude oil settlement monies to be used for indirect restitution. This proposal relied upon the DOE's recent Statement of Restitutionary Policy, which concludes that such funds should be set aside so as to permit Congress to formulate a means for distributing crude oil overcharge funds to the general public on an indirect basis. 50 FR 27400 (July 2, 1985). Most of the comments which we received in response to the PD&O addressed this proposal. The arguments submitted opposing adoption of the DOE policy in this proceeding generally include the following: (1) The policy is a procedurally invalid rulemaking; (2) the policy will not effect restitution to parties possibly injured by the alleged crude oil violations, since it contemplates depositing crude oil funds in the U.S. Treasury; (3) the policy does not allow potentially injured parties a reasonable opportunity to demonstrate their eligibility for restitution; and (4) the policy does not involve state governments as a channel for indirect restitution to the public. We have previously considered and rejected comments virtually identical to these. *Amber Refining, Inc.*, 13 DOE ¶ 85,217 at 88,567 (1985). As was stated in *Amber*, the DOE has broad discretion to fashion appropriate restitutionary remedies. *Citronelle-Mobile Gathering, Inc.* v. *Edwards*, 669 F.2d 717 (Temp. Emer. Ct. App.), *cert. denied*, 459 U.S. 877 (1982). Further, in a recent judgment, the Temporary Emergency Court of Appeals (TECA) held that a claims process need not be implemented in cases where the effects of crude oil overcharges cannot be traced. *United States* v. *Exxon Corp.*, 773 F.2d 1240, 1286 (Temp. Emer. Ct. App. 1985), *petition for cert. filed*, Nos. 85-429, 85-430, 85-432, 58-440, 85-444 (September 13, 1985). Therefore, these comments do not convince us that this policy should be changed.

In addition, the Earth resources/Delta Marketers' and Jobbers' Group filed comments attacking the OHA's report in the *Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., filed June 21, 1985), upon which the DOE's crude oil policy relies. These comments maintain that the report has no basis in fact, since its conclusions about the traceability of crude oil overcharges and the efficacy of a claims process for the Stripper Well funds vary from positions on those issues expressed in an earlier draft report. The commenters further contend that the changes in the final report were made after the OHA consulted DOE officials about the draft report, which the commenters claim was an improper action by the OHA, given its fact-finding role in the *Stripper Well* proceeding.

The commenters' attempt to discredit the OHA *Stripper Well* report as a factual basis for the DOE's disposition of the ERC crude oil settlement funds has no basis. The extensive factual evidence accumulated during the *Stripper Well* hearings confirms the conclusions we reached in that proceeding. Instead of presenting alternative factual evidence to contradict the OHA's *Stripper Well* findings, the commenters attempt to dispute its conclusions by drawing attention to a draft report. This attempt must also fail. By its very nature that report was preliminary and subject to modification. In any event, actions which this Office may have taken to comply with the court's mandate in the *Stripper Well* proceeding are completely irrelevant to the issue at hand, namely, whether we can efficiently and accurately identify parties injured by ERC's alleged crude oil violations. Since the commenters have presented no evidence whatsoever which addresses the latter issue, we have no reason to question the factual conclusion in the *Stripper Well* report. We therefore have determined that the commenters have not shown that the *Stripper Well* report was in any way flawed, and the portion of the ERC consent order fund pertaining to alleged crude oil violations will be pooled with other, similar funds in accordance with the OHA's Order Implementing Departmental Policy Regarding Crude Oil Overcharges. 50 FR 27402 (July 2, 1985).

B. Refined Products Claims

The remaining $10,312,130.18 plus interest in the consent order fund relates to ERC's alleged violations of refined products pricing and allocation regulations. During the first stage of the refund process, the consent order funds will be distributed to claimants that satisfactorily demonstrate that they were adversely affected by ERC's alleged overcharges in sales of covered products. We will accept applications from all parties who can demonstrate that they either directly or indirectly purchased products which originated with ERC.

In order to be eligible to receive a refund, claimants must file an application and, with the three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. While there are a variety of ways in which a showing of injury may be made, we proposed in the PD&O that a reseller or retailer generally be required to demonstrate that competitive market conditions would not permit it to pass through the increased costs associated with the alleged overcharges.

The Earth Resources/Delta Marketers' and Jobbers' Group filed comments suggesting another possible method for demonstrating injury. This method, used in one previous case, *Vickers Energy Corp./Denny Klepper Oil Co.*, 13 DOE ¶ 85,051 (1985) (*Klepper*), entails establishing a "profit margin threshold" equal to 90% of the applicant's average profit margin during the consent order period. Under the suggested methodology an applicant would be found to have experienced injury as a result of the alleged overcharges in months where its profit margin did not reach the "threshold" amount. Refunds would be available only for purchases in those months.

Since the time we used the suggested *Klepper* methodology in the Vickers proceeding—the only time it has been employed—we have come to the view that this methodology is impractical. It can lead to an inexact and distorted result by producing the appearance of injury in some cases where none occurred while withholding relief in other instances where it would otherwise be warranted. This results because in establishing a standard for injury based only on profit margin data for the applicant firm, the *Klepper* methodology ignores other relevant factors which are equally or even more important to the showing of injury yet affect profit margins in a misleading way. One example is a firm that elected to reduce prices and thus its profit margin on sales but increase its total profits through higher sales volume. Under *Klepper* this firm would have demonstrated "injury" in the *Klepper* sense even though its total profitability increased. Another firm might have elected to pass on all increased costs and thereby maintain its profit margin on sales but experience operating losses when sales volume declined. This firm would not have been "injured" under the *Klepper* test. Likewise, fluctuations in the petroleum market as a whole can influence the profit statistics of a single firm. The price and supply disruptions of 1979 and 1980, not a factor in the Vickers refund proceeding because the relevant consent order covered an earlier period, had a significant effect on many small firms' profit margins. *See Mobil Oil Corporation*, 13 DOE ¶ _____, No. HEF-0508 (December 24, 1985); *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,208 (1982) (*Amoco*).

In contrast to the narrow scope of analysis embodied in the *Klepper* methodology, previous OHA refund determinations have relied upon different methods which more accurately reflect the absorption of alleged refined product overcharges at different levels of complex chains of distribution. In some cases, we have analyzed profit margin data aggregated from a category of similarly situated firms, *e.g.*, jobbers purchasing from a particular refiner, to construct presumptions of injury. *See, e.g., Mobil Oil Corporation*, 13 DOE ¶ _____, No. HEF-0508 (December 24, 1985); *Getty Oil Company*, 13 DOE ¶ 90,068 (1985) (Proposed Decision); *Amoco*. Another useful method used in previous cases involves using market comparisons to gauge the competitive disadvantage a claimant suffered in purchasing a consent order firm's products. For example, firms have presented schedules of the product prices paid to the consent order firm and compared them to prevailing market prices. We have found that firms that paid prices demonstrably above the market average were injured in those transactions. *See, e.g., Allied Materials Corporation and Excel Corporation/Great Plains Corporation*, 13 DOE ¶ 85,289 at 88,732 (1985).

The *Klepper* methodology also can lead to inconsistent treatment of similar refund applicants. For example, even if two claimant firms are equally profitable (or unprofitable) on average, a firm with a large variance in its month-to-month profitability might receive refunds for close to half of the months in the consent order period, while a firm with a consistent level of profitability might never fall below the 90% threshold in any particular month, and therefore would not be eligible for any amount of refund. Finally, the *Klepper* case itself proved to be a poor model for designing other refund procedings, since the refund amount was computed by the OHA under specific remand instructions designed by the District Court for the District of Columbia. *Denny Klepper Oil Co.* v. *DOE*, Civil Action No. 84-0547, 3 Fed. Energy Guidelines ¶ 26,513 (D.D.C. 1984). For all of these reasons, we have decided that we will not rely upon the *Klepper* methodology alone as proof of injury in this proceeding. Firms may submit profit data as part of an attempt to demonstrate injury, but this material may not be sufficient evidence without the presence of other factors, such as sales volume decreases or competitive disadvantage.

In addition to a showing of injury, a reseller or retailer claimant must show that during the consent order period, it maintained a "bank" of unrecovered increased product costs at least equal to the refund amount claimed, indicating that the claimant did not actually pass on alleged overcharges to its own customers. If actual, contemporaneously calculated cost banks are not available for specific reasons, we will accept other information, *e.g.*, monthly profit margin data, which conclusively proves that the alleged overcharges were not passed along. *See Husky Oil Company*, 13 DOE ¶ 85,045 (1985); *see also Tenneco Oil Company/Northern Petroleum, Inc.*, 13 DOE ¶ 85,207 (1985).

In this case we are adopting three rebuttable presumptions regarding the demonstration of injury. These presumptions have been used in many previous refund proceedings. First, we will presume that purchasers of ERC products who are claiming small refunds ($5,000 or less, not including interest) were injured by the alleged overcharges. Claimants in this category need not provide us with a showing of injury, as described above.[6] Second, we will not require a showing of injury from regulated utilities or agricultural cooperatives that passed on the alleged overcharges in sales of refined products to their end-user members. In their applications, however, these firms should provide a full explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund. Third, we will adopt a presumption that spot purchasers were not injured and are generally not eligible to apply for refunds.[7] Prior OHA decisions provide detailed explanations of the basis for these presumptions. *E.g., VGS Corporation, et al.*, 13 DOE ¶ 85,165 at 88,451-53 (1985). We also explained the rationale for these presumptions in the PD&O. 50 FR 43449 at 43451-52. (October 25, 1985). The presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Finally, we will adopt a finding made in the PD&O that end-users or ultimate consumers of ERC products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges, and therefore need not demonstrate injury. *Id.*

C. Calculation of Refund Amounts

We will adopt a volumetric method of dividing the consent order funds among applicants who demonstrate eligibility to receive refunds.[8] This method,

[6] Resellers or retailers of ERC products who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the alleged overcharges will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981).

[7] If a spot purchaser believes it was injured, it must submit additional documentation of this injury to overcome the presumption that this category of ERC customers suffered no harm. As in previous cases, however, we will except from the presumption of non-injury cooperative organizations which made spot purchases and resold these products to their members. *See* VGS Corporation, *et al.*, 13 DOE ¶ 85,165 at 88,453 n.8 (1985).

[8] In the PD&O, we proposed that one eligible refund claimant in this proceeding, DFSC, would be eligible to receive the full amount of unpaid credit memoranda deposited in the DOE escrow account.

Continued

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outlined in the PD&O, presumes that the alleged overcharges were spread equally over all the gallons of products which ERC sold during the consent order period. We have calculated the volumetric amount to be used in this proceeding by dividing the total amount of consent order funds pertaining to refined products sales—$8,638,130 exclusive of interest ($8,638,130=$10,312,130 total refined products fund less $1,674,000 set aside for DFSC claim)—by the total volume of regulated petroleum products sales by ERC during the consent order period, which we estimate to be approximately 2,872,372,682 gallons. this calculation results in a volumetric refund amount of $.003007 per gallon. A successful claimant will receive a refund equal to its eligible volume of petroleum product purchases from ERC multiplied by the volumetric amount, plus a pro rata share of accrued interest.[9]

III. Applications for Refund

We have determined that the refund procedures described above are the best means of distributing the ERC consent order fund. Accordingly, we will now accept applications for refunds.

Applications must be in writing, signed by the applicant, and make reference to Case Number HEF-0205. Applications must include the following information:

(i) The business address of the firm during the consent order period, August 19, 1973 through January 28, 1981;

(ii) Monthly schedules indicating the volume of products purchased from ERC during the consent order period, or, if no documentation is available, a detailed estimate of purchases;

(iii) A showing of injury, as explained above, or a statement that the applicant need not show injury because it was an end-user of the product, an agricultural cooperative or regulated utility which sold the product to members, or is claiming a refund of $5,000 or less;

(iv) An indication of the firm's level in ERC's chain of distribution, *e.g.*, ultimate consumer, reseller, etc.

(v) A statement of whether the applicant is or has been involved as a party in DOE enforcement actions or private, § 210 actions. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status.

(vi) A statement of whether there has been a change in the ownership of the firm during the consent order period. If there has been a change of ownership, the applicant must provide the names and addresses of any other owners and either a statement of the reasons why the refund should be paid to the applicant rather than to the other owners, or a signed statement from the other owners indicating that they do not claim a refund.

(vii) The name, title, and telephone number of a person who the OHA may contact for additional information concerning the application; and

(viii) The following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c), 18 U.S.C. 1001.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the application claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. All applications should be sent to: Earth Resources/Delta Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Earth Resources Company pursuant to the Consent Order executed on January 27, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Date: January 23, 1986

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2323 Filed 1-31-86; 8:45 am]

BILLING CODE 6450-01-M

See text at note 3, *supra*. We received no comments objecting to this proposal and will allow DFSC to apply for the unpaid credit amount—$1,540,631.67 plus accumulated interest—instead of a refund computed by the volumetric method.

[9] Any applicant that believes it suffered a disproportionate share of ERC's alleged overcharges may apply for a refund greater than the amount computed by the volumetric method. Such applicants will be required to document conclusively the disproportionate impact. In addition, we intend to set a minimum refund amount for potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,214 (1982). We will utilize the same minimum refund in the present case.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/28H; FRL-2952-6]

Creosote, Pentachlorophenol, and Inorganic Arsenicals; Amendment of Notice of Intent To Cancel Registrations

Correction

In FR Doc. 86-575 beginning on page 1334, in the issue of Friday, January 10, 1986, make the following corrections:

1. On page 1344, second column, in the eighth complete paragraph, insert a period after the word "contamination" and a new sentence should begin with the word "Dispose".

2. On page 1346, second column, in paragraph 2, at the end of the seventh line, the word "and" should be inserted.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

KOZN-FM Stereo 99, Ltd; Hearing; Order To Show Cause and Notice of Apparent Liability

In the matter of KOZN FM Stereo 99, Ltd., MM Docket No. 85-397; Lincensee of Radio Station, KOZN-FM, Imperial, CA; Order to Show Cause Why the license of KOZN-FM, Imperial, CA should not be revoked.

Adopted: December 24, 1985.
Released: January 2, 1986.

By the Commission.

1. The Commission has before it for consideration: (a) the license of KOZN-FM Stereo 99, Ltd. for radio station KOZN-FM, Imperial, CA; and (b) the result of its investigation into the alleged unauthorized operation of KOZN-FM by an alien licensee and the alleged misrepresentation by Richard Edgar Green that he was an American citizen when, in fact, he was a Canadian citizen.

2. Following receipt of a complaint, the Commission commenced on June 14, 1985, an inquiry that revealed the following facts. Richard Edgar Green was born in Toronto, Canada, on March 29, 1940. He entered the United States with his parents on May 6, 1947, at Niagara Falls, NY, and later enlisted in the United States Navy. He served from 1958-62 and was honorably discharged. Green's draft registration falsely

indicated that he was born on March 29, 1937, in Einberg, Pennsylvania. This was the same date and place of birth that Green submitted to the Commission in his application for KOZN-FM's construction permit (BPH-790508AB). In addition, Green has admitted that he misrepresented his citizenship to the Commission in subsequent documents including ownership forms, the renewal application for KOZN-FM (Form 303-S, File No. BRH-830801VM), and the application for assignment of license from Richard E. Green to KOZN-FM Stereo 99, Ltd. (BALH-840416HE).[1] The licensee has also conceded that "no facts can justify such misrepresentation made to the Commission . . . ." [2]

3. Section 312(a)(1) of the Communications Act of 1934, as amended, states that "[t]he Commission may revoke any station license or construction permit . . . for false statements knowingly made . . . in the application." section 312(a)(2) permits the Commission to revoke a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application; . . ."

4. In the instant case, the licensee has admitted that he intentionally misrepresented in KOZN-FM's construction permit application that he was a United States citizen when, in fact, he was a citizen of Canada. Such alien ownership is specifically forbidden under section 310(b)(1) of the Communications Act, which states that "[n]o broadcast or . . . radio station license shall be granted to or held by . . . any alien or the representative of any alien. . . ." Consequently, the Commission would not have granted the application of Mr. Green for KOZN-FM had his alien status been revealed.

5. The Commission must necessarily depend on the integrity and representations of its licensees. A breach of that trust or willful false statements may constitute sufficient grounds for the revocation of licenses and character disqualification. *See FCC* v. *WOKO, Inc.*, 329 U.S. 223 (1946); *Charles P. B. Pinson, Inc.* v. *FCC*, 321 F.2d 372 (D.C. Cir. 1963); *see also Pass Ward, Inc.*, 76 FCC 2d 465 (1980) (revocation was based upon, and could be based solely upon, the pattern of deliberate misrepresentation and the resulting lack of character qualification of the licensees). In addition, Mr. Green did not take steps to change his status from alien to citizen in order to comply with his representations to this Commission until after he was alerted by the Commission's inquiry that his misrepresentations were under investigation.

6. The licensee has presented several factors that it believes would mitigate our consideration of a revocation of the license of KOZN-FM. We do not find them persuasive. Although it is true that some innocent employees might lose their jobs if a revocation order were issued, "we may not permit the impact upon employees to stand in the way of revocation when the public interest requires such action . . . ." *KWK Radio, Inc.*, 35 FCC 561, 563 (1963). In addition, the loss of local radio service to Imperial, CA, would not consitute a mitigating factor. *Id.* The licensee has also contended that mitigation would be justified because of his unblemished record "[w]ith the exception of a single notice of violation issued on July 10, 1981, for engineering discrepancies, which were corrected without further Commission action. . . ." The Commission has previously addressed and rejected an analagous contention in *Williamsburg County Broadcasting, Inc.*, 30 FCC 2d 173, 175 (1971).

7. Accordingly, it is ordered, that, pursuant to sections 312 (a)(1) and (a)(2) of the Communications Act of 1934, as amended, Richard Edgar Green is directed to show cause why the license for Radio Station KOZN-FM should not be revoked, upon the following issues:

(1) Whether, in light of all the facts and circumstances pertaining thereto, Richard Edgar Green obtained and/or held the license for Radio Station KOZN-FM in violation of section 310(b)(1) of the Communications Act of 1934, as amended.

(2) Whether Richard Edgar Green misrepresented to the Commission that he was an American citizen for the purpose of obtaining the construction permit for KOZN-FM.

(3) Whether, in light of the evidence adduced under issues (1) and (2) above, Richard Edgar Green and KOZN-FM Stereo 99, Ltd., possess the requisite qualifications to be or to remain a licensee of the Commission.

8. It is further ordered, that the Chief, Mass Media Bureau, is directed to serve upon the licensee and Richard Edgar Green, within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (1) and (2) above.

9. it is further ordered, that pursuant to sectioin 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to issues (1) through (3) inclusive.

10. It is further ordered, that to avail itself of the opportunity to be heard, the licensee, pursuant to section 1.91(c) of the Commission's Rules, in person or by attorney, shall file with the Commission within thirty days of the receipt of the Order to Show Cause a written appearance stating that he will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. *See* section 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* section 1.92(b) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer or the Chief Administrative Law Judge, if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular couse of business and an appropriate Order will be entered. *See* section 1.92 (c) and (d) of the Commission's Rules.

11. It is further ordered, that if it is determined that the hearing record does not warrant an Order revoking the license of KOZN FM Stereo 99, Ltd. for Radion Station KOZN-FM, it shall also be determined if Richard Edgar Green has willfully or repeatedly violated section 310(b)(1) of the Communications Act of 1934, as amended (alien ownership prohibition). If so, it shall also be determined whether an Order for Forfeiture shall be issued pursuant to section 503(b) of the Communications Act of 1934, as amended, in the amount of $20,000 for the willful or repeated violation of section 310(b)(1) of the Communications Act of 1934, as amended.

12. It is further ordered, that this document constitutes a Notice of Apparent Liability for forfeiture for

[1] Although the licensee has never filed with the Commission the required notification that the assignment application was consummated, KOZN-FM's ownership report, dated March 26, 1984, indicates that the licensee is currently operating as the above-captioned partnership. This information was also conveyed to the Commission earlier in an ownership amendment dated November 9, 1983, which contained the notarized contractual agreement between the proposed partners, Richard E. Green and Toni B. Blackman.

[2] The licensee stated that on July 2, 1985, subsequent to the Commission's inquiry, he applied for United States citizenship which was granted on August 14, 1985. Green explained that he had neglected to implement the legal procedures to become a naturalized citizen following his Navy discharge because he already had permanent resident status, had served on active duty in the military, and had satisfied the language and history requirements for citizenship.

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violation of section 310(b)(1) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is thus a routine of standard one, we stress that the inclusion of this notice is not be be taken as in any way indicating what the initial or final disposition of the case should be; that judgment is, of course, to be made on the facts of each case.

13. It is further ordered, that the Chief, Mass Media Bureau, send a copy of this Order by *Certified Mail, Return Receipt Requested,* to: KOZN FM Stereo 99, Ltd., Licensee of Radio Station KOZN–FM, P.O. Box 967, Imperial, CA 92251.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2284 Filed 1–31–86; 8:45 am]

BILLING CODE 6712–01–M

Allocations and Technical Subgroups of Radio Advisory Committee; Joint Meeting

March 7, 1986.

The Allocations and Technical Subgroups of the Advisory Committee on Radio Broadcasting resume their continuing meetings in a joint session to be held on Friday March 7, 1986, at 10:00 a.m. in the Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW., Washington, DC.

The Subgroups will give consideration to the final preparations for the upcoming Region 2 Conference on expansion of the AM band. The First Session of which is scheduled to begin on April 14, 1986. In particular, the Subgroups will focus on the planning method to be used in developing the spectrum to become available through expansion of the AM band, including the related issue of maximum power to be permitted. In these regards, attention will be given to the results of bilateral and Regional meetings which have taken place as part of the preparations for the Conference.

In addition, as appropriate, the Subgroups will continue their examination of possible steps which could be taken to improve the effective use of the AM band. This includes consideration of policy and technical changes to enhance the ability of AM stations to compete effectively in the radio marketplace.

The Subgroup meetings are continuing ones and may be resumed after the March 7, 1986, session at such time and place as may be decided at that session.

All meetings of the Allocations and Technical Subgroups are open to the public. All interested parties are invited to attend and participate in these meetings.

For further information, please call either the Chairman of the Allocations Subgroup, Jonathan David, at (202) 632–7792 or the Chairman of the Technical Subgroup, Wallace Johnson, at (703) 341–0500.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2283 Filed 1–31–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004166–001.

Title: The Port of Oakland and Pasha Properties, Inc. Terminal Management Agreement.

Parties:

The port of Oakland (Port)
Pasha Properties, Inc. (Pasha).

Synopsis: The proposed amendment would extend until March 15, 1986, the time in which the parties may reach agreement as to the adjusted compensation to be paid by Pasha to the Port beginning February 1, 1986.

Agreement No.: 202–008900–031.

Title: Eighty-nine Hundred Rate Agreement.

Parties:

Barber Blue Sea
A.P. Moller-Maersk Line
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
The National Shipping Co. of Saudi Arabia
United Arab Shipping Co. (S.A.G.)
Waterman Steamship Corporation.

Synopsis: The proposed amendment would enlarge the geographic scope of the agreement to include Saudi Arabia ports on the Red Sea.

Agreement No.: 002–010881.

Title: Lake Michigan and Lake Superior Ports Terminal Agreement.

Parties:

Port of Green Bay, Wisconsin
Port of Milwaukee, Wisconsin
Port of Kenosha, Wisconsin
Port of Chicago, Illinois
Port of Burns Harbor, Illinois
Port of Superior, Wisconsin
Port of Duluth, Minnesota.

Synopsis: The proposed agreement would establish a conference agreement between the parties for the purpose of improving the general cargo situation at U.S. ports on Lakes Michigan and Superior. The parties would have authority to discuss, agree upon, establish and enforce terminal rates, charges and practices. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: January 29, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–2243 Filed 1–31–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 28, 1986.

Background

Notice is hereby given of final approval of an information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Martha Bethea—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880).

The Board has reinstated the reporting form entitled "Mortgage Loan Disclosure Statement" (FR HMDA–1; OMB No. 7100–0220), the form used to collect data under the Home Mortgage Disclosure Act, 12 U.S.C. 2801–2811 (HMDA), as implemented by the Board's Regulation C, 12 CFR 203. Because HMDA was scheduled to expire on October 1, 1985, *see* 12 U.S.C. 2811, the Board had obtained approval for the HMDA–1 form from OMB only throuh September 30, 1985. Congress, however, has temporarily extended HMDA through March 17, 1986. *See* Pub. L. 99–219 (Dec. 26, 1985).

OMB's delegation of authority to the Board provides that the Board may approve a collection of information immediately, without the usual period for public comment, if the usual process would "substantially interfere with the Board's ability to perform its statutory obligation . . . ." 5 CFR part 1320 Appendix A ¶ 1(a)(3)(i)(A).

If the Board is to meet its responsibilities under HMDA, it must act without delay to inform affected institutions. Accordingly, the Board has approved the immediate reinstatement of the HMDA–1 form through April 15, 1986.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–2229 Filed 1–31–86; 8:45 am]

BILLING CODE 6210–01–M

Central Financial Corp. et al. Formations of; Acquisitions by; and Mergers of Bank Holding Co.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 21, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Central Financial Corporation,* Randolph, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of The Randolph National Bank, Randolph, Vermont.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Community Bancshares, Inc.,* Blountsville, Alabama (formerly Blountsville Bancshares); to acquire 100 percent of the voting shares of Community Bank of Marshall County, Arab, Alabama. Comments on this application must be received not later than February 24, 1986.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Success Financial Group/Indiana, Inc.,* Wilmington, Delaware; to become a bank holding company by acquiring 82.6 percent of the voting shares of Industrial National Bank of East Chicago, East Chicago, Indiana. Comments on this application must be received not later than February 10, 1986.

D. **Federal Reserve Bank of St. Louis,** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Central State Bancorp, Inc.,* Lexington, Tennessee; to become a bank holding company by acquiring 80 percent of the voting shares of Central State Bank, Lexington, Tennessee.

2. *First Kentucky National Corporation,* Louisville, Kentucky; to acquire 100 percent of the voting shares of Central Bancorp, Inc., Owensboro, Kentucky, thereby indirectly acquiring Central Bank and Trust Company, Owensboro, Kentucky. Comments on this application must be received not later than February 24, 1986.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Polco Bancshares, Inc.,* Palco, Kansas; to become a bank holding company by acquiring 80.05 percent of the voting shares of The First National Bank of Palco, Palco, Kansas. Comments on this application must be received not later than February 24, 1986.

F. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Gateway Bancorp, Inc.,* Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Gateway National Bank (in organization), Phoenix, Arizona.

2. *Puget Sound Bancorp,* Tocoma, Washington; to acquire 100 percent of the voting shares of The Bank of Seattle, Seattle, Washington.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–2230 Filed 1–31–86; 8:45 am]

BILLING CODE 6210–01–M

Dixie Bancshares Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

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evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 1986.

A. Federal Reserve Bank of St. Louis (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dixie Bancshares Corp.*, New Madrid, Missouri ("Applicant"); to engage *de novo* directly in the servicing of existing loans outstanding to Applicant's insiders, and the making and servicing of future loans to insiders of Applicant, pursuant to § 225.25(b)(1) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California; to engage *de novo* through its subsidiary First Interstate Trust Company of New York, New York, New York, in indirectly providing trust services usual to banks and bank affiliated trust companies, pursuant to § 225.25(b)(3) (i) and (ii) of Regulation Y.

2. *Wells Fargo & Company*, San Francisco, California; to engage *de novo* through its subsidiary, Central Western Insurance Company, Phoenix, Arizona, in underwriting credit life and credit disability insurance, pursuant to § 225.25(b)(9) of Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAFee,

Associate Secretary of the Board.

[FR Doc. 86-2231 Filed 1-31-86; 8:45 am]

BILLING CODE 6210-01-M

Hongkong and Shanghai Banking Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)), to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspecton at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applicatons must be received at the Reserve Bank indicated for the applicatoin or the offices of the Board of Governors not later than March 1, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

The Hongkong and Shanghai Banking Corporation, Hong Kong, B.C.C.; *Kellett N.V.*, Curacao, Netherlands Antilles; *HSBC Holdings B.V.*, Amsterdam, The Netherlands; and *Marine Midland Banks, Inc.*, Buffalo, New York: for Marine Midlands Banks, Inc., either directly or indirectly through a newly-formed, wholly-owned subsidiary, to require from its wholly-owned subsidiary, Marine Midland Bank, N.A., Buffalo, New York, all of the shares of CM&M Group, Inc., New York, New York ("Group"), and thereafter to engage through the subsidiaries of Group, in various securities and leasing activities.

The activities that wil be performed are as follows:

(1) Carroll McEntee and McGinley, Inc., New York, New York ("CM&M"): to act as a primary dealer in U.S. government and Federal agency securities, CM&M also proposes to purchase and sell for its own account financial futures and options on the securities. CM&M also acts as a dealer in money market instruments, bankers' acceptances, and negotiable certificates of deposits. The activities will be conducted from offices in New York City, Atlanta, Boston, Chicago, Clevelend, Houston, Los Angeles, Philadelphia, and San Francisco.

(2) Marine-CM&M Securities, Inc., New York, New York: to engage in discount brokerage activities. This activity will be conducted from offices in New York, New York and Palm Beach, Florida.

(3) Intramarket Securities Corporation, New York, New York: to act as an dealer in fixed income securities, certificates of desposits, bankers' acceptances and gold and silver bullion.

(4) CM&M Futures, New York, New York: to engage as a broker in financial futures instruments and foreign currency options. This activity will be conducted from offices in New York, New York, and Chicago, Illinois.

(5) Investors Arbitrage Corporation, New York, New York: to act as an investment advisor. This activity would be conducted from offices in New York, New York, and Tucson, Arizona.

(6) American Interest Arbitrage Corporation, New York, New York: to act as an investment advisor and money manager for Group.

(7) Reacvom Services, Inc., New York, New York: to engage in equipment leasing for Group.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2232 Filed 1-31-86; 8:45 am]

BILLING CODE 6210-01-M

Puget Sound Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 1986.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Puget Sound Bancorp*, Tacoma, Washington; to acquire 100 percent of the voting shares of The Bank of Redmond, Redmond, Washington.

Applicant has also applied to acquire Redmond Mortgage Company, Redmond, Washington, and thereby engage in mortgage lending activities, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2233 Filed 1-31-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; National Cholesterol Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the National Cholesterol Education Program Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute, on March 7, 1986, 9 a.m. to 4 p.m., Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897-9400.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National Cholesterol Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants and meeting summary contact: Dr. James I. Cleeman, Coordinator, National Cholesterol Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A16, Bethesda, Maryland 20892, (301) 496-1051.

Those who wish to attend the meeting, please contact Sharman DeWeese, University Research Corporation, Suite 430 North, 1776 East Jefferson Street, Rockville, Maryland 20852, (301) 230-1340.

Dated: January 28, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-2244 Filed 1-31-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of BLM Utah Statewide Wilderness Draft Environmental Impact Statement, Volumes I, II, III, IV, V, and VI

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of the draft wilderness environmental impact statement (EIS) and schedule of public hearings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, Department of the Interior, has prepared a draft environmental impact statement analyzing possible impacts from Congressional wilderness designation of BLM wilderness study areas (WSAs) in Utah. There are 82 WSAs including 3,231,327 acres under consideration. The draft EIS is comprised of six volumes.

Volume I is a Statewide overview. Eleven Statewide alternatives (combinations of WSAs) are identified, with seven of these analyzed in detail. The alternative analyzed in detail are as follow:

1. BLM Proposed Action
   —Designates 1,892,402 acres.
   —Includes all areas and acres currently judged by BLM to meet the test of wilderness suitability.
2. No Action/No Wilderness Alternative
   —Designates 0 acres.
   —Alternative required by regulations.
   —Provides lower limit of designated acreage to range of alternatives.
3. All Wilderness Alternative
   —Designates 3,231,327 acres.
   —Provides upper limit of WSA acreage to range of alternatives.
4. Manageability Alternative
   —Designates 2,606,548 acres.
   —Includes areas without significant wilderness management problems.
5. Paramount Wilderness Alternative
   —Designates 1,474,380 acres.
   —Includes highest quality areas having minimum conflicts with other resources, to the extent possible; also includes key areas where wilderness values clearly exceed other resource values, if unavoidable, if unavoidable conflicts exist.
6. Regional Representative Areas Alternative
   —Designates 913,225 acres.
   —Includes a selection of one or more WSAs that are most representative of each of five geographic regions in the State.
7. Small Cluster Concept Alternative
   —Designates 851,271 acres.
   —Includes areas selected from the BLM Proposed Action.
   —Considers geographic distribution and includes adjacent WSAs separated by dirt or gravel roads, minor intrusions, and less than a half mile distance.
   —Identifies clusters that total 100,000 acres or more, including adjacent non-BLM wilderness lands or proposals.
   —Provides at least 25 percent of BLM WSA lands in a cluster.

Volumes II through VI contain individual WSA analysis by Utah region as follows:

Volume II concerns WSAs in the West-Central Region (West Desert Area); Volume III concerns WSAs in the South-West Region (Zion vicinity and Kaiparowits Plateau); Volume IV concerns WSAs in the South-Central Region (Henry Mountains and Dirty Devil River Area); Volume V concerns WSAs in the South-East Region (Canyonlands Area), and Volume VI concerns WSAs in the East-Central

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Region (San Rafael Swell and Book Cliffs).

The scoping process for this Draft EIS identified the following twelve major issues:

1. Impacts on naturalness.
2. Impacts on opportunities for solitude.
3. Impacts on opportunities for primitive and unconfined recreation.
4. Impacts on wilderness special features.
5. Impacts on mineral and energy production.
6. Impacts on livestock grazing levels.
7. Impacts of future rangeland improvements for livestock.
8. Impacts on ranching practices.
9. Impacts on land use plans and controls.
10. Impacts on employment.
11. Impacts on income.
12. Impacts on government revenues.

The analysis is based on projected conditions with and without wilderness designation. It does not include the effects of the Interim Management Policy.

Locations Where Copies Are Available

Limited copies of the Draft EIS are now available at the locations described below. Specify the Volumes that are desired.

Bureau of Land Management, Utah State Office, Public Room, 324 South State, Salt Lake City, Utah 84111–2303, Phone: (801) 524–5331 or 588–5331 FTS
Cedar City District Office, 1579 North Main, P.O. Box 724, Cedar City, Utah 84720, Phone: (801) 586–2401
Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, Phone: (801) 259–6111
Richfield District Office, 150 East 900 North, P.O. Box 768, Richfield, Utah, 85701, Phone: (801) 896–8221 or 584–8011 FTS
Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119, Phone: (801) 524–5348 or 588–5348 FTS
Vernal District Office, 170 South 500 East, Vernal, Utah 84078, Phone: (801) 789–1362

Public Comment Period Hearing Schedule

The public comment period on the Draft EIS will end June 15, 1986. Written comments should be sent to: Wilderness Studies (U–933), Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303.

The schedule for sixteen public hearings to receive oral comments is as follows:

Date	Time (p.m)	Location	Address
May 07, 1986	7:00	Vernal	BLM Vernal District Office, Conference Room, 170 South 500 East, Vernal, UT.
Do	7:00	Provo	Utah County Building, Courtroom 310, 51 South University Avenue, Provo, UT.
Do	7:00	Escalante	Escalante High School, Lunchroom, 70 North First West, Escalante, UT.
Do	7:00	Monticello	Monticello High School, Auditorium, 164 South 200 West, Monticello, UT.
May 08, 1986	7:00	Tooele	Commissioners Chambers, (3rd Floor), Tooele County Courthouse, 47 South Main, Tooele, UT.
Do	7:00	Kanab	Kane County Courthouse, 70 North Main, Kanab, UT.
Do	7:00	Moab	Grand County Community Center, (Old Legion Building), 500 East 100 North, Moab, UT.
May 13, 1986	7:00	Ogden	Roland Perry Choral Room, Browning Performing Arts Center, Weber State College, 3750 Harrison Blvd., Ogden, UT.
Do	7:00	Cedar City	BLM Cedar City District Office, 1579 North Main, Cedar City, UT.
Do	7:00	Loa	Community Center, One Block West of Courthouse, Loa, UT.
Do	7:00	Price	Carbon County Courthouse, 200 East Main, Price, UT.
May 14, 1986	7:00	Logan	Mountain Fuel Supply, Auditorium, 45 East 200 North, Logan, UT.
Do	7:00	St. George	Washington County, Administration Building, 197 East Tabernacle, St. George, UT.
Do	7:00	Delta	Delta High School, Auditorium, 50 South 300 North, Delta, UT.
Do	7:00	Castle Dale	Emery County Courthouse, Castle Dale, UT.
May 15, 1986	2:00, 7:00	Salt Lake City	Suite E, Salt Palace, 100 South West Temple, Salt Lake City, UT.

FOR FURTHER INFORMATION CONTACT:
Dr. Gregory F. Thayn, Wilderness EIS Team Leader, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111–2303, Telephone (801) 524–3135 or 588–3135 FTS.

Dated: January 28, 1986.
Roland G. Robison,
State Director.
[FR Doc. 86–2123 Filed 1–31–86; 8:45 am]
BILLING CODE 4320–DQ–M

Environmental Statement; Big Sandy Planning Unit; Sweetwater County, WY; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice, Big Sandy Planning Unit, notice of intent, Sweetwater County, Wyoming.

SUMMARY: The **Federal Register** Notice of July 18, 1984, (FR Vol. 49 No. 139, FR document W82637) on page 29157, provides a notice of intent to amend the land use plan for the Big Sandy planning unit and to prepare an environmental assessment. Several parcels of land were identified for exchange consideration. Public comment was sought on the preliminary issues and planning criteria pertaining to the proposed Teton Valley Exchange.

The original Teton Valley Exchange proposal included lands in addition to those in the Point of Rocks coal tract. This resulted in the need to amend the existing management framework plan (MFP). The proposal has changed and these additional lands are no longer involved. In reviewing the existing MFP and the revised exchange proposal, the BLM has found the proposal is in conformance with the MFP and, therefore, no plan amendment is needed.

The lands included in the current exchange proposal are identified in the MFP as acceptable for further consideration for coal development. The MFP decision also states that the lands will be given consideration for exchange proposals.

Therefore, we are rescinding the July 18, 1984, **Federal Register** Notice which informed the public that we initiating a plan amendment. We are also amending the December 31, 1985, **Federal Register** Notice which indicated that we were preparing a plan amendment. We are proceeding with further consideration of the exchange proposal through NEPA compliance and public input but without a plan amendment.

ADDRESS: Alan Stein, Assistant District Manager, Planning and Environment Assistant, Bureau of Land Management,

P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.
Donald H. Sweep,
District Manager.
[FR Doc. 86–2238 Filed 1–31–86; 8:45 am]
BILLING CODE 4310–22–M

U.S. Mineral Surveyor Appointment Examination

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of examination.

SUMMARY: The Division of Cadastral Survey, will conduct an examination to license U.S. Deputy Mineral Surveyors on April 23 and 24, 1986, in Anchorage, Alaska. The examination site in Alaska will be the only location at which the examination will be given. Individuals who pass the examination and the subsequent review of references will be allowed to perform U.S. mineral surveys in all locations under the mineral jurisdiction of the Bureau of Land Management. U.S. Deputy Mineral Surveyors must observe the same regulations concerning conflicts of interest as other Federal employees. A roster of mineral surveys is maintained by each BLM State Office and is made available to interested claimants, who then arrange for the survey with an individual surveyor for the survey and payment. The survey is performed under the jurisdiction and approved by the appropriate BLM Cadastral Survey office. Interested individuals should submit a completed SF 171 (available at most Federal offices), including signature and date, by March 17, 1986, to the following address: Director (720), Bureau of Land Management, Premier Bldg., Rm. 201, 18th and C Streets NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Daniel T. Mates, Land Surveyor, Division of Cadastral Survey, Washington, DC (see address above) at (202) 653–8798.
Robert F. Burford,
Director, Bureau of Land Management.
January 28, 1986.
[FR Doc. 86–2227 Filed 1–31–86; 8:45 am]
BILLING CODE 4310–84–M

National Park Service

Intention to Extend Concession Permits; Adrift Adventures in Canyonlands, Inc., et al.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend the following concession permits authorizing the permittees to continue to provide commercial float trips for the public on the waters and Federally owned lands and facilities along the shores of the Green and Colorado Rivers through Canyonlands National Park and a portion of Glen Canyon National Recreation Area from the south boundary of Canyonlands National Park to the Hite area for a period of one (1) year from January 1, 1986, thrugh December 31, 1986:

1. Adrift Adventures in Canyonlands, Inc.
2. Adventure Bound, Inc.
3. Colorado Outward Bound School
4. Colorado River & Trail Expeditions, Inc.
5. Descent River Expeditions
6. Don Hatch River Expeditions, Inc.
7. Holiday River Expeditions, Inc.
8. Moki Mac River Expeditions, Inc.
9. North American River Expeditions, Inc.
10. Outlaw River Expeditions, Inc.
11. San Juan Expeditions, Ltd.
12. Sheri Lynn Griffith Expeditions
13. Tag-A-Long Tours, Ltd.
14. Tag-A-Long Tours, Ltd.
15. Tex's River Expeditions
16. Tour West, Inc.
17. Western River Expeditions
18. World Wide River Expeditions, Inc.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing permits which expire by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, are entitled to be given preference in the renewal of the permits and in the negotiation of any new permits as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, P.O. Box 25287, Denver, Colorado, 80225, for information as to the requirements of the proposed contract.

Dated: January 17, 1986
Jack W. Nechels,
Regional Director, Rocky Mountain Region.
[FR Doc. 86–2197 Filed 1–31–86; 8:45 am]
BILLING CODE 4310–70–M

Environmental Statements, Availability, etc.; Denali State Park, AK

ACTION: Notice of Intent to Prepare an Environmental Impact Statement for Proposed Development of a Major Visitor Destination in the Curry Ridge Area of Denali State Park, Alaska.

SUMMARY: The National Park Service is issuing this notice to advise the public that, subject to receipt of federal funding, an environmental impact statement will be prepared for the proposed development of a major visitor destination on the south side of the Alaska Range in the Curry Ridge area of Denali State Park. The state park is adjacent to Denali National Park and Preserve, and the National Park Service is cooperating with the State of Alaska to plan and possibly develop facilities there. A major goal of the cooperative effort is to integrate planning of the South Denali destination with planning for both the state and the national park in order to better provide for public use and enjoyment of the area and for resource management.

The proposal calls for development of lodging and visitor information services as well as access to the site. The following developments would probably be included: a visitor center, lodge(s) and restaurant(s) at one or more sites, campgrounds, parking lot(s), a tramway, a youth hostel, trails, and maintenance buildings and utilities for the facilities. The tentative range of alternatives which may be analyzed in the environmental impact statement includes varying locations for some or all of the proposed facilities. Sites could be in the forested area close to the George Parks Highway, on bench lands part way up Curry Ridge, in the subalpine zone or on the alpine ridge top. A no action alternative will also be considered. A brochure describing the proposal and alternatives in further detail is available for public review.

Through this notice and through public workshops to be scheduled and announced in the Alaskan news media, the National Park Service and the State Division of Parks and Outdoor Recreation are seeking comments on the scope of alternatives and issues to be considered in the preparation of the environmental impact statement. The draft environmental impact statement is

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expected to be ready for public review in the spring of 1987.

DATES: Written comments should be received no later than April 4; however, comments received after that date will be considered to the extent possible.

ADDRESS: Comments may be sent to: Janet McCabe, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892, phone (907) 261–2697.

FOR FURTHER INFORMATION: For a brochure about the proposal or further information about the proposal or the environmental impact statement, please contact: Janet McCabe (address and phone above) or Cheryl Green, State of Alaska, Division of Parks and Outdoor Recreation, 3601 C Street, Suite 1280, Pouch 7–001, Anchorage, Alaska 99510, phone (907) 762–4506.

Boyd Evison,

Regional Director.

[FR Doc. 86–2292 Filed 1–31–86; 8:45 am]

BILLING CODE 4310-70-M

Development Concept Plan and Environmental Impact Statement To Relocate Facilities From the Fishing Bridge Area, Yellowstone National Park, WY

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of additional scoping information for the proposal to relocate 660 campsites and other facilities from the Fishing Bridge Area to other areas within Yellowstone National Park.

Background

The object of the Development Concept Plan (DCP) is to implement the 1974 Master Plan for Yellowstone National Park which states ". . . eliminate accommodations and services from this existing developed area in order to facilitate restoration of critical wildlife habitats at Yellowstone Lake's outlet. The existing campground, trailer village, store and service station will, however, be retained for an interim period."

The removal of facilities is also in accordance with the biological opinion of the U.S. Fish and Wildlife Service for the Grant Village development pursuant to section 7 of the Endangered Species Act. The biological opinion stated that the Grant Village development would cause no jeopardy to the threatened grizzly bear provided NPS followed through on its intention to remove the facilities at Fishing Bridge. As a part of the section 7 consultation, NPS committed to removal of the campground and the recreational vehicle (RV) park by 1985 and 1986, respectively.

A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the DCP for the Fishing Bridge Area was published in the **Federal Register** of February 22, 1985 (50 CFR Part 7405). That notice pointed out that the EIS will address the removal of facilities from the Fishing Bridge area with replacement in other areas of the park. The Notice of Intent also announced that a packet of information for scoping would be made available in the near future. That packet, in the form of a newsletter, was distributed on May 5, 1985. This notice announces the availability of additional scoping information and the National Park Service's (NPS) desire to obtain further public input on the issues, alternatives, and impacts to be discussed in the EIS.

Issues

To date, the NPS has identified the following issues concerning relocating the campground and the recreation vehicle park:

—The impacts to the grizzly bear and natural environment.
—The type of visitor experience.
—Site condition (soils, drainage, vegetation, slope).
—Design and construction costs.
—Effects to the economics of the gateway communities and tax revenue of Park and Teton counties.
—Effects on cultural resources.

Site Selection Factors

Based upon these issues, the following site selection factors were developed to analyze each potential relocation site:

—Minimal effect on grizzly bear habitat and travel patterns.
—Acceptable site conditions.
—Visitor amenities including access to Yellowstone Lake, other park features, and existing developed areas for visitor services.
—Cost to connect to existing utility systems including water, sewer and electricity.
—Potential economic effects on the park's gateway communities due to possible alteration of visitor travel patterns to and from the park.
—Potential for presence of archeological sites.

Alternatives

Relocation alternatives under consideration at this time are as follows (refer to accompanying map):

—Construct the recreation vehicle park and campground at the Gull Point/Weasel Creek area.
—Construct the recreation vehicle park at the Weasel Creek area and distribute the campground campsites throughout the park by expanding existing campgrounds and building a new campground in the Mesa Road area (minimum 100 sites).
—Construct the recreation vehicle park at Grant Village and distribute the campground campsites in the Lake/Bridge Bay area (Elephant Back, Natural Bridge and Bridge Bay campground sites).

In addition to the relocation alternatives, the planning team will also be analyzing a no action option (status quo) and an alternative that examines leaving all of the facilities at Fishing Bridge (i.e., fencing the recreational vehicle park and campground, redesigning the campground and other management actions that reduce human/bear conflicts).

Impacts

Impacts associated with the alternatives include:

—Impacts on wildlife and other natural resources, within the Fishing Bridge area, relocation sites and the park as a whole.
—Impacts on cultural resources (significant historic buildings and archeological sites).
—Cumulative impacts on the visitor experience, including visitor accommodations and services.
—Economic and social impacts on gateway communities and adjacent county tax revenues.
—Impacts on park concessioners.

Public Response

The public is invited to suggest other issues, alternatives or impacts which should be addressed in the EIS. Such comments will be received for 30 days following the publication of this notice. The comments may be sent to the Superintendent, Yellowstone National Park, Wyoming 82190.

Newsletter

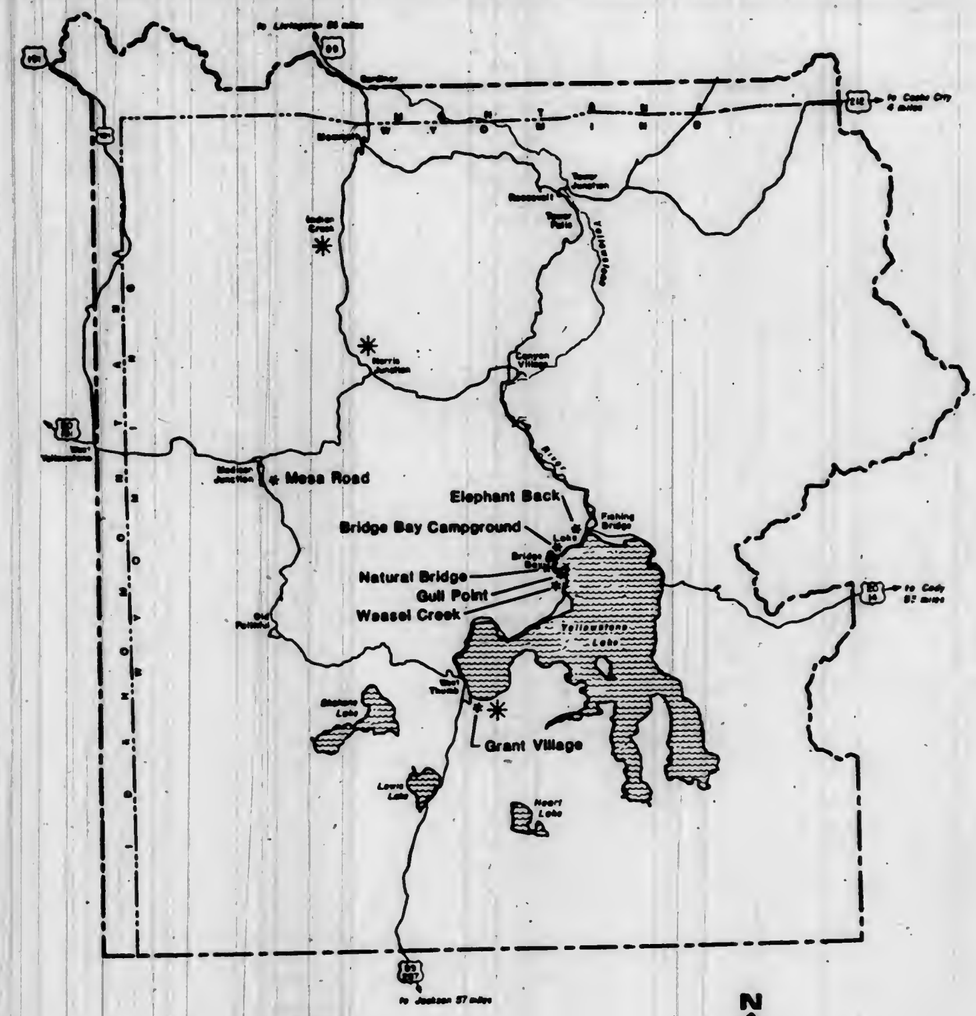
A newsletter containing additional information will soon be available from the park. To receive a copy of this newsletter, supply your name and address to the Superintendent.

Dated: January 23, 1986.

Lorraine Mintzmyer,

Regional Director, Rocky Mountain Region.

BILLING CODE 4310-70 M



CAMPSITE RELOCATION ALTERNATIVES
YELLOWSTONE NATIONAL PARK

United States Department of the Interior – National Park Service

[FR Doc. 86–2293 Filed 1–31–86; 8:45 am]

BILLING CODE 4310-70-M

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INTERSTATE COMMERCE COMMISSION

[Docket No. AB-12 (Sub-No. 102)]

Southern Pacific Transportation Co. Abandonment; Cochise County, AZ; Findings

The Commission has issued a certificate authorizing the Southern Pacific Transporation Company to abandon its 5.619-mile rail line between Bisbee Jct. (milepost 1085.064) and Bisbee (milepost 1090.863) in Cochise County, AZ. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assitance (through subsidy or purchase) to enable the rail service to be continued; and (2) It is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 86-2246 Filed 1-31-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 154)]

Seaboard System Railroad, Inc., Abandonment, Fannin County, GA, and Cherokee County, NC; Findings

The Commission has found that the public convenience and necessity permit the abandonment by Seaboard System Railroad, Inc., of its 20.45-mile line of railroad between Mineral Bluff, GA (milepost KG-396.36), and Murphy, NC (milepost KG-416.61).

An abandonment certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) It is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 86-2367 Filed 1-31-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-101 (Sub-No. 6)]

The Duluth Missabie and Iron Range Railway Co.; Abandonment in St. Louis and Lake Counties, MN; Findings

The Commission has issued a certificate authorizing The Duluth Missabie and Iron Range Railway Company to abandon its 29.403-mile rail line between Duluth (milepost .901) and Two Harbors (milepost 26.0) in St. Louis and Lake Counties, MN. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 86-2426 Filed 1-31-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Order Pursuant To Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 17, 1986 a proposed Consent Order in *United States* v. *New Boston Coke Corporation*, Civil Action No. C-1-84-1427, was lodged with the United States District Court for the Southern District of Ohio. The proposed Consent Order concerns control of air pollution at New Boston's coke battery in New Boston, Ohio. The proposed Consent Order requires the defendant to comply with regulations limiting emissions and pay a civil penalty of $5,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *New Boston Coke Corporation*, D.J. Ref. 90-5-2-1-710.

The proposed Consent Order may be examined at the office of the United States Attorney, Southern District of Ohio, 220 U.S. Post Office and Courthouse, Fifth and Main Streets, Cincinnati, Ohio 45202 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount $2.30 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-2240 Filed 1-31-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Performance Standards for Program Years (PY) 1986 and 1987

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of performance standards for PY 1986 and 1987.

SUMMARY: Section 106 of the Job Training Partnership Act (JTPA) requires the Secretary of Labor to prescribe performance standards for adult and youth training programs under Title II-A and dislocated worker programs under Title III of JTPA. Based on the experience since JTPA programs began, the numerical values of the performance standards are being changed for Program Years (PY) 1986 and 1987. (July 1, 1986 - June 30, 1988).

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies. Telephone (202) 376-6700.

SUPPLEMENTARY INFORMATION: On January 2, 1986, a document was published in the **Federal Register** at 51 FR 132 announcing new performance standards for Job Training Partnership Act (JTPA) Title II-A adult and youth training programs and Title III dislocated worker programs. Such performance standards are required by JTPA § 106. Interested parties were invited to submit written comments through January 22, 1986.

A. Purpose of Performance Standards

The Secretary of Labor (Secretary) issues performance standards in order to determine whether the basic measures of JTPA, increased earnings and employment and reduced welfare dependency, are being met. On the basis of the Secretary's Performance Standards, Governors must set standards for each of their service delivery areas (SDAs). To date, the Secretary has set seven standards for the initial nine-month period of JTPA and for Program Years (PY) 1984-85. In the January 2, 1986 issuance, the Secretary proposed to revise the numerical values for these same seven standards. This issuance presents those standards and also consolidates into one document the implementation instructions for performance standards.

B. Authority to Issue Performance Standards

Section 106 of the Act directs the Secretary to establish performance standards for Title II-A adult and youth and Title III dislocated worker programs.

C. Discussion of Comments

The Department of Labor (Department) received 17 written comments on the proposed issuance within the comment period. The following is a summary of the comments on each of the major issues raised by the commenters and the Department's response

Applicable Period

Comments were received that section 106(d)(4)(A) of JTPA requires that the Secretary not modify the standards more often than once every two program years. The Department agrees and hereby clarifies that these standards are applicable to PY 1986 and 1987.

Adult Standards

Commenters expressed concern that the adult standards were too stringent, and that as a result programs would be forced to avoid serving the hard to serve. The new cost per entered employment standard would result in shorter training. The Department has very carefully considered the likely impact of the standards on the persons served and the types of training and services provided. The manner in which the standards have been set is based on the expectation that three quarters of the service delivery areas (SDAs) will exceed the standards if performance is comparable to PY 1984. Therefore, it is the judgment of the Department that the adult standards are not excessively stringent. Furthermore, Governors have the authority to adjust the standards in accordance with section 106(e) of JTPA to recognize circumstances which would make the accomplishment of the standards more difficult. To assist in this, the Department has provided a methodology to the Governors to make such adjustments. This methodology also adjusts the cost standard for the length of the training. Therefore, Governors need not be concerned that SDAs will be penalized for longer term training.

Youth Standards

Some commenters felt that the positive termination standards were too stringent and that the Department was assuming that all areas would have youth competency systems in place. During the last two years, the Department has encouraged the development of youth competency systems and has provided the opportunity for competency attainment to count as a positive termination. The Department also advised that the positive termination standards should be adjusted to account for competency systems still under development. The Department now considers that a sufficient period of time has been allowed to implement youth competency systems and that it is reasonable to set standards which recognize that such systems are now operational. Among those SDAs that reported youth competency attainments in PY 1984, the positive termination rates were, on average, higher than the proposed levels. Accordingly, the Department is retaining the proposed youth standards.

Incentives for Exceeding the Standards

Some commenters questioned the provision in the section entitled "Application of the Performance Standards" that an SDA cannot be precluded from receiving an incentive award if it exceeds all seven of the standards set in accordance with the Secretary's measures. They wanted to preclude the provision of incentives to SDAs which failed to reach particular administrative requirements, such as levels of expenditure, youth service levels, or linkage requirements. Other commenters specifically indicated that they supported this provision, and that it would be counter to the statute to apply such additional requirements before receiving an incentive award. The Department considers that withholding incentive awards is an inappropriate way to enforce statutory or other State imposed administrative requirements.

Sanctions

Commenters expressed concern that the provision for sanctioning under section 106(h) of JTPA, described at Section D.2. of the issuance would cause confusion regarding the authority to take sanction action as described in other parts of the statute. Therefore, it is hereby clarified that this issuance in no way limits the authority of the Governor to take sanction action pursuant to statutory authority other than Section 106(h).

Signed at Washington, D.C., this 30th day of January, 1986.

Roger D. Semerad,

Assistant Secretary for Employment and Training.

Appendix

[Training and Employment Information Notice No. ——]

January 1986.

Performance Standards for PY 1986 and 1987

Authority: Job Training Partnership Act, Pub. L. 97-300, Section 106, Implementing Regulations, 20 CFR 629.46, March 15, 1983.

1. *Purpose.* To transmit to State JTPA Liaisons the Secretary's National Numerical Standards and implementing instructions for Program Years (PY) 86 and 87.

2. *Background.* Section 106 of JTPA directs the Secretary to establish performance standards for adult, youth and dislocated worker programs. In accordance with the Act, the Secretary established standards based on CETA

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data for the initial nine month period of JTPA and for the first two program years. The Secretary also issued implementing instructions for the first two program years and parameters for adjusting the Secretary's Standards. This issuance provides new numerical levels for existing standards for Title II–A, a goal for Title III programs, and updated and consolidated implementing instructions.

3. *Performance Measures and the Secretary's National Numerical Standards for PY 86 and 87 for Title II–A.* For PY 86 and 87, the performance measures will remain the same as they have been since the inception of JTPA.

Four of the Secretary's Standards have been derived from PY 84 JTPA Title II–A performance data and have been set at a point at which 75% of the SDAs are expected to exceed. These standards are the entered employment rates for adults, adult welfare recipients, and youth, and the cost per entered employment. The average wage standard remains unchanged from the previous PY 84/85 level. This level reflects the Departmental commitment to encouraging placement in better quality jobs. The youth positive termination rate is set higher than the PY 84 experience in anticipation of increased positive outcomes due to youth competency attainment. The youth cost per positive termination remains unchanged at the PY 84/85 level to allow for systemwide enrichment of services to youth.

Adults

A. *Entered Employment Rate:* 62%.
B. *Cost per Entered Employment:* $4374.
C. *Average Wage at Placement:* $4.91.
D. *Welfare Entered Employment Rate:* 51%.

Youth

A. *Entered Employment rate:* 43%.
B. *Positive Termination Rate:* 75%.
C. *Cost per Positive Termination:* $4900.

4. *Implementation Provisions.* In accordance with Section 106 of the Act, the following implementation requirements must be followed:

A. *Required Standards.* Governors must set for each SDA a numerical performance standard for each of the seven Secretary's Standards.

B. *Setting the Standards.* The Governor may set the SDA's standards by using the Secretary's numerical standards or by adjusting standards. In accordance with Section 106(e), such adjustments must conform to the Secretary's parameters, which are as follows:

1. Procedures must be:
- Responsive to the intent of the Act,
- Consistently applied among the SDAs,
- Objective and equitable throughout the State,
- In conformance with widely accepted statistical criteria;

2. Source data must be:
- Of public use quality,
- Available upon request;

3. Results must be:
- Documented,
- Reproducible; and

4. Adjustment factors must be limited to:
- Economic factors,
- Labor market conditions,
- Characteristics of the population to be served,
- Geographic factors; and
- Types of services to be provided.

The Department has developed an adjustment methodology which is available for Governors to use at their option. The Department's methodology conforms to the parameter criteria cited above. Should the Governor choose to use an alternate methodology, or make additional adjustments, it must conform to the parameter criteria and be documented in the Governor's Coordination and Special Services Plan prior to the program year to which they apply.

In the case of an appeal from an SDA concerning the imposition of a reorganization plan for failure to meet the performance standards for two consecutive years, the Secretary will make the final decision in accordance with section 106(h)(4) of the Act and 20 CFR 629.46(d)(6). In making this decision, the Secretary will be predisposed to uphold the Governor's determination concerning the application of the performance standards, if the Governor elected to use the nationally developed adjustment methodology to vary the performance standards. If the Governor, however, elected to use an alternative methodology to vary the standards, the Secretary will make this decision on a case by case basis, based on the validity of the methodology and its uniform application throughout the State.

The State Job Training Coordinating Council must have an opportunity to consider adjustments to the Secretary's Standards and to recommend variations.

C. *Performance Standards Definitions.* Governors must compute the performance of their SDAs in accordance with the definitions included in the attachment.

D. *Application of the Performance Standards.* In applying the Secretary's Standards, Governors must conform to the following:

1. An SDA cannot be precluded from receiving an incentive award in accordance with section 202(b)(3)(B) if it exceeded all seven of the standards set in accordance with the Secretary's measures. Standards beyond those specified by the Secretary can be the basis for making rewards.

2. An SDA can only be sanctioned under section 106(h) for failure to meet standards set in accordance with the Secretary's measures. If an SDA fails to meet for two consecutive years all seven of the standards set in accordance with the Secretary's measures, then it must be sanctioned by the Governor. The Governor's policy on sanctions may provide for sanctioning for missing fewer than all seven of the standards.

3. Eligibility for incentive awards pursuant to section 202(b)(3)(B) must be based on exceeding, not just meeting standards.

4. The amount of the incentive award must be determined by the extent to which the standard(s) are exceeded, and not simply based on the number of standards exceeded. Further adjustments can be made to the incentive award amount, including adjustments based upon grant size, service to the hard-to-serve, and expenditure level.

5. Governors must specify their incentive award policy under section 202(b)(3)(B) and sanctions policy under section 106(h). State sanctioning policy must include a definition of "failure to meet" and the timeframe that constitutes the period on which sanction action will be taken. The failure to receive incentive funds for two consecutive years does not necessarily constitute failure to meet the standards pursuant to section 106(h).

5. *Performance Standards Provisions for Title III.* Governors are required to set an Entered Employment Rate standard for their Title III formula funded programs and are encouraged to establish goals for Cost per Entered Employment. Because there are no incentive or sanction provisions for Title III performance, the Title III standard serves as a guide for the expected level of performance. In addition, the Secretary is specifying a national goal of *60* % for the Entered Employment Rate. This goal has been established on the same basis as the Secretary's Standards for Title II–A; that is, if Title III programs continue to perform in the same manner as they did in PY 84, that 75% of the system should exceed the goal.

16. *Inquiries.* Questions concerning this issuance may be directed to Hugh Davies on 202–376–6700.

Attachment—Definitions for Performance Standards

The following defines the Title II–A performance standards:

Adult

1. Entered Employment Rate.—Number of adults who entered employment as a percentage of the number of adults who terminated.

2. Cost per Entered Employment.—Total expenditures for adults divided by the number of adults who entered employment.

3. Average Wage at Placement.—Average wage for all adults who entered employment at the time of termination.

4. Welfare Entered Employment Rate.—Number of adult welfare recipients who entered employment at termination as a percentage of the number of adult welfare recipients who terminated.

Youth

1. Entered Employment Rate.—Number of youth who entered employment at termination as a percentage of the number of youth who terminated.

2. Positive Terminated Rate.—Number of youth who entered employment at termination plus the number of youth who met one of the youth employability enhancement* definitions at termination as a percentage of the number of youths who terminated.

3. *Cost per Positive Termination.*—Total expenditures for youth divided by the number of youth who entered employment at termination plus the number of youth who met one of the youth employability enhancement* definitions at termination.

*Youth Employability Enhancements include:

a. Attained PIC Recognized Youth Employment Competencies
b. Entered Non-Title II Training
c. Returned to Full-time School
d. Completed Major Level of Education
e. Completed Program Objectives (14–15 year olds)

[FR Doc. 86–2396 Filed 1–31–86; 8:45 am]
BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the advisory Committee on Reactor Safeguards will hold a meeting on February 13–15, 1986, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting as published in the **Federal Register** on January 21, 1986.

Thursday, February 13, 1986

8:30 A.M.–8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.–10:45 A.M.: radioactive Waste Management and Reactor Radiological-Effects (Open)—The members will hear and discuss activities considered during the January 15–17, 1986 subcommittee meeting on radioactive waste management and control, including proposed *de minimis* levels for radioactive releases to the environment, as well as features related to research, regulation, and policy coordination on this subject. Representatives of the NRC Staff, DOE, and the nuclear industry will participate as appropriate.

10:45 A.M.–11:45 A.M.: ACRS Procedures and Administration (Open)—The ACRS members will hear and discuss the remainder of the report of its Subcommittee on Procedures and Administration regarding the recommendations of the Panel on ACRS Effectiveness and other aspects of ACRS procedures and practices.

11:45 A.M.–12:15 P.M.: Future Activities (Open)—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:15 P.M.–3:15 P.M.: Safety Research Program (Open)—The members will discuss the proposed ACRS Annual Report to the U.S. Congress regarding the proposed NRC safety research program and budget for FY 1987.

3:15 P.M.–5:15 P.M.: Three Mile Island Unit 2 Core Criticality (Open)—Members of the Committee will hear and discuss the report of its subcommittee regarding the actions being taken to prevent criticality of the Three Mile Island Unit 2 core during its disassembly.

5:15 P.M.–6:30 P.M.: San Onofre Nuclear Generating Station (Open/Closed)—The Committee members will hear and discuss the report of its subcommittee regarding loss of AC power at this Station and resulting plant damage due to water hammer.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

Friday, February 14, 1986

8:30 A.M.–9:30 A.M.: NRC Outage Inspection Program (Open)—The members will hear and discuss a briefing by representatives of the NRC Staff regarding an NRC Outage Inspection Program.

9:30 A.M.–11:45 A.M.: Security Provisions at Nuclear Power Plants (Open)—The Committee will consider proposed changes in NRC regulations regarding protection of nuclear plants from sabotage by insiders. Representatives of the NRC and the nuclear industry will take part in the discussion as appropriate.

11:45 A.M.–12:00 Noon: ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of designated subcommittee activities regarding the seismic qualification of safety-related equipment in nuclear power plants.

1:00 P.M.–3:30 P.M.: Use of the "Check-Operator" Concept for Requalification of Reactor Operators (Open)—The members will hear and discuss reports from representatives of the NRC Staff, the FAA, and the nuclear industry regarding the use of a "check-operator" for requalification of nuclear power plant operators.

3:30 P.M.–5:00 P.M.: DOE High-Level Radwaste Program (Open)—The members will hear and discuss a briefing by representatives of DOE regarding the anticipated DOE program for the management and disposal of civilian, high-level, radioactive wastes.

5:00 P.M.–6:30 P.M.: Reactor Operations (Open/Closed)—The members will hear and discuss reports from the designated ACRS subcommittee, members of the NRC Staff, and representatives of the nuclear industry as appropriate regarding recent operating events and incidents at nuclear power stations. The subcommittee will also report to the full Committee regarding NRC proposed changes in requirements for nuclear power plant technical specifications.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the topics being considered.

Saturday, February 15, 1986

8:30 A.M.–12:00 Noon: Preparation of ACRS Reports (Open)—Discuss proposed reports to the U.S. Congress and to the NRC regarding items considered during this meeting.

1:00 P.M.–3:30 P.M.: ACRS Subcommittee Activities (Open)—Discuss ACRS reports regarding safety-related matters proposed by ACRS

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Members including: seismic design margins in nuclear facilities; the state of nuclear power plant safety; reactor pressure vessel pressurized thermal shock-related transients; containment sump performance in nuclear stations; *de minimis* levels of radiation dose in risk calculations; venting of nuclear power plant containments.

Procedures for the conduct of and participation of ACRS meetings were published in the **Federal Register** on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: January 29, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–2296 Filed 1–31–86; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, March 6, 1986
Thursday, March 13, 1986
Thursday, March 20, 1986
Thursday, March 27, 1986

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632–9710).

February 13, 1986.

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 86–2322 Filed 1–31–86; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24006; 70–6790]

Central and South West Corp. Proposal to Increase Debt and Decrease Equity Investment; Extend Period of Investment Authority

January 28, 1986.

Central and South West Corporation ("CSW"), P.O. Box 220164, Dallas, Texas 75222, a registered holding company, has filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to sections 6(a), 7, 9(c)(3) and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50 thereunder.

By order dated January 22, 1985 (HCAR No. 23578), CSW and its non-utility subsidiary, CSW Financial, Inc. ("CSWF"), were authorized to form a joint venture with Manufacturers Hanover Leasing Corporation ("Manufacturers"), to be owned 80% by CSW or CSWF, and 20% by Manufacturers. The Commission authorized the investment by the joint venture, CSW Leasing, Inc. ("Leasing"), of up to $250 million ($200 million from CSW and $50 million from Manufacturers) in the equity portion of leveraged leases to finance up to $1 billion of leased property through December 31, 1986. Of the $200 million from CSW, $60 million would come from equity contributions from CSW and $140 million from borrowings by CSW, CSWF or Leasing on the terms set forth in the order. Through September 30, 1985, Leasing had invested $18,809,381 in the equity portion of leveraged leases.

CSW now proposes to extend its investment authority through December 31, 1987. CSW further proposes that

CSW's $200 million of authority will be comprised of up to $40 million in equity (20% equity) with the amount of borrowings and guarantees by CSW and Leasing not to exceed $160 million (80%). As of September 30, 1985, CSW's investment in the equity of Leasing was $18,813,000 of which $13,453,420 was from borrowings by CSW. CSW's experience since January has indicated that this rigid 70%–30% mix debt and equity has been difficult to maintain and that a 20% equity ratio would be more appropriate, allow for a more efficient use of capital, and would permit greater flexibility without any significant adverse impact on borrowing costs.

The post-effective amendment to the application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall idenfify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–2318 Filed 1–31–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24004; 70–7197]

Central Power and Light Co., and Central and South West Corp.; Proposed Equity Investment in Subsidiary

January 28, 1986.

Central and South West Corporation ("CSW"), 2400 San Jacinto Tower, Dallas, Texas 75201, a registered holding company, and its electric utility subsidiary, Central Power and Light Company ("CP&L"), P.O. Box 2121, Corpus Christi, Texas 78403, have filed an application-declaration with this Commission pursuant to section 6(a), 7, 9(a), 10 and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45, and 50(a)(3) thereunder.

CSW proposes to make equity investments in CP&L, either through cash capital contributions or purchases of common stock or both, in an amount up to $100,000,000 through December 31, 1987. CP&L intends to use the additional equity to finance its construction expenditures and to repay short-term outstanding from time to time. CSW's equity investments will be financed from internally generated funds.

The application-declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall idenfify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–2318 Filed 1–31–86; 8:45 am

BILLING CODE 8010–01–M

[Release No. 35–24005; 70–7192]

Georgia Power Co.; Proposal To Enter Into Pollution Control Financing and To Issue and Sell First Mortgage Bonds and Preferred Stock

January 28, 1986.

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration with this Commission pursuant to sections 6(b) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 thereunder.

Georgia proposes the financing of certain pollution control facilities ("Facilities") at one or more of its electric generating plants located in various counties in the state of Georgia, and/or the issuance and sale of its first mortgage bonds ("New Bonds") with a term of from five to thirty years in one or more series from time to time not later than March 31, 1987 in the aggregate principal amount of up to $550,000,000.

If any part of the $550,000,000 is used for Facilities, it is proposed that the Development Authority ("Authority") of each such county involved will issue its revenue bonds ("Revenue Bonds") to make loans to Georgia, pursuant to a loan agreement, for the Facility located in its county ("Project") in return for a non-negotiable promissory note ("Note"). The Note will provide for payments corresponding to payments of the principal, premium, and interest on the Revenue Bonds.

In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of Georgia's first mortgage bonds, Georgia may secure its obligations under the Note by issuing Collateral Bonds, delivering a Letter of Credit, causing an insurance policy to be issued, conveying to the Authority a subordinated security interest in the Project or other property of Georgia, or guaranteeing the payment of the principal, premium, if any, and interest on the Revenue Bonds.

Georgia also proposes to issue and sell up to $100,000,000 of preferred stock, without par value, but a stated value of up to $100 per share ("New Preferred Stock") in one or more series from time to time not later than March 31, 1987. Both the New Bonds and the New Preferred Stock will be sold in compliance with Rule 50 unless Georgia requests an exception there from by amendment.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 21, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by Certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, application-declaration as filed or as it

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may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2320 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14923; 812-6268]

Pioneer Bond Fund, et al.; Application for an Order Pursuant to Section 11(a) of the Investment Company Act of 1940 Permitting Certain Offers of Exchange

January 28, 1986.

Notice is hereby given that Pioneer Bond Fund (the "Reduced Loan Fund"), Pioneer Fund, Pioneer II and Pioneer Three ("Load Funds" and collectively with the Reduced Loan Fund, the "Funds"), and The Pioneer Group, Inc. (the "Underwriter," and collectively with the Funds, "Applicants"), 60 State Street, Boston, MA 02109, filed an application on December 24, 1985, and amendments thereto on January 17 and 23, 1986, for an order pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of certain offers of exchange. Applicants also request that such order extend to future open-end investment companies ("Additional Funds") for which the Underwriter serves as principal underwriter. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, the Funds are registered as open-end investment companies under the Act. Applicants state that the Underwriter serves as principal underwriter for the Funds and maintains a continuous public offering of shares of each Fund. Applicants further state that shares of each of the Load Funds are offered at their respective net asset values plus a sales charge, and that shares of the Reduced Loan Fund are offered at net asset value plus a sales charge that is lower than the sales charge applicable to the Load Funds. Applicants represent that the sales charge for shares of the Load Funds is a percentage of the public offering price for such shares, which percentage varies with the amount of the investment in accordance with the following table:

Amount of purchase	Sales charge as percentage of offering price
Less than $10,000	8.50
$10,000 but less than $25,000	7.75
$25,000 but less than $50,000	6.00
$50,000 but less than $100,000	4.50
$100,000 but less than $250,000	3.50
$250,000 but less than $400,000	2.50
$400,000 but less than $600,000	2.00
$600,000 but less than $5,000,000	1.00
$5,000,000 or more	.25

Applicants further represent that the sales charge for shares of the Reduced Load Fund is also a percentage of the public offering price for such shares, which percentage varies with the amount of the Investment and is assessed in accordance with the following table:

Amount of purchase	Sales charge as percentage of offering price
Less than $100,000	4.50
$100,000 but less than $250,000	3.50
$250,000 but less than $400,000	2.50
$400,000 but less than $600,000	2.00
$600,000 but less than $5,000,000	1.00
$5,000,000 or more	.25

Applicants state that the Underwriter may become principal underwriter for certain Additional Funds, which may be considered Load or Reduced Load Funds. With respect to the order sought on behalf of the Additional Funds, Applicants undertake to limit any future exchange offers involving such Additional Funds to the terms and conditions described in the application.

Applicants state that exchanges of shares of certain Funds for shares of other Funds are currently permitted without a sales charge, based on the relative net asset values of such shares at the time of the exchange. Subsequent to the granting of the order requested herein, Applicants intend that all offers of exchange will be effected as follows:

(1) Shares of any Fund ("Initial Fund") that were not acquired by an exchange for shares of another Fund, and reinvested shares accrued on such shares, may be exchanged ("Initial Exchange") for shares of any Fund ("Successor Fund") based on relative net asset value plus the sales charge applicable to the shares of the Successor Fund less the higher of (i) the sales charge, if any, the exchanging shareholder paid for the shares of the Initial Fund or (ii) the sales charge, if any, applicable to the Initial Fund at the time of the exchange;

(2) Shares of any Fund ("Predecessor Fund") acquired after an Initial Exchange by one or more exchanges for shares of one or more Funds, and reinvested shares accrued on the shares of such Predecessor Fund, may be exchanged for shares of any Successor Fund based on relative net asset value plus the sales charge applicable to the shares of the Successor Fund less the higher of (i) the total sales charge, if any, the exchanging shareholder paid with respect to the acquisition of the shares of the Initial Fund and all exchange transactions thereafter leading to the acquisition of the shares of the Predecessor Fund or (ii) the sales charge, if any, applicable to the Predecessor Fund at the time of the exchange.

Applicants state that exchange transactions may be effected only if the net asset value of the shares to be exchanged is at least equal to the minimum initial amount required for investment in a particular Fund or the minimum amount required for reinvestment in the shares to be acquired, as the case may be. Applicants represent that a shareholder desiring to exercise an exchange will be provided a prospectus of the Fund whose shares such shareholder wishes to acquire by an exchange transaction. Applicants also state that they may terminate the exchange privilege, in which case no notice of such termination will be furnished to the shareholders other than through the Funds' next effective prospectuses.

Applicants assert that that purpose of the exhcange plan is to permit a shareholder whose investment objectives change to transfer his or her investment into a different Fund, without incurring an additional full sales charge. Applicants note that it is possible under limited circumstances for an exhcanging shareholder to pay a lower aggregate sales charge for a Fund's shares than a shareholder acquiring such Fund's shares by direct purchase. Nonetheless, Applicants submit that the exchange plan provides equitable treatment for existing shareholders of each Fund as well those exchanging into a Fund without disrupting the Funds' distribution system.

Applicants represent that commissions payable to sales representatives in connection with the proposed exchange transactions will typically be less than commissions on direct purchases. In view of this fact, Applicants believe there is not sufficient financial incentive for a sales representative of the Underwriter to initiate exchanges for his or her own benefit. Applicants represent that the Underwriter has established sufficient internal monitoring and review procedures to ensure that exchanges are made only for the benefit of the shareholder and in accordance with the shareholder's investment objectives.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 21, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2321 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22842; File No. SR-AMEX-86-02]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Extending the Close of Trading and Exercise Cut-off Time for Options on the AMEX's Major Market Index ("XMI") From 4:10 P.M. to 4:15 P.M.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 16, 1986 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to amend Exchange Rules 1 and 903C to extend trading hours in Major Market Index (XMI) options until 4:15 p.m., and to amend Rule 980C to similarly extend the cut-off time for exercising XMI options.

Italics indicate material proposed to be added.

Rule 1. Hours of Business

No change.

. . . Commentary

.01 No change.

.02 Options Trading After 4:10 p.m.—The Board has determined that no options series shall freely trade after 4:10 p.m. *except that Major Market Index options shall freely trade until 4:15 p.m. each business day.* However, one trading rotation in any class of options contracts may be effected even though employment of the rotation will result in the effecting of transactions on the Exchange after 4:10 p.m., provided:

(1) Trading in the underlying security opens or re-opens after 3:30 p.m. (N.Y. time); and promptly thereafter, the Exchange commences an opening or re-opening rotation in the corresponding options; or

(2) Such rotation was intitated due to unusual market conditions pursuant to Rule 918, and (i) notice of such rotation is publicly disseminated no later than the commencement of the rotation or 4:00 p.m. (N.Y. time), whichever is earlier; or (ii) notice of such rotation is publicy disseminated after 4:00 p.m. but before 4:10 p.m., and the rotation does not commence until ten minutes after news of such rotation is publicly disseminated.

(3) A trading rotation commenced under either (1) or (2) above, must be authorized by two (2) Floor Officials.

If prior to 4:10 p.m., a trading rotation is in progress and a Senior Floor Official and a Floor Official determine that a final trading rotation is needed to assure a fair and orderly market, the rotation in progress shall be halted and such final rotation begun as promptly as possible after 4:10 p.m. Any trading rotation commenced after 4:10 p.m. must be approved by a Senior Floor Official..

Rule 903C Series of Stock Index Options

(a) No Change.

(b) No Change.

(C) on the business day prior to the expiration of a particular series of index options, such options shall freely trade until 4:10 p.m., *unless the Board of Governors has established different hours of trading for certain index options.*

. . . *Commentary*

.01 Transaction in Major Market Index options may be effected on the Exchange until 4:15 p.m., each business day, including the business day prior to expiration.

Rule 980C Exercise of Stock Index Option Contracts

(a) With respect to stock index option contracts, clearing members are required to follow the procedures of The Options Clearing Corporation for tendering exercise notices, and member organizations are also required to comply with the following procedures.

(i) A memorandum to exercise any stock index option contract, *other than an option contract on the Major Market Index,* issued or to be issued in a customer or market maker account at The Options Clearing Corporation must be received or prepared by the member organization no later than 4:10 p.m. and must be time stamped at the time it is received or prepared. Except with respect to exercises of 25 or more contracts pursuant to sub-paragraph (iii) of this Rule, member organizations must accept exercise instructions until 4:10 p.m. each business day.

(ii) A memorandum to exercise any stock index option contract, *other than an option contract on the Major Market Index,* issued or to be issued in a firm account at The Options Clearing Corporation must be prepared by the member organization no later than 4:10 p.m., and must be time stamped at the time it is prepared.

(iii) Any member or member organization that intends to submit an exercise notice for 25 or more stock index option contracts, *other than option contracts on the Major Market Index,* in the same series on the same business day on its own behalf or on behalf of an individual customer must deliver an "exercise advice" on a form prescribed by the Exchange to a place designated by the Exchange no later than 4:10 p.m. For purposes of determining compliance with this Rule, exercises for all accounts controlled by the same individual or entity must be aggregated.

(iv) With respect to options on the Major Market Index, members and member organizations must comply with the provisions of sub-paragraphs (i), (ii), and (iii) of this Rule, but the deadline for such compliance shall be 4:15 p.m.

(b) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under current Exchange rules, Major Market Index (XMI) options, as well as all other index options, trade until 4:10 p.m. every day. In comparison, the XMI futures contract is traded on the Chicago Board of Trade (CBT) until 4:15 p.m. every day. Market participants frequently assume positions in XMI futures contracts to hedge their positions in the XMI options and, conversely, hedge their options contracts with futures contracts.

To coordinate the daily close of trading in the Amex's XMI options with the close of trading in the CBT's XMI futures contract, the Exchange proposes that Exchange Rules 1 and 903C be amened to extend trading hours in XMI options until 4:15 p.m. At present, market participants who assume positions in both XMI futures and options contracts are unable to adjust their positions in the XMI options in response to price movements in the XMI futures during the last five minutes of futures trading. Since the Amex has seen a surge in XMI options trading volume since the introduction of XMI futures in July 1984, the synchronization of the close of trading in both XMI options and futures is likely to further enhance depth and liquidity in the options market.

Further, the rule change also would benefit market participants using XMI options by ensuring the availability of last sale information of the component XMI stocks. Occasionally, in periods of extremely heavy trading volume, last sale information for the underlying stocks may not be complete at 4:10 p.m. due to tape runoff.

The Exchange also proposes to amend the corresponding exercise requirements for index options. Exchange Rule 980C currently requires members and member organizations to prepare and time-stamp all index option exercise instructions by 4:10 p.m. The Rule also requires that "exercise advices" be delivered to the Exchange trading floor by 4:10 p.m. when 25 or more index option contracts in the same series are to be exercised for an account. The 4:10 p.m. cut-off time was established to prevent option holders from having an unfair advantage of deciding whether to exercise their options based on news disseminated after the close of trading. Since it is proposed that XMI options trade until 4:15 p.m., a similar cut-off time needs to be established for persons who wish to exercise such options.

The proposed changes are consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by providing investors with additional trading opportunities for XMI options. Therefore, the proposed rule changes are consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Chonge Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change whould be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submisison, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

January 27, 1986.

[FR Doc. 86-2315 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22819; File No. SR-BSE-85-9]

Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange, Inc., Relating to Amendments to Chapter XIV of the Boston Stock Exchange Rules

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1985, the Boston Stock Exchange, Inc. ("BSE"), filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the BSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to enhance the effectiveness of floor clerks by requiring them to pass the Floor Member Examination within three months of their registration. An unregistered clerk cannot assist members in transmitting or executing orders prior to passing the examination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Chonge

(1) *Purpose.* The proposed change under Chapter XIV of the BSE Rules of the Board of Governors provides that any individual desiring registration as a floor clerk must (i) submit an application to the Exchange, (ii) be fingerprinted, and (iii) pass the Exchange-administered Floor Member Examination.

Under the proposed rule change, an individual with the consent of the Exchange, may perform limited clerical duties prior to passing the Floor Member Examination, but cannot assist members in transmitting or executing orders prior to passing the examination.

In addition, a floor clerk performing limited clerical duties with the consent of the Exchange for three months without having passed the Floor Member Examination shall be subject to revocation of such consent.

(2) *Basis.* The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934, as amended, in that the rule will enhance the training of those clerks employed by member firms on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Boston Stock Exchange does not believe that the proposed change will have an adverse impact upon competition. The proposed measures are designed to improve floor clerk effectiveness.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participonts or Others

On April 26, 1984, the Board of Governors of the BSE chartered the Special Committee on Specialists, chaired by William F. Devin. The Committee was charged with reviewing and evaluating the specialist system at the BSE and with making recommendations to strengthen that system. During the succeeding months, comments were solicited from all members of the BSE as well as from a broad spectrum of the brokerage community. These comments were solicited through questionnaires, personal interviews and general requests for comment. The changes proposed by this filing represent conclusions reached by the Committee after consideration of the comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 22, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2316 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22837; File No. SR-MSE-85-6]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Midwest Stock Exchange, Inc. Relating to Amendments to MSE Article XXX, Rule 6, Blue Book Section and Cabinet Procedures

The Midwest Stock Exchange, Inc. ("MSE") submitted on June 21, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSE Article XXX, Rule 6; Blue Book Section C, Rules 1, 2, 10, and 17, and the MSE's Cabinet Procedures.[1] The amendment to Article XXX, Rule 6, which also will be incorporated, when amended, into new Rule 2 [2] under Section C of the MSE Blue Book, requires that two members of the Committee on Floor Procedure rule on an opening of an MSE-traded issue where any unusual condition exists and for a third member to break any impasse regarding such rulings. The MSE also has proposed to require under new Rule 2 that an MSE specialist display a continuous two-sided market following an independent opening by a specilist in a dually listed issue. Further, Rule 2, as proposed, provides that specialists not participating in an independent MSE opening are not thereby relieved of their obligations, among other things, to disseminate a continuous two-sided market.

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[1] The MSE also proposed an amendment to Article XXXIV, Rule 9, regarding the extent to which registered market markers may participate in the opening of a security, which provided that such participation could comprise up to one-third of the net *MSE* imbalance of purchase and sale orders on the Exchenge (emphasis added). MSE's Amendment No. 1 to the filing, submitted on November 13, 1985, however, proposed, among other things, to eliminate the addition to existing Rule 9 (regarding the "MSE" imabalance), so that the net effect would be to leave the language of the existing rule unchanged. *See* discuision of Amendment No. 1 in note 3, *infra*.

[2] The proposal would establish a new Rule 2 under Section C, and renumber the other rules under this Section (*i.e.*, existing Rules 2 through 23) accordingly.

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In addition, Section C, Rule 1 would require that quotes disseminated by a specialist prior to the opening in the primary market must be firm and available to any order seeking execution at that price. Proposed Section C, Rule 11 would clarify that the MSE specialist is not required to fill at the opening a pre-opening limit order in the MSE Book unless there was price or quote penetration in the primary market of the price of the MSE order, and would add a provision limiting the specilist's obligation to fill such order (except where a floor official determiend otherwise based on the amount of opening volume at the limit price) until there is exhustion of the bid or offer at the limit price in the primary market. Further, proposed Section C, Rule 18 clarifies that the specialist's book be properly represented during the trading session, and provides that (1) the book be attended from one half hour before the opening to one half hour after the close, and (2) the time requirement may be increased by the Committee on Floor Procedure during "unusual trading periods."

The amendments to Cabinet procedures will govern order eligibility for the Cabinet System, procedures governing priorities for order executions, order processing and trade reporting, notification of two floor officials for executions more than ½ point away from the last sale price, and procedures for agency cross transactions.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22218, July 11, 1985) and by publication in the **Federal Register** (50 FR 29034, July 17, 1985). No comments were received regarding the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 27, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2317 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[3] The MSE submitted to the Commission Amendment No. 1 to the proposed rule in response to comments from the Commission staff. In addition to the proposed amendment discussed in note 1, *supra*, Amendment No. 1 would amend proposed Rule 11 under Blue Book Section C by clarifying the example illustrating the proposed Rule, and amend proposed Rule 1 under Section C by changing the hour from which the specialist's book must be attended to 8:00 a.m. in accordance with the MSE's new earlier opening time. In addition, the Amendment proposes an adjustment to 8:00 a.m. for certain proposed Cabinet System Procedures. Further, Amendment No. 1 extends the requirement of notification of two floor officials to executions more than ¼ point from the last sale price for stocks of $10 or less.

[Release No. 34-22838; SR-NYSE-85-44]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE") submitted on December 12, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend the NYSE regulatory oversight services fee ("regulatory fee") imposed under NYSE Rule 129 by increasing the charge to its members and member organizations for regulatory oversight services from $0.35 to $0.42 per $1,000 of gross revenues as reported in the FOCUS report.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22725, December 18, 1985) and by publication in the **Federal Register** (50 FR 53049, December 27, 1985). No comments were received with respect to the proposed rule change.

The primary purpose of the proposed rule change is to permit the NYSE to continue to recover costs associated with conducting FINOP regulatory oversight of its members. According to the NYSE, the revenues generated from the regulatory fee are used exclusively to defray FINOP related expenses incurred by the Exchange as DEA pursuant to Rule 17d-1 under the Act.[2] The NYSE estimates FINOP revenues for 1986 to be $18.3 million and notes that, even with the proposed fee increase, there will be a projected loss of $12.0 million in 1986 in the Regulatory Services Group,[3] $4.8 million of which would be related to FINOP activities.[4]

When the Commission, in March 1984, approved an increase in the regulatory oversight fee from $0.13 to $0.26 per $1,000 gross revenues, the Commission indicated that any subsequent increases in the fee would have to be accompanied by a detailed cost justification that would specify for each FINOP-related cost center those expenses related exclusively to the NYSE's responsibilities as DEA under Rule 17d-1.[5] In addition, the Commission recommended that the NYSE devise suitable means for tracking the amount of staff time devoted to carrying out the Exchange's FINOP responsibilities.

The NYSE has submitted statistical data with respect to the instant filing. Among the data provided were: (1) A financial summary of 1985 and 1986 estimated revenues and expenses of the NYSE's Division of Member Firm Regulation/Enforcement and Regulatory Standards ("Division") including detailed revenue breakdowns for FINOP, Sales Practices, and "Other" areas; (2) a time-tracking system summary for regulatory review units within the Division, including for a five-week period from the week of August 16, 1985 to the week of September 13, 1985, the number of staff hours devoted to FINOP activities, sales practices, market surveillance and other areas;[6] and (3) other information relating to expenses and staff allocations for 1985 and 1986.

Based on the data supplied to the Commission in connection with the proposed regulatory fee increase, the Commission is satisfied that the estimated 1986 revenues generated by the proposed fee will not exceed those NYSE expenses directly related to the Exchange's exclusive FINOP responsibilities as DEA under Rule 17d-1. The Commission will continue to monitor the NYSE's allocation of various Division cost centers to FINOP and non-FINOP areas and to assess the accuracy of the NYSE's projections with respect to the FINOP-related expenses of those cost centers. The Commission also will require cost justification for any further increases in the regulatory fee.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder. In particular, the Commission finds that the proposed increase in the regulatory fee is consistent with section 6(b)(4) of the Act, which requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members. A charge of $0.42 per $1,000 gross revenue is reasonable in light of the examination services that the NYSE is required to perform [7] and in view of the likelihood that such charges do not appear to exceed the Exchange's anticipated expenses in conducting FINOP-related services. The charge is equitable insofar as all NYSE members are assessed on the same basis.

The Commission finds further that the proposed increase in the regulatory fee is consistent with section 6(b)(8) of the Act, which requires that an exchange's rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Because all NYSE members are assessed on the same basis, and the fee relates to transactions effected other than on the NYSE only to the extent the NYSE is required to perform regulatory oversight functions with respect to such transactions, the Commission does not view the fee as having a significant adverse competitive effect on NYSE members or on other markets. Any burden imposed by such charges is clearly outweighed by the regulatory need to monitor the financial responsibility of NYSE members with respect to all of their financial and operational activities.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 27, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2314 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission first approved the NYSE's regulatory fee on gross revenues in Securities Exchange Act Release No. 20337, October 31, 1983; 48 FR 51188, November 7, 1983 (SR-NYSE-83-34). The purpose of the fee is to provide revenues for NYSE's financial and operational (FINOP) services and examinations of its members. The Commission approved an increase in the regulatory fee from $0.13 to $0.26 per $1,000 gross revenues as reported in the member's FOCUS report in Securities Exchange Act Release No. 20729, March 6, 1984; 49 FR 9525, March 13, 1984 (SR-NYSE-84-7) and an increase from $0.26 to $0.35 per $1,000 gross revenues in Securities Exchange Act Release No. 21843, January 9, 1985; 50 FR 2363, January 16, 1985 (SR-NYSE-84-34).

In its October 31, 1983, order approving the NYSE's initial regulatory fee under NYSE Rule 129, the Commission stated that a fee based on gross revenues is appropriate insofar as the NYSE is the designated examining authority ("DEA") pursuant to Rule 17d-1 under the Act with respect to conducting the FINOP examination of its members. The Commission noted that no other self-regulatory organization ("SRO") has responsibility for conducting such examinations, which necessarily include inspections of aspects of a member's business not limited to its activities in NYSE-listed securities.

[2] For those members for which the NYSE is the DEA, the NYSE is responsible for review and subsequent action on FOCUS reports, any schedules or forms thereof, and any other generally applicable financial reporting requirements imposed by other SROs, the NYSE, or the Commission. The NYSE's responsibility with respect to these financial reports includes review of compliance with Commission, NYSE, and other applicable SRO rules related to capital, margin, operations, books and records, reporting, and filing of documents. The NYSE is not responsible for conducting such a review for members for which the NYSE is not the DEA and the regulatory fee would not be imposed on such members.

[3] As of July 1, 1985, the Member Firm Regulatory Services Division was reorganized and renamed the Regulatory Services Group. The reorganization entailed dividing the cost centers of the Member Firm Regulatory Services Division into: (1) Member Firm Regulation Division, which is primarily responsible for the examination and surveillance of member firms, and sales practice requirements, and (2) Enforcement and Regulatory Standards Division, which is concerned primarily with enforcement activities, rule development and the upgrading of automated systems to analyze member firms' financial and operational standing.

[4] *See* Exhibits B, C and F of File No. SR-NYSE-85-44. The NYSE includes as FINOP revenues the regulatory fee on members' gross revenue, Regulation T extension fees, commodity exchange surveillance charges, and other service fees such as late filing, rule interpretation handbook, NYSE Guide, Fingerprinting and FOCUS Feedback charges. The NYSE estimates that FINOP revenues will increase from $15,514,000 in 1985 to $18,251,000 in 1986, assuming the $0.42 fee level is imposed. Total direct FINOP expenses will increase from $21,173,000 in 1985 to $23,006,000 in 1986, which includes an estimated increase in general and administrative expenses allocated to FINOP from 1985 to 1986.

[5] *See* Securities Exchange Act Release No. 20729, March 6, 1984; 49 FR 9525, March 13, 1984 (SR-NYSE-84-7).

[6] The time-tracking system summary indicated that 90% or more of staff time within the NYSE's regulatory review units was devoted to FINOP activities. This is consistent with the NYSE's projections of staff and expense allocations in connection with the Division's FINOP-related activities. The NYSE has instituted an automated time-tracking system and will provide the Commission with periodic summaries of regulatory review units' staff time allocated to FINOP and non-FINOP areas.

[7] In its October 1983 order approving the NYSE's $0.13 fee, the Commission stated that its determination that the fee is consistent with Section 6 of the Act is directly based on the universal nature of the FINOP examination. Self-regulatory organization fees calculated on members' gross revenues intended to support services directly related to transactions effected solely in that marketplace or for examinations which do not focus on all aspects of a member's business would not appear to be appropriate. *See* Securities Exchange Act Release No. 20337, October 31, 1983, note 18.

[Release No. 34-22844; File No. SR-OCC-85-21]

Self-Regulatory Organizations; Options Clearing Corporation; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1985, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Introduction

The proposed rule change would add a new section 602A to OCC's rules, adopting a new margin system for non-equity options and would make technical and conforming amendments to OCC's Rules and By-Laws to accommodate the new margin system. OCC beleives that the new system provides a more principled basis for margining non-equity options positions than OCC's present system and substantially reduces the potential for over and under-margining of such positions. Under the proposed system, options positions on the same underlying asset or on groups of closely-related underlying assets are margined as integrated portfolios. OCC stated that the system uses options price theory to project the cost of liquidating each portfolio of positions in the event of an assumed "worst case" change in the price of the underlying asset and sets OCC's margin requirements to cover that cost.

II. Description

Like OCC's current non-equity margin system, the new system calculates margin differently for market professionals than for public customers.

A. Firm and Market-Maker Accounts

Under the new system, OCC's Margin Committee will organize all classes of options (*i.e.*, puts and calls and European and American) on the same underlying asset into "class groups." Where the underlying assets for two or more class groups exhibit close price correlation, as determined by OCC (*e.g.*, broad-based stock indexes), those class groups will be organized, for margin purposes, into larger "product groups." The positions comprising a product group or class group (if the class group is not part of a larger product group) will be margined as integrated portfolios.[1]

The daily margin requirement for a class group or a product group has two components: "premium margin," which covers the cost of liquidating the

[1] OCC informed the Commission that when international options (*see* File No. SR-OCC-85-13, Securities Exchange Act Release No. 22354 (August 23, 1985), 50 FR 35340 (August 30, 1985)) are introduced, classes of international options will be deemed to constitute seperate class groups. Furthermore, margin credits for class groups and product groups consisting of international options will not be used to reduce margin requirements for other options positions and vice versa.

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positions comprising the group at the previous day's closing prices, and "additional margin," which covers the projected incremental cost of liquidating those positions in the event of a major adverse change in the price of the underlying asset.

The first step in calculating margin requirements is to net offsetting positions in each series within each class group (*i.e.*, long and short positions in the same series and type of option) against each other. This can be done in a firm or market-maker account because OCC has a lien on all long positions in the account to cover the Clearing Member's obligations on short positions in the account. The net long or short position in each series of options is used to calculate the appropriate margin.

The next step is to calculate premium margin for the non-offsetting positions in the class group. Premium margin, which is determined on the basis of the previous day's closing price, represents a position's current liquidating value (cost). Short positions result in a margin requirement and long positions result in a margin credit equal to the position's current liquidating value. Net premium margin for a class group may either result in a margin credit or requirement, depending on whether the positions comprising the class group would liquidate to a deficit or a credit.

The next set of calculations is to determine the appropriate additional margin for a class group. As noted above, additional margin is determined by comparing the appropriate additional margin for a class group. As noted above, additional margin is determined by comparing the actual liquidating value of a group with the theoretical liquidating value of the group at several predetermined underlying asset prices. One underlying asset price would include the maximum one-day increase that OCC should anticipate in the underlying asset price; another would include the maximum one-day decrease in the underlying asset price.[3] Further, in order to protect against certain trading strategies that may have their greatest potential loss at a strike price (*e.g.*, a butterfly spread), OCC will calculate a theoretical liquidating value for an underlying asset price equal to any option strike price that falls within the boundaries of the first two underlying asset prices set by OCC. Each theoretical liquidating value would be compared to the current liquidating value to determine at which potential underlying asset price OCC is most at risk. The difference between this "worst case" liquidating value and the current liquidating value would be the additional margin required.

To determine the maximum one-day price movement in the underlying asset that OCC should anticipate (the "margin interval"), OCC will analyze historical price changes in the underlying asset. OCC's current criteria are that there should be enough additional margin (i) to protect against a price movement equal to or exceeding at least 95% of the daily price changes for the last three months [4] and (ii) to ensure that additional margin would be eroded by no more than 70% in the event of a price change equal to the average daily price change during that period.

Once OCC determines the appropriate margin interval, OCC will calculate the theoretical liquidating value of the option at an underlying asset price equal to (i) the current asset price plus the margin interval (the "up-side projection"); (ii) the current asset price minus the margin interval (the "down-side projection"); and (iii) any strike price between the asset prices in (i) and (ii). To provide additional protection, OCC will presume the per-unit cost of liquidating out-of-the-money short call positions in the upside projection and short put positions in the downside projection, would increase by at least 25% of the margin interval.[5]

That process would produce two or more projected liquidating values (costs) for the class group. Each of those values would be compared with current liquidating value or cost (*i.e.*, net premium margin for the class group). After comparison, the largest upside variation (*i.e.*, the greatest change in liquidating value, positive or negative, in the event of an upward movement in the price of the underlying asset), together with the largest downside variation, would be saved for use in further calculations. If an upside or downside variation reflects an increase in liquidating cost or a decrease in liquidating value, that variation is assigned a positive sign for margin calculation purposes (signifying a margin requirement). Variations reflecting a decrease in liquidating cost or an increase in liquidating value are assigned a negative sign (signifying a margin credit).

If the class group is not part of a product group, the additional margin requirement for the class group would be an amount equal to either the upside variation or the downside variation, whichever is positive (*i.e.*, reflects an increase in liquidating cost or a decrease in liquidating value for the positions comprising the class group). In cases where both variations are positive, the additional margin requirement would be the larger of the two; and where both are negative, the additional margin requirement would be zero. Unlike premium margin, which can be either positive or negative, additional margin is always either positive or zero. The total margin requirement or credit for a class group that is not part of a larger product group would be an amount equal to the sum of the net premium margin requirement (credit) for the class group and the additional margin requirement for the class group. If premium margin for the class group is positive, generating a margin requirement, additional margin will accordingly add to that requirement. If premium margin is negative (as would be the case for a class group predominantly comprised of long positions), additional margin will ordinarily reduce the resulting margin credit (but never to less than zero, because the long positions that generated the credit might cease to be assets, but would never become liabilities).

If the class group is part of a larger product group, additional margin would be calculated only at the product-group level. First, all negative upside and downside variations for the class groups comprising the product group (*i.e.*, variations reflecting a decrease in liquidating cost or an increase in liquidating value) would be reduced by a percentage predetermined by OCC. OCC stated that the purpose of this reduction is to compensate for any lack of correlation in price movements among the class groups comprising the product group and the amount of the percentage would depend on the degree of correlation OCC observed for the particular product group involved.

Next, the upside variations for all class groups in the product group would be combined (*i.e.*, added algebraically), as would the downside differences. Whichever combined result was positive (*i.e.*, reflected a net increase in liquidating cost or a net decrease in liquidating value for the positions comprising the product group) would constitute the additional margin requirement for the product group.

Total margin requirement or credit for the product group as a whole would be an amount equal to the algebraic sum of the premium margin requirements for each class group in the product group, increased (in the case of a net premium margin requirement) or reduced (in the case of a net premium margin credit) by the additional margin requirement for the product group. In summary, if the positions in a product group (or a class group that was not part of a product group) would liquidate to a deficit, the total margin requirement for the group would be an amount equal to the sum of that deficit and the additional margin requirement for the group. If the positions in the group would liquidate to a credit, the total margin credit for the group would be an amount equal to that credit minus the additional margin requirement for the group.

Finally, if the total margin amount for a product group or a class group that was not part of a product group turned out to be a credit (*i.e.*, the combined result was negative), 50% of that credit would be applicable against the margin requirements for other class groups and product groups in the account. If the account as a whole showed a margin credit, there would be no margin requirement.

B. Customers' Accounts and Firm Non-Lien Accounts

OCC does not have a lien on firm non-lien accounts or long positions carried in customer accounts except to the extent that they comprise the long legs of customer-identified spreads (*i.e.*, constitute "unsegregated long positions"). Accordingly, OCC's proposal establishes slightly different procedures for margining these accounts:

1. Segregated long positions would not offset short positions in the same series of options, and would be assigned no value for margin calculation purposes.

2. In calculating product group margin, premium margin credits for class groups within the product group would be reduced to zero.

3. In calculating margin for the account as a whole, margin credits for class groups that are not part of product groups would be reduced to zero.

C. Options Price Theory

OCC believes that options price theory is particularly useful for calculating margin requirements because it provides the theoretical worth of an option (*i.e.*, potential liquidating value) when the underlying asset value changes.[6] As shown above, OCC believes that a comparison between the actual market value of an option and the potential liquidating value of that option at a potential future price provides the amount of additional margin necessary to protect OCC.

One of the important calculations in options price theory is the volatility of the price of the underlying asset. OCC stated that there are two basic methods to arrive at a figure representing volatility. One is to use the historical volatility of the underlying asset as measured over any given prior period. The other is to use "implied" or "market" volatility of an option, which involves plugging an option's actual price into the model and solving "backwards" for the volatility implied by that price. OCC stated that because implied volatilities can vary significantly from historical volatilities and because both can vary from day-to-day, there is no single volatility measure that can be classified as a totally reliable predictor of theoretical (or hypothetical) option values across a range of underlying prices. OCC believes, however, that by utilizing the greater of the implied volatility or historical volatility in the valuation process, any error will tend to be on the conservative side and will protect OCC. OCC anticipates that after it has gained some experience using implied volatilities it will be able to stop using historical volatilities entirely for computing daily margin requirements and use historical volatilities solely for evaluating risks associated with concentrated positions.

III. Request For Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the proposed rule change, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the proposed rule change will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 28, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2313 Filed 1-31-86; 8:45 am]

BILLING CODE 8010-01-M

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[3] This maximum one-day price movement is called the "margin interval" and would be set by OCC. OCC stated that it would adjust, as it currently does, the margin interval on a monthly basis (or more frequently) to assure margin adequacy.

[4] OCC stated that it intends to consider whether it should use one year's worth of data in addition to the three months' data it now uses to provide both a short- and long-term volatility measure, using the higher volatility estimate of the two to set margin intervals.

[5] OCC believes that for deep out-of-the-money short options, the options pricing model they propose to adopt may predict that these options values will be insensitive to the potential one-day change in the underlying asset. This would result in no additional margin requirement for that option. However, should the option move much more than expected and approach an "in-the-money relationship to the underlying asset price, OCC would be unprotected on a short option with a rapidly rising value. Therefore, OCC proposes that some adjustment to the model is necessary to provide for an absolute minimum additional margin amount. OCC stated that its initial research indicates that it is appropriate to increase the per-unit liquidating cost of the option by 25% of the margin interval. OCC further stated that it will continue to research the problem to determine whether further refinements are appropriate.

[6] Options price theory is a method which, given a set of inputs (series strike, time of expiration, interest rate, dividends, volatility and underlying asset price), will predict what the option is theoretically worth at a specified price for the underlying asset.

SMALL BUSINESS ADMINISTRATION

Contracting Authority; Certificate of Appointment Exemptions

The officials, including those officially acting in these positions, exempt from needing a certificate of appointment to purchase goods or services or enter into contracts by virtue of their positions are:

The Administrator.
The Deputy Administrator.
The Associate Deputy Administrator for Management and Administration.
Inspector General.
The Associate Administrator for MSB-COD (8a only).
The Assistant Administrator for Administration.

The officials exempt from needing a certificate of appointment by virtue of heading a procurement activity include:

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The Director, Office of Procurement and Grants Management.
Regional Administrators.

All other persons needing to enter into contracts or carry out purchases must have a certificate of appointment. This applies to any other activity and official not noted in the above exemptions.

Any other exemptions to the requirement for a certificate of appointment must be issued only in a **Federal Register** document recommended by the AA/MSB–COD and the AA/A and signed by the Administrator. To stay within the intent of the law, the only exemptions that may be legitimate are for a certain few district directors where there is a very high level of 8(a) activity. These will be submitted on a case by case basis by RA's.

Effective Date: February 3, 1986.

Dated: January 22, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86–2252 Filed 1–31–86; 8:45 am]

BILLING CODE 8025–01–M

Cleveland Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Cleveland, Ohio, will hold a public meeting at 9:00 a.m. on Thursday, February 13, 1986, at the Anthony J. Celebrezze Federal Building, 1240 East Ninth Street, Room B–1 (located on the cafeteria level of the building), Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, wrie or call S. Charles Hemming, District Director, U.S. Small Business Administration, 317 AJC Federal Building, 1240 East Ninth Street, Cleveland, Ohio 44199, (216) 522–4182.

Dated: January 24, 1986.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 86–2253 Filed 1–31–86; 8:45 am]

BILLING CODE 8025–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Francois Boucher; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1976 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the object to be included in the exhibit, "Francois Boucher" (included in the list[1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, NY, beginning on or about February 22, 1986, to on or about May 4, 1986, and the Detroit Institute of Arts, Detroit, MI, beginning on or about May 27, 1986, to on or about August 17, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 28, 1986.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 86–2226 Filed 1–31–86; 8:45 am]

BILLING CODE 8230–01–M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 51, No. 22
Monday, February 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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National Labor Relations Board	2
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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, February 10, 1986, 2:00 p.m.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Revisions to the Federal Sector Complaint Processing Regulations, 29 CFR Part 1613

Closed

1. Proposed Commission Decision
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: January 29, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86–2428 Filed 1–30–86; 3:59 pm]

BILLING CODE 6750–06–M

2

NATIONAL LABOR RELATIONS BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 29, 1986, 51 FR 3733.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: January 29, 1986, 9:30 a.m.

CHANGE IN THE MEETING: Date and time of Meeting changed to: Thursday, January 30, 1986, 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated: Washington, DC, January 29, 1986.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 86–2356 Filed 1–30–86; 11:09 am]

BILLING CODE 7545–01–M

3

NEIGHBORHOOD REINVESTMENT CORPORATION

Audit Committee

TIME AND DATE: 3:00 p.m., Monday, February 3, 1986.

PLACE: Comptroller of the Currency's Conference Room, 490 L'Enfant Plaza, SW.—6th Floor, Washington, DC 20219.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Timothy S. McCarthy, Associate Director, Communications, (202) 653–2705.

AGENDA:

I. Review of FY 1985 Audit and Management Letter

Winnie D. Morton,

Assistant Secretary.

[FR Doc. 86–2350 Filed 1–30–86; 10:32 am]

BILLING CODE 7570–01–M

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federal register

Monday
February 3, 1986

Part II

Department of Agriculture

Forest Service

Small Business Timber Set-Aside Program; Request for Additional Comments on Final Policy

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DEPARTMENT OF AGRICULTURE

Forest Service

Small Business Timber Set-Aside Program

AGENCY: Forest Service, USDA.

ACTION: Request for additional comments on final policy.

SUMMARY: On June 13, 1985, the Forest Service published a notice of adoption of final policy (50 FR 24788) setting forth procedures for administration of the Small Business Timber Set-Aside Program. A minor correction in a table was published July 9 at 50 FR 27997. The Forest Service is now requesting additional comments on the policy as adopted. The adopted policy remains in effect during this additional comment period.

DATE: Comments must be received by April 4, 1986.

ADDRESS: Send written comments to R. Max Peterson, (2400), Forest Service, USDA, P.O. Box 2417, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David Spores, Timber Management Staff, (202) 447–4051.

SUPPLEMENTARY INFORMATION: Following adoption of the final policy governing the Small Business Timber Set-Aside Program on June 13, 1985, a lawsuit was filed asserting that changes made between the publication of the proposed policy (49 FR 45889) and the adoption of the final policy resulted in violation of the requirements of the Administrative Procedures Act, 5 U.S.C. 551 *et seq.* In settlement of the lawsuit, the Forest Service agreed to solicit additional comments on the final policy as adopted. During this additional comment period, the adopted policy remains in effect.

The text of the final policy is as follows:

A. Establishment of Small Business Shares

1. Definition of Structural Change

The final policy defines structural change, which was not in the proposed policy. This was needed in order to provide a common definition for use in recomputation of market shares. A structural change occurs during a recomputation period when a small or large business firm, that purchased at least 10 percent of the total sawlog volume during the last recomputation period, discontinues operations, or changes ownership (i.e., small business purchased by large business or vice versa). When this structural change occurs, the small business share will be recomputed in accordance with the appropriate procedure, as described in the sections relating to 1981–1985 structural changes, or future structural changes. The necessity for the recomputation of shares due to structural change will be determined by the Forest Supervisor, in consultation with the SBA representative.

There are two conditions that will determine structural change:

1. Change in the size class of the firm(s);

2. The discontinuance of the operation of the firm(s).

In making decisions concerning structural changes, judgment must be exercised about what constitutes "discontinued operations." A mill closing must be carefully evaluated in terms of intent to resume operations. Cessation of operations due to natural disasters beyond the control of a firm must be evaluated in terms of the declared intent to reconstruct and resume operations.

Examples of the factors that should be evaluated in determining whether a firm has discontinued operations are: statement of intent to resume operations; changes in physical site conditions which include the dismantling and/or sale of physical assets; indicated intent to harvest Forest Service timber volume under contract; market and general economic conditions; and planned mill reconstruction.

2. Limit on Shares

The timber set-aside program is designed to ensure that small business firms have the opportunity to purchase a fair proportion of the timber offered for sale in each marketing area. The small business share defines the proportion of the planned timber sale program that will be assured to small business over a 5-year period. When the small business share changes in a market area, the change results in a change in "share percentage points." For example, the small business share may change from 45 percent to 50 percent of the timber sale program within a market area. The proposed policy would have limited small business shares to no greater than 80 percent of the planned timber sale program and would have retained the current policy that shares can not decrease to less than 50 percent of the original base share established in 1971. The current policy permits small business shares of 100 percent, of the planned timber sale program in a market area, which does not represent a fair proportion.

The proposed change received substantial support, although a few individuals suggested some variation in upper and lower share limts. Upon consideration, the Forest Service adopts the provisions of proposed policy and will implement these provisions at the time of the recomputation in FY 1986.

This revision provides a fair market share to small business, permits large business an opportunity to participate in all market areas, and provides the Forest Service an opportunity to enhance utilization through a wider group of potential users.

3. Recomputation of Shares in FY 86—Region 8 (Southern), Region 9 (Eastern) and Region 10 (Alaska)

Under the proposed policy, current procedures would remain in effect, subject to an upper limit on small business shares of 80 percent, and shares in Regions 8 and 9 would be recomputed in FY 1986 based on the small business purchase history for FY 1981–1985.

Comments were near unanimous in support of retaining the present procedure. A few respondents favored no change in the existing procedure, wanted a different effective date, or desired different years of purchase history.

The agency agrees with these comments and has decided not to change the existing procedure, other than to implement the 80 percent upper limit at the time of the FY 1986 recomputation of small business shares in Regions 8 and 9. Continuation of current procedures recognizes the relatively stable marketing situation in Regions 8 and 9 during the current recomputation period.

4. Recomputation of Shares in FY 86—Region 1 (Northern), Region 2 (Rocky Mountain), Region 3 (Southwestern), Region 4 (Intermountain), and the following National Forests in Region 6 (Pacific Northwest): Wallowa-Whitman NF, Colville NF, Ochoco NF, Malheur NF, and Umatilla NF

The proposed policy would have calculated a new small business share in these areas at the end of FY 1985 based on the arithmetic average of the small business purchase and harvest history for 1975–1984.

Substantial comment from small business opposed changing recomputation procedures this late in the current period and argued for retaining existing procedures. Some respondents wanted some National Forests in the eastern part of Region 6 included. Some respondents wanted

recognition of structural changes which occurred in the industry during FY 1981–1985. A few respondents also wanted to include all of Region 5 in this calculation of shares approach rather than under the approach proposed for that Region. Some large businesses favored use of harvest history as the sole basis for establishing new shares for small purchasers in these Regions. They felt harvest history better reflected the actual needs of small business firms rather than purchase history.

The agency agrees with those who favored retaining existing procedures for recomputing the small business share. Overall, market disruptions did not distort purchase and harvest patterns to the extent that resulted in Region 5 and western Forests of Region 6. The five eastern Forests of Region 6 had marketing patterns more closely associated with those of Regions 1–4 and, therefore, fit the small business share recomputation procedures now used. Conversely, the marketing patterns of Region 5 more closely fit those of western Forests in Region 6. The agency also recognizes the need to provide for structural changes in the industry and for unique changes which the current procedure would not effectively represent.

Under the adopted policy, the procedure for share establishment in these areas for use during the period FY 1986–1990 will use small business purchase history from the period FY 1981–1985. When a share changes 5 share percentage points or less, surplus or deficit volumes accrued during the 5-year period will carry forward. Where a share change exceeds 5 share percentage points, one half of the surplus or one half of the deficit volume will be carried forward. This procedure will dampen the impact of market fluctuations during the 5-year period. Where a share change exceeding 5 share percentage points occurs in a market area where salvage operations have significantly disrupted normal purchase patterns, the full surplus or deficit volume may be carried forward.

Where structural changes occur in industry size classes during the period and the recomputed share changes over 5 share percentage points from the previous share, the surplus or deficit volumes will be dropped and not carried forward to the next computation period. Where the recomputed share changes less than 5 share percentage points from the previous share, the surplus or deficit volumes will be carried foward to the next computation period.

If unique circumstances in a market area make deviation from these procedures appropriate, the Forest Supervisor may recommend alternatives to the Regional Forester following procedures outlined under paragraph B.3. Special Recomputations. Examples of unique circumstances include catastrophic natural events which disrupt normal operations or an event which causes substantial damage to a processing facility and results in abnormal delay in repairs.

Implementation of this policy recognizes and provides for the geographic similarity of market conditions during the 5-year period and recognized structural changes which occurred.

5. Recomputation of Shares in FY 86—Region 5 (Pacific Southwest) and Remaining National Forests in Region 6 (Pacific Northwest)

The proposed policy would have compared shares established in 1981 in these Regions with the small business harvest history for 1975–1979. The shares would have been maintained, except where the difference exceeded 10 percent. Then the new share would have been set halfway between the current share and the harvest history for that period. Structural changes in the industry since 1980 would have followed the same policy as for Regions 1–4.

Generally, large business firms felt that the proposed policy recognized the market distortion which occurred during FY 1981–1985 and that the proposed procedure would represent a more stable situation. About one third of small business respondents agreed with this rationale, including two associations who represent small business firms. Those small business respondents who opposed the proposed policy either wanted no change in the program or felt that data from other years would better reflect actual market conditions. Some small business firms and the associations representing small business argued for the need to use recent data for recognizing structural changes in the industry during FY 1981–1985. A few small business firms in Region 5 felt that a more stable situation existed in that Region during FY 1981–1985 and that purchase history or purchase and harvest history for that period would better reflect actual market conditions.

The Forest Service agrees that the FY 1981–1985 period distorted the market patterns which normally occur in Region 5 and the remaining portion of Region 6, and that adoption of the proposed policy would better recognize a more normal situation. The agency agrees with those who propose a special procedure to recognize structural changes in the industry between FY 1981–1985.

Therefore, under the adopted policy the shares established for use in Region 5 and the remainder of Region 6 during the period FY 1986–1990 will generally remain the same as those established in 1981, which used small business purchase history from the period FY 1976–1980. However, in market areas where the small business harvest history for FY 1975–1979 differed from the established share by more than 10 share percentage points, the small business share will be set half way between the current share and the small business harvest history for that period.

Where structural change occurred during the period 1981–1985, recomputation of the small business share will be based on the small business purchase and harvest history during this period. Surplus and deficit volumes will be carried forward when shares change 5 share percentage points or less. Surplus and deficit volumes will be dropped when shares change over 5 percent.

If unique circumstances in a market area make deviation from these procedures appropriate, the Forest Supervisor may recommend alternatives to the Regional Forester following procedures outlined under paragraph B.3. Special Recomputations.

This policy recognizes the market distortions during the FY 1982–1985 period which caused abnormal purchase and harvest operations. It serves to stablize the market shares to the previous period, which was a more normal 5-year period, except where recognized structural changes have occurred.

B. Future Share Changes

1. Regions 8, 9, and 10

The proposed policy would have continued the current system of establishing shares and have commissioned a two-year study by the Forest Service and SBA to determine the need to change the program in Regions 8 and 9. In Region 10, the set-aside program would have continued to operate based upon a volume quota basis.

This proposal received little comment, except support for completing the study promptly and to ensure that the study does not lead to adoption of restrictive conditions. The Forest Service and SBA will complete a study within the next 2 years which will determine whether changes are needed for future share recomputations in these Regions.

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2. All Other Regions

The proposed policy would have stabilized shares at current levels in all market areas. However, where a structural change occurred, shares would have been adjusted at the start of the 6-month period beginning at least 12 months after the change occurred. The basis of change would have been the average of the percentages of purchase and harvest history for the past 5 years. No further recomputations would have occurred.

Large businesses strongly supported these proposed changes. Large business desired prompt recognition of structural change, generally 12 to 18 months after it occurred, and supported use of purchase and harvest data for the 5 years preceding the change. Some individuals suggested various options which use different data and time periods. Small businesses uniformly opposed this proposal or suggested a changed procedure. Small businesses emphasized that the small business share belongs to the small business community-at-large and not to individual entities. Assigning a share to individual mills would add value to them and encourage speculation. Many small business respondents supported a recomputation procedure jointly developed by two of the associations which represent small businesses. The procedure developed by the associations would have based recomputation of small business shares on a combination of small business purchase history and weighted average small business purchase and harvest history. The process would compare both small and large business harvest to purchase history as criteria used to determine the small business share and carryover volume amounts.

The Forest Service agrees with both large and small business respondents who propose use of both purchase and harvest history to recompute the small business share. This reflects the relationship of volume of timber purchased to actual need over a 5-year period. The agency agrees with those elements of the recomputation procedure proposed by small businesses which deal with harvest to purchase performance. However, the agency disagrees with the desirability of making a comparison between the performance of large and small business firms. The Forest Service also agrees with the need to recognize structural change in market area industries and to reflect the change with an adjustment period shorter than 5 years. Also, recomputation procedures must recognize unique situations mentioned by some respondents and provide for them.

3. Special Recomputations

Unique situations may develop which require special recomputations and departure from the established procedure. In such cases the Forest Supervisor, in consultation with the SBA Representative, may propose procedures necessary to adapt to the situtation. The Forest Supervisor will solicit the views of firms operating within the market area before submitting a proposal to deviate from the normal recomputation process to the Regional Forester for approval.

In periods of significant market decline, Forest Supervisors will monitor harvest patterns of both small and large businesses by comparing harvest to purchase volume. Where both follow a similar pattern, the Forest Supervisor will adjust the effects of harvest performance criteria on carryover volume in conjunction with share establishment.

Departure from the standard procedure may also be warranted in the event volumes harvested by either large or small firms vary significantly from normal patterns in the market area as a result of salvage operations, a switch of harvest operations between market areas or ownerships, or other factors. Where such departure from the standard procedure is warranted, it may be achieved by adjusting carryover volumes, adjusting the time period, or by other means.

Implementation of policies in paragraph 2 (a) and (b), and (3) above will moderate the impact of short-term purchase and harvest fluctuations and their influence on the small business share. Inclusion of harvest history in recomputation recognizes the balance needed between purchase and harvest experience in share establishment. Use of both elements more accurately reflects actual raw material needs. The procedure permits recognition of structural change. The policy also helps stabilize market area shares in a responsive manner, and identifies unique situations which require special consideration.

In consideration of these views, the final policy will apply the following procedure for recomputing the small business share for a market area to scheduled recomputations and to those following structural changes in the industry between regular recomputation periods:

a. Regular Scheduled Recomputations

Normally, a scheduled recomputation will occur every 5 years and will use the past 5-year record of sawtimber purchase and harvest data as a basis.

Small business shares will be recomputed using the weighted average purchase and harvest history for small business firms in each market area. For purposes of share calculation, harvest history is based on actual deliveries of sawlog timber to small or large business firms for processing. Data for this calculation will be obtained from the 6-month reports submitted by purchasers for log export control. Carryover of surplus or deficit volumes from the previous period will be based on small business harvest performance. Exhibit 1 displays how harvest performance, calculated as a ratio of harvest to purchase, will be used to adjust carryover volumes.

b. Recomputation Due to Structural Change

Shares will be recomputed following structural change. Use exhibit 1 to adjust carryover volumes. The procedure is designed to provide small business firms the opportunity to maintain their historical share when a firm changes size, but provides a reasonably rapid adjustment of shares to reflect the actual purchase and harvest patterns which develop. Ordinarily, small business shares will be recomputed approximately 3 years after a structural change occurs, based on the purchase and harvest history for that 3-year period. When a recomputation for a structural change would occur within a year of a scheduled recomputation, the scheduled recomputation would be skipped.

C. Purchases by Non-Manufacturers

1. Regions 8, 9, and 10

Under the proposed policy the Forest Service would have retained the current procedure for allocating purchases by non-manufacturers to large and small businesses based on the anticipated size of the processor.

Nearly all comments supported the current procedures for allocating purchases by non-manufacturers. Sale procedures in Regions 8 and 9 provide for purchase of sales based on pre-sale measurement with no further measurement to determine actual harvest volume. The current method of anticipating delivery of sale volume to the respective size class of the processor best applies.

The Forest Service will retain the current procedure. Part of the planned Forest Service-Small Business Administration study will include review of this procedure and evaluation

of alternatives which may more accurately identify delivery source.

This policy recognizes the current method used to offer sales in Regions 8 and 9 and its relationship to tracking non-manufacturer volume to small and large firms. The policy also recognizes the need to evaluate these procedures, particularly in light of the manufacturing requirements discussed in paragraph F.3 below.

2. Regions 1–6

The proposed policy would credit harvest volumes in the 6-month program analysis based on actual deliveries to small or large businesses from open sales purchased by non-manufacturers.

Both large and small businesses support the proposal to credit sale volume purchased by non-manufacturers based on harvest records of delivery. Some large businesses wanted volume credited to the size class of the company processing the timber at the end of the period. Small businesses generally suggested a 3-year rolling average for harvest deliveries. A lesser number suggested use of an overall average with periodic corrections.

The new policy will use current reporting requirements for export control to monitor non-manufacturers' delivery of volume. Use of a 2-year rolling average, updated every 6 months, will develop the percentage of sawtimber which non-manufacturers deliver to each manufacturer size class. For each 6-month period, application of the calculated percentage to open sale volume purchased by non-manufacturers will develop the volume accrued to small businesses in order to determine set-aside needs for the next 6-month period.

This policy will result in more accurate assignment of non-manufacturer-purchased sale volumes and guard against short-term cyclic changes in deliveries.

D. Triggering of Set-Aside Sales

1. The proposed policy would have retained current procedures for triggering a set-aside program when small business firms fail to purchase their share by 10 percent or more. However, under the proposed policy, only a fractional change over 10 percent would not have triggered a set-aside program.

Both large and small businesses strongly supported continuance of the current procedure for initiating set-aside sales. However, small businesses strongly objected to dismissing a set-aside trigger if it occurred by only a fractional amount. They argued that use of the 10 percent figure precisely defines the threshold and avoids further interpretation.

The Forest Service agrees with these comments and will continue the current policy of initiating a set-aside program whenever small businesses fails to purchase their share by 10 percent or more and has dropped the fractional amount provision. Use of an exact percent amount will simplify administration of the set-aside program.

2. The current policy places no limit on the timber volume set-aside during each 6-month period. The proposed policy would have retained the existing process of setting aside a volume of timber equal to the small business share plus the accumulated deficit volume. However, at least 20 percent of the timber volume in each 6-month period would have been open sales.

Comments supported setting aside the deficit plus the small business share when the need to establish a set-aside program resulted and to provide at least 20 percent of the volume in a 6-month set-aside period as open sales. Some large businesses favored setting aside only the deficit. However, analysis has shown that this would not provide assurance that small business firms would have the opportunity to purchase the established small business share in a market area.

Therefore, the policy will be implemented as proposed. However, the Forest Supervisor may elect to use two 6-month periods to eliminate the deficit volume situation. If not eliminated by this time, the Forest Supervisor will act to eliminate it in the next 6-month period, subject to the 20 percent of open sale volume limitation.

This policy continues to recognize the advisability of eliminating a trigger situation requiring set-aside sales as rapidly as possible. It also recognizes the need to provide opportunities for large businesses to participate in the market each period.

E. Selection of Set-Aside Sales

The proposed policy would have continued the current procedure where the Forest Supervisor selects set-aside sales with the concurrence of the local SBA representative. Under the proposal, the tentative selection of set-aside sales in case of a triggered program would occur 60 days prior to the start of the next 6-month period.

This proposal received significant support, although a few large businesses wanted sale selection only by the Forest Service.

The final policy adopts the proposed sale selection process. Forest Supervisors will initiate the selection of tentative set-aside sales early enough to reach agreement with the local SBA representative 60 days prior to the start of the next 6-month period. If agreement cannot be resolved at the local level, the SBA may seek review by the Regional Forester. If not resolved at that level, the issue will be submitted to the Washington Office of the two agencies for resolution. Following review, the Chief of the Forest Service will make the decision.

This procedure will result in early selection of set-aside sales, help establish a firm timber sale program at the beginning of the 6-month period, allow development of a more orderly sale program well in advance of each 6-month period, and should avoid delays in sale offerings.

F. Manufacturing Requirements on Set-Aside Sales

1. Current policy requires that 70 percent of advertised volume from set-aside sales be processed in a small business facility. The proposed policy would have continued enforcement of the 70/30 rule except in Regions 8 and 10.

There was strong support for enforcement of the 70/30 rule.

The policy will continue for all Regions except Regions 8 and 10. Purchasers of set-aside sales may deliver no more than 30 percent of advertised sawtimber sale volume from set-aside timber sales to large business for manufacture. Continuance of the policy permits needed flexibility for purchasers to market their products.

2. The proposed policy would have continued the 50/50 rule for set-aside sale timber in Region 10 and received limited, but highly favorable, comment. Therefore, in Region 10, purchasers of set-aside sales may deliver up to 50 percent of advertised volume of a set-aside to a large business for processing. This policy recognizes the greater marketing flexibility needed in this unique market environment.

3. The proposed policy would have required a 100 percent rule for set-aside sale softwood sawtimber and a 70/30 rule for hardwood sawtimber in Region 8. Currently, the 70/30 rule applies to all sawtimber.

An association which represents small businesses in Region 8 supported the proposed policy on manufacturing requirements for softwood and hardwood sawtimber. However individual comments from some large businesses and ⅓ of individual small business respondents operating in the Southern Region opposed 100 percent delivery of set-aside softwood sawtimber volume to small business

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manufacturers. Arguments against 100 percent delivery included inability of some purchasers to dispose of all softwood sawtimber products, reduced opportunity to let special products seek an appropriate level of product use, and elimination of log trading between large and small mills to obtain special raw materials used by each. The Forest Service believes that adequate markets exist with small business firms to provide competitive markets for southern pine sawtimber. The 70/30 rule which applies to all other species of sawtimber will permit marketing flexibility. Therefore, in Region 8, the adopted policy will require that purchasers deliver 100 percent of the southern pine sawtimber purchased on set-aside sales to small business processing facilities, but the 70/30 rule will apply to all other coniferous species and to all hardwoods. For these, purchasers of set-aside sales may deliver up to 30 percent of the advertised sawtimber volume to large business processing facilities.

This policy assures delivery of set-aside volume to small business facilities, makes enforcement of requirements for processing of set-aside sale volume easier where southern pine species prevail, and yet provides marketing flexibility for hardwoods and other coniferous species.

Of the few who commented on enforcement provisions to ensure strict compliance with new manufacturing requirements, nearly all supported strong enforcement and prompt penalties for violations.

The Forest Service will work with SBA to develop enforcement through agency policy and small business qualification process. In addition, the Forest Service will examine contractual provisions which require reporting of log delivery and will develop appropriate measures to deal with violations.

G. Special Salvage Timber Sale Program (SSTS)

The current policy places undue restriction on the Special Salvage Timber Sale Program (SSTS). The proposed policy would have removed the 70/30 manufacturing requirement for sales set-aside under the special salvage program. Also, timber volume from this program would not have been included in calculations for the regular timber set-aside program.

Large business strongly supported the proposal to discontinue inclusion of the special salvage program with the regular set-aside program and to eliminate the 70/30 manufacturing requirement. Small businesses substantially supported the proposal. Comments against it cited the need to assure that small business facilities receive a meaningful supply of timber.

On February 15, 1985, following publication of the Forest Service proposed policy changes, the SBA published a final rule at 50 FR 6337 which eliminated the 70/30 manufacturing requirement for the special salvage program. The Forest Service will not include the SSTS program volume in its operation of the regular set-aside program or in recomputation of shares after the scheduled recomputation at the end of fiscal year 1985.

This policy permits maximum flexibility for small operators to market their products. It also eliminates recordkeeping for the recomputation process and operation of the 6-month set-aside program.

Impacts

This policy has been reviewed against the objectives and criteria of Executive Order 12291 and it has been determined that these changes in policy will not result in any of the economic or regulatory impacts associated with a major rule. The discretion available to the Secretary is in selecting administrative procedures to facilitate operation of the set-aside program. This change in policy will not have an annual effect on the economy of $100 million or more and will not result in a major increase in costs for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, and the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Moreover, this final policy would not have significant economic impact on a substantial number of small entities. The policy will continue to protect the interests of small business timber industry firms and to assure them of the opportunity to obtain a fair proportion of National Forest timber sales. The policy requires the use of existing reporting and inspection procedures and does not increase compliance or administrative costs of small entities.

This final policy will not significantly affect the environment. Therefore, an environmental impact statement has not been prepared. Furthermore, the final policy will not result in additional information collection requirements and, therefore, it has not been submitted for review under the regulations at 5 CFR Part 1320 which implement the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The policy revises procedural methods of conducting and administering the Small Business Timber Set-Aside Programs in response to a Forest Service-SBA Joint Review of the Small Business Timber sale Set-Aside Program which identified key procedures in the current program which needed revision in order to make the set-aside program operate more effectively. Substantial public involvement with associations representing both timber industry size groups, individuals from both large and small business firms, and from government entities helped shape the initial proposed changes. As noted above, substantial comments to the proposed changes published in the **Federal Register** have influenced the final policy. The final policy to be implemented has substantial support in the agency record, viewed as a whole, and full attention has been given to the comments of persons directly affected by the policy in particular. The revised program will set forth in a forthcoming revision of the Forest Service Manual.

Dated: January 27, 1986.

R. Max Peterson,

Chief.

EXHIBIT 1.—HANDLING OF CARRYOVER VOLUMES IN RECOMPUTING SHARES

Small business weighted average purchase and harvest percent causes	Small business harvest to purchase ratio of—	Result on share and carryover volume
1. Increase over current share which exceeds 5 share percentage points.	A. .90 ratio or more.	Adopt weighted average purchase and harvest percent. Drop surplus carryover.
	B. Less than .90 ratio.	Adopt weighted average purchase and harvest percent. Retain ½ surplus carryover.
2. Decrease from current share which exceeds 5 share percentage points.	A. .90 ratio or more.	Adopt weighted average purchase and harvest percent. Retain ½ deficit carryover.
	B. Less than .90 ratio.	Adopt weighted average purchase and harvest percent. Drop deficit carryover.
3. Increase or decrease from current share of 5 share percentage points or less.	A. .90 ratio or more.	Retain current share. Drop all carryover.
	B. Less than .90 ratio.	Retain current share. Retain ½ surplus carryover.

[FR Doc. 86-2245 Filed 1-31-86; 8:45 am]

BILLING CODE 3410-11-M

federal register

Monday
February 3, 1986

Part III

Department of Labor

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act Amendments of 1984 and Related Statutes; Final Rule

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DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act of 1984 and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: On January 3, 1985, the Department of Labor published Interim Final Rules (IFR) implementing the various provisions of The Longshore and Harbor Workers' Compensation Act Amendments of 1984 (Pub. L. 98–426, 98 Stat. 1639), and making certain technical corrections in the regulations as previously promulgated in 1973 and 1977 (50 FR 384). These were effective December 27, 1984.

The many substantive changes made by the 1984 Amendments include the exclusion from Longshore Act coverage of certain workers and a certification process for exempting from coverage certain small vessel facilities; provisions granting to the Secretary authority to exclude medical care providers and claimant representatives who have committed certain specified fraudulent activities; changes in procedures for the approval of settlements and in the application process for section 8(f) (second injury "Special Fund") relief; and new ways to deal with occupational disease claims and for hearing loss claims.

Because the 1984 Amendments provided that most of the statutory changes became effective either on the date of enactment (September 28, 1984) or ninety days thereafter, the rules were published as final subject to comment, as authorized under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The interim final regulations were to remain in effect (as extended 50 FR 39661 and 50 FR 53308) until February 3, 1986, unless extended. These final rules supercede those regulations and incorporate changes suggested by the comments received.

In addition to the changes in the interim final rules, this publication includes another change which is purely administrative in nature. The final rules at § 702.101 update the regulations to reflect changes made in 1980 to the organizational structure of the Office of Workers' Compensation Programs, which eliminated the Kansas City and Denver district offices. More specifically, section 39(b) of the Longshore Act, 33 U.S.C. 939(b), authorizes the Secretary of Labor to establish compensation districts as he deems advisable and necessary to ensure the proper administration of the Act. It has been determined that those states formerly served by Districts 11 and 12 should be transferred to the jurisdiction of Districts 10 and 14, respectively. This organizational change was designed, and has been made, to improve the administration of the Longshore Act and its extensions. All persons who had been serviced by Districts Numbered 11 and 12 have been informed of this change. Further, the changes made by this rule are not substantive but relate solely to agency organization and personnel matters. For that reason, the Department finds that, under 5 U.S.C. 553, notice and comment on the rule are unnecessary and that good cause exists to make the rule effective immediately upon publication.

EFFECTIVE DATE: These final rules shall be effective on January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523–7503 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Interim Final Regulations (IFR) provided a period for submitting written comments which (with an extension) closed March 22, 1985. Seventy-eight comments were received during this period from a variety of interested sources including employers, insurance companies, industry representatives, lawyers who practice in this area of law, the Department of the Air Force, and a labor union.

Based on the comments received and the lessons derived from the experience of working with the IFR, a number of changes have been made. The final rule as published today sets forth only the changes made to various sections of the IFR. All other portions of the IFR are adopted as published at 50 CFR 391–407. Readers should refer to the January 3, 1985 issue of the **Federal Register** for the other sections of the regulations implementing the 1984 amendments to the Longshore Act.

Foremost among these are modifications in the Section 8(f)/second injury funds application process. Other changes involve § 701.301 (definitions), incorporating a definition of recreational vessel; §§ 702.171–702.175 (certification of exemption), revising the definition of "commercial"; and §§ 702.401–702.436 (medical care and debarment of physicians and medical care providers).

For the readers' convenience, each section of the IFR that is being amended is discussed in turn. The Longshore and Harbor Workers' Compensation Act (LHWCA or the Act) and the changes made by the 1984 Amendments (the Amendments) are discussed first, followed by a description of the IFR, a summary of the significant comments which addressed that particular point and the Department's response, and finally any changes in the final rules.

Scope of this Subchapter

The Interim Final Rules, at § 701.101, stated that these regulations (and by reference the 1984 Amendments) apply to the Longshore and Harbor Workers' Compensation Act (LHWCA) and its direct extensions, including the District of Columbia Workmen's Compensation Act of 1928 (DCCA, or the 1928 Act).

Several affected parties submitted comments asserting that the 1984 Amendments should have no application to cases that arose under the 1928 Act, which was "repealed" by the District of Columbia City Council in its own District of Columbia Workers' Compensation Act that became effective July 26, 1982 [the 1982 Act]. Further, some courts considering the question in the context of the 1984 Amendments' changes in the incidents of injured workers' tort rights have found the 1984 Amendments inapplicable to cases arising under the repealed 1928 Act. The subject is of immediate concern in continuing litigation and administration of many cases arising out of pre-1982 employment injuries. The Department has determined that all concerned parties and tribunals could benefit from a further statement of the Department's construction of the interrelationship between the 1928 Act, the 1982 Act, and the 1984 Amendments. These final rules state that construction: that the 1928 Act is to be treated as still in effect, for all purposes (including application of the current version of the LHWCA according to its terms), in cases in which the employment event or events on which the claim is predicated occurred before the new D.C. Act took effect.

Congress enacted the DCCA in 1928, in the exercise of its power to legislate generally for the District of Columbia. The DCCA provided simply that the Longshore and Harbor Workers' Compensation Act [LHWCA], enacted the previous year (44 Stat. 1424), "including all amendments that may hereafter be made thereto, shall apply" to private employment in the District. Pub. L. 419, 45 Stat. 600. In 1979,

pursuant to authority conferred by Congress in the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Code sections 1–102 to –295 (1981), the District of Columbia City Council and Mayor enacted the District of Columbia Workers' Compensation Act, D.C. Law 3–77 (July 1, 1980), D.C. Code sections 36–301 to –344 (1981). After amendments extending its effective date, this act took effect on July 26, 1982. It contains no provision, other than that specifying its effective date, delimiting the class of cases to which it is applicable. It does contain a provision that the 1928 Act "is hereby repealed." *Id.* section 46, 27 D.C. Reg. 2503, 2541.

The local government and the United States Department of Labor, responsible for administration of the old law, were in full agreement that the new law did not disturb the operation of the old one with respect to pre-1982 cases, and the District of Columbia regulations promulgated under the new law limited its application to "injuries which occur on or after July 26, 1982." (Code of D.C. Reg. section 3602.1, 29 D.C. Reg. 5540 (Dec. 17, 1982)). No one then challenged the proposition that the 1928 Act was fully viable for purposes of applying the LHWCA to determine and enforce liabilities *continuing* to accrue for *post*-1982 medical services, disabilities, and survivorship related to injuries arising out of employment before the new law took effect. Such continued applicability of the 1928 Act was assumed and stated without analysis by both the District of Columbia Court of Appeals (*Garrett* v. *Washington Air Compressor Co.*, 466 A.2d 462, 462 n.1 (D.C. 1983); *Carey* v. *Crane Service Co.*, 457 A.2d 1102, 1103 n.2 (D.C. 1983)), and the federal Court of Appeals for the District of Columbia Circuit (*Crum* v. *General Adjustment Bureau*, 738 F.2 474, 475 n.2 (D.C. Cir. 1984); *Randall* v. *Comfort Control, Inc.*, 725 F.2d 791, 792 n.1 (D.C. Cir. 1984); *Stevenson* v. *Linens of the Week*, 688 F.2d 93, 95 n.1 (D.C. Cir. 1982)). Conversely, the local administrative authorities denied claims under the new law for post-1982 consequences of pre-1982 employment.

The LHWCA was amended on September 28, 1984. The Amendments have detailed effective-date provisons making many of their changes in the law applicable to future determinations of rights and liabilities based on *past* injuries and deaths, as well as those based on injuries occurring thereafter (*Id.* § 28, 98 Stat. 1655). The question whether these amendments to the LHWCA apply to liabilities under the 1928 Act has been presented in several contexts.

First, in *WMATA* v. *Johnson*, 104 S.Ct. 2827 (1984), the Supreme Court had interpreted sections 4(a), and 5(a) of the LHWCA as extending the tort immunity of an injured worker's employer to the "general contractor" to whom the immediate employer is a "subcontractor," under nearly all circumstances. Hence, the Washington Metropolitan Area Transit Authority (WMATA) was held immune to tort liability, based on its negligence, to injured employees of its subway-construction contractors. The cases that had been before the Supreme Court, many other pending tort suits against WMATA to which the *Johnson* ruling applied, and still more suits against other "general contractors" similarly situated, were still pending (final judgments not yet having been entered) when the LHWCA Amendments of 1984 were enacted. The plaintiffs immediately relied upon the amendments to sections 4(a) and 5(a), which were expressly made applicable to pending cases as well as new ones (1984 Amendments section 28(a), 98 Stat. 1655) and were expressly intended to preclude any still-pending cases from dismissal on the basis of the *Johnson* decision. (Conference Report, H.R. Rep. No. 98–1027, at 24 (1984)). In cases arising under the LHWCA itself, this position was readily sustained, and dismissals under *WMATA* v. *Johnson* were reversed on the basis of the 1984 Amendments. *E.g.*, *Louviere* v. *Marathon Oil Co.*, 755 F.2d 428 (5th Cir. 1985). In cases under the old DCCA, however, WMATA and other defendants asserted, inter alia, that the 1984 LHWCA Amendments could have no operation under the "repealed" 1928 Act. Although at least one judge of the U.S. District Court for the District of Columbia had apparently held that the *Johnson* decision was no longer the applicable law, (*Leher* v. *AFGO Engineering Corp., Civ.* No 81–1593 (D.D.C. Oct. 10, 1984) (Gasch, J.) (unpublished order denying summary judgment for defendant), WMATA's position was accepted by Judge Pratt in *In re Metro Subway Accident Referral*, Misc. No. 82–306 (D.D.C. Dec. 18, 1984). The *Metro Subway* opinion "accept[ed] as a fact that the Congress in enacting the 1984 amendments intended the amendments to sections 4(a) and 5(a) of the [LHWCA] to apply to the District of Columbia and therefore to this litigation," but reasoned that "[t]he crucial question is not whether Congress possessed the power and had this intent, but whether the means it employed achieved this result." (*In re Metro Subway Accident Referral, supra*, Slip op. at 7). The court concluded that, "[h]aving been repealed, the 1928 Act could not be affected by amendments to the [LHWCA]," and that the effect of the general saving statute, 1 U.S.C. 109, is only to "preserve . . . accrued rights and liabilities" that "exist[ed] at the time of the repeal." This decision has been appealed to the District of Columbia Circuit, which also has the issue before it in other indistinguishable cases.

The IFR, at § 701.101(b), provided that the new regulations (and, by implication, the amendments they embodied) would apply to old DCCA cases. This assertion has been challenged in comments on the interim final regulations, submitted on behalf of WMATA, in reliance on the *Metro Subway Accident Referral* opinion.

The applicability of the 1984 Amendments to old-DCCA cases was presented again in tort litigation in *O'Connell* v. *Maryland Steel Erectors, Inc.*, 495 A.2d 1134 (D.C. 1985). *O'Connell* involved the viability of an injured worker's tort suit against a negligent third party, where the suit was filed more than six months after entry of a formal award of compensation. Before the 1984 Amendments, LHWCA § 33(b) provided that, perhaps subject to rare exceptions based on conflicts of interest, the worker's right to sue was irrevocably assigned to the employer six months after an award; under the 1984 Amendments, the right reverts to the employee if the employer does not exercise it within 90 days. The court generally followed the reasoning of the *Metro Subway* decision in holding that because the injury was covered by the old DCCA rather than the LHWCA itself, the amendment was wholly inapplicable. It reasoned that because of its repeal in 1982 by the new DCCA, the old DCCA "had ceased to exist" and "was no longer on the books" before 1984, so that the Amendments "did not affect any rights created by [the] prior law." 495 A.2d at 1142. The court denied any deference to the IFR at 701.101(b), on the ground that "provisions dealing with the jurisdiction of the courts are not within the province of an agency to interpret." *Id.* at 1144. And it determined that the 1984 Amendments were not "meant . . . to cover persons injured in purely land based occupations" and "affected only the maritime industry." *Id.*

Contrary to the reasoning *Metro Subway* and *O'Connell*, the proposition asserted in the IFR—that the LHWCA Amendments of 1984, insofar as they

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apply in terms to "pending claims," apply to such claims under the old DCCA—is both sound and, as a practical matter, strictly necessary. The "general saving statute," 1 U.S.C. 109, not only preserves "liabilit[ies] incurred" under a repealed statute, but further provides that for purposes of determining and enforcing such liabilities the repealed statutes "shall be treated as still remaining in force." Hence, as to the preserved claims and liabilities, the 1928 Act is "still . . . in force." The terms of the statute that is thus preserved for the relevant class of rights and liabilities (the 1928 Act) expressly make the LHWCA *as amended* applicable; and the LHWCA, as currently amended, includes provisions added in 1984 which are expressly applicable to claims arising out of employment before 1982 as much as to those arising after 1984.

The contrary view expressed in *In re Metro Subway Accident Referral, supra,* and *O'Connell, supra,* would appear to have consequences far beyond the inapplicability of the 1984 LHWCA Amendments to rights and liabilities under the 1928 Act. The statement that the saving statute preserves only *"accrued* rights and liabilities" "existing at the time of the repeal," *In re Metro,* Slip op. at 10, would lead to legal and administrative chaos. The only rights and liabilities "accrued" under the 1928 Act as of July 26, 1982, were for medical services rendered by that date, disability or survivor status continuing to that date, attorneys' services performed up to that date, and special fund assessments made up to that date. Thus, if only such "accrued" liabilities and rights were preserved for enforcement after that date, there would be no basis for the *continuing* accrual of rights and liabilities under the 1928 Act after its repeal, even in circumstances where the *employment events* on which the rights and liabilities are based occurred before then.

The Department of Labor, like all relevant judicial tribunals, the local District of Columbia administrators, and indeed all insurers and self-insurers responsible for payments up to now under the old DCCA, *have certainly assumed the contrary*—i.e., that what is preserved under the old DCCA is all rights and liabilities, whenever "accruing," arising out of *employment* events before July 26, 1982. The future liabilities resulting from those events, though contingent in duration and amount on future events (and hence neither "accrued" nor "vested"), were, in the language of the general saving statute, "incurred" by the employers or insurers at the time of the employment events. *O'Connell's* reasoning that the old DCCA "had ceased to exist" and "was no longer on the books" in 1984 is as inconsistent with the court's own application of the pre-1984 version of the LHWCA, through the 1928 Act, as it would be with application of the amended version. Pursuant to the general saving statute, the 1928 Act *remains in force* for all circumstances in which the employer's liabilities were "incurred" before its repeal, even if those liabilities had not yet accrued. The *O'Connell* court also erred in reasoning that Congress and the President intended the 1984 Amendments to apply only to maritime, not "purely land based," employment; even apart from the old DCCA, the Amendments certainly apply to entirely non-maritime employment through the other statutory extensions of the LHWCA (see 20 CFR 701.101(a)).

Since the rights and liabilities preserved by the general saving statute included liabilities that were not "accrued" or "vested," but were *contingent* (even though already "incurred"), the application of new legislation readjusting some of those liabilities upwards and others downwards is entirely valid. It is clear that the District of Columbia government's intent and understanding when it enacted and implemented the 1982 Act was that the 1928 Act would remain fully in effect with respect to past *and future* liabilities deriving from pre-1982 employment events. It is equally clear that when Congress passed the 1984 LHWCA Amendments, it intended to readjust and to rebalance the rights and liabilities in *all* cases in which the LHWCA was the measure of those rights and liabilities.

In sum, the reasoning of the opinions in *In re Metro Subway Accident Referral* and *O'Connell* is unsound and would have extremely unfortunate consequences. The question should not be characterized as whether a repealed statute can be amended, but whether an incorporating statute which remains in effect as to a class of cases should apply the incorporated statute according to the latter's current terms. The 1928 Act remains in effect pursuant to the general saving statute, so as to apply the *current* version of the LHWCA (where its terms so provide), to determine liabilities resulting from employment events before July 26, 1982.

The IFR stated that the 1928 Act applies to "injuries or deaths sustained prior to July 26, 1982," when the new local legislation superseding the 1928 Act took effect. 20 CFR 701.101(b), 50 FR 391. This statement is substantially revised for clarity.

First, when an "injury [is] sustained" is ambiguous, and to the extent it is the appropriate standard it is defined differently for these purposes than for others. For example, if a worker whose leg was injured at work in 1980 falls while at home, because of the impaired leg, in 1984, that injury is "consequential" to the 1980 injury, and its consequences and sequellae are compensable based on their relationship to the earlier injury; yet the compensable consequential injury was "sustained" in 1984. It is not compensable under the new local legislation, and must reasonably be compensable under the old law. Further, the "injury" represented by an occupational disease is not considered for other purposes to "occur," or to be "sustained," until it causes symptoms; but for the purpose of determining whether a workers' compensation statute *applies* to such an injury ("coverage"), the relevant legal provisions are those in effect at the time of the *employment exposure* to the conditions that cause the disease. Finally, coverage of a *death* claim does not turn on when "death [is] sustained." The LHWCA itself, for example, until its shoreward extension in 1972, covered only employment afloat; it was never applied to cases of death *after* the 1972 amendments, related to employment events *before* 1972 in *shoreside* longshoring or shipyard work. See generally *Stark* v. *Bethlehem Steel Corp.*, 10 BRBS 350, 353–354 (1979); *Verderane* v. *Jacksonville Shipyards, Inc.*, 14 BRBS 220.15, 223–224 (1981); *id.* at 228 (concurrence); *id.* at 231 (dissent). Similarly, a death in 1985 resulting from a 1981 employment injury will not be within the coverage of the local DCCA that took effect in 1982, any more than an occupational disease, becoming manifest in 1985, arising out of employment exposure before 1982.

Workers' compensation laws operate upon the employment relationship. The occurrence of an event or events in the course of that relationship is the foundation of any compensation-law liabilities that arise thereafter. The insurance requirement that is a socially and practically critical aspect of compensation legislation attaches to the *conduct* of *covered employment.* The strictly standardized form of compensation insurance policy defines the liabilities covered by a policy for a specified term, as all those arising out of *employment* during the policy's term, regardless of when the liabilities arise. Hence a policy issued to a District of

Columbia employer under the 1928 Act for the year 1981 will cover the employer's liability, *under the old law* (including any statutory amendments to that law that are applicable to the case), for a 1985 death related to *employment* in 1981; but the employer's 1985 insurance policy (if the employer is still in business), under the new law, will not include such liability.

Thus, highly unsettling consequences would follow if the distinction between 1928-Act and 1982-Act cases were different from the distinction between what is covered under old-DCCA insurance policies and what is covered on new-DCCA policies. Insurers would be relieved of liabilities they contracted to bear, and either some cases that would otherwise be compensable would not be or the liabilities in those cases, if under the 1982 Act, would be uninsured and would fall on the employers themselves even though they were continuously insured under one law or the other.

The courts that have included footnotes in their opinions explaining their continued application of the old DCCA in the cases before them after its repeal have stated a variety of bases—that "events in this case occurred prior to the passage of" the 1982 Act, (*Carey* v. *Crane Service Co.*, 457 A.2d 1102, 1103 n.2 (D.C 1983) (employee's tort suit)), or that "all of the pertinent events occurred before [its] effective date," (*Garrett* v. *Washington Air Compressor Co.*, 466 A.2d 462, 462 n.1 (D.C. 1983)(same)), or that the "injury and claim occurred" before repeal, (*Stevenson* v. *Linens of the Week*, 688 F.2d 93, 95 n.1 (D.C. Cir. 1982) (review of old-DCCA award)) or that the "claim arose before the enactment" of the repeal, (*Crum* v. *General Adjustment Bureau*, 738 F.2d 474, 475 n.2 (D.C. Cir. 1984) (same)), or that "the claim was filed before the effective date" of the repeal. (*Carter* v. *Director, OWCP*, 751 F.2d 1398, 1399 n.1 (D.C. Cir. 1985) (same)). None of these statements was the result of consideration and resolution of a disagreement between the parties, nor would the different standard here promulgated have changed the results. It is appropriate to preserve the applicability of the 1928 Act for *all* liabilities arising out of *employment* before its repeal. The general saving statute, 1 U.S.C. 109, may be seen to support this analysis. It preserves any "liability incurred" under a statute before its repeal. The liability of an employer under a workers' compensation statute is "incurred" at the time of its conduct of the employment out of which a disabling injury arises, even though such liability may not even begin to *accrue* until later.

ALJ decisions issued under the 1928 Act, as well as decisions issued by the District of Columbia under the 1982 Act, have concluded that disabilities resulting from employment events that occured prior to July 26, 1982, are subject to the provisions of the 1928 Act even though such disabilities did not become mannifest until after the 1982 Act became effective. *Coward* v. *Peter Kiewit & Sons, Inc.*, OALJ Nos. 85–DCW–38 to –40 (Aug. 30, 1985) (1928 Act); *Pryor* v. *James McHugh Construction Co.*, OALJ No. 85–LHC–114 (Sept. 9, 1985) (1928 Act); *Jones* v. *PEPCO*, H&AS No. 83–182 (Oct. 23, 1985) (1982 Act).

Accordingly, these final rules revise § 701.101(b) to state that the old law applies, not to "injuries or deaths sustanied" before its repeal, but to "all claims based on *employment events* before July 26, 1982."

Definition and Coverage

The 1984 Amendments changed the Act's coverage in two significant ways: by specifically excluding certain categories of workers' from coverage, and by providing that certain facilities which work on small vessels (as defined) may be certified as exempt from coverage. Both are dependent on coverage of the worker under a state workers' compensation law. The IFR incorporated those changes, providing where possible definitions of the terms used in the statute and establishing a procedure for certifying small vessel facilities. A number of comments were received on these portions of the IFR.

One commentator objected to that section of the IFR which excluded "longshore cargo checkers and cargo clerks" from the definition of "individuals employed exclusively to perform office clerical, secretarial, security, or data processing work" (20 CFR 701.301(a)(12)(iii)(A)). The commentator contended that such exclusion constituted an expansion of coverage beyond that which existed prior to the amendments. The Department does not agree. First, the legislative history of the 1972 Longshore amendments clearly states that "checkers, for example, who are directly involved in the loading or unloading functions are covered by the new amendment." S. Rpt. No. 92–1125, 92D Cong. 2d Sess., 13 (1972); H. Rpt. No. 92–1441, 92D Cong. 2d Sess., 11 (1972). The Supreme Court sustained this position in *Northeast Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 271 (1977). More importantly, the Conference Managers Statement specifically states with regard to the 1984 Amendments that "cargo checkers and clerks remain fully within Longshore Act jurisdiction." H. Rpt. 98–1027, 98th Cong. 2d Sess., 23 (1984). See also Statement of Congressman George Miller, 130 Cong. Rec. H9731 (Daily ed. September 18, 1984). Because Congress expressly stated its intent to include within the coverage of the Act employees classified as longshore cargo checkers and clerks as well as other individuals performing tasks related to cargo movement, no change has been made to § 701.301(a)(12)(iii)(A) of the regulations.

Recreation

The Amendments remove from coverage those workers engaged in the building, repair or dismantling of recreational vessels under sixty-five feet and those employed by a "recreational operation", but does not define the term "recreational." In the preamble to the IFR, the Department specifically invited comments suggesting definitions for this term; thirteen were received. Each comment recommended that the Department should adopt the definition of "recreational vessel" set forth at 46 U.S.C. 2101 (25): "recreational vessel means a vessel: (A) Manufactured or operated primarily for pleasure, or (B) leased, rented, or chartered to another for the latter's pleasure." It was also recommended that the definition of "recreational operation" should be expanded to include activities conducted for the personal pleasure of the individuals involved. The Department accepts these suggestions and has amended § 701.301(a)(12)(iii) (B) and (F) to reflect these changes.

Marina

Among the categories of workers excluded from the Act's coverage are marina employees (except for those building, repairing or dismantling the structure). Comments related to the term marina employees in the IFR urged the Department to define "marina" and to specify which marina employees would be excluded from coverage.

The legislative history provides no guidance and research provided no definition of marina in other statutes which might be adopted.

Given this lack of guidance, the Department has not defined the term in the final rules, nor has it specified which employees may be included under this exclusion. The Department's position is that every employee of a marina (except those specifically excluded from the term in the statute) would be excluded from coverage.

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One commentator questioned why the Department's IFR used the phrase "whether or not over the navigable waters of the United States" only with regard to the exclusion of individuals employed by a club, camp, recreational operation, restaurant, museum or retail outlet (§ 701.301(a)(12)(iii)(B)). Such usage, the comment noted, implied that the exclusion set forth in section 2(3)(A), (C), (D), (E) and (F) of the Act would not apply to persons injured while working over water. Further review of the statue and its legislative history support the view that the phrase in question applies to all excluded groups. In explaining the scope of section 2(a) of P.L. 98-426 which amended Section 2(3) of the Longshore Act, Congressman John N. Erlenborn said:

> The consensus among the conferees wss to reaffirm the purposes of the 1972 jurisdictional changes, and in that light, the substitute narrowed its focus to certain fairly identifiable employers and employees who, although by circumstances happened to work on or adjacent to navigable waters, lack a sufficient nexus to maritime navigation and commerce.

130 Cong. Rec. H9733 (Daily ed. September 18, 1984).

To correct this oversight and to eliminate any possible confusion on this point § 701.301(a)(12(iii) has been amended to include the phrase quoted above so that it applies to all subsections and not merely to subsection (B).

Small Vessel Certification

The Amendments exempted from coverage those facilities certified by the Secretary to be engaged in building, repairing, or dismantling exclusively small vessels as defined. The definition of small vessels includes only commercial barges under 900 lightship displacement tons, and commercial tugboats, towboats, crewboats, supply boats, fishing vessels "or other work vessels" under 1600 tons gross. Two comments addressed this subject which has been revised in the final rules.

In § 702.172(a)(2) of the IFR the Department excluded from the definitions of commercial vessels "military supply boats, patrol boats, utility vessels, ferries, Corps of Engineers dredges, pressure barges or Coast Guard vessels." Two commentators suggested that most of these vessels qualified as "small vessels" within the meaning of section 3(d) of the amended Act and recommended that the regulations be changed accordingly.

The Department agrees and the definition of "commercial" has been modified to exclude from the term only military and Coast Guard vessels. Although the same commentators also maintained that military supply vessels should be included within the definition of small vessels, a review of the legislative history convinces the Department that—except for Army Corps of Engineers Dredges—military vessels of whatever nature are excluded from the term "commercial" vessels.

Certification Process

The IFR at §§ 702.171–702.175 describe the certification process through which a facility can gain exemption from coverage. Two points of clarification were suggested in the comments and experience has pointed out the need for additional clarification; corresponding changes have been made in the final rules.

Section 702.175(a) of the IFR provides examples of when the exemption granted under section 3(d) of the Longshore Act will terminate when the exempted facility engages in the repair of a non-small vessel or enters into a contract containing provision for a Federal maritime subsidy. No guidance was given, however, as to when the exemption would terminate should the facility agree to build a non-small vessel. Section 702.175(a) has been amended to provide that the exemption would cease to apply when the construction first takes on the characteristics of a vessel, that is, when the keel is laid. See 129 Cong. Rec. S8661 (Daily ed. June 16, 1983).

Another comment suggested that the requirement at § 702.174(d)(2) for posting a notice "along" those areas of an exempted facility which are over navigable waters, or upon any adjoining pier, wharf, dock, facility over land for launching vessels or for hauling, lifting or drydocking vessels (and are thus not exempt from coverage) be modified to read "at" the entrance, in order to avoid an unnecessarily burdensome posting requirement. That suggestion has been incorporated in the final rules.

Another comment suggested that § 702.174, which requires that a description of the facility be filed as part of the application, should specifically require a site plan or aerial photograph. Most applicants under the IFR have met the description requirement through submission of just such material and therefore the Department has concluded that such a change is not only proper but that it would not add any additional burden on those facilities seeking certificates of exemption; § 702.174 has therefore been revised to require the submission of a site plan or aerial photograph.

Coverage Under State Workers' Compensation Laws

Both the exclusion from the definition of employee and the small vessel certification exemption provisions of the Amendments are contingent on coverage under a state workers' compensation program. Several commentators pointed to a potential conflict with state laws which require a claimant first to file under any Federal law which might provide coverage. The commentators suggested such state law provisions could void the new exclusions from coverage intended by Congress in enacting the 1984 Amendments. They suggested that the regulations overrule such state laws.

The Department recognized that a conflict with State laws may arise and in § 701.401 set forth its position that any such law should not be used to avoid the changes in coverage made by the 1984 Amendments. *See* Discussion at 50 FR 386. Thus, the statute itself requires an employee who falls within one of the categories of workers' excluded from coverage of the Act, to first file under a State workers' compensation program. Only if the individual is specifically excluded from coverage under the State law would such individual retain rights under the Longshore Act. No changes have been made in this section of the IFR, in part, because experience has not demonstrated that further clarification is necessary or appropriate.

Subpart B—Claims Procedures

The Amendments made several changes in the notice and filing provisions of the Act (e.g., Sections 12 and 13, Longshore Act), which generally require that a notice of injury be filed within thirty days and the claim within one year of the date of injury. For occupational diseases, however, the Amendments provide those time limitations are one-year and two-years, respectively, and further define when an "injury" occurs.

In addition to changes in the time frames for submission of notice and claim, the Amendments call for designating a particular individual to whom the notice is to be given ("designated official"). Finally the Amendments provide that when no time is lost from work because of an injury, the employer is required only to keep a record of the injury but need not submit notice to the deputy commissioner. The IFR reflect these changes in the time limits and establish the procedure for designating an official. Comments on those subjects addressed several topics:

Designated Official

The Amendments provide that each employer designate an official to receive notice and claims. This official (in the language of the Amendments) must be a first line supervisor, local plant manager or personnel office official. The IFR (at § 702.211(b)(1)) described the type of individual who may be designated, consistent with the positions described in the Amendments; following the language of the Amendments, they called for "an individual" to be designated. They also noted that where an individual has not been properly designated, the time limitations might not be used as a defense, and that, for retirees, notice might be filed with any officer or person in charge of the business, whether or not an official had been designated.

One comment urged the Department to broaden the categories of individuals (first line supervisors, local plant managers or personnel office official) who may be designated, to include such individuals as the health facility nurse.

The Department notes the language of the statute specifically identifies the categories of individuals from which the designee "shall" be selected. The legislative history shows that this provision was included to ensure that an injured employee not be excluded from benefits because he/she failed to provide notice to the appropriate person when that person was obscure or at a distant location. The purpose was to make it easier for the employee to meet the notice requirement, not more difficult. Accordingly, longstanding customs should not be changed and the provisions at § 702.211(b)(1) have been broadened to allow other individuals to be designated.

Another comment also suggested that the regulations permit more than one individual to be designated at a facility which is so large that reporting only to one individual might be difficult. The final rules remove the word "an" and allow the designation or more than one individual, at the discretion of the employer. The Department expects that this multiple designation would only be where the size of the facility required it, and notes that the identity of all designated officials must be posted.

Filing a Claim for Occupational Disease: Sections 702.212(b) and 702.222(c) of the IFR provided that if the claim is for an occupational disease, both the notice and claim time limitation provisions did "not begin to run until the employee is disabled, or in the case of a retired employee, until a permanent impairment exists." Commentators objected to this provisions, stating there was no statutory authority for distinguishing occupational diseases from any other claim.

In making this distinction, the IFR reflect the language of the Amendments, which provide that the date of injury in occupational disease cases is the date the claimant becomes aware of the relationship between the employment, the disease and the death or disability. The Amendments for the first time provide a separate definition of disability for retired employees (section 2(10) ". . . such term shall mean permanent impairment . . ."). For those who are not retired the Amendments require that the date of injury begins only when there is a disability; until there is a disability to connect to the employment, there is no injury and the time limitation provisions do not begin to run. The regulations remain unchanged.

No Lost Time Cases: Section 30(a) of the Act was amended to provide that a report of injury need not be submitted by the employer where the injury does not result in time lost from work. This change is reflected in the IFR at § 702.201. The regulations specify which type of record to keep (§ 702.202) and for how long these must be retained (§ 702.111). One comment requested clarification on the record keeping requirement, noting that records of injury for LHWCA claims also served to meet the record keeping requirements of the Occupational Safety and Health Act (OSHA). The comment indicated that the information required by the Act (§ 702.202) and OSHA, did not coincide. To clarify, § 702.201(b) has been revised to provide that compliance with OSHA injury report record keeping requirements would satisfy the record keeping requirements for no-lost-time injuries under LHWCA.

Another comment on the no lost time reporting requirement concerned its affect on the running of the time limitation provisions under sections 12 and 13 of the Act (§§ 702.211 and 702.221). The commentator requested clarification on when the limitations period would begin in those cases where there is no immediate compensable disability. Section 30(a) of the Longshore Act requires covered employers to file reports only where the injury "causes loss of one or more shifts of work." Thus, where an injury does not result in lost time, the employer is not under a duty to file a report with the Secretary. In such cases (e.g., no lost time) the filing of a report cannot cause the time within which a claim must be filed (Act section 13) to commence. This conclusion is premised on the fact that: (1) Congress recognized that an employee could not be "injured" until he or she suffered an impairment (either presumed or actual) to that person's earning capacity, and (2) Congress deemed that, in the absence of such impairment or loss, no report should be required from the employer. *See* generally *Marathon Oil Co.* v. *Lundsford*, 733 F. 2d 1139 (5th Cir., 1984); *Both Iron Works Corp.*, v. *Galen*, 605 F. 2d 583 (1st Cir. 1979). Because no report is required by section 30(a) in no lost time cases, the filing of such reports cannot be deemed to start the statute of limitations within which the employee must file a claim. It is the Department's further position that no report should be filed with the OWCP district office in no lost time cases.

General Notice Provisions: Other issues concerning the notice and claim provisions of the IFR included:

—The elimination of the requirement that the claimant deliver a notice of injury to the deputy commissioner. Because few notices are actually delivered to the deputy commissioner, the IFR changed the old wording from "shall" to "may", since it more accurately reflected existing practice. Several commentators questioned whether the Department could do away with the statutory requirement. The statute also gives the deputy commissioner authority to waive this requirement. Since this provision represents merely a formalization of a longstanding practice, the regulations remain unchanged on this point.

—The employee may provide notice of an injury orally, under the IFR. Some commentators suggested the deputy commissioner make a record of all oral notices received. This practice will be required through Department procedures.

—The IFR (at § 702.216) failed to reflect accurately the statutory changes effected by the Amendments to section 12(d) of the Act. The final rules provide, as the statute now does, that a claim will not be barred by untimely notice if *either* the employer had knowledge of the assertedly work-related injury within the applicable notice period *or*, despite the absence of timely notice or knowledge, the employer or carrier was not prejudiced by the delay beyond the applicable period.

Settlements

The settlement provisions of the IFR were the subject of twenty-eight comments. Most objected to the settlement provisions of the IFR as going beyond the intent of Congress.

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The 1984 Amendments amended section 8(i) of the Act in several important respects. While it retained the requirement that settlements under the Act must be approved by the deputy commissioner or administrative law judge, the Amendments altered the basis for review, requiring that the settlement application be approved unless it was found to be "inadequate or procured by duress"; it imposed a thirty-day time limitation period within which the application must be acted on, and provided that where the parties are represented by attorneys, approval was automatic unless specifically disapproved within thirty days; settlement of medical and/or death claims was allowed; and it eliminated the commutation provision under section 14(j) of the Act.

The IFR, at §§ 702.241–702.245, established procedures for implementing these changes. These clarified that the thirty-day period for approval of settlement applications does not begin to run until the adjudicator (meaning the ALJ or deputy commissioner) receives a completed application and that where the claim was pending at the OALJ, that the time does not begin until five days before the hearing is scheduled, so as to ensure that the case is assigned to a judge and the application will be reviewed.

At § 702.242, the information necessary for a complete settlement application was described; included was a requirement for personal information on the claimant's education and skills, an explanation as to why the settlement amount is adequate, and a current medical report. While the IFR did not define adequate in most situations, they provided that for cases where compensation is being paid under an order and there are no outstanding issues, a settlement amount which does not equal the present value of future compensation payments commuted at a discount rate (for which comments were invited), would be considered inadequate unless shown to be adequate.

The comments received addressed a variety of issues concerning the settlement provisions. Many commentators considered the provisions to be contrary to the intent of Congress which limited the basis for denial of settlements and required action on a settlement application within thirty days. In addition, several commentators stated that the provisions denying the right to settle survivors claims prior to the employee's death were inconsistent with the statute. These comments and the response are discussed in turn below.

Information Required in the Settlement Application: The IFR at § 702.242, describe the information necessary for a complete settlement application. A number of objections to this provision were received.

First, a number of comments asserted that the amount of information required was burdensome and that the requirement would complicate, not simplify, the settlement process as Congress had intended. Some noted that much of the information required was already a part of the case record and the applicant should not be required to duplicate the information. Others objected to the provisions in §§ 702.242(b) (5) and (6), which required a "current medical report" and "an estimate of the cost of future medical treatment", respectively.

The information required by § 702.242(b) remains essentially the same in the final rules. While Congress narrowed the basis for evaluating a settlement application and imposed a time frame within which to take action, it retained the requirement that the deputy commissioner or administrative law judge approve the settlement. The information required in the settlement application is essential for the proper evaluation of the terms of the settlement, and is based on those factors which are considered essential in evaluating the settlement, as described by the Benefits Review Board (BRB) in *Clefsted* v. *Perini North River Associates*, 9 BRBS 217 (1978). However, the Department agrees with one commentator who suggested that the adjudicator should not be required to evaluate the "probability of success" before ruling on the application. This element, the Department agrees, is very difficult to evaluate and therefore should not be a separate factor to consider. Section 702.243(f) has been amended to delete this as a separate criterion to be evaluated. However, it is a circumstance which the adjudicator may consider in deciding whether the settlement should be approved.

The application requirements as established in the IFR are not only essential to the approval process, but have not proven to be burdensome. As many of the comments pointed out, much of the information is already in the case record, presumably submitted by the parties seeking the settlement. Moreover, experience in the past year has revealed no significant difficulties incurred by the parties in obtaining the required information.

Several comments suggested that § 702.243(g) be deleted because it was inconsistent with the 1984 amendments which repealed section 14(j) of the Act. The Department does not agree. Rather, the Department has determined that § 702.243(g) provides a sound annuity basis for determining the adequacy of settlements in those cases where benefits are being paid pursuant to a final compensation order and there are no substantive issues in dispute between the parties. This conclusion is consistent with the statement of Professor Larson in his treatise on workers' compensation wherein he noted that:

> [1] lump-sum settlements, when they are authorized by statute, are not compromises in the usual sense; that is, they do not assume concessions and adjustments in the amount of payment because of the existence of a disputed issue. Rather, they are essential commutations, and should be calculated on a sound annuity basis in accordance with any statutory rules provided. Larson, The Law of Workmen's Compensation, Vol. 3 section 82.71, p. 15–590–1. (Footnotes omitted).

In response to the Department's request many comments were received concerning the discount rate to the applied under § 702.243(g). The comments uniformly objected to the 5 per centum true discount rate set forth in the IFR. A more reasonable, and therefore acceptable, rate, some commentators suggested, was the interest rate provided for in section 302(f) of the The Federal Courts Improvement Act of 1982, Pub. L. 97–164, 96 Stat. 55. The Department agrees and has revised § 702.243(g) to require a discount rate identical to the rate specified at 28 U.S.C. 1961.

Many comments objected to the provisions of § 702.241(g) which prohibit parties to a disability claim from settling potential future survivors' claims at the same time they settle the employee's claim. The statute itself states that only "the parties to [a] claim for compensation" may agree to settle the claims. Since a claim for survivor benefits does not arise until the employee's death, there is no claim that can be settled. Therefore, under no circumstances may a person seeking benefits under section 7 or 8 of the Act settle a claim for survivor benefits which may be filed under section 9 of the Act.

While the settlement application requirements have remained essentially the same, certain modifications have been made in response to the comments and on the basis of experience. In addition, to ensure that information is required only where it is necessary to

properly evaluate the application, the Department is establishing procedures which allow deputy commissioners and ALJs flexibility in determining exactly what information is required in each case. Moreover, § 702.242(b)(5) has been changed to clarify that a new medical report is not always required; where permanency was established prior to the settlement, a report made at that time might meet the requirement. This avoids the unnecessary expense of a medical examination in cases where reports on file or in existence are adequate.

Several comments objected to that portion of § 702.243(a) which provides that the failure to submit a complete settlement application shall toll the thirty date period set forth in section 8(i) of the Act, 33 U.S.C. 908(i). The Department believes that this provision is both reasonable and necessary to ensure that the deputy commissioner or administrative law judge can properly evaluate the proposed settlement agreement in light of the statutory criteria. Without this limitation a settlement could be deemed approved without appropriate review, a result contrary to the Congressional directive that settlement proposals must be submitted to the Department for its evaluation and approval or disapproval.

Special Fund/Second Injury Cases

The special fund was established by section 44 of the Act to pay certain costs which are to be shared by the industry in general. Foremost among these is under section 8(f), which, under certain circumstances, limits to 104 weeks the liability of an employer/carrier in cases involving a second injury to a previously partially disabled employee. Section 8(f) was designed to discourage employers from discrimination in the hiring or retention of handicapped employees. As administrator of the fund, the Director, OWCP, is responsible for monitoring the fund and defending it against improper applications for relief.

The fund comes from an annual assessment, which prior to the 1984 Amendments was based on the amount of compensation and medical costs paid during the preceding year. Also, prior to the Amendments, an employer could apply for section 8(f) relief either at the deputy commissioner level or at the first hearing conducted by an ALJ. In the 1984 Amendments, Congress made two significant changes relating to the fund and to section 8(f) in particular. First, the assessment formula was modified, and second, the employer was required to raise the issue of special fund relief before the deputy commissioner. The IFR, at § 702.146 reflected the change in the assessment formula, and at § 702.321 established procedures for determining the applicability of section 8(f). Both were the subject of a significant number of comments and have been modified in response to those comments.

Assessment Formula

A number of comments expressed concern that the assessment formula still included the amount paid for medical benefits. These commentators pointed out that Congress changed the wording of the statute to delete the reference to medical payments and that continued inclusion of medical benefits in the assessment formula was inconsistent with the amended Act. Further review of the statute and the legislative history established that although section 44(c)(2) of the 1972 Longshore Act did require that the assessment be based on the "total compensation and medical payments made . . . by each carrier and self-insurer", the 1984 amendments (Pub. L. 98–426 § 24(a)) deleted the reference to medical payments. Under section 44(c)(2) as amended, the assessment is now dependent only on the compensation payments made during the preceding calendar year. Because "compensation" as defined in section 2 (12) of the Act does not include medical benefits, the Department now agrees that the formula set forth in the IFR should be changed. Accordingly, § 702.146(c) has been revised to delete the reference to medical payments. It should be noted, however, that this change will be applied only to assessments levied after publication of this final rule.

Section 8(f) and the Application Process

The requirement, at § 702.321, that a fully documented application must accompany the request for Section 8(f) relief brought more comments than any other section of the IFR. The 1984 Amendments for the first time required that all requests for section 8(f) relief, together with a statement documenting the employer's entitlement to such relief, must be presented first to the deputy commissioner before the request may be considered. Failure to present the request at that level operates as an absolute bar to relief, unless the employer/carrier could not have reasonably anticipated that sectioin 8(f) would be an issue.

The IFR at § 702.321, set out the procedures for determining the applicability of section 8(f), established when the request must be made, detailed what information must be contained in the application and set time limitations within which the request and the documentation must be submitted (90 days from the date when permanency first becomes an issue but no later than the informal conference).

Over thirty comments addressed this issue; some raised concerns with various aspects of the application process such as the ninety-day time requirement. Others asserted that the rules requiring a fully documented application and a recommendation by the deputy commissioner on the 8(f) request go beyond both the intent of Congress and the letter of the Amendments. These commentators maintained that the 1984 Amendments require only that the issue be raised before the deputy commissioner and do not require the submission of supporting documentation nor a decision on the issue by the deputy commissioner.

In drafting the IFR, the Department carefully considered the legislative history of the Amendments, which shows that this requirement in section 8(f)(3) is one of several changes made in order to stem the growing liability of the special fund. These concerns of Congress are amply illustrated by the legislative history; indeed the Senate version of the bill (which required the application to be raised before the ALJ) called for a fund conservator to represent the special fund. Senator Hatch described this provision as a response to the "growing liability" of the fund, 128 Cong. Rec. S9207 (Daily ed. July 27, 1982), which Senator Nickles noted was "not adequately protected and is being raided by questionable claims" 128 Cong. Rec. S9210.

While the conservator provision was dropped in Conference, similar concerns motivated the House version of the bill, which was eventually accepted by both houses. The House Labor Committee report explained that:

> The Committee further amended section 8(f) by requiring that employer's petitions for Special Fund relief be filed as soon in the claims adjudication process as possible, and that the Secretary be noticed with respect to any such petitions. The Committee believes that the Secretary has an obligation to safeguard the Special Fund, which should be met in connection with the adjudication of the claims.

H. Rept. No. 98–570, 98th Cong. 1st Sess., 10 (November 18, 1983).

Congressman Erlenborn noted that "no one guards the fund . . . [t]he result is that employers and claimants can stipulate fund coverage and often no one questions that factual claims." 130 Cong. Rec. H2488 (Daily ed. April 9, 1984).

Finally, the Conference Managers' report noted that the provision in section 8(f)(3) was intended

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to encourage employers to raise the special fund issue early in the claims adjudication process, in order to assure the deputy commissioner and the Director of OWCP the opportunity to examine the validity of the employer's basis for seeking special fund relief.

H. Rept. 98–1027, 98th Cong., 2d Sess. 31 (September 14, 1984).

Congressional intent is clear: to end the practice of first raising the section 8(f) issue at the ALJ level, where it could often go unnoticed and uncontested, and to provide the deputy commissioner with an opportunity to "examine the validity of the" request to identify cases eligible for special fund relief and to defend against cases where necessary. The comments objecting to the requirement for a fully documented application are not supported by the legislative history, and this principle which is the basis of the final rules remains in tact.

In addition, experience over the last year in working with the interim rules does not support the contention that the requirement for a fully documented application is burdensome. This experience shows that employers have been able to meet this requirement, and have not encountered problems in obtaining the necessary documentation, even where other issues are outstanding on which the final decision for section 8(f) relief is dependent. Requiring the employer to document its entitlement, even where permanency or basic liability is contested, means merely that the employer must argue in the alternative, a practice which is nothing new to those who practice in this area of law. *See Verderane* v. *Jacksonville Shipyards, Inc.*, 772 F. 2d 775 (11th Cir. 1985).

Although the final rules retain the provision for submission of a fully documented application, that part of § 702.321(a) which describes the evidence required has been clarified. The modifications stem from experience during the interim period which showed a need to clarify further the nature of the required information. Accordingly, the final rules contain a more detailed description of the necessary documentation; although described in more detail, the modifications do not add to the information which is required.

Commentators also objected to having the issue adjudicated by the deputy commissioner. They argue that the Amendments require only that the deputy commissioner be put on notice that relief would be sought, not that it should be adjudicated at that level. Many commentators pointed out that other issues going to the basis of liability remain outstanding at that level and argue that an application for special fund relief may be premature. These objections, too, are without merit.

The IFR require that the deputy commissioner consider the request for relief and include in the recommended decision a finding on all outstanding issues. This provision (which many commentators described as adjudication) is not new, but merely describes the longstanding practice by which the deputy commissioner's recommended decision addresses all issues, including a request for section 8(f) relief. The IFR do not change the role of the deputy commissioner, although the Amendments, by requiring that special fund relief be raised first before the deputy commissioner, may add to the frequency with which the issue needs to be addressed.

While the provisions requiring submission of a fully documented application and consideration of the request for special fund relief have been retained, the rules which detail the time frames for submission of the application and other factors in the process have been substantially revised in response to comments. Many comments objected to the 90-day period for submission of the documented application, noted the difficulty of obtaining essential documentation where the employee would not cooperate, and sought clarification of the nature of the absolute defense. The changes in the final rules concerning these issues are discussed in turn below:

Time Frames

A principal objection to the application process is that provision in §702.321(b) requiring submission of the fully documented application within ninety (90) days of the date when either: (1) The informal conference is held where permanency of the claimant's condition is at issue; or (2) benefits are first paid for permanent disability. Both the length of time (90 days) and the events which start the time running were confusing in practice and have been substantially modified.

When time begins

A number of comments described the 90-day period as inadequate and described the process as confusing. Among the concerns were:

- Some commentators described possible hardship to claimants resulting from the procedure. These comments suggested that in order to avoid starting th 90-day period when permanency becomes an issue, employers might prematurely terminate benefits for temporary disability which they previously might have continued to pay during the dispute process.
- The IFR seem contradictory, since the employer was given 90 days to submit an application, but not later than the date of the informal conference at which permanency was at issue. If permanency was not raised until the conference, many comments expressed concern that the employer, caught by surprise and unprepared, would lose the right to seek section 8(f) relief.
- Claimants who were not beng paid would face additional hardship where the case was not transmitted to the OALJ because the employer took the full 90 days to submit its section 8(f) application.
- A number of commentators considered the 90-day period to be insufficient for gathering the required documentation. Several commentators noted that, where the claimant did not cooperate, it would be impossible to obtain the evidence required for the completed application, since the deputy commissioner is without authority to order depositions.

The commentators suggested alternatives to the IFR process. Some urged the elimination of the 90-day period; others suggested that in order to avoid delaying the formal hearing process, the case should be transmitted to the OALJ while the section 8(f) documentation was being compiled, after which the section 8(f) issue would be presented to and considered by the deputy commissioner and later submitted to the OALJ along with the rest of the case; still other comments suggested bifurcating the hearing process by allowing the case to go before the OALJ for consideration of all other issues and then remanding it to the deputy commissioner for a determination on section 8(f). One group of comments suggested requiring the issue be raised within 14 days f receipt of the conference memorandum recommending permanent disability, with all supporting evidence to be submitted within 90 days thereafter.

While the Department recognizes the time frames established in the IFR create potential difficulties, the suggested changes do not present viable alternatives. The suggestions that the case be transmitted to the OALJ while the deputy commissioner considers the section 8(f) issue is contrary to the statutory scheme established by Congress—once the case is transmitted to the OALJ, the Director, OWCP, as administrator of the special fund, loses jurisdiction over the claim and cannot consider, other than as a party, any issues in the case, nor make a recommendation. Bifurcating the process would add additional and unnecessary workload to the hearing process and further extend the claims process, since once the case was remanded and the deputy commissioner made a determination on the issue, the employer/carrier may be able to request another hearing before the OALJ on the section 8(f) issue.

For these reasons, the Department has not implemented the changes suggested in the comments. However, substantial modifications in the application process described in § 702.321(b) have been made in response to the concerns. These changes are consistent with the law and are designed to clarify the period for submission of the documentation and eliminate confusion, avoid unnecessary delay in the informal conference stage which could work hardship on claimants, and better define the nature of the absolute defense for failure to raise and adequately document the request for section 8(f) relief.

First, the 90-day period for submission of a fully documented application has been eliminated. Instead of a set period established for all cases, the final rules call for a period fixed by the deputy commissioner according to the circumstances of each case. In certain circumstances, such as where all parties are notified that the issue of permanency will be addressed at the informal conference, the final rules specify that the final date for the submission of the section 8(f) application is at the informal conference. Where the issue is first raised during the informal conference and the employer/carrier could not reasonably be expected to have gathered the necessary documentation to support a section 8(f) application, the date will be fixed according to the circumstances of the case. Factors to be considered by the deputy commissioner in fixing the date of submission include the effect on the claimant of any delay in submission to the OALJ, the difficulty in obtaining the necessary evidence, and the reasons given by the employer in support of any request for additional time.

Second, the final rules clarify that the absolute defense is an affirmative defense and, as such, it must be raised and specifically pleaded by the Director before the OALJ.

Along with comments requesting clarification of the nature of the absolute defense, several comments noted that in many instances, employers would be unable to comply with the documentation requirements because, for example, a claimant involved in third party litigation refused to cooperate with the employer. Under these circumstances, the commentators noted, it would be unfair to penalize the employer by raising the absolute defense. While the Department recognizes that compliance may not always be possible, no change is necessary in the final rules to address this problem. As noted previously, experience with the interim rules for the past year has shown that employers have not experienced major difficulty in obtaining necessary documentation. Further, even in cases where the problem may arise, the employer would not be penalized: where the employer was not aware, due to lack of information, that section 8(f) would be an issue, the absolute defense would not apply. Thus, where the application was denied because of the inaccessible evidence, the employer would not be barred by the absolute defense from seeking section 8(f) relief, and could take the issue before an administrative law judge, whose deposition authority could be invoked to gain access to the evidence.

Administrative Matters

Other concerns raised by the comments regarding the 8(f) procedures are addressed below:

Time limits

Several comments suggested that rules include time limits for decisions on the section 8(f) application. The Department, through internal performance standards, already requires a timely response to applications. Experience has shown that, except where employers fail to submit required documentation, the Department has been able to address requests for section 8(f) relief in a timely fashion.

Approval authorization

Some comments proposed that the deputy commissioner be authorized to approve as well as deny section 8(f) applications. Although deputy commissioners can now approve section 8(f) relief in hearing loss claims, at this time all other applications must be reviewed by the OWCP Longshore Division national office staff. This review does not, as stated by those suggesting the change, substantially delay the process, as all requests for review are acted upon within two weeks of receipt. This central office review does, however, ensure unformity in application and consistency of policy and is retained.

Physicians, Health Care Providers, and Claimant Representatives

The 1984 Amendments to the Longshore Act authorized the Secretary to prepare a list of medical care providers (including physicians) and claimant's representatives who have been disqualified from providing medical care and/or services or representation services to injured employees. The amendments also strengthened the Secretary's authority to regulate the activities of such persons to ensure that the rights of the injured employees or their survivors are adequately protected. Several comments were received concerning these provisions including questions as to

—Whether the Secretary has the authority to excuse the failure to submit medical reports;
—Whether the ALJ, in addition to the deputy commissioner, has the authority to suspend compensation for failure to undergo medical examination or treatment;
—What standard should be used to evaluate prevailing community medical charges; and
—Whether the deputy commissioner should be required to investigate all fee disputes.

These are discussed in turn below.

Failure to file reports

The Act provides, at section 7(d)(2), that the attending physician must file a medical report within ten days of treatment or the employer is not obligated to pay the bill. The deputy commissioner may excuse the failure to submit a report for good cause. The IFR did not change the previous § 702.422 regarding this point. One comment queried whether the employer must await a finding of fact before being relieved from the liability of medical costs. Such issue must be raised as a defense against the obligation, and a finding of fact would therefore be necessary.

Failure to undergo medical exam

Section 702.410 of the IFR authorized the deputy commissioner to order suspension of benefits for failure to undergo a medical examination. Several comments questioned whether an ALJ also had that authority, since it was not specifically mentioned in the IFR. The ALJ does have such authority, and § 702.410 has been amended to clarify this. See Longshore Act 7(d)(4), 33 U.S.C. 907(d)(4).

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Prevailing community rate

Several comments suggested that existing state fee schedules should serve as prima facie evidence of the prevailing community rate for fee disputes. Section 702.413 provides that the agency medical director (changed to an Office of Workers' Compensation Programs district medical director in the final rules) or deputy commissioner must determine the prevailing community rate in medical fee disputes. While the Department recognizes the value of fee schedules in helping to establish the prevailing rate, it does not adopt them as the single criterion for determining the rate. In response to the comments received, however, the final rule has been changed and the phrase which was previously a part of § 702.413 (1984) which makes clear that such state fee schedules may be used as one criterion in making this determination, has been reinstated.

Investigation of fee disputes

Section 702.414 established the procedure for handling fee disputes. It permits the deputy commissioner to exercise discretion in determining whether to initiate a formal dispute process. Several comments suggested that the Office should be required to initiate the formal process whenever requested to do so by an employer. The Department declines to be bound to initiate a formal process where the assertions are patently frivolous or constitute a nuisance. The deputy commissioner will investiage any complaint received to the extent necessary, and, where such complaint is found to be meritorious, will institute the formal complaint process.

While the Department retains the right to determine when the facts warrant a formal investigation into medical fee disputes, it has clarified § 702.413 to provide that *any* interested party will be entitled to a hearing before an ALJ, including an employer who is ordered to pay but maintains the charge is excessive. The Department cautions that such actions as medical fee determinations cannot be taken unilaterally by any party, but must follow the process established by law and structured in the regulations.

Debarment

The 1984 Amendments authorized the Secretary to exclude physicians and other health care providers and claimant representatives from practicing under the Act, and specifies the grounds for debarment. The IFR described the procedures for debarring physicians (§ 702.431) and representatives (§ 702.131).

Two comments were received directly concerning the debarment process. One comment called for expanding the specific grounds for debarment of claimant representatives, and suggested that the Secretary should have the authority to debar for incompetence. Because the statute explicitly defines the grounds for debarment, however, the Department cannot expand the grounds through regulation.

Other comments suggested that employers be given the authority to appeal a finding by the deputy commissioner that debarment was not warranted in a particular case. The Department rejects this suggestion. The statute at section 7(c) gives to the Secretary the sole authority to debar physicians or claimant representatives. The regulations set forth the grounds for debarment as established by the Act and establish the procedures to be followed. Consistent with the statute, these regulations provide the right of hearing from an informal adverse decision only to the medical care provider or representative, e.g., the person directly affected. Allowing the employer to challenge this determination would, in effect, be placing the provider in double jeopardy, requiring that he/she first face the Department, and after, convincing the Department not to institute formal debarment proceedings, would have to face an inquiry before an ALJ initiated not by the Secretary but by an employer. Because the authority to initiate debarment procedures is given by law to the Director, OWCP, no change in the regulations on this point have been made.

Miscellaneous Subjects

Other subjects addressed in the comments include:

Hearing Loss

The IFR, at § 702.441, detailed procedures for claims for loss of hearing. Among other changes made by the 1984 Amendments was the requirement that properly administered audiograms are presumptive evidence of a hearing loss. To be properly administered, the Amendments require them to have been performed by a certified audiologist or otolaryngologist. In the Managers' Report, the legislative history clarifies this to allow qualified technicians to actually administer the test, as long as it is certified as correct and interpreted by an audiologist or otolaryngologist. One professional association objected to the use of technicians in performing hearing tests. The final rules remain unchanged, given the express direction of the Conference Managers that technicians be allowed to perform the examination.

The Amendments also required that a copy of the audiogram along with a statement that showed a loss of hearing be given to the employee in order to start the limitation period for notice and filing. The IFR, at § 702.212(a)(3) and § 702.221(b), respectively, implemented this provision. Several comments suggested the language be expanded to clarify that the report must also state that the loss is related to employment to start the running of limitation periods. These suggestions have been incorporated into the final rules, since they merely clarify the statutory requirement that the claimant must not only be aware of a disability but also of its relation to the employment.

Occupational Diseases

The Amendments made several changes regarding occupational diseases which do not immediately result in death or disability. Section 10 of the amended Act provides that in those cases where the job related disease does not become manifest until after retirement, compensation shall be paid based, not on the loss of earning capacity, but on the extent of impairment as determined by the American Medical Association's *Guides to Permanent Impairment*. The IFR provided a definition of retirement at § 702.601(c). Several comments noted that the definition in the IFR was different from that described in the preamble. To eliminate the ambiguity thus created and clarify the meaning, the final rules contain an amended definition of retirement. Section 702.604(b) was also clarified to ensure that the same limitation on benefits applied to death claims in occupational disease cases, as in all other death claims.

Liens on Compensation

One comment concerned the ability to enforce the provisions section 17 of the Act implemented in § 702.162 of the regulations, which allow a trust fund which pays disability benefits to a claimant while a claim is pending, a lien on the compensation benefits paid. The commentator stated that the provision of the IFR was not sufficient to recoup the entire lien from any lump-sum back recovery of benefits, but was limited to ten percent. A close reading of the section shows that the lien can be satisfied out of the entire past due compensation benefits which may be paid, and any excess can be recovered out of continuing benefits (limited to ten percent of bi-weekly compensation). There is no need for a change in this provision.

Third Party Recovery

The Amendments provide that a claimant must obtain the agreement of an employer to any settlement agreement in a third party action for an amount less than that to which he/she would be entitled under the Act. In the alternative, the claimant must notify the employer of any judgement or settlement against a third party. Failure to obtain the consent or make the required notification relieves the employer of liability for compensation and medical benefits, even where payments have been made or entitlement acknowledged (see section 33(g) of the amended Act). One commentator noted that § 702.281 did not fully explain this. Accordingly, the final rules include additional language clarifying the responsibilities of the claimant in third party actions, consistent with the Amendments.

Effective date

The Department has determined that the public interest requires the immediate issuance of regulations in order to assure continued smooth implementation of the amended Longshore Act. The IFR will expire on February 3, 1986, unless extended or superceded by revised rules. Further delay in issuing the final rule is not in the best interest of the parties subject to the Longshore Act. It is essential, therefore, that these regulations become effective immediately in order to ensure compliance with the statute and effective adjudication of claims that are subject to the 1984 amendments to the Longshore Act. Because immediate issuance of this final regulation is required by the public interest in having a smooth implementation of the Longshore Act amendments, it shall become effective immediately instead of thirty days after publication. This determination is made pursuant to 5 U.S.C. 553(d)(3).

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 1215–0160.

Classification—Executive Order 12291

These final rules only implement the amendments to the Longshore Act and make certain technical corrections to the regulations as previously promulgated. They do not, in themselves, impose any additional requirements. Therefore, this is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the final rules are only implementing this 1984 amendments to the Longshore Act and they do not, in themselves, impose any additional requirements upon small entities. On the contrary, these regulations implement those amendments which exclude many small entities from coverage under the Longshore Act, establish procedures whereby some small entities may seek an exemption from the statute, and eliminate the reporting requirements for all employers in cases of no lost time injuries. Accordingly, no regulatory impact analysis is required.

List of Subjects

20 CFR Part 701

Longshoremen, Workers' compensation.

20 CFR Part 702

Administrative practice and procedure, Claims, Insurance, Longshoremen, Vocational rehabilitation, and Workers' compensation.

20 CFR Part 703

Insurance, Longshoremen, Workers' compensation.

Accordingly, 20 CFR Parts 701, 702 and 703 as published in the **Federal Register** on January 3, 1985 (50 FR 384) are adopted as final with the changes noted below.

1. The citation of authorities for Parts 701, 702 and 703, continues to read as follows:

Authority: 5 U.S.C. 301; Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 83 U.S.C. 939; 36 D.C. Code 501 et seq.; 42 U.S.C. 1651 et seq.; 43 U.S.C. 1331; 5 U.S.C. 8171, et seq.; Secretary's Order 6–84, 49 FR 32473; Employment Standards Order 78–1, 43 FR 51469.

PART 701—GENERAL; ADMINISTERING AGENCY DEFINITIONS AND USE OF TERMS

2. Section 701.101(b) is revised to read as follows:

Rules in This Subchapter

§ 701.101 Scope of this subchapter and Subchapter B.

* * * * *

(b) The regulations also apply to claims filed under the District of Columbia Workmen's Compensation Act (DCCA). That law applies to all claims for injuries or deaths based on employment events that occurred prior to July 26, 1982, the effective date of the District of Columbia Workers' Compensation Act.

3. In § 701.301, paragraph (a)(12)(iii) is revised to read as follows:

Terms Used in This Subchapter

§ 701.301 Definitions and use of terms.

(a) * * *

(iii) Nor does this term include the following individuals (whether or not the injury occurs over the navigable waters of the United States) where it is first determined that they are covered by a state workers' compensation act:

(A) Individuals employed exclusively to perform office clerical, secretarial, security, or data processing work (but not longshore cargo checkers and cargo clerks);

(B) Individuals employed by a club (meaning a social or fraternal organization whether profit or nonprofit), camp, recreational operation (meaning any recreational activity, including but not limited to scuba diving, commercial rafting, canoeing or boating activities operated for pleasure of owners, members of a club or organization, or renting, leasing or chartering equipment to another for the latter's pleasure), restaurant, museum or retail outlet;

(C) Individuals employed by a marina, provided they are not engaged in its construction, replacement or expansion, except for routine maintenance such as cleaning, painting, trash removal, housekeeping and small repairs;

(D) Employees of suppliers, vendors and transporters temporarily doing business on the premises of a covered employer, provided they are not performing work normally performed by employees of the covered employer;

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(E) Aquaculture workers, meaning those employed by commercial enterprises involved in the controlled cultivation and harvest of aquatic plants and animals, including the cleaning, processing or canning of fish and fish products, the cultivation and harvesting of shellfish, and the controlled growing and harvesting of other aquatic species;

(F) Individuals engaged in the building, repairing or dismantling of recreational vessels under 65 feet in length. For purposes of this subparagraph "recreational vessel" means a vessel manufactured or operated primarily for pleasure, or rented, leased or chartered by another for the latter's pleasure, and "length" means a straight line measurement of the overall length from the foremost part of the vessel to the aftmost part of the vessel, measured parallel to the center line. The measurement shall be from end to end over the deck, excluding sheer.

PART 702—ADMINISTRATION AND PROCEDURE

4. In § 702.101 the entries for District Nos. 11 and 12 are removed and reserved, and the entries for District Nos. 10 and 14 are revised to read as follows:

§ 702.101 Establishment of Compensation Districts.

* * * * *

District No. 10. Comprises the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin; with headquarters in Chicago, Illinois.

District No. 11 [Reserved]

District No. 12 [Reserved]

* * * * *

District No. 14. Comprises the States of Alaska, Colorado, Idaho, Montana, North Dakota, South Dakota, Oregon, Utah, Washington and Wyoming; with headquarters in Seattle, Washington.

* * * * *

5. In § 702.145, paragraph (b) is revised to read as follows:

§ 702.145 Use of the special fund.

* * * * *

(b) Under section 8(f) of the Act (Second Injuries). In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of injury. If, following an injury falling within the provisions of section 8(c)(1)–(20), the employee with the pre-existing permanent partial disability becomes permanently and totally disabled after the second injury, but such total disability is found not to be due solely to his second injury, the employer (or carrier) shall be liable for compensation as provided by the provisions of section 8(c)(1)–(20) of the Act, 33 U.S.C. 908(c)(1)–(20) or for 104 weeks, whichever is greater. However, if the injury is a loss of hearing covered by section 8(c)(13), 33 U.S.C. 908(c)(13), the liability shall be the lesser of these periods. In all other cases of a second injury causing permanent total disability (or death), wherein it is found that such disability (or death) is not due solely to the second injury, and wherein the employee had a pre-existing permanent partial disability, the employer (or carrier) shall first pay compensation under section 8(b) or (e) of the Act, 33 U.S.C. 908(b) or (e), if any is payable thereunder, and shall then pay 104 weeks compensation for such total disability or death, and none otherwise. If the second injury results in permanent partial disability, and if such disability is compensable under section 8(c)(1)–(20) of the Act, 33 U.S.C. 908(c)(1)–(20), but the disability so compensable did not result solely from such second injury, and the disability so compensable is materially and substantially greater than that which would have resulted from the second injury alone, then the employer (or carrier) shall only be liable for the amount of compensation provided for in section 8(c)(1)–(20) that is attributable to such second injury, or for 104 weeks, whichever is greater. However, if the injury is a loss of hearing covered by section 8(c)(13), 33 U.S.C. 908(c)(13), the liability shall be the lesser of these periods. In all other cases wherein the employee is permanently and partially disabled following a second injury, and wherein such disability is not attributable solely to that second injury, and wherein such disability is materially and substantially greater than that which would have resulted from the second injury alone, and wherein such disability following the second injury is not compensable under section 8(c)(1)–(20) of the Act, then the employer (or carrier) shall be liable for such compensation as may be appropriate under section 8(b) or (e) of the Act, 33 U.S.C. 908(b) or (e), if any, to be followed by a payment of compensation for 104 weeks, and none other. The term "compensation" herein means money benefits only, and does not include medical benefits. The procedure for determining the extent of the employer's (or carrier's) liability under this paragraph shall be as provided for in the adjudication of claims in Subpart C of this Part 702. Thereafter, upon cessation of payments which the employer is required to make under this paragraph, if any additional compensation is payable in the case, the deputy commissioner shall forward such case to the Director for consideration of an award to the person or persons entitled thereto out of the special fund. Any such award from the special fund shall be by order of the Director or Acting Director.

* * * * *

6. In §702.146, paragraph (c) is revised to read as follows:

§ 702.146 Source of the special fund.

* * * * *

(c) The Director annually shall assess an amount against insurance carriers and self-insured employers authorized under the Act and Part 703 of this subchapter to replenish the fund. That total amount to be charged all carriers and self-insurers to be assessed shall be based upon an estimate of the probable expenses of the fund during the calendar year. The assessment against each carrier and self-insurer shall be based upon (1) the ratio of the amount each paid during the prior calendar year for compensation in relation to the amount all such carriers of self-insurers paid during that period for compensation, and (2) the ratio of the amount of payments made by the special fund for all cases being paid under section 8(f) of the Act, 33 U.S.C. 908(f), during the preceding calendar year which are attributable to the carrier or self-insurer in relation to the total of such payments during such year attributable to all carriers and self-insurers. The resulting sum of the percentages from paragraphs (c) (1) and (2) of this section will be divided by two, and the resulting percentage multiplied by the probable expenses of the fund. The Director may, in his or her discretion, condition continuance or renewal of authorization under Part 703 upon prompt payment of the assessment. However, no action suspending or revoking such authorization shall be taken without affording such carrier or self-insurer a hearing before the Director or his/her designee.

7. In § 702.162, paragraphs (a) and (h) are revised to read as follows:

§ 702.162 Liens on compensation authorized under special circumstances.

(a) Pursuant to section 17 of the Act, 33 U.S.C. 917, when a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947, 29 U.S.C. 186(c) [LMRA], established pursuant to a collective bargaining agreement in effect between an employer and an employee entitled to compensation under this Act, has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act, a lien shall be authorized on such compensation in favor of the trust fund for the amount of such payments.

* * * * *

(h) In the event that either the deputy commissioner or the administrative law judge is not satisfied that the trust fund qualifies for a lien under section 17, the deputy commissioner or administrative law judge may require further evidence including but not limited to the production of the collective bargaining agreement, trust agreement or portions thereof.

* * * * *

8. Section 702.172 is revised to read as follows:

§ 702.172 Certification; definitions.

For purposes of §§ 702.171 through 702.175 dealing with certification of small vessel facilities, the following definitions are applicable.

(a)(1) "Small vessel" means only those vessels described in section 3(d)(3) of the Act, 33 U.S.C. 903(d)(3), that is:

(i) A commercial barge which is under 900 lightship displacement tons (long); or

(ii) A commercial tugboat, towboat, crewboat, supply boat, fishing vessel or other work vessel which is under 1,600 tons gross.

(2) For these purposes: (i) One gross ton equals 100 cubic feet, as measured by the current formula contained in the Act of May 6, 1894 as amended through 1974 (46 U.S.C. 77); (ii) one long ton equals 2,240 lbs; and (iii) "Commercial" as it applies to "vessel" means any vessel engaged in commerce but does not include military vessels or Coast Guard vessels.

(b) "Federal Maritime Subsidy" means the construction differential subsidy (CDS) or operating differential subsidy under the Merchant Marine Act of 1936 (46 U.S.C. 1101 et seq.).

(c) "facility" means an operation of an employer at a particular contiguous geographic location.

9. In § 702.174, paragraphs (a)(1) and (d)(2) are revised to read as follows:

§ 702.174 Exemptions; necessary information.

(a) * * *

(1) Name, location, physical description and a site plan or aerial photograph of the facility for which an exemption is sought.

* * * * *

(d) * * *

(2) A notice, where applicable, at the entrances to all areas to which the exemption does not apply.

10. In § 702.175, paragraph (a) is revised to read as follows:

§ 702.175 Effect of work on excluded vessels; reinstatement of certification.

(a) When a vessel other than a small commercial vessel, as defined in § 702.172, enters a facility which has been certified as exempt from coverage, the exemption shall automatically terminate as of the date such a vessel enters the facility. The exemption shall also terminate on the date a contract for a Federal maritime subsidy is entered into, and, in the situation where the facility undertakes to build a vessel other than a small vessel, when the construction first takes on the characteristics of a vessel, i.e., when the keel is laid. All duties, obligations and requirements imposed by the Act, including the duty to secure compensation liability as required by sections 4 and 32 of the Act, 33 U.S.C. 904 and 932, and to keep records and forward reports, are effective immediately. The employer shall notify the Director or his/her designee immediately where this occurs.

10A. In § 702.201, paragraph (b) is revised to read as follows:

§ 702.201 Reports from employers of employee's injury or death.

* * * * *

(b) No report shall be filed unless the injury causes the employee to lose one or more shifts from work. However, the employer shall keep a record containing the information specified in § 702.202. Compliance with the current OSHA injury record keeping requirements at 29 CFR 1904 will satisfy the record keeping requirements of this section for no lost time injuries.

11. In § 702.211(b), paragraphs (1) and (4) are revised to read as follows:

§ 702.211 Notice of employee's injury or death; designation of responsible official.

* * * * *

(b) In order to facilitate the filing of notices, each employer shall designate at least one individual responsible for receiving notices of injury or death; this requirement applies to all employers. The designation shall be by position and the employer shall provide the name and/or position, exact location and telephone number of the individual to all employees by the appropriate method described below.

(1) *Type of individual.* Designees must be a first line supervisor (including a foreman, hatchboss or timekeeper), local plant manager, personnel office official, company nurse or other individual traditionally entrusted with this duty, who is located full-time on the premises of the covered facility. The employer must designate at least one individual at each place of employment or one individual for each work crew where there is no fixed place of employment (in that case, the designation should always be the same position for all work crews).

* * * * *

(4) *Effect of failure to designate.* Where an employer fails to properly designate and to properly publish the name and/or position of the individual authorized to receive notices of injury or death, such failure shall constitute satisfactory reasons for excusing the employee/claimant's failure to give notice as authorized by section 12(d)(3)(ii) of the Act, 33 U.S.C. 912(d)(3)(ii).

12. In § 702.212, paragraph (a)(3) is revised to read as follows:

§ 702.212 Notice; when given for certain occupational diseases.

(a) * * *

(3) In the case of claims for loss of hearing, the date the employee receives an audiogram, with the accompanying report which indicates the employee has suffered a loss of hearing that is related to his or her employment. (See § 702.441).

* * * * *

13. Section 702.216 is revised to read as follows:

§ 702.216 Effect of failure to give notice.

Failure to give timely notice to the employer's designated official shall not bar any claim for compensation if: (a) The employer, carrier, or designated official had actual knowledge of the injury or death; or (b) the deputy commissioner or ALJ determines the employer or carrier has not been prejudiced: or (c) the deputy commissioner excuses failure to file notice. For purposes of this subsection, actual knowledge shall be deemed to exist if the employee's immediate supervisor was aware of the injury and/or in the case of a hearing loss, where the employer has furnished to the employee an audiogram and report which indicates a loss of hearing. Failure to give notice shall be excused by the deputy commissioner if: a) notice, while not given to the designated official, was given to an official of the employer or carrier, and no prejudice resulted; or b) for some other satisfactory reason, notice could not be

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given. Failure to properly designate and post the individual so designated shall be considered a satisfactory reason. In any event, such defense to a claim must be raised by the employer/carrier at the first hearing on the claim.

14. In § 702.221 paragraph (b) is revised to read as follows:

§ 702.221 Claims for compensation; time limitations.

* * * * * *

(b) In the case of a hearing loss claim, the time for filing a claim does not begin to run until the employee receives an audiogram with the accompanying report which indicates the employee has sustained a hearing loss that is related to his or her employment. (See § 702.441).

15. In 702.241, paragraph (c) is revised to read as follows:

§ 702.241 Definitions and supplementary information.

* * * * *

(c) If a settlement application is first submitted to an ALJ, the thirty day period mentioned in paragraph (f) of this section does not begin until five days before the date the formal hearing is set. This rule does not preclude the parties from submitting the application at any other time such as (1) after the case is referred for hearing, (2) at the hearing, or (3) after the hearing but before the ALJ is issues a decision and order. Where a case is pending before the ALJ but not set for a hearing, the parties may request the case be remanded to the deputy commissioner for consideration of the settlement.

16. In § 702.242, paragraphs (b)(5) and (7) are revised to read as follows:

§ 702.242 Information necessary for a complete settlement application.

* * * * *

(b) * * *

(5) A current medical report which fully describes any injury related impairment as well as any unrelated conditions. This report shall indicate whether maximum medical improvement has been reached and whether further disability or medical treatment is anticipated. If the claimant has already reached maximum medical improvement, a medical report prepared at the time the employee's condition stabilized will satisfy the requirement for a current medical report. A medical report need not be submitted with agreements to settle survivor benefits unless the circumstances warrant it.

* * * * *

(7) If the settlement application covers medical benefits an itemization of the amount paid for medical expenses by year for the three years prior to the date of the application. An estimate of the claimant's need for future medical treatment as well as an estimate of the cost of such medical treatment shall also be submitted which indicates the inflation factor and/or the discount rate used, if any. The adjudicator may waive these requirements for good cause.

17. In § 702.243, paragraphs (a), (c), (f), and (g) are revised to read as follows:

§ 702.243 Settlement application; how submitted, how approved, how disapproved, criteria.

(a) When the parties to a claim for compensation, including survivor benefits and medical benefits, agree to a settlement they shall submit a complete application to the adjudicator. The application shall contain all the information outlined in § 702.242 and shall be sent by cetified mail, return receipt requested or submitted in person, or by any other delivery service with proof of delivery to the adjudicator. Failure to submit a complete application shall toll the thirty day period mentioned in section 8(i) of the Act, 33 U.S.C. 908(i), until a complete application is received.

* * * * *

(c) If the adjudicator disapproves a settlement application, the adjudicator shall serve on all parties a written statement or order containing the reasons for disapproval. This statement shall be served by certified mail within thirty days of receipt of a complete application (as described in § 702.242.) if the parties are represented by counsel. If the disapproval was made by a deputy commissioner, any party to the settlement may request a hearing before an ALJ as provided in sections 8 and 19 of the Act, 33 U.S.C. 908 and 919, or an amended application may be submitted to the deputy commissioner. If, following the hearing, the ALJ disapproves the settlement, the parties may: (1) Submit a new application, (2) file an appeal with the Benefits Review Board as provided in section 21 of the Act, 33 U.S.C. 921, or (3) proceed with a hearing on the merits of the claim. If the application is initially disapproved by an ALJ, the parties may (1) submit a new application or (2) proceed with a hearing on the merits of the claim.

* * * * *

(f) When presented with a settlement, the adjudicator shall review the application and determine whether, considering all of the circumstances, including, where appropriate, the probability of success if the case were formally litigated, the amount is adequate. The criteria for determining the adequacy of the settlement application shall include, but not be limited to:

(1) The claimant's age, education and work history;

(2) The degree of the claimant's disability or impairment;

(3) The availability of the type of work the claimant can do;

(4) The cost and necessity of future medical treatment (where the settlement includes medical benefits).

* * * * *

(g) In cases being paid pursuant to a final compensation order, where no substantive issues are in dispute, a settlement amount which does not equal the present value of future compensation payments commuted, computed at the discount rate specified below, shall be considered inadequate unless the parties to the settlement show that the amount is adequate. The probability of the death of the beneficiary before the expiration of the period during which he or she is entitled to compensation shall be determined according to the most current United States Life Table, as developed by the United States Department of Health and Human Services, which shall be updated from time to time. The discount rate shall be equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 weeks U.S. Treasury Bills settled immediately prior to the date of the submission of the settlement application.

18. In § 702.281, paragraph (b) is revised to read as follows:

§ 702.281 Third party action.

* * * * *

(b) Where the claim or legal action instituted against a third party results in a settlement agreement which is for an amount less than the compensation to which a person would be entitled under this Act, the person (or the person's representative) must obtain the prior, written approval of the settlement from the employer and the employer's carrier before the settlement is executed. Failure to do so relieves the employer and/or carrier of liability for compensation described in section 33(f) of Act, 33 U.S.C. 933(f) and for medical benefits otherwise due under section 7 of the Act, 33 U.S.C. 907, regardless of whether the employer or carrier has made payments of acknowledged entitlement to benefits under the Act. The approval shall be on a form provided by the Director and filed, within thirty days after the settlement is entered into, with the deputy commissioner who has jurisdiction in the district where the injury occurred.

19. Section 702.321 is revised to read as follows:

§ 702.321 Procedures for determining applicability of section 8(f) of the Act.

(a) *Application: filing, service, contents.* (1) an employer or insurance carrier which seeks to invoke the provisions of section 8(f) of the Act must request limitation of its liability and file, in duplicate, with the deputy commissioner a fully documented application. A fully documented application shall contain the following information: (i) A specific description of the pre-existing condition relied upon as constituting an existing permanent partial disability; (ii) the reasons for believing that the claimant's permanent disability after the injury would be less were it not for the pre-existing permanent partial disability or that the death would not have ensued but for that disability. These reasons must be supported by medical evidence as specified in (iv) below; (iii) the basis for the assertion that the pre-existing condition relied upon was manifest in the employer; and (iv) documentary medical evidence relied upon in support of the request for section 8(f) relief. This medical evidence shall include, but not be limited to, a current medical report establishing the extent of all impairments and the date of maximum medical improvement. If the claimant has already reached maximum medical improvement, a report prepared at that time will satisfy the requirement for a current medical report. If the current disability is total, the medical report must explain why the disability is not due solely to the second injury. If the current disability is partial, the medical report must explain why the disability is not due solely to the second injury and why the resulting disability is materially and substantially greater than that which would have resulted from the subsequent injury alone. If the injury is loss of hearing, the pre-existing hearing loss must be documented by an audiogram which complies with the requirements of § 702.441. If the claim is for survivor's benefits, the medical report must establish that the death was not due solely to the second injury. Any other evidence considered necessary for consideration of the request for section 8(f) relief must be submitted when requested by the deputy commissioner or Director.

(2) If claim is being paid by the special fund and the claimant dies, an employer need not reapply for section 8(f) relief. However, survivor benefits will not be paid until it has been established that the death was due to the accepted injury and the eligible survivors have been identified. The deputy commissioner will issue a compensation order after a claim has been filed and entitlement of the survivors has been verified. Since the employer remains a party in interest to the claim, a compensation order will not be issued without the agreement of the employer.

(b) *Application: Time for filing.* (1) A request for section 8(f) relief should be made as soon as the permanency of the claimant's condition becomes known or is an issue in dispute. This could be when benefits are first paid for permanent disability, or at an informal conference held to discuss the permanency of the claimant's condition. Where the claim is for death benefits, the request should be made as soon as possible after the date of death. Along with the request for section 8(f) relief, the applicant must also submit all the supporting documentation required by this section, described in paragraph (a), of this section. Where possible, this documentation should accompany the request, but may be submitted separately, in which case the deputy commissioner shall, at the time of the request, fix a date for submission of the fully documented application. The date shall be fixed as follows: (i) where notice is given to all parties that permanency shall be an issue at an informal conference, the fully documented application must be submitted at or before the conference. For these purposes, notice shall mean when the issues of permanency is noted on the form LS–141, Notice of Informal Conference. All parties are required to list issue reasonably anticipated to be discussed at the conference when the initial request for a conference is made and to notify all parties of additional issues which arise during the period before the conference is actually held. (ii) Where the issue of permanency is first raised at the informal conference and could not have reasonably been anticipated by the parties prior to the conference, the deputy commissioner shall adjourn the conference and establish the date by which the fully documented application must be submitted and so notify the employer/carrier. The date shall be set by the deputy commissioner after reviewing the circumstances of the case.

(2) At the request of the employer or insurance carrier, and for good cause, the deputy commissioner, at his/her discretion, may grant an extension of the date for submission of the fully documented application. In fixing the date for submission of the application under circumstances other than described above or in considering any request for an extension of the date for submitting the application, the deputy commissioner shall consider all the circumstances of the case, including but not limited to: Whether the claimant is being paid compensation and the hardship to the claimant of delaying referral of the case to the Office of Administrative Law Judges (OALJ); the complexity of the issues and the availability of medical and other evidence to the employer; the length of time the employer was or should have been aware that permanency is an issue; and, the reasons listed in support of the request. If the employer/carrier requested a specific date, the reasons for selection of that date will also be considered. Neither the date selected for submission of the fully documented application nor any extension therefrom can go beyond the date the case is referred to the OALJ for formal hearing.

(3) Where the claimant's condition has not reached maximum medical improvement and no claim for permanency is raised by the date the case is referred to the OALJ, an application need not be submitted to the deputy commissioner to preserve the employer's right to later seek relief under section 8(f) of the Act. In all other cases, failure to submit a fully documented application by the date established by the deputy commissioner shall be an absolute defense to the liability of the special fund. This defense is an affirmative defense which must be raised and pleaded by the Director. The absolute defense will not be raised where permanency was not an issue before the deputy commissioner. In all other cases, where permanency has been raised, the failure of an employer to submit a timely and fully documented application for section 8(f) relief shall not prevent the deputy commissioner, at his/her discretion, from considering the claim for compensation and transmitting the case for formal hearing. The failure of an employer to present a timely and fully documented application for section 8(f) relief may be excused only where the employer could not have reasonably anticipated the liability of the special fund prior to the consideration of the claim by the deputy commissioner. Relief under section 8(f) is not available to an employer who fails to comply with section 32(a) of the Act, 33 U.S.C. 932(a).

(c) *Application: Approval, disapproval.* If all the evidence required by paragraph (a) was submitted with the application for section 8(f) relief and the

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facts warrant relief under this section, the deputy commissioner shall award such relief after concurrence by the Associate Director, DLHWC, or his or her designee. If the deputy commissioner or the Associate Director or his or her designee finds that the facts do not warrant relief under section 8(f) the deputy commissioner shall advise the employer of the grounds for the denial. The application for section 8(f) relief may then be considered by an administrative law judge. When a case is transmitted to the Office of Administrative Law Judges the deputy commissioner shall also attach a copy of the application for section 8(f) relief submitted by the employer, and notwithstanding § 702.317(c), the deputy commissioner's denial of the application.

(Approved by the Office of Management and Budget under control number 1215-0160.)

20. In § 702.410, paragraph (c) is revised to read as follows:

§ 702.410 Duties of employees with respect to special examinations.

* * * * *

(c) Where an employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the deputy commissioner or administrative law judge may by order suspend the payment of further compensation during such time as the refusal continues. Except that refusal to submit to medical treatment because of adherence to the tenets of a recognized church or religious denomination as described in § 702.401(b) shall not cause the suspension of compensation.

21. Section 702.413 is revised to read as follows:

§ 702.413 Fees for medical services; prevailing community charges.

All fees charged by medical care providers for persons covered by this Act shall be limited to such charges for the same or similar care (including supplies) as prevails in the community in which the medical care provider is located and shall not exceed the customary charges of the medical care provider for the same or similar services. Official state medical fee schedules for workers' compensation charges may be used as guidelines in determining the prevailing community rate where available and to the extent appropriate. The opinion of the OWCP district medical director that a charge by a medical care provider disputed under the provisions of § 702.414 exceeds the charge which prevails in the community in which said medical care provider is located shall constitute sufficient evidence to warrant further proceedings pursuant to § 702.414 and to permit the Director to direct the claimant to select another medical provider for care to the claimant.

22. Section 702.414 is revised to read as follows:

§ 702.414 Fees for medical services; unresolved disputes on prevailing charges.

(a) The Director may, upon written complaint of an interested party, or upon the Director's own initiative, investigate any medical care provider or any fee for medical treatment, services, or supplies that appears to exceed prevailing, community charges for similar treatment, services or supplies or the provider's customary charges. Such investigation may initially be conducted informally through contact of the medical care provider by the district medical director. If this informal investigation is unsuccessful further proceedings may be undertaken. These proceedings may include, but not be limited to: An informal conference involving all interested parties; agency interrogatories to the pertinent medical care provider; and issuance of subpoenas duces tecum for documents having a bearing on the dispute.

(b) The failure of any medical care provider to present any evidence required by the Director pursuant to this section without good cause shall not prevent the Director from making findings of fact.

(c) After any proceeding under this section the Director shall make specific findings on whether the fee exceeded the prevailing community charges or the provider's customary charges and provide notice of these findings to the affected parties.

(d) The Director may suspend any such proceedings if after receipt of the written complaint the affected parties agree to withdraw the controversy from agency consideration on the basis that such controversy has been resolved by the affected parties. Such suspension, however, shall be at the discretion of the Director.

Section 702.415 is revised to read as follows:

§ 702.415 Fees for medical services; unresolved disputes on charges; procedure.

After issuance of specific findings of fact and proposed action by the Director as provided in § 702.414 any affected provider employer or other interested party has the right to seek a hearing pursuant to section 556 of Title 5, United States Code. Upon written request for such a hearing, the matter shall be referred by the Deputy Commissioner to the OALJ for formal hearing in accordance with the procedures in subpart C of this part. If no such request for a hearing is filed with the deputy commissioner within thirty (30) days the findings issued pursuant to § 702.414 shall be final.

In § 702.601, paragraph (c) is revised to read as follows:

Subpart F—Occupational Disease Which Does Not Immediately Result in Death or Disability

§ 702.601 Definitions.

* * * * *

(c) *Retirement.* For purposes of this subpart, retirement shall mean that the claimant, or decedent in cases involving survivor's benefits, has voluntarily withdrawn from the workforce and that there is no realistic expectation that such person will return to the workforce.

In § 702.604, paragraph (b) is revised to read as follows:

§ 702.604 Determining the amount of compensation for occupational disease claims which become manifest after retirement.

* * * * *

(b) If the claim is for death benefits and the time of injury occurs after the decedent has retired, compensation shall be the percent specified in section 9 of the Act, 33 U.S.C. 909, times the payrate determined according to § 702.603. Total weekly death benefits shall not exceed one fifty-second part of the decedent's average annual earnings during the fifty-two week period preceding retirement, such benefits shall be subject to the limitation provided for in section 6(b)(1) of the Act, 33 U.S.C. 906(b)(1).

Signed at Washington, D.C., this 29th day of January, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-2371 Filed 1-31-86; 8:45 am]

BILLING CODE 4510-27-M

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List January 21, 1986

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1986

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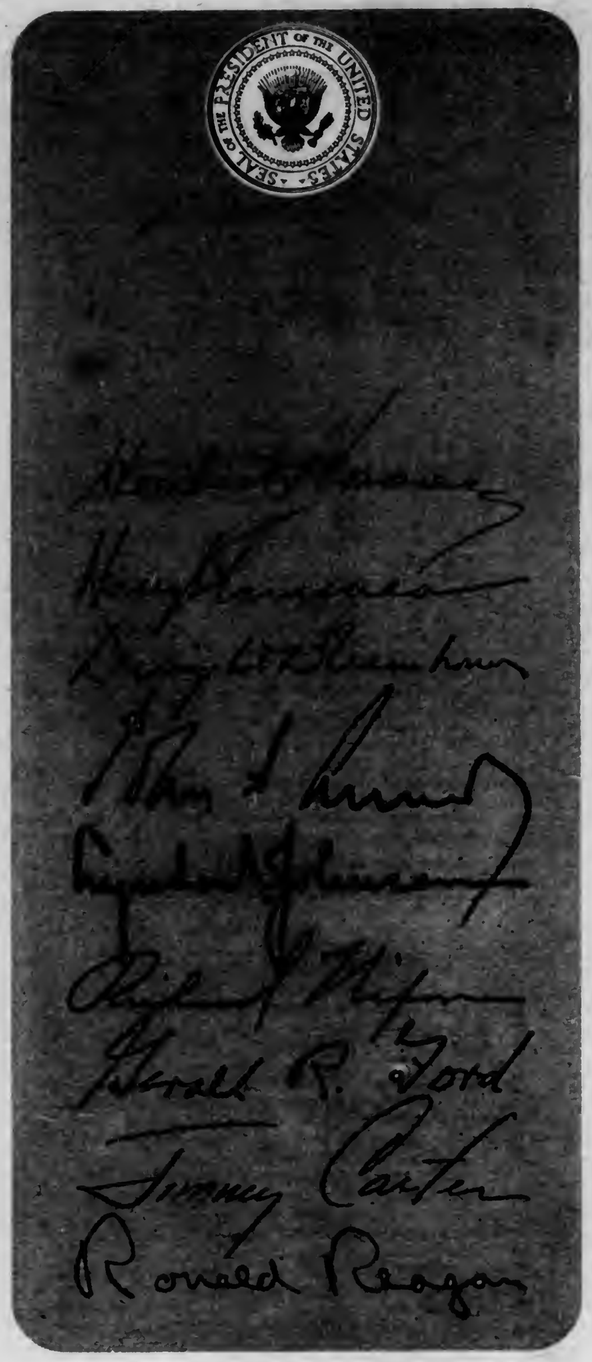
In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
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Tuesday
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federal register

Tuesday
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Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

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Accounting
Energy Department
Food and Nutrition Service
Administrative Practice and Procedure
Securities and Exchange Commission
Air Pollution Control
Environmental Protection Agency
Aviation Safety
Federal Aviation Administration
Banks, Banking
Federal Deposit Insurance Corporation
Communications Equipment
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Food and Drug Administration
Food Assistance Programs
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Grant Programs—Education
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Selected Subjects

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Income Taxes
Internal Revenue Service

Investment Companies
Securities and Exchange Commission

Labeling
Alcohol, Tobacco and Firearms Bureau

Marine Safety
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Marketing Agreements
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Natural Gas
Federal Energy Regulatory Commission

Penalties
Saint Lawrence Seaway Development Corporation

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Radio
Federal Communications Commission

Sewage Disposal
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WHERE: Room 239,
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1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
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Tuesday, February 4, 1986

Presidential Documents

Title 3—

The President

Proclamation 5437 of January 31, 1986

Suspending Most-Favored-Nation Status for Afghanistan

By the President of the United States of America

A Proclamation

Pursuant to sections 118(a)(1) and 552(a)(1) of Public Law 99–190, I have determined that it is appropriate to deny nondiscriminatory (most-favored-nation) trade treatment to the products of Afghanistan and thereby to cause such products to be subject to the rate of duty set forth in column number 2 of the Tariff Schedules of the United States.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States of America, including but not limited to sections 118(a)(1) and 552(a)(1) of Public Law 99–190, and section 604 of the Trade Act of 1974, do proclaim that:

1. General headnote 3(d) to the Tariff Schedules of the United States (TSUS), listing those countries whose products are subject to the rate of duty set forth in column number 2 of the TSUS, is amended to include Afghanistan.

2. This proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on and after the 14th day following the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of January in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86–2589
Filed 2–3–86; 10:54 am]
Billing code 3195–01–M

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Presidential Documents

Proclamation 5438 of February 3, 1986

National Safe Boating Week, 1986

By the President of the United States of America

A Proclamation

Americans increasingly look to the water for recreation and relaxation. This year, approximately one-quarter of us will enjoy boating in one or more of its many and varied forms. Therefore, it is important that all those involved in recreational boating should put a high priority on safety. They should know and obey the rules of safe boating, and show courtesy and consideration on the water.

The theme of this year's National Safe Boating Week—"Be Smart! Take a Boating Course!"—emphasizes the importance of learning the safe way to enjoy the sport of boating. Every year, more and more people engage in a variety of boating activities and our Nation's waters are increasingly utilized by a dazzling array of pleasure craft including sailboards, dinghies, ketches, catboats, outriggers, sloops, power yachts, and high-speed motorboats. Lack of knowledge on the part of boat operators makes them liable to expose themselves unnecessarily to hazards, thus endangering not only themselves, but others as well. A review of fatal boating accidents shows that over two-thirds were the fault of the operator. And less than one-quarter of these operators had received any kind of boating education. Through the observance of National Safe Boating Week, 1986, all Americans should be alerted to the importance of learning the rules of safe boating.

In recognition of the need for boating safety, the Congress, by joint resolution approved June 4, 1958, as amended (36 U.S.C. 161), authorized and requested the President to proclaim annually the week commencing on the first Sunday in June as "National Safe Boating Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week begining June 1, 1986, as National Safe Boating Week. I also invite the Governors of the States, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, and American Samoa, and the Mayor of the District of Columbia to provide for the observance of this week.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-2590
Filed 2-3-86; 10:55 am]
Billing code 3195-01-M

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Presidential Documents

Order of February 1, 1986

Emergency Deficit Control Measures for Fiscal Year 1986

By the authority vested in me as President by the statutes of the United States of America, including section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (hereafter referred to as "the Act"), I hereby order that the following actions be taken immediately to implement the required sequestration or reduction determined by the Comptroller General in his report dated January 21, 1986, under section 251 of the Act:

(1) Each automatic spending increase which, but for the passage of the Act, would be first paid on or after the enactment of the Act during fiscal year 1986 is suspended as provided in section 252(a)(6) and subject to provisions set forth in sections 255, 256, and 257 of the Act. The programs with such 1986 automatic spending increases subject to reduction in this manner, specified by account title, are: Central Intelligence Agency retirement and disability system fund; Civil service retirement and disability fund; Comptrollers general retirement system; Foreign service retirement and disability fund; Military retirement fund; National Oceanic and Atmospheric Administration retirement; Railroad Retirement Tier II; Retired pay, Coast Guard; Retirement pay and medical benefits for commissioned Public Health Service officers; Special benefits, Federal Employees' Compensation Act; National Wool Act; Special milk program; and Vocational rehabilitation.

(2) New budget authority and unobligated balances amounts for major National Defense functional category (050) are sequestered according to the procedures set forth in section 252(a)(2) of the Act.

(3) For non-defense accounts in the Federal budget, the following are sequestered: new budget authority, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended, and the reduction of obligation limitations, for each account and for each program, project, and activity, as defined pursuant to section 252(a)(1)(B)(i) of the Act, or each budget account activity as defined pursuant to section 252(a)(1)(B)(ii) of the Act.

(4) For accounts making payments otherwise required by substantive law, the head of each Department or agency is directed to modify the calculation of each such payment to the extent necessary to reduce the estimate of total required payments for the remainder of the fiscal year (a) where payments are not made from spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended, to the level of remaining budgetary resources or (b) where payments are made from spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, as amended, to the estimated level of payments included in the Comptroller General determination on January 21, 1986, of required sequestration or reduction action.

(5) For accounts making commitments for guaranteed loans and obligations for direct loans subject to limitation otherwise required by substantive law, the head of each Department or agency is directed to modify the calculation of such commitments or obligations to the extent necessary to conform to the limitations established by the Act and specified in the Comptroller General determination of January 21, 1986.

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(6) Each Department or agency head may, to the extent not otherwise prohibited by law, use existing authority to deobligate balances of budgetary resources as necessary to apply the required reduction or sequestration in as uniform a manner as possible for any person or other recipient entitled to payments under any formula-driven calculations specified in the substantive law. Deobligations may include budgetary resources obligations for which checks have not been issued or funds not otherwise disbursed (funds obligated but unexpended).

Also, the head of each Department or agency shall report the programs, projects, and activities information required by section 252(a)(5) (A) and (B) to the President of the Senate, the Speaker of the House, the Director of the Office of Management and Budget, and the Comptroller General, as instructed by the Director of the Office of Management and Budget in Bulletin No. 86–7. For those programs in the National Defense function that have already been reported by program, project, and activity, no additional report is necessary. The reports of the Departments and agencies are hereby incorporated in this Order.

I further direct the Director of Central Intelligence to report the programs, projects, and activities information required by section 252(a)(5) (A) and (B) on a classified basis to the appropriate committees of the Congress for the National Foreign Intelligence Program consistent with paragraphs 1 through 3 of this Order and to so advise the President of the Senate, the Speaker of the House, the Director of the Office of Management and Budget, and the Comptroller General, as instructed by the Director of the Office of Management end Budget.

In accordance with section 252(a)(6)(A), amounts suspended, sequestered or reduced under this Order shall be withheld from obligation and amounts suspended or sequestered shall be permanently cancelled as of March 1, 1986, unless alternative legislation is enacted prior to that date.

This Order shall be reported to the Congress and shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
February 1, 1986.

[FR Doc. 86–2591
Filed 2–3–86; 10:56 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 51, No. 23
Tuesday, February 4, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Kiwifruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule.

SUMMARY: The Department has decided to leave in effect an interim final rule which amended the voluntary United States Standards for Grades of Kiwifruit. The Kiwifruit Growers of California requested amending the standards by changing the shape requirement for U.S. Fancy grade, the application of tolerances section, revising the requirements of the definition of fairly uniform in size, and adding a section establishing the sample size for grade determination. The Agricultural Marketing Service has the responsibility, in cooperation with industry, to maintain current grade standards.

EFFECTIVE DATE: February 4, 1986.

FOR FURTHER INFORMATION CONTACT: Francis J. O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2056, South Building, Washington, DC 20250, (202) 477–2185.

SUPPLEMENTARY INFORMATION: This finalization of the interim final rule has been reviewed under USDA Procedures and Executive Order 12291 and designated as a "nonmajor rule." Agricultural Marketing Service's Administrator, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

The voluntary United States Standards for Grades of Kiwifruit became effective September 1982. Recently the Kiwifruit Growers of California requested that the standards be amended to change the shape requirement of the U.S. Fancy grade and application of tolerances; redefine fairly uniform in size requirements and add a section for sample size. The interim final rule became effective upon publication in the **Federal Register** (50 FR 40185) on October 2, 1985.

The U.S. Fancy grade required fruit to be well formed. However, it was felt that the well formed requirement was too restrictive. This rule allows U.S. Fancy fruit to be fairly well formed; the same as the U.S. No. 1 grade.

A provision was added to the application of tolerances permitting one fruit which is frozen or affected by decay in any consumer-size container; provided, that the average percentage of defects for the entire lot not exceed lot tolerances. Present application of tolerances allow two such fruit in any container; provided, the average for the entire lot does not exceed the tolerance.

The amended standards defined "fairly uniform in size" to mean that fruit in any container could not vary more than ¼ inch in diameter. This rule incorporates a sliding scale approach to the problem by allowing a greater variation in diameter for larger fruit than for smaller.

A section was added pertaining to sample size. This section will address sampling for new and old types of containers. These changes will bring the standards in line with current industry marketing practices. The rule provided interested persons with a period for comment through November 1, 1985, none were received.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

Accordingly, 7 CFR Part 51 is amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended, 7 U.S.C. 1622, 1624.

2. The interim final rule published in the October 2, 1985, **Federal Register** (50 FR 40185) revising the standards is adopted as a final rule.

* * * * *

Done in Washington, DC, on January 29, 1986.

William T. Manley,
Deputy Administrator, Marketing Programs.

[FR Doc. 86–2361 Filed 2–3–86; 8:45 am]
BILLING CODE 3410–02–M

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Audit Requirements and Use of Audit Funds

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is amending the Child Care Food Program (CCFP) regulations by (1) revising the CCFP audit requirements to conform to the Single Audit Act of 1984, Office of Management and Budget circulars, and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015); and (2) outlining the permissible uses of funds available to perform audits in the program. This action is necessary to conform the CCFP audit requirements with other Federal audit requirements.

EFFECTIVE DATE: March 6, 1986.

ADDRESS: Copies of all written comments on the proposed rule are available for review during normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for Program participants, individual industries.

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Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584–0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22875, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate and any subsequent notices that may apply.)

Background

On April 12, 1983, the Department published a proposed rule at 48 FR 15637 to amend Section 226.8 (a), (b), (c) and (d) to bring the Child Care Food Program (CCFP) into conformity with the audit requirement established in the Department's Uniform Federal Assistance Regulations (7 CFR 3015.70 ff) and in OMB circulars A–102 (the predecessor to current circular A–128) and A–110. Basically, that audit requirement mandated that public and private nonprofit organizations arrange and pay for organization-wide audits (OWAs) at least once every two years. That mandate differed from the long standing CCFP audit provision, which required State agencies to arrange for program specific audits of all participating institutions at least once every two years.

Because Part 3015 and the OMB circulars take precedence in this matter, the Department is required to implement OWAs in the CCFP. However, section 17(i) of the National School Lunch Act provides a specific fund to be made available to States for the purpose of conducting audit of the CCFP. Since the implementation of OWAs raised several questions concerning the use of CCFP audit monies, the Department issued the proposed regulation cited above, authorizing State agencies to use these funds to pay for OWAs, provided the CCFP is tested as part of the OWA. The proposal further provided that if State agencies elect not to fund OWAs, they could use these monies to conduct program specific audits of institutions for which no OWA is conducted during a two year period. A 60-day comment period was established, and commenters were requested to focus their discussions on the utilization of audit monies, over which the Department has discretion, rather than on the nondiscretionary implementation of OWAs. Twenty commenters responded during the official comment period (nine from within FNS or the Department, eight State agencies, one institution and two interested parties). An additional 21 comments were submitted after the comment period ended (19 institutions, one FNS staff and one State agency), and these comments were also considered.

Before a final rulemaking responding to commenters' concerns could be published, Congress enacted the Single Audit Act of 1984 (Public Law 98–502) (SAA), which established new audit requirements for State and local governmental recipients. In conformance with this legislative change, OMB has issued a new management circular pertaining to governmental agencies (A–128), and the Department is proceeding to amend 7 CFR Part 3015. Since the Department has no discretion over matters mandated by the law, this final rulemaking has been revised somewhat from the proposal in order to incorporate the new statutory requirements by reference to Part 3015 and the appropriate OMB circulars. However, the law and the circulars remain silent on several issues that directly affect the CCFP. This final rule establishes guidelines in these areas. The remainder of this preamble, therefore, discusses the discretionary policies adopted by the Department and addresses the concerns expressed by commenters.

A few commenters addressed themselves generally to the subject of OWAs. Of these commenters, four approved of the requirement, while five disapproved, preferring to retain program specific audits. As noted above and in the preamble to the proposed rule, the Department has no discretion in this area. OMB circulars have generally mandated OWAs for all public and private nonprofit organizations participating in Federal programs, and the Single nonprofit organizations participating in Federal programs, and the Single Audit Act reaffirmed this requirement for governmental recipients. Part 3015 reiterates this mandate for USDA programs, and this regulation implements the requirement for the CCFP.

In response to a variety of comments, the Department is taking this opportunity to issue the following clarifications. First, the OWA applies to all funds received by an institution, including State, local and private grants. The purpose of an OWA is to test the overall integrity of an organization's accounting practices. Therefore, all aspects of an institution's funding must be subject to audit in order for that audit to be a valid examination of the organization. Secondly, institutions receiving Federal funds are subject to OWAs even if there is only one source of funding. The intent of OWAs is to provide information about the integrity of the organization's system of accounting without the duplication and inefficiency occasioned by separate program specific audits. If the total grant is provided by a single source (e.g., the CCFP), the institution is still responsible for arranging and paying for the audit. Finally, the failure of an institution to have an OWA would not necessarily result in the institution's termination from the CCFP. The State agency would need to consider the individual circumstances and determine appropriate action on a case-by-case basis.

Following is a discussion of the major issues raised by commenters.

1. *Utilization of Audit Funds.* Three commenters expressed general approval of the Department's proposal to allow States to use CCFP audit monies to pay part of the cost of OWAs. Six commenters objected to one or another aspect of this proposal on various grounds ranging from the belief that no funding should be made available for any OWAs to the opinion that CCFP audit monies should be used to fund the *entire* cost of the audit regardless of whether or not the CCFP is tested. Some commenters also appeared to confuse the audit monies with State administrative Expense (SAE) funds. To eliminate any misunderstanding, the Department emphasizes that CCFP audit monies are a separate fund authorized by law for the specific purpose of auditing CCFP institutions. The Department considers, therefore, that these funds can be used for any audit which tests the CCFP, whether organization-wide or program specific. The Department further considers, however, that the intent of the law precludes payment of these monies for any OWA which does not test the CCFP. Consequently, this final rule retains this provision from the proposal. It should be noted, moreover, that the decision whether or not to defray the cost of OWAs which test the CCFP is entirely at the State agency's discretion.

The Department received several comments requesting clarification of the conditions under which CCFP monies may be used for OWAs. Ten commenters requested the Department to stipulate the portion of the OWA eligible for CCFP funding. Five commenters requested clarification of what would constitute a "test" of the program, and four commenters wished to know if payment would be made to the institution or to the auditor. The Department agrees that clarification of these points is needed; therefore, the final rule incorporates the following modifications. First, the maximum share of an OWA which the State may reimburse using CCFP audit monies equals the CCFP's portion of the institution's total Federal funding. Since OWAs are conducted to fulfill Federal audit requirements and might not conform to requirements for non Federal funds, the Department believes that it is reasonable to consider only Federal funds in determining the CCFP's share of an audit's cost. If, for example, CCFP funding represents 50 percent of the total Federal funds received by the institution, the State agency may use CCFP audit funds to pay for up to 50 percent of the cost of the audit, as long as the CCFP is tested. By "tested", the Department means a test as stipulated in section 10.558 of the Compliance Supplement to OMB circular A–128, and this stipulation has been incorporated into this final rule. Finally, the final rule specifies that any audit monies used by State agencies to fund OWAs will be paid directly to the institution.

Three additional issues pertaining to State agency flexibility were raised. Some commenters requested clarification as to whether the State agency would be required to use CCFP audit funds for OWAs or would be allowed to use these monies for other purposes, such as program specific audits or reviews. While State agencies *may* assist institutions with the expense of OWAs, the Department emphasizes that they are not required to do so. The State agency has discretion to decide how best to utilize its audit monies. To this end, the State agency may, if it wishes, use audit funds to conduct program specific audits of institutions which are not currently subject to OWAs or for which the State agency considers program specific audits to be needed. The State agency also may use these monies for administrative reviews, provided that all program specific audits which the State is required to conduct have been paid for. The reference to reviews formerly in Section 226.8(c) was inadvertently omitted from the proposed rule; the provision has been reinstated in this final rule. Finally three commenters suggested that State agencies should not be required to "use" the audit funds in the year in which they are allocated but only to "obligate" them. The Department agrees that this language would allow State agencies greater flexibility while continuing to meet the intent of the provision. Therefore, the final rule reflects this change in § 226.8(d).

2. *Burden on Small Institutions.* Seventeen commenters expressed concern that small institutions might not be able to bear the financial burden imposed by OWAs. It has been recognized that some smaller institutions may have difficulty meeting the expense of an audit. Therefore, the SAA specifically exempts smaller government agencies from the requirements of the law, and OMB has authorized an exception for the CCFP to the OWA requirement for nonprofit organizations receiving less than $25,000 in Federal funds annually. Moreover, the Department also considers that many smaller institutions which are still requred to have OWAs generally receive most, if not all, of their Federal funds from the CCFP. Consequently, if an OWA tests the CCFP, the institution will frequently qualify for CCFP audit monies sufficient to defray the audit's cost. For these reasons, the OWA requirement should not be burdensome for small institutions.

3. *Audit Guidance.* Several commenters requested specific guidance pertaining to the content and conduct of OWAs. In addition, two commenters expressed concern with the standards which individual auditors must meet in order to be approved to perform audits of Federal programs. While it is not appropriate to provide guidance on technical points in this rulemaking, the Department does wish to point out that guidance and assistance are available to institutions subject to OWAs. Moreover, specific government-wide standards have been established for auditors. The requirements for an OWA for public institutions are found in the *Compliance Supplement for Single Audits of State and Local Governments (Revised April 1985)* issued by OMB. Requirements for OWAs of private nonprofit organizations are included in Attachment P to OMB circular A–110. Auditor standards are discussed in *Standards for Audits of Governmental Organizations, Programs, Activities and Functions* (Yellow Book), issued by the General Accounting Office.

4. *Underpayment Disregard.* The Department received two comments suggesting that States should be authorized to disregard underpayment of less than $100. The purpose of the disregard would be to relieve the State agency of the burden associated with processing payments for relatively small amounts of money. The Department recognizes that State agencies may occasionally incur a disproportionate burden when reimbursing institutions for minor underpayments. However, institutions are entitled by law to their entire reimbursement, provided they have fulfilled their contractual obligations by serving meals to eligible children or otherwise incurring approved costs in their operation of the program. Therefore, the Department considers that an underpayment disregard is not appropriate for the CCFP.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, Infants and children, Surplus agricultural commodities.

Accordingly, Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The Authority citation for Part 226 continues to read as follows:

Authority: Sections 803, 810 and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); Section 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); section 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. Section 226.8 is amended by revising paragraphs (a), (b), (c) and (d), to read as follows:

§ 226.8 Audits.

(a) Unless otherwise exempt, audits at the State and institution levels shall be conducted in accordance with the Office of Management and Budget's Circulars A–128 and A–110 and the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015). Title XX proprietary institutions not subject to organization-wide audits shall be audited by the State agency at least once every two years.

(b) The funds provided to the State agency under § 226.4(h) may be made available to institutions to fund a

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portion of organization-wide audits, provided that the organization-wide audit includes tests of the CCFP in accordance with Section 10.558 of the Compliance Supplement to OMB Circular A-128. The funds provided to an institution for an organization-wide audit shall not exceed the portion of the audit's cost equal to the CCFP's portion of the total Federal grant.

(c) Funds provided under § 226.4(h) may be used by the State agency to conduct program-specific audits of institutions not subject to organization-wide audits, or for which the State agency considers program specific audits to be needed. The State agency may use any funds remaining after all required program-specific audits have been performed to conduct administrative reviews of institutions.

(d) Funds provided under § 226.4(h) may only be obligated during the fiscal year for which those funds are allocated. If funds provided under § 226.4(h) are not sufficient to meet the requirements of this section, the State agency may then use available State administrative expense funds to conduct audits, provided that the State agency is arranging for the audits and has not passed the responsibility down to the institution.

* * * * *

Dated: January 29, 1986.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 86-2451 Filed 2-3-86; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: This document makes final an interim rule which amended 10 CFR Part 600, Financial Assistance Rules, Subparts A, B, and C, and added a new Subpart D to implement the Single Audit Act of 1984 (Pub. L. 98-502) (Act) and Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments, issued pursuant to that Act. The intended effect of the rule is to achieve uniform Government-wide implementation of these audit requirements. The final rule also makes a limited technical amendment within one section of 10 CFR Part 600 that is affected by the new audit requirements.

DATES: This final rule was published as an interim final rule (50 FR 42354 *et seq.*, October 18, 1985) and was effective on that date; the technical amendment to § 600.310 and the adoption of the interim rule as a final rule is effective February 4, 1986.

FOR FURTHER INFORMATION CONTACT:

Ellen Feinsilber, Business and Financial Policy Branch (MA-421.2), U.S. Department of Energy, (202) 252-8173;

Paul Sherry, Office of the Assistant General Counsel, Procurement and Financial Incentives (GC-43), U.S. Department of Energy, (202) 252-1526.

SUPPLEMENTARY INFORMATION:

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I. Background
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I. Background

The Single Audit Act of 1984 (Pub. L. 98-502) builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget (OMB) to prescribe policies, procedures, and guidelines to implement the Act. On April 12, 1985, OMB issued OMB Circular A-128, Audits of State and Local Governments, pursuant to the Single Audit Act. The Circular was subsequently published in the **Federal Register** on May 6, 1985 (50 FR 19114). Consistent with the Department of Energy's (DOE's) comprehensive revision of 10 CFR Part 600 (47 FR 44076, October 5, 1982), which implements OMB Circulars A-102 and A-110, DOE in its interim final rulemaking (50 FR 42354 *et seq.*, October 18, 1985) adopted an approach to implementation of OMB Circular A-128 which DOE felt met the combined objectives of communicating to the affected recipient community those requirements with which they must comply and of meeting OMB requirements for uniform agency implementation. DOE invited public comments on its October 18, 1985 interim final rule, however, no comments were received. DOE is, therefore, issuing the interim final rule in final form with one technical change. On December 6, 1985 (50 FR 50027), OMB published a notice designating the Census Bureau, Department of Commerce, as the central clearinghouse for audit reports under OMB Circular A-128. The specific address for the clearinghouse has, therefore, been included in § 600.310(h) of the final rule.

II. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (February 27, 1981), this rulemaking has been reviewed by OMB.

DOE has concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

III. Review Under Regulatory Flexibility Act

As indicated in the preamble to the interim final rule, this rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164), which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities, i.e., small businesses, small organizations, and small governmental jurisdictions. At that time, DOE certified that this rule would not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis was prepared. In the absence of any public comments on the DOE certification in the interim final rule, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, accordingly, no final regulatory flexibility analysis has been prepared.

IV. Review Under the Paperwork Reduction Act

The information collection and recordkeeping requirements imposed by this final rule are subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). A control number to be issued by OMB for information collections under Circular A-128 will apply to the information collection and recordkeeping requirements imposed by this rule.

V. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this final rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976), the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 10 CFR Part 600

Accounting, Audit, Cooperative agreements, Educational institutions, Grant programs-energy, Indian tribes, Local governments, States.

Issued in Washington, DC, January 24, 1986.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—[AMENDED]

The interim rule published October 18, 1985 (50 FR 42354) which amended 10 CFR Part 600 is adopted as final with the following changes:

1. The authority citation for 10 CFR Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308), unless otherwise noted.

2. Section 600.310 Audit Reports is amended by revising paragraph (h) as set forth below:

§ 600.310 Audit reports.

* * * * *

(h) Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to the Bureau of the Census, Data Preparation Division, 1201 E. 10th Street, Jeffersonville, Indiana 47132, Attn: Single Audit Clearinghouse. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

* * * * *

[FR Doc. 86-2295 Filed 2-3-86; 8:45 am]

BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

Surety Bond Guarantee

AGENCY: Small Business Administration.

ACTION: Policy statement and request for comments.

SUMMARY: On the effective date stated below, SBA will reduce its guarantees of surety bonds to 80% of the surety's loss on all contracts up to the statutory limit of $1 million. This policy change has been adopted in response to the markedly increased demand for surety bond guarantees. The intended effect of this change is to allow SBA resources to benefit a greater number of small businesses.

DATES: Effective March 6, 1986. Comments should be received on or before March 6, 1986.

ADDRESS: Comments may be addressed to Howard F. Huegel, Director, Office of Surety Guarantees, Small Business Administration, 4040 No. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Howard F. Huegel, (703) 235-2900.

SUPPLEMENTARY INFORMATION: Section 411 of the Small Business Investment Act, 15 U.S.C. 694a, authorizes SBA to guarantee a surety against up to 90% of its loss resulting from the breach of the terms of a bond by a small concern on any contract up to $1 million. Current SBA policy, as set forth in 13 CFR 115.2(b) is to pay up to 90% of loss under a bonded contract up to $250,000, and up to 80% on contracts beyond that amount, not to exceed $1 million. Early in 1981 SBA's level of authorization to issue surety bond guarantees was reduced from $1.6 billion to $1.2 billion, representing a reduction, on the basis of the present policy, from approximately $1.84 billion to $1.37 billion in contract amounts. At the same time underwriting criteria were redesigned to improve portfolio quality. The impact of these and subsequent changes was mitigated by a business recession which reduced program demands, resulting in a drop of the volume of surety bond guarantees. With the economic recovery beginning in 1983, followed by a boom in the construction industry, the demand for surety bond guarantees increased to and beyond the authorized level, mainly in the latter part of 1985.

At the same time, increased losses in the insurance industry, and consequent failures of insurance companies, have caused a servere shrinkage in the capability of the insurance industry as a whole to handle insurance demand. This shrinkage apparently resulted in a sharp decline in surety bond availability to small contractors from standard sureties, and in a corresponding increase in the demand for SBA's guarantees. Our efforts to meet this demand have prematurely exhausted our authorized guarantee level for the first quarter of Fiscal Year 1986. This exhaustion of SBA's program has caused severe hardship to some small business contractors unable to obtain contracts requiring bonds, which include nearly all government contracts. Since in the present climate an increase in our authorized guarantee level cannot be expected, and because our guarantee authority is allotted in quarterly increments, we must anticipate that our authority will again be exhausted before the end of each calendar quarter as long as present conditions prevail. It has therefore become necessary to curtail our present policy.

Our present policy, based on a guarantee authority of $1,115 million (further reduced under Pub. L. No. 99-177 (Gramm-Rudmann-Hollings) to $1,067 million), has enabled us to satisfy guarantee demands for approximately 10,800 contracts aggregating $1,282 million in contract amount. We must extend our authorized program level to accommodate a larger contract total, while realizing that there is no practicable way to meet the entire demand. At the same time we must avoid, as best we can, discouraging surety companies from participation in this program. Any reduction in our guarantee percentage would increase the risk of the surety disproportionately. Accordingly, SBA must weigh guarantee percentage reduction against possible reduction of industry participation. With this dilemma in mind, SBA has considered several ways to stretch our guarantee authority. Of these, the reduction of SBA's guarantee to 80% for all contracts—not, as now, 90% for contracts below $250,000, and 80% for contracts above the amount—appears the simplest in its application and the most promising in terms of benefit to small business and acceptability to the industry. We estimate that the stated reduction would enable us to guarantee bonds on approximately 11,700 contracts for an aggregate contract amount of $1,394 million, as compared to 10,800 contracts for $1,282 million in FY 1985. We believe that this reduction would permit the greatest increase in bonding authority compatible with maximum participation in the surety bond guarantee program by the surety bonding industry.

The policy announced here will become effective thirty days after the date of this publication. Accordingly, SBA will guarantee final bonds on any contract for which bid bonds were approved and guaranteed before or during the delay period, subject to and in accordance with current regulations.

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This policy will remain in force as long as the conditions described above, or any of them, obtain.

It should be noted that the indicated percentages are maximum figures, and that SBA will continue to reserve the right, now stated in § 115.6(b), to vary terms, depending on its experience with a particular surety.

Dated: January 17, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-2022 Filed 2-3-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-78-AD; Amdt. 39-5229]

Airworthiness Directives; SAAB-Fairchild Corporation Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires modification of the empennage deicer boot system and the nacelle inlet protection device on certain SAAB Fairchild Model SF-340A airplanes. These actions are necessary to prevent water accumulation and subsequent freezing. Ice formations may prevent operation of the tail deicer system and prevent proper draining of the nacelle.

DATE: Effective March 13, 1986.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to SAAB Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires modifications to the empennage deicer boot pneumatic system, the nacelle inlet deice protection system, and the engine control cables, to prevent freezing, was published in the **Federal Register** on August 26, 1985 (50 FR 34495).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received; however, the reference to SAAB-Fairchild Service Bulletin SF 340-76-006, dated February 8, 1985, which describes a modification to the engine control cables, has been deleted from this final rule because it has been superseded by another service bulletin. Modification of the control cables will be the subject of separate rulemaking action.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change mentioned previously.

It is estimated that 15 airplanes will be affected by this AD, that it will take approximately 11 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated to be nominal. Based on these figures, the total cost impact of this AD is estimated to be $6,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($440.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

SAAB-Fairchild: Applies to Model SF-340A series airplanes as listed in each service bulletin cited below, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To prevent moisture accumulation, accomplish the following, unless previously accomplished:

A. Modify the empennage deicer boot pneumatic system in accordance with SAAB-Fairchild Service Bulletin SF 340-30-006, Revision 1, dated February 11, 1985.

B. Modify the nacelle inlet protection device exhaust nozzle in accordance with SAAB-Fairchild Service Bulletin SF 340-54-002, Revision 1, dated April 3, 1985.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspection and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Fairchild Corporation, Product Support, S.58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective March 13, 1986.

Issued in Seattle, Washington, on January 27, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2333 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-62-AD; Amdt. 39-5105]

Airworthiness Directives; Boeing Model 737-300 Series Airplanes Equipped With Plessey Type 8240 Mark 1, 2, or 3 Fuel Boost Pumps (Correction)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of Final Rule.

SUMMARY: This action corrects Airworthiness Directive (AD) T85-11-52, Amendment 39-5105 (50 FR 29648; July 22, 1985), applicable to Boeing Model 737-300 series airplanes, which limited the airplanes to Jet A type fuels. The model identification of the affected fuel boost pumps was inadvertently omitted in the applicability statement in the AD. This correction in necessary to identify properly the affected airplanes.

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office; telephone (206) 431-2969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The FAA issued telegraphic AD T85-11-52 on June 7, 1985, applicable to Boeing Model 737 series airplanes, after receiving reports of loss-of-power during climb when using JP-4 fuel. The AD was published as Amendment 39-5105 in the **Federal Register** on July 22, 1985 (50 FR 29648). This AD was made effective to all Boeing Model 737-300 series airplanes by omission of the affected fuel boost pump identification from the applicability statement of the AD. The AD should only apply to Boeing Model 737-300 series airplanes equipped with Plessey Type 8240 Mark 1, Mark 2, or Mark 3 fuel boost pumps. Therefore, action is taken herein to make this correction.

Since this action only corrects an error in a final rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Correction

Pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration corrects § 39.19 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 40 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

2. By correcting the applicability statement of AD T85-11-52, Amendment 39-5105 (50 FR 29628; July 22, 1985), FR Doc. 85-17313, to identify properly the affected airplanes, as follows:

"**Boeing:** Applies to Model 737-300 series airplanes equipped with Plessey Type 8240 Mark 1, 2, or 3 fuel boost pumps, certificated in any category."

This correction becomes effective March 13, 1986.

Issued in Seattle, Washington, on January 27, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2336 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-76-AD; Amdt. 39-5228]

Airworthiness Directives; Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection and modification, if necessary, of certain cabin fire extinguishers installed in Fokker Model F28 series airplanes. Several fire extinguishers have been found which have out-of-tolerance cartridge holders, which could prevent activation of the extinguisher in the event of a cabin fire. Correction of out-of-tolerance cartridge holders is necessary to ensure proper operation of the fire extinguishers.

EFFECTIVE DATE: March 13, 1986.

ADDRESSES: The applicable service information may be obtained from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands, or Walter Kidde, SE. Service Center, 3994 NW. 27th Street, Miami, Florida 33142. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection and modification, if necessary, of the cartridge holders on certain Walter Kidde portable fire extinguishers installed on certain Fokker Model F28 airplanes, was published in the **Federal Register** on August 23, 1985 (50 FR 34164).

The comment period for the proposal, which ended October 15, 1985, afforded interested persons an opportunity to participate in the making of this rule. Only one comment was received, which expressed no objections to the proposed AD.

After a careful review of the available data, the FAA has determined that air safety and public interest require the adoption of the rule as proposed.

It is estimated that there are 16 airplanes of U.S. registry will be affected by this AD, and the required actions will require approximately one manhour to accomplish. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact to U.S. operators will be $640.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($40.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Fokker Model F28 airplanes, serial numbers 11003 to 11171 inclusive, 11991 and 11992, certificated in any category, equipped with Walter Kidde fire extinguishers, P/N 890317, 892480, or 893948. Unless already accomplished, as indicated with an "x" punch stamped or "SB28.20.240" ink-stamped on the cartridge bolder, accomplish the following within 60 days after the effective date of this AD:

A. To preclude the malfunctioning of these fire extinguishers, inspect the cartridge holders for proper internal dimension tolerances, and replace, if necessary, in

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accordance with Fokker Service Bulletin F28/28-12, dated September 28, 1981.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands, or Walter Kidde, SE. Service Center, 3994 NW. 27th Street, Miami, Florida 33142. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 13, 1986.

Issued in Seattle, Washington, on January 27, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2334 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-77-AD; Amdt. 39-5227]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a parking brake valve position monitor circuit maintenance check every 3,000 flight hours, or modification of the antiskid parking brake shut-off valve monitoring circuit system, on certain McDonnell Douglas Model DC-10 and KC-10A airplanes. This action is prompted by the failure of the antiskid fail lights to illuminate when a sticking parking brake valve resulted in an inoperative antiskid system; when brakes were then applied after landing, the four main tires failed, due to skidding. This AD is needed to ensure that failure of the antiskid system is detected.

DATE: Effective March 13, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Huettner, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to adopt a new airworthiness directive to require modification of the antiskid parking brake shut-off valve monitoring circuit system on certain McDonnell Douglas Model DC-10 and KC-10A airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 3, 1984 (49 FR 31074). The comment period for the proposal closed on September 22, 1984.

Interested persons were afforded an opportunity to participate in the making of this amendment, and due consideration was given to all comments received.

In response to comments received from two operators, which stated that a scheduled maintenance test of the antiskid parking brake shut-off valve monitoring circuitry is adequate to control the risk associated with parking brake valve failures, the FAA, upon reconsideration, published an amendment to the original NPRM in the **Federal Register** on October 7, 1985 (50 FR 40867). This action reopened the comment period and requested comments concerning a proposal to require a maintenance test of the shut-off valve monitoring circuitry at 3,000 flight hour intervals, and to make the proposed modifications optional. The comment period closed November 26, 1985. One comment was received which supported the FAA's decision of making the repetitive maintenance test mandatory and the modifications optional. The final rule reflects this change from the original proposal.

One commenter noted that the modifications can be accomplished within the proposed compliance time.

Four commenters felt the compliance date of January 1, 1986, was too soon. The FAA agrees, and the compliance date for incorporation of the modifications, which are now optional, has been deleted from the final rule, based on the scheduled maintenance check of the parking brake valve monitoring circuitry.

One commenter stated that the proposed modifications will not prevent one of the incidents which was noted in the NPRM from occurring; namely, that during ground maintenance with the antiskid system armed and the parking brake lever released, and with a latent failure already existing, if a parking brake shut off valve is manually closed, the antiskid fail lights will still fail to illuminate. Technically, the proposed modifications will not prevent this from occurring; however, closing a parking brake shut-off valve manually is not a part of the normal maintenance procedures for the Model DC-10 airplane. A parking brake shut-off valve is motor-driven to the "open" or to the "closed" position. If the valve fails in one position, the motor will be unable to drive the valve, and the valve will not move then by itself (manually) to the alternate position.

One commenter stated that FAA underestimated the modification cost and time. The FAA's estimate of cost and time, as the commenter properly noted, is based on information provided by the manufacturer. These estimates of cost and time are based on average cost and time established for the average modifier.

It is estimated that 160 U.S. registered airplanes will be affected by this AD, that it will take approximately 19 manhours per airplane to accomplish the required actions, and that the average labor costs would be $40 per manhour.

The costs of modification parts are estimated to be $700 per airplane. Based on these figures, the total cost impact of the AD to the U.S. fleet will be $233,600.

After careful review of all available data, including these comments above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any,

Model DC-10 and KC-10A airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. By adding the following airworthiness directive:

McDonnell Douglas: Applies to Model DC-10 and KC-10A (Military) series airplanes, certificated in any category, which are listed in McDonnell Douglas DC-10 Service Bulletin 32-155, Revision 2, dated July 28, 1983, and Service Bulletin 32-198 dated January 17, 1984. Compliance required as indicated, unless previously accomplished. To minimize the potential operational hazard associated with the latent failure of the monitoring circuit of the antiskid system, accomplish the following:

A. Within the next 3,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 3,000 flight hours, accomplish a parking brake shut-off valve monitoring circuitry test in accordance with McDonnell Douglas DC-10 Maintenance Manual Section 32-45-05.

B. Modifications listed below in paragraphs C. and D. are optional and constitute terminating action for this AD when incorporated.

C. Install a parking brake valve fault isolation relay in accordance with McDonnell Douglas DC-10 Service Bulletin 32-155, Revision 2, dated July 28, 1983, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Revise the antiskid control wiring in accordance with McDonnell Douglas DC-10 Service Bulletin 32-155, Revision 2, dated July 28, 1983, or Service Bulletin 32-198, dated January 17, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective March 13, 1986.

Issued in Seattle, Washington, on January 27, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2335 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-125-AD; Amdt. 39-5232]

Airworthiness Directives; Boeing Model 767-200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective to all known U.S. owners and operators of certain Boeing Model 767-200 airplanes by individual telegrams. The AD requires inspection and replacement, if necessary, of self-locking nuts located in certain critical areas of the airplanes. This action was prompted by the discovery that two elevator actuator rod end bolt retaining nuts on one recently delivered Model 767 airplane did not have their intended self-locking feature. Such a nut could back off its mating bolt and result in a disconnection of the affected joint. Multiple disconnections of elevator to actuator joints could result in partial or complete loss of airplane control. These nuts have other critical applications on the Model 767 airplane, which are also addressed in the AD.

DATES: Effective February 24, 1986. This AD was effective earlier to all recipients of telegraphic AD T85-21-51, dated October 25, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Yarges, Airframe Branch, ANM-120S; telephone (206) 431-2925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On October 25, 1985, telegraphic AD T85-21-51 was issued and made effective immediately as to all known U.S. owners and operators of Boeing Model 767-200 series airplanes. The AD was prompted by the discovery that two elevator actuator rod end bolt retaining nuts on one Boeing Model 767 airplane, that had just been delivered, did not have their intended self-locking feature.

Self-locking nuts are designed to resist turning off their mating bolt by way of friction between the nut and bolt. This feature provides additional retention capability in the event that the installation torque (clamp-up) should relax. The additional retention capability is considered essential for safe operation in certain instances. It has been determined that other nuts of the same design as those initially discovered to be discrepant do not have adequate locking friction when installed on bolts.

These nuts are used in the control linkages to attach the elevator hydraulic actuators to the elevator. A nonfunctioning self-locking nut could back off its mating bolt under conceivable conditions and result in disconnection of the affected joint. Although there is redundancy in the mechanical control linkage for such disconnections, multiple disconnections could occur, or the loose actuator could damage adjacent structure. These effects could result in partial or complete loss of airplane control.

The same type of nut is used in the inboard trailing edge flap drive mechanism and in the outboard wing spoiler control system. The consequences of a defective locknut at these locations are as critical as those described above. Therefore, corrective action is considered necessary for these applications as well.

Boeing issued Service Bulletin 767-27A0064, dated October 25, 1985, which identifies the location of the critical suspect self-locking nuts and which

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specifies inspections that can be performed on the nuts to determine if there locking torque is within an allowable tolerance. This AD makes the inspection of the nuts specified in the service bulletin mandatory, and requires the replacement, before further flight, of self-locking nuts found to be discrepant. Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued October 25, 1985, to all known U.S. owners and operators of certain Boeing Model 767–200 airplanes. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a) 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 767–200 airplanes, certificated in any category. To prevent loss of certain critical airframe self-locking nuts, accomplish the following, unless previously accomplished:

A. Within 35 landings or 10 days after the effective date of this AD, whichever occurs first, inspect the horizontal elevator self-locking nuts in accordance with Boeing Alert Service Bulletin 767–27A0084, dated October 25, 1985, or later FAA-approved revision. Self-locking nuts found to be insecure in accordance with the criteria specified in the service bulletin must be replaced before further flight with serviceable self-locking nuts.

B. Within 50 landings or 20 days after the effective date of this AD, whichever occurs first, inspect the inboard aft trailing edge flap self-locking nuts and the outboard wing spoiler actuator self-locking nuts in accordance with Boeing Alert Service Bulletin 767–27A0064, dated October 25, 1985, or later FAA-approved revision. Self-locking nuts found to be insecure in accordance with the criteria specified in the service bulletin must be replaced before further flight with serviceable self-locking nuts.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may also be examined at FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 24, 1986 as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T85–21–51, issued October 25, 1985.

Issued in Seattle, Washington, on January 28, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–2420 Filed 2–3–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–141–AD; Amdt. 39–5231]

Airworthiness Directives; Cessna Model S550 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Cessna Model S550 airplanes by individual priority letters. This AD removes approval for flight into icing conditions and requires inspection and replacement, as necessary, of the fluid ice protection system proportioning units. This AD is prompted by the manufacturer's identification of a production error resulting in incorrect installation of fluid ice protection system proportioning units during manufacture of the airplanes.

DATES: Effective February 24, 1986. This AD was effective earlier to all recipients of Priority Letter AD 85–24–01, issued December 3, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. This information may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Ralph W. Rissmiller, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4419.

SUPPLEMENTARY INFORMATION: Cessna Aircraft Company has identified production errors in the Model S550 airplanes, which have resulted in incorrect installation of the fluid ice protection system proportioning units during manufacture of the airplanes. It was discovered that defective proportioning units permitted only 55% of the approved level of flow of anti-ice fluid to the inboard leading edge. This condition, if not corrected, can cause hazardous accumulation of ice on the inboard wing leading edge during flight into icing conditions.

Since this situation is likely to exist or develop on other airplanes of the same type design, Priority Letter AD 85–24–04 was issued on December 3, 1985, and made effective immediately to all known U.S. owners and operators of Cessna Model S550 airplanes. The AD removes approval for flight into icing conditions and requires inspection and replacement, if necessary, of the fluid ice protection system proportioning units.

Since a situation existed and still exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The reporting requirements of this AD are approved by the Office of Management and Budget under OMB No. 2120–0056.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979. If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Cessna Aircraft Company: Applies to Cessna Model S550 airplanes, Unit Numbers –0001 through –0075, certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent hazardous accumulation of ice on the inboard wing leading edge during flight in icing conditions, accomplish the following:

A. Prior to further flight:

1. Fabricate and install on the instrument panel in clear view of the pilot the following placard, using letters of a minimum of 0.10 inch in height: "FLIGHT INTO KNOWN OR FORECAST ICING PROHIBITED" and operate the airplane accordingly.

2. Revise the Airplane Flight Manual, Section II, Operating Limitations—Operations Authorized, to read: "This airplane is approved for day and night, VFR, IFR flight. Flight into known or forecast icing conditions prohibited." This may be accomplished by inserting a copy of this AD in the Airplane Flight Manual.

B. Within the next 15 flight hours or 15 days after the effective date of this AD, whichever occurs first, inspect and replace, as necessary, the fluid ice protection system proportioning units as described below:

1. Locate the fluid anti-ice proportioning units as follows:

a. Remove the access panel from the lower surface of the left wing root leading edge fairing to gain access to the left outboard wing proportioning unit.

b. Remove the right wing root leading edge fairing to gain access to the right outboard wing and left and right inboard wing-engine proportioning units.

c. Remove access panel 3405L or 340BR (located below the horizontal stabilizer on the vertical stabilizer) to gain access to the tail proportioning unit.

2. Locate the identification plate installed on each proportioning unit and identify that the correct part number proportioning unit is installed in the proper location (refer to TABLE 1, below).

TABLE 1.—PROPORTIONING UNIT PART NUMBER/LOCATION

Part No.	Location
PU306DW36	Left and Right Wing Root (Left and Right Outboard Wing).
PU306DC39	Right Wing Root (Left and Right Inboard Wing-Engine).
PU306DT41	Vertical Stabilizer (Tail).

Refer to Model S550 Maintenance Manual, Revision 30–1, dated May 1, 1985, for detailed installation information.

3. If the correct part number proportioning units are installed in all locations, reinstall all access plates using existing hardware and make an entry in the aircraft maintenance record indicating that the requirements of this AD have been complied with.

4. If the incorrect part number proportioning unit(s) is installed in any location(s), remove and replace the proportioning unit(s) with the correct part number proportioning unit. Refer to the Model S550 Maintenance Manual, Revision 30–1, dated May 1, 1985, Chapter 30, Removal/Installation Proportioning Unit, for removal and replacement instructions.

C. Within 5 days after the required inspection, report any defects found to the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

D. The requirements of paragraphs A.1. and A.2., above, may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

E. The requirements of paragraphs A.1. and A.2., above, are no longer required after the requirements of paragraph B. of this AD have been accomplished.

F. Airplanes may be flown in accordance with FAR 21.197 and 21.199 to a location where the inspection/modification requirements of the AD can be accomplished.

G. Alternate means of compliance with this AD which provide an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This Amendment becomes effective February 24, 1986 as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 85–24–04, issued December 3, 1985.

Issued in Seattle, Washington, on January 28, 1986.

Wayne J. Barlow,

Acting Director Northwest Mountain Region.

[FR Doc. 86–2419 Filed 2–3–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–75–AD; Amdt. 39–5230]

Airworthiness Directives; Fokker B.V. Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires modification of the inboard hinge bolt installation on certain Fokker Model F27 series airplanes. One case has been reported of restricted aileron movement due to a loose bolt/bush connection at the aileron inboard hinge point, which permitted the spring tab balance lever to interfere with the wing cutout. Restricted aileron movement or a jammed aileron could result in loss of roll control.

DATES: Effective March 14, 1986.

ADDRESSES: The applicable service information may be obtained from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway

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South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require modification of the bolt/bush connection at the inboard hinge point at wing station 10030 on certain Fokker Model F27 airplanes, was published in the **Federal Register** on August 23, 1985 (50 FR 34163). This action is considered necessary to preclude a jammed aileron, which could result in loss of roll control.

The comment period for the proposed rule, which ended October 15, 1985, afforded interested persons an opportunity to participate in making the rule. Only one comment was received, from an operator of F27 airplanes, recommending that the proposed AD be adopted.

It is estimated that there are 32 airplanes on the U.S. Register which are affected by this AD. The estimated costs associated with the required modifications are $44 per airplane for repair parts and 3 manhours per airplane. The average labor cost is $40 per manhour. Based on these figures, the total cost impact to U.S. operators will be $5,248.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($164). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes, serial numbers 10105 to 10635 inclusive, certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless already accomplished:

A. To prevent restricted aileron movement or jamming, modify the aileron inboard hinge bolt installations in accordance with Fokker Service Bulletin F27/57-58, dated May 16, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 14, 1986.

Issued in Seattle, Washington, on January 28, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2418 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-168-AD; Amdt. 39-5233]

Airworthiness Directive; Mitsubishi Heavy Industries, Limited, Model YS-11-11A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires replacement of the vertical stabilizer front spar fitting attachment bolts on Mitsubishi Heavy Industries, Limited, (MHI), Model YS-11/-11A series airplanes. This action is prompted by a report of a bolt failure in the attachment of the vertical stabilizer front spar fitting at the fuselage. This AD is required to minimize the potential loss of the vertical stabilizer, which could result in loss of control of the airplane.

DATES: Effective February 24, 1986. Compliance required within 150 hours time-in-service after the effective date of this AD.

ADDRESSES: The service bulletin specified in this AD may be obtained from Mitsubishi Heavy Industries, Limited, 10, Oye-Cho, Minato-ku, Nagoya, Japan. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthrone, California.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Richard, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1374.

SUPPLEMENTARY INFORMATION: Mitsubishi Heavy Industries (MHI), Ltd., which is the manufacturer of the Nihon Aeroplane Manufacturing Company (NMAC) Model YS-11/-11A airplane, has reported that, during a routine periodic inspection, a broken bolt was found in the vertical stabilizer front spar attachment fittings on the airplane fuselage. This condition, if not corrected, could result in loss of the vertical stabilizer and loss of control of the airplane.

As a result, MHI issued NMAC Alert Service Bulletin (S/B) A53-69 on September 10, 1985, which provides instructions for inspection and replacement, if necessary, of bolts used in the vertical stabilizer front spar fuselage.

The Japan Civil Aviation Bureau, which has responsibility and authority to maintain the continuing airworthiness of the Model YS-11/-11A airplanes in Japan, issued Airworthiness Directive TCD-2493-85 on September 10, 1985, to make mandatory the service bulletin and the actions recommended therein.

This airplane model is manufactured in Japan and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this unsafe condition is likely to exist on airplanes of this model registered in the United States, this AD is being issued to require the removal and replacement of the vertical stabilizer front spar attaching bolts on Mitsubishi Heavy Industries, Limited, Model YS-11/-11A series airplane. Although NMAC Alert S/B A53-69 and the associated Japanese airworthiness directive call, first, for an initial inspection and, second, for the removal and replacement, if necessary, of the affected attachment bolts, the FAA has determined that removal and replacement of all fasterners (without an initial inspection) is the most economical and expedient means to ensure the elimination of risk associated with the continuous use of bolts with possible material inadequacies and unobservable physical deficiencies.

Further, since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than thirty days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedure of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Mitsubishi Heavy Industries, Ltd. [Nihon Aeroplane Manufacturing Company (NAMC)]: Applies to Model YS-11/-11A series airplanes, certificated in any category.

Compliance required as indicated, unless already accomplished.

To prevent failure of any bolt attaching the vertical stabilizer front spar fitting to the fuselage, accomplish the following:

A. Within 150 hours time-in-service after the effective date of this AD, remove and replace bolts, part numbers MS 20010-32, with new bolts (same part number) in the vertical stabilizer fitting assembly right-hand and left-hand, part numbers 01-38101-11 and -12, at Fuselage Station 8554, in accordance with Mitsubishi Heavy Industries, Ltd., NAMC Alert Service Bulletin No. A53-69, dated September 10, 1985.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager of the Western Aircraft Certification Office, FAA, Northwest Mountain Region, Hawthorne, Calfornia.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to ferry aircraft to a maintenance base in order to comply with the requirements of this AD.

All persons affected by this AD who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Mitsubishi Heavy Industries, Ltd., 10 Oye-Cho, Minato-ku, Nagoya, Japan. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at Western Aircraft Certification Office, 15000 Aviation Boulevard, Hawthorne, California.

This Amendment becomes effective February 24, 1986.

Issued in Seattle, Washington, on January 28, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR. Doc. 86-2421 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33-6622; 34-22843; 35-24002; 39-1068; IC-14920; IA-1008]

Organization Changes; Director of Internal Audit

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission announces revisions to Subpart A, Part 200, of Title 17 to set forth a description of the functional responsibilities of the Director of Internal Audit.

EFFECTIVE DATE: February 4, 1986.

FOR FURTHER INFORMATION CONTACT: Walter Stachnik, Office of Internal Audit, (202) 272-3157.

SUPPLEMENTARY INFORMATION: The Commission finds, in accordance with the Administrative Procedure Act ("APA"),[1] that this amendment relates solely to agency organization, procedures or practices and that notice and comment pursuant to the APA are therefore not necessary and that such amendment shall be adopted, effective immediately.[2]

The amendment being adopted describes the duties of the Director of Internal Audit, which are to perform audits and provide the Chairman of the Commission with independent assessments of Commission operations, management and achievement of program goals. The Commission is adopting this amendment pursuant to its general statutory authority to make such rules as are necessary for it to carry out its functions.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

Text of Amendment: Part 200 of 17 CFR Chapter II is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 is amended by adding the following citation (Authority citations before * * * indicate general rulemaking authority).

Authority: Secs. 19, 23, 48 Stat. 85, 901 as amended, Sec. 20, 49 Stat. 833, Sec. 319, 53 Stat. 1173, Sec. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11, * * * § 200.16a also issued under Sec. 4, 48 Stat. 885, as amended; 15 U.S.C. 78d.

2. By adding new § 200.16a to read as follows:

§ 200.16a Director of Internal Audit.

(a) The Director of Internal Audit provides to the Chairman independent assessments of Commission operations.

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[1] 15 U.S.C. 553(b)(B).

[2] Since notice and a comment period are inapplicable to this rulemaking, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. do not apply. The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is inapplicable since no information collection is involved. Finally, this internal rule will have no impact on completion within the contemplation of Securities Exchange Act section 23(a)(2). 15 U.S.C. 78w(a)(2).

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Organizationally a part of the Chairman's Office, the Director of Internal Audit audits Commission organizations, programs, activities and functions. The audits seek to determine whether:

(1) The program goals and results identified in enabling legislation are achieved.

(2) Resources are managed and used in an economical and efficient manner.

(3) Financial operations are properly conducted.

(4) Financial reports are presented fairly.

(5) Applicable laws and regulations are complied with.

(b) The Director develops the audit universe and audit targets for review by the Chairman and tracks implementation of audit recommendations.

(c) The Director administers the Internal Control Program and provides technical assistance on internal controls to other Commission offices and divisions.

(d) With respect to government audit and internal control policies, the Director serves as liaison to other agencies, including the General Accounting Office, the Office of Management and Budget and the President's Council on Efficiency and Integrity.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

January 28, 1986.

[FR Doc. 86-2372 Filed 2-3-86; 8:45 am]

BILLING CODE 6010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM85-7-000; Order No. 445]

Natural Gas Policy Act; Ceiling Prices; Revised Procedures for Stripper Gas Well Category Determinations Under the NGPA

January 28, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its stripper gas well regulations to eliminate certain burdensome filing requirements. The final rule eliminates the requirement in 18 CFR 271.804(c) (1985) that new applications for temporary pressure build-up determinations be filed each time a well overproduces as a result of temporary pressure build-up. Instead, the rule permits a stripper gas well for which one application for a pressure build-up determination has been filed to retain its stripper status during all future periods of temporary overproduction due to shut-in without the filing of new applications, provided that the first application is granted and total production during any 90-day production period subsequent to the shut-in does not exceed 5400 Mcf. The Commission is also eliminating the requirement that producers file subsequent notices of disqualification for stripper gas wells for which applications for pressure build-up determinations have been filed, unless total production for a 90-day period exceeds 5400 Mcf.

EFFECTIVE DATE: April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8308).

SUPPLEMENTARY INFORMATION:

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its stripper gas well regulations [1] to permit producers to obtain a one-time determination that a stripper gas well is subject to temporary over-production caused by pressure build-up during shut-in (a pressure build-up determination).[2] Such a determination will permit the well to continue to qualify for stripper gas well prices after all future shut-ins, as long as production does not exceed 5400 Mcf during a 90-day production period, without requiring the producer to file new applications for temporary pressure build-up determinations. The Commission is also eliminating the requirement that producers file subsequent notices of disqualification for stripper gas wells for which applications for pressure build-up determinations have been filed, unless total production for a 90-day period excees 5400 Mcf.

II. Background

Section 108 of the Natural Gas Policy Act of 1978 (NGPA) [3] defines a stripper gas well generally as a well producing non-associated natural gas at a rate not exceeding an average of 60 Mcf per production day for a 90-day production period. A production day includes days during which gas is produced or production is prohibited by state law or state-approved conservation practices.[4] A 90-day production period is any period of 90 consecutive days, including days in which gas is not produced as a result of voluntary action by the operator but excluding other days of nonproduction.[5] A producer must file an application with the appropriate jurisdictional agency for a determination that a well qualifies as a stripper well.[6]

When a producer temporarily shuts in a well, for example to permit maintenance or repair work, pressure builds up in the well bore. This causes greater than normal production for a period after the well is reopened. Such shut-in days are included in a 90-day production period. However, unless required by state law or state-approved conservation practices, the shut-in days are not production days for purposes of determining the well's average rate of production during the 90-day period. Therefore, if a temporary pressure build-up causes average production from a previously-qualified well to exceed an average of 60 Mcf per day for the actual production days in any 90-day period during part of which the well had been shut in, the well would be disqualified as a stripper gas well.[7]

The Commission has determined that short-term overproduction resulting from temporary pressure build-up should not disqualify a stripper well. It issued an interim rule,[8] later finalized,[9] permitting

[1] 18 CFR Part 271, Subpart H (1985).

[2] A well is considered to be "shut-in" when a producer stops production from it.

[3] 15 U.S.C 3318 (1982).

[4] 18 C.F.R. 271.803(d) (1985).

[5] 18 CFR 271.803(c)(2) (1985). In order to avoid the necessity of bringing additional days into a 90-day production period when some are excluded pursuant to the above definition, the Commission has provided that, where records for a 90-consecutive-calendar-day period indicate that the well produced 60 Mcf or less per production day during that period, a rebuttable presumption is created that the well produced 60 Mcf or less during the statutory 90-day production period. 18 CFR 271.803(c)(2) (1985).

[6] 15 U.S.C. 3413 (1982) (Section 503 of the NGPA).

[7] For example, if a producer shut in a well for the first 45 days of a 90-day period and then reopened it and that well then produced 3150 Mcf during the remaining 45 days of the period, average daily production for the 90-day period would be 70 Mcf (total production of 3150 divided by 45 production days equals 70). Therefore, even though total production for the 90-day period was well below 5400 Mcf, the well would be disqualified because average production per production day exceeded 60 Mcf.

[8] Interim Rule under Section 108 of the NGPA Concerning Temporary Pressure Buildup in Qualifying Stripper Wells, 46 FR 6901 (Jan. 22, 1981).

[9] Reduction in Filing Requirements for Well Category Applications under sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978; Regulations for Temporary Pressure Buildup Determinations Under Section 108 of the Natural Gas Policy Act, 48 FR 44508 (Sept. 29, 1983) (Order No. 336), *reh'g denied* 49 FR 566 (Jan. 5, 1984) (Order No. 336-A).

Continued

a previously-qualifying stripper well which produces an average of more than 60 Mcf per production day during a 90-day period to continue to qualify, if the producer obtains a determination from the jurisdictional agency that: (1) Average production exceeded 60 Mcf because of a pressure build-up resulting from a temporary shut-in, (2) total production for the relevant 90-day period did not exceed 5400 Mcf, and (3) the well would likely have produced at no more than an average of 60 Mcf per production day during the 90-day period but for the shut-in.[10] Under the rule, the producer must obtain a new temporary pressure build-up determination for each 90-day period the well overproduces after a shut-in in order to avoid disqualification during the period of temporary overproduction. Also, the operator of the well and any purchaser must give notice to one another and the Commission that production has averaged more than 60 Mcf per day for a 90-day period even through the well eventually receives a temporary pressure build-up determination.[11]

On July 25, 1985, the Commission issued a notice of proposed rulemaking (NOPR) proposing that producers be permitted to obtain a one-time pressure build-up determination which would allow a well to continue to qualify for stripper gas well prices after all future shut-ins so long as its production does not exceed 5400 Mcf during a 90-day production period.[12] The NOPR also proposes to remove the requirement that producers file notices of disqualification for wells which retain their stripper status by virtue of an earlier pressure build-up determination. Twelve companies [13] and one state jurisdictional agency [14] filed comments on the NOPR. All generally supported the proposed rule change, although some proposed minor modifications. After reviewing the comments, the Commission has determined to issue a final rule adopting the proposed amendments with three changes.

III. Discussion

The Commission has determined that the present regulations permitting continued qualification of wells which overproduce due to temporary pressure build-up impose unduly burdensome filing requirements on producers and purchasers. A reduction in demand would force producers to shut in their wells periodically. This has caused many stripper gas wells to regularly overproduce when reopened, as a result of temporary pressure build-up. Since the Commission's regulations currently require new applications for pressure build-up determinations each time a well overproduces, many producers must file such applications for the same well as often as once a month. The Commission believes, and the commenters all agree, that this requirement is unduly burdensome since the producer must repeatedly compile the necessary supporting data, pay state filing fees, if applicable, and a $25 fee for Commission review. The financial burden is particularly significant, since most stripper gas wells are of marginal profitability.

Additionally, the increase in applications for pressure build-up determinations has significantly increased the workload of the Commission and the jurisdictional agencies. Requests for the Commission to review pressure build-up determinations have increased dramatically from 266 in fiscal year 1982 to 3,463 in fiscal year 1984 and 3,208 in fiscal year 1985. The Commission believes that this burden is not justified.

In order to reduce this burden on producers, jurisdictional agencies, and the Commission, the Commission is amending its regulations to remove the requirement that new applications for pressure build-up determinations be filed each time a well overproduces after a shut-in. Instead, the new rule permits a stripper gas well for which one application for a pressure build-up determination has been filed to retain its stripper status during all future periods of temporary overproduction due to shut-in without the filing of new applications, provided that the first application is granted and total production during the relevant 90-day period does not exceed 5400 Mcf.

As discussed more fully in the NOPR,[15] eliminating the requirement for new applications should not adversely affect compliance with the NGPA. Applications for pressure build-up are usually routine, with no dispute as to whether a well qualifies for a pressure build-up determination. To obtain a determination, a producer generally need only show that a qualifying well was shut in and thereafter temporarily overproduced,[16] facts which can easily be verified by reviewing a producer's or a pipeline's records. The Commission has never reversed any of the approximately 7,000 pressure build-up determinations it has reviewed.[17] Furthermore, the producer will still have to obtain an original determination that the well is a stripper gas well and obtain an initial pressure build-up determination. Also, the 5400 Mcf limit on production during a 90-day production period will remain in effect.

This rule also removes the requirement that the operator and any purchaser of gas give written notice when a stripper gas well produces an average of more than 60 Mcf per production day due to pressure build-up during any 90-day period [18] but retains its stripper status by virtue of an earlier pressure build-up filing. Since no action by jurisdictional agencies or the Commission is necessary for such wells to retain stripper status, notices that overproduction has occurred are unnecessary. Elimination of the notice requirement will reduce filing burdens on the industry and lessen the Commission's workload by eliminating notices of disqualification when the well does not actually disqualify.

While the commenters all agree with the elimination of the requirement that new applications for pressure build-up determinations be filed each time a well overproduces, the commenters do raise a number of issues concerning the mechanics of the one-time pressure build-up determination.

1. Continued Qualification Based on Prior Application

The NOPR proposed removal of the requirement of subsequent applications for pressure build-up determinations only in those cases where the jurisdictional agency has already made an affirmative determination for the well. One commenter [19] suggests that

[10] 18 CFR 271.804(e) (1985).

[11] 18 CFR 271.805(d) (1985).

[12] Revised Procedures for Stripper Gas Well Category determinations Under the NPGA, 50 FR 30659 (July 30, 1985) (Notice of Proposed Rulemaking).

[13] Union Oil Company of California, Mitchell Energy Corproation, Champlin Petroleum Company, Conoco, Inc., Columbia Gas Transmission Corporation, Tenneco Oil Company, Panhandle Eastern Pipe Line Company, Truckline Gas Company, Amoco Production Company, El Paso Natural Gas Company, Northwest Pipeline Corporation, and Mesa Petroleum Co.

[14] The Texas Railroad Commission.

[15] Revised Procedures for Stripper Gas Well Category Determinations Under the NGPA, 50 FR 30659, 30660-30661 (July 30, 1985).

[16] *See* 18 CFR 274.206(e)(8) (1984).

[17] The applicant or the jurisdictional agency has withdrawn eight of those determinations in response to Commission letters requesting further information.

[18] 18 CFR 271.805(d) (1985).

[19] Mitchell Energy Corporation.

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the Commission permit continued qualification based on a previous application for a pressure build-up determination even though the jurisdictional agency has not acted on that application. The Commission adopts this suggestion.

As the commenter observes, since many wells overproduce due to pressure build-up as often as once a month, wells may overproduce a number of times after the filing of an initial application for a pressure build-up determination before the jurisdictional agency acts on that application. Adoption of the commenter's suggestion avoids requiring the filing of separate applications (and notices of disqualification) every time a well overproduces while the first application is pending. This further reduces the burdens on producers of making such applications and on jurisdictional agencies and the Commission of processing them.

If the jurisdictional agency or the Commission ultimately denies the first application for a pressure build-up determination, however, the producer must file a notice of disqualification and make refunds pursuant to § 271.805(f) for all periods subsequent to the 90-day period in which the well first overproduced which are not covered by a subsequent application for a pressure build-up determination. This is necessary in order to avoid having a producer collect stripper prices based solely on the pendency of an application for a pressure build-up determination for a period for which no such determination was justified. Thus, if there is any doubt whether the initial application will be granted, the producer may be well advised to file applications for subsequent periods of overproduction. However, since it is generally obvious whether a well qualifies for a pressure build-up determination,[20] this situation should generally not arise.

2. Effect on Intervening Periods of Disqualification

One commenter [21] requests that the Commission clarify that a well may retain its stripper status based on a pressure build-up filing made any time during the life of a well, regardless of whether a period of disqualification of the well has intervened between that filing and the current overproduction due to temporary pressure build-up. If, after the filing of one application for a pressure build-up determination, a well disqualifies but then requalifies as a stripper gas well, and if the well subsequently overproduces as a result of temporary pressure build-up, it may continue to qualify for stripper prices based on the original pressure build-up filing [22] so long as it otherwise meets the requirements of the temporary pressure build-up rule. This is true whether the requalification was the result of a new jurisdictional determination pursuant to the procedures in effect before Order No. 336 [23] or is pursuant to the automatic requalification procedures set forth in § 271.805(c) as added by Order No. 336. However, the stripper well must have requalified as a stripper well by one of these procedures before it can retain stripper status based on the prior application for a pressure build-up determination.

3. Application of This Rule to Production Periods Before Its Effective Date

A related issue raised by another commenter [24] is whether this rule should apply to any 90-day periods ending before the rule's effective date. The commenter proposes that the rule apply to 90-day periods ending on or after 90 days before the effective date of the final rule. Since notices of disqualification must be filed within 90 days of the last day of the 90-day period in which the well overproduced, making the rule apply to 90-day periods ending on or after 90 days before the rule's effective date is necessary to eliminate any requirement that notices of disqualification be filed after the effective date of this rule. It would also mean that, after this rule becomes effective, operators need only file new applications for pressure build-up determinations for wells with previous determinations where the deadline for filing notices of disqualification for the wells expired before the rule became effective.

The Commission has determined to adopt this suggestion. If this rule applied only to 90-day periods ending on or after its effective date, operators and purchasers might have to file, after this rule becomes effective, as many as three additional notices of disqualification for wells with prior pressure build-up determinations, since many wells disqualify monthly due to pressure build-up. Corresponding applications for new pressure build-up determinations would also be required. It makes no sense to impose on operators and purchasers the burden of making such filings, and impose on jurisdictional agencies and the Commission the burden of making the necessary determinations after the effective date of a rule determining that such filings and determinations are unnecessary.[25]

While applying this rule to 90-day periods ending up to ninety days before its effective date may give the rule some retroactive effect, such retroactivity will harm no one. This rule does not alter the substantive requirements for continued qualification of a well after overproduction due to temporary pressure build-up. It affects only the procedures to be followed in obtaining such continued qualification. And the alteration in procedures does not affect the right of any person to contest a well's continued qualification under the temporary pressure build-up rule since, as stated in the next section, the Commission is amending its protest procedures to expressly permit purchasers to contest such continued qualification. Since there is strong public interest in giving this rule the limited retroactive effect described above and no harm to any individuals, this limited retroactive effect is lawful.[26]

4. Protest Procedures

One commenter [27] requests that the Commission provide a mechanism for resolving disputes between operators and purchasers concerning whether a well is entitled to retain its stripper status under this rule. The commenter states that the current regulations provide such a mechanism because the producer must obtain a pressure build-up determination each time a well overproduces due to pressure build-up. However, this rule's elimination of the requirement of more than one pressure build-up determination means that that mechanism will exist only until the producer obtains the one-time pressure build-up determination.

The Commission agrees that there should be a mechanism for resolving any disputes between operators and purchasers concerning continued qualification of a well under this rule. Accordingly, the Commission is amending its protest procedures set forth at § 271.805(c) to expressly allow purchasers or producers to file with the jurisdictional agency motions contesting the continued qualification or disqualification of a well under the temporary pressure build-up rule.

5. Deadline for Jurisdictional Agency Determination

Northwest Pipeline Corporation also requests that the Commission establish a time limit within which jurisdictional agencies must act on applications for pressure build-up determinations. The commenter states that some agencies take as long as six months to make those determinations and during this period the well may again overproduce due to pressure build-up, thus requiring additional notices of disqualification and applications for pressure build-up determinations.

The Commission does not believe that a deadline for jurisdictional agency action should be established. The varying budget and staffing levels of the jurisdictional agencies render such a deadline infeasible. In any event, the Commission's determination in this final rule not to require subsequent applications for jurisdictional determinations and notices of disqualification while the first application is pending before the jurisdictional agency means that delays by the jurisdictional agencies in processing the first application should not unduly burden operators and purchasers.

6. Notification Between Purchasers and Operators

While all the commenters agree with the NOPR's proposal to eliminate the requirement that the operator and purchaser give notice to the Commission that a well retaining its stripper status by virtue of an earlier pressure build-up filing has overproduced, four commenters [28] disagree with the NOPR's proposal to eliminate the similar requirement for notice to the purchaser and operator. The commenters contend, in particular, that notice by operators to purchasers containing sufficient information to show whether the well is eligible for continued qualification under this rule [29] is necessary in order to enable purchasers to monitor compliance with the regulations.

The Commission does not believe that it should require notice between operators and purchasers by regulation. Rather, individual operators and purchasers should have the flexibility to determine among themselves whether notice should be given and, if so, what information such notice should contain. The parties are in a better position than the Commission to make this determination, since the record keeping systems for each company are so varied. In Order No. 336, the Commission also refused to set forth specific requirements concerning the notice to be given when disqualified stripper wells requalify pursuant to the automatic procedures set forth in that order, [30] leaving the notice issue to be determined by the parties.[31] The Commission is not aware that that action has caused significant problems for purchasers in monitoring compliance with the stripper well regulations. There is no reason to believe that the absence of notice requirements in the temporary pressure build-up rule (other than after the first 90-day period in which the well overproduces due to temporary pressure (build-up) should cause significant problems.

7. Exemption From Filing Notices of Disqualification

One commenter [32] contends that the proposed § 271.804(e)(4), providing that subsequent notices of disqualification need not be filed for wells with pressure build-up determinations or applications therefor, should specify that operators and purchasers are exempted from the filing requirements of "§ 271.805(d)" rather than simply referring to "§ 271.805." Otherwise, the commenter claims, resourceful operators may misconstrue § 271.804(e)(4) to relieve them of the filing requirements of § 271.805(e) relating to motions contesting disqualification and petitions for enhanced recovery, seasonal fluctuation or pressure build-up determinations and to relieve them of the filing requirements of § 271.805(f) relating to collections subject to refund when petitions or motions under paragraph (e) have been filed.

Since the Commission's intent is only to exempt operators and purchasers from the filing requirements of §271.805(d), the Commission has adopted the commenter's suggestion. The Commission also amends the paralled provision in §271.804(d)(3), exempting operators and purchasers of seasonally affected wells from filing notices of disqualification, in order to clarify the Commission's intent that that section also exempts operators and purchasers only from the filing requirements of § 271.805(d).[33]

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [34] requires certain statements, descriptions, and analyses of rules that will have "a significant economic impact on a substantial number of small entities."[35] The Commission is not required to make an RFA analysis if it certifies that a rule will not have a "significant economic impact on a substantial number of small entities."[36]

There are approximately 10,000 natural gas producers in the United States, many of which would probably be classified as small entities under the appropriate RFA definition.[37] This

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[20] Usually, a producer need only show that a qualifying well was shut in and thereafter temporarily overproduced. *See* 18 CFR 274.206(a)(6) (1985). These facts are generally clear from the producer's or pipeline's records.

[21] Tenneco Oil Company.

[22] Reduction in Filing Requirements for Well Category Applications under sections 102, 103, 107, and 108 of the Natural Gas Policy Act of 1978; Regulations for Temporary Pressure Buildup Determinations under Section 108 of the Natural Gas Policy Act, 48 FR 44508 (Sept. 29, 1983), (Order No. 336) *reh'g denied*, 49 FR 566 (Jan. 5, 1984) (Order No. 336–A).

[23] Of course, if the original application is denied, that application cannot serve as the basis for continued qualification. *See* page 6 *supra*.

[24] Mitchell Energy Corporation.

[25] Of course, operators would still have to obtain pressure build-up determinations for wells for which the deadline for filing notices of disqualification occurs before the effective date of the rule even though the application for the pressure build-up determination might not be filed until after the rule becomes effective. Eliminating the need for pressure build-up determinations in that situation would not significantly reduce burdens on operators, jurisdictional agencies or the Commission since some form of filing (for example a withdrawal of the notice of disqualification) would still be required to determine which wells for which notices of disqualification had been filed nevertheless continued to qualify under this rule.

[26] Adams Nursing Home v. Mathews, 546 F.2d 1077, 1080–1082 (1st Cir. 1977), and Pasadena Hospital Assoc. v. U.S., 616 F.2d 728, 735 (Ct. of Cl. 1980). *See* Colyer v. Harris, 519 F. Supp. 692, 696–707 (D.C. Cir. 1981).

[27] Northwest Pipeline Corporation.

[28] Northwest Pipeline Corporation, Panhandle Eastern Pipeline Company, Trunkline Gas Company, and Tenneco Oil Company.

[29] Commenters contend that this information includes identification of the 90-day production period in question, total production for the period, dates on which the well produced and was shut in, and the reasons the well was shut in. Commenters suggest that the Commission expressely require that this information be included in the notice.

[30] *See* 18 CFR 271.805(c) (1985).

[31] One commenter requests that we also require that operators give purchasers notice when a stripper well requalifies pursuant to the procedures established by Order No. 336. The Commission continues to believe for the reasons set forth in Order No. 336 that there should be no regulatory requirement of such notice. However, as stated in Order No. 336, operators and purchasers may agree that such notice should be given.

[32] Northwest Pipeline Corporation.

[33] Only one other issue requires comment. Mesa Petroleum Company suggests that the definition of the term 90-day production period be revised to clarify what is meant by the phrase "any person with the right to control production of natural gas from such well." This issue is beyond the scope of this rulemaking. In any event, the phrase in question simply tracks the language of section 108(b)(3)(B) of the NGPA, and the Commission believes that clarification of the meaning of that phrase is best accomplished by adjudication in individual cases rather than rulemaking.

[34] 5 U.S. 601–612 (1982).

[35] *Id.* at section 603(a).

[36] *Id.* at section 605(b).

[37] *Id.* at section 601(3) *Citing* section 3 of the Small Business Act, 15 U.S.C. section 632 (1982). Section 3 of the Small Business Act defines "small

Continued

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proposed rule could affect most of these entities by eliminating filing requirements that are unnecessary. In addition, this proposal does not impose any additional regulatory burdens. Thus, while this proposal has a beneficial impact on small entities, the Commission believes that this impact will not be "significant," within the meaning of the RFA. Accordingly, the Commission certifies that this proposal will not have a "significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR 1320.13 (1985). Inquiries relating to the information collection provisions in this rule can be made to Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357–8306. Comments on these information collection provisions should be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Effective Date

This rule will become effective April 21, 1986. If OMB's approval has not been received by that date, the Commission will issue a notice temporarily suspending the effective date.

List of Subjects in 18 CFR Part 271

Ceiling prices, Natural gas.

In consideration of the foregoing, the Commission amends Part 271, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

1. The authority citation for Part 271 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352; (1982); E.O. 12009, 3 CFR 142 (1978); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982), unless otherwise noted.

2. Section 271.804(d)(3) is amended by removing the words "requirements of § 271.805" and replacing them with the words "requirements of § 271.805(d)".

3. Section 271.804(e) is amended by adding new paragraphs (3) and (4) to read as follows:

§ 271.804 Special rules.

* * * * *

(e) *Temporary pressure buildup in previously qualifying stripper wells.*

* * * * *

(3) If a previously qualifying stripper well, which qualified pursuant to paragraph (e)(1) subsequently produces in excess of an average of 60 Mcf per production day for a 90-day period because of pressure buildup occurring during a temporary shut-in, a new petition pursuant to paragraph (e)(1) need not be filed to avoid disqualification of the well so long as production does not exceed 5400 Mcf for a 90-day production period. If a well is disqualified as a stripper well after qualifying for a pressure buildup determination pursuant to paragraph (e)(1) but requalifies before a subsequent 90-day production period in which a temporary pressure buildup occurs, it will continue to qualify pursuant to this paragraph based on the prior petition filed pursuant to paragraph (e)(1).

(4) If a well which produces in excess of 60 Mcf per production day continues to qualify for stripper well prices under paragraph (e)(3), the operator of such well and the purchaser of production from such well are exempt from the filing requirements of § 271.805(d) for subsequent period.

* * * * *

4. Section 271.805(d)(1) is amended by removing the words "Unless exempt under § 271.804(d)(3)" and replacing them with the words "Unless exempt under §§ 271.804(d)(3) or 271.804(e)(4)".

5. Section 271.805(e)(1)(i) is revised to read as follows:

§ 271.805 Continuing qualification.

* * * * *

(e) *Petition under § 271.806.* (1)* * *

(i) A motion contesting the disqualification or requalification under paragraph (b) or (c) of this section, (or continuing qualification under paragraph (e)(3) of § 271.804), and include a copy if applicable, of the notice filed under paragraph (d) in the motion;

* * * * *

[FR Doc. 86–2431 Filed 2–3–86; 8:45 am]

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business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

18 CFR Part 381

[Docket Nos. RM82–25–000, et al.]

Natural Gas Companies and Natural Gas Policy Act; Fees Applicable to Producer Matters

AGENCY: Federal Energy Regulatory Commission; DOE.

ACTION: Final Rule; Update of Commission Filing Fees.

SUMMARY: In accordance with § 381.104 of the Commission's regulations, the Commission issues this update of its filing fees. This notice provides the yearly update by using data under the Commission's new Time Distribution Reporting System (TDRS) to calculate the new fees.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, (202) 357–8400.

SUPPLEMENTARY INFORMATION:

Notice of Update of Commission Filing Fees

January 30, 1986.

In the matter of Fees Applicable to Producer Matters Under the Natural Gas Act, Docket No. RM82–25–000; Fees Applicable to Natural Gas Pipeline Rate Matters, Docket No. RM83–2–000; Fees Applicable to the Natural Gas Policy Act, Docket No. RM82–30–000; Fees Applicable to General Activities, Docket No. RM82–35–000; Fees Applicable to Natural Gas Pipelines, Docket No. RM82–31–000; and Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, Docket No. RM82–38–000.

Under § 381.104 of the Commission's regulations,[1] the Commission by its designee the Executive Director is updating its filing fees. This notice provides the yearly update by using data under the Commission's new Time Distribution Reporting System (TDRS) to calculate the new fees.

The new fee schedule is as follows:

Fees Applicable to Producer Matters Under the Natural Gas Act (NGA), RM82–25–000

1. Review of Application for a Blanket Certificate for a Small Producer, $600
2. Application for Large Producer Certificate of Public Convenience and Necessity, $2,800
3. Change in Producer Rate Schedule, $400

Fees Applicable to Natural Gas Pipeline Rate Matters, RM83–2–000

1. Tariff Filings for General Changes in Rates and for Changes other than Rates, $3,400
2. Tariff Filings—Tracking, $4,000

Fees Applicable to the Natural Gas Policy Act, RM82–30–000

1. Staff Adjustments, $3,200
2. Jurisdictional Agency Determinations, $25
3. Petitions for Rate Approval Pursuant to Section 284.123(b)(2), $2,600
4. Initial or Extension Reports for Title III Transactions, $200
5. Interpretations of the NGPA by the Office of the General Counsel, $400

Fees Applicable to General Activities, RM82–35–000

1. Petitions for Issuance of Declaratory Orders (except under Part I of the Federal Power Act), $1,700
2. Review of Department of Energy Denial of Adjustment,

Amount in controversy	*Fee*
$0 to $9,999	$100
$10,000 to $29,999	600
$30,000 or above	4,900

3. Review of Department of Energy Remedial Order,

Amount in controversy	*Fee*
$0 to $9,999	$100
$10,000 to $29,999	600
$30,000 or above	4,600

4. Requests for Written Interpretations by the Office of Chief Accountant, $100

Fees Applicable to Natural Gas Pipelines, RM82–31–000

1. Pipeline Certificates (applications for authorization under NGA, Section 311(a); and application for declaration of Hinshaw exemption under NGA, Section 1(c), $12,100
2. Curtailment Filings, $5,200
3. Request under Blanket Certificate, $1,400

Fees Applicable to Electric Utilities, Cogenerators and Small Power Producers, RM82–38–000

1. Rate Schedule Filings with no Rate Impact or a Decrease, $1,100
2. Rate Schedule Filings with Rate Impact, but not Supported by Period II, $3,100
3. Rate Schedule Filings Involving Rate Increases, and Supported by Period II, $8,900
4. Certification of Qualifying Status, $1,400
5. Extension of Equipment Test Period Filings, $2,400
6. Authorization to Issue Equity or Long-Term Debt Securities Competitively or to Issue Short-Term Debt Securities, $1,300
7. Authorization for the Negotiated Placement Securities or Authorization to Assume an Obligation or Liability as a Guarantor, $3,400
8. Review of Corporate Application Involving One or More Jurisdictional Utilities Under Section 203 of the FPA, $4,400
9. Authorization to Hold Interlocking Positions, $1,700

In consideration of the foregoing, the Commission amends Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below.

List of Subjects in 18 CFR Part 381

General fees, Natural gas.

William G. McDonald,

Executive Director.

1. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR Part 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

2. Part 381 is amended as follows:

(a) Section 381.201 is amended by removing the number "$800" and inserting, in its place, the number "$600".

(b) Section 381.202 is amended by removing the number "$1,600" and inserting, in its place, the number "$2,800".

(c) Section 381.203 is amended by removing the number "$300" and inserting, in its place, the number "$400".

(d) Section 381.204 is amended by removing the number "$2,000" and inserting, in its place, the number "$3,400".

(e) Section 381.205 is amended by removing the number "$2,300" and inserting, in its place, the number "$4,000".

(f) Section 381.207(b) is amended by removing the number "$12,200" and inserting, in its place, the number "$12,100".

(g) Section 381.208 is amended by removing the number "$1,700" and inserting, in its place, the number "$1,400".

(h) Section 381.209(b) is amended by removing the number "$3,300" and inserting, in its place, the number "$5,200".

(i) Section 381.302(a) is amended by removing the number "$4,900" and inserting, in its place, the number "$1,700".

(j) Section 381.303(a) is amended by removing the number "$2,900" and inserting, in its place, the number "$4,600".

(k) Section 381.304(a) is amended by removing the number "$3,700" and inserting, in its place, the number "$4,900".

(l) Section 381.401 is amended by removing the number "$6,000" and inserting, in its place, the number "$3,200".

(m) Section 381.403 is amended by removing the number "$2,000" and inserting, in its place, the number "$2,600".

(n) Section 381.404 is amended by removing the number "$800" and inserting, in its place, the number "$200".

(o) Section 381.405 is amended by removing the number "$1,200" and inserting, in its place, the number "$400".

(p) Section 381.502(b) is amended by removing the number "$1,400" and inserting, in its place, the number "$1,100".

(q) Section 381.503(b) is amended by removing the number "$2,900" and inserting, in its place, the number "$3,100".

(r) Section 381.504(b) is amended by removing the number "$15,500" and inserting, in its place, the number "$8,900".

(s) Section 381.505 is amended by removing the number "$1,800" and inserting, in its place, the number "$1,400".

(t) Section 381.506 is amended by removing the number "$1,200" and inserting, in its place, the number "$2,400".

(u) Section 381.507 is amended by removing the number "$3,300" and inserting, in its place, the number "$3,400".

(v) Section 381.508 is amended by removing the number "$1,400" and inserting, in its place, the number "$1,300".

(w) Section 381.509 is amended by removing the number "$4,200" and inserting, in its place, the number "$4,400".

(x) Section 381.510 is amended by removing the number "$1,600" and inserting, in its place, the number "$1,700".

[FR Doc. 86–2434 Filed 2–3–86; 8:45 am]

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[1] 18 CFR 381.104 (1985).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 83F-0116]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is editorially amending the food additive regulations by removing tetrakis[methylene (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane from 21 CFR 175.300(b)(3) (xxxi). FDA inadvertently omitted removal of the use of this additive when it amended 21 CFR 178.2010(b) on June 3, 1985 (50 FR 23296), to provide for new and increased uses of this substance.

DATES: Effective February 4, 1984; objections by March 6, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of June 3, 1985 (50 FR 23296), FDA amended § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for a number of new and increased uses of tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane. Item 12 under the limitations for this additive states that the additive may be used at levels not to exceed 1 percent by weight of can end cement formulations complying with 21 CFR 175.300(b)(3)(xxxi). The listing of this use of this additive in § 178.2010 superseded the listing of this additive in § 175.300(b)(3)(xxxi), which had permitted use of the additive at a level of only 0.05 percent by weight of isobutylene-isoprene-divinylbenzene copolymers in can end cements.

FDA should have removed the listing of tetrakis[methylene (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane from § 175.300(b)(3)(xxxi) in the June 3, 1985, final rule. Inadvertently, however, it failed to do so. Therefore, FDA is making this editorial amendment at this time. Because this amendment merely remedies the agency's failure to make all of the appropriate changes in responding to FAP 3B3701, which sought the change in the uses of this additive, FDA finds that is unnecessary to propose this amendment.

The agency has determined under 21 CFR 25.24(a)(9) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before March 6, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 175.300 [Amended]

2. Section 175.300 *Resinous and polymeric coatings* is amended in paragraph (b)(3)(xxxi) by removing from the list of substances the entry "Tetrakis[methylene(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane * * *."

Dated: January 24, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-2406 Filed 2-3-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 54, 301 and 602

[T.D. 8073]

Income, Excise, and Estate and Gift Taxes; Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to effective dates and certain other issues arising under sections 91, 223, and 511-561 of the Tax Reform Act of 1984. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. The temporary regulations will affect qualified employee benefit plans, welfare benefit funds and employees receiving benefits through such plans.

DATES: As follows, the temporary regulations are to be effective on varying dates dependent upon the effective dates of the underlying provisions of the Internal Revenue Code of 1954. In general, the effective dates are as follows:

Regulation section	Subject	Effective date
1.72(e)-1T	Treatment of distributions.	Amounts received or loans made after Oct. 18, 1984.
1.79-4T	Group-term life insurance.	Generally, taxable years beginning after Dec. 31, 1983.

Regulation section	Subject	Effective date
1.125-2T	Cafeteria plans	Cafeteria plan years beginning on or after Jan 1, 1985.
1.133-1T	ESOP loan interest exclusion.	Loans extended to an ESOP or sponsoring employer after July 18, 1984.
1.402(a)(5)-1T	Rollover of partial distributions.	Distributions made after July 18, 1984.
1.404(a)-1T	Deduction of deferred compensation and benefits.	Generally, amounts paid or incurred after July 18, 1984.
1.404(a)(8)-1T	Deductions for plan contributions.	Taxable years beginning after Dec. 31, 1983.
1.404(b)-1T	Deduction of deferred compensation and benefits.	Generally, amounts paid or incurred after July 18, 1984.
1.404(d)-1T	Deduction of deferred benefits to nonemployees.	Generally, amounts paid or incurred after July 18, 1984.
1.404(k)-1T	Deduction for dividends on stock held by ESOP.	Dividends paid in employer taxable years beginning after July 18, 1984.
1.419-1T	Funded welfare benefits plans.	Generally, contributions paid or accrued after Dec. 31, 1985.
1.419A-1T	Qualified asset account, etc.	Generally, contributions paid or accrued after Dec. 31, 1985.
1.461(h)-3T	Economic performance requirement for certain employee benefits.	Generally, contributions incurred in taxable years ending after July 18, 1984.
1.463-1T	Transitional rule for vested accrued vacation benefits.	First taxable year ending on or before July 18, 1984.
1.505(c)-1T	Requirements for exemption.	Taxable years beginning after July 18, 1984.
1.512(a)-5T	Unrelated business income of exempt organizations.	Generally, income earned after Dec. 31, 1985.
1.1042-1T	Sale of stock to ESOP.	Taxable years beginning after July 18, 1984.
20.2039-1T	Repeal of estate tax exclusion for qualified plans.	Generally, estates of decedents dying after Dec. 31, 1984.
54.4976-1T	Taxes with respect to welfare benefit plans.	Generally, disqualified benefits provided after Dec. 31, 1985.
54.4978-1T	Tax on certain dispositions by an ESOP.	Taxable years beginning after July 18, 1984.
301.7701-17T	Collective bargaining plans and agreements.	Generally, after Mar. 31, 1984.

Regulation section	Subject	Attorney/ telephone (not toll-free calls)
1.72(e)-1T	Treatment of distributions.	Philip R. Bosco, (202) 566-3430.
1.79-4T	Group-term life insurance.	Nancy J. Marks, (202) 566-3430.
1.125-2T	Cafeteria plans	Harry Beker, (202) 566-6212.
1.133-1T	ESPO loan interest exclusion.	John T. Ricotta, (202) 566-3544.
1.402(a)(5)-1T	Rollover of partial distributions.	Charles M. Watkins, (202) 566-3430.
1.404(a)-1T	Deduction of deferred compensation and benefits.	John T. Ricotta, (202) 566-3544.
1.404(a)(8)-1T	Deductions for plan contributions.	Charles M. Watkins, (202) 566-3430.
1.404(b)-1T	Deduction of deferred compensation and benefits.	John T. Ricotta, (202) 566-3544.
1.404(d)-1T	Deduction of deferred benefits to nonemployees.	John T. Ricotta, (202) 566-3544.
1.404(k)-1T	Deduction for dividends on stock held by ESOP.	Calder L. Robertson, (202) 566-3544.
1.419-1T	Funded welfare benefits plans.	John T. Ricotta, (202) 566-3544.
1.419A-1T	Qualified asset account, etc..	John T. Ricotta, (202) 566-3544.
1.461(h)-3T	Economic performance requirement for certain employee benefits.	John T. Ricotta, (202) 566-3544.
1.463-1T	Transitional rule for vested accrued vacation pay.	Annette Guarisco, (202) 566-3236.
1.505(c)-1T	Requirements for exemption.	Sylvia F. Hunt, (202) 566-6212.
1.512(a)-5T	Unrelated business income of exempt organizations.	John T. Ricotta, (202) 566-3544.
1.1042-1T	Sale of stock to ESOP.	Sylvia F. Hunt, (202) 566-6212.
20.2039-1T	Repeal of estate tax exclusion for qualified plans.	Richard J. Wickersham, (202) 566-3430.
54.4976-1T	Taxes with respect to welfare benefit plans.	John T. Ricotta, (202) 566-3544.
54.4978-1T	Tax on certain dispositions by an ESOP.	John T. Ricotta, (202) 566-3544.
301.7701-17T	Collective bargaining plans and agreements.	Philip R. Bosco, (202) 566-3430.

FOR FURTHER INFORMATION CONTACT: The attorneys indicated in the table below at the Employee Plans and Exempt Organizations Division or the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224 (Attention: CC:LR:T).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the economic performance requirement for certain employee benefits under section 461(h) of the Internal Revenue Code of 1954 (Code), as added by section 91 of the Tax Refrom Act of 1984 (Act) (Pub. L. 98-369, 98 Stat. 598); the transitional rule for vested accrued vacation pay under section 463 of the Code, as amended by section 91(i) of the Act (Pub. L. 98-369, 98 Stat. 609); the treatment of group-term life insurance purchased for employees under section 79 of the Code, as amended by section 223 of the Act (Pub. L. 98-369, 98 Stat. 775); the treatment of funded welfare benefit plans under sections 419 and 419A of the Code, as added by section 511 of the Act (Pub. L. 98-369, 98 Stat. 854); the treatment of unfunded deferred benefits under sections 404(b) and 162 of the Code, as amended by section 512 of the Act (Pub. L. 98-369, 98 Stat. 862); additional requirements for tax-exempt status of certain organizations under section 505 of the Code, as added by section 513 of the Act (Pub. L. 98-369, 98 Stat. 863); rollovers of partial distributions under sections 402 and 403, as amended by section 522 of the Act (Pub. L. 98-369, 98 Stat. 868); distributions where substantially all contributions are employee contributions under section 72, as amended by section 523 of the Act (Pub. L. 98-369, 98 Stat. 871); repeal of the estate tax exclusion for qualified plan benefits under section 2039, as amended by section 525 of the Act (Pub. L. 98-369, 98 Stat. 873); determination of whether there is a collective bargaining agreement under section 7701(a)(46), as added by section 526(c) of the Act (Pub. L. 98-369, 98 Stat. 874); statutory nontaxable benefits under section 125, as amended by section 531(b) of the Act (Pub. L. 98-369, 98 Stat. 881); nonrecognition of gain on stock sold to an employee stock ownership plan (ESOP) under section 1042, as added by section 541 of the Act (Pub. L. 98-369, 98 Stat. 887); deductibility of dividends relating to ESOPs under section 404 and 3405, as amended by section 542 of the Act (Pub. L. 98-369, 98 Stat. 890); exclusion of interest on ESOP loans under section 133, as added by section 543 of the Act (Pub. L. 98-369, 98 Stat. 891); excise tax on certain dispositions by ESOPs under section 4978, as added by section 545 of the Act (Pub. L. 98-369, 98 Stat. 894); treatment of an employer and an employee benefit association as related under section 1239, as amended by section 557 of the Act (Pub. L. 98-369, 98 Stat. 898); and technical corrections to the pension provisions of the Tax Equity and Fiscal Responsibility Act of 1982 under sections 713 and 715 of the Act (Pub. L. 98-369, 98 Stat. 955, 966).

Format

These temporary regulations are generally presented in the form of questions and answers. Taxpayers may rely on them for guidance pending the issuance of final regulations. The questions and answers are not, however, intended to address comprehensively the issues raised by sections 91, 223 and 511-561 of the Act and no inference should be drawn

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regarding questions not expressly raised and answered.

For purposes of developing a notice of proposed rulemaking to provide comprehensive guidance under section 404(b) as amended by the Tax Reform Act of 1984, written comments are requested regarding whether, in place of the presumption established under Q&A–2 or § 1.404(b)–1T, compensation or benefits should be considered unconditionally provided under a plan, or method or arrangement, deferring the receipt of compensation or providing for deferred benefits for purposes of section 404 (a) and (d) and section 404(b) if paid beyond a 2½ month period following the close of the taxable year. In conjunction with the presumption and safe harbor rules of Q&A–2 of § 1.404(b)–1T, consideration was given to providing additionally for a fixed period beyond the close of taxable year (e.g., 8½ months) beyond which a payment would unconditionally be treated as deferred compensation or benefits for purposes of section 404. However, that approach was dismissed because of a concern that such a fixed period would inappropriately be regarded and utilized as an extended safe harbor within which a payment would be treated as not constituting deferred compensation or benefits for purposes of section 404.

Further, written comments are requested with respect to the treatment of an account as a "fund" for purposes of section 419(e)(3)(C). In particular, comments are requested regarding the application of Q&A–3 of § 1.419–1T to experience-rated insurance arrangements between employers and insurance companies to provide welfare benefits to employees, and the application of § 54.4976–1T to dividends and refunds under such arrangements. In addition, comments are requested regarding the inclusion of additional experience-rated arrangements in the definition of "welfare benefit fund" under section 419(e)(3)(C), particularly where there is a pooling or spreading of experience among different employers.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and a Regulatory Impact Analysis is not required for this rule. The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in this temporary regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0916.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.401–0—1.425–1

Income taxes, Employee benefit plans, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR 1.501(a)–1—1.528–10

Income taxes, Exempt organizations.

26 CFR 1.1001–1—1.1102–3

Nontaxable exchanges.

26 CFR Part 20

Estate taxes.

26 CFR Part 54

Excise taxes.

26 CFR Part 301

Procedure and administration.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 20, 54, 301, and 602 are amended as follows:

Paragraph 1. The authority citations for Parts 1, 20, 54, and 301 continue to read as follows:

Authority: 26 U.S.C. 7805.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Par. 2. The following new sections are added after § 1.72–18 to read as follows:

§ 1.72(e)–1T Treatment of distributions where substantially all contributions are employee contributions. (Temporary)

Q–1: How did the Tax Reform Act (TRA) of 1984 change the law with regard to the treatment of non-annuity distributions (i.e., amounts distributed prior to the annuity starting date and not received as annuities) from a qualified plan that is treated as a single contract under section 72 and under which substantially all of the contributions are employee contributions?

A–1: (a) Prior to the amendment of section 72(e) by the TRA of 1984, non-annuity distributions from such a qualified plan generally were allocable, first, to nondeductible employee contributions and thus were not includible in gross income. After distributions equaled the balance of nondeductible employee contributions, further non-annuity distributions generally were includible in gross income.

(b) Pursuant to section 72(e)(7), as added by the TRA of 1984, non-annuity distributions from such a qualified plan that are allocable to investment in the plan after August 13, 1982 (as determined in accordance with section 72(e)(5)(B)), generally will be treated, first, as allocable to income and, second, as allocable to nondeductible employee contributions. Distributions allocable to income are includible in gross income. Distributions allocable to nondeductible employee contributions are not includible in gross income.

Q–2: To which qualified plans and contracts does section 72(e)(7) apply?

A–2: Section 72(e)(7) applies to any plan or contract under which substantially all of the contributions are employee contributions if—

(a) Such plan is described in section 401(a) and the related trust or trusts are exempt from tax under section 501(a); or

(b) Such contract is—

(1) Purchased by a trust described in (a) above,

(2) Purchased as part of a plan described in section 403(a), or

(3) Described in section 403(b).

Q–3: What is the definition of a qualified plan or contract under which substantially all of the contributions are employee contributions?

A–3: (a) A qualified plan or contract under which substantially all of the contributions are employee contributions is a plan or contract with respect to which 85 percent or more of the total contributions during the "representative period" are employee contributions. The "representative period" means the five-plan-year period preceding the plan year during which a distribution occurs. However, if less than 85 percent of the total contributions for all plan years during which the plan or contract is in existence prior to the plan year of distribution are employee contributions, then the plan or contract is not one with respect to which substantially all of the contributions are employee contributions.

(b) For purposes of the 85 percent test, contributions made to a predecessor plan or contract are aggregated with contributions made the plan or contract to which the 85 percent test is being applied (the successor plan or contract). For purposes of the preceding sentence, a predecessor plan or contract is a plan or contract the terms of which are substantially the same as the successor plan or contract.

Q–4: What is the definition of employee contributions for purposes of section 72(e)(7)?

A–4: For purposes of section 72(e)(7), employee contributions are those amounts contributed by the employee and those amounts considered contributed by the employee under section 72(f). For example, amounts contributed to a section 401(k) qualified cash or deferred arrangement, pursuant to an employee's election to defer such amounts, are employer contributions to the extent that such amounts are not currently includible in gross income. In addition, deductible employee contributions under section 72(o) are disregarded in their entirety (i.e., treated as neither employee contributions nor employer contributions) in determining whether substantially all the contributions are employee contributions.

Q–5: How is the 85 percent test of section 72(e)(7) applied to a qualified plan or contract?

A–5: (a) Except as provided in paragraphs (b), (c), and (d), the 85 percent test is applied separately with respect to each contract under section 72.

(b) If a single qualified plan described in section 401(a) or section 403(a) comprises more than one contract under section 72, regardless of whether such plan includes multiple trusts or combinations of profit-sharing and pension features, these contracts are aggregated for purposes of applying the 85 percent test. Thus, if substantially all of the contributions under a qualified plan comprising two contracts under section 72 are employee contributions, section 72(e)(5)(D) shall not apply to non-annuity distributions under either of the contracts.

(c) With respect to the plans maintained by the Federal Government or by instrumentalities of the Federal Government, the 85 percent test shall be applied by aggregating all such plans. This aggregation rule applies only to those plans that are actively administered by the Federal Government or an instrumentality thereof. Thus, if a plan of the Federal Government is administered by a commercial financial institution, it would not be aggregated with other plans of the Federal Government and its instrumentalities for purposes of applying the 85 percent test.

(d) In the case of a contract described in section 403(b), the 85 percent test is applied separately to each such contract.

Q–6: Is a loan from a qualified plan or contract described in section 72(e)(7) treated as a distribution under section 72(e)(4)(A)?

A–6: Yea. Pursuant to section 72(e)(4)(A), if an employee receives, either directly or indirectly, any amount as a loan from a qualified plan or contract described in section 72(e)(7), such amount shall be treated as a distribution from the plan or contract of an amount not received as an annuity. Similarly, if an employee assigns or pledges, or agrees to assign or pledge, any portion of the value of any qualified plan or contract, such portion shall be treated as a distribution from the plan or contract of an amount not received as an annuity.

Q–7: Does the five percent penalty for premature distributions from annuity contracts, as described in section 72(q), apply to distributions from a qualified plan or contract described in section 72(e)(7)?

A–7: No.

Q–8: When is section 72(e)(7) effective?

A–8: Section 72(e)(7) is effective for amounts received or loans made on or after October 17, 1984. For purposes of this effective date provision, loan amounts outstanding on October 16, 1984, which are renegotiated, extended, renewed, or revised after that date generally are treated as loans made on the date of the renegotiation, etc.

Par. 3. There is added the following new section after § 1.79–3:

§ 1.79–4T Questions and answers relating to the nondiscrimination requirements for group-term life insurance. (Temporary)

Q–1: When does section 79, as amended by the Tax Reform Act of 1984, become effective?

A–1: (a) Generally, section 79, as amended, applies to taxable years (of the employee receiving insurance coverage) beginning after December 31, 1983. There are, however, several exceptions to this effective date where there is coverage under a group-term life insurance plan of the employer that was in existence on January 1, 1984, or a comparable successor to such a plan maintained by the employer or a successor employer.

(b) First, the new rules of section 79 (b) and (e), that require the inclusion in income of a retired employee of amounts attributable to the cost of group-term life insurance in excess of $50,000 and that include former employees within the definition of the term "employee," will not apply to any employee who retired from employment on or before January 1, 1984.

(c) Second, in the case of an individual who retires after January 1, 1984, and before January 1, 1987, the new rules of section 79 (b) and (e) do not apply if (1) the individual attained age 55 on or before January 1, 1984, and (2) the plan was maintained by the same employer who employed the individual during 1983, or by a successor employer.

(d) Third, in the case of an individual who retires after December 31, 1986, the new rules of section 79 (b) and (e) do not apply if (1) the individual attained age 55 on or before January 1, 1984, (2) the plan was maintained by the same employer who employed the individual during 1983, or by a successor employer, and (3) the plan is not, after December 31, 1986, a discriminatory group-term life insurance plan (not taking into account any group-term life insurance coverage provided to employees who retired before January 1, 1987).

(e) For purposes of determining whether a plan is, after December 31, 1986, a discriminatory group-term life insurance plan, there shall be ignored any insurance coverage provided pursuant to a state law requirement that an insurer continue to provide insurance coverage for a period of time not in excess of two months following the termination of a policy.

Q–2: What is meant by a "group-term life insurance plan of the employer that was in existence on January 1, 1984"?

A–2: A group-term life insurance plan of the employer was in existence on January 1, 1984, only if the group policy or policies providing group-term life insurance benefits under the plan were executed on or before January 1, 1984, and were not terminated prior to such date. The applicability of section 79, as amended, to an employee will not be affected by the transfer of the employee between employers treated as a single employer under section 79(d)(7) if the employee continues, after the transfer, to be provided with group-term life insurance benefits under a plan that is comparable (determined under the principles set forth in Q&A 3) to the plan provided by the former employer.

Q–3: When is a plan of group-term life insurance a "comparable successor" to another such plan?

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A–3: A plan of group-term life insurance will be a comparable successor to another plan of group-term life insurance (the first plan) only if the plan does not differ from the first plan in any significant aspect with respect to individual who are potentially eligible for benefits provided under the grandfather provisions in Q&A 1. These individuals consist of those persons who are covered under a plan of group-term life insurance of the employer that was in existence on January 1, 1984, or a comparable successor to such a plan maintained by the employer or a successor employer, and who either retired on or before January 1, 1984, or who both attained age 55 on or before January 1, 1984, and were employed by the employer maintaining the plan (or a predecessor of that employer) during the year 1983. Accordingly, if significant additional or reduced benefits are provided only to individuals who are not described in the preceding sentence, the plan will be considered a comparable successor plan. A plan will not fail to be a comparable successor plan merely because the employer purchases a policy or policies identical to the employer's first plan from a different insurance company. If the new plan provides significant additional or reduced benefits (either as to the type or amount available) to employees, or provides benefits to a category of employees that was formerly excluded from participating in the plan, the plan is generally not a comparable successor to the first plan. However, a plan will not be considered as providing significant additional or reduced benefits merely because a participant's coverage is based on a percentage of compensation and the participant's compensation for the taxable year has been increased or decreased. Furthermore, a plan will not be considered a non-comparable successor plan merely because it is amended, either to decrease benefits provided to key employees or to increase benefits provided to non-key employees, solely in order to comply with the nondiscrimination requirements of section 79(d). Finally, a plan will not be considered a non-comparable successor plan merely because a policy that is part of a discriminatory plan is terminated in order to end discriminatory coverage.

Q–4: For purposes of determining the effective date of section 79, as amended by the Tax Reform Act of 1984, what is a "successor employer"?

A–4: A successor employer is an employer who employs a group of individuals formerly employed by another employer as a result of a business merger, acquisition or division.

Q–5: Under what circumstances will separate policies of group-term life insurance of an employer be considered to be a single plan in determining whether the employer's plan of group-term life insurance is discriminatory?

A–5: All policies providing group-term life insurance to a common key employee or key employees (as defined in this Q&A) carried directly or indirectly by an employer (or by a group of employers described in section 79(d)(7)) will be considered as a single plan for purposes of determining whether an employer's group-term life insurance plan is discriminatory. For example, if a key employee receives $50,000 of group-term life insurance coverage under one policy and the same key employee receives an additional $250,000 of coverage under a separate group-term life insurance policy, the two policies will be treated as a single plan in determining whether the group-term life insurance provided by the employer is discriminatory. If it is discriminatory, the key employees covered by either policy will not receive the benefit of section 79(a)(1) or section 79(c) for either policy. The result is the same even if each policy, considered alone, would be nondiscriminatory. A policy that provides group-term life insurance to a key employee and a policy under which the same key employee is eligible to receive group-term life insurance upon separation from service will be considered to provide group-term life insurance to a common key employee. In addition, an employer may treat two or more policies that do not provide group-term life insurance to a common key employee as constituting a single plan for purposes of satisfying the nondiscrimination provisions of section 79(d). For example, if the employer provides group-term life insurance coverage for non-key employees under one policy and provides group-term life insurance coverage for key employees under a second policy, the two policies may be considered together in determining whether the requirements of section 79(d) are satisfied with regard to the second policy. For purposes of this section, the term "key employee" has the meaning given to such term by paragraph (1) of section 416(i), except that subparagraph (A)(iv) of such paragraph shall be applied by not taking into account employees described in section 79(d)(3)(B) who are not participants in the plan. For purposes of this section, all references to "plan year" or "plan years" in section 416(g)(4)(C) and section 416(i) shall be deleted and replaced with "taxable year of the employer" or "taxable years of the employer," respectively.

Q–6: In the case of a discriminatory group-term life insurance plan, what amounts should be included in the gross income of a key employee?

A–6: (a) In the case of a discriminatory group-term life insurance plan, each key employee must include in gross income for the taxable year the cost of his or her insurance benefit for that year provided by the employer under the plan.

(b) The cost of group-term life insurance coverage provided by an employer for a key employee during the employee's taxable year is determined by apportioning the net premium (group premium less policy dividends, premium refunds or experience rating credits) allocable to the group-term life insurance coverage during the key employee's taxable year, less the actual cost allocated to other key employees pursuant to the method described in the subparagraph (d) of this answer, if applicable, among the covered employees. In the event that the employer has other forms and types of coverage with the same insurer, the employer must make a reasonable allocation of the total premiums paid to the insurer. For example, where an employer has both health insurance coverage and a plan of group-term life insurance with the same insurer, and there is no volume discount, the net premium for the plan of group-term life insurance must include the excess, if any, of the payments the employer makes for the health insurance coverage over the payments the employer would make for such coverage if the plan of group-term life insurance for which this calculation is being made did not exist.

(c) In general, the portion of the net premium for group-term life insurance that should be apportioned to a key employee, other than a key employee to whom the method in subparagraph (d) of this answer is applicable, is determined by: (1) Calculating a "tabular" premium for the entire group (with the exception of all key employees to whom the method in subparagraph (d) of this answer is applicable), in the manner described below, (2) determining the ratio of the total actual net premium (less the actual cost allocated to key employees pursuant to the method in the subparagraph (d) of this answer) to the total tabular premium and (3) multiplying the tabular premium for the key employee at his or her attained age by such ratio. Thus, if the total actual net premium is 125 percent of the total tabular premium for all covered employees and the tabular premium at the key employee's attained age is $2.00 per thousand per month, the cost for such employee would be $2.50 per thousand per month ($2.00 times 125 percent). For these purposes the table used to calculate tabular premiums will be determined as follows:

(i) If the group policy contains a reasonable table (based on recognized mortality assumptions) of premium rates on an attained age basis (which table may use age brackets not exceeding five years) with reference to which the group premium is determined, such table will be used;

(ii) If such table is not available, the 1960 Basic Group Table published by the Society of Actuaries will be used.

(d) In cases where the mortality charge for group-term life insurance coverage provided to a key employee is calculated separately by the insurer (for example, where the charge for the coverage provided to a key employee is based on a medical examination) and the amount of such mortality charge plus a proportionate share of the loading charge for the coverage provided to the group is higher than the amount that would be allocable to such employee under the allocation method in subparagraph (c) the cost of group-term life insurance coverage for that employee shall be that higher amount.

Q–7: Must all active and former employees be considered in applying the coverage tests in section 79 (d) (3) to determine whether or not a plan of group-term life insurance is discriminatory with respect to coverage?

A–7: No. Generally, a plan of group-term life insurance which covers both active and former employees will not satisfy the nondiscrimination requirements of section 79 (d) unless the coverage tests in section 79 (d) (3) are satisfied with respect to both the active and the former employees of the employer, except to the extent they are excluded from tests for discrimination by application of the grandfather provisions set forth in Q&A 1. However, for purposes of determining whether a plan is discriminatory with respect to coverage, the coverage tests must be applied separately to active and former employees. In addition, if the plan limits participation by former employees to employees who retired from employment with the employer, then only retired employees must be considered in applying the coverage tests to former employees. Also, in applying the coverage tests in section 79 (d) (3), the employer may make reasonable mortality assumptions regarding former employees who are not covered under the plan but must be considered in applying the coverage tests. Furthermore, only those former employees who terminated employment on or after the earliest date of termination from employment for any former employee covered by the plan must be considered. Finally, for purposes of determining whether a plan of group-term life insurance of the employer (or a successor employer) that was in existence on January 1, 1984 (or a comparable successor to such a plan) is discriminatory, after December 31, 1986, with respect to group-term life insurance coverage for former employees, coverage provided to employees who retired on or before December 31, 1986, shall not be taken into account.

Q–8: Will a group-term life insurance plan be considered discriminatory if active employees receive greater benefits as a percentage of compensation than former employees, or vice versa?

A–8: No. For purposes of determining whether a plan is discriminatory with respect to the type and amount of benefits available, insurance coverage for former employees must be tested separately from insurance coverage for active employees. For example, a group-term life insurance plan that provides group-term life insurance benefits equal to 200 percent of compensation for all active employees and 100 percent of final compensation (based on the average annual compensation for the final five years) for all former employees would satisfy the nondiscrimination requirements of section 79 (d). However, a group-term life insurance plan that provides group-term life insurance benefits equal to 200 percent of compensation for all active employees and 100 percent of final compensation (based on the average annual compensation for the final five years) only for key employees who are no longer employed by the employer (or a successor employer) would not satisfy the nondiscrimination requirement of section 79 (d) (2) (A).

Q–9: Under what circumstances will the amount of benefits available under a plan of group-term life insurance be considered not to discriminate in favor of participants who are key employees?

A–9: A plan of group-term life insurance will be considered not to discriminate in favor of participants who are key employees, as to the amount of benefits available, if the plan provides a fixed amount of insurance which is the same for all covered employees. In other circumstances, the determination of whether a plan is nondiscriminatory will be based on all of the facts and circumstances. Such plans will be considered not to discriminate in favor of participants who are key employees, as to the amount of benefits available, if the plan contains no group of employees described in the following sentence that, if tested separately, would fail to satisfy the requirements of section 79(d)(2)(A). The group subject to separate testing under the preceding sentence consists of a key employee and all other participants (including other key employees) who receive, under the plan, an amount of insurance (as a multiple of compensation (either total compensation or the basic or regular rate of compensation)) that is equal to or greater than the amount of insurance received by such key employee. As described in Q&As 7&8, active and former employees are tested separately under section 79(d)(2)(A).

Example: Assume that a plan of group-term life insurance has 500 participants, 10 of whom are key employees. Under the plan, 400 of the non-key employees receive an amount of insurance equal to 100 percent of compensation, while all of the key employees and 90 of the non-key employees receive an amount of insurance equal to 200 percent of compensation. The plan will be considered not to discriminate in favor of the participants who are key employees because, tested separately, the group of participants receiving an amount of insurance equal to or greater than 200 percent of compensation would satisfy the requirements of section 79(d)(2)(A) (by reason of section 79(d)(3)(A)(iii)). If one of the key employees received an amount of insurance equal to 300 percent of compensation, the plan would be considered to discriminate in favor of participants who are key employees, because, tested separately, the group consisting of the single key employee receiving an amount of insurance equal to or greater than 300 percent of compensation would fail to satisfy the requirements of section 79(d)(2)(A).

In determining the groups of employees that are tested separately for this purpose, allowance shall be made for reasonable differences in amount of insurance (as a multiple of compensation) due to rounding, the use of compensation brackets or other similar factors. Thus, if a plan bases group-term life insurance coverage on "compensation brackets," it is not intended that any participants will be treated as receiving an amount of insurance (as a multiple of compensation) that is greater (or less) than that of any other participant merely because the first participant's compensation is at the lower (or higher) end of a compensation bracket while the second participant's compensation is at the higher (or lower) end of a compensation bracket. However, any

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compensation brackets utilized by a plan will be examined to determine if the brackets, or compensation groupings, result in discrimination in favor of key employees. In addition, a plan does not meet the requirements for nondiscrimination as to the type and amount of benefits available under the plan unless all types of benefits (including permanent benefits) and all terms and conditions with respect to such benefits which are available to any participant who is a key employee are also available on a nondiscriminatory basis to non-key employee participants.

Q–10: How is additional coverage purchased by employees under a plan of group-term life insurance treated for purposes of determining whether a plan of group-term life insurance is discriminatory?

A–10: (a) The extent to which employees purchase additional coverage under a plan of group-term life insurance is not taken into account for purposes of determining whether a plan of group-term life insurance is discriminatory. For example, a plan providing insurance to all employees of 1 times annual compensation, which gives all employees the option to purchase additional insurance of 1 times annual compensation at their own expense, would not be considered discriminatory as to the type and amount of benefits available, even if the group (or groups) of participants who purchase additional insurance, if tested separately, would not satisfy the requirements of section 79(d)(2)(A). Solely for this purpose, the choice of an amount of group-term life insurance as a benefit under a cafeteria plan will be treated as the purchase of group-term life insurance by an employee. If additional insurance coverage is available to any key employee that is not available, on a nondiscriminatory basis, to non-key employees, the plan will be considered discriminatory, even if the full cost of such additional insurance coverage is paid by the employee(s) electing such benefits.

(b) If the employer bears a part of the expense of any additional coverage that is purchased by an employee under a plan of group-term life insurance, the additional insurance shall be treated, in part, as an amount of insurance provided by the employer under the plan and, in part, as an amount of insurance purchased by the employee. Except to the extent provided in subparagraph (a) above, the portion of insurance treated as an amount of insurance purchased by the employee is not taken into account for purposes of determining whether the plan is discriminatory. Whether such insurance (together with any other insurance provided by the employer under the plan) will cause the plan to be considered to discriminate in favor of participants who are key employees is determined under the rules of Q&A 9.

Q–11: What effect do the provisions of section 79(d)(1) have if a plan of group-term life insurance is discriminatory for only part of a year?

A–11: If a plan of group-term life insurance is discriminatory at any time during the key employee's taxable year, then it is a discriminatory group-term life insurance plan for that taxable year and the provisions of section 79(d)(1) will be applicable with respect to all group-term life insurance costs allocable to that employee for that year.

Q–12: Are the section 79(d) provisions independent from the requirements contained in Treas. Reg. § 1.79–1?

A–12: Yes. Treas. Reg. § 1.79–1(c)(1) provides that life insurance provided to a group of employees cannot qualify as group-term life insurance if it is provided to less than ten full-time employees unless certain requirements are satisfied. The satisfaction of these requirements does not guarantee that the plan will be nondiscriminatory, and vice versa. Treas. Reg. § 1.79–1(a)(4) provides that life insurance is not group-term life insurance unless the amount of insurance provided to each employee is computed under a formula that precludes individual selection. The mere fact that a life insurance policy is nondiscriminatory is not determinative as to whether the policy precludes individual selection, and vice versa.

Par. 4. The following section is added immediately after § 1.125–1:

§ 1.125–2T Question and answer relating to the benefits that may be offered under a cafeteria plan. (Temporary)

Q–1: What benefits may be offered to participants under a cafeteria plan?

A–1: (a) Generally, for cafeteria plan years beginning on or after January 1, 1985, a cafeteria plan is a written plan under which participants may choose among two or more benefits consisting of cash and certain other permissible benefits. In general, benefits that are excludable from the gross income of an employee under a specific section of the Internal Revenue Code may be offered under a cafeteria plan. However, scholarships and fellowships under section 117, vanpooling under section 124, educational assistance under section 127 and certain fringe benefits under section 132 may not be offered under a cafeteria plan. In addition, meals and lodging under section 119, because they are furnished for the convenience of the employer and thus are not elective in lieu of other benefits or compensation provided by the employer, may not be offered under a cafeteria plan. Thus, a cafeteria plan may offer coverage under a group-term life insurance plan of up to $50,000 (section 79), coverage under an accident or health plan (sections 105 and 106), coverage under a qualified group legal services plan (section 120), coverage under a dependent care assistance program (section 129), and participation in a qualified cash or deferred arrangement that is part of a profit-sharing or stock bonus plan (section 401(k)). In addition, a cafeteria plan may offer group-term life insurance coverage which is includable in gross income only because it is in excess of $50,000 or is on the lives of the participant's spouse and/or children. In addition, a cafeteria plan may offer participants the opportunity to purchase, with after-tax employee contributions, coverage under a group-term life insurance plan (section 79), coverage under an accident or health plan (section 105(e)), coverage under a qualified group legal services plan (section 120), or coverage under a dependent care assistance program (section 129). Finally, a cafeteria plan may offer paid vacation days if the plan precludes any participant from using, or receiving cash for, in a subsequent plan year, any of such paid vacation days remaining unused as of the end of the plan year. For purposes of the preceding sentence, elective vacation days provided under a cafeteria plan are not considered to be used until all nonelective paid vacation days have been used.

(b) Note that benefits that may be offered under a cafeteria plan may or may not be taxable depending upon whether such benefits qualify for an exclusion from gross income. However, a cafeteria plan may not offer a benefit that is taxable because such benefit fails to satisfy any applicable eligibility, coverage, or nondiscrimination requirement. Similarly, a plan may not offer a benefit for purchase with after-tax employee contributions if such benefit would fail to satisfy any eligibility, coverage, or nondiscrimination requirement that would apply if such benefit were designed to be provided on a nontaxable basis with employer contributions. Also, note that section 125(d)(2) provides that a cafeteria plan may not offer a benefit that defers the receipt of compensation (other than the opportunity to make elective contributions under a qualified cash or deferred arrangement) and may not operate in a manner that enables

participants to defer the receipt of compensation.

Par. 5. The following new section is added immediately after § 1.132–1T:

§ 1.133–1T. Questions and answers relating to interest on certain loans used to acquire employer securities. (Temporary)

Q–1: What does section 133 provide?

A–1: In general, section 133 provides that certain commercial lenders may exclude from gross income fifty percent of the interest received with respect to securities acquisition loans. A securities acquisition loan is any loan to an employee stock ownership plan (ESOP) (as defined in section 4975(e)(7)) that qualifies as an exempt loan under §§ 54.4975–7 and –11 to the extent that the proceeds are used to acquire employer securities (within the meaning of section 409(l)) for the ESOP. A loan made to a corporation sponsoring an ESOP (or to a person related to such corporation under section 133(b)(2)) may also qualify as a securities acquisition loan to the extent and for the period that the proceeds are (a) loaned to the corporation's ESOP under a loan that qualifies as an exempt loan under §§ 54.4975–7 and –11 and that has substantially similar terms as the loan from the commercial lender to the sponsoring corporation, and (b) used to acquire employer securities for the ESOP. The terms of the loan between the commercial lender and the sponsoring corporation (or a related corporation) and the loan between such corporation and the ESOP shall be treated as substantially similar only if the timing and rate at which employer securities would be released from encumbrance if the loan from the commercial lender were the exempt loan under the applicable rule of § 54.4975–7(b)(8) are substantially similar to the timing and rate at which employer securities will actually be released from encumbrance in accordance with such rule. For this purpose, if the loan from the commercial lender to the sponsoring corporation states a variable rate of interest and the loan between the corporation and the ESOP states a fixed rate of interest, whether the terms of the loans are substantially similar shall be determined at the time the obligations are initially issued by taking into account the adjustment interval on the variable rate loan and the maturity of the fixed rate loan. For example, if the rate on the loan from the commercial lender to the sponsoring corporation adjusts each six months and the loan from the corporation to the ESOP has a ten year term, the initial interest rate on the variable rate loan could be compared to the rate on the fixed rate loan by comparing the yields on 6 month and ten year Treasury obligations. Similarly, if the rates on the two loans are based on different compounding assumptions, whether the terms of the loans are substantially similar shall be determined by taking into account the different compounding assumptions. A securities acquisition loan may be evidenced by any note, bond, debenture, or certificate. Also, section 133(b)(2) provides that certain loans between related persons are not securities acquisition loans. In addition, a loan from a commercial lender to an ESOP or sponsoring corporation to purchase employer securities will not be treated as a securities acquisition loan to the extent that such loan is used, either directly or indirectly, to purchase employer securities from any other qualified plan, including any other ESOP, maintained by the employer or any other corporation which is a member of the same controlled group (as defined in section 409(l)(4)).

Q–2: What lenders are eligible to receive the fifty percent interest exclusion?

A–2: Under section 133(a), a bank (within the meaning of section 581), an insurance company to which subchapter L applies, or a corporation (other than a subchapter S corporation) actively engaged in the business of lending money may exclude from gross income fifty percent of the interest received with respect to a securities acquisition loan (as defined in Q&A–1 of § 1.133–1T). For purposes of section 133(a)(3), a corporation is actively engaged in the business of lending money if it lends money to the public on a regular and continuing basis (other than in connection with the purchase by the public of goods and services from the lender or a related party). A corporation is not actively engaged in the business of lending money if a predominant share of the original value of the loans it makes to unrelated parties (other than in connection with the purchase by the public of goods and services from the lender or a related party) are securities acquisition loans.

Q–3: May loans which qualify for the fifty percent interest exclusion under section 133 be syndicated to other lending institutions?

A–3: Securities acquisition loans under section 133 may be syndicated to other lending institutions provided that such lending institutions are described in section 133(a) (1), (2) or (3) and the loan was originated by a qualified holder. Subsequent holders of the debt instrument may qualify for the partial interest exclusion of section 133 if such holders satisfy the requirements of section 133 and such loan does not fail to be a securities acquisition loan under section 133(b)(2).

Q–4: When is section 133 effective?

A–4: Section 133 applies to securities acquisition loans made after July 18, 1984, and used to acquire employer securities after July 18, 1984. The provision does not apply to loans made after July 18, 1984, to the extent that such loans are renegotiations, directly or indirectly, of loans outstanding on such date. A loan extended to an ESOP or sponsoring corporation after July 18, 1984, will be treated as a renegotiation of an outstanding loan if the loan proceeds are used to refinance acquisitions of employer securities made prior to July 19, 1984. For example, if an ESOP borrowed money prior to July 19, 1984, to purchase employer securities and after July 18, 1984, borrows other funds from the same or a different commercial lender to repay the first loan, the second loan will be treated as a renegotiation of an outstanding loan to the extent of the repaid amount. Similarly, if, after July 18, 1984, an ESOP sells employer securities, uses the proceeds to retire a pre-July 19, 1984, loan and obtains a second loan to acquire replacement employer securities, the second loan will be treated as a renegotiation of an outstanding loan.

Par. 6. The following new section is added immediately after § 1.162–10:

§ 1.162–10T Questions and answers relating to the deduction of employee benefits under the Tax Reform Act of 1984; certain limits on amounts deductible. (Temporary)

Q–1: How does the amendment of section 404(b) by the Tax Reform Act of 1984 affect the deduction of employee benefits under section 162 of the Internal Revenue Code?

A–1: As amended by the Tax Reform Act of 1984, section 404(b) clarifies that section 404(a) and (d) (in the case of employees and nonemployees, respectively) shall govern the deduction of contributions paid or compensation paid or incurred under a plan, or method or arrangement, deferring the receipt of compensation or providing for deferred benefits. Section 404(a) and (d) requires that such a contribution or compensation be paid or incurred for purposes of section 162 or 212 and satisfy the requirements for deductibility under either of these sections. However, notwithstanding the above, section 404 does not apply to contributions paid or accrued with respect to a "welfare benefit fund" (as defined in section

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419(e)) after July 18, 1984, in taxable years of employers (and payors) ending after that date.

Also, section 463 shall govern the deduction of vacation pay by a taxpayer that has elected the application of such section. Section 404(b), as amended, generally applies to contributions paid and compensation paid or incurred after July 18, 1984, in taxable years of employers (and payors) ending after that date. See Q&A–3 of § 1.404(b)–1T. For rules relating to the deduction of contributions attributable to the provision of deferred benefits, see section 404 (a), (b) and (d) and § 1.404(a)–1T, § 1.404(b)–1T and § 1.404(d)–1T. For rules relating to the deduction of contributions paid or accrued with respect to a welfare benefit fund, see section 419, § 1.419–1T and § 1.419A–2T. For rules relating to the deduction of vacation pay for which an election is made under section 463, see § 10.2 of this chapter and § 1.463–1T.

Q–2: How does the enactment of section 419 by the Tax Reform Act of 1984 affect the deduction of employee benefits under section 162?

A–2: As enacted by the Tax Reform Act of 1984, section 419 shall govern the deduction of contributions paid or accrued by an employer (or a person receiving services under section 419(g)) with respect to a "welfare benefit fund" (within the meaning of section 419(e)) after December 31, 1985, in taxable years of the employer (or person receiving the services) ending after that date. Section 419(a) requires that such a contribution be paid or accrued for purposes of section 162 or 212 and satisfy the requirements for deductibility under either of those sections. Generally, subject to a binding contract exception (as described in section 511(e)(5) of the Tax Reform Act of 1984), section 419 shall also govern the deduction of the contribution of a facility (or other contribution used to acquire or improve a facility) to a welfare benefit fund after June 22, 1984. See Q&A–11 of § 1.419–1T. In the case of a welfare benefit fund maintained pursuant to a collective bargaining agreement, section 419 applies to the extent provided under the special effective date rule described in Q&A–2 of § 1.419–1T and the special rules of § 1.419A–2T. For rules relating to the deduction of contributions paid or accrued with respect to a welfare benefit fund, see section 419 and § 1.419–1T.

Par. 7. The following new section is added after § 1.402(a)–1 to read as follows:

§ 1.402(a)(5)–1T Rollovers of partial distributions from qualified trusts and annuities. (Temporary)

Q–1: Can an employee or the surviving spouse of a deceased employee roll over to an individual retirement account or annuity, described in section 408 (a) or (b), the taxable portion of a partial distribution from a qualified trust described in section 401(a), a qualified plan described in section 403(a), or a tax-sheltered annuity contract under section 403(b)?

A–1: Yes. For distributions made after July 18, 1984, the taxable portion of a partial distribution may be rolled over within 60 days of the distribution to an individual retirement account or annuity.

Q–2: Are there special requirements applicable to rollovers of partial distributions?

A–2: Yes. Section 402(a)(5)(D)(i) specifies that no part of a partial distribution may be rolled over unless the distribution is equal to at least 50 percent of the balance to the credit of the employee in the contract or plan immediately before the distribution, and the distribution is not one of a series of periodic payments. For purposes of this section, the balance to the credit of an employee does not include any accumulated deductible employee contributions (within the meaning of section 72(o)). In addition, in calculating the balance to the credit for purposes of the 50 percent test, qualified plans are not to be aggregated with other qualified plans and tax-sheltered annuity contracts are not to be aggregated with other tax-sheltered annuity contracts. Also, in applying the 50 percent test to a surviving spouse, the balance to the credit is the maximum amount the spouse is entitled to receive under the plan or contract, rather than the total balance to the credit of the employee. The rollover of a partial distribution may result in adverse tax consequences; see section 402(a)(5)(D) (iii) and (iv).

Q–3: Are there any other requirements applicable to rollovers of partial distribution?

A–3: Yes. Section 402(a)(5)(D)(i)(III) requires the employee to elect, in conformance with Treasury regulations, to treat a contribution of a partial distribution to an IRA as a rollover contribution. An election is made by designating, in writing, to the trustee or issuer of the IRA at the time of the contribution that the contribution is to be treated as a rollover contribution. This requirement of a written designation to the trustee or issuer of the IRA is effective for contributions paid to the trustee or issuer of the IRA after March 20, 1986. For contributions paid to the trustee or issuer before March 21, 1986, an election is made by computing the individual's income tax liability on the income tax return for the taxable year in which the distribution occurs in a manner consistent with not including the distribution (or portion thereof) in gross income. Both such elections are irrevocable, except that an election made on an income tax return filed before March 21, 1986 is revocable.

Q–4: Does the election requirement apply to rollovers of qualified total distributions or rollover contributions described in section 402(a) (5) or (7), 403(a)(4), 403(b)(8), 405(d)(3), or 408(d)(3) to individual retirement accounts and annuities (IRAs)?

A–4: Yes. No amounts may be treated as a rollover contribution to an IRA under section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3) (as amended by section 491(c) of the TRA of 1984), or 408(d)(3) unless the requirements described in Q & A–3 of this section are satisfied. Thus, once any portion of a total distribution is irrevocably designated as a rollover contribution, such distribution is not taxable under section 402 or 403 and, therefore, is not eligible for the special capital gains and separate tax treatment under section 402 (a) and (e). Election requirements for rollover contributions to IRAs described in this Q &A–4 are subject to the same effective date rules set forth in Q &A–3.

Par. 8. The following new section is added immediately after § 1.404(a)–1:

§ 1.404(a)–1(T) Questions and answers relating to deductibility of deferred compensation and deferred benefits for employees. (Temporary)

Q–1: How does the amendment of section 404(b) by the Tax Reform Act of 1984 affect the deduction of contributions or compensation under section 404(a)?

A–1: As amended by the Tax Reform Act of 1984, section 404(b) clarifies that section 404(a) shall govern the deduction of contributions paid and compensation paid or incurred by the employer under a plan, or method or arrangement, deferring the receipt of compensation or providing for deferred benefits to employees, their spouses, or their dependents. See section 404(b) and § 1.404(b)–1T. Section 404 (a) and (d) requires that such a contribution or compensation be paid or incurred for purposes of section 162 or 212 and satisfy the requirements for deductibility under either of those sections. However, notwithstanding the above, section 404 does not apply to contributions paid or accrued with respect to a "welfare benefit fund" (as defined in section 419(e)) after July 18, 1984, in taxable years of employers (and payors) ending after that date. Also, section 463 shall govern the deduction of vacation pay by a taxpayer that has elected the application of such section. For rules relating to the deduction of contributions paid or accrued with respect to a welfare benefit fund, see section 419, § 1.419–1T and § 1.419A–2T. For rules relating to the deduction of vacation pay for which an election is made under section 463, see § 10.2 of this chapter and § 1.463–1T.

Par. 9. The following new section is added after § 1.404(a)–8 to read as follows:

§ 1.404(a)(8)–1T Deductions for plan contributions on behalf of self-employed individuals. (Temporary)

Q: How does the amendment to section 404(a)(8)(D), made by section 713(d)(6) of the Tax Reform Act of 1984 (TRA of 1984), affect section 404(a)(8)(C)?

A: In applying the rules of section 404(a)(8)(C), the Service will treat the amendment to section 404(a)(8)(D) as also having been made to section 404(a)(8)(C), pending enactment of technical corrections to TRA of 1984. The effect of treating the amendment as having also been made to section 404(a)(8)(C) is to increase the amount of contributions on behalf of a self-employed individual that will be treated as satisfying section 162 or 212. Generally, therefore, a contribution on behalf of a self-employed individual is treated as satisfying section 162 or 212 if it is not in excess of the individual's earned income for the year, determined without regard to the deduction allowed by section 404 for the self-employed individual's contribution.

Par. 10. The following new section is added immediately after § 1.404(b)–1:

§ 1.404(b)–1T Method or arrangement of contributions, etc., deferring the receipt of compensation or providing for deferred benefits. (Temporary)

Q–1: As amended by the Tax Reform Act of 1984, what does section 404(b) of the Internal Revenue Code provide?

A–1: As amended, section 404(b) clarifies that any plan, or method or arrangement, deferring the receipt of compensation or providing for deferred benefits (other than compensation) is to be treated as a plan deferring the receipt of compensation for purposes of section 404 (a) and (d). Accordingly, section 404 (a) and (d) (in the case of employees and nonemployees; respectively) shall govern the deduction of contributions paid or compensation paid or incurred with respect to such a plan, or method or arrangement. Section 404 (a) and (d) requires that such a contribution or compensation be paid or incurred for purposes of section 162 or 212 and satisfy the requirements for deductibility under either of those sections. Thus, for example, under section 404 (a)(5) and (b), if otherwise deductible under section 162 or 212, a contribution paid or incurred with respect to a nonqualified plan, or method or arragement, providing for deferred benefits is deductible in the taxable year of the employer in which or with which ends the taxable year of the employee in which the amount attributable to the contribution is includible in the gross income of the employee (without regard to any applicable exclusion under Chapter 1, Subtitle A, of the Internal Revenue Code). Section 404 (a) and (d) applies to all compensation and benefit plans, or methods or arrangements, however denominated, which defer the receipt of any amount of compensation or benefit, including fees or other payments. Thus, a limited partnership (using the accrual method of accounting) may not accrue deductions for a fee owed to an unrelated person (using the cash method of accounting) who performs services for the partnership until the partnership taxable year in which or within which ends the taxable year of the service provider in which the fee is included in income. However, notwithstanding the above, section 404 does not apply to contributions paid or accrued with respect to a "welfare benefit fund" (as defined in section 419(e)) after July 18, 1984, in taxable years of employers (and payors) ending after that date. Also, section 463 shall govern the deduction of vacation pay by a taxpayer that has elected the application of such section. For rules relating to the deduction of contributions paid or accrued with respect to a welfare benefit fund, see section 419, § 1.419–T and § 1.419A–2T. For rules relating to the deduction of vacation pay for which an election is made under section 463, see § 10.2 of this chapter and § 1.463–1T.

Q–2: When does a plan, or method or arrangement, defer the receipt of compensation or benefits for purposes of section 404 (a), (b), and (d)?

A–2: (a) For purposes of section 404 (a), (b), and (d), a plan, or method or arrangement, defers the receipt of compensation or benefits to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. The determination of whether a plan, or method or arrangement, defers the receipts of compensation or benefits is made separately with respect to each employee and each amount of compensation or benefit. Compensation or benefits received by an employee's spouse or dependent or any other person, but taxable to the employee, are treated as received by the employee for purposes of section 404. An employee is determined to receive compensation or benefits within or beyond a brief period of time after the end of the employer's taxable year under the rules provided in this Q&A. For the treatment of expenses with respect to transactions between related taxpayers, see section 267.

(b)(1) A plan, or method or arrangement, shall be presumed to be one deferring the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the 3rd calendar month after the end of the employer's taxable year in which the related services are rendered ("the 2½ month period"). Thus, for example, salary under an employment contract or a bonus under a year-end bonus declaration is presumed to be paid under a plan, or method or arrangement, deferring the receipt of compensation, to the extent that the salary or bonus is received beyond the applicable 2½ month period. Further, salary or a year-end bonus received beyond the applicable 2½ month period by one employee shall be presumed to constitute payment under a plan, or method or arrangement, deferring the receipt of compensation for such employee even though salary or bonus payments to all other employees are not similarly treated because they are received within the 2½ month period. Benefits are "deferred benefits" if, assuming the benefits were cash compensation, such benefits would be considered deferred compensation. Thus, a plan, or plan, or method or arrangement, shall be presumed to be one providing for deferred benefits to the extent benefits for services are received by an employee after the 2½ month period following the end of the employer's taxable year in which the related services are rendered.

(2) The taxpayer may rebut the presumption established under the previous subparagraph with respect to an amount of compensation or benefits only by setting forth facts and circumstances the preponderance of which demonstrates that it was impracticable, either administratively or economically, to avoid the deferral of

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the receipt by an employee of the amount of compensation or benefits beyond the applicable 2½ month period and that, as of the end of the employer's taxable year such impracticability was unforeseeable. For example, the presumption may be rebutted with respect to an amount of compensation to the extent that receipt of such amount is deferred beyond the applicable 2½ month period (i) either because the funds of the employer were not sufficient to make the payment within the 2½ month period without jeopardizing the solvency of the employer or because it was not reasonably possible to determine within the 2½ month period whether payment of such amount was to be made, and (ii) the circumstance causing the deferral described in (i) was unforeseeable as of the close of the employer's taxable year. Thus, the presumption with respect to the receipt of an amount of compensation or benefit is not rebutted to the extent it was foreseeable, as of the end of the employer's taxable year, that the amount would be received after the applicable 2½ month period. For example, if, as of the end of the employer's taxable year, it is foreseeable that calculation of a year-end bonus to be paid to an employee under a given formula will not be completed and thus the bonus will not be received (and is in fact not received) by the end of the applicable 2½ month period, the presumption that the bonus is deferred compensation is not rebutted.

(c) A plan, or method or arrangement, shall not be considered as deferring the receipt of compensation or benefits for more than a brief period of time after the end of the employer's taxable year to the extent that compensation or benefits are received by the employee on or before the end of the applicable 2½ month period. Thus, for example, salary under an employment contract or a bonus under a year-end bonus declaration is not considered paid under a plan, or method or arrangement, deferring the receipt of compensation to the extent that such salary or bonus is received by the employee on or before the end of the applicable 2½ month period.

(d) Solely for purposes of applying the rules of paragraphs (b) and (c) of this Q&A, in the case of an employer's taxable year ending on or after July 18, 1984, and on or before March 21, 1986, compensation or benefits that relate to services rendered in such taxable year shall be deemed to have been received within the applicable 2½ month period if such receipt actually occurs after such 2½ month period but on or before March 21, 1986.

Q–3: When does section 404(b), as amended by the Tax Reform Act of 1984, become effective?

A–3: With the exceptions discussed below, section 404(b), as amended, and the rules under Q&A–2 are effective with respect to amounts paid or incurred after July 18, 1984, in taxable years of employers (and payors) ending after that date. In the case of an extended vacation pay plan maintained pursuant to a collective bargaining agreement (a) between employee representatives and one or more employers, and (b) in effect on June 22, 1984, section 404(b) is not effective before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof agreed to after June 22, 1984). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added under section 512 of the Tax Reform Act of 1984 shall not be treated as a termination of such collective bargaining agreement. For purposes of this section, an "extended vacation pay plan" is one under which covered employees gradually over a specified period of years earn the right to additional vacation benefits, no part of which, under the terms of the plan, can be taken until the end of the specified period.

Par. 11. Section 1.404(d)–1 is removed and the following new section is added in its place:

§ 1.404(d)–1T Questions and answers relating to deductibility of deferred compensation and deferred benefits for independent contractors. (Temporary)

Q–1: How does the amendment of section 404(b) by the Tax Reform Act of 1984 affect the deduction of contributions or compensation under section 404(d)?

A–1: As amended by the Tax Reform Act of 1984, section 404(b) clarifies that section 404(d) shall govern the deduction of contributions paid and compensation paid or incurred by a payor under a plan, or method or arrangement, deferring the receipt of compensation or providing for deferred benefits for service providers with respect to which there is no employer-employee relationship. In such a case, section 404 (a) and (b) and the regulations thereunder apply as if the person providing the services were the employee and the person to whom the services are provided were the employer. Section 404(a) requires that such a contribution or compensation be paid or incurred for purposes of section 162 or 212 and satisfy the requirements for deductibility under either of those sections. However, notwithstanding the above, section 404 does not apply to contributions paid or accrued with respect to a "welfare benefit fund" (as defined in section 419(e)) after June 18, 1984, in taxable years of employers (and payors) ending after that date. Also, section 463 shall govern the deduction of vacation pay by a taxpayer that has elected under such section. For rules relating to the deduction of contributions paid or accrued with respect to a welfare benefit fund, see section 419, § 1.419–1T and § 1.419A–2T. For rules relating to the deduction of vacation pay for which an election is made under section 463, see § 10.2 of this chapter and § 1.463–1T.

Par. 12. The following new section is added immediately after § 1.404(e)–1A:

§ 1.404(k)–1T Questions and answers relating to the deductibility of certain dividend distributions. (Temporary)

Q–1: What does section 404(k) provide?

A–1: Section 404(k) allows a corporation a deduction for dividends actually paid in accordance with section 404(k)(2) with respect to stock of such corporation held by an employee stock ownership plan (as defined in section 4975(e)(7)) maintained by the corporation (or by any other corporation that is a member of a "controlled group of corporations" within the meaning of section 409(l)(4) that includes the corporation), but only if such dividends may be immediately distributed under the terms of the plan and all of the applicable qualification and distribution rules. The deduction is allowed under section 404(k) for the taxable year of the corporation during which the dividends are received by the participants.

Q–2: Is the deductibility of dividends paid to plan participants under section 404(k) affected by a plan provision which permits participants to elect to receive or not receive payment of dividends?

A–2: No. Dividends actually paid in cash to plan participants in accordance with section 404(k) are deductible under section 404(k) despite such an election provision.

Q–3: Are dividends paid in cash directly to plan participants by the corporation and dividends paid to the plan and then distributed in cash to plan participants under section 404(k) treated as distributions under the plan holding stock to which the dividends relate for purposes of sections 72, 401 and 402?

A–3: Generally, yes. However, a deductible dividend under section 404(k) is treated for purposes of section 72 as paid under a contract separate from any other contract that is part of the plan. Thus, a deductible dividend is treated as a plan distribution and as paid under a separate contract providing only for payment of deductible dividends. Therefore, a deductible dividend under section 404(k) is a taxable plan distribution even though an employee has unrecovered employee contributions or basis in the plan.

Par. 13. A new § 1.419–1T is added immediately following § 1.417(e)–1T to read as follows:

§ 1.419–1T Treatment of welfare benefit funds. (Temporary)

Q–1: What does section 419 of the Internal Revenue Code provide?

A–1: Section 419 prescribes limitations upon deductions for contributions paid or accrued with respect to a welfare benefit fund. Under section 419 (a) and (b), an employer's contributions to a welfare benefit fund are not deductible under section 162 (relating to trade or business expenses) or section 212 (relating to expenses for production of income) but, if the requirements of section 162 or 212 are otherwise met, are deductible under section 419 for the taxable year of the employer in which paid to the extent of the welfare benefit fund's qualified cost (within the meaning of section 419(c)(1)) for the taxable year of the fund that relates to such taxable year of the employer. Under section 419(g), section 419 and this section shall also apply to the deduction by a taxpayer of contributions with respect to a fund that would be a welfare benefit fund but for the fact that there is no employer-employee relationship between the person providing the services and the person for whom the services are provided. Contributions paid to a welfare benefit fund after section 419 becomes effective with respect to such contributions are deemed to relate, first, to amounts accrued and deducted (but not paid) by the employer with respect to such fund before section 419 becomes effective with respect to such contributions and thus shall not be treated as satisfying the payment requirement of section 419. See paragraph (b) of Q&A–5 for special deduction limits applicable to employer contributions to welfare benefit funds with excess reserves.

Q–2: When do the deduction rules of section 419, as enacted by the Tax Reform Act of 1984, become effective?

A–2: (a) Section 419 generally applies to contributions paid or accrued with respect to a welfare benefit fund after December 31, 1985, in taxable years of employers ending after that date. See Q&A–9 of this regulation for special rules relating to the deduction limit for the first taxable year of a fiscal year employer ending after December 31, 1985.

(b) In the case of a welfare benefit fund which is part of a plan maintained pursuant to one or more collective bargaining agreements (1) between employee representatives and one or more employers, and (2) that are in effect on July 1, 1985 (or ratified on or before such date), sections 419 shall not apply to contributions paid or accrued in taxable years beginning before the termination of the last of the collective bargaining agreements pursuant to which the plan is maintained (determined without regard to any extension thereof agreed to after July 1, 1985). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added under section 511 of the Tax Reform Act of 1984 (i.e., requirements under sections 419, 419A, 512(a)(3)(E), and 4976) shall not be treated as a termination of such collective bargaining agreement. See § 1.419A–2T for special rules relating to the application of section 419 to collectively bargained welfare benefit funds.

(c) Notwithstanding paragraphs (a) and (b), section 419 applies to any contribution of a facility to a welfare benefit fund (or other contribution, such as cash, which is used to acquire, construct, or improve such a facility) after June 22, 1984, unless such facility is placed in service by the fund before January 1, 1987, and either (1) is acquired or improved by the fund (or contributed to the fund) pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter, or (2) the construction of which was begun by or for the welfare benefit fund before June 22, 1984. See Q&A–11 of this regulation for special rules relating to the application of section 419 to the contribution of a facility to a welfare benefit fund (and to the contribution of other amounts, such as cash, used to acquire, construct, or improve such a facility) before section 419 generally becomes effective with respect to contributions to the fund.

Q–3. What is a "welfare benefit fund" under section 419?

A–3. (a) A "welfare benefit fund" is any fund which is part of a plan, or method or arrangement, of an employer and through which the employer provides welfare benefits to employees or their beneficiaries. For purposes of this section, the term "welfare benefit" includes any benefit other than a benefit with respect to which the employer's deduction is governed by section 83(h), section 404 (determined without regard to section 404(b)(2)), section 404A, or section 463.

(b) Under section 419(e)(3) (A) and (B), the term "fund" includes any organization described in section 501(c)(7), (9), (17) or (20), and any trust, corporation, or other organization not exempt from tax imposed by chapter 1, subtitle A, of the Internal Revenue Code. Thus, a taxable trust or taxable corporation that is maintained for the purpose of providing welfare benefits to an employer's employees is a "welfare benefit fund."

(c) Section 419(e)(3)(C) also provides that the term "fund" includes, to the extent provided in regulations, any account held for an employer by any person. Pending the issuance of further guidance, only the following accounts, and arrangements that effectively constitute accounts, as described below, are "funds" within section 419(e)(3)(C).

A retired lives reserve or a premium stabilization reserve maintained by an insurance company is a "fund," or part of a "fund," if it is maintained for a particular employer and the employer has the right to have any amount in the reserve applied against its future years' benefit costs or insurance premiums. Also, if an employer makes a payment to an insurance company under an "administrative services only" arrangement with respect to which the life insurance company maintains a separate account to provide benefits, then the arrangement would be considered to be a "fund." Finally, an insurance or premium arrangement between an employer and an insurance company is a "fund" if, under the arrangement, the employer has a right to a refund, credit, or additional benefits (including upon termination of the arrangement) based on the benefit or claims experience, administrative cost experience, or investment experience attributable to such employer for such year or years. However, an arrangement with an insurance company is not a "fund" under the previous sentence merely because the employer's premium for a renewal year reflects the employer's own experience for an earlier year if the arrangement is both cancellable by the insurance company and cancellable by the employer as of the end of any policy year and, upon cancellation by either of the parties, neither of the parties can receive a refund or additional amounts or benefits

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and neither of the parties can incur a residual liability beyond the end of the policy year (other than, in the case of the insurer, to provide benefits with respect to claims incurred before cancellation). The determination whether either of the parties can receive a refund or additional amounts or benefits or can incur a residual liability upon cancellation of an arrangement will be made by examining both the contractual rights and obligations of the parties under the arrangement and the actual practice of the insurance company (and other insurance companies) with respect to other employers upon cancellation of similar arrangements. Similarly, a disability income policy does not constitute a "fund" under the preceding provisions merely because, under the policy, an employer pays an annual premium so that employees who became disabled in such year may receive benefit payments for the duration of the disability.

Q–4: For purposes of determining the section 419 limit on the employer's deduction for contributions to the fund for a taxable year of the employer, which taxable year of the welfare benefit fund is related to the taxable year of the employer?

A–4: The amount of an employer's deduction for contributions to a welfare benefit fund for a taxable year of the employer is limited to the "qualified cost" of the welfare benefit fund for the taxable year of the fund that is related to such taxable year of the employer. The taxable year of the welfare benefit fund that ends with or within the taxable year of the employer is the taxable year of the fund that is related to the taxable year of the employer. Thus, for example, if an employer has a calendar taxable year and it makes contributions to a fund having a taxable year ending June 30, the "qualified cost" of the fund for the taxable year of the fund ending on June 30, 1986, applies to limit the employer's deduction for contributions to the fund in the employer's 1986 taxable year. In the case of employer contributions paid directly to an account or arrangement with an insurance company that is treated as a welfare benefit fund for the purposes of section 419, the policy year will be treated as the taxable year of the fund. See Q&A–7 of this regulation for special section 419 rules relating to the coordination of taxable years for the taxable year of the employer in which a welfare benefit fund is established and for the next following taxable year of the employer.

Q–5: What is the "qualified cost" of a welfare benefit fund for a taxable year under section 419?

A–5: (a) Under section 419(c), the "qualified cost" of a welfare benefit fund for a taxable year of the fund is the sum of: (1) The "qualified direct cost" of such fund for such taxable year of the fund, and (2) the amount that may be added to the qualified asset account for such taxable year of the fund to the extent that such addition does not result in a total amount of such account as of the end of such taxable year of the fund that exceeds the applicable account limit under section 419A(c). However, in calculating the qualified cost of a welfare benefit fund for a taxable year of the fund, this sum is reduced by the fund's "after-tax income" (as defined in section 419(c)(4)) for such taxable year of the fund. Also, the qualified cost of a welfare benefit fund is reduced further under the provisions of paragraph (b) of this Q&A.

(b)(1) Pursuant to section 419A(i), notwithstanding section 419 and § 1.419–1T, contributions to a welfare benefit fund during any taxable year of the employer beginning after December 31, 1985, shall not be deductible for such taxable year to the extent that such contributions result in the total amount in the fund as of the end of the last taxable year of the fund ending with or within such taxable year of the employer exceeding the account limit applicable to such taxable year of the fund (as adjusted under section 419A(f)(7)). Solely for purposes of this subparagraph, (i) contributions paid to a welfare benefit fund during the taxable year of the employer but after the end of the last taxable year of the fund that relates to such taxable year of the employer, and (ii) contributions accrued with respect to a welfare benefit fund during the taxable year of the employer or during any prior taxable year of the employer (but not actually paid to such fund on or before the end of a taxable year of the employer) and deducted by the employer for such or any prior taxable year of the employer, shall be treated as an amount in the fund as of the end of the last taxable year of the fund that relates to the taxable year of the employer. Contributions that are not deductible under this subparagraph are in excess of the qualified cost of the welfare benefit fund for the taxable year of the fund that relates to the taxable year of the employer and thus are treated as contributed to the fund on the first day of the employer's next taxable year.

(2) Paragraph (b)(1) of this section shall not apply to contributions with respect to a collectively bargained welfare benefit fund within the meaning of § 1.419A–2T. In addition, paragraph (b)(1) of this section shall not apply to any taxable year of an employer beginning after the end of the earlier of the following taxable years: (i) the first taxable year of the employer beginning after December 31, 1985, for which the employer's deduction limit under section 419 (after the application of paragraph (b)(1) of this section) is at least equal to the qualified direct cost of the fund for the taxable year (or years) of the fund that relates to such first taxable year of the employer, or (ii) the first taxable year of the employer beginning after December 31, 1985, with or within which ends the first taxable year of the fund with respect to which the total amount in the fund as of the end of such taxable year of the fund does not exceed the account limit for such taxable year of the fund (as adjusted under section 419A(f)(7)).

(3) For example, assume an employer with a taxable year ending June 30 and a welfare benefit fund with a taxable year ending January 31. During its taxable year ending June 30, 1987, and on or before January 31, 1987, the employer contributes $250,000 to the fund, and during the remaining portion of its taxable year ending June 30, 1987, the employer contributes $200,000. The qualified direct cost of the fund for its taxable year ending January 31, 1987, is $500,000, the account limit applicable to such taxable year (after the adjustment under section 419A(f)(7)) is $750,000, and the total amount in the fund as of January 31, 1987, is $800,000. Before the application of this paragraph, the employer may deduct the entire $450,000 contribution for its taxable year ending June 30, 1987. However, under this paragraph, the excess of (i) the sum of the total amount in the fund as of January 31, 1987 ($800,000), and employer contributions to the fund after January 31, 1987, and on or before June 30, 1987 ($200,000), over (ii) the account limit applicable to the fund for its taxable year ending January 31, 1987 ($750,000), is $250,000. Thus, under this paragraph, only $200,000 of the $450,000 contribution the employer made during its taxable year ending June 30, 1987, is deductible for such taxable year. If the excess were $450,000 or greater, no portion of the $450,000 contribution would be deductible by the employer for its taxable year ending June 30, 1987. Such nondeductible contributions are in excess of the fund's qualified cost for the taxable year related to the employer's taxable year and thus are

deemed to be contributed on the first day of the employer's next taxable year.

(c) See Q&A–7 of this regulation for special rules relating to the calculation of the qualified cost of a welfare benefit fund for an Initial Fund Year and an Overlap Fund Year (as defined in Q&A–7). See Q&A–11 of this regulation for special rules relating to the application of section 419 to the contribution to a welfare benefit fund of a facility (and to the contribution of other amounts, such as cash, used to acquire, construct, or improve a facility) before section 419 generally becomes effective with respect to contributions to the fund. See § 1.419A–2T for special rules relating to certain collectively bargained welfare benefit funds.

Q–6: What is the "qualified direct cost" of a welfare benefit fund under section 419(c)(3)?

A–6: (a) Under section 419(c)(3), the "qualified direct cost" of a welfare benefit fund for any taxable year of the fund is the aggregate amount which would have been allowable as a deduction to the employer for benefits provided by such fund during such year (including insurance coverage for such year) if (1) such benefits were provided directly by the employer and (2) the employer used the cash receipts and disbursements method of accounting and had the same taxable year as the fund. In this regard, a benefit is treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for a provision of chapter 1, subtitle A, of the Internal Revenue Code excluding it from gross income). Thus, for example, if a calendar year welfare benefit fund pays an insurance company in July 1986 the full premium for coverage of its current employees under a term health insurance policy for the twelve month period ending June 30, 1987, the insurance coverage will be treated as provided by the fund over such twelve month period. Accordingly, only the portion of the premium for coverage during 1986 will be treated as a "qualified direct cost" of the fund for 1986; the remaining portion of the premium will be treated as a "qualified direct cost" of the fund for 1987. The "qualified direct cost" for a taxable year of the fund includes the administrative expenses incurred by the welfare benefit fund in delivering the benefits for such year.

(b) If, in a taxable year of a welfare benefit fund, the fund holds an asset with useful life extending substantially beyond the end of the taxable year (e.g., buildings, vehicles, tangible assets, and licenses) and, for such taxable year of the fund, the asset is used in the provision of welfare benefits to employees, the "qualified direct cost" of the fund for such taxable year of the fund includes the amount that would have been allowable to the employer as a deduction under the applicable Code provisions (e.g., sections 168 and 179) with respect to the portion of the asset used in the provision of welfare benefits for such year if the employer had acquired and placed in service the asset at the same time the fund received and placed in service the asset, and the employer had the same taxable year as the fund. This rule applies regardless of whether the fund received the asset through a contribution of the asset by the employer or through an acquisition or the construction by the fund of the asset. For example, assume that in 1986 a calendar year employer contributes recovery property under section 168(c) to a welfare benefit fund with a calendar taxable year to be used in the provision of welfare benefits. The employer will be treated as having sold the property in such year and thus will recognize gain to the extent that the fair market value of the property exceeds the employer's adjusted basis in the property. In this regard, see section 1239(d). Also, the employer will be treated as having made a contribution to the fund in such year equal to the fair market value of the property. Finally, the qualified direct cost of the welfare benefit fund for 1986 will include the amount that the employer could have deducted in 1986 with respect to the portion of the property used in the provision of welfare benefits if the employer had acquired the property in 1986 and had placed the property in service when the fund actually placed the property in service. Similarly, for example, assume that in 1986 a welfare bendfit fund purchases and places in service a facility to be used in the provision of welfare benefits. The qualified direct cost of the fund for 1986 will include the amount that the employer could have deducted with respect to such facility if the employer had purchased and placed in service the facility at the same time that the fund purchased and placed in service the facility.

(c) The qualified direct cost of a welfare benefit fund does not include expenditures by the fund that would not have been deductible if they had been made directly by the employer. For example, a fund's purchase of land in a year for an employee recreational facility will not be treated as a qualified direct cost because, if made directly by the employer, the purchase would not have been deductible under section 263. See also sections 264 and 274.

(d) Notwithstanding the preceding paragraphs, the qualified direct cost of a welfare benefit fund with respect to that portion of a child care facility used in the provision of welfare benefits for a year will include the amount that would have been allowable to the employer as a deduction for the year under a straight-line depreciation schedule for a period of 60 months beginning with the month in which the facility is placed in service under rules similar to those provided for section 168 property under § 1.168–1(a). For purposes of this section, a "child care facility" is tangible property of a character subject to depreciation that is located in the United States and specifically used as an integral part of a "qualified child care center facility" within the meaning of § 1.168–1(d)(4).

(e) See Q&A–7 of this regulation for special section 419 rules relating to the calculation of the qualified direct cost of a welfare benefit fund for an Initial Fund Year and an Overlap Fund Year (as defined in Q&A–7). See Q&A–11 of this regulation for special rules relating to the contribution to a welfare benefit fund of a facility (and to the contribution of other amounts, such as cash, used to acquire, construct, or improve a facility) before section 419 generally becomes effective with respect to contributions to the fund.

Q–7: What special rules apply for purposes of determining the section 419 limit on the employer's deduction for contributions to a welfare benefit fund for the taxable year of the employer in which the fund is established and for the next following taxable year of the employer?

A–7: (a) If the taxable year of a welfare benefit fund is the same as the taxable year of the employer, there are no special rules that apply for purposes of determining the section 419 limit on an employer's deduction for contributions to the fund for either the taxable year of the employer in which the fund is established or the next following taxable year of the employer. However, if the taxable year of a welfare benefit fund is different from the taxable year of the employer, the general section 419 rules are modified by the special rules set forth below for purposes of determining the section 419 deduction limit for the taxable year of the employer in which a fund is established and for the next following taxable year of the employer.

(b) If a welfare benefit fund is established after December 31, 1985, during a taxable year of an employer

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and either (i) the first taxable year of the fund ends after the close of such taxable year of the employer, or (ii) the first taxable year of the fund is six months or less and ends before the close of such taxable year of the employer and the second taxable year of the fund begins before and ends after the close of such taxable year of the employer, the taxable year of the fund that contains the closing day of such taxable year of the employer will be treated as an "Overlap Fund Year." For purposes of determining the limit on the employer's deduction for contributions to a welfare benefit fund for the taxable year of the employer in which the fund was established, the period between the beginning of the fund's Overlap Fund Year and the end of the employer's taxable year in which the Overlap Fund Year began will be treated as a taxable year of the fund ("Initial Fund Year").

(c) The qualified cost of a welfare benefit fund for its Initial Fund Year will be equal to the qualified direct cost of the fund for such Initial Fund Year. The qualified cost of a fund for its Overlap Fund Year will be determined under the general rules of Q&A–5 of this regulation and section 419(c), with the exception that such qualfied cost will be reduced by the employer contributions made during the Initial Fund Year and deductible by the employer for the taxable year of the employer in which the Overlap Fund Year of the fund begins.

(d) Assume that an employer with a calendar taxable year establishes on July 1, 1986, a welfare benefit fund with a taxable year ending on June 30. The fund's first taxable year from July 1, 1986, to June 30, 1987, is an Overlap Fund Year. The employer contributes $1,000 to the fund during its taxable year ending December 31, 1986 (i.e., during the period between July 1, 1986, and December 31, 1986, which is also the Initial Fund Year) and another $1,500 to the fund during its taxable year ending December 31, 1987. Assume further that the qualified direct cost of the fund for the Initial Fund Year is $900 and that the qualified cost for the Overlap Fund Year is $2,500 (prior to the reduction required by paragraph (c) of this Q&A). Under the special rules of paragraphs (b) and (c), the employer may deduct $900 for its taxable year ending on December 31, 1986, and $1,600 for its taxable year ending on December 31, 1987. If the qualified direct cost of the fund for the Initial Fund Year had been $1,050 and the qualified cost for the Overlap Fund Year had been $2,500 (prior to the reduction required by paragraph (c) of this Q&A), the employer's deduction for its taxable year ending December 31, 1986, would have been $1,000 and its deduction for its taxable year ending December 31, 1987, would have been $1,500.

(e) Assume that an employer with a calendar taxable year establishes on March 1, 1986, a welfare benefit fund with a taxable year ending June 30. Thus, the fund has a short first taxable year ending June 30, 1986, an Overlap Fund Year from July 1, 1986, until June 30, 1987, and an ongoing June 30 taxable year. The employer contributes $1,750 to the fund during the employer's taxable year ending December 31, 1986—$750 during the short first taxable year of the fund and $1,000 during the Initial Fund Year (i.e., the period between July 1, 1986, and December 31, 1986)—and $1,500 to the fund during its taxable year ending December 31, 1987. Assume that the qualified cost of the fund for the short first taxable year of the fund is $800, the qualified direct cost for the Initial Fund Year is $900, and the qualified cost for the Overlap Fund Year is $2,500 (prior to the reduction required by paragraph (c) of this Q&A). Under the special rules of paragraphs (b) and (c), the employer may deduct $1,700 for its taxable year ending December 31, 1986, and $1,550 for its taxable year ending December 31, 1987.

Q–8: How does section 419 treat an employer's contribution with respect to a welfare benefit fund in excess of the applicable deduction limit for a taxable year of the employer?

A–8: (a) If an employer makes contributions to a welfare benefit fund in a taxable year of the employer and such contributions (when combined with prior contributions that are deemed under the rule of this Q&A and section 419(d) to have been made in such taxable year) exceed the section 419 deduction limit for such taxable year of the employer, the excess amounts are deemed to be contributed to the fund on the first day of the next taxable year of the employer. Such deemed contributions are combined with amounts actually contributed by the employer to the fund during the next taxable year and may be deductible for such year, subject to the otherwise applicable section 419 deduction limit for such year.

(b) Contributions to a welfare benefit fund on or before December 31, 1985, that were not deductible by the employer for any taxable year of the employer ending on or before December 31, 1985, or for the first taxable year of the employer ending after December 31, 1985, as pre-1986 contributions (see Q&A–9 of this regulation) are deemed to be contributed to the fund on January 1, 1986. However, see Q&A–11 of this regulation for special rules relating to the contribution to a welfare benefit fund of amounts (such as cash) used to acquire, construct, or improve a facility before section 419 generally becomes effective with respect to contributions to the fund. Generally, such contributions (to the extent that they were made after June 22, 1984 and on or before December 31, 1985) are treated as nondeductible pre-1986 contributions and are deemed to be contributed in the form of a facility at the same time as when the facility is placed in service by the fund.

Q–9: How does an employer with a fiscal taxable year calculate its deduction limit for contributions with respect to a welfare benefit fund for the first taxable year of the employer ending after December 31, 1985?

A–9: (a) If the first taxable year of an employer ending after December 31, 1985 (or, if applicable under paragraph (b) of Q&A–2 of this section, the first taxable year of an employer beginning after termination of the last of the collective bargaining agreements pursuant to which the fund is maintained) is a fiscal year, the employer's deduction for such taxable year for contributions to a welfare benefit fund that is not a collectively bargained welfare benefit fund under § 1.419A–2T is limited to the greater of the following two amounts: (1) The contributions paid to the fund during such first taxable year up to the qualified cost of the welfare benefit fund for the taxable year of the fund that relates to such taxable year of the employer, and (2) the contributions paid to the fund during the 1985 portion of such first taxable year of the employer ("the pre-1986 contributions") to the extent that such pre-1986 contributions are deductible under the rules governing the deduction of such contributions before section 419 generally becomes effective (including the rules set forth in Q&A–10 of this regulation, modified for purposes of this Q&A–9 by substituting "December 31, 1986" for "December 31, 1985" in paragraph (c)). See Q&A–11 of this regulation for special rules relating to the contribution to a welfare benefit fund of a facility (and to the contribution of other amounts, such as cash, used to acquire, construct, or improve such a facility) before section 419 generally becomes effective with respect to contributions to such fund.

(b) For example, assume that an employer with a taxable year ending June 30, contributes to a welfare benefit fund with a taxable year ending January 31. This employer contributes $1,000 to

the fund between July 1, 1985, and December 31, 1985, and an additional $500 to the fund between January 1, 1986, and June 30, 1986. Assume further that the qualified direct cost of the fund for the taxable year of the fund ending January 31, 1986, is $500 and that the qualified cost for such taxable year is $800. Under the deduction rule set forth above, the employer's deduction for its taxable year ending June 30, 1986, is the greater of two amounts: (1) The contributions made during such full taxable year ($1,500) up to the qualifed cost of the fund with respect to such taxable year ($800), and (2) the pre-1986 contributions ($1,000) to the extent that such pre-1986 contributions are deductible under the pre-section 419 rules. In determining the extent to which the pre-1986 contributions are deductible under the pre-section 419 rules, the rules contained in Q&A–10 apply as though December 31, 1985, in paragraph (c) were December 31, 1986. Assuming that only $875 is deductible under the pre-section 419 rules, because $875 is greater than $800, this employer may deduct $875 for its first taxable year ending after December 31, 1985. This full $875 deduction for 1985 is deemed to consist entirely of pre-1986 contributions.

Q–10: How do the rules of sections 263, 446(b), 461(a), and 461(h) apply in determining whether contributions with respect to a welfare benefit fund are deductible for a taxable year?

A–10: (a) Both before an after the effective date of section 419 (see Q&A–2 of this regulation), and employer is allowed a deduction for taxable year for contributions paid or accrued with respect to a "welfare benefit fund" (as defined in Q&A–3 of this regulation and section 419(e)) only to the extent that such contributions satisfy the requirements of section 162 or 212. These requirements must be satisfied after the effective date of section 419 because 419 requires that (among other requirements) contributions to a welfare benefit fund satisfy the requirements of section 162 or 212.

(b) Except as provided in paragraphs (c) and (d), in determinig the extent to which contributions paid or accrued with respect to welfare benefit fund satisfy the requirements of section 162 or 212 for a taxable year (both before and after section 419 generally becomes effective with respect to such contributions), the rules of sections 263, 446(b), 461(a) (including the rules that relate to the creation of an asset with a useful life extending substantially beyond the close of the taxable year), and 461(h) (to the extent that such section is effective with respect to such contributions) are are generally applicable.

(c) Notwithstanding paragraph (b), under the authority of section 7805(b), the rules of sections 263, 446(b), and 461(a) shall not be applied in determining the extent to which an employer's contribution with respect to a welfare benefit fund is deductible under section 162 or 212 with respect to any taxable year of the employer ending on or before December 31, 1985, to the extent that, for such taxable year, (1) the contribution was made pursuant to a bona fide collective bargaining agreement requiring fixed and determinable contributions to a collectively bargained welfare benefit fund (as defined in § 1.419A–2T), or (2) the contribution was not in excess of the amount deductible under the principles of Revenue Rulings 69–382, 1969–2 C.B. 28; 69–478, 1969–2 C.B. 29; and 73–599, 1973–2 C.B. 40, modified as appropriate for benefits for active employees.

(d) Notwithstanding paragraph (b), in determining the extent to which contributions paid or accrued with respect to a welfare benefit fund are deductible under section 419, the rules of sections 263, 446(b), and 461(a) will be treated as having been satisfied to the extent that such contributions satisfy the otherwise applicable rules of section 419. Thus, for example, contributions to a welfare benefit fund will not fail to be deductible under section 419 merely because they create an asset with a useful life extending substantially beyoud the close of the taxable year if such contributions satisfy the otherwise applicable requirements of section 419.

(e) In determining the extent to which contributions with respect to a welfare benefit fund satisfy the requirements of section 461(h) for any taxable year for which section 461(h) is effective, pursuant to the authority under section 461(h)(2), economic performance occurs as contributions to the welfare benefit fund are made. Solely for purposes of section 461(h), in the case of an employer's taxable year ending on or after July 18, 1984, and on or before March 21, 1986, contributions made to the welfare benefit fund after the end of such taxable year and on or before March 21, 1986 shall be deemed to have been made on the last day of such taxable year.

Q–11: What special section 419 rules apply to the payment or accrual with respect to a welfare benefit fund of a facility (and the payment or accrual of other amounts, such as cash, used to acquire, construct, or improve such a facility)?

A–11: (a)(1) In the case of an employer's payment or accrual with respect to a welfare benefit fund after June 22, 1984, and on or before December 31, 1985 (or, if applicable under paragraph (b) of Q&A–2 of this regulation, before section 419 generally becomes effective with respect to contributions to such fund), of a facility, the rules of section 419, § 1.419–1T, and § 1.419A–2T generally apply to determine the extent to which such contribution is deductible by the employer for its taxable year of contribution. For this purpose, however, the facility is to be treated as the only contribution made to the fund and the qualified cost of the fund for the taxable year of the fund in which the facility was contributed is to be equal to the qualified direct cost directly attributable to the facility (as determined under Q&A–6 of this regulation). Also, for this purpose, the welfare benefit fund to which the facility was contributed may not be aggregated with any other fund. For purposes of this Q&A, "facility" means any tangible asset with a useful life extending substantially beyond the end of the taxable year (e.g., vehicles, buildings) and any intangible asset (e.g., licenses) related to a tangible asset, whether or not such asset is used in the provision of welfare benefits. See, however, paragraph (c) of Q&A–2 of this regulation for a binding contract exception.

(2) For example, assume that an employer and a welfare benefit fund each has a calendar taxable year and that, during 1985, the employer contributes to the fund $200,000 in cash and a facility with a fair market value of $100,000. Such facility is used in the provision of welfare benefits under the fund. The employer is treated as having sold the facility in such year and thus will recognize gain to the extent that the fair market value of the facility exceeds the employer's adjusted basis in the facility. In this regard, see section 1239(d). The extent to which the facility contribution is deductible by the employer for its 1985 taxable year is determined as though it were the only contribution made by the employer to the fund during such year and the qualified cost of the fund for the taxable year of the fund in which the contribution was made (i.e., the 1985 taxable year) were equal to the amount that would have been allowable to the employer as a deduction for such year under the applicable Code provisions with respect to the portion of the facility used in the provision of welfare benefits for such year if the employer had placed in service the facility at the time the

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fund placed in service the facility and if the employer had the same taxable year as the fund. If, under these assumptions, the employer would have been allowed a $10,000 deduction with respect to the facility for the 1985 taxable year, the fund's qualified cost for its 1985 taxable year would be only $10,000. Thus, only $10,000 of the $100,000 facility contribution would be deductible by the employer for its 1985 taxable year (i.e., the taxable year of the employer with or within which the applicable taxable year of the fund ends). However, in determining the extent to which the $200,000 in cash is deductible by the employer for its 1985 taxable year, the $100,000 facility is not to be disregarded. Thus, if under the applicable pre-section 419 rules the employer is allowed for 1985 a total deduction of only $175,000, the employer would be permitted a deduction for 1985 of $175,000 ($10,000 with respect to the facility and $165,000 of the cash contribution). The nondeductible portion of the cash contribution is to be treated as contributed to the fund on the first day of the next taxable year of the employer. If under the applicable pre-section 419 rules the employer were allowed a total deduction of $300,000 for 1985, the employer would be permitted a deduction for 1985 of only $210,000 ($10,000 with respect to the facility and the full $200,000 cash contribution).

(3) For example, assume that an employer has a June 30 taxable year and maintains a welfare benefit fund with a taxable year ending January 31. During the 1985 portion of its taxable year ending June 30, 1986, the employer contributes $50,000 in cash and a facility with a fair market value of $100,000; and during the 1986 portion of such taxable year, the employer contributes another $75,000 in cash to the fund. The facility is used in the provision of welfare benefits under the fund. Under the rules of Q&A–9 of this regulation, the employer's deduction for its June 30, 1986, taxable year is limited to the greater of the following two amounts: (i) The contributions paid to the fund during such taxable year ($225,000) up to the qualified cost of the fund for the taxable year of the fund ending January 31, 1986, and (ii) the contributions paid to the fund during the 1985 portion of the employer's taxable year ending June 30, 1986 ("the pre-1986 contributions") ($150,000) to the extent that such pre-1986 contributions are deductible under the rules governing the deduction of such contributions before section 419 is generally effective with respect to the fund. For purposes of this rule, the contribution of the facility on or before December 31, 1985, is to be treated as a pre-1986 contribution and the rules of section 419 and this Q&A are to be treated as rules governing the deduction of such contribution before section 419 generally becomes effective with respect to the fund. Thus, in determining the extent to which the facility is deductible as a pre-1986 contribution under the rules before section 419 generally becomes effective, the facility is treated as the only contribution to the welfare benefit fund and the qualified cost of such fund for the taxable year of the fund in which the facility was contributed is the amount that would have been allowable to the employer as a deduction with respect to the portion of the facility used in the provision of welfare benefits if the employer had placed in service the facility at the same time that the fund placed in service the facility and the employer's taxable year ended on January 31, 1986.

(b)(1) The preceding rules shall also apply for purposes of determining when and the extent to which an employer may deduct contributions or other items and amounts after June 22, 1984 and on or before December 31, 1985 (or, if applicable under paragraph (b) of Q&A–2 of this regulation, before section 419 generally becomes effective with respect to contributions to the fund) that are not facilities (e.g., cash contributions) to a welfare benefit fund that are used by the fund to acquire, construct, or improve a facility. The most recent non-facility contributions made to a welfare benefit fund before the facility in question is placed in service by the fund (up to the fair market value of the facility at such time) are to be treated as used by the fund for the acquisition, construction, or improvement (as the case may be) of such facility. To the extent that contributions before such a facility is placed in service are not at least equal to the value of the facility at such time, contributions after such date (up to the value of the facility at the time it is placed in service) are treated as used for acquisition, construction, or improvement of the facility. Such non-facility contributions, to the extent that they were made after June 22, 1984, and on or before December 31, 1985 (or, if applicable under paragraph (b) of Q&A–2 of this regulation, before section 419 generally becomes effective with respect to contributions to the fund), are not deductible by the employer as non-facility contributions for any year. Instead, the employer is permitted a deduction with respect to such contributions only under the rules of this Q&A as though the employer had contributed a facility to the fund at the same time that the fund placed in service the facility in question and, at such time, the facility had a fair market value equal to the total of such non-facility contributions.

(2) For example, assume that an employer and a welfare benefit fund each has a calendar taxable year and during 1985 the fund acquired and placed in service a facility with a fair market value of $100,000 to be used in the provision of welfare benefits. Further, during July 1984 the employer contributed $150,000 in cash to the fund and, during the portion of 1985, before the facility was placed in service by the fund, the employer contributed another $75,000 in cash to the fund; during the remaining portion of 1985, the employer contributed $125,000 in cash. The facility is used in the provision of welfare benefits under the fund. Because $25,000 of the employer's 1984 contribution is treated under this rule as used for the acquisition of a facility, such $25,000 is not deductible by the employer for 1984. For purposes of determining the employer's deduction for 1985, the employer will be treated as having contributed $125,000 in cash and a facility with a fair market value of $100,000. The employer's deduction for its 1985 taxable year will be determined under the rules relating to the contribution of a facility after June 22, 1984, and on or before December 31, 1985.

(3) For example, assume that an employer and a welfare benefit fund each has a calendar taxable year and during 1986 the fund placed in service a facility with a fair market value of $100,000 to be used in the provision of welfare benefits. During 1985, the employer contributed $125,000 in cash to the fund. During the portion of 1986 before the facility was placed in service, the employer contributed $60,000 in cash, and during the remaining portion of 1986, the employer contributed another $75,000 in cash. The facility is used in the provision of welfare benefits under the fund. Because $40,000 of its 1985 cash contribution is treated under this rule as used for the acquisition of the facility, such $40,000 is not deductible by the employer for 1985. For purposes of determining the employer's deduction for 1986, the employer will be treated as though it had contributed a $40,000 facility to the fund at the time the fund placed the facility in service.

(c) For purposes of calculating the "existing excess reserve amount" under Q&A–1 of § 1.419A–1T and the "existing reserves for post-retirement medical or life insurance benefits" under Q&A–4 of § 1.512(a)–5T (but not the exempt function income under Q&A–3 of § 1.512(a)–5T), the amount set aside as of any applicable date is to be reduced to the extent that contributions originally included in such amount are subsequently treated under this Q&A as used for the acquisition, construction, or improvement of an asset excluded from the calculation of the total amount set aside under paragraph (b) of § 1.512(a)–5(T) (or would be so treated under this Q&A if it applied to such asset). The reduction required under this paragraph applies for purposes of calculating the "existing excess reserve amount" and the "existing reserves for post-retirement medical or life insurance benefits" for all taxable years of the welfare benefit fund.

Par. 14. A new § 1.419A–1T is added immediately following § 1.419–1T to read as follows:

§ 1.419A–1T Qualified asset account limitation of additions to account. (Temporary)

Q–1: What does the transition rule under section 419A(f)(7) provide?

A–1: Section 419A(f)(7) provides that, in the case of a welfare benefit fund that was in existence on July 18, 1984, the account limit (as determined under section 419A(c)) for each of the first four taxable years of the fund that relate to taxable years of the employer ending after December 31, 1985 (or, if applicable under paragraph (b) of Q&A–2 of this regulation, taxable years of the employer beginning after the termination of the last of the collective bargaining agreements pursuant to which the plan is maintained) shall be increased by the following percentages of the "existing excess reserve amount":

	Percent
First taxable year	80
Second taxable year	60
Third taxable year	40
Fourth taxable year	20

For purposes of this section, the "existing excess reserve amount" for any taxable year of a fund is the excess of (a) the assets actually set aside for purposes described in section 419A(a) at the close of the first taxable year of the fund ending after July 18, 1984 (calculated in the manner set forth in Q&A–3 of § 1.512(a)–3T, and adjusted under paragraph (c) of Q&A–11 of § 1.419–1T), reduced by employer contributions to the fund before the close of such first taxable year to the extent that such contributions are not deductible for the taxable year of the employer with or within which such taxable year of the fund ends and for any prior taxable year of the employer, over (b) the account limit which would have applied to the taxable year of the fund for which the excess is being computed (without regard to this transition rule). A welfare benefit fund is treated as in existence on July 18, 1984, for purposes of this transition rule only if amounts were actually set aside in such fund on such date to provide welfare benefits enumerated under section 419A.

Par. 15. The following new section is added immediately after § 1.461–3T to read as follows:

§ 1.461(h)–4T Questions and answers relating to the economic performance requirement for certain employee benefits. (Temporary)

Q–1: What is the relationship between the economic performance requirement of section 461(h) and sections 404 and 419?

A–1: Section 404 provides that contributions paid and compensation paid or incurred with respect to a plan, or method or arrangement, deferring the receipt of compensation or providing for deferred benefits will be deductible only to the extent that they satisfy the requirements of section 162 or 212. Section 419 provides that contributions paid or accrued with respect to a "welfare benefit fund" (as defined in section 419(e) and Q&A–3 of § 1.419–1T) will be deductible only to the extent that they satisfy the requirements of section 162 or 212. In the case of an accrual method taxpayer, a contribution or compensation satisfies the requirements of section 162 or 212 only to the extent that the all events test (as defined in section 461(b)(4)) and the economic performance requirement of section 461(h)(1) are satisfied. In the case of a contribution or compensation subject to section 404 or 419, pursuant to the authority under section 461(h)(2), economic performance occurs (a) in the case of a plan subject to section 404, either as the contribution is made under the plan or, if section 404(a)(5) is applicable, as an amount attributable to such contribution is includible in the gross income of an employee (or, if section 404(d) applies, a nonemployee); or (b) in the case of a welfare benefit fund, as a contribution is made to the welfare benefit fund. Solely for purposes of section 461(h), in the case of an employer's taxable year ending on or after July 18, 1984, and on or before March 21, 1986 contributions made to a welfare benefit fund after the end of such taxable year and on or before March 21, 1986 shall be deemed to have been made on the last day of such taxable year.

Par. 16. The following new section is added immediately after § 1.461(h)–4T:

§ 1.463–1T Transitional rule for vested accrued vacation pay. (Temporary)

(a) *Introduction.* Section 91(i) of the Tax Reform Act of 1984 provides a transitional rule for the election under section 463, relating to accrual of vacation pay. Section 91(i) applies only in the case of taxpayers with respect to which a deduction was allowable (other than under section 463) for vested accrued vacation pay for the last taxable year ending or or before July 18, 1984.

(b) *Election under transitional rule.* A taxpayer described in paragraph (a) of this section that makes an election under section 463 for the first taxable year ending after July 18, 1984, shall compute the opening balance of the account described in section 463(a)(1) ("accrual account") with respect to such vacation pay under the rules provided in paragraph (e)(3) of this section.

(c) *Multiple vacation pay accounts within a single trade or business.* (1) An election under section 463 must be made with respect to all vacation pay accounts maintained by the taxpayer within a single trade or business whether the liability is for vested accrued vacation pay or for vacation pay that is contingent.

(2) If a taxpayer has elected, in a taxable year ending on or before July 18, 1984, to treat contingent vacation pay with respect to a single trade or business under section 463, the taxpayer may elect, under the provisions of section 91(i) of the Tax Reform Act of 1984, to treat vested accrued vacation pay with respect to the same trade or business under section 463. However, no election may be made with respect to vacation pay for which a prior section 463 election was made and that is accounted for under section 463.

(d) *Time for making election.* A taxpayer described in paragraph (a) of this section that makes an election under section 463 for the first taxable year ending after July 18, 1984, must make the election on or before the due date (determined with regard to extensions) for filing the taxpayer's income tax return for such taxable year. However, if the taxpayer's income tax return was filed for the first taxable year ending after July 18, 1984, prior to March 6, 1986, the taxpayer must make the election by the later of the due date (determined with regard to extensions) for filing the taxpayer's income tax return, or May 5, 1986. In this case, the election must be made by filing an amended return (showing adjustments,

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if any) for such year and attaching the statement required by paragraph (e) of this section on or before the later of the due date (determined with regard to extensions) for filing the taxpayer's income tax return, or May 5, 1986.

(e) *Manner of making election.* A taxpayer must make the election described in paragraph (b) of this section by attaching a statement to the taxpayer's income tax return for the first taxable year ending after July 18, 1984. The statement must indicate that the taxpayer is electing to apply the provisions of section 463 with respect to vested accrued vacation pay for the taxpayer's first taxable year ending after July 18, 1984. The statement must contain the following information:

(1) The taxpayer's name and a description of the vacation pay plans to which the election applies.

(2) If a taxpayer has more than one trade or business and is not making the election with respect to all trades or businesses, a description of the trades or businesses to which the election applies.

(3) The opening balance in the taxpayer's accrual account. This balance equals the amount determined as if the taxpayer had maintained an account for the last taxable year ending on or before July 18, 1984, representing the taxpayer's liability for vested accrued vacation pay earned by employees before the close of the last taxable year ending on or before July 18, 1984, and payable during that taxable year or within 12 months following the close of that taxable year. If the taxpayer's liability for vacation pay includes both vested accrued vacation pay and vacation pay the liability for which is contingent, the amount in the opening balance of the accrual account that represents the taxpayer's liability for contingent vacation pay is to be determined under the rules provided in § 10.2(c)(ii)(B) of this chapter.

(4) The opening balance in the taxpayer's suspense account. This balance equals the amount determined under paragraph (e)(3) of this section less the portion allowed as deductions under section 162 for prior taxable years for vacation pay earned but not paid at the close of the last taxable year ending on or before July 18, 1984.

(f) *Vested accrued vacation pay.* For purposes of paragraphs (a) through (e) of this section, "vested accrued vacation pay" means any amount allowable as deductions under section 162(a) for a taxable year with respect to vacation pay of employees of the taxpayer (determined without regard to section 463). For purposes of this section, vacation pay will be considered vested accrued vacation pay even though there is a limit or ceiling on the amount of vacation pay an employee is entitled to as of the close of any plan year.

For example, if under a vacation pay plan an employee may accumulate no more than 40 days of vacation leave by the end of any plan year and any unused days in excess of 40 days are forfeited, the taxpayer is considered to have vested accrued vacation pay (even though the plan is not fully vested) and may make an election under the transitional rule.

Par. 17. A new § 1.505(c)–1T is added immediately after § 1.503(f)–1 to read as set forth below.

§ 1.505(c)–1T. Questions and Answers Relating to the Notification Requirement for Recognition of Exemption Under Paragraphs (9), (17) and (20) of Section 501(c). (Temporary)

Q–1: What does section 505(c) of the Internal Revenue Code provide?

A–1: Section 505(c) provides that an organization will not be recognized as exempt under section 501(c)(9) as a voluntary employees' beneficiary association, under section 501(c)(17) as a trust forming part of a plan providing for the payment of supplemental unemployment compensation benefits, or under section 501(c)(20) as a trust forming part of a qualified group legal services plan unless notification is given to the Internal Revenue Service. The notification required of a trust created pursuant to section 501(c)(20) and forming part of a qualified group legal services plan is set forth in Q&A–2. The notification required of an organization organized after July 18, 1984, and applying for exempt status as an organization described in section 501(c)(9) or (17) is set forth in Q&A–3 through Q&A–8. The notification required of an organization organized on or before July 18, 1984, and claiming exemption as an organization described in section 501(c)(9) or (17) is set forth in Q&A–9 through Q&A–11. However, an organization that has previously notified the Internal Revenue Service of its claim to exemption under section 501(c)(9), (17), or (20) or its claim to exemption under those sections pursuant to another provision of the Code, is not required, under section 505(c), to submit a renotification (See Q&A–2 and Q&A–12).

Section 501(c)(20) Trusts

Q–2: What is the notice required of a trust created pursuant to section 501(c)(20) and forming part of a qualified group legal services plan under section 120?

A–2: (a) A trust claiming exemption as an organization described in section 501(c)(20) will be recognized as exempt if the exclusive function of the trust is to form part of a qualified group legal services plan or plans. Exemption of the trust under section 501(c)(20) will generally be dependent upon and coextensive with recognition of the plan as a qualified group legal services plan. Therefore, a trust organized pursuant to section 501(c)(20) after July 18, 1984, need not file a separate notice with the Internal Revenue Service of its claim to exemption because the notice required by section 120(c)(4) will suffice for purposes of section 505(c), provided a copy of the trust instrument is filed with the Form 1024 submitted by the group legal services plan. If the trust instrument has not been filed with the Form 1024 submitted by the group legal services plan, the trust must comply with (and exemption will be dependent upon) the filing applicable to a trust organized on or before July 18, 1984. For the notice required and effective dates of exemption of a qualified group legal services plan under section 120, see § 1.120–3.

(b) A trust organized on or before July 18, 1984, that claims exempt status as a trust described in section 501(c)(20) and that forms part of a qualified group legal services plan which has been recognized as exempt under section 120, must file a copy of its trust instrument with the Internal Revenue Service before February 4, 1987. If a copy of the trust instrument is filed within the time provided, the trust's exemption will be recognized retroactively to the date the qualified group legal services plan was recognized as exempt under section 120. However, if a copy of the trust instrument is filed after the time provided, exemption will be recognized only for the period after the copy of the trust instrument is filed with the Internal Revenue Service. See Q&A–7 for a further discussion of "date of filing." A trust that has previously filed a copy of its trust instrument with the Service need not refile that document.

Section 501(c) (9) and (17) Organizations Organized After July 18, 1984

Q–3: What is the notice required of an organization or trust, organized after July 18, 1984, that is applying for recognition of tax exempt status under section 501(c) (9) or (17)?

A–3: An organization or trust that is organized after July 18, 1984, will not be treated as described in paragraphs (9) or (17) of section 501(c), unless the organization notifies the Internal Revenue Service that it is applying for recognition of exemption. In addition, unless the required notice is given in the manner and within the time prescribed by these regulations, an organization will not be treated as exempt for any period before the giving of the required notice. The notice is filed by submitting a properly completed and executed Form 1024, "Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120" together with the additional information required under Q&A–4 and Q&A–5. The notice is filed with the district director for the key district in which the organization's principal place of business or principal office is located.

The notice may be filed by either the plan administrator (as defined in section 414(g)) or the trustee. The Internal Revenue Service will not accept a Form 1024 for any organization or trust before such entity has been organized.

Q–4: What information, in addition to the information required by Form 1024, must be submitted by an organization or trust seeking recognition of exemption under section 501(c) (9) or (17)?

A–4: A notice will not be considered complete unless, in addition to a properly completed and executed Form 1024, the organization or trust submits a full description of the benefits available to participants under section 501(c) (9) or (17). Moreover, both the terms and conditions of eligibility for membership and the terms and conditions of eligibility for benefits must be set forth. This information may be contained in a separate document, such as a "plan document," or it may be contained in the creating document of the entity (e.g., the articles of incorporation or association, or a trust indenture). For benefits provided through a policy or policies of insurance, all such policies must be included with the notice. Where individual policies of insurance are provided to the participants, single exemplar copies, typical of policies generally issued to participants, are acceptable, provided they adequately describe all forms of insurance available to participants. In providing a full description of the benefits available, the benefits provided must be sufficiently described so that each benefit is definitely determinable. A benefit is definitely determinable if the amount of the benefit, its duration, and the persons eligible to receive it are ascertainable from the plan document or other instrument. Thus, a benefit is not definitely determinable if the rules governing either its amount, its duration, or its recipients are not ascertainable from the plan document or other instrument but are instead subject to the discretion of a person or committee. Likewise, a benefit is not definitely determinable if the amount for any individual is based upon a percentage share of any item that is within the discretion of the employer. However, a disability benefit will not fail to be considered definitely determinable merely because the determination of whether an individual is disabled is made under established guidelines by an authorized person or committee.

Q–5: What is the notice required of collectively bargained plans?

A–5: If an organization or trust claiming exemption under section 501(c)(9) or (17) is organized and maintained pursuant to a collective bargaining agreement between employee representatives and one or more employer, only one Form 1024 is required to be filed for the organization or trust, regardless of the number of employers originally participating in the agreement. Moreover, once a Form 1024 is filed pursuant to a collective bargaining areement, an additional Form 1024 is not required to be filed by an employer who thereafter participates in that agreement. When benefits are provided pursuant to a collective bargaining agreement, the notice will not be considered complete unless, in addition to a properly completed and executed Form 1024, a copy of the collective bargaining agreement is also submitted together with the additional information delineated in Q&A–4.

Q–6: When must the required notice be filed by an organization or trust, organized after July 18, 1984, that seeks recognition of exemption under section 501(c) (9) or (17)?

A–6: An organization or trust applying for exemption must file the required notice by the later of February 4, 1987 or 15 months from the end of the month in which the organization or trust was organized. An extension of time for filing the required notice may be granted by the district director if the request is submitted before the end of the applicable period and it is demonstrated that additional time is needed.

Q–7: What is the effective date of exemption for a new organization or trust, organized after July 18, 1984, that has submitted the required notice?

A–7: If the required notice is filed within the time provided by these regulations, the organization's exemption will be recognized retroactively to the date the organization was organized, provided its purpose, organization and operation (including compliance with the applicable nondiscrimination requirements) during the period prior to the date of the determination letter are in accordance with the applicable law. However, if the required notice is filed after the time provided by these regulations, exemption will be recognized only for the period after the application is filed with the Internal Revenue Service. The date of filing is the date of the United States postmark on the cover in which an exemption application is mailed or, if no postmark appears on the cover, the date the application is stamped as received by the Service. If an extension for filing the required notice has been granted to the organization, a notice filed on or before the last day specified in the extension will be considered timely and not the otherwise applicable date under Q&A–6.

Q–8: What is the effect on exemption of the filing of an incomplete notice?

A–8: Although a properly completed and executed Form 1024 together with the required additional information (See Q&A–4 and Q&A–5) must be submitted to satisfy the notice required by section 505(c), the failure to file, within the time specified, all of the information necessary to complete such notice will not alone be sufficient to deny recognition of exemption from the date of organization to the date the completed information is submitted to the Service. If the notice which is filed with the Service within the required time is substantially complete, and the organization supplies the necessary additional information requested by the Service within the additional time allowed, the original notice will be considered timely. However, if the notice is not substantially complete or the additional information is not provided within the additional time allowed, exemption will be recognized only from the date of filing of the additional information.

Section 501(c) (9) and (17) Organizations Organized on or Before July 18, 1984

Q–9: What is the notice required of an organization or trust organized on or before July 18, 1984, that claims exempt status as an organization described in section 501(c) (9) or (17)?

A–9: Section 505(c) provides a special rule for existing organizations and trusts organized on or before July 18, 1984. Such an organization or trust will not be treated as described in paragraphs (9) or (17) of section 501(c) unless the organization or trust notifies the Internal Revenue Service in the manner and within the time prescribed in these regulations that it is claiming exemption under the particular section. The type of notice, the manner for filing that notice, and the additional information required is the same as that set forth in Q&A–3 through Q&A–5 for new organizations.

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Q–10: When must the required notice be filed by an organization or trust organized on or before July 18, 1984?

A–10: An organization or trust organized on or before July 18, 1984, that claims exempt status as an organization described in section 501(c) (9) or (17), must file the required notice before February 4, 1987. An extension of time for filing the required notice may be granted by the district director if the request is submitted before the due date of the notice and it is demonstrated that additional time is needed.

Q–11: What is the effective date of exemption for an organization or trust organized on or before July 18, 1984, that has submitted the required notice?

A–11: If the required notice is filed within the time provided by these regulations, the organization's exemption will be recognized retroactively to the date the organization was organized, provided its purpose, organization and operation (including compliance with the applicable nondiscrimination requirements) during the period prior to the date of the determination letter are in accordance with the applicable law. If, on the other hand, the required notice is filed after the time provided by these regulations, exemption will be recognized only for the period after the notice is received by the Internal Revenue Service. See Q&A–7 for a further discussion of "date of filing." See also Q&A–6 for the effect on exemption of a notice that has been timely filed but is incomplete.

Exceptions to Notice Requirement

Q–12: Are any organizations or trusts claiming recognition of exemption as an organization described in section 501(c) (9) or (17) excepted from the notice requirement of section 505(c)?

A–12: An organization or trust that has previously notified the Internal Revenue Service of its claim to exemption by filing Form 1024 is not required, under section 505(c), to renotify the Service. Thus, an organization that has filed a Form 1024 that is pending with the Service need not refile that form. Also, an organization that has received a ruling or determination letter from the Service recognizing its exemption from taxation need not submit the notification required by section 505(c).

Par. 18. There is added the following new section after § 1.512(a)–4 to read as follows:

§ 1.512(a)–5T Questions and answers relating to the unrelated business taxable income of organizations described in paragraphs (9), (17) or (20) of section 501(c). (Temporary)

Q–1: What does section 512(a)(3), as amended by the Tax Reform Act of 1984 (Act), provide with respect to organizations described in paragraphs (9), (17) or (20) of section 501(c)?

A–1: In general, section 512(c)(3), as amended by section 511 of the Act, extends the rules for determining the unrelated business income tax of voluntary employees' beneficiary associations (VEBAs) to supplemental unemployment compensation benefit trusts (SUBs) and group legal service organizations (GLSOs). The section also restricts the amount of income that may be set aside by such organizations for exempt purposes.

Q–2: What is the effective date of the amendments to section 512(a)(3)?

A–2: The amendments to section 512(a)(3) will apply to income earned by VEBAs, SUBs or GLSOs after December 31, 1985, in the taxable years of such organizations ending after such date. For purposes of applying section 512(a)(3) to the first taxable year of such an organization ending after December 31, 1985, the income of the VEBA, SUB or GLSO earned after December 31, 1985, will be determined by allocating the total income earned for such taxable year on the basis of the calendar year 1985 and 1986 months in such taxable year. However, if a VEBA, SUB or GLSO is part of a plan that is maintained pursuant to one or more collective bargaining agreements (a) between employee representatives and one or more employers, and (b) which are in effect on July 1, 1985 (or ratified on or before that date), the amendments do not apply to income earned in a taxable year of a VEBA, SUB or GLSO beginning before the termination of the last of the collective bargaining agreements pursuant to which the plan is maintained (determined without regard to any extension of the contract agreed to after July 1, 1985). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added under section 511 of the Tax Reform Act 1984 (i.e., requirements under section 419, 419A, 512(a)(3)(E), and 4976) shall not be treated as a termination of such collective bargaining agreements.

Q–3: What amount of income may a VEBA, SUB or GLSO set aside for exempt purposes?

A–3: (a) Pursuant to section 512(a)(3)(E)(i), the amounts set aside in a VEBA, SUB, or GLSO (including a VEBA, SUB, or GLSO that is part of a 10 or more employer plan, as defined in section 419A(f)(6)(B)) as of the close of a taxable year of such VEBA, SUB, or GLSO to provide for the payment of life, sick, accident, or other benefits may not be taken into account for purposes of determining "exempt function income" to the extent that such amounts exceed the qualified asset account limit, determined under sections 419A(c) and 419A(f)(7), for such taxable year of the VEBA, SUB, or GLSO. In calculating the qualified asset account limit for this purpose, a reserve for post-retirement medical benefits under section 419A(c)(2)(A) is not to be taken into account.

(b) The exempt function income of a VEBA, SUB, or GLSO for a taxable year of such an organization, under section 512(a)(3)(B), includes: (1) Certain amounts paid by members of the VEBA, SUB, or GLSO within the meaning of the first sentence of section 512(a)(3)(B) ("member contributions"); and (2) other income of the VEBA, SUB, or GLSO (including earnings on member contributions) that is set aside for the payment of life, sick, accident, or other benefits to the extent that the total amount set aside in the VEBA, SUB or GLSO as of the close of the taxable year for any purpose (including member contributions and other income set aside in the VEBA, SUB, or GLSO as of the close of the year) does not exceed the qualified asset account limit for such taxable year of the organization. For purposes of section 512(c)(3)(B), member contributions include both employee contributions and employer contributions to the VEBA, SUB, or GLSO. In calculating the total amount set aside in a VEBA, SUB, or GLSO as of the close of a taxable year, certain assets with useful lives extending substantially beyond the end of the taxable year (e.g., buildings, and licenses) are not to be taken into account to the extent they are used in the provision of life, sick, accident, or other benefits. For example, cash and securities (and similar investments) held by a VEBA, SUB or GLSO are not disregarded in calculating the total amount set aside for this purpose because they are used to pay welfare benefits, rather than merely used in the provision of such benefits. Accordingly, the unrelated business taxable income of a VEBA, SUB, or GLSO for a taxable year of such an organization generally will equal the lesser of two amounts: (3) the income of the VEBA, SUB, or GLSO for the taxable year (excluding member contributions), or (4) the excess of the total amount set aside as of the close of the taxable year (including member contributions, and excluding certain assets with a useful life extending substantially beyond the end of the taxable year to the extent they are used in the provision of welfare benefits) over the qualified asset account limit (calculated without regard to the otherwise permitted reserve for post-retirement medical benefits) for the taxable year. See § 1.419A–2T for special rules relating to collectively bargained welfare benefit funds.

(c) The income of a VEBA, SUB, or GLSO for any taxable year includes gain realized by the organization on the sale or disposition of any asset during such year. The gain realized by a VEBA, SUB, or GLSO on the sale or disposition of an asset is equal to the amount realized by the organization over the basis of such asset (in the hands of the organization), reduced by any qualified direct costs attributable to such asset (under paragraphs (b), (c), and (d) of Q&A–6 of § 1.419–1T).

Q–4: What transition rules apply to "existing reserves for post-retirement medical or life insurance benefits"?

A–4: (a) Section 512(a)(3)(E)(iii)(I) provides that income that is either directly or indirectly attributable to "existing reserves for post-retirement medical or life insurance benefits" will not be treated as unrelated business taxable income. An "existing reserve for post-retirement medical or life insurance benefits" (as defined in section 512(a)(3)(E)(iii)(II)) is the total amount of assets actually set aside in a VEBA, SUB, or GLSO on July 18, 1984 (calculated in the manner set forth in Q&A–3 of the regulation, and adjusted under paragraph (c) of Q&A–11 of § 1.419–1T), reduced by employer contributions to the fund on or before such date to the extent such contributions are not deductible for the taxable year of the employer containing July 18, 1984, and for any prior taxable year of the employer, for purposes of providing such post-retirement benefits. For purposes of the preceding sentence only, an amount that was not actually set aside on July 18, 1984, will be treated as having been actually set aside on such date if (1) such amount was incurred by the employer (without regard to section 461(h)) as of the close of the last taxable year of the VEBA, SUB, or GLSO ending before July 18, 1984, and (2) such amount was actually contributed to the VEBA, SUB, or GLSO within 8½ months following the close of such taxable year.

(b) In addition, section 512(a)(3)(E)(iii)(I) applies to existing reserves for such post-retirement benefits only to the extent that such "existing reserves" do not exceed the amount that could be accumulated under the principles set forth in Revenue Rulings 69–382, 1969–2, C.B. 28; 69–478, 1969–2 C.B. 29; and 73–599, 1973–2 C.B. 40. Thus, amounts attributable to such excess "existing reserves" are not within this transition rule eventhough they were actually set aside on July 18, 1984.

(c) All post-retirement medical or life insurance benefits (or other benefits to the extent paid with amounts set aside to provide post-retirement medical or life insurance benefits) provided after July 18, 1984 (whether or not the employer has maintained a reserve or fund for such benefits) are to be charged, first, against the "existing reserves" within this transition rule (including amounts attributable to "existing reserves" within this transition rule) for post-retirement medical benefits or for post-retirement life insurance benefits (as the case may be) and, second, against all other amounts. For this purpose, the qualified direct cost of an asset with a useful life extending substantially beyond the end of the taxable year (as determined under Q&A–6 of § 1.419–1T) will be treated as a benefit provided and thus charged against the "existing reserve" based on the extent to which such asset is used in the provision of post-retirement medical benefits or post-retirement life insurance benefits (as the case may be). All plans of an employer providing post-retirement medical benefits are to be treated as one plan for purposes of section 512(a)(3)(E)(iii)(III), and all plans of an employer providing post-retirement life insurance benefits are to be treated as one plan for purposes of section 512(a)(3)(E)(iii)(III).

(d) In calculating the unrelated business taxable income of a VEBA, SUB, or GLSO for a taxable year of such organization, the total income of the VEBA, SUB, or GLSO for the taxable year is reduced by the income attributable to "existing reserves" within the transition rule before such income is compared to the excess of the total amount set aside as of the close of the taxable year over the qualified asset account limit for the taxable year. Thus, for example, assume that the total income of a VEBA for a taxable year is $1,000, and that the excess of the total amount of the VEBA set aside as of the close of the taxable year over the applicable qualified asset account limit is $800. Assume also that of the $1,000 of total income, $500 is attributable to "existing reserves" within the transition rule of section 512(a)(3)(E)(iii)(I). The unrelated business income of this VEBA for the taxable year is equal to the lesser of the following two amounts: (1) the total income of the VEBA for the taxable year ($1,000), reduced to the extent that such income is attributable to "existing reserves" within the transition rule ($500); or (2) the excess of the total amount set aside as of the close of the taxable year over the applicable qualified asset account limit ($600). Thus, the unrelated business income of this VEBA for the taxable year is $500.

Par. 19. The following new section is added immediately after § 1.1041–1T:

§ 1.1042–1T Questions and answers relating to the sales of stock to employee stock ownership plans or certain cooperatives. (Temporary)

Q–1: What does section 1042 provide?

A–1: (a) Section 1042 provides rules under which a taxpayer may elect not to recognize gain in certain cases where "qualified securities" are sold to a qualifying employee stock ownership plan or worker-owned cooperative in taxable years of the seller beginning after July 18, 1984, and "qualified replacement property" is purchased by the taxpayer within the "replacement period." If the requirements of Q&A–2 of this section are met, and if the taxpayer makes an election under section 1042(a) in accordance with Q&A–3 of this section, the gain realized by the taxpayer on the sale of the qualified securities is recognized only to the extent that the amount realized on such sale exceeds the cost to the taxpayer of the qualified replacement property.

(b) Under section 1042, the term "qualified securities" means employer securities (as defined in section 409(l)) with respect to which each of the following requirements is satisfied: (1) The employer securities were issued by a domestic corporation; (2) for at least one year before and immediately after the sale, the domestic corporation that issued the employer securities (and each corporation that is a member of a "controlled group of corporations" with such corporation for purposes of section 409(l)) has no stock outstanding that is readily tradeable on an established market; (3) as of the time of the sale, the employer securities have been held by the taxpayer for more than 1 year; and (4) the employer securities were not received by the taxpayer in a distribution from a plan described in section 401(a) or in a transfer pursuant to an option or other right to acquire

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stock to which section 83, 422, 422A, 423, or 424 applies.

(c) The term "replacement period" means the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale. A replacement period may include any period which occurs prior to July 19, 1984.

(d) The term "qualified replacement property" means any securities (as defined in section 165(g)(2)) issued by a domestic corporation which does not, for the taxable year of such corporation in which the securities are purchased by the taxpayer, have passive investment income (as defined in section 1362(d)(3)(D)) that exceeds 25 percent of the gross receipts of such corporation for the taxable year preceding the taxable year of purchase. In addition, securities of the domestic corporation that issued the employer securities qualifying under section 1042 (and of any corporation that is a member of a "controlled group of corporations" with such corporation for purposes of section 409(l)) will not qualify as "qualified replacement property."

(e) For purposes of section 1042(a), there is a "purchase" of qualified replacement property only if the basis of such property is determined by reference to its cost to the taxpayer. If the basis of the qualified replacement property is determined by reference to its basis in the hands of the transferor thereof or another person, or by reference to the basis of property (other than cash or its equivalent) exchanged for such property, then the basis of such property is not determined solely by reference to its cost to the taxpayer.

Q–2: What is a sale of qualified securities for purposes of section 1042(b)?

A–2: (a) Under section 1042(b), a sale of qualified securities is one under which all of the following requirements are met:

(1) The qualified securities are sold to an employee stock ownership plan (as defined in section 4975(e)(7)) maintained by the corporation that issued the qualified securities (or by a member of the "controlled group of corporations" with such corporation for purposes of section 409(l)) or to an eligible worker-owned cooperative (as defined in section 1042(c)(2));

(2) The employee stock ownership plan or eligible worker-owned cooperative owns, immediately after the sale, 30 percent or more of the total value of the employer securities (within the meaning of section 409(l) outstanding as of such time;

(3) No portion of the assets of the employee stock ownership plan or eligible worker-owned cooperative attributable to qualified securities that are sold to the plan or cooperative by the taxpayer or by any other person in a sale with respect to which an election under section 1042(a) is made accrue under the plan or are allocated by the cooperative, either directly or indirectly and either concurrently with or at any time thereafter, for the benefit of (i) the taxpayer; (ii) any person who is a member of the family of the taxpayer (within the meaning of section 267(c)(4)); or (iii) any person who owns (after the application of section 318(a)), at any time after July 18, 1984, and until immediately after the sale, more than 25 percent of in value of the outstanding portion of any class of stock of the corporation that issued the qualified securities (or of any member of the "controlled group of corporations" with such corporation for purposes of section 409(l)). For purposes of this calculation, stock that is owned, directly or indirectly, by or for a qualified plan shall not be treated as outstanding.

(4) The taxpayer files with the Secretary (as part of the required election described in Q&A–3 of this section) a verified written statement of the domestic corporation (or corporations) whose employees are covered by the plan acquiring the qualified securities or of any authorized officer of the eligible workerowned cooperative, consenting to the application of section 4978(a) with respect to such corporation or cooperative.

(b) For purposes of determining whether paragraph (a)(2) of this section is satisfied, sales of qualified securities by two or more taxpayers may be treated as a single sale if such sales are made as part of a single, integrated transaction under a prearranged agreement between the taxpayers.

(c) For purposes of determining whether paragraph (a)(3) of this section is satisfied with respect to the prohibition against an accrual or allocation of qualified securities, the accrual or allocation of any benefits or contributions or other assets that are not attributable to qualified securities sold to the employee stock ownership plan or eligible worker-owned cooperative in a sale with respect to which an election under section 1042(a) is made (including any accrual or allocation under any other plan or arrangement maintained by the corporation or any member of "the controlled group of corporations" with such corporation for purposes of section 409(l)) must be made without regard to the allocation of such qualified securities. Paragraph (a)(3) of this section above may be illustrated in part by the following example: Individuals A, B, and C own 50, 25, and 25, respectively, of the 100 outstanding shares of common stock of Corporation X. Such shares constitute qualified securities as defined in Q&A–1 of this section. A and B, but not C, are employees of Corporation X. For the benefit of all its employees, Corporation X establishes an employee stock ownership plan that obtains a loan meeting the exemption requirements of section 4975(d)(3). The loan proceeds are used by the plan to purchase the 100 shares of qualified securities from A, B, and C, all of whom elect nonrecognition treatment under section 1042(a) with respect to the gain realized on their sale of such securities. Under the requirements of paragraph (a)(3) of this section, no part of the assets of the plan attributable to the 100 shares of qualified securities may accrue under the plan (or under any other plan or arrangement maintained by Corporation X) for the benefit of A or B or any person who is a member of the family of A or B (as determined under section 267(c)(4)). Furthermore, no other assets of the plan or assets of the employer may accrue for the benefit of such individuals in lieu of the receipt of assets attributable to such qualified securities.

(d) A sale under section 1042(a) shall not include any sale of securities by a dealer or underwriter in the ordinary course of its trade or business as a dealer or underwriter, whether or not guaranteed.

Q–3: What is the time and manner for making the election under section 1042(a)?

A–3: (a) The election not to recognize the gain realized upon the sale of qualified securities to the extent provided under section 1042(a) shall be made in a "statement of election" attached to the taxpayer's income tax return filed on or before the due date (including extensions of time) for the taxable year in which the sale occurs. If a taxpayer does not make a timely election under this section to obtain section 1042(a) nonrecognition treatment with respect to the sale of qualified securities, it may not subsequently make an election on an amended return or otherwise. Also, an election once made is irrevocable.

(b) The statement of election shall provide that the taxpayer elects to treat the sale of securities as a sale of qualified securities under section 1042(a), and shall contain the following information:

(1) A description of the qualified securities sold, including the type and number of shares;

(2) The date of the sale of the qualified securities;

(3) The adjusted basis of the qualified securities;

(4) The amount realized upon the sale of the qualified securities;

(5) The identity of the employee stock ownership plan or eligible worker-owned cooperative to which the qualified securities were sold; and

(6) If the sale was part of a single, interrelated transaction under a prearranged agreement between taxpayers involving other sales of qualified securities, the names and taxpayer identification numbers of the other taxpayers under the agreement and the number of shares sold by the other taxpayers. See Q&A–2 of this section.

If the taxpayer has purchased qualified replacement property at the time of the election, the taxpayer must attach as part of the statement of election a "statement of purchase" describing the qualified replacement property, the date of the purchase, and the cost of the property, and declaring such property to be the qualified replacement property with respect to the sale of qualified securities. Such statement of purchase must be notarized by the later of thirty days after the purchase or March 8, 1986. In addition, the statement of election must be accompanied by the verified written statement of consent required under Q&A–2 of this section with respect to the qualified securities sold.

(c) If the taxpayer has not purchased qualified replacement property at the time of the filing of the statement of election, a timely election under this Q&A shall not be considered to have been made unless the taxpayer attaches the notarized statement of purchase described above to the taxpayer's income tax return filed for the taxable year following the year for which the election under section 1042(a) was made. Such notarized statement of purchase shall be filed with the district director or the director of the regional service center with whom such election was originally filed, if the return is not filed with such director.

Q–4: What is the basis of qualified replacement property?

A–4: If a taxpayer makes an election under section 1042(a), the basis of the qualified replacement property purchased by the taxpayer during the replacement period shall be reduced by an amount equal to the amount of gain which was not recognized. If more than one item of qualified replacement property is purchased, the basis of each of such items shall be reduced by an amount determined by multiplying the total gain not recognized by reason of the application of section 1042(a) by a fraction, the numerator of which is the cost of such item of property and the denominator of which is the total cost of all such items of property. For the rule regarding the holding period of qualified replacement property, see section 1223(13).

Q–5: What is the statute of limitations for the assessment of a deficiency relating to the gain on the sale of qualified securities?

A–5: (a) If any gain is realized by the taxpayer on the sale of any qualified securities and such gain has not been recognized under section 1042(a) in accordance with the requirements of this section, the statutory period provided in section 6501(e) for the assessment of any deficiency with respect to such gain shall not expire prior to the expiration of 3 years from the date of receipt, by the district director or director of regional service center with whom the statement of election under 1042(a) was originally filed, of:

(1) A notarized statement of purchase as described in Q&A–3;

(2) A written statement of the taxpayer's intention not to purchase qualified replacement property within the replacement period; or

(3) A written statement of the taxpayer's failure to purchase qualified replacement property within the replacement period.

In those situations when a taxpayer is providing a written statement of an intention not to purchase or of a failure to purchase qualified replacement property, the statement shall be accompanied, where appropriate, by an amended return for the taxable year in which the gain from the sale of the qualified securities was realized, in order to reflect the inclusion in gross income for that year of gain required to be recognized in connection with such sale.

(b) Any gain from the sale of qualified securities which is required to be recognized due to a failure to meet the requirements under section 1042 shall be included in the gross income for the taxable year in which the gain was realized. If any gain from the sale of qualified securities is not recognized under section 1042(a) in accordance with the requirements of this section, any deficiency attributable to any portion of such gain may be assessed at any time before the expiration of the 3-year period described in this Q&A, notwithstanding the provision of any law or rule of law which would otherwise prevent such assessment.

Q–6: When does section 1042 become effective?

A–6: Section 1042 applies to sales of qualified securities in taxable years of sellers beginning after July 18, 1984.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 20. The following new section is added after § 20.2039–5 to read as follows:

§ 20.2039–1T Limitations and repeal of estate tax exclusion for qualified plans and individual retirement plans (IRAs). (Temporary)

Q–1: Are there any exceptions to the general effective dates of the $100,000 limitation and the repeal of the estate tax exclusion for the value of interests under qualified plans and IRAs described in section 2039 (c) and (e)?

A–1: (a) Yes. Section 245 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) limited the estate tax exclusion to $100,000 for estates of decedents dying after December 31, 1982. Section 525 of the Tax Reform Act of 1984 (TRA of 1984) repealed the exclusion for estates of decedents dying after December 31, 1984.

(b) Section 525(b)(3) of the TRA of 1984 amended section 245 of TEFRA to provide that the $100,000 limitation on the exclusion for the value of a decedent's interest in a plan or IRA will not apply to the estate of any decedent dying after December 31, 1982, to the extent that the decedent-participant was in pay status on December 31, 1982, with respect to such interest and irrevocably elected the form of benefit payable under the plan or IRA (including the form of any survivor benefits) with respect to such interest before January 1, 1983.

(c) Similarly, the TRA of 1984 provides that the repeal of the estate tax exclusion for the value of a decedent's interest in a plan or IRA will not apply to the estate of a decedent dying after December 31, 1984, to the extent that the decedent-participant was in pay status on December 31, 1984, with respect to such interest and irrevocably elected the form of benefit payable under the plan or IRA (including the form of any survivor benefits) with respect to such interest before July 18, 1984.

Q–2: What is the meaning of "in pay status" on the applicable date?

A–2: A participant was in pay status on the applicable date with respect to a portion of his or her interest in a plan or IRA if such portion is to be paid in a

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benefit form that has been elected on or before such date and the participant has received, on or before such date, at least one payment under such benefit form.

Q–3: What is required for an election of the form of benefit payable under the plan to have been irrevocable as of any applicable date?

A–3: As of any applicable date, an election of the form of benefit payable under a plan is irrevocable if, as of such date, it was a written irrevocable election that, with respect to all payments to be received after such date, specified the form of distribution (e.g., lump sum, level dollar annuity, formula annuity) and the period over which the distribution would be made (e.g., single life, joint and survivor, term certain). An election is not irrevocable as of any applicable date if, on or after such date, the form or period of the distribution could be determined or altered by any person or persons. An election does not fail to be irrevocable as of an applicable date merely because the beneficiaries were not designated as of such date or could be changed after such date. If any interest in any IRA may not, by law or contract, be subject to an irrevocable election described in this section, any election of the form of benefit payable under the IRA does not satisfy the requirement that an irrevocable election have been made.

PART 54—PENSION EXCISE TAXES

Par. 21. There is added the following new section after § 54.4975–15 to read as follows:

§ 54.4976–1T Questions and answers relating to taxes with respect to welfare benefit funds. (Temporary)

Q–1: What does section 4976 provide?

A–1: Section 4976 imposes a tax on employers who provide disqualified benefits through a welfare benefit fund. The tax imposed is equal to 100 percent of the disqualified benefit.

Q–2: What constitutes a disqualified benefit?

A–2: A disqualified benefit is (a) any post-retirement medical or life insurance benefit provided with respect to a key employee (as defined in section 419A(d)(3)) through a welfare benefit fund if a separate account is required to be established for such employee under section 419A(d) and the cost for such coverage is not charged against or paid from such separate account; (b) any post-retirement medical or life insurance benefit provided through a welfare benefit fund with respect to an individual in whose favor discrimination is prohibited unless the plan of which the fund is a part meets the requirements of section 505(b) with respect to that benefit; and (c) any portion of the fund which reverts to the benefit of the employer. A post-retirement medical or life insurance benefit provided with respect to a key employee will not constitute a disqualified benefit even though such benefit is not provided through a separate account if the cost of such benefit is paid by the employer in the taxable year in which the benefit is provided and there is not (and there is not required to be) a separate account with an outstanding credit balance maintained for the key employee.

Q–3: What is the effective date of section 4976?

A–3: (a) Generally, section 4976 applies to disqualified benefits provided by a welfare benefit fund after December 31, 1985. However, a disqualified benefit, as defined in section 4976(b)(1) or (2), is not subject to section 4976(a) if it is provided from "existing reserves for post-retirement medical or life insurance benefits" that are within the transition rule set forth in section 512(a)(3)(E)(iii) and Q&A–4 of § 1.512(a)–5T (or would be if such transition rule applied to such welfare benefit fund). For example, if a welfare benefit fund in existence on July 18, 1984, provides an individual in whose favor discrimination is prohibited with a post-retirement life insurance benefit after December 31, 1985, that does not meet the requirements of section 505(b) and if the welfare benefit fund received no contributions after July 18, 1984, then the disqualified benefit provided by the fund is not subject to section 4976(a)

(b) A welfare benefit fund will be able to avoid the application of section 4976(b)(1) and (2) if the employer withdraws from such fund, before April 7, 1986, any amounts that are not attributable to "existing reserves for post-retirement medical or life insurance benefits" because they were neither actually set aside nor treated as actually set aside under Q&A–4 of § 1.512(a)–5T, on July 18, 1984. The employer making such a withdrawal must include the amount in income for the first taxable year ending after July 18, 1984, or, to the extent that the withdrawn amount is attributable to the following taxable year, for such following taxable year. Such a withdrawal will not be treated as an impermissible distribution or reversion under section 501(c)(9), and will not be treated as a disqualified benefit under section 4976(b)(3). Of course, to the extent that the welfare benefit fund contains amounts that are attributable to "existing reserves" but are not within the transition rule set forth in Q&A–4 of § 1.512(a)–5T (as applied to welfare benefit funds), for example, because such amounts exceed the amounts that could have been accumulated under the principles set forth in Revenue Rulings 69–382, 1969–2 C.B. 28; 69–478, 1969–2 C.B. 29; and 73–599, 1973–2 C.B. 40, the fund will not be able to avoid the application of section 4976(b)(1) and (2) under this paragraph.

(c) In the case of a plan which is maintained pursuant to one or more collective bargaining agreements (1) between employee representatives and one or more employers and (2) which are in effect on July 1, 1985 (or ratified on or before that date), the provision does not apply to disqualified benefits provided in years beginning before the termination of the last of the collective bargaining agreements pursuant to which the plan is maintained (determined without regard to any extension of the contract agreed to after July 1, 1985). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added under section 511 of the Tax Reform Act 1984 (i.e., requirements under sections 419, 419A, 512(a)(3)(E), and 4976) shall not be treated as a termination of such collective bargaining agreement.

Par. 22. The following new section is added immediately after § 54.4976–1T:

§ 54.4978–1T Questions and answers relating to the tax on certain dispositions by employee stock ownership plans and certain cooperatives. (Temporary)

Q–1: What does section 4978 provide?

A–1: Section 4978 imposes a tax (as determined under section 4978(b) and Q&A–2 of this section) on the amount realized on the disposition of any qualified securities, if:

(a) An employee stock ownership plan or eligible worker-owned cooperative acquires any qualified securities in a sale to which section 1042 applies;

(b) Such plan or cooperative disposes of any qualified securities during the 3-year period after the date on which any qualified securities were acquired in the sale to which section 1042 applies; and

(c) Either (1) the percentage of the total outstanding shares of the class of employer securities of which the disposed qualified securities are a part held by such plan or cooperative after such disposition is less than the percentage of the total outstanding shares of such class of employer securities held immediately after the sale to which section 1042 applies, or (2) the value of the employer securities held by such plan or cooperative immediately after such disposition is less than 30 percent of the total value of all employer securities outstanding at that time. For purposes of this section, the following terms have the same meanings given to such terms by the identified provisions: "employee stock ownership plan" (section 4975(e)(7)); "qualified securities" (section 1042(b)(1)); "eligible worker-owned cooperative" (section 1042(b)(2)); "employer securities" (section 409(l)). For purposes of determining what constitutes a disposition to which section 4978 applies, see Q&A–3 of this section.

Q–2: What is the amount of tax imposed under section 4978?

A–2: Section 4978 imposes a tax of 10 percent of the amount realized on the disposition of qualified securities. The amount realized that is subject to tax under section 4978 shall not exceed that portion of the amount realized that is allocable to qualified securities acquired within the 3-year period prior to the date of disposition and to which section 1042 applied ("restricted qualified securities"). In determining the amount realized (except as otherwise provided in Q&A–3 of this section), any disposition of employer securities with respect to which the condition contained in provision (c) of Q&A–1 is met shall be treated, first, as a disposition of restricted qualified securities (on a first in, first out basis) and, thereafter, as a disposition of any other employer securities. Thus, for example, if a plan disposes of more employer securities than the number of restricted qualified securities held by the plan at that time and immediately after such disposition the value of the employer securities held by the plan is less than 30 percent of the total value of all outstanding employer securities, the portion of the total amount realized that is allocable to restricted qualified securities subject to tax under section 4978 is determined by multiplying the total amount realized on the disposition by a fraction, the numerator of which is the total value of restricted qualified securities included in the disposition and the denominator of which is the total value of employer securities in the disposition.

Q–3: What constitutes a "disposition" under section 4978?

A–3: (a) Under section 4978, the term "disposition" includes any sale, exchange, or distribution. However, in the case of any exchange of qualified securities for stock of another corporation in any reorganization described in section 368(a)(1), such exchange shall not be treated as a disposition for purposes of section 4978.

(b) Section 4978 shall not apply to any disposition of qualified securites which is made by reason of:

(1) The death of the employee;

(2) The retirement of the employee after the employee has attained 59½ years of age;

(3) The disability of the employee (within the meaning of section 72(m)(5)); or

(4) The separation of the employee from service for any period which results in a 1-year break in service (within the meaning of section 411(a)(6)(A)).

Any disposition of employer securities within this paragraph and any disposition of employer securities with respect to which the condition contained in provision (c) of Q&A–1 of this section is not met shall be treated, first, as a disposition of securities that are not restricted qualified securities and, thereafter, as a disposition of restricted qualified securites (on a first-in, first-out basis).

(c) If restricted qualified securities held by an employee stock ownership plan or eligible worker-owned cooperative no longer meet the definition of qualified securities ("old restricted qualified securities") as a result of a transaction changing (1) the status of a corporation as an employer, or as a member of a controlled group of corporations including the employer, or (2) the existence of employer securities of the type described in section 409(l)(1), the disposition of such securities shall not be treated as a disposition of restricted qualified securites to which the tax under section 4978 is imposed if, within 90 days after such disposition, securities meeting the requirements of section 409(l) ("new restricted qualified securities") that are of equal value to the old restricted qualfied securities (at the time of the disposition of the old restricted qualified securities) are substituted for such old restricted qualified securities. However, for purposes of determining the tax imposed under section 4978, old restricted qualified securities shall not be treated as if they retained their status as restricted qualified securities and new restricted qualified securities derived from the disposition of old restricted qualified securities pursuant to the preceding sentence shall be treated as restricted qualified securities for the remaining portion of the period during which the disposition of the old restricted qualified securities would have been subject to tax under section 4978.

Q–4: To whom does the tax under section 4978 apply?

A–4: The tax under section 4978 is imposed on the domestic corporation (or corporations) or the eligible worker-owned cooperative that made the written statement of consent as described in section 1042(a)(2)(B) and Q&A–2 of § 1.1042–1T with respect to the disposition of the restricted qualified securities.

Q–5: When does section 4978, as enacted by the Tax Reform Act of 1984, become effective?

A–5: Section 4978 applies to the disposition of qualified securities acquired in a sale to which section 1042 applies. See Q&A–6 of § 1.1042–1T for the effective date of section 1042.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 23. The following new section is added after § 301.7701–16 to read as follows:

§ 301.7701–17T Collective-bargaining plans and agreements. (Temporary)

Q–1: How did the Tax Reform Act of 1984 (TRA of 1984) change the laws with respect to plans that are maintained pursuant to collective bargaining agreements?

A–1: (a) Many of the requirements and rules applicable to deferred compensation and welfare benefit plans are different for plans maintained pursuant to a collective bargaining agreement. Prior to the TRA of 1984, the Internal Revenue Code provided no clear definition of an employee representative or whether there is a collective bargaining agreement between such employee representative and one or more employers.

(b) Section 526(c) of the TRA of 1984 added a new condition under a new section 7701(a)(46) that must be satisfied in order for a plan to be considered to be a plan maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers for purposes of the Code after March 31, 1984. If more than one-half of the membership of an organization is comprised of owners, officers, and executives of employers covered by the plan, then such organization is not an employee representative for purposes of determining whether a plan is to be treated as maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers. Whether an individual is an owner, officer or executive is to be determined separately with respect to each employer. Additionally, section 7701(a)(46) provides that the Internal Revenue

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Service shall make the determination for purposes of the Code as to whether there is a collective bargaining agreement between employee representatives and one or more employers.

Q–2: If an organization does not fail to be an employee representative under the 50 percent or less test of section 7701(a)(46), is a plan maintained pursuant to an agreement between such organization and one or more employers necessarily treated, under the Code, as a plan maintained pursuant to a collective bargaining agreement between an employee representative and one or more employers?

A–2: (a) No.

(b) Specific Code provisions generally require other conditions than that in section 7701(a)(46) to be satisfied in order for a plan to be considered to be collectively-bargained. For example, in order for a plan to be described in section 413(a), the Secretary of Labor must find that the plan is maintained pursuant to a collective bargaining agreement between employee representatives and one or more employers.

(c) Even if (1) the finding in the example in the preceding paragraph (b) is made by the Secretary of Labor, (2) the union has been recognized as exempt under section 501(c)(5), and (3) the percentage condition in section 7701(a)(46) is satisfied, the Internal Revenue Service has the authority, pursuant to section 7701(a)(46), to determine whether there is a collective bargaining agreement under the Code.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 24. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

§ 602.101 [Amended]

Par. 25. Section 602.101(c) is amended by inserting the following items in the appropriate places in the table:

§ 1.463–1T	1545–0916
§ 1.505(c)–1T	1545–0916
§ 1.1042–1T	1545–0916

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: December 20, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 86–2172 Filed 1–29–86; 4:04 pm]
BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[T.D. ATF–210; Correction]

Disclosure of Saccharin in the Labeling of Wine, Distilled Spirits, and Malt Beverages

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule; correction.

SUMMARY: This document corrects errors made in FR Doc 85–29707, published in the **Federal Register** on December 20, 1985, at 50 FR 51851.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226. (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Paragraph 1. The Treasury decision number should read "T.D. ATF–220."

Para. 2. In the left column under "Summary" in the fifth line the word "continuing" should read "containing."

Para. 3. In the right column in the second and third lines remove the words", or on the basis of petitions."

Para. 4. On page 51852 in the right column the name "David D. Green" should read "David D. Queen."

Signed: January 27, 1986.

Stephen E. Higgins,
Director.

[FR Doc. 86–2416 Filed 2–3–86; 8:45 am]
BILLING CODE 4810–31–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 146, 175, and 181

[CGD 78–174A]

Hybrid PFD Carriage Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rules.

SUMMARY: These rules authorize carriage of hybrid inflatable personal flotation devices (hybrid PFD's) on recreational boats and on Outer Continental Shelf facilities and establish conditions for their use. Use of approved hybrid PFD's is optional but, if carried, certain limitations apply. Compared to most other approved PFD's, hybrid PFD's are more comfortable to wear, because they contain less flotation material, yet they provide greater buoyancy when fully inflated. This comfort feature should lead to increased wearing of PFD's and result in a corresponding reduction in the number of drownings in boating accidents.

EFFECTIVE DATE: These rules become effective on August 4, 1986.

ADDRESSES: A final regulatory evaluation has been included in the public docket for this rulemaking and may be inspected and copied at the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard, 2100 Second Street SW., Washington, DC between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Wehr, Office of Merchant Marine Safety, Attn: G–MVI–3/14, 2100 Second Street SW., Washington, DC 20593, (202)–426–1444.

SUPPLEMENTARY INFORMATION:

1. *Notice of Proposed Rulemaking.* A Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** of May 29, 1985 (50 FR 21862 and 21878). Comments were received from 19 parties in response to the NPRM.

2. *Equipment Approval Requirements.* An interim final rule for approving hybrid PFD's was published in the **Federal Register** of August 22, 1985 (50 FR 33923). That document contains a detailed discussion of comments concerning the carriage of hybrid PFD's on recreational boats as well as comments on the approval requirements for hybrid PFD's. The two remaining comments that relate to hybrid PFD's are discussed in this document. For a detailed explanation of the costs and benefits associated with the approval and carriage of hybrid PFD's please refer to the discussion accompanying the hybrid PFD regulation published on August 22, 1985.

3. *Carriage Requirements For Commercial Vessels.* Final regulations for carriage of hybrid PFD's on certain commercial vessels are published elsewhere in this issue of the **Federal Register**.

4. *Potential For Significant Benefits.* A principal benefit in using hybrid PFD's results from having reduced bulk and a corresponding increase in wearability and comfort. Coast Guard accident statistics show that most drownings in recreational boating accidents could possibly have been prevented if the victims had been wearing a PFD instead of just having one available for use. Hybrid PFD's are constructed using less flotation material than other approved devices, making them less bulky and significantly more comfortable to wear than other types of PFD's. Because of this comfort feature, the Coast Guard anticipates that there will be appreciable boater interest in purchasing the devices. If enough boaters begin to wear them, a substantial reduction in the total number of drownings from boating accidents can be expected.

Hybrid PFD's that meet the requirements in this rule have another significant benefit that distinguishes them from other types of currently approved PFD's. These devices, when inflated, provide more buoyancy and better flotation attitude than most other PFD's.

5. *Acceptance Prior to Effective Date.* As required by 46 U.S.C. 4302, these rules are being made effective 180 days after publication. However, the Coast Guard, as a matter of policy to allow early realization of the benefits discussed in paragraph (4), will allow use of approved hybrid PFD's as substitutes for other approved PFD's or work vests if carried under the conditions prescribed in §§ 146.20 and 175.17 of these rules, as applicable. The various state agencies which enforce boating safety laws and regulations will also be encouraged to adopt this policy.

6. *Suitability of Hybrids for Guests.* One commenter on the NPRM expressed the opinion that hybrids are not suitable for use by guests on recreational boats because (1) it is unrealistic to expect a guest to try the device in the water, (2) it is unreasonable to expect the owner to buy other devices for the guest to use, and (3) the owner may be liable if he does not require a person to try the hybrid in the water and that person subsequently drowns.

The Coast Guard recommends that persons try the hybrid device before using it. If a guest is not familiar with the hybrid device or has not been given the opportunity to try the device in the water, the Coast Guard recommends that the guest be provided with an inherently buoyant device.

If a boat owner wishes to carry guests, PFD's must be provided for them. Hybrid PFD's are only an optional type of flotation device to comply with this requirement. In view of the increased cost of hybrid PFD's, it is most likely that extra PFD's will be selected from other available approved types. While the Coast Guard strongly recommends trying out hybrid PFD's and, if necessary, customizing the device to the wearer's needs by partial inflation, it is speculative to assume liability if some lesser level of instruction or familiarization is employed.

7. *Need for Annual Servicing.* The same commenter recommended that the servicing requirements for hybrid PFD's be the same as those proposed in 46 CFR 160.076 for inflatable life jackets; i.e. that, like inflatable life jackets, they should be required to be serviced annually at an authorized servicing facility. This comment has not been adopted.

The owner's manual required for a hybrid PFD includes instructions for owner maintenance which call for periodic checks of the device, principally its inflation chamber and oral inflator which is the primary means of inflation, to determine whether it remains serviceable. These instructions are straightforward and include provisions for conducting a leak test on the inflation chamber and oral inflator. This test is designed so that it can easily be performed by the owner of the device. Accordingly, there is no justifiable need for requiring professional servicing of hybrid devices in lieu of owner servicing.

Professional servicing of inflatable life jackets, on the other hand, is essential. These devices have automatic and manual inflation mechanisms as the primary means of inflation, and oral inflators are provided only as a back-up feature. Annual professional servicing is necessary for these devices: (1) Because of the impracticality of performing necessary checks and tests of inflation mechanisms on board ship, (2) because of the impracticality of having wearers be responsible for servicing, and (3), most importantly, because of the absence of inherent buoyancy in these devices to aid users in floating if the inflators are expended due to use or become defective as a result of improper servicing.

The regulations for hybrid PFD's provide for manual and automatic inflation mechanisms as optional, back-up features for recreational devices and as required features for commercial devices. However, these inflators are not critical features because of the inherent buoyancy required for hybrid devices.

8. *Minor changes.* The carriage requirements, as proposed in the NPRM, were not presented in a regulatory format. Nonsubstantive editorial changes have been made in the final rules, as necessary, to provide full regulatory text.

Drafting Information

The principal persons involved in drafting this document were: Mr. Samuel Wehr, Office of Merchant Marine Safety, and Mr. William Register, Office of the Chief Counsel.

Final Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

This evaluation was discussed in more detail in the final rule for approving hybrid PFD's published on August 22, 1985. All costs for vessel owners will be optional and will be incurred only by those persons electing to take advantage of the improved wearability and flotation provided by hyrid PFD's. If hybrid PFD's are widely used, as many as 200 lives per year could be saved.

Based upon the information in the final evaluation, the Coast Guard certifies that these regulations will not have significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 146

Marine safety, Outer Continental Shelf activities.

33 CFR Parts 175 and 181

Marine safety, Boating safety.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Parts 146, 175, and 181 of Title 33 of the Code of Federal Regulations as follows:

PART 146—[AMENDED]

1. The authority for Part 146 is revised to read as follows:

Authority: 43 U.S.C. 1333 and 1348; 49 CFR 1.46.

2. In Part 146, by revising paragraph (a) and adding a new paragraph (e) to § 146.20 to read as follows:

§ 146.20 Work vests.

(a) *Types of approved work vests.* Each buoyant work vest carried under

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the permissive authority of this section must be approved under—

(1) 46 CFR 160.053; or

(2) 46 CFR 160.077 as a commercial hybrid PFD.

* * * * *

(e) *Additional requirements for hybrid work vests.* Commercial hybrid PFD's must, in addition to the other requirements in this section, be—

(1) Used, stowed, and maintained in accordance with—

(i) The procedures set out in the manual required for these devices by 46 CFR 160.077–29; and

(ii) Any limitation(s) marked on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

PART 175—[AMENDED]

3. By revising the authority citation for Part 175 to read as follows and removing all other authority citations which appear throughout Part 175:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

4. By adding a new paragraph (c) to § 175.17 to read as follows:

§ 175.17 Exceptions.

* * * * *

(c) A recreational hybrid PFD may be carried in lieu of another approved PFD. For persons not within an enclosed space, a hybrid PFD will be accepted as meeting Coast Guard carriage requirements only if worn when the boat is underway. It must also be used in accordance with the conditions marked on the PFD and in the owner's manual. The hybrid PFD must be approved and labeled for use on recreational boats.

PART 181—[AMENDED]

5. By revising the authority citation for Part 181 to read as follows and removing all other authority citations which appear throughout Part 181:

Authority: 46 U.S.C. 4302, 4310; 49 CFR 1.46.

6. By adding a new § 181.702 to Subpart G of Part 181 to read as follows:

§ 181.702 Recreational Hybrid PFD Information Pamphlet.

(a) Notwithstanding the requirements in §§ 181.703 and 181.705, each manufacturer of recreational hybrid PFD's must furnish with each of these PFD's a pamphlet meeting 46 CFR 160.077–27.

(b) The requirements for PFD pamphlets in §§ 181.703 and 181.705 do not apply to recreational hybrid PFD's.

Dated: January 21, 1986.

J.W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86–2286 Filed 2–3–86; 8:45 am]

BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Assessment, Mitigation or Remission of Penalties

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation is revising its rules on assessment, mitigation or remission of civil penalties to reflect a change in the Corporation official authorized to administer the procedures set forth in Subpart C of Part 401, 33 CFR.

EFFECTIVE DATE: This revision is effective February 4, 1986.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–3325.

SUPPLEMENTARY INFORMATION: This rulemaking reflects the Administrator's decisions to change the Corporation official authorized to administer the procedures governing the assessment, mitigation or remission of civil penalties. Under the present procedures, the Corporation's Chief Engineer is this official. As a result of a realignment of duties, the responsibilities of the Chief Engineer under Subpart C of Part 401 have been assigned to the Corporation's Associate Administrator and accordingly, Subpart C is revised by changing "Chief Engineer" to "Associate Administrator."

This rule is not a major rule under Executive Order 12291 or a significant rule under the Department of Transportation's Regulatory Policies and Procedures. The Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is a technical change that will have no economic impact. Consequently, no Regulatory Impact Analysis, Regulatory Evaluation, or Regulatory Flexibility Analysis has been prepared in connection with this rule.

Because this rule merely changes the Corporation's procedures, notice and an opportunity for comment are not required. The Corporation also finds good cause to make this rule effective upon publication in the **Federal Register.**

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio Reporting and record keeping requirements, Vessels, Waterways.

PART 401—[AMENDED]

For the reasons stated above, Subpart C—Assessment, Mitigation or Remission of Penalties of 33 CFR Part 401, Seaway Regulations, is amended as follows:

1. The authority citation for 33 CFR Part 401 continues to read as follows:

Authority: 68 Stat. 93–96, 33 U.S.C. 981–990, as amended; secs. 12 and 13 of Sec. 2 of Pub. L. 95–474, 92 Stat. 1471; and 49 CFR 1.52.

2. Section 401.201(b) is revised by substituting "Associate Administrator" for "Chief Engineer" to read as follows:

§ 401.201 Delegation of authority.

* * * * *

(b) The Administrator hereby authorizes the Corporation's Associate Administrator to administer this statute in accordance with the procedures set forth in this subpart.

3. In § 401.203, paragraphs (a), (b), (c), (d) and (f) (1), (3) and (4) are revised by substituting "Associate Administrator" for "Chief Engineer" so that they read as follows:

§ 401.203 Reports of violations of Seaway Regulations and instituting and conducting civil penalty proceedings.

(a) Violations of Seaway Regulations, Subpart A of this Part, will be brought to the attention of the alleged violator at the time of detection whenever possible. When appropriate, there will be a written notification of the fact of the violation. This notification will set forth the time and nature of the violation and advise the alleged violator relative to the administrative procedure employed in processing civil penalty cases. The alleged violator will be advised that he or she has 15 days in which to appear before the Associate Administrator or submit a written statement for consideration. The Associate Administrator shall, upon expiration of the 15-day period, determine whether there has been a violation of the Seaway Regulations.

(b) If the Associate Administrator decides that a violation of Seaway Regulations has occurred, a determination will be made as to whether to invoke no penalty at all and close the case or whether to invoke a part or full statutory penalty. In either

event, a written notice of the decision shall be given to advise the violator. If a penalty is assessed, such notice will advise the violator of the right to petition for relief within 15 days or such longer period as the Associate Administrator, in his or her discretion, may allow. The Associate Administrator may mitigate the penalty or remit it in full; except as the latter action is limited to paragraph (f) of this section. The violator may appear in person before the Associate Administrator. If the violator does not apply for relief but instead maintains that he or she has not committed the violation(s) charged, and the Associate Administrator, upon review, concludes that invocation of the penalty was proper, no remission or mitigation action will be taken. On the other hand, should the violator petition the Associate Administrator for relief without contesting the determination that violation did, in fact, occur, relief may be granted as the circumstances may warrant.

(c) When the penalty is mitigated, such mitigation will be made conditional upon payment of the balance within 15 days of notice or within such other longer period of time as the Associate Administrator, in his or her discretion, may allow.

(d) The violator may appeal to the Administrator from the action of the Associate Administrator. Any such appeal shall be submitted to the Administrator through the Associate Administrator within 15 days of the date of notification by the Associate Administrator, or such longer period of time as the Associate Administrator, in his or her discretions, may allow.

(e) Should the alleged violator require additional time to present matters favorable to the case at any stage of these penalty proceedings, a request for additional time shall be addressed to the Associate Administrator who will grant a reasonable extension of time where sufficient justification is shown.

(f) * * *

(1) When, within the prescribed time, the violator does not explain the violation, appeal for mitigation or remission, or otherwise respond to written notices from the Associate Administrator; or

(2) * * *

(3) When the violator denies that the violation(s) was committed by him or her, the Associate Administrator, upon review, disagrees and the violator thereafter fails to appeal to the Administrator, or to remit payment of the assessed penalty within the time prescribed (see § 401–203(b)); or

(4) When the violator fails to pay within the prescribed time the penalty as determined by the Administrator after consideration of the violator's appeal from the action of the Associate Administrator.

* * * * *

4. Section 401.205(b) is revised by substituting "Associate Administrator" for "Chief Engineer" so that it reads as follows:

§ 401.205 Civil and criminal penalties.

* * * * *

(b) The decision of the United States Attorney as to whether to institute criminal proceedings shall not bar the initiation of civil penalty proceedings by the Associate Administrator.

5. In § 401.206, paragraphs (c) and (d) are revised by substituting "Associate Administrator" for "Chief Engineer" so that they read as follows:

§ 401.206 Procedure for payment of civil penalty for violation of the Seaway Regulations.

* * * * *

(c) If the penalty paid is determined by the Associate Administrator to have been improperly or excessively imposed, the payor will be notified and requested to submit an application for a refund which should be mailed to the Saint Lawrence Seaway Development Corporation, attention of the Associate Administrator. Such application must be made by the payor within one year of the date of notification provided for in this section.

(d) In the event the alleged violator is about to leave the jurisdiction of the United States, he or she will be required, before being allowed to depart, to post a bond in the amount and manner suitable to the Associate Administrator, from which bond any subsequent assessed or mitigated penalty may be satisfied.

Issued at Washington, DC on January 24, 1986.

Saint Lawrence Seaway Development Corporation.

James L. Emery,

Administrator.

[FR Doc. 86–2340 Filed 2–3–86; 8:45 am]

BILLING CODE 4910-61-M

VETERANS ADMINISTRATION

38 CFR Part 3

Adjudication; Cost-of-Living Adjustments; Pension and Parents' DIC; Annual Rates

AGENCY: Veterans Administration.

ACTION: Final Regulatory Amendments.

SUMMARY: The Veterans Administration (VA) has amended its regulations setting forth the annual rates of improved pension and parents' dependency and indemnity compensation (DIC), the annual income limitations applicable to receipt of section 306 pension, old-law pension and parents' DIC, and the annual amount of a spouse's income that is excludable from a veteran's annual income under the section 306 pension program. The need for this action results from the social security cost-of-living increase. The effect of this action is to increase the rates and income limitations by the same percentage that social security benefits were increased. These increases were published as a notice in the **Federal Register** on October 31, 1985, at pages 45580–81.

DATES: These regulation changes are effective December 1, 1985, the effective date of the social security cost-of-living increase.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits, (202) 389–3005.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 3112 the Veterans Administration is required to increase the rates of improved pension and parents' DIC, the income limitations applicable to section 306 pension, old-law pension and parents' DIC, and the amount of a spouse's income that is excludable from the amount of a veteran's annual income under the section 306 pension program whenever there is a social security cost-of-living increase. The benefits are to be increased by the same percentage as social security benefits and at the same time.

The Social Security Administration has reported a cost-of-living increase of 3.1 percent in social security benefits effective December 1, 1985. Accordingly, we are amending 38 CFR 3.23 through 3.262(b)(2) to implement corresponding VA benefit increases.

Pursuant to 38 CFR 1.12 the Veterans Administration finds that prior publication of these changes for public notice and comment is not required adn is unnecessary. The Veterans Administration has no discretion in this matter. The law requires that we increase the benefits by the percentage amount determined by the Social Security Administration. Consequently, a proposed notice will not be published. For this reason, these changes are also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612, since they do not come within the term "rule" as defined in that Act.

In accordance with Executive Order 12291, Federal Regulation, we have

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determined that these regulation changes are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance Programs numbers are 64.104, 64.105, and 64.110)

Approved: December 18, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, ADJUDICATION, is amended as follows:

1. In § 3.23, paragraphs (a) and (c) are revised to read as follows:

§ 3.23 Improved pension rates.

(a) *Maximum annual rates of improved pension.* (1) Veterans permanently and totally disabled (38 U.S.C. 521).

(i) Veteran with no dependents, $5,886.

(ii) Veteran with one dependent, $7,710.

(iii) For each additional dependent, $999.

(2) *Veterans in need of aid and attendance.* (i) Veteran with no dependents, $9,416.

(ii) Veteran with one dependent, $11,240.

(iii) For each additional dependent, $999.

(3) *Veterans who are housebound.* (i) Veteran with no dependents, $7,194.

(ii) Veteran with one dependent, $9,019.

(iii) For each additional dependent, $999.

(4) *Two veterans married to one another; combined rates.* (i) Neither veteran is need of aid and attendance or housebound $7,710.

(ii) Either veteran in need of aid and attendance, $11,240.

(iii) Both veterans in need of aid and attendance, $14,769.

(iv) Either veteran housebound, $9,019.

(v) Both veterans housebound; $10,328.

(vi) One veteran housebound and one veteran in need of aid and attendance, $12,548.

(vii) For each dependent child, $999.

(5) *Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541).* (i) Surviving spouse alone, $3,944.

(ii) Surviving spouse and one child in his or her custody, $5,167.

(iii) For each additional child in his or her custody, $999.

(6) *Surviving spouses in need of aid and attendance.*

(i) Surviving spouse alone, $6,309.

(ii) Surviving spouse with one child in his or her custody, $7,530.

(iii) For each additional child in his or her custody, $999.

(7) *Surviving spouses who are housebound.* (i) Surviving spouse alone, $4,822.

(ii) Surviving spouse and one child in his or her custody, $6,042.

(iii) For each additional child in his or her custody, $999.

(See § 3.24 for entitlement criteria and rate applicable to a child of a deceased veteran not in the custody of a surviving spouse who has basic eligibility to receive improved pension. The term "basic eligibility to receive improved pension" is defined in § 3.24.)

* * * * *

(c) *Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by $1,329. (38 U.S.C. 521(g)).

* * * * *

2. In § 3.24, paragraphs (b) and (c) are revised to read as follows:

§ 3.24 Improved pension rates; surviving children.

* * * * *

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (See § 3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate of $999 reduced by the amount of the child's countable annual income.

(c) *Child in the custody of person legally responsible for support*—(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5)(ii), and the sum of the annual income of such child and the annual income of such person. The amount payable, however, may not exceed the amount by which $999 exceeds the child's countable annual income. (38 U.S.C. 542)

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than $999) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than $999). The combined amount payable, however, may not exceed the amount by which $999 times the number of eligible children exceeds the sum of the children's countable annual income. (38 U.S.C. 542)

* * * * *

3. In § 3.25, paragraphs (a), (c), (d)(1) and (e) are revised to read as follows:

§ 3.25 Parent's dependency and indemnity compensation rates.

* * * * *

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent the monthly rate of DIC paid to such parent shall be $275 reduced on the basis of the parent's annual income according to the following formula:

For each $1 if annual income—		
The $275 monthly rate shall be reduced by—	Which is more than—	But not more than—
$0.00	0	$800
.08	$800	6,695

No DIC is payable under this paragraph if annual income exceeds $6,695.

* * * * *

(c) *Two parents not living together.* The rates in this paragraph apply to: (1) Two parents who are not living together, or (2) an unremarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $196, reduced on the basis of each parent's annual income, according to the following formula:

For each $1 if annual income of each parent—		
The $196 monthly rate shall be reduced by—	Which is more than—	But not more than—
$0.00	0	$800
.05	$800	1,000
.07	1,000	1,200
.08	1,200	6,695

No DIC is payable under this paragraph if annual income exceeds $6,695.

(d) *Two parents living together or remarried parents living with spouses.* (1) The rates in this paragraph apply to:

(i) Each parent living with another parent; and

(ii) Each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $185, reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

For each $1 of combined annual income—		
The $185 monthly rate shall be reduced by—	Which is more than—	But not more than—
$0.00	0	$1,000
.03	$1,000	1,700
.04	1,700	2,300
.05	2,300	2,700
.06	2,700	3,200
.07	3,200	3,700
.08	3,700	9,002

No DIC is payable under this paragraph if combined annual income exceeds $9,002.

* * * * *

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by $145 if such parent is: (1) A patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

* * * * *

4. Section 3.26 is revised to read as follows:

§ 3.26 Section 306 and old-law pension annual income limitations.

(a) *Section 306 pension income limitations.* (1) Veteran or surviving spouse with no dependents, $6,695.

(2) Veteran with no dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $7,195.

(3) Veteran or surviving spouse with one or more dependents, $9,002.

(4) Veteran with one or more dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $9,502.

(5) Child (no entitled veteran or surviving spouse), $5,471.

(b) *Old-law pension income limitations.* (1) Veteran or surviving spouse without dependents or an entitled child, $5,860.

(2) Veteran or surviving spouse with one or more dependents, $8,452.

5. In § 3.262, paragraph (b)(2) is revised to read as follows:

§ 3.262 Evaluation of income.

* * * * *

(b) *Income of spouse.* * * *

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95–588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, $2,133 ($2,068 after November 30, 1984, and before December 1, 1985) or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements. (38 U.S.C. 521(f); sec. 306(a)(2)(B) of Pub. L. 95–588)

* * * * *

[FR Doc. 86–2405 Filed 2–3–86; 8:45 am]

BILLING CODE 6320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A–4–FRL–2962–3]

Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants; Tennessee; Delegation of Authority to Knox and Davidson Counties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These amendments institute address changes for reports and applications required from operators of certain sources subject to Federal regulations. EPA has delegated to two local agencies in Tennessee authority to administer and enforce standards in 40 CFR Part 60 (Standards of Performance for New Stationary Sources) and 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants). These amendments provide that all reports, requests, applications, submittals, and communications required by these Federal standards will now be sent to the local air pollution control agencies in Knoxville and Nashville.

EFFECTIVE DATE: These regulations are effective February 4, 1986. The effective date of the delegation of authority to Knox County is December 13, 1985. The effective date of the delegation of authority to Nashville-Davidson County is May 25, 1977.

ADDRESSES: Copies of the request for delegation of authority and EPA's letters of delegation may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Knox County Air Pollution Control, City/County Building, L222, 400 Main Street, Knoxville, Tennessee 37902

Air Pollution Control Bureau, Metropolitan Health Department, 311–23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Rosalyn Hughes of the ERA Region IV Air Programs Branch at the above address, telephone 404/347–3286 (FTS: 257–3286).

SUPPLEMENTARY INFORMATION: Sections 101 and 111(c)(1) of the Clean Air Act authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS). On May 20, 1977, EPA initially delegated the authority for implementation and enforcement of the NSPS program to Knox County. On October 28, 1985, Knox County requested an update of its delegation of authority for previously delegated NSPS for Subparts D (Fossil–Fuel Fired Steam Generators), G (Nitric Acid Plants), J (Petroleum Refineries), K (Storage Vessels for Petroleum Liquids Constructed After June 11, 1973, and Prior to May 19, 1978), M (Secondary Brass and Bronze Ingot Production Plants), N (Iron and Steel Plants), O (Sewage Treatment Plants), P (Primary Copper Smelters), S (Primary Aluminum Reduction Plants), T (Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants), U (Phosphate Fertilizer Industry: Superphosphoric Acid Plants), V (Phosphate Fertilizer Industry: Diammonium Phosphate Plants), W (Phosphate Fertilizer Industry: Triple Superphosphate Plants), and AA (Steel Plants: Electric Arc

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Furnaces Constructed After October 21, 1974 and on or before August 17, 1983).

Also on October 28, 1985 Knox County requested a delegation of authority for implementation and enforcement of the NSPS for Subparts Da (Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978), Ka (Storage Vessels for Petroleum Liquids Constructed After May 18, 1978), BB (Kraft Pulp Mills), CC (Glass Manufacturing Plants), DD (Grain Elevators), EE (Surface Coating of Metal Furniture), GG (Stationary Gas Turbines), HH (Lime Manufacturing Plants), KK (Lead-Acid Battery Manufacturing Plants), LL (Metallic Mineral Processing Plants), MM (Automobile and Light-Duty Truck Surface Coating Operations), NN (Phosphate Rock Plants), PP (Ammonium Sulfate Manufacture), QQ (Graphic Arts Industry: Publication Rotogravure Printing), RR (Pressure Sensitive Tape and Label Surface Coating Operations), SS (Industrial Surface Coating: Large Appliances), TT (Metal Coil Surface Coating Operations), UU (Asphalt Processing and Asphalt Roofing Manufacture), VV (Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry), WW (Beverage Can Surface Coating Industry), XX (Bulk Gasoline Terminals), GGG (Equipment Leaks of VOC in Petroleum Refineries), HHH (Synthetic Fiber Production Facilities), JJJ (Petroleum Dry Cleaners), OOO (Nonmetallic Mineral Processing Plants).

After a thorough review of the requests the Regional Administrator determined that such a delegation was appropriate for these source categories with all the conditions (except condition 4, regarding enforcement on Federal facilities) set forth in the original delegation letter of May 20, 1977. Knox County sources subject to the requirements of Subparts Da, Ka, BB, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, WW, XX, GGG, HHH, JJJ, and OOO of 40 CFR Part 60 will now be under the jurisdiction of Knox County, as well as sources subject to Subparts D, G, J, K, M, N, O, P, S, T, U, V, W, and AA.

EPA is also authorized to delegate authority to implement and enforce Federal standards set out in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

The authority for implementation and enforcement to the NESHAP program was initially delegated to Knox County on May 20, 1977. Knox County requested additional NESHAP delegations for Subparts J (Equipment Leaks—Fugitive Emission Sources—of Benzene), and V (Equipment Leaks—Fugitive Emission Sources [of VHAP]) on October 28, 1985. The agency also asked that its authority for Subparts C (Beryllium), D (Beryllium Rocket Motor Firing), E (Mercury) and F (Vinyl Chloride) be updated.

The Regional Administrator thoroughly reviewed the requests and determined that such a delegation was appropriate with the conditions (except condition 4, regarding enforcement on Federal facilities) set forth in the original delegation letter of May 20, 1977. Knox County sources subject to the requirements of Subparts J and V will now be under the jurisdiction of Knox County, as well as the sources subject to Subparts C, D, E, and F.

On May 25, 1977, EPA delegated to Nashville-Davidson County the authority to implement and enforce NSPS for Subparts D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and AA. Nashville-Davidson County was also delegated the authority to implement and enforce the NESHAP for Subparts B, C, and E.

Through an oversight, EPA did not add the addresses of these two local agencies to the lists in 40 CFR 60.4 and 61.04 at the time of the original delegation in May 1977. This oversight is rectified today.

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substative content. No additional substantive burdens are imposed on the parties affected. The delegations reflected by this administrative amendment were effective in May 1977 and it serves no purpose to delay the technical change of the addition of the local agency addresses to the Code of Federal Regulations.

The Office of Management and Budget has exempted this regulation from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Parts 60 and 61

Air pollution control, Aluminum, Ammonium sulfate plants, Asbestos, Beryllium, Cement Industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Hazardous materials, Intergovernmental relations, Iron, Lead, Mercury, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Vinyl chloride, Waste treatment and disposal, Zinc.

Dated January 16, 1986.

John A. Little,

Deputy Regional Administrator.

PART 60—AMENDED

Part 60 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart A—General Provisions

2. In § 60.4, paragraph (b)(RR) is amended by adding the following local agency addresses after the address of the State agency.

§ 60.4 Address.

* * * * *

(b) * * *

(RR) * * *

Knox County Department of Air Pollution, City/County Building, Room L222, 400 Main Avenue, Knoxville, Tennessee 37902.

Air Pollution Control Bureau, Metropolitan Health Department, 311 23rd Avenue North, Nashville, Tennessee 37203.

* * * * *

PART 61—AMENDED

Part 61 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

3. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart A—General Provisions

4. In § 61.04, paragraph (b)(RR) is amended by adding the following local agency addresses after the address of the State agency.

§ 61.04 Address.

* * * * *

(b) * * *

(RR) * * *

Knox County Department of Air Pollution, City/County Building, Room L222, 400 Main Avenue, Knoxville, Tennessee 37902.

Air Pollution Control Bureau, Metropolitan Health Department, 311 23rd Avenue North, Nashville, Tennessee 37203.

* * * * *

[FR Doc. 86–2040 Filed 2–3–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA-6700]

Changes in Flood Elevation Determinations; Arizona

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	Town of Gilbert	*Chandler Arizonan*	Honorable L.J. Reed, Mayor, Town of Gilbert, P.O. Box 837, Gilbert, AZ 85234.		040044
Florida: Hillsborough	Unincorporated areas	Jan. 13, and 20, 1986, *Tampa Tribune.*	Honorable Norman W. Hickey, Hillsborough County, Administrator, Hillsborough County P.O. Box 1110, Tampa, FL 33601.	Jan. 7, 1986	120112
New Mexico: Bernalillo	City of Albuquerque	Dec. 9 and 16, 1985, *Journal Tribune.*	Honorable Harry E. Kinney, Mayor of the City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Nov. 29, 1985, Letter of Map Revision.	350002C
Ohio: Franklin and Fairfield	City of Columbus	Dec. 27, 1985, Jan. 3, 1986, *Columbus Dispatch.*	Honorable Dana G. Rinehart, Mayor, City of Columbus, City Hall, 90 West Broad Street, Columbus, OH 43215–4184.	Dec. 16, 1985	390170
Oklahoma: Tulsa, Osage, & Rogers.	City of Tulsa	Dec. 26, 1985, Jan. 2, 1986, *Tulsa Daily Business Journal & Legal Record.*	The Honorable Terry Young, Mayor of the City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	Dec. 12, 1985, Letter of Map Revision.	405381E
Texas: Dallas	City of Coppell	Jan. 30, 1986, Feb. 6, 1986. *The Coppell News Weekly.*	The Honorable Lou Duggan Mayor of the City of Coppell, 136 Glenwood Drive Coppell, TX 75019.	Jan. 21, 1986, Letter of Map Revision.	480170C
Texas: El Paso	City of El Paso	Dec. 27, 1985, Jan. 3, 1986, *The El Paso Times.*	The Honorable Jonathan Rogers, Mayor of the City of El Paso, 2 Civic Center Plaza, El Paso, TX 79999.	Dec. 11, 1985, Letter of Map Revision.	480214B
Texas: Dallas & Rockwall	City of Rowlett	Dec. 27, 1985, Jan. 3, 1986, *The Rowlett Record American.*	Honorable Bill Payne, Mayor of the City of Rowlett, P.O. Box 99, Rowlett, TX 75088.	Dec. 4, 1985, Letter of Map Revision.	480185B

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Issued: January 23, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-2411 Filed 2-3-86; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations; Florida

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage of existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

State and county (Docket No).	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Brevard (FEMA-6684)	City of Palm Bay	Sept. 18 and 23, 1985, *Today*	Honorable Richard Diamond, Deputy City Manager, City of Palm Bay, 175 NW. Palm Bay Road, Palm Bay, FL 32905.	Aug. 28, 1985	120404
Georgia:					
Cobb (FEMA-6684)	Unincorporated areas	Oct. 11 and 18, 1985, *Marietta Daily Journal.*	Honorable Earl E. Smith, Chairman, Cobb County Board of Commissioners, 10 E. Park Square, P.O. Box 649, Marietta, GA 30061.	Sept. 30, 1985	130052
Cobb (FEMA-6684)	Unincorporated areas	Oct. 11 and 18, 1985, *Marietta Daily Journal.*	Honorable Earl E. Smith, Chairman, Cobb County Board of Commissioners, 10 E. Park Square, P.O. Box 649, Marietta, GA 30061.	Oct. 1, 1985	130052
Gwinnett (FEMA-6684)	Unincorporated areas	Sept. 18 and 23, 1985, *Gwynnett Daily News.*	Honorable Lillian Webb, Chairman, County Commissioners, 240 Oak Street, Lawrenceville, GA 30245.	Sept. 9, 1985	130322
Cobb (FEMA-6684)	City of Marietta	Oct. 4 and 11, 1985, *Marietta Daily Journal.*	Honorable Robert E. Flournoy, Jr., Mayor, City of Marietta, P.O. Box 609, 205 Lawrence Street, Marietta, GA 30061.	Sept. 26, 1985	130226
Illinois: Kane (FEMA-6684)	Village of West Dundee	Oct. 18 and 25, 1985, *Cardunal Free Press.*	Honorable Richard Kraft, Mayor, Village of West Dundee, Village Hall, 102 South Second Street, West Dundee, IL 60118.	Oct. 4, 1985	170335
Indiana: Allen (FEMA-6684)	City of Ft. Wayne	Sept. 27 and Oct. 4, 1985, *The News Sentinel.*	Honorable Winfield Moses, Mayor, City of Ft. Wayne, City/County Building, 1 Main Street, Ft. Wayne, IN 46802.	Sept. 16, 1985	180003
Louisiana: St. Mary Parish (FEMA-6684).	City of Morgan City	Aug. 28 and Sept. 4, 1985, *The Daily Review.*	The Honorable Cedric S. LaFleur, Mayor of the City of Morgan City, P.O. Box 1218, Morgan City, LA 70381.	Aug. 16, 1985	220196
Ohio: Erie (FEMA-6684)	Village of Bay View	Oct. 7 and 14, 1985, *Sandusky Register.*	Honorable Glen Harrelson, Mayor, Village of Bay View, 304 East Bay View Drive, Bay View, OH 44870.	Sept. 25, 1985	390595

State and county (Docket No).	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Oklahoma: Oklahoma (FEMA-6684).	City of Midwest City	Aug. 15, and 22, 1985, *The Midwest Daily Sun.*	Honorable Dave Herbert, Mayor of the City of Midwest City, 100 N. Midwest Boulevard, P.O. Box 10570, Midwest City, OK 73140.	Aug. 6, 1985, Letter of Map revision.	400405D
Texas: El Paso (FEMA-6684)	City of El Paso	May 17, and 24, 1985, *The El Paso Times.*	Honorable Jonathan Rogers, Mayor of the City of El Paso, 2 Civic Center Plaza, El Paso, TX 79999.	May 10, 1985	480214B

Issued: January 23, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-2410 Filed 2-3-86; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; California

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
California	
Alameda County (Unincorporated Areas) (FEMA Docket No. 6656)	
Arroyo De La Laguna: Downstream edge of Interstate Highway 680	*316
Arroyo Del Valle: 100 feet downstream from the centerline of Isabel Avenue	None
Bockman Canal: Pile Trestle Bridge crossing	*7
Line N-3: Southern Pacific Railroad crossing	*7

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
San Francisco Bay: Approximately 300 feet southwest of the intersection of Cabot Boulevard and Depot Road	*7
Ward Creek-Line B: 50 feet east of the intersection of New England Village Drive and Huntwood Avenue	*10
Maps available for inspection at the Alameda County Flood Control and Water Conservation District, 1221 Oak Street, Oakland, California.	
Hayward (City), Alameda County (FEMA Docket No. 6785)	
Alameda Creek—Line A (Zone 3A), Line A-2 (Zone 3A):	
Crossing of Southern Pacific Railroad over channel	*9
Approximately 270 feet north of crossing of Industrial Boulevard	*10
Intersection of Baumberg Avenue and Julia Street	*10
Approximately 150 feet west of intersection Capstown Avenue and Cobblestone Drive	*10
Sulphur Creek—Line K (Zone 2):	
Southern Pacific Railroad crossing over channel	*8
Eastern side of Skywest Drive and Sulphur Creek crossing	*32
Eastern side of Hesperian Boulevard and Sulphur Creek crossing	*39
70 feet east of the intersection of Barker Avenue and Thelma Street	*46
Western side of the Fuller Avenue crossing of the channel	*57
Intersection of Santa Clara Street and Elmwood Lane	#2
Line D (Zone 3A):	
Industrial Parkway SW Bridge over channel	*10
Northeast side of Taylor Avenue Bridge over channel	*12
Approximately 70 feet northwest along Pacific Street from the intersection of Pacific Street and Industrial Parkway	*14
Southern side of and of Valle Vista Avenue	*17
Ward Creek—Line B (Zone 3A):	
Intersection of Industrial Parkway West and Stratford Road	*10
Intersection of Windmere Road and Buckingham Way	*10
Industrial Parkway West at channel crossing	*10
Southern side of Folsom Street over the channel	*13
Northern side of Shepherd Avenue crossing over the channel	*26
Southern side of Schafer Road crossing over the channel	*34
Western side of Huntwood Avenue crossing over the channel	*43
Eastern side of Whitman Street crossing over the channel	*56
Approximately 50 feet south of Orchard Avenue crossing over channel	*82
Line E (Zone 3A):	
North side of West Harder Road crossing the channel	*53
Southern side of Orchard Avenue crossing over channel	*69
Approximately 180 feet southeast of Soto Road and Traynor Street intersection	*73
Approximately 70 feet upstream from the Northern and of Rider Court	*53
Line C (Zone 3A):	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
Approximately 50 feet east of Jan Avenue crossing over the channel	*63
Western side of Whitman Street over channel	*72
Approximately 850 feet east along channel from the crossing of Bay Area Rapid Transit over channel	*85
Line A (Zone 4):	
Western side of 1st Private Road west of Cabot Boulevard as it crosses the channel	*9
Crossing of Southern Pacific Railroad over channel, eastern side of tracks	*21
Approximately 100 feet west of crossing of Clawiter Road and channel	*26
San Francisco Bay:	
Intersection of Eden Landing Road and Arden Road	*7
Intersection of Arden Road and Danti Court	*7
Eastern end of Baumberg Court at Railroad tracks and area to the south	*7
Maps available for inspection at the Department of Public Works, 22300 Foothill Boulevard, Hayward, California.	
Colorado	
Larimer County (Unincorporated Areas) (FEMA Docket No. 6685)	
Dry Creek: At U.S. Highway 287	*5,006
Maps available for inspection at Department of Public Works, Larimer County Courthouse, Fort Collins, Colorado.	
Florida	
Hillsborough County (Unincorporated Areas) (FEMA Docket No. 6685)	
Buckhorn Creek:	
At confluence with Alafia River	*18
Just downstream of Kings Avenue	*26
Tributary Canal:	
At confluence with Buckhorn Creek	*25
About 3900 feet upstream of confluence with Buckhorn Creek	*30
Shallow Flooding (ponding from rainfall): South of Lumsden Avenue and about 0.5 mile west of Kings Avenue	*32
Maps available for inspection at the the Department of Development Coordination, P.O. Box 1110, Tampa, Florida.	
Tallahassee (City), Leon County (FEMA Docket No. 6685)	
Meginnis Arm Tributary:	
About 2100 feet downstream of Allen Road	*105
Just downstream of Allen Road	*116
West Arm Tributary:	
About 200 feet upstream of Miccosukee Road	*66
About 550 feet upstream of Centerville Road	*77
Munson Slough: Within community	*38
North Branch Gum Creek:	
About 750 feet upstream of Pig Pen Road	*77
About 1500 feet upstream of Pig Pen Road	*78
Alford Arm Tributary:	
Just above Centerville Road	*61
About 0.5 mile above Tory Sound Lane	*90
Maps available for inspection at the Department of Planning, City Hall, 300 S. Adams Street, Tallahassee, Florida.	
Illinois	
Crestwood (Village), Cook County (FEMA Docket No. 6692)	
Tinley Creek:	
Just upstream of 127th Street	*594
About 900 feet upstream of Elementary Christian School Road	*611
Shallow Flooding (overflow from Tinley Creek):	
Just east of Playfield Drive	*596
Just east of West Playfield Drive	*600
Approximately 400 feet west of the 127th Street bridge over Tinley Creek	*600
Just north of the intersection of Carriage Lane and 128th Plaza	*606
Maps available for inspection at the Village Office, 13840 South Cicero Avenue, Crestwood, Illinois.	
Tinley Park (Village), Cook and Will Counties (FEMA Docket No. 6685)	
76th Avenue Ditch:	
Just downstream of 156th Place	*703
Just downstream of 156th Street	*704
Maps available for inspection at the Village Hall, 17355 S. 66th Court, Tinley Park, Illinois.	
Iowa	
Grimes (City), Polk County (FEMA Docket No. 6685)	
Little Beaver Creek:	
About 250 feet downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*821
Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*823
Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*829
About 0.3 mile upstream of James Street	*834
Maps available for inspection at the City Hall, 508 South First, Grimes, Iowa.	
Maine	
Kittery (Town), York County (FEMA Docket No. 6685)	
Atlantic Ocean: Seavey Island, areas landward of the shoreline and lower than the 8.7 foot contour	*9
Maps available for inspection at the Town Hall, 200 Rogers Road, Kittery, Maine.	
Massachusetts	
Wayland (Town), Middlesex County (FEMA Docket No. 6685)	
Hayward Brook:	
Approximately 160 feet downstream of Boston Post Road	*124
Approximately 170 feet upstream of Boston Post Road	*130
Approximately 570 feet downstream of Rich Valley Road	*130
Approximately 370 feet downstream of Boston and Main Railroad	*146
Maps available for inspection at the Office of Lewis L. Bowker, Wayland Flood Insurance Coordinator, Town Hall, Wayland, Massachusetts.	
Michigan	
Sterling Heights (City), Macomb County (FEMA Docket No. 6685)	
Red Run Drain:	
Mouth at Clinton River	*602
Just downstream of 14 Mile Road	*608
Plum Brook:	
Mouth at Red Run Drain	*602
Just downstream of Schoenherr Road	*603
Big Beaver Creek:	
Just downstream of 14 Mile Road	*610
Just upstream of Conrail	*611
Sterling Relief Drain:	
Mouth at Red Run Drain	*604
Just upstream of Dodge Park Road	*606
Clinton River:	
At confluence of Red Run Drain	*600
Just upstream of Golf Course Bridge	*602
Maps available for inspection at the Engineering Department, 40555 Utica Road, Sterling Heights, Michigan.	
Warren (City), Macomb County (FEMA Docket No. 6692)	
Red Run Drain:	
Just upstream of Fourteen Mile Road	
Just downstream of Dequindre Road	*606
Big Beaver Creek: Within community	*619
Bear Creek:	*610
Mouth at Red Run Drain	
About 650 feet upstream of Thirteen Mile Road	*610
Meckler Drain:	*611
Mouth at Red Run Drain	
Just downstream of Service Drive	*611
Maps available for inspection at the Planning Department, 29500 Van Dyke Avenue, Warren, Michigan.	*614
New Jersey	
Morristown (Town), Morris County (FEMA Docket No. 6685)	
Great Brook:	
Approximately 300 feet downstream of upstream Windmill Drive culvert	
Approximately 540 feet downstream of James Street	*266
Maps available for inspection at the Town of Morristown, Department of Engineering, P.O. Box 709, Morristown, New Jersey.	*291
North Carolina	
Greenville (City), Pitt County (FEMA Docket No. 6685)	
Green Mill Run:	
Just upstream of confluence of Fornes Run	*25
Just downstream of South Evans Street	*38
Just upstream of South Evans Street	*39
Just downstream of Arlington Boulevard	*40
About 700 feet upstream of Arlington Boulevard	*42
Just upstream of Seaboard Coast Line Railroad	*43
Just upstream of State Road 1135	*60
Fornes Run:	
Just upstream of Dalebrook Circle	*37
Just downstream of 14th Street	*40
Maps available for inspection at the City Hall, P.O. Box 7207, Greenville, North Carolina.	
Oregon	
Douglas County (Unincorporated Areas) (FEMA Docket No. 6673)	
Umpqua River: At U.S. Highway 101	*11
Maps available for inspection at Planning Department, Courthouse Annex No. 2, 205 S.E. Jackson Street, Roseburg, Oregon.	
Multnomah County (Unincorporated Areas) (FEMA Docket No. 6673)	
Johnson Creek: Intersection of 104th Avenue and Knight Street	Zone C
Columbia Slough: Intersection of Columbia Slough and Alderwood Road	*14
Maps available for inspection at Planning Department, 2115 Morrison Street, Portland, Oregon.	
Portland (City), Multnomah, Clackamas, and Washington Counties (FEMA Docket No. 6685)	
Johnson Creek: Center of the intersection of Duke Street and SE 102nd Avenue	*207
Columbia River: 200 feet north of the intersection of Marine Drive and Northeast 148th Avenue	*30
Maps available for inspection at Engineering Department, 1220 SW 5th Avenue, Portland, Oregon.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD). Modified
Pennsylvania	
Latrobe (City), Westmoreland County (FEMA Docket No. 6685)	
Loyalhanna Creek:	
4,000 feet upstream of confluence of Sulphur Run	*996
1,250 feet downstream of Mission Road	*998
Upstream side of Mission Road	*1,000
1,000 feet downstream of upstream corporate limits	*1,003
Upstream corporate limits	*1,004
Maps available for inspection at the Latrobe Zoning Office, Municipal Building, Latrobe, Pennsylvania.	
Municipality of Murrysville, Westmoreland County (FEMA Docket No. 6673)	
Haymakers Run:	
At confluence with Turtle Creek	*868
Upstream side of William Penn Highway (U.S. Route 22)	*872
Upstream side of Old William Penn Highway	*873
Upstream side of Franklintowne Drive	*883
At confluence of Tributary No. 2	*900
Maps available for inspection at the Zoning and Engineering Department, Municipal Building, Municipality of Murrysville, Pennsylvania.	
Texas	
Plano (City), Collin and Denton Counties (FEMA Docket No. 6685)	
Pittman Creek:	
Upstream side of Parkhaven Drive	*673
Upstream side of Independence Parkway	*701
North Fork Pittman Creek: Upstream side of Teakwood Lane	*680
Maps available for inspection at the Municipal Annex Building, Plano, Texas.	
Washington	
Edmonds (City), Snohomish County (FEMA Docket No. 6673)	
Puget Sound: At mouth of Shell Creek	*10
Puget Sound: In marina northeast of Edwards Point	*8
Maps available for inspection at Planning Department, 250 5th Avenue N., Edmonds, Washington.	

Issued: January 23, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-2413 Filed 2-3-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION COAST GUARD

46 CFR Parts 25, 35, 78, 97, 108, 160, 167, and 196

[CGD 78-174A]

Commercial Hybrid PFD Carriage Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rules.

SUMMARY: These rules authorize the carriage of commercial hybrid PFD's in place of life preservers on uninspected commercial vessels and as work vests on certain inspected commercial vessels. Use of approved hybrid PFD's is optional but, if carried, certain limitations apply. Compared to most other approved PFD's, hybrid PFD's are more comfortable to wear and provide more buoyancy when fully inflated. These features should lead to increased wearing of PFD's and work vests and result in a corresponding reduction in the number of drownings in accidents involving commercial vessels. These rules also contain editorial corrections to the specifications and approval procedures for hybrid PFD's.

EFFECTIVE DATE: These rules become effective March 6, 1986.

ADDRESSES: A final regulatory evaluation has been included in the public docket for this rulemaking and may be inspected and copied at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard, 2100 Second Street SW., Washington, DC between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Wehr, Office of Merchant Marine Safety, Attn: G-MVI-3/14, 2100 Second Street SW., Washington, DC 20593 (202)-426-1444.

SUPPLEMENTARY INFORMATION:

1. *Notice of Proposed Rulemaking.* A Notice of Proposed Rulemaking (NPRM) for these regulations was published in the **Federal Register** of May 29, 1985 (50 FR 21878). Comments were received from 19 parties in response to the NPRM.

2. *Equipment Approval Requirements.* An interim final rule for approving hybrid PFD's was published in the **Federal Register** of August 22, 1985 (50 FR 33923). For a detailed explanation of the Comments on the NPRM, and of the costs and benefits associated with these regulations, please refer to the discussion accompanying the hybrid PFD regulations published on August 22, 1985.

3. *Additional Carriage Requirements for Recreational Boats and OCS Facilities.* The final regulations for carriage of hybrid PFD's on recreational boats and Outer Continental Shelf Facilities are published elsewhere in this issue of the **Federal Register.**

4. *Potential for Significant Benefits.* A principal benefit in using hybrid PFD's results from having reduced bulk and a corresponding increase in wearability and comfort. Because of this comfort feature, the Coast Guard anticipates that there will be appreciable interest in purchasing the devices. If enough users begin to wear them, a reduction in the total number of accidental drownings can be expected.

In addition to the above benefit, hybrid PFD's that meet the requirements in these regulations have another significant benefit that distinguishes them from other types of currently approved PFD's. These devices, when inflated, float the wearer better than most other PFD's. Specifically, they can provide more buoyancy and better flotation attitude than most other PFD's.

5. *Substitution of Hybrid PFD's for Life Preservers.* The NPRM included a proposal that commercial hybrid PFD's could be substituted for life preservers on inspected vessels as long as they were specifically approved for use on these vessels. This proposal has been deleted from the final rules. The comments received on the NPRM indicated an absence of interest in using approved hybrid PFD's on board inspected vessels as substitutes for approved life preservers. Accordingly, few if any requests are anticipated for specific approval to use hybrid PFD's as life preservers on inspected vessels. If a request is received, it will be considered in accordance with the provisions in 46 CFR Subparts 30.15, 70.15, 90.15, and 188.15 and 46 CFR 108.105 which provide for substitution of required equipment with other equipment having equivalent safety features.

6. *Minor changes.* The carriage requirements, as proposed in the NPRM, were not presented in a regulatory format. Nonsubstantive editorial changes have been made in the final rules, as necessary, to provide full regulatory text.

7. *Corrections to Subpart 160.077.* A number of editorial and typographical corrections have been made to the Hybrid PFD rule published on August 22, 1985, and are included in this document.

Drafting Information

The principal persons involved in drafting these regulations were: Mr. Samuel Wehr, Office of Merchant Marine Safety, and Mr. William Register, Office of the Chief Counsel.

Final Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed above under ADDRESSES. Copies may also be obtained by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

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This evaluation was discussed in more detail in the final rule for approving hybrid PFD's published on August 22, 1985. All costs for vessel owners will be optional and will be incurred only by those persons electing to take advantage of the improved wearability and flotation provided by hybrid PFD's. If hybrid PFD's are widely used, as many as 200 lives per year could be saved.

Based upon the information in the final evaluation, the Coast Guard certifies that these regulations will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no information collection requirements.

List of Subjects

46 CFR Part 25

Marine safety, Uninspected vessels.

46 CFR Part 35

Marine safety, Tank vessels.

46 CFR Part 78

Marine safety, Passenger vessels.

46 CFR Part 97

Marine safety, Cargo Vessels.

46 CFR Part 108

Marine safety, Mobile Offshore Drilling Units.

46 CFR Part 160

Marine safety, Lifesaving Equipment.

46 CFR Part 167

Marine safety, Nautical Schools.

46 CFR Part 196

Marine safety, Oceanographic Vessels.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Title 46 of the Code of Federal Regulations as follows:

Subchapter C—Uninspected Vessels

1. The authority for Part 25 is revised to read as follows and all other authority citations which appear throughout Part 25 are removed:

Authority: 46 U.S.C. 4104 and 4302; 49 CFR 1.46.

PART 25—[AMENDED]

2. In Part 25, by adding a new paragraph (f) to § 25.25–5 to read as follows:

§ 25.25–5 Life Preservers and other lifesaving equipment required.

* * * * *

(f) On each vessel, regardless of length and regardless of whether carrying passengers for hire, an approved commercial hybrid PFD may be substituted for a life preserver, buoyant vest, or marine buoyant device required under paragraphs (b) or (c) of this section. Each hybrid PFD is accepted as meeting the requirements in paragraphs (b) or (c) of this section only if it is—

(1) Worn when the vessel is underway and the intended wearer is not within an enclosed space;

(2) Used in accordance with the conditions marked on the PFD and in the owner's manual; and

(3) Labeled for use on uninspected commercial vessels.

Subchapter D—Tank Vessels

PART 35—[AMENDED]

3. The authority for Part 35 is revised to read as follows and all other authority citations which appear throughout Part 35 are removed:

Authority: 46 U.S.C. 3306 and 3703; 49 CFR 1.46.

4. In Part 35, by revising § 35.03–5 to read as follows:

§ 35.03–5 Approved types of work vests—TB/ALL.

(a) Each buoyant work vest carried under the permissive authority of this section must be approved under—

(1) Subpart 160.053 of this chapter; or

(2) Subpart 160.077 of this chapter as a commerical hybrid PFD.

5. In Part 35, by adding a new § 35.03–25 to read as follows:

§ 35.03–25 Additional requirements for hybrid work vests.

(a) In addition to the other requirements in this subpart, commercial hybrid PDF's must be—

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices by § 160.077–29 of this chapter and any limitation(s) marked on time; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

Subchapter H—Passenger Vessels

PART 78—[AMENDED]

6. The authority for Subpart 78.36 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

7. In Part 78, by revising § 78.36–5 to read as follows:

§ 78.36–5 Approved types of work vests.

(a) Each buoyant work vest carried under the permissive authority of this section must be approved under—

(1) Subpart 160.053 of this chapter; or

(2) Subpart 160.077 of this chapter as a commercial hybrid PFD.

8. In Part 78, by adding a new § 78.36–25 to read as follows:

§ 78.36–25 Additional Requirements For Hybrid Work Vests.

(a) In addition to the other requirements in this subpart, commercial hybrid PFD's must be—

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices by § 160.077–29 of this chapter and any limitation(s) marked on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

Subchapter I—Cargo and Miscellaneous Vessels

PART 97—[AMENDED]

9. The authority for Part 97 is revised to read as follows and all other authority citations which appear throughout Part 97 are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

10. In Part 97, by revising § 97.34–5 to read as follows:

§ 97.34–5 Approved types of work vests.

(a) Each buoyant work vest carried under the permissive authority of this section must be approved under—

(1) Subpart 160.053 of this chapter; or

(2) Subpart 160.077 of this chapter as a commercial hybrid PFD.

11. In Part 97, by adding a new § 97.34–25 to read as follows:

§ 97.34–25 Additional requirements for hybrid work vests.

(a) In addition to the other requirements in this subpart, commercial hybrid PFD's must be—

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices by § 160.077–29 of this chapter and any limitation(s) marked on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

Subchapter I–A–Mobile Offshore Drilling Units

PART 108—[AMENDED]

12. The authority for Part 108 is revised to read as follows and all other authority citations which appear throughout Part 108 are removed:

Authority: 43 U.S.C. 1333(d); 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46.

13. In Part 108, by revising § 108.697 to read as follows:

§ 108.697 Buoyant work vests.

(a) Each buoyant work vest on a unit must be approved under Subpart 160.053 or Subpart 160.077 of this chapter.

(b) Commercial hybrid PFD's carried as work vests must be—

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices by § 160.077–29 of this chapter and any limitation(s) market on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

Subchapter Q—Lifesaving Equipment

PART 160—[AMENDED]

14. The authority for Subpart 160.077 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 4104, and 4302; 49 CFR 1.46.

15. In § 160.077–3, by revising paragraphs (a) and (j) to read as follows:

§ 160.077–3 Definitions.

(a) "Commandant (G–MVI–3)" means the Chief of the Survival Systems Branch, Office of Merchant Marine Safety, U.S. Coast Guard. Address: Commandant (G–MVI–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, D.C. 20593. Telephone: 202–426–1444.

* * * * *

(j) "Reference vest" means a model AK–1 PFD meeting Subpart 160.047 of this chapter, except that, in lieu of the weight and displacement values prescribed in Tables 160.047–4(c)(2) and § 160.047–(4)(c)(4), each front insert must have a weight of kapok of at least 8.25 oz. and a volume displacement of 9.0±0.25 lb., and the back insert must have a weight of kapok of at least 5.5 oz. and a volume displacement of 6.0±0.25 lb. To achieve the specified volume displacement, front insert envelopes may be larger than the dimensions prescribed by § 160.047–1(b).

* * * * *

16. In § 160.077–15, by revising paragraph (b)(3) to read as follows:

§ 160.077–15 Construction and Performance—Recreational Hybrid PFD's.

* * * * *

(b) * * *

(3) Have at least one automatic inflation mechanism that inflates at least one chamber, if marked as providing Type II performance according to § 160.077–31(h)(2);

* * * * *

17. In § 160.077–23, by revising paragraph (h)(1)(ii) introductory text to read as follows:

§ 160.077–23 Production tests and inspections.

* * * * *

(h) Production Tests and Examinations—(1) General.

(i) * * *

(ii) On the samples selected for testing—

* * * * *

18. In § 160.077–31, by revising paragraphs (c) and (d) and adding a new paragraph (k) to read as follows:

§ 160.077–31 PFD marking.

* * * * *

(c) *Recreational Hybrid PFD's.* Each recreational hybrid PFD must be marked with the following text using capital letters where shown and be presented in the exact order shown:

ADULT—For a person weighing more than 90 lb.

Type V PFD: Recreational Hybrid Inflatable—Approved for use only on recreational boats. REQUIRED TO BE WORN to meet Coast Guard carriage requirements (except for persons in enclosed spaces as explained in owner's manual).

YOU MAY HAVE TO INFLATE THIS PFD TO FLOAT.

This PFD requires maintenance.

Try this PFD in the water to see if it will float you without inflation.

When inflated this PFD provides performance equivalent to a *(See paragraph (h) of this section for exact text to be used here).*

When new, this PFD provides a minimum buoyant force of 7.5 lb. uninflated and 22 lb. inflated.

A pamphlet and owner's manual must be provided with this PFD.

(d) *Commercial Hybrid PFD's.* Each commercial hybrid PFD must be marked with the following text using capital letters where shown and be presented in the exact order shown:

ADULT—For a person weighing more than 90 lb.

Type V PFD: Commercial Hybrid Inflatable—Approved for use on *(See paragraph (j) of this section for exact text to be used here).*

YOU MAY HAVE TO INFLATE THIS PFD TO FLOAT.

This PFD must be maintained, stowed, and used only in accordance with the manufacturer's manual.

Try this PFD in the water to see if it will float you without inflation.

When new, this PFD provides a minimum buoyant force of 10 lb. uninflated and 22 lb. inflated.

* * * * *

(k) *Statement of minimum uninflated buoyancy.* Instead of the statement concerning minimum buoyancy required by paragraphs (c) and (d) of this section, a hybrid PFD may be marked with a minimum buoyant force of greater than 7.5 lb. uninflated and greater than 22 lb. inflated if specified on the approved plans and specifications.

19. In § 160.077–33, by revising paragraphs (a)(3)(v) and (a)(4) to read as follows:

§ 160.077–33 Approval procedures.

(a) * * *

(3) * * *

(v) The manual required by § 160.077–29 (UL 1517 text may be omitted in this submission).

(4) The description of quality control procedures required by § 159.005–9 of this chapter to be submitted with the test report may be omitted as long as the manufacturer's planned quality control procedures comply with § 160.077–23.

* * * * *

Subchapter R—Nautical Schools

PART 167—[AMENDED]

20. The authority for Part 167 is revised to read as follows and all other authority citations which appear throughout part 167 are removed.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

21. In Part 167, by revising § 167.43–5 to read as follows:

§ 167.43–5 Approved types of work vests.

(a) Each buoyant work vest carried under the permissive authority of this section must be approved under—

(1) Subpart 160.053 of this chapter; or

(2) Subpart 160.077 of this chapter as a commercial hybrid PFD.

22. In Part 167, by adding a new § 167.43–25 to read as follows:

§ 167.43–25 Additional Requirements for Hybrid Work Vests.

(a) In addition to the other requirements in this subpart, commercial hybrid PFD's must be—

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices by § 160.077–29 of this chapter and any limitations(s) marked on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

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Subchapter U—Oceanographic Research Vessels

PART 196—[AMENDED]

23. The authority for Part 196 is revised to read as follows and all other authority citations which appear throughout part 196 are removed.

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

24. In Part 196, by revising § 196.34–5 to read as follows:

§ 196.34–5 Approved types of work vests.

(a) Each buoyant work vest carried under the permissive authority of this section must be approved under—

(1) Subpart 160.053 of this chapter; or

(2) Subpart 160.077 of this chapter as a commercial hybrid PFD.

25. In Part 196, by adding a new § 196.34–25 to read as follows:

§ 196.34–25 Additional Requirements For Hybrid Work Vests.

(a) In addition to the other requirements in this subpart, commercial hybrid PFD's must be—

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices by § 160.077–29 of this chapter and any limitations(s) marked on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

Dated: January 21, 1986.

J. W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86–2285 Filed 2–3–86; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

46 CFR Part 308

War Risk Insurance

AGENCY: Maritime Administration, Transportation.

ACTION: Correction of final rule notice.

SUMMARY: This final rule appeared in FR Doc 85–29160, beginning at 50 FR 50165, in the issue of Monday, December 9, 1985. Its principal purpose was to reissue, with some minor procedural amendments, final regulations at 46 CFR Part 308 with one conforming amendment to the regulations at 46 CFR Part 309. These regulations provide the terms and conditions upon which war risk insurance interim binder will be immediately reinstated for U.S. flag vessels and certain foreign flag vesaels owned or controlled by United States citizens. These regulations are issued under authority in 46 U.S.C. 1281–1293. That authority expired on September 30, 1984 and was reinstated by Pub. L. 99–59, enacted July 3, 1985, and which will expire on June 30, 1990. This notice corrects two errors in dates. It also adds a modifying word, as well as a sentence inadvertently omitted, setting for the application procedure for new interim binders on foreign flag vessels owned or controlled by United States citizens.

EFFECTIVE DATE: December 9, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Malkin, Director, Office of Marine Insurance, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590, Tel. (202) 382–0369.

1. On page 50166, in the first column, third paragraph, the word "hull" shall be inserted between "624" and "binders."

2. On page 50167, at § 308.6(a), the date "July 30, 1990", is corrected to read "June 30, 1990."

3. On page 50167, at § 308.6(b), the date in the last sentence is corrected to read "March 10, 1986."

4. On page 50167, at § 308.6(d), a new sentence is added at the end of the paragraph to read as follows:

"Applications for new interim binders on United States citizen-owned or controlled foreign flag vessels, with necessary attachments (as specified in §308.3), as well as checks for the binder fee, shall also be filed with this MARAD office."

Dated: January 30, 1986.

Murray A. Bloom,

Assistant Secretary, Maritime Administration.

[FR Doc. 86–2379 Filed 2–3–86; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[Gen Docket No. 84–902; RM–3975; FCC 85–641]

Amendment of the Rules to Allocate Additional Channels in the Band 470–512 MHz for Public Safety and Other Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allocates UHF–TV Channel 16 (482–488 MHz) for use by the Public Safety Radio Service in the vicinity of Los Angeles, California, and is being taken to provide sufficient suitable spectrum for the Los Angeles County Sheriff's Department to construct a modern communications system. This action will allow the Sheriff's deputies to communicate using small portable radios where they currently must use vehicular radios. This will allow Deputies to perform their assigned duties more efficiently and at less personal risk.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Julius P. Knapp or Don R. Precure, Spectrum Management Division, Office of Science and Technology, (202) 653–8159 or 8170.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Parts 2 and 73

Frequency allocation, Television.

47 CFR Part 90

Frequency allocations, Radio.

Report and Order

In the matter of Amendment of Parts 2, 73, and 90 of the Commission's Rules and Regulations to Allocate Additional Channels in the Band 470–512 MHz for Public Safety and Other Land Mobile Services; GEN Docket 84–902, RM–3975, and FCC 85–641.

Adopted: December 10, 1985.

Released: January 22, 1986.

By the Commission: Commissioner Quello concurring and issuing a statement.

Introduction

1. In this proceeding, we have engaged in rulemaking to provide spectrum for public safety use in the Los Angeles area. The proceeding was undertaken in response to a petition from the Los Angeles County Sheriff's Department ("the Sheriff"), requesting appropriate spectrum to construct a modern law enforcement communications system. In September 1984, we adopted a *Notice of Proposed Rulemaking* proposing to allow the use of UHF–TV Channel 19 frequencies for public safety services in Los Angeles.[1] Later, in May 1985, we adopted a *Further Notice of Proposed Rulemaking*, outlining several additional options for satisfying the Sheriff's needs.[2] This *Report and Order* makes

[1] *Notice of Proposed Rule Making* in Gen. Docket 84–902, FCC 84–444, 49 Fed. Reg. 45875 (adopted September 28, 1984).

[2] *Further Notice of Proposed Rule Making* in Gen. Docket 84–902, FCC 85–236, Fed. Reg. 19956 (adopted May 1, 1985).

the band 482–488 MHz, UHF–TV channel 16, available for assignment in the public safety radio services at, or in the vicinity of, Los Angeles. In a companion item we are proposing to make available a substitute channel for UHF–TV Channel 16 in Ventura. Specifically, this action will reallocate Channel 16 in the Los Angeles area from broadcasting to Private Land Mobile-Public Safety.[3]

Background

2. The Los Angeles County Sheriff's Department first brought this matter to our attention in September 1981, when the Sheriff filed a Petition (RM–3975) requesting reallocation of TV Channels 14 through 20 (470–512 MHz) for land mobile radio use on a nationwide basis, with 2 channels dedicated to public safety in each of our largest cities.[4] In a "Supplement to Petition for Rulemaking" filed in November 1983, the Sheriff amended the petition to ask for Channel 19 to be made available for public safety use in the Los Angeles area.[5] The Sheriff stated that the need for relief was urgent. While the Sheriff pointed to the need for relief throughout the Los Angeles area he emphasized in particular the problems he faces in Los Angeles County. In his Petition and Supplement, the Sheriff described several problems: excessive time delays on his current systems due to channel congestion, an inability to equip his patrol officers with suitable portable hand-held radios, and an inability to communicate effectively with other police departments for purposes of mutual aid.

3. In September 1984, we issued a *Notice of Proposed Rule Making* ("*Notice*"), proposing to make Channel 19 available for public safety use in Los Angeles. We noted that a study on the Sheriff's communication system conducted by our Field Operations Bureau conflicted with the Sheriff's reported levels of channel congestion; however, different analytical techniques were employed and the results were interpreted from different perspectives.[6] Nevertheless, irrespective of the issue of channel congestion, it was clear the Sheriff's existing system could not reasonably accommodate hand-held portable radios, and such equipment is a vital element for safety of life and property in a modern law-enforcement communications system.

4. In issuing the *Notice*, we acknowledged that the Sheriff's need for spectrum relief was real and immediate. We specifically based the *Notice* on the Sheriff's need for frequencies that could accommodate hand-held portable radios. In proposing to reallocate Channel 19 frequencies, however, we expressed concern about harmful interference to reception of station KSCI–TV, Channel 18 San Bernardino, because the Sheriff's mobile system could operate throughout a large part of the KSCI–TV service area, including the city grade contour. We stated that we would give careful consideration to results of interference tests which the Sheriff was conducting voluntarily.

5. Subsequently, the Sheriff found that the risk of interference to Channel 18 appeared greater than he had estimated. Accordingly, in December 1984 the Sheriff submitted a "Motion to Modify" the *Notice* requesting the Commission to modify its proposal to include consideration of Channel 16. While the Sheriff believed Channel 19 remained a viable option, he stated that some interference to Channel 18 would have to be accepted. He contended that operation on Channel 16 would provide adequate operational flexibility, would not result in interference to existing TV stations, and would affect only the pending applicants for the Channel 16 assignment, discussed in detail below. Thus, he reasoned, Channel 16 would be a preferable solution.

6. We issued a *Further Notice of Proposed Rulemaking* ("*Further Notice*") in May 1985, outlining several possible solutions in addition to Channel 19. We proposed as additional options: use of Channel 16 within Los Angeles County; use of the upper portion of Channel 19 along with a portion of Channel 15; and use of portions of Channel 19 along with portions of Channel 14 already assigned to the Sheriff.[7]

Public Safety Needs in Los Angeles

7. Public safety interests have throughout this proceeding pointed to the general need for spectrum relief for public safety nationwide. However, several public safety groups from the Los Angeles area, and in particular the Sheriff, emphasized that the problem is particularly acute and unique in Los Angeles. To begin with, the region is densely populated.[8] The geographic area is expansive, with Los Angeles County covering an area of approximately 4000 square miles. The topography is diverse, ranging from seashore to valleys, to deserts, to 11,000-foot mountain peaks. Because of the climate and geologic conditions, the region is prone to natural disasters such as forest wildfires, floods, mud-slides, earthquakes, high winds, high waves and tornados. The County has the highest concentration of automobiles in the world along with a vast network of freeways (totalling more than 500 miles). As a major manufacturing center, the Los Angeles area has experienced industrial disasters, including fires and hazardous chemical spills. These factors, among others, place severe demands on agencies involved with public safety in and around Los Angeles County. Moreover, these factors coupled with the general spectrum congestion present in the Los Angeles basin, place

[3] The Sheriff currently has applications pending for 55 duplex channels with a 25 kHz channel bandwidth, thus using 2.75 MHz of the 6 MHz of spectrum we are making available; however, he does not list transmitter sites but rather asks for temporary base and control station operation within a 75-mile radius of Los Angeles. The applications were filed in December 1983. The Sheriff's operation is subject to the usual completion of the prerequisite applications, with waivers as appropriate, and granting of the license(s) by the Private Radio Bureau. As to the frequencies employed by the Sheriff's present system, we expect the Sheriff to vacate these frequencies when all of his requirements are satisfied by his new system.

[4] In his original petition, the Sheriff asked the Commission to reallocate UHF television channels 14–20 to the land mobile services, move stations operating on those channels to other channels and provide federal funding or compensation, establish more realistic television receiver standards so "taboos" based on these standards could be relaxed, permit large land mobile system operators to reserve spectrum, based channel loading standards on monitoring rather than number of mobile units, and immediately reallocate Channels 15 and 18 to public safety use in the Los Angeles Area.

[5] In the Supplement, the Sheriff continued to request relief on a nationwide basis, but he focused his petition on creating more UHF channels through adoption of more efficient spectrum utilization techniques such as changes in the taboos, allocating unused and new UHF channels to land mobile services, reserving at least 12 MHz of spectrum (the equivalent of two television channels) for public safety land mobile use in the 20 largest metropolitan areas, and immediately assigning Channel 19 for public safety use in the Los Angeles area. Subsequently, we elected to address the nationwide issues in separate proceedings dealing with the long term needs of public safety. See *Future Public Safety Telecommunications Requirements Notice of Inquiry*, 49 FR 9754 (1984).

[6] See FCC Field Operations Bureau Report 84–01, "Limited Spectrum Occupancy Study," February 1984.

[7] For brevity, the four alternatives will be referred to as the Channel 19, the Channel 16, the Channel 19/15, and the Channel 19/14 alternatives, with the latter two being referred to as the split-channel alternatives.

[8] There are about 7.5 million people residing in Los Angeles County. This comprises approximately 32% of California's population. Within the county is the Los Angeles Metropolitan Area, the fourth most populated urban area in the world and the second most populated area in the nation.

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heightened demands on public safety communications systems.[9]

8. The Sheriff has stressed the problems he, in particular, faces in implementing a communications system for his Department. The Los Angeles County Sheriff's Department with a staff of about 8,200 personnel, is the sixth largest law enforcement agency in the United States. The Sheriff uses a fleet of 1,347 vehicles, 19 aircraft and 9 boats to provide a full range of public safety services, including street patrol, air-sea rescue, investigative/detective, custodial (jail), civil process, court services (baliff), scientific laboratory and photographic services, intrastate prisoner transportation, disaster relief, mountain rescue, air-support and mutual aid. In addition, 35 of Los Angeles County's 85 independent cities contract with the Sheriff's Department for police services rather than maintaining their own police department. For communications, the Sheriff operates two basic radio systems. A "patrol" system for basic vehicle patrol services operates on thirty-eight frequencies in the 39 MHz band and an "investigative" system operates on twenty frequencies in the 470 MHz band. Some of the 39 MHz frequencies and all of the 470 MHz frequencies are paired to provide duplex channels.

9. In his filings with the Commission, the Sheriff has emphasized the unique problem he faces in implementing a portable radio system for his patrol officers. He has stated that portable units are vital to an officer's ability to use radio for back-up assistance or emergency help when away from his car and that police departments in most major cities have portable radio systems. Although the Sheriff's spectrum at 470 MHz is compatible with portable equipment, the Sheriff has only ten channel pairs there, which is not enough spectrum to accommodate both patrol and investigative functions.[10] Because of assignments to others, sufficient land mobile channels suitable for portable radios are not available to meet the Sheriff's need in the Los Angeles area.[11]

The Sheriff asserts that use of the 39 MHz frequencies is impractical for meeting his portable radio requirements due to ambient noise in the Los Angeles metropolitan area, propagation characteristics, and system design considerations.

10. The Sheriff cites several other problems with the existing system: during busy periods requests for emergency assistance are lost (unheard) or unnecessarily delayed; the time to dispatch a citizen's request for service has risen from 1.2 minutes to over 4 minutes during busy periods; a recent audit has shown that only about 52% of arrivals and departures from dispatch locations are reported; and requests for data inquiries (e.g., computer inquiries regarding vehicle registration or driver's license information) are unreasonably delayed or inhibited, which can severely affect officer safety. A notable drawback to the Sheriff's current system is that there is no compatibility between the patrol (39 MHz) and investigative (470 MHz) radio systems. In addition, the 39 MHz frequencies are not compatible with the communications systems of other public safety agencies in the area. Thus, the system is unable to provide either intra-Departmental communications or efficient mutual aid capability with other public safety agencies.

11. The importance of mutual aid is apparent when one understands that there are many public safety agencies with which the Sheriff must coordinate activities, including the Los Angeles City Police Department, other municipal police departments, the California Highway Patrol, the U.S Marshal's Office, the U.S. Coast Guard, the Harbor Patrol, County Lifeguards, the California State Police, and law enforcement departments in neighboring counties. Coordination with the Los Angeles City Police Department is especially important because there are certain places where the Sheriff's Department and the City Police Department have jurisdiction over opposite sides of the same street.[12] Coordination is crucial in situations of "hot pursuit" where officers are engaged in high speed vehicular chases and must cross over from one jurisdiction into another.

12. The Sheriff has outlined several situations where an improved communications system could have saved lives or would have significantly assisted in carrying out law enforcement activities. For example, in one particular incident an officer was slain and another wounded severely in a confrontation with a suspect, when the officers were unable to summon assistance due to lack of portable radios. The Sheriff also described other situations where lack of efficient "mutual aid" capability has impaired high speed chases of suspects.

13. The Sheriff has elaborated on the criteria which must be considered in determining appropriate spectrum for his new system: the frequencies must be appropriate for portable use (UHF spectrum); the spectrum must exhibit reliable propagation characteristics; proven, reliable, cost-effective, off-the-shelf equipment must be available; the spectrum must be contiguous or near-contiguous such that use by a single radio is possible, thereby allowing for mutual aid and future growth. He projects that 50 channels are needed for voice and 5 channels for digital data. Portable radios would be equipped with automatic digital unit number identification, emergency "trigger" and digital voice encryption. He states that approximately 4.4 MHz of contiguous spectrum are needed to permit base stations to be located at virtually any point in the county with power up to 1000 watts and the operation of 50-watt mobiles and 5 watt portables anywhere in the county.[13] The Sheriff further states that both portable and mobile units must be capable of operating in the "talkaround" mode, which allows units to communicate with each other directly without going through a repeater. This feature is said by the Sheriff to be of critical importance in operations where officers may be out of range of a repeater.

14. The Sheriff has pending applications for licenses to operate a system such as that described above on either UHF TV channels 18 or 19. However, the applications do not specify the locations of transmitter sites and are therefore incomplete. We are unaware of any other applications for land mobile licenses to operate on the channels which are the subject of this proceeding. However, we note that Orange County, the California Public Safety Radio Association and others in the Los Angeles region have, in their comments, expressed a desire for additional public safety frequencies in the same band(s) as the Sheriff for interagency communications as well as for their own communications needs.

[9] The Commission recently released the *Report on Future Public Safety Telecommunications Requirements* prepared by the Private Radio Bureau which projected spectrum shortfall of about 90 MHz in the Los Angeles area by the year 2000, the highest projected shortfall in the country. *See Order*, PR Docket No. 84-232, 50 FR 32239 (August 9, 1985).

[10] The Sheriff's 10 channel radio system supports over 1000 portables and mobile radios using 45 base transmitters and 130 receivers. The system is configured to provide 3 county-wide channels and 7 regional channels.

[11] Spectrum released from the 800-900 MHz band reserves, for example, has already been assigned to others in the Los Angeles area. Land mobile spectrum at 150 MHz, 450 MHz, and 470 MHz has also been assigned to others.

[12] The Los Angeles City Police Department communications system operates in Channel 20; operation in Channels 16 or 19 by the Sheriff would easily lend itself to inter-agency communications.

[13] See Comments of the Los Angeles County Sheriff's Department, February 11, 1985, at 22. In summary, the Sheriff requests use of 55 duplex channels of 25 kHz channel width, or 2.75 MHz of spectrum. The approximately 4.4 MHz of contiguous spectrum is requested to allow for standard 3 MHz spacing between transmit and receive frequencies.

Discussion of Options

15. The public safety commuity is unanimous in its support of immediate spectrum relief for Los Angeles County. The broadcast commenters, on the other hand, argue that relief should be found outside the UHF television band or, at least, that any decision to make spectrum available from the UHF television band should await resolution of pending dockets dealing with allocation of the remaining vacant "reserve" spectrum in the 800-900 MHz reserve band and long term public safety requirements. A discussion of the comments on the proposed alternatives follows.

Channel 19

16. As noted earlier, the Sheriff's tests indicated that interference would occur to reception of KSCI Channel 18 caused by land mobile operation on Channel 19. The occurrence of interference would depend on a number of variables, such as the interference rejection characteristics of the individual TV receiver, the strength of the desired TV signal, and the separation in frequency between the land mobile transmitter and TV channel. Although the Sheriff stated that interference could occur to TV receivers within 500 to 1000 feet of a mobile transmitter, the Sheriff believes that several factors would tend to mitigate the actual number of occurrences of interference and that the interference should not be considered "harmful interference."[14]

17. KSCI-TV, Channel 18 San Bernardino, disagrees with the Sheriff and maintains that the interference would indeed be "harmful interference." It asserts that hand-held transmitters operating on the lower portion of Channel 19 in the vicinity of Channel 18's grade B contour would cause perceptible interference to television receivers located within 2.3 square miles of the land mobile transmitter. Since the Sheriff's hand-held and mobile radios would be used throughout the most densely populated regions of the county, KSCI reasons that substantial "harmful interference" would result.

18. KSCI notes that the Sheriff's need to locate base stations in the county without geographic limitations would violate the land mobile/TV sharing criteria development in Docket 18261.[15] These criteria, among other things, prescribe restrictions on antenna height, output power, and spacing between land mobile base stations and adjacent channel TV transmitters. KSCI argues that the technical criteria adopted in Docket 18261 should not be disturbed to any degree whatsoever without a clear demonstration that land mobile use of Channel 19 in Los Angeles would not cause interference to Channel 18.

19. Based on the record and our own analysis, we believe that operation of the Sheriff's planned system on Channel 19 would indeed cause "harmful interference" to reception of KSCI Channel 18. The Channel 18 grade B signal contour extends over a substantial portion of Los Angeles County where the Sheriff must operate. With the dense population in the area, it is likely that substantial numbers of viewers would receive interference. We agree with the Sheriff that the occurrence of interference is a function of several variables; however, it is clear that interference will occur frequently, particularly when one considers that mobile and portable transmitters will move throughout the county. The Sheriff's use of Channel 19 would be detrimental to large numbers of people presently enjoying an on-the-air TV station. It further appears that the extent of restrictions needed to avoid interference would be so great as to represent a sizeable obstacle to designing a useful system. Therefore, notwithstanding the fact that unrestricted use of Channel 19 would satisfy all of the Sheriff's operational requirements, as delineated earlier, we find the potential interference to Channel 18 weighs heavily against this alternative.

20. In its Comments and Reply Comments, California Broadcasting Corporation (CBC), one of the applicants for the Channel 16 TV allotment, recommends that the Commission allow interim use of frequencies from the upper portion of Channel 19 pending results from the Commission's study of long-term public safety needs and that the Commission insist upon full occupancy of these frequencies before considering any additional allocation. We did not propose use of frequencies from the upper portion of Channel 19 as a separate alternative because these frequencies are of limited benefit if they cannot be paired for duplex use to permit wide area portable-to-portable coverage and to allow a dispatcher to transmit and hear portable and mobile transmissions simultaneously, particularly during emergencies. Land mobile equipment used by the public safety community today utilizes a 3 MHz separation between transmit and receive frequencies. This separation is not possible if the Sheriff is given access only to the upper 1.5 MHz or even the upper 3 MHz of Channel 19. Thus, we do not consider CBC's recommendations as a viable solution to the Sheriff's spectrum need, even on an interim basis.

Channel 16

21. In the *Further Notice*, one of the additional alternatives we proposed was the use of Channel 16. This Channel is presently unoccupied in the Los Angeles area, but has been allotted to Ventura. Two applicants, California Broadcasting Corporation (CBC) and Channel Islands Television Corporation (CITC), are currently engaged in a comparative hearing; and earlier initial decision was remanded to the Administrative Law Judge for further hearing,[16] that hearing has been completed and the Administrative Law Judge's decision is pending. The Sheriff had earlier suggested that Channel 41, recently allotted to Ventura, might serve as a substitute for Channel 16. In the *Further Notice* we expressed reluctance about the Sheriff's suggestion because it would have meant a net loss of one TV channel to Ventura. Also, because Channel 41 requires use of a different transmitter site, we were concerned about the equities to CBC and CITC. In view of the time and expense of the

[14] 47 CFR 2.1(c) defines "Harmful Interference"—"Any emission, radiation or induction which endangers the functioning of a radionavigation service or of other safety services or seriously degrades, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with these Regulations."

[15] See 47 CFR, Part 90, Subpart L; *First Report and Order*, Docket 18261, 23 FCC 2d 323 (1970).

[16] *Initial Decision*, BC Docket Nos 80-698, 80-699, FCC 84D-21 (released March 29, 1984). The *Initial Decision* found CBC to be qualified to be a licensee of a new UHF TV station in Ventura. CITC was found disqualified on the basis of financial and other qualifying issues. Consequently, the application of CITC was denied and the application of CBC was granted. However, based on further questions that has been raised, the decision was remanded by the Review Board to the presiding Administrative Law Judge for further investigation of allegations with regard to the qualifications of CBC. See *Memorandum Opinion and Order*, BC Docket Nos. 80-698, 80-699, FCC 84R-60 (released August 30, 1984). By *Memorandum Opinion and Order* in this docket, FCC 85-326 (released June 27, 1985) the Commission, in response to an Objection to Grant filed by the Sheriff, ordered that any construction permit issued for operation on UHF television Channel 16 in Ventura, California shall be subject to the condition that the Commission may, without further proceedings, substitute for Channel 16 such other UHF television channel as is assigned to Ventura, California as a result of any action taken in this proceeding. CBC filed a Petition for Reconsideration of this action; the Petition was denied by *Memorandum Option and Order*, BC Docket Nos. 80-698, 80-699, FCC 85-597, (released Nov. 14, 1985).

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applicants in pursuing the Channel 16 assignment, and because alternatives appeared to be available that would not adversely affect television, i.e., the split-channel alternatives, we tentatively concluded that Channel 16 was not a desirable alternative.

22. In his comments, the Sheriff reaffirmed his position that Channel 16 is the preferred alternative. The Sheriff maintains that Channel 16 and Channel 19 are the only options where suitable land mobile equipment is available. The Sheriff's preference for Channel 16 is based on the belief that a suitable substitute channel for Channel 16 can be made available for television, whereas use of Channel 19 by his Department would interfere with TV reception on Channel 16. He advises that the *Further Notice* overlooked the other channels he had suggested which would not result in loss of a TV channel to Ventura.[17] The Sheriff states that, in any event, the need to amend the applications to list a new transmitter site is not adequate justification for withholding Channel 16 from use by public safety.

23. The channel substitution issue notwithstanding, the Sheriff asserts that Ventura is already covered by an abundance of over-the-air-TV signals and other video media. Reference is made to Channel 63 in Oxnard, near Ventura, which recently went on the air. The Sheriff notes that the signal from this station ". . . will place a solid city grade signal over the City of Ventura and much of Ventura County . . . and will thereby provide Ventura County with local television service."[18] Several public safety groups expressed support for the Sheriff's position that Channel 16 is the best alternative among those the Commission proposed but shed no additional light on why it would be the best choice. KSCI–TV, Channel 18 San Bernardino, and KPBS–TV, Channel 15 San Diego, also support the Sheriff's use of Channel 16.

24. The Board of Supervisors of the County of Ventura opposes any shift of Channel 16 from TV broadcast to public safety use. The Board states that Ventura County, which covers an area of about 2000 square miles and has a population of about a half-million people, has long awaited the start of local television service. Since the loss of Channel 16 could result in further delays, the Board urges the Commission to reject use of Channel 16 for public safety.

25. CBC opposes reallocation of Channel 16. It believes that any other potential channel would be vastly inferior to Channel 16 for local broadcast purposes, being either short-spaced to existing allocations and/or exhibiting substantial shadowing within the City of Ventura.[19] CBC alleges that because of these technical shortcomings, broadcasting on a substitute channel may be economically infeasible.

26. CBC goes on to argue that a substitution may be suspect on legal and procedural grounds. It states that it would be inequitable and unjust for the Commission to expect CBC to undertake a new comparative hearing for a substituted channel immediately after the lengthy and costly hearing in which it has already engaged. CBC points to the current rulemaking concerning "Amendments to the television of assignments to change non-commercial educational reservations," MM Docket 85–41, RM–4684 (March 8, 1985), which CBC refers to as "UHF–VHF Swaps." and states that numerous participants in that proceeding have suggested that the *Ashbacker* doctrine requires a comparative hearing whenever a new channel is allocated, regardless of the purposes for which the frequency is allocated. Finally, CBC argues that to reallocate Channel 16 at this time for land mobile use by public safety, six and one-half years after the cut-off date for Channel 16 applicants has passed, would undermine the very integrity of the Commission's broadcast allocation procedures as set out in Part 73 of the Rules.

27. Upon consideration of the comments, we find that the detriments to the public that might result from use of Channel 16 for land mobile purposes, specifically public safety needs, rather than for television broadcasting, would be minimal. First, a substitute channel can be made available to serve Ventura. Second, it is possible that the same transmitter site as proposed by the Channel 16 applicants could be used if the new channel is short-spaced. The question of which substitutes may be available and which is the best choice is a matter for another proceeding. What is most important here is that Ventura will not lose a TV channel and it is possible the channel substitution can be accomplished with minimal impact on the Channel 16 applicants. Although CBC has raised the possibility that it may not construct a station on a substitute channel if, in its opinion, the substitute does not appear economically viable, it has offered no information about the factors it would weigh in making this decision. We appreciate the difficulties CBC is experiencing in comparing the currently proposed station with an uncertain allotment. However, the economic viability of any channel, whether it be 16 or a substitute, is a business matter CBC must judge for itself.

28. We also note that any adverse impact on Ventura and on potential viewers in Los Angeles County is mitigated further by other broadcast and programming services now available or proposed. As the Sheriff points out, a new station has begun operation on Channel 63 in Oxnard, and it serves Ventura with local programming. Also, Channel 41 has been allotted to Ventura and applications for it have been filed with the Commission. Furthermore, other broadcast services are delivered over-the-air to the city of Ventura and Ventura County. The residents of Los Angeles County that the Channel 16 applicants propose to serve already receive off-the-air service from nine commercial and two public television stations licensed to Los Angeles and from additional stations licensed to Anaheim, Corona, San Bernardino, and Santa Ana. Thus, the community of Ventura or the potential viewers in Los Angeles County already receive a significant amount of broadcast service.

29. While we acknowledge and appreciate the equities regarding the Channel 16 applicants, those equities do not create any legal impediment to our reallocating Channel 16. Section 309 does not preclude the Commission from utilizing rulemakings for the orderly conduct of its business and from denying applications inconsistent with any rules ultimately adopted. *United States v. Storer*, 351 U.S. 192 (1956). Moreover, applicants, unlike licensees, are not protected by Section 316.[20] Further, despite CBC's suggestion that the cut-off rules may incidentally provide applicants with protection from competing applications, the rules' actual purpose is to ensure efficient processing

[17] The Sheriff suggests Channels 51, 57, 60, 65, 66, and 67 as possible substitutes for Channel 16 (February 11, 1985 Comments at pp. 40–41).

[18] See Further Comments of the Los Angeles County Sheriff's Department, filed June 13, 1985, at pp. 16–19.

[19] Section 73.610 of the Rules specifies minimum separation distances between TV stations to minimize interference. The minimum separation distances between UHF stations are set forth in Table IV of § 73.698, known as the table of UHF taboos. When a station is located closer than the specified minimum, it is referred to as a "short-spaced" channel.

[20] Even though these applicants are not technically governed by Section 316, their participation in this rulemaking has afforded them procedural rights equivalent to "notice" and an "opportunity to protest," as provided for in that section.

by creating a stable pool of applicants.[21] *See Denton Channel 2 Foundation, Inc.*, 85 FCC 2d 983, 984 (1981); *Operational Fixed Station (Program Transmission)*, 49 Fed. Reg. 24135 (58 RR 2d 305, 308–9) (1984), *appeal denied without opinion sub nom., Affiliated Communications Corporation v. FCC*, No. 83–1871, (D.C. Cir. May 6, 1985). The courts have thus agreed that the cut-off rules create no rights for applicants. *See City of Angels Broadcasting, Inc. v. FCC*, 745 F.2d 656, 663 n.7 (D.C. Cir. 1984). Finally, even existing licensees can be displaced as a consequence of spectrum reallocations. *See, e.g., Direct Broadcast Satellites*, 740 F.2d 1190, 1209 (D.C. Cir. 1984).[22] Certainly, mere applicants cannot expect greater protection. Cf. *Multi-State Communications, Inc. v. FCC*, 728 F.2d 1519, 1526 n. 12 (D.C. Cir. 1984). When, as in this instance, the public interest requires reallocating spectrum for different uses, that interest must take precedence over the private interests of existing applicants.[23]

30. Another issue related to land mobile operation on Channel 16 was the potential for interference to KGET–TV, Channel 17 in Bakersfield. In the *Further Notice*, we stated that, if Channel 16 were selected, certain restrictions on the Sheriff's operations might be necessary in order to protect Channel 17 in accordance with Docket 18261 protection criteria for television/land mobile sharing in the 470–512 MHz band. The Sheriff had stated that he recognized this limitation but felt that because of the mountainous region between the City of Bakersfield and Los Angeles County, terrain shielding could be an effective means of protecting Channel 17 viewers from potential interference from land mobile operations in Los Angeles County.

31. KGET–TV filed comments expressing concern about how adjacent channel interference could be averted. KGET–TV states that, if the Docket 18261 protection criteria were applied, land mobile transmitters could not operate within a radius of 90 miles of its transmitter, which means there would be a section of northwest Los Angeles County, 45 miles wide, where the Sheriff could not operate. KGET–TV realizes the rules that form the basis of this argument do not consider terrain shielding; however, it remains skeptical about the degree to which terrain shielding would allow the Sheriff to operate a viable system that could not cause interference to Channel 17 viewers.[24] KPBS–TV Channel 15 in San Diego states that it feels reasonably confident that the Sheriff's proposed operation on Channel 16 would not cause interference to reception of its signal.

32. We note KGET–TV's concern about possible adjacent channel interference to Channel 17; however, we move forward on the premise that Channel 17 will be afforded the protection currently provided under the rules, absent a finding by the Commission that a waiver is in the public interest and appropriate.[25] We also note that the adjacent channel interference problem from 16 to 17 is far less severe than from 19 to 18. In the former case we are dealing with limited and minimal interference in the fringes of the TV coverage area, and in the latter case we are dealing with a situation of constant and significant interference resulting from the substantial overlay of the TV and land mobile service areas.

33. In light of the above discussion, we find that Channel 16 is indeed a preferable option. It would satisfy the Sheriff's requirements and provide additional spectrum for public safety in the Los Angeles area. The people of Ventura would not forfeit a TV station. The possibility exists that the present Channel 16 applicants could use the same transmitter site (as described in their applications) for a substitute channel. Existing interference protection criteria can be satisfied.

Split-Channel Alternatives—Channel 19/15 and Channel 19/14

34. As indicated earlier, the *Further Notice* include two split-channel alternatives where portions of two different TV channels would be used. These alternatives made use of the fact that interference to adjacent channel TV reception varies depending on which portion of a channel is used for land mobile operation. Thus, a land mobile system can sometimes be designed where it otherwise could not operate if the entire TV channel were to be used. Split-channel land mobile equipment is in use today for common carrier service in certain cities. We speculated that split-channel operation might offer a solution in the instant case. The first split-channel alternative we proposed would utilize frequencies from the upper portion of Channel 19 and from the lower portion of Channel 15. The second split-channel alternative would utilize frequencies from the upper portion of Channel 19 together with Channel 14 frequencies presently assigned to the Sheriff. This would allow the Sheriff to double the ten channel-pairs he presently has in TV Channel 14, by pairing each of the twenty Channel 14 frequencies with a

[21] No application, however, is before us in the proceeding and no authorization to operate is being conferred herein.

[22] Unlike *Zenith Radio Corp. v. FCC*, 211 F.2d 629 (D.C. Cir. 1962), we are not choosing between two applicants in the same service for the right to provide a particular service. Instead, we are, as in *DBS*, determining what service is to be on the channel. The later is a policy question properly resolved in a rulemaking, not an adjudicatory matter. Of course, in the past, we have usually attempted to identify adequate substitute channels before determining that an existing licensee should be displaced. *See Transcontinent Television Corp. v. FCC*, 308 F.2d 339 (D.C. Cir. 1962); *Peoples Broadcasting Co. v. United States*, 209 F.2d 286 (D.C. Cir. 1953). Neither the courts nor this agency, however, have ever held that the procedure is statutorily required. Rather, the nature of those proceedings necessitated that approach. In the *DBS* proceeding, on the other hand, we identified and reallocated channels to the displaced OFS licensees after the completion of the rulemaking which reallocated the channels. The Court affirmed that approach. *Direct Broadcast Satellites, supra* at 1212–1214. In any event, in a separate, companion proceeding, "In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Ventura, California)", Mass Media Docket 85–390, the Commission is attempting to find an alternative substitute channel to Channel 16.

[23] *National Association of Independent Television Producers and Distributors v. FCC*, 502 F.2d 249, 257 (2d Cir. 1974), *citing FCC v. Pottsville Broadcasting Co., supra.*

[24] The basis for KGET's "90 mile" figure is in § 90.307(d) of the Rules which states "The minimum distance between a land mobile base station which has associated mobile units and a protected adjacent channel television station is 90 miles." Since Los Angeles County is 45 miles away, a 45-mile swath results. The cited rule, however, assumes the "associated mobiles" (and fixed-site control stations) will be located as much as 30 miles closer to the protected TV station or as close as 60 miles from KGET. *See* § 90.305 (b) and (c). Thus the rules would permit mobile and control stations with as much as 200 watts power to within 15 miles of the county line at its nearest point to KGET. As for base stations, current rules allow base stations with up to 1000 watts power with an antenna height of up to 100 feet above average terrain as close as 60 miles from the protected TV station. *See* § 90.307(a) and associated Table E. Current rules therefore would permit base stations and mobiles, but not associated with each other, with 15 miles of the county line at its nearest point to KGET, even if there were no terrain shielding. We note that the Sheriff plans to operate 50 watt mobiles rather than the 200 watt mobiles envisioned by the rules.

[25] The Sheriff acknowledges that the spacing requirement of § 90.307(d) would preclude the use of Channel 16 in the northernmost part of Los Angeles County, where the population is sparse. The Sheriff believes that the spacing can be reduced due to terrain shielding. See n. 24, *supra*. If the transmitter sites ultimately selected by the Sheriff do not meet the spacing required in § 90.307(d), the Sheriff must request a waiver and submit appropriate justification to the Private Radio Bureau in connection with pursuing applications for licenses. The justification may include measurements of the Channel 17 signal strength in the affected area, or an analysis based on reduced power and site selections, or other information as may be relevant.

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matching frequency in Channel 19. The resulting 20 channel pairs, however, would be considerably less than the 55 channels required by the Sheriff. However, it was envisioned that this might provide short-term relief for the Sheriff while alternative long-term solutions for public safety needs are considered by the Commission in other proceedings.

35. The commenters were unanimous in their opposition to the split-channel alternatives. The Sheriff and public safety groups objected on the ground that equipment is not available that satisfies public safety requirements. Broadcasters and TV manufacturers objected because there are questions about potential interference. We note also that several U.S. Congressmen from the Los Angeles area were opposed to the split-channel alternatives, and agreed with the views advanced by the Sheriff.

36. The Sheriff advises that the split-channel equipment he is aware of would not be satisfactory for the needs of public safety.[26] Whereas some split-channel equipment is available for other services, i.e., common carrier, none is available for public safety uses. Consequently, the equipment that is available does not have the features necessary for a modern law enforcement communications system, such as automatic triggering and digital voice encryption. Nor has it been demonstrated that such equipment is capable of withstanding the rigors of public safety use. Most important, a split channel system would be unique and different from the communication systems of other public safety agencies in the Los Angeles region and would not permit intercommunications with other departments. Furthermore, important features such as "talk-around" could not be accomplished in a split-channel system without constructing specialized and more costly equipment, such as portables that employ two separate transmitters.

37. Even if the necessary equipment could be built, the Sheriff argues that there are only a limited number of potential suppliers and the equipment must be custom ordered. This raises serious concern about the availability of replacement parts. Of particular concern to the Sheriff is his need to fit into a somewhat inflexible budget cycle and the cost to the taxpayers of financing a system dependent upon specially designed equipment. In summary, the Sheriff posits that the split-channel options are unacceptable solutions because they would call for use of equipment which does not exist and which would take time to develop at unknown cost and unproven reliability.

38. Several parties also questioned whether interference would result using the split-channel alternatives. The Consumer Electronics Group of the Electronics Industries Association, which represents manufacturers of TV receivers, claims that the results of the Sheriff's study of adjacent channel interference to Channel 18 caused by operation of land mobile equipment on Channel 19, which formed the basis in part for the split-channel alternatives, cannot be used to determine the potential for interference to the upper adjacent TV channel. This, EIA says, is due to the asymmetrical nature of TV broadcast signals and the corresponding design of TV receivers. The Association of Maximum Service Telecasters and the National Association of Broadcasters join in questioning this point. They also express concern that any decision here may prejudice the outcome of the Commission's pending reevaluation of land mobile/UHF TV sharing criteria.[27]

39. KPBS–TV Channel 15 in San Diego opposes public safety operation on Channel 19/15 due to concern about co-channel interference. KPBS does not believe that the Sheriff's tests show that no interference would occur from operation on the upper portion of Channel 15. Similarly, the Sheriff has expressed an interference concern about the Channel 19/14 alternative. The Sheriff feels that this alternative would result in mutual interference with co-located existing systems operated by Los Angeles County in the fire radio service on Channel 14 frequencies. In addition, the Sheriff objects to the Channel 19/14 alternative because it is only an interim solution. The Sheriff asserts that Los Angeles County does not have the resources to construct new communications systems repeatedly.

40. In light of the questions about the ready availability of suitable equipment and about interference to television broadcast reception, we conclude that our split-channel proposals do not offer a viable solution at this time. It would be an unreasonable burden to require the Sheriff to attempt to have custom-built equipment designed and developed. Even if equipment could be built for the Sheriff, there is no avoiding the fact that it would be incompatible with other communications systems in the area, thus impairing mutual aid capability—a feature which we consider of critical importance in light of the need for the various departments to assist and interact with one another. Accordingly, we find there are strong reasons against either of the split-channel alternatives.

Other Options

41. From the time this proceeding began, we sought to examine all viable options. For completeness of the record we wish to note some of the other possibilities that have been put forward. Several groups, most notably the National Association of Broadcasters, have suggested the Commission put off a decision in this matter and await the outcome of other proceedings examining ways of accommodating the needs of public safety. Specifically, it has been suggested that solutions may be possible in the various proceedings for allocating the land mobile reserve spectrum at 800 MHz or in the recently initiated study of further spectrum sharing between land mobile and TV broadcasting in certain sections of the UHF television spectrum.[28] The Sheriff opposes these options because they do not present immediate solutions. Moreover, the Sheriff is skeptical about the suitability of frequencies in the 800 MHz region for public safety use due to such factors as reduced coverage area necessitating additional transmitter sites, multipath fading and other considerations.

42. Although commenters have pointed to the 800–900 MHz land mobile reserve band as a potential source of spectrum for Los Angeles County, we do not believe these frequencies are appropriately considered at this time, because we cannot predict precisely when we will act to provide spectrum for public safety use from the reserve band, and we cannot predict what spectrum will be given to public safety.[29] Until we decide which

[26] Following release of the *Further Notice*, the Sheriff wrote to the FCC Chief Scientist requesting information on split-channel equipment on the market. The Chief Scientist responded by letter dated May 17, 1985, informing the Sheriff of two known pieces of equipment. The letter indicated that the equipment information given did not represent a thorough search nor was it intended that the equipment would satisfy the Sheriff's needs.

[27] See *Notice of Proposed Rule Making* in General Docket No. 85–172, FCC 85–289, adopted May 31, 1985, 50 FR 25587 (June 20, 1985).

[28] *Ibid.*

[29] We do not accept the Sheriff's arguments that 800–900 MHz frequencies are not suited for public safety use. The actual experience of licensees using frequencies in this region of the spectrum shows that they are comparable to those in the lower UHF television band sought by

Continued

frequencies will be allocated for private land mobile use, we believe it would not be appropriate or advisable to authorize construction of an extensive mobile system on 800–900 MHz frequencies that could ultimately be allocated for other services.[30] Also, until we act on the proposals for allocating the reserve band, manufacturers are unlikely to develop new mobile equipment for the band. Thus, special relief for reserve band frequencies probably would not provide timely relief. Moreover, once we complete our reserve band allocation proceedings, there may be additional delays before the spectrum allocated for public safety can actually be used. Furthermore, as previously noted, the projected demand in Los Angeles for public safety alone is substantial and therefore not likely to be totally satisfied by pending allocations for the private land mobile radio services.

43. As discussed in paragraph 6 of the *Notice*, we also considered the possibility of operation in the 216–225 MHz band. This possibility was opposed by the Amateur Radio Relay League because it would have a serious impact on amateur radio operations in the 220–225 MHz band. Spectrum from the 216–225 MHz band is not feasible because land mobile equipment is not available at these frequencies and is not likely to be developed for a single customer within a reasonable time and at reasonable cost. Nor is the spectrum vacant. Also, if operation were permitted in the 216–225 MHz band, restrictions would be required in order to protect TV Channel 13 (210–216 MHz).

44. Finally, we have considered whether various advance technologies, such as trunking and amplitude companded single sideban, may offer solutions for Los Angeles County public safety requirements. These technologies are not currently available for private radio service use in the 470–512 MHz band. Even if more spectrum efficient equipment were to become available soon in this frequency band, its performance under actual operating conditions would remain to be demonstrated. The Sheriff has shown that the situation in Los Angeles requires immediate attention; action has already been delayed considerably in studying possible remedies. Under these circumstances advanced technologies do not appear to be a viable solution here. We stress, however, that we expect to resolve most spectrum congestion problems of the future by requiring the implementation of more efficient technologies, not by reallocating additional spectrum in individual cases. Further, we expect new and more efficient technologies to provide any future spectrum relief required by the Sheriff.

Decision

45. After considering the need for spectrum for public safety radio communications in Los Angeles and the spectrum options before us, we have concluded that we should make spectrum available and that we should do so by allocating Channel 16 to the land mobile public safety service. We reach this decision only after considerable effort to find a solution that would make an effective law enforcement radio system possible without adversely affecting any broadcast interest or television viewers, existing or prospective.

46. The Sheriff has shown that Los Angeles County's spectrum problem leaves him with an outmoded and inadequate radio system and, thus, impairs his ability to carry out his responsibilities. The problems he faces, as a result of not being able to modernize his system and of not being able to equip patrol officers with portable, hand-held radio units, are more than inconveniences. They affect the public safety and the safety of his officers. No one disputes this, just as no one disputes the critical importance of radio communications to the public safety community generally. In concluding that we should act now to provide public safety spectrum relief in Los Angeles County, we have considered all the alternatives proposed in our *Notice* and *Further Notice* along with the arguments against proceeding now if there will be an adverse impact on the television broacast service. We believe the record before us compels us to act and, with respect to the actual relief available, we find that Channel 16, on balance, is the best choice. Consequently, we are allocating Channel 16 in Los Angeles to the Land Mobile Service for use by the Public Safety Pool.

47. As discussed earlier, neither of the split-channel alternatives offer a viable solution. They would place an unreasonable burden on the Sheriff because the necessary equipment is not available. Further, this would not permit the Sheriff to communicate with other departments. There are concerns about interference to television reception. The channel 19/14 alternative would provide at most an interim solution. Accordingly, we decline to adopt either of the split-channel proposals.

48. This leaves the other two options discussed in the *Further Notice*—TV Channel 16 or Channel 19. Before going further, we wish to emphasize that if there were any other viable option available with no impact on TV broadcast or the Channel 16 applicants, we would exercise it. In weighing the potential impact of using Channel 16 versus Channel 19, it is clear that there would be far greater negative impact if Channel 19 were selected. As pointed out previously, selection of Channel 19 would cause widespread interference from the Sheriff's planned system to an existing television station, to the detriment of large numbers of people as well as the station. In the case of Channel 16, we are dealing with a station that is not yet licensed or on the air. We also have the knowledge that a substitute channel can be made available which will serve Ventura. In addition, to minimize any inequities to the Channel 16 applicants, we have stated that we will attempt to find a substitute channel which can retain the same transmitter location by being short-spaced. Therefore, we believe that Channel 16 is clearly a far less burdensome option than Channel 19.

49. We have weighed the need for spectrum relief for public safety in Los Angeles against any potential impact on the applicants for Channel 16 and the people of Ventura. The Communications Act charges us with making decisions in the public interest. The Act further charges us with "the responsibility to promote the safety of life and property," a responsibility that Congress reiterated

the Sheriff. Furthermore, the most versatile and operationally efficient land mobile equipment being manufactured today is being manufactured for the 800 MHz band. The real problem with these frequencies is their timely availability for an urgent public safety need.

[30] There are outstanding proceedings in which we will decide the ultimate disposition of the reserve spectrum at 800–900 MHz. See *Notices of Proposed Rulemaking* in Gen. Docket 84–1233, "In the Matter of Amendment of Parts 2, 15, 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 806–902 MHz and 935–941 MHz Bands for Private Land Mobile Use," 50 FR 1582 (January 11, 1985), in Gen. Docket 84–1234, "In the Matter of Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services," 50 FR 6149 (February 28, 1985), and in Gen. Docket 84–1231, "In the Matter of Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems," 50 FR 3809 (January 28, 1985).

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when adopting the Communications Amendments Act of 1982.[31] When interests conflict, as they do here, the public interest must be paramount.[32]

50. On the one hand, we must consider the need of Los Angeles County residents for an effective law enforcement service, and the role that public safety mobile communications plays in meeting this need. The need is critical and the role substantial. On the other hand, as elaborated earlier, the impact on the Channel 16 applicants and people of Ventura, if Channel 16 were to be allocated for public safety, is minimized by the facts that a substitute channel can be made available to serve Ventura, the present Channel 16 applicants may be able to use the same transmitter site, and Ventura is already served by a host of TV services. On balance, we find that allocation of Channel 16 to public safety in Los Angeles is in the public interest.

51. In a companion item, we will make a specific proposal that will reflect our best effort to find a substitute for Channel 16 offering the maximum flexibility with respect to site selection and population coverage.[33] The specific procedures for implementing such a substitution will be addressed in that proceeding. In response to CBC's concern about having to start the comparative process over with a new cut-off date for applications, we will not penalize the current Channel 16 applicants for the time and effort expended thus far in prosecuting their applications. After carefully weighing the various policy considerations voiced by commenters in this rulemaking proceeding, we conclude that the public interest fully justifies limiting eligibility for any newly allotted Ventura channel to the displaced Channel 16 applicants. Those applicants will therefore be asked to inform us whether they wish to pursue their applications on the substitute channel. If both applicants fail to state their intention to apply then the newly allotted channel would be opened up to other applicants. We will keep the CBC and CITC applications pending for consideration once a substitute channel is allotted so that the hearing on the applicants' qualifications in *California Broadcasting Corporation, et al.*, Dockets 80-698, 80-699, can continue without interruption.

52. To effect this reallocation, we are amending the Table of Allocations in Part 2, the Table of Assignments in Part 73, and Subpart L in Part 90 of the Commission's Rules by deleting Channel 16 from the list of channels available for broadcasting in Ventura and by adding Channel 16 to the list of frequencies available for land mobile use in Los Angeles, limiting its availability to the Public Safety Pool. Somewhere in this spectrum, we expect to be able to provide for the 55 duplex channel system described by the Sheriff. We will also accept applications for Channel 16 frequencies from public safety eligibles in accordance with the procedures in Part 90.

53. The Sheriff has stated that "It is our intention, if granted the frequencies requested, to abandon practically all of the frequencies we currently employ upon migration to the new system."[34] We expect the Sheriff to abide by this commitment and to vacate his existing frequencies to the greatest extent possible in the interests of spectrum efficiency, as soon as his new system is operational.[35]

Final Regulatory Flexibility Analysis

54. Pursuant to section 605 of the Regulatory Flexibility Act of 1980, Pub. L. 96-354, we find that the action herein will not have a significant impact on a substantial number of small businesses. It does not displace anyone assigned to the spectrum being reallocated and only provides spectrums which is currently unused by its assigned service, for use by public safety. Providers of equipment for public safety uses may be small businesses, and, in this regard, the action has a positive impact.

Paperwork Reduction Act Statement

55. The decision contained herein has been analyzed with regard to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

56. Accordingly, it is ordered that, Parts 2, 73, and 90 of the Commission's Rules are amended as set forth in Appendix B attached hereto effective March 3, 1986. The authority for this action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

57. It is further ordered that, the pending applications of Channel Island Television Corporation and California Broadcasting Corporation for Channel 16, Ventura, California, are to be held pending subject to the outcome of a separate proceeding to replace Channel 16 with another allotment.

58. It is further ordered that, the Secretary shall send copies of the *Report and Order*, to the following applicants for Ventura, California, Channel 16:

1. California Broadcasting Corporation, 223 E. Thousand, Oaks, Thousand Oak, California 91360
2. Channel Islands Television Corporation, 10635 Riverside Drive, Toluca Lake, California 91602

59. It is further ordered that this proceeding is terminated.

60. For further information concerning this action, contact Mr. Julius Knapp at (202) 653-8106 or Mr. Donald Precure at (202) 653-8117, of the Office of Science and Engineering.

Federal Communications Commission. *

William J. Tricarico,

Secretary.

* See Attached Statement of Commissioner Quello following Appendices A and B.

Appendix A

Commenters on the Notice of Proposed Rulemoking:

American Petroleum Institute, Central Committee on Telecommunications
Associated Public-Safety Communications Officers, Inc.
Association of Maximum Service Telecasters*
California Broadcasting Corporation**
California Public-Safety Radio Association, Inc.
California Peace Officer's Association
California Public-Safety Radio Association, Inc.
City of Glendora
City of Pasadena
City of San Buenaventura
County of Los Angeles, Board of Supervisors*
County of Orange, California
Letters of endorsement attached from:
City of Santa Ana, City of Garden Grove, City of Irvine, City of Orange, City of Ahaheim
County of Riverside
County of San Bernardino
County of Ventura, Board of Supervisors
Electronic Industries Association, Consumer Electronics Group
International Association of Chiefs of Police
International Association of Fire Chiefs, Inc.
International Municipal Signal Association
KGET TV, Inc. (Channel 17 Bakersfield)**
KSCI, Inc. (Channel 18, San Bernardino)*
Los Angeles County Police Chief's Association
Los Angeles County Sheriff's Department*
Los Angeles Police Department
National Association of Broadcasters*
National Translator Association
Pasadena Police Department
Pomona Police Department
Special Industrial Radio Service Association, Inc.

Comments on the Further Notice of Proposed Rulemaking were Filed by:

Association of Federal Consulting Engineers
Association of Maximum Service Telecasters
Beverley Hills Police Department
California Public-Safety Radio Association, Inc.
Consumer Electronics Group, Electronic Industries Association
County of Orange
Glendale Police Department
KPBS-TV Channel 15 San Diego
Los Angeles County Chiefs of Police Association
Los Angeles County Sheriff's Department
National Association of Public Television Stations
National Association of Broadcasters
Pasadena Police Department
Raymond C. Trott Consulting Engineers, Inc.
Station KSCI-TV, Channel 18, San Bernardino
Santa Monica Police Department
Society of Broadcast Engineers

Reply Comments on the Further Notice of Proposed Rulemaking were Filed by:

Association of Maximum Service Telecasters
California Broadcasting Corporation
Consumer Electronics Group
Electronic Industries Association
County of Los Angeles
County of Orange
County of Ventura Board of Supervisors
County of Ventura Communications Dept.
Honorable Glenn M. Anderson
Honorable Anthony C. Beilenson
Honorable Howard L. Berman
Honorable Alan Cranston
Honorable Julian C. Dixon
Honorable Robert K. Dornan
Honorable David Dreier
Honorable Bobbi Fiedler
Honorable Mervyn M. Dymally
Honorable Augustas F. Hawkins
Honorable Duncan L. Hunter
Honorable Mel Levine
Honorable Jerry Lewis
Honorable Daniel E. Lungren
Honorable Matthew G. Martinez
Honorable Carlos J. Moorhead
Honorable Edward R. Roybal
Honorable William M. Thomas
Honorable Esteban Edward Torres
Honorable Henry A. Waxman
Honorable Pete Wilson
International Association of Chiefs of Police
KGET-TV Channel 17 Bakersfield
KPBS-TV Channel 15 San Diego
Los Angeles County Sheriff's Department
Major City Chiefs of Police Association
National Association of Broadcasters
Ventura County Sheriff's Department

Appendix B

A. Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation in Part 2 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS—[AMENDED]

2. In § 2.106, the list of footnotes following the allocation table is amended by revising footnote NG66 as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Non-Government Footnotes

* * * * *

NG66 The frequency band 470–512 MHz is allocated for use in the broadcasting and land mobile radio services. In the land mobile services it is available for assignment in the domestic public, public safety, industrial, and land transportation radio services at, or in the vicinity of 13 urbanized areas of the United States, as set forth in the table below. Additionally, in the land mobile services, TV Channel 16 is available for assignment in the public safety radio services at, or in the vicinity of Los Angeles. Such use in the land mobile services is subject to the conditions set forth in Parts 22 and 90 of this chapter, CFR 47.

Urbanized area	TV channel
New York-Northeastern New Jersey	14, 15
Los Angeles	14, 20
Chicago-Northwestern Indiana	14, 15
Philadelphia, PA-New Jersey	19, 20
Detroit, Michigan	15, 16
San Francisco-Oakland, California	16, 17
Boston, Mass.	14, 16
Washington, D.C.-Maryland-Virginia	17, 18
Pittsburgh, PA	14, 16
Cleveland, Ohio	14, 15
Miami, Florida	14
Houston, Texas	17
Dallas, Texas	16

B. Part 73 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation in Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended: 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

§ 73.606 [Amended]

2. The table in § 73.606(b) is amended by revising the entry for Ventura.

* * * * *

CALIFORNIA

	Channel No.
Ventura	41+

C. Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation in Part 90 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

§ 90.303 [Amended]

2. The Table in § 90.303 is amended by adding a footnote for Los Angeles:

FREQUENCY AVAILABILITY FOR LAND MOBILE USE

Urbanized area
Los Angeles, Calif.*

* Channel 16 is available in Los Angeles for use by public safety users.

* * * * *

§ 90.311 [Amended]

2. The Table in § 90.311 is amended by adding Channel 16 to the entry for Los Angeles as follows. Channel 14 and 20 are reprinted for the convenience of the reader.

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[31] 47 U.S.C. 332(a); H.R. Rep. No. 765, 97th Cong., 2nd Sess. 52 (1982). *See generally Neighborhood TV Company, Inc.* v. *F.C.C.*, 742 F.2d 629, 642–643 (D.C. Cir. 1984); *National Association of Broadcasters* v. *F.C.C.* 740 F.2d 1190, 1213 (D.C. Cir. 1984).

[32] *See generally Writers Guide of America, West, Inc.*, v. *FCC* 609 F.2d 355, 362 (9th Cir. 1979), *cert. denied*, 449 U.S. 824 (1980).

[33] See *Notice of Proposed Rulemaking* in Mass Media Docket No. 85-390, FCC 85-642, adopted December 10, 1985, 50 Fed. Reg. 52806 (Dec. 26, 1985)

[34] See Petition of the Sheriff of Los Angeles County, September 1981, at p. 18.

[35] The Sheriff mey have need for continued use of at least some of his 39 MHz frequencies to achieve coverage in some mountainous areas. The Sheriff is expected, in that case, to explain what frequencies are required and why.

* Filed comments and reply comments.

** Filed reply comments only.

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FREQUENCIES ASSIGNED IN SERVICE POOLS

Urbanized Area. (Channel assignment)	Public Safety Pool: Fire, Police, Local Government, Highway Maintenance and Forestry Conservation Radio Service: Base and Mobile	Public Safety Pool: Fire, Police, Local Government, Highway Maintenance and Forestry Conservation Radio Service: Mobile
Los Angeles		
Ch. 14	470.3125 to 471.1375	473.3125 to 474.1375
Ch. 16	482.0125 to 484.9875	485.0125 to 487.9875
Ch. 20	506.3125 to 507.2625	509.3125 to 510.2625

Concurring Statement of Commissioner James H. Quello

December 10, 1985.

In re: The Report and Order Amending Parts 2, 73, and 90 of the Commissioner's Rules and Regulations to Allocate Additional Channels in the Band 470–512 MHz for Public Safety and Other Land Mobile Services (the reallocation of Ventura, California's UHF–TV Channel 16 to the Los Angeles County Sheriff's Department).

In 1984, I "reluctantly" concurred with the majority in adopting the Notice of Proposed Rulemaking seeking a solution to the Los Angeles County Sheriff's Department's need for spectrum. I questioned the need for interim relief as expressed by the Sheriff, as well as the appropriateness of the proposals contained in the NPRM.

Today, I reluctantly concur to the Report and Order reallocating Channel 16 from Ventura to meet public safety needs of Los Angeles, or more specifically, to meet the needs of the Los Angeles County Sheriff's Department. My reluctance in concurring should not be interpreted as a strike against public safety. Both Congress and this Commission have long recognized the important role of public safety services and the need for adequate spectrum to provide these services, for example (see PR Docket 84–232). My reluctant concurrence instead addresses the Report and Order's endorsement of inefficient spectrum use.

The real need for the Los Angeles County Sheriff, the need for spectrum to accommodate new portable hand-held units, can be met in part by reconfiguring the existing radio system to accommodate spectrum-efficient equipment. I am told that such equipment is available today and would not require the use of new, untested technology. Spectrum efficient equipment may prove to be somewhat more costly and, in the specific case of the Sheriff, may not provide for all that was requested. The long term benefits of greater spectrum use and efficiency, however, must be taken into consideration not only by the L.A. County Sheriff's Departmer.t, but also by all those in the public safety community.

Further, today's action in effect rewards a failure to plan for the future and a lack of foresight to obtain additional frequencies when they were available.[1] Early on I questioned the claim made by the Sheriff's office concerning congested spectrum, since our own Field Operations Bureau's analysis indicated otherwise. Nontheless, the possibility of spectrum congestion would indicate an even more dire need to utilize existing and future spectrum allocations in an efficient manner.

I am concerned that the Order adopted today will send the wrong message to the public safety community that communication needs be met by just acquiring additional spectrum. This is the wrong message. Public safety licensees like all licensees must come to grips with the excessive demands being placed on limited spectrum. To accommodate legitimate demands, more efficient use of the spectrum must be made. Because my colleagues have assured me that the situation of the Los Angeles County Sheriff's Department is unique, I am convinced that the public interest needs of the residents of Los Angles County warrant my concurrence with the Order. Furthermore, the length of time the Commission has taken to address the needs of the Sheriff has been excessive, thereby creating a greater urgency to provide spectrum relief.

The applicants for Channel 16 will be disserved by reallocating Channel 16 to the public safety service in Los Angeles. The Commission must share the blame for this disservice. Applicants for Channel 16 have been in hearing for approximately five years adding the unacceptable burdens of delay and uncertainty to an already lengthy comparative proceeding. Nonetheless, the Mass Media Bureau has made a significant effort to find a reasonable substitute for Channel 16 that will provide service to the citizens of Ventura.

For the reasons enumerated above, I concur.

[FR Doc. 86–1983 Filed 2–3–86; 8:45 am]

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[1] *See Second Report and Order* in Docket No. 18262 (an inquiry relative to the future use of the frequency band 806–960 MHz and amendment of Parts 2, 18, 21, 73, 74, 89, 91, and 93 of the rules relative to operations in the land mobile services between 806 and 960 MHz), 46 FCC 2d 752 (1974), reconsidered, *Memorandum Opinion and Order*, Docket No. 18262, 51 F.C.C.2d 945 (1975); and *Second Report and Order* in PR Docket No. 79–191 (amendment of Part 90 of the Commission's Rules to release spectrum in certain MHz bands and to adopt rules and regulations which govern their use; and amendment of the Commission's Rules to facilitate authorization of wide-area mobile radio communication systems; and action concerning the multiple licensing of 800 MHz radio systems; and amendment of the Commission's Rules to allow transmission of non-voice signals at 800 MHz), 90 F.C.C.2d 1281 (1982).

47 CFR Part 15

[Gen. Docket No. 85–129; RM–4427; FCC 86–33]

Amendment to the Rules To Permit the Operation of Low Power Communication Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amends Part 15, Subpart D of its Rules to allow the operation of low power communication devices in the 1.6 to 10 MHz band in response to a petition filed by the Knogo Corporation (RM–4427). The intended effect is to provide additional frequencies for low power communication devices, including wideband and/or swept frequency systems.

EFFECTIVE DATE: March 3, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Liliane Volcy, Office of Science & Technology, Washington, DC 20554, Tel: (202) 653–7316.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, Radio, Reporting requirements.

Report and Order

In the matter of the amendment of Part 15 of the Commission's Rules to permit the operation of low power communication devices in the 1.6–10 MHz band; Gen. Docket 85–129, RM–4427.

Adopted: January 14, 1986.
Released: January 23, 1986.

By the Commission.

Introduction and Summary

1. This proceeding was initiated in response to a petition for rule making filed by the Knogo Corporation (Knogo) [1] with respect to the Commission's Rules [2] affecting the operation of wideband swept frequency field disturbance sensors [3] (WBSS) in the upper MF and lower HF regions of the spectrum. [4] Knogo, in its petition, disputed the suitability of the Commission's Rules for WBSS, and in particular, the low permissible field strength levels imposed on operation in the 2–10 MHz band, and requested that technical standards which yield a more efficient use of such systems be established.

2. More specifically, Knogo stated that WBSS could be operated efficiently, under the current rules, only in the three following bands: 1.7–2.3, 4.05–4.95, and 7.4–9.0 MHz. At other frequencies in the range of interest, Knogo contended that the field strength limit imposed by the Commission, of 15 uV/m at a distance of the wavelength divided by 2 pi was too difficult to meet whereas, in the three bands previously listed, the allowable limit of 100 uV/m at 30 meters assured enough flexibility to design efficient and economic systems. Also, Knogo indicated that it had voluntarily restricted the design of its systems to the 1.7–2.3 MHz band in order to avoid multi-user interference problems (false alarms, etc.) with equipment manufactured by its competitors which, for the most part, is designed in two upper bands. Knogo argued that the regulations enforced by the Commission unjustly limited its share of the marketplace and its desire to respond to the growing demand for more sophisticated and inexpensive systems. Knogo urged the Commission to amend its rules by allowing the operation of WBSS anywhere from 2 to 10 MHz subject to an in-band field strength limit of 100 uV/m at a distance of 30 meters. Such a rule change, Knogo maintained, would provide design flexibility, and would continue to assure a low incidence of interference between multi-users and to authorized radio services.

3. In response to the subject petition, the Commission released a *Notice of Proposed Rule Making* (*Notice*) [5] in which it acknowledged the difficulties imposed by the technicial requirements in the 2–10 MHz frequency range, and offered solutions to some of the problems enumerated in the Knogo petition. In light of the fact that no provisions for the non-licensed operation of low power communication devices (PLDCs) [6] in the upper MF and lower HF regions of the spectrum had been made, [7] and that other manufacturers had shown an interest in designing Part 15 devices in the frequency range of interest, [8] the Commission expanded the scope of the petition and proposed, in the *Notice*, technical standards which would allow the use of any LPCD from 1.6 to 10 MHz, including wideband and/or swept frequency devices.

4. Most comments on the *Notice* were very supportive of the Commission's proposals. Strong support was received from small manufacturers of security and alarm systems which have not been able, in the past, to compete with the larger industrial concerns because of the limited available frequencies and the high cost of designing similar systems in other regions of the spectrum. The *Notice* was also viewed as a responsive approach to technological innovation and an attempt at establishing uniform specifications with other countries since many American manufacturers of security devices, such as Knogo, also sell on the European or Canadian markets. The *Notice* was not only considered to provide for the needs of the security device industry, but also the low power communication device market. Many new consumer applications in the 1.6–10 MHz band, such as in-house data communication services, remote controllers, real estate advertising services, and low power AM radio services on college campuses, can evolve from the Commission's expansion of the scope of this proceeding beyond that of the Knogo petition.

5. Some parties expressed concern over possible interference problems between the operation of non-licensed LPCDs and authorized radio services, and measures that the Commission would take if such problems occurred. The major topics addressed in the comments were operating characteristics, interference control, and methods of measurements. A list of the parties who filed comments and reply comments to the *Notice* is given in Appendix A. The new rules adopted herein acknowledge, to the extent practicable, the comments filed, and are specified in Appendix B.

Operating Characteristics

6. In the past decade, the industry has found the MF and HF regions of the spectrum technologically and economically attractive for the operation of WBSS, especially for security and control applications in which plastic tags are placed on the objects to monitor. In this proceeding, we focus on the 1.6 to 10 MHz range and on possible ways to make more efficient and effective use of the radio spectrum by the industry. We have received requests in this and other proceedings to examine the possibility of opening the 10–25 MHz range of the spectrum for the use of LPCDs. [9] However, as was stated in the *Notice*, due to the limited amount of information available at this time regarding the impact of such operation, we shall consider the higher part of the frequency range in question at a later date. In the *Notice*, in order to allow more flexible and efficient utilization of the 1.6 to 10 MHz frequency range, we proposed not only the operation of WBSS, but also of any LPCD, as long as specified field strength and conducted voltage levels were not exceeded.

7. We proposed emission limits on the operation of LPCDs from 1.6 to 10 MHz which, we believe, minimize the interference potential to authorized radio services regardless of the modulation technique utilized. A field strength limit of 100 uV/m at 30 meters in-band, and a conduction limit of 250 uV from 450 kHz to 30 MHz were advanced. The out-of-band field strength limits proposed were considered equivalent to those listed under §§ 15.830 and 15.832. It is important to note that these field strength limits were derived in order to protect the licensed radio services from consumer products used in any type of environment, and predominantly, residential areas (where interference problems are more likely to occur).

8. Although most parties supported the operation of general purpose LPCDs within the subject frequency range, in accordance with the proposed technical standards, the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG) and the Association of Federal Communications Consulting Engineers (AFCCE) questioned the necessity of allowing LPCDs from 1.6 to 1.705 MHz in view of the expansion of the AM broadcasting band by 1990. [10] We note that non-licensed AM transmitters which are used for advertising purposes by real estate companies, radio tunnel services, and on college campuses, etc. are already permitted to operate below 1.6 MHz under 47 CFR §§ 15.111–15.113, and have not created problems for broadcasters. We also note that the broadcasting and public safety communities, whose services could also be affected from the operation of LPCDs, have not objected to our proposal. However, we understand the concerns of EIA and AFCCE. In view of the fact that quite diverse LPCDs could be operated under the new rules, we shall account for the coming expansion of the AM broadcasting services by specifying for the time being, a lower field strength than the one proposed in the *Notice*. More specifically, the limits specified in §§ 15.111 and 15.113 shall apply to the non-licensed operation of LPCDs from 1.6 to 1.705 MHz. Of course, all uses of the band 535–1705 kHz are subject to whatever steps the Commission may take to improve the AM broadcasting service.

9. The Amateur Radio Relay League, Inc. (ARRL) recommended that the operation of LPCDs be restricted to industrial, commercial, or business applications. The potential for interference, the ARRL stated, increases in residential areas due to the geographic proximity to amateur radio receivers which are very sensitive tc noise. Further, the ARRL suggested that, preferably, the operation of LPCDs in the 1.8–2.0, 3.5–4.0, and 7.0–7.3 MHz

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bands should be prohibited. While the ARRL claimed that LPCDs operating in the 3.5–4.0 MHz range will be a great source of interference to its services of interest, Mr. Richmond, an amateur radio operator, stated, to the contrary, that LPCDs will most likely be the victims in any interference situation. In view of the fact that amateur radio services operate with much greater power than LPCDs and that the field strength levels proposed for the use of LPCDs in the subject frequency range are below ambient noise, we believe that Mr. Richmond's comments represent a more accurate description of an interference case. The same reasoning can also be applied to the 1.8–2.0 and 7.0–7.3 MHz bands since conditions similar to the ones under the 3.5–4.0 MHz band are present in those frequency ranges. It is significant to note that the principal operating condition of LPCDs under Part 15 is a non-interference requirement to authorized radio services. As Mr. Richmond pointed out in his comments, the primary difficulty would thus seem to lie actually in the acceptance by LPCD operators of any interference caused by the operation of authorized radio services.

10. Another question of importance is whether the prescribed field strength limits within that range will be adequate if a proliferation of equipment occurs. We believe that the limits adopted herein will serve such a purpose, especially in view of the fact that they are below typical man-made ambient noise levels found in rural, commercial, industrial, or residential areas within that frequency range.[11] Also, the current rules already allow the use of these bands at lower field strength levels, but without any restriction on the conducted voltage levels.[12] It is important to note that conducted interference is more characteristic than radiated interference at frequencies below 30 MHz. Therefore, our proposal to restrict the conducted voltage levels and to slightly increase the permissible field strength levels should not have adverse consequences. Further, our Field Operations Bureau (FOB) undertook a broad investigation in parallel with this proceeding in an attempt to assure that FCC authorized WBSS are still operating within the framework of the regulations, and that similar transmissions in the frequency range in question do not interfere with amateur and other radio services.[13] This investigation was aided by radio amateur and other amateur groups. The study concludes that there is little chance of interference being caused to authorized communication users.

11. In the *Notice*, we proposed the utilization of any type of modulation technique, emission (with the exception of damped waves, as specified under §§ 2.201(f) and 15.105), and bandwidth for LPCDs in the 1.8–10 MHz range.[14] Such a proposition was based on our objectives to enhance technological innovation and to encourage more efficient designs. The National Telecommunications and Information Administration (NTIA), an arm of the Department of Commerce, was the only party which questioned the use of any modulation technique. Earlier in this proceeding, NTIA suggested that only LPCDs using a sweep of at least ±5% of the fundamental frequency be allowed to operate due to the increased likelihood of interference to government aeronautical, maritime mobile and other services from narrowband or stationary signals in the 2–10 MHz range. We believe that lowering the permissible field strength level for devices using less than a ±5% bandwidth centered on the carrier frequency will answer NTIA's concerns. As indicated in § 15.114(b) of Appendix B, we shall limit the field strength levels for narrowband systems or devices sweeping less than ±5% of the center frequency from 1.705 to 10 MHz to 15 uV/m or the (bandwidth of the device in kHz)/(center frequency of the device in MHz) uV/m at a distance of 30 meters, whichever is higher. Most of the equipment utilized under the authorized radio services from 1.6 to 10 MHz employs amplitude or frequency modulation techniques (AM or FM) with narrow bandwidth. We must, therefore, emphasize that the type of emissions or modulation techniques chosen by a manufacturer should be such as not to increase the risk of interference to and from narrowband AM and FM modulated signals, and other modulation techniques utilized by the authorized radio services. This should be observed especially for one-of-a-kind systems which are known to be located near authorized (government and non-government) radio service installations.

Interference Control

12. As stated in § 15.3, the operation of Part 15 devices, including LPCDs authorized under this proceeding, must be on a non-interference basis to authorized radio services. Moreover, Part 15 devices must accept any interference received from the operation of authorized radio services. To further enforce this policy, we shall require, as we have done in the past for other Part 15 LPCDs, that manufacturers place a statement in the instruction manual and/or a label on the device attesting to such operating conditions.[15] *See* § 15.132, as amended in this proceeding.

13. The same marketing regulations applied normally to Part 15 transmitters will be used. That is, certification shall be required from any party assuming the responsibility of marketing an LPCD in the 1.6 to 10 MHz range under Part 15. Certification is a grant of authorization issued by the Commission based on representation and test data submitted by the applicant. The FCC may also require the applicant to submit one or more sample units for further testing. Certification attaches to all subsequently produced units which are identical. An application FCC Form 731, reports of measurements, photographs, etc. are usually required to be filed for certification. Certain changes in certified equipment are also permitted without the need for FCC authorization.[16] In view of the relaxation of the rules, we shall rely heavily on the certification procedure and on our sampling program to assure continued compliance and low incidences of interference.

Methods of Measurements

14. Dash, Straus and Goodhue, Inc. recommended that the Commission adopt, for measurements below 30 MHz, procedures similar to the ones utilized by foreign government agencies such as the German FTZ (*Fernmeldetechnisches Zentralamt*). The measurement techniques used by the FCC laboratory are similar to those used by the FTZ. The major difference is that the FCC evaluates the rate of decay of the fields for each device and frequency whereas the FTZ assumes a given rate of decay.[17] The FCC technique gives a more accurate recording of how the field strength levels are propagated through space, and should, therefore, be continued.

15. Measurements should be undertaken on an open field site or a site which assures repeatable results. The Commission will test equipment using a loop antenna at frequencies below 30 MHz, and a half-wave, tuned dipole at frequencies above 30 MHz. The Commission will be halting the sweep of WBSS when undertaking measurements. For conducted voltage measurements, the relevant guidelines in MP-4, "FCC Methods of Measurements of Radio Noise Emissions from Computing Devices," shall be followed. The appropriate sections of MP-1, "FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers," and OST Bulletin No. 55, "Characteristics of Open Field Test Sites," should be consulted for guidance in the area of field strength measurements. For calculating rates of decay and for field strength measurements below 30 MHz, FCC/OST bulletin MP-5, "Methods for Measurements of Radio Noise Emissions from Industrial, Scientific, and Medical Equipment," should also be consulted for guidelines. It is important to note that at frequencies below 30 MHz the test site described in OST Bulletin No. 55 may lead to some reading errors due to the approximations made. We recognize also that other measurement errors will occur when testing WBSS due to the fact that we shall be halting their sweep. However, such measures are necessary pending further development of measurement techniques and the procurement of instrumentation by the FCC laboratory which will help us in solving such problems. Measurement procedures applicable to wideband emissions are currently being studied. Parties undertaking measurements are advised to discuss the matter with the FCC Sampling and Measurements Branch, (tel: (301) 725–1585), prior to submitting their filings.

Final Regulatory Analysis

16. Pursuant to 5 U.S.C. 601 *et seq.*, and Initial Regulatory Flexibility Analysis was incorporated in paragraph 11 of the Notice of Proposed Rule Making. In paragraph 11 of the Notice, written comments on this Analysis were solicited. No comments in response to this request were received.

I. Reason for action

This proceeding is in response to a petition for rulemaking requesting that additional frequencies be allowed for the operation of wideband swept frequency field disturbance sensors.

II. The objective

The objective of this proceeding is to enhance the use of new technology for low power communication devices in the 1.6–10 MHz band without increasing the interference potential to authorized radio services.

III. Legal basis

The action proposed is in accordance with sections 4(i), 302(a), 303(g), and 303(r) of the Communications Act of 1934, as amended, which permit the Commission to make reasonable regulations governing the interference potential of radio frequency equipment and to promote the larger and more effective use of radio in the public interest.

IV. Entities affected; nature of economic impact; significant alternatives

This action is expected to have a beneficial economic impact on manufacturers since it will allow greater design flexibility. No significant alternatives are apparent at this time.

V. Recording, recordkeeping and other compliance requirements

None beyond that required under the existing regulations.

Ordering Clauses

17. Accordingly, it is ordered that, pursuant to sections 1, 4(i), 302, and 303 of the Communications Act of 1934, as amended, Part 15 is amended, as shown in Appendix B, effective March 3, 1986. It is also ordered that cow identification systems authorized under the terms of the Order referenced in footnote 8, below, are hereby grandfathered, subject only to compliance with 47 CFR 15.3 and 15.103. It is further ordered that this proceeding is terminated. For further information on this proceeding, contact Liliane Volcy, Office of Science & Technology, tel: (202) 653–8247.

Federal Communications Commission

William J. Tricarico,

Secretary.

Notes

[1] *See Petition for Rule Making*, RM–4427 (Public Notice, April 19, 1983, Report No. 1401).

[2] *See* 47 CFR Part 15, Subpart F. *See* in particular § 15.305.

[3] A field disturbance sensor is defined in 47 CFR 15.4(j) as a device which establishes a radio frequency (RF) field in its vicinity and detects changes in that field resulting from the movement of persons or objects within the RF field. Examples are sensors for automatic door openers in commercial establishments, intrusion detectors, and anti-shoplifting equipment for retail stores. Wide band swept frequency field disturbance sensors (WBSS) utilize larger bandwidth than conventional equipment in order to assure a better detection of objects.

[4] The MF or Medium Frequency range of the spectrum is from 300 kHz to 3 MHz. The HF or High Frequency range of the spectrum is from 3 to 30 MHz.

[5] 50 Fed. Reg. 19551, FCC 85–212, ——FCC 2d——(1985).

[6] A low power communication device (LPCD) is defined under 47 CFR 15.4(f) as a restricted radiation device (i.e. a device in which the generation of RF energy is intentional), exclusive of those employing conducted or guided RF techniques, used for the transmission of signs, signals (including control signals), writing, images, and sound or intelligence of any nature by radiation of electromagnetic energy.

[7] Under the present rules general purpose LPCDs can be operated at any frequency below 1600 kHz (except from 490 to 510 kHz), from 26.995 to 27.255 MHz (six channels only), from 49.830 to 49.890 MHz (five channels only), at 40.66 MHz, or any frequency above 70 MHz.

[8] *See Order Granting Waiver*, FCC 81–322, released July 21, 1981 (dealing with the operation of low power communication system at 2.5 and 8.0 MHz for the purpose of identifying individual cows). *See also* letter from CX Inc. to FCC, Technical Standards Branch, dated February 25, 1985.

[9] *See* comments from Schlage Electronics in Gen. Docket 20620. *See also* comments of 3M in this proceeding.

[10] *See* Gen. Docket 84–467 (dealing with the preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the planning of broadcasting in the 1605–1705 kHz band).

[11] Cf. CCIR (French acronym for International Radio Consultative Committee) Report No. 258–4, "Man-made Radio Noise," (1982).

[12] *See* 47 CFR 15.7 and 15.305.

[13] *See* FOB Memorandum from Chief of the Inspections & Investigations Branch to Assistant Chief of the Enforcement Division, re. "Report regarding field disturbance sensors—Docket 85–129," dated November 12, 1985.

[14] A damped wave is generally defined as a wave in which, at every point, the amplitude of each sinusoidal component is a decreasing function of the time. *See* Institute of Electrical and Electronics Engineers (IEEE) Standard Dictionary of Electrical and Electronics Terms, IEEE centennial edition, ANSI/IEEE Std. 100–1984.

[15] *See* 47 CFR 15.131–15.133.

[16] *See* 47 CFR 2.1031–2.1045 for additional information.

[17] The FTZ assumes the following attenuation factors: (1) Below 1 MHz, the inverse distance cubed, (2) from 1 to 10 MHz, the inverse distance squared, and (3) above 10 MHz, the inverse distance.

Appendix A

The following parties filed comments on the Notice of Proposed Rule Making in Gen. Docket 85–129:

Comments:

1. American Radio Relay League, Inc. (ARRL).
2. Association of Federal Communications Consulting Engineers (AFCCE).
3. CX, Inc. (CX).
4. Dash, Straus and Goodhue, Inc.
5. Electronic Industries Association/Consumer Electronics Group (EIA/CEG).
6. Fifth Generation Audio.
7. Knogo Corporation (Knogo)
8. Cortland E. Richmond.
9. San Diego Gas Electric Co.
10. 3M.

Reply comments: Knogo Corporation.

Appendix B

47 CFR Part 15 is amended as follows:

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PART 15—[AMENDED]

1. The authority citation for Part 15 is revised to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise note. Interpret or apply Sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

2. In Part 15, §§ 15.111 and 15.113 are amended by removing the number "1600" wherever it appears and inserting in its place the number "1705".

3. In Part 15, the current § 15.115 is removed and the current § 15.114 is redesignated as § 15.115.

4. In Part 15, a new § 15.114 is added to read as follow:

§ 15.114 Operation between 1.705 and 10 MHz (including swept frequency).

A low power communication device, including one which utilizes swept frequency techniques, may be operated in the 1.705 to 10 MHz band, provided it meets the following requirements:

(a) Operation shall be confined to the 1.705 to 10 MHz band.

(b) For devices with a bandwidth at least ± 5% of the center frequency, the field strength of emissions from 1.705 to 10 MHz shall not exceed 100 uV/m at 30 meters. For devices with a bandwidth less than ± 5% of the center frequency, the field strength of emissions from 1.705 to 10 MHz shall not exceed 15 uV/m or (the bandwidth of the device in kHz)/(the center frequency of the device in MHz) uV/m at a distance of 30 meters, whichever is higher. *Note:* For the purposes of this Section, bandwidth is determined at the points 6 dB down from the modulated carrier.

(c) The field strength of emissions outside the 1.705–10 MHz band shall not exceed:

Frequency range (MHz)	Distance (meters)	Field strength (uV/m)
Below 88	30	10
88 to 216	30	15
Above 216	30	20

(d) A low power communication device which is designed to be connected to a public utility power line shall limit the radio frequency voltage conducted back into the power lines to not more than 250 uV over the frequency range 450 kHz to 30 MHz. A 50 uH/50 Ohm LISN shall be used to measure the conducted voltage levels, as specified in the appropriate sections of MP–4, "FCC Methods of Measurements of Radio Noise Emissions from Computing Devices."

5. In Part 15, a new paragraph (d) is added to § 15.132 to read as follows:

§ 15.132 Labeling and identification requirements.

* * * * *

(d) When it is not practicable to affix the label required under this section due to the size, use of the device, or other factors, the wording specified under paragraph (a) or (b) above and the FCC identifier (when applicable) shall, as an alternative, be placed on the first page of the instruction manual or a pamphlet given to the user.

6. In Part 15, paragraph (a) of § 15.141 is revised and a new paragraph (d) is added to read as follows:

§ 15.141 Measurement procedure.

(a) Any procedure acceptable to the Commission may be used to measure the RF energy emitted or conducted by a low power communication device. For swept frequency equipment, measurements shall be made with the frequency sweep stopped. Field strength measurements shall be made, to the extent possible, on an open field site.

* * * * *

(d) For devices operating between 1.705 and 10 MHz, the following shall be observed:

(1) The minimum bandwidth of the measuring instrumentation shall be:

—200 Hz for measurements below 150 kHz

—9 kHz for measurements from 150 kHz to 30 MHz

—100 kHz for measurements from 30 to 300 MHz

(2) The antenna to be used for field strength measurements shall be:

—below 18 MHz, a shielded balance loop

—from 18 to 30 MHz, a shielded balanced loop or calibrated tuned half-wave dipole

—from 30 to 300 MHz, a calibrated tuned half-wave dipole

9. In Part 15, the table in § 15.142 is revised to specify the frequency range of measurements for devices operating from 1.6 to 10 MHz as follows:

§ 15.142 Range of measurements.

* * * * *

Frequency band in which the device operates	Frequency range of measurements	
	Lowest frequency	Highest frequency (MHZ)
Below 1705 kHz	9 kHz	20
1.705 to 10 MHz	Lowest frequency generated in the device.	300
26.97 to 27.27 MHz	Lowest frequency generated in the device.	400
40.66 to 40.70 MHz	Lowest frequency generated in the device or 25 MHz, whichever is lower.	1000
49.82 to 49.90 MHz	Lowest frequency generated in the device or 25 MHz, whichever is lower.	1000
70 to 108 MHz	do	1000
108 to 500 MHz	do	2000
500 to 1000 MHz	Lowest frequency generated in the device or 100 MHz, whichever is lower.	5000 MHz

8. In Part 15, paragraph (c) of § 15.305 is revised to read as follows:

§ 15.305 General technical specifications.

* * * * *

(c) A field disturbance sensor, as an alternative to paragraphs (a) and (b), may be operated under the provisions of Subpart D of this part.

* * * * *

§§ 15.321 and 15.323 [Removed]

9. In Part 15, §§ 15.321 and 15.323 are removed.

[FR Doc. 86–1961 Filed 2–3–86; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 522 and 552

[Acquisition Circular AC–86–2]

General Services Administration Acquisition Regulation; Repeal of Daily Overtime Requirement

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular temporarily revises the General Services Administration Acquisition Regulation (GSAR) to implement the provisions of Pub. L. 99–145, the Department of Defense Authorization Act, that amended Contract Work Hour and Safety Standards Act and the Walsh-Healy Public Contracts Act to eliminate the requirement that contractors pay employees performing on Federal or Federally assisted construction contracts and Federal service or supply contracts, time and one-half their basic rate of pay for hours worked in excess of 8 hours per day on or after January 1, 1986. The intended effect is to provide guidance to GSA contracting activities pending a revision to the regulation.

EFFECTIVE DATE: All solicitations issued on or after January 15, 1986, should comply with the requirements of the revised regulation. Solicitations issued and contracts awarded before January 15, 1986 need not be modified to incorporate the revised contract clauses.

Expiration date: July 15, 1986, unless canceled earlier.

Comment date: Comments must be submitted on or before April 7, 1986.

ADDRESS: Comments may be submitted to Mrs. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th & F Streets, NW., Room 4026, Washington, DC 20405 (202) 523–3822.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP) (202) 566–1224.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The need to comply with the statutory provisions is an urgent and compelling circumstance that makes advance publication impracticable. The General Services Administration certifies that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The rule implements the statutory change repealing the daily overtime compensation requirements applicable to employees performing on Federal and Federally assisted contracts. Accordingly, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 552 and 522

Government procurement.

1. The authority citation for 48 CFR Parts 522 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Parts 522 and 552 are amended by the following Acquisition Circular:

General Services Administration
Washington, DC 20405

January 15, 1986.

General Services Administration Acquisition Regulation Acquisition Circular (AC–86–2)

To: All GSA contracting activities.

Subject: Repeal of daily overtime compensation requirements applicable to employees performing on Federal and Federally assisted contracts.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), Chapter 5 (APD 2800.12) to implement the provisions of Pub. L. 99–145 that eliminated the requirement that contractors pay employees time and one-half their basic rate of pay for hours worked in excess of 8 hours per day.

2. *Background.* Pub. L. 99–145, the Department of Defense Authorization Act of 1986, amended the Contract Work Hours and Safety Standards Act (CWHSSA) and the Walsh-Healy Public Contracts Act (PCA) to eliminate the requirements that contractors pay employees performing on Federal or Federally assisted construction contracts, and Federal service or supply contracts, time and one-half their basic rate of pay for hours worked in excess of 8 hours per day on or after January 1, 1986. Overtime compensation will continue to be required under these statutes for hours worked in excess of 40 hours per week. By memorandum dated December 23, 1985, the Department of Labor (DOL) advised contracting agencies that they would take no action to enforce daily overtime requirements with respect to hours worked on any Federal contracts after January 1, 1986.

3. *Effective date.* All solicitations issued on or after January 15, 1986, should comply with the requirements of the revised regulation. Solicitations issued and contracts awarded before January 15, 1986 need not be modified to incorporate the revised contract clauses.

4. *Expiration date.* This Circular expires July 15, 1986, unless canceled earlier.

5. *Reference to regulation.* Sections 22.301, 22.302, 22.305, and 22.602 of the Federal Acquisition Regulation (FAR) and Sections 522.402–3 and 552.222–71 of the General Services Administration Acquisition Regulation (GSAR).

6. *Explanation of changes.*

a. Section 522.301 is added to read as follows:

522.301 Statutory requirement.

Public Law 99–145 amended the Contract Work Hours and Safety Standards Act to eliminate the requirement that contractors pay employees time and one-half their basic rate of pay for hours worked in excess of 8 hours per day on or after January 1, 1986.

b. Section 522.302 is amended to designate the current text as paragraph (a) and to add paragraph (b) to read as follows:

522.302 Computation of overtime and liquidated damages.

(a) The provisions of § 522.405–13 apply to all contracts covered by the Contract Work Hours and Safety Standards Act, including construction contracts.

(b) Contracting officers shall disregard the reference in FAR 22.302 to 8 hours per day when computing overtime and liquidated damages for work on Federal contracts performed on or after January 1, 1986.

c. Section 522.305 is added to read as follows:

522.305 Contract clauses.

(a) A class deviation to FAR clause 52.222–4, Contract Work Hours and Safety Standards Act—Overtime Compensation—General (APR 1984), has been approved for use by all GSA contracting officers in order to modify the clause to reflect the statutory changes made by Pub. L. 99–145. The class deviation authorizes modification of paragraph (a) of the clause to read as follows:

(a) *Overtime requirements.* A contractor or subcontractor shall not require or permit any laborer or mechanic to work in excess of 40 hours in any workweek, on any part of the contract work subject to the Act; unless, the laborer or mechanic receives compensation at a rate not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in any workweek.

(b) A class deviation to FAR clause 52.222–5, Contract Work Hours and Safety Standards Act—Overtime Compensation—Firefighters and Fireguards, has been approved for use by all GSA contracting offices in order to eliminate the requirement to use the clause.

d. Section 522.402–3 is amended to revise paragraph (a) to read as follows:

522.402–3 Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), requires that certain contracts contain a clause (see 522.222–71), specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless such laborer or mechanic is compensated at not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in any workweek.

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e. Section 522.602 is added to read as follows:

522.602 Statutory requirements.

Public Law 99-145 amended the Walsh-Healy Public Contracts Act to eliminate the requirement that contractors pay employees time and one-half their basic rate of pay for hours worked in excess of 8 hours per day on or after January 1, 1986.

f. Section 552.222-71 is amended to revise paragraphs (a) and (b) of the clause to read as follows:

552.222-71 Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333)

* * * * *

Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333) (Jan. 1986)

* * * * *

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of $10 for each calendar day for which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

g. Section 553.270-3 is amended to revise paragraphs (b), (c), and (e) to read as follows:

553.270-3 Contract clauses.

(a) * * *

(b) GSA Form 3504, Service Contract Clauses, is for use in connection with sealed bid and negotiated contracts for services, except small purchases. Pending a revision of the form, contracting officers shall modify paragraph 13 of the form to conform to the class deviation to FAR clause 52.222-4 (see 522.305(a)).

(c) GSA Form 3505, Labor Standards (Construction Contract), if for use in connection with sealed bid and negotiated contracts subject to the Davis-Bacon and related acts. Because the clauses contained in this form must be included in solicitations/contracts in full text, the form may not be incorporated by reference. Pending revision of the form, contracting offices shall modify paragraph 2 of the form to include the January 1986 version of GSAR clause 552.222-71.

(d) * * *

(e) GSA Form 3507, Supply Contract Clauses, if for use in connection with sealed bid and negotiated contracts for supplies. However, because most of the clauses contained in the form are also applicable to contracts for the rental of personal property, the form may also be used in connection with rental contracts. Pending a revision of the form, contracting officers shall modify paragraph 53 of the form to conform to the class deviation to FAR clause 52.222-4 (see 522.305(a)).

(f) * * *

Richard H. Hopf, III,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 86-2348 Filed 2-3-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 175

[Docket No. HM-184C; Amdt. No. 175-36]

Implementation of the ICAO Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This document amends the Hazardous Materials Regulations to permit batteries with a net weight in excess of 50 pounds, intended as items of replacement for batteries installed in an aircraft, to be transported in an inaccessible manner aboard an aircraft. This amendment is published in response to a petition for reconsideration submitted by the Air Transport Association of America (ATA) in response to amendments published on December 2, 1985, under Docket No. 184C.

EFFECTIVE DATE: February 4, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 426-0656.

SUPPLEMENTARY INFORMATION: RSPA published a final rule in the Federal Register on December 2, 1985, [50 FR 49393], under Docket HM-184C. The amendments concerned the implementation of the 1986 edition of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). One of the specific amendments in that final rule was an exception in § 175.10(a)(2)(ii) that dealt with the transport as cargo aboard an aircraft of batteries intended as items of replacement for batteries normally installed as equipment in an aircraft.

A petition for reconsideration of this amendment has been submitted by the ATA. The petition states that, although the exception provided in § 175.10(a)(2)(ii) stated that aircraft batteries are not subject to a gross weight limitation per package, the provisions of § 175.75(a) continued to impose a quantity limitation of 50 pounds net weight of hazardous materials that may be stowed in an inaccessible manner aboard an aircraft. The ATA noted that this would appear to negate the effect of the exception added to § 175.10(a)(2)(ii) and, since replacement batteries normally exceed a weight of 50 pounds, their transport aboard passenger aircraft was, in effect, prohibited. The ATA requested that § 175.10(a)(2)(ii) be amended to also except replacement aircraft batteries from the provisions of § 175.75.

The ATA petition is hereby granted. It was not the intent of the RSPA that replacement aircraft batteries should be subject to the provisions of § 175.75, and § 175.10(a)(2)(ii) is therefore being amended to clearly state that replacement aircraft batteries are excepted both from the quantity limitation of 50 pounds net weight that may be stowed in an inaccessible manner aboard an aircraft and from any limitations on the individual weight of the battery or package.

Because this amendment constitutes a grant of relief to a petition for reconsideration of a final rule, I find that notice and comment are unnecessary under 5 U.S.C. 553(a)(2) and (b)(3)(A), and under 5 U.S.C. 553(d)(3) it may be made effective in less than 30 days.

Administrative Notices

A. Executive Order 12291

The RSPA has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures [44 FR 11034] and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act [49 U.S.C. 4321 et. seq.]. A regulatory evaluation is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning the size and nature of entities likely affected, I certify that this rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 175

Hazardous materials transportation, Air carriers.

PART 175—[AMENDED]

In consideration of the foregoing, the following revision is made to Docket HM-184C:

1. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1807, 1808, 49 CFR 1.53.

2. Paragraph (a)(2)(ii) of § 175.10 is revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(2) * * *

(ii) Aircraft batteries are not subject to quantity limitations such as those provided in § 172.101 or § 175.75(a) of this subchapter.

* * * * *

Issued in Washington D.C. on January 27, 1986, under the authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 86-2117 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 60110-6010]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; correction.

SUMMARY: This document corrects the emergency interim rule delaying the scheduled opening of the 1986 *Chinoecetes bairdi* Tanner crab season that was published January 22, 1986, 51 FR 2892. An incorrect date for ending the emergency rule was given.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (fishery Biologist, NMFS), 907-586-7230.

The following correction is made in FR Doc. 86-1288 appearing on page 2892 in the issue of January 22, 1986: On page 2892, third column under the **"EFFECTIVE DATES"** heading, the first sentence is corrected to read "This emergency interim rule is effective from January 16, 1986, until April 14, 1986."

Dated: January 30, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-2370 Filed 2-3-86; 8:45 am]

BILLING CODE 3510-22-M

VOL 51 ISS 23 FE 4 1986 UMI

Proposed Rules

Federal Register
Vol. 51, No. 23
Tuesday, February 4, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 252

National Commodity Processing Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes amendments to regulations for the Food Distribution Program (Part 250) and the National Commodity Processing (NCP) Program (Part 252). The proposed changes will (1) increase uniformity between provisions governing State processing activities and those contained in Part 252 and (2) increase NCP program accountability requirements to ensure program integrity.

DATES: To be assured of consideration, comments *must* be received by March 21, 1986.

ADDRESS: Comments should be sent to Susan E. Proden, Branch Chief, Special Operations Branch, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for inspection in Room 413, 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 am to 5:00 pm) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Proden, Branch Chief, Special Operations Branch, Nutrition and Technical Services Division, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3888.

SUPPLEMENTARY INFORMATION: Recordkeeping and reporting requirements contained in these proposed amendments will not be made effective until such requirements are approved by the Office of Management and Budget and final rules are issued.

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. No major increase in costs or prices for program participants, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Robert E. Leard, Administrator of the FNS, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This action will ensure the availability of processed surplus commodities to eligible recipient agencies. The eligible recipient agencies include all outlets eligible for commodities under Parts 250 and 251.

Backgound

On September 12, 1985, the Department published an interim rule which reestablished the NCP Program, and announced a continuation of the program through June 30, 1986. The September 12, 1985 interim rule (1) removed all references to NCP from Part 250 and added a new Part 252 to accommodate the NCP Program; (2) incorporated in the regulatory text procedures contained in Part 250 regulations and NCP Program agreement; and (3) addressed comments received on the June 23, 1983, (48 FR 28609) interim rule which originally set forth NCP Program requirements.

The NCP Program has been in effect for two years. Based on operational experience, the Department recognizes the need to continually improve program accountability and integrity. These proposed rules are being issued to strengthen program management by: (1) Limiting allowable donated food value return systems; (2) requiring processor verification of discount-through-distributor reported NCP sales; (3) requiring State agency verification of the NCP recipient agency masterfile; and (4) clarifying the provisions for FNS verification of processor reported sales. In addition, a new requirement for an annual audit by a certified public accountant currently contained in the proposed Part 250 regulations is being added to Part 252.

Discussion of Proposed Amendments

The following material contains a description of the interim rule and the proposed changes to the rule.

(1) *Donated food volue return system:* Section 252.4(c)(4)(ii)(B) of the September 12, 1985 interim rule requires that processors return the agreement value of the donated commodity contained in processed products to the purchasing recipient agency. At the time of agreement approval, FNS reviews and approves the method selected by the processor for returning the value of the donated commodity contained in the end product to the recipient agency. The processor may choose a system which either: (1) Reduces the market price of a processed end product by the value of the donated food contained in the product (discount); or (2) refunds to the recipient agency the value of the donated food contained in the end product (refund). Under the interim rule FNS may approve any other value return system developed by the processor if the system ensures proper accountability.

Section 252.4(c)(4)(i)–(ii) of the September 12, 1985 interim regulation describes the varieties of value pass-through systems permitted in the NCP Program. They include (1) Direct sale discount system; (2) Direct sale refund system; (3) Indirect sale through distributor with dual billing (under the dual billing system, the processor invoices the recipient agency directly for the end products purchased and the distributor bills the recipient agency for delivery of the end product); (4) Indirect sale through distributor without dual billing and (5) Indirect sale through distributor with a refund.

Currently FNS permits the use of all the aforementioned value pass-through systems. However, based on on-site processor reviews, GAO audits and FNS sales verification results, FNS is proposing to restrict discount sales through distributors without dual billing. In March 1985, FNS conducted e sales verification of reported discount sales through distributors without dual billing. The results of the verification were significant. Of the 199 sales verified, 23 recipient agencies said they never purchased the end products. Of the sales that were made, 30 recipient agencies reported they paid higher prices for the products than was reported by the processor and 32 recipient agencies reported paying lower prices of the products. As a condition for approving a discount sales system without dual billing, processors were required to ensure that the invoice to the recipient agency clearly reflected the value of commodities contained in the end products. This required distributors to list the gross price of the end product minus the discount per case *or* the net price (price reduced by the value of the commodities contained in the case) and specific discount amount reflected in this price. Of the total number of sales verified, 132 recipient agencies could not identify the commodity value of their purchases. Similar findings were disclosed during the National Audit of the Food Distribution Program which also covered processing activities.

Based on these findings, processors selling end products through distributors without dual billing would, under this proposal, be required to use a system which provides refunds to distributors and discounts to recipient agencies based on the agreement value of donated commodities. Under this system, the processor would be required to sell end products to a distributor at the processor's commercial/gross price for the end product.

The processor's invoice would reflect the value of commodities contained in the end product as established by the agreement. The processor would ensure that the distributor invoices the recipient agency at a price which reflects the value of the discount established by the agreement. The processor would ensure that the distributor submits a refund application to the processor within 30 days after the eligible recipient agency receives the processed end product. The processor would ensure that the refund application includes certification of the purchase of end product by the eligible recipient agency through substantiating invoices and that the recipient agency has purchased the end product at the net case price which reflects the value of the discount established by the agreement. Within 30 days of the receipt of the refund application, the processor would issue payment directly to the distributor in an amount equal to the stated agreement value of the donated food contained in the purchased end products covered by the application. In no event would refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period. This system is consistent with that contained in the proposed Part 250 regulations. It is expected that implementation of this system would result in distributors reporting sales to processors more expeditiously and enable more timely reporting by processors to FNS. The requirements for this system are described in § 252.4(c)(ii)(B).

Processor Sales Verification: Section 252.4(c)(ii)(B) of the September 12, 1985 interim regulation requires processors to verify sales through a distributor without dual billing. This includes verifying sales of end products to eligible recipient agencies reported by distributors made under the discount through distributor system without dual billing by verifying a statistically valid sampling of sales to recipient agencies. Results of FNS sales verifications and on-site processor reviews have indicated that inaccurate reporting by distributors to processors is a major reason for inaccurate or invalid sales reporting to FNS. To maintain the accountability of the NCP program, the Department is proposing that processors verify on a quarterly basis 100 percent of discount sales made through distributors without dual billing. The verification must include a review of sales to determine if NCP end products were sold to eligible recipient agencies and to determine if the value of the donated commodities was passed on to the recipient agency. Processors must reports to FNS the level of invalid or inaccurate sales and simultaneously submit a corrective action plan to correct problems identified in the verification effort. The processor also must immediately submit adjusted monthly performance reports to eliminate invalid sales. If FNS determines that end products have been improperly distributed, FNS may assert a claim against the processor.

Verification of Recipient Agency Masterfile: To be eligible to participate in NCP, recipient agencies must have a current agreement to receive donated commodities in accordance with § 252.1(c). To register to participate in NCP, recipient agencies must complete and return to FNS an NCP registration card. FNS maintains a masterfile of all agencies registered to participate in NCP. This listing is provided to approved processors for marketing and reporting purposes.

Previously, the Department solicited the cooperation of State distributing agencies in verifying the NCP recipient agency masterfile. The voluntary recipient agency masterfile verification was extremely useful and enabled the Department to eliminate a significant number of ineligible recipient agencies from the masterfile. Since the recipient agency masterfile is supplied to each NCP processor, FNS must ensure that this list is as accurate as possible to maintain program integrity. To ensure the integrity of the entire recipient agency masterfile, the Department is adding a requirement in § 250.11 that State distributing agencies must verify the NCP recipient agency masterfile for recipient agencies registered in their States. Some options under consideration for verification of recipient agency eligibility include: (1) State agencies verifying that recipient agencies listed on the NCP masterfile have a current agreement with the State under § 250.8 and 251.5; (2) State agencies signing off on the recipient agency registration card prior to submission to FNS; and (3) recipient agencies submitting an approved current State agency agreement to receive donated food with the NCP registration card. We solicit comments on the above options and welcome any other suggestions as to how the verification of the NCP masterfile can best be accomplished. Since a revised § 250.11 has already been proposed, FNS is proposing to add this provision as an additional paragraph in 7 CFR 250.11. We would like to point out that this proposal does not nullify the proposed § 250.11 set forth in the August 19, 1985 proposed Part 250 (50 FR 33470). This rule proposes to add a third paragraph to § 250.11.

Audit requirement: Because it is not appropriate for the Department to conduct on-site reviews or audits of all processors participating in the NCP Program, the Department is proposing to require that processors obtain an annual independent audit by a certified public accountant (CPA).

The first audit will cover NCP agreement activities during the 1985–86 agreement year (July 1, 1985 through June 30, 1986). Since final NCP activity reports are due to FNS by October 31, 1986, processors will have until January 31, 1987 to submit the final audit report to FNS. Subsequent audit reports must cover each agreement year's activities from July 1 through June 30 and will be due to FNS no later than January 31 of

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the next calendar year. All final audit reports must be submitted to FNS complete with findings, deficiencies and recommendations. The Department believes this requirement will improve program accountability. This requirement is being proposed in Part 250, as a requirement for State processing activities.

The audits must be conducted in accordance with the financial and compliance elements of *Standards For Audit of Governmental Organizations, Programs, Activities and Functions* issued by the Comptroller General of the United States. In addition, FNS will develop audit guidelines for use by auditors to ensure that such audits are of sufficient scope to include a thorough review of program requirements. FNS will provide training for auditors in accordance with requirements prescribed by the Secretary on the use of these guidelines. All costs associated with the CPA audit, including travel expenses to attend any FNS training sessions, must be borne by the processor. All audit findings must be submitted by the processor to FNS.

FNS Sales Verification: In addition to sales verification conducted by processors, FNS has conducted a verification of processor sales reported to FNS. FNS will continue to conduct such a verification utilizing statistically valid samples to determine the level of inaccurate or invalid sales. Section 252.6(c) is being amended to clarify that FNS will be conducting such verification and may project claims based on the results.

List of Subjects in 7 CFR Parts 250 and 252

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs—social programs, Infants and children, Price support programs, Reporting requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, it is proposed that Parts 250 and 252 be amended to read as follows:

PART 250—FOOD DISTRIBUTION PROGRAM

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1056 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 nt); sec. 708, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(s), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 613c nt); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); (5 U.S.C. 301), unless otherwise noted.

21. Section 250.11, previously reserved, is added as follows:

§ 250.11 Eligibility determination for recipient agencies and recipients.

Verification of recipient agency eligibility. State distributing agencies at the request of FNS shall (a) verify that recipient agencies registered to participate in the National Commodity Processing (NCP) Program have in effect a current agreement with the State agency to receive donated food in accordance with Part 252.1(c) and (b) State agencies shall report the results of such verification to FNS within timeframes determined by FNS.

PART 252—NATIONAL COMMODITY PROCESSING PROGRAM

1. The authority citation for Part 252 continues to read as follows:

Authority: Sec. 416 Agricultural Act of 1949 (7 U.S.C. 1431).

2. In § 252.4, paragraph (c)(4)(ii)(B) is revised and paragraph (c)(17) is added as follows:

§ 252.4 Application to participate and agreement.

* * * * *

(c) * * *
(4) * * *
(ii) * * *

(B) *Sale Through Distributor without Dual Billing.* When end products are sold to recipient agencies through a distributor without dual billing, processors shall provide refunds to the distributor and ensure that the distributor provides discounts of equal value to recipient agencies. Under this system, the processor shall sell end products to a distributor at the processor's commercial/gross price for the end product. The processor's invoice shall reflect the value of commodities contained in the end product as established by the agreement. The processor shall ensure that the distributor invoices the recipient agency at a price which reflects the value of the discount established by the agreement. The processor shall ensure that the distributor submits a refund application to the processor within 30 days after the eligible recipient agency receives the processed end product. The processor shall ensure that the refund application includes documentation of the purchase of end product by the eligible recipient agency through substantiating invoices and that the recipient agency has purchased the end product at the net case price which reflects the value of the discount established by the agreement. Within 30 days of the receipt of the refund application, the processor shall issue payment directly to the distributor in an amount equal to the stated agreement value of the donated food contained in the purchased end products covered by the application. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period. The processor shall verify 100 percent of discounted sales made by distributors without dual billing. The processor shall verify, at a minimum, on a quarterly basis that discounted sales of NCP end products reported by the distributor without dual billing were made only to eligible recipient agencies and that the value of donated commodities was passed through to those recipient agencies. The processor shall report to FNS the level of invalid or inaccurate sales identified through the verification effort immediately upon completion of the verification. At the same time such report is submitted, the processor shall submit to FNS a corrective action plan disigned to correct problems identified in the verification effort. The processor shall immediately adjust all monthly performance reports to reflect the invalid sales identified during the verification effort required by this paragraph. If, as a result of this verification, FNS determines that the value of donated food has not been passed on to recipient agencies or when end products have been improperly distributed FNS may assert a claim against the processor in accordance with FNS instructions.

* * * * *

(17) NCP processors shall obtain an annual independent audit by a certified public accountant (CPA). The first audit shall cover the 1985–86 agreement year's NCP activities and shall be submitted to FNS complete with findings, deficiencies and recommendations prior to January 31, 1987. Subsequent audits shall cover all activities of each agreement year from July 1 through June 30 and must be submitted to FNS by January 31 of the next calendar year. The audits shall be conducted in accordance with the financial and compliance elements of *Standards For Audit of Government Organizations, Programs, Activities and Functions* and FNS audit guidelines.

(i) Processors shall ensure that auditors attend any FNS training prescribed by the Secretary.

(ii) The costs of the audits, including travel expenses to attend any FNS training sessions, shall be borne by the processors.

(iii) Audit findings shall be submitted by the processor to FNS.

(iv) Failure to conduct an audit as required by paragraph (17) of this section or failure to correct deficiencies identified by such audit will render the processor ineligible to enter into another NCP agreement until the required audit has been conducted and/or deficiencies corrected.

(v) Processors shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such responses shall include: (A) corrective action which has already been taken to eliminate the deficiency; (B) corrective action which the processor proposes to take to eliminate the deficiency; (C) the timeframes for the implementation and completion of the corrective action; (D) a determination of what caused the deficiency; and (E) deficiencies which have been identified that the processor takes exception to and an explanation for the exception.

3. Section 252.6 is amended by adding 3 sentences to the end of paragraph (c) to read as follows:

§ 252.6 Miscellaneous Provisions.

* * * * *

(c) * * * FNS may conduct a verification of processor reported sales utilizing a statistically valid sampling technique. If, as a result of this verification, FNS determines that the value of the donated food has not been passed on to recipient agencies or if end products have been improperly distributed, FNS may assert a claim against the processor. Such claim may include a projection of the verification sample to the total NCP sales reported by the processor.

* * * * *

Dated: January 6, 1986.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 86–2414 Filed 2–3–86; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Proposed Salable Quantities and Allotment Percentages for the 1986–87 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This is a proposal to establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from, or handled for, producers by handlers during the 1986–87 marketing year which begins June 1, 1986. this action is taken under the marketing conditions. The proposal was recommended by the Spearmint Oil Administrative Committee which works with USDA in administering the order.

DATE: Comments must be received by February 19, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, DC 20250. Telephone: (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512.1 and has been classified a "non-major" rule under criteria contained therein.

The Administrator of the Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposed salable quantity and allotment percentage for each class of spearmint oil would be established in accordance with the provisions of Marketing Order No. 985, regulating the handling of spearmint oil produced in the Far West, hereinafter referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was recommended by the Spearmint Oil Administrative Committee, which works with USDA in administering the order.

The salable quantity and allotment percentage proposed for each class of spearmint oil for the 1986–87 marketing year beginning June 1, 1986, is based upon recommendations of the Committee and the following data and estimates:

(1) "Class 1" Oil (Scotch Spearmint)

(A) Estimated carryin on June 1, 1986—209,964 pounds.

(B) Estimated trade demand (domestic and export) for the 1986–87 marketing year, based on an average of producer sales for the five year period beginning with the 1980–81 marketing year through the 1984–85 marketing year—737,049 pounds.

(C) Recommended desirable carryout on May 31, 1987—75,000 pounds.

(D) Salable quantity required from 1986 production—602,085 pounds.

(E) Total allotment bases for "Class 1" Oil—1,639,140 pounds.

(F) Computed allotment percentage—36.73 percent.

(G) The Committee's recommended salable quantity—688,439 pounds.

(H) Recommended allotment percentage—42 percent.

(2) "Class 3" Oil (Native Spearmint)

(A) Estimated carryin on June 1, 1986—90,529 pounds.

(B) Estimated trade demand (domestic and export) for the 1986–87 marketing year based on an aveage of sales for the past five marketing years beginning with the 1980–81 marketing year through the 1984–85 marketing year—870,516 pounds.

(C) Recommended desirable carryout on May 31, 1987—75,000 pounds.

(D) Salable quantity required from 1986 production—854,987 pounds.

(E) Total allotment bases for "Class 3" Oil—1,808,587 pounds.

(F) Computed allotment percentage—47.27 percent.

(G) The Committee's recommended salable quantity—886,208 pounds.

(H) Recommended allotment percentage—49 percent.

The salable quantity is the total quantity of each class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to his/her allotment base for the applicable class.

Volume controls in effect under the order have aided in maintaining a stable market for each class of oil. The Committee's objective for 1986–87 is to

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continue to balance supplies with needs to maintain a stable market and prices for each class of 1986-crop oil and promote orderly marketing. The Committee's recommendations are based on expectations of normal sales of spearmint oil during the 1986-87 marketing year.

Pursuant to the order, the Committee issued additional allotment bases to both new and existing procedures for the 1986-87 marketing year. New procedures were issued allotment bases in units of 2,049 pounds for "Class 1" Oil and 2,261 pounds for "Class 3" Oil. Additional allotment bases for existing procedures were divided equally, by class of oil, among all producers who requested such additional base and demonstrated the ability to produce the additional spearmint oil referable to such base. The issuance of the additional allotment bases increased the total of "Class 1" Oil allotment bases by 16,336 pounds and "Class 3" Oil by 18,054 pounds.

This proposed rule provides a 15-day comment period. A longer comment period would be contrary to the public interest, as any comments on the rule need to be received within 15 days so that the final rule, if issued, can be made effective as soon as possible, in order to ensure orderly marketing of spearmint oil during the 1986-87 marketing season, and to give growers adequate notice so they may develop or make any adjustments in their planning plans for the ensuing marketing season.

List of Subjects in 7 CFR Part 985

Marketing Agreements and Orders, and Spearmint Oil.

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. It is proposed to add a new § 985.206 under Subpart—Salable Quantities and Allotment Percentages to read as follows: (The following provisions will not be published in the Code of Federal Regulations).

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

Subpart—Salable Quantities and Allotment Percentages

§ 985.206 Salable quantities and allotment percentages—1986-87 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year which begins June 1, 1986, shall be as follows:

(a) "Class 1" Oil—a salable quantity of 688,439 pounds, and an allotment percentage of 42 percent.

(b) "Class 3" Oil—a salable quantity of 886,208 pounds, and an allotment percentage of 49 percent.

Dated: January 29, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-2362 Filed 2-3-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1102, 1106, 1108, 1120, 1124, 1125, 1126, 1131, 1132, 1134, 1135, 1136, 1137, 1138, and 1139

Milk in the Upper Florida Marketing Area et al.; Computation of Basic Class II Formula Price; Proposed Termination of Use of Edible Whey Factors, and Determination of Change in the Current Computation

7 CFR Part and Marketing Areas

1006 Upper Florida
1007 Georgia
1011 Tennessee Valley
1012 Tampa Bay
1013 Southeastern Florida
1030 Chicago Regional
1032 Southern Illinois
1033 Ohio Valley
1036 Eastern Ohio-Western Pennsylvania
1040 Southern Michigan
1046 Louisville-Lexington-Evansville
1049 Indiana
1050 Central Illinois
1064 Greater Kansas City
1065 Nebraska-Western Iowa
1068 Upper Midwest
1076 Eastern South Dakota
1079 Iowa
1093 Alabama-West Florida
1094 New Orleans-Mississippi
1096 Greater Louisiana
1097 Memphis, Tennessee
1098 Nashville, Tennessee
1099 Paducah, Kentucky
1102 Fort Smith, Arkansas
1106 Southwest Plains
1108 Central Arkansas
1120 Lubbock-Plainview, Texas
1124 Oregon-Washington
1125 Puget Sound-Inland
1126 Texas
1131 Central Arizona
1132 Texas Panhandle
1134 Western Colorado
1135 Southwestern Idaho-Eastern Oregon
1136 Great Basin
1137 Eastern Colorado
1138 Rio Grande Valley
1139 Lake Mead

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Termination and Determination of current Class II price.

SUMMARY: This rulemaking invites written comments on a proposal of the Department to terminate certain provisions relating to the computation of the Class II price in the above-listed 39 Federal milk orders, and makes a change in computing the current basic Class II formula price. The Class II price, which applies in most cases to such products as cottage cheese, ice cream, yogurt, and cream, is determined each month through a formula. The formula provides, in part, for using certain pricing factors relating to edible dry whey as established under the dairy price support program. Because of recent changes in the support program, these pricing factors are no longer available. The proposed action would eliminate the use of dry whey values in the Class II price computation.

DATE: Comments are due not later than February 19, 1986.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. The termination would have a relatively limited impact on the level of the Class II price. Thus, neither handlers or producers would be significantly affected by this action.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the termination of the following provisions of the orders regulating the handling of milk in the aforesaid marketing areas is being considered:

7 CFR Provisions and Marketing Area

1006.19(d) and 1006.51a(a)(1)(iii)—Upper Florida
1007.20(d) and 1007.51a(a)(1)(iii)—Georgia
1011.20(d) and 1011.51a(a)(1)(iii)—Tennessee Valley
1012.19(d) and 1012.51a(a)(1)(iii)—Tampa Bay
1013.19(d) and 1013.51a(a)(1)(iii)—Southeastern Florida
1030.20(d) and 1030.51a(a)(1)(iii)—Chicago Regional
1032.20(d) and 1032.51a(a)(1)(iii)—Southern Illinois

1033.20(d) and 1033.51a(a)(1)(iii)—Ohio Valley
1036.20(d) and 1036.51a(a)(1)(iii)—Eastern Ohio-Western Pennsylvania
1040.21(d) and 1040.51a(a)(1)(iii)—Southern Michigan
1046.20(d) and 1046.51a(a)(1)(iii)—Louisville-Lexington-Evansville
1049.20(d) and 1049.51a(a)(1)(iii)—Indiana
1050.20(d) and 1050.51a(a)(1)(iii)—Central Illinois
1064.20(d) and 1064.51a(a)(1)(iii)—Greater Kansas City
1065.20(d) and 1065.51a(a)(1)(iii)—Nebraska-Western Iowa
1068.20(d) and 1068.51a(a)(1)(iii)—Upper Midwest
1076.20(d) and 1076.51a(a)(1)(iii)—Eastern South Dakota
1079.20(d) and 1079.51a(a)(1)(iii)—Iowa
1093.20(d) and 1093.51a(a)(1)(iii)—Alabama-West Florida
1094.20(d) and 1094.51a(a)(1)(iii)—New Orleans-Mississippi
1096.20(d) and 1096.51a(a)(1)(iii)—Greater Louisiana
1097.20(d) and 1097.51a(a)(1)(iii)—Memphis, Tennessee
1098.20(d) and 1098.51a(a)(1)(iii)—Nashville, Tennessee
1099.20(d) and 1099.51a(a)(1)(iii)—Paducah, Kentucky
1102.20(d) and 1102.51a(a)(1)(iii)—Fort Smith, Arkansas
1106.20(d) and 1106.51a(a)(1)(iii)—Southwest Plains
1108.20(d) and 1108.51a(a)(1)(iii)—Central Arkansas
1120.20(d) and 1120.51a(a)(1)(iii)—Lubbock-Plainview, Texas
1124.20(d) and 1124.51a(a)(1)(iii)—Oregon-Washington
1125.19(d) and 1125.51a(a)(1)(iii)—Puget Sound-Inland
1126.20(d) and 1126.51a(a)(1)(iii)—Texas
1131.20(d) and 1131.51a(a)(1)(iii)—Central Arizona
1132.20(d) and 1132.51a(a)(1)(iii)—Texas Panhandle
1134.19(d) and 1134.51a(a)(1)(iii)—Western Colorado
1135.19(d) and 1135.51a(a)(1)(iii)—Southwestern Idaho-Eastern Oregon
1136.19(d) and 1136.51a(a)(1)(iii)—Great Basin
1137.19(d) and 1137.51a(a)(1)(iii)—Eastern Colorado
1138.20(d) and 1138.51a(a)(1)(iii)—Rio Grande Valley
1139.19(d) and 1139.51a(a)(1)(iii)—Lake Mead

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250 not later than 15 days after the publication of this notice in the **Federal Register**.

All written comments received pursuant to this notice will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The 39 orders provide that a tentative Class II price shall be announced for each month by the 15th day of the preceding month. The tentative price is based in part on a "basic Class II formula price," which in turn is computed in accordance with a prescribed formula set forth in the orders. The formula includes determining the gross value of milk used to manufacture cheddar cheese. The gross value is the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

Because of recent changes in the price support program, the processing cost and yield factor for edible dry whey are no longer being determined under that program and thus are not available for use under the Federal orders. The changes stemmed from the recently enacted Food Security Act of 1985, which precludes the use of any market value of whey in determining the purchase price for cheese under the price support program.

Possible options for dealing with the unavailability of certain pricing factors includes amending the orders on the basis of a public hearing or terminating the use of a whey value in computing the basic Class II formula price. Since the whey value carries a relatively minor weight in the pricing formula, the Department is recommending the termination option. The following table shows the effect of the whey factor on the basic Class II formula price over a recent period:

EFFECT OF THE EXCLUSION OF THE WHEY PRICING FACTOR ON THE BASIC CLASS II FORMULA PRICE—BASIC CLASS II FORMULA PRICES

[Dollars per hundredweight]

Month (1985)	With whey pricing factor	Without whey pricing factor	Difference
January	12.52	12.54	+0.02
February	12.35	12.43	+.08
March	12.03	12.21	+.18
April	11.79	11.95	+.16
May	11.63	11.64	+.01
June	11.63	11.58	−.05
July	11.58	11.43	−.15
August	10.89	10.78	−.11
September	11.03	11.12	+.09
October	10.98	11.04	+.11
November	11.09	11.20	+.11
December	11.12	11.12	.00
Average			+.037

This basic Class II formula price has been in effect since October 1981. For the 51-month period of October 1981 through December 1985, the average monthly impact was +.0033 cents per hundredweight.

Determination of Current Class II Price

Pending a resolution of this issue, it is appropriate to continue the use of whey value in computing the basic Class II formula price. As authorized under the order, equivalent pricing factors should be determined for this purpose. It is concluded that the processing cost and yield factor for any whey that had been used most recently under the price support program should be used as the equivalent factors. The processing cost would be 12.5 cents per pound of dry whey. The yield factor would be 5.5 pounds of dry whey per hundredweight of milk.

It is therefore ordered that a whey processing cost of 12.5 cents per pound and a yield factor of 5.5 pounds be used as equivalent factors in determining any positive whey value in computing the basic Class II formula price under the above-named orders, effective upon issuance of this determination.

It is hereby found and determined that 30 days' prior notice of the effective date of this determination is impracticable, unnecessary and contrary to the public interest in that (1) there no longer exists under the dairy price support program a processing cost factor and yield factor for edible dry whey for use in computing the basic Class II formula price; (2) there is an immediate need to compute the basic Class II formula price; and (3) this determination does not require of persons affected substantial or extensive preparation prior to making it effective.

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List of Subjects in 7 CFR Parts 1006 et al.

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1006, 1007, 1011, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1102, 1106, 1108, 1120, 1124, 1125, 1126, 1131, 1132, 1134, 1135, 1136, 1137, 1138, 1139 continues to read as follows:

Authority. Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on: January 29, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–2360 Filed 2–3–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 904

Public Comment Forum on General Regulations for the Sale of Power From the Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Further notice of public comment forum.

SUMMARY: On Tuesday, January 28, 1986, the Western Area Power Administration (Western) published a notice of a second public comment forum to be conducted February 12, 1986, at the Tropicana Hotel in Las Vegas, Nevada, on Western's revised proposed General Regulations for the Sale of Power from the Boulder Canyon Project (General Regulations). This notice informs all those who are interested in attending this public comment forum, as well as others who may be interested in participating in this rulemaking, that at the February 12, 1986, public comment forum each participant will be invited to indicate to Western those aspects of the Western proposal as to which the participant wishes Western to provide additional analysis, as well as other information, that might aid participants in forumulating comments on this rulemaking. Interested parties who do not choose to attend this public comment forum may, in the alternative, make this indication by written communication received by Western by February 17, 1986.

DATE: The public comment forum will be held on February 12, 1986, beginning at 9 a.m.

ADDRESS: The public comment forum will be held at the Tropicana Hotel in the Monte Carlo Room, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005, (702) 293–8855.

SUPPLEMENTARY INFORMATION: On January 28, 1986, Western published a notice (51 FR 3471) that an additional public comment forum would be held February 12, 1986, to allow ample opportunity for all interested parties to comment on the revised proposed General Regulations published in the **Federal Register** on November 29, 1985. In addition to providing comments on the revised proposed General Regulations, all interested parties are invited to indicate to Western, either during this public comment forum or by written request received by Western by February 17, 1986, at the address above, any aspect of the revised proposed General Regulations (including the need for them and their probable effects) as to which the party wishes Western to provide additional information, including research and analysis, in support of the revised proposed General Regulations. Western, thereafter, will supply the requested information to all interested parties by publication in the **Federal Register**, and will invite further comments after all interested parties have had an opportunity to review such additional information. On request by interested parties, Western will then conduct an additional public comment forum to receive oral presentations concerning the revised proposed General Regulations.

Issued in Washington, DC, January 31, 1986.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

[FR Doc. 86–2549 Filed 2–3–86; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

Interest on Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") proposes to revise and simplify Part 329 of the FDIC's regulations. 12 CFR Part 329 ("Interest on Deposits"). The proposal reflects changes made in the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1811–1832d. The FDIC is proposing two alternative responses to these changes. The first one ("Revision") is designed to maintain parity between Part 329 and proposed Regulation Q as recently published by the Board of Governors of the Federal Reserve System ("FRB"). *See* 51 31 (1986). The second one is a simpler and more liberal rule ("Alternative Rule"). The FDIC specifically requests full comment both on the Revision and on the Alternative Rule.

DATE: Comments must be submitted on or before March 6, 1986.

ADDRESS: Send comments to: Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to, and are available for reviewing in, Room 6108 on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jules Bernard, Senior Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429, 202–389–4171.

SUPPLEMENTARY INFORMATION: Prior to 1980, Congress directed the FDIC and the FRB to regulate interest rates that banks paid on deposits. The agencies did so in three ways. They enforced the law forbidding banks to pay interest on demand deposits. They set limits on the rates banks could pay on time and savings deposits. Finally, they regulated the way banks advertised the rates. *See* 12 U.S.C. 371a, 371b, & 1828(g)(1); *see also* 12 CFR Parts 217 (the FRB's Regulation Q) & 329 (the FDIC's rules).

In 1980 Congress transferred the authority to limit rates paid on time and savings deposits (but not the other two kinds of authority) from the two agencies to the Depository Institutions Deregulation Committee (DIDC). *See* 12 U.S.C. 3502. The DIDC's rules superseded those of the agencies where the DIDC's rules differed from those that the agencies had adopted. *See* 12 CFR Part 1204.

The DIDC and all its rules will expire on April 1, 1986. The agencies' rulemaking authority will also change in significant ways on that date. Banks will still be forbidden to pay interest on demand deposits, however, and the agencies will continue to have authority

to regulate banks' advertising practices.[1]

The FDIC proposes two responses to these changes, presented in the alternative. One is the Revision. The Revision generally conforms to the FRB's proposed Regulation Q. The other is the Alternative Rule, which is somewhat more liberal than proposed Regulation Q. The FDIC seeks full comment on all aspects of the Revision and of the Alternative Rule. The FDIC specifically seeks a full discussion of the question whether it would be preferable to adopt the Revision or the Alternative Rule.

Ordinarily the FDIC provides a 60-day comment period for proposed regulations. *See* "Development and Review of FDIC Rules and Regulations," 1 *FED. DEPOSIT INS. CORP.* 5057, 5058 (May 21, 1979). Inasmuch as the statutory basis for Part 329 will be altered at the end of March, however, the FDIC considers that it is necessary to reduce the comment period on the proposed rule to 30 days.

I. The Revision.

A. The regulation.

1. Defining "demand deposit." The Revision defines "demand deposit" to include:

—any deposit that has an original maturity or notice period of less than seven days, or regarding which the bank reserves less than seven days' notice of an intended withdrawal,[2] and

—any deposit that otherwise resembles a Money Market Deposit Account (MMDA) as currently defined by the DIDC, but that allows the depositor to exceed the number of third-party transfers or preauthorized payments that are allowed for MMDAs under the DIDC's current rules:[3] Provided, that a deposit of this kind does not qualify as a "demand deposit" if the depositor is eligible to hold a NOW account.[4]

The Revision specifies that NOW accounts and ATS accounts [5] are not subject to the prohibition against paying interest on demand deposits. Strictly speaking, there is no need for this provision. These accounts may only be held by depositors that are eligible to hold NOW accounts. Accordingly, they do not qualify as "demand deposits," and are not subject to the prohibition in the first place. Nevertheless, the Revision includes this provision in order to maintain parity with proposed Regulation Q.[6]

The Revision, like proposed Regulation Q, makes provision for a special kind of account that "is subject to withdrawals by telephonic or data transmission order or instruction and which consists of funds the entire beneficial interest of which is held by a party eligible to hold a NOW account." [7] Unlike proposed Regulation Q, the Revision imposes a seven-day reserved-notice period on these accounts (herein referred to as "electronic NOW accounts").

The Revision deviates from proposed Regulation Q in this respect. The FDIC believes, however, that NOW accounts and electronic NOW accounts should be defined in essentially identical terms. Of course, the FDIC could eliminate the reserved-notice requirement in both cases. The FDIC seeks comment on whether it would be preferable to adopt the Revision's approach, or to eliminate the reserved-notice requirement for both kinds of account, or to conform strictly with proposed Regulation Q as drafted by the FRB.

The Revision, like proposed Regulation Q, specifies that electronic NOW accounts are not subject to the prohibition against paying interest on demand deposits. In the Revision's case, this exemption is superfluous, since electronic NOW accounts (as defined by the Revision) can never qualify as "demand deposits." The Revision includes the exemption in order to follow proposed Regulation Q.

Because the Revision and proposed Regulation Q define electronic NOW accounts differently, however, the scope of the exemption provided by the Revision is a bit narrower than that afforded by proposed Regulation Q. The Revision's exemption only applies to deposits that have a seven-day notice requirement. Proposed Regulation Q affords the exemption to all electronic NOW accounts—even ones having a reserved-notice period of less than seven days, and which therefore qualify as "demand deposits" under proposed Regulation Q. The FDIC seeks comment on whether it would be preferable to limit the exemption to electronic NOW accounts that have the reserved-notice requirement, or to extend the exemption to all electronic NOW accounts (including those that are payable on demand).

2. Repealing obsolete provisions. The Revision drops the definitions of "savings deposit" and "time deposit," the rules for computing and paying interest on such accounts, and the rules for withdrawing funds from them. There is no need for these provisions after March 31, 1986. The Revision also drops the special advertising rules for accounts that once had a separate regulatory status, but which no longer do so.

The Revision drops the penalty for premature withdrawals from time deposits. The FDI Act will not require the FDIC to impose penalties of this kind after March 31, 1986; and the FDIC does not believe that penalties are needed merely to enforce the prohibition against paying interest on demand deposits. The FDIC considers that it is more appropriate to address possible violations of the prohibition on a case-by-case basis. In eliminating early-withdrawal penalties from Part 329, the Revision follows the FRB's proposed Regulation Q.[8]

[1] The FRB has issued a proposal to revise the advertising rules set forth in Regulation Q. *See* 51 FR 1379 (1986). The FDIC is not now proposing to make any changes in the advertising rules set forth in Part 329, except as may be necessary to eliminate obsolete provisions. The FDIC will consider issues related to advertising seperately.

[2] Following the FRB's lead, the Revision establishes a seven-day notice period at the line of demarcation between demand deposits and other deposits. Part 329 is out of date in this respect. It speaks of a 14-day minimum term or notice period for time deposits, and of 14 days' reserved notice for most kinds of savings deposit. *See* 12 CFR 329.1(c), (d), & (e)(1)(iii). The DIDC has provided for time deposits with terms as short as seven days, however. *Id.* section 1204.121. Moreover, the DIDC only requires 7 days' reserved notice for NOW accounts (*i.e.*, interest-bearing deposits that are accessible by negotiable or transferable orders of withdrawal) and for MMDAs. *Id.* sections 1204.108(b)(4) & 1204.122(d). These accounts are both classed as "savings deposits" by Part 329. *Id.* section 329.1(e)(1)(iii).

[3] The limit is "six transfers per month or statement cycle (or similar period) of at least four weeks . . . and no more than three of the six such transfers may be by check, draft or similar order . . ." *Id.* section 1204.122.

[4] Only natural persons, nonprofit organizations, and public units may hold NOW accounts. *See* 12 U.S.C. 1832(a)(2).

[5] ATS accounts are defined by statute as "savings deposits" from which the depositor may make withdrawals "through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn upon the bank." Only natural persons are eligible to hold ATS accounts. *Id.* section 1828(g)(2).

[6] In this regard the Revision complies with the requirements of section 18(g)(1) of the FDI Act, which specifies: "[S]uch exceptions from this prohibition [against paying interest on demand deposits] shall be made as are now or may hereafter be prescribed with respect to deposits payable on demand in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the Board of Governors of the Federal Reserve System." *Id.* section 1828(g)(1).

[7] The Revision provides that the rules governing eligibility for NOW accounts apply to electronic NOW accounts as well.

[8] The FRB has retained a more limited set of early-withdrawal penalties in proposed Regulation D. *See.* 51 FR 27 (1986). The penalties are "safe-

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Banks may still impose early-withdrawal penalties for their own purposes, however. When they do, they must include a clear and conspicuous statement that they will impose a "substantial penalty" for early withdrawals.

In connection with the proposed modification of Part 329, the FDIC's Board of Directors proposes to withdraw its policy statement entitled "Premiums Not Considered Payment of Interest or Dividends," *Id.* 5023 (March 24, 1970), which says that certain *de minimis* payments are not regarded as being the payment of "interest." The policy statement is obsolete in its present form, having been superseded by the DIDC's rules. *See* 12 U.S.C. 1204.109. Moreover, the Board believes that there will soon be no need for this exception from the prohibition against paying interest on demand deposits, inasmuch as the Revision effectively exempts all consumer deposits from that prohibition. The FDIC specifically asks for comment on whether it is appropriate to eliminate the premium rule.

The Board also proposes to withdraw four General Counsel's opinions. Opinion No. 2, "Computation of Interest on Time and Savings Deposits," 11 *FED. DEPOSIT INS. CORP.* 5522 (Feb. 10, 1978) allows banks to divide the year into four equal quarters of 91¼ days each for the purpose of computing interest on nondemand deposits. Opinion No. 3, "Interest Rate Differential on Loans Secured by Time Deposits," *Id.* 5523 (Feb. 16, 1978), speaks of the mandatory differential between the rate a bank charges on a loan secured by a deposit and the rate paid on the underlying deposit. Opinion No. 4, "Advertising of 6-Month Variable Rate (Money Market) Time Deposits," *id.* 5524 (undated) prescribes special rules for advertising six-month time deposits. Opinion No. 5, "Computation of Interest on Time and Savings Deposits During Leap Years," *id.* 5526 (Nov. 20, 1979), prescribes methods for computing interest during leap years. These opinions will all be obsolete.

3. Conforming with the language of proposed Regulation Q. The Revision changes the language of certain provisions of Part 329 without altering their substance. These provisions are ones where the FDIC and the FRB have parallel requirements, and where the meaning and the regulatory consequences of the provisions are meant to be identical in Part 329 and Regulation Q, but where the language of the two regulations differs. The Revision modifies Part 329's language to conform with that proposed by the FRB simply for the sake of uniformity.

In this connection, the Revision adopts the FRB's definition of "interest." The change reflects the long-standing interpretation of the FDIC (and of the FRB). The Revision also replaces Part 329's descriptions of NOW and ATS accounts with those given by the FRB. None of these changes alters the substance of Part 329 in any way.

B. Discussion.

There are a number of arguments in favor of the approach taken in the Revision. The Revision makes it clear that the same rules apply to all insured banks, both those that belong to the Federal Reserve System and those that do not. Accordingly, the Revision avoids creating any competitive or regulatory imbalances. At the same time, the Revision preserves the essential features of the current definition of "demand deposit." Accordingly, the Revision does not produce any significant disruption in the banking industry.

The FDIC's assessment and insurance rules both have special rules for "demand deposits." Banks may deduct ⅛ of their "demand deposits" from the assessment base; the assessment rules explicitly refer to the definition provided for that term in Part 329. *See* 12 CFR 327.03. In addition, IRAs, Keogh Plans, and public units are separately insured for "demand deposits" on one hand "time and savings deposits" on the other. *Id.* §§ 330.8 & 330.10. The Revision does not affect the FDIC's assessments nor its insurance liabilities significantly.

Finally, the Revision reinforces the line of demarcation between transactions balances and less-volatile funds that the FRB has established in Regulation D. *See id.* Part 204.

On the other hand, this approach presents certain difficulties in interpretation. Like the present rule, the Revision provides that a nondemand deposit that belongs to a business enterprise is a "demand deposit" if the depositor may make more than the allowable number of transfers from it per month. It is not clear, however, what the consequences are when a bank allows its customers to violate the transfer limits. The account might well be regarded as a "demand deposit" *ab initio*,[9] and the bank would not pay any interest on it in the future. But it is not clear what effects—if any—would arise from the retroactive reclassification of the deposit.

The Revision (like the current regulation) can lead to strange results. For example, if a business enterprise uses its own computers to communicate with its bank, and instructs the bank to transfer funds from its MMDA to its checking account, it may do do only six times per month. But if it persuades the bank to install an automated teller machine on its premises, and performs exactly the same transaction through the automated teller, the business enterpirse may do so as often as it likes.

The Revision also continues a deficiency in the current rule in that the FDIC's examiners cannot immediately tell whether a deposit is a "demand deposit" or not. Depending on the circumstances, the examiner must consider not only the terms of the deposit contract, but also the depositor's conduct as well.

It should be noted that the Federal Home Loan Bank Board (FHLBB) is developing its own rules regarding the use of third-party transfers from interest-bearing accounts. If the FHLBB adopts a more liberal rule, S&Ls and Federal savings banks (which are subject to the FHLBB's rules) could have a competitive advantage over other banks.

harbor" provisions that protect banks against the retroactive imposition of higher reserve requirements in certain cases. Proposed Regulation D says that if a bank allows a depositor to withdraw funds from a time deposit within the first six days, the FRB will not impose higher reserve requirements if the bank requires the depositor to pay a minimum penalty equal to seven days' simple interest on the amount withdrawn. In addition, if a nonpersonal time deposit has a stated maturity of one and one-half years or more, and if the bank allows the depositor to withdraw funds after six days but before one and one-half years after the date of deposit, the FRB will not impose higher reserve requirements if the bank requires the depositor to pay a minimum penalty equal to one month's simple interest on the amount withdraw. *Id.* 27, 29 (1986).

[9] The FRB has ruled that, if a bank authorizes a depositor to make more than six third-party transfers from an account opened as an MMDA, the account is a "transaction account" under Regulation D (which category excludes MMDAs), and has been so right from the beginning. On the other hand, if the depositor merely exceeds the permitted number of transfers from an MMDA in an occasional basis, and does so inadvertently and without explicit authorization from the bank, the FRB considers that the account remains an MMDA. If the depositor does so regularly, the bank must close the account—but the account, immediately prior to closing, is still regarded as an MMDA, at least under Regulation D. *See* 1 *FED. RES. REG. SERVICE* 1–285 (1983).

The FRB has not ruled on the status of such an account under Regulation Q. Presumably the FRB would follow the same line of analysis in order to preserve uniformity between Regulations D and Q. In order to maintain parity between Regulation Q and Part 329, the FDIC might well do the same.

II. The Alternative Rule.

A. The regulation.

1. Defining "demand deposit." The Alternative Rule defines "demand deposit" as:

> any deposit from which the depositor may, as a matter of legal right, withdraw the funds from the bank upon demand: *Provided*, that the term "demand deposit" does not include a nonbusiness deposit.

The Alternative Rule defines the term "nonbusiness deposit" as one owned by an depositor that is specified in 12 U.S.C. 1832(a)—*i.e.*, a despositor that is eligible to hold a NOW account. In effect, the Alternative Rule treats all deposits owned by such depositors (whether payable on demand or not) as NOW accounts.[10] There does not seem to be any practical reason to maintain a special category of interest-free deposit for these depositors, since as a practical matter they can hold interest-bearing accounts that have all the powers of demand deposits.

In this regard, the Alternative Rule reaches the same result as proposed Regulation Q, but by a slightly different road. The Alternative Rule and proposed Regulation Q both exclude NOW accounts and ATS from the category "demand deposits." The Alternative Rule excludes electronic NOW accounts from that category as well. Proposed Regulation Q does not do so, but then exempts them from the prohibition against paying interest on demand deposits. The practical effect is the same in either case.

Insofar as other depositors are concerned, the Alternative Rule is more liberal than proposed Regulation Q. The Alternative Rule allows banks to pay interest on any deposit—no matter who the beneficial owner may be—so long as the deposit is not payable on demand. Accordingly, banks may pay interest on all reserved-notice deposits—even when the accounts offer unlimited third-party transfer powers, and even when the accounts are owned by businesses. Of course, the FRB might classify such accounts as "transactions accounts" under Regulation D, *see* 12 CFR 204.2(e), and could subject them to higher reserve requirements.

2. Other provisions. The Alternative Rule omits all references to NOW accounts, electronic NOW accounts, and ATS accounts. Otherwise the Alternative Rule is the same as the Revision.

B. Discussion.

A principal benefit of the Alternative Rule is that it is simple and clear. Accordingly, it is easy for banks to understand, and for the FDIC to enforce.[11] The Alternative Rule should be helpful in removing artificial constraints on banking services, and make it possible for banks to price transaction services—and bid for transaction balances—explicitly. Currently banks compensate depositors for such deposits, but in indirect ways—*e.g.*, by waiving fees. In addition, the current rules favor larger businesses over smaller ones. Larger businesses evidently find that it is cost-effective to use messengers to avoid the restrictions on third-party transfers from MMDAs, while smaller businesses find that it is not cost-effective to do so. The Alternative Rule eliminates any such bias against small businesses.

On the other hand, because the Alternative Rule does not limit third-party transfers from nondemand accounts, banks belonging to the Federal Reserve System could suffer a competitive disadvantage if the FRB continues to impose limits on such transfers. It would also be possible under the Alternative Rule for banks to reduce the reserved-notice period for nondemand checking accounts to a very small interval—*e.g.*, one day—in order to maintain technical compliance with the prohibition against paying interest on demand deposits. This procedure may be considered to be an evasion of the rule. Such an "evasion" is arguably more a matter of form than of substance. Even under current rules, banks do not have to invoke the reserved-notice period, and as a rule they do not do so.[12]

One additional effect of the Alternative Rule could be to shrink the class of "demand deposits" somewhat. Banks may subtract ⅛ of their "demand deposits"—as that term is defined in Part 329—from their assessment base. *Id.* § 327.03. The Alternative Rule could increase assessments for some banks.

Request for Comment

The FDIC is proposing to adopt either the Revision or the Alternative Rule. Accordingly, the FDIC specifically asks for full comment on each one. The FDIC specifically seeks comment on which would be preferable to adopt, and the reasons for the choice. The FDIC also seeks comment on any other approaches that might be feasible.

Other Matters

Regulatory Flexibility Act Statement. Both the Revision and the Alternative Rule merely simplify Part 329 and relax regulatory constraints. Accordingly, neither the Revision nor the Alternative Rule will have a significant economic impact on a substantial number of small entities. The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable.

Paperwork Reduction Act Statement. Neither the Revision nor the Alternative Rule will affect the record-keeping or reporting requirements imposed on insured banks, or affect any bank's competitive status. A cost/benefit analysis (including a small-bank impact statement) is not required.

Regulation Review Program. The FDIC has established a program for reviewing each of its regulations at least once every five years for the purpose of determining whether the regulation should be continued, revised, or terminated. *See* "Development and Review of FDIC Rules and Regulations," 1 *FED. DEPOSIT INS. CORP.* 5057 (1979). The FDIC has selected Part 329 for review under the FDIC's Regulation Review Program. *See* 50 FR 14247 (1985).

The factors the FDIC must consider in making the determination are (a) the continuing need for the regulation; (b) alternative methods of accomplishing the purpose of the regulation; (c) the type and number of complaints or suggestions received; (d) the need to minimize the burden imposed on those affected by the regulation, especially small banks; (e) possible simplification or clarification of the regulation; (f) the need to eliminate overlapping and duplicative regulations or supervisory procedures; and (g) the length of time since the regulation was last evaluated

[10] The FDI Act gives the FDIC explicit authority to define the term "demand deposit." 12 U.S.C. 1828(g)(1). The FDI Act does not require the FDIC to adopt the same definition as the FRB: it merely provides that, if the FRB excepts any "deposits payable on demand" from the prohibition against paying interest on demand deposits, the FDIC may not impose that prohibition on nonmember banks in connection with such deposits. *Id.*

[11] The Alternative Rule fully implements the law forbidding banks to pay interest on demand deposits. When Congress adopted that law in 1935, Congress only spoke of deposits payable on demand. In the 1960's, Congress authorized depositors of all kinds—even for-profit business enterprises—to write checks drawn on nondemand accounts (*i.e.*, MMDAs). Congress did not limit the number of checks that a depositor may write on an MMDA. Congress only said that, if the number did not exceed three per month, the MMDA is not a "transaction account" under the FRB's Regulation D, and the bank does not have to post higher reserves. The DIDC has put an absolute ceiling on checks drawn on MMDAs; but that is a regulatory directive, not a statutory one.

[12] The FDI Act now provides that, if a bank waives the reserved-notice period for one depositor, the bank must do so for all depositors. *Id.* section 1828(g)(2). This requirement is removed from the FDI Act on March 31, 1986.

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and the extent to which technology, economic, and other factors have changed in the area affected by the regulation. *See* 1 *FED. DEPOSIT INS. CORP.* at 5059. These factors were all taken into consideration during the development of each alternative presented in the proposed rule (*i.e.*, the Revision and the Alternative Rule).

List of Subjects in 12 CFR Part 329

Advertising, Banks, banking, Interest rates.

1. For the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to revise Part 329 of Title 12 of the Code of Federal Regulations to read as follows:

PART 329—INTEREST ON DEPOSITS

Sec.
329.0 Scope.
329.1 Definitions.
329.2 Payment of interest.
329.3 Advertising.
329.101 Applicability of § 329.2(b).

Authority: Secs. 9 and 18, Pub. L. No. 797, 64 Stat. 881, 891 (12 U.S.C. 1819 and 1828); secs. 302(b) and 303, Pub. L. No. 96–221, 94 Stat. 146 (12 U.S.C. 1828(g) and 1832(a)).

§ 329.0 Scope.

This part applies to any deposit which is payable within the States of the United States or the District of Columbia, or which is directly or indirectly accessible by check, draft, or order payable within the States of the United States or the District of Columbia, which check, draft or order is drawn on an account maintained at a bank office located within the States of the United States or the District of Columbia. An "international banking facility time deposit," as defined by the Board of Governors of the Federal Reserve System, 12 CFR 204.8(a)(2), is not a "deposit" within the meaning of this part.

§ 329.1 Definitions.

As used in this Part 329—

(a) The term "bank" includes:

(1) Any State bank, as defined in section 3(a) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a), the deposit in which are insured by the Corporation, and which is not a member of the Federal Reserve System;

(2) Any State branch of a foreign bank, the deposit obligations in which branch are insured by the Corporation; and

(3) Any noninsured bank in a State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State.[1]

(b) The term "demand deposit" includes any deposit that:

(1) Has an original maturity or required notice period of less than seven days;

(2) Represents funds regarding which the bank does not reserve the right to require at least seven days' written notice prior to withdrawal or transfer of any funds in the account; or

(3) represents funds regarding which the bank has reserved the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account, and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make more then six transfers per month or statement cycle (or similar period) of at least four weeks to another account of the depositor at the same institution, to the institution itself, or to a third party by means of preauthorized, automatic or telephonic or data transmission agreement, order or instruction and no more than three of the six such transfers may be by check, draft or similar order (including debit card or transfer at an automatic teller machine or remote service unit) drawn by the depositor: *Provided*, that such a deposit shall not be deemed to be a "demand deposit" if the entire beneficial interest of the deposit is held by a party that is eligible to hold a NOW account as prescribed by 12 U.S.C. 1832(a).

(c) The term "interest" means any payment to or the account of any depositor as compensation for the use of funds constituting a deposit. A bank's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not deemed the payment of "interest."

(d) The term "NOW account" means an account authorized by 12 U.S.C. 1832(a) on which the bank has reserved the right to require at least seven days notice prior to withdrawal or transfer of any funds in the account but only if the account consists of funds in which the entire beneficial interest is held by a party eligible to have such an account as prescribed by 12 U.S.C. 1832(a).

(e) The term "ATS account" means a deposit subject to automatic withdrawals or transfers authorized by 12 U.S.C. 1828(g)(2), and on which the bank has reserved the right to require at least sever days' notice prior to withdrawal or transfer of any funds in the account. Under that paragraph, a bank may permit withdrawals to be made automatically from a deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or draft drawn on the bank.

§ 329.2 Payment of interest.

(a) Except as provided in paragraphs (b) and (c), no bank shall, directly or indirectly, by any device whatsoever, pay interest on any demand deposit.

(b) The prohibition expressed in paragraph (a) does not apply to:

(1) Any NOW account; or

(2) Any account on which the bank has reserved the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account but which is subject to withdrawals by telephonic or data transmission order or instruction and which consists of funds the entire beneficial interest of which is held by a party eligible to hold a NOW account.

(c) The prohibition expresed in paragraph (a) does not apply to any ATS account.

§ 329.3 Advertising.

Every advertisement shall be governed by the following rules:

(a) *Annual rate of simple interest.* Interest rates shall be stated in terms of annual rates of simple interest. In no case shall a rate be advertised which is in excess of the applicable maximum rate for the particular deposit.

(b) *Percentage yields based on 1 year.* Where a percentage yield achieved by compounding interest during 1 year is advertised, the annual rate of simple interest shall be stated with equal prominence, together with a reference to the basis of compounding.

(c) *Percentage yields based on periods in excess of 1 year.* No advertisement shall include any indication of a total percentage yield, compounded or simple, based on a period in excess of a year, or an average annual percentage yield achieved by compounding during a period in excess of a year.

(d) *Time or amount requirements.* If an advertised rate is payable only on deposits that meet time or amount requirements, such requirements shall be clearly and conspicuously stated. Where the time requirement for an advertised rate is in excess of a year, the required number of years for the rate shall be stated with equal prominence, together with an indication of any lower rate or rates that will apply if the deposit is withdrawn at an earlier maturity.

(e) *Profit.* The term "profit" shall not be used in referring to interest paid on deposits.

(f) *Accuracy of advertising.* No insured nonmember bank shall make any advertisement relating to the interest paid on deposits which is inaccurate or misleading or which misrepresents its deposit contracts.

(g) *Solicitation of deposits for banks.* Any person or organization which solicits deposits for a bank shall be bound by the rules contained in this section with respect to any advertisement relating to such deposits. No such person or organization shall advertise a percentage yield on any deposit it solicits for a bank which is not authorized to be paid and advertised by such bank.

(h) *Withdrawal penalties.* Any advertisement relating to the interest paid on any deposit regarding which the bank imposes a penalty for withdrawal prior to the deposit's maturity shall include a clear and conspicuous statement that in the event the depositor is allowed to withdraw all or part of his deposit before maturity, a "substantial penalty" will be imposed.

§ 329.101 Applicability of § 329.2(b).

(a) Any organization that is not organized for profit and that is described in paragraphs 501(c)(3) through (13) and (19) and section 528 of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)–(13) & (19), & 528) is eligible to hold a NOW account. Actual Internal Revenue Service documentation of tax-exempt status is not required to meet eligibility requirements; it is merely an aid in making eligibility determinations.

(b) It is impracticable to distinguish between NOW accounts that are used for personal purposes and NOW accounts that are used for business purposes (*e.g.*, by sole proprietorships). The rule set forth in § 329.2(b) applies to all NOW accounts—including NOW accounts that are used for business purposes.

(c) The rule set forth in § 329.2(b) applies to NOW accounts that represent funds held in a fiduciary capacity (whether the fiduciary is a natural person or otherwise) if all the beneficiaries are natural persons.

(d) Paragraphs (a), (b), and (c) also apply to any account described in § 329.2(b)(2).

2. In the alternative, for the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to revise Part 329 of title 12 of the *Code of Federal Regulations* to read as follows:

PART 329—INTEREST ON DEPOSITS

Sec.
329.0 Scope.
329.1 Definitions.
329.2 Payment of interest.
329.3 Advertising.
329.101 Eligibility to hold a "nonbusiness deposit."

Authority: Secs. 9 and 18, Pub. L. No. 797, 64 Stat. 881, 891 (12 U.S.C. 1819 and 1828); secs. 302(b) and 303, Pub. L. No. 96–221, 94 Stat. 146 (12 U.S.C. 1828(g) and 1832(a)).

§ 329.0 Scope

This part applies to any deposit which is payable within the States of the United States or the District of Columbia, or which is directly or indirectly accessible by check, draft, or order payable within the States of the United States or the District of Columbia, which check, draft or order is drawn on an account maintained at a bank office located within the States of the United States or the District of Columbia. An "international banking facility time deposit," as defined by the Board of Governors of the Federal Reserve System, 12 CFR 204.8(a)(2), is not a "deposit" within the meaning of this part.

§ 329.1 Definitions.

As used in this Part 329—

(a) The term "bank" includes:

(1) Any State bank, as defined in section 3(a) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a), the deposits in which are insured by the Corporation, and which is not a member of the Federal Reserve System;

(2) Any State branch of a foreign bank, the deposit obligations in which branch are insured by the Corporation; and

(3) Any noninsured bank in a State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State.[1]

(b) The term "demand deposit" means any deposit from which the depositor may, as a matter of legal right, withdraw the funds from the bank upon demand: *Provided*, that the term "demand deposit" does not include a nonbusiness deposit.

(c) The term "interest" means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A bank's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not deemed the payment of "interest."

(d) The term "nonbusiness deposit" means an account that consists of funds in which the entire beneficial interest is held by one or more parties specified in 12 U.S.C. 1832(a)(2).

§ 329.2 Payment of interest.

No bank shall, directly or indirectly, by any device whatsoever, pay interest on any demand desposit.

§ 329.3 Advertising.

Every advertisement shall be governed by the following rules:

(a) *Annual rate of simple interest.* Interest rates shall be stated in terms of annual fees of simple interest. In no case shall a rate be advertised which is in excess of the applicable maximum rate for the particular deposit.

(b) *Percentage yields based on 1 year.* Where a percentage yield achieved by compounding interest during 1 year is advertised, the annual rate of simple interest shall be stated with equal prominence, together with a reference to the basis of compounding.

(c) *Percentage yields based on periods in excess of 1 year.* No advertisement shall include any indication of a total percentage yield, compounded or simple, based on a period in excess of a year, or an average annual percentage yield achieved by compounding during a period in excess of a year.

(d) *Time or amount requirements.* If an advertised rate is payable only on deposits that meet time or amount requirements, such requirements shall be clearly and conspicuously stated.

[1] The following State satisfies this criterion: Massachusetts.

[1] The following State satisfies this criterion: Massachusetts.

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Where the time requirement for an advertised rate is in excess of a year, the required number of years for the rate shall be stated with equal prominence, together with an indication of any lower rate or rates that will apply if the deposit is withdrawn at an earlier maturity.

(e) *Profit.* The term "profit" shall not be used in referring to interest paid on deposits.

(f) *Accuracy of advertising.* No insured nonmember bank shall make any advertisement relating to the interest paid on deposits which is inaccurate or misleading or which misrepresents its deposit contracts.

(g) *Solicitation of deposits for banks.* Any person or organization which solicits deposits for a bank shall be bound by the rules contained in this section with respect to any advertisement relating to such deposits. No such person or organization shall advertise a percentage yield on any deposit it solicits for a bank which is not authorized to be paid and advertised by such bank.

(h) *Withdrawal penalties.* Any advertisement relating to the interest paid on any deposit regarding which the bank imposes a penalty for withdrawal prior to the deposit's maturity shall include a clear and conspicuous statement that in the event the depositor is allowed to withdraw all or part of his deposit before maturity, a "substantial penalty" will be imposed.

§ 329.101 Eligibility for "nonbusiness deposits."

(a) Any organization that is not organized for profit and that is described in paragraphs 501(c)(3) through (13) and (19) and section 528 of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)–(13) & (19), & 528) is eligible to hold a "nonbusiness deposit." Actual Internal Revenue Service documentation of tax-exempt status is not required to meet eligibility requirements; it is merely an aid in making eligibility determinations.

(b) It is impracticable to distinguish between "nonbusiness deposits" that are used for personal purposes and "nonbusiness deposits" that are used for business purposes (*e.g.*, by sole proprietorships). Accordingly, the term "nonbusiness deposit" includes all deposits that are held by a depositor listed in 12 U.S.C. 1828(a)(2)—including "nonbusiness deposits" that are used for business purposes.

(c) Funds held in a fiduciary capacity (whether the fiduciary is a natural person or otherwise) may be held in the form of "nonbusiness deposits" if all the beneficiaries are natural persons.

By order of the Board of Directors this 27 day of January, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-2359 Filed 2-3-86; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Summary Notice No. PR-86-2]

Summary of Rulemaking Petition Received From Air Wisconsin

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of petition for rulemaking.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a petition by Air Wisconsin seeking an exception to the restriction of commuter slots at high density traffic airports to aircraft having a maximum passenger seating capacity of less than 56 seats. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before March 6, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket [AGC-204], Docket No. 24896, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule Docket [AGC-204], Room 916, FAA Headquarters Building [FOB-10A], Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

Petitioner requests that the requirements of the High Density Traffic Airport Rule, 14 CFR Part 93, Subpart K, as amended by Part 93, Subpart S (50 FR 52180, December 20, 1985), be amended to permit the limited operation of "commuter" slots at high density airports with aircraft having a maximum passenger seating capacity of 56 or more. The High Density Traffic Airport Rule currently limits the number of air carrier, commuter, and other operations at O'Hare International Airport in Chicago, LaGuardia and Kennedy International Airports in New York, and Washington National Airport in Washington, DC. The existing rule limts the use of commuter slots at these airports to aircraft with a seating capacity of less than 56. The rule previously limited air carrier slots to use with aircraft having a seating capacity of 56 or more; however, Subpart S amended the rule to permit air carrier slots to be operated with aircraft of any size.

Petitioner states that it now serves a number of smaller cities within a 250-mile radius of O'Hare Airport. To provide jet service to these points, petitioner seeks an amendment to Part 93, § 93.221, to permit operation of a limited number of commuter slots with aircraft with more than 56 seats. Such operations would be subject to the following conditions:

(1) The slots could be used with aircraft having a maximum passenger seating capacity of 100 seats;

(2) The slots could be used to provide nonstop service only to points within a 250-mile radius of the high density airport;

(3) The number of slots so used could not exceed the number of daily operations as of December 16, 1985, which used aircraft with a maximum seating capacity of 100 for service to points within a 250-mile radius of the airport; and

(4) Slots so used could not be sold and could be traded only on a one-for-one basis.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on January 29, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement.

[FR Doc. 86-2422 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-14-M

14 CFR Part 39

[Docket No. 85-NM-163-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require inspection and modification, as necessary, of the horizontal stabilizer center section rear spar upper chord on certain Boeing Model 737 airplanes. An existing AD requires similar inspections and modifications on airplane line numbers 1 thru 208 because of a history of cracking. Later airplanes are of a similar design and may also be subject to cracking. Cracks, if undetected, could lead to failure of the horizontal stabilizer.

DATES: Comments must be received on or before March 31, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-163-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commerical Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe, Branch, ANM-120S; telephone (206) 431-2928. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highwey South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-163-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company issued Alert Service Bulletin 737-55AS1031 on November 13, 1981, which specified inspection and repair procedures, if necessary, of the horizontal stabilizer center section rear spar upper chord on the first 208 Boeing Model 737 airplanes. The alert service bulletin was prompted by a report of a cracked chord on an airplane with 38,200 flight cycles. Subsequent inspections revealed additional cracks on other airplanes of four separate operators. The FAA adopted Amendment 39-4473 [47 FR 44713), AD 82-21-02, on October 18, 1982, which requires repetitive inspections in accordance with the manufacturer's alert service bulletin for these earlier Boeing Model 737 airplanes.

Prior to the issuance of the above mentioned service bulletin, the manufacturer had incorporated a design change, beginning with airplane line number 209, which included coldworking the holes in areas of the horizontal stabilizer center section rear spar upper chord known to be susceptible to cracking and installation of close tolerance tapered shank fasteners. In addition, the manufactuer structurally reassessed the Boeing Model 737 airplane and found that this structure, even with the design change, is a Structurally Significant Item (SSI) requiring additional inspections to ensure its structural integrity. Although cracking of the horizontal stabilizer rear spar upper chord with tapered fasteners has not been reported, the manufacturer considers repetitive inspections necessary to ensure continued structural integrity. Boeing analysis indicates that if cracking does occur, it will be similar to the known cracking previously reported. Failure to detect cracks in the horizontal stabilizer center section rear spar upper chord may result in the unscheduled replacement of the entire chord or loss of the horizontal stabilizer. Although the threshold for these inspections is high in terms of flight cycles, there are affected airplanes near or beyond this threshold.

The Boeing Company issued Service Bulletin 737-55-1034 on April 12, 1985, which specifies inspection, modification, and repair procedures, if necessary, for the later Boeing Model 737 airplanes with the production design change previously discussed. Since this structure is of similar design to structures with a known occurrence of cracking, and recognizing the structural significance of the horizontal stablizer rear spar upper chord, the FAA has determined that an AD is necessary which would establish repetitive inspections of the horizontal stabilizer center section rear spar upper chord in accordance with the manufacturer's service bulletin for these later Boeing Model 737 airplanes.

It is estimated that 218 airplanes of U.S. registry would be affected by this AD, that approximately 8 manhours per airplane would be required to perform the necessary inspections, and that the average labor cost would be $40 per hour. Based on these figures, the total cost impact of this AD to the U.S. fleet is estimated to be $69,760 per inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

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Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 737-55-1034, dated April 12, 1985.

To detect cracking in the horizontal stabilizer rear spar upper chord, accomplish the following prior to the accumulation of 50,000 landings, or prior to the accumulation of 50,000 landings after chord replacement, or within 500 landings after the effective date of this AD, whichever occurs latest, unless accomplished within the last 4,000 landings:

A. Eddy current inspect the horizontal stabilizer center section rear spar upper chord for cracks in the areas of each beam gusset plate in accordance with the Flight Safety Inspection Program in Boeing Service Bulletin 737-55-1034, dated April 12, 1985, or later FAA-approved revisions. Repeat the inspections at intervals not to exceed 4,500 landings.

B. If cracks are found in the horizontal stabilizer center section rear spar upper chord, repair or modify in accordance with Part II, or replace in accordance with Part III, of the Accomplishment Instructions in Boeing Service Bulletin 737-55-1034, dated April 12, 1985, or later FAA-approved revisions. Resume the inspections required by paragraph A., above, no later than 8,000 landings after repair, or 35,000 landings after modification, or 50,000 landings after replacement, as appropriate.

C. For the purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

F. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the compliance times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

All persons affected by this directive who have not already received the appropriate service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 28, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2417 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-162-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 737 airplanes, which would require inspection and replacement, if necessary, of the horizontal stabilizer center section rear spar upper chord attach lugs. An existing AD requires similar inspections on earlier airplanes of this model because of a history of cracking. Later airplanes are of a similar design and may also be subject to cracking. Cracks, if undetected, could lead to loss of the horizontal stabilizer.

DATES: Comments must be received on or before March 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-162-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2928. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-162-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On May 20, 1981, the FAA adopted Amendment 39-4122 (46 FR 28147), AD 81-11-07, which required a one-time visual inspection and modification, as necessary, of the horizontal stabilizer center section rear spar upper chord attach lugs on certain Boeing Model 737 airplanes. This amendment applied to earlier line-numbered airplanes and was prompted by a reported cracked lug on an airplane with 28,704 flights.

Following a structural reassessment of the airplane, the horizontal stabilizer center section rear spar upper chord attach lugs were determined to be a Significant Structural Item (SSI) requiring increased emphasis in the maintenance program of operators in order to maintain the structural integrity of the airplane. As a result, the applicable Service Bulletin 737-55A1029 was revised to include a Flight Safety Addendum specifying repetitive inspections in lieu of the one-time visual inspection which had been mandated by AD 81-11-07. The FAA adopted Amendment 39-4933 on November 16, 1984 (49 FR 42556), AD 84-23-05, mandating these repetitive inspections for the earlier line-numbered airplanes. Failure to detect cracks in the horizontal stabilizer attach lugs prior to their reaching critical length may result in unscheduled spar chord replacement or loss of the horizontal stabilizer.

Prior to the issuance of AD 81-11-07, the manufacturer incorporated a design change on later airplanes which included thicker lugs. Although these airplanes have no history of cracking, the manufacturer considers repetitive inspections necessary to ensure their continued structural integrity. Accordingly, a new Service Bulletin 737-55-1033 was issued on April 12, 1985, recommending repetitive inspections in accordance with a Flight Safety Addendum for these later airplanes. Since this structure is of similar design to structures with a known occurrence of cracking, and recognizing the structural significance of the horizontal stabilizer attach lugs, the FAA proposes this amendment.

The amendment, if adopted, would establish similar inspections for later Boeing Model 737 airplanes, as currently required by AD 84-23-05 for the earlier line-numbered airplanes.

It is estimated that 219 airplanes of U.S. registry would be affected by this AD, and that approximately 4 manhours per airplane would be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. operators would be $35,040 per inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes listed in Boeing Service Bulletin 737-55-1033, dated April 12, 1985, certificated in any category.

Cracking in the horizontal stabilizer rear spar upper chord attach lugs, accomplish the following prior to the accumulation of 40,000 landings, or prior to the accumulation of 40,000 landings after a chord replacement, or within 200 landings after the effective date of this AD, whichever occurs latest, unless accomplished within the last 5,500 landings:

A. Eddy current inspect the horizontal stabilizer center section rear spar upper chord attach lugs for cracks in accordance with the Flight Safety Inspection Program specified in Boeing Service Bulletin 737-55-1033, dated April 12, 1985, or later FAA-approved revisions. Repeat at intervals not to exceed 5,700 landings.

B. If cracks are found, replace the horizontal stabilizer center section rear spar upper chord in accordance with Boeing Service Bulletin 737-55-1034, dated April 12, 1985, or later FAA-approved revisions. Resume the inspections required by paragraph A., above, prior to the accumulation of 40,000 landings after the chord replacement.

C. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

E. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

F. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of that operator if the request contains substantiating data to justify the change for that operator.

All persons affected by this directive who have not already received the appropriate service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 27, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2331 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-152-AD]

Airworthiness Directives; Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) that requires inspection of trailing edge flap tracks for cracking on certain Boeing Model 747 airplanes. This amendment would incorporate a decrease in the inspection intervals from 2,000 landings to 1,000 landings. This action is prompted by recent reports of cracking of twelve flap tracks. The cracking has occurred aft of the third lower forward fail-safe bar fastener hole. This recent service experience has shown that the present 2,000 landing inspection interval is inadequate.

DATES: Comments must be received on or before March 28, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-152-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206)431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of thsi proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–152–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

Amendment 39–4917 (49 FR 36819; September 20, 1984), AD 84–19–02, requires repetitive inspection of trailing edge flap tracks for cracking. The track web cracks are attributed to fatigue, stress corrosion pitting, and possible work hardening at the fail-safe bar fastener holes. Extensive cracking could result in separation of the flap and the resultant trajectory of the flap could cause it to damage the horizontal stabilizer, jeopardizing continued safe flight.

Since the issuance of AD 84–19–02, eight operators have reported 12 additional track web hole cracks aft of the third lower forward fail-safe bar fastener hole. The flap track is fabricated from high strenght steel and testing has shown that the rate of crack growth is very fast once a crack is established. The recent finding of a number of cracks is an indication that the present 2,000 landing inspection interval is too long.

Boeing has issued Service Bulletin 747–57–2146, Revision 3, which reduces the inspection interval from 2,000 landings to 1,000 landings and clarifies the specific inspection procedures to be used to check for cracks in the trailing edge flap tracks on certain Model 747 series airplanes.

Since this condition is likely to exist or develop in other airplanes of the same type design, the proposed amendment would require repetitive inspections, at the reduced intervals specified in the service bulletin previously mentioned.

It is estamated that 101 airplanes of U.S. operators would be affected by this AD, that it would take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $193,920 per additionally required inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Rule

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—(AMENDED)

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 84–19–02, Amendment 39–4917 (49 FR 36819; September 20, 1984), by revising paragraph B. to read as follows:

B. "Initially, as specified in Table I, below, and at intervals thereafter not exceeding 1,000 landings, visually inspect the flap track webs for cracks extending from all fastener holes not previously inspected under paragraph A., above, in accordance with Boeing Service Bulletin 747–57–2146, Revision 3, or later FAA-approved revisions. Cracked parts must be replaced before further flight."

TABLE I

Number of landings since last inspection as of the effective date of this amendment	Inspect prior to the accumulation of the following number of landings
0 to 700	1,000 from last inspection.
701 to 1,700	300 after effective date of amendment.
1,701 to 2,000	2,000 from last inspection.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on January 27, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–2332 Filed 2–3–86; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–14924; File No. S7–3–86]

Investment Company Acquisition of Securities Underwritten by an Affiliate of That Company; Request for Comment

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Commission is considering amending an existing rule that provides an exemption from a statutory provision that prevents a registered investment company from purchasing or otherwise acquiring securities underwritten by an affiliate of the company during the existence of the underwriting or selling syndicate. The Commission is requesting comment on whether, and if so, how, the rule should be amended to provide better safeguards against overreaching and at the same time give investment companies greater flexibility in making investments. All comments and suggestions received will be considered in developing the rule proposal.

DATE: Comments must be received on or before April 7, 1986.

ADDRESS: Comment letters should refer to File No. S7–3–86 and be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Philip J. Niehoff, Esq., (202) 272–2048, or Elizabeth K. Norsworthy, Chief, (202) 272–2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is considering amending rule 10f–3 [17 CFR 270.10f–3] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Act"), a rule that provides an exemption from section 10(f) [15 U.S.C. 80a–10(f)] of that Act. Section 10(f) prohibits a registered investment company from purchasing or otherwise acquiring any security, a principal underwriter of which is affiliated with the registered investment company,[1] during the existence of the underwriting or selling syndicate. Rule 10f–3 allows registered investment companies to make such purchases or acquisitions under certain conditions. The Commission is asking for comment on how the rule might be amended to provide better safeguards for investors and give investment companies more flexibility in purchasing securities.

After a short discussion of the legislative history of section 10(f) and the development of existing rule 10f–3, this release requests comment on the causes and effects of overreaching as well as the effectiveness of the conditions contained in the existing rule. The release also invites specific comment on whether alternative conditions, such as those that have been suggested by applicants who have recently applied for additional exemptive relief from section 10(f), could be substituted for existing provisions of the rule to better protect investment company investors from the possibility of overreaching while at the same time giving investment companies more flexibility in making investments. All comments and suggestions received will be considered in developing the rule proposal.

Background

When Congress was considering legislation in 1940 to regulate the investment company industry, concern was voiced over underwriters "dumping" otherwise unmarketable securities on affiliated investment companies,[2] either by forcing the investment company to purchase unmarketable securities from the underwriting affiliate itself, or by forcing or encouraging the investment company to purchase such securities from another member of the syndicate. Concern was also expressed over the level of underwriting fees earned by affiliated underwriters in connection with these transactions.[3]

In reponse to these concerns, Congress included section 10(f) in the Act to prevent any registered investment company from purchasing or otherwise acquiring any security during the existence of an underwriting or selling syndicate where a principal underwriter of the security is affiliated with the investment company except under limited circumstances.[4] Since section 17(a) [15 U.S.C. 80a–17(a)] prevents an investment company from acquiring any securities directly from an affiliate or from an affiliate of an affiliate, the purpose of section 10(f) is to prevent an investment company from acquiring any securities from an unaffiliated member of the underwriting syndicate on the premise that the affiliate still has the potential to pressure the investment company into making the purchase in order to facilitate the underwriting.[5]

Section 10(f) provides that the Commission may exempt any transaction or classes of transactions from the statutory prohibition if and to the extent that the exemption is consistent with the protection of investors. Using that exemptive authority, the Commission adopted rule 10f–3 [17 CFR 270.10f–3] in 1958.[6] The rule as later amended [7] permits the purchase of securities registered under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") and municipal securities [8] underwritten by a person

[1] Specifically, section 10(f) states that a principal underwriter of the securities may not be any officer, director, member of an advisory board, investment adviser or employee of such registered company or, with a limited exception, any person of which any such officer, director, member of an advisory board, investment adviser or employee is an affiliated person.

[2] This practice was described in the Report of the Securities and Exchange Commission, *Investment Trusts and Investment Companies*, Part Three, Chapter VII, "Abuses and Deficiencies in the Organization and Operation of Investment Trusts and Investment Companies," H.R. Doc. No. 279, 76th Cong., 2d Sess. 2581, 2589 (1940).

[3] *See Hearings on S. 3580 Before a Subcomm. on the Comm. on Banking and Currency*, 76th Cong., 3d Sess. 209, 212–13 (1940). ("*Senate Hearings on S. 3580*")

These concerns are reflected in section 1(b)(2) [15 U.S.C. 80a–1(b) (2)] which provides that:

[T]he national public interest and the interest of investors are adversely affected—

(2) when *investment companies* are organized, operated, managed, or their *portfolio securities are selected in the interest of* directors, officers, *investment advisers . . . or other affiliated persons thereof, underwriters, brokers, or dealers . . .* or in the interest of . . . persons engaged in other lines of business . . . (emphasis added).

[4] Section 10(f) does permit the purchase of securities where the investment company is itself acting as a principal underwriter of the issuer. Principal underwriter is defined in section 2(a)(29) [15 U.S.C. 80a–2(a)(29)] as:

[A]ny underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread or profit greater than the rate allowed another underwriter participating in the distribution.

[5] Section 17(a)(1) makes it unlawful for any affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, knowingly to sell any security or other property to such company except in certain limited circumstances not relevant here. Therefore, an underwriter that is affiliated with an investment company or its investment adviser is already prevented by section 17(a) from selling securities to that company.

[6] *See*, Investment Company Act Release No. 2787 (December 2, 1958) [23 FR 9548].

In addition to rule 10f–3, rules 10f–1 and 10f–2 were adopted shortly after the Act was promulgated.

Rule 10f–1 [17 CFR 270.10f–1] adopted in 1941, extends the statutory exception for the purchase of securities where an investment company is itself acting as a principal underwriter of those securities (see *supra* note 4) to certain situations where the investment company is acting as an underwriter of the securities. Investment Company Act Release No. 73 (February 28, 1941) [6 FR 1191].

Rule 10f–2 [17 CFR 270.10f–2], adopted in 1944, permits the purchase of securities underwritten by an affiliate pursuant to the exercise of warrants or rights, provided that the warrants or rights are offered or issued on the same basis to all securities holders of the issuing company and do not exceed five percent of the total amount of warrants or rights outstanding. Investment Company Act Release No. 666 (January 5, 1944) [9 FR 339].

Since rule 10f–3 is considered the primary exemptive rule under section 10(f), comment is requested on whether rules 10f–1 and 10f–2 should be merged into rule 10f–3 if amended.

[7] The rule has been amended twice—in 1979 and 1985. Most notably, the 1979 amendments increased the rule's volume limitations, substituted a fair and reasonable standard for a cap on underwriter compensation and permitted investment companies to acquire municipal securities, as well as securities registered under the Securities Act in reliance on the rule. Investment Company Act Release No. 10736 (June 4, 1979) [44 FR 36152]. In 1985, when the Commission revised investment company periodic reporting obligations to require such companies to file semi-annual reports instead of annual and quarterly reports, the rule was changed to require companies to report their 10f–3 transactions semi-annually instead of quarterly. Investment Company Act Release No. 14698 (July 1, 1985) [50 FR 27837].

[8] Municipal securities are defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] ("Exchange Act") by section 3(a)(29) [15 U.S.C. 78c(a)(29)].

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affiliated with the investment company under certain specified conditions intended to prevent the affiliate from taking unfair advantage of the investment company. These conditions, as discussed in more detail below, relate to: (i) The amount of securities that an investment company, or two or more investment companies having the same investment adviser, may purchase; (ii) the type of securities that may be acquired; (iii) the price to be paid for the securities and the time period during which the purchase may be made; (iv) the type of underwriting agreement that governs the offering; (v) the fees to be paid to the principal underwriters; and (vi) the role played by the affiliated underwriter. The rule also directs the investment company to keep a record of any transactions made pursuant to the rule, to have the directors review those transactions at least quarterly and to report those transactions in the company's semi-annual report.

The Commission believes that these conditions should be re-evaluated in light of changed conditions in the financial markets. Recent mergers and acquisitions have created financial service conglomerates that include both underwriting firms and advisers to investment companies. Applicants for additional exemptive relief from section 10(f) contend that where an underwriting firm plays a major role in underwriting a wide range of securities, the volume limitations in rule 10f-3 may make it difficult for an investment company affiliated with that underwriter to purchase the amounts and types of securities that it needs to achieve its investment objectives.[9]

In addition, concern has been expressed that certain of the rule's conditions, such as the volume limitations, may not provide the most meaningful safeguards to protect against overreaching. For example, although the intent of section 10(f) is to prevent an underwriter affiliated with an investment company from causing that company to purchase securities from the unaffiliated members of the underwriting syndicate, the argument could be made that the existing rule merely limits the extent to which such conduct could occur. As discussed below, recent applicants for exemptive relief from these restrictions have suggested alternative conditions. In view of these developments, the Commission believes that rule 10f-3 should be re-evaluated and requests comments on how the rule could be amended, consistent with the protection of investors. To the extent possible, the Commission particularly encourages commentators to base their comments on empirical data.

Discussion

In addition to comments on the specific issues discussed below, the Commission asks commentators to consider the causes of overreaching and whether this behavior has any measurable effects on the performance of an investment company's portfolio. In particular, the Commission requests comments on what market conditions would encourage an underwriter to induce an affiliated investment company to purchase securities which the company would not otherwise acquire. Is there any evidence to suggest that this behavior could be a function of the type of securities being underwritten, the type of underwriter, the relationship between the underwriter and purchaser or some other conditions? How does the performance of securities that investment companies have acquired in reliance on existing rule of 10f-3 compare to the performance of similar securities purchased by those companies during a comparable time period in primary offerings which have not been underwritten by an affiliate?

I. Quantity of Securities Purchased

To minimize any adverse effects of dumping, rule 10f-3 contains two provisions limiting the amount of securities which in investment company may purchase during the existence of a selling or underwriting syndicate where a principal underwriter of the securities is affiliated with the investment company. These limitations are based on the size of the offering and on the size of the fund.

Paragraph (d) of rule 10f-3 permits an investment company, or two or more investment companies having the same investment adviser, to purchase up to four percent or $500,000 (but not to exceed 10% of the offering), whichever is greater, of an issue of securities underwritten by an affiliate of the investment company. Paragraph (e) of present rule 10f-3 allows an investment company to purchase securities underwritten by an affiliate during the primary offering only if the consideration paid does not exceed three percent of the investment company's total assets. These provisions were included to limit the amount of securities that an underwriter could induce an affiliated investment company or companies to purchase.

According to recent applicants for exemptive relief, these limitations may make it difficult for an investment company to meet its investment objectives if it is affiliated with a major investment banking firm. Applicants have stated that they have been unable to purchase the amount or type of securities that they desire because rule 10f-3 limits their participation in primary offerings.[10] Of course, an investment company can always purchase the desired securities in the secondary market after the underwriting syndicate is dissolved, but applicant contend that this alternative can lead to higher costs, loss of profit and delays in acquiring the securities.[11]

As noted above, another view of these conditions is that quantity limitations do *not* ensure against an underwriter causing an affiliated investment company to purchase undesirable securities; instead, they merely limit the harm to investors that may result from the sale. In view of these concerns, (i) Are quantity limitations appropriate? (ii) If so, should the rule's existing limitations be modified? (iii) Should scale be used, depending on the type of security, the size of the offering or the size of the investment company?[12] (iv) If quantity limitations are not appropriate, what alternative standards could be substituted?

II. Type of Securities

Paragraph (a)(1) of the existing rule provides that exemptive relief from section 10(f) is available only where an investment company is acquiring securities registered under the Securities Act or municipal securities that are exempt from registration under section 3(a)(2) [15 U.S.C. 77c(a)(2)] of that Act.[13]

[9] *See* Application of IDS Mutual, Inc., *et al.*, IDS Financial Services, Inc., IDS Life Insurance Company and Shearson Lehman/American Express Inc., *et al.* (File No. 812-5772) ("IDS application"). *See also* Application of CMA Tax-Exempt Fund *et al.* Merrill Lynch Asset Managment, Inc., *et al.* and Merrill Lynch, Pierce, Fenner and Smith Incorporated ("Merrill Lynch application") (File No. 812-5990).

[10] *See* IDS application Amendment No. 1, *supra* n. 9, p.26.

[11] *Id.* at pp. 26-27.

[12] *See e.g.*, IDS application Amendment No. 1, *supra* n. 9, at pp. 17-24; *cf.* Merrill Lynch application, *supra* n. 9, at pp. 58-61 (advocating a fixed percentage based on the size of the offering and a sliding scale based on the size of the fund for municipal securities).

[13] Municipal securities were added to the rule in 1979 after the enactment of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1520 (1976)) that, *inter alia*, permitted investment companies organized as corporations to pass through to their shareholders the tax-exempt character of the income earned from the municipal bond investments. [26 U.S.C. § 852] As contended by applicants for exemptive relief prior to the 1979 amendments, funds that invest in municipal securities often need to purchase large blocks of securities of a particular issuer at specific yields and maturities during the primary offering.

In the case of registered securities, the issuer must have been in continuous operation for at least three years; in the case of municipal securities, the securities must have received a rating of at least investment grade (one of the four highest ratings) from a nationally recognized statistical rating organization or, issuer has been in operation for less than three years, one of the three highest ratings.

While the purpose of these provisions is to ensure that investment companies purchase only high quality securities that are underwritten by an affiliate, arguably more effective quality controls could be substituted. For example, in the case of registered securities, should the rule be amended to incorporate the same criteria that are used to determine whether an issuer is eligible to register its securities on form S-2 [17 CFR 239.12] or form S-3 [17 CFR 239.13] under the Securities Act?[14] Should higher ratings be required with respect to municipal securities?[15] Alternatively, the argument can be made that this type of provision would prevent investment companies relying on the rule from investing in start-up companies. Given the limited track record and lack of a trading market for securities of start-up companies, what other safeguards against overreaching would be effective? Should the rule differentiate at all between the types of securities that may be purchased? If so, should any other types of securities be added to the list of eligible securities?

[14] Form S-2 may be used by issuers meeting the following requirements: (i) The issuer must have a class of securities registered under the Exchange Act; (ii) the issuer must have been subject to the filing requirements under the Exchange Act for at least three years; and (iii) since the close of its last fiscal year, must not have failed to pay dividends or sinking fund installments on preferred stock, defaulted on outstanding indebtedness or failed to make rental payments. *See* General Instruction I to form S-2.

In addition to the requirements described above, issuers using form S-3 must meet at least one of the following transaction requirements: (i) The market value of voting stock held by non-affiliates of the issuer is $150 million or more; (ii) the market value of voting stock held by non-affiliates of the issuer is $100 million or more and the annual trading volume is 3 million shares or more; or (iii) the non-convertible debt or preferred securities to be offered has received an investment grade rating from at least one nationally recognized statistical rating organization. *See* General Instruction I to form S-3.

[15] In addition to requiring higher ratings for municipal securities, one applicant has represented that the investment adviser will continually monitor the ratings of the municipal securities in the fund's portfolio and if the ratings drop below the rating required for purchase, the fund's board of directors will re-evaluate those securities to determine whether they continue to be high quality with minimal credit risks to the fund. *See* Merrill Lynch application, *supra* n. 9, at pp. 60-61.

III. Price Paid for the Securities and Time Period During Which the Purchase My Be Made

Paragraph (a)(2) of rule 10f-3 states that to be eligible for the exemption, an investment company must purchase the securities "at not more than the public offering price prior to the end of the first full business day after the first date on which the issue is offered to the public."[16] The Commission has interpreted this provision to mean that the investment company must make its acquisition on the first business day of the offering at no more than the initial public offering price.[17] This provision is based on the theory that on the first business day of the offering an affiliated underwriter would not yet be in a position to know whether or not the offering would be fully subscribed. Further, the provision was included in the rule to prevent an underwriter from using affiliated investment companies to stimulate the market for the securities.

However, it could be argued that to the extent that the rule locks the investment company into making the purchase on the first business day of the offering, the rule may unduly restrict the company's investment flexibility. In view of the above, (i) Is a price limitation appropriate? (ii) If so, how can the limitation be clarified or modified? (iii) If a price limitation is not appropriate, what alternative standard could be substituted?

IV. The Type of Underwriting Agreement Thot Governs the Offering

The final provision of paragraph (a) of rule 10f-3 requires that the securities be offered pursuant to a firm commitment underwriting on the assumption that an underwriter is less likely to enter into a firm commitment to sell securities that may be difficult to market. Where a primary offering is governed by another type of underwriting agreement, the members of the underwriting syndicate may be under considerably more pressure to "sell out" the offering. For example, the underwriters may not earn any commission in a "best efforts, all or none" underwriting if any securities remain unsold. However, the argument can be made that participants in a firm commitment underwriting are also under pressure to "sell out" the offering because the members of the syndicate may be obligated to purchase all or a portion of the unsold securities. In view of these considerations, should this provision be retained or modified? What alternative provision could be substituted?

[16] That paragraph also provides that in a rights offering, the investment company must purchase the securities on or before the fourth day preceding the day when the offering terminates.

[17] *See* Investment Company Act Release No. 10562, dated February 13, 1979 [44 FR 10580], proposing the 1979 amendments to the rule.

V. The Fees To Be Paid to the Principal Underwriters

Paragraph (b) of rule 10f-3 requires that the commission, spread or profit received by the principal underwriters be reasonable and fair in relation to the commission, spread or profit received by other underwriters in connection with the sale of similar securities being sold during a comparable time period. This provision was included in the rule to remove any incentive for an underwriter to cause an affiliated investment company to purchase securities because of a larger commission or profit that the underwriter might receive. The provision also was included on the assumption that if a syndicate is allowed a higher than average spread on a primary offering, then the issuer may be offering syndicate members an inducement to sell otherwise unmarketable securities. Although it appears that this limitation of the rule should be retained to address Congress' concern that an investment company not be overcharged, comment is requested on whether it should be changed, and if so, how?

VI. The Role Played by the Affiliated Underwriter

Paragraph (f) of rule 10f-3 provides that an investment company relying on the rule may not purchase securities directly or indirectly from an affiliated underwriter except that a purchase from a syndicate manager is not considered to be a purchase from a specific underwriter so long as that underwriter does not benefit directly or indirectly from the transaction.[18] The staff has interpreted this provision to allow an investment company to purchase securities from an unaffiliated member of the underwriting syndicate where the syndicate manager is affiliated with the investment company, so long as the sale is not credited against the manager's account.[19]

[18] The rule also excepts purchases of municipal securities from the syndicate manager where the sale is not allocated to the account of the affiliated underwriter.

[19] *Hotteras Income Securities, Inc.* (February 4, 1983), [1982-1983 Transfer Binder] Fed. Sec. L. Rep. (CCH) Par. 77,428, letter from the Division of Investment Management to Hatteras Income Securities, Inc. (pub. avail. March 7, 1983). This interpretation would allow the manager to retain a portion of the underwriter's spread on all securities sold out of the syndicate's general account or "pool."

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An argument can be made that this provision should be redrafted simply to prevent any investment company from acquiring securities where an affiliated underwriter is acting as manager or co-manager of the offering.[20] Since a manager or co-manager of an underwriting syndicate has access to information regarding the extent to which the offering has been successful and, therefore, has contol over the allocation of the securities to members of the underwriting syndicate, it has the knowledge and ability to allocate large amounts of undesirable securities. The other members of the syndicate are much less likely to know how successful an offering has been and are unable to control the allocation process. However, given the trend toward concentration in the financial services industry, such a provision could prevent investment companies from participating in a number of primary offerings since the managers and co-managers of an underwriting syndicate are often chosen from only a small group of major investment banking firms. Moreover, such a provision could cause particular difficulty in the context of municipal securities offerings, because this type of a municipal offering may have several co-managers.

Another way to limit the role played by the affiliated underwriter might be to condition exemptive relief upon the underwriter not soliciting the participation of the investment company.[21] Since most solicitations are verbal and a "paper trail" is rarely created, however, such a provision may be difficult to enforce.

In view of the above, (i) Should the existing provision be retained, but clarified to incorporate the staff's interpretive position? (ii) Should the existing provision be replaced by or supplemented with a provision that prohibits purchases where the affiliated underwriter is acting as managing underwriter? (iii) Should such a prohibition be absolute or relaxed under certain conditions? (iv) Should the existing provision be replaced by or supplemented with a ban on solicitation by the affiliated underwriter or by all members of the underwriting syndicate? If so, how would such a condition be enforced? (v) Should the existing provision be replaced by or supplemented with any other alternatives?

VII. Other Objective Criteria That Have Been Suggested

Several criteria for exemptive relief have been suggested recently that may provide better safeguards against overreaching than some or all of the provisions of rule 10f-3 discussed above. For example, recent applicants for exemptive relief have undertaken to obtain advance approval of a rule 10f-3 transaction from a qualified representative of the investment company.[22] Alternatively, the rule could require an investment company to obtain advance notice of a 10f-3 transaction contemplated by its adviser. If the company did not object to the purchase within a given time period, *e.g.*, 24 or 48 hours, the adviser would go forward with the transaction.[23]

While the best of marketability is the after-market, the Commission believes that other indicia of marketability may be evident during the early stages of a primary offering. For example, if an offering is over-subscribed, a reasonable inference may be drawn that the underwriter is unlikely to have any improper incentive to cause an affiliated company to purchase the securities that are the subject of the offering. The rule could condition exemptive relief upon an offering being over-subscribed by the primary offering date. Such a condition would of course provide that the over-subscriber must be net of affiliates, *i.e.*, exclusive of any subscriptions made by investment companies affiliated with the underwriters of that offering.

The Commission is, therefore, requesting general comment on whether better objective criteria for exemptive relief can be developed, as well as specific comment on whether an amended rule should incorporate some or all of the suggestions outlined above.

VIII. The Role of the Board of Directors

Paragraph (h) of rule 10f-3 requires the board of directors of an investment company relying on the rule, including a majority of the disinterested directors,[24] to adopt procedures reasonably designed to ensure compliance with the conditions of the rule. The rule requires the directors to review these procedures at least once a year and also to review all of the company's rule 10f-3 transactions at least once every three months for compliance with those procedures. Recent applicants for exemptive relief have also represented that in addition, the directors will review each of the company's 10f-3 transactions as soon as practicable after completion of the transaction.[25]

Specific comment is requested on the following: (i) Does the quarterly review provide meaningful protection against overreaching by affiliated underwriters? (ii) Would director oversight be more effective if the review were conducted after more time had elapsed, *i.e.*, when the directors have more information about the aftermarket? (iii) Should the rule set forth with greater specificity the factors which the directors should consider in evaluating each 10f-3 transaction? (iv) Are other measures needed?(v) If so, what should those measures be?

IX. Reporting Requirements

Paragraph (g) of rule 10f-3 requires an investment company to report all rule 10f-3 transactions to the Commission in its semi-annual report on form N-SAR [17 CFR 274.101], attaching an exhibit to that report that sets forth the details of each transaction. Since registered investment companies are encouraged to file form N-SAR by direct transmission through the Commission's electronic disclosure system, the exhibit describing all of the company's rule 10f-3 transactions must be submitted separately on paper under cover of form SE [17 CFR 274.403] or on magnetic tape or a separate diskette under cover of form ET [17 CFR 274.401]. As a result, it may be cumbersome for the Commission to receive this data. Moreover, the limited information which these reports contain is not sufficient to permit a meaningful analysis of these transactions.

To fully evaluate the impact of these transactions, the Commission believes that it may be more practical to rely instead on its periodic on-site examination of fund records to ensure compliance with the rule. The Commission is, therefore, requesting comment on whether the rule should be modified to permit an investment company simply to report whether any 10f-3 transactions occurred during the reporting period. The investment company would still be required to keep a detailed record of these transactions as discussed below.

X. Record Keeping Requirements

Paragraph (i) of rule 10f-3 requires the investment company to keep a written copy of the procedures that the directors have approved to ensure compliance with the rule in an easily accessible place. In addition, the investment company is also required to keep a written record of each of its rule 10f-3 transactions for at least six years—the first two years in an easily accessible place. The Commission continues to believe that an investment company must keep a detailed record of its rule 10f-3 procedures and the terms of its 10f-3 transactions. Comment is requested, however, on whether this provision should be modified, and if so, how?

Conclusion

The Commission wishes to emphasize that, by asking for public comment and setting forth arguments pro and con with respect to the questions addressed in this release, it has not taken any firm position on those questions. The Commission is particularly interested in developing better objective standards for exemptive relief that can replace some or all of the provisions of the existing rule. The Commission will, of course, consider other suggestions that will ensure adequate investor protection while making rule 10f-3 more responsive to changes in the financial markets. Finally, the Commission wishes to again encourage commentators, whenever possible, to base their comments on empirical data.

List of Subjects in 17 CFR Part 270.

Investment companies, Reporting requirements, Securities.

Dated: January 29, 1986.
By the Commission.
John Wheeler,
Secretary.
[FR Doc. 86-2373 Filed 2-3-86; 8:45 am]
BILLING CODE 8010-01-M

[20] *See* Release No. 35-23663 [50 FR 21680] in which the Commission proposed a definition of managing underwriter that would be included in a revised version of rule 70 [17 CFR § 250.70] under the Holding Company Act of 1935 [5 U.S.C. 79 *et seq.*]

[21] *See* IDS application, Amendment No. 1, *Supra* n. 9, p. 23; *see also* Merrill Lynch application, *supra* n. 9, p. 91.

[22] A qualified representative would be a person designated by a majority of the directors or managers who are not "interested persons" (as the term is defined in section 2(a)(19) [15 U.S.C. § 80a-2(a)(19)]) of the investment company who is either a disinterested director or manager of the investment company or an officer of the investment company not affiliated with the investment adviser or any of the underwriters in the selling syndicate. *Id.*, at p.21.

[23] *See* letter of November 13, 1985, from counsel for applicant, re IDS application (File No. 812-5772).

[24] Section 10(a) of the Act [15 U.S.C. 80a-10(a)] provides that no more than 60 percent of the members of an investment company's board of directors may be interested persons of that company.

[25] *See* IDS application, Amendment No. 1, *supra* n. 9, p. 22.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 85N-0500]

Cocoa Powders; Possible Amendment of the U.S. Standards of Identity; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; Extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for submitting comments on its advance notice of proposed rulemakng on the possible amendment of the U.S. standard for cocoa powders. This action is based on a request for an extension of the comment period.

DATE: Comments by April 30, 1986.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 2, 1985 (50 FR 49405), FDA published an advance notice of proposed rulemaking offering interested persons an opportunity to review the Codex Standard for Cocoa Powders (Cocoas) and Dry Cocoa-Sugar Mixtures (Codex Standard 105-1981) (Codex standard) and to comment on the desirability of, and need for, amendment of the U.S. standards of identity for cocoa powders to achieve consistency with the Codex standard. FDA requested comments by January 31, 1986.

The Chocolate Manufacturers Association of the United States of America (CMA) has requested a 90-day extension of the comment period. The purpose of the request is to allow the industry adequate time to properly review the Codex Standard and determine a proper course of action.

FDA concludes that CMA has provided adequate justification for its request. Therefore, FDA is extending the comment period for 90 days to April 30, 1986.

Interested persons may, on or before April 30, 1986, submit to the Dockets Management Branch (address above) written comments regarding this advance notice. Two copies of any comments are to be submitted, except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 30, 1986.

James C. Simmons,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-2398 Filed 1-30-86; 2:50 pm]
BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 54, 301 and 602

[EE-96-85]

Income, Excise, and Estate and Gift Taxes; Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to effective dates and certain other issues arising under the employee benefit provisions of the Tax Reform Act of 1984. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by April 7, 1986. The regulations are proposed to be effective on varying dates provided in the temporary regulations.

ADDRESS: Send comments and requests for a public hearing to Commissioner of Internal Revenue, Attn: CC:LR:T (EE-96-85), 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution

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Ave., NW., Washington, DC 20224, Attention: CC:LR:T (EE–96–85), telephone: 202–566–3544 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations provide guidance concerning the economic performance requirement for certain employee benefits under section 461(h) of the Internal Revenue Code of 1954 (Code), as added by section 91 of the Tax Reform Act of 1984 (Act) (Pub. L. 98–369, 98 Stat. 598); the transitional rule for vested accrued vacation pay under section 463 of the Code, as amended by section 91(i) of the Act (Pub. L. 98–369, 98 Stat. 609); the treatment of group-term life insurance purchased for employees under section 79 of the Code, as amended by section 223 of the Act (Pub. L. 98–369, 98 Stat. 775) the treatment of funded welfare benefit plans under sections 419 and 419A of the Code, as added by section 511 of the Act (Pub. L. 98–369, 98 Stat. 854); the treatment of unfunded deferred benefits under sections 404(b) and 162 of the Code, as amended by section 512 of the Act (Pub. L. 98–369, 98 Stat. 862); additional requirements for tax-exempt status of certain organizations under section 505 of the Code, as added by section 513 of the Act (Pub. L. 98–369, 98 Stat. 863); rollovers of partial distributions under sections 402 and 403 of the Code, as amended by section 522 of the Act (Pub. L. 98–369, 98 Stat. 868); distributions where substantially all contributions are employee contributions under section 72 of the Code, as amended by section 523 of the Act (Pub. L. 98–369, 98 Stat. 871); repeal of the estate tax exclusion for qualified plan benefits under section 2039 of the Code, as amended by section 525 of the Act (Pub. L. 98–369, 98 Stat. 873); determination of whether there is a collective bargaining agreement under section 7701(a)(46) of the Code, as added by section 526(c) of the Act (Pub. L. 98–369, 98 Stat. 881); nonrecognition of gain on stock sold to an employee stock ownership plan (ESOP) under section 1042 of the Code, as added by section 541 of the Act (Pub. L. 98–369, 98 Stat. 887); deductibility of dividends relating to ESOPs under sections 404 and 3405 of the Code, as amended by section 542 of the Act (Pub. L. 98–369, 98 Stat. 890); exclusion of interest on ESOP loans under section 133 of the Code, as added by section 543 of the Act (Pub. L. 98–369, 98 Stat. 894); treatment of an employer and an employee benefit association as related under section 1239 of the Code, as amended by section 557 of the Act (Pub. L. 98–369, 98 Stat. 898); and technical corrections to the pension provisions of the Tax Equity and Fiscal Responsibility Act of 1982 under sections 713 and 715 of the Act (Pub. L. 98–369, 98 Stat. 955, 966). The proposed regulations are issued under the authority contained in section 7805 of the Code (26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. 86–2172 published in the Rules and Regulations portion of this issue of the Federal Register.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits pubic comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are submitted (perferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs, of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB also to send copies of the comments to the Service.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–2171 Filed 1–29–86; 4:06 pm]

BILLING CODE 4830–01–M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 581]

Grape Variety Names; Wine Labeling

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF proposes to establish approved lists of names of grape varieties which may be used as varietal designations for American wines. This proposed rulemaking also establishes the method by which names of additional or new American grape varieties may be added to the approved lists in the future. Due to the increased emphasis on varietal labeling, the Bureau feels that it is necessary to establish standardized lists of winegrape varietal names. These standardized lists of varietal names will assure more accurate and truthful identification of the wine for the consumer.

DATE: Written comments must be received by April 7, 1986.

ADDRESSES: Send written comments to: Office of Compliance Operations, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Attn. Notice No. 581).

Copies of the report of the Winegrape Varietal Names Advisory Committee and written comments received in response to this notice will be available during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Bacon, Product Compliance Branch, (202) 566–7595.

SUPPLEMENTARY INFORMATION:

Background

In recent years, more emphasis has been put on the use of varietal desigantions on wine labels and in advertising. In response to this trend, AFT decided to examine the propriety of grape variety names used in the labeling of domestically produced wine. To accomplish this, a Winegrape Varietal Names Advisory Committee was established in December of 1982. The Committee's membership was composed of individuals representing various interests concerned with wine. The participants were drawn from among wine producers, grape growers, the academic community, consumers and government.

Accuracy in identification of the proper grape variety was the primary goal of the Committee. In dealing with the often complicated issues of grape varietal nomenclature, the key question in every case has been "What is the most correct name for this variety?". Many other factors have influenced the naming of grape varieties, such as, common usage or commercial practice. These were carefully considered in the Committee's recommendations. However, the prerequisite for policy decisions was the establishment of the facts.

The report of the Winegrape Varietal Names Advisory Committee was made available to the public through an announcement published in the Federal Register on November 1, 1984 (49 FR 44049). The report recommends a list of names to be used for American grape varieties and guidelines for adding new varietal names to the list. The Bureau of Alcohol, Tobacco and Firearms is proposing to incorporate the findings of the Committee into 27 CFR Part 4.

Summary of Proposed Changes to Part 4

1. § 4.23 has been deleted since it applied to wine bottled prior to January 1, 1983. § 1983. § 4.23a has been renumbered § 4.23 In addition, a transitional rule has been added at § 4.23(e) to require the ue of the varietal names shown in Subpart J for American wines.

2. The proposed regulations set out prime grape varietal names to be used on labels of American wine bottled two years after effective date of the regulations.

3. Two additional sections identify:

(a) Alternative names which may appear on American wine labels only in direct conjunction with the prime name.

(b) Alternative names which may be used with or without the prime name until 5 years after the effective date of the regulation.

4. The proposed regulations also establish the method by which varieties may be added to the approved lists and the documentation/substantiation required to establish the name of the variety.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) A significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirement to collect information proposed in this notice has been submitted to the Office of Management and Budget for review under Sec. 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

Public Participation

ATF requests comments from all interested parties. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

In addition to general comments, ATF is specifically interested in the following areas which will be significantly affected by the proposed rulemaking:

1. *French Colombard—French Colombard* has been included in the list of alternative names which may be used with or without the prime name (§ 4.93) until 5 years after the effective date of the regulations. After that time only the term *Colombard* will be acceptable as the grape variety designation.

The decision of the Committee was not unanimous concerning the use of the term *Colombard* instead of *French Colombard*. However, *Colombard* is the correct name for the variety currently called *French Colombard*. Therefore, in the interest of accuracy, the Bureau feels that *Colombard* should be adopted as the prime name for the variety. Those recommending the use of the term *Colombard* also recommended a phase-in period of at least 15 years and possibly as long as a generation of 25–30 years.

The Bureau feels that a 15 year or longer phase-in period is impractical from an administrative standpoint. Our experience with regulatory phase-in periods affecting labels has indicated that most of the changes required (i.e. new marketing, redesign and printing of labels) are accomplished within the last 1 to 2 years prior to implementation. The difference between *Colombard* and *French Colombard*, from a consumer perspective, seems negligible and no more distinct than other changes in varietal names such as *Cayuga* and *Cayuga White*, *Foch* to *Marechal Foch*, etc. Therefore, we do not feel that an extended phase-in period, as recommended by the Committee, would benefit ATF, industry or the consumer.

For the above reason, the Bureau is proposing to treat *French Colombard* no differently than other designations in this category (§ 4.93). The Bureau would welcome specific comments to assist in the final decision making process.

2. *Thompson Seedless and Sultanina*—The Committee found that *Thompson Seedless* and *Sultanina* were equally valid prime names to describe that variety. The Bureau is proposing to allow both names for the variety, as recommended by the Committee, but realizes further consideration may be warranted regarding the use of either of these names. *Thompson Seedless* is rare as a wine designation but well known as a raisin and table grape. On the other hand, *Sultanina* as a wine or grape name, seems even more rare and significantly less recognizable. The Bureau requests comment on whether *Sultanina* should be used as a prime name in addition to *Thompson Seedless*, whether it would more properly be an alternative name which should be phased out or whether it should be used only in conjunction with *Thompson Seedless*.

3. *Napa Gamay—Napa Gamay* is included in the proposed list of prime names. The Bureau recognizes that its

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inclusion as a prime name may be temporary since work is under way to establish the true identity of this variety. By including it here, ATF does not intend that it be considered a closed issue. Instead, this will assure that any change in its identity will be aired to the public in the rulemaking process.

4. *Gamay Beaujolais*—The Committee found that *Gamay Beaujolais* is not a valid name for any variety. Based on their recommendation, we are proposing that *Gamay Beaujolais* be accepted as an alternative name to appear in direct conjunction with *Napa Gamay* for a period of five years after the effective date of the regulations provided the wine is made from grapes currently identified as *Napa Gamay*. In addition, ATF is proposing to allow the use on labels of *Gamay Beaujolais* in conjunction with *Pinot noir* for a period of five years from the effective date of the regulations provided the wine is, in fact, made from Pinot noir.

5. *Walschriesling (Welschriesling)*—The Committee recommended that the alternate spelling, *Welschriesling*, be allowed for the varietal name *Walschriesling*. Both spellings of the name are included in the prime list of grape varietals (§ 4.91). However, ATF is aware that the difference between the two spellings, from a consumer perspective, seems negligible and no more distinct than other spelling variations which the Committee recommended for elimination. For example, the spelling *Aurore* is proposed for adoption while *Aurora* is not recommended for inclusion on the prime name list and the spelling *Carignane* is recommended instead of *Carignan*. The Bureau would welcome comment on whether both spellings of the varietal *Walschriesling (Welschriesling)* should be retained or whether *Walschriesling* only should be adopted as the prime name for the variety.

6. *Riesling*—In addition to the above question of the spelling of the name *Walschriesling*, the question of acceptable names for other varieties commonly known as "Rieslings" was addressed by the Committee. The proposed regulations allow for the use of *White Riesling* and *Johannisberg Riesling* as equally acceptable prime names. The name *Johannisberg Riesling* has so long been recognized in the United States as a name for *White Riesling*, that the Committee recommended that it be accepted as a synonym. The term has been historically used to signify the "true" *White Riesling*, as distinguished from other horticulturally distinct varieties which carry the Riesling name.

Other names using the term "Riesling" have been given to varieties which are not, in fact, true Rieslings. However, their usage has been commonly accepted and no other names have been attributed to these varieties. In the absence of any alternative, the names *Emerald Riesling* and *Missouri Riesling* have been included on the list of prime names. *Grey Riesling* has not been conclusively identified; however, it has been definitely established that it is not a true Riesling. Until such time as the variety is properly identified, it has been added to the prime name list. At that time, it should be replaced by the horticulturally correct name.

The proposed regulations also provide for the use of *Franken Riesling* if it is shown in conjunction with its correct varietal name, *Sylvaner*.

Finally, it is the position of the Bureau that the term "Riesling" may not be used for any additional names approved in the future.

Comments on use of the term Riesling, inclusion of varieties which are not true Rieslings on the prime name list and future additions or changes will be welcome.

7. *Other Areas Affected*—a. Under the proposed regulations, names such as "White Zinfandel", "Cabernet Blush", "Zinfandel Nouveau" and other currently approved proprietary variations of varietal names would not be permissible on wine labels. Although only the approved name, with no modification, may be used as the varietal designation, it will still be permissible to designate the color of the wine and show proprietary names separately from the varietal designation on the label.

b. ATF Ruling 74–25 authorizing Cabernet as a synonym for Cabernet Sauvignon and Revenue Ruling 56–460 regarding true varietal names would become obsolete. Although these rulings also apply to imported wines, the Bureau believes that specific varietal names used on imported wine labels are adequately controlled by the requirements under 27 CFR 4.25a. This section requires that imported wine must be designated in accordance with the laws and regulations of the country of origin.

c. The designation "Muscadine Wine" is authorized by Revenue Ruling 54–528 for wines made from *Scuppernong* grapes. This Ruling would be made obsolete by adoption of the proposed regulations since *Muscodine* is a *subspecies* of the grape species *rotundifolia* and not a specific grape varietal name or a varietal designation. Under the proposed regulations, wine made from the varietal *Scuppernong* could only be labeled as *Scuppernong*.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be necessary.

Drafting Information

The principal authors of this document are Betsey Bradford and Sharon K. Hendee of the Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Labeling, Packaging and containers, Wine.

Authority and Issuance

PART 4—[AMENDED]

27 CFR Part 4—Labeling and Advertising of Wine is amended as follows:

Par. 1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections for Part 4 is amended to reflect the addition of Subpart J, the revised heading of § 4.23 and the removal of § 4.23a, to read as follows:

Sec.

* * * * *

4.23 Varietal (grape type) labeling.

4.24 * * *

* * * * *

Subpart J—American Grape Variety Names

4.91 Approved list of prime names.

4.92 Alternative names permitted in conjunction with prime names for American wines.

4.93 Alternative names permitted for wines bottled prior to 5 years after the effective date of this subpart.

4.94 Approval of new grape variety names.

Par. 3. Section 4.23 is revised to read as follows:

§ 4.23 Varietal (grape type) labeling.

(a) *General.* The names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin as defined in §4.25a.

(b) *One variety.* Except as provided in paragraph (c) of this section, the name of a single grape variety may be used as the type designation if not less than 75 percent of the wine is derived from grapes of that variety, the entire 75 percent of which was grown in the labeled appellation of origin area.

(c) *Exceptions.* (1) Wine made from any *Vitis labrusca* variety (exclusive of hybrids with *V. labrusca* parentage) may be labeled with the variety name if:

(i) Not less than 51 percent of the wine is derived from grapes of that variety;

(ii) The statement "contains not less than 51 percent (name of variety)" is shown on the brand label, back label, or a separate strip label, (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(2) Wine made from any variety of any species found by the Director upon appropriate application to be too strongly flavored at 75 percent minimum varietal content may be labeled with the variety name if:

(i) Not less than 51 percent of the wine is derived from grapes of that variety;

(ii) The statement "contains not less than 51 percent (name of variety)" is shown on the brand label, back label, or a separate strip label; and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation to origin area.

(d) *Two or three varieties.* The names of two or three grape varieties may be used as the type designation if:

(1) All of the grapes used to make the wine are of the labeled varieties;

(2) The percentage of the wine derived from each variety is shown on the label (with a tolerance of plus or minus 2 percent); and

(3)(i) If labeled with a multicounty appellation of origin, the percentage of wine derived from each variety from each county is shown on the label; or

(ii) If labeled with a multistate appellation of origin, the percentage of wine derived from each variety from each state is shown on the label.

(e) *Transitional rule.* 2 years after the effective date of the regulations the names of grape varieties used on American wine labels shall be in accordance with the requirments of subpart J of this part.

§ 4.23a [Removed]

Par. 4. Section 4.23a is removed because it is made obsolete by the above revision of § 4.23.

Par. 5. Section 4.34(b)(1) is amended to change the cross-reference citation from § 4.23a to § 4.23. As revised, § 4.34(b)(1) reads as follows:

§ 4.34 Class and type.

* * * * *

(b) * * *

(1) A grape type (varietal) designation is used under the provisions of § 4.23;

* * * * *

Par. 6. Immediately after § 4.80, the following new Subpart J is added to read as follows:

Subpart J—American Grape Variety Names

§4.91 Approved list of Prime Names.

Names from the following list shall be used to identify grape varieties on American wine labels. Where more than one name may be used to identify a single variety of grape, the synonym(s) are shown in parentheses.

Agawam
Albemarle
Aleatico
Aliconte Bouschet
Aligote
Alvarelhao
Aurore
Bacchus
Baco blanc
Baco noir
Barbera
Beacon
Beclan
Bellandais
Beta
Black Malvoisie
Black Pearl
Blue Eye
Bonarda
Bountiful
Burdin 4672
Burdin 5201
Burdin 11042
Burgaw
Burger
Cabernet franc
Cabernet Pfeffer
Cabernet Sauvignon
Calzin
Campbell Early
Conada Muscat
Captivator
Carignane
Carmine
Carlos
Carnelian
Cascade
Castel 19-637
Catawba
Cayuga White
Centurion
Chambourcin
Chancellor
Charbono
Chardonnay
Chasselas dore
Chelois
Chenin blanc
Chief
Chowan
Clairette blanche
Clinton
Colambard
Colobel
Concord
Conquistador
Couderc noir
Cowart
Creek
Cynthiana
Dearing
De Chaunac
Delaware
Diamond
Dixie
Dolcetto
Dorsen
Dulcet
Dutchess
Early Burgundy
Edelweiss
Eden
Ehrenfelser
Ellen Scott
Elvira
Emeral Riesling
Feher Szagos
Fern Munson
Flame Tokay
Flora
Florental
Folle blanche
Fry
Furmint
Gamay
Garronet
Gewerztraminer
Gladwin 113
Glennel
Gold
Golden Muscat
Groad Noir
Grey Riesling
Green Hungarian
Grenache
Grignolino
Grillo
Helena
Herbemont
Higgins
Horizon
Hunt
Iona
Isabella
Ives
James
Jewell
Joannes Seyve 12–428
Joannes Seyve 23–416
Johannisberg Riesling (White Riesling)
Kerner
Kleinberger
Lake Emerald
Landal
Landot noir
Lenoir
Leon Millot
Limberger
Madeline Angevine
Magnolia
Magoon
Malbec
Malvasia bianca
Marechal Foch
Mataro
Melon
Merlot
Meunier
Mish
Mission
Missouri Riesling
Mondeuse
Montefiore
Moore Early
Morio-Muskat
Muench
Muscat blanc
Muscat du Moulin
Muscat Hamburg
Muscat of Alexandria
Muscat Pantelleria
Muscat Ottonel
Muller-Thurgau
Napa Gamay
Naples
Nebbiolo
New York Muscat
Niagara
Noah
Noble
Norton
Ontario
Orange Muscat
Palomino
Pamlico
Pedro Ximenes
Petit Verdot
Petite Sirah
Peverella
Pinot blanc
Pinot gris
Pinot noir
Pinot Saint George
Precoce de Malingre
Pride
Rayon d'Or
Ravat 34
Ravat noir
Redgate
Regale
Rkatziteli
Roanoke
Rosette
Roucaneuf
Rougeon
Rayalty
Rubired
Rugy Cabernet
Saint Macaire
Salem
Salvador
Sauvignon blanc
Sauvignon musque
Sauvignon vert
Scarlet
Scheurebe
Scuppernong
Semillon
Seyval
Siegerrebe
Siegfried
Southland
Souzao
Steuben
Stover
Sugargate
Sultanina (Thompson Seedless)
Summit
Suwannee
Sylvaner
Syrah
Symphony
Swenson Red
Tarheel
Taylor
Thomas
Thompson Seedless (Sultanina)
Tinta Madeira
Tinto cao
Topsail
Touriga
Traminer
Trousseau
Ugni blanc
Valdepenas
Valerien
Van Buren
Veeblanc
Veltliner
Ventura
Verdelet
Vidal blanc
Vignoles
Villard blanc
Villard noir
Vincent
Vivant
Walschriesling (Welschriesling)
Watergate
Welschriesling (Walschriesling)
Welder
White Riesling (Johannisberg Riesling)
Yuga
Zinfandel

§ 4.92 Alternative names permitted for use only in conjunction with prime names for American wines.

Each of the following alternative names, listed in the left-hand column, may be used to identify grape varieties on wine labels only when shown in direct conjunction with the prime name listed opposite it in the right-hand column.

Alternative name	Prime name
Bastardo	Trousseau.
Black Muscat	Muscat Hamburg.
Blanc Fume	Sauvignon blanc.
Chevrier	Semillon.
Cineaut	Black Malvoisie.
Durif	Petite Sirah.
Franken Riesling	Sylvaner.
Fume blanc	Sauvignon blanc.
Muscadelle	Sauvignon vert.

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Alternative name	Prime name
Muscat Canelli	Muscat blanc.
Muscat Frontignan	Muscat blanc.
Pineau de la Loire	Chenin blanc.
Refosco	Mondeuse.
Rulander	Pinot gris.
Saint-Emilion	Ugni blanc.
Shiraz	Syrah.

§ 4.93 Alternative names permitted for wines bottled before 5 years after the effective date of this subpart.

The following alternative names shown in the left-hand column may be used on American wine labels in lieu of the prime name shown in the right-hand column with the exception of *Gamay Beaujolais*. *Gamay Beaujolais* must be shown in direct conjunction with either *Napa Gamay* or *Pinot noir*, as the case may be. Alternative names listed in the left-hand column may only be used for 5 years after the effective date of this subpart.

Alternative name	Prime name
Beco 1	Beco noir.
Beco 224	Beco blanc.
Black Spanish	Lenoir.
Burdin 7705	Florental.
Cayuga	Cayuga White.
Chancellor noir	Chancellor.
Chasselas	Chasselas dore.
Chatois noir	Chatois.
Couderc 71-20	Couderc noir.
Couderc 299-35	Muscat du Moulin.
Foch	Marechal Foch.
French Colombard	Colombard.
Gamay Beaujolais	Napa Gamay.
Gamay Beaujolais	Pinot noir.
Gutedel	Chasselas dore.
Island Belle	Campbell Early.
Ives Seedling	Ives.
Jacquez	Lenoir.
Joannes Seyve 26-205	Chambourcin.
Landot 244	Landal.
Landot 4511	Landot noir.
Lemberger	Limberger.
Millot	Leon Millot.
Moore's Diamond	Diamond.
Norton Seedling	Norton.
Pfeffer Cabernet	Cabernet Pfeffer.
Pinot Chardonnay	Chardonnay.
Pinot Meunier	Meunier.
Ravat 51	Vignoles.
Ravat 262	Ravat noir.
Seibel 128	Salvador.
Seibel 1000	Rosette.
Seibel 4996	Rayon'd'Or.
Seibel 5279	Aurore.
Seibel 5898	Rougeon.
Seibel 7053	Chancellor.
Seibel 8357	Colobel.
Seibel 9110	Verdelet.
Seibel 9549	De Chaunac.
Seibel 10878	Chelois.
Seibel 13053	Cascade.
Seibel 14596	Bellandais.
Seyval blanc	Seyval.
Seyve-Villard 5-276	Seyval.
Seyve-Villard 12-309	Roucaneul.
Seyve-Villard 12-375	Villard blanc.
Seyve-Villard 18-283	Garronet.
Seyve-Villard 18-315	Villard noir.
Seyve-Villard 23-410	Valerien.
Sweetwater	Chasselas dore.
Verdelet blanc	Verdelet.
Vidal 256	Vidal blanc.
Virginia Seedling	Norton.

§ 4.94 Approval of new grape variety names.

(a) Petitions for the addition of names to the list of prime names for grape varieties in § 4.91 and alternative names in § 4.92 may be made to the Director by any interested party pursuant to § 71.41 of this chapter. The petition may be in the form of a letter and should provide evidence of the following:

(1) Acceptance of the new grape variety,

(2) The validity of the name for identifying the grape variety,

(3) That the variety is used or will be used in winemaking,

(4) That the variety is grown and used in the United States.

(b) Documentation submitted with the petitions to establish the items in paragraph (a) of this section should include, but is not limited to:

(1) Reference to the publication of the name of the variety in a scientific or professional journal of horticulture recognized by the Director or a published report by a professional, scientific or winegrowers' organization accepted by the Director,

(2) Reference to a plant patent, if so patented,

(3) Information pertaining to the commercial potential of the variety, such as, the acreage planted and its location or market studies.

(c) The following guidelines should be used by those persons petitioning to include a varietal name on the list of prime names or alternative names:

(1) Words of geographical significance or place names shall not be part of the name of a new grape variety;

(2) The proposed name shall not have been previously used for a different grape variety;

(3) Foreign words shall not be part of the name of a new grape variety which is developed in the United States;

(4) Misleading names shall not be part of the name of a new grape variety per 27 CFR 4.39(a); and

(5) The term "Riesling" shall not be used for any new grape variety added to the lists.

Signed: September 13, 1985.

Stephen E. Higgins,

Director.

Approved: October 17, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 86-2300 Filed 2-3-86; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Parts 5 and 19

[Notice No. 580]

Labeling of Distilled Spirits in Percent-Alcohol-by-Volume

Correction

In FR Doc. 86-1522 beginning on page 3208 in the issue of Friday, January 24, 1986, make the following correction on page 3210: In the third column, the second signature should read "David D. Queen".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 733

Reopening and Extension of Public Comment Period on a Petition To Initiate Rulemaking; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Procedures for Evaluating State Programs, Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is reopening and extending the public comment period regarding a petition submitted by ten citizens' organizations submitted pursuant to the Surface Mining Control and Reclamation Act (the Act), to amend OSMRE's existing regulations concerning procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs.

On January 3, 1986, OSMRE published in the **Federal Register** a notice of availability of the petition (51 FR 272). The public comment period closed on February 3, 1986. Prior to the close of the public comment period, a number of interested parties contacted OSMRE and requested that additional time be provided to submit comments. In accordance with those requests, OSMRE has decided to reopen and extend the comment period to March 5, 1986.

OSMRE is requesting comments on the merits of the petition and the rule changes suggested in the petition. Such comments will assist the Director of OSMRE in making the decision whether to grant or deny the petition.

DATES: OSMRE will accept written comments on the petition until 5:00 p.m. eastern standard time on March 5, 1986.

ADDRESS: Written comments must be mailed to the Administrative Record, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240 or hand-delivered to the Administrative Record, Office of Surface Mining, U.S. Department of the Interior, Room 5124, 1100 "L" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, Room 110, 1951 Constitution Avenue, NW., Washington, DC 20240. Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures

Written Comments

Written comments on the suggested changes should be specific, should be confined to issues pertinent to the petition, and should explain the reasons for the comment. Comments received after the close of the comment period (see **"DATES"**) may not necessarily be considered or included in the administrative record on the petition. OSMRE cannot ensure that written comments received or delivered during the comment period to any location other than that specified under **"ADDRESS"** above will be considered and included in the administrative record on this petition.

Availability of Copies

The full text of the petition was published in the **Federal Register** on January 3, 1986 (51 FR 272). Additional copies of the petition and copies of 30 CFR Part 733 are available for inspection and may be obtained at the location listed under **"ADDRESS"**.

Public Meetings

OSMRE will not hold a public hearing on the petition or proposed revisions, but OSMRE personnel will be available to meet with the public during business hours, 8:00 a.m. to 4:00 p.m., during the extended comment period. In order to arrange such a meeting, call or write to the person listed above under **"FOR FURTHER INFORMATION CONTACT"**.

II. Background

OSMRE received a letter dated November 13, 1985, from the Honorable Morris K. Udall, Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives forwarding a petition by the Dakota Resource Council, Environmental Policy Institute, Illinois South Project, Inc., Legal Environmental Assistance Foundation, Northern Plains Resource Council, Powder River Basin Resource Council, Public Lands Institute, Save Our Comberland Mountains, Western Colorado Congress, and the Western Organization of Resource Councils. The petitioners seek certain amendments to regulations found at 30 CFR 733.12 relating to procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs. Pursuant to section 201(g) of the Act, any person may petition for a change in OSMRE's permanent program rules which appear in 30 CFR Chapter VII. The Act allows for a period of 90 days within which to decide to grant or deny a petition (Section 201(g)(4); 30 U.S.C. 1211(g)(4)).

In the **January 3, 1986 Federal Register**, OSMRE published a notice of availability of the petition and invited public comment for 30 days (51 FR 272). The comment period closed February 3, 1986. Prior to the close of the public comment period, a number of interested parties contacted OSMRE and requested that additional time be provided to submit comments. Commenters noted that additional time is necessary to evaluate fully the contents of the petition. In accordance with those requests OSMRE is reopening and extending the public comment period until March 5, 1986. At the close of the comment period, a decision will be made whether to grant or deny the petition. If the decision is made to grant the petition, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. If the decision is made to deny the entire petition, no further rulemaking action will occur pursuant to the petition.

List of Subjects in 30 CFR Part 733

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 29, 1986

Brent Wahlquist,

Assistant Director, Program Operations.

[FR Doc. 86-2358 Filed 2-3-86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 796, 797, and 799

[OPTS-42008B; FRL-2946-9]

Unsubstituted Phenylenediamines, Proposed Test Rule

Correction

In FR Doc. 86-9 beginning on page 472 in the issue of Monday, January 6, 1986, make the following corrections:

1. On page 473, in Table 1 under "Solubility in water(mg/L)", the third entry should read: "41,500 at 35 °C; 7.3 $\times 10^{3}$ at 81 °C".

2. On page 479, in the third column, in paragraph 6., in the fifth line, "predicted to the dermal" should read "predicted to be dermal." Also, in the third line from the bottom of the page, "*Dophina*" should read "*Daphnia*".

3. On page 480, in the third column, in the first complete paragraph, in the first line, "LC" should read "LC_{50}". Also, in the fifth line, "Text" should read "Test".

4. On page 482, in paragraph (13), the first word should read "Clairol".

5. On page 485, in paragraph (2), in the second and third lines, "<20percent but >80 percent" should read ">20 percent but <80 percent".

6. On page 485, in the second column, Equation 7 should read:

$k_{IE} = k_{pE} - k_{DE}$

Also, in paragraph (ii), beginning in the eleventh line, delete the sentence "However, since SHW is subject to photobleaching, susceptibility of a chemical to indirect photolysis."

In the third column, in paragraph (6), in the fifth and seventh lines, "10^{-9}" should read "10^{-9}". Also, in paragraph (iii), in the formula, "10^{+9}" should read "10^{-9}".

On page 486, in the second column in paragraph (viii), in the first line, "1_D" should read "k_D".

On page 493, in the second column, in the eight line, "PEC^{m}" should read "PEC_{m}". Also, in the thirteenth line, "minutes" was misspelled.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Superfund; Natural Resource Damage Assessments

AGENCY: Department of the Interior.

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ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 20, 1985, (50 FR 52126) the Department of the Interior (Department) proposed a rule establishing procedures for assessing damages to natural resources from a discharge of oil or a release of a hazardous substance and compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, or under the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act). The Department is extending the period for comment on the proposed regulation from February 3, 1986, to February 18, 1986.

DATES: Comments on the proposed rule must be submitted by February 18, 1986.

ADDRESSES: Comments should be sent to: Keith Eastin, Associate Solicitor, CERCLA 301 Project Director, Room 4354, Department of the Interior, 1801 "C" Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 A.M. to 4:15 P.M.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Keith Eastin, (202) 343–5757;
Sheryl Katz, (202) 343–1301;
Alison Ling, (202) 343–1301.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the Department proposed a rule for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f)(4) and (5) of the CWA. The December 20, 1985, notice stated that the proposed rule is being developed under a deadline imposed by the court in *State of New Jersey et al. v. Ruckelshaus et al.*, Cir. No. 84–1668 (D.C.N.J.), which required promulgation of final "B regulations" on or before April 22, 1986. Because of that deadline, the notice stated that comments on the proposed rule were to be submitted on or before February 3, 1986.

The Department has received numerous requests from the public for additional time to comment on this proposed rule. The parties to the litigation referred to above have agreed upon and have petitioned the court to approve a modification in the schedule for the promulgation of the final "B" regulations. While awaiting the court's ruling on this motion, the Department is extending the comment period to February 18, 1986. If the court rules favorably upon the motion, the comment period will then be extended to March 21, 1986, to assure that all members of the public have adequate time to comment fully on this proposed rule.

Dated: January 30, 1986.

Keith E. Eastin,

Associate Solicitor.

[FR Doc. 86–2453 Filed 2–3–86; 8:45 am]

BILLING CODE 4310–10–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6699]

Proposed Flood Elevation Determinations; Alabama

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Divisions, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntary adopts flood plain ordinances in accordance with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	Depth in feet above ground * Elevation in feet	
				Existing	Modified
Alabama	Unincorporated Areas, Jefferson County.	Shades Creek	About 0.98 mile upstream of Greensprings Highway	*635	*635
			About 400 feet downstream of Old Montgomery Highway.	*641	*640
			Just upstream of Old U.S. Highway 280	*657	*657
Maps available for inspection at the Jefferson County Courthouse, 2nd Floor, 716 North 21st Street, Birmingham, Alabama.					
Send comments to Honorable Chriss Doss, President, Board of County Commissioners, Jefferson County Courthouse, 2nd Floor, 716 North 21st Street, Birmingham, Alabama 35263.					
Florida	Unincorporated Areas of Orange County.	Little Econlockhatchee River	At the downstream county boundary	*48	*48
			Just downstream of Michaels Dam	*56	*50
			Just upstream of Michaels Dam	(1)	*54
			Just downstream of Curry Ford Road	(1)	*75
		Landfill Outfall Canal	Just upstream of Curry Ford Road	(1)	*75
			About 2.88 miles upstream of the confluence of East Orlando Outfall Canal.	(1)	*81
		Goldenrod Canal	At the confluence with the Little Econlockhatchee River.	(1)	*55
			Just downstream of Herrell Road	(1)	*55
			Just upstream of Herrel Road	(1)	*61
			Just downstream of Cheney Dam	(1)	*61
			Just upstream of Cheney Dam	(1)	*71
			Just downstream of CS–7 Dam	(1)	*79
			Just upstream of CS–7 Dam	(1)	*65
			About 1,100 feet upstream of Forsyth Road	(1)	*66
		East Orlando Outfall Canal	At mouth	(1)	*79
			Just upstream of Turnbull Drive	(1)	*96
		E40 Canal	At mouth	(1)	*55
			Just upstream of Peppercorn Drive	(1)	*78
		Lake Corrine Outline Canal	At mouth	(1)	*61
			Just downstream of Doris Drive	(1)	*68
			Just upstream of Doris Drive	(1)	*61
			About 2,500 feet upstream of State Road 436	(1)	*93
		Azalea Park Outfall Canal	At the confluence with Landfill Outfall Canal	(1)	*77
			Just upstream of Goldenrod Road	(1)	*89
		Park Manor Outfall Canal	At mouth	(1)	*50
			About 1,800 feet upstream of Park Manor Drive	(1)	*59
		Crane Strand Canal	At mouth	(1)	*61
			At county boundary	(1)	*61
		Winter Park	At mouth	(1)	*77
		Pines Canal	About 1,000 feet upstream of Ranger Boulevard	(1)	*90
Maps available for inspection at the Department of Engineering, Division of Drainage Engineering and Water Management, 2450 33rd Street, Orlando, Florida.					
Send comments to Honorable James L. Harris, County Administrator, Orange County, P.O. Box 1393, Orlando, Florida 32802.					
Georgia	Unincorporated Areas of Cobb County.	Rottenwood Creek	About 0.49 mile downstream of Interstate 75	*928	*928
			At confluence of Powers Creek	*932	*930
			Just upstream of Interstate 75	*944	*944
		Powers Creek	At mouth	*932	*930
			Just upstream of Powers Ferry Drive	*935	*935
Maps available for inspection at the Cobb County Development Control Department, 10 E. Park Square, Marietta, Georgia.					
Send comments to Honorable Earl E. Smith, Chairman, Cobb County Board of Commissioners, 10 E. Park Square, P.O. Box 649, Marietta, Georgia 30060–9602.					
Georgia	Unincorporated Areas of DeKalb County.	South Fork Peachtree Creek	Just upstream of Tahoe Apartment Drive	*989	*989
			Just downstream of Sarr Parkway	*1,027	*1,021
			Just upstream of Stone Mountain Freeway	*1,049	*1,029
			Just downstream of Elmdale Drive	*1,049	*1,037
Maps available for inspection at the Planning Department, Room 308, Callaway Building, Decatur, Goergia.					
Send comments to Honorable Manuel Maloof, Chairman, Board of Commissioners, Courthouse Square, Decatur, Georgia 30030.					
Indiana	Town of Dyer Lake county	Dyer Ditch	Just upstream of 213th street	*626	*624
			Just upstream of Lincoln Highway	*635	*630
			About 0.25 miles upstream of Lincoln Highway	*636	*637
			Just downstream of Novak Road	*642	*639
		Shallow flooding (ponding)	About 500 feet north of the intersection of Novak Road & Louisville and Nashville Railroad.	(1)	*641
			About 0.35 miles northeast of the intersection of Novak Road & Louisville and Nashville Railroad.	(1)	*637
			About 400 feet east of Dyer Ditch and about 500 feet north of Lincoln Highway.	*626	*630
			Just south of 213th Street and about 0.4 miles west of Dyer Ditch.	*625	*623
Maps available for inspection at the Town Hall, 226 East Schulte Street, Dyer, Indiana.					
Send comments to Honorable John Quinn, Town Board President, Town of Dyer, Town Hall, 226 East Schulte Street, Dyer, Indiana 46311.					
Maryland	Cecil County	Chesapeake Bay	Entire shoreline of Sassafras River within community	(1)	*11
Maps available for inspection at the Federal Emergency Civil Defense Office; Room 6, Courthouse, Elkton, Maryland.					
Send comments to the Honorable David Pinder, Administrative Assistant to the Cecil County Board of Commissioners, County Office Building, Room 101, Elkton, Maryland 21921.					
Maryland	Queen Annes County	Chesapeake Bay	Wells Cove, East Inlet	*10	*9
			Intersection of Turtle Drive and State Route 18	*10	*7

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PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	Depth in feet above ground * Elevation in feet	
				Existing	Modified
Maps available for inspection at the County Commissioners Office, County Annex Building, Centreville, Maryland.					
Send comments to the Honorable Robert Sellitt, Queen Annes County Administrator, County Annex Building, Centeville, Maryland, 21617.					
Massachusetts	City of Newton, Middlesex County.	Charles River	Most downstream corporate limits	*7	*5
			Upstream side of Newton Lower Falls Dam	*48	*47
			Approximately 1,000 feet upstream of Washington Street.	*58	*49
			Downstream side of Wales Street	*65	*84
			Downstream side of State Route 9 (Boylston Street)	*75	*67
			Approximately 75 feet downstream of Sudbury Aqueduct.	*90	*75
Maps available for inspection at the Engineering Department, City Hall, Newton, Massachusetts.					
Send comments to The Honorable Theodore D. Mann, Mayor of the City of Newton, City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts 02159.					
Minnesota	City of Crystal, Hennepin County	Bassett Creek	At confluence with North Branch Bassett Creek	*847	*849
		North Branch Bassett Creek	At confluence of Bassett Creek	*847	*849
			Approximately 400 feet upstream of Douglas Drive	*872	*872
			Immediately upstream of dam	*878	*878
			Immediately downstream of Louisiana Avenue North	*884	*879
Maps available for inspection at the Planning Department, City Hall, 4141 Douglas Drive, Crystal, Minnesota.					
Send comments to Honorable Thomas Asker, Mayor, City of Crystal, City Hall, 4141 Douglas Drive, Crystal, Minnesota 55422.					
Minnesota	City of Golden Valley, Hennepin County.	Bassett Creek	About 200 feet upstream of Golden Valley Road	*832	*829
			About 800 feet upstream of Bassett Creek Drive	*835	*833
			About 230 feet downstream of Lilac Drive	*845	*843
			About 50 feet upstream of Lilac Drive	*847	*847
			Just upstream of Westbrook Road	*863	*863
Maps available for inspection at the Department of Planning and Development, City Hall, 7800 Golden Valley Road, Golden Valley, Minnesota.					
Send comments to Honorable Mary Anderson, Mayor, City of Golden Valley, City Hall, 7800 Golden Valley Road, Golden Valley, Minnesota 55427.					
Minnesota	City of Winona, Winona County	Gilmore Creek	Just upstream of U.S. Highway 14	* 673	* 667
			Just upstream of Gilmore Avenue	* 676	* 674
			About 1,100 feet upstream of Gilmore Avenue	* 677	677
		Shallow flooding (Gilmore Creek overflow).	Just east of Huff Street	* 658	* 655
			Just northeast of U.S. Highways 14 and 61	* 658	* 660
			Just south of the intersection of Gilmore Avenue and Kerry Drive.	(1)	* 674
Maps available for inspection at the Engineering Department, City Hall, P.O. Box 378, Winona, Minnesota.					
Send comments to Honorabe David R. Sollenberger, City Manager, City Hall, P.O. Box 378, Winona, Minnesota 55987.					
New York	Town of LaGrange, Dutchess County.	Branch 3 Wappinger Creek	1,475 feet downstream of Noxon Road	* 218	* 219
			755 feet downstream of Noxon Road	* 225	* 225
			525 feet downstream of Noxon Road	* 228	* 230
			Downstream side of Noxon Road	* 243	* 242
			35 feet upstream of Noxon Road	* 244	* 243
Maps available for inspection with Mr. Samuel Shaffer, Building Inspector, LaGrange Town Hall, Stringham Road, Pleasant Valley, New York.					
Send comments to the The Honorable Arthur M. McCluskey, Town Supervisor of the Town of LaGrange, Dutchess County, Stringham Road, Pleasant Valley, New York 12569.					
Oklahoma	Oklahoma, City, Oklahoma County.	Lightning Creek Tributary 3	Approximately 100 feet upstream of South Walker Avenue.	* 1,232	* 1,231
			Aproximately 1,300 feet downstream of eastbound US 62 and Interstate 240 access road.	* 1,238	* 1,237
			Approximately 45 feet downstream of eastbound US 62 and Interstate 240 access road.	(1)	* 1,243
		Walnut Creek	Approximately 200 feet upstream of Hefner Road (Northwest 106th Street).	* 1,205	* 1,204
			Approximately 800 feet upstream of Hefner Road (Northwest 106th Street).	* 1,208	* 1,205
			Approximately 1,500 feet upstream of Hefner Road (Northwest 106th Street).	* 1,212	* 1,208
			Approximately 1,200 feet downstream of Northwest Expressway (State Highway 3).	* 1,222	* 1,221
			Approximately 525 feet downstream of Northwest Expressway (State Highway 3) - Limit of Detailed Study.	* 1,226	* 1,225
		Tributary 3 of Canadian River	Approximately 860 feet upstream of SW 119th Street	* 1,208	(1)
		Tributary 1	At upstream side of SW 119th Street	* 1,205	(1)
Maps available for inspection at the City Hall, 200 North Walker, Suite 302, Oklahoma City, Oklahoma.					
Send comments to the Honorable Andrew Coats, Mayor of the City of Oklahoma City, Oklahoma County, 200 North Walker, Suite 302, Oklahoma City, Oklahoma 73102.					
Pennsylvania	Logan, Township, Blair County	Mill Run	At downstream corporate limits	*1,054	*1,052
			Upstream side Logan Mall Access road	*1,055	*1,054
			Upstream side of Union Avenue (downstream crossing).	*1,080	*1,078
			Approximately 2,000 feet upstream of Union Avenue (downstream crossing).	*1,088	*1,086
			Approximately 3,800 feet upstream of Union Avenue (downstream crossing).	*1,102	*1,103
			Approximately 350 feet downstream of CONRAIL	*(1)	*1,198
			Upstream side of CONRAIL	*(1)	*1,204

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	Depth in feet above ground * Elevation in feet	
				Existing	Modified
			Approximately 600 feet upstream of CONRAIL	*(1)	*1,209
			Approximately 2,000 feet downstream of Mill Run Road.	*(1)	*1,236
			Approximately 500 feet downstream of Mill Run Road	*(1)	*1,261
			Upstream side of Mill Run Road	(1)	*1,275
Maps are available for inspection at the Logan Township Municipal Building, 800 39th Street, Altoona, Pennsylvania.					
Send comments to The Honorable L. Noye, Manager of Logan Township, 800 39th Street, Altoona, Pennsylvania 16601.					
Pennsylvania	West Lebanon, Township, Lebanon County.	Quittapahilla Creek	Approximately 500 feet downstream of 16th Street	*449	(1)
			Downstream side of 16th Street	*450	(1)
Maps available for inspection at the Lebanon County Planning Department, Room 206, Municipal Building, Lebanon, Pennsylvania.					
Send comments to Honorable Joseph Kline, President of the Board of West Lebanon Township Commissioners, Lebanon County, 322 North 22nd Street, Lebanon, Pennsylvania 17042.					
Washington	Clark County (unincorporated areas).	Lewis River	At crossing of CC Street Bridge (County Route 1)	*34	*31
			400 feet south of the intersection of Lyons Road and County Highway 16 along Lyons Road.	*40	*38
			At confluence with Cedar Creek	*60	*57
		Columbia River	At Squaw Island at the mouth of Gee Creek	(1)	*23
			At confluence with Whipple Creek on the downstream side of Burlington Northern-Union Pacific Railroad.	(1)	*25
Maps available for review at Planning and Code Administration, P.O. Box 5000, Vancouver, Washington 98668					
Send comments to the Honorable John S. McKibbin, P.O. Box 5000, Vancouver, Washington 98668.					
West Virginia	City of Ripley, Jackson County	Mill Creek	Downstream corporate limits	*597	*593
			Upstream side of U.S. Route 33	*599	*594
			Downstream side of Main Street	*601	*597
			Downstream side of School Street	*604	*599
			Downstream side of U.S. Route 21	*605	*601
Maps available for inspection at the City Hall, 113 South Church Street, Ripley, West Virginia.					
Send comments to The Honorable Edward E. Angus, Mayor of the City of Ripley, 113 South Church Street, Ripley, West Virginia 25271.					

[1] None.

Issued: January 23, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-2412 Filed 2-3-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 160

[CGD 84-069a]

Lifesaving Equipment; Immersion Suits

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: The Coast Guard proposes to revise the specifications for approval of exposure suits. Currently-approved exposure suits will be phased out and suits meeting the new standards will be assured of international marketability and acceptance. The changes are needed to conform the regulations to the International Convention for Safety of Life at Sea, 1974 (SOLAS 74), as amended.

DATES: Comments on this proposal must be received on or before May 5, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 84-069a) U.S. Coast Guard, Washington, D.C. 20593. If an acknowledgement is desired, a stamped addressed postcard should be enclosed. The comments, draft evaluation, and materials referenced in this notice will be available for examination and copying and comments may also be hand delivered between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: LCDR William M. Riley, (202) 426-1444.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice as CGD 84-069a, and give reasons for their comments. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on these proposed rules. No public hearing is planned, but one may be held if requested by anyone raising a genuine issue, and if it is determined to aid the rulemaking process.

Drafting Information

The principal drafters of these proposed rules are: LCDR William M. Riley, Office of Merchant Marine Safety, and Mr. Michael N. Mervin, Office of the Chief Counsel.

Discussion of the Proposed Regulations

On June 17, 1983, the International Maritime Organization (IMO) adopted the Second Set of Amendments to SOLAS 74. These amendments, which enter into force on July 1, 1986, will require "immersion suits" to be carried on board certain vessels on an international voyage. Exposure suits approved under 46 CFR 160.071 are already required to be carried on U. S. vessels, and substantially meet the requirements for immersion suits. However, the specification for immersion suits contained in Regulation 33 of Chapter III of SOLAS 74 includes a number of requirements which differ from those contained in § 160.071. The proposed rules will bring the U.S. regulations into line with the treaty with respect to nomenclature, test subjects, donning over clothing and at low temperature, storage temperature, flame and oil exposure, impact resistance, water ingress, hand dexterity after immersion in cold water, freeboard, and righting.

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Existing U.S. standards which exceed the SOLAS 74 requirements would be retained. In particular, the U.S. would continue to refuse approval of uninsulated and non-buoyant immersion suits, which are permitted by SOLAS 74. Uninsulated and non-buoyant suits do not provide an acceptable level of protection because they require layers of woolen clothing to be worn under the suit for warmth and a life preserver to be worn over the suit to provide flotation. The extra time required to don the clothing and life preserver may cost a seaman his life in an emergency.

In order to distinguish between approved suits which meet SOLAS 74 requirements and those which do not, the Coast Guard proposes to change the nomenclature of the suits from "exposure suit" to "immersion suit" and use the markings on the suits to make the distinction. Current approvals for exposure suits will be terminated on the effective date of these rules unless supplemental testing has been performed. New ships subject to SOLAS 74 will be required to have immersion suits meeting the requirements of SOLAS 74. Existing ships and those not subject to the SOLAS 74 requirements may retain previously approved exposure suits as long as they are serviceable. The results will be an orderly phase-out of the currently-approved suits with a minimum of hardship to vessel operators and manufacturers, and international marketability of U.S. manufactured suits since the markings will assure purchasers abroad that the suits meet SOLAS 74 standards.

Requirements for certain vessels to carry immersion suits will be addressed in a separate rulemaking. Advance notice of that rulemaking project was published in the Federal Register of December 31, 1984. The requirements for approval of immersion suits need to be treated separately and expeditiously so that manufacturers can develop products to comply with the specification by the time the shipowners begin placing orders for them.

Economic Analysis and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft evaluation has been prepared and placed in the rule making docket. It may be inspected or copied at the address listed above under **ADDRESSES**. Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The cost of the proposed regulations would be the cost of supplemental testing of existing designs of suits to meet the new requirements, which has been estimated at $1,750 per design. There are 29 different suits approved, each of which would have to be retested. The total cost to the manufacturers is therefore $50,750. The cost of this proposal to the government will be the cost of a government engineer to review the independent laboratory report of the supplemental testing, and the clerical cost of re-issue a certificate of approval for each suit design. This cost is estimated at $150 per approval for a total of $4,350. This analysis assumes that current designs of suits will pass the supplemental testing. If any designs fail the tests, those manufacturers may incur additional costs to redesign their products, or may be forced out of the market. Comments from manufacturers and independent laboratories are specifically requested to help refine these assumptions and estimates. Based upon the estimated cost involved, the Coast Guard certifies that these proposed rules would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule making contains information collection requirements. These requirements have been previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB under control numbers 2115-0121 and 2115-0141.

List of Subjects in 46 CFR Part 160

Marine safety.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Title 46 of the Code of Federal Regulations as follows:

PART 160—LIFESAVING EQUIPMENT

1. The authority citation for subpart 160.071 is revised to read as set forth below and all other authority citations are removed from the subpart:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

2. By replacing the words "exposure suit(s) with the words "immersion suit(s)" in each place the former appears in Subpart 160.071.

3. By revising § 160.071-1 to read as follows:

§ 160.071-1 Scope.

This subpart contains construction and performance requirements, and approval tests for audit and child insulated, buoyant immersion suits that are designed to prevent shock upon entering cold water and lessen the effect of hypothermia (extreme body heat loss due to immersion in cold water). Immersion suits approved under this subpart will meet the requirements of Regulation 33 of Chapter III of the International Convention for Safety of Life at Sea, 1974, under the Second Set of Amendments adopted 17 June 1983.

4. By revising § 160.071-3 to read as follows:

§ 160.071-3 Incorporations by reference.

(a) Certain materials are incorporated by reference into this subchapter with the approval of the Director of the Federal Register. The Office of the Federal Register published a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found the date of the edition approved, citations to the particular sections of this part where the material is incorporated, addresses where the material is available, and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in the table, notice of change must be published in the Federal Register and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the U.S. Coast Guard, Survival Systems Branch (G-MVI-3), Washington, DC 20593.

(b) The materials approved for incorporation by reference in this subpart are:

American Society for Testing and Materials

ASTM B 117-73 (Reapproved 1979), Standard Method of Salt Spray (Fog) Testing.

ASTM C 177-76, Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Guarded Hot Plate.

ASTM C 518-76, Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter.

ASTM D 1004-66 (Reapproved 1976), Tear Resistance of Plastic Film and Sheeting.

Federal Standards

Federal Test Method Standard No. 191a dated July 20, 1978, Method 5304.1, Abrasion Resistance of Cloth, Oscillatory Cylinder (Wyzenbeek) Method, dated July 9, 1971.

Federal Standard No. 751a, Stitches, Seams, and Stitchings, dated January 25, 1965.

Underwriters Laboratories, Inc.

UL 1191, FIRST EDITION (Standard for Components for Personal Flotation Devices), as revised March 29, 1977.

International Committee for the Standardization of Physical Fitness Tests

Heath-Carter Antropometric Method, as described in "Body Type and Performance," FITNESS, HEALTH AND WORK CAPACITY. INTERNATIONAL STANDARDS FOR ASSESSMENT.

5. In § 160.071-9 by revising paragraphs (a), (b), (e), (j), (m), an (n) to read as follows:

§ 160.071-9 Construction.

(a) *General.* Each immersion suit must be constructed primarily of a closed-cell flexible foam that meets the buoyancy and thermal insulation requirements in § 160.071-11(a) and (c). Each suit must be designed to cover the wearer's entire body, except for the area of the nose and eyes. It must be capable of being worn inside-out or be clearly capable of being worn in only one way and, as far as possible, incapable of being donned incorrectly.

(b) *Impact resistance and body strength.* The body of each suit must be designed to allow the wearer to jump from a height of at least 4.5 m into the water without injury and without dislodging or damaging the suit.

(c) *Seams.* Stitching, if used in each structural seam of an immersion suit must be lock type stitching that meets the requirements in Federal Standard No. 751 for one of the following:

(1) Class 300 Lockstitch.

(2) Class 700 Single Thread Lockstitch. Other stitches which are not true lock stitches may be used to reinforce a glued seam provided the adhesive alone has the required seam strength after the non-standard stitch has been removed.

* * * * *

(e) *Closures and seals.* Each closure and seal must be designed so that, following a jump from a height of not less than 4.5 m into the water, there is no undue ingress of water into the suit.

* * * * *

(j) *Hand and arm construction.* The hand of each suit must be a glove that allows sufficient dexterity for the wearer to pick up a 9.5 m ⅜in.) diameter wooden pencil from a talble and write with it, after being immersed in water at 5 ° for a period of one hour. The glove may not be removable unless it is attached to the arm and unless it can be secured to the arm or stowed in a pocket on the arm when not in use. A removable glove must be designed so that there is no undue ingress of water into the glove during use. Each arm with a removable glove must have a wristlet seal that meets paragraph (e) of this section.

* * * * *

(m) *Size.* Each adult suit must fit persons ranging in weight from 50 kg (110 lb.) to 150 kg (330 lb.) and in height from 1.5 m (59 in.) to 1.9 m (75 in.). Each child size suit must fit children or small adults ranging in weight from 20 kg (44 lb.) to 50 kg (110 lb.) and in height from 1.0 m (39 in.) to 1.5 m (59 in.). An oversize adult suit is intended for persons too large for the standard adult suit. Each suit must be capable of being worn comfortably over clothing and must not restrict the wearer's motion. The suit size and design must allow successful completion of the mobility tests prescribed in § 160.071-17(c) (2) through (7).

(n) *Retroreflective material.* Each immersion suit must be fitted with Type I retroreflective material that meets subpart 164.018 of this chapter. When the wearer of an immersion suit is in any stable floating position, at least 200 cm^2 (31 sq. in.) of the material must be visible above water to observers at water level directly in front of the wearer.

* * * * *

6. In § 160.071-11 by revising paragraphs (a) (1) and (2), (b), (c) (2), (f), (h), and (i), and adding paragraph (j) to read as follows:

§ 160.071-11 Performance.

(a) * * *

(1) The adjusted buoyancy of each adult and each oversize adult size suit must be at least 100 N (22 lb.). The adjusted buoyancy of each child size suit must be at least 50 N (11 lb.). These measured buoyancy must not be reduced by more than 5% after 24 hours submersion in fresh water.

(2) Each suit must have a stable floating position in which the wearer's head must be tilted to a position between 30° and 80° above the horizontal, with the mouth and nose at least 120 mm (4¾ in.) above the surface of the water. If necessary, this position may be obtained through the use of an auxiliary means of buoyancy such as an inflatable bladder behind the wearer's head.

* * * * *

(b) *Righting.* The suit must be designed to turn the body of an unconscious person in the water from any position to one where the mouth is clear of the water in not more than five seconds, without assistance or the use of any means of auxiliary buoyancy which must be inflated by the wearer; or to allow the wearer to turn from a face down to a face up position in not more than 5 seconds, without assistance or the use of any means of auxiliary buoyancy. Auxiliary buoyancy, if fitted and/or inflated, must not interfere with righting.

(c) * * *

(2) The suit must provide the wearer with sufficient thermal insulation, following one jump into the water from a height of 4.5 m, to make sure that the wearer's body core temperature does not fall more than 2 °C (3.6 °F) after a period of 6 hours immersion in calm circulating water at a temperature of between 0 °C (32 °F) and 2 °C (35.6 °F).

* * * * *

(f) *Water penetration.* An immersion suit must be designed to prevent undue ingress of water into the suit following a period of flotation in calm water of one hour.

* * * * *

(h) *Storage temperature.* Each suit must be designed so that it will not be damaged by storage in its storage case at any temperature between −30 °C (−22 °F) and +65 °C (149 °F).

(i) *Flame exposure.* Each suit must be designed to prevent sustained burning or continued melting after it is totally enveloped in a fire for a period of 2 seconds.

(j) *Oil resistance.* Each immersion suit must be designed to be useable after a 24 hour exposure to diesel oil.

7. By revising § 160.071 to read as follows:

§ 160.071-15 Instructions.

(a) Each suit must have instructions for its donning and use in an emergency. The instructions must be in English and must not exceed 50 words. Illustrations must be used in addition to the words. These instructions must be on the exterior of the storage case or printed on a waterproof card attached to the storage case or to the suit.

(b) If the suit has an inflatable auxiliary means of buoyancy, separate instructions covering the use of the inflation valve must be provided on the suit near the valve or on a waterproof card attached near the valve.

(c) Instructions for donning and use of the suit in an emergency must also be available in a format suitable for mounting on a bulkhead of a vessel. This placard must be in English, must include illustrations, and must include a warning as to the risk of entrapment in a submerged compartment due to the buoyancy of the suit.

(d) Instructions for donning and use of the suit in an emergency, instructions for care and repair of the suit, and any additional necessary information concerning stowage and use of the suit on a vessel must be available in 8½ x 11 loose-leaf format suitable for inclusion in the vessel's training manual.

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8. In § 160.071–17, by revising paragraphs, (c) (1), (2), (3)(i), (4), (7), (9), (10), (11), (d) (1), (2), (5)(iv), (f), (g)(2), and (i)(2), and adding paragraph (p) to read as follows:

§ 160.071–17 Approval testing for adult size immersion suit.

* * * * *

(c) * * *

(1) *Test subjects.* Seven males and three females must be used in the tests described in this paragraph. The subjects must represent each of the three physical types (ectomorphic, endomorphic, and mesomorphic). Each subject must be in good health. The heaviest subject, of either sex, must weigh at least 135 kg (298 lb.). The heaviest male subject must weigh at least 115 kg (254 lb.) and the lightest male subject must weigh not more than 55 kg (121 lb). The heaviest female subject must weigh at least 115 kg (254 lb.) and the lightest female subject must weigh not more than 55 kg (121 lb). Each subject must be unfamiliar with the specific suit under test. Each subject must wear a standard range of clothing consisting of:

(i) Underwear (short sleeved, short legged);
(ii) Shirt (long sleeved);
(iii) Trousers (not woolen);
(iv) Woolen socks;
(v) Rubber soled shoes.

(2) *Donning time.* Each subject is removed from the view of the other subjects and allowed one minute to examine a suit and the manufacturer's instructions for donning and use of the suit in an emergency. At the end of this period, the subject attempts to don the suit as rapidly as possible without the aid of a chair or any support to lean on. If the subject does not don the suit completely, including gloves and any other accessories, within two minutes, the subject removes the suit and is given a demonstration of correct donning, and again attempts to don the suit. At least nine of the ten subjects must be able to don the suit completely, including time to remove shoes if necessary, in two minutes in at least one of the two attempts.

(3) * * *

(i) While wearing a suit, each subject stands uprights and faces straight ahead. An observer is positioned to one side of the subject at an angle of 60° away from the subject's straight-ahead line of sight. The observer must be able to see the subject's closest eye at this position. The observer then walks past the front of the subject to a position on the subject's other side that is at an angle of 60° away from the subject's straight-ahead line of sight. The suit must not obstruct the observer's view of the subject's eyes at any point between the two positions.

* * * * *

(4) *Hand dexterity.* While wearing a suit, including a removable glove if any, and after being immersed in water at 5 °C (41 °F) for a period of one hour, each subject must be able to pick up a 2.5 mm (3/32 in.) diameter wooden pencil from a flat hard surfaced table using only one hand. Still using only one hand, the subject must be able to position the pencil and write with it. At least eight of the ten test subjects must be able to complete this test. This test may be performed in conjunction with the thermal protection test described in § 160.071–17(d).

* * * * *

(7) *Swimming and water emergence test.* A pool with a liferaft or wooden platform at one side must be used for this test. The liferaft or platform must have a freeboard of 300 mm (1 ft.) above the water surface. The platform, if used, must have a smooth painted surface. Each subject, wearing a life preserver but not the immersion suit, enters the water and swims 25 m. The subject must then be able to emerge from the pool onto the liferaft or platform using only his or her hands on top of the liferaft or platform as an aid and without pushing off of the bottom of the pool. Any subject unable to emerge onto the liferaft or platform within 30 seconds is disqualified for this test. At least five subjects must qualify and be used for this test. If less than five subjects of the original ten qualify, substitute subjects must be used. Each qualified subject, after sufficient rest to avoid fatigue, repeats this test wearing an immersion suit instead of the life preserver. At least two-thirds of the qualified subjects must be able to swim this distance, and emerge onto the liferaft or platform within 30 seconds, wearing the immersion suit.

* * * * *

(9) *Righting.* Each subject while wearing a suit in water, without any auxiliary means of buoyancy which must be inflated by the wearer, takes a deep breath, assumes a face-down position, allows his or her body to become limp, and slowly expels air. The suit must cause the subject to turn to a position where his or her face is clear of the water within 5 seconds; or if the suit does not turn the subject within 5 seconds, the subject must be able to turn face up under his or her own power within 5 seconds. The procedure is repeated using the auxiliary means of buoyancy, if one is provided and was not used because it required inflation by the wearer. The procedure is repeated without any means of auxiliary bouyancy, if one is provided and was used previously.

(10) *Water and Air Penetration.* Each subject is weighed while wearing a pre-wetted suit without any auxiliary means of buoyancy. The subject jumps into water from a height that will cause the subject to be completely immersed. The subject swims or treads water for approximately one minute, emerges from the water, and is weighed within 10 seconds after emerging. The procedure is repeated with the subject entering the water headfirst. If air accumulates in the legs as the subject enters the water head-first, it must be expelled automatically. At the end of this test, the weight of the subject in the suit must not exceed the weight of the subject in the suit at the beginning of the test by more than 500 grams. Each test subject then re-enters the water and floats for a period of one hour. The subject then emerges from the water and is weighed within 10 seconds. The weight of the subject in the suit at the end of this test must not exceed the weight of the subject in the suit at the beginning of the period of flotation by more than 200 grams.

(11) *Impact.* While wearing a suit without any auxiliary means of buoyancy, each subject jumps into water feet first six times from a height of 4.5 m (15 ft.) above the water surface. Each subject must be able to assume a face up stable position without assistance after each jump. The suit must not tear, separate at any seam, or exhibit any characteristic that could render it unsafe or unsuitable for uses in water.

(d) * * *

(1) *Test subjects.* Male subjects must be used for this test. Each subject must be familiarized with the test procedure before starting the test. Each subject must have somatotype parameters within the following ranges according to the Heath-Carter anthropometric method: endomorphy 3.5±1.0; mesomorphy 4.0±1.5; ectomorphy 3.5±1.0. Each subject must have had a normal night's sleep the night before the test, a well-balanced meal 1 to 5 hours before the test, and no alcoholic beverages for 24 hours before the test. In addition to the suit, each subject must wear:

(i) Underwear (short sleeved, short legged);
(ii) Shirt (long sleeved);
(iii) Trousers (not woolen);
(iv) Woolen socks;
(v) Leather work shoes, if the suit is designed for shoes to be worn inside.

(2) *Test equipment.* The test must be conducted in calm water with a temperature between 0°C (32°F) and 2°C (35.6°F). The air temperature 300 mm (1 ft.) above the water surface must be between minus 10°C (14°F) and 20°C (68°F). Each subject must be instrumented with an electrocardiograph, a thermistor or thermocouple in the rectum placed 150 mm (6 in) beyond the anus, a thermistor or thermocouple in the lumbar region, a thermistor or thermocouple on the tip of the index finger, and a thermistor or thermocouple on the tip of the great toe. Each thermistor or thermocouple must have an accuracy of 0.1°C (0.18°F). The suits used in this test must be the same ones previously subjected to the impact test described in §§§ 160.071–17(c)(11).

* * * * *

(5) * * *

(iv) The subject's lumbar, finger, or toe temperature drops below 5°C (41°F), unless the physician determines that the subject may continue.

* * * * *

(f) *Storage temperature.* Two samples of the immersion suits, in their storage cases, must be alternately subjected to surrounding temperatures of −30°C to +65°C. These alternating cycles need not follow immediately after each other and the following procedure, repeated for a total of ten cycles, is acceptable:

(1) 8 hours conditioning at 65°C to be completed in one day;

(2) The specimens removed from the warm chamber that same day and left exposed under ordinary room conditions until the next day;

(3) 8 hours conditioning at −30°C to be completed the next day; and

(4) The specimens removed from the cold chamber that same day and left exposed under ordinary room conditions until the next day. At the conclusion of the final cycle of cold storage, two test subjects who previously successfully completed the donning test in paragraph (c)(2) of this section enter the cold chamber, unpack and don the immersion suits. Alternatively, the suits may be unpacked in the chamber, then removed and immediately donned. Neither of the suits must show damage such as shrinking, cracking, swelling, dissolution or change of mechanical qualities.

(g) * * *

(2) *Test Procedure.* The basket is submerged so that its top edge is 50 mm (2 in.) below the surface of the water. The basket is then weighed. Thereafter, a suit is submerged in water and then filled with water, folded, and placed in the submerged basket. The basket is tilted 45° from the vertical for five minutes in each of four different directions to allow all entrapped air to escape. The basket is then suspended with its top edge 50 mm (2 in.) below the surface of the water for 24 hours. At the beginning and end of this period, the basket and suit are weighed underwater. The measured buoyancy of the suit is the difference between this weight and the weight of the basket as determined at the beginning of the test. The measure buoyancy after 24 hours must not be more than 5% lower than the initial measured buoyancy. The measured buoyancy after 24 hours is used to determine adjusted buoyancy as described in paragraph (h) of this section.

* * * * *

(i) * * *

(2) *Test procedure.* A suit is held from its top by the holding arrangement. The gasoline is ignited and allowed to burn for approximately 30 seconds in a draft-free location. The suit is then held with the lowest part of each foot 240 mm (9.5 in.) above the surface of the burning gasoline. After two seconds, measured from the moment the flame first contacts the suit, the suit is removed from the fire. The suit must not sustain burning or continue melting after removal from the flames. If the suit sustains any visible damage other than scorching, it must then be subjected to the stability test described in paragraph (c)(8) of this section, except that only one subject need to used; the impact test described in paragraph (c)(11) of this section, except that only one subject need be used; the thermal protection test described in paragraph (d) of this section, except that only one subject need be used; and the buoyancy test described in paragraph (g) of this section, except that the buoyancy test need be conducted for only 2 hours.

* * * * *

(p) *Test for oil resistance.* After all its apertures have been sealed, an immersion suit is immersed under a 100 mm head of diesel oil for 24 hours. The surface oil is then wiped off and the immersion suit subjected to the leak test prescribed in § 160.071–17(c)(10). The ingress of water must not be greater than 200 grams.

9. In 160.071–19, by revising paragraph (a) to read as follows:

§ 160.071–19 Approval testing for child size immersion suit.

* * * * *

(a) The stability test prescribed in § 160.071–17(c)(8), except that only six children need be used as test subjects and they can be of either sex. The subjects must be within the ranges of weight and height prescribed in § 160.071–9(m). The heaviest subject must weigh at least 10 kg (22 lb.) more than the lightest subject. During this test the face seal, neck and chin fit are evaluated and must be comparable to the fit of the corresponding adult size suit on an adult.

* * * * *

10. In § 160.071–23, by revising paragraph (a) to read as follows:

§ 160.071–23 Marking.

(a) Each immersion suit must be marked with the words "IMMERSION SUIT—COMPLIES WITH SOLAS 74/83," the name of the manufacturer, the date of manufacture, the model, the size, and the Coast Guard approval number.

* * * * *

11. in § 160.071–25, by revising paragraph (e) to read as follows:

§ 160.071–25 Production testing.

* * * * *

(e) The manufacture must ensure that the quality control procedure described in the test plans previously submitted for approval under § 159.005–9(a)(5)(iii) is followed.

Dated: January 21, 1986.

J.W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86–2287 Filed 2–3–86; 8:45 am]

BILLING CODE 4910–14–M

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM–195]

Reclassification of Special Fireworks

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), DOT.

ACTION: Withdrawal of Advance Notice of Proposed Rulemaking.

SUMMARY: This document terminates Docket HM–195. In the advance notice of proposed rulemaking (ANPRM) establishing Docket HM–195, RSPA solicited comments on the merits of a petition for rulemaking filed by the United States Display Fireworks Association (USDFA)(49 FR 45627, November 19, 1984). In the petition, the USDFA requested that RSPA reclassify special fireworks from class B explosives to class C explosives. By letter dated September 16, 1985, the USDAF withdrew their petition. Based on the withdrawal of the petition and other reasons discussed herein, this document terminates Docket HM–195 without issuance of a formal proposal.

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FOR FURTHER INFORMATION CONTACT: Hattie L Mitchell, Standards Division, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590, (202) 426–2075.

SUPPLEMENTARY INFORMATION: On November 19, 1984, RSPA published in the **Federal Register** an ANPRM soliciting comments on the merits of a petition filed by the USDFA to reclassify special (or display) fireworks from class B explosives to class C explosives (49 FR 45627). These fireworks are commonly used for public display on the Fourth of July and other special events. The USDFA summarized their reasons for the petition as follows: "(1) Make truck common carrier transportation economically available to the display fireworks industry, (2) make company vehicle transportation economic and time efficient; and (3) enhance safety by the elimination of placards entitled "B Explosives". The petition was published verbatim in its entirety in the ANPRM.

RSPA received over 90 comments on the ANPRM. The majority of the commenters, representing fire and safety emergency response agencies, objected to the changes proposed in the petition. Most of these commenters expressed concern over the downgrading of certain safety controls for motor vehicles transporting special fireworks. They expressed strong opposition to allowing the display of DANGEROUS placards in place of EXPLOSIVE placards and no placards on motor vehicles containing less than 1,000 pounds of special fireworks. They objected to elimination of the requirements for the attendance and surveillance of vehicles, special restrictions on parking the vehicle in certain areas, and the preparation of route plans. Many commenters attributed the excellent safety record for transporting special fireworks to these safety and expressed concern for the safety of firefighters responding to incidents involving fireworks if the safety controls are downgraded.

Commenters in favor of the petition expressed their concern over the deteriorating financial posture of the explosive industry resulting from Federal, State and local regulations, competition from explosive importers, and higher transportation rates, insurance premiums, raw materials and labor costs. One commenter maintained that present state-of-the-art materials and methods being used by fireworks manufacturers have "dissolved" the safety concerns experienced by earlier manufacturers.

On March 13, 1985, RSPA notified the USDFA of a preliminary determination that the petition should be denied based on RSPA's review of the petition and the comments received in response to the petition, and afforded the USDFA 30 days to provide additional information to support their petition or to make any comments on the comments received in response to their petition. The USDFA filed a letter dated April 12, 1985, responding to the comments received to the petition and again requesting some regulatory relief.

In order to assist RSPA in making a determination on whether some regulatory relief may be warranted on a selective basis for special fireworks, RSPA requested the U.S. Bureau of Mines to conduct testing of assorted special fireworks packed in various packaging configurations. The testing was conducted on May 28–31, 1985. Testing procedures conformed to the UN Test Series 6, which is used to determine how explosives react when involved in a fire or explosion. In addition, a special test exposing a truck partially loaded with 500 pounds of special fireworks to an external fire source was conducted to determine whether this quantity of special fireworks would explode violently or just burn. Test results showed that the special fireworks functioned primarily by rapid combustion and therefore, are properly classed as class B explosives.

In a letter dated September 16, 1985, the USFA withdrew its petition without making any comment. Based on a review of the comments received in response to publication of the petition in the ANPRM, testing results, and the USDFA's withdrawal of their petition, Docket HM–195 is hereby withdrawn.

Issued in Washington, DC on January 28, 1986.

Under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86–2392 Filed 2–3–86; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 51, No. 23
Tuesday, February 4, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a subcommittee meeting of the Colorado Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:00 p.m., on February 22, 1986 , at the Holiday Inn, 4001 North Elizabeth, Conference Room, Pueblo, Colorado. The purpose of the meeting is to receive information on problems related to Hispanic dropouts.

Persons desiring additional information, or planning a presentation to the subcommittee, should contact subcommittee Chairperson, Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 884–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 30, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–2459 Filed 2–3–86; 8:45 am]

BILLING CODE 6335–01–M

Iowa Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 8:30 a.m. and adjourn at 3:00 p.m., on Feburary 27, 1986, at the Federal Building, 210 Walnut Street, Room 239, Des Moines, Iowa. The purpose of the meeting is to continue program planning for FY 1986 and hold a forum on education issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Ralph S. Scott or Melvin Jenkins, Director of the Central States Regional Office at (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 30, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–2460 Filed 2–3–86; 8:45 am]

BILLING CODE 6335–01–M

Iowa Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 8:00 p.m., on February 26, 1986, at the Best Western Starlite Village, 929 3rd Street, Room 206, Des Moines, Iowa. The purpose of the meeting is to continue program planning for FY 1986 and hold a forum on education issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Ralph S. Scott or Melvin Jenkins, Director of the Central States Regional Office at (816) 374–5253, (TDD 816) 374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 30, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–2461 Filed 2–3–86; 8:45 am]

BILLING CODE 6335–01–M

Maine Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 7:00 a.m. and adjourn at 9:00 p.m. on February 12, 1986, at the Holiday Inn, Western Avenue, Gardiner Room, Augusta, Maine. The purpose of the meeting is to consider a proposed project to examine civil rights issues faced by Maine Indians.

Persons desiring additional information, or plannng a presentation to the Committee, should contact Committee Chairperson, Richard Morgan, or Jake Schlitt, Director of the New England Regional Office at (617) 223–4671 (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 30, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–2462 Filed 2–3–86; 8:45 am]

BILLING CODE 6335–01–M

Montana Advisory Committee; Cancellation of Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission originally scheduled for February 14, 1986, convening at 10:30 a.m. and adjourning at 2:00 p.m., at the Northern Hotel, 1st & Broadway, Billings, Montana (FR Doc 85–29930, Page 51573) has been cancelled.

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Dated at Washington, DC, January 30, 1986.
Bert Silver,
Assistant Staff Director for Regional Programs.
[FR Doc. 86-2463 Filed 2-3-86; 8:45 am]
BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 2:00 p.m., on February 28, 1986, at the Bond Court Hotel, 777 St. Clair Avenue, Cleveland, Ohio. The purpose of the meeting is to discuss fair housing in Parma, voting rights in Cincinnati, and other civil rights issues in Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Prock or Clark Roberts, Director of the Midwestern Regional Office at [312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 30, 1985.
Bert Silver,
Assistant Staff Director for Regional Programs.
[FR Doc. 86-2464 Filed 2-3-86; 8:45 am]
BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Proposed Permit Modification No. 1: Oregon Department of Fish and Wildlife (P211B)

Notice is hereby given that Oregon Department of Fish and Wildlife, Marine Region, Marine Science Drive, Building 3, Newport, Oregon 97365, has requested a modification to Permit No. 499 issued on April 16, 1985 (50 FR 18283), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting authorization to add hot-branding to his permitted tagging of 100 northern sea lions (Eumetopias jubatus) and 200 Pacific harbor seals (Phoca vitulina).

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and
Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: January 28, 1986.
Richard B. Roe,
Director, Office of Fisheries Management, National Marine Fisheries Service.
[FR Doc. 86-2458 Filed 2-3-86; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Modification of Permit; Walt Disney World Company, Modification No. 1 to Permit No. 458

Notice is hereby given that pursuant to the provisions of §216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Permit No. 458 issued to the Walt Disney World Company, P.O. Box 40, Lake Buena Vista, Florida 32830 on April 19, 1984, (49 FR 17795) is modified as follows:

Section B.6 is deleted and replaced by:

"6. This permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification became effective January 1, 1986.

Documents in connection with the above modification and Permit are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, Washington, DC:
Director, Southeast Region, National Marine Fisheries, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: January 27, 1986.
Richard B. Roe,
Director, Office of Fisheries Management, National Marine Fisheries Service.
[FR Doc. 86-2457 Filed 2-3-86; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Permit Modification; Ocean World Associates, Modification No. 3 to Permit No. 334

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 334 issued to Ocean World Associates, 17th Street Causeway, Fort Lauderdale, Florida on May 8, 1981, (46 FR 26673) as modified on October 6, 1982, (47 FR 44830), and December 31, 1984, (50 FR 873), is further modified as follows:

Section B-2 is deleted and replaced by the following:

"2. This Permit is valid with respect to the taking authorized herein until December 31, 1986."

This modification is effective as of January 1, 1986.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC; and
Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: January 27, 1986.
Richard B. Roe,
Director, Office of Fisheries Management, National Marine Fisheries Service.
[FR Doc. 86-2456 Filed 2-3-86; 8:45 am]
BILLING CODE 3510-22-M

Marine Mammals; Permit Modification, Southwest Fisheries Center, Modification No. 3 to Permit No. 347

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 347 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on July 25, 1981 (46 FR 38950), as modified on February 7, 1983 (48 FR 6381), and September 1, 1983 (48 FR 40933), is further modified as follows:

Section A.1 is deleted and replaced by:

"1. Up to 3900 California sea lions (*Zalophus californianus*) may be taken for mark/recapture studies as described in the application and modification request."

This modification became effective on January 28, 1986.

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and
Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: January 30, 1986.
James E. Douglas Jr.,
Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.
[FR Doc. 86-2454 Filed 2-3-86; 8:45 am]
BILLING CODE 3510-22-M

National Marine Fisheries Service; Issuance of Letter of Authorization

Notice is hereby given that on January 24, 1986, the National Marine Fisheries Service issued a Letter of Authorization under the authority of section 101(a)(5) of the Marine Mammal Protection Act of 1972 and 50 CFR Part 228, Subpart B Taking of Ringed Seals Incidental to On-Ice Seismic Activities to the following:

Enertec Geophysical Services, Inc., 201 South Cherokee Street, Denver, Colorado 80223

This Letter of Authorization is valid for 1986 and is subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities (50 CFR Part 228, Subparts A and B).

Issuance of this letter is based on a finding that the total level of taking will have a negligible impact on the ringed seals species or stock, its habitat and its availability for subsistence use.

This Letter of Authorization is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: January 27, 1986.
Richard B. Roe,
Director, Office of Fisheries Management, National Marine Fisheries Service.
[FR Doc. 86-2455 Filed 2-3-86; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton Textile Products Produced or Manufactured in Brazil

January 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 30, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 337-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and the Federative Republic of Brazil provides, among other things, for designated percentage increases in certain categories (swing), and for the borrowing of yardage from the succeeding year's level with the amount used being deducted from the level in the succeeding year (carryforward). An increase for swing and carryforward is being applied to the restraint limit previously established for cotton textile products in Category 361, produced or manufactured in Brazil and exported during the agreement year which began on April 1, 1985, increasing it from 45,000 numbers to 504,000 numbers.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584, April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of October 15, 1985 which prohibited entry into the United States for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1985 and extends through March 31, 1986.

Effective on January 30, 1986, the directive of October 15, 1985 is hereby amended to include an adjusted restraint limit of 504,000 numbers [1] for cotton textile products in Category 361.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 86-2402 Filed 2-3-86; 8:45 am]
BILLING CODE 3510-DR-M

Announcing a New Export Visa Requirement and Exempt Certification for Cotton, Wool, and Man-Made Fiber Textile Products From Peru

January 30, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 15, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Governments of the United States and Peru have exchanged letters establishing a new visa and exempt

[1] The restraint limit has not been adjusted to reflect any imports exported after May 31, 1985.

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certification mechanism, as an administrative arrangement under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended.

The new mechanism will be effective on March 15, 1986 for textile and apparel products exported on and after that date. Textile and apparel products that have been exported before March 15, 1986 shall not be denied entry for lack of a visa.

On and after March 15, 1986 cotton, wool and man-made fiber textile and apparel products exported from Peru which are subject to the terms of the bilateral agreement shall be visaed with a circular stamp in order to be entered or withdrawn from warehouse for consumption in the United States. Shipments of textile and apparel products which are exempt from the quantitative levels of the bilateral agreement shall be certified by the Government of Peru prior to exportation using a rectangular-shaped stamp. The basis for exemption shall be stated on the certification stamp by the use of a description, such as "handloomed fabric", "hand-made", or the name of a particular traditional folklore handicraft product which has been designated for exemption. (Entirely "hand-made" means cut and hand sewn with a needle and thread). Invoices for certified exempt items shall not include any textile or apparel products that are not agreed to be exempt.

Merchandise imported for the personal use of the importer, and not for resale, will not require a visa or certification for entry, regardless of value.

Shipments shall be visaed or certified by the placing of original stamped markings (the visa or certification) in blue ink on the front of the original copy of the commercial invoice. Each visa and certification will include its number and date and the signature of the issuing official. The visa shall also state the correct categories and quantities in the shipment in applicable category units. However, if the quantity indicated on the export visa is more than that of the shipment, entry shall be permitted.

Facsimiles of the visa and exempt certification stamps are published as enclosures to the letter to the Commissioner of Customs which follows this notice.

The Government of Peru has authorized the following officials to issue export visas:

Eduardo Paredes Briceno
Juan Manuel Pacheco Zevallos
Otto Espinoza Barron
Miguel Olivares Aranda
Emilia Acosta Angeles

The following are authorized to issue certifications for exemption:

Herbert Zarate Nevarro
Sana Zanabria Gutierrez
Sara Briceno Gurreonero

Interested persons are advised to take all necessary steps to insure that textile products, produced or manfuactured in Peru, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, on and after March 15, 1986 will meet the stated visa and certification requirements.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

January 30, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, between the Governments of the United States and Peru; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on March 15, 1986, and until further notice, to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 300–369, 400–469 and 600–670, as applicable, produced or manufactured in Peru and exported on and after March 15, 1986, which are not visaed or certified for exemption in accordance with the procedures outlined below. Cotton, wool and man-made fiber textile products which have been exported before March 15, 1986 shall not be denied entry for lack of a visa or certification.

Cotton, wool and man-made fiber textile and apparel products exported from Peru on and after March 15, 1986 shall be visaed with a circular stamp in order to be entered into the United States for consumption, or withdrawn from warehouse for consumption.

Certain cotton, wool and man-made fiber textile and apparel products which are exempt from the levels of restraint shall be certified by the Government of Peru prior to exportation using a rectangular-shaped stamp. The basis for exemption shall be stated on the certification by the use of a description, such as, "handloomed fabric", "hand-made"[1], or the name of a particular traditional folklore handicraft product which is listed in the enclosure to this letter.

Facsimiles of the visa and certification stamps are enclosed.

Shipments shall be visaed or certified by the placing of original stamped markings (the visa or certification) in blue ink on the front of the original commercial invoice. The original visa or certification shall not be affixed to duplicate copies of the invoice. The original copy of the invoice with the original visa or certification will be required to enter the shipment into the United States. Duplicate copies of the invoice and/or visa or certification may not be used.

Each visa and certification will include its number and date and the signature of the issuing official. The visa shall also state the correct categories and quantities in the shipment in applicable category units. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted. The visa or certification will not be accepted if the visa number, date, signature, category, quantity or category units are missing, incorrect or illegible; if the indicated quantity is less than the quantity in the shipment; or if the reason for exemption is not correct. A new visa, certification or waiver must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct visaed invoice, or visa waiver. Only the actual quantity and correct category will be charged to the quota.

Merchandise imported for the personal use of the importer, and not for resale, does not require a visa or certification for entry, regardless of value.

Merchandise covered by an invoice which has an exempt certification but contains both exempt and non-exempt textile products shall not be permitted entry.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textile and apparel products, produced or manufactured in Peru and exported to the United States, notwithstanding the designated merchandise does not fulfill the aforementioned visa and certification requirements, whenever requested to do so in writing by the Chairmen of the Committee for the Implementation of Textile Agreements.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] Entirely hand-made means cut and hand sewn with a needle and thread.

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

1. Handloom fabrics of the cottage industry, such as:

1. *Cottage industry fabrics.* Handloomed fabrics, made of fine animal hair, wool, cotton or other natural fibers, or other fabric hand-decorated, embroidered or painted with traditional designs. In some cases, portions of warp are left unwoven.

II. Hand-made cottage industry products made of such handloom fabrics, such as:

1. *Cottage industry bedspreads and blankets.* Bed clothes of wool, fine animal hair, cotton or other handloomed natural fibers; bedspreads with hemmed, trimmed, or otherwise secured edges, and/or blankets with fringes of the same fabric or separate bands, with or without designs.

2. *Cushions.* Covers for cushions made of fabric woven from fine animal hair, wool, cotton, or other natural fibers, with traditional designs, with or without filling. In some cases, these designs are hand-embroidered.

3. *Rugs and tapestries.* Coarse handloomed fabrics made with a cotton warp and wool weft, colored with vegetable dyes. They contain traditional designs. Rectangular and of various sizes. These fabrics are used especially as wall hangings or floor coverings.

4. *San Pedro de Cajas tapestries.* Coarse handloomed fabrics woven with a cotton warp and weft of dyed wool. The design is obtained by inserting sections of weft in the warp by hand and this filler is supported and reinforced with two or more wefts of cotton threat in every repeat. Rectangular or square, and of various sizes. They usually contain traditional designs of the region. They are generally used as wall hangings.

5. *Hand knotted rugs.* On these rugs the pile is formed by a cable of yarns knotted by hand on the warp, of wool or fine animal hair. The base is of cotton, woven on a handloom. Usually of natural colors.

6. *Scarves, cravats and neckties.* Strips of coarsely woven fabrics to be worn around the neck, made of fine animal hair, or wool, cotton, or other natural fibers, with or without traditional designs.

7. *Handbags and purses.* Handbags and purses of various types, made of woven, closed or net-type fabric or crochet, used to carry miscellaneous articles, with or without embroidery or appliques, with traditional designs.

8. *Table linen.* Includes tablecloths, napkins, placemats and runners, hand woven of coarse yarns or made with crochet needles, usually embroidered. Made with natural dyestuffs and with traditional designs.

9. *Hand embroidered banners, badges or emblems.* Used as decoration in flags, pennants and clothing.

10. *Outerwear.* This category includes products entirely hand made with cottage industry fabrics (as specified in Paragraph 3 of the Visa System Arrangement). It includes shirts, jackets, overcoats, dress coats, vests, and trousers:

11. *Dresses, skirts and other outerwear for women.* Hand-loomed, with yarns of fine animal hair, wool, cotton or other natural fibers.

12. *Hammocks.* Made with handloomed fabrics, generally with multicolored stripes, the ends of which are reinforced with strong rope or made by braiding strands of fibers, usually of vegetable origin, in the form of a net. They can be designed for one or two persons.

13. *Hand-woven clothing accesories.* Included in this category are: caps, chullos, berets, muffs, gloves, mittens, slippers, stockings and leg warmers. Made from yarn of fine animal hair wool, cotton, and other natural fibers. Generally with traditional designs.

III. Traditional folklore handicraft textile products, such as:

1. *Sashes or chumpis, grecas or belts.* Woven strips of fine animal hair, wool, cotton, or other natural fibers, with traditional designs, with or without embroidery, and with or without braided attachments.

2. *Ponchos, ruanas, capes, shawls, and stoles.* Articles of clothing of fine animal hair, wool, cotton or other natural fibers, that cover the shoulders, made from pieces of coarsely woven or knitted fabrics, with or without a hole at the center for the head to pass through, with or without decoration, and with or without fringes.

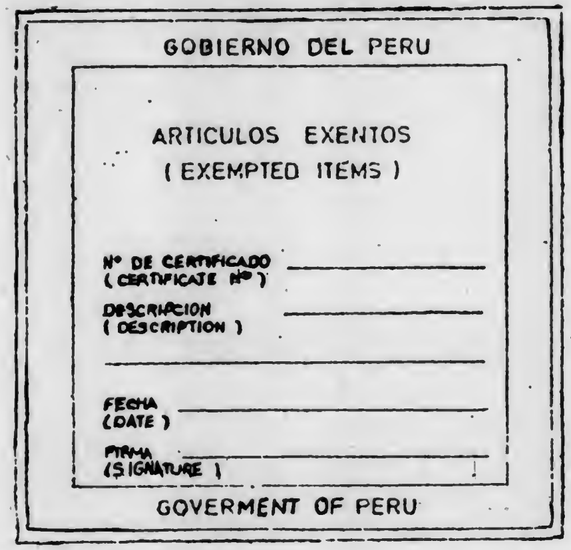
Note.—Traditional Peruvian designs include sun motifs, astrological motifs, animal motifs such as llama, puma, vicuña, birds, serpents, butterflies, Inca cultural motifs such as the tumi (a cutting tool) and stylized Inca figures.

BILLING CODE 3510-DR-M

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FACSIMILES OF
EXPORT VISA AND EXEMPT CERTIFICATION STAMPS AUTHORIZED BY THE GOVERNMENT OF PERU FOR CERTAIN COTTON, WOOL AND MAN-MADE FIBER TEXTILE AND APPAREL PRODUCTS EXPORTED TO THE UNITED STATES





[FR Doc. 86-2403 Filed 2-3-86; 8:45 am]
BILLING CODE 3510-DR-C

Announcing a New Export Visa Requirement for Cotton, Wool and Man-Made Fiber Textile Products From the Socialist Federal Republic of Yugoslavia

January 30, 1986

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on March 15, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Governments of the United States and the Socialist Federal Republic of Yugoslavia have exchanged letters establishing a new visa requirement as an administrative arrangement under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1984, as amended and extended, between the two governments.

The new mechanism will be effective on March 15, 1986 for textile and apparel products exported on and after that date. Textile and apparel products that have been exported before March 15, 1986 shall not be denied entry for lack of a visa until May 1, 1986.

On and after March 15, 1986, cotton, wool and man-made fiber textiles and apparel products exports from Yugoslavia, which are subject to the terms of the bilateral agreement, shall be visaed with a circular stamp in order to be entered or withdrawn from warehouse for consumption in the United States.

Merchandise imported for the personal use of the importer, and not for resale, does not require a visa for entry, regardless of value.

Shipments shall be visaed by the placing of an original circular stamped marking (the visa) in blue ink on the front of the original commercial invoice. Each visa will include its number and date of issuance and the signature of the issuing official. The visa shall also state the correct categories and quantities in the shipment in applicable category units. However, if the quantity indicated on the export visa is more than that of the shipment, entry shall be permitted.

A facsimile of the visa stamp is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.

The Government of the Socialist Federal Republic of Yugoslavia has authorized the following officials to issue export visas:

Lomic Anka
Haider Micica
Pavlovic Bozana
Krnjajic Nebojsa
Paranos Vera

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Yugoslavia, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the stated visa requirements.

Ronlad I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
January 30, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of August 31, 1976, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool and man-made fiber textile products for which the Government of the Socialist Federal Republic of Yugoslavia had not issued an appropriate export visa.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1984, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on March 15, 1986, and until further notice, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 300-369, 400-469, and 600-669, as applicable, produced or manufactured in Yugoslavia and exported on and after March 15, 1986, which are not visaed in accordance with the procedures outlined below. Cotton, wool and man-made fiber textile products which have been exported before March 15, 1986 shall be permitted entry without a visa until May 1, 1986.

Cotton, wool and man-made fiber textile and apparel products exported fom Yugoslavia on and after March 15, 1986 shall be visaed with a circular stamp in order to be entered into the United States for consumption, or withdrawn from warehouse for consumption.

Shipments shall be visaed by the placing of original stamped markings (the visa) in blue ink on the front of the original commercial invoice. The original visa shall not be affixed to duplicate copies of the invoice. The original copy of the invoice with the original visa will be required to enter the shipment into the United States. Duplicate copies of the visaed invoice may not be used.

Each visa shall include its number and date of issuance and the signature of the issuing official. The visa shall also state the correct categories and quantities in the shipment in applicable category units. However, if the quantity indicated on the visa is more than that of the shipment, entry shall be permitted. The visa will not be accepted if the visa number date signature, category, quantity or category units are missing, incorrect or illegible, or if the indicated quantity is less than the quantity in the shipment. The categories and quantities shall be those determined by the U.S. Customs Service. A new visa or visa waiver must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct visaed invoice or visa waiver. If import quotas are in force, only the actual quantity and correct category will be charged to the restraint limit.

Merchandise imported for the personal use of the importer, and not for resale, does not require a visa for entry, regardless of value.

The visa number shall be of nine digits and letters, beginning with one digit for the last digit of the year of export, the letters YU and a six digit serial number identifying the shipment, i.e., 6YU123456.

A facsimile of the visa stamp is enclosed, as are the names of the officials authorized by the Government of the Socialist Federal Republic of Yugoslavia to issue and sign the visas.

You are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of textile and apparel products, produced or manufactured in Yugoslavia and exported to the United States, notwithstanding the designated merchandise does not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of

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Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.



FACSIMILE OF VISA AUTHORIZED BY THE GOVERNMENT OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA FOR COTTON, WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS EXPORTED TO THE UNITED STATES

OFFICIALS OF THE GOVERNMENT OF THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA AUTHORIZED TO ISSUE VISAS FOR CERTAIN COTTON, WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS EXPORTED TO THE UNITED STATES

Lomic Anka
Haider Milica
Pavlovic Bozana
Krnjajic Nebojsa
Paranos Vera

[FR Doc. 86-2404 Filed 2-3-86; 8:45 am]
BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 85-3 85CA]

Adjustment of Cable Copyright Royalty Rates; Inquiry

AGENCY: Copyright Royalty Tribunal.
ACTION: Notice of Inquiry.

SUMMARY: This notice solicits comments on the petitions to adjust the cable copyright royalty rates filed by several copyright owners and users. The notice solicits comments as to standing to initiate a proceeding, consolidation of petitions, procedures and scheduling.

DATES: Comments must be submitted by April 4, 1986. Reply comments must be submitted by May 5, 1986.

ADDRESS: Comments may be filed with or mailed to: Copyright Royalty Tribunal, Suite 450, 1111 20th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, (202) 653-5175.

SUPPLEMENTARY INFORMATION: On March 25, 1985, the Tribunal received a petition from Turner Broadcasting System, Inc. (TBS) to adjust the cable copyright royalty rates "for carriage of newly added distant broadcast signals as it is applied to carriage of WTBS, Atlanta, Georgia in certain circumstances." In response to a motion filed by Motion Picture Association of America, Inc. (MPAA), the Tribunal initiated an inquiry to ascertain whether TBS is an owner or user of copyrighted works with a significant interest in the royalty rate, and what procedures should apply to a TBS-initiated rate proceeding. *Notice of Inquiry*, 50 FR 23349 (June 3, 1985).

After consideration of the comments filed pursuant to the inquiry, the Tribunal decided to defer ruling on the TBS petition, preferring to give all potentially interested parties the full extent of calendar year 1985 to reach either a negotiated settlement, or file additional petitions. *Notice*, 50 FR 43605 (October 28, 1985). On December 31, 1985, the Tribunal received three petitions: a joint petition by MPAA, American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. to increase the copyright royalty rate set by the Tribunal for signals permitted after the FCC deregulation effective June 25, 1981, and the syndicated exclusivity surcharge; a petition by Major League Baseball, the National Basketball Association and the National Hockey League (Joint Sports) to increase the royalty rate for post-deregulation signals, and the syndicated exclusivity surcharge; and a petition by the National Cable Television Association, Inc. (NCTA) to reduce the royalty rate for post-deregulation signals.

Section 804(a)(2) of the Copyright Act states, ". . . any owner or user of a copyrighted work whose royalty rates are specified by this title, or by a rate established by the Tribunal, may file a petition with the Tribunal . . ." It is apparent that all the parties that have filed with the Tribunal are either owners or users—TBS, MPAA, ASCAP, BMI, SESAC, Inc., and Joint Sports are copyright claimants year after year in the Tribunal's distribution proceedings, and NCTA represents over 2100 cable systems which use the copyrighted works via the compulsory license under Section 111.

Section 804(a)(2) goes on to state:

. . . The Tribunal shall make a determination as to whether the applicant has a significant interest in the royalty rate in which an adjustment is requested. If the Tribunal determines that the petitioner has a significant interest, the Chairman shall cause notice of this determination, with the reasons therefor, to be published in the **Federal Register**, together with notice of commencement of proceedings under this chapter.

TBS' petition has been opposed because it is alleged that TBS does not have a "significant interest." The Tribunal has not reached a conclusion regarding the question of TBS' "significant interest", and reserves the option to do so, because, among other things, the question may have become moot by the filings of December 31, 1985.

The filings of December 31, 1985 may be sufficient, upon a finding that at least one petitioner has a significant interest, to initiate a proceeding. The question would then become, by what criteria should the Tribunal allow parties to participate in a hearing, and should they be permitted to be heard for relief that consitutes less than a new nationwide royalty rate.

The Tribunal solicits comments on the following:

1. Do the petitioners who filed on December 31, 1985 have a significant interest in the cable copyright royalty rate?
2. Should the petitions be consolidated into one proceeding?
3. When should the proceeding be scheduled?
4. By what criteria should the Tribunal allow parties to participate in a hearing?
5. May a party request changes in the cable royalty rates which would apply to carriage of one station, or a category of stations?
6. The procedures that should apply to this proceeding.

Dated: January 30, 1986.
Edward W. Ray,
Chairman.

[FR Doc. 86-2433 Filed 2-3-86; 8:45 am]
BILLING CODE 1710-09-M

[Docket No. CRT 84-1-83CD]

1983 Cable Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.
ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: 17 U.S.C. 111(d)(4) authorizes the Copyright Royalty Tribunal to distribute royalty fees paid by cable systems to certain copyright owners who have filed claims with the Tribunal. The Tribunal declared the existence of a controversy as to the distribution of the 1983 cable royalty fees effective April 15, 1985. In accordance with past procedure, the Tribunal resolved that the distribution proceeding would be conducted in two phases. Phase I would determine the allocation of cable royalties to specific groups of claimants. Phase II would allocate cable royalties to individual claimants within each group.

In order to permit the Tribunal to proceed to Phase II of this proceeding, the Tribunal is publishing this summary statement of its Phase I determinations. In accordance with 17 U.S.C. 803(b), a full and complete statement of the Tribunal's findings of facts and conclusions of law will be included in the Tribunal's final determination. This notice does not constitute a "final determination" pursuant to 17 U.S.C. 803(b) of a "final decision" under 17 U.S.C. 804(e) or 810.

The Tribunal has determined that after subtracting the award of $144,497.85 to National Public Radio (NPR) [1] from the 1983 cable royalty fund, the remainder of the fund shall be divided into three royalty funds: (1) The cable royalty fees derived from payments by cable systems based upon the statutory rates as adjusted for inflation by the Tribunal (basic); (2) the cable royalty fees derived from payments by cable systems based upon the 3.75% rate adopted by the Tribunal in 1982 (3.75%); and (3) the cable royalty fees derived from payments by the cable systems based upon the syndicated exclusivity surcharge (syndex).

The Tribunal, in its final determination, will provide for the following allocations:

Category	Basic	3.75 percent	Syndex
Program suppliers	67.1000	72.0000	95.5000
Joint sports	16.3500	17.5000	0
Public broadcasting service	5.2000	0	0
Commercial television	5.0000	5.0000	0
Music	4.5000	4.5000	4.5000
Devotional claimants	1.1000	0.7500	0
Canadian claimants	0.7500	0.2500	0
Commercial radio	0	0	0

The award to the Music category includes television and radio. The award to Commercial Television includes all copyrightable interests.

The Tribunal directs that all parties which have filed timely notices of appreareance in Phase II shall file their Phase II written direct case on February 18, 1986 to include the claims of the Phase II participants to the basic, the 3.75% and the syndex funds.

Dated: January 30, 1986.
Edward W. Ray,
Chairman.

[FR Doc. 86-2432 Filed 2-3-86; 8:45 am]
BILLING CODE 1410-09-M

[1] The award to NPR was based upon a settlement entered into by all the parties to this proceeding agreeing to 0.16% of the entire 1983 fund. At the time NPR moved for full distribution of its award, it waived any interest in future growth in the fund. Consequently, because the fund continues to grow, the Tribunal finds that the better bookkeeping procedure is to subtract the actual amount NPR received on June 27, 1985 and September 30, 1985 from the total fund, and to allocate the remainder. The award to NPR does not constitute precedent for entitlement to either the basic, 3.75%, or syndex funds.

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Navigation Project at Shinnecock Inlet, Town of Southampton, Suffolk County, NY

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: *1. Description of Proposed Action.* The proposed plan consists of a stabilized 200-ft.-wide navigation channel with a "natural channel" alignment of design dept 10 ft. below mean low water; a 700-ft.-wide deposition basin dredged to 20 ft. below mean low water for advanced maintenance; rehabilitation of the existing east and west jetties; and construction of a revetment on the bay side of the beach east of the inlet.

2. Reasonable Alternatives. A reasonable alternative to channel dredging and jetty/revetment rehabilitation and construction is no action. Other alternatives considered include: different channel alignments and different channel depths.

3. Scoping Process.—a. Public Involvement. Two public meetings were held on April 9, 1984 to solicit views from local officials and the public. Other meetings were held with the Coast Guard, local agencies and representatives of local fishermen on March 15, 1984, March 16, 1984 and April 17, 1984. Views from public agencies and individuals will also be solicited through a public notice presenting a description of the proposed plan of improvement and announcing that a General Design Memorandum and Draft Environmental Impact Statement are being prepared.

b. Significant Issues Requiring In-depth Analysis. Water quality impacts; archaeological and cultural resources impacts; aquatic resources impacts; and terrestrial resources impacts, including potential impacts to the piping plover, a species currently under consideration for listing as a Federally endangered species.

c. Assignments. None anticipated.

d. Environmental review and consultation. Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500-1508) and Corps regulations ER 200-2-2 dated August 25, 1980 (revised March 2, 1981).

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4. Scoping Meeting will ☐* will not ☐ be held *Date Time Location

5. Estimate date of statement availability February 1987, Address: Project Manager, Linda Buege, ATTN: NANPL–FB, Tel No. (212) 264–1060; EIS Coordinator, Karen Gustina, ATTN: NANPL–E, Tel No. (212) 264–4662. U.S. Army Engineer District, New York, 26 Federal Plaza, New York, N.Y. 10007.

Dated: January 15, 1986.

Samuel P. Tosi,

Chief, Planning Division.

[FR Doc. 86–2345 Filed 2–3–86; 8:45 am]

BILLING CODE 3710–66–M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Special Warfare Task Force; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Special Warfare Task Force will meet February 26, 1986, from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine special warfare forces missions and roles. The entire agenda for the meeting will consist of discussions of key issues related to special warfare and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 928; Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: January 29, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86–2354 Filed 2–3–86; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations, Executive Panel Advisory Committee, Strategic Planning and the Technology Base Task Force; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Planning and the Technology Base Task Force will meet February 27–28, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for the meeting will consist of discussions of key issues regarding the integration of technology management with strategic planning and requirements definition and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: January 30, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86–2355 Filed 2–3–86; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of Subcommittee A of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on February 10, 1986, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 2:00 p.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Technical issues arising from papers by the Standing Group on Emergency Questions:
(a) Countries' minimum operating requirements and accessible stocks;
(b) Certain issues on oil stocks and oil consumption reduction measures; and
(c) Oil statistical reports.
i. End-January Oil Market Report; and
ii. Base Period Final Consumption (4Q84–3Q85).
3. Future work program.

II. A meeting of Subcommittee C of the IAB will be held on February 10 and 11, 1986, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning on February 10 following the conclusion of the meeting of Subcommittee A of the IAB to be held at the same location on that date. The agenda for the meeting is as follows:

1. Opening remarks.
2. Experience with AST–5 legal clearance and consequential recommendations for future test clearances and U.S. Plan of Action:
(a) Reporting Company experience and recommendations; and
(b) Industry Supply Advisory Group (ISAG) experience and recommendations.
3. U.S. Plan of Action, including status reports from the IEA Secretariat and U.S. Government.
4. Future work program.

III. A meeting of the IAB will be held on February 11, 1986, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of Record Note of IAB meeting of May 21, 1985.
3. Correspondence and communications with IEA and Reporting Companies.
4. Report from Subcommittee A.
5. Report from Subcommittee C.
6. Report from ISAG Chairman.
7. AST–5 issues:
(a) Report by ISAG;
(b) Report by IEA Secretariat; and
(c) Draft appraisal.
8. IAB organization, leadership and succession.
9. Date of next meeting and future business.

IV. A meeting of the IAB will be held on February 12, 1986, at the offices of the IEA, 2 rue Andre Pascal, Paris 16, France, beginning at 10:00 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is being held at the offices of the IEA on that date. The agenda for the meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the draft agenda.
2. Summary record of the 51st meeting.
3. Emergency Preparedness:
(a) AST–5 report by ISAG;
(b) AST–5 report by IEA Secretariat; and
(c) Draft appraisal of AST–5 for the Governing Board;
(d) Test sale of oil from the Strategic Petroleum Reserve; and
(e) Review of Member Countries' emergency response programs.
4. Stocks and other measures:
(a) Minimum operating stock requirements and accessible stocks;
(b) Certain issues on oil stocks and oil consumption reduction measures;
(c) Short-term fuel switching; and
(d) Member Countries' legislation.
5. Oil supply and demand:
(a) End-January Oil Market Report; and
(b) Base Period Final Consumption (4Q84–3Q85).
6. Any other business.
7. Date of next meeting.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the IAB meetings are open only to representatives of members of the IAB, their counsel, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of committees of Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB or the IEA. The SEQ meeting is open only to the aforesaid persons, representatives of members of the SEQ, representatives of members of the IEA Group of Reporting Companies, and invitees of the SEQ.

As permitted by 10 CFR 209.32, the usual seven day notice period has been shortened because unanticipated procedural delays prevented processing in sufficient time to provide such notice.

Issued in Washington, DC, January 29, 1986.

J. Michael Farrell,

General Counsel.

FR Doc. 86–2495 Filed 2–3–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 86–07–NG]

Czar Resources Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 17, 1986, of an application filed by Czar Resources Inc. (Czar Inc.), a wholly-owned subsidiary of Czar Resources Ltd. (Czar Ltd.), for blanket authorization to import from Canada up to 30 Bcf of natural gas per year over a two-year period beginning on the date of first delivery. The gas would be supplied by Czar Ltd. and other Canadian producers and sold by Czar Inc. to customers that include, but are not limited to, pipelines, gas distributors, electric utilities, industrial users and agricultural end-users. Czar Inc. proposes to file quarterly reports with the ERA giving the specific terms of each import and sale, including the price and volumes.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than March 6, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9622

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. March 6, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issuers genuinely in dispute

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that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.36.

A copy of the Czar Inc. application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, January 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2381 Filed 2-3-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-23; OFP Case No. 61058-9306-20-24]

Powerplant and Industrial Fuel Use; Exemption Requests; Cogen Kern Bluff Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Cogen Kern, Bluff Incorporation.

SUMMARY: On December 26, 1985, Cogen Kern Bluff Incorporated (Cogen Kern Bluff) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for their proposed Kern Bluff Cogeneration Project from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq.) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 503.1. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition or exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before March 21, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-23 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Division of Coal & Electricity, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, D.C. 20585, Telephone (202) 252-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Cogen Kern Bluff plans to install n 46.5 MW gas fired cogeneration facility to produce steam and electric power. The cogeneration system of the facility will consist of a self-contained combustion gas turbine generator and an unfired heat recovery steam generator. The only fuel burning equipment in the facility will be the gas turbine. The facility will consume 383 million Btu's of natural gas per hour and produce 45.0 MW of electric power and 54,000 pounds per hour of steam. The steam will be sold to the Petro-Lewis Corporation, and the electric power to the Pacific Gas and Electric Company.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Cogen Kern Bluff has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Cogen Kern Bluff has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 et seq.; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Cogen Kern Bluff is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2382 Filed 2-3-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-22; OFP Case No. 55118-1647-05-24]

Powerplant and Industrial Fuel Use; Exemption Requests; General Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by General Electric Company.

SUMMARY: On December 5, 1985, General Electric Company (GE) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for their Lynn Utilities Operation located in Lynn, Massachusetts, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in certain new major fuel burning installations. Final rules setting forth the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petion and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before March 21, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments on a request for a public hearing shall be submitted to: Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Docket No. ERA-C&E-86-22 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Division of Coal & Electricity, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-82333

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The project is the installation of a new steam boiler in an addition to River Works Power House. The new boiler is necessary to provide capacity for a new peak steam test load anticipated to occur after 1988. The proposed project is to install a new field-erected boiler with a rate capacity of 200,000 lbs/hr of steam (650 psig, 820°) to be supplied for the River Works cogeneration facility. The proposed new boiler will have the capacity of generating 35,000 MWH of electricity, all of which will be consumed by the River Works. The new boiler will be capable of firing No. 6 fuel oil and natural gas; it is proposed to use the same fuels that are currently used in existing boilers. The maximum heat input capacity for the new boiler will be 249×10^6 Btu/hr.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), GE has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), GE has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the enyironment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that GE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on January 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2383 Filed 2-3-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-07; OFP Case No. 64012-9295-21-24]

Powerplant and Industrial Fuel Use; Exemption Requests; Klondike Equity Enterprises, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting to Klondike Equity Enterprises, Inc. Exemption from

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the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Klondike Equity Enterprises, Inc. (KEE or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 27.6 MW (net, approximate) combined cycle cogeneration facility designed to produce electricity and process steam at the Klondike II facility located in San Diego County, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATE: The order shall take effect on April 7, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Telephone (202) 252-9506
Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On October 4, 1985, KEE petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 27.6 MW (net, approximate) combined cycle cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, an absorption refrigeration package, and ancillary equipment. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to San Diego Gas & Electric, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including KEE's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on November 22, 1985 (50 FR 48246), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on January 8, 1986; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that KEE has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to KEE to permit the use of natural gas as the primary energy source for its cogeneration facility at Klondike II in San Diego County, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC, on January 27, 1986.

Robert L. Davies,
Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2284 Filed 2-3-86; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-034; OFP Case No. 64012-9295-20-24]

Powerplant and Industrial Fuel Use; Exemption Requests; Klondike Equity Enterprises, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting to Klondike Equity Enterprises, Inc. Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Klondike Equity Enterprises, Inc. (KEE or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 27.6 MW (net, approximate) combined cycle cogeneration facility designed to produce electricity and process steam at the Klondike I(b) facility located in Oceanside, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATE: The Order shall take effect on April 7, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-9506
Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On September 30, 1985, KEE petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 27.6 MW (net, approximate) combined cycle cogeneration facility consisting of a gas turbine and generator, a heat recovery steam generator, a steam turbine and generator, an absorption refrigeration package, and ancillary equipment. It is expected that more than 50 percent of the net annual electric power produced by KEE will be sold to San Diego Gas & Electric, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will also produce thermal energy for an absorption refrigeration system, water heating, and comfort heating system at the adjoining recreational complex.

Basis for Permanent exemption Order

The permanent exemption order is based upon evidence in the record including KEE's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on November 1, 1985 (50 FR 45653), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on December 16, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that KEE has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to KEE to permit the use of natural gas as the primary energy source for its cogeneration facility at Klondike I(b) in Oceanside, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC, on January 27, 1986.

Robert L. Davies,
Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2385 Filed 2-3-86; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. 50849-1613-07, 08-02]

Concurrence on Certification and Issuance of a Final Prohibition Order; Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Concurrence on Certification and Issuance of a Final Prohibition Order.

SUMMARY: In accordance with section 301(c) and 702(a) of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of (1) its concurrence on a certification dated October 28, 1981, and its supplemental documents of January 20, 1982, submitted by the Montaup Electric Company (Montaup) on behalf of its Somerset generating station boilers 7 and 8 (hereafter referred to as Somerset 7 and 8); and (2) its issuance of a final prohibition order to Somerset 7 and 8. The certification addresses the technical capability and financial feasibility of Somerset 7 and 8 to use coal or another alternate fuel as their primary energy source. Together with the supporting materials submitted by Montaup and other information contained in the administrative record of this proceeding, this certification constitutes the basis for the issuance of the final prohibition order which will prohibit the use of petroleum or natural gas in Somerset 7 and 8 in amounts in excess of the minimum necessary to maintain reliability of operation of the units, consistent with maintaining reasonable fuel efficiency of such mixture.

ERA's Notice of Acceptance of Certification and Issuance of Proposed Prohibition Order to Somerset 7 and 8 was published at 47 FR 7875 (February 23, 1982). At that time, a public comment period was announced for the purpose of receiving written comments and requests, if any, for a public hearing on ERA's proposed prohibition order. The comment period expired on April 9, 1982; no comments or requests for hearing were received.

The regulations implementing section 301 of FUA and governing this proceeding are 10 CFR Parts 500, 501, and 504, published on April 21, 1982, at 47 FR 17037. Additional information on the proceeding, together with the final prohibition order and the applicable Compliance Schedule addressed to Somerset 7 and 8 appear in the **SUPPLEMENTARY INFORMATION** section below.

DATE: The final prohibition order and its prohibitions shall take effect on April 7, 1986.

FOR FURTHER INFORMATION CONTACT:
John Boyd, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-045, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 252-4523.
Steven E. Ferguson, Esq., Office of General Counsel, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 252-6947.

The public file containing a copy of this notice and other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 8:00 a.m. to 4:00 p.m., except Federal holidays.

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SUPPLEMENTARY INFORMATION: On October 28, 1981, and in its supplemental document of January 20, 1982, Montaup certified to ERA that it is technically and financially feasible for its powerplants, Somerset 7 and 8, to use coal or another alternate fuel as their primary energy source. As provided in section 301(c) of FUA and 10 CFR 504.5, 504.6 and 504.8, ERA may, after its review of and concurrence on a certification of coal-mixture capability, issue a mixtures prohibition order limiting the use of petroleum or natural gas as the primary energy source in a powerplant to the amount necessary to maintain reliability of unit operation, consistent with maintaining reasonable fuel efficiency of the mixture. Montaup certified that, for Somerset 7 and 8, the minimum amount of the primary energy source consisting of natural gas or petroleum that would be necessary to achieve these purposes would be the equivalent of thirty (30) percent of the respective powerplants' annual operating hours.

ERA examined the certification and the documentation submitted for each of the powerplants and believed that it would be able to concur in such certification and to ultimately issue a final prohibition order based thereon. Accordingly, ERA accepted the certification and issued a proposed prohibition order to Somerset 7 and 8 on February 17, 1982 [47 FR 7875, February 23, 1982].

ERA's final regulations applicable to the issuance of prohibition order to existing powerplants that have been certified as capable of using a petroleum or natural gas and coal (or other alternate fuel) mixture under section 301(c) of FUA are 10 CFR Parts 500, 501, and 504, published at 47 FR 17037 (April 21, 1982). The regulations require that the following actions be completed before issuance of a final prohibition order to Somerset 7 and 8.

(1) *Notice of Order.* Pursuant to 10 CFR 501.52(b)(2), a proposed prohibition order based upon ERA's review of the certification and the supporting information, and including an explanation of the basis therefor, must be issued to the proposed recipients and published in the Federal Register, together with a Notice of Acceptance of the certification. ERA complied with this requirement on February 17, 1982 (47 FR 7875, February 23, 1982).

(2) *Public Participotion.* Pursuant to 10 CFR 501.52(b)(3), the Notice of Acceptance must commence a 45-day public comment period during which evidence pertaining to the certification and to ERA's proposed action could be submitted and a public hearing could be requested. The public comment period established for Somerset 7 and 8 in the Notice of Acceptance referred to in paragraph (1) above, expired on April 9, 1982, without receipt of either comments or hearing requests.

(3) *NEPA Compliance.* In accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), DOE has performed an environmental review of these actions and has concluded that the prohibitions contained in this Order to Somerset 7 and 8, when they become effective, are not major Federal actions significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of NEPA (42 U.S.C. 4332(C)).

Accordingly, after consideration of the whole record in this proceeding, and finding its proposed actions to be supported by reliable, probative, and substantial evidence, ERA concurs in the certification of coal-mixture capability filed by Montaup on behalf of Somerset 7 and 8 and issues the following final prohibition order:

Prohibition Order

Montaup Electric Company, Somerset #7, Docket No. 50849-1613-07-82; Montaup Electric Company, Somerset #8, Docket No. 50849-1613-07-82;

Pursuant to section 301(c) of FUA and 10 CFR 504.8, ERA hereby prohibits the above-named powerplants from using petroleum or natural gas as a primary energy source in amounts exceeding the minimum amount necessary to maintain reliability of operation consistent with maintaining the reasonable fuel efficiency of the mixture, effective (60) days from date of issuance. For Somerset 7 and 8, these amounts shall be the equivalent of the operation of each of the units on petroleum or natural gas for thirty (30) percent of their respective annual operating hours. Under section 103(a)(28) of FUA, Montaup may use an actual mixture of natural gas or petrolem and coal or a combination of such fuels simultaneously or alternately in the powerplants in compliance with these prohibitions.

As provided in section 301(c) of FUA, and 10 CFR 504.8, this prohibition order is based upon ERA's findings that:

(1) Somerset 7 and 8 were originally designed and constructed for the use of coal as a fuel (10 CFR 504.8 (c)(2));

(2) Somerset 7 and 8 have the technical capability to use a mixture of petroleum or natural gas with coal or another alternate fuel as their primary energy source notwithstanding the fact that some relatively minor modifications must be made to the units beforehand (10 CFR 504.8 (c)(3));

(3) it is financially feasible to use a mixture of petroleum or natural gas with coal or another alternate fuel as a primary energy source in Somerset 7 and 8, as Montaup has demonstrated its ability to obtain sufficient capital to finance the conversions, including all necessary land, coal and ash handling equipment, pollution control equipment, and all other necessary conversion expenditures, without violationg any legal restrictions on its ability to raise debt or equity capital [10 CFR 504.8(f)). Further, through the performance of cost calculations based on the formula in 10 CFR 504.12, Montaup has demonstrated that the total and individual unit costs of using a coal and petroleum or natural gas mixture will not exceed the cost of using imported petroleum, and that, therefore, the economic benefits to be derived from the operation of the converted powerplants using such a mixture are anticipated to be much greater than those that would be derived from the continued operation of the units using petroleum or natural gas exclusively.

These findings are based upon the contents of the certification submitted by Montaup on behalf of Somerset 7 and 8, on which certification ERA has, above, concurred; upon the data furnished to ERA in support of the certification; and upon all other relevent information contained in the administrative record.

Terms and Conditions

The order and its prohibitions to Somerset 7 and 8, stated above, shall take effect on April 7, 1986, except that the use of natural gas or petroleum as a primary energy source in Somerset 7 and 8 shall not be prohibited:

1. During any period that Montaup, due to circumstances beyond its reasonable control, is unable to burn coal in the unit, or is unable to burn coal in the unit in compliance with all applicable Federal, State and local laws, rules, regulations, ordinances and orders;

2. During any period that Montaup, due to circumstances beyond its reasonable control, is unable to purchase or secure delivery of a supply of coal suitable for operation of the unit in compliance with all applicable Federal, State and local laws, rules, regulations, ordinances or orders; and

3. During any other periods as provided or permitted by FUA or applicable ERA rules, regulations or orders.

Upon issuance, the prohibition order to Somerset 7 and 8 is final for purposes of judicial review (section 702 of FUA). They shall become effective on April 7, 1986.

Montaup may at any time amend the certification application to Somerset 7 and 8 in order to take into account changes in relevant facts and circumstances that have occurred, except that no such amendment to the certification may be made after the prohibitions based thereon have become effective (section 301(d) of FUA; 10 CFR 501.52(d)). Montaup may at any time request the modification or rescission of this prohibition order pursuant to 10 CFR Part 501, Subpart G, "Requests for Modification or Rescission of a Rule or Order," 10 CFR 501.100 and 501.103. If, in the future, it becomes more economical to use natural gas rather than coal as a primary energy source for Somerset 7 and 8 as a result of changes in the operating characteristics of the units and/or changes in the relative economics of coal and natural gas as a fuel source, such facts and circumstances will be deemed to constitute "significantly changed circumstances" pursuant to 10 CFR 501.102(b) sufficient to provide a basis for rescission or modification of the specific prohibitions contained in this Order.

Issued in Washington, DC on January 27, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2386 Filed 2-3-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-26; OFP Case No. 52748-3482-20, 21, 22-22]

Petition for Exemption and Availability of Certification; Southwestern Public Service Co.

AGENCY: Economic Regulatory Administration; DOE.

ACTION: Notice of Acceptance of Petition from Southwestern Public Service Company, for Exemption and Availability of Certification.

SUMMARY: On January 14, 1986, Southwestern Public Service Company (SPS), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent peakload exemption for proposed powerplants at its existing Jones Station from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new electric powerplants and prohibits the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the Federal Register at 46 FR 59872 (December 7, 1981).

SPS requested a permanent peakload exemption under 10 CFR 503.41. SPS proposes to install three peaking gas turbines having a maximum rating of not greater than 150 megawatts each. The proposed units are to be located at the SPS Jones Station which is approximately ten miles Southeast of Lubbock, Texas. The powerplants will be capable of burning natural gas. Oil can be used in an emergency.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from SPS at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday thru Friday, 8:00 a.m.-4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement or reasons for such extension will be published in the Federal Register.

DATE: Written comments are due on or before March 21, 1986. A request for public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-045, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-26 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Phone (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. SPS has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its proposed Jones Station simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplants, no such certification can be made. The certification requirement is therefore waived with respect to this petition.

SPS submitted a certified statement by a duly authorized officer to the effect that the proposed natural gas or oil combustion turbine generators will be operated solely as peakload powerplants at the Jones Station.

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SPS stated in its petition that the manufacturer of the proposed combustion turbines has not yet been selected. For planning purposes the maximum rating of the individual units will be 150 MW. The combustion turbine units will be operated as peakload powerplants with a maximum annual capacity factor of 17 percent. The utilization factor is expected to be slightly higher than the capacity factor for the units.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7678) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. SPS has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by SPS pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on SPS' exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that SPS is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on January 27, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2387 Filed 2-3-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-27; OFP Case No. 52748-2454-20, 21, 22-22]

Petition for Exemption and Availability of Certification; Southwestern Public Service Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition from Southwestern Public Service Company, for Exemption and Availability of Certification.

SUMMARY: On January 14, 1986, Southwestern Public Service Company, (SPS), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent peakload exemption for proposed powerplants at its existing Cunningham Station from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new electric powerplants and prohibits the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

SPS requested a permanent peakload exemption under 10 CFR 503.41. SPS proposes to install three peaking gas turbines having a maximum rating of not greater than 150 megawatts each. The proposed units are to be located at the SPS Cunningham Station which is approximately twelve miles west of Hobbs, New Mexico. The powerplants will be capable of buring natural gas. Oil can be used in emergency.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from SPS at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, DC 20585, Monday thru Friday, 9:00 a.m.-4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before March 21, 1986. A request for public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-045, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-27 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Phone (202) 252-6769.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. SPS has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its proposed Cunningham Station simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplants, no such certification can be made. The certification requirement is therefore waived with respect to this petition.

SPS submitted a certified statement by a duly authorized officer to the effect that the proposed natural gas or oil combustion turbine generators will be operated solely as peakload powerplants at the Cunningham Station.

SPS stated in its petition that the manufacturer of the proposed combustion turbines has not yet been selected. For planning purposes the maximum rating of the individual units will be 150 MW. The combustion turbine units will be operated as peakload powerplants with a maximum annual capacity factor of 17 percent. The utilization factor is expected to be slightly higher than the capacity factor for the units.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. SPS has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by SPS pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on SPS' exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that SPS is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on January 27, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2388 Filed 2-3-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-28; OFP Case No. 52748-9310-20,21,22-22]

Petition for Exemption and Availability of Certification; Southwestern Public Service Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition from Southwestern Public Service Company, for Exemption and Availability of Certification.

SUMMARY: On January 14, 1986, Southwestern Public Service Company, (SPS), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requested a permanent peakload exemption for proposed powerplants at its existing Maddox Station from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et. seq.*). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new electric powerplants and prohibits the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

SPS requested a permanent peakload exemption under 10 CFR 503.41. SPS proposes to install three peaking gas turbines having a maximum rating of not greater than 150 megawatts each. The proposed units are to be located at the SPS Maddox Station which is approximately nine miles west of Hobbs, New Mexico. The powerplants will be capable of burning natural gas. Oil can be used in an emergency.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the final rules under 10 CFR 501.3 and 501.63. ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from SPS at any time during these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 401 (c) and (d) of FUA and 10 CFR 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, DC 20585, Monday thru Friday, 9:00 a.m.-4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension will be published in the **Federal Register.**

DATES: Written comments are due on or before March 21, 1986. A request for public hearing must also be made within this 45 day public comment period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-045, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-28 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Office of Fuels Programs, Coal & Electricity Division, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Phone (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue,

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SW., Room 6A-113, Washington, DC 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. SPA has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its proposed Maddox Station simple-cycle combustion turbine installation.

Under the requirements of 10 CFR 503.41(a)(2)(ii), if a petitioner proposes to use natural gas or to construct a powerplant to use natural gas in lieu of an alternate fuel as a primary energy source, the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency must certify to ERA that the use by the powerplant of any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is or would be exceeded. However, since ERA has determined that there are no presently available alternate fuels which may be used in the proposed powerplants, no such certification can be made. The certification requirement is therefore waived with respect to this petition.

SPS submitted a certified statement by a duly authorized officer to the effect that the proposed natural gas or oil combustion turbine generators will be operated solely as peakload powerplants at the Maddox Station.

SPS stated in its petition that the manufacturer of the proposed combustion turbines has not yet been selected. For planning purposes the maximum rating of the individual units will be 150 MW. The combustion turbine units will be operated as peakload powerplants with a maximum annual capacity factor of 17 percent. The utilization factor is expected to be slightly higher than the capacity factor for the units.

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7676) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial or certain FUA permanent exemptions, including the permanent exemption for peakload powerplants, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. SPS has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new units under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by SPS pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on SPS' exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that SPS is entitled to the exemption requested. That determination will be made on the basis of the entire record of these proceedings, including any comments received in response to this document.

Issued in Washington, DC on January 27, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2389 Filed 2-3-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP86-281-000]

Southern Natural Gas Co.; Application

January 29, 1986.

Take notice that on January 22, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP86-281-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing Southern to sell gas to its jurisdictional customers pursuant to the terms of a Flexible Discount Rate Schedule proposed to be in effect from March 1, 1986, through September 30, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that on June 7, 1985, the Commission issued Southern a limited-term certificate of public convenience and necessity in Docket No. CP85-464-000 authorizing Southern to implement a Flexible Discount Rate Schedule during the months of June through October, 1985. It is indicated that during that period Southern sold approximately 28,000,000 Mcf of gas under the discount rate schedule. All of Southern's jurisdictional customers were eligible for the discount and 95 of Southern's customers actually purchased gas at discounted rates, it is stated.

Southern states that notwithstanding its implementation of the discount rate schedule in 1985, with all of its attendant benefits for the system as a whole, the same problems that prompted Southern to discount its rates in 1985 continue to plague the Southern system and warrant the reimposition of an even more aggressive discounting program than the one implemented in 1985.

Southern therefore requests a limited-term certificate of public convenience and necessity authorizing it to sell natural gas to its existing jurisdictional customers pursuant to the terms of a proposed Flexible Discount Rate Schedule. It is stated that under the terms of Southern's discount rate schedule, which is proposed to be in effect from March 1, 1986, any existing jurisdictional customer of Southern would be eligible to purchase volumes of gas in excess of a threshold level at a discounted rate, provided that the purchase would be made at existing points on Southern's system.

Southern states that the threshold level would be equal to a specified percentage of volume of gas purchased by the customer during the corresponding month in 1985, exclusive of sales under the original Flexible Discount Rate Schedule, and that the threshold level may vary from month to month but would not exceed 100 percent of such monthly sales. It is indicated that by utilizing a threshold level that is no greater than the customers' actual monthly purchases in 1985, exclusive of purchases made under the original Flexible Discount Rate Schedule, any customer that received discount gas during 1985 would again be eligible to receive it in 1986 at the same sales level at which the customer qualified for the discount rate in 1985. Southern states that by setting the threshold at some percentage of the customer's actual monthly purchases in 1985, customers who were not able to purchase discount gas under Southern's original Flexible Discount Rate Schedule may be able to purchase discount gas under the rate schedule proposed herein, since the threshold has been reduced to the customer's actual monthly purchases in 1985. All volumes of gas sold to any of Southern's existing jurisdictional customers in excess of the threshold volume would be priced at the applicable discount rate, it is stated.

Southern states that there would be no end-use restrictions applicable to gas purchased under the Flexible Discount Rate Schedule and that, accordingly, all of a distributor's customers, industrial, commerical, and residential, would, through their distributor, have equal access to and be benefited by the discount gas sold under the proposed rate schedule.

Since the discount sales must be made at existing delivery points on Southern's system, Southern does not seek in the instant application authorization to construct any new facilities in connection with the implementation of its proposed Flexible Discount Rate Schedule.

It is stated that because of the constantly changing and increasingly competitive circumstances in Southern's service areas, Southern has designed its Flexible Discount Rate Schedule to provide it with the maximum degree of flexibility to compete for sales within each of its service areas. To that end, Southern proposes to establish a flexible discount rate which may vary from month to month and from zone to zone. It is stated that the rate would consist of both a gas and a non-gas component, both of which would be posted monthly by Southern. It is indicated that the gas cost component would represent a cost of gas which is equal (i) to Southern's weighted average commodity cost of gas as reflected in Southern's purchased gas adjustment (PGA) filing in effect during such month or (ii) to the cost of gas made available by Southern's producers for sale under the discount rate schedule or (iii) to some combination thereof designed to produce the lowest average cost of gas obtainable during such month. Southern states that the non-gas component of the rate may range from a specified minimum level to a specified maximum level. Specifically, Southern proposes that the maximum non-gas rate for sales made under the Flexible Discount Rate Schedule would be equal to the fixed cost component of Southern's commodity rates less one-half of Southern's return on equity and related taxes. It is proposed that the minimum non-gas rate would be equal to the variable costs contained in Southern's commodity rates and would also include the currently effective GRI surcharge.

It is indicated that during the term of the original Flexible Discount Rate Schedule it became clear to Southern that the program could work more efficiently with certain modifications and that the most important modification to the program would be to allow Southern's producers to nominate presently committed high cost gas supplies for use in the program. It is stated that gas supplies that would be eligible for this program woud be section 102, 103, and 107 gas supplies. Southern states that some of its produers have indicated a willingness to sell gas to Southern at prices below those required under their contracts with Southern in return for increased takes of such competitively priced gas. It is indicated that the purchase of this gas would not only reduce Southern's take or pay exposure, it would also provide price relief for Southern's customers. Because of Southern's depressed sales level, however, Southern states that it may not be able to purchase these additional volumes of competitively priced gas, thus causing it to forfeit take-or-pay and price relief that it might otherwise obtain. Consequently, Southern states that it has modified its original Flexible Discount Rate Schedule to provide a vehicle whereby its producers could make these additional volumes of gas available for sale to Southern's customers. It is indicated that this would not only provide an outlet for volumes of gas which Southern may not otherwise be able to purchase and for which Southern receives both take-or-pay and price relief but also a source of very competitively priced gas for Southern customers. Since all of Southern's existing customers would be eligible to purchase this gas, all of Southern's customers would benefit, it is stated.

It is stated that with the exception of the first month during which the discount rate schedule is effective, Southern would file a revised tariff sheet five days before the beginning of the month for which such rates would be effective, setting forth the gas and non-gas rates and the threshold percentage would be applicable during that month. Southern requests such waivers of the Commission's Regulations as may be necessary in order to permit the monthly rate changes as proposed herein.

It is stated that in order to insure that sales made under the Flexible Discount Rate Schedule would not generate amounts to be charged or returned to Southern's customers through future PGA surcharges, Southern would exclude from the computation of its Account No. 191 balance all volumes sold under the Flexible Discount Rate Schedule as well as all purchased gas costs incurred in connection therewith. It is stated that under this procedure, Southern alone would be at risk for any underrecovery of costs as a result of sales that would be made under its Flexible Discount Rate Schedule. Accordingly, Southern proposes to retain all revenues from sales under its Flexible Discount Rate Schedule.

It is indicated that the Flexible Discount Rate Schedule proposed herein would afford Southern the flexibility to target its discount rates to meet changing market conditions in each of its zones while at the same time assuring that all customers who purchase gas under the discount rate schedule would receive at least a minimum discount. It is also stated that it would allow Southern's producers the opportunity to make sales on Southern's system at competitive rates, thereby providing substantial take-or-pay and price relief and that absent such a program such relief may not be realized. It is stated that the proposal is designed moreover, to ensure that Southern would bear all costs in connection with sales under the proposed rate schedule such that the implementation of the rate schedule would not result in any shifting of costs among Southern's customers, any increase in costs to any group of customers, or result in amounts to be charged or returned to Southern's customers through future PGA surcharges.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 10, 1986, file with the Federal Energy Regulatory Commission, Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

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certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2251 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. C183-148-002 and C185-263-001]

Cities Service Oil and Gas Corporation (Successor in Interest to Oxy Petroleum, Inc.); Application to Amend Certificates of Public Convenience and Necessity, To Redesignate Rate Schedules, and To Redesignate Pending Proceedings

January 30, 1986.

Take notice that on January 21, 1986, Cities Service Oil and Gas Corporation (Applicant) of P.O. Box 300, Tulsa, Oklahoma 74102, filed an application for Certificate of Public Convenience and Necessity to render service previously authorized by the Commission under certain Certificates of Public Convenience and Necessity heretofore issued to Oxy Petroleum, Inc., and for substitution of Cities Service Oil and Gas Corporation for Oxy Petroleum Inc., in any related proceedings presently pending before the Commission and requests Redesignation of Oxy Petroleum, Inc.'s Rate Schedules, shown in Exhibit "A" attached hereto, all as more fully described in the application which is on file with the Commission and open to public inspection.

This Application results from the merger of Oxy Petroleum, Inc. into Cities Service Oil and Gas Corporation, effective January 1, 1986.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 18, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Exhibit A

R.S. No.	Purchaser	Certificate Docket
4[1]	Northern Natural Gas Co.	C183-148
5	Arkoma Gas Co.	C185-263

[1]Oxy Petroleum, Inc. Request for termination of Certificate and cancellation of Rate Schedule dated December 20, 1985 is currently pending before FERC.

[FR Doc. 86-2436 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-283-000, et al.]

Columbia Gas Transmission Corp. et al.; Natural Gas Certificate Filings

January 30, 1986.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP86-283-000]

Take notice that on January 23, 1986, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP86-283-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued operation of certain existing natural gas storage fields and related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this filing is to assure Applicant's ability to condemn exclusive gas storage easements under section 7(h) of the Natural Gas Act, and thereby protect the integrity of its storage fields. It is indicated that this filing resulted from a holding in *Columbia Gas Transmission Corp. v. Exclusive Gas Storage Easement*, 578 F. Supp. 930 (N.D. Ohio 1983), *affirmed*, 778 F.2d 125 (6th Cir. 1985) which found that Applicant did not have the right of condemnation for a certain tract of land because it was located outside of the geographical area designated on the exhibit maps contained in the application in which Applicant obtained certificate authority for the operation of the storage field.

Applicant seeks authorization for the continued operation as presently constituted of the following storage fields and related facilities:

1. Brinker Storage Field in Columbiana County, Ohio;
2. Holmes Storage Field in Holmes County, Ohio;
3. Lorain Storage Field in Lorain County, Ohio;
4. Lucas Storage Field in Ashland and Richland Countiers, Ohio;
5. Pavonia Storage Field in Ashland and Richland Counties, Ohio;
6. Wayne Storage Field in Ashland, Holmes and Wayne Counties, Ohio,
7. Weaver Storage Field in Ashland, Holmes, Knox and Richland Counties, Ohio; and
8. Wellington Storage Field in Lorain and Medina Counties, Ohio.

Applicant states that there is an urgent need to assure its right of condemnation for the gas storage easements in these fields, due to the pendency of several cases in the U.S. District Courts of Ohio affecting several storage fields which would be bound by the court decision. It is indicated that for the eight storage fields herein, the description of the storage field facilities and the overall scope of the storage operations, although deemed adequate by Applicant when authority for these existing storage fields was obtained, would not meet the Court's map rule; thus, Applicant states that it must file this application to assure the right of condemnation of these fields.

Comment date: February 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket Nos. CP84-4-002, CP86-284-000]

Take notice that on January 10, 1986, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed (1) Docket No. CP84-4-002 a petition to amend the order issued June 1, 1984, in Docket No. CP84-4-000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to permit the use of existing emergency facilities to effectuate the transportation of natural gas for Caterpillar Tractor Co. (Caterpillar) and any other end-users; and (2) in Docket No. CP86-284-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to a maximum of 15 billion Btu of natural gas per day on an interruptible basis for Caterpillar, all as more fully set forth in the application and petition to amend which are on file with the Commission and open for public inspection.

Natural requests authority to provide an interruptible transportation service for Caterpillar, an industrial end-user, for a period of two years from the date of first delivery and month-to-month thereafter. Natural proposes to provide such service pursuant to the terms and conditions contained in a gas transportation agreement between Natural and Caterpillar dated January 6, 1986. Natural states that the proposed end use of the gas is for space heating, boilers and process gas.

It is stated that gas for Caterpillar's account would be delivered to Natural at existing points of interconnection between the facilities of Natural and (1) Reliance Pipeline located at two points in Caddo County, Oklahoma, and (2) Oklahoma Natural Gas Company in Woodward, Custer, Stephens and Grady Counties, Oklahoma. Natural states that additional gas would be delivered at Bryans Mill Plant, Cass County, Texas, and at Mestena Ranch in Jim Hogg County, Texas.

Natural proposes to redeliver volumes of gas for the account of Caterpillar to Central Illinois Light Company (CILCO) at an existing interconnection near Princeton, in Bureau County, Illinois. It is stated that the interconnection was authorized in Docket No. CP84-4-000, as amended by Docket No. CP84-4-001, for emergency only use to deliver gas to CILCO. Natural requests permission herein to also utilize the interconnection to transport gas on behalf of Caterpillar and any other end-users.

Natural proposes to charge Caterpillar a rate based on its Rate Schedule T-1 tariff. For illustrative purposes, Natural states the following rates:

Point of receipt	Point of delivery	Transportation rate [1]
Caddo Co., OK (west)	Bureau Co., IL	32.9
Caddo Co., OK (east)	Bureau Co., IL	33.3
ONG-Woodward	Bureau Co., IL	28.9
ONG-Custer	Bureau Co., IL	30.7
ONG-Stephens	Bureau Co., IL	34.9
ONG-Grady	Bureau Co., IL	33.8
Bryans Mill Plant	Bureau Co., IL	27.2
Mestena Ranch	Bureau Co., IL	46.1

[1] Cents per million Btu.

In addition, Natural proposes to reduce the volume of gas redelivered to Caterpillar by an amount equal to fuel consumed and lost and unaccounted for or to charge Caterpillar for fuel used and lost and unaccounted for gas under the terms of the agreement. Natural also proposes to charge Caterpillar the currently effective GRI surcharge.

Natural states that no new facilities would be required for this service. Natural requests authorization to add or delete additional receipt points in the future that may be necessary to support this service.

Comment date: February 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP85-116-004]

Take notice that on January 17, 1986, Northwest Pipeline Corporation (Petitioner), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85-116-004 a petition to amend the Commission's order issued May 8, 1985, in Docket Nos. CP85-116-000 and CP85-116-001 pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to transport natural gas for an extended term for the account of the Washington Water Power Company (Water Power), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that the Commission's order issued on May 8, 1985, authorized Petitioner to transport, on an interruptible basis, up to 6.6 billion Btu of natural gas per day for the account of Water Power pursuant to a gas transportation agreement (transportation agreement), dated November 7, 1984. Under the transportation agreement, it is alleged, Petitioner transports gas from the Canadian border at Sumas, Washington, to two delivery points in Spokane County, Washington, where thermally equivalent volumes, less fuel, are redelivered to Water Power for subsequent resale to two large end-users, Fairchild Air Force Base and Northwest Alloys, Inc.

It is further stated that Petitioner was initially authorized to perform the subject transportation service for a term of one year extending through March 10, 1986, the initial termination date of the transportation agreement. Petitioner submits that by amendment dated January 9, 1986, to the transportation agreement, Petitioner and Water Power agreed to extend the term of the transportation agreement for an additional one year, expiring March 11, 1987.

Petitioner requests the Commission to amend its May 8, 1985, order to authorize Petitioner to continue to transport natural gas for Water Power under the transportation agreement, as amended, for an additional one year term, expiring March 11, 1987.

Petitioner submits that other than the extension of term, no change is proposed in the subject transportation service.

Petitioner further submits that it will continue to charge its effective tariff rate applicable to incremental on-system transportation services. It is alleged that such rate is currently 20.0 cents per million Btu, plus a fuel charge and a G.R.I charge.

Comment date: February 20, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket No. CP83-439-003]

Take notice that on January 16, 1986, Southern Natural Gas Company (Petitioner), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP83-439-003 a petition to amend the Commission's order issued January 15, 1985, in Docket No. CP83-439-000, as amended, so as to authorize the off-system sale of natural gas to New Orleans Public Service Inc. (NOPSI) to continue for an additional two years, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that its certificate to sell up to 85,000 Mcf of natural gas per day on an interruptible basis to NOPSI expired on January 15, 1986. Petitioner also proposes to amend the rate to be equal to its effective Rate Schedule OCD-1 commodity charge. It is explained that this rate would be adjusted to reflect any changes in Petitioner's OCD-1 Rate Schedule commodity charge.

Comment date: February 20, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-272-000]

Take notice that on January 15, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-272-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Transco to transport natural gas on behalf of Florida Gas Transmission Company (Florida Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 5,175 dt equivalents of gas per day on an interruptible basis for Florida Gas for an initial term of ten years and year-to-year thereafter. It is stated that gas purchased by Florida Gas from Chevron

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USA, Inc., Partnership Properties and PanCanadian Petroleum Company in the Reedy Creek field, Jones County, Mississippi, would be delivered to Transco by Quivira Gas Company (Quivira), an intrastate pipeline and gathering company, through an existing point of interconnection between Quivira's facilities in the Reedy Creek field and Transco's main line. It is further stated that Transco would redeliver equivalent quantities of gas to Florida Gas through existing points of interconnection between the facilities of Transco and Florida Gas in Vermillion Parish and St. Helena Parish, Louisiana.

It is asserted that Transco would charge Florida Gas 5.8 cents per dt equivalent of gas for the transportation service. It is explained that Transco has been providing the transportation service for Florida Gas since May 23, 1985, under the self-implementing authorization of Part 284 of the Commission's Regulations.

Comment date: February 20, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Washington Gas Light Company

[Docket No. CP84-706-001]

Take notice that on January 16, 1985, Washington Gas Light Company (WGL), 1100 H Street, N.W., Washington, D.C. 20080, filed in Docket No. CP84-706-001 a petition pursuant to section 7(c) of the Natural Gas Act to amend the order issued November 13, 1984, in Docket No. CP84-706-000, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The order issued November 13, 1984, permitted WGL to sell compressed natural gas (CNG) to Accokeek Marine Company (Accokeek) for a short-term experimental period terminating December 31, 1985. The order exempted WGL from the certificate requirements of section 7(c) of the Natural Gas Act for that time period. WGL desires to continue to sell CNG, on an experimental basis, to Accokeek for a period ending December 31, 1986. It is stated that the volume of gas to be sold in this experimental program is *de minimis*, as Accokeek's current cylinder capacity is only approximately 5 Mcf of gas.

Comment date: February 18, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2436 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA86-5-000]

Entex, Inc.; Petition for Adjustment

Issued: January 30, 1986.

On November 7, 1985, Entex, Inc. (Entex) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978.[1] Entex seeks an adjustment from § 284.105 of the Commission's regulations, promulgated October 9, 1985, by Order No. 436 in Docket No. RM85-1-000,[2] as amended by certain corrections (Technical Corrections) issued October 24, 1985.[3]

Entex states that recently it had negotiated and orally agreed to an NGPA section 311 transportation arrangement with United Gas Pipe Line Company (United) under which United agreed to transport gas which Entex has arranged to purchase from a producer. Entex planned to resell the gas to approximately 40 customers in its service area.

Entex complains that its proposed arrangement, which had not been commenced by October 9, 1985, was improperly denied grandfather status by the Commission's October 24, 1985 order which provided that NGPA section 311 transportation arrangements must have commenced by October 9, 1985, to be free of the non-discriminatory access condition imposed by Order No. 436. Entex states that, because of unwillingness on the part of United to become subject to the non-discriminatory access condition, the October 24 order precluded the parties from commencing the negotiated transaction and caused Entex a serious inequity. Entex argues that the October 24 order was issued without adequate notice or opportunity for comment or a proper statement of its basis, and that it was impermissibly retroactive as to Entex and United. It requests that the Commission grant an adjustment from § 284.105 to permit Entex and United to implement and commence their negotiated transaction on a grandfathered basis, without subjecting United to the non-discriminatory access condition.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure [18 CFR 385.1101 *et seq.* (1985)). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2439 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] 15 U.S.C. 3412(c) (1982).

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (October 18, 1985).

[3] Entex's petition for adjustment under section 502(c) was filed in the alternative with a request for rehearing of Order No. 436 and the Technical Corrections thereto. Order No. 436-A, issued December 12, 1985 (50 FR 52217 (December 23, 1985)), *inter alia*, denied Entex's request for rehearing.

[Docket No. RP85-150-006]

Natural Gas Pipeline Co. of America; Compliance Filing

January 28, 1986.

Take notice that on January 22, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Third Revised Volume No. 1:

Third Substitute Twenty-sixth Revised Sheet No. 5A
Second Substitute Original Sheet No. 82
Second Substitute Original Sheet No. 83
Second Substitute Original Sheet No. 84
Second Substitute Original Sheet No. 85

Natural states this filing is in compliance with Ordering Paragraphs (A) and (E) of the Commission's order issued January 17, 1986 at Docket Nos. RP85-150-004 and 005.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the enclosed tariff sheets to become effective January 1, 1986. Natural indicates that this filing has been mailed to its jurisdictional customers, interested state regulatory agencies, and all parties on the official service list at Docket No. RP85-150-000.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 4, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2440 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-254-000, et al.]

Electric Rate and Corporate Regulations Filings; Portland General Electric Co. et al.

January 27, 1986.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER86-254-000]

Take notice that on January 21, 1986, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during November of 1985, along with a cost justification for the rates charged.

Portland General Electric Company requests an effective date of December 31, 1985 and therefore requests a waiver of the Commission's notice requirements.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commissioner.

Comment date: February 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp.

[Docket No. ER86-252-000]

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on January 21, 1986, tendered for filing, in accordance with § 35.30 of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon and Bonneville Power Administration's (Bonneville) Determinaton of Average System Cost (ASC) for the state of Oregon (Bonneville's Docket No. 5-A1-8501). The Revised Appendix 1 calculates the ASC for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective April 26, 1985, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commissioner of Oregon, and Bonneville's Direct Service Industrial Customers.

Comment date: February 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp

[Docket No. ER86-253-000]

Take notice that on January 21, 1986 Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Ninth Revised Sheet No. 5C, superseding Eighth Revised Sheet No. 5C (Index of Purchasers) of Pacific's FERC Electric Tariff, Original Volume No. 3 (Tariff), and a Service Agreement between Pacific and Port Angeles City Light Department.

Pacific states that the Service Agreements provide for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL-3 under Pacific's Tariff.

Comment date: February 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2435 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE81-74-004]

Sierra Pacific Power Co.; Application for Exemption

January 30, 1986.

Take notice that Sierra Pacific Power Company (Sierra) filed an application on October 25, 1985 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 [44 FR 58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986 information on the costs of providing electric service as specified in Subpart B, C, D and E or Part 290.

In its application for exemption Sierra states, in part, that it should not be required to file the specified data for the following reason:

The purposes of section 133 of PURPA have been and will continue to be served by

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alternate procedures requiring detailed filings with state regulatory commissions.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on:

Sierra Pacific Power Company, Legal Department, P.O. Box 10100, Reno, Nevada 89520.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2441 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP-288-000]

Texas Gas Transmission Corp.; Application

January 30, 1986.

Take notice that on January 24, 1986, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-288-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce on an interruptible basis for the account of Arkla Energy Resources, a division of Arkla, Inc. (Arkla), all as more fully set forth in the application which is on file and open to public inspection.

Applicant proposes to transport up to 100 billion Btu of gas per day on an interruptible basis for Arkla pursuant to a gas transportation agreement, dated February 27, 1984, as amended. Applicant states it would receive such gas at various existing points of interconnection with Arkla in Texas, Arkansas and Louisiana and redeliver this gas to Louisiana Intrastate Gas Corporation (LIG), for the account of Arkla, at four existing points of interconnection between Applicant and LIG in Louisiana. LIG then delivers the gas to Central Louisiana Electric Co., Inc., for use in several of its power stations.

Applicant states no third-party transportation is necessary for it to receive this gas into its system. Applicant states the primary term of the proposed transportation service shall be from the date of initial delivery to December 31, 1995, and from year to year thereafter unless cancelled upon six months prior writen notice by either party. Applicant states it is currently transporting the subject gas for Arkla pursuant to Subpart G of Part 284 of the Commission's Regulations and the blanket certificate issued to Applicant in Docket No. CP80-186.

As consideration for the proposed transportation service Applicant proposes to charge Arkla the legally effective rate applicable to that type of service as it may exist from time to time and as specified in Applicant's appropriate transportation rate schedule as filed with the Commission. Applicant states the current transportation rate for gas delivered to three of the delivery points is 7.30 cents per million Btu (Rate Schedule T-SL/Z-SL), and for one delivery point the current rate is 24.16 cents per million Btu (Rate Schedule T-1/Z-1). Applicant states the current rates are actually motion rates being collected by Applicant subject to refund, pending approval of its stipulation and agreement in Docket No. RP-85-141-002 and RP85-141-005.

Applicant states that the transportation service on behalf of Arkla allows Arkla access to an existing customer that could not otherwise be served by Arkla without the construction of facilities by Arkla duplicative of those existing facilities owned by Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 10, 1986, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction confered upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessry for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2442 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-326-000, et al.]

Chevron U.S.A. Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

January 30, 1986.

Take notice that the following filings have been made with the Commission.

1. Chevron U.S.A. Inc.

[Docket No. QF86-326-000]

On January 14, 1986, Chevron U.S.A. Inc. (Applicant), of Bakersfield, California 93302 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near McKittrick, California. The facility will consist of two combustion turbine generators and two waste heat recovery steam generators (HRSG's). The primary energy source will be natural gas. The electric power production capacity of the facility will be 5.4 MW. The steam from HRSG's will be used for tertiary petroleum production. Construction of the facility was scheduled to begin last quarter of 1985.

2. Consolidated Power Company

[Docket No. QF86-435-000]

On December 30, 1985, Consolidated Power Company (Applicant), of 3003 Summer Street, Stamford, Connecticut 06905, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near the Joan Fabrics Corporation, 122 Western Avenue, Lowell, Massachusetts 01853. The facility will consist of a combustion turbine generator, a steam turbine generator, and a waste heat recovery boiler. The electric power production capacity of the facility will be 21.7 MW. The primary energy source for the facility will be natural gas.

3. Consolidated Power Company

[Docket No. QF86-436-000]

On December 30, 1985, Consolidated Power Company (Applicant), of 3003 Summer Street, Stamford, Connecticut 06905, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Wyeth Nutritionals, Inc., Georgia Dairy Industrial Park, Milton, Vermont 05468. The facility will consist of a combustion turbine and a waste heat recovery boiler. The electric power production capacity of the facility will be 3.4 MW. The primary energy source for the facility will be natural gas.

4. Consolidated Power Company

[Docket No. QF86-437-000]

On December 30, 1985, Consolidated Power Company (Applicant), of 3003 Summer Street, Stamford, Connecticut 06905, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Travenol Labs, Inc., Highway 61 North, Cleveland, Mississippi 38732. The facility will consist of a combustion turbine generator and a waste heat recovery boiler. The electric power production capacity of the facility will be 3.2 MW. The primary energy source for the facility will be natural gas.

5. Consolidated Power Company

[Docket No. QF86-438-000]

On December 30, 1985, Consolidated Power Company (Applicant), of 3003 Summer Street, Stamford, Connecticut 06905, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near the Medical Center Hospital of Vermont, Colchester Avenue, Burlington, Vermont 05401. The facility will consist a combustion turbine generator, a steam turbine generator, and a waste heat recovery boiler. The electric power production capacity of the facility will be 23.2 MW. The primary energy source for the facility will be natural gas.

6. Golden West Cogeneration Company, Inc.

[Docket No. QF86-463-000]

On December 31, 1985, Golden West Cogeneration Company, Inc. (Applicant), of 13539 East Foster Road, Santa Fe Springs, California 90670, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Santa Fe Springs, California and will consist of a gas turbine generator and a heat recovery steam generator. Thermal energy recovered in the form of steam will be applied for refinery uses in the Golden West Refining Company, Santa Fe Springs refinery. The net electric power production capacity will be 22.17 MW. The primary source of energy will be natural gas.

7. The University of Texas at Austin

[Docket No. QF86-486-000]

On January 9, 1986, the University of Texas at Austin (Applicant), of Utilities Division, P.O. Drawer 7580, Austin, Texas 78713-7580, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined-cycle cogeneration facility will be located in Austin, Texas. The facility is consisting of four intermediate pressure and two low pressure gas boilers; three condensing/extraction steam turbine generating units; three condensing turbine generating units and one combustion turbine generating unit with a supplemental firing waste heat recovery steam boiler. Low pressure steam generated by the facility is used for chilled water production, domestic hot water and building heating. The electric power production capacity of the facility is 80.3 MW. The primary energy source is natural gas. The gas turbine installation began in May, 1986.

8. Continental Energy Associates

[Docket No. QF83-413-002]

On January 14, 1986, Continental Energy Associates (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the coal gasification plant in the Humboldt Industrial Park, Hazleton, Pennsylvania. The facility will consist of a maximum of three gas turbine generator units and two waste heat recovery boilers. The primary sources of energy are synthetic and natural gas. The electric power production capacity is 125 MW. The thermal energy output of the facility, in the form of steam and hot water will be utilized for process and heating/cooling applications in the coal gasification and testing facility and for sale to industrial customers for heating, cooling, and various process applications.

On December 11, 1985, an order was issued by the Director of the Office of Electric Power Regulation granting certification to the cogeneration facility with an electric power production capacity of 28 MW and consisting of four gas turbine generators and a waste heat recovery boiler.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in

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determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2437 Filed 2-3-86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Emergency Training Center, Board or Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy (NFA).

Dates of Meeting: February 10-11, 1986.

Place: Federal Emergency Management Agency, Federal Center Plaza, 500 C Street SW., Room 413, Washington, D.C. 20472.

Time: February 10—3:00 p.m. to 5:00 p.m., February 11—8:30 a.m. to 5:00 p.m.

Proposed Agenda:

February 10-11: Old Business; New Business; Review of Staff Recommendations to NFA Master Curriculum Plan; Annual Report by National Fire Academy Superintendent and Deputy Superintendents.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact Mr. Joseph Donovan, Superintendent, National Fire Academy, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301-447-6771) on or before February 4, 1986.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Associate Director's Office, Building N, National Emergency Training Center, Emmitsburg, MD, 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: January 22, 1985.

Joseph L. Donovan,

Superintendent, National Fire Academy.

[FR Doc. 86-2415 Filed 2-3-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants; M. Zager, International, Inc.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

M. Zager International, Inc., 844 Winchester Avenue, Hillside, NJ 07205; Officers: Martin Zager, President/Director, Edith S. Zager, Vice President/Director

Oceanair, Inc., P.O. Box 8707, Cargo Bldg. A-22, BWI, Maryland 21240; Officers: Ann T. Bruno, President, Philip B. Sigismondi, Vice President, Richard E. Norris, Secretary/Treasurer

Sea-Bridge International, Inc., 13 John Paul Drive, Hamilton Square, NJ 08690, Officer: Donald M. Guerrazzi, President

Dated: January 29, 1986.

By the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-2390 Filed 2-3-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Staten Overseas Operations Corp.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1935
Name: Staten Overseas Operations Corp.
Address: P.O. Box 145, New York, NY 10033
Date Revoked: January 9, 1986
Reason: Surrendered license voluntarily

License Number: 2714
Name: Soo Bok Kang dba Oceangate Forwarding Company
Address: 4841 Sandy Circle, La Palma, CA 90623
Date Revoked: January 19, 1986
Reason: Failed to maintain a valid surety bond

Eugene P. Stakem,

Deputy Director, Bureau of Tariffs.

[FR Doc. 86-2391 Filed 2-3-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Alabama Bancshares, Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86-294), published at page 2433 of the issue for Thursday, January 16, 1986.

These activities would be conducted in the following states: Alabama, Georgia, Florida, Tennessee, and Mississippi.

Board of Governors of the Federal Reserve System, January 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2337 Filed 2-3-86; 8:45 am]

BILLING CODE 6210-01-M

First United Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 6142) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Bancorp,* Franklin, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Franklin Bank and Trust Company, Franklin, Indiana.

Applicant has also applied to acquire Franklin Mortgage Corporation, Indianapolis, Indiana, and thereby engaging in residential mortgage loan lending, servicing and brokering and commercial mortgage loan, servicing and brokering, pursuant to § 225.25(b)(1) of Regulation Y.

Applicant has also applied to acquire Franklin Financial Corporation, Indianapolis, Indiana, and thereby engage in the origination, package, sale and servicing of commercial and mortgage loans, the origination of small consumer loans and the origination of finance leases, pursuant to § 225.25(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2338 Filed 2-3-86; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may expess their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 24, 1986.

A. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to engage *de novo* through its direct or indirect subsidiaries, Norwest Financial Services, Inc., Des Moines, Iowa or one or more of its subsidiaries, in the activities of consumer finance; sales finance; commercial finance (including, but not limited to, accounts receivable financing, factoring and other secured lending activities); lease financing; the underwriting of credit life and credit accident and health insurance related to extensions of credit by Norwest Corporation or its subsidiaries; and the offering for sale and selling of bookkeeping, payroll and other management financial reporting services. This notification is for existing or *de novo* subsidiaries of Norwest Financial Services, Inc., to engage *de novo* in any of the aforementioned activities at any location with the State of Alaska. The state that will be served is the State of Alaska.

Board of Governors of the Federal Reserve System, January 29, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2339 Filed 2-3-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0567]

Cabot Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cabot Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of high purity carbon black (furnace process) as a colorant in polymers. Cabot Corp. also requested that the food additive regulations be amended to provide for the safe use of high purity carbon black (furnace process) as an alternative additive where carbon black (channel process) is now permitted for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 6B3901) has been filed by Cabot Corp., Concord Rd., Billerica, MA 01821, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of high purity carbon black (furnace process) as a colorant in polymers. The petitioner also requested that the food additive regulations be amended to provide for the safe use of high purity carbon black (furnace process) as an alternative additive where carbon black (channel process) is now permitted for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's

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finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: January 24, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-2407 Filed 2-3-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85E-0562]

Determination of Regulatory Review Period for Purposes of Patent Extension; Automatic Implantable Cardioverter/Defibrillator System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Automatic Implantable Cardioverter/Defibrillator System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

Under the act, a product's "regulatory review period" forms the basis for determining the amount of extension an applicant may receive. A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the Automatic Implantable Cardioverter/Defibrillator System, which is indicated for the treatment of ventricular tachycardia and ventricular fibrillation in patients who are at high risk of sudden cardiac death. Based on this approval, Mieczyslaw Mirowski now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for the Automatic Implantable Cardioverter/Defibrillator System is 2,071 days. Of this time, 1,488 days occurred during the testing phase of the regulatory review period, while 583 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* February 4, 1980.

The applicant claims February 4, 1980, as the date on which a clinical investigation on humans involving the device was begun. Although the device was subsequently modified, the results of the initial clinical investigations on an earlier model were included in FDA's analysis of the approved product's safety and effectiveness. The test on the earlier model is, therefore, part of the testing phase.

Additionally, the product is of a type which, under present regulations, would require IDE (investigational device exemption approval prior to the start of clinical investigations, and normally the initiation of the testing phase for a medical device is determined by reference to the approval phase of the relevant IDE. In this case, however, an IDE was not required prior to the start of a clinical investigation because FDA's IDE regulations did not become effective until July 16, 1980.

For the above reasons, FDA lacks records on which to independently verify the February 4, 1980, date claimed by the applicant, and FDA accepts the applicant's claim regarding the date on which a clinical investigation was begun.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* March 1, 1984.

FDA has verified that the application, P830060, was initially submitted on March 1, 1984.

3. *The date the application was approved:* October 4, 1985.

FDA has verified that P830060 was approved on October 4, 1985.

This determination of the regulatory review period establishes the maximum potential length of a parent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 7, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 4, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 28, 1986.

Stuart L. Nightingale,

Associate Commissoner for Health Affairs.

[FR Doc. 86-2409 Filed 2-3-86; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Center For Health Services Research and Health Care Technology Assessment; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that is is coordinating an assessment of what is know of the clinical effectiveness, and appropriateness, of real time cardiac monitors. These devices are understood to be noncontinuously functioning electrocardiographic systems that may be employed to monitor the cardiac status of patients over protracted periods of time. Specifically, this assessment seeks to determine whether, and to what degree, the information on cardiac activity captured by such devices is useful in diagnosing and treating patients with cardiac abnormalities and disease. We are particularly interested is a scientific comparison of the medical efficacy of real time cardiac monitors to that of continuously recording 24-hour (Holter) electrocardiographic monitors. If a distinction should be made between noncontinuous real time cardiac monitors and continuously recording devices, suggestions for appropriate generic descriptive terms are solicited. In addition, the efficacy and safety of real time cardiac monitors as a substitute for inpatient cardiac care unit (CCU) monitoring of patients with acute cardiac conditions will be assessed.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessements are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed studies, and information related to the clinical acceptability and effectiveness of this technology. Proprietary information is not being sought.

Written material should be submitted to: Ernest Feigenbaum, M.D., Office of Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4990.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

January 23, 1986.

[FR Doc. 86-2363 Filed 2-3-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as s amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Thursday, February 20, 1986, starting at 9:00 am, in Arizona State University, Memorial Union Building's Pima Room, in Tempe, Arizona 85287.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may requeat time to testify by contacting the Commission.

This meeting is open to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111-20th Street, NW., Washington, DC 20036-8547, (202) 634-7310.

Dated: January 29, 1986.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 86-2377 Filed 2-3-86; 8:45 am]

BILLING CODE 4310-70-M

Fish and Wildlife Service

Notice of Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-703575

Applicant: Zoological Society of San Diego, San Diego, CA

The applicant requests a permit to import one male lowland anoa (*Bubalus depressicornis)* from Zoologishcher Garten Berlin for the purpose of enhancement of propagation.

PRT-703554

Applicant: Circo Magico Italiano, Tlaxcala, Mexico

The applicant requests a permit to import 15 male and 10 female Bengal tigers (Panthera tigris), and a female leopard (*Panthera pardus),* for the purpose of the propagation and survival (conservation education) the species.

PRT-703056

Applicant: New York Zoological Society, Bronx, NY

The applicant requests a permit to import 2 male and 2 female proboscis monkeys *(Nasalis larvatus),* as they become available, from Sepilok, a Malaysian government holding facility for confiscated wildlife, for the purpose of enhancement of propagation.

PRT-702013

Applicant: Lorne E. Hanna, Corvallis, OR

The applicant requests a permit to engage in interstate and foreign commerce with the following species of endangered cacti: *Ancistrocactus tobuschii* and *Echinocereus viridiflorus* var. *dovisii.*

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRI number when submitting comments.

Dated: January 30, 1986.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-2444 Filed 2-3-86; 8:45 am]

BILLING CODE 4310-55-M

Issuance of Permit for Marine Mammals

On December 11, 1985, a notice was published in the Federal Register (Vol. 50, No. 238) that an application had been filed with the Fish and Wildlife Service by Manitoba Department of Business Development and Tourism (PRT-693086) for a permit to import a mounted polar bear for public display.

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Notice is hereby given that on January 27, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service issued the permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: January 30, 1986.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86–2446 Filed 2–3–86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[W-59086]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

January 27, 1986.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–59086 for lands in Uinta County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–59086 effective June 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–2343 Filed 2–3–86; 8:45 am]

BILLING CODE 4310-22-M

[W-70658-J]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

January 27, 1986.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–70658–J for lands in Natrona County, Wyoming was timely filed and was accompanied by all required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–70658–J effective November 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–2344 Filed 2–3–86; 8:45 am]

BILLING CODE 4310-22-M

Realty Action Exchange of Public and Private Lands in Fresno, Madera, and Nevada Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment Notice.

SUMMARY: This notice is to amend the Federal Register, notice of January 2, 1986, Vol. 51, No. 1, beginning on page 128. On page 129 the description of reservations, terms, and conditions on lands to be transferred from the United States should be amended as follows:

1. In T. 15 N., R. 8 E., sec. 26: SW¼SW¼, MDM: a. FPC power project with an 80 ft. width (Power project No. 2310). b. One canal and road right-of-way (CA 3775).

2. In T. 14 N., R. E., Sec. 9: within W½SE¼: a. Two rights-of-way (one 12KV powerline, CA 206; one canal and road, CA 3775).

3. In T. 9 S., R. 19 E., Sec. 20: NW¼NE¼: One road right-of-way.

4. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

FOR FURTHER INFORMATION CONTACT: David E. Howell, Area Manager, Bureau of Land Management, P.O. Box 365, Hollister, CA 95024–0365; (408) 637–8183.

David Lehmann,

Acting Area Manager.

[FR Doc 86–2348 Filed 2–3–86; 8:45 am]

BILLING CODE 4310-40-M

[U-54824]

Realty Action; Direct Sale of Public Lands in Tooele County, UT

The following described public land has been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) or FLPMA:

Legal Description

T. 6 S., R. 5 W., SLM.
Sec. 6, NE¼SE¼SE¼.
Acreage: 10 acres.

The land is being offered by direct sale to the Town of Rush Valley, Utah at the appraised fair market value. The land is being offered for sale to serve the public objectives of community development. The land is currently under lease to the Town of Rush Valley under the provisions of the Recreation and Public Purposes Act of 1926, as amended, for use as a sanitary landfill. The Town would like to purchase the land, but cannot do so under the provisions of the Recreation and Public Purposes Act. The land does not possess more important public values than community development.

A direct sale to the Town of Rush Valley will recognize a preference to the Town as a user with an existing lease on the land, as set forth in FLPMA.

The sale is consistent with the Bureau of Land Management's planning system and with local planning and zoning.

The public land will be sold on the 10th day of February, 1986. The patent, when issued, will contain certain reservations to the United States and be subject to existing right-of-way and a grazing authorization. Detailed information concerning these reservations, as well as conditions of the sale, is available for review at the Salt Lake District Office, Bureau of Land Management, 2370 S. 2300 W., Salt Lake City, Utah 84119.

Publication of this notice in the Federal Register segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, 2370 S. 2300 W., Salt Lake City, Utah 84119. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 27, 1986.

John H. Stephenson,

Associate District Manager.

[FR Doc. 86–2368 Filed 2–3–86; 8:45 am]

BILLING CODE 4310-DQ-M

[ES35844]

Recordable Disclaimer of Interest; Mississippi

Notice is hereby given that pursuant to section 315 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1745 (1982), S. Ray and Willa D. Gurney, Michael R. Gurney and David Callender have applied for a recordable disclaimer of interest to a one-half mineral interest, including the right to enter upon the land and remove any minerals which comprise that one-half mineral interest without compensation, for the following described lands:

Washington Meridian, Mississippi.

T. 1 N., R. 3 E.,
Irregular Sec. 13, SE¼SW¼.
Irregular Sec. 23, that part of the NW¼ lying north of Centreville-Osyka Road and east of Natchez-Clinton Road.

1. On May 4, 1931, C.T. Gordon, trustee for D.F. Dixon, conveyed title to all lands and minerals to the Federal Land Bank of New Orleans. In an October 22, 1937 deed to L.W. Callender, the Federal Land Bank conveyed the subject tract but reserved one-half interest in all minerals. Through a condemnation proceeding, the United States acquired full fee simple interest in the tract on December 28, 1942. Subsequently, on December 14, 1943, the one-half interest in the minerals was revested in the Federal Land Bank. On September 30, 1947, pursuant to the provisions of the Surplus Property Act of 1944, 58 Stat. 765, the United States conveyed the lands and minerals back to L.W. Callender. The deed conveyed "All right, title, interest and claim in and to" these lands . . . "less and except one-half minerals" . . . "being the same property acquired by the United States of America." The deed is ambiguous as to whether this wording recognized the one-half mineral interest outstanding in the Federal Land Bank or is a reservation by the United States of the remaining one-half interest.

2. The following is submitted in support of this application:

A. It has been determined by the Department from the language of the Surplus Property Act of 1944 and the legislative history thereof that the deed in question was intended to reconvey to L.W. Callender his original holdings, both surface and mineral.

B. Therefore, upon issuance of the subject deed to L.W. Callender, all right, title and interest, in and to the lands so conveyed, vested in the grantee with no additional mineral reservation to the United States attaching. The effect of the deed was to vest 50% of the mineral estate in L.W. Callender and reserve 50% in the United States.

3. The purpose of this notice is to afford any person or persons having a valid protest to the above action an opportunity to submit such protest to the Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, telephone (703) 274–0180 on or before May 7, 1986.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 86–2363 Filed 2–3–86; 8:45 am]

BILLING CODE 4310-GJ-M

Salmon District Advisory Council; Meeting Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting; Cancellation.

SUMMARY: The Notice of Meeting for the Salmon District Advisory Council, published in the Federal Register Monday, December 30, 1985 on page 53204 is cancelled. The meeting will be rescheduled at a later date.

Dated: January 24, 1986

Kenneth G. Walker,

District Manager.

[FR Doc. 86–2347 Filed 2–3–86; 8:45 am]

BILLING CODE 4310-66-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 25, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 19, 1986.

Patrick Andrus,

Acting Chief of Registration, National Register

CALIFORNIA

Humboldt County

Arcata, *Pythian Castle*, 1100 H St.

Santa Clara County

San Jose, *Dohrmann Building*, 325 S. First St.

CONNECTICUT

Hartford County

South Windsor, *East Windsor Hill Historic District*. Roughly bounded by Scantic River, John Fitch Blvd., Sullivan Ave., and the Connecticut River

Fairfield County

Trumbull, *Mallett, Dovid Jr., House*, 420 Tashua Rd.

GEORGIA

DeKalb County

Avondale Estates, *Avondale Estates Historic District*. Roughly bounded by Avondale Rd., Lakeshore Dr., Kingstone, Clarendon, and Fairchild Dr. Also Lake Avondale

KENTUCKY

Graves County

Youngblood Site (15 Gv 26)

Harrison County

Archeological Site 15 HR 4

MASSACHUSETTS

Barnstable County

Brewster, *Nickerson Hall*, 2871 Main St.

Plymouth County

Duxbury, *Brodford, Captain Daniel, House*, 251 Harrison St.

NORTH CAROLINA

Gaston County

Gastonia, *First National Bank Building*, 168–170 W. Main Ave.
Gastonia, *Third National Bank Building*, 195 W. Main Ave.

Gates County

Buckland, *Buckland*, NC 37 at SR 1220

Jackson County

Cashiers, *Church of the Good Shepherd*, NC 107 at SR 1118

Rutherford County

Rutherfordton, *Logan, George W., House*, SR 1555 at US 64

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Surry County

Mt. Airy, *Hennis, Edgar Harvey, House*, 1056 N. Main St.
Mt. Airy, *Moore, William Alfred, House*, 202 Moore Ave.

Wake County

Raleigh, *Marshall-Harris-Richardson House*, 116 N. Person St.

OHIO

Hamilton County

Loveland vicinity, *Chateau Laroche*, 12025 Shore Dr.

Logan County

Zanesfield vicinity, *Marmon, Martin, House*, CR 153

PENNSYLVANIA

Northampton County

Bangor, *Real Estate Building*, 2–6 N. Main St.

PUERTO RICO

Ponce County

Ponce, *Toro, Fernando Luis, Casa*, Calle Obispado No. 3, La Alhambra

[FR Doc. 86–2294 Filed 2–3–86; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Annual Evaluation Reports on the Administration of State Regulatory and Abandoned Mine Lands Programs Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of availability.

SUMMARY: OSMRE is announcing the availability to two annual evaluation reports on the administration of State regulatory and abandoned mine lands (AML) programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The two reports, covering the States of Utah and West Virginia were prepared under the provisions of OSMRE's oversight policy and have been transmitted to Congress.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for the addresses where copies of the reports may be obtained.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 343–5351.

SUPPLEMENTARY INFORMATION: Copies of the reports are available, free of charge, at the respective OSMRE offices listed below:

Utah: Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

West Virginia: Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301.

Background

Under Section 503 of SMCRA, a State may elect to assume primary responsibility for regulating surface coal mining and reclamation operations within its borders by submitting a program to the Secretary of the Interior which demonstrates the State's capability to carry out the provisions of SMCRA. Once the Secretary approves the program, the State is granted primacy, and the Federal government assumes a monitoring and evaluation role. Monitoring of the State's administration and enforcement of its regulatory and AML programs is conducted throughout the year. The Field Office Directors compile and analyze the data gathered during the evaluation period and prepare annual evaluation reports for transmittal to Congress.

Evaluation reports for (Illinois, Kentucky, Maryland, Mississippi, Montana and North Dakota) were completed and sent to Congress on November 5, 1985, and were made publicly available on November 14, 1985 (50 FR 47122). Evaluation reports for Alabama, Alaska, Ohio, and Wyoming were completed and sent to Congress on November 25, 1985, and were made publicly available on November 29, 1985 (50 FR 49138). Evaluation reports for Indiana, Iowa, Kansas, Louisiana, Missouri and Oklahoma were completed and sent to Congress on December 10, 1985, and were made publicly available on December 18, 1985 (50 FR 51612). Evaluation reports for Arkansas, Pennsylvania and Virginia were completed and sent to Congress on January 7, 1986, and were made publicly available on January 14, 1986 (51 FR 1566). Two additional evaluations reports for Utah and West Virgina were completed and sent to Congress on January 28, 1986, and are now publicly available. As the reminding reports are completed, OSMRE plans to make them available also.

Dated January 29, 1986.

Brent Wahlquist,

Assistant Director Program Operations, Office of Surface Mining Reclamation and Enforcement

[FR Doc. 86–2357 Filed 2–3–86; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984—Portland Cement Association

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462 ("the Act"), the Portland Cement Association ("PCA") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. Specifically, Gifford-Hill & Company, Inc. has resigned from the Association effective December 31, 1985. Accordingly, at present the members of the PCA are:

Aetna Cement Corporation
Alaska Basic Industries
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic
Blue Circle Inc.
CalMat Co.
Capitol Aggregates, Inc.
Dragon Products Company
General Portland Inc.
Genstar Cement Company
Hawaiian Cement
Ideal Basic Industries, Cement Division
Independent Cement Corporation
Lehigh Portland Cement Company
Lone Star Industries, Inc.
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rinker Portland Cement Corp.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St. Marys Wisconsin Cement Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
Canada Cement Lafarge Ltd.
Ciment Quebec, Inc.
Federal White Cement Ltd.
Genstar Cement Limited
Lake Ontario Cement Limited
Miron Inc.
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Limited

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Holderbank Consulting, Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
F. L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification, identifying the original parties to the venture and describing in general terms the area of planned activities of the venture, is published at 50 F.R. 5015 (1985).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 86–2395 Filed 2–3–86; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency indentification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523–6331. Coments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration

OFCCP Recordkeeping and Reporting Requirements 1215–0072; CC– 60–2
Monthly; Quarterly; annually
Businesses or other for-profit; small businesses or organizations 2,560,000 responses; 8,523,000 hours

Consolidated recordkeeping and reporting requirements of OFCCP.

Mine Safety and Health Administration

Certificate of Training, MSHA Form 5000–23 1219–0070
On occasion
Businesses and other for profit; small businesses or organizations
18,500 respondents; 56,240 hours

Requires MSHA Form 5000–23, Certificate of Training, to be used by mine operators to record mandatory training received by miners.

Safety Defect Record of Self-Propelled Equipment 1219–0069
Other, each shift
Businesses and other for profit; small businesses or organizations
13,272 respondents; 122,839 hours

Requires equipment operators to make a visual and operational check of the various primary operating systems that affect safety, such as brakes, lights, tires, steering, and related items. Any defects found are verbally reported to the mine operator who is required to make a record of the defects. The record must be retained until the defect is corrected.

Program to Prevent Smoking in Hazardous Areas 1219–0041
On occasion
Businesses and other for profit; small businesses or organizations
200 respondents; 100 hours

Requires coal mine operators to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as, in or around oil houses, explosives magazines, etc. Mine operators are further required to submit the programs to MSHA for approval.

Annual Status Report and Certification and Weekly Inspections of Refuse Piles and Impoundments 1219–0015
Annually; weekly
Businesses and other for profit; small businesses or organizations
600 respondents; 79,200 hours

Requires coal mine operators to submit to MSHA an annual status report and certification on refuse piles and impoundments; and to keep records of the result of weekly examinations and instrumentation monitorings of impoundments.

Certificate of Electrical/Noise Training. MSHA Form 5000–1 1219–0001
On occasion
Businesses and other for profit; small businesses or organizations
4,925 respondents; 480 hours

MSHA Form 5000–1 is required to be used by instructors to report to MSHA for certification those persons who have satisfactorily completed either a coal mine electrical training program or a noise training course.

Occupational Safety and Health Administration

Employer-Employee Training Record 1218–0005; OSHA Form 66
On occasion
State or local governments
3,750 responses; 625 hours; 1 form

States administering occupational safety and health plans pursuant to section 18 of the Occupational Safety and Health Act are required by 29 CFR 1902.4(c)(2)(xiii) to establish public and private employer/employee training and education programs in recognition and avoidance of unsafe and unhealthful working conditions. Form 66 data are needed to evaluate State performance in this area of plan administration.

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Extension

Occupational Safety and Health Administration

Ethylene Oxide 1218–0108
On occassion
Business or other for-profit
6,453 respondents; 334,730 hours; 0 forms

This regulation requires employers to establish and maintain accurate records or exposure monitoring and medical surveillance for employees exposed to ethylene oxide (EtO). These records will be used by employers, employees, physicians and the Government to assure that workplace exposure to EtO does not adversely affect that health of employees.

Signed at Washington, DC this 30th day of January, 1986.

Paul E. Larson,

Departmental Clearance Office.

[FR Doc. 86–2466 Filed 2–3–86; 8:45 am]

BILLING CODES 4510–26; 4510–43–M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Alaska

This notice announces the beginning of a new Extended Benefit Period in Alaska, effective on December 29, 1985, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an extended benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and willl end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on December 14, 1985, equals or exceeds 6 percent, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on December 29, 1985. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the extended benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on January 28, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–2465 Filed 2–3–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–16,024]

Negative Determination Regarding Application for Reconsideration; Eaton Corp.

By an application dated December 17, 1985, and after being granted a filing extension, the Unites Steelworkers and America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at Eaton Corporation, Transmission Division, Shelbyville, Tennessee. The notice of negative determination was published in the **Federal Register** on November 14, 1985 (50 FR 47128).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous.

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered: or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that workers at Shelbyville formerly produced and built each part for heavy duty truck transmissions and now these transmissions together with service parts are being imported by Eaton.

A major share of production at Shelbyville during the period applicable to the petition was machining transmission parts for Eaton's parts business. A smaller share of production was the assembling of transmissions. Findings in the investigation show that productions of transmissions at Shelbyville increased absolutely in quantity and in value in 1984 compared to 1983 and in the first five months of 1985 compared to the same period in 1984, the latest periods for which data were available.

Sales of transmissions, division wide, increased in quantity and value in 1984 compared to 1983 and increased in value in the first five months of 1985 compared to the same period in 1984. Sales in quantity remained constant for the first five months of 1985 compared to the same period in 1984. Company officials indicated that imports of nearly completed transmissions—which were significant in 1984—had a positive effect on employment at Shelbyville because it created additional work on clutch housings, oil seals, shift bar housings and other parts that were attached to the transmissions.

Because of sales and/or production of transmissions did not decrease during the period applicable to the petition, a survey of Eaton customers purchasing transmissions was not required.

Production and sales of transmission parts increased in 1984 compared to 1983 and declined in the first five months of 1985 compared to the same period in 1984. Company-wide imports of transmission parts declined in the January–May 1985 period compared to the same period in 1984.

The Department of Labor's survey of major customers of Eaton Corporation purchasing transmission parts showed that none of the responding customers increased their purchases or imported transmission parts while decreasing their purchases of transmission parts from Eaton. The survey further revealed that responding customers' total demand for transmission parts declined in the January–June 1985 period compared to the same period in 1984.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 27th day of January 1986.

James D. Van Erden,

Acting Deputy Director, Office of Program Management, UIS.

[FR Doc. 86–2328 Filed 2–3–86; 8:45 am]

BILLING CODE 4510–30–M

Negative Determination on Reconsideration; Great Western Sugar Co., et al.

On December 24, 1985, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers producing refined sugar at the Great Western Sugar Company, Loveland, Colorado; Fort Morgan, Colorado; Sterling, Colorado; Goodland, Kansas; Greeley, Colorado; Bayard, Nebraska; Ovid, Colorado and Billings, Montana. The determination was published in the **Federal Register** on January 10, 1986 (51 FR 1312).

The application for reconsideration was filed by the Teamsters Union and claimed that the Department's negative determination was erroneous in that all relevant facts were not considered, the determination was based on mistakes in the determination of facts previously considered and certain facts were misinterpreted.

To support these claims the application states that the Department's survey was inadequate in that it did not include raw sugar imports, sugar beet acreage and sugar beet prices. The union claims that an imported article, in this case raw sugar, is "directly competitive with" a domestic article at a later stage of processing and cites *United Shoe Workers of America* v. *Bedell*.506 F. 2d 174, 186 no 80 (D.C. Cir. 1974) to support its claim. The union asserts that the Department did not consider the fact that it had previously certified workers for trade adjustment assistance at Great Western's operations in Johnston and Longmont, Colorado in 1978 (TA–W–1636).

During the period applicable to the petition, Great Western Sugar Company was involved solely in the production of refined sugar from sugar beets. U.S. imports of refined sugar were negligible in 1982, 1983, 1984 and in the first three months of 1985. Imports were less than one percent in relation to domestic production in recent years. Findings in the Department's investigation for adjustment assistance did not substantiate that increased imports of refined sugar contributed importantly to worker separations.

The Department's survey of Great Western's customers, which are primarily food manufacturers and soft drink producers, showed that the predominant portion of the respondents did not import refined sugar or high frutose corn syrup (HFCS) during the time period applicable to the petition. The respondents accounted for a significant proportion of Great Western's 1984 sales and over 100 percent of Great Western's sales decline in 1985 compared to 1984.

Several of the respondents to the survey indicated that they would have continued to purchase sugar from Great Western if the company would have promised future deliveries. Sugar beet acreage and prices would not be factors in the Department's survey of company customers purchasing refined sugar.

Virtually all raw sugar entering the U.S. is raw cane sugar. Because raw cane sugar requires further processing before it can be marketed as refined sugar, it is not like or directly competitive with refined sugar. Therefore, raw cane sugar cannot be included with refined sugar for establishing import levels. On reconsideration, the Department learned that the subject facilities of Great Western could not convert raw cane sugar into refined sugar without extensive capitalization. Further, none of the facilities had the capability in the time period applicable to the petition to convert raw cane sugar into refined sugar. Therefore, raw cane sugar imports would not have an absolute adverse effect on sales and or production of refined sugar and on worker separations at the above mentioned facilities of Great Western Sugar.

Finally, prior certifications in 1978 at Great Western Sugar Company (Johnston and Longmont, Colorado, TA–W–1636) have no bearing on the instant cases since those decisions were made in an earlier time period when sales and/or production and import data were different. Further, the consumption of HFCS for industrial useage was much smaller in 1978.

Conclusion

After reconsideration, I affirm the original denial of eligibility to apply for adjustment assistance to workers and former workers producing refined sugar at Great Western Sugar Company, Loveland, Colorado; Denver, Colorado; Fort Morgan, Colorado; Sterling, Colorado; Goodland, Kansas; Greeley, Colorado; Bayard, Nebraska; Ovid, Colorado and Billings, Montana.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86–2326 Filed 2–3–86; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Koppers Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 20, 1986—January 24, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

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(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–16,271; Koppers Company; Fontana, CA

TA–W–16,338; NU Method Dyeing and Processing, Union City, NJ

TA–W–16,303; The Fenton Art Glass Co., Williamstown, WV

TA–W–16,310; Texas City Refining, Inc., Texas City, TX

TA–W–16,311; Vesta Mining Co., McMurray, PA

TA–W–16,307; Potlatch Corp., Jaype Plywood Plant, Pierce, ID

Affirmative Determinations

TA–W–16,272; Rola Company, Division of International Jensen, Punxsutawney, PA

A certification was issued covering all workers of the firm separated on or after August 1, 1984.

TA–W–16,302; Carter Automotive Products Corp., Lafayette, TN

A certification was issued covering all workers of the firm separated on or after August 1, 1984.

TA–W–16,346; TRW, Inc., Boone, NC

A certification was issued covering all workers of the firm separated on or after February 1, 1985.

TA–W–16,347; TRW, Inc., Newland, NC

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA–W–16,398; Arbor Manufacturing Co., Harrison, NJ

A certification was issued covering all workers of the firm separated on or after August 1, 1984 and before August 18, 1985.

TA–W–16,280; Bow Age, Inc., East Newark, NJ

A certification was issued covering all workers of the firm separated on or after August 1, 1984 and before August 24, 1985.

TA–W–16,378; Copperweld Steel Company, Warren, OH

A certification was issued covering all workers of the firm separated on or after August 15, 1984.

TA–W–16,315; E.W. Bowman, Inc., Uniontown, PA

A certification was issued covering all workers of the firm separated on or after August 7, 1984.

TA–W–16,300; Seatt Corp., Downers Grove, IL

A certification was issued covering all workers of the firm separated on or after March 1, 1985.

TA–W–16,316; Fun Footwear Co., Hazleton, PA

A certification was issued covering all workers of the firm separated on or after August 1, 1984.

TA–W–16,316A; Plasti-Boot, Co., West Hazleton, PA

A certification was issued covering all workers of the firm separated on or after August 1, 1984.

TA–W–16,316B; Fun Footwear Co., West Hazleton, PA

A certification was issued covering all workers of the firm separated on or after August 1, 1984.

TA–W–16,308; Potlatch Corp., Clearwater Logging Unit, Headquarters, ID

A certification was issued covering all workers of Clearwater Logging Union, Headquarters, Idaho, separated on or after August 8, 1984.

TA–W–16,309; Potlatch Corp., Clearwater Unit Sawmill, Lewiston, ID

A certification was issued covering all workers of the Clearwater Unit Sawmill, Lewiston, Idaho, separated on or after August 8, 1984.

I hereby certify that the aforementioned determinations were issued during the period January 20, 1986–January 24, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: January 28, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–2327 Filed 2–3–86; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Alta Products Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 14, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 27th day of January 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Alta Products, Inc. (workers)	Wilkes-Barre, PA	12/27/85	12/20/85	TA–W–17,103	Women's casual shoes.
American Cigar (teamsters)	Mountaintop, PA	1/21/86	1/10/86	TA–W–17,104	Cigars.
Anker Holth (workers)	Port Huron, MI	1/7/86	1/3/86	TA–W–17,105	Cylinders.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Cooper Tire & Rubber Co. (URW)	Clarksdale, MS	1/10/86	1/7/86	TA–W–17,106	Inner tubes.
Eastern Stainless Steel co. (USWA)	Baltimore, MD	1/21/86	1/13/86	TA–W–17,107	Steel coils, sheets, plates.
Harmony Design, Inc. (workers)	Boulder, CO	12/19/85	12/12/85	TA–W–17,108	Belt Buckles.
Kenco Refining (workers)	Wolf Pt., MT	1/7/86	1/2/86	TA–W–17,109	Fuel refinery.
Mackintosh-Hemphill Manufacturing Co. (USWA)	Midland, PA	1/13/86	12/31/85	TA–W–17,110	Slag handling equipment and machining.
Maremont Corp. (workers)	Chickasha, OK	1/13/86	1/6/86	TA–W–17,111	Auto shock absorbers.
Reichert Scientific Instruments (workers)	Buffalo, NY	1/21/86	1/14/86	TA–W–17,112	Microscopes and other high-tech medical instruments.
Ron Scott Togs (ILGWU)	New York, NY	12/24/85	12/20/85	TA–W–17,113	Pants, skirts, blouses.
S.K. Wellman (workers)	Bedford, OH	1/6/86	12/27/85	TA–W–17,114	Clutches, friction matrial for clutches and brakes.
S.S.&G. Manufacturing Co. (ILGWU)	Worcester, MS	12/18/85	12/12/85	TA–W–17,115	Women's skirts.
Celotex Corporation Insul-Coustic Div. (Sheetmetals Wkrs)	Sayreville, NJ	12/2/85	11/26/85	TA–W–17,116	Fiberglass insulation.
(The) Bibb Co. (company)	Anderson, GA	1/23/86	1/16/86	TA–W–17,117	Woven fabrics.
(The) Bibb Co. (company)	Columbus, GA	1/23/86	1/16/86	TA–W–17,118	Woven fabrics.
Dresser Industries Harbison-Walker Refractories Div. (USWA).	Mt. Union, PA	12/19/85	12/17/85	TA–W–17,119	Refractory brick.
F. Rullson & Sons, Inc. (Tannery Workers Union)	Johnstown, NY	1/6/86	1/3/86	TA–W–17,120	Leather.
Kenner Products (workers)	Cincinnati, OH	1/10/86	1/6/86	TA–W–17,121	Children's toys and office staff.
Kenner Products (workers)	Cincinnati OH	1/10/86	1/6/86	TA–W–17,122	Distribution center (children's toys).
Lauren Sportswear, Inc	W. Springfield, MA	12/16/85	12/12/85	TA–W–17,123	Women's blazers (jackets).
Modulus Gary Screw & Bolt Co. (USWA)	Gary, IN	12/19/85	12/17/85	TA–W–17,124	Industrial fasteners.
Southwire—Kentucky Division (workers)	Hawesville, KY	1/6/86	12/27/85	TA–W–17,125	Aluminum wire.
(The) West Co., Plastic Group (URW)	Newton, NJ	1/14/86	12/16/85	TA–W–17,126	Plastic caps and closures.
American Borate Co. (Teamsters)	Death Valley, CA	1/7/86	12/30/85	TA–W–17,127	Borate—chemicals.
American Borate Co. (Teamsters)	Armagosa Valley, NE	1/7/86	12/30/85	TA–W–17,128	Borate—chemicals.
American Borate Co. (Teamsters)	Dunn, CA	1/7/86	12/30/85	TA–W–17,129	Borate—chemicals.
Design Innovation Inc. (workers)	Long Island City, NY	1/10/86	1/8/86	TA–W–17,130	Enameled metals trimmings.
Lancaster Glass Corp (AEGWU)	Lancaster, OH	1/15/86	12/20/85	TA–W–17,131	Manufacture industrial glass and electronics.
LTV Steel Co. (USWA)	Canton, OH	12/19/85	12/17/85	TA–W–17,132	Steel bars.
Motion Picture Screen Cartoonists, Local No. 841 (workers).	New York, NY	12/24/85	12/20/85	TA–W–17,133	T.V. commercial artists.
Shuron, Inc. (IUE)	Rochester, NY	1/14/86	1/10/86	TA–W–17,134	Eyeglass frames.
Tampa Bay Shipyard (workers)	Tampa, FL	1/17/86	12/22/85	TA–W–17,135	Build and repair ships.
U.S. Steel Corp., U.S. Steel Supply (workers)	Memphis, TN	12/18/85	12/12/85	TA–W–17,136	Sales of steel products.

[FR Doc. 86–2329 Filed 2–3–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–16,217]

Kitt Energy Corp.; Phillipi, WV; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Kitt Energy Corporation, Phillipi, West Virginia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued. TA–W–16,217; Kitt Energy Corporation, Phillipi, West Virginia (January 23, 1986).

Signed at Washington, DC this 27th day of January 1986.

Marvin M. Fooks,

Dirctor, Office of Trade Adjustment Assistance.

[FR Doc. 86–2330 Filed 2–3–86; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–10]

NASA Advisory Council, History Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee.

DATE AND TIME: February 26, 1986, 9 a.m. to 1 p.m.

ADDRESS: NASA Goddard Space Flight Center, Bldg. 8, Management Council Room, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code LBH, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–2999).

SUPPLEMENTARY INFORMATION: The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains a non-record historical reference file and publishes works in the history of aeronautics and space science and technology. The Committee, chaired by Dr. Melvin Kranzberg, consists of 9 members.

This meeting will be closed to the public from 10:30 a.m. to 11:30 a.m. on February 26 for a discussion of the qualifications of candidate historians to do two contract projects. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open, except for a closed session as noted in the agenda below.

Agenda: February 26, 1986.

9 a.m.—NASA Implementation of Five Year Plan and Previous Committee Recommendations.

10:30 a.m.—Discussion of Candidate Historians and Proposals for NASA Funded Histories:

11:30 a.m.—Adjourn.

Dated: January 27, 1986.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 86–2341 Filed 2–3–86; 8:45 am]

BILLING CODE 7510–01–M

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by March 7, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianne Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylania Avenue, NW., Washington, DC 20506; (202–682–5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts requests OMB approval of the Application Guidelines and Supplemental Information Sheets listed below: Music Ensembles, Music Presenters and Festivals, Visual Arts/Grants to Organizations, Visual Artists Fellowships.

Purpose: Application for benefits.

Frequency of Collection: One-time.

Respondents: Individuals, State or local governments and nonprofit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, nonprofit organizations, and state or local arts agencies that apply for funding under specific Program categories.

This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 7,204.

Estimated Hours for Respondents to Provide Information: 58,912.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 86–2365 Filed 2–3–86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Aircraft Accident; Public Hearing in Milwaukee, WI

In connection with its investigation of the accident involving a Midwest Express Airlines, Douglas DC–9–14, N100ME, at General Mitchell Field, Milwaukee, Wisconsin, on September 6, 1985, the National Transportation Safety Board will convene a public hearing at 9:00 a.m., (local time) on February 18, 1986, in the Lakeshore Room of the Hyatt Regency Hotel, 333 West Kilbourne Avenue, Milwaukee, Wisconsin. For more information, contact Mr. Brad Dunbar, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202) 382–6600.

Catherine T. Kaputa,

Federal Register Liaison Officer.

January 28, 1986.

[FR Doc. 86–2342 Filed 2–3–86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–70]

Environmental Assessment and Finding of No Significant Impact; Facility Operating License No. TR–1 General Electric Test Reactor

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. TR–1 for the General Electric Test Reactor (GETR) located in the Vallecitos Nuclear Center (VNC), Alameda County, California.

The amendment would renew the operating license until October 1, 1992 and place the license in a possession only status in accordance with the licensee's applications dated October 21, 1975 and June 20, 1985, as supplemented.

Environmental Assessment

Description of Proposed Action

By letter dated October 21, 1975, the licensee requested renewal of Facility Operating License No. TR–1. Opportunity for hearing was afforded by the Notice of Proposed Renewal of Facility License published in the **Federal Register** on September 15, 1977 at 42 FR 46427. A request for hearing and petition for leave to intervene was filed following notice of the proposed action. In 1977 the resulting hearing was set aside pending other hearings on an NRC Order to Show Cause concerning potential effects on the reactor due to postulated extreme seismic events. Hearings were terminated in August 1982 and the Order to Show Cause was rescinded in April 1983. Proceedings on the original petition to intervene were resumed.

An agreement between GE and the one remaining intervenor on the renewal application resulted in withdrawal of the contentions, acceptance of the agreement conditions by the ASLB, and termination of the hearing in April 1985 by the ASLB. In accordance with the agreement, by letter dated June 28, 1985, as supplemented July 15, 1985, GE submitted an amendment to its license renewal application requesting renewal for possession only. This request was noticed in the **Federal Register** on September 11, 1985 at 50 FR 37083. No petitions to intervene were received.

All reactor fuel, fueled experiments, and targets containing SNM have been removed from the reactor facility and shipped from the VNC. In addition, all contaminated resins have been removed from the demineralizers and shipped to a licensed waste disposal facility. Therefore, only activation and fission product contamination remain. A confinement approach will be utilized to minimize the possibility of contamination spreads and uncontrolled discharges. The confinement system consists of primary containers, piping, the ventilation system and the reactor building.

Activities to be performed at the facility will include decontamination testing and decommissioning training exercises. Work will be limited to equipment, components, or devices which would or could be removed, repaired, replaced or installed as part of "normal maintenance" under the operating license. In addition, all such work will exclude installation or reinstallation of any fuel, equipment, component or device for the purpose of restoring the facility to a condition where it would be capable of operating as a nuclear reactor. The proposed activities will not involve any material alteration of the reactor facility. There are no credible accidents that would result in the release of significant amounts of the remaining radioactive contamination.

Need for the Proposed Action

The operating license for the facility was to have expired in November 1975. The licensee made a timely request for renewal in October 1975. Since that time, litigation has postponed any action on renewal. The proposed action is required to authorize GE to continue to possess the test reactor pending a decision on its ultimate disposition.

Alternative to the Proposed Action

As required by section 102(2)(E) of NEPA (42 U.S.C. 4332(2)(E)), the staff has considered possible alternatives to the proposed action. The only reasonable alternatives to the proposed action that were considered were: (1) Not to renew the license, and (2) To conduct the required testing and training exercises in an uncontaminated facility. The first alternative would have led to a change in status and could result in a greater impact on the GE personnel and the environment. Consideration of the second alternative led to the conclusion that there is no available comparable facility without radioactive contamination. Such a facility would have to be constructed at a multi-million dollar cost and a relatively large consumption of natural and human resources that otherwise would not have to be utilized. From the standpoint of the environmental impact of the possession only license amendment, there are no appropriate alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of any resources beyond those normally allocated for such activities.

Agencies and Persons Consulted

The staff did not consult other agencies or persons.

Conclusion and Basis for Finding of No Significant Environmental Impact

Based on the foregoing Environmental Assessment, the staff has concluded that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for this proposed action.

For further details with respect to this action, see the licensee's requests for license renewal dated October 21, 1975, and the subsequent possession only amendment request dated June 20, 1985, as supplemented. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland this 29th day of January 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B, Office of Nuclear Reactor Regulation.

[FR Doc. 86–2352 Filed 2–3–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–289]

GPU Nuclear Corp., et al.; Environmental Assessment and Finding of No Significant Impact; GPU Nuclear Corp., et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemption from the requirements of Appendix J to 10 CFR Part 50 to GPU Nuclear Corporation (the licensee) for Three Mile Island Nuclear Station, Unit No. 1 (TMI–1) located in Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The exemption is related to section III.D.3 of Appendix J to 10 CFR Part 50. Appendix J is concerned with primary reactor containment leakage testing for water-cooled power reactors. Section III.D.3 states that Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than two years. The two-year interval for selected valves ends February 23, 1986. The licensee requested schedular exemptions for 71 valves. The one-time only schedular exemption would allow the licensee to conduct testing at the first outage of sufficient duration past February 23, 1986. The next presently scheduled outage will begin near the end of March 1986. However, if the balance of the leak rate testing is not completed by August 23, 1986, the licensee will shutdown in order to complete it.

The exemption is responsive to the licensee's letter requesting exemption dated October 22, 1985.

The Need for the Proposed Action: Barring an unforeseen shutdown of sufficient duration, these schedule requirements cannot be met for the 71 valves listed in the licensee's application without bringing the plant to cold shutdown conditions solely for the purpose of completing local leak rate testing by the required dates. TMI–1 is presently engaged in Restart Test Program activities following the shutdown order which remained in effect for 6½ years. The Restart Test Program includes zero and low power physics tests, natural circulation tests, and other tests in a slow controlled power escalation test sequence which is followed by about 90 days of operations prior to shutting down for the steam generator eddy current outage in compliance with license Amendment No. 103. To place the plant in cold shutdown only for local leak rate testing purposes would unnecessarily interrupt the Restart test sequence and Once Through Steam Generator test run. It would also subject the plant to an unnecessary thermal cycle whereas a planned outage for eddy current testing will occur within a reasonably short time after the original required date.

Environmental Impacts of the Proposed Action: Although TMI–1 has not operated since March 1979, the licensee has conducted four series of local leak rate testing during the 6½ year span. The results of the last local leak rate testing were reported to the Commission on July 19, 1984, and show that the actual total leakage was less than one third the total allowed leakage. The proposed schedular exemption would add a maximum of six months to the testing schedule. Given the historical data available, it is reasonable to predict that the total leakage will not exceed Technical Specification limits with the six-month delay.

In addition, the schedular exemption would not change the types or allow an increase in the amounts of any effluents that may be released offsite. Since there is no increase in the allowed leakage limitations and no predictable leakage in excess of allowed values, the exemption would not result in an increase in individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction

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permit and operating license) for Three Mile Island, Unit 1.

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the letter requesting the exemption dated October 22, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 21st day of January 1986.

John F. Stolz,

Director, PWR Project Directorate #6, Division of PWR Licensing-B

[FR Doc. 86-2353 Filed 2-13-86; 8:45 am]

BILLING CODE 759-01-M

[Docket No. 50-005]

Renewal of Facility Operating License; Pennsylvania State University

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 23 to Facility Operating License No. R-2 for Pennsylvania State University (the licensee) which renews the license for operation of the training and research reactor located in University Park, Pennsylvania. The facility is a non-power reactor that has been operating at power levels not in excess of one megawatt (thermal) and in the pulse mode. The renewed Operating License No. R-2 will expire twenty years from its date of issuance.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on April 24, 1985 at 50 FR 16180. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a Safety Evaluation Report (NUREG-1158) for the renewal of Facility Operating License No. R-2 and has, based on that report, concluded that the facility can continue to be operated by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment, dated December, 1985, for the renewal of Facility Operating License No. R-2 and has concluded that this action will not have a significant effect on the quality of the human environment. The Notice of Finding of No Significant Environmental Impact was published in the **Federal Register** on January 6, 1986 at 51 FR 1589.

For further details with respect to this action, see (1) the application for amendment dated March 1, 1985, as supplemented, (2) the Finding of No Significant Environmental Impact, (3) Amendment No. 23 to Operating License R-2, (4) the Commission's related Safety Evaluation Report (NUREG-1158), and (5) the Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. Copies of NUREG-1158 may be purchased by calling (202) 275-2060 or (202) 275-2171 or by writing the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982.

Dated at Bethesda, Maryland, this 27th day of January 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization & Special Projects Directorate, Division of PWR Licensing-B.

[FR Doc. 86-2351 Filed 2-3-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Class 9 Accidents (Severe Accident Phenomena); Meeting

The ACRS Subcommittee on Class 9 Accidents (Severe Accident Phenomena) will hold a meeting on February 19, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 19, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will review the NRR implementation plan for the Severe Accident Policy.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 30, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-2430 Filed 2-3-86; 8:45 am]

BILLING CODE 7590-01-M

Issuance and Availability; Draft NUREG-1109, "Regulatory Analysis for the Resolution of Unresolved Safety Issue A-44, Station Blackout"

The U.S. Nuclear Regulatory Commission (NRC) staff has issued NUREG-1109, "Regulatory Analysis for the Resolution of Unresolved Safety Issue A-44, Station Blackout" in draft form. NUREG-1109 provides the value-impact analysis related to the proposed resolution of Unresolved Safety Issue (USI) A-44, "Station Blackout." This

issue was identified as an Unresolved Safety Issue in the 1978 Annual Report, pursuant to section 210 of the Energy Reorganization Act of 1974.

Station Blackout is the complete loss of alternating current (AC) electric power in a nuclear power plant. Because many safety systems required for reactor core decay heat removal and containment heat removal depend on AC power, the consequences of a station blackout could be severe. NUREG-1109 summarizes the proposed technical resolution and provides an assessment of the benefits and costs of the proposed resolution. The resolution itself consists of a proposed rule that would require nuclear power plants to be able to cope with a station blackout, and an associated draft regulatory guide that provides guidance on an acceptable means to comply with the proposed rule. The proposed rule and draft regulatory guide are being issued for public comment at about the same time as this draft NUREG. The staff and the Commission are seeking comments from the public on these three documents before a final resolution of USI A-44 is developed. The staff recognizes the benefits that can be achieved by public review and comment, especially when the comments are accompanied by supporting data.

Comments are being solicited from interested organizations, groups and individuals. The staff will evaluate the comments, received, and address them, as appropriate, in the final resolution of USI A-44.

Copies of Draft NUREG-1109 have been sent directly to affected licensees and applicants. Free single copies of the Draft NUREG-1109 are available as long as supplies last and may be requested by writing the Public Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of NUREG-1109 is also available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments on NUREG-1109 should be forwarded in writing to Mr. Warren Minners, Division of Safety Review and Oversight, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or comments can be included in response to the proposed rule on station blackout that will be issued soon. Comments should be received within 90 days after the proposed rule is published. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

For further information contact Alan Rubin, Reactor Safety Issues Branch, Division of Safety Review & Oversight, US Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-8303.

Dated at Bethesda Maryland, this 29th day of January, 1986.

For the Nuclear Regulatory Commission.

Warren Minners,

Chief, Reactor Safety Issues Branch, Division of Safety Review & Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 86-2450 Filed 2-3-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing; Duke Power Co.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-9 and Facility Operating License No. NPF-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

50 FR 30548 published July 26, 1985, discussed proposed amendments requested in a May 9, 1985, letter which would change the Technical Specifications to allow operation at up to 100% rated power without the Upper Head Injection (UHI) System and provide for its removal. That Notice stated that the proposed Technical Specifications would also increase the operable range of the nitrogen gas cover-pressure of the ECCS cold leg injection accumulators and that in support in the proposed amendments the licensee would provide appropriate reanalyses of accidents to demonstrate that the change would not result in exceeding operating limits established by 10 CFR 50.46, or other Commission regulations.

The reanalyses have been provided by licensee's letter dated October 2, 1985, forwarding a document entitled "McGuire Nuclear Station, Safety Analysis for UHI Elimination," dated September 1985. One of the assumptions used in the reanalyses was the borated water volume contained in each ECCS cold leg accumulator. The reanalyses assumed a nominal volume of 950 ft^3. Accordingly, by letter dated October 14, 1985, the licensee has proposed an additional change to the Technical Specification on cold leg accumulator volume to be consistent with the reanalyses assumption. Specification 3.5.1.1b would be revised to reflect that, with the UHI removed, the contained water volume for the accumulator to be declared operable shall range between 6870 and 7342 gallons (the existing Specification requires a range between 8022 and 8256 gallons). The reduction in nominal water level and the increase in nominal gas cover pressure would also be accompanied by appropriate modifications to instrumentation, alarm functions and procedures; however, these accompanying modifications do not require changes to the Technical Specifications.

In addition to the nitrogen gas cover pressure and water volume changes, flow restricting orifices in the discharge piping of the cold leg accumulator would be replaced (or rebored) concurrent with UHI removal to achieve injection flow resistances that would be within tolerance bands assumed in the ECCS analysis of October 2, 1985. However, this change to the discharge pipe does not involve a change to the Technical Specifications.

50 FR 30548 noted that the proposed Technical Specifications would be changed in a manner which would allow existing specification requirements to remain in effect until implementation of plant modifications (i.e., physical removal of UHI system) during refueling outages. By letters dated December 17, 1985, and January 14, 1986, the licensee supplemented the proposed changes to provide for an additional mode of operation prior to physical removal of the UHI system; namely operation with the UHI still installed but functionally disabled by closing and gagging the two UHI isolation valves in each UHI injection pipe. Therefore, the proposed Technical Specifications would be changed in a manner which would allow either or both McGuire units to operate with its UHI system either (1) fully operable, (2) isolated, or (3) removed.

These changes would be accomplished generally by repetition and some renumbering of existing Specifications 3/4.5.1.1 (ECCS Accumulators) and 3/4.5.1.2 (UHI System), with appropriate changes to the APPLICABILITY section. Apart from such administrative changes, technical requirements for the existing applicability mode (i.e., UHI fully operable) would not be changed by the proposed amendments. Like the case for operation after UHI removal, operation with the UHI system isolated would apply only after completion of the modifications to the ECCS cold leg accumulators (i.e., gas pressure and water volume changes) and their discharge piping (i.e., orifice

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modification), consistent with assumptions used in the licensee's safety analyses. The proposed changes for operation with the UHI system isolated would add a new Limiting Condition for Operation (3.5.1.4) requiring that each UHI system be isolated with the isolation valves closed. The action statement for new LCO 3.5.1.4 would state that with the isolation valve(s) open, the operator is either to immediately close the isolation valve(s) or have the unit in hot standby within 6 hours and reduce pressurizer pressure to less than 1900 psig within the next 12 hours. The proposed changes for operation with the UHI system isolated would also add a new surveillance requirement (4.5.1.4) such that each UHI system would be demonstrated isolated at least once per 12 hours by verifying that each accumulator isolation valve is closed. The proposed changes for operation with the UHI system removed would provide for deletion of (1) existing Specification 3/4.5.1.2 (i.e., proposed renumbered Specification 3/4.5.1.3) as it would be modified to reflect applicability for existing requirements (i.e., UHI operability required, no modification to cold leg accumulators and their discharge paths), and (2) new Specification 3/4.5.1.4 discussed above.

The proposed amendments would also supplement Bases 3/4.5.1 to acknowledge the supporting analyses in licensee's letter of October 2, 1985, and to discuss the applicability of these specifications in terms of the three proposed UHI modes (i.e., operable, isolated, removed).

By letter dated December 23, 1985, the licensee responded to the Commission's request for additional information regarding radiological aspects of UHI removal and related radiological impacts on plant operations. The additional information further supports the licensee's proposed amendments, and does not change the specific changes requested not the bases thereto.

50 FR 30548 stated that the licensee's letter of May 9, 1985, had also proposed amendments to delete technical specifications requiring UHI system leakage verification and to modify technical specifications to reflect deletion of UHI related containment penetrations and associated conductor overcurrent protection devices, containment isolation valves, and system piping snubbers. These changes, which were proposed in the context of UHI system removal, are not changed by the licensee's subsequent requests and would continue to apply only after removal of related components and piping and modifications to the cold leg accumulators and their discharge piping.

The licensee notes in the December 17, 1985, letter that with the modifications to the cold leg accumulators and their discharge paths, the plant configuration with an isolated UHI system would be functionally the same as described in the analyses by letter of October 2, 1985, for the removal of the UHI system. Therefore, those prior analyses for UHI removal are indicated by the licensee to bound operation with the UHI system isolated, and to demonstrate compliance with the Commission's regulations, including 10 CFR 50.46.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, (the Act) and the Commission's regulations.

By March 5, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Such request should be limited to matters raised by those aspects of the proposed amendments which are not the subject of the **Federal Register** Notice issued July 26, 1985 (50 FR 30548)—namely those changes which (1) adjust the Cold Leg Accumulator volume to be consistent with that assumed in the applicant's safety analysis, and (2) allow McGuire Unit 1 and/or Unit 2 to operate with the UHI system isolated. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reason why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification 3737 and the following message addressed to B. J. Youngblood: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated May 9, 1985, its supplement dated October 14, 1985, supporting reanalyses submitted by letter dated October 2, 1985, and the supplements dated December 17, 1985, and January 14, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated at Bethesda, Maryland, this 29th day of January 1986.

For the Nuclear Regulatory Commission.

Darl Hood,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing—A.

[FR Doc. 86-2448 Filed 2-3-86; 8:45 am]

BILLING CODE 7590-01-M

Issuance of Amendment to Facility Operating License; Georgia Power Co., et al.

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 121 to Facility Operating License No. DPR-57, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority for Georgia, City of Dalton, Georgia (the licensees), which revised the Technical Specifications (TSs) for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1 (the facility) located in Appling County, Georgia. The amendment is effective as of the date of its issuance and shall be implemented within 30 days.

This amendment revises the TSs for Hatch Unit 1 to support the installation of the analog transmitter trip system (ATTS). It includes changes to the surveillance frequencies and trip setpoints associated with the ATTS equipment.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on August 26, 1985 (50 FR 34559). No request for a hearing or petition for leave to intervene was filed following this notice.

Also, in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact which was published in the **Federal Register** on January 9, 1986 (51 FR 1051).

For further details with respect to this action, see (1) the application for amendment dated July 24, 1985, (2) Amendment No. 121 to License No. DPR-57, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 17th day of January 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-2449 Filed 2-3-86; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Public Information Collection Request Submitted For OMB Review

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of information request submitted for OMB review.

SUMMARY: Under the provisions of the Papework Reduction Act and its implementing regulations, agencies are required to submit information collection requests to the Office of Management and Budget for Review and approval, and to publish a notice in the **Federal Register** notifying the public of the submission. The effect of this notice is to advise the public that the Pension Benefit Guaranty Corporation has requested OMB approval of revisions to PBGC Forms 444, 445, and 446, which forms are used by plan administrators to file for pension plan termination under the optional Enrolled Actuary Certification program. These revisions are needed to clarify the information requirements that are prerequisite to issuance by the PBGC of a notice of sufficiency under that program.

ADDRESSES: All written comments should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The information request will be available for public inspection, and copying, at the PBGC Communications and Public Affairs Department, Suite 7100, 202 K Street NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, 2020 K Street NW., Washington, DC 20006; telephone 202-956-5050 (202-956-5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget with regulatory responsibility over these burdens, and that agency has promulgated rules for obtaining clearance of information requests.

Pursuant to those rules, OMB has previously approved the collection of information by the Pension Benefit Guaranty Corporation from plan administrators electing to terminate a pension plan using the Enrolled Actuary Certification program set forth in 29 CFR Part 2617. OMB approved the use of PBGC Forms 444, 445, and 446 for that purpose through 4/30/88 (OMB No. 1212-0018). The PBGC now is seeking approval by OMB of revisions to PBGC Forms 444, 445, and 446 that reflect comments and suggestions received during the first six months' experience under the Enrolled Actuary Certification program. The proposed revisions are needed to provide more detailed instructions for complying with the information requirements that are prerequisite to the PBGC's issuance of a

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notice of sufficiency to the terminating pension plan.

Issued at Washington, DC this 29th day of January 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-2378 Filed 2-3-86; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 29, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Ames Department Stores, Inc.
Common Stock, $0.50 Par Value (File No. 7-8781)
Anheuser-Bush Companies, Inc.
$3.60 Redeemable Convertible Preferred Stock Series A (File No. 7-8782)
Baxter Travenol Laboratories, Inc.
7% Cumulative Convertible Exchangeable Preferred Series A and B (File No. 7-8783)
Data-Design Laboratories
Common Stock, $0.33⅓ Par Value (File No. 7-8783)
Enserch Exploration Partners, Ltd.
Depository Units (File No. 7-8784)
Getty Petroleum Corporation
Common Stock, $0.10 Par Value (File No. 7-8785)
IP Timberlands, Ltd.
Class A Depository Units (File No. 7-8786)
Manor Care, Inc.
Common Stock, $0.10 Par Value (File No. 7-8787)
Pansophic Systems, Inc.
Common Stock, No Par Value (File No. 7-8788)
The Plessey Company plc
American Depository Receipts (File No. 7-8789)
Pope & Talbor, Inc.
Common Stock, $2.00 Par Value (File No. 7-8790)
Primark Corporation
Common Stock, No Par Value (File No. 7-8791)
Revco D.S., Incorporated
Common Stock, $1.00 Par Value (File No. 7-8792)
Safety-Kleen Corporation
Common Stock, $0.10 Par Value (File No. 7-8793)
The Travelers Corporation
$4.16 Series A Convertible Preferred Stock (File No. 7-8794)
Triangle Pacific Corporation
Common Stock, $0.50 Par Value (File No. 7-8795)
United Jersey Banks
Common Stock, $1.66⅔ Par Value (File No. 7-8796)
West Point—Pepperell, Inc.
Common Stock, $5.00 Par Value (File No. 7-8797)
Weyerhaeuser Company
$2.80 Cumulative Convertible Preferred (File No. 7-8798)
Weyerhaeuser Company
$4.50 Cumulative Convertible A Preferred (File No. 7-8799)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 19, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2374 Filed 2-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24007; 70-6975]

Cedar Coal Co. et al.; Proposed Transactions Regarding Leased Equipment

January 29, 1986.

Cedar Coal Company ("Cedar"), Conesville Coal Preparation Company ("CCPC"), Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company ("SOCCo"), Windsor Power House Coal Company ("Windsor"), and Simco, Inc. ("Simco") (collectively, the "Applicants"), c/o American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, which are indirect subsidiaries of American Electric Power Company, Inc., a registered holding company, have filed with this Commission a further post-effective amendment to the application in this proceeding pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Pursuant to orders in this proceeding dated May 25, 1984, May 22, 1985, and December 31, 1985 (HCAR Nos. 23313, 23701, and 23975), all of the Applicants have entered into substantially identical Master Leasing Agreements with BLC Corporation ("BLC"), an affiliate of Bankers Leasing Corporation of San Mateo, California, under which such companies are currently leasing new and used office furniture and equipment, communications equipment, automotive equipment, and certain mining equipment. The Applicants have been authorized to lease up to an aggregate of $30.1 million of mining equipment under these leases.

Applicants, except for Cedar, now propose to lease certain additional equipment for use in surface and underground mining pursuant to the leases with BLC. The additional equipment is estimated to have an aggregate acquisition cost not exceeding $23,000,000. Rental payments will be paid monthly in an amount sufficient to amortize the Acquisition Cost of the equipment in equal amounts on a straight-line basis plus a monthly interest factor on the unamortized Acquisition Cost, as described in the application. The Amortization Period will be up to 10 years, depending upon the particular equipment. After the expiration of the Amortization Period of any equipment, the lessee may purchase such equipment for $1.00.

The post-effective amendment to the application and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as now amended or as it may be further amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2375 Filed 2-3-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24006; 70-6971]

New England Energy Inc.; Proposal To Extend Period In Which to Contractually Arrange for Exchange of Interest Payment Obligations Between Parties and Increase Principal Amount of Contractual Arrangements

January 29, 1986.

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a fuel supply subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to the application-declaration in this proceeding with this Commission pursuant to sections 6(a), 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

By order dated August 16, 1984 (HCAR No. 23397), NEEI was authorized to enter into interest payment exchange contracts ("Swap Agreement(s)"), with one or more parties ("Counterparty"), on or before December 31, 1985, covering a total principal amount of up to $150 million for a term or terms ranging between three and seven years. As of December 31, 1985, NEEI had entered into a five-year Swap Agreement with Harris Trust and Savings Bank covering a principal amount of $25,000,000. NEEI now seeks authorization to enter into additional Swap Agreements on or before December 31, 1987 and requests that the total principal amount that may be covered by Swap Agreements in effect at any one time be increased to $200 million.

In no event will the fixed rate of interest paid by NEEI exceed by more than 1.5% per annum the yield, on direct obligations of the U.S. Government at the time of the Swap Agreement(s) with maturities comparable to the term of such Swap Agreement(s) plus any intermediary fee required and any amounts required in excess of what NEEI receives from the Counterparty to meet its obligations under the New Bank Loan.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-2376 Filed 2-3-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2227]

Florida; Declaration of Disaster Loan Area

The County of Monroe in the State of Florida constitutes a disaster loan area because of damage from high tides and winds from Hurricane Kate on November 18 and 19, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on March 28, 1986, and for economic injury until September 2, 1986, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring Street SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222706 for physical damage and for economic injury the number is 637500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 27, 1986.

Robert A. Trunbull,

Acting Administrator.

[FR Doc. 86-2349 Filed 2-3-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Agreements Filed During the Week Ending January 24, 1986

Answers may be filed within 21 days from the date of filing.

Date filed: January 21, 1986; Docket No. 43746 R-1 to R-24; parties: Members of International Air Transport Association; subject; North Atlantic-Middle East Fares; proposed effective date: April 1, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-2425 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43687]

Denver-London Route Proceeding; Hearing

Notice is hereby given that a hearing in this proceeding is assigned to be held commencing April 2, 1986, at 9:30 a.m. (local time), in Room 5332, Nassif Bldg., 400 7th Street, SW., Washington, DC, before the undersigned Chief Administrative Law Judge.

Dated at Washington, DC, January 29, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-2424 Filed 2-3-86; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB January 9, 1986, to January 27, 1986

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period January 9, 1986, to January 27, 1986 to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson,

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Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, DC 20590, telephone (202) 426–1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from January 9, 1986—January 27, 1986.

DOT No: 2685
OMB No: 2130–0515
BY: Federal Railroad Administration
Title: Hours of Service of Railroad Employees
Form(s): None
Frequency: Recordkeeping
Respondents: Railroads

Need/Use: the Federal Railroad Administration utilizes this information to assure compliance with the Hours of Service Act, to serve as a deterrent to violations, and to document violations for prosecution.

DOT No: 2686
OMB No: 2125–0514
By: Federal Highway Administration
Title: Develop and Submit Utility Accommodation Policies
Form(s): None
Frequency: 3 to 5 year frequency, as needed
Respondents: State highway agencies

Need/Use: To fulfill FHWA's statutory requirements by requiring State Highway agencies to submit to FHWA a utility accommodation policy in the use of highway rights-of-way on Federal-aid highway projects for review and approval.

DOT No: 2687
OMB No: 2130–0516
By: Federal Railroad Administration
Title: Remotely Controlled Railroad Switch Operation Log
Form(s): None
Frequency: Recordkeeping
Respondents: Railroads

Need/Use: The information is for use by operators of remotely controlled switches as a record of protection provided under blue signal protection of workmen and by FRA inspectors in assuring compliance with regulations.

DOT No: 2688
OMB No: 2115–0135
By: United States Coast Guard
Title: Display of Plans
Form(s): None
Frequency: Recordkeeping
Respondents: Owners/operators of certain categories of commercial vessels

Need/Use: This recordkeeping requirement is a safety aid. Vessel owners/operators are required to have these plans available in case of shipboard fire, flooding or other emergencies. The information contained on the plans will be used by shipboard personnel during routine duties, such as maintenance, as well as during emergency conditions. If non-shipboard personnel assist, the plans will familiarize them with the vessel and its subsystems. Coast Guard marine inspectors check the plans periodically to ensure that all information is correct and current.

DOT No: 2689
OMB No: 2138–0006
By: Research and Special Programs Administration
Title: Part 249—Preservation of Air Carrier Records
Form(s): None
Frequency: None (Recordkeeping requirement)—must retain records for periods of 30 days to 3 years)
Respondents: Air carriers holding section 401 or 418 certificates and charter operators

Need/Use: Prescribes record retention periods to assure availability of records for audit and enforcement purposes. Retention periods are prescribed only for records that support specific regulatory needs.

DOT No: 2691
OMB No: 2130–0502
By: Federal Railroad Administration
Title: Filing of Dedicated Cars
Form(s): None
Frequency: On Occasion
Respondents: Railroads

Need/Use: FRA uses the information to determine if the equipment is safe to operate and if the operation qualifies for dedicated service.

DOT No: 2692
OMB No: 2115–0140
By: United States Coast Guard
Title: Certificate of Completion of First Aid and CPR Training Courses
Form(s): None
Frequency: On Occasion
Respondents: Applicants for original merchant mariner's license

Need/Use: The Coast Guard needs this information to assure that applicants possess a minimum level of qualifications in first aid and cardiopulmonary resuscitation. The information is used in conjunction with the officer license examination.

DOT No: 2693
OMB No: 2127–0050
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 574, Tire Identification and Recordkeeping
Form(s): None
Frequency: On Occasion—recordkeeping
Respondents: Businesses—Small businesses

Need/Use: This regulation requires the tire manufacturers to collect and record the names and addresses of the first purchasers of new tires, so that the manufacturers can directly notify those persons if the tires are recalled.

DOT No: 2694
OMB No: 2106–XXXX
By: OST A
Title: Part 326 Procedures for Bumping Subsidized Air Carriers from Eligible Points
Form(s): None
Frequency: On Occasion
Respondents: Businesses

Need/Use: Part 326 sets procedures under which an airline receiving subsidy for serving a community may be replaced by another carrier offering to provide better service or service at a lower subsidy cost. These procedures

are needed to implement sections 419(a) and (b)(8) of the Federal Aviation Act.

DOT No: 2595
OMB No: 2106–XXXX
By: OST A
Title: Part 297 Foreign Air Freight Forwarder and Foreign Cooperative Shippers Associations
Form(s): Form 297A
Frequency: On Occasion
Respondents: Businesses

Need/Use: CAB Form 297A is a simplified application form for foreign indirect cargo carriers that provides basic information (name, address, phone, applicant's country of citizenship and percent ownership of person's owning ten percent or more of the applicant's stock). It relieves them from certain provisions of the Act and provides for simplified reporting.

DOT No: 2596
OMB No: 2106–XXXX
By: OST A
Title: Part 324 Procedures for Compensating Air Carriers for Losses
Form(s): None
Frequency: On Occasion
Respondents: Businesses

Need/Use: Part 324 sets the procedures for compensating an air carrier for financial losses incurred for complying with a Board order to continue to provide essential air service to a community under section 419(a)(6) of the Airline Deregulation Act of 1978 (Pub. L. 95–504).

Issued in Washington, DC on January 29, 1986.

John E. Turner,
Director of Information Systems and Telecommunications.

[FR Doc. 86–2423 Filed 2–3–86; 8:45 am]
BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Performance Review Board

AGENCY: Treasury Department.
ACTION: Notice of Members of Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the composite PRB for the Savings Bonds Division and the Bureaus of Engraving and Printing, Mint, Public Debt, and the Financial Management Service.

FOR FURTHER INFORMATION CONTACT: Peter H. Daly, Deputy Director, Bureau of Engraving and Printing, Room 112M, 14th and C Streets SW., Washington, DC 20228; Telephone: (202) 447–9412.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4) and the Civil Service Reform Act of 1978, the members of the Senior Executive Service Performance Review Board for the Savings Bonds Division and the Bureaus of Engraving and Printing, Mint, Public Debt, and the Financial Management Service are listed below. This Board reviews the performance of Senior Executives below the level of bureau head and principal deputy in the five bureaus, except for the Assistant Commissioner (Comptroller) at the Bureau of Financial Management Service. At least three voting members constitute a quorum.

Bureau	Primary	Alternate
E&P	Peter H. Daly, Deputy Director.	Joseph M. DeBoss, Jr., Assistant Director (Operations).
SB	Vacant, Executive Director.	Edward J. Guss, Deputy Executive Director.
Mint	Eugene H. Essner, Deputy Director.	Dennis J. Fischer, Associate Director for Policy and Management.
PD	Richard T. Miller, Assistant Commissioner (Automated Information Systems).	Kenneth W. Platts, Assistant Commissioner (Administration).
FMS	Michael O. Serlin, Assistant Commissioner, Headquarters Operations.	Bland Brockenborough, Assistant Commissioner, Field Operations.

This notice does not meet the Department's criteria for significant regulations.

Dated: January 29, 1986.

Peter H. Daly,
Deputy Director, Bureau of Engraving and Printing, PRB Chairman, 1986.

[FR Doc. 86–2394 Filed 2–3–86; 8:45 am]
BILLING CODE 4910–34–M

VOL 51 ISS 23 FE 4 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 23
Tuesday, February 4, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 7, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-2475 Filed 1-31-86; 10:39 am]
BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 14, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-2476 Filed 1-31-86; 10:39 am]
BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., February 21, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-2477 Filed 1-31-86; 10:39 am]
BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., February 25, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 5th Floor Conference Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Quarterly Objectives—Third Quarter, FY 86.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-2478 Filed 1-31-86; 10:39 am]
BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11.00 a.m., February 25, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Quarterly Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-2479 Filed 1-31-86; 10:39 am]
BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11.00 a.m., February 28, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance briefing.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-2480 Filed 1-31-86; 10:39 am]
BILLING CODE 6351-01-M

7

UNITED STATES INSTITUTE OF PEACE

Background

The United States Institute of Peace was created by Pub. L. 98-525 signed on October 19, 1984, and a majority of the Institute's Board of Directors was recently confirmed by the Senate. The purpose of the law is to establish an independent, nonprofit, national institute to serve the people and the Government through the widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world.

The Institute is established as an independent nonprofit corporation and may establish, under the laws of the District of Columbia, a legal entity capable of receiving, holding, and investing public funds for the purposes described in the enabling legislation.

The powers of the Institute are vested in a Board of Directors consisting of fifteen voting members as follows:

1. The Secretary of State (or the Secretary's designee)
2. The Secretary of Defense (or the Secretary's designee)
3. The Director of the Arms Control and Disarmament Agency (or the Director's designee)
4. The President of the National Defense University (or the vice president of the University, if designated by the president)
5. Eleven individuals appointed by the President, by and with the advice and consent of the Senate.

This notice announces the first meeting of the Board of Directors of the United States Institute of Peace to be held in Washington, DC.

TIME:

8:30am-5:00pm—February 25, 1986
8:30am-5:00pm—February 26, 1986

PLACE:

February 25, 1986—Dirksen Senate Office Building, Room 342
February 26, 1986—Russell Senate Office Building, Room 188

STATUS: Open meeting (portions of the meeting may be closed by majority vote of the members to discuss matters exempted from public disclosure pursuant to subsection (c) of section 552b of title 5, United States Code)

AGENDA:

February 25, 1985
Swearing in of Director
Hearings on goals and work of the Institute with members of Congress and the Executive Branch
Administrative matters
Subcommittee assignments and goals
February 26, 1986
Subcommittee assignments and goals
Administrative matters
General discussion

CONTACT: Donna Ganoe, Telephone: (804) 924-7441

Dated: January 27, 1986.

John Norton Moore,
Chairman of the Board of Directors, United States Institute of Peace.
[FR Doc. 86-2481 Filed 1-31-86; 11:46 am]
BILLING CODE 6820-PA-M

federal register

Tuesday
February 4, 1986

Part II

Environmental Protection Agency

40 CFR Part 501
State Sewage Sludge Management Program Regulations; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 501

[FR 2825-1]

State Sewage Sludge Management Program Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a rule which requires States to develop programs to assure that the use and disposal of sewage sludge complies with Federal sludge use and disposal criteria. The proposed rule provides the procedural requirements for submission, review, approval, EPA oversight, and, when warranted, withdrawal of approval of State sludge management programs. Specific technical criteria for use and disposal of sewage sludge are being developed and will be proposed in 1986. This regulatory program is designed to implement the requirements of section 405 of the Clean Water Act (CWA) and assure that Federal criteria for sewage sludge use and disposal are met.

In order to obtain EPA approval of its sludge management program, a State must demonstrate its capability to ensure compliance with Federal regulations for sewage sludge use and disposal practices through individual project review and oversight; conduct compliance monitoring activities sufficient to verify the reports submitted by regulated users and disposers of sewage sludge; and take appropriate enforcement action when necessary. States with approved programs are required to submit quarterly reports which summarize substantial non-compliance by Class I facilities (defined as those required to develop pretreament programs) and annual reports to EPA which update their inventories of sludge management facilities, summarize the volume of sludge being managed of by various methods, and provide additional information on non-compliance.

DATES: Comments must be received on or before May 5, 1986.

ADDRESSES: Comments should be addressed to the person listed below. The public docket for this proposed rule is located in the EPA Library's Public Information Reference Unit; Room 2904; 401 M Street SW., Washington DC, and is available for viewing from 8:30 AM to 4:00 PM, Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Charles E. Gross, Office of Municipal Pollution Control, Municipal Facilities Division (WH-595), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-2333.

SUPPLEMENTARY INFORMATION:

I. Background
II. General Management Approach
A. State Programs for Sewage Sludge Management
B. Sewage Sludge Technical Regulations
C. Enforcement of Federal Sludge Criteria
III. Discussion of Proposed Rule
A. Principal Requirements
B. Incentives for States to Develop Sludge Management Programs
C. Funding for Developing State Programs
D. Phased Approval of State Programs
E. Flexibility and Alternative Program Approval Process
F. Focus on POTWs Required to Develop Pretreatment Programs
G. Ocean Dumping
H. Indian Lands
I. Program Coordination
J. Supplemental Guidance
IV. Specific Comments Solicited
A. Coverage of Septage and Portable Toilet Pumpings
B. Coverage of Privately Owned Treatment Works Sewage Sludge
C. Coverage of Grit, Scum, Screenings, and Incinerator Ash
D. Civil Penalties to be Imposed by States
V. Regulatory Development Process
A. Executive Order 12291
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
List of Subjects in 40 CFR Part 501

I. Background

Implementation of the Clean Water Act (CWA) has resulted in surface water quality improvement and the generation of large quantities of residual sewage sludge. This residue of wastewater treatment must be used or disposed of in a manner that protects public health and the environment. Current estimates are that about 7 million dry tons of sewage sludge are generated each year by domestic sewage treatment works. This figure is expected to double by the year 2000 as more sewage treatment facilities are upgraded and go into operation.

Legislation, such as the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), the Toxic Substances Control Act (TSCA) and the Marine Protection, Research and Sanctuaries Act (MPRSA) has resulted in a variety of EPA regulations that affect sludge use and disposal practices. Some of these regulations were not developed specifically for sewage sludge. In addition, each of these statutes focuses on different environmental media and thus addresses different aspects of sludge management. Thus, regulations issued under these various authorities have not been developed in an integrated manner and thus may result in inconsistent levels of protection and inconsistent methods of implementing and enforcing sludge use and disposal criteria.

Section 405(d) of the CWA was amended in 1977 to require EPA to develop regulations providing guidelines which "identify uses for sludge, including disposal; specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs); and identify concentrations of pollutants which interfere with each such use or disposal." EPA has issued regulations in 40 CFR Part 257 addressing the land disposal of non-hazardous solid wastes using the section 405(d) authority as well as authority provided by RCRA Subtitle D. Additional regulations under the authority of section 405(d), are now being developed and will be later proposed in 1986.

Section 405(d) of the CWA does not specify an implementation mechanism such as a permit program or other regulatory process to assure that users and disposers of sewage sludge comply with Federal requirements. However, under the authority of sections 405(e) and 309 of the CWA, EPA may take direct enforcement against violations of the guidelines issued under section 405(d).

EPA established an Intra-Agency Sludge Task Force (STF) in early 1982 to study and make recommendations for future Agency actions in the sludge management area. The STF, with representatives from EPA's Offices of Water, Air and Solid Waste, approached sludge management from an inter-media perspective. The STF developed the Agency "Policy on Municipal Sludge Management" (49 FR 24358; June 12, 1984) which establishes the institutional framework for the regulations proposed here today. That policy states, in part:

"The U.S. Environmental Protection Agency (EPA) will actively promote those municipal sludge management practices that provide for the beneficial use of sludge while maintaining or improving environmental quality and protecting public health. To implement this policy, EPA will continue to issue regulations that protect public health and other environmental values. The Agency will use all available authorities to ensure that States establish and maintain programs to ensure that local governments utilize sludge management techniques that are consistent with Federal and State regulations and guidelines. Local communities will remain responsible for choosing among alternative programs, for planning, constructing and operating facilities to meet their needs, and for ensuring the continuing availability of adequate and acceptable disposal or use capacity."

The STF also developed and published the document entitled "Environmental Regulations and Technology; Use and Disposal of Municipal Wastewater Sludge" (September 1984, EPA 625/10-84-003). This document contains a description of the various sludge management practices, factors to be given into account when implementing them, and references to more detailed design information. (Copies of this guidance document are available from the EPA Center for Environmental Research Information, 26 West St. Clair Street, Cincinnati, Ohio 45268.)

II. General Management Approach

A. State Programs for Sewage Sludge Management

The STF recommended that EPA forge a State-oriented implementation mechanism from existing authorities. The STF concluded that the best approach would be to require each State to prepare a program to implement sludge management criteria which would be reviewed for sufficiency by EPA. The primary authority for such a requirement is found in section 303(e) of the CWA.

The CWA provides for water quality management planning in section 205(j), 303 and 305(b) of the CWA. The water quality management process described in the Act and the 40 CFR Part 130 Water Quality Planning and Management regulations provides for a consistent national approach for maintaining, improving and protecting water quality while allowing States to implement the most effective individual program.

In accordance with section 303(e), States are required to maintain a continuing planning process which results in water quality management plans designed to correct a number of water quality problems. Section 303(e) of the CWA and 40 CFR Part 130.5 require each State to have a continuing planning process approved by EPA. Section 303(e)(3)(G) requires that such plans include "controls over the disposition of all residual waste from any water treatment processing." (The term "water treatment processing" in section 303(e) includes wastewater treatment plants.) EPA is now proposing to establish a separate program approval process to specifically address sludge management.

Causing each State to integrate and describe its regulatory program will add an element of certainty to State programs and allow them to be understood by the regulated community and the public. This should help ensure that users and disposers of sewage sludge comply with Federal requirements issued under section 405(d) of the CWA and other applicable statutes.

Most States have the legal authority to assure compliance with technical criteria for sludge disposal and use, and some States have developed workable sludge management programs. Many States have adopted the existing Federal criteria, in some cases, going beyond Federal requirements in areas such as distribution and marketing and application of sludge to non-food chain crops. Currently over 27 States use at least parts of the Federal criteria for land disposal (i.e., 40 CFR Part 257) in their regulations and guidelines. These States generate as much as 80 percent of the Nation's sewage sludge. At least 14 States currently use a permitting or equivalent oversight system.

B. Sewage Sludge Technical Regulations

EPA plans to promulgate additional technical regulations for sewage sludge use and disposal under the authority of section 405(d) of the CWA in 40 CFR Part 503. Proposed regulations are currently scheduled to be issued in 1986, with the final regulations to follow in 1987. These regulations will take the form of numerical criteria, best management practices, or other controls and limitations needed to protect the environment and public health. EPA intends that the technical regulations will allow the States to consider site-specific factors such as climate and site conditions when imposing the Federal criteria on individual projects and to develop data to demonstrate alternative means for meeting the technical requirements.

EPA believes that section 405 of the CWA was intended to regulate sludges that derive from publicly owned treatment works (POTWs) or other treatment works that treat primarily domestic sewage. Therefore, neither the Part 501 regulations nor the Part 503 regulations will apply to privately owned treatment works operated in conjunction with industrial manufacturing and processing facilities. Such sludges are, however, regulated by EPA under the authority of the RCRA.

C. Enforcement of Federal Sludge Criteria

EPA would ordinarily except States with EPA approved State sludge management programs to take primary responsibility for enforcement action against any person who violates sludge use and disposal criteria. EPA retains the right, however, to take enforcement action, either alone or in cooperation with a State, against violations of the requirements issued under section 405(d) of the CWA or other applicable statutes.

Subsequent to approval of State sludge management programs, EPA and the State will negotiate a State/Federal enforcement agreement, pursuant to the "Policy Framework on State Federal Enforcement Agreements" (dated June 26, 1984), to address the compliance monitoring, enforcement, recordkeeping and reporting expected from the State, along with the agreed criteria for Federal oversight of State sludge management programs.

If a State lacks an EPA approved program for sludge management under 40 CFR Part 501, EPA will continue exercising its responsibility to assure compliance with the requirements of section 405 and other statutes by taking enforcement actions under section 309 of the CWA or under the authority of other applicable statutes against violations of these requirements.

III. Discussion of Proposed Rule

A. Principal Requirements

EPA is proposing today a rule that requires that States submit to EPA, for review and approval, a description of their existing sludge management programs and plans and schedules for improving them as necessary to meet the requirements of these regulations. The regulations provide the procedural requirements for submitting, approving, revising, and withdrawing approval of State sludge management programs. The regulations require the Governor of the State to identify a lead agency to coordinate State activities in sludge management and to collect and submit the necessary information to EPA for program approval.

States are encouraged to consult with the public as soon as they begin to develop or improve their sludge management programs to meet the requirements of these regulations. These consultations may be in the form of public meetings or individual meetings with specific groups or individuals that would be affected by the States regulatory programs or otherwise known to have an interest in sludge

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management. At least 30 days before submitting its sludge management program to EPA for approval, the State must provide notice of its content and availability and seek comments from the public. Where a State program is likely to affect other nearby States, this notice should also be provided in nearby States. A responsiveness summary (as described in 40 CFR 25.8) of these public participation efforts must be included with the States' submissions for program approval. States are encouraged to appoint citizen advisory panels or select other appropriate mechanisms to provide for public participation in the operation of their sludge management programs.

In order to have its sludge management program approved by EPA, a State must demonstrate its capability to (1) ensure compliance with Federal regulations for sewage sludge disposal and use practices through individual project review and oversight; (2) require users and disposers of sewage sludge to have contingency plans for spills and on-site accidents and submit self-monitoring reports; (3) conduct adequate compliance monitoring activities to verify self-monitoring reports from municipalities and others subject to the State's regulatory program; and (4) take appropriate enforcement action when necessary.

The phrase "individual project review and oversight," is intended to mean that States must have a mechanism for review and approval of sludge use and disposal practices for existing as well as new facilities. Generally, this review and approval should begin prior to facility construction and start-up of operations and involve thorough review and oversight of the sludge management practices employed by municipalities and other generations, users or disposers of sewage sludge; it may or may not include site-specific field-by-field approvals. This proposed rule does not require States to have permit programs to control sewage sludge use and disposal, as a number of other review and oversight mechanisms currently appear to be equally effective. For example, the review and approval of detailed planning documents, such as a Facility Plan developed for construction grant projects, combined with close scrutiny of self-monitoring reports may be sufficient.

The Clean Water Act Amendments passed by the Senate (S 1128) in June 1985 would require sludge use and disposal criteria to be included in some type of permit. If this provision is included in the enacted legislation, the final regulations will include appropriate changes. EPA expects that States would retain authority to choose the appropriate permit mechanism.

Section 501.11(g) provides States with an opportunity to propose processes, procedures, program provisions, and legal authorities differing from those described in §§ 501.15, 501.16, and 501.17 if their program submissions include analyses showing how their processes, procedures, program provisions, and legal authorities adequately protect public health and the environment. This includes an opportunity for a State to show how its mechanisms for facility review and approval ensure compliance with Federal requirements and protect public health and the environment without significant compliance monitoring (see discussion under III.E).

In this proposal, EPA has refrained from specifying the frequency of self-monitoring and reporting that States should require; we believe the States should be given sufficient latitude to allow considerations of project specific conditions in making those determinations. Similarly, we have not specified levels of compliance monitoring and inspections. However, at least annual inspections of Class I facilities are recommended; further suggestions in these areas will be provided in guidance that will supplement these regulations. Monitoring and reporting requirements for users and disposers of sludge will be addressed as part of the effort to develop the technical regulations discussed under III.B above. We intend to include in supplemental guidance, now being prepared, advice on reporting requirements for sludge users and disposers and State compliance monitoring and inspections. See paragraph III.J below.

States with approved programs are required to submit annual reports to EPA which update their inventories of sludge management facilities, summarize the volume of sludge being managed by various methods, and provide information on occasions of non-compliance. In addition, States are required to submit quarterly reports that provide a tubular summary of "substantial" non-compliance by Class I facilities during the previous quarter and the actions the State has taken to bring these facilities into compliance. (Class I facilities are defined as those required to develop pretreatment programs under section 402(6)(B) of the CWA). EPA believes such information is necessary to demonstrate that sludge use and disposal is being controlled in accordance with section 405 of the CWA and to assist any EPA enforcement actions deemed necessary to supplement the States' efforts to control sludge management practices. EPA will issue guidance to clarify what should be considered "substantial" non-compliance and modify it as necessary when the technical regulations are promulgated.

EPA is concerned about the potential expense or difficulty in meeting the reporting requirements that may result from the need to obtain and summarize the requested information that is currently unavailable as well as the cost of developing new data/reporting systems or modifying existing systems. EPA is especially interested in hearing from States that already have developed an information base for their sludge management facilities. Could these States submit the required reports to EPA using existing systems, or would significant modifications be necessary? How much of the information requested is already being collected and readily available to the States? How much would they have to collect to meet EPA's requirements? EPA recognizes that not all program elements are now defined so that State answers to these questions are not absolute. Any views or information which can be provided will be useful. EPA is also seeking comments on methods and formats for submitting this information, especially example recordkeeping and reporting forms.

B. Incentives for States to Develop Sludge Management Programs

EPA believes that several benefits will accure to States which develop sludge management programs as described in these regulations. First, States will have the ability to develop and administer a program tailored to their specific needs. Second, developing a sludge management program will allow the State agencies to become better informed about the sludge use and disposal practices employed in the State and to direct those in need of special assistance to sources of information and assistance. The net result should be better protection of the public health and the environment. Also, developing a coordinated program such as that described in these regulations should promote a more efficient use of available resources by improving communication and avoiding overlapping program functions among the State programs affecting sludge management. The principal long term benefit will be improving public acceptance of sludge use or disposal plans proposed by municipal treatment

authorities. This will help avoid project delays and extra costs.

C. Funding for Developing State Programs

States may use funds they receive under section 205(j) of the CWA or other authorities as determined appropriate to assess their present sludge management programs and develop plans to meet the requirements of these regulations.

In commenting on these proposed rules, States are encouraged to provide estimates of the resources necessary to develop the program submittal and to maintain an on-going program such as that described in the regulation. Work-year estimates should be broken down into their component parts, i.e., data collection, analysis, reporting, and enforcement.

D. Phased Approval of State Programs

The proposed rule provides for phased approval of State sludge management programs so that States can plan for the orderly implementation of additional program elements. However, EPA expects the States to implement a complete program as defined in §§ 501.15 through 501.17 within a period not to exceed five years from the date the regulation is promulgated in final form. The States are given flexibility in determining what constitutes a "program element" as used in this context. A program element may, for example, include all aspects (e.g., planning, design, construction, operation, or compliance monitoring and enforcement) of a particular sludge management practice or a certain aspect (e.g., planning) of all sludge management practices used or expected to be used in the State. Guidance, to be published with the final rules, will contain examples of acceptable program elements. The final rules are expected to specify the minimum program elements that a State must agree to implement immediately upon program approval. States are requested to include suggestions for minimum program elements in their comments on this proposed rule.

In its initial program submission, the State is expected to describe its complete sludge management program and a schedule for implementing the individual program elements. Individual program elements should be generally described in the initial submission; however, the detailed processes, procedures, application forms, permit or approval forms, and reporting forms for program elements to be implemented more than one year after initial program submission need not be included. These documents together with additional statutes, regulations, and Statement of Legal Authority, if applicable, are to be submitted to the Regional Office not less than 90 days before the State intends to implement the program elements.

When a State has implemented all program elements necessary to accomplish the objectives of §§ 501.15, 501.16, and 501.17, it is considered to have an "approved sludge management program." A State that is phasing in implementation of a complete sludge management program according to a plan and schedule approved by the EPA Regional Administrator is considered to have "interim approval" of its sludge management program.

EPA is seeking comments on the proposed approach for allowing phased approval of State Sludge Management Programs as well as suggestions on what minimum elements to require for different types of phase programs.

E. Flexibility and Alternative Program Approval Process

Although the proposed rule sets the goals and objectives for State programs, the States have considerable flexibility in selecting the means of achieving those goals and objectives. EPA does not wish to disrupt existing State programs and organizational structures that are successfully managing sewage sludge. However, EPA encourages States to review all of their environmental programs which may affect sludge management activities, improve communications among them, and eliminate any overlapping functions if necessary. See paragraph III.I below.

Many States may not need to create entirely new programs and organizations to administer sludge management programs. EPA recommends that existing programs be adapted to administer sludge management programs whenever possible. For example, some States may have authority under State law to include criteria for sludge use and disposal in NPDES permits. Other States with strong solid waste programs may prefer to use these programs to meet the requirements of Part 501.

Section 501.11(g) of these regulations allows EPA to approve State programs even if they do not have all of the elements required by §§ 501.15, 501.16, and 501.17. This provision allows approval of State programs which provide an equivalent level of protection of public health and the environment through other means. One example would be a State program which imposes reasonable requirements more stringent than Federal technical criteria governing sludge quality and application rates so that less compliance monitoring and oversight of operations would be necessary to assure protection of public health and the environment. Another example is a State with a strong and effective pretreatment program that ensures that sewage sludges are of a quality that can be used or disposed of with little additional controls. Still another example would be a program in a rural State which requires little, if any, self-monitoring by sludge users and disposers because the State itself closely monitors the operations of the relatively few wastewater treatment works in the State which produce sewage sludge (e.g., almost all of the treatment works are lagoons).

To take advantage of this alternative approval process, a State must still apply for approval of its program, provide all of the information requested in § 501.12 and, in addition, submit an analysis showing how its program provides a level of protection equivalent to that provided by the processes outlined in §§ 501.15, 501.16, and 501.17. EPA is specifically requesting comments on whether this alternative approval process is necessary, considering the degree of flexibility already provided by the proposed rule.

F. Focus on POTWS Required To Develop Pretréatment Programs

Large POTWs or those with significant industrial wastewater contributions are generally required to develop pretreatment programs (see 40 CFR 403.8). EPA believes that these same POTWs (approximately 1,500 POTWs) should be the focus of sludge management programs. Specifically such coverage would include 13 percent of the POTWs in the Nation, covering about 78 percent of the sludge generated, and 87 percent of industrial flows to POTWs. Therefore, the proposed rule requires more detailed reporting on such treatment works—defined as "Class I sludge management facilities" in the regulations.

G. Ocean Dumping

The ocean dumping of material, including sewage sludge, is subject to regulation under the Marine Protection, Research and Sanctuaries Act (MPRSA). Sections 106 (a) and (d) of the MPRSA generally exclude States from regulating ocean dumping or issuing ocean dumping permits. While States are encouraged to work with municipalities or other authorities in developing sludge use or disposal options, including ocean dumping, nothing in these regulations is intended to give States the authority to regulate or issue permits for ocean dumping.

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H. Indian Lands

The Agency recognizes that most States will not be able to demonstrate under § 501.14 adequate legal authority to perform required sludge management program activities on Indian lands within their borders. Accordingly, States will not be required to assert or demonstrate authority for Indian lands which, as defined in § 501.4(h), include all lands within the exterior bounderies of Federal Indian reservations. If a State should choose at its option to assert authority over Indian lands it should include a demonstration of the legal basis for its assertion in its Statement of Legal Authority under § 501.14. If a State does not assert authority over Indian lands or if it fails to demonstate adequate legal authority, EPA may approve the State's plan for other lands in the State.

Because the CWA does not treat tribal governments as counterparts to the States, these regulations do not require tribes to develop programs for sewage sludge management or to obtain EPA approval of tribally-developed programs. However, in the "EPA Policy for Administration of Environmental Programs on Indian Reservations" (dated November 8, 1984), EPA has stated that, consistent with Agency standards and regulations, it "will view tribal governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environment and the health and welfare of the reservation populace." Section 501.19, therefore, provides for the development of an appropriate role for interested tribal governments in carrying out sludge management activities.

I. Program Coordination

EPA encourages States to establish closer coordination among the various environmental protection programs that may affect sludge use and disposal practices, such as public health programs; air quality programs; water quality programs including construction grants, pretreatment, ground water protection, and National Pollution Discharge Elimination System (NPDES) permit systems; and solid waste management programs.

EPA also encourages States to provide technical assistance to local government authorities to help them plan for adequate sludge handling facilities; provide financial assistance to assist local governments in constructing sludge management facilities; and support research and development activities.

J. Supplemental Guidance

EPA is developing guidance to supplement the final regulations when published. This guidance will provide information helpful to the States as they develop or improve programs for submission to EPA under these regulations. Included, among other things, will be "model programs" that could be adopted and submitted, sample recordkeeping and reporting forms, information as to the appropriate frequency of compliance monitoring and on-site inspections, and examples of "substantial" non-compliance. The guidance materials will also provide information and guidance for EPA Regional Office personnel who will be reviewing the State program submissions.

EPA is aware of the completeness of some State programs and intends to consult with the States and other interested parties as this guidance is prepared. EPA requests suggestions from the States and other interested parties as to what specific types of supplemental guidance would be most helpful.

IV. Specific Comments Solicited

During the development of these proposed regulations, EPA identified several areas requiring input from the States and other interested parties before deciding on a course of action. These topics are discussed below:

A. Coverage of Septage and Portable Toilet Pumpings

Management of septage (septic tank pumpings) is currently addressed, along with sewage sludge, in 40 CFR Part 257, the RCRA regulations for land disposal of non-hazardous solid wastes. The CWA does not define sewage sludge. For the purposes of this Part, EPA proposes to define sewage sludge to include septage. Due to the similar properties of and constraints on management practices for sewage sludge and septage, EPA proposes requiring that States submit information to EPA on how they manage septage and portable toilet pumpings when they request approval of their sludge management programs. The Agency wants to know if and how a State or its local subdivisions control septage and portable toilet pumpings. EPA does not intend to require that these wastes be controlled by the same State agency(s) or by the same mechanisms as those for sewage sludge, since it is not unusual for States to use different control mechanisms for septage.

Regarding the regulation's inventory requirements, EPA does not expect the States to inventory all septic tanks and portable toilets. Instead the Agency asks the States to provide an inventory of private firms which pump, haul and/or dispose of septage and wastes from portable toilets and to describe each firm's utilization/disposal practices and facilities.

EPA seeks comments on this approach and whether coverage of portable toilet pumpings should be specifically addressed by State Programs under Part 501 regulations.

B. Coverage of Privately Owned Treatment Works Sewage Sludge

EPA believes that State programs should control sewage sludge generated from all POTWs and other treatment works that treat primarily domestic sewage. This should include control of sewage sludge from private treatment works such as those serving schools, trailer parks, housing subdivisions, recreational facilities, and the domestic wastewater from industrial plants. In addition, EPA believes that States should assure that all persons who use or dispose of sewage sludge, such as private contractors to municipalities, comply with the requirements of section 405(d) of the CWA. EPA seeks comments on whether sewage sludge generated from privately owned treatment works as discussed above or sewage sludge processed by others should be covered by the State programs under the Part 501 regulations.

C. Coverage of Grit, Scum, Screenings and Incinerator Ash

EPA considered including the coverage of grit, scum, screenings and incinerator ash in State sludge management programs. However, the small volumes generated, the general lack of potential exposure to the public, and the different characteristics and limited management practices of these materials versus sewage sludge do not seem to justify their inclusion in State Sludge Management Programs. EPA is seeking comments on whether States should be required to address the management of these materials (similar to requirements for septage) in order to have an approved State Program for Sludge Management under the Part 501 regulations.

D. Civil Penalties to be Imposed by Stotes

EPA proposes that approved State Sludge Management Programs have enforcement authority to assess civil penalties of $5,000 a day for each violation. Amounts less than $5,000 a day may be approved if the Regional Administrator agrees the amount is adequate to deter violations. EPA encourages the use of significant civil penalties under the various environmental protection programs delegated to the States. Since authority to impose penalties of $5,000 a day is required under a delegated NPDES program [40 CFR S 123.27(a)(3)(i)], EPA selected this amount for approvable State Sludge Management Programs.

EPA is seeking comments from States on the dollar amount of civil penalties they can currently impose for violations of sludge use and disposal requirements.

V. Regulatory Development Process

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposed regulation does not directly impose any burden on POTWs and other generators/users/disposers of sewage sludge and does not impose large costs upon State regulatory agencies. It does not satisfy any of the criteria for a major rule as specified in section 1(b) of the Executive Order and as such does not constitute a major rulemaking. This regulation was submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

The information collection requirements (ICRs) in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An information Collection Request document (ICR #1237) has been prepared by EPA and a copy may be obtained from: Control Officer, Information Management Branch; EPA; 401 M St., SW., (PM-223); Washington, DC 20460 or by calling (202) 382-2742. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

The major paperwork burdens of this proposed rule are associated with the development of the program submission described in § 501.12 and the reports described in § 501.18. EPA believes that the reporting requirements will help focus the States' attention on the status of facility compliance with the Part 503 technical criteria and facilitate determining when EPA enforcement actions may be necessary to supplement the States' efforts to control sewage sludge management practices. EPA also believes that States with an approvable program for sludge management would ordinarily have already collected the desired information from municipalities and others that it regulates. The regulations merely require that this information be analyzed, summarized and reported to EPA in quarterly non-compliance reports and annual reports. This information is required to allow EPA to focus its limited enforcement resources to supplement those of the State Programs on serious non-complying facilities and to help EPA assure Congress and other interested groups that municipalities and others covered by section 405 of the CWA are complying with Federal regulations governing sewage sludge use and disposal.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's proposed regulation directly affects only State agencies. Accordingly, I hereby certify pursuant to 5 U.S.C. 605(b), that this amendment will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 501

Grant programs—Environmental protection, Reporting and recordkeeping requirements, Publicly owned treatment works, Sewage disposal, Waste treatment and disposal, Water pollution control.

Dated: January 24, 1986.

Lee Thomas,

Administrator.

Chapter I of Title 40 of the Code of Federal Regulations is proposed to be amended by adding a new Subchapter O consisting of Part 501 to read as follows:

SUPCHAPTER O—SEWAGE SLUDGE
PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

Subpart A—General

Sec.
501.1 Introduction
501.2 Sludge Management Goals
501.3 Purpose, Scope, and Applicability
501.4 Definitions

Subpart B—Development and Submission of State Programs.

501.11 General Requirements
501.12 Contents of State Sludge Management Program Submissions
501.13 Program Description
501.14 Statement of Legal Authority
501.15 Program Provisions and Required Elements
501.16 Requirements for Compliance Evaluation Program
501.17 Requirements for Enforcement Authority
501.18 Program Reporting to EPA
501.19 Indian Lands

Subpart C—Federal Approval, Revision and Oversight of State Programs

501.21 Review and Approval Procedures
501.22 Memorandum of Agreement
501.23 Procedures for Revision and EPA Oversight of State Programs
501.24 Withdrawal of Program Approval and Other Sanctions

Authority: Sections 101(b), 205(j), 303(e), 307(b), 308, 405, 501(a), and 510, Federal Water Pollution Control Act (Pub. L. 92-500), as amended by the Clean Water Act of 1977, 33 U.S.C. 1251(b), 1285(j), 1313(e), 1317(b), 1318, 1345, 1361(a), and 1370 as amended; sections 1008(b), 1008, 2002(a), 4004, 4005, 4009, and 4010 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905(b), 6907, 6912(a), 6944, 6945); sections 110, 111, 112, 113, 114, and 301 of the Clean Air Act (42 U.S.C. 7410, 7411, 7412, 7413, 7414, and 7601); sections 5, 6, 7, 9, 15, 16, and 28 of the Toxic Substances Control Act (15 U.S.C. 2604, 2605, 2606, 2608, 2614, 2615, and 2627); and section 102 of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1412).

Subpart A—General

§ 501.1 Introduction.

(a) Section 405(d) of the Clean Water Act (CWA) requires the Administrator to publish regulations providing guidelines for the disposal of sewage sludge and the utilization of sewage sludge for various purposes. Such regulations are to identify uses for sludge and disposal practices; specify factors to be taken into account in determining the measures and practices applicable to each use or disposal practice, including publication of information on costs; and identify concentrations of polutants which interfere with each use or disposal practice. Sludge use and disposal practice requirements issued under the authority of section 405(d) of the CWA apply to publicly owned treatment works (POTWs), other treatment works that treat primarily domestic sewage, and other persons that use or dispose of sewage sludge.

(b) In addition to the guidelines to be issued under section 405(d) [as 40 CFR

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Part 503], several other statutes and regulations affect sewage sludge management practices.

(c) Violations of sewage sludge use and disposal requirements issued under section 405(d) of the CWA are subject to Federal enforcement under section 309 of the CWA.

(d) In accordance with the Agency's "Policy on Municipal Sludge Management" (49 FR 24358; June 12, 1984), this regulations require States to establish and maintain programs to ensure that POTWs and others use sludge management techniques that are consistent with Federal and State regulations and guidelines. Local communities will remain responsible for choosing among alternative sludge management practices; planning, constructing, and operating facilities to meet their needs; and ensuring the continuing availability of adequate and acceptable disposal or use capacity.

(e) Consistent with the Agency's "Policy on Municipal Sludge Management," EPA seeks to have each State control sewage sludge in a manner best suited to its own circumstances. EPA intends to allow the States to have the flexibility to consider site-specific factors such as climate and soil conditions when imposing the Federal criteria on individual projects and to develop data to demonstrate alternative means for meeting the Federal technical requirements. However, if a State fails to obtain compliance with the section 405(d) guidelines and other requirements applicable to sludge management, EPA is responsible for enforcing these requirements.

§ 501.2 Sludge management goals.

Any State sludge management program submitted for approval under this Part should be designed and implemented to achieve the following goals established in the Agency's "Policy on Municipal Sludge Management":

(a) Encourage use of sludge management practicies that beneficially use sludge while maintaining or improving environmental quality and protecting public health;

(b) Establish and maintain programs to ensure that POTWs and others who use and dispose of sewage sludge comply with applicable Federal and State regulations and guidelines in the planning, design, construction, operation and maintenance of sludge management facilities;

(c) Hold local communities accountable for choosing sewage sludge management practices, for planning, constructing, and operating facilities, and providing continued capacity for adequate and environmentally acceptable sludge use or disposal;

(d) Provide for adequate coordination and communication among State programs that affect sewage sludge management practices;

(e) Assist with educating the public on the beneficial uses of sewage sludge;

(f) Assist local governments in planning and implementing their sewage sludge management systems.

§ 501.3 Purpose, scope, and applicability.

(a) This regulation requires States to submit to EPA, for review and approval, a description of their existing sludge management programs and plans and schedules for improving them as necessary to meet the requirements of this Part. Minimum Federal requirements are provided in this Part to assure adequate State control of sewage sludge use and disposal practices. The requirements give the States sufficient discretionary authority to tailor their programs and actions to local conditions.

(b) Subpart A provides background information on the Agency's approach to managing sewage sludge, sets forth the goals for the State's programs, defines the purpose, scope and applicability of these regulations, and provides definitions for terms that have special meanings as used in this Part. Subpart B of this part sets forth the items a State must submit to obtain approval of its State Sludge Management Program and describes the minimum requirements that must be met for a State sludge management program to be approved. Subpart C sets forth procedures for the review, approval, revision, and withdrawal of State Sludge Management Programs.

(c) Regional Administrators may use discretion in determining whether the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands are required to comply with the requirements of this Part.

§ 501.4 Definitions.

For purposes of this Part, the following terms have the meanings given below:

"Approved program" means a State program which has received EPA approval under this Part.

"Class I sludge management facility" means any POTW required to develop a pretreatment program under § 403.8 of this Chapter.

"Disposal practice" means the emitting, discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land, air, or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Distributor" means the person responsible for distributing and marketing sewage sludge and sludge derived products.

"Facility" means all land and structures, other appurtenances, and improvements on the land used for the treatment, storage, processing, utilization, or disposal of sewage sludge.

"Federal Facility" means the buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the Federal government.

"Generator" means the owner or operator of a treatment works (but not including individual household septic tanks or portable toilets) or any person whose act or process produces sewage sludge.

"Indian lands" means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian title to which have been extinguished, including rights-of-way running through the same.

"Indian tribe" means any Indian tribe, band, nation or other organized group or community having a governing body recognized by the Secretary of the Interior.

"Municipality," as defined in section 502(4) of the Clean Water Act, means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over sewage sludge management, or a designated and approved management agency under section 208 of the Clean Water Act. This definition includes a special district created under State law such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility, as defined in section 201(e) of the Clean Water Act, which has one of its principal responsibilities the treatment, transport, or disposal of sewage sludge in a particular geographic area. [see 40 CFR 35.2005(b)(27)]

"Project" means a plan, approach or practice which a community adopts for its sludge management activities.

"Publicly Owned Treatment Works" or "POTW" means a treatment works, as defined in paragraph (u) of this section, which is owned by a State or municipality.

"Septage" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic waste treatment system when the system is cleaned.

"Sewage Sludge" means any solid, semi-solid, or liquid residue which contains materials, removed from municipal or domestic wastewater during treatment, including primary and secondary solids, septage, and portable toilet wastes.

"Sludge management practice" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Sludge management program" means the assistance, oversight, monitoring, and enforcement provided by Federal, State and local agencies to assure that treatment works comply with applicable State and Federal standards for sewage sludge use and disposal practices.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"State Program Director" or "Program Director" means the chief executive officer of the State sewage sludge management agency.

"State sewage sludge management agency" means the agency designated by the Governor as having the lead responsibility for managing or coordinating the approved State program under this Part.

"State Sludge management Program/Plan" means the State procedures for the review, approval, monitoring, and oversight of users and disposers of sewage sludge to assure compliance with Federal and State standards applicable to such practices.

"Treatment Works," as defined by section 212 of the Clean Water Act, means any devices and systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage waste of a liquid nature, including land dedicated for the storage, treatment, and disposal of sewage and resulting sludge.

"Use" or "Utilization practice" means the treatment or final disposition of a waste material involving resource recovery, recycling, or beneficial use of all or part of the material for such purposes as energy recovery, and soil fertilization or conditioning.

Subpart B—Development and Submission of State Programs

§ 501.11 General requirements.

(a) States shall submit an approvable sludge management program plan to EPA for approval within 12 months of the promulgation of this regulation. However, the Regional Administrator may extend this period for up to 12 more months if necessary to complete State legislative action. Such Sludge Management Program submissions may be developed and implemented as a part of the State's Water Quality Management Planning Process (40 CFR Part 130), Solid Waste Management Program Plans (40 CFR Part 256), or other plans.

(b) Unless the Governor indicates otherwise in his letter (see § 501.12(a)), the Program Director shall have the authority to execute all documents concerning submission and approval of the State program under this Part. The Program Director may further delegate this responsibility in writing.

(c) The State's initial program submission may request approval of a complete sludge management program, as defined by these regulations, or elements thereof. Examples of elements of a complete program are provided in guidance published by the Administrator. When requesting approval for less than a complete program, the State's initial submission must include a plan and schedule to implement a complete sludge management program within five years of the date of promulgation of these regulations. The initial submission should generally describe the individual program elements the State proposes to implement; however, the detailed processes, procedures, application forms, permit or approval forms, and reporting forms [see § 501.13(b)(1)–(6)] for program elements to be implemented more than one year after initial program submission need not be included. These documents together with additional statutes, regulations, and Statement of Legal Authority are to be submitted to the Regional Office not less than 90 days before the State intends to implement the applicable program elements. The Memorandum of Agreement (see § 501.22) should set forth the procedure for submitting these documents and obtaining specific approval of the program elements, but submission and approval procedures should be in general conformance with §§ 501.12 and 501.21.

(d) Before submitting its program, the State shall consult with interested and affected groups and citizens. The State shall provide notice of availability and make copies of the submission available to the public for review and comment at least 30 days prior to the anticipated submission to EPA. If public meetings or hearings are held, States are encouraged to offer the Regional Administrator the opportunity of conducting the meeting or hearing jointly with the State. Public participation shall conform with 40 CFR Part 25; a responsiveness summary as described in 40 CFR 25.8 shall be included with the State submission.

(e) The Regional Administrator may provide funds to be used by State agencies designated pursuant to § 501.12[a] for the development of sludge management programs. These funds may be allocated to the States under section 205[j] of the CWA or other authorities as determined appropriate. These funds may not be used for program development after [insert date 2 years after date of promulgation of the final regulation]. Grant funds for development of sludge management programs shall be administered in accordance with 40 CFR Part 30; 40 CFR Part 35, Subpart A; 40 CFR 130; and/or other regulations that may govern funds used.

(f) A State program differing from that described in §§ 501.15, 501.16, and 501.17 may be approved if the program submission includes an analysis showing how the State's processes, procedures, program provisions, and legal authorities assure compliance with the Federal technical criteria and adequately protect public health and the environment.

§ 501.12 Contents of State Sludge Management Program submissions.

Any State seeking approval of a sludge management program under this Part shall submit the following to the Regional Administrator:

(a) A letter from the Governor designating the State Sewage Sludge Management Agency. If more than one agency has sludge management responsibilities, the Governor shall designate a lead agency, department, or other official State body to coordinate sludge management activities, to apply for program approval, and furnish required reports under this Part. The Regional Administrator may waive this

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requirement for States already controlling sludge use and disposal through State issued NPDES permits or other programs delegated to it by EPA.

(b) A complete program description, in accordance with § 501.13;

(c) A statement of legal authority in accordance with § 501.14;

(d) Copies of all applicable State statutes and regulations, including those governing State administrative procedures applicable to the sludge management program;

(e) An inventory of all sewage sludge generators and sewage sludge disposal facilities in the State and procedures for keeping the inventory current (as to septage and portable toilet pumpings, the inventory need only list the commercial firms which pump and service septic tanks and portable toilets);

(f) An inventory of known violations of existing Federal or State sludge management requirements or major sewage sludge management problems (e.g., large backlog in sludge volumes, serious equipment failures, potential cases of public health or environmental harm), and a schedule for corrective action;

(g) A description of the State's program for regulating the disposal of septage and portable toilet pumpings if handled under a program that is separate from that for sewage sludge;

(h) If applicable, identification of any State or local sewage sludge management standards that are more restrictive than those issued under section 405 of the CWA and other applicable laws;

(i) If applicable, a description of any bans or prohibitions imposed by State or local authorities on specific sewage sludge management practices;

(j) A responsiveness summary of public participation under § 501.11(e).

§ 501.13 Program description.

The program description provided with the State program submission must include:

(a) A description of the scope, structure, and coverage of the State's current sludge management program.

(b) A narrative description of a program (current, improved, or expanded) complying with this Part and including:

(1) A showing of how the State will achieve the sludge management goals listed in § 501.2;

(2) A listing of the sludge use and disposal practices to be controlled or regulated;

(3) The processes and procedures to be used for reviewing the planning, design, construction and operation of sludge management facilities;

(4) The processes and procedures to be used for compliance monitoring and enforcement, and reporting to EPA;

(5) Copies of any application form(s), permit or approval form(s) and reporting form(s) the State uses or intends to use;

(6) A description (including organization charts) of the organization, structure, and responsibilities of the State agency or agencies which will administer the program.

(c) A listing and schedule of additional actions necessary to fully effect the program elements to be implemented within one year of program submittal.

(d) An estimate of the resources for implementing the program described in (b) of this section.

(e) If applicable, a schedule for implementing the remaining elements of a complete program. Elements of a complete program are explained in guidance published by the Administrator.

§ 501.14 Statement of legal authority.

Any State program submission under this Part shall include a legal opinion from the State Attorney General (or other appropriate State legal counsel) as to whether the laws of the State provide adequate authority to carry out the program described under § 501.13. This statement shall include citations of the specific statutes, administrative regulations, and where appropriate, judicial decisions that demonstrate adequate authority. State statutes and regulations cited shall be either fully effective when the program is approved or shall be scheduled to become fully effective by a date identified in the Statement of Legal Authority. If a State seeks to carry out the program on Indian lands, the Statement shall include an appropriate opinion and analysis of the State's authority.

§ 501.15 Program provisions and required elements.

(a) Any complete State Sludge Management Program submitted for approval under this Part shall have the following as a minimum:

(1) Regulations or other means to require existing and new facilities to comply with sludge use and disposal requirements issued under section 405 of the CWA and other Federal statutes;

(2) Provisions for project-specific approval through permits, registration of operations, letters of approval, facility planning, or other means;

(3) Requirements for generators and distributors of sewage sludge to have adequate contingency plans for handling spills, on-site accidents, and other emergencies that may threaten public health or the environment;

(4) Requirements for generators and distributors of sewage sludge to submit periodic monitoring reports;

(5) Provisions for adequate compliance assurance procedures, to verify self-monitoring reports submitted to the State by POTWs and others who use or dispose of sewage sludge (see § 501.16);

(6) Provisions for enforcement against violators of the State sludge management program requirements (see § 501.17);

(7) Provisions for reporting information to EPA (see § 501.18);

(8) Provisions for allowing EPA and other Federal enforcement agencies access to State records; and

(9) Provisions for coordination among the various State and local programs that may affect sewage sludge management activities and practices, such as:

(i) Public Health Programs,

(ii) Water Quality Management Programs (e.g., programs dealing with surface and groundwater quality protection, marine water and estuary protection, pretreatment, point and non-point water pollution source controls),

(iii) Solid Waste Management Programs (including both Hazardous and Non-Hazardous Solid Waste Control Programs),

(iv) Air Quality Management Programs,

(v) Sludge quality and environmental monitoring programs,

(vi) Programs providing direct financial and/or technical assistance to POTWs,

(vii) Other related State programs for soil conservation, strip mine reclamation, etc., and

(viii) Programs providing for public education and information dissemination about environmental issues.

(b) The State's sludge management program shall address all sewage sludge management practices used in the State, including associated transport and storage, that are practiced or planned to be practiced in the State. The State sludge management program shall also be applicable to all Federal facilities in the State. Sludge management activities and practices shall include as applicable:

(1) Sludge treatment, processing, and short term storage practices, including:

(i) Digestion, composting, heat treatment, and drying,

(ii) Lagoons and stockpiles,

(iii) Sludge treatment, processing, and transport activities, as may be covered by Federal regulations.

(2) Sludge use and ultimate disposal practices, including:

(i) Land application,

(ii) Landfill,

(iii) Distribution & marketing,

(iv) Incineration,

(v) Ocean disposal, and

(vi) Any other sludge use and disposal practices as may be covered by Federal regulations.

(c) Sections 106 (a) and (d) of the Marine Protection Research and Sanctuaries Act (MPRSA), 33 U.S.C. 1416, generally preclude States from Regulating or issuing permits for ocean dumping. Nothing in this regulation is intended to confer on the States the authority to engage in the regulation or permitting of ocean dumping in contravention of the provisions of sections 106 (a) and (d) of the MPRSA.

(d) Nothing in this Part prevents a responsible State or political subdivision thereof, or interstate agency, from adopting or enforcing requirements established by State or local law that are more stringent or more extensive than those required in this Part or in any other Federal statute or regulation. Nevertheless, because a goal of sludge management programs should be to encourage use of sludge management practices that beneficially use sludge while maintaining or improving environmental quality and protecting public health [see § 501.2(a)], State or local agencies should not ban or unreasonably restrict any sewage sludge management practice unless local circumstances require such restrictions.

§ 501.16 Requirements for Compliance Evaluation Program

(a) State compliance monitoring programs shall provide for:

(1) Receipt, storage, evaluation for possible enforcement action, and retention of notices and reports required of facilities for a minimum of three years, or longer if needed for enforcement action;

(2) Investigation and possible enforcement for failure to submit required notices and reports;

(3) Establishing priorities for monitoring and enforcement actions, and

(4) Receiving and investigating, where appropriate, information obtained from private citizens and others regarding violations of applicable program requirements.

(b) State programs shall have written procedures for periodic inspection and surveillance of regulated facilities. EPA recommends at least annual inspections of facilities handling sewage sludge generated by POTWs required to operate pretreatment programs under § 403.8 of this Chapter. The Agency also recommends that States closely coordinate these inspections with those required in conjunction with pretreatment, NPDES, RCRA, and other programs, and encourage the involvement of local regulatory agencies to assist in their periodic inspection and surveillance efforts.

(1) The inspections of sewage sludge management facilities and activities under this program shall:

(i) Determine compliance or noncompliance with minimum Federal requirements and other program requirements; and

(ii) Verify the accuracy of information submitted by facilities in self monitoring reports, including adequacy of sampling, monitoring, and other methods used by facilities to develop that information.

(2) State investigations and inspections shall include obtaining samples and collection of other information in a manner that will produce evidence admissable in an enforcement proceeding or in court (i.e., using proper chain of custody procedures).

(c) Appropriate representatives of the State shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to evaluate and/or copy any records, and inspect, monitor, collect samples, or otherwise investigate compliance with the State Program requirements.

(d) State sludge management program compliance evaluation programs shall have procedures for:

(1) Maintaining a schedule of any reports that POTWs and others who use and dispose of sewage sludge must submit to the State;

(2) Initial screening of all facility compliance information to identify violations and to establish priorities for further substantive technical evaluation;

(3) Conducting a substantive technical evaluation when the initial screening of all compliance information indicates follow-up action is necessary;

(4) Maintaining an information management system that supports the compliance evaluation activities of this Part.

§ 501.17 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To order any person to halt or modify any unauthorized activity that is endangering or causing damage to public health or the environment (e.g., by use of an administrative cease and desist order);

(2) To request courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;

(3) To assess, or sue to recover in court, civil penalties appropriate to the violation. Civil penalties shall be recoverable for the violation of any program requirement; any duty to allow or carry out inspection, entry or monitoring activities; or, any regulation or orders issued by the State Program Director. These penalties shall be assessable at the amount of $5,000 a day for each violation or other amounts agreed upon by the Regional Administrator and State Program Director as adequate to deter violations.

(b) The burden of proof and degree of knowledge or intent required to bring suit under State law for establishing violations under paragraph (a)(3) of this section shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

(c) The civil penalty (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable for each day of violation.

(d) Any State agency administering a program should consider obtaining the authority to impose injunctive relief and civil penalties administratively. This authority would be in addition to the requirements of paragraph (a) of this section.

§ 501.18 Program reporting to EPA.

The State Program Director shall prepare Quarterly Sludge Violation Reports and Annual Reports as detailed below. These reports shall serve as the main vehicle for the State to report on the status of its sludge management programs, update its inventory of sewage sludge generators and sludge disposal facilities, and provide information on substantial incidents of noncompliance. The States Program Director shall submit these reports to the Regional Administrator according to a mutually agreed-upon schedule. The Quarterly Sludge Violation Reports and Annual Reports specified below may be combined with other reports to EPA (e.g., existing NPDES or RCRA reporting systems) where appropriate.

(a) An Annual Report shall have the following elements:

(1) Information to update the inventory of all sewage sludge

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generators and sewage sludge disposal facilities submitted with the program plan or in previous annual reports, including as appropriate:

(i) Name and location.

(ii) NPDES permit number, if any.

(iii) RCRA permit number, if any.

(iv) State permit number, if any.

(v) Sludge management practice used.

(vi) Sludge production volume.

(vii) Sludge pollutant concentrations compared to applicable standards.

(viii) Summary of the above data by sludge use and disposal practice.

(ix) Identification of non-complying facilities;

(2) A description of any program changes not reported during the past year.

(3) Information on Substantial Non-Compliance of Class I Facilities. "Substantial" as used in this sense means those cases of noncompliance which may adversely affect the environment or public health. The information shall include:

(i) Incidences of noncompliance such as:

(A) Significant failure to comply with minimum Federal requirements for sludge use or disposal practices under 40 CFR Part 503 or other Federal regulations,

(B) Failure to compete construction of essential elements of a sludge management facility or meet other key milestone dates specified in a permit or other enforceable document,

(C) Failure to provide required compliance monitoring reports or submission of reports that are so deficient as to cause misunderstanding and thus impede the review of the status of compliance,

(D) Significant noncompliance with other program requirements,

(E) Unexplained presence of elevated levels of toxic or hazardous substance(s) in a facility's sewage sludge,

(F) Other significant events that the State Program Director determines to have occurred;

(ii) For each incident of substantial non-compliance the Annual Report shall provide:

(A) A brief description and data(s) of the event. If records for a facility show noncompliance of more than one type under the sludge management program, the information should be combined into a single entry for each such facility,

(B) The date(s) and a brief description of the action(s) taken to ensure timely and appropriate action to achieve compliance;

(C) Status of the instance(s) of noncompliance with the date of resolution,

(D) Any details which tend to explain or mitigate the instance(s) of non-compliance;

(iii) A summary of the number and type of violations by sludge use and disposal practice;

(iv) A list of facilities brought into compliance since the last report;

(v) A summary of the results of periodic State compliance monitoring efforts to verify self-monitoring reports [§ 501.16(b)].

(4) Information on Substantial Non-compliance of Non-Class I Facilities shall include:

(i) A tabular listing which identifies:

(A) The non-complying facility by name or reference number,

(B) The type of non-compliance [see list in paragraph (a)(3)(i) of this section],

(C) How long the facility has been in non-compliance, and

(D) What steps are being taken to bring these facilities into compliance;

(ii) A summary of the number and type of violations by sludge use and disposal practice;

(iii) A separate list of non-Class I facilities (along with any applicable permit numbers) that are one or more years behind in their schedules for achieving compliance; and

(iv) A list of non-Class I facilities brought into compliance since the last report.

(b) At a minimum, Quarterly Sludge Violation Reports (QSVRs) shall provide a tabular summary of the incidents of "substantial" non-compliance which occurred in the previous quarter by Class I facilities. The State Program Director and Regional Administrator may choose to include reporting of incidents of substantial non-compliance by additional non-Class I facilities at their discretion. The tabular summary will identify:

(1) The non-complying facilities by name or reference number;

(2) The type of non-compliance [see list in paragraph (a)(3)(i) of this section];

(3) How long the facility has been in non-compliance; and

(4) What steps are being taken to bring these facilities back into compliance.

§ 501.19 Indian lands.

If a State does not demonstrate adequate legal authority to carry out the program on Indian lands in accordance with § 501.14, EPA and the government of the affected Indian tribe will seek to define an appropriate role for the tribal government in carrying out program activities to meet the goals of §501.2.

Subpart C—Federal Approval, Revision and Oversight of State Programs

§ 501.21 Review and approval procedures.

(a) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If it is incomplete, EPA will identify the missing items.

(b) The Regional Administrator shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest in the program approval decision. The Regional Administrator may also hold a public hearing at his or her discretion, whenever such a hearing might clarify one or more issues involved in the approval decision. A single hearing held jointly by EPA and the State satisfies the requirements of this paragraph.

(c) Within 90 days of receiving a complete State submission, the Regional Administrator shall notify the State whether its program has been approved or disapproved, based on the requirements of this Part. The Regional Administrator shall prepare a separate responsiveness summary which identifies the public's concerns and provides the Agency's response to these concerns. If the Regional Administrator disapproves the State Program, the State shall be notified of the reasons for disapproval and any revisions or modifications to the State program that may be necessary to obtain approval.

(d) The State and EPA may extend the 90-day review period by mutual agreement.

(e) If the State's submission is materially changed during the 90-day review, either as a result of EPA's review or the State action, the official review period shall begin again upon receipt of the revised submission.

(f) Notice of program approval shall be published by EPA in the Federal Register.

§ 501.22 Memorandum of agreement.

(a) For each State program submission that is to be approved, the Regional Administrator shall develop a Memorandum of Agreement to be executed by him/her and the State representative designated under § 501.12(a) that shall become effective when signed by both parties. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's Sludge Management Program.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions specifying the frequency and content of reports, documents and other information that the State is required to submit to EPA (§ 501.18);

(2) When partial programs are initially proposed and approved, a schedule and mechanism for approving the remaining program elements;

(3) Procedures to assure coordination of compliance monitoring and enforcement activities by the State and EPA, including such activities as investigating information obtained regarding violations of Federal requirements and establishing the frequency of comprehensive surveys and periodic inspections of the sludge management facilities and activities of local POTW owners and operators.

(4) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs (See for example 40 CFR 124.4).

(5) Assurance that the State will implement and maintain the program described in its submission.

(6) Provisions for EPA monitoring and oversight of the State's sludge management activities covered by this agreement. The State shall allow EPA to review all State records, reports, and files relevant to the administration and enforcement of the approved program.

(7) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) If applicable, the Memorandum of Agreement should be consistent with the work program under which the sludge management program is funded [see § 501.11(a)], and should be consistent with the State's continuing planning process for water quality management.

(d) The provisions of the Memorandum of Agreement specified in paragraphs (a) through (c) of this section, may be contained in other agreements for administration of pollution control programs by mutual agreement of the State and EPA.

§ 501.23 Procedures for revision and EPA oversight of State programs.

(a) A State with an approved program or which has interim approval of its program shall notify the Regional Administrator of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, requirements or significant change in its staffing level, operating budget, or organizational structure that may affect its ability to implement or continue the approved program.

(b) A State with an approved program or which has interim approval of its program shall notify EPA whenever it decides to transfer all or part of any program from the approved State agency, and shall identify any new division of responsibilities among the agencies involved. The Program description and organizational charts required under § 501.13(b) shall be appropriately revised and resubmitted.

(c) If the Regional Administrator determines that changes in the State program are significant:

(1) The State shall, upon request by the Regional Administrator, submit a modified program description, statement of legal authority, or such other documents as EPA determines to be necessary under the circumstances;

(2) EPA may require public participation during the process of revising a State Program, in accordance with the provisions of § 501.11(e);

(3) The Regional Administrator shall approve or disapprove program revisions and, if necessary, revise the Memorandum of Agreement within the time restraints specified in § 501.21;

(4) A program revision shall become effective upon notice of the approval by the Regional Administrator or, if required, signature of the revised Memorandum of Agreement by both the State and EPA.

(d) Whenever the Regional Administrator has reason to believe that circumstances have changed with respect to a State program, he/she may initiate a thorough review of the State Program, including legal authorities, and require supplemental information or submissions similar to those identified in paragraph (c) of this section.

§ 501.24 Withdrawal of program approval and other sanctions.

(a) The Administrator may withdraw approval of all or portions of a State program when the State no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

(1) The State's legal authority no longer meets the requirements of this part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) A major or significant failing of the approved State Sludge Management Program to exercise control over activities required under this part, resulting in a failure to comply with the approved program or EPA technical criteria.

(3) The State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) The State program fails to comply with the terms of the Memorandum of Agreement requried under § 501.22.

(b) Before withdrawal, the Regional Administrator will hold a public hearing and provide an opportunity for the State to justify why the program approval should not be withdrawn.

(c) Notice of withdrawal of program approval shall be published in the Federal Register.

[FR Doc. 86-2045 Filed 2-3-86; 8:45 am]
BILLING CODE 6560-50-M

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federal register

Tuesday
February 4, 1986

Part III

Department of Education

34 CFR Part 690
Pell Grant Program; Schedule of Expected Family Contributions; Family Size Offsets; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program; Schedule of Expected Family Contributions—Family Size Offsets

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the final regulations for the Pell Grant Expected Family Contribution Schedule for the 1986–87 award year. These regulations are amended by setting forth the family size offsets in accordance with section 5 of the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97–301), as amended by section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98–79), and by Section 707 of the Education Amendments of 1984 (Pub. L. 98–511). The family size offset tables are part of the formulas used in determining student eligibility for Pell Grants on the basis of financial need.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later, if Congress takes certain adjournments. It should be noted, however, that these regulatory amendments apply only to the award of student financial assistance under the Pell Grant Program for periods of enrollment beginning on or after July 1, 1986. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred Sellers, Chief, Pell Grant Policy Section, or Deborah Cohen, Pell Grant Program Specialist, Office of Student Financial Assistance, U.S. Department of Education, [ROB–3, Room 4318], 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION:

Background

The Family Contribution Schedule includes "offsets" based on family size which are used in computing the size of the Pell Grant. The offsets, which represent basic subsistence costs for families, are subtracted from the income of the student and his or her family along with other deductions to derive "discretionary income." A portion of discretionary income is assessed as the student's expected family contribution.

On May 7, 1985, the Secretary issued the final regulations for the Pell Grant Expected Family Contribution Schedule for the 1986–87 award year. The regulations were published in compliance with Section 707 of the Education Amendments of 1984 (Pub. L. 98–511). However, the family size offset tables were not published at that time; section 5 of Pub. L. 97–301 as amended by section 4 of Pub. L. 98–79 and by section 707 of Pub. L. 98–511, requires that the family size offsets for the 1986–87 Pell Grant Expected Family Contribution Schedule be based upon the offsets used in the 1985–86 Pell Grant Expected Family Contribution Schedule, adjusted by a percentage change equal to the percentage increase or decrease in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, rounded to the nearest $100. That section also provides, in effect, that the percentage change is the percentage difference between the arithmetic mean for the period of October 1, 1983, through September 30, 1984, and the arithmetic mean for the period of October 1, 1984, through September 30, 1985. Finally, that section, in effect, directs the Secretary to publish the family size offset tables for the 1986–87 Pell Grant Family Contribution Schedule immediately after the Secretary of Labor publishes the Consumer Price Index for September, 1985. Therefore, these tables are now being published. Because the CPI was increased by 3.6 percent, the offsets used in 1985–86 were multiplied by 1.036 and the results were rounded to the nearest $100.

Technical revisions

Typographical Errors

A technical revision is being made to correct a typographical error in § 690.48 of the 1986–87 Family Contribution Schedule that was published in the Federal Register on May 7, 1985. In § 690.48(a)(2), 1986 rather than 1985 is the year during which a spouse must have lost his or her job for at least 10 weeks, and in § 690.48(b), 1986 rather than 1985 is the year for which received and expected income is to be reported.

Social Security Educational Benefits

The Secretary is making a technical revision to the 1986–87 Family Contribution Schedule by deleting the requirement in §§ 690.33, 690.33a, and 690.43, not to report Social Security educational benefits received on account of or by the student since these benefits are no longer being awarded.

Waiver of Notice of Proposed Rulemaking

In accordance with section 5 of the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97–301), as amended by section 4 of the Student Loan Consolidation and Technical Amendments Act of 1983 (Pub. L. 98–79), and by section 707 of the Education Amendments of 1984 (Pub. L. 98–511), the Secretary is required to publish the family size offsets used in the 1985–86 award year schedule, adjusted by the percentage increase or decrease in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor. The other changes being made are to correct typographical errors and to reflect a change in the Social Security law. Accordingly, the Secretary finds that publication of a proposed rule in this instance would be unnecessary within the meaning of 5 U.S.C. 553(b)(B), and is publishing these rules as final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations set forth the family size offsets for the Pell Grant Family Contribution Schedule and make other technical changes to the regulations.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

Dated: January 29, 1986.

William J. Bennett,

Secretary of Education.

(Catalogue of Federal Domestic Assistance Number: 84.063, Pell Grant Program)

The Secretary amends Part 690 of Title 34 of the Code of Federal Regulations as follows:

PART 690—PELL GRANT PROGRAM

1. The authority for Part 690 is revised to read as follows:

Authority: Sec. 411, Higher Education Act of 1965, as amended [20 U.S.C. 1070a], unless otherwise noted.

2. In § 690.33, paragraph (b)(1)(iii) is revised to read as follows:

§ 690.33 Effective family income.

* * * * * * *

(b) * * *

(1) * * *

(iii) Other income upon which no Federal income tax is paid. Examples of income to be reported include child support payments and income from income maintenance programs such as welfare benefits.

* * * * * * *

3. In § 690.33a, paragraph (b)(3) is revised to read as follows:

§ 690.33a Effective student income.

* * * * * * *

(b) * * *

(3) Other income upon which no Federal income tax is paid. Examples of that income include child support payments, and income from income maintenance programs such as welfare benefits.

* * * * * * *

4. In § 690.34, paragraph (a)(1)(i) is revised to read as follows:

§ 690.34 Computation of the expected family contribution for a dependent student from the effective family income.

* * * * * * *

(a) * * *

(1)(i) A family size offset in the amount specified in the following table.

FAMILY SIZE OFFSETS

Family members—	Amount
2	$8,400
3	7,800
4	9,900
5	11,800
6	13,300

Plus $1,600 for each additional family member over 6.

* * * * * * *

5. In § 690.34a, paragraph (a)(1) is revised to read as follows:

§ 690.34a Computation of the expected family contribution for a dependent student from the effective student income.

* * * * * * *

(a) * * *

(1) If the parental discretionary income is positive, the dependent student offset, which is derived from the family size offset (See § 690.34(a)(1)(i)), is in the amount specified below:

Dependent Student Offset

Single student	$3,400
Married student	5,100

* * * * * * *

6. In § 690.43, paragraph (b)(1)(iii) is revised to read as follows:

§ 690.43 Effective family income.

* * * * * * *

(b) * * *

(1) * * *

(iii) Other income upon which no Federal income tax is paid. Examples of that income include child support payments, and income from income maintenance programs such as welfare benefits.

* * * * * * *

7. In § 690.44, paragraph (a)(1)(i) is revised to read as follows:

§ 690.44 Computation of the expected family contribution for an independent student from the effective family income.

* * * * * * *

(a) * * *

(1)(i) A family size offset in the amount specified in the following table.

FAMILY SIZE OFFSETS

Family members—	Amount
1	$5,100
2	6,400
3	7,800
4	9,900
5	11,800
6	13,300

Plus $1,600 for each additional family member over 6.

* * * * * * *

8. In § 690.48, paragraphs (a)(2) and (b) are revised to read as follows:

§ 690.48 Extraordinary circumstances affecting the expected family contribution determination for an independent student.

(a) * * *

(2) A spouse whose 1985 income from work must be reported under § 690.43 has lost his or her job for at least 10 weeks during 1986.

* * * * * * *

(b) For an application submitted under paragraph (a), the student shall include the income already received for 1986 and an estimate of the income to be received for the remainder of that year.

* * * * * * *

[FR Doc. 86–2447 Filed 2–3–86; 8:45 am]

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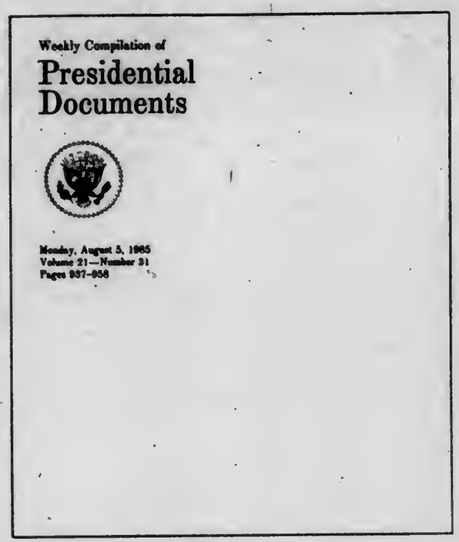
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To delay the referendum with respect to the 1986 through 1988 crops of Flue-cured tobacco and to delay the proclamation of national marketing quotas for the 1986 through 1988 crops of Burley tobacco. (Jan. 30, 1986; 100 Stat. 3; 1 page) Price: $1.00

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Federal Register
Vol. 51, No. 24
Wednesday, February 5, 1986

Presidential Documents

Title 3—

The President

Executive Order 12546 of February 3, 1986

Presidential Commission on the Space Shuttle Challenger Accident

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to establish a commission of distinguished Americans to investigate the accident to the Space Shuttle Challenger, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the Presidential Commission on the Space Shuttle Challenger Accident. The Commission shall be composed of not more than 20 members appointed or designated by the President. The members shall be drawn from among distinguished leaders of the government, and the scientific, technical, and management communities.

(b) The President shall designate a Chairman and a Vice Chairman from among the members of the Commission.

Sec. 2. *Functions.* (a) The Commission shall investigate the accident to the Space Shuttle Challenger, which occurred on January 28, 1986.

(b) The Commission shall:

(1) Review the circumstances surrounding the accident to establish the probable cause or causes of the accident; and

(2) Develop recommendations for corrective or other action based upon the Commission's findings and determinations.

(c) The Commission shall submit its final report to the President and the Administrator of the National Aeronautics and Space Administration within one hundred and twenty days of the date of this Order.

Sec. 3. *Administration.* (a) The heads of Executive departments and agencies shall, to the extent permitted by law, provide the Commission with such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) To the extent permitted by law, and subject to the availability of appropriations, the Administrator of the National Aeronautics and Space Administration shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

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Sec. 4. *General Provisions.* (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Administrator of the National Aeronautics and Space Administration, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 60 days after submitting its final report.

Ronald Reagan

THE WHITE HOUSE,
February 3, 1986.

[FR Doc. 86-2663
Filed 2-3-86; 4:37 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks on the formation of the commission and the White House announcement listing the Chairman, Vice Chairman, and members of the commission, see the *Weekly Compilation of Presidential Documents* (vol. 22, no. 6).

Rules and Regulations

Federal Register
Vol. 51, No. 24
Wednesday, February 5, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, CA; Continuation of Relaxed Size Regulation for Deglet Noor Dates for Further Processing; and Addition of Japan to List of Countries to Which Dry Dates Needing Further Processing May Be Exported

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action continues the relaxed size regulation for Deglet Noor dates for another season and makes Japan an eligible outlet for dry dates needing further processing. The continued relaxation will allow packers to sell more small-sized dates of good quality as whole dates. In the absence of the relaxation, packers will have to dispose of the dates as rings, chunks, pieces, butter, paste or for manufacture into such products. The addition of Japan to the list of countries to which dry dates may be exported will provide a new market for California date packers and increase date sales. Both actions are based on unanimous recommendations of the California Date Administrative Committee. The Committee works with the USDA in administering the date marketing order program.

EFFECTIVE DATES: Relaxation of the size tolerance for Deglet Noor dates for further processing to be effective upon the date of publication in the **Federal Register** and applies to the 1985–86 crop year (October 1, 1985 through September 30, 1986). The addition of Japan to the list of countries to which dry dates needing further processing may be exported to be effective upon the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

This final rule continues the relaxation in the size regulation for Deglet Noor dates for further processing which terminated September 30, 1985, until September 30, 1986, and adds Japan to the list of countries to which dry dates needing further processing may be shipped. These actions are expected to increase date sales.

It is estimated that approximately 26 handlers of dates will be subject to regulation under the California Date Marketing Order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers, the added burden on small entities if present at all is not significant.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective time of these actions until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The Deglet Noor dates from the 1985 crop are expected to be unusually small and dry, and lighter in weight than usual the same as last season; (2) this will cause a substantial quantity of the dates from the 1985 crop and carryover from the 1984 crop to fail to meet the current size requirements; (3) continuation of the relaxation of the size requirements effectuated last season will allow a larger quantity of otherwise good quality Deglet Noor dates weighing less than 6.5 grams to be sold to consumers as whole dates, not as products; (4) processors in Japan have expressed an interest in importing dry dates needing processing and the domestic date handlers should be afforded the opportunity to supply their needs; (5) the addition of Japan to the group of designated countries eligible to receive dry dates needing further processing will allow domestic date handlers to meet these needs; (6) handlers are aware of these actions relieving restrictions on handlers; and (7) no useful purpose would be served by delaying the effective dates of these actions.

This action will amend temporarily § 987.112a(c)(2) of Subpart—Administrative Rules (7 CFR 987.101–987.172) by changing the size tolerance for Deglet Noor dates for further processing contained in the second sentence of that paragraph from 10 to 15 percent for the 1985–86 crop year which began October 1, 1985. It also adds Japan to the list of date processing and consuming countries contained in § 987.112a(d)(2) of that subpart to which dry dates needing further processing may be exported. The authority for both actions is contained in §§ 987.12 and 987.43 of the marketing agreement and Order No. 987 (7 CFR Part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Dates for further processing are dates having a moisture content below 15 percent. To produce a desirable texture for eating, water must be added by hydration during processing. Dates for further processing are sold to users here and abroad desiring to use their own processing, packaging, and marketing facilities.

Section 987.112a(c)(2) prescribes size requirements for whole Deglet Noor dates for further processing in terms of weight. Currently, the individual dates in the sample must weigh at least 6.5

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grams, but up to 10 percent of the dates in a sample may weigh less.

Deglet Noor dates in California's 1985 date crop are expected to be unusually dry and small, and lighter in weight than normal, the same as last season. As a result, a large quantity of the 1985 crop will exceed the current 10 percent tolerance for dates lighter than 6.5 grams. Dates failing to meet applicable size requirements must be diverted to product outlets. To allow a greater quantity of Deglet Noor dates weighing less than 6.5 grams to be available for use as whole dates, a temporary increase in that tolerance to 15 percent is necessary from October 1, 1985 through September 30, 1986 (1985–86 season). Last season, the tolerance also was increased to 15 percent effective through September 30, 1985, because of similar crop conditions. To maintain continuity in the marketplace the carryover of 1984 crop light-weight dates also must be covered by this action. Hence, this action should apply as of October 1, 1985.

Pursuant to § 987.112a(d)(2), dry dates of any variety inspected and certified as meeting specified quality and size requirements may only be exported to the following designated date producing and processing countries in North Africa: Morocco, Algeria, Tunisia, Libya,[1] Egypt, and Sudan; and to the following date processing and consuming countries north of the Mediterranean Sea: Spain, France, Belgium, West Germany, Italy, Greece, and the Netherlands. These countries have the facilities to properly process and produce a desirable product.

Processors in Japan have expressed an interest in importing such dates. To promote orderly marketing and to facilitate export sales of dry dates, Japan should be added to the group of date processing and consuming countries to which such dates may be exported. Authority to export dry dates to Japan will provide the industry with flexibility in meeting Japan's needs and tend to increase sales of California dates.

After consideration of all relevant matter presented, the information and recommendation submitted by the Committee, and other available information, it is further found that the amendment of §§ 987.112a(c)(2) and 987.112a(d)(2) of Subpart—Administrative Rules (7 CFR 987.101–987.172) to continue the temporary relaxation in the current size regulations for Deglet Noor dates for further processing, and to add Japan to the group of date processing and consuming countries, respectively, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 987

Agricultural Marketing Service, Marketing Agreements and Orders, Dates, and California.

PART 987—[AMENDED]

Therefore, §§ 987.112a(c)(2) and 987.112a(d)(2) of Subpart—Administrative Rules (7 CFR 987.101—987.172) are amended as follows:

1. The authority citation for 7 CFR Part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 987.112a (c)(2) and (d)(2) are revised to read as follows:

§ 987.112a Grade, size, and container requirements for each outlet category.

* * * * * *

(c) * * *

(2) FP dates of any variety shall at least meet the requirements of U.S. Grade B (dry). Also, with respect to whole dates of the Deglet Noor variety, the individual dates in the sample from the lot shall weigh at least 6.5 grams, but up to 10 percent, by weight, may weigh less than 6.5 grams, except beginning October 1, 1985, and ending September 30, 1986, the 10 percent tolerance shall be increased to 15 percent. These size requirements are in addition to, and do not supersede, the requirements as to uniformity of size prescribed in the grade standards.

(d) * * *

(2) *Export of dry dates.* Dates of any variety identified and certified as meeting the requirements of this subparagraph only may be exported to the following designated date producing and processing countries in North Africa: Morocco, Algeria, Tunisia, Libya,[1] Egypt, and Sudan; the following date processing and consuming countries north of the Mediterranean Sea: Spain, France, Belgium, West Germany, Italy, France, Greece, and the Netherlands; and the following date processing and consuming country in Asia: Japan. Such dates shall at least meet U.S. Grade C (dry) except for defects removable by washing: *Provided,* That Deglet Noor dates shall score not less than 31 points for character and 24 points for absence of defects but up to 40 percent, by weight, of the dates may be damaged by broken skin.

* * * * * *

Dated: January 31, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86–2534 Filed 2–4–86; 8:45 am]

BILLING CODE 3410-02-M

[1] Executive Order 12543 of January 7, 1986 (51 FR 875), prohibits trade and certain transactions involving Libya, and is applicable to exports of dates under this marketing order as long as the executive order is in effect. That order, among other things, prohibits the export to Libya of any goods, technology (including technical data or other information) or services from the United States, except publications and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes.

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86–004]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Mississippi from Class C to Class B. This rule is necessary because it has been determined that this State meets the standards for Class B status. The rule relieves certain restrictions on the interstate movement of cattle from the State of Mississippi.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Granville H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on November 4, 1985 (50 FR 45808–45809), amended the brucellosis regulations in 9 CFR Part 78 by changing the classification of the State of Mississippi from Class C to Class B. The amendment, which was effective on November 4, 1985, relieves certain restrictions on the interstate movement of cattle from Mississippi.

Comments were solicited for 60 days after publication of the amendent. No comments were received. The factual situation which was set forth in the document of November 4, 1985, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Mississippi reduces certain testing and other requirements on the interstate movement of these cattle. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feed lots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 50 FR 45808–45809 on November 4, 1985, is adopted as a final rule without change.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 31st day of January 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–2535 Filed 2–4–86; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 92

[Docket No. 85–135]

Limited Ports; Atlanta, GA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations in 9 CFR Part 92 by adding Atlanta, Georgia, to the list of limited ports of entry for animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. It is necessary to add Atlanta, Georgia, to this list to reflect the availability of the Veterinary Services inspection facilities and personnel so that importers can make arrangements for the importation of such animals and animal products.

DATES: Effective date of this interim rule is February 5, 1986. Written comments must be received on or before April 7, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85–135. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. S.S. Richeson, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in § 92.3 of 9 CFR Part 92 list a large number of ports with inspection stations or quarantine stations maintained by Veterinary Services for the importation of animals and animal products. In addition to air and ocean ports and several other types of ports, § 92.3 lists certain limited ports for the importation of animals and animal products (such as animal semen, animal test specimens, hatching eggs, and day old chicks) which do not appear to require restraint and holding inspection facilities. It has been determined that Atlanta, Georgia, has Veterinary Services inspection facilities and available inspection personnel for a limited port.

Therefore, it is necessary to amend § 92.3(e) of the regulations to add Atlanta, Georgia, as a limited port, so that importers can make arrangements for the entry of such animals and animal products.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been classified as not a major rule. The Department has determined that this action will not have a significant effect on the economy; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that the addition of Atlanta, Georgia, to the list of limited ports for the importation of animals and animal products which do not appear to require restraint and holding inspection facilities would not cause a substantial change in the number of such animals and animal products entering the United States or in the number of persons importing such animals and animal products.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

[1] Executive Order 12543 of January 7, 1986 (51 FR 875), prohibits trade and certain transactions involving Libya, and is applicable to exports of dates under this marketing order as long as the executive order is in effect. That order, among other things, prohibits the exports to Libya of any goods, technology (including technical data or other information) or services from the United States, except publications and donations of articles intended to relieve human suffering, such as food, clothing, medicine and medical supplies intended strictly for medical purposes.

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Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedure are unnecessary and contrary to the public interest with respect to the addition of Atlanta, Georgia, to the list of limited ports in § 92.3(e), and that good cause is found for making this action effective upon publication in the **Federal Register**. Comments concerning the addition of Atlanta are being solicited for 60 days after publication of the document.

It is necessary to make this rule effective as soon as possible in order to relieve unnecessary restrictions and to reflect the existence of the Veterinary Services facility at Atlanta, so that importers of certain animals and animal products can make arrangements to utilize the facility.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 92 continues to read as set forth below:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Paragraph (e) of § 92.3 is revised to read:

§ 92.3 Ports designated for the importation of animals and birds.

* * * * *

(e) *Limited ports.* The following ports are designated as having inspection facilities for the entry of animals and animal products such as animal semen, animal test specimens, or hatching eggs and day old chicks which do not appear to require restraint and holding inspection facilities: Anchorage, Alaska; San Diego, California; Denver, Colorado; Jacksonville, St. Petersburg-Clearwater, and Tampa, Florida; Atlanta, Georgia; Chicago, Illinois; New Orleans, Louisiana; Portland, Maine; Baltimore, Maryland; Boston, Massachusetts; Minneapolis, Minnesota; Great Falls, Montana; Portland, Oregon; San Juan, Puerto Rico; Galveston and Houston, Texas; and Seattle, Spokane, and Tacoma, Washington.

* * * * *

Done at Washington, D.C., this 31st day of January 1986.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–2537 Filed 2–4–86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Indexing for Widow(er)'s Benefits; Effect of Remarriage on Widow(er)'s Entitlement; Retroactivity of Widow(er)'s Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rules, with request for comments on a specific rule.

SUMMARY: In these final regulations, we explain the increased widow(er)'s benefits because of the special indexing of the deceased worker's earnings when he or she died before attaining age 62. We also explain that in many cases, a widow(er) or surviving divorced spouse who remarries can nevertheless be entitled to monthly benefits after 1983 on the earnings record of a deceased insured worker. Finally, we explain that a widow(er) under age 65 may choose to have survivor's benefits begin with the month of the worker's death if the widow(er) filed in the month after death; this is an exception to the usual rule on retroactivity.

These final rules are based on sections 131, 133, and 334 of Pub. L. 98–21 (the Social Security Amendments of 1983).

DATES: These rules are effective upon publication in the **Federal Register**. Because we have revised the rule on remarriage (§ 404.336) since the Notice of Proposed Rulemaking was published, comments on this final rule may be submitted within 60 days after publication.

ADDRESSES: Comments on the remarriage rule should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangments with the contact person shown below. If appropriate, we will respond in a future publication to any comments we receive on the revised remarriage rule.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6785.

SUPPLEMENTARY INFORMATION:

Remarriage of Widow(er)

Before the Social Security Amendments of 1983, a person could not be entitled to benefits as a widow or a widower if he or she had remarried before age 60 and was still married. Also, the deceased worker's surviving divorced spouse who had remarried at any age and was still married could not be entitled to widow(er)'s benefits. Furthermore, if a surviving spouse under age 60 or a surviving divorced spouse of any age remarried after becoming entitled to widow's or widower's benefits, entitlement ended unless the remarriage was to a person entitled to certain kinds of Social Security benefits (see 20 CFR 404.337). Under the provisions of the 1983 Amendments, remarriage after attaining age 60 does not affect a widow(er)'s or surviving divorced spouse's continuing entitlement to benefits. Remarriage at age 50–59 prevents entitlement of a person in that age bracket if he or she remarries before meeting the disability requirement (§§ 404.335(c) and 404.336(c)) for entitlement before age 60. Remarriage at age 50–59 prevents entitlement of a person after attaining age 60 if the person remarried before he or she was entitled to benefits as a disabled widow(er) and recovered from the disabling condition prior to attaining age 60. This provision removes the distinction between surviving spouses and surviving divorced spouses who remarry after attaining age 60. It also removes the requirement that a disabled surviving spouse under age 60 and a surviving divorced spouse age 50 or older who remarries cannot continue to receive benefits unless the marriage is to a certain category of Social Security beneficiary.

The 1983 Amendments also amended the section of the Act (section 202(f)) on widower's benefits by providing for the entitlement of a surviving divorced husband. This makes section 202(f) consistent with the existing provisions of the Act on benefits for surviving divorced wives and reflects the decision of the District Court for the District of Oregon in *Ambrose* v. *Califano* (July 17, 1980). Our regulations have included this provision in 20 CFR 404.336 since March 22, 1982 (47 FR 12162).

The 1983 Amendments further amended the section of the Act on widower's benefits by changing the entitlement requirement "has not married" to "is not married." This too is consistent with the provisions on benefits for widows and follows the decision of the District Court for the Southern District of Texas in *Mertz* v. *Harris* (September 10, 1980). Our regulations have included this provision in 20 CFR 404.335 and 404.336 since March 22, 1982 (47 FR 12162).

In these final regulations, we are revising the rule on remarriage as it was published in the Notice of Proposed Rulemaking. We specify that the surviving divorced spouse's remarriage must have occurred after the insured individual died. This rule will not be consistent with the rule for a divorced spouse of a living insured individual (see §§ 404.331 and 404.332), which requires that the spouse not have married in or before the first month for which he or she could be entitled. More important, it will reflect the intent of Congress as expressed in the language of section 131 of the 1983 Amendments and in legislative history (Senate Rep. No. 98–23, 98th Cong., 1st Sess. (1983) at page 6). We are further revising the rule on remarriage of a surviving divorced spouse by providing that such a spouse may be entitled only for months after 1983 if he or she remarried after reaching age 60 and does not meet a disability requirement. (In the Notice of Proposed Rulemaking, we did not limit such a spouse's entitlement to months after 1983.)

Indexing Deceased Worker's Earnings

Under the Act in effect before the 1983 Amendments, benefit amounts for a widow(er) of an insured worker who would have reached age 62 after 1978 and who died before age 62 are usually based on the worker's earnings from 1951 through the year of death. Further, earnings from 1951 through the second year before death are indexed (i.e, updated) to reflect the level of the average wages of all workers for the second year before the worker's death. If the surviving spouse does not become entitled until some year after the worker's death, the spouse is disadvantaged because his or her benefits do not reflect the economy-wide wage increases that would have increased the worker's indexed earnings had he or she lived longer. The 1983 Amendments remedy this disadvantage by providing that where the worker dies before age 62, the indexing will be based on the average wage level of all workers near the time the widow(er) becomes eligible for survivor's benefits. We will only pay the benefit computed under this provision if the amount is greater than that computed under the pre-amendment provisions.

We are modifying 20 CFR 404.212(b)(1) as stated in the Notice of Proposed Rulemaking by providing that we will compute the primary insurance amount as if the deceased worker had not died but reached age 62 in the second year after the appropriate indexing year. This is a clarification of the former language where we said that we will compute as if the deceased worker had died in the second year after the indexing year.

Retroactivity of Widow(er)'s Benefits

Before the 1983 Amendments, the Act provided that a person could not be entitled to benefits for any month before the month in which an application is filed if the benefit amount beginning in a prior month would be reduced or further reduced because the person was under age 65. The 1983 Amendments provide an exception for a widow(er) who files in the month after the worker died. Such a widow(er) may be entitled beginning with the month of the worker's death, even if his or her benefit amount will be less because of the earlier entitlement. This provision offers protection if the worker dies late in a month and the widow(er) under age 65 does not file until the next month.

Effective Dates

The legislative provision on remarriage is effective for benefits for months after December 1983; a person who is not entitled for December 1983 must file an application. The legislative provision on indexing is effective for benefits for months after December 1984 for widows and widowers who are first eligible after December 1984. The legislative provision on retroactivity is effective for applications filed on or after July 1, 1983.

Comments

These rules were published as a Notice of Proposed Rulemaking at 49 FR 22340 on May 29, 1984. We received no comments. We are, therefore, adopting these rules as proposed, except as otherwise stated.

Regulatory Procedures

Executive Order 12291—These final regulations have been reviewed under E.O. 12291 for their estimated program costs or savings for FY 1984–88. The provisions on indexing are expected to increase program costs by $4 million, the remarriage provisions by $109 million, and the retroactivity of benefits provisions by a negligible amount. However, these provisions are required by Pub. L. 98–21 and we have no discretion in implementing them. Therefore, OMB has waived the requirement that a regulatory impact analysis be prepared.

Paperwork Reduction Act—The final regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.805 Social Security—Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors, and disability insurance, Social Security.

Dated: September 16, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 25, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subparts C, D, and G of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart C is revised to read as follows:

Authority: Secs. 202, 205, 215, and 1102, Social Security Act, 49 Stat. 623, as amended; 53 Stat. 1368, as amended; 64 Stat. 506, as amended, 49 Stat. 647, as amended, 42 U.S.C. 402, 405, 415, and 1302.

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2. Section 404.211 is amended by revising paragraph (d)(1) and by adding a new paragraph (d)(4) to read as follows:

§ 404.211 Computing your average indexed monthly earnings.

* * * * *

(d) *Indexing your earnings.* (1) The first step in indexing your social security earnings is to find the relationship (under paragraph (d)(2)) between—

(i) The average wage of all workers in your computation base years; and

(ii) The average wage of all workers in your "indexing year." As a general rule, your indexing year is the second year before the earliest of the year you reach age 62, or become disabled or die before age 62. However, your indexing year is determined under paragraph (d)(4) of this section if you die before age 62, your surviving spouse or surviving divorced spouse is first eligible for benefits after 1984, and the indexing year explained in paragraph (d)(4) results in a higher widow(er)'s benefit than results from determining the indexing year under the general rule.

* * * * *

(4) We calculate your indexing year under this paragraph if you, the insured worker, die before reaching age 62, your surviving spouse or surviving divorced spouse is first eligible after 1984, and the indexing year calculated under this paragraph results in a higher widow(er)'s benefit than results from the indexing year calculated under the general rule explained in paragraph (d)(1)(ii). For purposes of this paragraph, the indexing year is never earlier than the second year before the year of your death. Except for this limitation, the indexing year is the earlier of—

(i) The year in which you, the insured worker, attained age 60, or would have attained age 60 if you had lived, and

(ii) The second year before the year in which the surviving spouse or the surviving divorced spouse becomes eligible for widow(er)'s benefits, i.e. has attained age 60, or is age 50–59 and disabled.

* * * * *

3. Section 404.212 is amended in paragraph (b)(1) by adding the following 3 sentences to the end thereof, and by removing the authority citation at the end of the section, to read as follows:

§ 404.212 Computing your primary insurance amount from your average indexed monthly earnings.

* * * * *

(b) *Benefit formula.* (1) * * * If you die before age 62, and your surviving spouse or surviving divorced spouse is first eligible after 1984, we may compute the primary insurance amount, for the purpose of paying benefits to your widow(er), as if you had not died but reached age 62 in the second year after the indexing year that we computed under the provisions of § 404.211(d)(4). We will not use this primary insurance amount for computing benefit amounts for your other survivors or for computing the maximum family benefits payable on your earnings record. Further, we will only use this primary insurance amount if it results in a higher widow(er)'s benefit than would result if we did not use this special computation.

* * * * *

4. The authority citation for Subpart D is revised to read as follows:

Authority: Secs. 202, 205, 216, 223, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 64 Stat. 510 as amended, 70 Stat. 815, 80 Stat. 67, 49 Stat. 647; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 428, and 1302; and 5 U.S.C. Appendix.

5. Section 404.335 is amended by revising paragraph (e) and by deleting the authority citation at the end of the section, to read as follows:

§ 404.335 Who is entitled to widow's or widower's benefits.

* * * * *

(e) You are unmarried, unless—

(1) You remarried after you became 60 years old; or

(2) For benefits for months after 1983—

(i) You are now age 60 or older;

(ii) You remarried after attaining age 50 but before attaining age 60; and

(iii) At the time of the remarriage, you were entitled to widow(er)'s benefits as a disabled widow(er); or

(3) For benefits for months after 1983—

(i) You are now at least age 50 but not yet age 60;

(ii) You remarried after attaining age 50; and

(iii) You met the disability requirements in paragraph (c) of this section at the time of your remarriage (i.e., your disability began within the specified time and before your remarriage).

6. Section 404.336 is amended by revising paragraph (e) and by deleting the authority citation at the end of the section, to read as follows:

§ 404.336 Who is entitled to widow's or widower's benefits as a surviving divorced spouse.

* * * * *

(e) You are unmarried, unless for benefits for months after 1983—

(1) You remarried after you became 60 years old; or

(2)(i) You are now age 60 or older;

(ii) You remarried after attaining age 50 but before attaining age 60; and

(iii) At the time of the remarriage, you were entitled to widow(er)'s benefits as a disabled widow(er); or

(3)(i) You are now at least age 50 but not yet age 60;

(ii) You remarried after attaining age 50; and

(iii) You met the disability requirements in paragraph (c) of this section at the time of your remarriage (i.e., your disability began within the specified time and before your remarriage).

(4) In addition to meeting the requirements of paragraph (e)(1), (e)(2), or (e)(3) of this section, you remarried after the insured person died.

§404.337 [Amended]

7. Section 404.337 is amended by removing paragraph (b)(1) and by redesignating paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) as (b)(1), (b)(2), (b)(3), and (b)(4) respectively.

§404.338 [Amended]

8. Section 404.338 is amended by adding new material between the first and second sentences to read as follows:

* * * If the insured person died before reaching age 62 and you are first eligible after 1984, we may compute a special primary insurance amount for the purpose of determining the amount of your monthly benefit (see § 404.212(b)). We may increase your monthly benefit amount if the insured person earned delayed retirement credit after age 65 by working or by delaying filing for benefits (see § 404.313). * * *

9. The authority citation for Subpart G is revised to read as follows:

Authority: Secs. 202(j)(1), 205 and 1102 of the Social Security Act, 53 Stat. 1368, and 49 Stat. 623, 624, and 647; sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631, 94 Stat. 2855; 42 U.S.C. 402(j)(1), 405 and 1302 and 5 U.S.C. appendix.

10. Section 404.621 is amended by revising the first sentence of paragraph (a)(2)(iii), by adding a new paragraph (a)(2)(iv) and by removing the authority citation at the end of the section, to read as follows:

§ 404.621 Filing after the first month you meet the requirements for benefits.

(a) * * *

(2) * * *

(iii) You are a widow, widower, surviving divorced wife, or surviving divorced husband who is disabled and could be entitled to retroactive benefits for any month before age 60.

* * * * *

(iv) You are a widow, widower, or surviving divorced spouse of the insured person who died in the month before you applied and you were at least age 60 in the month of death of the insured person on whose earnings record you are claiming benefits. In this case, you can be entitled beginning with the month the insured person died if you choose and if you file your application on or after July 1, 1983.

[FR Doc. 86-2364 Filed 2-4-86; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium for Oral Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for use of amoxicillin trihydrate and clavulanate potassium for oral suspension in dogs for the treatment of certain skin and soft tissue infections such as wounds, abscesses, cellulitis, and superficial/juvenile and deep pyoderma.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham Inc., Bristol, TN 37620, filed NADA 55-101 for Clavomox ® (amoxicillin trihydrate and clavulanate potassium) Oral Suspension (Drops) for use in dogs. The drug is a dry powder which is reconstituted for the treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, and superficial/juvenile and deep pyoderma due to beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, *Staphylococcus* spp. *Streptococcus* spp. and *E. coli*. The application is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 540

Aninal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. By adding new § 540.103h to read as follows:

§ 540.103h Amoxicillin trihydrate and clavulanate potassium for oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Amoxicillin trihydrate and clavulanate potassium for oral suspension is a dry mixture of amoxicillin trihydrate and clavulanate potassium with one of more suitable and harmless flavorings, sweetening ingredients, stabilizers, and suspending agents. When reconstituted as directed in the labeling, each milliliter contains amoxicillin trihydrate equivalent to 50 milligrams of amoxicillin with clavulanate potassium equivalent to 12.5 milligrams of clavulanic acid. Its amoxicillin trihydrate content is satisfactory if it is not less that 90 percent and not more than 120 percent of the number of milligrams of amoxicillin that it is represented to contain. Its clavulanate is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of clavulanic acid that it is represented to contain. The moisture content of the dry powder is not more than 8.5 percent. When reconstituted as directed in the labeling, its pH is not less than 4.8 and not more than 6.6. The amoxicillin trihydrate conforms to the standards prescribed by § 440.3(a)(1) of this chapter. The calvulanate potassium conforms to the standards prescribed by § 455.15(a)(1) of this chapter.

(2) *Labeling.* The drug shall be labeled in accordance with the requirements of paragraph (c) of this section and § 510.55 of this chapter; in addition, it shall be labeled "amoxicillin and clavulanate potassium for oral suspension, veterinary".

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 514.50 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The amoxicillin trihydrate used in making the batch for potency, moisture, pH, amoxicillin content, concordance, crystallinity, and identity.

(*b*) The clavulanate potassium used in making the batch for clavulanic acid content, moisture, pH, identity, and clavam-2-carboxylate content.

(*c*) The batch for amoxicillin content, clavulanic acid content, moisture, and pH.

(ii) Samples required:

(*a*) The amoxicillin trihydrate used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*b*) The clavulanate potassium used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*c*) The batch: A minimum of 6 immediate containers.

(b) *Tests and methods of assay*—(1) *Amoxicillin and clavulanic acid contents.* Proceed as in § 440.103e(b) of this chapter.

(2) *Moisture.* Proceed as in § 436.201 of this chapter.

(3) *pH.* Proceed as in § 436.202 of this chapter, using the suspension reconstituted as directed in the labeling.

(c) *Conditions of marketing*—(1) *Specifications.* The drug conforms to the requirements of paragraph (a) of this section.

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(2) *Sponsor.* See 000029 in § 510.600(c) of this chapter.

(3) *Conditions of use*—(i) *Dogs*—(*a*) *Amount.* 6.25 milligrams per pound of body weight twice daily (equivalent to 5 milligrams amoxicillin and 1.25 milligrams clavulanic acid per pound body weight).

(*b*) *Indications for use.* For the treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, *Staphylococcus* spp. *Streptococcus* spp., and *E. coli.*

(*c*) *Limitations.* Administer for 5 to 7 days or 48 hours after all symptoms have subsided. Deep pyoderma may require 21 days, not to exceed 30 days. If no improvement is seen in 5 days, discontinue therapy and reevaluate the case. Not for use in dogs maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) [Reserved].

Dated: January 29, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-2484 Filed 2-4-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Beecham Laboratories. The supplemental NADA provides an additional claim for safe and effective use in dogs of amoxicillin trihydrate and clavulanate potassium tablets in treating soft tissue infections and also claims effectiveness against certain infectious organisms in addition to those currently associated with the existing skin infections claim. Additionally, the supplemental NADA decreases the duration of treatment.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham Inc., Bristol, TN 37620, is sponsor of approved NADA 55-099 which provides for use in dogs of amoxicillin trihydrate and clavulanate potassium tablets to treat skin infections such as superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, and *Staphylococcus* spp. The firm has filed a supplemental NADA providing additional claims for use of the drug to treat soft tissue infections and for *Streptococcus* spp. *E. coli* as susceptible organisms. Additionally, the supplement revises the limitations paragraph in 21 CFR 540.103g to decrease the duration of treatment of skin and soft tissue infections. The supplement is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Docket Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b) (4):

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 540.103g by revising paragraph (c)(3)(i) (*b*) and (*c*) to read as follows:

§ 540.103g Amoxicillin trihydrate and clavulanate potassium film-coated tablets.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(*b*) *Indications for use.* It is used for treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, *Staphylococcus* spp., *Streptococcus* spp., and *E. coli.*

(*c*) *Limitations.* Wounds, abscesses, cellulitis, and superficial/juvenile pyoderma: Treat for 5 to 7 days or for 48 hours after all signs have subsided. If no improvement is seen after 5 days of treatment, discontinue therapy and reevaluate the case. Deep pyoderma may require treatment for 21 days; do not treat for more than 30 days. Not for use in dogs maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

Dated: January 29, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-2483 Filed 2-4-86; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

26 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

Correction

In the issue of Thursday, January 23, 1986, beginning on page 3040, a correction to FR Doc. 86-871 appeared.

On page 3041, first column, item 2 is corrected to read, "2. In the third column, under Appendix B, th'rd line, "G" should read "G,".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Amendments to Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Director is announcing the approval, with certain exceptions, of proposed amendments submitted by the State of Colorado as modifications to its permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments, originally announced as two separate proposed rulemakings on October 1, 1984 and April 25, 1985 (49 FR 38653-38654 and 50 FR 16311-16321), involve definitions and requirements concerning coal exploration, permit application information needs, prime farmland, confidentiality, mapping, inspection and enforcement, civil penalty assessments, guidelines, declaratory orders, and performance standards pertaining to roads, revegetation, land use, temporary cessation of operations, fish and wildlife, topsoil, use of explosives and the treatment of drilled holes and underground openings.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards in accordance with SMCRA without undue delay.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102. Telephone: (505) 766-1492.

SUPPLEMENTARY INFORMATION: On December 15, 1980, the Secretary of the Interior approved the Colorado program, subject to the correction of 45 deficiencies. Information pertinent to the general background, revisions and amendments to the Colorado program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the December 15, 1980 **Federal Register** (45 FR 82173-82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16.

On August 28, 1984, Colorado submitted proposed amendments revising various provisions of the Colorado Code of Regulations concerning coal exploration, permit application information requirements and performance standards relating to topsoil, treatment of drilled holes and underground openings, use of explosives, and temporary cessation of operations. On October 1, 1984, OSMRE announced receipt of the amendments and opened the public comment period (49 FR 38653-38654). Since no one requested a public hearing, none was held. On February 4, 1985, OSMRE notified the State of the deficiencies found in the amendments and provided an opportunity for the State to submit further rule changes, policy statements, legal opinions or other evidence to show that the State's proposed modifications were consistent with the Federal requirements.

On March 8, 1985, Colorado responded to OSMRE's concerns by proposing additional changes to the coal exploration regulations and by providing additional information concerning the proposed changes to the topsoil and temporary cessation of operations rules. OSMRE found that this response did not fully resolve all identified deficiencies, and so notified the State by letter of May 21, 1985. This letter also provided the State with another opportunity to correct these problems.

On March 12, 1985, Colorado submitted additional proposed amendments revising various provisions of the Colorado Code of Regulations concerning prime farmland, roads, mapping, revegetation, land use, fish and wildlife, inspection and enforcement, civil penalties, guidelines, declaratory orders, and permit application information requirements. On April 25, 1985, OSMRE announced receipt of the proposed amendments and opened the public comment period (50 FR 16311-16312). Since no one requested a public hearing, none was held. On August 22, 1985, OSMRE notified the State of the deficiencies found in the proposed amendments and provided an opportunity for the State to submit additional materials demonstrating that the proposed modifications were consistent with the Federal requirements.

This letter also revised the deficiencies identified in the August 28, 1984 amendment package, as listed in the letters of February 4, 1985 and May 21, 1985. At the State's request, the contents of this letter were further discussed at a meeting on August 29, 1985. By letter dated October 2, 1985, Colorado subsequently submitted additional proposed rule changes, proposed policy statements, legal opinions and other responses regarding the mapping, topsoil, land use, blasting, coal exploration, revegetation, prime farmland, archaeological resources, confidentiality, and fish and wildlife requirements. The submittal also included material relative to revegetation success standards and methods of determining revegetation success. On October 30, 1985, OSMRE announced receipt of the materials submitted on March 8, 1985 and October 2, 1985, and reopened the public comment period until November 29, 1985 (50 FR 45117-45118).

Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments submitted by the State of Colorado. The Director's review of the proposed amendments was largely confined to the actual changes and did not necessarily encompass the entire provision within which a change was proposed. The Director may require further changes in the future as a result of his ongoing review of the Colorado program in light of Federal regulatory revisions, court decisions and oversight evaluations.

1. Coal Exploration

(a) Colorado proposes to revise its definition of "coal exploration" at 2 CCR 407-2, 1.04(22) to include only mechanical disturbances of the natural land surface for the purpose of determining overburden characteristics, coal quantity or quality, or the hydrologic characteristics of the area, as well as the construction of roads to determine other environmental resources of the area.

The corresponding Federal definition of 30 CFR 701.5 also includes all mapping and pre-permit environmental data collection activities, and does not limit its scope to mechanical disturbances. Prior to promulgating the revised coal exploration rules on September 8, 1983, OSMRE requested comments on the need to include environmental data collection within the definition of coal exploration (47 FR 21443, May 18, 1982). In response to the comments received, OSMRE decided to retain this element of the definition, as discussed in the preamble to the

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September 8, 1983 rules (48 FR 40623–40624). However, as promulgated on that date, the Federal regulations at 30 CFR Parts 772 and 815 did not impose any filing, permitting or performance requirements on coal exploration operations which would not substantially disturb the natural land surface, unless those operations would take place on lands designated as unsuitable for surface mining, in which case they would have to be conducted in accordance with an approved exploration permit and the performance standards of 30 CFR Part 815.

In response to these OSMRE concerns, on October 2, 1985, Colorado indicated that as part of the regulatory reform process it would further amend its regulations to specify that, for lands designated as unsuitable for surface mining, the definition would include all data collection activities regardless of whether they disturb the natural land surface.

However, on July 15, 1985, the U.S. District Court for the District of Columbia ruled that the Secretary had failed to adequately justify his decision to require operators engaging in coal exploration activities to file a notice of intent with the regulatory authority only when the operator anticipated that such activities might substantially disturb the natural land surface. The court noted that such a procedure could encourage a lack of compliance with section 512(a) of SMCRA, and, accordingly, it remanded 30 CFR 772.11(a) to the Secretary for reconsideration (*In re: Permonent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144).

The revised definition of coal exploration proposed by Colorado would have an effect similiar to remanded 30 CFR 772.11(a) in that it would limit filing requirements to sites at which the operator anticipates a certain level of disturbance. Therefore,the Director finds that the proposed revision to Colorado rule 1.04(22) would render the Colorado program less effective than the Federal regulation as interpreted by the court and he is not approving it.

(b) Colorado proposes to revise 2 CCR 407–2, 2.02.1, which establishes the scope of the general coal exploration requirements, to delete the reference to, and partial repetition of, the definition of "coal exploration". Since the definition itself would remain in effect, this deletion would have no effect upon the meaning or application of this rule. Therefore, the Director finds that revised State rule 2.02.1 is no less effective than the Federal regulations at 30 CFR 772.1.

(c) Colorado proposes to revise 2 CCR 407–2, 2.02.2(2)(c) by replacing the requirement for a "precise" description of the exploration area with one for a "narrative" description. The Director finds that the revised rule is no less stringent than section 512(a) of SMCRA, which requires a description of the exploration area, and no less effective than the Federal regulation at 30 CFR 772.11(b)(3), which requires a narrative describing the exploration area.

In *In re: Permanent Surface Mining Regulation II*, the U.S. District Court for the District of Columbia remanded 30 CFR 772.11(b)(3) for further rulemaking to clarify how detailed the description required by section 512(a) of SMCRA must be. When OSMRE has completed further rulemaking to address this decision, the State will be notified of any amendments needed to be no less effective than the Federal rules.

(d) Colorado proposes to revise 2 CCR 407–2, 2.02.2(2)(g), 2.02.3(1)(c)(ii) and 2.02.3(1)(e) to establish special descriptive and mapping requirements for coal exploration operations involving drilling. The changes to 2.02.2(2)(g) and 2.02.3(1)(c)(ii) require that descriptions of proposed exploration operations include the maximum number of holes to be drilled within each quarter-quarter section (40 acres) as established by the rectangular survey system, while the changes to 2.02.3(1)(e) require that maps accompanying exploration permit applications indicate the quarter-quarter sections within which excavations will be conducted or holes will be drilled.

Since neither section 512 of SMCRA nor the Federal regulations at 30 CFR 772.11(b) (3) and (5) and 772.12(b) (3) and (12) establish location accuracy standards, and since the maps need only be prepared at a scale of 1:24,000, the Director finds that the quarter-quarter section criterion is reasonable, no less stringent than SMCRA and no less effective than the Federal regulations. However, the wording of 2.02.2(2)(g), as revised, indicates that the description of the methods to be used to conduct coal exploration and reclamation need include only the number of drill holes. This information alone is inadequate since it does not describe the method of reclamation and since coal exploration activities may also include road construction or use non-drilling methods, activities and methods which would not have to be described under the revised rule. Therefore, the Director is requiring that Colorado further amend its program to clarify that the second sentence of 2.02.2(2)(g) only sets accuracy standards for descriptions of drilling operations, and that it does not exempt any operation from the applicable descriptive requirements of the first sentence.

(e) Colorado proposes to revise the language defining the scope of the performance standards for coal exploration at 2 CCR 407–2, 4.21.1 to delete the reference to, and partial repetition of, the definition of "coal exploration". The Director finds that the deletion of this language does not alter the meaning of the rule, and that the revised rule is no less effective than the Federal regulations at 30 CFR 815.1.

(f) Colorado proposes to revise 2 CCR 407–2, 4.21.4(1) to provide that habitats of unique value for fish, wildlife or other related environmental values, and areas identified in State rule 2.05.6(2)(b), shall not be adversely affected during coal exploration. The Federal rule at 30 CFR 815.15(a) prohibits any disturbance of such areas; however, Colorado explains that areas of only seasonal use by, or importance to, wildlife could be minimally disturbed during the period of nonuse without adversely affecting the site's significant values. The preamble to the revised Federal rule clarifies that under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) critical habitats may not be destroyed or adversely modified, except as otherwise provided in that statute (48 FR 40631, September 8, 1983). The Director finds that the phrase "adversely affected" is synonymous with the phrase "adversely modified", and that, if implemented in accordance with the clarifications contained in Colorado's letter of March 8, 1985, the revised language is no less effective than the terminology of 30 CFR 815.15(a).

However, the Director is requiring that Colorado correct an apparent typographical error in the cross reference portion of the rule. To be no less effective than the Federal requirements, Colorado must replace the reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), thus insuring that the revised rule will protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

2. Soil Resources Information

Colorado proposes to revise its permit application requirements at 2 CCR 407–2, 2.04.9(1) to require soil resources information only for the area to be disturbed, not the entire permit area, and to otherwise clarify informational requirements. On August 4, 1980, the Secretary suspended the corresponding Federal regulations at 30 CFR 779.21 and 783.21 to the extent that they require soil survey information for non-primeland soils. Since Colorado rule 2.04.12(4) separately requires that a soil survey prepared to the standards of the National Cooperative Soil Survey be submitted for all prime farmland soils within the area to be disturbed, the Director finds that the proposed changes to 2.04.9(1) are no less stringent than SMCRA and no less effective than the Federal regulations.

3. Topsoil

(a) Colorado proposes to revise 2 CCR 407–2, 4.06.1(2) to delete the provision limiting alternative topsoil storage practices (other than stockpiling) to surface disturbances associated with underground mining. The corresponding Federal regulations at 30 CFR 816/817.22(c)(3) permit alternative topsoil storage practices for long-term surface disturbances of any type, but only under certain conditions. The proposed Colorado revisions are less effective in that they require only that the alternative practice provide equal or greater protection to the topsoil. Therefore, the Director is requiring that Colorado further amend its program to provide that alternative topsoil storage practices may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling.

(b) Colorado proposes to revise 2 CCR 407–2, 4.06.2(1) to apply all provisions governing the clearing of vegetation prior to topsoil removal to both surface and underground mining operations. The revised rule would exempt surface mining operations from the requirement to clear vegetation if the operator can demonstrate that the vegetation is necessary or desirable to ensure soil productivity consistent with the postmining land use. The Director finds that this provision does not conflict with the other vegetation-clearing requirements of this State rule (which require removal of only vegetation interfering with topsoil use) and that it is no less effective than the Federal regulations at 30 CFR 816/817.22(a)(4), which require that all vegetation interfering with topsoil salvage be cleared prior to topsoil removal.

(c) Colorado proposes to revise 2 CCR 407–2, 4.06.2(2)(a) to allow variances from topsoil removal requirements "for good cause shown". The revised rule lists three examples (light traffic areas which do not destroy vegetation or cause erosion; areas of construction of small structures such as power poles, signs or fence lines; and areas where removal would cause needless damage to soil characteristics, but it does not limit variance issuance to these cases.

The Federal regulations at 30 CFR 816/817.22(a)(3) allow the granting of topsoil removal variances for minor disturbances meeting the criteria established for the first two examples. Since the third variance situation proposed by the State (areas where topsoil removal would cause needless damage to soil characteristics) meets the reclamation objectives of SMCRA section 102 and the topsoil protection objectives of 30 CFR 816/817.22, the Director finds that the three specific situations in which the State proposes to provide a topsoil removal variance are no less effective than the Federal regulations at 30 CFR 816/817.22(a)(3). However, since the State rule does not define what constitutes "good cause shown" and since it does not limit topsoil removal variances to the three situations given as examples, the potential exists to consider almost any grounds as sufficient basis for a variance. Therefore, the Director is requiring that Colorado further amend its program to clearly establish criteria for the granting of topsoil removal variances.

By letter of October 2, 1985, Colorado stated that this revision was proposed in part to allow the State to grant operators an exemption from the requirement to salvage poor quality topsoil on the steep slopes of ephemeral drainages. While a blanket exemption of this nature would be less effective than 30 CFR 816/817.22(a)(3), the Federal regulations at 30 CFR 816/817.22(b) do allow the use of selected overburden materials as topsoil substitutes where the operator demonstrates that the resulting soil medium is equal to or more suitable for sustaining vegetation than the existing topsoil and where the resulting soil medium is the best available in the permit area to support vegetation. Except as discussed in Finding 3(d), the Colorado rules at 4.06.2(4)(a) contain similar provisions for topsoil substitution. Where appropriate selected overburden materials are available, use of this topsoil substitution procedure would allow the State to achieve the goal of the proposed amendment while ensuring that the resulting surface soil medium would be equal to or more suitable for sustaining vegetation than the existing topsoil. Based on this understanding, Colorado has agreed to restrict the granting of topsoil removal variances to the three situations identified in 4.06.2(2)(a)(i), (ii) and (iii), as submitted on August 28, 1984, until the further revisions required by the Director are submitted and approved.

(d) Colorado proposes to revise 2 CCR 407–2, 4.06.2(4)(a)(ii) to delete the requirement for laboratory certification of proposed topsoil substitutes and supplements. Instead, the revised rule would require that trials and tests be conducted using standard procedures approved by the Division. Although the revised Federal rules no longer require laboratory certification, the Director finds that the State's revised rule is less effective than the Federal regulations at 30 CFR 816/817.22(b) and less stringent than section 515(b)(5) of SMCRA in that it does not require that the operator demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation. Therefore, he is requiring that the State further amend its program to correct this deficiency. By letter of October 2, 1985, Colorado has agreed to require this demonstration in the interim until the deficiency has been formally corrected.

(e) Colorado proposes to revise 2 CCR 407–2, 4.06.4(1) to require mechanical loosening or other treatment of regraded materials only where necessary to eliminate slippage surfaces, relieve compaction, or provide for root penetration. The Federal rules at 30 CFR 816/817.22(d)(2) contain a similar requirement, but they also require that this land treatment be done prior to topsoil replacement or at a time when it will cause no harm to either redistributed materials or reestablished vegetation. By letter of October 2, 1985, Colorado stated that it interpreted the term "regraded land" in its revised rule in a manner identical to its use in the Federal rule, i.e., loosening following topsoil replacement would be an alternative treatment requiring Division approval. Colorado further stated that it would evaluate all such requests to ensure that no unnecessary compaction of the redistributed materials occurred. In addition, State rule 4.15.3(1) prohibits seeding and planting of disturbed areas until final preparation has been completed. Since loosening of regraded land is part of seedbed preparation, no harm to vegetation could occur.

Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations at 30 CFR 816/817.22(d)(2).

(f) Colorado proposes to revise 2 CCR 407–2, 4.06.4(2)(a) to replace the requirement that topsoil and other materials be distributed so as to achieve

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an "approximate uniform, stable thickness", consistent with approved postmining land uses, contours, surface water drainage systems and requirements of the vegetation proposed to be established, with a requirement that distribution achieve an "average thickness". The Federal rules at 30 CFR 816/817.22(d)(1)(i) require that redistribution achieve an approximately uniform, stable thickness consistent with the approved postmining land use, contours and surface water drainage systems. The Director finds that substitution of "average thickness" for "approximate uniform, stable thickness" would render the State rule less effective than the Federal rule since the change would allow wide random deviations in topsoil thickness without regard for uniformity or stability.

Since the approximately uniform, stable thickness standard already permits limited differential topsoil redistribution where justified by postmining land use, topographical, drainage and stability concerns, Colorado requested withdrawal of this proposed change. In its request of October 2, 1985, Colorado stated that it understood that the existing language provided sufficient flexibility to allow the Division to approve placement of greater topsoil depths at the top of swales than at the bottom so as to allow for some erosional redistribution. The Director agrees that Colorado has some flexibility in this respect, but he notes that, in approving any differential redistribution plan, the State must fully consider the requirement of State rule 4.06.4(2)(d) that erosion be minimized through protection of the topsoil both before and after seeding or planting, and the requirement of State rule 4.16.1 that all areas affected by surface coal mining operations be restored in a timely manner to conditions capable of fully supporting the uses they were capable of supporting to mining or to any approved higher or better uses.

Since Colorado has withdrawn this proposed change, the provisions approved on December 15, 1980 will remain in effect as a part of the Colorado program.

4. Drilled Holes and Exposed Underground Openings

(a) Colorado proposes to revise 2 CCR 407-2, 4.07.1(2) and 4.07.2 to provide that the sealing and protection standards for temporarily inactive drilled holes and exposed underground openings also apply to those holes and openings which will be eliminated by future mining, as approved in the permit. Boreholes extending deeper than the approved future mining must be permanently sealed below that level. Although the Federal regulations at 30 CFR 816/817.13 through 816/817.15 do not contain similar provisions, the Secretary finds that such holes are appropriately considered as being temporarily inactive since they will be completely removed by future mining. Since the operator would be required to inspect and maintain all temporary seals and protective measures, there would be no reduction in the level of protection afforded to the public health and safety and the environment. Therefore, the Director finds that these revisions are no less effective than the Federal regulations.

(b) Colorado proposes to revise 2 CCR 407-2, 4.07.3 (1) and (2) to expand the range of plug and sealant materials acceptable for use in the closure of permanently abandoned drill holes and exposed underground openings. The Federal regulations at 30 CFR 816/817.15 require only that such holes and openings be permanently closed so as to prevent contamination of surface or ground waters and to prevent access, requirements which are met by the State's technical closure criteria. Therefore, the Director finds that the revised State rules are no less effective than the Federal rules.

5. Use of Explosives

(a) Colorado proposes to revise 2 CCR 407-2, 408.3(2)(b)(i) and (ii) to allow the Division to approve blasting schedules with designated blasting areas larger than 300 acres in size, and to delete the requirement that blasting times not exceed an aggregate of four hours in any one day. The Director finds that these revisions are no less effective than the Federal regulations at 30 CFR 816.64(c)(2) and (3), which require only that the blasting schedule identify the specific areas in which blasting will take place and the dates and times when explosives are to be detonated.

(b) Colorado proposes to revise 2 CCR 407-2, 4.08.4(1)(b)(ii) to clarify that oral notice of unscheduled nighttime blasting does not need to be given to employees of the mining operation. The revised Federal regulations at 30 CFR 816.64(a)(3) require only that residents within ½ mile of the blasting site be notified by an audible signal, a signal also required by the State rules at 4.08.4(1)(b)(ii) and 4.08.4(3). Since the Federal rules no longer require oral notices, the Director finds that the Colorado revision is no less effective than the Federal rules.

(c) Colorado proposes to revise 2 CCR 407-2, 4.08.4(10), 4.08.4(10)(a) and 4.08.4(10)(a)(i) to allow the Division to increase the maximum allowable peak particle velocity for a particular mining operation if it determines that a different velocity is justified by the density of population, land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors. The currently approved State rule permits only velocity *reductions* on these grounds.

The revised Federal rules at 30 CFR 816/817.67(d)(1) require that the maximum ground vibration permissible at the protected structures listed in 30 CFR 816/817.67(d)(2)(i) be established in accordance with the peak particle velocity limits of paragraph (d)(2), the scaled-distance equation of paragraph (d)(3), or the blasting level chart of paragraph (d)(4). The Federal rules at 30 CFR 816/817.67 (d) and (e) do not permit an unrestricted increase in allowable maximum peak particle velocities for any of the factors listed in State rule 4.08.4(10)(a)(i); 30 CFR 816/817.67(d)(1) provides that the standard peak particle velocity limits of paragraph (d)(2) may be exceeded only when the blasting level chart of paragraph (d)(4) is used to determine maximum ground vibration, and then only to a limited extent (2.0 inches per second at certain frequencies).

Section 515(b)(5)(C) of SMCRA requires the regulatory authority to promulgate regulations governing the use of explosives to limit their use so as to prevent, *inter alio*, damage to public and private property outside the permit area. As discussed in the preamble to the proposed rule revising the Federal explosives regulations, this language requires that threshold damage (e.g., lengthening of existing plaster cracks), not just major and minor damage, be prevented (47 FR 12765-12766, March 24, 1982). In formulating its regulatory limits on blasting vibration, OSMRE relied on Bureau of Mines Report of Investigations RI 8507, which consolidates numerous previous studies on blast vibration and structural damage. After consideration of the comments received on its proposed rules and the Bureau of Mines report, OSMRE established its maximum peak particle velocity standards based on the report's most reliable data concerning threshold damage, data involving actual blasts and actual structures under carefully monitored conditions. OSMRE specifically rejected a commenter's request that the regulatory authority be allowed to increase permissible velocity limits on an unrestricted site-specific basis. The Director is not aware of any data which can clearly substantiate the claim that threshold damage can be prevented at higher velocities without use of the more sophisticated planning, analysis and monitoring required for use of the blasting level chart (48 FR 9795-9800, March 8, 1983).

Therefore, the Director finds that the proposed changes to State rules 4.08.4(10)(a) and 4.08.4(10)(a)(i) to allow the Division discretionary authority to increase the maximum allowable peak particle velocity are less effective than the Federal regulations, and cannot be approved. However, the Director also finds that the language added to the introductory paragraph of State rule 4.08.4(10) to clarify that the Division has the authority to reduce the maximum allowable peak particle velocity below one inch per second is not less effective than 30 CFR 816/817(d)(1) and (5).

(d) Colorado proposes to revise 2 CCR 407-2, 4.08.4(10)(a)(ii) to require that structures owned by the permittee and leased to another party be inhabited before they qualify as structures protected by the maximum allowable peak particle velocity standards. The Director finds that this change would render the State rule less effective than the Federal regulations at 30 CFR 816/817.67(e)(2), which do not require that leased structures be inhabited before coming under protection. In addition, the wording of the revised State rule does not limit the increased maximum velocity to the structures in question. Therefore, the Director is not approving these proposed changes.

(e) Colorado proposes to add 4.08.4(10)(a)(iii) to 2 CCR 407-2 to allow the Division to increase the maximum allowable peak particle velocity when the owners of structures provide written waivers prior to blasting. The Federal regulations at 30 CFR 816/817.67(e) do not authorize any such waivers. In the preamble to the March 13, 1979 regulations (44 FR 15199) OSMRE explained that it had declined to adopt commenters' recommendations that such a waiver provision be included in the regulations because homeowners are not likely to have adequate technical knowledge for intelligent selection of an alternative maximum allowable peak particle velocity, and because they may waive their rights without realizing the significance of such an action.

Therefore, the Director finds that adoption of this provision would render the Colorado program less effective than the Federal requirements, and he is not approving it.

(f) Colorado proposes to revise 2 CCR 407-2, 4.08.5(14) to specify that records of blasts maintained by the operator need contain data on the type and length of stemming only if the subject blasts occurred within 1,000 feet of the permit perimeter. The Federal rules at 30 CFR 816/817.68(m) require that records of all blasts contain this information. The type and length of stemming is important in controlling both flyrock and air blast, the adverse effects of which are not limited to blasts occurring within 1,000 feet of the permit perimeter. Since lack of this information would hinder investigation of both damage occurrences and complaints from the public, the Director finds that this change would render the Colorado program less effective than the Federal requirements, and he is not approving it.

(g) Colorado has made minor wording changes to 2 CCR 407-2, 4.08.6(2), to clarify its requirements concerning the use of a modified equation to determine the maximum allowable weight of explosives per delay and to conform the rule to other program requirements. The Director finds that the proposed changes are no less effective than the Federal rules at 30 CFR 816/817.67(d)(3)(ii).

6. Temporary Cessation of Operations

Colorado proposes to revise its rule at 2 CCR 407-2, 4.30.1(2) to provide a two-phase notification procedure for temporary cessations of operations and to make other nonsubstantive wording changes. The State has retained the requirement that the permittee notify the Division before ceasing operations for 30 days or more or as soon as it is known that the cessation will extend beyond 30 days. However, the revised rule allows the permittee 90 days following that notification to submit a detailed notice of intention containing the rquired information concerning mining and reclamation status and those monitoring and reclamation activities which will continue during the period of temporary cessation. As explained by letter of March 8, 1985, until the Division receives complete information and approves the temporary cessation, Colorado will continue to inspect such mines at the frequency required for active operations and will enforce all performance standards. The additional time will allow the preparation of more accurate and complete reports, especially for larger, more complex mines. Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations at 30 CFR 816/817.131(b).

7. Guidelines

Colorado proposes to add a new subsection 1.15 to 2 CCR 407-2 to provide formal rules governing the adoption and use of guidelines. The Federal rules contain no similar provisions, but the Director finds that the proposed rules are not inconsistent with SMCRA nor are they less effective than the Federal regulations.

8. Declaratory Orders

In accordance with its Administrative Procedures Act, Colorado proposes to add a new subsection 1.14 to 2 CCR 407-2 to establish procedural rules governing the filing, processing and disposition of petitions for declaratory orders concerning the applicability of any statutory provision or rule or order of the Mined Land Reclamation Board to the petitioner. The Director finds that these procedures are not inconsistent with SMCRA, nor are they less effective than the Federal regulations, provided that this process is not used as an alternative administrative appeal route for enforcement, permitting or bond release actions, or for appeals of lands unsuitable determinations or other decisions of the regulatory authority.

9. Permit Application Information

(a) Colorado proposes to reorder the wording of 2 CCR 407-2, 2.03.5(3) to clarify that the schedule of violations submitted with the permit application need include only violations of the Colorado Surface Coal Mining Reclamation Act and violations of any other Colorado or Federal law, rule or regulation pertaining to air or water environmental protection. The Director finds that, apart from more clearly requiring the listing of all violations of the Act, the proposed wording changes do not alter the substantive content of this rule, and that the changes themselves are no less effective than the corresponding Federal regulations at 30 CFR 778.14(c). As part of the regulatory reform review process, Colorado will be required to further amend this rule to require the listing of all violations of the relevant laws, rules and regulations of other States as well, in order to be no less stringent than section 510(c) of SMCRA and no less effective than 30 CFR 778.14(c).

(b) Colorado proposes to revise 2 CCR 407-2, 2.03.9(1) to allow an applicant to submit that portion of the permit application requiring proof of the requisite liability insurance policy at some time subsequent to submission of the initial permit application but prior to the issuance of the permit. Section 507(f) of SMCRA and the Federal regulations at 30 CFR 800.60(a) require that proof of liability insurance coverage be submitted as part of the permit application.

The Colorado rule requires that the insurance policy be adequate to compensate any persons injured or property damaged as a result of surface

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coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury must be $300,000 for each occurrence and $500,000 aggregate, and minimum insurance coverage for property damage must be $300,000 for each occurrence and $500,000 aggregate.

Under the revised State rule, both the State and the public would have sufficient information from the portions of the permit application filed initially to evaluate the adequacy of the applicant's proposed liability coverage, while the operator would be relieved of the costs of acquiring liability insurance for the period of principal permit review. Since Colorado would still require that the applicant obtain and submit proof of the necessary liability insurance before any permit is issued and before initiation of any coal mining operation, and since this proof, when submitted, must be included in the permit application, the Director finds that the revised State rule provides protection that is no less stringent than that required by section 507(f) of SMCRA and that it is no less effective than the corresponding Federal regulations.

(c) Colorado proposes to revise 2 CCR 407–2, 2.04.4 to require that the permit application contain a description of only significant known archaeological sites existing on the date of application, rather than all known archaeological features. The Federal regulations at 30 CFR 779.12(b) and 783.12(b) require descriptions of all known archaeological features, although section 507(b)(13) of SMCRA contains language identical to that of the proposed revision to the State rule. Apart from the prohibitions and limitations on the effect of surface coal mining operations on sites listed in the National Register of Historic Places and the lands protected under the lands unsuitable designation process (provisions for which the Colorado program has similar counterparts), SMCRA and the Federal regulations establish no specific requirements for the protection of archaeological sites. Therefore, the applicable standards for the protection of cultural and historic resources under State permanent regulatory programs approved under SMCRA are provided by the National Historic Preservation Act of 1966, as amended, which requires that appropriate consideration be given to all potential effects upon sites listed in or eligible for inclusion in the National Register of Historic Places.

Hence, at a minimum, all archaeological sites listed in or eligible for inclusion in the National Register of Historic Places (using the criteria of 36 CFR 60.4) must be described and mapped in the permit application. By letter of October 2, 1985, Colorado stated that it interperets "significant" as including all such sites. The Director solicited comments from the Advisory Council on Historic Preservation on both the submission of March 12, 1985 and the clarification of October 2, 1985; however, no response was received.

Since the revised State rule requires sufficient information to provide the same level of protection to archaeological sites as that provided by the Federal rules, the Director finds that this revision of State rule 2.04.4, as clarified on October 2, 1985, is no less effective than the Federal regulations. However, OSMRE is planning to revise its rules and otherwise clarify requirements concerning the protection of cultural and historic resources. When these interpretive documents are issued or the revised regulations are promulgated, OSMRE will notify the State of any necessary modifications in accordance with 30 CFR 732.17.

(d) Colorado proposes to revise 2 CCR 407–2, 2.04.8(1) to require that permit applications include climatological information only when requested by the Division. Since, the Federal regulations at 30 CFR 779.18 and 783.19 specify that climatological information is required only when requested by the regulatory authority, the Director finds that the revised rule is no less effective than the Federal rules.

(e) Colorado proposes to revise 2 CCR 407–2, 2.04.10(4) to delete the requirement that permit applications contain information concerning the trend of each vegetative community or portion thereof. Since the Federal regulations at 30 CFR 779.19 and 783.19 specify that vegetative information is required only when requested by the regulatory authority, the Director finds that the revised rule is no less effective than the Federal regulations.

(f) Colorado proposes to revise 2 CCR 407–2, 2.05.3(4)(a)(1)(A) and 2.05.3(4)(a)(ii)(A) to provide that other engineers may assist the qualified registered professional engineer in the preparation of general and detailed design plans for ponds, impoundments and diversions. The Director finds that the revised State rules are no less effective than the design assistance provisions of the Federal regulations at 30 CFR 780.25(a)(1)(i), 780.25(a)(2)(i), 780.25(a)(3)(i), 784.16(a)(1)(i), 784.16(a)(2)(i) and 784.16(a)(3)(i).

(g) Colorado proposes to delete 2 CCR 407–2, 2.05.5(1)(a)(iv), which requires that, where the proposed postmining land use is range or pasture, the permit application must include the detailed management plans to be implemented following final bond release. The State believes this requirement is unrealistic given the permittee's lack of control following bond release and the time lapse between plan submittal and the projected implementation date. The preamble to the corresponding Federal regulations at 30 CFR 780.23(a)(2) indicates that this requirement is based on the need to know the historical carrying capacity, proposed postmining carrying capacity and site-specific capability of the land in order to determine the feasibility of the proposed use (44 FR 15058, March 13, 1979). By letter of October 2, 1985, Colorado agreed with the preamble statement and stated that this information is obtained from the detailed narratives required by 2.04.3(2)(b) and 2.05.5(1)(a) (i) through (iii). These narratives include a description of the land's capability and productivity prior to mining and a discussion of how the proposed postmining land use will be achieved. Hence, preparation of a detailed management plan is unnecessary.

Therefore, based on Colorado's clarifications of October 2, 1985, the Director finds that the deletion of State rule 2.05.5(1)(a)(iv) will not render the Colorado program less effective than the Federal regulations.

(h) Colorado proposes to revise 2 CCR 407–2, 2.07.5(1)(b) to allow information pertaining to the quantity of the coal or to stripping ratios to be kept confidential upon request of the permit applicant. In approving Colorado's permanent regulatory program, the Secretary approved similar provisions regarding quantity (but not stripping ratios) at CRS 34–33–110(7) and 34–33–111(i)(1), based on the legislative history of SMCRA (45 FR 82182, December 15, 1980). However, his approval of this provision also relied on the State's commitment of July 16, 1980 to limit the quantitative information to be held in confidence to "direct statements setting forth the limits of coal reserves", which the Secretary interpreted to mean only quantitative data, not the areal extent of the coal. A person owning property or other interests overlying the affected area of an underground mine must have access to maps showing the planned extent of mining and to overburden information to enable him to evaluate subsidence potential, and persons potentially affected by surface mining must have access to sufficient geological, chemical and physical information concerning the overburden, coal seam(s) and other

strata to enable him or her to fully evaluate any potential adverse impacts on his or her interests. Section 507(b)(17) of SMCRA requires that information pertaining to coal seams, test borings, core samplings or soil samples be made available to any person with an interest which is or may be adversely affected. Congress intended that confidential information be limited to "selected qualitative and quantitative analysis of the coal seam" [H.R. Rep. No. 218, 95th Congress 1st Sess. 91 (1977)].

By letter of October 2, 1985, Colorado agreed that persons who may be adversely impacted by the proposed operation must have access to information regarding the depth to the coal and the stratigraphy and qualitative aspects of the overburden. To meet this need, the State will require that operators requesting drill log confidentiality reconstitute the stratigraphic data and qualitative information in a form suitable and adequate for public review.

Therefore, based on this commitment, the Director finds that the revised State rule is no less effective than the Federal regulations at 30 CFR 773.13(d)(2) and 773.13(d)(3)(ii).

(i) Colorado proposes to revise 2 CCR 407–2, 2.10.1 (1), (2) and (3) to require large-scale permit application maps only for the disturbed area, not the entire proposed permit area as required by the Federal regulations at 30 CFR 777.14(a). The Division would retain the right to require that additional areas be mapped at a larger scale for good cause shown. Colorado has requested approval of this amendment because its definition of "permit area" at 1.04(89) includes the entire effected area, which by definition includes all areas overlying existing and planned underground workings. The more limited Federal definition of "permit area" at 30 CFR 701.5 does not include all such areas.

However, both the State [at 1.04(36)] and OSM (at 30 CFR 701.5) define "disturbed area" as "an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations." At a meeting on August 29, 1985, Colorado stated that its definition of "disturbed area" included all areas to be disturbed during the term of the permit, as well as all areas disturbed at the time of application, but that it did not include all areas upon which roads and support facilities were sited. By letter of October 2, 1985, Colorado announced its intention to further amend its rules at 2.10.1(1) to clarify that the large-scale mapping requirements would also apply to these areas.

With respect to other proposed changes, since Colorado has retained the general requirement of Rule 2.10.1 that *all* maps legibly detail *all* information set forth on U.S. Geologic Survey topographical maps, and since the State has retained the specific requirement of Rule 2.10.3(1)(c) that the permit application include maps showing the boundaries of all areas proposed to be affected over the estimated total life of the proposed surface or underground mining activities, the proposed deletion of the phrase "over the estimated life of the operation" from the general mapping requirements of Rule 2.10.1(2) does not render the State rule less effective than the Federal regulations at 30 CFR 777.14(a), 779.24(c) and 783.24(c). Other minor wording changes are nonsubstantive in nature.

The Director is requiring that Colorado amend its rules at 2.10.1(1) to require that all areas upon which roads and support facilities (other than isolated monitoring stations involving little or no surface disturbance) are sited also be mapped at a large scale. He finds that the revised State rules at 2.10.1(1), (2) and (3) are otherwise no less effective than the Federal regulations.

(j) Colorado proposes to delete 2 CCR 407–2, 2.10.2(4), which requires that permit applications include a map delineating the area to be disturbed after the estimated date of issuance of the permit. The Federal regulations at 30 CFR 777.14(b) include a similar requirement, which, the preamble explains, is needed in situations where initial program permits are repermitted under the permanent program. Under the Federal rules, permanent program performance standards become effective only upon issuance of a permanent program permit; therefore, the inspector must be able to readily determine the portions of the permit area subject to differing sets of regulations for enforcement purposes.

However, Colorado has completed the repermitting of all but one initial program permit. In addition, at a meeting on August 29, 1985, Colorado stated that all operations must fully comply with its permanent program requirements regardless of permit status, since its initial program regulations are no longer in effect. Therefore, the Director finds that State rule 2.10.2(4) is now obsolete, and that its deletion will not render the Colorado program less effective than the Federal rules.

(k) While retaining the requirement for a map of the existing topography, Colorado proposes to revise 2 CCR 407–2, 2.10.3(1)(j) to delete the requirement that permit applications also include slope measurements. On October 2, 1985, the State submitted an explanation of its policy governing the implementation of this rule. The policy statement requires that all maps: (1) Be prepared at a uniform scale of 1:6,000 or larger, (2) accurately represent the range of natural slopes, variations in slopes and geomorphic differences, (3) extend at least 100 feet beyond any disturbed area or area to be disturbed, and (4) utilize a contour interval no greater than 20 feet. The State also submitted a legal opinion from a State assistant attorney general confirming that the language of the revised rule provides the Division with the authority to adopt this policy.

The Director finds that topographical maps prepared in accordance with this policy would be adequate substitutes for the specific premining slope measurements required by the Federal rules at 30 CFR 779.25(a)(11) and 783.25(a)(11). Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations.

(l) Colorado proposes to revise 2 CCR 407–2, 2.10.3(1)(i) to specify that the Division can require that permit application maps include relevant information other than that specified in Rule 2.10.3 only for good cause shown. As the Federal regulations at 30 CFR 779.25 and 783.25 contain no corresponding nonspecific informational requirements, the Director finds that the revised State rule is no less stringent than SMCRA and no less effective than the Federal regulations.

10. Prime Farmland

(a) Colorado has proposed several nonsubstantive wording changes to clarify the definition of "prime farmland" at 2 CCR 407–2, 1.04(95). The Director finds that the revised definition is no less effective than the Federal definition of "prime farmland" at 30 CFR 701.5.

(b) Colorado proposes to revise 2 CCR 407–2, 2.04.12(1) to require prime farmland investigations (reconnaissance inspections) only for areas to be disturbed and only for areas on which mining was not approved prior to August 3, 1977. The Director finds that the historical exemption provision is similar to and no less effective than that provided by the Federal regulations at 30 CFR 785.17(a). In addition, for reasons similar to those discussed in Finding 9(i), the Director finds that

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Colorado's proposal to require an investigation only of all areas to be disturbed is no less effective than the Federal regulation at 30 CFR 785.17(b)(1), which requires an investigation of the proposed permit area. However, since Colorado does not consider all lands upon which roads and support facilities are sited to be disturbed, and since these uses could adversely impact soil structure, the Secretary is requiring that the State further amend its program to also require prime farmland investigations for such lands.

(c) Colorado proposes to revise 2 CCR 407–2, 2.04.12(2) to conform the State's negative determination criteria for prime farmland investigations with the prime farmland criteria established for Colorado by the U.S. Soil Conservation Service (SCS) State Conservationist. Specifically, the revised rule states that land shall not be considered prime farmland where, *inter alia*, the slope exceeds 6 (rather than 10) percent, the land has no developed irrigation water supply, or the growing season is shorter than 90 days. On October 2, 1985, Colorado submitted a copy of the SCS publication *Importont Farmland Inventory, Colorado*, which contains the State-specific SCS definition of prime farmland. The State also submitted a copy of an August 28, 1985 letter from the State Conservationist confirming that this publication contains the definition currently in effect for SCS purposes.

The Federal regulations at 30 CFR 701.5 define prime farmland, in part, as those lands defined by the Secretary of Agriculture in 7 CFR 657. Subparagraph (a)(2) of 7 CFR 657.4 allows State Conservationists to further restrict the national prime farmland criteria of 30 CFR 657.5. Therefore, since the changes proposed by Colorado are consistent with the State Conservationist's criteria, the Director finds that the revised State rule is no less effective than the Federal regulations.

(d) Colorado proposes to revise 2 CCR 407–2, 2.04.12(4) to require that soil surveys of potential prime farmland need be submitted (and, where necessary, conducted) only for lands to be disturbed, rather than for all such lands within the proposed permit area. For the reasons discussed in Finding 10(b), the Director is requiring that Colorado further amend this rule to also require soil surveys for areas upon which roads and support facilities will be sited. He finds that the rule is otherwise no less effective than the Federal reglations at 30 CFR 785.17(c)(1).

11. Roads

Colorado proposes to revise the definition of "road" at 2 CCR 407–2, 1.04(111) to exclude all roadways adjacent to the immediate mining pit area as well as those within it, an exclusion which the State further explains as including only those roads reclaimed concurrently with the pit as part of the normal backfilling and grading plan. In addition, the State has proposed assorted revisions to its road design an performance standards at 2 CCR 407–2, 4.03. In general, these changes would permit greater flexibility in the design and construction of roads.

On October 1, 1984, the U.S. District Court for the District of Columbia held that the Secretary had failed to provide adequate public notice and opportunity for comment on the road classification system promulgated at 30 CFR 816/817.150(a) and it remanded those rules to the Secretary (*In re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144). Since the definition of "road" and the remainder of the performance standards concerning roads are partially dependent upon the road classification system, the Secretary implemented the court's order by suspending the definition of "road" at 30 CFR 701.5 and the performance standards for roads at 30 CFR 816.150, 816.151, 817.150 and 817.151 in their entirety (50 FR 7274–7278, February 21, 1985). Until new regulations are promulgated, the Director is reviewing State program amendments concerning roads only for consistency with SMCRA. When new regulations are promulgated, the Secretary will notify Colorado of any additional changes required, as provided by 30 CFR 732.17(d) and (e).

Section 515(b)(17) of SMCRA requires that surface coal mining and reclamation operations be conducted so as to insure that the construction, maintenance and postmining conditions of access roads will control or prevent erosion and siltation, water pollution, damage to fish or wildlife or their habitat, or damage to public or private property. In addition, section 515(b)(18) requires that operators refrain from the construction of roads or other access ways up stream beds or drainage channels or in such proximity to such channels so as to severely alter the normal flow of water.

Since the revisions to the State rules do not alter the general environmental and property protection requirements of Section 4.03, requirements which are similar to those of SMCRA, the Director finds that the proposed revisions are no less stringent than SMCRA.

12. Revegetation

(a) Colorado proposes to revise 2 CCR 407–2, 4.15.1(2)(a) to exempt "other facilities" approved as part of the postmining land use, as well as road surfaces and water areas, from revegetation requirements. By letter of October 2, 1985, the State explained that it would require permittees applying for such an exemption to demonstrate that the facilities would be beneficial to, and compatible with, the approved postmining use. In addition, the application would have to include the landowner's comments. As an example of "other facilities" that may qualify for the exemption, the State cites a warehouse or equipment shed which could be used as a barn or storage shed following reclamation.

Although the Federal regulations at 30 CFR 816/817.111(a) do not explicitly exempt other facilities approved as part of the postmining land use from revegetation requirements, the preambles to both the proposed and final Federal rules suggest that revegetation of the areas upon which such facilities are sited is implicitly unnecessary. Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations, provided Colorado determines the appropriateness of facility retention in the manner described above.

(b) Colorado proposes a nonsubstantive rewording of 2 CCR 407–2, 4.15.1(2)(d), which concerns the selection of species for revegetation of areas with fish or wildlife postmining land uses. The Director finds that the revised rule is no less effective than its Federal counterpart at 30 CFR 816/817.116(b)(3)(ii), which requires that species have utility for the approved postmining land use.

(c) Colorado proposes to revise the vegetation monitoring requirements of 2 CCR 407–2, 4.15.1(4) to clarify that this monitoring differs from that required to demonstrate revegetation success. The Director finds that this State rule has no Federal counterpart, that it represents an added level of environmental protection, and that it is therefore not inconsistent with the requirements of SMCRA and no less effective than the Federal regulations.

(d) In addition to several grammatical and organizational changes, Colorado proposes to revise 2 CCR 407–2, 4.15.2 by deleting 4.15.2(2), which limits the use of introduced species to the establishment of temporary cover, and 4.15.2(3), which requires that introduced species be compatible with the local

flora and fauna. The Federal regulations at 30 CFR 816/817.11(a)(2) allow the regulatory authority to approve the use of introduced species in permanent revegetation plans where it determines that they are desirable and necessary to achieve the approved postmining land use; therefore, the Director finds that the deletion of State rule 4.15.2(2) (limiting the use of introduced species to temporary cover establishment) will not render the Colorado program less effective than the Federal requirements.

The Federal regulations at 30 CFR 816/817.111(b)(4) require that all reestablished plant species, native or introduced, be compatible with the plant and animal species of the area. Colorado believes that this requirement is redundant with respect to introduced species, since it is an integral element of the requirement that introduced species be both desirable and necessary to achieve the postmining land use and an implicit consideration of the postmining land use regulations of State rule 4.16. In a meeting on August 29, 1985, Colorado stated that its reviews of revegetation plans proposing the use of introduced species always consider the growth characteristics of the species proposed for revegetation, and that species of an invasive nature or species destructive of local flora and fauna would not be approved. The Director interpreta this statement and Colorado's comments in the October 2, 1985 letter of clarification as a commitment by the State to interpret and apply its provisions in a manner no less effective than the Federal regulations, and he is approving the deletion of Colorado rule 4.15.2(3) on this basis.

(e) Colorado has proposed assorted nonsubstantive changes to the language of 2 CCR 407–2, 4.15.4(1) and (3), and has proposed the deletion of 4.15.4(5), which provides for case-by-case waivers of mulching requirements. State rule 4.15.4, as revised, would require that soil stabilizing practices be used promptly on all regraded and topsoiled areas; a requirement more stringent than the Federal regulations in that no waivers are permitted. The revised rule is otherwise similar to the Federal regulations at 30 CFR 816/817.114, although the Federal rules allow the regulatory authority to waive this requirement if it determines that such practices are unnecessary to control soil erosion or promote prompt establishment of a vegetative cover. Therefore, the Director finds that the revised State rule is no less effective than the Federal regulations.

(f) Colorado proposes to revise 2 CCR 407–2, 4.15.5 to eliminate the grazing requirements for range and pasture land and to prohibit grazing by domestic livestock for one year after seeding and planting. Since the Federal regulations neither require nor explicitly regulate grazing, the Director finds that revised State rule 4.15.5 is no less stringent than SMCRA and no less effective than the Federal regulations.

(g) Colorado proposes to revise 2 CCR 407–2, 4.15.6(3) to make field trials discretionary, rather than mandatory, if the Division identifies a potential concern with an operator's proposed revegetation plan. Since the Federal regulations at 30 CFR 816/817.111 through 816/817.116 concerning revegetation contain no field trial requirements, the Director finds that the revised State rule is no less stringent than SMCRA and no less effective than the Federal rules.

(h) Colorado proposes to revise 2 CCR 407–2, 4.15.7(2)(c) to allow the use of unspecified other (nonstatistical) comparative procedures when evaluating revegetation success. The Federal regulations at 30 CFR 816/817.116(a)(1) require that all sampling techniques be statistically valid and that they be selected by the regulatory authority and included in the approved regulatory program following public comment and review. As discussed in the preamble to these regulations, the Secretary previously declined to adopt a commenter's recommendation that the Federal regulations be altered in a manner similar to that proposed by the State (48 FR 40150, September 2, 1983). The technical papers submitted by the State on October 2, 1985 support the use of nonstatistical sampling methods, recommend a reduction in the 90% confidence level required 30 CFR 816/817.116(a)(2), or suggest a less restrictive alpha error level than the 0.10 prescribed by at 30 CFR 818/817.116(a)(2). OSMRE considered similar comments when preparing the revised revegetation rules but, as discussed in the preamble to the proposed rules (47 FR 12599, March 23, 1982) and the preamble to the revised rules (48 FR 40150–40151, September 2, 1983), OSMRE believes that statistically valid techniques and a nationwide standard of statistical confidence are necessary to insure objective, standardized and equitable evaluations of revegetation success. Therefore, the Director finds that the proposed revision is less effective than the Federal regulations, and he is not approving it.

(i) Colorado proposes to revise 2 CCR 407–2, 4.15.7(2)(d) by adding a provision allowing the use of unspecified "other comparison methods approved by the Division" when selecting revegetation success standards. The Federal regulations at 30 CFR 816/817.116(a)(1) require that specific standards for success be selected by the regulatory authority and included in the approved regulatory program following public comment and review.

As discussed in the preamble to the Federal rules, success standards, or, in the terminology of the Colorado rules, comparison methods, are approved models or measures to which the properties of vegetation on reclaimed areas are compared for the purpose of determining the degree of success (48 FR 40149–40150, September 2, 1983). The applicable properties to be measured will depend upon the postmining land use and the method of evaluation. The preamble further explains that a statement of minimum acceptable levels or values is inherent in the success standard concept, regardless of whether fixed or variable standards are used. Except for reference areas and (presumably) technical documents, the State's current comparison methods establish no such minimum. The revegetation success criteria of State rules 4.15.8(2) and 4.15.9 require that, prior to final bond release, measurements of the applicable vegetative parameters of the reclaimed area be at least 90% of those of the reference area or other standards as established in State rule 4.15.7(2)(d). Since most of the comparison methods listed in Rule 4.15.7(2)(d) lack an actual standard, i.e., do not specify a minimum acceptable fixed or relative value or level, the Colorado program does not establish standards in the manner required by the Federal rules.

In addition, two of the remaining conditions of approval of the Colorado program result from Colorado's failure to require or obtain OSMRE approval of the technical documents used to establish success standards and of the alternative success standards for small mines. As the U.S. District Court for the District of Columbia reiterated in *In re: Permonent Surface Mining Regulotion Litigotion II* (Civil Action No. 79–1144, July 15, 1985), OSMRE must approve all success standards used in State regulatory programs. Therefore, the Director finds that proposed State rule 4.15.7(2)(d)(vii) is less effective than the Federal regulations, and he is not approving it.

(j) Colorado proposes to revise 2 CCR 407–2, 4.15.8(2), (3) and (4) by changing "productivity" to "production", by making certain other nonsubstantive changes and corrections, by requiring that cover and production success

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standards for woody plant communities be met with 90%, rather than 80%, statistical confidence, and by allowing the use of other comparative methods and procedures approved by the Division. Colorado also proposes to revise State rule 4.15.8(7) by applying its requirements, which concern the establishment of woody plants, to parameters other than density, by requiring that woody plant success standards be met with 90%, rather than 80%, statistical confidence, by allowing the use of unspecified other comparative methods and procedures approved by the Division, and by deleting the requirements concerning live crown length and the counting of root and stump sprouts. In addition, the State proposes to delete Rule 4.15.8(8), which requires the permittee to demonstrate annual increases in woody plant cover and/or height.

As discussed in Findings 12(h) and (i), the Director cannot approve unspecified comparative methods and procedures. The revised Federal rules do not contain any live crown length, sprout counting or annual height increase requirements, but they do require that woody plant success standards be achieved with 90% statistical confidence. Therefore, the Director finds that, except for the changes to 4.15.8(3)(a), (4)(a) and (7) allowing the use of "other methods of comparison approved by the Division", the revisions to State rules 4.15.8(2), (3), (4) and (7) and the deletion of State rule 4.15.8(8) are no less effective than the Federal regulations at 30 CFR 816/817.116(a)(2), (b)(1) and (b)(3).

(k) Colorado proposes to revise the cropland success criteria at 2 CCR 407–2, 4.15.9 by requiring that the production standard be met only for the last growing season of the liability period, by allowing the use of unspecified other comparative methods and procedures approved by the Division, and by making various nonsubstantive changes in language.

As discussed in Findings 12(h) and (i), the Director cannot approve unspecified comparative methods or procedures. In addition, the Federal regulations at 30 CFR 816/817.116(c)(3) state that, in areas with an average annual precipitation of 26.0 inches or less, an area including virtually all of Colorado, measurements of all vegetation parameters shall equal or exceed the approved success standard for at least the last two consecutive years (not growing seasons) of the liability period. As discussed in the preamble to the Federal regulations (48 FR 40156, September 2, 1983), two consecutive years of proof is necessary in States with pronounced annual climatic variability, especially where success is determined on the basis of crop yields or other highly weather sensitive parameters. Therefore, except for the replacement of "be equal to or greater" with "not be less" and the substitution of "not less than" for "at least", the Director finds that the revisions to State rule 4.15.9 are less effective than the Federal regulations at 30 CFR 816/817(b)(2) and (c)(3), and he is not approving them.

13. Postmining Land Use

(a) Colorado proposes to revise 2 CCR 407–2, 4.16.2 to clarify that postmining land uses shall be determined based on a consideration of both the premining use and the appropriateness of this use based on the land's capability. The changes would also require reclamation of previously mined areas to either the use or uses which the land was capable of supporting prior to any mining or any higher or better uses that can be achieved and are compatible with the adjacent area. Colorado states that this change is necessary to be consistent with its statutory requirements at CRS 34–33–120(2)(b), which contains similar language with which all mining and reclamation operations must comply. Colorado would thus apply the same postmining land use determination criteria to both unmined and previously mined lands. These criteria are similar to those established by section 515(b)(2) of SMCRA and the Federal regulations at 30 CFR 779.22(a)(2), 783.22(a)(2), 816/817.133(a) and 816/817.133(b), except that the State has elected not to allow a variance for previously mined lands. Therefore, the Director finds that Colorado rule 4.16.2 as revised is no less effective than the Federal requirements.

(b) Colorado proposes to revise the alternative postmining land use requirements of 2 CCR 407–2, 4.16.3 to delete redundant provisions; make various nonsubstantive technical corrections; require specific feasibility plans, demonstrations and schedules only where necessary; and eliminate the requirements for: (1) Submission of a written statement of the views of authorities with statutory responsibility for land use policies and plans, (2) public facility commitments, (3) financial plans and (4) preparation of land use plans by a registered professional engineer. State rule 4.16.3 continues to require that all necessary approvals be obtained from all appropriate Federal, State and local governmental units, that the proposed use comply with all land use policies and plans and that the land owner or land management agency be consulted. In addition, the Colorado statute at CRS 34–33–120(2)(b) requires that there be a reasonable likelihood of achieving the proposed alternative postmining land use. Since the Federal regulations at 30 CFR 816/817.133(c) do not require the other items proposed for deletion, the Director finds that revised State rule 4.16.3, in combination with the State statute, is no less effective than the Federal requirements.

14. Fish and Wildlife

(a) Colorado proposes to revise 2 CCR 407–2, 4.18(3) to replace the specific guideline requirements for design and construction of electric power lines and transmission facilities with a general requirement that such facilities be designed and constructed to minimize electrocution hazards to raptors, except where the Division determines that such requirements are unnecessary. Since the language of the revised rule parallels that of 30 CFR 816/817.97(e)(1), the Director finds that proposed State rule 4.18(3) is no less effective than the Federal regulations.

(b) Colorado proposes to revise 2 CCR 407–2, 4.18(4)(e) to require the restoration, enhancement and/or maintenance of riparian vegetation only where such vegetation is of significant value to wildlife. The Federal regulations at 30 CFR 816/817.97(f) require that the operator avoid disturbances to, enhance where practical, restore or replace riparian vegetation along rivers and streams and bordering ponds and lakes, unless restoration of the land to an approved alternative postmining land use precludes such measures (48 FR 30323–30324, June 30, 1983). Since the Federal rule requires enhancement wherever practical, the significance to wildlife of any existing riparian vegetation is clearly not a basis for waiving reclamation requirements concerning this vegetation. In addition, as noted by the U.S. Fish and Wildlife Service, there will be few if any instances where riparian vegetation is not of significant value to wildlife in the arid and semiarid environments predominant in Colorado. Therefore, the Director cannot approve the proposed revision to State rule 4.18(4)(e), since it would render the Colorado program less effective than the Federal regulations.

(c) Colorado proposes a nonsubstantive rewording of the fish and wildlife revegetation requirements of 2 CCR 407–2, 4.18(4)(i), a change which the Director finds to be no less effective than the Federal regulations at 30 CFR 816/817.97(g).

15. Inspection and Enforcement

(a) Colorado proposes to revise 2 CCR 407–2, 5.02.2 to differentiate between active and inactive sites, reduce the required inspection frequency for inactive sites, define inactive sites and allow the use of aerial inspections. State rule 5.02.2(2) establishes no "as necessary" partial inspection frequency requirement for inactive operations similar to that contained in the Federal regulations at 30 CFR 840.11(a); however, in the "Statement of Basis and Purpose" accompanying the proposed amendments Colorado explains that this rule does not preclude more frequent inspections and that, where necessary, the Division would perform such inspections. The other changes to this rule are similar to those contained in 30 CFR 840.11(a), (b), (c), (d) and (f) except that Colorado has elected to continue considering those sites with vegetative bond release as active rather than inactive operations. Therefore, the Director finds that revised Colorado rule 5.02.2 is no less stringent than section 5.21 of SMCRA and no less effective than the Federal regulations at 30 CFR 840.11.

(b) Colorado proposes to revise 2 CCR 407–2, 5.03.2(2) by adding provisions for the granting of extensions of violation abatement periods beyond 90 days. Since these provisions are virtually identical to their Federal counterparts at 30 CFR 843.12(c), (f), (g), (h), (i) and (j), the Director finds that the revised rule is no less stringent than section 521 of SMCRA and no less effective than the Federal regulations.

(c) Colorado proposes to revise 2 CCR 407–2, 5.04.6 by adding a new paragraph (4) to provide that penalties for failure to abate a violation shall not be assessed for more than 30 days. If the violation has not been abated within the 30-day period, the Division would be required to take the appropriate alternative enforcement actions. Since these provisions are virtually identical to their Federal counterparts at 30 CFR 845.15(b)(2), the Director finds that State rule 5.04.6(4) is no less stringent than sections 518 and 521 of SMCRA and no less effective than the Federal regulations.

Public Comments

The Director solicited public comments on the proposed amendments by **Federal Register** notices published on October 1, 1984, April 25, 1985, and October 30, 1985 (49 FR 38653–38654, 50 FR 16311–16321 and 50 FR 45117–45118). No public comments were received, and, since no one requested to testify at the scheduled public hearings, none were held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), the Director also solicited comments from various Federal agencies. Of the Federal agencies invited to comment on these proposed amendments, only the U.S. Fish and Wildlife Service (FWS) and the U.S. Soil Conservation Service (SCS) responded.

A summary of the comments received and the Director's responses to them appears below.

1. The FWS expressed concern that modifying the language of Colorado rule 4.18(4)(i) would result in a reduction in the level of protection of fish and wildlife values. As discussed in Finding 14(c), the Director finds that the revisions are nonsubstantive in nature and no less effective than 30 CFR 816/817.97(g). Fish and wildlife revegetation requirements apply only to those areas with approved fish and wildlife postmining land uses.

2. The FWS stated that the requirement of State rule 4.15.2(3) that introduced species be compatible with the plant and animal species of the region should be retained. As discussed in Finding 12(d), the Director finds that Colorado interprets other provisions of its program as incorporating this requirement, and he is approving its deletion solely on this basis.

3. The FWS stated that the elimination of the previous regulatory references to guidelines for the prevention of raptor electrocution, and the addition of a provision allowing the Division to waive the design and construction requirements for power poles and electrical transmission lines, would weaken State rule 4.18(3) to the point where it would no longer meet Federal requirements. The Director disagrees. As discussed in Finding 14(a), the language of the revised State rule is almost identical to that of the corresponding Federal rules at 30 CFR 816/817.97(e)(1). The preamble to the Federal regulations (48 FR 30320–30321, June 30, 1983) notes that operators must still minimize disturbances to and adverse impacts on fish and wildlife (including raptors) by use of the best technology currently available, a requirement also contained in Colorado rule 4.18(1). The specific reference materials have been deleted only to prevent obsolescence. Both the State and Federal rules allow waivers of design and construction requirements only when the regulatory authority determines that they are unnecessary, an exemption which the preamble further explains is applicable only when large raptors are not known to frequent the area or when there is no chance that electrocution could occur.

4. The FWS stated that the proposed revision to Colorado rule 4.18(4)(e) to require protection, enhancement, restoration or replacement of riparian habitats only where such habitats are of significant value to wildlife would be counterproductive to the intent of the Federal regulations to encourage enhancement and mitigation. Furthermore, the FWS noted that virtually all riparian vegetation in Colorado is of significant value to wildlife. As discussed in Finding 14(b), the Director agrees and he is not approving this revision.

5. The SCS commented that, although that agency had limited experience with statistically valid methods of evaluating vegetative parameters, use of the "running estimate of the mean" method appeared to be both practical and useful. The Director does not disagree with this conclusion; however, as submitted in this amendment and as discussed in Finding 12(h), it does not meet the standards of statistical validity established by 30 CFR 816/817.116(a).

Director's Decision

The Director, based on the above findings, is approving the proposed amendments submitted by Colorado on August 28, 1984, as clarified and modified on March 8, 1985 and October 2, 1985, and the proposed amendments submitted on March 12, 1985, as clarified and modified on August 29, 1985 and October 2, 1985, with the exception of those amendments determined to be inconsistent with SMCRA or the Federal regulations. In addition, as indicated in the findings, he is requiring that Colorado submit a number of future program amendments. The Director has notified Colorado, pursuant to 30 CFR 732.17, that certain required program amendments will be necessary. The Federal rules at 30 CFR Part 906 are being amended to implement this decision.

The Director is not approving the following proposed amendments to the Colorado program:

(1) Revisions to 2 CCR 407–2, 1.04(22), 4.06.4(2)(a), 4.08.4(10)(a), 4.08.4(10)(a)(i), 4.08.4(10)(a)(ii), 4.08.4(10)(a)(iii), 4.08.5(14), 4.15.7(2)(c), 4.15.7(2)(d) and 4.18(4)(e),

(2) Deletion of the words "two consecutive" from the phrase "the last two consecutive growing seasons of the extended liability period" in 2 CCR 407–2, 4.15.9, and addition of the phrase "or other methods of comparison approved by the Division" to the same rule, and

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(3) Addition of the phrase "or other methods of comparison approved by the Division" to 2 CCR 407–2, 4.15.8(3)(a), 4.15.8(4)(a) and 4.15.8(7).

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) clearly prohibit any unilateral changes to approved State programs. In his oversight of the Colorado program, the Director will recognize only the statutes and regulations approved by him, and will require the enforcement by Colorado of only such provisions.

Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Section 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 29, 1986.

Brent Wahlquist,

Acting Deputy Director, Operations and Technical Services.

PART 906—COLORADO

30 CFR Part 906 is amended as follows:

1. The authority citation for Part 906 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 906.15 is amended by adding paragraph (e) to read as follows:

§ 906.15 Approval of amendments to State regulatory programs.

* * * * *

(e)(1) Revisions to the following provisions of 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on August 28, 1984 and March 12, 1985, and as clarified and modified on March 8, 1985, August 29, 1985, and October 2, 1985, are approved effective February 5, 1986.

1.04(95)
1.04(111)
2.02.1
2.02.2(2)(c)
2.02.(g)
2.02.3(1)(c)(ii)
2.02.3(1)(e)
2.03.5(3)
2.03.9(1)
2.04.4
2.04.8(1)
2.04.9(1)
2.04.10(4)
2.04.12(1), (2) and (4)
2.05.3(4)(a)(i)(A)
2.05.3(4)(a)(ii)(A)
2.07.5(1)(b)
2.10.1(1), (2) and (3)
2.10.3(1)(i) and (j)
4.03
4.06.1(2)
4.06.2(1)
4.06.2(2)(a)
4.06.2(4)(a)(ii)
4.06.4(1)
4.07.1(2)
4.07.3(1) and (2)
4.08.3(2)(b)(i) and (ii)
4.08.4(1)(b)(ii)
4.08.6(2)
4.15.1(2)(a) and (d)
4.15.2
4.15.1(4)
4.15.4
4.15.5
4.15.6(3)
4.15.8(2)
4.16.2
4.16.3
4.18(3)
4.18(4)(i)
4.21.1
4.21.4(1)
4.30.1(2)
5.02.2
5.03.2(2)

(2) Addition of the following provisions to 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on March 12, 1985 is approved effective February 5, 1986: 1.14, 1.15 and 5.04.6(4).

(3) Deletion of the following provisions from 2 CCR 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on March 12, 1985 and clarified on October 2, 1985 is approved effective February 5, 1986: 2.05.5(1)(a)(iv), 2.10.2(4), and 4.15.8(8).

(4) Revisions to 2 CCR 407–2, 4.15.8(3), (4) and (7), as submitted on March 12, 1985, are approved effective February 5, 1986, except for the proposed addition of the phrase "or other methods of comparison approved by the Division" to each of these paragraphs, which is not approved.

(5) Revisions to 2 CCR 407–2, 4.15.9, except for the deletion of "two consecutive" from the phrase "the last two consecutive growing seasons of the extended liability period", and the addition of the phrase "or other methods of comparison approved by the Division," as submitted on March 12, 1985, are approved effective February 5, 1986. As approved, the revised rule reads as follows:

For areas to be used as cropland, success of revegetation shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved standard(s). Crop production from the mined area shall not be less than that of the approved reference area or standard for the last two consecutive growing seasons of the extended liability period established in 3.02.3. This liability period shall commence on the date of initial planting of the crop being grown. Production shall be considered equal if it is not less than 90% of the production as determined from the reference area or approved standard with 90% statistical confidence.

(6) Addition of the phrase "[e]xcept as provided in 4.06.4(10)[a]," to the introductory paragraph of 2 CCR 407–2, 4.06.4(10), as submitted on August 28, 1984, is approved effective February 5, 1986, but the proposed amendments to other portions of 2 CCR 407–2, 4.06.4(10), as submitted on August 28, 1984, are not approved.

3. 30 CFR 906.16 is amended by adding paragraphs (b) through (h) to read as follows:

§ 906.16 Required program amendments.

* * * * *

(b) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.02.2(2)(g) or otherwise propose to amend its program to require that the notice filed by any person intending to conduct coal exploration involving the removal of 250 or fewer tons of coal include a complete description of the methods of exploration to be used and the practices that will be followed to reclaim the area following completion of exploration, and to clarify that specifying the maximum number of holes to be drilled will not fully satisfy this requirement.

(c) By February 5, 1987, Colorado shall submit a revised form of 2 CCR 407–2, 4.21.4(1) replacing the cross reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), or otherwise propose to amend the coal exploration provisions of its program to protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

(d) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 406.1(2) or otherwise propose to amend its program to provide that topsoil storage practices other than stockpiling may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling.

(e) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 406.2(2)(a) or otherwise propose to amend its program to establish definitive criteria governing the granting of topsoil removal variances, criteria which must be no less effective than those contained in the Federal regulations at 30 CFR 816.22(a)(3) and 817.22(a)(3).

(f) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 406.1(4)(a)(ii) or otherwise propose to amend its program to require that, before the State approves topsoil substitutes or supplements, the operator must demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation.

(g) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.10.1(1) or otherwise propose to amend its program to require that all areas upon which roads or support facilities, other than isolated monitoring stations involving little or no surface disturbance, are to be sited be mapped at a scale of 1:6,000 or larger.

(h) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407–2, 2.04.12(1) or otherwise propose to amend its program to require that prime farmland investigations be conducted on all lands upon which roads or support facilities are to be sited.

[FR Doc. 86–2259 Filed 2–4–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 223

Special Impact Aid Provisions for Local Educational Agencies That Claim Entitlements Based on the Number of Children Residing on Indian Lands

AGENCY: Department of Education.

ACTION: Final regulations; technical change.

SUMMARY: The following amendment makes a technical change in the special Impact Aid regulations affecting children residing on Indian lands to correct designation of paragraphs for cross-reference purposes.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue SW., Room 2109, Washington, DC 20202. Telephone: (202) 245–1975.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

Dated: January 29, 1986.

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

The Secretary amends Part 223 of Title 34 of the Code of Federal Regulations as follows:

PART 223—SPECIAL IMPACT AID PROVISIONS FOR LOCAL EDUCATIONAL AGENCIES THAT CLAIM ENTITLEMENTS BASED ON THE NUMBER OF CHILDREN RESIDING ON INDIAN LANDS

1. The authority citation for Part 223 continues to read as follows:

Authority: Sec. 5(b)(3) of Title I of the Act of September 30, 1950, Pub. L. 81–874, as amended by the Education Amendments of 1978, Pub. L. 95–561 [20 U.S.C. 240(b)(3)], unless otherwise noted.

§ 223.42 [Amended]

2. In § 223.42, the paragraph designation (a)(1) is removed, and paragraph (a)(1)(i) and (ii) are redesignated as paragraph (a)(1) and (2).

[FR Doc. 86–2429 Filed 2–4–86; 8:45 am]

BILLING CODE 4000–01–M

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3246/R808; FRL-2962-7]

Pesticide Tolerance for Endothall

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide endothall in or on the raw agricultural commodity hops. The regulation to establish a maximum permissible level for residues of endothall in or on hops was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 5, 1986.

ADDRESS: Written objections, identified by the document control number [PP 5E3246/R808] may be submitted to the: Hearing Clerk (A-110), Office of Pesticide Programs, Environmental Protection Agency, Room M-3708, 401 M Street, SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Office location and telephone number: Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of December 4, 1985 (50 FR 49705), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 5E3246 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Oregon and Washington, proposing the establishment of a tolerance for residues of the herbicide endothall (7-oxabicyclo (2.2.2)heptane-2,3-dicarboxylic acid) from use of its mono-*N,N*-dimethylalkylamine salt wherein the alkyl group is the same as in the fatty acid of coconut oil in or on the raw agricultural commodity hops at 0.1 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considerd, the Agency concludes that the tolerance would protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 22, 1986.

Steven Schatzow,
Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.293 is amended by adding, and alphabetically inserting, the raw agricultural commodity hops to read as follows:

§ 180.293 Endothall; tolerances for residues.

* * * * *

Commodities	Parts per million
Hops	0.1

[FR Doc. 86-2042 Filed 2-4-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4E3139/R806; FRL-2962-5]

Pesticide Tolerance for Hexakis[2-Methyl-2-Phenylpropyl]Distannoxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl]-distannoxane and its metabolites in or on the raw agricultural commodity cucumbers. This regulation to establish a maximum permissible level for residues of hexakis in or on cucumbers was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on February 5, 1986.

ADDRESS: Written objections, identified by the document control number [PP 4E3139/R806], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Office location and telephone number: Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-3199).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 20, 1985 (50 FR 47761), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 4E3139 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of California and Ohio and the United States Department of Agriculture proposing the establishment of a tolerance for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl]-distannoxane and its organotin metabolites calculted as hexakis[2-methyl-2-phenylpropyl]distannoxane in or on the raw agricultural commodity cucumbers at 4.0 parts per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the tolerance would protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Lists of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 22, 1986.

Steven Schatzow,
Director, Office of Pesticide Programs.

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.362 is amended by adding, and alphabetically inserting, the raw agricultural commodity cucumbers to read as follows:

§ 180.362 Hexakis[2-methyl-2-phenylpropyl] distannoxane; tolerances for residues.

* * * * *

Commodities	Parts per million
Cucumbers	4.0

[FR Doc. 86-2041 Filed 2-4-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-160; RM-4773]

FM Broadcast Station in Butte, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allocates FM Channel 224A to Butte, Montana, in response to a petition filed by Ronald J. Huckeby and John D. Jacobs. The allotment could provide a third commercial service for Butte.

EFFECTIVE DATE: March 10, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order

In the matter of amendment of § 73.202(b), table of allotments, FM Broadcast Stations (Butte, Montana); MM Docket No. 85-160, RM-4773.

Adopted: January 22, 1986.
Released: January 30, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 26006, published June 24, 1985, proposing the allotment of FM Channel 224A to Butte, Montana, as that community's third Broadcast service. The *Notice* was issued in response to a petition filed by Ronald J. Huckeby and John D. Jacobs ("petitioners"). Supporting comments were filed by the petitioners. Opposition comments were filed by KBOW, Inc., to which reply comments were filed by the petitioners.

2. Butte (population 37,205) [1] in Silver Bow County (population 38,092), is located in the southwestern part of the state, 65 miles south of Helena, Montana. Butte is currently served by Station KOPR, Channel 231; Station KQUY, Channel 238, two educational stations and two fulltime AM stations.

3. In support of its proposal, petitioners reaffirmed their intention to file an application for Channel 224A and to promptly build a station.

4. KBOW, Inc., opposes the request on the basis that Butte is in a state of economic decline and can not support another FM station. In this regard, KBOW provided photographs of vacant warehouses, unoccupied office buildings and department stores, small businesses that have closed in the past few years and abandoned houses. It also provided letters from various businesses in the Butte area attesting to a decline in utility customers, hospital patients, jobs, personal income and overall population. KBOW contends that Butte is already well served by AM and FM stations licensed to Butte and that service is also received from several other Montana communities. It argues that the proposed third allotment to Butte would have to compete with four other fulltime stations and is at best a highly marginal economic proposition. As such, a new station would merely serve to inflict economic injuries on the existing stations and would do little to add to programming diversity in the community.

5. In response, petitioners state that population and industry did decline over a several year period in Butte, until 1983, but now appears to be on the increase. Petitioners point out that Butte is seeing new construction and new businesses, and expansion and renovation of others. They dispute other evidence of economic decline and claim the area is growing and can support an additional FM channel. Petitioners refer to the Commission's policy on this matter, *Revision of FM Assignment Policies and Procedure*, 90 F.C.C. 2d 88 (1982) wherein the Commission stated that it would not consider arguments of economic need.

6. We conclude that the public interest would be served by the allotment of Channel 224A to Butte, Montana. The showings and arguments made in the opposition are not sufficiently persuasive to justify denying the allotment of an additional FM channel to Butte. Allegations of economic impact are more appropriate at the application stage where the issues can be more fully developed. *Revision of FM Assignment Policies and Procedures, supra.* Therefore, we believe it woud be in the public interest to allot a third FM channel to Butte. Channel 224A can be allocated to Butte in compliance with the Commission's mileage separation requirements.

7. Accordingly, pursuant to authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 10, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended for the following community:

[1] Population figures are taken from the 1980 U.S. Census.

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City	Channel No.
Butte, MT	224A, 231, and 238.

8. The window period for filing applications will open on March 11, 1986, and close on April 10, 1986.

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–2497 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–155; RM–4877]

TV Broadcast Station in Guymon, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns VHF TV Channel 9 to Guymon, Oklahoma, as the community's first local commercial assignment, at the request of Steven D. King.

EFFECTIVE DATE: March 7, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), table of assignments, television broadcast stations (Guymon, Oklahoma); MM Docket No. 85–155, RM–4877.

Adopted: January 17, 1986.
Released: January 29, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 23732, published June 5, 1985, seeking comments on the assignments of VHF TV Channel 9 to Guymon, Oklahoma, at the request of Steven D. King ("petitioner"). The channel could provide Guymon with its first local commercial television service.

2. Petitioner filed comments reiterating his intention to apply for the channel, if assigned. No other comments were received. Channel 9 can be assigned in compliance with the Commission's minimum distance separation and other technical requirements.

3. We believe the public interest would be served by assigning a first commercial TV channel to Guymon, as proposed. Accordingly, it is ordered, That effective March 7, 1986, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Guymon, OK	9+, *16

4. It is further ordered, That this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–2498 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–240; RM–5075]

FM Broadcast Station in McKinnon, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Channel 268A to McKinnon, Tennessee, as that community's first FM service, at the request of David R. Ross.

EFFECTIVE DATE: March 10, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations (McKinnon, Tennessee); MM Docket No. 85–240, RM–5075.

Adopted: January 17, 1986.
Released: January 31, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 50 FR 33610, published August 20, 1985, proposing the allotment of FM Channel 268A to McKinnon, Tennessee, as that community's first FM service. The *Notice* was adopted in response to a petition filed by David R. Ross ("petitioner"). Petitioner submitted comments reiterating his intention to apply for the channel.[1]

2. The Commission believes the public interest would be served by the allotment of Channel 268A to McKinnon, Tennessee, in order to provide a first FM service to that community. The channel can be allotted in compliance with the Commission's minimum distance separation requirements of § 73.207 of the Rules.[2]

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 10, 1986, the FM Table of Allotments, § 73.202(b) of the Rules, is amended for the following community:

City	Channel No.
McKinnon, TN	268A

[1] Petitioner claims that he filed timely comments. These comments were not received by the Commission. Therefore, petitioner resubmitted his comments after the comment deadline, and included a request for their acceptance. We shall accept the comments for the purpose of permitting the petitioner to reaffirm his interest in the proposal.

[2] The spacing requirements are met based on the grant of a construction permit to Station WBVR, Russellville, Kentucky. This allotment to McKinnon is conditioned on the Russellville station receiving a license at the new site.

4. The window period for filing applications will open on March 11, 1986, and close on April 11, 1986.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–2499 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Parts 222 and 252

Department of Defense Federal Acquisition Regulation Supplement; Restrictions on Employment of Personnel

AGENCY: Department of Defense (DoD).

ACTION: Interim rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council has issued a change to the coverage in the DoD FAR Supplement regarding Restrictions on Employment of Personnel in DoD contracts. The purpose of the change is to implement Section 8078 of the Fiscal Year 1986 Defense Appropriations Act.

DATES: Effective January 28, 1986. Comments on the change must be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before March 7, 1986, to be considered in the formulation of the final rule. Please cite DAR Case 86–3 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DASD(P)DARS, c/o OASD(A&L), Room 3E791, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7268.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1985 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84–1 through 84–10.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

B. Interim Changes to 48 CFR Parts 222 and 252

Section 8078 of the FY 1986 Defense Appropriations Act, enacted on December 23, 1985, requires that whenever the unemployment rate in Alaska or Hawaii exceeds the national average as determined by the Secretary of Labor, service and construction contracts awarded in FY 1986 and calling for performance in whole or in part within those states must contain a restriction on who can be employed to perform work on that contract.

C. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that the regulation in DoD FAR Supplement Parts 222 and 252 must be issued as an interim rule in compliance with section 22 of the Office of Federal Procurement Policy Act, as amended, in order to put in place, as soon as possible, the requirements of section 8078 of the FY 1986 DoD Appropriations Act.

D. Regulatory Flexibility Act

This change does nothing more than implement section 8078 of the FY 1986 DoD Appropriations Act. If this change impacts on small entities, it will impact only those small entities that have been awarded, in FY 1986, construction and services contracts calling for performance in whole or in part within the States of Alaska or Hawaii and then only if the unemployment rate for those states exceeds the national average. The number of small entities that meet this condition are considered to be insignificant in relation to the total number of small entities that do business with the Department of Defense. Therefore, the Department of Defense certifies that the change will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

E. Paperwork Reduction Act Information

The interim rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 222 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Parts 222 and 252 is amended as set forth below:

1. The authority for 48 CFR Parts 222 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Subpart 222.72, consisting of sections 222.7200 through 222.7202, is added to read as follows:

Subpart 222.72—Section 8078, 1986 Defense Appropriations Act—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7200 Policy.

(a) Except as provided in (b) and (c) below, Section 8078 of the 1986 Defense Appropriations Act requires that notwithstanding any other provision of law, every contract awarded during FY 1986 calling for construction or services to be performed in whole or in part within the State of Alaska or the State of Hawaii shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract work within the particular state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) This section shall not apply at any time during FY 1986 when the unemployment rate in Alaska is not in excess of the national average rate of unemployment as determined by the Secretary of Labor.

(c) This section shall not apply to contracts to be performed in whole or in part within the State of Hawaii unless in FY 1986 the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7201 Waivers.

This section may be waived by the Secretary of Defense, the Deputy Secretary of Defense, the Assistant Secretary of Defense for Acquisition and

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Logistics, and any Secretary, Undersecretary, or Assistant Secretary of the Army, Navy, and Air Force, in the interest of national security. Requests for waiver shall be processed in accordance with Departmental or agency procedures.

222.7202 Contract Clause.

The contracting officer shall insert the clause at 252.222-7002, Restrictions on Employment of Personnel, in all solicitations and contracts in accordance with 222.7200.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.222-7002, is added to read as follows:

252.222-7002 Restrictions on Employment of Personnel.

As prescribed in 222.7202, insert the following clause.

Restrictions on Employment of Personnel (Jan. 1986)

(a) The Contractor shall employ, for the purpose of performing that portion of the contract work in the State of (*insert appropriate state*), individuals who are residents of the state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

[FR Doc. 86-2494 Filed 2-4-86; 8:45 am]

BILLING CODE 3810-01-M

NATIONAL AERONAUTICS AND SPACE ADMINSTRATION

48 CFR Parts 1822 and 1852

Interim Changes to the NASA FAR Supplement on Overtime Compensation

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Interim rule and request for comment.

SUMMARY: This notice establishes interim amendments to the NASA Federal Acquisition Regulations System concerning overtime compensation and invites written comments on these interim amendments. This rule implements changes to the Contract Work Hours and Safety Standards Act (CWHSSA) made by Pub. L. 99-145.

DATES: *Effective date:* January 1, 1986. *Comment Date:* Comments are due not later than March 7, 1986.

ADDRESS: Comments shall be addressed to NASA, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-453-2119.

SUPPLEMENTARY INFORMATION:

Background

NASA is issuing this interim change to the NASA FAR Supplement to assure agency compliance with Pub. L. 99-145 which became effective on January 1, 1986. Time allowed for lead agency and subsequent action from enactment of Pub. L. 99-145 and its effective date was relatively short. Due to these urgent and compelling circumstances, the instant changes are being issued as interim rules without public comment prior to their effectivity.

Impact

The Director, Office of Management and Budget (OMB), by memorandum, dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The changes concern wages falling within the exception of the Regulatory Flexibility Act (5 U.S.C. 601(2)). This rule does not contain requirements subject to the Paperwork Reduction Act (44 U.S.C. 301 et seq.).

List of Subjects in 48 CFR Parts 1822 and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1822 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

2. Subparts 1822.3 and 1822.4 are added to read as follows:

Subpart 1822.3—Contract Work Hours and Safety Standards Act

§ 1822.305 Contract clauses.

(a) The clause at 1852.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation—General, shall be used in lieu of the clause at FAR 52.222-4, same title.

(b) The clause at FAR 52.222-5, Contract Work Hours and Safety Standards Act—Overtime Compensation—Firefighters and Fireguards, shall not be used.

Subpart 1822.4—Labor Standards for Contracts Involving Construction

1822.403-1 Clauses for general use.

Except as provided in 1822.403-4, every construction contract in excess of $2,000 for work within the United States shall include the clause at 1852.222-7, Contract Work Hours and Safety Standards Act—Overtime Compensation—Construction.

1822.403-4 Contracts with a State or political subdivision.

In the case of construction contracts with a State or political subdivision thereof, the contract clause required by 1822.403-1 shall be inserted therein but shall be prefaced by the following:

The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1852.2—Texts of Provisions and Clauses

3. Section 1852.222-4 is added to read as follows:

1852.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Jan. 1986).

As prescribed in 1822.305(a), insert the following clause:

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation; Liability for unpaid wages; Liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause. A workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used instead of the calendar day in applying the daily liquidated damages provisions of the Act to the employment of firefighters or fireguards if the use of the alternate 24-hour day was agreed upon between the employer and employees or their authorized representatives before performance of the work.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Payrolls and basic records.* (1) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying or transcription by Contracting Officer or the Department of Labor or their authorized representatives. The Contractor and subcontractors will permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (c) of this clause.

(End of clause)

4. Section 1852.222-7 is added to read as follows:

1852.222-7 Contract Work Hours and Safety Standards Act—Overtime Compensation—Construction (Jan. 1986).

As prescribed in 1822.403-1, insert the following clause.

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation; Liability for unpaid wages; Liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

[FR Doc. 86-2474 Filed 2-4-86; 8:45 am]

BILLING CODE 7510-01-M

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Proposed Rules

Federal Register
Vol. 51, No. 24
Wednesday, February 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 18

[Docket No. 86-2]

Disclosure of Financial and Other Information by National Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of second hearing and extension of comment period on a proposed rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a forthcoming hearing on its proposed rule 12 CFR Part 18—Disclosure of Financial and Other Information by National Banks.

The proposal generally would increase the information about a bank's financial condition and management that would be available to shareholders and depositors. The purpose of the hearing is to solicit views and comments from those who would provide and use that information.

DATE: The second hearing will be held at 10:00 a.m., eastern standard time, Wednesday, February 19, 1986. It will be held from 10:00 a.m. to 5 p.m., or from 10:00 a.m. to 1 p.m. depending on the number of witnesses. The Comment period on the proposed rule of October 30, 1985 (50 FR 45372) has been extended from January 28, 1986 to February 28, 1986.

ADDRESS: The second hearing will be held at the Comptroller's Offices, Room 3A–B, 490 L'Enfant Plaza East, S.W, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Emily R. McNaughton, Commercial Examination Division, Office of the Comptroller of the Currency, (202) 447–1164.

SUPPLEMENTARY INFORMATION: On October 30, 1985, the Office of the Comptroller of the Currency (OCC) published in the **Federal Register** its proposed amendments to 12 CFR Part 18—Disclosure of Financial and Other Information by National Banks.

Of particular importance to the OCC are comments on several questions regarding the proposal, including:

- Content and structure of reports.
- Exemptions.
- Non-disclosure of supervisory information.
- Cost/benefit analysis.
- Implementation.

Those wishing only to submit written comments on the proposed OCC regulation should send them to Lynnette Carter, Office of the Comptroller of the Currency, Washington, D.C. 20219 by February 28, 1986. Those wishing to appear at this public hearing should submit their written request to Lynnette Carter at the above address by February 12, 1986, accompanied by a summary of the issue on which the witness wishes to comment, the names of other interested parties who may accompany the witness, and the length of time for the oral presentation. Those wishing to appear at this public hearing will have a copy of their entire statement entered into the official record of these proceedings.

It is expected that oral presentations will be limited to 10 minutes and that those comments will specifically address the disclosure proposal.

The OCC scheduled the additional hearing and extended the comment period to give consumers and banks an added opportunity to comment orally and in writing on this proposal.

Dated: January 29, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-2325 Filed 2-4-86; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket Nos. 24802 and 24848; Notice Nos. 85-19 and 85-23]

Transport Category Rotorcraft Performance; Helicopter Minimum Flightcrew; European Airworthiness Authorities Steering Committee Proposals for Changes to Federal Aviation Regulations (FAR) Part 29

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting and extension of comment periods for Advanced Notices of Proposed Rulemaking (ANPRM) Notice No. 85–19, Transport Category Rotorcraft Performance, and Notice No. 85–23, Helicopter Minimum Flightcrew.

SUMMARY: This notice announces the dates and location of a public meeting for ANPRM Notice No. 85–19 (50 FR 42126), Transport Category Rotorcraft Performance; ANPRM Notice No. 85–23 (50 FR 48786), Helicopter Minimum Flightcrew; and European Airworthiness Authorities Steering Committee (AASC) proposals for changes to Part 29, Airworthiness Standards: Transport Category Rotorcraft Performance and Helicopter Minimum Flightcrew.

DATES: The meeting will be held April 30 to May 2, 1986. Discussion of Helicopter Minimum Flightcrew will begin at 9 a.m. on April 30, 1986, and discussion of Transport Category Rotorcraft Performance will begin at 1 p.m. The discussion of the AASC proposals will begin at 8 a.m. on May 1 and 2, 1986.

The public comment period for ANPRM Notice No. 85–19, Transport Category Rotorcraft Performance, is extended from April 15, 1986, to June 6, 1986.

The public comment period for ANPRM Notice No. 85–23, Helicopter Minimum Flightcrew, is extended from May 25, 1986, to June 6, 1986. ADDRESS: The public meeting will be held in the Training Room (Room 167), Building 3B, FAA, Southwest Region, 4400 Blue Mound Road, Forth Worth, Texas.

FOR FURTHER INFORMATION CONTACT: R.T. Weaver, Regulations Program Management, ASW–111, Aircraft Certification Division, P.O. Box 1689, Forth Worth, Texas 76101, telephone (817) 877–2548 or FTS 734–2548.

SUPPLEMENTARY INFORMATION: The ANPRM, Helicopter Minimum Flightcrew, proposes changes to Parts 1, 27, and 29 to establish a minimum flightcrew of at least two pilots for helicopters where power controls (throttles) are not incorporated as a part of the pilot's collective control. This action results from previous public comments identifying power control location as a significant safety concern.

The ANPRM, Transport Category Rotorcraft Performance, proposes to revise the performance requirements for transport category rotorcraft. The proposal results from adoption of Rotorcraft Regulatory Review Program Amendment No. 1, which revised the applicability of Part 29 and emphasized the need to define more clearly the determination of takeoff performance. The present Part 29 does not sufficiently define factors for determining Category A takeoff distance nor minimum climb gradients necessary for the design of heliports.

The airworthiness authorities of the European community are studying Part 29 to determine the need for Joint Airworthiness Requirements (JAR) 29. The FAA met with members of the AASC to help standardize, as far as practical, rotorcraft certification rules. A letter was sent to AASC and industry on May 7, 1983, soliciting comments on key issues. The initial key issue responses were published in the **Federal Register** on May 7, 1984 (49 FR 19309), for additional public comment. Public comments were received, and a more comprehensive list of AASC proposals for Part 29 was received on September 15, 1984. A preliminary response was sent to AASC by the FAA on March 18, 1985. After additional review of the comprehensive AASC proposals for Part 29, the FAA Rotorcraft Directorate decided that the proposals were of such a nature that they warrant further public discussion by all interested parties. Therefore, each of the AASC proposals and portions of proposals not already in the rulemaking process will be discussed at the public meeting.

A copy of the AASC proposals for changes to Part 29 will be mailed to all interested parties. Any interested party who has not received a copy of the AASC proposals by March 14, 1986, may contact R.T. Weaver at the address under "**FOR FURTHER INFORMATION CONTACT**" for a copy.

Issued in Forth Worth, Texas, on January 23, 1986.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 86-2521 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 85N-0483]

Policy of Eligibility of Drugs for Orphan Designation; Termination of Interim Policy on Eligibility; Advance Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its policy on the eligibility of drugs for orphan designation. FDA is announcing that a drug is eligibile for orphan designation for a rare disease or condition if the sponsor's request for designation is received by FDA before the agency approves a marketing application for the drug for that rare disease or condition. This is a continuation of FDA's policy, followed since enactment of the Orphan Drug Act, that requests for orphan designation could be filed for drugs that had not yet received approval of their marketing applications. FDA also is announcing that the agency is terminating an interim policy on eligibility of drugs for orphan designation. Under the interim policy, a sponsor could request from FDA and receive orphan designation for a drug after FDA had approved a marketing application for the drug for the orphan indication, if the approval of the marketing application occurred after enactment of the Orphan Drug Act (January 4, 1983). Comments and recommendations received by FDA regarding this notice will be considered by the agency in its preparation of a proposed rule to implement the orphan drug provisions of the Federal Food, Drug, and Cosmetic Act (the act) [21 U.S.C 301 et seq.].

DATES: Comments by March 24, 1986; the interim policy change is effective May 6, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Emery J. Sturniolo, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4718.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 1983, the President signed the Orphan Drug Act (Pub. L. 97–414), which amended the act to facilitate the development of drugs for rare diseases or conditions. This legislation was intended to overcome the reluctance of manufacturers to become sponsors of orphan drugs and undertake the costs of conducting clinical trials and obtaining FDA approval of these drugs, because of the limited number of patients with the rare disease or condition, their geographic dispersion, and the nonpatentability of many of these drugs. The Orphan Drug Act added four new sections to the act (sections 525 through 528). Section 525 requires FDA to give protocol assistance to sponsors of drugs for rare diseases or conditions. Section 526 defines orphan drugs and requires FDA to publicize its designation of orphan drugs. Section 527 gives 7 years of exclusive approval to certain designated orphan drugs. Section 528 facilitates the use of open protocols to permit patients to use orphan drugs for treatment purposes while the drugs are being investigated in clinical trials. To promote the development of drugs for rare diseases or conditions, the Orphan Drug Act also (a) amended the Public Health Service Act by establishing the Orphan Products Board, (b) amended the Internal Revenue Code of 1954 to allow tax credits for qualified clinical testing expenses for certain drugs for rare diseases or conditions, (c) provided authority for the Secretary of Health and Human Services (the Secretary) to make grants to defray costs of qualified clinical testing expenses incurred in connection with development of drugs for rare diseases or conditions, and (d) amended Title 35 of the United States Code to provide for patent term extension under certain conditions. Subsequently, Congress enacted two amendments of the orphan drug provisions of the act.

On October 30, 1984, the President signed the Health Promotion and Disease Prevention Amendments of 1984 (Pub. L. 98–551) that, among other actions, amended section 526 to specify that a rare disease or condition means any disease or condition which (a) affects less than 200,000 persons in the United States, or (b) affects more than 200,000 in the United States and for which there is no reasonable expectation that the cost of developing

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and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug.

On August 15, 1985, the President signed the the Orphan Drug Amendments of 1985 (Pub. L. 99-91) that, among other actions, amended section 527 to provide that, if the Secretary approves a marketing application filed under section 505(b) or 507 of the act or under section 351 of the Public Health Service Act (42 U.S.C. 262) for a patented or unpatented drug that is designated for a rare disease or condition under section 526, the Secretary may not approve another sponsor's application for that drug for such disease or condition until the expiration of 7 years from date of approval of the first marketing application, unless the Secretary finds that the holder of the first approved application cannot assure the availability of sufficient quantities of the drug to meet the needs of the affected persons. Of course, these provisions in no way prohibit the approval of other drug substances which may be developed and prove valuable in the treatment of rare diseases and conditions.

Thus, some of the effects of the Orphan Drug Amendments of 1985 are to provide marketing exclusivity for 7 years to the holder of the first approval of a designated orphan drug, such marketing exclusivity to apply to either patented or unpatented drugs.

The agency will publish a proposed rule to establish procedures to implement the orphan drug provisions of the act. FDA intends to include in that proposed rule the policy described below regarding timing of requests for designation.

FDA's Policy Regarding Eligibility of Drugs for Orphan Designation

For a drug to be eligible for orphan designation, FDA must receive the sponsor's designation request before the agency has approved a marketing application for that drug for that rare diseases or condition filed under section 505(b) or 507 of the act or section 351 of the Public Health Service Act (42 U.S.C. 262).

FDA believes that this policy is consistent with the purpose of the orphan drug provisions of the act. Section 1 of the Orphan Drug Act states in part that adequate drugs for rare disease or conditions "have not been developed" and that drugs with promise for treating rare diseases or conditions "will not be developed unless changes are made in the applicable Federal laws * * *." All but one of the benefits conferred under the orphan drug provisions of the act are for activities that would occur before approval of a marketing application—protocol assistance, open protocols under investigational new drug applications, tax benefits for clinical testing, and grants and contracts for clinical testing. The only benefit conferred on a sponsor of a designated orphan drug after its approval is the 7 years of exclusive approval. However, even the language in section 527 of the act that authorizes exclusive approval anticipates marketing approval after orphan designation.

Under the policy above, for a drug to be eligible for designation, FDA needs to receive the request for designation before it approves a marketing application for the drug. However, the time needed for FDA's review of a request for orphan designation of a drug would not delay FDA's approval of the marketing application for the drug or shorten the 7-year exclusive marketing approval of the drug provided by its designation.

FDA's Interim Policy Regarding Eligibility of Drugs for Orphan Designation

FDA's interim policy has been that a sponsor could also request orphan designation for a drug for a rare disease or condition after FDA had approved a marketing application for the drug for that rare disease or condition, if the marketing application was approved after enactment of the Orphan Drug Act on January 4, 1983.

FDA first applied its interim policy in response to Abbott Pharmaceutical Division's request for orphan designation for hematin. FDA approved hematin for marketing in 1983 and FDA designated hematin as an orphan drug in March 1984. Later, on June 4, 1984, at a conference sponsored by the Institute for Applied Pharmaceutical Sciences entitled "Processing an Orphan Drug Through the Regulatory and Corporate Management Systems," the Director of FDA's Office of Orphan Products Development publicly announced implementation of this interim policy, under which FDA would accept requests for designation for certain drugs and designate these drugs as orphan drugs after FDA had approved the marketing applications for the drugs. After that announcement, FDA designated four more approved drugs as orphan drugs. The five drugs FDA has designated as orphan drugs under its interim policy are listed below.

Drug and rare disease or condition for which designated	Sponsor	Date designated an orphan drug
Hematin—for hepatic porphyria.	Abbott Laboratories	1984
Chenodeoxycholic acid—for dissolution of radiolucent gallstones in poor risk surgical patients.	Rowell Laboratories	1984
Naltrexone—as an adjunct to the maintenance of the opioid-free state in detoxified individuals.	Du Pont de Nemours	1985
Cromolyn sodium 4 percent opthalmic solution—for vernal kerato-conjunctivitis.	Fisons Corp	1985
Potassium citrate—for management of uric acid lithiasis.	The University of Texas Health Science Center, Dallas, Texas.	1985

Reasons for FDA's Adoption and Terminotion of the Interim Policy

Before the Orphan Drug Act was enacted, based on requests of FDA and consumers, some drug manufacturers sponsored development of certain drugs for rare diseases or conditions as a public service knowing that development costs for the drugs likely would exceed expected sales revenues from those drugs. FDA approved the marketing applications for some of these pioneer orphan drugs shortly after enactment of the Orphan Drug Act. FDA believed that the agency should not delay approval of such drugs while it reviewed sponsors' requests for orphan designation under the new Orphan Drug Act. FDA also believed that, in fairness, a short-term interim period was warranted to give sponsors time to learn about the Orphan Drug Act and submit requests to FDA for orphan designation. Moreover, the interim policy was appropriate while the definition of orphan drug was in flux.

Because of passage of time and enactment of the two amendments to the orphan drug provisions of the act described above, FDA now believes that its interim policy is no longer needed or appropriate. Accordingly, FDA is terminating its interim policy.

Effective Date of Termination of Interim Policy

FDA's termination of its interim policy on eligibility of approved drugs for orphan designation (which was not published in the **Federal Register**), May 6, 1986. FDA is delaying for 90 days the effective date of its termination of its interim policy to provide sponsors an opportunity to submit a request for designation for eligible pioneer drugs that FDA has approved for marketing since January 4, 1983. Because of FDA's interim policy, sponsors of such approved drugs may have delayed submission of their requests for designation. Further, FDA is delaying the effective date because of the changes in the orphan drug provisions of the act resulting from the Orphan Drug Amendments of 1985 that were enacted and made effective on August 15, 1985. Before enactment of those amendments, only drugs for which a U.S. letter of patent could not be issued were eligible for marketing exclusivity of orphan drugs. Effective on August 15, 1985, both patented and unpatented drugs are eligible for the resulting 7 years of marketing exclusivity provided to the first designated orphan drug approved for the rare disease or condition. FDA's 90-day delayed effective date will allow sponsors who may not know about the eligibility for marketing exclusivity of their patented approved drugs to request designation and obtain the 7-year marketing exclusivity intended by Congress when it enacted the Orphan Drug Amendments of 1985.

Accordingly, FDA is delaying the effective date of its termination of its interim policy. After May 6, 1986, FDA no longer will accept for review and processing a sponsor's request that a drug approved for an orphan indication be designated as an orphan drug for the same indication. Requests for orphan drug designation will continue to be accepted for drugs previously approved for other uses.

Comments and recommendations received by FDA regarding this notice will be considered by the agency during preparation of its proposed rule implementing the orphan drug provisions of the act. FDA intends to incorporate its continuing policy regarding eligibility of products for orphan designation in that proposed rule that will be subject to notice and comment rulemaking.

Interested person may, on or before March 24, 1986, submit to the Dockets Management Branch (address above) written comments regarding the interim policy change. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments are available for public inspection in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 2, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-2408 Filed 2-4-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, and 212

Product Valuation for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is making available for public comment drafts of proposed methods of valuing, for royalty purposes, coal, oil, and gas and associated products from Federal and Indian leases. MMS is making these drafts available to obtain initial public comment on specific proposed methods before it formally issues proposed regulations.

DATES: Comments must be received on or before April 7, 1986. A public meeting will be held on March 18 and 19, 1986, at 8:30 a.m. to 4:00 p.m.

ADDRESSES: Comments should be mailed to Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, Attention: Vernon B. Ingraham. Copies of the draft regulations may be obtained from the above address. The public meeting will be held at the Denver Federal Center, Building 25, Room 1254, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, telephone: (303) 231-3360, (FTS) 326-3360.

SUPPLEMENTARY INFORMATION:

I. Background

Regulations governing the valuation for royalty purposes of coal, oil, and gas and associated products from Federal and Indian leases are codified in various sections of Title 30 and 43 of the Code of Federal Regulations. In addition, other regulatory and related provisions are included in various Notices to Lessees and orders.

For the past several months, MMS has been reviewing the existing regulatory scheme for royalty valuation and developing proposals for new methods for valuation which would simplify, clarify, and consolidate the existing provisions. In furtherance of the effort to develop comprehensive and workable product value regulations, the Secretary of the Interior recently Royalty Managment Advisory Committee comprised of 31 representatives from industry, the states and Indian Tribes, which will have as one of its first tasks to advise the Secretary on the new product value regulations. The Advisory Committee held its first meeting in Lakewood, Colorado on January 9 and 10, 1986.

II. Draft Regulations

As a result of its extensive review and consideration of royalty valuation issues, MMS has developed draft regulations for product valuation. There are five separate draft regulations; coal, oil, gas and associated products, gas processing allowances, and transportation allowances. Each draft is in the form of a notice of proposed rulemaking, including proposed regulatory language and a preamble.

Because the issues related to product valuation are so complex, and because MMS expects extensive public comment, it has decided to make drafts of the proposed regulations available for public review and comment before issuing formal Notices of Proposed Rulemaking. The existing draft regulations reflect MMS current proposals for addressing product valuation but we expect that changes will be made as a result of comments before proposed rules are issued.

Commenters are specifically requested to provide alternative suggestions to those specified in the draft rules. In addition, a public meeting will be held for the purpose of receiving comments at the time and location stated in the **DATES** and **ADDRESSES** sections. All written comments, plus comments received at the public meeting, will be made available to the Royalty Management Advisory Committee for its consideration in providing advice to the Secretary of the Interior on product valuation.

Although each of the five drafts is in the form of a proposed rule, MMS is not considering them as proposed rules at this time and the proposed rules will be published in the **Federal Register** for public comment before final rules are issued.

III. Availability of Draft Regulations

At this time, only four of the five draft regulatory packages are being made available for comment: coal, oil, gas processing allowances and transportation allowances. The draft rule for gas and associated products will be available in a few weeks and MMS will send copies to those requesting them at that time. Interested persons may obtain a copy of the draft regulations upon request from the MMS at the address above in **ADDRESSES**.

BEST COPY AVAILABLE

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The format of the public meeting will be the same as that specified in the preamble sections of the draft regulations.

Dated: January 30, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-2526 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-MR

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

Federal Payments Made Through Financial Institutions by the Automated Clearing House Method

[Editorial Note: The following document was originally published at page 2899 in the issue of Wednesday, January 22, 1986. The document is being republished in its entirety because of typesetting errors.]

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This amendment revises 31 CFR Part 210, which defines the responsibilities and liabilities of the Federal Government, Federal Reserve Banks, financial institutions, and recipients participating in the Automated Clearing House (ACH) payment system. There are three reasons for the proposed revision. First, changes regarding enrollment are necessary in order to allow Treasury to devise, test, and implement creative and innovative means of enrollment while improving the Direct Deposit/Electronic Funds Transfer (DD/EFT) system's flexibility. Second, the problem of fraud in the Direct Deposit Program needs to be addressed. Finally, it was felt that overall clarity and arrangement of the regulations could be improved. The proposed revision will address these needs.

DATE: Comments on this proposed rule must be received by February 21, 1986.

ADDRESS: Comments may be mailed to the ACH Programs Branch, Financial Management Service, U.S. Department of Treasury, Room 226, Treasury Annex No. 1, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Christine Ricci, (202) 535-6328 or Maurice Galloway, (202) 535-6323.

SUPPLEMENTARY INFORMATION: Part 210 of Title 31 of the Code of Federal Regulations sets forth the rights and liabilities of the Government, Federal Reserve Banks, financial institutions and recipients where a recipient of Federal recurring payments authorizes Direct Deposit of recurring payments made by means other than by check. The regulations in this Part were promulgated in 1975, with amendments in 1976, 1984, and 1985. Since that time, it has become apparent that the regulations need clarification and improvement in a number of respects. Notably, this notice proposes to expand the coverage of the regulations to include changes designed to meet increased utilization of the Automated Clearing House (ACH) method for Federal payments.

Changes have been proposed to the current regulations to make them more clear and understandable, as well as to make them more flexible so as to allow for future innovations in technology and payment methods. Thus, the phrase in the title of Part 210 referring to payment "by means other than by check" has been changed to payments "by the Automated Clearing House method." While the ACH method is presently used only for recurring payments, the word "recurring" has been eliminated in order to allow for the use of this method in the future for non-recurring payments, as well. Present §§ 210.1–210.8 plus § 210.13, which are applicable to both benefit and nonbenefit payments, have been grouped together as Subpart A. They have also been rearranged and renumbered. Minor changes have been made to present §§ 210.9—210.12, which relate only to benefit payments, and they have been renumbered and labeled Subpart B.

There are a number of new definitions found in these proposed regulations. "Automated Clearing House" refers to a computerized clearing system that effects the paperless exchange of funds. "Benefit payment" is a payment of money for any Federal Government entitlement program or annuity, either one-time or recurring. "Enrollment" means any method approved and prescribed by Treasury's Financial Management Service for authorizing or conveying instructions for the use of the ACH payment method. This term replaces "Standard Authorization Form" in the present regulations. New definitions are also provided for "Federal Reserve Bank," and "financial institution." Definitions of "Government" and "recurring payment" have been eliminated.

The present term "credit payment" is replaced in these proposed rules by two terms: "payment" and "payment instruction." The phrase "credit payment" is not only unclear, but is used in two different senses in the present regulations. The Service believes that this creates needless confusion in interpreting the present regulations. Accordingly, the term "credit payment" is replaced through these proposed rules by either "payment" or "payment instruction," as the context dictates. "Payment" is used in its most commonly accepted sense to mean the transfer of a sum of money, while "payment instruction" means an order for the payment of money, including the information necessary to make the indicated payment.

The section on recipients reflects proposed changes which are designed to improve the system's flexibility as well as simplify the enrollment process for recipients of Federal payments.

Present § 210.5 on program agencies has been eliminated as unnecessary, while a new section 210.3 has been added to state the policy for making payments by the ACH method. The authority citation has also been updated.

A new section 210.10 on fraud has been added. Paragraph (a) references the liabilities which are imposed by the False Claims Act, 31 U.S.C. 3729 *et. seq.*, for the submission of false claims or falsified documents in support of such claims, and also references applicable criminal statutes and common law remedies. This section is intended to apply to falsified enrollments, as well as to such activities as the initiation of an improper ACH payment by an employee of the Federal Government, or the diversion of a properly authorized payment by employees of the Federal Government, Federal Reserve Banks, or financial institutions to their own bank account or the account of another. Present § 210.9(g) has been added to this section and designated paragraph (b).

Numerous small, non-substantive changes in wording have been made throughout these proposed regulations in order to achieve greater clarity and precision.

The changes and new procedures will be published as amendments to the Financial Management Service's Green Book on Direct Deposit.

This proposed revision is not a major rule as defined by Executive Order 12291. Accordingly, a regulatory impact analysis is not required. It is hereby certified pursuant to the Regulatory Flexibility Act that the proposed revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 210

Banks, banking, Electronic funds transfer, Federal Reserve System.

For the reasons set out in the preamble, Part 210 of Chapter II of Title 31 of the Code of Federal Regulations is proposed to be amended as follows:

1. 31 CFR Part 210 is revised to read as follows:

PART 210—FEDERAL PAYMENTS THROUGH FINANCIAL INSTITUTIONS BY THE AUTOMATED CLEARING HOUSE METHOD

Subpart A—General

Sec.

210.1 Scope of regulations.
210.2 Definitions.
210.3 Policy for payments by the Automated Clearing House method.
210.4 Recipients.
210.5 The Federal Government.
210.6 Federal Reserve Banks.
210.7 Financial institutions.
210.8 Timeliness of action.
210.9 Liability of, and acquittance to, the United States.
210.10 Fraud.

Subpart B—Repayment of Benefit Payments

210.11 Death or legal incapacity of recipients or death of beneficiaries.
210.12 Collection procedures.
210.13 Notice to Account Owners of collection action.
210.14 Erroneous death information.

Authority: 12 U.S.C. 391; 31 U.S.C. 321, and other provisions of law.

Subpart A—General

§ 210.1 Scope of regulations.

This Part governs Federal Government payments made by the automated clearing house (ACH) method through Federal Reserve Banks and financial institutions, to recipients maintaining accounts at these financial institutions. It describes the procedures to be used, defines the obligations and responsibilities of the participants in ACH payments, and states terms of a contract between the Federal Government and those participants. It also prescribes the liabilities of financial institutions to the Federal Government arising from payments to deceased or incompetent recipients, and deceased beneficiaries, of Federal benefit payments.

§ 210.2 Definitions.

As used in this Part, unless the context otherwise requires:

(a) "Account," "recipient's account," "designated account" and "appropriate account" mean the account specified by a recipient or beneficiary into which payments under this Part shall be deposited. These definitions also include an account on which the financial institution has, after execution of an enrollment, made changes to the account number or the type of account as authorized by § 210.4(f).

(b) "Automated Clearing House" (ACH) means a Federal Reserve Bank or other entity which effects the paperless exchange of funds.

(c) "Beneficiary" means a person other than a recipient who is entitled to receive the benefit of all or part of a benefit payment from the Federal Government.

(d) "Benefit Payment" is a payment of money for any Federal Government entitlement program or annuity. It can be either a one-time or recurring payment. These payments include, but are not limited to, the following:

(1) Social Security.
(2) Supplemental Security Income.
(3) Black Lung.
(4) Civil Service Retirement.
(5) Railroad Retirement Board Retirement/Annuity.
(6) Veterans Administration Compensation/Pension.
(7) Central Intelligence Agency Annuity.
(8) Military Retirement/Annuity.
(9) Coast Guard Retirement.

(e) "Enrollment" means a procedure approved or prescribed by the Financial Management Service for a recipient to provide the information necessary to make an ACH payment.

(f) "Federal Reserve Bank" means all Federal Reserve District Head Offices, branches, and regional check processing centers that process ACH payments for the Federal Government.

(g) "Financial Institution" means any bank, savings bank, savings and loan association, credit union, or similar institution.

(h) "Outstanding Total" means the sum of all benefit payments received, pursuant to an enrollment, after death or legal incapacity, minus any amount returned to or recovered by the Federal Government.

(i) "Payment" means a sum of money which is transferred to a recipient in satisfaction of an obligation.

(j) "Payment Date" means the date specified in the payment instruction for a payment. It is the date on which the funds specified in the payment instruction are to be available for withdrawal from the recipient's account with the financial institution specified by the recipient, and on which the funds are to be made available to the financial institution by the Federal Reserve Bank with which the financial institution maintains or utilizes an account. If the payment date is not a business day for the financial institution receiving a payment, or for the Federal Reserve Bank from which it received such payment, then the next succeeding business day for both shall be deemed to be the payment date.

(k) "Payment Instruction" means an order issued by the Federal Government for the payment of money under this Part. A payment instruction may be contained on:

(1) A letter, memorandum, telegram, computer printout or similar writing, or

(2) Any form of nonverbal communication, registered upon magnetic tape, disc or any other medium designed to capture and contain in durable form conventional signals used to electronically communicate messages.

(l) "Program Agency" means an agency of the Federal Government responsible for determining and initiating a payment to be made, and includes any department, agency independent establishment, board, office, commission, or other establishment in the executive, legislative, or judicial branches of the Federal Government, and any wholly-owned or -controlled Federal Government corporation.

(m) "Recipient" means a person authorized by a program agency to receive payments from the Federal Government. Recipient includes a person named by a program agency to receive benefit payments for a beneficiary.

§ 210.3 Policy for payments by the Automated Clearing House Method.

A payment shall be made by the ACH method unless the Treasury Department determines that conditions exist that make payment by check or other means more appropriate.

§ 210.4 Recipients.

(a) In order for a recipient to receive a payment by the ACH method, the recipient shall designate the desired financial institution and account identification at that financial institution using an enrollment procedure prescribed by the Financial Management Service for such payments. The title of the account so designated shall include the name of the recipient.

(b) In executing an enrollment, a recipient:

(1) Agrees to the provisions of this Part; and

(2) Authorizes the termination of any previously executed enrollment or inconsistent payment instructions.

(c) Once an ACH enrollment has been provided, it shall remain in effect until it is terminated by one of the following events:

(1) A request from the recipient to change or terminate the enrollment;

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(2) A change in the title of an account which removes the name of the recipient, removes or adds the name of a beneficiary, or alters the interest of the beneficiary;

(3) The death or legal incapacity of a recipient, or the death of the beneficiary, of a benefit payment; or

(4) The closing of the account.

If any of these events occurs, a new enrollment shall be required before further payments may be credited to that account.

(d) A recipient who wishes to change the account or financial institution to which payment is directed shall execute a new enrollment.

(e) A recipient of a benefit payment made under this Part may request only that the full amount of the payment be credited to one account on the books of a financial institution. Except as authorized by law or other regulations, the procedures set forth in this Part shall not be used to effect an assignment of a payment.

(f) A financial institution may change the account numbers or, at the request of the recipient, the type of the recipient's account without executing a new enrollment provided no change is made to the title of the account or the interest of the recipient or beneficiary in the account. These changes must be communicated to the appropriate program agency or agencies in accordance with implementing instructions issued by the Federal Government.

§ 210.5 The Federal Government.

(a) The Federal agencies that perform disbursing functions will, in accordance with the provisions of this Part, issue and direct payment instructions to the Federal Reserve Bank on whose books the financial institution named therein maintains or utilizes an account in sufficient time for the Federal Reserve Bank to carry out its responsibilities under this Part.

(b) Procedural instructions will be issued by the Financial Management Service for the guidance of program agencies, Federal agencies that perform disbursing functions, Federal Reserve Banks, and financial institutions in the implementation of these regulations.

§ 210.6 Federal Reserve Banks.

(a) Each Federal Reserve Bank as Fiscal Agent of the United States shall receive payment instructions from the Federal Government and shall make available and pay to financial institutions amounts specified in these payment instructions, and shall otherwise carry out the procedures and conduct the operations contemplated under this Part. Each Federal Reserve Bank may issue operating circulars (sometimes referred to as operating letters or bulletins) not inconsistent with this Part, governing the details of its handling of payments under this Part and containing such provisions as are required and permitted by this Part.

(b) The Federal Government by its action of issuing and sending any payment instruction contained in the media specified in § 210.2(k) shall be deemed to authorize the Federal Reserve Banks to:

(1) Pay the amount specified in the payment instruction to the debit of the general account of the United States Treasury on the payment date; and

(2) Handle and act upon the payment instruction.

(c) Upon receipt of a payment instruction, a Federal Reserve Bank shall, if the payment is directed to a financial institution which maintains or utilizes an account on the books of another Federal Reserve Bank, forward the payment instruction to the other Federal Reserve Bank. The Federal Reserve Bank on whose books the financial institution or its designated correspondent maintains an account shall deliver or make available to the financial institution the information contained in the payment instruction not later than the close of business for the financial institution on the business day prior to the payment date on the medium as agreed to by the Federal Reserve Bank and financial institution.

(d) A financial institution by its action in maintaining or utilizing an account at a Federal Reserve Bank shall be deemed to authorize that Federal Reserve Bank to credit the amount of the payment to the account of the financial institution on its books, or the account of its designated correspondent maintaining an account with the Federal Reserve Bank.

(e) A Federal Reserve Bank receiving a payment instruction from the Federal Government shall make the amount specified in the payment instruction available for withdrawal from the financial institution's account on its books, referred to in paragraph (d) of this section, at the opening of business on the payment date.

(f) Each Federal Reserve Bank shall be responsible only to the Department of the Treasury and shall not be liable to any other party for any loss resulting from the Federal Reserve Bank's action under this Part.

§ 210.7 Financial institutions.

(a) A financial institution's execution of actions required of it in connection with an enrollment shall constitute its agreement to the terms of this Part with respect to each payment received by it pursuant to the enrollment. Regardless of whether it has executed an enrollment, a financial institution's acceptance and handling of a payment issued pursuant to this Part shall constitute its agreement to the provisions of this Part.

(b) A financial institution in executing an enrollment shall be responsible for:

(1) The completeness and accuracy of the data provided by it with respect to the enrollment, and

(2) Verifying that the account number entered by the recipient during enrollment corresponds to an account bearing the name of the recipient.

(c) A financial institution wishing to terminate an enrollment shall do so by giving written notice to the recipient. The termination shall become effective thirty days after the financial institution has sent the notice to the recipient. A financial institution must immediately return to the Federal Government all payments received after the effective date of a termination.

(d) A financial institution receiving a payment under this Part shall credit the amount of the payment to the designated account of the recipient on its books, and it shall make the amount available for withdrawal or other use by the recipient not later than the opening of business on the payment date. "Available" in this paragraph means accessible through any means of access provided by a financial institution to its customers for the recipient's type of account, for example, checks, automated teller machines, or automatic transfers from the recipient's account. If the payments or any related information received by the financial institution from a Federal Reserve Bank do not balance, are incomplete, are clearly erroneous on their face (e.g., the account number and recipient's name do not agree with the financial institution's records), or are incapable of being processed, the financial institution, after assuring itself that neither it nor any of its agents is responsible, shall immediately notify the Federal Reserve Bank in order that it may deliver corrected information to the financial institution.

(e) A financial institution receiving a payment under this Part shall credit the amount of the payment to the account specified in the payment instruction. If the financial institution is unable to credit the amount of a payment to the account indicated in the payment instruction because, for example, such an account does not exist on its books, or because in processing the payment it has reason to believe the account

indicated in the payment instruction is not the account designated by the recipient, it shall either:

(1) Return the payment to the Federal Reserve Bank with a statement identifying the reason therefore; or

(2) Credit the amount of the payment to the account designated by the recipient.

A credit to any other account by a financial institution shall constitute a breach of its warranty made by reason of paragraph (i) of this section.

(f) A financial institution shall promptly return to the Federal Government through the Federal Reserve Bank any payment received by the financial institution:

(1) After termination of the enrollment pursuant to § 210.4(c)(2) and before the execution of a new enrollment;

(2) After termination of an enrollment pursuant to §§ 210.4(c)(1) or 210.7(c) has become effective;

(3) After it learns of the death or legal incapacity of the recipient, or the death of the beneficiary, of a benefit payment, regardless of whether or not notice has been received from the Federal Government; or

(4) After the closing of the recipient's account.

(g) A financial institution to which a payment is sent under this Part does not thereby become a Federal Government depositary and shall not advertise itself as one because of that fact.

(h) If any change in account numbers permitted by § 210.4(f) is made by a financial institution, the financial institution shall be liable to the recipient for any lost or late payment caused by the financial institution's actions in processing the change.

(i) Each financial institution by its action of handling a payment under this Part shall be deemed to warrant to the Federal Government that it has handled the payment in accordance with the requirements of this part. In addition to the liability which may be imposed pursuant to § 210.11, if the foregoing warranty is breached, the financial institution shall be liable to the Federal Government for any loss sustained by the Federal Government, but only to the extent that the loss was the result of the breach. Except as provided in this section, and § 210.11, a financial institution shall not be liable under this Part to any party for its handling of a payment.

§ 210.8 Timeliness of action.

If, because of circumstances beyond its control, action by the Federal Government, a Federal Reserve Bank, or a financial institution is delayed beyond the time prescribed for the action (including the payment date) by this Part, by the operating circulars of the Federal Reserve Banks, or by applicable law, the time within which the action shall be completed shall be extended for such time after the cause of the delay ceases to operate as shall be necessary to take or complete the action, provided the Federal Government, the Federal Reserve Bank, or the financial institution exercises such diligence as the circumstances require.

§ 210.9 Liability of, and acquittance to, the United States.

(a) The United States shall be liable to a recipient for the failure to credit the proper amount of a payment to the appropriate account of the receipient as required by this part. This liability shall be limited to the amount of the payment.

(b) The United States shall be liable to the financial institution, up to the amount of the payment, for a loss sustained by the financial institution as a result of its crediting the amount of the payment to the account specified in the payment instruction, if the financial institution has handled the payment in accordance with this part. The foregoing does not extend to benefit payments received by the financial institution after the death or legal incapacity of the recipient or death of the beneficiary, in which event § 210.11 shall govern.

(c) The crediting of the amount of a payment to the appropriate account of a recipient on the books of the appropriate financial institution shall constitute a full acquittance to the United States for the amount of the payment.

§ 210.10 Fraud.

(a) The False Claims Act, 31 U.S.C. 3729, *et seq.*, provides for the recovery of damages and a civil penalty from any person who knowingly presents to the Federal Government, or causes to be presented, a false or fraudulent claim for payment, or uses a false record or statement in connection with such a claim. In addition, criminal penalties are provided in 18 U.S.C. 1001 for knowingly making false or fraudulent statements or representations to agencies of the Federal Government, and in 18 U.S.C. 1002 for knowingly possessing false documents for the purpose of enabling another to receive a payment from the Federal Government. These provisions are in addition to the Federal Government's remedies under common law.

(b) A financial institution shall verify the identity of any person who initiates and executes an enrollment through such financial institution. The Federal Government shall verify the identity of any person who presents an enrollment to the Federal Government without prior review or execution by a financial institution. A financial institution that executes an enrollment in which the recipient's or beneficiary's signature is forged or other information is falsified shall be liable to the Federal Government for all benefit payments made in reliance thereon. However, if the program agency fails to take corrective action after it has been notified that a payment has not been received by the correct recipient or beneficiary, the financial institution shall not be liable for any benefit payments based on the forgery or falsified information which are made after the date of such notice.

Subpart B—Repayment of Benefit Payments

§ 210.11 Death or legal incapacity of recipients or death of beneficiaries.

(a) A financial institution shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of the recipient or the death of the beneficiary. However, a financial institution may limit its liability if the financial institution did not have knowledge of the death or legal incapacity at the time of the deposit or withdrawal of any of the benefit payments made after the death or legal incapacity, and if it fulfills the requirements of this section and of §§ 210.12 and 210.13.

(b) Except as provided in paragraph (f) of this section, if limitation of liability is available to a financial institution under this Part, the amount of its liability shall be:

(1) An amount equal to the amount in the recipient's or beneficiary's account as defined in § 210.12(b)(2)(i), plus

(2) An amount equal to the benefit payments received by the financial institution within 45 days after the death or legal incapacity of the recipient or the death of the beneficiary; *Provided*, that the financial institution will only be liable for the 45-day amount to the extent described in § 210.12(d).

(c) Although a financial institution shall be liable for an amount equal to the amount in the recipient's or beneficiary's account, plus the amount of benefit payments received within 45 days after the death or legal incapacity of the recipient or the death of the beneficiary, this Part dose not authorize or direct a financial institution to debit the account of any customer, living or deceased, including that of the recipient or beneficiary, for the financial institution's liability to the Federal

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Government under this Part. The amount in the recipient's or beneficiary's account is only a measure of the financial institution's liability. Nothing in this Part shall be construed to affect any right a financial institution may have under State law or the financial institution's contract with a customer to recover from the customer's account an amount returned to the Federal Government in compliance with this Part.

(d) A financial institution shall be deemed to have knowledge of the death or legal incapacity of the recipient or beneficary when it is brought to the attention of a financial institution employee who handles benefit payments, or when it would have been brought to that person's attention if the financial institution had exercised due diligence. The financial institution will be considered to have exercised due diligence only if it maintains procedures under which, once it learns of the death of a depositor, it determines whether its deceased depositor is a recipient or beneficary of benefit payments under this part, and immediately communicates such information to the appropriate employees, and it complies with such procedures. This does not impose a duty on a financial institution to learn of the deaths of its customers by searching obituaries or any other means, unless it does so for purposes other than its participation in the payment system governed by this Part.

(e) A financial institution that fails to comply timely with the collection procedures set forth in § 210.12 or the Notice to Account Owners requirement of § 210.13 may not limit its liability in accordance with paragraph (a) of this section.

(f) A financial institution will not be liable under this Part for benefit payments made after the death of a beneficiary if the beneficiary was decreased at the time the recipient executed an enrollment and if the financial institution had no knowledge of the beneficiary's death.

§ 210.12 Collection procedures.

The amount of which the financial institution is liable under § 210.11 shall be collected as follows:

(a) For each type of benefit payment, the Federal Government will send a Notice of Reclamation form to the financial institution. The form will identify benefit payments sent to the financial institution for credit to the account of a recipient or beneficiary which should have been returned by the financial institution because of the death or legal incapacity of a recipient or the death of a beneficiary.

(b) Upon receipt of the Notice of Reclamation, the financial institution must do one of the following:

(1) If the financial institution had knowledge of the death or legal incapacity and did not immediately return to the Federal Government all benefit payments received after it acquired that knowledge, the financial institution shall immediately return to the Federal Government an amount equal to the outstanding total of benefit payments listed on the notice form that it received after it learned of the death. With respect to any benefit payments received prior to learning of the death that have not been returned, the financial institution shall certify on the Notice of Reclamation the date it learned of the death and follow the procedure in paragraph (b)(2) of his section.

(2) If the financial institution had no knowledge of the death or legal incapacity at the time any benefit payments made after the death or legal incapacity were credited to the recipient's or beneficiary's account, an appropriate official of the financial institution shall certify on the Notice of Reclamation form that it had no knowledge of the death or legal incapacity and fully complete the form in accordance with its instructions and do the following:

(i) The financial institution shall return to the Federal Government both the executed Notice of Reclamation form and an amount equal to the amount in the account or the outstanding total, whichever is less. The amount in the account is the balance when the financial institution has received the Notice of Reclamation and has had a reasonable time to take action based on its receipt, plus any additions to the account balance made before the financial institution returns the completed Notice of Reclamation to the Federal Government. For the purposes of this paragraph, action is taken within a reasonable time if it is taken not later than the close of business on the business day following receipt of the Notice of Reclamation.

(ii) If the amount returned is less than the amount requested in the notice, the financial institution shall include with the form the name and the most current address on its records of any person(s) who withdrew funds from the account after the death or legal incapacity. If the financial institution is unable to supply the name(s) of the withdrawer(s), it shall provide the names and most current addresses on its records of any co-owners of the account or other persons authorized to withdraw. If it is unable to supply the names or addresses of the withdrawers or co-owners, it shall state the reason for its inability on the form.

(3) If the Federal Government issues a second or subsequent Notice of Reclamation for the same type of payment for the same recipient or beneficiary, the financial institution shall be liable with respect to such second or subsequent Notice only for an amount equal to the amount in the account at the time it receives a second or subsequent Notice of Reclamation, plus any further additions to the account balance up to the date it returns these subsequent Notices of Reclamation. For a second or subsequent Notice of Reclamation for the same type of payment for the same recipient or beneficiary, the financial institution shall not be liable for an amount in excess of the amount determined under the first sentence of this paragraph, attributable to benefit payments received within 45 days after the death or legal incapacity if it complied properly and timely to the first Notice of Reclamation.

(c) If the Federal Government does not receive response to the Notice of Reclamation within 30 days, it will issue a follow-up to ensure that the original Notice of Reclamation was received. If the Federal Government does not receive from the financial institution the fully completed and properly executed Notice of Reclamation form along with the amount due under § 210.11(b)(1) within 60 days of the issue date of the original Notice of Reclamation, the financial institution shall be liable for the outstanding total listed on the form. Following the sixtieth day after the date of the original Notice of Reclamation, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the financial institution for receipt of benefit payments in the amount of the outstanding total. By receiving benefit payments under this part, the financial institution is deemed to authorize this debit. The Federal Reserve Bank will provide advice of the debit to the financial institution.

(d) After the financial institution has paid to the Federal Government an amount equal to the amount in the recipient's account as provided in § 210.11(b)(1), if the program agency is unable to collect the entire outstanding total from the withdrawer(s), the financial institution shall be liable for an additional amount equal to the benefit payments received by it within 45 days after the death or legal incapacity, or the balance of the outstanding total, whichever is less. The Federal Government will instruct the appropriate Federal Reserve Bank to debit the account utilized by the financial institution for receipt of benefit payments in the amount of the outstanding total. By receiving benefit payments under this part, the financial institution is deemed to authorize this debit. The Federal Reserve Bank will provide advice of the debit to the financial institution.

(e) Immediately upon learning of the death or legal incapacity, regardless of whether there has been notification from the Federal Government, the financial institution shall return to the Federal Government any further benefit payments it receives and notify the Federal Government that it has learned of the death or legal incapacity in order that the above collection procedures can be commenced. See § 210.7(f)(3).

§ 210.13 Notice to Account Owners of collection action.

(a) Upon receipt by a financial institution of the Notice of Reclamation as described in § 210.12(a), the financial institution shall immediately mail to the current address(es) of the account owner(s) of record a copy of the Notice to Account Owners form included with the Notice of Reclamation.

(b) The financial institution shall indicate with the Notice to Account Owners any action it has taken or intends to take with respect to the recipient's or beneficiary's account in connection with the Federal Government's collection action against the financial institution.

(c) The financial institution is not authorized by this part to debit the account of any party or to deposit any funds from any account in a suspense account or escrow account or the equivalent. If such action is taken, it must be under authority of State law or the financial institution's contract with its depositor(s).

(d) The financial institution's liability under this part is not affected by any action taken or not taken by the financial institution to recover from any party the amount of its liability to the Federal Government.

(e) Failure to mail the Notice to Account Owners, or failure to certify on the Notice of Reclamation that it has done so, shall result in the forfeiture by the financial institution of its ability under this Part to limit its liability. See § 210.11(e).

§ 210.14 Erroneous death information.

(a) In the event that the financial institution is advised that the Federal Government's information that the recipient or beneficiary is deceased is incorrect, or that the date of death is incorrect, the financial institution shall certify the correct information to the Federal Government by one of the following means:

(1) Certify on the "Notice of Reclamation" that the person whose name is reflected on the notice is alive, or that the date of death is incorrect, and that the financial institution took prudent measures to assure that the person was alive or that the date of death was erroneous. Prudent measures to assure that the person was alive include, but are not limited to, the named person providing the financial institution adequate identification, or obtaining through a third person a signed, dated and notarized statement from the named person. Prudent measures to assure the correct date of death include obtaining a death certificate.

(2) If there is any question regarding the sufficiency of the evidence presented to demonstrate that the date or fact of death is incorrect, the individual presenting the evidence should be referred by the financial institution to the agency making the payment, e.g., the Social Security Administration or the Veterans Administration. The agency will certify in writing to the financial institution the corrected information. The financial institution shall then return the agency's certification with the Notice of Reclamation.

(b) If the Federal Government's information that the recipient or beneficiary is deceased is in error, the financial institution shall be relieved of its liability, and shall no longer be subject to collection procedures under this part, if an accurate certification in accordance with paragraph (a) of this section is received by the Federal Government, on or with a properly completed Notice of Reclamation, within 60 days of the date of the original Notice of Reclamation to the financial institution.

(c) If the date of death on the Notice of Reclamation is in error, the financial institution shall be relieved of an appropriate part of its liability if an accurate certification in accordance with paragraph (a) of this section is received by the Federal Government, on or with a properly completed Notice of Reclamation, within 60 days of the date of the original Notice of Reclamation to the financial institution. In that event, the financial institution shall adjust the outstanding total on the Notice of Reclamation to exclude benefit payments made before the correct date of death. The financial institution shall include an explanation of the adjustment with the Notice of Reclamation. If correction of an error to the date of death shown on the Notice of Reclamation would result in additional payments being due to the Federal Government, the financial institution shall so notify the Federal Government when it returns the Notice of Reclamation.

(d) If after the financial institution has returned to the Federal Government a completed Notice of Reclamation and has made payment of its liablity, the financial institution learns that the fact of death or date of death was in error, it should bring the information to the attention of the agency which made the benefit payments, e.g., the Social Security Administration or the Railroad Retirement Board. The agency will refund to the financial institution, without interest, the appropriate amount of funds paid by the financial institution pursuant to § 210.12, including funds debited from its Federal Reserve account under § 210.12 (c) or (d).

Dated: January 14, 1986.

W. E. Douglas,

Commissioner.

[FR Doc. 86-1153 Filed 1-21-86; 8:45 am]

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 153 and 166

[OPP-250072; FRL 2962-8]

Notification to Secretary of Agriculture of a Proposed Interpretive Regulation on Pesticide Advertising

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation that would treat as unlawful certain advertising of pesticide products. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: John C. Street, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. Street, SW., Washington, D.C. 20460.

Office location and telephone number: Room 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7758).

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SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the **Federal Register.** If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register,** with the proposed regulation, the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the **Federal Register,** anytime after the 30-day period.

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: January 17, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-2043 Filed 2-4-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 3F2901/P384; FRL-296-6]

Pesticide Tolerances for Potassium Salt of 1-(4-Chlorophenyl)-1,4-Dihydro-6-Methyl-4-Oxo-Pyridazine-3-Carboxylic Acid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes tolerances for the hybridizing agent potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxo-pyridazine-3-carboxylic acid (referred to in the preamble of this document as fenridazone-potassium) in or on certain raw agricultural commodities. This regulation to establish maximum permissible levels for residues of fenridazone-potassium in or on the commodities was requested by the Rohm & Haas Co.

DATE: Comments, identified by the document control number [PP 3F2901/384], must be received on or before March 7, 1986.

ADDRESS: By mail, submit written comments to: Information Services Section Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of July 13, 1983 (48 FR 32078), that announced that Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, submitted pesticide petition 3F2901, proposing the establishment of tolerances for residues of the hybridizing agent fenridazone-potassium in or on the raw agricultural commodities cattle fat, meat, and meat byproducts (mbyp) at .02 part per million (ppm) and kidney at .25 ppm; goat fat, meat, and mbyp at .02 ppm and kidney at .25 ppm; hog fat, meat, and mbyp at .02 and kidney at .25 ppm; horse fat, meat, and mbyp at .02 ppm and kidney at .25 ppm; sheep fat, meat, and mbyp at .02 ppm and kidney at .25 ppm; wheat grain at 20.0 ppm and wheat straw at 10.0 ppm; and poultry fat, meat, and mbyp at .02 ppm and kidney at .25 ppm.

There were no comments received in response to the notice of filing.

Rohm and Haas has amended the petition by increasing the tolerance levels for the commodities proposed and adding tolerances for eggs and milk. Because of the potential increased exposure to humans, the tolerances are being reproposed for a 30-day comment period.

Commodities	Proposed tolerances (ppm)	
	Previous	New levels
Cattle (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Eggs		0.05
Goat (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Hog (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Horse (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Milk		0.05
Poultry (fat, meat, mbyp)	0.02	0.30
(kidney)	0.25	
Sheep (fat, meat, mbyp)	0.02	0.05
(kidney)	0.25	
(kidney and liver)		1.0
Wheat (grain)	20.0	40.0
(straw)	10.0	25.0

The pesticide is considered useful for the purposes for which the tolerances are sought. The data submitted in the petition and other relevant material have been evaluated. The data considered include acute studies; a 90-day feeding study in mice, with a no-observed-effect level (NOEL) of 500 ppm (75 mg/kg/day); a 90-day feeding study in rats, with a NOEL of 500 ppm (25 mg/kg/day); a second 98-day feeding study in mice, with a NOEL of 2,000 ppm (300 mg/kg/day); a sister chromatid exchange assay in mouse lymphoma cells which were weakly mutagenic at 1,250 ug/ml; a mouse mutation assay, with no increase in mutant frequency without activation; with activition, frequency increased at dose levels between 2,500 to 4,000 nl/ml and cell toxicity was observed at dose levels between 3,500 to 4,000 nl/ml; a teratology study in rats at dose levels of 0, 150, 500, 1,500 mg/kg/day with a NOEL of 10,000 ppm (500 mg/kg/day), a fetoxicity NOEL of 30,000 ppm (1,500 mg/kg/day), and a teratogenic NOEL of 30,000 ppm (1,500 mg/kg/day); a teratology study in rabbits, at dosage rates of 0, 100, 300, 1,000 mg/kg/day with a teratogenic NOEL of 1,000 mg/kg/day, a fetoxicity NOEL of 100 mg/kg/day, and a maternal toxicity NOEL of (100 mg/kg/day); a 24-month chronic/oncogenicity study in rats at dose levels of 5, 15, 45, 135, 405, mg/kg/day with a NOEL of 300 ppm (15 mg/kg/day) for systemic effects (decreased survival) and no oncogenic effects observed under the conditions of the study; an 18-month chronic/oncogenicity study in mice at dose levels of 0, 18, 75, 75, 300, mg/kg/day with a NOEL of 2,000 ppm (300 mg/kg/day) for systemic effects (decreased survival), and no oncogenic effects observed under the conditions of the study; a 3-generation reproduction study in rats at dose levels of 0, 5, 45, 405, mg/kg/day with a NOEL of 100 ppm (5 mg/kg/day) for systemic effects (decreased body weights, adults) and a NOEL of 45 mg/kg/day for reproductive effects (decreased pup survival); and a one year dog study at dose levels of 0, 16.25, 62.5, 250 mg/kg/day with a NOEL of 62.5 mg/kg for systemic effects.

The accepted daily intake (ADI) based on the 24-month rat feeding study (NOEL of 15.0 mg/kg/day) and using a 100-fold safety factor is calculated to be 0.15 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 9.00 mg/day. The theoretical maximum residue contribution (TMRC) for existing tolerances is calculated to be 6.2632 mg/day. The current action will use 69.58 percent of the ADI.

Fenridazone-potassium contains a nitrosoamine contaminant. The Agency has performed a risk assessment for the nitrosoamine contaminant in the product and concluded that the nitrosoamine contaminant is not in excess of acceptable levels established by the Agency. Data submitted to the Agency show that the level of nitrosoamine contaminant is below the level of concern.

The nature of the residue of fenridazone-potassium in plants and animals is adequately understood. An adequate analytical method, liquid chromatography with an ultra-violet detector, is available for enforcement purposes.

Based on the data and information considered, the Agency concludes that the proposed tolerances would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide, Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this proposed rule be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3F2901/P384]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612) the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: January 21, 1986.

Douglas D. Campt,

Director, Registration Division.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.423 is added to read as follows:

§180.423 Potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxo-pyridazine-3-carboxylic acid; tolerances for residues.

Tolerances are established for residues of the hybridizing agent potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylic acid, in or on the following raw agricultural commodities:

Commodities	Parts per million
Cattle, fat	0.05
Cattle, kidney and liver	1.0
Cattle, meat	0.05
Cattle, mbyp	0.05
Eggs	0.05
Goat, fat	0.05
Goat, kidney and liver	1.0
Goat, meat	0.05
Goat, mbyp	0.05
Hog, fat	0.05
Hog, kidney and liver	1.0
Hog, meat	0.05
Hog, mbyp	0.05
Horse, fat	0.05
Horse, kidney and liver	1.0
Horse, meat	0.05
Horse, mbyp	0.05
Milk	0.05
Poultry, fat	0.30
Poultry, meat	0.30
Poultry, mbyp	0.30
Sheep, fat	0.05
Sheep, kidney and liver	1.0
Sheep, meat	0.05
Sheep, mbyp	0.05
Wheat, grain	40.0
Wheat, straw	25.0

[FR Doc. 86-2044 Filed 2-4-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-26; RM-5113]

FM Broadcast Station in Fresno, CA; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 257A to Fresno, California, as that community's eighth local commercial FM broadcast service, in response to a petition filed by New Life Enterprises, Inc.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Fresno, California); MM Docket No. 86-26 RM-5113.

Adopted: January 21, 1986.

Released: January 31, 1986.

By the Chief, Policy and Rules Division:

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1. Before the Commission for consideration is a petition for rule-making filed by New Life Enterprises, Inc. ("petitioner"), licensee of daytime only AM Station KIRV, Fresno, seeking the allotment of Channel 257A to that community as its eighth commercial FM service. Petitioner advises that it will apply for the channel, if allotted.

2. A staff engineering study reveals that Channel 257A can be allotted to Fresno consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

§ 73.202 [Amended]

3. Since the proposal could provide an additional voice to Fresno for the presentation of diverse viewpoints and programming, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Fresno, CA	229, 239, 250, 266, 270, 274, and 290.	229, 239, 250, 257A, 266, 270, 274, and 290.

4. The Commission's authority to institute rulemaking proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: James K. Edmundson, Esq., Kenkel, Barnard & Edmundson, P.C., 1220–19th Street, NW., Suite 202, Washington, DC 20036, (Counsel to Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rulemaking proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rulemaking to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1) 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rulemaking* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rulemaking which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rulemaking* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–2503 Filed 2–4–86; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–23; RM–5005]

FM Broadcast Station in Nicholasville, KY; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot FM Channel 298A to Nicholasville, Kentucky, as that community's second FM allotment in response to a petition filed by Kentucky Basic Communications.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Radio.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Nicholasville, Kentucky); MM Docket No. 86–23, RM–5005.

Adopted: January 17, 1986.
Released: January 30, 1986.

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for Rule Making filed by Kentucky Basic Communications ("petitioner") requesting the allotment of FM Channel 298A to Nicholasville, Kentucky, as that community's second FM allotment. Petitioner has expressed an intention to apply for the channel, if assigned. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

§ 73.202 [Amended]

2. In view of the fact that the proposed allotment could provide a second FM service to Nicholasville, Kentucky, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules for the following community:

City	Channel No.	
	Present	Proposed
Nicholasville, KY	273A	273A, 298A.

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Ms. Nancy L. Wolf, Dow, Lohnes & Albertson, 1255—23rd St. N.W., Washington, D.C. 20037 (Counsel for petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 74.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.*

6. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposals(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

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5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 86-2504 Filed 2-4-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-27; RM-5157]

FM Broadcast Station in Topsail Beach, NC; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 267A to Topsail Beach, North Carolina, as the community's first local FM service, at the request of Jeffrey D. Southmayd.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), table of allotments, FM Broadcast Stations. (Topsail Beach, North Carolina); MM Docket No. 86-27, RM-5157.

Adopted: January 17, 1986.
Released: January 31, 1986.

By the Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making submitted by Jeffrey D. Southmayd ("petitioner") requesting the allocation of Channel 298A to Topsail Beach, North Carolina, as the community's first local FM service.[1] Petitioner states that he will apply for the channel, if allocated. Channel 267A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements, if the transmitter is restricted to an area at least 8.4 kms (5.2 miles) southwest to avoid short-spacing to Station WRAL, Raleigh, North Carolina, and to the construction permit authorizing full Class C facilities for Station WAZZ, New Bern, North Carolina.

§ 73.202 [Amended]

2. We believe the public interest would be served by soliciting comments on the proposed allocation of a first FM channel at Topsail Beach. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Topsail Beach, NC		267A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Jeffrey D. Southmayd, Esq., Southmayd Powell Taylor & Bowen, 1764 Church Street NW., Washington, D.C. 20036 (Petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission,

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 061, 0.204(b) and 0.283 of the Commission's rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

[1] Petitioner requested the allocation of Channel 298A to Topsail Beach. However, to avoid a conflict with a requested adjacent channel upgrade for Station WJYW, Channel 296A at Southport, North Carolina, the staff has found that Channel 267A can be proposed for Topsail Beach.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-2505 Filed 2-4-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-25; RM-4971]

FM Broadcast Station in Chester, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 287C2 to Chester, California, as that community's second local FM service, in response to a petition filed by Eric R. Hilding.

DATE: Comments must be file on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Chester, California); MM Docket No. 86-25; RM-4971.

Adopted: January 21, 1986.
Released: January 31, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Eric R. Hilding ("petitioner") requesting the allotment of Channel 287C2 to Chester, California, as that community's second local FM service. Petitioner failed to specifically state that he will apply for the channel, if allotted. He should do so in his comments to this *Notice*.

2. A staff engineering study reveals that Channel 287C2 can be alloted to Chester, California, consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. In view of the fact that the proposed allotment could provide a second local FM service to Chester for the expression of diverse viewpoints and programming, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules with repect to that community, as follows:

City	Channel No.	
	Present	Proposed
Chester, CA	255	255, 287C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note—A showing of continuing interest is require by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Eric Hilding, P.O. Box 1300, Freedom, California 95019-1300.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the peitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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Federal Communications Commission
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showing Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filing in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties of this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 2502 Filed 2-4-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-24]

FM Broadcast Station in Ardmore, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 243A for Channel 221A at Ardmore, Oklahoma, and the modification of Station KEBQ(FM)'s license to specify operation on the new channel, at the request of Waters Broadcasting Company, Inc.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of Amendment of § 73.202(b), table of allotments, FM broadcast stations. (Ardmore, Oklahoma); MM Docket No. 86-24, RM-5164.

Adopted: January 17, 1986.
Released: January 30, 1986.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Waters Broadcasting Company, Inc., licensee of Station KEBQ(FM), Ardmore, Oklahoma ("petitioner"). Petitioner seeks the substitution of Channel 243A for its present Channel 221A at Ardmore, and the modification of its license to specify operation on the new channel. Channel 243A can be allocated in compliance with the Commission's minimum distance separation requirements.

2. Petitioner states that Station KEBQ(FM) is currently operating under Special Temporary Authority ("STA") at less than full Class A facilities due to the station's loss of its transmitter site. Further, it states that it has been unable to locate a new, fully spaced site which would permit it to resume full power operations due to the proximity of two airports in the area where a transmitter for Channel 221A could be located. Petitioner states that it has available a fully spaced site for Channel 243A which would permit resumption of its full power operation.

3. Oktex, Inc. ("Oktex"), licensee of Class C. Station KKAJ(FM) at Ardmore, filed comments in opposition to the petition. It states that the petitioner seeks the allocation of "yet another FM channel to Ardmore which would be detrimental to KKAJ(FM)." Oktex also states that the substitution of channels is not necessary since it has located at least one site for Channel 221A which is available and poses no FAA problems. Therefore, it questions the "good faith" of petitioner in seeking the substitution.

4. We are not proposing the allocation of a third FM channel at Ardmore but only the substitution of one Class A for another. Therefore, as stated in paragraph 5, *infra*, no additional Class A channel need be available for competing interests. However, in light of Oktex's allegation that alternate sites are available for use by Station KEBQ(FM) on its present channel, we request that petitioner specifically address this site availability issue in its comments.

5. In view of the above, we propose to substitute Channel 243A for Channel 221A at Ardmore, Oklahoma, and the modification of Station KEBQ (FM)'s license. The procedures outlines in *Modification of FM and TV Licenses*, 98 F.C.C. 2d 916 (1984), and § 1.420(g) of the Commission's Rules, do not apply in this case since no upgrade in facilities is contemplated. Accordingly, comments are invited on the proposal to amend the FM Table of Allotments, § 73. 202(b) of the Commission's Rules, as concerns the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Ardmore, OK	221A, 239	239 243A

6. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Timonthy K. Brady, Esq., 116 Weisgarber Road, P.O. Box 10566, Knoxville, Tennessee 37939-0566 (Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.*

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in §§ 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules IT IS PROPOSED TO AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comment herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at the headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-2506 Filed 2-4-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-22; RM-5151]

FM Broadcast Station in Pocatalico, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Mountaineer Communications Corporation, proposes the allotment of Channel 233A to Pocatalico, West Virginia, as that community's first FM service.

DATES: Comments must be filed on or before March 24, 1986, and reply comments on or before April 8, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

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Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Pocatalico, West Virginia); MM Docket No. 86-22, RM-5151.

Adopted: January 17, 1986.
Released: January 30, 1986.
By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Mountaineer Communications Corporation ("petitioner"), seeking the allotment of FM Channel 233A to Pocatalico, West Virginia, as that community's first FM service. Petitioner has stated its intention to apply for the channel, if allotted. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

2. In view of the fact that the proposed allotment could provide a first FM channel to Pocatalico, the Committee believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the folowing community:

City	Channel No.	
	Present	Proposed
Pocatalico, WV		233A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be alloted.

4. Interested parties may file comments on or before March 24, 1986, and reply comments on or before April 8, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: A. Wray Fitch III, Gammon & Grange, 1925 K Street NW., Suite 300, Washington, DC 20006 (counsel to petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that §§ 603 and 604, of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the preceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in §§ 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2507 Filed 2-4-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 74

[MM Docket No. 86-12; FCC 86-48]

Television Broadcasting; Lower Power Auxiliary Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to authorize broadcast low power auxiliary station (LPAS) operation, particularly wireless microphone operation, in the low VHF television bands (54–72 and 76–88 MHz) and UHF television band (470–806 MHz). Such operation is currently limited to the high VHF television band (174–216 HMz), to the aural STL band (947–952 MHz), and to some of the frequencies allocated for remote pickup operations. This proposed frequency extension will relieve the congestion that currently exists in the bands authorized for LPAS operation. In addition, the proposed technical changes will afford LPAS users (particularly wireless microphone users) maximum flexibility with practically no interference to television stations.

DATES: Comments are due on or before March 3, 1986, and reply comments on or before March 18, 1986.

ADDRESS: Federal Communications Commission Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: John Wong, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Television broadcasting.

Notice of Proposed Rulemaking

In the Matter of review of Subpart H, Part 74, of the Commission's rules, Low Power Auxiliary Stations, MM Docket No. 86-12.

Adopted: January 16, 1986.
Released: January 24, 1986.

By the Commission:

Introduction/Background

1. By this *Notice of Proposed Rule Making (Notice)*, the Commission proposes to amend its Rules to extend the available spectrum allocated for broadcast low power auxiliary station (LPAS) use.[1] In addition, we propose to relax certain restrictions on LPAS use to permit grater flexibility for licensees. The goal of this proceeding is to alleviate the frequency congestion currently experienced in many major cities without increasing the potential for interference and to deregulate technical requirements that may not be necessary to prevent interference.

2. The predominant use of LPAS is for wireless microphones but it is also used to transmit signals necessary for program production such as cuing and control communications. LPAS transmitters are currently authorized to use the 174–216 MHz band (VHF–TV channels 7–13), some of the frequencies allocated for broadcast remote pickup operations, and the aural STL frequencies (944–952 MHz). The 174–216 MHz band is available for use by the motion picture, video production, and cable TV industries, as well as broadcast stations and networks.[2] The large number of users has created a shortage of available spectrum in many major cities. This, it is appropriate to investigate new avenues to relieve the current frequency congestion.

3. The following areas will be discussed in this *Notice:*

Authorizing new spectrm for LPAS use
Technical considerations
Miscellaneous

New Spectrum

4. Within the television broadcast bands, LPAS are currently allowed on a secondary non-interfering basis in the frequencies allocated to the high VHF–TV band channels 7–13. Since their entry into this band, in 1977, interference tc television stations has not increased as best we can determine. The Commission is not aware of any complaints regarding LPAS use of these frequencies. The absence of interference is largely attributable to the fact that LPAS receivers are much more susceptible to interference from broadcast TV signals than *vice versa*. Thus, LPAS users must select frequencies removed from operating broadcast TV channel and must also maintain a certain minimum operating distance from existing co-channel, TV stations. In view of the above, we propose to allow all LPAS licensees to also use the low VHF–TV bands (channels 2–6, 54–72, and 76–88 MHz) and the UHF–TV band (channels 14–36 and 38–69, 470–608, and 614–806 MHz) on a secondary non-interfering basis.[3]

Comments are requested on this proposal.

Technical Considerations

5. The Commission's Rules Limit LPAS transmitters operating in the high VHF–TV band to 50 mW. We are proposing to retain this power level in the low VHF–TV band because of the similar technical characteristics of these frequencies. However, because of the technical differences and increased difficulties with propagation in the UHF–TV frequencies, we propose to allow UHF–LPAS transmitters to operate at power levels of 250 mW. Comments are requested on this proposal. In addition, to permit LPAS users the flexibility to provide a high fidelity service, we propose to allow 25 kHz channels in the new specturm and propose to allow LPAS licensees to "stack" up to 8 adjacent channels (200 kHz) in all the television bands available to LPAS users. Finally, we are requsting comments on any other technical concerns that may arise as a result of the proposed actions.

Miscellaneous

6. Currently, LPAS licensees are precluded from full use of the high VHF–TV spectrum because of the existence of guards bands and "taboo" frequencies imbedded within every TV channel. The purpose of these restrictions is to minimize the probability of interference to adjacent channel operations. However, we now seek comment on whether these restrictions are necessary, considering that LPAS operations, for a variety of reasons, have a small probability of causing interference. Because LPAS transmitters are normally operated away from consumer TV receivers (in studios, auditoriums, and sports arenas) and operate with low power levels, the probability of causing interference to the TV service is low. This fact, coupled with the requirement that these devices will only be authorized on a secondary non-interfering basis, leads us to believe that interference to adjacent channel operations does not occur in practice. While we believe that the current restrictions to limit adjacent channel interference are unnecessary, we do believe that the current distance preclusion criteria for co-channel operations are appropriate. This requirement, which prohibits LPAS transmitters from operating within the Grade B contour of a co-channel TV station, is necessary because the

[1] A petition for rulemaking was filed on June 24, 1985 by Cetec Corporation (Cetec), requesting amendment of Part 74 of the Commission's Rules to include the UHF–TV channels for LPAS use. Because this *Notice* also proposes such a spectrum extension, the letter of petition is hereby returned.

[2] Wireless microphones for personal and business use are authorized under Part 15 and Part 90 of the Commisson's Rules on other frequencies.

[3] UHF–TV channel 37 (608–614 MHz) is reserved exclusively for the radio astronomy service. Additionally, UHF–TV channel 17 (488–494 MHz) is allocated for non-broadcast use in Hawaii.

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probability of interference is much higher for co-channel operations than for adjacent channel operations. Finally, we are proposing other non-substantive changes in the Rules as shown in the attached appendix. Comments are requested on these and all proposals of this *Notice*.

7. Regulatory Flexibility Act Initial Analysis.

I. *Reason for action:*

This action is taken to consider avenues for alleviating the congestion in the frequencies allocated for broadcast low power auxiliary stations. In addition, the proposed action would allow greater flexibility for the users of these devices.

II. *The objective:*

The frequencies which are currently authorized for low power auxiliary use are congested, particularly at times when operators simultaneously must use such frequencies. The purpose of this proposal, therefore, is to ease this congestion by providing additional spectrum and flexibility to low power auxiliary station licensees without increasing interference.

III. *Legal basis:*

Sections 4 and 303 of the Communications Act of 1934, as amended.

IV *Description, potential impact, and number of small entities affected:*

No adverse impact to any small entities is expected as a result of the rule amendments contained in this proposed action. This proposal should, however, benefit low power auxiliary licensees through the increase in frequencies available for their use, and the relaxation of the current congestion in the low power auxiliary frequencies.

V. *Recording, record keeping, and other compliance requirements:*

None.

VI. *Federal rules which overlap, duplicate, or conflict with this rule:*

None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the stated objective:*

None.

Paperwork Reduction Act Statement

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements except for a small adjustment due to the additional applications expected to be received. This proposal will not increase or decrease burden hours imposed on the public.

Ex Parte Considerations

9. For purposes of this nonrestricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral presentation addressing matters not fully covered in any previously filed written comments must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

10. Pursuant to applicable procedures set forth in § 1,415 and § 1,419 of the Commission's Rules, interested parties may file comments on or before March 3, 1986, and reply comments on or before March 18, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW. 20554.

Ordering Clauses

11. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals advanced herein. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall cause a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

12. Accordingly, it is proposed, pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, that Part 74 of the Commission's Rules is amended as set forth in the attached appendix.

13. For further information regarding this proceeding, contact John Wong, Mass Media Bureau, (202) 632–9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 74—[AMENDED]

Title 47, Part 74 of the Code of Federal Regulations would be amended as follows:

1. The authority citations for Part 74 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 74.802 would be amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 74.802 Frequency assignment.

(a) The following frequency bands may be assigned for use by low power auxiliary stations:

26.100–26.480 MHz
54.000–72.000 MHz
76.000–88.000 MHz
161.625–161.775 MHz (except in Puerto Rico or the Virgin Islands)
174.000–216.000 MHz
450.000–451.000 MHz
455.000–456.000 MHz
470.000–488.000 MHz
488.000–494.000 MHz (except Hawaii)
494.000–608.000 MHz
614.000–806.000 MHz
944.000–952.000 MHz

Stations may operate on any frequency within the bands specified above except as noted in paragraph (b).

(b) Operations in the bands allocated for TV broadcasting, listed below, are limited to locations removed from existing co-channel TV broadcast stations by the following distances unless otherwise authorized by the FCC. (See § 73.609 for zone definitions.)

(1) 54.000–72.000 MHz and 76.000–88.000 MHz:
Zone I—105 km (80 miles)
Zone II and III—129 km (80 miles)
(2) 174.000–216.000 MHz
Zone I—97 km (80 miles)
Zone II and III.129 km (80 milea)
(3) 480.000–608.000 MHz and 614.000–806.000 MHz
All zones—113 km (70 miles)

(c) Specific frequency operation is required within the bands allocated for TV broadcasting.

(1) The frequency selection must be offset from the upper or lower band limits by 25 kHz or an integral multiple thereof.

(2) One or more adjacent 25 kHz segments within the assignable frequencies may be combined to form a channel with a maximum bandwidth of 200 kHz.

* * * * *

3. 47 CFR 74.803 would be amended by revising paragraph (b) to read as follows:

§ 74.803 Frequency selection to avoid interference.

* * * * *

(b) The selection of frequencies in the bands allocated for TV broadcasting for use in any area shall be guided by the need to avoid interference to TV broadcast reception. In these bands, low power auxiliary station usage is secondary to TV broadcasting and must not cause harmful interference. If such interference occurs, low power auxiliary station operation must immediately cease and may not be resumed until the interference problem has been resolved.

4. 47 CFR 73.832 would be amended by revising paragraphs (d) and (f) to read as follows:

§ 74.832 Licensing requirements and procedures.

* * * * *

(d) Cable television operations, motion picture and television program producers may be authorized to operate low power auxiliary stations in the bands allocated for TV broadcasting.

* * * * *

(f) Applications for the use of the bands allocated for TV broadcasting must specify the usual area of operation within which the low power auxiliary station will be used. This area of operation may, for example, be specified as the metropolitan area in which the broadcast licensee serves, or the usual area within which motion picture and television producers are operating. Because low power auxiliary stations operating in these bands will only be permitted in areas removed from existing co-channel TV broadcast stations, the licensee has full responsibility to ensure operation of their stations does not occur at distances less than those specified in § 74.802(b).

5. 47 CFR 74.861 would be amended by revising the introduction of paragraphs (d) and (e), and paragraphs (e)(1) and (e)(3) to read as follows:

§ 74.861 Technical requirements.

* * * * *

(d) For low power auxiliary stations operating in the bands allocated for TV broadcasting, the following technical requirements are imposed:

* * * * *

(e) For low power auxiliary stations operating in the bands allocated for TV broadcasting, the following technical requirements apply:

(1) The power of the measured unmodulated carrier power at the output of the transmitter power amplifier (antenna input power) may not exceed the following:

(i) 54–72, 76–88, and 174–216 MHz bands—50 mW.

(ii) 470–608 and 614–806 MHz bands—250 mW.

* * * * *

(3) The operating bandwidth shall not exceed 200 kHz.

* * * * *

[FR Doc. 86–2280 Filed 2–4–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 81

[PR Docket No. 86–2; RM–5071; FCC 86–10]

Subsidiary Communications in the Maritime Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to permit on a subsidiary basis the transmission of messages between public coast stations and land vehicles. This action was initiated by a petition for rulemaking filed by AMCOM, Inc. The effect of the proposed rules would be to expand the scope of communications on certain maritime frequencies.

DATES: Comments must be received on or before March 5, 1986, reply comments must be received on or before March 20, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Private radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 87

Maritime Communications equipment, Public Coast stations, Radio.

The collection of information requirements contained in the proposed rule have been submitted to the Office of Management and Budget for review pursuant to Section 3504(h) of the Paperwork Reduction Act of 1980 (Title 44 U.S.C. Chapter 35). Comments concerning the proposed requirements shall be directed to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Desk Officer for Federal Communications Commission,
Washington, DC

Proposed Rule Making

In the matter of amendment of Part 81 of the rules to permit public coast stations to serve vehicles on land; PR Docket No. PR 86–2, RM–5071.

Adopted: January 3, 1986.
Released: January 27, 1986.

By the Commission.

1. This Notice proposes to amend Part 81 of the rules to permit public coast stations operating on VHF frequencies to serve vehicles on land on a subsidiary basis. The proposal is in response to a request by AMCOM, Inc. (AMCOM) dated April 12, 1984.[1]

Background

2. The Commission's rules currently restrict the use of maritime VHF public correspondence channels to communications between local area (VHF) public coast stations and ships and boats. Service to vehicles on land is prohibited.

3. Previously, § 22.509(b) of the Commission's rules prohibited licensees in the Domestic Public Land Mobile Radio Service (DPLMRS) from serving ships in areas served by VHF public coast stations. In the *Report and Order* in CC Docket No. 80–57 [2] which revised

[1] Public Notice, Report No. 1624 dated July 3, 1985.
[2] 95 FCC 2d 769 (1983).

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the Public Mobile Radio Service rules (Part 22), § 22.509(b) was deleted. AMCOM and other public coast station licensees opposed the elimination of this rule. They argued however that if the rule were deleted, equity required that public coast stations be permitted to serve vehicles on land. In resolving CC Docket No. 80–57 we indicated that a separate proceeding would be initiated to consider whether to permit VHF public coast stations to serve vehicles on land on a subsidiary basis.[3]

Discussion

4. In many areas of the country maritime public correspondence traffic is seasonal in nature. Furthermore the heaviest use of VHF public coast stations by recreational boaters occurs on weekends and evenings while traffic in the land mobile services tends to be concentrated during normal business hours on weekdays. The offering of subsidiary services may improve the financial viability of public coast stations and lead to improved maritime services such as longer hours of service, expanded service areas and more public coast stations.

5. Under section 303(g) of the Communications Act of 1934, as amended, the Commission is tasked to "(s)tudy new uses for radio . . . and generally encourage the larger and more effective use of radio in the public interest." Our preliminary analysis suggests that permitting VHF public coast stations [4] to serve mobile stations on land on an ancillary or subsidiary basis would be in the public interest by encouraging an expansion in the services provided by public coast stations and a more effective use of the frequency spectrum.[5]

6. Accordingly, we are proposing to permit VHF public coast stations to provide subsidiary public correspondence services to vehicles on land provided that:

(a) The subsidiary service is provided on a secondary basis to maritime radio services;

(b) The costs or charges of maritime subscribers who do not wish to use the other communications services will not be increased because of the subsidiary service offering;

(c) The quality, growth or availability of the licensee's maritime service offerings are not materially diminished by the subsidiary service offering;

(d) The subsidiary service does not violate or is not otherwise inconsistent with other Commission regulations or policies; and

(e) The Commission is notified prior to the commencement of such subsidiary service.

Further, it may be necessary to exclude subsidiary services from the channel occupancy data provided by public coast stations in applications for additional VHF public correspondence channels. We invite comments on whether such action is needed to protect the availability and growth of maritime services.

7. Because public coast stations utilize frequencies allocated internationally to the Maritime Service, we are concerned that any additional subsidiary services not deteriorate or diminish maritime communications or any safety services. This concern is somewhat ameliorated by the fact that the proposed subsidiary services would be authorized only on public correspondence channels and direct intervehicle communications would be prohibited. No use of maritime safety or working channels would be authorized. The possibility, however, that land vehicles may interfere with maritime services by communicating among themselves on other maritime frequencies remains a serious concern. The potential for abuse is particularly great if land vehicles are equipped with frequency synthesized maritime transceivers. Accordingly, we invite comments on how this concern can be allayed. For example, should the land vehicle equipment also be limited physically to transmissions only on public correspondence channels?

8. Further, to reduce paperwork burdens on the public as well as the Commission and to simplify enforcement efforts, for licensing purposes we would include the units in land vehicles under the license of the public coast station providing service. In other words, we would authorize individual coast stations to provide subsidiary services *on a system basis.* The system would offer service to subscriber vehicles. If we adopt this approach, it will be necessary to specify an identification method for the vehicles. Use of the public coast station call sign plus a unit identification appears to be sufficient. We invite comment on these issues.

9. Accordingly, we are proposing to amend Part 81 of the rules to permit VHF public coast stations to provide subsidiary communications services to vehicles on land as set forth in the attached Appendix.

10. The proposed amendment to the Commission's rules, as set forth in the attached Appendix, are issued under the authority contained in sections 4(i) and 303 (g) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (g) and (r).

11. Under procedures set out in § 1.415 of the rules and regulations, 47 CFR 1.415, interested persons may file comments on or before March 5, 1986, reply comments must be received on or before March 20, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in Report and Order.

12. In accordance with the provisions of § 1.419 of the rules and regulations, 47 CFR 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be avilable for public inspection during the regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

13. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusions in the public file. Any person who make an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discribed above must state on its face that the secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR § 1.1231.

14. The proposal contained herein has been analyzed with resepct to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by that Act.

Regulatory Flexibility Initial Analysis

15. *Reasons for Action.* DPLMRS stations are currently permitted to provide service to mobile stations on board ships. This notice responds to requests from VHF public coast station licensees for parallel authority to serve vehicles on land.

16. *The Objective.* The purpose of this proposal is to permit VHF public coast stations to serve land vehicles on a subsidary basis. This is expected to improve spectrum utilization without adversely affecting maritime radio services and thus provide greater service to the public.

17. *Legal basis.* This action is consistent with section 303(g) of the Communications Act of 1934, as amended, 47 U.S.C. 303(g), which charges the Commission to study new uses of radio and encourage larger and more effective use of radio in the public interest.

18. *Description of potential impact and number of small entities affected.* The proposed rules would apply to approximately 300 VHF public coast stations. The availability of subsidiary service authority could improve the financial viability of some public coast stations and lead to expanded service offerings. Minimal impact on DPLMRS stations is expected.

19. *Recording, record keeping and other compliance requirements.* Stations planning to provide subsidiary services would be required to notify the Commission in writing of the general and technical nature of the proposed service.

20. *Federal rules which overlap, duplicate or conflict with this rule.* None.

21. *Any significant alternative minimizing impact on small entities and consistent with stoted objective.* None.

22. It is ordered, That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

23. Regarding questions on matters covered in this document, contact Robert DeYoung, (202) 632–7175.

Federal Communications Commission.

William J. Tricarico,

Secretory.

Appendix

Part 81 of Chapter 1 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE

1. The authority citation for Part 81 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105 as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 81.176 is amended by adding a new paragraph (c) to read as follows:

§ 81.176 Service of public coast stations.

* * * * *

(c) A VHF public coast station may provide subsidiary service to land mobile vehicles using public correspondence channels and equipment licensed to it provided that:

(1) The subsidiary service is provided on a secondary basis to the maritime radio services;

(2) The costs or charges of subscribers who do not wish to use the other communication service will not be increased because of the subsidiary service offering;

(3) The quality, growth or availability of the licensee's maritime service offerings are not materially diminished by the subsidiary service offering;

(4) The provision of the subsidiary service does not violate and is not otherwise inconsistent with other Commission rules, regulations, and policies; and

(5) The Commission is notified by letter prior to the commencement of offering subsidiary communication service. Such notification shall include a general description of the service and an explanation of the technical details.

[FR Doc. 86–2281 Filed 2–4–86; 8:45 am]

BILLING CODE 6712–01–M

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[3] See *Order on Reconsideration*, released July 31, 1985, FCC 85–367, 50 FR 32196, August 9, 1985, 101 FCC 2d ____, at para. 39.

[4] For the purposes of this proceeding VHF public coast stations includes stations operating in the 216–220 MHz band as part of an automated maritime telecommunications system.

[5] This view is consistent with other recent Commission actions. For example, radio and TV broadcast licensees are now permitted to use their subcarriers and vertical blanking interval (VBI) for a variety of ancillary or secondary services. See, *First Report and Order*, BC Docket No. 82–536, 48 FR 28445, published June 22, 1983; *Second Report and Order*, Docket No. 21323, 49 FR 18100, published April 27, 1984; and *Report and Order*, BC Docket No. 81–741, 48 FR 27054, published June 13, 1983.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 654

Stone Crab Fishery; Public Hearing

AGENCY: National Marine Fisheries Service (NMPS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold public hearings to review amendments to the stone crab fishery management plan which will affect the holding of crabs on board vessels, harvest of females with eggs, data collection systems, and a hardship exemption for removal of traps.

DATES: Written comments will be accepted through March 6, 1986. The hearings will be convened at 7:00 p.m., and will adjourn at approximately 10:00 p.m., on February 18, 19, and 20, 1986.

ADDRESSES: Written comments should be sent to Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609.

The hearings will be held at the following locations:

1. February 18, 1986—Disabled American Veterans Hall, 7280 Overseas Highway, Marathon, Florida.
2. February 19, 1986—County Meeting Room, 3301 Tamiami Trail East, Naples, Florida.
3. February 20, 1986—St. Benedict's Church Annex, 455 South Suncoast Boulevard, Crystal River, Florida.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, 813–228–2815.

Dated: January 30, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–2482 Filed 2–4–86; 8:45 am]

BILLING CODE 3510–22–M

BEST COPY AVAILABLE

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Notices

Federal Register
Vol. 51, No. 24
Wednesday, February 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 31, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250 (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Marketing Service.

Fresh Peaches Grown in Designated Counties in Washington
On occasion; Once every three years
Farms; Businesses or other for-profit; 334 responses; 52 hours; not applicable under 3504(h)
William J. Doyle (202) 447-5975

- Agricultural Stabilization and Conservation Service

7 CFR Parts 723.62, 724.62, 725.69 and 726.65
MQ-25
On occasion
Farms; 1,000 responses; 500 hours; not applicable under 3504(h)
Donald M. Blythe (202) 447-2715

- Agricultural Stabilization and Conservation Service

7 CFR 1421 Standards for Approval of Warehouses
CCC-25 and 26 and related forms
Recordkeeping; On occasion
Businesses or other for-profit; Small businesses or organizations; 19,369 responses; 90,259 hours; not applicable under 3504(h)
Lynda Flament (202) 447-7912

- Animal Plant and Health Inspection Service

National Poultry Improvement Plan (NPIP)
VS Forms 9-2, 9-3, 9-4, 9-5, 9-6, 9-7, 10-3
Recordkeeping; On occasion, Annually
State or local governments; Businesses or other for-profit; Small businesses or organizations; 27,000 responses; 3,276 hours; not applicable under 3504(h)
Irvin L. Peterson (301) 436-5140

- Animal Plant and Health Inspection Service

Proceeds from Animals Sold for Slaughter
VS Form 1-24
On occasion
Businesses or other for-profit; 2,500 responses; 500 hours; not applicable under 3504(h)
Ralph L. Hosker (301) 436-8715

New

- Agricultural Stabilization and Conservation Service

7 CFR Part 1430, Dairy Products, Dairy Termination Program
ASCS-304, -305, -306, -309, -313, -315 and CCC-312
On occasion, Annually
Farms; 640,000 responses; 120,665 hours; not applicable under 3504(h)
Susan Schneider (202) 447-5171

- Federal Crop Insurance Corporation

General Administrative Regulations—Appeal Procedure 7 CFR Part 400, Subpart J
No approved forms
On occasion
Individuals or households; Farms; 700 responses; 700 hours; not applicable under 3504(h)
Peter F. Cole (202) 447-3325

Jane A. Renoit,
Departmental Clearance Officer.
[FR Doc. 86-2533 Filed 2-4-86; 8:45 am]
BILLING CODE 3410-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament
Date: February 11, 1986
Time: 2:00 PM
Place: State Department Building, Washington, D.C.
Type of Meeting: Closed
Contact Person: Paula R. Adamo, Bureau of Verification and Intelligence, Room 4953, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, telephone (202) 647-4379
Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.
Agenda: Will include the following discussions and presentations:
February 11
P.M.—Discuss Soviet Noncompliance
Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.
Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated July 24, 1985, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.
Reason for Late Notice: This notice appears in less than 15 days prior to the meeting date because of scheduling requirements relating to the Committee's recommendations.

Joe H. Morton,
Acting Committee Management Officer.
[FR Doc. 86-2655 Filed 2-4-86; 8:45 am]
BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Case No. OEE-2-85]

Werner Scheele et al.; Denial Order Affirmed

In the matter of: Werner Scheele, individually and doing business as CHB Computer Hardware Vertriebs GmbH, a/k/a, CHB GmbH and COMSERV GmbH and COMSERV Computer Leasing GmbH, Respondents.

Pursuant to section 13(d)(2) of the Export Administration Act, and based on the facts adduced in this case, I find that there is reason to believe that the Temporary Denial Order (TDO) is required in the public interest. I therefore accept the recommendation of the Administrative Law Judge that the TDO be affirmed.

If, however, the Commerce Department elects to pursue the renewal of this TDO on or before its February 7, 1986 expiration date, I fully expect that a written record—with more complete documentation and a more substantial evidentiary basis—will be provided at that time.

The Temporary Denial Order is affirmed.

Date: January 22, 1986.

Paul Freedenberg,
Assistant Secretary for Trade Administration.
[FR Doc. 86-2452 Filed 2-4-86; 8:45 am]
BILLING CODE 3510-DT-M

Office of the Secretary

[Case No. OEE-2-85]

Werner Scheele et al.; Report and Recommendation

In the matter of: Werner Scheele, individually and doing business as CHB Computer Hardware Vertriebs GmbH, a/k/a, CHB GmbH and Comserv Gmbh and Comserv Computer Leasing GmbH, respondents.

On December 30, 1985, an appeal was received from Werner Scheele, on behalf of himself and CHB Computer Hardware Vertriebs GmbH, also known as CHB GmbH, and Comserv Computer Leasing GmbH (hereinafter collectively referred to as Scheele), from the December 9, 1985, issuance, by the Deputy Assistant Secretary for Export Enforcement (Deputy Assistant Secretary), of a temporary denial order against the Respondents (50 FR 50931 (December 31, 1985)). Counsel for the agency filed a reply to Respondent Scheele's Appeal on January 9, 1986, in accordance with the time limits established by § 388.19 of the Export Administration Regulations (15 CFR Parts 368-399 (1985)) (the Regulations)[1] and the notice promulgated by this Office on December 31, 1985.

In his Appeal, Scheele alleges that he and his companies obtained a limited amount of U.S.-origin goods directly from the United States. Scheele also alleges that he obtained authorization from the appropriate authorities in the Federal Republic of Germany (FRG) before exporting U.S.-origin goods he obtained from the United States from the FRG to BEA Computers in Sweden.[2]

In Addition to the above submissions, the record file on which the temporary denial order was issued was also requested. The Deputy Assistant Secretary for Export Administration advised this Office that his office retained no such record or file, and referred the staff member to agency counsel. After some further inquiry, the counsel who has appeared in this appeal orally confirmed that there was no case file or record and that the matters transmitted to this Office of January 9, 1986, constituted the case file per the regulations. Based on the foregoing and the record, it is my finding and conclusion that the record of the action initially taken is inadequate to sustain in this appeal. Even through this is the first appeal from the issuance of a temporary denial order, it is inexcusable that the record of the *ex parte* submission and the basis for the conclusion reached is not available for review here. The oral representation of agency counsel is not a substitute for the record. The **Federal Register** publication alone (50 FR 50931 et seq., Dec. 13, 1985) is also not a sufficient record to sustain the issuance.

In a classified written submission, which may not be discussed because of the security appellation, Agency counsel seeks to show a basis for sustaining the action.

Only because of the seriousness of the assertions in the classified document submitted in this appeal which are unsupported by anything that I would characterize as evidence, do I conclude that the extraordinary process of denial without notice, initial opportunity for hearing or effective ability to appeal even though the Respondent has not been and cannot under security regulations be informed of the basis for the charges, is appropriate for a brief period. I would particularly note that the Agency has not submitted or made any showing by Customs documents or other export records supporting the asserted past or impending violation. Contrary to his assertion, Agency counsel has not submitted something that may be characterized as evidence to support his belief that violations have been committed by Respondent Scheele. Rank, unsupported hearsay is a feeble crutch to support denial action. The law was recently amended to change the temporary denial order process which has, in the past, left Respondents without a meaningful remedy.[3] The Agency should not proceed down the same path again.

Section 388.19 of the Regulations provides that the Department may seek the issuance of a temporary denial order on an *ex parte* basis from the Deputy Assistant Secretary in order to prevent an imminent violation. The Regulations provide that a violation may be imminent either in time or degree of likelihood. While the temporary denial order entered against Scheele states that the violations under investigation were deliberate, covert and likely to occur again, the record does not reflect the basis for that conclusion.

Based upon my review of the record in this proceeding including the submissions by the parties, I find the evidence presented in Scheele's appeal to be deficient, principally because it is not in English. That he does not rebut the Agency's assertions is

[1] Parts 387 and 388 of the Regulations were recently amended and republished. *See* 50 FR 53130 (December 30, 1985).

[2] Scheele attached to his appeal numerous documents which are are in German. Contrary to § 388.7(e) of the Regulations, Scheele did not provide English translations of the documents. Any future submissions of relevant documents in languages other than English should be accompanied by translations.

[3] In a recent compilation, it was reported that 21 pre-July 12 temporary denial orders involving 131 individuals were outstanding. Some of these date back to 1981. No action to have these "*ex parte*" orders adjudicated is pending in the bulk of those cases.

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understandable since they have not been disclosed to him! However, I find that the Department has some basis for its belief that violations of the Act and the Regulations have been committed by Scheele and that those violations were deliberate, covert and likely to occur again. Accordingly, I find that the record now marginally supports the finding in the temporary denial order that the order is necessary to prevent an imminent violation of the Act and the Regulations.

In accordance with § 388.19 of the Regulations, I recommend that the Assistant Secretary for Trade Administration issue a written order affirming the issuance of the temporary denial order against Scheele.

Agency counsel's Motion for a Protective Order is *Denied*. Security regulations foreclose this Office from providing the Respondents with the contents of the classified document on which the Agency relies. A Protective Order would be redundant.

Date: January 14, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-2488 Filed 2-4-86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of General Permit

On January 29, 1986, a general permit to incidentally take marine mammals during commercial fishing operations in 1986 was issued to: The Embassy of the Republic of Korea, 2320 Massachusetts Avenue NW., Washington, DC 20008, in Category 1: Towed or Dragged Gear, to take 25 northern sea lions, 5 northern fur seals, 5 harbor seals and 5 cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the office of the Assistant Administrator for Fisheries, 3300 Whitehaven Street NW., Washington. DC.

Dated: January 29, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-2523 Filed 2-4-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Oklahoma City Zoological Trust (P141A)

On November 19, 1985, notice was published in the **Federal Register** (50 FR 47574) that an application had been filed by Oklahoma City Zoological Trust, 2101 NE. 50th Street, Oklahoma City, Oklahoma 73111 for a permit to obtain six (6) California sea lions (*Zalophus californianus*) and four (4) Northern elephant seals (*Mirounga angustirostris*) for public display.

Notice is hereby given that on January 29, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: January 29, 1986.

Richard B. Roe,

Director, Office of Fisheries Management; National Marine Fisheries Service.

[FR Doc. 86-2524 Filed 2-4-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Courts-Martial Manual; Annual Review

ACTION: Notice of the Annual Review of the Manual for Courts-Martial.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, Exec. Order No. 12473, as amended by EO 12484. The proposed changes are part of the annual review required by the Manual for Courts-Martial and DoD Directive 5500.17, "Review of the Manual for Courts-Martial," January 23, 1985. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

The proposed changes include modifications to the following Rules for Courts-Martial: R.C.M. 307, Preferral of charges; R.C.M. 906, Motions for appropriate relief; R.C.M. 907, Motions to dismiss; R.C.M. 916, Defenses; R.C.M. 918, Findings; R.C.M. 1001, Presentencing procedure; R.C.M. 1003, Punishments; R.C.M. 1109, Vacation of suspension of sentence; R.C.M. 1112, Review by a judge advocate; and, R.C.M. 1305, Record of trial. They also include the modifications to the following provisions of Part IV, Punitive Articles: Introductory Discussion; Paragraph 2, Article 79—Conviction of lesser included offenses; Paragraph 10, Article 86—Absence without leave; Paragraph 32, Article 108—Military property of the United States—sale, loss, damage, destruction, or wrongful disposition; Paragraph 42, Article 117—Provoking speeches or gestures; Paragraph 46, Article 121—Larceny and wrongful appropriation; and, Paragraph 89, Article 134 (Indecent language).

This notice is provided in accordance with DoD Directive 550.17, "Review of the Manual for Courts-Martial," January 23, 1985. It is intended only to improve the internal management of the federal government. It is not intended to create any right of benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

ADDRESS: Copies of the proposed changes, and the accompanying Discussion and Analysis, may be examined at the Military Law Branch, Room 1004, Federal Building No. 2 (Navy Annex), Judge Advocate Division, Headquarters, United States Marine Corps, Washington, DC. A copy of the proposed changes and accompanying Discussion and Analysis may be obtained by mail upon request from the following address: Headquarters, U.S. Marine Corps (JAM), Washington, DC 20380-0001, Attn: Major D.P. O'Neil.

DATE: Comments on the proposed changes must be received not later than April 21, 1986, for consideration by the Joint-Service Committee on Military Justice.

FOR FURTHER INFORMATION CONTACT: Major D.P. O'Neil, (202) 694-4197.

Dated: January 31, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-2528 Filed 2-4-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, March 13-15, 1986. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on March 14, 1986, from 9:15 a.m. to 11:40 a.m. Other portions of this meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include: attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal information and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in the Superintendent's Conference Room, Harmon Hall, Academy.

In addition to the open meeting session, the public is welcome to attend a press conference scheduled for 10:45 a.m. to 11:30 a.m. on March 15, 1986, in the Upperclass Lounge in Arnold Hall.

For further information, contact Major Randall R. Cantrell, Headquarters, US Air Force (DPPA), Washington, DC 20330-5060, at (202) 697-7116.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-2471 Filed 2-4-86; 8:45 am]

BILLING CODE 3910-01-M

Privacy Act of 1974; New Record System

AGENCY: Department of the Air Force (DAF), DOD.

ACTION: Notice of a new record system subject to the Privacy Act.

SUMMARY: The Air Force is adding a new record system to its existing inventory of record systems.

DATE: This proposed action will be effective without further notice March 7, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to Mr. John Updike, HQ USAF/DAQD, The Pentagon, Washington, D.C. 20330-5024. Telephone: 202/694-3431, Autovon: 224-3431.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 522a) have been previously published in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22332) May 29, 1985
FR Doc. 85-14122 (50 FR 24672) June 12, 1985
FR Doc. 85-15062 (50 FR 25737) June 21, 1985
FR Doc. 85-28775 (50 FR 46477) November 8, 1985
FR Doc. 85-29261 (50 FR 50337) December 10, 1985

A new system report, as required by 5 U.S.C. 552(a)(o), of the Privacy Act was submitted on December 31, 1985, pursuant to OMB Circular A-108 Transmittal Memorandum No. 1, dated September 30, 1975, and Transmittal Memorandum No. 3, dated May 17, 1976.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 31, 1986.

F035 AF MP Q

SYSTEM NAME:

035 AF MP Q Family Support Center Case Files.

SYSTEM LOCATION:

At servicing Family Support Centers on AF installations. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel dependent, Air Force civilian employees, and Air Reserve Forces personnel who request assistance from the Family Support Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of client contacts and time expended; client interview and assessment, and referrals to other agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 8012, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Regulation (AFR) 30-7, Family Action/Information Board and Family Support Center.

PURPOSES:

Files are used to record client traffic and referral to other agencies. They are analyzed for traffic and trends.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by person(s) responsible for servicing the record system in performance of their duties. Records are stored in security files containers/cabinets.

RETENTION AND DISPOSAL:

Records are destroyed 1 year from date of last visit to FSC, unless needed as background for case files supporting a separation or other action in which case disposition will be the same as the file which they support.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at Major Command Headquarters; and Director, Family Support Center at Air Force installation.

NOTIFICATION PROCEDURE:

Contact Director, Family Support Center at servicing AF installation. Include full name, grade and unit of assignment. Identification such as Armed Forces Identification Card (DOD Form 2AF) will be required for personal visit.

RECORD ACCESS PROCEDURES:

Contact Director, Family Support Center at servicing AF installation.

CONTESTING RECORDS PROCEDURES:

The Air Force's rules for access to records and for contesting and

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appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35.

RECORD SOURCE CATEGORIES:

Information obtained from individual, medical institutions, and personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–2527 Filed 2–4–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86–259–000 et al.]

Electric Rate and Corporate Regulation Filings; Dayton Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Dayton Power and Light Company

[Docket No. ER86–259–000]

January 31, 1986.

Take notice that on January 24, 1986, The Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Eldorado (Eldorado), Ohio.

The proposed Agreement allows Eldorado to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Eldorado.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Idaho Power Company

[Docket No. ER86–261–000]

January 31, 1986.

Take notice that on January 27, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1976, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during November, 1985, along with cost justification for the rate changed. This filing includes the following supplements:

	Supplement
Utah Power & Light Company	49
Sierra Pacific Power Company	45
Portland General Electric Company	41
Southern California Edison Company	35
San Diego Gas & Electric Company	30
Washington Water Power Company	34
Los Angeles Water & Power Company	30
Pacific Gas & Electric Company	16
Western Area Power Administration	9
City of Burbank	26
City of Glendale	28
City of Pasadena	26

Comment date: February 13, 1986, in accordance with Standard Paragraph H at the end of this notice.

3. Indiana and Michigan Electric

[Docket No. ER86–70–000]

January 31, 1986.

Take notice that on December 27, 1985, Illinois Power Company (Illinois Power) tendered for filing revised Modification No. 21, dated August 30, 1985, to the Interconnection Agreement, dated November 27, 1961, between Indiana and Michigan Electric Company (I&M) and Illinois Power.

Illinois Power indicates that revised Modification No. 21 modifies those areas of the revisions dealing with mulit-party transmissions to include specific rates in lieu of reference to Order 84 rates. In addition, Illinois Power seeks to increase the transmission use charge from 1.15 mills/kwh to a cost supported charge of 1.4 mills/kwh.

The parties request an effective date of March 1, 1986.

Illinois Power states that a copy of this filing was served upon I&M, American Electric Power Service Corporation, Public Service Commission of Indiana, Michigan Public Service Commission and the Illinois Commerce Commission.

Comment date: February 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Indiana & Michigan Electric Company

[Docket No. ER86–248–000]

January 31, 1986.

Take notice that American Electric Power Service Corporation (AEP) on January 27, 1986, tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), which is an AEP affiliated operating subsidiary, Amendment No. 29 dated December 1, 1985 to the Operating Agreement dated March 1, 1966 among Consumers Power Company (Consumers), The Detroit Edison Company (Detroit) sometimes collectively referred to as the Michigan Companies, and I&ME. The Commission has previously designated the 1966 Agreement as I&ME's Rate Schedule FERC No. 68 and Michigan Companies Rate Schedule FERC No. 12.

Section 1 of Amendment No. 29 revises the demand rate and energy adder for Short Term Power from "$1.25/kW-week" and 10% of out-of-pocket cost (OPC) to "up to $1.25" per kilowatt per week and "up to 10% of OPC " respectively. In addition, this Schedule has also been modified by the addition of a subsection which states that the sum of the demand charge and the energy charge will not be less than 110% of the out-of-pocket cost of supplying the energy for a specific Short Term Power reservation. These revisions apply only when I&ME is the supplying party. I&ME requests an effective date of December 1, 1985.

The updated terms and conditions contained in this Amendment No. 29 for Short Term Power are the same as those previously established on the AEP System and accepted for filing by the Federal Energy Regulatory Commission.

Copies of the filing were served upon Consumers Power Company, The Detroit Edison Company, Public Service Commission of Indiana, and Michigan Public Service Commission.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Gas and Electric Company

[Docket No. ER86–258–000]

January 31, 1986.

Take notice that Kansas Gas and Electric Company (KG&E) on January 21, 1986 tendered for filing a proposed Generating Municipal Electric Service Agreement superseding FERC Electric Service Tariff No. 87.

Kansas Gas and Electric Company states that the filing assures continued service to the City of Fredonia, Kansas (City).

This filing is necessary because KG&E desires to cancel its existing Electric Interconnection Contract at the expiration of its twenty five year initial term but desires to continue to serve the City. KG&E has requested an effective date of March 26, 1986.

Copies of the filing were served upon the City of Fredonia, Kansas and the Utilities Division of the Kansas Corporation Commission.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

New England Hydro-Transmission Corporation and New England Hydro-Transmission Electric Company, Inc.

[Docket No. EL86–19–000]

January 31, 1986.

Take notice that on January 24, 1986, New England Hydro-Transmission Corporation (NEH) and New England Hydro-Transmission Electric Company, Inc. (NEHT) filed a joint Petition for Declaratory Order. NEH and NEHT ask that the Commission issue a Declaratory Order stating that the staff may accept for filing certain agreements relating to Phase II of the NEPOOL/Hydro-Quebec Interconnection that include provisions for indexed returns on common equity.

NEH and NEHT state that that the indexed return on equity provisions are integral parts of the unique framework created in the Phase II Hydro-Quebec contracts and the issuance of the requested Declaratory Order is accordingly in the public interest. NEH and NEHT further state that they do not seek in this Petition the Commission's approval of the contracts in question nor of the indexed return provisions included therein. They seek only permission to file the agreements and an opportunity to submit evidence in support thereof, notwithstanding recent Commission decisions in which the staff was directed to reject as patently deficient all rate filings containing formula returns on equity.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER86–260–000]

January 31, 1986.

Take notice that on January 27, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing a proposed change in its rate schedule FPC No. 53 for service to the City and County of San Francisco (CCSF). The proposed adjustment is based on a settlement reached between PGandE and CCSF.

The filing proposes an increase in the charge for transmission and distribution of CCSF power to CCSF municipal load. The proposed change in the rate for CCSF wheeling would increase annual revenues by approximately $4,302,000 over current revenues.

PGandE and CCSF have requested a waiver of the 60-day notice period required by § 35.3 of the Commission's Regulations. The proposed effective date for the proposed rate schedule change contained in the settlement is January 1, 1985.

Copies of this filing were served upon the affected customer and the California Public Utilities Commission.

Comment date: February 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Texas-New Mexico Power Company

[Docket No. ES86–25–000]

January 29, 1986.

Take notice that on January 21, 1986, Texas-New Mexico Power Company (Applicant) filed an application seeking an order pursuant to section 204 of the Federal Power Act, authorizing the issuance of nor more than $50 million of short-term notes to be issued from time to time with a final maturity date of not later than April 1, 1988.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2529 Filed 2–4–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM85–1–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Consolidated Rule Supply, Inc. and Teepak, Inc.); Order Granting Reconsideration

Issued January 31, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 10, 1986, Consolidated Fuel Supply, Inc. and Teepak, Inc. (petitioners) filed a joint request for reconsideration of the Commission's November 22, 1985 order denying petitioners' request for clarification [1] of Order No. 436.[2] We grant the request for reconsideration.

In denying petitioners' request for clarification, we held that petitioners' transportation arrangement with Panhandle Eastern Pipe Line Company did not qualify under § 284.223(g)(1) of the Regulations adopted in Order No. 436 for continued transportation authorization after November 1, 1985. In that order we found that, as of October 9, 1985, Panhandle was transporting gas for the petitioners under § 157.209(e) of the old regulations. Panhandle had not advised the Commission that the transportation qualified for a high-priority end use under § 157.209(a) until October 31, 1985, when it filed an initial report. The Commission therefore denied the request, citing *Midwest Solvents.*[3]

On December 19, 1985, the Commission granted rehearing of the *Midwest Solvents* decision. Consistent with that decision, the grant petitioners' request for reconsideration. We agree that petitioners' transportation arrangement with Panhandle qualifies for continuing transportation authorization under § 284.223(g)(1) because it was authorized under § 157.209(a)(1) automatically with the commencement of service.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2530 Filed 2–4–86; 8:45 am]

BILLING CODE 6717–01–M

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[1] 33 FERC ¶ 61,253 (1985).

[2] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[3] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (*Midwest Solvents Company*), Order Denying Request for Clarification, 33 FERC ¶ 61,157 (October 31, 1985); Order Granting Rehearing, 33 FERC 61,395 (December 19, 1985).

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ENVIRONMENTAL PROTECTION AGENCY

[OPP-40010; FRL-2962-2]

Certification of 1080 Livestock Protection Collar Applicators in EPA-Administered Programs; Nebraska and Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has recently registered Compound 1080 Livestock Protection Collars (Collars) containing sodium monofluoroacetate (commonly called 1080) for predator control. EPA will certify both private and commercial Collar applicators in Nebraska and private applicators in Colorado. Commercial applicators in Colorado and both private and commercial applicators in other States will be certified under State programs approved by EPA.

FOR FURTHER INFORMATION CONTACT: For further information on the administration of the program to certify Collar applicators or to comment on this action, in Colorado, contact: David Combs, Environmental Protection Agency, Region VIII, Suite 1300, 999 18th Street, Denver, CO 80202-2413 (303-293-1744).

For further information on the administration of the program in Nebraska or to comment on this action, contact: C.E. Poindexter, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101 (913-236-2835).

SUPPLEMENTARY INFORMATION: On July 11, 1985, EPA registered Compound 1080 Livestock Protection Collars as a restricted use pesticide for predator control. This registration follows the Agency's public hearing and Final Decision in 1983 to allow the processing of applications for the registration of 1080 Livestock Protection Collars. The Final Decision was rendered after a lengthy hearing process that afforded all interested parties an opportunity to comment upon any Agency conclusions regarding the use of the Collars.

On December 1, 1981, the Administrator ordered a hearing pursuant to Subpart D of EPA's Rules of Practice, 40 CFR 164.130 through 164.133, to reconsider the 1972 order suspending and cancelling the registrations of Compound 1080, as published in the **Federal Register** of December 7, 1981 (46 FR 59622). All interested parties were given an opportunity to submit a notice of intent to participate in the hearing. In response, more than 60 parties filed notices.

The procedure for a Subpart D reconsideration hearing appears at 40 CFR Part 164, Subparts A and B. During the hearing the parties had an opportunity to offer evidence, cross-examine witnesses and file briefs with the Administrative Law Judge (ALJ) stating their recommendations with regard to the use of Compound 1080. More than 90 witnesses appeared, over 430 exhibits were admitted, and nearly 15,000 pages of transcript were compiled. After the close of the hearing, the ALJ issued an Initial Decision setting forth restrictions governing the use of 1080 Livestock Protection Collars. Initial Decision, FIFRA Docket 502, Attachment C, October 22, 1982 (Attach. C).

Under § 164.101(a), parties appealed the ALJ's Initial Decision by filing exceptions and submitting briefs. The Agency issued its Final Decision which affirmed the Initial Decision's conclusions concerning the use of 1080 Livestock Protection Collars. Final Decision, FIFRA Docket 502, October 31, 1983, p. 2. The Final Decision requires that the Collars be used only by applicators who have completed a special training program and have been certified to use the Collar, under 40 CFR 171.11(b), as specified in Attach. C (1) through (3).

As published in the **Federal Register** of October 13, 1978 (43 FR 47279), EPA presently administers the private and commercial applicator certification programs in Nebraska and will provide certification to Collar Applicators. Although EPA also administers the private applicator certification program in Colorado, Colorado now administers the commercial applicator certification program, as published in the **Federal Register** of August 7, 1985 (50 FR 31919). Therefore, EPA will certify commercial and private applicators in Nebraska and private applicators in Colorado to the extent Collar use is authorized by their respective State laws and regulations. EPA will request Nebraska and Colorado to submit a written interpretation of their laws and regulations as they apply to Collars. It is realized that these States have their own pesticide registration process and that Collars may not have been granted a State registration. In these instances EPA will not certify Collar applicators until a State indicates its intention to grant registrations.

1. To be eligible for certification to use Collars in EPA-administered programs, under 40 CFR 171.11 (c)(3) and (d)(1) an applicator must first be certified as a private applicator or a commercial applicator in Agricultural Pest Control, Animal category defined at 40 CFR 171.3(b)(1)(ii), as specified in Attach. C(1).

2. To be certified for use of the Collar, private and commercial applicators must also attend and participate in an EPA-approved training program under 40 CFR 171.11(d)(1)(i), as specified in Attach. C(3).

3. In addition, commercial applicators must take and pass a written examination, as specified in 40 CFR 171.11(c)(4).

EPA will issue either an additional certificate or will modify the applicator's certificate to identify those applicators certified to use Collars.

The criteria which Collar applicators must meet were developed by EPA in consultation with State regulatory and training agencies. These criteria, which follow, reflect the requirements of the Final Decision and applicable EPA regulations.

Applicators of Compound 1080 Livestock Protection Collars will first meet the private applicator standards or the general commercial applicator standards of 40 CFR 171.4 through 171.6, and 40 CFR 171.11 (c)(4) and (d)(1), as specified in Attach. C(1).

Applicators certified for use of Collars must also:

1. Read and understand label and labeling information, including all use restrictions under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(i), and 171.5(a)(2), as specified in Attach. C(1).

2. Recognize the technical name, sodium monofluoroacetate, and understand the basic properties of Compound 1080, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(i), and 171.5(a)(2), as specified in Attach. C(1).

3. Recognize potential hazards to humans, domestic animals and to non-target wildlife, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1) (i) through (iii), and 171.5(a)(4), as specified in Attach. C(3)(c).

4. Recognize general symptoms of poisoning by Compound 1080 in humans and domestic animals and take appropriate action, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(ii) (*e*) and (*f*), and 171.5(a)(5), as specified in Attach. C(3)(c).

5. Understand the requirements for direct supervision of noncertified applicators using Collars, under 40 CFR 171.11(b) and 171.6(a), as specified in Attach. C(2).

6. Recognize situations where Collars can be expected to be safe and effective in addition to being aware of alternative means of control, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1), and 171.5(a), as specified in Attach. C(3).

7. Keep required records on use of collars, under 40 CFR 171.11(c)(7), as specified in Attach. C (3)(d) and (5).

8. Make required reports of suspected poisoning of nontarget species and suspected poisoning of humans or domestic animals to the appropriate State regulatory agency or EPA, as specified in Attach. C(6).

9. Make appropriate repairs to damaged Collars prior to reuse or dispose of properly, under 40 CFR 171.11 (c)(3) and (d)(1), and 171.4(b)(1)(ii)(*g*) and 171.5(a), as specified in Attach. C(11).

10. Properly dispose of animal remains, vegetation or soil contaminated by a punctured Collar, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(ii)(*g*), and 171.5(a), as specified in Attach. C(3)(b).

11. Safely handle and store Collars, under 40 CFR 171.11 (c)(3) and (d)(1), 171.4(b)(1)(ii)(*g*), and 171.5(a), as specified in Attach. C (3)(a), (7), and (13).

12. Post and maintain required bilingual warning signs at logical points of access to areas where Collars are in use, as specified in Attach. C(9).

13. Perform weekly or more frequent inspections of Collars in use, as specified in Attach. C(10).

Dated: December 18, 1985.

Morris Kay,

Regional Administrator, Region VII.

Dated: December 2, 1985.

John Welles,

Regional Administrator, Region VIII.

[FR Doc. 86-2281 Filed 2-4-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-435; FRL-2965-2]

Pesticide Tolerance Petition; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a pesticide petition relating to the clarification of a Petitioner's name.

ADDRESS: By mail, submit comments identified by the document control number [PF-434] and the petition number, attention Product Manager (PM-15), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca (PM-15), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 204, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202 (703-557-2400).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of November 6, 1985 (50 FR 46176), which announced that Hoechst-Roussel Agri-Vet Co., Route 202-206 North, Sommerville, NJ 08876, proposed amending 40 CFR 180.422 by establishing a tolerance for the combined residues of the insecticide (1*R*,3S)3[(1'*RS*)(1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and its metabolites, (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-*cis*,*trans*-2,2-dimethyl-3-(2,2-dibromovinyl) cyclopropanecarboxylate calculated as parent, in or on the commodity soybeans at 0.02 part per million (ppm) (negligible). The proposed analytical method for determining residues is gas chromatography.

In FR Doc. 85-26449, appearing at page 46176, second column, the company name under "I. INITIAL

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FILING, — PP 6F3309," was inadvertently filed as "Hoechst-Roussel Agri-Vet Co." and is corrected to read "Roussel Uclaf of Paris, France with Hoechst-Roussel Agri-Vet Company acting as U.S. Agent," Route 202–206 North, Sommerville, NJ 08876.

Authority: 21 U.S.C. 346a.

Dated: January 24, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–2260 Filed 2–4–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50647A; FRL–2965–3]

Terminex International, Inc.; Withdrawal of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal.

SUMMARY: On November 27, 1985, EPA issued an experimental use permit (1927–EUP–1), to Terminex International, Inc., Box 17167, Memphis, TN 38187. This experimental use permit allowed the use of 226.8 pounds of the insecticide dieldrin in 10 homes to evaluate the control of subterreanean termites and dieldrin air concentrations. The program was authorized in the States of Florida and Maryland and was effective from August 13, 1985 to August 13, 1986. The company has withdrawn this experimental use permit without prejudice in accordance with the regulations under 40 CFR Part 172 which define EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room. 204, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–2400).

Dated: January 22, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–2262 Filed 2–4–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report DC–363; CC Docket 86–9]

Action in Docket Case; FCC Begins Inquiry Into Policies Governing Provision of Shared Telecommunications Services

January 14, 1986.

The Commission has initiated an inquiry to examine the issues raised by the introduction of shared telecommunications services (STS) systems, including the impact of STS on local telephone companies, its effect on telephone subscribers, both directly and through its impact on local exchange rates, and the effects of state regulation on STS implementation.

STS systems use PBXs or other electronic switching devices (STS switch) to provide their users with interexchange and local telecommunications services, and in some cases, a variety of enhanced services. The STS switch allows the occupations of a multitenant building, a building complex, or a real estate development tract to call each other directly without using local exchange carrier (LEC) facilities and to call anywhere on the switched network through trunk lines connecting the STS switch with the LEC central office (CO). In addition, most STS systems purchase interexchange services from a variety of carriers and resell these services to their customers.

The Commission noted that the introduction of STS systems has attracted substantial regulatory attention at the state level. Some state regulatory commissions have reacted favorably to the introduction of STS systems, while others have developed, or are currentiy developing, regulations that prevent local service resale by an STS systems. States have been concerned with the effect of STS systems on universal service, stranded investment of local exchange companies and duplication of facilities. To conform to state restrictions, the STS operator is required to partition its PBX, which eliminates the aggregated use of local exchange access lines and imposes on the system the additional costs needed to perform the partitioning functions.

The Commission said the introduction of STS systems would provide certain benefits to the public by increasing the availability of state-of-the-art telecommunications technology and by providing opportunities for small users to take greater advantage of competition in interstate service. But, it noted that there was not sufficient data and other information to assess the cost savings STS systems would provide to customers and society as a whole, especially those that desive from the resale of local service. It also indicated that more information was needed to determine the long term effect of STS on local exchange carriers and universal service.

Therefore, the Commission asked for comments on the following areas of concern:

1. The effect of state regulaions on STS systems and how they conflict with federal policy, including
   - Current status of state regulation of STS
   - Partitioning requirements and their effect
   - Pricing policies for local service to STS systems
   - Interconnection and local resale restrictions
   - Geographic area, number of trunks and other size restrictions
2. Potential benefits from STS systems
   - Cost savings to STS customers for local and interstate service
   - Availability of communications technologies to small users
   - Savings to society
3. Potential adverse effects from STS systems
   - Effect of local exchange service resale on local exchange carriers such as stranded investment, duplication of facilities and difficulties in facilities planning
   - Effect on universal service
   - Rights of customers in an unregulated STS system.

The Commission noted that some states have enacted regulations to address these issues. Others have decided to wait until some experience is gained from actual STS developments. The FCC said it tentatively concluded that so long as state regulation of these areas does not unduly impair the ability of STS providers to operate, the states would continue to regulate these areas. It invited comments on this conclusion.

In a separate but related concurrent action, the Commission granted a petition for declaratory ruling filed by International Business Machines Corporation (IBM) to the extent of reaffirming the right of users to interconnect the customer premises equipment (CPE) used to provide shared telecomunications services (STS) with the public switched network. It rejected IBM's request, however, for a ruling that existing federal interconnection policies have preempted state regulations restricting the resale of local service by an STS system.

Comments are due March 21; replies April 21.

Action by the Commission January 14, 1986, by Notice of Inquiry (FCC 86–29). Commissioners Fowler (Chairman), Quello, Dawson and Patrick.

For further information contact Geoffrey Jarvis or Rose Crellin at (202) 632–6342.

Note: The actual text of the Notice of Inquiry will not be printed herein, due to the ongoing effort to minimize publishing costs. However, copies may be obtained from International Transcription Service, 1919 M St., NW., Washington, D.C. 20554, Tel: (202) 857–3800. Also, a copy is available for public inspection in the FCC Dockets Branch, room 239, and the FCC Library, room 639, both also located at 1919 M St., NW.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 86–2510 Filed 2–4–86; 8:45 am

BILLING CODE 6712–01–M

North Atlantic Facilities; Meeting

January 28, 1986.

The Commission's staff will convene a public meeting on February 11, 1986 to begin preparation of the U.S. submission to the North Atlantic Consultative Working Group (NACWG) meeting tentatively scheduled to be held May 27–30, 1986. A schedule for the preparation of drafts of the various elements of the U.S. submission to the NACWG meeting will be developed at the public meeting.

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The public meeting will be convened at 9:30 a.m. on February 11, 1986 in Room 856, 1919 M Street, NW., Washington, DC.

For further information, contact Robert E. Gosse, (202) 632-4047.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2512 Filed 2-4-86; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 30, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB Number: 3060-0330
Title: Part 62, Applications to Hold Interlocking Directorates
Action: Revision
Respondents: Officers or directors of communication common carriers
Estimated Annual Burden: 60 Responses; 120 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2508 Filed 2-4-86; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 29, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from the Commisson by calling Doris R. Benz, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

Title: Broadcast Station Annual Employment Report
Form No.: FCC 395-B
Action: New
Estimated Annual Burden: 11,000 Response; 9,750 Hours.

Title: Broadcast EEO Program Report
Form No.: FCC 396
Action: New
Estimated Annual Burden: 123 Responses; 308 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2509 Filed 2-4-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Wm. Jarrel Smith, Jr., Director of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, D.C. 20573, telephone number (202) 523-5866. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR 552—Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades and Related Forms FMC-377 and FMC-378.

FMC requests extension of clearance for regulations which establish methodologies to be used in evaluating rates filed by vessel operating common carriers in the domestic offshore trades who are subject to the Intercoastal Shipping Act, 1933. Total estimated annual burden for 18 tug and barge operators and 14 self-propelled operators is 2517.4 manhours. Total estimated annual cost to the Federal Government is approximately $15,500; total estimated annual cost to respondents is approximately $40,000.

46 CFR 553—Financial Exhibits and Schedules of Non-Vessel-Oparating, Common Carriers in the Domestic Offshore Trades and Related Form FMC-379.

FMC requests extension of clearance for regulations which will facilitate the orderly acquisition of data required in those instances where the Commission institutes an investigation and hearing with respect to proposed rate changes by non-vessel operating common carriers in the domestic offshore trades subject to the Shipping Act, 1933.

Although no reports have been received in the past five years, potential estimated respondent is 61 with an estimated 320 manhours per year. The annual cost to the Federal Government and respondents is nominal because there is no reason to believe that a significant number of reports will be received during the renewal period.

John Robert Ewers,

Secretary.

[FR Doc. 86-2516 Filed 2-4-86; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreements.

Agreement No.: 217-010882.
Title: Southern Africa Europe Container Service, United States Lines, Inc., and South African Marine Corporation Limited Space Charter Agreement.
Parties:
Southern Africa Europe Container Service (SAECS)
United States Lines, Inc. (USL)
South African Marine Corporation Limited (Safmarine)

Synopsis: The proposed agreement would permit USL and Safmarine to charter space for the carriage of cargo in the trade between United States Atlantic, Gulf and Pacific ports and ports in Southern Africa aboard vessels operated by SAECE. Under the terms of the agreement, cargo would be transshipped to SAECS' vessels at European relay ports for on carriage to Southern Africa. SAECS would not make calls at U.S. ports. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: January 31, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-2517 Filed 2-4-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-4]

Four Winds International, Inc.; Investigation and Hearing on Application for a License as an Ocean Freight Forwarder

Four Winds International, Inc. (FWI), a California corporation operating as a transportation management firm, has submitted an application for a license to act as an ocean freight forwarder.

FWI, which intends to operate nine branch offices throughout the country, is a wholly-owned subsidiary of another California corporation, Four Winds Enterprises, Inc., with which it shares officers and directors. Four Winds Enterprises, Inc. operates in the United States as a holding company for nine firms (including FWI), the majority of which are engaged in moving and consolidation services. One of these United States subsidiaries is Movers Port Service, Inc. (MPS), which operates as a trucking and warehousing firm.

MPS was licensed as an ocean freight forwarder in 1971. In December 1980, under the terms of a settlement agreement disposing of alleged violations of sections 16 and 18 of the Shipping Act, 1916 (46 U.S.C. app. secs 815 and 817), MPS surrendered its license and, together with other Four Winds companies, paid a civil penalty of $55,000.

In 1980, while MPS and its related companies were negotiating the terms of the settlement agreement, the Commission received an application from Aurora International Forwarding, Inc. (Aurora). Because Aurora appeared to meet all the standards for licensing, it was licensed on June 12, 1980.

Soon after Aurora was licensed it established a number of branch offices at the same locations which had been utilized by MPS and, in most cases, used MPS personnel. The Commission staff, in an informal investigation, determined that, while Aurora had assumed much of MPS's freight forwarding business, MPS also continued to provide certain services for export shipments. Due to the commingling of offices, employees, and records, it was unclear whether Aurora or MPS was performing forwarding services for shipments being handled jointly by MPS and Aurora.

In June, 1982, when MPS re-applied for an ocean freight forwarder license, a field investigation of MPS's operations was conducted. The investigation uncovered possible violations of section 16 of the Shipping Act, 1916. Based upon these apparent violations, the Commission advised MPS that it intended to deny the application due to the lack of required fitness. MPS did not request a hearing on its application. Subsequently, MPS paid a penalty of $100,000 in settlement of a Commission-issued enforcement claim based on the apparent violations.

FWI, which shares common ownership with MPS, also appears to have a business relationship with Aurora. The field investigation conducted in connection with this application indicates that FWI may have performed certain unlicensed forwarding services by paying the ocean freight and preparing the export declarations on ocean shipments that were also serviced by Aurora personnel. From FWI's and Aurora's files, it is unclear whether forwarding services were performed by FWI or Aurora. Moreover, neither the files nor FWI's ocean freight forwarder application clearly indicate the nature of the relationship, if any, between FWI and Aurora.[1]

Section 19 of the Shipping Act of 1984 (46 U.S.C. app. sec. 1718) provides that a forwarder license shall be issued to any person that:

> [T]he Commission determines to be qualified by experience and character to render forwarding services. * * *

Applicants for an ocean freight forwarder license have the burden of demonstrating that they meet the requisite criteria. The Commission is unable, on the existing record, to conclude that FWI has the requisite character to perform forwarding services.

FWI is a wholly-owned subsidiary of a holding company which owns another corporation that was a licensed ocean freight forwarder, MPS, whose license was surrendered in settlement of certain Shipping Act violations. MPS's forwarding operations and a number of its offices were incorporated into Aurora's forwarding operation, with which both MPS and FWI appear to have a continuing, but not fully explained, relationship. Moreover, it appears that FWI may have performed certain unlicensed forwarding services on a number of export shipments. Accordingly, the Commission is instituting a formal investigation and hearing to determine whether FWI should be licensed as an ocean freight forwarder.

Therefore, it is further ordered, That pursuant to sections 11 and 19 the Shipping Act of 1984 (46 U.S.C. app. §§ 1710 and 1718), a formal investigation and hearing is instituted to determine whether Four Winds International, Inc. possesses the necessary character to be licensed as ocean freight forwarder;

It is further ordered, That Four Winds International, Inc. is named respondent in this proceeding;

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing and decision by an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Presiding Administrative Law Judge. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure (46 CFR 502.61), the initial decision of the presiding officer in this proceeding shall be issued by February 2, 1987 and the final decision of the Commission shall be issued by June 2, 1987;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served upon the Respondent and the Commission's Bureau of Hearing Counsel;

It is further ordered, That in accordance with Rule 42 of the Commission's Rules of Practice and Procedure (46 CFR 502.42), the Director of the Commission's Bureau of Hearing Counsel shall be a party to this proceeding;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

[1] In response to a staff inquiry, FWI advised that it has a "business relationship [with Aurora] in which Aurora performs certain services which FWI cannot perform because it does not have a FMC license." FWI did not, however, document or further explain the extent of its relationship with Aurora.

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It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as mailed directly to all parties of record.

By the Commission.[2]

John Robert Ewers,

Secretary.

[FR Doc. 86-2518 Filed 2-4-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Capitol Bancorporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question may be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1986.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Capitol Bancorporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, CAP Mortgage Co., Inc., Braintree, Massachusetts ("Company"), in issuing, buying, selling and otherwise dealing in first and second mortgages on real property and also to service such loans, pursuant to section 225.25(b)(1) (i), (ii), (iii), (iv), and (v). Loans originated by Company would generally be sold in the secondary mortgage market to investors.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Valley Capital Corporation*, Las Vegas, Nevada; to engage *de novo* through its subsidiary, Valley Financial Services, Inc., Las Vegas, Nevada, in acting as a registered securities broker/dealer providing securities brokerage services and related securities credit activities and certain incidental services, pursuant to section 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, January 31, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2485 Filed 2-4-86; 8:45 am]

BILLING CODE 6210-01-M

National Industrial Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 28, 1986.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *National Industrial Bancorp, Inc.* (formerly, the Co-op Credit Corporation), East Hartford, Connecticut; to become a bank holding company by acquiring at least 80 percent of the voting shares of National Industrial Bank of Connecticut, Meriden, Connecticut.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers & Merchants Bancshares, Inc.*, Wright City, Missouri; to acquire 18 percent of the voting shares of Warren County Bancshares, Inc., Warrenton, Missouri, thereby indirectly acquire Commerce Warren County Bank, Warrenton, Missouri.

Board of Governors of the Federal Reserve System, January 31, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2486 Filed 2-4-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Department of Interior.

ACTION: Notice of Availability of a final environmental impact statement (EIS) for the proposed Adoption and Implementation of Coachella Valley Fringe-toed Lizard Habitat Conservation Plan and Endangered Species Act Section 10(a) Permit.

FOR FURTHER INFORMATION CONTACT: Fish and Wildlife Service, Division of Endangered Species, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232.

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the above contact.

Copies are also available for inspection at the following locations:

Fish and Wildlife Service, Sacramento Field Station, Division of Endangered Species, 2800 Cottage Way, Room E-1823, Sacramento, California 95825;

Fish and Wildlife Service, Laguna Niguel Field Office, Federal Building, 24000 Avila Road, Laguna, California 92677.

Dated: January 29, 1986.

Joseph R. Blum,

Acting Regional Director.

[FR Doc. 86-2369 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Colorado; Extension of Public Comment Period and Additional Public Meeting on Draft Environmental Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Extension of the comment period, and notice of an additional public meeting to receive comments on, the Draft Environmental Impact Statement (EIS) for the James Creek Coal Preference Right Lease Application.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior, has prepared a Draft EIS on the James Creek Preference Right Lease Application (PRLA) of Rio Blanco County, Colorado, and copies have been available for public review and comment since November 22, 1985. The Draft EIS also documents a BLM land use planning amendment for the PRLA and several adjacent coal leases.

Notice is also given that an additional public hearing will be held and public comment will be accepted on the Draft EIS through February 28, 1986.

DATES: Written comments on the proposal will be accepted up to and including February 28, 1986.

An additional public meeting to receive oral and/or written comments on the Draft EIS will be held as follows: February 25, 1986—7:30 p.m., Mt. Vernon Room, Sheraton Inn, Union and 6th Avenue, Lakewood, Colorado.

ADDRESS: Written comments on the proposals in the document are to be addressed to: Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625, Telephone (303) 824-8261.

Availability: Single copie of the Draft EIS are available from the Craig District BLM Office (address and phone listed above.)

FOR FURTHER INFORMATION CONTACT: Greg Goodenow, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson, Craig, Colorado 81625; telephone (303) 824-8261.

SUPPLEMENTARY INFORMATION: This Draft EIS describes and analyzes the environmental impacts of the proposed leasing of Preference Right Lease Application (PRLA) C-0126998 located about 9 miles northeast of Meeker, Colorado, in Rio Blanco County, and in the Craig District, Bureau of Land Management. It also serves as the analysis for amending the White River Resource Area Management Framework Plan, by applying the coal unsuitability criteria (43 CFR 3460) to the project area.

This PRLA is held by Consolidation Coal Company (Consol). Consol has proposed a 10-million-ton-per-year surface mine as the likely development of the PRLA, should the lease be issued. It is around this proposal that the analysis is centered.

The Alternatives considered in this EIS include:

No Action
Withdrawal/Just Compensation Lease Exchange
Proposed Action (Consol's Current Proposal)
BLM's Preferred Alternative

Dated: January 30, 1986.

Kannon Richards,

State Director.

[FR Doc. 86-2492 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Endangered Species Permit Issued for the Months of October, November, December 1985

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, telephone (703/235-1903) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

October 1985

Darryl L. Hastings	X697329	Oct. 3.
Bernard Hennings	X697808	Oct. 3.
John M. Hinerwadel Sr.	X696581	Oct. 3.
Dan Mooney	X697813	Oct. 3.
New York Zoological Society.	X696360	Oct. 4.
William A. Paulin	X696354	Oct. 9.
San Diego Zoological Society.	X696757	Oct. 9.
San Diego Zoological Society.	X696755	Oct. 9.
Hawaii Division of Forestry & Wildife.	X691504	Oct. 17.
Jack Risken	X697798	Oct. 17.
Ted M. Siouris	X696450	Oct. 17.
Frank Howard Bess	X696474	Oct. 17.
Natalie M. Eckel	X695739	Oct. 18.
San Diego Zoological Society.	X695998	Oct. 22.
San Diego Zoological Society.	X695995	Oct. 22.
Leonard Hinckley	X697804	Oct. 24.
Charles Mooney	X697809	Oct. 24.
Fresno Zoo	X696999	Oct. 28.
Kim Enterprises	X696527	Oct. 28.

November 1985

John E. Parks	X695839	Nov. 1:
USFWS/Regional Director:		
Region 3	X697830	Nov. 5.
Region 4	X697819	Nov. 5.
Region 5	X697823	Nov. 5.
Gerald E. Fleock	X699729	Nov. 5.
David S. Hodgin	X699018	Nov. 5.
Los Angeles Zoo	X699695	Nov. 5.
Vance B. Grannis, Jr.	X696602	Nov. 13.
Lloydean Martin	X699786	Nov. 21.
Don R. Mullins	X699432	Nov. 21.
International Animal Exchange.	X699120	Nov. 25.
Mesker Park Zoo	X700327	Nov. 25.
Ralph E. Ward	X699971	Nov. 25.
International Animal Exchange.	X695764	Nov. 26.
Dallas Zoo	X697170	Nov. 27.
San Diego Zoological Society.	X701931	Nov. 27.
New York Zoological Society.	X697869	Nov. 27.
Hagan Thompson	X700068	Nov. 29.
Gary Lingle	X696341	Nov. 30.

December 1985

David F. Bilbie	X699542	Dec. 2.
Vance B. Grannis	X701827	Dec. 3.
FWS/National Sea Turtle Coordinator.	X696367	Dec. 8.
San Diego Zoological Society.	X697192	Dec. 13.
Cincinnati Zoo	X700809	Dec. 13.

[2] Vice Chairman James J. Carey is not participating in this matter.

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Chicago Zoological Society.	X697739	Dec. 13.
New England Wild Flower Society, Inc.	X700728	Dec. 16.
Baltimore Zoo	X700784	Dec. 18.
Jackson Zoological Park.	X701521	Dec. 27.
Charles Bazzy	X700583	Dec. 27.
Sunlight Gardens, Inc.	X683622	Dec. 31.

Dated: January 27, 1986.

Robert T. Kavetsky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-2445 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-700679

Applicant: Dallas Museum of Natural History, Dallas, TX

The applicant requests a permit to import for scientific research and public display a trophy specimen of Nile crocodile (*Crocodylus niloticus*) taken in the Sudan.

PRT-702488

Applicant: Michael Barrett, Fillmore, CA

The applicant requests a permit to import two pairs of captive-born Cabot's tragopan pheasants (*Tragopan caboti*) from Glenn Howe of Aylmer, Ontario, Canada, for enhancement of propagation.

PRT-702540

Applicant: Cincinatti Zoo, Cincinatti, OH

The applicant requests a permit to import one captive-born Asian tapir (*Tapirus indicus*) from the Metroplitan Toronto Zoo, Toronto, Ontario, Canada, for enhancement of propagation.

PRT-702932

Applicant: Ned V. Goecken, Orland, CA

The applicant requests a permit to import the personal sport-hunted trophy of bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Mr. V. Pringle in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-703241

Applicant: Dennis Kropp, Driscoll, ND

The applicant requests a permit to import the sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Phil van de Merwe in Cape Province, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-703251

Applicant: Life Fellowship, Seffner, FL

The applicant requests a permit to purchase 2.0 Galapagos tortoises (*Geochelone elephantpus*) from International Animal Exchange, Ferndale, MI, for the purpose of enhancement of propagation.

PRT-703339

Applicant: Life Fellowship, Seffner, FL

The applicant requests a permit to purchase 3.1 Galapagos tortoises (*Geochelone elephantopus*) from Mr. and Mrs. Rene van Swinderen, Phoenix, AZ, for the purpose of enhancement of propagation.

PRT-703180

Applicant: Wilbur Carr Brown, San Angelo, TX

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Coehraad Vermaak in Dundee, Republic of South Africa, for the purpose of enhancement of propagation.

PRT-703309

Applicant: Dr. Harold F. Hirth, Salt Lake City, UT

The applicant requests a permit to take (measure, tag) hawksbill turtles (*Eretmochelys imbricata*) on the beach at Rose Atoll (American Samoa) for the purpose of scientific research.

PRT-703212

Applicant: Nancy Crawford, Sunnymead, CA

The applicant requests a permit to import a pair of white eared pheasants (*Crossoptilon crossoptilon*), and one Mikado pheasant (*Syrmaticus mikado*), captive born at Harry Hardy's, Bumaby, British Columbia, Canada, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 27, 1986.

Robert T. Kavetsky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-2443 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Procedures for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of proposed modification to Notice of Lessees-5; extension of comment period.

SUMMARY: This Notice extends the comment period from February 3, 1986 to March 3, 1986 on the Notice of Proposed Modification to NTL-5 (concerning procedures for determining natural gas value for royalty purposes) which was published in the Federal Register on January 3, 1986 (51 FR 260, 261 and 262). The extension of the comment period is in response to requests received from the public to allow additional time for comments.

DATE: Comments must be delivered or postmarked no later than March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, telephone: (303) 231-3432, (FTS) 326-3432.

Dated: January 31, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-2525 Filed 2-4-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Modification of Consent Decree in Clean Water Act Enforcement Action; Welch, WV

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that the consent decree in *United States* v. *City of Welch, West Virginia*, which was entered by the United States District Court for the Northern District of West Virginia on January 30, 1985, is the subject of a proposed modication lodged with the District Court on *Jan. 30, 1986*. The proposed modification requires the City to build a new sewage collection system in conjunction with the new sewage treatment facility required by the consent decree. Interim milestone dates in the consent decree are adjusted in the modification but the final compliance date is unchanged.

The Department of Justice will receive for thirty (30) days from the publication date of this notice, written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *City of Welch*, 90-5-1-1-813.

The modification to the consent decree can be examined at the office of the United States Attorney, Room 243, Federal Building, 1125-1141 Chapline Street, Wheeling, West Virginia, at the Region III office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, (Room 1515), Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. Copies of the modification to the consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-2493 Filed 2-4-86; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Prisons

National Institute of Corrections Advisory Board; Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board will meet on February 11, 1986, starting at 8:30 a.m., at the United States Department of Labor, 200 Constitution Avenue, NW., Departmental Development Center, 5th Floor, Seminar Room 3, Washington, D.C., 20210. At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive its subcommittees' reports and recommendations as to future thrusts of the Institute.

Raymond C. Brown,

Director.

[FR Doc. 86-2489 Filed 2-4-86; 8:45 am]

BILLING CODE 4410-05-M

Drug Enforcement Administration

Revocation of Registration; John M. Thorkelson, M.D.

On October 30, 1985, the Administration of the Drug Enforcement Administration (DEA) issued to John M. Thorkelson, M.D. of 2713 Maplewood Drive, Sulphur, Louisiana 70663, an Order to Show Cause proposing to revoke his DEA Certificate of Registration, AT3387001. The Order to Show Cause alleged that the continued registration of Dr. Thorkelson would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f). Additionally, citing his preliminary finding that the continued registration of Dr. Thorkelson posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration AT3387001 during the pendency of these proceedings. 21 U.S.C. 824(d).

The Order to Show Cause/Immediate Suspension was personally served on Dr. Thorkelson on November 1, 1985. In a letter dated November 8, 1985, Dr. Thorkelson's counsel specifically waived Dr. Thorkelson's opportunity for a hearing pursuant to 21 CFR 1301.54(c). The letter further stated that Dr. Thorkelson intended to close his medical office as of December 31, 1985, and therefore had no further need to maintain his DEA Certificate of Registration. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Thorkelson was the subject of a joint undercover investigation conducted by DEA and the Calcasieu Parish Sheriff's Office starting in August 1985. Since January 1985, Dr. Thorkelson was the subject of a Louisiana State Police undercover investigation. During the investigation, Dr. Thorkelson sold a number of prescriptions for controlled substances to undercover investigators and to a cooperating individual. There was no legitimate medical justification for the writing of these prescriptions.

On four separate occasions between December 7, 1984 and March 6, 1985, Dr. Thorkelson wrote prescriptions for Valium 5 mg. and 10 mg. tablets for an undercover investigator. Valium is a Schedule IV controlled substance. On each of these visits, Dr. Thorkelson performed a very cursory physical examination if he performed one at all.

On January 30, 1985, a cooperating individual traded Dr. Thorkelson auto parts in exchange for 90 dosage units of Valium 5 mg. On May 21, 1985, Dr. Thorkelson sold the cooperating individual two prescriptions for Tuinal and on June 13, 1985, Dr. Thorkelson sold him a prescription for Percodan. Tuinal and Percodan are Schedule II controlled substances.

Dr. Thorkelson's illicit prescribing practices were not limited to his office. On at least one occasion, Dr. Thorkelson sold an undercover investigator two prescriptions for Percodan while they were at a Louisiana paramutual race track. In addition, Dr. Thorkelson sold the undercover investigator a prescription for Valium on August 28, 1985.

As a result of these investigations, Dr. Thorkelson was arrested on October 24, 1985. That same afternoon, within a few hours of his release from the Calcasieu Parish Jail, Dr. Thorkelson telephoned Darryl's Thrifty Drugs and attempted to have a prescription filled over the phone. Dr. Thorkelson's telephone call was answered by a DEA special agent who was at Darryl's Thrifty Drugs conducting an accountability audit, because the owner/pharmacist of Darryl's Thrifty Drugs was also arrested that morning for controlled substance violations.

Previously, the Administrator concluded that the activities of Dr. Thorkelson indicated that the continued registration of Dr. Thorkelson posed such an imminent danger to the public health and safety that on October 30, 1985, the Administrator ordered the immediate suspension of Dr. Thorkelson's DEA registration during the pendency of these proceedings. Dr. Thorkelson has stated that he no longer needs a DEA Certificate of Registration since he has closed his medical office as of December 31, 1985. Based on the foregoing reasons, the Administrator concludes that the registration of Dr. Thorkelson would be inconsistent with the public interest and therefore Dr. Thorkelson's DEA Certificate of Registration shoud be revoked pursuant to 21 U.S.C. 824(a)(4).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AT3387001, previously issued to John M. Thorkelson, M.D., be, and it hereby is revoked. This order is effective immediately.

Dated: January 30, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-2487 Filed 2-4-86; 8:45 am]

BILLING CODE 4410-05-M

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DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Appeals of Service Delivery Area Reorganization Plans

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of appeals procedures for plans to reorganize Service Delivery Areas.

SUMMARY: This notice announces procedures for appeals to the Secretary of Labor of a Governor's plan to reorganize a Job Training Partnership Act Service Delivery Area for failure to meet performance standards for two consecutive years.

FOR FURTHER INFORMATION CONTACT: Robert N. Colombo, Director, Office of Employment and Training Programs, Room 6402, 601 D Street, NW., Washington, D.C. 20213. Telephone number: (202) 376–6093.

SUPPLEMENTARY INFORMATION: Pursuant to section 106(h) of the Job Training Partnership Act (JTPA) and 20 CFR 629.46(d) of the JTPA regulations, the Governor must impose a reorganization plan on a Service Delivery Area (SDA) for failure to meet, for two consecutive program years, the performance standards established by the Secretary. It is left to the Governor to determine if "failure" constitutes failure to meet any one or more of the standards. A reorganization plan may not, however, be imposed for an SDA's failure to meet performance standards other than those established by the Secretary. Such reorganization plans may be appealed to the Secretary pursuant to section 106(h)(4) of JTPA. Pursuant to 20 CFR 629.46(d)(1), the Governor must offer the SDA an opportunity for a hearing prior to imposing a reorganization plan. The Governor shall provide the SDA with written notification of the hearing determination. The Secretary will accept appeals dated no later than 30 days after the SDA's receipt of the Governor's written notification of the hearing determination. The Secretary will make a decision only with regard to determining whether or not the Governor's decision is inconsistent with section 106 of the Act. The regulations provide the address for appeal submittal and require simultaneous submittal of the appeal to the Governor.

Pursuant to section 20 CFR 629.46(d)(5), the appealing party shall explain why it believes the Governor's decision is contrary to the provisions of section 106 of the Act. In order for the Secretary to make an informed decision, the appealing party should provide all relevant information in the appeal. This includes, at a minimum:

(a) Documentation of the SDA's performance standards established by the Governor, any variations to these local standards prescribed by the Governor, and if available to the SDAs, information on how such variations were determined.

(b) Documentation of the SDA's actual performance to assess the extent of failure to meet standards.

(c) Documentation of availability of technical assistance and requests for and the use of such technical assistance by the SDA based upon underperformance.

(d) Documentation of the State sanction policy, if available to the SDA, including the criteria the Governor uses to apply sanctions and the type of sanctions during the two year period. At a minimum, such policy should include the following:

- Number of Secretary's performance standards not met which constitutes failure; and
- Extent of failure as determined by the degree of underperformance or relative importance of standards.

(e) Documentation of efforts by the SDA to follow a corrective action plan if imposed by the State, for underperformance. If feasible, the SDA can provide information on reasons why such action was not effective in correcting deficiencies.

(f) A copy of the Governor's notification of the hearing determination with evidence of the date of receipt of such notification.

Pursuant to 20 CFR 629.46(d)(6), Governors may submit comments for consideration by the Secretary. Governors may wish to submit similar or additional information with their comments on the appeal. Since the Secretary will make a final decision within 60 days of receipt of the appeal, Governors will need to submit their comments to the Secretary expeditously for consideration. A letter indicating that the Secretary has received an appeal and establishing a cutoff date for receipt of comments will be sent to the Governor by the Employment and Training Administration for each appeal.

Pursuant to 20 CFR 629.46(d)(6), the Secretary shall make a decision only with regard to determining whether or not the Governor's decision is inconsistent with section 106 of the Act. Pursuant to section 106(e), where the Governor has elected to vary the performance standards established by the Secretary by using the nationally developed adjustment methodology referenced in the Department's Performance Standards Issuance Number 1-PY 84, the Secretary will be predisposed to uphold the Governor's reorganization plan if the varied standards are not being met. If the Govenor elected to use an alternative methodology to vary the standards, however, the Secretary will make the decision on a case-by-case basis, based on the validity of the methodology and its uniform application throughout the State.

Paperwork Reduction Act Clearance

This notice was submitted to and approved by OMB under the Paperwork Reduction Act. The control number assigned to this document by OMB is 1205–0243.

Signed at Washington, D.C., this 3rd day of December, 1985.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–2467 Filed 2–4–86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

National Endowment for the Arts; Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Audience Development Section) will be held on Thursday and Friday, February 20–21, 1986, from 9:00 a.m.–5:30 p.m. and Saturday, February 22, 1986, from 9:00 a.m.–1:00 p.m., Room 714 of the Nancy Hank Center, 1100 Pennsylvania Avenue, NW. Washington, DC 20506.

A portion of this meeting will be open to the public on February 22, 1986, from 11:30 p.m.–1:00 p.m. Topics for discussion will be policy and guidelines.

The remaining sessions of this meeting on February 20–21, 1986, from 9:00 a.m.–5:30 p.m., and February 22, 1986, from 9:00 a.m.–11:15 a.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: January 27, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–2469 Filed 2–4–86; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended, notice is hereby given that a meeting of the Music Advisory Panel (Centers/Services Section) will be held on Wednesday, February 19, 1986, from 9:00 a.m.–5:00 p.m., Room 730 of the Nancy Hank Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 19, 1986, from 2:00 p.m.–3:00 p.m. Topics for discussion will be policy and guidelines.

The remaining sessions of this meeting on February 19, 1986, from 9:00 a.m.–2:00 p.m. and 3:00 p.m.–5:00 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Fundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: January 27, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–2470 Filed 2–4–86; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF–6 issued to Arkansas Power and Light Company (the licensee), for operation of Arkansas Nuclear One, Unit 2, located in Pope County, Arkansas.

The amendment would revise section 6 (Administrative Controls) of the Technical Specifications (TS) in accordance with the licensee's application for amendment dated December 20, 1985. The proposed TS changes are:

1. Changes to TS 6.5.2.2 would be made to clarify the responsibility of Safety Review Committee (SRC) appointments and total membership of the committee. In addition, the job titles referenced in the current TS for the committee membership would be replaced with functional descriptions.

2. Editorial changes would be made to TS 6.5.2.8 and a typographical error which was made with the issuance of Amendment No. 52 dated February 1, 1984 would be corrected.

3. Changes to Figures 6.2–1 and 6.2–2 would be made to reflect a reorganization of the Nuclear Operations Department of Arkansas Power & Light Company (AP&L).

4. Changes would be made to reflect title changes and change in makeup of the Plant Safety Committee (PSC) due to reorganization.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). One of the examples (i) of actions involving no significant hazards considerations is a purely administrative change to TS; for example, a change to achieve consistency throughout the TS, correction of an error, or a change in nomenclature.

The proposed changes identified in item 2 above are purely administrative changes as in example (i) since they involve editorial changes and correction of an error.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes identified in items 1, 3 and 4 above are the results of a recent reorganization of the Nuclear Operations Department of AP&L. The details of the reorganization are described in the licensees application dated December 20, 1985. There, the licensee indicates that the reorganization will enhance the effectiveness of the Nuclear Operations Department in responding to safety issues at Arkansas Nuclear One (ANO). In a similar manner, the effectiveness of PSC and SRC will be enhanced by the improved utilization of personnel with experience and expertise in the appropriate technical disciplines necessary to carry out their functions. Based on the above, the NRC staff

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believes that these proposed changes are administrative improvements and that these changes will not diminish, in any way, current administrative requirements of the ANO–2 TS. The staff therefore, proposes to conclude that the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any previously evaluated, or (3) involve a significant reduction in a margin of safety. On this basis, the staff has made an initial determination that the proposed amendment is not likely to involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By March 6, 1986, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period; provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, D.C. 20036.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 30th day of January 1986.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 86–2545 Filed 2–4–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–400A]

Carolina Power & Light Company and the North Carolina Eastern Municipal Power Agency; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of the Shearon Harris Nuclear Power Plant by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensees' activities or proposed activities have occurred subsequent to the previous construction permit review. The Committee has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Shearon Harris construction permits to the Carolina Power and Light Company, the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

"In reaching this conclusion, the staff considered the structure of the electric utility industry in both North and South Carolina, the events relevant to the Shearon Harris construction permit review and the related Brunswick operating license review and the events that have occurred subsequent to these reviews.

"The conclusion of the staff's analysis is as follows:

'Carolina Power and Light (CPL) and the North Carolina Eastern Municipal Power Agency (NCEMPA) are joint owners of the Shearon Harris Nuclear Power Plant (Harris). CPL is a relatively large, fully integrated investor owned utility system serving in North Carolina and South Carolina. NCEMPA is a joint action agency, representing over thirty municipal electric utility systems in North Carolina. CPL supplied wholesale power to NCEMPA, and contractually provides transmission service between NCEMPA and its members. CPL also provides wholesale service to eighteen electric membership cooperatives, four other municipal electric utilities, and one private utility.

'The Department of Justice (Department) rendered antitrust advice to the Commission in 1972 following the Department's review of CPL in connection with CPL's construction permit (CP) application for Harris. In that advice letter, the Department noted that it had received separate complaints regarding CPL's practices, one from a group of fourteen municipal electric distribution utilities, and a second from EPIC, Inc., an agency representing both municipals and cooperatives in the area. In addition, the Department noted several objectionable restrictive provisions in CPL's wholesale contracts. CPL denied any anticompetitive intent or actions, but agreed to remove the alleged restrictive contract provisions, and agreed to accept certain procompetitive conditions in the Harris licenses in exchange for a "no hearing" advice letter from the Department.

'Subsequent to the Harris CP antitrust review, the Department reviewed, (1) CPL with respect to the Brunswick operating license (OL) application, and (2) NCEMPA with respect to its ownership participation in Harris. In neither instance, did the Department express any further antitrust concerns.

'Staff's review of changes in load forecasts, generation and transmission additions, power delivery points, and rate schedules does not suggest any significant anticompetitive effects. Further, CPL's purchases of the Domestic Electric Company and of Pinehurst, Inc., indicate reasonable business transactions which had no significant consumer or local regulatory opposition. Finally, staff views CPL's sale of an ownership share in Harris to NCEMPA and the associated service arrangements as consistent with antitrust conditions contained in other nuclear power plant licenses, and the transmission service arrangements consistent with its Harris antitrust license conditions. Although negotiations for transmission service arrangements between CPL and the North Carolina Electric Membership Corporation (NCEMC) have not been completed, any subsequent problems that may arise therewith may be treated under the Commission's rules for enforcement of license conditions. In conclusion, staff does not recommend a "significant change" finding for the Harris OL application."

"Based upon staff's analysis, it is my finding that a formal operating license antitrust review of the Shearon Harris Power Plant, Unit 1, is not required."

Signed on January 27, 1986 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 for 30 days from the date of the publication of the **Federal Register** notice. Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Bethesda, Maryland, on January 29th, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86–2546 Filed 2–4–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–337 and 50–328; 50–259, 50–260, and 50–296; 50–390 and 50–391; 50–438 and 50–439]

Tennessee Valley Authority, (Sequoyah Nuclear Plant, Units 1 and 2), (Browns Ferry Nuclear Plant, Units 1, 2, and 3), (Watts Bar, Units 1 and 2), (Bellefonte, Units 1 and 2); Order Modifying Licenses (Effective Immediately)

I

Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating Licenses Nos. DPR–77 and DPR–79 which authorize the licensee to operate the Sequoyah Nuclear Plant, Units 1 and 2 (SNP) in Soddy-Daisy, Tennessee, the holder of Facility Operating Licenses Nos. DPR 33, DPR 52, DPR 68 which authorize the licensee to operate the Browns Ferry Nuclear Plant, Units 1, 2, and 3 near Athens, Alabama, the holder of construction permits to build the Watts Bar Nuclear Plant, Units 1 and 2 near Spring City, Tennessee and the holder of construction permits to build the Bellefonte Nuclear Plant, Units 1 and 2.

II

In the spring of 1985, the NRC received a number of anonymous allegations regarding safety concerns and employee reprisals at TVA. Most of the allegations involved construction quality issues at Watts Bar and the perception that TVA supervisors had either taken or would take adverse actions against employees raising these concerns through normal channels.

TVA has contracted with the Quality Technology Company (QTC) to conduct interviews of all employees at Watts Bar and to conduct certain investigations flowing from concerns raised by these employees. The contract between TVA and QTC provides, *inter alia*, that the names of persons raising concerns will be held in confidence, and will only be disclosed to a third party with the permission of the employee or as a

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result of a compelled process such as an order.

The Commission, acting under the authority of section 103(c) and 161(o) of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.70 of the Commission's regulations, has also initiated inspections and undertaken investigations of licensed activities involving the construction of Watts Bar and other TVA facilities. Specifically, the inspections and investigations are to determine: (a) Whether construction workers engaged in activities under the various licenses were harassed, intimidated or discharged because the workers were raising questions concerning alleged construction problems which, if uncorrected, could lead to unsafe conditions jeopardizing the public health and safety, (b) whether there may now exist at the Watts Bar potentially unsafe conditions, the existence of which has not been communicated to the licensee or the Commission because of the chilling effect on workers' willingness to identify safety concerns from a perception on such workers' part that a worker may be harassed or discharged if he or she identifies potentially unsafe conditions to the licensee or to the Commission; and (c) whether the program put in place by TVA is identifying, evaluating, and resolving plant specific safety concerns at Watts Bar, Sequoyah, Browns Ferry, and Bellefonte and any generic aspects of employee concerns that may relate to other TVA facilities.

In order for the NRC to carry out its health and safety responsibilities it is necessary that the NRC have reasonable assurance that safety concerns affecting TVA's licensed facilities have been identified and properly evaluated and resolved. This may require that NRC representatives review the QTC records describing the safety concerns and interview the persons who have raised such concerns. Access to the original unexpurgated records is therefore required to obtain the necessary information. If such records are reviewed, NRC would honor the confidentiality agreements between QTC and their interviewees. In any subsequent interviews NRC may conduct, NRC would afford the interviewee the opportunity to sign an NRC confidentiality agreement if he or she desires to remain confidential.

IV

During the past few weeks it appears that the continuing status of the contractual relationship between QTC and TVA is unclear and may significantly change at any time. QTC has informed the NRC that there is only a verbal agreement between QTC and TVA to preserve the integrity of the original unexpurgated records resulting from the employee concern program. Thus, there is a substantial question as to whether the original QTC records will be preserved and if preserved, whether NRC will have access to them to permit inspection and copying.

The failure to permit voluntary NRC inspection of the complete employee concern records containing potential safety information related to licensed activities is contrary to 10 CFR 50.70. *See Union Electric Company* (Callaway Plant, Units 1 and 2), 9 NRC 126 (1979). Therefore, in view of the above I have determined that the public health, safety and interest requires that the following actions be effective immediately.

V

In view of the foregoing, pursuant to sections 103, 161c, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR part 50, it is hereby ordered, effective immediately, that TVA:

(A) Prohibit the removal of the unexpurgated original QTC records resulting from the employee concern program from TVA controlled property, the destruction of such records, the deletion of information from such records, or any other action which could compromise the integrity of the information contained in such records without prior written approval of the Director, Office of Nuclear Reactor Regulation.

(B) Provide 5 working days notice to the Director, Office of Nuclear Reactor Regulation, before QTC relinquishes control or custody of the unexpurgated original QTC records resulting from the employee concern program.

(C) Direct QTC to permit inspection and copying of the unexpurgated original QTC records resulting from the employee concern program by NRC representatives authorized by the Director of the Office of Nuclear Reactor Regulation.

The Director, Office of Nuclear Reactor Regulation, may relax or terminate any of the above conditions for good cause.

VI

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be submitted to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 30 days of the date of the Order. A copy of the request shall also be sent to the Executive Legal Director at the same address and to the Regional Administrator, Region II, 101 Marietta Street, NW., Atlanta, Georgia 30303. An answer to this order or a request for hearing shall not stay the immediate effectiveness of section V of this order.

If a hearing is to be held concerning this Order, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order shall be sustained.

Dated at Bethesda, Maryland, this 30th day of January, 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulations.

[FR Doc. 86-2547 Filed 2-4-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-424-OL, 50-425-OL; (ASLBP No. 84-499-01-OL)]

Georgia Power Company et al., (Vogtle Electric Generating Plant, Units 1 and 2); Hearing

January 29, 1986.

Atomic Safety and Licensing Board. Before Administrative Judges: Morton B. Margulies, Chairman, Gustave A. Linenberger, Jr., Dr. Oscar H. Paris.

Notice is hereby given that an evidentiary hearing will be conducted involving the application filed by Georgia Power Company, acting for itself and as agent for Oglethorpe Power Corporation, Municipal Electric Authority of Georgia and City of Dalton, Georgia, for operating licenses for two pressurized water nuclear reactors located in Burke County, Georgia. The application, as amended, was filed on September 13, 1983, pursuant to the Atomic Energy Act of 1954, as amended, and the National Environmental Policy Act of 1969. Hearing will commence on March 11, 1986, at 9:30 a.m., local time, in the Burke County Office Park Auditorium, West 8th Street, Waynesboro, Georgia and continue at the direction of the Licensing Board.

The subject of the hearing will relate to allegations made by Joint Intervenors, Campaign For A Prosperous Georgia and Georgians Against Nuclear Energy, that there is no reasonable assurance that the activities to be authorized by the operating licenses can be conducted without endangering the health and safety of the public because of possible groundwater contamination (Contention 7) and deficiencies that exist in the qualification of certain polymer

materials to be employed in components (Contention 10.1) and of specified valves (Contention 10.5) that are to be used in the facilities. (There are contentions pending on the discrete issue of emergency planning for which no hearing schedule has been set.)

Direct testimony to be presented at the hearing is to be prefiled with the Licensing Board and the parties by February 24, 1986. The identities of witnesses to appear at the hearing are to be conveyed to the Licensing Board and the parties, in writing, by February 18, 1986.

The public is invited to attend the hearing. An appropriate opportunity will be provided during the course of the hearing for persons not parties to the proceeding to make a limited appearance through an oral or written statement of position on the issues, as provided for in 10 CFR 2.715(a). The terms under which the limited appearance are to be made will be set forth in a further notice.

It is so *Ordered.*

Dated at Bethesda, Maryland, this 29th day of January, 1986.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 86-2544 Filed 2-5-86; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Claim for Credit for Military Service [RUI Act).

(2) Form(s) submitted: UI-44.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Individuals or households.

(6) Annual responses: 300.

(7) Annual reporting hours: 25.

(8) Collection description: Military service can be used under certain conditions for entitlement to an extended or accelerated unemployment benefit period provided for under section 2(c) of the Railroad Unemployment Insurance Act. The form will obtain information about the applicant's claimed military service.

Additional information or comments: Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-2472 Filed 2-4-86; 8:45 am]

BILLING CODE 7905-01-M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Employer Service and Compensation Reports.

(2) Form(s) submitted: UI-41, UI-41a.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: On occasion.

(5) Respondents: Businesses or other for-profit.

(6) Annual responses: 25,000.

(7) Annual reporting hours: 1,833.

(8) Collection description: The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86-2473 Filed 2-4-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14928; (812-5882)]

Municipal Investment Trust Fund et al.; Application for Order Permitting Principal Transactions

January 30, 1986.

Notice is hereby given that Municipal Investment Trust Fund and Liberty Street Trust, Municipal Monthly Payment Series and any future series of either Fund (collectively, "Funds"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Dean Witter Reynolds Inc., Prudential-Bache Securities Inc., Shearson Lehman Brothers Inc., PaineWebber Incorporated and any other broker/dealer which may in the future act as Sponsor of the Funds (collectively with Merrill Lynch, "Sponsors") (Sponsors and Funds collectively, "Applicants") c/o Merrill Lynch, One Liberty Plaza, 165 Broadway, New York, New York 10080, filed an application on June 27, 1984, and amendments thereto on August 28, 1985, and January 10, 1986, for an order of the Commission, pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") exempting Applicants and any future Sponsor who may join as a co-sponsor of the Funds from the provisions of section 17(a)(2) of the Act to the extent necessary to permit the Funds to sell their portfolio securities ("Securities") through independent broker-dealers to purchasers, which may include one or more of the Sponsors. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the Rules thereunder for the text of the applicable provisions thereof.

According to the application, each of the Funds is a registered unit investment trust under the Act that issue separate series ("Series"), created by separate trust indentures. Each Fund has a separate portfolio and registration statement under the Securities Act of 1933 ("Securities Act") with respect to

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the sale of units ("Units") that represent a fractional undivided interest in the Series. Applicants state that each Series of the Funds invests in Securities consisting solely of debt obligation of states, municipalities, public authorities and other public subdivisions ("Municipal Bonds"), and to a limited extent in some Series, Units of other Series comprised of such Securities. The interest on each of the Securities, in the opinion of bond counsel, is exempt from federal income taxation. At the time of acquisition by the Funds, the Securities are rated A or better by Standard & Poor's Corporation or Moody's Investors Services, or in the opinion of the agent ("Agent") for the Sponsors, has comparable credit characteristics.

According to the application, the trustee for each Series is not permitted to vary investments or to purchase Securities except to purchase replacement Securities for failed contracts. The trustee is authorized to sell Securities prior to maturity in order to meet redemption obligations to Unitholders, or as directed by the Agent, in the event of certain material adverse credit developments, such as defaults of amounts due or a default on amounts due on other securities by the same issuer, a decline in prices, or the occurrence of other market developments which in the opinion of the Sponsors would make retention of the Securities by the Funds to be deterimental to the interest of Unitholders.

Applicants state that Merrill Lynch acts as Agent for the Sponsors of each Series pursuant to a power of attorney and is the only Sponsor giving instructions to a trustee with respect to Securities to be sold. These instructions are given an officer of Merrill Lynch in its Unit Trust Department, which maintains it own separate research staff. Applicants represent that although Securities deposited in a Series may be acquired from Merrill Lynch, White Weld Capital Markets Group ("Group"), a separate division of Merrill Lynch and one of the largest dealers in municipal securities, the personnel and operations of the two divisions are separate and the Group will not have any involvement in the administration of the Funds' portfolios, and will not solicit sales from the Funds' portfolios. Applicants state that personnel from the Group may be consulted from time to time about the quality of a Municipal Bond held by a Series.

Applicants state that Municipal Bonds are exempt from the registration requirement under the Securities Act and are traded after initial issuance in a dealer market in which there is no single obtainable price. Applicants state that a seller of Municipal Bonds can have an executing broker telephone directly different Municipal Bond dealers, or can use the facilities of a wire service. Applicants state there are two principal operators of wire systems in Municipal Bonds. The wire services announce offers over the wire, specifying the security, principal amount offered, and any price and timing limitation, but neither the ultimate seller nor the dealer acting on its behalf are revealed. Applicants state that Merrill Lynch will select an independent broker-dealer which will introduce the Series' order on the wire service. Each of the Sponsors maintains a major business in municipal securities, Applicants state, and that based on their experience as dealers in municipal securities, the Sponsors and their affiliates represent a significant portion of the municipal securities market. Applicants also state that to the best of their knowledge and belief, the two wire systems operate where a major segment of secondary market transactions in municipal securities are conducted.

Applicants submit that because the Funds are excluded from receiving bids from the Sponsors and their affiliates, Funds may frequently be denied the best available price notwithstanding that the market reached by the wire services is both widely competitive and anonymous. Applicants request an order, pursuant to sections 6(c) and 17(b) of the Act, that the sales of Securities from the Funds and any future series of the Funds through an independent broker-dealer to a purchaser, which may include a Sponsor, be exempted from the provisions of section 17(a)(2) of the Act.

Applicants agree that in order to minimize the possibilities of overreaching in the Securities transactions, any order issued by the Commission be subject to the following conditions: (1) Merrill Lynch will not advise the Group or the municipal securities dealer department of any other Sponsor when giving instructions to sell a Municipal Bond. (2) Merrill Lynch will select a broker-dealer to effect the sale which it considers efficient and competent and which is independent of any of the Sponsors. (3) Offers will be made through a major wire service in Municipal Bonds and will be kept open for 3 hours after initial appearance on the wire, and which will not be reduced to less than 2 hours in the discretion of the executing broker-dealer in a declining market. (4) A Sponsor's bid will be accepted only if a minimum of three bids are received from persons other than their Sponsors or their affiliates. (5) The trustee will be instructed not to inquire as to the identity of a bidder, and if it receives such information, will not transmit it to the Agent for the Sponsors. (6) Broker-dealers effecting the sales will be instructed to obtain the best available price and execution and will instruct the wire services not to report any bid from a Sponsor unless it is higher than the best price available from non-affiliated broker-dealers.

Applicant believe that the proposed terms and conditions of the Funds' transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, that the proposed transaction is consistent with the policy of each Fund as recited in their registration statements and reports filed under the Act, and is consistent with the general purpose of the Act. Applicants further assert that the requested exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 24, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington. D.C. 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2542 Filed 2-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22847; File No. SR-OCC-85-13]

Self-Regulatory Organizations; The Options Clearing Corp.; Amendment to Proposed Rule Change

On January 16, 1986, the Options Clearing Corporation ("OCC") filed with the Commission an amendment to a proposed rule change (SR-OCC-85-13) filed on August 9, 1985. In Securities Exchange Act Release No. 22354 (August 23, 1985), 50 FR 35340 (August 30, 1985), the Commission published notice of that proposed rule change. That rule change would establish a general OCC processing system for the issuance and clearance of international options traded pursuant to international market agreements.

More specifically, the proposed rule change reflected a proposed link between the Philadelphia Stock Exchange ("PHLX") and The Stock Exchange of the United Kingdom and the Republic of Ireland (the "London Exchange") whereby foreign currency options that are currently traded on the PHLX would be traded on the London Exchange. Under the proposed rule change, since options of a given series would be fungible regardless of the market in which the option was purchased or sold, options positions acquired in one market could be liquidated in the other. These international options ("IFX") would be traded and cleared pursuant to an International Market Agreement ("IMA") among OCC, PHLX and the London Exchange.

OCC proposed revisions to its By-Laws and Rules in light of the proposed rule change and submitted a draft IMA in its initial filing. The Commission is publishing this notice of amendment because OCC has proposed significant modifications to the previous proposed changes to its By-Laws and Rules and IMA. In addition, OCC has submitted to the Commission an Associate clearinghouse Agreement between OCC and International Commodities Clearing House Association Limited ("ICCH") through which ICCH would become an "associate clearinghouse" of OCC for the purpose of carrying the accounts of London-based securities firms that do not choose to become OCC Clearing Members.

Although the present filing relates specifically to IFX options, the proposed amendments to the By-Laws and Rules have been drafted to apply generally to options that might be traded on any international market pursuant to an international market agreement similar to the IMA ("international options"). In addition, it should be noted that, although all foreign currency options presently traded on PHLX will be deemed for most purposes under the By-Laws and Rules to be international options and may at some future time be traded on the London Exchange, it is the present intention of the London Exchange and PHLX to initiate trading in IFX options only on the British pound.

Amendments to By-Laws and Rules

In Article I, section 1 of the By-Laws, the changes in the leadin language are to conform to the language approved by the Commission in File No. SR-OCC-85-15. The definitions of "business day" and "settlement time" are being amended to more precisely define those terms in relation to international options. OCC will conduct margin and premium settlement in respect of international options in a particular country on any day when the local banks are open and the markets in that country are open for trading. OCC will designate a settlement time in London that is prior to the time when trading begins on the London Exchange. The definition of "settlement time" is being amended to make clear that the London settlement time applies only to those Clearing Members that have elected to clear international transactions through OCC's London office ("London Clearing Members"). In accordance with proposed Rule 204, Clearing Members that maintain offices in the United States may clear international transactions, including transactions in IFX options executed on the London Exchange, through the same OCC offices they have designated for clearance of other OCC-issued options. The regular settlement time in the United States will apply in respect of international transactions cleared through an OCC office in the United States. A new sentence is being added to the definition of "settlement time" to specify that for purposes of the definition the term "international transaction" shall include any Exchange transaction that is deemed to be an international transaction for purposes of section 20 of Article VI of the By-Laws. The reason for this change is described below in the discussion of the new "Interpretation and Policy" to accompany section 20 of Article VI of the By-Laws.

Because transactions executed on the London Exchange may be cleared through OCC offices in the United States, and transactions in foreign currency options executed on PHLX may be cleared through OCC's London office, it is possible that the premiums required to be paid *by* OCC to London Clearing Members on any business day will exceed the premiums paid *to* OCC by London Clearing Members. Accordingly, OCC is in the process of establishing banking arrangements that will allow it to overdraft its settlement account in London in order to pay premiums owed to London Clearing Members pending receipt of premiums from United States Clearing Members at settlement time in the United States. On a few days during the year when the market in one country is open but the market in the other country is not, OCC will borrow funds overnight if needed to make premium settlement.

The definition of "business day" is also being amended to make clear that exercise notices may be tendered in respect of international options, and exercises will be assigned to such options, on any day that is a trading day on either the London Exchange of PHLX. This is necessary to keep the exercise and assignment system in balance. Accordingly, OCC offices in the United States will be open for the purpose of accepting exercise notices on holidays such as the Fourth of July, which is ordinarily a trading day on the London Exchange. The changes in the last sentence of the definition are to conform to the language proposed in File No. SR-OCC-85-16.

The definition of "Exchange transaction" is being amended to eliminate any implication that all options transactions on the London Exchange are within the definition. Options other than IFX options are traded on the London Exchange, and OCC is not the clearing agent in respect of those other options. The definition of "associate clearinghouse" is being amended to provide that an associate clearinghouse acts on behalf of those of its participants that choose to clear international transactions through the associate clearinghouse, whether or not such participants are Clearing Members of OCC. The definition is also amended to specify that the provisions governing the relationship between the associate clearinghouse and OCC are contained in an agreement between OCC and the associate clearinghouse, rather than in the IMA.

The added definitions in section 1 of Article I of the By-Laws have been re-lettered in accordance with a letter dated October 10, 1985, from Ms. Lori R. Burns to the Division of Market Regulation.

Section 6 of Article VI of the By-Laws is being amended to enable authorized Exchange members to give up the name of an associate clearinghouse in respect of international transactions. Section 20 of Article VI is being amended to make

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clear that international transactions may be cleared through an international office at the election of a particular Clearing Member. An "Interpretation and Policy" is being added following section 20 to make it clear that under the IMA all foreign currency options traded on PHLX will be deemed to be "international options" for the purposes of that section, even though initially only options on the British pound will be traded on the London Exchange. This result is required because matched trades in respect of all foreign currency options traded on PHLX will be reported to OCC on the same daily computer tapes and must therefore be cleared through the same clearing system—*i.e.*, the new international clearing system. Conforming changes required for the same reason are being made to subparagraph (bb) of section 1 of Article I of the By-Laws, new Rule 101(p), Rule 204, Interpretation and Policy .06 to Rule 604 and Rule 801(a), and the changes described below to Rule 601(b)(5), new Rule 601(b)(6) and the new Interpretation and Policy to Rule 1602 are influenced by the same considerations.

An "Interpretation and Policy" is being added following section 1 of Article XV of the By-Laws to indicate that certain foreign currency options traded on PHLX have been designated as "international options" pursuant to an international market agreement, and that the By-Laws and Rules applicable to international options are applicable to such options.

The proposed change to Rule 201 specifies that offices maintained by Clearing Members for the purpose of doing business with OCC through an international office will be treated in the same way as offices maintained by Foreign Clearing Members.

Proposed new Rule 310 has been deleted for reasons that are explained below in the discussion of section 9 of the Associate Clearinghouse Agreement.

Proposed new Rule 601(b)(6) has been changed, and new language has been added to Rule 601(b)(5), to clarify that, while there will be no "crossover margin credit" between options that the Corporation deems to be international options for purposes of section 20 of Article VI of the By-Laws and other classes of options, "crossover margin credit" will be available between the various classes of options that the Corporation deems to be international options for the purposes of Section 20 of Article VI of the By-Laws.

The change in paragraph (j) of Rule 601 merely corrects a cross-reference and is unrelated to international options.

In Rule 801, the reference to paragraph (d) as being unchanged is added to conform the configuration of the Rule to that proposed in File No. SR–OCC–85–18.

The new "Interpretation and Policy" following Rule 1602 is intended to supplement the amended definition of "business day" by emphasizing that any day that is a trading day on any Exchange or international market will be treated as a business day for purposes of acceptance and assignment of exercise notices filed in respect of options that the Corporation deems to be international options for the purposes of section 20 of Article VI of the By-Laws.

International Market Agreement

The text of the IMA as set forth in Exhibit 4 has been marked to show the location of changes from the form of the agreement as originally filed with the Commission. The changes on the first page reflect the fact that not all foreign currency options traded on PHLX ("PFX options") will be international options, at least initially. The changes in the second sentence of section 2 are for the same purpose. The change in section 1 is not substantive.

A new sentence has been added to section 2 to specify that, for purposes of clearance and settlement, foreign currency options traded on PHLX which are not international options will be deemed to be international options. This change is dictated by the considerations described above in the discussion of the new "Interpretation and Policy" to accompany section 20 of Article VI of OCC's By-Laws, and it will have the additional consequences for OCC's By-Laws and Rules described in that discussion. The remaining changes in section 2 are stylistic and to correct a typographical error.

Section 3 has been changed to provide that new series of options can be opened only by agreement between the two markets. Section 4, relating to the submission of matched trade information by the London Exchange to OCC, has been amended to delete references to magnetic tape since transmission will be by telecommunication. The London Exchange will be required to submit such information to OCC in Chicago not later than 5:00 P.M. Chicago time rather than 7:00 P.M. London time, as originally stated. The changes in section 6 are stylistic. Section 8, which relates to the furnishing of certain information by the London Exchange to OCC for inclusion in any disclosure document that OCC might be required to prepare, has been amended to reflect OCC's view that, under present law, no disclosure with respect to IFX options traded on the London Exchange will be required. Under the definition of security as set forth in section 2(l) of the Securities Act of 1933 (the "Securities Act") and in section 3(a)(10) of the Securities Exchange Act of 1934 (the "Exchange Act"), an option relating to foreign currency is a security only if it is "entered into on a national security exchange." Because IFX options arising from transactions on the London Exchange will not be "entered into on a national securities exchange," such options are not securities within the meaning of either Act. Accordingly, neither the Prospectus filed by OCC under the Securities Act nor the risk disclosure document distributed pursuant to the Exchange Act will contain specific disclosures relating to LFX options. Section 8 of the IMA nevertheless provides that the London Exchange is obligated to furnish information for inclusion in a disclosure document if OCC should at any time determine that such disclosure is required.

A new sentence has been added to section 9 to make clear that the Associate Clearinghouse Agreement, which is being filed with this Amendment, contains a provision (in section 7(b) of that Agreement) which governs the exchange rate to be applied to British pounds, and the "haircut" to be applied to British "gilts", that are deposited as margin by ICCH.

Former section 11, which contained certain provisions relating to the role of ICCH as an associate clearinghouse, has been deleted from the IMA. The role of ICCH is now set forth in detail in the Associate Clearinghouse Agreement.

Section 11 now provides that OCC will treat as "Market-Makers" under its Rules such persons and firms as are recognized as market makers in LFX options by the London Exchange.

A reference to the Associate Clearinghouse has been deleted from section 13 because all agreements relating to the Associate Clearinghouse are now contained in the Associate Clearinghouse Agreement.

Paragraph (a) of section 14 is amended (i) to reflect the fact that the London Exchange does not file its rules with any regulatory authority, and (ii) to narrow the scope of the provision to those Exchange Rules that relate to contract specifications. A sentence containing the agreement of PHLX and the London Exchange not to list options other than IFX options on any foreign currency that is an underlying foreign currency for IFX Options has also been added to the paragraph.

Section 16 limits OCC's authority and responsibility with respect to certain matters. A non-substantive change has been made in clause (i), and a general provision has been added to the effect that OCC shall have no authority or responsibility to establish or enforce any standard or procedure not fairly contemplated by the IMA.

Section 17 obligates the London Exchange to adopt Exchange Rules establishing time limits for the preparation of exercise notices by its members in respect of IFX options. The Section is being amended to require the London Exchange to establish time limits that are not later than the corresponding time limits contained in the rules of PHLX.

Section 20 has been amended to eliminate the obligation of the London Exchange to provide certain specific information to OCC and to make clear that the London Exchange is not obligated to furnish any information to OCC regarding any Clearing Member except to the extent that the Clearing Member has given its written consent to the release of such information. The change in Paragraph (b) is stylistic.

Subparagraph (a)(i) of section 21 has been amended to make its provisions parallel to those of Subparagraph (b)(i).

Paragraph (b) of section 23 has been amended to clarify its intended meaning. A stylistic improvement has been made to clause (ii) of Paragraph (c), and a new clause has been added that permits PHLX and the London Exchange to open new series of IFX options after a termination of the IMA, so long as each such new series expires on the expiration date of any previously opened series of IFX options. This new provision is intended to give PHLX and the London Exchange the ability to set new exercise prices that take account of then-current market conditions so that the full range of trading strategies remains available to traders until the final expiration date.

Section 24 has been amended to permit the London Exchange to give notices to OCC's London office.

Section 25 has been amended to include a forum selection provision requiring that any action brought by either party against the other relating to the IMA or the transactions contemplated therein shall be brought in federal court in Chicago, Illinois if the federal court has jurisdiction, and shall otherwise be brought in an appropriate Illinois state court in Chicago, Illinois. A typographical error has also been corrected.

Associate Clearinghouse Agreement

OCC has reached an agreement with International Commodity Clearing House Limited ("ICCH") whereby ICCH agrees to act as an associate clearinghouse as defined in the By-Laws and Rules of OCC. ICCH will act on behalf of securities firms that are or become participants in ICCH for the purpose of clearing the transaction and carrying the positions of such firms in IFX options. Under the provisions of the Associate Clearinghouse Agreement, an OCC Clearing Member could choose to clear its transaction in IFX options through ICCH. It is anticipated, however, that most ICCH participants will not be Clearing Members of OCC.

ICCH will function in many respects as a Clearing Member of OCC, and will be deemed to be a Clearing Member under OCC's By-Laws and Rules, except to the extent provided in the Associate Clearinghouse Agreement.

Section 1 of the Associate Clearinghouse Agreement provides that terms used in the Agreement that are defined in the By-Laws and Rules of OCC shall have the same respective meanings as therein.

Section 2 provides that ICCH shall become an associate clearinghouse and, as such, shall not be subject to the requirements of Article V of the By-Laws that are applicable to other Clearing Members.

Section 3 provides that ICCH is bound by amendments to the By-Laws and Rules except that, if ICCH delivers to OCC notice objecting to a particular amendment or proposed amendment to the By-Laws and Rules and gives notice of termination of the Agreement, that OCC shall use its best efforts to delay or suspend the effectiveness of any such amendment, or to exempt ICCH from the effect of such amendment, until the termination has been effected.

Section 4 sets forth a system of subaccounts to be maintained by ICCH on behalf of its participants that is parallel in some respect to the accounts that would be maintained on behalf of such participants if the participants were themselves Clearing Members of OCC. These subaccounts shall consist of Firm Subaccounts, Market-Maker's Subaccounts, Combined Market-Makers' Subaccounts, and Customers' Subaccounts. Paragraph (d) of section 4 provides that long positions in Customers' Subaccounts may be carried as unrestricted long positions only to the extent that ICCH and the affected ICCH Participants warrant to OCC that it is lawful to so carry such long positions and grant OCC a lien on such long positions. In addition, paragraph (e) of section 4 provides for the possible consolidation of Firm Subaccounts of two or more ICCH Participants, or of Market-Maker's or Combined Market-Makers' Subaccounts carried by two or more ICCH Participants, in Omnibus Firm Subaccounts and Omnibus Market-Makers' Subaccounts (as the case may be) provided, among other things, that the respective ICCH Participants and Market-Makers whose positions are commingled in such omnibus accounts have executed an agreement consenting to such commingling.

For each subaccount other than a Customers' Subaccount maintained by ICCH on behalf of an ICCH Participant, OCC will require ICCH and the ICCH Participant to enter into an account agreement with OCC similar in form to the account agreements required by OCC in respect of Market-Maker accounts. Account agreements in respect of Market-Maker's Subaccounts and Combined Market-Makers' Subaccounts shall also be executed by each Market-Maker whose positions are included in the account. Each such account agreement shall provide, among other things, that OCC shall have a lien on all long positions carried in the account. In the case of a Market-Maker's Subaccount or a Combined Market-Maker's Subaccount, the lien shall be limited to obligations of ICCH arising out of the particular subaccount. In the case of a Firm Subaccount, the lien shall extend to any obligation arising from such Firm Subaccount or any obligation arising from any other subaccount maintained by ICCH on behalf of the same ICCH Participant.

To the extent that the Firm Subaccounts of more than one ICCH Participant are consolidated in an Omnibus Firm Subaccount, OCC shall require that ICCH and each such ICCH Participant shall enter into an account agreement with OCC providing, among other things, that OCC shall have a lien on all long positions carried in such Omnibus Subaccount in respect of any obligation arising in any subaccount maintained by any ICCH Participant whose positions are included in the Omnibus Subaccount. In the case of an Omnibus Market-Makers' Subaccount, OCC will require ICCH and each such ICCH Participant whose Market-Maker Subaccount are included in such Omnibus Subaccount, together with each Market-Maker whose positions are included in such Omnibus Subaccount, to enter into an agreement with OCC pursuant to which OCC shall have a lien on all long positions included in such Omnibus Subaccount in respect of any

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obligation of ICCH to OCC arising out of such Omnibus Account.

Section 5 provides the grounds upon which ICCH could be suspended as a clearing member and provides that, in the highly unlikely event of such a suspension, the Rules of Chapter XI shall apply. Section 6 relates to Daily Position Reports and clearing procedures of OCC and is self-explanatory.

Paragraph (a) of section 7 provides that ICCH shall be required to deposit margin on each ICCH Participant Customers' Subaccount as if it were a customers' account and on each Firm Subaccount and Market-Maker Subaccount as if it were a firm or Market-Maker account. OCC may nevertheless require ICCH to deposit margin on each ICCH Participant Subaccount as if it were a Customers' Subaccount if OCC determines that it is impossible or impracticable under applicable laws of the United Kingdom to perfect OCC's security interest on long positions maintained in such account. The reasoning of this provision is that OCC will give margin credit for long positions (as is presently done in the case of Market-Makers' accounts and firm accounts) only to the extent that OCC has a perfected security interest in such long positions.

The provisions of paragraph (b) of section 7 relate to the acceptance by OCC of ICCH margin deposits in the form of British pounds and governmental obligations of the United Kingdom. The provisions of paragraph (b) are self-explanatory.

Section 8 provides that ICCH shall be required to make contributions to OCC's Non-Equity Securities Clearing Fund according to the same formula applicable to other Clearing Members. ICCH will be permitted, however, to make such contributions in the form of British pounds or Gilts if it so chooses.

Section 9 provides that most of the financial requirements contained in Chapter III of the Rules are inapplicable to ICCH. Section 9 sets forth special financial requirements that are appropriate to the unique circumstances of ICCH. As a result the provision that was proposed as new Rule 310 in OCC's Rules has been deleted as no longer necessary.

Section 10 contains certain technical provisions indicating how certain existing provisions of OCC's By-Laws and Rules will apply to ICCH. Paragraph (b) of section 10 exempts ICCH from the disciplinary provisions of Chapter XII of the Rules. OCC believes that it is inappropriate for ICCH to be subject to disciplinary procedures. However, in the event that ICCH is in violation of operational Rules, the problem would be dismissed with ICCH and, if it could not be resolved, OCC would have the right to terminate performance of its obligations related to ICCH's violation on 30 days' notice to ICCH, and would have the additional right to terminate its relationship with ICCH on an additional 15 days' notice. Paragraph (c) reflects an agreement that ICCH may designate Exchange members that are not OCC Clearing Members to compare trades on its behalf.

Section 11 requires that ICCH Participants shall establish a cut-off time for submission of exercise notices in respect of IFX options that is not later than the cut-off time for submission of such exercise notices established in the Rules of PHLX and to establish procedures for allocation of exercise notices in accordance with OCC's Rule 804.

Section 12 relates to clearing fees, the calculation of which will be in accordance with the formula set forth in Schedule A to the Associate Clearinghouse Agreement. These provisions are self-explanatory.

Section 13 contains certain representations and warranties of ICCH and of OCC with respect to execution of the Associate Clearinghouse Agreement. ICCH makes no representation or warranty as to the authority of the government of the United Kingdom under the Protection of Trading Interests Act 1980 to prohibit the performance of any act to be performed by ICCH pursuant to the agreement.

Section 14 contains provisions permitting either party to terminate the agreement on 120 days' prior notice. Section 15 provides for notices delivered by one party to the other, and section 16 relates to miscellaneous matters. The provisions of these sections are self-explanatory.

Item 4. *Self-Regulatory Organization's Statement on Burden on Competition*

OCC is not amending its statement pursuant to this Item 4 as originally filed.

Item 5. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received.

Item 6. *Extension of Time for Commission Action*

OCC does not consent to an extension of the time period specified in section 19(b)(2) of the Exchange Act.

Item 7. *Basis for Summary Effectiveness Pursuant to section 19(b)(3) or for Accelerated Effectiveness Pursuant to section 19(b)(2)*

Not applicable.

Item 8. *Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission*

The proposed rule change is not based on a rule of another self-regulatory organization or of the Commission.

Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 28, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 30, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-2540 Filed 2-4-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/937]

Chairman's Special Ad Hoc Subcommittee of the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the Chairman's Special Ad Hoc Subcommittee of the CCIR National Committee will meet on February 27, 1986 at 9:30 a.m. in Room 6320, Department of State, 2201 C Street, NW., Washington, D.C.

During the 93rd meeting of the CCIR National Committee, the Chairman established a Special Ad Hoc Subcommittee to facilitate the activities of the Committee. The general purpose of this Subcommittee is to obtain both government and private sector input to advise the Chairman on a wide variety of radio issues related to the CCIR National Committee. In the short term, this Special Ad Hoc Subcommittee will focus on preparations for the XVIth CCIR Plenary Assembly, May 1986, especially those items of a general, non-technical nature. In the longer term, the work will address general, non-technical policy issues that encompass multiple study groups.

The purpose of this meeting will be to initiate preparatory work for the VXIth Plenary Assembly and to identify long-term study areas that the Special Subcommittee will address in the future.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact Warren Richards, Department of State (telephone (202) 647-5841). All attendees must use the C Street entrance to the building.

Dated: January 29, 1986.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 86-2522 Filed 2-4-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Revocation of the Section 401 Certificates of Chisum Flying Service of Alaska, Inc., the Hawaii Express, Inc., and Marco Island Airways, Inc.; Section 418 Certificates of Combs Airways, Inc., Gelco Courier Services, Inc., and Hawkins & Powers Aviation, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 86-1-73), Docket 43767.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the section 401 certificates of Chisum Flying Service of Alaska, Inc., The Hawaii Express, Inc., and Marco Island Airways, Inc., and the section 418 certificates of Combs Airways, Inc., Gelco Courier Services, Inc., and Hawkins & Powers Aviation, Inc.

DATES: Persons wishing to file objections should do so no later than February 21, 1986.

ADDRESSES: Responses should be filed in Docket 43767 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 755-3812.

Dated: January 30, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-2514 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-62-M

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 85-12-54 established the currently effective two-month SFFL applicable through January 31, 1986.

In establishing the SFFL for the two-month period starting February 1, 1986, we have projected nonfuel costs based on the year ended September 30, 1985 data, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported by the Department.

By Order 86-1-72 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	1.1116
Latin America	1.3500
Pacific	1.2601
Canada	1.2590

For further information contact: Julien R. Schrenk, (202) 472-5126.

By the Department of Transportation.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-2515 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[FAA Order 6850.26A]

Grants, Availability, etc.; Federal Funding of Visual Glideslope Indicators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of funding policy.

Purpose

This notice announces the FAA's policy on Federal funding of visual glideslope indicators. As required by Pub. L. 99-88, the proposed funding policy, as contained in FAA Order 6850.26A, was published in the Federal Register (50 FR 34573) on August 26, 1985, to provide the public with the opportunity to comment. The original comment period of 30 days was extended to 60 days by notice in the Federal Register (50 FR 39067) dated September 26, 1985.

Background

During the period from 1961 to 1982 the VASI was the U.S. standard system and was the only system eligible for Federal funding. During this period over 3000 runways in the U.S. were equipped with a VASI. Although the VASI was an English developed system, it was not patented and could be made by anyone. All of the systems installed in the U.S. were made by American manufacturers.

In 1978, a system called the Precision Approach Path Indicator (PAPI) was proposed for adoption as a new international standard to replace the VASI. The PAPI is basically a reconfigured VASI with a improved

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signal format and consists of four light units located on a line perpendicular to the runway centerline. The PAPI was thoroughly tested by a number of countries, including the U.S., and was adopted by ICAO as the new international standard in 1982. The VASI will cease to be an international standard on January 1, 1995.

In 1983, the FAA revised its longstanding policy of funding only one standard system. The new policy permitted Federal funding of only the new international system, the PAPI, at international airports while permitting the funding of various types of systems at other than international airports. During the period this policy was in effect, three systems, including the PAPI, VASI, and the Pulsed Light Approach Slope Indicator (PLASI), were made eligible for Federal funding at non-international airports.

The three systems (VASI, PAPI, PLASI) were all in a comparable price range. For federally funded projects, competitive bidding must be followed. Because of their similar price range, any of the three approved systems could be the lowest bid on any particular project. This could result in a situation where a particular airport could have three different systems. As more systems, each employing a different signal format, were expected to be added to the approved list, this problem would have become even more pronounced. Several of the other systems on the market which were expected to be added to the approved list were substantially lower in price than the three original systems on the list. Thus, the competitive bid process would insure that only the lowest cost systems would be funded. This would have effectively eliminated the three original systems (VASI, PAPI, PLASI).

It seemed apparent that the new policy would lead to a proliferation of systems, each having a different signal format. FAA professional opinion did not consider this to be in the best interest of aviation safety. Also, it was felt that pilots need to see the same visual presentation at all airports and expecially when breaking out of a low overcast or approaching a new field at night.

In the critical approach to landing phase, a pilot has many things to do and it was felt by those who considered the issue that pilots should not be unnecessarily burdened with the need to determine which of several different signal formats is presented by the visual glideslope indicator. It was also felt that the use of a standard signal format lessens the pilot's workload by having one less thing to concentrate on, reduces the margin of error, and thereby enhances safety.

One approach that was considered would have limited Federal funding to the three systems previously approved. However, this was not considered the best approach since it would favor some manufacturers while discriminating against others. Also, it would not lead to the desirable goal of standardization. The PAPI was chosen as the new national standard for Federal funding purposes primarily because it is the system that has been adopted by the International Civil Aviation Organization (ICAO) as the standard international system for use by fixed-wing aircraft. It is the policy of the Federal Aviation Administration (FAA), consistent with U.S. obligations under the Convention on International Civil Aviation to implement ICAO standards on international airports, whenever practicable. To select a system other than the PAPI for use at non-international airports would not be consistent with the goal of standardization. The PAPI system is not patented and can be made by anyone. There are currently six U.S. manufacturers who already market or plan to market the PAPI.

One of the most fundamental responsibilities provided for under the Federal Aviation Act of 1958 is to develop a safe aviation system. Inherent in this charge is the wide discretionary latitude to establish standards and regulations that are directed toward accomplishing this goal. It is the firm belief of the FAA that standardization is directly related to safety and that the issuing of an order establishing a standard is necessary to discharge the FAA's statutory duty.

Discussion of Comments

One commenter stated that the FAA had presented no data to prove that standardization enhanced safety. In support of this view it was pointed out that several different lighting configurations were used for other airport lighting systems. Examples cited were that several different configurations of approach lighting systems were used and that runway lighting systems consisted of edge lights, centerline lights, touchdown zone lights, and runway end identifier lights. It was further stated that there were three different systems of runway edge lights and that various colors were used.

As for approach lighting systems, those used for precision approaches are standardized in the sense that the configuration is based on the center row concept and all contain the essential common elements such as centerline crossbars, distance-to-threshold bar, and a green threshold bar. As to runway edge lights, they are standardized in their presentation to a pilot since the only difference is in the light intensity which is based on their use in different visibility conditions. The use of other lighting systems on runways such as centerline lights and touchdown zone lights are necessary to provide additional information to permit operations under very low visibility conditions.

One commenter stated that standardization was not necessary and cited as an example that there is no standardization in aircraft cockpit instruments.

Another commenter, in support of standardization stated that pilots are thoroughly checked out on using the various cockpit instruments but there was no requirement to be familiar with various visual glideslope indicators. One commenter who supported standardization cited a personal experience as follows: "I had personal experience with the problem of nonstandardization the other day. We broke out of an overcast on a nonprecision approach on short final and there to provide visual slope guidance was an indicator I was unfamiliar with. Fortunately, it was fairly easy to figure out (it was a PAPI), but nonetheless, it was distracting at a critical phase of flight. When flying airplanes, the best surprise is no surprise. Trying to decode a different indicator at every airport at night or in marginal weather conditions could easily lead to a disaster."

Several commenters stated there would be no problem with retaining two systems, such as the PAPI and PLASI, since this would not constitute proliferation. However, the FAA has determined that more than one system would conflict with the goal of standardization. By permitting the PLASI system to be funded would not support this goal and in addition would benefit only the one manufacturer holding the patent to that system. To quote the Air Line Pilots Association, "In the final analysis we are convinced that the standardization and safety issues are of paramount importance over all others, and in this instance the FAA has acted correctly in fulfilling its charter to ensure safety of flight and enhance the effectiveness of the aviation industry."

Several commenters stated that standardizing on one system would lead to a lack of competition. Since there are currently at least six manufacturers who are in the process of marketing a PAPI, there would appear to be more than adequate competition. Also, several commenters expressed the view that airport sponsors should be free to select the system of their choice. To permit the selection of a particular manufacturer's product does not foster competition and is not in conformance with procurement guidelines for grant programs as given in OMB Circular A-102, Attachment O.

Summary of Comments

A total of 7,488 public comments were received. All comments received after the close of the comment period but in time to be considered prior to publication of this notice are included. The vast majority of responses, approximately 7,333, were in the form of preprinted postcards which had been distributed by three different organizations in order to solicit views or to enlist support for their respective positions. Major organizations which supported the FAA's position on the need for standardization included the Air Line Pilots Assocation, Air Transport Association, Airport Operators Council International, Allied Pilots Association, Association of Flight Attendents, and the Aviation Safety Institute. Organizations which opposed the FAA's position on standardization included the Aircraft Owners and Pilots Assocation, National Air Transportation Association, National Association of State Aviation Officials, and the aviation departments of the States of Maryland, Alaska, Montana, Nebraska, and New Mexico. On an overall basis, the vast majority of response supported the goal of standardization by a count of approximately 6,518 to 970.

Determination

In consideration of the fact that the vast majority of responses supported the concept of standardization and since no evidence was presented as a valid argument against the need for standardization, the FAA has determined that the funding of only one system, the PAPI, to promote standardization is in the interest of aviation safety. This policy is set forth in the following FAA order number 6850.26A.

FAA Order Number 6850.26A—Visual Glideslope Indicators

1. *Purpose.* This order establishes national policy on Federal funding of visual glideslope indicators which provide visual descent guidance to pilots of landing aircraft.

2. *Distribution.* This order is distributed to the division level in the Office of Flight Standards (sic), Office of Airport Standards, Office of Airport Planning and Programming, Office of Aviation Policy and Plans, Program Engineering and Maintenance Service, Systems Engineering Service, Air Traffic Service, and to the regional Airports, Air Traffic, Airway Facilities, and Flight Standards Divisions.

3. *Cancellation.* Order 6850.26, Visual Approach Slope Indicators, dated May 9, 1983, is cancelled.

4. *Background.*

a. The visual approach slope indicator (VASI) (as described in Order 1010.47B, cancelled October 31, 1982), was selected as the national standard visual glideslope indicator in 1961 and shortly thereafter was adopted as the international standard by the International Civil Aviation Organization (ICAO). To date, over 3000 runways in the United States have been equipped with a VASI. The VASI has been, and continues to be, an effective aid for providing visual descent guidance.

b. An improved version of the VASI, called the precision approach path indicator (PAPI), was recently adopted by ICAO as the new international standard to replace the VASI. The VASI will cease to be an ICAO standard system after January 1, 1995.

5. *Explanation of Changes.* The policy has been revised to promote standardization of visual glidepath indicators by limiting Federal funding to only one system, the PAPI, for use by pilots of fixed-wing aircraft.

6. *Policy.*

a. The PAPI, as described in ICAO Annex 14, Aerodromes, shall be the standard visual glideslope indicator for new installations at U.S. airports when funded under the Facilities and Equipment Program or through the Airport Improvement Program.

b. Existing VASI installations shall remain in service and need not be replaced with the PAPI.

c. Other types of systems, which have been determined operationally suitable by the Office of Flight Standards (sic), may be federally funded for use on heliports or may be installed on airports when non-federally funded.

7. *Responsibilities.*

a. The Office of Flight Standards (sic) shall develop performance characteristics which assure safe and effective visual guidance for all visual glidepath indicators and shall determine acceptability of proposed system concepts for operational use.

b. The Office of Airport Standards shall develop equipment and installation standards for those visual glideslope indicators, which have been determined to be acceptable by the Office of Flight Standards (sic), to be funded under the Airport Improvement Program.

c. The Program Engineering and Maintenance Service shall develop equipment and installation standards for those visual glideslope indicators, which have been determined to be operationally acceptable by the Office of Flight Standards (sic), to be funded under the Facilities and Equipment Program.

d. The equipment specifications and installation standards issued under the Airport Improvement Program and the Facilities and Equipment Program shall be coordinated with the Office of Airport Standards and the Program Engineering and Maintenance Service, respectively, to assure that the agency specifications and standards are uniform in meeting the operational requirements of the Office of Flight Standards (sic).

e. The Office of Aviation Policy and Plans shall have the responsibility for developing establishment, discontinuance, and replacement criteria for visual glideslope indicators to be funded under the Facilities and Equipment Program.

Issued in Washington, DC on January 21, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86-2520 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-13-M

High Density Traffic Airport Slots; Meeting; Correction

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Notice of meeting to assign withdrawal priorities to High Density Traffic Airport Slots; correction.

SUMMARY: On January 28, 1986, the FAA published a notice of a meeting at FAA Headquarters in Washington, DC, to conduct a lottery to assign withdrawal priority numbers to high density airport slots. This notice corrects the date of that meeting to February 11, 1986.

The lottery is being conducted under provisions of a final rule issued by the Secretary of Transportation on December 16, 1985, which will permit the transfer of high density airport slots effective April 1, 1986. The withdrawal priority number lottery is an administrative action which is necessary for implementation of the rule, particularly as it pertains to international and essential air service obligations. This lottery will not result in the withdrawal or transfer of slots.

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DATE: The meeting will be held on Tuesday, February 11, 1986, at 8:30 a.m.

ADDRESS: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, in conference rooms 9A, B, and C on the 9th floor.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Manager, Airspace and Air Traffic Law Branch, AGC-230, Telephone: (202) 426-3691, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTAL INFORMATION:

Availability of Document

Any person may obtain a copy of Amendment No. 93-49, "High Density Traffic Airports; Slots Allocation and Transfer Methods," by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426-8058. Communications must identify the amendment number of the document.

Background

On December 16, 1985, the Department of Transportation issued Amendment No. 93-49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new Subpart S to Part 93 of the Federal Aviation Regulations (FAR), 14 CFR Part 93, Subpart S. The amendment establishes procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under 14 CFR Part 93, Subpart K. The airports are Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that slots will be allocated to those carriers holding the slots as of December 16, 1985, and that unallocated and returned slots will be distributed by lottery. Beginning April 1, 1986, slots may, with certain exceptions, be bought, sold, or traded for any consideration.

In order to honor international obligations and to provide operating authority for carriers providing service under the Essential Air Service (EAS) Program, the rule provides that slots may be withdrawn from domestic operators if needed for international or EAS operations. Slots may also be withdrawn for other agency international needs not foreseen at this time. Slots will be withdrawn for the above purposes, if necessary, in the order of withdrawal priority numbers assigned to each slot. The rule provides that each slot will be assigned a withdrawal priority number by random lottery.

Separate slot pools will be maintained for air carriers and commuter operators at each of the four high density airports. A separate lottery will be conducted for air carriers and for commuter operators at each airport. Once designated, the slot withdrawal priority number for each slot will be permanent. The number will be included in the designation of each slot which will consist of the airport, type of carrier (air carrier or commuter operator), time period, and withdrawal priority number. This number must be included in all communications with the agency concerning that slot, including utilization reports and requests for confirmation of transfers. A list of the withdrawal priority numbers will be made available to the public.

Public Process

This notice announces a meeting to conduct the lotteries to assign slot withdrawal priority numbers for each category of carrier at each high density airport. The meeting is open to the public and all interested persons are invited to attend. The meeting will begin at 8:30 a.m. on Tuesday, February 11, 1986, at FAA Headquarters, in conference rooms 9A, B, and C. The meeting will continue on February 12 if necessary.

No slots will be withdrawn at this meeting. The meeting is being conducted solely for administrative purposes, to assign numbers to individual slots and to fulfill regulatory obligations of the agency under Amendment 93-49.

Lottery Procedures

Procedures for conduct of the lotteries will be as follows.

1. The lotteries will be conducted in the following order:
   (a) Kennedy Airport air carriers.
   (b) Kennedy Airport commuter operators.
   (c) National Airport air carriers.
   (d) National Airport commuter operators.
   (e) LaGuardia Airport air carriers.
   (f) LaGuardia airport commuter operators.
   (g) O'Hare Airport air carriers.
   (h) O'Hare Airport commuter operators.
2. The FAA has prepared a separate list of slots for each airport and carrier category indicating the existing allocation of each slot which was allocated to a carrier on December 16, 1985. Slots are listed in order of hour or half-hour, and within the hour or half-hour in alphabetical order of the carrier to which they are allocated. Unallocated slots are listed at the end of each hour or half-hour. The lists may be obtained by contacting the offic listed above under "Availability of Documents."
3. A slot pool will consist of all air carrier or all commuter slots at a particular airport, including international, EAS, and unallocated slots. A card will be prepared for each slot in a pool, identifying the slot by the hour or half-hour and the current slot holder. (The card will be marked "U" if the slot is not currently allocated).
4. The card for each slot will be placed in a separate envelope. The envelopes will be identical and unmarked. Each envelope will be placed in a drum with all other envelopes for the same slot pool.
5. The envelopes will be drawn from the drum, one at a time, by a representative of the Office of the Secretary or the Federal Aviation Administration. As each envelope is drawn, the slot identification will be announced and recorded, and the number of the selection will be assigned to that slot as its slot withdrawal priority number. The first slot drawn will be withdrawal priority number 1, the second drawn will be withdrawal priority number 2, and so on.
6. Example: The drawing for air carriers at National Airport begins as follows:

The first slot drawn has an identifier of Eastern Air Lines 1800. The permanent designation of that slot becomes "DCA/A/1800/0001." (The identifier of the holder—"EA"—may be added to the end of the permanent designation but would change if the slot is transferred.) This slot would be the first National Airport air carrier slot to be withdrawn if an 1800 air carrier slot at National satisfied the need for which the slot was being withdrawn.

The second slot drawn is identified as United Airlines 0900. The permanent designation would be recorded as "DCA/A/0900/0002."

7. Each lottery will continue until all slots for that slot pool are assigned withdrawal priority numbers.
8. The meeting will continue until all slot pools receive slot allocation priority sequences.
9. In accordance with 14 CFR 93.223(d), if an operator has more than one slot in a specific time period in which it also has one or more slots being used for international or essential air service operations, the slots used for international or EAS service shall be assigned the lowest priority (i.e., the last to be withdrawn) of that carrier's slots in that hour.

Issued in Washington, DC, on January 30, 1986.

Edward P. Faberman,
Acting Chief Counsel.

[FR Doc. 86-2519 Filed 2-4-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 86-14]

Revision of Criteria for Establishing Ports of Entry and Stations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Revised Criteria.

SUMMARY: This notice is to advise the public that Customs has revised the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. The revision set forth in this document modifies and expands upon certain criteria which Customs has followed since 1982 in evaluating these requests. It reflects the increased minimum value for commercial entries and deletes any reference to informal entries. In addition, the revision requires a commitment by any applicant that is attempting to qualify for port or station status by satisfying the cargo workload standard (2,500 consumption entries), to make optimal use of electronic data transfer capability to permit integration with Customs Automated Commercial System.

The revised criteria will permit Customs to obtain more efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

By T.D. 82-37, published in the **Federal Register** on March 9, 1982 (47 FR 10137), Customs set forth the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. Under the heading "Criteria" of T.D. 82-37, number (2)(b) states the following:

> (2) The actual or potential Customs workload (minimum number of transactions per year), in the area must be: (b) 2,500 consumption entries (formal (over $250 in Customs value));"

Since the publication of T.D. 82-37, Customs has implemented the Automated Commercial System (ACS) which provides a means for the electronic processing of entries of imported merchandise. ACS is a national teleprocessing system that encompasses approximately 2,000 programs and processes 250,000 transactions per day. ACS includes a number of interdependent modules and computer-to-computer interfaces with the private sector which, together, automatically process enforcement and statistical data spanning the full range of Customs processing for imported merchandise. Current ACS modules are Antidumping and Countervailing Duty, Automated Broker (Importer) Interface, Bonds, Collections and Revenue, Drawback, Entry Summary Processing, Fines, Penalties and Forfeitures, In-bond, Information Exchange, Liquidations, Manifests, Protests, Quota, Carrier and Port Authority Interfaces, Cargo and Entry Summary Selectivity, and Warehouse. It is anticipated that ACS will be fully operational in 1987. To take full advantage of the potential of ACS to expedite the entry of imported merchandise, in determining whether to grant requests for the establishment of Customs ports and stations, Customs will now require a commitment by the applicant port or station to make optimal use of electronic data transfer capability to permit integration with ACS.

In an unrelated matter, by section 206 of Pub. L. 98-573, the Trade and Tariff Act of 1984, Congress amended § 498(a)(1), Tariff Act of 1930, (19 U.S.C. 1498(a)(1)), by increasing the statutory limit for informal Customs entries from $250 to $1,250. After thorough consideration of the issue, Customs determined that, with the exception of specific exclusions, the informal limit for all articles would be set initially at $1,000, with the option to increase it to $1,250 in the future. This change was reflected in amendments to the Customs Regulations published as T.D. 85-123 in the **Federal Register** on July 23, 1985 (50 FR 29949). Accordingly, a further criteria revision reflects the increased minimum value of $1000 for commercial entries, instead of $250. In addition, all references to informal entries in the criteria are deleted since they are not a factor in determining potential cargo activity. As a result of these changes, number 2(b) under "Criteria" listed in T.D. 82-37, is revised to read as follows:

> (b) 2,500 consumption entries (each valued over $1000). The applicant must commit to optimal use of electronic data input means to permit integration with any Customs system for electronic processing of entries.

These changes will permit Customs to obtain more efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

All of the other criteria in T.D. 82-37 will continue to be used in evaluating requests for new service.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved: January 10, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 86-2400 Filed 2-4-86; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 86-15]

Country of Origin Marking of Imported Pipe and Pipe Fittings of Iron or Steel

AGENCY: U.S. Customs Sevice, Department of the Treasury.

ACTION: Notice of Required Alternative Marking Methods.

SUMMARY: In a notice previously published in the **Federal Register**, Customs acknowledged that certain pipe and pipe fittings of iron or steel cannot be marked with the country of origin by any of the methods prescribed by section 207 of the Trade and Tariff Act of 1984, without rendering such articles unfit for the purpose for which they are intended or violating industry standards for such articles. The notice solicited public comments as to which pipe and pipe fittings of iron or steel cannot be marked by any of the prescribed methods. This document sets forth which articles may be exempted from the marking methods prescribed by section 207 and are eligible for marking by alternative methods.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1984, the President signed Pub. L. 98-573, the Trade and Tariff Act of 1984, which made numerous changes to the Tariff Act of 1930. Section 207 of Pub. L. 98-573

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amended section 304, Tariff Act of 1930, (19 U.S.C. 1304), requiring, without exception, that all imported pipe and pipe fittings of iron or steel be permanently marked to indicate the proper country of origin of the article by means of die stamping, cast-in-mold lettering, etching, or engraving.

Pursuant to 19 U.S.C. 1304, every article of foreign origin, or its container, imported into the U.S., shall be marked in a conspicuous place as legibly, indelibly, and permanently *as the nature of the article or its container will permit*, in such a manner as to indicate to an ultimate purchaser in the U.S. the English name of the country of origin of the article, unless specifically exempted. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304.

It was brought to Customs attention that certain pipe and pipe fittings of iron or steel cannot be marked by any of the four prescribed methods without rendering such articles unfit for the purpose for which they are intended or violating industry standards for such articles.

Under the laws of statutory construction, section 207 and 19 U.S.C. 1304, which it amends, should be read in *pari materia*, so that pipe and pipe fittings which by their nature will not permit marking by any of the four prescribed methods will not be barred from entering the U.S. Such a construction would allow for alternative methods of marking, such as stencilling or tagging in bundles. Accordingly, by a document published in the Federal Register on January 9, 1985 (50 FR 1064), Customs solicited public comments as to which pipe and pipe fittings of iron or steel cannot be marked by any of the means prescribed in section 207 without rendering such articles unfit for the purposes for which they were intended or violating industry standards for such articles.

Customs has already taken the position that the new marking requirements will apply to iron or steel pipes, tubes, and blanks therefor, as defined in Headnote 3(e), Schedule 6, Part 2, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), which covers tubular products, including hollow bars and hollow billets, of any cross-sectional configuration, by whatever process made, whether seamless, brazed, or welded, and whether with an open or lock seam or joint, of the kind classifiable under items 610.30–610.58, 688.30, TSUS. However, it does not include hollow drill steel of the kind defined in Headnote 3(e), Schedule 6, Subpart 2B, TSUS, and classifiable under items 607.05–607.09, TSUS. By a correction document published in the Federal Register on January 31, 1985 (50 FR 4524), Customs stated that the new marking requirements of section 207 will also apply to pipe and tube fittings of iron or steel (bends, branches, drains, reducers, etc.) of the kind classifiable under items 610.62–610.93, 688.32, TSUS, as well as those pipe and tube fittings of iron or steel of the kind classifiable under items 606.71 and 606.73, TSUS.

Required Alternative Marking List

After reviewing the numerous comments received in response to the notice and the best technical information available, Customs has identified certain categories of articles which cannot be marked by any of the methods prescribed by section 207 without impairing the articles with respect to their intended use, or without violating applicable industry standards. The categories of articles so identified were listed and communicated in the form of a telex to Customs field offices on March 18, 1985, and subsequently amended by telexes dated April 15, 1985, and May 13, 1985. Copies of those telexes were made available to all interested parties. The purpose of this notice is to publish in a final and definitive format the categories which may be marked to indicate their country of origin by methods other than those prescribed by section 207.

Inasmuch as this notice is merely a restatement of existing requirements and contains no substantive changes in the previously adopted rules, and because the requirements of section 207 became effective on November 14, 1984, no delayed effective date is necessary.

Categories of Articles Exempted From Section 207 Marking Requirements Thin-Walled Pipes and Fittings

Carbon and low-alloy steel tubing or fittings with wall thickness less than .08 inch (this exception is provided because the statutory methods of marking would be illegible on the relatively rough surfaces of these articles).

High-alloy (nickel, chromium, molybdenum, or combinations thereof) articles which have wall thicknesses less than .08 inch and which the importer certifies (in writing to the district director) will actually be used in an application or environment in which marking by a statutory method would substantially diminish or destroy the utility of the articles.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Small-Diameter Pipes and Fittings

Fittings having nominal diameters of one-fourth inch or less.

Pipes having inner diameters of 1.9 inches or less.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Other Fittings

Fittings which meet American Petroleum Institute (API) specifications (or equivalent mill specifications) 5AC or higher, including 5AX and 5AQ.

High-alloy (nickel, chromium, molybdenum, or combinations thereof) fittings ordered to National Aeronautic and Space Administration (NASA) or military specifications which prohibit marking by any of the statutory methods.

Small galvanized iron fittings of the following types [dimensions stated are nominal diameters]:

Elbows 90 degree—one-eighth and one-fourth inch.

Elbows 45 degrees—one-eighth and one-fourth inch.

Street elbows 90 degrees—one-eighth and one-fourth inch.

Street elbows 45 degrees—one-eighth and one-fourth inch.

Tees—one-eighth and one-fourth inch.

Crosses—one-eighth and one-fourth inch.

Couplings (sockets)—one-eighth and one-fourth inch.

Locknuts—one-eighth, one-fourth, three-eighths, and one-half inch.

Bushings—one-fourth by one-eighth, three-eighths, by one-eighth, three-eighths by one fourth, one-half by one-eighth, one-half by one-fourth, one-half by three-eighths inch.

Unions—one-eighth, one-fourth, and three-eighths inch.

Caps—one-eighth, one-fourth, three-eights, and one-half inch.

Plugs—one-eighth, one-fourth, three-eighths, one-half, three-fourths, and one inch.

Reducing elbows—one-fourth by one-eighth inch.

Reducing tees—one-fourth by one-eighth inch.

Reducing coupling—one-fourth by one-eighth inch.

Spun iron fittings with a Brinell hardness number in excess of 500 (five hundred).

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Oil Country Tubular Goods

Oil Country Tubular Goods (OCTG) which meet API specifications (or equivalent mill specifications) 5AC or higher, including 5AX and 5AQ.

Solution-annealed austentitic ferritic duplex stainless steel.

"Green" tubes which are two and seven-eighths inches or smaller in outer diameter, and which are certified by the importer (in writing to the district director) to be for redrawing.

Required alternative marking method: paint stencilling.

Line Pipe

High-test line pipe meeting API specifications (or equivalent mill specifications) 5L grades X–42 and higher.

Pipe meeting API specification (or equivalent mill specification) 5LU.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Mechanical Tubing

Mechanical tubing which meets American Society of Testing and Materials (ASTM) specification A–511, A–512, A–513, A–519, A–554, A–787, or A–789.

Any other such articles for which the importer certifies (in writing to the district director) that the tubing will actually be used in an application or environment in which marking by a statutory method would substantially diminish or destory the utility of the tubing.

Required alternative marking method: paint stencilling.

Coated Pipe

Galvanized, plastic-coated, aluminized, galv-alum, porcelain enamel-coated, and vinyl-coated pipe.

Required alternative marking method: paint stencilling, or tagging of bundles or containers.

"Mother" Tubes

So-called "mother" tubes which are certified by the importer (in writing to the district director) to be for redrawing.

Required alternative marking method: paint stencilling.

Structural Pipe

Structural pipe which meets API specifications (or equivalent mill specifications) 2H and 2B.

Required alternative marking method: Paint stencilling.

Pressure Tubing

Pressure tubing which meets ASTM specification A–161, A–178, A–179, A–192, A–199, A–200, A–209, A–210, A–213, A–214, A–226, A–249, A–250, A–333, A–334, A–423, A–557.

Tubing for which the importer certifies (in writing to the district director) that it is for actual use in an application or environment in which marking by one of the statutory methods would substantially diminish or destroy the utility of the tubing.

Required alternative marking method: paint stencilling.

Ornamental Pipes, Tubes, and Fittings

Ornamental pipes, tubes, and fittings of all types, having highly polished surfaces.

Required alternative marking methods: Each piece is separately marked with a durable tag or sticker securely affixed to the article, or is separately wrapped in a protective wrapping which clearly indicates the country of origin.

Spun Iron Pipe

Spun iron pipe with a Brinnel hardness number of 500 or more.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: January 22, 1986.

Francis A. Keating, II

Assistant Secretary of the Treasury.

[FR Doc. 86–2401 Filed 2–4–86; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the Federal Register notifying the public that such a submission has been made. USIA is requesting approval of an information collection which requires organizations or individuals interested in promoting German-American contacts to complete a form to be used by USIA's German-American Contacts Staff in preparing a directory of such organizations.

DATE: Comments must be received by February 18, 1986. If you intend to comment but cannot prepare comments before the deadline, please advise the OMB Reviewer and the Agency Clearance Officer promptly.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA clearance officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, attention Desk Officer for USIA.

FOR INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485–8676. And OMB review: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: Title: "German-American Directory". USIA has created a German-American Contacts Staff to encourage and disseminate information on educational, cultural, professional and social contacts and exchanges between the United States and the Federal Republic of Germany. In pursuit of this goal, USIA will create a directory of German-American organizations which can be used to simplify establishing contracts between such groups and save a considerable amount of research and staff time for those interested in making such contacts.

Dated: January 22, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–2618 Filed 2–4–86; 8:45 am]

BILLING CODE 8230–01–M

VOL 51 ISS 24 FE 5 1986 UMI

Sunshine Act Meetings

Federal Register
Vol. 51, No. 24
Wednesday, Feburary 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Federal Deposit Insurance Corporation	1, 2
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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, February 10, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Mission Thrift and Loan Association, an operating noninsured industrial bank located at 1765 4th Avenue, San Diego, California.

Marine Merchant Bank and Trust Company, Ltd., an operating noninsured bank located at Hyatt Regency Office Plaza, Suite 4, Garapan, Saipan, Commonwealth of the Northern Marianas Islands.

Application for consent to purchase assets and assume liabilities and to establish one branch:

Reeves Bank, Beaver Falls, Pennsylvania, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Moon Township Branch of Colony First Federal Savings and Loan Association, Monaca, Pennsylvania, a non-FDIC-insured institution, and for consent to establish that office as a branch of Reeves Bank.

Request for reconsideration of a previous denial of an application to convert into a non-FDIC-insured institution:

The Business Bank, Vienna, Virginia

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 39,410-L
The First National Bank of Midland, Midland, Texas
Memorandum and Resolution re:
First National Bank of Oak Lawn, Oak Lawn, Illinois

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Resolution amending the current delegations of authority with respect to liquidation and receivership activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: February 3, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-2649 Filed 2-3-86; 3:10 pm]
BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANACE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, February 10, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussions of these matters will occur at the meeting.

Discussion Agenda:

Request for modification of a condition imposed in granting Federal deposit insurance:

Universal Trust Company, San Juan, Puerto Rico.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 - 17th Street, NW., Washington, DC.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: February 3, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-2650 Filed 2-3-86; 3:11 pm]
BILLING CODE 6714-01-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 Noon, Monday, February 10, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 3, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-2617 Filed 2-3-86; 12:24 pm]
BILLING CODE 6210-01-M

4

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Thursday, February 6, 1986 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   a. Certain laser inscribed diamonds and the method of inscription thereof. (Docket no. 1273).
5. Any items left over from the previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 86-2551 Filed 2-3-86; 9:28 am]
BILLING CODE 7020-02-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 3, 10, 17, and 24, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 3

Thursday, February 6

2:00 p.m.
Affirmative/Discussion and Vote (Public Meeting)
a. Review of ALAB-826 (In the Matter of Metropolitan Edison Company)
b. Final Rule, "Limitation on the Use of Highly Enriched Uranium (HEU) in Research and Test Reactors" (Tentative) (Postponed from January 29)

Friday, February 7

2:00 p.m.
Briefing on Staff Activities Regarding TVA (Public Meeting)

Week of February 10—Tentative

Tuesday, February 11

10:30 a.m.
Classified Security Briefing (Closed—Ex. 1)
10:45 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing by AIF on Technical Specification Improvements (Public Meeting)

Wednesday, February 12

2:00 p.m.
Discussion of Staff Recommendations on Enforcement Policy (Public Meeting)

Thursday, February 13

2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of February 17—Tentative

Tuesday, February 18

2:00 p.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)

Wednesday, February 19

10:00 a.m.
Staff Briefing on Integrated Safety Assessment Program (Public Meeting)

Thursday, February 20

10:00 a.m.
Report on Safety Goal Evaluation (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, February 21

10:00 a.m.
Briefing by Southern California Edison Co. on San Onofre (Public Meeting)

Week of February 24—Tentative

Monday, February 24

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, February 25

10:00 a.m.
Briefing by Incident Investigation Team on Status of Rancho Seco (Public Meeting)

Wednesday, February 26

10:00 a.m.
Briefing on NUMARC Initiatives (Public Meeting)

Thursday, February 27

10:00 a.m.
Discussion of DOE High Level Waste Program (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Intervenors' Motion for Cancellation of Shoreham Emergency Planning Exercise" and "Order on ALAB-812 (In the Matter of Louisiana Power & Light Company, Waterford, Unit 3)" (Public Meeting) was held on January 29.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Dated: January 30, 1986.
Andrew L. Bates,
Office of the Secretary.
[FR Doc. 86-2543 Filed 1-31-86; 4:23 pm]
BILLING CODE 7590-01-M

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federal register

Wednesday
February 5, 1986

Part II

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs
Administrative Conference of the United States
Advisory Committee on Federal Pay
Advisory Commission on Intergovernmental Relations
Department of Energy
Office of the Federal Inspector for the Alaska Natural Gas Transportation System
Export-Import Bank of the United States
Consumer Product Safety Commission
International Trade Commission
International Development Cooperation Agency, Agency for International Development
Arms Control and Disarmament Agency
International Boundary and Water Commission, United States and Mexico—United States Section
Board for International Broadcasting
American Battle Monuments Commission
National Foundation on the Arts and the Humanities, National Endowment for the Humanities
National Foundation on the Arts and the Humanities, Institute of Museum Services
National Commission on Libraries and Information Science
National Transportation Safety Board
Marine Mammal Commission

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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 326

ADVISORY COMMITTEE ON FEDERAL PAY

5 CFR Part 1411

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 CFR Part 1701

DEPARTMENT OF ENERGY

10 CFR Part 1040

OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

10 CFR Part 1535

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 410

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1033

UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 219

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 607

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO—UNITED STATES SECTION

22 CFR Part 1103

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1304

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 406

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Part 1175

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

45 CFR Part 1181

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

45 CFR Part 1706

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 807

MARINE MAMMAL COMMISSION

50 CFR Part 550

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

AGENCIES: Administrative Conference of the United States; Advisory Committee on Federal Pay; Advisory Commission on Intergovernmental Relations; Department of Energy; Office of the Federal Inspector for the Alaska Natural Gas Transportation System; Export-Import Bank of the United States; Consumer Product Safety Commission; United States International Trade Commission; International Development Cooperation Agency, Agency for International Development; Arms Control and Disarmament Agency; International Boundary and Water Commission, United States and Mexico—United States Section; Board for International Broadcasting; American Battle Monuments Commission; National Foundation on the Arts and the Humanities, National Endowment for the Humanities; National Foundation on the Arts and the Humanities; Institute of Museum Services; National Commission on Libraries and Information Science; National Transportation Safety Board; Marine Mammal Commission.

ACTION: Final rule.

SUMMARY: This regulation requires that the agencies listed above operate all of their programs and activities to ensure nondiscrimination against qualified handicapped persons. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for handicapped person and qualified handicapped person, and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

EFFECTIVE DATE: April 7, 1986.

FOR FURTHER INFORMATION CONTACT: See individual agencies below. Copies of this regulation are available on tape for those with impaired vision. They may be obtained from the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

SUPPLEMENTANY INFORMATION:

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the following agencies (hereinafter "the agencies): Administrative Conference of the United States; Advisory Committee on Federal Pay; Advisory Commission on Intergovernmental Relations; Department of Energy; Office of the Federal Inspector for the Alaska Natural Gas Transportation System; Export-Import Bank of the United States; Consumer Product Safety Commission; United States International Trade Commission; International Development Cooperation Agency, Agency for International Development; Arms Control and Disarmament Agency; International Boundary and Water Commission, United States and Mexico—United States Section; Board for International Broadcasting; American Battle Monuments Commission; National Foundation on the Arts and the Humanities, National Endowment for the Humanities; National Foundation on the Arts and the Humanities, Institute of Museum Services; National Commission on Libraries and Information Science; National Transportation Safety Board; Marine Mammal Commission. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) [amendment italicized])

On January 11, 1984, eighteen agencies jointly published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. 49 FR 1450. Each agency individually received comments on the NPRM. In addition, each agency considered the Department of Justice's (DOJ) Supplemental Notice, published March 1, 1984 (49 FR 7792), as part of its rulemaking record. After analysis of the comments received by the individual agencies, DOJ's Supplemental Notice, and the final section 504 regulation that DOJ issued for its own programs and activities, the agencies participating in this publication decided to adopt this final rule. Because this rule is identical for all the participating agencies, they are able to publish it jointly, and are doing so in order to minimize costs and expedite its issuance. The rule adopted by each agency will be codified in that agency's portion of the Code of Federal Regulations, as indicated in the information provided for the individual agencies below.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies be submitted to the appropriate authorizing committees of Congress and that such regulations take effect no earlier than the thirtieth day after they have been so submitted. The Department of Justice, on behalf of the agencies participating in this joint rulemaking, is submitting these regulations to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and to the House Committee on Education and Labor and its Subcommittee on Select Education. Each regulation will become effective on April 7, 1986.

One commenter said that the agency should have tailored the regulation to its particular programs and activities instead of adopting the Justice Department's prototype. The agencies participating in this publication have found that the programs that they conduct are not so unique as to require special regulatory language and that this regulation is therefore appropriate for them.

Several commenters suggested that the agency adopt the changes discussed by the Department of Justice in its Supplemental Notice. One of these suggested that, in order to ensure adequate public notice of these changes, the agency should publish a second Notice of Proposed Rulemaking. The agency has adopted the changes, but does not believe that a second NPRM is necessary. As the Court of Appeals for the District of Columbia stated in *Air Transport Association of America* v. *CAB*, 732 F.2d 219, 224 (D.C. Cir. 1984), "the statutory duty to submit a proposed rule for comment does not include an obligation to provide new opportunities for comment whenever the final rule differs from the proposed rule." Notice is intended to inform interested persons of the subjects and issues under consideration so that they can address their comments to them. *See, e.g., Small Refiner Lead Phase-Down Task Force* v. *EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983); *BASF Wyandotte Corp.* v. *Costle*, 598 F.2d 637, 642–644 (1st. Cir. 1979) and cases there cited. We believe that the changes suggested in the Supplemental Notice and incorporated in this final rule are a "logical outgrowth" of the proposed rule, *Air Transport Association* at 224, so that an additional notice is not required. The Supplemental Notice itself was included as a comment in the public record before the close of the comment period, and several commenters did, in fact, discuss it in their comments.

The substantive nondiscrimination obligations of the agencies, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this final rule and the Federal government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

This interpretation is supported by the recent decision of the Supreme Court in *Alexander* v. *Choate*, 105 S. Ct. 712 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requries only "reasonable" modifications, 105 S. Ct. at 721, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" (*id.*, n.21) (emphasis added).

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation consistent with the Federal government's section 504 federally assisted regulations, as interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis*, subsequent lower court cases interpreting *Davis*, and *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agencies believe that there are no significant differences between this final rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298).

It has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. The regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis and Response to Comments

Section .101 Purpose

Section .101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended

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section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

No comments were received on this section and it remains unchanged from the proposed rule.

Section .103 Definitions

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Auxiliary aids are addressed in § .160(a)(1). Comments on the definition of "auxiliary aids" are discussed in connection with that section.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (*see* § .170(g)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted. As explained in DOJ's Supplemental Notice, the term "facility," as used in this regulation, refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. Sixty commenters supported the clarification of this issue in the Supplemental Notice. The term "facility" is used in §§ .149, .150, and .170(f).

"Handicapped person." The definition of "handicapped person" has been revised to make it identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) of the definition states that a "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment is a handicapped person who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision.

In *Davis*, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

One comment received by the agencies said that provision of a sign language interpreter or relocation of a service could be considered a fundamental alteration in the nature of a program of activity. The agency believes that the specific provisions of the regulation on program accessibility and communications clearly establish that, absent some unusual circumstance, such an interpretation would be incorrect.

"Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § .140. Nothing in this part changes existing regulations applicable to employment.

The definition of "qualified handicapped person" has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in subparagraph .150 (a)(2) and paragraph .160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a

fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

Subparagraph (2) of the definition adopts the existing definition in the coordination regulation of "qualified handicapped person" with respect to services for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this part of the definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section .110 Self-evaluation

This section requires that the agency conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance [28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

In response to preliminary comments that the proposed DOJ rule had no specific criteria for conducting a self-evaluation, the Department requested comment on a proposed alternative in its Supplemental Notice (49 FR at 7792). It received 64 comments, 57 of which were positive. The comments generally favored adoption of the alternative section, instead of the proposed section. The agency agrees.

This final rule uses the same provision adopted by the Department of Justice in its final rule implementing section 504 for its federally conducted programs. 28 CFR 39.110. The Department of Justice determined that this regulatory language was appropriate after it analyzed the Federal Advisory Committee Act (5 U.S.C. app.), Executive Order 12024, and 41 CFR Part 101–6, the regulation of the General Services Administration implementing the Act.

This final rule provides that the agency shall provide an opportunity for interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written).

Section .111 Notice

A commenter criticized the omission of a paragraph routinely used in section 504 regulations for federally assisted programs requiring recipients to inform interested persons of their rights under section 504. The agency has incorporated the new provision on notice from DOJ's Supplemental Notice into the final rule. It appears as § .111.

Section .111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section .111 is, in fact, a broader and more detailed version of the proposed rule's requirement (at § .160(d)) that the agency provide handicapped persons with information concerning their rights. Because § .111 encompasses the requirements of proposed § .160(d), that latter paragraph has been deleted as duplicative.

Section .130 General prohibitions against discrimination

Section .130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule.

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § .130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § .130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicaped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumption that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of irrebuttable presumptions is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ .149– .151) and communications (§ .160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate of different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necesssary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate of different aids, benefits, or services would be more effective, subparagraph (b)(2) provides that a qualified person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

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Subparagraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § .130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

One commenter recommended that the agency include the provision on licensing and certification from the Department of Justice's regulation. None of the agencies participating in this joint publication conduct licensing or certification programs. That provision was not included in the proposed rule, and is not included in this final rule because it is not applicable to the agency's programs.

This regulation does not include the paragraph of the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization, that discriminates. To the extent that assistance from the agency would provide significant support to an organization, it would constitute Federal financial assistance, and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

Section .140 Employment

Section .140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 622 F.2d at 304. Accordingly, § .140 (Employment) of this rule adopts the definitions, requirements and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, § .170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

The final rule has not been changed, except that a reference to the Equal Employment Opportunity Commission has been added. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp. p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section .149 Program accessibility: Discrimination prohibited

The proposed regulation did not contain a general statement of the program accessibility requirement similar to that appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.56). In order to remedy the misperception that a change in substance was intended, the final rule has been revised to include a general program accessibility statement. The language appears at § .149.

Section .150 Program accessibility: Existing facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § .150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible and to usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ .150(a)(1)). However, § .150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ .150(a)(2)).

The "undue financial and administrative burdens" language (found at §§ .150(a)(2) and .160(d)) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association* v. *Lewis, supra* (*APTA*).

This interpretation is also supported by the Supreme Court's recent decision in *Alexander* v. *Choate*, 105 S.Ct. 712 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court rejected the defendants' argument that section 504 prohibits only intentional discrimination, but held that the reduction was not "the sort of disparate impact" discrimination prohibited by section 504 or its implementing regulation (*id.* at 720).

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers" (*id.* at 721) and that *"reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." (*Id.*, n.21) (emphasis added). However section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' . . . or that would constitute 'fundamental alteration(s) in the nature of a program.' " (*id.*, n.20) (citations omitted).

Because *Alexander* was decided after the comment period on the proposed regulation closed, the agency would have allowed additional comments if it believed that a change in the proposed rule was necessary. *Alexander*, however, supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus the failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This provision is therefore unchanged from the proposed rule.

Some commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. This view overlooks the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982). In addition, the Court in *Alexander* held that the "administrative costs" of subjecting any action affecting Medicaid recipients to a detailed analysis of its effects on handicapped people "would be well beyond the accommodations that are required under *Davis.*" (105 S.Ct. at 725).

The Department of Justice carefully considered the comments on the process that the Department should follow in determining whether a program modification would result in undue financial and administrative burdens and adopted procedural requirements for application of the "fundamental alteration" and "undue financial and administrative burdens" language. The agency is also adopting those requirements. The agency believes that, in most cases, making an agency program accessible will not result in undue burdens. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity are to be considered. The burden of proving that compliance with § .150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § .170. Finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the agency must still take action, short of that outer limit, that will open participation in the agency program to disabled persons to the fullest extent possible.

A commenter argued that the decision that an action would result in undue burdens should be based on the resources of the agency as a whole. The agency believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the agency's budget can be earmarked for specific purposes and are simply not available for use in making the agency's programs accessible to disabled persons.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section .151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section .151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

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Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § .150.

This regulation does not require that buildings leased after the effective date of the regulation meet the new construction standards of § .151, rather than the program accessibility standard for existing facilities in § .150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings. The question of whether buildings leased by the U.S. Postal Service and subject to the Architectural Barriers Act must be accessible at the time of leasing is the subject of litigation now pending before the courts. The agencies may provide more specific guidance on the accessibility of leased buildings after the litigation is concluded.

Section .160 Communications

Section .160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps include procedures for determining when auxiliary aids are necessary under § .160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ .160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § .160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Dovis* and the circuit court opinions interpreting it (*see supra* preamble § .150(a)(2)). Unless not required by § .160(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

One commenter argued that the communications section should require that communications for handicapped people be "equal" to those for non-handicapped people, not merely "effective." The regulation requires the agency to provide auxiliary aids to ensure that handicapped people have "an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency." Where the form of communication is different for handicapped people than for non-handicapped people (*e.g.*, oral instead of written for blind people, sign language instead of speech for deaf people) the effectiveness of the communication is the only appropriate measurement of equality of treatment.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids when several different modes are effective.

When sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ .160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

A commenter suggested that the language in proposed § .160(a)(1)(ii) that states that the agency need not provide individually prescribed devices or readers for personal use or study be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted because it is less clear than the existing formulation, which is intended to distinguish between communications that are necessary to obtain the benefits of Federal programs and those that are not, and which parallels the requirements of the Federal Government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section .170 Compliance procedures

One commenter suggested that the agency adopt the more comprehensive compliance procedures adopted by the Department of Justice in its regulation. The Department of Justice included very detailed procedures that were tailored to its needs and abilities. The procedures in this rule are less detailed and more suitable for adoption by small agencies with limited enforcement capacities. The procedures adopted in this regulation follow the same basic scheme as those in the Department of Justice's rule. To the extent that additional procedural guidance is appropriate to the agency, the agency will adopt it in the form of internal guidelines.

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) of the proposed rule provided that the head of the agency would designate an official to be responsible for coordinating implementation of this section. Since the proposed rule was published, the Office of the Federal Register has developed a method whereby individual agencies participating in a joint publication may amend the jointly published regulatory text to incorporate individual variations. Accordingly, some of the participating agencies are making that designation through this publication and are also providing an address to which complaints may be sent.

The agency is required to accept and investigate all complete complaints (§ .170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ .170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ .170(g)). One appeal within the agency shall be provided (§ .170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ .170(i)).

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 326

FOR FURTHER INFORMATION CONTACT:
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List of Subjects in 1 CFR Part 326

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 1 of the Code of Federal Regulations is amended as follows:

1. Part 326 is added as set forth at the end of this document.

PART 326—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Sec.
326.101 Purpose.
326.102 Application.
326.103 Definitions.
326.104–326.109 [Reserved]
326.110 Self-evaluation.
326.111 Notice.
326.112–326.129 [Reserved]
326.130 General prohibitions against discrimination.
326.131–326.139 [Reserved]
326.140 Employment.
326.141–326.148 [Reserved]
326.149 Program accessibility: Discrimination prohibited.
326.150 Program accessibility: Existing facilities.
326.151 Program accessibility: New construction and alterations.
326.152–326.159 [Reserved]
326.160 Communications.
326.161–326.169 [Reserved]
326.170 Compliance procedures.
326.171–326.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 326 is further amended by revising paragraph (c) in § 326.170 to read as follows:

§ 326.170 Compliance procedures.

* * * * *

(c) The General Counsel shall be responsible for coordinating implementation of this section. Complaints may be sent to General Counsel, Administrative Conference of the United States, 2120 L St., NW., Suite 500, Washington, D.C. 20037.

* * * * *

Richard K. Berg,
General Counsel.

ADVISORY COMMITTEE ON FEDERAL PAY

5 CFR Part 1411

FOR FURTHER INFORMATION CONTACT:
Ms. Lucretia Dewey Tanner, Executive Director, Advisory Committee on Federal Pay, 1730 K Street, NW., Suite 205, Washington, D.C. 20006. (202) 653-6193, TDD: (202) 724–7678.

List of Subjects in 5 CFR Part 1411

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 1411 is added as set forth at the end of this document.

PART 1411—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY ADVISORY COMMITTEE ON FEDERAL PAY

Sec.
1411.101 Purpose.
1411.102 Application.
1411.103 Definitions.
1411.104–1411.109 [Reserved]
1411.110 Self-evaluation.
1411.111 Notice.
1411.112–1411.129 [Reserved]
1411.130 General prohibitions against discrimination.
1411.140 Employment.
1411.141–1411.148 [Reserved]
1411.149 Program accessibility: Discrimination prohibited.
1411.150 Program accessibility: Existing facilities.
1411.151 Program accessibility: New construction and alterations.
1411.152–1411.159 [Reserved]
1411.160 Communications.
1411.161–1411.169 [Reserved]
1411.170 Compliance procedures.
1411.171–1411.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1411 is further amended by revising paragraph (c) in § 1411.170 to read as follows:

§ 1411.170 Compliance procedures.

* * * * *

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Executive Director, Advisory Committee on Federal Pay, 1730 K Street, NW., Suite 205, Washington, D.C. 20006.

* * * * *

Lucretia Dewey Tanner,
Executive Director.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 CFR Part 1701

FOR FURTHER INFORMATION CONTACT:
Franklin A. Steinko, Jr., Budget and Management Officer, Advisory Commission on Intergovernmental Relations, Suite 2000, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20575, Phone: (202) 653–5640, TDD (202) 724–7678.

List of Subjects in 5 CFR Part 1701

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped,

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Nondiscrimination, Physically handicapped.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Part 1701 is added as set forth at the end of this document.

PART 1701—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Sec.
1701.101 Purpose.
1701.102 Application.
1701.103 Definitions.
1701.104–1701.109 [Reserved]
1701.110 Self-evaluation.
1701.111 Notice.
1701.112–1701.129 [Reserved]
1701.130 General prohibitions against discrimination.
1701.131–1701.139 [Reserved]
1701.140 Employment
1701.141–1701.148 [Reserved]
1701.149 Program accessibility: Discrimination prohibited.
1701.150 Program accessibility: Existing facilities.
1701.151 Program accessibility: New construction and alterations.
1701.152–1701.159 [Reserved]
1701.160 Communications.
1701.161–1701.169 [Reserved]
1701.170 Compliance procedures.
1701.171–1701.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1701 is further amended by revising paragraph (c) in § 1701.170 to read as follows:

§ 1701.170 Compliance procedures.

* * * * *

(c) The Personnel Officer shall be responsible for coordinating implementation of this section. Compliants may be sent to Budget and Management Officer, Advisory Commission on Intergovernmental Relations, Suite 2000, Vanguard Building, 1111 20th St., NW., Washington, D.C. 20575.

* * * * *

Franklin A. Steinko, Jr.,
Budget and Management Officer.

DEPARTMENT OF ENERGY

10 CFR Part 1040

FOR FURTHER INFORMATION CONTACT: Mr. Barry Haley, Manager for Federally Assisted Programs, Complaints and Investigations Division, Office of Equal Opportunity, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 4B–088, Washington, D.C. 20585, Voice: (202) 252–2230, TDD: (202) 252–9777.

List of Subjects in 10 CFR Part 1040

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 5 of the Code of Federal Regulations is amended as follows:

1. Subpart D is added to Part 1040 as set forth at the end of this document.

PART 1040—[AMENDED]

Subpart D—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by Department of Energy

Sec.
1040.101 Purpose.
1040.102 Application.
1040.103 Definitions.
1040.104–1040.109 [Reserved]
1040.110 Self-evaluation.
1040.111 Notice.
1040.112–1040.129 [Reserved]
1040.130 General prohibitions against discrimination.
1040.131–1040.139 [Reserved]
1040.140 Employment.
1040.141–1040.148 [Reserved]
1040.149 Program accessibility: Discrimination prohibited.
1040.150 Program accessibility: Existing facilities.
1040.151 Program accessibility: New construction and alterations.
1040.152–1040.159 [Reserved]
1040.160 Communications.
1040.161–1040.169 [Reserved]
1040.170 Compliance procedures.
1040.171–1040.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Subpart D is further amended by revising paragraph (c) in § 1040.170 to read as follows:

§ 1040.170 Compliance procedures.

* * * * *

(c) The Director, Complaints and Investigations Division, Office of Equal Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Office of Equal Opportunity, U.S. Department of Energy, Room 4B–112, 100 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2218.

* * * * *

Barry Haley,
Manager for Federally Assisted Programs.

OFFICE OF THE FEDERAL INSPECTOR OF THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

10 CFR Part 1535

FOR FURTHER INFORMATION CONTACT: Rhodell G. Fields, Legal Counsel, 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252–4669 TDD: (202) 724–7678.

List of Subjects in 10 CFR Part 1535

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 10 of the Code of Federal Regulations is amended as follows:

1. Part 1535 is added as set forth at the end of this document.

PART 1535—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY OFFICE OF THE FEDERAL INSPECTOR FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM

Sec.
1535.101 Purpose.
1535.102 Application.
1535.103—1535 Definitions.
1535.104–1535.109 [Reserved]
1535.110 Self-evaluation.
1535.111 Notice.
1535.112–1535.129 [Reserved]
1535.130 General prohibitions against discrimination.
1535.131–1535.138 [Reserved]
1535.149 Program accessibility: Discrimination prohibited.
1535.140 Employment.
1535.141–1535.149 [Reserved]
1535.150 Program accessibility: Existing facilities
1535.151 Program accessibility: New construction and alterations.
1535.152–1535.159 [Reserved]
1535.160 Communications.
1535.161–1535.169 [Reserved]
1535.170 Compliance procedures.
1535.171–1535.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1535 is further amended by revising paragraph (c) in § 1535.170 to read as follows:

§ 1535.170 Compliance procedures.

* * * * *

(c) Legal Counsel, Office of the Federal Inspector of the Alaska Natural Gas Transportation System shall be responsible for coordinating implementation of this section. Complaints may be sent to Legal Counsel, Office of the Federal Inspector of the Alaska Natural Gas, 1000

Independence Avenue, SW., Washington, D.C. 20585.

* * * * *

Rhodell G. Fields,
Legal Counsel.

EXPORT-IMPORT BANK OF THE UNITED STATES

12 CFR Part 410

FOR FURTHER INFORMATION CONTACT: Hart Fessenden, General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Room 947, Washington, D.C. 20571 VOICE: (202) 566–8334, TDD: (202) 566–8860.

List of Subjects in 12 CFR Part 410

Blind, Civil Rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 12 of the Code of Federal Regulations is amended as follows:

1. Part 410 is added as set forth at the end of this document.

PART 410—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY EXPORT-IMPORT BANK OF THE UNITED STATES

Sec.
410.101 Purpose.
410.102 Application.
410.103 Definitions.
410.104–410.109 [Reserved]
410.110 Self-evaluation.
410.111 Notice.
410.112–410.129 [Reserved]
410.130 General prohibitions against discrimination.
410.131–410.139 [Reserved]
410.140 Employment.
410.141–410.148 [Reserved]
410.149 Program accessibility: Discrimination prohibited.
410.150 Program accessibility: Existing facilities.
410.151 Program accessibility: New construction and alterations.
410.152–410.159 [Reserved]
410.160 Communications.
410.161–410.169 [Reserved]
410.170 Compliance procedures.
410.171–410.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 410 is further amended by revising paragraph (c) in § 410.170 to read as follows:

§ 410.170 Compliance procedures.

* * * * *

(c) General Counsel, Export-Import Bank of the United States shall be responsible for coordinating implementation of this section. Complaints may be sent to General Counsel, Export-Import Bank of the United States, 811 Vermont Avenue, NW., Room 947, Washington, D.C. 20571.

* * * * *

Hart Fessenden,
General Counsel.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1034

FOR FURTHER INFORMATION CONTACT: Robert T. Noonan, Office of the General Counsel, Telephone (301) 492–6980, TDD: (800) 638–8270 National, (800) 492–8104 MD only.

SUPPLEMENTARY INFORMATION: In the proposed rule, this part was incorrectly designated part 1033. The designation of this final rule has been corrected to 1034.

List of Subjects in 16 CFR Part 1034

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 16 of the Code of Federal Regulations is amended as follows:

1. Part 1034 is added as set forth at the end of this document.

PART 1034—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE CONSUMER PRODUCT SAFETY COMMISSION

Sec.
1034.101 Purpose.
1034.102 Application.
1034.103 Definitions.
1034.104–1034.109 [Reserved]
1034.110 Self-evaluation.
1034.111 Notice.
1034.112–1034.129 [Reserved]
1034.130 General prohibitions against discrimination.
1034.131–1034.139 [Reserved]
1034.140 Employment.
1034.141–1034.148 [Reserved]
1034.149 Program accessibility: Discrimination prohibited.
1034.150 Program accessibility: Existing facilities.
1034.151 Program accessibility: New construction and alterations.
1034.152–1034.159 [Reserved]
1034.160 Communications.
1034.161–1034.169 [Reserved]
1034.170 Compliance procedures.
1034.171–1034.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1034 is further amended by revising paragraph (c) in § 1034.170 to read as follows:

§ 1034.170 Compliance procedures.

* * * * *

(c) The Office of Equal Employment Opportunity and Minority Enterprise shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Office of Equal Employment Opportunity and Minority Enterprise, Consumer Product Safety Commission, Washington, D.C. 20207.

* * * * *

Sadye E. Dunn,
Secretary.

UNITED STATES INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

FOR FURTHER INFORMATION CONTACT: Mr. Terry P. McGowan, Room 166, U.S. International Trade Commission, 701 E Street, NW., Washington, D.C. 20436; telephone (202) 523–0182. TDD: (202) 724–0004.

List of Subjects in 19 CFR Part 201

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 19 of the Code of Federal Regulations is amended as follows:

1. Subpart G is added to Part 201 as set forth at the end of this document.

PART 201—[Amended]

Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

Sec.
201.101 Purpose.
201.102 Application.
201.103 Definitions.
201.104–201.109 [Reserved]
201.110 Self-evaluation.
201.111 Notice.
201.112–201.129 [Reserved]
201.130 General prohibitions against discrimination.
201.131–201.139 [Reserved]
201.140 Employment.
201.141–201.148 [Reserved]
201.149 Program accessibility: Discrimination prohibited.
201.150 Program accessibility: Existing facilities.
201.151 Program accessibility: New construction and alterations.
201.152–201.159 [Reserved]
201.160 Communications.
201.161–201.169 [Reserved]
201.170 Compliance procedures.
201.171–201.999 [Reserved]

Authority: 29 U.S.C. 794.

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2. Subpart G is further amended by revising paragraph (c) in § 201.170 to read as follows:

§ 201.170 Compliance procedures.

* * * * *

(c) EEO Director, Office of Operations, Office of Data Systems, Library Division shall be responsible for coordinating implementation of this section. Complaints may be sent to Handicap Coordinator, Office of Operations, Office of Investigations, 701 E Street, NW., Washington, D.C. 20436.

* * * * *

Paula Stern,
Chairwoman.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 219

FOR FURTHER INFORMATION CONTACT:
Dennis Diamond, Acting Director, Office of Equal Opportunity Programs, Agency for International Development, International Development Cooperation Agency, Room 1224 SA–1 Washington, D.C. 20523. Voice (202) 663–1333 TDD, (202) 663–1341.

List of Subjects in 22 CFR Part 219

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 219 is added as set forth at the end of this document.

PART 219—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY INTERNATIONAL DEVELOPMENT COOPERATION AGENCY, AGENCY FOR INTERNATIONAL DEVELOPMENT

Sec.
219.101 Purpose.
219.102 Application.
219.103 Definitions.
219.104–219.109 [Reserved]
219.110 Self-evaluation.
219.111 Notice.
219.112–219.219 [Reserved]
219.130 General prohibitions against discrimination.
219.131–219.139 [Reserved]
219.140 Employment.
219.141–219.148 [Reserved]
219.149 Program accessibility: Discrimination prohibited.
219.150 Program accessibility: Existing facilities.
219.151 Program accessibility: New construction and alterations.
219.152–219.159 [Reserved]
219.160 Communications.
219.161–219.169 [Reserved]
219.170 Compliance procedures.
219.171–219.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 219 is further amended by revising paragraph (c) in § 219.170 to read as follows:

§ 219.170 Compliance procedures.

* * * * *

(c) Director, Office of Equal Opportunity Programs shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Office of Equal Opportunity Programs, Agency for International Development, International Development Cooperation Agency, Room 1224, SA–1, Washington, D.C.

* * * * *

Nancy D. Frame,
Assistant General Counsel for Employee and Public Affairs, Office of the General Counsel.

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Part 607

FOR FURTHER INFORMATION CONTACT:
F. Eugene Johnson, Room 5672A, 320 21st Street, NW., Washington, D.C. 20451, Telephone: (202) 632–8666; TDD (202) 632–7987.

List of Subjects in 22 CFR Part 607

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 607 is added as set forth at the end of this document.

PART 607—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Sec.
607.101 Purpose.
607.102 Application.
607.103 Definitions.
607.104–607.109 [Reserved]
607.110 Self-evaluation.
607.111 Notice.
607.112–607.129 [Reserved]
607.130 General prohibitions against discrimination.
607.131–607.139 [Reserved]
607.140 Employment.
607.141–607.148 [Reserved]
607.149 Program accessibility: Discrimination prohibited.
607.150 Program accessibility: Existing facilities.
607.151 Program accessibility: New construction and alterations.
607.152–607.159 [Reserved]
607.160 Communications.
607.161–607.169 [Reserved]
607.170 Compliance procedures.
607.171–607.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 607 is further amended by revising paragraph (c) in § 607.170 to read as follows:

§ 607.170 Compliance procedures.

* * * * *

(c) Chief, Communication and Services Section, Office of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Chief, Communication and Services Section, Office of Administration, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, D.C. 20451.

* * * * *

William J. Montgomery,
Administrative Director.

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO-UNITED STATES SECTION

22 CFR Part 1103

FOR FURTHER INFORMATION CONTACT:
Legal Adviser, International Boundary and Water Commission, United States and Mexico, United States Section, The Commons, Building C, Suite 310, 4171 North Mesa, El Paso, Texas 79902. Telephones: Commercial (915) 541–7393, FTS: 572–7394, TDD: (202) 724–7678.

List of Subjects in 22 CFR Part 1103

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 1103 is added as set forth at the end of this document.

PART 1103—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

Sec.
1103.101 Purpose.
1103.102 Application.
1103.103 Definitions.
1103.104–1103.109 [Reserved]
1103.110 Self-evaluation.
1103.111 Notice.
1103.112–1103.129 [Reserved]
1103.130 General prohibitions against discrimination.
1103.131–1103.139 [Reserved]
1103.140 Employment.
1103.141–1103.148 [Reserved]
1103.149 Program accessibility: Discrimination prohibited.
1103.150 Program accessibility: Existing facilities.
1103.151 Program accessibility: New construction and alterations.
1103.152–1103.159 [Reserved]
1103.160 Communications.
1103.161–1103.169 [Reserved]
1103.170 Compliance procedures.
1103.171–1103.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1103 is further amended by revising paragraph (c) in § 1103.170 to read as follows:

§ 1103.170 Compliance procedures.

* * * * *

(c) Director, Equal Employment Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Equal Employment Opportunity, International Boundary and Water Commission United States and Mexico, United States Section, The Commons, Building C, Suite 310, 4171 North Mesa, El Paso, Texas 79902.

* * * * *

Darcy Frownfelter,
Legal Adviser.

BOARD FOR INTERNATIONAL BROADCASTING

22 CFR Part 1304

FOR FURTHER INFORMATION CONTACT:
Kathryn M. Harper, 1201 Connecticut Avenue, NW., Suite 400, Washington, D.C. 20036 Telephone: (202) 254–8040, TDD: (202) 724–7678.

List of Subjects in 22 CFR Part 1304

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 22 of the Code of Federal Regulations is amended as follows:

1. Part 1304 is added as set forth at the end of this document.

PART 1304—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE BOARD FOR INTERNATIONAL BROADCASTING

Sec.
1304.101 Purpose.
1304.102 Application.
1304.103 Definitions.
1304.104–1304.109 [Reserved]
1304.110 Self-evaluation.
1304.111 Notice.
1304.112–1304.129 [Reserved]
1304.130 General prohibitions against discrimination.
1304.131–1304.139 [Reserved]
1304.140 Employment.
1304.141–1304.148 [Reserved]
1304.149 Program accessibility: Discrimination prohibited.
1304.150 Program accessibility: Existing facilities.
1304.151 Program accessibility: New construction and alterations.
1304.152–1304.159 [Reserved]
1304.160 Communications.
1304.161–1304.169 [Reserved]
1304.170 Compliance procedures.
1304.171–1304.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1304 is further amended by revising paragraph (c) in § 1304.170 to read as follows:

§ 1304.170 Compliance procedures.

* * * * *

(c) The Executive Director shall be responsible for coordinating implementation of this section. Complaints may be sent to the Budget and Administrative Office, 1201 Connecticut Avenue, NW., Suite 400, Washington, D.C. 20036.

* * * * *

Walter R. Roberts,
Executive Director.

AMERICAN BATTLE MONUMENTS COMMISSION

36 CFR Part 406

FOR FURTHER INFORMATION CONTACT:
Col. Clayton L. Moran (202) 272–0534 (Voice) or (202) 724–7678 (TDD).

List of Subjects in 36 CFR Part 406

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 36 of the Code of Federal Regulations is amended as follows:

1. Part 406 is added as set forth at the end of this document.

PART 406—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY AMERICAN BATTLE MONUMENTS COMMISSION

Sec.
406.101 Purpose.
406.102 Application.
406.103 Definitions.
406.104–406.109 [Reserved]
406.110 Self-evaluation.
406.111 Notice.
406.112–406.129 [Reserved]
406.130 General prohibitions against discrimination.
406.131–406.139 [Reserved]
406.140 Employment.
406.141–406.148 [Reserved]
406.149 Program accessibility: Discrimination prohibited.
406.150 Program accessibility: Existing facilities.
406.151 Program accessibility: New construction and alterations.
406.152–406.159 [Reserved]
406.160 Communications.
406.161–406.169 [Reserved]
406.170 Compliance procedures.
406.171–406.999 [Reserved]

Authority: 29 U.S.C. 749.

2. Part 406 is further amended by revising paragraph (c) in § 406.170 to read as follows:

§ 406.170 Compliance procedures.

* * * * *

(c) The Director, Personnel and Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Personnel and Administration, American Battle Monuments Commission, Room 5127, Pulaski Building, 20 Massachusetts Ave., N.W., Washington, D.C. 20314.

* * * * *

Clayton L. Moran,
Colonel, FA, Director, Personnel and Administration.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR 1175

FOR FURTHER INFORMATION CONTACT:
Carol M. Gordon, Director, Office of Equal Opportunity, (202) 786–0410, TDD: (202) 786–0282 (Public Affairs Office).

List of Subjects in 45 CFR Part 1175

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped.

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Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 1175 is added as set forth at the end of this document.

PART 1175—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Sec.
1175.101 Purpose.
1175.102 Application.
1175.103 Definitions.
1175.104–1175.109 [Reserved]
1175.110 Self-evaluation.
1175.111 Notice.
1175.112–1175.129 [Reserved]
1175.130 General prohibitions against discrimination.
1175.131–1175.139 [Reserved]
1175.140 Employment.
1175.141–1175.148 [Reserved]
1175–149 Program accessibility: Discrimination prohibited.
1175.150 Program accessibility: Existing facilities.
1175.151 Program accessibility: New construction and alterations.
1175.152–1175.159 [Reserved]
1175.160 Communications.
1175.161–1175.169 [Reserved]
1175.170 Compliance procedures.
1175.171–1175.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1175 is further amended by revising paragraph (c) in § 1175.170 to read as follows:

§ 1175.170 Compliance procedures

* * * * *

(c) The Director, Office of Equal Opportunity shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Office of Equal Opportunity, National Endowment for the Humanities, 1100 Pennsylvania Ave., N.W., Room 419, Washington, D.C. 20506.

* * * * *

John Agresto,
Acting Chairman.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

45 CFR 1181

FOR FURTHER INFORMATION CONTACT: Monika Edwards Harrison, Acting Director Institute of Museum Service, (202) 786–0536, TDD: (202) 786–0282 (Public Affairs Office, National Endowment for the Humanities).

List of Subjects in 45 CFR Part 1181

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 1181 is added as set forth at the end of this document.

PART 1181—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE INSTITUTE OF MUSEUM SERVICES

Sec.
1181.101 Purpose.
1181.102 Application.
1181.103 Definitions.
1181.104–1181.109 [Reserved]
1181.110 Self-evaluation.
1181.111 Notice.
1181.112–1181.129 [Reserved]
1181.130 General prohibitions against discrimination.
1181.131–1181.139 [Reserved]
1181.140 Employment.
1181.141–1181.148 [Reserved]
1181.149 Program accessibility: Discrimination prohibited.
1181.150 Program accessibility: Existing facilities.
1181.151 Program accessibility: New construction and alterations.
1181.152–1175.159 [Reserved]
1181.160 Communications.
1181.161–1181.169 [Reserved]
1181.170 Compliance procedures.
1181.171–1181.999 [Reserved]

Authority: 29 U.S.C. 794

2. Part 1181 is further amended by revising paragraph (c) in § 1181.170 to read as follows:

§ 1181.170 Compliance procedures.

* * * * *

(c) The Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Institute of Museum Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, D.C. 20506.

* * * * *

Monika Edwards Harrison,
Acting Director, Institute of Museum Services.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

45 CFR Part 1706

FOR FURTHER INFORMATION CONTACT: Sarah G. Bishop, Deputy Director, (202) 382–0840 (Voice) or (202) 724–7678 (TDD).

List of Subjects in 45 CFR Part 1706

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 45 of the Code of Federal Regulations is amended as follows:

1. Part 1706 is added as set forth at the end of this document.

PART 1706—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sec.
1706.101 Purpose.
1706.102 Application.
1706.103 Definitions.
1706.104–1706.109 [Reserved]
1706.110 Self-evaluation.
1706.111 Notice.
1706.112–1706.129 [Reserved]
1706.130 General prohibitions against discrimination.
1706.131–1706.139 [Reserved]
1706.140 Employment.
1706.141–1706.148 [Reserved]
1706.149 Program accessibility: Discrimination prohibited.
1706.150 Program accessibility: Existing facilities.
1706.151 Program accessibility: New construction and alterations.
1706.152–1706.159 [Reserved]
1706.160 Communications.
1706.161–1706.169 [Reserved]
1706.170 Compliance procedures.
1706.171–1706.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 1706 is further amended by revising paragraph (c) in § 1706.170 to read as follows:

§ 1706.170 Compliance procedures.

* * * * *

(c) The Deputy Director shall be responsible for coordinating implementation of this section. Complaints may be sent to Deputy Director, National Commission on Libraries and Information Science, Suite 3122, GSA–ROB 3, Washington, D.C. 20024.

* * * * *

Toni Carbo Bearman,
Executive Director.

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 807

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, Washington, D.C. 20594; (202) 382–6540, (TDD) (202) 724–7678.

List of Subjects in 49 CFR Part 807

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 49 of the Code of Federal Regulations is amended as follows:

1. Part 807 is added as set forth at the end of this document.

PART 807—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL TRANSPORTATION SAFETY BOARD

Sec.
807.101 Purpose.
807.102 Application.
807.103 Definitions.
807.104–807.109 [Reserved]
807.110 Self-evaluation.
807.111 Notice.
807.112–807.129 [Reserved]
807.130 General prohibitions against discrimination.
807.131–807.139 [Reserved]
807.140 Employment.
807.141–807.148 [Reserved]
807.142–149 Program accessibility: Discrimination prohibited.
807.150 Program accessibility: Existing facilities.
807.151 Program accessibility: New construction and alterations.
807.152–807.159 [Reserved]
807.160 Communications.
807.161–807.169 [Reserved]
807.170 Compliance procedures.
807.171–807.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 807 is further amended by revising paragraph (c) in § 807.170 to read as follows:

§ 807.170 Compliance procedures.

* * * * *

(c) Director, Bureau of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to Director, Bureau of Administration, 800 Independence Ave., SW. Room 802, Washington, D.C. 20594.

* * * * *

Jim Burnett,
Chairman.

MARINE MAMMAL COMMISSION

50 CFR Part 550

FOR FURTHER INFORMATION CONTACT: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, Room 307, 1625 I Street, NW., Washington, D.C. 20006; TDD (202) 653–6237, Voice (202) 724–7678.

List of Subjects in 50 CFR Part 550

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Title 50 of the Code of Federal Regulations is amended as follows:

1. Part 550 is added as set forth at the end of this document.

PART 550—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY MARINE MAMMAL COMMISSION

Sec.
550.101 Purpose.
550.102 Application.
550.103 Definitions.
550.104–550.109 [Reserved]
550.110 Self-evaluation.
550.111 Notice.
550.112–550.129 [Reserved]
550.130 General prohibitions against discrimination.
550.131–550.139 [Reserved]
550.140 Employment.
550.141–550.148 [Reserved]
550.149 Program accessibility: Discrimination prohibited.
550.150 Program accessibility: Existing facilities.
550.151 Program accessibility: New construction and alterations.
550.152–550.159 [Reserved]
550.160 Communications.
550.161–550.169 [Reserved]
550.170 Compliance procedures.
550.171–550.999 [Reserved]

Authority: 29 U.S.C. 794.

2. Part 550 is further amended by revising paragraph (c) in § 550.170 to read as follows:

§ 550.170 Compliance procedures.

* * * * *

(c) The General Counsel for the Commission shall be responsible for coordinating implementation of this section. Complaints may be sent to the General Counsel for the Commission, Marine Mammal Commission, Room 307, 1625–I Street, NW., Washington, D.C. 20006.

* * * * *

John R. Twiss, Jr.,
Executive Director.

PART —ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED

By

Sec.
.101 Purpose.
.102 Application.
.103 Definitions.
.104– .109 [Reserved]
.110 Self-evaluation.
.111 Notice.
.112– .129 [Reserved]
.130 General prohibitions against discrimination.
.131– .139 [Reserved]
.140 Employment.
.141– .148 [Reserved]
.149 Program accessibility: Discrimination prohibited.
.150 Program accessibility: Existing facilities.
.151 Program accessibility: New construction and alterations.
.152– .159 [Reserved]
.160 Communications.
.161– .169 [Reserved]
.170 Compliance procedures.
.171– .999 [Reserved]

Authority: 29 U.S.C. 794.

§ .101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ .102 Application.

This part applies to all programs or activities conducted by the agency.

§ .103 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged

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discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(l) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic bring syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § .140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ .104– .109 [Reserved]

§ .110– Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ .111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ .112– .129 [Reserved]

§ .130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualfied handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ .131– .139 [Reserved]

§ .140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ .141– .148 [Reserved]

§ .149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § .150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ .150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § .150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is nor required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by April 7, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ .151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to

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and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ .152– .159. [Reserved]

§ .160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § .160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ .161– .169 [Reserved]

§ .170 Compliance Procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The head of the agency shall designate an official to be responsible for coordinating implementation of this section.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § .170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ .171— .999 [Reserved]

[FR Doc. 86–2134 Filed 2–4–86; 8:45 am]

BILLING CODE 6110–01–M; 6820–43–M; 6115–01–M; 6450–01–M; 6116–01–M; 6690–01–M; 6355–01–M; 7020–02–M; 6116–01–M; 6820–32–M; 4710–03–M; 6155–01–M; 6120–01–M; 7536–01–M; 7036–01–M; 7527–01–M; 7533–01–M; 6820–31–M

federal register

Wednesday
February 5, 1986

Part III

Office of Management and Budget

Office of Federal Procurement Policy

Management and Operating Contracts Use (Circular A–49, Proposed Rescission)

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Transmittal Memorandum No. 1, Rescission of OMB Circular No. A-49, "Use of Management and Operating Contracts"

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Final notice of rescission.

SUMMARY: This rescission notice is issued to cancel OMB Circular No. A-49, "Use of Management and Operating Contracts."

EFFECTIVE: Transmittal Memorandum No. 1 to OMB Circular No. A-49, is effective as of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Bienvenue, Office of Federal Procurement Policy (202) 395-3254.

SUPPLEMENTARY INFORMATION: Comments received in response to our Proposed Notice of Rescission, which appeared in the **Federal Register** on November 13, 1985 (50 FR 46849), were overwhelmingly supportive of that action. Responses from Government agencies reaffirmed our assessment that comprehensive guidance currently exists in the Federal Acquisition Regulation, Subpart 17.6, OFPP Policy Letter 84-1, "Federally Funded Research and Development Centers", dated April 4, 1984, and in agency implementing regulations. The circular is no longer necessary and is being cancelled.

Dated: January 27, 1986.

David F. Baker,

Acting Administrator.

Circular No. A-49

Transmittal Memorandum No. 1

Executive Office of the President,
Office of Management and Budget,
Washington, DC 20503.

January 28, 1986.

To the heads of executive departments and establishments.

Subject: Use of Management and Operating Contracts.

Office of Management and Budget Circular No. 49 is hereby rescinded. Policy and guidance affecting the use of management and operating contracts is found in the Federal Acquisition Regulation, Subpart 17.6, and in other related regulations and directives.

James C. Miller III,

Director.

[FR Doc. 86-2468 Filed 2-4-86; 8:45 am]

BILLING CODE 3110-01-M

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2-6-86
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federal register

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Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Passenger Vessels
Coast Guard

Radio and Television Broadcasting
Federal Communications Commission

Securities
Securities and Exchange Commission

Water Transportation
Maritime Administration

Waterways
Coast Guard

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center.
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center.
303-236-7181

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 83-042AI]

Withdrawal of Certain Countries From the List of Those Eligible for Importation of Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Confirmation of Interim Rules.

SUMMARY: On Feburary 15, 1984, the Food Safety and Inspection Service (FSIS) published an interim rule with request for comments (49 FR 5727). This interim rule withdrew the Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama from the list of countries eligible under the Federal Meat Inspection Act (FMIA) to import cattle, sheep, swine, goat, and equine products into the United States. This action was necessary because those countries had failed to implement satisfactory residue testing and/or species verification programs, resulting in their no longer meeting provisions of the FMIA.

Since publication of the interim final rule FSIS has issued three amendments which relisted the countries of Panama (49 FR 14497; April 12, 1984), El Salvador and Nicaragua (49 FR 22626; May 31, 1984), and the Dominican Republic (50 FR 14370; April 12, 1985) as again being eligible under the FMIA to import cattle, sheep, swine, and goat products into the United States.

The countries of Mexico and Haiti have not corrected the deficiencies which resulted in their delisting on February 15, 1984, and FSIS is now issuing a final rule to confirm that these countries remain delisted.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Havlik, Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291/Effect on Small Entities

The Administrator has determined that this final rule is not a major rule under Executive Order 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Additionally, the Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601 *et seq.*).

These determinations have been made because this rule applies only to foreign meat production and will not adversely impact American industry or the consuming public.

Background

On February 15, 1984, FSIS published in the **Federal Register** an interim rule with request for comments (49 FR 5727). This interim rule withdrew the Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama from the list of countries eligible under the Federal Meat Inspection Act (FMIA) to import the products of cattle, sheep, swine, goats, and equines (Mexico only) into the United States. The FMIA requires that in order for a country to be eligible to import meat products into the United States, that country must establish, maintain, and implement inspection standards and requirements that are "at least equal to" the requirements of the FMIA and the United States regulations which are applicable to official establishments in this country.

In order for a foreign country's inspection system to be considered "at least equal to" that of the United States, the country must provide for testing of fat, kidney, muscle and/or liver tissues for chlorinated hydrocarbons, organophosphates, trace metals, antibiotics, and (if applicable) hormones, using a method approved by the Secretary. In addition, the country must conduct an approved species verification program. Failure at that time of the Dominican Republic, El Salvador, Haiti, Mexico, Nicaragua, and Panama to implement satisfactory residue testing and/or species verification programs resulted in their being withdrawn from the list of countries eligible to import meat products into the United States.

In the February 15, 1984 interim rule withdrawing these countries, FSIS stated that once they had corrected the deficiencies in their residue testing and/or species verification programs, and the Administrator was satisfied that their systems meet all provisions of the FMIA, those countries would again be added to the list of countries eligible to import cattle, sheep, swine, and goat products into the United States.

The countries of Panama, El Salvador, Nicaragua, and the Dominican Republic have provided the Administrator with evidence showing that their systems are now "at least equal to" that of the United States; the countries of Mexico and Haiti have not provided such evidence. Accordingly, FSIS is now finalizing the February 15, 1984, interim rule (as amended on April 15, 1984; May 31, 1984; and April 12, 1985) to confirm that the countries of Mexico and Haiti are no longer eligible to import cattle, sheep, swine, goat, or equine products into the United States.

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

For the reasons explained in the preamble:

§ 327.2 [Amended]

1. In Part 327, the amendments to § 327.2(b) published on February 15, 1984 (49 FR 5727), April 12, 1984 (49 FR 14497), May 31, 1984 (49 FR 22626) and

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April 12, 1985 (50 FR 14370) are confirmed as final.

2. In Part 327, the amendment to § 327.2(c) published as an interim rule on February 15, 1984 (49 FR 5727) is confirmed as final.

Done at Washington, DC on: January 21, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-2538 Filed 2-5-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 436

Federal Energy Management and Planning Programs; Technical Amendment

AGENCY: Department of Energy.

ACTION: Final rule; technical amendment.

SUMMARY: The Department of Energy (DOE) is making a technical amendment to its regulations for the Federal Energy Management Program. Upon initial publication, § 436.106(a)(4)(vi) and (vii) were incorrectly designated. This amendment will correct the numbers.

EFFECTIVE DATE: February 6, 1986.

FOR FURTHER INFORMATION CONTACT:

J. Wm. Bethea, Director, Federal Energy Management Program (CE-10.1), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9430

Neal J. Strauss, Office of General Counsel (GC-12), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9507

List of Subjects in 10 CFR Part 436

Energy conservation, Federal buildings and facilities, Solar energy.

In consideration of the foregoing, Part 436 of Chapter II of Title 10, Code of Federal Regulations, is hereby amended as set forth below:

Issued in Washington, D.C., on January 28, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 436—FEDERAL ENERGY MANAGEMENT AND PLANNING PROGRAMS

1. The authority citation for Part 436, Subpart F is revised to read as follows:

Authority: Energy Policy and Conservation Act, as amended, 42 U.S.C. 6361; Executive Order 11912, as amended, 42 FR 37523 (July 20, 1977); National Energy Conservation Policy Act, Title V, Part 3, 42 U.S.C. 8251 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7254.

§ 436.106 [Amended]

2. In § 436.106 paragraphs (a)(4) (vi) and (vii) are redesignated paragraphs (a)(4) (iv) and (v).

[FR Doc. 86-2513 Filed 2-5-86; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-15; Amdt. 39-5212]

Airworthiness Directives; Garrett TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires an inspection of the rear mount weld attachments on turbine interstage transition ducts, or requires modification or replacement of these ducts on certain Garrett TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R turbofan engines. The AD is needed to detect and remove from service, ducts with engine mount clevises which were improperly welded during manufacture. This defect may result in separation of the engine rear mount.

DATES: Effective March 6, 1986.

Compliance required within the next 1,150 hours time in service after the effective date of this AD, unless already accomplished.

Incorporation by Reference—Approved by the Director of the Federal Register on March 6, 1986.

ADDRESSES: The applicable service documents may be obtained from: Garrett General Aviation Services Company, Department H65-1, Building 601AD, P.O. Box 29003, Phoenix, Arizona 85038.

A copy of each of the applicable service documents is contained in the Rules Docket, Federal Aviation Administration, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA Northwest Mountain Region, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; telephone (213) 297-1382.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD that would require an inspection of the rear mount weld attachments on turbine interstage transition ducts, or require modification or replacement of these ducts on certain Garrett TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R turbofan engines was published in the **Federal Register** on May 6, 1985 (50 FR 19033). Subsequent to publishing this proposal, a further review of the inspection records at the manufacturer's facility has revealed a substantial number of additional ducts which may contain the same defect. Revision 1 to Service Bulletin (SB) TFE731-72-3309 issued on September 6, 1985, lists these ducts by serial number (S/N). Since the inclusion of the additional duct part numbers and serial numbers in the final rule requires no more action by the operators than that which would have been required by the proposed amendment, and since the manufacturer has agreed to provide the necessary X-ray inspections and modifications at no cost to the owners, an amended Notice of Proposed Rulemaking (NPRM) is considered unnecessary. The compliance time of 1,150 hours coincides with normal maintenance schedules and, therefore, no operator will be significantly burdened.

The proposal was prompted by reports of three in-service failures of the Garrett TFE731 engine rear mount. One of the ducts on which the rear mount is welded had been X-ray inspected prior to failure. These failures resulted from fatigue cracking of the electron beam weld attaching the rear mount clevis to the turbine interstage transition duct. Separation of the rear mount is known to result in an unsafe engine installation on some aircraft types, and may result in an unsafe installation on others.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two replies to the request for comments were received. One commenter stated that the proposed AD was difficult to understand and that SB 3309 referred to the installation of an auxiliary bracket (in accordance with SB TFE731-72-3170) as an "interim compliance", while the proposed AD indicated this action to be a final compliance.

The FAA has subsequently reviewed the proposed AD and finds that it can be simplified without changing the engineering intent. Accordingly, the AD has been rewritten. Use of the auxiliary bracket has been determined by the FAA to provide a structurally adequate engine rear mount for an unlimited service life. The manufacturer has, for reasons other than airworthiness, recommended replacement of this bracket at the first convenient opportunity. While the FAA does not disagree with the manufacturer, there is no AD requirement to replace the auxiliary bracket.

The other commentor indicated that the proposed compliance time is unjustifiably long for engine installations on certain aircraft. The FAA, after reconsidering the compliance time, still believes that the proposed time results in a satisfactory level of safety and, therefore, will maintain the original schedule.

Paragraph (d)(3) of the proposed AD, as published in the **Federal Register**, was found to have a misprint. SB TFE731-72-3159 was printed "Bulletin-3139". This is corrected.

Accordingly, the proposal is adopted with the following changes: the correction of the SB number misprint, the use of Revision 1 to SB 3309 which lists additional duct part numbers and serial numbers, and a rewriting to make the AD easier to understand.

Conclusion

The FAA has determined that this regulation affects approximately 4,800 engines of which approximately 1,400 will require remedial action. For the above stated reasons, the cost to the owners/operators will be only about $10 per engine, i.e., the cost of checking the S/N of the turbine interstage transition duct. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the FAR as follows:

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD to § 39.13:

Garrett Turbine Engine Company (formerly the AiResearch Manufacturing Company of Arizona). Applies to all Model TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R turbofan engines installed in aircraft certified in all categories equipped with turbine interstage transition ducts, part numbers 3071486-3 through -10, 3072318-1 and -3, 3072726-1 and -2, identified by individual serial numbers (hereinafter referred to as duct(s)).

Compliance is required prior to the accumulation of 1,150 hours time in service from the effective date of this AD, unless already accomplished. NOTE: A substantial number of additional ducts were found to be subject to the same defect after Garrett issued SB TFE731-72-3309, dated March 7, 1985. This SB was specified in the NPRM (50 FR 19033). Revision 1 of said SB, dated September 6, 1985, was subsequently issued, and it now contains complete listings of affected ducts. Therefore, engines which were determined to be unaffected in accordance with the original SB, must be reverified.

To prevent separation of the engine rear mount from the duct, accomplish the following:

(a) Determine, by engine visual inspection, whether the turbine interstage transition duct S/N is included in Table 1 or Table 2 of Garrett SB TFE 731-72-3309, Revision 1, dated September 6, 1985, (SB 3309) or FAA-approved equivalent.

(1) Engine visual inspection which ensures that the duct S/N is not in Table 1 or Table 2 constitutes terminating action for this AD.

(2) Ducts listed in Table 1 are known to have inadequate weld penetration, and require modification or replacement as specified below. Ducts listed in Table 2 might have inadequate weld penetration, and must either pass the additional X-ray inspection or be modified or replaced, as specified below.

(b) Replace any duct listed in Table 1 of SB 3309 with a serviceable duct, or perform the actions of SB 3309, paragraph 2.B. (modification).

(c) Replace any duct listed in Table 2 of SB 3309 with a serviceable duct, or perform the actions of SB 3309, paragraph 2.C (X-ray inspection and/or modification).

Notes.—(1) Regardless of statements in SB 3309 referring to the installation of the aft mount auxiliary bracket (in accordance with SB TFE731-72-3170) as an "interim compliance", such installation constitutes terminating action for this AD. Ducts which are modified by incorporation of the aft mount auxiliary bracket, shall not have the bracket removed and be returned to service unless the other actions of SB 3309, paragraph 2.B. or 2.C., as applicable, are performed.

(2) The aft mount auxiliary bracket requires a longer engine mount bolt which is a new aircraft part. Therefore, each type aircraft using this bracket must have an FAA-approved SB to complete the installation; otherwise the bracket shall not be used.

(d) For ducts which are determined to have a satisfactory weld at a clevis position used to mount the engine to the aircraft, but are determined to have an unsatisfactory weld(s) at the other clevis positions(s), an FAA-approved alternative means of compliance with the provisions of SB 3309, paragraph 2.B.(2) or 2.C.(6), as applicable, is as follows:

(1) Cut through the bolt holes of the unsatisfactory clevis(es) in accordance with paragraph 2.F.(1) of SB TFE731-72-3159, Revision 5, dated September 6, 1985, or FAA-approved equivalent;

(2) Efface existing part number on duct and electrochemically etch new part number (0.0004 inch maximum depth) in accordance with:

Old Part No.	*New Part No.*
3071486-3	3071486-11
3071486-4	3071486-12
3071486-5	3071486-13
3071486-6	3071486-14
3071486-7	3071486-15
3071486-8	3071486-16
3071486-9	3071486-17
3071486-10	3071486-18
3072318-1	3076070-1
3072318-3	3076070-2
3072726-1	3076070-3
3072726-2	3076070-4

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Western Aircraft Certification Office, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009 may adjust the compliance time specified in this AD.

Garrett SB Nos. TFE731-72-3309, Revision 1, dated September 6, 1985; TFE731-72-3159, Revision 5, dated September 6, 1985; and TFE731-72-3170, Revision 2, dated March 7, 1985, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Garrett General Aviation Service Company, Department H65-1, Building 601AD, P.O. Box 29003, Phoenix, Arizona 85038.

These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on March 6, 1986.

Issued in Burlington, Massachusetts, on December 31, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-2607 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-52-AD; Amdt. 39-5235]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection for cracks or damage, and repairs or replacement, as necessary, of certain components of the nose and main landing gears of British Aerospace Model BAC 1-11 200 and 400 series airplanes. There have been reports of cracks in the main landing gear rear pintle support beam, and of a nose landing gear collapse. These conditions, if not corrected, have the potential of leading to a catastrophic landing.

DATES: Effective March 17, 1986. Compliance is required as indicated, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations was published in the **Federal Register** on June 28, 1985 (50 FR 26785), to include an airworthiness directive which requires inspection, and repair or replacement, as necessary, of the BAC Model 1-11 200 and 400 series main landing gear structure for cracks in the rear pintle support beam sub-assembly (manacle beam), as prescribed by British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, and of the nose landing gear for damage of the toggle links' special bolt assembly, as prescribed by British Aerospace BAC 1-11 Alert Service Bulletin 32-A-PM5872.

The comment period for the proposal which ended August 16, 1985, afforded interested persons an opportunity to participate in making the rule and due consideration has been given to the two comments which were received. The manufacturer offered no objection to the rule as proposed. The Air Transport Association (ATA) of America stated that its only affected member operator has already complied with the proposal and offered no objection to the contents of the proposed rule.

After a careful review of the available data, including the comments noted above, the FAA had determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 60 airplanes will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required inspections, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be $7,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($120.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAC 1-11 airplanes, with series as specified in each paragraph below, certificated in any category. To prevent a hazardous landing condition, accomplish the following within the next 90 days after the effective date of this AD, or prior to reaching the landing threshold indicated in each paragraph below, whichever is the later, unless already accomplished:

A. For Model BAC 1-11 400 series airplanes, prior to the accumulation of 15,000 landings, perform an eddy current or dye penetrant inspection for cracks of the rear pintle support beam in accordance with paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, dated August 6, 1984. Thereafter, repeat this inspection at intervals not to exceed 3,200 landings. If cracks are discovered, repair or replace in accordance with paragraph 2.2 of the accomplishment instructions of the service bulletin before further flight.

B. For Model BAC 1-11 200 and 400 series airplanes, inspect for damage of the toggle links' special bolt assembly, part number AB44A1275, in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 32-A-PM5872, dated July 25, 1983. If the special bolt assembly is found damaged, replace with a serviceable part before further flight.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 17, 1986.

Issued in Seattle, Washington, on January 30, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2608 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-03-AD; Amdt. 39-5234]

Airworthiness Directives; Cessna Models 425 and 441 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 85-25-11, applicable to certain Cessna Models 425 and 441 airplanes and codifies the corresponding emergency AD letter dated December 18, 1985, into the **Federal Register**. This AD is necessary because one or both of the horizontal stabilizer front spar attachment bolt retaining nuts may be broken, or subject to failure from hydrogen embrittlement, resulting in possible separation of the stabilizer from the aircraft.

DATES: Effective Date: February 12, 1986, to all persons except those to whom it has already been made effective by priority letter from the FAA dated December 18, 1985. Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Conquest Service Bulletin CQB85-25, Revision 1, dated December 16, 1985, applicable to this AD, may be obtained from Cessna Aircraft Company Customer Services, Post Office Box 1521, Wichita, Kansas 67201. A copy of the information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence S. Abbott, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: Attachment bolt retaining nuts on the horizontal stabilizer front spar have been found cracked during ground inspections on four Cessna Model 425 airplanes. There have been no incidents where the nut separated from the bolt in-flight. Metallurgical investigations indicate hydrogen embrittlement to be the cause for the failures. Cessna issued Service Bulletin CQB85-25, Revision 1, dated December 16, 1985, recommending replacement of both nuts on all Cessna Models 425 and 441 airplanes within 10 hours time-in-service. The Model 441 airplanes are included since they use the same nut in a similar application. These actions are necessary to preclude possible in-flight separation of the horizontal tail.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating AD action. It was also determined that an emergency condition existed and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known owners and operators affected by this AD by priority mail letter dated December 18, 1985. The AD became effective immediately as to those individuals upon receipt of that letter and is identified as AD 85-25-11. Since the unsafe condition described herein may still exist on other certain Cessna Models 425 and 441 airplanes, the AD is hereby published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective as to all persons who did not receive the priority letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less then 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the FAA to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed, in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to Models 425 (Serial Numbers 425-0002 thru 425-0236) and 441 (Serial Numbers 441-0001 thru 441-0354) airplanes certified in any category.

Compliance: Required within the next ten hours time-in-service, unless previously accomplished.

To preclude failure of the horizontal stabilizer front spar attachments accomplish the following:

(a) Replace left and right horizontal stabilizer front spar attach bolt retaining nuts (Part Number NAS1291-8) in accordance with the instructions contained in Cessna Service Bulletin No. CQB85-25, Revision 1, dated December 16, 1985. Purchase replacement NAS1291-8 nuts exclusively from the Cessna Supply Division after November 22, 1985, per the above Cessna Service Bulletin.

(b) Return removed NAS1291-8 nuts to Cessna in accordance with Cessna Service Bulletin No. CQB85-25, Revision 1, dated December 16, 1985.

(c) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(d) An equivalent method of compliance with this AD may be used when approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201 or the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective February 12, 1986, as to all persons except those persons to whom it was made immediately effective by priority letter AD 85-25-11, issued December 18, 1985, which contained this amendment.

Issued in Kansas City, Missouri, on January 28, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-2610 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ASW-29]

Revision of Transition Area; Walnut Ridge, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area at Walnut Ridge, AR. The intended effect of the amendment is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Walnut Ridge Regional Airport. This revision is necessary because the Lawrence County Nondirectional Radio Beacon (NDB) is being relocated to a point approximately 5.19 miles north of its present location. Additionally, a review of the existing controlled airspace revealed that it was not adequate for the types and volume of air traffic utilizing the Walnut Ridge Regional and Pocahontas Municipal Airports. This action will result in

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additional controlled airspace as necessary to protect the existing and proposed new SIAP's.

EFFECTIVE DATE: 0901 G.m.t., July 3, 1986.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877-2622.

SUPPLEMENTARY INFORMATION:

History

On October 21, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Walnut Ridge, AR, transition area (50 FR 203).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 or Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the transition area at Walnut Ridge, AR. This will provide adequate controlled airspace for the protection of aircraft arriving and departing the Walnut Ridge Regional and Pocahontas Municipal Airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Walnut Ridge, AR Revised

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Walnut Ridge Regional Airport (latitude 36°07'30" N., longitude 90°55'25" W.); within 3 miles each side of the Walnut Ridge VORTAC 240-degree radial, extending from the 8.5-mile radius area to 8.5 miles southwest of the VORTAC; within 5 miles each side of the 360-degree bearing from the NDB (latitude 36°12'20" N., longitude 90°55'23" W.) extending from the 8.5-mile radius to 12 miles north of the NDB; and within a 6.5-mile radius of the Pocahontas Municipal Airport (latitude 36°14'39" N., longitude 90°56'59" W.).

Issued in Fort Worth, TX, on January 23, 1986.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 86-2614 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket Nos. 84P-0231 and 84P-0268]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Essential Uses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adding two products to the list of products containing a chlorofluorocarbon for an essential use. They are metered-dose nitroglycerin human drugs administered to the oral cavity and metered-dose cromolyn sodium human drugs administered by oral inhalation. FDA concludes that these products provide unique health benefits unavailable without the use of the chlorofluorocarbon.

EFFECTIVE DATE: February 6, 1986.

FOR FURTHER INFORMATION CONTACT: Eileen R. Hodkinson, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 24, 1985 (50 FR 30210), FDA proposed to amend § 2.125(e) (21 CFR 2.125(e)) to include the following drugs for human use, as essential uses of chlorofluorocarbon: metered-dose nitroglycerin administered to the oral cavity and metered-dose cromolyn sodium administered by oral inhalation. This action was taken in response to two citizen petitions stating that these products provide unique health benefits that would be unavailable without the use of chlorofluorocarbon.

Interested persons were allowed 60 days to submit comments on the proposal. Twenty-five comments were received from physicians who supported the use of cromolyn sodium in a metered-dose container. No comments were received concerning the use of nitroglycerin in a metered-dose container.

Based on these comments and information relied upon in the proposal, the agency concludes that the subject drug products should be added to the list of products containing chlorofluorocarbon as an essential use. The use of metered-dose nitroglycerin human drugs for administration to the oral cavity provides a special benefit to the angina pectoris patient because of the product's uniform delivery system and because it removes the need to open a bottle to obtain tablets. According to the information available to the agency, this benefit is not available in other nitroglycerin products. Metered-dose cromolyn sodium human drugs administered by oral inhalation provides a special benefit to asthmatic patients because of the products' delivery of the drug in proper size particles and the efficient portable delivery system that can be used easily by the handicapped, the elderly, and small children. This benefit also, on the basis of the agency's information, is not available from other delivery systems, such as the hand-operated pump or pressurized nebulizer.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the

Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985).

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Subpart G of Part 2 is amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

Subpart G—Provisions Applicable to Specific Products Subject to the Federal Food, Drug, and Cosmetic Act

1. The authority citation for 21 CFR Part 2, Subpart G, is revised to read as follows:

Authority: Secs. 301, 402, 409, 501, 502, 505, 507, 512, 601, 701, 52 Stat. 1042-1043 as amended, 1046-1047 as amended, 1049-1054 as amended, 1055-1056 as amended, 59 Stat. 463 as amended, 72 Stat. 1785-1788 as amended, 82 Stat. 343-351 (21 U.S.C. 331, 342, 348, 351, 352, 355, 357, 360b, 361, 371); 21 CFR 5.10.

2. In § 2.125 by adding new paragraph (e) (9) and (10) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(e) * * *

(9) Metered-dose nitroglycerin human drugs administered to the oral cavity.

(10) Metered-dose cromolyn sodium human drugs administered by oral inhalation.

* * * * *

Dated: January 28, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-2565 Filed 2-3-86; 3:02 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 89

[CGD 85-061]

Inland Navigation Rules; Implementing Rules

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This regulation will add Rule 14(d) of the Inland Navigation Rules to the list of provisions which apply on the Great Lakes and/or Western Rivers, including the Tennessee Tombigbee Waterway. Prior to 1984, the Inland Navigation Rules (33 U.S.C. 2001 et seq) contained three provisions which applied only to the Great Lakes, Western Rivers and/or other waters designated by the Secretary. All of the three, then existing, Western Rivers provisions were designated as applicable to the Tennessee Tombigbee Waterway and connecting waters by a regulation dated August 27, 1984 (49 FR 33875). Subsequently, on October 30, 1984, Pub. L. 98-557 was enacted which added a fourth Western Rivers provision, Rule 14(d), to the Inland Rules. This regulation is needed to update the Western Rivers provisions so that they are all applicable to the Tennessee Tombigbee Waterway. The intended effect of the regulation is to enhance navigation safety by providing for the uniform application of all the Western River provisions to the waters which comprise the Tennessee Tombigbee Waterway.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Charles K. Bell, Marine Information and Rules Branch, Office of Navigation (202) 426-1950.

SUPPLEMENTARY INFORMATION: The Inland Navigation Rules are codified in chapter 34 of Title 33 of the United States Code (33 U.S.C. 2001 et seq). The Inland Rules contain several provisions which establish unique regulations for the Great Lakes, Western Rivers or other waters as may be designated by the Secretary. The Tennessee Tombigbee Waterway and certain connecting rivers were previously designated as waterways to which the existing Western Rivers provisions apply (CGD 83-028, 49 FR 33875, August 27, 1984). That designation appears at § 89.25 of Title 33, Code of Federal Regulations.

Pub. L. 98-557 amended Inland Rule 14 (33 U.S.C. 2014) to add a paragraph designated (d). Inland Rule 14(d) is a Western Rivers provision that gives the downbound vessel with a following current the right-of-way when vessels are approaching each other on head on situations. This rulemaking will amend § 89.25 of Title 33 Code of Federal Regulations by adding Rule 14(d) to the list of rules which apply to these designated waters.

A Notice of Proposed Rulemaking (published December 6, 1983, at 48 FR 54998) and the Supplemental Notice of Proposed Rulemaking (published May 3, 1984 at 49 FR 18870) for CGD 83-028, proposed making all the Inland Navigation Rules applicable to Western Rivers also applicable to the Tennessee Tombigbee Waterway and connecting waters. All comments received were favorable to a uniform application of the Western Rivers provisions to the proposed waters in order to eliminate the confusion which would result from applying different navigation rules. Since the Congress has added Rule 14(d) to the Western Rivers provisions, the Coast Guard considered it necessary for consistency and safety to make 14(d) applicable to the Tennessee Tombigbee Waterway and connecting waters.

The Coast Guard informed mariners of the addition of Rule 14(d) to the Great Lakes, Western Rivers, Tennessee Tombigbee Waterway and connecting waters provisions in Local Notices to Mariners. Mariners have been applying Rule 14(d) to the Tennessee Tombigbee Waterway and connecting waters since the enactment of Pub. L. 98-557.

Because of the confusion that would exist if Rule 14(d) was not applied to the same waters as other Western Rivers provisions, and because the public has already commented favorably on a uniform application of such provisions, the Coast Guard finds that further opportunity for notice and comment is unnecessary and contrary to the public interest and that good cause exists for publication of this regulation as a final rule.

Drafting Information

This document was drafted by LCDR Charles K. Bell, Project Manager, Office of Navigation and LT Sandra R. Sylvester, Project Attorney, Office of Chief Counsel.

Regulatory Evaluation

This final rule is considered to be nonmajor under Exectutive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely updates the Western Rivers provisions within the Inland Navigation Implementing Rules to include Rule 14(d) as a provision applicable to the Tennessee Tombigbee Waterway and connecting waters. Since the impact is expected to be minimal, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 89

Navigation (waters) Waterways.

PART 89—[AMENDED]

In consideration of the foregoing, Part 89 of Title 33 Code of Federal Regulations is amended as follows:

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1. The authority citation for Part 89 is revised to read as set forth below:

Authority: 33 U.S.C. 2071; 49 CFR 1.46(n)(14).

2. Section 89.21 is revised to read as follows:

§ 89.21 Purpose.

Inland Navigation Rules 9(a)(ii), 14(d), and 15(b) apply to the Great Lakes, and along with 24(i), apply on the "Western Rivers" as defined in Rule 3(1), and to additional specifically designated waters. The purpose of this Subpart is to specify those additional waters upon which Inland Navigation Rules 9(a)(ii), 14(d), 15(b), and 24(i) apply.

3. Section 89.25 is revised to read as follows:

§ 89.25 Waters upon which Inland Rules 9(a)(ii), 14(d), 15(b), and 24(i) apply.

Inland Rules 9(a)(ii), 14(d), and 15(b) apply on the Great Lakes, and along with 24(i), apply on the Western Rivers and the following specified waters:

(a) Tennessee-Tombigbee Waterway;
(b) Tombigbee River;
(c) Black Warrior River;
(d) Alabama River;
(e) Coosa River;
(f) Mobile River above the Cochrane Bridge at St. Louis Point;
(g) Flint River;
(h) Chattachoochee River; and
(i) The Apalachicola River above its confluence with the Jackson River.

Dated: January 17, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 86-2630 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD11 86-02]

Special Local Regulations; NJBA Regatta, Parker, AZ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the NJBA Regatta. This event will be held on 22, 23 February and 22, 23 March 1986, at Parker, Arizona. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on 22 February 1986 and terminate on 23 March 1986.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, 400 Oceangate Boulevard, Long Beach, California 90822-5399, Tel: (213) 590-2331.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until 6 January 1986, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data, or arguments. Commenters should include their name and address, identify this notice [CGD11 86-02] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LTFG Jorge Arroyo, Project Officer, Boating Affairs Office, Eleventh Coast Guard District and LT David S. Riley, Project Attorney, Legal Office, Eleventh Coast Guard District.

Discussion of Regulation

The National Jet Boat Association, "NJBA Regatta" will be conducted on 22, 23 February and 22, 23 March 1986, on the Colorado River in front of the Bluewater Marina in Parker, Arizona. This event will have a maximum of 200 inboard high speed ski boats, 16 to 20 feet in length, that could pose a hazard to navigation. Therefore, vessels desiring to transit the regulated area may do so only with clearance from an official patrol vessel.

List Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Regulations:

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. Part 100 is amended by adding a § 100.35 11-86-02 to read as follows:

§ 100.35 11-86-02 NJBA Regatta, Parker, Arizona.

(a) *Regulated Area.* The following area will be closed intermittently to all vessel traffic: That portion of the Arizona side of the Colorado River, from Headgate Rock Dam thence 1.5 miles North. The area will be open for ten minutes, on the hour, to allow the transit of spectators.

(b) *Special Local Regulations.* All persons and/or vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol each event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given, failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

(c) *Effective Dates.* These regulations will be effective from 6:00 AM to 8:00 PM on 22, 23 February and 22, 23 March 1986.

Dated: January 24, 1986.

A. Bruce Beran,

Rear Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.

[FR Doc. 86-2629 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 110

[CGD3-85-02]

Special Anchorage Area; Lake Champlain, Charlotte, VT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a special anchorage area in Lake Champlain east of Thompson's Point, Charlotte, Vermont. There is no special anchorage area off the Vermont shore from Whitehall, NY to Shelburne Bay near Burlington VT. This area is well away from the navigational channel and not within the normal area of recreational navigation due to its position in a cove between Thompson's and William's Points. The establishment of this special anchorage area should not create any safety, security or environmental hazards. It will enhance navigational safety by alerting transiting vessels, through depiction on appropriate nautical charts, that unlighted vessels or vessels not sounding fog signals may be present in the anchorage.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade T. S. Kuhaneck, Vessel Movement Officer, Commander, Coast Guard Group New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: On August 1, 1985 the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (50 FR 31197). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are LTJG T. S. Kuhaneck, Project Officer, Coast Guard Group New York and Mrs. M.A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Comments

No formal written comments concerning the proposal were received. One telephone inquiry was received regarding the latitude and longitude coordinates of the special anchorage location. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this Special Anchorage Area will not require dredging or result in increased cost to any segment of the public. In fact, it may attract additional recreational boaters to the area which would have a favorable economic impact on commercial facilities providing services to these boaters.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

PART 110—[AMENDED]

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.8, paragraph (g) is added to read as follows:

§ 110.8 Lake Champlain, N.Y. and Vt.

* * * * *

(g) *Charlotte, Vt.* An area shoreward of a line bearing 080 T from 44°16' 12" N, 73°17' 18" W, on Thompson's Point to 44°16' 16" N, 73°16' 40" W., on William's Point.

Dated: January 27, 1986.

P.A. Yost,

Vice Admiral U.S. Coast Guard Commander, Third Coast Guard District.

[FR Doc. 86-2627 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 166

[CGD 81-080B]

Shipping Safety Fairways; Expansions and Additions

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a new fairway at the channel entrance to Lower Mud Lake and establishes new fairway anchorages at Calcasieu Pass and Sabine Bank. This rule also widens the existing fairway at the entrance to Southwest Pass. These actions are necessary because of the increased volume of vessel traffic, the need to provide adequate anchorage areas for vessels, and the need to establish greater maneuvering area for taking on and letting off pilots. The intended effect of this rule is to provide for safe access routes and anchorages in these areas. This rule also corrects errors in the geographical descriptions of the Southwest Pass to Sea Safety Fairway and the Calcasieu Pass Fairway Anchorage. Correction of these errors does not affect the actual dimensions of the fairway or fairway anchorage area.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: LTJG D. Reese, Project Manager, Office of Navigation (G-NSR-3), room 1416, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, telephone (202) 245-0108.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) concerning the shipping safety fairways and fairway anchorages in this final rule was published on August 9, 1982 (47 FR 34432). A supplemental notice of proposed rulemaking (SNPRM) was published on March 30, 1984 (49 FR 12715) and included the revision of specific proposals in the NPRM. Interested persons were given until June 28, 1984, to submit comments. A public hearing was not held on this matter. Two of the proposals in the SNPRM have been renamed and two errors in geographical descriptions have been corrected.

Drafting Information

The principal persons involved in drafting this rulemaking are Lieutenant (j.g.) D. Reese, Project Manager, Office of Navigation, and Lieutenant S. R. Sylvester, Project Attorney, Office of Chief Counsel.

Background

The Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223) authorizes the Coast Guard to designate necessary fairways to allow vessels an area free of fixed structures for safe access to U.S. ports. The regulations governing shipping safety fairways (33 CFR Part 166) provide that fixed offshore structures, temporary or permanent, are not permitted within designated safety fairways, and are only permitted within fairway anchorages if the structures are two miles apart. The Coast Guard has the authority, in accordance with the PWSA, to modify or relocate existing safety fairways to improve navigation safety or to accommodate offshore mineral exploitation and exploration.

Although shipping safety fairways may interfere with the direct exploration for and production of oil and gas on the Outer Continental Shelf (OCS), and fairway anchorages limit how closely platforms may be situated, there is no indication that the acreage involved in this regulation will obstruct OCS

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development. Indeed, the Coast Guard, in revising the original proposals, has minimized each identifiable cost impact while also satisfying the needs of safe navigation.

The authority to create a fairway may be exercised by the Coast Guard only after a study of potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from U.S. ports. The study for this rulemaking was initiated by a notice in the **Federal Register** in April 1979 (44 FR 22543, modified at 45 FR 7027). The study results for the ports along the Gulf of Mexico were published on October 8, 1981 (46 FR 49989). On August 9, 1982 the Coast Guard published a notice of proposed rulemaking (47 FR 34432), with specific proposals to add new fairways and fairway anchorages in the Gulf of Mexico. Several comments were received which caused the Coast Guard to re-evaluate the proposed fairways and fairway anchorages. On March 30, 1984 (49 FR 12715) the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) which contained proposed shipping safety fairway amendments, additions, and anchorages.

This rulemaking will establish two new fairway anchorages in the vicinity of Sabine Bank, adjacent to the existing Sabine Pass Safety Fairway in the approach to Sabine Lake and Port Arthur, Texas (as described in 33 CFR 166.200(d)(12)). These anchorages are intended to improve navigation safety by providing areas where vessels may anchor during periods of reduced visibility or during times when scheduling of port facilities or pilot services causes a delay in arrival. The Sabine Bank/Port Arthur area is a major petrochemical area with a volume of vessel traffic which warrants the designation of new fairway anchorage areas.

The Eighth Coast Guard District considered whether the amount of liquified natural gas/liquified petroleum gas (LNG/LPG) traffic and the draft of LNG/LPG vessels in the Sabine Bank/Port Arthur area and the Calcasieu Lake/Port of Lake Charles, Louisiana would be supported by the designation of an anchorage specifically for LNG/LPG vessels. It was determined that the designation of anchorages specifically for LNG/LPG traffic as proposed in the SNPRM was not needed at this time based on the present low volume of LNG/LPG traffic in both areas and doubt as to the adequacy of the depth of the proposed Sabine Bank LNG/LPG anchorage. The three Sabine Pass anchorage areas as proposed in the SNPRM are renamed in this rulemaking. The Sabine Pass anchorage areas will be renamed the Sabine Pass Inshore Anchorage Area, the Sabine Bank Offshore (North) Anchorage Area, and the Sabine Bank Offshore (South) Anchorage Area.

This rulemaking will establish a new fairway anchorage adjacent to the existing Calcasieu Pass Safety Fairway in the approach to Calcasieu Lake and the port of Lake Charles, Louisiana (described in 33 CFR 166.200(d)(15)). This anchorage will improve navigation safety by accommodating the increased volume of deep draft vessels in the area.

The LNG/LPG designation for the new anchorage has been changed and the two Calcasieu Pass anchorage areas, as described in the SNPRM, have been renamed as North and South fairway anchorage areas in this rulemaking. Also, the geographical positions of the Calcasieu Pass LNG/LPG Anchorage (now Calcasieu Pass South Anchorage Area) have been described in a more logical order.

This rulemaking will establish a new safety fairway at the channel entrance to Lower Mud Lake. This fairway would ensure a corridor free of fixed structures to the channel which is in steady use by offshore crew boats and fishing vessels.

This rulemaking will amend the existing Southwest Pass (Mississippi River) Safety Fairway and anchorage (33 CFR 166.200(d)(28) and (29)) by widening it. The change is intended to establish greater maneuvering area for taking on and letting off pilots near the sea buoy. Also, an error in the geographical description of the Southwest Pass (Mississippi River) to Sea Safety Fairway has been corrected.

Discussion of Comments

Two comments were received in response to the SNPRM published on March 30, 1984. One comment, from Sonat Marine Inc., was strongly in favor of the proposal in the SNPRM. The other comment, from The Standard Oil Company (SOHIO), did not support two of the proposals in the SNPRM and suggested alternatives. The Coast Guard responses to both comments are addressed in the following discussion of the affected areas.

1. Sabine Bank/Port Arthur Anchorages

Sonat Marine Inc. was in favor of the proposals in the SNPRM in their entirety because they better defined the safety fairways in the Gulf of Mexico; allowed the use of the safety fairways to be strictly on a voluntary basis; separated general cargo anchorages from LNG/LPG anchorages; did not obstruct the development of the OCS; and established areas for vessel navigation which cannot be obstructed by fixed offshore oil field equipment.

SOHIO's comment expressed concern about the existence of shoal spots with only 34–38 feet of water immediately south of the proposed general anchorage. The comment noted that the shoal spots could present a hazard to the mariner approaching the anchorage from seaward in a vessel drawing 40 or more feet. The comment expressed concern about Sabine Bank Shoal because 40 feet is the normal full load draft for tank vessels entering ports via Sabine Pass. The comment also expressed concern over the presence of a spoil area to the north. This comment proposed an alternative anchorage area on the eastern side of the Sabine Pass Safety Fairway.

Although the Sabine Pass Anchorage Areas will be unable to handle very deep draft vessels, the anchorages, as proposed, are still needed. Currently, there are numerous vessels that transit the Sabine Pass area that are not constrained by a 34 foot draft and could therefore utilize all the Sabine Pass Anchorage Areas. Also, the 42–47 foot depth of the Sabine Bank Inshore (South) Anchorage Area will accommodate some of the tank vessel traffic entering port via Sabine Pass. The alternative location suggested by SOHIO, at Sabine Bank, could present a serious hazard because if a vessel outbound from Sabine Pass should fail to negotiate the southbound turn at Sabine Bank it would probably proceed into the proposed anchorage area. This could cause considerable damage to vessels at anchor there. The Coast Guard will therefore not adopt this comment.

The names of the Sabine Pass Anchorage Areas have been changed for convenience of reference from Sabine Pass Anchorage Area, Sabine Bank General Anchorage Area, and Sabine Bank LNG/LPG Anchorage Area to Sabine Pass Inshore Anchorage Area (33 CFR 166.200(d)(13)(i)), Sabine Bank Offshore (North) Anchorage Area (33 CFR 166.200(d)(13)(ii)) and Sabine Bank Offshore (South) Anchorage Area (33 CFR 166.200(d)(13)(iii)). There have been no changes to the geographical positions of either fairway anchorage since the supplemental notice of proposed rulemaking.

2. Calcasieu Pass/Lake Charles Anchorage

SOHIO's comment expressed concern about the water depth available in the Calcasieu Pass LNG/LPG anchorage and proposed an additional deep draft anchorage. The Coast Guard disagrees with this comment since as a result of comments to the NPRM, the Calcasieu Pass LNG/LPG (now the Calcasieu Pass South Anchorage Area) anchorage was shifted fourteen miles further south to deeper water and redescribed in the SNPRM. The alternative proposed by the comment would actually put the anchorage in an area of shallower water and would impact on currently leased tracts.

Although Sonat Marine Inc. supports separate designations for LNG/LPG and general cargo vessels, as mentioned earlier, further analysis by the Eighth Coast Guard District has not indicated a clear and present need to designate special anchorage for LNG/LPG vessels because of the low volume of LNG/LPG traffic density in the area. Therefore, the designation of the Calcasieu Pass LNG/LPG Anchorage Area has been changed. The Calcasieu Pass LNG/LPG Anchorage Area is renamed the Calcasieu Pass South Anchorage (33 CFR 166.200(d)(16)(ii)). The Calcasieu Pass General Anchorage Area is renamed the Calcasieu Pass North Anchorage Area (33 CFR 166.200(d)(16)(i)).

Two of the geographical positions in the description of the Calcasieu Pass LNG/LPG Anchorage Area in the SNPRM were not listed in sequential order. The positions have been resequenced to provide a clear description of the rhumb lines that make up the anchorage.

Southwest Pass Fairways and Anchorage

The fifth position in the description of the Southwest Pass (Mississippi River) to Sea Safety Fairway (28°36'28", 89°18'45") was in error in the SNPRM. The correct position is (28°36'28", 89°18'45"). This safety fairway is described at 33 CFR 166.200(d)(28)(ii).

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). There are no costs associated with the new fairways and anchorages. These designations will contribute to navigation safety without interfering with current development of the OCS. The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping safety fairways.

PART 166—[AMENDED]

In consideration of the foregoing, Part 166 of Title 33 CFR is amended as follows:

1. The authority citation for Part 166 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

2. Section 166.200 is amended by revising paragraphs (d)(13); (d)(16); (d)(17); (d)(28) (i) and (ii); and (d)(29) to read as follows:

§ 166.200 Shipping Safety Fairways.

* * * * *

(d) *Designated Areas.* All geographical positions in the following designations are North Latitude and West Longitude.

* * * * *

(13) *Sabine Pass Anchorage Areas—*(i) *Sabine Pass Inshore Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°37'32" N.	93°48'02" W.
29°37'32" N.	93°21'25" W.
29°32'52" N.	93°43'00" W.
29°36'28" N.	93°47'14" W.

(ii) *Sabine Bank Offshore (North) Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°26'06" N.	93°43'00" W.
29°26'06" N.	93°41'06" W.
29°24'06" N.	93°41'06" W.
29°24'06" N.	93°43'00" W.

(iii) *Sabine Bank Offshore (South) Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°18'55" N.	93°43'00" W.
29°16'55" N.	93°41'06" W.
29°14'29" N.	93°41'06" W.
29°14'29" N.	93°43'00" W.

* * * * *

(16) *Calcasieu Pass Anchorage Areas—*(i) *Calcasieu Pass North Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°41'12" N.	93°19'37" W.
29°41'12" N.	93°12'28" W.
29°31'16" N.	93°12'16" W.
29°37'30" N.	93°16'15" W.

(ii) *Calcasieu Pass South Anchorage Area.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
28°59'30" N.	93°16'30" W.
28°59'30" N.	93°14'00" W.
28°56'00" N.	93°14'00" W.
28°56'00" N.	93°16'30" W.

(17) *Lower Mud Lake Safety Fairway.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
29°43'24" N.	93°00'16" W.
29°42'00" N.	93°00'16" W.

and rhumb lines joining points at:

29°43'33" N.	93°00'48" W.
29°42'00" N.	93°00'48" W.

* * * * *

(28) *Southwest Pass (Mississippi River) Safety Fairway—*(i) *Southwest Pass (Mississippi River) to Gulf Safety Fairway.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
28°54'33" N.	89°26'07" W.
28°52'42" N.	89°27'06" W.
28°50'00" N.	89°27'06" W.
28°02'32" N.	90°09'28" W.

and rhumb lines joining points at:

28°54'18" N.	89°25'46" W.
28°53'30" N.	89°25'18" W.
28°53'30" N.	89°23'48" W.
28°50'40" N.	89°24'48" W.
28°48'48" N.	89°24'46" W.
28°47'24" N.	89°26'30" W.
28°00'36" N.	90°06'18" W.

(ii) *Southwest Pass (Mississippi River) to Sea Safety Fairway.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
28°54'33" N.	89°26'07" W.
28°52'42" N.	89°27'06" W.
28°50'00" N.	89°27'06" W.
28°47'24" N.	89°26'30" W.
28°36'28" N.	89°18'45" W.

and rhumb lines joining points at:

28°54'18" N.	89°25'46" W.
28°53'30" N.	89°25'18" W.
28°53'30" N.	89°23'48" W.
28°50'40" N.	89°24'48" W.
28°48'48" N.	89°24'48" W.
28°45'06" N.	89°22'12" W.
28°43'27" N.	89°21'01" W.
28°37'54" N.	89°17'06" W.

* * * * *

(29) *Southwest Pass (Mississippi River) Anchorage.* The area enclosed by rhumb lines joining points at:

Latitude	Longitude
28°53'30" N.	89°23'48" W.
28°53'30" N.	89°21'46" W.
28°55'06" N.	89°21'46" W.
28°55'06" N.	89°19'18" W.
28°52'41" N.	89°17'30" W.
28°50'40" N.	89°21'14" W.
28°50'40" N.	89°24'46" W.

* * * * *

Dated: January 17, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation.

[FR Doc. 86-2632 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-14-M

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VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Extension of Reporting Time for Defaults on Loans

AGENCY: Veterans Administration.

ACTION: Final regulation amendment.

SUMMARY: The VA (Veterans Administration) is amending the reporting requirement on defaulted vendee loans that have been purchased by investors with a repurchase agreement. Previously, holders of such loans had to submit to the VA a notice of default within 30 days after a loan had become two full installments in default. This regulation amendment extends the reporting period to 60 days.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-3668.

EFFECTIVE DATE: January 10, 1986.

SUPPLEMENTARY INFORMATION: On July 8, 1985, the VA published in the **Federal Register** (50 FR 27833) proposed amendments to § 36.4600 of the VA's loan guaranty regulations. Public comments were requested on a proposal to extend the time period for reporting defaults to the VA on loans sold by the VA with a repurchase agreement. The amended regulation extends the reporting time from 30 to 60 days after a loan becomes two full installments in default. Please refer to the July 8, 1985 **Federal Register** for a complete discussion of the proposed regulation amendment.

Three comments were received on the proposed amendments. One comment was submitted solely to concur with the proposal.

A second comment suggested that purchasers of VA loans might be less interested in the loans because of the extended reporting time. The VA believes that purchasers will not be less interested in the loans since the extended reporting time simply provides the loan holder with a longer period in which to report defaults, but does not alter either the time for the holder to file a claim for repurchase of the loan amount of the principal, interest and other expenses payable by the VA.

The third comment states that "the additional time allotted under the proposal for reporting should be added to the existing forbearance procedure which has been currently sanctioned by the VA (and not substituted in lieu thereof)." The VA's position is that extending the reporting time actually permits the loan holder to grant additional forbearance prior to reporting the default to the VA, and although the VA has not specified or sanctioned any particular "forbearance" procedure, loan holders are expected to service loans according to industry standards (38 CFR 36.4600(c) (12)) and to accept partial payments (38 CFR 36.4600(c)(15) (i) and (ii)) when appropriate.

The Administrator hereby certifies that these final regulation amendments will not have a signficant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory analyses requirements of sections 603 and 604. The amendments will have no impact on small organizations or small government entities. Small businesses may be affected slightly due to relaxation of the reporting requirement, but not to an economically significant degree.

The amended regulation has been reviewed under Executive Order, Federal Regulation, and is not considered major as that term is defined. This regulation will not impact on the public or private sectors as a major rule. It will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will it have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program Number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

This amendment is promulgated under authority granted the Administrator by sections 210(c) and 1820 of title 38, United States Code.

Approved: January 10, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

§ 36.4600 [Amended]

In 38 CFR Part 36, Loan Guaranty, § 36.4600 is amended by removing the word "hereby" from paragraph (a); by changing the number "30" to "60" in the text and adding the cite "(38 U.S.C. 210(c), 1820)" at the end in paragraph (c)(1); and by changing the title "Secretary of Housing and Urban Development" to "Federal Emergency Management Agency" in paragraph (c)(3).

[FR Doc. 86-2634 Filed 2-5-86; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 94

Private Operational-Fixed Microwave Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects the effective date of the Final Rule document in this proceeding concerning amendments of the rules governing the private operational-fixed microwave service Parts 1 and 94 to make certain non-substantive changes, published on January 21, 1986, 51 FR 2702.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Harold Salters Private Radio Bureau (202) 632-7597.

In FR Doc. 86-941, appearing in the **Federal Register** issue of January 21, 1986, correct the Effective Date line to read: "January 21, 1986."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2496 Filed 2-5-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 65

[CC Docket No. 84-900; Phase II; FCC 85-645]

Interstate Services of AT&T Communications and Exchange Telephone Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects typographical errors and omissions that appeared in the Report and Order concerning interstate services of AT&T Communications and Exchange Telephone carriers that was published in the **Federal Register** on January 15, 1986, 51 FR 1795-1814.

FOR FURTHER INFORMATION CONTACT: Steve Goodman, Common Carrier Bureau, 202-632-0745.

Erratum

Authorized rates of return for the interstate services of AT&T Communications and Exchange Telephone carriers (CC Docket No. 84-900, Phase II).

Released: January 17, 1986.

By the Commission.

Several errata were present in the *Report and Order* in CC Docket No. 84-900, Phase II (FCC 85-645, Mimeo Number 36337, released December 20, 1985). In light of the errata contained therein (see correct text, *infra*), all scheduled filings are advanced five business days to permit parties additional time to prepare their pleadings. Under this revised schedule, initial carrier filings are to be made on February 10, 1986. The following modifications should be made to the text of that order. (FR Doc. 515, 51 FR 1795-1838).

1. Table of Contents, last line, 51 FR 1795.

VI. Conclusion.....70-76

2. Para. 1, 51 FR 1795.

1. In this phase of the proceeding, we are establishing procedures and methodologies for represcribing rates of return for the interstate services of AT&T Communications (ATTCOM) and the interstate access services of the local exchange carriers (LECs). Our original Notice of Proposed Rulemaking (*Initial NPRM*)[1] was issued in August of last year. After reviewing the substantial record developed in response to the *Initial NPRM*, we issued a Supplemental Notice of Proposed Rulemaking (*Supplemental Notice*) [2] which refined and modified our initial proposals.

3. Para. 2, 51 FR 1795-1796.

2. The *Supplemental Notice* divided this proceeding into two phases. The Phase I issues, regarding enforcement and interim rates of return, were addressed in an order (*Phase I Order*) recently released.[3] In the *Phase I Order*, we adopted enforcement policies which best balance the interests of ratepayers and investors. We believe the procedures and methodologies we are prescribing will allow us to determine accurately the carriers' costs of capital without creating administrative nightmares.

4. Para. 9, note 25, 51 FR 1797.

25. If we were to begin, initially, with an individual determination of a firm's cost of capital *in toto*, we would have to attempt to remove the effects of non-jurisdictional activities from the firm's financial structure, the firm's cost of embedded debt, the firm's cost of preferred stock, and the firm's cost of common stock.

5. Para. 12, 51 FR 1797.

12. The perceptions of investors, investment analysts or bond rating agencies are accordingly of limited relevance because investors, analysts and bond rating agencies view the firm as a whole in making their decisions. At the present time, an investor cannot invest solely in the interstate access service assets of a local exchange carrier.

6. Para. 26, 51 FR 1800.

26. Commenting parties raise some concerns that cause us to conclude that we should not utilize the state authorized returns as a presumptively correct cost of capital for interstate exchange access services, although we do intend to collect and use that information in determining the interstate rate of return. In criticizing our proposed use of state authorized returns, parties argue that use of costs of capital set at the state level would be inconsistent with the Commission's intent to prescribe accurately an interstate rate of return. One criticism relates to timing. The Commission is attempting to prescribe an exchange carrier rate of return for the upcoming two-year period, yet many of the state authorizations are several years old. According to Southwestern Bell, nearly one-third of the prescriptions for the Bell Operating Companies predate the divestiture.[60] We agree that when interest rates and costs of capital fluctuate widely, a previous state determination might not correspond with current interstate costs of capital.[61]

7. Para. 32, note 66, 51 FR 1801.

66. We would also expect that interexchange carriers or customers would identify instances in which in which a state's treatment was inconsistent with, and more generous than, Commission treatment.

8. Para. 35, 51 FR 1802.

35. We have decided that we should use a RHC DCF composite methodology with certain modifications as one of the methods for the determination of an interstate access return. We will also use a comparable firm method that is described in Part D. We will not use the Capital Asset Pricing Model ("CAPM") or the risk premium approaches that were described in the *Supplemental Notice*. Those approaches ultimately rely upon a variation of the DCF approach to calculate a cost of equity capital. We have concluded that those additional measurements are not necessary.

9. Para. 38, note 74, 51 FR 1802.

74. This procedure guarantees a "true up" every two years that is based upon the actual daily market performance of each share of common stock. We have decided to use New York Stock Exchange share price trading data because of the requirements that the New York Stock Exchange imposes upon listed companies and member firms, and the broad volume of trading that occurs on the New York Stock Exchange. Data services, however, more frequently report New York Stock Exchange Composite price data (*i.e.*, daily price data for NYSE listed firms for all exchanges, rather than price data that is unique to the New York Stock Exchange). In light of this limitation, and the comparatively short period of time that parties will have to prepare their pleadings (as contrasted with the next represcription cycle), we have decided to utilize composite exchange price data for this represcription cycle.

10. Para. 39, 51 FR 1802.

39. The *Supplemental Notice* discussed a tentative preference for adjusting the last quarter's dividend by the growth rate that was expected to occur during the period that the prescription would be in effect.[76] In light of our decision to represcribe automatically the cost of equity every two years on the basis of the actual data, we have concluded that it is neither necessary nor desirable to attempt to reconcile conflicting estimates of expected growth rates of dividends in computing the value of D that is to be utilized. Instead, we have decided to use the average of annual dividends that were actually paid during the two years that immediately precede the represcription filing. The average of those dividends is readily determinable and unambiguous. In addition, the availability, in computer data bases, of actual, as compared with declared, dividends, should facilitate computer assisted analyses of the costs of common stock equities.

11. Para. 38, note 75, 51 FR 1802.

See para. 48, *infra*. Our decision to use daily trading data is also more consistent with our decisions to use experienced (actual) annual growth rates of dividends (*see* para. 40, *infra*), and the average annual dividend during the two year period preceding each represcription filing (*see* para. 39, *infra*), rather than using estimates of those values.

12. Para. 40, note 78, 51 FR 1802.

78. G_1 is derived from the slope ("B") of the ordinary least squares trend line of quarterly dividends that were declared during the two calendar years preceding the represcription filing, where

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$$G_1 = \left[\frac{B}{\text{Average Quarterly Dividend}} + 1 \right]^{4} - 1.$$

13. Para. 45, 51 FR 1803.

45. The debt component includes short, intermediate, and long term issues. The cost of debt shall be the most recent embedded cost of debt [89] at the time that the initial rate of return filings are made (see Appendix A). The amount of debt to be used in calculating the relative weight of debt in the WACC will be the book value of that debt.[90] Straight preferred stock, for weighting purposes, shall be treated in the same manner as short and intermediate term debt. Its cost will be the most recently available embedded dividend cost (*i.e.*, dividend divided by book value) at the time of the most recent balance sheet that has been filed with the SEC prior to the filings that are required in Part 65 of our rules. The weight will be based upon the book value of the straight preferred stock that is outstanding.

14. Para. 47, note 92, 51 FR 1804.

92. See paras. 49–51, *infra*.

15. Para. 48, note 93, 51 FR 1804.

93. The *Supplemental Notice* discussed the possibility of determining, over time, sets of analysts whose estimates of G would be included in the record. Based upon the comments that have been filed in this proceeding, we have concluded that it is neither necessary nor desirable to entertain disputes as to the composition of such a group. *See Supplemental Notice* at paras. 63–64, n.56.

16 Para. 50, note 97, 51 FR 1804.

97. For this purpose, we have defined the coefficient of variation to be the standard deviation about the ordinary least squares trend line, divided by the simple average of the data. Coefficients of variation for comparable firms are to be based upon quarterly data for eight quarters preceding the prescription filing. Only those firms are to be included that have reported expense and revenue data for eight quarters as of the date of the represcription filing. For many firms, this limitation will constrain the data set to those firms whose most recent SEC filing was for the third quarter of the year immediately preceding the represcription filing.

17. Para. 50, note 98, 51 FR 1804.

98. The trend data and variability would be measured on a quarterly basis by combining the monthly NECA data for the months that are contained within each quarter. "Expenses" for coefficient of variation analyses would not include Federal income taxes. If the sample size that results from this procedure is abnormally small, we may consider: (i) Employing a single detrended coefficient of variation of operating income screen that is based upon NECA revenues minus NECA expense (*i.e.*, a single income screen in lieu of the two coefficient of variation screens that are based upon two income components); (ii) identifying a sample size among firms that are otherwise comparable (*i.e.*, that meet the other screen requirements) that would be centered upon one or more detrended coefficient of variation screens; or (iii) utilizing the methodology identified by AT&T for comparable firms (*see* AT&T comments at 10–14).

18. Para. 53, note 102, 51 FR 1805.

102. *See* AT&T Comments at 12, Attachment A.

19. Para. 54, note 104, 51 FR 1805.

104. For the filing to be submitted on February 10, AT&T shall perform the analyses specified in § 65.500 of the Commission's Rules. In this regard, AT&T shall, pursuant to § 65.500(c)(1), exclude those firms that did not have a Standard and Poor's credit rating, on one or more debt issues, of AA– or better (or equivalent Moodys or Fitches ratings) during the two calendar years immediately preceding the represcription filing. Pursuant to § 65.500(c) (2) and (3), AT&T shall determine a set of comparable firms that are based upon the detrended coefficients of variation of expenses and net revenues that are calculated on the basis of quarterly Interstate Monthly Report No. 1 data for the two calendar years immediately preceding the represcription filing. In addition to the set of comparable firms thus determined, pursuant to § 65.500(d) AT&T shall further identify, and perform comparable firm cost of capital measurements in accordance with the formulae, methodologies, data, and calculations that are specified in § 65.300–304, upon a second set for firms that are determined under the coefficient of variation net income methodology for ATTCOM that is specified in pages 12–13 and Statement of Lindenberg and Vinson, Attachment A, pages 1–4, of AT&T's September 25, 1985 Comments in this proceeding. In determining the two sets of comparable firms, AT&T should utilize the NYSE universe of companies, rather than just those in the Standard and Poor's 500, as had been suggested in its comments. *See* para. 53, *supra*. Thus, both sets of comparable firms will utilize the same initial screens (NYSE listed companies and a credit rating of AA– or better), but will differ with respect to the coefficient of variation screens.

§ 65.102 [Corrected]

20. In the Appendix (51 FR 1809), § 65.102(b)(1) is corrected to read:

* * * * *

(b) * * *

(1) Initial carrier rate of return submissions for the prescribed methodologies shall not exceed 70 pages in length. Data prescribed by §§ 65.201(a)(1) and (2), 65.201(b), and 65.300–65.400 are not counted in the 70 pages.

* * * * *

§ 65.201 [Corrected]

21. In the Appendix (51 FR 1810), § 65.201(b)(3) is corrected to read:

* * * * *

(b) * * *

(3) The embedded cost of debt (expressed as an annual rate, see § 65.301) that applies to each debt obligation that is contained in the most recent financial structure that has been filed with the Securities and Exchange Commission.

§ 65.300 [Corrected]

* * * * *

22. In the Appendix (51 FR 1811), § 65.300, first paragraph is corrected to read:

Sections 65.301–304 specify the calculations that are to be performed in computing the weighted average cost of capital for each firm for whom a weighted average cost of capital is calculated. Financial structure weights, debt issues, and classes of preferred and common stock are to be calculated on the basis of the most recent position statement (10–Q or 10–K) that has been filed with the Securities and Exchange Commission. The calculations of costs of capital and their weights shall be calculated to eight decimal places and shall not be rounded at the eighth decimal place.

* * * * *

23. In the Appendix (51 FR 1811), § 65.300(b)(1) is corrected to read:

* * * * *

(b) * * *

(1) for short term debt components (and the short term component of capitalized leases), the "Prime Bank Loan Rate";

* * * * *

24. In the Appendix (51 FR 1811), § 65.300(b)(3) is corrected to read:

(b) * * *

(3) for capitalized long term lease obligations, the internal rate of return, unless that rate cannot be calculated in which case the "Corporate AAA Bonds" rate;

* * * * *

§ 65.301 [Corrected]

25. In the Appendix (51 FR 1811), § 65.301(a), the formula is corrected to read:

(a) * * *

$$K_{dip} = \frac{\text{(Effective Annual Interest Rate) (Principal)}}{\text{Net Proceeds}} - \frac{\text{(Premium) (365.25)}}{\text{(Net Proceeds) (N)}}$$

* * * * *

26. In the Appendix (51 FR 1811), § 65.301(b)—formula is corrected to read:

(a) * * *

$$K_{dd} = \frac{\text{(Effective Annual Interest Rate) (Principal)}}{\text{Net Proceeds}} + \frac{\text{(Discount) (365.25)}}{\text{(Net Proceeds) (N)}}$$

* * * * *

27. In the Appendix (51 FR 1812), § 65.301(c)—formula is corrected to read:

* * * * *

(c) * * *

$$K_{dc}1 = \frac{\text{(Effective Annual Interest Rate) (Principal)}-\text{(Premium) (n)}^{-1}}{\text{Net Proceeds}}$$

* * * * *

28. In the Appendix (51 FR 1812), § 65.301(d)—formula is corrected to read:

* * * * *

(d) * * *

$$K_{dd}1 = \frac{\text{(Effective Annual Interest Rate) (Principal)}+\text{(Discount) (n)}^{-1}}{\text{Net Proceeds}}$$

* * * * *

§ 65.303 [Corrected]

29. In the Appendix (51 FR 1812), § 65.303(a) is corrected to read:

(a) *General.* The cost of each issue of common stock [K_e] is to be calculated by the general formula: $K_e = D/P + G_1$; where D is the average annual dividend during the two calendar years preceding the represcription filing, P is the average daily price of that issue of common stock during each trading day during the two calendar years that precede the represcription filing, and G_1 is the annual rate of growth as hereinafter defined ($G_1 = G_1, G_2$). The calculations of the cost of common stock equity should consistently adjust D, P, and G, for stock splits and dividends of shares of common stock.

* * * * *

30. In the Appendix (51 FR 1812), § 65.303(b) is corrected to read:

* * * * *

(b) *Calculation of Dividend* ("D"). D is the average of the annual dividends that have been paid during the two calendar years that precede the represcription filing.

* * * * *

§ 65.304 [Corrected]

31. In the Appendix (51 FR 1812), § 65.304(c) is corrected to read:

* * * * *

(c) The weight that is to be applied to each cost of capital component shall be equal to the book value of that component divided by the total book values of all cost of capital components for each firm for whom a cost of capital has been computed. The total of all weights that are calculated in the computation of the weighted average cost of capital of any firm shall be 1.0000000.

* * * * *

§ 65.400 [Corrected]

32. In the Appendix (51 FR 1813), § 65.400(a)(1) is corrected to read:

(a) * * *

(1) Continuously filed quarterly and annual financial statements with the Securities and Exchange Commission during the eight quarters that are closest to the represcription filing;

* * * * *

33. In the Appendix (51 FR 1813), § 65.400(e)(3) is corrected to read:

(e) * * *

(3) The computation of the NECA coefficients of variation for the February 10, 1986 filing shall be computed on the basis of monthly NECA data. For subsequent represcription filings, the monthly NECA data shall be aggregated into quarterly NECA expense and revenue data to compute coefficients of variation that are based upon that quarterly data. Coefficients of variation for comparable firms shall be calculated on the basis of quarterly data. Linear trend lines are to be computed on the basis of ordinary least squares. The detrended coefficient of variation that is to be calculated, in each instance, is the standard deviation from the ordinary least squares linear trend line of each data series divided by the average value of the data series.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–1616 Filed 2–5–86; 8:45 am]

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47 CFR Part 74

[MM Docket No. 85–126; FCC 86–58]

Radio and Television Broadcasting; Review of Technical and Operational Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action deregulates Part 74 of the Commission's Rules, pertaining to technical and operational requirements for remote pickup stations and wireless microphones. The purpose of these amendments is to provide auxiliary station licensees with the maximum allowable design and operational flexibility. These changes are also intended to encourage more efficient use of the spectrum.

EFFECTIVE DATE: March 10, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Radio broadcasting, TV broadcasting.

Report and Order

In the matter of Review of Technical and Operational Requirements: Part 74–D Broadcast Remote Pickup Service; and Part 74–H Low Power Auxiliary Stations (MM Docket No. 85–126).

Adopted: January 23, 1986.
Released: January 30, 1986.

By the Commission.

Introduction/Background

1. The Commission has under consideration, a *Notice of Proposed Rule*

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Making (Notice)[1] in the above captioned matter and the comments and reply comments filed in response thereto.[2] The *Notice* proposed to revise certain rules covering technical and operational requirements for remote pickup (RPU) stations and wireless microphone licensees. Such stations are used to transmit aural program material and control signals from an event back to the broadcast studio or from a performer to a local reception point. The proposed actions would allow more flexibility for licensees and provide for more efficient use of the spectrum.

Issue 1: Cable System Eligibility

2. The *Notice* proposed to permit cable entities, serving a minimum number of subscribers, to use certain broadcast RPU spectrum for electronic news gathering (ENG).

3. TBS, while strongly supporting the above proposal for cable entry, requested that the Commission adopt rigid eligibility requirements to allow only cable network entry into the RPU spectrum because those bands are already quite congested in certain metropolitan areas. TBS also concurred with other commenters regarding the need for frequency coordination by all RPU licensees, to maximize use of the RPU spectrum.

4. CRB, representing cable television operators, stated that they have no particular need for aural remote authorizations. CRB's comments read, "With the exception of some FM services and occasional subcarrier services, most cable television spectrum usage is for distribution of video services."

5. NBC pointed out that cable entities engaged in true ENG activities have always been accommodated with authorization to use broadcast auxiliary frequencies.[3] NBC further submitted that, "many cable systems in fact do not engage in the sort of activities for which broadcasters use remote pickup frequencies. Many systems merely retransmit cable network and broadcast programming that already has been packaged." They expressed concern that use of the remote pickup frequencies for other business purposes, such as billing, would critically overburden the remote pickup frequencies.

6. CBS recommended that the Commission not extend remote pickup licensing eligibility cable interests and system operators, especially in the top 25 markets. This is due to the increased dependence of broadcasters on the scarce remote pickup spectrum. They requested that, if the Commission extends eligibility to cable interests, the eligibility be restricted to the 450 MHz spectrum, subject to prior frequency coordination, and that the proposed use be disclosed. This would ensure that the scarce spectrum space is devoted solely to "functions for which the Commission has designated."

7. NAB opposed the proposal stating that cable interests do not have any public interest programming duties as broadcasters do, and the increased congestion and interference resulting from cable interest stations in the scarce RPU spectrum would jeopardize broadcast ENG efforts. Further, they stated that the frequency coordination effort would certainly be complicated leading to less efficient use of the RPU spectrum. NAB also pointed out that there may be other means available to cable interests to satisfy their aural link requirements, such as the "two-way" capability of cable systems.

8. The RPU spectrum is already congested in certain markets, and the impact that additional users would have on that spectrum are the major concerns expressed in the comments. The Commission realizes that even if some additional users can be accommodated, allowing unlimited cable access could cause additional interference in the band, thus, drastically decreasing the usefulness of these types of facilities to many users whose access priority should be high. We further note that the broadcast auxiliary bands play an important role in ENG service. In this service, news events, which occur at random times and locations, may attract a large number of mobile units that need simultaneous transmission paths to their base stations. Given the unpredictability of these events, and the desirability of providing a high quality broadcast signal to the public, it is essential that all users coordinate operations in the band to prevent harmful interference.

9. Comments received indicate that individual cable systems, unlike cable networks that originate considerable programming, have no particular need for RPU spectrum.[4] Accordingly, the rules we adopt today are designed to provide new service where it is needed while limiting the number of additional eligible RPU licensees. These rules will allow cable networks that serve at least 5,000,000 subscribers access to the 450 MHz RPU band for the purpose of producing ENG programming.[5] Cable networks, actively engaged in ENG programming, and simultaneously distributing that program material to a large national or regional audience provide a service comparable to that provided by broadcast networks. Thus, we believe that cable networks providing such service should be accommodated in the RPU spectrum even if this involves some level of increased congestion in certain major markets. Even so, we fully expect that the number of additional eligible entrants will be small and that their presence will not have a serious adverse impact to existing stations operating in this spectrum.

Issue 2: Short Term Operation Flexibility

10. We proposed expanding a current provision in the Rules which permits operation on RPU channels for 30 days per year, without specific authority from the Commission. Specifically, the "30-day" limit would not apply to RPU stations operating within 50 miles of the broadcast studio or transmitter to broadcasters eligible for short term operation. Further, local operation would not be subject to secondary status as in short term operation.

11. The record supports the proposal, provided that there is prior frequency coordination with other licensees in the local area.[6] CBS requested clarification of "broadcast facility" (as proposed). NBC emphasized that prior frequency coordination would be essential, in addition to maintaining accurate records at the local level, because there would be no central records of stations maintained by the Commission.

[1] Adopted April 25, 1985 (50 FR 19555, May 9, 1985).

[2] Comments were submitted by: A.D. Ring & Associates (Ring); Association of Federal Communications Consulting Engineers (AFCCE); Association of Maximum Service Telecasters (MST); CBS Inc (CBS); Cole, Raywid, & Braverman (CRB); ESPN, Inc (ESPN); Hubbard Broadcasting, Inc (Hubbard); National Cable Television Association, Inc (NCTA); National Broadcasting Company, Inc (NBC); National Association of Broadcasters (NAB); Society of Cable Television Engineers, Inc (SCTE); Turner Broadcasting System, Inc (TBS); and WSAL-AM/FM (WSAL). Reply comments were submitted by: Hubbard; MST; NAB; National Public Radio (NPR); NCTA; Society of Broadcast Engineers (SBE); and TBS.

[3] NBC cited the Cable News Network as an example.

[4] See comments from CRB, NBC, and NAB.

[5] Although we originally proposed 250,000 subscribers, commenters were very concerned about the increased interference that could result from entry of additional stations. Therefore, we have chosen to proceed very conservatively by raising the eligibility requirements to cable entities serving more than 5,000,000 subscribers. Since this may preclude eligibility to some local and regional sports networks, we may wish to revisit this issue at a future date.

[6] See comments from CBS, NBC, TBS, NAB, Hubbard, and AFCCE.

12. Accordingly, we will amend the Rules as proposed, with the clarification requested by CBS and provisions discussed above. This action will also institute a notification process for RPU stations eligible to operate under their Part 73 license. This notification procedure will permit eligible broadcasters to begin operation of their auxiliary stations on the day their RPU applications are submitted to the Commission. Pending official authorization, the Commission can require that operation be suspended without hearing. Also, the Commission will continue to maintain centralized records of stations for an indefinite period until local frequency coordinators can take over the task. We note that there is a pending petition for rule making before the Commission [7] and may further address this issue in that docket.

Issue 3: Remote Control

13. The record supports revision of the remote control rules to provide more flexibility in the design and operation of auxiliary systems.[8] Accordingly, the remote control rules will be amended as proposed. We note, however, the *Notice of Proposed Rule Making* in MM Docket No. 85-225 proposed additional flexibility for remote control operations for Part 74-A Experimental Broadcast Stations and for Part 74-I Instructional Television Fixed Service stations.[9] In light of that proposal, if such rules are adopted, the Chief of the Mass Media Bureau may similarly amend the rule parts covered by this Order through an Order on delegated authority.

Issue 4: Wireless Microphones in the 944-947 MHz Band

14. The record supports extending the lower portion of the 950 MHz wireless microphone band to include 944-947 MHz. CBS, NBC, and AFCCE supported this proposal as providing additional resources to broadcasters without causing additional interference. Accordingly, the wireless microphone rules will be adopted as proposed.

Other Considerations

15. We proposed to make some non-substantive revisions to certain rule sections providing more flexibility to licensees operating RPU stations. These sections include: § 74.431, Special rules applicable to remote pickup stations; § 74.432, Licensing requirements and procedures; § 74.436, Special requirements for automatic relay stations; § 74.465, Frequency monitors and requirements; § 74.467, Posting of licenses; and § 74.867, Posting of licenses. The record supported these revisions. CBS requested that the amending language proposed for § 74.431(e) be clarified to remain consistent with current rules regarding power limits of hand-carried and pack-carried units used with vehicular repeaters. Accordingly, those revisions will be adopted as proposed and § 74.431(e) will be clarified.

Regulatory Flexibility Final Analysis

16. *Need and purpose of this action:* Through this decision, the Commission hopes to increase spectrum efficiency while allowing licensees maximum flexibility. The lack of spectrum to accommodate demands for auxiliary services necessitates that current bands be used more efficiently.

17. *Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:* No issues of significance were raised in addition to those set forth above.

18. *Significant alternatives considered and rejected:* The Commission considered the alternatives presented in the *Notice* and timely filed comments directed to the various issues in the *Notice*. After weighing all aspects of this proceeding, the Commission has adopted the course of action it deems most reasonable for the public interest under the Communications Act of 1934, as amended.

Paperwork Reduction Act

19. The Order contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and, except for a small adjustment due to the additional applications expected to be received, will not increase or decrease burden hours imposed on the public.

Actions

20. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*), (1981).

21. Accordingly, it is ordered that Part 74 of the Commission's Rules is amended as set forth in the attached Appendix, to be effective March 10, 1986. The actions taken herein are pursuant to 5 U.S.C. 553(d)(1). Authority for the actions taken herein is contained in Sections 4(i) and 303(r) of the Communications Act of 1935, as amended.

22. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 74—[AMENDED]

47 CFR Part 74 is amended as follows:

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR Part 74 is amended by adding a new § 74.2 *General definitions* to read as follows:

§ 74.2 General definitions.

Broadcast network-entity. A broadcast network-entity is an organization which produces programs available for simultaneous transmission by 10 or more affiliated broadcast stations and having distribution facilities or circuits available to such affiliated stations at least 12 hours each day.

Cable network-entity. A cable network-entity is an organization which produces programs available for simultaneous transmission by cable systems serving a combined total of at least 5,000,000 subscribers and having distribution facilities or circuits available to such affiliated stations or cable systems.

§ 74.401 [Amended]

3. 47 CFR 74.401 *Definitions* is amended by removing the definition for *Network entity*.

4. 47 CFR 74.402 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 74.402 Frequency assignment.

(a) The following frequencies may be assigned for use by remote broadcast pickup stations and broadcast network-entities. Frequencies between 450.025-450.975 and 455.025-455.975 MHz may also be assigned for use by cable network-entities.

* * * * *

[7] RM-5178, *Amendment of Subparts of the Commission's Rules and Regulations Concerning Frequency Coordination for Auxiliary Radio Broadcast Services*. Petition for rule making submitted by the Society of Broadcast Engineers. Public Notice given on October 8, 1985 (Report No. 1540).

[8] See comments from CBS, NBC, Turner, and AFCCE.

[9] Adopted July 9, 1985 (50 FR 30979, July 31, 1985).

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5. 47 CFR § 74.431 is revised in its entirety to read as follows:

§ 74.431 Special rules applicable to remote pickup stations.

(a) Remote pickup mobile stations may be used for the transmission of material from the scene of events which occur outside the studio back to studio or production center. The transmitted material shall be intended for the licensee's own use and may be made available for use by any other broadcast station or cable system.

(b) Remote pickup mobile or base stations may be used for communications related to production and technical support of the remote program. This includes cues, orders, dispatch instructions, frequency coordination, establishing microwave links, and operational communications. Operational communications are alerting tones and special signals of short duration used for telemetry or control.

(c) Remote pickup mobile or base stations may communicate with any other station licensed under this subpart.

(d) Remote pickup mobile stations may be operated as a vehicular repeater to relay program material and communications between stations licensed under this subpart. Precautions shall be taken to avoid interference to other stations and the vehicular repeater shall only be activated by hand-carried or pack-carried units.

(e) The output of hand-carried or pack-carried transmitter units used with a vehicular repeater is limited to 2.5 watts. The output of a vehicular repeater transmitter used as a talkback unit on an additional frequency is limited to 2.5 watts.

(f) Remote pickup base and mobile stations in Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands may be used for any purpose related to the programming or technical operation of a broadcasting station, except for transmission intended for direct reception by the general public.

(g) A broadcast licensee eligible for "short-term operation" under § 74.24, may operate RPU base or mobile stations under the authorization of the Part 73 license for an indefinite period upon filing an application for auxiliary operation with the Commission and subject to the conditions of § 74.24 (a), (b), (e), (f), (h), (i), and to the conditions set forth below:

(1) The auxiliary station is located within 50 miles (80 km) of the broadcast studio or broadcast transmitter.

(2) The applicant must coordinate the operation with all affected co-channel and adjacent channel licensees in the area of operation. This requirement can be satisfied by coordination with the local frequency committee if one exists.

(3) Such operation shall be suspended immediately upon notification from the Commission or by the Engineer in Charge (EIC) of the Commission's local field office, and shall not be resumed until specific authority is given by the Commission or EIC. When authorized by the EIC, short test operations may be made.

(4) Operation under this provision is not permitted between 152.87 MHz and 153.35 MHz.

(h) In the event that normal aural studio to transmitter circuits are damaged, stations licensed under Subpart D may be used to provide temporary circuits for a period not exceeding 30 days without further authority from the Commission necessary to continue broadcasting.

(i) Remote pickup mobile or base stations may be used for activities associated with the Emergency Broadcast System and similar emergency survival communications systems. Drills and tests are also permitted on these stations, but the priority requirements of § 74.403(b) must be observed in such cases.

6. 47 CFR 74.432 is amended by deleting paragraph (l); and revising paragraphs (a), (b), (c), (d), (e), (f), and (j) to read as follows:

§ 74.432 Licensing requirements and procedures.

(a) A license for a remote pickup station will be issued to: the licensee of an AM, FM, noncommercial FM, TV, international broadcast or low power TV station; broadcast network-entity; or cable network-entity.

(b) Base stations may operate as automatic relay stations on the frequencies listed in § 74.402(a) (6) and (8) under the provisions of § 74.436, however, one licensee may not operate such stations on more than two frequencies in a single area.

(c) Base stations may use voice communications between the studio and transmitter or points of any intercity relay system on frequencies in Groups I and J.

(d) Base stations may be authorized to establish standby circuits from places where official broadcasts may be made during times of emergency and circuits to interconnect an emergency survival communications system.

(e) In Alaska, Guam, Hawaii, Puerto Rico, and the Virgin Islands, base stations may provide program circuits between the studio and transmitter or to relay programs between broadcasting stations. A base station may be operated unattended in accordance with the following:

(1) The station must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(2) The station must be equipped with circuits to prevent transmitter operation when no signal is received from the station which it is relaying.

(f) Remote pickup stations may use only those frequencies and bandwidths which are necessary for operation.

* * * * *

(j) The license shall be retained in the licensee's files at the address shown on the authorization, posted at the transmitter, or posted at the control point of the station.

* * * * *

7. 47 CFR 74.434 is revised in its entirety to read as follows:

§ 74.434 Remote control operation.

(a) A remote control system must provide adequate monitoring and control functions to permit proper operation of the station.

(b) A remote control system must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(c) A remote control system must prevent inadvertent transmitter operation caused by malfunctions in the circuits between the control point and transmitter.

8. 47 CFR 74.436 is revised in its entirety to read as follows:

§ 74.436 Special requirements for automatic relay stations.

(a) An automatic relay station must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(b) An automatic relay station may accomplish retransmission of the incoming signals by either heterodyne frequency conversion or by modulating the transmitter with the demodulated incoming signals.

(c) An automatic relay station transmitter may relay the demodulated incoming signals from one or more receivers.

9. 47 CFR 74.465 is revised in its entirety to read as follows:

§ 74.465 Frequency monitors and measurements.

The licensee of a remote pickup station or system shall provide the necessary means to assure that all operating frequencies are maintained within the allowed tolerances.

§ 74.467 [Removed]

10. 47 CFR 74.467 Posting of Licenses is removed in its entirety.

§ 74.801 [Amended]

11. 47 CFR 74.801 Definitions is amended by removing the definition Network entity.

§ 74.802 [Amended]

12. 47 CFR 74.802 Frequency assignment is amended by changing the occurrence of "947–952 MHz" to read "944–952 MHz."

§ 74.831 [Amended]

13. 47 CFR 74.831 Scope of service and permissible transmissions is amended by changing the occurrence of "947–952 MHz" to read "944–952 MHz."

14. 47 CFR 74.832 is amended by adding a new paragraph (j) to read as follows:

§ 74.832 Licensing requirements and procedures.

* * * * *

(j) The license shall be retained in the licensee's files at the address shown on the authorization, posted at the transmitter, or posted at the control point of the station.

§ 74.867 [Removed]

15. 47 CFR 74.867 Posting of licenses is removed in its entirety.

16. 47 CFR 74.832 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 74.832 Licensing requirements and procedures.

(a) * * *

(2) A broadcast network entity.

* * * * *

(c) Licensees of AM, FM, TV, and International broadcast stations; low power TV stations; and broadcast network entities may be authorized to operate low power auxiliary stations in the frequency bands set forth in § 74.802(a).

* * * * *

[FR Doc. 86–2500 Filed 2–5–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 51160–5160]

Foreign Fishing, Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of the Pacific cod domestic annual harvest (DAH) in the Central area to foreign fishermen under provisions of the fishery management plan for groundfish of the Gulf of Alaska. This action is necessary to provide sufficient Pacific cod as a target species. This reapportionment is intended as a management measure that promotes fuller utilization of Gulf of Alaska groundfish.

DATES: February 3, 1986. Comments on this action are invited until March 5, 1986.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: Under rules appearing at 50 CFR Part 672, Gulf of Alaska optimum yields (OYs) are apportioned initially among DAH, reserve, and the total allowable level of foreign fishing (TALFF). NOAA announced 1986 interim apportionments of OY for each category of groundfish in the Gulf of Alaska at 51 FR 956 (January 9, 1986), which revised § 672.20(a) Table 1. Under § 672.20(c)(2), the Secretary may apportion surplus DAH to TALFF on such dates as he determines necessary. In accordance with these regulations, the Director, Alaska Region, NMFS, has consulted with the North Pacific Fishery Management Council and determined that 3,880 metric tons of Pacific cod in the Central Regulatory Area will not be harvested by U.S. fishermen during the remainder of the year, and that immediate action is necessary to apportion this amount to TALFF. This action announces apportionment of 3,880 metric tons of Pacific cod from DAH to TALFF as shown in the table below.

TABLE 1.—GULF OF ALASKA REAPPORTIONMENT OF DAH

[Figures are in metric tons]

	Current	This action	Revised
Pacific cod (Central Regulatory Area):			
DAH	26,832	−3,880	22,952
TALFF	0	+3,880	3,880

Classification

This action is taken under 50 CFR Parts 611 and 672, and complies with Executive Order 12291.

In view of the need to avoid disruption of foreign and domestic fisheries, the Agency has determined that delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: February 3, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86–2660 Filed 2–3–86; 4:56 pm]

BILLING CODE 3510-22-M

50 CFR Part 671

[Docket No. 41154–4154]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the Southwest Section of the Kodiak District of Registration Area J must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crab by vessels of the United States in the Southwest Section effective February 3, 1986. This action is intended as a management measure to conserve Tanner crab stocks.

DATES: This notice is effective at noon, Alaska Standard Time (AST), February 3, 1986. Public comments on this notice of closure are invited until February 18, 1986.

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ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of season and area openings and closures. Implementing regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J to independently manage individual Tanner crab stocks. One of these districts is the Kodiak District which is further subdivided into eight sections enabling management of localized Tanner crab stocks. The 1986 fishing season in this district began on January 15, 1986 (50 FR 47549, November 19, 1985). Reasons for this closure area follow:

As of January 26, 1986, 21 vessels have delivered 350,000 pounds of Tanner crab in the Southwest Section. The catch per unit of effort (CPUE) has averaged only 11 crabs per pot from the beginning of the fishery through January 25. This CPUE is only about half the overall CPUE during the 1985 fishery. The initial low level of CPUE, combined with the lack of any improvement in the CPUE as the season progressed, indicates an unanticipated low level of abundance of Tanner crab in this area.

Based on the unanticipated low CPUE at the beginning of the fishery, the Regional Director has determined that the condition of the Tanner crab stock in the Southwest Section of the Kodiak District is substantially different from the condition anticipated on November 1, 1985, the beginning of the fishing year, and that this difference reasonably supports the need to protect the Tanner crab stock. This section, as defined in § 671.26(f)(1)(i), is closed by this notice until noon, Alaska Daylight Time, April 30, 1986, at which time the closure of this district prescribed in Table 1 of 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Southwest Section of the Kodiak District will be subject to damage by overfishing unless this closure takes effect promptly. NOAA, therefore, finds for good cause that advance opportunity for public comment on this closure is contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: February 3, 1986.

Authority: 16 U.S.C. 1801 *et seq.*

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86–2861 Filed 2–3–86; 4:55 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 25
Thursday, February 6, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Frozen Quick-Cooking Beans or Frozen Quick-Cooking Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to establish voluntary U.S. Standards for Grades of Frozen Quick-Cooking Beans or Frozen Quick-Cooking Peas. The proposed rule was developed by the U.S. Department of Agriculture at the request of the California League of Food Processors. Its effect would be to promote orderly and efficient marketing.

DATE: Comments must be received on or before April 7, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–6247.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

Currently, there are no U.S. grade standards for frozen quick-cooking beans or frozen quick-cooking peas. In April 1985, the USDA received a petition from the California League of Food Processors (CLFP), an association representing processors of frozen quick-cooking beans and peas, requesting that U.S. grade standards be established for this product. CLFP recommended that it be developed using a system of attributes type quality grading that is similar to the U.S. grade standards for many other processed fruit and vegetable products. The product is prepared by hydrating dry, mature beans or peas, and is quick frozen and maintained at a temperature necessary for preservation. Frequently, the product is garnished with onions, garlic, peppers or other condiments or spices.

The establishment of these U.S. grade standards would expedite marketing of frozen quick-cooking beans and peas. The product is being marketed for use in soup mixes, as well as for retail sales as a ready-to-serve salad product (when thawed).

The product can be called "frozen quick-cooking beans" or "frozen quick-cooking peas" if it consists of one or more of the following single varietal types: white beans, pinto beans, pink beans, black-eye peas, speckled butter beans, baby lima beans, fordhook lima beans, light red kidney beans, dark red kidney beans, garbanzos, large lima beans, or beans and peas of other colors or types. The product can also be called "frozen mixed bean salad" when it consists of a mixture of two or more of these varietal types.

The grade standards would provide two (2) quality levels, U.S. Grade A and U.S. Grade B, since available data indicate two quality levels are needed in the marketing of this product. The proposed grade standards are similar to other voluntary grade standards used for beans and peas that are frozen or canned.

The factors of quality contained in this proposal for frozen quick-cooking beans or frozen quick-cooking peas are: similar varietal characteristics (except for mixed types), blemishes, character, color, extraneous vegetable material, and flavor and odor.

The standards would provide uniform guidelines for marketing this product for the benefit of processors and buyers.

List of Subjects in 7 CFR Part 52

Fruits, Food grades and standards, vegetables.

Accordingly, 7 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, 1090 as amended, 7 U.S.C. 1622, 1624.

2. Establish the Subpart—United States Standards for Grades of Frozen Quick-Cooking Beans or Frozen Quick-Cooking Peas (7 CFR 52.6421–52.6430) to read as follows:

Subpart—United States Standards for Grades of Frozen Quick-Cooking Beans or Frozen Quick-Cooking Peas

Sec.

52.6421 Product description.
52.6422 Types.
52.6423 Definitions of terms.
52.6424 Recommended sample unit sizes.
52.6425 Grades.
52.6426 Factors of quality.
52.6427 Classification of defects.
52.6428 Tolerances for defects.
52.6429 Samples size.
52.6430 Quality requirement criteria.

§ 52.6421 Product description.

(a) *"Frozen quick-cooking beans or frozen quick-cooking peas,"* referred to as "beans" or "peas" in these standards, is the product prepared from hydrated, mature dry beans or peas, as *single varietal types* or *mixtures of varietal types.* The beans or peas may be prepared by any safe and suitable process designed to produce a quick-cooking, ready-to-serve product. It is quick frozen and maintained at temperatures necessary for

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preservation. Any safe and suitable solid or liquid optional ingredient(s) may be used as a garnish.

(b) *"Frozen mixed bean salad"* is the precooked (or optionally uncooked) product prepared from hydrated, mature, dry beans or peas, as a *mixture of varietal types.* The beans or peas may be prepared by any safe and suitable process designed to produce a ready-to-serve product. It is quick frozen and maintained at temperatures necessary for preservation. Any safe and suitable solid or liquid optional ingredient(s) may be used as a garnish.

§ 52.6422 Types.

(a) Single variety:
(1) White beans.
(2) Pinto beans.
(3) Pink beans.
(4) Black-eye peas.
(5) Speckled butter beans (or Jackson Wonders).
(6) Baby lima beans.
(7) Fordhook lima beans.
(8) Light red kidney beans.
(9) Dark red kidney beans.
(10) Garbanzos.
(11) Large lima beans (butter beans or limagrands).
(12) Beans and peas of other colors or types.

(b) Mixed varieties consisting of two or more varietal types in any proportion.

§ 52.6423 Definitions of terms.

In these U.S. standards, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

(a) *Acceptable quality level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemished.* Blemished does not include the characteristic mottling of specific varietal types, such as pinto beans, red beans, speckled butter beans, and southern peas. Blemished means a bean that is affected by discoloration (area and intensity) or other causes to the extent that its appearance or eating quality is adversely affected:
(1) Slightly;
(2) Materially; or
(3) Seriously.

(c) *Character* refers to the degree of freedom from hard beans, mushy beans, beans with tough skins, broken beans, mashed beans, crushed beans, ruptured beans, and to the overall texture and eating quality of the product [bean and optional ingredient(s)]. Character is determined after reconstituting the product.

(1) *Good character* means that the product has a good, typical overall texture and eating quality; and that the cotyledons and skins are tender.

(2) *Reasonably good character* means that the product has a reasonably good, typical overall texture and eating quality. The beans may be firm or slightly soft, but the presence of hard beans, mushy beans, broken beans, mashed beans, crushed beans, and ruptured beans does not seriously affect the eating quality. The skins may be slightly tough.

(3) *Poor character* means the product fails to meet the requirements for "reasonably good character."

(d) *Color* refers to the overall bright color of the product [beans and optional ingredient(s)], whether single varietal type or mixed varietal types.

(1) *Good color* means that the product has a bright overall color typical of the varietal type(s) of beans.

(2) *Reasonably good color* means that the product has an overall color typical of the varietal type(s) of beans; and may be dull but not "off-color."

(3) *Poor color* means the product fails to met the requirements for "reasonably good color."

(e) *Damaged* means:
(1) A loose skin or portion of a skin;
(2) A cotyledon or portion of a cotyledon; and
(3) A bean or portion of a bean with the skin or portion of the skin missing.

(f) *Defect* means any non conformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(g) *Extraneous vegetable material* means vegetable material common to the bean or pea plant or other plants (excluding "garnish") that is harmless upon eating.

(h) *Flavor and odor.*
(1) *Good flavor and odor* means that the product has a good, typical flavor and odor, characteristic of the type(s) of beans. It is free from objectionable flavors and odors of any kind.

(2) *Reasonably good flavor and odor* means that the product may be lacking in good flavor and odor, but is characteristic of the type(s) of beans. It is free from objectionable flavors and odors of any kind.

(i) *Sample unit* means the amount of product specified to be used for inspection. It may be:
(1) The entire contents of a container;
(2) A portion of the contents of a container;
(3) A combination of the contents of two or more containers; or
(4) A portion of unpacked product.

(j) *Unit* means any individual frozen bean or pea; or, any reconstructed portions of beans or peas that are the equivalent of one bean or pea.

(k) *Varietal characteristics* (Similar varietal characteristics are not applicable to mixed types).

(1) *Contrasting varieties* means beans or peas of the same type or of other types that are of a noticeably different color, size, or shape than the beans or peas of the predominant variety (such as red beans with white beans).

(2) *Varieties that blend* means beans or peas of the same type or of other types that are similar in color, size, or shape to the beans or peas of the predominant variety.

§ 52.6424 Recommended sample unit sizes.

Requirements for all factors of quality are based on the following sample unit sizes:

(a) For all defects classified in Table I—200 beans.

(b) For similar varietal characteristics (single types only) and damaged beans—284 grams (10.0 oz) including beans and garnish;

(c) For flavor and odor, character, and color—850 grams (30.0 oz); and

(d) For extraneous vegetable material (EVM).
(1) On-line grading only—850 grams (30.0 oz).
(2) Lot grading only—entire sample.

§ 52.6425 Grades.

(a) *U.S. Grade A* is the quality of product that:

(1) Meets the following prerequisite factors in which the beans or peas:

(i) Have practically similar varietal characteristics (not applicable to "mixed" types). The weight of "contrasting varieties" does not exceed 1.5 grams per 284 grams (10.0 oz.); and the weight of "varieties that blend" does not exceed 14 grams per 284 grams (10.0 oz.);

(ii) Have good character;
(iii) Have good color;
(iv) Are practically free from EVM;

(A) On-line grading—within the limits for defects as specified in Table II.

(B) Lot grading—Not more than one (1) piece of EVM per 1700 grams (60.0 oz.)

(v) Have good flavor and odor;
(vi) Weight of "damaged" units does not exceed 25 grams per 284 grams (10.0 oz.); and

(2) Is within the limits for defects as classified in Table I and specified in Table III.

(b) *U.S. Grade B* is the quality of product that:

(1) Meets the following prerequisite factors in which the beans or peas:

(i) Have reasonably similar varietal characteristics (not applicable to "mixed" types). The weight of "contrasting varieties" does not exceed 3 grams per 284 grams (10.0 oz.); and the weight of "varieties that blend" does not exceed 28 grams per 284 grams (10.0 oz.);

(ii) Have reasonably good character;
(iii) Have reasonably good color;
(iv) Are reasonably free from EVM;

(A) On-line grading—within the limits for defects as specified in Table II.

(B) Lot grading—Not more than two (2) pieces of EVM per 850 grams (30.0 oz).

(v) Have reasonably good flavor and odor.

(vi) Weight of "damaged" units does not exceed 45 grams per 284 grams (10.0 oz.); and

(2) Is within the limits for defects as classified in Table I and specified in Table III.

(c) *Substandard* is the quality of product that fails to meet the requirements for U.S. Grade B.

§ 52.6426 Factors of quality.

The grade of a sample of frozen quick-cooking beans or peas or frozen mixed bean salad is based on requirements for the following quality factors:

(a) Prerequisite quality factors:
(1) Varietal characteristics (not applicable to mixed types);
(2) Flavor and odor;
(3) Character;
(4) Color;
(5) Freedom from extraneous vegetable material (EVM);
(6) Damaged.

(b) Classified quality factors:
(1) Blemished.

§ 52.6427 Classification of defects.

Defects are classified as "minor," "major," or "severe." "Total" defects includes all "minor," "major," and "severe" defects. Each "X" mark in Table 1 represents "one" defect.

TABLE I.—CLASSIFICATION OF DEFECTS

Quality factor	Defects	Classification		
		Minor	Major	Severe
Blemished:				
Slightly	Each bean [1]	X		
Materially	do		X	
Seriously	do			X

[1] Each bean or equivalent of one bean in broken pieces.

§ 52.6428 Tolerances for defects.

TABLE II.—EXTRANEOUS VEGETABLE MATERIAL (EVM) ON-LINE ONLY (25 Plan)

	Grade A	Grade B
AQL [1]	1.5	6.5

[1] AQL expressed as defects per hundred units.

TABLE III.—ALL CLASSIFIED DEFECTS

	Grade A			Grade B		
	Total [1]	Major	Severe	Total [1]	Major	Severe
AQL [2]	4.0	1.5	.65	6.5	4.0	1.5

[1] Total = Minor + Major + Severe.
[2] AQL expressed as defects per hundred units.

§ 52.6429 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1—52.83) for lot grading and on-line grading, as applicable.

§ 52.6430 Quality requirement criteria.

(a) *Lot grading.* A lot of frozen quick-cooking beans or peas, or frozen mixed bean salad is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 52.6425 are met; and

(2) The Acceptable Quality Levels (AQL) in Table III are not exceeded.

(b) *On-line grading.* A portion of production is considered as meeting the requirements for quality if:

(1) Prerequisite requirements specified in § 52.6425 are met; and

(2) The Acceptable Quality Levels (AQL) in Table III are not exceeded.

(c) *Single sample unit.* Each single sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 52.6425 are met; and

(2) The Acceptable Quality Levels (AQL) in Table III are not exceeded.

Done at Washington, DC, on January 31, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-2657 Filed 2-5-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-01-AD]

Airworthiness Directives; Cessna R172, FR172, 177, 177RG, F177RG, 185, 188, 205, 206, P206, U206, 207, 210 and P210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Cessna R172, FR172, 177, 177RG, F177RG, 185, 188, 205, 206, P206, U206, 207, 210 and P210 Series Airplanes, which would require initial inspection and modification of the airplane fuel system as well as installation of a placard and special fuel system preflight inspection instructions on some airplanes. Loss of engine power has resulted from failure to adequately drain fuel contamination from the fuel reservoirs and wing tanks. The actions prescribed in this proposal will preclude engine power loss caused by undrained fuel contamination.

DATES: Comments must be received on or before May 28, 1986.

ADDRESSES: Cessna Single Engine Customer Care Service Information Letters, SE 79-45 dated September 10, 1979, and SE 84-8 dated March 16, 1984, applicable to this AD, may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Wichita, Kansas 67201, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-01-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office, ACE-140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in view of the comments received. Comments are specifically invited on the overall

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regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86-CE-01-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion: Reports have been received of engine power losses resulting from fuel contamination on Cessna 100 and 200 Series airplanes equipped with separate fuel reservoirs. These incidents and other service reports indicate that fuel contamination is not being detected by the pilot during normal inspection and/or maintenance of the airplane fuel system installation. Lack of fuel reservoir quick drains and existing fuel system preflight instructions concerning proper draining of fuel reservoirs have contributed to the reported engine power losses. Cessna has issued Single Engine Customer Care Service Information Letters SE79-45 and SE84-8, making available for in-service airplanes the fuel reservoir and wing tank quick drain provisions that have been installed on production airplanes since 1975. In addition, AD 84-10-01 required fuel reservoir and wing tank quick drains, plus installation of a placard on some Cessna airplanes equipped with bladder wing fuel tanks. The placard required by AD 84-10-01 has been determined to be very effective in eliminating fuel contamination on those airplanes affected by this AD. Therefore, the FAA is proposing to (1) extend the applicability of the placard to all those airplanes equipped with integral wing fuel tanks and fuel reservoirs, and (2) require fuel reservoir quick drains be installed on all affected airplanes.

Since the condition described herein is likely to exist or develop on other airplanes of the same type design, the proposed AD would require visual inspection of the fuel reservoirs and wing tanks on certain Cessna FR172, R172, 177, 177RG, F177RG, and 210 series airplanes for the quick drain fitting and installation of the quick drains on airplanes not presently so equipped as well as require installation of the placard on certain Cessna FR172, R172, 177, 177RG, F177RG, 185, 188, 205, 206, P206, U206, 207, 210 and P210 series airplanes.

There are approximately 20,000 airplanes affected by the proposed AD at an initial inspection cost of $15 per airplane. Eventually 4,000 airplanes are expected to be modified by the installation of fuel tank and reservoir quick drains, at an approximate cost of $200 per airplane. The initial inspection, proposed quick drain and placard installation is considered to constitute unscheduled expense for the airplanes affected by the proposed AD. The remaining airplanes have been manufactured with fuel reservoir and wing tank quick drains by Cessna prior to delivery or were equipped when they complied with AD 8-10-01. Accordingly, the estimated total cost to the private sector for compliance with the proposed AD is $1,100,000. This cost of compliance with the proposal is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes. Therefore, I certify that (1) this action is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Cessna: Applies to Models R172 thru R172K, FR172E, thru FR172K, 177 thru 177B and 177RG, F177RG, 185 thru 185E, A185E, A185F, A188, A188A, A188B, T188C, 205 and 205A, 206, U206, U206A thru U206G, TU206A thru TU206G, P206, P206A thru P206E, TP206A thru TP206E, 207 and 207A, T207 and T207A, 210B thru 210R, T210F thru T210R, P210N and P210R (all serial numbers) airplanes equipped with fuel reservoir(s) certified in any category.

Compliance: Within 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To eliminate the possibility of engine power reduction due to contaminated fuel, accomplish the following:

(a) On Cessna Models R172, R172E thru R172H, (S/Ns R172-0001 thru R1720825) FR172E thru FR172J (S/Ns FR17200001 thru FR17200530) 177 thru 177A (S/Ns 17700001 thru 17702123) Model 177RG (S/Ns 177RG0001 thru 177RG0592) F177RG (S/Ns F177RG0001 thru F177RG0122) 210G and T210G thru 210L and T210L (S/Ns 21058619 thru 21060539 and T210-0196 thru T2100454), install quick drains in the fuel reservoirs and wing fuel tanks if not presently equipped in accordance with Cessna Single Engine Customer Care Service Information Letters SE79-45 dated September 10, 1979, and SE84-8 dated March 16, 1984, or using equivalent aircraft standard hardware.

(b) On all Cessna Model airplanes R172, R172E, R172F, R172G, R172H, R172J, R172K, (S/Ns R172-0001 thru R172-0409 and R1720410 and on) FR172E, FR172F, FR172G, FR172H, FR172J, FR172EK, (S/Ns FR17200001 thru FR17200675) 177, 177A, 177B (S/Ns 17700001 and on), 177RG (S/Ns 177RG0001 and on) F177RG (S/Ns F177RG0001 thru F177RG0177) 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F (S/Ns 632, 185-0001 thru 185-1599, 18501600 and on) A188 (S/Ns 653, 188-0001 thru 188-0572) A188A (S/Ns 18800573 thru 18800632) A188B (S/Ns 678T, 18800633 and on) T188C (S/Ns T18803307T, T18803306T, T18803325T and on) 205, 205A, (S/Ns 205-0001 and on) 206, U206, U206A, U206B, U206C, U206D, U206E, U206F, U206G, TU206A, TU206B, TU206C, TU206E, TU206F, TU206G (S/Ns 206-0001 thru 206-0275, U206-0276 and on) P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TP206D, TP206E, (S/Ns P206-0001 thru P20600647) 207, 207A, T207, T207A (S/Ns 20700001 and on) 210B, 210C, 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M, 210N, 210R, T210F, T210G, T210H, T210J, T210K, T210L, T210M, T210N, T210R (S/Ns 21057841 and on) P210N and P210R (S/Ns P21000001 and on) fabricate and install a placard in full view of the pilot which reads as follows: "Prior to next flight following aircraft exposure to rain, sleet, snow, or after fueling from an unfiltered fuel source:

(1) Drain and catch the contents of the fuel gascolator, wing, and (if equipped) reservoir tank sumps and check for water contamination.

(2) Place the airplane on a level surface and lower the tail to within 5 inches of the ground (on nose gear airplanes).

(3) Rock the wings 10 inches up and 10 inches down at least 12 times.

(4) Drain and catch the contents of the fuel gascolator, wing, and (if equipped) reservoir tank sumps and check for water contamination.

(5) If water is found in step 4, above, repeat steps 3 and 4, until no additional water is detected or drain the entire airplane fuel system."

Note.—The fuel reservoir(s) are located on the firewall or under the fuselage between the firewall and rear door post on all airplane models. Consult the Pilots Operating Handbook or Owners Manual in order to determine if one or two reservoir(s) are installed.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Wichita, Kansas, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 28, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-2611 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-166-AD]

Airworthiness Directives: McDonnell Douglas Model DC-9, MD-80, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1168

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require a safety sealant on the nut and sleeve in the tank fuel line gamah couplings on certain McDonnell Douglas DC-9, MD-80, and C-9 series airplanes. This proposal is prompted by several incidents of uncontrolled fuel transfer and imbalance after coupling separation. This action is necessary to minimize the potential of an uncontrollable fuel transfer, which could cause loss of control of the airplane.

DATES: Comments must be received no later than March 31, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-166-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Izumikawa, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communication should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-166-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reported incidents of uncontrollable fuel transfer and airplane lateral imbalance caused by in-tank fuel line gamah coupling separation. In one of the incidents, the pilot was required to take immediate corrective action and to make an emergency landing with some control difficulty after a coupling separated on the fuel crossfeed manifold.

Proper installation of the gamah coupling nut and sleeve on some locations within the tank is difficult to accomplish due to insufficient accessibility. A leak check of the coupling installation is specified in the maintenance manual to assure proper adjustment and installation of the coupling; however, the leak check may not detect a loosely installed nut and sleeve.

McDonnell Douglas issued Service Bulletin 28-24, dated December 14, 1973, which contains instructions for installation of a safety collar over the nut and sleeve of the coupling assembly to enhance the installation of the gamah couplings within the tank. Installation of the safety collar reduced the number of incidents of coupling separation; however, separations continued to occur with reports of the locking collar detached from the assembly. McDonnell Douglas Corporation issued another Service Bulletin 28-41, dated March 21, 1984, with instructions to provide a positive lock in lieu of the safety collar. McDonnell Douglas Service Bulletin 28-41 recommends applying a 90 degree bead of sealant across the gamah nut and sleeve to prevent loosening of the nut.

McDonnell Douglass Corporation revised the DC-9 Airplane Flight Manuals on December 19, 1984, by addition of a new procedure to minimize fuel transfer and lateral imbalance caused by gamah coupling separations or other fuel line leaks.

Since uncontrollable fuel transfer due to gamah coupling separation is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being proposed which would require the application of a bead of sealant 90 degrees across the gamah nut and sleeve in accordance with McDonnell Douglas Service Bulletin 28-41.

It is estimated that 680 airplanes of U.S. registry would be affected by the proposed AD, that it would take approximately 15 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $408,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a

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substantial number of small entities because few, if any, Model DC-9 and C-9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this section is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9, MD-80, and C-9 (Military) series airplanes, fuselage numbers 1 through 1168, certificated in any category. Compliance required as indicated, unless previously accomplished.

A. To prevent separation of in-tank fuel line gamah couplings, which can cause uncontrollable fuel transfer and airplane lateral imbalance, accomplish the following:

1. Within 8,000 flight hours or 30 months time-in-service whichever occurs earlier, or anytime a gamah coupling is disassembled and reassembled after the effective date of this AD, apply a bead of sealant 90 degrees across the gamah nut and sleeve in accordance with McDonnell Douglas Service Bulletin 28-41, dated March 21, 1984, or later FAA-approved revisions.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This document also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on January 30, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2609 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASW-2]

Proposed Alteration of Transition Area; Ada, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the transition area at Ada, OK. The intended effect of this proposed action is to provide additional controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Ada Municipal Airport. This action is necessary since the city of Ada, OK, proposes to relocate the existing Ada Nondirectional Radio Beacon (NDB) north of the airport and establish a new terminal VOR (TVOR) on the airport. Coincident with the relocation of the Ada NDB (AMR) the existing NDB-A SIAP will be canceled.

DATES: Comments must be received on or before March 24, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 86-ASW-2, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2622.

SUPPLEMENTARY INFORMATION:

Comment Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASW-2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Ada Municipal Airport. This will provide adequate controlled airspace for the protection of aircraft arriving and departing the Ada Municipal Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Control Zones and/or transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.65.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ada, OK Revised

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Ada Municipal Airport (latitude 34°28'20" N., longitude 96°40'15" W.).

Issued in Fort Worth, TX, on January 23, 1986.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 86-2613 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASW-3]

Proposed Designation of Transition Area; Carnegie, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at Carnegie, OK. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Carnegie Municipal Airport. This action is necessary since a nonfederal nondirectional radio beacon (NDB) is being installed to provide navigational guidance to the Carnegie Municipal Airport. Coincident with this proposed action, the airport will be changed from visual flight rules (VFR) to instrument flight rules (IFR).

DATES: Comments must be received on or before March 24, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 86-ASW-3, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

The informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Suthwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2622.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rule-making by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, exonomic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ASW-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, P.O. Box 1689, Fort Worth, TX 76101. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a transition area at Carnegie Municipal Airport. This will provide controlled airspace for the protection of aircraft arriving and departing Carnegie Municipal Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas, ETC.

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The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.65.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Carnegie, OK New

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Carnegie Municipal Airport (latitude 35°07'14" N., longitude 98°34'49" W.) and within 3 miles each side of the 351-degree bearing from the airport extending from the 5-mile radius area to 8.5 miles north of the airport.

Issued in Fort Worth, TX, on January 23, 1986.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 86-2612 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22849, File No. S7-4-86]

Exemption of Japanese Government Securities Under the Securities Exchange Act of 1934 for Purposes of Futures Trading

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments and solicitation of public comments.

SUMMARY: The Commission is proposing for comment an amendment to Rule 3a12-8 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act") which would designate Japanese government securities as "exempted securities" only for purposes of the Exchange Act's application to the marketing in the United States of futures contracts on these securities. The Rule currently grants such an exemption to British and Canadian government securities underlying foreign futures contracts that meet certain conditions in the Rule. If adopted, the amendments would extend the exemption to Japanese government securities thereby effectively removing these securities from those on which futures trading is prohibited by the Commodity Exchange Act. Trading the underlying securities, absent compliance with applicable registration and other requirements, would remain prohibited to the same extent as under current law.

DATE: Comments should be submitted by March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Sharon D. Lawson, Esq. (202) 272-3116, Division of Market Regulation, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("SEC") is today proposing for comment amendments to Rule 3a12-8 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act"). Currently, Rule 3a12-8 designates British and Canadian government debt obligations that meet certain conditions as exempted securities under the Exchange Act only for purposes of marketing, in the United States, futures on those securities. Under the Commodity Exchange Act ("CEA") futures trading on individual securities is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or Exchange Act. Hence, the designation of these securities as "exempted securities" effectively removes the CEA's prohibition against marketing futures on these securities in the United States (so long as the terms of the Rule are satisfied).

The proposed amendment would extend the class of securities permitted an exemption under the Rule to Japanese government debt obligations for purposes of permitting the sale of futures contracts on these securities in this country. In addition, to qualify for the exemption, foreign futures contracts on Japanese securities would have to meet all the other existing requirements of the Rule.

II. Background

The CEA, as amended by the Futures Trading Act of 1982, [1] prohibits the trading of futures contracts on individual securities unless such securities qualify as exempted securities under Section 3 of the Securities Act of Section 3(a)(12) of the Exchange Act.[2] Because foreign government securities such as Japanese government bonds are not exempted securities under either of these sections, the CEA prohibition against trading futures on individual securities prevents marketing futures on these foreign government securities in this country.

Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted security" includes

> such other securities. . . as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities".

In March 1984, pursuant to this authority, the Commission promulgated Rule 3a12-8.[3] The Rule designates British and Canadian government securities that meet certain conditions as "exempted securities" under the Exchange Act. The purpose of the Rule is to permit certain foreign, exchange-traded futures contracts on these securities to be marketed in the United States.[4] Under the Rule, British and Canadian government debt securities are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) the securities are not registered in the United States, (2) the futures transactions do not involve contracts deliverable in the United States and (3) the futures contracts are traded on a market located in the country whose government issues those securities.

III. Discussion

Rule 3a12-8 was promulgated in response to Congress' understanding, in approving the amendments to the CEA, that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar British gilt futures trading and that adminstrative action would be taken to allow the sale of these futures contracts in this country.[5]

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[1] Pub. L. 97-444, Stat. 2294, 7 U.S.C. 1 *et seq.*

[2] Section 2(a)(1)(B)(v) of the CEA provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act . . . or section 3(a)(12) of the . . . Exchange Act . . ."

[3] *See* Securities Exchange Act Release Nos. 20708 ("Adopting Release"), March 2, 1984, 49 FR 8595 and 19611 ("Proposal Release"), May 25, 1983, 48 FR 24725

[4] As discussed above, without this designation the trading of futures on these securities in the United States would be prohibited by section 2(a)(1)(B)(v) of the CEA.

[5] In extending the exemption to futures on Canadian government bonds and bills the Commission noted that there did not appear to be any legal or policy reason for treating them differently from British gilt futures contracts.

In promulgating the Rule the Commission implemented Congress' intent without abandoning its longstanding policy of subjecting foreign government securities, for most purposes, to the requirements of the federal securities laws.[6] Accordingly, the conditions set forth in the Rule are designed to ensure that a domestic market in unregistered bonds does not develop and that futures markets in these instruments are not used simply to avoid the registration and other provisions of the federal securities laws.

At the time the Commission originally proposed Rule 3a12-8, it recognized that should the securities of additional governments become subjects of futures contracts, it may become necessary to amend the Rule to include those governments.[7] In this regard, the Tokyo Stock Exchange recently began trading futures on long-term Japanese government bonds, denominated in yen (so-called yen-bond futures). In addition, the Commission staff has indications that United States citizens, particularly institutional investors which currently invest in Japanese government securities, are interested in trading these new yen bond futures.[8] As a result, the Commission is today proposing to amend subsection (a)(1) of Rule 3a12-8 by adding to the list of designated foreign government securities under the Rule unregistered debt obligations of the government of Japan. This would permit futures on the yen bond that currently trade on the Tokyo Stock Exchange to be marketed in this country to United States citizens.[9]

In proposing to extend the exemption currently granted to British and Canadian government securities to Japanese government securities for purposes of futures trading, the Commission initially believes that there are no major differences between Japanese government securities and those of the United Kingdom and Canada that would justify a different regulatory response. As noted above, Japanese government securities and the futures contracts on those securities will have to meet the existing conditions set forth in the Rule. This should ensure that the federal securities laws will not be subverted by the marketing of futures on such government securities in this country and that United States investors are adequately protected by the federal securities laws. In this regard, the Commission preliminarily believes that United States investors have sufficiently ready access to information, available in English, about the Japanese trading markets and the securities which will underlie the foreign futures.[10]

The Commission encourages comments on the type of information available, in English, to United States investors concerning the Japanese government and its markets and whether it will provide United States investors with sufficient information to trade futures on yen bonds. In addition, commentators may wish to discuss whether there are any legal or policy reasons for determining that Japanese government securities should not be accorded the same treatent in the United States as British and Canadian government securities under Rule 3a12-8.[11]

III. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

IV. Statutory Basis

The amendment to Rule 3a12-8 is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Text of the Proposed Amendment

On the basis of the above discussion, the Commission is proposing to amend Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

The authority citation for 17 CFR Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.3a12-8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a).* * *

Section 240.3a12-8 is amended by removing the word "or" from (a)(1)(i), adding a semi-colon and the word "or" to (a)(1)(ii), and adding paragraph (a)(1)(iii) as follows:

§ 240.3a12-8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

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[6] Indeed, as stated in the Proposal Release, the Commission continues to believe that "Given the turbulence characterizing the current international financial markets, particularly the debt structure of many foreign governments, any lessening of the disclosure and other protections afforded by the federal securities laws with respect to such instruments would appear to be inappropriate." Proposal Release, *supra* note 3, 48 FR at 24726.

[7] *See* Proposal Release, *supra* note 3, 48 FR at 24726-27.

[8] *See* letter from John T. Shinkle, General Counsel, Salomon Brothers Inc., to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated October 23, 1985.

[9] The underlying yen bonds and futures contracts would, of course, have to meet the other conditions of the Rule in order for the underlying yen bonds to qualify as exempted securities under the Exchange Act. Accordingly, the yen bonds could not be registered in the U.S. and the futures would have to require delivery outside the U.S. and be traded on a board of trade located within the nation whose government issues the designated foreign government securities. It appears that the yen bond futures contracts currently being traded on the Toyko Stock Exchange would meet these requirements.

[10] In adopting Rule 3a12-8 the Commission decided not to require, as a condition to the exemption, that such information be available because the structure of the Rule provides the Commission with an opportunity to evaluate in each particular case whether sufficient information is available, in English, regarding the securities which would underlie the foreign futures contract. *See* Adopting Release, *supra* note 3, 49 FR at 8597-98. The Commission notes that preliminary discussions with securities analysts have indicated that there is information available to United States citizens, in English, on the underlying Japanese government bond market. There is also some information available on yen-bond futures contracts traded on the Tokyo Stock Exchange, although to a lesser extent as compared to the information available concerning the underlying Japanese bond market.

[11] The Commission staff recently has been informed that the Chicago Board of Trade ("CBT") may be interested in developing a futures contract on the Japanese yen bond. We note that currently the Rule 3a12-8 exemption only applies to futures traded on a board of trade located within the nation whose government issues the designated foreign government securities. In the Adopting Release, the Commission noted that no determination regarding the expansion of the exemption to futures traded on domestic United States boards of trade was being made at the time. The Commission also noted that such action raised discrete concerns regarding the expansion of cash trading if substantial markets in the overlying futures developed in the United States. The Commission did indicate, however, that it might revisit this issue at a later time if there were proposals to trade such futures on domestic boards of trade.

To facilitate prompt action on the proposed amendment, the Commission believes it is useful to limit its scope to foreign futures contracts on foreign government securities. Accordingly, because the Tokyo Stock Exchange is currently trading futures on such securities, the trading of such futures apparently is of interest to, and would serve useful economic purposes for, United States investors, and the proposed amendment to the Rule does not appear to raise any new issues or problems, we are only addressing the extension of the exemption to foreign futures contracts on Japanese government securities.

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(1) * * *

(iii) Japan.

* * * * *

Dated: January 30, 1986.
By the Commission.

John Wheeler,
Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 3a12–8 set forth in Securities Exchange Act Release No. 34–22849, which would define Japanese government securities as exempted securities under the Securities Exchange Act of 1934 under certain circumstances for purposes of futures trading, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the rule imposes no regulatory burden in itself and merely forestalls a prohibition under the Futures Trading Act of 1982 which currently prevents marketing foreign futures contracts on Japanese government securities in the United States. Accordingly, the proposal imposes no new requirements for any entity. Second, because the level of interest presently evident in this country in the futures trading covered by the proposed rule amendment is modest and those primarily interested are large institutional investors, neither the availability or unavailability of these futures products is likely to have a significant economic impact on a substantial number of small entities as that term is defined for broker-dealers in 17 CFR 240.0–10 and to the extent that it is defined for futures market participants at 47 FR 18618.

John S.R. Shad,
Chairman.

January 30, 1986.

[FR Doc. 86–2541 Filed 2–5–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[Order No. 1124–86]

FBI Identification Records; Production Fees

AGENCY: Federal Bureau of Investification, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule permits the FBI Identification Division to increase the fee for the production of identification records to the subjects of such records set forth in § 16.33 of Title 28 of the Code of Federal Regulations (CFR). It will also revise certain sections to reflect the FBI's new nine-digit ZIP Code.

DATE: Comments must be received on or before March 10, 1986.

ADDRESS: Identification Division, FBI, Washington, D.C. 20537–9700.

FOR FURTHER INFORMATION CONTACT: Melvin D. Mercer, Jr., Chief of the Recording and Posting Sections, telephone number (202) 324–5454.

SUPPLEMENTARY INFORMATION: Departmental Order 556–73 directed that the FBI publish rules for the dissemination of arrest and conviction records upon request. This order resulted from a determination that section 534 of Title 28 of the United States Code (U.S.C.) does not prohibit the subjects of arrest and conviction records from having access to those records. In accordance with the Attorney General's order, the FBI will release to the subjects of identification records copies of such records upon submission of a written request, a set of rolled-inked fingerprint impressions and the appropriate processing fee. Based on current cost analysis, the cost for production of an FBI identification record has increased from $11.00 to $14.00.

This proposed rule also revises the five-digit ZIP Code appearing in 28 CFR 16.32 and 16.34 to reflect the FBI Identification Division's new nine-digit ZIP Code, 20537–9700.

List of Subjects in 28 CFR Part 16

Archives and records, Freedom of Information, Privacy, Sunshine Act.

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 16, Subpart C, of Title 28 of the CFR is proposed to be amended as follows:

PART 16—[AMENDED]

1. The authority citation for Part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510; 28 U.S.C. 534; 31 U.S.C. 9701. 2. All other authority citations are removed from this Part.

3. Section 16.32 is proposed to be revised to read as follows:

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to the FBI, Identification Division, Washington, D.C. 20537–9700, or may present his/her written request in person during regular business hours to the FBI Identification Division, Room 11262, J. Edgar Hoover F.B.I. Building, Tenth Street and Pennsylvania Avenue, NW., Washington, D.C. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and placed of birth and a set of rolled-inked fingerprint impressions placed upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

3. Section 16.33 is proposed to be revised to read as follows:

§ 16.33 Fee for production of identification record.

Each written request for production of an identification record must be accompanied by a fee of $14.00 in the form of a certified check or money order, payable to the Treasury of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 9701 and is based upon the clerical time beyond the first quarter hour to be spent in searching for, identifying, and reproducing each identification record requested as specified in § 16.10 of this part. Any request for waiver of the fee shall accompany the original request for the identification record and shall include a claim and proof of indigency.

4. Section 16.34 is proposed to be revised to read as follows:

§ 16.34 Procedure to obtain change, correction or updating of identification records.

If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he should make application directly to the agency which contributed the questioned information. The subject of a record may also direct his challenge as to the accuracy or completeness of any entry on his record to the Assistant Director of the FBI Identification Division, Washington, D.C. 20537–9700. The FBI will then forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by the agency.

Date: January 28, 1986.

Edwin Meese III,
Attorney General.

[FR Doc. 86–2491 Filed 2–5–86; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 166

[CGD 81–103]

Shipping Safety Fairways; Alaska

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This notice proposes to establish shipping safety fairways to permit vessels to navigate safely off the southern coast of Alaska in the approaches to Prince William Sound and through Unimak Pass. These shipping safety fairways are intended to increase navigation safety in areas subject to offshore drilling activities. The regulations governing shipping safety fairways provide that offshore structures are not permitted within designated safety fairways. This proposal would implement the results of the port access route study as reported in a notice of study results in the Federal Register on December 14, 1981 (46 FR 61049).

DATE: Comments must be received on or before May 7, 1986.

ADDRESS: Comments should be submitted to Commandant (G–CMC/21) (CGD81–103), U.S. Coast Guard, Washington, DC 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, room 2100, between the hours of 8 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (j.g.) Daphne Reese, Project Manager, Office of Navigation (G–NSR–3), room 1606, U.S. Coast Guard headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 245–0108.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 81–103, and give the reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this rulemaking are: Lieutenant (j.g.) Daphne Reese, Project Manager, Office of Navigation, and Lieutenant Sandra Sylvester, Project Attorney, Office of Chief Counsel.

Discussion of Proposed Regulations

In 1978, the Ports and Waterways Safety Act (PWSA) was amended to authorize the Coast Guard to establish shipping safety fairways (33 U.S.C. 1223(c)). Prior to this amendment, fairways were established by the Corps of Engineers (COE) as areas in which no permits for structures were issued. Although the Coast Guard now designates the fairways, the authority to issue permits for structures remains with the COE.

A shipping safety fairway is an area or corridor of a waterway where the right of navigation is paramount over other uses, and where no fixed structure are permitted. A fixed structure in a fairway would be an obstruction to navigation. The fairways exist to ensure structures are not erected during development and production of offshore resources which would hinder safe access to ports. Although the proposed fairways will be indicated on navigation charts, the use of fairways by vessels is voluntary.

The authority to create a fairway may be exercised by the Coast Guard only after a study of potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from United States ports (33 U.S.C. 1223(c)(3)). The results of a port access route study could cause restrictions on the manner in which specific offshore areas are leased after the date of the study notice. The study for this rulemaking was initiated by a notice in the Federal Register on April 16, 1979 (44 FR 22543, modified in 45 FR 7027). Study results for the ports along the southern coast of Alaska were published in the Federal Register on December 14, 1981 (46 FR 61049).

The study concluded that two vessel shipping safety fairways are necessary in Alaskan waters. One is intended to provide safe routing to and from Prince William Sound through Outer Continental Shelf (OCS) areas of the northern Gulf of Alaska for vessels proceeding to and from the Trans-Alaska Pipeline (TAPS) terminal at Valdez. The other is to provide safe routing through Unimak Pass, which is a major route for vessels rounding the Alaska Peninsula as well as a Great Circle route from western United States ports to the Far East. The present rulemaking is intended to implement these study findings. This notice of proposed rulemaking will also modify the geographical descriptions of Prince William Sound and Unimak Pass Safety Fairway as recommended in the port access study results (46 FR 61049), Whereas the study results described the fairways using centerlines, this proposed rule describes the fairways using outside boundaries. These modifications in the descriptions of the fairways are based on plotting by the National Ocean Service (NOS) and do not affect the actual dimensions of the fairways as published in the study results.

After the fairway recommendation was announced in 1981, the Seventeenth Coast Guard District initiated a study on February 27, 1984 (49 FR 7180) to determine whether a traffic separation scheme (TSS) was needed in the Unimak Pass area. A TSS is a routing measure which separates opposing vessel traffic into directional lanes. Once a vessel is within a TSS, it is governed by Rule 10 of the International Regulations for Preventing Collisions at Sea (COLREGS). Rule 10 imposes several specific operating requirements on a vessel. The study results concluded that the current and anticipated traffic patterns and density do not indicate a need for the specific operating requirements of a TSS in Unimak Pass at this time. These results were published on March 18, 1985 (50 FR 10878). The study results also reconfirmed the need for the safety fairway recommended for Unimak Pass in 46 FR 61049 to ensure that vessel traffic would not be obstructed by fixed structures.

The Minerals Management Service (MMS) of the Department of Interior (DOI) has identified three lease sales of offshore tracts in the areas off Prince William Sound and Unimak Pass. Sale 88 (Gulf of Alaska/Cook Inlet) and Sale 89 (St. George Basin) are both currently on hold. Sale 88 and 89 contain blocks which would be affected by the proposed fairways. Sale 92 (North Aleutian Basin) is currently scheduled for January 1986 and includes no blocks affected by the proposed fairways. In a letter to the Coast Guard, the MMS

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resource evaluation staff estimated that "the economically recoverable resources in the areas proposed for fairway use are negligible."

The NOS surveyed the proposed Alaska fairway approach to Prince William Sound in June, July, and August 1984 to check the depth of water in the area and look for possible underwater obstructions. NOS, in a letter to the Coast Guard, reported "no significant changes in depth and no indication of pinnacle rocks within the proposed fairway."

Prince William Sound Safety Fairway

A new shipping safety fairway system is proposed in the approaches to Prince William Sound. The Coast Guard Vessel Traffic Service (VTS) in Valdez monitors traffic in the TSS within Prince William Sound. Prince William Sound, and the approaches thereto across the Northern Gulf of Alaska, average 5 transits a day by tank vessels. These vessels are up to 268,000 dead weight tonnage (DWT) in size and carry North Slope crude oil in the TAPS trade between Valdez, and lower U.S. ports and the Virgin Islands.

The fairway would be forked and would consist of three segments. Segment (1) is a fairway extending southeast from Cape Hinchinbrook in which inbound and outbound traffic will navigate. Segment (2) is a two mile wide fairway which would be recommended for inbound traffic approaching the two-way fairway. Segment (3) is a two mile wide fairway which would be recommended for outbound traffic departing the two-way fairway. Traffic directions within segments (2) and (3) will not be mandatory. Appropriate use of the fairway will be encouraged by indicating the recommended direction on nautical charts.

Segment (1) provides adequate maneuvering room for two-way traffic. The two mile width of segments (2) and (3) is adequate for one way traffic, especially in view of their separation. The non-fairway area between the inbound and outbound fairways would be 3.5 nautical miles wide at the northern end and expand to 5.5 nautical miles wide at the southern terminus. This configuration is considered best to resolve the conflict between the need for vessel safety and exploration and exploitation of mineral resources.

Unimak Pass Safety Fairway

It is proposed that a new shipping safety fairway system be established in Unimak Pass. Unimak Pass is the major route through the Aleutian Islands chain. Deep draft vessels currently transit this area while navigating the Great Circle route from western U.S. ports to the Far East. The new fairway will ensure that no structures are erected in this major corridor and will increase navigation safety through areas of offshore drilling. The fairway would be in two four mile wide sections. The first section runs approximately east/west and is approximately 120 miles long. The second section runs approximately north/south and is approximately 23 miles long. No recommended directional routing is proposed within the fairway although vessels would ordinarily tend to stay to the right of the fairway when meeting traffic.

Regulatory Evaluation

Although shipping safety fairways may interfere with direct exploration and production of oil and gas on the OCS, there is not indication that the acreage involved in the proposed fairways will obstruct OCS development. The precise locations of resources in the proposed fairways are unknown; lease sales on tracts within the fairways are uncertain; and indirect access to resources is technically feasible through most of the two-mile wide fairway. Although there is no definite indication that OCS blocks will be developed in the proposed fairways, the Coast Guard is directed by the PWSA to anticipate development and reconcile the potential conflict to navigation by establishing safe access routes in these frequently used traffic corridors.

A request for adjustment to a fairway would be given the appropriate consideration by the Coast Guard, in accordance with the PWSA and rulemaking procedures, in circumstances when there is evidence that fixed structures must be placed in an area designated as a fairway to gain access to significant quantities of oil or gas and that navigation safety would not be jeopardized by a modification of that fairway. In most cases a fairway modification will require a PWSA port access study before rulemaking can be commenced.

The proposed shipping safety fairways will overlay traditional traffic routes and will not alter applicable navigation rules or cause any interference with fishing activities.

These proposed regulations are considered to be non-major under Executive order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). There are no costs associated with the proposed new fairways which can be identified and calculated at this time. These designations will contribute to navigation safety without interfering significantly with development of the OCS. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be so minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping safety fairways.

In consideration of the foregoing, 33 CFR Part 166 is proposed to be amended as follows:

PART 166—SHIPPING SAFETY FAIRWAYS

1. The authority citation for Part 166 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

2. Section 166.400 is added to read as follows:

§166.400 Areas along the coast of Alaska.

(a) *Purpose.* Fairways as described in this section are established to control the erection of structures therein to provide safe vessel routes along the coast of Alaska.

(b) *Designated Areas.* (1) Prince William Sound Safety Fairway.

(i) *Hinchinbrook Entrance Safety Fairway.* The area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
59°59'00" N.	145°27'24" W.
60°13'18" N.	146°38'06" W.
60°11'24" N.	146°47'00" W.
59°55'00" N.	145°42'00" W.

(ii) *Gulf to Hinchinbrook Safety Fairway* (recommended for inbound vessel traffic). The area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
59°15'42" N.	144°02'07" W.
59°59'00" N.	145°27'24" W.
59°58'00" N.	145°32'12" W.
59°14'18" N.	144°04'53" W.

(iii) *Hinchinbrook to Gulf Safety Fairway* (recommended for outbound vessel traffic). The area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
59°15'41" N.	144°23'35" W.
59°56'00" N.	145°37'39" W.
59°56'00" N.	145°42'00" W.
59°14'19" N.	144°26'25" W.

(2) Unimak Pass Safety Fairway. (i) *East/West Safety Fairway. The area enclosed by rhumb lines joining points at:*

Latitude	*Longitude*
54°25'58" N.	165°42'24" W.
54°22'50" N.	165°06'54" W.
54°22'10" N.	164°59'29" W.
54°07'58" N.	162°19'25" W.
54°04'02" N.	162°20'35" W.
54°22'02" N.	165°43'36" W.

(ii) *North/South Safety Fairway.* The area enclosed by rhumb lines joining points at:

Latitude	*Longitude*
54°42'28" N.	165°16'19" W.
54°43'32" N.	165°09'41" W.
54°22'50" N.	165°06'54" W.
54°22'10" N.	164°59'29" W.

Dated: February 3, 1986.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation.

[FR Doc. 86-2628 Filed 2-5-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-2966-3]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order issued by the Pennsylvania Department of Environmental Resources to Zapata Industries. The Order requires the company to bring air emissions from its metal surface coating facility located in West Mahoney Township, Schuylkill County, Pennsylvania into compliance with certain regulations contained in the federally-approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. Also, the Order requires that compliance be achieved by April 21, 1988 utilizing low solvent technology (LST) and by April 21, 1987 should LST be abandoned and add-on controls installed. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before March 10, 1986.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at the EPA Region III address above during normal business hours.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., Environmental Engineer, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Telephone: (215) 597-6553.

SUPPLEMENTARY INFORMATION: Zapata Industries, Inc. operates a miscellaneous metal parts and products surface coating facility in West Mahoney Township, Schuylkill County, Pennsylvania. The Order under consideration addresses emissions from the metal surface coating processes, which are subject to § 129.52, Table 1, clear coatings of Title 25 of the Pennsylvania Code. The regulations limit the emissions of volatile organic compounds (VOC), and are part of the federally-approved Pennsylvania State Implementation Plan for the control of ozone. Also, the Order requires that final compliance with the regulation shall be achieved by April 21, 1988 through the use of low solvent technology (LST) and by April 27, 1987 should LST be abandoned and add-on controls installed.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this subsection of the Act.

EPA's review indicates that the Zapata Industries, Inc. facility is a major source of VOC emissions. The facility is located in the Northeast Pennsylvania-Upper Delaware Valley Interstate (New Jersey-Pennsylvania) Air Quality Control Region, essentially a non-attainment area for the National Ambient Air Quality Standard for ozone, excluding the attainment counties of Bradford, Sullivan, and Tioga.

The facility as presently constructed is unable to comply with regulations limiting emissions of VOC's codified at § 129.52 of Title 25 of the Pennsylvania Code, part of the federally-approved State Implementation Plan, because low solvent coatings are still being developed. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. No public comments or requests for public hearing were received by the State. The Order contains requirements for expeditious increments of progress towards compliance and emission monitoring and reporting requirements and provides for interim emission reduction requirements as required by section 113(d)(6) of the Clean Air Act. These requirements are sufficient to avoid any imminent and substantial endangerment to health within the meaning of section 113(d)(7)(A) of the Clean Air Act. After several months of LST research and development work, and consistent with the increments of progress defined in the Order, Zapata informed PA DER by letter dated July 2, 1985 that the Company was in the process of contracting for emissions control equipment. This action will allow timely source compliance with § 129.52 of Title 25 of the Pa. Code. A second Zapata letter, dated September 30, 1985, indicates that the Company will submit to PA DER, on or before January 1, 1986 and consistent with the Order, a complete permit application to install control equipment. The 1984 estimated total VOC emissions of 138 Tons/Year (T/Y) will be reduced to 127 T/Y by April 21, 1987 with the installation of control equipment for the surface metal coating facility. A substantial portion of the total emission estimates represent emissions from processes currently controlled by incineration and not subject to this Order.

The system of emissions reduction required during the period covered by this Order is the best practicable system in light of the ultimate emission reductions required for compliance with the SIP. This interim system provides substantial emission reduction in a manner which permits the Company to move toward the use of either low solvent coatings or facility alterations to install add-on controls.

The Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so and the Order, therefore, meets the requirements of section 113(d)(7)(B). The Order notifies Zapata Industries, Inc. of its liability for noncompliance penalties under Section 120 of the Clean Air Act, 42 U.S.C. 7420 as required by section 113(d)(1)(E) of the Act.

If approved, the Order would also constitute an addition to the

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Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of the Executive Order 12291.

Under 5 U.S.C. 605(b), the Administrator has certified that this action does not have a significant economic impact on a substantial number of small entities.

Authority: 42 U.S.C. 7413, 7601.

Dated: January 23, 1986

James M. Seif,

Regional Administrator, Region III.

[FR 86-2583 Filed 2-5-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 141

[WH-FRL-2964-7]

National Primary Drinking Water Regulations; Synthetic Organic Chemicals, Inorganic Chemicals and Microorganisms; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: EPA is correcting the proposed rule for Recommended Maximum Contaminant Levels (RMCLs) for synthetic organic chemicals, inorganic chemicals and microorganisms which was published in the Federal Register of November 13, 1985, 50 FR 46936.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, ODW (WH-550), Environmental Protection Agency, 401 M St., SW Washington, DC 20460 (202/382-7575).

DATES: Comments on the proposed rule must be submitted by March 13, 1986. A public hearing will be held in Washington, DC, on Tuesday January 28 and if needed, Wednesday January 29, 1986, beginning at 9:00 AM in Conference Room 1, adjacent to the Washington, Information Center, EPA, 401 M St., SW., Washington, DC.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85-26418 appearing on page 46936 in the issue of November 13, 1985:

1. On page 46941, column 2, third full paragraph, line two, change "in" to "is".

2. On page 46951, Table 7, under Total coliforms, membrane filter technique, across from <20 samples/month; change "<4/100 ml, once/month; to ">4/100 ml once/month".

3. On page 46951, Table 7, under Multiple tube fermentation procedure (100-ml portions) single sample MCLs; change "<5 samples/month" to ">5 samples/month".

4. On page 46958, Table 8, line 10, change "nitrate" to "nitrite".

5. On page 46967, column 1, third full paragraph, lines 13 and 14, change "(February 1984. 49 FR 4551)" to "(U.S. EPA, 1982. Unpublished. Errata for the Ambient Water Quality Criteria Documents. February 23, p. 2)".

6. On page 46973, column 1, lines 11, 23, 24, 29, 31, 32, 34, 36, 39, 40 and 42, change "ug/l" to "mg/l".

7. On page 46973, column 2, lines 14, 19, 33, and 52, change "ug/l" to mg/l".

8. On page 46976, column 2 second full paragraph, line 18, change "(February, 1984. 49 FR 4551)" to "(U.S. EPA, 1982. Unpublished. Errata for the Ambient Water Quality Criteria Documents. February 23, p. 7).

9. On page 46978, column 2, first full paragraph, line 7, change "(February 1984. 49 FR 4551)" to "(U.S. EPA, 1982. Unpublished. Errata for the Ambient Water Quality Criteria Documents. February 23, p. 14)".

10. On page 47022, § 141.50 *Recommended Maximum Contamination Levels for organic contaminants*, change paragraphs (b)(10) through (b)(18) In the table to read as follows:

Contaminant	RMCL in mg/l
(10) 1,2-Dichloropropane	0.006
(11) Ethylbenzene	0.68
(12) Lindane	0.0002
(13) Methoxychlor	0.34
(14) Monochlorobenzene	0.06
(15) Pentachlorophenol	0.22
(16) Styrene	0.14
(17) Toluene	2.0
(18) 2,4,5-TP	0.052
(19) Xylene	0.44

Dated: January 16, 1986.

William B. Medeman,

Acting Assistant Administrator for Water.

[FR Doc. 86-2257 Filed 2-5-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 141

[WH-FRL-2964-8]

National Primary Drinking Water Regulations; Volatile Synthetic Organic Chemicals; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: EPA is correcting the proposed rule for Maximum Contaminant Levels (MCLs) for eight volatile synthetic organic chemicals in drinking water which was published in the Federal Register of November 13, 1985, 50 FR 46902.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, ODW (WH-550), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 (202/382-7575).

DATES: Comments on the proposed rule must be submitted on or before February 11, 1986. A public hearing will be held in Washington, DC on Monday, January 13 and if needed, Tuesday, January 14, 1986, beginning at 9:00 AM in Room 3906, EPA 401 M St., SW., Washington, DC.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Doc. 85-2616 appearing on 46902 in the issue of November 13, 1985:

1. On page 46902, column 1, lines 52 and 53, change "Tuesday January 13 and 14, 1986," to "Monday, January 13 and if needed, Tuesday, January 14, 1986".

2. On page 46903, column 2, fourth full paragraph, last line, change "variance" to "exemption".

3. On page 46906, column 1, third full paragraph, line 13, change "on" to "only".

4. On page 46909, column 1, second paragraph, line 8, change "100 µg/l" to "10 µg/l"

5. On page 46924, column 1, line 30, change "sec-Dichloropropane" to "2,2-Dichloropropane".

6. On page 46924, column 1, line 39, change "1,1-Dichloropropane" to "1,1-Dichloropropene".

7. On page 46929, § 141.24(g)(10) lines 6 and 8, change "100 µg/l" to "10 µg/l".

8. On page 46930, § 141.40(l)(37) change "sec-Dichloropropane" to "2,2-Dichloropropane".

9. On page 46930, column 1, § 141.40(l)(46) change "1,1-Dichloropropane" to "1,1-Dichloropropene".

10. On page 46933, Table B-1, change the monitoring option under Option 2, across from VOCs ND/invulnerable to read, "5 years for ground water, State discretion for surface water".

Dated: January 16, 1986.

William B. Hedeman,

Acting Assistant Administrator for Water.

[FR Doc. 86-2258 Filed 2-5-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

Office of Acquisition Policy

41 CFR Ch. 101, Subchapter E

Supply and Procurement; Draft Availability

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking and availability of draft.

SUMMARY: This notice announces the availability of a draft proposed revision of Federal Property Management Regulations (FPMR) Subchapter E, Supply and Procurement.

DATE: Any comments on the proposed revision should be submitted in writting to the address shown below within 60 days from the publication date of this notice in the Federal Register. No extensions on the comment date cited in this notice will be made.

ADDRESS: Comments should be submitted to the General Services Administration, VRT, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Emily C. Karam, Director of Regulatory Review (VRT), Office of Acquisition Policy, telephone (202 566-1177 or FTS 566-1177. A single copy of the proposed revision is available upon request.

SUPPLEMENTARY INFORMATION: The proposed revision incorporates recommendations to update, clarify, and streamline the regulation which were submitted to the Administrator of GSA by the Interagency Advisory Committee on Regulatory Review.

Dated: January 30, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86-2571 Filed 2-5-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[OMB-008-N]

Medicare Program; Agency Information Collection Activities Under OMB Review

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of OMB action on collection of information requirements.

SUMMARY: As a result of reviews performed under the authority of the Paperwork Reduction Act of 1980, the Office of Management and Budget (OMB) has directed that we revise selected collection of information requirements in our regulations. The requirements identified by OMB are those concerning conditions for coverage of suppliers of end-stage renal disease services. This notice:

(1) Informs the public of OMB's decision, and

(2) announces our intention to develop a proposed rule to modify the regulations, as appropriate.

Consistent with the provisions of 5 CFR 1320.14, OMB has granted continued approval of the current collection of information requirements for a limited time.

FOR FURTHER INFORMATION CONTACT:

Michael Odachowski, (301) 594-3075, Information Collection Requirements

or

Stan Rosenfeld, (301) 594-5675, Conditions for Coverage of Suppliers of End-Stage Renal Disease Suppliers.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3507) establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. In regulations at 5 CFR 1320.14, effective May 2, 1983, the Office of Management and Budget (OMB) set forth procedures for its review of collection of information requirements contained in existing regulations that had not been previously reviewed by OMB or the General Accounting Office.

In accordance with an agreed-upon schedule, HCFA identified and submitted for review a number of items for approval. (Approval results in assignment of a control number, listed at 42 CFR 400.310.) OMB has directed that we initiate proposals to change certain requirements. In such instances, OMB's procedures require Federal agencies to publish a notice in the Federal Register informing the public that OMB has initiated proposals for changes in the collection of information requirements and that OMB has approved the information requirements for a limited period of time. (This process is described in OMB regulations, 5 CFR 1320.14(f).)

The collection of information requirements most recently identified by OMB as those that may be overly prescriptive appear in 42 CFR Part 405, Subpart U. Therefore, we are publishing this notice to inform the public that OMB has granted limited continued approval of these questioned requirements.

The following rules contain collection of information requirements that OMB has identified for elimination or change:

42 CFR Part 405, Subpart U (Conditions for Covarage of Suppliers of End-Stage Renal Disease (ESRD) Services)

1. Section 405.2112(b)(2) requires that the network coordinating council (NCC) in an approved ESRD network submit to the Secretary an annual report containing (a) ESRD services provided by each facility in the network; (b) a quantitative estimate of each facility's capacity to deliver each service; (c) the anticipated utilization rate for each ESRD service in each facility for each year in the subsequent 3 year period; (d) a statement describing reasons for the participation of an ESRD facility reporting utilization rates that do not satisfy the standard for unconditional status in § 405.2130; and (e) an overview report on the medical review activities undertaken in the network during the previous year.

2. Section 405.2113(f) requires that the NCC medical review board submit to the council and the secretary a report on its activities not less than annually. The report must include (a) the plan of the board for conducting review activities and the process of information exchange between the board, the council and the network facilities; (b) findings of board reviews and studies; and (c) recommendations on the effective accomplishment of the purposes and objectives of the board.

3. Section 405.2114 requires that NCCs develop detailed written working arrangements with Health Systems Agencies and State Health Coordinating Councils. It also requires that the medical review board develop detailed written arrangements with PROs to assure that these organizations receive appropriate professional advice concerning the quality of medical

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services required and given to ESRD patients.

4. Section 405.2136(b)(4) requires that the operational objectives and administrative rules and regulations of each ESRD facility be reviewed at least annually, revised as necessary, and adopted when approved by the governing body. Section 405.2136(c) specifies responsibilities of the chief executive officer of an ESRD facility, including maintaining and submitting records and reports. Section 405.2136(d) provides that the governing body must institute specific written personnel policies and procedures, including incident and accident reporting and maintaining personnel records and manuals. Section 405.2136(e) requires the chief executive officer of a facility, when using outside resources, to have detailed written documents relating to the terms of each arrangement.

We will, within 120 days, develop a proposed rule to modify these collection of information requirements.

(Section 1102 of the Social Security Act, 42 U.S.C. 1302; 5 CFR 1320.14(f))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 17, 1986.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 86-2658 Filed 2-5-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 25, 58, 147 and 184

[CGD 83-013]

Carriage and Use of Liquefied and Non-Liquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: Coast Guard regulations currently prohibit the carriage and use of liquefied and non-liquefied flammable gas as ships' stores on vessels carrying passengers for hire. The Coast Guard published proposed rules in the March 22, 1984 **Federal Register** (49 FR 10685) which would have removed this prohibition as it pertains to cooking appliances and promulgated standards to govern the design, installation and testing of cooking appliances using these fuels. The purpose of this supplemental proposed rule is to allow for further comment before publication as a final rule because of the substantive changes made to the initial proposal as a result of the comments received.

DATE: Comments must be received on or before May 7, 1986.

ADDRESSES: 1. Send comments to Commandant (G-CMC/21) [CGD 83-013], U.S. Coast Guard, Washington, DC 20593. All comments received and other materials referenced in this notice will be available for examination or copying between 7:30 a.m. and 3:30 p.m., Monday through Friday, exclusive of Federal holidays, at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Comments may also be hand delivered to this address.

2. The standards proposed for incorporation by reference may be obtained from the American Boat and Yacht Council Inc., P.O. Box 806, Amityville, NY, 11701, (516) 598-0050, and the National fire Protection Association, Batterymarch Park, Quincy, MA, 02269, (617) 770-3000. They may also be examined at most Coast Guard Marine Inspection and Marine Safety Offices and at the office of the Federal Register.

FOR FURTHER INFORMATION CONTACT: LCDR Donald B. Parsons, Project Manager, (202) 426-4431.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this supplemental proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address, identify this notice [CGD 83-013], the specific section of the proposal to which the comments apply, and give reasons for any recommended changes. The proposal may be changed in light of comments received. All comments will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in drafting this document are LCDR Donald B. Parsons, Office of Merchant Marine Safety, and Michael N. Mervin, Office of the Chief Counsel.

E.O. 12291 and DOT Regulatory Policies and Procedures

This supplemental proposed rulemaking is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the location specified in the **ADDRESSES** paragraph. Copies may also be obtained by sending a written request to that address.

As explained in the draft evaluation, the proposed rules are deregulatory. They provide alternatives to fuels currently in use by permitting the use of cooking fuels that are currently prohibited by the regulations. The rules would not require vessel owners or operators to install systems using these fuels. Vessel owners would choose to install liquefied petroleum gas (LPG) or compressed natural gas (CNG) cooking appliances on new vessels only if they believed that the costs of such equipment, in terms of initial purchase price, installation costs or operating costs were less than the currently permitted systems, or if they believed that these systems provided added convenience that outweighed any additional costs. Owners of existing vessels with installed cooking appliances may choose to replace them with LPG or CNG systems if they believed them to be less costly, if they are experiencing difficulty in obtaining fuel for their current systems and LPG or CNG are readily available, or if they prefer these systems for their cleanliness and ease of operation.

The proposed rules serve only to expand the choices available to vessel owners, although some vessel owners may choose to install LPG or CNG systems for their added convenience even though they may in some instances be more costly. There are relatively minor differences between the cost of electric marine stoves and those with similar features that are fueled either by alcohol or LPG. Depending upon the individual features of an electric stove, its purchase price may range from less than $100 to over $400; typically, an equivalent alcohol stove would be priced $10 to $30 more, and an LPG or CNG stove priced $15 to $60 more. There would be little, if any, difference in installation costs. The differences in operating costs would be governed by the relative costs and availability of the fuels. Because the economic impact of this proposal is so minimal, we find that no further economic evaluation is necessary.

Environmental Assessment

An environmental assessment has not been prepared. As specified by DOT Order 5610.1C and Commandant Instruction M16714.1A, regulations of this type are excluded from the requirement to prepare an environmental assessment.

Regulatory Flexibility Act

The Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities. This proposal principally affects small vessels carrying passengers. This includes both Coast Guard inspected and uninspected vessels. Many of these are operated as small businesses. While it has not been possible to quantify the economic impact of this proposal, any cost of installing LPG or CNG cooking appliances would be voluntarily assumed by the vessel owner or operator. The proposal does not require the installation of systems using these fuels.

Discussion of the Proposed Regulations

The Coast Guard's ships' store regulations, 46 CFR Part 147, prohibit the carriage of liquefied and non-liquefied gases, such as LPG and CNG, as ship's stores (items intended for use or consumption on board a vessel) on vessels carrying passengers for hire. This prohibition dates back to 1937. The prohibition is referenced or paraphrased in 46 CFR 25.45—Uninspected Vessels, 46 CFR 58.16—Marine Engineering, and 46 CFR 184.05—Small Passenger Vessels.

In 1982, the Coast Guard received numerous requests to reevaluate the prohibition against the use of LPG and CNG as cooking fuels. A technical proposal submitted by the Virgin Islands Charterboat League cites advances in the technology of LPG systems, the adoption by the American Boat and Yacht Council (ABYC) of voluntary standards, and their own perception of the hazards of these fuels vis-a-vis the principal alternative fuels—alcohol and kerosene—as reasons for reevaluating the regulations. Also mentioned are cleanliness, convenience, and commercial availability of LPG as compared to the alternative fuels. Some vessel operators also claim that they face inequitable treatment because LPG cooking appliances are not prohibited on vessels offered for bareboat charter or on similar vessels operating in the British Virgin Islands.

The Coast Guard has reviewed its casualty statistics for recreational boats, where LPG and CNG systems are not prohibited. This data indicates that LPG and CNG cooking systems have not contributed to a greater number of galley fires than the principal alternative fuels—kerosene and alcohol. However, data is not available to indicate the number of LPG and CNG units installed vis-a-vis kerosene or alcohol units and in cases involving explosions, the source of explosive vapors may not be known.

The ABYC has adopted voluntary standards for both LPG and CNG systems on small vessels. ABYC standard A-1-78 provides standards for the design, installation, testing and use of LPG systems; ABYC standard A-22-78 provides similar standards for CNG systems. Coast Guard regulations (46 CFR 58.16) permit the use of LPG systems on inspected vessels that do not carry passengers for hire; ABYC standard A-1-78 is similar in most respects to these regulations. The Coast Guard does not have regulations specifically governing the design, installation or testing of CNG systems on inspected vessels. The Coast Guard has concluded that there is not sufficient interest in installing CNG systems on large inspected vessels to develop specific regulations at this time; such installations may be considered on a case-by-case basis under the provisions of 46 CFR 50.20-30.

Having reviewed the ABYC standards A-1-78 and A-22-78 the Coast Guard has concluded that, with few exceptions, they can be adopted and used to govern the design, installation and testing of attended LPG and CNG cooking systems on vessels carrying passengers for hire. Although the ABYC standards do permit the use of LPG and CNG for unattended appliances such as heating units, the Coast Guard is proposing to limit the use of LPG and CNG to cooking appliances. Cooking appliances are normally operated by a member of the vessel's crew, the fuel need only be supplied to these appliances for a limited period of time, and they are normally attended while in operation. Most other LPG or CNG applications involve unattended appliances or appliances, such as heating units, which would normally be accessible to and operated by the passengers. A major concern with both LPG and CNG is the possibility of a dangerous concentration of vapor accumulating in any enclosed space through which the fuel supply piping is led, where the appliances are located, or where the cylinders are stored. Therefore the Coast Guard has concluded that the greater possibility of undetected vapor accumulation or misuse with these other LPG and CNG applications warrants their continued prohibition on passenger-carrying vessels for the present. To further reduce the possibility of dangerous vapor accumulations, the Coast Guard is proposing that LPG and CNG cylinders be located outside enclosed areas, and that a remotely operated shut-off valve be installed in the fuel supply line if it enters an enclosed space on the vessel.

Accordingly, the Coast Guard published proposed rules in the March 22, 1984, **Federal Register** (49 FR 10685) which would have removed the prohibition against using compressed flammable gases as fuels for cooking appliances. This proposal also promulgated standards governing the design, installation and testing of cooking appliances using LPG and CNG. As a result of the comments received, substantive changes have been made to the original proposal, and they have been incorporated into this supplemental proposed rule.

On August 26, 1983, all the maritime shipping laws relating to vessels and seamen which were contained in the Revised Statutes and the Statutes at Large were recodified and enacted into Subtitle II of Title 46, United States Code, "Shipping". The recodification repealed Revised Statute 4472 (46 U.S.C. 170) on the basis that its authority was duplicated elsewhere within the Coast Guard's and Department of Transportation's statutes, and that no substantive changes were made to the law. The Coast Guard's authority to regulate Ship's Stores on inspected vessels is now 46 U.S.C. 3306. The authority to regulate cooking, heating, and lighting systems on uninspected vessels carrying passengers for hire (46 CFR 25.45) is now 46 U.S.C. 4105 and 46 U.S.C. 4302. The Coast Guard's authority to regulate the carriage of hazardous materials carried aboard all vessels is 49 U.S.C. 1804(a). The authority citations in this proposal indicate these changes.

Paperwork Reduction Act

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Comments concerning the collection of information requirements contained in this proposed rule should be directed to the Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, Attention: Desk Officer for DOT. A copy of any comments submitted, sent to Commandant (G-CMC/21) as indicated in **"ADDRESSES"** above, would be appreciated.

Discussion of Comments

A total of fifty-one comment letters were received from forty-five persons or organizations in response to the notice of proposed rulemaking published in the

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March 22, 1984, Federal Register (49 FR 10685). Of the forty-five persons or organizations, forty-two were in favor of the proposal, one was opposed to allowing either LPG or CNG on passenger-carrying vessels, one was opposed to allowing LPG on these vessels, and one expressed no opinion either way. Although the majority of comments were in favor of permitting the use of these fuels on passenger vessels, many were opposed to certain specifics of the proposed rule. These comments are discussed below.

1. The one comment that opposed the installation of both CNG and LPG cooking appliances on passenger vessels stressed the fire and explosion potential of these fuels. Also, this comment called attention to the adversities of the marine environment which these systems would be subjected to that are not encountered in shoreside installations. According to the comment, these conditions would increase the hazards presented by these fuels.

Any of the cooking fuels currently allowed aboard passenger vessels possess the potential for fire or explosion. The fact that LPG and CNG are gases at ambient temperatures and therefore form explosive atmospheres in case of a leak more readily than liquid fuels supports the opposition to allowing LPG and CNG on passenger-carrying vessels. However, as stated in the preamble of the proposed rule published on March 22, 1984, the casualty statistics do not indicate that LPG or CNG cooking systems have contributed to a greater number of galley fires than kerosene or alcohol. Also, there is no evidence to indicate that the marine environment has a significant enough adverse effect on these systems to render them unsafe and therefore unsuitable for use on vessels.

2. Two comments were opposed to allowing the use of LPG as a cooking fuel because, in addition to the previously stated fire and explosion potential, it is heavier than air and could collect inside the vessel in the event of a leak rather than rising and dissipating into the atmosphere as CNG would.

If the LPG bottle and regulating equipment are stowed in a housing that is either topside or in a vapor-tight locker in an open cockpit and is vented overboard above the waterline, the possibility of LPG entering the vessel because of a leak from either of these sources is highly unlikely. Additionally, if the supply piping is tested in accordance with the referenced industry standards, any leak in the system will be detected. These requirements, combined with the prohibition against pilot lights, the installation of a remotely controlled shutoff valve, and the fact that stoves are usually attended, make the probability of a leak going undetected long enough to allow a dangerous accumulation of gas slight.

3. One comment mentioned OMB Circular A–119 which addresses federal agency use of voluntary standards, and stated that two guideline documents approved by the Secretary of Commerce should be referenced as they apply to this rulemaking. These documents are entitled "Guidelines for Federal Agency Use of Private Sector Third-Party Certification" and "Guidelines for Federal Agency Use of Self-Certification by Producer or Supplier". These documents were published in the Federal Register on February 15, 1984 (49 FR 5792).

This rulemaking does meet the policy set forth in OMB Circular A–119. The guidelines approved by the Secretary of Commerce do not apply, however, because there is no self-certification or third-party certification involved in this rulemaking. Rather, the Coast Guard will verify that LPG and CNG cooking appliance installations meet the standards adopted by regulations on inspected passenger vessels, and it is the responsibility of the owner of an uninspected passenger-carrying vessel to ensure that LPG and CNG installations on his vessel comply with the adopted industry standards. In neither case is there a certification by either a third party, producer, or supplier that these installations meet the adopted standards.

4. Four comments recommended adopting the National Fire Protection Association Standard No. 302, Pleasure and Commercial Motor Craft 1984, in lieu of the ABYC standards. The primary reason given was that the NFPA standard was considered more stringent than those of ABYC and would therefore provide for a safer installation.

The NFPA and ABYC standards were compared and found to be so similiar that the Coast Guard is proposing that either standard may be used as the basic reference for LPG or CNG installations. However, due to a few differences between these standards which are considered significant, certain requirements are being added to each of them. Specifically, these requirements are as follows:

a. If NFPA 302 is used as the standard, then the following ABYC sections must also be complied with:

1. LPG or CNG must be odorized in accordance with A–1.5.d or A–22.5.b, respectively.

2. Ovens must be equipped with a flame failure switch in accordance with A–1.10.b for LPG or A–22.10.b for CNG.

3. The marking and mounting of LPG cylinders must be in accordance with A–1.8.b.

4. Only LPG cylinders of the vapor withdrawal type are permitted as specified in A–1.5.b.

b. If ABYC A–1 or A–22 is used as the standard for an LPG or CNG installation, then the following requirements must also be met:

1. Pilot lights or glow plugs are prohibited.

2. The use or stowage of stoves with attached cylinders is prohibited as specified in paragraph 6–5.1 of NFPA 302.

c. If ABYC A–22 is used as the standard for a CNG installation, then the CNC cylinders, regulation equipment, and safety equipment must meet the requirements of paragraphs 6–5.11.1, 2, 3, 5.11.5, and 5.11.8 of NFPA 302.

5. Fifteen comments were not in agreement with the requirement that the gas cylinders be stowed in metal enclosures above the weather deck. The reasons cited were lack of space, interference of the tank and fuel supply line with the rigging on sail vessels, that the metal cylinder enclosure would interfere with the working of the sails on sailboats, and the increased probability of the cylinder being damaged by wave action. Also, it was mentioned that stowing CNG cylinders above the weather deck was superfluous because CNG is lighter than air and, if it leaked, it would simply rise and dissipate into the atmosphere. All these commenters recommended simply accepting the ABYC standards for cylinder stowage without modification.

After reevaluating this requirement and those contained in the ABYC and NFPA standards, it has been decided that the industry standards by themselves provide an adequate level of safety except as regards the stowage of CNG cylinders. Therefore, the requirement to stow cylinders in enclosures located above the weather deck has been withdrawn to allow for the exceptions provided by the industry standards. Also, the proposed requirements contained in paragraphs 25.45–2(b)(3) and 184.05–1(d)(3) have been deleted as they merely reiterate the industry standards. It should be noted, however, that the proposed rule did not specify that the cylinder enclosures be metal.

Regarding CNG cylinders, ABYC permits their stowage anywhere on the vessel while NFPA 302 requires them to be stowed similarly to LPG cylinders. Although any CNG leaking from a cylinder stowed within a vessel would rise, the Coast Guard feels this would present an unacceptable risk because of the possibility of the gas encountering an ignition source before exiting the vessel. Therefore, the Coast Guard is proposing that CNG cylinder stowage be similar to that for LPG as set forth in section 6–5.11.3 of NFPA 302.

6. One comment stated that propane cylinders should be permitted to be installed below deck provided adequate safety precautions were taken such as putting the cylinder and regulator in a vapor tight container with a bottom vent leading overboard. The Coast Guard is not in agreement with this because of LPG's property of being heavier than air. A leak in the container or bottom vent would result in LPG collecting in the bottom of a compartment with no means of being vented. This presents an unacceptable risk on passenger vessels and therefore the requirements for LPG cylinder stowage set forth in NFPA 302 or ABYC A–1 must be met.

7. Six comments stated that the remotely controlled shutoff valve should not be required. One reason given was that requiring solid piping from the cylinder to the appliance with a valve at the appliance would be adequate. Another reason was that CNG systems operate at a much lower pressure than those of LPG and a liquid over-pressure condition can not occur as is the case with LPG. A third reason was that the shutoff valves are of light construction and will not stand up to constant use, with undetected fractures developing directly at the valve.

Both NFPA and ABYC require the gas supply piping to be a continuous length of tubing without joints except to feed appliances. The purpose of the remotely controlled shutoff valve is to minimize the amount of time needed for the stove operator to secure the gas supply in the event of a leak in the fuel line inside the vessel. This in turn would minimize the amount of gas released into the vessel. The Coast Guard feels this extra measure of safety is needed on passenger vessels. A valve installed at the appliance would not serve this function, and therefore this suggestion is not being adopted.

Other than the tank, both LPG and CNG systems operate at very low pressures (less than one psig.) and both systems are protected from over-pressure by required relief valves installed on the low pressure side of the regulator. Therefore, it is not reasonable to expect the supply line to fail due to overpressure, but more probably from mechanical damage. Consequently, it is not reasonable to eliminate the requirement for the remotely controlled shutoff valve in CNG systems because of its lower operating pressure.

The remotely controlled shutoff valve is not intended to be the primary gas supply valve for the fuel system, but only intended to be used in an emergency in the event of a gas leak inside the vessel. Therefore, these valves should rarely be operated. Consequently, the probability of the valve, or its fittings, failing from excessive use is minimal. In the unlikely event that the valve, its fittings, or any other part of the system should develop hidden fractures, the hazard to the vessel would be minimal because the NFPA and ABYC standards both require that these systems be frequently tested. These tests would readily indicate any leak in the system. For these reasons, the remotely controlled shutoff valve requirement is being retained.

8. Three comments suggested that the required remote shutoff value be an electric solenoid valve rather than a mechanically operated one because a mechanical valve would be difficult to operate on most vessels due to the distance between the appliance and the cylinder. Another comment suggested that a normally closed solenoid valve, operable from the stove, be installed next to the cylinder valve. The reason for this type of valve was that in the event of a power failure, the valve would automatically close, whereas a normally open solenoid valve would become inoperable and remain open.

The type of control mechanism required for the remotely controlled shutoff valve was not specified in the original proposal because this was not felt to be critical. What was considered important was the ability of the stove operator to secure the flow of gas into the vessel in the event of a leak. Whether the distance between the stove and the shutoff valve is such as to make a mechanical control mechanism ineffective will depend upon the specific installation. Therefore, the type of remotely controlled shutoff valve installed and its control mechanism is left to the discretion of the vessel owner.

To install the remotely controlled shutoff valve next to the cylinder valve would conflict with the NFPA and ABYC standards which require that the regulator be installed next to the cylinder valve. Also, the initial proposal allowed the remotely controlled shutoff valve to be installed anywhere in the fuel supply line between the regulator and where the line entered the vessel. This was permitted because a leak occurring in the line outside of the vessel was not considered to be extremely dangerous as the gas would dissipate into the atmosphere. Since there is no apparent reason to install this valve at the regulator, this flexibility has been maintained.

The Coast Guard agrees that a normally closed power operated valve is superior to a normally open one, and this SNPRM requires all power operated valves to be of the fail-closed type.

9. Three comments requested a public hearing to discuss the proposed rules. No meeting has been held because several of the recommendations made in the comments received have been incorporated into this SNPRM, and it was not considered beneficial to discuss a proposal which was being revised. Rather, it is felt that it would be more meaningful to publish this SNPRM for comment and then consider a public hearing should one still be requested by anyone raising a genuine issue. It should be noted that this supplemental proposal was on the agenda of the National Boating Safety Advisory Council (NBSAC) at its meeting as discussed in paragraph 10 below. This meeting was open to the public and any interested persons could attend. There were no comments made by either the council members or the public in attendance concerning the proposed changes to the NPRM.

10. One comment noted that there was an error in the preamble of the proposed rulemaking published on March 22, 1984. Specifically, the statement in the proposal that the Coast Guard consulted with NBSAC on the proposed amendments to 46 CFR 25.45 at its November 1983 meeting. It is correct that the issue was not discussed, but instead only mention was made of its forthcoming publication in the Federal Register. Accordingly, this proposed rulemaking was placed on the agenda of NBSAC for its meeting on May 14 & 15, 1985, in Harrisburg, Pa. Advance notice of this meeting and the agenda items were published in the Federal Register on April 18, 1985 (50 FR 15522). As stated above, there were no comments made after the presentation of this SNPRM at the meeting.

11. One comment requested a 30 day extension of the comment period which ended on May 22, 1984, so that there would be sufficient time to discuss the proposal with others in a boating association and obtain their opinions. Although no formal extension of time has been granted, any comments received up to the drafting of this SNPRM have been considered and included in this preamble. This person did subsequently submit the associations comments, and they are addressed herein.

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12. One comment suggested requiring the fuel supply hose to be supported every 12 inches to reduce its vibration. Both NFPA and ABYC require the gas piping to be secured against vibration, but do not specify any interval. The reason for this is that the necessary interval will vary from vessel to vessel depending upon its configuration and that of the fuel supply system. Therefore, no interval for securing the fuel supply line has been specified in this SNPRM.

13. One comment recommended that water heaters and heating systems fueled by LPG and CNG also be allowed on passenger vessels. As was stated in the preamble of the initial proposed rule, the Coast Guard is limiting the use of LPG and CNG to cooking appliances because they are normally attended and most probably operated by a crew member who is familiar with their safe operation. This is not the case with water heaters and heating systems. They are both normally unattended, and heating systems additionally would likely be operated by passengers who may not be familiar with their safe operation. These systems present a much higher risk for an undetected gas leak than an attended cook stove, and this increased risk is not considered acceptable on a passenger vessel.

14. One comment expressed concern that these proposed rules may eventually be applied to recreational vessels. Currently, there are no rules for recreational vessels restricting the use of LPG and CNG, and the implementation of any such rules is not anticipated at this time.

15. Three comments recommended that the gas cylinders and regulators be housed in one piece compartments located above the waterline and vented overboard. As has been previously stated, the original proposed requirement to stow the gas cylinders and regulators in containers located above the weather deck has been removed because it only reiterated what is already in the industry standards. Also, this SNPRM accepts the ABYC and NFPA standards for cylinder and regulator stowage in a vapor tight housing or locker located above the waterline in an open cockpit in special circumstances. The reasons for not allowing cylinders to be stowed within a vessel have been stated in preceding paragraphs.

16. One comment recommended that a leak detecting system be required on a vessel if LPG were used as the cooking fuel. Since this is not required by NFPA or ABYC and casualty statistics do not appear to justify the need for such a system, this requirement has not been incorporated in this SNPRM. However, there is nothing that would preclude a vessel owner from installing a leak detector if desired.

17. One comment suggested that installation configurations be published as part of this rulemaking. This is not considered practical because of the unlimited number of possible configurations that could be used. Also, the Coast Guard feels that the NFPA and ABYC standards adequately describe the requirements for LPG and CNG system installations. Therefore, possible configurations for these systems are not included with this proposed rule.

18. One comment recommended that the Coast Guard inform insurance companies of these requirements because this would ensure enforcement of the regulations for gas cooking appliance installations. This is not considered possible because the Coast Guard cannot delegate its enforcement authority to the insurance companies. Also, the insurance industry should be well aware of any requirements published by the Coast Guard simply because of the regulatory process. Therefore, no attempt to specifically notify each insurance company is planned at this time. It should be noted, however, that there is nothing to preclude an insurance company or marine surveyor from informing the Coast Guard of any violations of the regulations observed on a vessel.

19. One comment suggested that standards should be added for fittings and fuel lines because these are the most probable sources of leaks. Although this may be true, the NFPA and ABYC standards address this. Also, industry standards have been developed which cover these items of equipment, and it is not considered necessary to repeat them in this proposal.

20. One comment recommended that routine inspections of vessels carrying more than six passengers should include an examination of the gas cooking system. This requirement is felt to be unnecessary because marine inspectors examine equipment and systems on vessels during their inspections and this would include gas cooking systems. Therefore, such a specific requirement has not been included.

21. One comment suggested allowing portable gas stoves which have the gas cylinder attached directly to them. A leak from such an appliance would allow gas to accumulate within the vessel adjacent to an ignition source. This presents an unacceptable risk on passenger vessels, and the Coast Guard is in agreement with both the NFPA and ABYC standards which prohibit portable gas stoves.

22. Two comments recommended that all pipe and wire penetrations be sealed gastight. Currently, regulations require all penetrations to meet the same tightness standards as the bulkheads or decks through which they pass, whether this be watertight, weathertight, or vaportight. It would serve no purpose to make a penetration vaportight (gastight) in a non-vaportight deck or bulkhead. Therefore, no additional requirement has been included in this proposal which would call for all pipe and wire penetrations to be vaportight.

23. One person stated that his vessel had an LPG cooking system installed in accordance with ABYC A–1 and it would be impractical to modify it to comply with the requirements of the initial proposal. Also, he did not think the safety of the system would be significantly improved by so doing. With the changes that have been made to this proposed rule from what was initially published, the system in question should be in compliance, with the exception of the remote shutoff valve, unless it has a pilot light or automatic glow plug. Removal of such a device and the installation of the remote shutoff valve would not be an extensive or costly modification.

24. One comment stated that a remote solenoid shutoff valve installed in a CNG gas line could cause an excessive pressure drop that would be sufficient to adversely affect the safety control system of a stove with an oven. This problem could be alleviated by either adjusting the regulator to compensate for any pressure drop through the solenoid valve, or by using a full port valve or one with a large enough orifice to cause a negligible pressure drop. Each system is different and the pressure losses will vary due to length of pipe, number of bends in the pipe, and other restrictions in the system. It is the designer's responsibility to address system pressure losses and to ensure an adequate supply of gas to the stove.

25. One comment recommended requiring a remote shutoff solenoid valve which is capable of stopping the flow of LPG when subjected to either overpressure or liquid carry-over. The reason given for this requirement was that on a moving vessel with an improperly overfilled cylinder or a poor cylinder installation, liquid could carry-over through the regulator and would flash into vapor at the stove burner at a much greater pressure than the cooking appliance was designed for. The result would be permanent damage to the applicance controls and possible burn injuries to the stove operator.

The possibility of liquid carry-over is considered extremely unlikely and the Coast Guard has no information that this type of accident has in fact occurred on any vessel. ABYC A–1.5.b requires LPG cylinders to be of the vapor withdrawal type, and any cylinder designed or installed so as to admit liquid into the system is prohibited. Installations meeting the requirements of NFPA 302 must, in addition, comply with ABYC A–1.5.b. Regarding an overpressure condition, both ABYC and NFPA require a relief valve on the low pressure side of the regulator. For these reasons, it is not felt that a special purpose solenoid valve is necessary and a requirement for one has not been adopted.

26. Three comments stated that LPG and CNG are different gases, have different properties, and should therefore be addressed separately in regulations as is done by ABYC. The previous proposed rule, as with this proposal, only treats these gases similarly to the extent that ABYC does, with the exception of the cylinder stowage requirements for CNG. In reviewing ABYC A–1 and A–22, it is readily apparent that the vast majority of requirements are the same and in many places the wording is identical. Therefore, the Coast Guard does not feel that it has addressed these cooking fuels as being the same.

27. One comment stated that gas cylinders should not be stowed in metal lockers because of maintenance problems due to corrosion, the aesthetic appearance of such lockers, and the fact that many vessels already have lockers built into their hulls which were specifically designed for cylinder stowage. As was stated previously in paragraph 5, the initially proposed for lockers did not specify that they be metal.

List of Subjects

46 CFR Part 25

Marine safety, Vessels, Fishing vessels, Passenger vessels, Fire prevention, Hazardous materials transportation.

46 CFR Part 58

Marine safety, Vessels, Oil and gas exploration.

46 CFR Part 147

Marine safety, Arms and munitions, Hazardous materials transportation.

46 CFR Part 184

Marine safety, Passenger vessels, Navigation (water), Communication equipment.

In consideration of the foregoing, the Coast Guard proposes to amend Chapter 1 of Title 46 of the Code of Federal Regulations as set forth below.

PART 25—REQUIREMENTS

1. Subpart 25.45 would be revised to read as follows:

Subpart 25.45—Cooking, Heating, and Lighting Systems

Sec.

25.45–1 Heating and lighting systems on vessels carrying passengers for hire.
25.45–2 Cooking systems on vessels carrying passengers for hire.

Authority: 46 U.S.C. 2104, 4102, 4104, 4105, 4302; 49 U.S.C. 1804(a); 49 CFR 1.46(b), 1.46(t).

Subpart 25.45—Cooking, Heating, and Lighting Systems

§ 25.45–1 Heating and lighting systems on vessels carrying passengers for hire.

(a) No fuel may be used in any heating or lighting system on any vessel carrying passengers for hire without approval of Commandant (G–MTH), except—

(1) Alcohol, solid,
(2) Alcohol, liquid, combustible,
(3) Fuel oil, No. 1, No. 2, or No. 3,
(4) Kerosene,
(5) Wood or,
(6) Coal.

(b) Heating and lighting systems using alcohol must meet the following requirements:

(1) Containers of solidified alcohol must be properly secured to a fixed base.

(2) Fluid alcohol burners, where wet priming is used, must have—

(i) A catch pan of not less than ¾" depth secured inside the frame of the stove; or

(ii) The metal protection under the stove flanged up at least ¾" to form a pan.

(c) Heating and lighting systems using kerosene or fuel oil must meet the following requirements:

(1) Where wet priming is used, each system must have—

(i) A catch pan of not less than ¾" depth secured inside the frame of the stove; or

(ii) The metal protection under the stove flanged up at least ¾" to form a pan.

(2) Fuel tanks must be—

(i) Separated from the stove that they serve;

(ii) Mounted in a location open to the atmosphere or mounted inside a compartment that is vented to the atmosphere; and

(iii) Fitted with an outside fill and vent.

§ 25.45–2 Cooking systems on vessels carrying passengers for hire.

(a) No fuel may be used in any cooking system on any vessel carrying passengers for hire without approval of Commandant (G–MTH) except those listed in § 25.45–1(a), subject to the requirements stated therein, liquefied petroleum gas (LPG), or compressed natural gas (CNG).

(b) Cooking systems using LPG or CNG must meet the following requirements:

(1) The design, installation, and testing of each LPG system must meet ABYC A–1–78 or Chapter 6 of NFPA 302.

(2) The design, installation, and testing of each CNG system must meet ABYC A–22–78 or Chapter 6 of NFPA 302.

(3) If Chapter 6 of NFPA 302 is used as the standard, then the following additional requirements must also be meet:

(i) LPG or CNG must be odorized in accordance with ABYC A–1.5.d or A–22.5.b, respectively.

(ii) Ovens must be equipped with a flame failure switch in accordance with ABYC A–1.10.b for LPG or A–22.10.b for CNG.

(iii) The marking and mounting of LPG cylinders must be in accordance with ABYC A–1.6.b.

(iv) LPG cylinders must be of the vapor withdrawal type as specified in ABYC A–1.5.b.

(4) If ABYC A–1 or A–22 is used as the standard for an LPG or CNG installation, then pilot lights or glow plugs are prohibited.

(5) If ABYC A–22 is used as the standard for a CNG installation, then the following additional requirements must also be met:

(i) The CNG cylinders, regulating equipment, and safety equipment must meet the installation, stowage, and testing requirements specified in paragraphs 6–5.11.1, 2, 3; 6–5.11.5; and 6–5.11.6 of NFPA 302.

(ii) The use or stowage of stoves with attached cylinders is prohibited as specified in paragraph 6–5.1 of NFPA 302.

(6) If the fuel supply line of an LPG or CNG system enters an enclosed space on the vessel, a remote shut-off valve must be installed that can be operated from a position adjacent to the appliance. The valve must be located between the regulator and the point where the fuel supply line enters the

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enclosed portion of the vessel. A power operated valve installed to meet this requirement must be of a type that will fail closed.

(c) In accordance with 5 U.S.C. 552(a), the following standards of the American Boat and Yacht Council, Inc. (ABYC), P.O. Box 806, Amityville, NY, 11701, (516) 598–0050, are incorporated by reference:

(1) Standard A–1–78, "Marine LPG—Liquefied Petroleum Gas Systems" dated December 15, 1978.

(2) Standard A–22–78, "Marine CNG—Compressed Natural Gas Systems" dated December 15, 1978.

(d) In accordance with 5 U.S.C. 552(a), Chapter 6 of Standard 302 "Pleasure and Commercial Motor Craft" dated 1984 of the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA, 02269, (617) 770–3000, is incorporated by reference.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

3. The authority citation for Part 58 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

4. By revising § 58.16–1(a) to read as follows:

§ 58.16–1 Scope.

(a) This subpart prescribes standards for the use of liquefied petroleum gas for heating and cooking on inspected vessels, except ferries.

* * * * *

5. By adding a new § 58.16–7 to read as follows:

§ 58.16–7 Use of liquefied petroleum gas.

(a) Cooking equipment using liquefied petroleum gas on vessels of 100 gross tons or more that carry passengers for hire must meet the requirements of this subpart.

(b) Cooking equipment using liquefied petroleum gas on vessels of less than 100 gross tons that carry passengers must meet the requirements of 46 CFR 24.45–2 or 184.05, as applicable.

(c) Systems using liquefied petroleum gas for cooking or heating on any other vessels subject to inspection by the Coast Guard must meet the requirements of this subpart.

PART 147—REGULATIONS GOVERNING USE OF DANGEROUS ARTICLES AS SHIPS' STORES AND SUPPLIES ON BOARD VESSELS

6. The authority citation for Part 147 would be revised to read as follows:

Authority: 46 U.S.C. 2104, 3306; 49 U.S.C. 1804(a); 49 CFR 1.46(b), 1.46(t).

§ 147.05–100 [Amended]

7. In § 147.05–100, amend Table S—Classification: Ships' Stores and Supplies of a Dangerous Nature by revising the entry under "Fuel for heating, cooking, lighting" for "Liquefied or non-liquefied gas" to read as follows:

TABLE S.—CLASSIFICATION: SHIPS' STORES AND SUPPLIES OF A DANGEROUS NATURE

Descriptive name of article	Characteristic properties, precautions required, markings required	Label required	Required conditions for transportation			
			Cargo vessel	Passenger vessel	Ferry vessel, passenger or vehicle	R R car ferry, passenger or vehicle
Fuel for heating, cooking, lighting. Liquefied non-liquefied gas.	Systems using a liquefied or a nonliquefied gas, including regulating and safety equipment, exclusive of the cylinder, must be of a design approved by the Commandant of the Coast Guard for such use. Vapors from petroleum gases are heavier than air and with air form explosive mixtures over wide ranges. Acetylene, methane and coal gas are lighter than air.	Flammable gas label required on cylinders.	Prohibited except as provided for in subpart 58.16. Cylinders must be DOT specification containers. The cylinders must bear a test date marking indicating test within the preceding 5 years. Cylinders must be located in a locker or housing on or above the weather deck in such a position that any escaping vapor cannot reach living quarters or enclosed compartments on board the vessel. Lockers or housings must be vented to the open air near the bottom for gases evolving vapors heavier than air and near the top of the enclosure for gases evolving vapors lighter than air. Cylinders must be protected from climatic extremes.	Prohibited except for cooking subject to the requirements of §§ 25.45–2, 58.16 and 184.05–1 of this chapter. Cylinders must be DOT specification containers. The cylinders must bear a test date marking indicating test within the preceding 5 years. Cylinders, except as otherwise provided in this chapter, must be located in a locker or housing on or above the weather deck in such a position that any escaping vapor cannot reach living quarters or enclosed compartments on board the vessel. Lockers or housings must be vented to the open air near the bottom for gases evolving vapors heavier than air and near the top of the enclosure for gases evolving vapors lighter than air. Cylinders must be protected from climatic extremes.	Not permitted.....	Not permitted.

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

8. The authority citation for Part 184 would be revised to read as follows:

Authority: 46 U.S.C. 2104, 3306; 49 U.S.C. 1804(a); 49 CFR 1.46(b), 1.46(t).

9. In § 184.05–1 by revising paragraph (b) and adding paragraphs (d), (e), and (f) to read as follows:

§ 184.05–1 Restrictions.

* * * * *

(b) Except as provided by paragraph (d) of this section, the carriage or use of liquefied or non-liquefied gases and certain flammable liquids as ships' stores is prohibited by Part 147 of this chapter.

* * * * *

(d) Cooking systems using liquefied petroleum gas (LPG) and compressed natural gas (CNG) must meet the following requirements:

(1) The design, installation and testing of each LPG system must meet ABYC A–1–78 or Chapter 6 of NFPA 302.

(2) The design, installation and testing of each CNG system must meet ABYC A–22–78 or Chapter 6 of NFPA 302.

(3) If Chapter 6 of NFPA 302 is used as the standard, then the following additional requirements must also be met:

(i) LPG or CNG must be odorized in accordance with ABYC A–1.5.d or A–22.5.b, respectively.

(ii) Ovens must be equipped with a flame failure switch in accordance with ABYC A–1.10.b for LPG or A–22.10.b for CNG.

(iii) The marking and mounting of LPG cylinders must be in accordance with ABYC A–1.6.b.

(iv) LPG cylinders must be of the vapor withdrawal type as specified in ABYC A–1.5.b.

(4) If ABYC A–1 or A–22 is used as the standard for an LPG or CNG installation, then pilot lights or glow plugs are prohibited.

(5) If ABYC A–22 is used as the standard for a CNG installation, then the following additional requirements must also be met:

(i) The CNG cylinders, regulating equipment, and safety equipment must meet the installation, stowage, and testing requirements of paragraphs 6–5.11.1, 2, 3; 6–5.11.5; and 6–5.11.6 of NFPA 302.

(ii) The use or stowage of stoves with attached cylinders is prohibited as specified in paragraph 6–5.1 of NFPA 302.

(6) If the fuel supply line of an LPG or CNG system enters an enclosed space on the vessel, a remote shut-off valve must be installed which can be operated from a position adjacent to the appliance. The valve must be located between the regulator and the point where the fuel supply line enters the enclosed portion of the vessel. A power operated valve installed to meet this requirement must be of a type that will fail closed.

(e) In accordance with 5 U.S.C. 552(a), the following standards of the American Boat and Yacht Council, Inc. (ABYC), P.O. Box 806, Amityville, NY 11701, (516) 598–0050, are incorporated by reference:

(1) Standard A–1–78, "Marine LPG—Liquefied Petroleum Gas Systems" dated December 15, 1978.

(2) Standard A–22–78, "Marine CNG—Compressed Natural Gas Systems" dated December 15, 1978.

(f) In accordance with 5 U.S.C. 552(a), Chapter 6 of Standard 302 "Pleasure and Commercial Motor Craft" dated 1984 of the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269, (617) 770–3000 is incorporated by reference.

Dated: January 21, 1986.

J.W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc. 86–2633 Filed 2–5–86; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

46 CFR Part 282

[Docket No. R–103]

General Procedures for Determining Operating-Differential Subsidy for Liner Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to establish regulations governing the calculation and payment of daily operating-differential subsidy (ODS) for liner vessels engaged in essential services in the foreign commerce of the United States. The present system governing ODS payments requires extensive audit of expenses of operators, resulting in delayed ODS payments. The proposed regulations provide for the payment of ODS as a fixed and final daily amount that includes all items of expense authorized for ODA participation by the respective ODS agreements (ODSA) currently in force.

DATE: Comments must be received on or before April 7, 1986.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. To expedite review of the comments, the Agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, D.C. 20590, Tel. (202) 382–6036.

SUPPLEMENTARY INFORMATION: Sections 603 and 606 of the Merchant Marine Act, 1936, (Act) as amended (46 U.S.C. § 1173, 1176) contain the statutory requirements for the determination of ODS rates and the payment of ODS. The Act is quite specific in prescribing the methods for determining wage rates, but provides no guidance on the methods for determining rates for other subsidizable expenses, i.e., maintenance and repairs (M&R), hull and machinery insurance premiums (H&M) and protection and indemnity insurance premiums and deductibles (P&I). ODS rates for wages are determined and paid for fiscal periods, while ODS rates for the other expenses are determined and paid for calendar periods. In administering 46 U.S.C. § 1173 and 1176, MARAD bases ODS payments on estimated expenses accrued by the operators. The Act does not require the operator to pay expenses before receiving ODS payments from MARAD.

MARAD has issued the Manual of General Procedures for Determining Operating-Differential Subsidy (Manual) to implement its statutory authority for determining ODS for liner vessels. This Manual contains procedures that now govern the determination of ODS rates and payment of ODS. These proposed regulations would incorporate those procedures and revise the current system for ODS rate determinations and, if finalized, would replace the Manual.

Foreign-flag competition for liner vessels is now determined in accordance with the provisions of the Manual of General Procedures for Determining Substantiality and Extent of Foreign Flag Competition (Competition Manual). MARAD uses the foreign-flag competition as a basis for calculating the cost differential between foreign-flag and U.S. vessels, and bases the ODS rate on this cost differential. Payment of ODS is based on the U.S.-foreign cost differential which shall be the excess of an operator's cost over the principal foreign-flag competitor's cost. These proposed regulations include amended procedures for determining foreign competition and, if finalized, would also replace the Competition Manual.

The current system includes two methods for payment of ODS, i.e., a daily rate for wages and a reimbursement method, based on a percentage differential applied to eligible expenses, for other subsidizable items. It is a system which requires that MARAD audit the actual expenses of the operators. Further, under existing procedures, the finalization of U.S. and foreign cost differentials and the concomitant final payment of ODS cannot be accomplished until two to two and one-half years after the close of the subsidized year.

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In 1981, the Comptroller General of the United States completed an audit of the system for ODS as previously described. The GAO audit report of November 30, 1981 (CED–82–2), urged MARAD to expedite ODS payments and concluded, in part:

> The U.S. Government owes subsidized operators millions of dollars. Subsidy payments are delayed due to an extensive and time-consuming process used to compute final . . . subsidy rates. This process, which currently delays final payments by an average of 3 years, precludes these operators from timely receipt of monies due them and hurts their cash management capability.

The GAO report added that MARAD should take steps to provide for payment of accrued ODS owed to operators for prior years and to provide for more timely payment of future subsidy. The Office of the Secretary, Department of Transportation, concurred with the GAO's conclusions and recommendations.

In response to the GAO report and to improve current procedures for ODS rate determinations and timely payment, MARAD has developed a proposed system which would pay ODS as a fixed and final daily amount which includes all items of subsidizable expense. The new system would permit the operators to establish conclusively the amounts of ODS receivable at the time they prepared financial statements and tax filings, and when making decisions on dividends.

The receipt of ODS at the time it is earned would greatly improve cash flow. Overall, the proposed system would place the ODS receipts of the operators and the obligations of the government on a current basis. The following discussions outlines how the proposed system would work and the changes necessitated in the current system as a result.

The Proposed System

General

Under the proposed system, every six months, commencing retroactively July 1, 1984, MARAD would establish a daily ODS rate inclusive of all subsidizable expenses. The daily rate would include a component for wages and another for non-wage subsidy items. In accordance with the Act, the wage component would be calculated each year for the fiscal period July 1 through June 30, and the non-wage component would be determined on a calendar year basis. Accordingly, the year would be divided into two periods: July 1 through December 31 and January 1 through June 30. Each year, MARAD would determine ODS wage amounts applicable to the period commencing July 1. The wage rates would reflect the most recent collective bargaining adjustments, normally effective June 16 each year. The annual ODS determinations for all other subsidized items of expense would be applicable to the period commencing January 1.

46 U.S.C. 1173 prescribes a formula for determining daily ODS for wages, applicable to the fiscal period July 1 through June 30. Since the formula requires the use of data not available until March each year, it will be necessary to wait until such data are available to establish the final wage portion of the daily ODS rate. In order to accomplish the objective of establishing final ODS by the end of the calendar year, it will be necessary for MARAD to approve final daily ODS wage amounts for the first six months of the fiscal period. Adjustments can be made for any inaccuracies in those determinations during the second half of the fiscal period when complete information is available. They would be made as lump sum adjustments or as adjustments to the ODS daily amounts. Such adjustments are expected to be small and would protect both parties from any error in the ODS rate determinations for the first half of the year. This procedure would assure prompt finalization of ODS accounts. Because of the adjustments which would be made in the second half of the fiscal period, there would not be any retroactive adjustments of the daily ODS rate for the first six months. Further, MARAD does not anticipate that it will be necessary to make retroactive adjustments for more than four months in the second half of the period. Under the current system, MARAD has demonstrated high accuracy in estimating tentative ODS rates each year, averaging within five percent of the final rates. By changing the current system as discussed below, MARAD's accuracy should be improved significantly. We estimate that the margin of error would be less than two percent, so the adjustment during the second six-month period would be small.

ODS Rate Determinations

ODS rate determinations under the proposed system would conform to the existing method establishing rate differentials, as set forth in the existing Manual, except for a reduction in the amount of data required for submission and the use of regression techniques to determine rates. The specific changes in procedure are discussed below.

I. Foreign-Flag Competition

Currently, MARAD bases its determination of foreign-flag competition for ODS rate-making purposes as of January 1 of the subsidized year. Under the proposed system, competition data available as of January 1 of the preceding year would be used. The use of this older competition data would still provide MARAD with reasonably accurate competition data and would permit accelerated ODS rate calculations, since this data would be available at a much earlier time. As previously noted, the Competition Manual has been incorporated in these regulations. Changes in the competition procedures include:

1. The use of countries actually called on to determine competition rather than only ports "required" to be served under the ODSA; and
2. The use of all flags aggregating 50% of foreign carriage, rather than 60%, to determine competition.

These changes will result in more accurate determinations of foreign-flag competition, and the elimination of two to four foreign flags considered in ODS rate calculations.

II. Foreign Exchange Rates

Under the current system, the exchange rates prevailing at the end of each month are averaged for the entire subsidized year and are used for rate calculation purposes. The proposed system would use the average of the end month exchange rates for the first seven months of the fiscal period commencing July 1, unless there is a substantial and consistent change in exchange rates in one direction during the period. In this case, the end of period (January 31) exchange rates would be used. The reduction from twelve months to seven months of exchange rates used in ODS rate determinations would still provide a sound data sample and would permit earlier ODS rate calculations.

Wages

In current rate calculations, the subsidized operator's variable cost experience for the entire calendar year preceding January 1 of the subsidized fiscal year is used. The proposed system would use only the first nine months of the preceding year. This change would permit earlier calculation of wage rates and at the same time, require a smaller but fully acceptable sample of data.

At the present time, the actual wage costs for crew members who remain aboard subsidized vessels during idle status periods are subsidized as unpredictable timed costs (costs that are not regularly incurred). As a result, these costs require audit. Under the new procedures, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidized crew members in each category. For each day of a reduced crew preiod, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day.

Operators now bill unpredictably timed expenses for ODS purposes by using differential rates expressed as a percentage, which are derived from the ODS rate calculations for wages under the index system, contained in 46 U.S.C. 1173(b). Under the proposed system, unpredictably timed expenses would be included as a daily increment in the total daily ODS rate. This would convert subsidy payment for unpredictably timed expenses to a daily rate or lump sum payment, and would reduce audits required for such expenses.

Non-wage Items—General

ODS for M&R, H&M and P&I premiums is paid on the basis of a differential expressed as a percentage which is applied to actual expenses. For P&I deductibles, ODS is the dollar difference between the deductible absorptions (claim costs absorbed by the company) of the U.S. operator and the deeductable absorptions of the foreign competitor. Due to the unavailability of data, there is currently a two-year lag in the calculation of final rates which necessitates adjustment of subsidy when final rates are calculated.

Under the proposed system, ODS for non-wage items would be an agreed upon daily amount which would be established early in the calendar year. All information necessary to determine the final daily amounts would be available at that time, so no subsequent adjustment would be necessary. The procedural changes are described below for each item.

M&R

Under the proposed system, MARAD would determine the subsidizable daily costs for M&R by trade route, based on a three-year historical relationship of ODS for M&R to ODS for wages. The latest U.S./foreign percentage differentials applicable to the three-year period, determined in accordance with existing procedures, would be applied to the subsidizable costs to derive a daily ODS amount for M&R. The ODS for M&R would be established as a percentage of wage ODS for the three-year period and applied to the daily wage ODS for the current subsidizable year, for each vessel type, on each trade route, to derive a daily ODS rate for M&R. Historical M&R expenses would be audited to assure accuracy of data.

H&M & P&I Premiums

Under the proposed system, MARAD would determine subsidizable daily costs for the subsidized calendar year from actual premium costs submitted by the operators for that year. The latest U.S./foreign percentage differential available, calculated in accordance with existing procedures, would be applied to such costs to determine a daily ODS amount for H&M and P&I premiums. Use of historical U.S./foreign percentage differentials would permit significantly earlier calculations of daily ODS amounts.

P&I Deductibles

Under the proposed system, MARAD would determine ODS for P&I deductibles on the basis of the historical relationship of P&I deductible ODS to wage ODS for a three-year period. Further, since the P&I deductible absorptions of the operators for crew claims are primarily wage related, the P&I deductible ODS would now be determined by applying the wage percentage differential, established in the ODS calculation, for wages for the three-year period to eligible deductible expenses for the same three-year period. The ODS for P&I deductibles would be established as a percentage of wage ODS for the three-year period. The percentage would be applied to the daily wage ODS calculated for the subsidized year to derive a daily ODS rate for P&I deductibles. These changes would permit much earlier calculation of subsidy for P&I deductibles and would eliminate the need for schedules of foreign deductibles. MARAD would audit historical P&I deductible expenses to assure accuracy of data.

Other Matters

Although authorized by the Act, no operating-differential subsidy is currently contractually payable for subsistence of officers and crews on passenger vessels, as defined in Section 613 of the Act. These regulations, therefore, include no procedures for ODS rate determinations on this item.

E.O. 12291, Statutory and DOT Requirements

The Acting Maritime Administrator has determined that this proposed rulemaking is not major, as defined in E.O. 12291, and is significant under DOT regulatory policies and procedures due to considerable public interest (49 FR 11034; Feburary 26, 1979). This rulemaking would place the ODS receipts of the operators and the obligations of the Government on a current basis, with no appreciable overall change in such receipts and obligations. Since it would only facilitate the payment of final ODS amounts in a more timely manner, the economic impact of this proposal has been found to be minimal and further evaluation is unnecessary. However, MARAD specifically requests comments on the industry's views with respect to the economic impact of this proposal and will prepare a regulatory evaluation, if necessary. If MARAD does believe it necessary to prepare a Regulatory Evaluation, it expects no appreciable change in receipts or obligations and, thus, no appreciable cost associated with the rule. The major benefit is one of improving the timeliness of ODS payments.

Since this proposal would affect principally ship operators with substantial annual revenues, the Acting Maritime Administrator certifies that, if finalized, this rulemaking would not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). It does not include new information collection requirements, but maintains existing information requirements which have been approved by OMB under control numbers 2133–0004 and 2133–0024, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 282

Liner cargo vessels, the ODS program, and water transportation.

Accordingly, it is proposed that a new Part 282 be added to the Code of Federal Regulations, Title 46, to read as follows:

PART 282—OPERATING-DIFFERENTIAL SUBSIDY FOR LINER VESSELS ENGAGED IN ESSENTIAL SERVICES IN THE FOREIGN COMMERCE OF THE UNITED STATES

Subpart A—Introduction

Sec.

282.1 Purpose.
282.2 Definitions.
282.3 Waivers.

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Subpart B—Foreign-Flag Competition

282.10 Basis for determining foreign-flag competition.
282.11 Ranking of flags.

Subpart C—Calculation of Subsidy Rates

282.20 Amount of subsidy payable.
282.21 Wages of officers and crew.
282.22 Maintenance (upkeep) and repairs.
282.23 Hull and machinery insurance.
282.24 Protection and indemnity insurance.

Subpart D—Subsidy Payment and Billing Procedures

282.30 Payment of subsidy.
282.31 Subsidy billing procedures.
282.32 Appeal procedures.

Authority: Secs. 204(b), 603, 606, Merchant Marine Act 1936, as amended (46 U.S.C. § 1114(b), 1173, 1176), 49 CFR § 1.66.

Subpart A—Introduction

§ 282.1 Purpose.

This part prescribes regulations implementing Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. § 1171–1176 and 1178–1181) governing operating-differential subsidy for liner vessels engaged in essential services in the foreign commerce of the United States.

§ 282.2 Definitions.

When used in this part:

(a) Act means the Merchant Marine Act, 1936, as amended (46 U.S.C. 1101–1294).

(b) Board means the Maritime Subsidy Board of the Maritime Administration (MARAD).

(c) Contracting Officer means the Associate Administrator for Maritime Aids.

(d) Fiscal Period means any annual period beginning on July 1 and ending on June 30.

(e) Foreign-flag competition means those foreign-flag vessels deemed by the Board to be competitive with the subsidized vessel.

(f) Maritime Administrator means the Maritime Administrator, Maritime Administration of the Department of Transportation.

(g) Operating day means any day or part of a day during which a subsidized vessel is operated in accordance with the terms and conditions of an operating-differential subsidy agreement.

(h) Operating-differential subsidy (ODS) means, except as the operator and the United States Government should agree upon a lesser amount, the excess of cost of subsidizable items of expense incurred in the operation under United States registry of a vessel over the estimated fair and reasonable cost of the same items of expense (excluding any increase in the cost of such items necessitated by features incorporated for national defense), if such vessel were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel.

(i) Operating-differential subsidy agreement (ODSA) means the agreement entered into by the operator and the United States Government for the payment of operating-differential subsidy.

(j) ODS rate means the method adopted by the Board for determining the amount of ODS that is to be paid for an item of subsidizable expense.

(k) Operator means any individual, partnership, corporation or association that contracts with the United States Government under Title VI of the Act to receive ODS.

(l) Reduced crew period means a period in port between or during voyages when the subsidized vessel's approved crew complement is reduced by 10 percent or more and division of wages (wages of an absent seaman are divided among the seamen who provide the absent seaman's work) is not paid for the missiong men.

(m) Region Director means the Region Director of the Maritime Administration within whose region the principal office of the operator is located.

(n) Subsidized service means the operation of a vessel, other than in the coastal or intercoastal trade, in accordance with the terms and conditions of the ODSA.

(o) Subsidized vessel means a vessel covered by an ODSA.

(p) U.S. foreign commerce means the commerce or trade between the United States, its territories or possessions, or the District of Columbia and a foreign country.

(q) Vessel means subsidized vessel, unless otherwise specified.

§ 282.3 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this Part may be waived in writing, by mutual agreement of the parties, in keeping with the circumstances then present, so long as the procedures adopted are consistent with the Act and with the intent of these regulations.

Subpart B—Foreign-Flag Competition

§ 282.10 Basis for determining foreign-flag competition.

The foreign-flag competition shall form the basis for determining the cost disadvantage of operating the subsidized vessels in the essential service. The Board shall determine the foreign-flag competition from those countries that have carried a significant amount of cargo into the service by using the following procedures:

(a) The primary source of information shall be commodity import/export data compiled by the Bureau of the Census. Cargo data shall be compiled in long tons. Trade publications which show advertised sailings shall be used to verify the liner services offered by foreign-flag operators.

(b) The U.S. import/export data shall be compiled by reference to countries actually served by the the subsidized operator, using the subsidized operator's own competition data for each country to eliminate the flags which are not substantial competitors with the subsidized vessels. An example of the weighing procedure follows:

Examples

I. Determination of U.S.-Flag Weights

	Country A	Country B	Country C	Total
U.S. subsidized carrier	300	500	200	1,00
Percent	30	50	20	100

II. Actual Foreign-Flag Carryings

	Country A	Country B	Country C	Total
Flag 1	1,500	500	1,000	3,000
Flag 2	4,000	6,000	0	10,000
Flag 3	5,000	2,000	5,000	12,000

III. Adjusted Foreign-Flag Carryings (Actual Foreign X U.S. Wts)

	Country A	Country B	Country C	Total
Flag 1	450	250	200	900
Flag 2	1,200	3,000	0	4,200
Flag 3	1,500	1,000	1,000	3,500
Total				8,600

IV. Competition Computation

		Actual percent	Re-weight (percent)
Flag 2	4200/8600	49.0	55.0
Flag 3	3500/8600	41.9	45.0
Total		90.0	100.0

(c) The principal foreign flags shall be those countries whose cargo carrying would rank the flag among those carriers that aggregate at least 50 percent of the total foreign-flag carryings.

(d) The cargo carryings of each principal foreign flags shall be expressed as a percentage of total cargo carryings of all principal flags on the service. The resultant ratio shall be applied to the costs of that principal flag for determining its portion of the composite foreign cost, which shall be used for establishing the cost disadvantage of U.S. vessels in the service.

(e) The determination of the principal competitors and competition weight factors shall be based upon the import/export data from the year preceding January 1 of the subsidized year to allow several months to collect foreign cost data.

§ 282.11 Ranking of Flags.

The operators under each principal foreign flag shall be ranked as predominant, secondary, etc., for the purpose of establishing the priority of costs which are representative of the flag. For liner cargo vessels, the ranking of operators shall be based on the long tons of cargo carried.

(a) If the predominant operator is an agent, charterer or a joint venture in which the vessels are owned by two or more lines, under the name of such agent, charterer or joint venture, the predominant operator shall be the owner whose vessels carried the most cargo.

(b) If cost experience cannot be obtained for the foreign-flag operators in the subsidized service, MARAD may use the costs of another service, following the same ranking of operators, if possible.

Subpart C—Calculation of Subsidy Rates

§ 282.20 Amount of subsidy payable.

(a) *Daily Rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessels and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced Crew Periods.* For reduced crew periods, as defined in § 282.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day.

(c) *Review of Rates.* Daily subsidy rates shall be reviewed every six months. For the item "wages of officers and crews," the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or all a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative Rates.* When an ODS rate in any catetory is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated by the Maritime Administration. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Board for its consideration in determining subsidy rates.

§ 282.21 Wages of officers and crews.

(a) *Definitions.* When used in this part:

(1) *Base period.* The first base period under the wage index system, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Board establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Subsidy Board shall establish a new base period. Base periods shall be announced by the Board prior to the December 31 date that would be included in the new base period.

(2) *Base period cost.*—(i) *Initial base period.* For the initial base period of subsidized service, the term "base period cost" means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subsequent to the initial base period, the term "base period cost" means the average of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index complied by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to change affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less than a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance with the following schedule:

	Minimum (percent)	Maximum (percent)
Base period following a:		
2 year cycle	97½	102½
3 year cycle	96¼	103¾
4 year cycle	95	105

(3) *Collective bargaining cost (CBC)* means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost (WC)* means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(6) *Normal manning complement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. In cases where the complement may vary in

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number, the lowest number shall be the normal manning complement. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wage cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(3) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Example of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective bargaining cost (CBC).* CBC shall be determined by pricing out, for the approved crew complement, the per diem total of fixed costs specified in the collective bargaining agreement and adding a per diem total of variable costs obtained from the cost experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Example of fixed costs are:

(i) Base wages;

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs;

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of two days); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage costs (WC).* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages on the service). The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC.* The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC.* The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements.* For purpose of calculating CBC and WC the operator shall each year submit Form MA–790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the fixed costs as of January 1. Schedule A of Form MA–790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by December 31. Schedule B of Form MA–790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by Janury 31. Form MA–790, Schedule A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(e) *Example Calculation.* The following is a sample of calculation of CBC and WC;

ABC Steamship Company.—January 1, 1985, Collective Bargaining Costs (CBC) and U.S. Wage Cost, (WC)

Crew complement	Per diem	
	WC: 35[1]	CBC: 31[2]
Fixed Costs as of Jan. 1, 1985		
Base wages and non-watch pay	$1,789.79	$1,571.60
Allowance (radio, telephone, clothing, etc.)	5.75	5.75
Vacation pay	1,189.60	1,109.85
Pension, welfare, training unemployment fund contributions	1,280.80	1,171.75
Total fixed	4,265.94	3,858.75
Variable Costs as of Jan. 1, 1985		
Variable cost factor (based on 1984 cost experience) (percent)	104.69	104.69
Total variable costs (Jan. 1, 1985 base wages x variable cost factor)	$1,873.73	$1,845.31
Total wage costs as of Jan. 1, 1985	$6,139.67	$5,504.06

[1] Normal manning complement.
[2] Approval manning complement.

(f) *Method of calculating foreign wage costs.* The foreign wage cost (FC) of the principal foreign-flag competitors and the comparable WC of the subsidized vessel are matched as of January 1 of the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

(1) *Manning.* The foreign manning complement in number and nationality for the principal foreign-flag competitors shall be constructed for the subsidized vessel type using the manning scales and practices of the competitors as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitors shall be adjusted to fit the predominant vessel type in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identical with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for July through January, unless they consistently change in one direction by 25% or more during the period, in which cases the January exchange rate shall be used. The exchange rates shall be obtained from the publication, "International Financial Statistics," published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage cost.* The per diem composite foreign wage cost is determined by multiplying the per diem WC for the U.S. ship type by the ratio of FC to WC for the foreign-flag competitiors. The following is a sample calculation of the foreign cost percentage.

ABC Steamship Company, Inc.—Trade Route 21; Jan. 1, 1985—Foreign Wage Cost (FC)

	United States	Belgium	United States[1]	Germany	Netherlands	United States	Norway
Crew complement	35	35	35	23	22	35	28
Base wages	[1] $53,687	[1] $24,779	[1] $53,687	[1] $25,192	[1] $23,127	[1] $53,687	[1] $27,257
Allowances	[1] 1,074	[1] 4,584	[1] 1,074	[1] 5,879	[1] 3,097	[1] 1,074	[1] 289
Vacation pay (leave)	[1] 35,681	[1] 13,009	[1] 35,681	[1] 6,912	[1] 9,499	[1] 35,681	[1] 11,976
Pension and welfare	[1] 38,407	[1] 2,065	[1] 38,407	[1] 124	[1] 3,923	[2] 38,342	[1] 124
Social Security	[2] 6,606	[2] 7,227	[2] 3,717	[2] 6,814	[1] 4,584	[2] 6,606	[2] 10,116
Overtime and other variable costs (not elsewhere included)	[2] 48,732	[2] 10,944	[2] 48,732	[2] 10,325	[2] 7,021	[2] 48,732	[2] 12,389
Repatriation							[2] 413
Total wage costs	184,189	62,606	181,296	61,246	51,251	182,124	62,566
Unweighted percentage FC to WC		33.99		33.76	28.27		34.35
Competition weight factor (percent)		22.1		19.60	19.10		39.20
Weighted percentage		7.51		6.62	5.40		13.47
Composite weighted percentage, 33.00.							

[1] Based on Jan. 1 priced out cost.
[2] Excludes training costs—foreign data not available.
[3] Based on cost experience.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs (UTC)* are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate. A lump sum amount would be paid for special lump sum assessments or for per man-day increases to benefits plans which become effective during the six months following the establishment of the daily rate. In either case, the percentage subsidy rate—which is the differential percentage between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses are eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefit funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiated. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of paying subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

ABC Steamship Company, Inc.—Trade Route 21; Calculation of Wage Subsidy Rates [1]

Base period (1)	Interim period (2)	U.S. wage cost (3)	Collective bargaining cost (4)	Application of BLS index to base period cost (5)	Averaging in base periods (4)+(5)÷2 (6)	Appropriate limits (7)	Base period cost (8)	Subsidizable wage cost (9)	Composite weighted percentage (10)	Composite foreign wage cost (11)	Wage subsidy daily rate (12)	Wage subsidy percentage rate (12)÷(9) (13)
1981		4,162.60	3,850.29				3,850.29	3,850.29	32.99	1,373.24	2,477.05	64.33
	1982	4,578.24	4,230.15	3,850.29×1.0845=4,175.64		0.9×(4)=3,807.14		4,175.64	32.99	1,509.90	2,665.74	63.84
						1.1×(4)=4,653.17						
	1983	5,013.80	4,560.36	3,850.29×1.1818=4,549.50		.9×(4)=4,104.24		4,549.50	36.15	1,812.49	2,737.01	60.16
						1.1×(4)=5,016.42						
	1984	5,539.40	4,966.90	3,850.29×1.2992=5,002.30		.9×(4)=4,470.21		5,002.30	34.77	1,926.06	3,076.25	61.50
						1.1×(4)=5,463.59						
1985		6,139.57	5,504.06	3,850.29×1.4044=5,407.35	5,455.71	.95×(4)=5,228.86	5,455.71	5,455.71	33.00	2,026.06	3,429.65	62.96
						1.05×(4)=5,779.26						

[1] This computation is based on a new vessel entering subsidized service in May 1981.

§ 282.22 Maintenance (Upkeep) and repairs.

(a) *Basis for subsidy.* The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR Part 272, shall be used for determining the daily amount of subsidy. The U.S.-Foreign cost differential shall be determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential.* MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost Survey.* MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost

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experts to ascertain the U.S. and foreign M&R prices.

MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential.* A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price divided by the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example:

DETERMINATION OF COUNTRY COST DIFFERENTIAL, YEAR 1985, U.S. EAST COAST

[Foreign Country—United Kingdom]

Repair category	Foreign price	U.S. price
Drydocking and underwater repairs	$49,596	$70,662
Boiler repairs	18,936	20,267
Machinery repairs	33,004	36,193
Hull and deck repairs	16,729	20,853
Electrical repairs	11,868	11,117
Exterior painting	5,456	7,974
Interior painting	681	1,162
Estimate totals	136,274	168,248

Foreign/U.S. price ratio, 81 percent.
Country cost differential, 100 minus 81 equals 19 percent.

(3) *Distribution of repairs.* The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag completitor. When data on the repairing practices are obtained directly from the foreign competitor, they shall be used. If information about such practices is unavailable—or only partially available—data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys, shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels, there are three basic types of survey—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be: drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *Proportionate cost differential.* A proportionate cost differential for each principal foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country and by adding the resulting weighted percentages for all countries where repair work was performed.

(5) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be determined by multiplying the proportionate cost differential for each principal foreign-flag competitor by the competition weight factor for that competitor, and by adding the resulting differentials for all principal foreign-flag competitors, as shown in the following example.

ABC STEAMSHIP COMPANY, INC., TRADE ROUTE—X

[U.S.-Foreign cost differential for maintenance (upkeep) and repairs subsidy rate, 1985]

Principal competitors	Distribution of repairs		Country cost differential (percent)	Proportionate cost differential (1)×(2) (percent)	Competition weight factor (percent	Weighted differential (3)×(4) (percent)
	Country	Percent				
	(1)	(1)	(2)	(3)	(4)	(5)
Japan	Japan	85	36.21	30.78		
	U.S.	15	0	0		
	Total	100		30.78	23.4	7.20
Norway	Norway	15	44.72	6.71		
	Netherlands	20	43.23	8.65		
	Japan	45	36.21	16.29		
	U.S.	20	0	0		
	Total	100		31.65	31.1	9.84
United Kingdom	U.K.	80	19.00	15.20		
	Hong Kong	15	50.35	7.55		
	U.S.	5	0	0		
	Total	100		22.75	45.5	10.35
U.S.-Foreign cost differential						27.39

(c) *Calculation.* The appropriate U.S.-foreign cost differential shall be applied to the subsidizable and audited maintenance and repair costs for the three-year period, discussed in paragraph (c)(1) of this section, to establish a relationship of the cost differentials between M&R and wages. This relationship shall be used to establish the M&R subsidy on a current basis by applying the percentage relationship to the per diem wage subsidy rate.

(1) *Historical period.* The relationship of calendar period M&R subsidy to fiscal period wage subsidy shall be measured for the three-year period commencing five years prior to January 1 of the subsidized year. This ratio shall be established for each subsidized service and applied to the per diem wage rate of each ship type in the service to factor a daily amount of subsidy for M&R. The following is an example of the determination of the relationship and the daily amount of subsidy for M&R.

DETERMINATION FO DAILY AMOUNT OF SUBSIDY FOR M&R

T.R. 96: Item	F.Y. '80	F.Y. '81	F.Y. '82	Total
Wage ODS	1,500,000 C.Y. '80	1,000,000 C.Y. '80	1,750,000 C.Y. '80	4,250,000 (1)
M&R ODS	300,000	750,000	350,000	1,400,000 (2)

Note.—Ratio of M&R ODS to wage ODS—32.94% (2) ÷ (1)

T.R. 96: Ship type	Daily wage ODS 1/1/85	Ratio—M&R to wage ODS	Daily M&R ODS 1/1/85
C4–A	$4,000	×32.94	$1,317.60
C5–B	5,000	×32.94	1,647.00
C6–C	6,000	×32.94	1,976.40

(2) *Data submission requirement.* The operator is required to sumbit an annual certified statement of eligible M&R expenses for each month. The report shall be submitted to the Director, Office of Ship Operating Costs. The report should be submitted not later than sixty (60) days after the close of each calendar year.

§ 282.23 Hull and machinery insurance.

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery,

increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for each service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the Bristish market rate.

(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular average repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* The particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the close of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs percentage cost differential (100 percent minus the differential) to the particular average portion of the premium cost. The adjusted particular average foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be subtracted from the operator's total premium cost to determine the difference in dollars. The percentage differential is determined by dividing the dollar difference by the operators' total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

TABLE 2.— ABC STEAMSHIP COMPANY, INC.—CARGO VESSELS—TRADE ROUTE—X; U.S./FOREIGN COST DIFFERENTIAL FOR HULL AND MACHINERY INSURANCE, 1985

1. *Composite Foreign Premium Cost:*			
A. *Hull and Machinery,* Total coverage		$92,741,996	
Average Premium Rate in British Market (percent)		1.00966	
Premium Cost in British Market			$936,379
(Estimated Total Loss Premium $9,2741,996@ .46500%[1] $431,250)			
B. *Increased Value,* Total Coverage		$1,083,325	
Average Premium Rate in British Market (percent)		.32550	
Premium Cost in British Market			3,526
C. *Excess Liability,* Total Coverage			None
D. *Total Premium Cost if Insured 100% in British Market*			939,905
E. *Deduct Particular Average Portion:* $936,379 Less $431,250=$505,129×62%[2]			313,180
F. *Net Premium Cost Exclusive of Particular Average*			626,725
	Trade route No. X line A	Trade route No. X line B	Trade route No. X line C
G. *Particular Average Adjustment:*			
P/A Portion of Premium Cost	$313,180	$313,180	$313,180
M&R Subsidy Rate Complement [3] (percent)	84.48	86.63	87.34
Adjusted P/A Foreign Premium Cost	$264,574	271,308	273,531
Add: Net Premium Cost (Excluding P/A)	$626,725	626,725	626,725
2. *Composite Foreign Premium Cost*	$891,299	$898,033	$900,256
3. *Total premium cost to subsidized operators*	$1,066,998	$1,066,998	$1,066,998
4. *Differential in dollars* [4]	$177,699	$170,965	166,742
5. Composite weighted differential [5] (percent)	16.62	15.99	15.79

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	Trade route No. X line A	Trade route No. X line B	[d]Trade route No. X line C
6. U.S.-Foreign Cost Differential (percent)	16.82	15.99	15.79

[1] Estimated gross total loss rate adjusted for broker's discounts, policy tax and other costs, as necessary.
[2] Percentage of particular average.
[3] 100% minus M&R subsidy rate of the same calendar year.
[4] Line 3 less line 2.
[5] Line 4 divided by line 3.

§ 282.24 Protection and indemnity insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential are:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, tovalop or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection and indemnity insurance policy, approved as to form and coverage by MARAD, to the extent that such cost would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible notwithstanding that the deductible provisions of the policy may be exceeded.

(b) *Assumptions made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for each subsidized service of the vessel. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting Requirement.* The operator shall submit the total premium cost for the subsidized year, plus any supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* The crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years preceding January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Board's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC Steamship Company, Inc., Trade Route—X Protection and Indemnity Insurance Premiums, 1985

Premium Cost (per GRT)	United States	Greece	Pakistan	South Africa
Crew Liability	[1] $3.98	[2] $1.27	[2] $0.45	[2] $0.08
All Other Liability	1.06	1.06	1.06	1.06
Total Cost	5.04	2.33	1.51	1.14
Differential—Excess of U.S. Cost over Foreign Cost		$2.71	$3.53	$3.90
Unweighted Differential		[3] 53.77	[3] 70.04	[3] 77.36
Competition Weight Factor		[4] 24.3	[4] 24.9	[4] 50.8
Weighted Differential		[4] 13.07	[4] 17.44	[4] 39.31
U.S.—Foreign Cost Differential				[4] 69.82

[1] Determined by applying 79.03% (based on 5-year claims experience) to total GRT premium rate of $5.04.
[2] Crew Liability data obtained by Maritime Administration.
[3] The unweighted percentage of Pakistani to U.S. wage costs of 11.23% was applied to $3.96 to estimate the foreign cost.
[4] Percentage.

(d) *Daily Subsidy Rate.* The daily subsidy rate shall be calculated in the following manner.

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crew claims, paid and pending, shall be audited for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year, and shall be multiplied by the percentage wage differential, as determined in the calculation of wage subsidy for the appropriate fiscal period. The resulting calendar period P&I deductible differential shall be divided by the fiscal period wage differential in the service for the three-year period, and the resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall determine subsidy for P&I deductibles.

Determination of Daily Amount of Subsidy for P&I Deductibles

T.R. 96 Item	Fiscal Year 1980	Fiscal Year 1981	Fiscal Year 1982	Total
Wage ODS	1,500,000 C.Y. '80	1,000,000 C.Y. '80	1,750,000 C.Y. '80	4,250,000 (1)
P&I Ded. ODS	75,000	80,000	100,000	255,000 (2)
Ratio of P&I Ded. ODS to Wage ODS—6.00 (2)-(1)				

T.R. 96 ship type	Daily wage ODS 1/1/85	Ratio P&I Ded. to wage ODS	Daily P&I Ded. ODS 1/1/85
C4-A	$4,000	X .06	$240.00
C5-B	5,000	X .06	300.00
C6-C	6,000	X .06	360.00

(ii) In cases where national insurance schemes cover crew claims costs in their entirety, resulting in no cost to the foreign competitor for deductible absorptions, the composite percentage differential for wages shall be adjusted by substituting a zero cost for such foreign competitor in the calculation of the differential. The adjustment of the wage percentage differential shall not be used for Japan, where operators incur minimal costs for deductible absorptions, rather than no costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

Subpart D—Subsidy Payment and Billing Procedures

§ 282.30 Payment of subsidy.

Submission of voucher. At the close of each calendar month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

§ 282.31 Subsidy billing procedures.

(a) *Subsidy voucher.*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher for payment to the MARAD Region Director. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

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Schedule A

_____
(Company)

ODSA No._____
ODS Accrued During Fiscal Year 198__
ODS Payable for the Month of_____/_____

	Current Voucher	Previous Voucher	Total
Total Accrued ODS (Sched. B)	$_____	$	$
Less ODS Reductions:			
DTR/Deviations (Sched. C)	$_____		
Reduced Crew (Sched. D)	$_____		
Net ODS Accrued	$_____	$_____	$_____
Less Previous Payments			$_____
ODS Payable			$_____

Schedule B

_____
(Company)

ODS Accrued for the Month of_____
Trade Area_____

Vessel Name	Voy. No.	Voyage Dates From	To	Voy. Days (a)	Per Diem Rates (a)	Net Subsidy
					$	$

ODS Payable for Unpredictably Timed Expenses not included in Daily Amount (Attach supporting information) $_____

Total Accrued Subsidy (Enter on Schedule A) $_____

(a) Place * next to applicable "Voy. Days" or "Per Diem Rate" of vessel and voyage requiring reduction of ODS because of domestic trade operations or voyage deviations.

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Schedule C

_____
(Company)

Domestic Trade and Voyage Deviation ODS Reductions

Domestic Trade Reduction (DTR)

Vessel Name	Voy. No.	Gross Voyage Revenue	Domestic Revenue	% of Dom. to Gross Revenue	Per Diem Rate	Per Diem Reduction	DTR Days	ODS Reduction
		$	$	%	$	$		$

Deviation Reduction

Vessel Name	Voy. No.	Deviation Days or % of Day	Per Diem Rate	ODS Reduction
			$	$

(Enter total Reductions on Schedule A)

Schedule D

_____
(Company)

Reduced Crew Periods

Vessel	Reduced Crew Dates From	To	No. of Reduced Crew Days (a)		No. of Crew Reduced		Man-Days		Man-Day Amount		Reduced Crew Reduction
				x		=		x $		= $	
				x		=		x $		= $	
				x		=		x $		= $	
				x		=		x $		= $	

Total Reduced Crew Reduction (Enter on Schedule A) $ _____

(a) If licensed crew, indicate (a)

(b) If unlicensed crew, indicate (b)

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(2) A notorized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the operation the subsidized vessel and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

Affidavit

State of _____
City of _____
County/Parish of _____

I, _____, being duly sworn, depose and say, that I am _____ (title) _____ of the _____ (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. _____, dated as of _____, as amended, to which the Operator is a party; and (b) the regulations governing the payment of operating-differential subsidy for liner vessels, PART 282, Title 46, CFR; and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursements of the Operator relating to such operation.

Referring to the public voucher dated _____, covering voyage days allowed for subsidy during the periods commencing _____ and ending _____, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of _____, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereto, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calcutation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the atoresaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this _____ day of _____.
My commission expires _____
Notary Public

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

§ 282.32 Appeal procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with Part 205 of this chapter.

(b) *Appeals of administrative determinations.*—(1) *Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administrative determination of the Contracting Officer. In his appeal to the Secretary the operator shall indicate whether or not he desires a hearing.

(ii) The appellant will be notified in writing if a hearing is to be held and whether he is required to submit additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered by the Board, the appellant will be notified in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing with the Secretary of Transportation, a written petition for review of the Board's action. The petition shall be filed in accordance with provisions of the Department of Transporation pertaining to Secretarial review.

(3) *Hearings.* The Rules of Practice and Procedure, 46 CFR Part 201, Subpart M, shall be followed for hearings granted under 46 U.S.C. § 1176 and 46 CFR Section 282.32.

Authority: Secs. 204(b), 603, 606, Merchant Marine Act 1936, as amended (46 U.S.C. § 1114(b), 1173, 1176), 49 CFR § 1.66.

Dated: January 29, 1986.

By order of the Maritime Administrator.

Georgia P. Stamas,
Secretary, Maritime Administration.

[FR Doc. 86-2380 Filed 2-5-86; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

American Lobster Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council has submitted Amendment 1 to the Fishery Management Plan for the American Lobster Fishery (Plan) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan should be submitted on or before April 18, 1986.

ADDRESSES: Comments on Amendment 1 should be sent to Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Amendment 1 to the American Lobster FMP."

Copies of Amendment 1 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, Massachusetts 01906.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, 617-281-3600, ext. 244.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or plan amendment.

The amendment proposes measures to (1) establish a uniform offshore lobster gear marking system; (2) provide an exemption from trap venting requirements for fish pots operated in the black sea bass fishery in certain areas along the coast adjacent to New Jersey and points south; and (3) provide the authority for the Regional Director (NMFS), with Council concurrence, to exempt certain lobster research activities from the regulations implementing the plan or close certain areas to lobster fishing for the same purpose. The amendment also provides a clarification to the regulations implementing the plan that the Council does not consider red crab fishing gear operated in waters deeper than 200 fathoms to be gear capable of catching lobsters, and therefore, that gear is not subject to the gear marking, gear length, or trap venting requirements specified in the regulations.

Regulations proposed by the Council and based on this amendment are scheduled to be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: February 3, 1986.

Richard B. Roe,
Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-2662 Filed 2-3-86; 4:54 pm]
BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 25
Thursday, February 6, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Noxious Weed and Poisonous Plant Control; Custer National Forest and National Grasslands; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement to identify methods for controlling noxious weeds on the Custer National Forest and National Grasslands.

The proposed Custer National Forest and National Grasslands Plan has been prepared. The noxious weed objective in the Forest Plan is to implement an integrated pest management program aimed at treating new starts, priority drainages, areas of minor infestations and holding actions on areas of current large infestations.

The Custer National Forest and National Grasslands has many acres of land that contain noxious weeds. These weeds have been identified as noxious by the States of Montana, North Dakota and South Dakota or by counties within these states. These plants can severely affect the productivity of forest and rangelands. Infestations on National Forest lands and National Grasslands have the potential to spread to adjacent private lands.

A range of alternatives for treating these sites will be considered. One of these will be no treatment of problem plants by any means. Other alternatives will be integrated pest management systems that may include a combination of the following methods:

1. Chemical treatment of problem plants applied by various methods, such as hand spraying, truck mounted spraying, or hand application of pelleted herbicides.
2. Implementation of biological control methods, such as insects or fungus.
3. Treatment of problem plants by mechanical methods, such as hand grubbing, mechanical disking or plowing.

Federal, State, and local agencies, local landowners, and other individuals or organizations who may be interested in or affected by the decisions will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be considered in depth.
3. Elimination of insignificant issues of those which have been covered by a previous environmental review.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the area of consideration.

No public meetings are scheduled at this time, but the public is invited to comment. Written comments should be mailed by February 7, 1986, to David A. Filius, Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, Montana 59103.

David A. Filius, Forest Supevisor, Custer National Forest, Billings, Montana 59103, is the responsible official.

The draft environmental impact statement should be available for public review by February 28, 1986. The final environmental impact statement is scheduled to be completed by May 1, 1986.

Questions about the proposed action and environmental impact statement should be directed to Sue Zike, Landscape Architect, Custer National Forest, phone 406–657–6361.

Dated: January 28, 1986.

David M. Lee,

Acting Forest Supervisor.

[FR Doc. 86–2572 Filed 2–5–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 51218–5218]

Review of Commercial Activities; Inventory and Review Schedule

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The U.S. Department of Commerce announces that it has compiled an inventory of activities it operates which provide a product or service which could be obtained from a commercial source ("commercial activities"). The Department is reviewing or plans to initiate reviews for these activities during fiscal years 1986 and 1987 to determine which, if any, should be performed by commercial sources under Government contract instead of being performed "in house" by Government personnel using Government facilities.

This notice is not an invitation for sealed bids or a request for proposals.

FOR FURTHER INFORMATION CONTACT: Robert M. McNamara, Office of Finance and Federal Assistance, U.S. Department of Commerce, Herbert C. Hoover Bldg., Room H–6823, 14th St. between Pennsylvania and Constitution Avenues, NW., Washington D.C. 20230. (202) 377–0641.

SUPPLEMENTARY INFORMATION: This notice is issued under the authority of the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); the Office of Federal Procurement Policy Act Amendments of 1979 (41 U.S.C. 401 *et seq.*); Office of Management and Budget (OMB) Circular No. A–76, Performance of Commercial Activities; and Department of Commerce Administrative Order (DAO) No. 201–41, "Performance of Commercial Activities". Commercial activities are those which are operated by the agency and which provide a product or service which could be obtained from a commercial source.

The following chart is the inventory of and review schedule for the Department's commercial activities. Each activity is listed by the Department's identifier number keyed to the operating unit which performs the activity, the name, location, and description of the activity, approximately how many full time equivalents are currently performing the activity, and the scheduled review start and end dates.

Abbreviations appearing on the chart are as follows:

FTE's ..... Full Time Equivalents.
BEA ..... Bureau of Economic Analysis.
CEN ..... Bureau of the Census.

EDA ..... Economic Development Administration.
ITA ..... International Trade Administration.
NBS ..... National Bureau of Standards
NOAA ..... National Oceanic and Atmospheric Administration.
NTIS ..... National Technical Information Service.
OS ..... Office of the Secretary.

Dated: January 31, 1986.

Sonya G. Stewart,

Director, Office of Finance and Federal Assistance.

PRODUCTIVITY IMPROVEMENT PROGRAM REVIEW LIST, FY 1986 PUBLICATION, FEDERAL REGISTER AND COMMERCE BUSINESS DAILY EDITION

Identifier	Name of activity	Location of activity	Description of activity	Approximate No. of FTEs	Review start date	Review end date
BEA–W001–C	Data Conversion	Washington, DC	Key-to/disk operation converting surveys, coding forms, etc. to machine readable form.	13.0	09/01/86	03/31/87
CEN–8515–C	Library	Suitland, MD	Planning, directing, and coordinating library services.	21.0	05/01/85	10/01/86
CEN–8518–C	Warehousing/Stock Handling	do	Receiving, shipping, warehousing, packing, and stock handling services.	16.0	06/03/85	11/01/86
CEN–8519–C	Motor Pool/Vehicle Maintenance	do	Provide transportation for employees, mail, supplies, and equipment.	16.0	08/01/85	07/01/86
CEN–8536–C	Warehouse/Motor Pool/Stock/Maintenance.	Jeffersonville, IN	Receiving, shipping, warehousing, packing, and stock services. Provide for the transportation of employees, mail, supplies, and equipment.	47.0	04/01/85	09/30/86
EDA–ISS4–C	Loan Application Review and Processing.	Washington/Field	Loan Application Review and Processing.	44.0	01/01/86	05/31/87
NBS–14–C	Instrument Shops	Gaithersburg, MD	Provide instrument design, fabrication, modification, and repair for research and development programs.	31.0	01/15/85	06/01/86
NBS–21–C	do	Boulder, CO	do	18.0	03/31/86	06/30/87
NBS–33–C	Visual Arts	Gaithersburg, MD	Produces scientific and technical illustrations, technical drafting, record photography film processing and production of material for presentation.	14.3	06/30/86	09/30/87
NBS–36–C	Technical Support for Scientific Computer.	do	Provides the human link between the user community and the hardware, software, and procedures which comprise the computing facility.	16.0	08/30/86	09/30/87
NBS–45–C	Plant Operation	Boulder, CO	Grounds maintenance, central steam, electric shop, pipe shop, construction shop, paint shop, a/c and refrigeration.	125.0	10/31/85	01/31/87
NBS–46–C	do	Gaithersburg, MD	Grounds maintenance, central steam, electric shop, pipe shop, construction shop, print shop, sheet metal shop, a/c and refrigeration.	125.9	10/31/85	01/31/87
NBS–47–C	do	do	Janitorial service, mail service, supply operations, shuttle service, and auto repair.	32.4	08/30/86/	12/31/87
NOA–A004–C	MASC Library	Boulder, CO	Provides library and information services in the fields of interest of the Boulder, CO complex (MASC).	15.0	09/01/83	01/23/86
NOA–A005–C	MASC Supply Services	do	Provides supply management services (excluding procurement) for the MASC.	36.0	09/01/83	02/15/86
NOA–E001–C	National Climatic Data Center	Asheville, NC	Provides ADP, archival, and technical support services for the National Climatic Center.	114.0	04/01/83	03/01/86
NOA–E002–C	Library and Information Services	Rockville, MD	Provides library and information services for both NOAA and non-NOAA interests.	28.0	04/01/83	03/01/86
NOA–E005–C	Satellite Operations Control Center	Suitland, MD*	Environmental satellite operations.* Also Wallops Island, VA and Fairbanks, AK.	50.0	01/01/86	02/01/87
NOAA–E006–C	Office of Satellite Data	Suitland, MD	Satellite data collection, processing and distribution.	142.0	04/01/86	09/30/87
NOA–E007–C	Office of Satellite Research and Applications.	do	ADP Services, sensor calibration and technical services.	32.0	04/01/85	09/30/87
NOA–E008–C	Satellite CDA Station	Wallops Is., VA/ Fairbanks, AK.	Environmental Satellite operations	102.0	07/30/85	09/01/86
NOA–E009–C	National Climatic Data Center	Ashville, NC, Suitland, MD.	Climate records processing, systems programming, climate library and satellite data operations.	80.0	04/01/86	09/30/87
NOA–E010–C	National Oceanographic Data Center	Washington, DC	Data base management, product delivery, and systems development.	55.0	04/01/86	09/30/87
NOA–F001–C	National Marine Fisheries Service	Miami, FL	Provide computer operations, and systems analysis support for NMFS.	60.0	09/01/85/	10/26/86
NOA86–F002NO–C	do	Washington, DC/Field	Provides scientific publication and editorial services for NMFS.	30.0	09/01/85	12/24/86
NOA–F003–C	NE Fisheries Center Activities	Woods Hole, MA	Provides ADP and facilities maintenance support for the Northwest Fisheries Center, NMFS.	39.0	09/24/85	11/22/86
NOA–F004–C	SW Fisheries Center Activities	LaJolla, CA	Provides ADP support for the Southwest Fisheries Centers, NMFS.	33.0	04/01/83	04/06/86
NOA–F006–C	Office of Data and Information Management.	Washington, DC	ADP support.	7.0	10/01/85	10/01/86
NOA–F007–C	Financial Service Division	Washington, DC/Field	Fisheries obligations, guaranteed loans, and Fishery Loan Fund processing in Washington, DC and the regions.	30.0	09/24/85	11/22/86
NOA–N004–C	Aeronautical Chart Branch	Rockville, MD	Constructs and maintains aeronautical charts and related publications to meet the requirements of civil-military aviation.	148.0	03/31/83	10/01/86
NOA–N007–C	Marine Chart Branch	do	Constructs and maintains nautical charts, Coast Pilots, and other related marine publications.	52.0	08/31/83	10/01/86
NOA–N008–C	Geodetic Resources Management	do	Establishes, improves, and maintains a basic horizontal and vertical network of geodetic control. Provides technical and logistical support to geodetic field units and compiles, publishes, and maintains information for the geodetic user community.	292.0	09/31/88	10/01/86
NOA–N010–C	Atlantic Marine Center	Norfolk, VA	Provides operational and technical support (including ship operation) for all hydrographic, oceanographic, and marine resource activities at AMC.	142.0	08/31/83	04/23/86
NOA–N012–C	Pacific Marine Center	Seattle, WA	Provides operational and technical support (including ship operations) for all hydrographic, oceanographic, and marine resource activities at the PMC.	576.0	03/01/84	10/01/86

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PRODUCTIVITY IMPROVEMENT PROGRAM REVIEW LIST, FY 1986 PUBLICATION, FEDERAL REGISTER AND COMMERCE BUSINESS DAILY EDITION—Continued

Identifier	Name of activity	Location of activity	Description of activity	Approximate No. of FTEs	Review start date	Review end date
NOA-N014-C	Photogrammetry Branch	Rockville, MD	Photogrammetry	100.0	04/01/86	09/30/87
NOA-N021-C	Office of Marine Operations	...do	Engineering	35.0	10/01/85	04/01/87
NOA-N022-C	Office of Aircraft Operations	Miami, FL	Aircraft operations	88.0	04/01/85	10/01/86
NOA-R001-C	GFDL Computer Operations	Princeton, NJ	Provides ADP support for the research activities conducted at GFDL.	16.0	05/01/83	03/21/86
NOA-R002-C	Atlantic Oceanographic Meteorological Lab.	Miami, FL	Facilities management and maintenance	12.0	04/01/85	07/01/86
NOA-W001-C	NWS Engineering Activities	Washington, DC*	Provides maintenance, reconditioning and quality control in support of the NWS technical equipment program. Provides engineering, facilities, and instrumentation support to NWS field installations. Provides a full spectrum of engineering support activities for the National Weather Service.* Also Kansas City, MO; FT. Worth, TX; Salt Lake City, UT; Garden City, NY.	214.0	05/01/83	09/01/86
NOA-W007-C	Communications Operations	Suitland, MD	Provides for the installation, operation, adjustment, and maintenance of communications equipment for NWS.	44.0	04/01/83	10/15/85
NOA-W011-C	Alaska Regional Weather Service Activities.	Anchorage and Fairbanks, AK.	Provides engineering facilities and instrumentation support to NWS field installations. Provides electronic maintenance for NWS instrumentation in the Anchorage, AK area. Provides electronic maintenance for NWS instrumentation at the WSFO, Fairbanks, AK. Provides aviation observations at the Fairbanks WSFO.	35.0	03/01/84	05/01/86
NOA-W013-C	Hawaii Regional Weather Service Activities.	Honolulu, HI	Provides electronic maintenance for NWS instrumentation at the WSFO, Honolulu, HI. Provides weather observations and communications support for the WSFO, Honolulu HI.	21.0	11/01/83	02/26/86
NOA-W015-C	NWS New York Area Airport Observations.	New York, NY and Newark, NJ.	Provides aviation observations at the NY/Kennedy WSO, the Newark WSO, and the NY/LaGuardia WSO.	16.0	04/01/84	05/15/86
NOA-W017-C	NWS LA Area Airport Observations	Los Angeles & Long Beach, CA.	Provides aviation observations at the Los Angeles International WSO/AU. and the Long Beach WSO.	14.0	04/01/84	04/15/86
NOA-W018-C	Dulles Airport Observatiogs	Chantilly, VA	Provides aviation observations at the Wash/Dulles International WSO.	9.0	10/01/83	02/15/86
NOA-W019-C	NMC Computer Operations	Suitland, MD	Provide comprehensive computer services to NOAA components as well as other DOC organizations. Responsibilities include installation, testing, modification, and operation of IMS computers.	50.0	10/01/84	02/01/86
NOA-W020-C	O'Hare Airport Observations	Chicago, IL	Provides aviation observations at the Chicago/O'Hare WSO	6.0	05/01/83	04/15/86
NOA-W021-C	NWS Overseas Operations	Silver Springs, MD	Support of overseas weather operations	31.0	12/01/85	10/01/86
NOA-W022-C	NWS Integrated Systems Laboratory	...do	Systems development engineering	37.0	04/01/86	09/30/87
NOA-W023-C	NWS AFOS Operations Division	...do	Operation of communications systems	65.0	10/01/85	04/01/87
NOA-W024-C	NWS Training Center	Kansas City, MO	Electronics and meterological training	42.0	01/01/86	07/01/87
NTIS-004-C	Automated Data Processing	Springfiled, VA	Plan and operate the agency's automated data processing system used to process the bibliographic data file, publications and edit programs. Perform studies and analysis of total NTIS systems needs with emphasis on adaptation of automated data processing systems to satisfy needs.	45.0	06/01/86	12/01/87
OS-DCS1-C	Computer Servcies	...do	Operates central ADP resource facility to support Office of the Secretary and designated operating units and provide computer resources for selected automated applications of other Government agencies.	26.0	06/01/86	12/01/87
OS-OMB1-C	Operations and Maintenance	Washington, DC	Provides craftmen to operate and maintain mechanical systems of HCHB.	20.0	10/01/86	09/30/87

[FR Doc. 86-2615 Filed 2-5-86; 8:45 am]
BILLING CODE 3510-BR-M

International Trade Administration

[Case No. OEE-1-85]

Order Renewing Temporary Denial of Export Privileges; Ivan Grinon

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of Section 388.19 of the Export Administration Regulations, 15 CFR Parts 368–399 (1985)[1] (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act), has asked that the order temporarily denying all export privileges to Ivan Grinon (Grinon), Avda de Chile, 2–0 1–A. Barcelona 28, Spain, initially issued on December 3, 1985 (50 FR 50334, December 10, 1985) be renewed.

The Department has stated that, as a result of an ongoing investigation, it has reason to believe that Ivan Grinon (Grinon) was employed by Suin, S.A. (Suin) as an engineer from January 3, 1976 to July 31, 1985. Suin and its owner, Carlos Mira Gallart (Mira), have specifically been the subjects of an order denying them all U.S. export privileges since October 14, 1982 (47 FR 47876, October 21, 1982). By its terms, the denial order also applies to all of Suin's employees. Accordingly, from October 14, 1982 to July 31, 1985, Grinon, as an employee of Suin, was subject to the provisions of the denial order.

The Department has additionally stated that it has reason to believe that, despite the prohibition in the order denying all export privileges to Suin and others and contrary to the Regulations, Grinon acted in concert with Mira and others to effect the reexport of U.S.-origin integrated circuit manufacturing and testing equipment and related U.S.-origin technology from Spain to proscribed destinations without the required export licenses or reexport authorizations from the Department.

The Department now states it continues to have reason to believe that, since leaving the employment of Suin on July 31, 1985, Grinon has actively sought work assignments that would involve unauthorized reexports of U.S.-origin equipment from Spain. The Department further states its continuing belief that the general circumstances of Grinon's past activities in violation of both the denial order and the Regulations, coupled with his current active solicitation for job offers for substantially similar activities, demonstrate the likelihood of future violations unless action is taken to preclude such attempts. The Department states that renewal of the order temporarily denying export privileges to Ivan Grinon is necessary in order to give notice to companies in the United States and abroad to cease dealing with Grinon in goods and technical data subject to the Regulations in order to reduce the likelihood that he will continue to engage in activities which are in violation of the Regulations.

Based upon the showing made by the Department, I find that renewal of the order temporarily denying all export privileges to Ivan Grinon and to any person now or hereafter related to him is necessary in the public interest to prevent an imminent violation of the Act and the Regulations. This order is issued without a hearing, the respondent's not having filed any opposition to the Department's renewal request within the time specified in § 388.19(d)(2) of the Regulations.

Accordingly, it is hereby Ordered

I. All outstanding validated export licenses in which the respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. The respondent, his successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are othewise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with the respondent or any related party, or whereby the respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the respondent denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, the respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support thereof.

VI. Pursuant to Section 388.19(d)(2)(iii), I am issuing this order today upon the expiration of the time specified for receipt by me of any opposition by the respondent to the Department's renewal request. This order shall become effective on February 2, 1986 and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. The respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order renewing the temporary denial of export privileges to Ivan Grinon shall be served upon the respondent and published in the Federal Register.

Dated: January 31, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86-2637 Filed 2-5-86; 8:45 am]
BILLING CODE 3510-DS-M

[1] Parts 387 and 388 were amended on December 24, 1985 (50 FR 53130, December 30, 1985).

Automated Manufacturing Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held February 26, 1986 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to Automated Manufacturing Equipment and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. 1986 Plan.
4. Programmable Controllers.
5. Numerical Control Equipment.
6. Precision Inspection Equipment.
7. Sensory Systems.
8. Electric Arc Devices/Isostatic Presses.
9. Bearing Production Equipment.
10. Local Area Networking.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before, or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In

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The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes contact Liga Hagenah, 202-377-2583.

Dated: January 31, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-2641 Filed 2-5-86; 8:45 am]

BILLING CODE 3510-DT-M

Electronic Instrumentation Technical Advisory Committee; Open Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held in open session February 27 and 28, 1986 at 9:30 a.m., Herbert C. Hoover Building, 14th and Constitution Constitution Avenue, NW., Washington, DC. The meeting for both days will be held in Room 6029.

Agenda

The Committee will begin the open meeting by inviting public comments with regards to medical instrumentation.

Invited comments will be restricted to these or substantially related items. In particular the Committee would like to invite public comments in the application of computers and lasers in medical instrumentation.

If you wish to attend this open meeting of the Electronic Instrumentation Technical Advisory Committee, please call or write Liga Hagenah at (202) 377-4959, U.S. Department of Commerce 14th & Constitution Ave., NW. Washington, DC at least five working days in advance in order to reserve as seat as available space is limited. With this advance notice, arrangement can be made for more space, should that be necessary. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, telephone 202-377-4959.

Dated: January 31, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-2642 Filed 2-5-86; 8:45 am]

BILLING CODE 3510-DT-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

TIME AND PLACE: February 27, 1986 at 9:00 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Ave., NW., Washington, DC.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation by LAM Research on state-of-the-art dry etch systems.
4. Approval of minutes of last meeting.
5. Action items underway.
6. Action items due at next meeting.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes call 202-377-2583.

Dated: January 30, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis

[FR Doc. 86-2643 Filed 2-5-86; 8:45 am]

BILLING CODE 3510-DT-M

Short Supply Review on Certain Steel Products; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and Request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to grade M5 grain oriented silicon electrical steel strip.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product . . ."

We have received a short supply request for the following product: Grain Oriented Silicon Electrical Steel Strip: grade M5, with a thickness of 12 mil and a Rockwell hardness of 88 ±3. Slit in rolls to widths varying between 50-160 mm.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of the submission and also provide a non-proprietary submission which can be placed in the public file. This public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-2644 Filed 2-5-86; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulaitons, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than February 28, 1986, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February, for the following periods:

	Period
Antidumping duty proceeding:	
Melamine in crystal form from Japan	02/01/85-01/31/86
Railway track maintenance equipment from Austria	02/01/85-01/31/86
Birch 3-ply doorskins from Japan	02/01/85-01/31/86
Racing plates from Canada	02-01-85-01/31/86
Countervailing duty proceeding:	
Oil country tubuler goods from Brazil	09/12/84-09/30/84
Stainless steel products from Brazil	01/01/85-12/31/85
Polypropylene yarn from Mexico	01/01/85-12/31/85
Cotton sheeting and sateen from Peru	01/01/85-12/31/85
Cotton yarn from Peru	01/01/85-12/31/85
Flat-rolled steel products from South Korea	09/18/84-09/30/84
Oil country tubular goods from Spain	09/12/84/-09/30/84

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room 5-099, U.S. Department of Commerce, Washington, D.C. 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Adminstrative Review," for requests received by February 28, 1986.

If the Department does not receive by February 28, 1986, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 30, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-2606 Filed 2-5-86; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-077. Applicant: The Hospital of the University of Pennsylvania, 3400 Spruce Street, Philadelphia, PA 19104. Instrument: Electron Microscope, Model H-600-2 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: The instrument is intended to be used for examination of human and animal tissues and cells from different disease states such as cancer, degenerative cardiovascular disease, diabetes or viral infections. The instrument will also be used to train pathologists and technicians in the changes that occur in tissues as a result of disease. Application received by Commissioner of Customs: December 13, 1985.

Docket No. 86-078. Applicant: State University of New York at Stony Brook, The Research Foundation of SUNY, P.O. Box 9, Albany, NY 12201. Instrument: Ultra High Pressure System. Manufacturer: Sumitomo Heavy Industries, Japan. Intended use: The instrument will be used to study oxide and silicate minerals and their chemical analogues in order to understand more fully the behavior and properties of these materials under ultra high pressure conditions. In addition, the instrument will be used for educational purposes in the courses: ESS 531—Crystalline Solids and ESS 556—Solid State Geophysics. Application received by Commissioner of Customs: December 13, 1985.

Docket No. 86-079. Applicant: Lutheran Institute of Human Ecology, 1775 West Dempster, Park Ridge, IL 60068. Instrument: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi, Limited, Japan. Intended use: The instrument is intended to be used to examine biological tissue samples removed from patients during surgery. The material is examined for diagnostic purposes. The results of these studies are then compared to other studies and a formal diagnosis is formulated upon which is based future treatment of the patient. The results of postmortem studies are also used for formulating diagnoses for other patients. These studies will also assist in the generation of data for publication or in conducting educational seminars related to specific diseases. Application received by Commissioner of Customs: December 13, 1985.

Docket No. 86-080. Applicant: NASA Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135. Instrument: ARC Lamp System. Manufacturer:

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Vortek Industries, Limited, Canada. Intended use: The instrument is to be used in a research effort whose objective is to design and fabricate a system for steady-state and transient calibration and durability testing of heat flux sensors for use in space shuttle main engine turbine blades. Development will rely on experiment and analysis from many interdisciplinary fields of research including thin-film and wire thermocouples, materials, heat transfer, optics and electric arc phenomena. Application received by Commissioner of Customs: December 13, 1985.

Docket No. 86-083. Applicant: USDA, ARS, U.S. Plant, Soil and Nutrition Laboratory, Tower Road, Ithaca, NY 14853. Instrument: ICP/Mass Spectrometer, Model 250. Manufacturer: Sciex Incorporated, Canada. Intended use: The instrument will be used for conducting a variety of studies in the soil and plant sciences as well as animal and human nutrition. These include studies on the chemical forms of elements in soils, their movement through soils to the root-soil interface, transport across the root-cell membrane, translocation to the various parts of plants, chemical forms of the elements in plants, absorption and bioavailability of the elements to animals and humans, and finally, their biochemical functions in animals and/or humans. The overall research objectives are to improve the nutritional quality of plant foods and to improve the efficiency with which animals and people utilize the nutrients provided by plant foods. Applicant received by Commissioner of Customs: December 13, 1985.

Docket No.: 86-084. Applicant: University of Southern Mississippi, Department of Polymer Science, Box 10076, Hattieburg, MS 39606-0076. Instrument: Excimer Laser, Model HE440-SM-B with Power Supplies and Accessories. Manufacturer: Lumonics Incorporated, Canada. Intended use: The instrument is intended to be used to investigate the photophysical and photochemical properties of thiazine and oxazine dyes, dihydropyridines, arene sulfonyl azides and their charge-transfer complexes with amines and alkyl N-arylcarbamates, alkyl N-arylbiscarbamates, and polyurethanes based on aromatic diisocyanates. The research will be conducted in an attempt to obtain a better understanding of the mechanistic events which occur between laser light absorption by the sample and formation of a stable, isolable photoproduct. The instrument will also be used to develop student research expertise in the courses: Chemistry, CHE 496, 496L Special Projects. Chemistry, CHE 791. Research in Chemistry and Polymer Science PSE 490, 490L, 491L. Special Projects in Polymer Science. Application received by Commissioner of Customs: December 13, 1985.

Docket No.: 86-085. Applicant: University of California, Davis, CA 95616. Instrument: Excimer Laser HE-420 with Accessories. Manufacturer: Lumonics Research Limited, Canada. Intended use: The instrument is intended to be used for the study of the photodissociation chemistry of a variety of organic molecules in the gas phase. Experiments will be conducted to obtain fundamental data on the rates and mechanisms of several classes of elementary chemical reactions. Application received by Commissioner of Customs: December 13, 1985.

Docket No.: 86-086. Applicant: University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. Instrument: Camera, X-Ray Streak. Manufacturer: Kentech Instruments Limited, United Kingdom. Intended use: The instrument will be used to study the temporal properties of the x-ray emission from laser produced plasmas. Experiments will be performed in the areas of thermal electron transport, x-ray conversion efficiency and implosion diagnostics. The investigations will be conducted to obtain a better understanding of the coupling of laser energy to targets and their subsequent implosion. Application received by Commissioner of Customs: December 16, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-2645 Filed 2-5-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application Announcements; California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $341,176 for the project performance period of July 1, 1986 to June 30, 1987. The MBDC will operate in the Riverside Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $290,000 in Federal funds and a minimum of $51,176 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I. D. Number for this project will be 09-10-86020-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105.

February 21, 1986 at 10:00 A.M.

Proposals are to be Mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is March 18, 1986. Applications must be postmarked by midnight March 18, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Xavier Mena, *Regional Director, San Francisco Regional Office.*

January 31, 1986.

[FR Doc. 86-2599 Filed 2-5-86; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase in Limits for Certain and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

February 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITRA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 4, 1986. For further information contact Jane Corwin, International Trade Specialist (202) 377-4212.

Background

On November 6, 1985 a notice was published in the Federal Register (50 FR 46151) which announced that, effective on November 8, 1985, a level of 130,000 dozen pairs would be applied to work gloves in Category 631pt. (only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704.9000), produced or manufactured in Indonesia and imported during each of five thirty-day periods beginning on November 6, 1985 and extending through April 4, 1986 which were exported during the restraint period which began on September 17, 1984 and extended through June 30, 1985. The purpose of this notice is to advise the public that the Governments of the United States and Indonesia have agreed, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25, and October 3, 1985, to increase the monthly increment to 200,000 dozen pairs for the thirty-day period beginning on February 4, 1986. (The level will revert to 130,000 dozen pairs for the thirty-day period beginning on March 6, 1986.) In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase this amount accordingly.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedule of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

February 3, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Effective on February 4, 1986, this directive amends, but does not cancel, the directive of October 31, 1985 to increase to 200,000 dozen pairs the amount of man-made fiber textile products in Category 631pt.[1] produced or manufactured in Indonesia, to be permitted entry for consumption or withdrawal from warehouse for consumption in the United States during the thirty-day period beginning on February 4, 1986. The amount will revert to 130,000 dozen pairs for the period beginning on March 6, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2646 Filed 2-5-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8550 and 705.9000.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Mathews, Office of Federal Acquisition and Regulatory Policy, (202) 523-3856.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* This request covers recordkeeping requirements and the collection of information regarding the Affidavit of Individual Surety, Standard Form (SF) 28, to be used by individuals applying as sureties for Government penal bonds.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 500; responses, 715; and reporting and recordkeeping hours, 286.

Obtaining Copies of Proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GS Building, Washington, DC 20405, telephone (202) 523-4755. Please cite OMB Control No. 9000-0001.

Dated: January 31, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86-2597 Filed 2-5-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF EDUCATION

Elementary Education Study Group; Meeting

AGENCY: Office of the Secretary of Education.

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ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Secretary of Education will conduct a meeting on information and ideas about the improvement of elementary education in the United States.

DATE: February 11, 1986 at 9:00 a.m.–4:00 p.m.

ADDRESS: The Horace Mann Learning Center Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Nelson Smith Staff Director, Elementary Education Study Group, Room 556, 1200 19th Street, NW., Washington, DC 20208. Telephone (202) 254–9721.

SUPPLEMENTARY INFORMATION: This third public meeting of the Elementary Education Study Group will review recent visits made by members of the panel to elementary shcools; will consider the role of the principal in providing educational leadership in elementary education; and will address the "hidden curriculum" of character formation in elementary schools.

Dated: February 4, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86–2747 Filed 2–4–86; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE–FRL–2965–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)* requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382–2740 or FTS 382–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Annual Motor Vehicle Tampering Survey (EPA #0114). (This is an extension of an existing ICR; no change is proposed.)

Abstract: This is a survey of in-use vehicles to assess the degree and type of tampering with vehicle emission controls. An annual survey is required to assess trends in this rate and to provide data necessary for modeling the air quality impacts of State and local programs to control tampering and fuel switching.

Respondents: Individual motorists.

Agency PRA Clearance Requests Completed by OMB

EPA #0229; NPDES Discharge Monitoring Report, was approved 11/8/85 (OMB #2040–0004; expires 12/31/86).

EPA #1190; Hazardous Waste Management Industry Screening Census, was approved 1/13/86 (OMB #2050–0055; expires 1/31/88).

EPA #1223; Use of Department of Defense Style System for Collecting Fiscal Status Information from AEERL Contractors, was approved 12/19/85 (OMB #2080–0009; expires 12/31/88).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), Information and Regulatory Systems Divisions, 401 M Street, SW., Washington, DC 20460

and

Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: January 31, 1986.

Daniel J. Fiorino,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86–2586 Filed 2–5–86; 8:45 am]

BILLING CODE 6560–50–M

[A–9–FRL–2966–1]

Air Quality; Approval of Prevention of Significant Deterioration (PSD); Permit to Cogeneration National Corporation (EPA Project No. SJ 85–05)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 31, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct the Port of Stockton District Energy Facility, a 49.2 megawatt (gross) fluidized bed combustion cogeneration system to be located in Stockton, San Joaquin County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: SO_2 at 26 lbs/hr, and NO_x at 30 ppmdv at 3% O_2.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include limestone injection, selective noncatalytic ammonia injection (SNCR), and circulating fluidized bed combustion.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by April 7, 1987.

Dated: January 24, 1986.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 86–2585 Filed 2–5–86; 8:45 am]

BILLING CODE 6560–50–M

[A–9–FRL–2966–2]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Kaiser Engineers (California) Corporation (EPA Project Number SFB 84–01)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 31, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct the Tri-Cities resource recovery project, a 10 megawatt waste-to-energy plant, to be located in Fremont, Alameda County, Caliornia. The permit is subject to certain conditions, including an allowable emission rate as follows: SO_2 at 14.3 lbs/hr, No_x at 68.5 lbs/hr, particulate matter at 4.2 lbs/hr, and mercury at 0.34 lbs/hr.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region. 9 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of a dry scrubber, baghouse, staged combustion and flue gas recirculation.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by April 7, 1986.

Dated: January 24, 1986.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 86–2584 Filed 2–5–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATION COMMISSION

Hearing Designation Order; Bayland Aviation, Inc; et al.

In re the applications of Bayland Aviation, Inc. Salisbury, MD. PR Docket No. 86–11—File No. 354–A—25; Executive Air Services, Inc., Salisbury, MD, File No. 204–A–L–45; for an Aeronautical Advisory Station to serve Salisbury–Wicomico County Airport at Salisbury, MD.

Adopted: January 16, 1986.
Released: January 31, 1986.

1. Bayland Aviation, Inc. (Bayland) and Executive Air Services, Inc. (Executive) have each filed an application for authority to operate an aeronautical advisory station at Salisbury-Wicomico County Airport in Salisbury, Maryland. Both applicants seek a new station authorization. Each application meets the basic eligibility requirements of Part 87 of the Commission's rules. The applications captioned above are mutually exclusive under §87.251(a) of the Commission's rules which provides that only one aeronautical advisory station may be authorized at an uncontrolled airport. Accordingly, it is necessary to designate these applications for comparative hearing in order to determine which, if any, should be granted.

2. In view of the foregoing, it is Ordered, that pursuant to the provisions of section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and § 0.331 of the Commission's rules, 47 CFR 0.331, the applications captioned above are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a susequent order on the following issues:

(a) To determine which applicant would provide the public with the better aeronautical advisory service based on the following comparative considerations:

(1) Location of the aviation service organization and proposed radio station in relation to the landing area and traffic patters;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of the applicants and their employees in aviation and aviation communications, including but not limited to operation of stations in the aviation services under Part 87 that may be or have been authorized to the applicant;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points; and

(7) Availability of the radio facilities to other aviation service organizations;

(b) To determine in light of the evidence adduced on the foregoing issues which of the applications should be granted.

3. It is further ordered, that the burden of proof and the burden of proceeding with the introduction of evidence is on each applicant with respect to its application.

4. It is further ordered, that to avail themselves of an opportunity to be heard Bayland and Executive, in person or by attorneys, must file with the Commission a written appearance, in triplicate, within 20 days of the date of this Order, stating an intention to appear on the date set for hearing and to present evidence on the issues specified in this Order. See § 1.221(c) of the Commission's rules, 47 CFR 1.221(c). Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

Federal Communications Commission.

Robert S. Foosaner,

Chief, Private Radio Bureau.

[FR Doc. 86–2594 Filed 2–5–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. 86–83]

Agency Information Collection Activities Under OMB Review

Dated: January 31, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "FSLIC Receivership Rules—Claims Procedures," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the Federal Register. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Mary Rawlings-Milton, Office of General Counsel. Phone: (202) 377–7048.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86–2592 Filed 2–5–86; 8:45 am]

BILLING CODE 6720–01–M

[No. 86–84]

Western Savings & Loan Association, Phoenix, AZ; Application To Withdraw Securities From Listing and Registration on American Stock Exchange

Dated: January 31, 1986.

Western Savings & Loan Association, Phoenix, Arizona (the "Association") has filed on December 16, 1985 pursuant to Securities Exchange Act ("Exchange Act") section 12(d) and Exchange Act Rule 12d2–2(d) an application with the Federal Home Loan Bank Board ("Board") to withdraw from listing and registration on the American Stock Exchange its $1.00 par value Permanent Reserve Guarantee Stock (the "Stock"). The Association's Stock was approved for listing and registration on the New York Stock Exchange on November 27, 1985.

The reasons stated in the Association's application for withdrawing the securities from the

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listing and registration on the American Stock Exchange include the following:

1. The direct and indirect costs and expenses attendant on maintaining the dual listing of the Stock on the New York Stock Exchange and the American Stock Exchange are not justified.

2. The belief that dual listing would fragment the market for the Stock without offsetting benefits.

3. The American Stock Exchange has no objection to the withdrawal of the Association's Stock from listing on the American Stock Exchange.

4. The withdrawal from listing of the Association's Stock from the American Stock Exchange shall have no effect upon the continued listing of the Stock on the New York Stock Exchange.

5. By reason of section 12(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Association shall continue to be obligated to file reports under section 13 of that Act with the Federal Home Loan Bank Board and the New York Stock Exchange.

Any interested person may inspect the application at the Board and, on or before February 20, 1986, submit by letter to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, facts bearing upon whether the application has been made in accordance with the rules of the American Stock Exchange and what terms, if any, should be imposed by the Board for the protection of investors. The Board, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Board determines to order a hearing on the matter.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-2593 Filed 2-5-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Center for Disease Control

Cooperative Agreement; University of North Carolina Training and Institutional Development in Health Education; Selected Primary Health Care Interventions in Sub-Saharan Africa; Availability of Funds for Fiscal Year 1986

The Centers for Disease Control announces the availability of funds in Fiscal Year 1986 for a cooperative agreement with the University of North Carolina School of Public Health for assistance in the development of a program of training and institutional development in health education in support of selected primary health care interventions in sub-Saharan Africa. This program is authorized under a delegation of legislative authority from the U.S. Agency for International Development (AID), in accordance with the Foreign Assistance Act of 1961, as amended.

The cooperative agreement requires close collaboration with an established MPH-level program in health education with demonstrated experience in health education training and practice in both French-speaking and English-speaking countries of sub-Saharan Africa. The program should have an existing institutional relationship in the areas of research and training with the African Regional Health Education Centre, University of Ibadan, Nigeria. The Department of Health Education, School of Public Health, University of North Carolina has the only such program in the United States.

This is not a formal request for applications, and other applications will not be accepted. It is expected that approximately $200,000 will be available in Fiscal Year 1986 to support this project for the first year of a 3-year project period.

FOR FURTHER INFORMATION CONTACT: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 321, Atlanta, Georgia 30305, Telephone: (404) 262-6575 or FTS 236-6575.

Dated: January 30, 1986.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 86-2598 Filed 2-5-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 83P-0166]

Canned Tuna in Water Deviating From Identity Standard; Amendment of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit to market test canned tuna in water seasoned with vegetable oil is being amended to reflect a change in name of the permit holder.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Ralston Purina Co., St. Louis, MO 63164, to market test for interstate commerce canned tuna in water seasoned with vegetable oil and containing xanthan gum as an emulsifying agent and suspending agent. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit of Ralston Purina Co. was published in the **Federal Register** of June 7, 1983 (48 FR 26361). Subsequently, Ralston Purina Co. requested that the temporary permit be extended and petitioned to amend the standard of identity for canned tuna. The expiration date of the permit was changed in a notice published in the **Federal Register** of October 25, 1984 (49 FR 42985). The new expiration date is either the effective date of a final rule for any proposal to amend the standard of identity for canned tuna which may result from the petition Ralston Purina Co. submitted, or 30 days after termination of such a proposal.

Since the permit was issued and the expiration date changed, the seafood division of Ralston Purina Co. has become a wholly owned subsidiary, Van Camp Seafood Co., Inc. Ralston Purina Co. has requested that the temporary permit be amended to reflect the change in the name of the permit holder. Accordingly, FDA is amending the temporary permit to indicate that Van Camp Seafood Co., Inc., is the permit holder and that company name will be declared as the manufacturer on the test product label.

Therefore, FDA is amending the permit to change the name under which the permit is held. All other conditions and terms of this permit remain the same.

Dated: January 24, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-2564 Filed 2-5-86; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing on Reconsideration of Disapproval of Portion of an Ohio State Plan Amendment

AGENCY: Health Care Financing Administration (HFCA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on March 12, 1986 in Chicago, Illinois to reconsider our decision to disapprove a portion of Ohio State Plan Amendment 85-15.

Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk February 21, 1986.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a portion of Ohio State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice of a State Medicaid Agency that informs the agency of the time and place of the hearing and issues to be considered. [If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Office will notify all participants.

The issues in this matter is whether Ohio's amendment which would provide Medicaid to a child, sibling, or parent who is denied AFDC solely because the need, income and resources of all eligible siblings are used in determining AFDC eligibility violates section 1902(a)(10)(A) and 1902(a)(17)(B) of the Social Security Act and Federal regulations at 42 CFR 435.113.

HCFA has disapproved a portion of Ohio SPA 85-15 because we concluded that it violates section 1902(a)(10)(A), which by its terms specifies the mandatory and optional categorically needy groups which a State must cover, but does not include the group which the State seeks to cover, and section 1902(a)(17)(B) which provides that the State must take into account only such income and resources as determined in accordance with standards prescribed by the Secretary to be available to the applicant or recipient. We reached these conclusions because Congress determined that the sibling's or child's income and resources are availble to and must be included in the assistance unit under AFDC, and therefore the Secretary determined that his income and resources are available to the entire unit under Medicaid. Unlike deeming of income and resources under the single filing unit requirement the sibling's income and resources are not imputed to the unit, but are actually available to it (since the sibling to whom they belong is a member of that unit). Once the unit has this income, it is not deeming to consider these amounts in determining the whole unit's eligibility for AFDC (and concomitantly for Medicaid). Accordingly, we believe the denial of Medicaid eligibility to individuals terminated or denied AFDC solely due to the application of the single filing rule under section 402(a)(38) of the Act (which causes a sibling to apply for AFDC even though he would prefer not to) does not violate the section 1902(a)(17)(D) prohibition on taking into account the financial responsibility of any individual other than a spouse (for his or her spouse) or parent for their children under 21 (or for their adult blind or disabled children). Moreover, because the denial of AFDC eligibility under the mandatory filing unit rule does not conflict with section 1902(a)(17)(D) of the Act, we concluded that the State cannot invoke 42 CFR 435.113 as a basis for covering individuals who lose AFDC eligibility solely because of the provision of that rule. (The regulation requires States to "provide Medicaid to individuals who would be eligible for AFDC except for an eligibility requirement used in that program that is specifically prohibited under title XIX.)

This notice of Ohio announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Ms. Patricia K. Barry, Director,

Ohio Department of Humon Services, East Broad Street, 32nd Floor, Columbus, Ohio 43215.

Dear Ms. Barry: This is to advise you that your request for reconsideration of the decision to disapprove a portion of Ohio State Plan Amendment 85-15 was received on January 6, 1986. Ohio SPA 85-15 would provide Medicaid to a child sibling or parent who is denied AFDC solely because the need, income and resources of all eligible siblings are used in determining AFDC eligibility. You have requested reconsideration of whether this plan provision conforms to the requirements for approval under title XIX of the Social Security Act. The issue to be considered is whether Ohio's amendment, which would provide Medicaid to a child, sibling, or parent who is denied AFDC solely because the need, income and resources of all eligible siblings are used in determining AFDC eligibility, violates section 1902(a)(10)(A) and 1902(a)(17)(B) of the Social Security Act and Federal regulations at 42 CFR 435.113.

I am scheduling a hearing on your request to be held on March 12, 1986 in the 8th Floor Conference Room, 175 West Jackson Boulevard, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Stanley Krostar as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

C. McClain Haddow,

Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 31, 1986.

C.M. Clain Haddow,

Acting Administrotor, Health Care Financing Administration.

[FR Doc. 86-2623 Filed 2-5-86; 8:45 am]

BILLING CODE 4120-01-M

Medicaid Program; Hearing: Reconsideration of Disapproval of a South Carolina State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Hearing.

SUMMARY: This notice announces an administrative hearing on March 26, 1986 in Atlanta, Georgia to reconsider our decision to disapprove South Carolina State Plan Amendment 85-11.

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DATE: Request to participate in the hearing as a party must be received by the Docket Clerk (February 21, 1986).

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594–8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a South Carolina State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether the portion of South Carolina's proposal which requires the use of the Supplemental Security Income (SSI) resource exclusion when determining Medicaid eligibility for Aid to Families with Dependent Children (AFDC) related medically needy individuals violates section 1902(a)(10)(C)(i)(III) of the Social Security Act.

Section 1902(a)(10)(C)(i)(III) of the Social Security Act requires that in determining Medicaid eligibility for medically needy applicants or recipients, States must apply the same income and resource methodologies as are used in the cash assistance programs and utilize a single income and resource standard. For those individuals whose eligibility is AFDC-related, States must follow the methodologies of the AFDC program. South Carolina's proposal uses the SSI automobile resource exclusion for all the medically needy (SSI-related and AFDC-related). Therefore, HCFA has determined that South Carolina's proposal violates section 1902(a)(10)(C)(i)(III) of the Act.

The notice to South Carolina announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. Dennis Caldwell, Executive Director,
State Health and Human Services, Finance Commission, P.O. Box 8206, Columbia, South Carolina 29202–8206.

Dear Mr. Caldwell: This is to advise you that your request for reconsideration of the decision to disapprove South Carolina State Plan Amendment 85–11 was received on January 6, 1986. You have requested a reconsideration of whether the portion of South Carolina's proposal which requires the use of the Supplemental Security Income (SSI) resource exclusion when determining Medicaid eligibility for Aid to Families with Dependent Children (AFDC) related medically needy individuals violates section 1902(a)(10)(C)(i)(III) of the Social Security Act.

I am scheduling a hearing on your request to be held on March 26, 1986 at 10 a.m., in the 7th Floor Conference Room, 101 Marietta Tower, Spring and Marietta Streets, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

In am designating Mr. Albert Miller as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594–8261.

Sincerely yours,

C. McClain Haddow,
Acting Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: January 31, 1986.

C. McClain Haddow,
Acting Administrator, Health Care Financing Administration.

[FR Doc. 86–2624 Filed 2–5–86; 8:45 am]
BILLING CODE 4120–03–M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committee has been filed with the Library of Congress:

Task Force on Organ Transplantation

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C., or weekdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1436, 330 Independence Avenue, SW., Washington, D.C 20201, Telephone (202) 245–6791. Copies may be obtained from Ms. Linda D. Sheaffer, Executive Director, Office of Organ Procurement and Transplantation, Office of the Administrator, Health Resources and Services Administration, Room 17–60, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–5911.

Dated: February 3, 1986.

Jackie E. Baum,
Advisory Committee Management Officer, HRSA.

[FR Doc. 86–2626 Filed 2–5–86; 8:45 am]
BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14989–A, F–14989–B]

Alaska Native Claims Selection; Danzhit Hanlaii

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Danzhit Hanlaii Corporation, notice of which was published in the **Federal Register**, 47 FR 12869 to 12871 on March 25, 1982, as modified on March 31, 1983, and published in the **Federal Register**, 48 FR 14760 to 14761 on April 5, 1983, is further modified by adding, modifying, and deleting certain easements.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until March 10, 1986 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given March 25, 1982, as amended September 20, 1983, is final.

Helen Burleson,
Section Chief, Branch of ANCAS Adjudication.

[FR Doc. 86–2648 Filed 2–5–86; 8:45 am]
BILLING CODE 4310–JA–M

[Serial No. A 8168–D]

Classification of Public Lands for State Indemnity Selection; Arizona

1. The Arizona State Land Department has filed a letter of intent to acquire and a petition for classification and application to acquire the lands described in paragraph 5 below, under the provisions of the Act of June 20, 1910 (36 Stat. 557), as amended, in lieu of certain school lands that were encumbered by other rights or reservations before the State's title could attach. The application has been assigned serial number A 8168–D.

2. The Bureau of Land Management will examine these lands for evidence of prior valid rights or other statutory constraints that would bar transfer. Those lands found suitable for transfer will be held to be classified 60 days from date of publication of this notice in the **Federal Register**. Classification is pursuant to Title 43 Code of Federal Regulations, Subpart 2400 and section 7 of the Act of June 28, 1934.

3. Information concerning these lands and the proposed transfer to the State of Arizona may be obtained from the District Manager, Yuma District Office, Bureau of Land Management, P.O. Box 5680, Yuma, Arizona 85364–0697 (602–726–6300).

4. For a period of 60 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments on the above classification may present their views in writing for consideration to the Yuma District Manager, Bureau of Land Management, P.O. Box 5680, Yuma, Arizona 85364–0697. As provided by Title 43 Code of Federal Regulations, Subpart 2462.1, a public hearing will be scheduled by the District Manager if he determines that sufficient public interest exists to warrant the time and expense of a hearing.

5. The lands included in this classification are located in Yuma County, Arizona, and are described as follows:

Gila and Salt River Meridian

T. 8 S., R. 16 W.,
Sec. 31, S½;
Sec. 33, SE¼;
Sec. 34, S½.
T. 9 S., R. 17 W.,
Sec. 4, W½ NW¼ NW¼;
Sec. 5, lot 1, S½ N½;
Sec. 6, NE¼ SE¼, S½ SE¼.

The total acreage described above is approximately 1,139.88 acres.

6. Rights-of-way granted by BLM will transfer with the land. Oil and gas leases will remain in effect under the terms and conditions of the lease. State Law and Land Department procedures (R 12–5–154 D Administrative Rules and Regulations, Arizona State Land Department), provide for the offering to BLM grazing permits the first right to lease lands that are transferred to the State. This constitutes official notice to grazing lessees that their Bureau of Land Management leases will be terminated in part upon transfer of the land to the State of Arizona.

Dated: January 29, 1986.

J. Darwin Snell,
District Manager.

[FR Doc. 86–2567 Filed 2–5–86; 8:45 am]
BILLING CODE 4310–32–M

Environmental Statements; Proposal to Allow Construction of a Temporary Culinary Water Well in the Cottonwood Canyon Wilderness Study Area (UT–040–046)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of a Draft Environmental Assessment and Interim Management Policy Analysis.

SUMMARY: The City of St. George is proposing to develop a temporary culinary water well to meet peak demands pending availability of other water sources. The proposal is for a temporary right-of-way 35 feet wide and 673 feet long to accommodate buried water and power transmission lines and a one-acre site for a well installation. This facility would extend approximately 700 feet into the Cottonwood Canyon Wilderness Study Area (UT–040–046), which is located north and northeast of Washington, Utah. The location of the proposed well facility is in the SE¼ SW¼ NW¼ of Sec. 26, T. 41 S., R 15 W., SLB&M.

A Draft Environmental Assessment and Interim Management Policy (IMP) Analysis have been prepared on this proposal and are now available for public review and comment.

DATE: Comments should be submitted by March 18, 1986. Comments postmarked after the above date may not arrive in time to be considered as part of the decision making process.

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ADDRESS: To obtain a copy of these documents or to obtain additional information on the proposal, contact Frank Rowley, Area Manager at the Bureau of Land Management, Dixie Resource Area, P.O. Box 726, St. George, Utah 84770 or telephone at (801) 673–4654 .

Dated: January 29, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86–2577 Filed 2–5–86; 8:45 am]

BILLING CODE 4310-DQ-M

Management Framework Plan Amendment; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend land use plans in the Burns and other Eastern Oregon Districts.

SUMMARY: In accordance with 43 CFR 1601.3, notice is given that the Bureau of Land Management in the State of Oregon, Burns. District, intends to amend Management Framework Plan Decisions regarding the Riddle Mountain Wild Horse Herd Management Area. The Herd Management Area is located in Harney and Malheur Counties, approximately 50 miles southeast of Burns, Oregon. The purpose of the plan amendment is to adjust the Herd Management Area boundary, herd size, or make herd location adjustments in order to facilitate removal of wild horses from non-federal lands. Potential herd relocation areas are located throughout southeastern Oregon and may not be limited to BLM lands administered by the Burns District. The current management direction for the Riddle Mountain Wild Horse Herd and the Associated Grazing Management Program was developed through the Drewsey Management Framework Plan, Drewsey Grazing Management Environmental Impact Statement and Rangeland Program Summary and updates.

DATES: Comments are due by March 18, 1986.

ADDRESSES: Detailed information concerning the proposed land use plan amendment and revised Herd Management Plan including the Environmental Analysis will be available for review at the Burns District Office, 74 South Alvord, Burns, Oregon 97720.

FOR FURTHER INFORMATION CONTACT: Joshua I Warburton, District Manager, Burns District Office, 74 S. Alvord, Burns, Oregon 97720, (503) 573–5241.

SUPPLEMENTARY INFORMATION: Major issues involved in the plan amendment are: reducing the active herd management area, reducing the herd size (minimum and maximum management levels) or relocating a portion of the herd, potential impacts of herd adjustments on domestic livestock grazing and on the management of non-federal lands, and compatibility with wilderness study areas. Major disciplines to be represented on the interdisciplinary team preparing the plan amendment and Environmental Assessment (EA) are: Wild horse management, range management, watershed, wilderness, wildlife and land use planning. More detailed information on planning criteria, issues and preliminary management alternatives is available at the Burns District Office and has also been mailed to known interested parties. The comment period on preliminary issues and planning criteria for the plan amendment and associated EA will close March 18, 1986. Other public participating activities will include a 60-day review of the proposed plan amendment and the EA and an open house or public meeting to receive comments and answer questions. Dates, times and location will be announced through local media and mailing to interested parties. Planning documents are available for inspection at the Burns District Office during normal working hours.

Dated: January 27, 1986.

Joshua L. Warburton,

District Manager.

[FR Doc. 86–2578 Filed 2–5–86; 8:45 am]

BILLING CODE 4310-33-M

Butte District, Montana; Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will he held Wednesday and Thursday, March 5 and 6, 1986.

The meeting will begin at 1 p.m., March 5 in the Butte District Office conference room, 106 North Parkmont (Industrial Park), Butte, Montana. The agenda will include 1) recreation access to public lands, 2) the district's land adjustment program, 3) surface management (3809) regulation administration, 4) the FY 86 budget, and 5) a discussion of the district's range program, including the Bureau's riparian initiative, Cooperative Management Agreements and grazing fees. This meeting was originally scheduled for January 15 and 16 and was rescheduled due to the uncertainty of a quorum being present on those dates.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the district manager.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: January 31, 1986.

Jack A. McIntosh,

District Manager, Butte District.

[FR Doc. 86–2621 Filed 2–5–86; 8:45 am]

BILLING CODE 4310-DN-M

Moab District, Utah; Advisory Council Meeting

January 31, 1986.

AGENCY: Bureau of Land Management, Utah, Interior.

ACTION: Moab District Advisory Council Meeting.

SUMMARY: The Council will meet on Thursday, March 6, beginning at 9 a.m.

SUPPLEMENTAL INFORMATION: The Council meeting will be held at the Moab Disitrict Office, 82 East Dogwood, Moab, Utah 84532. The agenda includes an update on planning efforts, a review of the Utah Statewide Draft Environmental Impact Statement (DEIS), and new business. Also, if Council members so desire, they may elect new officers and form new committees at this meeting, or they may hold that action until a future date. All Advisory Council meetings are open to interested members of the public.

FOR FURTHER INFORMATION CONTACT: Mary Plumb, Public Affairs Officer, Bureau of Land Management, Moab District, 82 East Dogwood (P.O. Box 970), Moab, Utah 84532. Telephone: (801) 259–6111.

Gene Nodine,

District Manager.

[FR Doc. 86–680 Filed 2–5–86; 8:45 am]

BILLING CODE 4310-DQ-M

[A-21218]

Realty Action; Noncompetitive Sale of Public Land in La Paz County; AZ

The following described public lands have been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value. The lands will not be offered for sale until 60 days after the date of this notice.

Gila and Salt River Meridian

T. 7 N., R. 19 W.,
Sec. 13, SW¼.

The above described land contains 160 acres more or less.

The land is proposed to be offered for sale to La Paz County which plans to use the land for sanitary landfill and maintenance yard purposes.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and disposal of the land would serve important public objectives.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as conditions of the sale, is available for review at the Yuma District Office, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365.

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 5680, Yuma, Arizona 85364–0697. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action become the final determination of the Department of the Interior.

Dated: January 29, 1986.

J. Darwin Snell,

District Manager.

[FR Doc. 86–2568 Filed 2–5–86; 8:45 am]

BILLING CODE 4310-32-M

Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value. The lands will not be offered for sale until 60 days after the date of this notice.

Gila and Salt River Meridian

T. 7 N., R. 19 W.,
Sec. 13, SW¼.

The above described land contains 160 acres more or less.

The land is proposed to be offered for sale to La Paz County which plans to use the land for sanitary landfill and maintenance yard purposes.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and disposal of the land would serve important public objectives.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as conditions of the sale, is available for review at the Yuma District Office, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365.

Publication of this notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 5680, Yuma, Arizona 85364–0697. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action become the final determination of the Department of the Interior.

Dated: January 29, 1986.

J. Darwin Snell,

District Manager.

[FR Doc. 86–2568 Filed 2–5–86; 8:45 am]

BILLING CODE 4310-32-M

[A-21355]

Realty Action; Noncompetitive Sale of Public Land in La Paz County, AZ

The following described public land has been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value. The lands will not be offered for sale until 60 days after the date of this notice.

Gila and Salt River Meridian

T. 1 S., R. 23 W.,
Sec. 5, W½S½N½NW¼NE¼, W½N½S½NW¼NE¼, E½S½N½NE¼NW¼, E½N½S½NE¼NW¼.

The above described land contains 20 acres more or less.

The land is proposed to be offered for sale to La Paz County when plans to use the land for sanitary landfill purposes.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and disposal of the land would serve important public objectives.

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations, as well as conditions of the sale, is available for review at the Yuma District Office, Bureau of Land Management, 3150 Winsor Avenue, Yuma, Arizona 85365.

Publication of this notice in the **Federal Register** segregates the public land from the operations of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 5680, Yuma, Arizona 85364. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 29, 1986.

J. Darwin Snell,

District Manager.

[FR Doc. 86–2569 Filed 2–5–86; 8:45 am]

BILLING CODE 4310-32-M

Colorado; Filing of Plats of Survey

January 31, 1986.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., January 31, 1986.

The plat representing the dependent resurvey of a portion of the south and west boundaries and a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 43 N., R. 8 E., New Mexico Principal Meridian, Colorado, Group No. 804, was accepted January 14, 1986.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

The plat in twelve sheets, of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., March 21, 1986.

The plat, in twelve sheets, representing the dependent resurvey of a portion of the First Standard Parallel South, south boundary, T. 5 S., Rs. 77 and 78 W., a portion of the south and east boundaries, subdivisional lines and certain mineral claims, and the survey of the subdivision of certain sections and tract 39, T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, Group No. 638, was accepted January 16, 1986.

The survey was executed prepared to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86–2580 Filed 2–5–86; 8:45 am]

BILLING CODE 4310-84-M

[Alaska AA–48372–G]

Oil and Gas Leases; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48372–G has been received covering the following lands:

Copper River Meridian, Alaska

T. 13 N., R. 9 W.,
Sec. 4, NW¼NE¼.
(40 acres.)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid.

The required rentals and royalties accruing from February 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48372–G as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease.

BEST COPY AVAILABLE

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effective February 1, 1985, subject to the terms and conditions cited above.

Dated: January 24, 1986.

Robert E. Sorenson,

Chief, Branch of Mineral, Adjudication.

[FR Doc. 86-2576 Filed 2-5-86; 8:45 am]

BILLING CODE 4310-JA-M

Re-Inventory of Contiguous Areas Over 5,000 Acres; Mockingbird and Kofa Unit 4, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Proposed Decision—Mockingbird and Kofa Unit 4 South Re-Inventory.

Proposed Decision and Public Comment Period

Notice is hereby given that a re-inventory of two contiguous inventory units over 5,000 acres, both affected by the Sierra Club vs. Watt litigation, has been completed by the Arizona Office of the Bureau of Land Management. The units re-inventoried are:

Name	Number	Acres	District office
Mockingbird	AZ-020-008	5,700	Phoenix.
Kofa Unit 4 south	AZ-050-034	11,220	Yuma.

Field inventories and subsequent analysis indicate that both the Mockingbird and Kofa No. 4 inventory units have wilderness characteristics only in association with contiguous federal lands managed by other federal agencies. We are recommending Wilderness Study Area (WSA) status under Section 202 of FLPMA.

Publication of this notice in the **Federal Register** begins a 90-day public review and comment period on each re-inventoried unit. The public comment period will end on May 1, 1986.

The public is invited to comment on the wilderness re-inventory proposed decision and to submit additional information in order to assist the BLM in the assessment of wilderness characteristics on these public lands. Copies of the report and map are available from the following Bureau of Land Management offices:

Phoenix District Office, 2015 West Deer Valley Rd., Phoenix, AZ 85027 (602) 863-4464, or

Yuma District Office, 3150 Winsor Dr., P.O. Box 5680, Yuma, AZ 85364 (602) 726-6300

Please send your verbal or written comments to the appropriate district office. All comments will be analyzed and a final decision issued in a subsequent **Federal Register** Notice in June, 1986.

Background Information

The U.S. District Court for the Eastern District of California issued a decision on April 18, 1985, in *Sierra Club* vs. *Watt*, concerning lands that were deleted from wilderness review in 1982 and 1983. To bring the wilderness program into compliance with this decision, the Department of Interior agreed, in a stipulated agreement with plaintiffs, to re-inventory "contiguous areas" over 5,000 acres that were under litigation. The re-inventory was conducted under procedures required by the Wilderness Inventory Handbook and Instruction Memorandum No. 85-93 (Organic Act Directive No. 78-61 and Changes 1, 2, and 3).

Those that are found to have wilderness characteristics of their own will become WSA's under section 603 of the Federal Land Policy and Management Act (FLPMA). Those that are found to have wilderness characteristics only in association with contiguous lands managed by another agency will become WSA's under section 202 of FLPMA. Both groups of WSA's will be studied by 1991 and will be managed under the Interim Management Policy (IMP). For the section 202 WSA's, management under the IMP means (as with WSA's under 5,000 acres) they are subject to the section 302 provisions rather than section 630 (see Chapter I.A.5. of the IMP).

D. Dean Bibles,

State Director.

[FR Doc. 86-2581 Filed 2-5-86; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Republication of Lists

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Service announces the republication and availability of the current Lists of Endangered and Threatened Wildlife and Plants.

DATES: The republished lists contain all changes through January 1, 1986.

ADDRESS: Requests for copies should be addressed to the Publications Unit, 148 Matomic, U.S. Fish and Wildlife Service, Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION: The Service has incorporated all changes to the list at 50 CFR 17.11 and 17.12 published since the October 1, 1985, compilation of that title. The date on this reprint is stated as January 1, 1986. In addition, minor changes or corrections to the spellings of names, historic ranges, and applicable rules elsewhere in 50 CFR have been incorporated in the special reprinting of these lists. Otherwise, no entry in these lists has been significantly affected. The document also contains a list of the 12 species that have been removed from § 17.11 or § 17.12 since 1973. The 29-page document is available from the Publications Unit (address above).

Dated: December 26, 1985.

Ronald E. Lambertson,

Acting Director.

[FR Doc. 86-2596 Filed 2-5-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulfur Operations on the Outer Continental Shelf; Receipt of Proposed Development and Production Plan; Chevron U.S.A., Inc.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct as operator of Lease OCS-P 0205 in the Santa Clara Unit. The purpose of this Notice is to inform the public that the Minerals Management Service (MMS) is considering approval of the plan and that it is available for public review and comment.

DATES: The plan may be reviewed weekdays, 8:00 a.m. to 3:00 p.m. Written comments must be received or postmarked by March 31, 1985.

ADDRESSES: The plan is available for public review at the Office of the Regional Director, Pacific OCS Region, Minerals Management Service, Room 160, 1340 West Sixth Street, Los Angeles, California 90017. Written comments may be mailed or hand-delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Dunaway, Regional Supervisor, Office of Field Operations, Pacific OCS Region, (213) 894-2083.

SUPPLEMENTARY INFORMATION: Section 25 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1351, requires the MMS to make any development and production plans available for public review. Regulation 30 CFR 250.34 provides for the publication of a Notice that such a plan is available for review.

James R. Mason,

Acting Regional Director, Pacific OCS Region.

[FR Doc. 86-2573 Filed 2-5-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Chevron U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3401, Block 8, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 24, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regulatory Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 29, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-2575 Filed 2-5-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Cities Service Oil & Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Cities Service Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4918, Block 273, Main Pass Area, offshore Louisiana and Mississippi. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submited on January 27, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (505) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 31, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-2574 Filed 2-5-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-278, 279, and 280 (Final)]

Import Investigations; Certain Cast-Iron Pipe Fittings From Brazil, Korea, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice the institution of final antidumping investigations Nos. 731-TA-278, 279, and 280 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, the Republic of Korea (Korea), and Taiwan

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of nonalloy, threaded, malleable [1] cast-iron pipe fittings, provided for in items 610.70 and 610.74 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before March 24, 1986, and the Commission will make its final injury determination by May 12, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: January 13, 1986.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202–523–6620), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of malleable cast-iron pipe fittings from Brazil, Korea, and Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on July 31, 1985 by the Cast-Iron Pipe Fittings Committee.[2] In response to these petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 38904, Sept. 25, 1985).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR § 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on March 24, 1986, pursuant to section 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on April 14, 1986 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 1, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 4, 1986 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 7, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 18, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 18, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

Authority. These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: January 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2559 Filed 2–5–86; 8:45 am]

BILLING CODE 7020–02–M

[1] The malleable cast-iron pipe fittings covered by these investigations are those with either standard pressure ratings of 150 pounds per square inch (psi) or heavy-duty pressure ratings of 300 psi.

[2] The 5 member producers of this committee are Stanley G. Flagg & Co., Inc., ITT-Grinnell Corp., Stockham Valves & Fittings Co., U-Brand Corp., and Ward Foundry Division of Clevepak Corp. U-Brand Corp. did not join the other members of the committee in filing the petitions.

[Investigation No. 731–TA–300 (Preliminary)]

Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above From Japan

Determination [1]

On the basis of the record [2] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Japan of dynamic random access memory semiconductors having a memory capacity of 256 kilobits and above,[3] of both the N–channel and the complementary metal oxide semiconductor type, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices, provided for in item 687.74 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).[4]

Background

This investigation was instituted by the Commission in response to notification from the Department of Commerce on December 11, 1985, that it was self-initiating an antidumping investigation on the subject products (50 FR 51450, Dec. 17, 1985). Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 18, 1985 (50 FR 51613). A second notice was published on December 26, 1985 (50 FR 52869), rescheduling the conference from January 3, 1986, to January 6, 1986. All persons who requested the opportunity were permitted to appear at the conference in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 27, 1986. The views of the Commission are contained in USITC Publication 1803 (January 1986), entitled "Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above from Japan: Determination of the Commission in Investigation No. 731–TA–300 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: January 29, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2553 Filed 2–5–86; 8:45 am]

BILLING CODE 7020–02–M

[1] Commissioner Brunsdale was sworn in on Jan. 3, 1986, and, therefore, did not participate in this determination.

[2] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[3] Vice Chairman Liebeler and Commissioner Eckes base their determinations in this preliminary investigation on semiconductors up to and including 1 megabit.

[4] Commissioner Lodwick determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of the subject merchandise.

[Investigation No. 337–TA–215]

Certain Double-Sided Floppy Disk Drives and Components Thereof; Commission Decision on Review Affirming Initial Determination Finding No Violation

AGENCY: U.S. International Trade Commission.

ACTION: The Commission has determined to affirm the presiding officer's initial determination finding no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in investigation No. 337–TA–215.

SUMMARY: The Commission has determined on review to affirm the administrative law judge's (ALJ) initial determination (ID) finding no violation of section 337 in the above-captioned investigation. Although the Commission has affirmed the ALJ's finding of no violation, the Commission disagrees with portions of the ALJ's reasoning in the initial determination.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION: On December 6, 1984, Tandon Corporation (Tandon) filed a complaint and a motion for temporary relief under section 337. On January 22, 1985, the Commission instituted an investigation to determine whether there is a violation of section 337 in the unlawful importation or sale of certain double-sided floppy disk drives into the United States by reason of alleged infringement of the claims of U.S. Patent No 4,151,573 (the '573 patent), the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The original respondents were: (1) Mitsubishi Electric Corporation, (2) Mitsubishi Electronics America, Inc., (3) TEAC Corporation, (4) TEAC Corporation of America (hereinafter collectively referred to as "TEAC"), (5) Sony Corporation, and (6) Sony Corporation of America (hereinafter collectively referred to as Sony). Mitsubishi is the only remaining respondent. On August 16, 1985, the Commission approved a settlement and licensing agreement between the Sony respondents and Tandon. On November 5, 1985, the Commission approved a settlement and licensing agreement between the TEAC respondents and Tandon.

On May 29, 1985, the ALJ granted the complainant's motion for temporary relief after a hearing. On September 3, 1985, the Commission decided to affirm the ALJ's ID awarding temporary relief and awarded a limited temporary exclusion order barring entry of allegedly infringing drives manufactured by the respondents except under a bond of 25 percent.

On November 1, 1985, the ALJ issued an ID finding no violation of section 337. On December 19, 1985, the Commission determined to review portions of the ID (50 FR 52866). All parties submitted briefs on all issues under review. Sankyo Seiki Manufacturing Co., Ltd., filed a submission on the issue of remedy. No Government agency comments have been received.

The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.56 of the Commission's Rules of Practice and Procedure (49 FR 46123) (19 CFR 210.56).

Copies of the Commission's action and order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Issued: January 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2556 Filed 2–5–86; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 731-TA-236 (Final)]

Hydrogenated Castor Oil From Brazil

Determination [1]

On the basis of the record [2] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil of hydrogenated castor oil (HCO), provided for in item 178.20 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 30, 1985, following a preliminary determination by the Department of Commerce that imports of HCO from Brazil were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 21, 1985 (50 FR 33858). Commerce subsequently extended the investigation (50 FR 35110, Aug. 29, 1985) and, accordingly, the Commission rescheduled its hearing (50 FR 40241, Oct. 2, 1985). The hearing was held in Washington, DC, on December 18, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 27, 1986. The views of the Commission are contained in USITC Publication 1804 (January 1986), entitled "Hydrogenated Castor Oil from Brazil: Determination of the Commission in Investigation No. 731-TA-236 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

[1] Commissioner Brunsdale was sworn in on Jan. 3, 1986, and, therefore, did not participate in this determination.

[2] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

Issued: January 29, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-2554 Filed 2-5-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 337-TA-225]

Certain Multi-Level Touch Control Lighting Switches; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Leviton Manufacturing Company, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 29, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: January 29, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-2557 Filed 2-5-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-244 (Final)]

Natural Bristle Paint Brushes From the People's Republic of China

Determinations

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China of natural bristle paint brushes, except artists' brushes, provided for in item 750.65 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

The Commission also determines, pursuant to section 734(b)(4)(B) of the Tariff Act of 1930 (19 U.S.C. 1673(b)(4)(B)), that no material injury would have been found but for any suspension of liquidation of entries of the merchandise. Because the Commission determined that there is only a threat of material injury, it did not reach the question of critical circumstances found in section 735(b)(4)(A) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(4)(A)).

Background

The Commission instituted this investigation effective August 5, 1985, following a preliminary determination by the Department of Commerce that imports of natural bristle paint brushes from the People's Republic of China were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of

[1] The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting; Commissioner Brunsdale not participating.

the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 5, 1985 (50 FR 36158). The hearing was held in Washington, DC, on December 19, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 27, 1986. The views of the Commission are contained in USITC Publication 1805 (January 1986), entitled "Natural Bristle Paint Brushes from the People's Republic of China; Determination of the Commission in Investigation No. 731-TA-244 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: January 29, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-2555 Filed 2-5-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-275 (Final)]

Oil Country Tubular Goods From Argentina; Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-275 under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Argentina of oil country tubular goods,[1] provided for in items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless this investigation is extended, Commerce will make its final dumping determination by April 8, 1986, and the Commission will make its final injury determination by May 21, 1986 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: January 22, 1986.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of oil country tubular goods from Argentina are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on July 22, 1985, by the Lone Star Steel Company, Dallas, TX and CF&I Steel Corporation, Pueblo, CO. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 37066, September 11, 1985).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing, staff report, and written submissions.—The Commission will hold a hearing in connection with this investigation at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC; the time and date of the hearing will be announced at a later date. A public version of the prehearing staff report in this investigation will be placed in the public record prior to the hearing, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21). The dates for filing prehearing and posthearing briefs and the date for filing other written submissions will also be announced at a later date.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: January 31, 1986.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-2561 Filed 2-5-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 731-TA-268 (Final)]

Certain Steel Wire Nails From Yugoslavia; Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Termination of final antidumping investigation.

SUMMARY: On January 21, 1986, the Commission received a letter from counsel on behalf of the petitioners in investigation No. 731-TA-268 (Final) withdrawing the petition and requesting that the investigation be terminated. Accordingly, pursuant to its authority under § 207.40(a) of the Commission's rules of practice and procedure (19 CFR 207.40(a)), the Commission's antidumping investigation (No. 731-TA-268 (Final)), certain steel wire nails from Yugoslavia is hereby terminated.

EFFECTIVE DATE: January 30, 1986.

[1] For purposes of this investigation, "oil country tubular goods" includes drill pipe, casing, and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute [API] specifications.

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FOR FURTHER INFORMATION CONTACT: Bruce Cates [202–523–0368], Office of Investigations, U.S. International Trade Commission, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules [19 CFR 207.40].

By order of the Commission.

Issued: January 30, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2500 Filed 2–5–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–191]

Certain Stretch Wrapping Apparatus and Components Thereof; Commission Determination Not To Review Initial Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial advisory opinion (IAO) granting with prejudice a motion to withdraw a request for an advisory opinion.

SUMMARY: Notice is hereby given that the Commission has determined not to review the IAO of the presiding administrative law judge (ALJ) granting with prejudice respondents' motion to withdraw their request for an advisory opinion.

FOR FURTHER INFORMATION CONTACT: John Kingery, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1638.

SUPPLEMENTARY INFORMATION: This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 211.54(b) (19 CFR 211.54(b)).

The above-captioned investigation was terminated in November 1984, on the basis of a consent order. Under the consent order, respondents Muller Manufacturing, Ltd., and Muller Packaging Systems, Inc., were not to import certain stretch wrapping machines which allegedly infringe the patent of complainant Lantech, Inc., after August 31, 1985. The date for full compliance was subsequently extended by the Commission to September 14, 1985, pursuant to a joint motion of the parties.

Respondents filed a request for an advisory opinion on September 18, 1985. Respondents requested that the Commission issue an advisory opinion as to whether an allegedly new machine, Dial-A-Stretch, developed by respondents, infringes any claim of the patent at issue in the Commission's investigation. Complainant responded that an advisory opinion would be appropriate under the circumstances and argued that the allegedly new machine is covered by the terms of the consent order. Pursuant to a Commission Action and Order issued December 13, 1985, the Commission certified the request to the ALJ for an IAO to be issued as expeditiously as possible.

On December 30, 1985, respondents filed a motion to withdraw the request for an advisory opinion. The motion was filed with the concurrence of the complainant. Complainant had joined a claim against the allegedly new machine in a U.S. District Court case concerning the same patent at issue in the Commission's section 337 investigation. The parties agreed to litigate the issue in that forum. The Commission investigative attorney filed a response in support of respondents' motion. On January 10, 1986, the ALJ served his IAO granting with prejudice the motion to withdraw the request. Because this was merely a request for an advisory opinion meant to provide business certainty and because the basis for the motion to withdraw the request for an advisory opinion is a choice by the parties of a different forum, a forum clearly available to them prior to the filing of this request, the Commission understands the term "with prejudice" in this instance to mean that neither complaintant nor respondents will be permitted in the future to request an advisory opinion with respect to respondents' Dial-A-Stretch stretch wrapping machine, which was the subjct of this request, regardless of any future alleged "changed circumstances."

Copies of the IAO and all other nonconfidential documents filed in connection with this investigation and with respect to the advisory opinion proceedings are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: January 31, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2558 Filed 2–5–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–267 and 268 (Preliminary) and Investigations Nos. 731–TA–304 and 305 (Preliminary)]

Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan; Antidumping Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with these investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701–TA–267 and 268 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea and Taiwan of cooking ware of stainless steel, including skillets, fry pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, and similar stainless steel vessels (but not including teakettles), all the foregoing for cooking on stove-top burners,[1] provided for in item 653.94 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of Korea and Taiwan. As provided in section 703(a), the Commission must complete preliminary countervailing duty nvestigations in 45 days, or in this case by March 7, 1986.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–304 and 305 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Korea and Taiwan of top-of-the-stove stainless steel cooking ware, including skillets, fry pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, and other stainless steel vessels used primarily for cooking on stove top burners, except teakettles,[1] provided for in item 653.94 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 7, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's rules of practice and procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: January 21, 1986.

FOR FUTHER INFORMATION CONTACT: Valerie Newkirk (202–523–0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in respose to a petition filed on January 21, 1986, by counsel on behalf of the Fair Trade Committee of the Cookware Manufacturers Association, Walworth, Wisconsin.

Participation in the investigations.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Commission's Director of Operations has schedule a conference in connection with these investigations for 9:30 a.m. on February 12, 1986, at the U.S. International Trade Commission Building, 701 E. Street NW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–523–0165) not later than February 10, 1986, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before February 14, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: January 29, 1986

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2563 Filed 2–5–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation 332–2236]

Impact of Increased U.S.-Mexican Trade on Southwest-Border Development

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearings.

EFFECTIVE DATE: January 23, 1986.

FOR FURTHER INFORMATION CONTACT: Jose Mendez (202–523–8267), Research Devision, Office of Economics, U.S. International Trade Commission, Washington, DC 20436 [telephone 202–523–0075].

Background

The Commission instituted the investigation No. 332–223 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt on November 25, 1985 of a request therefor from the Committee on Finance of the United States Senate. Pursuant to the Committee's request, the Commission's study shall address the following topics:

(1) A complete report on the nature of trade benefits Mexico receives under current U.S. trade programs, including most-favored-nation duty-free treatment; the Generalized System of Preferences; the U.S. Foreign Trade Zones Act; items 806.30 and 807 of the Tariff Schedules of the United States treatment; and other programs.

(2) A report on the value and volume of imports from Mexico that benefit from each program identified under (1) in period 1975 to 1985 and the reasonably anticipated value and volume of such imports from 1985 to 1990.

(3) An investigation of the impact of U.S. imports from Mexico and U.S. exports to Mexico upon U.S. communities near the border.

(4) A report of Mexican programs, including programs of States of Mexico, to encourage imports from the United States and to encourage industrial and other development along the border; and of U.S. programs, including programs of States of the United States, designed to encourage development along the border.

(5) Possible cooperative programs to encourage development along the border, including industrialization and processing, through increased merchandise trade along the border.

Public Hearings

The Commission will hold two public hearings in connection with this investigation in McAllen, Texas on April 7, 1986 and El Paso, Texas on April 8, 1986. The location and times of these

[1] The products are made of stainless steel and may have either plain bottoms or contain one or more layers of aluminum, copper, or carbon steel for more even heat distribution.

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hearings shall be announced at a later date. All persons shall have the right to appear, by counsel or in person, to present information to be heard. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on March 24, 1986. All persons desiring to appear at the hearings and make oral presentations should file prehearing briefs. The deadline for filing prehearing briefs is March 26, 1986.

Written Submissions

In lieu of or in addition to appearances at the public hearings, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received no later than March 24, 1986. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Posthearing briefs must be submitted not later than the close of business on April 21, 1986. A signed original and 14 true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: January 28, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–2562 Filed 2–5–86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-32)]

Intrastate Rail Rate Authority; Utah

AGENCY: Interstate Commerce Commission.

ACTION: Assumption of Commission jurisdiction over Utah Intrastate Rail Transportation.

SUMMARY: Pursuant to a request from the Public Service Commission of Utah (PSUC), the Commission will assert jurisdiction over intrastate freight rates in Utah and vacate the provisional certification of PSCU.

EFFECTIVE DATE: March 7, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTAL INFORMATION: In Ex Parte No. 388 (Sub-No. 32), *Intrastate Rail Rate Authority-Utah* (not printed), served October 10, 1984, the Commission extended the provisional certification, pursuant to 49 U.S.C. 11501, of Utah to allow the State time to make necessary statutory amendments, in conformance with Federal law, as set forth in that decision.

As requested by the Public Service Commission of Utah in a letter filed January 9, 1986, the Commission is vacating the provisional certification of the PSCU and assuming jurisdiction over Utah intrastate rail rates.

Rail carriers in Utah shall comply with Commission regulations including the filing of intrastate tariffs with the Commission. Parties that wish to continue litigating cases that were pending before PSCU shall so advise Deputy Director Louis E. Gitomer, Rail Section, Office of Proceedings. In the case of any remaining pending State section 229 cases, parties shall consult immediately with Chief Administrative Law Judge David Allard. In this way, we will develop, with the parties, appropriate steps in each case to transfer the records and establish procedural schedules.

This decision does not significantly affect either the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 11501.

Decided: January 30, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–2603 Filed 2–5–86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30757]

Norfolk and Western Railway Co. Trackage Rights Exemption; Consolidated Rail Corp.

Consolidated Rail Corporation has agreed to grant overhead trackage rights to Norfolk and Western Railway Company for a term of 5 years, over 4.3 miles of its line in Toledo, OH, between Milepost 287.9 and Rockwell Junction (Milepost 2.4) and Stanley (Milepost 4.0). The trackage rights were effective on December 16, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: January 31, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86–2604 Filed 2–5–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-36X); AB-36 (Sub-22X)]

Union Pacific Railroad Co.—Exemption to Discontinue Operations in Salt Lake County, UT; Oregon Short Line Railroad Co.; Exemption; Abandonment in Salt Lake County, UT

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903 *et seq.*, the discontinuance of operations by the Union Pacific Railroad Company and the abandonment by the Oregon Short Line Railroad Company of 1.66 miles of track in Salt Lake City, UT, subject to standard labor protective conditions.

DATES: This exemption shall be effective on March 7, 1986. Petitions to stay must be filed by February 21, 1986. Petitions for reconsideration must be filed by March 3, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–33 (Sub–No. 36X) and Docket No. AB–36 (Sub–No. 22X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representatives, Joseph D. Anthofer, Jeanna L. Regier, Union Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 5, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 86–2602 Filed 2–5–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 85–22]

Joseph V. Cusmano, M.D.; Revocation of Registration

On March 7, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Joseph V. Cusmano, M.D. (Respondent) of 19719 Oakbrook Circle, Boca Raton, Florida 33434, an Order to Show Cause, proposing to revoke Respondent's DEA Certificate of Registration AC5265396. The statutory ground under 21 U.S.C. 824(a)(2) for the proposed action is Respondnet's conviction on January 10, 1985, of conspiring to import marijuana in violation of 21 U.S.C. 963, and of conspiring to possess marijuana with intent to distribute in violation of 21 U.S.C. 841(a)(1) and 846. Each is a felony offense relating to a controlled substance. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

The hearing in this matter was held in Miami, Florida on May 23, 1985. Administrative Law Judge Francis L. Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on November 25, 1985, Judge Young transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby isues his final order in this matter, based on the following findings of fact and conclusions of law.

The Administrative Law Judge found that Respondent, a radiologist in Delray Beach, Florida, first came to the investigative attention of DEA in May, 1984, when a confidential informant reported that Dr. Cusmano proposed to the informant that they use a large ocean-going sailboat to import marijuana from Jamaica. DEA Agents directed the informant to determine if Respondent would be interested in using a DC–3 airplane in such an undertaking, rather than a sailboat. Respondent agreed to this approach.

After negotiations between Respondent, the informant and a DEA undercover agent, it was agreed that a flight to Jamaica would take place utilizing the DC–3 to pick up the load of marijuana. Due to inclement weather and a miscommunication between Respondent and another subject by the name of Ben White, the mission was aborted. As a result of this investigation, Respondent was convicted on January 10, 1985, in the United States District Court for the Southern District of Florida, for conspiring to import marijuana and conspiring to possess marijuana with intent to distribute it. These are felony convictions related to controlled substances. There is, therefore, a lawful basis for the revocation of Respondent's registration. 21 U.S.C. 824(a)(2). As a result of these convictions, Respondent was sentenced to five years imprisonment and five years probation. Respondent is currently incarcerated and is unable to practice medicine. His conviction is on appeal and Respondent has filed a motion for new trial.

The Administrative Law Judge further found that Respondent was the central moving force behind the planned operation to smuggle marijuana into the United States. Respondent kept in close contact with the DEA undercover agent and was adamant about being kept fully informed of any action. Respondent was never hesitant and never showed any fear or uncertainty as to the eventual objective. The record establishes that Respondent is a very competent and highly regarded radiologist. He appears to have been financially successful in his professional practice. There was no showing of any financial pressure to involve himself in this marijuana smuggling activity, nor would such pressures excuse a physician's participation in such illicit activity.

The Administrative Law Judge found that the fact that marijuana is a proscribed substance, beyond the pale of Respondent's DEA registration, is irrelevant. The Administrator has so ruled in a number of past cases. See *Coleman Preston McCown, D.D.S.*, Docket No. 82–28, 49 FR 45818 (1984) (illegal distribution of cocaine); *Tilman J. Bentley, D.O.*, Docket No. 32–22, 49 FR 35049 (1984) (conspiracy to manufacture methaqualone); *Dennis Howard Harris, M.D.*, Docket No. 84–19, 49 FR 39930 (1984) (attempted manufacture of MDA); *Aaron A. Moss, D.D.S.*, Docket No. 80–2, FR 72850 (1980) (smuggling cocaine into the United States). The facts in each case, and in this one, demonstrate a basic lack of trustworthiness, regardless of the controlled substance involved. Respondent clearly emerges as a person not to be trusted with a DEA registration.

Finally, the Administrative Law Judge found the fact that Respondent's conviction is on appeal irrelevant to the present action. If Respondent's pending new trial motion results in his conviction being overturned, then this basis for revocation of his registration would no longer exist. At this time, however, there is a lawful basis for the revocation of Respondent's registration. Therefore, Judge Young recommended that Respondent's DEA Certification of Registration be revoked.

The Administrator adopts the recommended rulings, findings of fact, conclusions of law and decision of the Administrative Law Judge in their entirety.

Having concluded that there is a lawful basis for the revocation of the Respondent's registration, and having further concluded that under the facts and circumstances presented in this case the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100, hereby orders that DEA Certification of Registration AC5265396, previously issued to Joseph V. Cusmano, M.D., be, and is hereby revoked.

Dated: February 3, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–2638 Filed 2–5–86; 8:45 am]

BILLING CODE 4410-09-M

Richard Oliver Ranheim, M.D.; Denial of Application

On December 16, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Richard Oliver Ranheim, M.D. (Respondent) of Mansura, Louisiana, an Order to Show Cause proposing to deny his application, executed on July 22, 1985, for registration as a practitioner under 21 U.S.C. 823(f). The statutory basis for the proposed action was that Dr. Ranheim is not currently authorized by the State of Louisiana to prescribe, dispense,

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administer or otherwise handle controlled substances. 21 U.S.C. 824(a)(3). In addition, the Order to Show Cause alleged that Dr. Ranheim materially falsified his application by indicating that he had never surrendered a CAS registration, when in fact he did surrender DEA Certificate of Registration, AR9595919 on October 18, 1984. 21 U.S.C. 824(a)(1).

On January 11, 1986, in lieu of requesting a hearing, Respondent submitted a written statement regarding his position on the issues raised by the Order to Show Cause pursuant to 21 CFR 1301.54(c). The Administrator enters his final order in this matter based on the investigative file and Respondent's written statement. 21 CFR 1301.57.

The Administrator finds that the Louisiana State Board of Medical Examiners conducted an administrative hearing on August 24, 1984, to adjudicate alleged violations of the Louisiana Medical Practice Act by Dr. Ranheim, to-wit: "[p]rescribing, dispensing or administering habit-forming or other legally controlled substances in other than a legal or legitimate manner; continuing or recurring medical practice which fails to satisfy the prevailing and usually accepted standards of medical practice in Louisiana; and professional or medical incompetency." Subsequently, the Louisiana State Board of Medical Examiners rendered a Final Decision in this matter on September 20, 1984. The Board ordered that Dr. Ranheim's license to practice medicine in the State of Louisiana be suspended for five years, with the suspension stayed except for the period beginning October 1, 1984 and ending March 31, 1985, during which the suspension shall have full force and effect. In addition, the Board further ordered that, "Dr. Ranheim shall not, from October 1, 1984, until further order from the board, prescribe, dispense or administer controlled substances as defined enumerated or included in 21 CFR 1308.11—1308.15 and LSA–R.S. 40:964 and any substance which hereafter may be included in any controlled substances schedule by amendment or revision of the cited regulations or statute."

As a result of this order by the Board, Dr. Ranheim surrendered his DEA Certificate of Registration AR9595919 on October 18, 1984. Dr. Ranheim is now seeking a new DEA Certificate of Registration.

The Administrator finds that in a letter dated October 28, 1985, the Executive Assistant of the Louisiana State Board of Medical Examiners confirmed that Dr. Ranheim has had no authority to prescribe, administer or dispense controlled substances since October 1, 1984, and will continue to have no such authority until the Louisiana State Board of Medical Examiners amends its Final Decision of September 20, 1984.

DEA has consistently held that if a registrant or applicant is without authority to handle controlled substances under the laws of the state in which he practices or proposes to practice, DEA is without statutory authority to issue or maintain a registration. See, *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); *Sam S. Misosi, D.O.*, 50 FR 11469 (1985); *Jesse Gutmon, D.D.S.*, 49 FR 28780 (1984) and cases cited therein.

The administrator concludes that Respondent lacks authority under state law to handle controlled substances in Louisiana, the state in which he wishes to become registered. Therefore, DEA cannot register Respondent in Louisiana. Additionally, the Administrator concludes that Dr. Ranheim materially falsified his application for registration by indicating that he had never surrendered a CSA registration, when in fact he did surrender DEA Certificate of Registration, AR9595919 on October 18, 1984. Based on the foregoing reasons, the Administrator must deny Respondent's application for registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application of Richard Oliver Ranheim, M.D., for registration under the Controlled Substance Act, be, and it hereby is denied effective February 6, 1986.

Dated: February 3, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–2639 Filed 2–5–86; 8:45 am]

BILLING CODE 4410–09–M

John H. Story, M.D.; Revocation of Registration

On November 1, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to John H. Story, M.D. of 25 West 10th Street, Lovell, Wyoming 32421 (Respondent), an Order to Show Cause proposing to revoke DEA Certificate of Registration AS3255824, issued to Respondent as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action is that Respondent is not authorized to handle controlled substances in the State of Wyoming due to the revocation of his license to practice medicine in that State.

In a letter dated November 21, 1985, Respondent's counsel specifically waived Respondent's opportunity for a hearing and instead filed a written statement regarding his position on the matters of fact and law involved. 21 CFR 1301.54(c). The Administrator has considered the entire investigation file in this matter, including Respondent's written statement, and hereby issues this final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that on June 30, 1984, the State of Wyoming, Board of Medical Examiners ordered the revocation of the medical license of John Story, M.D. The revocation was based upon the conviction of Dr. Story in the District Court for the County of Big Horn of three counts of assault and battery with intend to commit rape.

Respondent's counsel, in his letter dated November 21, 1985, acknowledges that Respondent is not currently licensed to practice medicine in Wyoming. The letter continues by stating that Respondent is licensed to practice medicine in the State of Nebraska. Respondent's counsel also indicates that the basis for the revocation of his medical license is not related to handling of controlled substances, and that the action is under appeal.

The Administrator notes that the fact that Respondent is licensed to practice medicine in the State of Nebraska is irrelevant to the determination of whether Respondent may lawfully possess a DEA registration in the State of Wyoming, where he is not licensed to practice. If Respondent intends to practice medicine in the State of Nebraska, and wishes to apply for a DEA Certificate of Registration, he must do so as a practitioner in the State of Nebraska. In addition, the basis for the revocation of his medical license is irrelevant. The Administrator has consistently held that when a DEA registrant is not authorized to handle controlled substances under the laws of the State in which he practices, DEA is without lawful authority to maintain a registration. See *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985) *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983), and *Thomas E. Woodson, D.O.*, Docket No. 81–4, 47 FR 1353 (1982).

Finally, the Administrator finds the fact that the revocation of Respondent's license is on appeal irrelevant to the present action. Respondent is not currently licensed to practice medicine or authorized to handle controlled sustances in the State of Wyoming. At this time, there is a lawful basis for the revocation of Respondent's registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS3255824, issued to John H. Story, M.D., be, and hereby is revoked effective March 10, 1986.

Dated: February 3, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–2640 Filed 2–5–86; 8:45 am]

BILLING CODE 4410–09–M

MERIT SYSTEMS PROTECTION BOARD

Significant Actions of OPM; Issuance of Orders Under Section 1205(e) Concerning Regulation Review

AGENCY: Merit Systems Protection Board.

ACTION: Notice of Order.

SUMMARY: 5 U.S.C. 1205(e) authorizes the Board to review rules and regulations issued by the Office of Personnel Management (OPM) and their implementation by other federal agencies in order to determine if they have required or would require any federal employee to commit a prohibited personnel practice in violation of 5 U.S.C. 2302(b). Mr. Berry Nelson, Administrative Director, National Council of Field Assessment Locals, American Federation of Government Employees has petitioned the Board under 5 U.S.C. 1205(e)(1) (B) to review certain performance standards of the Social Security Administration implemented on or about October 1, 1983. It is alleged that those standards represent an invalid implementation of Office of Personnel Management regulations concerning performance appraisal systems. Because the petition failed to present any particular instance of invalid implementation and the regularity of performance standards can be challenged by way of appeal from performance-based personnel actions, the petition has been denied.

FOR FURTHER INFORMATION CONTACT: William Cardoza, Office of General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419, (202) 653–8911.

Dated: January 31, 1986.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 86–2605 Filed 2–5–86; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: February 24–25, 1986.

Time: 8:30 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review applications for support of Editions of American materials submitted to the Editions category of the Texts Program in the Division of Research Programs, for projects beginning after July 1, 1986.

The proposed meeting is for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), (6) and (9) (B) of section 552b of title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86–2625 Filed 2–5–86; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Design, Manufacturing, and Computer Engineering; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Design, Manufacturing, and Computer Engineering (DMCE).

Date and time: February 24–25, 1986, 9:00 a.m.–5:00 p.m., February 24 9:00 a.m.–3:00 p.m., February 25.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, Room 540–February 24; Room 523–February 25.

Type of meeting: Open.

Contact person: Dr. Bernard Chern, Division Director, DMCE, Room 1108, National Science Foundation, Telephone: 202/357–7508.

Summary minutes: Dr. Chern.

Purpose of meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to the Division of Design, Manufacturing, and Computer Engineering.

Summarized agenda: Discussions on issues, opportunities and future directions for the Division in Design, Manufacturing, and Computer Engineering; discussion of the DMCE budget for FY 1986; discussion of budget issues with the NSF Assistant Director for Engineering, as well as other items.

Dated: February 3, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–2656 Filed 2–5–86; 8:45 am]

BILLING CODE 7555–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has

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made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 481, 1615 "M" Street, NW., Washington, DC 20527; Telephone (202) 457–7151.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7231.

Summary of Form Under Review:

Type of Request: Revision
Title: Contractors and Exporters Application Form
Form Number: OPIC–81
Frequency of Use: Nonrecurring
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Description of Affected Public: Business firms requesting OPIC insurance
Number of Responses: 100
Reporting Hours: 200
Federal Cost: $1,000.00
Authority for Information Collection: Sections 231 and 234(a) of the Foreign Assistance Act of 1961, as amended
Abstract (Needs and Uses): Forms are sent to entities seeking OPIC insurance and solicit only information required by OPIC to enable it to process insurance policies requested by such entities.

Dated: January 10, 1986.

Robert C. Sullivan,

Office of the General Counsel.

[FR Doc. 86–2566 Filed 2–5–86; 8:45 am]

BILLING CODE 3210–01–M

POSTAL RATE COMMISSION

[Docket No. SS86–1]

Agency Information Collection Activities Under OMB Review

January 31, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bennie Gaston; Patti Birge Tyson.

AGENCY: Postal Rate Commission.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) the Commission has submitted the following proposal for the collection of information to the Office of Management and Budget for emergency, or expedited review and approval.

Summary of Proposal: A one-time information collection effort, Docket No. SS86–1, to ascertain the types of advertisements which are supported by federal subsidies for categories of "preferred rate" mail. The Commission has been asking to develop recommendations for legislation which would reduce the amount of such subsidies. Voluntary responses will be sought from 2,800 mailers.

Additional Information or Comments: Copies of the above information request proposal can be obtained by calling or writing Charles L. Clapp, Postal Rate Commission, 1333 H Street, N.W., Washington, DC 20268–0001, (202) 789–6840. Comments may be sent to the Postal Rate Commission and to Michael Weinstein, OMB Desk Officer for the Postal Rate Commission, Room 3235, New Executive Office Building, Washington, DC 20503.

Charles L. Clapp,

Secretary.

[FR Doc. 86–2550 Filed 2–5–86; 8:45 am]

BILLING CODE 7715–01–M

PRESIDENTIAL TASK FORCE ON PROJECT ECONOMIC JUSTICE

Meeting

In accordance with Federal Advisory Committee Act, Pub. L. 92–463, the Presidential Task Force on Project Economic Justice announces the following meeting:

Date: Monday, March 3, 1986.
Time: 9:00 a.m.–3:00 p.m.
Place: Department of State, Conference Room 1205, C Street Entrance, Washington, DC 20520.
Type of Meeting: Open.
Contact Person: Bruce L. Mazzie, Executive Director, Presidential Task Force on Project Economic Justice, 655 Fifteenth Street, NW, Suite 200, Washington, DC 20005, (202) 639–8090.

Purpose and Agenda: To review materials prepared for the report prepared by members of the Task Force.

Bruce L. Mazzie,

Executive Director and Committee Management Officer.

[FR Doc. 86–2630 Filed 2–5–86; 8:45 am]

BILLING CODE 6820–09–M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes to Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed changes to systems of records.

SUMMARY: The purposes of this document are (1) to give notice of 33 proposed routine uses for 19 of the RRB's systems of records; (2) to give notice of 30 revisions of existing routine uses in 17 systems of records; (3) to delete the same routine use in 2 systems of records; and (4) to give notice of several changes in other categories for several systems of records.

DATES: The new routine uses that are proposed shall be effective as proposed without further notice 30 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination. All other changes shall be effective as of the date of this publication.

ADDRESS: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611, (312) 751–4548 (FTS 387–4548).

SUPPLEMENTARY INFORMATION

Part I: Proposed Routine Uses

One routine use proposed for inclusion in 19 systems of records (RRB–1, "s"; RRB–3, "o"; RRB–4, "g"; RRB–5, "p"; RRB–6, "p"; RRB–7, "r"; RRB–9, "j"; RRB–17, "g"; RRB–20, "u"; RRB–21, "aa"; RRB–22, "ii"; RRB–34, "f"; RRB–35, "e"; RRB–36, "d"; RRB–38, "j"; RRB–39, "q"; RRB–40, "r"; RRB–41, "p"; RRB–42, "f") would permit the disclosure of relevant information to the Office of the President of the United States for use in responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf. This routine use is similar to an existing routine use which provides for disclosure to Congressional office from the record of an individual for use in responding to an

inquiry made to that office by the subject individual.

Proposed routine use "q" in system of records RRB–1 would provide for disclosure of beneficiary identifying information, address, amounts of benefits paid and repaid, beneficiary withholding instructions, and amounts withheld by the RRB for tax purposes to the IRS for tax administration. This routine use is identical to routine use "hh" in system of records RRB–22, which was previously published. It is required by a change in the law providing for the taxability of portions of SSA benefits under certain conditions.

Proposed routine use "r" in system records RRB–1 would provide for disclosure of beneficiary identifying information, entitlement data, and benefit rates to the Department of State and embassy and consular officials, to the American Institute on Taiwan, and to the Veterans' Administration, Regional Office, Philippines, to aid in insuring the continued payment of beneficiaries living abroad. This routine use is identical to routine use "jj" in system of records RRB–22, which was previously published; inadvertantly it was not published previously.

Proposed routine use "j" in system of records RRB–3 would provide for disclosure of necessary information to the U.S. Postal Service and to State and local police authorities for investigation of the loss, theft, and/or forgery of Medicare checks. This routine use is similar to routine use "d" in system of records RRB–21 and routine use "f" in system of records RRB–22; inadvertantly it was not published previously.

Proposed routine use "k" through "n" in system of records RRB–3 are unique to this system, "MEDICARE: Part B (Supplementary Medical Insurance) Payment System—Contract to the Travelers Insurance Company." They parallel similar routine uses in HCFA's similar system of records.

Proposed routine use "k" would permit disclosure of relevant information to state licensing boards for review of unethical practices or unprofessional conduct on the part of health providers, and when such information has been so disclosed, also to state agencies investigating such conduct under Titles V and XIX, to the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) and to CHAMPUS contractors that are not also Medicare contractors.

Proposed routine use "m" would permit disclosure to a state agency charged with administration of a program under Title XIX (or to a carrier acting for a state agency) of the following information: The physician's name, other practitioner and supplier identification numbers, and charges of physicians or other suppliers for services furnished to beneficiaries.

Proposed routine use "n" would permit disclosure to a state agency or to a carrier acting for a state agency, charged with administration of a program under Title XIX of an individual's entitlement, benefit payment or benefit utilization.

Proposed routine use "s" in system RRB–20, "Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (MEDICARE)," would permit disclosure to the Department of the Treasury for the purpose of investigating alleged forgery or theft of Medicare reimbursement checks. Proposed routine use "t" of the same system would permit disclosure to the U.S. Postal Service for the same purpose. Both these routine uses are found in other systems: Proposed routine use "s" is similar to routine use "c" in system of records RRB–21 and to routine use "e" in system of records RRB–22.

Proposed routine use "z" in system of records RRB–21, "Railroad Unemployment and Sickness Insurance Benefit System," would permit disclosure to claimant's last railroad employer of the amount of each sickness benefit that is subject to a tier 1 railroad retirement tax and the amount of the tier 1 tax withheld to enable that employer to compute its tax liability under the Railroad Retirement Tax Act. Proposed routine use "bb" in the same system of records would permit disclosure to the Internal Revenue Service for tax administration purposes of the amount of sickness benefits paid and claimant identifying information except for sickness benefits paid for an on-the-job injury. Such sickness benefits became taxable under the Internal Revenue Code as a result of the enactment of the Railroad Retirement Solvency Act of 1983.

Proposed routine use "jj" in system of records RRB–22, "Railroad Retirement, Survivor, and Pensioner Benefit System," would permit disclosure of last address and beneficiary identifying information to railroad employers for the purpose of mailing railroad passes to retired employees and their families.

Proposed routine use "c" in system of records RRB–36, renamed "Complaint, Grievance, Disciplinary and Adverse Action Files," would permit disclosure to the Merit System Protection Board or an arbitrator to adjudicate an appeal, complaint, or grievance.

Proposed routine use "p" in system of records RRB–39, "Milwaukee Railroad Restructuring Act Benefit System," would permit the disclosure to the Internal Revenue Service for tax administration purposes of the amount of supplementary unemployment insurance paid, if $10 or more in a calendar year, and claimant identifying information.

Part II: Revisions of Existing Routine Uses

The following existing routine uses in the following systems of records are being revised to better express what information is being disclosed and for what purposes, or to change the name of the organization to which the information can be disclosed due to the renaming of the organization, or to limit the conditions under which disclosure can be made:

RRB–1	"c," "e," and "o"
RRB–3	"b" and "h"
RRB–5	"l"
RRB–6	"m"
RRB–7	"p"
RRB–8	"d"
RRB–9	"h"
RRB–10	only routine use
RRB–11	only routine use
RRB–17	"g"
RRB–20	"d," "e," "j," "k," and "q"
RRB–21	"e," "s," and "w"
RRB–22	"e" and "x"
RRB–38	"h"
RRB–39	"i," "n," and "o"
RRB–41	"j" and "k"
RRB–42	"c"

These revisions do not constitute new or expanded disclosures.

Part III: Changes in Other Categories

System name:

We revised the system name for systems RRB–5, RRB–15, RRB–35, and RRB–36 to better express the content of these systems.

Categories of individuals covered by the system:

We revised this category for systems RRB–1, RRB–4, RRB–5, RRB–12, RRB–36, & RRB–37 to better or more comprehensively describe the individuals covered by the system. None of the revisions reflect new groups of individuals covered by the system.

Categories of records in the system:

We revised this category for systems RRB–4, RRB–5, RRB–34, RRB–35, RRB–36, & RRB–40 to correctly or more comprehensively describe the categories of records in these systems. None of the revisions reflect any new categories of records added to the systems.

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Authority for maintenance of the system:

We revised this category in system RRB–36 to reflect the correct legal citations.

Storage and Safeguards:

We revised these two categories for system RRB–36.

Retention and disposal:

We revised this category for systems RRB–8, RRB–9, RRB–17, RRB–35, RRB–36, RRB–38, & RRB–39.

System manager(s):

Because of organizational changes, we changed the name of the system managers in the following systems: RRB–3, RRB–5, RRB–8, RRB–9, RRB–10, RRB–11, RRB–12, RRB–13, RRB–15, RRB–16, & RRB–37.

Record source categories:

We revised this category for system RRB–36.

Part IV: Systems Covered by This Document

RRB–1 Social Security Benefit Vouchering System
RRB–3 Medicare, Part B (Supplementary Medical Insurance Payment System—Contracted to the Travelers Insurance Company)
RRB–4 Microfiche of Estimate Annuity, Total Compensation and Residual Amount File
RRB–5 Master File of Railroad Employees' Creditable Compensation
RRB–6 Unemployment Insurance Record File
RRB–7 Applications for Unemployment Benefits and Placement Service under the Railroad Unemployment Insurance Act
RRB–8 Railroad Retirement Tax Reconciliation System
RRB–9 Protest and Appeals under the Railroad Unemployment Insurance Act
RRB–10 Legal Opinion Files
RRB–11 Files on Concluded Litigation
RRB–12 Railroad Employees Registration File
RRB–13 Disclosure of Information Files
RRB–14 Freedom of Information Act Register
RRB–15 Covered Abandoned Railroads
RRB–16 Social Security Administration Summary Earnings File
RRB–17 Appeal Decisions from Initial Denials for Benefits Under the Provisions of the Railroad Retirement Act.
RRB–18 Travel and Miscellaneous Voucher Examining System
RRB–19 Payroll Record System
RRB–20 Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (MEDICARE)
RRB–21 Railroad Unemployment and Sickness Insurance Benefit System
RRB–22 Railroad Retirement, Survivor, and Pensioner Benefit System
RRB–34 Employee Personnel Management Files
RRB–35 Employee Promotion Evaluation File
RRB–36 Negotiated Grievance File
RRB–37 Medical Records on Railroads Retirement Board Employees
RRB–38 Regional Rail Reorganization Act Reimbursement System
RRB–39 Milwaukee Railroad Restructuring Act Benefit System
RRB–40 Regional Rail Reorganization Act Title VII Benefit System
RRB–41 Rock Island Railroad Transition and Employee Assistance Act Benefit System
RRB–42 Uncollectible Benefit Overpayment Accounts

Part V: Previous Publication

Unless noted otherwise below, all systems covered by this document were last published in their entirety on September 20, 1977, at 42 FR 47469–88.

RRB–1 August 12, 1981, at 46 FR 40642–43
RRB–5 September 26, 1978, at 43 FR 43642–43
RRB–6 September 26, 1978, at 43 FR 43644–45
RRB–7 September 26, 1978, at 43 FR 43645–46
RRB–19 March 13, 1980, at 45 FR 16373–74
RRB–20 March 13, 1980, at 45 FR 16374–75
RRB–21 March 13, 1980, at 45 FR 16375–76
RRB–22 August 12, 1981, at 46 FR 40643–44
RRB–39 August 12, 1981, at 46 FR 40645–46
RRB–40 March 18, 1982, at 47 FR 11796–97
RRB–41 September 11, 1983, at 48 FR 43246–48
RRB–42 March 2, 1984, at 49 FR 7900–01

Dated: January 30, 1986.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RRB–1

SYSTEM NAME:

Social Security Benefit Vouchering System—RRB.

* * * * *

This section is revised to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants after December 31, 1974, for benefits under Title II of the Social Security Act who have completed ten years of creditable service in the railroad industry, the spouse and/or divorced spouse or survivor of such an individual.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Paragraphs "c," "e," and "o" are revised to read as follows:

* * * * *

c. Benefit rates, names, and addresses may be released to the Department of the Treasury to control for reclamation and return of outstanding benefit payments, to issue benefit payments, act on reports of non-receipt, to insure delivery of payments to the correct address of the beneficiary or representative payee or to proper financial organization, and to investigate alleged forgery, theft or unlawful negotiation of railroad retirement or social security benefit checks or improper diversion of payments directed to a financial organization.

* * * * *

e. Beneficiary identifying information, effective date, benefit rates, and months paid may be furnished to the Veterans Administration for the purpose of assisting that agency in determining eligibility for benefits or verifying continued entitlement to and the correct amount of benefits payable under programs which it administers.

* * * * *

o. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

Paragraphs "q," "r," and "s" are added to read as follows:

* * * * *

q. For payments made after December 31, 1983, beneficiary identifying information, address, amounts of benefits paid and repaid, beneficiary withholding instructions, and amounts withheld by the RRB for tax purposes may be furnished to the Internal Revenue Service for tax administration purposes.

r. Beneficiary identifying information, entitlement data, and benefit rates may be released to the Department of State and embassy and consular officials, to the American Institute on Taiwan, and to the Veterans Administration Regional Office, Philippines, to aid in insuring the continued payment of beneficiaries living abroad.

s. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

RRB–3

SYSTEM NAME:

Medicare: Part B (Supplementary Medical Insurance) Payment System—Contract to the Travelers Insurance Company—RRB.

* * * * *

This section is revised to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, health insurance claim number, address, telephone number, description of illness and treatment pertaining to claim, indication of other health insurance or medical assistance pertinent to claim, date(s) and place(s) of physician service, description of medical procedures, services or supplies furnished, nature of illness(es), medical charges, name, address and telephone of physician, Part B entitlement date, Part B deductible status, and amount of payment to beneficiary.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

Paragraph "b" and "h" are revised to read as follows:

* * * * *

b. Information regarding payments and deductibles may be released to the Department of Health and Human Services for uses in administering Title XVIII of the Social Security Act, as amended, and to establish, audit and maintain account and vouchering records.

* * * * *

h. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

Paragraphs "j" through "o" are added to read as follows:

* * * * *

j. Information may be furnished to the U.S. Postal Service and to State and local police authorities for investigation of the loss, theft, and/or forgery of Medicare checks.

k. Information may be furnished to the State licensing boards for review of unethical practices or nonprofessional conduct. When such information has been disclosed to a State licensing board, it may also be disclosed when requested to State agencies investigating such conduct under Titles V and XIX and to the CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) organization and to CHAMPUS contractors that are not also Medicare contractors.

l. General guidelines dealing with length of stay, diagnosis and other criteria used in the claims process to establish the basis for payment may be disclosed to the requester. Information regarding physicians' prevailing or customary charges may be furnished.

m. The following general types of information may be disclosed to Title XIX agencies (to a state agency or to a carrier acting for a State agency charged with administration of a program under Title XIX): physician, other practitioner and supplier identification numbers, and charges of physicians or other practitioners or suppliers for services furnished to benefficiaries.

n. Information on such matters as entitlement, benefit payment, or benefit utilization relating to an individual may be disclosed to any State agency or to a carrier acting for a State agency charged with the administration of a program under Title XIX. (Note: Disclosure to State agencies administering other Federal grants-in-aid programs requires the authorization of the beneficiary or his/her legal representative.)

o. Relevant information may be disclosed to the Office of the President for responding to an individual pursuant to an inquiry from that individual or from a third party in his/her behalf.

* * * * *

RRB–4

SYSTEM NAME:

Microfiche of Estimated Annuity, Total Compensation and Residual Amount File—RRB.

* * * * *

This section is revised to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad employees who never filed an application for an annuity, have not been reported to be deceased and who either worked in the current reporting year or have at least 120 months of creditable service.

* * * * *

This section is revised to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

For employees with less than 120 months of service: SSN, name, date of birth, sex, cumulative service, cumulative tier 1 compensation, daily pay rate, employer number, gross residual, year last worked, number and pattern of months worked in year last worked, tier 1 compensation for year last worked, tier 2 compensation for year last worked. For railroad employees with 120 or more months of service: all of the above information plus estimated annuity data and SSA data.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Paragraph "g" is added to read as follows:

* * * * *

g. Relevant information may be furnished to the Office of the President for responding to an individual pursuant

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to an inquiry from that individual or a third party in his/her behalf.

* * * * *

This section should be revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Director of Compensation and Certification, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–5

This section should be revised to read as follows:

SYSTEM NAME:

Master File of Creditable Service and Compensation of Railroad Employees—RRB.

* * * * *

This section should be revised to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals with creditable service and compensation under the Railroad Retirement and Railroad Unemployment Insurance Acts.

* * * * *

This section should be revised to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual name, social security number, claim number, date of birth, sex, race, last employer identification number, amount of daily payrate if under $100, ICC occupation code, and creditable service and compensation from 1937 to date.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Routine use "l" is revised to read as follows:

* * * * *

l. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system or records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or the Railroad Unemployment Insurance Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

New paragraph "p" is added to read as follows:

* * * * *

p. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

This section is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Director of Compensation and Certification, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–6

SYSTEM NAME:

Unemployment Insurance Record File —RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Paragraph "m" is revised to read as follows:

* * * * *

m. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Unemployment Insurance Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

Routine use "p" is added to read as follows:

* * * * *

p. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

RRB–7

SYSTEM NAME:

Applications for Unemployment Benefits and Placement Service under the Railroad Unemployment Insurance Act.

* * * * *

ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Routine uses "d" and "p" are revised to read as follows:

* * * * *

d. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter, provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

p. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Unemployment Insurance Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

Paragraph "r" is added to read as follows:

* * * * *

r. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

RRB–8

SYSTEM NAME:

Railroad Retirement Tax Reconciliation System—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Routine use "d" is revised to read as follows:

* * * * *

d. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

This section is revised to read as follows:

RETENTION AND DISPOSAL:

Employer and employee representative quarterly tax returns and tax reporting reconciliation files are destroyed by shredding.

* * * * *

This section is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Director of Fiscal Operations, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–9

SYSTEM NAME:

Protest and Appeals under the Railroad Unemployment Insurance Act—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Routine use "h" is revised to read as follows:

* * * * *

h. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Unemployment Insurance Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

Paragraph "j" is added to read as follows:

* * * * *

j. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

This section is revised to read as follows:

RETENTION AND DISPOSAL:

Decisions are retained for a period of 15 years and then destroyed by shredding.

* * * * *

This section is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Director of Hearings and Appeals, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–10

SYSTEM NAME:

Legal Opinion Files.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system's only routine use is revised to read as follows: In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act, the Railroad Unemployment Insurance Act, the Milwaukee Railroad Restructuring Act, the Rock Island Railroad Transition and Employee Assistance Act or that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

This section is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Deputy General Counsel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–11

SYSTEM NAME:

Files on Concluded Litigation.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

The system's only routine use is revised to read as follows: In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in

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the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act, the Railroad Unemployment Insurance Act, the Milwaukee Railroad Restructuring Act, or the Rock Island Railroad Transition and Employee Assistance Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

This section is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Deputy General Counsel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–12

SYSTEM NAME:

Railroad Employees' Registration File.

* * * * *

This section is revised to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who had any employment for a railroad employer after 1936 and before 1981. (Use of the registration form was discontinued January 1, 1981.)

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

This section is revised to read as follows: Director of Compensation and Certification, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–13

SYSTEM NAME:

Disclosure of Information Files.

* * * * *

This setion is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Deputy General Counsel, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–15

This section is revised to read as follows:

SYSTEM NAME:

Covered Abandoned Railroad Employers' Payroll Records—RRB.

* * * * *

This section is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Director of Compensation and Certification, U.S. Railroad Retirement Board, 844, Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–16

SYSTEM NAME:

Social Security Administration Summary Earnings File—RRB.

* * * * *

This section is revised as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Director of Compensation and Certification, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB–17

SYSTEM NAME:

Appeal Decisions from Initial Denials for Benefits Under the provisions of the Railroad Retirement Act—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Routine use "e" is revised to read as follows:

* * * * *

e. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or paticular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or that disclosure would be clearly in the furtherance of interest of the subject individual.

* * * * *

Paragraph "g" is added to read as follows:

* * * * *

g. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

This section is revised to read as follows:

RETENTION AND DISPOSAL:

Decisions are retained for a period of 15 years and then destoryed by shredding.

* * * * *

RRB–20

System name:

Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (MEDICARE).

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

Paragraphs "d," "e," "j," "k," and "q" are revised to read as follows:

* * * * *

d. Data may be disclosed to the Department of Health and Human Services for reimbursement for work done under reimbursement provisions of Title XVIII of the Social Security Act, as amended.

e. Jurisdictional clearance, premium rates, coverage election, paid-through date, and amounts of payments in arrears may be released to the Social Security Administration and the Health Care Financing Administration to assist those agencies in administering Title XVIII of the Social Security Act, as amended.

* * * * *

j. Last address information may be disclosed to the Department of Health and Human Services in conjunction with the Parent Locator Service.

k. Beneficiary identification, entitlement data and rate information may be released to the Department of State and embassy and consular officials, to the American Institute on Taiwan, and to the Veterans Administration Regional Office, Philippines, to aid in the development of applications, supporting evidence and the continued eligibility of beneficiaries and potential beneficiaries living abroad.

* * * * *

q. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

New paragraphs "s," "t," and "u" are added to read as follows:

* * * * *

s. Information may be disclosed to the Department of the Treasury for the purpose of investigating alleged forgery or theft of Medicare reimbursement checks.

t. Information may be disclosed to the U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

u. Relevant information may be disclosed to the Office of the President for responding to an individual pursuant to an inquiry from that individual for a third party in his/her behalf.

* * * * *

RRB–21

SYSTEM NAME:

Railroad Unemployment and Sickness Insurance Benefit System—RRB.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

* * * * *

Paragraphs "e," "s," and "w" are revised to read as follows:

* * * * *

e. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter, provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

s. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or the Railroad Unemployment Insurance Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

w. The amount of unemployment benefits paid, if $10 or more in a calendar year, and claimant identifying information, may be furnished to the Internal Revenue Service for tax administration purposes.

* * * * *

New paragraphs "z," "aa," and "bb" are added to read as follows:

* * * * *

z. The amount of each sickness benefit that is subject to a tier 1 railroad retirement tax and the amount of the tier 1 tax withheld may be disclosed to the claimant's last railroad employer to enable that employer to compute its tax liability under the Railroad Retirement Tax Act.

aa. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

bb. The amount of sickness benefits paid and claimant identifying information, except for sickness benefits paid for an on-the-job injury, may be furnished to the Internal Revenue Service for tax administration purposes.

* * * * *

Paragraph "m" is removed and reserved.

* * * * *

RRB–22

SYSTEM NAME:

Railroad Retirement, Survivor, and Pensioner Benefit System—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Routine uses "e" and "x" are revised to read as follows:

* * * * *

e. Benefit rates, names, and addresses may be released to the Department of the Treasury to control for reclamation and return of outstanding benefit payments, to issue benefit payments, act on reports of non-receipt, to insure delivery of payments to the correct addresses of the beneficiary or representative payee or to proper financial organization, and to investigate alleged forgery, theft or unlawful negotiation of railroad retirement or social security benefit checks or improper diversion of payments directed to a financial organization.

* * * * *

x. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

Paragraph "ii" and "jj" are added to read as follows:

* * * * *

ii. Relevant information may be disclosed to the Office of the President for responding to an individual pursuant to an inquiry from that individual or from a third party in his/her behalf.

jj. Last address and beneficiary identifying information may be furnished to railroad employers for the

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purpose of mailing railroad passes to retired employees and their families.

* * * * *

Paragraph "n" is removed and reserved.

* * * * *

RRB-33

SYSTEM NAME:

Federal Employee Incentive Awards System.

* * * * *

This section is revised to read as follows:

RETENTION AND DISPOSAL:

Denied suggestions are purged and destroyed and shredding five year after denial date. Adopted suggestions are retained permanently as are all special achievement and quality increase recommendations.

* * * * *

RRB-34

SYSTEM NAME:

Employee Personnel Management Files—RRB.

* * * * *

This section is revised to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address and phone number of the person to notify in case of emergency and personal physician; copies of (10 pay change slip, (2) bi-weekly statement of earnings and leave, (3) SF-52, Request for Personnel Action, (4) SF-50, Personnel Action, (5) service compensation date form, (6) written requests for leave, (7) performance ratings, (8) incentive awards program suggestions and awards, (9) other awards and nominations for recognition, (10) supervisory informal and formal written notes, memorandums, etc., relative to admonishment, caution, warnings, reprimand, or similar notices, (11) within-grade increase materials, (12) SF-171, Employment Application, (13) credit or debt materials; (14) letters of commendation, (15) official position descriptions, (16) probationary letters, (17) performance plans, (18) information concerning training received and seminars attended, and (19) miscellaneous correspondence.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

New Paragraph "f" is added to read as follows:

* * * * *

f. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

RRB-35

This section is revised to read as follows:

SYSTEM NAME:

Employee Skills File.

* * * * *

This section is revised to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

Board seniority date; performance rating and plan; merit pay performance appraisal rating; and an extract from the official personnel folder showing experience, education, special skills, and a synopsis of unsatisfactory or outstanding performance rating memoranda, denials of within-grade increases, letters of commendation, work-related awards, and disciplinary action memoranda and warning notices.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

New paragraph "e" is added to read as follows:

* * * * *

e. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

This section is revised to read as follows:

RETENTION AND DISPOSAL:

Retained until employee terminates employment with the Board or enters one of the positions exempted under "Categories of individuals" above. The material is updated as new information is received. Superseded materials are destroyed by shredding.

* * * * *

RRB-36

This section is revised to read as follows:

SYSTEM NAME:

Complaint, Grievance, Disciplinary and Adverse Action Files—RRB.

* * * * *

This section is revised to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad Retirement Board employees who are the subjects of disciplinary or adverse actions or who have filed a complaint or grievance.

* * * * *

This section is revised to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to proposals and decisions in cases of discipline and adverse actions, including supporting documents; information relating to grievances filed under the agency and negotiated grievance procedures, including the grievance, final decision and any evidence submitted by the employee and/or the agency in support of or contesting the grievance.

* * * * *

This section is revised to read as follows:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C., Sections 4303, 7121, 7503, 7513, and P.L. 95-454.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

New paragraphs "c" and "d" are added to read as follows:

* * * * *

c. Records may be disclosed to the Merit Systems Protection Board or an arbitrator to adjudicate an appeal, complaint, or grievance.

d. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

This section is revised to read as follows:

STORAGE:

Paper.

* * * * *

This section is revised to read as follows:

SAFEGUARDS:

Maintained in locked file cabinets in an area not accessible to the public.

* * * * *

This section is revised to read as follows:

RETENTION AND DISPOSAL:

Maintained for four years; then destroyed by shredding.

* * * * *

This section is revised to read as follows:

RECORD SOURCE CATEGORIES:

The Railroad Retirement Board employee, the employee's supervisor, bureau or regional director, the executive director, or the employee's representative.

* * * * *

RRB-37

SYSTEMS NAME:

Medical Records on Railroad Retirement Board Employees—RRB.

* * * * *

This section is revised to read as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Board employees who utilize the Medical Service Section and any building employee involved in a medical emergency requiring medical treatment.

* * * * *

This section is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Medical Service Section Nurse, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

* * * * *

RRB-38

SYSTEM NAME:

Regional Rail Reorganization Act Reimbursement System—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Routine use "h" is revised to read as follows:

* * * * *

h. Information may be released to the Department of Justice and to courts of competent jurisdiction in response to properly issued subpoenas, provided that disclosure would be for a purpose related to enforcement of the Regional Rail Reorganization Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

New paragraph "j" is added to read as follows:

* * * * *

j. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

This section is revised to read as follows:

RETENTION AND DISPOSAL:

Upon receipt of authorization from the General Accounting Office to destroy records, magnetic tape will be written over and microform records will be shredded.

* * * * *

RRB-39

SYSTEM NAME:

Milwaukee Railroad Restructuring Act Benefit System—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

* * * * *

Routine uses "i," "n" and "o" are revised to read as follows:

* * * * *

i. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter, provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

n. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Milwaukee Railroad Restructuring Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

o. Information may be released to the Department of Justice and to courts of competent jurisdiction in response to properly issued supoenas, provided that disclosure would be for a purpose related to the enforcement of the Milwaukee Railroad Restructuring Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

New paragraphs "p" and "q" are added to read as follows:

* * * * *

p. The amount of supplementary unemployment insurance paid, if $10 or more in a calendar year, and claimant identifying information may be furnished to the Internal Revenue Service for tax administration purposes.

q. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

This section is revised to read as follows:

RETENTION AND DISPOSAL:

All records will be retained until January 1990, which is 5 years after the end of the benefit programs. Paper and microforms will be destroyed by shredding. Information on magnetic tapes and disks will be erased.

* * * * *

RRB-40

SYSTEM NAME:

Regional Rail Reorganization Act Title VII Benefit System—RRB.

* * * * *

This section is revised to read as follows:

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information such as name, address, social security number, date of birth, occupational code and employer code; information pertaining to the payment or denial of a claim under Title VII of the Regional Rail Reorganization Act, last rate of pay, reason not working, application and claims filed, information as to the amount of separation allowance, subsistence allowance, health-welfare premiums, moving expenses, new career training assistance and dates paid, erroneous payment investigations and benefit recovery information; the amount of income taxes deducted and remitted to the Internal Revenue Service; for new career assistance, information as to schools attended, courses taken and proof of payment of expenses; for

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moving expenses, if applicable, market value of residence and sale price of residence.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Routine use "r" is added to read as follows:

* * * * *

r. Relevant information may be furnished the Office of the President for responding to an individual pursuant to an inquiry from that individual or third party in his/her behalf.

* * * * *

RRB–41

SYSTEM NAME:

Rock Island Railroad Transition and Employee Assistance Act Benefit System—RRB.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses "i" and "k" are revised to read as follows:

* * * * *

i. In the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Rock Island Railroad Transition and Employee Assistance Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

k. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter, provided that disclosure is clearly in the furtherance of the interest of the subject individual.

* * * * *

New paragraph "p" is added to read as follows:

* * * * *

p. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

* * * * *

RRB–42

SYSTEM NAME:

Uncollectible Benefit Overpayment Accounts.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

* * * * *

Routine use "c" is revised to read as follows:

* * * * *

c. For information related to uncollectible overpayments of benefits paid under section 701 of the Regional Rail Reorganization Act of 1973, in the event that this system of records, maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto; for information related to uncollectible overpayments of benefits paid under any other Act administered by the Railroad Retirement Board, in the event this system of records maintained by the Railroad Retirement Board to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the Railroad Retirement Act, the Railroad Unemployment Insurance Act, the Rock Island Railroad Transition and Employee Assistance Act, or the Milwaukee Railroad Restructuring Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

* * * * *

New paragraph "f" is added to read as follows:

* * * * *

f. Relevant information may be furnished to the Office of the President for responding to an individual pursuant to an inquiry from that individual or a third party in his/her behalf.

[FR Doc. 86–2570 Filed 2–5–86; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 1:00 p.m., March 12, 1986, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh Street SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than March 6, 1986, Joan C. Hall, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/426–3574.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued At Washington, DC, on February 3, 1986.

Joan C. Hall,

Advisory Board Liaison.

[FR Doc. 86–2651 Filed 2–5–86; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: January 17, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 2587
Type of Review: New
Title: Application for Special Examination
OMB Number: 1545–0056
Form Number: IRS Forms 1023 and 872–C
Type of Review: Revision
Title: Application for Exemption Under section 501(c)(3) of the IRC (1023). Consent Fixing Period of Limitation Upon Assessment of Tax Under section 4940 of the IRC (872–C)
OMB Number: 1545–0071
Form Number: IRS Form 2120
Type of Review: Extension
Title: Multiple Support Declaration
OMB Number: 1545–0118
Form Number: IRS Form 1099–PATR
Type of Review: Extension
Title: Statement for Recipients (Patrons) of Taxable Distributions Received from Cooperatives
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Bureau of the Public Debt

OMB Number: 1535–0023
Form Number: PD 4000
Type of Review: Reinstatement
Title: Request by Owner for Reissue of U.S. Savings Bonds/Notes to Add Beneficiary or Coowner, Eliminate Beneficiary or Decedent, Show Changes of Name, and/or Correct Error in Registration
Clearance Officer: Peter Laugesen (202) 376–4102, Bureau of the Public Debt, Room 445, 999 E. Street, NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 86–2619 Filed 2–5–86; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Cotton States Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Cotton States Mutual Insurance Company, of Atlanta, Georgia, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27112, July 1, 1985.

With respect to any bonds currently in force with Cotton States Mutual Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, D.C. 20226, telephone (202) 634–2350.

Dated: January 22, 1986.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 86–2600 Filed 2–5–86; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1985 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Transport Indemnity Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Transport Indemnity Company, of Los Angeles, California, under the United States Code, Title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 50 FR 27132, July 1, 1985.

With respect to any bonds currently in force with Transport Indemnity Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634–2347.

Dated: January 22, 1986.

W.E. Douglas,

Commissioner, Financial Management Service.

[Fr. Doc. 86–2601 Filed 2–5–86; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the Federal Register notifying the public that such a submission has been made. USIA is requesting approval of an information collection which requires organizations or individuals interested in promoting German-American contacts to complete a form to be used by USIA's German-American Contacts Staff in preparing a directory of such organizations.

DATE: Comments must be received by February 18, 1986. If you intend to comment but cannot prepare comments before the deadline, please advise the OMB Reviewer and the Agency Clearance Officer promptly.

Copies: Copies of the request for clearance (SF–83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from USIA Clearance

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Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, D.C. 20547, telephone (202) 485–8676. And OMB review; Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: Title: "German-American Directory". USIA has created a German-American Contacts Staff to encourage and disseminate information on educational, cultural, professional and social contacts and exchanges between the United States and the Federal Republic of Germany. In pursuit of this goal, USIA will create a directory of German-American organizations which can be used to simplify establishing contacts between such groups and save a considerable amount of research and staff time for those interested in making such contacts.

Dated: January 22, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–2579 Filed 2–5–86; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Special Medical Advisory Group will be held on February 20 and 21, 1986. The session on February 20 will be held at the Sheraton Carlton Hotel, 923 Sixteenth Street, NW, Washington, DC 20006, and the session on February 21 will be held in the Administrator's Conference Room at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery.

The session on February 20 will convene at 6 p.m. and the session on February 21 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Kathy Eller, Secretary, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389–5156) prior to February 18, 1986.

Dated: January 29, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–2636 Filed 2–5–86; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 25
Thursday, February 6, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:35 p.m. on Friday, January 31, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider recommendations regarding the initiation of administrative enforcement proceedings against an insured bank and against persons participating in the conduct of the affairs of the bank; names of persons and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(6), (c)(8), and (c)(9)(A)(ii)).

At the same meeting, the Board also considered a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael Patriarca, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552d(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: February 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–2745 Filed 2–4–86; 3:14 pm]

BILLING CODE 6714–01–M

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federal register

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Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 7 and 18
Underground Mining Equipment; Product Testing by Applicant or Third Party; Proposed Rule

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7 and 18

Underground Mining Equipment; Product Testing by Applicant or Third Party

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement new procedures and requirements for testing and certification of certain products used in underground mines prior to MSHA approval, shifting the emphasis of the Agency from product testing to post-approval oversight of product quality. The proposal contains new technical requirements for brattice cloth and ventilation tubing, and revised requirements for battery assemblies currently contained in § 18.44 and § 18.63 of this title. It is anticipated that the proposed procedure, if adopted, would reduce the demand on the Agency's product testing and evaluation resources and improve the efficiency of the approval process.

DATES: Comments must be received on or before April 7, 1986. The removal of § 18.63 is proposed to be effective one year after the effective date of § 7.41.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances, MSHA; Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164) (Mine Act), the Mine Safety and Health Administration (MSHA) is required to approve certain products for use in underground mines. This approval indicates that MSHA's specifications and tests, designed to ensure that a product will not present a fire, explosion, or other specific safety hazard related to use, have been met.

On March 4, 1983, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (48 FR 9475) announcing the availability of a preproposal draft of a new Part 37 of Title 30 of the Code of Federal Regulations (CFR). The draft provided for an alternate and expedited application procedure for the approval of certain products and invited public comment. Technical requirements and test procedures were to be addressed in appendices to Part 37. A draft of an appendix to the preproposal draft was made available so that commenters could see the relationship of an appendix to the draft rule.

On March 18, 1983, MSHA published a notice of two public meetings (48 FR 11665) which were held in April 1983 to present detailed information regarding the Agency's approval program. MSHA received comments on the preproposal draft from equipment manufacturers, trade associations, testing organizations, mine operators, representatives of miners, and the U.S. Bureau of Mines. After reviewing these comments and suggestions, MSHA has developed this proposed rule which would require testing of products by applicants or third parties prior to receiving MSHA approval. The proposal would be codified as Part 7 of Title 30. Technical requirements for specific products would be set forth in subparts of Part 7.

MSHA's existing regulations in 30 CFR Parts 15 through 36 govern the process through which manufacturers may obtain MSHA approval, certification, acceptance or evaluation of certain products for use underground. Each of these separate parts contains application procedures and technical requirements for certain types of products. MSHA currently conducts most of the testing and evaluation of a product for a fee paid by the applicant, although some parts require pretesting of the product by the manufacturer. Upon MSHA approval, manufacturers must ensure that the product continues to conform to the specifications and design evaluated and approved by MSHA. In some instances, as part of the approval process, manufacturers are required to have a quality control plan. In addition, some parts provide for product and manufacturing site audits.

Currently, when MSHA receives an application for approval of a product for use in underground mines, every aspect of the documentation package submitted by the manufacturer is scrutinized to determine that the technical requirements of the applicable provisions of 30 CFR Parts 15 through 36 are met. Each drawing and specification in the package is cross-checked against these requirements, and, for some products, samples of the product or parts of the product are disassembled and examined by MSHA for conformity with the drawings and specifications. When MSHA verifies that an applicant's product complies with the design and construction requirements, MSHA then tests the product to determine whether it performs according to the appropriate approval requirements, unless the design precludes the need for testing. If the product passes the tests, MSHA issues an approval for the product.

Once MSHA has approved a product, the manufacturer is authorized to place an approval marketing on the product that identifies it as approved for use in underground mines. Use of the MSHA marking obligates the manufacturer to maintain the quality of the product. In addition, the MSHA marking indicates to the mining community that the product has been manufactured according to the drawings and specifications upon which the approval was based. Any proposed change to the documentation for a product approved by MSHA must be submitted for consideration prior to implementation of the change. If MSHA approves the change, MSHA then issues the manufacturer an extension of approval or a notice of acceptance of the modified product.

II. Discussion and Summary of the Proposed Rule

This proposal would initiate a new role for the Agency in the evaluation and testing of products used in underground mines. Where the Agency's current role is one which emphasizes pre-marketing testing by MSHA, this proposal would require testing by the applicant or a third party according to test procedures specified by the Agency, and require certification of test results by the applicant. While the Agency would maintain approval authority prior to marketing, the approval would be based largely on the applicant's certification that the product has met MSHA-specified technical requirements, has been tested according to the test procedures, and that the applicant will perform the specified quality assurance functions to maintain the continued quality of the product. Based on these certifications, MSHA's observance of product testing, and a review of the applicant's documentation, the Agency would issue the approval allowing the applicant to market the product as "MSHA-approved." The emphasis of the program would then be placed on the applicant's production of units under a quality assurance program and the Agency's audits of products to ensure that they have been manufactured as approved. The Agency believes that this shift in emphasis would expedite the approval of applications and give the mining community greater assurance that the products used in mines have been manufactured according to MSHA specifications.

The preproposal draft provided that MSHA test procedures and technical requirements would be specified in appendices which would be issued as Agency publications, but not regulations. Many commenters objected and stated that the technical requirements found in Parts 15-36 should be reviewed and updated through the rulemaking process to produce requirements based on more performance-oriented provisions. Such revisions, the commenters said, would allow for technological advances and thereby increase safety of miners.

MSHA agrees that the existing technical requirements for product approval need to be updated and revised. MSHA has begun a review of the existing technical requirements for revision and has made available for comment preproposal drafts of revisions to the regulations for approval of explosives and blasting units. Proposed rules will be published shortly.

This proposed rule includes in Subparts B and C revisions to the technical requirements for battery assemblies, currently approved under 30 CFR Part 18, as well as new technical requirements for the approval of brattice cloth and ventilation tubing. While the Agency currently tests brattice cloth and ventilation tubing for flame resistance, no approval regulations exist and only letters of acceptance, not approval, have been issued by the Agency. The acceptance indicates that the brattice cloth or ventilation tubing meets the flammability requirements of 30 CFR Part 75.302-3 and may, therefore, be used in an underground coal mine. MSHA requests comments on whether or not these proposed technical requirements are appropriate to assure that the products may be used safely in underground mines. MSHA further requests comments on the test procedures proposed to determine whether the product meets the technical requirements, and whether other test procedures may be more appropriate or cost-effective.

It is MSHA's intention to propose additional subparts to Part 7 which would specify the technical requirements for the full range of products which are suitable for testing by the applicant or third party. At this time, MSHA believes that designs of most products could be tested in this manner. MSHA anticipates that subparts will be developed for all products listed in Table I.

TABLE I

CFR Part	Product
18	Battery-powered intrinsically safe devices.
18	Hose conduit.
18	Electrical motors.
18	Electrical mining machines.
18	Asbestos substitute packing.
18	Explosion-proof enclosures (excluding connectors and luminaires).
18	Flame resistance testing.
18	Intrinsically safe circuits.
19	Electric cap lamps.
20	Electric mine lamps.
21	Flame safety lamps.
22	Portable methane detectors.
23	Telephones and signaling devices.
24	Single-shot blasting units.
25	Multiple-shot blasting units.
26	Lighting equipment.
27	Methane monitoring systems.
28	Fuses (for use in direct current in providing short-circuit protection for trailing cables).
29	Portable coal dust/rock dust analyzers.
31	Diesel mine locomotives.
32	Diesel engines (for non-gassy noncoal mines).
33	Dust collectors.
35	Fire-resistant hydraulic fluids.
36	Diesel engines (for gassy noncoal mines).
75	Ground check monitors.
75	Lighting systems (statement of tests and evaluation).

MSHA realizes that some applicants may need a phase-in period to prepare for the testing responsibility, while others may want to begin their own testing immediately. To accommodate both situations, MSHA is proposing that the existing approval procedures remain in effect for a phase-in period and that applicants be allowed to elect to submit an approval application under the existing procedures or under this new procedure. The phase-in period would be product specific based on MSHA's assessment of the amount of time needed to prepare for testing. MSHA believes that one year is appropriate for brattice cloth and ventilation tubing and battery assemblies. Phase-in periods will be considered for additional subparts as they are proposed. In order to avoid confusion during the phase-in period, MSHA proposes that extensions of approval only be granted under the part in which the original approval was granted.

III. Discussion of Each Subpart

Subpart A—General Provisions

The following section-by-section analysis discusses Subpart A of the proposed rule and addresses the comments received on the preproposal draft.

Section 7.1 Purpose and Scope

As discussed above, the purpose of proposed Part 7 is to set out the application procedures and requirements for MSHA approval of certain products with testing to be conducted by the applicant or a third party. The general requirements for the approval process would be set out in Subpart A and the technical requirements for the design and performance of products would be set out in additional subparts. As MSHA develops the technical requirements for additional products, new subparts of Part 7 would be proposed. For those products for which technical requirements are finalized in subparts of Part 7, approvals would be granted only under Part 7 after a specified phase-in period. After the phase-in period, the existing approval regulations would be revoked if all designs of a particular product are covered by a subpart. If only some designs are covered, the existing regulation would be revised to indicate which ones could be approved only under Part 7.

Section 7.2 Definitions

The following definitions concerning product approval are proposed for Part 7.

"Applicant". The draft proposal defined an applicant, in part, as one that "designs, manufactures, or assembles the product, and controls the assembly of the product." One commenter stated that this draft wording could preclude, for example, a machine manufacturer from submitting for approval a component manufactured by a third party. Approval of a product obligates the applicant to maintain the continuing quality and performance of the product. MSHA believes that an applicant can meet this obligation by either manufacturing or controlling the assembly of the product. Therefore, the proposed rule would revise the definition to reflect this view and would allow for approval of a component manufactured by a third party as long as the applicant maintains control over the product assembly.

"Approval". This term is used to describe a written document issued by MSHA which states that a product has met the requirements of Part 7 and which authorizes the use of an MSHA approval marking. The proposed definition is based on existing definitions of "approval" in 30 CFR Parts 15 through 36. It has been expanded to include "certification," "acceptance," and "evaluation" because these terms are also used to denote MSHA approval.

"Authorized company official". This term means the applicant or a representative of the applicant who has authority to bind the applicant. The term is used in the proposed requirements for the certification statements which are to be signed by an "authorized company official."

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"Critical characteristic". Used in the proposed requirements for quality assurance, this term is used in reference to those features of a product which could seriously affect the safety or performance of the product.

"Extension of approval". This term is used to describe a written document issued by MSHA which states that the change to a previously approved product meets the requirements of Part 7. It is based on the existing definitions of the term in 30 CFR Parts 15 through 36. The proposed rule would change the draft definition to more clearly indicate that the term would apply to changes to a product previously approved by MSHA.

"Post-approval product audit". In the preproposal draft, this term was used to describe MSHA's examination and testing of approved products to determine whether the products meet the technical requirements and have been manufactured as approved. MSHA proposes to revise the draft definition to allow the Agency, based on the nature of the product involved, to conduct either an examination or test, or both, of the product approved under this Part.

"Technical requirements". In the preproposal draft, this term was used to describe the design characteristics and features, and construction and test requirements for a product. The technical requirements were to be specified in appendices to the rule. Commenters stated that the technical requirements should be more performance—rather than design-oriented when possible. In response, MSHA proposes to revise the draft definition to mean "the design and performance requirements for a product" which would be specified in subparts of the rule.

"Test procedures".This term is used to describe the method applicants would be required to follow in testing a product under Part 7 and would be specified in subparts of this Part.

The preproposal draft of Part 37 also included definitions of the term "appendix" and "manufacturing site survey." These definitions have been deleted from proposed Part 7 since they are not used in the proposed rule.

Section 7.3 Application Procedures and Requirements.

Section 7.3 sets out the procedures and general requirements an applicant would be required to follow to request MSHA approval of a product under this Part. The documentation that would be required for different products is specified in the proposed subparts.

In a separate rulemaking, MSHA is proposing a new Part 5, Fees for Testing, Evaluation, and Approval of Mining Products. That proposal would update the existing system for charging fees and set forth the basis on which MSHA would compute fees for all approval-related services for which MSHA bears a cost, including application processing, testing, and the issuance of approvals and extensions of approval. It would provide that MSHA publish a fee schedule in the **Federal Register** on an annual basis to reflect an increase or decrease in costs associated with approval. In accordance with that proposal, fees for MSHA processing of an application under Part 7 would be subject to an hourly charge. Applicants would be billed for the fee after processing of the application is completed. After the Agency has sufficient data at the hourly rate, it would be converted to a flat fee payable with the application. The hourly rate or flat fee used by MSHA would be published annually in the **Federal Register**.

The preproposal draft would have required applicants to submit supporting documentation including, among other things, "drawings, specifications, and a drawing list." Many commenters recommended that applicants be permitted to submit composite drawings when applying for approval under this Part. Applications for approval of a product must contain sufficient information for MSHA to determine whether the product complies with the technical requirements as specified in the appropriate subpart. MSHA believes composite drawings can adequately provide the information needed for product approval and intends to specify the use of composite drawings where possible in the product subparts.

The proposal would reorganize the application procedures to separate out the three kinds of approval actions an applicant may request under Part 7—requests for: (1) Original approval, (2) subsequent approval of a similar product and (3) extension of approval. Subpart A would generally identify the information required to request each of these actions with more specific information on the documentation specified in the appropriate subparts.

In requesting an original approval, i.e., the first time an applicant seeks approval for a particular product, MSHA would require the submission of all information necessary to evaluate all facets of the design and construction of the product as they relate to the approval requirements. If, after receipt of an original approval, the applicant requests subsequent approval of a similar product or an extension of approval for the original product, the applicant would not be required to submit documentation duplicative of previously submitted information. Only information relative to changes in the previously approved product would be required, avoiding unnecessary paperwork.

Applicants would also be required to indicate whether changes in a previously approved product require testing. If tests will not be conducted, the applicant would be required to explain the technical reasons for not testing. MSHA realizes that some changes to a product would be of a nature that would not require testing. For instance, a packing gland assembly, lens assembly, or shaft assembly already approved for one product may not require testing when used in another product. Similarly, a change in the value of a resistor in a product may not require retesting of the product. Under the proposal, however, MSHA would evaluate the need for retesting in each case taking into account the applicant's explanation for not testing. MSHA's decision would be based on its evaluation of the effect of a proposed change on the safe performance of the product.

Some commenters stated that MSHA should allow crossover between the proposed regulation and the regulations contained in Parts 15–36. In that way, extensions of approval could be granted under the new procedure even if the original approval had been granted under existing regulations. However, MSHA is proposing revised technical requirements for some products currently approved. Because these technical requirements may differ from and replace existing ones in some respects, MSHA believes it necessary to limit crossover between parts. However, the Agency realizes that manufacturers holding approvals at the time of a final rule for Part 7 may be in the process of making a modification to their already-approved product. Rather than require that these manufacturers submit the product for a new approval under Part 7, MSHA proposes to allow for extensions of approval under existing regulations for a specified time. This time would vary with the product and would be based on such factors as the number of existing approvals, the history of requests for extensions, the resources required for MSHA testing of modifications, and the time needed by applicants to arrange for their own testing. At the expiration of the phase-in period, all applications for extensions of approval would be treated as new applications and applicants would be required to apply for an original approval under Part 7.

As part of an approval application, proposed § 7.3(f) would require the applicant to certify that the requirements in the appropriate subpart have been met and that the quality assurance functions required by proposed § 7.5 will be performed. In the case of subsequent approvals or extensions of approval, applicants would be required to certify that the proposed changes indicated in the application are the only changes being made. Once testing has been completed, the applicant would also be required to certify that the product has been tested in accordance with the specified test procedures, and that the product meets the performance requirements. As supporting evidence for the certification statement, § 7.4(a) would require the applicant to maintain records of test results for three years. In addition, the proposal would require that all certification statements be signed by an authorized company official.

Under the preproposal draft, the applicant also would have been required to describe the test procedures used during testing. In response to commenters, MSHA has not proposed that the applicant describe the test procedures since the applicant would be required to test according to the procedures specified in the appropriate subpart.

Section 7.4 Product Testing.

The proposal would reorganize and consolidate various testing provisions of the preproposal draft into one section. As in the preproposal draft, MSHA would not be required to conduct the testing of each product to determine whether it performs according to the appropriate technical requirements. Instead, the necessary testing would be performed either by the applicant or by a third party selected by the applicant. Testing would be conducted according to test procedures specified in the appropriate subpart. MSHA could elect to observe product testing as a prerequisite of approval.

Many commenters favored the preproposal draft's provisions regarding testing. They stated that by having the applicant or a third party conduct testing, MSHA would be able to devote more resources to reviewing and evaluating the documentation submitted as part of approval applications. As a result, the efficiency of the approval process would be improved.

Other commenters, however, objected to applicant or third-party testing, stating that testing was a function more appropriately performed by a Federal agency. In addition, one commenter suggested that allowing applicants or third parties to test products would be improper under the Mine Act because the statute provides for MSHA approval of products to be used in underground mines. With the proposed rule, MSHA would retain the responsibility to approve or deny approval of products. Only the testing would be performed outside the Agency. MSHA would continue to review and evaluate each application and supporting documentation upon submission. The Agency would also observe, as necessary, any product testing conducted by the applicant or a third party.

When MSHA elects to observe product testing, many commenters stated that the Agency should be obligated to accept the applicant's tentative date and time. For the convenience of all involved, MSHA would attempt to meet the times and dates proposed by applicants for product testing and does not anticipate that schedule changes would be routinely needed. However, because MSHA considers the opportunity to observe product testing to be an important part of the approval process, the proposed rule would require that applicants permit an MSHA official to be present for testing at a mutually agreeable date, time, and place. MSHA also realizes that some applicants may test their products prior to submitting their approval application. In this case, they may submit the certification of testing with the application. However, MSHA may still elect to observe product testing and, if this occurs, the applicant may be required to arrange for testing with an MSHA observer.

Under the proposal, if MSHA elects to observe product testing, the applicant would be required to arrange any necessary clearances, especially when testing is to be conducted by someone other than the applicant. At the test site, MSHA may require the applicant to partially or completely disassemble the product for visual or physical inspection to ascertain that the product being tested comports with the documentation submitted with the application.

If MSHA elects not to observe product testing, the applicant would be so notified. The applicant could then proceed to perform the necessary testing and, upon completion, certify to MSHA that the product had been tested as specified in the appropriate subpart.

Because MSHA will not observe all product testing, applicants would be required to maintain records of test results and procedures. These records would assist MSHA in determining the cause of any problems which may be detected during post-approval product audit. Applicants would be required to maintain the records for three years after completion of testing. MSHA expects that within this time it would be able to audit the approved product for which the tests apply.

In the preproposal draft, the procedures to be used in testing products would have been specified in appendices which would not have been subject to rulemaking. Commenters generally objected that the appendices would not be subject to notice and comment, stating that they desired input into the technical requirements and test procedures which they would be required to follow for product approval. In response to these comments, MSHA proposes to specify the test procedures to be used by applicants in the same subpart which prescribes the technical requirements a particular product type must meet for approval. Specifying the test procedures in the proposed rule itself makes them subject to the rulemaking process and allows comments by interested parties on the test procedures proposed.

In specifying the procedures to be used in product testing, the proposed rule would allow flexibility where possible in performing the required tests. For example, to determine the impact resistance of battery assembly covers constructed of material other than M1020 steel, MSHA would drop a 50-pound weight from a distance of 4 feet, whereas proposed Subpart C would allow the application of a 200-foot pound force. Where the proposed test procedures permit flexibility, MSHA intends to make available to interested parties those test procedures the Agency would use in conducting product audits.

Section 7.5 Quality Assurance

As part of each product approval application, the preproposal draft would have required applicants to submit a detailed quality control plan for acceptance by MSHA. It also would have required that quality control inspection and testing instructions be submitted for MSHA acceptance. MSHA would have reviewed and accepted the plan and the instructions prior to their implementation, and any changes to them would also have been subject to MSHA acceptance. Many commenters objected to these draft provisions, stating that their quality control plans contain proprietary information, that such a requirement would be unnecessarily burdensome, and that submitting changes in the plans for

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MSHA acceptance would delay implementing needed changes.

MSHA continues to believe that there is a need for quality in the production of approved products. For this reason, proposed § 7.5 retains a basic requirement for a quality assurance program for approved products. The proposal focuses, however, on the operation of the applicant's program and deletes the draft provision regarding MSHA acceptance. Under the proposal, the applicant would be required to perform certain quality assurance functions and to certify that this will be done.

The required quality assurance program would include inspecting and testing the critical characteristics of the particular product. At this stage in the rulemaking process, MSHA considers the inspection and testing function to be an essential element of an effective quality assurance program. Therefore, MSHA would identify in the subparts the critical characteristics which the applicant's quality control inspector would be required to inspect or test to determine whether specified tolerances are maintained and to see that components not meeting these tolerances are not used in approved products.

By their very nature, critical characteristics could seriously affect the safety or performance of a product. Therefore, under the proposal, some characteristics would be required to be inspected or tested on each product containing the MSHA approval marking. However, for certain other characteristics of a product or for certain types of products, lot or batch sampling would provide the necessary safety protection. In the appropriate subpart, MSHA would designate the critical characteristics to be inspected or tested. In addition, the subpart would indicate whether each unit would need to be inspected or tested, or whether lot or batch sampling would be acceptable.

Because the quality control provisions of the proposal would focus on the inspection and testing of critical characteristics, the proposal would also require that instruments used in inspecting and testing be properly calibrated. The minimum frequency of calibration required would be that recommended by the instrument manufacturer and would have to be traceable to a nationally recognized standard. The most frequently used calibration standards are those set by the National Bureau of Standards, U.S. Department of Commerce, but the proposal would permit the use of other standards.

Two other important aspects of a quality assurance program for approved products concern the approval documentation. Under the proposal, applicants would be required to control all drawings and specifications so that only the approved ones are used during production and inspection, and any changes affecting the technical requirements for products could not be made without prior MSHA approval. These precautions would provide protection against the distribution of products not conforming with the documentation upon which the approval was based.

While MSHA believes that adherence to the proposed requirements for quality assurance would provide substantial protection against the distribution of defective products, MSHA recognizes that this could occur. Therefore, proposed § 7.5(d) would require the approval-holder to report to the Agency any knowledge of a product that has been distributed with critical characteristics not meeting required specifications. This knowledge could come from the results of internal audits, reports from users, or other sources. Upon receiving such a report, MSHA would work with the approval-holder to implement appropriate corrective action.

The preproposal draft provided that MSHA could conduct manufacturing site surveys before and after issuance of an approval to determine whether or not the applicant was complying with the accepted quality control program. Some commenters objected to this draft provision, stating that such surveys were unnecessary and that the practices in an applicant's manufacturing facilities were not a legitimate area of MSHA concern. At this stage in the rulemaking process, MSHA believes that the proposed emphasis on product auditing by the Agency, which is discussed under proposed § 7.8, would provide the necessary assurance that approved products are in compliance with the technical requirements, and uncover problems in the quality assurance program which were not detected by the approval-holder. In addition, MSHA agrees that the manufacturing process is the responsibility of the approval-holder. For these reasons, the draft provision for manufacturing site surveys is not retained in the proposal.

Section 7.6 Issuance of Approval

Under the proposal, § 7.6 provides that MSHA would issue an approval or notice denying approval after all documentation submitted has been evaluated by MSHA. The approval or denial would be in writing, and would follow a review of the applicant's product testing, if testing were required. An applicant would not be allowed to represent the product as approved until MSHA had issued an approval.

When issuing an approval under proposed Part 7, MSHA would identify all documents upon which the approval is based such as drawings, specifications and related materials covering the details of design of the product. Applicants would be required to retain these documents, and adherence to them would be a condition of continued MSHA approval.

Section 7.7 Approval Marking and Distribution Record

Under the proposal, each approved product would be required to have an approval marking. The marking would identify the product as approved for use in underground mines. The type and location of marking for products would be specified in the subpart for the particular product being approved.

Because the MSHA approval marking indicates to the user that the product meets the specified technical requirements, any units of a product not in compliance with these requirements may need to be recalled or retrofitted. For this reason, the proposal would require applicants to maintain records on the distribution of each unit with an approval marking so deficient units can be traced and appropriate corrective action taken. At this time, the proposal does not specify a set number of years for retention of these records. Instead, MSHA proposes that records on the distribution of approved units be maintained for the projected service life of the product as determined by the applicant. This approach would recognize that product life varies depending on the type of product involved and, within product types, on the materials used. For example, the projected service life for a continuous mining machine would be significantly longer than for a consumable item such as hydraulic fluid. Similarly, the product life of a battery assembly with a metallic cover may be different than one with a nonmetallic cover. Since units in service may need to be traced for corrective action, it is necessary to have records of the units as long as they are in use.

MSHA is also considering the need for specifying a set time for maintaining distribution records on a product-by-product basis. The Agency solicits comments on this issue and requests information as to what the projected service life would be for brattice cloth and ventilation tubing and battery assemblies.

Section 7.8 Post-Approval Product Audits

MSHA believes that the approval process should be an ongoing one. While the use of quality assurance during the manufacturing process would help assure the mining community that a product meets the approval requirements, MSHA believes there is also a need for independent evaluation of approved products on a random basis. For this reason, the proposal provides for post-approval audits of products receiving approval. In this way, the Agency would compare manufacturing products with the applicable technical requirements.

The preproposal draft would have required that MSHA acquire a product, at the approval-holder's expense, through any of a variety of methods, to compare it to the drawings and specifications approved by MSHA and to test it in accordance with the test procedures specified in the applicable appendix. If the product failed to meet any of the technical requirements, appropriate action would be taken to require corrections.

Many commenters requested clarification of how the approval holder would make a product available to MSHA in order to be sure that it has not been altered after production. MSHA recognizes that dealers and consumers could alter a product after production and that the manufacturer has no control over this. For this reason, the proposed rule would require the approval-holder, upon MSHA's request, to make approved products available for audit at a mutually agreeable site and time. MSHA anticipates that most audits would be conducted at the warehouse, manufacturing, or assembly site. In that way, MSHA could select a product, screen it to determine the need for further audit, and return it to the approval-holder. If further audit were considered necessary, or if an on-site audit were not practical, the approval-holder would be required to release the product to MSHA for further examination and testing at MSHA facilities. The product would be returned to the approval-holder unless destructive testing has been conducted, as, for example, in the testing of a batch of hydraulic fluid.

All products audited by MSHA would be selected by the Agency so that they are representative of those distributed for use in mines. If an audit demonstrated that the product failed to comply with the technical requirements, MSHA would take immediate action to address the problem and revoke the approval, if necessary. The proposed rule would require that approval-holders, upon request by the Agency, make products available at no cost to MSHA not more than once a year, except for cause. Based on MSHA's experience, the Agency anticipates few instances in which more than one product would be required in any one year. There are several events which may demonstrate to MSHA that a product does not meet the technical requirements. For example, MSHA may have verified complaints about the safe functioning of a product, have evidence of unapproved design changes in the product, need to retest a product with which an audit test indicated a problem, or need to verify that corrective action required by MSHA has been taken. Because the use of the approval marking obligates the approval-holder to produce the product according to the approved drawings and specifications, MSHA believes that, when there is cause, the approval-holder should provide additional products.

Some commenters on the preproposal draft suggested that MSHA rely solely on post-approval product audits, in lieu of a quality control program, to verify that products have been manufactured in accordance with the documentation upon which the approval was based. At this point in the rulemaking process, MSHA believes that post-approval product audits alone cannot do this. The Agency believes that equal emphasis should be placed on the prevention of defective products entering the market, not solely on the discovery of defects after distribution. The proposed requirements for quality assurance are designed to accomplish this goal.

Section 7.9 Revocation

Proposed § 7.9 provides that MSHA may revoke an approval granted under Part 7 whenever a product fails to meet the applicable technical requirements specified in a subpart or creates a hazard when used in a mine. This differs from the preproposal draft in that failure to comply with the accepted quality control plan or inspection and testing instructions would have been a basis for revocation of an approval granted under this part. This change conforms with the quality assurance proposal in § 7.5.

One commenter suggested that MSHA's authority to revoke an approval under Part 7 should be limited to instances when an approved product fails to meet the technical requirements or when an approval-holder fails to correct deficiencies discovered in an approved product. MSHA anticipates that revocation actions, when necessary, would be based on products which do not meet the technical requirements for that product, or which present a hazard.

The preproposal draft did not contain revocation procedures. However, in the preamble to the draft proposal MSHA indicated that the development of such procedures was under consideration and requested comments. Commenters recommended that any revocation procedures should require MSHA to fully describe the "cause" of a revocation action and include an appeal process to provide the approval-holder with an opportunity to challenge the basis for such action. MSHA continues to believe that revocation procedures are necessary and should be developed. At this stage, the Agency considers uniform revocation procedures applicable to all MSHA-approved products to be appropriate. For this reason, the procedures would be developed in a separate rulemaking in which the issues raised by commenters would be addressed.

Subpart B—Brattice Cloth and Ventilation tubing

Brattice cloth and ventilation tubing are used to direct or convey ventilating air in underground mines. Because of the hazard presented by fire in underground coal mines and gassy underground metal and nonmetal mines, MSHA safety standards in 30 CFR 75.302–3 and 30 CFR 57.21049 require that brattice cloth and ventilation tubing be flame-resistant. The coal mine standard requires brattice cloth and ventilation tubing to have a flame spread index of 25 or less as determined by the American Society for Testing and Materials (ASTM) standards E–84, Surface Characteristics of Building Materials, or E–162, Surface Flammability of Materials Using a Radiant Heat Energy Source. However, various studies and flammability evaluations by MSHA's Approval and Certification Center have shown that the ASTM tests are not optimum for evaluating the flammability of brattice cloth and ventilation tubing. For example, these tests do not evaluate the materials under the conditions of use in a mining environment and can yield varying test results. In some MSHA tests, certain brattice materials that had a flame spread index of 25 or less based on the existing test procedures were shown to propagate flames and be consumed in large-scale tests that were more representative of the mining environment.

The test procedures and criteria in Subpart B are the result of MSHA's efforts to develop more appropriate standardized small-scale flammability

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tests. A large-scale flammability test, using a mine fire gallery and a manner of testing the materials that simulated their use in the mining environment, was developed for brattice and ventilation tubing by the MSHA Approval and Certification Center. Results from the large-scale test were repeatable and the test provided an appropriate method for evaluating the flame resistance of brattice and ventilation tubing. However, the large-scale test required an expensive fire gallary facility and large amounts of samples for testing. MSHA believed it would not be feasible for manufacturers or independent laboratories to construct the large-scale fire gallery and perform the test. Therefore, MSHA began development of a smaller-scale laboratory test that would correlate with the large-scale test. The small-scale test described in this proposal was found to produce repeatable, objective test results which appropriately assess the flame resistance of brattice cloth and ventilation tubing in the context of the mining environment; and would permit the flame-resistance testing of these materials to be conducted in a relatively inexpensive manner.

Initially, a prototype test approximately one-fourth the size of the large-scale test was devised. However, test results were very erratic and correlation with the large-scale test was poor. Further analysis and test development work was conducted resulting in a small-scale laboratory test apparatus that produced excellent correlation with the large-scale test, provided that certain critical factors were controlled, including gallery dimensions and certain design elements. These factors are critical for obtaining correlation and repeatable test results. For example, the requirements for construction of the small-scale test gallery described in the proposal minimize thermal reflection from the walls to the test sample while maintaining uniform heat insulation characteristics and uniform air flow in the sample test area. The design of the ignitor, also specified in the proposal, provides a controlled and consistent flame during the igniting process. Through numerous trials, MSHA found this type of ignitor design produces a reliable and uniform igniting source.

Due to the fire dynamics during testing, MSHA believes these design characteristics are essential in obtaining uniform and consistent test results. Variations in the principal parts of the apparatus, such as thickness of insulation and dimensions associated with the tapering of the duct section and fan housing, would produce different heat changes and nonuniform air flow. This would disturb the burning process and yield unreliable results. However, where variations do not affect the reliability of the test results, MSHA has not specified design characteristics, and would allow design flexibility.

The test gallery is large enough to permit evaluation of brattice cloth samples 40 inches wide and 48 inches long. This size of brattice sample allows for shrinkage of plastic brattice cloth prior to burning and permits a reliable assessment of flame propagation. The air flow requirements in the test are also reflective of the conditions of use for this material and optimal for promoting flame propagation. The small-scale test would permit the manufacturer to test the flame-resistant quality of brattice and ventilation tubing at the production site in a relatively inexpensive manner. Independent laboratories would also be able to economically construct the small-scale test and perform third party testing.

Under the proposal, applications for approval of brattice cloth or ventilation tubing would be required to include product identification information such as the trade names, and style and code numbers under which the product would be marketed, and technical specifications related to the flame resistance of the product such as the type of film, scrim, and adhesive used. Because color additives can affect the flame resistance of brattice cloth, color serves as both an indicator of the flame resistance and a product identification feature. MSHA would use the application information to evaluate the product submitted for approval as well as to identify products bearing an MSHA approval marking as those approved by the Agency.

The technical requirements would require that brattice cloth and rigid ventilation tubing be flame resistant when tested in accordance with the test procedures in the subpart. Flexible ventilation tubing would have to be manufactured using an MSHA-approved brattice cloth, with a non-combustible supporting structure, if one is used. Use of approved brattice cloth obviates the need to gallery test flexible ventilation tubing.

MSHA would require appropriate approval markings on both brattice cloth and ventilation tubing. These markings would be permanently placed on the products in a manner to allow field identification of the product as approved by the Agency. Because not all approved brattice cloth lends itself to approval markings on the cloth, the proposed rule would permit marking the edge with an MSHA-assigned color code with permanent paint or ink. Approved ventilation tubing would have to be marked on each section with an MSHA approval number.

Copies of drawings which depict some aspects of the test procedures would be available from MSHA upon request.

Subpart C—Battery Assemblies

Subpart C would replace the battery assembly approval requirements in 30 CFR 18.44 and 18.63 for battery assemblies used in underground mines where methane gas could create an explosion hazard. Under the proposal, an application for approval would be required to be accompanied by a composite drawing showing the design specifications for the battery assembly. For clear identification, the drawing would be required to be titled, dated, numbered, and include the latest revision number. An application would also need to document, through test results or mathematical calculations, that the battery assembly has sufficient ventilation.

The technical requirements for approval of battery assemblies are based on the existing requirements in § 18.44. Section 7.44(a) concerns the thickness of boxes and covers which provide physical protection for the battery. These minimum thicknesses are related to the weight of the battery and are based on the performance of M1020 steel, which is the material most commonly used for construction of the boxes and covers.

The proposal would add a new weight class for battery assemblies weighing up to 1,000 pounds and revise the construction requirements for such battery assemblies. Currently, battery boxes and covers for assemblies weighing less than 2,000 pounds must be constructed with at least 3/16-inch M1020 steel or the equivalent. The proposal would revise this requirement to 1/8-inch M1020 steel, or equivalent, for batteries weighing up to 1,000 pounds. The proposed rule would also allow other materials to be used for the boxes if they have at least the same tensile strength and impact resistance of M1020 steel.

Battery covers not constructed of M1020 steel would have to meet the impact test requirements in § 7.46. This test reveals whether impacts to the cover would bend intercell connectors, crack cells, or otherwise damage the battery. If nonmetallic materials are used for the construction of the battery box or cover, the materials would have to be accepted by MSHA as flame-resistant under 30 CFR Part 18.

Non-metallic materials would also have to meet the temperature deflection test criteria in § 7.47. This test defines the allowable flexibility of the material due to temperature variation to ensure rigidity throughout the possible range of operating temperatures. The degree of rigidity affects the protection of the battery assembly from impact damage.

Paragraph (b) addresses the electrical conductivity and flame resistance of insulating material. Paragraph (c) would require that the battery box and cover insulating material be acid-resistant as determined by the test described in § 7.48. The acid resistance test determines whether the materials tested will chemically react with electrolyte from the battery. Paragraph (d) would require that covers be lined with insulating material. This insulation prevents the cover from shorting the battery terminals. Under paragraph (e), the covers would have to be provided with a means of securing them in a closed position to prevent loss of the cover and damage to the internal assembly. Paragraph (f) would require battery boxes to be sufficiently ventilated to prevent the build-up of flammable or toxic gases or vapors. Paragraph (g) would require that the boxes have drainage holes to prevent the accumulation of water or electrolyte leading to deterioration of the battery box.

In addition to the existing requirement that battery cells be insulated from the battery box walls, paragraph (h) would clarify that the wall insulating material must extend to the top of the battery box to prevent electrical tracking. Tracking is a current-leakage or fault path created across the surface of an insulating material due to build-up of carbon. Paragraph (i) would retain the existing requirement that cell connectors be burned on and would continue to allow use of two-bolt type bolted connectors on end terminals. "Burning" is a manufacturing method by which the connectors and the battery terminal posts, both of which are lead, are heated during assembly so that the two are fused together.

Paragraph (j) would retain the existing requirement that battery connections be designed so that the total battery potential is not available between adjacent cells. This reduces the possibility of arcing and shorting across the terminals. Paragraph (k) would require the cables to be accepted by MSHA as flame resistant under Part 18 and protected against abrasion. These measures prevent arcing due to damaged cables.

Paragraph (l) would require that a strain-relief device be installed on a cable outside the box when the battery plug and receptacle are not located on or within the battery box. Strain on the battery terminals during charging can loosen the connectors and result in arcing or sparking. The cable would have to be insulated from the device with MSHA-accepted flame-resistant insulating material so that damage to the cable jacket would not allow energization of the strain-relief device.

Paragraph (m) is new and would require that at least a ½-inch air space be between the underside of the battery cover and the top of the battery. This design would provide protection against impact damage to the battery cells.

Section 7.45 lists the critical characteristics that must be inspected or tested on each battery assembly. Section 7.49 would require that each approved battery assembly be identified by an approval plate attached to the battery box. This would allow identification of the approved product in the field. Section 7.50 would require an approval-holder to allow MSHA to audit at no cost, an approved battery assembly no more than once a year. Section 7.51 would require that the manufacturer accompany each approved battery assembly with a list of items that can be checked by the user to ensure that the battery assembly is maintained in approved condition.

Proposed § 7.52 would allow approval of battery assemblies that incorporate technology for which the specific requirements of Subpart C are not appropriate if MSHA determines that the battery assembly is as safe as those which meet the requirements of the subpart. To implement this provision, MSHA would prescribe appropriate tests and specific performance requirements when such an approval is sought.

Organizational Changes

MSHA proposes to make the following non-substantive organizational changes to Title 30 CFR. The proposed rule would remove the subchapter designations for Subchapters B through E and add a new Subchapter B, entitled "Testing, Evaluation, and Approval of Mining Products." This new Subchapter would include Parts 5 through 36 of Title 30.

IV. Drafting Information

The principal persons responsible for preparing this proposed rule are: Robert E. Marshall, Office of Technical Support, MSHA; Regina M. Flahie and Richard V. Zeutenhorst, Office of Standards, Regulations and Variances, MSHA; and Linda B. Fort, Office of the Solicitor, Department of Labor.

V. Executive Order 1291 and Regulatory Flexibility Act

In accordance with E.O. 12291, MSHA has prepared an initial analysis to identify potential costs and benefits associated with proposed Part 7. This analysis has formed the basis for the initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the proposed rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulatory proposals. This proposed rule does not significantly alter the existing technical requirements for any of the products.

This new proposal would increase private-sector involvement in the approval of mining equipment. For the first time in lieu of testing only by MSHA the manufacturers or independent laboratories would test certain mining equipment. The Agency anticipates that this new procedure would reduce duplicate testing of products in some cases and eliminate associated costs and potential delays in equipment approvals. In addition, the procedure is expected to enhance the safety of miners through the more rapid introduction of technological advances in mining products.

An option has been introduced in battery assemblies which allows for a reduction in thickness for covers of small batteries. This may reduce costs for some small manufacturers. Any necessary testing of products required by MSHA either is not substantially different from that currently undertaken or it does not impose significant costs compared to the sales value of the product. Furthermore, the tests are performance-oriented so that manufacturers can choose the most cost effective option. The application procedures, quality assurance program and annual audit do not impose significant costs. The proposed Part 7 greatly clarifies the standards which must be met by industry for approval of these products and makes the approval

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process more efficient, thereby reducing costs for large as well as small business.

The estimated total costs for Part 7 are specifically related to the subparts for which revised or new technical specifications are being proposed. Estimates, therefore, have been developed only for those subparts. Estimated costs for additional products will be analyzed as the subparts are proposed.

The total annual incremental costs for Subpart B, Brattice Cloth and Ventilation Tubing would range from a savings of $8,599 to a cost of $39,746. The current annual cost for testing and acceptance is estimated to be $50,584 based on the revised fee schedule to be proposed as Part 5. The annual cost of the proposed program would be a range of $41,985 to $90,330. MSHA encourages commenters to review this proposal within the context of proposed Part 5 when it is available for comment.

The total annual incremental cost for Subpart C, Battery Assemblies would result in a savings of $34,579. The total annual cost of the current program is estimated to be $1,138,580. The proposed program is estimated to cost $1,104,001, also based on the revised fee schedule. The revised application fee would be considerably less under Part 7 than it would be under the current regulation.

The total annual incremental costs for Part 7, Subparts B and C are estimated to range from a savings of $43,178 to a cost of $5,167. The aggregated annual costs for the current programs for these products is estimated to be $1,169,164, whereas the total annual costs of the proposed program for these products is estimated to be a range of $1,145,986 to $1,194,331.

VI. Paperwork Reduction Act

This proposal contains information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Proposed §§ 7.3, 7.23, and 7.43 would require applicants seeking product approval to submit an application including certification of compliance with the technical requirements. For brattice cloth and ventilation tubing, MSHA estimates there will be 60 applications a year, each requiring 30 minutes to prepare. At an estimated cost of $20 per hour, 60 applications would require 30 hours and cost $600. In addition, if a revised fee schedule is adopted, MSHA estimates an application fee of $135 each totaling $8,100 for 60 applications. For battery assemblies, MSHA estimates 28 applications a year and 1.25 hours to prepare at an hourly cost of $29 per hour for a total of 35 hours and $1,015. MSHA further estimates a revised fee of $26 each for 6 applications and $148 each for 22 applications for a total fee of $3,412 for all applications.

Under the proposal, §§ 7.4(a), 7.27(a)(6), 7.28(a)(7), 7.46(a)(3), 7.47(a)(6), and 7.48(a)(2) would require records of test results and procedures which must be retained for three years. Standard testing protocols used by the scientific community include the keeping of records of product testing. Therefore, MSHA estimates there will be no additional cost for applicants to maintain these records.

Proposed § 7.5(d) would require applicants to report to MSHA any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications. MSHA estimates that each 55 approval-holders of brattice cloth and ventilation tubing may need to make a report once a year, and that each report may require 15 minutes to call or write a letter, totaling 14 hours. At $20 an hour, the cost for all reports would be $275 a year. For battery assemblies, it is estimated that each of 17 approval-holders would make one or two reports a year for an average of 1.5 reports, and that each report would require 15 minutes, for a total of 28 hours. At $29 an hour, the cost for reports on battery assemblies would be $185 a year.

The proposal would require applicants to maintain records on the distribution of each unit with an approval marking [proposed § 7.9(c)]. This provision does not specify the type of record and MSHA believes applicants will use existing sales records systems to comply. Therefore, MSHA has assigned no cost to this requirement.

Proposed § 7.51 would require the applicant to include a permissibility checklist with each battery assembly sold. MSHA estimates that it would require two hours to develop the checklist. At $29 an hour, the one-time cost would be two hours or $58 for each of 17 applicants or a total of 34 hours and $986. To insert a copy of the checklist in each battery sold, MSHA estimates one minute times 1,375 batteries a year or 23 hours. At $29 an hour, the cost would be $667 a year.

MSHA specifically solicits comments on the merits and impact of these requirements. Comments should be submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget marked, "Attention: Desk Officer for Mine Safety and Health Administration". The final rule will respond to any comments on the information collection requirements.

List of Subjects in 30 CFR Part 7

Mine safety and health, Underground mining.

Dated: January 31, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

Therefore, it is proposed that Title 30 of the Code of Federal Regulations be amended as follows:

PART 18—[AMENDED]

1. The authority citation for Part 18 is revised to read as set forth below and the authority citation preceding Subpart E is removed.

Authority: 30 U.S.C. 3, 7, 957, 961.

2. Amend § 18.44 by revising the section heading; revising paragraphs (a) and (b), removing paragraphs (c), (d), (e), (f), (g), (h), (i), and (k); and revising and redesignating paragraph (j) as new paragraph (c) to read as follows:

§ 18.44 Nonintrinsically safe battery-powered equipment.

(a) Battery-powered equipment shall use battery assemblies approved under Part 7 of this chapter, or battery assemblies accepted or certified under this part part prior to [insert date one year after the effective date of § 7.41 of this chapter].

(b) Battery box covers shall be secured in a closed position.

(c) Each wire or cable leaving a battery box on storage-battery-operated equipment shall have short-circuit protection in an explosion-proof enclosure as close as practicable to the battery terminals. A protective device installed within a nearby explosion-proof enclosure will be acceptable provided the exposed portion of the cable from the battery box to the enclosure does not exceed 36 inches in length; in addition, special care shall be taken to protect each wire or cable from damage.

3. Remove § 18.63, and reserve section number 18.63, as follows:

§ 18.63 [Removed and Reserved]

4. The subchapter designations and headings for subchapters B through E are removed and a new heading for Subchapter B, entitled "Subchapter B—Testing, Evaluation and Approval of Mining Products" is added. (Subchapter B would include Parts 5 through 36.

5. Add a new Part 7 to Subchapter B, to read as follows:

PART 7—TESTING BY APPLICANT OR THIRD PARTY

Subpart A—General Provisions

Sec.
7.1 Purpose and scope.
7.2 Definitions.
7.3 Application procedures and requirements.
7.4 Product testing.
7.5 Quality assurance.
7.6 Issuance of approval.
7.7 Approval marking and distribution record.
7.8 Post-approval product audit.
7.9 Revocation.

Subpart B—Brattice Cloth and Ventilation Tubing

7.21 Purpose and effective date.
7.22 Definitions.
7.23 Application requirements.
7.24 Technical requirements.
7.25 Critical characteristics.
7.26 Flame test apparatus.
7.27 Test for flame resistance of brattice cloth.
7.28 Test for flame resistance of rigid ventilation tubing.
7.29 Approval marking.
7.30 Post-approval product audit.

Subpart C—Battery Assemblies

7.41 Purpose and effective date.
7.42 Definitions.
7.43 Application requirements.
7.44 Technical requirements.
7.45 Critical characteristics.
7.46 Impact test.
7.47 Deflection temperature test.
7.48 Acid resistance test.
7.49 Approval marking.
7.50 Post-approval product audit.
7.51 Permissibility checklist.
7.52 New technology.

Authority: 30 U.S.C. 957.

Subpart A—General Provisions

§ 7.1 Purpose and scope.

This part sets out requirements for MSHA approval of certain equipment and materials for use in underground mines. These requirements apply to products listed in the subparts following Subpart A of this part. After the dates specified in the following subparts, approval of products that meet these requirements shall be requested in accordance with the applicable subpart of this part.

§ 7.2 Definitions.

The following definitions apply in this part.

Applicant. An individual or organization that manufactures or controls the assembly of a product and that applies to MSHA for approval of that product.

Approval. A document issued by MSHA which states that a product has met the requirements of this part and which authorizes an approval marking identifying the product as approved.

Authorized company official. The applicant or a representative of the applicant who has the authority to bind the applicant.

Critical characteristic. A feature of a product which requires inspection or testing to ensure that the feature conforms to the technical requirements specified in the appropriate subpart of this part.

Extension of approval. A document issued by MSHA which states that the change to a product previously approved by MSHA under this part meets the requirements of this part and which authorizes the continued use of the approval marking after the appropriate extension number has been added.

Post-approval product audit. Examination, testing, or both, by MSHA of approved products selected by MSHA to determine whether those products meet the technical requirements and have been manufactured as approved.

Technical requirements. The design and performance requirements for a product, as specified in a subpart of this part.

Test procedures. The method specified in a subpart of this part used to determine whether a product meets the technical requirements.

§ 7.3 Application procedures and requirements.

(a) *Application.* Requests for an approval or extension of approval shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, R.R. #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

(b) *Fees.* Fees calculated in accordance with Part 5 of this title shall be submitted in accordance with § 5.20.

(c) *Original approval.* Each application for approval of a product shall include—

(1) A brief description of the product;

(2) The documentation specified in the appropriate subpart of this part;

(3) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application; and

(4) The place and date for product testing.

(d) *Subsequent approval of a similar product.* Each application for a product similar to one for which the applicant already holds an approval shall include—

(1) The approval number for the product which most closely resembles the new one;

(2) The information specified in paragraph (c) of this section for the new product, except that any document which is the same as one listed by MSHA in the prior approval need not be submitted but shall be noted in the application;

(3) An explanation of any change from the existing approval; and

(4) A statement as to whether the change requires product testing. If testing will not be conducted, the applicant shall explain the reasons for not testing.

(e) *Extension of an approval.* Any change in the approved product from the documentation on file at MSHA that affects the technical requirements of this part shall be submitted to MSHA for approval prior to implementing the change. Each application for an extension of approval shall include—

(1) The MSHA-assigned approval number for the product for which the extension is sought;

(2) A brief description of the proposed change to the previously approved product;

(3) Drawings and specifications which show the change in detail;

(4) A statement as to whether the change requires product testing and, if testing will not be conducted, an explanation of the reasons for not testing;

(5) The place and date for product testing, if testing will be conducted; and

(6) The name, address, and telephone number of the applicant's representative responsible for answering any questions regarding the application.

(f) *Certification statement.* (1) Each application for original approval, subsequent approval, or extension of approval of a product shall include a certification by the applicant that the product meets the design criteria as specified in the appropriate subpart and that the applicant will perform the quality assurance functions specified in § 7.5. For a subsequent approval or extension of approval, the applicant shall also certify that the proposed change cited in the application is the only change.

(2) After completion of the required product testing, the applicant shall certify that the product has been tested and performs as specified in the appropriate subpart.

(3) All certification statements shall be signed by an authorized company official.

§ 7.4 Product testing.

(a) When testing is required, products submitted for approval under this part shall be tested using the test procedures specified in the appropriate subpart.

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Applicants shall maintain records of test results and procedures for three years.

(b) When MSHA elects to observe product testing, the applicant shall permit an MSHA official to be present at a mutually agreeable date, time, and place.

§ 7.5 Quality assurance.

Applicants granted an approval or an extension of approval under this part shall—

(a) Inspect or test, or both, the critical characteristics identified in the appropriate subpart of this part;

(b) Calibrate instruments used for the inspection and testing of critical characteristics at least as frequently as, and according to, the instrument manufacturer's specifications, using calibration standards traceable to those set by the National Bureau of Standards, U.S. Department of Commerce or other nationally recognized standards;

(c) Control drawings and specifications so that the product is manufactured as approved;

(d) Report to the MSHA Approval and Certification Center, Office of Quality Assurance, any knowledge of a product distributed with critical characteristics not in accordance with the approval specifications.

§ 7.6 Issuance of approval.

(a) An applicant shall not advertise or otherwise represent a product as approved until MSHA has issued the applicant an approval.

(b) MSHA will issue an approval or a notice denying approval after reviewing the application, and the results of product testing, when applicable. An approval will identify any documents upon which the approval is based.

§ 7.7 Approval marking and distribution record.

(a) Each approved product shall have an approval marking as specified in the appropriate subpart of this part.

(b) For an extension of approval, the extension number shall be added to the original approval number on the approval marking.

(c) Applicants shall maintain records of their distribution of each unit having an approval marking. Records shall be retained for the projected service life of the product as determined by the applicant.

§ 7.8 Post-approval product audit.

Upon request by MSHA but no more than once a year except for cause, the approval-holder shall make approved products available for audit at no cost and at a mutually agreeable site and time.

§ 7.9 Revocation.

MSHA may revoke for cause an approval issued under this part if the product fails to meet the applicable technical requirements or creates a hazard when used in a mine.

Subpart B—Brattice Cloth and Ventilation Tubing

§ 7.21 Purpose and effective date.

This subpart establishes the specific requirements for approval of brattice cloth and ventilation tubing. Applications for approval or extension of approval submitted after [date one year after the effective date of this subpart] shall meet the requirements of this part.

§ 7.22 Definitions.

The following definitions apply in this subpart:

Brattice cloth. A curtain of jute, plastic, or similar material used to control or direct ventilating air.

Denier. A unit of yarn size indicating the fineness of fiber of material based on the number of grams in a length of 9,000 meters.

Film. A sheet of flexible material applied to a scrim by pressure, temperature, adhesion, or other method.

Scrim. A substrate material of plastic or fabric laminated between or coated with a film.

Ventilation tubing. Rigid or flexible tubing used to convey ventilating air.

§ 7.23 Application requirements.

(a) *Brattice cloth.* A single application may address two or more products if the products differ only in: weight of the finished product; weight or weave of the same fabric or scrim; or thickness or layers of the same film. Applications shall include the following information:

(1) Trade name.

(2) Product designations (for example, style and code number).

(3) Color.

(4) Type of brattice (for example, plastic or jute).

(5) Weight of finished product.

(6) Film: type, weight, thickness, supplier, supplier's stock number or designation, and percent of finished product by weight.

(7) Scrim: type, denier, weight, weave, the supplier, supplier's stock number or designation, and percent of finished product by weight.

(8) Adhesive: type, supplier, supplier's stock number or designation, and percent of finished product by weight.

(b) *Flexible ventilation tubing.* Applications shall include the product description information in paragraph (a) of this section and list the type of supporting structure, if applicable; inside diameters; and configurations.

(c) *Rigid ventilation tubing.* A single application may address two or more products if the products differ only in diameters, lengths, configuration or average wall thickness. Applications shall include the following information:

(1) Trade name.

(2) Product designations (for example, style and code numbers).

(3) Color.

(4) Type of ventilation tubing (for example, fiberglass, plastic, or polyethylene).

(5) Inside diameter, configuration, and average wall thickness.

(6) Suspension system (for example, metal hooks).

(7) Base material: type, supplier, the supplier's stock number, and percent of finished product by weight.

(8) Resin: type, supplier, the supplier's stock number, and percent of finished product by weight.

(9) Flame retardant, if added during manufacturing: type, supplier, the supplier's stock number, and percent of finished product by weight.

§ 7.24 Technical requirements.

(a) Brattice cloth shall be flame resistant when tested in accordance with the flame resistance test in § 7.27.

(b) Flexible ventilation tubing shall be manufactured using an MSHA-approved brattice cloth. If a supporting structure is used, it shall be metal or other noncombustible material which will not ignite, burn, support combustion or release flammable vapors when subjected to fire or heat.

(c) Rigid ventilation tubing shall be flame resistant when tested in accordance with the flame resistance test in § 7.28.

§ 7.25 Critical characteristics.

A sample of each batch or lot of brattice cloth and ventilation tubing shall be flame tested or the materials that contribute to flame-resistance shall be inspected or tested to ensure that the finished product will meet the flame resistance test.

§ 7.26 Flame test apparatus.

The principal parts of the apparatus to test for flame resistance of brattice cloth and ventilation tubing shall be constructed as follows:

(a) A 16-gauge stainless steel gallery lined on the top, bottom and both sides with ½-inch thick Marinite or equivalent insulating material yielding inside dimensions approximately 58 inches long, 41 inches high, and 30 inches wide;

(b) Two ⅜-inch-diameter-steel J-hooks and a 9/16-inch-diameter-steel rod to support the sample so that the sample is located approximately 2 9/16 inches from the front and back ends of the test gallery 1½ inches from the ceiling insulation and centrally located in the gallery along its length. Samples shall be suspended to preclude folds or wrinkles;

(c) A tapered 16 gauge stainless steel duct section tapering from a cross-sectional area measuring 2 feet 7-inches wide by 3 feet 6-inches high at the test gallery to a cross-sectional area 1 foot 6-inches square over a length of 3 feet. The tapered duct section must be tightly connected to the test gallery;

(d) A 16-gauge stainless steel fan housing, consisting of a 1-foot-6-inch-square section 6-inches long followed by a 10-inch-long section which tapers from 1 foot 6-inches square to 12-inches-diameter-round and concluding with a 12-inch-diameter-round collar 3 inches long. A variable speed fan capable of producing an air velocity of 125 ft/min in the test gallery must be secured in the fan housing. The fan housing must be tightly connected to the tapered duct section;

(e) A methane-fueled impinged jet burner igniting source, measuring 12 inches long from the threaded ends of the first and last jets and 4 inches wide with 12 impinged jets, approximately 1⅜ inches long and spaced alternately along the length of the burner tube. The burner jets must be canted so that they point toward each other in pairs and the flame from these pairs impinge upon each other.

§ 7.27 Test for flame resistance of brattice cloth.

(a) *Test procedures.* (1) Prepare 6 samples of brattice cloth 40-inches wide by 48 inches long.

(2) Prior to testing, condition each sample for a minimum of 24 hours at a temperature of 70±10°F(21±5.5°C) and a relative humidity of 55±10%.

(3) For each test, suspend the sample in the gallery by wrapping the brattice cloth around the rod and clamping each end and the center. The brattice cloth must hang 4 inches from the gallery floor.

(4) Use a front exhaust system to remove smoke escaping from the gallery. The exhaust system must remain on during all testing, but not affect the air flow in the gallery.

(5) Set the methane-fueled impinged jet burner to yield a flame height of 12 inches as measured at the outermost tip of the flame.

(6) Apply the burner to the front lower edge of the brattice cloth and keep it in contact with the material for 25 seconds or until 1 foot of material, measured horizontally, is consumed, whichever occurs first. If the material shrinks during application of the burner flame, move the burner flame to maintain contact with 1 foot of the material. If melting material might clog the burner orifices, rotate the burner slightly during application of the flame.

(7) Test 3 samples in still air and 3 samples with an average of 125 ft/min of air flowing past the sample.

(8) Record the propagation length and duration of burning for each of the 6 samples. The duration of burning is the total burning time of the specimen during the flame test. This includes the burn time of any material that falls on the floor of the test gallery during the igniting period. However, the suspended specimen is considered burning only after the burner is removed. Should the burning time of a suspended specimen and a specimen on the floor coincide, count the coinciding burning time only once.

(9) Calculate the average duration of burning for the first 3 samples (still air) and the second 3 samples (125 ft/min air flow).

(b) *Acceptable performance.* The brattice cloth shall meet the following criteria:

(1) Flame propagation of less than 4 feet in each of the six tests.

(2) An average duration of burning of less than 1 minute in both groups of three tests.

(3) A duration of burning not exceeding two minutes in each of the six tests.

§ 7.28 Test for flame resistance of rigid ventilation tubing.

(a) *Test procedures.* (1) Prepare 6 samples of ventilation tubing 48 inches in length with all flared or thickened ends removed. Any sample with a cross-sectional dimension greater than 24 inches must be tested in a 24-inch size.

(2) For each test, suspend the sample in the center of the gallery by running a wire through the 48-inch length of tubing.

(3) Use a front exhaust system to remove smoke escaping from the gallery. The exhaust system must remain on during all testing but not affect the air flow in the gallery.

(4) Set the methane-fueled impinged jet burner to yield a flame height of 12 inches as measured at the outermost tip of the flame.

(5) Apply the burner to the front lower edge of the tubing so that two-thirds of the burner is under the tubing and the remaining third is exposed to allow the flames to curl onto the inside of the tubing. Keep the burner in contact with the material for 60 seconds. If melting material might clog the burner orifices, rotate the burner slightly during application of the flame.

(6) Test 3 samples in still air and 3 samples with an average of 125 ft/min of air flowing past the sample.

(7) Record the propagation length and duration of burning for each of the 6 samples. The duration of burn is the total burning time of the specimen during the flame test. This includes the burning time of any material that falls on the floor of the test gallery during the igniting period. However, the suspended specimen is considered burning only after the burner is removed. Should the burning time of a suspended specimen and a specimen on the floor coincide, count the coinciding burn time only once.

(8) Calculate the average duration of burning for the first 3 samples (still air) and the second 3 samples (125 ft/min air flow).

(b) *Acceptable performance.* The ventilation tubing shall meet each of the following criteria:

(1) Flame propagation of less than 4 feet in each of the 6 tests.

(2) An average duration of burning of less than 1 minute in both groups of 3 tests.

(3) A duration of burning not exceeding 2 minutes in each of the 6 tests.

§ 7.29 Approval marking.

(a) Approved brattice cloth shall be legibly and permanently marked with the assigned MSHA approval number at intervals not exceeding ten feet. If the nature of the material or method of processing makes such marking impractical, permanent paint or ink may be used to mark the edge with an MSHA-assigned color code.

(b) Approved ventilation tubing shall be legibly and permanently marked on each section with the assigned MSHA approval number.

(c) An approved product shall be marketed only under a brand or trade name that has been furnished to MSHA.

§ 7.30 Post-approval product audit.

Upon request by MSHA but no more than once a year except for cause, the approval-holder shall supply to MSHA at no cost up to fifty feet of each approved design of brattice cloth and ventilation tubing for inspection and testing.

Subpart C—Battery Assemblies

§ 7.41 Purpose and effective date.

This subpart establishes the specific requirements for MSHA approval of

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battery assemblies intended for use in approved equipment in underground mines. Applications for approval or extensions of approval submitted after [date one year after effective date of this subpart] shall meet the requirements of this part.

§ 7.42 Definitions.

The following definitions apply in this subpart:

Battery assembly. Battery boxes, covers, and cells.

Battery box. The exterior sides, bottom, and connector receptacle compartment, if any, of a battery assembly. For the purposes of this subpart, the terms battery box and battery tray mean the same but do not include internal partitions.

§ 7.43 Application requirements.

(a) An application for approval of a battery assembly shall include a composite drawing with the following information:

(1) Overall dimensions of the battery assembly, including the minimum distance from the underside of the cover to the top of the terminals and caps.

(2) Composition materials and thicknesses of the battery box and cover.

(3) Method of securing covers.

(4) Documentation of flame-resistance of insulating materials and cables.

(5) Number, type, and rating of the battery cells.

(6) Diagram of battery connections between cells and between trays.

(7) Total weight of the battery, charged and ready for service.

(8) Complete specifications of the materials for battery cells, intercell connectors, filler caps, and battery top for nonmetallic cover designs where cover support blocks are used, or where the cover comes into contact with any portion of the cells, caps, filler material, battery top, or intercell connectors during the impact test specified by § 7.46.

(b) All drawings shall be titled, dated, numbered, and include the latest revision number.

(c) An application shall contain documentation to demonstrate adequate battery assembly ventilation.

§ 7.44 Technical requirements.

(a)(1) Battery boxes and covers constructed of M1020 steal shall have the following minimum thicknesses based on the total weight of the battery, charged and ready for service:

Weight of battery	Minimum required thickness
1000 lbs maximum	10 gauge or ⅛" nominal.
1,001 to 2,000 lbs	7 gauge or 3/16" nominal.
2,001 to 4,500 lbs	3 gauge or ¼" nominal.
Over 4,500 lbs	0 gauge or 5/16" nominal.

(2) Battery boxes constructed of materials other than M1020 steel shall have at least the tensile strength and impact resistance of those for the same weight class listed in paragraph (a)(1).

(3) Covers constructed of materials other than M1020 steel shall meet the impact test requirements of § 7.46. Nonmetallic covers shall be used only in the battery assembly configuration in which they pass the impact test.

(4) Nonmetallic materials for boxes and covers shall—

(i) Be accepted by MSHA as flame-resistant material under Part 18 of this chapter; and

(ii) Meet the deflection temperature criteria of § 7.47.

(b) All insulating material shall have a minimum resistance of 100 megohms at 500 volts d.c. and be accepted by MSHA as flame resistant under Part 18 of this chapter.

(c) Battery box and cover insulating material shall be acid-resistant as determined by the acid resistance test specified in § 7.48.

(d) Covers shall be lined with insulating material permanently bonded to the inside of the cover, unless the cover is constructed of insulating material.

(e) Covers, including those used over connector receptacle housings, shall be provided with a means of securing them in a closed position.

(f) Battery boxes shall be sufficiently ventilated to prevent the accumulation of flammable or toxic gases or vapors within the battery assembly. The size and locations of openings shall prevent direct access to cell terminals.

(g) Battery boxes shall have drainage holes to prevent accumulation or water of electrolyte.

(h) Battery cells shall be insulated from the battery box walls and supported on insulation material, unless the battery box is constructed of insulating material. Wall insulating material shall extend to the top of the wall.

(i) Cell terminals shall be burned on. Two-bolt type bolted connectors may be used on end terminals.

(j) Battery connections shall be designed so that total battery potential is not available between adjacent cells.

(k) Cables within a battery box shall be accepted by MSHA as flame resistant under Part 18 of this chapter. The cables shall be protected against abrasion by insulation, location, clamping, or other effective means.

(l) When the battery plug and receptacle are not located on or within the battery box, a strain-relief device shall be installed on the cable to prevent strain on the battery terminals. Insulating material shall be placed between the device and cable, unless the strain-relief device is constructed of insulating materials.

(m) At least a ½-inch air space shall be provided between the underside of the battery cover and the top of the battery, including the terminals and connectors.

§ 7.45 Critical characteristics.

The following critical characteristics shall be inspected or tested on each battery assembly to which an approval marking is affixed:

(a) Thickness of covers and boxes.

(b) Application of insulating material.

(c) Size and location of ventilation openings.

(d) Method of cell terminations.

(e) Strain-relief devices for cables leaving boxes.

(f) Type, location, and physical protection of cables.

§ 7.46 Impact test.

(a) *Test Procedures.* (1) Prepare four covers for testing. Prior to testing, condition two covers at −13 °F (−25 °C) and two covers at 122 °F (50 °C) for a period of 48 hours.

(2) Mount the covers on a battery box of the same design to be approved, including any support blocks and with the cells completely assembled. If used, support blocks must contact only the filler material located between the individual cells. Apply a dynamic force of 200 ft lbs to the following areas:

(i) At the center of the two largest unsupported areas.

(ii) Above at least two support blocks, if applicable, and on at least two corners. If the design consists of both inside and outside corners, test one of each.

(iii) Above at least two intercell connectors, one cell, and one filler cap.

(3) Record the condition of the covers, supports, intercell connectors, filler caps, cell covers, and filler material.

(b) *Acceptable performance.* Impact tests of any cover shall not result in any of the following:

(1) Bent intercell connectors.

(2) Cracked or broken filler caps, except plastic tabs which extend from the body of the filler caps.

(3) Cracks in the cell cover, cells, or filler material.

(4) Cracked or bent supports.

(5) Cracked or splintered battery covers.

§ 7.47 Deflection temperature test.

(a) *Test procedures.* (1) Prepare two samples for testing, measuring 5 inches by ½-inch by the thickness of the material. Prior to testing, condition the samples at 73.4±3.6 °F (23±2 °C) and 50±5% relative humidity for at least 40 hours.

(2) Place a sample on supports which are 4 inches apart and immersed in a heat transfer medium at room temperature. The heat transfer medium must be a liquid which will not chemically affect the sample. The testing apparatus must be constructed so that expansion of any components during heating of the medium does not result in deflection of the sample.

(3) Place a temperature measuring device with an accuracy of 1% into the heat transfer medium within ⅛ inch of, but not touching, the sample.

(4) Apply a total load, in pounds, numerically equivalent to 11 times the thickness of the sample, in inches, to the sample midway between the supports using a ⅛–inch radius, rounded contact. The total load includes that weight used to apply the load and any force exerted by the deflection measurement device.

(5) Use a deflection measuring device to measure the deflection of the sample at the point of loading as the temperature of the medium is increased at a uniform rate of 2±0.2 °C/min. Apply the load to the sample for 5 minutes prior to heating, to allow compensation for creep due to the loading temperature.

(6) Record the deflection temperature at which the sample deflects .010 inch due to heating.

(b) *Acceptable performance.* Neither sample shall have a deflection temperature less than 180°F (82°C).

§ 7.48 Acid resistance test.

(a) *Test procedures.* (1) Prepare a representative sample of the insulated surfaces of the battery box and of the cover, measuring at least 4 inches by 8 inches by the thickness of the material.

(2) Cover the samples with a 25% solution (1.3 specific gravity) of sulfuric acid (H_2SO_4) for 7 days

(3) After 7 days, record the condition of the samples.

(b) *Acceptable performance.* At the end of the test, the insulation shall not exhibit any blistering, discoloration, cracking, swelling, tackiness, rubberiness, or loss of bond.

§ 7.49 Approval marking.

Each approved battery assembly shall be identified by a legible and permanent approval plate inscribed with the assigned MSHA approval number and securely attached to the battery box.

§ 7.50 Post-approval product audit.

Upon request by MSHA but not more than once a year except for cause, the approval-holder shall make a battery assembly available for audit at no cost and at a mutually agreeable site and time.

§ 7.51 Permissibility checklist.

Each battery assembly bearing an MSHA approval marking shall be accompanied by a list of items necessary for maintenance of the battery assembly as approved.

§ 7.52 New technology.

MSHA may approve a battery assembly that incorporates technology for which the requirements of this subpart are not applicable if MSHA determines that the battery assembly is as safe as those which meet the requirements of this subpart.

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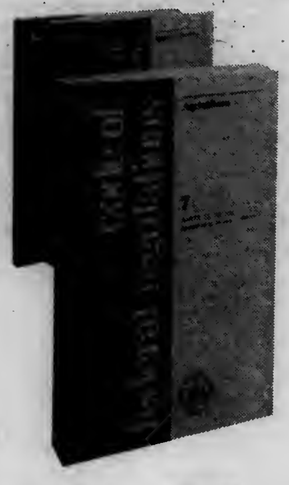
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2-7-86
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For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

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Federal Communications Commission

Reporting and Recordkeeping Requirements
Commodity Futures Trading Commission
Customs Service

Surface Mining
Surface Mining Reclamation and Enforcement Office

Trade Practices
Federal Trade Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center,
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center,
303-236-7181

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Presidential Documents

Title 3—

The President

Presidential Determination No. 86–5 of January 16, 1986

Certification To Authorize Continuation of Certain Assistance for Jamaica

Memorandum for the Secretary of State

Pursuant to Section 537 of the Foreign Assistance and Related Programs Appropriations Act, 1986 (P.L. 99–190), I hereby certify that the Government of Jamaica is sufficiently responsive to the United States Government's concerns on drug control and that the added expenditures of funds for that country are in the national interest of the United States.

You are requested to report this determination to the Congress immediately.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, January 16, 1986.

[FR Doc. 86–2820
Filed 2–5–86; 12:27 pm]
Billing code 3195–01–M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

Tobacco Loan Program Regulations

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a paragraph reference with respect to the addition of flue-cured tobacco variety Reams 266 to the list of discount varieties of flue-cured tobacco for which a reduced level of price support is available. The final rule published in the **Federal Register** on January 31, 1985 (50 FR 4493) which added Reams 266 to this list incorrectly amended 7 CFR § 1464.3(c) instead of 7 CFR § 1464.3(e).

FOR FURTHER INFORMATION CONTACT: C. Douglas Richardson, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 447–4281.

Accordingly, Chapter XIV, Title 7 of the Code of Federal Regulations is corrected as follows:

PART 1464—TOBACCO

§ 1464.3 [Corrected]

1. In Part 1464, § 1464.3(e) is amended by inserting "Reams 266," after "Reams 64," each time it appears.

Authority: Sec. 375, 52 Stat. 66, as amended (7 U.S.C. 1375); Sec. 401, 403, 63 Stat. 1054, as amended (7 U.S.C. 1421, 1423).

Signed at Washington, D.C., on February 4, 1986.

Milt J. Hertz,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86–2757 Filed 2–6–86; 8:45 am]
BILLING CODE 3410–05–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Rev. 2; Amdt. 41]

Delegations to Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Administrator has approved the relocation of the Branch Office at Biloxi, Mississippi to Gulfport, Mississippi.

EFFECTIVE DATE: February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Vizachero, Administrative Information Branch, Small Business Administration, 1441 L Street NW., Washington, DC 20416. Telephone No. (202) 653–8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies); Administrative practice and procedure; Organization and functions (Government agencies).

The authority citation for Part 101 of Title 13 continues to read as follows:

Authority: Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634.

Part 101, 13 CFR 101.3–2 is amended as set forth below:

* * * * *

1. Part I, Section A, paragraph 1, a (13) is changed as follows:

(13) Assistant Branch Manager/F&I, Gulfport, Milwaukee, and Springfield, Illinois

B.O.'s only	250,000	350,000

2. Part I, Section A, paragraph 1.b. (16) is changed as follows:

(16) Assistant Branch Manager for F&I,

Gulfport, B.O.	250,000	500,000

3. Part I, Section B, paragraph 1.j. is changed as follows:

j. Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee and Springfield, Illinois B.O.'s only.

4. Part I, Section B, paragraph 2., subparagraph a (12) is changed as follows:

(12) Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee, and Springfield, Illinois B.O.'s only.

5. Part I, Section B, paragraph 2., subparagraph b (12) is changed as follows:

(12) Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee, and Springfield, Illinois B.O.'s only.

6. Part I, Section B, paragraph 3, subparagraph a (10) is changed as follows:

(10) Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee.

7. Part I, Section B, paragraph 4., subparagraph 1 is changed as follows:

1. Assistant Branch Manager for F&I, Gulfport, Corpus Christi, Milwaukee and Springfield, Illinois B.O.'s only.

8. Part IV, Section A, paragraph 1.d. (12) is changed as follows and (13) is removed:

(12) Assistant Branch Manager/F&I, Gulfport, Corpus Christi, Milwaukee, and Springfield, Illinois B.O.'s only.

Dated: January 27, 1986.

Robert A. Turnbull,
Acting Administrator.

[FR Doc. 86–2366 Filed 2–6–86; 8:45 am]
BILLING CODE 8025–01–M

13 CFR Part 101

[Revision 2—Amdt. 42]

Delegations of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule reflects the structure for Certificate of Appointments (SF–1402) and the legal exemptions from them. Certain officials, including those officially acting in their positions, are exempt from needing a certificate of appointment to purchase goods or services or enter into contracts.

EFFECTIVE DATE: February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Vizachero, Chief, Administrative Procedures and Documentation Section, Small Business Administration, 1441 L Street NW.,

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Washington, DC 20416, Telephone No. (202) 653–8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedures, Organization and functions (Government agencies).

For the reason set forth in the preamble and pursuant to authority in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101. 13 CFR 101.3–2 is amended as set forth below:

1. The authority citation for 13 CFR 101.3–2 continues to read as follows:

Authority: Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended.

§ 101.3–2 [Amended]

1. In 13 CFR 101.3–2, Part VII, Sections A and B are revised and a new Section C is added to read as follows:

Section A. Contract Certificate of Appointment Authority

No agency field office personnel may purchase goods or services or enter into contracts without a certificate of appointment specific to that individual issued by the Internal Procurement Executive. Regional Administrators, as heads of procurement activities, are exempt from this requirement for a certificate of appointment.

Section B. Section 7j Agreements Authority

1. Administration and Management of 7j Agreements. To take all necessary actions in connection with the administration and management of agreements awarded under the authority granted in Section 7(j) of the Small Business Act, as amended (formerly under Section 406 of the Economic Opportunity Act of 1964) except the awarding, changing, amending or terminating of the agreements which are actions subject to the contracting authority in Section A, Contract Certificate of Appointment Authority.

a. Regional Administrator
b. Deputy Regional Administrator
c. Assistant Regional Administrator for Minority Small Business and Capitol Ownership Development (MSB–COD)
d. Chief, Business Development, Regional Office. Reg. VII
e. District Director
f. Deputy District Director
g. Assistant District Director for MSB/COD
h. Financial Management Assistance Officer, Minneapolis MN, D/O

Section C. Section 8(a)(1)(A) Contracting Authority (SBAct)

1. To enter into contracts on behalf of the Small Business Administration with the United States Government and any department, agency, or officer thereof having procurement powers, obligating the Small Business Administration to furnish articles, equipment, supplies, services or materials to the Government or to perform construction work for the Government subject to the following:

Each individual who is warranted to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment limit determines the amount limit that person may procure. Regional Administrators, as heads of procurement activities, are exempt from this requirement for a certificate of appointment.

2. Subcontracting to arrange for the performance of such procurement contracts as stated in paragraph 1 above by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for the construction work, services or the manufacture, supply or assembly of such articles, equipment, supplies or materials or parts thereof, or services or processing connection therewith or such management services as may be necessary to enable the Small Business Administration to perform such contracts, subject to the following:

Each individual who has a certificate of appointment to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment determines the amount that person may procure. Regional Administrators have no dollar limit under this section.

3. To certify to any Officer of the Government having procurement powers that the Small Business Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, subject to following:

Each individual who has a certificate of appointment to purchase goods or services or enter into contracts has a dollar limit inherent in the certificate of appointment. That certificate of appointment limit determines the amount that person may procure. Regional Administrators have no dollar limit under this section.

2. In 13 CFR 101.3–2, Part X, Paragraph 1 is revised to read as follows:

1. Authority to purchase, rent, or contract for equipment, services and supplies for the agency in amounts not to be exceeded. No agency field office personnel may purchase goods or services or enter into contracts without a certificate of appointment specific to that individual issued by the Internal Procurement Executive. Regional Administrators as heads of contracting activities are exempt from this requirement for a certificate of appointment.

3. In 13 CFR 101.3–2, Part X, Paragraph 1, subparagraph e. is revised as follows:

e. Contract for Services. To contract for services for the agency pursuant to Chapter 4 of Title 41, United States Code, subject to the limitations contained in section 257 (a) and (b) of that Chapter. Each individual who has a certificate of appointment to purchase goods or services or enter into contract has a dollar limit inherent in the certificate of appointment. The certificate of appointment limit determines the amount that person may procure. Regional Administrators are limited to $25,000 on open market and up to the maximum order limitation (MOL) on Federal Supply Schedule under this section.

4. Part XI, Section A, paragraph 2 is revised as follows:

2. The authority delegated herein may be exercised by any SBA employee designated as acting in a position designated herein, except that procurement authority requiring a certificate of appointment does not reside in a person acting in a designated position unless that acting individual also holds a certificate of appointment. Procurement certificate of appointments are to individuals, not positions.

Date: January 22, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86–2729 Filed 2–6–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–ANM–25]

Establish 700' Transition Area; Tillamook, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides controlled airspace from 700' above the surface for aircraft executing a new instrument approach procedure at the Tillamook Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or, otherwise, comply with instrument flight rules (IFR) during instrument flight conditions.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM–533, Federal Aviation Administration, Docket No. 85–ANM–25, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2530.

SUPPLEMENTARY INFORMATION:

History

On October 1, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Tillamook, Oregon, 700' transition area (50 FR 40035).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700' transition area to provide controlled airspace for aircraft executing a new instrument approach procedure to Tillamook, Oregon, Airport.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); [14 CFR 11.69].

2. By amending § 71.181 as follows:

Tillamook, Oregon, Transition Area (New)

That airspace extending upward from 700' above the surface within an 8.5 mile radius of the Tillamook Airport (Lat. 45°25'08" N/Long. 123°48'45" W).

Issued in Seattle, Washington, on January 27, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–2664 Filed 2–6–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 24894; Amdt. No. 328]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on January 16, 1986.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. §§ 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

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REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 328 EFFECTIVE DATE, JANUARY 16, 1986

FROM	TO	MEA
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
SANDHILLS, NC VORTAC	RALEIGH-DURHAM, NC VORTAC	2500
PEASE, NH VOR	*YUKES, NH FIX	**3500
*5500 - MRA		
**2200 - MOCA		
YUKES, NH FIX	PARSO, ME FIX	*3500
*2200 - MOCA		
§95.6006 VOR FEDERAL AIRWAY 6		
IS DELETED		
OAKLAND, CA VORTAC	*SALAD, CA FIX	
VIA S ALTER.	VIA S ALTER.	4000
*4700 - MCA SALAD FIX, NE BND		
SALAD, CA FIX	*OAKEY, CA FIX	
VIA S ALTER.	VIA S ALTER.	5000
*3000 - MCA OAKEY FIX, S BND		
OAKEY, CA FIX	SACRAMENTO, CA VORTAC	
VIA S ALTER.	VIA S ALTER.	2500
SACRAMENTO, CA VORTAC	ROZZY, CA FIX	
VIA N ALTER.	VIA N ALTER.	*3500
*2200 - MOCA		
ROZZY, CA FIX	*NAGAN, CA FIX	
VIA N ALTER.	VIA N ALTER.	**4000
*7500 - MCA NAGAN FIX, N BND		
**3000 - MOCA		
NAGAN, CA FIX	CONYO, CA FIX	
VIA N ALTER.	VIA N ALTER.	
	S BND	*7000
	N BND	*11000
*2700 - MOCA		
CONYO, CA FIX	SIGNA, CA FIX	
VIA N ALTER.	VIA N ALTER.	*11000
*9000 - MOCA		
SIGNA, CA FIX	RENO, NV VORTAC	
VIA N ALTER.	VIA N ALTER.	11500
§95.6008 VOR FEDERAL AIRWAY 8		
IS DELETED		
ANEAH, CA FIX	*POMONA, CA VORTAC	
VIA N ALTER.	VIA N ALTER.	4000
*10300 - MCA POMONA VORTAC, NE BND		
POMONA, CA VORTAC	CALBE, CA FIX	
VIA N ALTER.	VIA N ALTER.	
	NE BND	10800
	SW BND	5300
CALBE, CA FIX	MEANT, CA FIX	
VIA N ALTER.	VIA N ALTER.	
	NE BND	11500
	SW BND	10700
MEANT, CA FIX	*APLES, CA FIX	
VIA N ALTER.	VIA N ALTER.	11500
*9100 - MCA APLES FIX, SW BND		
APLES, CA FIX	DAGGETT, CA VORTAC	
VIA N ALTER.	VIA N ALTER.	7500
DAGGETT, CA VORTAC	LAS VEGAS, NV VORTAC	
VIA N ALTER.	VIA N ALTER.	9500

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FROM	TO	MEA
§95.6008 VOR FEDERAL AIRWAY 8—Continued		
LAS VEGAS, NV VORTAC	MORMON MESA, NV VORTAC	
VIA N ALTER.	VIA N ALTER.	*7500
*6500 - MOCA		
§95.6009 VOR FEDERAL AIRWAY 9		
IS AMENDED TO READ IN PART		
IRON MOUNTAIN, MI VORTAC	HOUGHTON, MI VORTAC	3800
§95.6012 VOR FEDERAL AIRWAY 12		
IS DELETED		
SANTA BARBARA, CA VORTAC	*FILLMORE, CA VORTAC	
VIA S ALTER.	VIA S ALTER.	8000
*6100 - MCA FILLMORE VORTAC, W BND		
FILLMORE, CA VORTAC	*SAUGS, CA FIX	
VIA S ALTER.	VIA S ALTER.	6000
*6300 - MCA SAUGS FIX, NE BND		
SAUGS, CA FIX	PALMDALE, CA VORTAC	
VIA S ALTER.	VIA S ALTER.	7000
§95.6015 VOR FEDERAL AIRWAY 15		
IS AMENDED TO READ IN PART		
MALTS, OK FIX	*PRYOR, OK FIX	2900
*2900 - MRA		
§95.6021 VOR FEDERAL AIRWAY 21		
IS DELETED		
BULGY, CA FIX	DAGGETT, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	8000
DAGGETT, CA VORTAC	DANBY, CA FIX	
VIA W ALTER.	VIA W ALTER.	10000
§95.6023 VOR FEDERAL AIRWAY 23		
IS DELETED		
FRESNO, CA VORTAC	*MENDO, CA FIX	
VIA W ALTER.	VIA W ALTER.	2000
*3000 - MCA MENDO FIX, SW BND		
MENDO, CA FIX	PANOCHE, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	4500
PANOCHE, CA VORTAC	VOLTA, CA FIX	
VIA W ALTER.	VIA W ALTER.	5000
VOLTA, CA FIX	STOCKTON, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	3000
STOCKTON, CA VORTAC	LODDI, CA FIX	
VIA W ALTER.	VIA W ALTER.	2000

FROM	TO	MEA
§95.6023 VOR FEDERAL AIRWAY 23—Continued		
LODDI, CA FIX	SACRAMENTO, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	3000
§95.6025 VOR FEDERAL AIRWAY 25		
IS DELETED		
PASO ROBLES, CA VORTAC	*SARDO, CA FIX	
VIA E ALTER.	VIA E ALTER.	5000
*5500 - MRA		
*5500 - MCA SARDO FIX, N BND		
SARDO, CA FIX	SALINAS, CA VORTAC	
VIA E ALTER.	VIA E ALTER.	5500
§95.6027 VOR FEDERAL AIRWAY 27		
IS DELETED		
MENDOCINO, CA VORTAC	FORTUNA, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	*13000
*6100 - MOCA		
FORTUNA, CA VORTAC	CRESCENT CITY, CA VORTAC	
VIA W ALTER.	VIA W ALTER.	*6000
*3500 - MOCA		
§95.6037 VOR FEDERAL AIRWAY 37		
IS AMENDED TO READ IN PART		
BLOTS, SC FIX	CHARLOTTE, NC VOR/DME	2500
CHARLOTTE, NC VOR/DME	*TOLLY, NC FIX	2500
*2600 - MRA		
§95.6054 VOR FEDERAL AIRWAY 54		
IS AMENDED BY ADDING		
CHARLOTTE, NC VOR/DME	SANDHILLS, NC VORTAC	3000
SANDHILLS, NC VORTAC	RAEFO, NC FIX	3000
RAEFO, NC FIX	FAYETTEVILLE, NC VOR/DME	2400
IS AMENDED TO READ IN PART		
SPARTANBURG, SC VORTAC	*GAFFE, SC FIX	3000
*3000 - MRA		
GAFFE, SC FIX	CHARLOTTE, NC VOR/DME	3000
§95.6066 VOR FEDERAL AIRWAY 66		
IS AMENDED TO READ IN PART		
ATHENS, GA VORTAC	GREENWOOD, SC VORTAC	2500
GREENWOOD, SC VORTAC	SANDHILLS, NC VORTAC	*4000
*2200 - MOCA		

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FROM	TO	MEA
§95.6066 VOR FEDERAL AIRWAY 66—Continued		
SANDHILLS, NC VORTAC	RALEIGH-DURHAM, NC VORTAC	2500
§95.6068 VOR FEDERAL AIRWAY 68		
IS AMENDED TO READ IN PART		
HONDS, NM FIX	ROSWELL, NM VORTAC	
	SE BND	*6000
	NW BND	*9000
*6000 - MOCA		
§95.6083 VOR FEDERAL AIRWAY 83		
IS AMENDED TO READ IN PART		
ROSWELL, NM VORTAC	HONDS, NM FIX	
	NW BND	*9000
	SE BND	*6000
*6000 - MOCA		
§95.6087 VOR FEDERAL AIRWAY 87		
IS AMENDED BY ADDING		
PANOCHE, CA VORTAC	SALINAS, CA VORTAC	6000
SALINAS, CA VORTAC	*SANTY, CA FIX	**5000
*7000 - MRA		
**4000 - MOCA		
SANTY, CA FIX	WOODSIDE, CA VORTAC	5000
WOODSIDE, CA VORTAC	SAN FRANCISCO, CA VOR/DME	4500
§95.6103 VOR FEDERAL AIRWAY 103		
IS AMENDED BY ADDING		
CHESTERFIELD, SC VOR/DME	GREENSBORO, NC VORTAC	2500
§95.6106 VOR FEDERAL AIRWAY 106		
IS AMENDED TO READ IN PART		
MANCHESTER, NH VORTAC	RAYMY, NH FIX	*2600
*2100 - MOCA		
RAYMY, NH FIX	*YUKES, NH FIX	**5500
*5500 - MRA		
**2100 - MOCA		
YUKES, NH FIX	KENNEBUNK, ME VORTAC	*5500
*2100 - MOCA		
§95.6107 VOR FEDERAL AIRWAY 107		
IS DELETED		
PANOCHE, CA VORTAC	*SUNOL, CA FIX	
VIA E ALTER.	VIA E ALTER.	6500
*6500 - MCA SUNOL FIX, SE BND		
SUNOL, CA FIX	OAKLAND, CA VORTAC	
VIA E ALTER.	VIA E ALTER.	4000

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FROM	TO	MEA
§95.6108 VOR FEDERAL AIRWAY 108		
IS AMENDED TO READ IN PART		
MEEKER, CO VORTAC	RED TABLE, CO VOR/DME	*14000
*12800 - MOCA		
RED TABLE, CO VOR/DME	COLORADO SPRINGS, CO VORTAC	*16000
*15000 - MOCA		
§95.6133 VOR FEDERAL AIRWAY 133		
IS AMENDED BY ADDING		
LINCO, NC FIX	BARRETTS MOUNTAIN, NC VOR/DME	4000
IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	STANN, NC FIX	3400
STANN, NC FIX	BARRETTS MOUNTAIN, NC VOR/DME	*3500
*3000 - MOCA		
§95.6134 VOR FEDERAL AIRWAY 134		
IS AMENDED TO READ IN PART		
*FAIRFIELD, UT VORTAC	**CARBON, UT VOR/DME	***12700
*10800 - MCA FAIRFIELD VORTAC, E BND		
**10200 - MCA CARBON VOR/DME, W BND		
***11800 - MOCA		
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.		
GRAND JUNCTION, CO VORTAC	TRACI, CO FIX	
	E BND	11000
	W BND	9000
TRACI, CO FIX	PACES, CO FIX	*11000
*10100 - MOCA		
PACES, CO FIX	GLENO, CO FIX	13000
GLENO, CO FIX	RED TABLE, CO VOR/DME	14000
RED TABLE, CO VOR/DME	HERLS, CO FIX	
	E BND	*16000
	W BND	*14000
*14000 - MOCA		
HERLS, CO FIX	FUNDS, CO FIX	16000
FUNDS, CO FIX	DENVER, CO VORTAC	16300
§95.6141 VOR FEDERAL AIRWAY 141		
IS AMENDED TO READ IN PART		
NANTUCKET, MA VORTAC	HYANNIS, MA VORTAC	1700
§95.6142 VOR FEDERAL AIRWAY 142		
IS AMENDED BY ADDING		
*TWIN FALLS, ID VORTAC	MURTH, ID FIX	
	E BND	13000
	W BND	7800
*12000 - MCA TWIN FALLS VORTAC, E BND		

FROM	TO	MEA
§95.6142 VOR FEDERAL AIRWAY 142—Continued		
MURTH, ID FIX	OCLEY, ID FIX	
	E BND	15000
	W BND	9500
OCLEY, ID FIX	*SHEAR, UT FIX	**16500
*16500 - MCA SHEAR FIX, W BND		
**12400 - MOCA		
SHEAR, UT FIX	*MALAD CITY, ID VORTAC	
	SW BND	11000
	NE BND	10000
*13500 - MCA MALAD CITY VORTAC, SW BND		
§95.6143 VOR FEDERAL AIRWAY 143		
IS AMENDED BY ADDING		
BAYMA, NC FIX	GREENSBORO, NC VORTAC	2300
IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	BROKK, NC FIX	3000
BROKK, NC FIX	AZELL, NC FIX	*2600
*2300 - MOCA		
AZELL, NC FIX	GREENSBORO, NC VORTAC	*2500
*2300 - MOCA		
§95.6155 VOR FEDERAL AIRWAY 155		
IS AMENDED TO READ IN PART		
SANDHILLS, NC VORTAC	RALEIGH-DURHAM, NC VORTAC	2500
§95.6159 VOR FEDERAL AIRWAY 159		
IS AMENDED TO READ IN PART		
TUSKEGEE, AL VORTAC	KENTT, AL FIX	2600
KENTT, AL FIX	KYLEE, AL FIX	8000
§95.6195 VOR FEDERAL AIRWAY 195		
IS AMENDED BY ADDING		
STOCKTON, CA VORTAC	TRACY, CA FIX	
	E BND	2000
	W BND	4000
TRACY, CA FIX	SUNOL, CA FIX	5000
SUNOL, CA FIX	OAKLAND, CA VORTAC	4000
§95.6230 VOR FEDERAL AIRWAY 230		
IS DELETED		
SALINAS, CA VORTAC VIA S ALTER.	PANOCHE, CA VORTAC VIA S ALTER.	6000

FROM	TO	MEA
§95.6244 VOR FEDERAL AIRWAY 244		
IS DELETED		
OAKLAND, CA VORTAC VIA S ALTER.	SUNOL, CA FIX VIA S ALTER.	4000
SUNOL, CA FIX VIA S ALTER.	TRACY, CA FIX VIA S ALTER.	5000
TRACY, CA FIX VIA S ALTER.	STOCKTON, CA VORTAC VIA S ALTER.	
	E BND	2000
	W BND	4000
§95.6248 VOR FEDERAL AIRWAY 248		
IS AMENDED BY ADDING		
SALINAS, CA VORTAC	*SARDO, CA FIX	5500
*5500 - MRA		
*5500 - MCA SARDO FIX, N BND		
SARDO, CA FIX	PASO ROBLES, CA VORTAC	5000
§95.6259 VOR FEDERAL AIRWAY 259		
IS AMENDED BY ADDING		
MOPED, NC FIX	BARRETTS MOUNTAIN, NC VOR/DME	4000
BARRETTS MOUNTAIN, NC VOR/DME	HOLSTON MOUNTAIN, TN VORTAC	7500
IS AMENDED TO READ IN PART		
CHESTERFIELD, SC VOR/DME	HUSTN, NC FIX	2500
IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	AMDET, NC FIX	3700
AMDET, NC FIX	*OLETE, NC FIX	5000
*8000 - MCA OLETE FIX, NW BND		
OLETE, NC FIX	*LIVIL, NC FIX	8000
*8000 - MCA LIVIL FIX, SE BND		
LIVIL, NC FIX	HOLSTON MOUNTAIN, TN VORTAC	7500
§95.6283 VOR FEDERAL AIRWAY 283		
IS AMENDED BY ADDING		
BULGY, CA FIX	DAGGETT, CA VORTAC	8000
DAGGETT, CA VORTAC	*WHIGG, CA FIX	10000
*12000 - MRA		
WHIGG, CA FIX	BOULDER CITY, NV VORTAC	10000
§95.6293 VOR FEDERAL AIRWAY 293		
IS AMENDED TO READ IN PART		
BULLION, NV VORTAC	SAMAN, ID FIX	10600
SAMAN, ID FIX	*TWIN FALLS, ID VORTAC N BND	7500

FROM	TO	MEA
§95.6293 VOR FEDERAL AIRWAY 293—Continued		
	S BND	8600
*6500 - MCA TWIN FALLS VORTAC, S BND		
§95.6296 VOR FEDERAL AIRWAY 296		
IS AMENDED TO READ IN PART		
HUSTN, NC FIX	FAYETTEVILLE, NC VOR/DME	2400
IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	FAYETTEVILLE, NC VOR/DME	*3000
*2700 - MOCA		
§95.6301 VOR FEDERAL AIRWAY 301		
IS AMENDED BY ADDING		
PANOCHE, CA VORTAC	*SUNOL, CA FIX	6500
*6500 - MCA SUNOL FIX, SE BND		
SUNOL, CA FIX	OAKLAND, CA VORTAC	4000
OAKLAND, CA VORTAC	COMMO, CA FIX	*5000
*4000 - MOCA		
COMMO, CA FIX	POINT REYES, CA VORTAC	5000
§95.6327 VOR FEDERAL AIRWAY 327		
IS AMENDED TO READ IN PART		
SALT RIVER, AZ VORTAC	*KNOBB, AZ FIX	
	N BND	8000
	S BND	6000
*8000 - MRA		
§95.6358 VOR FEDERAL AIRWAY 358		
IS AMENDED TO READ IN PART		
ALEXX, OK FIX	WILL ROGERS, OK VORTAC	2800
§95.6361 VOR FEDERAL AIRWAY 361		
IS AMENDED BY ADDING		
FARMINGTON, NM VORTAC	MONTROSE, CO VOR/DME	16200
MONTROSE, CO VOR/DME	RED TABLE, CO VOR/DME	15000
RED TABLE, CO VOR/DME	KREAMLING, CO VORTAC	14000
§95.6362 VOR FEDERAL AIRWAY 362		
IS AMENDED TO DELETE		
MACON, GA VORTAC	NORCROSS, GA VORTAC	*5000
*3000 - MOCA		MAA- 7000
NORCROSS, GA VORTAC	*HELLO, GA FIX	4900
*5000 - MRA		MAA- 7000

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FROM	TO	MEA
§95.6364 VOR FEDERAL AIRWAY 364 IS AMENDED BY ADDING		
LINCO, NC FIX	SUGARLOAF MOUNTAIN, NC VORTAC	6000
§95.6386 VOR FEDERAL AIRWAY 386 IS AMENDED BY ADDING		
SANTA BARBARA, CA VORTAC	*FILLMORE, CA VORTAC	8000
*6100 - MCA FILLMORE VORTAC, W BND		
FILLMORE, CA VORTAC	*SAUGS, CA FIX	6000
*6300 - MCA SAUGS FIX, NE BND		
SAUGS, CA FIX	PALMDALE, CA VORTAC	7000
§95.6392 VOR FEDERAL AIRWAY 392 IS ADDED TO READ		
OAKLAND, CA VORTAC	*SALAD, CA FIX	4000
*4700 - MCA SALAD FIX, NE BND		
SALAD, CA FIX	*OAKEY, CA FIX	5000
*3000 - MCA OAKEY FIX, S BND		
OAKEY, CA FIX	SACRAMENTO, CA VORTAC	2500
SACRAMENTO, CA VORTAC	ROZZY, CA FIX	*3500
*2200 - MOCA		
ROZZY, CA FIX	*HAGAM, CA FIX	**4000
*7500 - MCA HAGAM FIX, N BND		
**3000 - MOCA		
HAGAM, CA FIX	*AUDIO, CA FIX N BND	**11000
	S BND	**7000
*9000 - MCA AUDIO FIX, NE BND		
**2700 - MOCA		
AUDIO, CA FIX	CONYO, CA FIX NE BND	*11000
	SW BND	*7000
*2700 - MOCA		
CONYO, CA FIX	SIGNA, CA FIX	*11000
*9000 - MOCA		
SIGNA, CA FIX	RENO, NV VORTAC	11500
§95.6394 VOR FEDERAL AIRWAY 394 IS ADDED TO READ		
SEAL BEACH, CA VORTAC	AHEIM, CA FIX	*3000
*2200 - MOCA		
AHEIM, CA FIX	*POMONA, CA VORTAC	4000
*10300 - MCA POMONA VORTAC, NE BND		
POMONA, CA VORTAC	CALBE, CA FIX SW BND	5300
	NE BND	10800
CALBE, CA FIX	MEANT, CA FIX SW BND	10700
	NE BND	11500
MEANT, CA FIX	*APLES, CA FIX	11500
*9100 - MCA APLES FIX, SW BND		
APLES, CA FIX	DAGGETT, CA VORTAC	7500
DAGGETT, CA VORTAC	LAS VEGAS, NV VORTAC	*9500
*7000 - MOCA		
LAS VEGAS, NV VORTAC	MORMON MESA, NV VORTAC	*7500
*6500 - MOCA		

FROM	TO	MEA
§95.6409 VOR FEDERAL AIRWAY 409 IS AMENDED BY ADDING		
CHARLOTTE, NC VOR/DME	LOCAS, NC FIX	3000
LOCAS, NC FIX	RALEIGH-DURHAM, NC VORTAC	*6000
*2200 - MOCA		
IS AMENDED TO DELETE		
ATHENS, GA VORTAC	VESTO, GA FIX	2500
VESTO, GA FIX	GREENWOOD, SC VORTAC	2500
GREENWOOD, SC VORTAC	SANDHILLS, NC VORTAC	*4000
*2100 - MOCA		
SANDHILLS, NC VORTAC	RALEIGH-DURHAM, NC VORTAC	2000
§95.6415 VOR FEDERAL AIRWAY 415 IS AMENDED BY ADDING		
SPARTANBURG, SC VORTAC	LOCKS, SC FIX	2300
§95.6421 VOR FEDERAL AIRWAY 421 IS AMENDED TO READ IN PART		
GUNNISON, CO VORTAC	WENDT, CO FIX N BND	*16300
	S BND	*13000
*13000 - MOCA		
WENDT, CO FIX	CAZIJU, CO FIX	*16300
*14500 - MOCA		
CAZIJU, CO FIX	SKIER, CO FIX	16300
SKIER, CO FIX	RED TABLE, CO VOR/DME	*16300
*14000 - MOCA		
RED TABLE, CO VOR/DME	KREMMLING, CO VORTAC	14000
§95.6454 VOR FEDERAL AIRWAY 454 IS AMENDED TO READ IN PART		
GREENWOOD, SC VORTAC	LOCKS, SC FIX	2300
BAYSM, NC FIX	LIBERTY, NC VORTAC	3000
IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	LIBERTY, NC VORTAC	*2600
*2500 - MOCA		
§95.6494 VOR FEDERAL AIRWAY 494 IS AMENDED BY ADDING		
CRESCENT CITY, CA VORTAC	FORTUNA, CA VORTAC	*6000
*3500 - MOCA		
FORTUNA, CA VORTAC	MENDOCINO, CA VORTAC	*13000
*6100 - MOCA		

FROM	TO	MEA
§95.6567 VOR FEDERAL AIRWAY 567 IS AMENDED TO READ IN PART		
SALT RIVER, AZ VORTAC	*KNOBB, AZ FIX N BND	8000
	S BND	6000
*8000 - MEA		
§95.6585 VOR FEDERAL AIRWAY 585 IS ADDED TO READ		
FRESNO, CA VORTAC	*MENDO, CA FIX	2000
*3000 - MCA MENDO FIX, SW BND		
MENDO, CA FIX	PANOCHE, CA VORTAC	4500
PANOCHE, CA VORTAC	VOLTA, CA FIX	5000
VOLTA, CA FIX	STOCKTON, CA VORTAC	3000
STOCKTON, CA VORTAC	LODDI, CA FIX	2000
LODDI, CA FIX	SACRAMENTO, CA VORTAC	3000
§95.6402 HAWAII VOR FEDERAL AIRWAY 2 IS AMENDED TO READ IN PART		
PARIS, HI FIX	*ARBOR, HI FIX	4000
*8000 - MRA		
ARBOR, HI FIX	HILO, HI VORTAC	3000
§95.6405 HAWAII VOR FEDERAL AIRWAY 5 IS AMENDED TO READ IN PART		
ALTIS, HI FIX	MAKEN, HI FIX NW BND	8000
	SE BND	7000
MOANA, HI FIX	*BOWIN, HI FIX	
VIA W ALTER.	VIA W ALTER.	4000
*7500 - MCA ROWIN FIX, N BND		
JESSI, HI FIX	*LAVAS, HI FIX	
VIA W ALTER.	VIA W ALTER.	7000
*7000 - MRA		
LAVAS, HI FIX	MAKEN, HI FIX	
VIA W ALTER.	VIA W ALTER.	7000
§95.6407 HAWAII VOR FEDERAL AIRWAY 7 IS AMENDED TO READ IN PART		
MOANA, HI FIX	LANAI, HI VORTAC	4000
LANAI, HI VORTAC	MOLOKAI, HI VORTAC	4000
§95.6411 HAWAII VOR FEDERAL AIRWAY 11 IS AMENDED TO READ IN PART		

FROM	TO	MEA
§95.6411 HAWAII VOR FEDERAL AIRWAY 11—Continued		
PULPS, HI FIX	MAUI, HI VORTAC	5000
§95.6412 HAWAII VOR FEDERAL AIRWAY 12 IS AMENDED TO READ IN PART		
GRITL, HI FIX	BAMBO, HI FIX	4500
BAMBO, HI FIX	MAGGI, HI FIX	5000
MAGGI, HI FIX	*SNARK, HI FIX NE BND	13000
	SW BND	5000
*13000 - MRA		
§95.6413 HAWAII VOR FEDERAL AIRWAY 13 IS AMENDED TO READ IN PART		
KOKO HEAD, HI VORTAC	BAMBO, HI FIX	4500
BAMBO, HI FIX	TOADS, HI FIX	5000
§95.6415 HAWAII VOR FEDERAL AIRWAY 15 IS AMENDED TO READ IN PART		
LIHUE, HI VORTAC	BOOKE, HI FIX	4000
BARSY, HI FIX	*RABAT, HI FIX	10000
*10000 - MRA		
RABAT, HI FIX	*PUMIC, HI FIX	6000
*10000 - MRA		
PUMIC, HI FIX	*ARBOR, HI FIX	4000
*8000 - MRA		
ARBOR, HI FIX	HILO, HI VORTAC	3000
HOOAY, HI FIX	EELIC, HI FIX	10000
EELIC, HI FIX	KUMAME, HI FIX W BND	10000
	E BND	31000
§95.6416 HAWAII VOR FEDERAL AIRWAY 16 IS AMENDED TO READ IN PART		
PUPPI, HI FIX	SOUTH KAUAI, HI VORTAC E BND	5000
	W BND	11000
SOUTH KAUAI, HI VORTAC	MORKE, HI FIX NW BND	4300
	SE BND	3000
§95.6421 HAWAII VOR FEDERAL AIRWAY 21 IS AMENDED TO READ IN PART		
BISEN, HI FIX	CUTLE, HI FIX	21000

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FROM	TO	MEA
§95.6421 HAWAII VOR FEDERAL AIRWAY 21—Continued		
CUTLE, HI FIX	OSTAM, HI FIX	24000
§95.6422 HAWAII VOR FEDERAL AIRWAY 22		
IS AMENDED TO READ IN PART		
BARBY, HI FIX	SARDS, HI FIX	12000
SARDS, HI FIX	BONUS, HI FIX	8000
BONUS, HI FIX	OKALA, HI FIX	6000

FROM	TO	MEA
§95.6422 HAWAII VOR FEDERAL AIRWAY 22—Continued		
BATES, HI FIX	OSTAM, HI FIX	10000
OSTAM, HI FIX	SCOON, HI FIX	22000
§95.6424 HAWAII VOR FEDERAL AIRWAY 24		
IS AMENDED TO READ IN PART		
*LANAI, HI VORTAC	**MAUI, HI VORTAC	9000
*5100 - MCA LANAI VORTAC, NE BND		
**6700 - MCA MAUI VORTAC, SW BND		
§95.6425 HAWAII VOR FEDERAL AIRWAY 25		
IS AMENDED TO READ IN PART		
HILO, HI VORTAC	COOKE, HI FIX	3000
COOKE, HI FIX	BASSY, HI FIX	6000
BASSY, HI FIX	COODY, HI FIX	9000

FROM	TO	MEA	MAA
§95.7028 JET ROUTE NO. 28			
IS AMENDED BY ADDING			
MILFORD, UT VORTAC	HANKSVILLE, UT VORTAC	18000	45000
HANKSVILLE, UT VORTAC	GUNNISON, CO VORTAC	18000	45000
GUNNISON, CO VORTAC	PUEBLO, CO VORTAC	18000	45000
§95.7060 JET ROUTE NO. 60			
IS AMENDED TO READ IN PART			
HANKSVILLE, UT VORTAC	RED TABLE, CO VOR/DME	18000	45000
RED TABLE, CO VOR/DME	DENVER, CO VORTAC	18000	45000
§95.7080 JET ROUTE NO. 80			
IS AMENDED TO READ IN PART			
GRAND JUNCTION, CO VORTAC	RED TABLE, CO VOR/DME	18000	45000
RED TABLE, CO VOR/DME	DENVER, CO VORTAC	18000	45000
§95.7206 JET ROUTE NO. 206			
IS ADDED TO READ			
ALAMOSA, CO VORTAC	GUNNISON, CO VORTAC	18000	45000
GUNNISON, CO VORTAC	RED TABLE, CO VOR/DME	18000	45000
RED TABLE, CO VOR/DME	ROCK SPRINGS, WY VORTAC	18000	45000
§95.7399 JET ROUTE NO. 399			
IS ADDED TO READ			
MULLAN PASS, ID VOR/DME	U.S. CANADIAN BORDER	18000	45000

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§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-8		
	IS AMENDED TO DELETE		
POMONA, CA VORTAC VIA N ALTER.	DAGGETT, CA VORTAC VIA N ALTER.	16	POMONA
	V-8		
	IS AMENDED TO DELETE		
DAGGETT, CA VORTAC VIA N ALTER.	LAS VEGAS, NV VORTAC VIA N ALTER.	59	DAGGETT
	V-134		
	IS AMENDED TO DELETE		
FAIRFIELD, UT VORTAC	CARBON, UT VOR/DME	42	FAIRFIELD
GRAND JUNCTION, CO VORTAC	DENVER, CO VORTAC	110	GRAND JUNCTION
	V-394		
	IS AMENDED BY ADDING		
POMONA, CA VORTAC	DAGGETT, CA VORTAC	16	POMONA
DAGGETT, CA VORTAC	LAS VEGAS, NV VORTAC	59	DAGGETT
	V-37		
	IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	PULASKI, VA VORTAC	86	FORT MILL
	V-259		
	IS AMENDED TO DELETE		
FORT MILL, SC VORTAC	HOLSTON MOUNTAIN, TN VORTAC	53	FORT MILL
	J-60		
	IS AMENDED TO DELETE		
GRAND JUNCTION, CO VORTAC	DENVER, CO VORTAC	120	GRAND JUNCTION

[FR Doc. 86-2711 Filed 2-6-86; 8:45 am]

BILLING CODE 4910-13-C

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 16, 17, 18 and 21

Reports Filed by Contract Markets, Futures Commission Merchants, Clearing Members, Foreign Brokers and Large Traders

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is adopting amendments to Parts 15, 16, 17, 18 and 21 of its regulations. The amendments to Part 16, which relates to reporting requirements for contract markets, provide that contract markets submit those reports required under Rules 16.00, 16.01 and 16.02 by 3:00 p.m. on the business day following that to which the information pertains. The amendments also require that contract markets submit corrections to errors and omissions on reports submitted pursuant to Part 16 on Commission compatible data processing media.

The amendments to Part 17, which relates to reporting requirements for futures commission merchants ("FCMs"), clearing members and foreign brokers, require that all such persons provide the information required under Rule 17.00 on compatible data processing media unless otherwise approved to report on printed forms or Commission supplied computer printouts. The amendments, as adopted, include an exemptive provision for those firms that do not have the requisite means to comply with the amendments. The amendments to Part 17 also require that foreign brokers file series '01 reports on a daily as opposed to a weekly basis. Additional technical amendments have been made to Parts 15, 17 and 21 which the Commission believes are necessary in order for firms to report on machine-readable media.

Part 18 of the regulations, which pertains to reports furnished by traders, has been amended to require that large traders provide on CFTC form 40 information concerning financial interest in and control of other traders as well as all futures and/or option trading accounts. Traders are required to update their form 40s if these amendments alter the information which has previously been provided to the Commission. The Commission has also adopted changes to Rule 18.04 that clarify the type of information that should be provided by traders on the form 40 concerning their hedging use of option or futures markets.

The adoption of new rules 16.07 and 17.03 delegates authority to decide certain procedural reporting matters to the Director of the Division of Economic Analysis and to the Executive Director.

DATE: These rules shall be effective August 1, 1986.

ADDRESS: Commbdity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, Associate Director, Market Surveillance, Division of Economic Analysis at the above address. Telephone (202) 254–3310.

SUPPLEMENTARY INFORMATION: On July 26, 1985, the Commission published in the **Federal Register** proposed amendments to Parts 16, 17 and 18 of its regulations. These regulations concern reports containing option and futures data which are filed by contract markets, futures commission merchants (FCMs), clearing members, foreign brokers and large traders (50 FR 30450, July 26, 1985).[1] As noted in the release announcing the proposed rule changes, these data are necessary for daily market surveillance purposes and for market analysis and may also be used in research projects. The Commission received 33 comment letters on its proposed rulemaking. These letters included responses from five exchanges, clearinghouses associated with two of the exchanges, the Futures Industry Association, and a vendor of accounting systems whose clients include 23 FCMs. The remaining 24 comment letters were from FCMs, non-FCM clearing members and foreign brokers.

I. Amendments to Part 16—Reports by Contract Markets

A. Time of Filing Reports

As explained in the July 26, 1985, **Federal Register** release, Part 16 of the Regulations requires contract markets to provide certain futures and option information to the Commission in both machine-readable and hard copy form. This information includes the futures and option positions and transactions of members of the clearing organization for a contract market, 17 CFR 16.00; futures and option trading volume, open contracts and prices, 17 CFR 16.01; option large trader reports 17 CFR 16.02; and option month-end reports, 17 CFR 16.04. Contract markets must submit the data required under rules 16.00, 16.01 and 16.02 on the business day following the day to which the information pertains; however, no particular time of day is mentioned in the rules. See 17 CFR 16.00(b), 16.01(d) and 16.02(b).

Because of the large volume of data involved, the Commission updates its data base only once a day with the exchange-submitted data. Timely receipt of these data are essential so that the Commission can process and make them available for analysis on the following business day. In view of the importance of these data to its market suveillance program, the Commission proposed that the exchanges submit the data required under rules 16.00(a), 16.01(a) and 16.02(a) by 12:00 noon of the business day following the day to which the information pertains.

The Commission received comments from ten persons concerning this proposal, six of whom were representatives of exchanges or clearinghouses associated with exchanges. Nine of the ten commenters expressed concern that adoption of the proposed amendments would impose a severe burden on clearing member firms that must submit the data to the clearinghouses for initial processing. Four of the exchanges commenting on this aspect of the proposal cited a number of operational constraints which preclude them from shortening their current processing time for market surveillance data. Significant among these was the time necessary for the exchanges to collect, edit and process large trader option reports and gross futures and option position computations and/or adjustments. These latter data form the basis for open interest data required under Commission rules 16.00 and 16.01.

The exchanges concluded that if the rules were adopted as proposed, clearing members would have to submit their reports to the exchanges two to three hours earlier than is currently required. After polling its member firms, one exchange found that for a large number of such firms this would necessitate the hiring of additional staff and/or starting work approximately three hours earlier. The commenters questioned whether the gains in the Commission's surveillance capability which might accrue from adoption of the proposed rules were justified by the substantial burden which would be

[1] In a September 4, 1985, **Federal Register** release, the Commission proposed certain technical amendments to rules 21.02 and 21.02a concerning special calls for information from industry members (50 FR 35247, September 4, 1985). This included clarifying language that exempts futures commission merchants who carry positions on a fully disclosed basis with another futures commission merchant from reporting such positions to the Commission. Additionally, there were four technical corrections to the ADP format for providing data on machine-readable media. The Commission received no comments on these admendments and is adopting them as proposed as part of the instant rulemaking.

placed on clearing member firms. Other commenters indicated that a 12:00 noon filing time for Part 16 data would seriously impair the accuracy of the data and would necessitate an additional submission each day to correct errors.

The Commission appreciates the concerns of the commenters with respect to the additional reporting burdens which may be placed on clearing members. It is the Commission's policy to minimize costs to the industry for providing data to the extent that it does not impair effective market surveillance. In the present instance, the Commission continues to believe that it is necessary to prescribe a time by which data must be submitted by the exchanges, even though 12:00 noon may not be feasible at the current time.

Comment letters from the exchanges and a Commission staff review of current exchanges practices indicate that a majority of the exchange, either now or with little additional burden, will be able to submit the machine-readable data required under Part 16 by 3:00 p.m. on the day following that to which the information pertains. The Commission believes that by requiring a 3:00 p.m. deadline for submission of Part 16 data it can accomplish a primary purpose of its original proposal. The Commission is aware, however, that at least two exchanges are currently able to submit both hard copy and machine-readable data by 12:00 noon and that a number of others are able to provide hard copy imformation an hour or more in advance of the time that machine-readable data are available. The Commission does not desire to degrade the current timeliness of certain reports, in particular those hard copy reports which can be used immediately for assessing the liquidation of a maturing future. Accordingly, the Commission is amending its proposal to require that the exchanges submit data in hard copy and machine-readable forms at such times as each of the two forms of the data are first available but not later than 3:00 p.m. of the day following that to which the information pertains.

It should be noted that under current rules, the Commission or its designee may instruct exchanges to submit hard copy and/or machine-readable data at different times if an exchange is unable to comply with the time of filing specified in the regulations. See, for example, 17 CFR 16.02(b). The Commission is retaining this flexibility in its amended rules. If an exchange can demonstrate that it cannot meet the proposed timing requirements without an undue burden, the Commission or its designee may instruct such an exchange to submit machine-readable data at a time later than that explicitly set forth in the regulations.

B. Delegation of Authority

The Commission also is adding a new § 16.07 to the regulations delegating to the Director of the Division of Economic Analysis the authority to prescribe the form in which reports must be filed (*i.e.*, machine-readable and/or hard copy) and for exchanges that request exemptions from the requirements of Part 16 to determine the place and time of filing reports. This authority is to be exercised by such Director or by such other employee or employees of the Commission under the supervision of such Director as may be designated from time to time by the Director.

Commission rules 16.00(b), 16.01(b), 16.02(d), and 16.04(b) also require that exchanges use a format and coding structure approved in writing by the Commission or its designee. The Commission's Office of the Executive Director has been responsible for supplying exchanges with a model format for reporting in machine-readable form and for determining whether exchanges comply with this format. Accordingly, new Commission rule 16.07 also contains a delegation of authority to the Executive Director to approve the format and coding structure for exchange data supplied in machine-readable form under Part 16 of the regulations.

C. Types of Machine Media

The Commission also proposed to amend rules 16.01(b), 16.01(d), 16.02(b) and 16.04(b) to reflect accurately the types of magnetic media that are compatible with the Commission's data processing system. (50 FR 30451 July 26, 1985). No persons commented on this aspect of the Commission's proposed rule changes.

At the time the proposal was set forth, compatible data processing media included only magnetic tapes and diskettes. As discussed more fully below, the Commission intends to add certain varieties of telecommunication equipment to its ADP center in Chicago in response to requests for direct transfer of Part 17 data from FCMs and clearing members to the Commission. Accordingly, the Commission is adopting in final form a definition of compatible magnetic media which includes dial-up transmission and which will be applicable as well to reports of contract markets pursuant to Part 16 of the Commission's regulations. The Commission believes that dial-up data transmission may assist the exchange in meeting the new time requirements set forth in Part 16 since delivery to the Commission of a physical tape would no longer be required.[2]

D. Errors or Omissions

The Commission expects that contract markets will maintain a program designed to detect errors or omissions in data supplied by them under Part 16 of the regulations. Amendments to rule 16.06, which concerns the reporting of errors or omissions to the Commission, were proposed in order to clarify the manner in which exchanges must notify the Commission of such errors and omissions. The proposed amendments would require that corrections to data filed in machine-readable form under Part 16 also be provided to the Commission on compatible data processing media. Two exchanges commented on this proposal. Both exchanges noted that if the proposed amendment were adopted, they would need an extended period of time to make programming changes.

The Commission intends to adopt the rule change as proposed, with an effective date of all amendments to Part 16 of August 1, 1986. The Commission believes that this should allow exchanges sufficient time to make necessary adjustments in the internal procedures and/or necessary programming changes to meet the new requirements set forth in Part 16 regarding timing and error corrections.

II. Amendments to Part 17—Reports by Futures Commission Merchants, Members of Contract Markets and Foreign Brokers

Part 17 of the Commission's regulations specifies the information that must be reported, the form and manner of reporting and the time and place for filing reports by FCMs, clearing members and foreign brokers. Firms file information required under rule 17.00 ("01 information") on printed forms, Commission-supplied computer printouts or magnetic tapes.[3] At present,

[2] Since Parts 16, 17 and 21 of its regulations require that data be provided in machine-readable form, the Commission is adding a definition of "compatible data processing media" to Rule 15.00. The new definition makes clear the type of magnetic media that the Commission can accept without prior notification or approval and which types of media each Commission regional offices can accept. The Commission, in new Rule 16.07, has delegated its authority to approve reporting on other types of magnetic media to the Executive Director. Conforming emendments are also being made to Part 21 of the regulations.

[3] The information required under rule 17.00 includes reportable positions, exchanges of futures for cash and delivery notices issued or received for

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five firms use tapes to provide '01 information.

In the July 26, 1985, **Federal Register** release, the Commission noted that its experience with '01 information reported on tape indicates that it provides more accurate and timely data and reduces processing and/or reporting burdens for the Commission and industry members (50 FR 30451). The Commission also noted that its experience was independently confirmed through a report concerning Commission reporting which was conducted by the General Accounting Office.[4]

Since a large number of firms have their own computer systems or use a service bureau that can provide machine-readable data on their behalf, the Commission proposed amendments to Part 17 that would require all FCMs, clearing members and foreign brokers to file information in machine-readable form unless authorized to report otherwise by the Commission or its designee. The Commission also proposed to require foreign brokers to submit '01 information on a daily rather than a weekly basis. The Commission received 25 comment letters dealing at least in part with its proposed revisions to Part 17.

A. Machine-Readable Data

The Commission's proposed amendments to rule 17.00 specifically provide that, unless otherwise approved by the Commission or its designee, an FCM, clearing member or foreign broker must submit '01 information in machine-readable form on magnetic media that are compatible with the Commission's data processing system and in a form and manner specified in proposed Rule 17.00(g). Proposed rule 17.00(g) allows for reporting only on magnetic tape unless otherwise authorized by the Commission or its designee. The proposed amendments also require that machine-readable data be submitted by 9:00 am at a Commission office in accordance with instructions from the Commission or its designee.

The Commission proposed to delegate its authority to authorize firms to report by means other than machine-readable media to the Director of the Division of Economic Analysis. Proposed Rule 17.03 allows reporting on Commission-supplied computer printouts or printed forms if firms could demonstrate to the Director of the Division of Economic Analysis that technologically they are unable to meet the requirements of proposed rule 17.00. The Commission also proposed deleting current rule 17.03 which allows voluntary submissions of '01 information on machine-readable media. The requirement in current rule 17.03 that a printout of data accompany any submissions made on machine-readable media was proposed as new rule 17.00(a)(3).

Fifteen of the twenty-five comment letters responsive to this proposal requested that any regulation that required the submission of '01 information in machine-readable form have its effective date delayed 6 to 8 months after the adoption of such rules by the Commission. The commenters noted that an extended period of time would be needed by FCMs or service organizations that do the accounting for FCMs and clearing members to reprogram their systems. The Commission is well aware of the need for lead time to reprogram computer systems and has determined to set the effective date of the amendments to Part 17 as of August 1, 1986 which coincides with the effective date of the amendments to Part 16.

The Commission received five comment letters requesting that it allow reporting via data transmission on diskette in addition to magnetic tape. Two persons specifically noted that the Commission should allow reporting on diskettes produced by the IBM system 34 since this system was in common use by the industry.

Another commenter recommended that the Commission support data transmission using 3780 bisynchronous, RJE or SRJE protocols via Bell 208 compatible modems as well as diskettes in IBM single density 3741 format. The commenters noted that tape input would not allow the Commission to realize all potential benefits from machine-readable input since the tapes must be handled by both the reporting firms and the Commission and submission of the data may be delayed by the time required to deliver a tape.

The Commission's original proposal did not preclude the use of magnetic media other than tape but would have required approval for the use of diskettes or data transmission. In light of the comments it received, the Commission is amending its proposal specifically to include, as magnetic media approved for reporting, diskettes in a single density IBM 3741 format and dial-up data transmission at speeds up to 1200 baud asynchronous transmission and 4800 baud synchronous transmission. The use of other forms of magnetic media or transmission will require prior approval from the Commission or its designee.

Since the term "compatible data processing media" is used in Parts 16, 17 and 21 of its regulations, the Commission has determined to add a definition of this term as a new paragraph to Rule 15.00 which defines terms used in Parts 15 through 21 of Chapter 17 of the Code of Federal Regulations. New paragraph 15.00(1) also specifies the Commission offices that can accept the various media.

The comments concerning data transmission have also caused the Commission to reconsider the need for proposed rule 17.00(a)(3), which would require that data submitted in machine-readable form be accompanied by a complete and accurate printout of the data. This requirement would provide a source by which the Commission could determine if certain errors such as record omissions occurred in creating or reading magnetic media. This requirement, however, may conflict with certain objectives associated with requiring machine-readable input, in particular if the data are transmitted. The Commission believes that with the addition of a sequence number to the record format for '01 information, it will have sufficient ability to check for errors or omissions. In view of the above, the Commission is amending its proposal by deleting rule 17.00(a)(3) and by requiring under rule 17.00(g) that a sequence number be included on each data record supplied to the Commission.[5]

Two commenters, the FIA and a service organization, expressed concerns about error corrections. The FIA conducted an informal survey of its members and found that if errors or omissions had to be provided in machine-readable form, it would complicate programming efforts and would require more than a 6 to 8 month lead time in order for its members to achieve compliance with the proposed rules. As noted by the FIA, the Commission made no reference in its July 26, 1985, **Federal Register** release to procedures for correcting errors.

each special account. A special account is any account in which there are reportable positions, that is, positions which exceed certain levels established by the Commission. See 17 CFR 15.00(a)(2), (c) and 15.03, 1985.

[4] Report to the Committee on Government Operations, House of Representatives of the United States, GAO/GGD-83-89, April 11, 1983.

[5] The Commission is amending its proposed rule 17.00(g) to require that the sequence number appear in colums 46–53 of each record. The Commission notes that this amendment should not significantly affect those FCMs which are currently supplying tapes to the Commission since at the present time columns 46–53 are used as filler. Moreover, the cost of making this change should be more than offset by not having to produce and deliver an output of the data to the Commission. FCMs currently supplying tapes will have until August 1, 1986, to add a sequence number to their current formats.

Currently, the Commission only accepts corrections in hard copy form and will continue this practice.[6] To make this clear, the Commission is amending its proposal by adding a new rule 17.00(h), which requires that corrections to previous days' data be supplied on printed '01 forms or on a computer printout using a format and coding structure approved by the Commission or its designee. The Commission also notes that at present it produces a printout of the '01 information for correction purposes that is given to the five FCMs currently supplying tapes. The Commission intends to discontinue this practice when its amendments to Part 17 become effective.

Both commenters also noted that if the Commission maintains a 9:00 am filing time as proposed, the accuracy of the reports the Commission receives on machine-readable media may be questionable. Final adjustments may be required to the data as a result of the clearing process or positions may have to be combined for reporting to the Commission. The service organization requested a filing time of 12:00 noon to coincide with the submission of the data required under Part 16.

Industry members have an obligation at all times to provide the Commission with accurate reports. As with Part 16 data, the Commission recognizes that there may be significant costs to firms to provide accurate reports within relatively restrictive time frames and that there may be some later time at which reports can be filed that will serve the Commission's purposes. The Commission begins processing '01 information concerning markets in the eastern time zone at about 11:00 am eastern time. Series '01 information concerning all other markets are processed on a similar schedule based on central time. In view of the above and the Commission's need to maintain its current processing schedule, the Commission is amending its proposal concerning the time at which reports must be filed. As amended, proposed rule 17.02 requires that '01 information be received in the appropriate regional office on the business day following the day for which reports are filed when such reports are first available but not later than:

(1) 9:00 am, if the '01 information is submitted in hard copy form;

(2) 10:30 a.m., if the '01 information is submitted on computer tape or diskette; or

(3) 11:00 a.m., if the '01 information is transmitted via telecommunications.

The times referred to in (1) through (3) above are eastern time if the information concerns markets located in that time zone and central time for information concerning all other markets. The Commission is requiring firms to submit the information when it is first available in an attempt to prevent congestion problems which might otherwise occur if all firms, particularly those using dial-up transmission, file at a single time. The earliest time is required for hardcopy submissions since such data require manual preparation and key entry. Hardcopy submission would be permitted only for firms obtaining an exemption from this rule.[7]

The Commission received nine comment letters expressing concern that the proposed amendments to Part 17 would create a hardship for smaller firms. Seven of the comment letters were from firms that believed they would need to acquire expensive equipment to achieve compliance with proposed rule 17.00.[8] A number of these commenters indicated that they have few reportable accounts and currently spend little time in preparing reports for the Commission. An exchange commented that a few large firms find automated reporting to be cost effective, but the exchange did not believe this was true of the vast majority of firms. The exchange stated that . . ." requiring all firms to conform to this standard would impose a disproportionate burden on small specialized firms carrying a few accounts. To that end, the proposed changes would have an anticompetitive effect in the FCM and clearing member community." The exchange also noted that adoption of the proposed rule change by the Commission would pressure the exchange to accept machine-readable data from its members as well and would necessitate a conversion from the current hard-copy based market surveillance system at considerable expense.

The Commission recognizes that there are certain costs associated with providing data in machine-readable form. These costs may vary from firm to firm, generally depending on whether all position and/or transaction information in accounts carried by a firm are maintained on a computer system. A staff review of the data currently collected by the Commission indicates that at least 50 percent of those firms which currently file '01 information either maintain position and transaction data on their own computer systems or on those of service organizations.[9] These firms account for approximately 90 percent of the '01 information collected and processed by the Commission. A substantial proportion of the firms that use service organizations have few reports to file and on this basis may be characterized as small. Although the Commission received a number of comment letters from such firms requesting that it delay adoption of the proposed amendments, none of the firms indicated that it would be more costly or less efficient for them to provide data on machine-readable media than on hardcopy.

The Commission's proposal is intended primarily to obtain data on machine-readable media from those firms that maintain trader position and transaction data on computer systems for purposes other than Commission reporting. For this reason, the Commission proposed a limited exemption to rule 17.00 which could be granted to firms demonstrating that they are unable technologically to comply with the proposed requirements. The Commission did not envision that firms would be required to purchase expensive computer equipment or employ service organizations solely for the purpose of compliance with Rule 17.00.

With regard to exchanges' surveillance systems, the Commission finds little merit in the suggestion that, as a result of this rulemaking, an exchange will be required to covert to a computer-based system at great expense. Members of an exchange who provide information to the Commission on machine-readable media can provide printouts of the data to the exchange at little additional expense.

B. Delegation of Authority

The Commission received comments from one person on its proposal to allow exemptions from the requirements of

[6] The Commission is making changes to its current software and may in the future be able to process corrections which are supplied in machine-readable form. At such time as it gains this capability, the Commission may further amend its regulations to allow respondents to file corrections on machine-readable media.

[7] The Commission is also amending rule 17.02 to include instructions on the time and place for filing CFTC form 102. This information is currently contained in rule 17.01(c).

[8] Four of the comment letters were from affiliated firms, three of which report as foreign brokers.

[9] These estimates are based on the staffs' direct knowledge of firms which have their own computer systems or use a service organization. Since the staff did not survey the fifty percent of the firms (which account for approximately 10 percent of the '01 data) for which it did not have information concerning computer capabilities, the staff's estimate of the number of firms that can provide data in machine-readable form may be significantly understated.

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Rule 17.00. This commenter believed that proposed Rule 17.03 should be "tightly framed" setting specific guidelines for exemptions rather than putting "wide discretion in the hands of CFTC staff."

The Commission is not convinced that it should attempt to set specific standards for exemptions to Rule 17.00. There may be a number of reasons why a firm cannot technologically meet the requirements of Rule 17.00 other than the fact that the firm does not maintain trader position and transaction data on a computer system. Since such reasons may be varied and apply only in individual cases, there does not appear to be a requirement for general guidelines. Moreover, granting exemptions may involve relatively technical issues concerning which Commission staff have the necessary expertise to make determinations guided in the exercise of their discretion by the Commission's intent in adopting the proposed rules.

In this regard, other rules contained in Part 17 of the regulations concern purely technical or procedural matters that require a great deal of flexibility on the part of Commission staff in dealing with allowable exemptions. Specifically, proposed Rule 17.00 (a) and (g) and 17.02 allow discretion by the Commission or its designee in determining compliance with certain matters concerning reporting. Rules 17.00 (a) and (g), respectively, allow the Commission or its designee to exempt firms from reporting on machine-readable media and allow firms to report on types of magnetic media other than those specified in the regulations. Rule 17.02 allows the Commission or its designee certain latitude in specifying the place where reports are to be filed.

In view of the procedural nature of the issues involved, the Commission wishes to delegate its authority in these areas to Commission staff. It is therefore amending its proposed Rule 17.03 to include a delegation of authority to the Director of the Division of Economic Analysis to determine the appropriate Commission office at which a firm must file reports. Similarly the Commission is delegating to the Executive Director the authority to determine acceptable types of magnetic media. In addition, the Commission is adopting as proposed its delegation of authority to the Director of the Division of Economic Analysis to determine exemptions from the requirements contained in Rule 17.00 to submit data in machine-readable form.

C. Account Identifiers

The Commission also requested comment on the desirability of amending Rule 17.01(a) to allow the use of two account identifiers when reporting option and futures data for the same trader. As explained in the July 26, 1984, **Federal Register** release, Rule 17.01(a) requires that a numeric account identifier be used to report futures information to the Commission for compatability with current Commission software. The rule also provides that the same number must be used in reporting option information to the exchange. However, if a trader becomes reportable in options first, some firms currently report alpha-numeric account identifiers to the exchange. If such trader then becomes reportable in futures, the account identifier must be changed to a number to comply with current Rule 17.01(a).

The Commission proposed amending Rule 17.01(a) because modifying the identifier results in additional work for the firms, the exchanges and the Commission. No comments concerning the desirability of this amendment were received by the Commission. Since the proposed amendment may reduce a reporting burden on the industry as well as reduce Commission processing costs, the Commission is amending Rule 17.01(a) to allow the use of an alpha-numeric identifier for accounts that a trader may have in options while requiring a numeric indicator for accounts that a trader may have in futures.

D. Foreign Broker Reporting

The Commission proposed to delete Rule 17.02(b) which allows foreign brokers to file reports on a weekly basis. The Commission's proposed amendments to Rule 17.02(a) would require that all persons, foreign and domestic, send manual series '01 reports and form 102's on a daily basis. As explained in the July 26, 1985, **Federal Register** release, the Commission has found that in certain market situations, weekly reporting by foreign brokers is not sufficient. Moreover, the Commission believes that adoption of these proposed amendments furthers its policy concerning parity of treatment between domestic and foreign market participants. No comments were received on this aspect of the Commission's proposed rule changes, and the Commission is adopting Rule 17.02 concerning foreign broker reporting as proposed.

III. Amendments to Part 18—Reports by Traders

A. Financial Interest and Control

The Commission proposed amendments to paragraphs (5), (8) and (9) of Rule 18.04(a). Rule 18.04 requires each reportable trader to file with the Commission a "Statement of Reporting Trader" on CFTC form 40, 17 CFR 18.04 (1984). The form 40 provides certain biographical information about the trader as well as information concerning the trader's financial interest in organizations that trade futures and/or options and the trader's control over futures and/or option trading accounts. Paragraphs (5), (8) and (9) of Rule 18.04(a) set forth that the trader shall report certain information concerning the following:

(a) Persons whose accounts are controlled by the reporting trader, 17 CFR 18.03(a)(5);

(b) Persons who guarantee or who have a financial interest of 10 percent or more in the account of the trader, 17 CFR 18.04(a)(8); and

(c) Accounts which the reporting trader guarantees or in which the trader has a financial interest of 10 percent or more. 17 CFR 18.04(a)(9).

In at least one instance, a trader has interpreted the use of the term "account" in Rule 18.04 to mean a direct interest in a specific futures trading account. The Commission, however, has generally interpreted and applied these rules more broadly. To conduct effective market surveillance and enforce speculative limits, the Commission must know the relationship in terms of financial interest or control between traders as well as that between a trader and trading accounts. The Commission therefore proposed to modify the language in paragraphs 18.04(a) (5), (8) and (9) to reflect more accurately its intentions.

One person commented on the proposed amendments to Rule 18.04, stating that the proposed amendments greatly expand rather than clarify the type of information that is required on the form 40. The commenter requested that the Commission explain in detail the reasons for this change.

Section 4i of the Commodity Exchange Act ("Act"), 7 U.S.C. 6i, authorizes the Commission to collect information from traders who directly or indirectly make futures contracts or directly or indirectly have or obtain long or short futures positions. In this section of the Act, Congress clearly recognized that the Commission must be aware of traders who indirectly own or control futures positions in order effectively to enforce other provisions of the Act. A narrow interpretation of the current language in Rule 18.04 would not provide the Commission with information concerning indirect ownership or control of futures or option contracts. The Commission believes that its proposed amendments clarify the type of information that must be provided on the form 40. Accordingly, the Commission is adopting the amendments to Rule 18.04 as proposed.

B. Hedging Use of Futures Markets

The Commission proposed amendments to paragraphs 18.04(b)(3) and 18.04(c)(6) of its regulations to clarify the information that is required on the form 40 concerning a trader's use of futures and/or option markets for hedging. Since no comments were received on these proposed amendments, the Commission is adopting them as proposed.

IV. Other Related Issues

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 et. seq., requires that agencies, in adopting rules, consider their impact on small businesses. Analysis of the final rule amendments to Parts 15, 16, 17, 18 and 21 are not required, however, since the Commission has previously determined that reporting entities such as contract markets, FCMs and similar entities are not "small" for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). Nonetheless, the Commission invited comment from any firm that believed the rules would have a significant impact upon its operations.

As noted above, the Commission received a number of comments from contract markets and reporting firms that believed the amendments to Parts 16 and 17 would have an economic impact on their operations or that of their members.[10] The Commission has addressed these concerns by amending its proposal concerning Part 16 and clarifying its policy with respect to exemptions from the new requirements in Rule 17.00. This exemption provides relief to any reporting entity which fails to possess the requisite technical capability to achieve compliance.

[10] One commenter argued that the Commission's definition of small for purposes of the RFA is . . . "an overbroad and simplistic view of the economic makeup of the futures industry and its highly competitive nature." This commenter believed that the burdens imposed by adoption of the proposed rules would fall more heavily on the smaller FCMs. In view of this, the commentator requested that the Commission reconsider its certification as it relates to the proposed rules and take into account their effect on small firms. As noted previously, the Commission is sensitive to the costs that firms incur for reporting, whether or not the firms are certified as small for the purposes of the RFA. As amended, the Commission does not believe that adoption of its proposed rules will have a significant economic impact on any firm regardless of its size.

In view of the above, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that the proposed rules, as amended, will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Commission believes that adoption of its proposals as amended will reduce a reporting burden associated with certain existing information collection requirements. These requirements have already been assigned an Office of Management and Budget ("OMB") control number. OMB has been notified by the Commission of the adoption of these proposed amendments, and a copy of this **Federal Register** release has been provided to that agency with an explanation and details of the effects these amendments may have on the subject information collection. No comments were received relating to Paperwork Reduction Act implications.

List of Subjects

17 CFR Part 15

Commodity futures, Reports—general provisions.

17 CFR Part 16

Commodity futures, Reports by contract markets.

17 CFR Part 17

Commodity futures, Reports by Futures Commission merchants, Members of contract markets and foreign brokers.

17 CFR Part 18

Commodity futures, Reports by traders.

17 CFR Part 21

Commodity futures, Special calls.

In consideration of the foregoing the Commission is amending Parts 15, 16, 17, 18 and 21 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for Part 15 is revised to read as set forth below and the authority citations following all the sections in Part 15 are removed:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c(a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

2. Section 15.00 is amended by adding new paragraphs (l) as follows:

§ 15.00 Definitions.

As used in Parts 15 to 21 of this chapter:

* * * * *

(l) Compatible Data Processing Media means:

(1) Unblocked, nine track, 1600 BPI magnetic tape using EBCIDIC encoding and a standard IBM label if magnetic media are filed at the Commission's Chicago or New York Regional Offices;

(2) Magnetic diskettes using a single density IBM 3741 format if magnetic media are filed at the Commission's Chicago, New York or Kansas City Regional Office; and

(3) Asynchronous dial-up data transmission at speeds up to 1200 baud or synchronous dial-up data transmission at speeds up to 4800 baud to the Commission's computer center at its Regional Office in Chicago.

PART 16—REPORTS BY CONTRACT MARKETS

3. The Authority citation for Part 16 is revised to read as set forth below and the authority citations following all the sections in Part 16 are removed:

Authority: 7 U.S.C. 2, 4, 6c (a)–(d), 6f, 6g, 6k, 6m, 6n, 7, 12a, 19, and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

4. Section 16.00 is amended by revising paragraph (b) as follows:

§ 16.00 Clearing member Reports.

* * * * *

(b) *Form and manner of reporting; time and place of filing reports.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using a format and coding structure approved in writing by the Commission or its designee in both hard copy form and on compatible data processing media;

(2) When each such form of the data is first available but not later than 3:00 p.m. on the business day following the day to which the information pertains; and

(3) Except for dial-up data transmissions, at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

5. Section 16.01 is amended by revising paragraph (d) as follows:

§ 16.01 Trading volume, open contracts and prices.

* * * * *

(d) *Reports to the Commission.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information specified in

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paragraphs (a) and (b) of this section as follows:

(1) Using a format and coding structure approved in writing by the Commission or its designee in both hard copy form and on compatible data processing media;

(2) When each such form of the data is first available but not later than 3:00 p.m. on the business day following the day to which the information pertains; and

(3) Except for dial-up data transmission, at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

6. Section 16.02 is amended by revising paragraph (b) as follows:

§ 16.02 Large option trader reports.

* * * * *

(b) *Form and manner of reporting.* Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using a format and coding structure approved is writing by the Commission or its designee in both hard copy form and on compatible data processing media.

(2) When each such form of the data is first available but not later than 3:00 p.m. on the business day following the day to which the information pertains. For options on futures and for options on physicals that are settled in cash, such information shall be compiled weekly as of the close of business on Tuesday, or Monday if Tuesday is a holiday, or more frequently than weekly as the Commission may direct; and

(3) Except for dial-up data transmission, at the Regional Office of the Commission having local jurisdiction with respect to each contract market.

7. Section 16.04 is amended by revising paragraph (b) as follows:

§ 16.04 Month-end reports.

* * * * *

(b) Form and manner of reporting; time and place of filing reports. Unless otherwise approved by the Commission or its designee, contract markets shall submit the information required by paragraph (a) of this section as follows:

(1) Using a format and coding structure approved in writing by the Commission or its designee in both hard copy form and on compatible data processing media.

(2) Not later than the fifth business day following the day to which the information pertains; and

(3) Except for dial-up data transmission at the Regional Office of the Commission having local jurisdiction with respect to such contract market.

8. Section 16.06 is revised to read as follows:

§ 16.06 Errors or omissions.

Contract Markets shall file with the Commission on compatible data processing media using a format and coding structure approved by the Commission or its designee, corrections to errors or omissions in data previously filed with the Commission pursuant to §§ 16.00, 16.01, 16.02 or 16.04.

9. Rule 16.07 is added to read as follows:

§ 16.07 Delegation of authority to the Director of the Division of Economic Analysis and the Executive Director.

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraph (a) of this section to the Director of the Division of Economic Analysis and the authority set forth in paragraph (b) of this section to the Executive Director to be exercised by such Director or by such other employee or employees of such Director as may be designated from time to time by the Director.

(a) Pursuant to §§16.00(b), 16.01(d), 16.02(b), and 16.04(b), the authority to determine whether contract markets must submit data in machine-readable form or hardcopy or both, and the time and Commission office at which such data may be submitted where the Director determines that a contract market is unable to meet the requirements set forth in the Regulations.

(b) Pursuant to §§ 16.00(b)(1), 16.01(d)(1), 16.02(d)(1), 16.04(b)(1) and 16.06, the authority to approve the use of data processing media other than compatible data processing media as that term is defined in § 15.00(1) and to approve the format and coding structure used by contract markets.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

10. The authority citation for Part 17 is revised to read as set forth below and the authority citations following all the sections in Part 17 are removed:

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7, and 12a, unless otherwise noted.

11. Section 17.00 is amended by revising the language in paragraph (a)(1) and adding new paragraphs (g) and (h) as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

(a) *Special Accounts—Reportable futures positions, delivery notices and exchanges of futures for cash.* (1) Each futures commission merchant, clearing member and foreign broker shall submit a report to the Commission for each business day with respect to all Special Accounts carried by the futures commission merchant, clearing member or foreign broker, except for accounts carried on the books of another futures commission merchant on a fully disclosed basis. Except as otherwise authorized by the Commission or its designee, such report shall be made on compatible data processing media in accordance with the format and coding provisions set forth in paragraph (g) of this section. The report shall show each reportable futures position, separately for each contract market and for each future in each special account as of the close of the market on the day covered by the report and, in addition, the quantity of exchanges of futures for physicals and the number of delivery notices issued for each such account by the clearing organization of a contract market and the number stopped by the account.

* * * * *

(g) *Media and file characteristics.* (1) Except as otherwise approved by the Commission or its designee, all required records shall be submitted together in a single file. Each record will be 80 characters long. Specific record formats are given below as a set of Cobol Language descriptions. There are two different record descriptions. The file must begin with a Type I record identifying the sequence of Type II records that follow as series '01 data.

(2) The required records are as follows:

```
01 O-T-Type I RECORD:
   05 Filler—PIC X(10) VALUE "X 01 REG".
   05 O-T-REPORT-DATE—PIC X(6).
   05 Filler—PIC X(29) VALUE "Spaces".
   05 O-T SEQUENCE-NUMBER—PIC (6).
   05 Filler—PIC X(27) VALUE "Spaces".
01 O-T-Type II RECORD:
   05 O-T-REPORTING-FIRM-NUMBER—
      PIC 9(5).
   05 O-T-REPORT-DATE—PIC 9(6).
   05 O-T-ACCOUNT-NUMBER—PIC 9(12).
   05 O-T-COMMODITY-CODE—PIC 9(6).
   05 O-T-DELIVERY-MONTH—PIC 9(4).
   05 O-T-LONG-POSITION—PIC 9(6).
   05 O-T-SHORT-POSITION—PIC 9(6).
   05 O-T-SEQUENCE-NUMBER—PIC 9(6).
   05 Filler—PIC X(8). VALUE "Spaces".
   05 O-T-NOTICES-ISSUED—PIC 9(5).
   05 O-T-NOTICES-STOPPED—PIC 9(5).
   05 O-T-BUY-XFC—PIC 9(4).
   05 O-T-SELL-XFC—PIC 9(4).
```


05 Filler—PIC X(1). VALUE "Spaces".

(3) Field definitions for each record are as follows:

(i) *Reporting Firm Number.* A five digit number assigned by the Commission to each FCM, clearing member and foreign broker which reports series '01 data.

(ii) *Report Date.* The date on which the reported positions were held by traders. Dates are encoded in a YYMMDD format where YY is the last 2 digits of the year, MM is the month and DD is the date with a leading 0 for months and days 1–9.

(iii) *Account Number.* A unique identifier assigned by the reporting firm to each special account. The field is 0 filled with account number right justified. Assignment of the account number is subject to the provisions of §§ 17.00 (b) and (c) and 17.01(a).

(iv) *Commodity Code.* A six character identifier assigned by the CFTC to identify uniquely a contract traded on a specific exchange. The code is in CCMMS format where CCC identifies the commodity, MM identifies the exchange and S distinguishes between two or more contracts specifying delivery of the same commodity on the same exchange.

(v) *Delivery Month.* The year and month of delivery specified in the contract in YYMM format. YY is the last two digits of the year and MM specifies the month with a leading 0 for months 1–9.

(vi) *Sequence Number.* The number of the record in the file. This number should be right justified and the field 0 filled.

(vii) *Long (Short) Position.* Reportable long (short) position (if any) in the special account held on the contract market as of the close of business on the report date specified in the same record. Long (short) positions are reported in contracts except for the grains and soybeans. In the grains and soybeans, long (short) positions are reported in thousand bushels (000 omitted). The long (short) position is right justified with the field zero filled. Positions are reported on a net or gross basis in accordance with the provisions of paragraphs (d) and (e) of this section.

(viii) *Notices Issued (Stopped).* Delivery notices issued by the clearing organization of a contract market on behalf of a special account (stopped by the account) on the report date. Notices issued (stopped) are reported in contracts except for the grains and soybeans. In the grains and soybeans, notices issued (stopped) are reported in thousand bushels (000 omitted). Notices issued (stopped) are right justified, and the field zero filled.

(ix) *Purchases (Sales) of Futures in Connection with Cash Commodity Transactions.* The quantity of long contracts opened and/or short contracts liquidated (short contracts opened and/or long contracts liquidated) as a result of an exchange of futures for physicals. Purchases (Sales) are reported in contracts except for the grains and soybeans. In the grains and soybeans, purchases (sales) are reported in thousand bushels (000 omitted).

(h) *Correction of errors and omissions.* Corrections to errors and omissions in data provided pursuant to § 17.00(a) shall be filed on series '01 forms or on computer printouts using a format and coding structure approved by the Commission or its designee.

12. Section 17.01 is amended by revising paragraphs (a) and (c) as follows:

§ 17.01 Special account designation and identification.

(a) *Designation of special account.* For the purpose of reporting futures information to the Commission and option information to a contract market, each futures commission merchant, member of a contract market and foreign broker shall assign a unique designator to each special account and shall report such account only by such designator. Provided, that the designator used to report futures information shall be numeric and further that the designator for options and the designator for futures shall not be changed or assigned to another account without prior approval of the Commission.

* * * * *

(c) *Transmittal of Form 102.* For futures, the report on Form 102 shall be submitted to the Commission in accordance with the requirements set forth in § 17.02. For options, the report must be submitted to the appropriate contract market in accordance with instructions from such contract market.

* * * * *

13. Section 17.02 is amended by deleting the current paragraph (b), revising the introductory paragraph and paragraph (a) and adding new paragraph (b). As revised § 17.02 reads as follows:

§ 17.02 Place and Time of Filing Reports.

Unless otherwise instructed by the Commission or its designee, the reports required to be filed by futures commission merchants, clearing members and foreign brokers under §§ 17.00 and 17.01 shall be filed at the nearest appropriate Commission office as specified in paragraphs (a) and (b) below, wherein the times stated are eastern times for information concerning markets located in that time zone and central time for information concerning all other markets.

(a) For data submitted on compatible data processing media:

(1) At the Commission's New York or Chicago Regional Office if the information is supplied on magnetic tape or, at the Commission's New York, Chicago or Kansas City Regional Office if the information is supplied on magnetic diskette, at such time as the information is first available provided that it is received in the appropriate office no later than 10:30 a.m. on the business day following that to which the information pertains;

(2) At the Commission's Chicago Regional office if the information is submitted via dial-up data transmission at such time as the information is first available provided that it is received in such office not later than 11:00 a.m. on the business day following that to which the information pertains.

(b) For data submitted in hardcopy form pursuant to §§ 17.00(a), (h) or 17.01(a), at a Commission office in accordance with instructions by the Commission or its designee and, at such time as is specified below, provided that if a foreign broker or futures commission merchant, other than a clearing member, does not have an office in the city in which the appropriate Commission office is located, reports may be transmitted to the appropriate Commission office by mail no later than the day covered by the report.

(1) For reports submitted pursuant to § 17.00(a), not later than 9:00 a.m. on the day following that to which the information pertains; and

(2) For reports submitted pursuant to § 17.01, on the same day on which the account in question is first reported to the Commission.

14. Section 17.03 is amended by deleting the current § 17.03 and adding a new § 17.03. As revised § 17.03 reads as follows:

§ 17.03 Delegation of authority to the Director of the Division of Economic Analysis and to the Executive Director.

The Commission hereby delegates, until the Commission orders otherwise, the authority set forth in paragraphs (a) and (b) of this section to the Director of the Division of Economic Analysis and the authority set forth in paragraph (c) of this section to the Executive Director to be exercised by such Director or by such other employee or employees of

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such Director as designated from time to time by the Director.

(a) Pursuant to § 17.00(a) the authority to determine whether futures commission merchants, clearing members and foreign brokers can report the information required under Rule 17.00(a) on series '01 forms or updated Commission supplied computer printouts upon a determination by the Director that such person technologically is unable to provide such information on compatible data processing media.

(b) Pursuant to §§ 17.00(h) and 17.02, the authority to approve the format and coding structure for error reports on computer printouts and to instruct and/or approve the time and Commission office at which the information required under Rules 17.00 and 17.01 must be submitted by futures commission merchants, clearing members and foreign brokers provided that such persons are unable to meet the requirements set forth in § 17.02; and

(c) Pursuant to § 17.00(a), the authority to approve the use of data processing media other than compatible data processing media as that term is defined in § 15.00(1) and the authority to approve a format and coding structure other than that set forth in § 17.00(g).

PART 18—REPORTS BY TRADERS

15. The authority citation for Part 18 is revised to read as set forth below and the authority citations following all the sections in Part 18 are removed:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a and 19; 5 U.S.C. 552 and 552(b) unless otherwise noted.

16. Section 18.04 is amended by revising paragraphs (a)(5), (a)(8), (a)(9), (b)(3) and (c)(6) as follows. The introductory text of paragraphs (a)–(c) are reprinted for the convenience of the reader.

§ 18.04 Statement of reporting trader.

(a) Information to be furnished by all traders in Part A of the Form 40 shall include:

* * * * *

(5) The name and address of each person whose option or futures trading is controlled by the reporting trader.

* * * * *

(8) The names and locations (city and state) of persons who guarantee the futures or option trading accounts of the reporting trader or who have a financial interest of 10 percent or more in the reporting trader or the accounts of the reporting trader.

(9) The following information concerning other option or futures trading accounts which the reporting trader guarantees or other futures or option traders or accounts in which the reporting trader has a financial interest of 10 percent or more:

(i) The names of traders for whom the reporting trader guarantees accounts or in which the reporting trader has a financial interest;

(ii) The names of the accounts that the reporting trader guarantees or in which the reporting trader has a financial interest; and

(iii) The names and locations of the brokerage firms at which the accounts are carried

* * * * *

(b) Information to be furnished in Part B of the Form 40 shall include:

* * * * *

(3) The following information if a trader makes transactions or holds positions in a futures or option contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the option or futures market (*e.g.*, production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or option markets.

(iii) Futures or option markets used.

* * * * *

(c) Information to be furnished in Part C of the Form 40 shall include:

* * * * *

(6) The following information if a trader makes transactions or holds positions in a futures or option contract where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel and the transactions or positions are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise:

(i) Commercial activity associated with use of the option or futures market (e.g., production, merchandising or processing of a cash commodity, asset/liability risk management by depository institutions, security portfolio risk management, etc.)

(ii) Physical commodities underlying use of the futures or option markets.

(iii) Futures or option markets used.

* * * * *

PART 21—SPECIAL CALLS

17. The authority citation for Part 21 is added to read as set forth below and the authority citations following all the sections in Part 21 are removed:

Authority: 7 U.S.C., 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

18. Section 21.02 is amended by revising the heading and the introductory paragraph as follows:

§ 21.02 Special calls for information on open contracts in accounts carried or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers.

Upon special call by the Commission for information relating to futures and/or option positions held or introduced on the dates specified in the call, each futures commission merchant, member of a contract market, introducing broker, or foreign broker, and, in addition, for option information each contract market, shall furnish to the Commission the following information concerning accounts of traders owning or controlling such futures and/or option positions, except for accounts carried on a fully disclosed basis by another futures commission merchant, as may be specified in the call:

* * * * *

19. Section 21.02a is amended by revising the section heading and revising paragraph (a), (b)(1), (b)(3), (b)(4)(iv) and (b)(4)(x) as follows. The introductory text of paragraphs (b) and (b)(4) are reprinted for the convenience of the reader.

§ 21.02a Special calls for machine-readable information.

(a) Upon special call by the Commission for information relating to futures and/or option positions held on the dates specified in the call, each futures commission merchant, member of a contract market and foreign broker shall furnish to the Commission in accordance with paragraph (b) below the following information concerning accounts of traders owning or controlling such futures and/or option position, except for accounts carried by another futures commission merchant on a fully disclosed basis, as may be specified in the call:

(b) Except as provided in paragraph (c), the information shall be furnished in the following form and manner:

(1) Reporting Medium. Except as otherwise specifically approved by the Commission, information shall be provided on compatible data processing media.

* * * * *

(3) The required record description is as follows:

```
01 O-T-400A:
   05 O-T-RECORD-TYPE—PIC X(4) VALUE
      400A.
   05 O-T-REPORT-DATE—PIC X(6).
   05 O-T-REPORTING-FIRM-NAME—PIC
      X(55).
   05 FILLER—PIC X(7).
   05 O-T-SEQUENCE—PIC 9(8).
01 O-T-410B:
   05 O-T-RECORD-TYPE—PIC X(4) VALUE
      410B.
   05 O-T-ACCCOUNT-NUMBER—PIC
      X(48).
   05 FILLER—PIC X(20).
   05 O-T-SEQUENCE—PIC 9(8).
01 O-T-520E:
   05 O-T-RECORD-TYPE—PIC X(4) VALUE
      520E.
   05 O-T-COMMODITY-ID—PIC X(6).
   05 O-T-DELIVERY-OR-EXPIRATION-
      MONTH—PIC X(4).
   05 O-T-PUT-OR-CALL-OPTION—PIC X.
   05 O-T-STRIKE-PRICE—PIC 9(8).
   05 O-T-OPEN-LONG-POSITION—PIC
      9(8).
   05 O-T-OPEN-SHORT-POSITION—PIC
      X(8).
   05 FILLER—PIC X(33).
   05 O-T-SEQUENCE—PIC 9(8).
```

(4) *Field Definitions.* Field definitions for each record are as follows:

* * * * *

(iv) *Account Number.* A unique identifier for each account reported to the Commission under the § 21.02a call. This can be any sequence of alphanumeric characters not to exceed 48 characters which are left justified in the field.

* * * * *

(x) *Open Long (Short) Positions.* Total number of long (short) contracts in the commodity specified in the call that are open on the firm's books for a particular account as of the end of the trading day specified in the call. The field should be zero filled with right justified integers from 0 to 99999999.

Issued in Washington, DC on January 31, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86-2588 Filed 2-6-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 178

[T.D. 86-18]

Customs Regulations Amendment to Listing of OMB Control Numbers

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include the clearance number issued by the Office of Management and Budget (OMB), necessary for certain information collection requirements included in a recent interim amendment to the Customs air commerce regulations. The interim amendment stated that an application for clearance was submitted to OMB. That office has since approved the regulation and issued the clearance number which appears later in this document.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Regulations Control and Disclosure Law Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

Background

Part 6, Customs Regulations (19 CFR Part 6) was amended on an interim basis by T.D. 86-12, published in the **Federal Register** on February 3, 1986 (51 FR 4161). The amendment created a new § 6.12a, Customs Regulations (19 CFR 6.12a), to enhance security in certain designated areas of international airports in the U.S. The major thrust of the regulations is to define a "Customs security area" which may only be entered by airport personnel wearing a Customs approved and issued identification strip or seal on an existing airport identification card. A strip or seal is issued only after an airport employer attests, in writing, that a background check has been conducted on an employee seeking access including, at a minimum, references and employment history necessary to verify employee representations regarding employment in the preceeding five years. Thus, the regulations place upon the employer the burden of conducting an investigation and making a written submission to Customs concerning that investigation.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C 3501 *et seq.*) established policies and procedures for controlling paperwork burdens imposed on the public by federal agencies. Pursuant to this Act, by a document published in the **Federal Register** on March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) promulgated rules implementing the Act. The OMB rules are codified at 5 CFR Part 1320 *et seq.*

One aspect of OMB's oversight function is the review and approval of information collections. Generally, information collections include any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. OMB analyzes such requests for three basic requirements. First, the collection of information must be necessary for proper performance of the agency functions. Second, the request for information or records must not duplicate information otherwise accessible to the agency. Third, the information must have practical utility.

When an information collection is approved by OMB, it is issued a control number. The control number provides a simple and effective way to inform the public that a particular information collection has been approved by OMB pursuant to the Paperwork Reduction Act.

In the February 3, 1986, interim regulation, Customs stated that the amendment was subject to the Paperwork Reduction Act, and that an application for approval was submitted to OMB. OMB was able to quickly review the information collection requirements included in T.D. 86-12, and has issued a control number. This document amends the Customs Regulations by including that control number in the list of previously issued numbers for Part 6, Customs Regulations (19 CFR Part 6), which appears in Part 178, Customs Regulations (19 CFR Part 178).

E.O. 12291, Regulatory Flexibility Act, Inapplicability of Public Notice Requirement

This document merely amends a listing of the status of other already published regulations. Therefore, the requirements of E.O. 12291, the Regulatory Flexibility Act, and the notice and public comment requirements of the Administrative Procedure Act (5 U.S.C. 552) are not applicable.

List of Subjects in 19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

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Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Amendment to the Regulations

Part 178, Customs Regulations (19 CFR Part 178), is amended as set forth below:

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting, in proper numerical order, the following entry:

§ 178.2 Listing of OMB control numbers.

* * * * *

19 CFR section	Description	OMB control No.
§ 6.12a.....	Customs security areas in international airports.	1515-0152

Dated: February 4, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86-2746 Filed 2-6-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of Para-Fluorofentanyl into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice to temporarily place para-fluorofentanyl into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provision of the CSA. This action is based on a finding that the scheduling of this substance in Schedule I is necessary to avoid an imminent hazard to the public safety. This action will impose the criminal sanctions and regulatory controls of Schedule I on the manufacturing, distribution and possession of para-fluorofentanyl.

EFFECTIVE DATE: On March 10, 1986, para-fluorofentanyl will be subject to Schedule I control.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473), which was signed into law on October 12, 1984, amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if he finds that such action is necesssary to avoid an imminent hazard to the public safety. A substance may be scheduled under the emergency provision of the CSA if that substance is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no approval or exemption in effect under 21 U.S.C. 355 for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (28 CFR 0.100(b)). In making a finding of an imminent hazard to the public safety, the Attorney General is required to consider only those factors set forth in paragraphs (4) the history and current pattern of abuse, (5) the scope, duration and significance of abuse, and (6) what, if any, risk there is to the public health of section 201(c) of the CSA (21 U.S.C. 811(c)).

House Report 98-835 which accompanied Pub. L. 98-473 states that "This new procedure [emergency scheduling] is intended by the Committee to apply to what has been called 'designer drugs', new chemical analogs or variations of existing controlled substances, or other new substances, which have a psychedelic, stimulant or depressant effect and have a high potential for abuse." Para-fluorofentanyl is an analog of fentanyl, a Schedule II synthetic narcotic analgesic, and as such is the type of substance which Congress intended to subject to the emergency scheduling authority as an imminent hazard to the public safety.

A series of analogs of the Schedule II narcotic analgesic, fentanyl, have been clandestinely produced, distributed and abused primarily in California since late 1979. The first of these analogs identified was alpha-methylfentanyl, sold on the street as "China White" or "synthetic heroin." Alpha-methylfentanyl was associated with over 20 narcotic overdose deaths during the period 1980-1982. Using the traditional scheduling process pursuant to section 201(a) of the CSA (21 U.S.C. 811(a)), DEA placed alpha-methylfentanyl into Schedule I of the CSA effective September 22, 1981 (46 FR 46799). Since the control of alpha-methylfentanyl, DEA laboratories have identified other fentanyl analogs clandestinely produced and distributed in California. DEA used its emergency scheduling authority for the first time when 3-methyl-fentanyl, a particularly potent fentanyl analog, was temporarily placed into Schedule I of the CSA effective April 25, 1985 (50 FR 11690). Subsequently, after their identification in the illicit drug traffic by DEA laboratories, the substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, benzylfentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl, thenylfentanyl and thiofentanyl were temporarily placed into Schedule I effective November 29, 1985 pursuant to the emergency scheduling provision of the CSA (50 FR 43698-702). Yet another fentanyl analog, para-fluorofentanyl, has been identified in submissions to a DEA laboratory.

Chemically, para-fluorofentanyl is N-[1-2-phenylethyl)-4-piperidyl]-N-[4-flourophenyl)propanamide. Para-fluorofentanyl behaves as a typical morphine-like compound in several pharmacological tests in the mouse and rat. It has a 90-minute duration of analgesic action and it is estimated to be about 100 times as potent an analgesic as morphine. Para-fluorofentanyl substitutes completely for morphine in morphine-dependent monkeys at several doses.

DEA laboratories have identified para-fluorofentanyl in drug evidence submissions from the East Coast and West Coast. Para-fluorofentanyl was first identified by a DEA laboratory in a two-ounce submission from Los Angeles, California in 1981. Since the fall of 1985 DEA laboratories have identified substantial quantities of para-fluorofentanyl in several exhibits associated with a clandestine laboratory producing this substance in Delaware.

Para-fluorofentanyl's morphine-like pharmacological profile and high potency make it likely that it will be associated with the same type of health hazards as other fentanyl analogs. Since January 1984 there have been at least 60 overdose deaths associated with fentanyl analogs. Due to the difficulty in detecting the minute quantities of fentanyl analogs found in body fluids, it is likely that some injuries and deaths associated with these substances go unreported.

There is no accepted medical use for or commercial manufacturer of para-fluorofentanyl. The use of clandestinely produced narcotic substances poses greater health and safety risks than those attendant to the use of traditional narcotics. The identity, purity and concentration of the active ingredients in most cases are unknown or at best inconsistent. The relatively high potency of para-fluorofentanyl (100 times morphine) necessitates very small doses. Mixing the active ingredients with diluents to obtain appropriate and uniform doses is extremely difficult. Thus, there is a high risk of overdose.

The incidence of fentanyl analog use among narcotic addicts in California has been estimated at 10 to 20 percent. Fentanyl analogs are primarily administered intravenously by narcotic addicts. The pattern of abuse of fentanyl analogs parallels that of heroin and other narcotics.

The above data show that the production, distribution and use of fentanyl analogs continue to pose a very serious hazard to the public safety, particularly in California. With the identification of substantial quantities of para-fluorofentanyl in forensic laboratory submissions from Delaware, it appears that the high potential for the spread of fentanyl analogs to areas outside of California has been realized. Although para-fluorofentanyl has not been specifically associated with injuries or deaths at this time, it is likely to produce the same health and safety risks as those associated with the use of other potent fentanyl analogs.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h) and 28 CFR 0.100, the Administrator of DEA has considered the following factors relative to making a determination of whether para-fluorofentanyl poses an imminent hazard to the public safety:

(1) Its history and current pattern of abuse,

(2) The scope, duration and significance of abuse, and

(3) What, if any, risk there is to the public health.

Based on a consideration of these factors and other relevant information, the Administrator, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, finds that scheduling para-fluorofentanyl in Schedule I of the CSA, at least on a temporary basis, is necessary to avoid an imminent hazard to the public safety.

As required by section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)), the Administrator has notified the Secretary of the Department of Health and Human Services of his intention to temporarily place para-fluorofentanyl into Schedule I of the CSA. Comments submitted by the Secretary in response to this notification, including whether there is an exemption or approval in effect for para-fluorofentanyl under the Federal Food, Drug and Cosmetic Act, shall be taken into consideration by the Administrator before the notice becomes effective.

Pursuant to the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100, the Administrator hereby orders that on March 10, 1986, N-[1-(2-phenylethyl)-4-piperidyl]-N-(4-fluorophenyl)propanamide (para-fluorofentanyl), its optical isomers, salts and salts of isomers be placed into Schedule I of the CSA (21 U.S.C. 801 et seq.) unless the Administrator gives notice in the **Federal Register** that this order is rescinded prior to March 10, 1986.

PART 1308—[AMENDED]

For the reasons set forth above, 21 CFR 1308.11(g) is amended as follows:

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11(g)(13) is added to read as follows:

§1308.11 Schedule I.

* * * * *

(g) * * *

(13) N-[1-(2-phenylethyl)-4-piperidyl]-N-(4-fluorophenyl)-propanamide (para-fluorofentanyl), its optical isomers, salts and salts of isomers..... 9812

* * * * *

The temporary placement of para-fluorofentanyl into Schedule I, pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)), will expire at the end of one year from the effective date of this order. If a rulemaking proceeding to schedule para-fluorofentanyl under the CSA has been initiated pursuant to section 201(a) of the CSA (21 U.S.C. 811(a)) and is pending, the temporary scheduling of that substance may be extended for up to six months.

This action is not a formal rulemaking procedure as set forth in the Administrative Procedures Act (5 U.S.C. 551-559) and the opportunity for a hearing on the record is not required. Nevertheless, the Administrator affords the opportunity for comments to be submitted concerning this matter.

Comments should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: Federal Register Representative.

All regulations and criminal sanctions applicable to Schedule I substances are effective on March 10, 1986, with respect to para-fluorofentanyl. However, individuals registered with DEA in accordance with Part 1301 or 1311 of Title 21 of the Code of Federal Regulations and who currently possess para-fluorofentanyl may continue to do so pending DEA's receipt of an amended registration no later than April 8, 1986.

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports para/fluorofentanyl or who engages in research or conducts instructional activities with respect to this substance or who proposes to engage in such activities must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* Para-fluorofentanyl must be manufactured, distributed and stored in accordance with §§ 1301.71-1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of para-fluorofentanyl must comply with the requirements of §§ 1302.03-1302.05, 1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for para-fluorofentanyl shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of para-fluorofentanyl shall take an inventory, pursuant to §§ 1304.11-1304.19 of Title 21 of the Code of Federal Regulations, of all stocks of this substance on hand.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21-1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding para-fluorofentanyl.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.37-1304.41 of Title 21 of the Code of Federal Regulations shall do so regarding para-fluorofentanyl.

8. *Order Forms.* All registrants involved in the distribution of para-fluorofentanyl shall comply with the order form requirements of § 1305.01-

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1305.16 of Title 21 of the Code of Federal Regulations.

9. Importation and Exportation. All importation and exportation of para-fluorofentanyl shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. Criminal Liability. Any activity with respect to para-fluorofentanyl not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring after March 10, 1986, is unlawful.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the temporary placement of para-fluorofentanyl into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the temporary control of substances with no legitimate medical use or manufacture in the United States.

It has been determined that the temporary placement of para-fluorofentanyl in Schedule I of the CSA under the emergency scheduling provision is a statutory exception to the requirements of Executive Order 12291 (46 FR 13193).

Dated: February 3, 1986.

John C. Lawn,
Administrator.

[FR Doc. 86–2731 Filed 2–6–86; 8:45 am]
BILLING CODE 4410-09-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 916

Director's Findings on the Status of Kansas' Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: On January 21, 1981, the State of Kansas received conditional approval of its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). All six conditions were removed on April 14, 1982, and full approval was granted. On March 11, 1983, the Director, OSM, notified the Governor of Kansas that OSM had reason to believe that serious problems existed and were adversely affecting the implementation of Kansas' approved regulatory program. After a public hearing and opportunity for public comment, the Director finds that while Kansas was experiencing some difficulty in adequately implementing certain aspects of its approved program, corrective measures have been initiated which will ensure that the Kansas program is implemented in accordance with the State program as approved by the Secretary of the Interior.

The action initiated under the provisions of 30 CFR Part 733 is now being terminated. The Director, OSM, will continue to provide the State with assistance and guidance as necessary to ensure that the Kansas permanent regulatory program continues to be implemented as approved by the Secretary. OSM will monitor the State's actions through its ongoing oversight program.

This notice sets forth the Director's detailed findings regarding this action and the status of corrective actions initiated by the State of Kansas.

EFFECTIVE DATE: March 10, 1986.

ADDRESSES: Copies of the Director's decision and the Administrative Record documents referenced in this notice are available for public inspection and copying during regular business hours at:

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, DC 20240; Telephone: (202) 343–4855.

Office of Surface Mining, Kansas City Field Office, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

Mined Land Conservation and Reclamation Board, 107 West 11th Street, Pittsburg, Kansas; Telephone: (316) 231–8540.

FOR FURTHER INFORMATION CONTACT:

Raymond Lowrie, Assistant Director, Western Field Operations, Office of Surface Mining, Suite 1702, Executive Tower Inn, 1405 Curtis Street, Denver, Colorado 80202; Telephone: (303) 844–2459

William Kovacic, Director, Kansas City Field Office, Office of Surface Mining, Room 502, 1103 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

I. Background

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program to administer and enforce the permanent regulatory program under SMCRA. All six of the conditions were removed on April 14, 1982.

On March 11, 1983, the Director, OSM notified the Governor of Kansas that he had reason to believe that the State, through the Mined Land Conservation and Reclamation Board (MLCRB or the Board) was not adequately implementing its approved program to regulate surface coal mining and reclamation operations (KS–247). The Board is a duly constituted agency under the direction of the Kansas State Corporation Commission (KSCC) which is designated to administer the regulatory program. The Chairman of the KSCC also serves as the Chairman of the Board. The Board represents multiple interests, and its members include heads of State agencies, employees and operators of surface coal mines, and representatives from the general public. The Board's staff, headed by an Executive Director, implements the State program.

The Director, OSM, cited problems in Kansas' program implementation in several areas including (1) permitting, (2) inspection and enforcement, (3) administrative procedures and records, (4) civil penalty assessment, (5) bond release and (6) staffing. A more detailed account of the Director's concerns can be found in the May 31, 1983 Federal Register (48 FR 24073).

On April 14, 1983, the Governor responded to the Director's March 11, 1983 letter by providing assurances that Kansas would correct the deficiencies outlined in the Director's letter (KS–258).

On May 6, 1983, the State requested an informal conference with OSM under the provisions of 30 CFR 733.12(c) (KS–250). The Director agreed to Kansas' request, notified the public (48 FR 24073) and held an informal conference with Board officials and the KCC on June 16, 1983, in Pittsburg, Kansas. (See KS–254 for conference transcript.)

At the informal conference, OSM requested that Kansas provide additional information on many of OSM's concerns. Kansas submitted additional written information on July 30, 1983 (KS–255), August 30, 1983 (KS–257), and September 30, 1983 (KS–259).

In August 1983, OSM's Annual Report on Kansas' Permanent Program was completed and submitted to Congress. The report contained an evaluation of the performance of the Kansas Mined Land Conservation and Reclamation Board in implementing its approved program for the period from April 1, 1982 to April 30, 1983 (KS–290).

A meeting was held between OSM and the State on November 10, 1983, to discuss OSM's concerns and the State's progress in resolving issues identified in the annual evaluation report. (KS–260)

On November 17, 1983, after evaluating Kansas' performance for the period of eight months from the time he wrote of his concerns to the Governor, the Director announced in the Federal Register (48 FR 52297) that he still had reason to believe that Kansas might not be adequately implementing its approved State program and scheduled a public hearing and public comment period (KS–262). In addition to announcements of the public hearing in the Federal Register, announcement were made in a newspaper of general circulation in the State of Kansas and in two newspapers serving population centers in the State's coal region. Also, copies of the Federal Register notice were made available to citizens having expressed an interest in the State's enforcement of its regulatory program (and whose names were available at OSM's Kansas City Field Office), all coal operators in the State, and environmental groups.

The Director's decision to hold a public hearing and solicit public comments was based on unresolved concerns in the following areas: permitting, inspection and enforcement, administrative procedures and records, civil penalty assessment, bond release and staffing. A more detailed account of the Director's concerns regarding the status of Kansas' program can be found in the text of the announcement of the public hearing (48 FR 52297).

On December 16, 1983, OSM conducted a public hearing in Topeka, Kansas regarding the status of the Kansas program. In addition to presenting testimony at the hearing, the KCC and the Board submitted to OSM additional information concerning issues raised previously by OSM (KS–264, 279, 281, and 283). Also, during the course of the hearing, OSM requested that the State provide additional information addressing many of OSM's concerns. The comment period closed December 30, 1983. A copy of the transcript of the public hearing was placed in the Administrative Record (KS–263).

After December 30, 1983, OSM received additional material addressing the status of the Kansas permanent regulatory program. This material consisted of information submitted by the State, meeting notes, telephone conservation records and several documents generated by OSM. The additional material was included in the Administrative Record (KS–267 through KS–319). Therefore, OSM reopened the comment period for an additional 15 days, April 30, 1984 to May 15, 1984, to allow the public sufficient time to review and comment on the above documents (49 FR 18296).

During the period between November 17, 1983, and May 15, 1984, a number of comments were received from the public. All written comments have been made a part of the Administrative Record, either by inclusion in the transcript of the public hearing, or as written comments received by OSM on or before the close of the comment period. Also, all documents on file in the OSM Kansas City Field Office relating to the Kansas permanent regulatory program since March 11, 1983, obtained in the ordinary course of OSM business from the public, OSM Kansas City Field Office employees, the KCC, the Board or other government agencies, excluding internal memoranda (including telephone call notes, meeting notes, decisionmaking documents, and advice of counsel) have been placed in the Administrative Record.

On January 23, 1985, OSM's Annual Report on the Kansas Permanent Program for the period from April 1, 1983 to March 31, 1984 (KS–333) was completed and submitted to Congress. On March 25, 1985, OSM reopened the public comment period for an additional 30 days for comment on material received since the close of the April 30, 1984 comment period. No additonal comments were received.

All Kansas Administrative Record documents from KS–247 (March 11, 1983) through KS–368 (December 19, 1985) and the 1985 Annual Report which includes information based on OSM findings concerning the actions taken by Kansas to implement its approved regulatory program during the period April 1, 1984 through April 30, 1985 and being considered in this decision.

II. Director's Findings on the Status of Kansas' Permanent Regulatory Program

On the basis of the record described above, the Director makes the following findings pursuant to Section 521 of SMCRA and 30 CFR 733.12.

A. Administration

The Director's letter of March 11, 1983, indicated a concern that most of the problems with the Kansas program appeared to stem from a lack of commitment by the Board to enforce Kansas' program and the failure to develop and implement effective procedures and practices to accomplish this task.

Since the April 14, 1983 letter from the Governor in response to the Director's letter, Kansas has made several changes to improve the administration of the program. On May 17, 1983, the Governor appointed a new Chairman of the KSCC (who also serves as Chairman of the Board). A new Executive Director was hired effective December 8, 1983. The State has also sought and obtained additional resources to administer the approved program. Staffing is discussed in detail below under B. *Permitting/Bonding.*

Other changes made by the Board to improve program administration include the development of revised memorandums of understanding (MOUs) with other State agencies for permit review assistance; the updating of regulations; revising and adjusting inspection procedures; the development and implementation of a civil penalty filing and tracking system; the development and implementation of tracking systems for citizen complaints, ten day notices, and bond activity; and the development of a permit manual for use by operators and procedures for permit review. These procedures and systems are further discussed under the appropriate subject headings below.

Summary Administration Finding

The Director finds that the management changes made in the KSCC and Board staff, the improvements made in existing administrative systems and the development of additional administrative systems evidence the State's resolution of the problems associated with this portion of the program.

B. Permitting/Bonding

1. *Staffing:* When the Secretary approved the Kansas program on January 21, 1981, he noted in the Federal Register approval document that the Kansas legislature had not yet approved the proposed staffing and budget plan for the Kansas regulatory authority. That plan called for a staffing level of 15 full-time positions, including approximately five full-time equivalent (FTE) permitting positions, to administer the State's regulatory program. The Secretary approved the program based on Kansas' assurance that, until such time as the legislature approved the staffing plan, the State would employ the following measures: (1) Contract with qualified consulting firms to provide needed technical support; (2) utilize the expertise of other State agencies; and (3) enter into an agreement with OSM under the Intergovernmental Personnel Act (IPA) whereby OSM would provide a full-time technically qualified person to Kansas.

In March 1983, there was only one technically trained person on the Kansas staff available part-time for permitting. In its March 11, 1983 letter, OSM indicated its concern that the Board's approved program staffing plan was not being met and that this might be a contributing factor to the problems

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associated with permit review. OSM noted that the lack of technical expertise was particularly evident in the areas of geology, engineering and agronomy. In the Director's letter, OSM required that the Board identify its plans to fill vacant technical positions needed to ensure adequate permit review. At the informal conference, the State indicated that legislative action would be necessary to authorize additional positions and funding.

Since January 1984, the Board has filled five new positions approved through legislative action. These positions included an engineer and reclamation technician with a soils and agronomy background. Individuals with these particular backgrounds are well suited to address the identified permitting deficiencies related to hydrology, structures, soils and revegetation. OSM's evaluation of Kansas' permitting activities during 1985 noted improvement in these areas and OSM believes that the improvement was related in part to the additional staff.

Kansas also informed OSM that an engineer was detailed to the regulatory authority from another State agency for a minimum of one year to work on the permitting manual. That individual will be working with the Kansas regulatory program staff in Topeka until Spring 1986.

The increase in staff resources devoted to the Kansas program during 1984 is reflected in the FY 85 Administrative and Enforcement Grant. The staff allocations are:

	FTE [1]
Regulatory	7.75
Loaned engineer (permitting)	1.00
AML	5.25
Total	14.00

[1] Full-time equivalent.

The 7.75 FTE for the regulatory program includes 2.31 FTE for the permitting function, or 3.31 FTE when the loaned engineer is included.

In the past, because of the lack of technical expertise the Board's staff was responsible only for determining if permit applications were complete, relying upon ten State agencies holding memorandums of understanding (MOU) with the MLCRB to determine the technical adequacy of an application. Seven of these State agencies are represented by members on the Board. These Board members were to act as liaison between their respective agencies and the Board to ensure that interagency review of permit applications was conducted and to be available for a final review when the Board takes action on permit applications. Under the MOUs in existence prior to January 1, 1985, the necessary technical review, and interdisciplinary review of permit applications was not conducted. Only four of the ten State agencies' responses on technical adequacy could be documented in MLCRB's permit files during OSM's 1983–84 oversight evaluation. A review of these responses showed little evidence that a substantive technical review in those agencies was conducted.

The Executive Director initiated action to revise and strengthen the MOUs. These MOUs have been updated to require that cooperating agencies provide information necessary for the MLCRB to make its written findings. The Board has discontinued three of the MOUs. They were with the State Energy Office, State Department of Economic Development and the State Biological Survey. The Board added one MOU by entering into an agreement with the State Fire Marshal. The eight MOUs currently in effect are between the MLCRB and the State Fish and Game Commission, State Division of Water Resources, State Department of Health and Environment, State Geological Survey, State Historical Society, State Water Office, State Conservation Commission, and State Fire Marshal.

2. *Permit Processing:* In its March 11, 1983 letter to the Governor, OSM noted that the Board was not conducting adequate completeness and technical reviews of the permit applications and was not preparing adequate written findings. Kansas had no detailed procedures for permit review and had not been able to issue proper permits as required by State and Federal laws and regulations. This was evident by the technical deficiencies identified in the approved permits reviewed by OSM.

As a result of a preliminary review conducted by OSM during December 1983, of two permits issued on June 9, 1983, and October 13, 1983, OSM found that in many instances the technical documentation in the applications did not support the written findings. In addition, OSM found that major technical inadequacies existed in areas of vegetation, prime farmland, hydrology, fish and wildlife, and soils.

The oversight review of Kansas' permitting process conducted by OSM as part of the 1984 oversight review conducted during February 1984 (KS–316), confirmed OSM's previous findings and indicated continued inadequate technical reviews and analyses of permit applications. The permits reviewed by OSM were found to be incomplete, with technical deficiencies similar to those identified during the previous OSM oversight review conducted in February 1983 and the preliminary review conducted in December 1983. The deficiencies were generally the result of a lack of descriptive information in the permit application. OSM found the following permitting problems based on re-review of the three previously issued permits:

- Approved permits on file were not complete and did not contain information required by the approved State program.
- Some application requirements were either inadequately addressed, or were based on unrepresentative data. The Board's written findings, when based on this inadequate information, were not accurate. Without the required descriptive baseline information the MLCRB's staff could not properly assess the merits of the reclamation plan. The baseline deficiencies identified in the permits reviewed dealt with soils, prime farmland, vegetation, hydrology, and fish and wildlife, and taken together indicated a lack of adequate interdisciplinary review prior to permit approval.
- As a result of technical deficiencies, the permits reviewed did not correlate the operation plan to the reclamation plan so as to prevent or mitigate adverse environmental effects.
- While there was evidence that the MLCRB was processing coal exploration notices, there was not sufficient documentation in the files to assess how the notices were being processed. Separate files were not maintained for coal exploration notices. The MLCRB had not required companies to submit the necessary information as required by Kansas regulations. There was no documentation indicating that the MLCRB considered the amount of proposed disturbance during exploration activities.

The Board, in response to a request to identify its procedures for technical review and for preparing written findings on applications, submitted a letter dated September 30, 1983 (KS–259) which explained the permit review process, included a detailed application review checklist used to determine completeness, and outlined assignments for staff responsible for application review. The State's response also included flow charts that described the review process for coal exploration, experimental practices applications and lands unsuitable for mining petitions.

Kansas developed a manual for preparing, reviewing and tracking permits. The manual was completed in May 1985. The State has begun to use the manual for permit application preparation and completeness review. In December 1984 the MLCRB approved proposed regulation designed to clarify and strengthen permit and bonding requirements and comply with Federal regulations. The proposed regulations were approved by OSM (50 FR 47216) on November 15, 1985.

Since May 1984 and at OSM's request, Kansas has re-reviewed three previously issued permits for technical adequacy. The coal operators involved have been advised of permit deficiencies found during the review and were given until March 31, 1985, to correct them. The State has received and is currently reviewing follow-up data received from two of the three operators. The remaining operator is collecting the additional information required by the State.

The MLCRB approved one permit application during the 1985 evaluation period of April, 1, 1984 through April 30, 1985. OSM reviewed the permit application in conjunction with a review of MLCRB's exploration approvals, permit revision approvals, and newly adopted permit review procedures. The results of that review identified improvement in MLCRB's handling of exploration applications, prime farmland determinations, and fish and wildlife determinations; however, the permit area was small and did not provide sufficient basis for OSM to fully evaluate Kansas' permitting performance in all technical areas. In addition, separate exploration permit files have been established and are now acceptable.

OSM has re-examined administrative deficiencies identified in previous oversight reports. The State has either corrected those deficiencies or taken steps to correct them. Kansas has taken positive action to closely monitor the review process for accuracy, compliance, and quality assurance. As previously mentioned, new memorandums of understanding have been developed for all State support agencies currently involved in the permit review process to improve MLCRB permitting operations. A new permit application manual has been developed and put into effect which will improve the quality of initial permit application submissions, and enhance the review process.

3. *Review of Existing Permits:* The March 11, 1983 letter requested that Kansas provide to OSM a summary of the status of all permit approval actions taken since January 21, 1981, and a schedule for a technical review of those permits, including a timetable for revisions necessary to bring the permits into compliance with Kansas regulations.

In 1983, Kansas had a total of 23 permanent program permits of which 17 were active and six were inactive, as well as inactive interim program permits. Since November 1983, Kansas has reviewed 16 of the 17 active permits for completeness. The remaining permit is scheduled for review in early 1986. The permittees have been notified by the State of permit deficiencies and have been advised to provide necessary additional information. The State has received much of the required information and is currently reviewing the follow-up data submitted by the permittees.

As a component of the current technical assistance program, representatives of the State of Kansas, the OSM Western Technical Center, and the Kansas City Field Office analyzed those permits previously scheduled for a completeness review to determine the present need for complete technical reviews.

As a result of the above effort a specific review was established for each permit still being actively mined and/or reclaimed. The technical review will concentrate on those deficiencies which could have a negative environmental impact.

In a letter dated November 27, 1985 (KS–366), Kansas agreed to re-review for technical adequacy 10 current permits. These 10 permanent program permits are for 4 operations actively mining in Kansas and for 1 company that has recently filed for Chapter 11 proceedings in Federal Bankruptcy Court. If any permit deficiencies are identified, written notification of the deficiencies in the form of a Board Order will be provided to operators pursuant to the authority of the Board to review and require reasonable revision or modification of permit provisions. The order will contain a definite date for operator response which will vary depending upon the types of deficiencies which were cited.

If a timely response is not filed, absent a good faith justification, the operator will be issued a notice of violation pursuant to K.A.R. 47–15–1a for failure to comply with the State act, and regulations, and 15 day deadline for compliance will be set. Kansas has committed to have all deficiencies properly addressed by the end of calendar year 1986.

4. *Bond Release:* In its March 11, 1983 letter, OSM expressed concern that the Board was releasing performance bonds for operations that did not meet the required performance standards. OSM requested that the Board provide procedures for releasing performance bonds including documentation showing that all performance standards have been met, and provide assurances that no bonds will be released prematurely.

Kansas assured OSM by letter dated August 30, 1983, of the Board's policy to follow the requirements of Kansas regulation 47–8–9, incorporating 30 CFR 807.11 (May 8, 1980) in processing interim as well as permanent program bond release requests. This assurance satisfied OSM's request. The MLCRB did not release any interim program bonds during the 1984 oversight period. During the 1985 evaluation period, the MLCRB approved partial bond releases on two permanent program permits and two interim permits. OSM inspected one operation where a partial permanent program bond was released and found that all performance standards were met and release was made properly. OSM has held specific discussions with Kansas concerning requirements for interim permit bond releases and further discussions and joint field evaluations are planned to insure continued adequate releases.

Summary of Permitting/Bonding Findings

In his letter of March 1983, the Director had found that the technical adequacy of the permits the Board has issued and the completeness of the information in the applications was generally inadequate. The Board had failed to adequately reevaluate existing deficient permits for technical adequacy and require appropriate modifications. The Director now finds that the State has shown the capability to correct these errors by conducting reviews of the active permits, requiring additional information from permittees, increasing its permitting staff and realigning existing responsibilities to address the previously identified permitting deficiencies.

The Director also finds that the State has made progress in improving its permit review process, most notably by development of an improved permit review system and a permit preparation and review manual. The Director finds that the quality of the Board's review for technical adequacy, analysis of technical components supporting written findings, and timeliness of reviewing existing permanent program permits, has improved. Therefore, the Director finds that Kansas has demonstrated its capability to implement, administer, maintain, and enforce the permitting requirements of the approved program and has corrected or is in the process of

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correcting previously identified deficiencies.

OSM will continue to provide assistance to ensure that Kansas continues to implement its permitting responsibilities in accordance with its approved program. OSM will continue to monitor the Kansas permitting program through oversight and will reevaluate the need for assistance periodically.

Bond Release

The Director finds that Kansas has identified procedures for processing bond release requests and provided assurances that they will be followed. The Director has concluded that although there has been relatively little recent bond release activity with which to judge compliance, the State has demonstrated its capability to meet bond release requirements.

C. Inspection and Enforcement

1. *Inspection Frequency and Completeness of Inspections:* In its March 11, 1983 letter, OSM expressed concern that, while State inspection reports indicated that the State appeared to be meeting and even exceeding the required frequency for inspections, such a high frequency level could mean that the quality of the inspections was being compromised or the number of inspections was being improperly calculated. The State program requires an average of one complete inspection per calendar quarter and an average of one partial inspection per month. A complete inspection can substitute for one of the partial inspections. Thus, the program effectively requires four complete and eight partial inspections per year (1 complete and 2 partial inspection per quarter) on each inspectable unit. A complete inspection is an on-site review of compliance with all permit conditions and program requirements. A partial inspection is a review of compliance with some of the program requirements.

During the first year of primacy, Kansas reported that it had conducted 733 complete inspections (344 were required) and thus had exceeded its mandated inspection frequency. However, OSM found that the number of the complete inspections being reported had been improperly "double counted" by the State. Kansas used an inspection system based on inspector specialty in which each of two State inspectors reviewed different performance standards on a particular site at the same or different times. Each of these inspections was counted and reported by the State as a "complete" inspection. OSM secured a commitment from Kansas to correct the practice of double-counting complete inspections as of December 1, 1983. The Executive Director of the MLCRB agreed to require the two inspectors to inspect the same site on the same date, or as near the same date as possible.

Following the agreement to resolve this problem, OSM recalculated Kansas' inspection frequency since March 31, 1983, to eliminate the double-counting and present a more accurate summary of Kansas' complete inspection frequency. Only those cases in which both inspectors inspected the same site within 30 days were counted as a complete inspection.

The number of inspectable units in Kansas ranged from 68 in April–June 1983 to 79 in January–March 1984. Calculated by calendar quarter, the frequency of Kansas' complete inspections showed a steady increase in frequency from a low of 59 percent during April–June 1983 to a high of 84 percent during January–March 1984. This increase indicates a general level of improvement. However, when inspection frequency was calculated by individual inspectable units, 46 of the inspectable units, or over 50 percent, did not receive the required number of complete inspections during the year.

During January–March 1984, OSM found that of the 79 inspectable units, 66 units received a complete inspection for an inspection frequency of 84 percent. The remaining 13 units received only one of the two required partial inspections and, therefore, were not counted as receiving a complete inspection. OSM found that the average time between the two site visits required for a complete inspection was an acceptable 10.3 days.

Kansas previously exceeded the required number of partial inspections. The approved program requires eight partial inspections per inspectable unit per year. Kansas conducted an average of 15.7 partial inspections per unit from April 1, 1983 through March 31, 1984, which is almost double the required frequency. This excess of partial inspections and shortage of complete inspections suggested that Kansas was not properly allocating its inspection resources.

On September 1, 1984, the Kansas Director instituted a completely revised inspection system. One inspector is now responsible for conducting all aspects of a complete inspection on a mine site. Kansas also revised the way it counts its inspectable units. By eliminating the counting of permit increments as separate inspectable units, the number of inspectable units was decreased from a high of 83 in 1984 to 50. The new inspection system has eliminated time-consuming double inspections, reduced paperwork, and has improved the quality of complete inspections.

Since the initiation of the new inspection procedure, Kansas has maintained an inspection frequency of at least one inspection per inspectable unit each month. During the period of September 1, 1984 through April 30, 1985, Kansas' inspectors conducted the required number of complete and partial inspections on 100 percent of the inspectable units for both interim and permanent program permit areas. There were no units that lacked the required number of inspections.

2. *Inspection Reports:* As noted in the Director's March 11, 1983 letter, during the 1983 oversight review, OSM found that of 132 inspection reports reviewed, only four contained sufficient information to identify the report as that of a complete inspection. Conditions of the permit area and compliance with applicable performance standards were generally not addressed. These deficiencies continued from April through November 1983. No improvements were noted in the Kansas inspection reports until December 1983, when Kansas developed two new inspection report formats, the "inspection report" and the "hydrologic report".

OSM reviewed from a total of 690 Kansas inspection reports a sample of 49 inspection reports and 49 hydrology reports written from January through May 1984. The reports taken together constituted 49 complete inspections. The checklists included on both inspection report forms cover all the performance standards required to be reviewed during complete inspections. Compared to the situation which existed prior to December 1983, Kansas made improvements in preparing complete inspection reports. During the sample review OSM found that the checklist was completed on 98 percent of the reports. The narrative section of the report was considered adequate in 71 percent of the reports. The narratives that were found to be deficient lacked complete descriptions of mining or reclamation activities. Of the sample, 98 percent of the complete inspection reports did, however, contain sufficient information to identify the report as that of a complete inspection. A review of all 137 complete inspection reports submitted to OSM from September 1, 1984 through March 31, 1985 found that 100 percent of the checklists were completed and 98 percent of the narratives described mine site conditions adequately to identify the

report as that of a complete inspection. Inspection reports were adequate to support any citations that were issued as a result of the inspector's findings. The improvements noted in complete inspection reports indicate that Kansas has corrected inspection report deficiencies identified by the Director.

3. *Enforcement During Field Inspection:* On March 11, 1983, OSM notified Kansas that State inspectors had generally failed to take appropriate enforcement actions when violations were observed, and that OSM oversight inspections resulted in the discovery of an inordinate number of observed violations that were not cited by Kansas inspectors.

In response to OSM concerns, the MLCRB Executive Director issued a directive to Kansas inspectors on September 29, 1983, stating that, while past policy regarding issuance of notices of violation (NOV) has been less stringent than the regulations require, an effort must be initiated to ensure that compliance with the regulations is carried out.

In September 1983, Kansas requested assistance from OSM for training to improve the level of inspector proficiency. The training was provided in October 1983. Major topics included in the training were (1) inspection process, (2) permit review, (3) on-site inspection, (4) haul roads, (5) topsoil, (6) revegetation, (7) blasting, (8) enforcement procedures, and (9) special categories of mining.

During the 1984 oversight period, OSM found that the State cited violations at approximately 50 percent of the rate that OSM observed violations. This was an improvement over previous results, but Kansas inspectors still did not cite all observed violations.

A review of all 27 NOVs issued by the State during the 1985 review period indicated that Kansas inspectors are citing violations at a rate which is approximately 80 percent of the rate that OSM observed violations in Kansas. Due to the low number of ten-day notices (5) issued in Kansas as a result of statistical sample inspections (SSI), OSM finds that Kansas is making a diligent effort to cite violations observed during inspections.

Out of the 65 SSIs conducted by OSM during the review period, 22 were conducted jointly with State inspectors. No TDNs were issued during joint inspections; the State issued 2 NOVs during the same inspections. No significant difference was noted in the issuance of enforcement actions by the State during joint or non-joint inspections.

The reduction in the total number of enforcement actions taken since the last review period (68 vs 28), along with a corresponding decrease in the TDNs issued by OSM (17 vs 11), and an increase in the rate at which Kansas cites violations indicates that the level of compliance by Kansas operators has increased. This is a reflection of the State's improved enforcement program.

Timeliness of issuing enforcement actions is reviewed by OSM to ensure prompt citation of violations. Of the 62 NOVs issued by Kansas in the 12 months following the 30 CFR 733 notification, OSM found that 50 NOVs were issued as the result of an on-site inspection. The other 12 NOVs were issued for the permittee's failure to submit required designs or water monitoring reports. No no-site inspection was required prior to issuance of these NOVs. A review of the 50 NOVs indicated that 92 percent, or 46 out of 50 were issued within two days and that the longest period of time taken for issuance of an NOV was seven days. Eight NOVs were issued on the same day that the violation was observed. The average NOV issuance period was 1.7 days. During the 1985 review period, OSM reviewed 28 State enforcement actions to determine the number of days required to issue a NOV or CO following an inspection. The State issued 71 percent of all enforcement actions on the same day as the inspection. The average enforcement issuance period is 0.8 days which is an improvement over the 1.7 days reported in the first annual review. OSM finds the timeliness of issuing NOVs is no longer a problem in Kansas.

4. *Ten-Doy Notices:* a. *Timeliness of Response:* In its March 11, 1983 letter, OSM stated that while Kansas had responded promptly to five of seven ten-day notices (TDN) issued by OSM, the State generally did not respond appropriately to the specific problems and issues raised in the TDN. When the State failed to properly address OSM's concerns, OSM conducted follow-up inspections or requested additional information from the State to resolve the issues.

During the period April 1, 1983–March 31, 1984, OSM issued 17 TDNs to Kansas citing a total of 31 violations. Timely responses were received on 12 of 17 TDNs or 71 percent. Of the five TDN responses not received by OSM within the required 10 day period, the longest period before a response was received was 14 days. The average time for all TDN responses was 8 days. From April 1, 1984 through April 30, 1985, Kansas responded within the required period on 9 out of 11 TDNs, with an average response time of 9 days. OSM does not consider the timeliness of response to TDNs by Kansas to be a problem at this time.

b. *Appropriateness of Response:* In the 12 months following the 30 CFR 733 notification, Kansas responded appropriately to 52 percent or 16 out of 31 violations noted in OSM's 17 TDNs. The remaining 15 responses were judged to be inappropriate. OSM found that in all 15 of the inappropriate responses, Kansas failed to take an enforcement action.

During the period of April 1, 1984 to March 31, 1985, Kansas responded appropriately to 8 out of 11 TDNs issued by OSM. The three inappropriate responses concerned premature bond releases which occurred early in 1983 and do not reflect current MLCRB actions. No evidence of delayed inspection by Kansas was identified. OSM finds that Kansas is now more responsive in enforcing its approved program when compared to the period prior to April 1983. OSM will continue to monitor progress in this area through program oversight activities.

5. *Citizen Complaints:* Prior to the 30 CFR 733 action, OSM found that Kansas did not respond appropriately to citizen complaints. Specifically, OSM found that the State was not notifying the citizen of (1) its determination or action with respect to the citizen's allegation, or (2) the right to appeal its action or inaction. Additionally, OSM found that the State did not address in its report the specific allegations identified by the citizen.

From December 31, 1983 through March 31, 1984, Kansas received a total of five citizen complaints, four of which were in writing. OSM reviewed all five citizen complaints and found that Kansas initiated an investigation within two days of receipt of the complaints. The State found no violations upon investigation and, therefore, took no enforcement actions. OSM found that the State's documentation of its investigations was adequate to support its decision of all five cases. Kansas responded in writing to four of the five citizens within the approved time period, and the fifth response was only one day beyond the approved time period. OSM found that on four of the five complaints, citizens were not advised of the right to appeal the State's action, but when this was brought to the attention of the Executive Director, corrections in procedures were made immediately and resulted in the fifth complainant being properly advised. The State developed and submitted a copy to OSM of its citizen complaint tracking

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log. OSM reviewed this system and concluded that it is adequate to identify, process and track citizen complaints. During the period April 1, 1984 through March 31, 1985, Kansas received 4 oral citizen complaints and 6 written citizen complaints. Three of the oral complaints were later received in writing. The State investigated and responded to all the citizen complaints it received.

OSM no longer considers citizen complaint procedures and investigations to be a problem in Kansas. The Director finds that Kansas has continued to use its system to properly track and respond to citizens' complaints. OSM will continue to monitor the State's effort through the annual oversight process.

Summary Inspection and Enforcement Findings

The Director finds that the Board has met the required frequency for complete and partial inspections and has demonstrated the ability and commitment to continue this practice.

The Director also finds that the number of enforcement actions taken by Kansas has risen compared to the 12-month period prior to the 30 CFR 733 notice and that the percentage of uncited violations observed by OSM has significantly decreased. Kansas' commitment to enforcing its approved regulatory program, hiring of additional staff, and improvement in its responses to OSM's ten-day notices, particularly since October 1983, indicate that Kansas' inspection and enforcement program is being implemented in a manner consistent with the provisions of the approved Kansas permanent regulatory program.

D. Civil Penalty Assessment

Prior to initiation of the 30 CFR 733 action, Kansas had not developed a civil penalty filing and tracking system and failed in virtually every aspect to implement its approved civil penalty assessment process. Kansas had not sent proposed assessments to operators within the required timeframe, had not documented reasons for specific point assignments, routinely and inappropriately waived the point system and issued assessments without using methods approved in its program. Kansas also conducted assessment conferences in a manner inconsistent with its established guidelines, and failed to afford an operator the opportunity to request an informal review.

1. *Review of Assessment:* Prior to initiation of the 30 CFR 733 action, OSM found that the MLCRB did not review each notice of violation in accordance with assessment procedures outlined in the approved regulatory program. Of the 29 violations cited, seven were not reviewed for penalty assessment.

OSM reviewed five penalty assessments and associated documents during September 1983. That review indicated that Kansas was not following its approved procedures for penalty assessments. At Kansas' request, OSM provided an assessment training course on October 12, 1983. OSM found during reviews conducted in February and April of 1984 that Kansas had improved its method for assessment of points through the proper utilization of the assessment criteria.

A total of 62 violations were cited by Kansas during the period April 1, 1983 through March 31, 1984. Two of the NOVs were later vacated, leaving 60 violations which required assessment. Kansas evaluated all of these violations for assessment and 44 (73%) were assessed a civil penalty. The remaining 16 violations were not assessed a civil penalty because they were assigned 30 points or less and a penalty was discretionary.

A total of 28 violations were cited by Kansas during the period April 1, 1984 through March 31, 1985. Four violations were vacated. Penalties were reviewed and proposed by the Board on 17 violations and the remaining seven were pending Board Review as of March 31, 1985. Of the 17 proposed penalties, 14 were for violations assessed 30 points or less and were waived under the Board's discretionary authority.

The review indicated that Kansas is following its approved procedures for penalty assessments and mandatory criteria are consistently considered. The Board is assessing all mandatory penalties.

2. *Penalty Tracking and Filing System:* Prior to initiation of the 30 CFR 733 action, OSM found that Kansas had no system for tracking civil penalties. The information available was inadequate to provide a record of the assessment actions or to allow the Board to track penalties from the initial assessment through the appeal process to collection. Kansas requested assistance from OSM in addressing this problem. OSM provided on October 12, 1983, assessment training and assisted the State in reorganizing its civil penalty records and filing system. During January 1984, OSM reviewed Kansas' assessment files developed after completion of the assessment training and found that the improvement made to the assessment filing system was sufficient to allow the assessment process to be tracked. The filing and tracking system maintained by Kansas is current and complete for tracking and recording assessment actions. A review of all 28 violations during the 1985 evaluation period indicated documentation of the calculations of penalty amounts and reasons for any adjustments or waiver of penalty assessments. Board assessment actions are documented and the operator is notified through the Board Orders.

Documentation of assessment actions was found to be adequate in the 1985 oversight report and Kansas continues using the prescribed system for record maintenance and documentation.

3. *Proposed Assessment Notifications:* Prior to issuance of the 30 CFR Part 733 notice, OSM found that the Board failed to send proposed assessments to operators within the required 30 days of issuance of an enforcement action. Only 6 out of 23 (23%) enforcement actions were assessed within the required 30 days. Additionally, OSM found that operators received no explanation of the penalty calculation, copy of the assessment worksheet, or notification of their right to appeal.

OSM conducted a review of the State's proposed assessment notification procedures and found that not all notices of proposed assessments, which are in the form of Board Orders, were sent within the required 30-day period. Two problems were identified which contributed to the delay:

1. Assessments are proposed by the Board, which meets on a bi-monthly schedule (60 days).

2. After the Board meeting, six to eight weeks were needed to develop and send Board Orders to the mine operators.

OSM has met with both the legal and administrative staffs of Kansas to resolve the timeliness issue. The Board is currently considering certain delegation, to expedite assessment issuance. Consideration is also being given to a program change as part of the pending regulatory reform process.

Improvement in the timeliness of assessment notification has been noted. Recent Board Orders were sent within two weeks of the Board taking action. OSM will continue to monitor the State's assessment notification process through the oversight process. OSM has found that Kansas now routinely provides operators with an explanation of the penalty calculation, a copy of the assessment worksheet, and notification of their right to appeal.

Additionally, the average proposed penalty assessment increased from $100 to over $2,300. In the 12 months following the 30 CFR 733 notification, Kansas collected five civil penalties for a total of $7,250. An additional 29 penalties were due for collection on two abandoned mine sites. Two collection actions were filed by Kansas and are pending a decision in district court for collection of $104,200 in outstanding penalties.

4. *Assessment Conferences:* Prior to the 30 CFR 733 notice, OSM found that Kansas' assessment conferences were conducted in a manner inconsistent with its established guidelines. The conference officer did not serve the person assessed with a notice of his action, including a worksheet, when the penalty was raised or lowered. The reasons for the conference officers' decisions were not documented.

From April 1, 1983 to May 31, 1984, Kansas held no assessment conferences and none were requested. One conference has been held since May 31, 1984. The position of the Board was sustained with no changes in the penalty. A complete report was made including background findings and conclusions. The operator was notified of his right to appeal proposed assessments in accordance with the Kansas approved program. One assessment conference was held during the 1985 review period. It was scheduled and held within the 60 day time frame established in the Kansas program. OSM will continue to monitor the State's performance when assessment conferences are held.

Summary Civil Penalty Assessment Findings

The Director finds that the State has shown improvement in reviewing all violations for assessment, assessing penalties using the proper criteria and procedures, and collecting civil penalties. The Director finds that the timeliness of the entire assessment process will require constant effort to ensure that Kansas meets its required time constraints. Kansas has, however, demonstrated the intent and capability to carry out the civil penalty portion of its approved program by: (1) Attending assessment training, (2) instituting a tracking and filing system, (3) computing penalty points for each violation and order, (4) using a point formula in all proposed assessments, (5) verifying Board action in writing, (6) establishing conference procedures and (7) providing opportunity for administrative and judicial review.

III. Disposition of Comments

During the public hearing and public comment periods, the Director received comments from the public, coal operators and government agencies. In arriving at his decision, the Director considered the comments received in response to the public comment periods, provided at the public hearing and all of the testimony heard and documents received as a result of the public hearing or received during the public comment period.

One commenter stated that his agency was satisfied with the Kansas Board's enforcement of the reclamation regulations. The commenter also stated that landowners with lands being mined in Labette County were also satisfied with the way their lands were reclaimed (KS–265). The Director has found that the State has taken numerous steps to improve its program implementation as noted in the Findings section of this notice.

A mine operator stated that it was largely OSM's fault for the "economic instability" in the coal marketplace. The commenter stated that Kansas coal mine operators attempted to comply with reclamation standards required by the State program and SMCRA while adjacent States were allowed to operate under "delinquent" reclamation standards, thus distorting coal prices. The commenter also stated that reclamation standards could be better met if the State administers the program. The commenter requested that OSM recognize the improvements made by Kansas in its program and that it be allowed to continue administering the program (KS–263, KS–267). Review by OSM during the period covered by this notice found that initially permits did not comply with State regulations and that the State was failing to require permit deficiencies be corrected. The Director recognizes recent actions by Kansas to strengthen its program administration and correct permitting and inspection deficiencies. The Director believes that Kansas has taken action to address all identified program deficiencies.

A commenter, who is a landowner, stated that the MLCRB failed to obtain a bond for property he leased to an operator for use as a tipple. He asserted that failure to require the bond violated Kansas Statute (K.S.A. 49–406(a)) and resulted in his land being unreclaimed (KS–270). The Director agrees that the State acted improperly in failing to require bond on the tipple site. Kansas was operating under the interim program when the permit was issued. While Kansas' interim regulations required all land affected by mining operations be included in the permit and be bonded, the MLCRB improperly determined that bond was not required for the tipple. Kansas now requires that all tipples be permitted and bonded.

A commenter stated he and a number of other people were concerned about alleged water problems (flooding) resulting from State approved mining activities. The commenter was concerned about the capabilities of the MLCRB members and their conduct at Board meetings and recommended they be replaced. The commenter also alleged that blasting is not being controlled and that this results in homes being severely shaken. The commenter stated that the MLCRB has not and cannot enforce program requirements (KS–274). Kansas has revised and improved its permit review process to include an extensive review of the hydrologic consequences of mining in order to make the findings required under the Kansas' approved program. The MLCRB staff is qualified and has nearly doubled in size since the 30 CFR Part 733 action was initiated. A new MLCRB Chairman and staff Director have also been appointed. Blasting activities are being monitored by the MLCRB and Kansas regulations are being enforced. The Director believes that Kansas has taken action to address the implementation problem cited by the commenter.

One commenter cited some of the findings contained in OSM's 1983 annual evaluation report in pointing out the State's failure to meet its regulatory responsibilities. The commenter cited problems with the regulatory program permits, bonding, inspection frequency and practices, failure to issue violation notices and administrative functions. The commenter alleged that Kansas' failure to meet its regulatory responsibilities has resulted in water quality problems, inadequate reclamation, inadequate public participation and response to citizen complaints (KS–275). The Director agrees that prior to his March 11, 1983 letter, the MLCRB was not adequately enforcing the provisions of the approved Kansas program. The 1983 annual evaluation report prepared by OSM identified several major deficiencies in the Kansas regulatory program including those described by the commenter. The 1984 OSM evaluation report identified generally the same problems noted in the previous year's report but also recognized major accomplishments on the part of the State to increase its staff, improve administrative functions, meet inspection frequency requirements and strengthen its enforcement effort. The 1985 OSM evaluation report indicates that changes made by the MLCRB in the permitting program should improve the quality of permit applications and permit review. As detailed in the findings contained in Section II of this notice, the Director finds that Kansas

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has implemented changes to address all known program deficiencies.

One commenter, while supporting Kansas primacy stated that a direct cause of the State's problem in administering its program lies in the MLCRB's failure to properly understand, accept and follow its statutes and regulations. The commenter also stated the MLCRB lacked the staff and expertise needed to proper administer the regulatory and Abandoned Mine Land (AML) program. The commenter pointed out potential conflicts of interest that exist in the present composition of the MLCRB and in the MLCRB being a part of the Kansas Corporation Commission, an agency which regulates the utilities that purchase coal from operators regulated by the Board. The commenter also indicated potential conflict in the use of a KCC employee as a hearing officer (KS–263, KS–281). The Director agrees with the commenter that at the time of the 30 CFR 733 letter the MLCRB was not adequately administering its program. As noted in the responses to previous comments, the Director believes that Kansas has initiated action to address all known program deficiencies.

Another commenter alleged a misguided attempt on the part of the OSM to over-regulate the coal industry in Kansas. The commenter stated that both OSM and the State need to "adopt a more common sense attitude in implementing more reasonable reclamation practices in Kansas" (KS–263).

The Director disagrees with the comment that OSM is overregulating the coal industry in Kansas. SMCRA includes provisions to protect society and the environment from the adverse effects of coal mining operations, and establishes minimum national standards for regulating the surface effects of coal mining. OSM has and will continue to ensure that States implement the provisions of the programs approved under SMCRA.

IV. Director's Decision

Having reviewed and considered all available information on the Board's implementation of the Kansas program, including the hearing record, OSM's oversight findings, public comments and all other contents of the administrative record in these proceedings, the Director has made the following determinations.

Kansas has corrected or initiated action to address problems identified by OSM in the State's implementation of its program. The Director has determined that the steps taken by Kansas to resolve the identified program deficiencies, including the addition of technical staff, the development of improved memorandums of understanding with supporting agencies, recent revisions of regulations, pending regulatory revisions, and operating procedures, as well as actions taken by the Kansas MLCRB to implement the approved program, demonstrate the State's intent and capability to administer its regulatory program as approved by the Secretary. For this reason, the Director is terminating the 30 CFR Part 733 action initiated on March 11, 1983.

To assure that the adverse effects of surface mining are controlled as required under SMCRA and the State program, OSM will continue its oversight of the Kansas regulatory program and provide assistance as necessary to the Kansas MLCRB.

Date: January 31, 1986.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 86–2735 Filed 2–6–86; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 251

[DoD Directive 4175.1]

Sale of Government-Furnished Equipment or Materiel and Services to U.S. Companies

AGENCY: Defense Department.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule concerning sale of government-furnished equipment or materiel and services to U.S. companies that appeared in the **Federal Register** on Thursday, January 23, 1986 (51 FR 3041). This action is necessary to include a new § 251.5(c)(5) and correct mistakes previously submitted.

PART 251—[AMENDED]

1. The authority citation for 32 CFR Part 251 is changed to read:

Authority: Sec. 305(2) Pub. L. 96–525, Pub. L. 97–392, 10 U.S.C. 2208(i), 22 U.S.C. 2770, and 96 Stat. 1962.

2. Page 3042, Column 1 subject heading "Appendix B–22 U.S.C. 2208(i)" is changed to read "Appendix B–10 U.S.C. 2208(i)".

§§ 251.3 and 251.4 [Amended]

3. Column 2 (§ 251.3, line 3), column 3 (paragraph (b), line 1) and § 251.4 (line 2) change "2751–2796c" to read "2770".

§ 251.4 [Amended]

4. Page 3043, Column 1 (paragraph (b), line 5) delete one of the section symbols and change "251.4(4)" to read "251.4(b)(4)".

§ 251.5 [Amended]

5. Section 251.5 (line 3) change "2751–2796c" to read "2770", and in Column 2 (line 6) change "paragraph (3)(ii)" to read "paragraph (e)(3)(ii)".

6. On page 3043, Column 2, paragraph (b)(3) (line 4) change "§ 251.5(3)(ii)" to read "§ 251.5(e)(3)(ii)".

7. Column 3, delete paragraph (5) in its entirety and replace with a new paragraph (5) to read: "(5) Accountability shall be in accordance with DoD 7290.3–M with reimbursements from sales being credited to the current appropriation, fund, or account of the selling agency. Surcharges, on items sold under 22 U.S.C. 2770 such as nonrecurring cost recoupment charge, asset use charge, and GMS administrative surcharge, shall be accountable as FMS surcharges under DoD 7290.3–M. Amounts collected for items sold under 10 U.S.C. 2208(i) shall be credited to accounts specified in paragraph 10402 of Foreign Military Sales Financial Management Manual, DoD 7290.3–M."

8. Page 3044, column 1 (paragraph (e), line 10) change "2751–2796c" to read "2770".

9. Column 2, (paragraph (e)(3)(i), line 2) change "251.3(1)"; to read "251.5(c)(2);"

§ 251.6 [Amended]

10. Column 3, section 251.6(a), line 4 and 251.6(b), line 3, change "GEM" to read "GFM".

11. Paragraph (d)(2), line 2 and (d)(3), line 3 change "2751–2796c" to read "2770".

§ 251.7 [Amended]

12. Section 251.7(a), line 2 change "251.4(3)" to read "251.6(d)(3)".

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 3, 1986.

[FR Doc. 86–2618 Filed 2–6–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 251

Indian Education Program—Formula Grants—Local Educational Agencies and Tribal Schools

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations governing the Indian Education Programs—Formula Grants—Local Educational Agencies and Tribal Schools. These regulations implement changes made by Pub. L. 98–396 to the maintenance of effort requirement contained in the authorizing statute.

DATES: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ervin Keith, Chief, Support Services Branch, Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 2177, FOB–6), Washington, DC 20202. Telephone: (202) 732–1908.

SUPPLEMENTARY INFORMATION: These regulations amend the regulations in 34 CFR Part 251 which implement section 306(b)(2) of Part A of the Indian Education Act of 1972 (Title IV of Pub. L. 92–318, the Education Amendments of 1972, as amended). Section 306(b)(2) previously prohibited the payment of Part A formula grant funds to a local educational agency (LEA) unless the cognizant State educational agency (SEA) found that the applicant LEA maintained 100 percent of combined fiscal effort of the LEA and State, as determined in accordance with regulatory requirements. Pub. L. 98–396 amended section 306(b)(2) of the Act by: (1) Reducing from 100 percent to 90 percent the combined fiscal effort that must be maintained by the LEA; and (2) providing authority for the Secretary to waive that requirement for exceptional circumstances for one year only.

These regulations reflect the statutory reduction in the maintenance of effort requirement from 100 percent to 90 percent (§ 251.40(a)) and restate the Secretary's authority to waive the requirement under exceptional circumstances for one year only (§ 251.41(a)). In addition, these regulations: (1) Clarify how the level of maintenance of effort is to be determined (§ 251.40); (2) add the Secretary's criteria for consideration of a waiver of maintenance of effort (§ 251.41(c)); and (3) establish a maintenance of effort standard to be applied to LEAs in the funding year immediately following receipt of a waiver (§ 251.42). The Secretary considers those provisions of the regulations that are not specifically mandated by statute to be necessary for the efficient administration of the program and for equitable treatment of all LEAs that seek funding under this program.

These regulations include § 251.40 in its entirety to assist the reader.

The Secretary published a notice of proposed rulemaking (NPRM) on March 22, 1985 (50 FR 11513), and invited interested persons to submit comments. Comments were received from two commenters.

Under the maintenance of effort amendment to the Indian Education Act, an LEA may not receive a grant unless the appropriate SEA finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort for that purpose for the second preceding fiscal year.

The amendment also allows the Secretary to waive this provision for exceptional circumstances for one year only. The NPRM provided that, to meet the requirement the year after receiving a waiver, an LEA's fiscal effort in the preceding year would have to have been at least 81 percent of the third preceding year.

The two commenters expressed concern that the Department did not seem to be interpreting the new Indian Education maintenance of effort provision as the Congress had intended—that is, "in a manner similar to that found in Chapter 1 of the Education Consolidation and Improvement Act." They were concerned because the NPRM seemed to them to have "the questionable effect of allowing districts that decrease their per pupil expenditures continuously over a three-year period to continue to receive funds, despite the fact that the waiver is intended to allow for only a single year's decrease in local effort."

The commenters suggested that the Department use the Chapter 1 regulation as a guideline and include a provision "which would hold a school to no less than 90 percent of the per pupil expenditure in the year preceding the year for which the waiver was granted." Although the provision in the NPRM would have had the same effect as the Chapter 1 provision, the Department agrees that the language in the NPRM may have been confusing. However, in lieu of using the Chapter 1 regulatory language, the Secretary has chosen to adapt language from the regulations implementing the Carl. D. Perkins Vocational Education Act.

This new langauge is easier to understand and achieves the same result as the Chapter 1 provision favored by the commenters. Under the new provision: "No level of expenditures permitted under a waiver may be used as a basis for computing . . . fiscal effort . . . for subsequent years. Instead, for subsequent years, fiscal effort must be computed on the basis of the level of expenditures that would have been required had a waiver not been granted."

The commenters also expressed concern that the proposed regulations would allow an LEA denied a waiver to reapply the following year and meet the fiscal effort requirement based on a lower level of expenditures that an LEA granted a waiver. The NPRM provided that, for the year after an LEA was denied a waiver, the LEA would be held to the statutory requirement (fiscal effort of the preceding year no less than 90 percent of the effort for the second preceding fiscal year).

All references to the effects of denials of waivers in subsequent years have been deleted from these final regulations as unnecessary. However, the Department believes it must treat LEAs that were not funded in the prior year as the Department treats all applicants for new grants. Under the Indian Education Act, an LEA that receives a waiver for one year also receives its grant that year. An LEA that is denied a waiver loses its *entire* allocation under the Indian Education Act for that year (unlike under Chapter 1 where an LEA denied a waiver receives a *reduced* allocation). The Department therefore believes an LEA denied a waiver should be treated as a new applicant in any subsequent year it reapplies for funds under the Indian Education Act.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovermental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is

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to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 251

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance No. 84.060, Indian Education—Formula Grants to Local Educational Agencies and Tribal Schools).

Dated: February 3, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 251 of Title 34 of the Code of Federal Regulations as follows:

PART 251—FORMULA GRANTS—LOCAL EDUCATIONAL AGENCIES AND TRIBAL SCHOOLS

1. The authority citation for Part 251 continues to read as follows:

Authority: Title IV, Part A, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241a-241ff), unless otherwise noted.

2. Section 251.40 of Subpart E is revised to read as follows:

§ 251.40 What is the maintenance of effort requirement?

(a) Subject to the granting of a waiver under § 251.41, the Secretary does not make payments to an LEA for any fiscal year unless the appropriate SEA finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by that LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort for that purpose for the second preceding fiscal year.

(b) For purposes of determining maintenance of effort, the "preceding fiscal year" means the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are awarded.

Example: For funds awarded in fiscal year 1985 for expenditure by LEAs during the 1985–86 school year, if a State is using the Federal fiscal year, the "preceding fiscal year" is fiscal year 1984 (which began on October 1, 1983). The "second preceding fiscal year" is fiscal year 1983 (which began on October 1, 1982). If a State is using a fiscal year that begins on July 1, 1984, the "preceding fiscal year" is the 12-month fiscal period ending on June 30, 1984. The "second preceding fiscal year" is the 12-month fiscal period ending on June 30, 1983.

(c)(1) For the purpose of making the finding described in paragraph (a) of this section, an SEA may compute combined fiscal effort on the basis of either aggregate expenditures or per pupil expenditure.

(2)(i) As used in this section, "aggregate expenditures" means expenditures by the LEA and the State for free public education provided by that LEA.

(ii) The term includes expenditures for administration, instruction, attendance, health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student activities.

(iii) The term does not include expenditures for community services, capital outlay and debt service, or any expenditures from funds granted under Federal programs of assistance.

(3) As used in this section, "per pupil expenditures" means aggregate expenditures divided by the number of pupils in average daily attendance at the LEA's schools—as determined in accordance with State law—during the fiscal year for which the computation is made.

(20 U.S.C. 241ee(b)(2))

2. A new § 251.41 is added to Subpart E to read as follows:

§ 251.41 When may the Secretary grant a waiver of the maintenance of effort requirement?

(a) The Secretary may grant a waiver, for one year only, of the maintenance of effort requirement in § 251.40, if the Secretary determines that the LEA's failure to meet that requirement is due exceptional circumstances.

(b) An LEA may ask the Secretary to grant a waiver of the maintenance of effort requirement by submitting a request for a waiver that includes a description of the circumstances that the LEA considers to be exceptional.

(c)(1) Exceptional circumstances include but are not limited to—

(i) A natural disaster; or

(ii) A precipitious and unforeseen decline in the financial resources of the LEA.

(2) The Secretary does not consider tax initiatives or referenda to be exceptional circumstances.

(d) If the Secretary grants a waiver under paragraph (a) of this section, the affected LEA may receive its full allocation of formula grant funds.

(20 U.S.C. 241ee(b)(2))

4. A new § 251.42 is added to Subpart E to read as follows:

§ 251.42 What is the effect of a waiver on determination of an LEA's maintenance of effort in the following year?

No level of expenditures permitted under a waiver may be used as a basis for computing the fiscal effort required under § 251.40 for subsequent years. Instead, for subsequent years, fiscal effort must be computed on the basis of the level of expenditures that would have been required had a waiver not been granted.

Example: An LEA was granted a waiver in fiscal year 1985 because its fiscal effort in the preceding fiscal year (1984) was less than 90 percent of its fiscal effort in the second preceding fiscal year (1983) due to exceptional circumstances. In determining maintenance of effort for the purpose of funding in fiscal year 1986, the LEA's combined fiscal effort for the preceding fiscal year (1985) must be at least 81 percent (90 percent of 90 percent) of its fiscal effort in the third preceding fiscal year (1983).

(20 U.S.C. 241ee(b)(2))

[FR Doc. 86-2669 Filed 2-6-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Oversize Vehicle Regulations; Zion National Park, UT

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking revises and deletes portions of an existing regulation that establishes road use and convoy requirements for large vehicles using the Zion-Mt. Carmel tunnel road in Zion National Park, Utah. This road receives substantial levels of use by buses and other large vehicles. There are two tunnels on this road that were constructed in the 1930's and that do not accommodate two lanes of traffic safely if large vehicles are involved; the road system itself is narrow with numerous tight curves; bridges carry a Federal Highway Administration rating that is marginal for larger trucks. In the interest of public safety, certain large vehicles must be escorted by National Park Service (NPS) convoy. The existing convoy requirements and fees have not been changed since 1970 and therefore do not reflect current road and traffic conditions, changes that have occurred in large recreational vehicle specifications nor the increased cost to the NPS of providing convoy services. The NPS is deleting the portion of the existing regulation that contains size restrictions for vehicles traveling on the Zion-Mt. Carmel tunnel road so that the park superintendent may revise those requirements locally pursuant to authority provided to establish public use limits. This revision will allow a greater number of vehicles to proceed on this road without a convoy and provides the superintendent greater flexibility to revise vehicle size limits in the future. The fees charged for a convoy are being raised from $5 to $15 to recover the costs associated with providing the personnel and equipment necessary to provide this service which typically lasts approximately one hour.

EFFECTIVE DATE: March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Roger Rudolph, Chief Park Ranger, Zion National Park, Springdale, UT 84767, Telephone: 801-772-3256.

SUPPLEMENTARY INFORMATION:

Background

The Zion-Mt. Carmel tunnel road was build by the Federal government in the late 1920's and early 1930's to provide a link through Zion National Park between two sections of Utah State Route 9 built on either side. Very few roads existed in that area then, or do now, and the road provides a convenient access between the small communities of Springdale and Mt. Carmel as well vehicle access for park visitors. In 1959 the National Park Service (NPS) developed a special regulation to control large truck traffic on the tunnel road; the regulation was amended in 1970. Use of the tunnel road by large vehicles such as motorhomes, buses, travel trailers and a few trucks has increased significantly over the years, with vehicles becoming larger as well. The tunnel road severely restricts the size of vehicles that can be negotiated over it safely because of its lane widths in the tunnels (10'), low clearance in the tunnels (11'6"), low bridge weight limits and severe curves. Total visitation to the park has increased over 50% since 1970. On a typical summer day, numerous buses and motor homes exceeding the current height limitations travel the tunnel road. The present regulation restricts truck use so that it remains low and consists mainly of vehicles associated with local businesses; alternate routes around the park are available for vehicle operators who do not wish to be escorted and pay the fee or whose vehicles exceed the physical limitations of the roadway.

This revision deletes all specific vehicle size limitations from 36 CFR 7.10 in favor of the park superintendent's using the authority in 36 CFR 1.5 to establish public use limits without a formal rulemaking. By using this authority, the superintendent can have greater flexibility to establish and then change, in the interest of public safety, vehicle size and weight restrictions that accurately reflect and respond to local requirements and road conditions as well as changing patterns of public use, visitation and local transportation. However, except in emergency situations, the superintendent is required to prepare a written determination justifying the action, prior to implementing or terminating a restriction imposed pursuant to this authority. The public is assured of being notified of the establishment of new restrictions or of changes made to existing restrictions through the public notice requirements of 36 CFR 1.7. The net result of this revision is to allow a greater number of large vehicles to negotiate the tunnel road without a convoy by relaxing existing vehicle size restrictions which are outdated. A permit and payment of convoy fees are required only of operators of large vehicles that exceed the new size restrictions and who wish to travel through the park nevertheless. Such vehicles would typically be semi-tractor trailers or vehicles towing excessively long recreational trailers.

The NPS is also increasing the fees charged for a required vehicle convoy from $5 to $15. A typical convoy involves one park ranger in a marked patrol vehicle escorting the oversized vehicle for a distance of 16 miles, a procedure that usually lasts one hour. This increase is necessary for the NPS to recover the costs of providing the service. Federal, State and local government vehicles are still subject to permit and convoy requirements, but are not required to pay convoy fees.

The NPS published a proposed rule and requested public comments on this rulemaking on May 14, 1985 (50 FR 20111). No public comments were received in response. The final rule is therefore published unchanged.

Drafting Information

The following National Park Service employees participated in the writing of this regulation: Larry E. Florea, formerly of Zion National Park; Roger Rudolph of Zion National Park; and Andy Ringgold of the Branch of Ranger Activities, Washington, DC.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on the fact that the overall economic effects of this rulemaking, when compared to the effects of the existing regulation, are beneficial to the owners of affected oversized vehicles. These savings result from the fact that a large percentage of the vehicles subject to load, size, and convoy restrictions under the existing regulation will no longer be subject to that requirement after this rulemaking goes into effect.

The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

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List of Subjects in 36 CFR Part 7

National Parks.

In consideration of the foregoing, 36 CFR Chapter I is amended to read as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 7.10(a) is revised to read as follows:

§ 7.10 Zion National Park.

(a) *Vehicle convoy requirements.* (1) An operator of a vehicle that exceeds load or size limitations established by the superintendent for the use of park roads may not operate such vehicle on a park road without a convoy service provided at the direction of the superintendent.

(2) A single trip convoy fee of $15 is charged by the superintendent for each vehicle or combination of vehicles convoyed over a park road. Payment of a convoy fee by an operator of a vehicle owned by the Federal, State or county government and used on official business is not required. Failure to pay a required convoy fee is prohibited.

3. Paragraphs (b), (c), and (d) are removed.

4. Paragraph (e) is redesignated as (b).

Dated: January 3, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-2760 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42012B; TSH-FRL 2815-5b]

Identification of Specific Chemical Substance and Mixture Testing Requirements; Diethylenetriamine

Correction

In FR Doc. 85-12422 beginning on page 21398 in the issue of Thursday, May 23, 1985, make the following correction: On page 21412, in the second column, in § 799.1575(c)(2)(i)(D), in the fifth through seventh lines, remove "or the * * * of this section".

BILLING CODE 1505-1-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 85-204; RM-4796; FCC 86-30]

Common Carrier Services; Implementation and Scope of the Uniform Settlements Policy

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action clarifies the scope of application of the Commission's uniform settlements policy for parallel international telecommunications routes. It also establishes a new, streamlined procedure for dealing with requests for waiver of the policy. This order terminates the rulemaking procedure.

EFFECTIVE DATE: March 10, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, International Policy Division, Room 534, FCC, Washington, DC 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects 47 CFR Part 43

Communications Common Carrier, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Report and Order

In the Matter of Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes; CC Docket No. 85-204 Rm-4796; FCC 86-30.

Adopted: January 14, 1986.
Released: January 30, 1986.

By the Commission.

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I. Introduction

1. We adopt today a Report and Order modifying and clarifying the implementation and scope of our uniform settlement policy. This Order is based on our recent Notice of Proposed Rulemaking in this matter,[1] and on comments[2] and replies[3] received in response thereto.

A. Summary of Notice of Proposed Rulemaking

2. In April 1984, RCA Global Communications, Inc. (RCAGC) and Western Union International, Inc. (WUI) filed a joint Petition for routes.[4] In our Notice of Proposed Rulemaking of July 1985, we determined that a thorough analysis, with possible modifications to follow of the uniform settlements policy (USP) is in the public interest. The NPRM examined the issues raised by the petition itself, by then-pending or recently-resolved cases, and by pleadings submitted in response to the petition.[5] The Notice identified issues and drew tentative conclusions as follows:

(a) *Applicotion of the USP to transit-routed communicotions:* The USP has previously been held applicable to transit telex traffic when the transit arrangement is demonstrably designed to circumvent the requirements of the USP.[6] The NPRM affirmed this application of the policy, and solicited comments regarding definitions or guidelines for the policy's application in ambiguous cases (where the "parallelness" of transit and direct routes is not clear).

(b) *Application of the USP to services not previously so regulated:* Recent cases have raised the question whether the USP applies to services to which it has not been expressly extended, such as voice services[7] and enhanced services.[8] The NPRM tentatively concludes that the USP applies to any service, regardless of technology or form, where conditions exist which are conducive to whipsawing by foreign communications entities. The NPRM suggested, however, that such regulation can be deferred with regard to enhanced services, at least until actual abuses are evidenced.

(c) *Application of the USP to modifications of operating agreements' terms of currency use and conversions:* The question of currency conversion (specifically, conversion from national currencies or the gold franc to the Special Drawing Right (SDR), the monetary unit adopted by the International Monetary Fund (IMF) and the International Telecommunications Union (ITU) Plenipotentiary Conference) arises through a history of discussion (still ongoing) at the IRC/FCC meetings,[9] an informal agreement reached in the Hague in 1980,[10] and a complaint presently pending before the Commission.[11] The bifurcated issue discussed in the NPRM is: (a) Does such conversion fall within the ambit of the USP, and therefore call forth the USP's requirements of uniformity? and (b) assuming the desirability of the universal use of SDR's, how can such conversion be most smoothly and efficiently effected? The NPRM confirmed that the USP does apply to currency conversion in that it requires uniform settlement rates. Further, the NPRM tentatively concluded that such conversion can best be accomplished either through simultaneous conversion by all carriers, or through individual carriers' negotiations with their foreign correspondents, and the use of waiver requests before this Commission.

(d) *Modification of the procedures relating to USP implementation:* We tentatively concluded in the NPRM that, because whipsawing typically occurs, if it occurs at all, at stages of negotiation prior to the Commission's oversight or regulation, the present procedures used to implement the USP are less effective than is desirable. The NPRM suggested a new streamlined procedure which would result in earlier and more thorough Commission oversight and awareness of negotiations (and of the possibility of whipsawing), while resulting in no significant additional time expenditure. This procedure would include Commission review of every operating agreement modification, even those agreed to by all relevant carriers, and would incorporate use of a sixty-day semi-automatic grant.

B. Background

3. The policy of uniform settlement rates arose in response to the unique situation in the international telecommunications arena which places single governmental or quasi-governmental entities from other nations in direct negotiation with multiple private U.S. entities for the formation of operating agreements to arrange international services.[12] As noted above, the uniform settlements policy requires that all carriers providing the same service to the same foreign point have the same accounting, settlement and division of tolls arrangements with the foreign administration. Specifically, the operating agreements must stipulate: (a) Uniform accounting rates (a negotiated rate of reimbursement for service, which is then shared by the initiating and terminating entities); (b) uniform terms for the sharing of tolls (the percentage of the accounting rate to be allowed each entity, generally 50–50); and (c) uniform settlement rates (the currency conversion rate used to arrive at the currency stipulated in the operating agreement, usually Gold Francs (GF), U.S. dollars, or special drawing rights (SDR's)).[13]

4. These requirements of uniformity are meant to assure that the operating agreements achieve their purpose of allowing both service providers fair compensation for the costs of service. Because the U.S. carriers are private and competitive, the foreign telecommunications entities (hereinafter PTTs, for postal, telegraph and telephone administrations), which are monopolistic, enjoy an advantageous bargaining position. The result of this situation is that the monopolist PTT has the ability, as well as the incentive, to manipulate the multiple U.S. entities by playing them against one another in order to gain unfairly favorable terms and conditions. This manipulation is referred to as "whipsawing." The most frequent concession sought is a modification of the accounting rate in such a manner as to decrease the revenues paid by the PTT to the U.S.

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[1] Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes, Notice of Proposed Rulemaking, CC Docket 85-204, FCC 85-332, released July 3, 1985 [hereinafter "NPRM"].

[2] Comments were received from the Association of Data Processing Service Organizations, Inc. (ADAPSO), American Telephone and Telegraph Company (AT&T), FTCC McDonnell Douglas International Telecommunications Company (FTCC), Graphnet, Inc. (Graphnet), GTE Sprint Communications Corp. and GTE Telenet Communications Corp. (together GTE), Hawaiian Telephone Company (HTC), the International Communications Association (ICA), ITT World Communications Inc. (ITTWC), MCI International, Inc. (MCII), the National Telecommunications and Information Administration (NTIA), RCA Global Communications, Inc. (RCAGC), T.C.P., TRT Telecommunications Corporation (TRT), U.S. Telecom, Inc. (Telecom), and The Western Union Telegraph Company (Western Union).

[3] Replies were received from ADAPSO, AT&T, FTCC, Graphnet, GTE (Sprint and Telenet, jointly), HTC, ICA, ITTWC, MCII, NTIA, RCAGC, TCP, TRT, and Western Union.

[4] This policy, which developed in the 1930's and has its roots in antitrust law, has evolved through case law and Commission policy statements. *See, e.g.*, Mackay Radio and Telegraph Co., 2 FCC 592 (Telegraph Committee 1936), *aff'd by the Commission en banc*, 4 FCC 150 (1937), *aff'd sub nom.* Mackay v. FCC, 97 F. 2d 641 (D.C. Cir. 1938) *(Mackay I)*; Mackay Radio and Telegraph Co., 25 FCC 690 (1951), *rev'd on other grounds sub nom.* RCA Communications, Inc. v. FCC, 201 F. 2d 694 (D.C. Cir. 1950), *vocated and remanded*, 346 U.S. 86 (1953) *(Mackay II)*; Uniform Settlement Rates, 84 FCC 2d (1980). This policy requires that all U.S. international record carriers (IRCs) offering similar service to the same point must do so under identical accounting rates, settlement rates, and divisions of tolls.

[5] Comments on the petition were filed by the Western Union Telegraph Company, the American Telephone and Telegraph Company, and ITT World Communications. Reply comments were filed by RCA Global Communications.

[6] *RCA Global Communications* v. *The Western Union Telegraph Company*, File No. E-83-24, FCC 85-286, released June 28, 1985.

[7] *See* MCI Telecommunications Corporation, *et al.*, CC Mimeo No. 3874, released April 16, 1985.

[8] Second Computer Inquiry, 77 FCC 2d 384 (1979) (Final Decision), *aff'd sub nom.* CCIA v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. den. sub nom.* Louisiana v. United States, 103 S. Ct. 2109 (1983) [hereinafter *"Computer II"*].

[9] Regular FCC–Industry meetings were initiated in 1961 as a means of allowing Commission staff and carrier representatives to meet periodically to consider accounting and settlement rate modification requests. This was intended to be a way for U.S. carriers to present a "united front" to respond to the PTT's monopoly status in their negotiations with competitive U.S. carriers, and was seen as a reasonable response to the unique realities of the international marketplace.

[10] A meeting in 1980 of several CEPT and other PTT representatives with U.S. carrier representatives produced no binding document or agreement, but a series of correspondence evidencing a general willingness and desire to proceed with conversion to SDR's.

[11] RCA Global Communications v. TRT Telecommunications Corporation and FTC Communication, Inc., File Nos. E-85-49 and E-85-50. The complaint was filed in September 1985; answers were filed by both defendants; RCA Global Communications also filed a reply. TRT Telecommunications Corp. filed, in October, a Request for Waiver of Policy Regarding Uniform Accounting/Settlement Rates on Parallel International Routes.

[12] The operating agreement provides the technical details of interconnection as well as the terms for the settlement of accounts between the U.S. carrier and the foreign administration. All U.S. carriers use the same generic settlement procedure for switched services. When a U.S. carrier transmits a message to a foreign country, the U.S. carrier pays the foreign correspondent for terminating/delivering the message. Similarly, if a foreign correspondent transmits a message to the U.S., the U.S. carrier will receive payment to compensate it for effectuating delivery.

[13] We emphasize that the policy does not require or encourage uniform collection (tariff) rates for international services.

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carrier for effectuating delivery in the United States or to increase the revenues paid by U.S. carriers to the PTT to effectuate delivery in the foreign country. While historically tied to costs, accounting rates have gradually come to reflect the relative negotiating positions of the carriers and foreign administrations.

5. We have previously found that whipsawing is harmful to the U.S. public interest because, in allowing the PTTs to dictate the terms under which international services are offered, whipsawing reduces the total revenues of U.S. carriers, and, most importantly, decreases the ability of U.S. carriers to lower the collection rates they charge their customers. The seriousness of the problem is compounded by the fact that one U.S. carrier's acceptance of terms unfairly favorable to the PTT, insofar as these terms differ from those in effect for other carriers, creates substantial pressure on the other U.S. carriers to make identical concessions in order to retain or expand their business. Thus, the foreign PTT, through negotiation with a single U.S. entity and control over the routing of return traffic, may succeed in dictating terms to all U.S. carriers. This situation is exacerbated, as we have remarked before, by the formation of consortia of PTTs and by the position of many PTTs, for some services, as debtors able to decrease rates by the simple expedient of paying only what they want.[14] In order to enable the U.S. carriers to create a unified bargaining position by which they can approach parity with the monopolistic PTTs, and thus to prevent whipsawing, the Commission has developed requirements of uniform terms and conditions in international operating agreements.

6. Our focus to date has been on facilitating the development of a competitive marketplace characterized by lower rates and greater service/carrier options for users. This continues to be our goal; our policy specifically recognizes the potential value of occasional nonuniformity, which may increase competition and produce lower rates and/or improved services. Nonetheless, the unique characteristics of the international marketplace mean that regulation in the form of the application of our uniformity requirements serves to help U.S. competitive entities present a united front in negotiation with foreign monopoly administrations, and is necessary in service of the public interest. Such regulation is ineffectual if undertaken in such a way as to allow "windows" for whipsawing before, or in spite of, this Commission's awareness of, participation in, and oversight of the bargaining process. It is this set of circumstances which has engendered the rulemaking proceeding here concluded, and which has militated for the new procedural approach herein set forth. With the adoption of this Report and Order we affirm our above-stated tentative conclusions, and set forth guidelines and definitions for their clarification and implementation.

C. History

7. One of the first decisions taken by this Commission involved the uniform settlements policy.[15] In a 1936 decision we denied the Mackay Radio and Telegraph Company authorization under Section 214 of the Communications Act for a radio circuit to Oslo, Norway because we objected to the settlement terms in Mackay's proposed operating agreement with the Norwegian PTT. We found the agreement objectionable because it would have permitted the Norwegian PTT to play two U.S. entities against each other, to manipulate traffic flows, and to retain a greater percentage of the accounting rate at the expense of a U.S. carrier. We stated that this attempt by the PTT to maximize its revenues by whipsawing the U.S. companies was the normal consequence of the international market situation,[16] and that the protection of U.S. non-monopolist entities therefore rests with the Commission, falling within its general powers mandate to protect the public interest, convenience and necessity.

8. Further development and application of the uniform settlements policy again involved the Mackay Radio and Telegraph Company.[17] In this 1951 decision we expressed concern about the whipsawing of U.S. carriers by foreign PTTs (the application was to add a fifth carrier providing service to Portugal and the Netherlands). Because the terms of the proposed operating agreement were identical to the terms of the agreements already in effect, however, our concern was assuaged, and we granted the application to place another competitor into the market. The policy was applied again in *TRT Telecommunications Corporation*, 46 FCC 2d 1042 (1974), when TRT applied to provide service to the U.K. upon terms more favorable to the British entity than the terms then in effect between the U.K. and other U.S. carriers. The Commission granted TRT's application contingent upon the operating agreements being brought into conformity with existing agreements.

9. We considered the uniform settlements policy again in a 1980 policy statement which resulted from a request by TRT to decrease its U.S.–U.K. telex accounting rate.[18] In that statement we reaffirmed the need for and viability of the uniformity policy, but announced also that we would entertain requests for waivers of the policy in appropriate cases.

We found that the public interest requires a uniform settlements policy, and we stated:

> Absent our policy of uniformity it would be less difficult for a foreign correspondent to negotiate a more advantageous settlement. . . . In such instances more money would flow to the foreign correspondent. In some cases this could lead U.S. carriers to raise the collection rate at the expense of the U.S. ratepayers.

84 FCC 2d at 123. We also noted, however, that situations might occasionally arise in which "public interest benefits would warrant grant of a waiver of the policy. . . ." *Id.*

10. At that time we discussed factors we would consider in the analysis of waiver requests—among them lower collection rates, improved services and increased competition. Recognizing the value of flexibility and the potential benefits of non-uniformity, as well as the improbability of "typical" situations in the international telecommunications marketplace, we declined to specify rigid rules or a *prima facie* test to govern the grant of waivers. We also declined to establish a particular procedure or timetable for action on waiver applications. The possibility of whipsawing, with the consequent potential for diversion of substantial revenues from U.S. carriers, prompted us to initiate, in early 1981, a series of periodic industry meetings involving U.S. carrier representatives and Commission staff.[19] These meetings

[14] *See* NPRM para. 4 and note 6.

[15] *Mackay I, supra.*

[16] We said in that Order:

> To expect the telegraph administration to play the competing companies against each other is simply to expect that the administration will be headed by good businessmen, loyal to their national interests. To rely upon companies which are bitter competitors not to make concessions to the administration which controls all outgoing radio-telegraph traffic is to provide an exceedingly tenuous basis upon which to rest the public interest. 2 FCC at 599.

[17] *Mackay II, supra.*

[18] Uniform Settlement Rates, *supra* note 4.

[19] *See* note 9, *supra*. The petition in this proceeding included questions of procedure, scope and confidentiality with regard to these meetings. These issues are discussed at part II.E., *infra*.

continue, but their efficacy in combating whipsawing has been called into question, and is one major issue of this proceeding.[20]

D. Summary of Comments

11. The pleadings received in response to the NPRM (*see* notes 2 and 3, *supra*) generally support the NPRM's tentative conclusion finding a continuing need for and justification of the USP. MCII, for example, stated that the dangers of whipsawing, and the resulting need for a strong and consistent policy of uniformity, are increasing as a result of the Commission's open entry policy for international telecommunications. Further, MCII pointed out, foreign administrations are taking commercial advantage of U.S. policies of open entry and streamlined regulation by establishing affiliates to compete with U.S. carriers within the United States, for both domestic and international traffic. NTIA stated that instances of whipsawing are increasing, and that foreign administrations are becoming more sophisticated in their techniques. FTCC also warned of "fierce competition from abroad," and provided statistics regarding the inroads on American industry revenues made by foreign refiling and resale initiatives. On the other hand, the commenters' support of our procedural proposals, while strong, is not unquestioning. FTCC stated that, although it sees a continuing need for the USP, our focus in applying the policy has been misplaced. FTCC found that the competition between the U.S. industry and that of certain foreign administrations has caused far greater harm to the U.S. public interest than does inter-carrier competition with its inherent dangers of whipsawing. FTCC argued that the Commission's application of the USP has hindered rather than helped the IRCs in combating the drain of traffic, and that future deliberations regarding the policy's use should consider not only an action's immediate impact upon the IRCs, but also its effect on the competitive standing of the U.S. industry vis-a-vis its foreign competitors. The commenters discussed the major issues broached by the NPRM as follows:

12. *Application of the USP to transit-routed communications:* The applicability of the USP to transit traffic was dealt with in a recent order, following a complaint by RCAGC that Western Union was abusing this Commission's traditional flexibility regarding the USP and transit traffic, in order to circumvent the requirements of uniformity.[21] As noted above, the NPRM relied on that case to conclude that "where a transiting arrangement has no real purpose other than to enrich a PTT or group of PTTs at the expense of a U.S. carrier and U.S. ratepayers, we shall strike down that arrangement as contrary to our uniformity policy."[22]

13. The commenters were virtually unanimous in stating that the Commission's proposed approach—monitoring transit traffic, but forebearing from active regulation except where abuses are demonstrated [23]—is the correct one.[24] Both MCII and FTCC acccepted the NPRM's invitation to propose definitions of "transit" and "direct" traffic.[25] Western Union noted that the Commission has yet to establish clear and unambiguous guidelines in its regulation of transit traffic, pointing to the absence of definition of demonstrable abuses, and to the phrase "consistent with similar arrangements" in the Commission's June 28, 1985 order responding to RCAGC's complaint.[26] Western Union suggested that we adopt the standard mentioned in that order, and in a Common Carrier Bureau order of September 17, 1985 in the same matter, *i.e.*, a simple requirement that no terminal entity receive or retain more than half of the established accounting rate.

14. *Application of the USP to services not previously subject:* (a) *Voice services:* The NPRM tentatively concluded that the USP should apply to voice services because "as competition develops in the provisions of voice services the potential for whipsawing will increase." While all the commenters who dealt with this issue, with the single exception of AT&T, agreed that whipsawing could be a problem and that the USP should therefore apply to voice, several are of the opinion that until whipsawing is actually evidenced, the requirements of the USP should be deferred.[27] AT&T suggested periodic, full filings by carriers, and careful Commission monitoring (but no active regulation, nor actual application of the USP), until such time as actual abuses could be demonstrated—an occurrence AT&T believes unlikely.[28] RCAGC cite examples of voice service whipsawing; NTIA in its reply drew on the comments of several of the United States International Service Carriers (USISCs) to propose a monitoring and filing procedure which would make inplementation of the policy simple and immediate in case of abuses, while

[20] Because a PTT will typically discuss proposed accounting rate and return flow modifications with the affected carriers, any whipsawing involved tends to take place prior to (or sometimes shortly after) the submission of waiver requests, and is therefore never fully addressed by the Commission. This approach to waiver requests has also resulted in a lack of clarity regarding certain other issues which arise, such as the definition of parallel routes (to which the policy applies), and the determination of which services are, and which are not, covered by this policy. It is this situation which has given rise to not only a number of waiver applications, but also the present petition for rulemaking and comments.

[21] RCA Global Communications v. The Western Union Telegraph Company, *supra* note 6.

[22] *Id.* at para. 5.

[23] Several commenters suggested full reliance on the submission of complaints, without any other *suo sponte* review of regulation by the Commission.

[24] RCAGC was the single exception. RCAGC feels that transit traffic should be fully regulated in any instance where the point served by transit traffic is also served by any U.S. carrier directly. In its reply comments, RCAGC enlarged upon this thesis to recommend that regulation is appropriate where the elective use of transit over direct routes diminishes the United States' share of revenues. Further, RCAGC stated, the reliance on complaints rather than active regulation is an unsatisfactory and inefficient way to proceed, especially where a consortium of foreign administrations is involved.

[25] MCII proposed this definition: *direct* routes carry traffic over direct, point-to-point circuits with no intermediate switching. (Through-patched end-to-end circuits traversing one or more overseas countries, so long as they include no intermediate switching, are also direct). *Transit* routes are those which do incorporate switching in one or more intermediate international exchanges.

FTCC stated that *transit* traffic is categorizable to four types —(1) U.S.-middleman transit where the United States carrier is the transiting point for traffic flowing between two foreign countries which do not have direct relationships; (2) overflow transit, which is traffic flowing between a United States IRC and a PTT with which it has direct relations, which is transited through a third country because the direct circuits are congested; (3) standard transit, which is traffic between a U.S. IRC and a PTT with which it does not have direct relations, which flows via a foreign point (with which the IRC does have direct relations), and (4) domestic transit, where traffic from a PTT to an IRC with which it does not have direct relations is transited through a second U.S. IRC. According to FTCC, the first two types of transit require no regulation by this Commission. The third type should be free of restrictions, according to FTCC, so long as the total accounting rate is the same as for direct traffic. The fourth type especially when the domestic transiting is effected without the concurrence of the terminating carrier, inflicts significant economic harm on that carrier and could therefore appear a worthy subject of regulation, in FTCC's view.

[26] *See* note 6, *supra*, and part II. A., *infra*.

[27] HTC suggests deferral of regulation until abuses are shown. Other commenters, including GTE, ICA, ITTWC, MCII, NTIA, RCAGC and TRT, agree with our tentative conclusion that the USP applies to voice services.

[28] AT&T's suggested filings would include: (a) A description of the existing and the new arrangement for any proposed modification, and a projection of the revenue effect on the proponent carrier; (b) whether changes in the methods of allocating return traffic among U.S. carriers were included in the negotiations leading to the charge, and if so, to what effect; (c) Whether there had been any attempt by the PTT(s) involved to secure concessions in the accounting rate through any measures (such as reallocations of return traffic) which would indicate whipsawing.

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avoiding delay and administrative burden in the meantime.[29]

(b) *Enhanced services:* The NPRM tentatively concluded that while the Commission has the authority to apply its policies to enhanced services, we should not do so internationally. This tentative conclusion engendered a two-part response from commenters: first, whether the Commission *could* apply the policy to international enhanced services, and second, whether we should do so. The commenters who deal with the question of our authority to include enhanced services were split on the question of whether the Commission's mandate extends this far.[30] Our *Computer II* decisions [31] indicate that authority for such regulation extends to common carrier services only. Several commenters suggested, however, that any service provider whose correspondent is a PTT or other foreign monopolist should be subject to the policy: the PTTs do not distinguish between USISCs, recognized private operating authorities (RPOAs), or other (officially unrecognized) entities.[32] The Commission noted in the NPRM that the USP would (and could) apply only in those situations in which an operating agreement (establishing accounting rates and divisions of tolls) has been negotiated between the service provider and the PTT; the commenters agreed with this evaluation.

15. On the question of whether the Commission ought to apply the USP to enhanced services, the commenters were also roughly split. Several suggested that we affirm the validity of the USP in this context, but that until whipsawing or other abuses are shown, we should simply observe or monitor.[33] Other commenters cited recent cases of abuse in support of their contention that application of the USP is necessary and justified now.[34]

16. *Application of the USP to modifications of operating agreements' terms of currency use and conversion:* The NPRM discussed the desirability of converting the financial terms of all operating agreements to SDRs (Special Drawing Rights, the "universal currency" created and employed by the International Monetary Fund), and raised two questions to which the commenters respond.[35] First, does a modification or conversion of currencies in an operating agreement constitute a change in terms or rates such as the USP prohibits, absent waiver? Second, if universal use of the SDR is desirable,[36] how can this conversion best be accomplished?

17. The NPRM states:

> Because the uniform settlements policy requires uniformity of terms, rates and toll divisions between and among carriers offering like services between the same points, it seems clear that a unilateral conversion by one carrier of the monetary unit is a change in terms and rates such as the policy prohibits . . . . Any carrier desiring to change [currencies or rates] . . . would be required to file a waiver petition.

NPRM, para. 38. Of the several commenters who discussed the question whether SDR conversion falls within the ambit of the USP, only FTCC took issue with our conclusion that it does.[37] TRT stated that currency conversion does fall under the USP, but that violation of the USP should be seen not in every conversion, but only in the case of a demonstrable net financial impact which is inimical to U.S. interests.[38]

18. In the NPRM, we briefly discussed various methods of conversion, but then tentatively concluded that the methodology of conversion should be left to the carriers. The commenters responded variously: RCAGC made suggestions regarding the use of a floating coefficient (tied to currency exchange rates) rather than the stationary coefficient of the ITU recommendation. ITT noted that the timing of settlement payments may be even more important than the currency employed, or the method of conversion used, and suggested the formation of strict payment timetable guidelines and the establishing of a settlements clearinghouse. ITTWC and MCII commented that the waiver procedure presently in place is the best means by which currency conversion can be accomplished, but Western Union warned that if this procedure is retained, universal conversion to SDRs by 1988 will be impossible.

19. *Modification of procedures relating to USP implementation:* The NPRM suggested a new, streamlined procedural approach to USP matters which would serve more effectively to combat whipsawing by subjecting to Commisson scrutiny *all* relevant modifications of operating agreements, even those upon which the IRCs have reached unanimous agreement.[39] By incorporating a 60-day quasi-automatic grant mechanism, we hope to ensure that the increased thoroughness of review will not cause increased delay—and that, in fact, consideration of USP matters will proceed more expeditiously than under the present system.[40] The

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[29] NTIA's approach is as follows: (a) the Commission makes clear that the USP applies to voice, and that attempts at whipsawing will not be tolerated; (b) the UPS will be in effect as new carriers initiate services to create competitive markets. New entrants thus will enter the market at a presumably fair rate; (c) all accounting rate and other USP-related changes will be filed with the Commission. These filings, as suggested in AT&T's comments, would be complete enough to apprise the Commission of any competitive abuses.

[30] ADAPSO, FTCC, Graphnet, MCII, TCP and Western Union stated that the USP does not apply to enhanced services (although FTCC said that if the policy were held to apply to enhanced services at all, it should apply across the board, without the common carrier restriction). GTE, ICA, ITTWC, NTIA, RCAGC and TRT said the USP does apply to enhanced services.

[31] Note 8, *supra See also* GTE-Telenet Communications Corp., 91 FCC 2d 232 (1982), *reconsideration*, FCC 85–29, released February 22, 1985, which confirmed the applicability of the *Computer II* decisions to international services and facilities.

[32] This view was voiced, for example, by FTCC, GTE, ICA, ITT and TRT.

[33] The proposal that the Commission monitor but not affirmatively impose the USP, absent demonstrated abuses, is propounded by, among others, MCII NTIA and FTCC. (FTCC preferred no application of the USP to enhanced services, but argued that if enhanced services are to be covered, they should be covered across the board—*see* note 30, *supra*).

[34] ICA argued, for example, that many overseas markets have in place only one to two enhanced service providers, and will resist authorization of additional service providers because of the increased costs incurred in such accommodation. Further, according to ICA, PTTs are unlikely to respect our domestic distinctions regarding basic and enhanced services, especially as common basic services tend increasingly to become "enhanced" simply through protocol changes used to gain access via switched services rather than tie-lines. Finally, ICA argued that the view (expressed, for example, by Graphnet in its comments) that enhanced services differ enough from one another so that a foreign administration could never successfully play off one provider against another for the same service, is belied by substantial evidence of strong similarities among certain enhanced services provided by international carriers. All these factors taken together, stated ICA, create exactly the scenario the Commission foresaw but dismissed as unlikely in our NPRM: that a decision not to include enhanced services could produce significant whipsawing as a result of the reclassification of many basic services, at the urging of a PTT into enhanced services.

[35] We note that shortly after release of the NPRM, RCAGC filed a complaint dealing with the issue of SDR conversion. RCA Global Communications, Inc. v. TRT Telecommunications Corporation and FTC Communications, Inc., File Nos. E–85–49 and E–85–50, filed September 30, 1985. This complaint will be discussed and resolved within the present proceeding; *see* Section II. C., *infra*.

[36] The NPRM noted a 1980 informal agreement regarding universal conversion to SDRs by 1988. This goal is discussed further, *infra*.

[37] FTCC stated that the Commission's inclusion of currency conversion within the ambit of the USP constitutes an "extension" of that policy into "a new field." ITTWC, MCII, RCAGC, TRT and Western Union stated that currency conversions are modifications such as are regulated by the USP.

[38] This approach faced strong resistance in the reply comments of RCAGC.

[39] *See* NPRM para. 40.

[40] The present system, described at paras. 4–5, 13 and 39 of the NPRM, is inadequate because it comes into effect only upon the filing of a non-unanimous waiver request, thereby allowing significant opportunity for whipsawing.

response of the commenters was generally positive; all agreed that delay has been a major, troubling factor in USP matters to date, and is to be avoided or lessened to the greatest extent possible. Several also confirmed the Commission's holding that more universal and thorough review is needed; only FTCC (in its reply comments) opposed this suggestion, on the grounds that added review would necessarily create additional delay, which is to be avoided at virtually any cost. AT&T objected to our procedures on the grounds that the degree of review we proposed is unwise and overactive, and might even be illegal. FTCC stated opposition to our more thorough review on the grounds that the present review process is cumbersome and slow, and that increased oversight will necessarily exacerbate this situation. GTE and RCAGC supported our proposed procedures, but stated that clarification is needed on the question of the applicability of the semi-automatic grant in the case of opposition from interested parties.

20. Other comments and suggestions regarding the Commission's procedural proposals included the following:

(a) *Factors to be Considered:* FTCC commented that, while the Commission has stated that various factors (service quality, increased competition, lowered collection rates) will be considered in the analysis of waiver requests, in fact the Commission consistently bases its determination on a single factor, the increase or decrease of revenues to the IRC industry as a whole. FTCC argued that the other factors are at least as significant as this single one, and that mere "lip service" to those factors is unacceptable. FTCC warned of the U.S.' growing reputation for intransigence, a result of the FCC—imposed inflexibility in negotiations. Western Union and FTCC suggested in their filings that we review these standards, and the factors we enunciated in our 1980 statement. FTCC stated that the Commission has confined its waiver evaluation to "a single, narrow-focused criterion: does the proposed accounting rate change result in an immediate increase or decrease in the total revenue accruing to the U.S. carriers as a group?" FTCC comments, p. 13. FTCC suggested that we consider the following additional factors: effect on reductions in the collection rates, effect on competition in the United States, effect on diversion of traffic to PTTs, and effect on the standing of the U.S. in the world community.[41] Western Union also criticized our heavy reliance on the single factor of whether the proposed change would decrease overall U.S. revenues and suggested that we instead adopt as our guideline a determination as to "whether the proposed rate is an equitable one, all factors considered." Western Union Comments, p. 4.

(b) *Needed Clarification:* Several commenters noted that the language of the NPRM leaves open to question the application of the "automatic grant" in the case of a waiver request which is contested but upon which the Commission staff has not acted within the 60-day period.

(c) *Anonymity:* MCII suggested in its comments that waiver requests and all filings related to them be made available to the public only after removal (by the FCC staff) of any identifying marks. According to MCII, this approach would result in greater freedom and straightforwardness in the carriers' filings and responses, as it would decrease the probability (and therefore the fear) of foreign correspondent retaliation. This proposal met with little response from other commenters.

(d) *Flexibility:* Western Union commented that the Commission's procedural proposals seem to diminish still further the already-inadequate flexibility of negotiation accorded the USISCs. Western Union recommended that the Commission's requirements and involvement be kept to an absolute minimum.

21. *New issues raised in the pleadings: the exemption of small carriers from the requirements of the USP:* FTCC and Graphnet proposed, in their comments, that small carriers (those without market power) be exempted from the requirements of the USP. FTCC argued that the USP, as it is presently applied, sharply restricts the ability of the IRCs to compete with the overseas carriers that are draining away the U.S.' outbound telex traffic, and permits the larger, dominant IRCs to retain their dominance and to prevent new or smaller carriers from obtaining significant shares of the market. While FTCC believes that the policy is needed to promote competition and to safeguard U.S. interests, it argued that the USP, in its present form, "coddles the cartel" and thwarts attempts to establish true (and beneficial) competition. FTCC argued that this situation could readily be ameliorated, by exempting from the terms of the policy those carriers found to be non-dominant.[42] Without specifying a threshold or cut-off point, FTCC suggested that those carriers without market power, *i.e.* those too small to have a significant effect upon total industry revenues—of which there are presently two—should have the freedom to reduce their outbound expenses, and thus become more viable competitors of the dominant carriers.[43] Graphnet set the guideline for "small carrier" as follows: if a carrier is so small that its lowering of settlement rates would not result in other carriers' lowering of their settlement rates, then it should be exempt from the USP.[44] FTCC suggested that any new carrier seeking entry to international markets could seek this USP-exempt status at any time. Graphnet agreed that the Commission should establish a guideline based on a carrier's percentage of the total market, so that any carrier below that percentage for any given market would qualify as USP-exempt until such time as its percentage rose beyond the cut-off. FTCC noted that, under its proposal, when an exempt carrier grows enough to become a significant market factor, the Commission can review its status, on the Commission's own motion or at the request of another carrier. Both exemption proponents observed that where any USP-exempt arrangements result from whipsawing, the FCC will undoubtedly be notified by competing carriers. The proponents suggested that this exemption would encourage new entrants, would help new and small carriers establish a foothold, and would allow for meaningful competition with resellers and refilers.

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[41] FTCC suggested that we also do more than "pay lip service" to our own stated considerations of improved quality and competition.

[42] FTCC referred to the Commission's recent *Competitive Carrier* and *Computer III* pronouncements, discussed more fully below. We note that this use of the term "non-dominant" differs from the interpretation established in *Competitive Carrier*, where we found all IRCs non-dominant. International Competitive Carrier Policies, FCC 85–585, released November 15, 1985, at para. 85. The FTCC definition of non-dominance is "haveing no significant effect upon total industry revenues." Our own definition of non-dominance, established in *Competitive Carrier*, "cannot be made in scientifically precise terms," but includes analysis of such factors as marketshare, rate of return, control of facilities, and actual or potential competition. *Id.* at para. 42.

[43] FTCC noted that the Commission could set limits—perhaps 25%—on the deviation from the standard accounting rate that an exempt carrier could negotiate. FTCC stated that this limitation would preclude any opportunity for whipsawing.

[44] Graphnet sees market power as an approximate reflection of a carrier's circuit capacity: a PTT may play off two carriers in order to get a favorable rate from one, but if the carrier ultimately proposing the best rate has insufficient capacity to meet the PTT's needs, no whipsawing can occur. Replying commenters rejected this approach because circuit capacity is so readily expandable; *See infra*.

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22. This exemption proposal received strong negative reaction in the reply comments of ITTWC, MCII, RCAGC, TRT, and Western Union. ITTWC argued that allowing exemptions on the basis of minimal capacity and facilities would be specious, since such conditions are changeable. Thus, ITTWC argued, whipsawing would still occur if the smaller carriers were allowed to change accounting rates at will: It might simply take longer to happen. MCII argued that FTCC's proposal is contrary to the deregulatory goals of the statute,[45] and that under Graphnet's proposed guideline (a carrier large enough that its change in rates would pressure other carriers to change as well), no carrier could be exempt, because historically even the smallest carrier has proved to be a viable tool for whipsawing.[46] Further, stated MCII, circuit capacity is multipliable in a matter of weeks, and is thus a useless determinant of a carrier's market power. RCAGC noted the dual purposes of the USP—to promote a competitive U.S. telecommunications industry, and to assure that the benefits of such competition are not diverted overseas—in stating that no exemption from the rules is warranted. RCAGC stated that the smaller carriers are particularly vulnerable to PTT manipulation. RCAGC further stated that the rate reductions proposed under such exemptions would be ineffective in combating resale and refiling. TRT stated that the protection offered by the USP derives precisely from the policy's insistence that foreign administrations deal with *all* U.S. carriers on the same terms. Any exemption would nullify that protection by allowing foreign administrations to play the exempt carriers (individually or as a group) against the larger carriers, regardless of the circuit capacity or market power of the exempt carriers, according to TRT. Such an exemption policy would serve as an invitation to whipsawing, argued TRT, and would serve as an indicator to the PTTs of where to direct their efforts. Finally, TRT noted, the legal basis for a domestic dominant/non-dominant distinction is absent in the international arena, where the operative fact is the monopolistic character of the foreign correspondent Western Union stated that the FTCC-Graphnet proposal is without merit, and notes that the Commission has previously found that all international non-MTS carriers are non-dominant, and therefore indistinguishable from each other for the purposes of the proposed exemption-granting.[47] Western Union took issue with Graphnet's minimal-capacity argument by noting, first, that substantial telex service can be rendered on very little circuit capacity, and second, that capacity expansion or multiplication is readily accomplished. Second, Western Union noted that the Commission's reduced reporting requirements mean that a small carrier which was allowed to reduce its rates could very rapidly become a large carrier, realizing huge profits and perhaps setting a new, lower rate industry-wide in the "many months" before the Commission detected the traffic shift and brought the carrier back under the policy's coverage.

II. Discussion

23. The uniform settlements policy exists to protect the U.S. public interest by helping U.S.-carriers resist pressure to make concessions which may ultimately be detrimental to U.S. ratepayers. Development of the policy was brought about by the unique situation of the international telecommunications market, where numerous competitive U.S. carriers are faced with monopolistic, quasi-governmental foreign administrations. Absent the USP, the natural result of the introduction of competition in the U.S. market is the potential for manipulation by the monopolistic entity of the competing U.S. private entities—manipulation in the form of playing the U.S. companies against one another so that the benefits of U.S. competition accrue not to the U.S. public, but to the foreign administration. The USP deters the individual U.S. carrier from agreeing to terms which disserve the U.S. public interest, in the hopes of "pleasing" the foreign correspondent to the end of obtaining more return traffic or other perquisites. The policy is thus designed to protect not the U.S. carriers, but U.S. ratepayers, and accordingly any proposed modifications of the policy must be considered in light of their effect on the U.S. public interest.

24. Absent the USP, operating agreements would more directly reflect the advantageous marketing positions of the PTTs. The result would be a loss of revenues to the U.S. industry, and ultimately a loss to the U.S. public. A revenue loss to the U.S. industry produces a diminished ability on the part of the carriers to reduce the collection rates they charge their customers, or to provide increased services for the same rates. To allow whipsawing of the U.S. carriers by the PTTs would be to allow those administrations to claim for themselves and their customers, to the detriment of the U.S. public, the benefits of the competition among U.S. carriers. As discussed above, the comments received in the this rulemaking are virtually unanimous in supporting continuation of the USP.[48]

25. On the other hand, we are well aware of the costs of this policy's application. Though we believe that U.S. Telcom significantly overstates when it argues that "the uniform settlement rates policy has tended to minimize, if not eliminate, true competition in the international market,"[49] we do realize that application of the USP tends to preserve the *status quo*. We believe as the comments of NTIA state, that "the need for government oversight to prevent abuse . . . should be balanced with the need to minimize regulatory intrusion in complicated, dynamic sector business operations."[50] The waiver policy that we enunciated in 1980 recognizes that nonuniformity may sometimes further the interests of the U.S. public by stimulating new carrier entry, lower collection rates, and improved services. Our modified policy of considering waiver requests, further discussed below, is designed to allow us to make the balanced and informed determinations necessary to assure that the public interest is served.

26. In our NPRM we tentatively concluded that the USP should be retained in its present form (though procedurally strengthened, as discussed below), but we also solicited comments on alternatives to the USP. We mentioned that the initiation of any new policy or method would require negotiation with the PTTs. The alternatives we proposed included:

(a) Abandonment of the policy, and reliance on competition;

(b) Sender-keep-all;

(c) Accounting rates tied directly to cost of service provision; and

(d) Greater Commission oversight or responsibility for negotiation of terms.

The commenters, as noted above, supported continuation of the policy (with or without various modifications); those who did discuss our proposed alternative approaches uniformly rejected them in favor of the present policy. The comments stated: (a) Elimination of the policy would place the U.S. Industry (and U.S. ratepayers) at the mercy of the PTTs; (b) sender-keep-all (SKA) is unacceptable because of the significant imbalances of traffic flow, not only from service to service but also from carrier to carrier;[51] and (c) cost-based accounting rates would be extremely difficult to implement equitably.

27. We thus affirm the validity of and need for the uniform settlements policy. With this Order, in recognition of both the strengths and the weaknesses of the policy, we set forth modifications of USP procedure and clarifications of its scope and objectives. We believe that these changes will strengthen the policy and increase its efficacy so that the benefits of our pro-competitive policies accrue to U.S. users rather than to foreign PTTs.

A. Application of the USP to Transit Traffic

28. As the NPRM noted, we recently released an order clarifying our position with regard to the application of the USP to transit traffic where it is clear that the transit route "has no real purpose other than to enrich a PTT or group of PTTs at the expense of a U.S. carrier and US. ratepayers." *RCA Global Communications v. The Western Union Telegraph Company, supra* note 6. That application of the USP was based on the then-current policy and guidelines for use, and was not dependent upon considerations in this rulemaking. The Western Union transit traffic arrangement challenged by RCA was found, in effect, parallel to the direct routes of other U.S. carriers serving the same points, but with the impermissible difference that "the foreign correspondent's share of the accounting rate [was] *increased* by the addition of a third (transiting) entity . . . ." *Id.* at para. 5, emphasis added.[52] We stated there that "transit arrangements which have no apparent legitimate justification must be scrutinized in the interests of preventing whipsawing with its concomitant reduction in U.S. carrier revenues and, most importantly, its diminishing of U.S. carriers' ability to reduce collection rates." *Id.* The question remaining to us in this proceeding is to what extent the USP applies to transit traffic generally—*i.e.*, aside from those cases which are clear violations of the spirit and objectives of the policy. The Western Union service under scrutiny in the case was neither typical nor representative of transit arrangements in this regard.

29. The commenters who took up this issue urged almost uniformly that USP application to transit traffic be restricted to the sort of clear violation mentioned above.[53] Many commenters supported our earlier rationale favoring monitoring but not regulation of transit traffic:

> Transit routes are frequently used as a means of offering service where direct routes are not yet available, and as a means of entry by a new or not-yet-established carrier. They may also be used during the period of negotiations to establish direct routes. Several transiting routes may be used by the originating and terminating administrations, different facilities may be employed by the intermediary state for similar traffic between the same originating and terminating states, and compensation may be made pursuant to contract or tariff. Therefore, settlement rates for transiting traffic are not ordinarily required to conform with the settlement rates direct traffic routes in all respects.[54]

Also discussed was the recommendation of the International Telecommunications Union (ITU) that transit traffic tolls be split 50–50 between the terminal administrations, with the cost of transit also shared by them CCITT Recommendation D.60.[55] We affirm here our belief that transit traffic's historical freedom from strict Commission regulation offers certain benefits, and expands the flexibility of new or small carriers in establishing operating arrangements, and their opportunities for market entry. We further affirm, however, our intention to monitor both transit and indirect traffic arrangements very carefully,[56]

30. As to a definition of transit traffic, we can adopt neither MCII's nor FTCC's proposal, since both ignore the distinction between true transit and indirect traffic. While the term "transit" is commonly used to encompass both, the distinction is important. We will broadly define transit traffic as that which incorporates switching at one or more intermediate international exchanges between its point of origin and its point of destination.[57] True transit traffic, however, involves the U.S. not as an originating or terminating carrier, but as the intermediate carrier. Indirect traffic, on the other hand, while often subsumed in the general "transit" rubric, is traffic that is switched through an intermediate, third country, but which has as one terminal point a U.S. carrier (and U.S. users). It is this latter, indirect traffic, which has posed the harder questions—such as the WU-COMTELCA arrangements discussed herein. The question of when an indirect, "transit" arrangement is clearly violative of the USP's spirit and objectives, is designed to circumvent the policy's requirements, and must therefore be considered parallel to direct traffic arrangements and subject to the full panoply of USP regulation remains open.,

31. We have approached resolution of this question in two previous orders as well as in this rulemaking proceeding, and we rely now upon the viewpoints and experience gained in those proceedings to set forth a guideline in this matter. In our *RCAGC* order of June 28, 1985 (note 6, *supra*) we noted that the objectionable transit arrangements constituted a "transparent ploy" because the addition of a third (transiting) entity increased the terminal foreign correspondent's share of the accounting rate. In a Common Carrier Bureau order on the same matter,[58] Western Union's proposal for modified transit operating agreeements was found satisfactory because it eliminated the possibility that the foreign administration would have higher revenues for transit traffic than it could have for direct.[59]

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[45] *See* Section 222 of the Communications Act of 1934 as amended.

[46] Reference is made to the Commission's recent order, FTC Communications, Inc., FCC 85–249, released May 14, 1985.

[47] This is a reference to our recent *Competitive Carrier* order, *supra* note 42.

[48] Only U.S. Telecom urges discontinuation of the policy.

[49] U.S. Telecom Comments, p. 4.

[50] NTIA Comments, p. 2.

[51] For example, the overall balance of Europe-U.S. telex traffic is significantly inbound to the U.S., so that SKA would be beneficial to the European administrations and would cause the U.S. carriers overall to suffer substantial revenue losses. (Those smaller U.S. carriers having more outbound than inbound telex traffic would gain). Revenue losses to the U.S. industry would result in the decreased ability of the carriers to reduce rates and improve services, to the detriment of the U.S public.

[52] In that case, we order Western Union to modify its operating agreements for telex service to the nations in question to bring their terms into accord with existing agreements.

[53] See discussion of comments, *supra* at part I.D. (1).

[54] NPRM, para. 33. We also stated there our intention to monitor transit traffic, closely, on an *ad hoc* basis, for consistency with other area traffic, and for indications of whipsawing. *Id.*

[55] We note that this arrangement generally results in a division of approximately 40–20–40.

[56] To this end we note that a recent NPRM, In Re: Amendment of §§43.51 43.52, 43.53, 43.54 and 43.74 of the Commission's Rules to Eliminate Certain Reporting Requirements, FCC 85–601, released November 21, 1985, must be modified to the extent that it proposes to eliminate those filings for transit traffic which will allow us to maintain this oversight. Accordingly, the proposed rules in the Appendix of that document are hereby modified by deleting from rule § 43.53(a) the words "other than transiting."

[57] *See* note 25, *supra*. We note that CCITT Recommendation D. 60 offers a very similar definiton, *i.e.*, "A transit relation is a relation between two terminal Administrations where traffic is routed by switching in an international transit exchange(s) located in a country or countries other than the country of origin or the country of destination."

[58] RCA Global Communications v. The Western Union Telegraph Company, File No. E–83–24, Mimeo No. 7086, released September 17, 1985.

[59] We note that the September 17 Bureau order is presently under reconsideration, and accordingly direct that the Bureau issue an order on reconsideration consistent with our rulings here.

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We wish to avoid creating incentives for the creation and maintenance of indirect as opposed to direct traffic routes, not only because indirect routing is undesirable from the point of view of technological and economic efficiency, but also because it so easily creates a patently unfair situation which, ultimately disserves the U.S. public. While we have not to date stringently regulated the terms of indirect traffic routes, we have noted that such service is clearly meant only as a substitute for direct traffic, and as such should be held to similar standards of uniformity and fairness. While we intend to maintain a flexible, lenient approach to indirect routing, we state now that any U.S. carriers establishing such arrangements will be expected to adhere to the guidelines of CCITT Recommendation D.60, establishing equal division of tolls between the terminal administrations and sharing between them of the costs of transit, absent a persuasive showing in support of some alternative arrangement. This approach maintains fairness and flexibility by establishing a clear and equitable guideline for division of tolls for transit traffic, while allowing for departure from that guideline upon a showing of good cause.[60] Objections to such arrangements may be raised by means of a complaint by any interested party or by this Commission *sua sponte*. We further state, moreover, that we will continue to monitor both transit and indirect traffic assiduously.

B. Application of the USP to New Services—Voice and Enhanced

32. *Voice Services.* Only very recently has the question of competitive U.S. carriers arisen with regard to international voice services. As long as only one U.S. carrier provided international switched voice service (IMTS), that carrier stood in a position roughly equivalent to its foreign correspondents, so that whipsawing was not a possibility or a problem. As competition develops, however, AT&T's quasi-monopoly status begins to disappear, and the IMTS market begins to exhibit the characteristics common to other fields of the international telecommunications market where whipsawing exists.

33. We first considered the possiblity of applying the USP to voice services in an April 1985 case involving U.S.-Canada IMTS traffic.[61] There, the Common Carrier Bureau considered, but declined to resolve, the question of whether the USP applies to non-record services. The Bureau said:

> As our open entry policies place additional carriers into the international market, an individual carrier's ability to withstand pressure from a PTT may decline. As whipsawing increases, the benefits of a more competitive market may be transferred from U.S. users to the PTT. . . . We have recently witnessed the emergence of competition in the provision of international switched voice service. MCI, GTE Sprint, SBS, AT&T and others provide or may soon provide international switched voice services. There may be no distinction between telegram, telex or switched voice services, in considering the scope of the Commission's uniform settlements policy: in this view, more than one U.S. carrier is providing a particular service to an overseas point, the potential for whipsawing exists, and therefore, the policy applies. On the other hand, there may be differences between voice and record services which warrant the nonapplication of the uniform settlements policy to the voice market: in this view, traffic and revenue flows may make whipsawing more difficult, and this, together with our strong desire to facilitate the entry of U.S. carriers, would lead us to conclude that the policy need not apply. Under either view, the exact scope of the policy would be more appropriately reserved for a more general proceeding.[62]

34. Certainly until very recently our attention in USP matters has been on the IRCs, and specifically on the provision of international telex service. The focus of the uniform settlements policy, however, has been not on a specific service, but on the assurance of bargaining parity and fairness, and the protection of the U.S. public interest. Our NPRM noted:

> • • • the conditions considered in forming the [uniform settlements] policy (*i.e.*, conditions conducive to whipsawing) may be present in the voice as well as record services markets: multiple service carriers in the U.S. negotiate with single PTT entities overseas who can be expected to attempt to maximize their revenues via accounting rate manipulation. With the entry of additional carriers into the MTS market and the development of parallel routes, there may be a need to protect domestic ratepayers from the long-term effects of pro-PTT accounting rates.

NPRM, para. 35, footnotes omitted. Comments in the MCI-Canada case were split on the question of application of the USP; comments in the present proceeding, as noted above, favor application of the policy.[63]

35. It is clear that the USP was designed to deal with a market situation and not a particular technology or service type. MCI's comments in the Canada case regarding language limiting the USP to 'record carriers' are noted.[64] This language, however, was used interchangeably with other, non-restrictive phraseology, and indicates only that we did not then anticipate the development of competition in the voice market, rather than that we desired to limit the policy's scope. As competition develops in the provision of voice services, the potential for whipsawing could increase. The harm to be suffered from the whipsawing of IMTS carriers is the same as that suffered in the whipsawing of record carriers—the shifting of the benefits of U.S. competition (and of revenues) to the PTTs, to the detriment of the U.S. public interest. We therefore conclude that the USP should be expressly extended to include international voice services.[65]

36. We do, however, recognize that at the moment, and for the immediate future, the IMTS market is very different from the telex and other record markets. IMTS traffic flow is significantly outbound from the U.S., and one carrier (AT&T) has a significant majority of the market; these characteristics reduce somewhat the ability of the PTTs to whipsaw U.S. voice carriers. As we have noted before,[66] flexibility and nonuniformity can be important tools in allowing the new entrant to establish a toehold.[67] The U.S. public has already

[60] We recognize that many current transit arrangements do not adhere to this guideline, and we will allow a reasonable period of time—a period of 180 days from the release of this order—for the carriers to bring their arrangements for indirect traffic into conformity with this ruling or to file waiver requests establishing good cause for departure therefrom.

[61] MCI Telecommunications Corp. *et al.*, CC Mimeo No. 3874, released April 18, 1985.

[62] *Id.*, para. 12, footnotes omitted.

[63] All commenters who discussed the question either supported or at least accepted the validity of applying the USP to voice services. AT&T and HTC both suggested hands-off monitoring until such time as actual instances of whipsawing can be demonstrated.

[64] *See* MCI comments in that case noting several references, in USP-related orders, to 'record carriers' as opposed to simply 'carriers.'

[65] As noted in the NPRM, we believe that changes in the structure of the international voice market may justify corresponding changes in our USP application. As competition develops in the provision of international services in foreign markets [*e.g.*, the entry of a second carrier (Mercury) in the U.K. as an international switched service provider between the U.K. and the U.S.], it may be desirable to relax the application of our policy to those markets. This relaxation, accomplished through the liberal granting of waiver, would be considered on an *ad hoc* basis, taking into account all relevant factors and conditions.

[66] *See, e.g.*, Uniform Settlement Rates, 84 FCC 2d at 128.

[67] As AT&T noted in its comments, p. 7, "Non-uniformity in accounting rates is not necessarily an evil, as long as the non-uniformity does not flow from whipsawing."

begun to benefit from this situation, as competition and the anticipation of competition have produced significant rate reductions and increased service options. Although we have previously noted our belief that increasing competition in the IMTS market may produce conditions conducive to whipsawing, we are also aware that the above-cited factors, innate attributes of the international voice market, naturally combat any such manipulation. We therefore find that the USP should be applied to voice service, but that rigid application of the policy could serve to impede the development of competition, and is unnecessary in view of the unique market situation. Accordingly, while the filings discussed at para. 48 herein will be required for any modification of IMTS service, we expect such filings to meet with the 60-day semi-automatic grant, absent showings of demonstrable detriment to the U.S. public interest [68] or abuse of our policy of uniformity.[69]

37. *Enhanced Services.* We tentatively concluded in the NPRM that we have the authority to apply the USP to international enhanced services, but that such application need not (and should not) be undertaken at present. We affirm this conclusion.

38. As noted above in part I.D., the comments received in this proceeding discussed thoroughly both the authority of the Commission to impose constraints upon international enhanced services, and the desirability of our doing so. Some commenters stated that we have no authority whatsoever to apply the USP to enhanced services,[70] some that we may apply the policy only to common carriers providing enhanced services, but not to non-carriers providing the same or similar services,[71] some that we have authority to dictate certain activities of *all* enhanced service providers who have operating agreements with PTTs, whether these providers are common carrier-related or not.[72] It is argued that our basic/enhanced distinction may well be disappearing,[73] is not understood nor used by our foreign correspondents,[74] and must for practical purposes be abandoned in this regard. Because the PTTs do not distinguish among common carriers, RPOAs and other service providers, this argument runs, neither should the FCC distinguish among them; we should apply our policy—or not apply the policy—identically to all service providers (both enhanced and basic) having operating agreements with a PTT.[75]

39. We note first of all that issues relating to regulation of international enhanced services were fully considered and were settled in our *Computer II International* order.[76] The issue presently under consideration is not the regulation of those services, but whether we can and should apply the USP to non-carrier companies, and/or to carriers providing enhanced as well as basic services. Because no U.S. carrier in the enhanced services market enters that market with a "dominant" position, imposing uniformity on accounting rates by itself will have a limited effect in restraining the bargaining power of the PTTs. However, as the NPRM noted, to leave enhanced services outside the USP might invite PTTs to pressure U.S. carriers to add computer processing functions to a service to transform a basic service into an enhanced service. If enhanced services were excluded, this evolution of basic into enhanced services could give the PTTs the ability to whipsaw in services that are today basic. We noted in our NPRM and in *Computer II International* that we have residual authority under Title I of the Communications Act of 1934, as amended, to ensure the full effectuation of our statutory mandate.[77]

Accordingly, we reaffirm our authority to apply the uniform settlements policy to international enhanced services which are provided under operating agreements between U.S. carriers and their foreign correspondents, and we declare our intention to monitor carefully all such service arrangements.[78] Our interest and concern here are the arrangements under which service is provided. Therefore, all such arrangements, *i.e.*, any operating or service agreements between a U.S. service provider and a foreign correspondent, are subject to the terms of the USP. We will defer intervention, however, in the absence of demonstrable abuse.[79] In this way we can further our policy of minimizing regulation in reliance on market determinations, while assuring the safeguarding of the U.S. public interest.

C. The USP and Currency Conversion and Settlement Rates.

40. *Application of the USP:* The issue of currency conversion, specifically conversion to the International Monetary Fund's (IMF's) created currency, the Special Drawing Right (SDR), has stimulated intense debate,

[68] The filing guidelines proposed by AT&T, see note 28, which we adopt herein at para. 48, will require those filing waiver requests to indicate any changes in revenue expected to result from the non-uniform agreement.

[69] This automatic effectiveness can of course be precluded by this Commission [via its Common Carrier Bureau] *sua sponte*, by letter or order stating a need for more information or more time, or stating in what way(s) the proposal is unacceptable. Also, as described above and in our NPRM at paras. 4–7, the individual carrier's balance of traffic is a determinant of benefit or detriment in accounting rate modifications. A proposal of accounting rate changes which results in increased U.S. revenue [and therefore goes into effect almost immediately] will have the effect of *decreasing* the individual carrier's revenues if that carrier's traffic balance changes. At that point the accounting rate will be re-evaluated, upon motion or *sua sponte*, by Commission staff.

[70] *See, e.g.*, Graphnet, T.C.P. and Western Union comments.

[71] *See, e.g.*, ADAPSO comments.

[72] *See* comments of FTCC, GTE, ICA, RCAGC and TRT.

[73] TRT notes, in its comments, that this very transition is taking place, through general technological evolution, in the area of telex service.

[74] *See* TRT comments.

[75] *Id.*

[76] Note 31, *supra*.

[77] We said in *Computer II International Reconsideration*, at para. 71, that in case of conflict or undermining of the policies of this Commission with respect to the provision of enhanced services, we will address and remedy such abuses under our ancillary jurisdiction.

[78] Providers of enhanced services will not be required at this time to provide the filings discussed herein.

[79] For example, when evidence is given of attempts to whipsaw, we will intervene, as we have done in the past. We refer here to the situation which arose in 1982 with regard to the administrations of the Nordic countries (Iceland, Finland, Denmark, Sweden, and Norway). NORDTEL, and their plan to take competitive bids from the USISCs in order to establish an operating agreement "with one, or a limited number of carriers" to provide new data services. NORDTEL's June 1982 letter announcing this plan was followed within several weeks by similar letters from the administrations of Belgium, the Netherlands, and Luxembourg; all referred to "recent deregulatory development in the USA leading up to a changed market system as regards the provision of International telecommunications services." This initiative provoked great concern; the PTT attempt to limit the number of U.S. carriers was viewed as anticompetitive. This Commission has long sought to encourage more carriers to enter international markets, and has expressly criticized any attempts at exclusivity as inimical to the U.S. public interest. The damage is compounded if, as here, the exclusive service provider is not subject to regulation under a strict interpretation of *Computer II*. Further, the receipt of virtually identical proposals from other CEPT members exacerbated the situation.

Both the FCC and the State Department became involved in this exchange. This Commission suggested that the U.S. service providers not respond to the PTT request for competitive bids until completion of a period of study and analysis. The involved PTTs were informed of this undertaking. The study and analysis undertaken by our staff revealed the probability of whipsawing; eventually the PTTs dropped their efforts to elicit competitive bids, and the usual negotiating procedure, involving numerous U.S. carriers, was invoked.

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both in this proceeding and in the periodic FCC–IRC meetings.[80] While all the IRCs agree that they have made some commitment to universal conversion to SDR accounting, ideally by 1988, the degree of commitment and the methodology to be used to achieve conversion have been subjects of debate.[81] The NPRM refers to an "obligation" to convert to SDRs by 1988. That obligation arises from a 1980 meeting in The Hague of representatives of CEPT [82] with representatives of the IRCs. Although no formal agreement resulted from this meeting, a series of correspondence immediately preceding and following the meeting indicates the agreed intention of the parties to convert to SDRs.[83] The perceived degree of commitment varies from carrier to carrier; where one carrier sees an absolute commitment, creating an automatic conversion to SDRs upon request of any CEPT administration, another sees only a general statement of intent.

41. *RCAGC Complaint:* These antipodal positions are clearly represented in a complaint now pending before us, *RCA Global Communications, Inc. v. TRT Telecommunications Corporation and FTC Communications, Inc.*, File Nos. E–85–49 and E–85–50, filed in September 1985.[84] The undisputed fact is that TRT and FTCC have agreed to, and implemented, SDR settlement terms with several CEPT administrations with whom the other U.S. carriers settle in gold francs.[85] RCAGC charges that these non-uniform settlement terms, absent the concurrence of the other IRCs or an express waiver by the Commission of its USP, are in violation of that policy and should therefore be barred. The defendants respond that the 1980 correspondence between CEPT and the IRCs constitutes an absolute agreement to convert to SDRs, which requires for its effectuation only a PTT request to any signatory IRC.

42. As noted at para. 16 above, we discussed the issue of conversion to SDRs in the NPRM. Paragraph 38(2) of the NPRM states:

> Because the uniform settlements policy requires uniformity of terms, rates, and toll divisions between and among carriers offering like services between the same points, it seems clear that a unilateral conversion by one carrier of the monetary unit is a change in terms and rates such as the policy prohibits.

This is not a tentative conclusion, but a statement of definition of the policy as it then stood (and now stands). In the introductory paragraphs of the NPRM we stated, in defining the USP and its requirements, that ". . . the operating agreements must stipulate . . . (c) uniform settlement rates (the currency conversion rate used to arrive at the currency stipulated in the operating agreement, usually gold francs (GF), U.S. dollars, or special drawing rights (SDRs))." NPRM, para. 2. Elsewhere, reference is made to our 1980 policy statement on the USP, *Uniform Settlement Rates*, 84 FCC 2d 121 (1980), which is the source of that definition.[86] Not only do our formal statements thus establish unequivocally that SDR conversion is a modification of terms of operating agreements (specifically, of settlement rates) such as is prohibited under the USP, absent waiver; industry history and practice confirm this assertion.[87]

43. The policy's terms are clear, and its application here is straightforward. The conversion by TRT and FTCC to SDR accounting with the administrations of the above-named nations, with benefit of neither a waiver of the policy by this Commission, nor the concurrence of the other IRCs serving those administrations, violates the uniform settlements policy. The Common Carrier Bureau is therefore directed to act upon the complaint in an order consistent with these findings.[88]

44. *Procedure:* The second issue arising with regard to the matter of conversion to SDRs is the question of procedure—a question already touched upon here.[89] In the NPRM we briefly discussed various methods of conversion, but left to the carriers the determination of methodology. Comments mentioned the use of CCITT Recommendation D. 195,[90] the use of floating coefficients,[91] or the rejection of any coefficient by direct SDR negotiation.[92] The last, direct conversion, is suggested in a recent memorandum prepared by an *ad hoc* working group of the FCC/IRC meeting group as the only practicable approach. The memorandum notes that operating agreements are periodically renegotiated, and suggests that the next round of negotiations with each and every foreign correspondent establish accounting and settlement rates in SDRs, directly and without use of any linking coefficient.[93] Among the benefits

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[80] *See* note 9, *supra*.

[81] At recent FCC–IRC meetings, one carrier representative has taken care to note that settlement by gold francs is also acceptable under the ITU CCITT Recommendation discussed *infra*, and that it is therefore possible that no commitment to conversion to SDRs need be acknowledged.

[82] CEPT is the Conference Europeene des Administrations des Postes et Telegraphes, a consortium of 26 European PTTs.

[83] This correspondence is being placed in the docket.

[84] *See* note 11, *supra*.

[85] RCAGC charges that both FTCC and TRT have accepted SDR settlement terms with Finland, France, Norway and Spain. TRT agrees that it has begun to settle in SDRs with France, Norway and Spain, but not with Finland. FTCC states that it does not settle at all with Finland or Spain, but that it does indeed settle in SDRs with France and Norway.

[86] "The 'settlement rate' is the rate established for converting currencies to settle accounts." 84 FCC 2d at 122 (1980).

[87] The fact that various (CEPT and other PTT) requests to effectuate conversion to SDRs have frequently been considered, discussed, debated—and, occasionally, agreed upon—in the FCC/IRC meetings belies any assertion that each carrier is free—let alone obliged—to institute DSR settlements without formal procedure (*i.e.*, waiver request).

[88] We also note that TRT has filed a request for waiver of the USP with regard to its operating agreements with France, Norway and Spain. This waiver request also will be acted upon by the Common Carrier Bureau.

[89] As noted above, the conversion of currencies is a change of operating agreement terms, and any such conversion which involves fewer than *all* U.S. carriers serving the relevant foreign correspondent must be undertaken only upon our granting of a waiver.

[90] Recommendation D. 195 provides for SDR conversion as follows: (a) Convert gold francs to SDRs using a linking coefficient of 3.061 GF = 1 SDR; convert SDRs to currency of payment by the daily published exchange rate; or (b) convert directly to the currency of payment by application of fixed coefficients currently in use, or by establishing mutually agreeable new or modified coefficients.

[91] *See* RCAGC Comments, pp. 12–13.

[92] *See* "Settlement of International Telecommunication Balances of Accounts;" working group memorandum of October 31, 1984, included in the docket. This memorandum notes that the carriers' stances on SDR conversion are dependent on their balance of traffic (and thus on their being debtors or creditors *vis-a-vis* a given foreign correspondent) and on the fluctuating value of the dollar. (Only if the SDR equals $1.21 could all carriers convert directly from dollars with no gain or loss, the memorandum states. The SDR currently equals about $1.05). The memorandum notes that while the initial gain or loss through conversion may be significant, the difference over time will likely be even more so. For the U.S. industry as a whole, according to the paper, gains would roughly equal losses in conversion using the CCITT's linking coefficient of 3.061 GF to one SDR. (Of course this is accomplished by balancing one carrier's losses against another's gains, and so fails to provide a universally acceptable solution to the problem). The memorandum notes that the other recognized conversion method, where one dollar equals 2.5374 gold francs and the current dollar—SDR exchange rate (or, as is sometimes suggested, $1 = 1 SDR) is used, creates the same magnitude of imbalance, in the other direction.

[93] The IRCs could figure their rates in dollars, then use the current exchange rate to convert to SDRs. No immediate gains or losses would be experienced, and future gains and losses would be tied, as is always the case, to international currencies and exchange rates.

of this approach, according to the memorandum, are: it avoids the linking coefficient quagmire which is a controversial and largely nonessential stumbling block to conversion; it promotes international comity by effecting conversion to SDRs; it brings the international telecommunications industry into accord with other industries and agencies, national and international, which have already converted to SDRs; it brings international record services into accord with international voice services (specifically AT&T) which generally account and settle in SDRs; and it ends the otherwise insoluble turmoil among the IRCs over this issue.

45. While we decline to prescribe the exact methodology the carriers should use to effect conversion to SDRs, we accept the analysis and conclusion of the memorandum, and encourage the international carriers to do likewise. For the reasons given, negotiating new operating agreements in SDRs without the use of any conversion factor or linking coefficient, but only the current dollar/SDR exchange rate, seems the best solution to this problematical situation. We have previously stated our intention to be receptive to waiver requests designed to effectuate this goal; [94] we reiterate that intention here. Nonetheless, we recognize the very different positions of our IRCs due to difference in traffic flow and in existing settlement rates, and we very strongly urge that the IRCs take the earliest opportunity to establish accounting rates in SDRs with any and all willing correspondents, and to tie their SDR exchange to the published market exchange rather than to a fixed coefficient.[95]

D. Exemption of "Small" Carriers From the Requirements of the USP

46. As noted above, the suggestion in the comments of both FTCC and Graphnet that those carriers "without market power" be exempt from the requirements of the USP elicited strong and uniformly negative responses from the other commenters. We find some merit in the concept, however, though not to the extent of supporting an exemption. First, it is probably impossible to propose a workable definition of "small carriers."[96] Second, although FTCC and Graphnet have argued that in a truly competitive market, the practical likelihood of whipsawing of the largest carriers over changes (*i.e.*, rate reductions) by the smallest carriers is slight, in fact it has historically been the smallest and/or newest carriers which are used for this purpose. FTCC stated that a carrier which was granted a waiver, and whose lower rates then brought it increased return traffic, would approach the overall U.S. position on traffic flow, therefore ceasing to be a "small carrier," and would naturally therefore seek to conform its rates to the uniform general rates. We find it doubtful that the PTTs would willingly cooperate in this "natural" progression, or would fail to attempt to use the lower accounting rates of the "exempt" carriers to whipsaw the other carriers. The result would necessarily be increased intervention (and regulation) by this Commission. Therefore, we cannot agree to exempt such carriers from the terms of the USP, but we do feel that a slightly more lenient application of the policy's requirements may be appropriate, in certain circumstances, in the cases of small carriers. The size—or lack of market power—of the waiver proponent, as well as the carrier's traffic flow balances and the impact on other carriers of grant of a waiver, will therefore be included in the factors we consider in waiver request determinations. We also intend to review the resulting market situations diligently and frequently, to assure that other carriers serving the same points suffer no undue ill effects, and we reserve the right to revoke such waivers immediately (upon notice), either *sua sponte* or in response to requests or complaints from other carriers.[97]

E. Implementation of the USP

47. In the NPRM we suggested that the USP has not proved as effective as it should be, and that this problem might be resolved in part by modifying our procedural approach. Our tentative conclusion was that this Commission must undertake to review more thoroughly any and all operating agreement modifications, in order to assure that our carriers and service providers are not whipsawed, and that the benefits of competition among our carriers accrue to U.S. ratepayers rather than solely to the PTTs. We have found that whipsawing continues to occur, and that the tactics of the PTTs have become more sophisticated. The strategy of holding monthly meetings of representatives of the IRCs together with representatives from the FCC was an attempt to balance the bargaining positions of the parties in negotiations regarding international service agreements. It was hoped that by increasing coordination and cooperation among the IRCs, we could avoid or at least minimize their whipsawing by the foreign entities. However, because the IRCs having varying commercial interests, and thus varying positions on accounting rate proposals, unanimity is unlikely. Therefore, although we will continue to hold periodic IRC/FCC meetings, we find that additional measures are necessary.

48. *The Sixty-Day Semi-Automatic Grant.* In order to further the goals of the uniform settlements policy, we proposed in the NPRM to assure early, complete and informed Commission review of each and every modification of the terms, rates, or toll divisions of operating agreements for services where more than one carrier or service provider offers a particular service to a particular foreign jurisdiction. As noted above, the response to our proposals was generally positive. We therefore adopt the following procedural requirements, which we believe will not be burdensome or impose delay: each proposed modification will be submitted to this Commission and will be placed on a sixty-day timetable.[98] Further, each waiver request will be accompanied by the information proposed by AT&T in its comments, in the format indicated in Attachment A hereto.[99] Waiver applications will be placed on Public Notice when filed. This notice will start a twenty-one day filing period for objections or comments. Thereafter, reply comments may be filed within ten days. In the remaining twenty-nine day period the staff will review the waiver application. The staff can raise objections or questions either *sua sponte* or in response to the submitted filings.

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[94] NPRM para. 38.

[95] *See* the Comments of RCAGC at pp. 12–13.

[96] We reject the commenters' proposals: FTCC spoke of "Carriers which have been found to not have a significant share of the record communication industry," and went on to refer to a dominant/exempt dichotomy. FTCC Comments, p. 8. Graphnet suggested that the policy apply "only in those situations where a carrier possesses a market share significant . . . to cause other carriers to lower their settlement rates as a result of the smaller carrier lowering its rates." Graphnet Comments, p. 11. Graphnet suggested that a certain percentage of the market be set as an exemption cut-off, but did not suggest what that percentage should be. Graphnet suggested that market share, its determining factor, would be an approximate measure of the carrier's circuit capacity. *See* note 44, *supra*.

[97] Revocation of the waiver would oblige the subject carrier to return to uniform rates, and would preclude his operating under the former, non-uniform terms.

[98] Application of the USP for IMTS is discussed in para. 36, *supra*.

[99] This new procedural approach will necessitate some modifications of the Common Carrier Bureau's present filing and review practices. The Bureau Chief is therefore authorized to make known to the carriers, individually and informally, any consequent requirements of format or filing changes.

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This initial review of each application for waiver on its merits will result, at the end of the sixty-day period, in: (1) No formal staff action, in which case the petition will be deemed granted;[100] (b) a staff letter requiring additional information;[101] (c) a staff letter indicating that opposition was filed, but that the filing was found to be without merit (in which case the waiver will be deemed granted on the sixty-first day) (see para. 50, *infra*); or (d) a staff letter indicating that the waiver petition raises complex issues or is opposed, and thus must await formal action by order or letter rather being automatically granted.

49. Our new streamlined procedures meet the concerns expressed in the comments by increasing the carriers' flexibility. Further, our modifications are specifically designed to increase oversight but decrease delay, partially through the implementation of the 60-day semi-automatic grant, and partly through the removal or decreasing of ambiguities in the guidelines on factors to be considered in evaluation of waiver requests. While the speed and efficiency of waiver analysis by this Commission are valid concerns, we feel confident that they are adequately addressed by our proposal.

50. Regarding the question whether the semi-automatic grant can operate in the face of filed comments opposing the proposed waiver, we certainly do not want to creat incentives for competitors to use the regulatory process in order to forestall legitimate changes. If any opposition to the request is filed, a Bureau or Commission letter or order will be needed before the waiver can be finally approved. In this case, as in the case of the Commission's own objection, or our need for further information, a staff letter to the waiver applicant will indicate that the semi-automatic grant provision is *not* in effect.[102]

51. *Factors in Evaluation of Waiver Requests.* As we noted in the NPRM, we do not intend by these proposals to modify the waiver standards we enunciated in 1980. A carrier (voice or record) requesting a waiver of the USP will file a petition, and will have the burden of proof to support its request.[103] Our intention with regard to the evaluation and disposition of waiver requests is to increase our awareness and oversight while decreasing delay and rigidity. We are establishing a new, streamlined procedure which we believe will serve these goals. We are also stating a new, more flexible approach to waiver requests. This approach indicates not only our desire to encourage new entry, competition, and innovation, but also our movement away from the single-factor waiver evaluation here complained of: we have stated our intention to consider those factors named in our 1980 statement, including (but not limited to) lower collection rates, improved services, and increased competition, and have added to these factors the consideration of lack of market power.[104] We expect that our earlier and more thorough awareness of proposed changes, together with our streamlined procedure and our increased leniency (in certain cases) will serve to increase the flexibility of our carriers in their dealings with foreign correspondents. In sum, our Order recognizes that our primary goal is to promote lower prices and better services for U.S. users, and that our secondary goal, necessary to the first goal, is to eliminate whipsawing of U.S. carriers.

52. *Confidentiolity and Anonymity:* In our NPRM we suggested that requests for confidentiality in filings in this proceeding would be honored.[105] The issue has arisen before, and is discussed in the comments. There is an anticipation among the carriers, which we find to be supported, that foreign correspondents may retaliate, in their negotiations and operations, against carriers whose filings (in this or other USP-related proceedings) have taken an unwelcome slant. There is also a confidentiality issue with regard to business and financial information submitted in such filings. We are determined that in such cases, requests for confidential treatment will be honored to the extent possible.[106] Filings so treated will be considered and incorporated in any Commission determinations only to the extent that their substance, separated from any identifying characteristics, can be revealed and discussed.

53. As noted above, MCII suggests that all filings in waiver request proceedings be rendered anonymous by the Commission staff. This suggestion too is in recognition of the apprehension of foreign correspondent retaliation. We believe, however, that with the liberal granting of requests for confidentiality we are adequately addressing this concern, and need not take the more extreme measure of rendering all applications and pleadings anonymous.[107]

III. Conclusion and Ordering Clauses

54. We have undertaken a thorough analysis and consideration of our uniform settlements policy—its scope, its implementation, its underlying concerns and justification. We are convinced by this analysis, supported as it is by nearly fifty years' experience, as well as by the pleadings in this proceeding, that the need for a policy of uniformity is well established. As our policies and practices of encouraging competition have contributed to the stimulation of multiple entries in the international telecommunications market, the likelihood that these players will be manipulated by foreign monopolistic telecommunications administrations increases. We are determined that, to the greatest extent possible, the benefits of competition should redound at least as much to the U.S. public as to a foreign correspondent. To this end, rather than in any effort to protect or nurture the U.S. carriers, we affirm and will continue to apply the uniform settlements policy. The policy which we here affirm and modify limits the ability of a PTT to whipsaw U.S. carriers or to engage in other practices which are contrary to the interests of U.S. ratepayers.

55. We recognize and have considered the arguments against this policy, and we acknowledge the possibility that the application of the policy may entail some costs. It may be true, for example, that use of the USP can result in some inertia, in a tendency to maintain the *status quo*. We can see, too, that more delay may be involved when we insist on reviewing and monitoring international transactions and the results of negotiations than would be present if the international telecommunications market were conducted entirely without regulatory oversight. Further, it is likely that new entrants and small carriers would have an easier time establishing business relations with PTTs if they could do so under terms typical of open competition, including discounted rates and special concessions.

56. Nonetheless, our primary concern is the U.S. public interest, and we are firmly convinced that to abandon or seriously weaken the uniform settlements policy at this time would be to disserve the U.S. public. The desire of U.S. carriers and other service providers to compete freely is understandable, but when the benefits of this competition would be garnered by foreign correspondents rather than by U.S. customers, the imposition of some restraint is appropriate. The desire of PTTs to acquire for themselves more advantageous rates and various concessions that would be available to them under a U.S. policy of unrestrained competition is only natural, but when the costs of this competition would be borne, unrenumerated, by the U.S. ratepayer, intervention is necessary. As our foreign counterparts adopt more flexible views of competition and free enterprise, we shall certainly reexamine our policies.

57. We have, with this order, modified the procedural implementation of the USP in order to respond to the concerns outlined above. We have announced a determination to view receptively such waiver requests as would serve, by stimulating competition, to ameliorate the tendency to preserve the *status quo*. We have further sought to encourage as much as possible the rapid and smooth conversion of the financial terms of operating agreements into SDRs. We have established a streamlined procedure which will increase the effectiveness and decrease the innate delay of our regulation. We have announced our intention to regulate to the least extent possible; our goal is to assure the service to the U.S. public interest at the least possible expense (in time, cost, frustration of competitive spirit, international comity) to the ratepayer (and, derivatively, the carrier). We find that certain rules must, at the present time, govern U.S. participation in the international telecommunications market in order to safeguard the U.S. public interest.

58. Accordingly, it is ordered, pursuant to sections 4 (i) and (j), 201–205, 218, 220, 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 201–205, 218, 220, 403 and 404, that the policies, rules and requirements set forth herein are adopted.

59. It is further ordered that all carriers subject to regulation under the uniform settlements policy will henceforth submit to this Commission a request for waiver of that policy in the case of any modification of terms within the purview of that policy, whether or not such modification is adopted or agreed to by other carriers involved in the subject service.

60. It is further ordered that the filing format discussed at paragraph 48 and Attachment A of this Order is adopted, and forms a requirement for all IMTS service providers, said filing to be made initially within thirty (30) days of the publication date of this Order in the **Federal Register**, and subsequently at the time of initiation or modification of IMTS.

61. It is further ordered that the uniform settlements policy is expressly extended to voice and enhance services.

62. It is further ordered that the language of § 43.53(a) of the Commission's rules, 47 U.S.C. 43.53(a) is modified by deleting the words "other than transiting" from that section effective March 10, 1986.

63. It is further ordered that the streamlined evaluation and approval process for requests for waiver of the uniform settlements policy set forth herein at paragraphs 47–53 is adopted.

64. It is further ordered that this proceeding is terminated.

65. It is further ordered that the Secretary of this Commission shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachment A

Filings accompanying waiver requests should include the following:

1. A description of the existing arrangement, and of the proposed new or modified arrangement(s).

2. A projection of the revenue effect on the proponent carrier.

3. A projection of the revenue effect on the U.S. industry overall (service-specific).

4. A statement as to whether changes in the methods of allocating return traffic among U.S. carriers were included in the negotiations leading to the change, and if so, to what effect.

5. A statement as to whether there was any attempt by the PTT(s) involved to secure concessions in the accounting rate through any measures (such as reallocations of return traffic, or other special concessions) which would indicate whipsawing.

Appendix

PART 43—[AMENDED]

Part 43 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 43 continues to read:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

§ 43.53 [Amended]

2. Section 43.53 is amended by removing the words "other than transiting" from paragraph (a).

[FR Doc. 86-2595 Filed 2-6-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 43

[CC Docket No. 79-262]

Update and Simplification of the Required Traffic Data Reports Filed by International Telecommunications Carriers; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule correction.

SUMMARY: This Erratum corrects a typographical error in the Report and Order amending § 43.61 of the Commission's rules governing the reporting of traffic data by international telecommunications carriers. The amendments are intended to update the Commission's Rules and eliminate unnecessary burdens on the carriers.

FOR FURTHER INFORMATION CONTACT: Dan Spiro, Common Carrier Bureau, International Policy Division, Federal Communications Commission, Washington, DC 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

In the matter of Update and Simplification of the Required Traffic Data Reports Filed by International Telecommunications Carriers, CC Docket No. 79-262.

Released: January 28, 1986.

The Report and Order released on May 15, 1985 (FCC 85-219), 50 FR 21607, May 28, 1985 is corrected as follows:

§ 43.61 [Corrected]

1. In the Appendix, 50 FR 21615, § 43.61, item j, the second sentence in paragraph (c) is corrected to read: "This report shall contain the information

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[100] We note that this procedural device of automatic grants of authority is already successfully used in the consideration of applications to extend facilities under § 63.03(d) of our Rules.

[101] The staff may extend the review period in order to analyze a carrier's response to other interested parties' comments.

[102] If, in the opinion of the Commission staff, the objection filed is specious, obstructionist, and without merit, it will not be allowed to block our streamlined process. A staff letter to the applicant and the objecting party will declare such a finding.

[103] Uniform Settlement Rates, 84 FCC 2d at 127, para. 14.

[104] For example, a modification that proposed a rate reduction and included a limitation on the reallocation of return traffic might lead to cuts in collection rates for U.S. customers without putting pressure on other U.S. carriers to change their accounting rates.

[105] NPRM, footnote 65.

[106] Requests for confidential treatment will be unequivocally honored—absent notification to the contrary—unless and until a FOIA request is filed. At that time, a determination will be made using the FOIA's guidelines.

[107] We may do so in a particular case, however, if the facts warrant.

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required by paragraphs (f)(1)(ii), (2)(ii), 3(ii) and (9) of this section, excluding leased channel service with the continental United States or Alaska."

Federal Communications Commission.
William Tricarico,
Secretary.

[FR Doc. 86-2501 Filed 2-6-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-752; FCC 86-49]

Radio Broadcasting; Changes in the AM Technical Rules To Reflect New International Agreements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By Report and Order in MM Docket No. 85-752, the FCC amended its rules to reclassify the AM Local Channels in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands as Regional Channels, thus enabling stations assigned to those channels in those locations (which were reclassified as III stations), to apply for higher power; eliminated the distinctions between Class III-A and III-B AM stations; and permitted the 100-km field strength value under Figure 1A of Section 190 of its Rules to be used for shorter distances. Changed conditions warrant the adopted rules revisions. They will enhance opportunities to render radio service to the public.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Mass Media Bureau, FCC Headquarters, Washington, D.C. 20554, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

AM station, class III, AM station, class IV, AM station, technical standards.

Second Report and Order (Proceeding Terminated)

In the matter of changes in the AM Technical Rules, to Reflect New International Agreements; MM Docket No. 84-752.

Adopted: January 16, 1986.
Released: January 28, 1986.

By the Commission.

1. In the *Further Notice of Proposed Rule Making* in this proceeding, 50 FR 30968, published July 31, 1985, the Commission invited comment on additional changes in the AM technical rules to conform the rules to the new AM agreements that had been or were being negotiated. These proposals were in addition to those which has been adopted in an earlier *Report and Order* in this proceeding, 50 FR 18818, published May 2, 1985.

2. The Commission advanced five specific proposals: (1) To reclassify Class IV AM stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands as Class III stations and increase their power limit to 50 kW; (2) to eliminate the distinctions between Class III-A and III-B AM stations; (3) to add a cross-reference table between the domestic and international station classifications; (4) to establish a procedure for calculating skywave field strength values over paths shorter than 100 km; and (5) to permit synchronous transmitter systems. Most comments fully supported these proposals.[1] Each issue will be addressed separately.

3. *Channel and Station Reclassification.* Ordinarily, Class III stations are not permitted to use power in excess of 5 kW. However, in the earlier *Report and Order* in this proceeding, the Commission amended the rules to raise the power ceiling for Class III stations operating in Alaska, Hawaii, Puerto Rico and the Virgin Islands. This step was taken to alleviate the problem these stations faced as a result of interference from neighboring countries or the need to provide service into remote underserved areas. The Class IV stations in these locations face similar problems from incoming interference and have similar needs, but they are limited to only 1 kW power. To help them overcome these difficulties, the Commission proposed reclassifying the six Local AM Channels (i.e., 1230, 1240, 1340, 1400, 1450 and 1490 kHz) as Regional Channels in these locations and the stations on them as Class III stations. By virtue of such a reclassification, these stations no longer would be subject to the 1 kW power limit for Class IV stations but would be subject to the 50 kW limit that applies to Class III stations in these locations. This proposal was strongly supported as a means of achieving the identified goals.

4. In evaluating the feasibility of the proposal we have to consider its effect on the use of these channels in the conterminous 48 states. There, the effective use of these channels has involved assigning stations as closely as daytime interference standards permit, using a maximum power of 1 kW. Nighttime protection for these stations is not calculated. Rather, it is a function of the pattern of assignments based on daytime protection and the 1 kW power permitted such stations at night. While the use of greater power would present a problem in the conterminous 48 states, the same does not hold true in these outlying areas. Typically, there is a great distance between operations on the same channel, and the power of these stations could be increased substantially without causing additional co-channel interference to existing stations. Under these circumstances, we believe it is appropriate to reclassify these stations and the channels on which they operate.[2] This will permit the use of higher power subject to the interference limitations set forth below.[3]

5. It is necessary to adopt standards to prevent these stations from causing interference to foreign stations and to the other domestic stations on the channel, both Class III and Class IV. To do this, in addition to complying with international agreements, the reclassified stations will be required to protect Class IV stations in the conterminous United States by application of the RSS procedure and the 50% exclusion rule contained in § 73.182(o) of the Rules. That section prescribes the methods for determining the incremental effect of the nighttime skywave radiations of an AM station on other co-channel stations. The same protection standards also will be applied between stations in the outlying areas.

6. ABES questioned the appropriateness of applying the RSS procedure and the 50% exclusion rule to the protection of Class IV stations in the conterminous 48 states. This, it said, could involve complications because of the large number of stations to be considered, Although these calculations may be slightly more complicated to perform, this would not be expected to impose a significant impact. Even more important, the use of this protection method balances the need for additional power by these stations with the need of

[1] The parties who filed comments are: Alabama Native American Broadcasting Company, Association for Broadcast Engineering Standards, Inc. (ABES), Association of Federal Communications Consulting Engineers (AFCCE), duTreil-Rackley Consulting Engineers, KOB-AM, Inc., Jefferson-Pilot Communications Company, Laughlin Roughrider Broadcasting, Inc., National Association of Broadcasters (NAB), National Radio Broadcasters Association (NRBA), Edward A. Schober, Consulting Engineer, and Sherman & Beverage Associates, Inc.

[2] In reclassifying these stations as Class III, it is not necessary or appropriate to require them to meet the more rigorous efficiency standards imposed on such stations. Accordingly, the current (Class IV) efficiency requirements will continue to apply to existing and future stations on these frequencies.

[3] Implementation of higher power must await final disposition of NARBA and the implementation of a new AM agreement with Mexico.

mainland stations for protection of their existing service. If interference were allowed to occur to the large numbers of class IV stations in the contiguous 48 states, the adverse impact on the public would be very great. For these reasons, we are not following ABES's suggestion.

7. The reclassified stations, as well as future Class III stations on the reclassified channels, will be afforded the same protection as other Class III stations no matter where located, except that existing and future Class IV co-channel stations in the conterminous 48 states will be permitted to treat all the stations on the reclassified channels during nighttime hours as if they were Class IV stations, and accordingly need not provide contour protection to them. It is recognized that, over time, this could result in some increase of the nighttime limits of stations on the reclassified channels. Such increase is not expected to be significant, however, the view of the distance of the affected stations from the conterminous 48 states.

8. *Distinctions between Class III-A and III-B Stations.* Class III stations are divided into two categories: Class III-A and Class III-B, In the conterminous 48 states Class III-A stations operate with a power from 1 kW to 5 kW, and at night are normally protected to their 2.5 mV/m contour. Class III-B stations operate with a power of 0.5 kW to 5 kW daytime and 0.5 kW at night. Normally, they are protected at night to their 4 mV/m contour. In light of developments over the years, these distinctions no longer seem necessary. Their deletion was fully supported by most of the comments. To the extent that new stations could be proposed or existing stations could be expanded, the new rules should not impose an artifical restraint. Likewise, these stations should be afforded the maximum feasible interference protection. Accordingly, to facilitate the most efficient use of this spectrum, we will eliminate the previous subclassifications and will reclassify all Class III-A and III-B stations as Class III.

9. One of the comments suggested that we lower the minimum power level for Class III stations to 0.25 kW. Several parties suggested that the permissible power be increased to 50 kW throughout the U.S., not just in Alaska, Hawaii, Puerto Rico and the Virgin Islands. At this point we do not have a sufficient record on which to base such a change in the rules.

10. All Class III stations will have a permissible power range extending from 0.5 kW to 5 kW daytime as well as nighttime. During the daytime, all Class III stations will continue to be normally protected to their 0.5 mV/m groundwave contour. During nighttime hours, except as otherwise noted later in this paragraph, all Class III stations will be protected to their 2.5 mV/m groundwave contour or such higher limit as is imposed by prevailing interference. Until now, only Class III-A stations enjoyed this level of nighttime protection but it is appropriate to afford such protection to Class III-B stations as well. Doing so will better protect existing service and make more efficient use of the spectrum involved. We think it administratively desirable that applicants for new stations or changed facilities who tender acceptable applications before the effective date of the rule changes adopted in this *Report and Order* should not be required to provide the greater level of nighttime protection that the rule changes will accord to former Class III-B stations. A new Note 2 to § 73.182(a)(3) so provides.

11. *Cross-referencing Domestic and International Classifications.* As we observed in the Further Notice, a new system of station classifications has come into international use. This system classifies stations as Class A (equivalent to a clear channel station) Class B (equivalent to a Class II or Class III station) and Class C (equivalent to a Class IV station). Unlike the domestic system of classifications, the international system does not classify frequencies. In recognizing these international developments, the Commission did not propose reclassifying all U.S. stations, as such an approach seemed infeasible in view of the many categories of U.S. stations. Instead, we proposed adopting a table that provides a convenient cross-reference between the two systems. Only one party questioned the desirability of a cross-reference table, expressing a concern that it might prove confusing. We do not think that such confusion will arise. Rather, we believe that this table can prove helpful in view of the continuing need to relate the current system of domestic classifications to that used under international agreements. Accordingly, the cross-reference table will be adopted as a note in the rules.

12. *Skywave Calculations at less than 100 km.* Figure 1a, § 73.190 graphically depicts the field strengths of skywave signals at distances greater than 100 km from the transmitter for purposes of calculating skywave service or interference. Occasionally, it is necessary to perform interference calculations for locations less than 100 km from the transmitter. Although, as ABES notes, specific data are not available for those shorter paths, experience indicates that their values may be expected to parallel the values shown on Figure 1a at 100 km. Most of the other comments supported such a proposal. Under the circumstances, it is appropriate to utilize this method to remedy the gap in Figure 1a by directing that the value at 100 km be used in calculations for shorter distances, and we so amend the rules.

13. *Synchronous Transmitters.* The comments generally favored the concept of authorizing AM stations to use synchronous transmitters that, in addition to the main transmitter, could simultaneously broadcast the same programs on the same frequency. Some of these comments offered engineering information on the questions posed by such operation, but this information falls far short of that needed to establish specific technical rules. Although we continue to believe there is merit to such operatons, we agree with parties who recommend further consideration and development of both allocations aspects and engineering standards before adopting generally applicable rules. We would welcome proposals for experimental operations of synchronous transmitters in order to develop information to assist us in developing rules that will allow these operations to render effective service while avoiding interference problems. An application for one such operation at East Las Vegas, Nevada is pending. Continuing studies of synchrnous operations are being performed as part of an omnibus review by the Commission's staff of the AM rules, on which a report to the Commission is expected to be submitted early in 1986. We expect, when it is appropriate, to inaugurate further rule making proceedings on synchronous transmitters, and will afford interested persons an opportunity for further comment.

Regulatory Flexibility Final Analysis

I. Reason for Action.

Intervening changes in international agreements necessitate corresponding changes in the rules governing AM radio allocations in the United States.

II. Objective

To conform pertinent rules with changed international agreements.

III. Legal Basis

Section 303 of the Communications Act of 1934, as amended, empowers the Commission to foster the more efficient use of radio in the public interest

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IV. Description, Potential Impact and Number of Small Entities Affected

The changes in the rules can be expected to aid affected small entities by allowing the use of higher power and of an improved method for making technical calculations.

V. Recording, Record Keeping and Other Compliance Requirements

No new requirements would be added by the proposed action.

VI. Any Significant Alternative Minimizing Impact on Small Entities Consistent With Stated Objectives

No adverse impact on small entities is expected.

Paperwork Reduction

The rule change adopted here has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and, except for the additional applications expected to be received, this rule change will not increase or decrease burden hours imposed on the public.

13. Accordingly, pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered that effective March 6, 1986, Part 73 of the Commissions Rules is amended as set forth in the Appendix.

14. It is further ordered, that all Class IV stations in Alaska, Puerto Rico and the U.S. Virgin Islands and all Class III–A and Class III–B stations irrespective of location are reclassified as Class III stations.

15. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 73—[AMENDED]

Title 47, Part 73 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 73 continues to read:

Authority: 47 U.S.C. 154 and 303.

1a. 47 CFR 73.21 is amended by revising the introductory portion of paragraph (b) and subparagraph (b)(1), by removing subparagraphs (b)(1)(i) and (b)(1)(ii), and by adding a new note 3 to paragraph (c), to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

* * * * *

(b) *Regional Channel.* A regional channel is one on which several stations may operate with powers set out in subparagraphs (1) and (2) of this paragraph. The service area of a station operating on a regional channel may be limited to a given field strength contour as a result of interference.

(1) *Class III station.* A Class III station operates on a regional channel and is designed to render service primarily to a principal center of population and the rural area contiguous thereto. Except as provided in paragraph (b)(2) of this section, a Class III station operates with a power not less than 0.5 kW and not more than 5 kW.

* * * * *

Note 3.—The following table indicates the international classes of AM broadcasting stations with which the domestic classes of stations set out in the previous paragraphs of this section correspond:

INTERNATIONAL AND DOMESTIC CLASSIFICATIONS OF STATIONS AND CHANNELS

International classes of AM stations	Corresponding U.S. classes of AM stations	Classes of Channels available in U.S. for each class of station
Class A	I–A	Clear channels.
	I–B	Do.
	I–N	Do.
Class B	II	Do.
	II–A	Do.
	II–B	Do.
	II–C	Do.
	II–D	Do.
	II–S	Do.
Class C	III	Regional channels.
	IV	Local channels.

* * * * *

2. 47 CFR 73.26 is revised in its entirety to read as follows:

§ 73.26 Regional channels; Class III Stations.

(a) The following frequencies are designated as regional channels and are assigned for use by Class III stations: 550, 560, 570, 580, 590, 600, 610, 620, 630, 790, 910, 920, 930, 950, 960, 970, 980, 1150, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1350, 1360, 1370, 1380, 1390, 1410, 1420, 1430, 1440, 1460, 1470, 1480, 1590 and 1600 kHz.

(b) Additionally, in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands the frequencies 1230, 1240, 1340, 1400, 1450, and 1490 kHz are designated as Regional channels, and are assigned for use by Class III stations. Stations formerly licensed to these channels in those locations as Class IV stations are redesignated as Class III stations.

3. 47 CFR 73.27 is revised to read as follows:

§ 73.27 Local channels; Class IV Stations.

Within the conterminous 48 states, the following frequencies are designated as local channels, and are assigned for use there by Class IV stations: 1230, 1240, 1340, 1400, 1450 and 1490 kHz.

4. 47 CFR 73.182 is amended by revising paragraph (a)(3), removing Note 1, revising the present Note 2 and redesignating it as Note 1, and adding a new Note 2, as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(3) Class III stations operate on regional channels and normally render primary service to the larger cities and the rural area contiguous thereto. They operate with powers not less than 0.5 kW and not more than 5 kW, and are normally protected to the 2500 uV/m groundwave contour nighttime and the 500 uV/m groundwaver contour daytime; provided, however, that Class IV stations in the 48 conterminous United States may, during nighttime hours, treat all stations assigned in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450 and 1490 kHz as if they were Class IV stations.

Note 1.—Class III stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands are permitted a maximum power of 50 kW day or night. Use of such higher power is subject to amendment of the U.S./Mexican Agreement and final disposition of NARBA. Pending such amendment, the maximum power permitted stations in these localities may not exceed 5 kW. Stations in the above-named places that are reclassified from Class IV to Class III stations under § 73.26(b) shall not be authorized to increase power to levels that, under the RSS procedure and the 50% exclusion rule in § 73.182(o), would increase the nighttime interference-free limit of cochannel Class IV stations in the conterminous United States.

Note 2.—Stations that were classified as Class III–B, before the distinctions between Class III–A and Class III–B stations were removed, shall—insofar as AM applications filed before March 10, 1986 are concerned—remain normally protected during nighttime hours to their 4000 uV/m contour.

* * * * *

5. 47 CFR 73.182(r) is amended by adding a note as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(r) * * *

Note.— For Class III stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands, 241 uV/m shall be used.

* * * * *

6. 47 CFR 73.182 is amended by revising the table in paragraph (v) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(v) * * *

Class of station	Class of channel used	Permissible power	Signal strength contour of area protected from objectionable interference [1]		Permissible interfering signal on same channel [2]	
			Day [3]	Night	Day	Night [4]
I–A	Clear	50 kW	SC 100 μV/m. AC 500 μV/m.	SC 500 μV/m(50% skywave).[7] AC 500 μ [8].	5 μV/m	25 μV/m.[7]
I–B	do	10 kW to 50 kW	SC 100 μV/m. AC 500 μV/m.	SC 500 μV/m 50% skywave. AC 500 μV/m [8].	5 μV/m	25 μV/m.
I–N	do	50 kW	SC 100 μV/m. AC 500 μV/m.	SC 100 μV/m 50% skywave. AC 500 μV/m.	5 μV/m	5 μV/m.
II–A	do	0.25 kW to 50 kW (daytime). 10 kW to 50 kW (nighttime).	500 μV/m	500 μV/m [9]	25 μV/m	25 μV/m.
II–B	do	0.25 kW to 50 kW	500 μV/m	2,500 μV/m [5, 6]	do	125 μV/m.
II–C	do	0.25 kW to 1 kW	500 μV/m	10,000 μV/m [5]	do	500 μV/m.
II–D	do	0.25 kW to 50 kW (daytime)	500 μV/m	Not prescribed	do	Not prescribed.
II–S	do	0.25 kW to 50 kW (daytime) less than 0.25 (nighttime).	500 μV/m	do	do	Do.
III	Regional	0.5 kW to 5 kW	500 μV/m	2,500 μV/m [5, 9]	do	125 μV/m.
IV	Local	0.25 to 1 kW	500 μV/m	Not prescribed [6]	do	Not prescribed.

[1] When a station is already limited by interference from other stations to a contour of higher values than that normally protected for its class, this contour shall be the established standard for such station with respect to interference from all other stations.
[2] For adjacent channel, see paragraph (w) of this section.
[3] Groundwave.
[4] Skywave field strength for 10 percent of more of the time.
[5] These values are with respect to interference from all stations except Class I–B, which stations may cause interference to a field strength contour of higher value. However, it is recommended that Class II stations be so located that the interference received from Class I–B stations will not exceed these values. If the Class II stations are limited by Class I–B stations to higher values, then such values shall be the established standard with respect to protection from all other stations.
[6] See paragraph (a)(4) of this section and Note 1 to paragraph (a)(3).
[7] Class I–A stations on channels reserved for the exclusive use of one station during nighttime hours are protected from co-channel interference on that basis.
[8] Applies only to nighttime operations of Class II–C stations coming within § 73.21(a)(ii), and to the operation of limited-time Class II–D stations during nighttime hours other than those during which they were authorized to operate as of June 1, 1960.
[9] During nighttime hours, Class IV stations in the conterminous 48 states may treat all Class III stations assigned to 1230, 1240, 1340, 1400, 1450 and 1490 kHz in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands as if they were Class IV stations.
Note.—SC = Same channel. AC = Adjacent channel.

7. 47 CFR 73.189 is amended by revising subparagraphs (b)(2)(i) and (ii) to read as follows:

§73.189 Minimum Antenna Heights or Field Strength Requirments.

* * * * *

(b)

(2) * * *

(i) Class IV stations, and stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450 and 1490 kHz that were formerly Class IV and were redesignated as Class III pursuant to Section 73.26(b), 45 meters or a minimum effective field strength of 241 mV/m for 1 kW (121 mV/m for 0.25 kW). (This height applies to a Class IV station on a local channel only. Curve A shall apply to any Class IV stations in the 48 conterminous states that are assigned to Regional channels.)

(ii) Class I–N and Class II stations, and Class III stations other than those covered in Section 73.189(b)(2)(i), a minimum effective field strength of 282 mV/m for 1 kW.

* * * * *

9. 47 CFR 73.190 is amended by adding a new paragraph (b)(3), reading as follows:

§73.190 Engineering Charts and Related Formulas

* * * * *

(b) * * *

(3) The field strength value in Figure 1a at 100 km also is to be used for distances less than 100 km. However, the actual great-circle distance is to be used in determining angle of departure.

* * * * *

[FR Doc. 86–2265 Filed 2–6–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50951–5182]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fisheries in the Hinchinbrook District, in the portion of the Eastern District north of 59°20′ N. latitude and west of 146°15′ W. longitude, and in the portion of the Western District north of 59°20′ N. latitude of Registration Area E (Prince William Sound), must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the Hinchinbrook District and the above-defined parts of the Eastern and Western Districts. This action is intended as a management measure to conserve Tanner crab stocks.

DATES: This notice is effective at noon, Alaska Standard Time (AST), February 4, 1986. Public comments on this notice of closure are invited until February 19, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

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Section 761.26(d) establishes three districts within Registration Area E to independently manage individual Tanner crab stocks. The optimum yield for the entire Prince William Sound area is 1.5 to 3.5 million pounds. The 1986 fishing season in these districts began on January 5, 1986 (50 FR 47549, November 19, 1985). Reasons for these closures follow:

In the Hinchinbrook District, in the portion of the Eastern District north of 59°20' N. latitude and west of 146°15' W. longitude, and in the portion of the Western District north of 59°20' N. latitude of Prince William Sound, approximately 240,000 pounds of Tanner crabs have been delivered by 11 vessels through January 23. The reported catch per unit of effort (CPUE) has declined from a maximum of 56 crabs per pot on January 6, 7, and 8 to a maximum of 20 crabs per pot on January 15, 16, and 17. Based on this rapidly declining CPUE early in the fishery, the Regional Director has determined that the conditions of Tanner crab stocks in these portions of Prince William Sound are substantially different from the conditions anticipated on November 1, 1985, the beginning of the fishing year, and this difference reasonably supports the need to protect those Tanner crab stocks by closing the above-described portions of the Prince William Sound area. These sections are therefore closed to all fishing for Tanner crab from noon, AST, February 4, 1986, until noon, Alaska Daylight Time, May 31, 1986, at which time the closure prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the above-described portions of Prince William Sound will be subject to damage by overfishing unless this closure takes effect promptly. NOAA, therefore, finds for good cause that advance opportunity for public comment on this order is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671, and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-2755 Filed 2-4-86; 4:44 pm]

BILLING CODE 3510-22-M

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50 CFR Part 671

[Docket No. 50951-5182]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the South Peninsula District of Registration Area J must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crabs by vessels of the United States in the South Peninsula District. This action is intended as a management measure to conserve Tanner crab stocks.

DATE: This notice is effective at noon, Alaska Standard Time (AST), February 5, 1986. Public comments on this notice of closure are invited until February 19, 1986.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing regulations at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J to independently manage individual Tanner crab stocks. One of these districts is the South Peninsula District. The 1986 fishing season in this District began on January 15, 1986 (50 FR 47549, November 19, 1985). Reasons for this closure follow:

As of January 28, 1986, approximately 73 vessels have landed 2.2 million pounds of Tanner crabs in the South Peninsula District. The catch per unit of effort (CPUE) in most of the district declined from 54 crabs per pot on January 18, 1986, to 25 crabs per pot on January 28, 1986. CPUE in one portion of the district has been reported to be as low as 9 crabs per pot. This decline in CPUE indicates a rapid depletion of the available Tanner crab stock and was unanticipated based on the 1985 survey results that indicated improved stock conditions.

Based on the rapidly declining CPUE so early in the fishery, the Regional Director has determined that the condition of the Tanner crab stock in the South Peninsula District is substantially different from the condition anticipated on November 1, 1985, the beginning of the fishing year, and that this difference reasonably supports the need to protect these Tanner crab stocks. The South Peninsula District, as defined in § 671.26(f)(1)(ii), is closed by this notice until noon, Alaska Daylight Time, May 15, 1986, at which time the closure of this district prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register** either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the South Peninsula District will be subject to damage by overfishing unless this

closure takes effect promptly. NOAA, therefore, finds for good cause that advance opportunity for public comment on this order is contrary to the public interest and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 86-2756 Filed 2-4-86; 4:38 pm]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 51, No. 26
Friday, February 7, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 99

[Docket No. 24903; Notice No. 86-1]

Transponder Requirements; Operations In or Out of U.S. Through a Coastal ADIZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This proposal would require aircraft to have an operating transponder when operating into, within, or out of the United States through a coastal Air Defense Identification Zone (ADIZ). The proposed action would assist in the identification of aircraft in and near the ADIZ and would promote enforcement of laws relating to illegal smuggling activities. Smuggling activity in small aircraft presents air safety problems. This proposal would promote air safety by reducing the incidence of aircraft use in smuggling activity.

DATE: Comments must be received on or before April 10, 1986.

ADDRESSES: Comments on the proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24903, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Burton Chandler, Airspace-Rules and Aeronautical Information Division, ATO-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426-8627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this advance proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the recommendations. Comments are specifically invited on any regulatory, economic, environmental, and energy aspects of the recommendations. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on ths notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24903." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before proposing any rule. Any proposed rule resulting from the recommendations contained in this notice may reflect comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of ANPRMs

Any person may obtain a copy of this ANPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this ANPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

The U.S. Customs Service of the Department of the Treasury has requested that the FAA take measures to identify all aircraft entering the United States. A letter dated July 11, 1985, from Deputy to the Assistant Secretary of the Treasury to the FAA Director of Civil Aviation Security summarizes the customs service request. A copy of that letter has been placed in the docket. The request is based on the major increase in illegal drug importation, and on the value to law enforcement officials of early positive identification of aircraft which may be engaged in such activity. Subpart A of Part 99 of the Federal Aviation Regulations (FAR) sets forth security requirements for aircraft operation in an ADIZ but does not set forth any transponder requirements for aircraft operating in an ADIZ. FAR 91.24 requires an air traffic control (ATC) radar transponder for operations above 12,500 feet above mean sea level (MSL), excluding the airspace below 2,500 feet above ground level (AGL), and for operation in a terminal control area (TCA). No other existing rule requires aircraft operations conducted in a coastal ADIZ to have or use an operable transponder. On November 1 the FAA published a rule requiring that aircraft having an operable transponder operate that transponder while airborne in the National Airspace System (50 FR 45599). The FAA is considering proposal of a similar requirement for operation in an ADIZ. Neither the rule nor the proposal would require installation of a transponder, however.

A large portion of the transport of illicit drugs into the United States has for some time been accomplished by aircraft flying into the United States through a coastal or domestic ADIZ. While the FAA does not have jurisdiction over antismuggling and related statutes, it is concerned with the growth of hazards to air commerce in the United States arising in connection with the increasing use of aircraft to escape detection in bringing narcotic drugs, marijuana, and depressant or stimulant drugs into the United States. The means for detection of these aircraft include low altitude radar, pursuit aircraft, and advanced police techniques. Any pilot committed to escaping detection in order to avoid severe penalties may be expected to engage in extremely dangerous flight techniques to avoid pursuit aircraft, including very low flight to avoid ground based radar, landing and taking off from unprepared landing areas, and operation in weather conditions beyond the capability of the aircraft or pilot. The FAA believes that these flight techniques create a safety hazard for other aircraft in the area and for persons and property on the ground. Thus, while other agencies are responsible for controlling the traffic in narcotic drugs, marijuana, and depressant or stimulant drugs and although the mere carriage of those items under normal conditions is not dangerous, the conduct of pilots engaged in smuggling activity poses a direct threat to air commerce.

Aircraft operating into the United States are subject to an identification process which involves, in part, the correlation of radar-detected targets with required flight plan and position report information. Radar targets of aircraft with an operating transponder are identified more quickly and more positively than radar targets of aircraft without a transponder. A requirement that aircraft entering the United States have an ATC transponder would greatly facilitate the routine identification of individual aircraft, and would permit quicker identification of those operators attempting to avoid detection and identification. The transponder requirement would be limited to coastal ADIZ airspace because the current designation of the Southern border domestic ADIZ is simply a line following the Mexican border of the United States. A simple requirement to have an operating transponder while crossing the border would not serve safety or law enforcement purposes. If a need is determined for mandatory transponder operation prior to crossing the Mexican border, as is proposed for the coastal ADIZ, that requirement would be the subject of future rulemaking.

The Proposal

The FAA is providing advance notice of its proposal for use of a transponder through coastal ADIZ's. This proposal would require aircraft operating into, within or out of the United States through a coastal ADIZ to have an operating transponder. The proposal is recognized as one that would require some operators to purchase new equipment. The FAA, therefore, solicits comments from all interested parties, on all aspects of the proposal. These comments will be given full consideration prior to any future agency action on the proposal.

Economic Evaluation

Agencies of the Federal Government are required by Executive Order 12291 to examine any proposed regulation to ascertain its economic impact and its potential benefits to society in comparison to the potential costs to society. Any regulatory proposal by the FAA must be accompanied by an evaluation quantifying, to the extent possible, the benefits and costs of such proposals. Therefore, it is essential that comments for or against the proposed required transponders for aircraft operating in an ADIZ include statements regarding the economic impacts perceived by the Commenter. As a result, FAA specifically solicits comments from individuals, corporate entities and organizations on the economic benefits and costs of the proposed regulations.

With this in mind, FAA suggests that comments address the following questions:

1. What benefits, other than those noted, would be derived from requiring transponders on aircraft operating in an ADIZ?

2. What incremental costs would be imposed on operators of aircraft through an ADIZ? Estimates of these costs should include consideration of the following:
   (a) Component costs—
   (1) Transponder units,
   (2) Installation.
   (b) Operating costs—
   (1) Weight/fuel,
   (2) Maintenance,
   (3) Additional training.
   (c) Others.

3. What are the estimated average life spans of transponders?

4. What estimated numbers of aircraft would be affected?

5. Would the proposed rules have a significant economic impact, either beneficial or detrimental, on small business, non-profit organizations, or governmental jurisdictions? If so, what are the types and sizes of the entities affected? Also, what is the nature and magnitude of the economic impact?

6. What, if any, alternatives to the proposed rules are available that would accomplish the same goals?

7. What are the costs and benefits of these alternatives and how do they compare to the costs and benefits of the proposed rule?

Responses to these questions should fully address the nature of the impact and the nature of the groups or types of operations, business or entities that are impacted. Commenters should describe and quantify the specific benefits and costs. They should be supported by factual data, to the extent possible. Otherwise, the reasons why costs are not quantifiable should be explained. Commenters should also provide the rational for their opinions, which might include information pertaining to type of operation and typical aviation practices, or publication practices. The FAA will examine separately the costs imposed on the Federal Government (e.g. equipment, education, training).

The benefit and cost questions outlined above cover broad areas of this ANPRM. The FAA desires comments pertaining to these areas of impact and any other areas that commenters feel may have an impact. The FAA invites particularly interested groups to gather the preferences, ideas, and comments of their group members, through such devices as articles in membership publications and polls of their membership.

The FAA does not have sufficient information to complete an economic evaluation of the proposal at this time. A full regulatory evaluation will be prepared with the assistance of comments received as a result of this advance notice, if necessary, in conjunction with any notice of proposed rulemaking that may be issued on this subject. For the reasons set forth in the preamble, the FAA has determined that the amendment does not involve a major rule under Executive Order 12291 and that this proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). On the basis of information received, the FAA will determine whether, under the criteria of the Regulatory Flexibility Act, this rule if promulgated would have a significant economic impact on a substantial number of small entities.

The authority citation for Part 99 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1502, 1510 and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

List of Subjects in 14 CFR Part 99

Air defense zone, Identification of foreign aircraft.

Issued in Washington, DC, on December 5, 1985.

Daniel F. Creedon,
Acting Director, Air Traffic Operations Service.

[FR Doc. 86-2666 Filed 2-6-86; 8:45 am]
BILLING CODE 4910-13-M

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FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9172]

Roswil, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Springfield, MO, grocer, among other things, to cease engaging in concerted action that restricts the gathering or reporting of comparative grocery price data. Additionally, respondent would be prohibited from: (1) Requiring price checkers to buy the surveyed items; (2) denying price checkers the same access to Roswil's stores as customers; and (3) coercing any price checker, publisher or broadcaster into discontinuing price reporting. Further, respondent would be required to take several steps to increase the likelihood that price surveys will be resumed in Springfield. According to the proposed order, the company must reimburse the local cable television station up to $1,000 of its costs if it decides to broadcast a comparative grocery price program and notify the public that such program will be aired.

DATE: Comments must be received on or before April 8, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bremer, FTC/B-921, Washington, DC 20580, (202) 724-1668.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Grocery stores, Trade practices.

Before Federal Trade Commission

In the matter of Roswil, Inc., a corporation, trading and doing business as Ramey Super Markets.

[Docket No. 9172]

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between Roswil, Inc., a corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Roswil, Inc., hereinafter sometimes referred to as "Roswil," is a Missouri corporation, trading and doing business as Ramey Super Markets. Its registered agent is Flavius Freeman, 1-130 Corporate Square, Springfield, Missouri.

2. Roswil has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of Section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Roswil admits all the jurisdictional facts set forth in the Commission's compliant in this proceeding.

4. Roswil waives:

a. Any further procedural steps;

b. The requirement that the Federal Trade Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

5. This agreement is for settlement purposes only and does not constitute an admission by Roswil that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Federal Trade Commission. If this agreement is accepted by the Federal Trade Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Roswil, in which event it will take such action as it may consider appropriate, or without further notice to Roswil issue and serve its decision containing the following Order in disposition of the proceeding and make information public in respect thereto. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time as provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to Roswil's address as stated in this agreement shall constitute service. Roswil waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or this agreement may be used to vary or contradict the terms of the Order.

7. A responsible official of Roswil has read the complaint and the Order contemplated hereby on behalf of Roswil. Roswil understands that once the Order has been issued, Roswil will be required to file one or more compliance reports showing that it has fully complied with the Order. Roswil further understands that it will be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For the porpose of this Order, the following definitions shall apply:

A. "Roswil" means Roswil, Inc., its divisions and subsidiaries, officers, directors, representatives, agents, employees, successors and assigns.

B. "Price check" or "price checking" means the collecting, from information available to customers, of retail prices of items offered for sale by any retail grocery store (SIC 5411), which is done neither by nor on behalf of a person engaged in the sale of groceries, and which information is used in price reporting.

C. "Price checker" means any person engaged in price checking.

D. "Price reporting" or "price report" means the dissemination to the public of price checking information through any medium by any person not engaged in the sale of groceries.

E. "Springfield" means the counties of Christian and Greene, Missouri.

F. "Customer" means any individual who enters a retail grocery store for the purpose of grocery shopping, whether or not that individual actually makes a purchase.

G. "Person" means individuals, corporations, partnerships, unincorporated associations, and any other business entity.

H. "Geographic area" means: (1) A Standard Metropolitan Statistical Area as defined by the Bureau of the Census, U.S. Department of Commerce, as of October 1, 1982; or (2) a county.

I. "Supermarket" means any retail grocery store (SIC 5411) with annual sales of more than one million dollars ($1,000,000.00).

II

It Is Further Ordered That:

A. Roswil shall forthwith cease and desist from taking any action in concert with any other person engaged in the sale of grocery products which has the purpose or effect of restricting, impeding, interfering with or preventing price checking or price reporting.

B. Except as provided in paragraphs II.C. and II.D., until September 7, 1989, Roswil shall cease and desist from taking or threatening to take any unilateral action that would:

1. Require price checkers to purchase items to be price checked as a condition of allowing them to price check; or

2. Deny price checkers the same access to Roswil's supermarkets as is provided to customers; or

3. Coerce, or attempt to coerce, any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting.

C. 1. Nothing in paragraph II.B. shall prevent Roswil from adopting reasonable, non-discriminatory rules governing the number of price checkers in its supermarkets at any one time for the purpose of preventing disruption of Roswil's normal business operations.

2. Nothing in subparagraph II.B.3. shall prevent Roswil from publicly commenting upon or objecting to any price report in which its prices are compared to those of any other grocery retailer.

3. Whenever Roswil believes that conditions exist that justify the exclusion of a price checker, it may submit to the Federal Trade Commission a sworn statement setting forth with particularity the facts that Roswil believes meet such conditions. For purposes of this Order, the only conditions justifying the exclusion of a price checker are that another supermarket operator with whose prices Roswil's prices are compared in a price report has knowingly tampered with or manipulated the results of such price report for its own competitive gain either (a) by the use of information wrongfully obtained and not available to all supermarket operators whose prices are being compared, or (b) by inducing any price reporter or price checker to cause false information to be published or broadcast. Following the Federal Trade Commission's actual receipt of such statement, Roswil may exclude the price checkers from its supermarkets in the geographic area(s) covered by the affected price report for so long as the conditions set forth in Roswil's statement shall exist. In any civil penalty action against Roswil for a violation of subparagraph II.B.2. occurring after notice to the Federal Trade Commission was given by Roswil as provided in this subparagraph, Roswil shall have the burden of proving, by a preponderance of the evidence, that the conditions justifying the exclusion of a price checker as set forth in this subparagrpah have been met. In meeting its burden, Roswil may offer evidence only for the purpose of proving the facts set forth in its statement to the Federal Trade Commission. Nothing in this subparagraph shall be construed to be an exception to the prohibitions of paragraph II.A. of this Order.

D. 1. Nothing in paragraph II.B. shall prohibit Roswil from requiring any company to pay a fee for collecting in its stores information that is not available to customers.

2. Nothing in paragraph II.B. shall prohibit Roswil from requiring any company to pay a fee for collecting information in its stores, if said company is presently or has been under contract to Roswil to pay such a fee for collecting such information, or if the primary purpose of collecting such information is not to disseminate it to the public.

III

It Is Further Ordered That, upon the resumption of price reporting by TeleCable of Springfield that is similar in quality and coverage to that broadcast by it prior to October 14, 1981, and that includes any Roswil supermarket, and upon receipt by Roswil of written request for payment from TeleCable, Roswil shall reimburse TeleCable for its actual cost of obtaining a price reporting program up to the amount of two hundred fifty dollars ($250.00) per week. Roswil's obligation under this Part (III) shall terminate either when it has reimbursed TeleCable in the total amount of one thousand dollars ($1,000.00) or three (3) years following the date on which this Order becomes final, whichever occurs first. Roswil shall not reimburse TeleCable for costs incurred by TeleCable during any week for which TeleCable's costs are reimbursed by any other person.

IV

It Is Further Ordered That, within seven (7) days following the date on which this Order becomes final, Roswil shall send a letter, a copy of which is attached here as Exhibit A, together with a copy of this Order, to TeleCable of Springfield, informing TeleCable of Roswil's obligations under Parts II and V of this Order, TeleCable's rights under Part III, and the notices that Roswil must receive from TeleCable before certain Order provisions become binding upon Roswil.

V

It is Further Ordered That, if at any time during the two years following the date on which this Order becomes final, Roswil is notified in writing by TeleCable of Springfield that price reporting that includes any of Roswil's supermarkets has resumed in Springfield:

A. For a period of sixty (60) days following the receipt of such notice, Roswil shall post signs no smaller than 30 inches by 40 inches in a front window in each of Roswil's supermarkets in Springfield, stating:

Grocery Price Survey

A price survey comparing prices of selected grocery items at Ramey's and other Springfield grocery supermarkets is being broadcast over cable television. This comparative price survey can be seen on channel _____ and is broadcast from _____ to _____.

B. For a period of sixty (60) days following the receipt of such notices, whenever Roswil places food advertisements of one-half page or larger in any printed advertising medium with circulation of 15,000 or more copies in Springfield, Roswil shall publish an announcement as a part thereof in the same language provided in paragraph V.A. This announcement shall be no smaller than 3 inches high by 3 inches wide and shall be printed in conspicuous type. In each week in which Roswil does not place a one-half page or larger food advertisement in such printed advertising medium, Roswil shall place this announcement as a display advertisement in any printed advertising medium with circulation of 15,000 or more copies in Springfield.

VI

It Is Further Ordered That Roswil shall, within seven (7) days after the date on which this Order becomes final, and once a year thereafter for three

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years, provide a copy of this Order to each of its officers actively engaged in the operation of its supermarkets in Springfield and to each manager of a Ramey supermarket located in Springfield, and secure from each such individual a signed statement acknowledging receipt of this Order.

VII

It Is Further Ordered That Roswil shall, within sixty (60) days after the date on which this Order becomes final, with the Commission a verified written report, setting forth in detail the manner and form in which Roswil has complied with this Order. Additional reports shall be filed at such other times as the Commission may by written notice require. Each compliance report shall include all information and documentation as may be required by the Commission to show compliance with this Order.

VIII

It Is Further Ordered That Roswil shall, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in it such as dissolution, assignment or sale resulting in the emergence of a successor corporation, or any other proposed change in the corporation or its retail grocery operations, which may effect compliance obligations arising out of this Order.

Exhibit A

TeleCable of Springfield,
1533 South Enterprise, Springfield, Missouri 65801

Dear Sir or Madam: This is to notify you that Roswil, Inc. ("Roswil"), which operates Ramey Super Markets in Springfield, Missouri, has entered into a consent order with the Federal Trade Commission in which it has agreed that it will not interfere with efforts by independent parties such as Tele-Cable of Springfield to engage in price reporting or price checking in Roswil's grocery stores in Springfield. Roswil has agreed that it will not require price checkers to purchase the items being price checked, will not deny price checkers the same access to its supermakets as is provided to customers, and will not attempt to coerce any price checker, publisher or broadcaster into refraining from or discontinuing price checking or price reporting. The terms of and limitations on Roswil's agreement are set forth in a consent order issued by the Federal Trade Commission, a copy of which is enclosed herewith.

If TeleCable of Springfield institutes a price reporting program similar or superior in quality and coverage to the one broadcast by TeleCable in 1981, and if the program includes any of Roswil's grocery stores in Springfield, Missouri, Roswil will reimburse TeleCable for its actual costs of obtaining price reports, up to the amount of $250 per week, and up to $1,000 in total. Roswil will also place notices in its Springfield grocery stores and in its weekly advertisements, informing consumers of TeleCable's price surveys. The precise terms of Roswil's obligations to place such notices, and to reimburse TeleCable for certain of its costs, are set forth in the enclosed consent order.

In order to receive any funds to which you may be entitled and to effect the placement of notices described above, please notify Roswil in writing, c/o President, Ramey Super Markets, 3259 East Sunshine, Springfield, Missouri 65804, stating when the program began or is scheduled to begin, the time and channel on which the survey will be broadcast, and TeleCable's costs, if any, of obtaining the survey.

Very truly yours,

President,

Ramey Super Markets.

Enclosure.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Roswil, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

A complaint was issued against Roswil, Inc., ("Roswil") and two other Springfield, Missouri, grocery retailers on December 18, 1983, charging them with a conspiracy to prevent an independent price checking firm from collecting comparative grocery price information from their stores for broadcast to the public over the local cable television station. A fourth retailer, Dillon Companies, Inc., had previously signed a consent agreement, which became final on October 13, 1983. The complaint against Roswil charges that, by agreeing with others to prevent the collection and public dissemination of comparative grocery price information, Roswil has engaged in conduct that constitutes a restraint on price competition and a group boycott, and that Roswil's conduct constituted an unfair method of competition or an unfair act or practice in violation of section 5(a)(1) of the Federal Trade Commission Act. The complaint alleges that this conduct had the following anticompetitive effects (1) price competition among Springfield grocery retailers has been suppressed; and (2) consumers in Springfield have been deprived of price information that can be used in the selection of a grocery store.

The proposed order provides that Roswil must: (1) refrain from engaging in concerted action to impede the collection or dissemination of comparative grocery price information; (2) refrain until September 7, 1989, from taking three specific types of actions to impede the collection or dissemination of comparative grocery price information; (3) reimburse the Springfield, Missouri, cable television station up to $1,000 for the broadcast of a comparative grocery price program, if the cable station elects to broadcast such a program; (4) if the cable station elects to broadcast such a program, to post signs and place advertisements for sixty (60) days notifying the public that such a program is being broadcast; (5) notify certain of its officers and employees of the terms of the order; (6) file periodic verified written compliance reports setting forth its compliance with the provisions of the order; and (7) provide the Federal Trade Commission at least 30 days notice prior to effecting changes in the corporation that may affect its compliance obligations arising from the order.

The proposed order, by requiring Roswil to refrain from concerted and individual action to impede the collection or dissemination of comparative grocery price information, should ameliorate the anticompetitive effects resulting from the concerted action. The proposed order is intended to permit the marketplace to determine whether a comparative price survey is broadcast in Springfield, and to ensure that the development of new forms of consumer price information is not inhibited.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,
Acting Secretary.

[FR Doc. 86-2802 Filed 2-6-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

Importation of Motor Vehicles and Boats by Employees of Public International Organizations

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Currently, the members of the Secretariat of a public international organization are exempted from compliance with federal emission standards, motor vehicle safety standards, and boat safety standards when importing a motor vehicle, boat, or related piece of equipment into the U.S. More than 15,000 staff personnel of such organizations are eligible to make nonconforming importations and the State Department has determined that the number of exemptions has extended well beyond the intended limits of the program.

Along with the problem associated with the number of people making such nonconforming importations, continuation of the exemption program would allow for the continued unjustified introduction into the U.S. of motor vehicles and boats which injure the public health and pose an unnecessary risk to the public safety.

The State Department has informed Customs that the exemption is not required by international law and is no longer warranted. Therefore, this document proposes to remove the exemption available to public international organization employees. In the rare instance when some international agreement might require such a privilege being granted, or to accommodate special circumstances, the proposal allows the State Department to designate certain individuals who would be granted the privilege of making nonconforming importations.

The document invites written comments on the proposal for consideration before final regulations are prepared.

DATES: Comments must be received on or before April 8, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: William Burns, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8651).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service, in the discharge of its duties, is often called upon to help enforce some 400 statutory and regulatory requirements on behalf of approximately 40 other Federal agencies. Three such instances are the cooperative efforts of Customs and the Environmental Protection Agency, the National Highway Traffic Safety Administration, and the Coast Guard, respectively, in enforcing regulations pertaining to the importation of motor vehicles, motor vehicle engines, boats, and related equipment. The specific regulations involved are § 12.73, Customs Regulations (19 CFR 12.73), concerning emission standards for imported motor vehicles and engines, § 12.80, Customs Regulations (19 CFR 12.80), concerning safety standards for imported motor vehicles, and § 12.85, Customs Regulations (19 CFR 12.85), concerning safety standards for imported boats.

In all three of these regulations, there are examples of certain types of importations which will be exempted from compliance with the applicable emission or safety standard. Common to all three is the exemption available to members of the Secretariat of a public international organization. The exemptions appear at §§ 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5), Customs Regulations (19 CFR 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5)). More precisely, the exemption is available to a member of the Secretariat of a public international organization, so designated pursuant to the International Organizations Immunities Act (22 U.S.C. 288), on assignment in the U.S. A list of these organizations is included in § 148.87, Customs Regulations (19 CFR 148.87).

The International Organizations Immunities Act (the IOIA) was passed in 1945 to bring some standardization to the conduct of affairs with public international organizations. The U.S. had been dealing directly with other governments for a very long time, and diplomatic law was fairly well established. However, the U.S. was dealing with other countries through the medium of public international organizations with increasing frequency at this time. The IOIA was the U.S. response to the need for formal methods of dealing with public international organizations. The law was passed with the thought in mind that public international organizations, and the employees thereof, should be granted privileges and immunities similar to, but less extensive, than the privileges and immunities granted to foreign governments and diplomats. This reflected the fact that public international organizations were not foreign governments but were public organizations often carrying on work or research of a governmental nature.

The use of the IOIA in the three Customs Regulations mentioned above has expanded beyond the concept of the law as passed in 1945. It is not a necessary practice to grant employees of public international organizations the right to import nonconforming motor vehicles or boats for personal use. The IOIA was intended to extend privileges and immunities only to official acts of the organization and its empolyees.

The State Department has advised Customs that the current exemption program is not required by any international law and is no longer warranted. Currently, over 15,000 staff employees of public international organizations can import nonconforming motor vehicles, motor vehicle engines, boats, and related pieces of equipment for personal use. The State Department's Office of Foreign Missions has informed Customs that this number of exemptions has extended well beyond the intended limits of the program. Also contributing to the proposal to eliminate the exemption program is the unnecessary harm inflicted on the U.S. environment by these nonconforming imports and the unnecessary risk they pose to the public safety. Accordingly, §§ 12.73, 12.80, and 12.85 would be amended by removing the exemption available to employees of public international organizations.

To accommodate the rare instance in which a binding international commitment requires that such an exemption be granted, or special circumstances exist, it is proposed to add language to §§ 12.73, 12.80, and 12.85, permitting the State Department to designate individuals who are not foreign government diplomatic personnel, but who are otherwise entitled to import nonconforming motor vehicles, motor vehicle engines, boats or related equipment.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the

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Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 12

Air pollution control, Marine safety, Motor vehicle pollution, Motor vehicle safety, Motor Vehicles.

Proposed Amendments

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624. Section 12.73 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601; § 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310.

2. It is proposed to revise § 12.73(b)(5)(iv) to read as follows:

§ 12.73 Federal motor vehicle air pollution control

* * * * *

(b) * * *

(5) * * *

(iv) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor vehicle emission standards, and the importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S., or is a member of the personnel of a foreign government on assignment in the U.S., or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law, and that such vehicle or engine will not be sold in the U.S.; or

* * * * *

3. It is proposed to revise § 12.80(b)(1)(vi) to read as follows:

§ 12.80 Federal motor vehicle safety standards.

* * * * *

(b) * * *

(1) * * *

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S., or a member of the personnel of a foreign government on assignment in the U.S., or other individual who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State in accordance with general principles of international law, is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the U.S., the name of the Embassy to which he is accredited is stated on the declaration).

* * * * *

4. It is proposed to revise § 12.85(c)(5) to read as follows:

§ 12.85 Coast Guard boat and associated equipment safety standards.

* * * * * *

(c) * * *

(5) *Products owned by certain foreign governments.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the U.S., is a member of the personnel of a foreign government on assignment in the U.S., or other individual who comes within the class of persons for whom free entry of boats has been authorized by the Department of State in accordance with general principles of international law, and that he is importing the product for purposes other than resale.

* * * * *

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: January 22, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-2742 Filed 2-6-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 629

Job Training Partnership Act; Reports Required; Technical Amendment

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor is publishing a proposed technical amendment to the "Reports Required" section of the Job Training Partnership Act regulations. The purpose is to conform the regulations to proposed new reporting requirements which provide for the submission of reports semiannually.

DATE: Written comments are invited from the public. Comments must be submitted on or before March 10, 1986.

ADDRESS: Comments should be addressed to the Assistant Secretary of Labor for Employment and Training, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213. Attention: Robert N. Colombo.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training programs Employment and Training Administration, U.S. Department of Labor, Room 6402, 601 D Street NW. Washington, DC 20213. Telephone 202-376-6093.

SUPPLEMENTARY INFORMATION: The Department of Labor is proposing changes to the reporting requirements for JTPA programs. This technical amendment is being proposed to conform the regulations at 20 CFR 629.36 to the proposed reporting requirements which include the semiannual submission of reports. (See Vol. 51, No. 9 of the **Federal Register**, pp. 1569-76, 1/14/86). The proposal to place Title II-A and Title III Statewide enrollment and expenditure data on a semiannual reporting basis is based on the Department's concern that many of the budget pressures now faced were not anticipated when the annual submission was authorized starting with PY 1984. The data available from an annual report is too out-of-date to respond to Congressional inquiries during the budget process and provide a sound basis for the Department's budget recommendations. Semiannual reporting and the addition of the proposed expenditure detail will also give the Department information on what has been found to be widely differing

expenditure rates of programs under the Act.

Regulatory Impact

This proposed rule is a technical amendment conforming to changes in JTPA reporting requirements. As such, it does not have the financial or other impact to make it a major rule, and therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127.

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. The reports under the rule are to be made by States, which are not small entities as defined under the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed rule changes an information collection requirement previously approved by the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.* The applicable reporting requirement for grantees would no longer be limited to an annual period. As would be permitted by the proposed rule, the Department of Labor is requesting OMB's approval pursuant to the Paperwork Reduction Act, for the report to be made semiannually.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at No. 17.250, "Job Training Partnership Act (JTPA)".

List of Subjects in 20 CFR Part 629

Grant programs, Labor, Manpower training programs.

Proposed Rule

Accordingly, Part 629 of Chapter V of Title 20, Code of Federal Regulations is proposed to be amended as follows:

PART 629—[AMENDED]

1. The authority citation for Part 629 continues to read as follows:

Authority: Job Training Partnership Act, Sec. 169, Pub. L. 97-300, 96 Stat. 1322 (29 U.S.C. 1501 et seq.).

2. Section 629.36 is revised to read as follows:

§ 629.36 Reports required.

The Governor shall report to the Secretary pursuant to instructions issued by the Secretary. Reports shall be required by the Secretary no more frequently than semiannually. Reports shall be submitted to the Secretary within 45 calendar days after the end of the report period. (Section 165(a)(2))

Signed at Washington, DC, this 3rd day of February 1986.

Roger D. Semerad,

Assistant Secretary for Employment and Training.

[FR Doc. 86-2827 Filed 2-6-86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 82N-0163]

Biological Products; Blood and Blood Derivatives; Implementation of Efficacy Review

Correction

In FR Doc. 85-30007 beginning on page 52602 in the issue of Tuesday, December 24, 1985, make the following corrections:

1. On page 52720, third column, in § 606.151 (b), third line, "of" should read "or".

2. On page 52721, first column, in § 610.53 (a), in the table, second column, third line from the bottom, "21 days" should read "35 days".

3. On page 52722, second column, in § 640.65 (b)(2)(i), first line, "Expect" should read "Except".

4. On page 52722, third column, in § 640.84(b), second line, "NO" should read "DO". Also, in § 640.84 (c), second line, "of" should read "or".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Quazepam and Midazolam Into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is a proposed rule to place the benzodiazepine drugs, quazepam and midazolam, into Schedule IV of the Controlled Substances Act (21 U.S.C. 801 *et seq.*). The Administrator of the Drug Enforcement Administration has received recommendations from the Department of Health and Human Services that quazepam and midazolam be controlled in Schedule IV.

DATE: Comments must be submitted on or before March 10, 1986.

ADDRESS: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control; Narcotics, Prescription drugs.

The Administrator of the Drug Enforcement Administration received a letter dated December 18, 1985 regarding quazepam and another letter dated January 13, 1986 regarding midazolam from the Acting Assistant Secretary for Health, on behalf of the Secretary of the Department of Health and Human Services, recommending that each substance be placed into Schedule IV of the Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 [21 U.S.C. 801-966]). Enclosed with each letter from the Acting Assistant Secretary was a scientific and medical evaluation which listed the factors which the Act requires the Secretary to consider, and summarized the matters considered by the Acting Assistant Secretary in recommending the control of quazepam and midazolam under the Controlled Substances Act. In his letters, the Acting Assistant Secretary requested that the Drug Enforcement Administration delay the publication of the proposed rulemaking until notification of final approval by the FDA. The Drug Enforcement Administration has been advised that the NDA approval letters have been forwarded to the sponsors of each of the drugs in question, and that FDA recommends that the rulemaking procedures be initiated.

This proposed rulemaking is published based upon the letters received from the Food and Drug Administration and the Acting Assistant Secretary for Health that the NDA's for quazepam and midazolam have been approved. The final rule in this matter will be issued when the Administrator receives formal notification from the

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Assistant Secretary for Health or the Food and Drug Administration that the NDA's for quazepam and midazolam have received final approval from the Food and Drug Administration.

The factors considered by the Secretary for each of the drugs, quazepam and midazolam, were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the drug (or other substance);

(4) Its history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) What, if any, risk to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

Relying on the scientific and medical evaluations and the recommendations of the Acting Assistant Secretary for Health, received in accordance with section 201(f) of the Act (21 U.S.C. 811(f)), the Administrator of the Drug Enforcement Administration, pursuant to sections 201(a) and 201(b) of the Act, (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Based on information now available, quazepam and midazolam each appear to have a low potential for abuse relative to the drugs or other substances currently listed in Schedule III.

(2) Quazepam and midazolam, upon final approval of each new drug application by the Food and Drug Administration, will each have currently accepted medical uses in treatment in the United States.

(3) Abuse of either quazepam or midazolam may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

PART 1308—[AMENDED]

Therefore, under the authority vested in the Attorney General by section 201(a) of the Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Drug Enforcement administration by regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby proposes to amend 21 CFR 1308.14(c) to read as follows:

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811(a).]

2. Section 1308.14(c) would be revised to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(1)	Alprazolam	2882
(2)	Barbital	2145
(3)	Bromazepam	2748
(4)	Camazepam	2749
(5)	Chloral betaine	2460
(6)	Chloral hydrate	2465
(7)	Chlordiazepoxide	2744
(8)	Clobazam	2751
(9)	Clonazepam	2737
(10)	Clorazepate	2768
(11)	Clotiazepam	2752
(12)	Cloxazolam	2753
(13)	Delorazepam	2754
(14)	Diazepam	2765
(15)	Estazolam	2756
(16)	Ethchlorvynol	2540
(17)	Ethinamate	2545
(18)	Ethyl loflazepate	2758
(19)	Fludiazepam	2759
(20)	Flunitrazepam	2763
(21)	Flurazepam	2767
(22)	Halazepam	762
(23)	Haloxazolam	2771
(24)	Ketazolam	2772
(25)	Loprazolam	2773
(26)	Lorazepam	2885
(27)	Lormetazepam	2774
(28)	Mebutamate	2800
(29)	Medazepam	2836
(30)	Meprobamate	2820
(31)	Methohexital	2264
(32)	Methylphenobarbital (mephobarbital)	2250
(33)	Midazolam	2884
(34)	Nimetazepam	2837
(35)	Nitrazepam	2834
(36)	Nordiazepam	2838
(37)	Oxazepam	2835
(38)	Oxazolam	2839
(39)	Paraldehyde	2585
(40)	Petrichloral	2591
(41)	Phenobarbital	2285
(42)	Pinazepam	2883
(43)	Prazepam	2764
(44)	Quazepam	2881
(45)	Temazepam	2925
(46)	Tetrazepam	2886
(47)	Triazolam	2887

* * * * * *

Interested persons are invited to submit their comments or objections in writing regarding this proposal. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief. Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

In the event comments, objections, or requests for a hearing received in response to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register** summarizing the issues to be heard and setting the time for the hearing (which will not be less than 30 days after the date of the order).

If no objections presenting grounds for a hearing on this proposal are received within the time limitation or if interested parties waive or are deemed to have waived their opportunity for a hearing or to participate in a hearing, the Administrator, after giving consideration to written comments and objections, will issue his final order pursuant to 21 CFR 1308.48 without a hearing.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the control of quazepam or midazolam, as proposed herein, will have no significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). These scheduling actions relate to the proposed initial control of drugs not previously approved for marketing in the United States.

In accordance with the provisions of section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)), this proposal to place each substance, quazepam and midazolam, into Schedule IV is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291.

Dated: February 3, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–2732 Filed 2–6–86; 8:45 am]

BILLING CODE 4410-09-M

28 CFR Part 16

[AAG/A Order No. 5–86]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act, 5 U.S.C. 552a. This system is the "Declassification Review System (JUSTICE/OLP–004)." Information in this system relates to official Federal investigations and matters of law enforcement. The exemption is needed to protect ongoing investigations, material which has been properly classified pursuant to Executive Order 12356, the privacy of third parties, and the identities of confidential sources involved in such investigations.

DATE: Submit any comments by March 10, 1986.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 9002, 601 D Street NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272–6474.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register**, the Department of Justice provides a description of the "Declassification Review System."

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, and Sunshine Act.

Pursuant to the authority invested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR 16.73 is amended by adding paragraphs (g) and (h) as set forth below.

Dated: December 18, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR 16.73 by adding paragraphs (g) and (h) as follows:

§ 16.73 Exemption of Office of Legal Policy System—limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5) and (g):

(1) Declassification Review System (JUSTICE/OLP–004).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the Department of Justice as well as the recipient agency. This would permit record subjects to impede the investigation, e.g., destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

(3) From subsection (d) to the extent that information in this record system relates to official Federal investigations and matters of law enforcement and/or is properly classified pursuant to Executive Order 12356. Individual access to these records might compromise ongoing investigations, reveal confidential sources or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation, or jeopardize national security or foreign policy interests. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effect law enforcement, it is appropriate to retain all information which may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness, and completeness of all information obtained.

(5) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(6) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(7) From subsections (e)(4)(G) and (H), and (g) because this system is exempt from the access provisions of subsection (d) pursuant to subsections (j) and (k) of the Privacy Act.

[FR Doc. 86–2698 Filed 2–6–86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program modifications submitted by Ohio as amendments to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments consist of proposed changes to the Ohio regulations at 1501:13–3–05, 1501:13–4–04, 1501:13–4–13 and 1501:13–9–04. The amendments allow registered surveyors to prepare and certify maps for permit applications and to design and certify construction of drainage control systems jointly with a registered professional engineer. The amendments also add informational and mapping requirements to permit applications for cultural and historic resources eligible for listing on the National Register of Historic Places.

This notice sets forth the time and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

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DATES: Written comments from the public not received by 4:30 p.m., March 10, 1986 will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Ohio regulatory program. If requested, a public hearing on the proposed amendments has been scheduled for February 27, 1986. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by February 24, 1986 of. If no person has contacted Ms Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing if requested, is scheduled for 1:00 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone (614) 866–0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street NW., Washington, DC 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 Federal Register (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in August 10, 1983 Federal Register.

II. Submission of Revisions

By letter dated October 28, 1985, Ohio submitted proposed program amendments consisting of:

(1) Revisions to 1501:13–3–05 (10/18/85) to add cultural and historic resources eligible for listing on the National Register of Historic Places to the definition of "historic lands";

(2) Revisions to 1501:13–4–04 (10/18/85) to allow registered surveyors to prepare the maps necessary for surface coal mining permit applications; to add requirements for permit information and maps showing cultural and historic resources eligible for listing on the National Register of Historic Places, and to redefine prime farmland exemptions to include land that has not been historically used for cropland;

(3) Revisions to 1501:13–9–04 (10/18/85) that allow the design and certification of construction of drainage control systems and sedimentation ponds by either a registered professional engineer or a registered professional engineer and a registered surveyor to the extent joint certification is required or permitted by the regulatory authority; and

(4) Revisions to 1501:13–4–13 (10/21/85) to allow registered surveyors to prepare supplementary maps, cross-sections and plans necessary for underground coal mining permit applications; to add requirements for permit information and maps showing cultural and historic resources eligible for listing on the National Register of Historic Places, and to allow the preparation of detailed design plans and maps by registered professional engineers only.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSMRE's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendments. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

III. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 2291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 1986.

Gary Bennethum,

Acting Deputy Director, Operations and Technical Services Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86–2734 Filed 2–6–86; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Reopening and Extension of Public Comment Period on Proposed Modifications to the Pennsylvania Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Reopening and extension of public comment period.

SUMMARY: OSMRE is reopening and extending the public comment period on proposed amendments to the Pennsylvania Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) submitted to OSMRE by Pennsylvania. The amendments are intended to satisfy two conditions of the Secretary of the Interior's approval of the Pennsylvania program. The two conditions, listed at 30 CFR 938.11(d) and 938.11(k), pertain to prime farmland requirements for proposed mining operations in the anthracite region and to bond release procedures. The State also submitted proposed changes to its permitting and blasting regulations.

These amendments were initially submitted by the State on November 2, 1984. OSMRE published a notice in the Federal Register on January 4, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendments (50 FR 486).

Following a review of the Pennsylvania amendments, OSMRE notified the State on April 24, 1985, of its concerns about the amendments. On September 5, 1985, the State responded to the issues set forth in OSMRE's letter.

Accordingly, OSMRE is reopening and extending the public comment period on Pennsylvania's amendment of November 2, 1984, as clarified by the State's letter of September 5, 1985. This action is being taken to provide the public an opportunity to consider the adequacy of the proposed amendments in light of the State's clarification.

DATE: Written comments from members of the public not received by 4:30 p.m. on February 24, 1986, will not necessarily be considered in the Secretary's decision on whether the proposed amendments satisfy the criteria for approval.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd St., Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Copies of the Pennsylvania program, the proposed modifications to the program, records of meetings and all written comments received in response to this notice will be available for public review at the OSMRE Field Office above and the OSMRE Headquarters office listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd St., Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of that proposed program as outlined in 30 CFR Part 732, the Secretary of the Interior disapproved the program. The State resubmitted its program on January 25, 1982, and, subsequently the Secretary approved the program conditioned on the correction of minor deficiencies. Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanations of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, Federal Register (47 FR 33050). Additionally, on April 20, 1983, the United States District Court for the Middle District of Pennsylvania in *Pennsylvania Coal Mining Association v. Watt,* Civil No. 82–1129, remanded to the Secretary for correction the provision in the Pennsylvania program concerning the timing of the bond release hearing and the decision. Pursuant to 30 CFR 732.17(e), the Secretary notified Pennsylvania by a letter dated June 7, 1983, that a State program amendment was required to revise the State provision. In the Federal Register (48 FR 27102) dated June 13, 1983, OSMRE announced its intention to impose new condition (k) on the approval of the Pennsylvania program to comply with the district court decision. The State responded to OSMRE's June 7, 1983, letter on July 27, 1983, and advised OSMRE that it would amend its regulations (PA 86.171) to rectify the matter. In the Federal Register dated September 6, 1983 (48 FR 40223), OSMRE imposed condition (k).

II. Submission of Program Amendments

On November 2, 1984, the Pennsylvania Department of Environmental Resources (DER) submitted program amendments to satisfy the requirements of the Secretary's conditions of approval of the Pennsylvania program listed at 30 CFR 938.11(d) and 938.11(k).

Condition (d) stipulates that Pennsylvania must submit to the Secretary copies of promulgated regulations, or otherwise amend its program to require (1) that the applicant conduct a prime farmland investigation prior to mining in the anthracite region which is no less effective than 30 CFR 779.27, 783.27 (now cited at 30 CFR 785.17(b)), and in accordance with section 507(b)(16) of SMCRA; (2) that the applicant obtain with respect to prime farmland, a negative determination when proposing to mine coal in the anthracite region which is no less effective than 30 CFR 786.19(1) and section 510(d)(1) of SMCRA; and (3) the prohibition of bond release for anthracite mining operations until after the soil productivity for prime farmland has been returned to a level of yield comparable with non-mined prime farmland which is no less effective than 30 CFR 807.12(e)(2)(iii) (now cited at 30 CFR 800.40(c)(2))in accordance with section 519(c)(2) of SMCRA.

Condition (k) stipulates that Pennsylvania must submit to the Secretary a copy of promulgated regulations or other amendments to its program to contain provisions no less effective than 30 CFR 800.40 (b)(2) and (f) to require the State to hold a bond release hearing or informal conference within 30 days after it is requested and that a decision be rendered within 30 days after the hearing or informal conference has been held.

In addition to amendments to satisfy conditions (d) and (k), Pennsylvania also submitted for OSMRE's approval proposed changes amending sections 88.24, 88.30, 88.134, 88.135, 88.136, 88.137, 88.491 of Pennsylvania's regulations.

OSMRE announced receipt of the amendments and initiated a public comment period on January 4, 1985 (50 FR 486). The comment period closed on January 24, 1985.

During review of the amendments, OSMRE identified some concerns related to anthracite operations on prime farmland and to blasting operations within 500 feet of any active underground mine. OSMRE's concerns are fully explained in its letter to the State of April 24, 1985. On September 5, 1985, Pennsylvania responded to the issues raised by OSMRE.

The proposed amendments of November 2, 1984, and the subsequent material are available for review, in full text, at the addresses listed above under **"ADDRESSES".** OSMRE seeks public comment on whether the proposed modifications to the Pennsylvania permanent program listed above satisfy the Secretary's conditions of approval (d) and (k) and meet the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17. If the

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Secretary determines the proposed modifications are consistent with SMCRA and no less effective the OSMRE's regulations, the amendments will be approved, and 30 CFR 938 modified accordingly.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 3, 1986.

Arthur W. Abbs,

Acting Assistant Director, Program Operations.

[FR Doc. 86-2690 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151, 154, and 155

[CGD 85-026]

Pollution Prevention, Implementation of Amendments to MARPOL 73/78

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the oil pollution prevention regulations for ships in order to implement the amendments and interpretations to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) that were adopted at the 20th Session of the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) and correct the MARPOL 73/78 implementing final rulemaking of October 6, 1983 (48 FR 45704).

Implementation of these provisions will maintain the desired parallel between U.S. regulations and the international requirements of MARPOL 73/78. Maintaining this parallel will help to ensure U.S. ships will be in compliance with mandatory international requirements thereby allowing them to engage in uninterrupted international trade while at the same time helping to ensure the U.S. shipping industry is not unnecessarily burdened with regulatory requirements not mandated by MARPOL 73/78. Ships which do not comply with these regulations will not be in compliance with MARPOL 73/78 as amended and may therefore encounter difficulties in international trade.

DATE: Comments must be received by March 24, 1986.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/24) (CGD 85-026), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593. Comments will be available for inspection and copying from 7:00 a.m. to 3:30 p.m., Monday through Friday, except holidays at the Marine Safety Council, Room 2110, at the address above. The telephone number is 202-426-1477. The amendments and interpretations to MARPOL 73/78 are contained in the IMO publication "Supplement to the Regulations for the Prevention of Pollution by Oil." Copies of this publication can be obtained from the International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, England for 2.5 English pounds (publication no. 527.85.06.E).

FOR FURTHER INFORMATION CONTACT: Lieutenant R.J. Jones, Office of Marine Environment and Systems (G-WER-3), Room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washigton, DC 20593 (202) 426-9573.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 85-026), and the specific section of the proposal to which their comments apply, and give reasons for each comment. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self addressed postcard.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one will be held if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in the drafting of this proposal are Lieutenant R.J. Jones, Project Officer, Office of Marine Environment and Systems (G-WER-3), and Michael N. Mervin, Project Attorney, Office of the Chief Counsel (G-LRA).

Background

A Final Rulemaking implementing MARPOL 73/78, Annex I was published October 6, 1983 (48 FR 45704). At the 20th Session of the MEPC held in London September 3-7, 1984, certain amendments and interpretations to MARPOL 73/78, Annex I were adopted. The amendments and interpretations were circulated to all parties to MARPOL 73/78 for comment. No comments were received therefore the amendments and interpretations entered into force July 1985. Some of these amendments and interpretations required U.S. regulatory changes.

The Coast Guard was able to foresee most of these Amendments and Interpretations and provided for them in the MARPOL 73/78, Annex I implementing final rulemaking (48 FR 45704). However, some of the Amendments and Interpretations were not foreseen because they were not proposed until after 48 FR 45704 was published. They now require U.S. regulatory changes and are summarized below.

Regulation 21 was amended to increase the maximum permissible discharge of oily water for stationary drilling rigs outside special areas and more than 12 nautical miles from nearest land from 15 parts per million (ppm) to 100 ppm.

Regulation 16 was amended to incorporate provisions for the granting of waivers from the oily-water separating equipment requirements for specific ships operating in special areas, within 12 miles of land, or in restricted voyages.

Discussion of the Proposed Rules

Though most of the proposed regulations are self-explanatory, the following discussion is offered in hope that it might add some clarification, stimulate public response, and show variations between proposed and existing rules. The proposed regulations implement amendments and interpretations to MARPOL 73/78, Annex I, correct existing 33 CFR Parts 151 and 155, and improve existing regulations. 33 CFR Parts 151, 154, and 155 are proposed to be revised.

1. In Part 151, the authority citation is included to comply with Federal Register procedures.

2. Section 151.05, Definitions is amended to make the definition of Clean Ballast contained in Part 151 identical to that of Part 157.

3. Section 151.07, Delegations, is expanded simply to clarify that the authority to investigate MARPOL 73/78 related incidents is delegated to Coast Guard officials designated as Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI).

4. In § 151.09, Control of discharge of oil, paragraphs (a) and (d) are amended to incorporate the MARPOL 73/78 amendment to Regulation 21 adopted at the 20th Session of the MEPC that changes the discharge standards for drilling rigs and other platfoms so that they can now discharge oily mixtures at 100 ppm (oil to water) while stationary, provided they are outside special areas and more than 12 nautical miles from the nearest land. Other ships must still not exceed 15 ppm when discharging oily mixtures while stationary, wherever located.

5. In § 151.13, Special areas, paragraph (d)(5) is amended to be more specific in requiring the 15 ppm oily-water separating equipment and bilge alarm of MARPOL 73/78, Regulation 10. The October 6, 1983 MARPOL 73/78 implementing rulemaking (48 FR 45704) lacked the necessary specificity. It is revised to require oily-water separating equipment complying with paragraph § 155.370 (a)(2) of this part rather than simply Part 155.

6. In § 151.15, Reporting requirements, paragraph (e) is revised to clarify (as stressed at the 21st Session of the MEPC) that the reporting requirements of Protocol I to MARPOL 73/78 do apply to discharges of hazardous substances (noxious liquid substances and harmful substances) as well as to oil. Paragraph (i) is added to incorporate the reporting provision contained in the "Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region" of the "Conference of Plenipotentiaries on the Protection and Development of the Marine Environment of the Wider Caribbean Region", known as the Cartagena Agreement. The U.S. is party to this Treaty and as such is complying with this provision by strongly encouraging persons to report any information regarding sightings or knowledge of marine pollution incidents. Reports should be directed to the coastal state nearest to the location of the incident. Compliance with this provision is strictly voluntary, it is not a requirement to report.

7. In § 151.19, International Oil Pollution Prevention (IOPP) Certificates, paragraph (f) is removed. It is an exclusionary clause for existing ships which became outdated as of October 2, 1984.

8. Section 151.25, Oil Record Book, is amended to indicate that Oil Record Books will not longer be available from the Coast Guard. Instead Oil Record Books may be purchased through the Government Printing Office.

9. In § 154.105 the definition of "tank vessel" is revised to follow the language of 46 U.S.C. 2101.

10. In Part 155, the authority citation is amended to more accurately indicate the statutory authority for each section in order to more easily differentiate between requirements based on the Federal Water Pollution Control Act, as amended and those based on the Act to Prevent Pollution from Ships.

11. In § 155.100, the applicability is amended so that Subpart C will no longer apply to fixed drilling rigs and fixed platform and will no longer apply to ships operating beyond the navigable waters and contiguous zone of the U.S. In the October 6, 1983 final rulemaking (48 FR 45704) the applicability to Part 155 of this chapter was expanded so that the applicability of Subpart B would parallel that of MARPOL 73/78 and apply to "ships" wherever located. As a result, the applicability of Subpart C was also expanded. This is simply being corrected.

12. Section 155.110, Definitions, is revised to include the definition of "oil" from 33 U.S.C. 1321(a)(1) because Part 155 should apply to all oils including animal and vegetable oils, as it did in the past. In Part 155, the term oil should not be limited to petroleum oils as the definition of § 151.05(k) would wrongly imply.

13. Section 155.120, Equivalents, is revised to specify that the Chief, Office of Marine Environment and Systems (Commandant (G-W)) will exercise the authority to grant equivalents and that equivalents will be submitted via the OCMI.

14. Section 155.130, is amended to re-incorporate the pre-MARPOL 73/78 rulemaking (48 FR 45704) provision authorizing Coast Guard COTPs and OCMIs to allow certain alternative procedures, methods, or equipment standards for certain ships. This authority is more finely delineated so that the public will know to whom to submit requests and who is acting on these requests. OCMIs will have the authority to allow alternatives to Subpart B requirements for U.S. flag ships and COTPs will have the authority to allow alternatives to Subpart C requirements for all ships and to Subpart B requirements for foreign flag ships. The authority to grant exemptions remains with the Commandant. Requests for exemptions should be addressed to the Chief, Office of Marine Environment and Systems, mailing address: Commandant (G-W), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

15. Section 155.310, Cargo oil discharge containment, is amended so that paragraph (a) will apply to "tank vessels" rather than to "oil tankers". In the interest of using standard MARPOL 73/78 terminology, the October 1983 rulemaking (48 FR 45704) erroneously changed the applicability of this section from "tank vessel" to "oil tanker". This was a mistake because not all "tank vessels" are "oil tankers". "Oil tanker" is defined as a ship constructed or adapted primarily to carry oil in bulk as cargo whereas "tank vessel" is defined more broadly but also includes a vessel that carries oil in bulk as cargo.

The Coast Guard believes that this correction will affect very few ships and will therefore have a minimal impact. To be affected, a ship would have to carry oil in bulk as cargo but not be an "oil tanker" and would have to be constructed without the containment provisions. These prerequisites limit the impact to a very small universe. Very few ships other than oil tankers carry oil in bulk as cargo and of those that do, virtually all continue to comply with the discharge containment requirements. The only ships that would not be in compliance with the discharge containment requirements would be those that just began U.S. operations within the past two years (since the incorrect rules have been in effect). Only one ship thus far has fallen into this category, an offshore supply vessel that carried oil in bulk as cargo for use on offshore platforms switched from foreign to U.S. operations. The Coast Guard informed the ship owner that the rules were mistakenly changed to apply to "oil tankers" and that the Coast Guard intended to correct this oversight by changing the applicability back to "tank vessels". The ship owner decided to modify his ship to comply with these containment requirements.

Paragraph (a) of this section is being corrected to read exactly as it did prior to the October 1983 rulemaking (48 FR 45704). This is not a new requirement since it existed prior to the October 1983 rulemaking (48 FR 45704).

16. In § 155.320, Fuel oil and bulk lubricating oil discharge containment, paragraph (c) is being revised so the requirements of this section will apply to Mobile Offshore Drilling Units (MODUs) as they did prior to the October 6, 1983 rulemaking (48 FR 45704). This is not a new requirement; it existed prior to the October 1983 rulemaking (48 FR 45704). In standardizing language throughout Subpart B, the exclusionary clause of this section was unintentionally changed from "fixed drilling rig or other platform" as it was in the Notice of Proposed Rulemaking to "fixed or floating drilling rig or other platform" in the Final Rule. This was an error because this is a domestic pre-MARPOL 73/78 requirement that did and still should apply to MODUs; only fixed drilling rigs and fixed platforms should be excluded. The impact of this correction will be minimal because all

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MODUs were required to comply with this requirement prior to the October 1983 rulemaking and few MODUs have been designed and constructed since the incorrect rules have been in effect. Additionally, the Coast Guard enforcement personnel were instructed to, and have been requiring MODUs to comply with the requirements of this section in anticipation of a forthcoming correction.

17. In § 155.330, Bilge slops/fuel oil tank ballast water discharges on U.S. non-oceangoing ships, and § 155.350, Bilge slops/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons, paragraph (b) is removed to eliminate any indication that the Coast Guard condones the practice of retaining oily mixtures in a ship's bilges. For safety reasons, the Coast Guard strongly discourages this practice. Title 46 of the Code of Federal Regulations, does not allow the accumulation of oil, in machinery space tank tops and bilges, which might create a fire hazard. In order to avoid what could be an overly burdensome requirement on a few specific ships, the Coast Guard does not require oily residue (sludge) tanks on non-oceangoing ships. However, on any ship where oily mixtures are retained on board, it must not threaten safety by creating a fire hazard. The Coast Guard strongly recommends that oily residue (sludge) tanks be provided on all ships where practicable. Additionally, paragraph (c) of § 155.330 and paragraph (d) of § 155.350 are revised so that the requirements of these sections will apply to Mobile Offshore Drilling Units (MODUs) as they did prior to the October 6, 1983 rulemaking (48 FR 45704). This is not a new requirement, it existed prior to the October 1983 rulemaking (48 FR 45704). In standardizing language throughout Subpart B, the exclusionary clause of this section was unintentionally changed from "fixed drilling rig or other platform" as it was in the Notice of Proposed Rulemaking to "fixed or floating drilling rig or other platform" in the Final Rule. This was an error because this is a domestic pre-MARPOL 73/83 requirement that did and still should apply to MODUs; only fixed drilling rigs and fixed platforms should be excluded. The impact of this correction will be minimal because all MODUs were required to comply with this requirement prior to the October 1983 rulemaking and few MODUs have been designed and constructed since the incorrect rules have been in effect. Additionally, the Coast Guard enforcement personnel were instructed to, and have been requiring MODUs to comply with the requirements of this section in anticipation of a forthcoming correction.

18. In § 155.360, Bilge slops discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks, the exclusionary clause contained in paragraph (f) for existing ships is corrected so that the October 2, 1986 delay only applies to the oily-water separating equipment requirements of paragraphs (a) and (b). Prior to the October 6, 1983 MARPOL 73/78 implementing rulemaking (48 FR 45704), 33 CFR 155.340 required to be equipped to discharge bilge slops to shore. The three year delay of MARPOL 73/78 only applies to the oily-water separating equipment requirements, not to the piping requirement for discharge of machinery space bilge slops to reception facilities. Ships must be able to discharge to reception facilities.

19. In § 155.370, Bilge slops/fuel oil tank ballast discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks, the exclusionary clause contained in paragraph (g) for existing ships is corrected so that the October 2, 1986 delay only applies to the oily-water separating equipment requirements of paragraphs (a) and (b). Prior to the October 6, 1983 MARPOL 73/78 implementing rulemaking (48 FR 45704), 33 CFR 155.340 required ships to be equipped to discharge bilge slops to shore. The three year delay of MARPOL 73/78 only applies to the oily-water separating equipment requirements, not to the piping requirement for discharge of machinery space bilge slops to reception facilities. Ships must be able to discharge to reception facilities.

20. Section 155.375, Oily-water separating equipment waivers, is added to incorporate the MARPOL 73/78 amendment that allows specific ships operating within special areas, within 12 miles of land, or on restricted voyages to obtain oily-water separating equipment waivers.

21. Section 155.380, Oily-water separating equipment, bilge alarm, and bilge monitor approval standards, is amended in order to clarify that a 15 ppm bilge alarm, installed to comply with the equipment requirements of § 155.370 or being operated to comply with the discharge standards of §§ 151.09 or 151.13 of this chapter, must be set at 15 ppm. The bilge alarm sensor can not be adjusted from its 15 ppm setting to operate at 100 ppm when more than 12 nautical miles from land, this is not permitted under MARPOL 73/78 and would be a violation of U.S. law.

22. Section 155.400, Platform machinery space drainage on oceangoing fixed or floating drilling rigs and other platforms, is amended to incorporate the MARPOL 73/78 amendment that drilling rigs and other platforms can discharge oily mixtures at 100 ppm (oil to water) when stationary rather than at 15 ppm. Paragraphs (b) and (c) which simply emphasized the applicability of the discharge requirements of section 151.09 to drilling rigs and other platforms are removed.

23. In § 155.410, Pumping, piping and discharge requirements for non-oceangoing ships of 100 gross tons and above, paragraph (c) is amended so that the requirements of this section will apply to MODUs as it did prior to the October 6, 1983 rulemaking (48 Fr 45704). This is not a new requirement; it existed prior to the October 1983 rulemaking (48 Fr 45704). In standardizing language throughout Subpart B, the exclusionary clause of this section was unintentionally changed from "fixed drilling rig or other platform" as it was in the Notice of Proposed Rulemaking to "fixed or floating drilling rig or other platform" in the Final Rule. This was an error because this is a domestic pre-MARPOL 73/78 requirement that did and still should apply to MODUs, only fixed drilling rigs and fixed platforms should be excluded. The impact of this correction will be minimal because all MODUs were required to comply with this requirement prior to the October 1983 rulemaking and few MODUs have been designed and constructed since the incorrect rules have been in effect. Additionally, the Coast Guard enforcement personnel were instructed to, and have been requiring MODUs to comply with the requirements of this section in anticipation of a forthcoming correction.

24. Section 155.450 is revised to include the discharge limitations of the Act to Prevent Pollution from Ships. A future change to discharge limitations may occur as a result of an EPA regulatory project to define a quantity of oil which "may be harmful" in the U.S. Exclusive Economic Zone (EEZ). Depending on the status of the EPA rulemaking, this section may be changed prior to the publication of the final rulemaking.

Summary of Draft Evaluation

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be non-significant under DOT regulatory policy and procedures (44 CFR 11034, February 26, 1979). A draft regulatory evaluation has been prepared and placed in the public rulemaking docket.

There should be no costs incurred as a result of these regulations. Overall, there should be either no economic effect or a slight decrease in cost.

The primary benefit of this regulatory project will be the improvement to existing 33 CFR Parts 151, 154 and 155 by incorporating the amendments and interpretations that were adopted at the 20th session of the MEPC and that the U.S., as a party to MARPOL 73/78, Annex I, agreed to adopt. The secondary benefit will be the correction of minor errors that were made in the MARPOL 73/78, Annex I implementing rulemaking and the removal of outdated provisions.

Implementation of these provisions will maintain the desired parallel between U.S. regulations and the international requirements of MARPOL 73/78. Maintaining this parallel will help to ensure U.S. ships will be in compliance with mandatory international requirements thereby allowing them to engage in uninterrupted international trade while at the same time helping to ensure the U.S. shipping industry is not unnecessarily burdened with regulatory requirements not mandated by MARPOL 73/78. Ships which do not comply with these regulations will not be in compliance with MARPOL 73/78 as amended and may therefore encounter difficulties in international trade.

Regulatory Flexibility Analysis

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposed changes are primarily clarifications and minor relaxations. They do not impose any burden on any small entities.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in §§ 151.15 and 155.130. They will be submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESSES".

Environmental Assessment

The Environmental Assessment prepared for this regulatory project indicated that this rulemaking will not have a significant effect on the environment therefore a Finding of No Significant Impact (FONSI) has been issued.

List of Subjects in 33 CFR Parts 151, 154, and 155

Environmental Protection, pollution, Oily-water separating equipment.

For reasons set out in the preamble, Parts 151, 154, and 155, Subchapter O, Chapter I of Title 33, Code of Federal Regulations are proposed to be amended as follows:

PART 151—[AMENDED]

1. The authority citation for Part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C), 1902(c) and 1903(b). E.O. 11735, 49 CFR 1.46(m).

2. Section 151.05 is amended by revising paragraph (a) to read as follows:

§ 151.05 Definitions.

* * * * *

(a) "Clean Ballast" means ballast which:

(1) If discharged from a vessel that is stationary into clean, calm water on a clear day, would not:

(i) Produce visible traces of oil on the surface of the water or on adjoining shore lines; or

(ii) Cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shore lines; or

(2) If verified by an approved cargo monitor and control system, has an oil content that does not exceed 15 ppm.

* * * * *

3. Section 151.07 is revised to read as follows:

§ 151.07 Delegations.

Each Coast Guard official designated as a Captain of the Port (COTP) or Officer in Charge Marine Inspection (OCMI) or Commanding Officer, Marine Safety Office (MSO), is delegated the authority to—

(a) Issue International Oil Pollution Prevention (IOPP) Certificates;

(b) Detain or deny entry to ships not in substantial compliance with MARPOL 73/78 or not having an IOPP Certificate on board or not having evidence of compliance with MARPOL 73/78 on board;

(c) Receive and investigate reports under § 151.15;

(d) Issue subpoenas to require the attendance of any witness and the production of documents and other evidence, in the course of investigations of potential violations of the Act to Prevent Pollution from Ships (33 U.S.C 1901–1911, Pub. L. 96–478), MARPOL 73/78, or related provisions contained in this sub-chapter; and

(e) Investigate casualties, pollution incidents and other potential violations; relating to the requirements of the Act to Prevent Pollution from Ships (33 U.S.C. 1901–1911, Pub. L. 96–478), MARPOL 73/78, or related provisions contained in this sub-chapter.

4. In § 151.09, paragraphs (a)(4) and (d) are revised to read as follows:

§ 151.09 Control of discharge of oil.

(a) * * *

(4) The ship, providing it is not a fixed or floating drilling rig or other platform, is proceeding enroute;

* * * * *

(d) Except for a fixed or floating drilling rig or other platform, any discharge of oil or oily mixtures into the sea from a ship other than an oil tanker or from machinery space bilges of an oil tanker; that is not proceeding enroute; must be in accordance with paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section.

* * * * *

5. In § 151.13, paragraph (d)(5) is revised to read as follows:

§ 151.13 Special areas.

* * * * *

(d) * * *

(5) The ship has in operation oily-water separating equipment complying with § 155.370(a)(2) of this chapter; and

* * * * *

6. Section 151.15 is amended by revising paragraph (e) and adding paragraph (i) to read as follows:

§ 151.15 Reporting requirements.

* * * * *

(e) The report must be made whenever an incident involves—

(1) A discharge of oil other than as permitted under this part;

(2) A discharge of a hazardous substance; or

(3) A discharge permitted under this part by virtue of the fact that—

(i) It is for the purpose of securing the safety of a ship or saving life at sea; or

(ii) It results from damage to the ship or its equipment; or

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(4) The probability of a discharge referred to in paragraphs (e)(1), (e)(2), or (e)(3) of this section.

* * * * *

(i) Any person sighting or otherwise becoming aware of an oil or other hazardous substance spill incident is encouraged to report the specifics of the sighting to the appropriate officer or agency of the country that is closest to where the incident is detected. For an incident off the U.S. coast, the report should be directed to either the nearest Coast Guard Captain of the Port (COTP) or to the National Response Center (NRC), toll free telephone number 800–424–8802, telex number 892427.

7. Section 151.19 is amended by removing paragraph (f).

8. In § 151.25, paragraph (b) is revised and paragraph (c) is removed and reserved to read as follows:

§ 151.25 Oil Record Book.

* * * * *

(b) U.S. ships will use the U.S. Oil Record Book which is available from any Government Printing Office (stock number: 050–012–00213–4).

(c) [Reserved]

* * * * *

PART 154—[AMENDED]

9. The authority citation for Part 154 is revised to read as follows and all other authority citations which appear throughout Part 154 are removed:

Authority: 33 U.S.C. 1321(j)(1)(C), E.O. 11735, 3 CFR, 1971 through 1975 Comp., p. 793, and 49 CFR 1.46(m).

10. Section 154.105 is amended by revising the definition of "Tank vessel" to read as follows:

§ 154.105 Definitions.

* * * * *

"Tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(a) Is a vessel of the United States;

(b) Operates on the navigable waters of the United States; or

(c) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

PART 155—[AMENDED]

11. The authority citation for Part 155 is revised to read as follows and all other authority citations which appear throughout Part 155 are removed:

Authority: 33 U.S.C. 1321(j)(1)(C), E.O. 11735, and 49 CFR 1.46(m); §§ 155.100, 155.110, 155.120, 155.130, 155.350, 155.360, 155.370, 155.380, 155.390, 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1902(c) and 1903(b).

12. Section 155.100 is amended by revising paragraph (a) introductory text and adding paragraph (c) to read as follows:

§ 155.100 Applicability.

(a) Subject to the exceptions provided for in paragraphs (b) and (c) of this section, this part applies to each ship that—

* * * * *

(c) Subpart C only applies to vessels that operate on the navigable waters or contiguous zone of the U.S. and does not apply to a fixed drilling rig or other fixed platform.

13. Section 155.110 is revised to read as follows:

§ 155.110 Definitions.

(a) The definitions in Parts 151 and 154 of this chapter apply to this part except as modified in paragraph (b) of this section.

(b) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

14. Section 155.120 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 155.120 Equivalents

(a) The Chief, Office of Marine Environment and Systems, acting for the Commandant, allows any fitting, material, appliance or apparatus to be fitted in a ship as an equivalent to that required by both MARPOL 73/78 and §§ 155.350, 155.360, 155.370, 155.375, 155.380, 155.390, 155.400, 155.430, or 155.440 of this part if—

(1) Such fitting, material, appliance, or apparatus is at least as effective as that required; and

(2) The ship operator submits a written request for the exemption via the OCMI at least 30 days before operations under the equivalent are proposed.

* * * * *

(c) Substitution of operational methods to control the discharge of oil in place of those design and construction features prescribed by MARPOL 73/78 is not allowed as an equivalent.

15. Section 155.130 is revised to read as follows:

§ 155.130 Exemption and alternatives.

(a) The Chief, Office of Marine Environment and Systems, acting for the Commandant, grants an exemption from compliance with any requirement in this part if—

(1) Compliance with the requirement is economically or physically impractical;

(2) The ship operator submits a written request for the exemption via the OCMI at least 30 days before operations under the exemption are proposed; and

(3) The likelihood of oil being discharged as a result of the exemption is minimal and is documented in the request.

(b) For U.S. flag ships; the OCMI allows alternative precedures, methods, or equipment standards in lieu of any requirement of §§ 155.310, 155.320, 155.330, 155.410, 155.420, 155.450, 155.470, of this part; and the OCTP allows alternative procedures, methods, or equipment standards in lieu of any requirement of Subpart C of this part if—

(1) Compliance with the requirement is economically or physically impractical;

(2) The ship operator submits a written request for the alternative at least 30 days before operations under the alternative are proposed; and

(3) The alternative provides an equivalent level of safety and protection from pollution by oil, as documented in the request.

(c) For foreign flag ships, the COTP allows alternative procedures, methods, or equipment standards in lieu of any requirement of §§ 155.310, 155.320, 155.330, 155.410, 155.420, 155.450, 155.470, and Subpart C of this part if—

(1) Compliance with the requirement is economically or physically impractical.

(2) The ship operator submits a written request for the alternative at least 30 days before operations under the alternative are proposed; and

(3) The alternative provides an equivalent level of safety and protection from pollution by oil, as documented in the request.

(d) If requested, the applicant must submit any appropriate information, including an environmental and economic assessment of the effects of and the reasons for the exemption and proposed procedures, methods, or equipment standards.

(e) The exemption or alternative specifies the procedures, methods, and equipment standards that will apply.

(f) An exemption is granted or denied in writing. The decision of the Chief, Office of Marine Environment and Systems, acting for the Commandant is a final agency action.

(g) An alternative is granted or denied in writing by the OCMI or COTP. Decisions by the OCMI or COTP may be appealed to the Chief, Office of Marine Environment and Systems. The denial of an appeal by the Chief, Office of Marine Environment and Systems, acting for the Commandant, is a final agency action.

(h) A ship required to be surveyed under § 151.17 of this chapter is not given an exemption from the requirements of §§ 155.350, 155.360, 155.375, 155.380, 155.390, 155.400, 155.430, or 155.440, of this part unless the ship is a hydrofoil, air cushion vehicle or other new type of ship (near-surface craft, submarine craft, etc.) whose construction features render the application of any of the provisions of these sections of Subpart B relating to construction and equipment unreasonable or impractical. The construction and equipment of the ship must provide protection equivalent to that afforded by Subpart B of this part against pollution by oil, having regard to the service for which the ship is intended.

16. Section 155.310 is amended by revising paragraph (a) introductory text to read as follows:

§ 155.310 Cargo oil discharge containment.

(a) A tank vessel with a capacity of 250 or more barrels that is carrying oil cargo must have:

* * * * *

17. Section 155.320 is amended by revising paragraph (c) to read as follows:

§ 155.320 Fuel oil and bulk lubricating oil discharge containment.

* * * * *

(c) This section does not apply to a fixed drilling rig or other fixed platform.

18. Section 155.330 is amended by removing paragraph (b) and revising paragraph (c) to read as follows:

§ 155.330 Bilge slops/fuel oil tank ballast water discharges on U.S. non-oceangoing ships.

* * * * *

(b) [Reserved]

(c) This section does not apply to a fixed drilling rig or other fixed platform.

19. Section 155.350 is revised by removing paragraph (b) to read as follows:

§ 155.350 Bilge slops/fuel oil tank ballast water discharges on oceangoing ships of less than 400 gross tons.

* * * * *

(b) [Reserved]

* * * * *

20 In § 155.360 paragraph (f) is revised to read as follows:

§ 155.360 Bilge slops discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.

* * * * *

(f) Paragraphs (a) and (b) of this section do not apply to an existing ship before October 2, 1986.

21. In § 155.370 paragraph (g) is revised to read as follows:

§ 155.370 Bilge slops/fuel oil tank ballast discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.

* * * * *

(g) Paragraphs (a) and (b) of this section do not apply to an existing ship before October 2, 1986.

22. Section 155.375 is added to read as follows:

§ 155.375 Oily-water separating equipment waivers.

(a) The requirements of paragraph (a) of §§ 155.360 and 155.370 of this part may be waived by an OCMI for any ship engaged exclusively on:

(1) Voyages within special areas; or

(2) Voyages within 12 nautical miles of the nearest land outside special areas, provided the ship is in:

(i) Trade between ports or terminals within a State party to MARPOL 73/78; or

(ii) Restricted international voyages between specified ports.

(b) For paragraph (a) of this section to apply, all of the following conditions must be satisfied:

(1) The ship is fitted with a holding tank having a volume adequate for the total retention on board of all oily bilge water;

(2) All oily bilge water is retained on board for subsequent discharge to reception facilities;

(3) Adequate reception facilities are available to receive such oily bilge water in a sufficient number of ports or terminals at which the ship calls;

(4) The International Oil Pollution Prevention Certification of Form A or B, as appropriate, is endorsed to the effect that the ship is exclusively engaged on the voyages specified in paragraph (a) of this section, including a list of ports, the maximum duration of voyages between ports, trade pattern, and other conditions, as applicable; and

(5) The quantity, time, and port of all discharges to reception facilities are recorded in the Oil Record Book.

23. Section 155.380 is amended by adding paragraph (e) to read as follows:

§ 155.380 Oily-water separating equipment, bilge alarm, and bilge monitor approval standards.

* * * * *

(e) A bilge alarm installed to satisfy the equipment requirements of § 155.370 or being operated to satisfy the operational discharge requirements of §§ 151.09 or 151.13 of this Subchapter must be set at 15 parts per million.

24. Section 155.400 is amended by removing paragraphs (b) and (c), to read as follows:

§ 155.400 Platform machinery space drainage on oceangoing fixed and floating drilling rigs and other platforms.

* * * * *

(b)–(c) [Reserved]

* * * * *

25. In § 155.410, paragraph (c) is revised to read as follows:

§ 155.410 Pumping, piping and discharge requirements for non-oceangoing ships of 100 gross tons and above.

* * * * *

(c) This section does not apply to a fixed drilling rig or other fixed platform.

26. Section 155.450 is revised to read as follows:

§ 155.450 Placard.

(a) A ship of 26 feet in length or more, must have a placard of at least 5 by 8 inches, made of durable material, fixed in a conspicuous place in each machinery space, or at the bilge and ballast pump control stations, stating the following—

The Discharge of Oil is Prohibited

U.S. Law prohibits the discharge of oil in a quantity which may be harmful into or upon the navigable waters of the United States (within 3 nautical miles offshore). Discharges of oil are also prohibited beyond 3 nautical miles offshore, except through approved equipment in strict compliance with 33 CFR Part 151 which implements MARPOL 73/78. Violators are subject to a civil penalty of up to $25,000. A "quantity of oil which may be harmful" is defined for the navigable waters and contiguous zone of the United States as any quantity which when discharged causes a film or sheen upon or a discoloration of the surface of the water or causes a sludge or emulsion beneath the surface of the water.

Report prohibited discharges of oil in waters within the U.S. jurisdiction to either the nearest Coast Guard Captain of the Port (COTP) or to the National Response Center (NRC), toll free telephone number 800–424–8802, telex number 892427.

(b) The placard required by paragraph (a) of this section must be printed in the

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language or languages understood by the crew.

(c) This section is effective (12 months after date of publication of final rule). Previously authorized placards may continue to be used.

Dated: February 3, 1986.

Peter J. Rots,

Chief, Office of Marine Environment and System.

[FR Doc. 86-2631 Filed 2-6-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 13

Commissions for Federally Appointed Fiduciaries

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The proposed new regulation will place into effect section 207 of Pub. L. 98-223, Veterans Compensation and Improvement Amendments of 1984, which relates to commissions for Federally appointed fiduciaries. The regulation will give the Veterans Services Officer the authority to determine, within the regulatory guidelines, which Federally appointed fiduciary will be allowed to take a commission and the amount of the commission not to exceed 4 percent of VA benefits paid in any one year on behalf of an incompetent beneficiary.

DATES: Comments must be received on or before March 24, 1986. It is proposed to make this regulation effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until April 7, 1986.

FOR FURTHER INFORMATION CONTACT: William B. Saliski, (202) 389-3644.

SUPPLEMENTARY INFORMATION: The Veterans Administration in recent years found it to be increasingly difficult to encourage qualified individuals to take on the responsibilities of Federally appointed fiduciaries without some sort of compensation for the time involved in managing the economic affairs of incompetent beneficiaries and complying with accounting and other protective requirements that are designed to reduce the potential for fraud, waste and abuse of VA benefits. In many instances the qualified person is not a family member. Such persons may be professional members of the community who feel the need to provide a public service to the community by taking on fiduciary responsibilities. In the past, these same people generally have served as count-appointed fiduciaries and as such could petition the court for fees and commissions under State statute. But court-appointment is not always desirable, particularly when the amount of benefits payable is relatively small and/or the residual estate is not large enough to warrant the time and additional costs associated with court-appointment. Because no clear authority existed to allow a commission to a Federally appointed fiduciary until the enactment of Pub. L. 98-223, the VA had little choice but to seek in some cases unnecessary, costly court-appointment of fiduciaries in order to allow qualified persons to receive payment for service rendered, or to seek lesser qualified persons willing to serve without fee. In some extreme cases, when neither option was available, benefits payments continued to the incompetent beneficiary as a supervised direct payment payee under the supervision of the Veterans Services Officer.

The effective date of the regulations will be 30 days after publication of the final rule.

This regulation simply interprets and implements Pub. L. 98-223. The Administrator hereby certifies that this new regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA (Regulatory Flexibility Act), 5 U.S.C. 601-612. The reason for this certification is that, consistent with the clear intent of Pub. L. 98-223, only a relatively small number of VA cases are expected to fall under the provisions of the regulation. Therefore, pursuant to 5 U.S.C. 605(b), this new regulation is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this proposed new regulation is nonmajor for the following reasons: (1) It will not have an effect on the economy of $100 million or more; (2) It will not cause a major increase in costs or prices; (3) It will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 13

Administrative practice and procedure, Estates, Fraud, Handicapped, Infants and children, Investigations, Investments, Surety bonds, Trusts and trustees, Veterans.

There is no affected Catalog of Federal Domestic Assistance Program number.

This proposed regulation contains no information collection requirements.

Approved: January 10, 1986.

Everett Alvarez, Jr.,

Acting Administrator

PART 13—[AMENDED]

38 CFR Part 13, Department of Veterans Benefits Fiduciary Activities, is amended to read as follows:

1. Section 13.64 is added to read as follows:

§ 13.64 Fiduciary commissions.

Generally, a VA appointed fiduciary is to be encouraged to serve without fee.

(a) *Authority.* The Veterans Services Officer is authorized to determine when a commission is necessary in order to obtain the services of a fiduciary, except that the Veterans Services Officer may not authorize a commission to a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services on behalf of the beneficiary. Necessity is established only if the beneficiary's best interest would be served by the appointment of a qualified professional, or, if a qualified professional is not available, the proposed fiduciary is the only qualified person available and is not willing to serve without a fee.

(b) *Amount; notice to beneficiary.* The Veterans Services Officer shall authorize a fiduciary to whom a commission is payable under paragraph (a) of this section to deduct from the beneficiary's estate a reasonable commission for fiduciary services rendered. The commission for any year may not exceed 4 percent of the monetary benefits paid by the VA on behalf of the beneficiary to the fiduciary during that year; a year being the normal 12 month period following the anniversary date of appointment. The Veterans Services Officer shall furnish appropriate notice to the beneficiary, either directly or through the fiduciary, that a commission is payable.

(c) *Persons who may be excluded.* Commissions may not be authorized to dependents of the beneficiary or other close relatives acting in a fiduciary capacity on behalf of the beneficiary, except under extraordinary circumstances.

(38 U.S.C. 3202; Pub. L. 98-223)

§ 13.70 [Amended]

2. In § 13.70, paragraphs (a)(1), (a)(2), and (c) are amended by removing the words "wife, husband" and inserting in their place, the word "spouse."

3. In § 13.71, paragraph (b) is revised to read as follows:

§ 13.71 Payment of cost of veteran's maintenance in institution.

* * * * *

(b) *By care and maintenance award.* When payment of compensation, pension or emergency officers' retirement pay in behalf of a veteran rated incompetent by the VA, who has no spouse or child and is being furnished hospital treatment, institutional or domiciliary care by a political subdivision of the United States, has been stopped because his or her estate has reached $1,500, the Veterans Services Officer may certify to the Adjudication Division the amount to be released to the responsible official to pay for the cost of the veteran's current care and maintenance. The amounts paid in such cases shall not exceed the amount of the benefit otherwise payable less any amounts apportioned to dependent parents and in no event exceed the amount which the Veterans Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation. (See §§ 13.74(b) and 13.108(b).) (38 U.S.C. 210)

[FR Doc. 86-2733 Filed 2-6-86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[OW-FRL-2961-9]

Hazardous Wastes Injection Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: The purpose of the meeting is to discuss the Agency's approach to the hazardous waste injection restriction program mandated by the RCRA Amendments of 1984. Particularly, the Agency will discuss possible amendments to the UIC Permitting Regulations, options for the overall framework of the restriction program and issues in the interpretation of the Statute.

DATE: This meeting will take place on February 21, 1986 beginning at (9:00 a.m.

ADDRESS: This meeting will be held at the Environmental Protection Agency (EPA) Headquarters, North Conference Center, Room 3, 401 M Street, SW., Washington, DC 20460. Any member of the public wishing to attend this open meeting should register in advance. Registration is necessary so EPA can better plan for adequate conference room space.

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Shaw, Program Coordinator, Office of Drinking Water (WH-550), EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-5533.

Dated: February 4, 1986.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

[FR Doc. 86-2835 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

Amend Regulations To Authorize the Private, Noncommercial Possession of Accidentally Killed Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This document announces the advance intent of the Fish and Wildlife Service (Service) to initiate activity leading to a proposed rulemaking to amend existing regulations prohibiting the taking and possession of migratory birds and to allow certain accidentally killed migratory birds to be possessed and utilized by taxidermists and subsequently by other individuals for private, noncommercial uses. The proposed rulemaking arises from the Petition for Rulemaking submitted by the National Taxidermists' Association (NTA) and published by the Service for public comment on July 13, 1983 [48 FR 32034], and the subsequent review by the Service of the comments received and discussions within the Service with commentors and Petitioner.

In response to the NTA Petition, the Service reviewed its personnel, budget and regulatory commitments, and has determined that, while the Service has the statutory authority and responsibility to regulate activities related to uses and possession of migratory birds, it does not have the personnel or the funds to undertake a system of national permits issued by the federal government and enforced by inspections by Service personnel.

At present the only potentially practical alternative identified by the Service to accede to the NTA Petition and allow private, non-commercial possession of non-game migratory bird specimens by individuals is one in which the burden falls primarily upon the states. This alternative is based upon the establishment of a core of minimum Federal standards to include a requirement that each specimen be officially identified, marked, and verified to have been accidentally, not intentionally, killed. These Federal standards would then be adopted and followed on a state-by-state basis by states determining that the private, non-commercial possession of migratory bird specimens is in conformity with its conservation program.

Because earlier public comment on the NTA Petition focused upon permits being a federal, rather than a state, activity and enforcement project, the Service seeks additional public comment upon two issues: first, whether it should alter its existing policies and regulations to allow individuals to possess accidentally-killed non-game migratory birds for private, non-commercial purposes; and, second, upon allowing this activity based on state permits issued under a general federal regulatory scheme, or some other alternative.

DATES: Comments on the advance notice of proposed rulemaking must be received in writing by April 8, 1986.

ADDRESSES: Comments may be mailed to Director (LE), Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, or delivered weekdays to the Division of Law Enforcement, Fish and Wildlife Service, 3rd Floor, 1375 K Street NW., Washington, DC between the hours 8:00 am and 4:00 pm. Comments should bear the identifying notation REG 21-02-004090. All materials received, the NTA petition and all comments received in response to the publication of that petition by the Service, Service, and Law Enforcement Memoranda 52 (Rev. 1) and 91 referenced in that Petition may be inspected weekdays during normal business hours at the Service's Division of Law Enforcement, 3rd Floor, 1375 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Enforcement Specialist, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife

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Service, U.S. Department of the Interior, P.O. Box 28006, Washington, DC 20005; telephone (202) 343–9242.

SUPPLEMENTARY INFORMATION: By public notice published July 13, 1983 (48 FR 32034) the Service acknowledged receipt of a Petition for Rulemaking to Amend Part 21 submitted by NTA and solicited public comment on the text of the Petition and NTA's proposal that the Department of Interior, acting through the Service, amend its regulations and change its policies to allow either by issuance of permit or by exemption the taking, possession, and other conduct currently prohibited with regard to certain migratory bird species.

The NTA Petition was submitted as the result of settlement negotiations in *Ballard* v. *United States*, No. 82–0445 (D.D.C.). The litigation concerned denial of a permit to a taxidermist to possess a "road-killed" red-tail hawk, a species protected pursuant to the Migratory Bird Treaty Act, 16 U.S.C. 703 et seq., and regulations issued under that statute. Regulations restrict legal possession of non-game migratory species to those persons, not otherwise exempt, who possess permits issued by the Service. Generally, permits are issued only upon showing of benefit to migratory bird resources or for important scientific research, humane reasons, or other compelling justification. Service policy, articulated in Law Enforcement Memoranda 52 (Rev. 1) and 91, has generally limited issuance of permits to take, possess, and utilize the birds or carcasses, parts, feathers, nests, etc. of non-game migratory bird species which have been accidentally killed or removed from the wild, to schools, universities, museums, medical or veterinary research facilities, public educational or scientific research institutions, to individuals demonstrating a publicly beneficial educational or scientific need or to certain Native Americans affiliated with Indian tribes for tribal religious and ceremonial uses. Taxidermists and members of the general public have not been allowed to take, possess, or otherwise utilize these species; the Service's policy in this matter was based upon a perception that the treaties negotiated with Canada, Mexico, Japan and the U.S.S.R. concerning protection of migratory birds and implemented under the Migratory Bird Treaty Act indicated that personal possession and use of non-game migratory birds for decorative purposes was not a proper use of the public natural resource.

The policy was also based upon a belief that history indicated a previous large commercial market for these birds and their parts and feathers had been detrimental to some species, resulting in governmental action to control the taking and possession of the species, and that allowing personal possession and use on a general basis might encourage revival of a market, albeit illegal, for the birds, parts, feathers and nests. Effective enforcement of the Migratory Bird Treaty Act provisions requires that some method be used to differentiate between legally and illegally taken birds, including identification of those specimens which die naturally and by accident. The Service's limited resources make it impossible for the Service to examine on demand each migratory bird specimen to determine if it is the result of an accidental taking.

During the comment period on the NTA Petition and proposal for rulemaking, thousands of comments were received by the Service. 3143 signatures on a standard form petition supplied by NTA and 744 signatures on other types of petitions responded favorably to the proposal. 1107 other comments received in a standard form indicated support of the NTA Petition. 815 additional comments indicated support. 67 conservation or environmental groups stated that they opposed the proposal, as did 54 educational and scientific institutions. 16 State conservation agencies officially responded against the proposal. 300 general comments were also received opposing the NTA proposal. Numerous comments have continued to be received by the Service, both in support and opposition. Since the comment period closed on the NTA Petition.

Most States protect migratory birds making it illegal to possess non-game migratory birds for personal uses. The only potential alternative preliminarily identified by the Service to the NTA Peition places the administrative and enforcement burden on the states, rather than on the federal government, especially with regard to identification, marking and verification of cause of death of the bird specimen.

Although only 16 state conservation agencies responded to the NTA Petition, all of those responding opposed the proposal. Therefore, the Service feels that it should solicit additional comment on the alternative approach.

Further, NTA did not supply with its Petition and has not to date provided any documentation which meets the requirements imposed upon the Service for rulemaking in compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4231–4237; Executive Order 12291; the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.; or the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Service has conducted internal discussions and has met with representatives of NTA to attempt to verify facts related to economic and environmental issues which must be determined by the Service. Compliance with the NEPA process and other regulatory impact analyses are ongoing within the Service, and the Service seeks public comment and participation in its evaluation of those issues.

A preliminary Determination of Effects with regard to this Advance Notice of Proposed Rulemaking has been prepared by the Service. A copy of the Determination of Effects of Advanced Intent to Propose Rulemaking may be obtained by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT.**" The Service recognizes that this Determination reflects only tentative conclusions concerning any decisions with regard to proposed rulemaking and will continue its analysis of various possible regulatory and non-regulatory alternatives.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with regard to the proposed rulemaking; the extent of environmental review, including whether there is a need for a full environmental impact statement or an assessment; whether the potential economic consequences of proposed rulemaking require preparation of a regulatory impact analysis or a small entity flexibility analysis; and any other matters of concern to the commentors regarding the Service significantly changing its policies and amending the regulations to allow private, noncommercial possession and utilization of accidentally-killed non-game migratory bird species, to the location identified in the ADDRESSES section of this notice. Comments must be received on or before April 8, 1986.

Dated: January 29, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Porks.

[FR Doc. 86–2674 Filed 2–6–86; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

[Docket No. 60218–6018]

Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary initial specifications and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1986–1987 fishing year for Atlantic mackerel, squids, and butterfish and requests public comments. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish preliminary initial specifications. This action will provide data and requests comments for the agency's determination of the initial specifications for the 1986–1987 fishing year.

DATE: Comments must be received on or before March 10, 1986.

ADDRESS: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, NOAA, State Fish Pier, Gloucester, MA 01930–3097. Mark on the outside of the envelope, "Comments on MAC/SQU/BUA—Annual Specifications."

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600, extension 273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) (January 4, 1984, 49 FR 402), stipulate at § 655.22(b) that the Secretary will publish a notice specifying the preliminary initial annual amounts of the respective optimum yields (OYs) as well as the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), total allowable levels of foreign fishing (TALFFs), and Reserves (if any) for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish. Procedures for determining the initial annual amounts are found at § 655.21. The Secretary is required to publish this notice by February 1 of each year and to provide for a 30-day comment period on the preliminary specifications.

These specifications are based on information submitted by the Mid-Atlantic Fishery Management Council (Council), including an analysis of the nine economic factors specified at § 655.21(b)(1)(ii). The Council's recommendations and other relevant data are available for inspection at the NMFS Regional Office at the above address during the comment period. Recommendations by the New England Fishery Management Council were also considered. A notice of final determination of the initial amounts and response to public comments is expected to be published in the **Federal Register** on or about March 15, 1986.

Specifications

The following table lists the preliminary initial specifications in metric tons (mt) for the maximum optimum yield (Max OY), allowable biological catch (ABC), allowable catch (AC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), Reserve, and total allowable level of foreign fishing (TALFF) for Atlantic mackerel, *Illex* and *Loligo* squid, and butterfish. These initial specifications are the amounts that the Regional Director proposes for the 1986–1987 fishing year beginning April 1, 1986, and ending March 31, 1987.

Preliminary Initial Specifications For Fishing Year April 1, 1986, Through March 31, 1987.

[in metric tons (mt)]

Specification	Squid		Butterfish	Atlantic mackerel
	Loligo	*Illex*		
Max OY [a]	44,000	30,000	[c] 16,000	295,000
ABC	37,000	22,500	[c] 16,000	
AC				262,000
IOY	31,826	14,926	12,676	262,000
DAH	31,150	14,250	12,000	[b] 126,500
DAP	29,500	12,000	12,000	14,000
JVP [c]	1,650	2,250		100,000
Reserve				67,750
TALFF [d]	678	678	676	67,750

[a] Up to the figure given.
[b] These are the maximum OYs as stated within the FMP.
[b] This amount includes 12,500 mt projected recreational catch.
[c] Consistent with Councils; guidelines, these initial amounts represent 50 percent of the "cap" JVP totals requested to date.
[d] Assures all initial TALFFs, but not Reserve, are allowed.

The Regional Director has determined that the IOY levels proposed for the 1986–1987 fishing year will result in the greatest overall benefit to the United States. These levels were set to promote growth in both the harvesting and processing sectors of the domestic industry in accordance with the mandates of the Magnuson Act. They were selected after lengthy meetings and consultation with both the Mid-Atlantic and New England Fishery Management Councils (Councils) and industry groups, and after reviewing the results of processor and joint venture surveys. Specifications give high priority, especially as to the squid amounts, to domestic users. This priority is based on reports filed with the Councils and information available to the NMFS which indicates that considerable interest and substantial investments exist among domestic business ventures. TALFF, therefore, has been set initially at the bycatch level and will be increased only if circumstances indicate that the U.S. industry will benefit and will not suffer adverse effects from allocation of TALFF. Obviously, foreign nations' performance will influence the disposition of TALFF, as recommended through and by the Councils.

Atlantic mackerel and butterfish specification amounts are similar to those of the previous fishing year. Atlantic mackerel specifications, especially Max OY, AC, and IOY, have increased because of the continual rebuilding of the mackerel stocks. The FMP allows that, if U.S. Atlantic mackerel landings during the year (including amounts authorized for joint ventures) increase above the final initial estimates, DAH and OY may be increased by similar amounts, up to the point where OY = AC. TALFF would not change from the amount specified at the beginning of a year as a result of such adjustments to DAH and OY. The proposed butterfish specification amounts for the upcoming fishing year has increased the DAH and DAP each by 1,000 mt.

The Council has submitted Amendment 2 to the FMP which, if implemented, will establish a 12-month fishing year starting January 1 of each year. If implemented during the 1986–1987 fishing year, the Agency will seek public comments and revise these specification amounts to reflect any change within the regulations and the specifications. Revised specifications will be proportioned to reflect the remainder of the 1986 calendar year.

Classification

This action is authorized by 50 CFR Part 655, and complies with E.O. 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: February 3, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–2677 Filed 2–4–86; 12:09 pm]

BILLING CODE 3510–22–M

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Notices

Federal Register
Vol. 51, No. 26
Friday, February 7, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Helen Timber Sale; Republic Ranger Station—Colville National Forest; Ferry County, WA, Environmental Impact Statement; Cancellation

The Department of Agriculture, Forest Service has withdrawn its proposal for harvesting timber in the Thirteenmile Creek drainage of the Republic Ranger District.

The notice of intent, published in the **Federal Register** of January 2, 1986, is hereby rescinded (51 FR 44).

For further information, contact: Gus Nichols, District Ranger, Republic Ranger District, Republic, Washington, 99166; telephone (509) 775–3305.

Dated: January 23, 1986.

William D. Shenk,

Forest Supervisor.

[FR Doc. 86–2692 Filed 2–6–86 8:45 am]

BILLING CODE 3410-11-M

Intent To Prepare an Environmental Impact Statement; Gallatin National Forest; Noxious Weed and Poisonous Plant Control

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement to identify methods for controlling noxious weeds on the Gallatin National Forest.

The proposed Gallatin National Forest Plan has been prepared. One of the Forest-wide Standards and Guidelines was to contain present infestations and prevent the spread of noxious weeds.

The Gallatin National Forest has many acres of land that contain noxious weeds. These weeds have been identified as noxious by the State of Montana. These plants can severely effect the productivity of forest and rangelands. Infestations on National Forest lands have the potential to spread to adjacent private lands.

A range of alternatives for treating these sites will be considered. One of these will be no treatment of problem plants by any means. Other alternatives may include:

1. *Manual Treatment:* pulling or grubbing of noxious weeds with the possible use of handtools.
2. *Mechanical Treatment:* plowing, discing or cultivating infestations of noxious weeds with heavy equipment.
3. *Biological Control:* control of noxious weeds by the action of parasites, predators, and pathogens.
4. *Broadcast Application:* Application of herbicides by truck mounted sprayer to infestations of noxious weeds.
5. *Manual Application:* application of herbicides with spray nozzles, hand guns, or backpack compression sprayers to infestations of noxious weeds.
6. *Integrated Pest Management:* using a combination of the above methods.

Federal, State and local agencies, local landowners, and other individuals or organizations who may be interested in or affected by the decisions will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be considered in depth.
3. Elimination of insignificant issues of those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat, if any such species are found to exist in the area of consideration.

No public meetings are scheduled at this time, but the public is invited to comment. Written comments should be mailed by February 21, 1986, to: Robert E. Breazeale, Forest Supervisor, Gallatin National Forest, P.O. Box 130, Bozeman, MT 59771.

Robert E. Breazeale, Forest Supervisor, Gallatin National Forest, Bozeman, Montana, 59771, is the responsible official.

The Draft Environmental Impact Statement should be available for public review by April, 1986. The Final Environmental Impact Statement is scheduled to be completed by June, 1986.

Questions about the proposed action and Environmental Impact Statement should be directed to Richard Inman, Range and Wildlife Staff Officer, Gallatin National Forest, phone: 406–587–6705.

Dated: January 31, 1986.

Robert E. Breazeale,

Forest Supervisor.

[FR Doc. 86–2668 Filed 2–6–86; 8:45 am]

BILLING CODE 3410-11-M

Statistical Reporting Service

Modification of Program Reports

Notice is hereby given that the Statistical Reporting Service (SRS) of USDA is proposing immediate modifications in portions of its crop, dairy, poultry, and prices estimating program. These actions are in response to the funding level provided to the Agency for fiscal year 1986. Available resources will be directed to maintaining high quality statistics for the more than 300 reports that will continue to be published by SRS.

SRS will work with commodity organizations and State agencies to reestablish programs being curtailed if funds for data collection, summarization, and publication can be provided by those organizations.

A. The following crop estimate program modifications are planned:

1. Discontinue pasture and range condition table and map and crop prospects map in the April Crop Production report. The Agency earlier proposed discontinuing the conditions in all months. Based on comments received from data users, the pasture and range condition table will be retained in the May-November Crop Production reports. The maps will be replaced by two crop moisture maps (short-term and long-term) prepared by the NOAA/USDA Joint Agricultural Weather Facility.
2. Grain stocks program:

a. Discontinue all rye stocks estimates.

b. Discontinue quarterly on- and off-farm stock estimates for barley, oats, sorghum, and sunflowers. Continue these commodity estimates at end-of-marketing year only (barley and oats, June 1; sorghum and sunflowers, September 1).

c. Discontinue separate State on-farm stock estimates for other grains and oil seeds in minor producing States. Individual State estimates published will account for 75–85 percent of the total U.S. production for each crop. Minor States will be published as an "other State" total. United States estimates will be continued.

3. Field crop production program:

a. Discontinue winter wheat production forecasts in September.

b. Discontinue spring wheat production forecasts in October.

c. Discontinue all rye and flaxseed production forecasts. Retain acreage estimates and the end-of-year acres, yield, and production report.

d. Discontinue barley and oats production forecasts in July and September. Retain acreage estimates, August forecasts, and the end-of-year acres, yield, and production report.

e. Discontinue end-of-year forage estimates for corn and sorghum.

f. Discontinue sweetpotato production forecasts and disposition estimates. Retain acreage estimates and end-of-year acres, yield, and production report.

4. Discontinue all fertilizer production statistics collected and published by SRS.

5. Discontinue all Hop Production and Stock estimates. Data will not be collected for the March 1, 1986, stocks report which was scheduled to be released March 20, 1986.

B. The following reductions in State estimates for dairy and poultry reports are planned:

1. *Milk Production*—Coverage of estimates in the monthly reports will be reduced from 33 States and the U.S. to 21 States with about 85 percent of the U.S. production. Reports issued in January, April, July, and October will continue to include quarterly estimates for 50 States and the U.S. Estimates by month will be eliminated for Alabama, Arkansas, Colorado, Georgia, Kansas, Louisiana, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon and Utah beginning with the May 14, 1986, release of April production.

2. *Eggs, Chickens & Turkeys*—Coverage of layers and egg production estimates in the monthly reports will be reduced in coverage from 33 States and the U.S. to 20 States with about 84 percent of the U.S. production. Reports issued in March, June, September, and December will continue to include quarterly egg production estimates for 50 States and the U.S. Estimates by month will be eliminated for Hawaii, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Nebraska, New Jersey, Oklahoma, Oregon, Tennessee, Virginia and Wisconsin beginning with the April 23, 1986, release of March production.

3. *Weekly Broiler Hatchery*—Coverage of weekly estimates of broiler eggs set and chicks placed will be reduced from 19 States to 12 States with about 92 percent of the U.S. production. Monthly estimates of broiler chicks hatched in the U.S. will continue as currently published in Eggs, Chickens & Turkeys. States to be eliminated from the weekly coverage are Louisiana, Missouri, Oregon, South Carolina, Tennessee, Washington, and West Virginia beginning with data for week ending March 8 available for release March 12, 1986.

C. The following changes in the program of prices paid reports are planned:

1. The annual Telephone and Electric Survey will be discontinued.
2. Feed, fuels and motor supplies will be surveyed and published quarterly rather than monthly. Only regional and U.S. level prices will be estimated in this new quarterly survey, which will begin in April, due to reduced sample size. The last monthly survey for these items will be February 1986.
3. Fertilizer prices will be surveyed and published on a regional and U.S. basis in April and October of each year, instead of the current 4 surveys.
4. Seed prices will be surveyed annually in April of each year with U.S. level prices published rather than semi-annually by States.
5. Replacement livestock prices will be published on a U.S. level basis each quarter instead of monthly by States.
6. Building Materials will be surveyed in April, July, and October with prices published at the U.S. level compared with current bi-monthly State data.
7. Farm Machinery, Farm Supplies, and Marketing Containers will be surveyed semiannually in April and October (rather than quarterly) with prices published at the U.S. level.
8. Autos and trucks will be surveyed annually in April instead of semiannually with prices published at the U.S. level.

D. Modification in survey dates for quarterly stocks report:

In addition to those program modifications, the October 1 on-farm and off-farm grain stocks survey will be moved to September 1 and the dates of other quarterly reports shifted to a uniform quarterly time schedule. This is to reduce costs and responds to new legislation changing the official marketing year for corn from October 1—September 30 to September 1—August 31. The first new report will be issued on September 29, The January 1, 1987, stocks survey, including stocks of rice and hay, will be changed to December 1, 1986, and will be issued in early January 1987. The December 1, 1986, on-farm grain stocks survey will be conducted in conjunction with the end-of-season crop acreage and production survey. This is the first of a number of steps to improve crop survey methodology. The April 1, 1987, grain stocks survey, including rice, and the February 1 prospective plantings survey will be changed to March 1 with a report in late March 1987. A historical 10-year data series of U.S. totals will be published for each of the new report dates to assist data users in shifting data bases to the new report schedule.

Comments from data users regarding the proposed changes should be addressed to Richard D. Allen, Director, Estimates Division, Room 5847–S, SRS/USDA, Washington, DC 20250. The comment period will close February 24, 1986.

Done at Washington, DC this 31 day of January 1986.

W.E. Kibler,

Administrator.

[FR Doc. 86–2751 Filed 2–6–86; 8:45 am]

BILLING CODE 3410-20-M

COMMISSION ON CIVIL RIGHTS

New Hampshire Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on March 6, 1986, at McLane, Graf, Raulerson & Middleton, 40 Stark Street, Manchester, New Hampshire. The purpose of the meeting is to continue FY '86 project planning. Special attention will be paid to the proposed project "Access to Voter Registration and Polling Sites by New Hampshire's Elderly and Disabled.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert A. Wells, or Jake Schlitt, Director of the New England Regional Office at (617)223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

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The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., January 31, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-2749 Filed 2-6-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Short Supply Review on Certain Brass Plated Steel Wire; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to small diameter, brass plated steel wire (tire bead wire) used in the reinforcement of automotive tires.

EFFECTIVE DATE: Comments must be submitted no later than ten days from publication of this notice.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce; 14th and Constitution Ave. NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Ave. NW., Washington, DC 20230, Room 3709, (202) 377-1102.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. ". . . determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the United States of America for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such category or sub-category . . ."

We have received a short supply request for high carbon, brass plated steel wire meeting the following specifications:

Diameter: 1.55 millimeter, +/−0.03 millimeter.

Copper Coating: 0.28 gram, +/−0.10 gram per 1 kilogram of wire.

Tin Content: 12 percent, +/−5 percent.

Tensile Strength: Minimum 310 kilograms.

Elongation: Minimum 2.75 percent.

This product is used in the reinforcement of automotive tires.

Parties interested in commenting on any of these products should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly label the business proprietary portion of the submission and also include a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Dated: February 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration

[FR Doc. 86-2727 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Senior Executive Service; Membership of General and Limited Performance Review Boards

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice.

SUMMARY: This notice announces the purpose of the National Bureau of Standards (NBS) General and Limited Performance Review Boards, changes in the membership of those Boards, and the terms of appointment of its members.

SUPPLEMENTARY INFORMATION: The purpose of the General Performance Review Board (GPRB) is to review performance agreements, performance appraisals and ratings, recommendations for certain personnel actions and other related material, and to make appropriate recommendations to the Director of NBS as the Appointing Authority for the Senior Executive Service at NBS concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives and the organizations of which they are members and instill in the minds of such senior executives confidence in the integrity, competence and impartiality of the GPRB. The GPRB performs its review functions for all NBS senior executives except those who are members of the NBS Executive Board and those who are members of the GPRB.

The purpose of the Limited Performance Review Board (LPRB) is the same as the GPRB. However, the LPRB performs its review functions for all NBS senior executives who are members of the NBS Executive Board (except the NBS Deputy Director) and those senior executives who are members of the NBS GPRB.

The individuals who have been newly appointed by the Director of NBS to membership on the GPRB and LPRB or have had their term of membership extended and the term of their appointment or extension are listed below.

GPRB

Dr. Lewis H. Nosanow, Director, Division of Materials Research, National Science Foundation, Washington, D.C. 20550, Term: January 1, 1986 to December 31, 1987

Dr. Theodore E. Madey, Group Leader, Surface Structure and Kinetics, National Measurement Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, Term: January 1, 1986 to December 31, 1987

Dr. James E. Hill, Chief, Building Equipment Division, National Engineering Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, Term: January 1, 1986 to December 31, 1987

Mr. Thomas N. Pyke, Jr., Director, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899, Term extended to December 31, 1986

LPRB

Dr. Jeffery D. Rosendhal, Assistant Associate Administrator (Science), National Aeronautics and Space Administration, Washington, D.C. 20546, Term: January 1, 1986 to December 31, 1987.

The full membership and expiration dates of the GPRB and the LPRB as now constituted, including the changes made by this notice, are set out below.

GPRB

Dr. Howard E. Sorrows, Chair, Director, Office of Research and Technology Applications, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1986

Dr. James E. Hill, Chief, Building Equipment Division, National Engineering Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1987

Dr. Theodore E. Madey, Group Leader, Surface Structure and Kinetics, National Measurement Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1987

Mr. Charles K.S. Miller, Chief, Electromagnetic Fields Division, National Bureau of Standards, Boulder, Colorado 80303, Expiration of appointment—December 31, 1986

Dr. Lewis H. Nosanow, Director, Division of Materials Research, National Science Foundation, Washington, D.C. 20550, Expiration of appointment—December 31, 1987

Mr. Thomas N. Pyke, Jr., Director, Center for Programming Science and Technology, Institute of Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1986

Dr. Robb M. Thomson, Senior Scientist, Institute for Materials Science and Engineering, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1986

LPRB

Dr. Edward L. Brady, Chair, Associate Director for International Affairs, National Bureau of Standards, Gaithersburg, Maryland 20899, Expiration of appointment—December 31, 1986

Dr. Jeffrey D. Rosendhal, Assistant Associate Administrator (Science), National Aeronautics and Space Administration, Washington, D.C. 20546, Expiration of appointment—December 31, 1987

Dr. Donald K. Stevens, Deputy Associate Director for Basic Energy Sciences, Office of Energy Research, Department of Energy, Washington, D.C. 20545, Expiration of appointment—December 31, 1986

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, Maryland 20899 (301) 921-3555.

Dated: February 3, 1986.

Ernest Ambler,

Director.

[FR Doc. 86-2675 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Colombia

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, as amended, between the Governments of the United States and Colombia, the United States has decided to control imports of man-made fiber shirts in Category 640, produced or manufactured in Colombia and exported during the twelve-month period which began on July 1, 1985, and extends through June 30, 1986. The letter to the Commissioner of Customs which follows this notice establishes the import level for this category.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 6, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

February 4, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This letter amends, but does not cancel, the letter of June 27, 1985, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Colombia and exported during the twelve-month period began on July 1, 1985, and extends through June 30, 1986.

Effective on February 10, 1986, the letter of June 27, 1985, is hereby amended to include a restraint level of 29,167 dozen [1] for man-made fiber textile products in Category 640.

Textile products in Category 640 which have been exported to the United States prior to June 1, 1985, shall not be subject to this directive.

Textile products in Category 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2722 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Mexico have exchanged notes further amending and extending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979 for six months beginning on January 1, 1986 and extending through June 30, 1986. The bilateral agreement, as further amended and extended, establishes specific limits for Categories 338/339, 347/348, 359pt. (cotton coveralls in T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928, and 384.5227), 633, 641, 647/648 and 659pt. (man-made fiber coveralls in T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8605, and 384.9310). In addition, the agreement provides consultation levels for cotton,

[1] The levels has not been adjusted to reflect any imports exported after June 30, 1985. Charges during the period July 1, 1985, through November 30, 1985, have amounted to 14,744 dozen.

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wool and man-made fiber textiles and textile products in Categories 300/301, 331, 334, 335, 336, 337, 340, 341, 352, 359pt. (apparel other than coveralls), 363, 433, 434, 435, 442, 447, 448, 604, 634, 635, 636, 637, 638/639, 640, 642, 644, 645, 646, 649, 650, 651, 652, 659pt. (headwear in T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, and 703.1650) and 659pt. (all T.S.U.S.A. numbers in the category except those previously specified for headwear and coveralls), which are not subject to specific limits and which may be adjusted during the agreement year upon agreement between the two governments. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, in the United States of textiles and textile products in the foregoing categories, produced or manufactured in Mexico and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 4, 1986

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of February 26, 1979, as further amended and extended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 10, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the six-month period which began on January 1, 1986 and extends through June 30, 1986, in excess of the following limits:

Category	6-month limit[1] [4]
300/301	4,00,000 pounds.
331	265,715 dozen pairs.
334	12,107 dozen.
335	15,000 dozen.
336	20,000 dozen.
337	14,000 dozen.
336/339	292,747 dozen.
340	62,500 dozen.
341	55,000 dozen.
347/348	570,000 dozen of which not more than 312,500 dozen shall be in Category 347 and not more than 312,500 dozen shall be in Category 348.
352	90,909 dozen.
359pt.[2]	500,000 pounds.
359pt.[3]	108,696 pounds.
363	2,000,000 numbers.
433	5,000 dozen.
434	1,158 dozen.
435	7,408 dozen.
442	4,000 dozen.
447	4,500 dozen.
448	2,778 dozen.
604	1,250,000 pounds of which not more than 375,000 pounds shall be in T.S.U.S.A. number 310.5049.
633	37,500 dozen.
634	50,000 dozen.
635	50,000 dozen.
636	50,000 dozen.
637	22,500 dozen.
638/639	450,000 dozen of which not more than 300,000 dozen shall be in Category 638 and not more than 300,000 dozen shall be in Category 639.
640	100,000 dozen.
641	212,500 dozen.
642	56,180 dozen.
644	18,519 dozen.
645	15,000 dozen.
646	9,511 dozen.
647/648	750,000 dozen of which not more than 400,000 dozen shall be in Category 647 and not more than 400,000 dozen shall be in Category 648.
649	1,000,000 dozen.
650	6,863 dozen.
651	50,000 dozen.
652	375,000 dozen.
659pt.[5]	500,000 pounds.
659pt.[6]	125,000 pounds.
659pt.[7]	600,000 pounds.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.
[2] In Category 359, only T.S.U.S.A. numbers 381.0822, 381.6510, 384.0926 and 384.5227.
[3] In Category 359, all T.S.U.S.A. numbers in the category except those listed in footnote 2.
[4] See footnote 1.
[5] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9605, 384.2205, 384.2530, 384.8605 and 384.9310.
[6] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, and 703.1650.
[7] In Category 659, all T.S.U.S.A numbers in the category except those listed in footnotes 5 and 6

In carrying out this directive, entries of cotton and man-made fiber textile products in the foregoing categories, except Categories 300/301, 331, 334, 337, 352, 359pt.[8], 359pt.[9], 363, 434, 435, 448, 636, 640, 642, 644, 646, 650, 651, 652, 659pt.[6], 659pt.[8], and 659pt.[7], produced or manufactured in Mexico, which have been exported during the period which began on January 1, 1985 and extended through December 31, 1985, shall to the extent of any unfilled balances, be charged against the limits established for such goods during that twelve-month period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive. Textile products in Categories 300/301, 331 334, 337, 352, 359pt.[10], 359pt.[11], 363, 434, 435, 448, 636, 640, 642, 644, 646, 650, 651, 652, 659pt.[12], 659pt.[12], and 659pt.[14], which have been exported before January 1, 1986, shall not be subject to this directive.

The limits set forth above are subject to adjustment in the further according to the provisions of the bilateral agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than 7 percent for swing in any agreement period; (2) these same limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in term of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1)

[8] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9605, 384.2205, 384.2530, 384.8605 and 384.9310.
[9] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640., and 703.1650.
[7] In Category 659, all T.S.U.S.A. numbers in the category except those listed in footnotes 5 and 6.
[8] See footnote 2.
[9] See footnote 3.
[10] See footnote 2.
[11] see footnote 3.
[12] See footnote 5.
[13] see footnote 6.
[14] See footnote 7.

Sincerely,
Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 86-2725 Filed 2-6-86; 8:45 am]
BILLING CODE 3510-DR-M

Adjusting the Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

A CITA directive establishing import limits for specific categories of cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986, was published in the **Federal Register** on May 29, 1985 (50 FR 21923). The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka provides, among other things, for the carryover of shortfalls in certain categories from the previous agreement year. Accordingly, at the request of the Government of Sri Lanka, carryover is being applied to the current-year limits for cotton, wool and man-made fiber textile products in Categories 334, 336, 339, 369 pt. (shop towels in T.S.U.S.A. number 366.2840–formerly 366.2740), 445/446, 631, 634, 635, 640, 641, 645/646, including the sublimit for Category 646 and 648. The limits for Categories 634 and 635 have also been adjusted to account for shift previously applied. The limit for Category 347 is being adjusted to account for unused carryforward in the amount of 12,543 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

February 4, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 29, 1985, as amended, from the Chairman of the Committee for the Inplementation of Textile Agreements which established levels of restraint for certain specific categories of cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986.

Effective on February 10, 1986, the directive of May 29, 1985 is hereby amended to adjust the previously established restraint limits for the following categories to the indicated amounts under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983:[1]

Category	Adjusted 12-mo restraint limits[1]
334	191,882 dozen.
336	70,596 dozen.
339	444,002 dozen.
347	362,804 dozen.
369 pt.[2]	900,107 pounds.
445/446	97,553 dozen.
631	310,190 dozen.
634	116,066 dozen.
635	178,291 dozen.
640	102,077 dozen.
641	532,460 dozen.
645/646	112,248 dozen of which not more than 74,565 dozen shall be in Category 646.
648	170,454 dozen.

[1] The levels have not been adjusted to account for any imports exported after May 31, 1985.
[2] In Category 369, only T.S.U.S.A. number 366.2840 (formerly 366.2740).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2723 Filed 2-6-86; 8:45 am]
BILLING CODE 3510-DR-M

[1] The Agreement provides, in part, that (1) specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits may also be increased for carryover and carryforward.

Increasing Import Levels for Certain Cotton, Wool and Man-Made Fiber Products Produced or Manufactured in Colombia

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, as amended, between the Governments of the United States and Colombia provides for percentage increases in certain limits during an agreement year (swing) and for the carryover of shortfalls from the previous agreement period (carryover). Under the terms of the bilateral agreement, the restraint limits previously established for textile products in Categories 313, 435, 442, 444, and 448 are being increased, variously, for swing and carryover for the agreement year which began on July 1, 1985 and extends through June 30, 1986. The limits for Categories 443, 444 and 641 also include adjustment for growth for the current agreement year. The limit for Category 435 also includes an adjustment in the base to account for the conversion of a minimum consultation level to a specific limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754) November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile agreements.

Committee for the Implementation of Textile Agreements

February 4, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

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Dear Mr. Commissioner: On October 29, 1985, the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry of certain cotton, wool and man-made fiber textile products exported during the twelve-month period beginning on July 1, 1986 and extending through June 10, 1986, produced or manufactured in Colombia, in excess of designated restraint limits. The Chairman further advised you that the limits are subject to adjustment.[1]

Effective on February 10, 1986, the directive of October 29, 1985 is hereby amended to include the following adjusted restraint limits for textile products in Categories 313, 435, 442, 443, 444, 448 and 641:

Category	Adjusted 12-month limit [2]
313	16,078,670 square yards.
435	7,692 dozen.
442	9,467 dozen.
443	12,229 dozen.
444	5,244 dozen.
448	6,284 dozen.
641	213,292 dozen.

[2] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2721 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

New Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

February 4, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 10, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 1 and August 11, 1982, between the Governments of the United States and Colombia which provide, in part that: (1) Within the applicable group limits, specific limits may be exceeded by designated percentages; (2) specific limits may be increased for carryforward; (3) certain consultation levels may be increased within the applicable group limit upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Background

On May 29, 1985, a notice was published in the **Federal Register** (50 FR 21923) announcing the import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the agreement year which began on June 1, 1985 and extends through May 31, 1986.

During consultations held under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 10, 1983, the Governments of the United States and Sri Lanka have agreed to establish specific limits for the following categories of cotton and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986: Cotton playsuits in Category 337, men's and boys' cotton knit shirts in Category 338, women's, girls' and infants' knit shirts in Category 339, cotton terry and other pile towels in Category 363, cotton shop towels in Category 369 (only T.S.U.S.A. number (366.2840-formerly 366.2740) and men's and boys' trousers in Category 647.

The United States Government has decided to control imports in these categories at the agreed limits. Accordingly, in the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry or withdrawal from warehouse for consumption, in the United States of textile products in the foregoing categories in excess of the designated restraint limits. The limits for Categories 338 and 647 have been prorated for the period July 30, 1985 through May 31, 1986. The limit for Category 363 has been prorated for the period August 26, 1985 through May 31, 1986.

The agreed limits for the foregoing categories have not been adjusted to account for any charges for imports exported during the restraint periods which end on May 31, 1986. Such charges will be made to these limits as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

February 4, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel the directive of May 24, 1985 which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of certain cotton textile products produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extends through May 31, 1986.

Effective on February 10, 1986, the directive of May 24, 1985 is hereby further amended to include an adjusted limit of 400,002 dozen for cotton textile products in Category 339 and the following new twelve-month limits for cotton textile products in Categories 337 and 369pt.[1]:

Category	12-month limit [2]
337	106,000 dozen.
369 pt.[3]	846,940 pounds.

[1] In Category 369, only T.S.U.S.A. number 366.2840 (formerly 366.2740).

[2] The limits have not been adjusted to account for any import exported after May 31, 1985.

Textile products in Categories 337 and 369 pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated May 10, 1983 between the Governments of the United States and Sri Lanka; and in accordance with the provision of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 10, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 338, 363, and 647, produced or manufactured in Sri Lanka and exported during the indicated periods, in excess of the following limits:

Category	Prorated 12 month restraint limit [2]	Period
338	194,499 dozen.	July 30, 1985-May 31, 1986.

[1] In Category 369, only T.S.U.S.A. number 366.2840 (formerly 366.2740).

Category	Prorated 12 month restraint limit [2]	Period
363	4,586,301 numbers.	Aug. 26, 1985-May 31, 1986.
647	297,616 dozen.	July 30, 1985-May 31, 1986.

[2] The limits have not been adjusted to account for any imports exported after May 31, 1985.

In carrying out this directive textile products in the foregoing categories, except Categories 338, 363 and 647, which have been exported during the agreement periods which ended on May 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the restraint limits established for such goods during those periods have been exhausted by previous entires, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 338, 363 and 647 which have been exported prior to July 30, 1985 in the case of Categories 338 and 647 and prior to August 26, 1985 in the case of Category 363 shall not be subject to this directive.

Textile products in Categories 338, 363 and 647 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

All of the restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, which provide, in part, that (1) any specific limit and sublimit may be exceeded by designated percentages of the square yards equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent decrease in one or more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any of the adjustments referred to above will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2724 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations on Man-Made Fiber Specialty Fabrics in Category 627, Produced or Manufactured in Taiwan

February 4, 1986.

On December 30, 1985, the American Institute in Taiwan (AIT), under the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan, requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of man-made fiber specialty fabrics in Category 627, produced or manufactured in Taiwan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber products in Category 627, produced or manufactured in Taiwan and exported to the United States.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-2726 Filed 2-6-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1986 services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 7, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 2 and November 15, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 31407 and 50 FR 47245) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.5.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1986:

Commissary Shelf Stocking and Custodial, Hickam Air Force Base, Hawaii.

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Janitorial/Custodial, All Family Housing Units and Buildings, 672, 1001, 2004, 2033, 2034, 2042, 2044, 2048, 2076, 2077, 2082, 2085, 2100, 2121, 3041, 3074, 3094, 3100, 3104, 3169, 3228, 3250, 3252, 3255, 3301, 3307, 3400, 4320, 24003, 24164 and 24165.
U.S. Marine Corps, MCDEC, Quantico, Virginia.

C. W. Fletcher,
Executive Director.
[FR Doc. 86-2737 Filed 2-6-86; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1986; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

Comments Must be Received on or Before: March 12, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons and opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodities

Belt, Aircraft Safety, 1680-00-407-5335.
Cushion, Seat Back, 2540-01-065-6289.
Curtain, Shower, 7230-00-849-9838, 7230-00-849-9839.

Services

Commissary Shelf Stocking, Branch Commissary Store, Little Creek Naval Amphibious Base, Building 3324, Norfolk, VA.
Commissary Shelf Stocking, Branch Commissary Store, Building 350, Norfolk Naval Shipyard, Portsmouth, VA.
Commissary Shelf Stocking and Custodial, Fort Irwin, IL.
Commissary Shelf Stocking and Custodial, Rock Island Commissary, Rock Island, IL.
Commissary Shelf Stocking and Custodial, Seneca Army Depot, NY.
Commissary Shelf Stocking and Custodial, Fort Sill, OK.
Commissary Shelf Stocking and Custodial, Carlisle Barracks, PA.
Commissary Shelf Stocking and Custodial, Tobyhanna Army Depot, PA.
Commissary Shelf Stocking and Custodial, Commissary and Commissary Annex, Fort Bliss, TX.
Operation of the Postal Service Center, Barksdale Air Force Base, LA.

C.W. Fletcher,
Executive Director.
[FR Doc. 86-2738 Filed 2-6-86; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been rescheduled from January 31, 1986 as follows:

DATE: 5 March 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Space Activities.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
February 4, 1986.
[FR Doc. 86-2752 Filed 2-6-86; 8:45 am]
BILLING CODE 3810-01-M

Defense Science Board Task Force on Software; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Software will meet in open session on 4-5 March 1986 at the MITRE COMPLEX, 1820 Dolley Madison Blvd, McLean, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. The March meeting will consist of discussion by the Task Force members on various software issues.

Persons interested in attending should contact Major Susan Swift, Task Force Executive Secretary, approximately one week prior to the scheduled meeting times. Space is limited and will be awarded on a first come first served basis. Telephone (202) 695-7181.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
February 4, 1986.
[FR Doc. 86-2753 Filed 2-6-86; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Bilingual Education; Meeting Cancellation

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice of Meeting Cancellation

SUMMARY: This notice cancels the NACCBE meeting scheduled for February 10-11, 1986, published in the December 18, 1985 **Federal Register** on page 51577.

FOR FURTHER INFORMATION CONTACT: Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202 (202) 245-2600.

Dated: February 4, 1986.
Carol Pendas Whitten,
Director, Office of Bilingual Education and Minority Languages Affairs.
[FR Doc. 86-2699 Filed 2-6-86; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: 9(i)(3)-86]

Proposed Legal Interpretation of Section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act; Request for Comments

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Request for comments.

SUMMARY: Bonneville Power Administration (BPA) proposes to interpret section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839f(i)(3). Section 9(i)(3) imposes an obligation upon the BPA Administrator, to the extend practicable, to give priority to marketing services for capability from projects under construction on the effective date of the Northwest Power Act if the capability has been offered for sale to BPA at cost, including a reasonable rate of return, and the offer is not accepted within one year. The proposed legal interpretation addresses the qualification of project capability for the priority set forth in section 9(i)(3), and the meaning of a section 9(i)(3) priority in relation to BPA's power marketing program.

Responsible Officials; James O. Luce, Assistant General Counsel, is the official responsible for this statutory interpretation. Thomas M. Noguchi, Director, Division of Customer Service, is the official responsible for implementing section 9(i)(3).

DATE: Written comments on the proposed interpretation of section 9(i)(3) will be accepted until 5 P.M., P.S.T., February 21, 1986.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the above address, 503-230-3478. Oregon callers outside Portland may use the toll-free number 800-452-8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800-547-6048. Information may also be obtained from:

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon 97208, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Ronald H. Wilkerson, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3860.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington, 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla Washington 99362, 509-525-5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main St., Boise, Idaho 83707, 208-334-9138.

SUPPLEMENTARY INFORMATION:

I. Background

A. Need for Legal Interpretation

BPA needs to interpret section 9(i)(3) because it has received an offer of project capability under the terms of section 9(i)(3). In addition, the section 9(i)(3) priority affects the implementation of BPA's power marketing program and policies, such as the Intertie Access Policy.

B. Relevant Statutory Provisions

Section 9(i)(1) of the Northwest Power Act, 16 U.S.C. 839f(i)(1), imposes an obligation on the BPA Administrator, to the extent practicable, to acquire electric power required by certain customers as replacement power and to dispose or assist in the disposal of power that certain customers propose to sell, if such disposition does not conflict with the Administrator's other marketing obligations, the policies of the Northwest Power Act, and other applicable laws. Section 9(i)(2) of the Act, 16 U.S.C. 839f(i)(2), authorizes the BPA Administrator to prescribe policies and conditions for the independent acquisition or disposition of electric power by direct service industrial customers. Section 9(i)(3) provides:

> The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year. 16 U.S.C. 839f(i)(3).

C. Scope of Interpretation

This interpretation addresses the qualification of project capability for the priority set forth in section 9(i)(3), and the meaning of a section 9(i)(3) priority in relation to BPA's power marketing program. This interpretation is not intended to address other legal issues or policy questions which may involve section 9(i)(3). This interpretation is not an invitation to the public to provide comment on the substance or merits of any other BPA policies or rate proceedings under consideration and public comment at this time.

D. Public Comment Procedures

All comments should be directed to the Public Involvement Manager at P.O. Box 12999, Portland, Oregon 97212. Written comments must be received in the Public Involvement Office by 5 p.m., P.S.T., on February 21, 1985. BPA will develop its final interpretation based in part on the written comments received. The final interpretation will be published in the Federal Register in March of 1986.

II. Proposed Legal Interpretation

A. Definitions

This section contains definitions of terms used in the proposed legal interpretation and is a part of the interpretation. Terms defined in the Northwest Power Act have the same meaning in this interpretation, unless further defined.

1. *Project capability:* "Project capability" is the actual or planned

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electric power capability of a generating facility. Project capability is not output or plant ownership.

2. *Under construction:* A project is "under construction" if BPA determines there was a firm commitment to build and operate a generating facility. This commitment may, but not necessarily, be evidenced by binding contracts for the purchase of generation equipment or machinery, site development, or construction placement, including foundation work, fabrication, or equipment installation.

3. *Offered for sale:* Project capability is "offered for sale" if there is a bona fide offer, capable of acceptance and valid for one year, which includes, but is not limited to, the following essential terms: (a) Identification of project capability offered pursuant to section 6 of the Northwest Power Act; (b) the cost of the capability offered; (c) the quantity of capability offered; (d) the term of the proposed sale; (e) identification of the manner of acceptance; and (f) designation of the point of delivery from which BPA can take delivery of the power into its system.

4. *At cost, including a reasonable rate of return:* Under section 9(i)(3), project capability must be offered for sale to BPA "at cost, including a reasonable rate of return." This price reflects the costs determined by BPA to be associated with the project capability. In any decision to acquire project capability, BPA shall determine the appropriateness of the costs and the reasonableness of the rate of return included in the offered price.

5. *Power marketing program:* BPA's "power marketing program" means the aggregate of BPA's power marketing actions taken and policies developed to fulfill BPA's statutory obligations and policy directives. These actions and policies are based on the exercise of broad authority to act, consistent with sound business principles, to recover adequate revenue to repay the Federal investment in the Federal system while, at the same time, encouraging the widest possible diversified use of electric power at the lowest possible rates for BPA customers. BPA's power marketing program includes the Administrator's obligation to meet his power supply obligations in the Pacific Northwest and to market surplus power in the Pacific Northwest in a manner that assures an adequate, reliable, economical, efficient, and environmentally acceptable power supply, while preserving regional and public preference to Federal electric power and maintaining BPA's present and future rates to all customers at the lowest level possible consistent with sound business principles. BPA's power marketing program also includes the Administrator's objectives to market surplus Federal power to the Southwest utilities at equitable prices under rates adopted pursuant to section 7(i) of the Northwest Power Act and to assist in the marketing of the region's surplus firm power to the Southwest.

B. Interpretation

Project capability which qualifies for the section 9(i)(3) priority is generating capability of a Pacific Northwest utility customer of BPA; from a project located within or without the Pacific Northwest, which was under construction by such customer on December 5, 1980; was offered for sale to BPA at cost, including a reasonable rate of return; and the offer of which has been rejected by BPA, or has not been accepted by BPA within one year from the date of the offer. Such project capability shall have priority to all transmission, storage, and loan factoring services, at established rates or charges, which BPA is making available to other utility customers under policies and programs in effect at the time the offer is rejected or allowed to lapse and for which the project capability otherwise qualifies.

Section 9(i)(3), however, does not confer independently and substantive right to, or any modification of, BPA's power marketing program for the reason that the statute grants only a priority to the services as BPA may offer. In this regard, section 9(i)(3) implicitly recognizes that the type and amount of services BPA provides are separate questions to be addressed in BPA's power marketing program which establishes transmission, storage, and load factoring services.

Priority shall be provided to the extent practicable, unless BPA determines that such services cannot be furnished without substantial interference with BPA's power marketing program, applicable operating limitations, or existing contractual obligations. In the event that there are competing requests for such services, the section 9(i)(3) project capability shall have priority; however, BPA shall not breach existing contracts to provide services.

Issued in Portland, Oregon on February 4, 1986.

Peter T. Johnson,

Administrator, Bonneville Power Administration.

[FR Doc. 86-2901 Filed 2-5-86; 4:59 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-015; OFP Case No. 61050-9275-21, 22-22]

Powerplant and Industrial Fuel Use; Alaska Electric Generation & Transmission Cooperative

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Extension of Decision Period on Petition for Exemption by Alaska Electric Generation and Transmission Cooperative, Inc., near The Seward Meridian, Alaska.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by ninety (90) days to April 14, 1986, the Decision Period within which to either grant or deny the request for a permanent reliability of service exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA) filed by Alaska Electric Generation and Transmission Cooperative for two proposed 80 MW gas turbine powerplants to be located west of The Seward Meridian, Alaska.

Section 501.68(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a date certain by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension by ERA of the decision period to grant or deny the petition is necessary due to required analysis of additional environmental data submitted by the petitioner during December, 1985.

Issued in Washington, D.C. on January 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2713 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-01; OFP Case No. 61056-9296-20-24]

Powerplant and Industrial Fuel Use; Prohibition Orders; Basic American Foods

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting to Basic American Foods Exemption from Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Basic American Foods (Basic or "the petitioner"), of San Francisco, California. The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a planned American I cogeneration project located in King City, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on April 8, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: The proposed cogeneration facility will be a gas turbine combined cycle plant designed to produce process steam for use in the existing Basic food processing plant and electricity for sale to the Pacific Gas and Electric Company. Approximately 87 MW of electricity will be generated by a single gas turbine-generator. Heat rejected with the gas turbine exhaust gas will be recovered in a heat recovery steam generator. The steam produced will be passed through a steam turbine-generator producing a variable amount of additional electricity. Process steam for use in the vegetable processing plant will be extracted from an intermediate stage in the steam turbine at a maximum rate of approximately 201,500 lb/hr.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Basic's certification to ERA, in accordance with § 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on November 15, 1985 (50 FR 47251), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on December 30, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Basic has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Basic to permit the use of natural gas as the primary energy source for its cogeneration facility in King City, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on January 29, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2720 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-016; OFP Case No. 55034-9279-01, 02-33]

Powerplant and Industrial Fuel Use; Prohibition Orders; Boise Cascade Corp.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting to Boise Cascade Corporation Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to Boise Cascade Corporation a permanent emergency purposes exemption from the prohibitions of the Powerplant and Industrial Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA") or "the Act") for two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana. The exemption granted permits the use of natural gas as the primary energy source for the emergency standby units.

The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The order and its provisions shall take effect on April 8, 1986.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or

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petroleum in new MFBIs that consist of a boiler unless an exemption for such use has been granted by ERA. Boise Cascade Corporation has filed a petition with ERA requesting a permanent emergency purposes exemption to permit the use of two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana.

The proposed gas-fired units are rated at 165,000 pounds per hour (lb/hr) of steam each at 900 psig. Because the heat input into each unit, about 228 million Btu's per hour (MMBtu/hr), would exceed 100 MMBtu/hr, each proposed boiler would be an MFBI subject to FUA regulation. The proposed boilers are to be operated only as standby units on an emergency basis when one of the paper mill waste wood boilers or the recovery boiler would have to be shut down. The proposed boilers would operate a potential 409 hours per year. Their required fuel would be natural gas. It is economically nonfeasible to install coal or other mixtures boilers for standby emergency purposes.

Basis for Exemption Order

The permanent exemption granted by ERA to the new boilers is based upon Boise Cascade Corporation's certification, pursuant to section 212(e) of FUA and 10 CFR 503.39(a), that:

1. It will operate and maintain the proposed unit for emergency purposes only; and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.39(c) (and in addition to the certifications discussed above), Boise Cascade Corporation has included as part of its petition:

1. Exhibits containing the basis for the certifications described above, and

2. Environmental certifications, as required under 10 CFR 503.13(b).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of certification relating to the proposed units in the **Federal Register** on August 21, 1985 (50 FR 33823), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701 (f) and (g) of the Act, ERA provided copies of the petition to the Environmental Protection Agency and the Federal Trade Commission, respectively, for comments. During this period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed on October 4, 1985. No comments were received and no hearing was requested.

Order Granting Permanent Emergency Purposes Exemption

Based upon the entire record of this proceeding, ERA has determined that Boise Cascade Corporation has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR 503.39(a). Therefore, pursuant to section 212(e) of FUA, ERA hereby grants a permanent emergency purposes exemption to Boise Cascade Corporation to permit the use of natural gas as the primary energy source for its two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this action may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC January 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2714 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-29; OFP Case No. 64013-9311-20, 21-24]

Powerplant and Industrial Fuel Use; Prohibition Orders; Kern Front CoGen, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Kern Front CoGen, Inc.

SUMMARY: On January 17, 1966, Kern Front CoGen, Inc. (Kern Front CoGen) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for their proposed Kern Front Project from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301, *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source Final rules setting forth the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTAL INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before March 24, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-C&E-86-29 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Myra Couch, Division of Coal & Electricity, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: Kern Front CoGen plans to install a 47 MW gas fired cogeneration facility to produce steam and electric power. The cogeneration system of the facility, will consist of two combustion gas turbine generators and two unfired heat recovery boilers. The only fuel burning equipment in the facility will be the gas turbines. The facility will consume 432 million Btu's of natural gas per hour and produce 46.0 MW of electric power and 113,000 pounds per hour of steam. The steam will be sold to the Petro-Lewis Corporation, and the electric power to the Pacific Gas and Electric Company.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Kern Front CoGen has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Kern Front CoGen has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Kern Front CoGen is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on January 30, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2719 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-04; OFP Case No. 52164-2952-21, 22, 23, 24-22]

Powerplant and Industrial Fuel Use; Prohibition Orders; Oklahoma Gas and Electric Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting Oklahoma Gas and Electric Company, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company, (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Muskogee generating station (Muskogee), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 3801 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1961)

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators with a maximum total capacity of 250.7 MW. Three of the turbines will have electrical design peak mode outputs of approximately 82.8 MW with the smaller unit having an output of 39.7 MW. Using a site elevation of 600 feet and assuming a 88° F inlet temperature the total peakload fuel consumed by the four units using natural gas is estimated to be 2,745.2 million Btu per hour, and on No. 2 distillate oil 2,720.6 million Btu per hour. They will be able to burn either natural gas or petroleum as a primary energy source. The proposed units are to be installed at the OG&E's Muskogee facility, an 800 acre site adjacent to the Arkansas River, south of U.S. Highway 62.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Muskogee a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 8, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Muskogee facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48461), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E

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petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility near Muskogee, Oklahoma, permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2715 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-03; OFP Case No. 52164-2951-21,22,23,24-22]

Powerplant and Industrial Full Use; Prohibition Orders; Oklahoma Gas and Electric Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting Oklahoma Gas and Electric Company, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company, (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Horseshoe Lake generating station (Horseshoe Lake), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and neutral gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators with a maximum total capacity of 284.4 MW. Using a site elevation of 1,000 feet and assuming a 88 °F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. The proposed units are to be installed at the OG&E's Horseshoe Lake facility, a site of approximately 900 acres. It is located on the north bank of the North Canadian River, at a point about one mile north of U.S. Highway 62 and one mile west of Harrah, Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Horseshoe Lake a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 8, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request for DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Horseshoe Lake facility' simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d) ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48460), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41 (a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility near Harrah, Oklahoma, permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2716 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-02; OFP Case No. 52164-2956-22,23,24,25-22]

Powerplant and Industrial Fuel Use; Prohibition Orders, Oklahoma Gas and Electric Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting Oklahoma Gas and Electric Company, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Seminole generating station (Seminole), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators with a maximum total capacity of 284.5 MW. Using a site elevation of 1,000 feet and assuming a 88°F inlet temperature the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. They will be able to burn either natural gas or petroleum as a primary energy source. The proposed units are to be installed at the OG&E's Seminole facility, a 3,300 acre site adjacent to the South Canadian River about two miles northeast of Konawa, Oklahoma.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Seminole a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 8, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Seminole facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48463), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

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OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the request exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility near Konawa, Oklahoma, permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2717 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-06; [OFP Case No. 52164-2953-22, 23, 24, 25-22]

Powerplant and Industrial Fuel Use; Prohibition Orders; Oklahoma Gas and Electric Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order Granting Oklahoma Gas and Electric Company, Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company, (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Mustang generating station (Mustang), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for four simple-cycle combustion turbine generators with a maximum total capacity of 284.4 MW. Using a site elevation of 1,000 feet and assuming a 88 °F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 3,094.4 million Btu per hour, and on No. 2 distillate oil 3,066.8 million Btu per hour. The proposed units are to be installed at the OG&E's Mustang facility, a site of approximately 355 acres. It is located on the west bank of the North Canadian River, at a point about one half mile south of State Highway 4. The units will be able to burn either natural gas or petroleum as a primary energy source.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Mustang a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 8, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4523;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Mustang facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48462), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternative fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a to a

concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility located on the west bank of the North Canadian River permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2718 Filed 2-6-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. TA86-6-20-002, TA86-7-20-002, and TA86-8-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 3, 1986.

Take notice that Algonquin Gas Tranmission Company ("Algonquin Gas") on January 28, 1986 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No.1.

Substitute Tenth Revised Sheet No. 203
Seventh Revised Sheet No. 204
Substitute Nineteenth Revised Sheet No. 213
Substitute Twentieth Revised Sheet No. 213

Algonquin Gas states that Sheet No. 203 and Sheets 213 are being filed to reflect in Algonquin Gas' Rate Schedule F-2 and Rate Schedule S-IS, a 3 cent/dekatherm reduction in the non-gas commodity component of Consolidated Gas Transmission Corporation's ("Consolidated") underlying rates. Sheet No. 204 is being filed to reflect in Algonquin Gas' Rate Schedule F-3 a 92 cent/dekatherm reduction in the demand charge for firm transportation by Transcontinental Gas Pipe Line Corporation ("Transco").

Algonquin Gas requests that the Commission accept Substitute Tenth Revised Sheet No. 203 and Substitute Nineteenth Revised Sheet No. 213 to be effective January 1, 1986; and that the Commission accept Seventh Revised Sheet No. 204 and Substitute Twentieth Revised Sheet No. 213 to be effective February 1, 1986.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2702 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-9-20-000, 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 3, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on January 28, 1986 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Eleventh Revised Sheet No. 201
Sixth Revised Sheet No. 231
Fifth Revised Sheet No. 241

Algonquin Gas states that such tariff sheets are being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment Provision as set forth in section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. The rates as shown on Eleventh Revised Sheet No. 201 reflect (i) and adjustment to amortize the December 31, 1985 balance in Algonquin Gas' Unrecovered Purchased Gas Cost Account (Account No. 191) and (ii) an adjustment to reflect a change in purchased gas cost to be charged by its supplier, Texas Eastern Transmission Corporation ("Texas Eastern"). Sixth Revised Sheet No. 231 reflects Projected Incremental Pricing Surcharges for the period March, 1986 through August, 1986. Fifth Revised Sheet No. 241 identifies the gas cost included in the revised sales rates.

Algonquin Gas proposes the effective date of the above-mentioned tariff sheets to be March 1, 1986.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2701 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-41-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 3, 1986.

Take notice that on January 29, 1986, Algonquin Gas Transmission Company ("Algonquin Gas"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed proposed changes in its FERC Gas Tariff, pursuant to Section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations under the Natural Gas Act. Algonquin Gas propose that the filing take effect on March 1, 1986.

Algonquin states that the filing would effectuate an increase in annual revenues of approximately $9.9 million or 1.7%. The Company asserts that the increased rates are required to provide revenues equal to the test period cost of service, when applied to the related test period deliveries. The increased rates are filed to become effective March 1, 1986.

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Algonquin Gas states that copies of its filing have been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-2700 Filed 2-6-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-3-21-000, 001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 3, 1986

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 29, 1986, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective on March 1, 1986:

One hundred and fourth Revise Sheet No. 16
Eighth Revised Sheet Nos. 16B and 16C
Fortieth Revised Sheet No. 64

Columbia states that the filing reflects only demand charges consistent with the Stipulation and Agreement in Docket Nos. TA82-1-21-001, *et al.*, approved by Commission's order dated June 14, 1985, as modified by order dated June 25, 1985.

Columbia further states that the rates set forth on One hundred and forth Revised Sheet No. 16 reflect a $.377/Dth reduction in the Demand Rate Applicable to Non-Shielded Customers and a $.333/Dth reduction in the Demand Rate Applicable to Shielded Customers, which results in an approximate decrease of $10.6 million applicable to sales rate schedules for the subject PGA period. This reduction is composed of the net of (1) a Demand Purchased Gas Cost Adjustment which reflects a reduction in the current cost of gas, and (2) a net increase in the Demand Surcharge Adjustment.

In addition, the Demand Purchased Gas Cost Surcharge amounts set forth on Eighth Revised Sheet No. 16B provide for the recovery of $19,865 in demand gas purchased costs from customers receiving service under Columbia's Rate Schedule SGES.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-2703 Filed 2-6-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER86-76-000]

Commonwealth Edison Co.; Order Summarily Rejecting Filing in Part and Ordering New Filing, Granting Waiver, Granting Interventions, Denying Motion to Consolidate, and Establishing Hearing Procedures

Issued: January 30, 1986.

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On November 4, 1985, Commonwealth Edison Company (Edison) filed a proposed rate for transmission service (Rate 80) to the City of Geneva, Illinois (Geneva).[1] The rate was filed as a result of a settlement approved by the Commission in Docket No. ER83-437-000.[2] Geneva presently receives full requirements service from Edison. Under the terms of the settlement agreement, Geneva and Edison's other full requirements customers may obtain transmission and/or partial requirements service upon one year's notice. In that event, Edison is required to file a rate for the service requested no later than 180 days prior to termination of full requirements service. As discussed more fully below, commencing in June 1984, Geneva began exploring alternative power purchase options and ultimately entered into a full requirements power supply agreement with Wisconsin Electric Power Company (WEPCO). As a result, on May 1, 1985, Geneva gave Edison notice of its intent to terminate full requirements service on May 1, 1986. Accordingly, Edison has submitted this filing. Edison proposes an April 30, 1986 effective date for Rate 80 and requests waiver of the advance filing requirements. The company has characterized its filing as an initial rate.

Notice of Edison's filing was published in the Federal Register,[3] with comments due on or before November 22, 1985. Timely motions to intervene were filed, jointly, by Geneva and the City of Rock Falls, Illinois (Rock Falls), and by the Illinois Municipal Electric Agency (IMEA).[4] In addition, an untimely motion to intervene was filed by the Illinois Commerce Commission (ICC).

Geneva, joined by Rock Falls,[5] requests that the Commission: (1) Find that Edison's filing constitutes a change in rate and suspend it for one day; (2) Declare the filing deficient and order Edison to file all information required by section 35.13 of the Commission's regulations, including a cost of service study based on fully distributed embedded costs; (3) Direct the company to place in effect and collect commencing May 1, 1986, on a subject-to-refund basis, a transmission rate based on fully-distributed embedded costs; (4) Summarily reject Edison's proposed stand-by charge and the company's alternative justification for Rate 80; and (5) Set the matter for expedited hearing. In support, the cities allege that Edison's filing is anticompetitive and an unlawful exercise of monopoly power. The cities also contend that the filing is unduly discriminatory when compared to the transmission component of Edison's firm wholesale and retail rates and, thus, will result in a price squeeze. With respect to the proposed stand-by charge, Geneva states that it does not want stand-by service, and that it has informed Edison of this in the past. The cities also allege that Edison's filing undercuts the terms of the settlement agreement filed in Docket No. ER83-647-000, in effect rewriting the termination provisions of that agreement. In the event the Commission does not require Edison to file a rate based on fully-distributed costs, the cities request that the hearing be expedited in order to avoid the allegedly anticompetitive effects of the filing.

IMEA seeks rejection of the filing, alleging that Edison has not justified pricing its transmission rate on marginal costs, that it has not justified including generation capacity costs in Rate 80, and that the stand-by facilities charge included in the proposed rate schedule is discriminatory.

The ICC, while requesting intervenor status, does not raise any specific issues in its pleading.

On December 9, 1985, Edison filed a response to the pleadings of Geneva, Rock Falls, and IMEA. While Edison does not object to Geneva's intervention, it does object to Rock Falls' and IMEA's intervention. According to Edison, neither movant has an interest in the outcome of this proceeding. Edison denies that its filing is deficient, contending that it complies with the filing regulations applicable to initial rates. However, Edison volunteers to hold any amounts paid under Rate 80 subject to refund if the Commission decides that a lower rate should be charged. In the event that the Commission determines that Rate 80 is a rate change, Edison asserts that the filing meets the requirements of the exception to the full filing requirements set forth at § 35.13(a)(2)(A) of the Commission's regulations because Rate 80 is allegedly a rate decrease. As to the motions for summary disposition, Edison states that they raise disputed issues of material fact. Finally, Edison requests that the Commission set the matter for hearing on an expedited schedule.

On January 21, 1986, Geneva, Rock Falls, and the Cities of Batavia and Naperville, Illinois (Municipalities) filed a motion to consolidate this docket with Edison's filing in Docket No. ER86-230-000. In support, the Municipalities state that the latter docket, in which they have filed a motion to intervene, concerns a rate schedule providing for transmission service to Rock Falls on rates, terms, and conditions virtually identical to those reflected in this docket.[6] Thus, the Municipalities allege that the two filings present common questions of fact and law, and consolidation would promote economy of resources.

[1] *See* Attachment for rate schedule designations.

[2] 29 FERC ¶ 61,064 (1984).

[3] 50 FR 47586 (1985).

[4] IMEA is a municipal corporation formed to provide a mechanism by which its members jointly plan, finance, own, and operate facilities for the generation and transmission of electric power and energy. IMEA's members include Geneva and Rock Falls. IMEA anticipates becoming a supplier of power and energy to some of its members, including Geneva, which are located within Edison's service territory.

[5] Rock Falls is a full requirements customer of Edison and a party to the settlement agreement approved in Docket No. ER83-437-000. Rock Falls has served a notice of termination and request for transmission service to commence on July 3, 1986. A filing similar to that at issue here was made for service to Rock Falls in Docket No. ER86-230-000.

[6] Edison proposes a rate of $8.27/kW for service to Rock Falls, as opposed to the $8.93/kW rate for service to Geneva.

[7] 18 CFR 35.1(c) (1985).

[8] In the event that Edison were to question our assumption of reasonableness, we need only point to the provisions of sections 205 and 206 of Federal Power Act which proscribe *any* rate that fails to meet this standard or which unduly discriminates among customers.

Discussion

Under Rule 214 of the Commission's rules of practice and procedure (18 CFR 285.214), the timely, unopposed motion to intervene of Geneva serves to make it a party to these proceedings. Notwithstanding Edison's opposition to IMEA's and Rock Falls' interventions, we find that good cause exists to grant their motions. We are satisfied that they have expressed interests in the outcome of this proceeding that are not represented by any other party, and that their participation may be in the public interest. Accordingly, we shall grant their motions to intervene. With respect to the ICC, we shall grant its late-filed motion to intervene, given the interests of the constituency which it represents, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

We shall grant Edison's motion for waiver of the 120-day advance filing limitation contained in §35.3 of our regulations. We note that none of the intervenors objects to the request, and that the timing of Edison's filing is in accordance with the terms of the settlement agreement previously approved by the Commission.

The Commission disagrees with Edison's assertion that its filing constitutes an initial rate. Section 35.1(c) of the regulations [7] states that:

> A rate schedule applicable to a transmission or sale of electric energy which proposes to supersede, supplement, cancel or otherwise change any of the provisions of a rate schedule required to be on file . . . (such as providing for other or additional rates, charges, classifications or services . . .) shall be filed as a change in rate.

Clearly, Edison's filing, by providing for transmission service to its present full requirements customer, constitutes a change in service and a change in rate for that customer, as defined in our regulations, and as interpreted in prior cases. *See Florida Power & Light Co* v. *FERC*, 617 F.2d 809 (D.C. Cir. 1980).

Furthermore, we cannot accept Edison's characterization of its submittal as comprising a rate decrease. While overall revenues from Geneva will certainly decrease as a result of the change in service, the charge for the transmission component of Geneva's service will certainly increase as a result of the change, under any reasonable method of unbundling the current full requirements electricity and transmission service. Thus, as a technical matter, Edison's submittal does not comply with the § 35.13 filing requirements. Nonetheless, given Edison's obligation to make the filing and the city's desire to implement an appropriate transmission rate by May 1, 1986, we shall not reject the filing outright as deficient. Rather, we shall direct the company to submit full cost of service data and testimony in the form of a case-in-chief in order to proceed to hearing.

Having considered the pleadings, the purposes of the prior settlement and the current filing, and the bases advanced by Edison to support its rates, we shall for the reasons stated below, summarily reject the rates filed by Edison and direct the company to develop and file a transmission rate based on Edison's average embedded costs of its transmission system. Should the company wish to pursue Rate 80 as an appropriate rate for the service to which Geneva is entitled under the settlement, it will be permitted to do so at hearing, although such a rate will be allowed to operate only prospectively.

In sorting through the current controversy, we find the 1984 settlement, the circumstances underlying it, and the course of conduct following it to be instructive as to the parties' intent with regard to the availability and cost of transmission service. The settlement in Docket No. ER83-437-000 reflected a comprehensive resolution of rate and price squeeze issues in ongoing Commission proceedings as well as antitrust litigation in the Federal courts. By the terms of the agreement, Edison was to enable any of its wholesale customers to pursue alternative power supply options under reasonable parameters. Implicit in such an arrangement must be an agreement that transmission service will be priced reasonably relative to existing service being provided by the utility.[8]

Although the parties neglected (or declined) to specify the manner in which a transmission rate would be developed, the course of conduct after the settlement leaves no doubt that responsible representatives of the company and the city shared a common

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understanding and intent. During the period following the settlement, Geneva, through its Director of Electric Services, corresponded on several occasions with Edison, through its Director of Rates (*See* Exhibits 3–9 to Geneva's motion to intervene and protest).

Geneva requested information from Edison concerning the rates, terms, and conditions under which transmission services would be provided: The information was solicited for the expressed and acknowledged purpose of evaluating the relative economics of dealing with two alternative suppliers—WEPCO and Wisconsin Power & Light Company [WP&L). Edison's consistent response (as indicated in letters appended to Geneva's protest) was that the rates would be "in the range of $25 to $30 per kilowatt-year" and that "this would cover the costs related to Edison's investment in distribution lines which serve Geneva, as well as the transmission system." (Exhibit 4). The company further represented that such information was sufficient to "develop a reasonable estimate of the cost of transmission service." (Exhibit 6). We note that the range provided is equivalent to the average embedded cost of Edison's transmission system. While Geneva was evaluating other supply options, Edison apparently gave not indication whatever that it would ultimately derive a rate based on other than an average embedded cost basis.

It is clear that Geneva relied detrimentally on such representations in finalizing its supply arrangements with WEPCO. However, on the eve of Edison's submittal, long after the WEPCO agreement had been negotiated and Edison had been served with notice of Geneva's intention to convert to transmission service only, the company first evidenced its intention to propose a rate approximately four times the price that had been quoted, *i.e.*, a rate that will effectively preclude the supply switch negotiated by Geneva.

Given this background, we are not evaluating Edison's filing in a vacuum. The course of dealings could perhaps establish a predicate for applying principles of promissory estoppel, against Edison and certainly provide a sufficient basis on which to initiate a hearing regarding Edison's rates as well as the anticompetitive scope of its practices. We cannot, however, concur in Edison's conclusion that we must proceed to hearing before initially ruling on the acceptablility of what it characterizes as a marginal cost proposal. Clearly, this Commission is carefully evaluating the appropriateness of marginal cost pricing in various contexts, and we will be receptive to such pricing proposals where circumstances warrant.[9] We must, however, proceed cautiously in this novel area. Here, without intending to discourage any reasonable proposals for implementing marginal cost pricing methodologies, the Commission is compelled to conclude that Edison has not proffered such justification for its shift to the proposed rate as would overcome the filing's clear potential for substantial anticompetitive effects. We are satisfied that, in the circumstances presented, no material findings of fact would prompt the Commission to permit the rate to operate at least before a clear and convincing showing that any justification for the rate outweighs the potential harm to the customer. There is a simple reason for this conclusion. Despite the obvious objective of the parties' settlement to make available viable supply alternatives for the affected customers, the pleadings make clear that the arrangements negotiated by Geneva will necessarily be foreclosed if the proposed rate is placed in effect. Whatever ultimate findings the Commission might make with regard to the merit of Edison's pricing structure or, conversely, its anticompetitive effects, we know at this point that the filing will immediately subject Geneva to an observable prejudice or disadvantage in the power supply market, that will not be remedied through later refunds. Based on all the circumstances, including the support proffered by Edison to date, it simply has not satisfied its burden of proving that its rate proposal is just, reasonable, and otherwise lawful.

Having evaluated the filing, we have similar concerns and shall make a similar finding with respect to Edison's inclusion of a stand-by charge in Rate 80. The pleadings indicate that during the period of time after its request for an estimate for transmission charges and before Edison's submission of Rate 80 for filing, Geneva, on more than one occasion, advised Edison that it only wanted to utilize Edison's transmission service and nothing else. In its motion to intervene, Geneva reiterated that it does not need or want stand-by service. According to Geneva, WEPCO is just as reliable a supplier as Edison. Further, no provision in the settlement agreement seems to contemplate or obligate Geneva to take a stand-by service from Edison. On the other hand, the result of this charge, as presently proposed, will, without question, have the same direct, adverse effect on Geneva's purchase agreement with WEPCO as is discussed above. Again, whether or not we are later able to accept compelling evidence that some compensation is appropriate to account for future supply contingencies, we find that Edison's filing does not now provide such justification for assessing the stand-by charge, as presently constituted, as would be required to overcome the clear potential for undue prejudice, disadvantage, or other anticompetitive harm to the customer. Without more, we cannot conclude that implementation of the charge is in the public interest and we shall order Edison to eliminate the stand-by charge at such time as it refiles its rates.[10] As in the case of the transmission pricing proposal generally, however, we will not foreclose Edison from seeking prospective application of such a charge through a hearing. In the course of such hearing, we expect the presiding judge to evaluate, among other issues, the balance to be struck between Edison's transmission and stand-by charge proposals, on the one hand, and the various anticompetitive issues presented on the other.

Because Geneva has given notice of its intent to terminate full requirements service from Edison and to begin taking service from WEPCO on May 1, 1986, it is clear that a transmission rate must be on file with the Commission. Under the circumstances, we shall reject Edison's proposed transmission rate, insofar as it departs so dramatically from the self-evident intent of the parties at the time of settlement, and insofar as it creates a real, unremediable potential for undue prejudice or other anticompetitive effects. We shall direct the company to file, within thirty (30) days, a rate excluding any stand-by charge and based on average system transmission costs, accompanied by appropriate cost support data. *Cf. Trans Alaska Pipeline Cases*, 436 U.S. 631 (1978). Because Edison has not yet filed this revised rate, we must conclude that it has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential. Accordingly, we shall suspend Edison's revised rate, to become effective on May 1, 1986, subject to refund.

With respect to the parties' request that expedited hearing procedures be applied to this proceeding, we shall leave that decision to the discretion of the Chief Administrative Law Judge. *See e.g., Utah Power & Light Co.*, 30 FERC ¶ 61,015 (1985).

As to the Municipalities' motion to consolidate, we believe that the request is premature. The Commission has not yet acted upon Edison's filing in Docket No. ER86–230–000. There should be ample opportunity in that docket to consider any similarities or differences in the issues presented.

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors to the extent that it may continue to exist following Edison's submission of revised rates.

The Commission Orders

(A) Rock Falls', IMEA's, and the ICC's motions to intervene are hereby granted, subject to the Commission's rules of practice and procedure.

(B) Edison's request for waiver of the 120-day advance filing requirement is hereby granted.

(C) Edison's proposed rate is summarily rejected and Edison is directed to file, within thirty (30) days of the date of this order, a rate based on its average system transmission costs and excluding a stand-by component.

(D) Edison's transmission rate, as amended by summary disposition in ordering paragraph (C), is accepted for filing and suspended to become effective on May 1, 1986, subject to refund.

(E) All other requests for rejection or summary disposition not specifically granted herein are denied.

(F) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 of thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Edison's rates and charges.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding within fifteen (15) days of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Such conference shall be held for purposes of establishing a procedural schedule, including the submission of a case-in-chief by Edison. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's rules of practice and procedure.

(H) The Municipalities' motion to consolidate is hereby denied.

(I) Subdocket 000 of Docket No. ER86–76 is hereby terminated. Docket No. ER86–76–001 is assigned to the evidentiary hearing ordered herein.

(J) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(K) The Secretary shall promptly publish this order in the Federal Register.

By the Commission. Commissioner Stalon concurred with a separate statement to issued later.

Kenneth F. Plumb,

Secretary.

Attachment A—Commonwealth Edison Company Docket No. ER86–76–000 Rate Schedule Designations

Designation	Designation
(1) Original Sheet Nos. 1M, 1N and 1P to FPC Electric Tariff, Original Volume No. 1.	Rate 80.
(2) 2nd Revised Sheet No. 58 to FPC Electric Tariff, Original Volume No. 1.	Blank service Contract for Rate 80.
(3) 4th Revised Sheet No. 59 to FPC Electric Tariff, Original Volume No. 1.	Do.
(4) Service Agreement No. 11 to FPC Electric Tariff, Original Volume No. 1 (Supersedes Service Agreement dated October 2, 1984).	City of Geneva.

[FR Doc. 86–2708 Filed 2–6–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–572–004]

Utah Power & Light Co.; Amended Compliance Filing

January 31, 1986.

Take notice on January 14, 1986 Utah Power & Light Company tendered for filing its Amended Compliance Report pursuant to the Order of the Commission issued on November 26, 1985. Copies of the filing were served upon Utah Power's resale customers, the affected State Public Service Commissions, and all other parties required to be served.

Utah Power & Light states that the Amended Compliance Report is being filed to correct an error in the refund calculations which was discovered subsequent to the filing of its original report. Adjusted refunds, together with additional interest, have been made to the affected customers.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, on or before February 7, 1986. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2706 Filed 2–6–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8872–001]

W. A. Vachon and Associates, Inc.; Surrender of Preliminary Permit

January 30, 1986.

Take notice that W. A. Vachon, and Associates, Inc., Permittee for the Welch Brook & Swift River Project No. 8872, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8872 was issued on June 28, 1985, and would have expired on May 31, 1987. The project would have been located on the Welch Brook & Swift River, in Franklin County, Maine.

The Permittee filed the request on January 8, 1986, and the preliminary permit for Project No. 8872 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth, F. Plumb,

Secretary.

[FR Doc. 86–2704 Filed 2–6–86; 8:45 am]

BILLING CODE 6717–01–M

[9] See Notice of Inquiry, Regulation of Electricity Sales-for-Resale and Transmission Services, 50 FR 23,445 (June 4, 1985) (Phase I); 50 FR 27 604 (July 5, 1985) (Phase II).

[10] Geneva alleges that Edison has included an alternate justification for its proposed $8.63/kw/month charge on the basis that Geneva is required to continue paying, for ten years, the fixed costs of those facilities built to serve Geneva's loads. Geneva also requests that the Commission summarily reject Edison's alternative justification because this charge in effect undermines the settlement by including a ten year termination charge. Since Edison has, in fact, not adopted its alternate cost justification to support its rate, the requested summary disposition appears to be moot.

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[Project No. 8873-001]

W.A. Vachon and Associates, Inc.; Surrender of Preliminary Permit

January 30, 1986.

Take notice that W.A. Vachon and Associates, Inc., Permittee for the West Branch of the Swift River Project No. 8873, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8873 was issued on June 28, 1985, and would have expired on May 31, 1987. The project would have been located on the West Branch of the Swift River, in Oxford County, Maine.

The Permittee filed the request on January 8, 1986, and the preliminary permit for Project No. 8873 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2705 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8949-001; 8601-000; 18-001; 8350-000]

Availability of Environmental Assessment and Finding of No Significant Impact; City of Auburn, Merle Jore and Sons

January 30, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
Exemptions					
8949-001	North Division Street Dam/Shoe Form Dam.	NY	Oswasco River	City of Auburn	City of Auburn.
Licenses					
8601-000	Jore	MT	Unnamed tributary to Mollman Creek.	Ronan	Merle Jore and Sons.
18-001	Twin Falls	ID	Snake River	Twin Falls	Idaho Power Co.
8350-000	Littleville	MA	Middle Branch of Westfield River.	Chester and Huntington.	Littleville Power Co.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environment impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2709 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D); RP86-14-003; RP86-15-003]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Columbia Gulf Transmission Co. and Columbia Gas Transmission Corp.; Offer of Settlement

January 31, 1986.

Take notice that on January 31, 1986, Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf) filed an offer of settlement in the referenced dockets to resolve certain issues raised in the Petition For Emergency Clarification filed jointly by Columbia and Columbia Gulf on December 16, 1985. The settlement provides procedures for allocating the mainline capacity in Columbia Gulf's system through March 31, 1989. The settlement does not allocate capacity on Columbia.

Columbia Gulf would continue to provide transportation in its mainline system according to its present procedures through March 31, 1986. From April 1, 1986 through March 31, 1989, mainline capacity in Columbia Gulf's system would be allocated monthly to Columbia's wholesale customers, end-users, and other parties pursuant to the nomination, allocation and reallocation procedures set forth in the proposed settlement.

Out of the volumes so allocated, Columbia Gulf will provide to Columbia's wholesale customers up to a maximum of 300,000 Dth per day of firm transportation in its mainline system for the one-year period April 1, 1986 through March 31, 1987, and will consider extending the offer past that period.

Columbia and Columbia Gulf state that they are sending a copy of the settlement offer by overnight mail to all parties required to be served under rule 602. Initial comments on the offer of settlement shall be filed on or before February 13, 1986. At a technical conference held in this proceeding on January 24, 1986, the participants agreed that, for their mutual convenience and availability, ten copies of any initial comments would be lodged in the Washington, DC office of Columbia and Columbia Gulf, in addition to the normal service on the Commission and the other participants. Reply comments will be due on or before February 24, 1986.

Copies of the settlement offer are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2707 Filed 2-6-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2965-8]

Intent To Form an Advisory Committee To Negotiate New Source Performance Standards for Residential Wood Combustion Units

SUMMARY: EPA is considering establishing a new Advisory Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate issues leading to a Notice of Proposed Rulemaking on New Source Performance Standards (NSPS) for Residential Wood Combustion (RWC) units, under section 111 of the Clean Air Act, as amended. The Committee would consist of representatives of parties with a definable stake in the outcome of the proposed rule.

DATE: EPA must receive comments and suggestions by March 10, 1986.

ADDRESS: Comments should be submitted (in duplicate if possible) to: Central Docket Section LE-131, Environmental Protection Agency, Attn: Docket No. A-84-49, 401 M Street, SW., Washington, DC 20460.

Docket No. A-84-49, containing materials relevant to this rulemaking, is located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby, 401 M Street SW., Washington, DC. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Chris Kirtz, Director, Regulatory Negotiation Project, U.S.E.P.A. (PM-223), 401 "M" Street SW., Washington, DC 20460, (202) 382-7565.

SUPPLEMENTARY INFORMATION:

Outline of Notice

I. Project Background

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B. Negotiations to Date
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Outline of Notice

I. Project Background

A. The Concept of Regulatory Negotiation

The increasingly formal nature of the rulemaking process can impede an agency in developing sound regulatory solutions. The traditional rulemaking process of comment and reply can lead to adversarial relationships among participants and little opportunity for the exchange of information and ideas conducive to developing workable solutions.

On February 22, 1983, EPA announced in the **Federal Register**, 48 FR 7494-7495, that it was beginning a project to explore the extent to which negotiations among interested parties could serve as an alternative to its current rulemaking process—an alternative that could better conserve time and resources and minimize costly litigation.

The project's stated purposes are to test:

- The value of developing regulations by negotiation;
- The types of regulations which are most appropriate for negotiated rulemakings; and
- The procedures and circumstances which best foster negotiations.

The project brings together a balanced mix of parties and interests to negotiate at the pre-proposal stage. The goal of each negotiation is to reach a consensus on which to base a Notice of Proposed Rulemaking (NPRM). EPA intends to use any consensus that is justified and within its statutory authority as the basis of the proposal. Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

A senior official selected by the EPA office responsible for developing the rule acts as chief negotiator for EPA. Individuals representing definable interests in the regulated community, enforcement officials, and other affected stakeholders negotiate on behalf of their constituencies. A neutral facilitator chairs the negotiations, keeps the process moving smoothly, and assists in resolving disputes.

EPA is optimistic that this process can produce better regulations, use all parties' time and resources more wisely, and reduce litigation and uncertainty.

B. Negotiations to Date

EPA has already successfully conducted two such regulatory negotiations and has a third well underway. The first involved Nonconformance Penalties under section 206(g) of the Clean Air Act, as amended. In the time allowed, the group achieved consensus on the core issues. This consensus was used as the basis of the proposed rulemaking. The proposal drew only thirteen comments, all from participants supporting the consensus. Six specifically requested that EPA conduct additional negotiations on other proposed regulations. A final rule was issued on August 30, 1985. It has not been challenged legally.

The second involved Emergency Pesticide Exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Again within the time allowed, the group reached full consensus on the exact wording for the proposal and preamble. EPA received nineteen comments on the proposal. Three were from participants supporting the proposal; the others raised relatively narrow points of interpretation or concern. A final rule was issued on January 15, 1986.

The third negotiation, on Farmworker Protection Standards for Agricultural Pesticides, started on November 4, 1985, and is scheduled to end on March 7, 1986.

C. Residential Wood Combustion (RWC) Standards as a Negotiation Item

1. *Need for Standards.* At the end of 1983, EPA estimates that 10.6 million RWC units were in use. Annual sales of new RWC units are projected to continue at a rate of approximately 1 million units per year.

Actual emissions from RWC units vary greatly, depending upon the design and operation of the combustion device and the type and condition of the fuel. However, data clearly indicate that particulate matter (PM) (which includes polycyclic organic matter (POM)), carbon monoxide (CO), and hydrocarbon (HC) emissions are substantially from RWC appliances.

EPA estimates that RWC units contribute the following annual emissions: PM—2.7 million tons, including POM—20,000 tons; CO—7.4 million tons; HC—62,000 tons. If the sales of RWC units continue at a rate of 1 million units each year, annual emissions would increase by the following estimated amounts if not controlled: PM—216,000 tons, including POM—1,600 tons; CO—584,000 tons; and HC—5,000 tons.

Recent advances in both catalytic and non-catalytic woodstove control technology have brought about significant reductions (50 to greater than 90 percent) of the emission from conventional air-tight RWC units. EPA is aware that emissions from woodstoves pose a significant and growing problem, and that effective control technology is commercially available. On August 2, 1985, EPA announced plans to develop New Source Performance Standards for Residential Wood Combustion Units (50 FR 31504).

2. *Selection as a Negotiation Item.* EPA believes that proposed NSPS for RWC units may be appropriate for development by the regulatory negotiation process. EPA has made a preliminary inquiry among potential parties and representatives of identified

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interests to determine if EPA's selection criteria for choosing a candidate for a negotiated rulemaking were satisfied. To qualify under EPA's selection criteria, an item must:

- Be at a pre-proposal stage of development;
- Have a relativelyl small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating a consensus;
- Present a limited number of related issues for which sufficient information is available for resolution; and
- Have a time factor that lends some urgency to issuing the regulation.

On the basis of this preliminary inquiry, EPA believes that its selection criteria have been met and that negotiations on this rule can be successful. This item is at the pre-proposal phase of development, affected interests are limited in number, and groups representing these interests are identifiable and in an appropriate balance and mix. EPA has contacted them and believes they are interested in negotiating this item in good faith, and are aligned on key issues to address and schedule and groundrules to follow. EPA's lead program office has identified a number of basic issues for which sufficient information is in hand (or will be developed during the negotiations) for resolution; and EPA is publicly committed to establishing NSPS for RWC units expeditiously.

D. Key Issues for Negotiations

We anticipate the key issues to be addressed will include the following:

- How should the affected facility be defined?
- What are the most appropriate methods and procedures for measuring emissions and efficiencies from woodstoves? This issue includes examining factors affecting emissions and measurements such as the sampling train, gas flow measurements, wood loading, burn rate, and altitude effects.
- What is the best demonstrated technology?
- In what units should the standard be expressed?
- What should the numerical emission limit be?

When should the emission limits become applicable?

- What type of woodstove certification and/or lab accreditation program should be established?
- What labeling requirements, if any, should there be?
- How should catalyst replacement be addressed?

II. Negotiation Procedures

EPA requests public comment on whether it should:

- Establish a Federal Advisory Committee;
- Identify interests it believes are affected by the key issues listed above;
- Identify participants who will adequately represent the interests affected by the negotiations; and
- Use regulatory negotiations for this rulemaking, and the extent to which the issues, parties, and procedures are adequate and appropriate.

This Notice also announces:

- The date, time, location, and purpose of an informal organizational meeting to discuss whether the Committee should be formed and negotiations proceed; and
- The tentative date, time, location, and subject matter of the first negotiation meeting (if the Committee is formed).

The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this Notice or during the negotiating process.

A. Formal Negotiation Procedures

1. Procedure for Establishing an Advisory Committee. As a general rule, an agency of the federal government is required to comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

2. Participants. The negotiating group should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the standard that EPA is developing would substantially affect interests not adequately represented by the proposed participants (listed later in this Notice). We do not believe that each potentially affected organizational or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

3. Requests for Representation. If, in response to this Notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group.

4. Final Notice. After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and request for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee unless EPA decides, based on comments and other relevant considerations, that such action is inappropriate, or in the event EPA's charter request is disapproved. The negotiation process will begin once the Committee is appropriately chartered and notice is published in the Federal Register.

5. *Tentative Schedule.* EPA will hold an organizational meeting on February 12, 1986, from 9:00 a.m. until completion, at The National Institute for Dispute Resolution, 1901 L Street NW., Suite 600, Washington, DC. This meeting is open, and potential participants are encouraged to attend.

The purpose of this meeting is to discuss whether negotiations should proceed, and if so, how the negotiations and Committee should function, what should and should not be covered, to answer questions, and to address any other procedural issues which may arise.

If the final determination is that the Committee should be formed and negotiations should proceed, EPA plans to hold the first meeting of the Advisory Committee on March 12, 1986, at the National Institute for Dispute Resolution. At this first meeting, participants would complete action on any procedural matters outstanding from the organizational meeting, determine how best to address the principal issues, and begin to address them.

To ensure timely issuance of the proposal, we intend to terminate the activities of the Committee if it does not reach consensus within four months of the first meeting. The process may end earlier if the facilitator so recommends.

6. *Failure of Advisory Committee to Reach Consensus.* In the event the Committee is unable to reach consensus, EPA will proceed to develop its own proposal.

B. International Negotiation Procedures

1. *Facilitator.* EPA will use a facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

2. *Good Faith Negotiation.* Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interests. This applies to EPA as well, and the Agency will designate a senior official of the Office of Air Quality Planning and Standards as its representative.

3. *Administrative Support and Meetings.* EPA's Regulation Management Branch will supply logistical, administrative and management support. Meetings will be held in the Washington area. To support the negotiations, EPA has pledged funds to a resource pool which the National Institute for Dispute Resolution will administer. EPA expects that funds from private foundations will also be available. These funds may be used by the parties for such activities as training, technical support, computer simulations, and other assistance which the parties deem useful. To give committee members maximum freedom, subject to any applicable legal constraints, they will determine the procedures under which requests for funds will be made and approved.

4. *Defining Consensus.* The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

5. *Record of Meetings.* In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. EPA will announce Committee meetings in the **Federal Register.** Such meetings will generally be open to the public.

6. *Committee Procedures.* Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings which they consider most appropriate.

7. *Potential Interests and Participants.* EPA has tentatively identified the following list of possible interests and parties:

Woodstove Manufacturers

Wood Heating Alliance
Woodcutters Manufacturing
Brugger Exports, Ltd.
a–b Fabricators
American Eagle Stoves

Catalyst Manufacturers

Corning Glass Works

Public Interest Groups

National Resources Defense Council
Consumers Union
Oregon Environmental Council
Consumer Federation of America

State Officials

Oregon Department of Environmental Quality
Colorado Air Pollution Control Division
Massachusetts Division of Air Quality Control
State and Territorial Air Pollution Program Administrators
The Association of Local Air Pollution Control Officials

Federal Government

Environmental Protection Agency

Comments and suggestions on this tentative list of representatives are invited. Anyone wishing to be included should explain the interest they represent and why that interest is not already represented. The listing of a potential group does not necessarily mean that the group has agreed to participate.

Dated: January 31, 1986.

A. James Barnes,

Deputy Administrator.

[FR Doc. 86–2587 Filed 2–6–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2966–8]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed January 27, 1986 Through January 31, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860026, Draft, COE, KY, Mayfield Creek Flood Damage Reduction Plan, Due: March 24, 1986, Contact: Billy Dycus (901) 521–3831

EIS No. 860027, Draft, AFS, CA, Plumas National Forest, Land and Resource Management Plan, Due: May 8, 1986, Contact: Lloyd Britton (916) 283–2050

EIS No. 860028, Draft, FHW, VA, VA–199 Construction, VA–5 to I–64, James City and York Cos., Due: March 24, 1986, Contact: James Tumlin (804) 771–2371

EIS No. 860029, Draft, BLM, CO, Little Snake Resource Area, Resource Management Plan, Moffat, Rio Blanca, and Routt Cos., Due: May 9, 1986, Contact: Duane Johnson (303) 824–8261

EIS No. 860030, Final, FHW, CA, Yerba Buena Road and Sylvandale Avenue Connection, Senter Road to San Felipe Road, US 101 and Yerba Buena Road Interchange and Undercrossing Construction, Santa Clara County, Due: March 10, 1986, Contact: David Eyres (916) 440–3541

EIS No. 860031, Draft, EPA, REG, Surface Coating of Plastic Parts for Business Machines, Emissions Standards, Due: March 24, 1986, Contact: James Berry (916) 541–5671

EIS No. 860032, Draft, EPA, OR, Coos Bay Ocean Disposal Sites, Dredged Material Disposal Site, Designation, Coos County, Due: March 10, 1986, Contact: Tudor Davies (202) 382–7166.

Amended Notices

EIS No. 850533, DSuppl, FWS, REG, Migratory Bird Hunting in the United States, Use of Lead Shotgun Pellets, Regulations, Due: February 19, 1986, Published FR 12–20–85—Review period extended

EIS No. 860023, Draft, BPA, ID, WA, MT, OR, Direct Service Industry Options on Reducing Load Fluctuations and Revenue Uncertainty, Due: February 21, 1986, Published FR 1–31–86—WAIVER—The original notice contained an incorrect due date of March 17, 1986. EPA has approved a waiver of the review period for this EIS. Therefore, the correct due date is February 21, 1986

EIS No. 860025, Final, HUD, OK, Shenandoah Development, Mortgage Insurance, Tulsa County, Due: March 3, 1986, Contact: Ivan Ramsbottom (817) 885–5482—Should have appeared in 1–31–86 FR

EIS No. 850557, Final, USA, VA, Fort Story Ongoing Mission, Logistics Over-the-Shore (LOTS) Training, Continued Operations and LOTS Units Modernization, Due: November 4, 1985, Contact: Thomas Traceski (804) 878–4123—Should have appeared in 10–4–85 FR.

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Dated: February 4, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-2764 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2966-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 21, 1986 through January 24, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76.

Summary of rating definitions.

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D-AFS-L65100-ID, Rating EO2, Salmon Nat'l Forest, Land and Resources Mgmt. Plan, ID. SUMMARY: EPA's primary concern is that the DEIS did not clearly provide evidence that federally approved State water quality standards could be satisfied under the preferred alternative (and therefore the proposed Plan). The major reasons are: 1. Insufficient presentation of existing conditions; 2. Insufficient analysis of risks to water quality and beneficial uses posed by specific soil erosion and instability conditions; 3. Riparian area standards that were too general to ensure protection of riparian-related resources; and 4. An unclear commitment that adopted standards and guidelines will in fact apply to all activities which occur.

ERP No. D-CDB-F89024-IL, Rating EC2, Decatur Historic District Development, Demolition, Rehabilitation, and Construction, CDBG, IL. Summary: EPA is concerned that the DEIS did not include analysis of the environmental impacts of asbestos removal on workers or District residents. Information on identification and mitigation of more short-term impacts was also lacking. EPA recommends the inclusion of environmental considerations into each rating system developed by HUD. Because of projections that water supplies will be limiting to development in Decatur in the near future, EPA also recommends that HUD consider the use of water conservation devices in any developments proposed for the Historic District.

ERP No. D-FAA-J51007-CO, Rating E02, Stapleton Int'l Airport Runway Expansion, Approval, Co. Summary: EPA is principally concerned with air quality impacts and possible hazardous waste impacts associated with runway construction on the Rocky Mountain Arsenal site. EPA requests that the FEIS include an analysis of curbside terminal air quality the proposed soil analysis for contaminants, and associated mitigation measures. EPA also requests that the noise analysis be expanded and additional mitigation measures be investigated. Final EISs.

ERP No. F-COE-C32024-NY, Sheepshead Bay Navigation Channel Improvements, NY. Summary: Based on the review of the FEIS, EPA has no objections to the project as proposed. However, EPA indicated that additional testing will be required prior to ocean disposal of the dredged material.

Dated: February 4, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-2765 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59211; FRL-2966-6]

Certain Chemical Premanufacture Exemption Application; Quaternized Fatty Imidazoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

Written comments by: February 24, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59211]" and the specific TME number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-17

Close of Review Period. March 15, 1986.

Manufacturer. Quaker Chemical Corporation.

Chemical. (G) Quaternized fatty imidazoline.

Use Production. (S) Debonder/softener for wood pulp fibers.

Prod range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 5 hrs/da, up to 54 da/yr.

Environmental Release/Disposal. 0.5—2 kg/batch released to water. Disposal by publicly owned treatment works (POTW).

Dated: January 31, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86-2684 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51609, FRL-2966-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a permanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-304, April 6, 1986

P 86-432, April 22, 1986

P 86-433, 86-434, 86-435, 86-436, 86-437, and 86-438, April 25, 1986

P 86-439, 86-440, 86-441, 86-442, 86-443, 86-444, 86-445, 86-446, 86-447, 86-448, 86-449, 86-450, 86-451, and 86-452; April 26, 1986

P 86-453, and 86-454; April 27, 1986

P 86-455, 86-456, 86-457, 86-458, 86-459, 86-460, 86-461, 86-462, 86-463, 86-464, and 86-465; April 28, 1986.

Written comments by:

P 86-304; March 7, 1986

P 86-432; March 23, 1986

P 86-433, 86-434, 86-435, 86-436, 86-437, and 86-438; March 26, 1986

P 86-439, 86-440, 86-441, 86-442, 86-443, 86-444, 86-445, 86-446, 86-447, 86-448, 86-449, 86-450, 86-451, and 86-452; March 27, 1986

P 86-453, and 86-454; March 28, 1986

P 86-455, 86-456, 86-457, 86-458, 86-459, 86-460, 86-461, 86-462, 86-463, 86-464, and 86-465; March 29, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51609]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-304

Importer. Confidential.

Chemical. (G) Diester of 1,4-benzenedicarboxylic acid.

Use/Import. (G) Minor component of coatings used on specialty papers. Import range: Confidential.

Toxicity Data. Acute oral: >5,012 mg/kg; Acute dermal: >2,239 mg/kg; Irritation: Skin—Slight, Eye—Minimal.

Exposure. No exposure.

Environmental Release/Disposal. No release.

P 86-432

Manufacturer. Confidential.

Chemical. (G) Modified metal chloride.

Use/Production. (G) Chemical catalyst, destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-433

Manufacturer. Reed Lignin, Inc.

Chemical. (G) Spent sulfite liquor, alkalai treated polymer with sodium acrylate.

Use/Production. (G) Industrial pellet binder—highly dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and processing: dermal, a total of 4 workers, up to 2 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. 2 kg solids/batch released to water. Disposal by navigable waterway.

P 86-434

Manufacturer. Reed Lignin, Inc.

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Chemical. (S) Lignosulfonic acid, sodium salt, condensation product with formaldehyde and primary oleylamine.
Use/Production. (G) Ink binder—open, non-dispersive use, emulsifier and corrosion inhibitor—dispersive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: dermal, a total of 8 workers, up to 3 hrs/da, up to 46 da/yr.
Environmental Release/Disposal. 2.0 kg/batch released to water. Disposal by navigable waterway.

P 86-435

Manufacturer. The Goodyear Tire & Rubber Company.
Chemical. (G) Self-synergized phenolic antioxidant reaction product.
Use/Production. (S) Industrial polymer stabilizer and age resister additive for polymers. Prod. range: 45,000—1,362,000 kg/yr.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 12 hrs/da, up to 96 da/yr.
Environmental Release/Disposal. 12 to 40 kg/batch released to land. Disposal by publicly owned treatment works (POTW).

P 86-436

Manufacturer. Confidential.
Chemical. (G) Chloride of ethoxylated alcohols.
Use/Production. (G) Process intermediate. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Slight; Eye—Moderate.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86-437

Manufacturer. Confidential.
Chemical. (G) Trimethyl-silyl blocked hydroxymethylmethacrylate.
Use/Production. (S) Monomer for copolymerization use; intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >4.0 g./kg; Irritation: Skin—Irritant, Eye—Irritant; Ames test: Negative.
Exposure. Manufacture: dermal, a total of 1 worker, up to 2 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. 3 kg incinerated.

P 86-438

Manufacturer. Confidential.
Chemical. (G) Silyl ketene acetal.
Use/Production. (G) Polymerization initiator. Prod range: Confidential.
Toxicity Data. Acute oral: >3,470 mg/kg; Irritation: Skin—Irritant; Eye—Irritant; Ames test: Negative.
Exposure. Manufacture: dermal, a total of 1 worker, up to 2 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. 5 kg incinerated.

P 86-439

Importer. Confidential.
Chemical. (G) Acrylic silicon oligomer.
Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-440

Importer. Confidential.
Chemical. (G) Acrylic silicon oligomer.
Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-441

Importer. Confidential.
Chemical. (G) Acrylic silicon oligomer.
Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-442

Importer. Confidential.
Chemical. (G) Acrylic silicon oligomer.
Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-443

Importer. Confidential.
Chemical. (G) Acrylic silicon oligomer.
Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-444

Importer. Confidential.
Chemical. (G) Acrylic silicon oligomer.
Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-445

Importer. Confidential.
Chemical. (G) Acrylic silicon oligomer.
Use/Import. (S) Raw material for industrial coatings, adhesives and binders. Import range: 1,000–30,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-446

Manufacturer. R.T. Vanderbilt Company Inc.
Chemical. (S) 1,3-propanediol, 2-amino-2-(hydroxymethyl)-sulfate (salt).
Use/Production. (S) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 5,900 mg/kg.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. No release.

P 86-447

Manufacturer. Confidential.
Chemical. (G) Tricyclic olefinic hydrocarbons.
Use/Production. (S) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-448

Manufacturer. Confidential.
Chemical. (G) Aromatic amine.
Use/Production. (G) Monomer, destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-449

Manufacturer. Confidential.
Chemical. (G) Nitrated aromatic chemical.
Use/Production. (G) Chemical intermediate, destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-450

Manufacturer. Confidential.
Chemical. (G) Polycationic polymer.
Use/Production. (S) Industrial clay stabilizer. Prod. range: 100,000–200,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 4 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. No release. Disposal by land farm.

P 86-451

Manufacturer. Confidential.
Chemical. (G) Homopolymer of methyethyldiallyammoniumsulfate.
Use/Production. (S) Industrial clay stabilizer. Prod. range: 50,000–100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 4 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. No release. Disposal by land farm.

P 86-452

Manufacturer. Lilly Industrial Coatings, Inc.
Chemical. (G) Polymer of benzenedicarboxylic acids, alkanediol, alkanedicarboxylic acid and benzenetricarboxylic acid.
Use/Production. (G) Industrial liquid paints. Prod. range: 36,000–54,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 25 workers, up to 14 hrs/da, up to 77 da/yr.
Environmental Release/Disposal. 1 to 15 kg/batch released to air. Disposal by POTW.

P 86-453

Manufacturer. Confidential.
Chemical. (G) Fluorinated alkyl silane.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: 0.89 g/kg; Irritation: Skin—Slight to moderate; Spot plate test: Negative; Agar overlay test: Not mutagenic.
Exposure. Manufacture: dermal, a total of 7 workers, up to 1 hr/da, up to 50 da/yr.
Environmental Release/Disposal. Less than 1 kg/batch incinerated.

P 86-454

Manufacturer. Confidential.
Chemical. (G) Fluoroalkylsiloxane hydrolyzate.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >15.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Spot plate test: Negative; Agar overlay test: Not mutagenic.
Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. 1 to 5 kg/batch incinerated. Disposal by approved landfill and waste treatment plant.

P 86-455

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Fatty acid ester of EO/PO block polymer.
Use/Production. (S) Site limited and industrial surfactant. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 1 hr/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 kg/ batch released to water. Disposal by POTW and waste water treatment.

P 86-456

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Fatty imidazoline.
Use/Production. (S) Site-limited intermediate in the production of a quaternary ammonium compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 1 hr/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 kg/batch released to water. Disposal by POTW and waste water treatment.

P 86-457

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Halogenated, ethoxylated ester.
Use/Production. (S) Site-limited intermediate in the production of a quaternary ammonium compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 1 hr/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 kg/batch released to water. Disposal by POTW and waste water treatment.

P 86-458

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Halogenated, propoxylated ester.
Use/Production. (S) Site-limited intermediate in the production of a quaternary ammonium compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 1 hr/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 kg/batch released to water. Disposal by POTW and waste water treatment.

P 86-459

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Quaternized fatty imidazoline.
Use/Production. (S) Debonder/softener for wood pulp fibers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 5 hrs/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 to 2 kg/batch released. Disposal by POTW and waste water treatment.

P 86-460

Manufacturer. Quaker Chemical Corporation.
Chemical. (G) Quaternized fatty imidazoline.
Use/Production. (S) Debonder/softener for wood pulp fibers. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 5 hrs/da, up to 54 da/yr.
Environmental Release/Disposal. 0.5 to 2 kg/batch released. Disposal by POTW and waste water treatment.

P 86-461

Manufacturer. Confidentail.
Chemical. (G) Dehydrated castor oil alkyd resin.
Use/Production. (S) Industrial baking enamels. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

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P 86-462

Importer. Confidential.
Chemical. (G) Substituted monoazo indole.
Use/Import. (G) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Skin sensitization: Non-sensitizer; EC_{50} 24 hrs (Daphnia magna): 49 mg/l; LC_0 96 hr (Zebra fish): 56 mg/l; LC_{50} 96 hr (Zebra fish): 74 mg/l; IC_{50} 3 hr: >100 mg/l; Irritation: Skin—Non-irritant; Ames test: Negative; Micronucleus test: Negative; 5-day range finding study: 2,000 mg/kg; Subacute 28-day dermal: No systemic effects noted up to the maximum dose level of 1,000 mg/kg.
Exposure. Processing: inhalation, a total of 2 workers, up to 0.5 hr/da, up to 9 da/yr.
Environmental Release/Disposal. .15 kg/batch released to water. Disposal by POTW.

P 86-463

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Resin is cured with a ketimine to form an auto refinishing system. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-464

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Resins are converted to paints for use in automotive exterior top coats. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-465

Manufacturer. Confidential.
Chemical. (G) Blocked polyamine.
Use/Production. (S) Ketimine cross-linker used in tandem with an acrylic resin and applied in a car repair system. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: January 31, 1986.

V. Paul Fuschini,

Acting Director, Information Monogement Division.

[FR Doc. 86-2685 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59751, FRL-2966-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of three such PMNs and provides a summary of each.

DATES: Close of Review Period:
Y 86-61—February 13, 1986.
Y 86-62—February 16, 1986.
Y 86-63—February 18, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-61

Manufacturer. S.C. Johnson & Son, Inc.
Chemical. (G) A modified styrene acrylic emulsion.
Use/Production. (G) Emulsion polymer for wood coating. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

Y 86-62

Manufacturer. Confidential.
Chemical. (G) Copolymer of methacrylate esters.
Use/Production. (S) Polymer for industrial, commercial, and industrial use in coatings, adhesives and inks. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 86-63

Manufacturer. Superior Varnish & Drier Company.
Chemical. (G) A partially crosslinked castor oil modified polyester.
Use/Production. (S) Industrial metal decorating printing ink vehicle. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hrs/da, up to 8 da/yr.
Environmental Release/Disposal. 2 to 2,250 kg/batch released to air. Disposal by condenser/scrubber and outside recovery company.

Dated: January 31, 1986.

V. Paul Fuschini,

Acting Director, Information Monogement Division.

[FR Doc. 86-2686 Filed 2-6-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Advisory Committee; Meeting

The Radio Advisory Committee will meet Wednesday, March 19, 1986, at 1:30 p.m. in the Vincent Wasilewski Room of the National Association of Broadcasters at 1771 N Street, NW., Washington, DC.

The Committee will consider:

—Final preparations for the Region 2 Conference on the expansion of the AM band, the first session of which is scheduled to begin April 14, 1986 at Geneva;
—Review and modernization of the AM rules;
—Other business.

All meetings of the Radio Advisory Committee are public, and are open for participation by all interested persons. The meeting convened on March 19, 1986 may be scheduled for resumption at a further session at such later time and place as may be decided at that meeting.

For further information, please call the Committee Chairman, Louis C. Stephens, at the FCC Headquarters at Washington: (202) 632-7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2511 Filed 2-6-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Recordkeeping and Confirmation Requirements for Securities Transactions (OMB No. 3064-0028).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389-4351.

SUMMARY: The FDIC is requesting OMB to extend the expiration date of the recordkeeping and confirmation requirements for securities transactions (OMB No. 3064-0028 which expires March 31, 1986) contained in FDIC regulation 12 CFR 344. These requirements ensure that purchasers of securities in transactions effected by an insured state nonmember bank are provided adequate information concerning the transactions. These requirements are also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to securities transactions they effect. It is estimated that these requirements impose an annual paperwork burden of 10.69 hours on the average bank.

Dated: February 3, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-2744 Filed 2-6-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

Bohemian Savings and Loan Association, St. Louis, MO; Notice of Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Bohemian Savings and Loan Association, St. Louis, Missouri, on January 30, 1986.

Dated: February 3, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-2720 Filed 2-6-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL LABOR RELATIONS AUTHORITY

Senior Executive Service; Performance Review Board Membership

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the FLRA Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Clyde B. Blandford, Jr., Director of Personnel, Federal Labor Relations Authority, 500 C St., SW, Washington, DC 20424 (382-0751).

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) of Title 5, United States Code, requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evalaute the initial appraisal of a senior executive's performance by the supervisor—along with any recommendations, including recommendations with respect to bonuses—to the appointing authority relative to the performance of the senior executive.

The members of the FLRA performance review board are:

1. Jacqueline R. Bradley, Federal Labor Relations Authority
2. Robert Perry, Office of General Counsel, Federal Labor Relations Authority
3. John Kratzke, Office of Personnel Management [currently on detail to FLRA]
4. Johnny R. Butler, Equal Employment Opportunity Commission
5. Mary Kelly, Interstate Commerce Commission

Dated: February 3, 1986.

Federal Labor Relations Authority.

Clyde B. Blandford, Jr.,

Director of Personnel.

[FR Doc. 86-2748 Filed 2-6-86; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010676-010
Title: Mediterranean/U.S.A. Freight Conference
Parties:
Atlanttrafik Express Services, Ltd.
Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Container Lines
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolombiana S.A.
"Italia" di Navigazione
Jugolinija
Jugooceanija

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Lykes Lines
Med-America Express Service
Nedlloyd Lines
Nordana Line/Dannebrog Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would clarify the voting procedure used by the Conference and establish procedures to handle abstention from voting.

Agreement No. 217–010883
Title: Linabol/Navicana Space Charter Agreement
Parties: Lineas Navieras Bolivianas S.A.M. (Linabol) Naviera Interamericana "Navicana" S.A. (Navicana)

Synopsis: The proposed agreement would permit Linabol to charter space on Navicana's vessels for Bolivian cargo moving between North and Central American Pacific Coast ports and inland and coastal points to and from South American Pacific Coast ports and inland and coastal points.

By Order of the Federal Maritime Commission.

Dated: February 4, 1986.

John Robert Ewers,
Secretary.

[FR Doc. 86–2736 Filed 2–6–86; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Union Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 25, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire Southern International Corporation, Charlotte, North Carolina, and thereby engage in soliciting loans and other extensions of credit, issuing letters of credit and accepting or discounting drafts; collecting and negotiating financial documents, including bills of exchange, promissory notes, checks, drafts, payment receipts, and all types of commercial paper and negotiable instruments; collecting and negotiating commercial documents, including invoices, shipping documents, documents of title, and other similar documents; providing data and information transmission services, facilities and data bases in connection with its international financial activities, where data and information to be transmitted, processed or furnished are financial, banking or economic; providing transfers of funds, whether by check, draft, or similar paper instrument, or by electronic system or any other technologically feasible means in connection with its international financial services; buying and selling foreign currency for the account of others; and furnishing management consulting advice to nonaffiliated banks concerning the provision of international financial services to their customers, puruant to § 225.25(b)(1), (7), and (11) of Regulation Y, respectively.

B. Federal Reseve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire Securities Counsel, Inc., Jackson, Michigan, and thereby engage in providing portfolio investment advise to individuals, corporations, and institutions. Comments on this application must be received not later than February 27, 1986.

Board of Governors of the Federal Reserve System, February 3, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–2671 Filed 2–6–86; 8:45 am]
BILLING CODE 6210–01–M

Key Bancshares of New York Inc.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 86–1942), published at page 3657 of the issue for Wednesday, January 29, 1986.

Comments on this application must be received not later than February 18, 1986.

Board of Governors of the Federal Reserve System, February 3, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–2673 Filed 2–6–86; 8:45 am]
BILLING CODE 6210–01–M

Moxham Bank Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 28, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Moxham Bank Corporation*, Johnstown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Moxham National Bank, Johnstown, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Rainesville Bancshares, Inc.*, Rainesville, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Rainesville, Rainesville, Alabama.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *AmBank Financial Services, Inc.*, Rock Island, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of American Bank of Rock Island, Rock Island, Illinois. Comments on this application must be received not later than February 27, 1986.

Board of Governors of the Federal Reserve System, February 3, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86–2672 Filed 2–6–86; 8:45 am]
BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Managment and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 24, 1986

Health Care Financing Administration

Subject: Independent Rural Health Clinic Cost Report Form—Revision—(0938–0107)
Respondents: Businesses
Subject: Medicaid Eligibility Quality Control Disposition List—Revision—(0938–0173)
Respondents: State or Local Governments
Subject: Information Collection Medicare Requirements in §§ 405.2111, 405.2112, 405.2113, 405.2114, 405.2123, 405.2134, 405.2135, 405.2136, 405.2137, 405.2138, and 405.2140—Conditions of Coverage for End Stage Renal Diseases Facilities—Reinstatement—(0938–0386)
Respondents: Individuals or Households; State or Local Governments; Businesses; Federal Agencies or Employees; Non-profit Institutions; Small Businesses or Organizations
OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

Subject: Head Start Program Information Report—Reinstatement—(0938–0017)
Respondents: State or Local Governments; Non-profit Institutions
OMB Desk Officer: Judy A McIntosh

Social Security Administration

Subject: Social Security Notice—Report of Work Activity—Continuing Disability—Revision—(0960–0106)
Respondents: Individuals or Households
Subject: Residual Functional Capacity Assessment Mental Residual Functional Capacity Assessment—Existing Collection
Respondents: State or Local Governments
Subject: Summary of Evidence—Existing Collection
Respondents: State or Local Governments
OMB Desk Officer: Judy A. McIntosh

Public Health Services

Centers For Disease Control

Subject: National Sexually Transmitted Diseases Morbidity Program — Extension—(0920–0011)
Respondents: State or Local governments
Subject: Malaria Survey Among U.S. Travelers—NEW
Respondents: Individuals or Households
Subject: National Sexually Transmitted Diseases Epidemiology Program — Revision—(0920–0001)
Respondents: State or Local Governments

Office of Assistant Secretary For Health

Subject: Longitudinal Study on Aging — NEW—(0937–0139)
Respondents: Individuals or Households
OMB Desk Officer: Bruce Artim

Office of The Secretary

Office of The Inspector General

Subject: 42 CFR 455.300 Subpart D—State Medicaid Fraud Control Units—Existing Collection
Respondents: State or Local Governments
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)
Dated: January 31, 1986.

K. Jacqueline Holz,
Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–2622 Filed 2–6–86; 8:45 am]
BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 86M–0001]

University Optical Products, Co.; Premarket Approval of the Boston Lens II (Itafocon A) ALGES® Bifocal Contact Lens (Clear and Tinted)

Correction

In FR Doc. 86–1488, beginning on page 3256, in the issue of Friday, January 24, 1986, make the following corrections.

1. On page 3256, the Docket No. should read as set forth above.

2. On page 3257, second column, second complete paragraph, fourth line, "(21 UY.S.C. 360e(g))" should read "(21 U.S.C. 360e(g))".

BILLING CODE 4150–01–M

[Docket No. 85D–0480]

Draft Guideline for the Design of Clinical Trails for Evaluation of the Safety and Efficacy of Allergenic Products for Therapeutic Uses; Reopening of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is reopening the comment period for the notice announcing the availability of a draft guideline entitled "Draft Guideline for

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the Design of Clinical Trials for Evaluation of the Safety and Efficacy of Allergenic Products for Therapeutic Uses." FDA is taking this action in response to statements from members of the Allergenic Products Advisory Committee and other interested parties that more time will be needed to comment on the guideline.

DATE: Comments by February 20, 1986.

ADDRESS: Requests for a copy of the draft guideline and written comments regarding the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 22, 1985 (50 FR 42777), FDA issued a notice announcing the availability of a draft guideline to assist allergenic biological product manufacturers and investigational sponsors in designing clinical studies to assess the safety and efficacy of allergenic products for therapeutic use. FDA made the draft guideline available for public comment to assist it in developing a final guideline. Comments were requested to be submitted by January 21, 1986.

During a recent advisory committee meeting, members of the Allergenic Products Advisory Committee and other interested parties stated that more time will be needed to comment on the guideline.

FDA has determined that its schedule for issuing the guideline in final form would not be unduly delayed by a 30-day extension of the comment period, and that such an extension to receive additional comments would be in the public interest. Accordingly, the period for submission of comments is extended to February 20, 1986.

Interested persons may, on or before February 20, 1986, submit written comments on the draft guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether further amendments to, or revisions of, the draft guideline are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Dockets Management Branch.

Dated: February 3, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–2670 Filed 2–6–86; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

[NTP–85–055; NTP–85–056]

National Toxicology Program; Fiscal Year 1985 Annual Plan

The Director of the National Toxicology Program (NTP) announces the availability of the *NTP Annual Plan for Fiscal Year 1985*, solicits comments on the Annual Plan, and urges all interested persons to propose chemicals for testing by the NTP.

Background

The National Toxicology Program develops scientific information about potentially toxic and hazardous chemicals which may be used for protecting the health of the American people by preventing chemical-induced disease. The NTP coordinates and strengthens Department of Health and Human Services (DHHS) activities in toxicology research, testing, and test development/validation efforts and provides toxicological information needed by health research and regulatory agencies. NTP's four goals are to:

- Expand the spectrum of toxicologic information obtained on the chemicals nominated, selected, and being tested;
- Increase the numbers of chemicals tested within funding limits;
- Develop, coordinate, and validate a series of tests/protocols responsive to regulatory needs;
- Communicate Program plans and results to governmental agencies, the medical and scientific communities, and the public.

The NTP consists of the relevant toxicology activities of the National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH); National Center for Toxicological Research, Food and Drug Administration; and National Institute for Occupational Safety and Health, Centers for Disease Control. Relevant programs of the National Cancer Institute (NCI), National Institutes of Health, a charter agency, have been transferred to the NIEHS, but the NCI remains active in the program through membership on the Executive Committee.

The NTP Executive Committee membership links DHHS health research agencies with health regulatory agencies to ensure that NTP's toxicology research, testing and test development activities are responsive to research and public health needs.

The governmental agencies that comprise the NTP Executive Committee are:

- Consumer Product Safety Commission
- Environmental Protection Agency
- Food and Drug Administration
- National Cancer Institute
- National Institute for Occupational Safety and Health
- National Institute of Environmental Health Sciences
- National Institutes of Health
- Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight of the NTP. The NTP Board advises the NTP Director and the NTP Executive Committee on scientific content and policy and evaluates the merit and overall quality of NTP science. The members (listed in the 1985 Annual Plan) are appointed by the DHHS Assistant Secretary for Health. As NTP Director, Dr. David P. Rall (also the Director of the National Institute of Environmental Health Sciences) reports to the Assistant Secretary for Health.

The program segments of the NTP are grouped into two categories—toxicological research and testing, and coordinative management activities. Individual NTP scientists are identified as leaders of the major program segments and subprogram activities and serve as the focus or contact persons for their particular program activities. Program and project leaders are identified in the 1985 Annual Plan.

The development and approval by the Secretary, DHHS, of the NTP Annual Plan is central to the effective planning, coordination, and operation of the National Toxicology Program. The National Toxicology Program's seventh Annual Plan consists of two parts. First, the *NTP Annual Plan for Fiscal Year 1985* [NTP–85–055] describes current year research, testing, methods development and validation efforts, resources and past year program accomplishments. (Table of Contents follows this announcement.) Second, the *Review of Current DHHS, DOE and EPA Research Related to Toxicology* [NTP–85–056] lists chemicals being tested by DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

The NTP welcomes nominations for testing from all parts of Government and the private sector. At a minimum, the nominator should give the rationale for the nomination and recommend the type test(s) to be considered. In addition, it would be desirable, but is not essential, to supplement each nomination with the following information, it known.

I. Chemical identification.

II. Production, use, occurrence, and analysis.

III. Toxicology.

IV. Disposition and structure-activity-relations.

V. Ongoing toxicological and environmental studies in Government, industry, and academia.

To receive the *NTP Annual Plan for Fiscal Year 1985*, or the *FY 1985 Review of Current DHHS, DOE, and EPA Research Related to Toxicology*, please write or call the NTP Public Information Office, P.O. Box 12233, Research Triangle Park, NC 27709, (telephone: (919) 541–3991 or FTS 629–3991).

Written or verbal comments on the FY 1985 Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, Assistant to the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (telephone: (919) 541–3971 or FTS 629–3971).

Dated: February 3, 1986.

David P. Rall,

Director, National Toxicology Program.

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[FR Doc. 86–2687 Filed 2–6–86; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Sections SM.00, SM.10 and SM.20 of the SSA statement, as published in the **Federal Register** on August 7, 1979 describe the Mission, Organization and Function of SSA's office of Management, Budget and Personnel (OMBP). Notice is given that Sections SM.10 and SM.20 are amended to reflect the establishment of a Division of Labor and Employee Relations in the Office of Human Resources and the abolishment of the Division of Labor Relations and the

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Division of Disciplinary and Adverse Actions.

The new material and changes are as follows:

Section SM.10 *The Office of Management, Budget and Personnel—(Organization):*

F. The Office of Human Resources (SMH).

Delete:

5. The Division of Labor Relations (SMHJ).

6. The Division of Disciplinary and Adverse Actions (SMHM).

7. The Executive Recruitment and Services Staff (SMHN).

8. The Division of Personnel Operations (SMH9).

Add:

F. The Office of Human Resources (SMH).

5. The Division of Labor and Employee Relations (SMHJ).

6. The Executive Recruitment and Services Staff (SMHN).

7. The Division of Personnel Operations (SMH9).

Section SM.20 *The Office of Management, Budget and Personnel—(Functions):*

F. The Office of Human Resources (SMH).

Delete:

5. The Division of Labor Relations (SMHJ).

6. The Division of Disciplinary and Adverse Action (SMHM).

7. The Executive Recruitment and Services Staff (SMHN).

8. The Division of Personnel Operations (SMH9).

F. The Office of Human Resources (SMH).

Add:

5. The Division of Labor and Employee Relations (SMHJ).

a. Plans and directs the development and evaluation of the SSA labor-management and employee relations (disciplinary and unacceptable performance programs; formulates SSA-wide labor-management and employee relations policy; servea as the SSA reference point for inquiries, guidance and interpretations on labor-management and employee relations matters and provides SSA liaison with OPM, HHS and other non-SSA entities and organizations concerning labor-management and employee relations in SSA.

b. Implements labor-management relations programs and policies throughout SSA's headquarters and field organizations; participates in negotiation and implementation of negotiated procedures with labor organizations; resolves or recommends resolution in labor relations disputes and advises management during bargaining sessions.

c. Represents SSA management in all labor-management relations matters and proceedings which are adjudicated outside the agency.

d. Provides the full range of labor-management relations advisory services to all SSA components to ensure proper application of negotiated provisions and directs monitoring of union-management consultations as required by negotiated agreements or executive orders.

e. Implements an SSA program for disciplinary/adverse and unacceptable performance actions, in accordance with applicable regulations and procedures. Provides technical assistance, guidance, representation and letter writing services for misconduct and performance actions to management in SSA headquarters. Also provides these services to the field in complex cases.

f. In coordination with HHS' Office of the General Counsel, researches law, executive orders, court, Merit Systems Protection Board and comptroller general decisions, regulations, policies, precedents and procedures on disciplinary/adverse actions, employee appeals and grievances.

6. The Executive Recruitment and Services Staff (SMHN).

7. The Division of Personnel Operations (SMH9).

Dated: January 17, 1986.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 86-2741 Filed 2-6-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 34104-OK]

Issuance of Disclaimer of Interest to Lands in Oklahoma; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of Notice of Intent to Issue Disclaimer.

SUMMARY: On January 3, 1986, a Notice was published in the Federal Register (51 FR 257) to disclaim and release all surface interest to the owners of record for the land described.

The intent of the Notice was to disclaim and release all interest for the land described. Therefore, the word surface is deleted from paragraph 1, line 4, and paragraph 21, line 8 of the subject Federal Register Notice. Also, part 2b of paragraph 21 is deleted in its entirety.

Jim Sims,

District Manager.

[FR Doc. 86-2693 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-84-M

[A-21760 & A-21761]

Exchange of Public Land, Mojave County, AZ

The entire land description was not included in the above entitled Notice published by the Bureau of Land Management in the Federal Register on page 3435 on January 27, 1986. An aliquot part was not included for Section 15. The correct description is:

Section 15, NW¼SE¼NW¼, *NE¼SE¼ NW¼*, S½S½NW¼, SW¼, NW¼NW¼SE¼, S½NW¼SE¼, S½SE¼, excepting Recreation and Public Purposes (R&PP) applications A-21574 and A-21578

In addition, add: Section 14, Lot 1

Dated: January 30, 1986.

J. Darwin Snell,

Yuma District Manager.

[FR Doc. 86-2667 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-32-M

Fairbanks and Anchorage Districts Joint Advisory Council; Meeting

The Advisory Councils for the Fairbanks and Anchorage Districts of the Bureau of Land Management will hold a joint meeting on Tuesday, March 11 and Wednesday, March 12, 1986. The location of the meeting will be the auditorium of the Noel Wien Memorial Library, 1215 Cowles St., Fairbanks, Alaska.

The meeting will convene at 9 a.m. and conclude at 5 p.m. both days. Public comments will be received by the Council from 1 to 2 p.m.

The major topics of discussion will be:

—Alaska Bureau of Land Management organizational structure

—Advice and guidance for future BLM programs in Alaska

All meetings of the Council are open to the public.

Don Runberg,

Acting District Manager, Fairbanks District Office.

[FR Doc. 86-2652 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-JA-M

Worland District, Cody Resource Area, Wyoming; Intent To Prepare a Resource Management Plan Request for Information for Scoping Process and Call for Coal Resource Information

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Initiation of a scoping process for resource management planning, request for current resource information to update the resource inventory base, call for coal resource information and identification of areas of interest in future Federal coal leasing and development in the Cody Resource Area, Worland District, Wyoming.

SUMMARY: The Bureau of Land Management (BLM), Worland District, invites the public to provide information on BLM administered public lands and resources in the Cody Resource Area; to identify concerns to be addressed in the Cody Resource Management Plan (RMP); and to comment on preliminary concerns identified by the BLM staff. This notice is also the specific call for coal resource information and identification of areas with interest in future leasing and development of Federal coal required in 43 CFR 3420.1-2.

SUPPLEMENTARY INFORMATION: The Cody Resource Area includes about 1 million acres of public land and 1.4 million acres of Federal mineral estate administered by BLM in Park and Big Horn Counties, Wyoming.

The Cody RMP is in the preplanning stage. Preplanning activities include: Identifying problems, concerns, conflicts and opportunities concerning public land and resource uses and management; developing planning criteria; assessing data needs; identifying preliminary plan alternatives; developing a schedule for plan preparation; and establishing public participation activities.

The following preliminary issues may be addressed in the RMP: (1) Management of vegetative resources for both consumption (grazing, timber harvesting, etc.) and nonconsumptive (watershed protection, maintenance of cover for wildlife, etc.) uses; and (2) special management actions to protect environmentally sensitive areas or unique resource values. A summary of the basic problems and concerns for these preliminary issues is available for review at the Cody Resource Area Office.

The public, including other federal agencies and state and local governments, is invited to identify additional problems, concerns and management opportunities that should be addressed in the planning process and to comment on those identified by the BLM staff.

The BLM is also requesting resource data and information that will be used to further define issues, update the inventory base or to identify inventory needs, help develop planning alternatives, and analyze environmental consequences. Due to federal budget constraints, the BLM will conduct very little, if any, inventory work. Thus, development of the RMP must rely upon existing, available resource information and data.

Pursuant to 43 CFR 3420.1-2, this notice is a formal request for coal resource information and identification of any substantiated interest in future leasing and development of federal coal in the Cody Resource Area. Specifically, information on the location, quality and quantity of federal coal with development potential and on surface resource values related to the twenty coal unsuitability criteria described in 43 CFR 3461.1 is requested and will be used to conduct any necessary coal screening (43 CFR 3420.1-4) during the planning process.

The BLM has limited coal resource data for the planning area and will be unable to conduct further inventories. Parties interested in federal coal leasing and development will be expected to provide coal and other resource data for their areas of interest. Information concerning areas of leasing interest, coal resource data and other resource information related to the unsuitability criteria must be submitted to the Cody Resource Area Office, at the address below, by April 15, 1986.

Federal coal leasing in areas outside designated coal production regions may be considered apart form the competitive leasing process set out in 43 CFR 3420.3 through 3420.5-2. Since the Cody Resource Area is not within a coal production region, any federal coal leasing will be considered on a case-by-case basis, called "Leasing on Application," under the appropriate provisions of 43 CFR 3425 and 43 CFR 3420.1-4 through 3420.1-8. Note that the sale and issuance of federal coal leases under these provisions is still done through a competitive bidding process.

Identification at this time of definite interests in future federal coal leasing, substantiated with adequate coal and other resource data, will allow these interests to be considered in the planning process. In this way, unnecessary administrative delays or revisions in the plan may be avoided, if coal lease applications are submitted in the future.

Public participation activities will be initiated with an open house to be held at the Cody Resource Area Office, 1714 Stampede Avenue, Cody, Wyoming, on March 4-5, 1986 between the hours of 8:00 a.m. and 8:00 p.m. each day. The public is invited to meet informally with the Resource Area staff to discuss concerns and share information.

The public will have opportunities to participate throughout the planning effort, including input and comment on issues and planning criteria and on the draft and final resource management plan and EIS. Notice of public participation activities will be given through **Federal Register** notices, local media, and mailings to parties included on the Cody Resource Area mailing list.

ADDRESS: Coal resource information and interest in leasing, comments on issues or public land and resource concerns, and submissions of other resource data should be addressed to: Cody Resource Area Manager, Bureau of Land Management, P.O. Box 518, 1714 Stampede Avenue, Cody, Wyoming 82214.

Information relating to coal leasing and development should be submitted by April 15, 1986. Other resource information should be submitted by March 31, 1986.

FURTHER INFORMATION: To obtain further information or to be placed on the Cody mailing list contact Bob Ross, Planning Project Manager or Tom Enright, Area Manager, at the address above or telephone (307) 587-2216.

Dated: January 28, 1986.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 86-2582 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-22-M

Filing of Plat of Survey; Utah

AGENCY: Bureau of Land Management, Utah, Interior.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately:

Salt Lake Meridian, Utah
T. 4 S. R. 7 W.

This plat represents the dependent resurvey of a portion of the S. and W. boundaries, and a survey of a portion of the subdivisional lines of T. 4 S., R. 7 W., Salt Lake Meridian, Utah for Group 659 accepted October 17, 1985.

Salt Lake Meridian, Utah
T. 29 S. R. 5 E.

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This plat represents the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines with a subdivisional survey of section 18 of T. 29 S. R. 5 E. Salt Lake Meridian, Utah for Group 678 accepted November 1, 1985.

Salt Lake Meridian, Utah
T. 6 S. R. 4 E.

This plat represents the dependent resurvey of a portion of the S. and E. boundaries, the subdivisional lines, and the private land claims with a subdivisional survey of section 34 of T. 6 S. R. 4 E., Salt Lake Meridian, Utah for Group 632, accepted November 5, 1985.

Salt Lake Meridian, Utah
T. 30 S. R. 1 W.

This plat represents the dependent resurvey of a portion of the W. boundary and subdivisional lines with a subdivisional survey of section 19 of T. 30 S. R. 1 W., Salt Lake Meridian, Utah for Group 661 accepted November 8, 1985.

Salt Lake Meridian, Utah
T. 13 N. R. 4 E.

This plat represents the dependent resurvey of the S. boundary of T. 14 N. R. 4 E., the N. 2 miles of the E. boundary of T. 13 N. R. 3 E., the North 1 mile of the E. boundary and a portion of the subdivisional lines of T. 13 N. R. 4 E., Salt Lake Meridian, Utah for Group 640 accepted November 18, 1985.

Salt Lake Meridian, Utah
T. 15 N. R. 6 W.

This plat represents the retracement of the Utah and Idaho State boundary between the 78th and 80th mile posts; the dependent resurvey of portions of the S. and W. boundaries and subdivisional lines with a subdivisional survey of section 31 of T. 15 N. R. 6 W. Salt Lake Meridian, Utah for Group 641 accepted November 20, 1985.

Salt Lake Meridian, Utah
T. 3 S. R. 1 E.

This plat represents the dependent resurvey of portions of the S. and E. boundaries and subdivisional lines with a subdivisional survey of sections 12 and 33 of T. 3 S. R. 1 E., Salt Lake Meridian, Utah for Group 627 accepted November 26, 1985.

Salt Lake Meridian, Utah
T. 4 S. R. 2 E.

This plat represents the dependent resurvey of portions of the S. boundary and subdivisional lines, with a subdivisional survey of certain sections of T. 4 S. R. 2 E., Salt Lake Meridian, Utah for Group 631 accepted December 5, 1985.

Salt Lake Meridian, Utah
T. 41 S. R. 14 W.

This supplemental plat of sections 1 and 12, T. 41 S. R. 14 W. Salt Lake Meridian Utah was prepared to show new lottings created by Mineral Survey No.'s 7353 and 7353 AM, and is based upon the plats accepted September 3, 1870, June 30, 1877, and March 11, 1959, and the plats of Mineral Survey No. 7353 approved June 13, 1980 and the plat of Mineral Survey No. 7353 AM approved October 25, 1985, and was accepted October 28, 1985.

Glen B. Hatch,
Chief Branch of Cadastral Survey.
Leroy R. Turner,
Chief, Branch of Administrative Services.
[FR Doc. 86-2676 Filed 2-6-86; 8:45 am]
BILLING CODE 4310-DQ-M

Minerals Management Service

Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for 1987 Through 1991

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 1987 through 1991.

SUMMARY: The Secretary of the Interior is issuing for review and comment the Proposed 5-Year OCS Oil and Gas Leasing Program for 1987–1991. The Proposed Program is an intermediate stage in the development of the new 5-year program pursuant to section 18 of the OCS Lands Act, as amended, and consists of a proposed delineation of OCS planning areas, a proposed schedule of sales to be held during the period 1987–1991, and a selection of proposed leasing policies. The Proposed Program is described and analyzed in a Secretarial Issue Document and a draft Environmental Impact Statement (EIS)

A copy of this Notice and other documents explaining the Proposed Program are being sent to the Governors of affected coastal States, to the Congress, and to the heads of affected Federal Agencies.

The proposed Program for 1987–1991 proposes a number of changes to slow the pace and reduce the scope of leasing as compared with the current program: lengthening the period between sales in most areas from 2 to 3 years; and reducing the acreage to be offered for lease by adopting the approach of focusing on promising acreage. This approach incorporates the policy of emphasizing consultation with coastal States and other affected parties with a view to the early resolution of conflicts. In 21 of the 26 OCS planning areas, the Proposed Program schedules 27 standard sales, 10 frontier exploration sales, and 5 small supplemental sales. The Proposed Program has the flexibility to satisfy the statutory requirements to meet national energy needs under a variety of conditions. It responds to recent declines in hydrocarbon prices while at the same time retaining the ability to meet national energy needs under changing geopolitical or economic circumstances. In addition, the Proposed Program continues policies and procedures which assure the receipt of fair market value.

This Notice invites public comment on the Proposed Program. Responses to this Notice will be considered for the Secretarial decision on the adoption of a Proposed Final Program in late 1986/early 1987. After a 60-day congressional and Presidential notification period, the Secretary can give final approval to the new program.

DATE: Comments must be received by May 8, 1986.

ADDRESSES: Comments should be submitted to the Deputy Associate Director for Offshore Leasing, Minerals Management Service (MMS), Mail Stop 641, 18th & C Streets, NW., Washington, DC. 20240. Hand deliveries to the Department of the Interior may be made to Room 2525 at that address. If any privileged or proprietary information which the respondent wishes to be treated as confidential is attached to comments, the envelope should be marked, "Contains Confidential Information".

FOR FURTHER INFORMATION CONTACT: Telephone contact may be made with Chris Oynes, Chief, Offshore Leasing Management Division, MMS, at (202) 343–6906 or Paul Stang, Chief, Branch of Program Development and Planning, MMS, at (202) 343–1072. Copies of descriptions of planning area boundaries, maps and block and acreage counts of subareas deferred from leasing, and maps of subareas highlighted for further analysis and comments can be obtained by calling Tim Redding at (202) 343–1072.

Author: Robert Samuels, Branch of Program Development and Planning, MMS.

SUPPLEMENTARY INFORMATION: The Proposed Program is the second of three preparatory versions of the new program prescribed by section 18 of the OCS Lands Act. Initiation of development of the first stage was announced in a July 11, 1984, request for comments published in the **Federal Register** (49 FR 28332). Completion of

the first stage, the Draft Proposed Program, was announced in the **Federal Register** on March 22, 1985 (50 FR 11585). The consideration of public comments in response to those announcements was an important part of developing the Proposed Program.

Pursuant to section 18, the schedule and policies selected for the Proposed Program were based on a consideration of the factors specified by the act and provide "to the maximum extent practicable, a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone." The Proposed Program is also designed to allow all parties to plan for OCS leasing activities while providing sufficient flexibility to meet national energy needs under changing circumstances affecting the price and supply of oil and gas.

The proposals which comprise the Proposed Program will be reviewed at two later program development stages: the Proposed Final Program, planned for late 1986/early 1987; and final approval, following appropriate consultation and a 60-day congressional and Presidential notification period.

The following explanatory items appear at the end of this Notice: Figure 1, which depicts the leasing schedule selected for the Proposed Program; and Maps 1 and 2, depicting the planning areas.

1. Planning Area Boundaries for the Proposed Program

The proposed configuration of OCS planning areas is depicted on Maps 1 and 2.

The configuration of several of those planning areas was further revised by the Secretary's decision to include in the Proposed Program a provision that would defer from leasing the following 15 portions of OCS planning areas ("subareas"): offshore California—the area offshore Pt. Reyes Wilderness, Pt. Reyes-Farallon Islands National Marine Sanctuary, the area offshore San Francisco Bay, the area in the immediate vicinity of Cordell Bank, the area offshore Monterey Bay, the area offshore Big Sur, the Santa Barbara Federal Ecological Preserve and Buffer Zone, Channel Islands National Marine Sanctuary, and the Coordinated Anti-Submarine Warfare Area (San Nicolas Basin); offshore Florida—Seagrass Beds, the Florida Middle Ground, and the Atlantic coast portion of the Straits of Florida planning area extending to 25°07' N. latitude; offshore Georgia—Gray's Reef National Marine Sanctuary; offshore North Carolina—the U.S.S. Monitor National Marine Sanctuary and Buffer Zone; and offshore Texas—the Flower Garden Banks. Maps depicting these subareas will appear in the draft EIS. Separate copies of those maps and a list of block and acreage counts for those subareas can be obtained by calling the contact person indicated above.

In addition, the Secretary highlighted the following 13 subareas for further analysis and comments: three subareas extending 15 nautical miles offshore, in the North, South, and Mid-Atlantic planning areas; the Gulf of Maine; the National Aeronautics and Space Administration Flight Clearance Zone offshore Cape Canaveral (extending to 170 nautical miles offshore); a subarea extending between 20 and 30 nautical miles offshore the Florida Gulf Coast from Naples to Apalachicola; the subarea south of 26° N. latitude and east of 82° W. longitude in the "Miami" official protraction diagram offshore Florida in the Eastern Gulf of Mexico; the three subareas estimated by MMS to be beyond the area of hydrocarbon potential in the Washington-Oregon, Northern California, and Central California planning areas; two subareas totaling approximately 210 blocks adjacent to Unimak Pass, Alaska, in the St. George Basin and the North Aleutian Basin planning areas; and a subarea of approximately 59 blocks offshore Point Barrow, Alaska.

Maps depicting these subareas will appear in the draft EIS. Separate copies of those maps can be obtained by calling the contact person indicated above.

2. The Leasing Schedule for the Proposed Program

a. General

Over the 5-year period 1987–1991, the Proposed Program provides for 27 standard sales, 10 frontier exploration sales, and 5 small supplemental sales. These sales are scheduled in 21 of the 26 OCS planning areas. The Proposed Program schedules annual standard sales in the two highest-value, highest-interest areas, the Central and Western Gulf of Mexico. It proposes 27 standard or frontier exploration sales in 19 other areas, with approximately 3 years or longer between sales. The Proposed Program does not schedule any sales in Aleutian Arc, Aleutian Basin, Bowers Basin, St. Matthew-Hall, or the Straits of Florida. A question about whether a sale should be scheduled in the southern portion of the Straits of Florida planning area for the Proposed Final Program appears at the end of this Notice.

The basic determinants of the sale schedule depicted in Figure 1 are the pace of leasing decided upon by the Secretary, the date of the last sale held or scheduled in a planning area, and other administrative considerations. Thus, on the one hand, a single sale is scheduled for Norton Basin in 1989 because that is 3 years after the 1986 Norton Sale (Sale 100) and the 5-year period of the program ends before the subsequent 3-year cycle. On the other hand, two sales are scheduled in the Beaufort Sea (1987 and 1990) because the 3-year cycle starts with the 1984 Beaufort Sea Sale.

b. Flexibility Provisions

The Proposed Program contains three flexibility features: frontier exploration sales; supplemental sales; and the acceleration provision.

Frontier exploration sales are proposed for areas where incomplete geological data, MMS estimates of lower value, or current industry indications of lower interest call for an early decision point on whether to proceed with the standard presale process. For these sales, a Request for Interest soliciting industry interest in holding the sale will be published in the **Federal Register** approximately 4 months prior to the Call. Responses to that request, as well as the annual review of the program under section 18(e), will be used to help determine whether to proceed with the presale process. If interest is insufficient to justify proceeding with the sale, it can be delayed or cancelled. If delayed, a Request for Interest can then be reissued on a perennial or less frequent basis until interest is determined to be sufficient to hold the sale or the sale is cancelled. Ten frontier exploration sales are proposed: two in the North Atlantic and one in the Mid-Atlantic, the South Atlantic, Washington-Oregon, and the same five Alaska areas where such sales were scheduled in the Draft Proposed Program (Shumagin, Kodiak, Cook Inlet, Gulf of Alaska, and Hope Basin).

Supplemental sales on an annual basis are included in the Proposed Program for a small number of blocks in areas other than the Central and Western Gulf of Mexico in either of the following categories: blocks on which bids were rejected in the preceding year (i.e., the year preceding the one in which the supplemental sale is scheduled by the 5-year program); or drainage and development blocks.

The reoffering of rejected bid blocks would diminish the cost of delay of leasing blocks demonstrated to be of interest to industry. This provision would reintroduce the concept of drainage sales on a basis compatible with the requirements of the OCS Lands

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Act Amendments of 1978 and similar to procedures of the State of Alaska (set forth in Alaska Statutes 38.05.180(d)). These blocks will only be offered after compliance with the requirements of the National Environmental Policy Act, the OCS Lands Act, and other applicable statutes. The environmental assessment documentation for each of these sales would be released prior to the proposed Notice of Sale. If it is determined that an EIS is required for one or more blocks to be offered in one of these sales, revised presale milestones would be issued.

The acceleration provision responds to the need to plan for an unknown future with limited information. Changes in the world energy market as well as exploration results in frontier areas can dramatically affect the demand for offshore leases. Thus, the 5-year program needs to have flexibility to adjust to major unforeseen developments. One means of providing such flexibility is the provision to permit the acceleration of leasing from triennial to biennial, if carefully defined criteria are met (but not so as to increase the total number of sales in any planning area in the approved program). The areas where such acceleration could be considered include: Southern California; Eastern Gulf of Mexico; Central California; Northern California; Navarin Basin; Beaufort Sea; North Aleutian Basin; and St. George Basin.

The question of whether to accelerate a sale in an area would be made on a sale-by-sale basis. Consideration of accelerating a particular sale would be initiated by any one of four criteria: (1) A finding by the Secretary that a new discovery in a planning area indicates that biennial leasing there is in the national interest; (2) activation of the International Energy Agency's oil sharing agreement; (3) drawdown of the Strategic Petroleum Reserve because of a severe oil supply disruption; or (4) a major disruption in Mideast oil shipments. Comments on possible economic criteria in particular are solicited at the end of this Notice.

The concept of acceleration, which was introduced in the Draft Proposed Program to provide flexibility, is still under development. Comments are requested on appropriate means of implementing acceleration, including criteria for considering it in a particular planning area. Such criteria would identify a necessary component of the decision for accelerating leasing. A decision by the Secretary that acceleration is appropriate would be based on close consultation with affected States and consideration of the Nation's energy needs, environmental factors—including the results of the Environmental Studies Program, and multiple-use factors.

The purpose of including the acceleration provision in an approved leasing program is so that its exercise would be the implementation of part of the program approved pursuant to section 18 rather than a significant revision of it.

3. Size of Lease Sales

The proposed presale process, focusing on promising acreage, determines the size of lease sales. The Department uses an extensive consultation and balancing process to offer acreage where OCS leasing would be environmentally sound and has a potential to lead to exploration for oil and gas resources. In this process, the Department uses information and nominations obtained from affected States, local governments, Federal Agencies, the public, and potential bidders, as well as MMS analyses. Focusing on promising acreage aims at the resolution of conflicts early in the presale process by the achievement of consensus on key issues—especially concerning acreage with low MMS resource estimates and low industry interest.

Early steps in the presale process include the Call for Information and Nominations and the Area Identificaion. The Call depicts the area of hydrocarbon potential projected by MMS. The Call may be tailored on a case-by-case basis to exclude portions of the planning area (as in the exlusion of the Flower Garden Banks from the 1987 Western Gulf of Mexico Sale). In area Identification, responses to the Call are used in structuring the area to be analyzed in the EIS. In addition to these early steps, consultation also occurs at later steps in the presale process.

4. Assurance of Receipt of Fair Market Value in the Proposed Program

Section 18(a)(4) of the OCS Lands Act provides that leasing activities are to be conducted so as to assure receipt of fair market value for lands leased and rights conveyed. The Proposed Program maintains both the current procedures for assuring the receipt of fair market value and the current flexible policy for reconsidering the basic approach of $150/acre as the minimum bid on a sale-by-sale basis. The proposed program also provides for a review of the criteria to be used in that reconsideration of the minimum bid level.

Information Requested

This Notice has been prepared to obtain public views on the above proposals. Comments may be submitted on any topic related to the new 5-year program. Comments are requested in particular on the following specific topics.

(1) The proposed configuration of planning area boundaries, including the deferral of leasing in the 15 subareas described above.

(2) The 13 subareas highlighted for further analysis and comment: three subareas extending 15 nautical miles offshore in the North, South, and Mid-Atlantic planning areas; the Gulf of Maine; the National Aeronautics and Space Administration Flight Clearance Zone offshore Cape Canaveral (extending to 170 nautical miles offshore); a subarea offshore the Florida Gulf Coast extending between 20 and 30 nautical miles from shore from Naples to Apalachicola; the subarea south of 26° N. latitude and east of 82° W. longitude in the "Miami" official protraction diagram offshore Florida in the Eastern Gulf of Mexico; the three subareas estimated by MMS to be beyond the area of hydrocarbon potential in the Wahington-Oregon, Northern California, and Central California planning areas; two subareas totaling approximately 210 blocks adjacent to Unimak Pass, Alaska, in the St. George Basin and North Aleutian Basin planning areas; and a subarea of approximately 56 blocks offshore Point Barrow, Alaska. Maps depicting these subareas will appear in the draft EIS and separate copies of them can be obtained by calling the contact person indicated above.

(3) The appropriateness of the number of proposed sales and the interval between proposed sales; and, in particular, whether there should be biennial rather than triennial sales in the Eastern Gulf of Mexico.

(4) The appropriateness of the location of proposed sales; and, in particular, whether there should be a sale in 1991 in the portion of the Straits of Florida planning area south of 25°07' N. latitude.

(5) The proposed presale process of focusing on promising acreage; and, in particular, the following possible techniques for implementing that approach:

(A) The recommendation of Massachusettes that nomination procedures be revised so as to request more detailed information from industry on areas of interest prior to the issuance of the Call (to be displayed in the Call), and again after the issuance of the draft EIS.

(B) The recommendations of the American Petroleum Institute, the National Ocean Industries Association,

and a number of oil and gas producers that nomination procedures be revised so as to request more detailed information concerning "negative nominations."

(C) A sale-by-sale decision on whether to publish a notice in the Federal Register announcing the availability of the MMS proposed Call area for industry interest review prior to the issuance of the Call.

(6) The proposed means of pursuing flexibility in the new program in light of national energy needs and uncertainty over future oil and gas supplies and prices; and, in particular, the following possible economic criteria for the acceleration provision—

(I) Activation of the International Energy Agency's oil sharing agreement;

(II) Drawdown of the Strategic Petroleum Reserve (SPR) because of a severe oil supply disruption;

(III) Major disruption in Mideast oil shipments;

(IV) Imports of crude oil and refined petroleum products (excluding those for the SPR) reach a specific percentage of the trade deficit over a specified period;

(V) Imports of crude oil and refined petroleum products (excluding those for the SPR) reach a specific percentage of total domestic consumption of petroleum products over a specified period;

(VI) The price of imported crude oil (U.S. refiners' acquisition cost as computed by the Energy Information Administration (EIA)) rises by a specified amount or percent over a specified period;

(VII) Net imports of petroleum (excluding those for the SPR) are projected by EIA to equal or exceed a specified percent of U.S. consumption of refined petroleum products;

(VIII) Oil prices are projected by EIA to increase by a specified amount or percent or reach a specified level.

In light of the reconfiguration of planning areas resulting from the 15 subarea deferrals proposed by the Secretary, industry respondents in particular are requested to re-rank all 26 planning areas of the OCS. Separate rankings are requested for: (i) Hydrocarbon potential; and (ii) exploration and development interest. Both rankings should be based on estimates of resources expected to be unleased as of January 1987. Industry respondents are also asked to indicate those areas in which they intend to operate or have serious interest in leasing or operating so that their rankings can be interpreted most usefully by MMS. Industry respondents are also requested to indicate whether the deferral of leasing in any of the subareas highlighted in comment topic 2, above, would result in a significant decrease in the rank of the affected planning area(s).

Confidential treatment of privileged or proprietary information is authorized under section 18(g) of the OCS Lands Act. In order that only rankings be treated as confidential, they should be submitted as an attachment to the other comments which a respondent submits. An attachment to a response containing privileged or proprietary information will, upon request, be treated as confidential from the time of receipt by MMS until 5 years after final approval of the next leasing program. However, summaries of rankings submitted to MMS, the names of respondents submitting rankings, and comments other than rankings will not be treated as confidential information.

Dated: February 4, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

BILLING CODE 4310-MR-M

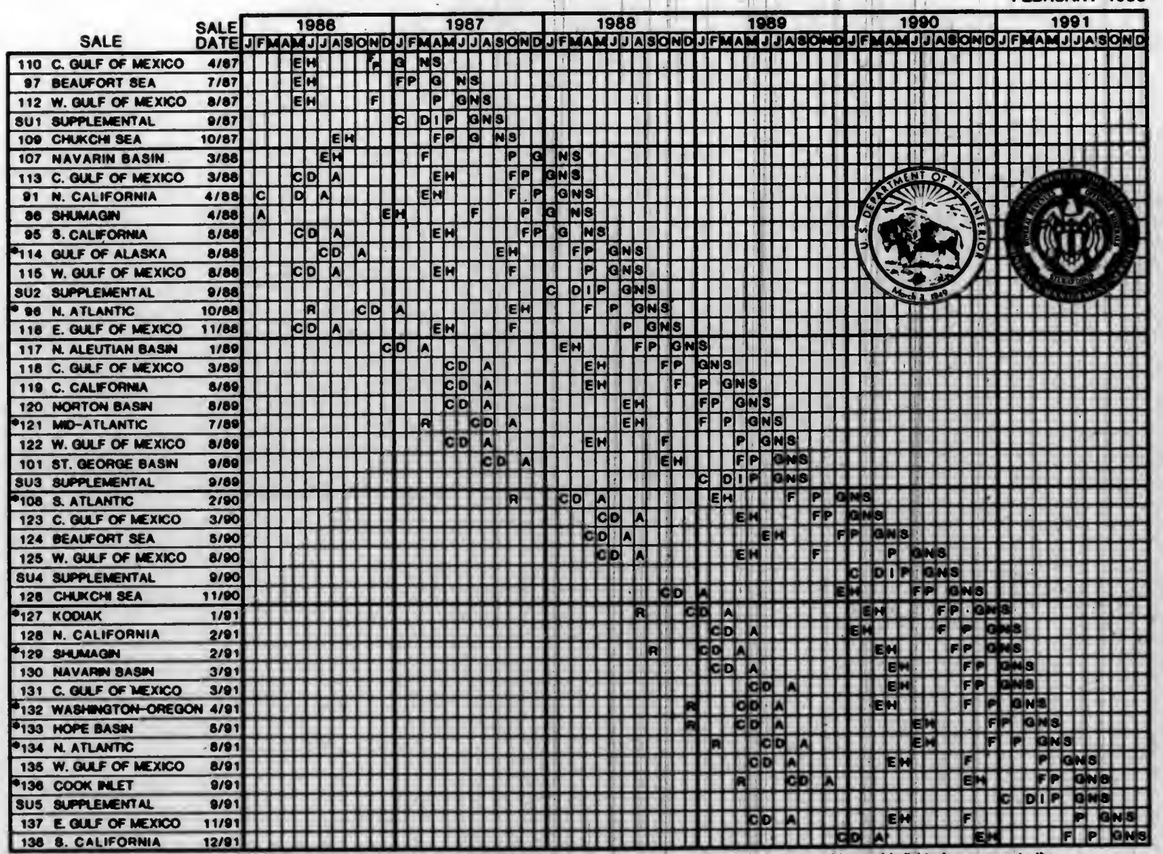
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Figure 1

U.S. DEPARTMENT OF THE INTERIOR

PROPOSED 5-YEAR OCS OIL AND GAS LEASING PROGRAM

FEBRUARY 1986



* Frontier Exploration Sale. The question of whether the Call for Information and Nominations for these sales will be issued will be addressed in light of responses to the Request for Interest.

R – Request for Interest C – Call for Information & Nominations D – Comments on Call Due A – Area Identification E – Draft EIS H – Public Hearing F – Final EIS

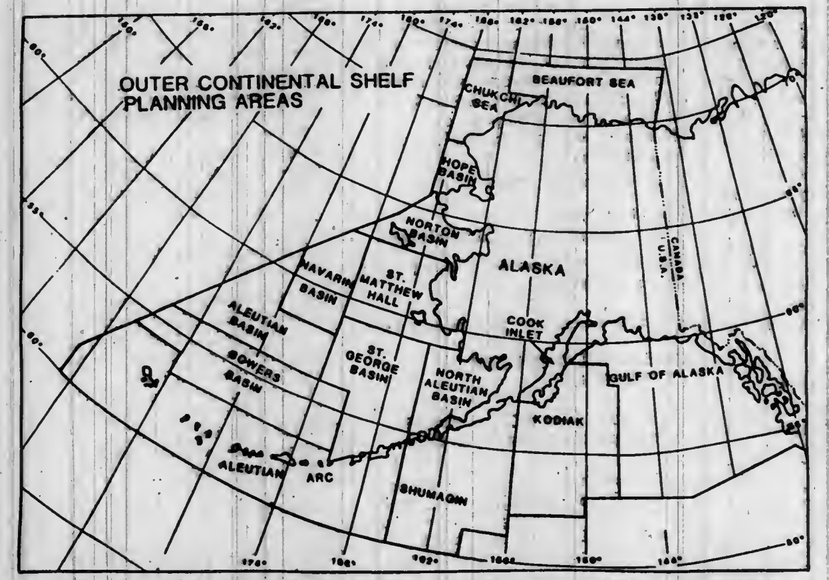
I – Issue Environmental Assessment for Supplemental Sale P – Proposed Notice of Sale G – Governor's Comments Due N – Notice of Sale S – Sale

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Map 1



Map 2



Maritime boundaries and limits depicted on the maps and divisions shown between planning areas are for initial planning purposes only and do not prejudice or affect United States jurisdiction in any way.

[FR Doc. 86-2750 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-MR-C

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National Park Service

Intention To Negotiate Concession Permit; Dune Climb Refreshment Stand

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 (79 Stat. 969; 19 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with the Dune Climb Refreshment Stand, authorizing it to continue to provide the sale of refreshments, handcrafts, merchandise, and souvenirs, facilities and services for the public at Sleeping Bear Dunes National Lakeshore, Michigan, for a period of five (5) years from January 1, 1986, through December 31, 1990.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which will expire on December 31, 1985, and, therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Sleeping Bear Dunes National Lakeshore, 400 Main Street, Frankfort, Michigan 49635, for information as to the requirements of the proposed permit.

Charles H. Odegaard,

Regional Director, Midwest Region.

January 8, 1986.

[FR Doc. 86-2758 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-70-M

Environmental Statements, Availability, etc.; TXO Production Corp., Big Thicket National Preserve, TX

The National Park Service has received from TXO Production Corporation a Plan of Operations for the purpose of drilling the Dixon "O" No. 1 Exploratory Well within the Turkey Creek Unit of Big Thicket National Preserve, Texas.

Pursuant to § 9.52(b) of Title 36 of the Code of Federal Regulations, Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, the Plan of Operations and Environmental Analysis are available for public review and comment for a period of 60 days from the publication date of this notice in the Office of the Superintendent, Big Thicket National Preserve, 8185 Eastex Freeway, Beaumont, Texas; and the Jefferson County Courthouse, in Beaumont, Texas. Copies of the Documents are available from the Southwest Regional Office, National Park Service, Post Office Box 728, Santa Fe, New Mexico 87504-0728, and will be sent upon request.

The National Park Service will use a worst case analysis and assume the proposed operation will be in and affect the base floodplain. The National Park Service will seek official determination of the operation's location in a wetland and/or floodplain during this review period. Therefore, the National Park Service requests reviewers to respond on the applicability and adequacy of the Plan of Operations and Environmental Analysis pursuant to the Non-Federal Oil and Gas Rights (36 CFR Part 9, Subpart B) and the purposes of Floodplain Management and Protection of Wetlands.

Dated: January 31, 1986.

Donald A. Dayton,

Acting Regional Director, Southwest Region.

[FR Doc. 86-2759 Filed 2-6-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Bumper Works Incorporated, an Illinois Corporation, 647 Section Street, P.O. Box 448, Danville, Illinois 61832.

2. Wholly owned subsidiary which will participate in the operations and State of Incorporation: Flex-N-Gate Corporation, an Illinois Corporation, 1306 East University, P.O. Box C, Urbana, Illinois 61801.

1. Parent corporation and address of principal office: West Point—Pepperell, Inc., 400 West Tenth Street, West Point, Georgia 31833, Georgia.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices and states of incorporation:

Alatex, Inc., 620 River Falls Street, Andalusia, AL 36420, Delaware.

Cluett Apparel Outlet, Inc., 3522 I75 Business Spur, Sault Ste. Marie, MI 49873, Michigan.

Donmoor, Inc., 34 W. 33rd Street, New York, NY 10001, New York.

Hometown Mfg. Co., Inc., Industrial Boulevard, Greensboro, GA 30642, New York.

Shoreham Classics, Inc., 530 5th Avenue, New York, NY 10036, New York.

Spring City Knitting Company, 475 North Lewis Road, Royersford, PA 19468, Pennsylvania.

Old Mission Textiles, Inc., 400 West 10th Street, West Point, Georgia 31833, Georgia.

Arrow Inter-American, Inc., 433 River Street, Troy, NY 12180, Delaware.

Cluett Peabody & Co., Inc., 400 West 10th Street, West Point, GA 31833, Georgia.

Duofold, Inc., 502 Bleecker, Utica, NY 13501, New York.

Leroy, Inc., 9818 Reisterstown Road, Owings Mills, MD 21117, Maryland.

Six Continents Ltd., 1441 Broadway, New York, NY 10018, New York.

West Point Pepperell Trans. Co., 400 West 10th Street, West Point, GA 31833, Georgia.

Productos Textiles Mision Vieja, 400 West 10th Street, West Point, Georgia 31833, Costa Rica.

James H. Bayne,

Secretary.

[FR Doc. 86-2688 Filed 2-6-86; 8:45 am]

BILLING CODE 7035-01-M

[OP3FD-23 (ICC-Reg.); OP3FD-24 (Fed.-Reg.)]

Motor Carriers; McAllister Towing and Transportation Co., Inc., et al.; Finance Applications

Decided: January 31, 1986.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's rules of practice. See Ex Parte 55. (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register** and *I.C.C. Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

[Finance Docket No. 30756]

McCallister Towing and Transportation Co., Inc., and McAllister Feeder lines, Inc.—Purchase—Norfolk, Baltimore and Carolina Line, Inc.

Agency: Interstate Commerce Commission.

Action: Notice of proposed acquisition of water carrier operating authority and other assets under 49 U.S.C. 11343 and notice of approval of waiver of informational filing requirements.

Summary: By application under 49 U.S.C. 11343 McAllister Towing and Transportation Company, Inc. (MTT), and McAllister Feeder lines, Inc. (MFL), propose to acquire the water carrier operating authority and other assets of Norfolk, Baltimore and Carolina Line, Incorporated, a regulated water carrier operating under Certificate and Permit No. W-595. Under the proposed transaction, MTT will acquire the relevant authorities and then sell them to its newly-formed, wholly-owned subsidiary, MFL. MTT also controls three other water carriers: (1) McAllister Lighterage Line, Inc. (MLL), (W-81); (2) McAllister Transport Lines, Inc. (MTL) (W-457); and (3) Bridgeport and Port Jefferson Steamboat Company (B&PJ) (W-271). This common control has been approved in Finance Docket Nos. 16079 and 25091. MLL and MTL provide a variety of common and contract water carrier services by self-propelled and non-self-propelled vessels along the Atlantic, Gulf and Pacific coasts and tributary waterways, transporting general commodities on behalf of the shipping public. B&PJ provides passenger and property ferry service on Long Island Sound. NBC also holds motor carrier authority in No. MC-142795. In a separate proceeding No. MC-F-16918, *McAllister Towing and Transportation Company, Inc. and McAllister Feeder Lines, Inc.—Purchase Exemption—Norfolk, Baltimore and Carolina Line, Incorporated*, filed November 27, 1985, petitioners seek an exemption of the Commission's regulations for MTT and then MFL to purchase all of the motor rights of NBC. NBC also holds property broker authority. However transfer of this authority is not contemplated in this proceeding. An application authorizing the temporary lease by MFL of NBC's relevent operating rights (water and motor) has been approved by the Motor Carrier Board. Division 2 of the Commission has granted the parties' request for waiver of a portion of informational filing requirements under 49 CFR 1181.11.

Dote: Comments are due 45 days from date of publication in the *ICC Register* and **Federal Register.**

Addresses: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representative: Norman J. Philion, 1920 N Street, NW., Washington, DC 20036

Comments should refer to finance Docket No. 30756.

Decided: January 31, 1986.

For further information contact: Eric Davis, 275-7941.

Supplementary information: The transaction embraces the transfer of all of NBC's interstate operating authority in No. W-595 which authorizes the transportation: (1) As a water common carrier of general commodities, between the ports of New York, NY, Philadelphia, PA, Baltimore, MD, and Norfolk, VA by way of the Atlantic Ocean, Delaware River, Chesapeake and Delaware Canal and Chesapeake Bay, serving all intermediate points and tributaries, and (2) as a water contract carrier, of general commodities (except classes A and B explosives), between ports and points on the Atlantic Coast and tributary waterways and ports and points on the Gulf of Mexico.

MTT and MFL will also acquire from NBC a total of 5 tugs and 7 barges, and miscellaneous equipment used in conducting its business.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-2689 Filed 2-6-86; 8:45 am]

BILLING CODE 7035-01-M

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DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; B. F. Goodrich

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 22, 1986, a proposed consent decree in *U.S.* v. *B.F. Goodrich*, Civil Action No. C84–3137 was lodged with the United States District Court for the Northern District of Ohio. The complaint filed by the United States alleged violations of the Clean Air Act by Goodrich due to particulate emissions from two coal-fired boilers, Boilers 3 and 4, at its general chemical manufacturing plant located at Avon Lake, Ohio. The complaint sought to prohibit operation of the boilers without adequate pollution controls. The consent decree provides that Goodrich will shut down both Boiler 3 and Boiler 4. Under the terms of the decree Boiler 4 may be operated only under specified emergency conditions. The decree also requires B.F. Goodrich to pay a penalty of $40,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *U.S.* v. *B.F. Goodrich*, D.J. Ref. 90–5–2–1–708.

The proposed consent decree may be examined at the Office of the United States Attorney for the Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio, 44114; the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, 60604; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–2694 Filed 2–6–86; 8:45 am]
BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Pursuant to the Resource Conservation and Recovery Act of 1976, as Amended; Hudson Refining Co., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 31, 1986, a proposed Partial Consent Deree in *United States* v. *Hudson Refining Co., Inc. and Hudson Oil Company*, Civil Action No. 84–2027A, was lodged with the United States District Court for the Western District of Oklahoma. The proposed Partial Consent Decree requires the Defendants to comply with certain requirements of the Oklahoma Rules and Regulations for Industrial Waste Management; to pay a civil penalty of $100,000 for past violations of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*, and applicable regulations; and to conduct a site investigation for potential releases and sources of release of hazardous waste or hazardous waste constituents at its petroleum refinery in Cushing, Oklahoma.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hudson Refining Co., Inc. and Hudson Oil Company*, D.J. Ref. No. 90–7–1–262.

The proposed Partial Consent Decree may be examined at the Office of the United States Attorney for the Western District of Oklahoma, 4434, U.S. Courthouse, Oklahoma City, Oklahoma, and at the Region VI Office of the Environmental Protection Agency, 1201 Elm Street, InterFirst II Building, Dallas, Texas. Copies of the proposed Partial Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW, Washington, DC 20530. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.10 payable to the Treasurer of the United States.

F. Henry Habicht II,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–2695 Filed 2–6–86; 8:45 am]
BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act; Stockton Port District, CA

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 30, 1986, a proposed consent decree in *United States* v. *Stockton Port District*, Civil Action No. S–84–1249–LKK was lodged with the United States District Court for the Eastern District of California. The proposed consent decree concerns the discharge of fertilizer into the Stockton Ship Channel in violation of the Clean Water Act. The proposed consent decree requires the Port District to apply for a NPDES permit, abate further discharges, and pay a civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Stockton Port District*, D.J. Ref. 90–5–1–1–2164.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of California, 3305 Federal Building, Sacramento, California and at the Region IX Office of the Environmental Protection Agency 215 Fremont Street, San Francisco, California. Copies of the Proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530.

A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–2696 Filed 2–6–86; 8:45 am]
BILLING CODE 4410–01–M

[AAG/A Order No. 4–86]

Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Legal Policy (OLP), Department of Justice, will modify a system of records last published on September 30, 1977, in **Federal Register** Volume 42, page 53353, and identified as the "Declassification Review Index, JUSTICE/DAG–001." Specifically, OLP will modify the system to reidentify the system name as "Declassification Review System, JUSTICE/OLP–004." This reidentification is consistent with a Department reorganization where the management roles of the Associate Attorney General and Deputy Attorney General were restructured and OLP was established. The records are now under the management of OLP. Consistent with the reorganization, OLP is also redesignating the system location and manager. In addition, OLP is expanding the categories of individuals and records covered by the system, adding a new routine use, revising the safeguards and retrievability procedures, and exempting the system from certain provisions of the Privacy Act. (A proposed rule to exempt the system is being published in the Proposed Rules section of today's **Federal Register**.)

5 U.S.C. 552a(e)(4)(11) provides that the public be given a 30-day period in which to comment on the new routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the modified system. However, a waiver of the 60-day requirement has been requested of OMB. Therefore, please submit comments by March 10, 1986. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street NW., Washington, DC 20530.

Dated: December 18, 1986.

W. Lawrence Wallace,
Assistant Attorney General for Administration.

JUSTICE/OLP–004

SYSTEM NAME:

Declassification Review System.

SYSTEM LOCATION:

Office of Information and Privacy, Office of Legal Policy, United States Department of Justice, 10th and Constitution Avenue, NW, Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system encompasses: (1) Individuals who (under the Freedom of Information Act (FOIA) or Privacy Act) appeal from the denial of access to classified Department of Justice documents; (2) individuals who (under the FOIA of Privacy Act) request declassification of and access to classified documents from the Office of the Attorney General, Deputy Attorney General, Associate Attorney General, or Legal Policy; and (3) individuals who (under Executive Order 12356) request declassification of and access to classified Department of Justice documents which are maintained in a Presidential library.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of (1) copies of classified documents which originated in any component of the Department of Justice and which were denied by a component under the FOIA or Privacy Act, and classified notes and cover sheets created during the declassification review of those documents; (2) classified Attorney General, Deputy Attorney General, Associate Attorney General, and Office of Legal Policy documents which are requested under the FOIA or Privacy Act, classified notes created during the declassification review of these documents, correspondence with other Federal agencies concerning the declassification or release of information which originated with the agencies or in which they have a substantial interest, and copies of responses to the requesters; and (3) copies of final declassification determinations by Department components of Department documents maintained in Presidential libraries as required by Executive Order 12356, Section 3.4(a).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

These records are maintained pursuant to 5 U.S.C. 301.

PURPOSE OF THE SYSTEM:

Classified Department records identified under category (1) above are reviewed by the Attorney General's Department Review Committee (DRC) to determine whether or not they continue to be properly classified pursuant to Executive Order 12356. The DRC was established to resolve issues concerning the administration of the President's Executive Order on national security information. DRC members consist of representatives from the Federal Bureau of Investigation, Criminal Division, Justice Management Division, and the Offices of Legal Counsel, Intelligence Policy and Review and the Deputy Attorney General. Attorney General, Deputy Attorney General, Associate Attorney General, and Office of Legal Policy records identified under categories (1) and (2) above are reviewed by the Office of Legal Policy to determine whether the records should be declassified and considered for release pursuant to the FOIA or Privacy Act. Copies of final declassification determinations identified under catetory (3) above are simply stored in the Classification Review Unit of the Office of Legal Policy. The Unit serves as the routing point for Department of Justice documents referred by a Presidential library for declassification review.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

These records may be disclosed to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information for investigative or policy decisionmaking purposes or to provide constituent assistance.

These records may be disclosed to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

These records may be disclosed in a proceeding before a court or adjudicative body before which the Office of Information and Privacy is authorized to appear when (a) the Office of Information and Privacy, or any subdivision thereof, or (b) any employee of the Office of Information and Privacy in his or her official capacity, or (c) any employee of the Department of Justice in his or her individual capacity where the Department has agreed to represent the employee, or (d) the United States, where the Office of Information and Privacy determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the Office of Information and Privacy to be arguably relevant to the litigation.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in file folders in cabinets or safes.

RETRIEVABILITY:

These records are indexed and retrieved manually by the individual's name or case file number.

SAFEGUARDS:

Classified records are stored in safes with combination locks. Only those persons with Top Secret security clearances who are responsible for conducting declassification reviews have access to the combinations of these safes. The safes are stored in rooms with combination or deadbolt locks. Unclassified records are stored in cabinets in these same rooms.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Classification Review Unit, Office of Information and Privacy, Office of Legal Policy, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Address all inquiries to the system manager. These records will be exempted from subsections (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5).

RECORD ACCESS PROCEDURES:

Make all requests for access to records from this system in writing to the system manager and clearly mark both the letter and the envelope "Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the request, and a return address.

CONTESTING RECORDS PROCEDURES:

Make all requests to contest or amend information maintained in this system in writing to the system manager. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment(s) to the information.

RECORD SOURCE CATEGORIES:

The records in this system are generally copies of records maintained in other systems of records of the Department of Justice. Additional records consist of letters from the individuals covered by the system.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (c)(3) and (4); (d); (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), and (k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 86-2697 Filed 2-6-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Georgia	GA86-14 (Jan. 3, 1986)	p. 238.
Georgia	GA86-21 (Jan. 3, 1986)	p. 250.
Mississippi	MS86-21 (Jan. 3, 1986)	p. 482.
Mississippi	MS86-23 (Jan. 3, 1986)	p. 487.
Mississippi	MS86-24 (Jan. 3, 1986)	p. 490.
Pennsylvania	PA86-4 (Jan. 3, 1986)	pp. 820-822.
Pennsylvania	PA86-5 (Jan. 3, 1986)	p. 831.
Pennsylvania	PA86-14 (Jan. 3, 1986)	pp. 892, 895.
Pennsylvania	PA86-18 (Jan. 3, 1986)	pp. 914-918.
Pennsylvania	PA86-22 (Jan. 3, 1986)	pp. 941-946.
Virginia	VA86-5 (Jan. 3, 1986)	p. 1065.
Virginia	VA86-15 (Jan. 3, 1986)	p. 1089.
Listing by location (index)		pp. xxix-xlii.

Volume II

Arkansas	AR86-7 (Jan. 3, 1986)	p. 22.
Illinois	IL86-1 (Jan. 3, 1986)	pp. 62-64.
Illinois	IL86-2 (Jan. 3, 1986)	pp. 88-89. pp. 91-92.
Illinois	IL86-6 (Jan. 3, 1986)	p. 121.
Illinois	IL86-8 (Jan. 3, 1986)	pp. 131-132.
Illinois	IL86-11 (Jan. 3, 1986)	p. 146.
Illinois	IL86-12 (Jan. 3, 1986)	p. 152.
Illinois	IL86-13 (Jan. 3, 1986)	p. 162. p. 165.
Louisiana	LA86-5 (Jan. 3, 1986)	p. 363.
Nebraska	NE86-2 (Jan. 3, 1986)	pp. 621-622.
Ohio	OH86-28 (Jan. 3, 1986)	p. 752.
Texas	TX86-19 (Jan. 3, 1986)	p. 894.
Wisconsin	WI86-5 (Jan. 3, 1986)	pp. 959-961.
Wisconsin	WI86-8 (Jan. 3, 1986)	p. 972. pp. 974-975.

Volume III

Colorado	CO86-1 (Jan. 3, 1986)	pp. 102-105.
Oregon	OR86-1 (Jan. 3, 1986)	p. 257. pp. 259-260.
Washington	WA86-1 (Jan. 3, 1986)	p. 300. pp. 303-304. p. 308.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Act". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Througout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 31st day of January 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-2539 Filed 2-6-86; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-15; Exemption Application No. D-6088 et al.]

Grant of Individual Exemptions; Peterson, Theian & Price et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

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(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Peterson, Thelan & Price, a Professional Corporation Profit Sharing Plan and Trust (the Plan), Located in San Diego, California

[Prohibited Transaction Exemption 86-15; Exemption Application No. D-6068]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of certain shares of common stock in Citizens Western Bank (the Bank), an unrelated party, by the Plan to Paul A. Peterson, a party in interest with respect to the Plan, provided that the Plan receives at least fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50364.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Extension of Prohibited Transaction Exemption (PTE) 82-184 for Certain Transactions Involving the Alaska Teamster-Employer Pension Trust (the Plan), Located in Anchorage, Alaska

[Prohibited Transaction Exemption 86-16; Exemption Application No. D-6184]

Exemption

The Department hereby extends, temporarily, PTE 82-184 (47 FR 52246, November 19, 1982) until May 16, 1988.

Accordingly, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1) (A) through (D) of the Code shall not apply until May 16, 1988 to the sales of certain residential units (the Units) located near Palm Springs, California, by Desert Horizons, Inc. (Desert Horizons), a wholly owned corporation of the Plan, to parties in interest to the Plan who are not fiduciaries [within the meaning of section 3(21) (A) of the Act], provided the following conditions are satisfied:

(1) (A) Every thirty days, Desert Horizons shall publish in *The Desert Sun*, a price list delineating each available Unit and the price at which it is offered for sale to the general public.

(B) For thirty days from the initial publication, no sale of any such advertised Unit shall be made to a party in interest, even if such party offers more than the advertised price.

(C) If, after thirty days from the initial publication, no non-party in interest offers to purchase the Unit, a party in interest shall become an eligible purchaser, but only at the advertised price or at a higher price.

(D) A party in interest shall not be eligible to purchase a Unit whose advertised price has been altered until the expiration of thirty days following publication at the altered price.

(E) All prospective purchasers shall complete a questionnaire indicating whether they are a party in interest with respect to the Plan.

(2) Prior to the execution of a contract for the sale of a Unit to a party in interest, Walker and Lee, Inc. serving as the independent appraiser for the Plan, shall submit to Mr. Jay D. Wahlin, CPA (Mr. Wahlin), the independent fiduciary, a letter certifying that, based on all relevant market factors, the sales price for the Unit is not less than its fair market value;

(3) No contract for sale of a Unit shall be executed until Mr. Whalin determines whether the prospective purchaser is a party in interest with respect to the Plan. Upon identification of such party, Mr. Wahlin, having access to all information and documentation that he deems necessary for an informed determination, shall evaluate and approve the proposed transaction, based on determinations made that: (i) The published advertisement procedures of condition (1) above, are fully met, and (ii) the terms and conditions of such sales are at least as equal to those that the Plan would receive in a similar transaction with an unrelated party. In the event Mr. Wahlin resigns from his position as independent fiduciary, or if his appointment is otherwise terminated, the Plan shall notify the Department's Office of Regulations and Interpretations of the name and qualifications of a prospective successor fiduciary. Appointment of such successor shall be effective thirty days after receipt of such notification, unless the Department issues a letter to the Plan explaining its objections; and

(4) The Plan or Desert Horizons shall maintain accurate records demonstrating compliance with the conditions of this exemption for all covered transactions.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46198.

Effective Dates: This exemption is effective May 15, 1985. It will expire on May 15, 1988.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Thomas L. Donovan, M.D., Inc., Defined Benefit Pension Trust (the Plan), Located in San Diego, California

[Prohibited Transaction Exemption 86-17; Exemption Application No. D-6193]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a 3% interest in International Carbide Co. (Incarb), a limited partnership, by the Plan to Dr. Thomas L. Donovan, a disqualified person with respect to the Plan,[1] for $36,000 in cash, provided that such price is no less than the fair market value of such percentage of Incarb at the time of the sale.

For a more complete statement of the facts and representatives supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50366.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Beacon Milling Company, Inc. Employee Stock Ownership Plan (the Plan), Located in Cayuga, NY

[Prohibited Transaction Exemption 86-18; Exemption Application No. D-6217]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the extension of credit to the Plan by several parties in interest, including Plan fiduciaries, in connection with the 1976 sale of stock of Beacon Milling Company, Inc. to the Plan.

For a more complete statement of the facts and representations supporting the

[1] Since Dr. Donovan is the sole stockholder of Thomas L. Donovan, M.D., Inc. and the only participant in the Plan there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50366.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Pension Plan for the Employees of J.J. Dorbel Corporation (the Plan), Located in Riviera Beach, Florida

[Prohibited Transaction Exemption 86-19; Exemption Application No. D-6248]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of an undivided half interest (the Interest), in certain real property by the Plan to the William R. Hibel Revocable Trust, the trustee and grantor of which is one of the trustees and administrators of the Plan and a major owner of the J.J. Dorbel Corporation, the employer of the Plan's participants, provided the sales price is not less than the fair market value of the Interest on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50367.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Avenue T.V. Cable Service, Inc., Profit sharing Retirement Plan (the Plan), Located in Oxnard, CA

[Prohibited Transaction Exemption 86-20; Exemption Application No. D-6272]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a parcel of improved real property located at 1940 East Main Street, Ventura, California, for $90,000 by the Plan to Avenue T.V. Cable Service, Inc., provided that this amount is not less than the fair market value of the property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50368.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

John P. Picone, Inc. Employee Retirement Trust (the Plan), Located in Larwence, New York

[Prohibited Transaction Exemption 86-21; Exemption Application No. D-6281]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continuation of a loan (the Loan) by the Plan to Sussex Realty Company, whose partners are officers and/or shareholders of the employer of Plan participants, provided the terms of the transaction are at least as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party, and provided, further, that all excise taxes due on prohibited transactions relating to the Loan prior to the effective date shown below are paid within 60 days of the date of this grant notice.

Effective Date: The exemption is effective as of April 30, 1985, the date Mr. Leonard Lustig, the independent trustee with respect to the Loan continuation, determined that the Loan continuation is in the best interest of the Plan participants and beneficiaries.

For a more complete statement of the facts and representatives supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50369.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

The Chase Manhattan Bank, N.A. (Chase), Located in New York, NY

[Prohibited Transaction Exemption 86-22; Exemption Application No. 6285]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the interaccount sale of publicly traded common stocks (the Stocks) from the Chase Bank Inter-Mediate Capitalization Fund to the Chase Bank Special Growth Fund, which are collective investment funds managed by Chase, provided that the price of the Stocks are their fair market value as of the date of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 10, 1985 at 50 FR 50370.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 4th day of February, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-2763 Filed 2-6-86; 8:45 am]

BILLING CODE 4510-29-M

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NATIONAL SCIENCE FOUNDATION

Delegation of Award-Approval Authority From the National Science Board to NSF Director

AGENCY: National Science Foundation.

ACTION: Notice of Delegation of Award-Approval Authority from the National Science Board to the Director of the National Science Foundation.

SUMMARY: This notice sets forth a delegation of authority from the National Science Board to the Director of the National Science Foundation that was adopted by the Board on January 17, 1986. This delegation is required by section 5(e)(1) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1864(e)(1)). It enables the Director to exercise the authority provided by section 11(c) of the NSF Act (42 U.S.C. 1870(c)) to enter into contracts, grants, and other arrangements for such scientific and engineering activities as the Foundation deems necessary for the purposes of the Act. Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)).

DATE: This delegation of authority was effective on January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Thomas Ubois, Executive Officer, National Science Board, National Science Foundation, Washington, DC 20550, 202–357–9582 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The following is the delegation:

(1) The Director of the National Science Foundation shall make no award involving a total commitment of more than six million dollars or more than one and one-half million dollars in any one year without the prior approval of the National Science Board, except for:

a. Any award for a new project or facility where the Board has approved a project development plan and has not specifically required approval of the award; or

b. Any continuing project, facility, or logistics-support arrangement listed in the Exemption List attached to this resolution. Such Exemption List is to be compiled, at least annually, for each calendar year for NSB approval in November of the preceding calendar year.

(2) Paragraph (1)a. does not apply, however, if the award amounts would exceed the corresponding amounts specified in the budget accompanying the development plan by either (i) more than eight percent times the number of full years since the initial award for that project or facility, or (ii) more than twenty-four percent.

(3) Except as provided in paragraphs (1) and (2) or by specific resolution of the National Science Board, the Board hereby delegates to the Director authority to make any award within an established program of the Foundation currently approved by the Board.

(4) Except as provided in paragraph (2) or by specific resolution of the National Science Board, when the Board approves the award of a specific amount of funds, the Director may subsequently amend the award to commit additional sums, not to exceed ten percent of the amount specified, or to change the expiration date of the award.

(5) This resolution is effective for two years and supersedes and replaces the resolutions of the National Science Board on this subject adopted in July 1968 and amended in February 1969, February 1974, and April 1977.

The following is the Exemption List attached to the delegation resolution:

1986 NSB Award Review Exemptions

I. Astronomical, Atmospheric, Earth, and Ocean Sciences

A. Astronomy

1. National Optical Astronomy Observatories/1987 Program Plan

2. National Radio Astronomy Observatory/1987 Program Plan

B. Ocean Sciences

1. Woods Hole Oceanographic Institution/Support for ALVIN/1987–1989

Woods Hole Oceanographic Institution/1987 Operation of Oceanographic Research Vessels at Academic Institutions

C. Polar Programs

1. U.S. Navy, 1987 Logistical Support for the U.S. Antarctic Program

2. U.S. Coast Guard, 1987 Icebreaker Support

II. Mathematical and Physical Sciences

1. University of Colorado, Joint Institute for Laboratory Physics, 5 years

2. University of Illinois, Nuclear Physics Laboratory, 3 years

3. Michigan State University, National Superconducting Cyclotron Laboratory, 3 years

4. Columbia University, High Energy Physics Laboratory, 3 years

5. State University of New York at Stony Brook, Nuclear Physics Laboratory, 3 years

III. Scientific, Technological, and International Affairs—International Programs

RFP and Associated Awards for Support of Invitational Travel, 3 years

IV. Science and Engineering Education—Research Career Development

1. National Academy of Sciences, Evaluation of Applications in the NSF Graduate Fellowship and Minority Graduate Fellowship Programs, 3 years

2. Combined Graduate and Minority Graduate Fellowship Support Grants to Affiliated Institutions Exceeding $1,500,000 Annually, 3 years.

As stated in its final section, this delegation replaces earlier ones on the same subject. This delegation, like those preceding it, is a matter of internal agency management and therefore not subject to Executive Order 12291 of February 17, 1981 (3 CFR 1981 Comp., p. 127). Publication of this notice is required by section 5(e)(2) of the NSF Act (42 U.S.C. 1864(e)(2)), which was enacted by section 109(b) of the National Science Foundation Authorization Act, Fiscal Year 1986 (99 Stat. 889; Pub. L. 99–159).

Thomas Ubois,

Executive Officer.

January 31, 1986.

[FR Doc. 86–2691 Filed 2–6–86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443A]

Public Service Company of New Hampshire et al.; Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of the Seabrook Nuclear Station. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission had delegated the authority to make the "significant change" finding to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Seabrook 1 construction permit to Public Service Company of New Hampshire, et al., the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit reivew are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in New England, the events relevant to the Seabrook construction permit reviews and the events that have occurred subsequent to the construction permit reviews.

The conclusion of the staff's analysis is as follows:

"Public Service Company of New Hampshire (PSNH), on behalf of itself and all other owners (applicants), has applied for an operating license for the Seabrook 1 nuclear unit. Pursuant to the Commission's "significant change" criteria, the staff has conducted an antitrust analysis of the applicants' activities and proposed activities since the Seabrook construction permit (CP) antitrust review was completed in January 1974. In performing this analysis, the staff has examined: (1) Activities undertaken by the applicants with respect to bulk power services, including coordination, transmission, and wholesale services, (2) antitrust issues raised in two separate federal court proceedings involving New England Power Company (NEPCO) and Connecticut Light and Power Company (CLP), and (3) the New England Power Pool (NEPOOL) which governs bulk power interrelationships among nearly all New England utilities.

"In the staff's view, none of the new and/or revised bulk arrangements entered into by any of the applicants present any significant consequences of an antitrust nature. Such arrangements, in fact, appear to promote access to a wide range of alternative for all New England utilities, regardless of size or type of ownership.

"The antitrust complaints against NEPCO were mitigated after a settlement among the parties permitted the Town of Norwood to switch wholesale suppliers. A district Court decision dismissing all antitrust complaints against CLP was affirmed by an Appeals Court on all but two counts. Those two counts both dealt with price-squeeze and were remanded to the lower court for reconsideration. Staff notes further that the Federal Energy Regulatory Commission (FERC) is required to explicitly consider price-squeeze issues when raised with regard to new rate filings. Consequently, staff has concluded that the price-squeeze issues do not warrant Commission remedy and therefore do not represent "significant changes" under the Commission's criteria.

"Finally, NEPOOL, which was only two years old at the time when the CP antitrust review was performed, appears to have evolved into a framework ensuring access to reliable and economical bulk power supply for all New England utilities. Two provisions of the original pool agreement were found to be discriminatory against smaller utilities and have since been removed. Further, because Seabrook 1 has been designated as a pool-planned unit, access to Seabrook 1 over pool transmission facilities of members is guaranteed for all participants under the term of NEPOOL.

"Thus, the changes in the activities of all of the applicants since the completion of the Seabrook 1 construction permit antitrust review do not represent significant changes of an antitrust nature and, therefore, do not require a further, formal antitrust review at the operating license stage."

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of Seabrook Station, Unit 1 is not required.

Signed on January 22, 1986 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 for 30 days from the date of the publication of the Federal Register notice.

Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86–2739 Filed 2–6–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–271; License Nos. DPR–28 and EA 85–105]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station); Order Imposing a Civil Monetary Penalty

I

Vermont Yankee Nuclear Power Corporation, Brattleboro, Vermont 05380, (licensee) is the holder of License No. DPR–28 issued by the Nuclear Regulatory Commission (Commission/NRC) which authorizes the licensee to operate the Vermont Yankee Nuclear Power Station, Vernon, Vermont, in accordance with the conditions specified therein.

II

On August 9, 1985 an NRC inspection was conducted to review the circumstances associated with an event involving an unplanned radiation exposure received by a health physics technician while he was performing a radiological survey in the Traversing Incore Probe (TIP) room. The inspection identified that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of a Civil Penalty was served upon the licensee by letter dated October 22, 1985. The Notice states the nature of the violation, the provision of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of civil penalty proposed for the violation. Answers dated November 25 and 26, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalty were received from the licensee.

III

After consideration of the answers received and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalty contained therein and as set forth in the Appendix to this Order, the Director, Office of Inspection and Enforcement, has determined that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 96–295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order

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shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty; and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 3rd day of February 1986.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

Although the licensee essentially admits the violation, its November 25 and 26, 1985 responses to the Notice of Violation and Proposed Imposition of Civil Penalty dated October 22, 1985 request mitigation of the civil penalty and provide the reasons why the licensee believes mitigation of the penalty is appropriate. Provided below are (1) a restatement of the violation, (2) the licensee's assertions in support of mitigation, and (3) the NRC response to each of the licensee's assertions.

Restatement of Violation

10 CFR 19.12 requires that all individuals working in or frequenting any portion of a restricted area shall be kept informed of the storage, transfer, or use of radioactive materials or of radiation and shall be instructed in the health protection problems associated with exposure to such radiation and in precautions or procedures to minimize exposure.

Contrary to the above, on August 8, 1985, a Chemistry-HP Technician (technician) was given approval by HP supervision to enter a restricted area (the TIP room area where radiation levels of 1000 R/hr or higher existed) to perform surveys where there was a known potential for unusually high exposure rates, and the technician was not instructed by HP supervision in precautions to take and procedures to follow to minimize exposure. The technician was not instructed as to the location to make an initial exposure rate measurement and a level at which to terminate the survey or provided appropriate alternative instructions.

This is a Severity Level III violation (Supplement IV).

Civil Penalty—$50,000.

Licensee Assertion

The licensee acknowledges the statement made in the NRC October 22, 1985 letter that an exposure in excess of regulatory limits could have occurred because of the inexperience of the HP technician. However, the licensee contends that the potential for a serious overexposure was minimized because before the entry the HP technician had: (1) Discussed with the Plant Health Physicist the radiological concerns associated with the TIP room; (2) reviewed the administrative/procedural controls in place for TIP room entries; (3) reviewed the procedure for performing the survey, including the related dose map; (4) been instructed in the specific goal of the survey; (5) requested and received backup assistance from two auxiliary operations; and (6) discussed the entry with his supervisor and the supervisor's assistant.

NRC Evaluation

The NRC acknowledges that the licensee took certain actions, as desribed in its responses, before the TIP room entry. However, several of the licensee's actions were not adequate to minimize the potential for an overexposure. The technician's discussions with supervision (items 1 and 6 above) were very brief and apparently no specific precautionary instructions were given regarding minimizing exposure. The dose maps (item 3) that were reviewed were potentially misleading to an inexperienced technician as they indicated that exposure rates should be very low. With respect to item 4, it is not clear whether the purpose of the suvey was to establish dose rates for a radiation work permit for that shift or to establish initial dose rates in the room for re-entry during subsequent shifts. Even at the enforcement conference, licensee management expressed uncertainty over the purpose of the entry and survey.

Further, the other actions cited by the licensee are normally expected before the performance of such a task. That is, the NRC would expect an individual to understand the task to be performed, review related procedures and controls, and also have discussions with appropriate supervisory personnel to provide adequate protection during performance of these tasks. In this specific case, these actions were not sufficient to provide adequate protection to the health physicis technician during the performance of the TIP room survey because the individual did not know or understand the location at which to make an initial exposure rate measurement or the level at which to terminate the survey. Further, the technician did not have any experience working in radiation fields of the magnitude encountered in the TIP room. This lack of adequate instruction and experience level was evident in that, although the technician's survey meter went offscale during the survey indicating radiation dose rates in excess of 1000 R/hr, he did not exit the room until one of the auxiliary operations told him to "back out of the room." For all of the above reasons, the NRC maintains that the potential for a serious exposure was not minimized. Therefore, the licensee's assertion does not provide a basis for mitigation of the civil penalty.

Licensee's Assertion

The NRC's October 22, 1985 letter transmitting the Notice stated that on at least two occasions NRC inspectors had informed the licensee staff of the need for formal, written, and approved procedures for personnel entry into the TIP room, yet such a procedure was not prepared. The licensee, however, states that to the best of its knowledge, neither conversation resulted in any concerns being expressed regarding the adequacy of administrative controls governing TIP room access.

NRC Evaluation

The licensee states in its November 26, 1985 response that licensee personnel do not recall any discussion during the two conversations with NRC representativs regarding the adequacy of its administrative controls governing TIP room access. However, the licensee does admit in its response that during one conversation the Region I inspector cautioned that if certain experienced staff members left, certain procedural and administrative controls would likely need to be enhanced if the new staff members were less experienced personnel. During this conversation, the inspector placed emphasis on the TIP room and other high-radiation areas.

The HP technician in this case was admittedly inexperienced, and the experienced Radiation Protection Manager was no longer employed by the licensee at the time of the NRC conversation. Nonetheless, the procedures for entry to high-radiation areas in general and the TIP room in particular were not sufficiently enhanced to ensure that the technician, as the responsible individual performing this survey, was knowledgeable of the location at which to make an initial exposure rate measurement and of the level at which to terminate the survey.

In addition, the licensee also was informed of the NRC concern about procedural controls in high-radiation areas via several information notices and a circular (Information Notice 84–19 dated March 21, 1984, Information Notice 82–51 dated December 26, 1982, and Circular Notice 76–03 dated September 13, 1976). These notices emphasized the importance of ensuring that radiation protection procedures and radiation protection training and retraining programs specifically address the matter of control and access to such areas and initiate appropriate retraining of all plant personnel. They also recommended that entry be allowed only after appropriate management review and approval. Further, they recommended periodic audit of these actions to ensure their continued effectiveness. Many of the actions noted in the Notices are similar to those in the Confirmatory Action Letter issued by the NRC to Vermont Yankee on September 9, 1985. In addition, there have been a number of escalated enforcement actions for similar violations at other plants of which the licensee should have been aware. A purpose of publishing escalated enforcement actions in NUREG–0940 and Orders Imposing Civil Penalties in the **Federal Register** is to give licensees notice of other enforcement actions which may bear on their own operations. (See Vol. 4, No. 1, p. I.A–94 and Vol. 3, No. 2, p. I.A–1 of NUREG–0940.)

Accordingly, the NRC maintains that the licensee had prior notice of potential problems associated with TIP rooms. Therefore, a basis would have existed for an increase in the civil penalty amount had it not been for the licensee's reporting of this event and prompt short-term corrective actions.

Licensee's Assertion

The licensee claims that at the time of the Enforcement Conference on September 5, 1985, significant efforts had been taken to assess the specific causes of the incident and develop long-term proposed corrective actions. In particular, on the day (August 9) following the event, the Plant Manager directed the Chemistry and HP technician to generate a Plant Information Report (PIR) so that the event could be analyzed and recommended long-long corrective action could be provided. The final PIR, which was issued approximately 6 weeks later on September 17, 1985, proposed six long-term corrective actions. On September 21, 1985 the Plant Manager dispositioned the long-term recommendations. The licensee contends that the development and finalization of this long-term corrective action program occurred in a prudent and timely manner.

NRC Evaluation

The NRC maintains that the long-term actions taken by the licensee were not particularly prompt in that some of the actions could and should have been in place at the time of the enforcement conference, namely, an upgrade of the procedures for entry into locked high-radiation areas in general, and the TIP room in particular. These items were not provided by the licensee at the Enforcement Conference and appeared to have been considered only after the Enforcement Conference on September 5, 1985 and the Region I Confirmatory Action Letter (CAL) issued on September 9, 1985. In addition, four of the six items in the licensee's PIR simply proposed evaluation of certain aspects of the program rather than describing specific actions taken or necessary to correct deficiencies and improve the program. It was not until September 21, 1985 after the Enforcement Conference and issuance of the Confirmatory Action Letter (CAL) that the licensee committed to take these actions.

For these reasons, the NRC maintains that the licensee's long-term actions were not unusually prompt and do not provide an adequate basis for mitigation of the civil penalty.

NRC Conclusion

After consideration of the answers received and the licensee's statements of fact, explanation, and arguments for mitigation of the proposed civil penalty, the staff concludes that any adjustment to the civil penalty amount is inappropriate. Therefore, the proposed $50,000 civil penalty should be imposed.

[FR Doc. 86–2740 Filed 2–6–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Babcock and Wilcox Water Reactors; Meeting

The ACRS Subcommittee on Babcock and Wilcox (B&W) Water Reactors will hold a meeting on February 25, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 25, 1986—8:30 A.M. Until the Conclusion of Business

The Subcommittee will consider the implications of operating experience on the adequacy of B&W plant designs, including consideration of the severe overcooling event at Rancho Seco on October 2, 1985. The Subcommittee may also review the NRC Staff's plans to reassess the long-term safety of B&W reactors.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634–1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the schedule meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 3, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–2761 Filed 2–6–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on February 27 and 28, Room 1046, 1717 H Street, NW., Washington, DC.

To the extent practical the meeting will be open to public attendance.

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However, portions of the meeting may be closed to discuss industry proprietary information.

The agenda for subject meeting shall be as follows:

Thursday, February 27, 1986—8:30 A.M. Until the Conclusion of Business

Friday, February 28, 1986—8:30 A.M. Until the Conclusion of Business

The Subcommittee will review, but not necessarily be limited to, the following items: [1] NUREG–0313, Revision 2, entitled, "Technical Report on Material Selection and Processing Guidelines for BWR Coolant Pressure Boundary Piping," and [2] Regulatory Guide XXX entitled, "Guide for License Preparation and NRC Staff Review of Plant Specific Analysis Required by PTS Rule." The Subcommittee will also hear a status report of the proposed broad rule to modify GDC–4 of 10 CFR Part 50 (the leak-before-break broad scope rule is applicable to all LWR high energy piping systems).

Oral statement may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics of be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 3, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–2762 Filed 2–6–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–455]

Texas Utilities Electric Co. et al. Comanche Peak Steam Electric Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR–126 issued to Texas Utilities Electric Company, Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc. (Applicants) for the Comanche Peak Steam Electric Station Unit No. 1 (the facility) located on Applicants' site in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action: The proposed action would amend the construction permit by extending the latest construction completion date to August 1, 1988. The proposed action is in response to Applicants' request dated January 29, 1986, as supplemented February 4, 1986.

The Need for the Proposed Action: The proposed action is needed because the construction of the facility is not yet fully completed. The Applicants state that, although construction on Comanche Peak Unit 1 was essentially completed early in 1985, major efforts to reinspect and reanalyze various structures, systems, and components is currently underway. These efforts are being conducted by the Applicants' Comanche Peak Response Team to verify both design and construction adequacy as well as to respond to numerous issues raised in the operating license proceeding, by the NRC's Technical Review Team, and by other sources. This activity has been ongoing since the fall of 1984. The Applicants anticipate that it will not be complete before the second quarter of 1986. In addition, the operating license hearings are not yet completed and will involve additional time for which the construction permit will be needed.

Environmental Impacts of the Proposed Action: The environmental impacts associated with construction of the facility have been previously discussed and evaluated in the NRC staff's Final Environmental Statement (FES) issued in June 1974 for the construction permit stage which covered construction of two units. Unit 2 is not affected by the proposed action.

Since the proposed action involves extending the construction permit, radiological impacts are not affected by this action. There are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction.

Since the construction of the facility is essentially 100% complete, most of the construction impacts discussed in the FES have already occurred: construction-related activities have disturbed about 400 acres of rangeland, the Squaw Creek Reservoir has been built, as have transmission lines and corridors, and a railroad spur. These activities and their impacts occurred earlier and are not affected by this proposed action.

The reinspection and rework that may be required will not have any significant environmental impact. The impacts associated with the work are equivalent to those of a maintenance or repair program. This activity will all take place within the facility and will not result in impacts to previously undisturbed areas.

There are no new significant impacts associated with this extension. There are, however, impacts that would continue in order to complete plant construction in addition to rework discussed above. These are community and traffic impacts, and continued groundwater withdrawal.

Community impacts from continued construction would be similar to those impacts previously assessed. The total number of workers on-site for both units at the present time (about 5300) is about the same (although somewhat smaller) as during earlier peak construction periods. The number of workers specifically assigned to Unit 1 is small compared with the number associated with the completion of Unit 2. The number of workers on-site will decline as the reinspection program for Unit 1 is completed during 1986. Continuing construction does not involve community impacts different from those previously considered or significantly greater than those previously considered or experienced.

The construction permits for Comanche Peak Units 1 and 2 limit groundwater usage to 40 gpm on an annual average basis for the site. Usage for 1984 and 1985 has averaged less than half this amount for both units. In fact, most construction water is being supplied from the Squaw Creek Reservoir, thus reducing the usage of groundwater. For these reasons, we conclude that continued construction will not have a significant effect on groundwater.

Based on the foregoing, the NRC staff concluded that the proposed extension of the construction permit would have no significant environment impact. Since this action would only extend the period of construction as described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement.

Alternatives Considered: A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicants would not be able to complete construction of the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is essentially completed. Therefore, this alternative is rejected.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the FES for Comanche Peak.

Agencies and Persons Contacted: The NRC staff reviewed the Applicants' request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated January 29, 1986, as supplemented February 4, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room at the Somervell County Public Library, Glen Rose, Texas 76403.

Dated at Bethesda, Maryland, this 5th day of February 1986.

For The Nuclear Regulatory Commission.

Vincent S. Noonan,

Director, PWR Project Directorate No. 5, Division of PWR Licensing–A.

[FR Doc. 86–2891 Filed 2–6–86; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee Review; Review and Solicitation of Public Comment Regarding the Proposed Modification of the List of Articles Eligible for Duty-Free Treatment Under the U.S. Generalized System of Preferences (GSP) to Remove Certain Chemical Mixtures Containing Ethanol

Notice is hereby given that the Trade Policy Staff Committee (TPSC) has initiated a review concerning the removal of certain chemical mixtures containing ethanol under TSUS 407.16pt, TSUS 407.09pt, TSUS 413.51pt and TSUS 432.25pt of the Tariff Schedules of the United States Annotated from the list of products currently eligible for duty-free treatment under the U.S. Generalized System of Preferences (19 U.S.C. 2461–2465). In the event that the TPSC should decide to recommend that the President remove these products from the GSP, it reserves the right to recommend that this action be effective with regard to any product that has not been imported and entered, or withdrawn from warehouse for consumption, before the date of the President's decision.

Anyone interested in this matter is requested to provide written comments to the TPSC regarding removal of these products from the GSP not later than March 7, 1986. A public hearing on the proposed modification will not be scheduled unless a request for such hearing is received no later than close of business February 17, 1986. If a hearing is requested, it will be held on February 27, 1986 at 10:00 am at the Office of the United States Trade Representative, 600 17th Street, Washington, DC in Room 403.

All submissions should conform to 15 CFR 2003.2 and be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee. Information submitted in connection with the proposed modification will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2007.7. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and each page within the document, where appropriate, that confidential materials are included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

All communications with regard to the proposed modification should be addressed to the GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., Room 517, Washington, DC 20506. Questions may be directed to the GSP Information Center at (202) 395–6971.

Donald M. Phillips,

Chairmon, Trade Policy Staff Committee.

[FR Doc. 86–2892 Filed 2–6–86; 9:40 am]

BILLING CODE 3190–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2228]

Declaration of Disaster Loan Area; Texas

The County of Montgomery and the adjacent County of Waller in the State of Texas constitute a disaster loan area because of damage caused by heavy rains and flooding on November 24, 1985. Applications for loans for physical damage may be filed until the close of business on April 4, 1986, and for economic injury until September 2, 1986, at: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222806 for physical damage and for economic injury the number is 637100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

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Dated: February 3, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-2678 Filed 2-6-86; 8:45 am]

BILLING CODE 6025-01-M

[License No. 05/05-0162]

Detroit Metropolitan Small Business Investment Co.; Surrender of License

Notice is hereby given that Detroit Metropolitan Small Business Investment Company, 150 Michigan Avenue, Detroit, Michigan 48226 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Detroit Metropolitan Small Business Investment Company was licensed by the Small Business Administration on August 6, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 27, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: January 30, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-2679 Filed 2-6-86; 8:45 am]

BILLING CODE 6025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-86-2]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 18, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 3, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24146-2	South Pacific Island Airways	14 CFR 91.303	To allow petitioner to operate one Stage 1 B707-323B aircraft until hush kits are installed.

[FR Doc. 86-2665 Filed 2-6-86; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-86-3]

Petition for Exemption; Summary of Petitions Received Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: February 27, 1986.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 4, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23867	Executive Helicopters	14 CFR 141.41(a)(1)	Amendment to Exemption No. 3966 to allow (HI) petitioner to utilize the HTS-100 Primary Helicopter Training system in their Part 141 Helicopter Pilot School, No. PC-205-2. The amendment would increase the maximum flight training credits up to 5 hours.
010CE	Bapco Engineering	§§ 3.430 & 3.446 of the Civil Air Regulations in effect on May 15, 1956.	To permit the Supplemental Type Certification of Cessna Model 100 and 200 Series airplanes without interconnecting the fuel tank airspaces of tanks supplying fuel simultaneously to one engine.
24884	Ramon Navarro	14 CFR 61.3(3)	To allow petitioner to act as a required pilot flight crewmember, without a current and valid medical certificate, for the purpose of acting as a safety pilot, during simulated instrument flight conditions, when instructing airplane instrument students, when the student holds a private or commercial pilot certificate with the appropriate category and class ratings, and is current and qualified in that aircraft.
24839	Burke & Burke	14 CFR 45.29(3)	To permit petitioner to affix a 6-inch "N" number on the fuselage or the tail rotor boom of a 1974 Highes 500C helicopter (N3698).
24895	Air Wisconsin, Inc.	14 CFR 93.123	To permit petitioner to use commuter slots to operate aircraft with a maximum of one hundred seats to points within a 250-mile radius of Chicago O'Hare International Airport to the extent such service was provided on December 16, 1985.
22822	T.B.M., Inc., & Butler Aircraft (MOORE)	14 CFR 91.45	To allow petitioner to conduct ferry flights with one engine inoperative on their McDonnell Douglas DC-6, DC-7, and DC-7B aircraft, without obtaining a special flight permit for each flight.
23907	Bolivar Aviation	14 CFR 141.65	To allow petitioner to continue to have examining authority for written tests only for Flight Instructor, Instrument Flight Instructor, and Airline Transport Pilot Certificates.
21967	Texas Department of Public Safety	14 CFR 91.65(b), 91.70(b), 91.73(a), 91.79(c), 91.85(b), & 91.109(a).	To permit petitioner to conduct certain law enforcement flight operations in close proximity to suspect aircraft; in airport traffic areas at speeds greater than the authorized limits; without operating the aircrafts position lights; at less than 500 feet above the surface over other than congested areas; in airport traffic areas other than to land or take off from an airport in that area; and/or in deviation from prescribed VFR cruising altitudes.
24671	Bell Helicopter	14 CFR 21.321(a)(2)	To permit petitioner to apply for a delegation option authorization (DOA), for type, production, and airworthiness certification of its transport category helicopter. Section 21.231(a)(2) allows DOA for normal category rotorcraft only, which precludes its use for transport category rotorcraft. Petitioner currently holds type certificates and production certificates for 32 normal category and 11 transport category rotorcraft.
23912	Braniff	14 CFR 93.123, 93.125, & 93.129	To permit petitioner to conduct a maximum of four daily operations at Washington National Airport.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
20771	US Air	14 CFR 91.307	To amend Exemption No. 3080d to add 14 BAC 1-11 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of specified two-engine airplanes, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1988: 7 BAC 1-111 and 30 DC-9 aircraft. *Granted Dec. 31, 1984.*
24760	Diane C. Heckman	14 CFR 65.5(e)	To allow petitioner to apply for dispatchers certificate before reaching her 23rd birthday. Denied Jan. 14, 1986.
19851	Gates Learjet Corp	14 CFR 21.197	Extension of Exemption 2981 to permit the issuance of special flight permits to petitioner for ferrying aircraft, for the purpose of completion, between Wichita, KS, and Tucson, AZ, subject to certain conditions and limitations. *Granted Jan. 2, 1986.*
23753	Saudi Arabian Airlines Corporation	14 CFR 61.2	To amend Exemption 3923 to permit petitioners pilots to be issued a U.S. pilot certificate with a type rating for any of the following aircraft: B-747, B-737, B-707, L-1011, and A300-600. *Granted Jan. 6, 1986.*
20618	Ransome Airlines	14 CFR 135.429(a) and 135.435	To allow petitioner to continue to use foreign repair stations not holding appropriate U.S. certificates to overhaul and repair engines, aircraft components, accessories, and propellers. *Granted Jan. 3, 1986.*
24769	Gerber Products Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 2, 1986.*
24788	Weyerhaeuser Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 2, 1986.*
24785	Southern California Edison Co	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 2, 1986.*
24261	Type Rating Training	14 CFR 63.37(b)(4) and Part 63 APP. C	To allow petitioner to substitute training in simulators and approved training devices for actual flight hours and allow a reduction in classroom hours. *Denied Jan. 8, 1986.*
24757	TACA International Airlines	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 8, 1986.*
23713	SimuFlite Training	14 CFR 121.407(a)(1)(i) & Portions of Part 121, Appendix A.	To allow petitioner, even though not a Part 121 certificate holder, to obtain approval of Phase II simulators; and to obtain approval of an Advanced Simulation Training Program. *Granted Jan. 10, 1986.*
24633	Command Airways	14 CFR 121.411 & 121.413(b)	To allow petitioner to utilize certain Aerospatiale, G.I.E. Avion de Transport Regional (ATR) pilots for training, in France, of certain of petitioner's check airmen, flight instructors, and flight crewmembers in the ATR-42 type aircraft. *Granted Jan. 10, 1986.*
24796	Tele/Com' Air Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 9, 1986.*
24791	Stephens, Inc.	14 CFR 21.181	To allow petitioner to operate certain aircraft utilizing the provisions of a minimum equipment list. *Granted Jan. 9, 1986.*
2392[illegible]	Flight Safety Int'l	14 CFR 61.57	To allow pilots contracting with petitioner to use approved Phase I simulators to meet the takeoffs and landings requirements. *Granted Jan. 10, 1986.*
24644	Federal Express Corporation	14 CFR 121.623 & 121.643	To allow petitioner to operate under domestic air carrier rules regarding alternate airport requirements and fuel reserves. *Denied Jan. 15, 1986.*

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DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought—Disposition
24647	Basler Flight Service, Inc	14 CFR 121.9	To allow petitioner to operate under, SFAR 38–2 and Part 121 of the FAR, certain DC–3 non-transport category airplanes having a maximum payload capacity of 7,500 pounds or less. *Withdrawn Dec. 19 1985.*
23937	Federal Express Corp	14 CFR 121.583	To permit employees of petitioner's Canadian licensee, Canaica Inc., to fly aboard petitioner's all-cargo aircraft using flight observer and courier seats. *Withdrawn Nov. 26, 1985.*
24724	Cargolux Airlines	14 CFR 21.181	To permit petitioner to operate B–747 aircraft utilizing an FAA approved minimum equipment list. *Granted Jan. 23, 1986.*
24345	VARIG, S.A	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended Partial Grant Jan. 13, 1986.*
24639	Florida West Airlines	14 CFR 91.303	To exempt petitioner from the January 1, 1985, noise level compliance date. *Amended Grant Dec. 9, 1985.*
24145–1	Dominicana Da Aviacion	14 CFR 91.303	To exempt petitioner from January 1, 1985, noise level compliance date. *Amended Grant Dec. 12, 1985.*
24364	Pan Aviation	14 CFR 91.303	To exempt petitioner from January 1, 1985, noise level compliance date. *Amended Partial Grant Dec. 12, 1985.*
24224	Transpraeil S.A. Linhas Aereas	14 CFR 91.303	To exempt petitioner from January 1, 1985, noise level compliance date. *Amended Partial Grant Dec. 12, 1985.*
21991	United Airlines	14 CFR 63.39(b)(2) & 121.425(a)(2)(i)	Extension of Exemption 3463 to allow petitioner its flight engineers and flight engineer applicants to continue to use FAA-approved pictorial means and an approved simulator instead of a static airplane for demonstrating satisfactory performance of a preflight inspection and flight engineer duties. *Granted Jan. 23, 1986.*
24842	Simmons Airlines	14 CFR 121.411 & 121.413	To allow petitioner to utilize certain Aerospatiale G.I.E. Avions de Transport Regional (ATR) pilots for the training of a selected number of Simmons' check airmen, flight instructors, and flight crewmembers in the ATR–42 type aircraft. The Training will be conducted in France, and the ATR pilots will hold pilot and medical certificates issued by France. *Granted Jan. 24, 1986.*
20853	United Airlines, Inc	14 CFR 121.351(a)	To permit petitioner to continue to operate its aircraft in extended overwater operations over the Gulf of Mexico with one high frequency (HF) communication radio system and one long range navigation system (LRNS). *Partial Grant Jan. 29, 1986.*
24770	Flightsafety Int'l	14 CFR 61.57(a)(1), 61.58(c)	To permit trainees of petitioner to complete certain proficiency checks and flight reviews in its Sikorsky S–76 training device and Bell 222 simulator. *Granted Jan. 28, 1986.*
24862	Continental Airlines, Inc	14 CFR 121.411(a)(1), (a)(2), (a)(3), (a)(5), 121.411(b); & 121.413(b), (c) & (d).	To permit petitioner to utilize certain qualified pilots and flight engineers from Aeroformation (a joint venture of Airbus Industrie and Flightsafety International) for the purpose of training petitioner's initial cadre of pilots and flight engineers in the Airbus Industrie A300–B4–200 (A300) type airplane without those Aeroformation airmen holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121 of the FAR. *Granted Jan. 8, 1986.*
24783	Federal Prison Camp Big Spring	14 CFR 63.37	To permit petitioner to administer airmen written examinations to certain inmates even though the applicants do not hold a current commercial pilot certificate with an instrument rating. *Denied Jan. 9, 1986.*
22286	Finnair Oy	14 CFR Portions of Part 21	To permit petitioner to obtain a special flight permit with continuing authorization for DC–10–30 aircraft N345HC. To permit petitioner to operate aircraft N345HC when it does not meet all applicable airworthiness requirements but is capable of safe flight for the purpose of flying the aircraft to a base where repairs, alterations, or maintenance may be performed. *Granted Jan. 9, 1986.*
24819	United Air Lines	14 CFR Appendix H	To allow petitioner to conduct Phase IIA training and checking utilizing a Phase I simulator to 3½ years from the date such approval was received from the Federal Aviation Administration (FAA), but not later than July 31, 1986. Petitioner requests Phase IIA training and checking credits for a L–1011–500 Phase I simulator until June 30, 1988. *Partial Grant Jan. 9, 1986.*

[FR Doc. 86–2710 Filed 2–6–86; 8:45 am]
BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Waiver Petition Docket Number HS–86–1]

Petition for Exemption From the Hours of Service Act; Lenawee County Railroad Co., Inc.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Lenawee County Railroad Company, Inc. (LCRC) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad which employs no more than fifteen employees who are subject to the statute to seek an exemption from the twelve hour limitation.

The LCRC seeks this exemption so that it can permit certain employees to remain on duty not more than sixteen hours in any twenty-four hour period. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceedings should identify this docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before March 27, 1986, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, Washington, DC 20590.

Issued in Washington, DC, on February 3, 1986.

J.W. Walsh,
Associate Administrator for Safety.

[FR Doc. 86–2754 Filed 2–6–86; 8:45 am]
BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

[T.D. 86–17]

Leaded Naphtha; Change of Tariff Classification

AGENCY: Customs Service, Treasury.

ACTION: Change of Practice.

SUMMARY: Customs has determined that a uniform and established practice exists to classify certain imported leaded naphtha for tariff purposes as motor fuel. Because this petroleum product, as imported, is not chiefly used as motor fuel, it cannot be classified as such, nor can it be classified as naphtha in view of the added lead content. Accordingly, Customs believes the classification practice is clearly wrong. The most appropriate tariff provision for the classification of leaded naphtha is for mixtures not specifically provided for, i.e., mixtures that are in whole or in part of hydrocarbons derived in whole or in part form petroleum, shale oil, or natural gas.

EFFECTIVE DATE: This change of practice will be effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after May 8, 1986.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC (202–566–8181).

SUPPLEMENTARY INFORMATION:

Background

In Treasury Decision 83–173, dated August 17, 1983, and published in the Customs Bulletin of September 7, 1983, new standards were established to aid Customs in classifying petroleum products which are chiefly used as motor fuels under the provision for motor fuel in item 475.25, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). It was further stated in T.D. 83–173 that classification under item 475.25, TSUS, would be indicated if the imported petroleum product met the current American Society for Testing and Materials (ASTM) standards set out in D439 for automotive gasoline, D1655 for aviation turbine fuels, or D910 for aviation gasoline.

T.D. 83–173 revoked T.D. 66–23(13) dated January 19, 1966, which set out critical properties for petroleum products chiefly used as motor fuels at that time. Although this guide was widely used both by Customs and importers for the classification of products claimed to be motor fuel, it had long been recognized that the standards set out in T.D. 66–23(13) were outmoded and required updating. Nonetheless, it should be noted that T.D. 66–23(13) itself stated that the critical properties listed were to be used only as a guide and that it was intended that to be classified as a motor fuel, a product should meet the requirements of Headnote 2(b), Part 10, Schedule 4, TSUS.

Despite this requirement, which has been recognized by the court in *United States v. Exxon Corp.*, 607 F.2d 985 (1979), C.A.D. 1233, Customs found that reliance has been placed on T.D. 66–23(13) to establish whether a particular petroleum importation was classified as motor fuel in item 475.25, TSUS. In view of the change in the critical properties of gasoline in the intervening years, as necessitated by the higher performance engines developed, the standards for automotive fuel as stated in T.S. 66–23(13) are no longer valid. Petroleum products which meet the criteria set out in T.D. 66–23(13) cannot be said to be chiefly used as motor fuel, as imported.

Customs has learned that petroleum products entered as motor fuel and which met the standards of T.D. 66–23(13) generally were not intended to be used as gasoline, as imported, but were used as blending stock; that is, they were products which were made into finished gasoline subsequent to importation. The gasoline blending industry imports hydrocarbon distillate mixtures, such as low octane, off specification motor gasoline, petroleum naphtha, leaded naphtha and similar products for the purpose of blending them into a final product which meets the requirements of modern gasoline engines.

A review of entries made over the past few years shows that, based on liquidations, a uniform and established practice exists to classify gasoline blendstock, particularly leaded naphtha, which meets the criteria set out in T.D. 66–23(13), as motor fuel in item 475.25, TSUS.

On the basis of the above information, Customs determined that the established and uniform practice of classifying leaded naphtha, which met the criteria set out in T.D. 66–23(13), as motor fuel in item 475.25, TSUS, is clearly wrong. Leaded naphtha cannot be classified as naphtha in item 475.35, TSUS, in view of the added lead content.

Accordingly, Customs published a notice in the **Federal Register** on February 27, 1985 (50 FR 7929), soliciting public comments on the proposed change of practice and starting the most appropriate provision for classification is that for mixitures not specially provided for, i.e., mixtures that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas, in item 432.10, TSUS. The current rate of duty for articles classified under item 432.10, TSUS, is 5 percent ad valorem, but not less than the highest rate applicable to any component material. The component material with the highest duty rate would be tetraethyl lead in item. 429.70, TSUS, with a current duty rate of 9.8 percent ad valorem.

The notice stated that it pertained to certain leaded naphtha only and not to petroleum naphtha classifiable in item 475.35, TSUS, or catalytic naphtha containing by weight over 5 percent synthetically produced dutiable benzenoids, classifiable as a benzenoid mixture in item 407.16, TSUS.

Discussion of Comments

Of the 17 comments received in response to the notice, some believed that the practice to classify such blendstock as motor fuel in item 475.25, TSUS, was correct and others believed that it was worng. Those who believed that the practice was wrong agreed with the Customs view that the various blendstock materials should be classifed according to composition if they did not meet motor fuel standards. Leaded naphtha which failed to meet current commercial gasoline standards would be classifiable as a mixture in item 432.10, TSUS, dutiable at the rate for tetraethyl lead in item 429.70, TSUS, of 9.8 percent ad valorem. If the imported material contained over 5 percent dutiable benzenoids it would be classifiable as a benzenoid mixture in item 407.16, TSUS. Reformate and catalytic naphtha containing over 5 percent dutiable benzenoids (whether or not containing tetraethyl lead) would be classifiable as a benzenoid mixture in item 407.16, TSUS, dutiable at the rate for alkylbenzenes in item 402.36, TSUS, of 0.8 cent per pound plus 17.3 percent ad valorem.

Various arguments were made in opposition to any change in the classification of blendstock materials as motor fuel. One argument was that such products were "unfinished gasoline" not required to be a finished product; that

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they were dedicated to use as a motor fuel. An example given was the Mexican product which was sold commercially in Mexico as a motor fuel and could be used, it was claimed, as a motor fuel in this country. However, even though it was acknowledged that it did not meet commercial U.S. standards, it was claimed such a petroleum product was of a "class of kind" that was chiefly used as a motor fuel, as it contained the general physical characteristics of motor fuel.

Several court decisions were listed to support the position that the imported blendstock was of a class or kind of petroleum material to be classified as motor fuel. Considerable reliance was placed on *Cities Service Oil Co.* v. *United States*, C.D. 994 (1946). There the court stated that an oil which did not meet the specifications for oil commonly and commercially used as fuel oil but was used as such after heating, was of a class or kind chiefly used for fuel. The court noted that while the oil product exceeded the highest viscosity rating of standard grades, the evidence was that large consumers of fuel oils use these high viscosity oils. If there is only one practical use for merchandise of this type, it seems obvious, stated the court, that it must be the chief use. In *California Oil Co.* v. *United States*, C.D. 1442 (1952), the court noted that a blending component used in gasoline but not suited for use as motor fuel was not chiefly used as motor fuel. An early customs decision on this issue, T.D. 46069 (1932), ruled that a petroleum naphtha was taxable as a motor fuel only if in its condition as imported it was of a grade which was chiefly used in the U.S. as a motor fuel.

As pointed out in *United States* v. *Exxon Corporation, Chevron Oil Co.*, C.A.D. 1233 (1979), Congress added a definition of the term "motor fuel" to the tariff. Under Headnote 2(b), Part 10, Schedule 4, TSUS, a product, stated the court, must be chiefly used as a motor fuel to be classified as such. Because the product in issue was unsuitable for use as motor fuel, it could not be classifiable as such.

The basic argument against changing the practice is that a petroleum product which is used as a motor fuel after only a minor amount of processing is of the same "class or kind" and therefore should be classified as a motor fuel.

Customs is of the opinion that if item 475.25, TSUS, was an "eo nomine" provision, the claim that the imported gasoline blendstock is an unfinished gasoline would have some merit. However, motor fuel is defined by Headnote 2(b), Part 10, Schedule 4, TSUS, and this limits motor fuel to a petroleum product chiefly used or imported as a motor fuel. This qualification only permits finished gasoline to be classified as motor fuel. As blendstock is not a finished gasoline, it would not be classified in item 475.25, TSUS.

T.D. 66-23(13) listed critical properties for petroleum products used as motor fuel about 20 years ago. During the intervening years the standards have changed and the specifications published then are no longer applicable. The Research and Motor Octane numbers for leaded gasoline, for example, gradually increased from the 1930's to the early 1960's and have generally levelled off since then—*e.g.*, the average Research Octane number in 1942 was about 77, while in the 1980's the average is about 93. The lead requirements for motor fuels have changed over the years and the distillation characteristics have varied within limits.

In *Amorient Petroleum Co.*, v. *United States*, Slip Op. 85-46 (1985), "the statutory definition of motor fuel contained in Schedule 4, Part 10, Headnote 2(b), determines what is or what is not a motor fuel," the court stated, adding that since the chief use of the petroleum product in issue was as a motor fuel, the fact that in one area it could not be so used, but had to be further blended before it could be used as a finished gasoline, did not change the classification. "The fact that plaintiff intended to, and later did, blend some of the imported petroleum derivatives with other materials is irrelevant if the chief use in the United States of the Imported merchandise at the time of importation was a motor fuel." Thus, even though the petroleum derivative may not be a motor fuel in a particular area, if it is chiefly used as such in the rest of the country, it status in a particular locale is not determinative, as it is of a "class or kind" chiefly used as motor fuel.

As to the question of naphtha, it is urged that naphtha regardless of origin, since it is a blendstock, be considered a petroleum product for tariff purposes and classifiable in item 475.35, TSUS, as petroleum naphtha. Headnote 1, Part 10, Schedule 4, TSUS, made allowances for the benzenoid content only in motor fuels, fuel oils and lubricating oils and greases. No exeption is made for naphtha. Therefore, a catalytic naphtha or reformate, with over a *de minimis* amount of dutiable benzenoids present, which is not chiefly used as motor fuel could only be classifiable as a benzenoid mixture and not a petroleum naphtha.

Change of Practice

After careful analysis of the comments and further review of the matter, it is concluded on the basis of the entire record, that the practice of classifying leaded naphtha or any other type of gasoline blendstock as motor fuel is clearly wrong and should be changed. Under Headnote 2(b), Part 10, Schedule 4, TSUS, only those petroleum derivative products which are chiefly used as motor fuel as imported are classifiable as motor fuel in item 475.25, TSUS. Those petroleum products which are not chiefly used as motor fuel as imported but are considered blendstocks are classifiable according to composition. Leaded naphtha is classifiable as a mixture in item 432.10, TSUS, with the rate of duty for tetraethyl lead in item 429.70, TSUS; catalytic naphtha or reformate with over 5 percent dutiable benzenoids present is classifiable as a benzenoid mixture in item 407.16 TSUS, dutiable at the rate of alkylbenzenes in item 402.36, TSUS.

Authority

This change is being made under the authority of section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

William von Raab,
Commissioner of Customs.

Approved:

David D. Queen,
Acting Assistant Secretary of the Treasury.

[FR Doc. 86-2743 Filed 5-6-86; 8:45 am]
BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 26
Friday, February 7, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Commission on Civil Rights	1
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1

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Washington, DC, Room 512.

DATE AND TIME: Tuesday, February 11, 1986, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report for January
  A. Status of Funds
  B. Personnel Report
  C. Office Directors' Reports
IV. Report on Review of School Desegregation Project
V. Further Discussion of Project Concepts
VI. Briefing: Indian Tribal Justice
VII. Panel Presentation on Arab-American Civil Rights Concerns
VIII. Civil Rights Developments in the Midwestern Region.

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division (202) 376-8312.

Lawrence B. Glick,
Solicitor, (376-8339).

[FR Doc. 86-2766 Filed 2-5-86; 9:26 am]
BILLING CODE 6335-01-M

2

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 30, 1986, 51 FR 3878.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: February 5, 1986, 2:00 p.m.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

1. Discussion of the Jurisdictional Aspects of Effective Agreement No. 231-010646: Marine Terminal Conference Agreement Between Maryland Port Administration and Baltimore Marine Terminal Association.

John Robert Ewers,
Secretary.

[FR Doc. 86-2890 Filed 2-5-86; 4:20 pm]
BILLING CODE 6730-01-M

3

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (NORTHWEST POWER PLANNING COUNCIL)

STATUS: Open.

TIME AND DATE: February 13–14, 1986, 10:00 a.m.

PLACE: Red Lion Motor Inn/Riverside, 29th and Chinden Boulevard, Boise, Idaho.

MATTERS TO BE CONSIDERED:

1. Council Deliberation on Mainstem Passage of Juvenile Fish Rulemaking.
2. Council Action on Compilation of Losses Information.
3. Staff Presentation on Hungry Horse Dam Issue Paper.
4. Status Report on Development of Salmon and Steelhead Production Objectives.
5. Council Deliberation on Response to Comments on 1986 Power Plan.
6. Council Deliberation on Comment on Bonneville Power Administration's Resource Strategy.
7. Council Business.
8. Public Comment. The record on the Mainstem Passage of Juvenile Fish closed January 24, 1986; therefore, no public comment can be taken on this subject at this meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 86-2772 Filed 2-5-86; 10:43 am]
BILLING CODE 0000-00-M

VOL
51

ISS
26

FE
7

1986

UMI

federal register

Friday
February 7, 1986

Part II

Department of Energy

Western Area Power Administration

Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power; Notice

VOL 51 ISS 26 FE 7 1986 UMI

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power; Colorado River Storage Project et al.

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Post-1989 General Power Marketing and Allocation Criteria.

SUMMARY: The Post-1989 General Power Marketing and Allocation Criteria (Criteria) for the disposition of capacity and energy from the Colorado River Storage Project (CRSP), and the Rio Grande and Collbran Projects by the Western Area Power Administration (Western) is published herein, together with a discussion of the relevant issues raised in the comments received on September 4, 1984, Revised Proposed Post-1989 General Power Marketing and Allocation Criteria (1984 Proposed Criteria), 49 FR 34900. A detailed discussion of these issues and resulting changes to the 1984 Proposed Criteria precede the Criteria in this publication. This notice also constitutes a formal request for applications for power and contains a description of the content of such an application. Applications will be considered by Western's Administrator in the determination of proposed allocations to eligible applicants. These proposed allocations will be published in a future **Federal Register** notice. Comments on these proposed allocations will be accepted and any appropriate adjustments will be made. Negotiation of electric service contracts will then follow.

These electric service contracts will be completed by September 30, 1987. Determination of final customer eligibility will be made by September 30, 1988, and reallocation of rescinded or refused allocation amounts will be made in sufficient time so that all contracts may become effective with the October 1989 billing period.

DATES: These criteria shall become effective 30 days following publication of this notice in the **Federal Register**. Applications for an allocation of both energy and associated capacity must be received by Western's Salt Lake City Area Office (SLCAO) from each potential allottee by close of business on April 8, 1986. See section A.1 for further details. While the Criteria provide for project integration, a SLCA Integrated Projects rate may be established through the public participation process in conjunction with the next CRSP rate adjustment. The effective date of the SLCA Integrated Projects rate could be as early as October 1987.

FOR FURTHER INFORMATION CONTACT: For further information on the Post-1989 General Power Marketing and Allocation Criteria and the Call for Applications for Power, contract Mr. Lloyd Greiner, Area Manager, or Ms. Marlene Moody, Assistant Area Manager for Power Marketing at: Salt Lake City Area Office, Western Area Power Administration, 438 East Second South, P.O. Box 11606, Salt Lake City, UT 84147, Telephone: (801) 524-5493.

SUPPLEMENTARY INFORMATION: Contents of this section include:

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A. Procedures

1. Applications for Power

This notice formally requests applications for power from those interested in receiving the Federal power resources offered. Applicants should advise the Area Manager in writing of their request to receive allocations of energy and capacity at the address set forth above. The request should specify (1) the desire on the part of the applicant to participate in the allocation process, and (2) the kWh/kW desired for both the summer and winter seasons. This last item will be used in determining the amounts of firm capacity to be associated with seasonal energy allocations. Since an adjustment on the energy allocation limit will be allowed for those customers who can demonstrate that energy usage for 1980–82 was reduced as the result of conservation efforts, any such applicants that may be affected by the allocation limit must also submit the required documentation with any application. An application must be received by Western's SLCAO from each potential allottee by close of business on April 8, 1986.

2. Determination of Allocations

Shortly after the deadline for submitting applications for power, Western will publish proposed allocations to all qualified applicants in the **Federal Register**. The notice will seek comments on the proposed allocations.

Once comments are considered and any necessary adjustments made, the Administrator will allocate energy and associated capacity under the terms of the Criteria to all qualified applicants and will publish the final allocations.

3. Contract Negotiations

Having established allocations, Western will begin developing contract language with the allottees. Preliminary draft contracts will be available for review shortly after the publication of the allocations. Those entities receiving an allocation and taking all other required steps will be offered a contract for the allocated resources based on the Criteria. After reasonable opportunity to assist in developing contract language, allottees will have 6 months to accept an offered contract or until September 30, 1987, whichever is later. Contractors must have the means to distribute power by September 30, 1988, in order to avoid automatic forfeiture of their contract rights, unless Western specifically agrees otherwise in writing.

4. Establishment of Integrated Rate

The SLCA Integrated Projects rate could become effective as early as the October 1987 billing period, and will become effective no later than the beginning of the October 1989 billing period.

B. Background on the Development of the Criteria

Western has been developing new marketing and allocation criteria for the CRSP, Collbran, and Rio Grande Projects since the initial public information forum was held on May 22, 1980, in Salt Lake City, Utah. The public participation process has included four public information forums, a public comment forum, and two published proposals. The last public information forum was held September 7, 1983, to discuss the initial published proposal. A 2-day public comment forum ended October 6, 1983. About 1,500 written

comments were received and considered in the development of the Criteria by the Salt Lake City Area Office. The period for submitting written comments on the 1984 Proposed Criteria officially ended on October 26, 1984. In addition, a request for Applicant Profile Data was published in the February 4, 1983, **Federal Register**, 48 FR 5303, and later extensions provided for a filing deadline of December 30, 1983, 48 FR 54880 (December 7, 1983). These applicant profile data have been used as the basis for determining entity eligibility and, in the case of new customers, will be used for the calculation of post-1989 allocations. The Criteria published herein represents a culmination of the public participation process.

C. Summary of Revisions

As a result of comments received on the 1984 Proposed Criteria, several significant additions and revisions have been made. These changes were the result of substantive comments received on the 1984 Proposed Criteria and improvements or clarifications provided by Western. These revisions are summarized as follows:

1. The integration of the Provo River Project with the Collbran, Rio Grande and CRSP Projects has been deferred.

2. The net benefits of integrating each small project (the Rio Grande and Collbran Projects) with CRSP have been divided among: (1) The existing small project customer(s) and (2) all other SLCA Integrated Projects customers in the Northern Division.

3. Marketable firm capacity has increased by 55 MW in both seasons due to a change in reserve levels and exclusion of Provo River capability. Marketable firm energy has decreased slightly due to minor changes in estimates for annual generation from Collbran and Rio Grande, and exclusion of Provo River generation. Because of the increase in marketable firm capacity and the minor decrease in marketable firm energy, the overall load factor has decreased from 52 percent to 50.2 percent.

4. A purchase level of 400 GWh has been selected.

5. Allocation priorities have been clarified.

6. The Northern Division participating customer pool increased to 100 MW, an increase of 25 MW.

7. The Northern Division allocation method now includes consideration of existing peaking power commitments in determining allocations to existing customers. Southern Division existing customer comments resulted in the selection of an allocation method based on CRSP long-term power and all other Federal power resources (Alternative No. 3 in the 1984 Proposed Criteria).

8. A first right of refusal to the cities of Enterprise and Hurricane, Utah, up to the remaining 50 percent of their 1975 summer season and 1976–77 winter season load requirements, has been granted in the event power is available for reallocation.

9. A Conservation and Renewable Energy (C&RE) Incentive Program Pool of approximately 30 MW in each season has been created as a direct result of decreasing reserve levels. The incentive program pools will have load factors similar to pools for Northern Division existing and participating customers.

10. The original proposal to allow for a one-time exchange of capacity within divisions has been liberalized to allow for annual exchanges among all customers, whenever Western will not be adversely affected.

11. Limits have been established on the energy and capacity amounts for which purchase costs will be passed directly to the customers. The annual pass-through costs are limited to expenses associated with purchasing 400 GWh of energy, 109 MW of winter capacity, and 95 MW of summer capacity. The cost of all other purchases will be included in studies used to develop firm rates.

12. Federal points of delivery (FPODs) in Wyoming and Montana, previously proposed to be deleted as delivery points on the SLCA Integrated Projects transmission system, will be retained. Also, additional FPODs have been added at Fontenelle and Elephant Butte.

13. The contract term has been changed from the proposed 10-year term to a 15-year term, but with provision for Western to adjust contracted amounts of capacity and energy at the end of 10 years based upon the marketable resource. Each contractor will be given a 3-year advance notice of the adjustment.

14. The Resale of Electric Energy article has been changed to require semiannual notice of costs of power to consumers. The proposal that compliance with existing provisions of the Resale article be an eligibility requirement has been eliminated.

15. A limit on energy allocations has been included such that no applicant will receive a seasonal allocation of energy that will exceed its average seasonal total energy use for the period 1980–1982. An adjustment will be allowed for those customers who have demonstrated to Western's satisfaction that energy usage for this period was reduced as the result of conservation efforts.

D. Major Issues

1. Eligibility Requirements—Application of the Preference Laws.

In the 1984 Proposed Criteria, Western proposed that resources would be allocated in accordance with preference provisions of power marketing law in the following order of priority: (1) Preference entities within the SLCA Integrated Projects market area; (2) preference entities outside the market area; and (3) nonpreference entities, provided that those nonpreference entities acting as agents for public entities without distribution systems shall receive priority over nonpreference entities acting on their own behalf.

The Utah Power & Light Company (UP&L) application on behalf of 143 municipalities was determined to be a request for an allocation of power to a nonpreference entity. Under power marketing law, therefore, UP&L's request could not be given equal consideration with requests from preference utilities. Western did conclude, however, that a sale to an investor-owned utility (IOU) acting as an agent for certain public entities was superior to sales to IOUs acting on their own behalf and therefore was given priority within nonpreference category.

a. Comments

A number of comments were received regarding the issue of preference to be given in the sale of Federal power. Most commended Western for its discussion of the subject. Four supplied additional comments stating that:

—The revised preference criteria violate certain provisions of the Department of Energy Organization Act (DOE Act) found at section 102(4), (14), and (16) (42 U.S.C. 7112);

—Municipalities without distribution systems are or are not (the comments are divided on this issue) entitled to preference under section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and Western is required to allocate power to all entities entitled to preference under said law.

—Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, requires Western to allocate power to an IOU and/or 143 additional municipalities on behalf of whom it also applied for an allocation of CRSP power;

—Western's discussion stated that existing customers have no vested right to another allocation but the allocation criteria effectively give them one;

—The preference criteria were prejudged and predetermined by then-

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Secretary of Energy Hodel before the IOU had an opportunity to comment;

—The concept that preference laws promote "yardstick competition" is an anachronism; and

—The allocation criteria violate the constitutional rights of the IOU and its municipal customers to due process and equal protection, and also violate the 10th amendment.

On the subject of priorities among qualified preference entities, one commenter suggested a category that would give nonpreference entities inside the market area precedence over preference entities outside the market area, with the intention to maximize benefits to Upper Basin States. An additional comment requested clarification of a statement provided by Western in the 1984 Proposed Criteria regarding the application of priorities to the pricing of nonfirm energy.

b. Discussion

The above comments have been grouped for discussion into the following numbered categories:

(1) Preference Issues; and
(2) Priorities Among Qualified Preference Entities.

(1) *Preference Issues.* Most of these comments repeat comments made previously and addressed at some length by Western in the 1984 Proposed Criteria. This response incorporates that previous response by reference and updates the previous response with additional information as needed. The IOU's constitutional arguments did not expand upon the comments discussed in the 1989 Proposed Criteria and will not be repeated here.

(a) The DOE Act (42 U.S.C. 7112). In section 102, Congress "declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs." It then lists 18 purposes of Congress in enacting the Department of Energy Organization Act, including such diverse functions as:

"to establish a Department of Energy" section 102(1); "to continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department" section 102(7); and "to provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this Act" section 102(18).

The commenter asserts that three of the 18 general purposes listed in section 102—"to create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program" section 102(4); "to assure . . . that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes" of this DOE Act section 102(14); and "to create an awareness of and responsibility for the fuel and energy needs of rural and urban residents" section 102(16) are more than just parts of a statement of congressional purposes. The commenter claims they constitute mandates which Western must follow. The argument is made that these portions of section 102 of the DOE Act mandates additional preference criteria to be followed in determining who may receive an allocation of CRSP power.

This comment is inconsistent with the plain language of section 102, as well as other sections of the DOE Act and its legislative history.

As the District Court of the District of Columbia stated in *Ad Hoc Committee for Integrity* v. *Hodel*, 594 F. Supp. 569 (D.D.C. 1984), the legislative history of the DOE Act indicates that Congress intended the purposes listed in section 102 to be significant concerns of the Department of Energy assigned to a high level official for oversight. But Congress did not "mandate any particular organizational method for doing so. To the contrary; the legislative history indicates a congressional desire to give the Department flexibility in carrying out its required functions. . . . Under the law, the Department has flexibility, and it accordingly is not for this Court to overrule the Secretary's decision as to how the functions assigned to him should be carried out." *Id.* at 573–574. Thus, section 102 consists not of mandates to Western, or of amendments to the Federal preference law, but of suggestions to the Secretary of Energy of general areas of functions, purposes, and responsibility to be assigned among the Secretary's staff. Nothing in the language of section 102 or in the legislative history of the DOE Act suggests that any amendment to the Federal preference laws was intended to result from the listing of purposes.

In any event, these marketing criteria are consistent with the congressional purposes of sections 102(4), (14), and (16). The criteria contain incentives for prospective customers to develop renewable resources and conservation programs and penalties for failure to implement C&RE programs in accordance with established Guidelines and Acceptance Criteria. The "productive capacity of private enterprise" is and will continue to be employed to transmit SLCA Integrated Projects energy and also, when economical, for purchases of firming capacity and energy. The energy needs of many rural and urban residents will be recognized and cared for through the allocations of power to preference entities such as municipalities and rural electric cooperatives.

(b) *The Reclamation Project Act of 1939.* An IOU commenter asserted that, under the preference provisions of 43 U.S.C. 485h(c), the 143 municipalities on behalf of which the IOU applied for power were entitled to preference and to equal treatment with other preference entities applying for power although none of the municipalities owned its own distribution system or had previously assumed any utility responsibilities. The IOU also asserted that 16 U.S.C. 825s, which directs the sale of Federal power "in such manner as to encourage the most widespread use thereof," requires Western to allocate power to those municipalities. Another entity representing public utilities stated that the Second Circuit Court of Appeals, in *Power Authority of the State of New York* v. *FERC*, 743 F.2d 93 (2d Cir. 1984), found that the Federal preference extends only to entities which have assumed full utility responsibility.

One question raised by a municipality may have relevance to potential new customers seeking to acquire utility responsibility for the post-1989 period. The question was whether the lease of distribution facilities, in lieu of ownership, would be adequate to qualify for an allocation. The proposal suggested that the city was interested in executing a long-term lease with the local IOU for the use of its facilities. The city would contract with Western for a direct allocation of energy and negotiate supplementary agreements with other suppliers. The city would perform the routine operational functions, such as meter reading, as well as accounting and billing functions. Western determined that public ownership of a distribution system is a prerequisite to satisfy eligibility requirements for allocations of Federal power under these criteria.

Our review of the Second Circuit Court of Appeals case did not disclose any language clearly addressing the issue of whether only entities assuming full utility responsibility are entitled to preference. The legislative history of the preference provisions of 43 U.S.C. 485h(c) does reveal that the language was written by the Bureau of Reclamation to clarify the legality of its practice at the time of giving preference to, among others, municipally-owned distribution systems. (See the remarks of Mr. Page, the Commissioner of Reclamation, and Mr. Cheadle, Chief Counsel to the Commissioner, in Hearings Before the House Committee on Irrigation and Reclamation on H.R. 6773 and H.R. 6984, 76th Cong., 1st Sess. at 120, 131, 132, 144 (June 15–29, 1939).

Assuming arguendo, however, that municipalities without distribution systems and which have not assumed full utility responsibility are preference entities within the language of 43 U.S.C. 485h(c), they are still not entitled to receive an allocation of Federal power. "The preference clause requires only that public entities be given a preference over private entities in the marketing of power generated by Federal reclamation projects. . . . It does not require that all preference customers be treated equally or that all potential preference customers receive an allotment. . . . Nothing in the legislative history of the Reclamation Project Act of 1939 suggests that Congress intended to limit the Secretary's discretion to interpret the preference clause in making decisions as to whether or how or on what terms he will sell power to particular customers as compared to other preference customers." *City of Santa Clara* v. *Andrus*, 572 F.2d 660, 667, (9th Cir.), *cert. denied*, 439 U.S. 859 (1978).

Where ". . . one preference entity challenges the Secretary's decision to discriminate against it in favor of other preference entities, the reclamation laws provide no law to apply to the dispute. If he so chooses, the Secretary can market *all* available power to a single public entity without running afoul of the preference clause." [emphasis in original] *Id.* In 1985, this reasoning was affirmed by five courts in the 4th, 8th, and 11th Circuits. (See *Electricities of North Carolina, Inc.* v. *Southeastern Power Administration (Electricities III)*, No. C–C–85–384–P (W.D.N.C. October 30, 1985); *Electricities of North Carolina, Inc.* v. *Southeastern Power Administration (Electricities II)*, No. 84–2152 (4th Cir. Mar. 19, 1985); *Electricities of North Carolina, Inc.* v. *Southeastern Power Administration (Electricities I)*, No. 82–888–CIV–5, (E.D.N.C October 16, 1984); *Greenwood Utilities Commission* v. *Hodel*, 764 F. 2d 1459 (11th Cir. 1985); *South Sioux City* v. *Western Area Power Administration*, No. CV82–L–107 (D. Neb. May 20, 1985).

In this instance, the commenter does not represent a municipality; the commenter represents an IOU applying on behalf of 143 municipalities. 43 U.S.C. 485h(c) states that "preference shall be given to municipalities and other public corporations and agencies; and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936." IOUs are clearly not entitled to preference under this law. Preference cannot, therefore, be given to the IOU whether or not it is acting on behalf of the municipalities it serves.

(c) *The Flood Control Act of 1944.* Two commenters asserted that the language of section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, which requires that Federal power be marketed "so as to encourage the most widespread use thereof," requires the allocation of power to all eligible entities. The phrase applies to the transmission and sale of "[e]lectric power and energy generated at reservoir projects under the control of the Department of the Army." The SLCA Integrated Projects power and energy are not generated at Army reservoir projects, so this phrase does not apply directly to the marketing of this power and energy as a matter of law. Western does, as a matter of policy, give effect to the phrase in developing power marketing programs. The phrase, however, is susceptible to so many different interpretations that it "permits the exercise of the widest administrative discretion by the Secretary. It does not supply 'law to apply.'" *Santa Clara*, 572 F.2d at 668. In 1985, this analysis was affirmed by Federal courts in the 4th and 11th circuits in *Electricities I*, at pages 7–8, and *Greenwood*, 764 F.2d at 1465.

(d) *Vested Rights.* The IOU states that Western says existing preference customers have no vested right to Federal power and then effectively recognizes such a vested right. Western does give more weight in allocating power to those currently receiving Federal power in order to avoid inflicting undue economic hardship upon existing customers. The Criteria also recognize the equity of selling Federal power to entities that were unable to contract for power earlier. The Criteria attempt to strike a balance between needs of existing and potential customers.

(e) *Former Secretary of Energy Hodel's Remarks.* The IOU alleged that the proposed preference criteria were prejudged and predetermined by then-Secretary of Energy Hodel before the IOU had an opportunity to comment. This allegation is based on remarks made by Secretary Hodel at a May 3, 1983, meeting of the American Public Power Association, in which he expresses general support for the preference clause. Western does not see anything arbitrary, capricious, improper, or illegal in a Secretary's statement that he supports the laws he is required to administer.

(f) *"Yardstick Competition."* The IOU argues that the concept that preference laws promote "yardstick competition" is an anachronism. This same commenter previously argued that certain congressional purposes in enacting the DOE Act in 1977, found at 42 U.S.C. 7112, were very important. One of the purposes, mentioned at section 102(12), was "to foster and assure competition among parties engaged in the supply of energy and fuels." We have recent legislation, therefore, which indicates that Congress does not consider the concept of competition to be anachronistic. In any event, Western is not in any position to second-guess Congress on the competition issue. Western is legally bound to uphold the preference law regardless of whether it may or may not be founded on an anachronistic idea. See *Power Authority of State of New York* v. *FERC*, 743 F.2d at 105.

(2) Priorities Among Qualified Preference Entities. The suggestion to modify priorities to provide a higher priority to nonpreference entities within the market area over preference entities outside the market area would allow for a greater allocation to entities in the Northern Division States. Adoption of such a proposal would mean, the commenter also believes, that the Southern Division allocations should be withdrawn. The legislative history of the Colorado River Storage Project shows that Congress indeed considered including a geographic preference clause in the CRSP Act but chose not to enact such a clause. The issue of whether the Southern Division should receive any SLCA Integrated Project power was thoroughly discussed in the 1984 Proposed Criteria at 49 FR 34912–34914, and need not be repeated here.

In the 1984 Proposed Criteria, Western provided a statement following the listing of allocation priorities as follow: "These priorities may be recognized within pricing blocks for non-firm energy." This statement means that Western will normally apply this same order of priority when considering competing purchasers of nonfirm energy. Preference is currently applied within each 1-mill price range.

c. Summary and Conclusion

Western's application of the preference clause is based on the clear language of the law as well as congressional intent and long-standing

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administrative policies. The preference clause still has validity as an important principle, and, indeed, as a legal requirement in the marketing of Federal power. The attainment of preference status by entities taking the necessary steps to do so will be recognized by Western. Western concludes, after carefully reviewing the pertinent legislation, that this is the appropriate application of the preference laws. To clarify the order of priorities as previously presented in the 1984 Proposed Criteria, the allocation priorities are as follows:

(1) Preference entities within the SLCA Integrated Projects' market area;

(2) Preference entities outside the SLCA Integrated Projects' market area;

(3) Nonpreference entities acting as agents for public entities without distribution systems; and

(4) Nonpreference entities acting on their own behalf. Western's position presented in the September 1984 **Federal Register** notice regarding the priority that should be given among qualified preference entities remains unchanged.

Western continues to believe there is justification for treating existing customers differently than potential new customers. In this sense, existing customers have been given a priority, but this priority is of a different character than that given to preference utilities over investor-owned utilities. Existing preference customers have no vested right in Federal power. However, in balancing the interests of existing and potential new customers that are qualified under the law to preference consideration over investor-owned utilities, Western continues to give more weight to those currently receiving benefits to avoid inflicting undue economic hardship, while recognizing the need to provide other qualified preference purchasers some reasonable benefits from Federal power.

2. Other Eligibility Requirements

Western acknowledged the need to clarify the eligibility requirements and revised them in the 1984 Proposed Criteria. Western refused to extend the December 30, 1983, deadline for filing applicant profile data, which is one of the eligibility requirements. Western did, however, grant an extension of the January 1, 1984, deadline to have taken "significant and tangible steps" to acquire the means to distribute power by September 30, 1988, to the cities of West Bountiful, Richfield, and Mapleton, Utah.

Western requested further comments from the public on whether conservation should be an allocation criterion, and indicated that an environmental assessment would consider the matter in further detail.

Western eliminated the initially proposed special eligibility requirements for wholesale utilities in the 1984 Proposed Criteria. However, Western indicated that both wholesale and retail utilities would be required to inform consumers of the source and cost of various components of power supply. That proposed requirement is discussed under the Contract Issues (section F.4).

The 1984 Proposed Criteria required existing customers to demonstrate compliance with the spirit of the Resale article in its current contract to avoid a reduction or elimination of its potential allocation.

a. Comments

—Deadline for taking "significant and tangible steps" to acquire the means to distribute power should be extended.

—Conservation and renewable energy programs should or should not be an allocation criterion.

b. Discussion

The above issues and comments have been grouped for discussion into the following numbered categories:

(1) Applicant Profile Data;

(2) Deadline for Attaining Utility Status;

(3) Resale Compliance by Existing Customers; and

(4) Other Special Eligibility Requirements.

(1) *Applicant Profile Data.* Certain load, resource, and organizational data, referred to as applicant profile data, were requested in a February 4, 1983, **Federal Register** notice, 48 FR 5303. No extensions to the final deadline of December 30, 1983, have been granted for filing the requested data. However, Western will consider that an applicant has complied with the requirements to file applicant profile data if their loads were incorporated as a part of another potential applicant's filed data. Western reserves the right to request clarifying or supplementary data from any applicant who has fulfilled the applicant profile data requirement, without generally extending the deadline for filing such data.

(2) *Deadline for Attaining Utility Status.* Santaquin and Elk Ridge, Utah, each requested treatment similar to that given to West Bountiful, Richfield, and Mapleton, Utah, in the 1984 Proposed Criteria. They desire to have an extended period of time in which to take "Significant and tangible steps" toward acquiring the means to distribute power, thereby acquiring utility status. Each indicated that some initial steps had been taken. While Centerville, Utah, indicated an interest in pursuing utility responsibility, no specific request for an extension of the deadline was received, nor did Western receive any indication that initial steps had been taken to acquire such responsibility. As previously stated in the 1984 Proposed Criteria, examples of "significant and tangible steps" include:

(a) Evidence of negotiations with an investor-owned utility regarding distribution system acquisition;

(b) Action before a Public Service or Public Utility Commission to acquire a system;

(c) Initiation of condemnation proceedings; or

(d) Evidence of a financial commitment to purchase a transmission system.

In the September 4, 1984, **Federal Register** notice, West Bountiful, Mapleton, and Richfield, Utah, were given a 1-year extension to show that "significant and tangible steps" had been taken to acquire the means to distribute power by September 30, 1988. This 1-year extension was granted since timely applicant profile data had been submitted by or for them, each had taken initial steps to acquire utility status, and each had specifically requested an extension of the January 1, 1984, deadline for taking "significant and tangible steps" to acquire utility responsibility. On July 26, 1985, Western sent a notice to West Bountiful, Richfield, and Mapleton requesting documentation of significant and tangible steps taken toward utility status. Mapleton did not respond by September 4, 1985, and is therefore no longer a potentially qualified applicant. Richfield provided a response to Western on September 4, 1985, documenting recent actions taken to acquire utility responsibility, and West Bountiful has been providing Western with information on its progress in acquiring a distribution system on a regular basis. Both Richfield and West Bountiful are therefore potentially qualified applicants for power hereunder.

Since acquiring the means to distribute can be a lengthy and difficult process and must be completed by September 1988 to meet the eligibility requirements, Western is unwilling to generally extend the deadline for taking "significant and tangible steps." However, those municipalities who have already taken initial steps and have requested an extension of Western's deadline, such as Santaquin and Elk Ridge, Utah, will be granted a 3-month extension from the date of the publication of this notice to show that "significant and tangible steps" have been taken to acquire the means to distribute power by September 30, 1988. Such municipalities will therefore be included in the proposed allocation process if they submit applications for power.

In December 1983, the city of Panguitch, Utah, submitted a letter to Western requesting information on the necessary steps to qualify as an eligible customer in the post-1989 period. Without realizing that load data had been submitted on their behalf, Western replied that the city was ineligible to participate. Since the city's failure to meet the deadline for taking "significant and tangible steps" may have been due to Western's response upon discovering that data for Panguitch had been provided, Western notified the city that it would have 3 months (until December 4, 1985) to submit information documenting "significant and tangible steps" taken prior to that date to acquire utility responsibility. A letter and a formal resolution were submitted by the city prior to the December 4, 1985, deadline documenting the significant step taken to acquire utility responsibility. Panguitch is therefore a potentially qualified applicant for power hereunder.

(3) *Resale Compliance by Existing Customers.* The 1984 Proposed Criteria included an obligation of existing customers to demonstrate compliance with the spirit of the Resale of Electric Energy article in their current contracts in order to receive an allocation. Western indicated that existing customers could show that the benefits of low-cost power have been passed on to the consumer, as required by the article, by at least two possible ways: (1) Through the lowest possible rates, or (2) through rates established in an open and public manner to provide revenues to accomplish legitimate public purposes.

No Comments were received on this requirement, indicating that existing customers are confident they can demonstrate compliance with the spirit of the article. The SLCAO annually asks its contractors to submit the data requested in that article, and data is now regularly submitted. To eliminate the administrative burden associated with a comprehensive review of compliance documentation in conjunction with the allocation process, Western has decided to eliminate resale article compliance as an eligibility requirement. Assuring that the benefits of low-cost power are passed on to consumers will continue to be an objective which can be achieved under contract provisions, and need not complicate the allocation process.

(4) *Other Special Eligibility Requirements.* The Environmental Defense Fund (EDF) and the National Wildlife Federation (NWF) proposed that conservation be an eligibility criterion rather than a goal to be encouraged after contract commitments are made. Western initially proposed to accomplish its conservation objectives through contract provisions and indicated that Congress had endorsed that approach in the passage of Title II of the Hoover Power Plant Act of 1984, 42 U.S.C. 7275. However, Western requested further comments and indicated that a decision would be made later. In addition, the Post-1989 Environmental Assessment (the Post-1989 EA) considered conservation as an eligibility criterion.

A number of commenters expressed opinions that past conservation practices should not be an overriding factor in determining allocation of Federal power. Some believe that conservation used as an eligibility criterion would stifle rather than promote conservation. The EDF and NWF continue to support the use of conservation as an allocation criterion.

As required by the Hoover Power Plant Act of 1984, Western promulgated an amendment to its Guidelines and Acceptance Criteria (G&AC) for the customer conservation and renewable energy program. During the public review process for the amended G&AC, similar comments proposing a precontractual conservation requirement were received. In the August 21, 1985 **Federal Register** notice containing Western's announcement of the final amended G&AC, Western pointed out that the Hoover Power Plant Act stipulates that the required contract article shall contain time schedules for meeting program goals, but did not find a basis for making the conservation and renewable energy program a precondition of the power sales contract.

Western further believes that the best conservation program is one that provides for an ongoing evaluation of the cost effectiveness of various technologies and methods in a variety of utility and consumer environments. The 1985 G&AC provide for these eventualities, while a denial of Federal power will not encourage prospective C&RE activities. It is further noted that the existing contract article requires the customer to submit an acceptable conservation program to Western within 12 months after the date of execution of the contract. Western fully intends to complete the contract negotiations for these allocations at least 1 full year before delivery of the actual power being allocated, thus for those receiving allocations little real benefit in terms of the timing of required customer conservation programs would actually be realized from a precontract conservation requirement.

Western concludes that the existing conservation requirements are appropriate, consistent with the requirements of the Hoover Power Plant Act of 1984 and will continue to be successful in meeting the objectives of an effective conservation and renewable energy program. However, approximately 65 GWh of firm energy with roughly 30 MW of firm capacity in both seasons have been set aside for use in a C&RE Incentive Program. Western believes this program pool provides an excellent opportunity to further pursue the objectives of the existing Westernwide C&RE Program, that is (1) to increase energy production from renewable resources, (2) to reduce dependence on foreign energy, and (3) to improve efficiency in energy utilization. These objectives can be accomplished by allocating a portion of the total marketable resources as an incentive for developing renewable resources and effective energy management programs.

The development of the details of the C&RE Incentive Program, such as evaluation criteria and allocation methodology, is not envisioned to start until about September 1988, at which time public participation will be sought to formulate the program. It is contemplated that this energy and capacity may be marketed on another basis until used in this incentive program.

c. Summary and Conclusion

No extension of the final deadline of December 30, 1983, will be granted for filing applicant profile data, though Western reserves the right to request clarifying or additional information from applicants who have already submitted data.

The 1-year extension to show "significant and tangible steps" granted to West Bountiful, Richfield and Mapleton, Utah, has expired. As Mapleton failed to submit the required information, the city will no longer qualify as a potential applicant. The 3-month extension Western granted the city of Panguitch, Utah, for taking significant and tangible steps has also expired. West Bountiful, Richfield, and Panguitch, Utah, are potentially qualified applicants. The cities of

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Santaquin and Elk Ridge, Utah, will be granted a 3-month extension from the date of publication of this notice to demonstrate "significant and tangible steps" have been taken to acquire the means to distribute power by September 30, 1988.

Western has eliminated compliance with the spirit of the Resale of Electric Energy article by existing customers as an eligibility requirement. Compliance will be encouraged through appropriate contract provisions.

Due principally to influences on Western's policies from objectives other than conservation alone, and due also to the uncertainties of developing satisfactory evaluation criteria, Western concludes that conservation will not be a general allocation criterion. A pool of firm energy with capacity, approximately 65 GWh with 30 MW in each season, will be reserved for use in a C&RE Incentive Program. This energy and capacity will most likely be marketed on another basis, that is, not as a long-term firm resource, until used in this incentive program. Details of the development of program evaluation criteria and allocation methodologies will be determined through a future public progress. This process is presently envisioned to begin about September 1988.

3. Market Area

The 1984 Proposed Criteria continued allocations to the Southern Division in amounts that represent a compromise adjustment to account for the change that has occurred in the load diversity between the summer and winter seasons in the Northern Division since the initial allocations in 1962. The Southern Division customers would experience a 26 MW increase in the winter season and a 55 MW reduction in the summer season.

Also proposed were minor changes to the description of the Northern and Southern Division market areas, and the market area for new customers was limited to the Salt Lake City Area of the Northern Division.

a. Comments

—Power and energy generated in the Northern Division should be allocated to Northern Division customers.
—Support allocations to the Southern Division.
—Oppose summer season reductions in Southern Division.
—Western does not have an "option" to withdraw Southern Division allocations.
—Support withdrawal from the Southern Division in 1989. Southern Division allocations should be completely withdrawn by the year 2000, at the latest.
—Request clarification of new customer market area.

b. Discussion

The above comments have been grouped for discussion into the following numbered categories:

(1) Southern Division Withdrawal; and

(2) New Customer Market Area.

(1) *Southern Division Withdrawal.* The principal arguments raised were (1) that it is inappropriate to market hydroelectric resources physically located in the Northern Division outside of that division, and (2) that the Southern Division allocations were intended to be permanent. These issues were discussed in detail in the September 1984 publication, 49 FR 34912-914, and will not be repeated here. Western's tentative conclusion in 1984 was that the spirit of the allocation made in 1962 should be maintained, but that adjustments should be made to reflect changing circumstances.

No new arguments were advanced that persuade Western that the proposed compromise is inappropriate. One commenter requesting Western to reconsider allocating to the Southern Division stated that ". . . to do otherwise would represent an abuse of the discretion vested in Western." Another commenter quoted excerpts from 1955 House and Senate reports to support the position that Western does not have the authority or "option" to withdraw allocations from the Southern Division. Some of those urging withdrawal from the Southern Division advocate giving notice to Southern Division contractors now that withdrawal will occur at the end of 10 years.

Without question, the principal marketing area for CRSP resources is the Northern Division. Western sees no compelling reasons why the relatively small amounts of CRSP power marketed in the Southern Division should be withdrawn in the foreseeable future. Approximately 30 percent of the preference loads in the Southern Division are supplied with Federal power compared to about 50 percent in the Northern Division. Western's interest in avoiding economic disruptions extends equally to existing contractors in both divisions. Finally, a common interest in CRSP serves as a catalyst in promoting cooperative activities among preference utilities in both divisions that generally benefit consumers.

Western does have the option to restrict marketing to the Northern Division if circumstances in the future indicate that is the best course of action. The 1955 congressional reports cited can only be regarded as historical information that do not compel Western to take actions contrary to those suggested by existing circumstances. Western has made every effort to exercise its discretion in a thoughtful and evenhanded manner. In that spirit, the compromise previously proposed has been selected as the most reasonable solution to this divisive issue.

(2) *New Customer Market Area.* Two commenters, one in Texas and another in South Dakota, shared a common concern that they were apparently disregarded as new customers in the hypothetical allocations that accompanied the 1984 Proposed Criteria. Western's treatment was not in error because the description of the proposed market area for new customers does not include Texas or South Dakota. Western accordingly concluded that these entities are not eligible for consideration as prospective customers. Although a member of the South Dakota entity serves the northeastern portion of Wyoming, this service area is outside that portion of southwestern Wyoming within the Colorado River Basin that comprises a portion of the proposed new customer market area.

Western has reexamined the description of the new customer market area presented in the September 1984 **Federal Register** notice and has provided improvements to the description so that the market area is clearly limited to the Salt Lake City Area of the Northern Division. In addition, the portion of Arizona included in the Salt Lake City Area has been redescribed to include the service area of those Northern Division cooperatives serving retail customers in Arizona.

c. Summary and Conclusion

As no new arguments were presented that would persuade Western to reconsider the proposed adjustment of Southern Division allocations, the proposal will be adopted in these criteria.

No compelling comments were received which required reconsideration of the proposed new customer area. Accordingly, Western will adopt the proposed market area.

4. SLCA Project Integration

The 1984 Proposed Criteria proposed the consolidation of the CRSP, Collbran, Rio Grande, and Provo River Projects to increase the marketable resources, assure repayment of costs, simplify contract development and administration, and create a common rate. Repayment requirements would continue to be determined separately for each project. Preliminary results of power repayment studies indicated that a composite rate would increase the CRSP rate by roughtly 0.10 mill, reduce the rates paid by the existing Collbran customer by about 10 mills, and reduce the rate paid by existing Rio Grande Project customers by about 20 mills. Western provided a detailed discussion of the impacts due to integration, the legal authority, and the disposition of the additional resources that would result directly from integration and concluded that the benefits outweighed the costs of integrating the resources, as proposed. Suggestions were invited for equitably distributing the resources from the smaller projects, and Western indicated that financial impacts on individual customers would be further evaluated.

a. Comments

—Oppose integration because (1) CRSP should not be operated to subsidize other projects, (2) section 5(c) of the CRSP Act, which mandates all revenues associated with CRSP shall be credited to the Basin Fund, should not be circumvented, and (3) CRSP may not receivce reciprocal financial benefits once smaller projects have been repaid.
—Blended rates would reduce electricity costs for the smaller projects, thus encouraging wasteful consumption.
—Additional resources resulting from integration should be allocated to new customers in the Northern Division to promote more widespread use.
—Western's request for suggestions on the distribution of smaller project resources to existing customers is unclear.
—Allocations to Collbran and Rio Grande Project customers should remain at present levels through the next contract term.
—Implement the requisite rate integration as soon as possible.
—Support integration but note additional facilities may be necessary for reserve and transmission requirements and to achieve effective integration.

b. Discussion

The majority of comments were generaliy supportive of the proposed concept of project integration. The few commenters who opposed it mainly contended that CRSP revenues would be used inappropriately or illegally to subsidize revenue requirements of the smaller projects, and that the blended rates would increase consumption.

Western believes project integration benefits Western's customers as well as the Federal Government. As a result of project integration, additional firm capacity will be made available and will be marketed to all CRSP Northern Division customers. The Collbran and Rio Grande Projects' customers will now be assured lower and more stable rates as well as firm annual commitments. In the past, the Collbran and Rio Grande Projects have had problems in meeting repayment obligations and maintaining marketable rates. The United States will now be assured that the Collbran and Rio Grande Projects will be repaid within the prescribed time period. Finally, a single instead of multiple rate adjustment process as well as the simplification of contract administration due to project integration will reduce administrative costs.

The additional firm capacity obtained because of integration exists for several reasons. The geographic isolation of the projects' river basins creates a certain diversity among the projects which will be utilized in integrated operations but which could not have been recognized in long-term firm commitments with separate projects. Integration allows the sharing of operational reliability requirements. If the individual projects must provide their own reserves, the amount of firm power available is reduced, and in some cases, firm power cannot be offered at all. This reduces the desirability and value of the resource as well as revenues available for repayment.

The CRSP Southern Division customers do not share in the resources of the smaller projects. These smaller projects have never been marketed in the Southern Division and are not located in the Southern Division marketing area. Southern Division entities will bear a small increase in the cost of power as a result of integration, along with all Northern Division customers. However, they will continue to share the CRSP resource at a very reasonable cost.

Integration will assure that repayment of these smaller projects will be made on schedule regardless of existing market conditions. Western believes that the slight increase in rates for CRSP customers is more than offset by the benefit just described as well as the additional firm capacity that the CRSP Northern Division customers will receive.

The advantage of a single rate process is significant to Western. The current requirement to complete rate adjustment procedures for each project has burdened Western's staff, resulting in the delay of vital marketing and contracting activities. The single rate process would permit Western's staff to provide better customer service. Customers currently purchasing power from more than one project will also be spared the burden of participating in more than one rate adjustment process. It should be noted that although there will be a single rate adjustment process, each project will continue to retain its separate financial identity and separate power repayment study (PRS).

In addition to the points made above regarding additional capacity, repayment and a single rate adjustment process, integration reduces the impact of a variety of other conditions the smaller projects would experience standing alone. The smaller projects lack upstream regulation for their reservoirs so that power production is related in a more immediate way to current weather conditions. Beyond that, the water releases from these projects are controlled by non-power needs so that the project standing alone is not capable of shaping its power production pattern to the needs of a customer to the extent necessary to optimize the marketability of the power produced.

One commenter objected to the proposed integration of the CRSP with the Rio Grande, Provo River, and Collbran Projects. The commenter asserts that under section 5(c) of the CRSP Act, 43 U.S.C. 620d(c), all revenues collected in connection with operation of the CRSP must be placed in the Basin Fund and cannot, therefore, be used to repay the costs of the smaller projects. This same commenter approves of the feature of the criteria which calls for Western to purchase additional power and energy for its customers provided that the costs are passed through to the customers and the customers support the purchases.

The integration of the CRSP with the Rio Grande and Colbran contracts simply consists of a purchase by the CRSP of the Rio Grande and Collbran resources. Western's power customers have not objected to this or any other purchase of power and energy by the CRSP. Furthermore, the integration of other Federal powerplants with those authorized under the CRSP Act is mandated by section 7 of the CRSP Act, 43 U.S.C. 620f, "so as to provide the greatest practicable amount of power and energy that can be sold at firm power and energy rates."

While it is true that the CRSP Act places certain limitations on how revenues in the Basin Fund must be applied, the limitations apply only to

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revenues in the Basin Fund in excess of operating needs. Purchased power costs of the CRSP are costs associated with operation of the CRSP, in accordance with standard utility accounting practices. See, for example, 18 CFR Part 101, The Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. Although Western is not a utility subject to the Federal Power Act, it is noteworthy that Western is acting in accordance with standard utility practices by considering purchased power expenses associated with the Rio Grande and Collbran Projects to be operating expenses of the CRSP. Since these costs are operating expenses, they are under section 5(c) available, without further appropriation, for the purchase of Rio Grande and Collbran resources. They do not constitute revenues in the Basin Fund in excess of operating needs, the proper disposition of which is specified in section 5(d) of the CRSP Act.

Western does not agree that a blended rate among projects will encourage consumption. A detailed analysis was performed in the Post-1989 EA regarding changes in consumption that resulted from project integration. The conclusion drawn was that the increases in consumption due to project intergration would be insignificant, since consumer habits with regard to energy consumption are only slightly altered in the short-term and especially since Western's treatment of the smaller customers' allocations would further minimize the individual impacts upon consumption. The principal purchasers of Collbran and Rio Grande Project power draw on a variety of other larger resources to meet their power needs. The impact of any rate change will be much reduced by the time the end-user receives the blended product. Moreover, the marginal prices paid by Western's customers for new power to meet load growth certainly promotes conservation rather than consumption. Finally, the recently announced Final Amended Guidelines and Acceptance Criteria for customers C&RE programs (50 FR 33892) that will be implemented through the conservation articles contained in Western's power sales contracts will serve to further discourage unwise consumption.

The Pose-1989 EA determined that the only potential environmental impact due to SLCA's Project Integration was in terms of changes in consumption. However, as noted above, after a detailed analysis, this potential impact was concluded to be insignificant.

Project integration is not a new concept for Western. Western has consolidated or integrated a number of its projects in the past for economy and efficiency reasons. These include the following consolidated or integrated projects that were accomplished either through an administrative or legislative process: Pick-Sloan Missouri Basin Program, Parker and Davis Dams, Central Valley Project, and Falcon and Amistad Projects. In addition, Western's Loveland Area Office is currently integrating the Pick-Sloan Missouri Basin Program-Western Division with the Fryingpan-Arkansas Project in its Post-1989 Criteria.

Western sees no legal obstacles to administratively integrating SLCA's projects. Under power marketing law, the Secretary has the authority to perform "any and all acts" for the purpose of putting his statutory responsibilities into full force and effect. See 42 U.S.C. 7152 and 7251. This includes the ability to integrate projects and to charge a uniform rate for the resulting power. Western also believes that operational integration, reflected in the combining of operational reliability requirements, comports with the congressional mandate to operate CRSP powerplants in conjunction with other Federal powerplants so as to produce the greatest practicable amount of marketable power. 43 U.S.C. 620f. Mandates of the CRSP Act that all revenues generated by CRSP be paid into the Basin Fund will be observed.

Legislated repayment obligations of projects will not be changed. In short, Western does not believe that any legislation exists that would prohibit project integration.

All revenues generated from the integrated projects will initially be placed into the Basin Fund. The Collbran and Rio Grande Projects revenue requirements, which are determined by their individual power repayment studies, will be treated as purchased power expenses to the CRSP. The SLCA Integrated Projects rate will be determined by an Integrated Projects power repayment study which will essentially be the CRSP power repayment study containing the purchased power costs for the Collbran and Rio Grande Projects.

As of September 30, 1985, Fiscal Year 1985 power repayment studies indicate that the Collbran composite rate should be increased from 19.30 mills per kilowatthour (kWh) to 22.70 mills, the Rio Grande composite rate should increase from 30.85 mills to 38.44 mills, and the CRSP composite rate increased from 9.92 mills to 10.35 mills per KWh. Using the CRSP PRS as the base study and treating the requirements of the smaller projects as expenses in the CRSP study, the resultant SLCA Integrated Projects rate would be 10.67 mills/kWh.

One commenter encouraged Western to implement the rate integration as soon as possible. In consideration of the possibility of early integration, the initial integrated projects rate might be implemented prior to the Post-1989 period, perhaps as early as the October 1987 billing period. Further information on this proposed rate, as well as the rate adjustment process and schedule, will appear in a future Federal Register notice. Concerned parties will be notified of this publication.

Due to presently unresolved problems, the Provo River Project has been excluded from those smaller projects to be integrated with CRSP. The Falcon-Amistad Projects will continue to be excluded from integration.

Western invited specific suggestions for the equitable distribution of the benefits from project integration. No proposals were received other than requests from the three customers of the smaller projects that they continue to receive the same power but at reduced rates.

Should contract commitments to existing customers of the smaller projects remain unchanged, only a few entities would benefit. This benefit is derived from the fact that the rate charged for SLCA Integrated Projects power would be considerably less than the rates for the separate projects from which these customers receive a share of their Federal power. To fairly distribute this benefit, Western proposes to reduce potential allocations to those customers of the smaller projects in order to share integration benefits and distribute them among all Northern Division customers. A financial analysis was performed which quantified the estimated monetary value due to project integration that the small project purchasers would experience without adjustment of existing commitments. This monetary benefit was translated into an equivalent amount of power, 50 percent of which was subtracted from existing commitments of the small project contractors. The remaining 50 percent was then included in the resource pool available to all other Northern Division customers. In this way, the small projects' customers and the other customers in the Northern Division share the benefits of project integration.

Project integration is estimated to benefit Northern Division customers by

$3.7 million annually. The difference between the proposed Integrated Projects rate and the proposed CRSP rate, multiplied by the energy purchased by all customers, gives the estimated cost of project integration: $1.6 million annually. Subtraction of this cost from the total benefit gives a net customer benefit due to project integration equal to $2.1 million annually.

With regard to the construction of additional transmission facilities for project integration, Western does not foresee any immediate need solely due to the integration initiative. Although Western does not have its own facilities to wheel the power generated at the Collbran and Rio Grande Projects, suitable arrangements will likely be made with the local utilities that have been receiving this power from Western since the inception of the projects. These facilities and arrangements appear to be adequate for integration given present circumstances.

c. Summary and Conclusion

Western concludes that the benefits of integration outweigh the costs due to integration of the resources from the Collbran and Rio Grande Projects with CRSP. Western will reduce potential allocations to existing purchasers of Collbran and Rio Grande resources so that a share of the benefits of integration of each small project is retained by the existing contractor(s) and to provide benefits for distribution among other Northern Division contractors. The integration of the Provo River Project has been deferred. Western will implement the SLCA Integrated Projects rate between October 1987 and October 1989. A separate rate adjustment process and schedule will be developed in a future Federal Register notice.

5. Contract Term

A 10-year contract term was retained in the 1984 Proposed Criteria, despite numerous requests from Customers for a longer term. The proposed 10-year term was supported on the basis of flexibility by one commenter, but most commenters provided numerous reasons why a contract term of 20 years or more is needed.

a. Comments

—Contractor resource decisions have already been made with the assumption that CRSP is available as a long-term resource.
—The 10-year contract period does not provide enough stability for planners to attract new industries and business to small towns and rural areas.
—The 10-year term is so short that the next allocation process must begin almost as soon as the new contracts are signed, which increases costs to both government and contractors.
—The 10-year term will provide an early opportunity for another attack on preference law.
—The congressionally-mandated terms for Hoover and Parker Davis power are 30 and 20 years respectively, demonstrating that the intent of policy makers is to commit long term.
—The 10-year term effectively eliminates needed time to develop effective resource and transmission coordination among the contractors and Western.
—A 10-year term will provide needed flexibility to assure that no constraint is placed upon the development of Upper Basin projects.
—A 10-year term of contract creates uncertainty as to the future availability of Federal power, considered a significant power resource by some customers. The resource is unpredictable and undependable when offered for 10 years.
—It is prudent for Western to market the hydro resources for an additional 25 years as this would make these resources available for the 50-year repayment period for these facilities.
—A longer contract term would provide greater security for repayment of existing and future resources, would be easier to administer, and would be more consistent with national environmental goals.
—A 10-year contract term does not coincide with generally accepted planning horizons in the utility industry.
—Western's concern regarding contractual commitments and current hydrology is not supportable.
—A longer contract term would limit attack on the "permanence" of Southern Division allocations.
—A 10-year term would discourage future investments, as the power allocation could not be used as security for a long-term loan associated with such an investment. The contract term should be 25 years.
—A 10-year term would perpetuate an already cumbersome bureaucratic process and increase uncertainty of preference users' power supply.
—Contract term should be longer than 10 years with the ability to adjust the commitment on the basis of hydrological conditions.
—Request a 5-year notice of reduction in commitments.

b. Discussion

A previous discussion by Western, presented in the September 1984 Federal Register notice, attempted to respond to similar comments requesting consideration of a longer contract term. The proposal was based on the need to preserve flexibility so that future Federal resources could be utilized where they are required in the event of changing legal or policy requirements. Western tentatively concluded that a 10-year contract term was the most prudent course of action.

Many comments noted the costly administrative burden associated with the reallocation process, possible recurring attacks on preference, and the financial uncertainty that would result should Western select a 10-year term.

Western acknowledges the significant administrative and financial burden that would result from selection of the 10-year term of contract. Recent comments stress the concern that such a contract term would require a continuous reallocation process that would preclude the development of desired resources or transmission coordination plans. Clearly, Western does not intend to place such a burden on the customers or Western's staff, and is interested in assuring sufficient time to develop mutually beneficial coordinated arrangements.

Western recognizes the strong desire of customers to maintain as much certainty as possible about future resources. Western continues to believe that (1) no absolute certainty exists about the availability of any resource, and (2) the economic benefits of Federal power should be sufficient incentive to dissuade construction of alternative resources.

Western believes that concerns about a shorter term of contract resulting in more frequent opportunities for change in preference law are not persuasive. Those entities desiring to change current preference provisions are free to lobby Congress to change the preference laws at any time. Lengthening contract terms will not likely decrease interest in changing preference laws as long as Federal hydroelectric power is available at an economically advantageous rate. More to the point, Western does not believe it appropriate to select a term of contract based on the objective of limiting congressional opportunity to reevaluate existing law and policy. Consequently, the selection of a contract term will be based on other factors.

Western recognizes the concern of municipalities with attracting new industry and business by maintaining a low-cost resource base. The economic dependence that many small communities and cooperatives have developed on Federal power is a condition to which Western is sensitive

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Whatever the contract length, however, Western cannot assure contractors that rates of power will remain the same or that Congress will retain the cost-based rate principle.

Western believes that the establishment of a term of contract should be based on more than an individual commenter's desire to use a power contract as security for an investment. As other customers apparently do not see the lack of a 25-year contract term as impacting on future investment, Western declines to adopt such a contract length in these criteria.

The only comment received in favor of a 10-year contract term qualified this support by indicating that this term would provide needed flexibility to assure that no constraint would be placed upon the development of participating projects in the Upper Colorado Basin. Western believes that a 15-year term will also provide this flexibility.

Although Western believes strongly in retaining flexibility in responding to changes in the marketable resources, including hydrological conditions, it would be inappropriate for Western to be unresponsive to the overwhelming dissatisfaction with the proposed 10-year term. Western is therefore offering a 15-year contract term. Consistent with commenters who suggested that the contract term be extended with provisions for adjustments, Western proposes that the resource commitments be subject to adjustment to reflect possible changes in the marketable resources. This adjustment would be possible no earlier than 1999 and all customers would be given a minimum of 3 years notice prior to any possible adjustments. Adjustments may involve increases or decreases in commitments subject to changes in the marketable resources. Western is cognizant of the desire of some to have a 5-year notice. As a practical matter, any substantial change in expected commitment levels will be provided as early as possible. However, on the basis of recent experience, it is not prudent to commit to a period longer than 3 years.

c. Summary and Conclusions

After consideration of the many comments provided, Western concludes that a 15-year term of contract is an appropriate compromise. This 15-year term will include a 10-year resource commitment with, after a 3-year notification, the possibility of an adjusted commitment for the remaining 5-year period, if necessary. Western feels that this approach will provide sufficient flexibility to deal with changes in marketable resources.

E. Special Allocation Issues

1. Bureau of Reclamation Priority Uses

The 1984 Proposed Criteria provided for the reservation of additional amounts of power and energy requested by the Bureau of Reclamation (Reclamation) for designated priority uses. Project Use has historically included power and energy needed for loads such as project pumping for gravity irrigation. Pumping is required to lift water from water conveyance features or reservoirs, and includes relift pumps as necessary. Other Priority Use would include similar uses associated with supplying water for municipal and industrial use, sprinkler (pressurized) irrigation, and other applications associated with water deliveries from participating projects.

Other Priority Use reservations requested by Reclamation from Western are shown below, together with amounts reserved by Reclamation for Project Uses:

	Winter season		Summer season	
	MW	MWh	MW	MWh
Project use	27.26	32,760	126.72	250,730
Other priority use	11.60	14,340	48.90	88,830
Total	38.86	47,100	175.62	339,560

a. Comments

Reclamation (Upper Colorado Region) slightly increased estimates shown above for Other Priority Uses.

b. Discussion

Western is committed to cooperation with Reclamation to ensure successful development and operation of participating projects, and promotion of full realization of the purposes of the CRSP Act.

Western continues to recognize the importance of Project Use and Other Priority Use reservations to Reclamation and to the development of water projects in the West. These uses are vital to the economic viability of participating projects, contribute to the efficient use of water, and, in some cases, provide power for salinity control features. Western also recognizes the importance of making a clear distinction between the two uses.

Purposes for which Other Priority Use capacity and energy will be available will be limited, to avoid competition with local power suppliers. For example, Western has denied power to the Navajo Indian Irrigation Project for powering the electric motors which drive center pivot sprinkler systems. Some power needs arise as the result of Reclamation projects which neither Reclamation nor Western have an obligation to supply. These needs must be met by local power suppliers.

Since publication of the 1984 Proposed Criteria, Reclamation has increased estimates for Other Priority Uses for the post-1989 contract period. However, Reclamation has agreed that a reservation of Other Priority Use power based on its previous request of August 1983, will be stisfactory. If additional needs arise for either Project Use or for Other Priority Use, Western will comply with its 1980 commitment to Reclamation to satisfy these capacity and energy requirements through purchases on a pass-through cost basis.

Western will market any excess reserved capacity and energy on a short-term basis until the estimated Other Priority Use loads have developed.

As Reclamation projects are completed, Western will contract with the appropriate entity for Other Priority Use capacity and energy sales for the term of the repayment contract or water services contract, whichever is applicable. Other applicable terms and conditions of these criteria will apply to such contracts.

c. Summary and Conclusion

Reclamation has reserved capacity and energy for traditional non-growth-related Project Use loads. Western will reserve additional firm capacity and energy, as Reclamation requested in August 1983, for Other Priority Uses. Capacity and energy will be available for Other Priority Uses under the terms of these criteria, except that the term of contract will be concurrent with the applicable repayment or water service contract.

2. Albuquerque Operations Office

In the 1984 Proposed Criteria, Western discussed the proposed special treatment for the Department of Energy's Albuquerque Operations Office (DOE/Albuquerque) due to unique historical circumstances. Western concluded that, given the shared responsibility for the lack of consummation of a 30 MW contract with Reclamation and the Public Service Company of New Mexico, the granting of a special allocation of 15 MW of power without energy in each season would be continued in the post-1989 period.

a. Comments

DOE/Albuquerque has restated their claim that treatment by Reclamation and Western was inequitable. DOE/Albuquerque requests that Western provide energy with the additional 15 MW of capacity proposed in the post-1989 period.

b. Discussion

No additional comments have been provided which would cause Western to change this proposed treatment. In addition to being eligible to receive an allocation as an existing customer from Resource Pools 3 and 4, and a special allocation, DOE/Albuquerque also fulfills the requirements of a "Participating Customer," that is, an existing customer presently receiving less than 25 percent of their total energy requirement from Federal sources. This determination will result in the potential further allocation to DOE/Albuquerque from Resource Pools 5 and 6, those seasonal resource pools reserved for Participating Customers. An additional change since the 1984 Proposed Criteria is that Pools 5 and 6 have been increased by 25 MW.

Another change that can benefit customers such as DOE/Albuquerque who are now peaking contractors is the modified allocation methodology for Northern Division existing customers. As discussed below, the new allocation method would give consideration to the amounts of peaking power that an existing customer presently receives in the determination of post-1989 allocations from Resource Pools 3 and 4. This method will result in a modest increase in the potential allocation to DOE/Albuquerque.

c. Summary and Conclusion

DOE/Albuquerque will be eligible to receive an allocation as an existing customer in accordance with the new allocation methodology, an allocation of 15 MW without energy in both seasons as a "special case," and an additional allocation as a Participating Customer. No additional special consideration is warranted.

3. Enterprise and Hurricane, Utah

In the September 1984 **Federal Register** notice, Western discussed in detail the significant events that occurred concerning the cities of Enterprise and Hurricane, Utah, in the initial allocation of CRSP power in 1963. In recognition of the responsibility that the United States shared in the misunderstanding, Western proposed tentative "special case" allocations. These special allocations were derived by taking 50 percent of each city's 1975 summer season and 1975–76 winter season peak loads. This basis was selected since the CRSP power that the cities failed to obtain in 1970 was based on each customer's estimated 1975–76 summer and winter peak loads.

a. Comments

Both Enterprise and Hurricane requested an allocation of 100 percent of their 1975–76 requirements, and failing that, requested priority in obtaining power available for reallocation.

b. Discussion

An Intermountain Cooperative Power Association (ICPA) official has advised Western that an agreement was made at the time Enterprise and Hurricane were prepared to receive Federal power, whereby ICPA members agreed to provide power at Federal rates to these cities until the next allocation was made. This was intended to carry out ICPA's share of the responsibility in this misunderstanding. It was understood by ICPA and the cities that the cities would be reinstated in the next allocation as if they had not lost their initial allocations.

Western does not believe the entire responsibility for the misunderstanding rests with the government. ICPA was granted diversity benefits from the United States that are used to provide Federal power to these cities. This does suggest that substantial responsibility for the misunderstanding was assumed by the government at the time these arrangements were being made. On the other hand, no written agreement assures the cities of a specified level of power in a future allocation.

c. Summary and Conclusion

Western proposes no change in the initial "special case" allocations to Enterprise and Hurricane, Utah, in the amounts indicated in the September 1984 **Federal Register** notice. However, Western will give first-right-of-refusal on any energy and associated capacity to be reallocated, up to an amount which would not exceed the remaining 50 percent of Enterprise and Hurricane's 1975–76 peak energy and capacity needs. Western will give each city "proportional" priority to the pool of capacity and energy available for reallocation should the amount available be less than the approximately 2 MW needed to reach the maximum potential allocations proposed.

F. Other Issues

1. Classes of Service

In the September 1984 **Federal Register** notice, Western proposed to offer long-term firm power with energy, short-term firm power with or without energy, and other services, such as interchange, emergency or maintenance service, transmission service, and nonfirm energy service. Discussion was presented supporting Western's proposal to offer a single class of long-term firm service, that is, to no longer offer peaking capacity.

a. Comments

—Serious consideration should be given to offering a certain amount of peaking power.
—Eliminating peaking power will result in increased fuel consumption.
—Unclear what is meant by the term "peaking power."

The request by one commenter that Western reserve a portion of the marketable firm capacity to be used as a peaking resource is similar to comments previously received on the subject. Considerable discussion was presented by Western in the September 1984 **Federal Register** notice (49 FR 34924–25) which supported the proposal of selecting long-term firm energy as the single class of long-term service to be offered in the post-1989 period. That discussion will not be repeated here. Applicants will be permitted to choose the amounts of long-term seasonal firm capacity they prefer with their share of firm energy within limitations. Western had intended this arrangement to allow customers the flexibility to request the specific amounts of capacity necessary to meet individual load requirements. Western continues to believe this approach would meet the needs of most customers.

To clarify one concern expressed over the use of the term "peaking power," peaking power represents an existing class of service offered by the SLCAO which is firm capacity without associated energy, used by existing customers to meet that portion of load which is above base load. This product was offered in 1978 as a result of construction of additional CRSP facilities. The added capability of these new facilities were then offered to existing customers as a long-term resource without increasing Western's energy obligation. This, in essence, reduced the load factor at which the total firm power and energy was available to those customers accepting additional capacity. Just because additional capacity will be marketed in the post-1989 period, the conclusion that increased fuel consumption will result does not necessarily follow.

c. Summary and Conclusion

Western concludes that the proposed classes of service presented in the criteria meet the needs of most customers and will not increase fuel

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consumption. Consequently, the proposed classes of service are included in the criteria.

2. Derivation of Marketoble Resources

In the 1984 Proposed Criteria, Western proposed that capacity available from the SLCA Integrated Projects would be based on the maximum operating capacity of the powerplants of the Collbran, Rio Grande and Provo River Projects and on the capacity of the CRSP powerplants based on 90 percent probability from 1989 to 1999. Energy would be based on average conditions projected for this same time period. An option to purchase up to 400 GWh of additional energy at the customer's request was also included. Western proposed to purchase certain firming capacity and energy on a pass-through cost basis. Only reserves and requirements for Reclamation's priority use loads were deducted from capacity available at plant to arrive at marketable capacity, since losses were assumed to equal diversity. Average energy generating at plant was reduced by losses and requirements for Reclamation's priority use loads. Reserves equal to 174 MW in both seasons to cover the largest single contingency were determined to be appropriate. Future resources as a result of possible future uprates or additions were addressed in footnotes to tables in Appendix A and B.

a. Comments

—Skewing of distribution, especially in lower quartile, may result in over estimation by Western of available generation and capacity. Question the statistical methodology used to determine the capacity and energy at given probability levels. Western's assumption that the data fits a normal distribution is incorrect.
—Selection of the 90 percent exceedance level for capacity is supported.
—Western should consider offering additional operating capacity based on a lower probability level and let preference customers decide whether they wish to accept the risk.
—Question why CRSP powerplants are treated differently than those of the Collbran, Rio Grande and Provo River Projects regarding the exceedance probability levels selected.
—According to application of average energy generation, Western would be explicity marketing non-Federal energy in most years.
—Energy figures for the Rio Grande Project differ from the November 1983 proposed power rate adjustment brochure.
—Support concept of maximizing the availability of both long-term and short-term power with energy, rather than selling nonfirm capacity to peaking power contractors.
—Western could economically purchase significantly more than the proposed 400 GWh annually and should increase purchase level up to 800 GWh, annually.
—Encourage increasing firming energy purchase up to 800 GWh or up to 1200 GWh to allow the post-1989 resource to more closely approximate the present CRSP resource.
—Western does not have the authority to sell power or energy on a long-term basis it knows will not be produced at Federal facilities. Purchases for firming are illegal.
—Western should reconsider its earlier position on the proposed reserve level of 174 MW and lower reserves to be consistent with current IPP reserve requirements.
—New resources from uprates should be offered to Northern Division customers only.

b. Discussion

The above comments have been grouped for discussion into the following numbered categories:

(1) Hydrology Studies;
(2) Level of Purchases;
(3) Reserves; and
(4) Future Uprates and Additions.

(1) *Hydrology Studies.* Detailed discussion was provided in the 1984 Proposed Criteria which indicated that the Bureau of Reclamation's Colorado River Simulation System (CRSS) computer simulation model was used to generate monthly estimates of capacity and energy for the 10-year period from 1990 to 1999 for CRSP alone. The data base used by the CRSS model included 78 years of historic records (1906–1983) used to simulate future conditions. The resultant estimates for future CRSP generation and capability were then analyzed to determine selected probability levels for capacity and energy for the post-1989 contract period. The results of this probability analysis are presented in two separate tables (Table A–1: Summary of Selected Probabilities, Capability and Table A–2: Summary of Selected Probabilities, Energy). The CRSP capacity values indicated for the 90 percent exceedance level and the CRSP energy values listed for seasonal mean energy were used in the Proposed Criteria for "Power At Plant—CRSP" and "Average Generation—CRSP", respectively. In addition, further discussion was presented in support of the selection of the 90 percent exceedance level for marketable firm capacity.

Strong support for the selection of a 90 percent exceedance level for capacity was presented in the September 1984 **Federal Register** notice. Since no new information has been provided, Western will not repeat that discussion, and will adopt its proposed selection.

In the 1984 Proposed Criteria, Western stated that the monthly CRSP energy and capacity estimates from the CRSS study were assumed to be normally distributed. One commenter questioned this assumption after consideration of the capacity and energy values presented in Tables A–1 and A–2. This statement by Western was said to be an incorrect explanation of the analysis of monthly energy and capacity estimates to determine the associated exceedance levels.

The distribution of monthly CRSP energy and capacity estimates do not have a normal distribution, that is, they do not fit a bell-shaped curve, and are negatively skewed. Negative skewing reflects the fact that in the critical load months of January and August, the number of estimated occurrences is greater for larger values of available capacity. However, the selection of the available CRSP capacity at the 90 percent exceedance level was based upon consideration of the calculated cumulative relative frequency of occurrence for all capacity values for all months. Therefore, the actual probability distribution was used as the basis for determination of available capacity. Simplifying assumptions as to the shape of the distribution curve were not used. Therefore, the 90 percent exceedance levels for CRSP capacity were properly selected. No correction is required.

Similarly for CRSP energy, the selection of the total seasonal mean energy value was based upon the arithmetic mean of energy estimates for all months in each season. By consideration of the actual distribution of CRSP energy estimates, it was clear that the selection of "average" seasonal energy more closely resembles an exceedance level of approximately 38 percent. This probability level translates into the expectation that roughly 6 years out of 10 or 60 percent of the time, Western would anticipate purchasing energy to meet CRSP firm energy commitments equal to the "average" seasonal energy. "Average seasonal energy" was not intended to be represented as synonymous with a 50 percent or median probability level.

For estimates of available capacity from the Collbran and Rio Grande Projects, which include the Upper and Lower Molina powerplants and the Elephant Butte powerplant respectively, the maximum operating capabilities were assumed to be a reasonable assumption for marketing purposes. This liberal estimate of available capability is a simplified assumption due to the lack of an acceptable simulation model for either facility and also due to the minor additional capacity and generation of these smaller projects with respect to that of CRSP. The Collbran Project's maximum plant capacity of 14 MW is less than 1 percent of that of CRSP (1691 MW). The Rio Grande Project's maximum plant capacity of 27 MW is less than 2 percent of that of CRSP. In the absence of computer simulation models for these projects and in consideration of their relative size in comparison to CRSP, estimates of average generation were based solely on historical generation.

The estimete of average seasonal generation for the Molina units is 58.50 GWh annually and is based on historic generation for the 20-year period from 1965 through 1984. The estimate of average seasonal generation for the Elephant Butte powerplant is 60.93 GWh annually and is based on the same 20-year period. These estimates for annual average generation differ from those presented in the 1984 Proposed Criteria. A 5.20 GWh increase in Collbran generation, a 0.23 GWh increase in Rio Grande, and deletion of Provo River generation of 18.90 GWh results in a decrease in total average generation at plant of 13.45 GWh. Deletion of Provo River capability of 5 MW represents a decrease in power at plant of less than 1 percent.

Estimated generation for CRSP, Collbran, or the Rio Grande Projects may differ from previous publications. This difference is attributed to the basis for determination of average energy generation estimates. For this marketing plan, it was believed that the most recent 20-year period, from 1965 through 1984, would provide a reasonable estimate of possible generation. Earlier estimates of generation will differ based on the historic period considered.

A special study has been prepared by Western documenting information used in the development of estimates for capability and generation for the individual projects of the SLCA Integrated Projects for the post-1989 period. This study, entitled Power Resources Study, December 1985, is available from Western upon request at the address provided above.

(2) *Level of Purchases.* Most commenters supported an increase from the proposed annual 400 GWh purchase in an average year up to a level of 800 GWh. One commenter suggested an average year purchase level as high as 1,200 GWh annually. The concept of pass-through of purchase costs was also strongly supported.

Results of the environmental assessment which considered alternative purchase levels, as well as differing purchase pass-through philosophies, conclude that the economic impact to typical representative customers in the Northern and Southern Division of the SLCA Integrated Projects market area due to changes in the annual energy purchase level, that is, 0 versus 400 versus 800 GWh, in an average year, would be inconsequential, either in the impact to estimated short-run or long-run retail rates or in retail consumption. Based upon the results of the Post-1989 EA, Western has determined that the 400 GWh level of purchase is reasonable. This level of commitment may require purchases of over 3,000 GWh in an adverse year, which will substantially utilize all of the SLCA Integrated Projects purchasing capability. In years when generation exceeds the long-term average, purchases will be less than 400 GWh.

In the 1984 Proposed Criteria, Western fully supported the legality of firming purchases. Power marketing administrations have inherent authority to purchase power and energy reasonably incidental to the integration of a hydroelectric project. The present proposal falls within that authority.

Western has determined that purchases required to provide energy commitments at a 58.2 percent load factor level would be approximately 1,450 GWh in an average water year. As the purchases in an adverse year at this commitment level would be beyond the capability of the system, Western concludes that such an energy commitment is not viable.

(3) *Reserves.* In the 1984 Proposed Criteria, Western proposed to increase the initial proposal of 145 MW of reserve capacity to 174 MW in both summer and winter seasons, based on the size of a single Gen Canyon generating unit. In addressing a suggestion that Western consider combining reserve requirements of the SLCAO and LAO, Western stated in the September 1984 **Federal Register** notice that such pooling would have little effect in reducing reserve requirements. However, recent studies, performed by Western in October 1984, addressed the possible impacts to Western should membership in the current Inland Power Pool (IPP) change. Based on the assumptions that (1) minimum power pooling participation would include three of Western's control areas, the Upper Colorado (WAUC), the Lower Colorado (WALC), and the Lower Missouri (WALM), and that (2) historical peak load data for critical months in 1983 and 1984 would be representative, estimates for operating and spinning reserve requirements for peak months were prepared. These estimates further assumed that current IPP methods for determination of operating and spinning reserve amounts would remain unchanged.

The studies demonstrate that the SLCA Integrated Projects need only provide approximately 114 MW of total operating reserve, or approximately 60 percent of the total system reserve requirement of 196 MW for the three Western control areas. This estimate is based on the sum of the largest single hazard (LSH) for the system (LSH=174 MW) and 1 percent of the total system load (LS) for the peak month (LS=2236 MW, 1 percent LS=22.36 MW) multiplied by the estimated Reserve Responsibility Ratio (RRR=0.58) for the WAUC.

This lower reserve level translates directly into an additional 60 MW of marketable firm capacity in both seasons. The total adjusted marketable firm capacity amounts would then be approximately 1,450 MW in the winter and 1,352 MW in the summer, or an approximate increase of 4 percent for each season. Lower reserve requirements would complement Western's objective in marketing the greatest practicable amount of firm capacity at firm power rates. This determination would be balanced against the need for adequate reserves and intermittent availability of capacity and nonfirm energy deliveries, as short-term operational needs dictate.

Western has decided that the most equitable and effective compromise for distribution among all customer groups of the additional resource resulting from lower reserve requirements would be to add approximately 25 MW with associated energy to the Participating Customer Pools, Resource Pools 5 and 6. The remainder, approximately 30 MW of capacity and associated energy, would be placed into a newly designated C&RE Incentive Program Pool. For details on this program, see Section D.2.b(4).

(4) *Future Uprates and Additions.* Although not specifically addressed in the Criteria, Reclamation has taken actions to pursue the uprating and rewinding of units at Flaming Gorge and Blue Mesa powerplants of CRSP. The uprates that have been tentatively scheduled by Reclamation, as of November 13, 1985, are as follows:

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	No. units of	Unit capability (MW)[1]					Completion date
		Exist	Total	Uprate	Total	Increase	
Blue Mesa	2	36	72	48	$96.00	24	Fed. 1988.
Flaming Gorge	3	44	*132*	50	*150.00*	18	Apr. 1989.
			204		246.00	42	

[1] Assumes maximum operating capability at unity (100 percent) power factor.

Questions that remain are: (1) How should such potential uprates and additions be treated in post-1989 marketing; and (2) who should receive the benefits of these additional resources should they be made available to SLCA Intergated Project customers.

The 1984 Proposed Criteria indicated that these uprates were in the preliminary planning stages, and at the time of publication, the completion dates were only tentative. In addtion, these uprates are not expected to increase the long-term marketable capacity at the 90 percent exceedance level. When hydrological conditions permit, this additional capacity will be offered for sale on a short-term basis after it goes into service.

One commenter has suggested that any new resources be offered to Northern Division customers only. Any additional long-term resources, such as from the proposed Diamond Fork development, will be offered under a separate public process. The terms and conditions of short-term offers can be developed most appropriately at the time those offers are made. Consequently, this comment does not have relevance to the development of these criteria.

c. Summary and Conclusion

Western has selected the 90 percent exceedance level for CRSP capacity, maximum operating capacity for Collbran and Rio Grande, and the selection of average seasonal energy generated for Collbran and Rio Grande Projects.

Western has selected energy commitment levels that exceed average seasonal energy generated by an annual total of 400 GWh for the CRSP.

Western has chosen a lower reserve level of 114 MW, as a result of a recent reserve study. This reduced level represents a 60 MW decrease in proposed reserves in both seasons from the 1984 Proposal Criteria.

The availability of additional capacity as a result of uprates are not expected to increase the long-term marketable capacity at the 90 percent exceedance level. Therefore, Western will offer any additional capacity for sale on a short-term basis subject to conditions that exist at that time.

3. General Allocation Issues

The September 1984 **Federal Register** notice presented an Appendix B which established proposed bases for allocations. Resource pools were defined for the summer and winter seasons for each of the customer groups identified, that is, Southern Division existing, Northern Division existing, and Northern Division participating customers. Also included were two additional appendices. Appendix C provided hypothetical allocations to Northern Division customer groups, Resource Pools 3 through 6. The basis for hypothetical allocations to Northern Division existing customers (Resource Pools 3 and 4) was their existing firm contract rates of delivery (CROD). Existing individual peaking commitments were not considered in the allocation process. Hypothetical allocations for Participating Customers (Resource Pools 5 and 6, potential new customers and certain existing customers) were based on historic loads and limited to the amount of energy associated with 3.5 MW of capacity. Appendix D provided five alternative methods for adjusting Southern Division existing customer commitments, to effectively distribute Resource Pools 1 and 2.

a. Comments

—Existing peaking allocations should be considered in the allocation methodology for existing customers.
—Request that Western grant larger allocations to customers serving a greater percentage of total load within an area.
—Recommend the selection of Southern Division Alternative 3 as a "pragmatic compromise."
—Support Southern Division Alternatives in the following order of priority: 2, 1, and 3. Alternatives 4 and 5 are not acceptable.
—Request that allocations be increased.
—Alternative 4 is preferred.
—Allocations to new customers are too small. Less than 1 MW allocation may be a problem for customer who must wheel power over a third-party transmission system.
—Western's proposal to allocate only a small fraction to new customers contradicts "widespread use."
—Western should offer first right of refusal of any unsubscribed resources to those contractors with peaking and who lost capacity in reallocation.
—Supports proportional reallocation to new customers that have received less than requested.
—Allocations to joint action agencies questioned.

b. Discussion

The above comments have been grouped for discussion into the following numbered categories:

(1) Northern Division Allocation Methodology.
(2) Southern Division Allocation Methodology.
(3) Limit on Energy Allocations.
(4) Reallocation Process.
(5) Other Allocation Issues.

(1) *Northern Division Allocation Methodology.* Hypothetical allocations for Northern Division existing customers, as shown in the September 1984 **Federal Register** notice, were calculated based on an entity's existing firm power commitment. Because the resource to be marketed in the post-1989 period is firm energy and associated capacity, Western felt that an equitable allocation methodology might be based on existing firm commitments only. As mentioned above, hypothetical allocations for Resource Pools 3 and 4 were presented in Appendix C of the 1984 Proposed Criteria.

Potential new customers submitted applicant profile data which included historic load data from 1980–82. These 3 years of historic load data were used to determine an entity's portion of the winter and summer capacity and associated energy pools reserved for Participating Customers. Participating Customers were defined in Appendix B to include potential new customers plus those existing customers who were entitled to receive less than 25 percent of their average energy requirements during 1980–82 from Federal resources that were committed on a long-term basis, and those who receive allocations based on special circumstances. An entity's potential allocation was limited to 10,066 MWh of annual firm energy or the energy equivalent to 3.5 MW of firm capacity.

Several Northern Division customers submitted comments on the proposed Northern Division allocation methodology presented in the September 1984 **Federal Register** notice. Most comments were supportive of the proposed methodology; however, some

commenters expressed concern that existing peaking allocations were not being considered in formulating an allocation methodology.

In response to public comment, Western has developed an allocation methodology for existing customers which would benefit those customers with existing peaking capacity commitments, but would not be inequitable to those customers without peaking. It was noted that the proposed allocation methodology greatly benefitted those customers without peaking capacity allocations at the expense of those contractors purchasing peaking capacity. Peaking contractors were unable to retain any benefits from their existing peaking allocations, and some customers with large peaking allocations felt unfairly treated.

The new allocation methodology developed for Northern Division existing customers is based partly on the ratio of a customer's existing firm capacity to total existing firm capacity commitments, and partly on the ratio of a customer's existing firm plus peaking capacity entitlements. First, the total resource energy pool is split into two components; a portion of the energy pool determined from the proportion of existing firm capacity to total firm and peaking capacity, and the remaining portion determined from the proportion of existing peaking capacity to total firm and peaking capacity. These components are then referred to as those portions of the total resource energy pool "associated with firm" and "associated with peaking," respectively.

The ratio of each customer's existing firm capacity to the total firm capacity for all Northern Division existing customers is applied to the resource pool component "associated with firm." Next, the ratio of each customer's existing firm and peaking capacity to the total firm and peaking for the entire Northern Division existing customer group is applied to the resource pool component "associated with peaking." Each customer's firm component and peaking component are then added to derive a total individual energy allocation.

The methodology described above can best be understood by consideration of the following equation:

$$\text{ALLOCATION, RESOURCE POOL (F+P)} = \left[\frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}}\right] \times \text{RES. POOL "FIRM" (t)} + \left[\frac{\text{CRSP, (F+P)(i)}}{\text{CRSP, (F+P)(t)}}\right] \times \text{RES. POOL "PEAK" (t)}$$

CRSP, F	=	REPRESENTS EXISTING INDIVIDUAL (i) OR TOTAL (t) FIRM CAPACITY ENTITLEMENT.
CRSP, (F + P)	=	REPRESENTS EXISTING INDIVIDUAL (i) OR TOTAL (t) FIRM + PEAKING CAPACITY ENTITLEMENT.
RESOURCE POOL, FIRM	=	REPRESENTS AMOUNT OF RESOURCE POOL "ASSOCIATED" WITH FIRM ENERGY.
RESOURCE POOL, "PEAK"	=	REPRESENTS AMOUNT OF RESOURCE POOL "ASSOCIATED" WITH PEAKING ENERGY.

The following is a hypothetical example of application of this new allocation method to two dissimilar customers; Customer 1 without a contract commitment of peaking capacity and Customer 2 with a peaking capacity commitment.

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1. EXISTING COMMITMENTS:

	EXISTING CROD (MW)		
	CUSTOMER 1	CUSTOMER 2	TOTAL COMMITMENT
PEAKING (MW)	0	5	200
LONG-TERM FIRM (MW)	10	10	800
TOTALS	10	15	1000

2. NEW RESOURCE POOL:

"ASSOCIATED FIRM" = 1600 GWh
"ASSOCIATED PEAK" = 400 GWh

2000 GWh (Assumed)

3. NEW METHOD:

CUSTOMER 1:

$$\left(\frac{10}{800} \times 1600\right) + \left(\frac{10}{1000} \times 400\right) = \text{ALLOCATION}$$

$$20 + 4 = 24\ \text{GWh}$$

CUSTOMER 2:

$$\left(\frac{10}{800} \times 1600\right) + \left(\frac{15}{1000} \times 400\right) = \text{ALLOCATION}$$

$$20 + 6 = 26\ \text{GWh}$$

Using the September 1984 method, the allocations of Customers 1 and 2 would have been the same. Using the new allocation method, Customer 2 would receive a slightly larger allocation due to its existing peaking capacity allocation. Note that the energy resource pool has been split into two components and that these components are distributed based on a ratio of capacity, as previously described. The resultant allocation is then an energy allocation.

A number of commenters requested changes in allocation methods that would be beneficial to them. Western is making three improvements to the distribution of resources: (1) By enlarging the participating customer pools, potential new customers will receive somewhat larger allocations; (2) by introducing the peaking commitments to existing customers in the Northern Division, additional equity among customers is achieved; and (3) by reinstating the allocation limits on existing customers greater equity among customers is achieved. Other suggestions for changing allocation methods, such as allocating on the basis of the percentage of area loads served, were not adopted because they would result in a more extreme redistribution of resources than Western thought advisable.

Since no comments were received on the allocation method for distribution of the resources reserved for Participating Customers, the method proposed in 1984 proposed criteria has been adopted.

(2) *Southern Division Allocation Methodology.* The 1984 Proposed Criteria presented five alternative methods for adjustment of the Southern Division commitment to existing customers, including a method that considered existing peaking commitments. The results of hypothetical allocations were presented in Appendix D. The basis for adjustment for each method is summarized as follows:

Adjustment method	Basis for adjustment
1	CRSP firm, only.
2	CRSP firm, + peaking.
3	CRSP firm, + other Federal res.
4	Total Federal res. (energy).
5	CRSP firm, only (variation on method no. 1).

The majority of the written comments supported the selection of Alternative Method 3, which considered adjustment based on the ratio of CRSP firm and the ratio of Other Federal Resources received by existing Southern Division customers. Other Federal resources were defined as the Boulder Canyon Project (BCP) and the Parker-Davis Project, excluding BCP uprates. The majority of commenters qualified this selection of Alternative Method 3 by indicating that the alternative was a pragmatic compromise and that it would appear to favor the greatest majority of Southern Division customers. Boulder Canyon Project uprates were not included as part of the Federal resources due to their unique character. The Hoover Power Plant Act of 1984 provided for the uprating of the Hoover generation. All capacity resulting from the uprates was allocated by Congress. The uprating will be accomplished by non-Federal financing and allottees will be required to front the funds for the uprating. Because of the non-Federal financing, the resources were considered as distinguishable from projects financed purely by Federal funds. As such, any consideration of the uprated resource under these Criteria was considered to be inappropriate.

3. *Limit on Energy Allocations.* In the August 23, 1983, **Federal Register** notice, Western presented a limit on capacity allocations such that no applicant would receive an allocation so that its total post-1989 firm power entitlements from all Federal sources exceed its average peak demand for the 3-year period ending with 1982. In the September 1984 proposal, Western supported its initial intent of wishing to correct any previous excessive commitments of Federal power in relation to a customer's total load. Western concluded that this was ". . . not a significant problem. The proposed limitation would have affected very few organizations." It seemed apparent that those customers who had established load management or conservation programs during 1980 through 1982 might be penalized for having reduced peak demands and energy usage. This was clearly not the intent, and so Western eliminated the limitation.

Upon reexamining the discussions presented in the September 1984 proposal, Western realized that when the 1980 through 1982 peak demands for all customers were compared to results of the latest hypothetical allocation methodologies, a number of customers were discovered to have reached the limitation on capacity in one season. By implementing this limitation, approximately 38 MW would have been reclaimed and made available to other customers within the same customer category. Western then decided to reevaluate this limitation as a possible improvement to allocation methodologies with the objective of providing more equity among existing customers without basing allocations solely on existing loads.

Since Western is allocating energy and allowing the customer the flexibility of choosing the amount of capacity they prefer with their share of energy, subject to system capability and limitations imposed by the needs of others, allocation limitations should limit energy rather than capacity.

Western's intent is not to penalize those customers who have established effective conservation programs and who have therefore experienced a decrease in annual energy usage for this period.

Therefore, Western will make adjustments in allocations for those customers who can convincingly demonstrate that conservation was the reason for the reduction in their 1980–1982 energy use. Therefore, it is strongly recommended that all customers who may have experienced such a load reduction as a direct result of conservation activities should provide sufficient documentation along with formal application for power if they think they may be subject to the limit on energy allocations.

(4) *Reallocation Process.* The 1984 Proposed Criteria included a proposed provision which indicated that allocations reduced or rescinded during the allocation or contract negotiation process may be administratively reallocated. Two comments were received relevant to this proposal. The first comment suggested a first-right-of-refusal be given to peaking contractors. The second suggested that reduced or withdrawn allocations be proportionately reallocated to new customers who received less than requested.

The suggestion to provide a first-right-of-refusal to existing peaking customers would be more convincing had Western not revised the allocation methodology to Northern Division customers. As such, the new method gives additional consideration to existing peaking customers. Also, since applicants have some flexibility in the amount of capacity to be associated with their allocation of from energy, no further special treatment of peaking customers is warranted.

The comment suggesting new customers be offered these reduced or withdrawn amounts of energy and capacity has some appeal. After reconsidering the treatment of the cities of Enterprise and Hurricane, Utah, Western has provided both entities a limited first-right-of-refusal to available resources. For details, refer to Section E.3. Beyond that commitment, Western desires to maintain flexibility in any redistribution of reduced withdrawn allocations. These amounts are expected to be relatively small, and Western's Administrator may reallocate them without further public process.

(5) *Other Allocation Issues.* In the September 1984 **Federal Register** notice, members of a joint action agency were given hypothetical allocations based on their individual filing of applicant profile data. The joint action agency was not identified as a potential allottee, and expressed concern.

Distribution level utilities should decide whether to apply independently for power, or whether the joint action agency to which they belong should apply on their behalf. Whether the joint action agency is entitled to preference will obviously be a consideration. The entity receiving an allocation will be entitled to execute contracts with Western. Any desire by allottees to have Western reassign allocations to other organizations will be considered on a case-by-case basis. Western clearly prefers that those entities that will become the contractors also be the initial allottees hereunder. As a matter of general policy, Western expects the benefits of Federal power will be distributed proportionally by a wholesale entity to each of its preference members who are located within the market area of the resource being distributed.

The issue raised by one commenter relating to scheduling over third-party transmissions systems will be addressed during the contract negotiations period.

c. Summary and Conclusion

Western adopted a new Northern Division allocation methodology for existing customers to provide for consideration of those existing customers with peaking power contract commitments. The methodology for participating customers will remain unchanged.

Alternative Method 3, Adjustment of Southern Division based on the ratio of summer season CRSP and the ratio of Other Federal resources, was selected.

The additional 55 MW and associated energy made available by the lowering of reserves from the level discussed in the 1984 Proposed Criteria will be distributed between the Participating Customer Pool (25 MW with energy) and the newly designated C&RE Incentive Program Pool (approximately 30 MW with energy). The Participating Customer Pool will thus increase from 75 MW to 100 MW. The C&RE Incentive Program Pool will be created to promote development of effective conservation and renewable resources programs. It will also provide an opportunity to evaluate the use of C&RE programs as an eligibility criterion for obtaining allocations. Details of the C&RE Incentive Program will be developed through a future public participation process.

Western will limit seasonal allocations of SLCA energy such that, when combined with its total post-1989 Federal firm energy entitlements from other Federal sources, an applicant will not exceed its average seasonal energy usage for 1980–82. Adjustments will be allowed for those who convince Western that conservation was the cause for reduction in energy use for this period.

The first 2 MW of allocations reduced or withdrawn shall be reallocated by offering a limited first-right-of-refusal to this resource to the cities of Enterprise and Hurricane, Utah. Any remaining amounts of firm energy and associated capacity will be reallocated by Western's Administrator without further public process.

4. Contract Issues

The September 1984 **Federal Register** notice stated that Western would: (1) Pass through the costs of firming capacity and energy to the customers, if the customer desired such purchases be made; (2) refrain from discussing the details of the pass-through mechanism until the contract development process; (3) maintain the 35 percent minimum schedule requirement with provisions for modification as appropriate; (4) add Elephant Butte Powerplant as an additional Federal Point of Delivery; (5) delete Casper, Glenrock, Thermopolis, and Yellowtail FPODs; (6) allow trading of capacity only between customers within the same division during the allocation process; and (7) would require a monthly notice to consumers providing information on the components and costs of power.

a. Comments

—Support passing through costs of 400 GWh of purchased energy on an annual basis.
—All costs associated with purchased energy, including interest, should be passed on to the customers.
—Support the passing through of purchased energy costs using an energy balancing account.
—Western should not change minimum scheduled rates of delivery without discussion with the contractors or without proper notice.
—Support the current 35 percent minimum schedule requirement.

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—Support maintenance of the Elephant Butte Powerplant at the 6.9 kV voltage.
—Oppose elimination of the Thermopolis, Casper, Glenrock, and Yellowtail FPODs.
—Exchange of capacity should occur on a seasonal basis.
—The requirement for the trading partner to be in the same division should be eliminated.
—Clarify the method by which Western expects its customers to "break-out" Federal power costs from non-Federal costs.
—The proposed Resale article would be unduly burdensome if reports on the costs of power were required to be detailed to retail customers on a monthly basis.
—Unclear what was meant by allottee purchasing agent.

b. Discussion

The above comments have been groups for discussion into the following numbered categories: (1) Pass Through of Purchase Costs; (2) Minimum Scheduled Rate of Delivery; (3) Delivery Conditions; (4) Annual Exchange of Capacity; (5) Resale Provisions; and (6) Other Contract Concerns.

(1) *Pass Through of Purchase Costs.* As summarized above, the 1984 Proposed Criteria stated that Western would pass on to its customers the expense of all purchases of capacity and energy. Western was interested in how this proposed pass-through approach would affect its customers and what kinds of financial obligations would be incurred. An analysis was included in the Post-1989 EA to avoid selecting an option that might result in financial demands on customers that could not be met. In the Post-1989 EA, Western identified "typical representative customers" which were used to gauge the impact of various pass-through approaches. Based on the approach employed in the EA, impacts to retail rates of these typical representative customers were estimated for each of the three pass-through methods considered. These three methods considered (1) all purchased capacity and energy directly passed on to the customer (Total Pass-Through), (2) limits to possible purchases of both capacity and energy passed on (Modified Pass-Through), and (3) a no pass-through approach in which all purchase expenses were blended into the project rates, whereby all customers would share in repayment of purchase costs (No Pass-Through).

These analyses showed that the impact on the estimated retail rate to the ultimate consumer under either pass-through methodology were insignificantly different from the method in which no costs were directly passed on, except in dry years. The estimated retail rate in dry years under the total pass-through methodology differed from the total blended methodology by as much as 18 percent. An increase in power costs of this magnitude during dry years could result in unexpected financial obligations that could not be met by some contractors.

Comments opposing blended rates were concerned that purchase costs could adversely affect revenues available for further project development or that the blended rates would remove price incentives for conservation by disguising costs of purchases. All purchase costs have been blended into the CRSP rate for the first 25 years of operation. This has not been detrimental in developing rates that provide all required revenues for project development. Since customer price incentives for conservation arise primarily from the cost of non-Federal power and the availability of low-cost Federal power is limited, this argument was not considered persuasive enough to prevail.

In general, the Modified Pass-Through approach resulted in estimated retail rates that were less than half the difference between the No Pass-Through approach and the Total Pass-Through method. Hence, this Modified Pass-Through method is more economically viable than the Total Pass-Through approach that was supported by several commenters. Moreover, it is preferred to the No Pass-Through method for two reasons: (1) Since the decision to purchase is an option to the customer, it seems appropriate that those who prefer an improved load factor product should do so at their own expense; and (2) Passing through costs of firming capacity purchases is appropriate since Western is marketing capacity on a 90 percent probability. Further, Western has limited the amount of firming capacity it will pass through to 109 MW in the summer season and 95 MW in the winter. There is a small risk (10 percent) that Western will have insufficient capacity. In addition, there is sufficient storage capacity so that reservoirs can be drawn down for several years before deficiencies in capacity will be realized, giving customers several years' warning. Western has also limited the amount of firming capacity purchase expense which will be passed through to customers. For these reasons, it is appropriate to pass these potentially substantial costs through to the contractors.

Western also considered what would happen under above-average hydrological conditions. When such conditions prevail, Western would purchase less energy and substitute more of its own generation so that customers could possibly purchase all or part of the 400 GWh at the SLCA Integrated Projects firm rate.

Due to the results of Western's analyses regarding the potential effects of various pass-through methodologies on its customers, Western has determined that a modified pass-through methodology would be the most appropriate. This method has a much less deleterious effect in dry years than a total pass-through method, while maintaining the idea that the customer should pay for an improved product and that the customer should bear some of the risks involved regarding hydrologic conditions.

Since the September 1984 Federal Register notice proposed that costs associated with all purchases of capacity and energy to meet contract commitments be passed-through to customers, several commenters suggested that an energy balancing account be part of the mechanism for handling the pass-through of these costs. As described, this balancing account would act as a revenue pool created as a result of excess capacity and/or surplus energy sales in wet years, which could then be credited against the expense of firming purchases required in drier years. The account, as proposed, could further be adjusted seasonally or annually to reflect current conditions.

It is understandable that customers would be interested in such a device when all firming costs and purchased energy costs would be passed on. According to Western's analysis, total expenses to customers would increase by 24 percent in an adverse year on a total pass-through basis. An energy balancing account could mitigate potentially large increases in their power costs in dry years.

In Western's view, an energy balancing account, adjusted seasonally, would be difficult to administer. Western is interested in reducing unnecessary overhead and administrative expenses and increasing productivity. Furthermore, Western prefers to limit the amount of firm capacity and energy purchases that it will pass-through to customers. With limits on possible purchases of capacity and energy in any year as proposed, drastic swings in customer costs (and the retail rate to consumers) should not be experienced by customers in drier years. Hence, an energy balancing account would not be necessary.

(2) *Minimum Scheduled Rate of Delivery.* Western stated in the 1984 Proposed Criteria that it would retain the latitude to change the 35 percent minimum scheduled rate of delivery if required for operational purposes. However, Western recognizes the legitimate need of its customers to plan for the future in order to better serve their customers. Therefore, Western will not change the minimum scheduled rate of delivery without advance notice or prior discussion with affected customers.

(3) *Delivery Conditions.* In the September 1984 Federal Register notice, Western maintained all existing delivery points except for Casper, Glenrock and Thermopolis in Wyoming, and the Yellowtail FPOD in Montana. These delivery points were proposed to be withdrawn due to changed conditions regarding the availability of Pacific Power and Light Company (PP&L) wheeling of energy in Wyoming and Montana. In addition, Western proposed to establish a new delivery point at the Elephant Butte Powerplant at 6.9 kV. Lastly, Western expressed the intent of continuing to exercise the option to extend the term of existing wheeling arrangements for deliveries to equivalent FPODs in Utah so long as the option remained in transmission agreements.

Several commenters utilizing the Wyoming and Montana FPODs expressed strong support for maintaining these delivery points, and qualified their concern by estimating the possible additional wheeling expenses that would result should these points be deleted.

Wyoming constitutes part of the Northern Division of the CRSP marketing area and was recognized as such in the original marketing criteria. CRSP did not construct Federal transmission lines into north-central Wyoming because it had made satisfactory arrangements in about 1962 for wheeling CRSP power with PP&L. As such, Western concludes it has a continuing responsibility to maintain these delivery points in Wyoming and Montana.

Since an alternative transmission path for CRSP energy to these FPODs might be through facilities of the Pick-Sloan Missouri Basin Program transmission system, Western has reassessed its earlier proposal to delete the Wyoming and Montana delivery points. Subject to suitable arrangements, Western's Loveland Area Office will begin assessment of wheeling fees for SLCA Integrated Projects power to these FPODs in the post-1989 period. Western will incorporate those costs into CRSP operating expenses.

A comment from a recipient of capacity and energy from the Rio Grande Project expressed support for recognizing the Elephant Butte 6.9 kV FPOD, which is currently used.

Western has an agreement with UP&L to wheel CRSP power to customers in Utah. As was the case in the decision to enter into an agreement with PP&L to deliver energy to CRSP Wyoming customers, Western did not build Federal transmission facilities to serve many of its Utah customers because of a satisfactory agreement with an IOU. Western believes that extensions of existing wheeling arrangements, as long as acceptable terms are available, will be used to provide delivery in Utah at equivalent FPODs.

Western has added an FPOD at the Fontenelle switchyard at 69 kV. The Fontenelle Powerplant facility is not presently operational, but Reclamation has initiated needed repairs, and the FPOD will be established to recognize that power deliveries to certain customers may be made at that point when the powerplant is placed back in service.

(4) *Annual Exchange of Capacity.* The September 1984 Federal Register notice allowed a one-time exchange of capacity between customers from one season to another, provided that customers were in the same division. In respose to comments received, Western is willing to be still more flexible in supplying electrical service to its customers. Some exchanges of capacity may not be permitted because of the unavailability of transmission service from third parties or for operational reasons.

Therefore, Western will allow an annual exchange of seasonal capacity and energy among customers between divisions provided that, (1) such an exchange will not adversely affect Western's operations, and (2) exchanges in capacity would not significantly decrease system diversity. To accomplish such an exchange, requests must be made 120 days in advance of the beginning of the winter season and will be considered on a case-by-case basis.

(5) *Resale Provisions.* A proposed Resale of Electric Energy article was presented in the September 1984 Federal Register notice which suggested that one of the ways that the requirements of the article could be satisfied, that is, the requirement that end-use consumers be able to identify the costs of federally generated power, would be for the customer to provide a breakdown of the amounts and costs of Federal power, non-Federal power and other costs which constitute the composite costs charged to the retail consumer. This breakdown was proposed to be done in monthly bills rendered to the end-use consumers.

All comments received on this proposal were in opposition to the monthly notice. Many expressed concern that a monthly notice would be unduly burdensome, and supported either an annual or semiannual notice. Several suggestions as to the form of these notices were provided, including notices such as bill stuffers, annual reports and notices in newspapers of general circulation.

Several commenters suggested that the notice be provided periodically, but not less often than semiannually. One commenter suggested that inserts or explanations in monthly bills would receive little attention from retail consumers due to their overriding concern about their own bills.

Western agrees that a monthly notice may not effectively inform retail consumers as to the cost components of the power they receive. The intent of the reporting requirement remains unchanged. Western is persuaded that semiannual notification will be most effective.

Several comments indicated uncertainty on the part of potential customers for the form and content of such notices to customers. Western will refrain from detailing such information in this publication, but will be willing to discuss detailed requirements during negotiation of electric sales agreements with each entity.

(6) *Other Contract Concerns.* The 1984 Proposed Criteria contained a provision applicable to allottee purchasing agents. One commenter suggested that the intent of this provision was unclear. Therefore, Western has revised this provision to more clearly indicate that it is Western's intent to retain diversity benefits should two or more allottees request they be represented by a joint action agency and Western assigns individual allocations to this entity.

c. Summary and Conclusions

Western is adopting a modified pass-through of purchase costs. This approach limits the annual pass through of costs to those associated with the purchase of up to 400 GWh of energy, 95 MW of winter capacity, and 109 MW of summer capacity. This will eliminate some undesirable uncertainties on the part of the customer and Western. An energy balancing account will not be adopted since these limitations have

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been established. Western prefers to develop the specific implementation details of this modified pass-through of purchase cost approach during contract negotiations.

Western will retain the present 35 percent minimum schedule requirement with a provision for modification, as appropriate, should Western wish to waive the minimum requirement during peak periods when operating conditions permit. Western will provide advance notice and discuss with affected customers any contemplated change in minimum schedule requirements. Since Wyoming was identified as a market area for CRSP power in the original marketing criteria, and because reasonably priced transmission service can be obtained, Western will continue delivery of SLCA Integrated Projects resources in Wyoming at Casper, Glenrock and Thermopolis, and in Montana at Yellowtail. Western will continue to deliver power to customers in Utah under terms and conditions of its wheeling agreements with UP&L as long as those agreements are effective. Also, Western will modify the listing of designated or equivalent FPODs by adding a 6.9 kV delivery point at the Elephant Butte Powerplant in New Mexico. Western is also adding the Fontenelle FPOD in Wyoming at 69 kV.

Western desires to accommodate customers and thus assist individual customers adjusting the diversity between their summer and winter allocations to their best advantage. Therefore, Western will allow annual exchanges of capacity between customers without division restrictions, as long as Western or its agents are not adversely affected.

Western recognizes the need for retail consumers to make informed decisions regarding the growth and development of renewable resources. In addition, it is important to Western that the financial benefits of low-cost Federal hydro power be passed on to retail consumers of electricity. For these reasons, Western will revise the Resale of Electric Energy article in electric service contracts to provide for a semiannual notice requirement on the part of Western's customers. The acceptable method(s) to be used in providing such notice will be developed during negotiation of electric sales contracts.

The Allottee Purchasing Agent provision in the Criteria has been clarified to more clearly indicate Western's intent to retain diversity benefits should two or more allottees desire a joint action agency to enter into a contract with Western after individual allocations have been made.

G. Regulatory Procedure Requirements

1. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a final rule, is further required to prepare and make available for public comment a final regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance the marketing plan relates to electric services provided by Western.

Under 5 U.S.C. 601(2), rules and practices relating to services are not considered "rules" within the meaning of the Act. Therefore, Western believes that no flexibility analysis is required.

2. Notice of Final Environmental Assessment and FONSI

Comments have been received from the National Wildlife Federation (NWF) and the Environmental Defense Fund (EDF) relative to the level of the National Environmental Policy Act of 1969 (NEPA) compliance required for the preparation of marketing and allocation criteria, among other concerns. Additional comments from NWF/EDF support their strong belief that preparation of a marketing plan constitutes a "major Federal action" and therefore, an environmental impact statement (EIS) is mandatory. Based on this belief by NWF/EDF, Western was criticized for not having begun the formal scoping process required for NEPA compliance.

Considerable discussion has been provided in the text of the Post-1989 EA which evaluated the potential environmental and socioeconomic effects of the Criteria. The analysis concentrated on the estimated potential changes in retail rates and estimated changes in consumption at the consumer level. No physical impact component was identified, as the proposed action was determined not to affect the operation of the reservoir system, and thus would not affect streamflows. Incorporated by reference, these discussions concluded that the development of the marketing and allocation criteria do little more than distribute Western's marketable resource and, from a regional perspective, result in insignificant socioeconomic impact to the quality of the human environment. No EIS is required for power marketing criteria if there is no significant regional effect. Based on the findings and conclusions of the EA, DOE determined that these criteria will have no significant environmental impact. The Post-1989 EA (DOE/EA–0265) and Finding of No Significant Impact (FONSI) were approved on January 8, 1986, in accordance with the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, 40 CFR Parts 1500–1508.

Copies of the EA and FONSI may be obtained by contacting the SLCAO Area Manager whose address appears above.

3. Determination Under Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

The Post-1989 General Power Marketing and Allocation Criteria and Call for Applications for Power for the SLCA Integrated Projects are published herewith.

Issued at Golden, Colorado, January 23, 1986.

William H. Clagett,

Administrator.

Department of Energy, Western Area Power Administration; Post-1989 General Power Marketing and Allocation Criteria

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Part I. General

A. Applicability

These General Power Marketing and Allocation Criteria (Criteria) of the Western Area Power Administration's (Western) Salt Lake City Area Office (SLCAO) are established in accordance with the provisions of the Acts of Congress approved June 17, 1902 (ch. 1093, 32 Stat. 388), August 4, 1939 (43 U.S.C. 485h(c)) and August 4, 1977 (42 U.S.C. 7152, 7191). The SLCAO criteria are more specifically based upon the provisions of the Acts of Congress approved February 25, 1905 (33 Stat. 814), July 3, 1952 (66 Stat. 325), June 18, 1954 (68 Stat. 255), April 11, 1956 (43 U.S.C. 620, *et seq.*), July 7, 1960 (22 U.S.C. 277d–13, 14, 15, 16), December 23, 1963 (77 Stat. 475), and acts amending or supplementing all of the foregoing legislation.

These Criteria shall become effective upon approval and promulgation by Western's Administrator and will apply to all power marketed by Western's SLCAO from the SLCA Integrated Projects and to the resources from the SLCA Integrated Projects marketed by Western's Boulder City Area Office (BCAO) and Loveland Area Office (LAO). Existing contract arrangements will only be affected upon amendment by the parties. These Criteria shall supersede and replace the General Power Marketing Criteria for sale of power from the Colorado River Storage Project (CRSP) effective February 9, 1978, as revised effective February 6, 1984. These Criteria are subject to change upon reasonable notice by the Administrator and the opportunity for comment by interested parties.

B. Marketable Resources

1. *SLCA Integrated Projects.* The SLCA Integrated Projects are certain hydroelectric resources operated within the Salt Lake City Area by the Bureau of Reclamation, including the CRSP and Participating Projects, and the Collbran and Rio Grande Projects. Marketable firm resources as of October 1989 are listed below:

Marketable firm energy (GWh)	Winter	Summer
CRSP	2787.812	2657.647
Collbran	21.137	33.336
Rio Grande	12.218	44.587
Purchases	356.240	43.760
SLCA integrated projects	3177.407	2979.330

Marketable firm capacity (MW)	Winter	Summer
CRSP	1410.836	1313.076
Collbran	13.079	13.079
Rio Grande	25.223	25.223
SLCA integrated projects	1449.140	1351.380

2. *Falcon-Amistad and Provo River Projects.* a. The Falcon-Amistad Projects are those hydroelectric resources operated within the SLCA by the International Boundary and Water Commission. These marketable resources have been committed under the terms and conditions of Contract No. 7–07–50–P0890 dated August 9, 1977, with South Texas and Medina Electric Cooperatives until June 8, 2033. Said contract, or any revision thereto, embodies the marketing criteria for these projects.

b. The Provo River Project hydroelectric resource operated within the SLCA by the Bureau of Reclamation may become part of the SLCA Integrated Projects upon the development of appropriate arrangements among affected parties. Any future integration of the Provo River Project may be administratively accomplished without additional public participation.

3. *Future Resources.* New or revised marketing criteria will be developed as necessary when future power resources are available and offered for sale.

Part II. Marketing Criteria For SLCA Integrated Projects

A. Market Area

The market area within which the power from the SLCA Integrated Projects will be marketed is divided into Northern and Southern Divisions.

Northern Division

1. The Northern Division consists of the States of Colorado; New Mexico; Utah; Wyoming; the city of Page, Arizona; a portion of the area in Arizona served by the Navajo Tribal Utility Authority; the areas in Arizona served by the Littlefield Electric Cooperative, the Navopache Electric Cooperative, and the Continental Divide Electric Cooperative; and White Pine County and portions of Elko and Eureka Counties in Nevada.

Southern Division

2. The Southern Division consists of the remaining portion of the State of Arizona, and that part of the State of Nevada in Clark, Lincoln, and Nye Counties which comprises the southern portion of the State.

New customers must have loads located within the portion of the market area that is also within the SLCA of the Northern Division, which includes the States of New Mexico and Utah; that portion of Colorado west of the Continental Divide, the southwest area of Wyoming within the Colorado River Basin; White Pine County and portions of Elko and Eureka Counties in Nevada served by Mt. Wheeler Power; and areas in Arizona served by the Littlefield Electric Cooperative, the Navopache Electric Cooperative, and the Continental Divide Electric Cooperative.

B. Service Seasons

1. *Summer Season.* The 6-month period from the first day of the April billing period of any calendar year through the last day of the September billing period of the same calendar year.

2. *Winter Season.* The 6-month period from the first day of the October billing period of any calendar year through the last day of the March billing period of the next succeeding calendar year.

C. Classes of Service

Classes of service available for marketing shall be as follows:

1. *Long-Term Firm Energy With Capacity.* Long-term firm energy and associated capacity available therewith through September 1999, shall be as stated in Appendix A.

2. *Short-Term Firm Energy and/or Capacity.* To the extent that priority uses, as estimated in Appendix A, have not developed and/or annual streamflow conditions and reservoir operations result in the production of greater amounts of power than what is committed on a long-term basis, short-term firm energy or capacity may be offered for sale on a monthly or seasonal basis. Such offers will be for firm energy with or without capacity, capacity with the return of energy or capacity without energy. These resources may be used in a resource coordinatin program.

3. *Other Services.* In addition to marketing the above classes of service, Western will engage in other transactions such as delivering or receiving interchange, emergency assistance, maintenance services and/or regulation services to the extent that water and power resources permit and the contracts contain enabling

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provisions. In order to conserve fossil fuels, enhance the environment, and/or ensure the availability to preference customers of contracted amounts of capacity and energy, Western will purchase or exchange capacity and/or energy as necessary or desirable to supplement its resources. Nonfirm energy service may be available as a result of purchases, exchanges, or favorable water conditions. To the extent that transmission capacity is determined to be available, Western will provide firm and nonfirm transmission service.

D. Derivation of Marketable Resources

Energy available for load will exceed average generation based on hydrological conditions projected for the 10-year period ending September 1999 by about 400 GWh annually. Capacity available from SLCA resources will be based on the maximum operating capacity of the powerplants of the Collbran and Rio Grande Projects along with the capacity from the CRSP powerplants based on 90 percent availability during the period from 1989 to 1999. Energy and capacity will be reserved for certain Bureau of Reclamation priority uses. All resources will be marketed in accordance with applicable Federal laws and policies. The derivation of the marketable resources of the SLCA Integrated Projects and the availability of these resources by seasons is contained in Appendix A.

E. Allocation Priorities

Available resources will be allocated in accordance with the allocation criteria stated in this document (Appendix B) and the preference provisions of Federal law in the following order of priority:

1. Preference entities within the SLCA Integrated Projects market area.
2. Preference entities ontside the SLCA Integrated Projects market area.
3. Nonpreference entities acting as agents for public entities without distribution systems.
4. Nonpreference entities acting on their own behalf.

These priorities may be recognized within pricing blocks for nonfirm energy.

Part III. Contract Arrangements

Those entities receiving an allocation and taking any other required steps will be offered a contract for the allocated resources based on the criteria stated in this document after reasonable opportunity to discuss proposed contract language has been provided to allottees. Allottees will have six (6) months to accept the offered contract or until September 30, 1987, whichever is later.

A. General Contract Terms

1. *Term of Contract.* Existing contracts will be allowed to expire by their own terms. Contracts offered for the sale of newly allocated long-term firm energy with capacity will become effective on the first day of the October 1989 billing period (or upon expiration of an existing contract if later) as to the delivery of energy and capacity and will terminate on the last day of the September 2004 billing period. However, at the end of the summer 1999 billing period, the amounts of committed energy and capacity for the remainder of the contract period will be subject to revision based upon the marketable resources upon 3 years' advance notice.

2. *Power Receipt and Distribution.* Contractors must have the means to receive and distribute power by September 30, 1988, in order to avoid automatic forfeiture of their contract rights unless Western specifically agrees otherwise in writing.

3. *Conservation and Renewable Energy Program.* Contractors will implement the terms of the Conservation and Renewable Energy (C&RE) article, or any that may supersede it, within 1 year of the date of contract execution. The development of a C&RE program is a responsibility of each Western long-term firm power contractor and its member systems, if any, benefiting from the purchase of federally generated long-term firm power.

An "Announcement of Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs" was published in the Federal Register (50 FR 33892) on August 21, 1985. In order to achieve the purposes listed therein, Western will guide and assist its firm power contractors in their C&RE program development, as requested and to the extent possible. Failure to develop a C&RE program that meets the Western Acceptance Criteria may subject a contractor to the potential loss of 10 percent of its firm power (capacity and energy) allocation. Western has also created a C&RE pool of energy with capacity that may be awarded to contractors with outstanding C&RE programs.

4. *Allottee Purchasing Agents.* Western may contract with a single purchasing agent for two or more allottees under this Criteria upon request of the allottees. Western, however, will not be willing to eliminate load diversity that permits it to meet its operating obligations.

5. *Load Diversity Adjustment.* Contract provisions will permit Western to adjust contract rates of delivery downward on a proportional basis in the event load diversity does not cover transmission system losses or other operating requirements.

6. *Resale Provisions.* Existing contractors will implement the terms of the Resale of Electric Energy article upon contract execution. New contractors will implement them upon receipt of Federal power. Failure to comply with these provisions may result in the loss of all or a part of the resources committed to the contractor. The Resale of Electric Energy article will contain, among other things, a requirement that the contractor demonstrate that:

a. The benefits of Federal power are distributed to the contractor's customers at the lowest possible rates consistent with sound business principles; and

b. Consumers can identify the costs of federally generated power and non-Federal power.

When the contractor consists of members or principals who are retail distributors of Federal power, these retail distributors will be directly accountable to Western for complying with the above requirements, in addition to the contractor. One of the ways these requirements may be satisfied by the contractor and its members or principals is to provide cost information semiannually to their customers, including a breakdown of the amounts and costs of Federal power and non-Federal power and of the magnitude and type of other costs which constitute the composite costs charged to the customer.

7. *Annual Exchange of Energy and Capacity.* To assist individual contractors to best utilize available resources, Western is willing to consider the annual exchange of energy and capacity from one season for the other season by matching those individual customers who desire to exchange with other customers 120 days prior to the beginning of each winter season, as long as such exchanges of energy and capacity do not adversely affect Western's operations.

B. Long-Term Firm Energy With Capacity Obligations

1. Monthly long-term firm energy and capacity delivery obligations for each season will be set forth in each contractor's power sales contract. These amounts will be determined in accordance with the estimated monthly pattern of the contractor's load requirements. Western's firm power

obligation for any given hour will be limited to the actual power scheduled during that hour; i.e., contractors will not be entitled to claim unscheduled firm capacity as their operating reserve capacity.

2. The monthly energy obligations may be increased from time-to-time at Western's discretion, should short-term conditions allow. If the established limit is increased for any month, it will be subsequently decreased to the normal monthly energy delivery obligations set forth in the power sales contract, unless Western agrees otherwise in writing.

C. Scheduling, Accounting and Billing

Western and its contractors will establish mutually agreeable scheduling and accounting procedures, based upon accepted utility industry practices, which will provide efficient and practicable utilization of energy and capacity. These procedures will be set forth in Western contracts or in separate written agreements made a part thereof. To the extent that firm energy or capacity is not available from the resources of the SLCA Integrated Projects for any season, up to the amount of Western's contractual obligation to provide energy or capacity, Western will purchase firming energy and/or capacity, unless a contractor advises Western not to purchase such energy and/or capacity on its behalf. Costs associated with the annual purchases of up to 400 GWh of energy and 109 MW of winter capacity or 95 MW of summer capacity will be on a pass-through-cost basis under the conditions specified in item 2.c. below. The costs of all other firming purchases will be recovered in the applicable firm power rates.

1. *Scheduling.* a. The maximum scheduled rate of delivery for long-term firm power (energy and capacity) in each billing period will be the monthly power obligations based on the contractor's seasonal load pattern of the contractor's loads being served with resources from the SLCA Integrated Projects.

b. The minimum scheduled rate of delivery for long-term firm power in each billing period will be 35 percent of the customer's maximum seasonal firm power rate of delivery during all hours of the month. This minimum schedule will normally be required to meet downstream water release requirements, to purchase firming energy, and to make purchases for a fuel replacement or other resource coordination program at a level that will allow utilization of operating reserves. The required minimum scheduled rates of delivery may be changed by Western as necessary for the above purposes upon reasonable notice of its needs to do so and an opportunity to comment by contractors.

c. If operating conditions warrant and Western so requests, each customer will schedule its resources from the SLCS Integrated Project to approximate normal hourly and daily load patterns to avoid abrupt changes in water releases and generation levels or other undesirable results. Upon request by the contractor, the requirement for a minimum schedule during onpeak periods may be waived by Western if operating conditions permit.

2. *Accounting and Billing.* a. The amounts of energy and/or capacity to be paid for by the contractor will be determined in accordance with accounting procedures set forth in the contracts, or in separate written agreements made a part thereof and need not be the monthly power and energy obligations. Said accounting procedures will include determining the amounts of energy and capacity delivered to the contractor at each point of delivery or point of use and shall establish the amounts of Federal power delivered over Western's transmission system to each contractor at each point of delivery.

b. These procedures will also provide for billing at multiple points of delivery. If the contractor's distribution system is operated so as to permit power to flow between points of delivery, accounting and billing will be on a coincidental basis. Otherwise, accounting and billing at multiple points of delivery will be on a noncoincidental basis, either by utilizing noncoincidental scheduling or metering information, or by reducing the contractor's entitlement to coincidental deliveries by the estimated diversity among the delivery points.

c. The cost of firming energy and capacity purchased in order to meet the contractual obligation to deliver the SLCA Integrated Project's energy and capacity to contractors in each fiscal year shall be the average cost of such energy and capacity purchased in the SLCA during the fiscal year. These costs shall be accrued during the fiscal year in which they are incurred. Purchase costs associated with annual energy purchases up to 400 GWh (the amount that commitments exceed average energy) and with capacity purchases up to 109 MW in the winter season and 95 MW in the summer season when the need for purchased capacity is due to hydrological conditions (the amount that commitments exceed adverse year capacity up to the 90 percent probability level) will be a cost obligation of those contractors who desire that the purchases be made on their behalf. To the extent the purchase cost obligations of the contractors were not anticipated and collected during the same fiscal year with a direct billing, they will be billed to the contractors during the following fiscal year or portion thereof, as Western deems appropriate, along with the regular monthly power bill. If the necessary revolving funds, authorizations, or appropriations are not available to Western, then trust funds will be established prior to Western's expenditures for purchasing the firming energy and capacity that is a cost obligation of the contractors.

D. Delivery Conditions

1. *Location and Voltage.* Subject to Western's approval as to specific location and voltage, normal delivery will be made at Western's transmission system voltages or at the contractor's transmission voltage at established delivery locations.

Deliveries may continue to be made at subtransmission voltages at powerplant and substation locations where contractors already are receiving deliveries at such lower voltage levels.

Designated or Equivalent Federal points of delivery will be at:

a. Points on the SLCA Integrated Projects' transmission system; or

b. Points on other Western transmission systems or the systems of non-Federal entities which have been established as delivery points under arrangements between Western and other entities.

If such arrangements are terminated, then the delivery points under 1.b. above will be rescinded. These points are listed below and may be modified as provided herein.

DESIGNATED OR EQUIVALENT FEDERAL POINTS OF DELIVERY, TAP POINTS, AND VOLTAGES

	Kilovolt
Arizona	
Glen Canyon	69.
Kayenta	230.
Long House Valley	230.
Mesa [1] [2]	230.
Pinnacle Peak [1]	230.
Colorado	
Ault	230.
Beaver Creek [2]	115.
Collbran Switchyard	115.
North Main Tap (Gunnison)	115.
Gore Pass Tap	138.
Green Mountain	115.
Gunnison	115.
Hayden	138.
Lost Canyon	115, 230 or [345].[3]
Midway	115. 230.
Montrose	115.
Pueblo [2]	115.
Rangely	138.
Salida (Poncha Junction)	115.
Skito Tap	115.

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DESIGNATED OR EQUIVALENT FEDERAL POINTS OF DELIVERY, TAP POINTS, AND VOLTAGES—Continued

	Kilovolt
Story [2]	230.
Weld	115, 230.
New Mexico	
Albuquerque [2]	115.
Ambrosia Lake [2]	115.
Elephant Butte	6.9, 115.
Four Corners	230 or [345].[3]
Shiprock	115, 230, [345]. [4]
Utah	
Brigham City Tap [2]	138.
Bountiful Tap [2]	138.
Centerfield [2]	138.
Fillmore [2]	138.
Flaming Gorge	69, 24.9.
Hale Plant Tap [2]	138.
Hyrum [2]	138.
Murray Tap [2]	138.
New Castle Tap [2]	138.
Paragonah [2]	138.
Sigurd [2]	138.
Smithfield Tap [2]	138.
South Provo Tap [2]	138.
Springville [2]	138.
St. George [2]	138.
Vernal	138.
Upalco Tap [2]	138.
Henrieville Tap [2]	230.
Wyoming	
Archer	115, 230.
Casper [2]	115.
Glenrock [2]	230, 115.
Thermopolis [2]	115.
Fontenelle	69.
Montana	
Yellowtail [2]	230.

[1] Deliveries to Southern Division Nevada customers are made from Mesa or Pinnacle Peak.
[2] Points of delivery on another Federal system or the system of a non-Federal entity.
[3] Scheduled for uprating from 230 kV to 345 kV.
[4] A 345-kV yard is under construction.

2. Modification to Facilities. Modifications to existing facilities and alternate or additional delivery points (beyond points provided by Western for the delivery of Western's firm commitments) requested by the customers may be permitted at the discretion of Western; costs for such modifications will be assigned to the appropriate parties. Western has no obligation to furnish additional facilities or to increase the transmission or transformer capabilities of its power system. Delivery will not be made from transformer capacity required for project purposes. Requests for taps on Western's transmission system will be considered on a case-by-case basis, with the final determination made by Western.

E. Delivery of Power Beyond Delivery Points

1. All costs, including losses, for delivery of power (energy and capacity) beyond the established delivery locations shall be the responsibility of the contractor.

2. The following alternatives are available to contractors for accomplishing delivery of power beyond the established delivery locations:

a. The contractor(s) may build all facilities to accept delivery at the established voltage at identified delivery locations, in which case the contractor(s) will pay the applicable rates for such power. The basic design of such facilities is subject to Western's approval.

b. Arrangements may be made with a third party to wheel and deliver power to a contractor's point of use. Such arrangements will normally be made by the contractor(s), with Western's assistance if desired. When the contractor(s) makes its own wheeling arrangements, the contractor(s) will be billed by the wheeling agent(s) and will pay the wheeling charges directly to the wheeling agent(s). If Western contracts for the wheeling arrangements on behalf of the contractor(s), Western will pass the costs through to the contractor(s).

c. Western may construct the transmission line facilities required beyond the identified established delivery locations, if the cost of the facilities constructed by Western beyond such locations are paid by the beneficiaries thereof.

Appendix A—Derivation of Marketable Resources

SLCA Integroted Projects

Energy—GWH	Winter	Summer
Average Generation of Plant:		
—CRSP [1]	3058.000	3424.000
—Colbran	22.800	35.700
—Rio Grande	13.180	47.750
Total average generation	3093.980	3507.450
Purchase [2]	356.240	43.760
Total	3450.220	3551.210
Less:		
Losses (7% at load) [3]	225.713	232.320
Priority Use [4]	47.100	339.560
Marketable firm energy	3177.407	2979.330

[1] Based on BuRec CRSS model studies simulating future conditions, July 1984.
[2] Purchases were scheduled to provide the same load factor (50.197 percent) for the marketable firm capacity and energy in each season. However, since the Southern Division resource is comprised of CRSP only, whereas the Northern Division resource includes energy from the Colbran, and Rio Grande Projects, the load factor varies slightly between the two divisions.
[3] Equivalent to 6.542 percent losses applied to amounts generated.
[4] Based on BuRec estimates of priority use requirements, August 25, 1983.

Derivation of Marketable Resources

SLCA Integrated Projects

Capacity—MW	Winter	Summer
Capacity at Plant:		
—CRSP [1]	1691.000	1691.000
—Colbran	14.000	14.000
—Rio Grande	27.000	27.000
Total	1732.000	1732.000
Less:		
Unavailable capacity [2]	130.000	91.000
Reserves [3]	114.000	114.000
Priority Use [4]	38.860	175.620
Marketable firm capacity	1449.140	1351.380

[1] Based on the Bureau of Reclamation's (BuRec) CRSS model studies simulating future conditions, July 1984, includes estimated generator uprates at Glen Canyon scheduled for completion in 1987.
[2] Based on 90 percent probability for CRSP and limiting releases at Glen Canyon to 31,500 cubic feet per second.
[3] Based on estimates of reserves assuming only Western membership in Inland Power Pool.
[4] Based on BuRec estimates of priority use requirements, August 25, 1983.

Appendix B—Allocation Criteria for the SLCA Integrated Projects

1. Bases for Allocations. The total amounts of long-term energy and capacity available for allocation to the Northern and Southern Divisions of the SLCA Integrated Projects market area are tabulated below and compared to existing commitments:

	Winter			Summer		
	Available for allocation	Existing commitment	Change	Available for allocation	Existing commitment	Change
Marketable Firm Energy (GWH)	3177.407	2659.900	517.507	2979.330	3041.800	−62.470
Southern Division:						
Existing Customers	264.642	214.200	50.642	463.854	612.000	−148.146
Northern Division:						
Existing Customers	2628.705	2445.700	183.005	2227.720	2429.800	−202.080
Participating Customers	218.967	0.000	218.967	220.389	0.000	220.389
Subtotal	2847.672	2445.700	401.972	2448.109	2429.800	18.309
C&RE Incentive Program	64.893	0.000	64.893	67.366	0.000	67.366
Detail—Northern Division: [1]						
CRSP	2811.009	2428.200	382.809	2371.260	2336.300	34.960
Colbran	23.233	17.500	5.733	32.876	32.300	0.576
Rio Grande	13.430	0.000	13.430	43.973	61.200	17.227
Subtotal	2847.672	2445.700	401.972	2448.109	2429.800	18.309
Marketable Firm Capacity (MW)	1449.140	1293.204	155.936	1351.380	1275.613	75.767
Southern Division:						
Existing Customers	119.000	92.700	26.300	210.000	264.800	−54.800
Northern Division:						
Existing Customers	1200.504	1200.504	0.000	1010.813	1010.813	0.000
Participating Customers	100.000	0.000	100.000	100.000	0.000	100.000
Subtotal	1300.504	1200.504	100.000	1110.813	1010.813	100.000
C&RE Incentive Program	29.636	.000	29.636	30.567	.000	30.567
Detail—Northern Division: [2]						
CRSP	1263.056	1186.504	76.552	1073.538	972.813	100.725
Colbran	12.787	14.000	−1.213	12.728	14.000	−1.272
Rio Grande	24.661	0.000	24.661	24.547	24.000	0.547
Subtotal	1300.504	1200.504	100.000	1110.813	1010.813	100.00

[1] Includes individual project share of purchases, losses, and priority use.
[2] Includes individual project share of unavailable power, reserves, and priority use.

For convenience in referring to the allocation process, the marketable firm energy and capacity has been divided among the following resource pool designations. The relationship between the energy and capacity components in each resource pool, that is, load factor (LF) and seasonal energy factor (SEF), is also shown for comparison with customer's seasonal load factors:

DEFINITION OF RESOURCE POOLS

Division	Summer Customer group	Winter Pool (No)	Winter LF (percent)	Winter SEF (kWh/kW)	Summer Pool (No)	Summer LF (percent)	Summer SEF (kWh/kW)
Southern [1]	Existing	1	50.9	2,225	2	50.3	2,208
Northern	Existing	3	50.1	2,189	4	50.2	2,203
	Participating	5	50.1	2,189	6	50.2	2,203
C&RE incentive		7	50.1	2,189	8	50.2	2,203

[1] Load Factor for Southern Division winter season pools differs slightly from summer season due to the difference in CRSP load factor between seasons.

The percentage change in the proposed amount of seasonal energy for the existing customer group in each division is as follows:

	Winter (percent)	Summer (percent)
Southern Division	+23.6	−24.2
Northern Division	+7.3	−6.4

To promote more widespread and equitable distribution of the benefits of available Federal energy and capacity, energy in excess of amounts presently under contract, and associated capacity, will be reserved for participating customers in the SLCA (Resource Pools 5 and 6).

Other Federal resources have been or will be available from the BCAO and LAO to new customers in those areas.

Since CRSP energy and capacity available to the Southern Division in the post-1989 period is less than presently under contract for the summer season, Resource Pools 1 and 2 will be offered to Southern Division existing customers only. The CRSP resource only will be allocated in the Southern Division in amounts that represent approximately 18 percent of the initial CRSP resource (1200 MW) in the summer season and about 10 percent of 1200 MW in the winter season. The balance of the long-term firm resources from the SLCA Integrated Projects will be allocated to the Northern Division.

Resource Pools 1 and 2 will be allocated to existing customers in the Southern Division by adjusting existing commitments based partly on the proportion of a customer's existing summer season CRSP contract rate of delivery (excluding peaking) and partly on the proportion of each customer's existing "Other Federal" summer season entitlements. "Other Federal" resources include Parker-Davis and Boulder Canyon Project resources, excluding Boulder Canyon uprates.

SOUTHERN DIVISION ALLOCATION EQUATION

$$\text{Individual Adjustment (SD, Existing)} = \left[0.50\ \frac{(\text{CRSP i})}{(\text{CRSP t})} + 0.50\ \frac{(\text{OF i [w/o BCP]})}{(\text{OF t [w/o BCP]})}\right] \times \text{Total Adjustment}$$

Where:

CRSP = Individual (i) or Total (t) CRSP Summer Firm CROD

OF [w/o BCP] = Individual (i) or Total (t) Summer Other Federal Resources, excluding Boulder Canyon uprates

Total Adjustment = Increase or decrease from existing seasonal commitment

Available energy in Resource Pools 3 and 4 will be allocated to eligible existing customers in the Northern Division for each season based partly on the ratio of a customer's existing firm capacity to total existing firm capacity commitments for the customer group to which it pertains, and partly on the ratio

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of a customer's existing total commitment (firm + peaking capacity) to the existing total commitment for the entire corresponding customer group.

NORTHERN DIVISION ALLOCATION EQUATION

$$\text{Allocation, Resource Pool} = \left[\frac{\text{CRSP, F(i)}}{\text{CRSP, F(t)}} \times \text{RES. POOL "FIRM" (t)}\right] + \left[\frac{\text{CRSP, F+P(i)}}{\text{CRSP, F+P (t)}} \times \text{RES. POOL "PEAK" (t)}\right]$$

CRSP, F = Represents Existing Individual (i) or Total (t) Firm Capacity Entitlement.

CRSP, (F+P) = Represents Existing Individual (i) or Total (t) Firm + Peaking Capacity Entitlement.

RESOURCE POOL, "FIRM" = Represents Amount in Resource Pool "Associated" with Firm Energy.

RESOURCE POOL, "PEAK" = Represents Amount in Resource Pool "Associated" with Peaking Energy.

The energy available in Resource Pools 5 and 6, after any special allocations have been made, will be allocated based on the proportion that the participating customer's average seasonal peak load within the SLCA for the 3-year period (1980–1982) bears to the total of all participating customer's average seasonal peak load for the same period, except that a seasonal energy allocation may not exceed an amount of energy associated with 3500 kilowatts at the seasonal load factor of the available resources or an amount equal to the difference between 25 percent of their average energy requirements during 1980–82 and their total available long-term Federal resources for the period, whichever is less.

Energy and capacity has been reserved for use as an incentive to promote outstanding customer conservation and renewable energy programs. This energy and capacity may be marketed on another basis until used in this incentive program. Details of the development of program evaluation criteria and allocation methodologies will be determined through a future public participation process.

Eligible applicants for all resource pools may request capacity with allocated energy to reflect their individual system characteristics. If there is insufficient power to satisfy the requests, the Administrator may limit the capacity allocated to a load factor that is equal to the seasonal load factor of the resource pool. The Administrator may deviate from the application of these allocation criteria when special circumstances warrant it.

2. *Limit on Energy Allocation.* To promote more widespread and equitable distribution of the benefits of available energy, no applicant will receive a seasonal allocation of SLCA energy from Western such that, when combined with its total post-1989 Federal firm energy entitlements from other Federal sources, the allocation exceeds its average seasonal total energy use for 1980, 1981, and 1982. The average seasonal total energy use for 1980, 1981 and 1982 will be adjusted to include additional energy which the applicant can demonstrate was not used during that period as a result of its conservation efforts.

3. *Reallocations.* Long-term firm energy with associated capacity made available for marketing because an allottee has failed to acquire a distribution system within the time period allowed, or because any allottee has failed to accept a contract within the time period allowed, or because a contract has been terminated, or because allocations have been reduced for noncompliance with contract provisions may be administratively reallocated without further public process. Enterprise and Hurricane, Utah, will together be given the first right to reallocable energy and capacity, so that each receives its proportional share, up to an amount equal to one-half of its peak loads in the 1975 summer season and the 1975–76 winter season.

4. *Applicant Qualifications.* The following requirements must be met in order to be eligible for an allocation of long-term firm resources:

a. Applicant profile data must have been submitted to Western on or before December 30, 1983, for each potential applicant.

b. Each potential new contractor must have had a 1982 load greater than 100 kilowatts.

c. On or before January 1, 1984, or such later date as specifically established by Western, each potential applicant must:

(1) Be a utility, primarily engaged in retail or wholesale sales of electricity, with responsibility for the load to be served; or

(2) Be a Federal or State agency with an ultimate consumer type load, including such loads of State agencies whose use of power enhances the available Federal power resource; or

(3) Be an existing Western contractor for long-term firm power who does not otherwise qualify above; or

(4) Have taken significant and tangible steps to acquire the means to distribute power within the time limits prescribed. Significant and tangible steps toward becoming a utility would include the following:

(a) Evidence of a financial commitment to purchase or construct a transmission system to distribute power;

(b) Evidence of negotiations with a utility regarding distribution system acquisition;

(c) Action before a public service or public utility commission to acquire a distribution system;

(d) Initiation of condemnation proceedings; and/or

(e) Construction of a distribution system.

5. *Application Procedures.* Western hereby requests all qualified applicants to advise the Area Manager, Salt Lake City Area, in writing of their requests to receive allocations of energy under these criteria and to specify the number of kilowatthours per kilowatt per season they desire for each season. This information must be received from each potential allottee in Western's Salt Lake City Area Office at 438 East Second South, P.O. Box 11606, Salt Lake City, Utah 84147 by close of business on April 8, 1986. The Administrator will allocate the available resources under the terms of these criteria only to those applicants who are qualified and who provide the requested information by the specified deadline.

[FR Doc. 86–2548 Filed 2–5–86; 1:28 pm]
BILLING CODE 6450-01-M

federal register

Friday
February 7, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-3 and 85-AWA-10]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at the 12 airports listed below. Final action is not taken on the proposed ARSA for Dulles International Airport. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Columbus and January 19, 1985, for Austin were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). On November 1, 1985, the FAA designated 11 ARSA's as the initial phase of implementation of the NAR recommendation (50 FR 45718), and an additional 11 ARSA's were designated on December 9 (50 FR 50254).

On August 2, 1985, the FAA proposed to designate ARSA's at 11 airports under Docket No. 85-AWA-3 (50 FR 31472), and two airports addressed in this rule were proposed under Docket No. 85-AWA-10 on September 30 (50 FR 39822). This rule designates ARSA's at 12 of those airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposals to the FAA. Additionally, the FAA has held informal airspace meetings for each of the proposed airports. In response to public comments received the FAA has modified several of the proposals.

Related Rulemaking

In addition to the airports addressed here, the FAA published proposed ARSA designations for 28 additional airports on September 30, 1985 (50 FR 39822).

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designations. Additionally, several of the comments on individual designations are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments, the second addresses comments on the proposals at particular locations.

ARSA Program Comments

Comments received from the Aircraft Owners and Pilots Association (AOPA) and several others requested individual notification of the informal airspace meetings held for some of the candidate airports, and that following that notice a second meeting be held. The schedule of the meetings was published in the Notice of Proposed Rulemaking (August 2, 1985, 50 FR 31472 and September 30, 1985, 50 FR 39822). Additionaliy, the FAA sent announcements to individuals, fixed-base operators, aviation user organizations, and to the news media organizations in each airport's area. The ARSA program has received considerable coverage in newsletters and official publications of aviation organizations and the schedule of the meetings mailed to members. Furthermore, a 121-day comment period was provided for Docket No. 85-AWA-3 and a 84-day comment period provided for Docket No. 85-AWA-10 in which the public could make comment to the public docket on the proposals. For the above reasons the FAA believes the opportunity was sufficient to permit full public comment on the proposals.

Additionally, AOPA submitted comments faulting notification for an earlier informal airspace meeting. AOPA discounted notices that contained an error in the graphic included in the meeting notice and those that referenced an incorrect meeting location. The FAA recognizes that there was an error in the graphic. However, the purpose of the notice, namely, to advise interested parties of the meeting, was not compromised by this inadvertent error in the graphic which was immediately corrected. Furthermore, the error in the meeting location was only in the name of the location; the address was correct. After notice had been given the chain owning the motel where the meeting was held sold it and a name change followed too late for the agency to amend the notice. The sale received considerable local media coverage, and the FAA has received no indication that the name change had a negative impact on attendance.

Several commenters faulted the manner in which comments were summarized in the informal airspace meetings, and requested that additional meetings be held and a court reporter employed to make a verbatim transcript. The FAA does not agree with this recommendation. These proposals fall under informal rulemaking and, therefore, neither the Administrative Procedures Act nor agency regulations require formal hearings. The agency exceeded basic requirements in holding informal meetings, and the summarization of comments made at those meetings and placing them in the public docket is in full compliance with procedural requirements. The docket is open to the public, and anyone may review that summary to determine if their position has been adequately summarized. Provision is also made for written comments to the docket, and thus, parties may reiterate their comments in writing, correct any error they perceive in the agency's summary, or expand upon the summarization. Additionally, the FAA believes the informal nature of these meetings proved to be most beneficial to the agency in reaching its decisions.

AOPA and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

AOPA also commented that additional costs will be incurred for controller training. Although the ARSA program utilizes a new combination of ATC procedures, none of the procedures are new to air traffic controllers. Thus, the training of air traffic controllers will be accomplished during regularly scheduled briefing sessions and at no additional cost.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level.

Numerous commenters also objected to the proposals based upon their belief that air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than was estimated by the FAA, and that these costs will be experienced more at some sites than at others. In some instances, commenters simply misread the delay estimate tables in the notices. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that estimates of delays were quite preliminary, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. These cost estimates are expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the case in the three locations where ARSA has been in effect for an appreciable period.

Several commenters questioned the validity of FAA's estimates of the time savings expected to be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. FAA wants to reemphasize that its estimates of expected savings in time and money which will result from the greater flexibility allowed air traffic controllers in handling traffic within an ARSA are quite preliminary. These estimated savings may or may not offset the delay anticipated at some sites after initial establishment of an ARSA, but are expected to provide overall time savings to all traffic, IFR as well as VFR, which will exceed delay as controllers gain experience with ARSA operating procedures.

Other commenters questioned the operating cost and passenger time values used to calculate delay costs and time savings. The values used are weighted averages of overall activity within an aircraft category for various aircraft types, and represent a typical mix of air passengers. FAA recognizes that for some specific operations actual operating cost and passenger time values will exceed the average values used, while in other cases, the actual values will be less. However, weighted averages represent the most appropriate and equitable measure to use when assessing *overall* impacts. Further, because the delay resulting from implementing ARSA procedures is expected to be transitory and efficiency improvements in the movement of traffic are ultimately expected to result, those operators whose variable cost and passenger time values exceed the averages used in the regulatory evaluation may in fact realize above average benefits.

AOPA, Experimental Aircraft Association (EAA), and other commenters claimed the FAA had failed to properly account for the number of pilots that would need to purchase two-way radios. These comments referred to the number of NORDO aircraft that were located at airports in proximity to ARSA candidates and noted that discrepancy between the number of such aircraft and the number reflected in the Regulatory Evaluation. Because of the liberal use of cutouts and local agreements, FAA estimates that only about six NORDO aircraft will be required to install radio transceivers as a result of establishing ARSA's at the sites included in this final rule.

AOPA also claimed that at least half of the number of NORDO aircraft in the Untied States, or 20,900 aircraft according to AOPA estimates, would have to purchase two-way radios in order to enter, land, and depart from ARSA airports. That is well in excess of the number estimated by the FAA. The FAA does not agree with the AOPA conclusion because each airport receiving an ARSA designation has an airport traffic area requiring two-way radio communications at present, and thus, no additional cost will be incurred for the procurement of radios for aircraft landing or departing airports receiving ARSA designation.

Further, some commenters expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

The Soaring Society of America (SSA) claimed that some FAA field personnel

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had indicated that a transponder would be needed to enter an ARSA, and thus, the cost to implement the program was grossly underestimated. An operable two-way radio is the only avionics required for flight in an ARSA. A transponder is not required and the costing estimates are correct.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is significantly reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the three current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot, thus the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Compression was not detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved.

AOPA and others commented that several of the proposals will require pilots to violate Federal Aviation Regulations (FAR) section 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. Namely, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and secondly, a pilot may deviate 2,000 feet horizontally from the obstacle.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not yet been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, EAA, and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making a recommendation to the FAA to adopt the ARSA concept. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation. The criteria for this group of candidates was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

AOPA, EAA, and others commented that the existence of a TRSA in the above mentioned category should not be considered as justification for an ARSA. After a review of all comments received to the above referenced proposal, the FAA adopted that NAR recommendation (50 FR 9252, March 6, 1985). Therefore, absent a finding that designation would be inappropriate, the existence of a TRSA within the criteria is deemed sufficient for designation.

AOPA, EAA, and others indicated that several of the proposed locations do not meet the criteria that the FAA is considering for future ARSA candidates. The FAA has circulated proposed criteria for future application. However, whatever the nature of any criteria eventually adopted, this group of locations which qualify as ARSA candidates under the adopted NAR criteria would not be affected.

Several commenters, including AOPA and EAA, indicated that the top of an ARSA should be limited to the height of the airport traffic area, which is generally up to but not including 3,000 feet above ground level. That limit was specifically considered by the NAR Task Group but rejected in favor of the current top of 4,000 feet above field elevation. The rationale of the task group was that the 4,000-foot cap would afford protection to aircraft executing an instrument approach during a critical

phase of flight when pilots must devote considerable attention to their instruments prior to executing an approach. The FAA concurs in that rationale and has adopted the 4,000-foot recommendation.

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations. The agency's rationale for nonadoption is set forth immediately above.

Several commenters indicated that pilots of aircraft equipped with altitude encoding Mode C transponders should not be required to participate in the ARSA. Procedures require that before an air traffic controller may use the altitude information from a Mode C transponder the information must be verified. Thus, the requirement to establish two-way radio communication would remain. If pilots of Mode C equipped aircraft were not subject to the remaining provisions of ARSA, there could be inequitable handling of users, one of the major points of criticism the NAR Task Group leveled at the TRSA program. Therefore, the FAA does not agree with this recommendation.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

AOPA, EAA, and other commenters requested that no 5- to 10-mile circles be segmented and that a single altitude be established at the highest level of any segment proposed. The FAA has established several ARSA's that have varying base altitudes. The FAA acknowledged that segmentation was a deviation from the NAR recommendation when the ARSA final rule was adopted (50 FR 9252, March 6, 1985). The recommendation was for the base altitude in the subject area to be 1,200 feet above ground level (AGL) and would have resulted in base altitudes rising and falling in concert with the underlying terrain. The FAA believes that segmentation simplifies ARSA's for the several locations where it is employed, yet establishes regulatory airspace where needed.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility the controllers will give appropriate instructions.

A closely associated comment received from several parties was that mandatory two-way communications with the ARSA approach control facility would preclude a pilot from being on a proper unicom frequency in a timely manner. As was indicated in the ARSA rule (50 FR 9252, March 6, 1985), pilots can expect communications transfer in sufficient time to obtain information at secondary airports.

AOPA, SSA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made significant modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility, and not to make modifications in the program to provide for nonparticipation.

AOPA and others commented that FAA underestimated the one-time cost of distributing Letters to Airmen and the Advisory Circular, and neglected costs related to the informal public meetings. Both of these issues were discussed in the detailed regulatory evaluation of the NPRM, which has been available in the regulatory docket since publication of the NPRM. The availability of this detailed evaluation was indicated in the introductory paragraph of the regulatory evaluation summary included in the **Federal Register** Notice of proposed rulemaking (50 FR 31472, 31474, August 2, 1985 and 50 FR 39822, 39824, September 30, 1985). AOPA's comments assumed that every active pilot would be notified at least once. However, FAA intends to mail individual Letters to Airmen only to those pilots living in the vicinity of ARSA sites, and consequently its cost estimate is less than that of AOPA. The total one-time cost of distributing Letters to Airmen and the Advisory Circular was also prorated to reflect only those sites included in the notice, and both total and prorated cost estimates were provided in the notice. Further, as FAA indicated in the detailed regulatory evaluation, the expenses associated with public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, and consequently these expenses are more appropriately considered sunken costs attributable to the rulemaking process rather than implementation costs of the ARSA program. Similarly, information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

Some commenters questioned whether the FAA considered the impact of the proposed ARSA's on individuals in making its Regulatory Flexibility Determination, and whether the threshold for determining if a significant

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economic impact on a substantial number of small entities had been exceeded because some small entities might be impacted. The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. Individual citizens, as such, are not considered small entities under the terms of the RFA; however, an individual whose business is a sole proprietorship would be considered a small entity under the RFA. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, argicultural operations and other small aviation businesses located at satellite airports located within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding almost every satellite airport located within the 5-nautical-mile ring to avoid adversely impacting their operations, and in some cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as, soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, a substantial number of small entities, defined in FAA Order 2100.14, "Regulatory Flexibility Criteria and Guidance," as more than one-third (but not less than eleven) of the small entities subject to a proposed rule, clearly will not be impacted by this rulemaking. Therefore, adoption of this final rule will not result in a significant economic impact on a substantial number of small entities.

The Air Line Pilots Association concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received supportive of each of the ARSA's addressed here as an improvement in aviation safety.

Comments on Particular Locations

[Airspace Docket No. 85-AWA-3]

Daytona Beach Regional Airport, FL

AOPA, EAA, and several other commenters objected to the establishment of an ARSA for Daytona but requested that if one were to be designated that the floor of the 5- to 10-mile shelf be raised to accommodate the recreational activity in the Spruce Creek Fly-In Community, Ormond Beach Airport, and New Smyrna Beach Airport areas. Commenters also requested the shelf be raised to enhance noise abatement procedures. The FAA indicated in the proposal and adoption of the ARSA final rule (50 FR 9252, March 6, 1985) that local agreements could be established to accommodate the needs of recreational flying activity. The shelf altitude of 1,200 feet mean sea level (MSL) is adequate to meet the needs of the noise abatement procedures requiring flight no lower than 1,000 feet MSL.

Skywood Aerial Advertising, AOPA, and others claimed that ARSA designation would have an adverse effect on banner towing operators. The FAA does not agree with this claim. Current banner towing occurs within the airport traffic area (ATA) and a letter of agreement is needed for this operation. Such a letter can encompass the subject of towing within an ARSA as well as within the ATA.

AOPA, EAA, and several other commenters claimed that ARSA designation would adversely affect flight training activity in the Daytona Beach area. Training activity is also subject to a letter of agreement and no adverse effect is expected.

One commenter claimed that simulation of the ARSA concept should preceed any actual implementation. The FAA does not agree. Regardless of the level of simulation, such an evaluation would of necessity need to be further evaluated in actual field facilities prior to making proposals on a national basis. The ARSA concept has received that level of evaluation at two field facilities prior to its adoption and further recommendation by the agency.

One commenter claimed that if all the recreational and training activity was to be subject to letters of agreement that there was no need for an ARSA. The FAA does not agree. Reducing the recreational and training activities and areas to a letter of agreement provides for those activities and simultaneously provides air traffic controllers with the needed informaton to relay to other pilots that would not otherwise be aware of the high level of air traffic activity in these areas.

Des Moines Municipal Airport, IA

Numerous commenters objected to designation of the Des Moines ARSA. Their objections were based upon claims of the compression of air traffic and the lack of a need for the proposed ARSA. These comments have been addressed above.

El Paso International Airport, TX

The City of El Paso, the El Paso Association of Certified Flight Instructors, the Air Transport Association, and several other commenters supported the ARSA proposal provided some additional provision was made for the users of the West Texas Airport. The Soaring Society of America, the El Paso Soaring Society, and other commenters objected to the proposed ARSA, but requested additional provision be made for users of the West Texas Airport if designation was to occur. The FAA concurs with the need for the additional provision and a cutout for the West Texas Airport has been provided.

The Short Wing Piper Club objected to ARSA designation at El Paso, claiming that safety benefits would not be realized due to the poor quality of radar targets displayed when fabric covered aircraft were involved, and in other cases due to the speed of certain aircraft. The FAA admits that quality of radar targets in some cases is less than desired. However, the agency does not agree that the improvement in safety that can be realized should be negated simply because its benefits do not extend equally to all users. Additionally, the information that is gained and exchanged improves the level of safety currently provided.

Some commenters claimed that a nonregulatory corridor was needed along the Rio Grande River. The FAA does not agree with this claim. The ARSA extends the two-way communications requirement of the current airport traffic area very little and the establishment of such a corridor would have a negative impact upon ARSA services provided to pilots arriving and departing El Paso International.

Eppley Airfield, Omaha, NE, and Offutt AFB, NE

SSA, AOPA, and other commenters claimed that Offutt AFB did not meet the criteria for ARSA designation. Offutt AFB meets the criteria as recommended by the NAR and adopted by the agency.

SSA requested that the Offutt AFB ARSA only be active when air traffic was in the area. The FAA does not agree. The recommended and adopted criteria require an operational control tower regardless of the amount of actual airport activity at any given time. If there is little or no traffic in the Offutt area, other users will have no difficulty in conducting their operations.

AOPA, SSA, and other commenters requested cutouts for North Omaha, South Omaha and Plattsmouth Airports in order to conduct glider operations and parachuting out of these locations. These activities can be covered by local agreements.

AOPA, and other commenters requested that the altitude of the 5- to 10-mile shelf be raised to 1,200 feet above obstructions. The FAA does not agree. Minimum clearances can be achieved by circumventing obstructions in the Eppley/Offutt area without undue burden. However, the FAA encourages use of ATC services rather than avoidance of the ARSA.

One commenter claimed that ARSA designation should be delayed until a thorough analysis could be conducted regarding the impact of thunderstorms on the proposed ARSA. The FAA does not agree. While the agency does not have extensive experience with ARSA's it does have some experience. Furthermore, the FAA has vast experience with several types of regulatory airspace which are comparable to ARSA's. There has been no correlation between the adverse effects of thunderstorm activity on aviation and these other types of regulated airspace.

AOPA did not agree with ARSA designation at either location, but suggested that if designation was to occur that an elliptical race track configuration be established. Such a configuration would eliminate the triangular areas where the circles meet which, according to AOPA, would trap pilots. The FAA does not agree with this conclusion. Similar configurations exist throughout the country where airport traffic areas meet and in numerous other cases due to adjoining regulatory airspace.

One commenter objected to ARSA designation claiming that attendees at the informal airspace meeting were not given an opportunity to express their views. The FAA does not agree. The informal airspace meeting was not adjourned until there was no response to a request for further comment. Furthermore, a 120-day period was provided for interested parties to submit written comments to the public docket.

The USAF and several other commenters supported the ARSA's as proposed as a significant improvement in aviation safety with minimal impact on the user community.

Fort Lauderdale-Hollywood International Airport, FL

AOPA, and other commenters opposed the designation of an ARSA at Fort Lauderdale but requested that if one was to be designated they requested cutouts for Fort Lauderdale Executive Airport and Pompano Beach Airpark Airport. Provisions for the operations at these two locations will be covered by letters of agreement between the appropriate facilities and regulatory cutouts are not warranted. The FAA believes that where possible this is preferable to modifications to the proposal. If regulatory action was taken based upon letters of agreement, that supposedly reflect current operational needs, additional regulatory action, with its lengthy leadtimes, would be needed to modify local agreements as operational needs changed.

Several commenters requested the altitude of the 5- to 10-mile shelf be raised. These requests were based on the perceived need to establish the shelf altitude above obstructions, or due to the altitude of the adjoining Miami TCA. The NAR recommended, and the FAA adopted, that shelf altitudes should be established at 1,200 feet above ground level. Absent overriding considerations, the FAA has designated shelf altitudes based upon ground level, not the height of obstructions. None of those overriding considerations are present at Fort Lauderdale-Hollywood International Airport, and thus, the altitude of 1,200 feet AGL has been designated. A shelf altitude of 1,500 feet MSL was recommended by one commenter who claimed that since that altitude was sufficient for the Miami TCA the lower altitude of 1,200 feet MSL for the ARSA was not warranted. The FAA does not agree. The rationale used to establish TCA and ARSA altitudes are significantly different. TCA altitudes are established to contain air traffic, whereas, that is not an ARSA consideration. Little effort has been made to achieve standardization in configuring TCA's, whereas standardization is a primary objective in the ARSA configurations.

The Air Line Pilots Association, and other commenters supported ARSA designation at Fort Lauderdale-Hollywood International Airport as an improvement in safety.

Jacksonville International Airport, FL

The North Florida Soaring Society (NFSS) submitted a detailed comment objecting to ARSA designation at Jacksonville International, but requesting modification if designation was to occur. These comments were supported by the SSA, AOPA, and other commenters. The NFSS claimed that recreational flying, especially glider operations, out of Herlong Airport would be severely impacted if the ARSA was designated as proposed. Herlong is surrounded on 3 sides by regulatory airspace and the proposed ARSA would effectively cut off the airport. Thus, the NFSS requested that if designation was to be made that the southern portion be modified to allow nonparticipative access to Herlong. The FAA agrees. Furthermore, due to the number of various operators and the types of recreational flying, local letters of agreement would be unmanageable. Thus, this rule terminates the Jacksonville ARSA at the 291° true radial of the Jacksonville VORTAC.

Several commenters claimed that training activity in the Jacksonville area would be negatively impacted by ARSA designation. With the modification to the ARSA as indicated above any remaining impact can be resolved with local agreements.

Norfolk International Airport, VA

Several commenters requested that the ARSA be modified by aligning it with the primary airway structure in the Norfolk area. They claimed that such a configuration was all that was needed. The FAA does not agree. The ARSA program is neither an IFR or VFR program but is a terminal radar program in which terminal radar air traffic control services are provided to both IFR and VFR air traffic.

The United States Navy commented in support of the Norfolk ARSA. However, Navy comments stated that if compression occurred in the Navy Oceana area that the Navy would request an ARSA be designated there. Furthermore, the Navy requested that an ARSA be designated at Norfolk Naval Air Station (NAS). One of the criterion for the current group of ARSA

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candidates is that they be currently contained within a TRSA. Norfolk NAS does not meet that criterion. The subject of compression of air traffic is addressed above. The Navy should coordinate any efforts to propose future ARSA candidates with the FAA's Eastern Region.

Orlando International Airport, FL

The SSA commented that there were significant glider operations at two airports nearby the proposed ARSA and requested that air traffic control personnel work closely with these operators to ensure their operations could continue. The FAA agrees with SSA. Personnel at Orlando International will work closely with these operators either on an individual basis or through a local agreement to provide for glider operations with minimal impact upon those activities.

Numerous commenters requested that the 5- to 10-mile shelf be raised since present and planned obstructions are so arranged that circumnavigation of the obstructions for nonparticipating pilots would be quite extensive. The FAA agrees. The final rule raises the base altitude of the 5- to 10-mile shelf to 1,500 feet MSL. The FAA has determined that this will not negatively impact ARSA services and will alleviate the problem.

One commenter indicated that provision should be made for balloonists to call the control tower on the telephone and obtain authorization to operate within the ARSA. The FAA agrees. This is the procedure to follow absent an operable two-way radio and the procedure that is currently used for such operations when airport traffic areas are involved.

Palm Beach International Airport, FL

AOPA, and several other commenters claimed that ARSA designation would negatively impact flight training in the Palm Beach area. The FAA does not agree. Flight training can be accommodated with local agreements.

AOPA, and several other commenters requested that if ARSA designation was to occur that the cutout for Palm Beach County Airport be enlarged to provide greater nonparticipative access by all operators, but primarily for glider operators. The FAA has enlarged the cutout of this airport.

AOPA, and numerous other commenters requested a cutout for Willis Gliderport. The FAA does not agree that a cutout is warranted for Willis. If operations at Willis cannot be conducted within the current terms of the rule, a local agreement can be established.

Richard Evelyn Byrd International Airport, Richmond, VA

Several commenters including AOPA claimed that the base altitude of the 5- to 10-mile shelf should be raised due to obstructions, if designation was to occur. The FAA does not agree. The height of the obstructions and their location does not warrant raising the shelf altitude.

AOPA commented that the base altitude of the 5- to 10-mile shelf should be raised to at least 2,000 feet AGL in the vicinity of the Presquile National Wildlife Refuge. This request was based upon the belief that provision should be made for pilots to fly over the refuges in accordance with the interagency agreement between the FAA and the Department of the Interior to encourage flight over such areas at no less than 2,000 feet AGL. While the FAA is supportive of that agreement, raising of the shelf altitude is not necessary. Participation requirements within an ARSA requires only the establishment of two-way communications, or prior ATC authorization. Thus, pilots wishing to fly over the refuge that do not have two-way radios may contact the Norfolk Approach Control on the telephone for prior approval for such a flight. Approvals will be granted on an individual and traffic permitting basis.

AOPA, and several other commenters requested a cutout for the New Kent County Airport. Several of these commenters claimed that without a cutout for this airport training activity would be aeverely impacted. The FAA does not agree. The major portion of the training area utilized by New Kent County operators is beyond the ARSA.

[Airspace Docket No. 85-AWA-10]

Dulles International Airport, VA

The airspace that is currently delegated to Dulles Approach Control is to be modified as a part of the Expanded East Coast Plan and this is anticipated to occur within the next few months. In line with this redelegation the FAA desires to modify the proposed ARSA for Dulles International and will publish a supplemental notice of proposed rulemaking in the **Federal Register** and allow an additional period for comments. Thus, no action on the proposed Dulles ARSA is being taken at this time.

Tampa International Airport, FL

AOPA, and several other commenters requested an extension of the comment period for the Tampa proposal, they claimed the 14 days between the informal airspace meeting and the closing of the comment period was not sufficient to make informed comments. The FAA does not agree. The notice itself contained the proposal for Tampa, and thus, the comment period was 94 days. Those attending the informal airspace meetings were given every opportunity to make verbal comments to the docket. Additionally, the agency believes that 14 days provides ample opportunity to forward written comments for those parties desiring to do so.

AOPA, and other commenters claimed that the proposal would negatively impact flight training in the Tampa area. There are two training areas depicted to the west of Tampa. The one to the northwest will require a local agreement, but the area to the southwest is outside of the ARSA and no impact will result.

The National Business Aircraft Association, and numerous other commenters were supportive of the ARSA but requested the base altitude of the 5- to 10-mile shelf be raised in the vicinity of Peter O. Knight and Vandenberg Airports. Several commenters requested that the shelf be raised in this area to 1,600 feet MSL. The FAA agrees that the base altitude should be raised but believes that an altitude of 1,400 feet MSL will provide sufficient space to accommodate the needs of users in this area.

One commenter requested that the Tampa ARSA be limited to 5 miles to the east and west of Tampa International and 10 miles north and south and basically oval in shape. The FAA does not agree. While the agency recognizes that the primary departure and arrival profiles would occur within the airspace suggested, this would be a sharp departure from the national standard and would not provide the level of service envisioned by the ARSA program.

One commenter claimed that the base altitude of the 5- to 10-mile shelf should be raised in the vicinity of St. Petersburg/Clearwater Airport and MacDill AFB to provide for operations at those locations. Letters of agreement will be established between Tampa and these two locations to provide for their operational needs. The FAA believes that where possible this is preferable to modifications to the proposal. If regulatory action was taken based upon letters of agreement, that supposedly reflect current operational needs, additional regulatory action, with its lengthy lead times, would be needed to modify local agreements as operational needs changed.

The USAF commented that it was supportive of the Tampa ARSA if the latter was delayed until an ARSA could be proposed for MacDill AFB and both ARSA's could be designated simultaneously; otherwise, the USAF was opposed to designation because of the possibility of the compression of air traffic in the MacDill area as pilots circumnavigated the Tampa ARSA. The USAF should coordinate their request for an ARSA with the FAA's Southern Region. However, to delay designation based upon the possibility of compression, which has been forecast by some for each of the ARSA's, but which has not yet occurred as indicated above, would not be warranted.

The Air Transport Association, and numerous other commenters supported the Tampa ARSA as proposed as a significant improvement in safety.

Regulatory Evaluation

Those comments which addressed information presented in the Regulatory Evaluations of the notices for the dockets included in this final rule have been discussed above. A detailed Regulatory Evaluation of this final rule has been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM, and those comments which addressed it have been discussed above. For the reasons presented in the NPRM and clarified in the Discussion of Comments, FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at the 12 airports listed below. Each location designated is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at each of the affected locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

[Airspace Docket No. 85-AWA-3]

Daytona Beach Regional Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Daytona Beach Regional Airport (lat. 29°10'51" N., long. 81°03'22" W.), and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of Daytona Beach Regional Airport.

Des Moines International Airport, IA [New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Des Moines International Airport (lat. 41°32'06" N., long. 93°39'38" W.), and that airspace extending upward from 2,200 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the Des Moines International Airport.

El Paso International Airport, TX [New]

That airspace extending upward from the surface to and including 8,000 feet MSL within a 5-mile radius of the El Paso International Airport (lat. 31°48'24" N., long. 106°22'38" W.), excluding that airspace west of long. 106°27'00" W., and that airspace within Mexico; and that airspace extending upward from 5,200 feet MSL to and including 8,000 feet MSL within a 10-mile radius of El Paso International Airport, excluding that airspace beyond an 8-mile arc from the airport beginning at the 115° bearing from the airport clockwise to the Rio Grande River, and that airspace within a 2-mile radius of the West Texas Airport (lat. 31°43'10" N., long. 106°14'37" W.), and that airspace within Mexico, and that airspace west of long. 106°27'00" W. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times established will thereafter be continuously published in the Airport/Facility Directory.

Eppley Airfield, Omaha, NE [New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Omaha Eppley Airfield (lat. 41°18'04" N., long. 95°53'36" W.), and that airspace extending upward from 2,500 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the Eppley Airfield.

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Fort Lauderdale-Hollywood International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Fort Lauderdale-Hollywood International Airport (lat. 26°04'19"N., long 80°09'13"W.), excluding that airspace south of the north boundary of the Miami, FL, Terminal Control Area (TCA); and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Fort Lauderdale-Hollywood International Airport, excluding that airspace south of the north boundary of the Miami, FL, TCA.

Jacksonville International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Jacksonville International Airport (lat. 30°29'33"N., long. 81°41'24"W.), and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport, excluding that airspace south of the 291° radial of the Jacksonville VORTAC.

Norfolk International Airport, VA [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of Norfolk International Airport (lat. 36°53'40"N., long. 76°12'06"W.), excluding that airspace within the Norfolk NAS, VA Control Zone below 2,000 feet MSL; and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL, excluding that airspace south and east of a line extending from a point on the 078° bearing from the airport on the 10-mile arc from the airport to a point on the 152° bearing from the airport on the 5.28-mile arc from the airport and thence to a point on the 170° bearing from the airport on the 10-mile arc from the airport, and excluding that airspace within a 4.3-mile radius of the Oceana NAS Airport (lat 36°49'14"N., long. 76°02'02"W.), and excluding that airspace within the Norfolk NAS Control Zone below 2,000 feet MSL, and excluding that airspace within a 4.3-mile radius of Langley AFB, Hampton Roads, VA (lat 37°05'05"N., long. 76°21'25"W.).

Offutt AFB, NE [New]

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Offutt AFB (lat. 41°07'06"N., long. 95°54'42"W.), excluding that airspace within a 1-mile radius of the South Omaha (Papillion) Airport (lat. 41°09'30"N., long. 96°00'30"W.), and that airspace designated as the Eppley Airfield, Omaha, NE, Airport Radar Service Area (ARSA); and that airspace extending upward from 2,500 feet MSL to and including 5,000 feet MSL within a 10-mile radius of the Offutt AFB, excluding that airspace designated as the Eppley Airfield, Omaha, NE, ARSA.

Orlando International Airport, FL [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Orlando International Airport (lat. 28°25'54"N., long. 81°19'29"W.), and that airspace extending upward from 1,500 feet MSL to and including 4,100 feet MSL within a 10-mile radius of Orlando International Airport.

Palm Beach International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Palm Beach International Airport (lat. 26°40'58"N., long. 80°05'45"W.), excluding that airspace within a 1½-mile radius of the Palm Beach County Park Airport (lat. 26°35'36"N., long. 80°05'09"W.) and west of Interstate 95; and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Palm Beach International Airport.

Richard Evelyn Byrd International Airport, Richmond, VA [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Richard Evelyn Byrd International Airport (lat. 37°30'16"N., long. 77°19'12"W.), and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Richard Evelyn Byrd International Airport.

(Airspace Docket No. 85-AWA-10)

Tampa International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Tampa International Airport (lat. 27°58'31"N., long. 83°32'00"W.), and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the airport, excluding that airspace extending upward from 1,200 feet MSL to but not including 1,400 feet MSL from V-152 northeast of the airport clockwise to a line beginning at the point where the 139° bearing from Tampa International Airport intersects the 5-mile arc from Tampa International Airport thence via the 139° bearing from the airport to the 1-mile arc from the Peter O. Knight Airport (lat. 27°54'45"N., long. 82°26'45"W.) thence via the 1-mile arc from Peter O. Knight Airport counterclockwise to the point where the 1-mile arc intercepts the 094° radial of the St. Petersburg VORTAC and thence via the 094° radial of the St. Petersburg VORTAC to the 10-mile arc of Tampa International Airport.

Issued in Washington, DC, on February 3, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-2712 Filed 2-6-86; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
February 7, 1986

Part IV

Legal Services Corporation

45 CFR Part 1625

Procedures Governing Denial of Refunding; Proposed Rule

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LEGAL SERVICES CORPORATION

45 CFR Part 1625

Procedures Governing Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Corporation's regulations governing denial of refunding. This revision is required to comply with the provisions of the Corporation's appropriations act for 1984, Pub. L. 98–166, as incorporated in the 1985 appropriations act, Pub. L. 98–411, and as contained in the 1986 appropriations act, Pub. L. 99–180. This proposed rule changes the time limits in the current rule to conform with those mandated by the appropriations acts and changes the burden of proof in denial of refunding proceedings as required by Congress in the acts.

DATE: Comments must be received on or before March 10, 1986.

ADDRESS: Comments may be submitted to the Office of General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: John H. Bayly, Jr., General Counsel, (202) 863–1820.

SUPPLEMENTARY INFORMATION: The Corporation has discovered that amendments to this part that were published as a final rule in the **Federal Register** of July 29, 1985 (50 FR 30714) were not properly adopted. Since this rulemaking proceeding covers the same areas, the amendments made in the July 29, 1985 publication will be revoked through the final rule.

Pub. L. 98–166, which appropriated the Corporation's funding for the fiscal year ending on September 30, 1984, set new requirements for denial of refunding proceedings. These new requirements have been continued in appropriations acts for subsequent years.

The acts provide that the proceedings be in the form of a hearing to show cause, that the recipient have the burden of proof, and that all denial of refunding proceedings must be completed within 90 days, of which 30 days are allowed for the recipient to request a hearing, 30 days for the hearing, and 30 days for the rendering of the final decision.

Procedural changes, including several deadline changes, have been necessitated by the acts. These changes are concentrated in §§ 1625.4, 1625.5, 1625.6, 1625.7, 1625.8, 1625.9, 1625.10 1625.11, and 1625.12.

A discussion of the principal procedural changes follows.

First, §§ 1625.4 and 1625.5 are proposed to be revised to provide that both parties will, as quickly as possible, provide one another with the relevant facts and other information on which they rely. Thus, the Corporation, with its show cause order pursuant to § 1625.4, and the recipient, with its request for a hearing under § 1625.5, will furnish each other:

1. A statement of the facts on which the party relies,
2. The affidavits of witnesses,
3. Copies of all exhibits, and
4. A memorandum showing the legal basis for its position.

Second, each party may ask for relevant documents in the other's possession or control, or for a person to be made available for a pre-hearing deposition or to testify at the hearing. Failure to supply the person or the document could have adverse consequences under the provisions of § 1625.8(f).

Third, the pre-hearing procedures under § 1625.7 have been revised to provide that the hearing examiner will review the submissions of both parties to determine if there is a genuine issue as to the facts and, if it is appropriate, to recommend a decision in the nature of summary judgment, or partial summary judgment, to the President. These procedures are similar to Fed. R. Civ. P. 56, which governs litigation in federal court.

Fourth, § 1625.8 is revised to provide that the hearing will be held not only at a place convenient to the recipient and its client community, but that it will normally be close to a United States District Court and an airport with commercial scheduled service. It also provides that, since each party will have presented the direct testimony of its witnesses by their affidavits, the show cause hearing will be limited to:

1. Cross-examination of other parties' affiants,
2. Examination of those employees of the other party who were previously unavailable for some adequate reason, and
3. Rebuttal testimony.

It provides that, unless otherwise agreed upon, the recipient will proceed first, and each party will have a maximum of 7 days to complete its presentation. Recipient will have an additional day for sur-rebuttal testimony and a day for oral argument will be equally divided among the parties. Finally, time limits of 5 and 4 days respectively are placed on the recipient's and the Corporation's post-hearing briefs.

Paragraph (f) of § 1625.8 also sets procedures whereby the hearing examiner may review the merits of any claim of attorney-client privilege and assure that it is properly exercised. The Corporation is especially interested in comments on these provisions and any alternative to how the difficulties posed by the attorney-client privilege may be resolved.

Fifth, § 1625.9 is revised to transfer the burden of proof to the recipient. It provides that the recipient has the burden of going forward and the burden of persuasion by a preponderance of the evidence. It provides that with respect to any ground for denial of refunding in § 1625.3 cited by the Corporation, the recipient must affirmatively show that it is in compliance with or otherwise meets the requirements for refunding. These explicit recitations of the obligations of recipients will avoid any uncertainty, surprise, or confusion.

Sixth, § 1625.10 is revised to give the hearing examiner 16 days instead of 10 to serve his recommended decision on the parties. This is needed because nine of the days are taken up by post-hearing briefs. Section 1625.11 makes the examiner's decision final in 7 days if review by the President is not requested. The request must be sought in 7 days and must detail the reasons for seeking review. The President then has 7 days to adopt, modify, or reverse the recommended decision or to direct further consideration of it.

Seventh, § 1625.12 clarifies how time is computed in complying with the procedures. For example, all time periods include Saturdays, Sundays, and legal holidays, and if a time period ends on a Saturday, Sunday, or legal holiday, the period is extended so as to end on the next day which is not a Saturday, Sunday, or legal holiday. The provision is similar to the federal rules of civil procedure with certain adjustments to ensure that extensions do not cause the process to exceed the 90 days. Also, any time limit can be shortened by mutual consent of the parties.

Finally, changes in terminology were necessary to reflect the actual operative purposes of specific sections. For example, the heading for § 1625.5 was changed from "Initiation of proceedings" to "Request for hearing."

Where we have revised a section dealing with the "presiding officer" of the hearing, we have changed it to "hearing examiner" to conform to the statutory language. We will conform the remaining sections when we publish the final rule. Unchanged sections and subsections are not included in the notice.

One point of public policy should be noted although it is not a part of the proceedings under this regulation. To avoid any disruption in the delivery of legal assistance to eligible clients, the Corporation will seek to find a suitable substitute or alternative delivery service when it commences any denial of refunding proceeding.

List of Subjects in 45 CFR Part 1625

Administrative practice and procedures, Legal Services; Legal Services Corporation.

For the reasons set out in the preamble, 45 CFR Part 1625 is proposed to be amended as follows:

PART 1625—DENIAL OF REFUNDING

1. The authority citation for Part 1625 is revised to read as follows:

Authority: Secs. 1006(b) (1) and (3), 1007(a) (1), (3), and (9), 1007(d), 1007(e), 1006(e), and 1011 of the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(b) (1) and (3), 2996f(a) (1), (3), and (9), 2996f (d) and (e), 2996g(e) and 2996j); Pub. L. 98–166, 97 Stat. 1071; Pub. L. 98–411, 98 Stat. 1545; Pub. L. 99–180, 99 Stat. 1136.

2. Section 1625.1 is revised to read as follows:

§ 1625.1 Purpose.

This part is intended to provide timely, full, fair, and impartial procedures for allowing a recipient to show cause why its funding should be continued when the Corporation has made a preliminary determination that refunding of a grant or contract should be denied. This part is further intended to provide for completion of these procedures in a timely manner so that funding issues are expeditiously resolved so as to avoid unnecessary and protracted disruption in the delivery of legal services to eligible clients.

3. Section 1625.4 is revised to read as follows:

§ 1625.4 Notice.

When there is reason to believe that refunding should be denied, the Corporation shall serve a written notice upon the recipient, which shall include:

(a) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of the factual grounds for the denial of refunding; if the ground specified in § 1625.3(d) is asserted, the statement shall specify the other organization that the Corporation asserts could better and more economically serve eligible clients;

(b) An affidavit from each witness upon whom Corporation's counsel relies covering that witness' direct testimony and appending all exhibits to such testimony; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein;

(c) A memorandum of points and authorities showing that the affidavit(s) specified in paragraph (b) of this section constitute evidence of facts sufficient to support a denial of refunding under the applicable legal standards;

(d) A directive to show cause, signed by the President of the Corporation, which shall inform the recipient that, if within 30 days of the recipient's receipt of this notice the Corporation receives a request for a hearing as specified in § 1625.5 of this part and accompanied or preceded by all documents specified by paragraph (f) of this section (or adequate explanation of why it was impossible or unreasonable to comply and accompanied by affidavits on personal knowledge as to the efforts made to comply), a hearing will be held; the directive shall identify:

(1) The name of the hearing examiner;

(2) The name of the Corporation's counsel;

(3) The time and place of the pre-hearing conference and the last date upon which it may be held, which date shall be no more than 37 days after the date of the notice; and

(4) The time and place of the hearing and the last date on which it can start, which date shall be no more than 44 days after the date of the notice;

(e) A copy of these procedures.

(f) A requirement, signed by the President or the hearing examiner, may be included that the recipient produce a specific document or documents in its possession, custody, or control within 30 days of receipt of the notice or produce a person in its employ to testify in a pre-hearing deposition at a date, place, and time to be specified in the requirement or to be available to testify at the show cause hearing.

4. Section 1625.5 is revised to read as follows:

§ 1625.5 Request for hearing.

Within 30 days of receipt of the notice, the recipient shall serve upon the Corporation a request for a hearing, which must include:

(a) A short and plain statement in numbered paragraphs, that is either an admission or a denial of each of the numbered paragraphs in the notice; any averment in the notice which is not specifically denied is deemed admitted;

(b) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of all factual grounds on which the recipient will rely to show cause why refunding should not be denied;

(c) An affidavit or affidavits covering the direct testimony of each witness upon whom recipient's counsel relies and appending all exhibits to such testimony; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; the recipient may not rest on mere allegations or denials, but must set forth by affidavit specific facts showing that a genuine issue of material fact is presented for a show cause hearing; and

(d) A memorandum of points and authorities showing that the affidavit(s) specified in paragraph (c) of this section constitute evidence of facts necessary to show cause why refunding should not be denied under applicable legal standards.

(e) The recipient may request the hearing examiner to require that the Corporation or another party upon sufficient notice, produce a specific document or documents in its possession, custody, or control or produce a person in its employ to testify in a pre-hearing deposition at a date, place, and time to be specified in the requirement or to be available to testify at the show cause hearing.

5. Section 1625.7 is amended by adding a new paragraph (a), by redesignating former paragraphs (a), (b), and (c) as (b), (c), and (d), and by revising new paragraphs (b) and (c) to read as follows:

§ 1625.7 Pre-hearing procedure.

(a) (1) If the recipient fails to make a request for hearing in such a timely fashion that it is received by the Corporation within 30 days of receipt of the notice by the recipient, the recipient shall be deemed to have waived its right to a hearing and a final decision shall be entered by the President.

(2) If the recipient makes timely request for a hearing, the hearing examiner may, *sua sponte* or on the motion of a party, review the notice, the request for a hearing, and all documents submitted by the recipient pursuant to requirement(s) issued pursuant to § 1625.4(f) to determine before the date set for the hearing whether there is any

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genuine issue as to any material fact and whether a party is entitled to summary judgment or partial summary judgment as a matter of law. If, considering the papers in the light most favorable to the opposing party, the hearing examiner finds that the parties' submissions, admissions on file, affidavits, and any other matter on the record show that there is no genuine issue as to any material fact and that either party is entitled to summary judgment as a matter of law, the hearing examiner shall issue to the President a written recommended decision with findings of fact and reasons that the President adopt such decision. If the hearing examiner should recommend and the President adopt a decision with a partial summary judgment, the hearing examiner may exclude further evidence relevant only to an issue or issues resolved by such decision.

(b) If the recipient makes a timely request for a hearing, a pre-hearing conference shall be held within 7 days. At the pre-hearing conference, the matters to be considered shall include:

(1) Whether summary judgment or partial summary judgment ought to be issued;

(2) Proposals to define and narrow the issues;

(3) Efforts to stipulate the facts, in whole or in part;

(4) The order of presentation of exhibits and witnesses (as earlier identified);

(5) The possibility or presenting the case on written submission or oral argument;

(6) Any necessary variation in the date, time, and place of the hearing;

(7) The possibility of settlement; and

(8) Such other matters as may be appropriate.

(c) The hearing examiner may establish specific procedures consistent with this part for conduct of the show cause hearing. The hearing examiner may require or permit written submission of additional statements discussing any matter described in paragraph (b) of this section as well as any other arguments and supporting material at any time prior to completion of the show cause hearing.

6. Section 1625.7 is further amended by inserting ", custody, or control" after the phrase "document in its possession" each place the phrase appears, in newly designated paragraph (d), and by adding after the first sentence of newly designated paragraph (d) a new sentence to read as follows:

(d) * * * The hearing examiner shall not issue such requirements at the request of the Corporation's counsel if request is not made within seven days of the Corporation's receipt of the request for a hearing, or at the request of the recipient, if request is not made at or before the time it makes a request for a hearing, unless the requesting party can show that it could not have anticipated its need to request the requirement and failure to issue the requirement would cause a manifest injustice. * * *

7. Section 1625.8 is amended by deleting and reserving paragraph (a) as indicated and by revising paragraph (b) to read as follows:

§ 1625.8 Conduct of the hearing.

(a) [Reserved]

(b) The show cause hearing shall be held within 7 days after the pre-hearing conference at a place convenient to the recipient, to the community it serves, and to witnesses determined by the hearing examiner to be necessary for the show cause hearings; the show cause hearing shall normally be held in or near a city having both a United States District Court and an airport with regularly scheduled airline service.

* * * * *

8. Section 1625.8 is further amended by adding "show cause" before "hearing" each place that word appears in paragraphs (c) and (d) and by revising paragraphs (e), (f), and (j) to read as follows:

* * * * *

(e) Since each party will have presented the direct testimony of its witnesses by their affidavits, the show cause hearing will be limited to cross-examination of the other party's affiants, examination of those employee(s) of the other party from whom the party was unable, despite due diligence, to obtain affidavit(s) or pre-hearing deposition(s), and rebuttal testimony (if allowed). The recipient will bear the burden of proceeding first and will be allowed a total of up to 7 days to cross-examine the Corporation's affiant(s) or to present testimony from another party's employee(s). The Corporation will then be allowed a total of up to 7 days to cross-examine the recipient's affiant(s), to present testimony from employee(s) of another party, or to adduce rebuttal testimony. The recipient will then be allowed a total of up to one day of sur-rebuttal testimony. The hearing examiner will allow a total of up to one day divided evenly between the parties for closing arguments.

(f) If a party fails, without good cause, to produce a person or document required to be produced under §§ 1625.4(f), 1625.5(e), or 1625.7(d), the hearing examiner may make a finding adverse to the party or any lesser determination. If a document is withheld on the basis of privilege, the hearing examiner may require the party to provide a version of the document that does not contain privileged information, explain the basis of the withholding, and, if it appears that the privilege is not asserted in good faith or is asserted in error, require production of the document for *in camera* inspection. After such inspection, the hearing examiner may issue such finding or order as the facts may warrant. If the attorney-client privilege is asserted, the hearing examiner may require the party to provide evidence of its good faith efforts to obtain an adequate waiver of the privilege from the client. Upon a finding that a party did not make good faith efforts to obtain authorization to produce the document, the hearing examiner may make a finding adverse to the party or any lesser determination.

* * * * *

(j) At the discretion of the hearing examiner, the parties may be required or allowed to submit post-hearing briefs or proposed findings and conclusions. The recipient's brief shall be served within 5 days of the close of the hearing and the Corporation's 4 days thereafter. A party should note any relevant transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within the time limit set for a brief).

* * * * *

9. Section 1625.9 is revised to read as follows:

§ 1625.9 Burden of proof.

The recipient shall have both the burden of going forward and the ultimate burden of persuasion by a preponderance of admissible evidence that refunding should not be denied. If the Corporation has asserted, as a ground for the denial of refunding, the grounds specified in:

(a) Section 1625.3(a), the recipient must establish by a preponderance of admissible evidence that it is not in a class of recipients affected by the law, the Corporation's rule, regulation, guideline or instruction, or a funding policy, standard, or criterion approved by the Board;

(b) Section 1625.3(b), the recipient must establish by a preponderance of admissible evidence (1) that it has complied during the specified period of time in all respects with each specified provision of law, with each specified provision of the Corporation's rules, regulations, guidelines, and instructions, and with each specified term and condition of current or prior grants from, or contracts with, the Corporation or (2) that all of its violations are merely minor or technical;

(c) Section 1625.3(c), the recipient must establish by a preponderance of admissible evidence that (1) it has provided economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation, or guideline issued by the Corporation or (2) the Corporation has not given the recipient prior notice of its failure and an opportunity to take effective corrective action and the recipient could not reasonably be expected to have prevented or corrected its failure without notice and an opportunity to have taken effective corrective action before it received the notice specified in section 4 of this part;

(d) Section 1625.3(d), the recipient must establish by a preponderance of admissible evidence that it could serve eligible clients in its service area better and more economically than the other organization specified in the notice.

10. Paragraph (a) of § 1625.10 is amended by revising the introductory language to read as follows:

§ 1625.10 Recommended decision.

(a) Within 16 days of the completion of the hearing, the hearing examiner shall cause a recommended decision to be served upon the parties:

* * * * *

11. Section 1625.11 is revised to read as follows:

§ 1625.11 Final decision.

(a) If neither the Corporation's counsel nor the recipient requests review by the President, the recommended decision shall become final 7 days after receipt by the recipient.

(b) The recipient or the Corporation's counsel may seek review by the President of the recommended decision. A request shall be made in writing to the President and other parties shall be served within 7 days of receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) Within 7 days after receipt of a request for review of the recommended decision, the President shall adopt, modify or reverse the recommended decision, or shall direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1625.10(b).

(d) A decision by the President shall become final upon receipt by the recipient.

12. Section 1625.12 is amended by redesignating paragraph (c) and (d), by revising paragraphs (a) and (b), and adding a new paragraph (c) as follows:

§ 1625.12 Time and waiver.

(a) *Computation of time.* In computing any period of time prescribed or allowed by this part or by order of the President or the hearing examiner, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. All periods shall otherwise include Saturdays, Sundays, and legal holidays. A deadline for a party or the hearing examiner to submit a document is met only if the document is actually received by counsel for each other party and by the hearing examiner by the end of the relevant time period.

(b) *Enlargement of Time.* The President or the hearing examiner may enlarge any period of time on agreement of the parties if, and only if, the President or the hearing examiner makes a determination in writing or on the record either that:

(1) The enlargement will not prevent completion of the hearing within 60 days from receipt of the notice by the recipient or prevent the President from reaching a final decision—with at least 7 days to consider the request for review—within 90 days from receipt of notice by the recipient; or

(2) The existence of extraordinary circumstances that require the enlargement of time to prevent manifest injustice.

(c) *Reduction of time.* On agreement of the parties and the hearing examiner, any period of time may be shortened.

* * * * *

Dated: February 6, 1986.

John H. Bayly, Jr.,

General Counsel.

[FR Doc. 86-2917 Filed 2-6-86; 10:55 am]

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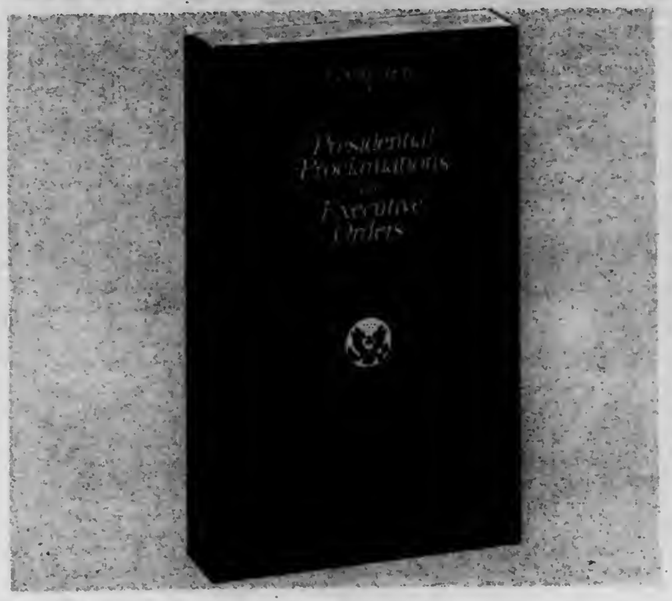
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

Hops of Domestic Production, Marketing Order 991; Suspension of Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension Order.

SUMMARY: This action suspends certain provisions of Marketing Order 991, Hops of Domestic Production, for an indefinite period, because the Secretary of Agriculture has determined that such provisions obstruct and do not tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Act) (7 U.S.C. 601–674).

EFFECTIVE DATE: February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph A. Gribbin, Director, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250. Telephone: (202) 447–4722.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 8c(16)(A) of the Act (7 U.S.C. 608c(16)(A)), and section 991.78 of the Hop Marketing Order (7 CFR 991.78).

The Department published an order in the **Federal Register** on July 1, 1985, which stated that: "Marketing Order No. 991 (7 CFR Part 991) regulating the handling of domestically produced hops, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and all rules and regulations and supplementary orders heretofore issued thereunder and now effective, are hereby terminated effective December 31, 1985." 50 FR 26977.

It was the Secretary's determination that the Hop Marketing Order obstructs and does not tend to effectuate the declared policy of the Act. The reasons supporting such determination are explained in detail in the text of the July 1, 1985, termination order.

The Food Security Act of 1985 which was signed into law on December 23, 1985, provides that: "The Secretary of Agriculture may not terminate any marketing order under section 8c(16) of the Agricultural Adjustment Act (7 U.S.C. 608c(16)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, if such termination becomes effective before January 16, 1986."

In enacting this provision, Congress intended that the Hop Marketing Order not be terminated as announced on July 1, 1985. It has, therefore, been determined that the Hop Marketing Order did not terminate and currently remains in effect.

For the reasons set forth in the July 1, 1985, termination order, the Hop Marketing Order now in effect has not achieved the statutory purposes. The principal operative provisions of the order such as the base allotment system which determines the market share of hops allocated to each producer, the "bona fide" effort requirement, and the transfer provisions have clearly failed to achieve the marketing goals contemplated by the Act. Entry of new producers has been severely restricted, a secondary market has developed which focuses more on allotment base trading than on production and marketing, and there remains an imbalance between supply and demand.

Therefore, since the order obstructs and does not tend to effectuate the declared policy of the Act, this suspension of the principal operative provisions is issued.

It is hereby found and determined that provisions of the order dealing with volume limitation, pooling, and transfers, and the administrative rules and regulations promulgated to effectuate such provisions, obstruct and do not tend to effectuate the declared policy of the Act. Specifically, such order provisions are found in §§ 991.36 through 991.41 and §§ 991.45 and 991.46.

The hop industry and other interested persons have been on notice of the Secretary's findings and determination regarding the Hop Marketing Order since the termination order which was published on July 1, 1985. Therefore, good cause exists for making this suspension order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 991

Marketing agreements and order.

It is therefore ordered, that the following provisions of the Hop Marketing Order (Part 991—Hops in Domestic Production) are suspended until further notice.

PART 991—HOPS IN DOMESTIC PRODUCTION

1. The authority citation for 7 CFR Part 991 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The following sections are suspended:

a. Sections 991.36 through 991.38—Volume Limitations.

b. Sections 991.39 through 991.41—Pooling.

c. Sections 991.45 through 991.46—Transfers.

3. The following sections of the Subpart Administrative Rules and Regulations are suspended:

a. Sections 991.132, 991.138, 991.139, 991.139a, 991.141, 991.146, 991.205, 991.219, and 991.220.

Signed at Washington, DC on: Tuesday, February 4, 1986.

Raymond D. Lett,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–2827 Filed 2–7–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 11

[Docket No. 86–3]

Securities Exchange Act Disclosure Rules; Technical Amendments

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is publishing technical amendments to its Securities Exchange Act Disclosure Rules codified at 12 CFR Part 11. The technical

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amendments involve the correction of errors in some of the section or subsection designations and cross references in Part 11. This action is necessary because the Office recently adopted final amendments to Part 11 which included a complete reformatting and reorganization of Part 11, and which became effective on December 30, 1985. The intended effect of the technical amendments is to facilitate compliance by national banks with the requirements of amended Part 11.

No collection of information requirements are involved in the technical amendments.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Michael C. Dugas, Securities & Corporate Practices Division, telephone (202) 447–1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Office is publishing technical amendments to its Securities Exchange Act Disclosure Rules, 12 CFR Part 11, to correct errors in some of the section and subsection designations and cross references.

On Wednesday, October 30, 1985, the Office published in the **Federal Register** final amendments to Part 11 at 50 FR 45276 (1985). These amendments, which became effective on December 30, 1985, included a complete reformatting and reorganization of Part 11. Errors in some of the section or subsection designations and in some of the cross references have come to the attention of the Office. This final rule is intended to correct those errors.

Regulatory Impact Analysis

Pursuant to Executive Order 12291, the Office has determined that these amendments do not constitute a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other entities.

Adoption Without Notice and Comment

The Office has found that notice and comment procedures concerning this rulemaking are unnecessary. This rulemaking merely makes technical changes intended to eliminate confusion. There is no substantive effect.

List of Subjects in 12 CFR Part 11

National banks, Securities disclosure rules.

For reasons set out in the preamble, Part 11 of Chapter I of Title 12 is amended as follows:

PART 11—[AMENDED]

1. The authority citation for 12 CFR Part 11 continues to read as follows:

Authority: 15 U.S.C. 781, 78m, 78n, 78p, 78w

2. The cross reference table is amended by revising the following entries to read as follows:

. . . . . .

SUBPART B—REGISTRATIONS

Deregistration	11.4(y)	(1)	(21)–(3)	11.207	(a), (b)

. . . . . .

SUBPART D—TRANSACTIONS BY CERTAIN SHAREHOLDERS

Exemption of certain transactions from section 16(b) of the Exchange Act	11.6	(k)–(r)	11.411	(a)–(h)	
Exemption of certain securities from section 16(c) of the Exchange Act	11.6	(t)–(v),	(s)	11.412	(a)–(d)

§ 11.102 [Amended]

3. Section 11.102 is amended by removing the asterisks following the computational note in paragraph (ii)(4).

§ 11.105 [Amended]

4. Section 11.105(c) is amended by changing the reference from "paragraph (c)(2)" to "paragraph (b)."

§ 11.106 [Amended]

5. Section 11.106(b)(2)(iii) is amended by changing the reference from "§ 1.832" to "§ 11.832."

§ 11.202 [Amended]

6. Section 11.202(b) is amended by changing the reference from "paragraph (p)" to "§ 11.724."

§ 11.390 [Amended]

7. Section 11.390 (Form F–2), General Instruction E(3) is amended by changing the reference from 11 "Part III (Items 10, 11, and 12)" to "Part III (Items 10, 11, 12 and 13)."

8. Section 11.390, Item 14 is amended by redesignating the last paragraph of that Item from (b) to (d).

§ 11.392 [Amended]

9. Section 11.392, Item 4 is amended by redesignating the last paragraph of the body of that Item from (b) to (d).

§ 11.401 [Amended]

10. Section 11.401(b)(1), introductory text is amended by changing the reference from "paragraph (i)" to "paragraph (a)."

11. Section 11.401(b)(2) is amended by changing the reference from "§ 11.401(a)" to "§ 11.401(c)."

12. Section 11.401(b)(3)(i)(A) is amended by changing the reference from "§ 11.401(b)(1) (i) or (ii)" to "§ 11.401(b)(1) or (2)."

13. Section 11.401(b)(3)(i)(C) is amended by changing the reference from "§ 11.401(a)" to "§ 11.401(c)."

§ 11.403 [Amended]

14. Section 11.403(d)(1)(i) is amended by changing the reference from "paragraph (ii)" to "paragraph (b)."

15. Section 11.403(d)(1)(ii) is amended by changing the reference from "Paragraph (1)(i)" to "Paragraph (d)(1)(i)," and by changing the reference from to "§ 11.401(a)" to "§ 11.401(c)."

16. Section 11.403(d)(3)(ii) is amended by changing the reference from "§ 11.401" to "§ 11.401(b)(1)(ii)(G)."

§ 11.410 [Amended]

17. Section 11.410(e)(3) is amended by changing the reference from "§ 11.411(b)" to "§ 11.411(c)."

17a. Section 11.410(g)(2) is amended by changing the reference from "§ 11.410(h)(1)(ii)" to "§ 11.410(g)(1)(ii)."

18. Section 11.410(g)(3) is amended by changing the reference from "§ 11.410(h) (1) or (2)" to "§ 11.410(g) (1) or (2)."

§ 11.411 [Amended]

19. Section 11.411(b)(2) is amended by changing the reference from "this paragraph (b)" to "§ 11.411(a)."

20. Section 11.411(c)(5)(V) is amended by changing the reference from "section 16(d)" to "section 16(b)."

21. Section 11.411(d) is amended by changing the reference in § 11.411(d)(1) from "paragraph (m)(2) of this section" to "§ 11.411(c)(2)"; changing the reference in § 11.411(d)(2) from "paragraph (m)(1) of this section" to "§ 11.411(c)(1)"; and changing the reference in § 11.411(d)(2) from "this paragraph m" to "this paragraph (d)."

22. Sections 11.411(d) (4) and (5) are amended by changing the references

from "this paragraph (c)" to "this paragraph (d)."

§§ 11.411 and 11.412 [Amended]

23. Section 11.411(i) is amended by redesignating it as § 11.412(d).

§ 11.412 [Amended]

24. Section 11.412(b)(1) is amended by redesignating paragraphs (1) and (2) as (i) and (ii).

§ 11.491 [Amended]

25. Section 11.491, Item 3 is amended by changing the reference in Item 3(g) from "§ 11.401(a)(1)(ii)G)" to "§ 11.401(b)(1)(ii)(G)" and by changing the reference in Item 3(h) from "11.401(a)(1)(ii)(H)" to "§ 11.401(b)(1)(ii)(H)."

26. Section 11.491, Item 4 is amended by changing the reference from "§ 11.401" to "§ 11.401(b)(2)."

§ 11.507 [Amended]

27. Section 11.507(b)(2) is amended by redesignating (A) and (B) therein as (i) and (ii).

§ 11.511 [Amended]

28. Section 11.511(d) is amended by changing the reference from "§ 11.509(c)" to "§ 11.511(c)."

§ 11.590 [Amended]

29. Section 11.590, Item 4(b)(1) is amended by changing the reference from "§§ 11.511(b)(1) (ii), (iii), (iv), (v) and (vi)" to "§ 11.511(b)(1) (ii), (iii), (iv), (v) and (vi)."

30. Section 11.590 (Form F–5), Item 7 is amended by changing the reference from "Instruction 4 to § 11.813" to "Instruction 2 to § 11.813."

31. Section 11.590, Item 9, Instruction 1, Item 10, Instruction 1 and Item 11, Instruction 1 are amended by changing the reference from "Instruction 5 of § 11.842" to "Instruction 3 to § 11.842(b)."

32. Section 11.590, Item 9, Instruction 4 is amended by changing the reference from "§ 11.506" to "§ 11.506(a)."

§ 11.592 [Amended]

33. Section 11.592, Item 4 is amended by changing the reference from "Item 7(f) of Form F–5" to "§ 11.844(a)."

§ 11.602 [Amended]

34. Section 11.602(b) is amended by changing the reference from "§ 11.604(b)(3)" to "§ 11.602(b)(3)."

§ 11.603 [Amended]

35. Section 11.603(a)(3) is amended by changing the reference from "§ 11.606(e)(2) (i) and (2)" to "§ 11.606(e)(2) (i) and (ii)."

§ 11.611 [Amended]

36. Section 11.611(b) is amended by changing the reference from "§ 11.608" to "§ 11.606."

§ 11.724 [Amended]

37. Section 11.724(d)(2) is amended by changing the reference from "Form 8" to "Form F–20."

§ 11.832 [Amended]

38. Section 11.832(c)(1)(ii)(B)(5)(i) is amended by changing the reference from "paragraph (5)(i)(C)(2)(iv)" to "paragraph (c)(1)(ii)(B)(4)."

§ 11.841 [Amended]

39. Section 11.841(a) is amended by changing the reference from "§ 11.102(q)" to "§ 11.102(o)."

§ 11.841 [Amended]

40. Section 11.841(d)(1) is amended by changing the two references from "paragraph (c)" to "paragraph (b)."

§ 11.841 [Amended]

41. Section 11.841(e), Instruction 2 is amended by changing the reference from "subparagraph (d)" to "subparagraph (e)."

42. Section 11.841(e), Instruction 4 is amended by changing the reference from "§ 11.841(d)" to "this paragraph (e)."

§ 11.844 [Amended]

43. Section 11.844(c)(1)(iv)(D) is amended by changing the reference from "§ 11.844(c)(1)(A) or § 11.844(c)(1)(B)" to "§ 11.844(c)(1)(iv)(A) or § 11.844(c)(1)(iv)(B)."

44. Section 11.844(c)(1)(iv)(E) is amended by changing the reference from "paragraphs (c)(1) (A) and (B)" to "paragraphs (c)(1)(iv) (A) and (B)."

45. Section 11.844(c)(1)(iv)(F) is amended by changing the reference from "paragraph (c)(1) (A) or (B)" to "paragraph (c)(1)(iv) (A) or (B)."

46. Section 11.844(c) is amended by changing the reference in Instruction 2.D from "(A), (B), (C), (D), or (E)" to "(A), (B), (C), (D), (E), or (F)."

47. Section 11.844(c), Instruction 2(D), Note is amended by changing the reference from "paragraphs (d)(1) (iii) and (iv)" to "paragraphs (c)(1) (iii) and (iv)."

Dated: January 31, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86–2532 Filed 2–7–86; 8:45 am]

BILLING CODE 4810-33-M

12 CFR Part 11

[Docket No. 86–4]

Securities Exchange Act Disclosure Rules; Correction

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule, corrections.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is publishing corrections to its Securities Exchange Act Disclosure Rules codified at 12 CFR Part 11 ("Part 11"). The corrections involve the insertion or deletion of words or minor wording changes, and in one instance, the redesignation of a subsection, none of which have any substantive effect. In addition, four instructions which should have accompanied § 11.841(a), and which were missing in the proposed and final versions of the amended Part 11, are being added. Also, § 11.410(f) is being deleted and replaced with a new § 11.410(f) which corresponds to the material in § 11.6(f) under the previous format of Part 11. This action is necessary because the Office recently adopted final amendments to Part 11 which included a complete reformatting and reorganization of the regulation, and which became effective on December 30, 1985. The intended effect of the technical amendments is to facilitate compliance by national banks with the requirements of amended Part 11.

No collection of information requirements are involved in the technical amendments.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Michael C. Dugas, Securities & Corporate Practices Division, telephone (202) 447–1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The Office is publishing corrections to its Securities Exchange Act Disclosure Rules, 12 CFR Part 11, to insert or delete words or make minor wording changes, and in one instance to redesignate a subsection. The Office is also adding four instructions to § 11.841(a) which clarify that section. All these instructions with the exception of Instruction 5 had previously accompanied Item 6(a) of 12 CFR § 11.51, the portion of the old Part 11 to which new § 11.841(a) corresponds. Also, § 11.410(f), which repeats § 11.410 (e), is being deleted and replaced with a new § 11.410(f). The new § 11.410(f) corresponds to the material in § 11.6(f) under the previous format of Part 11.

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which was not proposed for substantive change. Thus there is no substantive effect.

On Wednesday, October 30, 1985, the Office published a final rule at 50 FR 45276 amending Part 11. That final rule which became effective on December 30, 1985, included a complete reformatting and reorganization of the regulation. In the process of administering the amended Part 11, certain missing words or minor errors have come to the attention of the Office. Immediate publication of the corrections in the **Federal Register** is necessary to facilitate compliance by national banks with the requirements of amended Part 11.

For the same reasons, the Office is adding four instructions to § 11.841(a) to clarify that section, and is amending § 11.410(f). The instructions being added to § 11.841(a) are similar to Instructions 2–5 to Item 401(a) of Securities and Exchange Commission (SEC) Regulations S–K, 17 CFR 229.401(a), on which § 11.841(a) is based. The Securities Exchange Act of 1934 requires the Office to issue regulations substantially similar to those adopted by the SEC or publish its reasons for not doing so. The addition of the four instructions would comply with this requirement. In addition, as noted above, all of these instructions, with the exception of Instruction 5, as well as § 11.410(f) as it is being amended, were contained in the comparable provisions of Part 11 in effect prior to December 30, 1985.

Special Studies

A. *Competition.* The corrections will have no effect on competition.

B. *Regulatory Impact Analysis.* Pursuant to Executive Order 12291, the Office has determined that this final rule is not a major rule. Therefore, a regulatory impact analysis is not required.

C. *Regulatory Flexibility Act.* The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other entities.

D. *Paperwork Reduction Act.* Pursuant to the Paperwork Reduction Act of 1980, the reporting and recordkeeping requirements of 12 CFR Part 11 were submitted to and approved by the Office of Management and Budget and assigned control number 1557–0106.

E. Adoption Without Notice and Comment. The Office has found that notice and comment procedures concerning this rulemaking are unnecessary. This rulemaking merely makes technical changes intended to eliminate confusion. There is no substantive effect.

List of Subjects in 12 CFR Part 11

National banks, Securities disclosure rules.

For the reasons set out in the preamble, Part 11 of Chapter I of Title 12 is being corrected as follows.

PART 11—[AMENDED]

1. The authority citation for 12 CFR Part 11 continues to read as follows:

Authority: 15 U.S.C. 781, 78m, 78n, 78p, 78w.

§ 11.390 [Amended]

2. Section 11.390 General Instruction E(3) is amended by removing the last sentence of that instruction, which reads "See Instruction 4 to § 11.841(b)."

§ 11.401 [Amended]

3. Section 11.401(a) last sentence, first two words and § 11.401(b)(1), introductory text are amended by changing the words "three copies" to "four copies."

4. Section 11.401(b)(3)(ii) is amended by changing the phrase "bank of such" to "bank issuing such."

5. Section 11.401(c) is amended by changing "December 31, 1979" to "December 31, 1976" and by changing "December 22, 1970" to "December 20, 1970."

§ 11.402 [Amended]

6. Section 11.402(b) is amended by changing the first two words of the second sentence from "Three copies" to "Four copies."

§ 11.403 [Amended]

7. The parenthetical citation to Regulation T in § 11.403(b)(3)(iii)(B) should read "(12 CFR 220.1 to 220.130)."

§ 11.405 [Amended]

8. Section 11.405(b)(2)(iii) is amended by changing the phrase "specific purpose involved" to "specific purchase involved."

9. Section 11.410 is amended by revising paragraph (f) to read as follows:

§ 11.410 Reports of directors, officers and principal stockholders pursuant to Section 16(a) of the Exchange Act.

* * * * *

(f) *Exemption from Section 16 of securities purchased or added by odd-lot dealers.* A bank's securities purchased or sold by an odd-lot dealer (1) in odd-lots so far as reasonably necessary to carry on odd-lot transactions, or (2) in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of section 16 with respect to participation by such odd-lot dealer in such transactions.

* * * * *

§ 11.411 [Amended]

10. Section 11.411(c)(4)(ii) is amended by changing the phrase "parenthetical clause" to read "first sentence."

§ 11.490 [Amended]

11. Section 11.490 is amended by removing "(C) or (D)" from the instruction relating to persons who have previously filed on Form F–11A, immediately preceding the first NOTE.

§ 11.504 [Amended]

12. Section 11.504(b)(4)(i) is amended by adding the word "part" between "integral" and "of."

§ 11.590 [Amended]

13. Section 11.590, Item 2 is amended by changing "indicated" to "indicate" in the first sentence.

14. Section 11.590, Item 7 is amended by changing the reference from "Instruction 4 to § 11.813" to "Instruction 2 to § 11.813" and by changing the phrase "in which any executive director" to read "in which any executive officer, director."

§ 11.690 [Amended]

15. Section 11.690 Cover Page, Disclosure (5) should be changed from "Citizenship of Place of Organization" to "Citizenship or Place of Organization."

16. Section 11.690, Item 9, Instruction 1 is amended by changing the reference from "(17 CFR 349.210)" to "(17 CFR 249.210)" and by changing the reference from "SEC Form F–20 (17 CFR 249.200)" to "SEC Form 20–F (17 CFR 249.220f)."

17. Section 11.690, General Instruction B, second sentence, is amended by changing "indentified" to "identified."

18. Section 11.690, General Instruction G(ii) is amended by changing "securites" to "securities."

§ 11.691 [Amended]

19. Section 11.691, Item 6, paragraph (a) is amended by changing "affected" to "effected."

20. Section 11.841(a) is amended by revising the instructions, to read as follows:

§ 11.841 Directors and executive officers.

(a) * * *

Instructions

1. Do not include any arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No nominee or person chosen to become a director who has not consented to act as such should be named in response to this paragraph.

3. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. In connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information shall be given as to nominees of the persons making the solicitation. In all other instances, information shall be given as to directors and persons nominated for election or chosen by management to become directors.

* * * * *

§ 11.841 [Amended]

21. Section 11.841(c) is amended by changing "chosed" to "chosen."

22. Section 11.841(g) is amended by changing the word "of" to "on," the last time that it occurs.

§ 11.842 [Amended]

23. Section 11.842(b) is amended by removing the words "of this section" from Instructions 2 and 4 thereunder, the first and third times they occur in Instruction, 2 and the first time they occur in Instruction 4.

24. Section 11.842(b) is amended by changing the word "these" to "those" in Instruction 1 thereunder.

§ 11.843 [Amended]

25. Instruction 6 to § 11.843(b) is removed and Instruction 7 is redesignated as Instruction 6.

§ 11.844 [Amended]

26. Section 11.844(a) is amended by changing the phrase "subsidiaries was or to be" to "subsidiaries was or is to be."

27. Section 11.844(b)(1)(i) is amended to remove "or other entity's."

28. Section 11.844(b)(2)(i) is amended to remove "or other entity's."

29. Section 11.844(c) is amended by removing the words "or collectibility" from Instruction 3.

30. Section 11.844, Instruction 1 at the end of the section is amended by inserting the word "or" after "§ 11.842 the first time "§ 11.842" appears.

§ 11.911 [Amended]

31. Section 11.911(e) is amended by changing "134" to "135."

§ 11.912 [Amended]

32. Section 11.912(b) is amended by changing the parenthetical from "(FFIEC 033)" to "(FFIEC 032, 033, 034, as applicable)."

§ 11.931 [Amended]

33. Section 11.931, line item 22 is amended by inserting "(a)" after "Limited-life preferred stock" and, in line item 22(b) by changing the phrase "in the event of a required dividend" to read "in the event that a required dividend."

Dated: January 31, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86–2531 Filed 2–7–86; 8:45 am]

BILLING CODE 4810-33-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of Effective Date.

SUMMARY: The Farm Credit Administration (FCA) published an amended Regulation § 614.4330 that deals with loan participation agreements containing required repurchase provisions. The former regulation prohibited Farm Credit System (System) institutions from entering into such agreements with required repurchase provisions. The amended regulation lifts this restriction for System institutions and also applies to loan participation agreements between System sellers and commercial lenders.

The final rule was published in the November 14, 1985, **Federal Register**, and provided that notice of the actual effective date would be subsequently published (50 FR 47043). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress the effective date of this rule was January 21, 1986.

EFFECTIVE DATE: January 21, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Peoples, Office of the General Counsel, (703) 883–4024, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92–181, Stat. 619, 620, 621 (12 U.S.C. 2243, 2252))

Donald E. Wilkinson,

Acting Chairman.

[FR Doc. 86–2805 Filed 2–7–86; 8:45 am]

BILLING CODE 6705-01-M

12 CFR Part 615

Funding and Fiscal Affairs; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of Effective Date.

SUMMARY: The Farm Credit Administration (FCA) published an amended Regulation § 615.5150 that deals with the acquisition and disposition of real and personal property by Farm Credit System (System) banks and of System bank board policies on electronic data processing and word processing programs. The amendment eliminates the prior approval requirements in these areas and provides instead regulatory guidance for the district boards and supervising banks to follow in evaluating, documenting, and approving such activities.

The final rule was published in the November 26, 1985, **Federal Register**, and provided that notice of the actual effective date would be subsequently published (50 FR 48553). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of this rule was January 31, 1986.

EFFECTIVE DATE: January 31, 1986.

FOR FURTHER INFORMATION CONTACT:

Joseph M. Beltramo, Office of Examination and Supervision, (703) 883–4441;

or

Dorothy J. Acosta, Office of the General Counsel, (703) 883–4023, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22101–5090.

(Secs. 5.9, 5.12, Pub. L–92–181, 85 Stat. 619 620, and 621 (12 U.S.C. 2243, 2252))

Donald E. Wilkinson,

Acting Chairman.

[FR Doc. 86–2806 Filed 2–7–86; 8:45 am]

BILLING CODE 6705-01-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-8; Amdt. 39-5219]

Airworthiness Directives; Pratt & Whitney (PW) JT9D-7R4D, -7R4E, and -7R4E4 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires flow checking fuel nozzles following on-wing cleaning and starting difficulties, and requires ground starts using single ignition on PW JT9D-7R4 series engines. The AD is needed to prevent carbon build up on the fuel nozzles which could result in engine surge and the inability to restart inflight.

DATES: Effective—March 14, 1986.

Compliance schedule—As prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register on March 14, 1986.

ADDRESSES: The applicable PW Maintenance Manual P/N 785050 may be obtained from: Pratt & Whitney, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108.

A copy of the PW Maintenance Manual P/N 785050, Chapter 73-13-07, Cleaning/Painting Section is contained in Rules Docket No. 85-ANE-8 in the Office of the Regional Counsel, New England Region, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires flow checking fuel nozzles following on-wing cleaning and starting difficulties, and requires ground starts using single ignition on certain PW JT9D-7R4 series engines was published in the **Federal Register** on May 21, 1985, (50 FR 12172). The FAA has determined that carbon accumulation in internal flow passages and orifices of the primary flow path, and external carbon build up on certain JT9D-7R4 series engine fuel nozzles, can alter the spray cone angle characteristics and reduce combustion efficiency and stability. The condition has caused instances of engine sub-idle speeds, lack of response to throttle advance, overtemperature, surge, and the inability to start the engine inflight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Three comments were received. The first commenter recommended that paragraph (b) of the proposed AD be modified to address the pilot via the flight manual and require log book entries to assure that timely maintenance procedures are followed within the 25 flight cycles.

The FAA does not concur with the first commenter's proposal. Paragraph (b) of the AD addresses the requirements and compliance of flow checking the fuel nozzles. The implementation of the requirements is the responsibility of the operator to be accomplished through their maintenance and flight crew notification procedures. Therefore, the FAA did not modify the original proposal.

The second commenter proposed to allow continuation of flight with single ignition start and to restore single ignition start capability at the first maintenance opportunity. The FAA reviewed the commenter's recommendation but did not modify the original proposal. Any unresolved aborted ground start with 20 percent or greater flow reduction may be significant enough to cause possible instances of engine sub-idle speeds, lack of response to throttle advance, overtemperature, surge, and the inability to start the engines inflight. The FAA has concluded that five flight cycles are adequate to reach a maintenance base where the AD can be accomplished.

The third commenter requested that the Boeing Maintenance Manual procedure for nozzle cleaning and flow check be included as an alternate to the PW Maintenance Manual. The PW Maintenance Manual may not be readily available to the operator. However, the Boeing Maintenance Manual is available to all operators. Boeing incorporates the PW Maintenance Manual into the Boeing Maintenance Manual and any revisions to the PW Maintenance Manual are directly reflected in the Boeing Maintenance Manual.

The FAA agrees with the commenter's request and will reference the Boeing Maintenance Manual procedure for nozzle cleaning and flow check as an equivalent means of compliance.

Conclusion

The FAA has determined that this regulation involves 29 Boeing 767 aircraft and will cost approximately $1,600 per aricraft. These aircraft are not operated by small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD to § 39.13:

Pratt & Whitney: Applies to Pratt & Whitney model JT9D-7R4D, 7R4E, and -7R4E4 turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent deterioration of fuel nozzle flow and spray cone angle characteristics which could lead to engine surge, overtemperature, or the inability to request inflight, accomplish the following:

(a) Conduct a flow check on JT9D-7R4 series engine incorporating PW P/N 792842 and/or 794731 fuel nozzles following any on-wing cleaning procedure prior to returning the aircraft to service in accordance with PW Maintenance Manual P/N 785050, Chapter 73-13-07, Cleaning/Painting Section as revised by Temporary Revision 73-3, or FAA approved equivalent.

(1) A flow reduction of 10 percent or less is acceptable.

(2) A flow reduction greater than 10 percent but less than 20 percent requires selected fuel nozzles to be replaced with new or ultrasonically cleaned nozzles within 300 flight cycles. The fuel nozzles may be replaced in quantities and locations as needed to restore the flow to 10 percent flow reduction or less.

(3) A flow reduction of 20 percent or greater requires selected fuel nozzles to be replaced with new or ultrasonically cleaned nozzles within 25 flight cycles. If there have been any unresolved aborted ground starts (since the last cleaning and flow check) that are not attributed to an ignition system fault or a mechanical problem which is unrelated to the fuel nozzles, fuel nozzles must be selectively replaced within 5 cycles. The fuel nozzles may be replaced in quantities and locations as needed to restore the flow to 10 percent flow reduction or less.

(b) Ground starts must be initiated using single ignition, either ignition selector position 1 or 2. If an aborted start is experienced using single ignition that is related to a fuel nozzle problem, the engine may be started on the opposite ignition system or dual ignition and the fuel nozzles must be cleaned and flow checked within 25 flight cycles in accordance with PW Maintenance Manual P/N 785050, Chapter 73-13-07, Cleaning/Painting Section as revised by Temporary Revision 73-3, or FAA approved equivalent.

The flow check limits in Paragraph (a) are applicable to Paragraph (b).

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, 01803 may adjust the compliance time specified in this AD.

PW Maintenance Manual P/N 785050, Chapter 73-13-07, Cleaning/Painting Section as revised by Temporary Revision 73-3 is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552 (a)(1). (Boeing Maintenance Manual, Chapter 73-11-05, Cleaning/Painting Section is an equivalent means of compliance.) All person affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. This document also may be examined at the Office of the Regional Counsel, Rules Docket 85-ANE-8, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on March 14, 1986.

Issued in Burlington, Massachusetts, on January 11, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-2775 Filed 2-7-86 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ASO-1]

Alteration of Transition Area, Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Atlanta, Georgia, transition area by raising the floor of controlled airspace from 700 to 1,200 feet, in the vicinity of Stone Mountain, Georgia. This action will provide relief to those aircraft operating to and from the Stone Mountain-Britt Memorial Airport during Visual Flight Rule conditions. This reverses an action which became effective, under Airspace Docket No. 85-ASO-21, on January 16, 1986.

EFFECTIVE DATE: 0901 UTC, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, January 16, 1986, the FAA amended Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by increasing the size of the Altanta, Georgia, transition area (50 FR 49528). This action was intended to provide additional controlled airspace for use by Air Traffic Control in radar vectoring of aircraft in the vicinity of Stone Mountain and DeKalb-Peachtree Airport. Due to internal FAA mail distribution problems, interested parties were not invited to participate in this rulemaking procedure. No comments objecting to the proposal were received and the legitimate concerns of operators at Stone Mountain-Britt Memorial Airport were not disclosed until after publication of the Final Rule. Alternative means to provide the necessary airspace for radar vectoring have been developed; thus, the need for the additional controlled airspace has been resolved.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations reduces the size of the Atlanta, Georgia, transition area and increases the base of controlled airspace in the vicinity of Stone Mountain 700 to 1,200 feet above the surface.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation of Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47

2. By amending § 71.181 as follows:

§ 71.181 Atlanta, GA—[Amended]

By removing the words "within a 6.5-mile radius of Stone Mountain (lat. 33°48'22"N., long 84°08'47"W);".

Issued in East Point, Georgia, on January 29, 1986.

James L. Wright,

Acting Air Traffic Manager, Southern Region.

[FR Doc. 86-2773 Filed 2-7-86 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 24861; Amdt. 91-193]

Change in Airspace Definition of Minimum Navigation Performance Specification

Correction

In FR Doc. 85-29517, appearing on page 51193 in the issue of Friday, December 13, 1985, make the following correction in the first column under **Background:**

In the second paragraph, the last line should read, "south of 38° 30"N".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8960]

National Talent Associates, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has modified a 1975 consent order with National Talent Associates, Inc., et al., amending the provisions of the order that tell the company what disclosures it must make to consumers about its success in obtaining paid employment for clients. The consent order prohibited the respondents from misrepresenting their ability to obtain modeling positions for young children and required them to disclose specified information to prospective clients.

DATES: Consent Order issued November 26, 1975. Modifying Order issued January 21, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry McDonald, FTC/B-425, Washington, DC 20580, (202) 376-3484.

SUPPLEMENTARY INFORMATION: In the Matter of National Talent Associates, Inc., a New Jersey corporation, National Talent Associates, Inc., an Illinois corporation, National Talent Associates, Inc., a California corporation, Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, William Schuller Agency, Inc., a corporation, and Monica Stuart, individually and as an officer of said corporation. The prohibited trade practices and/or corrective actions, as set forth at 40 FR 59591, remain unchanged.

List of Subjects in 16 CFR Part 13

Modeling agencies, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the Matter of National Talent Associates, Inc., a New Jersey corporation, National Talent Associates, Inc., an Illinois corporation, National Talent Associates, Inc., a California corporation, Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, William Schuller Agency, Inc., a corporation, and Monica Stuart, individually and as an officer of said corporation.

[Docket No. 8960]

Order Reopening the Proceeding and Modifying Cease and Desist Order

On September 20, 1985, National Talent Associates, Inc., a New Jersey corporation; National Talent Associates, Inc., an Illinois corporation; National Talent Associates, Inc., a California corporation; and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations (Petitioners) filed a request to reopen and modify the consent order entered against them by the Commission on November 26, 1975, in Docket No. 8960 (86 F.T.C. 1202).[1]

The request to reopen and modify the consent order was placed on the public record on September 20, 1985, and a press release regarding the request was issued on October 2, 1985. The public comment period ended on November 1, 1985, and no comments were filed. The deadline to rule on Petitioners' request was January 20, 1985.

Petitioners sell five year contracts to parents of young children under which they arrange to have the children photographed annually for five years. They then submit the photographs to talent agencies for consideration for employment as models. The order prohibits various misrepresentations including those relating to the employment opportunities and potential earnings available to children placed under their contracts. It further imposes affirmative obligations on Petitioners, including a requirement that they give to each prospective purchaser an "Important Information" document disclosing the number of children signed to their contracts during the immediately preceding two calendar year period, and information reflecting the success rates of these children in the modeling business.

Petitioners requested that several paragraphs of Part I of the order be modified or replaced with new paragraphs and that three new paragraphs be added to the order. They assert that changed conditions of fact since the order was issued require that paragraph 13 be modified. They state further that the public interest requires that the first and second "IT IS FURTHER ORDERED" paragraphs of the order be replaced with new paragraphs and that new third, fourth and fifth "IT IS FURTHER ORDERED" paragraphs be placed in the order.

Paragraph 13 of the Order

Under paragraph 13 of the order, Petitioners are prohibited from representing that:

National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio.

Petitioners state that at the time that the order was issued, the individual respondents owned an interest in a photographic studio. This is no longer true, and Petitioners now arrange for NTA clients to have photographs taken by independent photographic studios. Based on this changed condition of fact, Petitioners ask that the words, "unless such is in fact true", be added to the end of the paragraph.

The Commission agrees with the Petitioners that paragraph 13 should be modified to reflect the stated changed factual condition. Petitioners should not be prohibited from making a truthful representation. If they acquire an interest in a photographic studio to which they refer clients in the future, the modified paragraph would prohibit them from representing that the photographic studio is an independent photographic studio.

First "It Is Further Ordered" Paragraph of the Order

Petitioners ask that the first "It Is Further Ordered" paragraph of the order, with the exception of the last subparagraph therein, be replaced with a new first "It Is Further Ordered" paragraph. The first "It is Further Ordered" paragraph reads as follows:

It Is Further Ordered that respondents shall disclose the following information, in writing, in a clear and conspicuous manner to each person who is a prospective purchaser of any of their products or services, prior to entering into any agreement for the furnishing of such products or services, including the photographing of, or assistance to, any such

[1] Other respondents under the order are not bound by Part I of the order, with which the petition is concerned, and are not Petitioners.

persons in seeking or obtaining employment opportunities as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

a. The number of persons who contracted with respondents for the purchase of photographs or services to be used in connection with the selection, placement or employment of persons in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, within the two calendar years immediately preceding the year in which the prospective purchaser was contacted, the number and percentage of such persons who obtained paid employment through the auspices of respondents, as well as the number of paid jobs and agency contracts obtained by such persons.

b. The total number of persons placed under contract by respondents in each of the following categories of gross annual earnings, derived from paid employment in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, during the two calendar years immediately preceding the year in which the prospective purchaser was contacted by respondents: Under $100, $100–$250, $250–$500, $500–$1,000, $1,000–$2,000, $2,000–$4,000, $4,000–$6,000, $6,000–$8,000, $8,000–$10,000, $10,000 and above.

c. Whether any financial agreement, arrangement or connection, exists between respondents and any photographic studio to which they may refer prospective purchasers of their photographs or services.

d. Whether any financial agreement, arrangement or connection, exists between respondents and any person, firm or agency to whom photographs, or any other information, concerning the prospective purchaser, of their products or services may be sent by respondents.

e. The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents.

Petitioners' proposed first "It Is Further Ordered" paragraph of the order would effect several significant changes in the "Important Information" document. The document now relates to the success rates of children signed by NTA during the immediately preceding two calendar years. The modified paragraph would change the time period covered to the immediately preceding five calendar years. Petitioners argue that the information required to be disclosed does not accurately reflect NTA client opportuntities during the term of their contracts with NTA. "Of significant importance", Petitioners state, "NTA's agreements with clients are for five years; whereas, the order provisions require disclosure for two years. Depending on the date on which a client is signed during the two-year period, it is often impossible for a client to be processed by NTA, signed by a talent agency, obtain a job assignment and receive payment for the assignment in sufficient time to be included in all subparagraph a. data disclosure categories." Thus, to make the data more relevant to prospective purchasers, Petitioners propose to enlarge the two year period to five years.

The items of information to be disclosed on the "Important Information" document would be reduced from five to three. The order requires the disclosure of the number of children signed to NTA contracts, the number of these children who were accepted by talent agencies, the number and percentage who obtained paid employment, the number of paid job assignments that they obtained and their earnings. Data concerning the number who were accepted by talent agencies and the number of paid job assignments that they obtained would no longer be disclosed. According to the Petitioner, these items of information are confusing and not easily relatable to the total number of persons contracting with NTA. Furthermore, the Petitioners assert that this data is extremely burdensome to compile.

The disclosure of earnings prescribed by subparagraph b. of the first "It Is Further Ordered" paragraph would be substantially altered by Petitioners' proposed modification. The proposed categories of gross annual earnings are as follows: Under $500, $500–$5,000, $5,000–$10,000 and above $10,000. Additionally, cumulative earnings would be permitted rather than annual earnings during the five calendar year period. In support of this modification, Petitioners assert that the public interest requires the elimination of unnecessary detail, and the four categories of earnings are more concise and easier to understand. Additionally, Petitioners argue that the physical counting and compilation of this data has been extremely burdensome and costly to NTA. To continue the ten categories of earnings with five year computations would be even more burdensome.

Petitioners' proposed modifications would permit two footnotes to be placed on the "Important Information" document. A footnote to items one and two, the number of persons signed to NTA's contracts and the number and percentage of those persons who received payment for employment, would read:

Of the children signed during the past five years, only a few have had the opportunity to complete the full term of their five-year agreement.

A footnote to item three, the number of persons who earned income and their gross earnings, would read:

These figures do not include those children signed by NTA prior to *(Year)* who received earnings during the past five years.

Petitioners state that the footnotes are needed to "further clarify and explain the coverage of items, 1, 2 and 3 on the disclosure document."

Subparagraph c. of the first "It Is Further Ordered" paragraph requires Petitioners to disclose whether "any financial agreement, arrangement or connection exists between Petitioners and any photographic studio to which they may refer prospective purchasers of their photographs or services." Subparagraph d. requires the disclosure of any such arrangement with firms or agencies to whom photographs, or any other information concerning prospective purchasers of their photographs or services are sent. Petitioners ask that subparagraphs c. and d. be combined into subparagraph (4) in the paragraph that they propose. These disclosures would be necessary only if such financial arrangements exist. Petitioners assert that the public interest requires this modification for clarification purposes.

The Commission has concluded that, taken together, the modifications proposed by Petitioners to the first "It Is Further Ordered" paragraph of the order serve the public interest. The "Important Information" document does not accurately reflect the success rates of Petitioners' clients if it is limited to only two of the five years that they are under contract. Moreover, some less significant information would be eliminated. The essential information is the number of children signed to Petitioners' contracts, the number and percentage who obtained employment and their earnings. This information would be retained. Similarly, the reduction of categories of income from ten to four serves to make the document more concise and understandable. Unless a financial agreement, arrangement or connection exists between Petitioners and the photographic studios to whom they refer clients or the talent agencies to whom the photographs are submitted, there is no need to clutter the document with the disclosures required by subparagraphs c. and d. of the order. The footnotes, which would be permitted to appear on the document, would assist prospective purchasers in understanding the statistical data. Finally, the modified order paragraph is clearly drafted, and ambiguities have been eliminated.

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Last Subparagraph of the First "It Is Further Ordered" Paragraph and the Second "It Is Further Ordered" Paragraph of the Order

Petitioners request further that the order be modified by deleting therefrom the last subparagraph of the first "It Is Further Ordered" paragraph and the second "It Is Further Ordered" paragraph and replacing them with the second "It Is Further Ordered" paragraph set forth in their petition. The subparagraph and paragraph proposed to be deleted from the order are:

At the time when the foregoing disclosures are made, respondents shall furnish the prospective purchase of any of their products or services with a retainable duplicate copy of the disclosure document, and secure from such prospective purchaser a signed acknowledgment of the receipt thereof on the properly dated original copy. The document containing the disclosures shall be headed "*Important Information*", and shall not contain information or representations other than those set forth above.

It is further ordered that respondents maintain, for a five year period following the execution thereof, the originals of the signed acknowledgments of receipt of the disclosures described in the preceding paragraphs and make them available for examination and copying, if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

The modification requested by respondents would replace the words "prospective purchaser", with the word, "purchaser". Additionally, respondents' representative would be required to sign the copy of the "Important Information" document that is retained for Commission staff inspection.

The Commission considers the proposed modifications, taken together, to be in the public interest. The first subparagraph of the proposed first "It Is Further Ordered" paragraph retains the obligation to give the "Important Information" document to each prospective purchaser of Petitioners' services. However, enforcement problems are brough about by a requirement that a signed acknowledgment of receipt be retained from each prospective purchaser. Additionally, the requirement that respondents' representative must also sign the copy of the document that is retained for staff inspection should serve to make those representatives aware of the importance of the document and the need to obtain a signed acknowledgment of receipt from each purchaser and to retain it.

Proposed Third "It Is Further Ordered" Paragraph of the Order

Petitioners ask that a new third "It Is Further Ordered" paragraph be placed in the order. It would prohibit them from making any claim or other representation, in advertising or promotional material, or in any oral sales presentation, that contradicts any of the information required to be disclosed in the "Important Information" document. In the view of the Commission, the public interest requires this prohibition to prevent overstatements of the employment opportunities and financial gains that may be anticipated by purchasing Petitioners' services.

Proposed Forth "It Is Further Ordered" Paragraph of the Order

A new forth "It Is Further Ordered" paragraph, which Petitioners to have up to sixty days after the close of each calendar year to update the "Important Information" document for the immediately preceding five calendar year period. In compiling the information required in the first item of information on the disclosure document, a tolerance of one quarter of one percent would be permitted and a tolerance of one percent would be permitted im compiling the information for the third item of information, if such variances resulted from a good faith efforth to accurately compile the required information.

In support of their request that the order be modified by adding the above-described paragraph, Petitioners contend that the public interest requires the "collection, assimilation and dissemination of accurate data; however, contrary to the public interest, the order does not allow sufficient time to collect the required data nor provide for good faith human error in assembling the data for display on the "Important Information" document. the proposed order paragraph, Petitioners continue, "takes into account the necessary time needed to accurately complete the 'Important Information" document and allows for good faith error, should the physical counting and compilation of statistical data (including determining five year cumulative earnings figures for each eligible client) result in insignificant errors.

We agree with Petitioners that adequate time should be provided in the order to update the information on the "Important Information" document from one calendar year to the next. The sixty days requested by Petitioners is reasonble. We agree also that small tolerances should be permitted for errors made in good faith in compiling the statistical data showing the number of children signed to their contracts and their earnings. No tolerance would be permitted for the information showing the number and percentage who were successful in being employed through Petitioners' auspices since this information involves fewer numbers and less difficult calculations.

Proposed Fifth "It Is Further Ordered" Paragraph of the Order

Petitioners further request that a fifth "It Is Further Ordered" Paragraph be placed in the order. It would require Petitoners to "maintain, and, upon request, make available to the Federal Trade Commission records substantiating the statistical information contained in each 'Important Information' document then in use." As the "Important Information" document relates to a period of five calendar years, the records substantiating the information would be maintained for five years. Petitioners assert that the proposed fifth "It Is Further Ordered" paragraph is in the public interest as it provides "additional compliance safeguards by establishing data substantiation and recordkeeping requirements which will allow the Commission's staff to effectively monitor Respondents' compliance with the first "It Is Further Ordered" provision.

The Commission has concluded that the public interest clearly requires that records substantiating the information on the "Important Information" document be maintained for compliance monitoring purposes.

Conclusions

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), requires that an order be modified or set aside upon a satisfactory showing that changed conditions of law or fact require that the order be altered, modified or set aside. The Commission's rules implementing this statute amplify on this by providing that an order should be altered, modified or set aside if "the public interest so requires." The Commission has concluded that Petitioners have adequately shown that changed conditions of law and public interest considerations require that the order be modified in the manner requested by Petitioners.

The "Important Information" document, if prepared in accordance with the terms of the modified order, will more accurately reflect the success rates of Petitioners' clients. By the elimination of unnecessary information

the document will be more understandable and meaningful to prospective purchasers of Petitioners' services. The burden and expense of compiling the statistical data for the document will also be substantially reduced. Moreover, the modifications strengthen the order by requiring substantiation for the information on the "Important Information" document and prohibiting representations that may contradict this information.

It is therefore ordered that the proceeding is hereby reopened and the Decision and Order issued on November 26, 1975, is hereby modified to read as follows:

Order

It is ordered that National Talent Associates, Inc., New Jersey, Illinois and California corporations, their successors and assigns, and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, and said respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, orally or in writing, that:

1. Respondents have received information that a person may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

2. Referrals from past purchasers of their products or services are a significant source from which the names of potential purchasers have been obtained.

3. Respondents have obtained the names of potential purchasers from a source which cannot be divulged.

4. Respondents, when requested, will provide persons with the source from which the information referred to in their solicitation letters, solicitation phone calls, or in any other means of solicitation was obtained and the nature of such information, unless respondents provide such information when requested.

5. National Talent Associates, Inc. has the expertise essential for the judging and selection of the most qualified persons to be used as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

6. National Talent Associates' salesmen, agents or representatives have the expertise essential to select and judge the suitability of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

7. Persons who prior to an in-person interview have been solicited by National Talent Associates, Inc., have been selected on the basis that they may have the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

8. The majority of National Talent Associates' income is derived from its personal management contracts and its ability to place persons under contract with the leading advertising modeling, talent or entertainment agencies.

9. Persons are selected and offered contracts by National Talent Associates, Inc., only on the basis that they may possess the personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

10. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc., or by any person or agency, will be aided, increased or enhanced, by entering into a contract with National Talent Associates, Inc.

11. Access to Monica Stuart or to the William Schuller Agency, Inc., is available only to persons who contract with National Talent Associates, Inc.

12. Monica Stuart or the William Schuller Agency, Inc., review photographs of only those persons who have contracted with National Talent Associates, Inc.

13. National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio, unless such is in fact true.

14. Persons who contract with National Talent Associates, Inc. will receive annually one black and white, 8 x 10 inch, photograph of children in the family not under contract, for a five year period, or for any period in excess of the period in which said photograph is received without any obligation to purchase additional photographs at an added cost.

15. Natural color photographs of persons who contract with National Talent Associates, Inc., are submitted annually, for a five year period, or for any period in excess of the period in which said photographs are submitted to Monica Stuart or to the William Schuller Agency, Inc., for her or their consideration and review, without disclosing that, unless the person comes back for rephotographing annually for a five year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

16. National Talent Associates, Inc., photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc., for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

17. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

18. Persons placed under contract by National Talent Associates, Inc., can reasonably anticipate significant or substantial earnings from paid employment in the commercial advertising, talent, modeling or entertainment industries as models, actors, actresses, or entertainers.

19. Persons who contract with National Talent Associates, Inc., may reasonably anticipate earning sums of money sufficient to provide for a college education or for any other such formal education.

20. A person's chances for selection as a model, actor, actress or entertainer by the commercial advertising, modeling, talent or entertainment industries is, in any way, enhanced solely because he or she is Black, Oriental, has red hair, freckles or because of his or her size, age or any other specific racial or personal characteristics.

It is further ordered that respondents shall disclose clearly and conspicuously to each prospective purchaser of their services, prior to entering into any agreement for the furnishing of such services, the following information in a written document entitled "Important Information":

(1) The total number of persons signed to contracts and accepted by respondents during the five (5) calendar years immediately preceding the year in which the prospective purchaser is contacted; provided, however, such total number may also be broken down by individual calendar year so long as the

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total number for the five (5) calendar years appears with such calendar year breakdown;

(2) The number and percentage of those persons in (1) above, who received payment for employment;

(3) The number of persons in (1) above who earned income and their cumulative gross earnings during the five (5) calendar years immediately preceding the year in which the purchaser is contacted, in each of the following categories: under $500, $500–$5,000, $5,000–$10,000, and above $10,000;

(4) Any financial agreement or affiliation between respondents and (a) any photographic studio to which they may refer purchasers of their services, and/or (b) any person, firm or agency to whom photographs, or any other information, concerning purchasers of their services may be sent by respondents;

(5) The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents;

and shall disclose in such "important information" document no other statistical data or information except (a) the name and addresses of National Talent Associates; (b) the following footnote relating to (1) and (2) above;

Of the children signed during the past five years, only a few have had the opportunity to complete the full term of their five-year agreement.

and (c) the following footnote relating to (3) above:

These figures do not include those children signed by NTA prior to *(Year) who received earnings during the past five years.*

It is further ordered that respondents shall provide to each purchaser of their services a retainable copy of the "Important Information" document, and secure from each such purchaser a signed and dated copy of such document containing an acknowledgement by the purchaser of having received such document, which shall also be signed by respondents' representative, and that respondents shall maintain each such signed and dated document for five years and, upon request, make them available to the Federal Trade Commission for inspection and copying.

It is further ordered that respondents shall not, in advertising or promotional material, or in any oral sales presentation, make any claim or other representation that contradicts any of the information required to be disclosed in the "Important Information" document.

It is further ordered that respondents shall have up to sixty (60) days after the close of each calendar year to compile and update the "Important Information" document for the immediately preceding five-calendar-year period; provided, however, no "Important Information" document shall be given to any prospective purchaser after sixty (60) days from the beginning of each calendar year that does not disclose the information required to be disclosed by (1) through (5) above for the immediately preceding five-calendar-year period. In compiling the information required in (1) and (3) above, it shall not be a violation of this order if the figures in (1) vary by one-quarter (¼) of of one percent (1%) and the figures for (3) vary by one percent (1%), if such variances resulted from a good faith effort to accurately compile the required information.

It is further ordered that respondents shall maintain, and upon request, make available to the Federal Trade Commission records substantiating the statistical information contained in each "Important Information" document then in use.

It is further ordered that, if any representations are made by the respondents, their salesmen, representatives or agents, either expressly or implied, orally or in writing, pertaining to any standards, qualifications or characteristics which a person must meet or possess before respondents will agree to place such a person under contract, photograph them or otherwise assist or render services to said person, respondents shall maintain complete and detailed records as to such persons who have failed to meet or possess such standards, qualifications or characteristics, including their names, addresses, date of rejection, and the reason or reasons for their rejection by respondents. Such records shall be made available for examination and copying if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered that the respondents named in Part I of this order shall submit to respondents Monica Stuart and the William Schuller Agency, Inc., for their inspection and evaluation, copies of all written promotional or sales materials, including but not limited to sales solicitation letters, contract forms, brochures, flyers, and sales presentation scripts. Said respondents will submit said materials to Monica Stuart and the William Schuller Agency, Inc., on a continuing basis whenever there is a change, revision or modification of any of the materials.

It is further ordered that respondents shall cease and desist from:

a. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

b. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable , and which shall contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale: Or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract. (Amended November 1, 1973).

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (*Name of seller*), at (*address of seller's place of business*) not later than midnight of (Date).

I hereby cancel this transaction.

(Date)

(Buyer's signature)

c. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

d. Including in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this Rule including specifically his right to cancel the sale in accordance with the provisions of this Rule.

e. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

f. Misrepresenting in any manner the buyer's right to cancel.

g. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

h. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

i. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, that nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon a showing of inconsistency, shall make such modifications as may be warranted in the premises.

II

It is ordered that William Schuller Agency, Inc., a corporation, its successors and assigns, and Monica Stuart, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing to consumers, directly or indirectly, orally or in writing, that:

1. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc. or by any person or agency, will be aided, increased or enhanced by entering into a contract with National Talent Associates, Inc.

2. Access to Monica Stuart or to the William Schuller Agency, Inc. is available only to persons who contract with National Talent Associates, Inc.

3. Monica Stuart or the William Schuller Agency, Inc., review photographs of only those persons who have contracted with National Talent Associates, Inc.

4. National Talent Associates, Inc. photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

5. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

6. Natural color photographs of persons who contract with National Talent Associates, Inc. are submitted annually, for a five year period, or for any period in excess of the period in which said photographs are submitted to Monica Stuart or to the William Schuller Agency, Inc. for her or their consideration and review without disclosing that, unless the person comes back for rephotographing annually for a five year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

It is further ordered that respondents Monica Stuart and William Schuller Agency, Inc. shall maintain complete and detailed records as to the number of persons whose photographs were submitted to them by any of the respondents set forth under Part I of the order herein, and the number of such persons who have failed to meet or possess the standards, qualifications or characteristics which a person must meet or possess before respondents herein will agree to place such a person under contract, or otherwise assist or render services to said person, including their names, place of residence, and month and year of rejection. Such records shall be made available for examination and copying if necessary by an authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered that respondents Monica Stuart and William Schuller Agency, Inc. shall inspect and evaluate the written promotional and sales material submitted to them by respondents named in Part I of this order. Within 30 days of their receipt of said materials, respondents Monica Stuart and William Schuller Agency, Inc. shall notify said other respondents, in writing as to any comments, complaints they might have, or any corrections they might require, concerning any representations relating to them contained in the materials submitted. Monica Stuart and William Schuller Agency, Inc. shall simultaneously submit to the New York Regional Office a copy of such notification to the respondents named in Part I of this Order.

It is further ordered that respondents Monica Stuart and William Schuller Agency, Inc. shall notify the Federal Trade Commission, in writing, of any consumer complaints received by them concerning any of the respondents named in Part I of this order. Such notification shall be made to the New York Regional Office within 30 days

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after receipt of the consumer complaint. This provision shall apply only to those complaints about representations by or practices of the respondents named in Part I which relate to respondents Monica Stuart and William Schuller Agency, Inc.

III

For the purposes of the following provisions of this order, unless otherwise specified, the term "respondents" shall include each of the respondents named heretofore in this order.

It is further ordered that respondents William Schuller Agency, Inc. and Monica Stuart shall forthwith deliver a copy of this order or a memorandum incorporating its provisions to all present and future employees engaged in the sale of said respondents' products or services and shall secure from each such person a signed statement acknowledging receipt of a copy of this order or the memorandum.

It is further ordered that corporate respondents National Talent Associates, Inc. and individual respondents Sanford Storm and Jerome P. Ashfield shall forthwith deliver a copy of this order or a memorandum incorporating its provisions to all present and future salesmen or other employees engaged in the sale of said respondents' products or services and shall secure from each such salesman or employee a signed statement acknowledging receipt of a copy of this order or the memorandum.

It is further ordered that respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered that each individual respondent shall promptly notify the Commission of any discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment. Such notice shall include such respondent's current business address and a statement as to the nature of the business or employment in which he or she is engaged as well as a description of his or her duties and responsibilities.

It is further ordered that corporate respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other changes in the corporations which may affect compliance obligations arising out of this order.

It is further ordered that the respondents shall within sixty days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

Issued: January 21, 1986.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-2817 Filed 2-7-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 45

[Docket No. RM 83-63-000; Order No. 446]

Electric Utilities; Automated Authorization for Holding Certain Positions That Require Commission Approval Under Section 305 (B) of the Federal Power Act

Issued: February 6, 1986

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending Part 45 of its regulations to authorize, generically, certain "interlocking positions" that require Commission approval under section 305(b) of the Federal Power Act (FPA). The Commission is providing this authorization to eliminate what it believes to be an unnecessary reporting burden on applicants and to reduce the time the Commission spends examining and processing certain applications to hold interlocking positions that are routinely approved.

EFFECTIVE DATE: This rule will be effective April 11, 1986.

FOR FURTHER INFORMATION CONTACT: Lori Tsang, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-8463.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Part 45 of its regulations to authorize certain "interlocking positions" that require Commission approval under section 305(b) of the Federal Power Act (FPA).[1] The Commission provides this authorization to eliminate what it believes to be an unnecessary filing burden on certain categories of applicants and to reduce the time expended by applicants and the Commission in preparing and processing these types of applications to hold interlocking positions which have traditionally been approved routinely because they present no potential threat to public or private interests within the meaning of the FPA.

The Commission's experience in reviewing the applications it has processed in recent years shows that there are certain types of applications which are routinely approved because the interlocking positions involved present no foreseeable danger of the abuses that section 305(b) was intended to preclude.[2]

On May 17, 1985, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM83-63-000[3] proposing to amend Part 45 of the regulations to provide an automatic authorization to hold several enumerated types of interlocking positions that require Commission approval under section 305(b). In initiating the rulemaking proceeding, the Commission, was responding, in part, to a petition for rulemaking submitted by eight registered electric utility holding companies.[4] The holding companies

[1] 16 U.S.C. 825(d) (1982). In the absence of prior Commission authorization, section 305(b) precludes an individual from serving concurrently as (1) an officer or director of more than one public utility, (2) an officer or director of a public utility and of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility ("securities firm"), or (3) an officer or director of a public utility and of any company supplying electrical equipment to such public utility ("electrical equipment supplier"). For purposes of this discussion the term "interlocking positions" is used to refer to the concurrent positions identified in section 305(b).

[2] With respect to the kinds of interlocking positions at issue in this rulemaking, the Commission received, in fiscal years 1982, 1983, and 1984, 86 applications for authority to hold positions with public utilities that are under common ownership, 15 applications for authority to hold positions with a public utility and with a jointly-owned public utility that owned and operated a single generating facility, and 115 applications for authority to hold new or additional positions by applicants who already held Commission approval to hold interlocking positions with the same company. All of these applications were approved on a case-by-case basis. Each application, even when routine, is estimated to have required approximately 21 hours to prepare.

[3] 50 FR 21304 (1985)

[4] Petition for Rulemaking Submitted by Registered Holding Companies (filed April 20, 1983) (Docket No RM83-63-000). The eight petitioners were Allegheny Power System, Inc., American Electric Power Company, Inc., Central and South West

Continued

requested that the Commission streamline its application procedure for authority to hold the following interlocking positions: (1) positions with public utilities that are owned by a single electric utility holding company registered with the Securities and Exchange Commission (SEC);[5] and (2) positions with a public utility that is owned by a registered holding company and a public utility that is a generating company owned by the holding company system, including those held in partnership with public utilties that are not affiliated with the system. The companies asserted that these types of interlocking positions do not adversely affect public or private interests and that the Commission's current application procedure is both burdensome and unnecessary.

II. Background

A. Requirements of Section 305(b)

When Congress investigated the utility industry in 1935, it found that public utilities [6] often had related interests because they belonged to various holding company systems, or because individuals served as officers or directors of more than one public utility or as officers or directors of a public utility and a firm that provided the public utility with goods and services. Congress expressed the belief that the existence of holding company systems and interlocking positions led to certain potential abuses in the industry, and sought to address such concerns through multifaceted legislation.[7] In 1940, this

Corporation, Eastern Utilities Associates, General Public Utilities Corporation, New England Electric System, Northeast Utilities, and The Southern Company.

[5] *See* Public Utility Holding Company Act of 1935, 15 U.S.C. 79 through 79z6 (1982).

[6] Under section 201(e) of the FPA, the term "public utility," with certain specific exceptions, means a person who owns or operates facilities subject to the jurisdiction of the Commission under Part II of the FPA (other than interconnection and wheeling facilities subject to Commission jurisdiction solely by reason of sections 210, 211, or 212).

[7] In attempting to resolve the perceived problems with holding companies, Congress identified what were believed to be the social and economic ills associated with these abuses, including the following: (1) Excessive charges to subsidiary public utility companies for goods and services resulting from the lack of arm's-length bargaining or the restraint of free and independent competition; (2) allocation of charges for goods and services among subsidiary companies in different States so as to frustrate State regulation; (3) control of subsidiary public utility companies through disproportionately small investment resulting in accounting practices, and rate, dividend, and other policies that complicated and obstructed State regulation; and (4) a general lack of economy of management and operation of the public utilities, a lack of efficiency and adequacy of services or a lack of effective public regulation, and a lack of economies in raising capital. Title I, Sec. 1, of the Public Utility Act of 1935 (49 Stat. 803, 15 U.S.C. 79a). Title I was the Public Utility Holding Company Act of 1935. Title II became Parts II and III of the Federal Power Act, which include section 305(b).

Commission's predecessor, the Federal Power Commission (FPC), set forth what it regarded as the principal abuses that section 305(b) of the FPA was designed to prevent:

(1) Control over a large number of geographically widespread public utilities by a small group of individuals with perhaps a minimum of investment;

(2) The evasion, by means of comon control, of competition resulting in higher costs and poorer services to consumers;

(3) The lack of arm's-length dealings between public utilities and organizations furnishing financial services or electrical equipment;

(4) The employment of dummy directors designated solely for the purpose of executing the orders of those in control and of nominal directors who give little time and attention to the affairs of the companies; and

(5) Violations of laws, ethics, and good business practices by those holding such interlocking positions, whereby such relationship is employed for their own benefit or profit or for the benefit or profit of any other person or persons, and to the detriment of the companies, their security holders, or the public interest.[8]

As a means of curbing such practices, Congress provided in section 305(b) that it is unlawful to hold "interlocking positions" unless the Commission, by order, authorizes the holding of the positions. Section 305(b) requires applicants, in the "form and manner prescribed by the Commission," to demonstrate that "neither public nor private interests will be adversely affected" by holding a particular interlock.

B. Commission Implementation of Section 305(b)

The Commission has implemented section 305(b) of the FPA through Part 45 of its regulations. Part 45 requires each person desiring to hold interlocking positions to submit an application to the Commission for authority to hold the specified positions.[9] Upon review of each individual application, the Commission or its designee [10] determines whether the holding of the positions for which the applicant has applied might "adversely affect public or private interests." Upon finding that it would not have such adverse effect, the application is granted.[11]

When an applicant who has received Commission approval to hold interlocking positions is elected or appointed to *another* position with one of the same companies, or is elected or appointed to new interlocking positions with additional companies, another application is required in order to hold these new positions.[12]

III. Summary of Comments and Revisions to NOPR

A. Introduction

In the NOPR issued on May 17, 1985, the Commission proposed to issue automatic authorization to hold the following interlocking positions:

(1) Positions as officer or director of more than one public utility when 10% of the voting stock of each utility is owned by the same holding company;

(2) Positions as officer or director of two public utilities where one of them is owned, wholly or in part, by the other and as its primary business generates electric power from one electric generating facility for sale to its owners; and

(3) Positions as officer or director of more than one public utility if the person is already authorized under Part 45 to hold different positions as officer or director with those utilities where the interlock involves affiliated public utilities.

The Commiesion received nine responses to this NOPR, seven from public utilities or public utility holding companies, one from Edison Electric Institute, and one from a lawyer.[13]

All of the commenters support the Commission's proposal, although six suggest certain amendments or clarifications of the proposed rule.

B. Discussion

1. Authorization to hold positions as officer or director of more than one public utility when 100% of the

[8] *John Edword Aldred*, 2 FPC 248 (1940).

[9] Approximately 100 such applications are processed annually by the Commission.

[10] The Commission has delegated authority to act on uncontested applications to the Director of its Office of Electric Power Regulation. 18 CFR 375.308.

[11] In some cases, the Commission has granted conditional approval depending on the particular circumstances of the case. In any event, it also reserves authority to revisit the approval if the circumstances change.

[12] 18 CFR 45.4(a).

[13] The commenters are Iowa Power and Light Company (IPL); American Electric Power Company, Inc. (AEP); Northeast Utilities (NU); New England Electric System (NEES); Cincinnati Gas & Electric Company (CG&E); Edison Electric Institute (EEI); Atlantic City Electric Company (ACE); Wisconsin Electric Power Company (WEPCO); and Herbert B Cohn.

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outstanding voting stock of each pertinent public utility is owned by the same holding company.

a. *Rationale.* As part of its effort to address the perceived abuses caused by the practice of individuals holding interlocking positions and the existence of holding company systems, Congress enacted the Public Utility Holding Company Act of 1935 (the "Holding Company Act") to regulate holding companies and to simplify the complex network of public utilities belonging to holding company systems. Congress found, in 1935, that a small minority of shareholders were using complex networks of holding company systems to manipulate and control a large number of public utilities. This control by minority shareholders resulted in poor management (due to absentee officers and board directors), lack of competition, and violations of law, ethics, and good business practices.

Today, largely due to the SEC's operations under the Holding Company Act, a complex network of holding companies no longer exists. Holding companies now operate as single coordinated electric systems with simplified stock structures. The remaining nine registered electric utility holding companies now own, directly or indirectly, all or substantially all of the common or other voting stock of their systems' public utilities.[14] The abuses resulting from minority shareholder control no longer occur. Each holding company system is, for present purposes, a single company conducting its electric utility operations through more than one corporate identity.

Holding companies often appoint individuals to numerous similar positions with public utility subsidiaries in their respective systems. Under the Commission's current regulations, those individuals must submit separate applications for authority to hold each interlocking position.

For the following reasons the Commission believes that the current filing requirements are unnecessary and burdensome. First, because a holding company controls the voting stock of the public utilities within its system, it, in fact, controls all of its affiliated public utilities. It is not important whether the holding company controls its public utilities by assigning the same individuals to similar positions within each utility in its system, or by assigning different individuals to each public utility. In either case, the holding company exercises effective control over the public utilities within its system. Second, because State and Federal agencies now closely regulate holding companies and their public utilities, the Commission believes that the holding of interlocking positions within a holding company system no longer leads to the kinds of difficulties that Congress feared might impede State regulation.[15] Third, the Commission acknowledges that allowing an individual to hold similar positions with several public utilities within a holding company system may enable the holding company to control and operate its system more efficiently and economically. Fourth, full public disclosure of these interlocking positions can be assured without case-specific approvals as a result of annual filing requirements under FPA section 305(c). Finally, a review of the applications processed over the years reveals that the abuses that section 305(b) was intended to preclude are never alleged to result from the holding of interlocking positions within holding company systems as they are now constituted.

b. *Comment Summary.* Five commenters raised concerns regarding holding companies which fail, technically, to meet the 100% ownership of "voting stock" requirement set forth in the NOPR.

NU explains that electric utilities generally have both common and preferred stock outstanding and, in a holding company system, only the common stock is owned by the holding company. While common stock normally carries the entitlement to vote for directors, preferred stock typically has some limited voting rights. NU further states that under the Holding Company Act, the requirement as to stock ownership of subsidiaries is that the parent own 100% of the common stock of the subsidiary, and preferred stock with limited voting rights is permitted to be issued publically. Therefore, NU contends that the new rule should define "voting stock" to mean "capital stock of any class of a corporation, the holders of which are, ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or persons performing similar functions)."

Mr. Cohn states that among the registered holding company systems there are instances where preferred stock with voting power is outstanding and the holding comany owns 100% of the common stock of a subsidiary, but something less than 100% of the subsidiary's total voting stock. Therefore, Mr. Cohn suggests amending the proposed rule to require ownership of 100% of the subsidiary's common stock *and* at least 80% of its outstanding voting stock.

NEES explains that its wholesale generating utility, New England Power Company, has two classes of stock with general voting rights. In excess of 98% of the vote is in common stock, all of which is owned by NEES, while the remaining vote is in the 6 % cumulative preferred stock. Therefore, NEES recommends that the Commission require ownership of 100% of the common stock of a subsidiary. Alternatively, NEES suggests that the level of voting stock ownership be set at such a percentage (i.e., 85%) as would clearly demonstrate operational control.

AEP states that three of the major public utility subsidiaries in the AEP system have outstanding preferred and preference stock that carry voting power, although 100% of their common stock is owned by AEP. AEP contends that it would be unnecessarily restrictive to exclude such public utility subsidiaries from coverage of the proposed rule. Accordingly, AEP suggests requiring ownership of 100% of the common stock of a subsidiary, and 80% of its voting stock.

CG&E states that it owns 99.9% of its subsidiary, Union Light, Heat and Power Company.[16] CG&E therefore suggests that proposed § 45.9(a)(1) be broadened to include "public utilities substantially or virtually wholly owned and controlled."

Mr. Cohn and AEP further suggest that the rule be amended to include indirect ownership through a subsidiary as well as direct ownership. AEP explains that, under the proposed amendment, interlocks involving one AEP system company, Kanawha Valley Power company (Kanawha) would not be covered, since Kanawha is a 100% owned public utility subsidiary of Appalachian Power Company, which in turn, is a direct public utility subsidiary of AEP.

c. *Comment Analysis.* Keeping in mind the concerns expressed by Congress in 1935, when it passed section 305(b) of the FPA, a holding company's actual control over its subsidiaries appears to be the appropriate focus of this Commission's scrutiny. Because the ability to elect directors is the primary means of exercising corporate control, a holding company's ownership of its subsidiaries' voting stock necessary to elect the board of directors should remain the test for purposes of the instant rule. Thus, the Commission has concluded that control of "voting stock" should, indeed, be defined in terms of the ability to elect directors.

The NOPR required 100% ownership of a subsidiary's "voting" stock. However, as the commenters pointed out, electric utilities often have two classes of stock outstanding—common and preferred—both of which have some "voting" rights. A holding company generally owns only the common stock. Therefore, a holding company would not own 100% of a subsidiary's "voting" stock, in the broadest sense of that term. Additionally, as evidenced by CG&E, there may be situations where a subsidiary has only one class of stock, less than 100% of which is owned by the parent company.

Consequently, in order to best implement the intent of the rule, the Commission will provide for automatic authorization of interlocking positions between more than one public utility *if* the same holding company owns, directly or indirectly,[17] that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors.

2. Authorization to hold positions as officer or director of two public utilities where one of them is owned, wholly or in part, by the other and as its primary business generates electric power for sale to its owners from one electric generating facility.

a. *Rationale.* Several public utilities are jointly owned by a few corporate or governmental owners, such as other public utilities, holding companies, municipalities, or rural electric cooperatives. These public utilities were formed for the purpose of taking advantage of economies of scale and sharing the risks of financing, constructing, and operating facilities for the benefit of the utility's joint owners. These companies are usually owned by a small number of corporations and are managed by one of the owners under a management agreement.

The Commission has routinely approved applications for authority to hold interlocking positions with such a public utility and one of the utility's corporate owners because it is believed that the holding of such interlocking positions creates no danger of fostering section 305(b) abuses. In essence, these jointly-owned companies are partnerships which have set out specific control arrangements in their initial agreements. None of the potential section 305(b) abuses appear to occur as a result of interlocking positions between the owner companies and the generating utilities.

b. *Comment Summary.* Mr. Cohn and AEP suggest amending the proposed rule to include jointly-owned companies that *operate* electric facilities as well as those that own them. AEP notes, as an example, that such an amendment would include interlocking positions involving Cardinal Operating Company which is jointly owned by Ohio Power Company and Buckeye Power, Inc. Mr. Cohn, AEP, and NU also suggest amending the proposed rule to include jointly-owned companies generating power from *more than one unit.* AEP states that such a modification would apply to the Ohio River Valley Electric Corporation (OVEC) and Indiana Kentucky Electric Corporation (IKEC) which own five and six generating units respectively.

NU and NEES recommend a further amendment to the proposed rule to include jointly-owned *transmission* as well as generating companies. These commenters refer, in particular, to jointly-owned transmission companies that are being organized to import power from Quebec to New England. Finally, NU suggests that the rule should automatically authorize interlocks with companies within the *same holding company system* as any of the joint owners, on the grounds that officers or directors of its system companies have "routinely" been authorized to hold interlocking positions of this kind.

c. *Comment Analysis*—(i) *Including companies within the same holding company system as any of the joint owners.* After due consideration, the Commission has decided not to expand the rule to include all companies that are within the same holding company system as any of the joint owners. The Commission perceives no problem if a person holds positions within *one* holding company system and one of the holding company subsidiaries is an owner or operator of a jointly-owned facility. However, if the rule were to grant the proposed expansion of authorization, the potential exists for automatic authorization of positions with utilities associated with two or more of the *non-affiliated* joint owners merely because the companies are associated with members of the joint facility venture, *i.e.,* the possibility exists that a person would be authorized to hold positions with different holding companies. Such a situation would create potential conflict of interest problems for the holder of the interlock who would be performing duties for potentially competing utility systems. While such concerns might be alleviated on a case-by-case basis, insofar as some of those companies may be actual or potential competitors of one or more of the other owners, the Commission prefers to continue to review those applications individually.

(ii) *Including jointly-owned companies that either own or operate electric facilities.* The NOPR proposed to automatically authorize interlocking positions between "two *public utilities,* where one of them is owned, wholly or in part, by the other and as its primary business . . ." (emphasis added). The term "public utility," in turn, is defined in section 201(e) of the FPA as ". . . any person who owns *or operates* facilities subject to the jurisdiction of the Commission. . . ." (emphasis added). Therefore, jointly-owned companies that *operate* facilities subject to the jurisdiction of the Commission are also covered by the rule. The final rule clarifies this point.

(iii) *Including jointly-owned (a) multiple-facility companies as well as single-facility companies and (b) transmission companies as well as generating companies.* Although the language in the NOPR focused on jointly-owned single-generating facility companies, the rationale for the NOPR applies generally to jointly-owned companies which are formed to take advantage of economics of scale and to share the risks of financing, constructing, and operating electric facilities, and are formed like partnerships with specific control arrangements in their initial management/operating agreements. As stated in the NOPR, interlocking positions within such companies are routinely approved.

The fact that transmission rather than generating facilities are involved, or that more than one facility is involved, does not detract from the salient considerations enumerated in the NOPR. Those considerations apply as well to jointly-owned companies owning or operating more than one facility and to jointly-owned companies owning or operating transmission facilities. In each case, the companies are formed to take advantage of the efficiencies and economics of scale and to share the risks discussed in the NOPR, and in each case management and operating

[14] Although there are numerous exempt electric utility holding company systems, these systems also appear to hold, directly or indirectly, controlling voting stock in their utility subsidiaries.

[15] *See supra,* note 7.

[16] *Moody's Public Utility Manual* [1985] indicates that, as of December 31, 1984, CG&E owns 99.9% of the "capital stock" of Union Light, Heat and Power Company. This suggests that Union Light, Heat and Power Company has only one class of stock.

[17] This revision also implements the suggestion by AEP and Mr. Cohn to include within the scope of the rule indirect ownership through a holding company system affiliate. This change, too, is consistent with the intent of the NOPR since holding company control is equally complete, albeit indirect.

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control are predetermined by agreement. Accordingly, the Commission is adopting these proposals to expand the scope of the proposed rule.

3. *Changing Positions Within Affiliated Public Utilities.*

Officers and directors already holding Commission-approved interlocking positions with two or more public utilities are frequently promoted, transferred, or otherwise assume new titles and responsibilities within these companies. Under section 45.4(a) of the Commission's current regulations, these individuals must file a complete interlocking position application under Part 45 for authority to hold each new position.

As discussed previously, the abuses that section 305(b) was intended to preclude do not appear to result from the holding of interlocking positions between affiliated public utilities controlled by a single parent holding company. Moreover, a change in the duties and responsibilities of an officer or director holding interlocking positions does not materially affect the possibility of fostering section 305(b) abuses within the context of an affiliated relationship between public utilities. No comments addressed this aspect of the NOPR. The Commission will therefore retain in the final rule the automatic authorization of such intracorporate changes in positions.

4. Other Issue.

WEPCO suggests amending the proposed rule to include interlocks between public utilities and banks, trust companies, banking associations, and firms that are authorized by law to underwrite or participate in the marketing of securities of a public utility, provided that such organizations have not and will not underwrite public utility securities. This proposal is well beyond the scope of the NOPR in this docket and the Commission declines to implement it in this final rule.

C. Conclusion

The Commission herein provides for automatic authorization to hold the following interlocking positions:

(1) Position as officer or director of more than one public utility when the same holding company owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors;

(2) Positions as officer or director of two public utilities where one of them is owned, wholly or in part, by the other and as its primary business owns or operates transmission or generating facilities to provide transmission service or electric power for sale to its owners; and

(3) Positions as officer or director of more than one public utility if the person is already authorized under Part 45 to hold different positions as officer or director of those utilities where the interlock involves affiliated public utilities.

Because these types of interlocking positions have no apparent potential to jeopardize public or private interests, the Commission is amending Part 45 of its regulations to provide a generic authorization (*i.e.*, by operation of the rule without prior review on a case-specific basis) to hold these interlocking positions.[18] This automatic authorization applies to anyone elected or appointed to these positions. To monitor all pre-authorized positions held subject to section 305(b) approval, the Commission will require that all persons holding interlocking positions pursuant to this automatic authorization file a short informational report within 30 days after they assume their interlocking positions. However, persons who are already assigned a current section 305(b) Commission identification number and file an annual FERC Form 561 information report will not be required to separately submit a report when they assume interlocking positions subject to this rule.[19] Information concerning any new interlocking position, assumed by an individual holding previously authorized interlocking positions, will be reported in that person's annual Form 561 report.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [20] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission found that the proposed rule would not impose any regulatory or administrative burdens on a signficant number of small entities and that it would not require an expenditure of resources by such entities. No comments were received on this finding and the modifications adopted in the final rule do not materially affect the earlier conclusions.

Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act Statement

The information collection provisions of this rule are being submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR 1320 (1985). The information collection requirements are in fact being reduced by this rule. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention Lori Tsang, (202) 357–8463).

VI. Effective date

This final rule is effective April 11, 1986.

List of Subjects in 18 CFR Part 45

Electric utilities.

In consideration of the foregoing, the Commission grants the petition for rulemaking in this docket submitted by the holding companies and amends Part 45 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The authority citation for Part 45 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7701–7352 (1982); Exec. Order No. 12,009, 3 CFR Part 142 (1978).

2. Section 45.1 is revised to read as follows:

§ 45.1 Applicability; who must file.

(a) This part applies to any person seeking to hold the following interlocking positions:

(1) Officer or director of more than one public utility;

(2) Officer or director of a public utility and of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility; or

(3) Officer or director of a public utility and of any company supplying electrical equipment to a public utility.

(b) Any person seeking to hold any interlocking position described in § 45.2 of this Chapter must do the following:

(1) Apply for Commission authorization under § 45.8 of this Chapter; or

(2) If qualified, comply with the requirements for automatic authorization under § 45.9 of this Chapter.

3. The Table of Contents of Part 45 is amended by adding the following entry to read as follows:

PART 45—APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS

Sec.

* * * * *

45.9 Automatic authorization of certain interlocking positions.

4. Part 45 is amended by adding a new § 45.9, to read as follows:

§ 45.9 Automatic authorization of certain interlocking positions.

(a) *Applicability.* Subject to paragraphs (b) and (c) of this section, the Commission authorizes any officer or director of a public utility to hold the following interlocking positions:

(1) Officer or director of one or more other public utilities if the same holding company owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors;

(2) Officer or director of two public utilities, if one utility is owned, wholly or in part, by the other and, as its primary business, owns or operates transmission or generating facilities to provide transmission service or electric power for sale to its owners; and

(3) Officer or director of more than one public utility, if such officer or director is already authorized under this part to hold different positions as officer or director of those utilities where the interlock involves affiliated public utilities.

(b) *Conditions of authorization.* Any person authorized to hold interlocking positions under this section must submit, not later than 30 days after assuming the duties of the position, an informational report in accordance with paragraph (c) of this section, unless that person is already authorized to hold interlocking positions of the type governed by this section.

(c) *Informational report.* An informational report required under paragraph (b) of this section must state:

(1) The full name and business address of the person required to submit this report;

(2) The names of all public utilities with which the person holds or will hold the positions of officer or director and a description of those positions;

(3) The names of any entity, other than those listed in paragraph (c)(2) of this section, of which the person is an officer or director and a description of those positions; and

(4) An explanation of the corporate relationship between or among the public utilities listed in paragraph (c)(2) of this section which qualifies the person for automatic authorization under this section.

[FR Doc. 86–2856 Filed 2–7–86; 8:45 am]

BILLING CODE 6717-01-M

[18] In the NOPR in this docket, the Commission expressed its view that the FPC had earlier adopted an unnecessarily narrow interpretation of the ability to address categories of interlocking positions generically in its Order No. 246, 27 FR 4912 (1962). The Commission has therefore overruled Order No. 246 in this regard.

[19] Under 18 CFR Part 46, a Form 561 is filed annually by persons holding Commission-approved interlocking positions.

[20] 5 U.S.C. 601–612 (1982).

18 CFR Part 271

[Docket No. RM79–76–246 (Oklahoma-7); Order No. 447]

High Cost Gas Produced From Tight Formations; Final Rule

Issued: February 7, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission is authorized to designate natural gas as "high-cost natural gas" where it determines such gas is produced under conditions which present extraordinary risks or costs. The Commission is also authorized to prescribe an incentive maximum lawful price applicable to high-cost gas. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas qualifying for an incentive price (18 CFR 271.703 (1985)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. In this order, the Federal Energy Regulatory Commission adopts the recommendation of the Oklahoma Corporation Commission that the Upper Marchand Sand of the Hoxbar Group located in Comanche County, Oklahoma, in Section 11, Township 3 North, Range 9 West, be designated as a tight formation under § 271.703(d) of the Commission's regulations.

EFFECTIVE DATE: This rule is effective March 10, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Winters, (202) 357–5578, or C.W. Gray, Jr., (202) 357–8731.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Based on a recommendation made by the Oklahoma Corporation Commission (Oklahoma), the Commission amends its regulations[1] to include the Upper Marchand Sand of the Hoxbar Group in Comanche County, Oklahoma, in Section 11, Township 3 North, Range 9 West, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on October 18, 1985.[2]

Evidence submitted by Oklahoma supports the assertion that the Upper Marchand Sand of the Hoxbar Group, described above, meets the guidelines contained in § 271.703(c)(2). The Commission adopts this recommendation.

This amendment shall become effective March 10, 1986.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

Part 271 is amended as follows:

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(195) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(195) Upper Marchand Sand of the Hoxbar Group in Oklahoma. RM79–76–246 (Oklahoma-7).

(i) *Delineation of formation.* The Upper Marchand Sand of the Hoxbar Group is found in Section 11, Township 3 North, Range 9 West, in Comanche County, Oklahoma.

(ii) *Depth.* The depth to the top of the Upper Marchand Sand is 9,976 feet. The average net thickness of the recommended zone is 50 feet. The recommended zone consists of the upper

[1] 18 CFR 271.703(d) (1985).

[2] 50 FR 43407 (Oct. 25, 1985). Comments on the proposed rule were invited and none were received. No party requested a hearing and no hearing was held.

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half of the Marchand Sand. The Marchand Sand is overlain by the Medrano Sandstone and underlain by the Culp-Melton Zone.

[FR Doc. 86-2854 Filed 2-7-86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Southeast Alaska REG 85-01]

Safety Zone; Ketchikan Harbor, Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Safety Zone in Ketchikan Harbor, Ketchikan, Alaska, from 1 May 1986 to 30 September 1986 and annually thereafter. The safety zone is the only suitable area for the maneuvering and anchoring of large passenger vessels in the Ketchikan area. When this area is used as an anchorage by private and other commercial vessels at the same time as a large cruise ship, the risk of collision between vessels is greatly increased due to the limited maneuverability of the larger vessels. The safety zone is needed to reduce this risk of collision and the inherent danger to life and property that this situation causes.

EFFECTIVE DATE: May 1, 1986, to September 30, 1986.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Scot W. Tiernan, (907) 586-7288.

SUPPLEMENTARY INFORMATION: On October 15, 1985 the Coast Guard published a notice of proposed rule making in the **Federal Register** for these regulations (50 FR 41705). Interested persons were requested to submit comments and two comments were received.

Drafting Information

The drafters of the notice are LT R.N. Janelle, project officer, Marine Safety Office, Juneau, Alaska, and LT Dave Shippert, project attorney, Coast Guard District Legal Office.

Discussion of Comments

Only two comments were received. The first comment addressed the fact that the positions of the navigation buoys which mark the corners of the Safety Zone were incorrectly published in the Notice of Proposed Rulemaking (NPRM). The latitude and longitude position of each buoy as published in the NPRM was in degrees, minutes and seconds. The correct location should have the seconds listed as tenths of minutes. For example, latitude 55°—20'—3" N, in the Final Rule becomes 55°—20.3' N. However, since no other comments addressed this error, and the boundary buoys are long established navigation aids, this minor error did not seem to cause any confusion on the location of the Safety Zone. The second comment supported the need for the safety zone.

Economic Evaluation and Certification

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is necessary. The impact on smaller vessels in terms of cost and inconvenience is minimal because of the large number of anchorages suitable to that class of vessel outside of the proposed Safety Zone.

Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation of Part 165 continues to read as set forth below:

Authority: 33 U.S.C. 1225 and 1231, 50 U.S.C. 191, 49 CFR Part 146 and 33 CFR 1.05-1(a), 6.04-1 and 160.5.

2. Section 165.1705 is added to read as follows:

§ 165.1705 Ketchikan Harbor, Ketchikan, Alaska—Safety Zone.

(a) That portion of Ketchikan Harbor, Ketchikan, Alaska enclosed by the following boundary lines is a Safety Zone: A line from Thomas Basin Entrance Light "2", latitude 55°—20'.3 N., longitude 131°—38'.5 W., to East Channel Lighted Buoy "4A", latitude 55°—20'.4 N., longitude 131°—38'.9 W., to Pennock Island Reef Lighted Buoy "PR", latitude 55°—20'.3 N., longitude 131°—40' W., to Wreck Lighted Buoy "WR6", latitude 55°—20'.7 N., longitude 131°—40'.3 W., then following a line bearing 064 degrees true to shore. This zone is effective 24 hours per day from 1 May through 30 September, annually. Annual notices of these regulations will be issued in Local Notices to Mariners.

(b) Special Regulations:

(1) All vessels may transit or navigate within the safety zone.

(2) No vessels, other than a large passenger vessel over 1600 gross tons (including ferries), may anchor within the Safety Zone without the express consent of the Captain of the Port, Southeast Alaska.

Dated: January 7, 1986

D.M. Waldron,

Commander, U.S. Coast Guard Marine Safety Officer, Juneau, Alaska, Captain of the Port, Southeast, Alaska.

[FR Doc. 86-2850 Filed 2-7-86; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP New London Regulation 86-05]

Safety Zone Regulations; Long Island Sound, Block Island Sound

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone around the vessel "Sea Level 7". The zone is needed to protect the vessel from a safety hazard associated with diving operations in which it is involved. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATES: This regulation becomes effective on 26 January 1986. It terminates on 31 January 1986 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: ENS Jonathan Hammond, 203-442-4471.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessel involved.

Drafting Information

The drafters of this regulation are ENS Jonathan Hammond, project officer for the captain of the port, and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation resulted from the sinking of the barge E-24 and the subsequent attempts to survey its hull. A diving bell suspended from the "Sea Level 7" will take divers to the wreck to survey it. Maximum stability is needed on the surface so that the bell will not rock from heavy wakes of vessels passing close by.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225, and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T391 is added to read as follows:

§ 165.T391 Safety Zone: Long Island Sound, Block Island Sound.

(a) *Location.* The following area is a safety zone: A 1000 yd radius of the vessel "SEA LEVEL 7" anchored at position 41° 13. 96' N. 072°01.31'W. (approx. 1.5 miles SE. of Race Point, Fishers Island).

(b) *Effective date.* This regulation becomes effective on 26 January 1986. It terminates on 31 January 1986.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited by the captain of the port.

Dated: January 26, 1986.

J. Rutkovsky,

LCDR, USCG, Captain of the Port, New London, CT.

[FR Doc. 86-2852 Filed 2-7-86; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 165

[COTP New London Regulation 86-01]

Safety Zone Regulations; Long Island Sound, Block Island Sound

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone around the vessel "Tioga." The zone is needed to protect the vessel from a safety hazard associated with diving operations in which it is involved. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATES: This regulation becomes effective on 12 January 1986. It terminates on 13 January 1986 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: ENS Jonathan Hammond, 203-442-4471.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less then 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessel involved.

Drafting Information

The drafters of this regulation are ENS Jonathan Hammond, project officer for the captain of the port, and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation resulted from the sinking of the barge E-24 and the subsequent attempts to survey its hull. Remote diving operations from the "Tioga" will take place intermittently as the currents allow. Maximum stability is needed on the surface so that the divers will not be subjected to excessive strain on the life lines from heavy wakes of vessels passing close by.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5

2. A new § 165.T387 is added to read as follows:

§ 165.T387 Safety Zone: Long Island Sound, Block Island Sound.

(a) *Location.* The following area is a safety zone: A 500 yd radius of the vessel "Tioga" anchored at position 41°13.96'N. 072° 01.31 W. (approx. 1.5 miles SE. of Race Point, Fishers Island).

(b) *Effective date.* This regulation becomes effective on 12 Jan. 1986. It terminates on 13 Jan. 1986.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the captain of the port.

Dated: January 12, 1986.

J. Rutkovsky,

LCDR, USCG, Captain of the Port, New London, CT.

[FR Doc. 86-2853 Filed 2-7-86; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone and Restricted Area Regulations; Naval Danger Zones and Restricted Areas, Vicinity of Norfolk and Virginia Beach, VA, and Gulf of Mexico, South of Panama City, FL

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Navy has requested that several regulations which establish danger zones and a restricted area in the Norfolk-Virginia Beach, Virginia area be amended as follows: (1) Change the title of § 334.380 to remove an obsolete command title, (2) Amend § 334.300 by enlarging the restricted area boundaries to incorporate government owned lands; and (3) Remove the prohibited area located in the Gulf of Mexico, South of Panama City, Florida promulgated in § 334.690. These amendments are necessary to meet changing conditions at those areas.

EFFECTIVE DATE: February 10, 1986.

ADDRESS: HQDA, DAEN-CWO-N, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard or Mr. Sam Collinson, (202) 272-0199.

SUPPLEMENTARY INFORMATION: The Commander, U.S. Naval Base, Norfolk, Va., has found that the restricted area established in 33 CFR 334.300 does not

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encompass the entire pier area at the Naval Station, Norfolk, and has requested an expansion of the restricted area. The Commander has also requested the title of 33 CFR 334.360 be changed from "Chesapeake Bay off Fort Monroe, Va.; restricted area, U.S. Naval Base and Naval Ordnance Laboratory" to "Chesapeake Bay off Fort Monroe, Va.; restricted area, U.S. Naval Base and Naval Surface Weapon Center."

The Commanding Officer, Fleet Combat Training Center, Atlantic, has requested the regulations which establish danger zones in 33 CFR 334.380 and 334.390 be amended to allow for nighttime use of the ranges.

On September 16, 1985, the Corps of Engineers published this proposal in the Notice of Proposed Rulemaking section of the **Federal Register** with the comment period expiring on October 16, 1985. One comment was received from the Commander, Fifth Coast Guard District which objected to the proposed amendments to 334.380 and 334.390. We received no objections to amending 334.300 and 334.360 and accordingly those regulations are amended as proposed. Any proposed amendments to 334.380 and 334.390 are being held in abeyance due to the objection. In addition, we have recently received a request from the Commanding Officer, Southern Division, Naval Facilities Engineering Command that the prohibited area in 334.690 be deleted. The prohibited area located in the Gulf of Mexico, South of Panama City, Florida is no longer needed because underwater testing platforms at that location have been demolished. The structures remain on the bottom but are converted to artificial fishing reefs. Section 334.690 is deleted as requested.

Note 1.—This proposed regulation is issued with respect to a military function of the Defense Department, is not a major rule within the meaning of Executive Order 12291, and accordingly, the provisions of Executive Order 12291 do not apply. The Corps of Engineers also certifies that these regulations would not have a significant economic impact on a substantial number of entities and thus do not require preparation of regulatory flexibility analysis.

Note 2.—Section 334.690 is deleted without being published as a proposed rule as it is unnecessary and impracticable. The deletion will serve to remove a restriction on a navigable water and return it to public use.

Note 3.—We have determined that it is in the public interest to make these rules effective upon publication in the **Federal Register**. It is essential for the protection of Government property to correct the restricted area boundaries in 33 CFR 334.300 without delay. The amendments to 33 CFR 334.360 and 334.690 are not significant and nothing would be achieved by delaying the effective dates.

List of Subjects in 33 CFR Part 334

Navigation, Transportation, Waterways.

Accordingly, 33 CFR Part 334 is amended by amending §§ 334.300, 334.360 and 334.690 as follows:

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority for Part 334 continues to read as follows:

Authority: (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

2. Section 334.300 is amended by revising paragraph (a) the areas, and paragraph (b)(2) as follows:

§ 334.300 Hampton Roads and Willoughby Bay, off Norfolk Naval Base; naval restricted area.

(a) *The area.* Beginning at a point on shore at the Destroyer Submarine Piers at latitude 36°56'00", longitude 76°19'30"; thence westerly to latitude 36°55'59", longitude 76°20'08.5"; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57'52", longitude 76°20'00"; thence easterly to latitude 36°57'52", longitude 76°19'35"; thence to latitude 36°57'47.7", longitude 76°18'57"; thence southeasterly to latitude 36°57'26", longitude 76°18'42"; thence easterly to latitude 36°57'26.2", longitude 76°17'55.2"; thence southerly to latitude 36°57'05", longitude 76°17'52"; thence southeasterly to latitude 36°56'56.2", longitude 76°17'27"; thence northeasterly to latitude 36°57'10", longitude 76°16'29"; and thence to the shoreline at latitude 36°57'16.8", longitude 76°16'22" at the Naval Air Station.

(b) The regulations. * * *

(2) This section shall be enforced by the Commander, Naval Base, Norfolk, Virginia, and such agencies as he/she may designate.

3. Section 334.360 is amended by the revising the title only, as follows:

§ 334.360 Chesapeake Bay off Fort Monroe, VA; restricted area, U.S. Naval Base and Naval Surface Weapon Center.

§ 334.690 [Removed]

4. Remove § 334.690.

Dated: February 4, 1986.

John O. Roach,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-2848 Filed 2-7-86; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-2967-6]

Approval and Promulgation of Implementation Plans; Alabama; Visibility Protection Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In this action EPA is approving revisions to the Alabama State Implementation Plan (SIP) which were submitted to EPA on November 20, 1985. Alabama has revised its SIP to include a visibility monitoring plan and visibility new source review regulations. These visibility provisions meet the requirements of 40 CFR 51.305 and 51.307 and were submitted to EPA in order to satisfy the first part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 40 FR 20647 on May 16, 1984. The principal effect of the new visibility protection regulations will be to require the State to consider visibility impacts when reviewing permit applications for new major sources, and major modifications, which could affect visibility in Federal Class I areas.

DATES: This action will be effective April 11, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted. Such notice may be submitted to Janet Hayward at the EPA Regional Office address listed below:

ADDRESSES: Copies of the documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, AL 36109

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV, Air Programs Branch, at the above address and telephone (404) 881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: As a result of the Environmental Defense Fund (EDF) Agreement, the State of Alabama was required to develop visibility new source review and visibility monitoring provisions to meet the requirements of 40 CFR 51.305 and 51.307. On November 20, 1985, Alabama submitted Part 1 visibility provisions to EPA for approval. This submittal satisfies the visibility requirements of 40 CFR 51.305 and 51.307.

Alabama's "Visibility SIP" is comprised of several parts. First, it contains a narrative discussion of visibility in general and of the State's visibility protection program. Second, it describes Alabama's visibility monitoring strategy. And third, it contains revisions to the State's new source review (in nonattainment areas) and Prevention of Significant Deterioration (PSD) regulations.

1. Narrative SIP

The new narrative section states that Alabama's visibility goal is to "prevent any future impairment of visibility in Federal Class I areas which results from man-made air pollution." This is consistent with EPA's national goal of preventing any future and remedying any existing visibility impairment in mandatory Class I areas. Alabama has one mandatory Class I area, which is the Sipsey Wilderness Area. It is located in the Bankhead National Forest in the northwest portion of the State. Through an inventory of the existing sources near Sipsey, the State has determined that there is presently no visibility impairment in the Class I area which can be attributed to a particular facility.

2. Monitoring Plan

Alabama will use airport visibility data to represent background visibility conditions in the Sipsey Wilderness. The National Weather Service (NWS) collects visual range data at the Huntaville-Madison County Airport on a daily basis. This information is reported to the State every month. The airport is located 48 miles to the east northeast of the Sipsey Wilderness, in flat to gently rolling terrain. Thus, the airport visibility data should be representative of conditions in the Class I area. The Alabama Air Division plans to use this background visibility data in reviewing permit applications and in evaluating visibility trends. Alabama's monitoring plan is consistent with the national visibility goal and meets EPA's criteria for approval.

3. New Source Review

Alabama has revised its new source review (in nonattainment areas) and PSD regulations to include the visibility notification and review procedures required by EPA. In doing this, they assure the involvement of the Federal Land Manager (FLM) in reviewing new source permits which could impact visibility in Class I areas. The FLM will be sent a copy of all information relevant to the permit application, and will be given an opportunity to show that the source could adversely impact visibility in the Class I area. If the State disagrees with this determination, it must explain its nonconcurrence and make that explanation available to the public. These regulations also allow the State to require monitoring of visibility in the Class I area near the proposed new facility or modification. These revisions meet the requirements set forth in 40 CFR 51.307 for visibility new source review, and include the necessary visibility definitions contained in 40 CFR 51.301.

Further details pertaining to these regulation changes are contained in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 11, 1986.

Final Action: After reviewing Alabama's visibility-related SIP revisions, EPA has found them to meet the requirements contained in 40 CFR 51.305 and 51.307. EPA is therefore approving Alabama's Visibility SIP, visibility monitoring strategy, and new source review regulation revisions, as submitted on November 20, 1985.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Alabama was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 4, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40—40 CFR Part 52 is amended as follows:

Subpart B—Alabama

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.50 is amended by adding paragraph (c)(40) as follows:

§ 52.50 Identification of Plan.

* * * * *

(c) * * *

(40) Visibility new source review regulations as visibility monitoring strategy were submitted to EPA on November 20, 1985.

(i) Incorporated by reference.

(A) Letter of November 20, 1985, from the Alabama Department of Environmental Management, and the following regulation Changes to Paragraphs 16.3.2 and 16.4 to Address Visibility Requirements adopted by the Alabama Environmental Management Commission on November 13, 1985:

16.3.2(b)—(Permits to Construct in or Near Nonattainment Areas—Definitions)

16.3.2(f)—(Permits to construct in or Near Nonattainment Areas—visibility protection provisions)

16.4.2—(Permits to Construct in Clean Air Areas—Definitions)

16.4.12—(Visibility Monitoring)

16.4.15—(Sources Impacting Federal Class I Areas—Additional Requirements)

(ii) Additional material.

(A) Narrative Visibility SIP which includes the State's visibility monitoring strategy.

[FR Doc. 86-2833 Filed 2-7-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL-2967-3]

Approval and Promulgation of Implementation Plans; Arkansas; Visibility Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the new source review (NSR) and monitoring plan for visibility in a revision to the Arkansas State Implementation Plan (SIP). This action is a result of a proposed rulemaking on October 23, 1984 (49 FR 42670), in which EPA proposed to disapprove SIPs of states which failed to comply with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR).

The Governor of Arkansas submitted a SIP Revision for Visibility Protection and the Visibility Regulation on July 23, 1985. Review of the plan and regulations indicated that Arkansas has met the criteria of 40 CFR 51.305 and 51.307.

EFFECTIVE DATE: This action will be effective on April 11, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to John Hepola of the EPA Region 6 Air Programs Branch, SIP/NSR Section (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1201 Elm Street, Dallas, Texas 75270;

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460;

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209.

FOR FURTHER INFORMATION CONTACT: John Crocker, Air Programs Branch, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-9850 or (FTS) 729-9850. Reference Docket File Number AR-85-1.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400-937.) Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80081, codified in 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the Court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to propose to incorporate federal regulations in states where SIPs are deficient with respect to the 1980 visibility new source review and monitoring regulations, 40 CFR 51.307 and 51.305, respectively. However, the settlement allows a state an opportunity to avoid federal promulgation if it submits a SIP by May 6, 1985. Arkansas is one of the states listed in 49 FR 42670 as having an inadequate New Source Review (NSR) and monitoring plan for visibility protection.

On July 23, 1985, the Governor of Arkansas submitted a SIP Revision for Visibility Protection and the Visibility Regulations for monitoring and new source review. EPA has reviewed the State's submittal and developed an evaluation report.[1] This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and the other addresses listed above.

Arkansas has two mandatory Class I areas: Upper Buffalo Wilderness Area in Newton County and Caney Creek Wilderness Area in Polk County. No other Class I areas currently exist in the State. The SIP commits the State to visibility protection consistent with the Clean Air Act to be afforded within the wilderness area boundaries. The SIP is to be reviewed annually and revised as necessary.

Visibility Monitoring Strategy

40 CFR 51.305 requires all states with visibility protection areas to have a monitoring strategy for evaluating visibility in any mandatory Federal Class I area by visual observation or other appropriate monitoring techniques. The purposes of this requirement are to generate data for evaluating visibility impairment trends, determine potential impacts of new sources, assess the effectiveness of the visibility protection program, and identify major contributing sources. These purposes can be adequately addressed by determining the background visibility protection areas and documenting the extent of any visibility impairment that can be attributed by a source or small group of sources.

Visibility impairment is the human perception of the effects of natural or man-made conditions which reduce visual range or contrast, or coloration change. Thus, a visibility monitoring program should identify these effects as well as differentiate man-made effects from natural conditions. The program could generate various types of data such as reports from human observers, photographs, and/or automated instruments. The minimum data collection technique that 40 CFR 51.305 requires is visual observation. However, other more objective techniques are available. (See "Interim Guidance for Visibility Monitoring", Office of Air Quality Planning and Standards, November 1980 (EPA 450/2-80-082).

The monitoring section of the Arkansas Visibility Protection Plan consist of two components:

(1) Monitoring by the Federal Land Manager (FLM), and

(2) Monitoring by sources proposing to locate or modify in an area where emissions may impact Class I areas.

"Monitoring by the FLM" is the assessment of visibility background and trends by obtaining existing data

[1] Evaluation Report for the Arkansas Visibility Protection Plan, October 1985.

available from the FLM. The State will use the only monitoring site currently operating in Arkansas. The State shall use visibility monitoring data collected by the National Park Service (NPS) at its site in the Buffalo National River area at Buffalo Point in Marion County (on the lower Buffalo River) for background data and trend analysis for the Upper Buffalo Wilderness Area, and for background data for the Caney Creek Wilderness Area. The monitoring site is located approximately 32 miles (52 km) from the Upper Buffalo Wilderness Area, and approximately 144 miles (230 km) from the Caney Creek Wilderness Area. Equipment at the site at this time consists of an automatic camera and a fine particulate monitor, which have been operated for the past two years.

The National Park Service has stated in a letter dated March 25, 1985, that it intends to continue operating this monitoring site, subject to the continuing availability of budget funds. The Park Service has agreed that, in the event circumstances force it to discontinue operation of the site, it will give the State at least ninety (90) days notice and the opportunity for the State to take over the operation of the site.

Monitoring by sources proposing to locate or modify in the locale where emissions may impact Class I areas will provide data for the assessment of impact upon background conditions and for trend analyses for that Class I area.

The Arkansas monitoring section of the Visibility SIP consists of a statement of goals, a discussion of monitoring methods, and a provision for future plan revisions. These provisions meet EPA criteria and EPA is approving this phase of the plan.

New Source Review

40 CFR 51.307 requires states to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any visibility protection area, regardless of the air quality status of the area in which the source is located. That is, sources locating in attainment areas and nonattainment areas must undergo visibility new source review (See 40 CFR 51.307 (a) and (b)(2), respectively). These requirements ensure that (1) the visibility impact review is conducted in a timely and consistent manner, (2) the reviewing authority considers any timely FLM analysis demonstrating that a proposed source would have an adverse impact on visibility, and (3) public availability of the permitting authority's conclusion.

Visibility NSR is addressed in two parts: one addresses major stationary sources subject to the Prevention of Significant Deterioration (PSD) regulations (40 CFR 52.21) which apply to attainment areas, and the second addresses major sources in nonattainment areas.

For all major PSD stationary sources:

(1) The State must notify the FLM in writing not more than 30 days after receiving a permit application or advance notification of application from a proposed source that may inpact a visibility protection area.

(2) This notification must take place at least 60 days prior to the public hearing on the application and must contain any analysis of the potential impact of the proposed source on visibility.

(3) The State must consider any analysis concerning visibility impairment performed by the FLM and received not more than 30 days after the not ification.

(4) If the State does not concur with the FLM's analysis that adverse visibility impairment will result from the proposed source, the State must provide in its notice of public hearing on the application an explanation of its decision or give notice as to where the explanation can be obtained.

(5) The State must have the ability to require a permit applicant to monitor visibility in or around the visibility protection areas.

For major sources in nonattainment areas:

(1) A major source or modification that may impact a visibility protection area must provide a visibility impact analysis.

(2) The State must ensure that the source's emissions are consistent with the national visibility goal. The State may consider the cost of compliance, the time for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

(3) The State must follow the same procedures outlined in the PSD items 1–5 above in conducting nonattainment area visibility reviews.

Items 1 through 5 for major PSD stationary sources and items 1 through 3 for major sources in nonattainment areas are the procedural steps in visibility review as defined in 40 CFR 52.27(d) and 52.28(c) and (d), respectively. (40 CFR 52.27 and 52.28 were proposed in 49 FR 42670 and finalized in 50 FR 28544.)

The Arkansas visibility SIP has incorporated into the NSR section its existing permit requirements for any source locating in an attainment area. Arkansas has no nonattainment areas and was therefore exempted from the nonattainment program requirements of 40 CFR 51.307(b)(2) by EPA (50 FR 28549). Since all areas in the State of Arkansas are classified attainment with respect to the National Ambient Air Quality Standards for all pollutants, their new source review regulations apply only to attainment areas and specify the standard requirements for any permit application and permit approval.

The approach taken by Arkansas to adopting new source review regulations was to amend the Prevention of Significant Deterioration (PSD) Supplement to the Arkansas SIP which was adopted by the Arkansas Commission and the Governor on April 10, 1981, and approved by EPA January 14, 1982. In amending these regulations, the Arkansas Department of Pollution Control and Ecology (Department) adopted by reference the definitions in 40 CFR 51.301 [Protection of Visibility SIP requirements]; and adopted by reference the revisions to the Federal PSD regulations pertaining to sources locating near Class I areas which were proposed in the October 23, 1984, **Federal Register.** As proposed, revised 40 CFR 52.21(o)(3) contains authority to require new sources to monitor visibility; and 40 CFR 52.21 (p)(1) and (p)(3) contain revised requirements for Federal Land Manager notification and visibility analysis. Corrections to the language used in adoption by reference have also been incorporated.

The SIP commits to the notification time frame requirements to the FLM. It commits to provide an explanation of its decision should it disagree with the FLM's assessment of a proposed source's impact on visibility and to give notice as to where that explanation can be obtained.

FLM Coordination

Under section 165(d) of the Clear Air Act, the FLM is given an affirmative responsbility to protect air quality related values, including visibility, in lands within a Class I area. The visibility regulations allow the FLM the opportunity to identify visibility impairment and to identify elements for inclusion in monitoring strategies. The FLM must maintain these areas consistent with congressional land use goals.

The State of Arkansas has accorded the FLM opportunities to participate and comment on its visibility SIP and regulations. Comments by the FLM were considered and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. Further, the

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State recognizes the expertise of the FLM (i.e., the NPS) in monitoring and new source applicability analyses for visibility and has agreed to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

Final Action

By this notice, EPA is approving the Arkansas visibility plan and regulation as meeting the requirements of 40 CFR 51.305 and 51.307 and the criteria discussed in 49 FR 42670. (One should reference the October 23, 1984, 49 FR 42670, for additional information). The SIP commits to a 3 year review and making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. The SIP is still deficient for all the other requirements of Subpart P (except 51.305 and 51.307) which should be addressed within the proper time frame after EPA promulgation or rulemaking.

EPA has reviewed these revisions to the Arkansas SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no adverse comments on them. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of Arkansas was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 4, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40.

40 CFR Part 52 is amended as follows:

Subpart E—Arkansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.170 is amended by adding paragraph (c)(22) as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(22) On July 12, 1985, the Governor submitted a revision entitled, "Protection of Visibility in Mandatory Class I Federal Areas, May 6, 1985." This submittal included new source review regulations and visibility monitoring strategy as adopted by the Arkansas Commission on Pollution Control and Ecology on May 24, 1985.

(i) Incorporation by reference.

(A) New source review regulations include amendments to rules and regulations of the Arkansas Department of Pollution Control and Ecology entitled, "Prevention of Significant Deterioration Supplement to the Arkansas Plan of Implementation for Air Pollution Control," Sections 1 through 6, adopted on May 24, 1985.

(B) Arkansas Department of Pollution Control and Ecology Minute Order No. 85–12, adopted May 24, 1985.

(ii) Additional Material.

(A) Narrative submittal, including introduction, and visibility monitoring strategy.

[FR Doc. 86–2831 Filed 2–7–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2954-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: Today's rulemaking pertains to rules developed by Indiana to satisfy the Clean Air Act's Reasonably Available Control Technology (RACT) requirements for stationary sources of Volatile Organic Compounds (VOC), which are addressed in the USEPA's Group I and Group II Control Technique Guidelines (CTGs). On October 27, 1982 (47 FR 47552), and January 18, 1983 (48 FR 2124), USEPA approved Indiana's VOC RACT I and II regulations, respectively on the condition that Indiana correct eight specified deficiencies. Indiana submitted revisions to its VOC regulations, including responses to six of the eight deficiencies, and extended the applicability of these regulations to St. Joseph and Elkhart Counties. In the March 28, 1985, Federal Register (50 FR 12338), USEPA proposed to approve Indiana's revisions which responded to the six conditions on its VOC RACT I and II regulations and the St. Joseph and Elkhart Counties VOC RACT regulations. During the 60-day public comment period, USEPA received no comments.

USEPA has determined that these revisions satisfy the six deficiencies. It is today approving these revisions, removing the six conditions which the revisions satisfy, and conditionally approving the regulations at they apply to St. Joseph and Elkhart Counties. Because this satisfies the only outstanding element of the St. Joseph and Elkhart ozone plan, USEPA's conditional approval of the RACT rules lifts the section 110(a)(2)(I) growth restrictions in St. Joseph and Elkhart Counties.

USEPA will rulemake on the remaining two conditions in future Federal Register notices.

DATE: This final rulemaking becomes effective on February 10, 1986.

ADDRESSES: Copies of these revisions to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

Copies of the SIP revisions, the proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 353–0396, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604;

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460;

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan (312) 353–0396.

SUPPLEMENTARY INFORMATION: Under section 107 of the Clean Air Act, USEPA has designated certain areas in Indiana as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978).

Part D of the Act requires the State to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the ozone NAAQS as expeditiously as practicable, but not later than December 31, 1982 (in certain cases by December 31, 1987). The requirements for an approvable SIP are described in a General Preamble for Part D rulemaking published on April 4, 1979 (44 FR 20372) and at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

An adequate SIP for ozone is one which includes sufficient control of VOC emissions for stationary and mobile sources to provide for attainment of the ozone standard. For stationary sources, the plan must include, at a minimum, legally enforceable requirements reflecting the application of RACT for those sources for which USEPA has published a CTG. In general, where the State regulations are not supported by the information in the CTGs, the State must provide a demonstration that its regulations represent RACT or amend the regulations to be consistent with the information in the CTGs.

In response to the requirements of Part D of the Act, the State of Indiana revised its SIP to require control of VOC emissions from stationary industrial sources addressed in USEPA's Groups I and II CTGs. On February 11, 1980, the State submitted to USEPA a revision to the ozone portion of its SIP for the Group I sources of VOC emissions. USEPA took final action to conditionally approve the Group I sources' regulation on October 27, 1982 (47 FR 47552),[1] based on commitment from the State to correct deficiencies in the regulation. In this same rulemaking, USEPA took no action on the "bubble" provision in this regulation.

On November 25, 1980, the State submitted to USEPA as a revision to its ozone SIP, amendments to its VOC regulation, now codified as 325 IAC Article 8 [2], which controlled VOC emissions from the Group II sources. USEPA took final action to conditionally approve this revision on January 18, 1983 (48 FR 2124), based on a commitment from the State to correct deficiencies in the regulation.

In response to these conditional approvals, on November 7, 1984, Indiana promulgated revised VOC regulations 325 IAC 8–1.1, 8–2, 8–3, 8–4, and 8–5. The State submitted these revisions to USEPA on July 3, 1984, and January 30, 1985, to satisfy certain conditions of USEPA's approval. In addition, the applicability of the regulations was extended to cover St. Joseph and Elkhart Counties.

Part I

In the March 28, 1985, Federal Register (50 FR 12338), USEPA proposed to approve Indiana's revised VOC RACT I and II regulations and the St. Joseph and Elkhart Counties RACT regulations. During the 60-day public comment period, USEPA received no comments.

Part II

Analysis of Revisions

A listing of each conditional approval item will be followed by a discussion of the State's corrected action and USEPA's final action.

1. *Conditional Approval Item—40 CFR 52.777(c)(1)(i).* For regulation 325 IAC 8–4, section 6, (Stage I Gasoline Dispensing Facilities) the State committed itself to conduct a study to demonstrate that even with the exemption from control of sources smaller than 20,000 gallons per month throughout, the source category as a whole still meets RACT emission reduction requirements. If the emissions resulting from the State's exemption were shown not to be essentially equivalent to those resulting from the CTG's RACT requirements, then the State agreed to submit to USEPA a rule which requires control of emissions from storage tanks at gasoline dispensing facilities with either 10,000 gallons per month or more throughput or 2,000 gallons or greater capacity.

Analysis

Neither a study nor an amended regulation has been submitted to satisfy this conditional approval item. However, Indiana has informed USEPA it is modifying the existing minimum throughput to reflect the references in the CTGs. This conditional approval item remains outstanding, and USEPA will propose rulemaking on this issue at a later date.

2. *Conditional Approval Item—40 CFR 52.777(c)(1)(ii).* For regulation 325 IAC 8–2–2(b), 7(b), and 8(b), Surface Coating Operations, the State committed itself (1) to replace the transfer efficiency equations in this regulation with a statement addressing transfer efficiency improvement on a case by case basis and (2) to submit the new rules to USEPA as a SIP revision.

Analysis

The transfer efficiency equations discussed above have been deleted. This constitutes an acceptable resolution of this conditional approval item. For an Indiana source to obtain credit for use of improved transfer efficiency equipment, a site-specific SIP revision must be obtained.

3. *Conditional Approval Item—40 CFR 52.777(c)(1)(iii).* For regulation 325 IAC 8–2, section 6, Fabric and Vinyl Coating, the State committed itself to revise the rule to meet the requirements of RACT and to submit the new rule to USEPA as a SIP revision.

Analysis

Indiana repealed its fabric and vinyl coating rules, 325 IAC 8–2–6. Therefore, this conditional approval item was not satisfied with the July 3, 1984, submittal. However, Indiana submitted a new fabric and vinyl coating rule as part of a September 7, 1984, submittal which primarily dealt with RACT regulations for St. Joseph and Elkhart Counties. For USEPA's final action on the new fabric and vinyl coating condition, see

Part III.

4. *Conditional Approval Item—40 CFR 52.777(c)(1)(iv).* For regulation 325 IAC 8–1.1, section 4, Test Methods and Procedures, the State committed itself to require USEPA-approved test methods and procedures and to submit the new rule to USEPA as a SIP revision.

Analysis

Indiana has added a new subsection (e) to 325 IAC 8–1.1–4, Test Methods and Procedures. This new subsection is as follows:

(e) The VOC emissions and control efficiency for bulk gasoline terminals

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[1] For more detail on conditional approvals, see 44 FR 38583 (July 2, 1979) and 44 FR 38583 (November 23, 1979).

[2] On October 6, 1980, the State resubmitted 1980 APC 15, recodified as 325 IAC Article 8. USEPA approved the State's recodification, but not the underlying regulations, on July 16, 1982 (47 FR 30972). On January 18, 1983, when USEPA codified its conditional approval of the RACT II regulations, it additionally revised the codification of the conditions of its October 27, 1982, approval of the RACT I regulation, 1980 APC 15, to reflect Indiana's recodification of that regulation to 325 IAC Article 8.

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may be determined by using reference test procedures specified in EPA guideline document EPA–450/2–77–026.

This new subsection states the testing requirement in terms of optional "may" language, rather than mandatory "shall" language. USEPA is approving the revision with the understanding that if Indiana allows use of a non-USEPA test method in the future, its use must be submitted to USEPA as a SIP revision. Other than that, the new subsection satisfies the above condition. It should be noted that this condition only refers to bulk gasoline terminals (as per the March 15, 1982, RACT I notice of Proposed Rulemaking). The test procedures in EPA-450/2–77–026 are appropriate for this source category, and USEPA is approving it.

5. *Conditional Approval Item—40 CFR 52.777(c)(1)(v).* For regulation 325 IAC 8–5, section 6, Perchloroethylene Dry Cleaning, the State committed itself to study whether the State's exemption of sources using less than 1,500 gallons per year still allows the State to meet the RACT requirements for this source category. If the emission reductions resulting from the State's exemption were shown not to be essentially equivalent to those resulting from RACT requirements, then the State committed itself to submit to USEPA a rule which requires control of emissions from dry cleaning sources using less than 1,500 gallons of perchloroethylene per year.

Analysis

Instead of fulfilling its specified commitment, Indiana included perchloroethylene in its list of exempt (non-photochemically reactive) compounds. In addition, the State repealed 325 IAC 8–5–6, its perchloroethylene dry cleaning regulation. Even so, these actions may ultimately be approvable because, on October 24, 1983, (48 FR 49097), USEPA proposed to add perchloroethylene to the list of organic compounds which are negligibly photochemically reactive and, thus, may be exempted from regulation in State ozone SIPs. This conditional approval item, therefore, may no longer be relevant.

USEPA may reconsider its exemption of perchloroethylene, if it determines that this compound is carcinogenic. Final federal rulemaking on these issues should occur in the near future. USEPA, will at that time, either require Indiana to readopt perchloroethylene regulations or will remove the outstanding condition from the SIP.

6. *Conditional Approval Item—40 CFR 52.777(c)(1)(vi).* For regulation 325 IAC 8–1.1, section 4, Test Methods and Procedures, the State committed (1) to add USEPA-approved test methods and procedures for determining VOC emissions from external floating roof tanks, synthesized pharmaceutical manufacturing, pneumatic rubber tire manufacturing, and graphic arts systems, and (2) to submit the new rule to USEPA as a SIP revision.

Analysis

Indiana has adopted USEPA-approved test procedures for synthesized pharmaceutical manufacturing, pneumatic rubber tire manufacturing, graphic arts and external floating roof tanks. These procedures are referenced in new subsections (f) and (g) of 325 IAC 8–1.1–4. Once again these new subsections state the testing requirements in terms of "may" as opposed to mandatory "shall" language. USEPA is approving the revision with the express understanding that if Indiana allows the use of a non-USEPA test method in the future, its use must be submitted to USEPA as a SIP revision.

7. *Conditional Approval Item—40 CFR 52.777(c)(1)(vii).* For regulation 325 IAC 8–4, section 3, Petroleum (liquid storage), the State committed itself to revise the rule to meet the requirements of RACT on petroleum storage tanks for primary and secondary seals, to add recordkeeping and reporting requirements, and to submit the new rule to USEPA as a SIP revision.

Analysis

Section 3(c) pertains to petroleum liquid storage in external floating roof tanks. Indiana revised section 3(c)(2)(B)(ili), which concerns primary and secondary seal gaps, such that it now meets the requirements of RACT. USEPA is approving these changes.

Recordkeeping and reporting requirements have been added in section 3(d) which meet USEPA requirements.

8. *Conditional Approval Item—40 CFR 52.777(c)(1)(viii).* For regulation 325 IAC 8–5, section 5, Graphic Arts, the State committed itself (1) to revise the rule to require capture system efficiencies of 75 percent for packaging rotogravure processes and 70 percent for flexographic printing processes and (2) to submit the new rule to USEPA as a SIP revision.

Analysis

Indiana has revised this rule consistent with the requirements specified in the conditional approval item. Therefore, this condition has been satisfied. USEPA is approving it.

9. *Miscellaneous Rule Change.* One rule revision was made to 325 IAC 8–2–3(a)(4), the portion of the can coating regulations dealing with end sealing compound operations. An interim limitation was changed from 4.2 pounds per gallon to 5.5 pounds per gallon of VOC, excluding water. This minor change is approvable. The final limitation of 3.7 pounds per gallon, which is effective after December 31, 1985, has not been changed.

Part III

St. Joseph and Elkhart Counties are nonattainment areas for ozone. Existing sources in these counties were not initially included in Indiana's VOC RACT I and RACT II regulations.

On September 7, 1984, and January 30, 1985, Indiana submitted revisions to 325 IAC Article 8 which amended various sections of 325 IAC 8–1.1, 8–2, 8–3, 8–4, and 8–5 to make them applicable to existing sources located in Elkhart and St. Joseph Counties. Essentially in parallel, the Indiana Air Pollution Control Board (Board) also adopted and submitted on September 12, 1984, VOC RACT I and II regulations developed by St. Joseph County for existing sources in that county only. These RACT VOC regulations are essentially identical to Indiana's September 7, 1984, version of 325 IAC Article 8, and state that they "do not apply to any facility subject to regulations under 325 IAC Article 8 by the Board". Because all RACT I and RACT II Source categories (except dry cleaning) [3] are covered by Indiana's RACT regulation, and supersede St. Joseph regulations, USEPA is not discussing these St. Joseph County regulations nor is it rulemaking on them.

The significant amendments to 325 IAC Article 8 in Indiana's September 7, 1984, submittal are as follows:

1. *325 IAC 8–1.1–3* (Compliance Schedules) was amended to impose the following compliance schedule on the RACT I and RACT II sources in St. Joseph County and Elkhart County.

(1) Plans and specifications for meeting the requirements of 325 IAC Article 8 must be submitted to the Board by June 30, 1985.

(2) Contracts for emission control systems or process modification must be awarded or purchase orders must be issued by August 31, 1985.

(3) On-site construction or installations must be initiated by October 31, 1985.

[3] If USEPA's Final Rulemaking on the reactivity of perchloroethylene is consistent with the Notice of Proposed Rulemaking, then no dry cleaning regulations would be required.

(4) On-site construction or installations must be completed by September 30, 1986.

(5) Final compliance must be demonstrated by December 31, 1986.

USEPA Position

These regulations were adopted by the Board in September 1984, and were State promulgated on November 7, 1985. Therefore, the subject sources would have about 2 years to comply with these RACT regulations. This is generally consistent with the amount of time sources have been given to comply with VOC RACT I and RACT II regulations. Therefore, USEPA finds this schedule is as expeditious as is now practicable, and USEPA is approving it.

2. *325 IAC 8–1.1–5* (Petition for Alternative Controls) was amended such that an owner or operator of a source constructed before January 1, 1980, in Elkhart and St. Joseph Counties may submit to the Board a petition for alternative RACT controls by October 1, 1985. Additionally, an owner or operator of any source which is constructed after January 1, 1980, located in any county may at any time submit to the Board a petition for alternative controls. The petition for alternative controls must meet certain specified criteria.

USEPA Position

Indiana requires a detailed analysis before it approves an alternative control plan. USEPA has previously approved this mechanism for other counties in Indiana. Additionally, the regulation states that alternative control plans shall be submitted to the USEPA as a revision to the State Implementation Plan. USEPA will act upon these revisions accordingly. The emission limitations contained in 325 IAC Article 8 will remain in effect for such a source seeking an alternative plan until such time as USEPA approves it as the alternative control plan. USEPA is approving this portion of the regulation.

3. *325 IAC 8–1.1–6* (Regarding Requirements for New Sources) was amended such that new facilities (as of January 1, 1980), which have potential emissions of 22.7 megagrams (25 tons) or more per year, located anywhere in the State, which are not otherwise regulated by other provisions of this Article, shall reduce their VOC emissions using Best Available Control Technology (BACT).

USEPA Position

The requirement for BACT is more appropriate for new sources than the State's previous requirement for control to at least an 85 percent reduction in emissions. BACT is an appropriate standard for new sources in attainment areas and unclassifiable areas as well as for new sources in nonattainment areas which are not otherwise subject to Indiana's Lowest Achievable Emission Rate (LEAR) requirement in the State's new source review rules. USEPA is approving this provision.

4. *325 IAC 8–2* (Fabric and Vinyl Coating) was amended by adding a new section, 325 IAC 8–2–12, which specifically covers fabric and vinyl coating sources. This section allows compliance by use of low solvent coatings (2.9 pounds per gallon (lbs/gal) for fabric coating and 4.8 lbs/gal for vinyl coating) or by use of add-on controls. If an add-on control device is used, the following requirements must be satisfied: Overall control efficiency of 67.5 percent, capture efficiency of 75 percent, and control efficiency of 90 percent.

USEPA Position

Indiana has documented that 4.8 lbs VOC/gal is RACT for the only vinyl coating source in Indiana (Uniroyal in St. Joseph County). Indiana has also demonstrated that 75 percent capture efficiency represents RACT for Uniroyal. Therefore, the 4.8 lbs VOC/gal limitation and a 75 percent capture efficiency is being approved as RACT for the entire State. The technical bases for these RACT determinations are contained in USEPA's November 20, 1984, technical support document.

Conclusion

In the notices of final rulemaking, published on October 27, 1982, and January 18, 1983, USEPA conditionally approved 325 IAC Article 8. Although Indiana's amended VOC RACT I and II rules were submitted one year later than the State's earlier commitment date of July 1983, they do satisfy six of USEPA's conditions. Additionally, Indiana has made its VOC RACT regulations applicable in St. Joseph and Elkhart Counties. USEPA has determined that these amended regulations can be approved, and is doing so. Although these amendments are approvable, the following two RACT deficiencies remain:

1. Indiana's *Stage I Gasoline Dispensing Regulations* are subject to an outstanding conditional approval item which must be resolved.

2. Requirements on perchloroethylene have been removed. This must be resolved in the context of USEPA's national rulemakings on the reactivity and carcinogenicity of perchloroethylene.

USEPA will propose action on these two conditions in future **Federal Register** notices.

USEPA approved the St. Joseph and Elkhart Counties plan except for the VOC RACT regulations on February 11, 1982, (47 FR 6274). The section 110(a)(2)(I) growth restrictions have remained in effect in St. Joseph and Elkhart Counties because these Counties did not have VOC RACT regulations. Today's conditional approval of the VOC RACT regulation satisfies the one outstanding element of the St. Joseph and Elkhart Counties ozone plan. Therefore, today's action lifts the section 110(a)(2)(I) growth restrictions for St. Joseph and Elkhart Counties.

Finally, in today's notice USEPA is taking the opportunity to correct typographical errors in Paragraph (c) and subparagraph (c)(1) that were published in the October 27, 1982 **Federal Register** notice (47 FR 47553).

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intragovernmental Incorporation by reference, relations, Ozone.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 9, 1986.

Lee Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.770 is amended by adding new paragraph (c)(55) as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(55) On January 30, 1985, Indiana submitted revised VOC regulations 325 IAC 8–1.1, 8–2, 8–3, 8–4 and 8–5 to satisfy certain conditions of USEPA's approval. Those regulations amended

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those approved at (c)(33) and (c)(34). In addition, the applicability of the regulations was extended to cover St. Joseph and Elkhart Counties. USEPA is taking no action on changes to 325 IAC 8-1.1-2(f), Methods of Compliance, and the repeal of 325 IAC 8-5-6, Perchloroethylene Dry Cleaning, because these exempt the compound perchloroethylene from control without the State justifying that such exemption is consistent with the Part D reasonably available control technology (RACT) requirements.

Note.—If Indiana allows use of a non-USEPA test method in the future, its use must be submitted to USEPA as a SIP revision.

(i) Incorporation by reference. (A) Indiana's Volatile Organic Compounds (VOC) RACT I and II regulations, Title 325 Air Pollution Control Board:

(1) 325 IAC 8-1.1, Establishes Volatile Organic Compound Emission Limitations. State promulgated on June 21, 1984, and amended November 7, 1984.

Note.—325 IAC 8-1.1-4 Test methods and procedures. If Indiana allows use of a non-USEPA test method in the future, its use must be submitted to USEPA as a SIP revision.

(2) 325 IAC 8-2 Surface Coating Emission Limitations. State promulgated on June 21, 1984, and amended November 7, 1984.

(3) 325 IAC 8-3 Solvent Metal Cleaning Operating Requirements. State promulgated on October 15, 1984, and amended November 7, 1984.

(4) 325 IAC 8-4 Petroleum Sources. State promulgated on June 21, 1984, and amended November 7, 1984.

(5) 325 IAC 8-5 Miscellaneous Operations. State promulgated on June 21, 1984, and amended November 7, 1984.

* * * * *

3. Section 52.773 is amended by adding St. Joseph and Elkhart Counties to the areas approved in paragraph (f). Paragraph (f) is revised to read as follows:

* * * * *

§ 52.773 Approval status.

* * * * *

(f) The Administrator finds ozone strategies for Clark, Elkhart, Floyd, Lake, Marion, Porter, and St. Joseph Counties satisfy all requirements of Part D, Title I of the Clean Air Act that are required to be submitted by January 1, 1981, except as noted below.

* * * * *

4. Section 52.777 is amended by correcting typographical errors in Paragraph (c) and paragraph (c)(1) and adding St. Joseph and Elkhart Counties to the list of conditionally approved Counties in paragraph (c). The introductory text of paragraphs (c) and (c)(1) are revised to read as follows:

§ 52.777 Control Strategy: Photochemical Oxidants (Hydrocarbons).

* * * * *

(c) Part D—Conditional approval—The Indiana plan for Clark, Floyd, Elkhart, Lake, Marion, Porter, and St. Joseph Counties is approved provided the following conditions are satisfied:

(1) The plan for stationary source volatile organic compound control must contain the following:

* * * * *

5. Section 52.777 is amended by revoking the reserving paragraphs (c)(1)(ii), (iii), (iv), (vi), (vii), and (viii).

[FR Doc. 86-2681 Filed 2-7-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-7-FRL-2967-5; MO 1809]

Approval and Promulgation of Missouri State Implementation Plan (SIP) for Visibility New Source Review and Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is today approving the visibility new source review and visibility monitoring portions of the Missouri SIP. This action was proposed for public comment in the **Federal Register** on November 26, 1985. No comments were received on the proposal.

EFFECTIVE DATE: March 12, 1986.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC

Missouri Department of Natural Resources, Air Pollution Control Program, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65101

Public Information, Reference Unit, EPA, 401 U Street, SW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Dewayne E. Durst at the EPA Region VII address listed above or (913) 236-2893, FTS 757-2893.

SUPPLEMENTARY INFORMATION: On May 3, 1985, the State of Missouri submitted a revision to its SIP containing provisions for visibility new source review and visibility monitoring. EPA reviewed the submittal and proposed to approve those portions of Missouri's visibility SIP in the **Federal Register** on November 26, 1985 (50 FR 48612). All other background information relating to the actions being taken may be found in that notice. No comments were received during the comment period on the November 26, 1985, Notice of Proposed Rulemaking.

The proposed rulemaking indicated that details of the visibility monitoring plan were being developed for Class I areas in Missouri.

These details are to be contained in a monitoring plan to be submitted as an appendix to Missouri's Visibility SIP. As presently drafted, these details are contained in agreements between the Federal Land Managers for each Class I area in the State and the Director of the Missouri Department of Natural Resources. When finalized, a copy of the monitoring plans will be available at the Missouri Department of Natural Resources, Air Pollution Control Program, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65101, and at the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Action

Based on the foregoing, EPA hereby approves Missouri's SIP as meeting the requirements of 40 CFR 51.305 and 40 CFR 51.307. This action becomes effective March 12, 1986.

The Office of Management and Budget has expempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by references, Intergovernmental relations, Particulate matter.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 4, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart AA—Missouri

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1320 is amended by adding paragraph (c)(56) as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(56) The Missouri Department of Natural Resources submitted the Protection of Visibility Plan, 1985, on May 3, 1985.

(i) Incorporation by reference.

(A) Amendments to Missouri Rule 10 CSR 10-6.020, Definitions, and Rule 10 CSR 10-6.060, Permits Required. These Amendments were adopted by the Missouri Air Conservation Commission and became effective on May 11, 1985.

(ii) Additional material.

(A) Narrative description of visibility new source review program for Class I areas in Missouri.

(B) Visibility monitoring plan for Class I areas in Missouri.

[FR Doc. 86-2832 Filed 2-7-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-9-FRL-2967-7]

Designation of Areas for Air Quality Planning Purposes; Redesignation To Attainment of San Manuel, Arizona for Total Suspended Particulates (TSP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The State of Arizona has requested a redesignation to attainment of the San Manuel portion of Pinal County, Arizona for total suspended particulates on October 1, 1984. EPA has evaluated the dispersion modeling using site-specific meteorological data and has determined that no violations could have occurred in the area. EPA approves the redesignation since it is consistent with EPA policy and Section 107 of the Clean Air Act. The intended effect is to update the attainment status for TSP.

DATES: This action will be effective on April 11, 1986 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such notice may be submitted to James C. Breitlow at the EPA Regional Office address listed below.

ADDRESSES: Copies of EPA's technical support document for this action and the dispersion modeling analysis submitted to EPA by Arizona are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco.

FOR FURTHER INFORMATION CONTACT: James C. Breitlow, Chief, State Implementation Plan Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641, FTS: 454-7641.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 [43 FR 8967] EPA promulgated attainment status designations for Arizona under section 107 of the Clean Air Act and designated all of Pinal County as nonattainment for both the primary and secondary TSP National Ambient Air Quality Standards (NAAQS).

On April 10, 1979 [44 FR 21261], EPA redesignated San Manuel, Pinal County to unclassified because screening model results indicated minimal violations of the secondary 24-hour standard as a result of background and stack emissions from the major stationary source in San Manuel.

The State submitted a redesignation to attainment of San Manuel for total suspended particulates on October 1, 1984. This unclassified area was bounded by:

Township 10 south, Range 16 east and Township 10 south, Range 17 east, of the San Bernardino Base Line and Meridian.

Section 123 of the Clean Air Act does not allow credit for improved air quality resulting from intermittent or supplementary control systems (SCS) which take advantage of meteorological variations in order to avoid NAAQS violations. Also, the area to be redesignated to attainment cannot have had a measured or modeled violation for the most recent two years for which data are available.

EPA Evaluation

EPA has evaluated the State of Arizona's request that the San Manuel portion of Pinal County be redesignated to attainment from unclassified for TSP and has determined that it should be approved. EPA is basing its decision mainly on the recent results of a sophisticated dispersion model (Complex I). This model was run using EPA approved site-specific meteorological data, and assumed that intermittent controls (SCS) were not used. The modeling is consistent with EPA modeling guidelines and the July 8, 1985 revised stack height regulations. It indicated no violations of the TSP NAAQS. EPA modeled the major source at full production with installed controls. The emissions out of the stacks, grandfathered under the stack height regulations, cause no ambient air violations. EPA is basing the redesignation on both the eight years of violation free ambient data and the modeling results.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new action by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 11, 1986.

Final Action

EPA approves the redesignation since it is consistent with EPA policy and section 107 of the Clean Air Act.

Regulatory Process

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this redesignation will not have a

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significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Date: February 4, 1986.

Lee M. Thomas,

Administrator.

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.303 Arizona.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.303 the attainment status designation table for TSP is amended by revising the entry for San Manuel to read as follows:

ARIZONA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
San Manuel:				
T10S, R16E				X
T10S, R17E				X

[FR Doc. 86–2834 Filed 2–7–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81–893; FCC 86–17]

Common Carrier Services; Procedures for Implementing the Detariffing of Customer Premises

AGENCY: Federal Communications Commission.

ACTION: Seventh report and order.

SUMMARY: The Federal Communications Commission in this Order provides a structure for the deregulation of: (1) Federally tariffed, embedded customer premises equipment (CPE) owned by Independent telephone companies (ITCs or Independents); and (2) federally or state tariffed, embedded CPE used by the Federal government for national security and emergency preparedness (NSEP) purposes. The Order also preempts state separate subsidiary requirements as applied to ITC provision, maintenance, or restoration of NSEP CPE. In addition, this Order establishes procedures for the deregulation of any remaining new or embedded CPE that is still subject to tariff and that has not been, or is being, addressed in other notices or orders. Specifically, this Order establishes procedures for: (1) Deregulating federally tariffed, embedded mobile CPE; and (2) deregulating any new or embedded CPE used in conjunction with maritime common carrier services licensed under Part 81 of our Rules. This Order detariffs the aforementioned CPE in a manner that is consistent with the principles and goals we have established in the *Second Computer Inquiry*. Finally, the Order defers to the states the decision of whether to deregulate ITC-owned CPE used to provide "911" services. This action is taken in an effort by the Commission to continue to detariff embedded CPE.

EFFECTIVE DATE: February 10, 1986.

ADDRESS: Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry Povich or Rose Crellin, Common Carrier Bureau, (202) 632–9342.

Seventh Report and Order

In the matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Service (Second Computer Inquiry) CC Docket No. 81–893.

Adopted: January 9, 1986.
Released: January 21, 1986.

By the Commission.

I. Introduction

1. This Order provides a structure for the deregulation of: (1) Federally tariffed, embedded customer premises equipment (CPE) [1] owned by Independent telephone companies (ITCs or Independents); [2] and (2) federally or state tariffed, embedded CPE used by the Federal government for national security and emergency preparedness (NSEP) purposes.[3] The Order also preempts state separate subsidiary requirements as applied to ITC provision, maintenance, or restoration of NSEP CPE. In addition, this Order establishes procedures for the deregulation of any remaining new or embedded CPE that is still subject to tariff and that has not been, or is not being, addressed in other notices or orders.[4] Specifically, this Order establishes procedures for: (1) Deregulating federally tariffed, embedded mobile CPE; [5] and (2) deregulating any new or embedded CPE used in conjunction with maritime common carrier services licensed under Part 81 of our Rules. This Order detariffs the aforementioned CPE in a manner that is consistent with the principles and goals we have established in the *Second Computer Inquiry*. Finally, the Order defers to the states the decision of whether to deregulate ITC-owned CPE used to provide "911" services. This action is taken in an effort by the Commission to continue to detariff embedded CPE.

[1] In the *Second Computer Inquiry* proceeding, we defined "CPE" to include all equipment provided by common carriers in the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands and located on customer premises, except over-voltage protection equipment, inside wiring, coin-operated or pay telephones, and multiplexing equipment to deliver multiple channels to the customer.

[2] For purposes of this proceeding, Cincinnati Bell Telephone Company (CBT) and Southern New England Telephone Company (SNET) are included among the ITCs.

[3] Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. 151 (1982), provides that two of the goals the FCC should pursue in exercising its regulatory mandate over interstate and foreign communications are to assist in the national defense and to promote the safety of life and property. *See* Exec. Order No. 12,472, 49 FR 13471 (1984) and 47 CFR § 201.0–215.2 (1984).

[4] One category of embedded CPE that has not yet been deregulated, but is being addressed in another Commission proceeding is the embedded CPE owned by the Bell Operating Companies (BOCs) that was not transferred to AT&T at divestiture. *See* Further Notice of Proposed Rulemaking, FCC 85–565, released October 21, 1985. (hereinafter *Fourth Further Notice*).

[5] Although in the *Second Order* we detariffed federally tariffed, embedded mobile CPE owned by ITCs, we did not specify the detariffing mechanisms or valuation methodology to be used.

Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry). Memorandum Opinion and Order on Further Reconsideration, 88 FCC 2d 512, para. 1 no. 1 (1981) (hereinafter *Further Reconsideration Order*). We also defined "embedded" CPE as "that equipment or inventory, which is tariffed or otherwise subject to the jurisdictional separations process as of the bifurcation date [[anuary 1, 1983]," and "new" CPE as "[a]ny other CPE which is acquired by a carrier or manufactured by an affiliated entity after [the bifurcation date]." *Id.* at para. 45. Mobile CPE was defined in Procedures for Implementing the Detariffing of Customer Premises Equipment (Second Computer Inquiry), Second Report and Order, 98 FCC 2d 814, para. 1 n. 1 (1984) (hereinafter *Second Order*). (This equipment had been excluded from the original *Second Computer Inquiry* deregulatory decisions on CPE). Furthermore, there may still be some equipment subject to tariff that does not fall within either the *Second Computer Inquiry* or the *Second Order* definitions of CPE, but should be considered "customer premises equipment" and should be detariffed. *See, e.g., infra* note 77.

Computer Inquiry.[6] Finally, the Order defers to the states the decision of whether to deregulate ITC-owned CPE used to provide "911" services.

II. General Background

2. In the *Second Computer Inquiry*, we concluded that "CPE is a severable commodity from the provision of transmission services and that regulation of CPE under Title II [of the Communication Act of 1934] is not required and is no longer warranted." [7] We concluded in subsequent proceedings in the *Second Computer Inquiry* that "continued provision of CPE by common carrier under regulation impedes the evolution of a truly competitive CPE market." [8] We also decided, however, that the public interest would be best served by providing separate schedules for the deregulation of new and embedded CPE.[9] New CPE was detariffed on January 1, 1983, while the detariffing of embedded CPE began after the completion of a separate "implementation proceeding," which addressed "issues of capital recovery and asset valuation, alternative mechanisms by which transition to an unregulated CPE environment may be achieved, and the appropriate time period for removal of embedded CPE investment from separations and a carrier's rate base." [10] We indicated that special treatment of embedded CPE was necessary in order to avoid the significant dislocations that could result from immediate detariffing.[11]

3. Several Commission orders in this docket have implemented the *Second Computer Inquiry* decisions requiring detariffing of embedded CPE.[12] In the *First Order*, we required AT&T to transfer its embedded CPE to an unregulated subsidiary, AT&T–IS, effective January 1, 1984.[13] The CPE was valued at net book for purposes of this transfer. We also required that AT&T–IS provide a sale option to its embedded CPE customers. National sales prices were set for single-line equipment for a two-year price predictability period. For multiline equipment, the sales prices were not to exceed net book value plus transaction costs in the aggregate. We also established limits on increases in lease prices for the two-year period ending December 31, 1985.[14]

4. In the *Third Order*, we established a framework for states to follow in deregulating ITC-owned, embedded CPE tariffed at the state level. Subject to a minimum set of federal requirements, states were given the flexibility to develop an approach to detariffing that best meets the needs of customers and ITCs in their jurisdictions. We did not set a valuation standard for the transfer price, but rather allowed the states to determine the valuation mechanism.[15] States were required to certify to the Commission by September 1, 1985, that they had developed plans to deregulate embedded CPE by December 31, 1987, in a manner consistent with the *Third Order*.

5. While we have deregulated, or have established a framework for deregulation of, a substantial amount of embedded CPE, there are still certain categories of embedded CPE yet to be detariffed. In the *Second Further Notice*, we sought comment on the deregulation of federally tariffed ITC-owned CPE. In the *Third Further Notice*, we sought comment on our proposals to deregulate embedded CPE for which we have not received substantial comment in prior proceedings, including ITC-owned, NSEP CPE tariffed at the state or federal level. We also proposed to establish detariffing mechanisms for mobile CPE tariffed at the federal level. In order to complete the deregulation of all CPE in an orderly and timely fashion, we also sought comments on the detariffing of any remaining CPE, new or embedded, for which we had not previously requested comments. Parties were requested to provide information on the type of any such CPE, the entity responsible for the CPE, and a preferred valuation technique and deregulation date.

III. Federally Tariffed, Embedded CPE Owned by Independents

A. Background

6. In the *Second Further Notice*, we sought comments on detariffing federally tariffed, embedded CPE. We proposed removing the embedded CPE from regulated service at adjusted net book value on a "flash-cut" basis as of January 1, 1985.[16] Customers would be given the opportunity to purchase their existing in-place equipment "at any time during a two-year period following detariffing at sale prices which, in the aggregate, do not exceed the adjusted net book value of the equipment plus

[6] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (hereinafter *Final Decision*), *modified on reconsideration*, 84 FCC 2d 50 (1980) (hereinafter *Reconsideration Order*), *modified on further reconsideration*, 88 FCC 2d 512 (1981) (hereinafter *Further Reconsideration Order*), *aff'd sub nom. Computer & Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 (U.S. 938 (1983); *aff'd on second further reconsideration*, FCC 84–190 (released May 4, 1984) (hereinafter *Second Further Reconsideration Order*).

[7] *Final Decision* at para. 9.

[8] *Reconsideration Order* at para. 46. (citing *Final Decision* at paras. 144–59).

[9] *Reconsideration Order* at para. 49.

[10] *Id.* at para. 55 (footnote omitted).

[11] *Id.* at para. 48.

[12] This docket was initiated through the release of a Notice of Inquiry on April 13, 1982. Procedures for Implementing the Detariffing of Customer Premises Equipment (Second Computer Inquiry), Notice of Inquiry, 89 FCC 2d 694 (1982) (hereinafter *Notice of Inquiry*). On June 21, 1983, we released a Notice of Proposed Rulemaking, 94 FCC 2d 76 (1983) (hereinafter *Notice*). The Report and Order detariffing AT&T's embedded CPE was released on December 15, 1983, 95 FCC 2d 1276 (1983) (hereinafter *First Order*), *modified on reconsideration*, 50 FR 9018 (1985) (hereinafter *First Order Reconsideration*). On June 29, 1984, we released the *Second Order*, *supra* note 1, which detariffed embedded CPE used in mobile telephone service. A Second Further Notice of Proposed Rulemaking, released on June 20, 1984, 98 FCC 2d 361 (1984) (hereinafter *Second Further Notice*), sought comment on a framework to allow federal agencies to obtain NSEP equipment from AT&T and its subsidieries and the Bell Operating Companies, and the Sixth Report and Order in this docket, 50 FR 1525 (1985) (hereinafter *Sixth Order*), established such a framework. The Third Report and Order, released on October 26, 1984, 99 FCC 2d 354 (1984) (herein after *Third Order*), *aff'd on reconsideration*, FCC 85–118 (released March 27, 1985), provides a framework for states to deregulate embedded CPE owned by the ITCs and tariffed at the state level. The Fourth Report and Order in this docket, 49 FR 47285 (1984), released November 4, 1984, detariffed CPE provided by Western Union and the international record carriers. The Fifth Report and Order, released November 20, 1984, 49 FR 46378 (1984) (hereinafter *Fifth Order*), *reconsideration pending*, addressed accounting matters involved in detariffing CPE. The Third Further Notice of Proposed Rulemaking, released on July 12, 1985, 50 FR 29440 (1985) (hereinafter *Third Further Notice*), requested comments on a structure for detariffing embedded, NSEP CPE owned by ITCs, tariffed at the state or federal level, as well as all other CPE not previously addressed in a Commission Order or Notice.

[13] The principal rules regarding the treatment of any gains or losses in connection with the removal of utility assets from regulated service are set out in *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 786 (D.C. Cir. 1973), *cert. denied sub nom. D.C. Transit Sup. v. Democratic Cent. Comm.*, 415 U.S. 935 (1974) (hereinafter, together with companion cases, referred to as *Democratic Central Committee*). For a listing of companion cases, see *First Order* at para. 56 n. 48.

[14] In the *First Order*, we decided to detariff embedded CPE owned by AT&T quickly because of the then-imminent Bell System divestiture, but determined that, since divestiture did not apply to ITCs, we could decide on the detariffing of ITC-owned CPE in a future rulemaking. *First Order* at para. 56 n. 48.

[15] States are subject to compliance with the principles of *Democratic Central Committee*, i.e., "the right to capital gains on utility assets is tied to the risk of capital losses" and "he who bears the financial burden of particular utility activity should also reap the benefit resulting therefrom." *Democratic Central Committee*, 485 F. 2d at 806. Therefore, gains or losses on transfer or sale of assets must go to the group entity—investors or ratepayers—that bore the risk of loss of capital value over the regulated life of the assets. For further discussion of this case, see *Third Order* at para. 39 n. 28.

[16] *Second Further Notice* at paras. 22–23.

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reasonable transaction costs." [17] We also proposed that the lease rates charged by the ITCs would be subject to established ceilings under a price predictability program based upon the requirements established in the *First Order* for AT&T-IS. Existing contracts applicable to this detariffed equipment would remain in effect and would be enforceable by the ITC and the customer involved. ITCs would be required to follow accounting and tax requirements specified in other Commission orders deregulating CPE.

7. Our goal in formulating the proposal in the *Second Further Notice* was to detariff federally tariffed, embedded equipment as expeditiously as possible, while "protecting the interests of ratepayers, in-place customers, and investors." [18] The comments and reply comments [19] received in response to the *Second Further Notice* represent the full range of interests on the issues under consideration.

B. Discussion

8. Initially, we note that our preliminary understanding that federally tariffed, embedded CPE comprises only a small portion of the total amount of embedded equipment owned by Independents has been confirmed by the record compiled in response to the *Second Further Notice*.[20] The procedures proposed by the various parties for detariffing that equipment, however, run the gamut from applying to ITCs all the requirements adopted in the *First Order* for AT&T,[21] to allowing ITCs to use "voluntary" standards in price predictability and lease or sale offers.[22] Most ITCs argue that they do not require the same control in the detariffing process that we found appropriate for AT&T. They assert that ITCs do not enjoy comparable market power in the replacement, lease, or maintenance of CPE and that much of the CPE provided under federal tariff consists of private line equipment used by sophisticated and knowledgeable business customers. This embedded CPE, it is argued, is subject to a high rate of technological and economic obsolescence.[23] Since they are operating in a highly competitive environment, the ITCs argue, they will have a financial incentive to lease equipment at rates no higher than those currently prevailing in the marketplace thereby maintaining the equipment in service. If an ITC attempts to charge rates that are higher than a customer's market value expectations, the equipment will be returned, and the resulting financial loss will be borne by the ITCs.[24]

9. We are convinced by the comments received that some flexibility is appropriate in the detariffing process as it applies to ITC-owned, federally tariffed, embedded CPE. We reach this conclusion having reviewed state detariffing plans for ITC-owned, embedded CPE tariffed at the state level filed in response to the requirements of the *Third Order*.[25] Cincinnati Bell argues that federally tariffed CPE should be deregulated on the same date and in the same manner as CPE deregulated under the provisions of the *Third Order*.[26] *We conclude, that ITCs should be given some opportunity to deregulate federally tariffed CPE at the same time as state-tariffed CPE* [27] and under somewhat similar conditions. Thus, we will provide some flexibility as to the detariffing date and valuation mechanisms.

10. In order to provide flexibility, while ensuring that this federally tariffed equipment is detariffed promptly and in a manner consistent with federal policies, we establish the following requirements:

(1) *Detariffing Period and Valuation Standard.* ITCs may deregulate federally tariffed, embedded CPE any time between March 1, 1986 and December 31, 1987.[28] For the purpose of transferring the CPE from regulated accounts the equipment should be valued at net book value.[29]

(2) *Price Predictability Program.* The Price Predictability program established herein provides for both a sales and lease program to be in effect for two years after the date of deregulation. This price predictability program is modeled after the program established for AT&T in the *First Order*.[30]

(a) *Sales Program.* A sales program [31] must be established under which customers will be able to purchase their CPE at any time during a two year price predictability program after deregulation, at sales prices that, in the aggregate, do not exceed the net book value of the equipment plus reasonable transaction costs. Customers must be notified that a sales program is in effect and those requesting a price quote for in-place CPE must receive a quote not more than 30 days after the request. CPE purchased during this period must receive a 90 day warranty.[32]

(b) *Lease Program.* During the price predictability period the lease rates charged by the ITCs are subject to increase no greater than the increase in the Consumer Price Index for that period.[33] Increases may be made in eight month intervals occurring at the 8th and 16th months of the transition period. Option to purchase contracts and lease contracts will continue in effect and be enforceable by the ITC and the customer involved.

(3) *Accounting Requirements.* (A) The deferred tax reserves and unamortized tax credits associated with all embedded CPE must be transferred with the CPE to unregulated accounts upon deregulation.

(B) CPE must be transferred to unregulated accounts or a separate subsidiary at net book value on the date of deregulation.

(C) Supporting assets must be transferred to unregulated accounts at net book value. Land and buildings must be transferred to unregulated accounts at market or appraised value.

(D) ITCs must maintain separate books for unregulated activities as required in the *Fifth Order*, unless the equipment will be transferred to a separate subsidiary. Joint or common costs must be fully distributed between the regulated and unregulated activities of the ITC.

(E) For sales under regulation, ITCs must use existing salvage accounting procedures that were applied to AT&T in the *First Order*.

11. ITCs will be required to balance the interests of ratepayers, in-place customers, and investors, while proceeding to detariff this equipment in a manner consistent with the *Second Computer Inquiry* and *Democratic Central Committee*.[34] Although this Order does not require the filing of a plan for deregulation of federaliy tariffed CPE by ITCs, the Commission may, at its discretion, require the submittal of a detailed plan, a report, or an accounting audit to ensure that the detariffing of federally tariffed, ITC-owned CPE takes place in a manner consistent with the *Second Computer Inquiry*.

IV. Embedded NSEP Equipment Owned by Independents

A. Background

12. The removal from regulation of embedded *NSEP* CPE owned by ITCs was not specifically addressed in the *Notice*. The *Third Order*, which permitted states to deregulate embedded CPE owned by ITCs that is tariffed at the state level, specifically excluded NSEP equipment [35] in order to ensure that there would be a consistent deregulatory process, for all NSEP CPE owned by ITCs, whether tariffed at the state or federal level.

13. In the *Second Further Notice*, we suggested several options under which specified federal agencies would be able to obtain CPE to provide NSEP functions.[36] The parties chose to comment largely on AT&T's role in the provision of NSEP equipment. Accordingly, the *Sixth Order* established a framework, involving a permanent waiver of the *Second Computer Inquiry* separate subsidiary requirements,[37] under which AT&T Communications (AT&T–COM) and the BOCs could continue to act as a single point of contact for federal agencies, to facilitate the provision, operation, and maintenance of 21 NSEP systems.[38]

14. The *Sixth Order* provided for the deregulation of embedded NSEP CPE owned by AT&T in a manner similar to that required by the *First Order* for AT&T's other embedded CPE. For both single-line and multiline CPE, the *Sixth Order* required that the equipment be transferred out of regulation at net book value with a sales plan and two-year price predictability period. AT&T-owned NSEP was detariffed effective January 1, 1984. The *Sixth Order* did not address the provision of NSEP equipment by ITCs; we stipulated however, that ITCs could continue to act as a single point of contact for NSEP communications needs and that a specific waiver would not be necessary since ITCs, unlike AT&T–COM and the BOCs, were not subject to the Commission's separate subsidiary requirements.[39]

B. Discussion

15. Our goal in this proceeding is the deregulation of ITC-owned NSEP CPE in a manner that protects the national security and the interests of ratepayers, in-place customers, and investors.[40] Although we were convinced that the deregulatory policies of the *Second Computer Inquiry* could proceed without adversely affecting national security and emergency preparedness, in the *Third Further Notice* we provided interested parties with an opportunity to provide more detailed comments on the detariffing of ITC-owned NSEP CPE before we would proceed to establish rules for deregulation.

16. In the *Third Further Notice*, we sought comment on: (1) The definition of NSEP CPE for detariffing purposes; (2) the detariffing processes for state tariffed NSEP CPE; (3) the detariffing process for federally tariffed NSEP CPE; and (4) the need to preempt state separate subsidiary requirements that may interfere with the effective provision, restoration, or maintenance of CPE for NSEP purposes. Below, we address the first three of these issues together and then the fourth issue separately.

1. NSEP CPE Detariffing

17. GTE and Cincinnati Bell argue that the definition of NSEP CPE presented in the *Third Further Notice*,[41] was "overbroad and subject to a variety of interpretations," [42] and that "NSEP CPE is not currently separately identified . . . ." [43] Cincinnati Bell indicates further that, it would be operationally difficult to keep these expenses separated from other expenses on an on-going basis because the deregulated NSEP equipment would be physically similar to other deregulated equipment.[44] In reply comments, FEA agrees with the concerns expressed by GTE and Cincinnati Bell regarding the identification of NSEP CPE. "The FEA are not sure that we are capable of compiling a complete and accurate list of all circuits in which ITC-owned NSEP CPE may be involved".[45] Further, FEA

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[17] *Second Further Notice* at para. 23. *See also id.* at para. 23 n. 24 regarding adjustments to net book value.

[18] *Second Further Notice* at para. 24.

[19] Parties filing comments included: Federal Executive Agencies; Ameritech Operating Companies; International Communications Association (ICA); Mountain States Telephone Company; Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company; American Satellite Company; Bell Telephone Company of Pennsylvania; Chesapeake and Potomac Telephone Company; The Diamond State Telephone Company; Nevada Bell Telephone Company; New England Telephone and Telegraph Company; New Jersey Bell Telephone Company; New York Telephone Company; Pacific Bell Telephone Company; Southwestern Bell Telephone Company; Teltec Saving Communications Company; and GTE Corp. Five parties filed reply comments: Federal Executive Agencies; United Telephone System, Inc. (UTS); AT&T; Central Telephone Company (Centel); Rolm Corporation.

[20] *See, e.g.*, Centel Comments at 3. Centel states that its net investment of $1,705,180 for private line interstate terminal equipment represents 2.5 percent of its total net investment in CPE. *See also* GTE Comments at 18; UTS Comments at 2.

[21] *See* ICA Comments at 4.

[22] *See* GTE Comments at 14.

[23] *See* Centel Comments at 3.

[24] See *Democratic Central Committee*, 485 F. 2d at 866.

[25] States were required to file plans for deregulating ITC-owned, state-tariffed, embedded CPE by September 1, 1985. The deregulation dates proposed by states have varied from January 1, 1986, to December 31, 1987. Waiver requests for detariffing past December 31, 1987, have also been received. States have proposed using net book value, market value, capital budgeting, and appraisals to set CPE valuation.

[26] Cincinnati Bell Comments at 3.

[27] The flexibility in detariffing date does not extend past December 31, 1987.

[28] This Order does not change the filing requirements of § 43.43 of the Commission's Rules, 47 CFR § 43.43 (1984). Any telephone company requiring changes in depreciation rates that are subject to approval by the Commission must follow the usual procedures in seeking such approval.

[29] Net book value is defined as the original cost of an asset less the related depreciation reserve. *First Order* at para. 45 n.40. For AT&T, we found that "using net book value as a proxy for economic value" has the advantage of extreme simplicity, and it may be the most prudent. *See First Order* at paras. 72–74, 78–79. Adjustments to net book value would be made in accordance with the principles and rules adopted with respect to AT&T embedded CPE in the *First Order*. We permitted the net book value of the embedded assets to be reduced upon transfer out of regulation by the amount of deferred tax reserves and unamortized investment tax credits associated with those assets as a means of effecting the transfer of these tax accounts from the regulated books. Since we are requiring ITCs also to transfer those tax accounts with the embedded CPE, a similar adjustment in net book value will be permitted.

[30] *First Order*, at paras. 67–112 and 15 n. 21.

[31] In the *First Order*, we indicated that the sale and transfer options formed the backbone of the detariffing plan developed for AT&T. *First Order* at para. 35.

[32] *See First Order* at para. 81.

[33] *Id* at paras. 79–80.

[34] *See supra* para. 3 note 11 and para. 4 note 13.

[35] *Third Order* at para. 27.

[36] *Second Further Notice* at paras. 9–11.

[37] In the *Second Computer Inquiry*, we permitted AT&T to engage in the provision of CPE and enhanced services only through a separate subsidiary. *See Final Decision* at para. 208. We have recently released an Order relieving AT&T from structural separation requirements for the provision of CPE. *See* Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Company, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 50 FR 9060 (1985). We have also recently initiated a proceeding to examine whether to remove the structural separation requirements for the enhanced service offerings of AT&T and the BOCs. Amendment of § 64.702 of the Commission's Rules and Regulations, CC Docket No. 85–229, FCC 85–397, released August 16, 1985.

[38] The permanent waiver permits AT&T–COM and the regulated BOC entities to maintain end-to-end responsibility for NSEP communications in cases of presidentially declared and certain other emergencies and on a continuous basis for 21 designated NSEP systems. *See Sixth Order* at para. 26, n. 72. *See also First Order* at para. 171 n. 148; *Sixth Order* at App. A.

[39] *Sixth Order* at para. 1 n.4.

[40] *Third Further Notice* at para. 8.

[41] *Id.* at para. 12.

[42] GTE Comments at 5–9.

[43] Cincinnati Bell Comments at 2. See also GTE Reply Comments at 3 n. 3.

[44] Cincinnati Bell Comments at 2.

[45] *See* FEA Reply Comments at 3.

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states that it did not contemplate having "ITC NSEP CPE treated differently for detariffing purposes than ITC non-NSEP CPE."[46]

18. The comments uniformly indicate that no special treatment is required in detariffing ITC-owned, embedded NSEP CPE tariffed at the state or federal level.[47] We conclude that ITC-owned embedded NSEP CPE should be treated in the same manner as other ITC-owned embedded CPE. Accordingly, federally tariffed, embedded NSEP CPE will be detariffed according to the provisions established in this Order for other federally tariffed CPE and state tariffed, embedded NSEP CPE will be detariffed according to state plans filed in response to the *Third Order*.[48] Consequently, it is unnecessary for us to define NSEP as it relates to the detariffing process, as we proposed in the *Third Further Notice*, since NSEP CPE [49] will be detariffed in the same manner as other embedded CPE.

2. State Separate Subsidiary Requirements

19. In the *Second Computer Inquiry*, we required that AT&T provide embedded and new CPE through a separate subsidiary in order to eliminate the risk of cross-subsidization or other anticompetitive conduct.[50] While we chose not to place these requirements on ITCs,[51] we did not preclude states from requiring that an ITC establish a separate subsidiary for the provision of CPE.[52] If a state has imposed such a requirement on an ITC, however, problems similar to those addressed in the *Sixth Order*, regarding AT&T's ability to provide end-to-end service for NSEP requirements, may exist for the ITC.

20. In the *Third Further Notice*, we proposed to preempt state separate subsidiary requirements that do not allow ITCs to provide embedded, new, or replacement NSEP CPE as part of an end-to-end service. We were concerned that such requirements could impede the effective provision of CPE for national security and emergency purposes, including those situations under which priority restoration and similar requirements would necessitate participation by ITCs in ensuring the telecommunications requirements for NSEP. As was the case with AT&T in the *Sixth Order*, we were concerned that these state separate subsidiary requirements would preclude ITCs from offering a single point of contact for services and CPE needed for NSEP purposes.[53]

21. In the *Third Further Notice*, the Commission proposed a definition of NSEP for purposes of preempting state separate subsidiary requirements [54] that included CPE used in connection with: (1) NCS [55]/Federal Communications Commission approved restoration priority 1–4 [56] services that are under contract to specified federal agencies;[57] (2) any service or circuit required in support of certain emergency situations, [58] and (3) any military exercise or special purpose services or circuits.[59]

22. The parties commenting on our proposal assert that ITCs have the same need to provide "end-to-end" service to the government that led the Commissions to waive the structural separation requirements for AT&T and the BOCs in their provision of NSEP CPE.[60] FEA and GTE both argue that, therefore, the Commission should adopt its proposal and preempt state limitations.[61] In its comments, FEA also indicates that the NSEP CPE definition that included military exercises was too limited and should be expanded to all exercises held by the special agencies. They also indicate that the special purpose services should include "foreign affairs" NSEP services, as well as presidential and foreign intelligence NSEP services. We concur that these services should be included in order to make the definition consistent with the NSEP Manual.[62]

[46] *Id.* at 3. Although FEA initially supported federal deregulation of state tariffed NSEP CPE, in its Reply Comments it takes the position that NSEP CPE should be detariffed in the same manner as other state-tariffed CPE.

[47] Moreover, as argued by GTE, the broad nature of the definition of NSEP presented in the *Third Further Notice* and supported and broadened by FEA in its comments would make it very difficult to detariff this CPE separately from other CPE. GTE Comments at 4 and FEA Comments at 4–5.

[48] The *Third Order* provides that NSEP CPE owned by ITCs in a state in which a state plan has not been filed with the Commission or has been denied because it is not consistent with the requirements of the *Third Order* will be deregulated according to the AT&T Detariffing plan specified in the *First Order*.

[49] In the *Third Further Notice* we proposed a waiver to extend the detariffing periods for ITCs with a substantial amount of embedded NSEP CPE. No comment was received regarding this waiver proposal and thus we have decided not to admit the waiver.

[50] *See Third Further Notice* at para. 7 n 19.

[51] In the *Reconsideration Order*, we decided that, for a number of reasons, separate subsidiary requirements would not be necessary for ITCs. First, we found that opportunities for ITCs to cross-subsidize were less than those or AT&T. Second, we concluded that the costs of separation would be greater for ITCs and might foreclose their entry into the enhanced service or CPE markets. *See Reconsideration Order* at para 70

[52] In the *Second Computer Inquiry*, we held that "if a state regulatory authority, focusing on the local activities of a carrier not subject to structural separations under our rules, perceived that the carrier's unregulated activities could lead to cross-subsidies or other anticompetitive conduct detrimental to basic service ratepayers, the state could apply structural separation conditions on that carrier." *Second Further Reconsideration Order* at para. 2.

[53] *See Bureau Woiver Order* at para. 12 n.16, regarding the DOD's comments on the need for a single point of contact for emergency communications needs.

[54] *See Third Further Notice* at para. 12.

[55] The NCS includes the telecommunications assets of, and representatives from, "those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and to the extent permitted by law, other Executive entities which bear policy, regulatory or enforcement responsibilities or importance to national security or emergency preparedness telecommunications capabilities." Exec. Order No. 12.472, 49 FR 13471 (1984).

[56] *See* 47 CFR Part 64, App. A, pp. 693–97. The Communications Act grants this Commission authority over the assignment of priorities for restoration of common carrier provided service, until such time as the applicable Commission rules are superseded by the President's emergency power. *Id.* at 693. A restoration priority system is "intended to restore only the most essential private line communications circuits in order to increase their reliability during emergencies." *Id.* All communications common carriers are directed by Appendix A of Part 64 of this Commission's Rules to honor and apply the restoration priority system.

[57] The federal agencies involved are the Department of Defense (DOD), the Department of Energy, the Department of the Interior, the Department of Transportation (including the Federal Aviation Administration and the Coast Guard), the General Services Administration, the Central Intelligence Agency, the Federal Emergency Management Agency, the National Aeronautics and Space Administration, the United States Information Agency, and the Nuclear Regulatory Commission. These agencies are hereinafter referred to as the "specified federal agencies."

[58] These emergency situations include a presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122) or other emergency as defined in DCA Circular 310–130–1, Chapter II. para. 2 (Feb. 1982). For the relevant text of the DCA Circular, see AT&T Petition for Waiver of § 64.702 of the Commission's Rules and Regulations with Respect to the Department of Defense and Specified Government Agencies, Memorandum Opinion and Order, 93 FCC 2d 632, para. 7 n. 8 (1983) (hereinafter *CPE Woiver Order*).

[59] Special purpose services/circuits include services/circuits used to support the President, Vice President, or activities conducted pursuant to the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801–11.

[60] GTE Reply Comments at 5 and FEA Comments at 6. *See* also joint Supplemental Comments of FEA, GTE, Continental Telecom Inc., Centel Corporation, and the United States Telephone Assoc. (hereinafter joint Supplemental Comments) at 2.

[61] GTE Reply Comments at 2; FEA Comments at 6.

[62] FEA Comments at 4–5.

23. In recognition of the "end-to-end" needs of an operational national security network,[63] this Commission herein preempts state-imposed separate subsidiary requirements, to the extent they apply to the provision, maintenance, or restoration of NSEP CPE by ITCs.[64] Specifically, in those states in which ITCs are required to provide CPE through a separate subsidiary, we preempt any state-imposed limitations that would prohibit ITCs from engaging on an unseparated basis in the provision, maintenance, and restoration of CPE [65] in national security and emergency situations, including those under which priority restoration and similar requirements would necessitate participation by ITCs in ensuring the telecommunications requirements of NSEP.[66] Under this preemption the regulated ITC would be permitted to be responsible for the acquisition of limited amounts of new CPE to replace embedded CPE in NSEP systems and for the reasonable augmentation of these systems. ITCs will also be permitted to be responsible for the acquisition of unlimited amounts of CPE during NSEP emergencies. New CPE that is not needed to augment or replace embedded CPE for NSEP systems, or to respond to a request during an NSEP emergency, will not be covered by this preemption.

24. Until deregulation, commenters argue, the provision, maintenance, and restoration of NSEP CPE may require coordination between the regulated and unregulated sides of ITCs. The costs of regulated service should continue to be reflected in tariff rates, and the allocated costs associated with providing and servicing NSEP CPE should not be borne by the ordinary ratepayer, but rather should be treated as a reimbursed cost to ITCs by government users. The decision to preempt the state-imposed separate subsidiary requirements extends only to the provision, maintenance, or restoration of NSEP CPE.[67] The specified federal agencies must reimburse the ITCs under tariff, for costs associated with providing regulated "end-to-end" maintenance and repair for NSEP CPE in emergency situations. These expenses should not find their way into the rate base on which general ratepayer's rates are based for these tariffed services. New CPE provided for NSPE purposes must be titled in the separate subsidiary or the government agency. The decision to request the unseparated provision, restoration, or maintenance of NSEP CPE will be left to the FEA in consultation with the ITCs. The decisions made by the ITCs in conjunction with the FEA will continue to be subject to regulatory oversight and review by this Commission.

25. If requested by a state, within 120 days of this Order or 30 days after the establishment of a separate subsidiary by an ITC, whichever is later, the ITC in conjunction with FEA must file a report with the state that specifies the NSEP CPE that will be provided and serviced by the ITC on an ongoing basis under the provisions of the preemption provided for herein. The state may require that the report be updated as often as quarterly by the ITC. In addition, if requested by a state, the ITC in conjunction with FEA must report quarterly on any emergency situations that required the provision, restoration, or maintenance of new or embedded CPE under the provisions of the preemption provided for herein, which was not previously identified to the state as a NSEP requirement. The report may include information on the new or embedded CPE provided and the regulated resources diverted to provide emergency repair and maintenance necessary to support NSEP CPE.

V. Other CPE

26. In order to ensure that when we terminate this proceeding all new or embedded CPE is detariffed, we sought comment in the *Third Further Notice* on the deregulation of any remaining CPE we have not addressed in this or any other previous notice or order.[68] Specifically, we sought comment regarding: (1) 911 emergency CPE; (2) federally tariffed, embedded mobile CPE and (3) CPE used with maritime mobile services licensed under part 81 of the Commission's Rules.

1. 911 Emergency CPE

27. We proposed in the *Third Further Notice* to permit the states to decide whether or not to detariff 911 emergency CPE [69] owned by ITCs and tariffed at the state level. We based this tentative conclusion on the extraordinary requirements for service continuity, reliability, and maintenance associated with 911 emergency calls. The Common Carrier Bureau has previously concluded that the provision of 911 emergency service directly promotes the statutory objective embedded in Section 1 of the Communications Act, 47 U.S.C. 151, of "promoting safety of life and property through the use of wire and radio communications."[70]

28. GTE supports our proposal to allow states to determine whether or not to detariff 911 CPE.[71] Cincinnati Bell argues that this CPE should be detariffed according to the same provisions as other state tariffed CPE.[72] However, because of the importance of this CPE in local government provision of emergency services, we conclude that it is in the public interest to allow states to determine whether the circumstances within their jurisdiction justify special treatment of 911 CPE. Thus, we conclude, consistent with our prior actions on this issue, that states may decide whether to detariff 911 CPE, and if they do decide to do so, how to accomplish the detariffing.

[63] FEA argues in its comments: "Many NSEP telecommunications services involve the ITCs. Failure to preempt state separate subsidiary requirements which prohibit ITCs from providing embedded, new, or replacement NSEP CPE as part of an end-to-end service, would preclude the FEA from continuing to receive existing end-to-end NSEP telecommunications services from the affected ITCs, and would hamper their ability to respond to future NSEP telecommunications service requirements. . . . [A]bsent preemption, the federal government will be able to obtain NSEP CPE from AT&T and the BOCs, but not the ITCs. There is no justification for such disparate treatment of ITCs."

See FEA Comments at 6. *See* also joint Supplementary Comments at p. 3.

[64] This preemption includes support services required to provide, maintain, and restore NSEP CPE. For example, support services may include: billing, installation and repair, legal and accounting support, and point-of-contact services. *See* Letter to the Commission from Daniel L. Bart, Attorney, GTE, dated November 14, 1985.

[65] NSEP CPE would not be tariffed and would not be added to the regulatory revenue requirements. Expenses incurred by ITCs in connection with making such arrangements would be recorded as below-the-line expenses.

[66] Only CPE associated with NSEP situations, as described *supra* paras. 21 and 22, would be covered by the proposed preemption.

[67] We have attempted to limit our preemption in this area in a manner that allows ITCs to provide NSEP CPE to the specified federal agencies in an effective fashion, while not broadening the preemption to a point that it interferes with the objectives of state separate subsidiary requirements.

[68] *See supra* para. 1 n. 4.

[69] By "911 emergency CPE" we mean that CPE located at 911 attendants' positions, including associated switches and processing database equipment used to implement centralized 911 dispatch services. We, of course, do not include in this definition conventional telephones that might be used to place a 911 call.

[70] Letter from the Chief, Common Carrier Bureau, to Alfred A. Green, AT&T (Dec. 30, 1982). See also *generally*, Southwestern Bell Telephone Company, File No. ENF 84–44, Mimeo No. 1709 (released January 8, 1985).

[71] GTE's telephone operating companies have recently sought a waiver of Computer II Rules for 911 service. *See* GTE Service Corporation letter dated May 21, 1985 from Daniel L. Burt. Request for Waiver of the Computer II Rules for E911 and CPE. FNF. 84–44.

[72] *See* comments Cincinnati Bell at 3.

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2. Mobile CPE

29. In the *Second Order* in this proceeding, we detariffed all embedded CPE used in mobile telephone services that was provided by AT&T, ITCs, and radio common carriers (RCCs).[73] AT&T's embedded mobile CPE was deregulated according to the procedures of the *First Order*. With respect to state tariffed, embedded mobile CPE, we decided to extend to the state commissions the flexibility to establish valuation standards and detariffing mechanisms, such as sales plans, to be applied at the time these assets owned by the ITCs and RCCs were removed from regulated service. While we directed that detariffing or federally tariffed, embedded mobile CPE occur in the *Second Order*, we did not specify the detariffing mechanisms or valuation methodology to be used. It is our understanding that this represents a small amount of CPE.

30. As proposed in the *Third Further Notice*, we require that ITCs and RCCs detariffing federally tariffed, embedded mobile CPE must: (1) Use net book value as the valuation standard for transfer of the equipment to nonregulated books; (2) provide that customers have an opportunity to purchase the in-place equipment at any time during a two-year price predictability period following detariffing, at sales prices that in the aggregate do not exceed the net book value of the equipment plus transaction costs; (3) limit increases in month-to-month lease rates during the price predictability period to increases in the Consumer Price Index (CPI), with adjustments permitted in eight month intervals at the 8th and 16th months of the price predictability period; (4) honor existing fixed-term leases according to their terms[74] (such leases would be enforceable by both the ITC and customer involved); and (5) follow accounting and tax requirements as specified herein for federally tariffed CPE.[75]

3. CPE used in Maritime Common Carrier Services Licensed under Part 81 of the Commission Rules

31. In the *Third Further Notice*, we sought comment on the deregulation of CPE used in maritime common carrier services licensed under Part 81 of our Rules. We received no comments on this issue. Neither new or embedded CPE used in this service has been previously deregulated by any prior Commission orders.[76] Thus, we are herein deregulating new and embedded CPE, effective March 1, 1986. Any embedded CPE used in such maritime service must be detariffed under the provisions established for federally tariffed mobile CPE.[77]

4. Any other CPE

32. In this Order we establish the procedures for detariffing any CPE not previously discussed in this Order, or any prior Commission notices or Orders. Respondents to the *Third Further Notice* did not identify any such new or embedded CPE. Any such embedded CPE identified subsequently must be deregulated according to the provisions established herein for federally tariffed, embedded, mobile CPE, effective March 1, 1986.[78]

VI. Regulatory Flexibility Certification

33. This Order establishes rules and policies for the detariffing of embedded CPE owned by ITCs that is either tariffed at the federal level or used by the federal government for NSEP functions, whether tariffed at the federal or state level. This Order establishes a workable and durable framework for the provision of NSEP CPE in a manner that accommodates national defense and emergency preparedness goals as well as the policies of the *Second Computer Inquiry*. This Order also establishes a framework for the deregulation of any remaining new or embedded CPE that is still being offered subject to tariffs. The authority for this rulemaking is contained in sections 4(i), 4(j), 201–205, 213, 218, 220, 403. We state our legal authority for taking action in this proceeding, and note that the policy objectives of the Regulatory Flexibility Act are also encompassed in Sections 2(b) and 203(a) of the Communications Act of 1934, the provisions of which are intended to relieve many small telephone companies from various reporting requirements established in the Communications Act.

34. We conclude that small business entities, as defined for purposes of the Regulatory Flexibility Act, 5 U.S.C. 602–12, would be favorably affected by this rulemaking.

35. We hereby certify pursuant to 5 U.S.C. 605(b) that the Regulatory Flexibility Act is not applicable to ITCs because they are monopolies in their own service areas. The Act incorporates the definition of a "small business" in Section 3 of the Small Business Act as the definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. ITCs, even small ones, enjoy a dominant monopoly position in their local service area. This is the case regarding the ITCs because each of them is the dominant provider of telephone service within its service area. Moreover, the actions we are taking in this proceeding that allow for more flexibility in deregulating federally tariffed CPE are designed such that the interests of small telephone companies are protected. We note that, even though the Regulatory Flexibility Act does not apply to ITCs, our requirements regarding the detariffing of CPE established in this proceeding comply with the spirit of that statute proceeding they will have the effect of reducing administrative burdens faced by small ITCs.

36. We conclude that our requirements will have a favorable impact on small RCCs directly affected by our actions. It is our view that any small business under the terms of the Regulatory Flexibility Act will be favorably affected because the removal of tariff regulation will allow them to meet the needs of their customers, to take advantage of technological developments affecting CPE, and to control and direct the operation and expansion of their CPE businesses in a more efficient manner. Moreover, as we noted in the *First Order*, the Regulatory Flexibility Act was designed for the protection of small businesses that are directly subject to administrative rules rather than businesses indirectly affected by the results that any rules will produce.

VII. Ordering Clauses

37. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 201–205, 213, 218, 220, and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 213, 218, 220 and 403, the policies, rules, and requirements set forth in this Order are adopted.

38. It is further ordered, that the motion to accept late filed comments filed by the Ameritech Operating Companies is granted and the comments are accepted as requested.

39. It is further ordered, that the petition of waiver to accept late filed comments filed by the Federal Executive Agencies is granted and the Joint Supplementary Comments are accepted, as requested.

40. It is further ordered, that the Secretary of the Commission shall cause a copy of this Report and Order to be provided to each state regulatory commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2269 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

[73] A Notice of Proposed Rulemaking in CC Docket No. 83-372 addressed the deregulation of mobile CPE used in conventional common carrier mobile radio services. Deregulation of Mobile Customer Premises Equipment, Notice of Proposed Rulemaking, 48 FR 20952 (1983) (hereinafter *Mobile Notice*). In the Order adopted pursuant to the *Mobile Order*, this Commission, consistent with the procedures established in the *Second Computer Inquiry*, deregulated and detariffed mobile telephone equipment on a bifurcated basis. Deregulation of Mobile Customer Premises Equipment, Report and Order 48 FR 54619 (1983) (hereinafter *Mobile Order*), *modified on reconsideration*, 49 FR 882 (1983). In a Further Notice of proposed Rulemaking in this docket, 48 FR 54668 (1983), we proposed procedures for deregulating embedded mobile CPE, and the *Second Order* was adopted pursuant to that notice.

[74] *See* Memorandum Opinion and Order in CC Docket No. 81-893, FCC 85-220 (released May 15, 1985)

[75] See *supra* para. 10, Accounting Requirements.

[76] In a recent letter to the Common Carrier Bureau, Waterway Communications Systems, Inc. requested that the Commission deregulate new CPE to be utilized in maritime common carrier services licensed under Part 81 of the Commission's Rules, 47 CFR 81.913-15. Letter from Martin W. Bercovici to Chief, Common Carrier Bureau (March 1, 1985). In comments filed in response to the *Mobile Notice*, Waterway had argued that the proceeding in CC Docket No. 83-372 should include customer equipment used in conjunction with services licensed, under Part 81 but we rejected this position, noting that the *Mobile Notice* was "finely focused upon the sole issue of deregulating mobile telephone CPE [used in all services licensed under Part 22 of the Commission's Rules] and did not include deregulation of any other type of CPE." *Mobile Order* at para. 11.

[77] *See supra* para. 30.

[78] *See supra* para. 30.

47 CFR Part 73

[MM Docket No. 83-603; RM-4424]

FM Broadcast Station in Quartzsite, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots FM Channel 232A to Quartzsite, Arizona, as that community's first FM channel, in response to a petition for reconsideration filed by Buck Burdette.

EFFECTIVE DATE: March 13, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat 1081, 1082, as amended, 1083, as amended. 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Quartzsite, Arizona): MM Docket No. 83-603; RM-4424.

Adopted: January 24, 1986.
Released: February 4, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for reconsideration,[1] filed by Buck Burdette ("petitioner"), of the Commission's *Report and Order*, adopted May 15, 1984, denying his request to allot FM Channel 228A to Quartzsite, Arizona, as that community's first FM channel.[2] The denial was premised on petitioner's failure to provide the requisite expression of continuing interest in the proposal.

2. The Commission issued the *Notice of Proposed Rule Making*, 48 FR 29917, published June 29, 1983, seeking comments on the proposal to allot FM Channel 228A to Quartzsite. However, the petitioner neglected to file comments reconfirming his interest, as required by Commission policy, and absent any other expressions of interest, the proposal was dismissed. Burdette now provides the requisite intention to apply for authority to construct and operate a station in Quartzsite.

3. Accordingly, we believe that public interest considerations merit a reversal of our earlier dismissal. The channel would have been allotted to Quartzsite previously, had it not been for the absence of an expression of interest. (See, *e.g., St. Johnsbury, Vermont*, 47 FR 2867, published January 20, 1982.)

4. A staff engineering study reveals that Channel 232A can be allotted to Quartzsite consistent with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules.

5. Since Quartzsite is located within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission obtained the concurrence of the Mexican government in the proposed allotment.

6. In view of the above considerations, it is ordered, That the petition for reconsideration filed by Buck Burdette is granted.

7. It is further ordered, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, That effective March 13, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, IS AMENDED to include the community listed below, as follows:

City	Channel No.
Quartzsite, Arizona	232A

8. The filing window for applications on Channel 232A will open on March 14, 1986, and close on April 14, 1986.

9. It is further ordered, That this proceeding is terminated.

10. For further information contact: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-2800 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of the petition was given August 13, 1984, Report No. 1474.

[2] Although petitioner requested the allotment of Channel 228A, that channel would limit the 16 kilometer buffer zone of Station KJOK (FM) (Channel 226), Yuma, Arizona. While we have not required such protection for petitions filed prior to March 1, 1984 [see *Memorandum Opinion and Order*, 94 F.C.C. 2d 152 (1983), *recon.* 97 F.C.C. 2d 279 (1984)], the Commission has attempted to accommodate such affected stations operating with less than 300 meters by substituting channels, where possible, to avoid overly restricting a station's ability to improve its facilities by the March 1, 1987 deadline. Accordingly, Channel 232A has been substituted for consideration herein.

47 CFR Part 73

[MM Docket No. 85-210; RM-4969]

FM Broadcast Station in Corning, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates Channel 254A to Corning, New York as the community's second local FM service, at the request of WCBA Radio, Inc.

EFFECTIVE DATE: March 13, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154.

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303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Corning, New York); MM Docket No. 85-210; RM-4969.

Adopted: January 24, 1986.
Released: February 4, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 29448, published July 19, 1985, proposing the allocation of Channel 254A to Corning, New York, as that community's second local FM facility, at the request of WCBA, Inc. ("petitioner"). Petitioner filed comments reiterating its intention to apply for the frequency, if allocated.

2. Channel 254A can be allocated to Corning in compliance with the Commission's minimum distance separation and other technical requirements. The Canadian Government has concurred in the allocation of Channel 254A to Corning since the community is located within 320 kilometers (200 miles) of the U.S.-Canada border.

3. We believe the public interest would be served by allocating the channel, as proposed, as it could provide Corning with its second local FM service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 13, 1986, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Corning, New York	254A, 291

4. The window for filing applications on this channel will open on March 14, 1986, and close April 14, 1986.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-2801 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-247; RM-4757; FCC 86-59]

FM Broadcast Station in Crookston and Valentine, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action dismisses a petition for rule making to substitute Class C FM Channel 262 for Channel 228A at Columbus, Nebraska, due to the lack of continuing interest by the petitioner. This action also states Commission policy in situations where multiple channel substitutions in either the Television or FM Table of Allotments are necessary.

EFFECTIVE DATE: March 13, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio and television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended, 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order

(Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Allotments, FM Boadcast Stations. (Columbus, Central City, Crookston, Kearney, Lexington, McCook and Valentine, Nebraska; and Hill City, Kansas); MM Docket No. 85-247, RM-4757.

Adopted: January 27, 1986.
Released: February 4, 1986.

By the Commission.

1. The Commission has before it the *Notice of Proposed Rule Making and Orders to Show Cause*, 50 FR 34518, published August 28, 1985, in response to a petition filed by City and Farm Broadcasting, Inc., licensee of Station KTTT-FM, Columbus, Nebraska, proposing the substitution of Class C FM Channel 262 in lieu of its present Channel 228A allotment and modification of its license to specify operation on the Class C channel. The proposal also requires channel substitutions for five existing stations and one vacant channel in other communities. Oppositions were filed by Nebraska Rural Radio Association, licensee of Station KRVN-FM, Lexington, Nebraska; Osage Radio, Inc., licensee of FM Station KZEN, Central City, Nebraska; and the Rosebud Educational Society, Inc., licensee of Station KINI(FM), Crookston, Nebraska. Semeco Broadcasting Corporation, licensee of Stations KRNY-FM, Kearney and KICX-FM, McCook, Nebraska filed comments and reply comments.

2. The *Notice of Proposed Rule Making* indicated that the petitioner, City and Farm Broadcasting, asserted that the proposed Class C facility in Columbus would provide service to additional areas which are presently underserved. In addition, City and Farm Broadcasting contended that upgrading to a full Class C channel would promote competition with the other existing Class C FM station in Columbus and eliminate the intermixture of a Class A and a Class C channel in the same community.

3. On July 10, 1985, the Commission granted an application to assign the license of Station KTTT-FM from City and Farm Broadcasting to Columbus Broadcasting Systems, Inc. (File No. BALH-850529FA). According to Commission policy, a showing of continuing interest is required before a channel will be allotted to a community. See *Williams, Arizona*, 47 FR 20827, published May 14, 1982. Neither City and Farm Broadcasting nor Columbus Broadcasting Systems, Inc. has filed comments in response to the *Notice* or indicated its willingness to pursue this matter. Accordingly, this petition for rule making will be dismissed.

4. Notwithstanding that the present petition for rule making is being dismissed, we are taking this opportunity to state our concerns with respect to proposals involving multiple FM or television channel substitutions. The present proceeding would have required five affected stations to agree on appropriate amounts of reimbursement for the channel changes.[1] This process can be time consuming for the parties and, in some instances, has lasted for years. *Muncie, Indiana*, 38 R.R. 2d 1327 (1976), *Ogallala, Nebraska*, 49 R.R. 2d 1675 (1981). Failure to reach a satisfactory agreement can delay or even preclude implementation of the proposed channel substitutions in these situations. There can also be a significant amount of confusion to the public from stations changing frequencies. Even though stations do attempt to inform the public of their change in frequency, these efforts are not often immediately successful and can result in disruptions to listening and viewing habits and losses of audience. In order to minimize interruptions in service, these channel substitutions would have to be accomplished on the same date.[2] Further, changing a station's frequency is a significant action which can cause substantial disruptions to a station's business. Modifications to equipment and promotional literature pertaining to the operating frequency are of major concern to most licensees despite the fact that the reasonable costs of the changes will be paid for by the benefitting party, i.e., the ultimate licensee of the new station. In summary, we do not believe it is in the public interest to have the service of several stations disrupted in order to accommodate one station expanding its service area.

5. For these reasons, we are advising potential petitioners for rule making that absent special factors involving significant public interest benefits, or an assurance of agreement among affected stations to the proposal in advance of filing the petition, the staff has been instructed not to entertain proposals for changes in the FM Table of Allotments which involve more than two other substitutions of channels occupied by existing FM or TV stations. Based upon our experience, proposals involving either one or two other channel substitutions have normally been successfully implemented. On the other hand, proposals involving more than two channel changes are frequently not pursued or implemented. This represents a waste of Commission resources as well as those of parties participating in the proceeding. Multiple channel substitutions are disruptive to licensees, Commission processes, and the viewing and listening public. While we do not intend to list what public interest benefits would be significant and overriding, we would, in the processing of petitions for rule making, look for such showings as service to unserved areas or resolution of major technical problems. We would also advise petitioners seeking changes in the Table of Allotments which also involve channel substitutions affecting existing licensees to address, in its petition for rule making, solutions to the problems discussed in the proceeding paragraph.

6. Finally, all of the parties who filed comments in this proceeding expressed concern over the ability of the licensee of Station KTTT-FM to reimburse five stations for the costs of changing channels. We believe that their concerns are understandable and warrant comment on our part. In most cases, the petitioner and the affected station can usually arrive at the appropriate reimbursement amount and the channel changes and reimbursement are promptly effectuated. However, it is not always the petitioner which ultimately becomes the party responsible for reimbursement. It is the ultimate permittee. Thus we do not require the petitioner to demonstrate its financial ability to reimburse other stations in the context of the rule making proceeding. On the other hand, affected stations cannot be expected to incur significant expenses without the assurance of prompt reimbursement. For this reason, it is quite conceivable that we would require a licensee to demonstrate its financial ability to affected stations. Having the necessary funds available and placed in escrow would be a reasonable request by an affected station.

7. As proposed in paragraph 5 of the *Notice*, we are using this *Report and Order* to change the Table of Allotments to reflect the actual usage of Channel 241 by Station KINI(FM) at Crookston, Nebraska, instead of Valentine, Nebraska as now listed in the Table.

8. Accordingly, it is further ordered, That effective March 13, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended, with respect to the communities listed below, as follows:

City	Channel No.
Crookston, NE	241
Valentine, NE	

9. It is further ordered, That the aforementioned petition for rule making filed by City and Farm Broadcasting, Inc. proposing the substitution of Class C FM Channel 262 for Channel 228A at Columbus, Nebraska and modification of its license to specify operation on the Class C FM channel is dismissed.

10. It is further ordered, That this proceeding is terminated.

William J. Tricarico,

Secretary.

[FR Doc. 86-2795 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

[1] See *Circleville, Ohio*, 8 F.C.C. 2d 159 (1967), in which the Commission set the appropriate types of reimbursable expenses.

[2] This would necessitate the delivery or modification of equipment on that date as well as the availability of technical personnel at each station throughout Nebraska. Often, it is necessary for a station to hire an outside tower crew to either replace or rebuild an antenna. To successfully implement this proposal, it is readily apparent that serious coordination difficulties would have to be overcome

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INTERSTATE COMMERCE COMMISSION

49 CFR Part 1175

[Ex Parte No. 397]

Rail Carriers; Exemption of Railroads From Securities Regulation Under 49 U.S.C. 11301

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: Subsequent to notice (50 FR 13841, April 8, 1985) and comment, the Commission is exempting the following from regulation under 49 U.S.C. 11301: (1) All securities issued and obligations assumed by Class II and III railroads; (2) all securities issued or obligations assumed by a party acquiring a rail line in a proceeding under 49 U.S.C. 10905; and (3) issuance of equipment trust certificates by any rail carrier, regardless of size. For these types of transactions, no filing with the Commission is needed.

The Commission also exempts issuances by Class I railroads and their holding companies, subject to a notice requirement. A Class I railroad may file a notice for each security issuance, or one annual notice with updates as needed, for all securities proposed to be issued during the upcoming two years. If the annual notice procedure is used, the exemption will expire for all securities not issued within two years of the filing. Either a Class I carrier's individual or annual notice, or update, may be protested within 15 days after it is filed.

Additionally, the Commission is removing the regulations governing rail securities and requiring competitive bidding for these securities (49 CFR Part 1175). In place of those regulations, Part 1175 is being revised. The new rules are set forth in the appendix. The forms OP-F-200, 210, 220, 230, and 240 are being eliminated.

These exemptions are due to a decreasing need for Commission oversight of railroad securities as a result of changed circumstances and recent Congressional action.

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This exemption does not apply to securities that are directly related to applications filed under 49 U.S.C. 10901 and 11344.

DATE: The rules are effective on March 12, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1175

Administrative Practice and Procedures, Railroads, Securities.

Decided: December 27, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

Title 49, Subtitle B, Chapter X, Part 1175 of the Code of Federal Regulations is revised to read as follows:

PART 1175—EXEMPT ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATIONS

1175.1 Scope of exemption.
1175.2 Procedures and relevant dates.

Authority: 49 U.S.C. 10321, 10505, 11301; 5 U.S.C. 553.

§ 1175.1 Scope of exemption.

(a) Subject to the exception in paragraph (b) of this section, the issuance of securities and/or the assumption of liabilities are exempt from the requirements of 49 U.S.C. 11301 when issued or assumed by: (1) Class II and III rail carriers; (2) a party acquiring a rail line in a proceeding under 49 U.S.C. 10905; and (3) any rail carrier, regardless of size, issuing equipment trust certificates. For these types of transactions, no filing with the Commission is needed. The issuance of securities and/or the assumption of liabilities by Class I railroads and their holding companies are also exempt from the requirements of 49 U.S.C. 11301, subject to the requirements of § 1175.2 and further subject to the exception in paragraph (b) of this section.

(b) The exemption in paragraph (a) of this section does not apply to those securities that are directly related to applications filed under 49 U.S.C. 10901 and 11344. However, since the information is readily available in the primary application filed under 49 U.S.C. 10901 and 11344 in those proceedings, there is no need to file that information separately in an application under 49 U.S.C. 11301.

(c) This exemption does not affect the competitive bidding requirements of Section 10 of the Clayton Act (15 U.S.C. 20), as implemented in part by 49 CFR 1010.

§ 1175.2 Procedures and relevant dates.

(a) To qualify for this exemption, Class I railroads and their holding companies, when issuing rail-related securities, must file a verified notice of exemption and serve it in accordance with 49 U.S.C. 11301(d)(2). A Class I railroad or its holding company may file a notice for each security issuance, or an annual notice, with updates as needed, for all securities proposed to be issued during the upcoming two years. If the annual notice procedure is used, the exemption will expire for all securities not issued within two years of filing. The notice must identify the carrier or holding company, describe the security and the purpose of the issuance or assumption, and certify that it has been served on the chief executive of the States in which the carrier operates.

(b)(1) If no opposition is filed with the Commission and served on the carrier within 15 days of the filing of either the individual or annual notice, or any update, the transaction is exempt without further action by the Commission.

(2) If protests are received, the Commission will issue a decision on whether the proposal will be investigated within 30 days of the filing of the notice, and the procedure to be followed. A decision not to investigate will allow the transaction to go forward under the exemption in § 1175.1

[FR Doc. 86-2826 Filed 2-7-86; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 3)]

Railroad Consolidation Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: For the information of persons using railroad class exemptions, the Commission is making a technical amendment to § 1180.4. A cross reference is being added to other class exemptions which may be relevant. Notice and comments are not required because this change only provides information about agency practice, 5 U.S.C. 553(b).

DATE: Effective on February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: This action will not affect either the quality of the human environment or energy conservation, and will not affect small entities.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedures, Railroads.

Decided: December 27, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio.

James H. Bayne,

Secretary.

Appendix

Part 1180 of Title 49 of the Code of Federal Regulations is amended as follows:

PART 1180—[AMENDED]

1. The authority citation for Part 1180 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11341, 11345, and 11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915, unless otherwise noted;

2. Section 1180.4 is amended by adding a new paragraph (g)(1)(iii) to read as follows:

§ 1180.4 Procedures.

* * * * *

(g) * * *

(1) * * *

(iii) Other exemptions that may be relevant to a proposal under this provision are 49 CFR Part 1150, Subpart D for transactions under 49 U.S.C. 10901, and 49 CFR Part 1175, for securities.

* * * * *

[FR Doc. 86-2821 Filed 2-7-86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 27
Monday, February 10, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-143-AD]

Airworthiness Directives; SAAB-Fairchild Corp. Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modifcation to the engine cable controls on certain SAAB-Fairchild Model SF-340A airplanes. This action is prompted by reports of an incorrect fitting of O-ring seals. This situation, if not corrected, could lead to freezing of the engine cable(s).

DATE: Comments must be received on or before April 4, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Fairchild, Product Support, S-58188, Linkoping, Sweden. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircarft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966. Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communication should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Swedish Board of Civil Aviation (BCA) has, in accordance with existing provisons of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Model SF-340A airplanes. Water may accumulate in the engine control cables at the wing/fuselage interface. The entrapped moisture may then freeze and prevent the proper operation of this system. To prevent this from occurring, the BCA has issued AD 009, dated August 15, 1985, which mandates modifications in accordance with SAAB-Fairchild Service Bullentin SF 340-76-007; Revision 3, dated August 14, 1985.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exists or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification in accordance with the previously mentioned service bulletin.

It is estimated that 10 airplanes of U.S., registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated will not have a significant economic impact on a substantial number of small entities because of the minimal costs of compliance per airplane ($400.). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposal Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 96-449, January 12, 1983); and 14 CFR 11.89.

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2. By adding the following new airworthiness directive to § 39.13:

SAAB-Fairchild: Applies to Model SF-340A airplanes listed in SAAB-Fairchild Service Bulletin SF 340-76-007, Revision 3, dated August 14, 1985, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent engine control cable freezing, accomplish the following:

A. Modify the engine control cable system in accordance with SAAB-Fairchild Service Bulletin SF 340-76-007, Revision 3, dated August 14, 1985.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to SAAB Fairchild, Product Support, S-58188, Linkoping, Sweden. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 3, 1986.

Wayne J. Barlow,

Acting Director Northwest Mountain Region.

[FR Doc. 86-2774 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AAL-2]

Proposed Establishment of Quinhagak, AK, Transition Area-AK

Corfection

In FR Doc. 86-2179 beginning on page 3987 in the issue of Friday, January 31, 1986, make the following corrections:

On page 3988, first column, in § 71.181 in the description heading, "AR" should read "AK". In the sixth line of the description, "Quinhegak" should read "Quinhagak". In the seventh line, "long. 161°53'6" W." should read "long. 161°53'18" W." At the end of the document, the signature should read "Daniel J. Peterson".

BILLING CODE 1505-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket Nos. RM79-76-091 (Texas-10 Addition), RM79-76-094 (Texas-19), RM79-76-161 (Texas-7 Addition III), RM79-76-172 (Texas-21 Addition Nacogdoches County), and RM79-76-173 (Texas-34)]

Natural Gas Policy Act; High-Cost Gas Produced From Tight Formations; Order Dismissing Tight Formation Recommendations and Terminating Dockets

Issued: February 7, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Dismissing Tight Formation Recommendations and Terminating Dockets.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission dismisses recommendations of the Texas Railroad Commission that the Edwards Limestone Formation, underlying Fayette County (Texas-10 Addition); Lower Wilcox Formation, underlying Dewitt County (Texas-7 Addition III); Georgetown Formation, underlying Brazos, Washington, and Burleson Counties (Texas-19); James Limestone Formation, underlying Nacogdoches County (Texas-21 Addition); Pettit Lime Formation, underlying Leon, Houston, and Cherokee Counties (Texas-34) be designated as tight formations under § 271.703(d).

DATE: This order is effective March 10, 1986.

FOR FURTHER INFORMATION CONTACT:
James Whitfield, Jr. (202) 357-8179
or
Walter W. Lawson, (202) 357-8737

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Background

During the period December 1981 through December 1982, the Commission received recommendations filed by the Texas Railroad Commission (Texas) pursuant to § 271.703 of the Commission's regulations, requesting that the formations specified in the above captioned proceedings be designated as tight formations.[1] These recommendations were published in separate notices of proposed rulemakings issued by the Director of the Commission's Office of Pipeline and Producer Regulation.[2] No comments were received in response to the notices.

Discussion

In order to meet the tight formation guidelines set forth in § 271.703(c)(2)(i) the regulations, it is necessary that the estimated average *in situ* gas permeability throughout the pay section not exceed 0.1 millidarcy, that the stabilized production rate against atmospheric pressure not exceed a specified level, and that no well drilled into the recommended tight formation be capable of producing, without stimulation, more than five barrels of crude oil per day.

Under the tight formation program, as detailed in Order No. 99, [3] tight formation recommendations submitted to the Commission by the various jurisdictional agencies are approved under the Commission's rulemaking authority. The Commission is not limited by the evidence in the record presented to it by the jurisdictional agency and the various commenters, and accordingly is free to request or develop additional evidence which it deems necessary in ruling on tight formation recommendations.

By letter, dated December 2, 1983, the Commission staff advised Texas of various deficiencies in, among others, the five referenced tight formation recommendations and on December 13, 1983, staff met with Texas to discuss the deficiencies.[4] The deficiencies [5] for the referenced recommendations are as follows:

(1) *Texas-10 Addition.* The arithmetic average permeability is 0.178 millidarcy which exceeds the 0.1 millidarcy guideline set forth in § 271.703(c).

(2) *Texas-7 Addition III.* The pre-stimulation flow rate exceeded the guideline rate set forth in § 271.703(c).

(3) *Texas-19.* Both the pre-stimulation flow rate and the permeability exceeded the guidelines set forth in § 271.703(c).

(4) *Texas-21 Addition.* Information supporting this recommendation was inadequate.[6]

(5) *Texas-34.* Supporting data for the 90 percent reduction of post-stimulation permeability values and the 95 percent reduction in post-stimulation production values to convert the values to pre-stimulated conditions was requested but not received.

By letter dated November 16, 1984, the staff advised Texas that nearly a year had elapsed since the December 13, 1983, meeting concerning problems with the subject recommendations and that no further information which would bring the recommendations into compliance with the applicable regulations had been received. The staff advised Texas that if information needed to process the recommendations were not forthcoming the recommendations would be referred to the Commission for appropriate disposition. As a result of this letter, the problems associated with some of the tight formation recommendations which were the subject of the December 13, 1983, meeting were resolved. No progress was made regarding the five recommendations which are the subject of this order.

On September 23, 1985, staff received a letter dated September 19, 1985, from Texas stating that on August 28, 1985, it had sent letters to four applicants requesting the submission of data which would bring their applications for tight formation designation into compliance with § 271.703(c)(2)(i) of the Commission's regulations. The letters of August 28, 1985, notified the applicants that if the requested data were not received by September 13, 1985, their applications would be considered dismissed as of that date. In its September 19, 1985 letter to the Commission, Texas stated that none of the applicants had responded to its requests for additional information and that accordingly it considered the applications for tight formation designations dismissed as of September 13, 1985, but would reopen the cases at any time at the request of the applicants involved. The remaining application for tight formation designation, Texas-10 Addition, was not listed in the August 28, 1985 letter, but Texas confirmed by telephone and by letter dated November 4, 1985, that it had dismissed this application as of September 10, 1985.

Conclusion

The subject recommendations have been pending before the Commission for several years. The subject formations do not qualify for designation as tight formations under the Commission's applicable regulations and information needed to enable the formations to qualify has not been submitted. Under these circumstances, the Commission concludes that the subject recommendations must be dismissed. This action is without prejudice to resubmittal of the recommendations if and at such time as additional information required by the Commission's regulations becomes available.

The Commission orders:

(A) The subject recommendations for designations of tight formations are dismissed.

(B) Docket Nos. RM79-76-091, RM79-76-094, RM79-76-161, RM79-76-172, and RM79-76-173 are hereby terminated.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2855 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 77P-0428 and 77P-0358]

Food Ingredient Labeling; Exemptions

Correction

The correction to FR Doc. 86-927 appearing on page 3466 in the Rules and Regulations section of the issue of Tuesday, January 28, 1986, should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-M

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21 CFR Part 700

[Docket No. 85N-0536]

Cosmetics; Proposed Ban on the Use of Methylene Chloride as an Ingredient of Aerosol Cosmetic Products

Correction

In FR Doc. 85-29851 beginning on page 51551 in the issue of Wednesday, December 18, 1985, make the following corrections:

1. On page 51554, third column, third complete paragraph, eight line, insert the word "was" before "negative".

2. On page 51555, second column, second paragraph, twelfth line, "1X^{-9}" should read "1X10^{-9}". In the thirteenth line, "4X^{-9}" should read "4X10^{-9}".

3. On page 51557, second column, sixth complete paragraph, fifth line, insert the word "from" between "result" and "the". In the twelfth line, insert "in tumor" between "increase" and "incidence".

4. On page 51558, first column, ninth line, "§ 173.25" should read" "§ 173.255". In the same column, second complete paragraph, second line from the bottom, "being" should read "begin". In the second column, in the heading, "VII" should read "VIII".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD11 86-01]

Special Local Regulations; Southern California Annual Marine Events

January 27, 1986.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will establish special local regulations during all the annual marine events in Southern California. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during each event. Also, this rule will consolidate all previously published permanent rulemakings concerning Southern California marine events into one section

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[1] Texas submitted tight formation recommendations (1) for the Edward Limestone Formation, located in Fayette County Texas (Texas-10 Addition) on December 1, 1981; (2) for the Lower Wilcox Formation, located in Dewitt County, Texas (Texas-7 Addition III) on November 22, 1982; (3) for the Georgetown Formation, located in Brazos, Washington, and Burleson Counties, Texas (Texas-19) on December 28, 1981; (4) for the James Limestone Formation, located in Nacogdoches and Shelby Counties, Texas (Texas-21 Addition) on December 27, 1982; and (5) for the Pettit Lime Formation, located in Leon, Houston, and Cherokee Counties, Texas on December 27, 1982.

[2] Notices of the recommendations were issued (1) on January 20, 1982 (47 FR 2884) with respect to the Edwards Limestone Formation; (2) on February 17 1983 (48 FR 6994) with respect to the Lower Wilcox Formation; (3) on February 12, 1982 (47 FR 6437) with respect to the Georgetown Formation; (4) on March 4, 1983 (48 FR 9293) with respect to the James Limestone Formation; and (5) on March 4, 1983 (48 FR 9297) with respect to the Pettit Formation.

[3] Docket No. RM79-76, issued August 22, 1980. FERC Statutes and Regulations ¶ 30,183.

[4] The December 13, 1983 meeting concerned eleven recommendations for tight formation designations which staff determined were at variance with the tight formation guidelines specified in § 271.703(c)(2)(i) of the Commission's regulations.

[5] Detailed explanations of these deficiencies were sent to Texas by letter, dated December 2, 1983. Texas sent each applicant a copy of the applicable deficiency explanation.

[6] On March 27, 1984, the Commission designated the Shelby County portion of the recommendation as a tight formation. Consequently dismissal is limited to that portion of the formation in Nacogdoches County.

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DATE: Comments must be received on or before March 27, 1986.

ADDRESSES: Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822–5399. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, California. Normal Office hours are between 8:00 AM and 3:30 PM. Monday through Friday, except holidays. Comments may also be hand-delivered.

FOR FURTHER INFORMATION CONTACT: LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, California 90822–5399, Tel: (213) 590–2331.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and addres, identify this notice (CGD11 86–01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office and LCDR Arthur E. Brooks, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

Each year various Yacht Clubs, Harbor Departments and Chambers of Commerce sponsor various marine events in Southern California waters. These events vary from slow moving festive Christmas boat parades through high speed hydroplane races to long diatance offshore sailboat races involving up to 600 participants. Because of the annual nature of these events, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regualtons to facilitate in the planning and organization of these events in the future. Each year the Coast Guard will provide the public full and adequate notice by publication in the Eleventh Coast Guard District Local Notice to Mariners. Certain events due to their nature present a hazard to navigation while others do not. However, given the number of participants and/or the uncertainty of specators at any event it is sometime necessary to control vessel traffic to avoid any potential mishap. Therefore, regulated areas will be established, and vessels desiring to transit these areas may do so only with clearance from an official patrolling vessel.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). the economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated areas will be in effect for a short period of time.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. Part 100 is amended by adding a § 100.1101 to read as follows:

§ 100.1101 Southern California Annual Marine Events.

(a) Regulated areas will be established for the event listed in Table 1. Further information on exact dates, times, details concerning number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list contact: Commander (oan), Elevent Coast Guard District, 400 Oceangate Blvd., Long Beach, CA 90822–5399.

(b) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol each event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given, failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

TABLE 1

Del Rey to Puerto Vallarta Race

Sponsor: Del Rey Yacht Club.
Date: February.
Location: Santa Monica Bay, that portion bounded by the following coordiantes: Lat 33 degrees 56'23"N, Long 118 degrees 28'20"W, Lat 33 degrees 56'23"N, Long 118 degrees 28'55"W, Lat 33 degrees 56'55"N, Long 118 degrees 28'55"W, Lat 33 degrees 56'55"N, Long 118 degrees 28'20"W. For the start of the race only.

San Diego Crew Classic

Sponsor: San Diego Crew Classic.
Date: April.
Location: Mission Bay, that portion bounded by Enchanted Cove, Fiesta Island, Pacific Passage and DeAnza Point.

Newport to Ensenada Race

Sponsor: Newport Ocean Sailing Association.
Date: Late April.
Location: That portion of the Pacific Ocean off Newport, bounded by the following coordinates: Lat 33 degrees 35.3'N, Long 117 degrees 53.3'W; Lat 33 degrees 34.9'N, Long 117 degrees 53.3'W; Lat 33 degrees 34.9'N, Long 117 degrees 54.5'; Lat 33 degrees 35.3'N, Long 117 degrees 54.5'W. For the start of the race only.

California Cup

Sponsor: California Yacht Club.
Date: Late May (4 day event).
Location: Santa Bay, that portion bounded by the following coordinates: Lat 34 degrees 01.4'N, Long 118 degrees 31.8'W; Lat 33 degrees 59.7'N, Long 118 degrees 37.9'W; Lat 33 degrees 59.2'N, Long 118 degrees 37.7'W; Lat 33 degrees 59.5'N, Long 118 degrees 33.4'W; Lat 33 degrees 57.0'N, Long 118 degrees 30.9'W; Lat 33 degrees 57.2'N, Long 118 degrees 30.1'W.

Coronado 4th of July Demonstration, Fireworks and Rehearsals

Sponsor: Citizens Committee Coronado 4th of July.
Date: 4 July (& 3 days of rehearsals prior to).
Location: Glorietta Bay, Coronado, the following portions: (1) Demonstration Area—from the tip of the marina, Lat 32 degrees 40'43.5"N, Long 117 degrees 10'10.5"W; northeast to Lat 32 degrees 40'48.5"N, Long 117 degrees 10'10.5"W; east along the shoreline to Lat 32 degrees 40'43.5"N, Long 117 degrees 10'00"W; east to Lat 32 degrees 40'46"N, Long 117 degrees 09'58"W; south to Lat 32 degrees 40'41"N, Long 117 degrees 09'56.5"W; east to Lat 32 40'41"N, Long 117 degrees 09'49"W; northeast to Lat 32 degrees 40'54"N, Long 117 degrees 09'30"W (Navy Restricted Area); thence southwest along shoreline to the initial point. (2) Fireworks Display Area—from Lat 32 degrees 40'41"N, Long 117 degrees 09'56.5"W; south to Lat 32 40'33"N, Long 117 degrees 09'56.5"W; northeast to Lat 32 degrees 40'41"N, Long 117 degrees 09'49"W; thence west to the initial point.

Los Angeles to Honolulu Yacht Race (Transpac)

Sponsor: Transpacific Yacht Club.
Date: 4 July (biennially).
Location: San Pedro Channel, that portion between Point Fermin and Portugese Bend bounded between the following coordinates: Lat 33 degrees, 42.6' N; Long 118 degrees, 19.5' W; Lat 33 degrees, 41.7' N; Long 118 degrees, 19.5' W; Lat 33 degrees, 41.7' N; Long 118 degrees, 21.2' W; Lat 33 degrees, 43.3' N; Long 118 degrees, 21.2' W.

Miller High Life Thunderboat Regatta

Sponsor: Thunderboats Unlimted of San Diego.
Date: Late September (4 day event).
Location: Fiesta Bay, Mission Bay, that portion bounded by the following coordiantes: starting at Lat 32 degrees 47'32"N, Long 117 degrees, 13'00"W, thence due west to Long 117 degrees, 13.25'W, thence along the eastern shoreline of Crown Point to the Vacation Isle Bridge, thence south along the bridge to Vacation Isle, thence along the eastern shoreline of Vacation Isle to Lat 32 degrees 46'18"N, Long 117 degrees, 14'01"W, thence southeasterly to Lat 32 degrees 46'14"N, Long 117 degrees, 13'43"W, thence along the western shoreline of Fiesta Island to Lat 32 degrees 47'20"N, Long 117 degrees, 13'00"W, thence due north to the starting point.

Head of Harbor Regatta

Sponsor: University of Southern California, Department of Intercollegiate Athletics.
Date: November.
Location: Los Angeles Harbor, that portion between Berth 191 and the Ford/Heim Bridges.

Symphony of Lights Boat Parade

Sponsor: Huntington Harbor Philharmonic Society.
Date: Early weekend in December.
Location: Entire Huntington Harbor Area.

Long Beach Festival of 1000 Lights

Sponsor: Shoreline Village Administration.
Date: Early December.
Location: Long Beach Harbor, that portion bounded by Shoreline Downtown Marina, the Queens Way Bridge and the Queen Mary.

Marina Del Rey Christmas Boat Parade

Sponsor: Pioneer Skippers Boat Owners Association.
Date: Early December.
Location: Marina del Rey Harbor, Main and entrance channels.

Los Angeles Christmas Afloat Parade

Sponsor: Los Angeles Harbor Department.
Date: Early December.
Location: Los Angeles Harbor, that portion between the Vincent Thomas Bridge and Reservation Point.

Newport Harbor Christmas Boat Parade of Lights

Sponsor: Newport Harbor Area Chamber of Commerce.
Date: Week prior to Christmas (7 day event).
Location: Entire Newport Harbor Area.

Mission Bay Parade of Lights

Sponsor: Mission Bay Yacht Club.
Date: Late December.
Location: Mission Bay, the Main Entrance Channel, Sail Bay and Fiesta Bay.

San Diego Christmas Boat Parade of Lights

Sponsor: Greater Shelter Island Association.
Date: Late December.
Location: San Diego Harbor, the northern portion of the main channel from Seaport Village to the Shelter Island Yacht Basin.

Dated: January 1, 1986.

A. Bruce Beran,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 86–2089 Filed 2–7–86; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD13 86–02]

Drawbridge Operation Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard is considering a change to the regulations for operation of the City of Seattle's drawbridges across the Lake Washington Ship Canal. The change would permit the bridges to remain in the closed position, after receiving an opening request, for periods of up to ten minutes, if needed to pass accumulated vehicular traffic. Bridges to which this change would apply are the: Ballard (15th Avenue) Bridge, Fremont Avenue Bridge, University Bridge, and Montlake Bridge. This proposal is being made to relieve vehicular traffic congestion and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before March 27, 1986.

ADDRESS: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442–5864).

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SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridges, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of the Proposed Regulations

Bridges across the Lake Washington Ship Canal are among the most frequently opened of any in the United States. Repeated opening of these drawbridges results in significant local traffic congestion. We believe that limiting the number of bridge openings will improve traffic conditions and still provide for the reasonable needs of navigation.

Temporary regulations similar to those contained in this proposal were published in the **Federal Register** on December 3, 1985 (50 FR 49550) and in a Thirteenth District Public Notice on December 10, 1985. The temporary regulations were in effect from November 20, 1985, to January 18, 1986. Two comments were received in response to the notices. One commentor, representing a company engaged in commercial towing on the waterway, supported the change as it applied to pleasure craft, but felt that commercial vessels should be exempted. The other commentor, representing an organization of commercial towing companies, felt that the evaluation period was too short and was not at a time of normal activity for member companies. The position stated by the representative was that the bridges should open on signal when requested by vessels engaged in towing operations. These concerns have been considered in the proposed regulation change.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).]

2. Section 117.1051 is amended by revising paragraph (d) to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) The draws of the Ballard (15th Avenue) Bridge, mile 1.1, Fremont Avenue Bridge, mile 2.6, University Bridge, mile 4.3, and Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draws need not be opened for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic. However, the draws shall open without delay, when requested by vessels engaged in towing operations.

(2) The draws need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 tons, unless the vessel has in tow a vessel of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified.

(3) Between the hours of 11 p.m. and 7 a.m. the draws shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue Bridge.

Dated: January 30, 1986.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 86–2851 Filed 2–7–86; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–2967–2]

Federal Assistance Limitations; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: This notice announces EPA's intent to monitor during 1986 the extent to which the state of Arizona attempts to bring the Maricopa County (Phoenix) and Tucson areas into attainment of the national ambient air quality standard (NAAQS) for carbon monoxide (CO). This notice also announces EPA's intent to initiate rulemaking action under section 176(a) of the Clean Air Act ("the Act") by the end of 1986, in coordination with the Department of Transportation, if by then EPA concludes preliminarily that Arizona is not making reasonable efforts to meet the requirements of Part D of the Act as they apply to CO nonattainment in either or both of those areas.

FOR FURTHER INFORMATION CONTACT: Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 974–7634, (FTS) 454–7634.

SUPPLEMENTARY INFORMATION: The Clear Air Act Amendments of 1977 required states to revise their state implementation plans (SIPs) to meet the requirements of the new Part D of the Act, Sections 171–179, in all areas designated as not attaining the NAAQS. Section 176(a), which Congress added as part of the amendments, authorizes the Administrator of EPA and the Secretary of Transportation to impose certain funding cutoffs, including a cutoff of highway grants under Title 23 of the United States Code (with certain exceptions), in any area in which (1) a NAAQS has not been attained, (2) transportation control measures are necessary for the attainment of that standard, and (3) the state has not submitted or made reasonable efforts toward submitting a SIP meeting the requirements of section 172 of the Act.

In 1978, EPA designated certain areas in and around Tucson and Phoenix as nonattainment for the NAAQS for CO. Following a series of SIP submittals and rulemakings, EPA published in separate **Federal Register** notices proposals (1) to find that the areas' CO SIPs do not meet the requirement in section 172 to demonstrate timely attainment of the CO NAAQS and (2) to impose in those areas the construction moratorium required by section 110(a)(2)(I) of the Act. 51 FR 3343 (January 27, 1986); 51 FR 3346 (January 27, 1986).

To ensure that Part D's requirements are met expeditiously, EPA will monitor the actions of the relevant state and local agencies and the legislature in Arizona during 1986 and decide by the end of the year whether the state is making the reasonable efforts described in section 176(a). EPA intends that, if the Agency decides preliminarily that the state is not making such efforts, it will initiate a rulemaking, in accordance with the procedures outlined at 45 FR 24892 (April 10, 1980) and, in

coordination with the Department of Transportation, to impose the funding cutoffs described in section 176(a).

EPA will consider all relevant factors in determining whether the state has made such reasonable efforts, including and giving significant weight to each of the following factors:

(a) The extent to which the relevant agencies have timely performed or are timely performing necessary modeling studies to address CO pollution in the two areas;

(b) Whether EPA has received a plan document from the state indicating the commitment of the relevant state and local agencies to implement (or evidence of actual implementation of) all additional CO emission reduction measures necessary to attain and maintain the national ambient air quality standard for CO as expeditiously as practicable;

(c) The extent to which the relevant state and local agencies have committed to implement the transportation control measures (TCMs) that EPA's contractor has identified as technologically applicable to the area;[1]

(d) Whether the relevant state and local agencies have adequately explained any decision not to commit to implement any TCMs that EPA's contractor has identified as technologically applicable to the relevant area;

(e) The extent to which the state has implemented, or committed to implement, whatever further lowering of the Arizona inspection and maintenance (I/M) testing cutpoints EPA has identified in guidance to the state as technologically feasible;

(f) Whether the state has adequately explained any failure to commit to implement, or to implement, a lowering of the I/M testing cutpoints that EPA has identified in guidance to the state as technologically feasible;

(g) Whether the state has committed to implement whatever measures to strengthen the Arizona I/M program EPA may identify in the next several months as presumptively reasonable for application in urban areas across the country, as well as any measures that the Arizona Department of Health Services may identify as reasonably available and as providing a reasonable potential for air quality improvement.

[1] The relevant state and local agencies remain primarily responsible for addressing TCMs. Put differently, EPA intends the contractor's work as a supplement to the work on TCMs that those agencies should already have commenced before receipt of the contractor's report.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.]

Dated: February 3, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86–2830 Filed 2–7–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–35; RM–5134]

FM Broadcast Station in Trinity, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: Action taken herein proposes the allotment of Channel 223A to Trinity, Alabama, as that community's first local broadcast service, in response to a petition filed by Dorsey Eugene Newman.

DATES: Comments must be filed on or before March 27, 1986, reply comments on or before April 11, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Parts 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081; 1082, as amended. 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of Allotments FM Broadcast Stations, (Trinity, Alabama); MM Docket No. 86–35, RM–5134.

Adopted: January 24, 1986.
Released: February 4, 1986.

By the Chief, Policy and Rules Divisions.

1. Before the Commission for consideration is a petition for rule making filed by Dorsey Eugene Newman ("petitioner") [1] seeking the allotment of FM Channel 223A to Trinity, Alabama, as that community's first local broadcast service. Petitioner indicates that he will apply for the channel, if allotted.

2. Channel 223A can be allotted to Trinity, Alabama in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Since the proposed allotment could provide a first local broadcast service to Trinity, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, to include that community as follows:

City	Channel No.	
	Present	Proposed
Trinity, Alabama		223A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirement are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or their counsel or consultant, as follows: Dorsey Eugene Newman, 113 No. Sparkman Street, Hartselle AL 35640.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings.

[1] Petitioner is the licensee of day-time-only AM Station WHRT, Hartselle, Al.

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such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes and *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comment even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filing made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2799 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-32; RM-5006; RM-5040; RM-5041; RM-5217]

FM Broadcast Station in Greenwood, Seneca and Aiken, SC, and Biltmore Forest, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein optionally proposes the allocation of: (1) Channel 243A to Biltmore Forest, North Carolina, as that community's first local FM service, at the request of Diana Cecil Pickering; (2) Channel 2433A to Seneca, South Carolina, as the community's second local FM service, at the request of LHR Partners; (3) Channel 243C2 in lieu of Channel 244A at Greenwood, South Carolina, and modification of the license of Station WSCZ(FM) to specify operation on the higher powered frequency, at the request of Eaton Broadcasting Corporation; or (4) Channel 242C2 in lieu of Channel 240A at Aiken, South Carolina, and modification of the license of Station WJFX-FM to specify operation on the higher powered frequency, at the request of Amici Broadcasting Corporation.

DATES: Comments must be filed on or before March 27, 1986, and reply comments on or before April 11, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Greenwood, Seneca and Aiken, South Carolina, and Biltmore Forest, North Carolina; MM Docket No. 86-32, RM-5006, RM-5040, RM-5041, and RM-5217.

Adopted: January 23, 1986.
Released: February 3, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it four mutually exclusive petitions for rule making. Eaton Broadcasting Corporation ("Eaton"), licensee of FM Station WSZC, Greenwood, South Carolina, requests the substitution of for Channel 244A, and the modification of its license to specify operation on the higher powered frequency (RM-5006). LHR Partners ("LHR") seeks the allocation of Channel 243A to Seneca, South Carolina, as the community's second local FM service (RM-5040). Diana Cecil Pickering ("Pickering") requests the allocation of Channel 243A to Biltmore Forest, North Carolina, as its first local FM allocation (RM-5041). Amici Broadcasting Corporation ("Amici"), proposed assignee of Station WJFX-FM, Aiken, South Carolina, requests the substitution of Channel 242C2 for Channel 240A at Aiken and the modification of its license to specify the higher powered channel (RM-5217).[1]

2. Greenwood, South Carolina (Population 21,613),[2] seat of Greenwood County (population 57,847), is located approximately 60 miles west of Columbia, South Carolina. The community currently receives local service from FM Station WSCZ, licensed to Eaton, as well as one full-time and two daytime-only AM stations. Seneca, South Carolina (population 7,436), in Oconee County (population 48,611), is located approximately 7 miles west of Clemson, South Carolina. Seneca receives local service from co-owned Stations WNSW(AM) and WBFM(FM). Biltmore Forest, North Carolina (population 1,499), in Buncombe County (population 160,934), is located approximately 5 miles southeast of Asheville, North Carolina. It presently has no local service. Aiken, South Carolina (population 14,978), seat of Aiken County (population 105,625), is located approximately 50 miles southwest of Columbia, South Carolina. It currently receives local service from two daytime-only AM stations and two FM stations.

3. Co-channel Class A stations must be separated by 105 kilometers (65 miles). However, Seneca and Biltmore Forest are only 100 kilometers apart. Co-channel Class A and Class C2 stations must be separated by 183 kilometers, but Greenwood is only 91 kilometers from Seneca, South Carolina, and 154 kilometers from Biltmore Forest, North Carolina. First adjacent Class C2 channels require a 130 kilometer separation but Aiken and Greenwood are only 64 kilometers apart. In an effort to resolve these conflicts, the staff has performed an engineering study but was unable to find an alternate channel for any of the communications involved nor was it able to find site restrictions to permit the allotment of Channel 243A to both Seneca and Biltmore Forest. Thus, these proposals must be comparatively considered.

4. Since we are unaware of any other Class A or C2 channel for the proposed communities, we shall provide each proponent with an opportunity to further demonstrate, in comments to this proceeding, why its community should receive the allocation. In this regard, the parties should be guided by the allocation principles set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). We shall also propose to modify the licenses of Stations WSCZ-FM at Greenwood and WJFX-FM at Aiken to specify operation on their requested channels. Pursuant to the Commission's Rules, modification of these licenses may not be implemented if other parties express interest in the proposed allotments unless an additional equivalent channel is available at their respective communities. See *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).[3]

5. We shall propose to allocate Channel 243A to either Seneca or Biltmore Forest as well as Channel 242C2 to Aiken or Channel 243C2 to Greenwood. Channel 243A can be allocated to Seneca in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 2.3 kilometers (1.4 miles) north to avoid a short-spacing to Station KFOX, Channel 246, Gainesville, Georgia. Channel 243A can be allocated to Biltmore Forest if the transmitter site is restricted to an area at least 1.9 kilometers (1.2 miles) southwest to avoid a short-spacing to Station WXBQ-FM, Channel 245, at Bristol, Tennessee-Virginia. This allocation is also contingent upon grant of the application filed by Station WXIK, Channel 241 at Shelby, North Carolina, to move its transmitter site (BPH-840904AD). Channel 243C2 can be allocated to Greenwood and utilized at Station WSCZ's existing transmitter site. Channel 242C2 can be allocated to Aiken if the transmitter is restricted to an area at least 19 kilometers (11.8 miles) northwest to avoid a short-spacing to Station WJCL, Channel 243 at Savannah, Georgia. This allocation is also contingent upon grant of the application of Station WXIK at Shelby, North Carolina.

6. In view of the foregoing, the Commission considers it appropriate to solicit comments on the alternative amendments to the FM Table of Allotments, § 73.202(b) of the Rules, as follows:

City	Channel No. Present	Channel No. Proposed
OPTION I		
Greenwood, South Carolina.	244A	243C2.
OPTION II		
Seneca, South Carolina.	251	243A and 251.
Aiken, South Carolina.	240A and 257A	242C2 and 258C2.[4]
OPTION III		
Biltmore Forest, North Carolina.		243A.
Aiken, South Carolina.	240A and 257A	242C2 and 258C2.[4]

[4] The Commission has proposed to substitute Channel 258C2 for Channel 257A at the request of Aiken Radio. See *Notice of Proposed Rule Making*, 50 FR 34874, published August 28, 1985.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John E. Fiorini III, Esq., Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel to Eaton Broadcasting Corp., Greenwood, SC)

Martin I. Levy, Esq., Cohn and Marks, 1333 New Hampshire Avenue, N.W. Suite 600, Washington, D.C. 20036 (Counsel to Diana Cecil Pickering—Biltmore Forest, N.C.)

Nancy Wolf, Esq., Dow, Lohnes & Albertson, 1255 23rd Street, NW., Washington, DC 20037 (Counsel to LHR Partners, Seneca, South Carolina)

David Tillotson, Esq., Mania K. Baghdadi, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036 (Counsel to Amici Broadcasting Corporation—Aiken, South Carolina)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the*

[1] Amici filed its proposal in connection with the *Notice of Proposed Rule Making* looking toward the substitution of Channel 258C2 for Channel 257A at Aiken, Docket 85-254, 50 FR 34874, published August 28, 1985. However, because of the conflict with the Greenwood proposal, we have included it for consideration here.

[2] All population figures are taken from the 1980 U.S. Census.

[3] See also *Notice of Proposed Rule Making*, MM Docket 85-313, 50 FR 45438, published October 31, 1985. In this proceeding, the Commission has under consideration a proposal to modify licenses to adjacent channels in situations such as Aiken and Greenwood without the need to provide an additional equivalent channel.

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Commission's Rules, 46 FR. 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failuure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to his proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompained by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2794 Filed 2-7-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-31; RM-5173]

FM Broadcast Station in Lahoma, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 239A to Lahoma, Oklahoma, as the community's first local service, at the request of Donna Clark.

DATES: Comments must be filed on or before March 27, 1986, and reply comments on or before April 11, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Lahoma, Oklahoma); MM Docket No. 86-31 and RM-5173.

Adopted: January 24, 1986.
Released: February 3, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition for rule making filed by Donna Clark ("petitioner") requesting the allocation of Channel 289A to Lahoma, Oklahoma, as the community's first local service.[1] Channel 239A can be allocate in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.5 kilometers (5.3 miles) southwest to avoid a short-spacing to the construction permit of Station KWEN, Channel 238 at Tulsa, Oklahoma. No site restriction is needed if KWEN's application (BMPH-850917IG) specifying full Class C facilities is granted. Petitioner states that she will apply for the channel, if allocated.

2. Petitioner states that Lahoma, in Garfield County, is a growing community with over 1,000 population. However, Lahoma is not listed in the 1980 U.S. Census. Section 307(b) of the Communications Act of 1934, as amended, mandates that allocations be made to "communities" which are defined as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. However, absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a "community" for allocation purposes. See *e.g., Ansley, Alabama*, 46 FR 58566, published December 3, 1981; *Cascade Village, Colorado*, 48 FR 19817, published May 3, 1983; *Red Rock, Georgia*, 48 FR 36170, published August 9, 1983, and cases cited therein. Therefore, petitioner should submit additional information to demonstrate whether it has any business, social organizations, or governmental units that identify themselves with Lahoma.

3. We believe the public interest would be served by seeking comments on the proposed allocation of a first FM channel to Lahoma. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Lahoma, Oklahoma		239A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Donna Clark, 2109 W. Pine Street, Enid, Oklahoma 73701 (Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§1.415 and 1.420 of the Commission's Rules and Regulations; interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2793 Filed 2-7-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-390]

TV Broadcast Station in Ventura, CA

AGENCY: Federal Communications Commission.

[1] Petitioner requested the allocation of Channel 289A at Lahoma. We have substituted Channel 239A for consideration here in order to avoid a conflict with the request of Women. Handicapped Americans and Minorities for Better Broadcasting to substitute Channel 289C1 for Channel 232A at Alva, Oklahoma, and the modification of its construction permit to specify operation on the higher powered channel.

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ACTION: Order.

SUMMARY: This action extends the time for filing comments to the *Notice of Proposed Rule Making* which proposed the assignment of UHF Channel 25 or UHF Channel 51 as a substitute for UHF Channel 16, at Ventura, California, for a 7-day period, in response to a request filed by California Broadcasting Corporation.

DATES: Comments must be filed on or before January 31, 1986, and reply comments must be filed on or before February 17, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554 .

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or supply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the Matter of amendment of § 73.6.6(b), Table of Assignments, TV Broadcast Stations. (Ventura, California); MM Docket No. 85–390.

Order Extending Time for Filing Comments and Reply Comments

Adopted: January 28, 1986.
Released: January 30, 1986.

By the Chief, Mass Media Bureau.

1. The Commission has before it the *Notice of Proposed Rule Making*, 50 FR 52806, published December 26, 1985, proposing the substitution of UHF Channel 25 or UHF Channel 51 for UHF Channel 16 at Ventura, California. Channel 16 was reallocated to the Land Mobile Service for public safety use in the Los Angeles, California area. The *Notice* requested that the two pending applicants for Channel 16 at Ventura state their interest in Channel 25 or 51, or along with other interested parties, provide us with any alternative channel proposals for Ventura.

2. In order to facilitate the submission of any such alternative proposals for Ventura, the Commission placed in the docket a copy of its "channel studies" for each UHF channel using the coordinates for the site specified by the applicants for Ventura. (See, *Public Notice*, Mimeo No. 2089, January 21, 1986).

3. On January 22, 1986, California Broadcasting Corporation (CBC), one of the two applicants for Channel 16 at Ventura, filed a motion for extension of time, seeking an additional 7 days to review the channel studies and file its comments. Comments were previously due January 24, 1986. CBC noted that although § 1.46(b) of the Commission's Rules requires that extension requests be filed seven days in advance of the filing deadline, it was impossible for CFC to comply since the Public Notice covering the channel studies was announced less than seven days before the January 24 deadline. CBC also notes that the other Ventura applicant, Channel Islands Television Corporation ("CIT") has consented to the requested extension. Finally, CBC requests that all other parties filing comments in this proceeding be required to serve copies of the pleadings on itself and CIT.

4. From the information provided, we believe an extension of time is warranted. The Commission requested that the applicants or other interested parties consider alternative channel proposals. In order to provide sufficient time for these parties to review the channel studies, we believe that it would be in the public interest to extend the comment period as requested. Accordingly, the comment period will be extended to January 31, 1986. As for CBC's request that we require all parties filing comments to serve comments on CBC and CIT, we think the request is reasonable and order service at paragraph 6, *infra*.

5. Accordingly, it is ordered, That the time for filing comments in MM Docket 85–390 is extended to and including January 31, 1986. Furthermore, reply comments will be due February 17, 1986.

6. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204 and 0.283 of the Commission's Rules.

7. It is further ordered, That all comments in this proceeding shall be served on the parties as listed below:

1. California Broadcasting Corporation, c/o Gardner F. Gillespie III, Esq., Hogan and Hartson, 815 Connecticut Avenue, NW., Suite 700, Washington, DC 20006
2. Channel Islands Television Corporation, c/o Robert B. Jacobi, Esq., Cohn and Marks, 1133 New Hampshire Avenue, NW., Suite 600, Washington, DC 20036

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 86–2790 Filed 2–7–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–29; RM–4941]

FM Broadcast Station in Greenup, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of Class B1 FM Channel 289 for Channel 288A at Greenup, Kentucky and modification of the Class A license for Station WLGC(FM), in response to a petition filed by Greenup County Broadcasting, Inc. The proposed allotment could provide Greenup with its first wide coverate Class B1 FM station.

DATES: Comments must be filed on or before March 27, 1986, and reply comments on or before April 11, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations (Greenup, Kentucky), MM Docket No. 86–29, RM 4941.

Adopted: January 21, 1986.
Released: February 3, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Greenup County Broadcasting, Inc. ("petitioner"), licensee of Station WLGC(FM), Channel 288A, Greenup, Kentucky, requesting the substitution of FM Channel 289B1 for Channel 288A and modification of its license to specify operation on the Class B1 channel.

2. We believe the proposal warrants consideration in view of the expressed desire for a wider coverage area FM station to serve the public interest. A staff engineering study reveals that the proposed allotment of FM Channel 289B1 can be made at the present site on Station WLGC in compliance with the minimum distance separation requirements.

3. In accordance with our established policy, we shall propose to modify the license of Station WLGC(FM) to specify operation on FM Channel 289B1. However, under current policy should another party indicate an interest in the Class B1 allotment the modification may not be implemented, unless an additional equivalent channel is allotted. See *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).[1]

PART 73—[AMENDED]

4. Accordingly, in order to provide Greenup, Kentucky with its first wide coverage area FM station, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Greenup Kentucky	288A	289B1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John H. Midlen, Jr., Chartered, 1050 Wisconsin Avenue, NW., Washington, DC 20007 (Counsel to petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in the initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceedings, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–2792 Filed 2–7–86; 8:45 am]

BILLING CODE 6712–01–M

[1] Interested parties should consider the pending *Notice of Proposed Rule Making* (MM Docket No. 85–313), 50 FR 45439, published October 31, 1985, which would permit FM stations to upgrade on adjacent channels without demonstrating the availability of an additional equivalent class of channel.

BEST COPY AVAILABLE

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47 CFR Part 73

[MM Docket No. 86-36; RM-5081]

TV Broadcast Station in McCook, NE

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

SUMMARY: Action taken herein proposes the assignment of VHF TV Channel 12 to McCook, Nebraska, at the request of Jerrell E. Kautz, and the modification of its construction permit for UHF TV Channel 16 to specify operation on the VHF channel. The channel assignment could provide McCook with its second VHF television service .

DATES: Comments must be filed on or before March 27, 1986 and reply comments on or before April 11, 1986.

ADDRESS: Federal Communications' Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: .

List of subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (McCook, Nebraska); MM Docket No. 86-36; RM-5081.

Adopted: January 24, 1986.
Released: February 4, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making submitted by Jerrell E. Kautz ("petitioner") requesting the assignment of VHF Channel 12 to McCook, Nebraska. Petitioner also requests that its construction permit (BPCT-840312KE) for UHF TV Channel 16 at McCook be modified to specify operation on Channel 12.

2. McCook (population 8,404)[1], seat of Red Willow County (population 12,615), is located in southwestern Nebraska, approximately 250 miles southwest of Omaha, Nebraska. McCook currently has assigned to it Channel 8, Station KSNK, licensed to Kansas State Network, and Channel 16, for which petitioner has a construction permit.

3. Channel 12 can be assigned to McCook in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 21.5 miles east to avoid short-spacing to Station KRNE-TV, Channel 12, Merriman, Nebraska, and to unoccupied and unapplied for Channel 12 at Lamar, Colorado. We also seek comments on an alternative site restriction of 10.4 miles south for proposed Channel 12 at McCook and the imposition of a 15.4 mile southwest site restriction on existing Channel 12 at Lamar, Colorado. In view of the above, we shall propose to assign Channel 12 to McCook, Nebraska, and modify petitioner's construction permit to specify the new channel. However, pursuant to § 1.420(g) of the Commission's Rules, the modification of petitioner's construction permit cannot be implemented if other parties express an interest in the proposed assignment unless an additional equivalent channel is available for use at McCook. See *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).

4. Accordingly, we propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
McCook, NE	8-, 16+	8-, 12+, and 16+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Jerrell E. Kautz, Rt, 1, Box 24A, Utica, Nebraska 68456, (Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedure.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2798 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

[1] All population figures are taken from the 1980 U.S. Census.

47 CFR Part 73

[MM Docket No. 86-28; RM-5109]

FDM Broadcast Station in Frayser, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Earl Daly, proposes the allotment of Channel 225A to Frayser, Tennessee, as that community's first FM service.

DATES: Comments must be filed on or before March 27, 1986, and reply comments on or before April 11, 1986.

ADDRES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Frayser, Tennessee): MM Docket No. 86-28; RM-5109.

Adopted: January 21, 1986.
Released: February 3, 1986.

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by Earl Daly ("petitioner"), requesting the allotment of FM Channel 225A to Frayser, Tennessee, as that community's first FM service. Petitioner has stated his intention to apply for the channel, if allotted.

2. A staff engineering study reveals that Channel 225A can be allotted to Frayser in compliance with the Commission's minimum distance separation requirements, with a site restriction. The site restriction of 12.1 kilometers (7.5 miles) east of the community is necessary to avoid short spacing to a construction permit for Station KZLE(FM), Channel 226, Batesville, Arkansas. However, a site 12.1 km removed from the center of the city may prove difficult to provide a city-grade (70 dBu) signal to the principal community. The petitioner or other interested parties, therefore, should provide information that a site is available that will meet the minimum spacing requirements and provide a city-grade signal to the community.

3. In view of the fact that Frayser, Tennessee, could receive its first local FM service, the Commission finds it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commiossion's Rules, as follows:

City	Channel No.	
	Present	Proposed
Frayser, TN	- -	225A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Keith E. Lamonica, P.O Box 510261, Salt Lake City, Utah 84151, (Consultant to petitioner.).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a

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message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceedings.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposal allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in the *Notice*, they will be considered as comments in the proceeding, and Public Notice of this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2791 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1004 and 1057

[Ex Parte No. MC-73 (Sub-1)]

Interchange Policies at International Boundary Lines

AGENCY: Interstate Commerce Commission.

ACTION: Withdrawal of proposed rules; discontinuance of proceeding.

SUMMARY: By notice of proposed rulemaking published at 46 FR 32460 (1981), the Commission proposed to reexamine the extent to which it regulates movements by foreign motor carriers transporting transborder traffic between points on the United States' international boundary lines and points within the United States for the sole purpose of interchanging that traffic with U.S. carriers. In view of the lack of public support for any change in existing practice, and subsequent legislation affecting transborder traffic we conclude that the proceeding should be discontinued and the proposed rules withdrawn.

FOR FURTHER INFORMATION CONTACT:

Andrew L. Lyon, (202) 275-7805

or

Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION: We instituted this rulemaking proceeding to reexamine the present policy of requiring Canadian and Mexican motor carriers to obtain operating authority from the Commission to conduct limited operations within the United States for the sole purpose of interchanging transborder traffic with United States carriers. Because the exchange of goods and equipment cannot be accomplished precisely on the boundary line, entry by foreign carriers into the United States is necessary. These movements require operating authority from the Commission. However, it was suggested that these movements are too insignificant to require this type of regulation and that the activity should continue without unnecessary regulatory burdens on the Commission and foreign carriers.

The rulemaking proposed to address these problems by making two changes in existing practice. The first change would have been made by amending the interchange regulations to allow operations within the United States by a foreign carrier to be conducted under the authority of the licensed interlining U.S. carrier, with the interchange of equipment being considered to occur on the border itself, although the necessary formalities could occur at any point within 5 miles of a boundary line. The second change, intended to address those situations in which the cargo is physically transferred to another carrier, is moving on a through bill of lading, and is being picked up from or delivered to a U.S. carrier, would have been made by disclaiming jurisdiction over all transportation by a foreign carrier within 5 miles of the boundary lines.

The comments do not provide support for either proposal. The proposed disclaimer of jurisdiction drew the strongest objections, with many parties arguing effectively that the burden on the Commission to ensure that unregulated operations remained confined to the 5 mile zone would be greater than that imposed by continuing to process applications for authority to conduct these movements. However, more importantly, neither proposal was viewed as contributing significantly to the smooth flow of commerce across international boundary lines. The parties generally agreed that the present system functions as smoothly as possible, and that the most significant delays are not caused by matters within this Commission's jurisdiction. Those few parties that expressed support for either or both proposals did so in the most general of terms and have not provided any basis upon which we could reasonably justify adoption of either the proposed rules or any modified version of those rules.

In addition, legislation affecting motor carriers passed subsequent to the Motor Carrier Act of 1980 further addressed the issue of trans-border traffic. The proposed rules could interfere with both the Bus Regulatory Reform Act of 1982 and the Motor Carrier Safety Act of 1984, which provide for greater control over motor traffic from foreign countries moving across United States borders.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will it have a significant effect on a substantial number of small entities.

It is ordered:

This proceeding is discontinued.

This action is taken under the authority of 49 U.S.C. 10101, 10321, 10762, 10922, and 11101, and 5 U.S.C. 553.

Decided: February 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-2822 Filed 2-7-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Animals and Birds to the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, extension of time.

SUMMARY: The Service extends the period for submission of comments from the public on the proposal (see 50 FR 49709 et seq. December 4, 1985) to promulgate regulatory requirements under the Lacey Act Amendments of 1981 for the humane and healthful transport of wild animals and birds to the United States.

DATE: The Service will consider information and comments received by March 5, 1986, in considering the making of a final rule.

ADDRESS: Please send correspondence concerning this notice to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201. Materials received will be available for public inspection from 7:45 am to 4:15 pm, Monday through Friday, at the Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 620, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Robinson, Acting Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Room 621, Arlington, Virginia 22201, telephone (703) 235-1937.

SUPPLEMENTARY INFORMATION: On December 4, 1985, the Service published in the **Federal Register** (50 FR 49709 et seq.) proposed rules under the Lacey Act Amendments of 1981 (Pub. L. 97-79, 95 Stat 1073) that would amend 50 CFR Part 14 by adding a new Subpart J thereto. These rules if finalized would establish regulatory requirements for the humane and healthful transport of wild animals and birds to the United States.

Today, much of the transport of live wildlife involves airline carriers. The rules would create legal obligations on such carriers and others to provide for the humane and healthful transport of live wild animals and birds.

The International Air Transport Association and the Air Transport Association by letters dated December 10 and December 11, 1985, respectively, have requested that the Service extend the closing date of the comment period on these proposed rules, February 3, 1986, by at least 45 days in light of the various religious holidays which occur at this time of the year and the need to disseminate the proposed rules to air carriers and interested parties throughout the world.

The Service recognizes the validity of these requests, but also recognizes the need for expeditious action on the proposed rules. Therefore, the Service hereby extends the closing date of the comment period by 30 days to March 5, 1986.

Dated: January 31, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-2894 Filed 2-7-86; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register
Vol. 51, No. 27
Monday, February 10, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Meeting

Pursuant to the Federal Advisory Commitee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States, to be held at 10:00 a.m., Wednesday, February 26, 1986, at 2120 L Street NW., FTC Hearing Room #1 (Lower Level), Washington, DC. The committee will meet to consider reports and recommedations from Professor George Johnson of George Mason University School of Law on the OSHA–OSHRC enforcement model and Professor Richard Pierce of the University of Pittsburgh School of Law in the use of the Federal Rules of Evidence in Federal agency adjudications. For further information, call Richard K. Berg, 202–254–7065.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the committee before, during or after the meeting. Minutes of the meeting will be available on request.

Dated: February 6, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86–2816 Filed 2–7–86; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Environmental Statement; Fall River Rural Electric Cooperative, Inc.

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has adopted and supplemented an Environmental Assessment (EA) prepared by the Federal Energy Regulatory Commission (FERC) on July 9, 1985, and made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Fall River Rural Electric Cooperative, Inc. (Fall River), of Ashton, Idaho.

The proposed project consists of altering the existing facilities at Fall River's Felt Hydro Project in Teton County, Idaho, by: (1) Refurbishing two existing generating units in the old powerhouse and installing two new units in a new powerhouse which would be located 518 m (1700 feet) downstream from the existing plant and it would increase the project's capacity from 6 MW to 7.5 MW, (2) rerouting the existing power line by constructing 1006 m (3300 feet) of 24.9 kV underground distribution line and 428 m (1400 feet) of aerial line, (3) rerouting the access road, and (4) constructing an additional 198 m (650 feet) penstock. The existing facilities consist of a dam, a reservoir, three intakes, three tunnels, three penstocks, two powerhouses containing an installed capacity of 1870 kW, and miscellaneous appurtenant facilities. No major alterations to the penstock intakes, dam, or reservoir are proposed.

FOR FURTHER INFORMATION CONTACT: REA's FONSI, the FERC EA, REA's Supplement to the FERC EA, and Fall River's Borrower's Environmental Report (BER), may be reviewed at or obtained from the office of the Director, Western Area-Electric, REA, Room 0207–S, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone number: (202) 382–8848, or the office of Fall River Rural Electric Cooperative, Inc. (Mr. Calvin Wickman, Manager), P.O. Box AE, Ashton, Idaho 83420, telephone number: (208) 652–7431, during regular business hours.

SUPPLEMENTARY INFORMATION: REA reviewed the BER submitted by Fall River and the FERC EA and determined that they represent an accurate assessment of the environmental impact of the proposed project. The BER and FERC EA adequately consider potential impacts of the proposed project to resources including threatened or endangered species, important farmland, prime forest land, prime rangeland, cultural resources, wild rivers, scenic or recreational rivers, floodplains, and wetlands. Possible REA actions could include: (1) Accommodating REA's first lien position related to existing facilities, easements, licenses, and water rights for the Felt Hydro Project lenders, and (2) Approving the "Lease Agreement on the new Felt Hydro Project" that would be executed by Bonneville Pacific Corporation and Fall River.

Based upon the FERC EA, the BER and other support documents, REA prepared a Supplement to the FERC EA, which represents REA's independent evaluation of the environmental effects of the proposed project. REA has independently evaluated the impact of the proposed project and determined the proposed project would not affect threatened or endangered species, important farmland, prime forest land, prime rangeland, cultural resources, wild rivers, scenic or recreational rivers, floodplains and wetlands.

FERC examined alternatives which included no action; upgrading the existing facility to its realistic maximum output by refurbishing two existing generating units in the old powerhouse and installing two new units in a new powerhouse which would be located 518 m (1700 feet) downstream from the existing plant; replacing the existing plant with a new, larger plant at the same location; and replacing the existing plant with a new plant at a new location. FERC has approved upgrading the existing plant to its maximum output as the preferred alternative. After reviewing these alternatives, REA concurred with the FERC determination that the proposed project of upgrading the existing facility by refurbishing two existing generating units in the old powerhouse and installing two new units in a new powerhouse is an acceptable alternative and it meets Fall River's needs with a minimum of environmental impact.

In accordance with its regulations, FERC published notices in the **Federal Register** and requested comments on the application submitted by Fall River. The notices published by FERC meet the REA notice requirements contained in 7 CFR 1794.62. Pursuant to REA's Environmental Policies and Procedures, 7 CFR Part 1794, Fall River advertised the availability of its BER in the local newspapers. No comments were received.

Based upon the FERC EA, the BER and other support documents, REA prepared a Supplement to the FERC EA and issued a FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: February 4, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86–2828 Filed 2–7–86; 8:45 am]

BILLING CODE 3410–15–M

Environmental Statements; United Power Association

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the provisions of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to the expansion of the ash disposal area at United Power Association's (UPA) Stanton Generating Station in Mercer County, North Dakota.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment and UPA's Borrower's Environmental Report (BER) may be reviewed at and copies obtained from the Office of the Director, North Central Area—Electric, REA Room 0230, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1400, or the offices of United Power Association, Highway 10, Elk River, Minnesota 55330–0800, telephone (612) 441–3121, during normal business hours.

SUPPLEMENTARY INFORMATION: REA reviewed the Borrower's Environmental Report (BER) submitted by UPA and determined that it represents an accurate assessment of the environmental impacts of the proposed 41 hectare (102 acre) ash disposal area expansion. REA prepared its Environmental Assessment based on the BER and other pertinent information. REA independently concluded that the proposed financing assistance would not result in a major Federal action significantly affecting the quality of the human environment. The BER and Environmental Assessment adequately consider the potential impacts of the proposed project on prime farmlands, wetlands, floodplains, cultural resources, Federally listed threatened or endangered species or those proposed for listing or their critical habitat, wild and scenic rivers, air quality, water quality, and aesthetics.

Various alternatives to the proposed project were considered, including no action, alternative locations, and alternative methods of disposal. REA determined that the proposed project is an acceptable alternative that meets UPA's needs with a minimum of adverse environmental impact.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850–Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: February 4, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86–2829 Filed 2–7–86; 8:45 am]

BILLING CODE 3410–15–M

CIVIL RIGHTS COMMISSION

California Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on February 28, 1986 and convene at 9:00 a.m. and adjourn at 1:00 p.m. on March 1, 1986, at the U.S. Commission on Civil Rights, 3660 Wilshire Boulevard, Room 810, Los Angeles, California. The purpose of the meeting is to discuss proposed project concepts on housing and affirmative action and to consider other SAC activities for the remainder of the fiscal year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxwell Greenberg or Philip Montez, Director of the Western Regional Office at (213) 688–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–2819 Filed 2–7–86; 8:45 am]

BILLING CODE 6335–01–M

Kansas Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:30 p.m. on March 10, 1986 and convene at 9:30 a.m. and adjourn at 12:00 noon on March 11, 1986, at the Garden City Hilton Inn, 1911 East Kansas, Central Ballroom, Garden City, Kansas. The purpose of the meeting is to discuss the status of civil rights in Finney County and continue program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett Loomis or Melvin Jenkins, Director of the

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Central States Regional Office at (816)374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–2818 Filed 2–7–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–601]

Certain Finished Carbon Steel Butt-Weld Pipe Fittings From Brazil; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld pipe fittings from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 27, 1986, and we will make ours on or before June 23, 1986.

EFFECTIVE DATE: February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Mara or Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 377–3798 or 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On January 13, 1986, we received a petition in proper form filed by the U.S. Butt-Weld Pipe Fittings Committee. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain finished carbon steel butt-weld pipe fittings from Brazil and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld fittings are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are finished, beveled, carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in inside diameter, as currently provided for in item 610.88 of the *Tariff Schedules of the United States, Annotated,* (TSUS).

United States Price and Foreign Market Value

Petitioner was unable to obtain price information from price quotes or sales offers. Consequently, petitioner based United States price on the customs value for butt-weld pipe fittings under 14 inches in diameter imported from Brazil during the period January through October 1985. Petitioner made no adjustments for foreign inland freight.

Petitioner was unable to obtain home market or third country price data. Consequently, petitioner calculated a constructed foreign market value. As petitioner was unable to obtain Brazilian cost data for the appropriate sizes of seamless pipe, petitioner averaged the unit values for Brazilian seamless pipe inputs to obtain average unit prices for the average imported Brazilian seamless pipe. Production factors were averaged as well and were based on three high-volume, common finished fittings representative of the market. Two average constructed foreign market values were calculated due to the uncertainty of the applicable tariff category.

Petitioner used U.S. production and packing costs for the three representative products.

Adjustments were made for known differences in corresponding Brazilian costs, as well as the statutory minimums for general expenses and profits.

Based on the comparison of United States price and the constructed foreign market value, petitioner alleges average dumping margins ranging from 53.4 to 58.1 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by February 27, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: February 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–2813 Filed 2–7–86; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–601]

Certain Finished Carbon Steel Butt-Weld Pipe Fittings From Taiwan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds mormally, the ITC will make its preliminary determination on or before March 3, 1986 and we will make ours on or before June 25, 1986.

EFFECTIVE DATE: February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Mara or Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3798 or 377–4769.

SUPPLEMENTARY INFORMATION:

The Petition

On January 13, 1986, the U.S. Butt-Weld Pipe Fittings Committee filed a petition in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition, however, was not properly filed until January 16, 1986, since until that date, the petition did not comply with § 207.10(b) of the Rules of the International Trade Commission, 19 CFR 207.10(b). The petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations

We examined the petition on certain finished carbon steel butt-weld pipe fittings from Taiwan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are finished, beveled, carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in inside diameter, as currently provided for in item 610.88 of the *Tariff Schedules of the United States, Annotated,* (TSUS).

United States Price and Foreign Market Value

Petitioner based United States price on a price list, C.I.F. duty paid, from a Taiwanese manufacturer. Petitioner assumed that these prices did not include the applicable customs duty on butt-weld pipe fitting from Taiwan. Petitioner estimated Taiwanese ocean freight and insurance based on an ITC study.

Petitioner was unable to obtain home market or third country data. Consequently, petitioner calculated a constructed foreign market value. Petitioner constructed a value for each of four representative fittings. The cost of materials and fabrication were calculated based on a U.S. producer's cost of production factors with some adjustments to reflect Taiwanese prices for those factors. Such factors included the cost of seamless steel pipe, electricity, direct labor, supervisory labor, fringe benefits, depreciation, storage, losses, repairs and supplies. Petitioner added the statutory minimums of ten percent of the costs for general expenses and eight precent of the costs and general expenses for profit. Packing costs were added and were based on the acutal expenses incurred by a U.S. producer. Based on the comparison of United States price and foreign market value, petitioner alleges average dumping margins ranging from 94.5 to 134.5 pecent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 3, 1986, whether there is a reasonable indiction that imports of certain finished carbon steel butt-weld pipe fittings from Taiwan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: February 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–2814 Filed 2–7–86; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–601]

Finished Carbon Steel Butt-Weld Pipe Fittings From Japan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether finished carbon steel butt-weld pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 3, 1986, and we will make ours on or before June 5, 1986.

EFFECTIVE DATE: February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Mara or Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3798 or 377–1769.

SUPPLEMENTARY INFORMATION:

The Petition

On January 13, 1986, the U.S. Butt-Weld Pipe Fittings Committee filed a petition in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition, however, was not properly filed until January 16, 1986, because until that date, the petition did not comply with § 207.10(b) of the Rules of the U.S. International Trade Commission, 19 CFR 207.10(b). The petition alleged that imports of the subject merchandise from

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Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain finished carbon steel butt-weld pipe fittings from Japan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are finished, beveled, carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in inside diameter, as currently provided for in item 610.88 of the *Tariff Schedules of the United States, Annotated*, (TSUS).

United States Price and Foreign Market Value

Petitioners based United States price on price quotes stated to be discounts offered off domestic list prices in the United States. Petitioner then made deductions from the net price for U.S. inland freight, broker fees, customs duties, ocean freight and insurance. Petitioners based foreign market value on home market price lists for all three known Japanese manufacturers. Based on the comparison of United States price and foreign market value, petitioner alleges average dumping margins ranging from 18.2 to 165.3 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 3, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from Japan are causing material injury, or threaten material injury, to a Unites States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 3, 1986.

[FR Doc. 86-2815 Filed 2-7-86; 8:45 am]

BILLING CODE 3510-DS-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held March 4, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 6029, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda

1. Presentation of papers or comments by the public.
2. Election of Chairman.
3. Discussion of the new PRC regulations.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereon is available for public inspection and copying in the Central reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes, contact Liga Hagenah, (202) 377-4959.

Dated: February 4, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-2812 Filed 2-7-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Receipt of Application for a General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within waters under the jurisdiction of the United States as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

Applicant: Sportfishing Association of California, Long Beach, California has applied for a Category 6: "Commercial Passenger Fishing Vessel Operation" general permit to take California sea lions by specified means that do not result in injury or mortality.

The applicant has requested authority to use the following methods for harassment: Cracker shells, seal bombs and acoustic harassment devices.

Cracker shells are a flash explosive device launched from either a 12-gauge shotgun or a flare pistol. The devices would be launched near sea lions interacting with a CPFV. When fired, the shells explode either on or very near the surface. Interference effects from refraction severely attenuate the low frequency energy produced; shells exploding in-air were not detected by underwater hydrophones during testing. Most of the energy from shells exploding underwater falls between 200 Hz and 10kHz with a sound exposure level of about 125dB. Thus it is highly unlikely that injury would occur with proper use.

Injury to a sea lion could result from direct in-air contact by a cracker shell. However, this event is not expected as operators are directed to fire the shells near, but not directly at, sea lions. Operators and crew will be instructed in the correct use of these devices to ensure both sea lion and passenger safety.

Sea bombs are a flash explosive, like the cracker shall, that are packed so that they sink below the surface before detonating. They usually explode at a depth of two to three meters. Most of the sound produced by seal bombs fall below 1-2kHz with a sound exposure level of 153.3dB at about 116 meters. Researchers state that a seal bomb would have to explode closer than 100 meters to cause auditory discomfort (and thus be effective). The sound levels at distances closer than 100 meters were roughly estimated to be about 168dB at 25 meters and 178dB at five meters. Although it is reported that these sound intensities may approach the predicted levels where some physical discomfort and auditory damage could occur, these effects are unlikely based on behavioral observations made by California Department of Fish and Game and National Marine Fisheries Service (NMFS). In field tests with seal bombs, California sea lions were observed to remain in or return to an area where seal bombs were being tested.

The acoustic harassment device (AHD) produces a sound electronically and projects it through an underwater transducer. The sounds produced are approximately 12kHz or 17kHz (depending on the device used) tones projected in regularly or randomly spaced pulses. These frequencies lie within or near the most sensitive hearing regions of California sea lions. In these frequency ranges, the hearing sensitivity of California sea lions is about 80dB. Within one meter of the source, actual sound levels were estimated at 175-185dB in shallow water. The expected threshold of pain is predicted to lie about 100-120dB above the hearing thresold (based on human audiology). Therefore, the AHD is effective because the sound level produced approaches sound levels that may be painful to sea lions. Researchers measured sound levels produced by the AHDs and concluded that although sounds produced were loud enough to be painful in the vicinity of the transducer, the sound probably would not result in damage to the sea lions auditory system. In the unlikely event that these devices did cause some minor acoustic damage, this effect is expected to be temporary and would not result in serious injury or death.

The authorization to use all of these devices is requested so that CPFV operators will have an array of techniques available which may be used in a variety of fishing areas. In addition, by being able to vary the technique used, CPFV operators may be able to avoid habituating sea lions to an individual deterring stimulus.

Because these techniques are non-lethal and non-injurious to the animals and will serve to reduce the frequency of sea lion-sportfishermen interactions, the NMFS believed these techniques to be consistent with the intent and purposes of the Marine Mammal Protection Act and implementing regulations.

This application is available for review in the following officers:

Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC.

Office of the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island California.

Interested parties may submit written comments on this application within thirty days (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

Dated: January 29, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-2810 Filed 2-7-86; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Mangement Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustaceans Plan Development Team (PDT) will convene a public meeting, February 12, 1986, at 12:30 p.m. at the Council's Headquarters, 1164 Bishop Street, Room 1405, Honolulu, HI. The PDT will review the validity of logbook data regarding reproductive conditions of spiny lobsters; the need for management measures for slipper lobsters; the economic condition of the fishery for lobsters in the Northwestern Hawaiian Islands, and possible revision of permit applications and data submission forms presently in use. For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368 or FTS: (808) 546-8923.

Dated: February 5, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-2811 Filed 2-7-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 4, 1986; Tuesday, March 11, 1986; Tuesday, March 18, 1986; and Tuesday, March 25, 1986; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392.

At this meeting, the Committee will consider wage survey specifications, wate survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments

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with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: February 5, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-2893 Filed 2-7-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command, Military Personal Property Claims Symposium, Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 27 February 1986 at the Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation (DoD 4500.34-R), and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0600-1530 hours. Topics to be discussed should be received on or before 18 February 1986.

Dated: January 30, 1986.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 86-2847 Filed 2-7-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

National Petroleum Council, U.S. Refinery Capability Task Group; Date Change for Meeting

The date of the February 6, 1986, eleventh meeting of the U.S. Refinery Capability Task Group has been changed. The meeting will now be held on Thursday, February 13, 1986, starting at 8:30 a.m., in the Matagora Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas. Notice of this meeting first appeared in 51 FR 3644, Wednesday, January 29, 1986 (FR DOC 86-1936).

Issued at Washington, DC, February 5, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-2895 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-05; OFP Case No. 52164-6095-21, 22, 23-22]

Powerplant and Industrial Fuel Use; Exemption From Prohibition; Oklahoma Gas & Electric Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order granting Oklahoma Gas & Electric Company, exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 15, 1985, Oklahoma Gas and Electric Company, (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Sooner generating station (Sooner), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the Federal Register at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR §503.41 for three simple-cycle combustion turbine generators with a maximum total capacity of 176.8 MW. Using a site elevation of 1,000 feet and assuming a 88°F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 1,935.6 million Btu per hour, and on No. 2 distillate oil 1,917.3 million Btu per hour. The proposed units are to be installed at the OF&E's Sooner facility, a site of approximately 10,400 acres. It is located on the east side of U.S. Highway 177 and Oklahoma State Highway 15, adjacent to the Arkansas River in north central Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Sooner a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 11, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585 Telephone (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room GA-113, Washington, DC 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m, except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Sooner facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the Federal Register on November 25, 1985 (50 FR 48464), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility in north central Oklahoma, permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC, on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2896 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-264-000 et al.]

Electric Rate and Corporate Regulation Filings; Arkansas Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power and Light Company

[Docket No. ER86-264-000]

February 4, 1986.

Take notice that Arkansas Power & Light Company (AP&L) filed on January 28, 1986, a proposed Peaking Power Agreement which is a supplement to the Power Coordination, Interchange and Transmission Agreement between City of Thayer, Missouri and Arkansas Power & Light Company dated June 23, 1983. The agreement provides for the sale to the City of 1 MW of Peaking capacity and 240 MWH of peaking Energy per month during the months of May through September.

The proposed Peaking Power Agreement will effect a savings of approximately $56,000 per year for the City of Thayer based on the actual billings for the twelve month period ended September 30, 1985.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER86-265-000]

February 4, 1986.

Take notice that Arkansas Power & Light Company (AP&L) filed on January 28, 1986, a proposed Peaking Power Agreement which is a supplement to the Power Coordination, Interchange and Transmission Agreement between City of Campbell, Missouri and Arkansas Power & Light Company dated June 23, 1983. The agreement provides for the sale to the City of 1 MW of Peaking capacity and 240 MWH of Peaking Energy per month during the months of May through September.

The proposed Peaking Power Agreement will effect a savings of approximately $59,000 per year for the City of Campbell based on the actual billings for the twelve month period ended September 30, 1985.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Power Company

[Docket No. ER86-270-000]

February 4, 1986.

Take notice that Consmers Power Company ("Consumers") on January 30, 1986 tendered for filing Amendment No. 1 to Back-Up Requirements Agreement Between Consumers Power Company and Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc. This is Consumers' Rate Schedule FERC No. 48. Consumers also tendered for filing at the same time Amendment No. 1 to Back-Up Requirements Agreement Between Consumers Power Company and the Michigan Public Power Agency. This is Consumers' Rate Schedule FERC No. 47.

Each of the amendments reduces its respective annual charge for back-up requirements service and the amount of power to be compensated for by the annual charge. Each amendment limits the provision of such back-up power compensated for by the annual charge to cases of total outage of Campbell Unit No. 3. Each amendment changes the unit for measuring back-up power provided from megawatt days to magawatt hours. Finally, each amendment changes the circumstances under which alternative arrangements can be made for back-up power in case of partial outage or derate of Campbell Unit No. 3.

Consumers states that copies of the filing were served on Wolverine Power Supply Cooperative, Inc., Michigan Public Power Agency and the Michigan Public Service Commission.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Company

[Docket No. ES86-27-000]

February 3, 1986.

Take notice that on January 23, 1986, Iowa Public Service Company filed an application pursuant to section 204 of the Federal Power Act, seeking authority to issue up to $90 million of short-term unsecured promissory notes to commercial banks and its parent or affiliated companies and commercial paper dealers. All proposed notes are to be issued on or before March 31, 1987, and will bear final maturity dates not later than March 31, 1988.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

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5. New York State Electric & Gas Corporation

[Docket No. ER86-262-000]

February 4, 1986.

Take notice that on January 27, 1985, New York State Electric & Gas Corporation ("NYSEG") tendered for filing as an initial rate schedule a contract dated September 18, 1985 between NYSEG and the County of Orange, a municipal corporation of the State of New York, ("Orange County"). The contract provides for Orange County to pay a charge to NYSEG for the use of its facilities to deliver hydroelectric power and energy sold by Orange County to its residential customers, equal to the charges that would have been billed to such customers under NYSEG's appropriate residential electric rate schedule on file with the New York State Public Service Commission less NYSEG's fuel and purchased power costs reflected in such rate schedule.

NYSEG states that copies of this filing have been served by mail upon Orange County, the New York State Public Service Commission, and the Power Authority of the State of New York, from whom Orange County is purchasing the hydroelectric power and energy to be sold by Orange County to its customers.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corporation

[Docket No. ER86-268-000]

February 4, 1986.

Take notice that Niagara Mohawk Power Corporation (Niagara), on January 30, 1986 tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation (Central Hudson) dated May 15, 1985.

Niagara presently has on file an agreement with Central Hudson dated February 14, 1975. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 88. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting FitzPatrick power and energy from the Power Authority of the State of New York to Central Hudson as provided for in the terms of the original agreement. Niagara requests the Commission to allow said agreement to become effective as of September 1, 1985.

Copies of the filing were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12602;
Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER86-269-000]

February 4, 1985.

Take notice that Niagara Mohawk Power Corporation (Niagara), on January 30, 1986 tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation (Central Hudson) dated May 15, 1985.

Niagara presently has on file an agreement with Central Hudson dated November 1, 1983. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 128. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the rate for providing transmission service for Central Hudson for the delivery of pumping and generating energy in connection with pumped storage power service provided in Central Hudson by the Power Authority of the State of New York (PASNY) from PASNY's Blenheim-Gilboa Pumped Storage Project. Niagara requests an effective date of July 1, 1985.

Copies of the filing were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12602;
Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12233.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER86-271-000]

February 4, 1986.

Take notice that Southern California Edison Company, on January 30, 1986, tendered for filing proposed changes in its FERC Electric Service Tariff, Time-of-Use Resale Service, Schedule R-3.2. The proposed changes would increase revenues from jurisdictional sales and service by $4,920,000 based on the 12-month period ending December 31, 1986. This increase is the result of a settlement which Edison has reached with all of its resale customers. This increase in resale revenues is subject to various adjustments under terms of the settlement.

The reasons for the proposed change are to include in rates increased costs associated with new generating units being placed in service, costs of termination of several fuel purchase contracts, increased operation and maintenance expenses, and increased demand costs of purchased power.

Copies of the filing were served upon the public utility's jurisdictional customers, the California Public Utilities Commission, and the Arizona Corporation Commission.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp doing business as Pacific Power & Light Company

[Docket No. ES86-26-000]

February 3, 1986

Take notice that on January 22, 1986, PacifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing it to (1) issue, on or before March 3, 1989, its unsecured short-term promissory notes to and borrow from U.S. or foreign commercial banks (or their affiliates) under the following facilities:

(a) Not more than $300,000,000 in aggregate principal amount outstanding at any one time under a Revolving Credit Agreement (Agreement);

(b) Not more than $25,000,000 in aggregate principal amount outstanding at any one time under renewable lines of credit (Lines);

(c) Not more than $325,000,000 in aggregate principal amount outstanding at any one time under other borrowing arrangements (Other Arrangements);

and to (2) issue and sell its commercial paper (Paper) in the U.S. or overseas from time to time, in aggregate principal amounts outstanding not to exceed $325,000,000 at any one time; provided that the aggregate principal amounts outstanding under the Agreement, Lines, Other Arrangements, and Paper shall not exceed $325,000,000 at any one time.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-2867 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-000 (Parts A-C) et al]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Mesa Pipeline Co. et al.; Order Granting Rehearing for the Purpose of Further Consideration

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Mesa Pipeline Co.), (Panhandle Producers and Royalty Owners Association), (Atlanta Gas Light Co.), (Natural Gas Pipeline Co.), (ANR Pipeline Co., *et al.*), (Southern Natural Gas Co.), (Interstate Natural Gas Association), (Texas Eastern Transmission Corporation); Docket Nos. RM85-1-000 (Parts A-C), RM85-1-144, RM85-1-145, RM85-1-147, RM85-1-148, RM85-1-149, RM85-1-150, RM85-1-151, RM85-1-152.

Issued: February 4, 1986.

On December 12, 1985, the Federal Energy Regulatory Commission issued Order No. 436-A, granting in part and denying in part applications for rehearing, denying petitions for stays, and granting clarification of Order No. 436.

The Commission received eight applications for rehearing of Order No. 436-A. In order to provide sufficient time to consider the issues raised in these pleadings, the Commission grants rehearing of its final rule for the limited purpose of further consideration. This action does not constitute a grant or denial of any request on its merits, either in whole or in part, nor does it stay the effect of the rule. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 325.713), no answers to the requests for rehearing will be considered by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2880 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Part A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Air Products and Chemicals, Inc.); Order Denying Request for Clarification

(Issued: February 4, 1986.

Before Commissioners A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 27, 1985, Air Products and Chemicals, Inc., filed a petition for expedited treatment of a request for clarification or, in the alternative, rehearing of the transitional provisions of § 284.223 (g)(1) of the regulations adopted in Order No. 436[1] Air Products' original request was filed on November 8, 1985, and was addressed by the Commission in Order No. 436-A.[2] Notwithstanding, in its petition for expedited treatment of its earlier request, Air Products has requested that the Commission further clarify issues involving receipt and delivery points.

Specifically, Air Products requests clarification that "a pre-existing contract provision under a grandfathered Order No. 319 arrangement that expressly permits the addition of mutually agreeable sources and delivery points is one of the 'terms and conditions' of the transportation authorization that continues for the remainder of the agreement's term."

On November 1, 1984, Air Products entered into a transportation agreement with United, under Order No. 319, whereby United agreed to transport gas on behalf of Air Products for use as process gas or feedstock in Air Products' industrial facility near Floridatown, Florida. The agreement is to terminate on October 1, 1989, and provides for transportation of up to 35,000 Mcf per day. The gas is predominately spot gas, unsupported by long-term reserves, and, therefore, subject to rapid depletion. In recognition that Air Products regularly requires the attachment of additional wells to maintain its supply, the list in the transportation contract of Air Products' sources and delivery points into United's system specifically includes "any other mutually agreeable source through an existing delivery point and any new delivery point as the parties may agree in writing." Air Products states that prior to October 9, 1985, new delivery points were added on five occasions and new wells through existing delivery points were added on twenty-three occasions. Air Products thus argues that the flexible delivery point authority was an "operative term and condition" prior to October 9, 1985.

In its petition, Air Products recognizes that the Commission has previously clarified that contracts cannot be amended to include additional delivery points and still qualify for transitional treatment. Air Products argues that its request should be distinguished from previous requests denied by the Commission in that its contract specifically provided for such additions over the term of the agreement.

We disagree. The Commission previously clarified that contracts could not be amended after October 9, 1985 to add new receipt or delivery points without invoking the non-discriminatory access provisions of Order No. 436.[2] We find that the contract clause which permitted the addition of any other mutually agreeable (but unspecified) delivery points as the parties may agree to in writing merely committed the parties to amend their written agreement at a later date. Such an amendment now, however, would constitute a new agreement that would not qualify for transitional treatment. Any change to the terms and conditions of the originaly certificated transaction made after October 9, 1985 would require an application for a new blanket certificate under § 284.221 of Subpart C. Accordingly, Air Products' request for clarification is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2864 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[1] 33 FERC ¶ 61,007, 50 FR 42408 (October 18, 1985).

[2] 50 FR 52217 (December 23, 1985).

[Docket No. RM85-1-000 (Parts A-C)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corp.); Order Denying Request for Clarification or Modification

Issued: February 4, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 3, 1986, Columbia Gas Transmission Corporation (Columbia) filed a request for a clarification or

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Hadson Gas Systems, Inc.), 33 FERC ¶ 61,142 (1985); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Panhandle Eastern Pipeline Company), 33 FERC ¶ 61,139 (1985); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Consolidated Fuel Supply, Inc.), 33 FERC ¶ 61,151 (1985); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (J. R. Simplot Company), 33 FERC 61,379 (1985).

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modification of Order No. 436–A [1] to the effect that pipelines can provide self-implementing transportation services for their pipeline customers as well as local distribution company customers prior to February 15, 1986, without subjecting themselves to the contract demand reduction/conversion condition of § 284.10 of the Regulations.

Columbia states that a number of its direct and indirect interstate pipeline suppliers have been continuing self-implementing transportation arrangements for their local distribution company customers on a non-discriminatory basis until February 15, 1986. However, such interstate pipelines have not offered similar self-implementing transportation arrangements to pipeline customers, such as Columbia, because they are uncertain whether the continuation or commencement of new transportation services for pipeline customers would subject the transporting pipelines to the reduction/conversion options.

Although not specifically identified in Columbia's request, we assume that the self-implementing transportation by Columbia's pipeline suppliers for local distribution company customers is being performed pursuant to section 311 of the Natural Gas Policy Act. Section 284.10(a) of the Regulations was modified in Order No. 436–A to permit new transportation arrangements under Section 311 to be commenced or continued through February 15, 1986, without triggering the contract demand reduction/conversion conditions. The transporting pipeline is required in such instances to provide non-discriminatory access to its system.[2]

Regulations covering the transportation of gas by an interstate pipeline on behalf of another interstate pipeline were issued in Order No. 60, which promulgated § 284.221 of our former rules. Such transportation is now covered by § 284.222. Section 284.105 of the new rules provides for the continuation of Order No. 60 transactions that were authorized and commenced on or before October 9, 1985, on the same basis as similar transactions commenced under Section 311. However, § 284.222 of the new rules provides that for an interstate pipeline to commence new transactions of the kind previously authorized by Order No. 60, the pipeline must first apply for and receive a blanket certificate under new § 284.221. Accordingly, unless Columbia's pipeline suppliers have satisfied the requirememts of that section, they may not offer new transportation to Columbia.

The authorization in our Regulations which permits the continuation or commencement of new self-implementing transportation arrangements to local distribution company customers is consistent with the provisions of section 311(a)(1) of the Natural Gas Policy Act, which applies only to transportation by interstate pipelines on behalf of intrastate pipelines and local distribution companies. That section does not authorize the Commission to approve similar transportation on behalf of another interstate pipeline. The request for modification of Order No. 436–A, therefore, is denied.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2866 Filed 2–7–86; 8:45 am]

BILLING CODE 6717–01–M

[1] 50 FR 52217 (December 23, 1985).

[2] Order No. 436–A, mimeo, pp. 276–77.

[Docket Nos. RM85–1–139 and RM85–1–142]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (El Paso Natural Gas Company, Pacific Gas and Electric Company, and Valley Gas Company); Order Denying Rehearing

Issued: February 4, 1986.

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

The Panhandle Producers and Royalty Owners Association (PPROA) has requested rehearing of there clarification orders we issued in this proceeding concerning El Paso Natural Gas Company (*El Paso*),[1] Pacific Gas and Electric Company (*PG&E*),[2] and Valley Gas Company (*Valley*).[3] As discussed below, we will deny PPROA's request.

The three orders concern transitional treatment of transportation authorized by section 311 of the Natural Gas Policy Act of 1978 (NGPA) pursuant to the regulations we recently issued in Order No. 436.[4] Section 284.105 of the regulations provides that NGPA section 311 transportation service authorized and commenced on or before October 9, 1985, may be continued, with several exceptions, under the terms and conditions that applied prior to November 1, 1985, until the earlier of October 9, 1987, or the end of the expiration of the term of the contract. In the *El Paso*, *PG&E*, and *Valley* orders, we clarified that:

1. The transition period rule is applicable to transportation arrangements which commenced prior to October 9, 1985, pursuant to a previously-executed written agreement;

2. The rule is not applicable to service which commenced after October 9, 1985, pursuant to a verbal agreement; and

3. The rule is applicable to service which commenced prior to October 9, 1985, pursuant to a verbal agreement, so long as applicable reporting requirements were satisfied.

PPROA is concerned that the orders permit transportation arrangements under section 311 to qualify for transition treatment under § 284.105 of our regulations on the basis of oral agreements between the parties. It contends that this permits pipelines to discriminate in favor of their marketing affiliates. While not explicitly stated, PPROA apparently believes that pipelines will enter into NGPA section 311 transportation arrangements with their affiliates after October 9, 1985, and then claim that the transactions qualify for transition treatment under § 284.105 of the regulations on the basis of oral agreements between the parties.

We are not persuaded that reliance on oral agreements as a basis for compliance with § 284.105 of the regulations will permit pipelines to discriminate in favor of their affiliates. To be eligible for transition treatment, the transportation must have commenced on or before October 9, 1985. Transportation which commences after that date must be conducted on a non-discriminatory basis under §§ 284.8 and 284.9 of the Order No. 436 regulations. Pursuant to §§ 284.4 and 284.106 of our Regulations, as in effect prior to November 1, 1985, pipelines were required to file an initial report of the transportation within 48 hours and full report within 30 days after commencing transportation. So, we can monitor the transactions to ensure that they did not commence after October 9.

PPROA also contends that certain interstate pipelines have been filing late 48-hour and 30-day reports alleging the commencement of transportation prior to October 9. It requests that we rule that transactions which have not been thoroughly documented by timely-filed 48-hour and 30-day reports are not eligible for transition treatment. We do not believe that such a ruling is warranted on the record before us.

[1] Order Denying Pelition for Declaratory Order and Denying, in Part, and Granting, in Part, Motion for Clarification, Docket No. RM85–1–000 (October 30, 1985).

[2] Order Granting Motion for Clarification, Docket No. RM85–1–000 (October 31, 1985).

[3] Order Granting Request for Clarification, Docket No. RM85–1–000 (November 27, 1985).

[4] Order No. 436, 50 FR 42408 (October 18, 1985).

PPROA has not alleged any specific instances of such action by any pipeline. We will consider any complaint which PPROA or any other person may file alleging specific instances of non-compliance with the transition provisions or the reporting requirements and take appropriate action.

Accordingly, PPROA's requests for rehearing are denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2865 Filed 2–7–86; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 8268–001 et al.]

Surrender of Preliminary Permits; Dillon Lake Hydro Associates et al.

January 31, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Dillion Lake Hydro Associates

[Project No. 8268–001]

Take notice that the Dillon Lake Hydro Associates, Permittee for the Dillon Lake Project No. 6268, located on the Licking River in Muskinghum County, Ohio has requested that its preliminary permit be terminated. The preliminary permit was issued on November 16, 1984, and would have expired on April 30, 1986. The Permittee states that analysis of the Dillon Lake Project did not indicate feasibility for development.

The Permittee filed the request on January 14, 1986.

2. Wills Creek Hydro Associates

[Project No. 8269–001]

Take notice that the Wills Creek Hydro Associates, Permittee for the Wills Creek Lake Project No. 8269, located on the Wills Creek in Coshonton and Muskinghum Counties, Ohio has requested that its preliminary permit be terminated. The preliminary permit was issued on December 18, 1984, and would have expired on May 31, 1986. The Permittee states that analysis of the Wills Creek Lake Project did not indicate feasibility for development.

The Permittee filed the request on January 14, 1986.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2869 Filed 2–7–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF86–494–000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Resource Enterprises, Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

January 31, 1986.

Take notice that the following filings have been made with the Commission.

1. Resource Enterprises Inc.

[Docket No. QF86–494–000]

On January 15, 1986, Resources Enterprises, Inc. (Applicant), of 8 Richland Lane T–1, Camp Hill, Pennsylvania 17011 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the Emerald Mine near Waynesburg, Pennsylvania. The facility will burn waste in the form of methane gas produced as a by-product of abandoned coal mining area to generate 1,500 kW of electric power.

2. Oceanside Refrigeration, Inc. (ICE HAUS V)

[Docket No. QF86–389–000]

On January 16, 1986, J.R. Bishop, President, Oceanside Refrigeration, Inc. (Applicant), of 4500 Campus Drive, Newport Beach, California 92660 submitted for filing an application for certification of a facility known as ICE HAUS V as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle ICE HAUS V cogeneration facility is located at Industry Street and Hoover Street, Oceanside, California. The facility will consist of a combustion turbine-generator, a two pressure level heat recovery steam generator (HRSG) and an extraction steam turbine-generator. The extracted steam together with low pressure steam from the HRSG will be supplied to the absorption refrigeration equipment to provide refrigeration at the host ice making facility. The net electric power production of the facility will be 40,627 kW. The primary energy source will be natural gas. The facility is scheduled to start commercial operation in Winter of 1987.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2868 Filed 2–7–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–1–22–000, 001]

Consolidated Gas Transmission Corp; Proposed Changes in FERC Gas Tariff

February 5, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on January 30, 1986, filed a revised tariff sheet pursuant to sections 12 (PGA Clause), 12A (Incremental Pricing Surcharges), and 13 (Research, Development and Demonstration Cost Adjustment) of the General Terms and Conditions of its tariff. The revisions, shown on Eighth Revised Sheet No. 31 to Original Volume No. 1 of Consolidated's tariff, provide for Consolidated's semiannual PGA to be effective March 1, 1986.

Consolidated has included in its filing:

(a) Rate decreases from pipeline suppliers in the amount of $58.1 million;

(b) Rate changes from producer suppliers in the amount of $28.6 million;

(c) A surcharge of 21.75 cents per dekatherm to recoup amounts accumulated in Account 191, Unrecovered Purchased Gas Costs;

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(d) A refund credit of 13.43 cents per dekatherm to flow through supplier refunds.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Concurrently with these PGA changes, Consolidated also includes a separately stated rate surcharge to recover its funding of take-or-pay payments made by Tennessee Gas Pipeline Company under the procedures approved in the Commission's order issued on April 16, 1985, in *Columbia Gas Transmission Corporation* v. *Tennessee Gas Pipeline Company, et al.*, in Docket Nos. RP83–8, *et al.* The take-or-pay surcharge is 0.31¢ per dekatherm.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice of Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2870 Filed 2–7–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–42–000]

El Paso Natural Gas Co.; Tariff Filing

February 3, 1986.

Take notice that on January 29, 1986, El Paso Natural Gas Company (El Paso) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 101
First Revised Sheet No. 250
First Revised Sheet No. 251
Second Revised Sheet No. 252
First Revised Sheet No. 254

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until January 30, 1986.

El Paso states, the above designated tariff sheets, when accepted by the Commission and permitted to become effective will revise El Paso's Rate Schedule INC–1 (Incentive Sales Rate).[1] Such revised Rate Schedule INC–1 will allow El Paso from time to time, and at its sole discretion, to elect to offer natural gas for sale at a price discounted from the otherwise applicable rate, but not less than the variable cost component of the rate, for all or a portion of the quantities sold under its sales rate schedules. The revisions to El Paso's Rate Schedule INC–1 track the revisions to Transwestern Pipeline Company's ("Transwestern") incentive sale Rate Schedule ISR filed as a part of Transwestern's Stipulation and Agreement on January 17, 1986 at Docket No. RP85–175–000. El Paso requests February 1, 1986 as the effective date of the tariff sheets, the same effective date as Transwestern requested for its revised Rate Schedule ISR.

Additionally, El Paso states that Transwestern has provided in Article VII, MINIMUM BILL, of its Stipulation and Agreement a "period of minimum bill waiver" commencing February 1, 1986, and ending on the date Transwestern reinstates or revises its minimum bill as permitted, in certain circumstances, by Article VII and Article VIII of the Stipulation and Agreement. El Paso states that upon Commission approval of its revised Rate Schedule INC–1, it will also waive the Fixed Cost Reimbursement Charge which might otherwise be due under section 3.1(c) of Rate Schedule G for the same period during which the waiver of Transwestern's minimum bill is in effect, subject to the provisions of section 6.2 through 6.4 of El Paso's Settlement at Docket No. RP85–58–000 governing the possible reinstatement of such charge.

El Paso states that the copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with § 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before February 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisison and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2857 Filed 2–7–86; 8:45 am]

BILLING CODE 6717–01–M

[1] Rate Schedule INC–1 was a part of El Paso's Stipulation and Agreement in Settlement of Rate Proceedings at Docket No. RP85–58–000, which was approved by the Commission in its letter order dated August 14, 1985.

[Docket No. RP86–45–000]

El Paso Natural Gas Co., Tariff Filing

February 5, 1986.

Take notice that on January 31, 1986, El Paso Natural Gas Company ("El Paso") filed pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the National Gas Act, the revised and original tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

El Paso states that on January 17, 1986 it commenced open-access transportation pursuant to the self-implementing provisions of Section 311 of the Natural Gas Policy Act of 1978 ("NGPA") and in accordance with the Commission's Order Nos. 436 and 436–A issued at Docket No. RM85–1. Consistent with the requirements of Order Nos. 436 and 436–A, the tendered tariff sheets serve to establish as part of El Paso's FERC Gas Tariff, the rates, rate schedules, and operating terms and conditions applicable to such transportation service rendered by El Paso under Subpart B of Part 284 of the Commission's Regulations, as well as service to be rendered upon receipt of blanket certificate authorization pursuant to Order Nos. 436 and 436–A which El Paso states it will promptly file for upon Commission approval of the tendered tariff sheets.

El Paso requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective March 1, 1986, and states that copies of the filing have been served upon all of its sales and transportation customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2858 Filed 2–7–86; 8:45 am]

BILLING CODE 6717–01

[Docket No. TA86–3–34–000, 001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

February 5, 1986.

Take notice that on January 30, 1986, Florida Gas Transmission Company (FGT), tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective February 1, 1986.

First Revised Volume No. 1
6th Revised Sheet No. 8
Original Volume No. 2
29th Revised Sheet No. 128

The proposed change reflects a decrease of 2.109¢/therm in FGT's Rate Schedule G and I and .96¢/Mcf in Rate Schedule T–3. In order to implement FGT's out-of-cycle PGA decrease, FGT has requested such Commission waivers as may be necessary to approve its filing effective February 1, 1986.

Copies of this filing were served on FGT's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2872 Filed 2–7–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI86–160–000]

Holden Energy Corp.; Application for Abandonment of Service

February 3, 1986.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application appear to meet the critieria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

And person desiring to be heard or to make any protests with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86–160–000, B, Jan. 24, 1986	Holden Energy Corporation, 5956 Sherry Lane, Suite 1110, Dallas, Texas 75225.	Tennessee Gas Pipeline, a Division of Tenneco, Inc., Lopena Field, Zapata County, Texas.	(1)	

[1] Pursuant to the expedited procedures set forth in § 2.77 of the Commission's rules, Applicant requests abandonment authorization for its sale to Tennessee of all gas from wells which will qualify for deregulation under section 601(a)(1)(B) of the NGPA upon conclusion of the well category determination process. Applicant indicates that it currently has 8 wells for which it has filed for NGPA section 103 determinations and 3 wells which have received NGPA section 102(c) or 103 determinations. Applicant states that it is not seeking abandonment of gas sold from wells subject to NGPA sections 104, 106 or 108. Applicant indicates that production from the subject wells has been shut-in by Tennessee since October 1, 1985, and that Applicant is not being paid for gas not taken.

Filing Code: A—Initial Service, B—Abandonment, C—Amendment to add acreage, D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[Docket No. TA86–3–46–000, 001]

Kentucky West Virginia Gas Co.; Proposed Change in Rates

February 5, 1986.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on January 30, 1986, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Seventeenth Revised Sheet No. 27A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective February 1, 1986.

The proposed tariff sheet amends the PGA filing made by Kentucky West herein on October 31, 1985, so as to reflect a reduction in current purchased gas costs due to Kentucky West's exercise of market-out provisions in its various gas purchase contracts with independence producers and purchases of natural gas from affiliated companies, effective February 1, 1986.

The current purchase gas adjustment is a reduction of 22.30¢ per dekatherm (dth). This reduction results in a total net jurisdictional sales rate of 271.41¢ per dth, to become effective February 1, 1986. This net jurisdictional sales rate is a decrease of 22.30¢ per dth below the net jurisdictional sales rate in Kentucky West's October 31, 1985 filing herein.

Apart from reflecting the decrease in purchase gas costs resulting from Kentucky West's exercise of market-out provisions effective February 1, 1986, no other amendment is proposed by Kentucky West to its PGA filing herein of October 31, 1985. Kentucky West requires waiver of the Commission's Regulations and the 30 day notice requirement to the extent necessary to permit its amended PGA adjustment to become effective February 1, 1986.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state

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commissions and upon each party to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.21 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2873 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-60-000, 001]

Locust Ridge Gas Co.; Proposed Changes in FERC Gas Tariff

February 5, 1986.

Take notice that on January 3, 1986, Locust Ridge Gas Company (Locust Ridge) tendered for filing as a part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 3, the following tariff sheets to be effective March 1, 1986:

Original Volume No. 1—Thirteenth Revised Sheet No. 1A
Original Volume No. 3—Twentieth Revised Sheet No. 1A

Locust Ridge states that the purpose of this filing is to submit, for Commission approval, a revision in Locust Ridge's rate for gas resold reflecting proposed changes in the Purchased Gas Component of such rate. The filing projects an increase of $0.0105 per MMBtu in the company's resale rate to its jurisdiction customers under the above tariffs for the period beginning March 1, 1986 and ending August 31, 1986.

Locust Ridge requests waiver of the Commission's regulations to the extent, if any, required to place the proposed tariff sheets into effect March 1, 1986.

A copy of this filing has been mailed to Locust Ridge's jurisdictional customers affected by such filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 12, 1986. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2874 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS86-22-000 et al.]

Long Brothers Oil Co. et al.; Applications for "Small Producer" Certificates [1]

February 3, 1986.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before February 19, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS86-22-000	1-21-86	Long Brothers Oil Co., P.O. Box L, Norphlet, Arkansas 71759.
CS86-26-000	1-6-86	Book Cliffs Oil & Gas Corp., 77 No. Oak Knoll Ave., #103, Pasadena, California 91101.
CS86-27-000	1-10-86	Mary Leonard Trust, Acct. Nos.'s 1979-03, 1979-04, 1979-05, and 1979-06, P.O. Box 2905, Fort Worth, Texas 76113.
CS86-28-000	1-13-86	Marquee Corporation, P.O. Box 2743, Corpus Christi, Texas 78403.
CS86-30-000	1-24-86	Minatome Corporation, One Allen Center, Suite 400, Houston, Texas 77002.
CS86-31-000	1-27-86	USENCO, 400 ClayDesta Towers East, Midland, Texas 79705.
CS86-32-000	1-27-86	Medallion Petroleum, Inc., Suite 200, 320 S. Boston Ave., Tulsa, Oklahoma 74103.

[FR Doc. 86-2859 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-3-25-000, 001]

Mississippi River Transmission Corp.; Rate Change Filing

February 5, 1986.

Take notice that on January 30, 1986 Mississippi River Transmission Corporation ("Mississippi") tendered for filing Fourteenth Revised Sheet No. 4 and Fifth Revised Sheet No. 4A to its FERC Gas Tariff, Second Revised Volume No. 1. An effective date of March 1, 1986 is proposed.

Fourteenth Revised Sheet No. 4 is being submitted pursuant to Mississippi's gas tariff to track pipeline and producer rate changes and to recover gas costs which have accumulated in Mississippi's Unrecovered Purchased Gas Cost Account. Mississippi states that the filing reflects an increase under Rate Schedule CD-1 of $1.019 per Mcf in Demand Charge D-1, an increase of $.0348 per Mcf in the D-2 Demand Charge and a commodity rate decrease of $.1708 per Mcf. The single part rate under Rate Schedule SGS-1 reflects a purchased gas cost decrease of $.0376 per Mcf. The overall cost impact of such rate changes when applied to annual jurisdictional billing determinants is an $8.6 million reduction.

Mississippi states that Fourth Revised Sheet No. 4A indicates zero incremental pricing surcharges.

Mississippi also submitted for filing as part of its tariff Third Revised Sheet No. 52 to be effective July 1, 1985. The purpose of this revised sheet is to modify Paragraph 17.44 of Mississippi's PGA tariff provisions to provide that the commodity cost of purchased gas recorded in Account 191 shall be adjusted to include the effect of exchange gas transactions recorded in Account 806.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2875 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-202-000]

Montaup Electric Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motions for Summary Disposition, and Establishing Hearing procedures

Issued: February 3, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 5, 1985, Montaup Electric Company (Montaup) tendered for filing a proposed two-phase increase in its rates for firm power service to two affiliated [1] and three unaffiliated wholesale customers.[2] The proposed Phase One rates would increase revenues by approximately $24.7 million (11.0%) for the test year ending April 30, 1987. The proposed Phase Two rates would result in an additional increase of approximately $2.7 million, representing a total increase of $27.4 million (12.2%) for the same period. In addition, Montaup, Eastern Edison, and Blackstone have filed revisions to facilities rental agreements under which Eastern Edison and Blackstone provide facilities to Montaup, and Montaup provides facilities to Eastern Edison. The revisions decrease the return on common equity components used in formula rates under the rental agreements. Montaup requests that the Phase One rates be made effective as of February 4, 1986, and suspended until the Millstone Generating Unit No. 3 (Millstone 3) enters commercial service.[3] Montaup requests an effective date of February 5, 1986, with suspension until the day after Millstone 3 enters commercial service, for the Phase Two rates. In the event that the Phase One and Phase Two rates are suspended for the same period, Montaup requests that the Phase One rates be deemed withdrawn.

Notice of Montaup's filing was published in the Federal Register,[4] with comments due on or before December 23, 1985.

On December 23, 1985, the Pascoag Fire District, the Town of Middleborough, Massachusetts, and Newport Electric Company (Unaffiliated Customers) filed a motion to intervene. The Unaffiliated Customers do not object to Montaup's request that the effectiveness of the rates be tied to the operation of Millstone 3, but request that the Commission's suspension order prohibit the collection of Millstone No. 3 related costs until the unit is "in fact," in commercial operation. The Unaffiliated Customers request that Montaup's filing be set for hearing, citing various cost of service issues.[5] The Unaffiliated Customers also object to the existing ratchet provisions in Montaup's tariff as discriminatory. Since that issue is being heard in Docket No. ER81-749-000, the Unaffiliated Customers request that any revision of the rate design ordered in that pending rate case be made applicable to the rates proposed here.

Timely motions to intervene were also filed by the Attorney General of Rhode Island, on behalf of herself and the Rhode Island Division of Public Carriers, and by the Attorney General of the Commonwealth of Massachusetts. The Rhode Island Attorney General raises various cost-of-service issues. In addition, the Rhode Island and Massachusetts Attorneys General request summary disposition as to the inclusion of non-pollution control CWIP in rate base, citing the decision in *Mid-Texas Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (*Mid-Tex*). Finally, they request that this case not be set for hearing on an expedited basis.

On January 6, 1986, Montaup filed an answer to the motions to intervene. While not opposing the interventions, the company does oppose the requests for summary disposition. With respect to the remaining assertions raised by the intervenors, Montaup contends that they are questions best resolved at hearing.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make the Unaffiliated Customers, and the Rhode Island and Massachusetts Attorneys General parties to this proceeding.

The Commission intends, in the near future, to take some responsive action to address the major outstanding issues regarding the inclusion of CWIP, other than that related to fuel conversion or pollution control facilities, in rate base in light of the D.C. Circuit's recent decision in *Mid-Tex, supra*. Pending such action, we believe that it would be premature to grant the motions in this docket for summary disposition on the CWIP issue. We note, in any case, that the utility's request to defer collection of the proposed rates until about May 1, 1986, largely obviates any urgency in addressing the intervenors' concerns. We shall therefore deny the requests for summary disposition at this time.

Our review of the company's filing and the pleadings indicates that Montaup's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we shall accept Montaup's rates for filing and suspend them in part as ordered below.

We observe initially that Montaup has filed revisions in the return on common equity component of the formula rates reflected in Montaup's, Eastern Edison's, and Blackstone's facilities rental agreements. Because these revisions result in rate decreases, they will not be made subject to suspension and a refund obligation. However, these rates, though decreases, reflect the same rate of return as that reflected in Montaup's other rates and challenged by the intervenors. We shall therefore order an

[1] Eastern Edison Company (Eastern Edison) and Blackstone Valley Electric Company (Blackstone).

[2] *See* Attachment for affected customers and rate schedule designations.

[3] Montaup estimates that Millstone 3 will enter commercial service on or about May 1, 1986.

[4] 50 FR 51744 (1985).

[5] The issues raised include: (1) Millstone 3 decommissioning costs; (2) depreciation expense; (3) forecasted investment in Millstone 3; (4) rate of return on common equity; (5) regulatory expenses; (6) demand projections and forecasts of unit sales; and (7) income taxes.

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investigation of these rates, with any modification to be prospective only.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the Phase One rates may not yield substantially excessive revenues. In ordinary circumstances, we would therefore suspend these rates for one day. However, because Montaup has requested that the Phase One rates be suspended until Millstone 3 enters commercial service,[6] we shall suspend those rates until that time, subject to refund. With respect to the Phase Two rates, our preliminary examination indicates that they may produce substantially excessive revenues. Accordingly, we shall suspend the Phase Two rates to become effective on the later of July 5, 1986, or one day after the unit enters commercial service, subject to refund.

Two of the issues raised by the intervenors in their pleadings have been or are currently being litigated in other Montaup rate filings. Specifically, the company's proposed amortization of Seabrook 2 costs is at issue in Docket No. ER85-106-000, and a ratchet provision applicable to the Unaffiliated Customers has been raised in Docket No. ER81-749-000. Because no change in circumstances has been alleged, those issues shall be controlled by our ultimate decision in the earlier dockets.

Finally, with respect to the request that we not make this proceeding subject to expedited procedures, we shall leave that question to be determined by the Chief Administrative Law Judge.

The Commission Orders

(A) The motions for summary disposition by the Rhode Island and the Massachusetts Attorneys General are hereby denied.

(B) Montaup's submittal is hereby accepted for filing. The Phase One rates are hereby suspended until the date on which Millstone 3 enters commercial service, subject to refund. The Phase Two rates are suspended to become effective on July 5, 1986, or one day after the unit enters commercial service, whichever is later, subject to refund. The proposed revisions to the facilities rental agreements shall become effective on February 4, 1986, without suspension, but subject to prospective modification following a hearing.

(C) Within ten (10) days of the date on which Millstone 3 enters commercial service, Montaup shall so advise the Commission and the affected wholesale customers.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Montaup's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service to top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (expect motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) Subdocket No. 000 of Docket No. ER86-202 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER86-202-001.

(H) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

MONTAUP ELECTRIC COMPANY, DOCKET NO. ER86-202-000

[Rate schedule designations]

	Designation	Description/other party
(1)	Eighteenth Revised Sheet No. 4 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Seventeenth Revised Sheet No. 4).	Phase I Rates.
(2)	Seventeenth Revised Sheet No. 6 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Sixteenth Revised Sheet No. 6).	Fuel Clause.
(3)	Supplement No. 18 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 17).	Revised Exhibit A—Rates for Contract Demand Service Pascoag Fire District.
(4)	Supplement No. 10 to Rate Schedule FERC No. 75 (Supersedes Supplement No. 9).	Revised Exhibit A—Rates for Contract Demand Service Town of Middleborough.
(5)	Supplement No. 7 to Rate Schedule FERC No. 76 (Supersedes Supplement No. 6).	Revised Exhibit A—Rates for Contract Demand Service Newport Electric Corporation.
(6)	Nineteenth Revised Sheet No. 4 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Eighteenth Revised Sheet No. 4).	Phase II Rates.
(7)	Eighteenth Revised Sheet No. 6 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Seventeenth Revised Sheet No. 6).	Fuel Clause.
(8)	Supplement No. 19 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 18).	Revised Exhibit A—Rates for Contract Demand Service Pascoag Fire District.
(9)	Supplement No. 11 to Rate Schedule FERC No. 75 (Supersedes Supplemen' No. 10).	Revised Exhibit A—Rates for Contract Demand Service Town of Middleborough.
(10)	Supplement No. 8 to Rate Schedule FERC No. 76 (Supersedes Supplement No. 7).	Revised Exhibit A—Rates for Contract Demand Service/Newport Electric Corporation.
(11)	Supplement No. 8 to Rate Schedule FERC No. 58 (Supersedes Supplement No. 7).	Revised Cost of Capital/Fall River Electric Light Company.
	EASTERN EDISON COMPANY	
(12)	Supplement No. 14 to Rate Schedule FERC No. 5 (Supersedes Supplement No. 13).	Revised Cost of Capital/Montaup Electric Company
	BLACKSTONE VALLEY ELECTRIC COMPANY	
(13)	Supplement No. 14 to Rate Schedule FPC No. 21 (Supersedes Supplement No. 13).	Revised Cost of Capital/Montaup Electric Company.

[FR Doc. 86-2860 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[6] As noted, the intervenors raise concerns regarding the "in-service" date of Millstone 3, suggesting that the unit may be brought on line to meet NEPOOL status and may then suffer a prolonged outage. Montaup has projected that Millstone No. 3 will come on line at the beginning of Period II. Based on our preliminary review, this date appears reasonable. To the extent that Millstone 3 goes on a prolonged outage after its initial in-service run, thereby bringing into question the propriety of continued rate base treatment, the customers are free to pursue this issue at hearing.

[Docket No. TA86-1-28-003]

Natural Gas Pipeline Company of America; Change in Rates

February 5, 1986.

Take notice that on January 29, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective January 1, 1986.

Second Substitute Revised Sheet No. 5
Second Substitute Twenty-seventh Revised Sheet No. 5A

Natural states that the purpose of the revised tariff sheets is to amend Natural's out-of-cycle PGA filing of December 31, 1985, as amended on January 17, 1986 (Natural's filing). The instant amendment is intended to reflect the rate impact of Great Lakes Gas Transmission Company's revised tariff sheets filed in Docket No. TA86-3-51-000 on January 21, 1986, to be effective December 19, 1985.

A copy of the filing is being mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211. All such motions or protests must be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2876 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-238-000]

New England Power Service Co.; Filing

February 5, 1986.

Take notice that on January 29, 1986, New England Power Company (NEP) tendered for filing revised rate schedules incorporating the Commission's acceptance of the proposed treatment of Brayton Point Unit 3 replacement power fuel adjustment clause. The filing is made in accordance with the Commission's order of November 27, 1985 in Docket Number EL86-4-000.

NEP also enclosed in this filing, revisions to the previously filed W-7 rate schedule, accepted for filing by the Commission on September 30, 1985 in Docket Number ER85-647-000. The revisions reflect the interim adjustment clause amendment granted in Docket Number EL86-4-000. These rate schedules should supercede those filed in Docket Number ER85-647-000 to become effective subject to refund, in March 1, 1986.

Any person desiring to be heard or to protest the application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2877 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-28-000, 001]

Panhandle Eastern Pipe Line Co.; Change in Tariff

February 3, 1986.

Take notice that on January 29, 1986 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-Fifth Revised Sheet No. 3-A.
Thirty-Second Revised Sheet No. 3-B.
Fourteenth Revised Sheet No. 3-C.1.
Fourteenth Revised Sheet No. 3-C.2.
Fourteenth Revised Sheet No. 3-C.3.

The proposed effective date of these revised sheets is March 1, 1986.

Panhandle states that these revised tariff sheets reflect an increase in the commodity rate of 18.99¢ per Dt. This incease includes: (1) A (10.99¢) Per Dt. decrease in the projected purchased gas cost component; (2) a 5.64¢ per Dt. increase in the surcharge to recover the current deferred account balance at November 30, 1985 and related carrying charges; and (3) a 24.34¢ per Dt. increase in the surcharge for the current period amortization of the deferred account balance at May 31, 1983, pursuant to Commission authorization previously granted in Docket No. TA83-2-28-000.

Panhandle further states that the revised tariff sheets filed herewith reflect the following changes to Panhandle's D_1 and D_2 demand rates:

(1) A decrease of ($.03) for D_1 and (0.07¢) for D_2, pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) A decrease of ($.05) for D_1 and (0.20¢) for D_2, to reflect a decrease in the Section 16.4 pipeline supplier demand costs.

Panhandle has included in this filing projected gas purchase volumes from its suppliers for the six-month period commencing March 1, 1986, as detailed in section 18.2, Schedule A. All projected gas costs for purchases from producer-suppliers reflected in this PGA filing have been calculated utilizing the procedures consistent with the requirements in the Commission's PGA Regulations.

Panhandle has also included in this filing the final portion of the three-year amortization of the deferred account balance at May 31, 1983 as approved in Docket No. TA83-2-28-000. Consistent with the Commission's Order dated August 31, 1983, Opinion No. 223 dated June 1, 1984, and Order on Rehearing dated July 25, 1984, no carrying charges on the amortized deferred account have been included herein. This filing is being made without prejudice to Panhandle's claims as stated in its request for court review.

As authorized by the Commission's Order dated November 27, 1985 in Docket No. TA85-3-28-003 Panhandle has: (1) Excluded estimated gas costs for the last month (November 1985) of the applicable deferral period herein; and (2) reflected the computation of its carrying charges based on the gross amount of supplier refunds and transportation revenues credited to Account No. 191 without reduction for the interperiod tax effect.

Panhandle is also submitting herewith for filing six (6) copies of the following revised sheet to its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 43-2.1

The proposed effective date of this revised sheet is December 1, 1985.

The purpose of this revision to Paragraph 18.33 of Panhandle's PGA tariff is to implement the adjustment to the computation of the unit cost of gas, with respect to out-of-balance

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concurrent exchange transactions, as presented to the Commission Staff at a public conference held at the Commission on August 29, 1985 and discussed by the Commission at its December 4, 1985 meeting. It is noted that the Commission has agreed to the treatment proposed by the pipelines, as reflected in recent Commission orders. Carrying charges will be calculated without the effects of assigning gas costs to any out-of-balance concurrent exchange transactions. Panhandle is proposing to implement this "adjusted methodology" prospectively beginning December 1, 1985. Accordingly, a December 1, 1985 effective date is proposed for Fourth Revised Sheet No. 43–2.1.

In addition, Panhandle has included in the instant PGA filing a one-time adjustment to Account No. 191 to bring it into appropriate balance to reflect the out-of-balance exchange transactions, as of November 30, 1985. Workpapers supporting this one-time adjustment are submitted herewith. Panhandle will include in subsequent PGA filings, data on the volumes and costs of the monthly exchange transactions, as well as data supporting the computation of the affected carrying charges.

Panhandle respectfully requests waiver of Section 154.22 of the Commission's Regulations together with any other such waivers as may be necessary, for the acceptance of Fourth Revised Sheet No. 43–2.1 submitted herewith to become effective December 1, 1985.

Additionally, the revised tariff sheets filed herewith reflect Projected Incremental Pricing Surcharges in accordance with section 21 of the General Terms and Conditions of Panhandle's tariff.

In accordance with section 18 of the General Terms and Conditions of its tariff, Panhandle has estimated sales volumes for the six-month period, March 1, 1986 through August 31, 1986. A tabulation of these estimated sales volumes for the six-month period beginning March 1, 1986 is submitted herewith in section 18.2.

On May 30, 1985 the Commission issued Order No. 423 in Docket No. RM83–53–000 which requires interstate pipelines to include with their future PGA filings a report which shows producer-supplier refunds recovered through billing adjustments. Accordingly, such schedules are being submitted in section 18.2 herewith.

Panhandle's Schedule A included herein reflects costs under the Commission's Order No. 94–A for gas to be acquired by Panhandle during the six-month period commencing March 1, 1986. Production-related cost data required by § 271.1104(f) of the Commission's Regulations, including the relevant contractual provisions expressly authorizing section 110 production-related charges, has previously been filed for all producer-suppliers.

Pursuant to the Commission's order of November 27, 1985 in Docket No. TA85–3–28–003, Panhandle is submitting additional data, under separate cover, pertaining to the "at risk" condition in its March 1, 1985 PGA. The additional data submitted pertains to contract information concerning Panhandle's actual gas costs, and its Account No. 191 balances, during the six-month period March 1 through August 31, 1985. This supplemental information shows that Panhandle's Account No. 191 balance at the end of this six-month period was a negative $4.5 million, which means that Panhandle during this "at risk" period did *not* incur any undercollections, and in fact experienced a slight overcollection. Therefore Panhandle has satisfied the "at risk" condition contained in the March 1, 1985 PGA, and is filing in that proceeding the data described above which demonstrates that, and is requesting the removal of the "at risk" condition in that proceeding. Notwithstanding final Commission action in the Docket Nos. TA85–1–28–000, 001 and Docket No. TA85–3–28–003 procedings Panhandle is in the instant filing flowing back to its customers this $4.5 million negative balance in the deferred account, without prejudice to its rights in the Docket Nos. TA85–1–28–000, 001 and Docket No. TA85–3–28–003 proceedings.

To the extent required, if any, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of the tariff sheets submitted herewith to become effective December 1, 1985, or March 1, 1986, as previously stated.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–2861 Filed 2–7–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G–4953–001 et al.]

Sun Exploration & Production Co. et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

February 3, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 19, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commisison will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and Location	Price per Mcf	Pressure base
G–4953–001, D Jan. 27, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221–2880.	United Gas Pipe Line Co., Red Fish Bay Field, Nueces County, TX.	[1]	
G–12211–002, D, Jan. 27, 1986	do	United Gas Pipe Line Co., Ridge Area, Lafayette & Vermilion Parishes, LA.	[2]	
G–12548–001, D, Jan. 24, 1986	do	Northern Natural Gas Co., West Perryton Field, Ochiltree County, TX.	[3]	
C161–524–002, D, Jan. 23, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77210.	ANR Pipeline Co., Cedardale Field, Major and Woodward Counties, OK.	[4]	
C173–334–000, C, Jan. 24, 1986	The Superior Oil Company, Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	ANR Pipeline Co., Eugene Island Block 306, Offshore LA.	[5]	
C173–476–000, C, Jan. 24, 1986	do	do	[6]	
C174–610–000, C, Jan. 24, 1986	Mobile Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	do	[6]	
C175–245–002, D, Jan. 27, 1986	Sun Exploration & Production Co	Arkansas Louisiana Gas Co., Star-Lacey Field, Kingfisher County, OK.	[7]	
C175–324–001, D, Jan. 22, 1986	do	Arkansas Louisiana Gas Co., Wilburton Field, Latimer County, OK.	[8]	
C180–133–001, C, Jan. 24, 1986	Mobile Oil Exploration & Producing Southeast Inc	ANR Pipeline Co., Eugene Island Block 306, Offshore LA.	[9]	
C186–171–000, A, Jan. 21, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Transco Gas Supply Co., Eugene Island Area Block 361, Offshore LA.	[10]	
C186–174–000, B, Jan. 21, 1986	Joseph P. Mueller	United Gas Pipe Line Co., Ramirena Field, Live Oak County, TX.	[11]	
C186–176–000, B, Jan. 24, 1986	Petroleum Resources, Inc., 420 Boulevard of the Allies, Pittsburgh, PA 15219.	Equitable Gas Co., Courthouse Field, Lewis County, WV.	[12]	
C186–177–000, B, Jan. 24, 1986	do	do	[12]	
C186–178–000, B, Jan. 24, 1986	Petroleum Resources, Inc., 420 Boulevard of the Allies Pittsburgh, PA 15219.	Equitable Gas Co., Courthouse Field, Lewis County, WV.	[13]	
C186–179–000, B, Jan. 24, 1986	do	do	[12]	
C186–183–000, F, Jan. 23, 1986	Cities Service Oil & Gas Corp. (Partial Succ. in Interest to Sun Exploration & Production Co.) P. O. Box 300, Tulsa, OK 74102.	ANR Pipeline Co., Laverne Field, Harper County, OK	[14]	

[1] Sale of State Tract 397 Wells No. 4 and No. 6 to Wooldridge & Associates.
[2] Expiration of leases.
[3] All properties in the Cedardale Field were assigned to Plains Resources, Inc., effective 12–1–85.
[4] Superior proposes to reinstate its Gas Rate Schedule No. 161 and establish an NGPA 109 rate effective 10–24–80, the date of first delivery from the additional reserves not covered by the original certificate.
[5] Superior proposes to reinstate its Gas Rate Schedule No. 252 and establish an NGPA 109 rate effective 10–24–80, the date of first delivery from the additional reserves not covered by the original certificate.
[6] MOEPSI proposes to reinstate its Gas Rate Schedule No. 122 and establish an NGPA 109 rate effective 10–24–80, the date of first delivery from the additional reserves not covered by the original certificate.
[7] Sale of Sun's interest in properties to Jack P. Speed.
[8] Assignment and Bill of Sale of properties to Samson Resources Company.
[9] MOEPSI proposes to reinstate its Gas Rate Schedule No. 107 and establish an NGPA 109 rate effective 10–24–80, the date of first delivery from the additional reserves not covered by the original certificate.
[10] Applicant is filing under Gas Purchase Contract dated 11–25–85.
[11] Abandonment from the contract of all depths in the dedicated acreage below the subsurface depth of 6000' is being sought in order to close an agreement with CONOCO to drill a deep well (below 12,000') on said acreage dedicated under the United contract or on acreage pooled therewith. It would not be economical to produce said deep gas well if gas from same were to be sold at a rate of 60.0¢/MCF. CONOCO will close said agreement with Mueller if, and only if, Mueller obtains an abandonment of deep rights.
[12] Equitable Gas Company has agreed to release the gas. Applicant proposes to sell instead to Hope Gas, Inc.
[13] Partial Assignment and Bill of Sale executed 10–17–85, effective 6–1–85, whereby Sun Exploration and Production Company assigned to Cities Service Oil and Gas Corporation additional interest in the Zoldoske "E" Unit in Harper County, Oklahoma.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 86–2862 Filed 2–7–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–1–17–001]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

February 3, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 24, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following tariff sheets:

To Be Effective January 1, 1986

Substitute Revised Seventy-sixth Revised Sheet No. 14 (4 pages)

To Be Effective February 1, 1986

Substitute Seventy-seventh Revised Sheet No. 14 (4 pages)

These tariff sheets are being filed pursuant to section 4.F of Texas Eastern's Rate Schedule SS–II and section 4.E of Texas Eastern's Rate Schedule ISS–III which provide for an automatic rate adjustment to flow through any changes in Consolidated Natural Gas Transmission Corporation's (Consolidated) GSS rates which underlie Texas Eastern's Rate Schedules SS–II and ISS–III.

Consolidated filed on July 1, 1985 to increase its Rate Schedule GSS rates as a part of their general rate increase filing in Docket No. RP85–169–000. The proposed rate increase was suspended until January 1, 1986 by the Commission in its order issued July 31, 1985. In this connection, Texas Eastern subsequently filed a revised tariff sheet on November 27, 1985 to be effective January 1, 1986 that reflected in its Rate Schedules SS–II and ISS–III the impact of the GSS rates in Consolidated's filing of July 1, 1985. Pursuant to a letter order dated December 17, 1985, the Commission accepted Texas Eastern's tariff sheet effective January 1, 1986 subject to downward revisions to track any such revision in Consolidated's GSS rates. Further, Texas Eastern filed on December 31, 1985 its semi-annual PGA filing to be effective February 1, 1986 which also reflected in its Rate Schedules SS–II and ISS–III the impact of the GSS rates in Consolidated's original filing of July 1, 1985.

On December 31, 1985, Consolidated filed its motion to make rates effective January 1, 1986 in compliance with the Commission's suspension order issued July 31, 1985 in Docket No. RP85–169–000. Consolidated's motion filing contained a revised space charge of 3.47¢ per dekatherm under Rate Schedule GSS as compared to 3.49¢ in its original filing.

The above substitute tariff sheets are being filed solely to reflect the revised GSS rates contained in Consolidated's motion filing of December 31, 1985. The proposed effective dates are as set forth above.

Copies of the filings were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to

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intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2863 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-42-003]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 5, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on January 30, 1986 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

9th Revised Sheet No. 74
4th Revised Sheet No. 75
Original Sheet No. 75A

The above tariff sheets are being issued pursuant to Ordering Paragraph (B) of the Commission's order issued September 30, 1985 in Docket No. TA86-1-42, and are in compliance with the methodology to treat concurrent exchange imbalances adopted by the Commission on December 4, 1985. Transwestern states that the revisions contained in the above tariff sheets, in addition to a proposed "one time adjustment" to its Account 191 as of July 1, 1985 to reflect the effect of any out-of-balance exchanges which existed as of July 1, 1985, are filed as in compliance with Ordering Paragraph (B) of the Commission's September 30, 1985 order, and Transwestern requests that a Commission order accepting the instant filing also constitute an order on rehearing of Transwestern's October 30, 1985 application for rehearing in Docket No. TA86-1-42.

The proposed effective date of the above tariff sheets is March 1, 1986.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2878 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-44-000]

Valero Interstate Transmission Co.; Proposed Rate Changes

February 5, 1986.

Take notice that on January 30, 1986, Valero Interstate Transmission Company ("Vitco") tendered for filing a notice of change in rates for the sale of gas under Vitco's FERC Gas Rate Schedule Nos., S-1, S-2 and S-3, to Natural Gas Pipeline Company of America ("Natural"), Transcontinental Gas Pipe Line Company ("Transco") and El Paso Natural Gas Company ("El Paso") respectively; and for the transportation of gas under FERC Gas Rate Schedule T-1, now revised as Rate Schedule ITS-1.

Vitco states that the proposed change represents a unit decrease in rate on a 100% load factor level. Vitco has unbundled its transmission and gathering services, and has separately stated its rate of firm transportation service in a new Rate Schedule FTS-1. Vitco's proposed rates for interruptible service are one part rates with a maximum and minimum rate stated. Reservation fees are imposed for firm service, and a minimum rate is stated. Vitco is proposing to convert its rates from an Mcf basis to an MMBtu basis, and is proposing to revert from a unit of production method of depreciation to a straight line rate.

Vitco states that its changes are necessary to satisfy the requirements of the FERC's Order No. 436 and the provisions of § 157.103 and 284.7 of the FERC's regulations. Vitco notes that simultaneously with its rate filing it is filing an application for a blanket certificate of public convenience and necessity pursuant to § 284.221 of the FERC's regulations.

Vitco is also proposing a rate schedule, Rate Schedule E, for emergency gas sales service pursuant to Subpart C, Part 157, of the FERC's regulations.

The proposed effective date is February 1, 1986. Vitco states that copies of the filing have been served on its jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 211 and 214 of the Commission's rules of practice and procedure (18 CFR 211 and 214). All such motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2879 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of January 3 Through January 10, 1986

During the week of January 3 through January 10, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 28, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 3 through Jan. 10, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 30, 1985	UCO Oil Co., Whittier, CA	RR176-1	Request for modification/rescission. If granted: The November 25, 1985 Decision and Order (Case No. RF176-7), issued to UCO Oil Company in response to the firm's application for refund in the Inland, USA refund proceeding, would be modified.
Jan. 7, 1986	Philadelphia Electric Co., et al., Philadelphia, PA	KRR-0004	Request for modification/rescission. If granted: The November 27, 1985 Decision and Order issued to the Philadelphia Electric Company, et al. (Case No. KRZ-0009) regarding a request to participate in the enforcement proceeding involving Texaco, Inc. (Case No. DRO-0199) would be rescinded.
Jan. 8, 1986	F.H. Moorhouse, Inc., Albion, IN	KEE-0015	Exception to the reporting requirements. If granted: F.H. Moorhouse, Inc. would no longer be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Jan. 10, 1986	Natural Resources Defense Council, Washington, DC	KFA-0010	Appeal of an information request denial. If granted: The December 11, 1985 Freedom of Information Request Denial issued by the Office of International Security Affairs would be rescinded and the Natural Resources Defense Council would receive access to the classified addendum to the September 18, 1985 statement of Roger F. Batzel.

REFUND APPLICATION RECEIVED

[Week of Jan. 3 to Jan. 10, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
8/16/85	Lowe/Stan's Hardware	RF206-5.
1/6/86	City Service/Howard "Slim" Hogiman.	RF219-4.
1/6/86	Zia/Standard Welding Works, Inc.	RF216-4.
1/6/86	Mobil/Charles Lindner	RF225-1.
1/6/86	Quaker State/Frost Distributing Co., Inc.	RF213-14.
1/6/86	General Equities/Mike's Getty	RF224-1.
1/7/86	Mobil/Frank-A-Timpani Service	RF225-2.
1/9/86	Gelf/Donald R. Ermel	RF40-3090.
1/9/86	Quaker State Refund Applications.	RF213-15 thru RF213-44.
1/10/86	Amoco/Milwaukee County Transit System.	RF21-12401.
1/10/86	Eastern/Frank M. Speaks, Jr	RF215-6.

[FR Doc. 86-2836 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of January 10 Through January 17, 1986

During the Week of January 10 through January 17, 1986, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be the aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

[Week of Jan. 10 through Jan. 17, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 13, 1986	Eastern Petroleum Corp., Enfield, NC	KEE-0016	Exception to the reporting requirements. If granted: Eastern Petroleum Corporation would not be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Jan. 14, 1986	Beard Oil & Supply, Inc., Mt. Pleasant, MI	KEE-0017	Exception to the reporting requirements. If granted: Beard Oil & Supply & Inc. would not be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Jan. 14, 1986	MGPC, Inc., Los Angeles, CA	KRZ-0016	Interlocutory. If granted: The revised Proposed Remedial Order issued to MGPC, Inc. by the Economic Regulatory Administration on May 4, 1984, would be dismissed.
Jan. 14, 1986	Mountain Oil, Inc., Walla Walla, WA	KEE-0016	Exception to the reporting requirements. If granted: Mountain Oil, Inc. would not be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Jan. 15, 1986	Consolidated Materials, New Orleans, LA	KRX-0008	Supplemental order. If granted: A new date and provisions would be established for an evidentiary hearing in the Consolidated Materials, Inc. Proposed Remedial Order proceeding (Case No. HRO-0107).

REFUND APPLICATIONS RECEIVED

[Week of Jan. 10 to Jan. 17, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/13/86	Aminoil/Evelyn M. Carson	RF139-143.
1/13/86	Eastern/Bausum & Duckett Electronic Company, Inc.	RF215-7.
1/13/86	Zia/Walton Construction Co., Inc	RF216-5.
1/13/86	Leese/Wynn J. Kraus	RF211-8.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 10 to Jan. 17, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/13/86	Conoco/Kelley Williamson Company.	RF220-2.
1/13/86	Conoco/Kendall Petroleum	RF220-3.
1/14/86	Midway/Charles Sonneville	RF207-3.
1/14/86	Mobil/William J. Grady	RF225-4.
1/14/86	Pasco/Whiting Bros	RF222-2.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 10 to Jan. 17, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/14/86	Amoco/Sauvage Gas Company	RF21-12402.
1/15/86	Mobil/Thomas A. Brown	RF225-5.
1/14/86	Union Texas/Winn Dixie Stores, Inc.	RF140-35.
1/16/86	Indian/Skowhegan Robo Wash	RF226-1.
1/16/86	Mobil/Beltline Mobil Service	RF225-6.

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REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 10 to Jan. 17, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/16/86	National Helium, Amoco, Chester/Louisiana	RQ9-262, RQ21-263, RQ23-264.
1/15/86	Quaker State/Southwest Central Rural Electric Cooperative Corp.	RF213-45.
1/16/86	Mobil/Troiano Fuel Oil Company	RF225-7.
1/16/86	Mobil/Stieves Service Station, Inc.	RF225-8.
1/16/86	Conoco/Northville Industries Corp.	RF220-4.
1/17/86	Aminoil/Xeron, Inc	RF139-144.

[FR Doc. 86-2837 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $83,646 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Hicks Oil and Hicks Gas Company, Inc. of Roberts, Illinois (Case No. HEF-0091). The fund will be available to certain customers who purchased propane from Hicks' wholly owned subsidiary, Rocket Supply Company, during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register** and should be addressed to the Hicks Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-0091.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Hicks Oil and Hicks Gas Company of Roberts, Illinois. The Consent Order settled possible pricing violations with respect to sales of propane by Hick's wholly owned subsidiary, Rocket Supply Company, during the November 1, 1973 through December 31, 1975 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on August 13, 1985. 50 FR 33829 (August 21, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased propane from Rocket Supply Company during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

January 31, 1986.

Name of Firm: Hicks Oil and Hicks Gas Company, Inc.

Date of Filing: October 13, 1983

Case Number: HEF-0091

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Hicks Oil and Hicks Gas Company, Inc. (Hicks) of Roberts, Illinois.

I. Background

Hicks is a "reseller-retailer" of propane as this term was defined in 10 CFR 212.31 and was therefore subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Rocket Supply Company (Rocket), a wholly owned subsidiary of Hicks, was conducted for the period November 1, 1973 through December 31, 1975 (the audit period). Subsequently, the ERA issued a Notice of Probable Violation (NOPV) to Hicks on February 8, 1980. In the NOPV, the ERA alleged that, during the audit period, Rocket overcharged its wholesale customers by $369,029.40 in sales of propane. On October 16, 1981 Hicks entered into a Consent Order with the DOE in order to settle all disputes and claims between Hicks and the DOE regarding Rocket's compliance with the DOE price regulations in sales of propane during the audit period (hereinafter known as the consent order period). In the Consent Order, Hicks agreed to remit $69,028.58 to the DOE for deposit in an interest bearing escrow account.[1] The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Hicks does not admit it committed any such violations.

On August 13, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 50 FR 33829 (August 21, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they are eligible to receive a refund from the monies remitted by Hicks. We noted that the ERA audit file identifies 20 wholesale customers who purchased propane from Rocket and specifies the amounts these customers were allegedly overcharged.[2] We specifically proposed to refund proportionate shares of the consent order fund to these customers.

A copy of the PD&O was published in the **Federal Register** on August 21, 1985, and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to those customers whose names and addresses were listed in the ERA audit file. Comments supporting OHA's efforts to make direct restitution to parties who have been affected by alleged violations of the petroleum price regulations were filed by the National Council of Farmer Cooperatives. We also received comments filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments argue that state governments are the appropriate recipients of second stage refunds. However, the purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the funds. Therefore, it would be premature for us to address the issues raised by the States' comments concerning the disposition of any residual funds until after all meritorious first stage claims have been paid.[3]

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process in order to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Hicks consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

The distribution of refunds will take place in two stages. In the first stage refund monies will be refunded to those wholesale customers who purchased propane from Rocket during the consent order period and who demonstrate that they were injured by Rocket's alleged overcharges. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶85,048 (1982). However, we will not discuss second-stage refund procedures in this Decision and Order.

A. Refund Claimants

During the first stage of the refund process, the Hicks consent order fund will be distributed to claimants who satisfactorily demonstrate that they were injured by Rocket's alleged regulatory violations.[4] As we indicated earlier, the ERA audit file identifies 20 wholesale customers who were allegedly overcharged by Rocket in sales of propane. These Rocket customers fall into one of two categories: Reseller i.e., retailer or wholesaler, or end-user. *See* Appendix to this Decision. The audit file also indicates the amount which each customer was allegedly overcharged. In our view, these identified customers are most likely the parties who were adversely affected, at least initially, by any overcharges by Rocket.[5]

B. Showing of Injury

In order to qualify for a refund, resellers of Rocket propane must show that during the consent order period they would have maintained their prices for the product at the same level had the alleged overcharges not occurred. Accordingly, a reseller of Rocket propane should show that during the consent order period, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *Office of Enforcement*, 10 DOE ¶85,056 (1983); *Office of Enforcment*, 10 DOE ¶85,029 (1982). In addition, a reseller must show that it had a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶85,014 (1982).

In the PD&O, we also proposed to adopt presumptions which have been used in many prior refund cases. The presumptions proposed in the PD&O, and being adopted here, will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. *See* 10 CFR 205.282(e).

1. Applicants Claiming a Refund of $5,000 or Less

As stated in the PD&O, we recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of propane from the consent order firm. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims presumption to assure that the costs of filing and processing refund applications do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶85,116 (1984); *Marion Corp.*, 12 DOE ¶85,014 (1984) (*Marion*). We will adopt such a presumption in this case. Therefore, any reseller applicant claiming a refund of $5,000 or less need no make a detailed showing of injury in order to be eligible to receive a refund.[6]

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[1] Hicks remitted a total of $83,646.27 to the DOE. This amount includes interest on Hicks' installment payments of the consent order amount to the DOE.

[2] Although the Hicks Consent Order does not mention Rocket by name, it expressly states that it is intended to settle the DOE's claims against Hicks with respect to the "specified transactions" which allegedly resulted in the overcharges. Consent Order ¶¶ 4 and 5. On the basis of the language in the Consent Order and the allegations set forth in the NOPV, we have determined that the Consent Order is limited to settling the claims and disputes regarding Rocket's alleged overcharges to wholesale customers. Accordingly, this refund proceeding establishes procedures for the disbursement of funds to Rocket's wholsale customers only.

[3] It is not clear, however, that any of these States have a direct interest in this proceeding because none of the propane sales took place in these States.

[4] In past Decisions, this Office has made a finding that affiliates of a consent order firm, even though they may have made "purchases" from the firm during the consent order period, are not eligible for refunds because the refund would effectively inure to the consent order firm. *See, e.g., Aztex Energy Co.*, 12 DOE ¶85,116 at 88,359 n.2 (1984). We will adopt that finding in this Decision as well.

[5] Rocket's sales to another firm, Bumps LP Gas (Bumps), are documented in the ERA audit file. However, according to these records, Bumps was not overcharged. Bumps is therefore not eligible for a refund in this proceeding.

[6] In the present case, only five of the 20 Rocket customers listed in the Appendix are eligible to apply for refunds over $5,000. If any of these five claimants chooses to apply for a refund based on the threshold level, it will not be required to make a showing of injury beyond volumes purchased.

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2. Spot Purchasers

Resellers that made spot purchases from Rocket will be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser would not have made spot market purchases of a firm's product at increased prices unless it was able to pass through to its customers the full amount of the firm's selling price. *See Vickers*, 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

3. End-Users

In the PD&O, we made a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the time covered by the Consent Order, and thus were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶85,072 (1983); *see also Texos Oil & Gas Corp.*, 12 DOE ¶85,069 (1984), and cases cited therein. We have received no comments objecting to this finding. We will therefore adopt our proposal that end-users of Rocket propane need only document their purchase volumes from the firm to make a showing that they were injured by the alleged overcharges.[7]

C. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. In the PD&O, we proposed that the maximum refund for the customers listed in the Appendix be based on the amount they were allegedly overcharged, as indicated in the ERA audit file. Although we recognize that the ERA audit file and NOPV do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case.

Specifically, we note that the ERA audit was very narrow in scope, that an NOPV had been issued, that the Consent Order was limited to "specified transactions" which occurred during the same time period as the audit, and that Rocket had a relatively small number of customers. Because of these factors, the information contained in the ERA audit file and NOPV can be used for guidance in fashioning a refund plan which is likely to correspond closely to the injuries experienced. *See, e.g., Marion*. To calculate the maximum refund amount for each identified customer listed in the Appendix, we will therefore multiply the alleged overcharge amounts for each firm by a pro rata factor, determined by dividing the applicable consent order amount ($83,646.27) by the total alleged overcharges in sales to wholesale customers ($369,029.40). This yields a pro rata factor of 0.22666. The potential refund, rounded to the nearest dollar, for each customer listed in the ERA audit file is set forth in the Appendix to this Decision. The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Hicks consent order fund. Accordingly, we shall now accept applications for refund from eligible customers who purchased propane from Rocket during the consent order period. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

1. The name of the consent order firm, Hicks Oil and Hicks Gas Company, Inc., the case number HEF-0091, and the applicant's name should e prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the Rocket propane i.e., whether it was a reseller or end-user.

4. The volume of Rocket propane that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges. Alternatively, an applicant may submit a signed statement certifying that it was a purchaser of Rocket propane during the consent order period and explaining why it cannot provide the requested documentation.

5. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations, and

(b) submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may compare the prices it paid for Rocket propane with the prices paid for that product by its competitors to show that price increases to recover alleged overcharges were infeasible.

6. A statement of whether the applicant was in any way affiliated with Hicks. If so, the applicant should state the nature of the affiliation.

7. A statement of whether there has been any change in ownership of the entity that purchased propane from Hicks since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

8. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for refund. *See* 10 CFR 205.9(d).

9. The following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the Federal Register. A copy of each Application will be available for Public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It is Therefore Ordered That

(1) Applications for Refund from the funds remitted to the Department of Energy by Hicks Oil and Hicks Gas Company, Inc. pursuant to the Consent Order executed on October 16, 1981 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[7] In its comments, the National Council of Farmer Cooperatives requested that the OHA continue its practice of considering agricultural cooperatives to be end-users for purposes of the showing of injury required of refund claimants. We intend to do so in this proceeding with respect to those volumes of propane that cooperatives sold to their members. *See, e.g., Apco Oil Corp.*, 12 DOE ¶85,149 at 88,459 (1985). Sales by cooperatives to non-members, however, will be treated the same as sales by any other resellers.

APPENDIX

Customer	Potential refund
Allerton Supply Co.	$8,384
Bloomfield LP Gas	51
Boente Bros. Propane	20,051
Bryant & Son LP Gas Co.	1,971
Cender Gas Co.	20,309
Flessner & Dultsman	405
Hicks Grain Terminal [1]	336
Hi Lo Gas Co. [1]	2,769
Hook Bros. LP Gas Co.	36
Lake Fork Grain Co.	53
Mt. Pulaski Products	359
Mainline Petroleum	569
Patterson Bros. Propane	18,667
C.T. Rees & Son	557
Scranton Industries	226
Southern States Co-op.	1,849
W. E. Stoll Coal & Gas Co.	8,685
Tate's Blue Flame Gas	27
Wescove School [1]	18
Zinale Farms	322
Total	83,644

[1] We sent copies of the PD&O to the firms marked with an asterisk, but they were returned to this office because of incorrect addresses. These firms may still apply for refunds and may contact this Office for a copy of our determination. We plan to enlist the plan help of the consent order firm in locating these potential claimants.

[FR Doc. 86–2842 Filed 2–7–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a $37,000 consent order fund to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Gibbs Industries, Inc. of Revere, Massachusetts (Case No. HEF–0079).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to Gibbs Industries, Inc. Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case No. HEF–0079.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a Consent Order entered into by Gibbs Industries, Inc. of Revere, Massachusetts and the DOE which settled possible regulatory violations regarding the firm's allocation of motor gasoline during the consent order period, May 1979 through June 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by Gibbs pursuant to the Consent Order. The DOE has tentatively established procedures under which certain purchasers of Gibbs motor gasoline during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 29, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 29, 1986.

Name of Firm: Gibbs Industries, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0079.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Gibbs Industries, Inc. (Gibbs) of Revere, Massachusetts.

I. Background

Gibbs is engaged in the reselling and retailing of petroleum products and was therefore subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. An ERA audit of Gibbs revealed possible violations of the regulations governing the allocation of petroleum products. 10 CFR Part 211, Subparts A and F. The ERA specifically alleged that during the months of May and June 1979, Gibbs failed to supply certain of its customers with their adjusted base period allocation of motor gasoline.

In order to settle all claims and disputes between Gibbs and the DOE regarding the firm's allocation of motor gasoline during May and June 1979 (hereinafter referred to as the consent order period), Gibbs and the DOE entered into a Consent Order on January 7, 1981. The Consent Order refers to the ERA's allegations of allocation infractions, but notes that there was no finding that violations actually occurred. Additionally, the Consent Order states that Gibbs does not admit that it violated the regulations. Under the terms of the Consent Order, Gibbs remitted $37,000 to the DOE for deposit in an interest-bearing escrow account for ultimate distribution by the DOE.

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II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines that may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). After reviewing the record in the present proceeding, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Gibbs consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by Gibbs' allocation practices during the consent order period. The ERA audit file contains the names of Gibbs' base period customers who received less than their adjusted base period customers who received less than their adjusted base period allocation of motor gasoline for May and/or June 1979. These are the parties most likely adversely affected, at least initially, by Gibbs' alleged allocation infractions. We propose to adopt the following standards and presumptions to assess the claims of these customers.[1]

First, we will generally assume that the customers listed in the ERA audit file were injured by Gibbs' alleged allocation violations. This assumption is based on a number of factors. The first factor is the period of time covered in the Gibbs audit: May and June 1979. This was a period of severe supply shortages in the petroleum industry, and firms generally were able to sell all the motor gasoline they were able to obtain. *Cf. Colony West Gulf*, No. DEE–4579 (June 22, 1979) (Proposed Decision). *Finalized sub nom. AIA Exxon*, No. DEE–2426 (August 20, 1979), and *C&C Garage & Towing*, No. DEE–3362 (June 20, 1979) (Proposed Decision), *finalized* at 5 DOE ¶ 81,249 (1980) (when shortages exist, any firm that obtains additional quantities of product could sell it). Furthermore, we note that the Gibbs Consent Order is focused on specific alleged allocation violations based upon a detailed audit. The ERA audit file identifies 147 customers of Gibbs who were affected by the firm's alleged allocation violations and indicates the difference between each customer's adjusted base period allocation of motor gasoline and the amount which it actually purchased from Gibbs. *See* the Appendix to this Proposed Decision.[2]

Therefore, we propose to adopt the presumption that each customer listed in the ERA audit file was injured with respect to any gallons of motor gasoline to which it was entitled, but did not receive from Gibbs.[3]

Second, we propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all customers experienced that same loss per gallon as a result of not receiving the correct adjusted base period allocation of motor gasoline from Gibbs during the consent order period. The assumption that the injury in this case was the same for each gallon lost is reasonable since the customers were in the same marketing area and is not inconsistent with the information contained in the audit file. As we have stated in prior cases, allocating refunds on a volumetric basis is efficient, treats all firms similarly and avoids detailed examination of the impact on each firm of the alleged violation. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982).

Utilizing the volumetric refund presumption will also further our goal of granting restitution to as many claimants as possible by simplifying the process through which refund applications are prepared and analyzed. In this case, the volumetric refund amount is calculated by dividing the consent order settlement amount ($37,000) by the total volume of misallocated motor gasoline (383,670 gallons), yielding a per gallon volumetric refund amount, exclusive of interest, of $0.096437. An eligible claimant will receive a refund determined by multiplying the volumetric refund amount by the number of gallons to which it was entitled, but did not receive from Gibbs during the consent order period (excluding any gallons obtained from alternative sources).[4] In addition, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

All refund applicants will be required to indicate, for each month of the consent order period, their base period allocation of motor gasoline and the number of gallons actually purchased from Gibbs, and the base period allocation and gallons purchased from other suppliers. If a claimant lacks this data, but is listed in the attached Appendix, it may certify that, during May and June 1979, (i) it had a supplier-purchaser relationship with Gibbs pursuant to 10 CFR Part 211, and (ii) it did not receive motor gasoline from another supplier.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Ubon Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

Refund applications in the Gibbs proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Consent Order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the unlikely event that the total amount of valid claims exceeds the funds available in the escrow account, all refunds will be reduced proportionately. If, on the other hand, money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent second-stage proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed.

It Is Therefore Ordered That

The refund amount remitted to the Department of Energy by Gibbs Industries, Inc. pursuant to the Consent Order executed on January 7, 1981, will be distributed in accordance with the foregoing Decision.

Appendix

I. Gibb's Wholesale Accounts

Name of customer	Gallons not received May 1979	Gallons not received June 1979
A. Address Known		
Arsenault, Harold	7,705	
Clean Machine	282	
Coviello & Son [1]	149	
Deering Lumber		156
Eddy, James	20	
Hallman Chevrolet	270	
Pleasant Park Yacht Club [1]		98
Richardson, Harold	1,684	
B. Address Unknown		
Acorni Corp	6,865	
Aranosian Oil Co	1,912	
Avellino, Silveo	11,100	
B&D Enterprises	276	
Ballard Oil	2,001	
Barnes, William	2,531	
C&C Elliot	951	
CDC, Inc	1,564	
Carl Oil Co	2,362	
Center Market, Inc	1,262	
Chapman Oil Co	157	
Charles Auto Body and Tire [1]	20	
Charles C. Towne & Sons	270	81
Charles Deemers, Inc	249	
Chelmsford Fuel Trans	1,449	
City of Saco, Maine	1,047	51
Colonial Express	232	
Conway, Clinton	5,552	
Cray Oil	5,031	
Daigle, Claude [1]	106	
Davis, Frank Jr [1]	28	
Dennis K. Burke, Inc	5,806	
Derring, Albert [1]	43	
Dinola Fuels, Inc	711	
Disilva Truck Service	80	
Duquette, O	2,333	
Dutton Tire & Auto Dist	622	1,870
Duval, Robert L	1,212	12,635
Dystart Service	2,178	4,672
Ecology Oil Corp	4,837	
Edgemont Garage & Oil	2,919	
Freed Oil Co	269	
Gasland (Good Hope)	18,129	
Geo. E. Warren Co	2,992	
Goldman Paper	68	
Gorham Town Garage	252	
Green Brothers Oil & Co., In	126	
Hall, Hoyt T	7,490	
Harbor Supply	186	
Hill Oil Co	5,227	19,228
Hoole Richard E	1,865	
JBB, Inc	9,839	
Kartland, Inc	23	
L.J. Bouchard & Son	2,113	
Lovetere, Angelo	376	
Lucas, James	1,202	
Maier, Paul	5,583	
Maine Coal Sales	630	
Malden Taxi	750	
McCollister	436	
Milliard, Fred [1]	52	
Montgomery, A	988	
Moore, Tom	617	
Mosher Farm [1]	27	
Mullerkey, Paul	1,715	
Munces Superior Petroleum	564	
Pages Service, Inc	4,478	3,120
Paul Martin, Inc	205	289
Piglet Market	1,312	
Prentiss, Arthur Jr. [1]	30	
Pressman, Melvin	212	
R.L. Greenlaw & Sons, Inc	630	79
Red's, Inc	6,006	
Remi Fortin Construction	730	
Rent A Took, Inc	273	
Richdale Dairies	3,206	
Riverside Anchorage [1]	90	
Rohner Service, Inc	1,257	
Romanchuk, Al	2,725	
Rossi, Steve	1,431	
Rousseau, G.A	3,612	
Roy's Garage	685	
Saco Brick [1]	84	
Schlager, Joseph	1,777	
Spang, Phil [1]	96	
Stevens, Walter [1]	44	
Stop-N-Go [1]	150	
Sweetster's Home [1]	106	
Teixeira, E	2,771	
Terry Oil & Heating	275	
Thibeault Oil	540	440
United Tire	1,501	
Wakefield Moving & Storage	472	
Waytra Realty	11,688	
Welch, Frank	1,123	
Woonsocket Consumer Coal	527	

[1] Using the volumetric method of calculating refunds, these firms do not qualify for the $15 minimum required to file a refund application.

II. Gibb's Dealer Accounts

Name of customer	Gallons not received May 1979	Gallons not received June 1979
A. Address Known		
Beers, Richard R		7,408
Berube, Jos	6,587	11,558
Bourassa, William	4,744	239
Clean Machine		950
Cote's Garage, Inc	552	
Daniels, Warren C		4,228
Martinee, Joseph	200	3,957
B. Address Unknown		
A&G Auto		856
Arthur Wolfe Tire Co	1,698	
Arundel Tulisa	469	
Bartlett, Clarence	7,829	
Bates, Clifford		578
Bill & Andy's	3,734	5,561
Bob Brest Buick		329
Brighton Auto Service	174	1,834
Bruhms, Arthur	610	508
Buster's Service	1,260	
Cormier, Ronald	1,304	1,505
D. Duquette		5,289
Donovan, Thomas		366
Duff's Littleton		6,205
Ferris, Thomas [1]	66	
Forbes, George	4,132	1,963
Foster, Charlie	7,936	
Granita State Gas Station		241
Greenier, Andrew		6,999
Hodge, William		2,498
Jiffy Mart		171
L.J. Bouchard & Son		177
Lampron, Huberi	3,016	

[1] Using the volumetric method of calculating refunds, these firms do not qualify for the $15 minimum required to file a refund application.

II. Gibb's Dealer Accounts—Continued

Name of customer	Gallons not received May 1979	Gallons not received June 1979
Latorella & Frongell		1,361
Lemieux, Hercules	215	
Levyssohn, J.V. Permis		2,049
Maier, Paul		105
Morel, Edmund		779
Mullerkey, P		934
Nierberle, Ernest	1,547	
North Reading BP		6,403
Oliver, G		3,552
Pressman, Melvin		130
Ray, Leonard		4,060
Reggie's BP		594
Rohner Service		1,295
Rossi, Steve		1,302
Samson, Lionel	1,777	145
Schlager, Joseph		1,323
Sebago, Portland		2,967
Steelstone Industries, Inc	266	
Sullaway, Sam		6,969
Venuti, Robert	421	
Welch, Frank		4,777
York Oldsmobile [1]		130
Zannini, David	2,159	5,470

[1] Using the volumetric method of calculating refunds, these firms do not qualify for the $15 minimum required to file a refund application.

[FR Doc. 86–2843 Filed 2–7–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $75,102.50 obtained as a result of a consent order which the DOE entered into with Power Pak Company, Inc., a wholesale purchaser reseller of petroleum products located in Houston, Texas. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Power Pak consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF–0155 and should be addressed to: Office of Hearings and Appeals, Deparment of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6602.

[1] Presumptions in refund cases are specifically authorized by § 205.282(e) of the DOE procedural regulations in order that refund applications may be considered in an efficient and equitable manner.

[2] *Contra Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982) (RFI) (Applicants seeking refunds from a "global" consent order fund required to show injury).

[3] This presumption will not apply to firms which were able to obtain sufficient quantities of motor gasoline elsewhere. The acquisition of product from other sources would have mitigated the injury which such customers experienced as a result of Gibbs' alleged failure to supply them with their full allocation. However, a claimant which purchased product from alternative sources will still be eligible for a refund, if, for example, it shows that it paid a significantly higher price for the product and was not able to pass the higher price through to its customers.

[4] Some customers may claim that they suffered an injury greater than that which has been approximated by the volumetric refund amount. In order to be eligible for a refund at a level in excess of the volumetric refund amount, these firms must make the showings required of allocation claimants in other Subpart V proceedings. *See, e.g., RFI: cf. Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984) (refund above volumetric level approved for price violation claim). Specifically, they must document the net profits lost as a result of not receiving their adjusted base period allocation of motor gasoline during the consent order period.

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SUPPLEMENTARY INFORMATION: In accordance with §205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the DOE and Power Pak Company, Inc., which settled all claims and disputes between Power Pak and the DOE regarding the manner in which the firm applied the federal allocation regulations with respect to its sales of motor gasoline during the period August 1, 1979, through December 31, 1979 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Power Pak consent order funds was issued on November 13, 1985. 50 FR 47819 (November 20, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Power Pak pursuant to the consent order. The DOE has decided to accept Applications for Refunds from firms and individuals that were unable to purchase their adjusted base period allocations of motor gasoline from Power Pak during the consent order period. In order to apply for a refund, a claimant should submit enough information to demonstrate that its claim is well-founded, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, the DOE will consider a number of equitable factors such as, for example, whether the alleged violation had a significant deleterious impact on the claimant or caused any loss of profits, and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action.

As the accompanying Decision and Order indicates, Applications for Refunds may now be filed by customers that were unable to purchase their adjusted base period allocations of motor gasoline from Power Pak during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: February 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Petitioner: Power Pak Co., Inc.

Date of Filing: October 13, 1983.

Case Number: NEF-0155.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Power Pak Co., Inc. (Power Pak). This Decision and Order specifies the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

Power Pak is a "wholesale purchaser reseller" of refined petroleum products as that term was defined in 10 CFR 211.51 and is located in Houston, Texas. A DOE audit of Power Pak's records revealed possible violations of the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, Subparts A and F. The DOE alleged that between August 1, 1979, and December 31, 1979 (consent order period), Power Pak failed to supply certain of its base period customers with their adjusted base period allocations of motor gasoline.

In order to settle all claims and disputes between Power Pak and the DOE regarding the firm's motor gasoline operations during the period covered by the audit, Power Pak and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of allocation infractions, but notes that there was no finding that violations occurred. In addition, the consent order states that Power Pak does not admit that it violated the regulations.

Under the terms of the consent order, Power Pak was required, in a series of installments, to deposit $66,201, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Power Pak make its final payment on August 19, 1983.[1]

II. Jurisdiction and Authority To Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

On November 13, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable showing of injury as a result of Power Pak's alleged allocation violations in its sales of motor gasoline during the consent order period. 50 FR 47819 (November 20, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the Federal Register and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&O were mailed to potential claimants identified in the audit file whose addresses were available. Copies were also sent to various service station dealers' associations. None of Power Pak's customers submitted comments on the proposed procedures. Comments were submitted collectively on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. All of these comments concern the distribution of any funds remaining after all refunds have been made to injured parties. However, the purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Power Pak refund proceeding. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. *See Office Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, if would be premature for us to address the issues raised by the states at this time. Since no comments were received concerning the first-stage procedures, they will be adopted as proposed.

[1] Power Pak paid $75,102.50 including installment interest into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Power Pak account stood at $102,938.48 as of December 31, 1985.

III. Refund Procedures

In the first stage of the Power Pak refund proceeding, we will distribute the funds currently in escrow to claimants who demonstrate that they were injured by Power Pak's alleged allocation violations.[2] In order to consider refund applications in the most efficient and equitable way possible in view of the limited resources available, we will adopted a presumption regarding injury.

We will presume that if, during the course of the entire consent order period, a claimant received aggregate volumes of motor gasoline at least equal of to its adjusted base period allocation for that period, it was not injured by Power Pak's alleged failure to supply correct volumes during certain months. We believe that this presumption is justified in order to limit eligibility for refunds to only those firms that were most adversely affected by Power Pak's alleged allocation violations. *Aztex Energy Company*, 12 DOE ¶ 85,116 at 88,356 (1984). However, this presumption is rebuttable. For example, we will consider granting a refund to a claimant which shows that the injuries sustained during the months when Power Pak allegedly failed to supply it with its monthly allocations of motor gasoline significantly outweighed any benefits which accrued to the claimant as a result of its receiving more than its monthly allocations during the other months of the consent order period.

Each applicant should submit enough information to demonstrate that its claim is well-founded, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, we will consider a number of equitable factors such as, for example, whether the alleged violation had a significant deleterious impact on the claimant or caused any loss of profits, *see Aztex Energy Company*, 12 DOE at 88,356 (1984), and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action. *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,207 (1982); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,246 (1982). Additionally, we will consider the cost and general adequacy of any such replacement supply.

The OHA is also interested in knowing if a claimant took some contemporaneous action to mitigate its injury, since any firm affected by an allocation violation would probably have known of this situation immediately, as contrasted with a firm being overcharged. We might expect that a firm which was denied a portion or all of its gasoline allocation would immediately seek redress by: (1) Filing a complaint with or otherwise notifying the appropriate agency officials, *see* 10 CFR 205.201(a)(d), or (2) filing a private lawsuit under section 210 of the Economic Stabilization Act, or (3) taking some other mitigating action such as filing an exception request, a state set-aside application pursuant to 10 CFR 211.17, or otherwise obtaining substitute supplies. This information along with a consideration of the other equitable factors discussed above will allow the OHA to determine the appropriate refund for a particular claimant.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. See *e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

IV. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Power Pak consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refunds from individuals and firms that were unable to purchase their adjusted base period allocations of motor gasoline from Power Pak between August 1, 1979, and December 31, 1979.

There is no specific application form which must be used. In order to apply for a refund, each claimant must submit the following information:

(1) A description of any actions taken prior to the September 1, 1981 consent order date by which it attempted to mitigate the injury resulting from Power Pak's alleged allocation violations;

(2) Its adjusted base period allocation of motor gasoline from each of its suppliers for each month of the consent order period;

(3) Its actual purchases of motor gasoline from each supplier during each month of the consent order period;

(4) A description of its efforts to locate alternative supplies of motor gasoline; and

(5) A computation of lost net profits sustained as a result of Power Pak's alleged allocation violations.

A claimant must also state:

(6) Whether it has previously received a refund, from any source, with respect to the alleged allocation violations underlying these proceedings;

(7) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(8) Whether it is or has been involved as a party in DOE enforcement or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(9) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the Federal Register. A copy of each application will be avaialble for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the

[2] Many potential claimants, *i.e.*, firms identified in the ERA audit as having purchased less than their adjusted base period allocations of motor gasoline from Power Pak during at least one of the months of the consent order period, are listed in Appendices 1 and 2. Appendix 1 lists potential applicants for which we have complete addresses. In addition to publishing this Decision and Order in the Federal Register, we will contact these customers directly. Since we have no addresses for the potential claimants listed in Appendix 2, we will accept information regarding the present locations of these purchasers for a period of 90 days following publication of this Decision and Order.

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information has been deleted. All applications should refer to Case No. HEF-0135 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to Department of Energy by Power Pak Co., Inc. pursuant to the Consent Order executed on September 1, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: February 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix 1—Potential Claimants

Bear Creek Tire & Auto, 5608 Highway 6 North, Houston, TX 77084
Condo Oil & Gas Co., 3419 Mercer, Houston, TX 77027
Clarke Bottling Co., 1 Clarke Drive, Conroe, TX 77301
Community Grocery, 1485 West, New Caney, TX 77357
Corner Food Store #6, 5103 F M 1960 Rd. E, Houston, TX 77073
Four M. Market, 3001 F M 1266, League City, TX 77573
Growing Concern, 6021 Winsome, Houston, TX 77057
Gullo-Haas Toyota, 8335 North Freeway, Houston, TX 77068
H&M Food Mart, 3599 Spring Stuebner Rd., Spring, TX 77379
Handy Man, Inc., 6215 Frazier, S., Conroe, TX 77301
Leland Lincoln Mercury, 9645 North Freeway, Houston, TX 77037
Oil Chemical, 505 Hadley, Houston, TX 77002
Reneau Roofing, 1014 Gatecrest Drive, Houston, TX 77032
Tomball Conoco, 1335 W. Main, Tomball, TX 77350
Wanda Petroleum, P.O. Box 45896, Houston, TX 77045
Webb's Grocery & Feed, 33042 F M 2978, Magnolia, TX 77355
World Trade, P.O. Box 60398, Houston, TX 77060

Appendix 2—Potential Claimants, No Address Available

Alright Parking
Bargain Barn
Bellville
Big Fulton
Big Tin Barn
Budget
Charles Way
Corner Food Store #1
Corner Food Store #2
Corner Food Store #3
Corner Food Store #4
Corner Food Store #5
Crosley #1
Crosley #2
De Montrond Buick
Elflex Research and Exploration
Express Stop #2
Fowler's
Friendswood
Frizzell Pontiac
Fulton Car Wash
Galveston #2
Harvey's
Herman Miller
Home Telephone
Huntsville Freeway
I-10 (#202)
J.H.J. Venture
Lake Conroe Forest
Luke Johnson Ford
MPG Oil
Margin Drive-In
Martinez Conoco
Martin's
Max Mahaffrey
McCarty's
National Precast
Park Place
Plains Machinery
Porter Fina
Post Oak
Roadrunner C/W
S & M Food
Sam Montgomery
Scarborough's
Sunny's #1
Sunny's #25
Tanner's
W. Columbia
Western C/W
Willis
3-75

[FR Doc. 86-2897 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 9 Through December 13, 1985

During the week of December 9 through December 13, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Peat, Marwick, Mitchell & Co., 12/11/85, KFA-0004

Peat, Marwick, Mitchell & Co. filed an Appeal from search fees assesed by the Western Area Power Administration pursuant to a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the firm's FOIA request contained an unconditional promise to pay all search fees assessed by the DOE and, since the authorizing official had not exceeded the scope of the search as authorized by the firm, the assessed fees were reasonable. Accordingly, the Appeal was denied.

Remedial Orders

Fields Energy Resources, Inc., V.W. Fields, II, 12/12/85, HRO-0284

Fields Energy Resources, Inc. and V.W. Fields, II, its president, failed to object to a Proposed Remedial Order which the Economic Regulatory Administration issued to them jointly on February 18, 1985. All findings of fact and conclusions of law contained in the PRO were therefore deemed admitted.

The DOE found that ERA had established prima facie violations of the "layering" (10 CFR 212.186) and "PAM" (10 CFR 212.182 and 212.183) regulations, in the amounts of $361,800.80 and $45,807.15, respectively. DOE further found that V.W. Fields was jointly and severally liable for the total $607,366.95 violation. The PRO was modified to require restitutionary proceedings pursuant to 10 CFR Part 205, Subpart V.

Isthmus Trading Corporation, Richard Gonzales, 12/11/85, HRO-0252

Isthmus Trading Corporation and Richard Gonzales, its president, jointly objected to a Proposed Remedial Order which the Economic Regulatory Administration issued to them on September 14, 1984. In the PRO, ERA found that, during the period April through December 1980, Respondents sold crude oil at excessive prices under the layering rule, 10 CFR 212.186 and received $3,574,849.48 in overcharges. In considering the Respondents' objections, the DOE found that the services Respondents claimed to have performed did not constitute traditional and historical reseller services within the meaning of the regulation. The DOE further found that Richard Gonzales, the corporation's president and primary shareholder, was jointly and severally liable with ITC because he (i) participated in the transactions and (ii) benefited through bonuses and commissions resulting from the transactions. The DOE therefore concluded that the Proposed Remedial Order should be issued as a final order.

Oil-Tex Petroleum, Inc., David E. Myres, 12/10/85, HRO-0161

Oil-Tex Petroleum, Inc. and David E. Myres (Respondents) objected to a Proposed Remedial Order which the Economic Regulatory Administration issued to them. After considering the objections, the DOE found that Respondents had violated DOE regulations concerning layering, certification and permissible average mark up in crude oil sales. The DOE stated that recurring sales to a refiner of crude oil which was subsequently refined by that refiner would involve a traditional, historical service, if the crude oil was not otherwise generally available to the refiner. Such sales would therefore not violate the layering regulation. The DOE further decided that since Myres was personally involved in and derived personal benefit from the illegal transactions, he should be held personally liable for the resulting overcharges. Accordingly, Respondents were directed to remit $1,947,101.03 in overcharges, plus interest, to the DOE.

Request for Exception

Union Carbide Caribe, Inc., Phillips Petroleum Company and Phillips Puerto Rico Core, Inc., Commonwealth Oil Refining, Inc., 12/18/85, HEE-0022; HEE-0024; HEE-0025; HEG-0015; HEA-0002; HEA-0003; HEA-0004

Union Carbide Caribe, Inc., Phillips Petroleum Company and Phillips Puerto Rico Core, Inc., and Commonwealth Oil Refining, Inc. (the Applicants) each filed an Application for Exception from a March 11, 1982 decision of the Economic Regulatory Administration. The ERA had ordered each Applicant to repay excessive entitlement relief that it had received under the Naphtha Entitlements Program. 10 CFR 211.67(d)(5). In the Proposed Decision and Order, the DOE considered the requests for exception relief and concluded that the implementation of the ERA order would further reduce the already insufficient benefits received by the Applicants under the Naphtha Entitlements Program. No Applicant objected to this conclusion in the Proposed Decision and Order. Accordingly, the requested exception relief from the March 11, 1982 ERA order was granted. Commonwealth Oil Refining, Inc. filed a Statement of Objections to the Proposed Decision and Order in which it argued that although the Proposed Decision and Order properly granted the requested relief, it did not address the firm's additional request for prospective and retroactive exception relief from ERA's use of a single crude runs credit as a cap on the firm's entitlements benefits rather than a modified crude runs credit. In considering Commonwealth Oil's Statement of Objections, the DOE concluded that the firm's request for prospective exception relief was moot because of a decision by ERA in January 1981 to eliminate any cap on naphtha entitlements benefits. The DOE also concluded that the firm's request for retroactive exception relief should be denied because the firm could not show that in the absence of the requested relief, it would suffer irreparable injury. Accordingly, Commonwealth Oil's additional request for prospective and retroactive relief was denied.

Tommy Oil Company, 12/13/85, HRD-0120; HRH-0120; KRZ-0011

Tommy Oil Company filed a Motion to Dismiss and Motions for Discovery and Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order that the Economic Regulatory Administration issued to the firm on October 29, 1982. In considering the Motion to Dismiss, the DOE determined that the PRO established a prima facie case of a regulatory violation and, accordingly, denied the motion. In considering the firm's Motion for Discovery, the DOE determined that contemporaneous construction discovery was unwarranted because the firm failed to establish that the regulations at issue were ambiguous or inconsistently applied or interpreted by the DOE. The DOE also found that audit-related discovery was unnecessary since the audit methodology employed in this proceeding had been fully explained by the ERA in the PRO and had been elaborated upon in other submissions. Accordingly, the Motion for Discovery was denied. Finally, in considering the Motion for Evidentiary Hearing, the DOE determind that an evidentiary hearing should not be convened because the firm failed to present any disputed material issues of fact. Accordingly, that motion was also denied.

Eason Oil Company, 12/10/85, KEX-0004

The Economic Regulatory Administration requested a review of the propriety of exception relief that was granted to Eason Oil Company. *See Internationol Telephone & Telegraph Co.*, No. DXE-0021 (April 20, 1978) (unpublished decision). In considering the ERA's request, the DOE found that very serious questions existed regarding the level of general and administrative expenses reported during Eason's acquisition by the International Telephone and Telegraph Company. Accordingly, the DOE found that good cause existed for reopening the prior exception proceeding. In order to evaluate the propriety of the exception relief, the DOE required Eason to submit a breakdown of the expenses it included in its "General and Administrative Expenses" for several fiscal quarters. Furthermore, the DOE required Eason to submit an explanation for any changes of more than five percent from the level in those prior quarters.

Implementation of Special Refund Procedures

Conlo Service, Inc., 12/13/85, HEF-0053

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling $5,615.95 obtained as a result of a Consent Order entered into between the DOE and Conlo Service, Inc. of East Farmingdale, New York. The Decision sets forth refund application procedures for customers who purchased motor gasoline from Conlo during the period covered by the Consent Order, April 1, 1979 through September 30, 1979. The Decision outlines specific information to be included in refund applications and discusses certain presumptions and findings which the DOE will utilize in analyzing the applications.

Conoco Inc., 12/12/85, HEF-0010; HEF-0484

The DOE issued a Decision and Order which establishes procedures to be used for distributing $14 million received from Conoco pursuant to a 1982 consent order. The consent order settled all disputes regarding Conoco's compliance with the DOE petroleum price and allocation regulations. The funds, plus accrued interest, will be available to customers who were injured as a result of their purchases of covered petroleum products from Conoco during the consent order period, January 1, 1973 through January 27, 1981. The Decision outlines specific information to be included in refund applications and discusses certain presumptions and findings which the DOE will utilize in analyzing the applications.

OKC Corporation, 12/13/85, KQF-0011

The DOE issued a Decision and Order which establishes criteria for the second stage disbursement of $1,981,111 in consent order funds provided by OKC Corporation. The DOE determined that the adverse effects of OKC's pricing practices during the consent order period were regional in nature, and generally confined to ten states in which OKC conducted the bulk of its business operations. The DOE therefore divided the funds remaining in the refined products pool of the OKC escrow account among the ten states in shares which reflect the volume of price-controlled OKC products consumed in each State during the consent order period. The DOE also provided that the funds would be disbursed upon the approval OHA of restitutionary plans submitted by the states.

Refund Applications

Crystal Petroleum/Tesoro Petroleum Distributing Company, 12/12/85, RF190-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Tesoro Petroleum Distributing Company (Pedco), a reseller of No. 2 diesel fuel purchased from Crystal Petroleum. Pedco provided purchase volume figures for the consent order period and requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Crystal Special Refund Proceeding, the DOE determined that Pedco should receive a refund based on the volumes of No. 2 diesel fuel it purchased from Crystal during the consent order period. The total refund amount approved in this Decision is $2,057 ($1,353 principal plus $704 interest).

F.O. Fletcher, Inc./Blue & White Transport, Inc., 12/13/85, RF172-16

The DOE issued a Decision and Order concerning an Application for Refund filed by Blue & White Transport, Inc. (BWT), a reseller of motor gasoline and diesel fuel purchased from F.O. Fletcher, Inc. BWT requested a refund of $11,915, a prorated portion of the alleged overcharges to the firm, but was unable to make a sufficient showing of injury at that level. In accordance with the procedures established in the Fletcher Special Refund Proceeding, the DOE determined that BWT should receive a refund equal to the $5,000 threshold amount. The total refund amount granted in this Decision is $9,394 ($5,000 principal plus $4,394 interest).

Gulf Oil Corporation/Hicks Plaza, Inc., 12/10/85, RF40-449

The DOE issued a Decision and Order concerning an Application for Refund filed by Hicks Plaza, Inc., a direct purchaser of Gulf Oil Corporation petroleum products. Hicks applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. To support its refund claim, Hicks presented material indicating that it banked approximately $300,000 in increased product costs during the period October 1974 through February 1975, and that those product costs were not subsequently recouped. The DOE concluded that Hicks

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would not have been required to reduce selling prices to its customers by the amount of the claimed refund, and that the firm therefore is eligible for a refund based on its purchases from Gulf during the period October 1974 through January 1976 (the end of the consent order period). The DOE granted Hicks a total refund of $27,013 ($23,206 principal plus $3,805 interest).

Gulf Oil Corporation/Spartan V&H Oil Company, 12/12/85, RF40-3081

The DOE issued a Decision and Order concerning a November 12, 1985 Decision and Order, *Gulf Oil Corp./Gordon C. Vorn, Inc.*, 13 DOE ¶ 85,264 (1985). The DOE determined that the November 12 Decision had granted Spartan V&H Oil Company an excessive refund. Accordingly, the DOE required Bassman, Mitchell and Alfano, representing Spartan, to remit to the DOE $500 for deposit into the Gulf escrow fund account.

Joc Oil, Inc./Tenneco Oil Company and Joc Oil, Inc./Amerada Hess Corporation, 12/09/85, RF109-1; RF109-3

The DOE issued a Decision and Order concerning Applications for Refund filed by Tenneco Oil Company and Amerada Hess Corporation, each seeking a portion of funds remitted by Joc Oil, Inc. pursuant to a consent order that Joc Oil entered into with the DOE. The DOE found that the refund applications filed by Tenneco and Amerada Hess were based upon their spot purchases which did not reflect a supplier/purchaser relationshi with Joc Oil. The DOE stated that the firms' discretionary decision to make the spot purchases was very likely to have served their profit goals. Since there was no evidence that Tenneco and Amerada Hess were injured from their spot purchases from Joc Oil, the DOE denies their refund requests.

Little America Refining Company, Inc. Lockhart, 12/13/85, RF112-3

The DOE issued a Decision and Order concerning an Applications for Refund filed by Lockhart, seeking a portion of funds remitted by Little America Refining Company, Inc. (Larco), pursuant to a consent order that Larco entered into with the DOE. Lockhart claimed that it purchased 102,051 gallons of motor gasoline from Larco during the consent order period. Based on the per gallon refund money available, Lockhart would be eligible for a refund of $36.55 plus accured interest. Since Lockhart's claim did not exceed the threshold level of $5,000, the DOE applied the presumption of injury method, and approved Lockhart's refund request without requiring a proof of injury.

Palo Pinto Oil & Gas/Mississippi, 12/13/85, RQ5-257

The DOE issued a Supplemental Order rescinding an earlier Supplemental Order. The earlier Supplemental Order authorized the disbursement of an additional second stage refund of $5,678 from the Palo Pinto Oil & Gas escrow account to the State of Mississippi. *See Palo Pinto Oil & Gas/Mississippi*, 13 DOE ¶ 85,313 (1985).

Tenneco Oil Company/Major Oil Company of Georgia, 12/13/85, RR7-6; RR7-9

Major Oil Company of Georgia filed two Motions for Reconsideration in connection with its Application for Refund for a portion of the Tenneco consent order funds. At the time of its original application in 1982, the firm had failed to provide cost bank information and was therefore limited to the 600,000-gallon annual threshold. Major filed two Motions for Modification in March 1985, which were denied by the DOE. In considering the firm's subsequent Motions for Reconsideration, the DOE found that because of the administrative ease in revaluating Major's data and the relatively small size of the claim, the DOE should reconsider Major's application.

Major submitted reconstructed cost bank figures sufficient to support its motor gasoline refund claim. In addition, it provided information from *Platt's* as evidence of competitive disadvantage. For regular and premium grades of gasoline, Major was granted a refund for gallons purchased in months when its purchase price was higher than Platt's average market price for the region. For unleaded gasoline, Major was granted a refund for the post-July 1975 period for gallons purchased in months when its purchase price was higher than EIA price data for those months and a refund for earlier months based on data extrapolated therefrom.

Major had previously received a Tenneco refund of $1,358 based on 3,970,954 gallons. The DOE therefore subtracted this amount from Major's total refund and granted the firm an additional refund of $2,101 ($1,333 principal plus $768 interest) based on additional purchases of 3,897,925 gallons.

Texas Oil and Gas Corporation/Gulf States Oil & Refining Company, 12/10/85, FR42-11

Gulf States Oil & Refining Company (Gulf States) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Texas Oil and Gas Corporation (TOGCO). The DOE found that Gulf States paid above-market average prices for propane in all of the months in which purchases were made during the TOGCO consent order period. Using a three-step methodology, the DOE calculated a range of Gulf States' competitive disadvantage. A refund of $83,159.24 was found to equitably compensate Gulf States for any harm experienced as a result of TOGCO's alleged overcharges. In addition, the firm received accrued interest of $39,634.35 for a total refund of $122,793.59.

Dismissals

The following submissions were dismissed:

Name and Case No.

Defense Fuel Supply Center—RF192-5
Fielda Energy Resources, Inc./V. W. Fields II—KRW-0001
Hill Petroleum Company—RF42-2

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
February 3, 1986.

[FR Doc. 86-2896 Filed 2-7-86; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of January 13 Through January 17, 1986

During the week of January 13 through January 17, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Crown Central Petroleum Corporation, 1/17/86, HEA-0006

Crown Central Petroleum Corporation (Crown) filed an Appeal challenging ERA's authority to issue ERA Order No. 85-1, entitled "Decision and Order Concerning The March 20, 1981 Refiling By The Crown Central Petroleum Corporation." In its Order, ERA determined that Crown's March 20, 1981 refiling of certain of its refiner's monthly cost allocation reports was without force and effect, in its entirety, for any use in connection with the Mandatory Petroleum Price and Allocation Regulations. After considering Crown's claims, OHA concluded that ERA has independent jurisdiction to issue Order No. 85-1 and that the principal conclusions contained in ERA's Order are consistent with previous OHA decisions. Accordingly, OHA denied Crown's Appeal.

W.F. Lowless, 1/14/86, KFA-0005

W.F. Lawless filed an Appeal from a partial denial by the Assistant Manager for Administration of the Richland Operations Office of the Department of Energy (DOE) of a Request for Information which the Appellant had submitted under the Freedom of Information Act (FOIA). In his original request, the Appellant asked for all documents regarding high level waste tanks that could not meet certain requirements. The initial determination stated that no such requirements existed and, consequently, there could be no responsive documents. In considering the Appeal, the DOE concluded that an adequate search had been performed and that no such requirements existed. Accordingly, the DOE affirmed the initial determination and denied the Appeal.

Dr. Ping-Wha Lin, 1/16/86, KFA-0003

Dr. Ping-Wha Lin filed an appeal from a partial denial by the DOE's Pittsburgh Energy Technology Center of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the proposal scorings, written proposal evaluations, proposal evaluation summaries, proposal rankings, proposal score averages and proposal recommendations made by an evaluation committee which were forwarded to a source selection official who made a final decision were exempt from mandatory disclosure by the "deliberative process" privilege incorporated into Exemption 5 of the FOIA. In addition, the DOE found home addresses of DOE employees to be exempt from mandatory disclosure because of the privacy considerations embodied in Exemption 6. However, the DOE found that factual materials in proposal evaluations such as document titles, headings, evaluation weights and criteria, dates, and proposal numbers initially withheld under Exemption 5 should be released to the public. The DOE also found that, absent special considerations not present in this case, DOE employee names are not shielded from mandatory disclosure by Exemption 5. Accordingly, the Appeal was granted in part.

Motions for Discovery

Cities Service Oil and Gas Corporation, 1/13/86, HRD-0285; HRH-0285

Cities Service Oil & Gas Corporation filed a Motion for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order issued to the firm by the ERA on March 5, 1985. In the PRO, the ERA alleged that during the audit period, Cities, through the use of reciprocal crude oil trades, violated the provisions of the Mandatory Petroleum Price Regulations in the aggregate amount of $264 million.

In its Motion for Discovery, Cities propounded a set of interrogatories and requests for documents that the firm alleged related to the issues in dispute in the March 5 PRO. In denying Cities' request for discovery, the DOE found that the material requested by the firm would not advance the resolution of the issues in dispute in the proceeding. In addition, the DOE found that after the initiation of the proceeding, Cities had received from the ERA a substantial amount of the material that it had requested. Accordingly the DOE found that discovery was not necessary for the resolution of the issues in dispute in this case.

In connection with Cities' Motion for Evidentiary Hearing, the DOE determined that an evidentiary hearing should be convened in this case. The March 5 PRO found that the substantial discount that Cities received in exchanging price-controlled crude oil for uncontrolled crude oil constituted extra consideration for the sale of the firm's price-controlled crude oil. The DOE found that the reason why the substantial discount was offered to Cities for the uncontrolled crude oil that it purchased in the reciprocal crude oil agreements was the central issue that must be resolved in this proceeding. The DOE therefore determined that Cities should be permitted to demonstrate what its traders knew regarding the reasons why the substantial discount was offered to the firm.

The DOE also found that an evidentiary hearing should be convened on another aspect of this case. In its pleadings, Cities stated that it could demonstrate that it passed along to consumers a substantial portion of the exessive regulatory benefits that it received. In exercising its discretion to grant Cities' request, the DOE determined that convening an evidentiary hearing would be appropriate due to the complexity of this issue. Accordingly, the firm's motion for an evidentiary hearing was granted.

Doram Energy Inc. and Damson Oil Corporation, 1/16/86, HRD-0145; HRH-0145

Doram Energy Inc. (Doram) and Damson Oil Corporation (Damson) filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) issued to the firms on March 9, 1983. In the PRO, the ERA alleges that Doram and Damson violated the "anti-layering" provisions of 10 CFR Part 212, Subpart L. In the Motion for Discovery, Doram and Damson sought information regarding: (1) The audit of the firm, (2) the administrative record for various rulemakings applicable to crude oil resellers, and (3) the DOE's contemporaneous construction of portions of the crude oil reseller regulations. Doram and Damson's Motion for Evidentiary hearing requested that OHA convene a hearing for the purpose of receiving oral testimony regarding the services that the firms provided in connection with the sales of crude oil that are the subject of the PRO.

In the Decision and Order, the DOE determined that the requested discovery would not elicit evidence that was material and relevant to the issues involved in the PRO, and that neither firm demonstrated that there were issues of fact in this proceeding that would benefit from an evidentiary hearing. Accordingly, both motions were denied. The DOE allowed the firms, however, to submit additional evidence regarding whether the services they provided in connection with the resale of crude oil were traditional and historical reseller services.

Lantern Petroleum Corporation, 1/14/86, HRD-0265; HRH-0265

Lantern Petroleum corporation filed Motions for Discovery and Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial order. The DOE found that these Motions, relating to the DOE's crude oil resellers regulations, were identical to those denied in *MAPCO International, Inc.*, 13 DOE ¶ 84,003 (1985). Since there were no differences in the circumstances of these cases which would make the reasoning of the MAPCO Decision inapplicable to the present proceeding, the Motions were denied for the reasons set forth in the MAPCO Decision.

Implementation of Special Refund Procedures

Pride Refining, Inc., 1/13/86, HEF-0218

The DOE issued a decision and Order implementing procedures to distribute $600,000 remitted by Pride Refining, Inc. (Pride) pursuant to a consent order entered into with the DOE in settlement of the DOE's allegations that Pride had violated the Mandatory Petroleum Price and Allocation Regulations during the consent order period January 1, 1973 through January 27, 1981. The Decision provided that refunds would be distributed to purchasers of refined petroleum products from Pride during the consent order period who can demonstrate that they were injured by Pride's alleged regulatory violations. The Decision sets forth specific information to be included in refund applications.

Richardson Ayres Jobber, Inc., 1/13/86, HEF-0166

The DOE issued a decision and Order implementing a plan for the distribution of $115,695.89 received pursuant to a consent order entered into by Richardson Ayres Jobber, Inc. (Ayres) and the DOE on September 29, 1981. The DOE determined that the Ayres settlement fund should be distributed to customers that purchased Ayres motor gasoline and No. 2 diesel fuel during the period November 1, 1973 through April 30, 1974. The specific information to be included in refund applications is set forth in the Decision.

Refund Applications

Foster Oil Company/Yezbick Corporation, Inc., 1/16/86, RF146-2

The DOE issued a Decision and Order concerning an Application for Refund filed by Yezbick Corporation, a reseller of motor gasoline purchased from Foster Oil Company. In accordance with the procedures set forth in the Foster Special Refund Proceeding, the DOE determined that Yezbick should receive a refund of $5,000, the maximum small claims refund. The total refund granted in this Decision is $8,017, representing $5,000 in principal and $3,017 in interest.

Franks Petroleum, Inc./, Tesoro Petroleum Corporation, Inc., 1/13/86, RF156-1

Tesoro Petroleum Corporation filed an Application for Refund in the Franks Petroleum, Inc. refund proceeding. Tesoro stated that it purchased 16,262,995 gallons of covered products during the Franks consent order period, and would be eligible for a refund of $34,438. Tesoro elected to limit its claim, however, to the threshold small claims refund amount of $5,000. The firm was therefore granted a refund of $5,000 plus $2,050.84 in accrued interest.

Gulf Oil Corporation/Armour Oil Company, Inc., 1/13/86, RF40-3016

Armour Oil Company sought a portion of the Gulf Oil Corporation consent order fund based upon settlement of a private claim by Armour arising out of alleged cost violations by Gulf during the consent order period. The refund procedures allow for consideration of applications of this type, provided the amount of the settlement is approved by the Office of Special Counsel. After verifying that the Application meets the criteria established in the refund procedures, the DOE concluded that Armour should receive a refund based on the amount of its settlement with Gulf. Accordingly, the Application for Refund was granted.

Gulf Oil Corporation/Clark's Service Station, 1/16/86, RF40-756

The DOE issued a Decision and Order concerning an Application for refund filed by a retailer of motor gasoline, Carmel G. Clark, owner of Clark's Service Station, in

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connection with the Gulf Oil Corporation refund proceeding. In considering the application, the DOE found that Clark failed to demonstrate that he would not have been required to reduce selling prices to his customers by the amount of refund he was claiming. Since that showing is a prerequisite for resellers and retailers applying for refunds from the gulf escrow account, the DOE denied Clark's refund claim.

Gulf Oil Corporation/Schrof Oil company, et al., 1/13/86, RF40-88,et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 14 purchasers of Gulf refined petroleum products. All of the refund applicants are resellers or retailers who demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund they received. The refunds to these firms total $81,563, representing $69,587 in principal and $11,976 in interest.

Gulf Oil Corporation/Stephen H. Sock, et al., 1/16/86, RF40-811, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed by retailers and resellers of Gulf covered refined petroleum products and natural gas liquid products. All of the claimants applied for refunds based on the volumetric presumption outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). Certain of the refunds were adjusted as a result of a finding that those applicants had negative banks of unrecouped increased product costs for portions of the consent order period. The total amount of refunds granted in this Decision is $614,621.

Husky Oil Company/Direct Sales Tire Company, et al., 1/17/86, RF161-55, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by Direct Sales Tire Company, *et al.* Each of the applicants had purchased refined petroleum products from Husky Oil Company, and each sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Husky. Although the applicants were eligible to apply for refunds greater than $5,000, they elected to limit their claims to $5,000 and apply for a refund under the small claims procedures outlined in *Office of Special Counsel*, 9 DOE ¶ 81,538 (1982). After examining the evidence and supporting information submitted by the firms, the DOE concluded that each of the 13 firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted in this Decision is $84,216.

Little America Refining company/Davidson Oil & Supply, et al., 1/16/86, RF112-53, et al.

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to 29 purchasers of Larco covered products. All of the applicants submitted claims for less than the $5,000 threshold small claims refund amount. The refunds in this Decision total $62,155, representing $42,194 in principal and $19,961 in interest.

Little America Refining Company/ Intermountain Farmers Association, Consolidated Freightways, 1/13/86, RF112-52, RF112-159

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to two purchasers of Larco covered products, Consolidated Freightways and the International Farmers Association. The DOE determined that both of the applicants were eligible for consideration under the ultimate consumer presumption of injury, and therefore did not require either to submit a detailed showing of injury. Accordingly, the DOE granted refunds totalling $2,950, representing $2,003 in principal and $947 in interest.

Little America Refining Company/K.Q. Oil, Inc. and B & B Oil Company, 1/14/86, RF112-185; RF112-186

The DOE issued a supplemental Decision and Order granting additional refunds from the Little America Refining Company deposit escrow account to two purchasers of covered products who had revised their original claims to a higher, documented total. The additional refunds to these firms total $1,097, representing $745 in principal and $352 in interest.

National Helium Corporation/Washington, RQ3-234; Perry Gas Processors, Inc./ Washington, RQ183-235; Coline Gasoline Corporation/Washington, 1/ 13/86, RQ2-236

The State of Washington field a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under Consent Orders with National Helium Corporation, Perry Gas Processors, Inc., and Coline Gasoline Corporation. Washington proposed to use the refunds to fund traffic light synchronization in major Washington cities, blower door testing and oil furnance retrofits for low-income residents, park and ride lots and an alternative fuels project for vehicle fleets. The OHA approved the alternative fuels project for private fleets only and fully approved all other plans. The OHA concluded that Washington's proposed restitutionary plan would benefit consumers of motor gasoline who were injured by the alleged overcharges. Accordingly, a refund of $770,834 was approved.

Plateau, Inc./Jim Dible Oil Company and Clark's Service Station, 1/13/86, RF204-4; RF204-5

The DOE issued a Decision and Order granting refunds from the Plateau, Inc. deposit escrow account to two purchasers of Plateau covered products. Both claims were under the small claims threshold. The refunds granted in this proceeding total $11,235, representing $7,424 in principal and $3,811 in interest.

Seminole Refining, Inc./Jasper Laundry and Dry Cleaners, 1/16/86, RF111-10

Jasper Laundry and Dry Cleaners (Jasper) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. (Seminole). The applicant claimed a refund on the basis of its purchase of 129,492 gallons of No. 4 fuel oil from Seminole during the consent order period. The DOE determined that Jasper was an end-user of the No. 4 fuel oil purchased from Seminole and was therefore entitled to a refund. The DOE therefore granted Jasper a refund in the amount of $1,359.42, representing $810.62 in principal and $548.80 in accrued interest.

Witco Chemical Corporation/Consolidated Oil Company, 1/16/86, RF115-3

Consolidated Oil Company (Consolidated) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Witco Chemical Corporation (Witco). The firm claimed a refund on the basis of its purchase of 336,520 gallons of lubricating oils from Witco during the consent order period; however, we considered only those volumes (280,276 gallons) purchased through August 31, 1976, since the prices of lubricating oils were exempt from price controls, effective September 1, 1976. The DOE determined that Consolidated's claim was below the presumption of injury threshold level of $5,000. The DOE therefore granted Consolidated a refund of $1,139.02, representing $719.75 in principal and $419.27 in accrued interest.

Dismissals

The following submissions were dismissed:

Company Name and Case No.
Elkton Gulf—RF40-1586
Green's Crichton Gulf—RF40-1411
Hazlet Plaza Gulf—RF40-1412
Jim's Cedar City Gulf—RF40-1429
Keeble's Service Center—RF40-1484
Lea Exploration, Inc.—KRO-0160
Muyl Wayne Bright—RF40-1088
Richard C. Krausmann—RF40-464
Seven Harbors Auto—RF40-1496
State of Nevada—RF40-1667

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 3, 1986.

[FR Doc. 86-2899 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of January 20 Through January 24, 1986

During the week of January 20 through January 24, 1986, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Supplemental Order

Consolidated Materials, Inc., Economic Regulatory Administration, 1/24/86 KRX-0006; KRZ-0017

On December 13, 1985, the Economic Regulatory Administration filed a memorandum setting forth its factual and legal arguments in connection with the enforcement proceeding involving Consolidated Materials, Inc. ERA also filed a Motion to Strike a response submitted by Consolidated. On December 19, 1986, Consolidated filed its memorandum accompanied by a memorandum regarding discovery and an additional witness nomination. All of the above-referenced submissions and requests pertain to the evidentiary hearing to be convened in connection with the Consolidated enforcement proceeding. In considering the requests described above, OHA determined that the additional witness list submitted by Consolidated be approved, that the Motion to Strike be denied, and that Consolidated's discovery requests be denied.

Implementation of Special Refund Procedures

Brownlie, Wallace, Armstrong, & Bander, HER-0564; Cordele Operating Company, HEF-0565; H.H Gungoll & Associates, 1/ 21/86, HEF-0572

The Department of Energy issued a final Decision and Order setting forth procedures to be used in a Special Refund Proceeding involving $1,912,000 received by the DOE in connection with a Remedial Order issued to H.H. Gungoll & Associates on April 5, 1984, and with consent orders entered into between the DOE and Brownlie, Wallace, Armstrong & Bander and Cordele Operating Company. Each of the firms was a producer of crude oil during the period in which the DOE Entitlements Program operated. The refund money will be distributed in accordance with Departmental policies.

Crystal Oil Company, 1/21/86, HEF-0204

The DOE issued a Decision and Order implementing procedures to distribute $1,041,462.73 remitted by Crystal Oil Company (Crystal) under the terms of a 1981 consent order settling the DOE's allegations that Crystal had violated the Mandatory Petroleum Price Regulations during the period August 19, 1973 through December 31, 1975 (the consent order period). The Decision provided that refunds would be granted to purchasers of refined petroleum products from Crystal during the consent order period who can demonstrate that they were injured by Crystal's alleged overcharges. Specific information to be included in refund applications is set forth in the Decision.

Earth Resources Company, 1/23/86, HEF-0205

The DOE issued a Decision and Order setting forth procedures to be used for distributing $10,938,130.18 plus accrued interest received from Earth Resources Company (ERC) pursuant to a 1981 consent order. The consent order settled all disputes regarding ERC's compliance with the DOE petroleum price and allocation regulations during the period August 9, 1973 through January 28, 1981. The funds will be available to customers who were injured as a result of their purchases of covered petroleum products from ERC during the consent order period. The Decision outlines specific information to be included in refund applications and discusses certain presumptions and findings which the DOE will utilize in analyzing the applications.

Juniper Petroleum Corporation, 1/21/86, HEF-0579

The Department of Energy issued a final Decision and Order setting forth procedures to be used in a Special Refund Proceeding involving $568,000 received by the DOE in connection with a lawsuit Juniper Petroleum Corporation filed challenging the DOE regulations governing the sale of crude oil produced from "stripper well properties." The refund money will be distributed in accordance with Departmental policies.

Refund Applications

Gulf Oil Corporation/Bryon's Gulf Service Station et al., 1/21/86, RF40-02217 et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 20 purchasers of Gulf refined petroleum products. The refunds of these firms totaled $23,473, representing $20,026 in principal and $3,447 in interest. All the refund applicants are retailers who demonstrated that they would not have been required to reduce their selling prices to their customers by the amount of the refund they received.

Gulf Oil Corporation/C.F. Conter Oil Company, Inc., 1/22/86, RF40-1017

C.F. Canter Oil Company, a consignee of Gulf motor gasolines filed an Application for Refund seeking a portion of the consent order fund made available by the Gulf Oil Corporation. Canter, who is located in Tennessee, demonstrated that the state's overall gasoline consumption during the consent order period increased 13.45 percent, while its own total sales volume of gasoline during that period declined .6 percent. The DOE therefore determined that Canter was injured by Gulf's allegedly uncompetitive prices. Canter's refund was calculated by multiplying the 11,948,450 gallons of motor gasoline Gulf consigned to Canter during the consent order period, Canter's 14.05 percent loss of potential sales, and the Gulf volumetric refund amount of $.00122. Accordingly, the firm received a total refund of $2,384, including $2,048 in principal and $336 in interest.

Gulf Oil Corporation/Donald R. Ermel, 1/22/ 86, RF40-03090

Subsequent to the issuance of *Gulf Oil Corporation/Sun City Gulf*, 13 DOE ¶ 85,332 (1985), the DOE discovered that one of the claimants, Donald R. Ermel, had understated his Gulf motor gasoline purchase volume figures, according to records provided by Gulf. The DOE therefore issued a Supplemental Order to Donald R. Ermel granting him an additional refund of $172.

Gulf Oil Corp./Florido Aviation Fueling Company, Inc. et al., 1/21/86, RF40-333 et al.

The DOE issued a Decision and Order concerning 30 Applications for Refund filed by end-users of petroleum products purchased from the Gulf Oil Corporation. In its Decision, the DOE granted the 30 applications under the standards and methods specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted in this proceeding total $229,350, representing $195,673 in principal and $33,677 in interest.

Gulf Oil Corp./Hamilton Taxi & Baggage Company et al., 1/21/86, RF40-27 et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund filed by end-users of petroleum products purchased from the Gulf Oil Corporation. In its Decision, the DOE granted the 36 applications under the standards and methods specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted in this proceeding total $71,506, representing $61,001 in principal and $10,505 in interest.

Houston Natural Gas Corporation/Tenneco Oil Company, 1/24/86, RF53-4

The DOE issued a Decision and Order granting an Application for Refund filed by Tenneco Oil Company from the Houston Natural Gas Corporation consent order fund. The refund approved in this Decision is $5,310 ($3,594 in principal and $1,716 in interest.)

MAPCO, Inc./Shell Oil Company, 1/24/86, RF108-2

Shell Oil Company (Shell) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with MAPCO, Inc. (MAPCO). The firm claimed a refund on the basis of its purchase of 1,703,772 gallons of natural gasoline from MAPCO during the consent order period. The DOE determined that Shell's claim was below the presumption of injury threshold level of $5,000. The DOE therefore granted Shell a refund of $3,066.79 plus accrued interest of $2,254.2 for a total refund of $5,321.01.

National Helium Corporation/Nevada et al., 1/23/86, RQ3-195 et al.

The DOE issued a Decision and Order approving in part the second-stage refund plans of Nevada, Maryland, and New Jersey for use of funds from the National Helium Corporation, Coline Gasoline Corporation, and Perry Gas Processors, Inc. escrow accounts. Nevada plans to use $714 from Coline to supplement its Park and Ride program. Maryland will use $124,623 from National Helium, Coline, and Perry Gas to implement a vehicle fleet management

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program. New Jersey will use $60,586 from National Helium and Coline to retrofit New Jersey Transit buses with aluminum wheels. The OHS found these programs to be restitutionary to injured motor gasoline consumers.

National Helium Corp./Washington, 1/23/86, RQ3-365

The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Supplemental Order to the State of Washington. In the Order, the OHA corrected an inadvertent error in the amount of the refund to be disbursed to Washington pursuant to the second-stage National Helium special refund proceedings. Washington's refund was misstated as $760,834 when it should have been $770,834.

U.S. Compressed Gas Co./FMC Corporation, 1/24/86, RF54-1

FMC Corporation filed an Application for Refund in the U.S. Compressed Gas Co. (USC) refund proceeding. FMC stated that it purchased 1,966,197 gallons of covered products during the USC consent order period, and requested a refund of $2,351.32. FMC stated that it used the products purchased from USC in its food and pharmaceutical operations. Since FMC was an end-user of the covered products, the DOE approved the firm's refund request without requiring additional proof of injury.

Webco Southern Oil, Inc./Airport Fina, 1/23/86, RF202-1

The DOE issued a Decision and Order concerning the Application for Refund from the Webco Southern Oil, Inc. escrow account filed by Airport Fina. Airport Fina applied for a volumetric refund based on the presumption of injury for small claims. *Webco Southern Oil, Inc.* 12 DOE ¶ 85,209 (1985). After examining the evidence and supporting information submitted by the applicant, the DOE concluded that Airport Fina should receive a refund of $1,250.

Dismissals

The following submissions were dismissed:

Name and Case No.

Champlin Pet. Company—RF13-16
Cities Service Company—RF13-25
Commonwealth Oil Ref. Co.—RF13-2
Stand. Oil Co. (Ind.)—RF13-28

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Monogement: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 31, 1986.

[FR Doc. 86-2900 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of December 23, 1985 Through January 10, 1986

During the period of December 23, 1985 through January 10, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within the ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service or the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are avaiable in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: January 28, 1986.

George B. Breznay,

Director Office of Hearings and Appeals.

Ed Flood Oil Co., Inc., Amarillo, Texas; KEE-0006

Ed Flood Oil Co., Inc. filed an Application for Exception from the requirement that it file Form E1A-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report." On January 9, 1986, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

[FR Doc. 86-2841 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 30, 1985 Through January 3, 1986

During the week of December 30, 1985 through January 3, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

The Anschutz Corporation, 12/31/85; KEE-0004

The Anschutz Corporation filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-758(A) with the DOE Energy Information Administration regarding one of the firm's natural gas wells. In considering the request, the DOE determined that since the well chosen by the EIA for its survey was the subject of litigation, the potential cost and damage facing Anschutz if adverse litigants obtained the information on Form EIA-758(A) constituted a gross inequity. Accordingly, the exception request was granted.

City Ice and Fuel Company, 12/31/85; KEE-0003

City Ice and Fuel Company filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B with the DOE Energy Information Administration. In considering the request, the DOE found that City Ice was not unduly burdened by the reporting obligation. Accordingly, the exception request was denied.

Fred K. Kleinbach Sons, Inc., 1/3/86; HEE-0154

Fred K. Kleinbach Sons, Inc. (Kleinbach) filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Kleinbach's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. Accordingly, exception relief was denied.

Motion for Discovery

Thomas P. Reidy, Inc., 1/3/86; HRD-0277; HRH-0277

Thomas P. Reidy, Inc. filed Motions for Discovery and Evidentiary Hearing concerning a Proposed Remedial Order issued to the firm on November 3, 1984. In the PRO, the ERA found that during the audit period, Reidy charged prices for regular motor gasoline that were in excess of the Maximum Lawful Selling Prices for that refined petroleum product. In its Motion for Discovery, Reidy requested discovery concerning almost every aspect of the November 3 PRO. In denying the motion, the DOE noted that Reidy's arguments were previously considered and rejected in two Decisions issued to the firm. *Thomas P. Reidy, Inc.*, 12 DOE ¶ 84,020 (1984), and *Thomas P. Reidy, Inc.*, 11 DOE ¶ 84,046 (1984), and that the firm had not provided any additional arguments to support its discovery request. With respect to Reidy's request for an evidentiary hearing, the DOE exercised its discretion to convene a hearing. In view of the complexity of Reidy's accounting practices and the prominence of accounting issues in its pleadings, an evidentiary hearing was granted to provide the firm with an opportunity to furnish testimony regarding its accounting practices. Accordingly, the firm's Motion for Discovery was denied and the Motion for Evidentiary Hearing was granted.

Interlocutory Order

Kenneth Walker, 12/30/85; HRZ-0263, HRD-0268, HRH-0268

Kenneth Walker filed a Motion for Discovery, a Supplemental Motion for Discovery and a Motion for Evidentiary Hearing in connection with the Proposed Remedial Order (PRO) issued jointly to Mr. Walker and Southwestern States Marketing Corporation (Southwestern). The Economic Regulatory Administration (ERA) filed a request to amend the PRO in connection with the same proceeding. In considering these submissions, the Office of Hearings and Appeals (OHA) first determined that the PRO, together with ERA's other submissions in this proceeding, fail to adequately describe the activities that allegedly constitute "illegal practices" during the period prior to the effective date of 10 CFR 212.186. Accordingly, OHA granted Interrogatories No. 19 & 20 only insofar as they request ERA to identify the illegal practices with which Mr. Walker is charged under 10 CFR 205.202 and 210.62(c) during the period October through December 1977. Next, OHA partially granted Mr. Walker's request for audit discovery. OHA determined that unusual circumstances in the present case require departure from the Office's general unwillingness to grant discovery of materials generated from a firm's own records. Since ERA had voluntarily provided audit related documents and microfilm to the co-respondent in this proceeding, Southwestern, OHA determined that ERA should make available to Mr. Walker all documents that the agency has heretofore provided to Southwestern. OHA also partially granted Mr. Walker's Motion for Evidentiary Hearing. OHA determined that an evidentiary hearing concerning the extent of Mr. Walker's involvement in the crude oil transactions that are the subject of this proceeding will be of substantial assistance in resolving the issue of Mr. Walker's personal liability for the regulatory violations alleged in the POR. Accordingly, Mr. Walker was directed to file with OHA a list of witnesses whom he proposes to call at the evidentiary hearing as well as the scope of anticipated questioning of those witnesses and the relevance of the questioning to the issues set forth for consideration at the hearing. With regard to ERA's request to amend the PRO, OHA determined that granting ERA's request would not prejudice Mr. Walker in any way, since the effect of the proposed amendment is to reduce Mr. Walker's potential liability. Therefore, OHA granted ERA permission to amend the PRO to effectuate the following three substantive changes: (1) withdraw all allegations relating to the purported violations of 10 CFR 212.10 and 212.183 by Southwestern and Mr. Walker; (2) withdraw the theory of piercing the corporate veil as one of the bases for holding Mr. walker personally liable for the applicable DOE regulations; (3) withdraw the allegations lodged against Mr. Walker regarding his violations of the applicable DOE regulations based on a tortious conduct theory for the period June 1980 through December 1980 only. OHA decided to deny Mr. Walker's Supplemental Motion for discovery because the motion failed to meet the requisite standards of 10 CFR 205.198.

As a final matter, OHA determined that Mr. Walker should be afforded the opportunity to submit any information that he deems necessary to prove (i) that he did not reap any financial or other benefit from the activities that ERA claims constitute regulatory violations, and (ii) that the services southwestern provided during the period covered by the PRO were traditional and historical reseller services as described in the Decision and Order.

Refund Applications

Gulf Oil Corporation *Cunningham Butane Gas Company, Inc., 12/31/85; RF40-3062*

The DOE issued a Decision and Order granting an Application for Refund filed by Cunningham Butane Gas Company, Inc., a retailer of Gulf products. The claimant applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation, the DOE concluded that the applicant should receive a refund of the full volumetric amount. The refund granted in this Decision totals $7,137, representing $6,132 in principal and $1,005 in interest.

Gulf Oil Corporation/Melrose Distributors, Inc. et al., 12/31/85; RF40-1960 et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund filed by retailers and resellers of Gulf products. All of the claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this Decision total $89,693, representing $77,061 in principal and $12,632 in interest.

Mesa Petroleum Co./Mobil Oil Corporation, 1/2/86; RF120-2

Mobil Oil Corporation filed an Application for Refund in the Mesa Petroleum Company refund proceeding. Mobil stated that it purchased 42,014 gallons of covered products during the Mesa consent order period, and would be eligible for a refund of $438.25 under the volumetric allocation methodology. Since Mobil's claim did not exceed the threshold level, the DOE approved the firm's refund request of $438.25 plus accrued interest of $333.03 without requiring detailed proof of injury.

Point Landing, Inc./Canal Barge Company et al., 1/3/86; RF122-1 et al.

The DOE issued a Decision and Order granting refunds to eight firms which had been identified by the Economic Regulatory Administration as having sustained overcharges alleged in the ERA's audit of Point Landing's sales of motor gasoline. Each claimant filed an Application for Refund in which it adequately demonstrated that it was injured by the alleged overcharges. The total amount of refunds approved in the Decision is $26,176, representing $14,628 in principal and $11,548 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

ERA—KRR-0003
Dr. Milton Hoenig—HFA-0261
Navajo Refining, Inc.—BER-0166, BEG-0062.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 28, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2838 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of January 6 Through January 10, 1986

During the week of January 6 through January 10, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Arent, Fox, Kintner, Plotkin & Kahn, 1/8/86; KFA-0006

Arent, Fox, Kintner, Plotkin & Kahn (Arent) filed an Appeal from a partial denial by the Authorizing Official at the Office of Procurement Operations at the Department of Energy (DOE) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). Arent sought information which was deleted from a copy of a government contract previously released to the firm. Specifically, Arent sought the due dates of audits of DOE field operations and the amounts of payment due at each step of the audit process. In considering the Appeal, the DOE found that the Authorizing Official improperly withheld

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the contested material pursuant to Exemption 4 of the FOIA. In so holding, the DOE found that a portion of the information was outside the scope of Exemption 4. Further, the DOE found that the remainder of the requested information was already in the public domain or easily calculable from available information. Accordingly, DOE ordered the release of the contested information.

Pacific Lighting Energy Systems, 1/9.86; KFA–0007

Pacific Lighting Energy Systems filed an Appeal from a denial by the Director of the Office of Policy, Planning and Analysis (Authorizing Official) of a Request for Information which the firm submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Authorizing Official had properly withheld pursuant to Exemption 5 a "Statement of Work" that contained the opinions and recommendations of DOE personnel concerning a draft report prepared by an outside consultant. The DOE also found, however, that responsive materials exist that were not identified or released to the firm by the Authorizing Official. Accordingly, the Decision and Order directed the Authorizing Official to conduct a further search for documents responsive to the firm's request.

Rek-Chem Manufacturing Corporation, 1/7/86; KFA–0008

Rek-Chem Manufacturing Corporation filed an Appeal from a denial by the Department of Energy Albuquerque Operations Office of a Request for Information which Rek-Chem had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that inadequate justification was given for the Operations Office's determination. The DOE therefore remanded the matter to the Director of that Office with instructions to either release the unit price information requested by Rek-Chem or issue a new determination that adequately justifies withholding the information in light of the applicable regulations.

Request for exception

P J W Corporation Pacific Northern Oil Carlson Company, 1/8/86; HEE–0165, HEE–0166, HEE–0167

P J W Corporation, Pacific Northern Oil, and Carlson Oil Company filed Applications for Exception in which each of the three firms sought relief from the obligation to submit Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the applicants' requests, the DOE found that none of the firms was particularly adversely affected by the requirement that it file Form EIA–782B. accordingly, exception relief was denied to the three applicants.

Motions for Discovery

Elk Trading Energy, Inc. Neal Davis, 1/8/85; HRD–0281, HRH–0281

Elk Trading Energy, Inc. and Neal Davis (collectively "Elk") filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with a Statement of Objections to a Proposed Remedial Order (PRO) that was issued to Elk by the Economic Regulatory Administration (ERA) on March 11, 1985. In the PRO, the ERA alleges that during the period May 1978 through December 1980, Elk charged prices in resales of crude oil in excess of those permitted under DOE regulations. In considering Elk's discovery motion, the DOE determined that (i) Elk's request for contemporaneous construction discovery of the pertinent crude oil reseller regulations should be denied since Elk had failed to show any ambiguity or inconsistency in those regulations, and (ii) Elk's request for administrative record discovery of the crude oil reseller regulations should be denied since Elk had failed to show any omission or defect in the publicly available record. In addition, the DOE determined that Elk's Motion for Evidentiary Hearing should be denied since Elk had failed to specify any genuine factual issue in dispute. Accordingly, Elk's Moton for Discovery and Motion for Evidentiary Hearing were denied.

T&M Petroleum Corporation and Ted R. Adkins, 1/8/86; HRD–0115, HRH–0115, HRZ–0259, HRZ–0260

T&M Petroleum Corporation and Ted R. Adkins (T&M) filed a Motion for Discovery and Motion for an Evidentiary hearing in connection with a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA) of the Department of Energy. Subsequently, both parties filed separate motions to dismiss portions of the PRO. In its Motion for Discovery, T&M requests administrative record and contemporaneous construction discovery of both the layering regulation and the term "nearest comparable reseller" contained in the reseller pricing rule. In its Motion for an Evidentiary Hearing, T&M seeks the opportunity to present evidence concerning the services and functions it performed in its resales of crude oil.

In considering T&M's Motion, the OHA found that discovery concerning the layering rule and term "nearest comparable reseller" was both unnecessary and inappropriate since much of the information sought concerned legal opinions, and the OHA had denied identical requests in recent layering cases. Furthermore, the OHA found that the PRO set forth a prima facie case of regulatory and individual liability and, accordingly, denied both Motions to Dismiss. Finally, the OHA denied T&M's Evidentiary Hearing Motion in the form submitted. T&M was allowed, however, to renew its Motion concerning whether the services and functions performed by the firm in its crude oil resales constitute traditional and historical reseller services and functions under the layering rule.

Implementation of Special Refund Procedures

Eastern of New Jersey, Inc., 1/10/86; HEF–0065

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling $459,929.76 obtained as a result of a consent order entered into between the DOE and Eastern of New Jersey, Inc. The Decision sets forth refund application procedures for customers who purchased No. 4 residual fuel oil from Eastern during the consent order period November 1, 1973 through March 31, 1974. The specific information to be included in refund applications is set forth in the Decision.

James Petroleum Corporation, 1/10/86; HEF–0099

The DOE issued a Decision and Order implementing a plan for the distribution of $60,434 received as a result of a consent order entered into by the DOE and James Petroleum Corporation (James) on November 10, 1981. The DOE determined that the James settlement fund should be distributed to customers who purchased motor gasoline fuel from James during the period January 1, 1980 through April 30, 1980. The specific information to be included in refund applications is set forth in the Decision.

Leonard E. Belcher, Inc., 1/7/86; HEF–0586

The DOE issued a final Decision and Order setting forth procedures to be used in filing applications for refund from $700,000 in settlement funds obtained under an Agreed Final Judgment terminating litigation with Leonard E. Belcher, Inc., a fuel oil reseller located in Springfield, Massachusetts. The Funds will be available to customers who purchased No. 2 fuel oil from Belcher during the period August 1973 to June 1976. The specific information to be included refund in applications for is set forth in the Decision.

Malco Industries, Inc., 1/10/86; HEF–0121

The DOE issued a Decision and Order implementing a plan for the distribution of $61,889.83 received as a result of a consent order entered into by Malco Industries, Inc. and the DOE on November 10, 1981. The DOE determined that the Malco settlement fund should be distributed to customers that purchased Malco motor gasoline during the period April 1, 1979 through January 31, 1980. The specific information to be included in applications for refund is set forth in the Decision.

Oceana Terminal Corporation, et al., 1/10/86; HEF–0142

The DOE issued a Decision and Order implementing a plan for the distribution of $258,367, plus accrued interest, received as the result of a consent order entered into by the DOE and Oceana Terminal Corporation, its parents, subsidiaries and affiliates (Cibro). The DOE determined that the Cibro settlement fund should be distributed to customers that were injured as a result of purchases of No. 6 fuel oil from Cibro during the period November 1, 1973 through April 30, 1974. The DOE also decided that a separate, detailed showing of injury would not be required of claimants for refunds of $5,000 or less. The Decision discusses specific information to be included in refund applications.

Post Petroleum Company, 1/9/86; HEF–0154

The Doe issued a Decision and Order implementing a plan for the distribution of $12,486.57 received as a result of a consent order entered into by Post Petroleum Company and the DOE on September 29, 1981. The Doe determined that the Post settlement fund should be distributed to customers that purchased Post motor gasoline during the period April 1, 1979 through September 30, 1979. The specific information to be included in applications for refund is set forth in the Decision.

Refund Applications

Armour Oil Company/Golden Gate Petroleum Company, 1/8/85; RF167–6

The DOE issued by Decision and Order concerning an Application for Refund filed by Golden Gate Petroleum Company, as reseller of refined products purchased from Armour Oil Company. In accordance with the procedures set forth in the Armour Special Refund Proceeding, the DOE determined that Golden Gate should receive a refund of $5,000, the maximum small claims refund. The total refund granted in this Decision is $6,557, representing $5,000 in principal and $1,557 in interest.

Belridge Oil Company/North Carolina Standard Oil Company (Indiana)/North Carolina, 1/9/86; RM8–9, RM21–10

The DOE issued a Decision and Order concerning the Motions for Modification filed by the State of North Carolina in the Belridge and Amoco second-stage refund proceedings. North Carolina sought permission to modify an earlier second-stage decisions approving seven restitutionary programs submitted by the state to benefit the state's injured consumers of motor gasoline and middle distillates. *See Standard Oil Co. (Indiana)/North Carolina*, 12 DOE ¶ 85,180 (1985). The proposed plan would appropriate $50,000 from previously approved programs and use this money for Amtrak operations between Raleigh and Charlotte, the most populous part of the state. Because the Amtrak project would reduce fuel consumption and improve the quality of transportation services in North Carolina, the state was granted permission to use the $50,000 which it had already received from the Belridge and Amoco escrow accounts to fund train service between Raleigh and Charlotte.

Gulf Oil Corporation/Defense Logistics Agency, 1/9/85; RF40–3064

The Department of Energy issued a Decision and Order concerning the resubmission of a claim by the Defense Logistics Agency (DLA) on behalf of the United States Government. The DLA, an end-user of Gulf petroleum products, applied for an additional refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In submitting its renewed application, DLA asked that the DOE approve a refund for certain portions of the consent order period based on estimates of the government's purchases of products from Gulf. After examining the estimation method and the information in the record, the DOE determined that DLA had submitted reasonable estimates which closely approximated the applicant's actual purchases. Accordingly, the DOE concluded that DLA should receive an additional refund of $214,323.

Gulf Oil Corporation/Harold Jones, et al., 1/9/86; RF40–00248, et al.

The DOE issued a Decision and Order concerning 28 Applications for Refund filed by resellers and retailers of Gulf refined products, in accordance with the refund procedures established in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In considering the Applications, the DOE found that all of the applicants had demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the refund claiming. Accordingly, the firms were granted refunds totalling $32,447, representing $27,876 in principal and $4,571 in interest.

Gulf Oil Corporation/Hilltop Auto Laundry, et al., 1/8/86; RF40–00033, et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed by retailers and resellers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1976 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $35,177, consisting of $30,223 in principal and $4,954 in interest, based on a total purchase volume of 24,772,510 gallons of Gulf petroleum products.

Gulf Oil Corporation/Matawan Gulf Service, et al., 1/9/86; RF40–02217, et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 44 purchasers of Gulf refined petroleum products. All refund applicants demonstrated that they would not have been required to reduce their selling prices to their customers by the amount of the refund they received. Accordingly, the firms were granted refunds totalling $56,740, representing $48,748 in principal and $7,991 in interest.

Seminole Refining, Inc./Columbia Paving, Inc., 1/7/86; RF111–12

Columbia Paving, Inc. (Columbia) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. (Seminole). The applicant claimed a refund on the basis of its purchases of 3,414,322 gallons of No. 2 and No. 5 fuel oils from Seminole during the consent order period. The DOE determined that Columbia was an end-user of the No. 2 and 5 fuel oils purchased from Seminole and was therefore entitled to a refund. Accordingly, the DOE granted Columbia a refund of $33,636.54, representing $21,373.66 in principal and $14,262.88 in accrued interest.

Seminole Refining, Inc./National Linen Service, 1/8/86; RF111–6

National Linen Service (NLS) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. (Seminole). The applicant claimed a refund on the basis of its purchases of 117,990 gallons of No. 5 fuel oil from Seminole during the consent order period. The DOE determined that NLS was an end-user of the No. 5 oils purchased from Seminole and was therefore entitled to a refund. Accordingly, the DOE granted NLS a refund of $1,231.57, representing $738.62 in principal and $492.95 in accrued interest.

Standard Oil Company (Indiana)/Bennett Corners Amoco, 1/9/86; RF21–12395

The DOE issued a Decision and Order concerning an incorrect refund received by a retailer of Amoco motor gasoline in the Standard Oil Company (Indiana) proceeding. The DOE determined that David S. Merva had applied for a refund on behalf of Bennett Corners Amoco for a period prior to his purchase of the station, and directed that Merva return the refund and accrued interest for that period. Merva was required to also submit evidence documenting his claim that owned the station after his alleged purchase. The DOE further provided that failure to file this additional information within 30 days would result in rescission of the entire refund amount.

Thompson Oil Company Defense Logistics Agency, et al., 1/9/86; RF185–2, et al.

Defense Logistics Agency (DLA) filed Applications for Refund in three refund proceedings involving Thompson Oil Company, Navajo Refining Company, and United Oil Company. DLA stated that it purchased certain volumes of covered products from those firms during their consent order periods. Since DLA was an end-user of the products it purchased, the DOE approved DLA's refund requests without requiring proof of injury. The refund amounts granted DLA were: $70.25 plus $36.09 in accrued interest from the Thompson Oil Company consent order fund: $90,929.25 plus $43,371.43 in accrued interest from the Navajo consent order fund; and $361.44 plus $206.09 in accrued interest from the United Oil consent order fund.

Warrior Asphalt Company of Alabama/Chevron U.S.A. Inc., 1/6/86; RF160–1

Chevron U.S.A. Inc. filed an Application for Refund in the Warrior Asphalt Company of Alabama refund proceeding. Chevron stated that it purchased 332,304 gallons of covered products during the Warrior consent order period, and would be eligible for a refund of $2,351.32. Since Chevron's application did not exceed the small claims threshold amount of $5,000, the DOE approved the firm's refund request of $2,351.32 in principal plus accrued interest of $2,081.36 without requiring proof of injury.

Dismissals

The following submissions were dismissed:

Company Name and Case No.
Bock Water Heaters, Inc.—HEE–0126
Cord Products Corporation—HEE–0158/HEL–0156
Double U Oil Company—BRO–1535
Jack E. Guenther—BRO–1533
Kerr-McGee Corporation—RF177–4
Knight Enterprises, Inc.—RF40–2987
Philadelphia Electric Company/National Freight, Inc./RJG Cab Inc. & Geraldine H. Sweeney—KRR–0004

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Rubins Hotel—RF169–4.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–2839 Filed 2–7–86; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order; Period of January 13 Through January 24, 1986

During the period of January 13 January 24, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Knox Nelson Oil Company, Pine Bluff, Arkansas: KEE–0002

Knox Nelson Oil Company filed an Application for Exception from the reporting requirements of Form EIA–782B. The exception request, if granted, would permit Knox Nelson to file reports using estimated data. On January 22, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be grant in part.

[FR Doc. 86–2840 Filed 2–7–86; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee for the 1987 ITU World Administrative Radio Conference for the Mobile Services; Meeting

February 4, 1986.

The Fifth meeting of the Federal Advisory Committee for the 1987 Mobile World Administrative Radio Conference will be held on Monday, March 10, 1986, at 9:30 A.M. in the Commission Meeting Room 856, 1919 M Street, NW., Washington, DC

The meeting agenda is:

1. Approval of meeeting agenda.
2. Approval of the summary record of the January 7, 1986, meeting.
3. Report on administrative matters from designated Federal employee.
4. Progress reports and consideration of draft proposals from Ad Hoc Group Chairmen: (a) Aeronautical, (b) Land Mobile, (c) Maritme, (d) Satellite, and (e) Steering.
5. Report on technical matters under consideration in the U.S. CCIR organization relevant to the Mobile WARC.
6. Reports on intenational meetings bearing on the Mobile WARC.
7. Other business.
8. Selection of next meeting date.

Anyone desiring further information should contact Gordon Hempton, FCC/PRB at (202) 632–7175. These meetings are open to the public.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2797 Filed 2–7–86; 8:45 am]

BILLING CODE 6712–01–M

Sixth Meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee

The sixth meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee will be held on February 27, 1986, in Room 856 (the Commission Meeting Room), 1919 M Street, NW., Washington, DC. The meeting will start at 11:30 A.M.

All interested parties are invited to attend this meeting. Since this is to be a technical advisory committee, attendees should be prepared for technical discussions.

The agenda for this meeting will consist of:

1. Approval of minutes of last meeting;
2. Status report from working group co-convenors;
3. Discussion of new business for the Committee;
4. Discussion of appropriate date and tentative agenda for next meeting.

Any questions regarding these meetings should be directed to Mr. Kenneth Nichols at (301) 725–1585.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–2789 Filed 2–7–86; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Hispanic Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Rocky Alford and Martha Vasquez d/b/a Hispanic Broadcasting	Victoria, Texas.	BPH–840710IA	86–7
B. Robert Rivera, Jr.	do	BPH–840913IA	
C. Sand Dollar Communications, Inc.	do	BPH–841016IB	
D. Victoria Radio Broadcasting Limited Partnership.	do	BPH–841016IC	
E. Yolanda G. Dorset.	do	BPH–841016IF	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
1. (See Appendix)	B.
2. Air Hazard	C, D, and E.
3. Comparative	All applicants.
4. Ultimate	All applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, DC 20554. Telephone, (202) 632–6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. If a final environmental impact statement is issued with respect to B (Rivera) which concludes that the proposed facilities are likely to have an adverse impact on the quality of the environment, to determine:

(a) Whether the proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301–1319 of the Commission's rules;

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 86–2796 Filed 2–7–86; 8:45 am]

BILLING CODE 6712–01–M

Community Christian Television; Hearing Designation Order

In re applications of MM Docket No. 86–39:

	File No.
Rosemary Wuenschel and Kristen A. Kincaid d/b/a Community Christian Television.	BPCT–850924KJ
Montana Western Corporation.	BPCT–851107KF

For Construction Permit, Butte, Montana.

Adopted: January 28, 1986.

Released: February 4, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 18, Butte, Montana.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Each of the applicants proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). Accordingly, in the event of a grant of either application, the construction permit shall be appropriately conditioned.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, It Is Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated For Hearing In A Consolidated Proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. It Is Further Ordered, That, in the event of a grant of either application, the construction permit shall be conditioned as follows: Subject to the condition that operation with visual effective radiated power in excess of 1000 kW is subject to the consent of Canada.

7. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

8. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–2804 Filed 2–7–86; 8:45 am]

BILLING CODE 6712–01–M

L. Lynn Henley et al.; Hearing Designation Order

In re applications of MM Docket No. 86–41:

	File No.
L. Lynn Henley	BPCT–850822KE
Virginia L. Fruits and Frederic O. Fruits.	BPCT–851018KO

For Construction Permit, Opelika, Alabama.

Adopted: January 28, 1986.

Released: February 4, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 50, Opelika, Alabama.

2. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. The Fruits application does include a certification

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of site availability. However, the certification is qualified and the applicant indicates that additional agreements or understanding must be obtained before the applicant can give reasonable assurance comporting with the requirements of the Commission. Accordingly, the applicant will be given 20 days after the release of this Order to submit a clarifying amendment to the presiding Administrative Law Judge.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, It Is Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated For Hearing In a Consolidated Proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would on a comparative basis, better serve the public interest

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It Is Further Ordered, That Virginia L. Fruits and Frederic O. Fruits shall submit a clarifying amendment regarding the availability of its transmitter site, to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

7. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-2803 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

[PRS-2]

Request by Lee Shoblom, London Bridge Broadcasting, Inc., Lake Havasu City, Arizona for Waiver of Certain Amateur Rules

AGENCY: Federal Communications Commission.

ACTION: Wavier Denied.

SUMMARY: The Chief, Private Radio Bureau, FCC, by letter denied the request wavier of §§ 97.110 and 97.113(b) of the Commission's Rules in order to permit use of petitioner's amateur station to gather news for broadcast over petitioner's low power televisions station. The wavier request was denied since its grant would set an undesirable precedent and because the proposed use of amateur frequencies as an adjunct to a television station operation did not comport with the character of the Amateur Radio Service.

DATE: Janaury 31, 1986.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: .

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-2788 Filed 2-7-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

TYPE: Extension of 3067-0113.

TITLE: Declaration of Emergency of Major Disaster

ABSTRACT: Requests for a Presidential declaration of a major disaster or an emergency must be made by the Governor. The request must contain certain information to comply with statutory requirements. Affected public includes families, individuals, and public facilities of State and local governments.

Type of Respondents: Individuals or households; Non-Profit Institutions; State or local governments

Number of Respondents: 57

Burden Hours: 400

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1986.

Walter A. Girstantas,

Director Administrative Support.

[FR Doc. 86-2809 Filed 2-7-86; 8:45 am]

BILLING CODE 6718-01-M

Delegation of Authority to the Department of Labor

AGENCY: Federal Emergency Management Agency.

ACTION: Delegation of Authority to the Department of Labor.

Pursuant to the authority vested in me to exercise certain of the powers and authorities of the President with respect to Federal disaster assistance, I hereby delegate to the Secretary of Labor, subject to the general policy guidance and coordination of the Director of the Federal Emergency Management Agency:

1. The authority, functions and powers granted by section 407(a) of the Disaster Relief Act of 1974, 42 U.S.C. 5177(a), to provide assistance to individuals unemployed as a result of a major disaster;

2. The authority, functions and powers granted by section 407(b) of the Disaster Relief Act of 1974, 42 U.S.C. 5177(b), to provide re-employment assistance services under other laws administered by the Department of Labor to individuals who are unemployed as a result of a major disaster; and

3. With the concurrence of the Director of the Federal Emergency Management Agency, the authority to issue such rules and regulations as may be necessary and appropriate to effectuate this delegation.

This delegation of authority supersedes the delegation of authority from James T. Lynn, Secretary of Housing and Urban Development to Peter J. Brennan, Secretary of Labor, appearing September 13, 1974, in 39 FR 33020.

DATE: The delegation of authority is effective on December 1, 1985.

FOR FURTHER INFORMATION CONTACT: Karen J. Keefer, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472; (202) 646-3658.

Dated: January 30, 1986.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-2808 Filed 2-7-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Great West Savings and Loan Association, Las Vegas, NV; Appointment of Receiver

Notice is heerby given that pursuant to the authority contained in 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Great West Savings and Loan Association, Las Vegas, Nevada on January 31, 1986.

Dated: February 5, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-2849 Filed 2-7-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Application for Certificate [Casualty]; Epirotiki Lines et al.

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Cosmos Cruises Maritime Company S.A. (d/b/a Epirotiki Lines), c/o Epirotiki Lines, Inc., 551 Fifth Avenue, New York, NY 10176

Vacation Travel Concepts, Inc., 955 N.E. 125th St., No. Miami, FL 33161

Dated: February 5, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-2888 Filed 2-7-86; 8:45 am]

BILLING CODE 6730-01-M

Application for Certificate [Performance]; Epirotiki Lines et al.

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Cosmos Cruises Maritime Company S.A. (d/b/a Epirotiki Lines), c/o Epirotiki Lines, Inc., 551 Fifth Avenue, New York, NY 10176

Vacation Travel Concepts, Inc., 955 N.E. 125th St., No. Miami, FL 33161

Dated: February 5, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-2889 Filed 2-7-86; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 86-5]

Compagnie Generale Maritime and Intercontinental Transport (ICT), B.V. v. S.E.L. Maduro (Florida), Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Compagnie Generale Maritime; and Intercontinental Transport (ICT), B.V. was served February 4, 1986.

Complainants allege that respondent, a marine terminal operator, has violated sections 10(ds) (1) and (2) and sections 10(b) (11) and (12) of the Shipping Act of 1984, and sections 15, 16 First, and 17 of the Shipping Act, 1916 through misapplication of terminal tariff rates and charges for freight handling at its terminal facilities in Miami and Port Everglades, Florida.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held shall commence within the time limitations prescribed in 46 CFR 501.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resovled on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be denied issued by February 4, 1987, and the final decision of the Commission shall be issued by June 4, 1987.

John Robert Ewers,

Secretary.

[FR Doc. 86-2779 Filed 2-7-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; West Coast Air Freight, Inc.

Notice is hereby given that the following person has filed with the Federal Maritime Commission an application for license as an ocean freight forwarder pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why the following person should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573. West Coast Air Freight, Inc., 105-107 Eucalyptus Drive, El Segundo, CA 90245. Officers: Josef S. Goralik, President; Tomas S-E Edlund, Director.

Dated: February 5, 1986.

By the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-2844 Filed 2-7-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Mahaska Investment Co.; et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mohaska Investment Company*, Oskaloosa, Iowa; to engage *de novo* directly in providing data processing services, pursuant to § 225.25(b)(7) of Regulation Y. These activities would be conducted in the State of Iowa.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Plaza Commerce Bancorp*, San Jose, California; to engage *de novo* through its subsidiary, Plaza Commerce Bancorp, San Jose, California, in arranging and brokering residential, commercial, and construction loans and other extensions of credit, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2776 Filed 2-7-86; 8:45 am]

BILLING CODE 6210-01-M

Unity Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 3, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Unity Bancorp, Inc.*, New Waterford, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The New Waterford Bank, New Waterford, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CB & T Bancshares, Inc.*, Columbus, Georgia; to acquire 100 percent of the voting shares of Bank of Coweta, Newnan, Georgia.

2. *Wrightsville Bancshores, Inc.*, Wrightsville, Georgia; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Wrightsville, Wrightsville, Georgia.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dassel Investment Company*, Minneapolis, Minnesota; to acquire 42.88 percent of the voting shares of Hutchinson Bancorp, Inc., Minneapolis, Minnesota, thereby indirectly acquiring First National Bank, Hutchinson, Minnesota. Comments on this application must be received not later than February 24, 1986.

2. *Hutchinson Bancorp, Inc.*, Minneapolis, Minnesota; to acquire 97.03 percent of the voting shares of Dassel State Bank, Dassel, Minnesota. Comments on this application must be received not later than February 24, 1986.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp*, Dallas, Texas and *MCorp Financial, Inc.*, Wilmington, Delaware; to acquire 100 percent of the voting shares of MBank Arboretum, Austin, Texas, a *de novo* bank.

2. *Texas Commerce Bancshores, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Texas Commerce Bank, Newark, Delaware, a *de novo* bank.

3. *Zapata Bancshares, Inc.*, Zapata, Texas; to acquire 51 percent of the voting shares of Mercedes Bancorp, Inc., Mercedes, Texas, which has applied to become a bank holding company by acquiring Mercedes National Bank, Mercedes, Texas.

Board of Governors of the Federal Reserve System, February 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2777 Filed 2-7-86; 8:45 am]

BILLING CODE 6210-01-M

Washington Bancorporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Washington Bancorporation*, Washington, DC; *Colson, Inc.*, Wilmington, Delaware; and *Washington National Holdings, N.V.*, Curacao, Netherlands Antilles; to engage *de novo* through its subsidiary, Washington Mortgage Group, Inc., Washington, DC, in the appraisal of single family residences for first and second trust loan applications, for a fee; placing single family, multi-family and commercial loans with commercial banks, savings and loans, insurance companies other sources active in the secondary markets, for a fee; and negotiating sales and purchases of blocks of loans for a fee, pursuant to § 225.25(b) (1) and (13), respectively.

Board of Governors of the Federal Reserve System, February 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2778 Filed 2-7-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Open Meetings; SNISA/NIOSH Collaborative Study of the Health Status of Industrial Sand Workers, et al.

The following meetings will be converned by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

National Industrial Sand Association (NISA)/NIOSH Collaborative Study of the Health Status of Industrial Sand Workers

Date: March 12, 1986

Time: 9:00 a.m. to 12 noon

Place: Room 203, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Purpose: To discuss the research protocol for a project to estimate the exposure-response association between silica and silicosis, and between silica, silicosis, and mortality in the industrial sand industry.

Additional information may be obtained from: Harlan Amandus, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505 Telephones: FTS: 923-4476, Commercial: (304) 291-4476

Development of Predictive Models for Determining Control Effectiveness

Date: March 18, 1986

Time: 9:00 a.m. to 12 noon

Place: Conference Room B, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To review a project to develop predictive models for determining the effectiveness of engineering controls which control emissions from industrial processes. This review will be in conjunction with a project to develop air curtain technology for control of emissions from industrial processes.

Additional information may be obtained from: Mazen Y. Anastas, Ph.D. Division of Physical Sciences and Engineering, NIOSH, CDC 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-4266, Commercial: (513) 841-4266

Control of Particulate and Gaseous Agents by Air Curtain Technology

Date: March 18, 1986

Time: 1:00 p.m. to 5:00 p.m.

Place: Conference Room B, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To review a project to develop air curtain technology for control of particulates and gaseous agents from industrial processes. This review will be in conjunction with a project to develop predictive models for control of harmful chemical agents from industrial processes.

Additional information may be obtained from: Vladimir Hampl, Ph.D., Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-4266, Commercial: (513) 841-4266

Development of Monitoring Networks and Control Monitoring Techniques

Date: March 19, 1986

Time: 9:00 a.m. to 12 noon

Place: Conference Room B, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To review a project to develop criteria for networking contaminant control monitors in the occupational work-place and to develop low cost control monitoring devices.

Additional information may be obtained from: Jerome P. Smith, Ph.D. Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati Ohio 45226, Telephones: FTS: 684-4266, Commercial: (513) 841-4266

Epidemiologic Study of Workers Exposed to Ethylene Oxide

Date: March 26, 1986

Time: 9:30 a.m.-4:00 p.m.

Place: Conference Room C, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To discuss the progress of a cohort mortality study of workers exposed to ethylene oxide.

Additional information may be obtained from: Leslie Stayner, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-4481, Commercial: 513/841-4481

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Robert L. Foster,

Acting Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-2807 Filed 2-7-86 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 85P-0570]

Petition Requesting Exclusivity for a Combination Product Containing Erythromycin and Benzoyl Peroxide

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: In keeping with agency policy, the Food and Drug Administration (FDA) is announcing the filing of a petition requesting, among other things, a period of marketing exclusivity for a combination product containing the antibiotic erythromycin and benzoyl peroxide. The agency has taken the position that antibiotics are

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not subject to the provisions of Title I of the Drug Price Competition and Patent Term Restoration Act of 1984. However, FDA is giving notice of the filing of this petition to all interested persons because, should FDA decide to grant the petition, this decision may affect the date when approval for marketing of generic versions of this combination product containing erythromycin and benzoyl peroxide may be made effective.

DATE: Comments by March 12, 1986.

ADDRESS: Requests for a copy of the petition and written comments regarding the petition to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carol A. Kimbrough, Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984. This act amends the Federal Food, Drug, and Cosmetic Act (the act) authorizing among other things, the agency to accept abbreviated new drug applications (ANDA's) for most previously approved new drug products. This legislation also provides for extending the term of a patent which claims a product, use, or method of manufacture that was subject to a regulatory review period in accordance with the act. Further, this new legislation also provides for periods, of exclusive marketing of certain new drug products submitted in an application (or a supplement to an application) under section 505(b) of the act (21 U.S.C. 355(b)). An ANDA or paper new drug application (NDA) for such a drug may not be submitted (under some provisions) or made effective (under other provisions) until the period of "exclusive" marketing ends.

The new drug products that have been granted "exclusivity" under one of the several exclusivity provisions of this new legislation are set forth in the volume entitled "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" (the list) and its monthly supplements. In addition, the period of "exclusivity" is shown. Further, the list also shows those products that are covered by a patent and when the patent expires.

The agency believes that all patient and exclusivity information appearing in the list is correct, and expects that such information appearing in any future supplements to the list will also be correct. However, interested persons may disagree with the agency's findings and believe that FDA has excluded patent or exclusivity information that should have been included, or included patent or exclusivity information that should have been excluded. Accordingly, FDA has established a policy that, whenever an interested person submits a citizen petition requesting such inclusion or exclusion, the agency will publish a notice in the **Federal Register** of the availability of the petition. This publication is constructive notice to all interested persons that they may be affected by the petition and gives them an opportunity to submit their comments on the petition to the agency. Persons potentially affected include holders of approved ANDA's or approved paper NDA's the effective dates of which might be changed by a decision to grant the petition, persons who have pending ANDA's or paper NDA's or who contemplate submitting such applications that, when approved, would have effective dates that will be determined by the decision on the petition or, in some cases, persons whose right to submit such applications may be afected. Where a petition seeks a change in a decision to grant exclusivity, the applicant granted exclusivity has an obvious interest in the issue.

Although the agency has taken the position that antibiotics are not subject to the provisions of Title I of the Drug Price Competition and Patent Term Restoration Act of 1984, in accordance with the policy above, FDA is announcing the filing of a petition submitted on behalf of Dermik Laboratories, Inc. (Dermik), requesting exclusivity for a topical gel combination product containing erythromycin and benzoyl peroxide. Specifically, Dermik requests that the agency:

1. Refrain from approving and ANDA or Form 6 for a generic version of erythromycin-benzoyl peroxide topical gel until the expiration on June 7, 2000 of certain patents.

2. Recognize 3-year exclusivity under section 505(j)(4)(D)(iii) of the act as an additional bar to approval of generic versions of erythromycin-benzolyl peroxide topical gel for the period prior to October 26, 1987.

FDA is reviewing the merits of this petition and, by this notice, is giving anyone who may be effected by this petition an opportunity to submit comments within 30 days.

Interested persons may, on or before March 12, 1986, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Dockets Management Branch.

Dated: February 3, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–2786 Filed 2–7–86 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86M–0030]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® Silsoft® (Elastofilcon A) Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Bausch & Lomb® Silsoft® (elastofilcon A) Contact Lens. The lens is to be manufactured under an agreement with Dow Corning Ophthalmics, Inc., Midland, MI, which has authorized Bausch & Lomb Optics Center to incorporate by reference information contained in its approved premarket approval application for the Silsoft® (elastofilcon A) Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 12, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On September 13, 1985, Bausch & Lomb Optics Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of the Bausch & Lomb® Silsoft® (elastofilcon A) Contact Lens. The lens is indicated for daily wear and extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in aphakic persons with nondiseased eyes. The lens may be worn by persons who exhibit refractive astigmatism of 1.50 diopters (D) or less and corneal astigmatism of 2.00 D or less that do not interfere with visual acuity. The lens ranges in powers from +7.00 D to +35.00 D and is to be disinfected by either a heat or chemical lens care system. The application included authorization from Dow Corning Ophthalmics, Inc., Midland, MI 48640, to incorporate by reference the information contained in its approved premarket approval application (PMA) and PMA supplement for the Silsoft® (elastofilcon A) Contact Lens for daily wear and aphakic extended wear (Docket No. 81M–0229).

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 31, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the Bausch & Lomb® Silsoft® (elastofilcon A) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restricitive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall idenify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate ith the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 12, 1986 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 4, 1986.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 86–2783 Filed 2–7–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86M–0029]

Mansfield Scientific, Inc.; Premarket Approval of the Mansfield Scientific Heart Trak ™ Coronary Balloon Dilatation Catheter System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the applicaltion by Mansfield Scientific, Inc., Mansfiled, MA, for premarket approval, under the Medical Device Amendments of 1976, of the Mansfield Scientific Heart Trak ™ Coronary Balloon Dilatation Catheter System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: 1Petitions for administrative review by March 12, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Shang W. Hwang, Center for Devices and Radiological Health (FHZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7559.

SUPPLEMENTARY INFORMATION: On February 14, 1985, Mansfield Scientific, Inc., Mansfield, MA 02048, submitted to CDRH an application for premarket approval of the Mansfield Scientific Heart Trak ™ Coronary Balloon Dilatation Catheter System. The system is indicated for balloon dilatation of the atheromatous, stenotic portion of a coronary artery affected by atherosclerosis in patients who are suitable candidates for coronary artery bypass graft surgery, and who meet one of the following selection criteria.

1. The patient has single vessel atherosclerotic lesions which are concentric, discrete, subtotal, noncalcific, and accessible to dilatation with a catheter.

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2. The patient with multiple vessel disease, under certain circumstances, is a suitable candidate for the procedure.

3. The patient has undergone previous aorto-coronary bypass surgery with recurrence of symptoms and progression of disease in the coronary artery, or stenosis and closure of the grafts.

On July 26, 1985, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 19, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Shang W. Hwang (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 12, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 4, 1986.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 86-2781 Filed 2-7-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0026]

Syntex Ophthalmics, Inc.; Premarket Approval of Polycon® II (Silafocon A) Bifocal Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Syntex Ophthalmics, Inc., Phoenix, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the Polycon® II (silafocon A) Bifocal Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental application.

DATE: Petitions for administrative review by March 12, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On November 13, 1984, Syntex Ophthalmics, Inc., Phoenix, AZ 85069-9600, submitted to CDRH a supplemental application for premarket approval of the Polycon® II (silafocon A) Bifocal Contact Lens. The lens is indicated for daily wear for the correction of visual acuity in not-aphakic myopic and hyperopic presbyopic persons with nondiseased eyes. The lens may be worn by persons who may exhibit astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in power from −10.00 D to +10.00 D. The refractive add power of the lens ranges from 1.00 D to 3.00 D. The lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206. It is to be disinfected using a chemical lens care system only.

On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application

On December 12, 1985, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

The labeling of the Polycon® II (silafocon A) Bifocal Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the Federal Register of approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 12, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 4, 1986.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 86-2785 Filed 2-7-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85V-0338]

Availability of Approved Variance for XIScan Model 1000 Fluoroscopic System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for fluoroscopic equipment has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the Model 1000 XIScan fluoroscopic system manufactured by XI Tech Inc. The product is a small-format, low-intensity fluoroscopic system for real-time x-ray imaging in miniature C-arm configuration.

DATES: The variance became effective October 21, 1985, and ends October 21, 1990.

ADDRESS: Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted XI Tech Inc., 215 Route 10, Randolph, NJ 07869, a variance from § 1020.32(f) (21 CFR 1020.32(f)) of the performance standard for fluoroscopic equipment for the Model 1000 XIScan fluoroscopic system.

The specific requirement of the standard from which a variance has been granted pertains to the provision of § 1020.32(f) that requires that the product be provided with a means to limit the source-to-skin distance to not less than 30 centimeters for mobile fluoroscopes and to not less than 20 centimeters for image-intensified fluoroscopes intended for specific surgical applications. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1020.32(f) is not appropriate for the product, and (2) suitable means of radiation safety and protection will be provided by (a) constraints on the existing equipment design, (b) conditions imposed by the terms of the variance, and (c) supplemental information provided to users. Therefore, on October 21, 1985, CDRH approved the requested variance by a letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on public display under the docket number in the heading of this document in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (section 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: January 30, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-2787 Filed 2-7-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 85E-0550 and 85E-0551]

Determination of Regulatory Review Period for Purposes of Patent Extension; Novafil

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Novafil and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of two applications to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims the medical device Novafil.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug

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Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under the act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

The applicant filed two alternative applications for extension of a patent related to Novafil. The primary application, for U.S. Patent No. 4,224,946 (FDA Docket No. 85E–0550), requests extension of a patent currently under litigation. The applicant filed an alternative application, for U.S. Patent No. 4,246,904 (FDA Docket No. 85E–0551), for Patent Office consideration only in the event that applicant does not prevail in the litigation regarding U.S. Patent No. 4,224,946. Both patents claim a single product, Novafil. FDA's determination of the regulatory review period for Novafil applies to both applications.

FDA has determined that the applicable regulatory review period for Novafil is 1,251 days. Of this time, 872 days occurred during the testing phase of the regulatory review period, while 379 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date a clinical investigation involving this device began: April 30, 1982.

FDA has verified that clinical testing began on April 30, 1982, the date an investigational device exemption became effective for the product.

2. The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act: September 17, 1984.

The applicant claimed that the approval phase began on September 14, 1984. However, FDA did not receive the premarket approval application (No. P840041) until September 17, 1984.

3. The date the application was approved: September 30, 1985.

FDA has verified that premarket approval application No. P840041 was approved on September 30, 1985, as stated by the applicant.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 626 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 11, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 11, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket numbers found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 3, 1986.

Allen B. Duncan,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 86–2782 Filed 2–5–86; 11:05am]

BILLING CODE 4160–01–M

Public Health Service

National Institute of Environmental Health Sciences; Conference

A conference to discuss the toxicity of methyl isocyante (MIC) will be held in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), Research Triangle Park, North Carolina, on March 12 and 13, 1986. The conference is sponsored by the NIEHS.

The purpose of the conference is the presentation and discussion of the results of studies on various aspects of the toxicity of methyl isocyanate. Topics will include assessments of human health effects; experimental animal respiratory pathology and function; general, immune, and reproductive toxicology; effects on hemoglobin and serum enzymes; and *in vitro* and *in vivo* genetic toxicology. Invited speakers include representatives from academia, industry, and government agencies who have engaged in recent research with methyl isocyanate or related isocyanates. For questions on scientific content, contact Dr. John Bucher, (919) 541–4532; FTS 629–4532.

There will be no registration fee; however, registration is required as attendance will be limited by space available. A conference schedule and agenda will be mailed with confirmation of registration.

To register and receive information and assistance about the conference including housing, reservations, and agenda, please contact: Ms. June Wallace, Corporate Travel International, 404–266–2680 (Atlanta area only), 1–800–241–2324 (Outside Atlanta).

Dated: February 3, 1986.

David P. Rall,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 86–2780 Filed 2–7–86; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Carcinogenesis Studies of Chlorodibromomethane

The HHS' National Toxicology Program today announces the availability of the Technical Report describing toxicology and carcinogenes is studies of chlorodibromomethane (dibromochloromethane), a trihalomethane formed when organic substances in water are chlorinated.

Toxicology and carcinogenesis studies of chlorodibromomethane (greater than 98% pure) were conducted by administering this chemical in corn oil by gavage five times per week for 104 weeks to groups of 50 male and 50 female F344/N rats at 0, 40, or 80 mg/kg per day and to groups of 50 male and 50 female B6C3F$_1$ mice for 105 weeks at doses of 0, 50, 100 mg/kg per day.

Under the conditions of these gavage studies, there was no evidence of carcinogenicity in male or female F344/N rats receiving chlorodibromomethane at doses of 40 or 80 mg/kg five times per week for 104 weeks. Fatty metamorphosis and ground-glass cytoplasmic changes of the liver in male and female F344/N rats were related to administration of chlorodibromomethane. There was equivocal evidence* of carcinogenicity for male B6C3F$_1$ mice; chlorodibromomethane caused an increased incidence of hepatocellular carcinomas, whereas the combined incidence of hepatocellular adenomas or carcinomas was only marginally increased. Some evidence of carcinogenicity was observed for female B6C3F$_1$ mice, since chlorodibromomethane caused an increased incidence of hepatocellular adenomas and an increased combined incidence of hepatocellular adenomas or carcinomas.

Copies of *Toxicology and Carcinogenesis Studies of Chlorodibromomethane in F344/N Rats and B6C3F$_1$* Mice (Gavage Studies) (TR 282) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541–3991, FTS: 629–3991.

Dated: February 4, 1986.

David P. Rall,

Director.

[FR Doc. 86–2781 Filed 2–7–86 8:45 am]

BILLING CODE 4140–01–M

* The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. R–86–1272; FR–2179]

Statement of Interim Policy on Mandatory Meals Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of agency policy.

SUMMARY: In approximately one year, HUD anticipates that it will publish a final rule, following notice and an opportunity for public comment on a proposed rule, that will govern the provision of mandatory meals in HUD-assisted housing for the elderly. The purpose of this Notice is to advise the public of the Department's policy that will apply to the mandatory meals program pending the formulation of regulations.

EFFECTIVE DATE: The policy described in this Notice is effective February 10, 1986.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 426–3970. (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: From 1959 to 1963 the Housing and Home Finance Agency (HHFA), HUD's predecessor agency, permitted owners of HHFA-assisted projects for the elderly with central dining facilities to require their tenants to purchase meals in their project's central dining facility. HHFA placed no limit on the number of meals per day that owners could require their tenants to purchase. Beginning in 1963, HHFA, and subsequently HUD, has permitted, with prior HUD approval, owners HUD-assisted projects for the elderly with central dining facilities to require their tenants to purchase only one meal per day in the dining facilities. This "mandatory meal policy" has appeared over the years in various HUD Circulars and Handbooks covering projects for the elderly assisted under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q; sections 221(d)(3), (d)(4) and (d)(5), 231, and 236 of the National Housing Act, 12 U.S.C. 1715*l*(d)(3), (4) and (5), 1715w, and 1715z–1; and Section 8 of the United States Housing Act, 42 U.S.C. 1437(f).

Recently, mandatory meal plans have generated controversy, on both procedural and substantive grounds. Procedurally, critics have complained that HUD should have published its policy in the **Federal Register**, after notice and an opportunity for public comment. Substantively, critics claim that the plans infringe on tenants' freedom to prepare or purchase meals of their choice, that they are excessive financial drain on tenants' modest income, and that tenants who cannot eat the meals because they require special diets, or because of employment they are unavoidably absent during the time meals are served, are nonetheless being required to pay for the mandatory meals.

HUD has determined as a matter of policy to reevaluate its mandatory meal policy, and to publish the policy as a final rule in the **Federal Register**, after providing notice and an opportunity for public comment. This decision has been incorporated into a court order in a legal challenge to mandatory meal programs in *Birkland* v. *Rotary Plaza, Inc.*, No. C 84–2026 SW (N.D. Cal. Jan. 10, 1986) (order granting declaratory and injunctive relief). HUD will promulgate a final rule by February 1, 1987. HUD will not, however, require owners to terminate their mandatory meal programs while HUD is engaged in rule making. Both the U.S. Ninth Circuit Court of Appeals, in *Aujero* v. *CDA Todco, Inc.*, 756 F.2d 1374, 1377 (9th Cir. 1985) and the Tenth Circuit, in *Mayoral* v. *Jeffco American Baptist Residences*, 726 F.2d 1361, 1366 (10th Cir. 1984), *cert. denied*, 105 S.Ct. 255 (1984) have recognized that mnandatory meal programs benefit elderly participants by ensuring adequate nutrition in a social environment, thereby avoiding malnutrition and social isolation. In March 1985 the General Accounting Office reported that it had surveyed participants in mandatory meal programs and that 75 percent of them said that their program improved their day-to-day lives. Also, available evidence indicates that owners of projects with mandatory meal programs would not continue their programs if they were required to make participation voluntary, because attendance might be too unpredictable to ensure a sufficiently steady stream of income. The District Court for the Northern District of California stated in its order granting injunctive and declaratory relief in *Birkland* v. *Rotary Plaza, Inc.* that it was "concerned that meal programs might collapse and some participants might be harmed if the mandatory meal policy were

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immediately voided nationwide." Thus, a termination of mandatory meal programs while HUD develops a final rule would not serve the public interest.

Instead, pending the formulation of a final rule following the observance of public notice and opportunity to comment procedures, HUD is now publishing an interim mandatory meal policy. Except for two changes concerning exemptions, HUD's interim policy is a continuation of its existing policy: Upon prior written approval of HUD, owners of HUD-assisted elderly projects with central dining facilities may require their tenants to purchase no more than one meal per day at their facilities. On a few occasions since 1963, HUD has permitted owners to require tenants to purchase more than one meal per day, generally in instances where there projects have not contained individual kitchens in which tenants could prepare their own meals. HUD will continue to permit those projects to require purchase of more than one meal per day, but will not approve any requests by other owners to require more than one meal per day. Mandatory meal charges, and any subsequent increase in charges, must receive the prior written approval of HUD, must be modest, and in no case may such charges exceed the cost of purchasing, preparing and serving the meals. HUD's current policy leaves to the discretion of owners whether to grant tenants exemptions from participation in their programs. Under HUD's interim policy, owners are required to grant exemption under two circumstances: (1) For individuals who have a documented medical condition demanding special diets that a project cannot provide; and (2) for tenants who have a paying job which requires that they be absent during the time mandatory meals are served at the project. HUD has determined that there is no reasonable basis for permitting owners to require tenants to participate in a mandatory meal program in either of these two circumstances. Owners continue to have discretion, but are not required, to grant exemptions for other reasons, such as for financial or religious reasons. HUD encourages owners in managing their mandatory meal programs to be sensitive to tenants' religious dietary practices.

HUD's interim policy is effective immediately, and will remain in effect for all existing and future mandatory meal programs in projects for the elderly assisted under section 202, sections 221(d)(3), (4) or (5), 231 or 236, or section 8, until a final rule is published and effective.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environment Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 6, 1986.

Janet Hale,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 86-2956 Filed 2-7-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action Recreation and Public Purposes Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Land classification for recreation and public purposes, Roseau and St. Louis Counties, ES-31812, ES-31813, ES-31831.

SUMMARY: The following described parcels have been classified as suitable for disposal to the State of Minnesota by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741), as amended (43 U.S.C. 869):

Fifth Principal Meridian, Minnesota

1. ES-31812, Roseau County: T.159N., R.42W., Sec. 23, SE ¼ NW ¼ total of 40 acres.

2. ES-31813, Roseau County: T.160N., R.44W., Sec. 30 Lot 2, total of 30.04 acres

Fourth Principal Meridian, Minnesota

3. ES-31831, St. Louis County: T.62N., R.14W., Tract 40, total of 5.2 acres, island in Eagles Nest lake No. 4.

The purpose of the conveyances in Roseau County (ES-31812 and ES-31813) is the preservation of Wildlife Management Areas.

The purpose of the conveyance in St. Louis County (ES-31831) is the preservation of a Scientific and Natural Area.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

Classification of these lands will segregate them from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this Notice, or upon publication of a notice of termination.

Comments: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning these applications is available for review at the Milwaukee District Office, Suite 225, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53201, or by calling Larry Johnson at (414) 291-4413.

Chuck Steele,

District Manager.

[FR Doc. 86-2771 Filed 2-7-86; 8:45 am]

BILLING CODE 4310-RN-M

Minerals Management Service

Outer Continental Shelf, Development Operations Coordination Document; Forest Oil Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Forest Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 0996 an 1980. Blocks 307 and 308, respectively, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 30, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised §250.34 of Title 30 of the CFR.

Dated: January 31, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-2682 Filed 2-7-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Addition of Lands at Redwood National Park; Correction

January 27, 1986.

AGENCY: National Park Service, Redwood National Park, California, Interior.

ACTION: Correction.

The last paragraph of the notice of Wednesday, November 20, 1985, (FR Doc. 85-27684; 50 FR 47850) is hereby corrected as follows:

Inquiries concerning the area within the Redwood National Park shall be directed to the Director, National Park Service, U.S. Department of the Interior, Washington, DC 20013-7127, or to the Regional Director, Western Regional Office, National Park Service, U.S. Department of the Interior, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102.

Denis P. Galvin,

Acting Director.

[FR Doc. 86-2885 Filed 2-7-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser, (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave. NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Records Retention Regulations
OMB Form No.: 3120-0121
Agency Form No.: None
Frequency: Recordkeeping
Respondents: Recordkeeping requirements of large carriers
No. of Respondents: 2,594
Total Burden Hrs.: 25,940

James H. Bayne,

Secretary.

[FR Doc. 86-2823 Filed 2-7-86; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 399]

Rail Carriers; Cost Recovery Percentage

AGENCY: Interstate Commerce Commission.

ACTION: Further Notice of Proposed Costing Standards and Decision.

SUMMARY: Although we have been able to calculate a preliminary 1985 Cost Recovery Percentage (CRP) using 1983 movement data and unit costs, other indicators tell us this should not have been possible. The addition of a 1983 cost of capital element, computed at the embedded debt level, to the total 1983 freight expenses of the railroad industry produces a total higher than the industry's total freight revenues. If costs exceed revenues, it should not be possible to calculate a CRP.

However, a CRP (182.5 percent) was calculated by applying actual 1983 Rail Form A unit costs to the movements from the 1983 I.C.C. Waybill Study. Individual railroad unit costs were used for movements over Class I Line-Haul Railroads, where possible, and regional unit costs were used for other movements. Since the CRP of 182.5 percent is based on revenue obtained by extrapolation from the waybill study sample, it will reflect the weakness of that sample.

The CRP of 182.5 percent may not be valid under 49 U.S.C. 10709. Section 10709 *defines* the CRP as the revenue/variable cost limit which would, if it were applied, reduce railroad revenues to the level of variable costs plus fixed costs. Fixed costs must include a return on equity equal to the embedded cost of debt.

Clearly, a CRP cannot be produced which satisfies the statutory definition when costs exceed revenues. If a number derived from the Waybill Study sample is produced when costs exceed revenues, there is likely to be a limitation in the sample methodology and/or the data.

In this case, the CRP of 182.5 percent is suspect because total railroad revenues are less than costs as defined by section 10709(d)(1). In all likelihood, the discrepancy is due to the lack of revenue information on movements under contract. When revenues are less than costs, section 10709(d)(5)(B) deems the CRP to be the CRP "last determined by the Commission".

In view of the contradiction between our calculated CRP using revenue based on a sample and the fact that total freight revenues are less than costs, comments are requested on whether we should adopt our calculated CRP or fall back to the latest published CRP contained in our decision served January 25, 1985. Our final 1985 CRP will be determined in light of those comments.

We have developed a methodology for the calculation of the CRP which we believe satisfies the requirements of the Staggers Rail Act. After our review of comments relating to the methodology currently used, we intend to issue final procedures for the methodology used for the calculation of a CRP. Although we will continue to solicit comments on each year's CRP after final rules are issued, any suggestions for changes in our methodology after that time must be brought to our attention through either a petition for reconsideration or a rulemaking proceeding.

Comments are due 30 days after publication in the **Federal Register**. If the calculated CRP is adopted it will be used as the threshold for rate regulation of market dominant traffic because it falls within the range specified by the Staggers Rail Act of 1980.

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DATES: Comments are due by March 12, 1986.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 275–7354 or Robert C. Hasek (202) 275–0038 or 275–7354.

SUPPLEMENTARY INFORMATION: Additional information is contained in the decision. To purchase a copy of the full decision, write T. S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone 289–4357 (Washington, DC Metropolitan Area) or toll free (800) 424–5043.

Section 202 of the Staggers Rail Act requires us to calculate an annual CRP for all railway traffic. The CRP is a revenue to variable cost percentage calculated using railway unit costs and a statistical sample of rail traffic. The Staggers Rail Act requires it to be set at such a level that, if all traffic moving at revenue to variable cost percentages above the CRP level were held at the CRP level, the railway industry would, in total, earn revenues sufficient to cover industry variable plus fixed costs. That Act currently sets a range of 170 percent to 180 percent in order for the CRP to be used as the jurisdictional threshold for rate regulation of market dominant traffic. If our calculated CRP falls below 170 percent the threshold will be set at 170 percent. If it falls above 180 percent the threshold will be set at 180 percent.

Authority: 49 U.S.C. 10321, 10709, 5 U.S.C 553.

Dated: December 10, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Andre, Sterrett, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86–2824 Filed 2–7–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–33 (Sub-No. 26)]

Union Pacific Railroad Co.; Abandonment in Douglas County, NE; Findings

The Commission has found that, subject to certain conditions, the public convenience and necessity permit the Union Pacific Railroad Company to abandon its line of railroad extending from railroad miles post 482.62 to railroad mile post 488.19 and from railroad mile post 488.70 to railroad mile post 492.33, a total distance of approximately 9.20 miles in Douglas County, Nebraska.

A certificate will be issued authorizing his abandonment unless within 10 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) It is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the appliant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding finanical assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–2825 Filed 2–7–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collection(s) Under OMB Review

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information: the name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing the form; the title of the form; the agency form number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of responses; an estimate of the total number of hours needed to fill out the form; an indication of whether Section 3504(h) of Pub. L. 96–511 applies; and, the name and telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *and* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633–4312

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) Monthly return of arson offenses known to law enforcement
(4) DO–73
(5) Monthly
(6) State and local governments. Used to collect the number of arsons and dollar loss throughout the United States. Data are published annually.
(7) 1,716 respondents
(8) 10,296 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder, 395–4814
(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) Number of full-time law enforcement employees as of October 31
(4) DO–52, 52a, 52b
(5) Annually
(6) State and local governments. Needed to determine the number of civilian and sworn male/female law enforcement employees in the United States; data published annually.
(7) 11,702 respondents
(8) 2,340 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder, 395–4814
(1) Larry E. Miesse, 202/633–4312
(2) Federal Bureau of Investigation, Department of Justice
(3) Supplementary homicide report
(4) DO–56
(5) On occasion
(6) State and local governments. Used to collect age, sex, race, ethnic origin and relationship of murder victims; weapons; and motives. Data published annually.
(7) 929 respondents
(8) 110 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder, 395–4814
(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Alien Crewman's landing permit
(4) I–95A
(5) On occasion
(6) Individuals or households. Vessel and aircraft alien crewmen execute this form for permission to enter the United States under Sections 251 and 252 of the Immigration and Nationality Act.
(7) 300,000 respondents
(8) 24,900 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder, 395–4814
(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Report of status treaty trader or investor
(4) I–126
(5) Annually
(6) Individuals or households. Information is used to determine whether an alien admitted to the United States as a treaty trader or investor (Section 101[a][15][e], I&N Act) is maintaining status.
(7) 35,000 respondents
(8) 17,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder, 395–4814

Larry E. Miesse,

Agency Clearance Officer, Department of Justice.

[FR Doc. 86–2846 Filed 2–7–86; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NAAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by March 12, 1986.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) or Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension of the Expiration Date of Currently Approved Form
Title: Sample Certification Letter
Form Number: 3136–0072
Frequency of Collection: Occasional
Respondents: NEH grantees who which to certify third party gifts
Use: To certify that gifts for federal matching funds, have been received by NEH grantees.
Estimated Number of Respondents: 500
Estimated Hours for Respondents to Provide Information: ½.

Susan Metts,

Acting Director of Administration.

[FR Doc. 86–2845 Filed 2–7–86; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Safety Recommendations Issued

Recommendation No.	Issued to	Date	Subject
AVIATION			
A–85–127 and –128	Federal Aviation Administration	Nov. 14, 1985	Installation and maintenance of runway markers, landing aids, safety areas, surveillance, and length of runway at Dutch Harbor Airport, Unalaska, Alaska.
A–85–112 through –114	FAA	Nov. 15, 1985	Airport Radar Service Areas (ARSA) and Terminal Control Areas (TSA) at the New Orleans International Airport.
A–85–115	FAA	Nov. 27, 1985	Minimum runway lengths for transport category airplanes in general aviation; emergency brake systems or alternate emergency procedures for use in brake failures.
A–85–117	FAA	Nov. 19, 1985	Mandatory use of shoulder harnesses during takeoff and landing of U.S. registered civil aircraft.
A–85–116	County of Los Angeles Fire Department, Avalon Fire Department, and Santa Catalina Island Conservancy.	Nov. 27, 1985	Improvement of crash/fire/rescue capability at the Catalina Airport.
A–85–138 through –140	FAA	Dec. 13, 1985	Fail safe criteria for dome-shaped aft pressure bulkheads on transport category airplanes.
A–85–126	General Aviation Manufacturers Association	Dec. 17, 1985	Evaluation of design of the seat/restraint systems in models of airplanes in wide use.
A–85–122 through –125	FAA	Dec. 17, 1985	Performance standards for seat/restraint systems in small airplanes.
A–85–93 through –104	FAA	Dec. 17, 1985	Airline passenger safety education.
HIGHWAY			
H–85–22	Governors of States and 4 U.S. Territories and the Mayor of the District of Columbia.	Nov. 12, 1985	Proper use of child seat restraints.
H–85–23 through –26	National Highway Traffic Safety Administration (NHTSA).	Nov. 12, 1985	Proper use of child seat restraints.
H–85–44 through –46	Riss International Corporation	Nov. 15, 1985	Transportation of hazardous materials; 24-hour emergency telephone numbers, safe haven lists, route selection.
H–85–41 through –43	Colorado State Highway Commission	Nov. 15, 1985	Inspection, effectiveness, and adequacy of existing hazard warning signs on interstate highway ramps; particularly ramp on Interstate 25 southbound to Interstate 70 eastbound.
H–85–36 through –40	Federal Highway Administration (FHA)	Nov. 15, 1985	Location of safe havens and routes designated for or restricted from the transportation of hazardous materials, placement of curve and turn warning signs; standards for retroflective illumination for traffic control devices.
H–85–31 through –35	Bureau of Motor Carrier Safety, FHA	Nov. 15, 1985	Transportation of hazardous materials; 24-hour emergency number, driver qualifications, safe havens, routing requirements, safety ratings.
H–85–47 and –48	NHTSA	Dec. 6, 1985	Improved reporting of alcohol involvement in highway crashes.

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Recommendation No.	Issued to	Date	Subject
INTERMODAL			
I-85-21 through -27	U.S. Department of Defense	Nov. 15, 1985	Safe transportation of high-hazard Department of Defense shipments.
MARINE			
M-85-106 through -110	U.S. Coast Guard	Dec. 5, 1985	Performance of safety equipment, adequacy of exposure suits when worn by physically smaller adults, and lights on life preservers.
M-85-107	Imperial Manufacturing Co.	Dec. 5, 1985	Separation of the inflator tube assembly for the auxiliary buoyancy ring on Imperial Manufacturing Co. exposure suits manufactured before clamps were required on inflator tubes.
M-85-116	Department of Labor Occupational Safety and Health Administration.	Dec. 17, 1985	Lifesaving and firefighting equipment requirements to protect industrial workers employed on uninspected self-elevating lift boats in State controlled waters.
M-85-111 through -115	U.S. Coast Guard	Dec. 17, 1985	Need for further regulation of self-elevating lift boats operating on the outer continental shelf.
M-85-117 through -119	Offshore Marine Service Association	Dec. 17, 1985	Regulation of self-elevating lift boats in the Gulf of Mexico and other offshore areas.
PIPELINE			
P-85-23 through -26	National Fuel Gas Company	Nov. 27, 1985	Emergency response procedures for gas leaks and preventive measures.
P-85-31	Research and Special Programs Administration.	Nov. 27, 1985	Design limitations on forces anticipated to act upon plastic pipe and couplings.
P-85-29	Dresser Industries, Inc.	Nov. 27, 1985	Customer notification of new or modified product limitations.
P-85-30	American Gas Association and American Public Gas Association.	Nov. 27, 1985	Design limitations on forces anticipated to act upon plastic pipe and couplings.
P-85-32	American Society of Mechanical Engineers and the American Petroleum Institute.	Nov. 27, 1985	Local emergency response to pipeline emergencies; initial lifesaving measures; provision of training to local emergency response agencies.
P-85-33	International Association of Fire Chiefs, Inc., the International Association of Chiefs of Police, and the International Society of Fire Service Instructors.	Nov. 27, 1985	Local emergency response to pipeline emergencies; initial lifesaving measures; provision of training to local emergency response agencies.
RAILROAD			
R-85-53	All railroads operating railyards	June 6, 1985	Development and implementation of emergency planning and response procedures for handling releases of hazardous materials.
R-85-64	Federal railroad Administration (FRA)	June 24, 1985	Testing and evaluation of head shields to protect DOT specification aluminum tank car ends from puncture.
R-85-76 through -78	Seaboard System Railroad, Inc.	July 22, 1985	Prevention of return to service of unsafe equipment; dispatching procedures in manual block territories, and safe dispatching of trains.
R-85-79 and -80	Seaboard System Railroad, Inc.	July 22, 1985	Notification of local emergency response agencies immediately of a derailment of a train transporting hazardous materials and training of employees in rules applicable to hazardous materials emergencies.
R-85-84 and -85	Association of American Railroads (AAR)	Aug. 5, 1985	Modification of operating rules classes and administering tests for employees and allocation to AMTRAK of radio channel for its exclusive operational use in New York area.
R-85-81 through -83	National Railroad Passenger Corporation	Aug. 5, 1985	Coach seatback cushion safety; exclusive radio channel for the National Railroad Passenger Corporation's operational use in New York area, operating rules verification procedure.
R-85-86	AAR	Aug. 12, 1985	Inspection of cushion underframe units replaced by Joy Manufacturing Company.
R-85-87	American Short Line Railroad Association	Aug. 12, 1985	Inspection of cushion underframe units replaced by Joy Manufacturing Company.
R-85-99	FRA	Sept. 26, 1985	Compliance of tank cars used in hazardous materials service with DOT standards.
R-85-100 and -101	City of North Little Rock, Arkansas	Sept. 26, 1985	Emergency response plan for responding to releases of hazardous materials within railroad yards and training and equipment for emergency response personnel.
R-85-49 and -50	Missouri Pacific Railroad Company	Sept. 26, 1985	Master railroad yard emergency response guideline for use by railroad yard personnel and the communities, for responding to releases of hazardous materials within railroad yards; local emergency and response plans.
R-85-98	Arkansas Office of Emergency Service	Sept. 26, 1985	Emergency response guidelines for use by communities adjacent to railroad yards that handle hazardous materials.
R-85-88 through -97	Chicago Transit Authority	Oct. 16, 1985	Emergency evacuation of trains at locations away from station platforms; medical records on operating personnel; evaluation of drugs taken by operating personnel; effects of over-the-counter drugs; initial and recurrent training in routine and simulated emergency situations; knowledge and understanding of CTA rules; procedures and coordinated response to emergency situations; identification of risks in CTA transit system; assurance that 6000-series cars retained for service are sound before they are returned to revenue service; energy-absorbing passenger seat grab bars and vertical staunchions.
R-85-106 through -112	The Chicago, South Shore and South Bend Railroad.	Nov. 13, 1985	3-minute delay rule for single-track operation; issue of "call orders", record of communications to and from dispatcher; power-monitoring system; stop-and-proceed signal aspect where no propulsion power is available, communications skills for employees.
R-85-105	Research and Special Programs Administration.	Nov. 13, 1985	Requirement that tank car shipments of hazardous materials with an isolation radius of one-half mile or more be transported in tank cars equipped with head shield or full tank head protection.
R-85-102 through -104	Seaboard System Railroad	Nov. 13, 1985	Equipment temporarily stored on main tracks, train radio communications capability; training of crewmembers regarding inspection practices for assembling trains at designated initial terminals.
R-85-113 through -116	New York State Public Transportation Safety Board.	Nov. 15, 1985	Integrated reporting systems on track and structures fires and car equipment fires, reporting of such fires for data collection; installation of a hardwire communication system throughout subway tunnels; prohibition of extended operation of subway trains with insufficiently powered motor control groups.

Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Alice F. Caldwell,
Alternate Federal Register Liaison Officer.
January 30, 1986.
[FR Doc. 86-2768 Filed 2-7-86; 8:45 am]
BILLING CODE 7533-01-M

Availability of Safety Recommendations Issued

Recommendation number	Respondent	Date	Subject
RAILROAD			
R-85-53	Burlington Northern Railroad	June 13, 1985	Hazardous emergency preparedness.
R-85-53	Chicago and Illinois Midland Railroad Co	June 20, 1985	Do.
R-85-53	Missouri-Kansas-Texas Railroad Co	do	Do.
R-85-53	Seaboard System Railroad Co	June 21 1985	Do.
R-83-7 and -9	Association of American Railroads	July 31, 1985	Internal rail flow inspections based on defect occurrence rates; provision by shippers of hazardous materials descriptions.
R-83-60 and 61	Houston Belt & Terminal Railway Co	Aug. 2, 1985	Monitoring of switch engine crews; qualifications of crew members.
R-85-3	Burlington Northern Railroad	Aug. 6, 1985	Emergency preparedness plans.
Monitoring of switch engine crews; qualification of crewmemebers.	Do.		
R-85-59 and -60	Federal Railroad Administration	do	Tank car inspections and evaluation of industry inspection programs.
R-78-35	do	Aug. 9, 1985	Expansion of communication channels between FRA and Assn. of American Railroads—Early Warning System.
R-78-54 and -55, R-78-35 and -44, R-84-31, R-79-85, R-84-10, R-83-102.	do	Aug. 12, 1985	Motive power and equipment.
R-85-53	Chicago & Northwestern	June 21, 1985	Hazardous materials emergency preparedness.
R-85-22	Seaboard System Railroad	do	Periodic monitoring of each train crew member on every applicable operational test.
R-85-53	The Atchison, Topeka and Santa Fe Railroad Co.	June 25, 1985	Hazardous material emergency preparedness.
R-85-53	Cambria and Indiana Railroad Company	do	Do.
R-85-53	Boston and Maine Corp; Delaware & Hudson Railroad Co.; Maine Central Railroad Co.	June 26, 1985	Do.
R-84-05	Burlington Northern Railroad	June 28, 1985	In-train forces; reduction of longitudinal forces that can occur when trains are stopped.
R-85-53	Detroit & Mackinac Railroad Co	do	Hazardous material emergency preparedness.
R-85-48	Association of American Railroads	July 18, 1985	Training and testing procedures for individuals to be employed in safety critical positions.
R-85-53	Illinois Central Gulf	July 22, 1985	Hazardous materials emergency preparedness.
R-85-53	Richmond, Fredericksburg and Potomac Railroad Co.	do	Do.
R-85-10 and -11	Federal Railroad Administration (FRA)	Aug. 12, 1985	Automated track geometry cars.
R-84-20	American Railway Engineering Association	Aug. 15, 1985	Torch-cutting of rail ends.
R-85-79 and -80	Seaboard System Railroad	Aug. 19, 1985	Notification of local emergency response agencies immediately of a derailment of a train transporting hazardous materials.
R-85-53	The Denver & Rio Grande Western Railroad Co.	Aug. 20, 1985	Hazardous materials emergency preparedness.
R-85-53	Indiana Harbor Belt Railroad Co., Railroad Co.	Oct. 18, 1985	Do.
R-85-53	Chicago & Northwestern Transportation Company.	Sept. 18, 1985	Do.
R-85-53	Missouri-Kansas-Texas Railroad Co	Sept. 5, 1985	Do.
R-84-15	Federal Railroad Administration	Aug. 27, 1985	Loosening problem on excess flow valves on certain tank cars.
R-85-64	do	do	Puncture resistance testing of aluminum tank cars.
R-85-87	The American Short Line Railroad	Aug. 30, 1985	Joy Manufacturing Company cushion underframe units.
R-85-76 through -78	Seaboard System Railroad	Sept. 3, 1985	Maintenance, inspection, supervisory practices, for locomotive and car equipment to prevent return to service of unsafe equipment.
R-81-39 and -40	Federal Railroad Administration	Sept. 5, 1985	Radios, grade crossing and other aspects of signal systems.
R-83-61	Chicago & Illinois Midland Railway Co	Sept. 10, 1985	Fitness of operating department employees when coming on duty at any hour.
R-85-57 and -58	New York City Transit Authority	Sept. 6, 1985	Procedures to ensure appropriate signs and signals are displayed to indicate speeds; reporting of discrepancies in truck conditions.
R-81-104, -105, -106-108, -109, -112, -113 and -115.	do	Sept. 5, 1985	Subway car inspections; emergency training; passenger procedures, provision of fire extinguishers, emergency procedures.
R-85-21	Association of American Railroads	Sept. 16, 1985	Crewmember substance use.
R-83-60 and -61	Illinois Central Gulf	do	Fitness of operating department employees; employee responsibility to report rules violations.
R-83-62, -63, -64, -67, -68, -69, -72, -74, and -75.	Amtrak	Sept. 23, 1985	Emergency equipment and procedures on revenue passenger cars.
R-78-56 and -57	Association of American Railroads	Sept. 26, 1985	Effect of exposure to critical temperatures on wheels.
R-85-86	do	do	Joy Manufacturing Company cushion underframe units.
R-85-23	do	do	Bottom discontinuities on existing stub-sill tank cars.
R-85-62 and -63	do	Sept. 19, 1985	Inspection of hidden car components, development of headshield to protect DOT specification aluminium tank car ends from puncture.
R-85-25 through -34	State of New York Public Transportation Safety Board.	Oct. 1, 1985	Removal of subway tunnel debris, emergency procedures.
R-85-64 and -85	Association of American Railroads	Oct. 2, 1985	Employee comprehension of operating rules.
R-85-4 and -5	Federal Railroad Administration	Oct. 6, 1985	Torch-cutting of chrome-vanadium alloy rail.
R-80-31, R-83-76	do	June 1985	Railroad passenger car safety.
R-83-30	do	June 1985	Alcohol and drug use in railroad operations.
R-85-25 through -34	New York City Transit Authority	Oct. 16, 1985	Removal of subway tunnel debris, emergency procedures.
R-83-25 and R-85-13	Amtrak	Oct. 23, 1985	Emergency lighting in passenger equipment; system to inform crew of overheating traction motor support bearings.
R-82-15, -16, -55, -57, -70, -72, and 74	Washington Metropolitan Area Transit Authority.	Oct. 24, 1985	Training for operators and supervisors; program to educate passengers on emergency procedures; marked emergency escape windows, side center doors; instruction graphic; carborne monitors.
R-83-47, -50, and -51	Seaboard System Railroad	Oct. 25, 1985	Hazardous materials emergency response procedures.

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Recommendation number	Respondent	Date	Subject
R-85-98	Arkansas Office of Emergency Preparedness.	....do	Transportation of hazardous materials; emergency drills and exercises.
R-85-81 through -83	Amtrak	Nov. 14, 1985	Reinforcing bar in the head-rest portion of the Amfleet seat back cushion; separate radio channel for the New York Sunnyside Yard operation; employee comprehension of rules.
R-85-71 and -72	U.S. Department of Labor	Aug. 21, 1985	Inspection of petrochemical plant loading facilities.
R-85-52	Association of American Railroads	Sept. 11, 1985	Requirement for at least two qualified crewmembers to be present on locomotives of through freight trains; one having total responsibility for the train and all employees, and the other to serve as an assistant.
I-85-2 through -4	Harris Corporation	June 20, 1985	Safe packaging of wastes.
I-85-13 and -14	Research and Special Programs Administration.	Aug. 6, 1985	Evacuation distances for rail tank cars carrying hazardous materials.
I-85-16 through -18	Kentucky Department of Military Affairs	July 29, 1985	Emergency response plans & procedures.
I-85-5 and -6	Chemical Waste Management, Inc.	Sept. 23, 1985	Safety and training programs for waste transporters.
I-78-14 through -16	Association of American Railroads	Sept. 26, 1985	Safety procedures for identifying and assessing hazardous materials dangers; wreckage-clearing operations.
I-78-9	Research and Special Programs Administration.	Sept. 27, 1985	Safety analysis application in hazardous materials regulatory and exemption programs.

Note.—The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Alice F. Caldwell,
Alternate Federal Register Liaison Officer
January 30, 1986.
[FR Doc. 86-2769 Filed 2-7-86; 8:45 am]
BILLING CODE 7533-01-M

Responses to Safety Recommendations

Recommendation No.	Respondent	Date	Subject
AVIATION			
A-82-32	Federal Aviation Administration	Nov. 1, 1985	Tension bolts on wings of specified model Beech Aircraft—removal, inspection.
A-85-53 through -56	....do	Nov. 1, 1985	Rotating outer air seal grooves in 2nd stage low-pressure turbine disks in Pratt & Whitney JT8D15-17, and 17R series engines.
A-78-4	....do	Nov. 1, 1985	Forward baggage door locks on Piper Cheyenne, Navajo, and Aztec airplanes.
A-83-64	....do	Nov. 1, 1985	Roll pins used to secure fuel tank selector valve handles to fuel tank selector valve shafts on all Cessna model airplanes.
A-82-123 through -129	....do	Oct. 29, 1985	Training guides for pilot transition into general aviation turbojet airplanes.
A-76-64	....do	Oct. 29, 1985	Maximum number of birds in various categories required to be injested into turbine engines.
A-84-50	....do	Oct. 29, 1985	Requirement for possession of valid medical certificates for airmen.
A-81-53	....do	Oct. 29, 1985	Retrofitting of Beech Baron/Travel Air aircraft with aerodynamic air flow kits.
A-84-83- and -84	....do	Oct. 28, 1985	Low altitude/conflict alert at ARTS III/IIIA facilities.
A-85-5 and -6	....do	Aug. 23, 1985	Engine fire detection & extinguishing systems on Boeing 747 series airplanes equipped with Pratt & Whitney JT9D series engines.
A-84-36, -37 and -41	....do	July 5, 1985	Safety of aircraft operations in the airport environment.
A-84-24 thru -26	....do	July, 1, 1985	Airport Certification Program—standards for fueling training.
A-81-70	....do	July 5, 1985	Design of flanges and fasteners on forward and aft faces of the fan case of JT9D turbofan engines.
A-74-38 and -39	....do	July 5, 1985	Specifications for standardizing powerplant control locations, visual/tactile appearance, mode of actuation, and fuel selector valve handles.
A-84-93 thru -95	....do	July 5, 1985	Pilot use of licit and illicit drugs.
A-80-115 and -119	....do	June 19, 1985	National Weather Service weather radar color remote displays.
A-84-45, -46, -48, and -50	....do	June 3, 1985	Blood alcohol testing of airmen; requirement for airmen to possess valid medical certificates.
A-84-87, -86, -89 and -92	....do	June 17, 1985	Mooney Model M-20 and M-20A airplanes; structural deterioration.
A-85-32 and -33	....do	July 12, 1985	Coordination between ground and local air traffic controllers.
A-85-26 and -27	....do	July 22, 1985	Wind shear training program and cockpit resource management training.
A-84-79 and -80	....do	Aug. 1, 1985	Cessna Models 206, 207, and nonturbocharged Model 210—inspection of induction airbox assembly; installation of Cessna induction airbox assembly Part 1250705-8.
A-81-156 and A-83-36	....do	Aug. 7, 1985	Evaluation of air traffic controllers.
A-85-31	....do	July 25, 1985	Inspection on Model PA-601B, -601P and -602P Piper Aerostar airplanes to determine whether the intercostals of the wing extension assemblies are properly attached with rivets to the wing rib structure at wing station 195.
A-85-34	....do	Aug. 29, 1985	General Electric CF6-50 and CF6-45 engines: left side cooling air tubes.
A-85-8 through -10	....do	Aug. 29, 1985	Field modifications for Mooney Models M20B, M20C, M20, E, M20F, M20G, M20J, (201) and M20K (231), and elimination of possibility for water entrapment in outward bay area of fuel tanks on all Mooney aircraft.
A-83-33	....do	Sept. 13, 1985	Inspection of connector sockets specified in Sunstrand Data Control Service Bulletin No. 23, dated Aug. 2, 1982, and replacement of incorrect connectors.
A-77-70, A-80-125, A-80-126, A-80-127, A-75-51, A-80-130, A-80-131, A-80-128.	....do	Sept. 12, 1985	Shoulder harnesses at occupant seats, crashworthiness testing for occupant protection.
A-85-20 and -21	....do	Sept. 13, 1985	Detection and repair of wing structural damage and inflight airframe failure in Bellanca Model 8GCBC.
A-80-53	....do	Sept. 12, 1985	Control and airspeed margins of Series 20 Learjet aircraft at both low- and high-speed extremes.
A-85-19	National Oceanic and Atmospheric Administration.	Aug. 13, 1985	Inspection of Supplementary Aviation Weather Reporting Stations outside the Alaska Region.
A-82-32	Federal Aviation Administration	Aug. 12, 1985	Periodic inspection of specified Model Beech aircraft wing tension bolts.
A-76-34	....do	Sept. 24, 1985	Airplane wind shear penetration capability.
A-76-23	....do	Sept. 17, 1985	Expansion of research on "Cockpit Human Factors Program" to include problems peculiar to helicopter controls and displays.

Recommendation No.	Respondent	Date	Subject
A-79-42	....do	Sept. 18, 1985	Runway incursion problem.
A-81-34	DOD Defense Mapping Agency	Sept. 20, 1985	NOS approach charts—missed approach symbology.
A-80-90, -91, -92, and -94	Federal Aviation Administration	Sept. 17, 1985	Crash resistant fuel systems.
A-84-67 and -68	....do	Oct. 1, 1985	Loss of tail rotor effectiveness on Bell Model 206 helicopters.
A-85-50 through -52	....do	Oct. 23, 1985	Labeling of ignition switch on Fairchild Swearingen Models SA-226 and SA-227.
A-83-35, -36, A-84-71 through -73	....do	Oct. 23, 1985	Controller fatigue and stress, operational error; Miami ARTCC satellite channels.
A-84-60	....do	Oct. 23, 1985	Engine compartment design of all certificated multiengine helicopters.
A-84-87 and -86	....do	Oct. 23, 1985	Structural deterioration in Mooney Models M-20 and M-20A airplanes.
A-83-39	....do	Oct. 7, 1985	Punitive nature of controller operational error/deviation investigations.
A-84-96	U.S. Department of Transportation	Oct. 3, 1985	Effect of licit and illicit drugs on human performance in all transportation
A-83-55	Federal Aviation Administration	Oct. 1, 1985	Inclusion of questions on visual scanning techniques for airborne targets in written examinations for pilot licenses.
H-85-12	Hawaii Department of Education	June 12, 1985	Schoolbus driver qualifications.
H-85-13	Florida Department of Education	June 13, 1985	Do.
H-84-15 through -18	State of Maryland	June 14, 1985	Sobriety checkpoints.
H-84-30	Mack Trucks, Inc	June 18, 1985	Decaburization control.
H-85-13	Oklahoma Department of Education	June 18, 1985	Schoolbus driver qualifications.
H-85-13	Tennessee Department of Education	June 19, 1985	Do.
H-85-12	Nebraska Department of Motor Vehicles	June 20, 1985	Do.
H-84-21	Missouri Division of Highway Safety	June 24, 1985	Data evaluation of DWI laws.
H-85-12	State of Hawaii	June 25, 1985	Schoolbus driver qualifications.
H-85-13	Arizona Department of Transportation	June 25, 1985	Do.
H-85-13	Kansas Department of Transportation	June 26, 1985	Do.
H-85-12	State of Nevada	June 28, 1985	Do.
H-85-12	California Highway Patrol	July 1, 1985	Do.
H-85-13	Wisconsin Department of Public Instruction	July 2, 1985	Do.
H-85-12	Maine Department of Educational and Cultural Services.	July 2, 1985	Do.
H-85-12	State of Maryland	July 5, 1985	Schoolbus driver qualifications.
H-84-77 through -86	Commonwealth of Kentucky	July 8, 1985	Blood alcohol testing; alcohol-related traffic offenses, including juvenile offenders.
H-85-13	Ohio Department of Education	July 10, 1985	Schoolbus driver standards.
H-85-9 through -11	Florida Department of Highway Safety and Motor Vehicles.	July 12, 1985	Schoolbus inspection (private and public buses).
H-84-66 through -68	Federal Highway Administration	July 15, 1985	Identification of motor carriers involved in interstate commerce through the automated Management Information System.
H-79-13	Recreational Vehicle Industry Assn	July 15, 1985	Safety of multipurpose vans.
H-85-13	Washington Superintendent of Public Instruction.	July 15, 1985	Schoolbus operation—public and private.
H-85-13	Ohio Department of Highway Safety	July 17, 1985	Schoolbus operation—public and private.
H-85-12	North Caroline Department of Transportation.	July 17, 1985	Schoolbus driver qualifications.
H-81-2, -4, -7	Federal Highway Administration	July 18, 1985	Motor carrier safety—hazerdous materials enforcement.
H-85-12	State of Washington	July 23, 1985	Schoolbus driver qualifications.
H-85-12	State of Mississippi	July 25, 1985	Do.
H-84-76	Wayne Corporation	July 25, 1985	Attachment of seat cushions to seat frames.
H-85-12	State of Rhode Island and Providence Plantations.	July 26, 1985	Schoolbus driver qualifications.
H-85-12	State of New York	July 26, 1985	Do.
H-83-53 through -59	National Highway Traffic Safety Administration.	July 26, 1985	Testing of child safety seats.
H-85-13	Virginia Department of Education	July 26, 1985	Schoolbus driver qualifications.
H-79-31, H-84-72, H-85-12	Minnesota Department of Education	July 22, 1985	Do.
H-85-12	State of Hawaii	July 30, 1985	Do.
H-85-13	Alaska Department of Education	July 30, 1985	Do.
H-85-12, H-84-72	Ohio Department of Highway Safety	July 31, 1985	Do.
H-78-52	Federal Highway Administration	July 31, 1985	Energy attenuating devices capable of decelerating large runway vehicles on steep grades.
H-79-31, H-84-72, and H-85-12	Commonwealth of Massachusetts	July 31, 1985	Schoolbus driver qualifications.
H-85-4 through -6	Alaska Department of Education	July 31, 1985	Schoolbus driver compliance with railroad crossing stop requirements; schoolbus driver stress.
H-84-89	Veterans Administration	July 31, 1985	Availability of VA hospital alcohol dependency treatment programs to local traffic court rehabilitation programs for convicted veteran DWI defendants.
H-85-17	North Carolina Department of Transportation.	Aug. 1, 1985	Schoolbus driver qualifications.
H-79-31, H-84-72, and H-85-12	State of Maryland	Aug. 2, 1985	Do.
H-79-31, H-84-72, and H-85-12	Wisconsin Department of Transportation	Aug. 3, 1985	Do.
H-84-77 through -86	State of New Jersey	Aug. 5, 1985	Blood alcohol testing; alcohol-related traffic offenses.
H-85-13	Pennsylvania Department of Transportation	Aug. 6, 1985	Schoolbus driver qualifications.
H-85-12	State of Nebraska	Aug. 8, 1985	Do.
H-85-12	State of Delaware	Aug. 7, 1985	Do.
H-79-31, H-84-72, and H-85-12	California Department of Highway Patrol	Aug. 7, 1985	Do.
H-85-12	State of Iowa	Aug. 8, 1985	Do.
H-85-12	State of Vermont	Aug. 9, 1985	Do.
H-79-31, H-84-72, and H-85-12	Oregon Department of Transportation	Aug. 9, 1985	Do.
H-85-12	State of Indiana	Aug. 13, 1985	Do.
H-84-19 through -21	State of Missouri	Aug. 26, 1985	Sobriety checkpoints.
H-84-55	American Association of State Highway and Transportation Officials.	Sept. 11, 1985	Design of bridges.
H-84-61 and -62	Trailways	Sept. 13, 1985	Driver seatbelt compliance and speed compliance.
H-83-23 and -24	Federal Highway Administration	Aug. 14, 1985	Testing of New Jersey type barriers on curved roadway sections—including crash testing of heavier vehicles with higher centers of gravity.
H-79-31, H-84-72, and H-85-12	State of Connecticut	Aug. 14, 1985	Schoolbus driver qualifications.
H-84-91 and -92	International Association of Chiefs of Police, Inc.	Aug. 15, 1985	Use of emergency signaling devices by police in non-emergency situations.
H-83-39 through -41, and -46 through -48	State of Alaska	Aug. 15, 1985	Use of lap seat belts in schoolbuses.
H-79-31, H-84-72 and H-85-12	State of West Virginia	Aug. 19, 1985	Schoolbus drive qualifications.
H-84-77, -79, -82 and -85	Ohio Department of Highway Safety	Aug. 23, 1985	Preliminary breath tests, DWI holding and release policies, juvenile offenders.
H-85-12	New Jersey Department of Education	Aug. 26, 1985	Schoolbus driver qualifications.
H-83-51	Delaware Department of Public Safety	Aug. 29, 1985	Child safety seats.
H-85-17	Commonwealth of Virginia	Aug. 29, 1985	Supplemental locks on schoolbus emergency doors.
H-83-51	Commonwealth of Kentucky	Sept. 3, 1985	Child safety seats.
H-85-4 through -6	State of Missouri	Sept. 3, 1985	Schoolbus driver certifications.

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Recommendation No.	Respondent	Date	Subject
H-79-31, H-84-72, and H-85-12	State of Iowa	Sept. 4, 1985	Do.
H-85-12	Florida Department of Highway Safety and Motor Vehicles.	Sept. 6, 1985	Do.
H-84-77	State of Florida	Sept. 9, 1985	Preliminary breath test devices; three-part field sobriety test, including the horizontal gaze nystagmus test.
H-82-35	Minnesota Department of Public Safety	Sept. 11, 1985	Citizen drunk driving reporting program.
H-83-39, -40, -41, and -50, H-84-77 through -86.	State of Texas	Sept. 12, 1985	Preliminary breath test devices, detention of DWI offenders, treatment of juvenile offenders, seat restraints for small schoolbus passengers, child passenger safety program.
H-80-16, -17, -18 and -20	Federal Highway Administration	Sept. 13, 1985	Seat restraints for bus passengers.
H-88-18, H-70-4, H-73-7, H-73-42	do	Sept. 13, 1985	Detection and control of unsafe interstate.
H-80-54 through -57	do	Sept. 13, 1985	State skid resistance programs.
H-84-77, -78, -73, -84, -86, and -79	State of Nevada	Sept. 19, 1985	Three-part field sobriety test, including the horizontal gaze m[nystagmus test, driver record system, pre-sentence investigation, juvenile offenders, detention of DWI offenders.
H-85-18	West Virginia Department of Education	Sept. 20, 1985	Schoolbus rear emergency door locks.
H-83-51	State of Connecticut	Sept. 23, 1985	Child safety seats.
H-85-18	Florida Department of Highway Safety and Motor Vehicles.	Sept. 24, 1985	Schoolbus rear emergeny door locks.
H-85-9, -12, -18, H-79-31, H-84-72	State of Georgia	Sept. 25, 1985	Schoolbus driver qualifications; rear emergency door locks.
H-79-31, H-84-72, and H-85-12	State of New York	Sept. 25, 1985	Schoolbus driver qualifications.
H-84-78, -79, -80, and -84	Alaska Department of Public Safety	Sept. 27, 1985	Blood alcohol testing, detention of DWI offenders, repeat offenders.
H-82-35	Alaska Department of Public Safety	Sept. 27, 1985	REDDI programs; citizen drunk driver reporting.
H-83-51	State of New York	Oct. 1, 1985	Child safety seats.
H-85-18	Arizona Department of Transportation	Oct. 3, 1985	Rear emergency door locks on school buses.
H-80-58	Federal Highway Administration	Oct. 4, 1985	Uniform traffic control devices—pavement marking policies.
H-85-4 through -6	State of West Virginia	Oct. 7, 1985	Schoolbus driver compliance with railroad crossing stop requirements; driver stress.
H-83-61	Ford Motor Company	Oct. 7, 1985	Lap belt locking clip on Ford child safety seats.
H-77-19	Department of California	Oct. 7, 1985	Heavy-duty commercial vehicle driver qualifications.
H-85-17	Washington Traffic Safety Commission	Oct. 8, 1985	Rear emergency door locks on schoolbuses.
H-82-35	Pennsylvania Department of Transportation	Oct. 11, 1985	Citizen drunk driver reporting programs (REDD).
H-76-23	Federal Highway Administration	Oct. 11, 1985	Identification and surveillance of accident locations.
H-82-35	State of Nevada	Oct. 14, 1985	Citizen drunk driver reporting programs (REDD).
H-83-18	American Trucking Associations, Inc.	Oct. 15, 1985	Safe truck transportation of hazardous materials.
H-76-12 and -14	Federal Highway Administration	Oct. 22, 1985	Bridge inspection reports; investigation of bridge collapses on public roadways and of accidents involving vehicles that have struck traffic barrier railing on bridges.
H-85-18	State of West Virginia	Oct. 23, 1985	Rear emergency door locks on schoolbuses.
PIPELINE			
P-85-7	Interstate Natural Gas Association of America.	June 18, 1985	Records of corrosion test results, safe transportation of hydrocarbons.
P-85-7	American Petroleum Institute	June 20, 1985	Do.
P-74-47	National Fire Protection Association	June 20, 1985	Treatment of gas leaks.
P-85-6	Texas Eastern Gas Pipeline Company	June 26, 1985	Cathodic Protection—pipe corrosion.
P-76-13	Southern Building Code Congress International, Inc.	July 3, 1985	Standard Gas Code—protecting gas lines in buildings.
P-74-22	Missouri Public Service Company	July 8, 1985	System failure alarms.
P-76-83	Michigan Power Company	July 18, 1985	Determination of gas-in-air ratio at which gas odor is first detectable.
P-83-29	American Gas Association	July 23, 1985	Inspection of customer-owned piping.
P-78-23	American Society of Mechanical Engineers	Sept. 12, 1985	Location of isolation valves in gas distribution systems.
P-85-21	American Gas Association	Sept. 18, 1985	ABS pipe material failures.
P-84-46	Columbia Gas	Oct. 14, 1985	Procedures for defining & investigating pipeline failures.
P-85-7	Interstate Natural Gas Association of America.	Oct. 22, 1985	Cathodic protection of pipelines.
P-85-7	American Gas Association	Oct. 25, 1985	Do.
MARINE			
M-83-76 and -77	State of Nevada	June 10, 1985	Alcohol abuse and boating safety.
M84-74 through -76	American Bureau of Shipping	July 8, 1985	Inspection of non-fuel oil tanks; stability criteria for Mobile Offshore Drilling Units.
M-81-21	Federal Highway Administration	July 16, 1985	Structural pier protection on bridges over navigable waterways.
M-85-48	National Association of State Boating Law Administrators.	July 29, 1985	Guidelines for vessels not subject to Federal jurisdiction.
M-85-42 through -44	United States Coast Guard (USCG)	Aug. 9, 1985	Vessel bridge-to-bridge radiotelephone.
M-85-16 through -24	USCG	Aug. 8, 1985	Study to identify critical areas of Western Rivers; qualifications for towing vessel operators; alternative bridge main span light displays; shore lighting in St. Louis Harbor.
M-85-29 through -35	USCG	Aug. 21, 1985	Port contingency plan for Port Canaveral; firefighting in U.S. ports & waterways; fire standards of SOLAS 74; sprinkle systems in accommodation areas of passenger vessels, increased level of Captain of the Port representation in Port Canaveral, Florida.
M-84-17 through -19	USCG	Sept. 4, 1985	Training for commanding officers in use of tugs.
M-84-67 through -69	ARCO China, Inc	Sept. 11, 1985	Organization charts and company lists.
M-80-23	USCG	Sept. 19, 1985	Carriage of emergency position indicating radio beacons (EPIRB) on documented U.S. fishing vessels.
M-85-25	National Oceanic and Atmospheric Administration (NOAA).	Sept. 24, 1985	Publication of a Western Rivers Navigation Guide.
M-83-12	USCG	Sept. 30, 1985	Manning requirements for certificated lifeboatmen on a MODU.
M-85-36 through -38	Canaveral Port Authority	Oct. 3, 1985	Port contingency plan; portable power supplies available at berths; passenger vessel submission of plans, diagrams, and procedures to Emergency Services coordinator for Port Authority.
M-85-45 and -46	USCG	Oct. 21, 1985	Reevaluation of basis for stability criteria; microbursts.
M-85-25	NOAA	Oct. 23, 1985	Advisory notes to navigation charts.
M-85-96	Lloyd's Register of Shipping	Oct. 24, 1985	Structural design of ships.
M-85-95	Liberty Fishing Corporation	Oct. 25, 1985	Stability of the fishing vessel *Liberty*.
M-85-91	U.S. Department of the Interior	Oct. 30, 1985	Safe use of natural gas on offshore drilling platforms.
M-85-14 through -17	USCG	Oct. 30, 1985	Reporting requirements for bridges over navigable waterways.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Federal Register Liaison Officer.

January 30, 1986.

[FR Doc. 86-2770 Filed 2-7-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-2061-SC; ASLBP No. 84-502-01 SC]

Kerr-McGee Chemical Corp.; West Chicago Rare Earths Facility (Kress Creek Decontamination); Reconstruction of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for the *Kerr-McGee Chemical Corporation* (West Chicago Rare Earths Facility (Kress Creek Decontamination)), Docket No. 40-2061-SC, is hereby reconstituted by appointing Administrative Judge Jerry R. Kline in place of Administrative Judge Peter A. Morris, who because of schedule conflict is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

John H. Frye, III, Chairman
Dr. Jery R. Kline
Dr. James H. Carpenter

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda Maryland, this 4th day of February, 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-2887 Filed 2-7-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on February 26, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information related to Westinghouse ECCS codes.

The agenda for the subject meeting shall be as follows:

Wednesday, February 26, 1986–8:30 A.M. Until the Conclusion of Business

The Subcommittee will review Duke Power Company's request to delete use of the ECCs UHI system.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 5, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-2886 Filed 2-7-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice of extended use of a revised form submitted to the Office of Management and Budget (OMB) for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces the extended use of a revised OPM Form 192 that collects information from the public. Under the provisions of the Administrative Procedure Act of 1946, now 5 U.S.C. 553-559, 1104, and 3105, OPM is required to examine qualifications of applicants who seek appointment to Administrative Law Judge (ALJ) positions.

Further, under 5 U.S.C. 1305, OPM is specifically authorized to collect such information and reports as needed to carry out its responsibility for examining applicants for ALJ positions. For copies of this proposal, call James M. Farron, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received within 20 working days from date of this publication.

ADDRESS: Send or deliver comments to—

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415.
and
Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James M. Farron, (202) 632-7714.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-2767 Filed 2-7-86; 8:45 am]

BILLING CODE 6325-01-M

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DEPARTMENT OF TRANSPORTATION

Agreements Filed During Week Ending January 31, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Jan. 27, 1986	43749 R-1—R-37	Members of International Air Transport Association	Mid-Atlantic-Africa Fares	Apr. 1, 1986.
Do	43750 R-1 & R-2	do	Amend Netherlands-Morocco Creative Fares	Do.
Do	43751	do	Amends Japan-Australia Fares for New Service	Do.
Do	43752	do	Inc. Peak GIT Fares ex-Japan to South West Pacific	Do.
Do	43753	do	New GCRs between PyongYang and TC3	Feb. 10, 1986.
Jan. 30, 1986	43763	do	Inc. Rates ex Egypt/Syria to Western Hemisphere	Dec. 21, 1986.
Do	43764	do	Reduce Minimum Stays on Intra-So. American Excursion Fares	Feb. 15, 1986.
Jan. 28, 1986	43754	NWA Inc., c/o Ronald D. Eastman, Cadwalader, Wickersham & Taft, 1333 New Hampshire Avenue NW., Suite 700, Washington, DC 20006. Republic Airlines, Inc., c/o Raymond J. Rasenberger, Zuckert, Scoutt, Rasenberger & Johnson, 888—17th Street NW., Washington, DC 20036. Joint Application of NWA Inc. and Republic Airlines, Inc. apply for an exemption to the extent necessary to allow NWA to acquire control of Republic. If DOT decides not to use its exemption authority, Joint Applicants ask the Department to approve the transaction under section 408 of the Act to proceed expeditiously under show cause procedures.		

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-2883 Filed 2-7-86; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed; Week Ended January 31, 1986

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings.

Date filed	Docket No.	Description
Jan. 31, 1986	43766	Key Airlines, Inc., c/o John T. Stewart, Jr., Zuckert, Scoutt, Rasenberger & Johnson, 888 Seventeenth Street, NW., Suite 600, Washington, DC 20006. Application of Key Airlines, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations seeks authority to engage in interstate and overseas scheduled air transportation of persons, property and mail. It intends to initiate service with one daily scheduled round-trip between Salt Lake City, Utah and Las Vegas, Nevada. Conforming Applications, Motions to Modify Scope and Answers may be filed by February 27, 1986.
Jan. 31, 1986	43771	All Nippon Airways Co., Ltd., c/o James L. Devall, Zuckert, Scoutt, Rasenberger & Johnson, 888 17th Street, NW., Washington, DC 20006. Application of All Nippon Airways Co., Ltd. pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in scheduled foreign air transportation of persons property, and mail on the following route: Between Tokyo, Japan and Guam. ANA also requests authority to engage in charter foreign air transportation of persons, property and mail. Answers may be filed by February 28, 1986.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 86-2884 Filed 2-7-86; 8:45 am]
BILLING CODE 4910-62-M

Federal Railroad Administration

[RS&I-Ap-No. 1018]

Missouri, Kansas and Texas Railroad Co.; Petition of Exemption and Hearing

The Missouri, Kansas and Texas Railroad Company has petitioned the Federal Railroad Administration (FRA) seeking an exemption from the requirements of the last sentence of § 236.204 of the Rules, Standards and Instructions which reads, ". . . In absolute permissive block signaling, when a train passes a head block signal it shall cause the opposing head block signal to display an aspect with an indication not more favorable than 'Stop'." This proceeding is identified as FRA Rules, Standards and Instructions No. 1018.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on the proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on April 2, 1986, in the City Council Chambers, Second Floor of the Fort Worth City Hall, 1000 Throckmorton Street, in Fort Worth, TX.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA rules of practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on February 3, 1986.

J. W. Walsh,
Associate Administrotor for Safety.
[FR Doc. 86-2882 Filed 2-7-86; 8:45 am]
BILLING CODE 4910-06-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 27
Monday, February 10, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Item
Consumer Product Safety Commission	1, 2
Federal Mine Safety and Health Review Commission	3
Securities and Exchange Commission	4

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, February 12, 1986.

LOCATION: Third Floor Hearing Room, 1111 – 18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Pressed Wood Project/Petition CP 82-6

The staff will brief the Commission on its analysis of the Consumer Federation of America (CFA)'s petition, as well as provide information on the risk of formaldehyde emitted by pressed wood products.

2. Section 15 Guidelines

The staff will brief the Commission on its response to comments on the Statement of Enforcement Policy on Substantial Product Hazard Reports, published in the Federal Register on April 6, 1984.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207; 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.

February 6, 1986.

[FR Doc. 86-2936 Filed 2-6-86; 12:43 pm]
BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, February 13, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Upholstered Furniture Flammability Project

The Commission will consider staff recommendations for 1986 on activities on upholstered furniture flammability.

2. Methylene Chloride

The Commission will consider various options available to them on methylene chloride in paint strippers and spray paints.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800.

Sheldon D. Butts,
Deputy Secretary.

February 6, 1986.

[FR Doc. 86-2937 Filed 2-6-86; 12:43 pm]
BILLING CODE 6355-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 5, 1986.

TIME AND DATE: 10:00 a.m., Wednesday, February 26, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Robert Simpson v. Kenta Energy, Inc., & Roy Dan Jackson, Docket No. KENT 83–155–D. (Issues include whether the administrative law judge properly concluded that the miner was constructively discharged in violation of the Mine Act.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

TIME AND DATE: Following oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)). A majority of Commissioners voted to close this portion of the meeting.

MATTERS TO BE CONSIDERED: The Commissioners will consider and act upon the above listed case, Docket No. KENT 83–155–D.

CORRECTION TO PREVIOUSLY ANNOUNCED AGENDA: The agenda meeting announced for February 12, 1986 listed an incorrect docket number. The case should read: U.S. Steel Mining Co., Inc., Docket No. PENN 84–49.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5632.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 86-2928 Filed 2-6-86; 11:46 am]
BILLING CODE 6735-01-M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 10, 1986.

A closed meeting will be held on Tuesday, February 11, 1986, at 2:30 p.m. An open meeting will be held on Thursday, February 13, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 11, 1986, at 2:30 p.m., will be:

Formal order of investigation.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of administrative proceeding of an enforcement nature.
Chapter 11 proceeding.

The subject matter of the open meeting scheduled for Thursday, February 13, 1986, at 10:00 a.m. will be:

1. Consideration of whether to withdraw Temporary Exemptive Rule 206A–1(T) under

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the Investment Advisers Act of 1940 for certain broker-dealers which, by its terms, expired. For further information, please contact Stephanie M. Monaco at (202) 272-2031.

2. Consideration of whether to propose for public comment Rule 202(a)(1)-1 under the Investment Advisers Act of 1940 which would deem a transaction not resulting in a change of actual control or management of an investment adviser not to be an "assignment" requiring approval of the adviser's clients. For further information, please contact Stephanie M. Monaco at (202) 272-2031.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ka'hryn Natale at (202) 272-3195.

John Wheeler,

Secretary.

February 3, 1986.

[FR Doc. 86-2967 Filed 2-6-86; 8:45 am]

BILLING CODE 8010-01-M

federal register

Monday
February 10, 1986

Part II

Department of Transportation

Maritime Administration

46 CFR Parts 381 and 383

Cargo Preference; U.S. Flag Vessels; Proposed Rulemaking

VOL 51 ISS 27 FE 10 1986 UMI

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 383

[Docket No. R-104]

Preference Cargoes; Proposed Rulemaking

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to establish new administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry bulk preference cargoes in less than full shiploads on United States-flag commercial liner vessels. These proposed regulations would also require operators to submit data on the operating and capital costs of their vessels. On the basis of these data, MARAD would calculate fair and reasonable guideline rates according to the method explained in the Supplementary Information Section of these proposed regulations.

DATE: Comments must be received on or before April 11, 1986.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the Agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Tel. (202) 382-6036.

SUPPLEMENTARY INFORMATION: Section 901(b)(1) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) (Act), requires that at least 50 percent of any equipment, materials or commodities generated by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, should be transported on privately owned United States-flag commercial vessels to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901 was amended to limit the application of cargo preference to specific programs and to raise the U.S.-flag share for those programs to 75 percent, phased in over three years.

Section 901 requires that all affected shipper agencies comply with regulations issued by MARAD (by delegation from the Secretary of Transportation). While a substantial number of Federal agencies generate preference cargoes, the preponderance of shipping tonnage subject to cargo preference is generated by the Department of Defense, U.S. Department of Agriculture (USDA), Department of State's Agency for International Development (AID), Department of Energy's Strategic Petroleum Reserve (SPR), and Eximbank. The principal agencies generating parcel lots of dry bulk preference cargoes are USDA and AID.

In 1981, the U.S. District Court for the District of Columbia (District Court), in response to a claim that the Maritime Subsidy Board (MSB) has no rate setting authority, held that the MSB has broad authority under section 901 of the Act to establish the rate formula and to provide guidance to other departments and agencies. The case was appealed to the U.S. Court of Appeals for the District of Columbia Circuit (Court of Appeals). In November 1982, the Court of Appeals upheld the previous ruling that the MSB has authority to set rates but it instructed the District Court to remand that particular case to the MSB for further proceedings on the reasonableness of the rate involved.

For many years MARAD has determined fair and reasonable rates for the carriage of civilian preference cargoes on bulk vessels and provided guidance to the shipper agencies. However, no formal rate guidance has been provided for the carriage of preference cargoes on liner vessels except for full shiploads. Fair and reasonable rates for the carriage of full shiploads of preference cargoes on liner vessels have been determined in the same manner as bulk vessel rates. The rates charged by liner companies for less than full shiploads have been a function of vessel costs and market forces. Decisions as to the reasonableness of such liner rates have been a function of the individual U.S. government agency controlling the cargo. With regard to military cargoes, MARAD does not have the authority to determine whether or not rates for such cargoes are fair and reasonable. Pursuant to the Cargo Preference Act, 1904 (10 U.S.C. 2631), authority to determine excessive or unreasonable rates for military cargoes is not vested in the Department of Transportation.

The lack of fair and reasonable rate standards for the carriage of non-competitive preference cargoes on liner vessels has recently been criticized. The President's Private Sector Survey on Coast Control (the Grace Commission) cited the need for regulatory standards to limit the cost of transporting preference cargoes on U.S.-flag liner vessels. Further, a General Accounting Office report entitled "Transportation of Public Law 480 Commodities—Efforts Needed to Eliminate Unnecessary Costs", included a recommendation to establish a system of fair and reasonable rates for the carriage of preference cargoes by liner vessels in less than full shiploads. MARAD concurs with these recommendations and proposes to implement a fair and reasonable rate system for liner vessels.

Civilian preference cargoes are primarily raw and processed, packaged and bulk agricultural commodities which are shipped to friendly nations under auspices of USDA in conjunction with Titles I, II, and III of the Agricultural Trade and Assistance Act of 1954 (Pub. L. 480), and under auspices of the State Department as AID cargoes. Packaged liner preference cargoes generally are transported at rates published as independent ocean carrier and conference freight tariffs filed with the Federal Maritime Commission, as required by law.

Tariffs on bulk parcel cargoes are not required by statute and are not filed. These parcels are predominantly dry bulk cargoes. The freight rates for liner parcels of dry bulk preference cargoes have been based on market conditions which have, at times, included a limited supply of vessels. The rates generally rise and fall according to the competitive demand. Rates have also fluctuated to some extent because of variances in shipping terms caused by local and seasonal factors at and beyond the ports of discharge. Thus, fluctuations, in the market place have been a more important factor than vessel costs in setting freight rates for liner parcels of dry bulk preference cargoes. Over the years these rates and the preference cargo laws have been criticized due to the large disparity with foreign rates. Accordingly, the methodology to establish fair and reasonable rates has been limited to dry bulk preference cargoes.

Three alternatives were considered in formulating this rulemaking. The first of these was to let the status quo prevail and continue with no formal fair and reasonable rate standards. However, as noted previously, MARAD concurs with the Grace Commission and GAO recommendations that there is a need for regulatory standards to limit the cost of transporting dry bulk preference cargoes. Without such standards, there are no assurances that dry bulk preference cargo parcels are carried on liner vessels at fair and reasonable rates.

The second alternative would involve implementing a system of fair and reasonable rates that are fully cost compensatory based on each vessel's actual costs. Such a system would not encourage efficiency measures for the carriage of preference cargoes since full compensation would provide no incentive for the operator to lower its costs in order to make a profit. It would have the disadvantage of inefficient operators continuing to bid for cargoes at rates reflecting their high operating cost levels.

The third alternative considered would utilize average operating costs on a fleetwide basis, and would incorporate actual capital costs and a reasonable return for investment. Such a system would be advantageous since it would encourage efficiency measures. The separate treatment of operating cost data and capital cost data permits recognition of the varying degrees of control that an operator has over different categories of costs. The vessel operator can exercise some control over operating costs. In contrast, capital costs are dictated to a large extent by prevailing conditions in the financial markets and are by and large beyond an operator's control. The proposed methodology, as set forth below, would reflect these considerations.

New MARAD System for Determination of Guideline Rates

The proposed procedures would set the maximum level (the fair and reasonable rate) for the carriage of dry bulk preference cargoes in parcels on eligible liner vessels. Eligible vessels are those for which data has been submitted in accordance with this rule. The cost-based guideline rates established by MARAD would apply only to the waterborne portion of cargo transportation and would consist of three components: (1) Operating costs, including fuel; (2) capital costs; and (3) port and cargo handling costs. Port and cargo handling costs would be determined on the basis of full berth terms, and with regard to ports of destination, only to the extent of landing the cargo in such a port. Any charges incurred for additional handling and necessary inland transport are beyond the jurisdiction of MARAD and will not be included in the guideline rate.

The operating cost component of the fair and reasonable rate for each participating liner vessel would be based on the aggregate average of all operating costs submitted by interested vessel operators for the calendar year immediately proceding the current year. The capital cost component would be calculated individually for each participating liner vessel type, and would consist of a reasonable return on investment, depreciation, and interest cost. To determine the operating and capital components as a cost per ton, the resulting daily cost elements would be multiplied by the average number of days per voyage, and divided by the average cargo carried per voyage, as derived from the operators' submissions. The operating and capital cost components would be added to the port and cargo handling charges based on the cargo tender terms for commodity, load and discharge ports, and lot size, expressed as a cost per ton.

The determination of fair and reasonable rates for the carriage of preference cargoes on voyages which are not totally dedicated to a preference trade presents a unique problem with respect to the allocation of vessel operating and capital costs. A liner operator would base its offered rate for moving the preference cargo on a variety of factors relating to its own operating schedule and the particular trade involved. The movement of the commercial cargo is generally the most important element of the voyage. Since fair and reasonable rates for preference cargoes must be determined prospectively, the amount of commercial cargo to be carried on the voyage would be unavailable at the time the fair and reasonable rate is determined. The mix of cargoes, also unknown, would make it difficult to accurately estimate the time necessary to conduct the voyage, and its associated costs. Consequently, the rate formula would not differentiate between commercial cargoes and preference cargoes in the computation of the operating and capital cost components since both cargoes are carried on the same voyage. For those components, it would utilize aggregate average data from the previous year, for all eligible liner vessels, with respect to voyage length and freight payable tonnage (the number of weight tons and measurement tons on which the freight charges have been based). The port and cargo handling component of the rate would be based on cargo tender terms.

In addition, terms to carry cargoes to many foreign ports, especially in third world nations, may vary drastically from one time to another. Commercial rates quoted for such areas may include surcharges for such unforeseeable costs as port congestion, weather, additional handling and transshipment to inland points. Many times these additional charges occur on a seasonal basis, or because of local competitive or political factors. As a result it is not possible to create a guideline rate which would accurately reflect all of the possible conditions in every port of discharge. Accordingly, the proposed guideline rate determination would utilize only factors to some extent within the control of the operators, and would be applicable only to the sealift of the cargo involved. Charges for additional services such as bagging at discharge, rail or truck loading and inland transport should be reviewed and apporoved by the sponsoring Government shipper agency.

The consideration and use of average operating costs is intended to encourage efficiency measures since vessel operators can exercise some control over operating costs. The methodology provides some incentive for efficiency since it would not allow full reimbursement for the high costs of inefficient vessels.

Proposed Data Submission Requirements

The proposed new Part 383 would require all operators who wish to participate in the carriage of dry bulk preference cargo to submit specific data to MARAD regarding vessel operating and capital costs. The data would be used by MARAD to determine fair and reasonable rates for the carriage of parcel lots of dry bulk preference cargoes on United States-flag liner vessels. Data submissions would be required not later than April 30 of each year and would be updated at least once every 12 months. Required information would include operating expenses (e.g., crew employment costs), capital costs (e.g., interest cost on the vessel), and an annual recapitulation of voyage results (e.g., cargo revenue tons, voyage days).

MARAD recognizes that a portion of United States-flag liner operators already submit operating data to MARAD under the reporting requirements for other programs administered by the agency. This information is collected by vessel type. To avoid duplication of information reporting requirements, data already submitted by an operator in accordance with another MARAD program would suffice for the purposes of this proposed rule, provided the data required by this proposal are submitted by April 30 of

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each year. Operators which do not already submit this information on a current basis would be required to submit the past year's experience, and update the information annually. MARAD needs these data in order to calculate fair and reasonable rates accurately. Pursuant to the Freedom of Information Act, data submissions would be considered confidential commercial or financial information not to be disclosed to the public (5 U.S.C. 552(b)(4)). A provision is included in the proposed regulation under which data would be held in confidence. Comments are particularly invited on § 383.2(c), which contains the provision relating to confidentiality.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this proposed regulation is not a major rule as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures (49 FR 11034, February 26, 1979). This proposed regulation is considered to be significant because MARAD expects it to generate considerable interest among ship operators and because there are no information submission procedures presently in place for the purpose of determining fair and reasonable rates for liner parcels of dry bulk preference cargoes.

MARAD has not yet prepared a regulatory evaluation. However, it does expect, given the lack of formal procedures for establishing fair and reasonable rate levels, that the implementation of a new system would result in significant program savings for the carriage of dry bulk preference cargoes in parcels on liner vessels. It is difficult to accurately estimate the magnitude of program savings which would result from implementation of fair and reasonable rate procedures. MARAD does not at this time have accurate information to support projections on the economic impact of implementing fair and reasonable rates and specifically requests comments on the industry's views in that regard. Based on those comments and other information available to it, MARAD will prepare a regulatory evaluation at the final rulemaking stage.

Since this proposal would affect principally ship operators with substantial annual revenues, and Government agencies, MARAD certifies that this rule, as proposed, would not exert a significant economic impact on a substantial number of small entities under Pub. L. 96-354. This proposed rulemaking contains a proposed information collection requirement in § 383.2. Although MARAD estimates ten total respondents, seven of those are subsidized and already submit the data to MARAD on Form MA-172. Since this rule would not require duplication of information reporting, the number of new respondents for purposes of the Paperwork Reduction Act is three. The proposed information collection requirement is being submitted to OMB for review pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We estimate that the total amount of time required to submit the proposed required data would be 48 hours (3 respondents x 16 hours to compile data per response). The total estimated cost of the proposed information collection would be only $441.00 annually (43 hours for an accountant and 5 hours for a clerk x hourly rates of $9.35 and $7.87, respectively). Persons desiring to comment on these information collection requirements should submit their comments to:

Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, Department of Transportation. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Department of Transportation, Maritime Administration as listed under "ADDRESSES."

List of Subjects in 46 CFR Part 383

Agricultural commodities, Cargo vessels, Government procurement, Grant programs—foreign relations, Loan programs—foreign relations, Water transportation, Freight and maritime carriers.

Accordingly it is proposed to amend 46 CFR Chapter II by adding a new Part 383, to read as follows:

PART 383—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF LINER PARCELS OF DRY BULK PREFERENCE CARGOES ON U.S.-FLAG LINER VESSELS

Sec.
383.1 Scope.
383.2 Data submission.
383.3 Determination of fair and reasonable rates.

Authority: Sec. 204(b), 901, Merchant Marine Act. 1936, as amended (46 U.S.C. 1241; Pub. L. 97-31, [August 6, 1981).

§ 383.1 Scope.

Part 383 prescribes regulations applying to the waterborne transportation of dry bulk preference cargoes in less than full shiploads on United States-flag commercial liner vessels. These regulations contain the method that the Maritime Administration (MARAD) shall use in calculating fair and reasonable rates and the type of information that must be submitted by liner operators interested in carrying such preference cargoes.

§ 383.2 Data submission.

(a) *General.* Operators who wish to employ vessels in the carriage of liner parcels of dry bulk preference cargoes must submit information as provided in paragraph (b) of this section, as applicable, to the Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590. Such information shall be submitted not later than April 30 of each year and updated not less often than once every 12 months. All submissions are subject to verification by MARAD.

(b) *Required Information.* (1) For each vessel an operator wishes to be considered for the carriage of preference cargoes, operating cost information shall be submitted, by vessel type, in the format stipulated by 46 CFR 232.1, Form MA-172, including operating revenue and expenses (Schedule 301). Such information shall be applicable to the most recently completed calendar year.

(2) For each vessel, total costs capitalized for Federal Income Tax purposes (list and date capitalized improvements separately) and cost and interest rate on any debt applicable to each vessel.

(3) An operator which already submits the information in paragraphs (b)(1) and (b)(2) of this section to MARAD in conjunction with other MARAD programs need not submit a duplicate of the information.

(c) *Confidentiality.* Due to the proprietary and confidential nature of the commercial and financial information requested in subparagraph (b) above, MARAD has determined that disclosure of such data is not required under 5 U.S.C. 552(b)(4).

§ 383.3 Determination of fair and reasonable rates.

(a) *Cost Components.* MARAD shall calculate a fair and reasonable rate for all liner vessels participating in this program. The fair and reasonable rate shall include an operating cost component, a capital cost component, and a component for port and cargo handling expense.

(b) *Operating cost component. (1) General.* MARAD shall calculate an average operating cost component applicable to the fair and reasonable rate for all participating liner vessels. It shall be based on operating cost data submissions for the calendar year immediately preceding the current year.

(2) *Items included.* The operating cost component shall include all costs relating to vessel operation and shall include expense categories as defined by 46 CFR Part 232.1, Form MA-172, Schedule 301, Operating Expenses.

(c) *Capital component. (1) General.* MARAD shall calculate the daily capital component of the fair and reasonable rate for each participating liner vessel type, consisting of return on working capital (one-half average voyage expense), return on equity, vessel depreciation, and interest cost.

(2) *Items included.* The capital component shall include:

(i) *Return on working capital.* The working capital shall be calculated for each participating liner vessel type, consisting of the dollar amount necessary to cover one-half the average operating costs (as calculated in paragraph (b)(1)) for the average voyage length of all participating liner vessels. For a rate of return, MARAD is considering the use of the most recent median annual rate of return on stockholder's equity for the top 500 corporations. For example, the median rate of return for calendar year 1984 was 13.6%. As an alternative, MARAD is also considering the use of the 12-month Treasury Bill rate as of January 1 of the year for which fair and reasonable rates are being calculated. MARAD specifically requests the industry's comments on the rates of return under consideration and will consider any alternatives proposed in the comments.

(ii) *Return on equity.* For the purpose of determining equity, the vessel's net book value shall be determined from the operator's amortization schedule, Form MA-172, Schedule 213.

The net book value shall equal the owner's capitalized cost minus accumulated straight line depreciation. The rate of return on equity shall be the same as that determined for working capital.

(iii) *Interest.* The cost of debt shall be determined by calculating the daily interest cost for each vessel type using the vessel owner's interest rate and remaining principal to be paid for each vessel.

(iv) *Depreciation.* Depreciation for each vessel shall be calculated by depreciating cost, reconstruction cost or purchase cost on a straight line basis over 25 years, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years old. When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. When vessels more than 15 years old are reconstructed, MARAD shall determine the depreciation period. The residual value of the vessel shall be based on the current scrap-value as determined by MARAD.

(d) *Port and cargo handling component. (1) General.* MARAD shall calculate an estimate of port and cargo handling costs consisting of a U.S. port and cargo handling element and a foreign element as applicable. Government shipper agencies have at times required steamship lines to perform services beyond their usual scope of operation on some shipments. Additional services such as bagging at discharge, rail or truck loading on carriage to some inland destinations, and other sundry expenses have been included in the ocean freight rate in the past. In order to provide a fair and reasonable rate guideline, charges beyond the seaport terminal at which a vessel discharges should be reviewed and approved by the sponsoring Govenment shipper agency.

(2) *Items included.* Port and cargo handling charges shall include the following, assuming full berth term quotations:

(i) *U.S. port and cargo handling charges.* In this category MARAD shall include domestic port and cargo handling charges for commodity, port of lading, and lot size based on the cargo tender, expressed as a cost per ton.

(ii) *Foreign port and cargo handling charges.* To the extent possible MARAD shall include in this category all known foreign port and cargo handling charges that would normally be included. These estimates shall be made for commodity, port of discharge, and lot size based on the cargo tender, expressed as a cost per ton.

(3) *Terms.* If the terms of the rate are other than full berth terms to the vessel owner, adjustment to the guideline rate shall be made on an *od hoc* basis by request to MARAD. This provision shall be interpreted in accordance with Incoterms, as amended, published by the International Chamber of Commerce, Paris, France.

(e) *Determination of voyage days and cargo carried.* For purposes of determining the vessel operating and capital cost components of the fair and reasonable rate, the number of voyage days and total cargo carried shall be the aggregate average as determined by the section 232(D) data submitted by the operators. The resulting components, expressed as costs per ton, shall be added to the component for port and cargo handling charges to yield the guideline rate.

By order of the Maritime Administrator
Dated: February 3, 1986.
Georgia P. Stamas,
Secretary, Maritime Administration.
[FR Doc. 86-2654 Filed 2-7-86; 8:45 am]
BILLING CODE 4910-81-M

46 CFR Part 381

[Docket No. R-105]

Cargo Preference—U.S. Flag Vessels

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to amend procedures governing the evaluation by U.S. departments or agencies ("the agencies") of bids from subsidized U.S.-flag vessel operators for the carriage of dry bulk preference cargoes. The amendments would expand coverage of the procedures to subsidized liner vessel carriage of dry bulk preference cargoes in less than full shiploads, and would revise procedures regarding negotiations with bidders by shipper agencies. The procedures would require that operating differential subsidies (ODS) received by operators of all liner vessels carrying less than full shiploads of dry bulk preference cargoes be considered a cost to the government for the carriage of such cargoes and be considered in the calculation of fair and reasonable rates for such carriage. MARAD's intent in proposing this regulation is to ensure equitable competition between subsidized and unsubsidized operators carrying dry bulk preference cargoes and the carriage of these cargoes at the lowest direct cost to the government.

DATE: Comments must be received on or before April 11, 1986.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the Agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT:
Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Telephone: (202) 382-6036.

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SUPPLEMENTARY INFORMATION:

a. Background

On October 11, 1984 (49 FR 39847) (46 CFR 381.8) MARAD issued a final rule setting forth procedures governing the evaluation by U.S. departments or agencies ("the agencies") of bids from subsidized U.S.-flag bulk vessel operators for the carriage of dry bulk preference cargoes. The procedures required that operating-differential subsidies (ODS) received by operators of vessels carrying dry bulk preference cargoes be considered a cost to the government for the carriage of such cargoes and be considered in the calculation of fair and reasonable rates for such carriage.

Application of Rulemaking to Liner Operators

Immediately proceding this document, MARAD is publishing a notice of proposed rulemaking (46 CFR Part 383) which would establish new administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry bulk preference cargoes in less than full shiploads on U.S.-flag commercial liner vessels. The proposed rulemaking would require operators to submit data on the operating and capital costs of their vessels. Based on this data, MARAD would calculate fair and reasonable guideline rates.

At the time the final rule on dry bulk preference cargo was published as an interim final rule, two commenters suggested that MARAD expand the concept of the rule, i.e., the inclusion of ODS as a cost to the government, to subsidized liner vessels engaging in the carriage of preference cargoes. MARAD stated, in the preamble to the rule, that it was considering the possibility of issuing a separate rulemaking applicable to the carriage of preference cargo by subsidized liner vessels, with opportunity for public comment.

Since MARAD is issuing proposed fair and reasonable rate procedures applicable to liner vessels, it is appropriate to establish criteria for the evaluation of bids when subsidized liner vessels compete to carry dry bulk preference cargoes. MARAD proposes to require that ODS be considered a cost to the government during the evaluation of bids from subsidized liner operators for the carriage of dry bulk preference cargoes in less than full shiploads. The reasons for applying these procedures to full shiploads of preference cargoes carried on subsidized bulk vessels (49 FR 39847) are equally valid for liner vessel carriage in less than full shiploads (subsidized liner vessels do not receive ODS for the carriage of full shiploads of preference cargoes). There is an inequity caused when an operator receiving ODS bids for cargo against an operator not receiving ODS. Unless the amount of ODS is taken into consideration by the agencies, subsidized vessels could have an unfair advantage. In addition to eliminating inequities, MARAD also wishes to assure that dry bulk preference cargoes are carried at the lowest cost to the government. Accordingly, MARAD is publishing this notice of proposed rulemaking which would revise 46 CFR 381.8 by applying a method similar to that used in evaluating dry bulk cargo preference bids for subsidized bulk vessels to all subsidized vessels.

This regulation does not supplant or prejudice further MARAD deliberations concerning the carriage of preference cargo by bulk operators pursuant to the decisions in *American Maritime Ass'n.* v. *United States*, No. 84-249 (D.D.C. August 20, 1984) and *American Maritime Ass'n.* v. *United States*, No. 84-5381 (D.C. Cir. July 2, 1985).

Negotiations with Bidders

The final rule for bulk vessels precluded the agencies from negotiating with anyone other than the low bidder. However, the Department of Agriculture, one of the shipper agencies covered by that rule, has stated that this provision has prevented it from negotiating lower rates for preference cargoes. MARAD agrees with the Department of Agriculture, and accordingly proposes to allow agencies to have more flexibility in negotiating with bidders to encourage lower rates. Forcing shipper agencies to accept the low initial bid prevents further negotiations which could result in even lower final offers.

This notice of proposed rulemaking would revise the final rule to allow the agencies to negotiate with all the bidders that have a reasonable chance of winning the bid. Such additional negotiations must, however, be equitable and non-discriminatory, may not permit carriers to learn the details of their competitors' bids, and the contract must be awarded to the bidder with the lowest responsive final offer.

b. Procedures

This proposed rule provides that when a subsidized vessel operator is the apparent low U.S.-flag responsive bidder for a dry bulk preference cargo, the responsible agency shall evaluate the subsidized operator's bid by: (1) Requesting from MARAD an amount for the ODS likely to be paid for the carriage of such cargo expressed as a cost per ton for performing the voyage by the apparent low responsive subsidized bidder and any other responsive subsidized bidders; (2) deriving "augmented bids" for the subsidized operators by adding the ODS amount to each subsidized operator's by adding the ODS amount to each subsidized operator's bid; (3) comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low responsive bidder; (4) requesting from MARAD a fair and reasonable guideline rate for the apparent low responsive bidder which shall be based on MARAD's calculation of the anticipated costs (less ODS in the case of a subsidized vessel) for the voyage plus a reasonable amount for profit for the voyage; and (5) determining whether the subsidized operator's unaugmented bid or the unsubsidized operator's bid, whoever was determined to be the lowest responsive bidder in Step (3), is at or below the guideline rate. When an open bid procedure is used, the contract shall be awarded to the low responsive bidder at a rate not exceeding the guideline rate. If the low responsibe bidder will not carry the cargo at or below the guideline rate, the agency may disqualify the bidder. In that event, the agency must then fix the next lowest responsive bidder at a rate not exceeding the guideline rate. When a closed bid procedure is used, the agencies or any of their contractors may negotiate with all responsive bidders within a competitive range that have a reasonable chance of winning the bid. Such additional negotiations must be equitable and non-discriminatory, may not permit carriers to learn the details of their competitors' bids, and the contract must be awarded to the bidder with the lowest responsive final offer.

c. E.O. 12291, Statutory, and DOT Requirements

This proposed rulemaking is considered to be non-major under Executive Order 12291 and significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). The rulemaking is significant because it is of substantial interest to certain governmental agencies and to the maritime industry since the shipment of preference cargoes represents a major source of business for that industry.

A regulatory evaluation for this proposed rule has not been prepared because MARAD does not have accurate information relating to essential variables needed to determine its economic impact. These variables would include the number of subsidized and unsubsidized vessels that would compete, the particular preference trade involved, the number of voyages made, the efficiencies of the vessels and the amount of cargo. The information needed is not historical in nature, and MARAD cannot reasonably predict which operators and agencies would benefit since the impact of the rule is directly affected by competition for the specific cargoes through the bidding process. In view of the foregoing, MARAD specifically requests comments on the industry's views with respect to this proposal and will prepare a regulatory evaluation, if necessary. The major benefits of the rule would be the elimination of the competitive inequity in the bidding process between subsidized and unsubsidized operators and the assurance that dry preference cargoes are carried at the lowest cost to the government and the public.

MARAD sees no evidence that this rule would affect a substantial number of small entities pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), since the rule would affect only large ship operators which do not meet the criteria for small business in the Small Business Administration regulations (13 CFR Part 121). The Maritime Administration certifies that the rule would not have a significant economic impact on a substantial number of small entities. This rulemaking does not include any new or amended information collection requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 46 CFR Part 381

Freight, Maritime carriers, Reporting requirements.

Accordingly, 46 CFR Part 381 is proposed to be amended as follows:

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read:

Authority: Secs. 204(b), 212(d), and 901(b), Merchant Marine Act, 1936, as amended; 46 U.S.C. 1114(b), 1122(d), and 1241(b) unless otherwise noted.

2. Section 381.8 is revised to read as follows:

§ 381.8 Subsidized vessel participation.

(a) For the purpose of approving subsidized U.S.-flag vessels competing for the carriage of dry bulk preference cargoes, each department or agency having responsibility under the Cargo Preference Act of 1954 (46 U.S.C. 1214(b)), shall evaluate bids received from the operators of such vessels in the manner described in this section.

(b) When a subsidized vessel operator is the apparent low U.S.-flag responsive bidder for a dry bulk preference cargo, the responsible department or agency shall evaluate the subsidized operators' bid by: (1) Requesting from MARAD an amount for the operating-differential subsidy (ODS) likely to be paid for the carriage of such cargo expressed as a cost per ton for performing the voyage by the apparent low responsive subsidized bidder and any other responsive subsidized bidders; (2) deriving "augmented bids" for the subsidized operators by adding the ODS amount to each subsidized operators' bid; (3) comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low responsive bidder; (4) requesting from MARAD a fair and reasonable guideline rate for the apparent low responsive bidder which shall be based on MARAD's calculation of anticipated costs (less ODS in the case of a subsidized vessel) for the voyage plus a reasonable amount for profit for the voyage; and (5) determining whether the subsidized operator's unaugmented bid or the unsubsidized operator's bid, whichever was determined to be the lowest responsive bid in Step (3), is at or below the fair and reasonable guideline rate. When an open bid procedure is used, the contract shall be awarded to the low responsive bidder at a rate not exceeding the guideline rate. If the low responsive bidder will not carry the cargo at or below the guideline rate, the department or agency may disqualify that bidder and must fix the next lowest responsive bidder at a rate not exceeding the guideline rate. When a closed bid procedure is used, the department or agency or any of its contractors may negotiate with all responsive bidders that have a reasonable chance of winning the bid. Such additional negotiations must be equitable and non-discriminatory, may not permit carriers to learn the details of their competitors' bids, and the contract must be awarded to the bidder with the lowest responsive final offer within the guideline rates.

(c) If the amount of cargo to be shipped is changed at any time prior to award, the department or agency shall request that MARAD provide new ODS amounts applicable to the carriage. The department or agency shall redetermine the augmented bids before determining the lowest responsive bid and requesting from MARAD a revised fair and reasonable guideline rate in accordance with the provisions of paragraph (b) above.

(d) Whenever a bid is submitted for a bulk cargo vessel for the transportation of dry bulk preference cargo, the responsible department or agency shall only approve bids that apply to an individual vessel, and may not accept combined bids submitted for more than one vessel.

(e) The requirements of this section shall apply only to those departments or agencies that directly pay or finance all or part of U.S.-flag ocean-freight transportation costs for the carriage of dry bulk preference cargoes, in accordance with this part. The requirements of this section shall not apply to departments or agencies that provide foreign aid by direct cash transfer payments unless specific agreements between the departments or agencies and the recipient country concerning the expenditure of such funds for U.S.-flag vessels.

By order of the Maritime Administrator.

Dated: February 3, 1986.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 86-2653 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-81-M

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ISS
27

FE
10

1986

UMI

federal register

Monday
February 10, 1986

Part III

Department of Health and Human Services

Office of Community Services

Availability of Funds and Requests for Applications

VOL 51 ISS 27 FE 10 1986 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–86–1]

Availability of Funds and Requests for Applications Under the Office of Community Services Discretionary Authority

AGENCY: Office of Community Services, Department of Health and Human Services.

ACTION: Announcement of availability of funds and requests for applications under the Office of Community Services Discretionary Authority. The Administration budget request proposes rescission of the discretionary funds. However, should funds become available for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the program. This notice regarding applications does not reflect any change in this policy.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 681 of the Community Services Block Grant Act of 1981, as amended. This program announcement consists of four parts. Part I covers general information, discusses the overall purposes of the OCS Discretionary Grants Program, lists the funding authority and briefly describes the Fiscal Year 1986 competitive review process. Part II describes the program priority areas in which grants will be awarded. Part III describes the application process, who is eligible to apply, what funds are expected to be available and the review and selection criteria. Part IV gives specific guidance on how to prepare and submit an application under each separate published program priority area. Applications must be limited to no more than 100 single-spaced typed pages. (Exceptions to this page limitation are noted within this announcement.)

DATE: The closing date for submission of applications is March 31, 1986. Applicants may meet this deadline either by delivering or mailing the application on or before March 31 in accordance with the detailed instructions in Part IV below. Late applications will be returned to the senders without consideration in the competition.

FOR FURTHER INFORMATION CONTACT: OCS/Office of State and Project Assistance/Division of Discretionary Grants, 200 Independence Avenue, SW., Room 433F.3, Washington, DC 20201, (202) 475–0394.

Part I—Overall Guidance

A. Scope of This Program Announcement

Section 681 of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities.

Applicants must fully demonstrate that they have successful prior experience in program implementation in one of the specific program activities defined below. Applicants must show that the proposed activity is clearly related to the purposes of the CSBG Act, i.e., to alleviate the causes of poverty in distressed communites.

For purposes of this announcement, the term "national or regional significance" means activities that directly address the causes of poverty in a way that can be replicated in another part of the region or country. Projects under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines, published in the **Federal Register**, March 8, 1985, pp. 9517–9518. (A copy of these guidelines will be made available to any party that requests an application kit.) Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication.

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for this OCS Discretionary Grants Program.

The OCS will grant funds for only one year. Accordingly, each applicant must clearly demonstrate its ability to carry out its work plan with the funds awarded and that its project will achieve measurable results within the one year of funding.

An applicant can be engaged in a qualified program activity without previously having been a recipient of funds from OCS. An organization funded by OCS in previous years may apply but an application from such an organization would constitute a request for new funding rather than an application for continued funding. This is a particularly relevant reminder for successful applicants in previous fiscal years under the OCS Discretionary Grants Program. All acceptable applications will be considered in competition with other applications within the pertinent program priority area.

The FY 1986 program will be conducted under the same basic policies established for the previous years for the OCS Discretionary Grants Programs. A project must be targeted to address the needs of a specific segment of low-income people, i.e., urban poor, rural poor, migrants or seasonal farmworkers.

The OCS policy direction for discretionary grants is to promote:

1. Full-time permanent jobs for poverty level project area residents:

2. Income and/or ownership opportunities for low-income community members;

3. A better standard of living for rural low-income individuals in terms of housing or water and waste-water treatment; and

4. The implementation of projects, including projects proposing new and innovative strategies for addressing the special needs of migrants and seasonal farmworkers.

The OCS believes that these policy objectives can be best met at the local level through local organizations that can coordinate linkages with other private and public sector initiatives and enhance private sector involvement.

B. Application Prerequisites

All proposed projects must meet the basic criteria of: (a) Being projects that are designed and intended to provide benefits to a targeted low-income group of people, (b) including matching funds from other sources sufficient to meet the requirements of this grant announcement, and (c) being capable of completion within one year of the award of the grant.

The OCS will not consider applications that are geared towards the establishment of new, or investment in existing, revolving loan funds, Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

C. FY 1986 Application Process

All timely applications will be initially screened by OCS staff to determine whether they are complete and in conformance with the requirements of this announcement, using the screening factors listed below in Part III. Those applications which pass this screening will be given further consideration by referral to independent field readers for scoring and analytical comment based on the criteria detailed in Part III of this announcement and the specific requirements contained under each published program priority area. Following the final review by the Director of OCS and staff, it is anticipated that awards under this announcement will be made in September, 1986.

D. General Grant Terms

1. Applicants are reminded that grantees are subject to the provisions of Office of Management and Budget Circular A–122 which prohibits the use of grant funds for: (a) Electioneering activities at the Federal, State or local level, and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

2. Applicants are reminded that periodic progress and financial reports, as well as an audit, will be required for any project that receives OCS funds. Costs associated with the completion and submission of the required grant audit may be chargeable to the grant but are not considered as part of the up to 10% of the grant that is allowable for administrative costs.

Part II—Program Priority Areas

A. Priority Area 1.0: Urban and Rural Community Economic Development

The purpose of this priority area is to encourage the development of special programs by which the applicants planning to serve economically depressed urban and rural areas may, with appropriate Federal assistance, initiate projects intended to improve the quality of the economic and social environment of low-income residents of the areas they plan to serve. It is intended to provide resources to eligible applicants, but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. The emphases of projects must be on self-help and mobilization of the community at-large and on providing opportunities for employment and/or ownership within the targeted population. To this end, the program seeks: (a) To attract additional private capital into distressed communities, including enterprise zones; (b) to build and expand the ability of local institutions to better serve the economic needs of local residents; and (c) to provide new employment and ownership opportunities for low-income people through business, physical or commercial development.

1. Narrative Description

The Office of Community Services will provide funds to a limited number of non-profit corporations or public agencies for business and community development activities at the local level. Funding under this Program Priority Area will be provided for specific projects with up to 10% allowed for administrative purposes and will require the submission of business or community development proposals that meet the test of economic feasiblity.

Projects must further Administration goals of public-private partnerships, and Federal initiatives such as urban and rural enterprise zones. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applications must show significant ability to create new permanent private sector jobs and maintain existing jobs, all targeted towards the poverty level area residents who are either unemployed or underemployed. While projected employment in future years may be included in the application, it is essential that the focus of employment projections concentrate on those jobs saved or created during the one year period of the requested grant from OCS. The description of employment should include a discussion of the types of jobs, any upward mobility potential and the wage structure that will be created by the OCS support of the project.

Any funds that are proposed to be used for training purposes must be limited to providing specific job related training to poverty level individuals who have been selected for employment in the grant supported project or who have been selected for training or participation in a project where potential jobs have actually been identified.

Investments in projects which would result in the relocation of a venture from one geographic area to another are discouraged.

A distressed community is defined as a geographic urban neighborhood or rural community of high unemployment and pervasive poverty. Applicants located in a State or Federally designated enterprise zone, in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are encouraged to submit applications. Such applications must be linked with and complement enterprise zone initiatives, and may be for either a business venture or a demonstration of innovative ways of involving the poverty community in the implementation of the enterprise zone concept.

Because of the continuing exacerbation of poverty and unemployment along the U.S.-Mexican border resulting from the devaluation of the Mexican peso, OCS will give special emphasis to the issuance of up to $3 million worth of grants to applicants proposing economic development projects in those counties of California, Arizona, New Mexico and Texas proximate to the border with Mexico.

2. Submission Requirements

Each application submitted under this program priority area must include a valid and complete Business Plan as part of its project narrative that is in Part IV of the SF 424. The format for such plans will be available to applicants as part of the Application Kit (defined in Part III, E. below) (OMB Approval Number 0990–0147, expiration date 9–30–87).

Although applicants may submit more than one application for OCS funding, each application must be a request for grant support for only one project. Single applications requesting grant support for more than one project may be disqualified and returned.

The Business Plan is one of the major components in the required project narrative that will be evaluated by OCS in terms of feasibility and community benefits. Therefore, the Business Plan must be well prepared and address all the major elements of a Business Plan as detailed in this program announcement and in the guidelines included in the application kits. The use of these guidelines should produce a complete and professional business plan of not more than 30 single-spaced typed pages that makes an orderly presentation of the facts as required by this program announcement. It must include clearly defined quarterly goals and identify the types of jobs that will be created/saved, including a discussion of the skills requirements and projected wage structure that will be characteristic of the project.

The Business Plan is to be component part of the application proper, with the exception that financial projections may be provided as part of appendices and may be in addition to the application's 100 page limitation.

Project narratives should contain a full and accurate description of the proposed use of the requested financial assistance, whether it is for a business enterprise or a physical or commercial

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development project. The project narrative must show how increased employment, income and/or ownership opportunities will be provided by the proposed project. The applicant must also clearly document an ability to strengthen links with and mobilize additional resources from other private and public sources. Evidence of a commitment on the part of the public or private sector to participate in the proposed project must be fully documented.

The Business Plan must demonstrate to OCS that there is reasonable assurance that the amount of OCS funds requested, together with other funds available, is adequate for the completion of the proposed project *or* achievement of the stated purposes for which the OCS grant funds are being requested within a twelve month period.

Because the Business Plan guidelines are written to cover a variety of possibilities, rigid adherence to them is neither possible nor necessarily desirable for all ventures. For example, a plan for a service business would not require a discussion of manufacturing or product design. Common sense should be used in applying the guidelines to develop a business plan for the venture.

The Business Plan guidelines include the following twelve sections: Summary Business Plan; The Venture and its Industry; Products and Services; Market Research and Evaluation; Marketing Plan; Design and Development Plans; Manufacturing and Operations Plan; Mangement Team, Overall Schedule and a Quarterly Work Plan; Critical Risks and Assumptions; Community Benefits (e.g., number of permanent jobs to be saved, number of new jobs to be created for poverty level residents, new ownership opportunities for community residents, specific new services or commercial or industrial infrastructure improvements that result from the project, etc.); and the Financial Plan.

Applicants which do not include a Business Plan as part of their application may be found non-responsive and their application may be disqualified and returned to them.

Any applicant applying under this priority area must document previous involvement in substantial economic development activities and a record of successful project implementation which justifies a high degree of confidence in the success of the proposed project.

Each applicant must document a firmly established and quantifiable performance record that shows the following capabilities:

—To plan and implement major activities such as (a) business development, (b) commercial development, (c) physical development, or (d) financial services;
—To mobilize dollars from such sources as (a) the private sector (corporations, banks, etc.), (b) foundations, (c) the public sector, including State and local governments, or (d) individuals;
—To establish and maintain working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;
—To maintain a sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;
—To develop and mainatain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services and other benefits to community residents, and impact on community-wide economic problems and needs;
—To recruit and maintain both a qualified and demonstrably competent staff and a functioning board of directors that are capable of setting policy, making program decisions, and providing adequate programmatic oversight;
—To have in place sound administrative and fiscal systems and controls; and,
—To establish and maintain partnerships with the private sector in such forms as financial support, volunteerism, or executives on loan.

Each applicant must also provides a detailed description, as specified in the application screening requirements noted herein, of the amount, type and sources of funding, as well as other significant support the applicant has received within the past three years from any source. In general, types of assistance can be divided into cash, in-kind contributions, training and technical assistance, etc. Sources might be other Federal, State, local governmental, corporate or other private contributors/project participants.

B. Priority Area 2.0: Assistance for Rural Housing and Community Facilities Development

The purpose of this priority area is to target funds in a limited number of low-income rural communities to address two major needs Housing Repair and Rehabilitation and Water and Waste Water Treatment.

Under this OCS Discretionary Grants Program, the eligibility guidelines for participation are the Annual Revision of Poverty Income Guidelines published by Department of Health and Human Services with the most recent edition being dated March 8, 1985. *No other low-income guidelines, such as those used by HUD or FmHA, may be used to determine participant eligibility.* All applicantions must state in detail what criteria were used by the applicant to determine participant eligibility.

For purposes of this section, *rural* is defined as any area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and the contiguous communities with population density of of 100 persons or more per square mile according to the latest decennial census. Such an entity may be located entirely within one State or made up of contiguous interstate communities.

1. Priority Area 2.1: Rural Housing Repairs and Rehabilitation

The primary purpose of this priority area is to assist low-income residents in rural communities by: (a) Rehabilitating or repairing existing substandard housing units; (b) converting non-residential buildings to residential use; and/or (c) developing innovative ways to meet housing needs. In addition, this program priority area has the purpose of assisting low-income community residents in acquiring and rehabilitating their own homes. OCS encourages applications that will assist low-income homeowners to improve their housing.

Applications calling for new construction or 'gut' rehabilitiation will only be considered if the application clearly documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be made available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) Owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy by low-income people, as defined by DHHS Poverty Income Guidelines noted above, for at least three years. Such applications must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units.

Funds will not be made available under this program priority area for establishing or expanding a revolving loan fund.

We will consider applications from such entities as rural housing development corporations, cooperatives and other public and private organizations with proven accomplishments in the area of rural housing.

Proposals should fully describe how the proposed use of grant funds will result in tangible improvements and benefits for rural poor people in housing conditions such as the following:

—Interior or exterior structural repairs including weatherization and alternative energy systems;
—Job opportunities for local unskilled residents while assuring quality work;
—Technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Projects should be conducted with maximum use of voluntary services of professional and community personnel);
—Development of innovative housing strategies to help low-income rural residents acquire housing.

Each applicant must include in Part IV, Program Narrative of the SF 424, a full discussion of the project including the following sections:

—*Basic Housing Data for Targeted Area.* Information on the status of housing in the targeted area, including but not limited to vacancy rates, housing deficiencies, characteristics of housing units to be repaired, new construction inventory, property values, rents and mortgage rates. (While specific census data may be included, this information must be project specific.)
—*Analysis of Needs/Priorities.* The nature and extent of the problem(s) to be addressed by the project with adequate description and documentation identifying specific housing needs of the rural poor in the area targeted and a rationale for the strategies and priorities for which OCS support is requested.
—*Participant Application Process.* A description of the participant application process including: (a) Verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.
—*Types of Work to be Performed.* Specific listing of the types of repairs or rehabilitation work to be performed under an OCS grant, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.
—*Job Creation.* Data regarding the number of new permanent direct jobs to be created, and the number of permanent jobs maintained by the proposed project, including the number of residents of the project target area expected to be trained and placed.

2. Priority Area 2.2: Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

The purpose of this priority area is to help low-income rural communities develop the capability and expertise to establish and maintain affordable, adequate and safe water and waste water treatment facilities.

The OCS will consider applications from Regional Technical Resource Centers and public or private organizations with proven technical expertise and accomplishments in water and waste water treatment programs.

Non-profit organizations applying under this program area must include in their board membership or in an advisory body a significant representation of low-income community residents to ensure that project efforts are meeting the needs of low-income people in the ara served and to meet the program objective of areas helping rural low-income communities to develop expertise in the overall management of water and waste water systems.

Each applicant must include in Part IV of the SF 424, a full discussion of how the proposed use of funds will result in tangible improvements and other benefits in the quality of water and waste water treatment systems for the rual poor such as:

—Improving the adequacy and dissemination of information on water and waste water programs serving rural communities;
—Increasing local expertise and capability in water and waste water development and engineering services;
—Assisting rural communities in developing the capability to operate and manage water and waste water facilities; and
—Coordinating Federal, State and local water and waste water program financing and development to assure improved service to rural communities.

While matching funds may be used for construction of water and waste water treatment systems or for operating subsidies for such systems and for individual home hook-ups (ECUs), OCS funds may not be used for these purposes. Applicants that define measurable benefits in terms of equivalent connection units (ECUs) should report the actual number of connection units to be completed during the grant program year as well. Applicants should coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

C. Priority Area 3.0: Assistance to Migrants and Seasonal Farmworkers

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

The following are definitions of terms for purposes of this section:

A migrant farmworker means an individual who works in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

A seasonal farmworker means an individual who works in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence.

Special consideration will be given to projects that emphasize the involvement of the private sector in addressing the unique problems of migrants or seasonal farmworkers, with priority afforded to migrant farmworkers since local commuting farmworkers have greater access to other social services and poverty programs.

Applicants are particularly encouraged to address the need for longer term and permanent employment and for support in the areas of nutrition and housing. With respect to employment problems, OCS encourages the submission of proposals that aim to:

(a) Assist low-income farmworkers directly in improving their job skills so as to qualify them for longer term and permanent full-time employment in agriculture, and/or

(b) Assist low-income farmworkers who wish to leave agricultural employment and find jobs in other lines of work.

With respect to farmworkers' needs in the areas of nutrition and housing, OCS will entertain proposals that directly assist in such areas as crisis nutritional activities, the development of self-help systems of food production, and activities in the areas of home repair, rehabilitation, and ownership.

Under the Community Services Block Grant Act, States may use block grant funds to provide services and assistance

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to migrant and seasonal farmworkers. Applications submitted under this discretionary grant priority area must not duplicate services or grants provided by the States through block grant funds in the specific State to be served by the applicant.

Part III—Application Process

A. Eligible Applicants

Any public agency or private non-profit organization may apply under this announcement.

B. Available Funds

Subject to the availability of funds at the time grant awards are expected to be made, the Office of Community Services expects to award approximately $24,000,000 in the fourth quarter of FY 1986 for new grants. The funding expected to be available for each program priority area is summarized below:

FUNDING SUMMARY

Program priority area	Anticipated fiscal year 1986 funds
1.0 Urban and Rural Community Economic Development	$17,535,000
2.0 Rural Housing and Community Facilities Development	3,720,000
3.0 Assistance for Migrants and Seasonal Farmworkers	2,800,000

The OCS anticipates making approximately 80 new awards pursuant to this announcement. In Fiscal Year 1986, OCS strongly encourages applicants to refrain from requests that are for more than $700,000. A typical award would be expected to be between $300,000 and $400,000 in economic development. In the area of housing repair and rehabilitation, community facilities development and assistance to migrants and seasonal farmworkers, we would anticipate that the average application request would be approximately $200,000. Actual grants may vary widely and eligible applicants requesting smaller or larger awards will still receive consideration.

Projects will be funded under this authority for a period not to exceed twelve months and each project will have an expiration date. However, at the discretion of the Director, shorter or longer project periods may be established.

If a project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate that it will be able to continue project operations with other sources of funding.

C. Administrative Costs

The OCS will accept applications that include administrative costs. However, since grant funds are extremely limited, no awards for only administrative costs will be made and no more than 10% of the OCS discretionary funds awarded under a single grant may be used for administrative purposes. More favorable consideration may be given to applications where administrative costs are less than 10% of total project funds from all sources.

Administrative costs are defined as costs that are necessary to protect, monitor, properly account for and apply to the approved project, those Federal funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs. Administrative costs must be identifiable within grantee records in order to allow auditors and OCS to verify that the grantee has not exceeded the 10% administrative cost limitation.

In all cases where an applicant has been awarded and claims a current indirect cost rate approved by the Department of Health and Human Services, the Defense Contracting Agency, or some other Federal agency, this rate should be documented in the application and will ordinarily be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of and not in addition to the amount of funds awarded in the subject grant. (In most cases, the indirect cost rate approved will include not only administrative costs but also other allowable costs that were negotiated under the grantee's approved indirect cost rate. Therefore, applicants with an applicable indirect cost rate exceeding 10% may not propose any administrative funds in excess of that rate. Thus, the approved indirect cost rate may often exceed the normal 10% administrative cost restrictions which otherwise apply to OCS discretionary grants. In such cases, the entire approved indirect cost rate will be accepted.)

D. Matching Funds Requirement

The applicant is required to obtain commitment of minimum prescribed amounts of private or public funds as noted below to match each OCS dollar awarded. This match must be either one private sector dollar or two public sector dollars to each dollar of OCS discretionary funds awarded in Priority Areas 1.0, 2.1 and 2.2. For projects submitted under Program Priority Area 3.0, Assistance to Migrants and Seasonal Farmworkers, a match of one private or public sector dollar to each dollar of OCS discretionary funds awarded is acceptable. The firm commitment of these required matching funds must be documented in the project application. Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/institution(s) from which the funds will be received.

Matching funds must be definite, or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant) will not be counted towards the matching requirement.

Funds expected to be raised as a result of the grant, whether from program income or otherwise, will not be counted toward the matching requirement, except that for existing businesses or projects, projected income based on the realistic extrapolation of past performance may be considered.

Matching funds may be in such forms as loans for construction financing, mortgages, grants from other Federal sources, or from States, counties, municipalities or private individuals or organizations or equity investments that are made to the project supported by the OCS grant. Matching funds might also be in the form of correlated training programs, related water or waste water installations, foundation support, private and charitable contributions and/or in-kind contributions.

In-kind matching contributions must show the bases for computation by indicating such data as: (a) The number and types of volunteers and rates at which their services are valued, (b) the value of donated space or equipment, noting rental value, use charges, square feet, etc., and/or (c) the fair market value of any property or equipment that is specifically part of the project.

Funds that are eligible to be counted as "matching" funds must be committed for specific project activities within the OCS approved project during the one year duration of the OCS grant. A grantee may not claim as matching funds, wages earned as a result of training or skill improvements that are expected to come from the OCS funded project.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds, although currently owned assets may be applied against the matching requirement.

Applicants should describe clearly how they plan to use their own resources and the requested OCS funds to generate additional private sources of funding or investment as well as funding from other government agencies.

While the above matching requirement must be met and documented for an application to be eligible for consideration, applicants generating support greater than that required, may be eligible for additional points to be awarded by the independent field readers as noted in Part III. F. 2. d., Criterion IV. below.

Documentation of any commitment of matching funds must be valid at least through September 1986.

E. Application Procedures

Organizations wishing to compete for an award under this announcement must submit an application by March 31, 1986. *Any application not received, postmarked or identified by a commercial carrier processing date by the above closing date will be disqualified and returned to the applicant.*

1. Availability of Forms

Applications for awards under the OCS Discretionary Program must be submitted on Standard Form (SF) 424 provided for that purpose. Application kits containing copies of these forms as well as detailed technical instructions for preparing the application may only be obtained by writing to:

Division of Discretionary Programs,
Office of Community Services/DHHS,
Room 433F.3, 200 Independence Ave., SW., Washington, DC 20201, Attn: OCS–86–1–DP

Your request for an application kit must include the following information formatted as below:

Name of Requesting Organization,
Address (including Zip Code), Name of Contact Person at Organization,
Phone Number

Telephone requests for application kits will not be honored.

2. Application Submission

An original signed application and six copies must be submitted to:

Office of Grants Management, Office of Community Services/DHHS, Room 457F, 200 Independence Ave., SW., Washington, DC 20201, Attn: OCS–86–1–DP

The application cover must contain a Program Priority Area designation in the lower right hand corner. The following Program Priority Area designations must be used:

UR—for Urban and Rural Community Economic Development,
RH—for Rural Housing Repairs and Rehabilitation,
RF—for Rural Community Facilities Development,
MS—for Migrants and Seasonal Farmworkers projects.

3. Table of Contents

All applications must include, as the first item, a Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutive. (This will facilitate review as well as future referencing once the application becomes part of the Agency's permanent files.)

The Table of Contents should list the following and the application should present material in the order herein noted:

a. Executive Summary *(not to exceed 5 single-spaced typewritten pages).*

b. Standard Form 424, Parts I through III, accompanied by:

(1). A Detailed Budget Breakdown for Part III, Section B,

(2). Documentation of Required Matching Funds, and

(3). Evidence of Applicant Support from other Government and/or private sources.

c. Narrative Description of project applicant and implementing organizations (if grant is to be implemented by an organization other than the entity which is making application to OCS), must include, at a minimum, the following:

(1). Organizational Experience in Program Area,

(2). Management History,

*(3). Staffing (Organizational Chart, Job Descriptions, Resumes),

(4) Senior Staff Responsibilities (including definite statements of who will have the responsibilities of the chief executive officer and who will be responsible for grant coordination with OCS),

*(5). Articles of Incorporation and By-laws,

*(6). Governing Boards and Representational Structure.

d. Description of Impact Area

(1). Standard Demographic Data,

(2). Participant/Beneficiary Characteristics,

(3). Analysis of Need.

e. Project Implementation

(1). Project Objectives and Measurable Impact,

(2). Implementation Factors: Resource Coordination, Quarterly Work Plans with Specific Task Timelines, Financial/Business Plans (where applicable), Identification of Problems and Issues, etc.

f. Evaluation Component.

*These items may be included as appendices to the project proposal.

Applications must be uniform in composition. They must be submitted on 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. (Please do not include organizational brochures or other promotional materials in the proposal unless they have been copied to conform with the size requirements noted above.)

Please submit applications in binders that will allow for easy separation and reassembly. While applications must be comprehensive, we encourage conciseness and brevity in the presentation of materials and caution you to avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

4. Intergovernmental Review

The OCS Discretionary Grants Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS.

5. Application Consideration

Complete applications that conform to the requirements of this Program Announcement will be reviewed competitively and evaluated by Federal officials and qualified independent field readers. Each complete application will be referred to qualified field readers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and review criteria published in this notice. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Evaluation scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the mean scores assigned by reviewers. However, highly

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ranked applications are not guaranteed funding.

The Director may also consider other factors deemed relevant including, but not limited to comments of independent field readers and State and local officials; staff evaluation and input; geographical distribution of funding; the previous program performance of applicants especially those that have had previous HHS grants; audit reports and investigative reports; and applicants' progress in resolving any final audit disallowances on OCS or other Federal agency grants.

The OCS reserves the option of discussing applications with other Federal or non-Federal funding sources to determine the applicant's performance record.

The official award document is the Notice of Financial Assistance Awarded, which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient participation required.

F. Criteria for OCS Screening and Review of All Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only complete and conforming applications will then be reviewed and evaluated competitively.

1. *Screening Requirements:* In order for an application to be processed under this announcement, it must meet all of the following requirements:

a. It must not exceed 100 pages in total, including the Business Plan (not to exceed 30 pages) and the Executive Summary (not to exceed 5 pages), but appendices may be in addition to the 100 page limitation.

b. *Standard Form 424:* The application must include a SF 424, completed according to instructions. Item 23b of Part I of this form must be signed by an official of the applicant organization having authority to obligate the applicant legally.

c. *Number of copies:* A signed original application and six copies must be submitted.

d. *Executive Summary:* A narrative summary of the project, not to exceed five single spaced typed pages, must be included in each application, immediately following the table of contents. This summary must directly address the program specifics within this announcement and the evaluation criteria contained below. (Applicants are cautioned that OCS will not accept a 5 page executive summary as the complete application or as a substitute for a properly detailed Part IV, Program Narrative of the SF 424.)

e. *OCS' Priorities:* An application may contain only one project and this project must be identified as responding to one of the program priority areas stated in the announcement. An application which does not identify one program priority area or which shows multiple program priority areas, will be deemed non-conforming and may be disqualified and returned to the applicant.

f. *Multiple Submittals:* A project can only be proposed once under this announcement. Multiple submittals of the same—or essentially the same—project as an application under different priority areas will be deemed non-conforming and may be disqualified and returned to the applicant.

g. *OCS Target Populations:* The application must clearly target the specific outcomes and benefits of the project to low-income participants and beneficiaries eligible under the DHHS Annual Revision of Poverty Guidelines.

h. *Match Requirements:* A match of one contributed private sector or two public sector dollars to each OCS discretionary dollar sought must be documented for all program priority areas, except Migrants and Seasonal Farmworker Programs. The match requirement for Migrants and Seasonal Farmworkers is one private or public sector dollar to each OCS dollar.

i. *Support from other Government Agencies or Private Institutions:* Each applicant must provide a list of all financial assistance (loans, loan guarantees, grants, contracts, cooperative agreements or other investment assistance) received from any government agency (Federal, State or local), private institution or individual during the three-year period beginning January 1, 1983 and ending December 31, 1985. In cases of applicants which are units of government (e.g. a city or county) which receive extensive assistance from many sources, the funding history need be only for that office or agency which is actually conducting the activities for which the OCS grant is being requested. The list must include the title of the project for which assistance was received, the name and address of the governmental agency, private institution or individual which provided the assistance and the name and telephone number of the responsible official or program officer, within the grantor agency or institution, who administered the assistance. The list should be certified by the applicant as accurate and complete. Where no assistance has been received during the three year period, the applicant must specifically so certify.

Special Note: Failure to include the above information by the deadline for submission of an application may disqualify the applicant from further consideration. In addition, should OCS discover that the applicant has omitted or distorted any information submitted as part of its application, it may be grounds for no further review of the application or for the recovery of any grant award already made.

Applications Must Meet All of the Above Requirements To Be Considered for Funding

2. *Criteria for Review and Evaluation of Applications:*

Applications which are judged to be in complete compliance with the announcement will be reviewed on a competitive basis. The OCS will use qualified independent field readers, other than OCS employees to conduct a formal objective review of the applications.

Each reader will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this notice. An overall rating will include the reader's judgment of each application. The readers will be instructed to assign one of the following ratings to each application consistent with the points given under the evaluation criteria: a) Not recommended for funding; b) recommended for funding with conditions; or c) unconditionally recommended for funding.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area.

a. Criterion I: *Organizational Capability and Capacity (Maximum: 20 points)*

(1). *Organizational Experience in Program Area (sub-rating: 5 points)*

Each applicant must document competence in the specific program priority area under which an application is submitted. Where the applicant has a history of two or more years of prior achievement in that area, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the targeted population. Applicants with a history of less than two years of prior achievement in the program area should so identify themselves. They must also indicate those activities that they have accomplished in the area in question and the reasons why they feel that they can successfully implement the project for which they are requesting funding. If applicable, documentation provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. The commitment of these organizations to the applicant organization and the project and the relevant experiences and achievements of key personnel including board members, executive staff and project management staff must also be included.

(2). *Management History (sub-rating: 5 points)*

The applicant must fully document a history of sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also document that they have consistently complied with financial and program progress reporting and audit requirements. Applicants with less than 2 years of such corporate management history should so identify themselves. These applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or Licensed Public Accountant to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3). *Staffing and Resources (sub-rating: 5 points)*

The application must fully describe the experience and skills, e.g. resumes of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project. It must also show that the applicant has adequate facilities and physical resources to carry out successfully the work plan specified.

(4). *Staff Responsibilities (sub-rating: 5 points)*

The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

b. Criterion II: *Significant and Beneficial Impact (Maximum: 30 points)*

Projects funded under this announcement must produce permanent and measurable results that will reduce the incidence of poverty in the areas targeted. Results should be quantifiable in terms of program area expectations, e.g., business or physical development accomplished, number of jobs saved/created, number of units of housing rehabilitated, etc. The OCS grant funds, in combination with private and other public resources, must be targeted into low-income communities with the goal of increasing the economic and social self-sufficiency of residents. Projects must be designed to achieve the specific program priority area objectives defined in this program announcement.

The following are examples of specific impact measures for the various program priority areas:

(1). Area 1.0: *Urban and Rural Community Economic Development:* The number of new permanent direct jobs to be created for low-income residents of the area that the project is intended to serve, the number of such jobs maintained; increase in taxes paid; new technical skills development and associated career opportunities for low-income community residents; development of the community's economic and physical assets; the amount of non-Discretionary Program dollars to be mobilized and the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project.

(2). Area 2.1: *Rural Housing Repair and Rehabilitation:* The number of sub-standard housing units to be repaired and/or rehabilitated, noting by number those which will be occupied by a low-income owner and/or those which will be rental units; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of low-income people to be employed in such projects; the number of units to be converted or newly constructed; total non-Discretionary Program dollars mobilized; and justifications for selecting target communities that are based on the housing needs of low-income local residents and which show the types and amounts of assistance that have been provided in the communities in previous years. (In cases where new construction is proposed, it will only be approved if the applicant clearly documents that there is insufficient existing housing stock that can be economically rehabilitated.)

(3). Area 2.2: *Rural Community Facilities:* The number of rural communites to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by applicant supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant supported treatment systems (all of the above may be expressed in terms of equivalent connections); the increase in local capacity in engineering and other areas of expertise; and the amount of non-Discretionary Program dollars expected to be mobilized.

(4). Area 3.0: *Assistance to Migrants and Seasonal Farmworkers:* The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of nutrition and housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary Program dollars expected to be mobilized; and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this announcement.

c. Criterion III: *Project Implementation and Evaluation (Maximum: 30 points)*

(1). *Project Implementation Component (sub-rating: 25 points)*

The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2). *Evaluation Component (sub-rating: 5 points)*

All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and

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quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

d. Criterion IV: *Public—Private Partnerships (Maximum: 5 points)*

All applications must document that the private and/or public matching funds requirement will be met as part of the grant. This commitment of non-Discretionary Grant funds is necessary for an application to be considered.

An application may be eligible for points under this criterion only if, in addition to the required matching funds, it documents that it will mobilize from public or private sources additional project support and assistance which will directly benefit the project and poverty level target area residents.

e. Criterion V: *Budget Appropriateness and Reasonableness (Maximum: 15 points)*

Each applicant should carefully review the requirements of the specific program priority area and the budget submitted must coincide with these requirements.

The proposed request for funds must be commensurate with the level of effort necessary to accomplish the goals and objectives of the project. It must include a detailed budget breakout for each of the budget categories in Part III, Section B of the SF 424. (Please identify any positions for which less than full-time funding is requested.) The estimated cost to the government of the project must also be reasonable in relation to the value of the anticipated results.

The contribution of any other private and/or public sector agencies or organizations must be assured in writing in the application when it is submitted.

Part IV: Instructions for Completing Applications, Closing Date & Delivery of Applications

A. Submission Date

The closing date for applications submitted under this program announcement is March 31, 1986. Applications may be mailed or hand delivered to: Office of Grants Management, Office of Community Services, Department of Health & Human Services, Room 457F, 200 Independence Ave., SW., Washington, DC 20201, Attn: OCS–86–1–DP

Hand delivered applications will be accepted during the normal working hours of 8.45 a.m. to 5:30 p.m., Monday through Friday (excluding Federal legal holidays), up through the closing date of March 31, 1986. All other applications must be postmarked or dated by a commercial carrier not later than midnight, March 31, 1986.

An application will be considered to be received on time under either one of the following two circumstances:

1. The application was sent by registered or certified mail or by private commercial carrier no later than the closing date, as evidenced by a U.S. Postal Service date postmark or by commercial carrier dating, unless it arrives too late to be considered by the independent field readers.

Applicants are responsible for assuring that the U.S. Post Office or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.

2. The application is hand delivered on or before the closing date to the Office of Community Services, Department of Health and Human Services in Washington, DC at the address indicated above. In establishing the date of receipt of hand delivered applications, reliance will be placed on documentary evidence of receipt maintained by OCS/DHHS.

Any application not meeting the above closing date for submission will be disqualified and returned to the applicant organization.

B. *Applicotion Package*: Each application must include:

1. A signed original and six additional copies of the application. The original must bear original signatures of the certifying representative of the applicant organization. Do not include extraneous materials such as agency promotional brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. A self-addressed, franked postcard (included in all OCS Application Kits) so that acknowledgment of receipt can be returned. (This requirement applies even if the application is accompanied by a "return receipt requested card".) All applications will be assigned an identification number which will be noted by OCS on the acknowledgment. This number and the program priority area must be referred to in all subsequent communication with OCS concerning the application. If you do not receive the acknowledgment within three weeks after the deadline date, please notify OCS by telephone (202) 475–0376.

Special Note.—After an identification number is assigned and the applicant has been notified of the number, applications will be filed serially by the number to aid in quick retrieval. It is not possible for OCS staff to provide a timely response to inquiries about a specific application unless this number and the program priority area are given along with the applicant's name.

C. *Contents of Applications*: Each copy of the application must contain in the order listed, each of the following (more detailed instructions are noted in Part III.E.3., above, and in the OCS Application Kit instructions to applicants).

1. A Table of Contents as noted in Part III, above;

2. Executive Summary no more than the equivalent of 5 single spaced typed pages;

3. Standard Form 424, Part I, Federal Assistance—to be completed according to instructions contained on that form;

4. Standard Form 424, Part II, Project Approval Information items 1 through 10, with attachment;

5. Standard Form 424, Part III, Budget Information—Sections A through F with attachments; and

6. Standard Form 424, Part IV, Project Narrative. fully describing the project being proposed in response to this announcement. The narrative should be fully responsive to the specific requirements contained under each program priority area and address the review criteria.

Applications once submitted are considered final and no additions will be accepted by OCS.

Applicants are cautioned to carefully read the specific requirements contained under each program priority area and detailed in the application kit.

Again, applicants are reminded that failure to meet the specific programmatic format and the submission requirements stated herein may result in the disqualification and return of an application.

Dated: February 6, 1986.

Jerrold B. Speers,

Acting Director, Office of Community Services.

[FR Doc. 86–2913 Filed 2–7–86; 8:45 am]

BILLING CODE 4130–01–M

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Monday, February 10, 1986

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

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CFR Index and Findings Aids	18.00	Jan. 1, 1985
Complete 1986 CFR set	595.00	1986
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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28

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UMI

2-11-86
Vol. 51 No. 28

federal register

Tuesday
February 11, 1986

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A FR SERIA300S NOV 86 R
SERIALS PROCESSING
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SECOND CLASS NEWSPAPER
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U.S. Government Printing Office
(ISSN 0097-6326)

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51
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1986
UMI

2-11-86
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Pages 5029-5144

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Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
International Trade Commission
Air Pollution Control
Environmental Protection Agency
Conflict of Interests
Postal Rate Commission
Foreign Trade
Trade Representative, Office of United States
Foreign Trade Zones
Customs Service
Hazardous Waste
Environmental Protection Agency
Investigations
International Trade Commission
Marketing Agreements
Agricultural Marketing Service
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHERE: Room 1612,
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RESERVATIONS: Delores O'Guin,
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314-425-4109

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WHEN: March 24; at 9 am.

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1961 Stout Street, Denver, CO.

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Denver Federal Information Center.
303-236-7181

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Presidential Documents

Title 3—

The President

Executive Order 12547 of February 6, 1986

Establishing Procedures for Facilitating Presidential Review of International Aviation Decisions Submitted by the Department of Transportation

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 801 of the Federal Aviation Act, as amended (49 U.S.C. 1461), and in order to provide Presidential guidance to department and agency heads and facilitate Presidential review of decisions submitted to the President for his review by the Department of Transportation pursuant to the Federal Aviation Act, it is hereby ordered as follows:

Section 1. (a) Except as otherwise provided in this section, decisions of the Department of Transportation (hereinafter referred to as the "DOT") transmitted to the President pursuant to Section 801 of the Federal Aviation Act, as amended, may be made available by the DOT for public inspection and copying following submission to the President.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 12356, decisions of the DOT transmitted to the President under Section 801 shall be withheld from public disclosure for a period not to exceed five days after submission to the President.

(c) At the same time that decisions of the DOT are submitted to the President pursuant to Section 801, the DOT shall transmit copies thereof to the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Attorney General, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget and any other Executive department or agency that the DOT deems appropriate.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the DOT transmitted pursuant to subsection (c) above, and shall promptly advise the Assistant to the President for National Security Affairs or his designee, whether action pursuant to Executive Order No. 12356 is deemed appropriate. If, after considering these recommendations, the Assistant to the President for National Security Affairs determines that classification under Executive Order No. 12356 is appropriate, he shall take such action and immediately so inform the DOT. Action pursuant to this subsection shall be completed by the persons designated herein within five days of receipt of the decision by the President.

(e) On and after the sixth day following receipt by the President of a DOT decision submitted pursuant to Section 801, or upon earlier notification by the Assistant to the President for National Security Affairs or his designee, the DOT is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under any Executive Order or statute other than Section 801.

Sec. 2. (a) Departments and agencies outside of the Executive Office of the President shall raise only matters of national defense or foreign relations in the course of the Presidential review established by this Order. All other matters, including those related to regulatory policy, shall be presented to the DOT in accordance with the procedures of the DOT.

(b) Departments and agencies outside of the Executive Office of the President that identify matters of national defense or foreign relations while a decision

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is pending before the DOT shall, except as confidentiality is required for reasons of defense or foreign policy, make those matters known to the DOT in the course of its proceedings.

Sec. 3. (a) After transmitting a decision under Section 801 to the President for review, the DOT shall obtain the recommendations, addressed to the President, of the departments and agencies referred to in section 1(c) of this Order.

(b) Departments or agencies outside of the Executive Office of the President making recommendations on matters of national defense or foreign relations with respect to any decision submitted by the DOT to the President under Section 801 shall submit their recommendations in writing to the DOT: (1) within four days of the DOT's issuance of a decision subject to a 10-day statutory review period under Section 801(b); and (2) within twenty-one days of the DOT's issuance of a decision subject to a 60-day statutory review period under Section 801(a), or in exceptional cases, within the period specified by the DOT in its letter of transmittal.

(c) The DOT shall, as soon as practical after the deadlines specified in section 3(b) of this Order: (1) if no recommendations are received from the departments and agencies specified in section 1(c) of this Order, transmit to the President, through the Assistant to the President for National Security Affairs, a memorandum stating that no department or agency advises disapproval of the decision; or (2) if recommendations are received, transmit them to the Assistant to the President for National Security Affairs, who upon review, shall transmit a memorandum to the President with a recommendation as to whether or not the President should disapprove the proposed decision.

Sec. 4. (a) In advising the President with respect to his review of a decision submitted to him pursuant to Section 801, departments and agencies outside of the Executive Office of the President shall identify with particularity the defense or foreign policy implications of the DOT decision which are deemed appropriate for the President's consideration.

(b) If any department or agency which made recommendations to the President pursuant to Section 801 believes that, if the President decides not to disapprove a decision, the letter so advising the DOT should include a statement that the decision not to disapprove was based on national defense or foreign relations reasons, it should so indicate separately and explain why.

Sec. 5. Individuals within the Executive Office of the President shall follow a policy of: (a) refusing to discuss matters relating to the disposition of a case subject to the review of the President under Section 801 with any interested private party, or an attorney or agent for any such party, prior to the President's decision; and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President. Exceptions to this policy may be made only when the head of an appropriate department or agency outside of the Executive Office of the President personally finds, on a nondelegable basis, that direct written or oral communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy.

Sec. 6. Departments and agencies outside of the Executive Office of the President which regularly make recommendations to the President in connection with the Presidential review pursuant to Section 801 shall, consistent with application law, including the provisions of Chapter 5 of Title 5 of the United States Code:

(a) establish public dockets for all written communications (other than those requiring confidential treatment for defense or foreign policy reasons) between their officers and employees and private parties in connection with the preparation of such recommendations; and

(b) prescribe such other procedures governing oral and written communications as they deem appropriate.

Sec. 7. This Order is intended solely for the internal guidance of the departments and agencies in order to facilitate the Presidential review process. This Order does not confer rights on any private parties.

Sec. 8. (a) None of the time deadlines specified in this Order shall be construed as a limitation on expedited Presidential review of any decision submitted under Section 801.

(b) Executive Order No. 11920 of June 10, 1976, is revoked.

(c) The provisions of this Order shall become effective 30 days after its publication in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
February 6, 1986.

[FR Doc. 86-3104
Filed 2-7-86; 4:38 pm]
Billing code 3195-01-M

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Proclamation 5439 of February 7, 1986

Small Business Week, 1986

By the President of the United States of America

A Proclamation

The business of America begins with small business—millions of men and women, bold and imaginative self-starters, seizing opportunities and providing the jobs that help to ensure that our Nation will remain economically strong and free.

The flexibility of small business people is exemplified by their willingness to adapt to change, their determination to test untapped markets for new products and services, and their ability to contribute to the competitive marketplace in such a way as to improve efficiency, thus benefitting the consumer and spurring economic growth. Nothing characterizes the American economy better than our 14 million small businesses. They should be a source of pride for all Americans.

It is especially gratifying that in recent years greater numbers of young Americans are preparing for careers in independent business. Their innovative entrepreneurial spirit has brought a new excitement to the campus and to the marketplace. All Americans can take hope from their optimism, their creativity, and their impressive achievements.

This year, thousands of business owners will express their views at State preparatory sessions for the National White House Conference on Small Business—an example of free enterprise at its best. The recommendations prepared by the delegates to the National White House Conference in August will help us in formulating a small business agenda designed to make sure that our economy continues to grow and to prosper. All Americans benefit when small business is the force behind a vigorous and expanding economy.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 18 through May 24, 1986, as Small Business Week and ask that all Americans join with me in saluting our small business men and women by observing that week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-3105
Filed 2-7-86; 4:39 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 51, No. 28
Tuesday, February 11, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 625]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 625 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 7 through February 13, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 625 (§ 907.925) is effective for the period February 7–13, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 4, 1986, at Visalia, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges continues weak. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is inpracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. The authority citation for Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.925 Navel Orange Regulation 625 is hereby added to read:

PART 907—[AMENDED]

§ 907.925 Navel Orange Regulation 625.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 7, 1986, through February 13, 1986, are established as follows:

(a) District 1: 1,400,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: February 5, 1986.

Joseph A. Gribbin,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–2929 Filed 2–10–86; 8:45 am]
BILLING CODE 3410–02–M

UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2007

Revision of Regulations Relating to the Generalized System of Preferences (GSP)

AGENCY: United States Trade Representative.

ACTION: Final regulations.

SUMMARY: The United States Generalized System of Preferences Program was extended for a period of eight and one-half years pursuant to section 505(a) of Title V of the Trade and Tariff Act of 1984 (Pub. L. No. 98–573, October 30, 1984). In order to ensure that the administration of the GSP program conforms to the amendments included in Title V of the Trade and Tariff Act of 1984 and responds to concerns raised by members of Congress and constituent groups during the consideration of the renewal legislation, we revised the administrative regulations governing the operation of the GSP program. In order to allow members of the public adequate opportunity to comment, revised regulations were issued as interim regulations on May 10, 1985. Having taken into account comments received on the interim regulations, we are now issuing final regulations.

EFFECTIVE DATE: The final regulations shall become effective on February 11, 1986.

FOR FURTHER INFORMATION CONTACT: Operations Aspects: David Shark, GSP Program Office (202–395–6971); Legal Aspects: Richard W. Parker, Office of the General Counsel (202–395–6800); Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

Two comments were received concerning procedural follow-through in respect of requests for action relating to

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country practices pursuant to sections 502 (b) and 502(c) of Title V of the Trade Act of 1974 (the Act), as amended, and the definition of "interested party" as described in § 2007.0(d). The commentors expressed concern that the regulations did not clearly specify the procedures that would be followed after receipt of a request for action relating to GSP beneficiary treatment of intellectual property rights and internationally recognized workers rights. With respect to the term "interested party", the commenters expressed a desire to have the definition broadened. Specifically, they requested that its definition be expanded to provide standing to parties with interests in intellectual property rights and internationally recognized worker rights concerns for the purpose of initiating product related reviews under the procedures explained in § 2007.2.

In response to these comments, the Office of the United States Trade Representative (USTR) revised the regulations to establish specific procedural steps to be taken following the receipt of a request for action relating to country practices. These revisions, in short, provide for consideration of such request as an integral part of the annual review. The term "annual product review" was changed to "annual review" to reflect this modification. These changes will ensure that those parties not provided "interested party" status have the opportunity, equivalent to those with interested party status, to express their concerns during annual reviews with respect to the country eligibility criteria in sections 502 (b) and (c) of the Act. The specific modifications can be found in §§ 2007.0(b), 2007.2, 2007.4 and 2007.5.

Regarding the definition of "interested party", USTR noted that sections 502(b) and 502(c) of the Act, and its legislative history, make clear that intellectual property rights and internationally recognized worker rights concerns will receive full consideration in all product specific actions under the program, including review of petitions to add, remove or graduate products. Parties with concerns relating to these issues will be welcome to testify and submit information relating to such petitions during each annual review. In view of this fact, and the modifications in procedures outlined above, USTR did not deem it appropriate to broaden the definition of "interested party."

One comment recommended that § 2007.0(f) be modified to state that the TPSC may at any time, on its own motion, initiate a review based on the country eligibility criteria in sections 502 (b) and (c) of the Act. USTR clarified § 2007.0 (f) as recommended.

A related change was made in response to a comment concerning § 2007.6. The first sentence in this section was altered to make clear that any "person", as opposed to any "interested person", may, upon request, inspect at USTR's GSP Information Center the material described in § 2007.6.

One comment was received concerning §§ 2007.0 and 2007.3 and the procedures and timeframe for the acceptance and rejection of petitions requesting modifications in the list of articles eligible for GSP benefits. The group commenting wanted the regulations altered to make clear that requests for additions to the product eligibility list which had been previously rejected after a formal review in the prior year be summarily rejected before the July 15 deadline. The concern of the group commenting was that the relevant domestic industry is burdened with a sense of unnecessary uncertainty during the June 1–July 15 time period while waiting for the decision as announced by USTR.

When respect to the comment concerning §§ 2007.0 and 2007.3, as discussed above, USTR concluded that it was inappropriate to alter the regulations. The regulation clearly states that a petition to add a product will be rejected if it has been the subject of a review within the three preceding calendar years. Therefore, there is no reason for uncertainty on the part of the domestic industry.

Two comments were received requesting the development of a standard petition for those interested in requesting modifications to the list of eligible articles. The commentors' interest was to ensure compliance with requirements that sufficient information be included in petitions.

USTR noted that the interim regulations have, to a large degree, met these concerns by specifying in greater detail the information which must be included for a petition to be accepted. However, USTR agreed that it would facilitate the understanding of, and compliance with, these requirements to develop additional written guidance to assist interested parties in preparing petitions. Such written guidance has been developed and will be incorporated in the "Guide to the U.S. Generalized System of Preferences", which is distributed to all U.S. Embassies, and is available at the GSP Information Center.

Two comments were received requesting additional information be added to the informational requirements listed in § 2007.1. In response to these requests, USTR altered § 2007.1 in two respects. An additional informational requirement was added to the list for petitioners requesting the designation of additional articles to the list of eligible items. An analysis of costs, including materials, labor and overhead is now required. USTR also altered § 2007.1(a)(2) to include language that requires the petitioner to clarify their request involving the list of eligible articles when it involves a basket category of the TSUS by providing a "detailed description of the product or products of interest." USTR did not revise the regulations to incorporate some suggested points because it felt that these points were already sufficiently covered in the regulations or were inappropriate.

One comment was received concerning § 2007.8 and whether USTR concludes that this provision is adequately clear in providing for the consideration of tariff and non-tariff barriers in beneficiary developing countries (BDCs) in considering petitions. USTR concludes that § 2007.8 is adequately clear.

One comment was received concerning the difficulty beneficiary country exporters will have in complying with informational requirements when requesting that products be added to the list of eligible articles. USTR concluded that the informational requirements are reasonable and that the regulations are adequately clear for those interested in requesting modifications to the list of eligible articles to understand them and comply.

Inapplicability of Notice and Delayed Effective Date Provisions

These regulations are not subject to the public notice and comment requirements of 5 U.S.C. 553 because they are procedural in nature and because they are specifically exempted pursuant to subsection (a)(1) of section 553 as within the foreign affairs function of the United States.

Additionally, as the amendments contained in this document are necessary to conform the regulations to amendments made to Title V of the Trade Act of 1974 by Title V of the Trade and Tariff Act of 1984, it is believed that good cause exists under the provisions of 4 U.S.C. 553 (d)(1) and (d)(3) for dispensing with the normal 30 day delayed effective date requirement.

Effective Order 12291

This regulation is not a "major rule" as defined by section 1(b) of Executive Order 12291. Accordingly, a regulatory impact and analysis is not required under Executive Order 12291.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this regulation because the rulemaking is not one for which published general notice is required and because the regulation will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603. Any economic impact flows directly from the GSP program as authorized by Title V of the Trade Act of 1974, as amended, and not from the implementing regulations.

Paperwork Reduction Act

The regulations are not subject to the Paperwork Reduction Act of 1980, (44 U.S.C. 3500 et seq.) because the regulations do not involve the collection of information within the meaning of the term as defined in the Act at 44 U.S.C. 3502(4) and subsection (c) of § 1320.7 of the regulations implementing the Act (5 CFR 1320.7(c)).

List of Subjects in 15 CFR Part 2007

Administrative practice and procedure, Foreign trade.

Amendments to Regulations

15 CFR Part 2007, Office of the U.S. Trade Representative Regulations, is revised to read as set forth below:

PART 2007—REGULATIONS OF THE U.S. TRADE REPRESENTATIVE PERTAINING TO ELIGIBILITY OF ARTICLES AND COUNTRIES FOR THE GENERALIZED SYSTEM OF PREFERENCE PROGRAM (GSP (15 CFR PART 2007))

Sec.

2007.0 Requests for reviews.
2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.
2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria.
2007.3 Timetable for reviews.
2007.4 Publication regarding requests.
2007.5 Written briefs and oral testimony.
2007.6 Information open to public inspection.
2007.7 Information exempt from public inspection.
2007.8 Other reviews of article eligibilities.

Authority: 19 U.S.C. 2461–65, 88 Stat. 2066–2071, as amended by Title V of the Trade and Tariff Act of 1984, Pub. L. No. 98–573, 98 Stat. 3018–3024; EO 11846 of March 27, 1975 (40 FR 14291), EO 12188 of January 2, 1980 (45 FR 989).

§ 2007.0 Requests for reviews.

(a) An interested party may submit a request (1) That additional articles be designated as eligible for GSP duty-free treatment, provided that the article has not been accepted for review within the three preceding calendar years; or (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; or (3) for a determination of whether a like or directly competitive product was produced in the United States on January 3, 1985 for the purposes of section 504(d)(1) (19 U.S. 2464(d)(1)); or (4) that the President exercise his waiver authority with respect to a specific article or articles pursuant to section 504(c)(3) (19 U.S.C. 2464(c)(3)); or (5) that product coverage be otherwise modified.

(b) During the annual reviews and general reviews conducted pursuant to the schedule set out in § 2007.3 any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)). Such requests must (1) specify the name of the person or the group requesting the review; (2) identify the beneficiary country that would be subject to the review; (3) indicate the specific section 502(b) or 502(c) criteria which the requestor believes warrants review; (4) provide a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information; (5) supply any other relevant information as requested by the GSP Subcommittee. If the subject matter of the request has been reviewed pursuant to a previous request, the request must include substantial new information warranting further consideration of the issue.

(c) An interested party or any other person may make submissions supporting, opposing or otherwise commenting on a request submitted pursuant to either paragraph (a) or (b) of this section.

(d) For the purposes of the regulations set out under § 2007.0 et seq., an interested party is defined as a party who has significant economic interest in the subject matter of the request, or any other party representing a significant economic interest that would be materially affected by the action requested, such as a domestic producer of a like or directly competitive article, a commercial importer or retailer of an article which is eligible for the GSP or for which such eligibility is requested, or a foreign government.

(e) All requests and other submissions should be submitted in 20 copies, and should be addressed to the Chairman, GSP Subcommittee, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. 20506. Requests by foreign governments may be made in the form of diplomatic correspondence provided that such requests comply with the requirements of 2007.1.

(f) The Trade Policy Staff Committee (TPSC) may at any time, on its own motion, initiate any of the actions described in paragraphs (a) or (b) of this section.

§ 2007.1 Information required of interested parties in submitting requests for modifications in the list of eligible articles.

(a) *General Information Required.* A request submitted pursuant to this Part, hereinafter also referred to as a petition, except requests submitted pursuant to § 2007.0(b), shall state clearly on the first page that it is a request for action with respect to the provision of duty-free treatment for an article or articles under the GSP, and must contain all information listed in this paragraph and in paragraphs (b) and (c). Petitions which do not contain the information required by this paragraph shall not be accepted for review except upon a showing that the petitioner made a good faith effort to obtain the information required. Petitions shall contain, in addition to any other information specifically requested, the following information:

(1) The name of the petitioner, the person, firm or association represented by the petitioner, and a brief description of the interest of the petitioner claiming to be affected by the operation of the GSP;

(2) An identification of the product or products of interest to the petitioner, including a detailed description of products and their uses and the identification of the pertinent item number of the Tariff Schedules of the United States (TSUS). Where the product or products of interest are included with other products in a basket category of the TSUS, provide a detailed description of the product or products of interest;

(3) A description of the action requested, together with a statement of the reasons therefor and any supporting information;

(4) A statement of whether to the best of the Petitioner's knowledge, the reasoning and information has been

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presented to the TPSC previously either by the petitioner or another party. If the Petitioner has knowledge the request has been made previously, it must include either new information which indicates changed circumstances or a rebuttal of the factors supporting the denial of the previous request. If it is a request for a product addition, the previous request must not have been formally accepted for review within the preceding three calendar year period; and

(5) A statement of the benefits anticipated by the petitioner if the request is granted, along with supporting facts or arguments.

(b) *Requests to withdraw, limit or suspend eligibility with respect to designated articles.* Petitions requesting withdrawal or limitation of duty-free treatment accorded under GSP to an eligible article or articles must include the following information with respect to the relevant United States industry for the most recent three year period:

(1) The names, number and locations of the firms producing a like or directly competitive product;

(2) Actual production figures;

(3) Production capacity and capacity utilization;

(4) Employment figures, including number, type, wage rate, location, and changes in any of these elements;

(5) Sales figures in terms of quantity, value and price;

(6) Quantity and value of exports, as well as principal export markets;

(7) Profitability of firm on firms producing the like product, if possible show profit data by product line;

(8) Analysis of cost including materials, labor and overhead;

(9) A discussion of the competitive situation of the domestic industry;

(10) Identification of competitors; analysis of the effect imports receiving duty-free treatment under the GSP have on competition and the business of the interest on whose behalf the request is made;

(11) Any relevant information relating to the factors listed in section 501 and 502(c) of Title V of the Trade Act of 1974, as amended (19 U.S.C. 2501, 502(c)) such as identification of tariff and non-tariff barriers to sales in foreign markets;

(12) Any other relevant information including any additional information that may be requested by the GSP Subcommittee.

This information should be submitted with the request for each article that is the subject of the request, both for the party making the request, and to the extent possible, for the industry to which the request pertains.

(c) *Requests to designate new articles.* Information to be provided in petitions requesting the designation of new articles submitted by interested parties must include for the most recent three year period the following information for the beneficiary country on whose behalf the request is being made and, to the extent possible, other principal beneficiary country suppliers:

(1) Identification of the principal beneficiary country suppliers expected to benefit from proposed modification;

(2) Name and location of firms;

(3) Actual production figures (and estimated increase in GSP status is granted);

(4) Actual production and capacity utilization (and estimated increase if GSP status is granted);

(5) Employment figures, including numbers, type, wage rate, location and changes in any of these elements if GSP treatment is granted;

(6) Sales figures in terms of quantity, value and prices;

(7) Information on total exports including principal markets, the distribution of products, existing tariff preferences in such markets, total quantity, value and trends in exports;

(8) Information on exports to the United States in terms of quantity, value and price, as well as considerations which affect the competitiveness of these exports relative to exports to the United States by other beneficiary countries of a like or directly competitive product. Where possible, petitioners should provide information on the development of the industry in beneficiary countries and trends in their production and promotional activities;

(9) Analysis of cost including materials, labor and overhead;

(10) Profitability of firms producing the product;

(11) Information on unit prices and a statement of other considerations such as variations in quality or use that affect price competition;

(12) If the petition is submitted by a foreign government or a government controlled entity, it should include a statement of the manner in which the requested action would further the economic development of the country submitting the petition;

(13) If appropriate, an assessment of how the article would qualify under the GSP's 35 percent value-added requirements; and

(14) Any other relevant information, including any information that may be requested by the GSP Subcommittee.

Submissions made by persons in support of or opposition to a request made under this Part should conform to the requirements for requests contained in § 2007.1(a) (3) and (4), and should supply such other relevant information as is available.

§ 2007.2 Action following receipt of requests for modifications in the list of eligible articles and for reviews of the GSP status of eligible beneficiary countries with respect to designation criteria.

(a)(1) If a request submitted pursuant to § 2007.0(a) does not conform to the requirements set forth above, or if it is clear from available information that the request does not warrant further consideration, the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(2) If a request submitted pursuant to § 2007.0(b) does not conform to the requirements set forth above, or if the request does not provide sufficient information relevant to subsections 502(b) or 502(c) (19 U.S.C. 2642 (b) and (c)) to warrant review, or if it is clear from available information that the request does not fall within the criteria of subsections 502(b) or 502(c), the request shall not be accepted for review. Upon written request, requests which are not accepted for review will be returned together with a written statement of the reasons why the request was not accepted.

(b) Requests which conform to the requirements set forth above or for which petitioners have demonstrated a good faith effort to obtain information in order to meet the requirements set forth above, and for which further consideration is deemed warranted, shall be accepted for review.

(c) The TPSC shall announce in the **Federal Register** those requests which will be considered for full examination in the annual review and the deadlines for submissions made pursuant to the review, including the deadlines for submission of comments on the U.S. International Trade Commission (USITC) report in instances in which USITC advice is requested.

(d) In conducting annual reviews, the TPSC shall hold public hearings in order to provide the opportunity for public testimony on petitions and requests filed pursuant to paragraphs (a) and (b) of § 2007.0.

(e) As appropriate, the USTR on behalf of the President will request advice from the USITC.

(f) The GSP Subcommittee of the TPSC shall conduct the first level of interagency consideration under this Part, and shall submit the results of its review to the TPSC.

(g) The TPSC shall review the work of the GSP Subcommittee and shall conduct, as necessary, further reviews of requests submitted and accepted under this Part. Unless subject to additional review, the TPSC shall prepare recommendations for the President on any modifications to the GSP under this Part. The Chairman of the TPSC shall report the results of the TPSC's review to the U.S. Trade Representative who may convene the Trade Policy Review Group (TPRG) or the Trade Policy Committee (TPC) for further review of recommendations and other decisions as necessary. The U.S. Trade Representative, after receiving the advice of the TPSC, TPRG or TPC, shall make recommendations to the President on any modifications to the GSP under this part, including recommendations that no modifications be made.

(h) In considering whether to recommend: (1) That additional articles be designated as eligible for the GSP; (2) that the duty-free treatment accorded to eligible articles under the GSP be withdrawn, suspended or limited; (3) that product coverage be otherwise modified; or (4) that changes be made with respect to the GSP status of eligible beneficiary countries, the GSP Subcommittee on behalf of the TPSC, TPRG, or TPC shall review the relevant information submitted in connection with or concerning a request under this part together with any other information which may be available relevant to the statutory prerequisites for Presidential action contained in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461–2465).

§ 2007.3 Timetable for reviews.

(a) *Annual review.* Beginning in calendar year 1986, reviews of pending requests shall be conducted at least once each year, according to the following schedule, unless otherwise specified by **Federal Register** notice:

(1) June 1, deadline for acceptance of petitions for review;

(2) July 15, **Federal Register** announcement of petitions accepted for review;

(3) September/October—public hearings and submission of written briefs and rebuttal materials;

(4) December/January—opportunity for public comment on USITC public reports;

(5) Results announced on April 1 will be implemented on July 1, the statutory effective date of modifications to the program. If the date specified is on or immediately follows a weekend or holiday, the effective date will be on the second working day following such weekend or holiday.

(b) Requests filed pursuant to paragraphs (a) or (b) of § 2007.0 which indicate the existence of unusual circumstances warranting an immediate review may be considered separately. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

(c) *General Review.* Section 504(c)(2) of Title V of the Trade Act of 1974 (19 U.S.C. 2464(c)(2)) requires that, not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502(c) of Title V. The initiation and scheduling of such reviews as well as the timetable for submission of comments and statements will be announced in the **Federal Register**. The first general review was initiated on February 14, 1985 and will be completed by January 3, 1987.

The initiation of the review and deadlines for submission of comments and statements were announced in the **Federal Register** on February 14, 1985 (50 FR 6294).

§ 2007.4 Publication regarding requests.

(a) Whenever a request is received which conforms to these regulations or which is accepted pursuant to § 2007.2 a statement of the fact that the request has been received, the subject matter of the request (including if appropriate, the TSUS item number or numbers and description of the article or articles covered by the request), and a request for public comment on the petitions received shall be published in the **Federal Register**.

(b) Upon the completion of a review and publication of any Presidential action modifying the GSP, a summary of the decisions made will be published in the **Federal Register** including:

(1) A list of actions taken in response to requests; and

(2) A list of requests which are pending.

(c) Whenever, following a review, there is to be no change in the status of an article with respect to the GSP in response to a request filed under § 2007.0(a), the party submitting a request with respect to such articles may request an explanation of factors considered.

(d) Whenever, following a review, there is to be no change in the status of a beneficiary country with respect to the GSP in response to a request filed under § 2007.0(b), the GSP Subcommittee will notify the party submitting the request in writing of the reasons why the requested action was not taken.

§ 2007.5 Written briefs and oral testimony.

Sections 2003.2 and 2003.4 of this chapter shall be applicable to the submission of any written briefs or requests to present oral testimony in connection with a review under this part. For the purposes of this section, the term "interested party" as used in §§ 2003.2 and 2003.4 shall be interpreted as including parties submitting petitions and requests pursuant to § 2007.0(a) or (b) as well as any other person wishing to file written briefs or present oral testimony.

§ 2007.6 Information open to public inspection.

With exception of information subject to § 2007.7 any person may, upon request inspect at the Office of the United States Trade Representative:

(a) Any written request, brief, or similar submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings which may be held pursuant to this part.

§ 2007.7 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if it is determined that the disclosure of such information is not required by law.

(b) A party requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "Submitted in Confidence" at the top, and shall submit a nonconfidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if it is determined that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

§ 2007.8 Other reviews of article eligibilities.

(a) As soon after the beginning of each calendar year as relevant trade data for the preceding year are available, modifications of the GSP in accordance with section 504(c) of the Trade Act of 1974 as amended (19 U.S.C. 2464) will be considered.

(b) *General Review.* Section 504(c)(2) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)(2)) requires

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that not later than January 4, 1987 and periodically thereafter, the President conduct a general review of eligible articles based on the considerations in sections 501 and 502 of Title V. The purpose of these reviews is to determine which articles from which beneficiary countries are "sufficiently competitive" to warrant a reduced competitive need limit. Those articles determined to be "sufficiently competitive" will be subject to a new lower competitive need limit set at: (1) 25 percent of the value of total U.S imports of the article; or (2) $25 million (this figure will be adjusted annually in accordance with nominal changes in U.S. gross national product (GNP), using 1984 as the base year). All other articles will continue to be subject to the original competitive need limits of 50 percent or $25 million (this figure is adjusted annually using 1974 as the base year).

(1) *Scope of General Reviews.* In addition to an examination the competitiveness of specific articles from particular beneficiary countries, the general review will also include consideration of requests for competitive need limit waivers pursuant to section 504(c)(3)(A) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(c)) and requests for a determination of no domestic production under section 504(d)(1) of Title V of the Trade Act of 1974 as amended (19 U.S.C. 2464(d)(1)).

(2) *Factors To Be Considered.* In determining whether a beneficiary country should be subjected to the lower competitive need limits with respect to a particular article, the President shall consider the following factors contained in sections 501 and 502(c) of Title V:

(i) The effect such action will have on furthering the economic development of developing countries through expansion of their exports;

(ii) The extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(iii) The anticipated impact of such action on the United States producers of like or directly competitive products;

(iv) The extent of the beneficiary developing country's competitiveness with respect to eligible articles;

(v) The level of economic development of such country, including its per capita GNP, the living standard of its inhabitants and any other economic factors the President deems appropriate;

(vi) Whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(vii) The extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(viii) The extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks and copyrights;

(ix) The extent to which such country has taken action to—

(A) Reduce trade distorting investment practices and policies (including export performance requirements); and

(B) Reduce or eliminate barriers to trade in services; and

(x) Whether or not such country has taken or is taking steps to afford workers in that country (including any designated zone in that country) internationally recognized worker rights.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86-2835 Filed 2-10-86; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 18, 24, 112, 113, 141, 144, 146, 178 and 191

[T.D. 86-16]

Foreign Trade Zones; Specialized and General Provisions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises Customs Regulations relating to foreign trade zones to provide a new audit-inspection method of zone supervision by Customs. A foreign trade zone is a defined area, considered to be outside the customs territory of the U.S., where certain lawful activities can be conducted with a minimum of formalities. A zone provides a site at or adjacent to a Customs port of entry where operations involving foreign merchandise can take place, which otherwise might have been done abroad for tariff and trade reasons. The revision sets forth the general provisions applicable to the administration of all zones and other specialized provisions applicable to subzones and zone sites. In addition, changes in the language of the regulations will clarify some provisions, eliminate inconsistencies, and conform the regulations to current administrative practices.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: John Holl, (202-566-8151);

Inventory Control and Recordkeeping System Aspect: Marcus Sircus, (202-566-2812);

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Liquidated Damages, Penalty and Suspension Aspect: William Lawlor, (202-566-5856);

Economic Aspect: Daniel Norman, (202-535-4138).

All of the above Customs personnel are located at: U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

In 1934, Congress enacted the Foreign-Trade Zones Act to expedite and encourage foreign commerce. The Act created domestic foreign trade zones and was designed to stimulate international trade and create jobs in the U.S. At that time, zones were envisioned as storage, manipulation, and transshipment (exportation) centers. In 1950, an amendment to the Act was passed, authorizing manufacturing and exhibition inside zones. Foreign trade zones (zones) are areas within the U.S. (but outside the "Customs territory of the U.S.," as defined in § 101.1(e), Customs Regulations (19 CFR 101.1(e)), where foreign or domestic merchandise may be brought for manipulation, manufacture, assembly or other processing, or for storage or exhibition, provided that these operations are not otherwise prohibited by law. Foreign merchandise may be brought into a zone without being subject to the usual Customs entry procedures and payment of duty. Foreign or domestic merchandise may be exported or entered into the Customs territory from a zone. Quota restrictions do not normally apply to foreign merchandise in a zone. Merchandise moved to a zone for export may be considered exported upon its admission to a zone for purposes of excise tax rebates and drawback.

Zones are established under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the general regulations and rules of procedure of the Foreign-Trade Zones Board (the Board), Department of Commerce (15 CFR Part 400). Part 146, Customs Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; the manipulation, manufacture, destruction, or exhibition in a zone; the exportation of merchandise from a zone; and the transfer of merchandise from a zone into the Customs territory.

Typically, a foreign trade zone is a fenced-in area with a general warehouse type building or buildings and access to all modes of transportation. Space is available for leasing to firms for authorized zone activity. Some zones have industrial park characteristics or are located within such facilities and have lots on which zone users can construct their own facilities. Subzones are locations authorized by the Board through zone grantees for operations by individual firms when zone procedures are vital for an operation that is in the public interest but cannot be accommodated within an existing zone.

Between 1934 and 1970, just 12 zones were approved by the Board. At this time, there are 109 general purpose zones and 60 subzones. It has been estimated that the volume of business in zones has multiplied substantially from 1970 to the present with zones now handling about $4.8 billion worth of merchandise each year.

As can be appreciated from the foregoing, the number of zones and the operations conducted therein have increased tremendously in recent years. Historically, Customs has administered zones and their operations by the physical presence of Customs officers at the various zone locations. However, as time has passed, Customs staffing available to supervise zones has declined while zones have continued to proliferate. This has resulted in delays in the approval of activation of a given zone, and has presented problems for Customs in the exercise of effective control over some zone operations, especially subzone manufacturing activities. Therefore, Customs undertook an effort to devise a method to reduce Customs staffing requirements in zones and other areas (notably bonded warehouses) without endangering the revenue or law enforcement priorities, while also not hampering the growth of those areas and not impeding commerce.

The audit-inspection program approach to administration of those areas of Customs responsibility, which de-emphasizes the physical presence of a Customs officer to supervise each transaction, was successfully implemented in regard to the operation of bonded warehouses (see T.D. 82-204, published in the **Federal Register** on November 1, 1982 (47 FR 49355)). Audit-inspection is a method of supervision based on spot checks and audits of foreign trade zone activities as represented in records maintained by the zone operator. This method is substituted in lieu of physical on-site supervision by Customs when merchandise is admitted to, transferred from, or processed in the zone.

The principal advantage for Customs of audit-inspection is that it requires fewer Customs personnel to administer the zones. The principal advantages for the importing community are that (1) merchandise may be admitted, transferred, or processed without a Customs officer being present, allowing increased flexibility in zone operations, and (2) for most zones, the reimbursable cost paid to Customs is reduced. Audit-inspection is based on several procedures, which are essential for its proper functioning and success. These procedures are:

1. The determination by Customs of the identity and nature of the merchandise through examination before or upon admission to the zone so that the initial responsibility of the operator for the merchandise can be determined.

2. The issuance of a prior permit by Customs to the zone operator for admission, transfer to the Customs territory, and processing in the zone.

3. The assumption by the zone operator of responsibility for the merchandise, maintaining records concerning the merchandise, and physical supervision of the zone. Quantities of merchandise received at the zone and transferred to the Customs territory are determined jointly by the zone operator and the carrier.

4. The performance by Customs of spot checks and audits to determine whether the zone operator is properly supervising the zone and maintaining records of the merchandise. The cost of the spot checks and audits is reimbursed to Customs through an annual fee charged the zone operator for this service.

5. The assessment of liquidated damages in an amount sufficient to ensure performance of the operator's duties and responsibilities under the rules and regulations needed for proper zone supervision and recordkeeping.

6. The temporary suspension by Customs of zone operations which do not comply with the rules and regulations.

It is noted that Customs initiated use of the audit-inspection method in August 1983, on the basis of voluntary agreements between Customs and zone operators. At present, 12 subzones and 6 general-purpose zones have entered into voluntary agreements to use the audit-inspection method to administer their operations. Customs has taken that limited experience under the zone audit-inspection method into account in preparing this revision.

To implement the audit-inspection method of supervision in foreign-trade zones, it is necessary to substantially revise Part 146, Customs Regulations (19 CFR Part 146), concerning the administration of foreign trade zones, and to revise to a much lesser extent, Parts 18, 24, 112, 113, 141, 144, 178, and 191, to conform them to changes made by the revision to Part 146. Accordingly, by notice published in the **Federal Register** on July 17, 1984 (49 FR 28855), an extensive revision of Part 146 and minor conforming revisions of Parts 18, 24, 112, 141, 144 and 191 were proposed. A detailed discussion of the proposed amendments to Part 146 can be found on pages 28856–28859 of the notice.

Interested parties were given until October 15, 1984, to submit written comments. However, by notice published in the **Federal Register** on September 11, 1984 (49 FR 35658), the comment period was extended to November 30, 1984, as an accommodation to the National Association of Foreign-Trade Zones. Approximately 150 comments were received in response to the notice. A discussion of the comments and our responses to the comments follow.

Discussion of Comments

Most of the commenters commend efforts to improve the regulations. However, many of them have complaints about several provisions of the proposal. Many commenters question the reasonableness of the proposed fees, penalties and liquidated damages provisions. They also allege that the proposal is inconsistent with generally accepted accounting principles and the Foreign-Trade Zones Act, and that it could impede the flow of commerce. Commenters further complained that the proposed regulations do not provide an orderly transition to the new audit-inspection system, and that they were unduly complex and restrictive. Specific comments and our responses are as follows:

Comment: Under the proposed regulations, Customs would treat merchandise destined for a zone as imported and subject to examination prior to admission to the zone, unless a subzone or zone site qualifies under special procedures for exemption from the prior examination requirement. This

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treatment of zone-destined merchandise may impede or delay shipments.

Response: We disagree. Merchandise which is destined for a zone is imported, within the meaning of § 101.1(h), Customs Regulations. Under section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), imported merchandise is subject to examination in Customs territory. Therefore, examination of zone-destined merchandise is already provided for under the law. The frequency and intensity of these examinations, however, will be reduced by selective examination procedures. Also, only occasional examinations will be necessary at certain subzones and zone sites because shipments to these sites are repetitive, liability for violations is known in advance, and elaborate audit trails for checking for diversions of the merchandise exist.

Comment: The proposed regulations do not clearly distinguish between physical and record identification of merchandise. The two systems cannot work together. Record identification is the only viable system under the proposed revision.

Response: We disagree. The physical and record systems of identifying merchandise are compatible. Under the specific identification system, the zone operator maintains a zone lot control system, physically segregating his merchandise by zone lots and controlling identification of merchandise by zone lot records from admission through final zone removal. Under the record identification system, the merchandise is identified by inventory records, using a Customs-approved inventory method, *e.g.*, the first-in, first-out method (FIFO). Both methods require a reconciliation, at least annually, of physical merchandise on hand to quantities reflected by the Customs-approved inventory method. Any discrepancies would require corrective action by the operator.

The physical identification of merchandise is required to ensure reliability of admissions, inventory record accuracy, and proper zone status requests, among other things. For these reasons, it is retained in the regulations.

Comment: The proposal provides no mechanism or guidance for transition to the audit-inspection method of supervision. Serious consideration should be given to grandfathering in some zones or allowing them sufficient time to change over to the new method.

Response: We disagree. Allowing some zone operations to be grandfathered in, *i.e.*, granted an exemption from the new foreign trade zone regulations, is not feasible because it would result in the perpetuation of different sets of rules for some zones. The intent of the proposed regulations is that one set of rules should govern all zone operations.

The regulatory changes will become effective as a final rule 90 days from the date of publication, except that zones with Alternative Inventory Control Systems (AICS) will have either 180 days after the publication date or to the end of their current business year to comply with the new recordkeeping regulations. This 90-day period, instead of the 30-day period ordinarily granted, will allow zone operators a sufficient period of time for bringing their inventory system into compliance with the new regulations.

Zones under the AICS are different from other zones in that the record of inventory is maintained by the zone grantee or operator, or by the individual zone firms or their agents, under the supervision of the grantee or operator, rather than by Customs. The zone grantee or operator is responsible for the posting of inventory ledgers, the supervision of individual zone firms which maintain their own inventory records, the correction of inventory discrepancies, the conducting of periodic selective inventories of open lots of all zone firms, and various additional tasks which require time and other resources to handle the paperwork associated with these tasks. Because of the complexity of operating this type of inventory control system, these zones will require more time than non-AICS zones to convert to the audit-inspection supervision system under the new regulations. For this reason zones under AICS will be given either 180 days from the date of publication of the new regulations or to the end of their business year to bring their inventory system into compliance with the new regulations. However, they will be subject to the 90-day period for bringing all other aspects of their zone operations into compliance with the new regulations.

Conversion to audit-inspection supervision under the new regulations will occur as follows:

All zones operators, except as noted below, will furnish a certification that their inventory control and recordkeeping system complies with the new regulations, a procedures manual, the date of the end of their business year, and the annual fee on or before the date the new regulations take effect, and the prescribed zone operator's bond. If these requirements are not complied with by the effective date, no further merchandise will be admitted to the zone and the activated status of the zone may be suspended.

In addition, the following actions will be taken with respect to specific zones:

(a) *Zones where Customs has maintained inventory records.* Customs will provide a listing of inventory balances for all lots in the zone on the effective date. The operator will have 30 days to review the lot balances, conduct a physical inventory, and resolve any differences with Customs. On or before the end of the 30-day period, the operator will sign to accept the lot balances as reflecting the inventory on hand on the effective date, with such adjustments as are mutually agreed to between the operator and the district director.

(b) *Zones with voluntary audit-inspection ogreements.* Zone operators will have the option of conducting a physical inventory before the effective date and certifying as to specific quantities of merchandise for which they are responsible on the effective date. Otherwise, they will be held responsible for losses and overages unless they can clearly show, with competent evidence, that the losses and/or overages occurred before the effective date.

(c) *Zones with alternative inventory control systems.* Zone operators may request postponement of the procedures manual and certification requirements until one of the following dates:

(i) 90 days after the effective date of the new regulations; or

(ii) end of their current business year. With respect to paragraph (c), the district director may approve the request for a postponement if he is satisfied that the postponement is necessary for the conversion of the operator's recordkeeping system to comply with the requirements of Subpart B, Part 146, Customs Regulations. During the interim before the procedures manual and certification are received, the operator will be allowed to maintain the inventory and recordkeeping system as agreed under the AICS, and he need not meet the requirements of Subpart B. However, the operator must meet and follow all the other requirements of the new regulations upon their effective date. The same physical inventory option will be available for zones with an AICS as for zones with a voluntary audit-inspection agreement. If that option is not exercised, any losses or overages found after the effective date will be considered to have occurred after the effective date, unless the operator can clearly show, with competent evidence, that the losses and/or overages occurred before the effective date.

Comment: The proposed regulations are inconsistent with generally accepted accounting principles as well as modern business practices.

Response: The commenters do not point to any specific instance of inconsistency. However, we do note that Customs method of identifying merchandise by the first-in, first-out (FIFO) method does not conform to generally accepted accounting principles (GAPP) under which FIFO is used to determine the value of goods in an ending inventory. Customs use of FIFO to identify merchandise expedites the movement of goods in and out of zones. It is used as an alternative to specific identification of merchandise.

Comment: While the proposed regulations provide for the removal of Customs officers from zones, there are no provisions detailing the methods and the time restraints for transmitting data and documents to Customs, particularly when a zone is remote from a Customs office. There should be a variety of mechanisms to transmit data and documents to expedite zone operations.

Response: We disagree. The regulations need not specify the method of transmittal. Many methods of transmittal, such as mail, messenger delivery, or electronic transmittal, can be accommodated so long as they can be administratively handled by Customs. There should be no problem with timely delivery of the required documentation to Customs on the part of any zone since, in order to be designated a foreign trade zone, it must be in or adjacent to a port of entry.

There are specific provisions for the timing of the transmittal and receipt of documentation by Customs from zone operators, such as in § 146.40(a) and (b), and wherever else specific provisions are necessary. In the absence of any stated provisions, documentation must be received by Customs before a permit to admit, handle or transfer merchandise can be issued.

Comment: The regulations should include a provision allowing merchandise to be temporarily removed from a zone for repair, restoration, or incidental operations and then returned to the zone.

Response: Customs has been testing such a proposal with, as yet, inconclusive results. If the test has favorable results, the procedure will be implemented on a permanent basis through a separate rulemaking proceeding.

Comment: One commenter state that Customs should not extend its concept of adjacency, in respect to subzones, beyond 35 miles from a port. Other commenters believe that subzones that are distant from ports should not be required to deliver merchandise and documentation to Customs, as is required in proposed § 146.15(a)

Response: The adjacency concept, and its application to subzones which are 35 miles from a port, is under review in a separate rulemaking proceeding at the Department of Commerce. Since this entire issue is under review, proposed § 146.15 is premature. Accordingly, it has been deleted from the final regulations.

Comment: Several commenters believe that the proposed regulations are too complicated, impose unnecessary requirements, and make zones less manageable.

Response: We have simplified the proposed regulations and removed certain requirements. The regulations, as revised, impose minimum requirements for recordkeeping and inventory systems, which zone operators are free to supplement so as to meet their own recordkeeping and inventory control requirements. The requirements for recordkeeping are similar to those any conscientious businessman would adhere to in the supervision of his business. The revised regulations make zones more, not less, manageable. They also allow Customs to carry out its mission of protecting U.S. revenue and enforcing importation laws and regulations more efficiently.

Comment: Many commenters criticize the criteria under proposed § 146.14 for allowing domestic status merchandise to be admitted to a zone without a prior application and permit for each shipment. They believe the criteria are too stringent, particularly those involving commercially identical merchandise and merchandise which has been combined so that it has lost its identity.

Response: We agree with these comments. Therefore, proposed § 146.14 is deleted. The subject matter of § 146.14 is transferred to § 146.43, which is further amended to specify that no prior permit will be required for the admission, handling, or transfer to Customs territory of domestic status merchandise except: (1) When mixed or combined with merchandise of another zone status, or (2) when so ordered by the Commissioner of Customs under certain circumstances. This latter authority on the Commissioner's part allows Customs to properly control domestic status merchandise in unusual circumstances. The zone operator must still maintain proper inventory records of domestic status merchandise as prescribed in Subpart B, Part 146, Customs Regulations, even if no permit is required.

Comment: Several commenters inquire as to the authority for Customs allowing activation of a zone under § 146.6. They also question whether this allowance is not more appropriately within the authority of either the Board or the zone grantee.

Response: Authority for Customs approval of activation of zones is found in the individual grants to the zones and subzones, as well as the Act itself. The grants contain provisions to the effect that operations at the zone shall not commence until the grantee obtains all the necessary permits from Federal authorities, and that the grant is subject to an agreement between the grantee and Customs regarding compliance with requirements for the protection of the revenue.

Section 15(b) of the Foreign-Trade Zones Act (19 U.S.C. 810(b)) gives the Secretory of the Treasury broad authority to approve regulations for the protection of the revenue under the Act, while section 9 (19 U.S.C. 81(i)) directs the Board to cooperate with Customs. The activation procedure is the method which Customs has chosen for protecting the revenue. Through this procedure Customs is assured that the zone is ready to receive merchandise in zone status.

Comment: Section 146.65 creates a new valuation concept, *i.e.*, "total zone value." There are a substantial number of Customs rulings dealing with zone valuation issues. These rulings should serve as the proper guidance for Customs position on this issue.

Response: "Total zone value" may be a new regulatory term, but it is not a novel regulatory concept. It is the value provided for by current § 146.48(e). Its significance relates to the valuation of recoverable waste or scrap from a zone operation and situations where the rate of duty applicable to nonprivileged foreign merchandise is dependent on the value of the article being transferred from a zone. Section 146.65 therefore, accurately reflects the current Customs position on zone valuation matters.

Comment: Many commenters are concerned with proposed § 146.8, which authorizes the zone operator to affix and break Customs in-bond seals. Heretofore, only Customs officers could affix and break Customs in-bond seals.

Response: Since under the audit-inspection approach a Customs officer will no longer be physically present in most cases, it is necessary that the zone operator be given authority in certain areas to perform functions that were previously conducted by Customs. One of these is the authority to affix and break in-bond seals. Under the new

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regulation, the zone operator will report to Customs any discrepancies in seal condition. This will protect the zone operator from liability when it is determined that the loss of merchandise occurred prior to arrival of the merchandise at the zone site.

Comment: Special procedures for admitting and removing zone merchandise limited to subzones and zone sites should be extended to general-purpose zones. Also, the criteria for admittance and removal are too stringent for most zones.

Response: We disagree. The audit-inspection requirement is that a permit is required before admission to a zone or transfer to Customs territory. The purpose of proposed § 146.13 is to exempt shipments from this prior permit requirement only when they are repetitive, predictable, and relatively unchanging over a period of time. The exemption was intended to be restrictive because of Customs experience that a major portion of trade destined for zones is non-repetitive and difficult to predict.

In response to the comments on this subject, however, Customs has made a number of changes in the special procedures. First, the criteria for direct delivery are moved to § 146.39 since they are applicable only to merchandise being admitted to a zone, and § 146.13 is deleted.

Secondly, the criteria for direct delivery as they appear in § 146.39 have been simplified. There is now no requirement for direct transmittal of statistical information to the Bureau of the Census. Also, the criteria have been grouped according to those that apply to merchandise and those that apply to the operator. The specific restriction of the direct delivery procedure to subzones and zone sites has been limited. However, we believe that most general-purpose zones will not qualify for the procedure because the zone operator is not the owner or purchaser of the merchandise (as interpreted by Customs in Customs Directive 3530-02, dated November 6, 1984). The criteria for direct delivery ensure that not only are the shipments repetitive and relatively unchanging, but also that the zone operator is in a position to see that they remain so.

Finally, the criteria for direct delivery no longer apply to merchandise transferred from a zone for weekly entry or permit for consumption, transportation, or exportation under proposed §§ 146.63 and 146.69. Instead, the criteria for a weekly permit under the direct delivery procedure in these sections is whether the merchandise is manufactured or changed to its final form just shortly (within 24 hours) before physical transfer from the zone. These sections are necessary for assembly-line type operations where there otherwise would be little time for examination of the merchandise and furnishing of proper entry documentation after the merchandise is in its final form but before physical removal from the zone. By allowing a weekly entry based on an estimate of merchandise to be removed during the week, Customs has prior information as to merchandise to be removed and documentation to serve as the basis of physical examination of the merchandise. At the same time, the assembly-line operation need not be delayed pending acceptance of an entry and Customs examination of the merchandise.

Comment: To qualify for many of the more liberal procedures, zones must provide statistical data directly to the Bureau of the Census instead of providing a statistical carbon copy of Customs Form 214-A, titled "Application For Foreign Trade Zone Admission And/Or Status Designation" to Customs. This may be very difficult for many zone users, and it abrogates the responsibility of Customs to collect statistics.

Responses: We disagree. Customs responsibility is to support the Census in collecting foreign trade statistics.

In some instances, Census has allowed direct transmittal of statistics by zone importers, relieving Customs of the necessity of collecting a copy of Customs Form 214-A. Normally, collection of this form is very important to Census because it ensures that statistical information is collected on each and every shipment to a zone. Direct transmittal of statistics is permitted by Census only when it is satisfied through other means that each and every shipment will be covered by the direct transmittal.

Census has indicated that trade statistics need not be collected for domestic status merchandise admitted to a zone. Therefore, the criteria in proposed § 146.13(b)(1) is not needed. Also, Customs will not, except as ordered by the Commissioner, require a prior permit for the admission of domestic status merchandise to a zone.

Under proposed § 146.13(b), direct transmittal of statistical information to Census is necessary to qualify a zone importer for direct delivery of merchandise to a zone without a prior permit to admit merchandise. Section 146.40 requires importers to submit Customs Form 214 for merchandise recorded into the zone inventory and recordkeeping system the previous business day. The previous business day may not occur until several weeks after the merchandise is physically received in the zone. Census is concerned that statistical information on zone importations may not be reported timely.

To alleviate Census concern, yet reduce barriers to use of the direct delivery procedures by importers under § 146.40, Customs has decided to allow two alternatives to meeting Census statistical reporting requirements. The zone importer must either have a direct transmittal arrangement with Census or he must submit an individual Customs Form 214 and 214-A under § 146.40(c)(2) for each shipment, within 10 days after the end of the month in which the merchandise is physically received in the zone. No extension will be authorized to this statistical reporting requirement. The statistics for each shipment of merchandise to the U.S., including nationality of the shipping vessel or aircraft, date of exportation, and date of importation, must be reported separately.

These requirements are being incorporated into § 146.40 inasmuch as § 146.13 is deleted, as discussed above.

Comment: Many commenters object to proposed regulations concerning Customs examination and documentation requirements before or upon admission to zones. Specifically, the objections are that the examination required by the proposed regulations: (1) Is contrary to the Act; (2) would unreasonably delay the shipment of merchandise to zones; (3) reduces the advantages to using zones; and (4) would result in insufficient supervision for the proper enforcement of the foreign trade zone regulations. Commenters also state that examination should only be done in zones, that removal of Customs officers from zones would make it impossible to examine merchandise there, that commercial invoices are not usually available for presentation before or upon admission to a zone, further delaying shipments, and that merchandise admitted to a zone but destined only for exportation should not be examined by Customs.

Responses: We do not agree. Physical examination is a key principle of audit-inspection supervision because it enables Customs to determine the initial responsibility of the operator for the merchandise. Proper duty assessment and enforcement of admissibility requirements are also benefits of zone merchandise examination. The authority for such examinations is found in sections 4, 8, and 15(b) of the Act (19 U.S.C. 81d, h, and o(b)), as well as in

section 499 of the Tariff Act of 1930, as amended (19 U.S.C. 1499).

The purpose of providing a commercial invoice of similar documentation is to assist Customs in physical examinations by disclosing the purported nature of the merchandise. It also aids in planning examinations under Customs selective examination procedures.

Furthermore, the proposed examination and documentation requirements do not unreasonably delay shipments to zones. First, under selective examination procedures, only about 20-30 percent of shipments are examined. Secondly, merchandise destined for zone sites under direct delivery procedures (§ 146.40) is examined even less frequently. Thirdly, if proper documentation is not available or is incomplete, the merchandise may be temporarily deposited in the zone, pending its receipt and Customs examination (§ 146.35).

Additionally, the examination and documentation requirements do not decrease the advantages of zones. First, there would not be unreasonable delays. Secondly, zone importers would not have to await the arrival of a Customs officer to physically supervise admission, as under the existing system. Thirdly, at worst the delays caused by examination and documentation requirements and those caused by awaiting the arrival of a Customs officer for physical supervision are equal. Zones still have very significant advantages conferred upon them under the Act.

As to the place of examination, we believe that this should be left to the discretion of the district director, so as to allow the most efficient deployment of personnel to carry out Customs tasks. In many cases, examination can be done more quickly at the dock, where Customs officers may be stationed full time, rather than at a zone with no full-time Customs officers.

The main purpose of audit-inspection supervision is to replace the physical supervision of zones. It does not deal directly with Customs staffing of zones for examination or documentation purposes. If the workload of a zone is large enough to warrant assignment of an officer full-time to examine merchandise and review documentation, the district director may do so. If the zone workload is light and commitments to other segments of the import community heavy, it would be inefficient and unreasonable to assign a full-time officer to a zone. There is nothing in the Act or elsewhere that obliges Customs, in its deployment of personnel, to accord zones more favorable treatment than other segments of the importing community.

Audit-inspection supervision will not result in ineffective enforcement of U.S. laws and regulations in zones. Under this system, Customs does not abandon supervision; rather, it supervises in a different manner, relying on physical supervision and recordkeeping by zone operators, enforced through liquidated damages, penalties, and suspension procedures. Customs believes these deterrents will provide better enforcement than physical supervision.

As to merchandise with no invoice or an incomplete invoice, we note that this merchandise may be sent to a zone for temporary deposit. Customs will accept alternate documentation in lieu of a commercial invoice, providing the documentation provides a clear description of the nature of the merchandise. However, Customs experience has been that commercial invoices exist for most zone shipments.

Finally, with regard to merchandise destined only for exportation, this merchandise is subject to examination for identification purposes under audit-inspection supervision just as any other merchandise destined for zones.

Comment: Proposed § 146.73(d)(2) prohibits duty-paid merchandise from being further processed in a zone. This provision is contrary to the Act and Customs Headquarters Ruling 215870. It therefore should be deleted.

Response: Whether or not the provision is contrary to Ruling 215870, the regulations take precedence. The prohibition against further processing of duty-paid merchandise is applicable only to merchandise previously in a zone, and not to all duty-paid merchandise.

The purpose of proposed § 146.73(d)(1) was to allow merchandise to remain in a zone after it has been constructively transferred to Customs territory and entered. It was intended to accommodate zone users who wished to make entry for a large amount of merchandise, but for various commercial reason did not wish to immediately remove all or some of the merchandise from the zone. The prohibition on further processing was intended to avoid abuse of this privilege by an assortment of schemes designed to circumvent high duty rates or import restrictions. Examples of such schemes are as follows:

1. Merchandise is entered for consumption at a duty rate of 5 percent. After entry the merchandise is retained in the zone, or it is removed but shortly thereafter returned to the same or a different zone in domestic status. Then it is further manufactured into a product whose rate of duty is 25 percent. However, the merchandise is no longer subject to duty since it is now wholly in domestic status.

2. There is a quota on sugar products containing over 65 percent sucrose. The importer adds another product to the sugar in a zone to produce a product with less than 65 percent sucrose content, which is not subject to the quota. The importer files an entry on the product in the latter state, but the merchandise is retained in the zone in domestic status. Then the added product is sifted out, leaving a sugar product containing 90 percent sucrose. The merchandise is no longer subject to quota upon its ultimate removal from the zone because it is in domestic status.

3. A firm produces pharmaceutical products in a zone. During an intermediate stage of processing, the merchandise is in a condition subject to a fee rate of duty, while the final rate of duty would be 15 percent. The intermediate stage is transitory, lasting no more than an hour. During this period, the firm files an entry at the free rate of duty. The intermediate stage merchandise is left in the zone for continuous processing, or is piped in a loop that runs into Customs territory and immediately back into the zone, whereupon the firm requests readmission in domestic status. By the time Customs accepts the entry and has an opportunity to examine the merchandise, it is no longer in its condition as entered. Besides circumventing the higher rate of duty, the merchandise covered by the entry can no longer be examined for verification or appraisement purposes.

Entry for consumption in these cases is a sham. Merchandise which is entered but not commingled with U.S. commerce is not, in Customs opinion, entered for consumption, and such entries may be declared null and void and cancelled by the district director. We note that there is a line of court decisions in support of the view that entered for consumption means that the merchandise has entered U.S. commerce as an integral part thereof. See *U.S.* v. *Rolls Royce of America, Inc.* T.D. 41202 and *U.S.* v. *Mussman and Schafer,* C.A.D. 506, C.D. 1367.

Section 3 of the Act permits zones two choices in the rate of duty upon entry for consumption—the rate of duty on the merchandise in its condition when the choice is made, or the rate of duty on the merchandise in its condition when transferred to Customs territory. A sham consumption entry allows a third choice—the rate applicable to the

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merchandise in an intermediate stage of processing in the zone.

In lieu of a prohibition on farther processing, proposed § 156.73(d)(1) (now §146.71(d)(1)) is being amended to authorize district directors to reject or cancel consumption entries from zones when the merchandise is not timely removed from the zone after entry, and merchandise removed from the zone does not enter U.S. commerce and is subsequently readmitted to a zone in domestic status. If the merchandise is so readmitted and the entry cancelled, it will be restored to its last zone status and a new entry required upon its transfer to Customs territory. This amendment closes an existing loophole so as to protect the revenue and properly enforce U.S. import laws and regulations.

A determination as to whether merchandise has not entered the commerce will be made by district directors on a case by case basis, considering factors such as the following:

1. Length of time the merchandise was outside the zone before readmission.
2. Whether readmission was requested by the importer of record or his agent, or a person acting in collusion with the importer of record.
3. Credible evidence that there was an intent by the importer or others, at the time of entry, to seek readmission to the zone.
4. The merchandise evades a higher rate of duty or an import restriction because of its having been admitted in domestic status.
5. The merchandise was not used or was not the subject of a bona fide sale by the importer after entry.
6. The merchandise was not further processed or manufactured outside the zone, or such processing or manufacture was minimal or cosmetic in nature.

Entries of merchandise readmitted in zone-restricted status will not be cancelled under the provision. It is noted that the position set forth in § 146.71(d)(1) is consistent with those in §§ 146.61, 146.63(c)(1) and 146.7,1(d)(2) in that merchandise which was entered but never removed from the zone is treated as constructively transferred back to the zone in its previous zone status.

An exception is made in § 146.71(c) from the general requirement of prompt zone removal for articles for use in a zone, such as production equipment, construction materials, and articles to be consumed in a zone.

A new § 146.71(d)(3) is added to clarify that merchandise which is actually entered into commerce may be readmitted to a zone in domestic status.

Comment: Several commenters were concerned that under the revised regulations, Customs would no longer approve a zone's procedures manual.

Response: Currently, Customs has three methods of supervising zones: (1) Customs maintained zone inventory ledgers; (2) Alternative inventory Control Systems (AICS) maintained by the zone operator; and (3) the Audit-Inspection Program where the zone operator maintains his inventory control. Only under AICS has Customs approved a zone operator's inventory control system. The reason for Customs allowing the AICS method of operating a zone stems from the fact that Customs did not have regulatory guidelines available for use by zone operators. However, there were some problems with the AICS method due to Customs limited ability to assist in the design of sophisticated data processing systems within short time frames so as to allow zones to be activated. Also, several zone systems were approved where zone operations were delayed sometimes for several years, resulting in the original system either being rendered obsolete or in need or major changes at the time the zone was activated.

Accordingly, Customs decided to provide much needed inventory control guidelines in the regulations and allow the individual zones to adopt their own inventory systems with the guidelines devised by Customs. Questions as to whether particular elements of a proposed inventory control and recordkeeping system meet the criteria in revised Subpart B, Part 146, Customs Regulations, may be referred to the district director for a non-binding ruling, or to Customs Headquarters for a ruling in accordance with Part 177, Customs Regulations (19 CFR Part 177). Customs will not review any system in its entirety to render an opinion as to whether it meets all of the criteria in Subpart B.

Comment: Since the Government's expense in providing Customs officers at the zone is reimbursed by the zone itself, there is no logical reason why Customs personnel cannot be permanently stationed at the zone.

Response: Although the expense of maintaining a Customs officer at a zone is a consideration in our decision to implement audit-inspection supervision, there are other considerations of equal value. One is that audit-inspection supervision would provide protection to the revenue, which is equal to or greater than that under the existing systems. This was apparent from a 4-year study of warehouses which had converted to audit-inspection supervision. Another consideration is that the new system allows Customs to assign personnel to other areas which have a higher priority. A great many zone operators, grantees and users do not realize that Customs warehouse and zone officer positions, although they are fully reimburseable, are counted against Customs overall personnel ceiling. If officers are assigned to warehouses and zones, there will be fewer officers for assignment to higher priority tasks.

Comment: The proposed regulations do not reduce recordkeeping and information costs to operators.

Response: We disagree. To meet present document filing requirements, zone operators must gather, maintain, and compile certain data on their zones's admissions and removals and file required documents with Customs. Under the proposal, data gathering and maintenance needs will not change appreciably, but required document filings will be reduced dramatically. We estimate 50,000—70,000 annual form filings will be eliminated by the proposal, resulting in operator data handling and form filing cost reductions of from $600,000 to $700,000. We regard document cost reductions of an average $10,000 per year per activated zone site to be real and significant.

Comment: Since Customs no longer will be approving operator procedures manuals in their entirety, it is not fulfilling its obligations to assist the importing and exporting public. Customs should therefore provide some instruction to zone operators.

Response: We agree. Accordingly, Customs will provide the following assistance to the importing and exporting and exporting public:

1. Every attempt has been made to make the new regulations clear and concise.
2. Rewrite the Customs pamphlet on foreign trade zones.
3. Develop a booket on foreign trade zones for operators and users.
4. Provide informational seminars for the public on the new regulations.
5. Rewrite operational guidelines based upon the new regulations.
6. Provide materials and seminars for Customs personnel, as well as the public.

Comment: Because of its impact, the proposal qualifies as a major rule under E.O. 12291 and thus requires a regulatory analysis.

Response: We disagree. Section 1(b) of E.O. 12291 requires a regulatory impact analysis for a proposal when one or more of the following criteria are met:

(1) A net national economic cost of $100 million or more;

(2) Significant cost increases for consumers; and

(3) Adverse effect upon the international competitiveness of U.S. firms.

In conducting an initial regulatory analysis under the terms of the Regulatory Flexibility Act (5 U.S.C. 603, 604), we concluded that none of the criteria was met.

Comment: Many commentors object to the penalty and liquidated damages provisions of the proposed regulations as excessive, unwarranted and not comparable to the bonded warehouse liquidated damages provisions or the penalties for fraud under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). They also question the authority of district directors to suspend a zone's activated status, claiming that this action amounts to revocation of the zone grant.

Response: As to the liquidated damages and penalties provisions of the new regulations not being comparable to those for bonded warehouses, we note that there are considerable differences between zones and bonded warehouses. Merchandise in a bonded warehouse is in Customs territory, has been entered, and is secured by both the warehouse proprietor's bond and the warehoue entry bond, whereas merchandise in a zone is not in Customs territory, is not entered and is not generally subject to the Customs laws or the bonding requirements. Also, there is much greater freedom to manufacture and manipulate merchandise in a zone than in a bonded warehouse. In view of this relative freedom from Customs control of activities in zones as compared to warehouses, the bonding requirments proposed are minimal.

As to the comment that the liquidated damages provisons under the new regulations should be consistent with those for bonded warehouses, we note that the proposed liquidated damages provisions for restricted merchandise or alcoholic beverages are consistent with those for such articles under the importer's and warehouse proprietor's bonds. They are in a higher amount than liquidated damages for other merchandise. This is necessary to remove the economic incentive to breach the bond, in certain cases, in order to evade quota, licensing, labeling or other restrictions.

With respect to liquidated damages claims not relating to merchandise, the liquidated damages proposed were in an amount to be determined by the district director, but not more than $200. Several commenters, however, were of the opinion that liquidated damages for non-merchandise related defaults of the zone operator's bond should be consistent with those for default of the warehouse proprietor's bond. Customs agrees with this position. Therefore, proposed § 146.81 is deleted, and the zone operator's bond in § 113.73, Customs Regulations (19 CFR 113.73), is modified to include the provisions previously appearing in § 146.81. Liquidated damages for merchandise and non-merchandise related defaults of the zone operator's bond will conform to those applicable to the warehouse proprietor's bond as well as other Customs bonds.

The only *penalty* provision in the new regulations is a restatement of 19 U.S.C. 81s (section 19, the Act), which authorizes a fine of not more than $1,000 for violation of the Act or any regulations thereunder. The regulations in Part 146, Customs Regulations, are regulations under the Act. The penalty for fraud under 19 U.S.C. 1592 is the domestic value of the merchandise plus any duties. These two penalty provisions are concerned with preventing two different types of activity which bear no relationship to each other. The penalties can in no way be compared to each other.

With respect to Customs authority to suspend activation of a zone, in proposed § 146.83, we note that sections 3, 5, 8, and 15(b) of the Act (19 U.S.C. 81c, e, h, o(b)), confer authority upon the Secretary of the Treasury to make rules and regulations under the Act. Customs derives this authority from the Secretary.

Suspension of activation of a zone is not a revocation of the zone grant, which is the only remedy currently available to Customs for improper activity or continued violations of the foreign trade zones regulations, provided that the Board orders the revocation. Furthermore, under section 18 of the Act (19 U.S.C. 81r), the zone grant cannot be revoked without giving four months notice and taking other actions.

Suspension gives Customs an alternative method for dealing with improper activity in a zone. It allows Customs to single out the improper activity, subzone, or zone site involved and apply certain sanctions, without disturbing other proper zone activities. For example, suspension may be limited to the activities of a particular site, such as suspension of the privilege to admit merchandise for a particular activity, and it may not necessarily be directed at the activation of the zone as a whole. Proposed §§ 146.83 (a) and (b)(1) (now §§ 146.82 (a) and (b)(1)) have been modified to clarify this procedure.

Some commenters also object to the proposed regulations on suspension on the grounds that they recognize only the operator as a party to suspension proceedings. These commenters suggest that grantees and users also be made parties to suspension proceedings. Customs agrees with this suggestion with respect to grantees, and, accordingly, we have added new paragraph (4) to § 146.83(b) to recognize the grantee. However, we do not agree that a user should be a party. Approval of zone activation is given to a grantee or operator, not to users. Suspension, or partial suspension, of that approval is a matter between Customs and the grantee or operator who is responsible for the zone.

Finally, it is noted that suspensions are for a limited period, are designed for fast action to minimize developing problems, and are substantially less onerous than revocation provisions applicable to customs brokers, warehouse proprietors, container station operators, and cartmen.

Comment: Language is not used consistently and accurately throughout the proposal. In describing the process of merchandise flow through a zone, the following words are used: admit, brought, enter, receive, remove, transfer, deliver, and withdraw. Also the terms zone, zone site, noncontiguous zone site, zone user, zone firm, and zone seller are used with different intents but without definition.

Response: Customs does not agree with this comment. Nevertheless, it appears that some commenters do not understand, or misunderstand, the use of a number of terms. Accordingly, it has been decided to revise and expand the definitions section and, through editorial changes throughout the proposed regulations, improve clarity. "Secretary", "Board", "State," "Corporation", "Public Corporation", "Private Corporation", "Applicant", "Grantee", and "Zone", are defined in section 1 of the Act (19 U.S.C. 81a), and wherever those terms appear in Part 146, they are used in consonance with their statutory meaning, unless otherwise stated. The statutory definitions will not be repeated in the new regulations.

Definitions of several terms, i.e., "subzone", "operator", and "user" have appeared in the proposed regulations of the Board published on February 18, 1983, in the **Federal Register** (48 FR 7189). As it is not known when those proposed regulations may become final, and as the use of these words is necessary in these regulations, their definitions have been added to § 146.1. If it appears necessary, the definitions may be modified when the proposed regulations of the Board become final.

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The terms "zone site" and "noncontiguous zone site" result from particular grants of authority by the Board to establish and operate a zone. It is believed that grantees and operators of those sites are aware of their meanings. The term "noncontiguous zone" has been deleted from these regulations wherever it appears. A definition of "zone site" has been added.

The exclusion of production equipment, building materials, and supplies from the definition of "merchandise" in § 146.1(h) is consistent with Customs decision on this subject. Production equipment, building materials, and supplies are not "merchandise" within the meaning of section 3 of the Act (19 U.S.C. 81c) for the reasons set forth in Customs Service Decision (C.S.D.) 79–418. Also, in H. Rept. 98–267 on H.R. 3398 (Trade and Tariff Act of 1984, June 24, 1983), at page 36, it is stated that the Act does not apply to machinery and equipment. They are, therefore, dutiable upon entry.

This position is supported by 19 U.S.C. 1311, the statute establishing bonded manufacturing warehouses, which specifically prohibits the duty-free entry of imported implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein. It would be inconsistent for Customs to prohibit the duty-free entry of such articles into a manufacturing warehouse, from which manufactured goods must be exported, and to permit the duty-free entry of the same articles into a zone. If zones had no such limitation, they would have a distinct advantage over domestic manufacturers since domestic manufacturers are required to enter and pay duty on those articles.

Review does not reveal differing intents in the use of "zone user", "zone firm", and "zone seller" and their meaning is self-evident in context. However, a definition of "user" has been added to § 146.1, and an effort has been made to remove the terms or to further clarify their meaning by editorial changes.

"Enter", where used, refers to the entry of merchandise into the Customs territory of the United States. "Withdrawal" refers to withdrawal from warehouses. Both words are used in the ordinary tariff sense.

To minimize confusion, and since goods are neither entered into nor withdrawn from a zone in the tariff sense, the words "admit", for bringing goods into a zone in zone status, and "transfer", for taking goods out of a zone, have been used. Definitions of these words have been added. "Brought", "receive", "remove", and "deliver", wherever used, have their ordinary meaning. While inconsistent and inaccurate use of the terms in the proposed regulations is not evident, their use has been reviewed and editorial changes have been made wherever appropriate.

Comment: Several commenters objected to the procedures for appealing decisions of the district director denying applications to activate a zone or suspending the activated status of a zone, but these comments were not specific.

Response: We see no problem with the appeal procedure for suspensions of the activated status of a zone or of certain activities in a zone. The procedures include the right to request a hearing and to obtain the decision of the regional commissioner.

With respect to denial of an application to activate a zone or zone site, the decision of the district director is considered the final administrative decision for several reasons. First, there may not even be an appealable right. The grant to establish and operate a zone is conditioned upon the grantee's obtaining all necessary permits and licenses, and securing the permission of the district director to begin operations in the zone. Where the district director denies activation because the conditions have not been complied with, or for other stated reasons, denial of activation does not result in denial of an appealable right since the right to activate the zone has not been granted.

Secondly, the district director is more closely connected with the application for and activation of a zone than Customs regional or headquarters officials. Appeals of denials to the Customs region or to Headquarters would result in little more than delay and inquiries into the factual basis of the decision. We believe that the Board and the courts provide the most suitable forum for appeals from denials of activation on the part of the district director.

Comment: The annual fees proposed for zones are unreasonably high.

Response: We disagree. The purpose of the annual fee is to recover Customs costs incurred in carrying out the audit-inspection supervision program. The annual fee to be charged each zone is a function of the degree of complexity in Customs auditing and inspection of zones.

Under the present inspectional system, Customs bills zone operators approximately $1.3 million annually for inspectional services. Zone operators recover this expense in their fee and rental/lease billings to zone users. We estimate that the Customs component of these fees paid by zone users averages $870 per year per user.

Under the proposed audit-inspection system with different fee tiers, Customs billings to operators of general purpose zones will amount to approximately $1 million per year, versus the estimated $1.3 million at present. The Customs component of small business users' payment to operators will average $670 per year per user, versus the $870 per year per user at present. Future increases in the annual fee will reflect cost increases incurred by Customs in delivering audit and inspection services. These increases will consist largely of annual rises in labor costs. It is expected that labor costs, and thus annual fees charged zone operators, will rise by a moderate 2–4 percent each year.

The proposed fees, therefore, are not unreasonable. Moreover, the proposed annual fee has been restructured into a three-tiered system with the larger, more active zones set to pay higher fees than the smaller zones. This would provide equitable treatment for the smaller zones in that they would no longer subsidize the larger zones. Appendix B reflects the revised structure of the annual fee.

Comment: Many commenters requested clarification of the respective liabilities to Customs of grantees, operators, and users of zones.

Response: As the privilege of establishing, operating, and maintaining a zone is given to a grantee, Customs is of the opinion that all liabilities to Customs involving zone activities reside ultimately with the grantee of the zone. If the operator is not the grantee, these liabilities can be minimized by the operator's being named as principal on the zone operator's bond. There is no liability to Customs on the part of zone users, other than users that are also operators.

It is the grantee or the grantee and operator who have responsibilities to Customs with the attendant liabilities. Grantees are free to make whatever contractual agreements regarding indemnification with operators and users that they choose. Furthermore, Customs is not aware of any way that a grantee can divest itself of all liability, or limit its liability, in the event of loss or damage to Customs resulting from zone activities. While 19 U.S.C. 1623(c) and § 113.51, Customs Regulations (19 CFR 113.51), authorize the cancellation of bonds or bond charges under certain circumstances, that authority does not apply to prospective transactions nor does it extend to the waiver of any lawful claims against the grantee, not secured by bond, that arise from zone activities.

Comment: A few comments were received concerning Subpart D, Part 146. The commenters stated that many of the sections and subsections of Subpart D were definitional in nature and should be in Subpart A.

Response: The subject matter of Subpart D—the status of merchandise in a zone is of sufficient importance to merit its own subpart. The terms "privileged foreign merchandise," "nonprivileged foreign merchandise," "domestic merchandise," and "zone-restricted merchandise" do not appear in the Act. They were coined to describe the status of certain merchandise in a zone with reference to particular provisos of section 3 of the Act (19 U.S.C. 81c). In that sense, the terms are not definitional but descriptive, in that they simply provide a name for conditions prescribed by law, *e.g.*, "zone-restricted" describes the status of merchandise subject to the fourth proviso of 19 U.S.C. 81c.

One commenter urged that § 146.44 (zone-restricted merchandise) be expanded to include a requirement that merchandise placed in a zone to obtain payment of drawback and subsequently removed for shipment to an insular possession of the U.S. be reported by the zone operator to the district director. Upon consideration, it has been decided not to add that requirement to Part 146. Section 191.13, Customs Regulations (19 CFR 191.13), provides that there is no authority to allow drawback on articles shipped to insular possessions. There is authority to allow drawback on articles placed in a zone in zone-restricted status. Subsequent shipment of such articles to an insular possession would be contrary to the Act since it would not be an exportation, destruction, or storage. The likelihood of such shipments is remote and since § 191.13 essentially covers the situation, there is no need to make allowance for it in § 146.44.

In connection with the deletion of § 146.14, § 146.43 is amended to specify that no permit will be required for the admission, handling, or transfer to Customs territory of domestic status merchandise except: (1) When mixed or combined with merchandise of another zone status, and (2) when so ordered by the Commissioner in individual circumstances. The latter residual authority is retained to allow Customs to properly control domestic status merchandise in unusual circumstances. The operator must still maintain proper records of domestic status merchandise under Subpart B, Part 146, even if no permit is required.

Finally, a new § 146.14 has been added. This section is a restatement of the statutory limitation on retail trade in a zone, found in section 15(d) of the Act (19 U.S.C. 81o(d)).

Changes are made throughout the regulations to conform them to the changes made by this document. Also, as a general point, whenever the word "days" appears in this revision, it means calendar days, unless "working days" is specified.

After careful analysis of all the comments received and upon further review of the matter, it has been determined advisable to adopt the proposed regulatory amendments with the various modifications as set forth above.

Executive Order 12291

It has been determined that these amendments are not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are applicable to this document. An initial regulatory analysis was prepared and included in the NPRM as Appendix C. A final regulatory flexibility analysis is attached to this document as an appendix.

Paperwork Reduction Act

The collection of information requirements contained in § 146.25 and the recordkeeping requirement contained in § 146.4, are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been cleared by the Office of Management and Budget (OMB). Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include OMB control number 1515–0151.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Parts 146 and 178

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

Chapter I, Title 19, Code of Federal Regulations, is amended by revising Part 146 to read as follows:

PART 146—FOREIGN TRADE ZONES

Sec.
146.0 Scope.

Subpart A—General Provisions

146.1 Definitions.
146.2 District director as Board representative.
146.3 Customs supervision.
146.4 Operator responsibility and supervision.
146.5 Activation fee and annual fee.
146.6 Procedure for activation.
146.7 Zone changes.
146.8 Seals; authority of operator to break and affix.
146.9 Permission of operator.
146.10 Authority to examine merchandise.
146.11 Transportation of merchandise to a zone.
146.12 Use of zone by carrier.
146.13 Customs forms and procedures.
146.14 Retail trade within a zone.

Subpart B—Inventory Control and Recordkeeping System

146.21 General requirements.
146.22 Admission of merchandise to a zone.
146.23 Accountability for merchandise in a zone.
146.24 Transfer of merchandise from a zone.
146.25 Annual reconciliation.
146.26 System review.

Subpart C—Admission of Merchandise to a Zone

146.31 Admissibility of merchandise into a zone.
146.32 Application and permit for admission of merchandise.
146.33 Temporary deposit for manipulation.
146.34 Merchandise transiting a zone.
146.35 Temporary deposit in a zone; Incomplete documentation.
146.36 Examination of merchandise.
146.37 Operator admission responsibilities.
146.38 Certificate of arrival of merchandise.
146.39 Direct delivery procedures.
146.40 Operator responsibilities for direct delivery.

Subpart D—Status of Merchandise in a Zone

146.41 Privileged foreign status.
146.42 Nonprivileged foreign status.
146.43 Domestic status.
146.44 Zone-restricted status.

Subpart E—Handling of Merchandise in a Zone

146.51 Customs control of merchandise.
146.52 Manipulation, manufacture, exhibition, or destruction; Customs Form 216.
146.53 Shortages and overages.

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Subpart F—Transfer of Merchandise From a Zone

Sec.

146.61 Constructive transfer to Customs territory.
146.62 Entry.
146.63 Entry for consumption.
146.64 Entry for warehouse.
146.65 Classification, valuation, and liquidation.
146.66 Transfer of merchandise from one zone to another.
146.67 Transfer of merchandise for exportation.
146.68 Transfer for transportation or exportation; estimated production.
146.69 Supplies, equipment, and repair material for vessels or aircraft.
146.70 Transfer of zone-restricted merchandise into Customs territory.
146.71 Release and removal of merchandise from zone.

Subpart G—Penalties; Suspension; Revocation

146.81 Penalties.
146.82 Suspension.
146.83 Revocation of zone grant.

Authority: 19 U.S.C. 66, 81a – 81u, 1202 (Gen. Hdnote 11), 1623, 1624, § 146.5 also issued under 31 U.S.C. 9701.

§ 146.0 Scope.

Foreign trade zonea are established under the Foreign Trade Zones Act and the general regulations and rules of procedure of the Foreign Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

Subpart A—General Provisions

§ 146.1 Definitions.

(a) The following words, defined in section 1 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a), are given the same meaning when used in this part, unless otherwise stated: "Board", "Grantee", and "Zones".

(b) The following are general definitions for the purpose of this part:

(1) *Act.* "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a-u).

(2) *Activation.* "Activation" means approval by the grantee and district director for operations and for the admission and handling of merchandise in zone status.

(3) *Admit.* "Admit" means to bring merchandise into a zone with zone status.

(4) *Alteration.* "Alteration" means a change in the boundaries of an activated zone or subzone; activation of a separate site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

(5) *Customs territory.* "Customs territory" is the territory of the U.S. in which the general tariff laws of the U.S. apply. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (General Headnote 2, Tariff Schedules of the United States (19 U.S.C. 1202)).

(6) *Constructive transfer.* "Constructive transfer" is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory.

(7) *Deactivation.* "Deactivation" means voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuance of the activated status of only a part of a zone site is an alteration.

(8) *Default.* "Default" means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foreign Trade Zone Operator Bond.

(9) *Merchandise.* "Merchandise" includes goods, wares and chattels of every description, except prohibited merchandise. Building materials, production equipment, and supplies for use in operation of a zone are not "merchandise" for the purpose of this part.

(10) *Domestic merchandise.* "Domestic merchandise" is merchandise which has been (i) produced in the U.S. and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

(11) *Foreign merchandise.* "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(12) *Conditionally admissible merchandise.* "Conditionally admissible merchandise" is merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

(13) *Prohibited merchandise.* "Prohibited merchandise" is merchandise the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise which is excluded from a zone by order of the Board. Books urging treason or insurrection against the U.S., obscene pictures, and lottery tickets are examples of prohibited merchandise.

(14) *Fungible merchondise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(15) *Operator.* "Operator" is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. Where used in this part, the term "operator" also applies to a "grantee" that operates its own zone.

(16) *Reactivation.* "Reactivation" means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is an alteration. If the operator is different, it is an activation.

(17) *Subzone.* "Subzone" is a special-purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. The term "zone" also applies to a subzone, unless specified otherwise.

(18) *Transfer.* "Transfer" means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes.

(19) *Unique identifier.* "Unique identifier" means the numbers, letters, or combination of number and letters that identify merchandise admitted to a zone with zone status.

(20) *User.* "User" means a person or firm using a zone or subzone for storage, handling, or processing of merchandise.

(21) *Zone lot.* "Zone lot" means a collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot.

(22) *Zone site.* "Zone site" means the physical location of a zone or subzone.

(23) *Zone status.* "Zone status" means the status of merchandise admitted to a zone, i.e., nonprivileged foreign, privileged foreign, zone restricted, or domestic.

§ 146.2 District director as Board representative.

The district director in whose district the zone is located shall be in charge of the zone as the representative of the Board.

§ 146.3 Customs supervision.

(a) *Assignment of Customs officers.* Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with § 161.1 of this chapter. The district director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone.

§ 146.4 Operator responsibility and supervision.

(a) *Supervision.* The operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise.

(b) *Customs access.* The operator shall permit any Customs officer access to a zone.

(c) *Safekeeping of merchandise and records.* The operator is responsible for safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(d) *Records maintenance.* The operator shall (1) maintain the inventory control and recordkeeping system in accordance with the provisions of Subpart B, (2) retain all records required in this Part and defined in § 162.1(a) of this chapter, pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and (3) protect proprietary information in its custody from unauthorized disclosure. Records shall be readily available for Customs review at the zone.

(e) *Merchandise security.* The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(f) *Storage and handling.* The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

(g) *Guard service.* The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the district director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

(h) *Miscellaneous responsibilities.* The operator is responsible for complying with requirements for admission, manipulation, manufacture, exhibition, or destruction, shortage, or overage; inventory control and recordkeeping systems, transfer to Customs territory, and other requirements as specified in this part.

§ 146.5 Activation fee and annual fee.

The operator, or where there is no operator, the grantee, will be charged a nonrefundable fee to activate a zone or any portion of a zone, or to alter or relocate an activated portion of a zone, under the provisions of 31 U.S.C. 9701. The operator of an activated zone will be charged a nonrefundable annual fee for each activated zone as payment of the cost of the additional Customs service required under the Act as provided in 19 U.S.C. 81n and the regulations in this part. The operator or grantee shall pay the annual fee to the district director of the district in which the zone is located within 14 days after activation and within 14 days after the effective date of the published fee schedule for each year thereafter that the area remains activated. The fee schedule will be revised annually and published in the **Federal Register** and the Customs Bulletin.

§ 146.6 Procedure for activation.

(a) *Application.* A zone operator, or where there is no operator, a grantee, shall make written application to the district director of the district in which the zone is located to obtain approval of activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted.

(b) *Supporting documents.* The application must be accompanied by the following:

(1) The application fee required by § 146.5;

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity, in the appropriate unit, of any tank, certified to be correct by the operator of the tank;

(4) A procedures manual describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of Subpart B; and

(5) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by district director.* As a condition of approval of the application, the district director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the district director.* The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in § 146.82. The decision of the district director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of § 113.73 of this chapter.

(e) *Activotion.* Upon the district director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated; and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

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§ 146.7 Zone changes.

(a) *Alteration of an activated area.* An operator shall make written application to the district director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the fee required in § 146.5 and the supporting document requirements specified in § 146.6, as applicable. The district director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in § 146.6.

(b) *Deactivation or reactivation.* A grantee, or an operator with the concurrence of a grantee, shall make written application to the district director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. The district director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator. The district director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under § 146.6(d). No fee is required for deactivation or reactivation.

(c) *Suspension of activated site.* When approval of an activated status has been suspended through the procedure in Subpart G, the district director may require all goods in that area in zone status (other than domestic status) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, if the district director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(d) *New bond.* The district director may require an operator to furnish, on 10 days notice, a new Foreign Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if (1) the activated zone area is substantially altered; (2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (3) the existing bond lacks good and sufficient surety; or (4) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the surety to any material alteration in the boundaries of the zone.

(e) *New operator.* A grantee of an activated zone site shall make written application to the district director for approval of a new operator, submitting with the application a certification by the new operator that the inventory control and recordkeeping system meets the requirements of Subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The district director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers.

(f) The bond in § 146.6 shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The district director shall promptly notify the grantee, in writing, of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The district director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of officers and persons having a direct or indirect financial interest in the operator, and of persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone user. If a list was previously furnished, the district director may make a written demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

§ 146.8 Seals, authority of operator to break and affix.

The district director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order of directive, on any vehicle or intermodal container containing merchandise approved for admission to the zone upon its arrival at the zone; or to affix a Customs in-bond seal to any vehicle or intermodal container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in-bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the district director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the district director shall deem the seal or delivering conveyance to be intact.

§ 146.9 Permission of operator.

An application for permission to admit merchandise into a zone, or to manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket application. The written concurrence of the operator in the removal of merchandise from a zone is not required because the merchandise is released by the district director to the operator for delivery from the zone, as provided in § 146.71 (a).

§ 146.10 Authority to examine merchandise.

The district director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

§ 146.11 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be admitted directly to a zone from any place outside Customs territory.

(b) *Through Customs territory, foreign merchandise.* Foreign merchandise destined to a zone and transported in-bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in-bond between two places in Customs territory.

(c) *From Customs territory, domestic merchandise.* Domestic merchandise may be admitted to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedures in § 144.37(g) of this chapter and transferred to a zone for admission in zone-restricted status.

§ 146.12 Use of zone by carrier.

(a) *Primary use; lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by Customs if found to endanger the revenue, or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulations.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

§ 146.13 Customs forms and procedures.

Where a Customs form or other document is required in this part, the number of copies of the form or document required to be presented and their manner of distribution and processing shall be determined by the district director, except as otherwise specified in this part.

§ 146.14 Retail trade within a zone.

Retail trade is prohibited within a zone except as provided in 19 U.S.C. 81o(d). See also the regulations of the Board as contained in 15 CFR Part 400.

Subpart B—Inventory Control and Recordkeeping System

§ 146.21 General requirements.

(a) *Systems capability.* The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method.

(b) *Procedures manual.*

(1) The operator shall provide the district director with an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its procedures manual and shall submit to the district director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the district director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the district director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator.* Upon zone activation approval the operator remains liable for complying with all inventory control and recordkeeping system requirements set forth in this part.

§ 146.22 Admission of merchandise to a zone.

(a) *Identification.* All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under § 146.43, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the district director as provided in § 146.37.

(c) *Incomplete documentation.* Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it will be formally admitted to the zone under § 146.32 or 146.40. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation.* Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier for traceability. The inventory record will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

§ 146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise.*

(1) *General.* A zone lot number or unique identifier will be used to identify and trace merchandise.

(2) *Fungible merchandise.* Fungible merchandise may be identified by an inventory method authorized by Customs, which is consistently applied, such as First-In-First-Out (FIFO) and using a unique identifier.

(b) *Inventory records.* The inventory records will specify by zone lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, comulative receipts and removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, and by-products.

(c) *Physical inventory.* The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the district director of any discrepancies in accordance with § 146.53.

§ 146.24 Transfer of merchandise from a zone.

(a) *Accountability.*

(1) All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping system.

(2) The inventory control and recordkeeping system for merchandise transfers must have the capability to trace all transfers back to a zone

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admission under a Customs authorized inventory method.

(b) *Information.* The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise from the zone.

§ 146.25 Annual reconciliation.

(a) *Report.* The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the district director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for a spot check or audit by Customs, and need not furnish it to Customs unless requested. There is no form specified for the preparation of the report.

(b) *Information required.* The report must contain a description of merchandise for each zone lot or unique identifer, zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification.* The operator shall submit to the district director within 10 working days after the annual reconciliation report, a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with § 146.53. These reports must accompany the certification letter.

§ 146.26 System review.

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the district director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

Subpart C—Admission of Merchandise to a Zone

§ 146.31 Admissibility of merchandise into a zone.

Merchandise of every description may be admitted into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* District directors shall not admit prohibited merchandise. If there is a question as to whether the merchandise may be prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise.

(b) *Conditionally admissible merchandise.* The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned.

§ 146.32 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit.* Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered Customs Form 214 ("Application for Foreign Trade Zone Admission and/or Status Designation") and the issuance of a permit by the district director. Exceptions to the Customs Form 214 requirement are for merchandise temporarily deposited (§ 146.33), transiting merchandise (§ 146.34), or domestic merchandise admitted without permit (§ 146.43). The applicant for admission shall present the application to the district director and shall include a statistical copy on Customs Form 214–A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct transmittal of statistical information to that agency.

(b) *Supporting documents.*—(1) *Commercial documentation.* The applicant shall submit with the application two copies of an examination invoice meeting the requirements of Subpart F, Part 141, of this chapter, for any merchandise, other than that excepted in paragraph (a) of this section, to be admitted to a zone. The notation of tariff classification and value required by § 141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under § 141.11 or § 141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized for delivery by Customs to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see § 141.11 of this chapter). When a release order is required, it will be made on any of the forms specified in § 141.111 of this chapter, or by the following statement attached to Customs Form 214:

Authority is hereby given to release the merchandise described in this application to _____

Name of Carrier _____

Signature and title of carrier representative _____

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in § 141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The district director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* The district director will issue a permit for admission of merchandise to a zone when:

(1) The application is properly executed and includes the zone status desired for the merchandise, as provided in Subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unlading, the zone, or other location designated by the district director, except for merchandise for direct delivery to a zone under §§ 146.39 and 146.40. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) All requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone under blanket application upon presentation of a Customs Form 214 covering more than one shipment of merchandise. A blanket application for admission is for:

(1) Shipments which arrive under one transportation entry as described in § 141.55 of this chapter, or

(2) Shipments which are destined to the same zone applicant on a single

business day, in which case the applicant shall:

(i) Present the examination invoices required by paragraph (b) of this section to the district director before the merchandise is admitted into the zone,

(ii) Have been approved for the direct transmittal of statistical trade information to the Bureau of Census under an agreement with that agency; and

(iii) Have examination invoices containing a unique identifier to trace the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and recordkeeping system of the operator as described in Subpart B.

§ 146.33 Temporary deposit for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Customs territory under Customs supervision, pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of section 562 and other Customs laws while in the zone.

§ 146.34 Merchandise transiting a zone.

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade will be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with § 146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Delay in zone transit.* Merchandise delayed while transiting a zone must be made the subject of an application for admission in accordance with § 146.32, or it must be removed from the zone.

§ 146.35 Temporary deposit in a zone; incomplete documentation.

(a) *General.* Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in § 146.36.

(b) *Application.* An application for temporary deposit will be made to the district director on a properly signed and uniquely numbered Customs Form 214, annotated clearly "Temporary Deposit in a Zone".

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section has no zone status and is considered to be in the Customs territory. It will:

(1) Be physically segregated from all other zone merchandise;

(2) Be held under the bond and at the risk of the operator; and

(3) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Approval.* The district director shall approve the application for temporary deposit of merchandise in a zone if the provisions of paragraphs (b) and (c) are met.

(e) *Submission of Customs Form 214.* A complete and accurate Customs Form 214 will be submitted, as provided in § 146.32, within 5 working days plus any extension granted by the district director, or the merchandise shall be placed in general order.

§ 146.36 Examination of merchandise.

Except for direct delivery procedures provided for in § 146.39, all merchandise covered by a Customs Form 214 may be retained for Customs examination at the place of unlading, the zone, or another location, as designated by the district director. The district director may authorize release of the merchandise without examination, as provided in § 151.2 of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices.

§ 146.37 Operator admission responsibilities.

(a) *Maintenance of admission documentation.* The operator shall maintain either:

(1) *Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number; or

(2) *Authorized inventory method.* Where a Customs authorized inventory method other than a lot system (specific identification of merchandise) is use, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Form's 214 in sequential order.

(b) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise from the zone upon request of that person or the district director.

(c) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the district director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of Subpart A, Part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(d) *Supervision of merchandise.* The district director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see § 146.3). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Custom Form 214 to Customs at the location specified by the district director.

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§ 146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

§ 146.39 Direct delivery procedures.

(a) *General.* This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214.

(b) *Application.* An operator, meeting the criteria of paragraph (c) of this section, shall file a written application with the district director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo in the zone.

(c) *Criteria.* The district director shall approve the application if the following criteria are met:

(1) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site; and

(3) The operator is the owner or purchaser of the goods.

(d) *Application decision.* The district director shall promptly notify the operator, in writing, of Customs decision on the application. If the application is denied, the district director shall specify the reason for denial in his reply. The district director's decision will constitute the final Customs administrative determination concerning the application.

(e) *Revocation of approval.* The district director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

§ 146.40 Operator responsibilities for direct delivery.

(a) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the district director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation to accept responsibility for the merchandise under the Foreign Trade Zone Operator's Bond and to relieve the carrier of responsibility.

(5) Forward the in-bond or cartage documentation so as to reach the district director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

(6) Maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site; and

(7) Notify the district director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(b) *Admission of merchandise: alternative procedures.*—(1) *Cumulative Customs Form 214.* If the operator has an agreement with the Bureau of Census for direct transmittal of statistical information, he shall submit to the district director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise except for domestic status merchandise admitted under § 146.43 recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (b)(1) of this section, the operator shall file with the district director each business day an individual Customs Form 214 and 214–A covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. The forms shall be submitted within 10 days after the end of the month in which the merchandise was received in the zone, and no extension beyond that time will be approved by the district director.

(3) *General order.* Merchandise which is not admitted into a subzone or zone site as provided in this section within 5 working days after its arrival there may be sent to general order unless:

(i) The district director grants the operator's request for an extension of the 5 working day period; or

(ii) The importer of record files an appropriate Customs entry for the merchandise and removes it from the zone premises.

(4) *Inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the district director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so that the district director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

Subpart D—Status of Merchandise in a Zone

§ 146.41 Privileged foreign status.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the district director, with the application, an invoice notated as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the district director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to classification and valuation as provided in § 146.65.

(e) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.42(b)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with §§ 146.67 and 146.69.

§ 146.42 Nonprivileged foreign status.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone, which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise, will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the district director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest.

§ 146.43 Domestic status.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the U.S. on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except: (1) When it is mixed or combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he may also order the procedures, forms, and terms under which the permit will be received and processed.

(c) *Return of merchandise of Customs territory.* Upon compliance with the provisions of this section, any of the merchandise specified in paragraph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.44 Zone-restricted status.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application.* Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported.*—(1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-restricted status is desired for the merchandise.

Subpart E—Handing of Merchandise in a Zone

§ 146.51 Customs control of merchandise.

No merchandise, other than domestic status merchandise provided for in § 146.43, will be manipulated, manufactured, exhibited, destroyed, or transferred from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The district director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations.

§ 146.52 Manipulation, manufacture, exhibition or destruction; Customs Form 216.

(a) *Application.* Prior to any action, the operator shall file with the district director an application (or blanket application) on Customs Form 216 for permission to manipulate, manufacture, exhibit, or destroy merchandise in a zone. After Customs approves the application (or blanket application), the operator will retain in his recordkeeping system the approved application.

(b) *Approval.*

(1) The district director shall approve the application unless (i) the proposed operation would be in violation of law or regulation; (ii) the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise, or for safeguarding the revenue; (iii) the district director is not satisfied that the destruction will be effective; or (iv) the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) The district director is authorized to approve a blanket application for a period of up to one year for a continuous or repetitive operation. The district director may disaprove or revoke approval of any application, or may require the operator to file an individual application.

(c) *Appeal of adverse ruling.* If an approved application is subsequently rescinded by the district director for any reason, the applicant or grantee may

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appeal the adverse ruling pursuant to the hearing provisions of § 146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal.

(d) *Report Results.*—(1) *Separate application.* —The operator shall report on Customs Form 216 the results of an approved manipulation, manufacture, exhibition, or certification of destruction (other than by a blanket application), unless the district director chooses physically to supervise the operation.

(2) *Blanket application.* —The operator shall maintain a record of an approved manipulation, manufacture, exhibition, or certification of destruction, in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

(e) *Destruction.* The district director may permit destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue from the destruction within a zone, which is determined to be without commercial value may be removed to Customs territory for disposal.

§ 146.53 Shortages and overages.

(a) *Report required.* The operator shall report, in writing, to the district director upon identification, as such, of any:

(1) Theft or suspected theft of merchandise;

(2) Merchandise not properly admitted to the zone; or

(3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique indentifier, if the missing merchandise would have been subject to duties and taxes of $100 or more upon entry into the Customs territory. The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the district director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under § 146.25.

(b) *Certain domestic merchandise.* Except in a case of theft or suspected theft, the operator need not file a report with the district director, or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required.

(c) *Shortoge.*

(1) *Operator responsibility.* The operator is responsible under its Foreign Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the district director is satisfied that the merchandise was:

(i) Never received in the zone;

(ii) Removed from the zone under proper permit;

(iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S.

(2) *Liability for duty and taxes.* Upon demand of the district director, the operator shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for.

(d) *Overage.* The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the district director has not granted an extension of the time provided, the merchandise shall be sent to general order.

(e) *Damage.* The liability of the operator under its Foreign Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity as damaged merchandise.

Subpart F—Transfer of Merchandise From a Zone

§ 146.61 Constructive transfer to Customs territory.

The district director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

§ 146.62 Entry.

(a) *General.* Entry for foreign merchandise which is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made on Customs Form 7512, Customs Form 3461, Customs Form 7501, or other applicable Customs forms. If entry is made on Customs Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the Customs Form 3461 within 10 working days after the time of entry.

(b) *Documentation.* (1) Customs Form 7501 or the entry summary will be accompanied by the entry documentation, including invoices as provided in Parts 141 and 142 of this chapter. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the transferred merchandise and provide the information necessary to support the admissibility, the declared values, quantity, and classification of the merchandise. If the declared values are predicated on estimates or estimated costs, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) Customs Form 7512 for merchandise to be transferred to another port or zone or for exportation shall state that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), § 146.66(b), or § 146.70(c).

(c) *Waiver of supporting documents.* The district director may waive presentation of an invoice and supporting documentation required in paragraph (b) of this section with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the district director or maintains and makes those records available for examination by Customs.

§ 146.63 Entry for consumption.

(a) *Foreign merchandise.* Merchandise in foreign status or composed in part of merchandise in foreign status may be entered for consumption from a zone.

(b) *Zone-restricted merchandise.* Merchandise in a zone-restricted status may be entered for consumption only when the Board has ruled that merchandise can be entered for consumption.

(c) *Estimated production.*—(1) *Weekly entry.* When merchandise is manufactured or otherwise changed in a zone (exclusive of packing) to its physical condition as entered within 24 hours before physical transfer from the zone for consumption, the district director may allow the person making entry to file an entry on Customs Form 3461 for the estimated removals of merchandise during the calendar week. The Customs Form 3461 must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. Merchandise covered by an entry made under the provisions of this section will be considered to be entered and may be removed only when the district director has accepted the entry on Customs Form 3461. If the actual removals will exceed the estimate for the week, the person making entry shall file an additional Customs Form 3461 to cover the additional units before their removal from the zone. Notwithstanding that a weekly entry may be allowed, all merchandise will be dutiable as provided in § 146.65. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory.

(2) *Individual transfers.* After acceptance of the weekly entry, individual transfers of merchandise covered by the entry may be made from the zone.

(d) *Textiles and textile products.* Subject to the existing statutory authority of the Board, textiles and textile products admitted into a zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation (if entered for consumption rather than admitted to a zone), may not be subsequently transferred into Customs territory for consumption if, during the time the merchandise is in the zone, there has been a change by manipulation, manufacture, or other means:

(1) In the country of origin of the merchandise as defined by § 12.130 of this chapter;

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation; or

(3) From one textile category to another textile category.

§ 146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be entered for warehouse only if the entry is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(d) *Time limit.* Merchandise may neither be placed nor remain in a Customs bonded warehouse after 5 years from the date of importation of the merchandise.

§ 146.65 Classification, valuation, and liquidation.

(a) *Classification.—(1) Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section will be subject to tariff classification according to its character, condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted.

(2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

(b) *Valuation.*—(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in § 146.42(b) will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

(3) *Allowance.* An allowance in the dutiable value of zone merchandise may be made by the district director in accordance with the provisions of Subparts B and C of Part 158 of this chapter, for damage, deterioration, or casualty while the merchandise is in the zone.

(c) *Liquidation; extension to update cost data.* When the declared value or values of the merchandise are based on an estimate or estimates, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the district director.

§ 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman under an entry for immediate transportation on Customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CF 6043 or under a local control system approved by the district director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of

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entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(iii) A copy of any Customs Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section are not presented, the operator of the transferring zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the transferring zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the transferring zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry. The statement will also show any change in zone status in the transferring zone and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the transferring zone that the statement in paragraph (c)(4)(i) of this section is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in § 146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system.

§ 146.67 Transfer of merchandise for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of paragraph (b) of this section.

(b) *Immediate exportation.* Each transfer of merchandise to the Customs territory for exportation at the port where the zone is located, will be made under an entry for immediate exportation on Customs Form 7512. The person making entry shall furnish an export bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the Customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation on Customs Form 7512. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

(d) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be exported and returned to Customs territory for warehousing provided the entry for warehouse is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(e) *Merchandise produced or manufactured in a zone and returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The district director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be on Customs Form 7512 stating at the top the words "Application for Weekly Zone Permit," and will be filed with the district director. The application must be accompanied by a *pro forma* invoice or schedule like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry shall file a supplemental Customs Form 7512 to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the district director.

(b) *Individual entries.* After approval of the application for a weekly permit by the district director, the person making entry will be authorized to execute individual Customs Forms 7512 for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the operator shall obtain a receipt from the carrier on Customs Form 7512 to ensure its assumption of liability under the carrier's or cartman's bond. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512 and the destination copy (Customs Form 7512–C), as provided for in § 18.2(c) of this chapter. The operator also shall ensure that the district director receives a copy of the Customs Form 7512 and the origin copy (Customs Form 7512–C) by the end of the next working day after the carrier has receipted for the merchandise.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit shall file with the district director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique I.T. number, and will provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual Customs Forms 7512 submitted to Customs, as well as an explanation of any discrepancy.

§ 146.69 Supplies, equipment, and repair material for vessels or aircraft.

(a) *General.* Any merchandise which may be withdrawn duty and tax free in Customs territory under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§ 10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified vessel or aircraft, will be made on Customs Form 7512 (see § 10.60 of this chapter). The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(b) *Merchandise for delivery within zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the bonded cartmen, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

§ 146.70 Transfer of zone—restricted merchandise into Customs territory.

(a) *General.* Zone-restricted merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval (See 15 CFR Part 400), that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisement, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *For consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *For warehousing.* Zone-restricted merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The Customs Form 7501 shall be endorsed by the district director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise is foreign trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation.

(d) *For other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

§ 146.71 Release and removal of merchandise from zone.

(a) *General.* Except as provided for in § 146.43, no merchandise will be transferred from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. This district director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the district director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any joint report of discrepancy must be submitted to the district director within 10 working days of signing by the parties.

(c) *Time limit.* Except in the case of articles for use in a zone, merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The district director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory.

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(d) *Retention of return or merchandise to zone for consumption.*

(1) The district director shall cancel any entry for consumption where: (i) The merchandise is not removed from the zone within the period specified in paragraph (c) of this section, or (ii) the merchandise was removed from the zone but did not enter the commerce of the U.S. in Customs territory and was subsequently readmitted to a zone in domestic status. If the district director has reason to believe any new entry would be cancelled under the provisions of this subparagraph, he may reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise covered by an entry which has been cancelled under this subparagraph shall be restored to its last foreign status.

(2) A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the district director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in Part 173 of this chapter. If the district director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as an overage and subject to the provisions of § 146.53(d).

(3) When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in subparagraph (d)(1), it shall be admitted in domestic status.

Subpart G—Penalties; Suspension; Revocation

§ 146.81 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, operator or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the district director under this section will be reviewed by the Director, Entry Procedures and Penalties Division, Headquarters, to determine whether further action against the grantee or operator, such as suspension br a recommendation for revocation of the grant, is warranted.

§ 146.82 Suspension.

(a) *For cause.* The district director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. An action to suspend will be taken in accordance with the procedure in paragraph (b) of this section if:

(1) The approval of the application to activate the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed an act that would constitute a felony, or would constitute a misdemeanor involving theft.

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) The operator fails to pay, within 30 days after the due date, all annual fees associated with the operation of a zone;

(7) The operator, or any officer, egent, or employee of the operator, discloses to an unauthorized person proprietary information contained on a Customs form or in the inventory control and recordkeeping system; or

(8) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure.*—(1) *Notice.* The district director may, at any time, serve notice, in writing, upon an operator to show cause why its right to continue operation of a zone should not be suspended or why an individual user or activities of an individual user should not be suspended, as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the district director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, will be presented. The right of cross-examination will be available to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the regional commissioner of the region in which the zone is located, together with a recommendation for final action.

(3) *Decision of regional commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the regional commissioner in writing any additional views or arguments. The regional commissioner shall then render a written decision stating his reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

(4) *Grantee.* If the grantee of the zone is not the operator, a copy of the notice to show cause will be served upon the grantee. The grantee, as a party-in-interest, may join the operator in any proceedings under this section.

§ 146.83 Revocation of zone grant.

(a) *Recommendation of district director.* The district director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the district director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request internal advice under the provisions of Part 177 of this chapter from the Director, Carriers, Drawback and Bonds Division, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board.* The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of the Act and Title 15, Chapter IV, Part 400, Code of Federal Regulations.

Conforming Amendments—Parts 18, 24, 112, 113, 141, 144, 178, and 191

To conform the Customs Regulations to the changes made by the revision of Part 146, Customs Regulations (19 CFR Part 146), Parts 18, 24, 112, 113, 141, 144, 178, and 191, Customs Regulations (19 CFR Parts 18, 24, 112, 113, 141, 144, 178, and 191) are amended in the following manner:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for Part 18 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1551–1553, 1624.

§ 18.2 [Amended]

2. Section 18.2 is amended in the following manner:

a. By revising the heading to paragraph (a)(1) to read "Merchandise other than from warehouse or foreign trade zone delivered to bonded carrier."

b. By removing the words "paragraph (a)(2)" in the first sentence of paragraph (a)(1) and inserting, in their place, the words "paragraphs (a)(2) and (a)(3) of this section."

c. By adding a new paragraph (a)(4) to read as follows:

§ 18.2 Receipt by carrier manifest.

(a) * * *

(4) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624, 31 U.S.C. 9701.

§ 24.13 [Amended]

2. Section 24.13 is amended by inserting in the first sentence of paragraphs (c) and (f), the words "a foreign trade zone operator," before the words "and bonded warehouse proprietor," in paragraph (c) and before the words "bonded warehouse proprietor" in paragraph (f).

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for Part 112 is revised to read as follows:

Authority: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

2. All other statutory authority cited at the end of various sections in Part 112 is removed.

3. The last sentence of § 112.12(b)(3) is revised to read as follows:

§ 112.12 Application for authorization. * * *

(b) *Special requirements.*

* * * * *

(3) *Private carriers.* * * * If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations, or the operator of a foreign trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse, container station, or zone.

* * * * *

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Section 113.73 is amended by revising paragraphs (a)(1) and (a)(2), and by adding paragraph (d), to read as follows:

§ 113.73 Foreign trade zone operator bond conditions.

* * * * *

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and Customs Regulations relating to the receipt, admission, status, handling, transfer, and removal of merchandise from the foreign trade zone or subzone, and

(2) The Customs Regulations concerning the maintenance of inventory control and recordkeeping systems covering merchandise in the foreign trade zone or subzone. If the principal defaults and the default involves merchandise other than domestic merchandise for which no permit for admission is required, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is a determination made by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs, and that value as used in these provisions means value as determined under 19 U.S.C. 1401a. If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default, or such other amount as may be authorized by law or regulations.

* * * * *

(d) *Payment of Annual Fee.* The principal agrees to pay timely any annual fee or fees as provided in the Customs Regulations. If the principal defaults, the obligors agree to pay liquidated damages equal to the amount of the annual fee due but not paid and an amount equal to one percent of the annual fee for each of the first seven days the annual fee is in arrears, two percent of the annual fee for each of the succeeding seven days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.111(d) is revised to read as follows:

§ 141.111 Carrier's release order.

* * * * *

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign trade zone, the release order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing;

(2) "For transfer to the bonded carrier designated in the transportation entry,"

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if the merchandise is entered for transportation in bond;

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation; or

(4) "For transfer to the foreign trade zone designated in Customs Form 214," if the merchandise is to be admitted to a foreign trade zone.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for Part 144 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1854, 19 U.S.C. 66, 1311, 1312, 1484, 1552, 1553, 1555, 1556, 1557, 1559, 1562, 1563, 1623, 1624, 1646(a), 26 U.S.C. 5214; Pub. L. 95–410; Pub. L. 95–176; Pub. L. 96–511.

2. All other statutory authority cited at the end of various sections in Part 144 is removed.

3. Section 144.36(g) is revised to read as follows:

§ 144.36 Withdrawal for transportation.

* * * * *

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with § 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with § 144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the port of origin in accordance with § 18.5 (c) or (d) of this chapter; or

(5) Admitted to a foreign trade zone in zone-restricted status as provided in Part 146 of this chapter.

* * * * *

4. Section 144.37 is amended by adding a new paragraph (g), to read as follows:

§ 144.37 Withdrawal for exportation

* * * * *

(g) *Exportation at a foreign trade zone.* Merchandise may be withdrawn for exportation at a foreign trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in § 146.44(c) of this chapter.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB Control No.
146.6, 146.7	Procedures for activation of a foreign trade zone; procedures for zone changes, including alteration, deactivation and suspension.	1515–0151

PART 191—DRAWBACK

1. The authority citation for Part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1313, 1624.

§§ 191.163–191.165 also issued under 19 U.S.C. 81c.

§ 191.162 [Amended]

2. Section 191.162 is amended by removing reference to "§ 146.25," and inserting, in its place, reference to "§ 146.44."

3. Section 191.163(c) and (d) are revised to read as follows:

§ 191.163 Articles manufactured or produced in the U.S.

* * * * *

(c) *Action of the district director on the notice of transfer.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign trade zone.

(d) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator at the zone shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.164(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback entry.

* * * * *

4. Paragraphs (b) and (c) of § 191.164 are revised to read as follows:

§ 191.164 Merchandise transferred from continuous Customs custody.

* * * * *

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136.

* * * * *

5. Paragraphs (b) and (c) of § 191.165 are revised to read as follows:

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

* * * * *

(d) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director shall forward one copy of Customs Form 7539 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7539 to the district director in place of the bill of lading required by § 191.136.

* * * * *

William von Raab,

Commissioner of Customs.

Approved: December 10, 1985.

David D. Queen,

Acting Assistant Secretary of the Treasury.

Note.—This ——— Table will be shown in the Code of Federal Regulations.

Parallel Reference Table—(This Table Shows the Relationship of Sections in Revised Part 146 of Superseded Part 146)

Revised section	Superseded section
146.0	146.0.
146.1(a)	New.
146.1(b)(2), (3), (4), (6), (7), (8), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23).	New.

Revised section	Superseded section
146.1(b)(1)	146.1(a).
146.1(b)(5)	146.1(c).
146.1(b)(9)	146.1(e).
146.1(b)(10)	146.1(e)(1).
146.1(b)(11)	146.1(e)(2).
146.2	146.2.
146.3(a)	146.3.
146.3(b)	New.
146.4	New.
146.5	146.4.
146.6	New.
146.7	New.
146.8	New.
146.9	146.5.
146.10	146.6.
146.11 (a), (b), and (c)	146.7 (a), (b), and (c).
146.11(d)	New.
146.12	146.8.
146.13	New.
146.14	New.
146.21	New.
146.22	New.
146.23	New.
146.24	New.
146.25	New.
146.26	New.
146.31	146.11.
146.32(a)	146.12(a).
146.32(b)(1)	New.
146.32(b)(2)	146.12(b)(1)(i).
146.32(b)(3)	146.12(b)(1)(ii).
146.32(b)(4)	146.12(b)(2).
146.32(b)(5)	New.
146.32(c) (1), (2) & (4)	146.12(c) (1), (2) & (3).
146.32(c)(3)	New.
146.32(d)	New.
146.33	146.13.
146.34	146.14.
146.35	New.
146.36	New.
146.37	New.
146.38	146.15.
146.39	New.
146.40	New.
146.41 (a), (b), and (c)	146.21 (a), (b), and (c) (1) and (2).
146.41(d)	146.21(c)(3) (i) and (v).
146.41(e)	146.21(d).
146.42	146.23.
146.43	146.22, 146.24.
146.44	146.25.
146.51	146.31 (a), (b).
146.52(a)	146.21(f), 146.32(a), 146.33(a).
146.52(b)	146.21(f), 146.32(b), 146.33(b).
146.52(c)	146.32(c).
146.52(d)(1)	New.
146.52(d)(2)	146.32(d).
146.52(e)	146.33(b).
146.53 (a), (b)	146.31(c).
146.53 (c), (d), and (e)	New.
146.61	146.47(c), 146.48(b).
146.62	New.
146.63(a)	146.45, 146.46, 146.48(c).
146.63(b)	146.47.
146.63(c)	New.
146.63(d)	146.49.
146.64(a)	146.48(c).
146.64(b)	146.47(e)(4).
146.64(c), (d)	New.
146.65(a)(1)	146.21(c)(3)(iv).
146.65(a)(2)	146.48(e)(1).
146.65(b)	146.48(e)(2).
146.65(c)	New.
146.66(a)	146.43(b)(1).
146.66(b)	146.43(b)(1).
146.66(c)	146.43(b)(2).
146.66(d)	New.
146.67(a)	146.41.
146.67 (b), (c)	146.45(d), 146.46(d).
146.67(d)	New.
146.67(e)	146.46(e).
146.68	New.
146.69	146.42.
146.70(a)	146.47(a).
146.70(b)	146.47(e)(3).
146.70(c)	146.47(e)(4).
146.70(d)	146.47(e)(3).
146.71	New.
146.81	New.
146.82	New
146.83	New.

Old section	New section
146.0	146.0.
146.1(a)	146.1(b)(1).
146.1(b)	Removed.
146.1(c)	146.1(b)(5).
146.1(d)	Removed.
146.1(e)	146.1(b)(9).
146.1(e)(1)	146.1(b)(10).
146.1(e)(2)	146.1(b)(11).
146.1(f)	Removed.
146.2	146.2.
146.3	146.3(a).
146.4	146.5.
146.5	146.9.
146.6	146.10.
146.7 (a), (b), & (c)	146.11 (a), (b), & (c).
146.8	146.12.
146.11	146.31.
146.12(a)	146.32(a).
146.12(b)(1)(i)	146.32(b)(3).
146.12(b)(1)(ii)	146.32(b)(2).
146.12(b)(2)	146.32(b)(4).
146.12 (c) (1), (2) & (3)	146.32 (c) (1), (2), & (4).
146.13	146.33.
146.14	146.34.
146.15	146.36.
146.21 (a), (b), and (c) (1) (2)	146.41 (a), (b), and (c).
146.21 (c) (3), (i) and (v)	146.41 (d); 146.65 (a) (1).
146.21(c)(3)(iv)	146.65(a)(1).
146.21 (c) (3) (ii) and (iii)	Removed.
146.21(d)	146.41(e).
146.21(e)	Removed.
146.21(f)	146.52 (a) and (b).
146.22	146.43.
146.23	146.42.
146.24	146.43.
146.25	146.44.
146.31 (a) and (b)	146.51.
146.31(c)	146.53 (a), (b).
146.32a	146.52(a).
146.32(b)	146.52(b).
146.32(c)	146.52(c).
146.32(d)	146.52(d)(2).
146.33(a)	146.52(a).
146.33(b)	146.52(b).
146.41	146.67(a).
146.42	146.69.
146.43(a)	Removed.
146.43(b) (1)	146.66(b).
146.43(b)(2)	146.66(c).
146.44	Removed.
146.45 (a), (b), and (c)	146.63.
146.45(d)	146.67 (b), (c).
146.46 (a), (b) and (c)	146.63.
146.46(d)	146.67 (b), (c).
146.46(e)	146.67(e).
146.47(a)	146.70(a).
146.47(b), (d), and (e) (1) and (2)	Removed.
146.47(c)	146.61.
146.47(e)(3)	146.70 (b) and (d).
146.47(e)(4)	146.64, 146.70(c).
146.47(f)	Removed.
146.48(a)	Removed.
146.48(b)	146.61.
146.48(c)	146.63 (a) and 146.64(a).
146.48(d)	Removed.
146.48(e)(1)	146.65(a)(2).
146.48(e)(2)	146.65(b).
146.48(f)	Removed.
146.49	146.63(d)

Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix—Final Regulatory Flexibility Analysis on Proposed Customs Regulations Amendments Relating to Foreign Trade Zones

Introduction

The economic impact review below constitutes the Customs Service final regulatory flexibility analysis in compliance with the requirements of section 3 of the Regulatory Flexibility Act (5 U.S.C. 603). The Act requires that regulatory effects be analyzed so as to determine and quantify, if possible, the economic effects of proposals on small business operations. The Act's key concepts revolve around identifying "significant economic impacts on a substantial number of small entities." The initial analysis was modified as necessary into a final regulatory flexibility analysis upon receipt and review of public comments resulting from **Federal Register** publication of this rule as a notice of proposed rulemaking.

Rationale

The number of Foreign Trade Zones, complexity of operations and volume of trade passing through zones has increased significantly in recent years. From less than 20 zones in the early 1970's, activated zones and sub-zones reporting activity at the end of 1984 numbered 88 (57 general purpose zones and 31 sub-zones), with 83 other zones approved but not reporting activity (see table 1).

Meanwhile, Customs inspection and supervision of zone activity has changed little in practice. Secular reductions in agency resources have combined with unchanged practices to produce (1) operational hardships on zone grantees and users and (2) uncertain inspection and control of zone activity.

The proposed revisions to 19 CFR Parts 18, 24, 112, 141, 144, 146, and 191 (relating to Customs administration of foreign trade zones) is an administrative attempt to update zone supervision in accordance with current business practices.

Objectives

The proposal is intended to bring about three fundamental changes:

1. the method of accountability of merchandise admitted, stored, manipulated, exhibited, manufactured and removed from zones;

2. the method of enforcement of Customs laws through audits and spot checks instead of more costly physical presence of inspectional resources; and

3. the method of reimbursing Customs for its zone-related operational expenses.

Legal Basis For Proposal

This regulatory project is initiated under the authority of R.S. 251, as amended, Sections 1–21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, section 624, 46 Stat. 759 (19 U.S.C. 66, 81a–81u, 1202 (General Headnote 11), 1624).

Estimated Number of Small Entities Affected

Tallies of zone activity in Customs regions indicated that approximately 1,500 users occupy space in zones and carry out the range of permitted manipulation, manufacturing and storage activities. Of these, 600 operate on a full-time, year-round basis. The remaining 900 operate on a part-time basis. These estimates do not include users in foreign trade sub-zones. Sub-zone users tend to be large (oftentimes multinational) corporations and thus do not fit within the purview of the requirements of

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the Regulatory Flexibility act which concentrate on small business concerns.

Economic Effects of Compliance With the Proposal

After review of the proposal's work plan, we have identified within the proposal the following seven procedural/administrative and fee-related changes likely to affect economic concerns of small business:

A. Procedural administrative changes
1. inventory control and record keeping system
2. operator's control over admission and removal of goods
3. elimination of customs forms 7502/7505/215

B. Fee changes
1. elimination of present form of reimbursement to Customs
2. implementation of annual fee covering audits and spot checks
3. zone activation and boundary alteration fee

TABLE I.—NUMBER OF FOREIGN TRADE ZONES IN THE UNITED STATES*

	Approved	Reporting activity	No reported activity
Total	171	88	83
General purpose zones	111	57	54
Sub-zones	60	31	29

*As of the end of FY 1984.

Source: Foreign Trade Zones Board, U.S. Department of Commerce and special reports from U.S. Customs Service Regions.

A. Procedural/Administrative Changes

Inventory Control and Record Keeping System

An inventory control and record keeping system with Customs prescribed data will result from this proposal. A similar system (Alternative Inventory Control System) has been in effect since 1976 and currently operates at 7 general purpose zones. Data required for the new system will consist of standard business data currently collected and tabulated for small users by each zone's operator/grantee. We do not anticipate a significant net reporting burden on users or operators as a result of this segment of the proposal.

Operators' Control Over Admission and Removal of Goods

Under present Customs supervision, a Customs officer must be present to clear admissions of merchandise to and removals of merchandise from a zone, thus limiting these transactions to the availability of a Customs officer. Under the present proposal, an operator will be able to admit and remove merchandise without a Customs officer being present, after receiving Customs approval. However, Customs approval for admission will require an invoice in support of the application for admission on CF 214 and that the merchandise be retained for Customs examination at the place of unlading, the zone, or other location designated by the district director. Upon admittance to a zone, textile goods subject to visa controls will require a CF 214 with an invoice annotated by a Customs officer. Withdrawal of those goods will require the visa, either the original if withdrawn in its original lot size or new visas if withdrawn in break bulk, partial quantities. Presentation of an invoice and merchandise examination prior to admission are not currently required and will represent an additional paperwork requirement and possible delay in the arrival of merchandise at the zone. Customs approval for removals will be simplified by a reduction in paperwork as outlined in the next section. In total, the additional admission requirements will be offset by the simplified removal procedure and the enhanced business flexibility derived from being able to admit or remove merchandise freely into and out of the zone after Customs approval has been received.

Forms Reduction—Customs Forms 7501/7505/215

Under present practice, Customs forms 7501 and 214 are required to obtain privileged foreign status. Removal of privileged foreign status merchandise from a zone requires filing CF 7505 for consumption. CF 215 is required to remove all zone status merchandise, except merchandise in privileged status or wholly composed of merchandise in privileged status. The estimated number of forms filed in FY 1984 appear in Table 2 below.

TABLE II

Form	Number of forms
7501*	15,000
7505	20,000
215	45,000

*The present CF 7501 requires data previously requested on the CF 7502.

Under a provision of this proposal, a request for privileged foreign status would require a CF 214 and invoice (as before) but would eliminate the CF 7501. Upon removal of privileged foreign status goods from a zone, the applicable entry form would replace the 7505 (no net gain or loss). Further, the CF 215 will be eliminated under this proposal. Current clerical, data base management and brokerage costs for an estimated 60,000 forms 7501/215 would be eliminated, giving small businesses a net gain on the order of $650,000 yearly from this procedural change.

Mandatory Bonding

One of the major proposed changes in zone administration is to involve the operator/grantee in data keeping and reporting. A new mandatory bond at a minimum level of $50,000 would be required in another provision of the proposal, with the goal of encouraging operator/grantee accuracy in compliance with his new responsibilities. The new bond would cover non-compliance with these proposed regulations as well as losses of merchandise. In terms of practical effects of this provision on small businesses, we anticipate no net appreciable added burden or cost. Most activated zones currently have bonds which meet or exceed the proposed minimum level.

B. Fee Changes

Elimination of Present Form of Customs Reimbursement

Under present practices, operators/grantees reimburse Customs for inspectional services rendered at zones. In fiscal year 1984, payments to Customs totaled an estimated $1.7 million, of which $1.3 million pertain to operations at general purpose zones. Assuming operators charge users flat fees to recover these payments, then each small user pays an average of $870 per year for these present Customs services.The proposed revisions would *eliminate* this $1.3 million present fee, substituting in its place (see below) tiered fees which would cover Customs costs in carrying out audits and spot checks.

A particular concern is underscored at this point, concerning the distribution of this $1.3 million benefits (eliminated Customs reimbursement). The 57 general purpose zones at the end of FY 1984 are widely distributed around the country. A small business interested in participating in a foreign trade zone generally finds itself limited to one and only one zone provider in its operating area. The offering of foreign trade zone services could thus be regarded as a monopolistic market condition. Significant regulatory requirements and administrative and application costs in seeking approval and setting up a zone essentially prevents access by (especially small) businesses. In essence, then, they must generally contract with the sole established zone operator in the geographic area.

In economic theory, the pricing practices of a good/service provided under monopolistic conditions are oriented towards extracting a maximum profit for the unique provider, and, in practice, the level of fees charged by some zone operators/grantees is a known concern of the Commerce Department's Foreign Trade Zone Board.

As stated above, average savings per user from elimination of Customs reimbursement is expected to approximate $870 per year. Based on actual trade zone market conditions, however, real actual savings to users may total well below the average $870/year. We expect that zone operator/grantees will pass through to small users only a portion (quite possibly small) of the total $1.3 estimated benefit of this provision of the proposed regulation. In the public comments, no commenters (largely major general purpose and sub-zone operators) addressed this issue. We expect that in most cases operators will neglect to pass on savings to small users. The Foreign Trade Zone Board has authority to review fees and charges to users if those fees are challenged as unreasonable.

The fiscal year 1984-based fee schedule is tiered. The purpose of the annual fee is to recover Customs costs incurred in carrying out the audit-inspection supervision program. The annual fee to be charged each zone is a function of the degree of complexity in Customs auditing and inspection of zones. In order to account for those distinct operating conditions, each zone will fall into a distinct size/complexity tier, with a specific fee for each tier. In this way, small, less operationally complex zones will not subsidize large zones. The tiers are based on operational complexity as measured by the number of admissions and removals of foreign and zone restricted merchandise

A zone will be classified as to its fee tier according to the following simple criteria if admissions/transfers of foreign and zone restricted merchandise:

(i) Are less than 300 per year, then TIER I ($1,400 per year fee);

(ii) Fall between 300 and 3,000 per year, then TIER II ($15,500 per year fee);

(iii) Are greater than 3,000 per year, then TIER III ($33,800 per year fee).

We expect general purpose zones to be largely skewed towards the TIER I level (see Table 3).

The annual fee is due and payable on the effective date of final Rule and on January 1 of each subsequent year. For existing zones the tier will be based on the number of admissions and transfers of foreign and zone restricted merchandise made during fiscal year ending September 30, 1984. Zones currently under a voluntary audit-inspection agreement need not pay an additional annual fee for calendar year 1985, nor will there be any refunds of fees paid. For subsequent years the tier will be based on the number of admissions and transfers of foreign and zone restricted merchandise made during the previous fiscal year ending September 30. Each zone operator is responsible for determining the appropriate tier. The operator's determination is subject to Customs verification. Operators of zones activated during a calendar year will be responsible for paying an annual fee based on tier I.

TABLE 3.—DISTRIBUTION OF FOREIGN TRADE ZONES BY ANNUAL FEE TIERS

	Tier I[1]	Tier II[2]	Tier III[3]	Small business users
Total	44	33	11	1,500
General purpose zones	30	18	8	1,300
Sub-zones	14	15	3	200

[1] $1,400 fee per year.
[2] $15,500 fee per year.
[3] $33,800 fee per year.

Under the present inspectional system Customs bills general purpose zone operators approximately $1.3 million annually for inspectional services. Zone operators recover this expense in their fee and rental/lease billings to zone users. As above, we estimate that the Customs component of these fees paid by zone users averages $870 per year per user.

Under the proposed audit-inspection system with different fee tiers, Customs billings to general purpose operators will amount to approximately $591,000 per year, versus the estimated $1.3 million at present. The Customs component of small business users' payments to operators will average $450 per year per user, versus the $870 per year per user at present. Future increases in the annual fee will reflect cost increases incurred by Customs in delivering audit and inspection services. These increases will consist largely of annual rises in labor costs. It is expected that labor costs, and thus annual fees charged zone operators, will rise by a moderate 2–4% per year.

Since sub-zone users are generally large companies, the effects of fees on them do not fall within the purview of the RFA and this analysis and thus will not be considered in this economic review. The burden on small business from this fee schedule (yielding $591,000/yr.) would be an average $450 per small user. Elimination of the current reimbursement method ($870 per small user annually), even under the caveats noted above, would more than cover these new audit-inspection approach fees.

New Zone Activation and Boundary Alteration Fees.

Under present procedures, zone applicants are not billed for necessary Customs preparatory work prior to a zone's activation or alteration. The proposed revisions contain a provision allowing Customs to recover its costs for such tasks, among others, as site surveys, background investigations, zone approval processing, inventory systems review and associated clerical costs. These fees would be applicable to zones which are activated, relocated or altered on or after the effective date of final rulemaking.

Prospective fees are currently estimated at the following:

(a) $1,021 for zone activation;
(b) $442 for zone relocation; and
(c) $442 for zone alterations.

Concerning effects on small businesses, we expect average added cost pass-through from this source to be insignificant.

Overlapping Rules

None identifiable.

Alternative Proposals

None feasible. The *Status Quo* becomes more untenable as complex zone manufacturing operations increase in number, while Customs resources diminish.

Summary of Economic Effects

Based on present available data, the proposed revisions would appear to provide net yearly benefits to zone operators and users of $1.3 million, as summarized below:

QUANTIFIED COST (–) BENEFITS (+)

[In dollars]

Document reduction	+650,000
Current reimbursement eliminated	+1,300,000
New annual fees for audit approach	-591,000
Total	+1,359,000

NON-QUANTIFIED FACTORS

	Added costs	New benefits	Neutral effect
Admission of goods	X		
Removal of goods		X	
Inventory control and record keeping system			X
Mandatory bonding			X

[FR Doc. 86-2399 Filed 2-10-86; 8:45 am]

BILLING CODE 4820-02-M

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-86-1178; FR-1656]

Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans; Correction of Final Rule and Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule and announcement of effective date; correction.

SUMMARY: This notice corrects a citation contained in the final rule on property improvement and manufactured home loans under Title I, Section 2 of the National Housing Act. This rule was published on October 25, 1985 (50 FR 43516). It also corrects certain phrases in provisions contained in the notice published on January 14, 1986 (51 FR 1495) that announced an effective date of January 15, 1986 for most provisions of the final rule.

FOR FURTHER INFORMATION CONTACT: William C. Sorrentino, Director, Office of Manufactured Housing and Regulatory Functions, room 9158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5210. (This is not a toll-free number.)

Accordingly, the Department is correcting FR Document 85-1178, published on October 25, 1985 (50 FR 43516) and the notice of announcement of the effective date for the final rule published on January 14, 1986 (51 FR 1495) as follows:

§ 201.54 [Corrected]

1. In paragraph (d) of § 201.54, on the top of page 43539, column one, line 18 is corrected by replacing the reference to "paragraph (g)" with "paragraph (f)".

2. In the notice of announcement of the effective date of the rule, in the center and right-hand columns on page 1495, following the heading **"DATES"**, the section reference to "201.10(b)(1)" is changed to "201.10(b)", the phrase "§ 201.10(b)(4) (sentence one only)" is removed, and the section reference "201.530(a)" is changed to "201.530". As amended by these changes, the text of the notice relating to dates reads as follows:

"DATES: *Effective date:* This rule is effective on January 15, 1986.

"However, a new manufactured home produced with a data plate and sold with a wholesale manufacturer's invoice that are *both* dated before January 15, 1986, and which has been sold with a manufacturer's invoice that complies with Title I regulations in effect before January 15, 1986, but not with regulations in effect on or after January 15, 1986, has until July 15, 1986 to comply with the following listed provisions: § 201.2(p), (hh), (ii), (kk), and (*ll*); § 201.10 (b) and (d)(1); § 201.21(b)(3); and § 201.10(d)(4) (sentence one only). For the loans eligible to use the delayed compliance date, the following provisions from the regulations in effect before January 15, 1986 shall be used with respect to the origination of Title I manufactured home loans through July 14, 1986: §§ 201.501(i), 201.530, 201.1502(i), and 201.1504(a)(2)."

3. In the list of regulatory provisions contained in paragraph D of the notice in the center column on page 1496, the section reference "201.10(b)(1)" is changed to "201.10(b)", the phrase "the first sentence of § 201.10(b)(4)" is removed, the phrase "during the period January 15, 1986 through July 1986" is changed to "during the period January 15, 1986 through July 14, 1986", and the section reference "201.530(a)" is changed to "201.530". As amended by these changes, paragraph D reads as follows:

"D. For a new manufactured home produced with a data plate and sold with a wholesale manufacturer's invoice that are both dated before January 15, 1986, but which has been sold with a manufacturer's invoice prepared under current Title I regulations that is not in compliance with the requirements of the new Title I final rule, the effective date of the final rule is January 15, 1986, *except* compliance with the following provisions of the new rule will not be required until July 14, 1986: § 201.1 (p), (hh), (ii), (kk), and (*ll*); § 201.10 (b) and (d)(1); § 201.21(b)(3); and the first sentence of § 201.10 (d)(4). With respect to the origination of Title I manufactured home loans concerning these homes during the period January 15, 1986 through July 14, 1986, §§ 201.501(i), 201.530, 201.1502(i), and 201.1504(a)(2) of the current Title I regulations shall continue in effect. Thereafter, such new homes shall only be eligible for Title I manufactured home loans originated on or after July 15, 1986 if their wholesale manufacturer's invoices wholly meet the requirements of the new Title I final rule."

Dated: February 5, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86-2957 Filed 2-10-86; 8:45 am]

BILLING CODE 4210-27-M

POSTAL RATE COMMISSION

39 CFR Part 3000

[Docket No. RM86-4; Order No. 663]

Personnel Conduct; Outside Employment and Disclosure of Financial Interests,

Issued February 4, 1986

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Postal Rate Commission is amending its rules governing disclosure of financial interests. The Commission is adding a provision requiring all employees to certify annually that they are aware of the Commission's conflict-of-interest standards and that they have no interests that conflict with these standards. The Commission is also adding a subsection indicating that it has internal guidelines governing the amount of investments an employee may have in any one entity. Lastly, the rule governing financial disclosure for new employees is being modified to require new employees transferring from other government agencies to file financial disclosure statements unless the most recent disclosure statement filed with the employee's former government employer was publicly available.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street NW., Washington, DC 20268-0001; Telephone (202) 789-6820.

SUPPLEMENTARY INFORMATION: The Postal Rate Commission has reviewed its Standards of Conduct (39 CFR Part 3000) and has determined that it is appropriate to amend its rules governing the reporting of financial interests. An explanation of the amendments is provided below.

Existing rules governing financial disclosure require that employees at grade level EAS 25 or above file financial disclosure statements. Employees below grade level EAS 25 are not required to file financial disclosure forms. The financial disclosure statements filed by reporting employees contain a *de minimis* exception. If the financial interest provides less than $100 in income during the reporting year and has a value of less than $1,000, the employee need not report it on the financial disclosure form. To minimize the possibility of an inadvertent violation of our Standards of Conduct, we are amending our rules to require that all employees certify annually that they do not have any investments that violate our conflict-of-interests standards.

Current Rule 402(a)(1) (39 CFR 3000.735-402(a)(1)) exempts new employees from filing financial disclosure statements if they have transferred from another government position which required the filing of a financial disclosure statement. If the financial disclosure statement filed at the employee's former government employer is treated on a confidential basis, the Commission would not have access to the disclosure statement and thus the Commission would be unable to review the new employee's financial interests. To insure that the Commission has an opportunity to review the new employee's financial disclosure form, we are amending our rules to exempt from filing financial disclosure statements only new employees who have filed a public financial disclosure statement.

The Commission's internal guidelines used to evaluate employee financial interests permit the Chairman to set a maximum limit on an employee's interest in any one entity or person. Employees who have investments exceeding this limitation must obtain a written determination that the interest is not so substantial as to affect the integrity of the services preformed by the employee. The Commission is amending its Standards of Conduct to give notice of this practice.

As the amendments herein involve matters of agency organization and procedure, the notice requirements of the Administrative Procedure Act (5 U.S.C. 553) do not apply. These rule changes are limited to minor changes in employee reporting requirements. Thus, they do not constitute a "major rule" under E.O. 12291. For the same reason, the rule changes will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

List of Subjects in 39 CFR Part 3000

Standards of conduct.

PART 3000—STANDARDS OF CONDUCT

Accordingly, pursuant to 39 U.S.C. 3603, it is order that, effective April 1, 1986, 39 CFR Part 3000, Subparts C and D are hereby amended as follows:

1. The authority citation for Part 3000 of title 39 continues to read as follows:

Authority: E.O. 11222 of May 8, 1965, 3 CFR 1964-1965 Comp., p. 306; E.O. 11570 of Nov. 24, 1970, 35 FR 18183; and 5 CFR Part 735, unless otherwise noted.

Subpart C—Conflicts of Interest and Ethical Conduct

2. 39 CFR 3000.735-302 is amended by adding paragraph (h) to read as follows:

§ 3000.735-302 Financial interests.

* * * * *

(h) The Chairman from time to time determines the appropriate maximum limit for an interest in any one entity or person. An employee may not maintain an interest above that limit unless he or she receives a written determination by the Chairman pursuant to section 208(b)(1) of title 18, U.S.C., that the interest is not so substantial as to be deemed likely to affect the integrity of the service which the Government may expect of him or her.

Subpart D—Reporting Outside Employment and Financial Interests

3. 39 CFR 3000.735-401 is amended by adding at the end a new sentence, reading as follows:

§ 3000.735-401 General standards.

* * * * *

Each employee shall annual certify to the Counselor that, to the best of his or her knowledge, information and belief, neither the employee nor his or her spouse, minor children and other relatives who are residents of the employee's immediate household have any financial interests or any outside employment which violate the Commission's Standards of Conduct.

4. 39 CFR 3000.735-402 is amended by revising paragraph (a)(1) to read as follows:

§ 3000.735-402 Reporting employment and financial interests—regular employees.

(a) * * *

(1) A financial disclosure statement shall be filed by a covered employee within 30 days of assuming a position with the Commission. If such individual has left another government position for which public financial disclosure statements were filed, a copy of the most recent such statement will fulfill the requirement of this paragraph. With respect to Commissioners, the financial disclosure statement filed by such Commissioner with the Commission in connection with his or her nomination to the position of Commissioner will fulfill the requirement of this paragraph.

* * * * *

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 86-2914 Filed 2-10-86; 8:45 am]

BILLING CODE 7715-01-M

VOL 51 ISS 28 FE 11 1986 UMI

Proposed Rules

Federal Register
Vol. 51, No. 28
Tuesday, February 11, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1136 and 1139

[Docket Nos. AO-309-A27 and AO-374-A11]

Milk in the Great Basin and Lake Mead Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultrual Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider a merger of the Great Basin and Lake Mead Federal milk orders. Western General Dairies, Inc., Lake Mead Cooperative Association and Intermountain Milk Producers requested that the hearing be held to consider merging the two orders. These cooperative organizations contend that the territory covered by the two orders is now essentially one market. The proposed merged order would combine the marketing areas of the two existing orders and add some currently unregulated areas. It is expected that no additional handlers would be regulated. The present Class I price differentials at Salt Lake City and Las Vegas would be maintained.

The proposal contains the first component pricing plan to be considered for incorporation in a Federal milk order in recent times. The proposed merged order would modify current princing provisions to accommodate a multiple component pricing plan using values for protein and butterfat to adjust the value of milk used in Class II and Class III products and payments to producers.

Other features of the proposal not now contained in either order would include in the pool plant definition a manufacturing plant located within the marketing area and operated by a cooperative association, allocate receipts to classes of utilization by product pounds instead of by skim and butterfat pounds and pool the differential value of producer milk used in Class I and Class II rather than pooling the full value of producer milk. Prices paid to producers would not be affected by the differntial pooling provision. The obligation of a partially regulated distributing plant operator regulated by a State order would be determined by subtracting any amount the handler has paid under the State order for the fluid milk products distributed in the Federal order marketing area from the value of those products at the applicable Federal order Class I price.

Three proprietary handlers submitted additional proposals related to the pooling standards, location pricing and producer payment provisions of the proposed merged order.

DATE: The hearing will convene at 9:00 a.m., on Tuesday, March 18, 1986.

ADDRESS: The hearing will be held in the Little America Motel, 500 South Main Street, Salt Lake City, Utah 84101 (Telephone 801/363-6781).

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultrual Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Little America Motel, 500 South Main Street, Salt Lake City, Utah 84101, beginning at 9:00 a.m., local time, on March 18, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Great Basin and Lake Mead marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Proposal No. 1, a proposal to combine the Great Basin and Lake Mead marketing areas and some currently unregulated areas under one order, raises the issue of whether the provisions set forth in that proposal would tend to effectuate the declared policy of the Act if they are applied to the proposed merged and expanded marketing area and, if not, what modifications of the proposal would be appropriate.

Issues raised by the proposals set forth herein also include whether the declared policy of the Act would tend to be effectuated by:

(a) Merging under one order the Great Basin and Lake Mead marketing areas.

(b) Adopting a component pricing plan to adjust the value of milk used by handlers in Class II and Class III and payments to producers by using values for protein and butterfat.

(c) Adopting any of the proposed provisions, or appropriate modification thereof, for separate orders or a combined order, including a review of the appropriate pricing and pooling provisions of the order whether separate or combined. The issue of consolidation of the Great Basin and Lake Mead marketing areas also raises the issue of the appropriate disposition of the producer-settlement funds, marketing service funds and administrative funds accumulated under the respective orders.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest

modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1136 and 1139

Milk marketing orders, Milk Dairy products.

The authority citation for parts 1136 and 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Lake Mead Cooperative Association, Western General Dairies, Inc., and Intermountain Milk Producers:

Proposal No. 1.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

§ 1139.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference, and made a part of this order.[1]

Definitions

§ 1139.2 Great Basin marketing area.

"Great Basin marketing area" (hereinafter called the "marketing area") means all the territory, including all municipalities and government reservations and installations within, or partially within, the counties listed below:

Utah Counties

All.

Nevada Counties

Clark, Elko, Lincoln and White Pine.

Wyoming Counties

Lincoln and Uinta.

Idaho Counties

Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Jefferson, Madison, Oneida and Power.

§ 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product from a plant to a retail or wholesale outlet (including any delivery to a distribution point by a vendor, from a plant store, or through a vending machine.) The term "route disposition" does not include a delivery to a plant defined in § 1139.7 (a) or (b).

[1] The provisions of part 1000 (7 CFR Part 1000) are set forth immediately following Proposal No. 1.

§ 1139.4 [Reserved]

§ 1139.5 Distributing plant.

"Distributing plant" means a plant in which approved fluid milk products or filled milk are processed or packaged, and from which fluid milk products are disposed of on routes in the marketing area during the month.

§ 1139.6 Supply plant.

"Supply plant" means a plant from which approved fluid milk products or filled milk are transferred in bulk form during the month to a pool distributing plant.

§ 1139.7 Pool plant.

"Pool plant" means any plant, except a plant defined in § 1139.8, which meets the standards of one or more of the following paragraphs:

(a) A distributing plant;

(1) From which not less than:

(i) 50 percent in any month of September through February, 45 percent in any month of March and April, and 40 percent of any month of May through August of the approved fluid milk products, except filled milk, received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class II, or Class III under this order and which is subject to the pricing and pooling provisions of any other order issued pursuant to the Act), are disposed of as route disposition; and

(ii) 15 percent of such receipts are disposed of as route disposition in the marketing area during the month.

(2) Producer milk which a cooperative association, or a federation of which it is a member, causes to be delivered to pool distributing plants of other handlers shall be included with receipts of producer milk at the distributing plants of the cooperative or federation and the quantity of such deliveries assigned to Class I pursuant to § 1139.45(d) shall be included as route disposition from such cooperative's or federation's plant(s) in determining their pool plant status as follows:

(i) If the cooperative association or federation operates more than one distributing plant as defined in § 1139.5, such producer milk and Class I utilization shall be included in the computation for whichever plant the cooperative association or federation requests in writing to the market administrator; and

(ii) If no such written request is made, such producer milk and Class I milk shall be prorated among the plants.

(3) If a handler operates more than one distributing plant, the combined receipts and fluid milk product dispositions of such plants may be used as the basis for qualifying all of the plants pursuant to (a)(1)(i) of this section, provided the handler so notifies the market administrator in writing before the last day of the month for which such consolidation is desired.

(b) A distributing plant that meets the following conditions:

(1) The plant is located in the marketing area;

(2) The plant meets the requirements of (a)(1)(i) of this section; and

(3) The principal activity of such plant is the processing and distribution of aseptically processed and packaged fluid milk products.

(c) A supply plant from which during the month not less than 50 percent of its approved milk receipts from dairy farmers is transferred to a pool distributing plant pursuant to (a) or (b) of this section as fluid milk products. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any of such months is filed by the plant operator with the market administrator prior to the first day of the month the request is to be effective. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of the March through July period unless it fulfills the transferring requirement of this paragraph for such month.

(d) Any plant not defined in (a), (b) or (c) of this section located within the marketing area at which milk is received from producers and which is operated by a cooperative association or federation, which has 60 percent or more of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) received at pool distributing plants during the current month or the 12-month period ending with the current month.

§ 1139.8 Nonpool plant.

"Nonpool plant" means any plant defined in this section, and any other milk-receiving, manufacturing, or processing plant, other than a pool plant:

(a) "Producer-handler plant" means a plant operated by a producer-handler as defined in this, or any other order issued pursuant to the Act.

(b) "Other order plant" means a plant as specified under (1), (2) or (3) of this paragraph that is fully subject to the

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pricing and pooling provisions of another order issued pursuant the the Act:

(1) A distributing plant qualified pursuant to § 1139.7(a) that also meets the pool plant requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk was disposed of as route disposition during the month in such other Federal order marketing area than was disposed of as route disposition in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its Class I route disposition is made in such other marketing area;

(2) A supply plant qualified pursuant to § 1139.7(c) that also meets the pool plant requirements of another Federal order and from which a larger quantity of fluid milk products is transferred during the month to plants regulated under such other order than is transferred to distributing plants under this order, except that transfers to other order plants for Class III dispositions during the months of March through July shall be disregarded for purposes of this computation if the operator of the supply plant elects to retain pool status under this order; or

(3) A plant qualified pursuant to § 1139.7 (a), (b), or (c) which the Secretary determines, despite the provisions of this order, to be fully regulated under another Federal order.

(c) "Exempt plant" means a distributing plant having less than an average of one thousand pounds per day of route dispositions in the marketing area during the month.

(d) "Partially regulated distributing plant" means any other distributing plant not defined in this section that is not a pool plant.

(e) "Unregulated supply plant" means any other supply plant not defined in this section that is not a pool plant.

§ 1139.9 Handler.

"Handler" means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative association with respect to milk of its producers that it diverts for its account pursuant to § 1139.13;

(c) Any cooperative association or federation with respect to producer milk that is received at the farm for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association or federation; or

(d) Any person who operates a plant defined in § 1139.8 (a) through (e).

§ 1139.10 Producer-handler.

"Producer-handler" means any person who is an individual, partnership, or corporation and who meets all of the following conditions:

(a) Operates a dairy farm(s) from which the milk produced thereon is supplied to a plant operated by such person in accordance with the conditions set forth in (b) of this section, and provides proof satisfactory to the market administrator that:

(1) The full maintenance of milk-producing cows on such farm(s) is such person's sole risk, and under such person's complete and exclusive management and control;

(2) Each such farm is owned or operated by and at the sole risk of such person, and under such person's complete and exclusive management and control; and

(3) Only such person, and no other person (except a member of such person's immediate family, or a stockholder in the case of a corporate operator) employed on such farm(s) own, fully or partially, either the cows producing the milk on the farm or the farm on which it is produced;

(b) Operates a plant in which approved milk is processed or packaged and from which there is route disposition during the month in the marketing area:

Provided, That:

(1) No fluid milk products are received at such plant during the month or by such person at any other location except;

(i) From the dairy farm(s) specified in (a) of this section; and

(ii) From pool plants, or other order plants, in an amount that is not in excess of the lesser of 5,000 pounds or 5 percent of such person's Class I disposition during the month;

(2) Such plant is operated under such person's complete and exclusive management and control and at such person's sole risk, and is not used during the month to process, package, receive or otherwise handle fluid milk products for any other person; and

(3) For the purpose of this section, all fluid milk products disposed of as route disposition or at stores operated by such person or by any person (including the operator of a plant, or vendor) who controls or is controlled by such person (e.g., as an interlocking stockholder) or in which such person (including, in the case of a corporation, any stockholder therein) has a financial interest, shall be considered as having been received at such person's plant; and the utilization for such plant shall include all such route and store dispositions; and

(c) Disposes of no other source milk (except that in the fortification of fluid milk products) as Class I milk.

§ 1139.11 Approved milk.

"Approved milk" means any milk, or fluid milk product that is approved for fluid consumption by a duly constituted regulatory authority.

§ 1139.12 Producer.

(a) Except as provided in (b) hereof, "producer" means any person:

(1) Who produces approved milk; and

(2) Whose milk is received at a pool plant or diverted to a nonpool plant that is not a producer-handler plant within the limits set forth in § 1139.13

(b) "Producer" shall not include:

(1) A producer-handler as defined under any order (including this order) issued pursuant to the Act;

(2) Any person with respect to milk diverted to a pool plant from an other order plant, if the other order designates such person as a producer under that order, and such milk is allocated to Class II, or Class III utilization pursuant to § 1139.44(h)(3);

(3) Any person with respect to milk diverted to an other order plant if any part of such milk was allocated to Class I, or the other order defines such person as a producer; or

(4) Any person whose milk is received at a pool plant if during the month milk from the same farm shared in the returns from fluid milk sales in another market, or was received at a nonpool plant (except an other order plant or a milk manufacturing plant that is not approved for the handling of fluid milk products) other than as a diversion.

§ 1139.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received or diverted by a handler defined in § 1139.9(a) under one of the following conditions:

(1) Received at such handler's pool plant directly from the farm of such producer;

(2) Received at such handler's pool plant from a handler defined in § 1139.9(c); or

(3) Diverted to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in (d) of this section;

(b) Diverted by a handler defined in § 1139.9(b), to a nonpool plant that is not a producer-handler plant, subject to the conditions set forth in (d) of this section;

(c) Received by a handler defined in § 1139.9(c), from the producer's farm in excess of the producer's milk that is received at pool plants pursuant to (a)(2) of this section. Such producer milk shall be deemed to have been received by the handler at the location of the pool plant to which the milk was delivered;

(d) The following conditions shall apply to producer milk diverted to a nonpool plant that is not a producer-handler plant:

(1) The milk shall be priced at the location of the plant to which diverted;

(2) A cooperative association or federation may divert for its account the milk of any producer from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 25 percent in the months of April through August and 15 percent in other months of the producer milk which the association or federation causes to be delivered to pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants, or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator;

(3) The operator of a pool plant (other than a cooperative association or federation) may divert for its account the milk of any producer (other than milk diverted pursuant to (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 25 percent in the months of April through August, and 15 percent in other months of the milk received at such pool plant from producers for which the operator of such is the handler for the month. The milk for which the operator of such plant is the handler for the month may not duplicate milk diverted pursuant to (d)(2) of this section;

(4) Diversions in excess of such percentages shall not be producer milk, and the diverting handler shall designate the milk which is not producer milk. If the handler fails to make such designation, no milk diverted by the handler shall be producer milk; and

(5) Milk of a dairy farmer who was not a producer in the preceding month shall not be eligible for diversion until after one day's milk production from such farmer has been received at a pool plant.

§ 1139.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers defined in § 1139.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1139.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1139.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1139.40(b)(1) for which the handler fails to establish a disposition.

§ 1139.15 Fluid milk product.

(a) Except as provided in (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in consumer-type packages), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), whey, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass, foil-lined paper, or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

(2) The quantity of skim milk in any modified product specified in (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1139.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1139.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring), resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1139.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of dairy farmers, including producers, which the Secretary determines, after application by the cooperative association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and any amendments thereto;

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

§ 1139.19 Product prices.

The prices specified in this section as computed and published by the Director of the Dairy Division, Agricultural Marketing Service, shall be used in calculating the basic Class II formula price, and the term "work-day" as used herein shall mean each Monday through Friday that is not a national holiday.

(a) "Butter price" means the simple average of the prices per pound of Grade A (92-score) butter on the Chicago Mercantile Exchange for the work-days during the first 15 days of the month, using the price reported each week as the price for the day of the report, and for each succeeding work-day until the next price is reported.

(b) "Cheddar cheese price" means the simple average for the work-days during the first 15 days of the month, of the prices per pound of cheddar cheese in 40 pound blocks on the national Cheese Exchange (Green Bay, WI). The price reported for each week shall be used as the price for the day on which reported, and for each succeeding work-day until the next price is reported.

(c) "Nonfat dry milk price" means the simple average of the prices per pound of nonfat dry milk for the work-days during the first 15 days of the month computed as follows:

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(1) Use the prices (using the midpoint of any price range as one price) reported each week for high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area;

(2) Compute a simple average of the weekly prices for the three types of nonfat dry milk in (c)(1) of this section. Such average shall be the daily price for the day on which the prices were reported and for each preceding work-day until the day such prices were previously reported; and

(3) Add the prices determined in (c)(2) of this section for the work-days during the first 15 days of the month and compute the simple average thereof.

(d) "Edible whey price" means the simple average of the prices per pound of edible whey powder for the Central States production area for the work-days during the first 15 days of the month. The prices used shall be the price (using the midpoint of any price range as one price) reported each week as the daily price for the day on which reported, and for each preceding work-day until the day such price was previously reported.

§ 1139.20 Minnesota-Wisconsin price.

The "Minnesota-Wisconsin price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1139.21 Federation.

Federation means a business organization which is incorporated under state law that is owned and operated by two or more cooperative associations as defined in § 1139.16.

Handler Reports and Records

§ 1139.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, the following information for such month:

(a) Each handler shall, with respect to each of its pool plants, report the quantities of, and the pounds of butterfat and milk protein contained in:

(1) Receipts of producer milk, including producer milk diverted by the handler;

(2) Receipts of milk from handlers defined in § 1139.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1139.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distribution plant shall report with respect to such plant in the same manner as prescribed for reports required by (a) of ths section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler as defined in § 1139.9 (b) and (c) shall report:

(1) The quantities of, and pounds of butterfat and milk protein contained in, receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to all receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1139.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler who pay producers pursuant to § 1139.74 shall submit a producer payroll to the market administrator which shall include the following information for each producer from whom milk was received during such month:

(1) The name and address of the producer;

(2) The total pounds and, with respect to final payments, the average butterfat and milk protein content of the milk, and the number of days on which milk was received from each producer;

(3) The minimum payment required by the order, and the amount paid if more than the minimum required;

(4) The amount and nature of any deductions as authorized in writing by the producer, from such payment;

(5) The net amount of payment to the producer; and

(6) The date the payment was made.

(b) On or before the 21st day after the end of the month, each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1139.76 (a) shall report to the market administrator with respect to milk received from each dairy farmer who would have been a producer if the plant had been fully regulated the following information for such month:

(1) The name and address of the dairy farmer;

(2) The total pounds of milk received from the dairy farmer;

(3) The average butterfat and milk protein content of such milk;

(4) The amount and nature of any deductions authorized in writing by the dairy farmer from the payment for such milk; and

(5) The net amount of payment paid.

§ 1139.32 Other reports.

In addition to the reports required pursuant to §§ 1139.30 and 1139.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligations under this order.

§ 1139.33 Milk component records.

In addition to the records otherwise required pursuant to this order, each handler shall maintain books and records concerning all milk and dairy products received, handled, disposed of or in inventory at the end of each month which shall state the volume and/or weight of each product which must be classified under this order, together with the butterfat and milk protein content thereof.

Classification and Accountability

§ 1139.40 Classes of utilizations.

The classes of utilization of skim milk and butterfat shall be as follows:

(a) *Class I milk.* Except as provided in (b) and (c) of this section, Class I milk shall be all butterfat and skim milk:

(1) Disposed of as route dispositions; or

(2) Not specifically classified as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all butterfat and skim milk:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and and product containing 6 percent of more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in (c) of this section;

(2) In packaged inventory at the end of the month of products specified in (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk plant) at which food products (other than milk products) are processed, and from which there is no disposition of fluid milk products, or fluid cream products other than those received in consumer type packages; and

(4) Used to produce:

(i) Cottage cheese (all forms);

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk fluid form other than that specified in (c) (1) (iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, or aseptically packaged and hermetically sealed in foil-lined paper containers.

(c) *Class III milk.* Class II milk shall be all butterfat and skim milk:

(1) Used to produce:

(i) Cheese, other than cottage cheese in any form;

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk fluid form that is used to produce a Class III product;

(v) Evaported milk or condensed milk (plain or sweetened) in a consumer-type package and evaported or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any other dairy product not otherwise specified in this section.

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form, and products specified in (b)(1) of this section in bulk form;

(3) In fluid milk products, and products specified in (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1139.15;

(6) In shrinkage assigned pursuant to § 1139.42(a) to the receipts specified in § 1139.42 (a)(2) and in shrinkage specified in § 1139.42 (b) and (c).

§ 1139.41 General accounting and classification rules.

Each month the market administrator shall:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to § 1130.30;

(b) Compute for each pool plant and for handlers defined in § 1139.9 (b) and (c) the amount, if any, by which the product pounds and the pounds of butterfat or milk protein to be accounted for exceed or are less than the pounds accounted for;

(c) Classify the receipts for each pool plant and for each handler pursuant to § 1139.9 (b) or (c) in accordance with §§ 1139.40, 1139.42, 1139.43, and 1139.44;

(d) Determine the classification of producer milk of a handler pursuant to § 1139.9 (b) and (c) separately from the operations of any pool plant operated by such handler;

(e) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this order as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(f) In the absence of complete and verifiable information concerning the milk protein content of any milk or dairy product which must be classified at any pool plant, the market administrator shall make an assignment for purposes of pricing and classification as follows:

(1) Assign to the fluid milk products packaged, processed or disposed of at all such pool plants during the month, a milk protein content based on the minimum required percentages of milk protein prescribed in the appropriate State or Federal standards of identity for the product involved, provided that if no such minimum milk protein standards are prescribed, the market administrator shall base the milk protein content on the average content of producer milk which meets the minimum nonfat solids content required in such standards of identity.

(2) The balance of the milk protein to be accounted for at the pool plant(s) each month shall be assigned prorata to the Class II and Class III utilization of the handler during the month based on the skim milk solids or the skim equivalent utilized in those classes.

(g) Notwithstanding the provisions of (f) hereof, make the following computations for the purpose of determining the amount of milk protein in fluid milk products to be accounted for with respect to all Class I fluid milk products disposed of by pool handlers for pricing purposes:

(1) Compute the average milk protein content of all producer milk pooled during the month;

(2) Adjust the total pounds of Class I fluid milk products disposed of by each pool handler during the month to the average butterfat percentage of all producer milk by adding or subtracting butterfat as necessary; and

(3) Compute a total Class I milk protein utilization for each handler by multiplying the adjusted pound of fluid milk products as computed under (2) hereof by the percentage computed under (1) hereof.

(4) The resulting pounds of milk protein shall be that deemed to have been disposed of in Class I milk for purposes of computing handler obligations under § 1139.60(h)(2).

§ 1139.42 Proration of shrinkage.

For purposes of prorating shrinkage of the product pounds reported by a handler pursuant to § 1139.30, the market administrator shall determine the following:

(a) The assignment of shrinkage at each pool plant shall be as follows:

(1) In the receipts specified in (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in (b) (1) through (6) of this section which was received in the form of bulk fluid milk product or a bulk fluid cream product:

(b) the shrinkage assigned pursuant to (a) of this section to the receipts specified in (a)(1) of this section that is not in excess of:

(1) Two percent of the producer milk (excluding milk diverted, or received from handlers defined in § 1139.9(c);

(2) Plus 1.5 percent of the milk received from handlers defined in § 1139.9(c), except if the operator of the plant to which the milk is delivered purchases such milk on the basis of quantities determined from its measurement at the farm and tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the producer milk diverted by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of quantities determined from its measurement at the farm and tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the bulk fluid milk products received by transfer from other pool plants;

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(5) Plus 1.5 percent of the bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the bulk fluid milk products transferred to other plants that is not in excess of the respective quantities to which precentages are applied in (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of shrinkage in milk from producers for which a cooperative association or federation is the handler pursuant to § 1139.9 (b) or (c), but not in excess of 0.5 percent thereof. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and tests determined from farm bulk tank samples, the applicable percentage for the cooperative association or federation shall be zero.

§ 1139.43 Assignment of transfers and diversions.

(a) *Transfers to pool plants.* Fluid milk products or bulk fluid cream products transferred from a pool plant to another pool plant shall be assigned as Class I milk unless the operators of both plants request assignment to another class. In either case, the assignment of such transfers shall be subject to the following conditions:

(1) The quantities assigned in each class shall be limited to the amounts remaining in such classes at the transferee-plant after the computation pursuant to § 1139.44(1);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1139.44(g), the product so transferred shall be assigned so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1139.44 (k) or (l), the product transferred, up to the total of such receipts of other source milk, shall not be assigned as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Diversions or transfers of bulk fluid milk products or transfers of bulk fluid cream products from a pool plant to an other order plant shall be assigned in the following manner. Such assignment shall apply only to the quantities in excess of any receipts at the pool plant from the other order plant in fluid milk products and bulk fluid cream products, respectively, that are in the same category as specified in (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, assignment shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred or diverted in bulk form, assignment shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be assigned as Class II or Class III milk to the extent such utilization is available for such assignment pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to whch such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of assigning under this paragraph, assignment shall be Class I subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this order, product allocated to a class consisting primarily of fluid milk products shall be assigned as Class I milk, and product allocated to the other classes shall be assigned as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, assignment under this paragraph shall be in accordance with the provisions of § 1139.40.

(c) *Transfers to producer-handlers and to plants defined in § 1139.8(c).* Transfers by a handler defined in § 1139.9(a) to a producer-handler or to a nonpool plant as defined in § 1139.8(c) shall be assigned:

(1) As class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of bulk fluid cream products, prorata to each source.

(d) *Transfers and diversions to other nonpool plants.* Transfers and diversions in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a plant defined in § 1139.8(c) shall be assigned:

(1) As Class I milk if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product, or transferred in the form of a bulk fluid cream product unless the following conditions apply:

(i) If the transferor-handler or divertor-handler so requests, and the conditions defined in (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be assigned on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1139.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of fluid and nonfluid milk products received at such plant which are made available for verfication if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Prorata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Prorata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants:

(*c*) Prorata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Prorata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible prorate to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such

transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Prorata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Prorata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of approved milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of approved milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of approved milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, prorata among such plants, to the extent possible, first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilizatin at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, prorata among such plants to the extent possible, first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities that are set forth in this paragraph.

§ 1139.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk for each handler defined in § 1139.9(a) for each of the handler's pool plants separately and of eah handler defined in § 1139.9(b) and (c) by allocating the handler's receipts to his utilizations as follows:

(a) Subtract from the total pounds in Class III the pounds in shrinkage specified in § 1139.42(b);

(b) Subtract from the total pounds in Class I the pounds in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(c) Subtract from the pounds remaining in each class the pounds in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to (g)(6) of this section, as follows:

(1) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(2) From Class I milk, the remainder of such receipt;

(d) Subtract from the pounds in Class II the pounds in § 1139.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds remaining in Class II;

(e) Subtract from the remaining pounds in Class II the pounds in products specified in § 1139.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(f) Subtract from the remaining pounds in Class II the pounds in other source milk (except that received in the form of a fluid milk product, or a fluid cream product) that is used to produce, or added to, any product specified in § 1139.40(b), but not in excess of the pounds remaining in Class II;

(g) Subtract in the order specified below from the pounds remaining in each class; in series beginning with Class III, the pounds in each of the following:

(1) Other source milk (except that received in the form of a fluid milk product) and, if (e) of this section applies, packaged inventory at the beginning of the month of products specified in § 1139.40(b)(a) that were not subtracted pursuant to (d), (e), and (f) of this section;

(2) Receipts of fluid milk products (except filled milk) for which approved milk product status is not established;

(3) Receipts of fluid milk products from unidentified sources;

(4) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(5) Receipt of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to (b) of this section;

(6) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk to allocated to Class I at the transferor-plant; and

(7) Receipts of milk from a dairy farmer pursuant to § 1139.12(b)(4);

(h) Subtract in the order specified below from the pounds remaining in Class II and Class III, in sequence beginning with Class III:

(1) The pounds in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to (b) and (g)(5) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds remaining in Class II and Class III combined;

(2) The pounds in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to (b), (g)(5), and (h)(1) of this section which are in excess of the pounds determined pursuant to (b)(2) (i) through (iii) of this section. Should the pounds to be subtracted from Class II and Class III combined exceed the pounds remaining in such classes, the pounds in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of Class I milk shall be decreased by a like amount. In such case, the pounds remaining in each class at this allocation step at the handler's other pool plant(s) shall be adjusted in the reverse direction in sequence, beginning with the plant(s) having the smallest location or zone differential(s).

(i) Multiply by 1.25 the sum of the pounds remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(ii) Subtract from the above result the sum of the pounds in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pusuant to (g)(6) of this section; and

(iii) Multiply any plus quantity resulting above by the percentage that the receipts of fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(3) The pounds in receipts of bulk fluid milk products that were priced and

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pooled under another Federal order that are in excess of bulk fluid milk products transferred to plants under such order, and that were not subtracted pursuant to (g)(6) of this section, if Class II or Class III classification is requested by both the transferring and receiving handlers, but not in excess of the pounds remaining in Class II and Class III combined;

(i) Subtract from the pounds remaining in each class, in series beginning with Class III, the pounds in fluid milk products and products specified in § 1139.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (e) and (g)(1) of this section;

(j) Add to the remaining pounds in Class III the pounds subtracted pursuant to (a) of this section;

(k) Subject to the provisions of (k) (1) and (2) of this section, subtract from the pounds remaining in each class at the plant, prorata to the total pounds remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to (b), (g)(5), and (h) (1) and (2) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(1) Should the pounds to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds remaining in such classes, the pounds in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds in Class I shall be decreased by a like amount. In such case, the pounds remaining in each class at this allocation step shall be adjusted an offsetting amount at the handler's other pool plants in sequence, beginning with the plant having the smallest location or zone adjustment; and

(2) Should the pounds to be subtracted from Class I pursuant to this paragraph exceed the pounds remaining in such class, the pounds in Class I shall be increased by an amount equal to such excess quantity, such increase to be offset first by decreasing the pounds in Class III and then in Class II if necessary. In case such offset is made, the pounds remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a similar amount, in sequence, beginning with the plant having the smallest location or zone adjustment.

(l) Subtract in the manner specified herein from the pounds remaining in each class the pounds in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant that were not subtracted pursuant to (g)(6) and (h)(3) of this section;

(1) Subject to the provisions of (2), (3), and (4) of this paragraph, such subtraction shall be prorate to the pounds in Class I and in Class II and Class III combined, with the combined quantity being subtracted first from Class III and then from Class II. The pounds to be subtracted from each classification pursuant hereto shall be determined based on whichever of the following subsections results in the smallest assignment to Class I.

(i) The estimated utilization of all handlers in each class as announced for the month pursuant to § 1139.45(a); or

(ii) The total pounds remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(2) Should the proration pursuant to (l)(1) of this section cause the total pounds at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined to exceed the pounds remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds remaining in Class I after such proration at the pool plants at which such other source milk was received;

(3) Except as provided in (l)(2) of this section, should the computations pursuant to (l) (1) or (2) of this section result in a quantity to be subtracted from Class II or Class III combined that exceeds the pounds remaining in such classes the pounds in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds in Class I shall be decreased by a like amount. In this case, the pounds remaining in each class at this allocation step at one of the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(4) Except as provided in (l)(2) of this section, should the computations pursuant to (l) (1) or (2) of this section result in a quantity to be subtracted from Class I that exceeds the pounds remaining in such class, the pounds in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds remaining in each class at this allocation step shall be adjusted in the reverse direction at one of the hander's other pool plants, if any;

(m) Subtract from the pounds remaining in each class the pounds in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1139.43(a); and

(n) If the total pounds remaining in all classes exceed the pounds in producer milk, subtract such excess from the pounds remaining in each class in series beginning with Class III. Any amount so subtracted is "overage";

(o) The pounds remaining in each class shall be the pounds of producer milk assigned to such classes.

§ 1139.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1139.44(1), estimate and publicly announce the utilization (to the nearest whole percentage) in each class of all producer milk pooled under this order during the month. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1139.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler as defined in § 1139.9(a) who has shipped fluid milk products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) Report to each cooperative association that so requests, on or before the 12th day after the end of each month, the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handlers.

Class and Component Prices

§ 1139.50 Prices for classes and components.

Subject to the provisions of § 1139.51 and § 1139.52, the class and component prices for the month, per hundredweight or per pound shall be as follows:

(a) *Class I price.* The Class I price shall be the Minnesota-Wisconsin price for the second preceding month plus $1.90.

(b) *Class II price.* A tentative Class II price shall be computed by the Director of the Dairy Division, Agricultural Marketing Service, USDA, and transmitted to the market administrator on or before the 15th day of the preceding month. The tentative Class II price shall be the basic Class II formula price for the month plus the amount that the value computed pursuant to (b)(1) of this section exceeds the value computed pursuant to (b)(2) of this section, except that in no event shall the final Class II price be less than the Minnesota-Wisconsin price for the month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest one cent) of the Minnesota-Wisconsin price and add 10 cents; and

(2) Determine for the same 12-month period as specified in (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices.

(c) *Butterfat price.* The butterfat price per pound shall be the simple average of the wholesale selling prices per pound, (using the mid-point of any price range as one price) of Grade A (92-score) bulk butter, f.o.b. Chicago, as reported by the Department for the month, multiplied by 1.15.

(d) *Milk protein price.* The price for milk protein per pound shall be computed by subtracting from the Minnesota-Wisconsin price the butterfat price multiplied by 3.5 and dividing the result by the average percentage of protein in all producer milk for the preceding month.

§ 1139.51 Basic Class II formula price.

The "basic Class II formula price" for the month shall be the Minnesota-Wisconsin price for the second preceding month plus or minus the amount computed pursuant to (a) through (d) of this section.

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1139.19 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply and positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to (b) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in (c) (1) and (2) of this section:

(1) Combine the total production of American cheese for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Statistical Reporting Service of the Department for the most recent preceding period, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to (b) of this section in accordance with the relative proportions of milk determined pursuant to (c) of this section.

§ 1139.52 Price adjustments for zone and location differentials.

(a) The Class I price shall be adjusted for plants located in the zones set forth below as follows:

(1) *Zone 1* 0 adjustments.

Utah Counties

Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Grand, Juab, Millard, Morgan, Rich, Salt Lake, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch and Weber.

Nevada Counties

Elko and White Pine, (2) *Zone 2* Minus $0.25 adjustment.

Idaho Counties

Bannock, Bear Lake, Caribou, Franklin, Oneida and Power, (3) *Zone 3* Minus $0.30 adjustment.

Idaho Counties

Bingham, Bonneville, Jefferson and Madison.

Wyoming Counties

Lincoln and Uinta.

Nevada Counties

Clark and Lincoln.

Utah Counties

Beaver, Garfield, Iron, Kane, Piute, San Juan, Washington and Wayne.

(b) Adjustment of Class I price for plants in other locations:

(1) For milk received from producers at a pool plant located outside the zones specified in (a) of this section, the Class I price shall be reduced at the following rate: 1.5 cents per hundredweight for each ten miles or fraction thereof of distance by shortest hard-surfaced highway as determined by the market administrator, betweem the plant and the nearest of the following courthouses:

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Clark County, Nevada, Salt Lake County, Utah.

(2) For purposes of calculating such adjustment, transfers of fluid milk products between pool plants shall be assigned any Class I utilization at the transferee plant which is in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I differential applicable to other source milk shall be adjusted at the rates set forth in (a) or (b) of this section, except that the differential shall not be less than zero.

§ 1139.53 Announcement of prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the tentative Class II price for the following month;

(c) The 5th day after the end of each month, the Minnesota-Wisconsin price, the prices for butterfat and milk protein computed pursuant to § 1139.50(c) and (d) and the final Class II price for such month; and

(d) The 12th day after the end of each month the uniform price computed for such month pursuant to § 1139.62(a), together with the weighted average differential value computed pursuant to § 1139.61.

§ 1139.54 Equivalent price.

If for any reason a price or pricing constituent required by this order for computing class prices or for other purposes is not available as prescribed in this order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Differential Pool and Handler Obligations

§ 1139.60 Computation of handlers' obligations to differential pool.

The market administrator shall compute each month for each handler defined in § 1139.9(a) with respect to each of his pool plants, and for each handler defined in § 1139.9 (b) and (c), an obligation to the differential pool as follows:

(a) Multiply the hundredweight assigned to Class I milk pursuant to § 1139.44 (n) and (o) by the Class I price differential ($1.90) as adjusted pursuant to § 1139.52;

(b) Add or subtract the amount obtained by multiplying the hundredweight used in (a) hereof by the amount by which the Minnesota-Wisconsin price for the second preceding month exceeds or is less than, respectively, such price for the current month;

(c) Multiply the hundredweight assigned to Class II milk pursuant to § 1139.44 (n) and (o) by $0.10;

(d) Add or subtract the amount obtained by multiplying the hundredweight used in (c) hereof by the amount by which the Minnesota-Wisconsin price for the current month is more or less respectively than the tentative Class II price minus 10 cents, provided that the rate of subtraction shall not exceed 10 cents;

(e) Add the amount computed by multiplying the pounds of any overage of butterfat determined pursuant to § 1139.41(b) by the butterfat price established pursuant to § 1139.50(c);

(f) Add the amount computed by multiplying the pounds of any coverage of milk protein determined pursuant to § 1139.41(b) by the milk protein price established pursuant to § 1139.50(d);

(g) Add any amount by which the amount computed by multiplying the hundredweight of overage allocated pursuant to § 1139.44(n) times the Minnesota-Wisconsin price for the current month, exceeds the amount arrived at by combining the amounts computed under paragraphs (e) and (f) hereof; and

(h) Add or subtract a figure computed as follows:

(1) Multiply the pounds of milk protein accounted for by each handler as utilized in Class II and Class III or assigned for him to such classes pursuant to § 1139.41(f)(2) by the milk protein price computed pursuant to § 1139.50(d);

(2) Multiply the pounds of milk protein in Class I as computed for such handler pursuant to § 1139.41(g)(4) by the milk protein price computed pursuant to § 1139.50(d);

(3) Combine the values computed pursuant to (1) and (2) of this paragraph and subtract therefrom the amount to be paid by the handler pursuant to § 1139.74 to producers and cooperative associations for milk protein contained in milk received from them; and

(4) Add any amount by which the payments for milk protein under (3) hereof are less than the combined value determined under (1) and (2) hereof, or subtract the amount if such payments are more than such combined values.

(i) Add the amount obtained from multiplying the difference between the Minnesota-Wisconsin price for the preceding month and the Class I price applicable at the location of the pool plant, or the Class II price as the case may be, for the current month by the hundredweight subtracted from Class I or Class II pursuant to § 1139.44(i);

(j) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Minnesota-Wisconsin price by the hundredweight subtracted from Class I pursuant to § 1139.44(g) (1) through (4) and (7), excluding receipts of bulk fluid cream products from another order plant;

(k) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Minnesota-Wisconsin price by the hundredweight subtracted from Class I pursuant to § 1139.44(g) (5) and (6);

(l) Add the amount obtained from multiplying the difference between the Class I price applicable at the nearest unregulated supply plants from which an equivalent volume was received and the Minnesota-Wisconsin price by the hundredweight subtracted from Class I pursuant to § 1139.44(k), excluding such hundredweight in receipts of bulk fluid milk products from un unregulated supply plant to the extent that an equivalent quantity disposed of to such plants by handlers fully regulated by any Federal order is classified and priced as Class I milk, and is not used as an offset for any other payment obligation under any order.

§ 1139.61 Computation of weighted average differential value.

For each month the market administrator shall compute the weighted average differential value for milk received from all producers as follows:

(a) Combine into one total the values computed pursuant to § 1139.60 for all handlers who made reports pursuant to § 1139.30 and who made payments pursuant to § 1139.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1139.75;

(c) Add an amount equal to not less than one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk;

(2) The total hundredweight for which a value is computed pursuant to § 1139.60(1).

(e) Subtract not more than 5 cents per hundredweight. The result is the "Weighted Average Differential Value".

§ 1139.62 Uniform price and handlers' obligation for producer milk.

(a) A uniform price for producer milk containing 3.5 percent butterfat shall be computed by adding the weighted average differential value determined pursuant to § 1139.61 to the Minnesota-Wisconsin price for the month.

(b) Handler obligations to producers and cooperative associations for producer milk shall be determined in accordance with the provisions of § 1139.74.

Payments for Milk

§ 1139.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit payments made by handlers pursuant to §§ 1139.71, 1139.76 and 1139.77, and out of which he shall make payments pursuant to §§ 1139.72 and 1139.77: *Provided*, that any payment due a handler from the fund shall be offset as appropriate against payments due from such handler.

§ 1139.71 Payments to the producer-settlement fund.

(a) On or before the 14th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the total amount specified in (a)(1) of this section exceeds the amount specified in (a)(2) of this section:

(1) The total obligation of the handler for such month as determined pursuant to § 1139.60.

(2) The sum of:

(i) The obligation at the weighted average differential value adjusted pursuant to § 1139.75 with respect to such handler's receipts of producer milk and milk received from a handler defined in § 1139.9(c), and in the case of a cooperative association or federation which is a handler, less the amount due from other handlers pursuant to § 1139.73(e); and

(ii) The value at the weighted average differential value applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1139.60(1).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual handler pooling shall pay the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route dispositions from such plant in the marketing area which was allocated to Class I at such plant; and

(2) Compute the value of the reconstituted skim milk assigned in (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price f.o.b. the other order plant and the Minnesota-Wisconsin price.

§ 1139.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available, provided that amounts due any handler shall be offset against payments due from such handler.

§ 1139.73 Value of producer milk.

(a) The partial payment for milk received during the first 15 days of the month shall be not less than 1.2 times the Minnesota-Wisconsin price for the preceding month times the quantity of milk received.

(b) The total value of milk received from producers during any month shall be computed as follows:

(1) The weighted average differential price computed pursuant to § 1139.61 subject to the appropriate plant location adjustment times the total hundredweight of milk received from the producer; plus

(2) The total milk protein contained in the producer milk received from the producer times the milk protein price computed pursuant to § 1139.50(d); plus

(3) The total butterfat contained in the producer milk received from the producer times the butterfat price computed pursuant to § 1139.50(c).

§ 1139.74 Payments to producers and to cooperative associations.

(a) Except as provided in (c), (d) or (e) of this section, each handler shall, on or before the last day of the month, make a partial payment to each producer from whom milk was received during the first 15 days of the month based on the provisions set forth in § 1139.73(a);

(b) Except as provided in (c), (d) or (e) of this section, each handler shall, on or before the 17th day of the following month make a final payment to each producer for milk received from him during the month at no less than the total amount computed in accordance with the provisions set forth in § 1139.73(b) with respect to such milk:

(1) Less any deductions for marketing services pursuant to § 1139.80;

(2) Less payment made pursuant to (a) of this section for such month;

(3) Plus or minus adjustments made in previous payments to such producer, and proper deductions authorized in writing by such producer; and

(4) If by the date specified such handler has not received full payment from the market administrator pursuant to § 1139.72 for such month, he may reduce his payments to producers prorata by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(c) In the case of a cooperative association authorized by its producers to collect payment for their milk, and which has requested such payment from any handler in writing and has so notified the market administrator, payment shall be made for milk received during the month as follows:

(1) On or before the 3rd day prior the last day of the month for milk received from the producers of such cooperative association at the rates set forth in § 1139.73(a);

(2) On or before the 14th day of the following month such handler shall pay to such cooperative association the sum of the payments computed in accordance with the procedures set forth in § 1139.73(b) with respect to deliveries by producers of such cooperative association to handler(s) from whom payment has been requested, less the amounts of payments made to such cooperative association pursuant to (c)(1) of this section, and less the amount retained by handlers as authorized deductions.

(d) Each handler who received milk from producers for which payment is to be made to a cooperative association pursuant to (c) of this section shall report to such cooperative association and to the market administrator on or before the 7th day of the following month as follows:

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(1) The total pounds of milk received during the month, and if requested, the pounds received from each member producer;

(2) The amount of payment made pursuant to (c)(1) of this section and the quantity of milk to which such payment applied; and

(3) The amount or rate and nature of any proper deductions authorized to be made from payments.

(e) Each handler shall pay a cooperative for milk received by him from such cooperative association in its capacity as a handler defined in § 1139.9(c), or from a pool plant operated by such association as follows:

(1) On or before the 3rd day prior to the last day of each month for milk received during the first 15 days of the amount per hundredweight computed pursuant to the provisions of § 1139.73(a); and

(2) On or before the 14th day of the following month for milk received during the month not less than the amount computed for such milk in accordance with the provisions under § 1139.73(b), less the amounts of payments made to such cooperative association pursuant to (e)(1) of this section, and less the amount retained by handlers as authorized deductions.

§ 1139.75 Location and zone differentials for producer and nonpool milk.

(a) In making payments pursuant to § 1139.72 the market administrator shall reduce the weighted average differential value computed pursuant to § 1139.61 by the location or zone differential applicable at the plant where such milk was first received from producers.

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1139.52(c) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Minnesota-Wisconsin price.

§ 1139.76 Payments by a handler operating a partially regulated distributing plant.

(a) Each handler who operates a partially regulated distributing plant, except such a plant which is subject to a milk classification and pricing program providing for a marketwide pooling of producer returns imposed under the authority of a state government, shall pay on or before the 25th day after the end of the month to the market administrator for deposit into the producer-settlement fund the amount computed pursuant to (a)(1) of this section, or, if the handler submits pursuant to §§ 1139.30(b) and 1139.31(c) the information necessary for making the appropriate computations, and so elects, the amount computed pursuant to (a)(2) of this section;

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(iii) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(iv) Multiply the remaining pounds by the weighted average differential computed pursuant to § 1139.61 as adjusted by the appropriate location or zone differential (but in no case less than 0);

(v) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in (a)(1)(iii) of this section by the difference between the Class I price adjusted to the appropriate plant location (but in no case less than 0) and the Minnesota-Wisconsin price.

(2) An amount computed as follows:

(i) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been a pool plant subject to the following modifications:

(*a*) Fluid milk products and bulk fluid cream products received at a partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(*b*) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to (a)(2)(i)(*a*) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60(j) shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price (or weighted average price) adjusted to the location of the nonpool plant (but not to be less than the class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order;

(*c*) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1139.60 for such handler shall include in lieu of the value of other source milk specified in § 1139.60(1) less the value of such other source milk specified in § 1139.71(a)(2)(ii) a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not another order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(c) subject to the following conditions:

(*1*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1139.30(b) and 1139.31(b) similar reports for each nonpool supply plant;

(*2*) The operator of such nonpool supply plant maintains books and records showing the utilization of all milk and milk products received at such plant which are made available if requested by the market administrator for verification purposes; and

(*3*) The value of milk determined pursuant to § 1139.60 for such nonpool supply plants shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plants; and

(ii) From the partially regulated distributing plant's value of milk computed pursuant to (a)(2)(i) of this section, subtract:

(*a*) The gross payment made by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(*b*) If (a)(2)(i)(*c*) of this section applies, the gross payments by the operator of such nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(*c*) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant, and like payments by the operator of the nonpool supply plant if (a)(2)(i)(*c*) of this section applies.

(b) Each handler who operates a partially regulated distributing plant which is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund an amount computed as follows:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant;

(i) As Class I milk from pool plants and other plants, except that subtracted under a similar provision under another Federal milk order;

(ii) From another nonpool plant that is not another order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plants by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Multiply the remaining pounds by the Class I price applicable at the location of the partially regulated distributing plant (but not to be less that the Class III price), and subtract the amount the handler pays under the state program, based on the classification and the appropriate class prices therefor, of the products disposed of in the marketing area.

§ 1139.77 Adjustment of accounts.

(a) Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due a producer, a cooperative association, or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred; and

(b) Any unpaid balance due from a handler pursuant to §§ 1139.71 and 1139.76 or under this section shall be increased 1% per month on the next day following the due date of such unpaid obligation and any balance remaining unpaid shall likewise be increased on the first day of each month thereafter until paid.

(c) For purposes of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1139.80 Deduction for marketing services.

(a) Except as set forth in (b) hereof, each handler in making payments to producers for milk pursuant to § 1139.74 (other than milk of his own production) shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 14th day after the end of the month.

(b) The monies retained by the market administrator pursuant to (a) of this section shall be expended by the market administrator for market information and for the verification of weights, samples and tests of milk of any producer for whom a cooperative association is not performing the same services on a comparable basis as determined by the Secretary.

§ 1139.81 Assessment for order administration.

As his prorata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including milk received from a handler defined in § 1139.9(c), but excluding in the case of a cooperative association which is a handler pursuant to § 1139.9(c), milk which was received at the pool plant of another handler) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 139.44 (g)(1) and (k), except such other source milk that is excluded from the computations pursuant to § 1139.60 (j) and (l);

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the quantity subtracted pursuant to § 1139.76(a)(1)(ii).

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS[2]

§ 1000.1 Scope and purpose of Part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and part of each Federal milk marketing order except as specifically defined otherwise, or modified, or otherwise provided, in an individual order.

§ 1000.2 Definitions.

The following terms shall have the following meanings as used in the order:

(a) *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

(b) *Order.* "Order" means the applicable part of Title 7 of the Code of Federal Regulations issued pursuant to section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department.* "Department" means the U.S. Department of Agriculture;

(d) *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.

(e) *Person.* "Person" means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Market administrator.

(a) *Designation.* The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Make rules and regulations to effectuate the terms and provisions of the order;

(3) Receive, investigate, and report complaints of violations to the Secretary; and

[2] These provisions are included solely for information of interested parties. They may not be changed on the basis of this proceeding.

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(4) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his administration, including, but not limited to, the following:

(1) [Reserved]

(2) Employ and fix the compensation of a person necessary to enable him to exercise his powers and perform his duties;

(3) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of his office and in the performance of his duties, including his own compensation;

(4) Keep records which will clearly reflect the transactions provided for in the order, and upon request by the Secretary, surrender the records to his successor or such other person as the Secretary may designate;

(5) Furnish information and reports requested by the Secretary and submit his records to examination by the Secretary;

(6) Announce publicly at his discretion, unless otherwise directed by the Secretary, by such means as he deems appropriate, the name of any handler who, after the date upon which he is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order;

(iii) Made available records and facilities as required pursuant to § 1000.5;

(7) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities; and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect.

(8) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a corrected statement to such handler if verification discloses that the original statement was incorrect; and

(9) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

§ 1000.4 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any of all of the provisions of the order whenever he finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order, there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order, the market administrator, or such other liquidating agent designated by the Secretary, shall if so directed by the Secretary liquidate the business of the market administrator's office, dispose of all property in his possession or control, including accounts receivable and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order persons or circumstances shall not be affected thereby.

§ 1000.5 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of his operations and make such records and his facilities available to the market administrator. If adequate records of a handler, or if any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall not be considered accounted for or established as used in a class other than the highest priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of his operations (including, but not limited to, records of purchase, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order, and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary for such market administrator to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary or other obligation under the order. Each handler shall permit the market administrator to weigh, sample,

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and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.6 Termination of obligations.

The provisions of this section shall apply to any obligation under the order for the payment of money:

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain but need not be limited to the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association (except an obligation to be prorated to producers under an individual handler pool), the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid;

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator;

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed; and

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 et seq.) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims to be due him under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

Proposed by Rowland's, Inc.:

Proposal No. 2

Change the Class I and producer price adjustment for locations in Idaho to more closely align Class I prices between Idaho handlers regulated under the Great Basin order and those regulated under the Southwestern Idaho-Eastern Oregon Federal milk order. The proposal would apply both to the proposed merged order and to the present Great Basin order.

Proposed by Kraft, Inc.:

Proposal No. 3

Amend § 1139.13(d) (2) and (3) of Proposal No. 1 or 1136.13(c)(3) and (4) of the present Great Basin order to read as follows:

* * * * *

(d) * * *

(2) A cooperative association or federation may divert for its account the milk of any producer from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed, in the months of April through August, the volume of the producer milk which the association or federation causes to be delivered to pool plants during the month, and may not exceed 50 percent of such volume during other months. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants, or diverted pursuant to this section, if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator.

(3) The operator of a pool plant (other than a cooperative association or federation) may divert for his account the milk of any producer (other than milk diverted pursuant to (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed, in the months of April through August, the volume of milk received at such pool plant from producers for which the operator of such plant is the handler for the month, and may not exceed 50 percent of such volume during other months. The milk for which the operator of such plant is the handler for the month may not duplicate milk diverted pursuant to (d)(2) of this section.

Proposed by Safeway Stores, Inc.:

Proposal No. 4

Amend Proposal No. 1 by revising proposed § 1139.52 to read as follows:

§ 1139.52 Price adjustments for zone and location differentials.

* * * * *

(b) * * *

(1) For milk received from producers at a pool plant located outside the zones specified in (a) of this section, the Class I price (Zone 3, when Clark County, Nevada courthouse is used to determine mileage) shall be reduced at the following rate: 1.5 cents per hundredweight for each ten miles or fraction thereof of distance by shortest hard-surfaced highway as determined by the market administrator, between the plant and the nearest of the following courthouses:

Clark County, Nevada
Salt Lake County, Utah

* * * * *

Proposal No. 5

Amend Proposal No. 1 by revising

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proposed § 1139.73 to read as follows:

§ 1139.73 Value of producer milk.

(a) The partial payment for milk received during the first 15 days of the month shall be not less than the Minnesota-Wisconsin price for the preceding month times the quantity of milk received.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 6

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator, W. Joe Albright, P.O. Box 440660, Aurora, Colorado 80044, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Great Basin and Lake Mead Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on: February 6, 1986.

James C. Handley,
Administrator.

[FR Doc. 86-2931 Filed 2-10-86; 8:45 am]
BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-40]

John F. Doherty; Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Receipt of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission requests public comments on this notice of receipt of a petition for rulemaking dated November 27, 1985, that was filed by John F. Doherty. The petition was docketed by the Commission on December 2, 1985, and assigned Docket No. PRM-50-40. The petitioner requests that the Commission amend its regulations to require that, following a power reactor trip, the licensee, if unable to determine the cause of the reactor trip in eight hours, be required to place the reactor in cold shutdown pending further study of the event.

DATES: Submit comments by April 14, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Obtain a copy of the petition by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A copy of the petition and of comments on the petition are available for inspection or copying for a fee at the Public Document Room at 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086 or, Toll Free, 800-368-5642.

SUPPLEMENTARY INFORMATION:

Petitioner's Proposal

The petitioner urges the Commission to adopt a rule that would state: Following a power reactor trip, the licensee, if unable to determine the cause of the reactor [trip] in eight hours, shall be required to place the reactor in cold shutdown pending further study of the event.

The petitioner states that this proposal could logically be included in 10 CFR 50.72, "Immediate Notification Requirements for Operating Nuclear Power Reactors," or in some other appropriate section of the regulations that could require the proposed licensee action.

Basis of the Proposal

The petitioner bases this proposal on a finding on page 2-8 of NUREG-1000, Vol. 1, "Generic Implications of ATWS Events at the Salem Nuclear Power Plant," April 1983. This document states that at one utility ". . . [i]f the cause for the reactor trip cannot be determined within eight hours, the plant is required by company policy to be placed in cold shutdown pending further study of the event." The petitioner contends that the Office of Nuclear Reactor Regulation cites this utility's policy favorably by continuing in the document with, "This operational philosophy exhibits the intuitively questioning attitude that NRC encourages in its licensees."

Reason for the Proposal

The petitioner contends that the 1983 Salem ATWS event is a prototype of the kind of incident that his proposal is designed to prevent. He further states that on the day preceding this event at Salem there was a "partial failure to SCRAM" that the utility thought had been caused by an operator manually tripping the reactor. The petitioner states that Salem operated under a rule that allowed higher management to authorize restart of the reactor if the cause for a trip could not be identified.

He further cites NUREG-1000 as indicating that in a study of a case such as Salem, a study of process recorders would have shown that a "SCRAM failure" had occurred and that restart would probably lead to a more serious "SCRAM failure," which is what occurred at Salem.

Conclusion

The petitioner concludes from the information cited from NUREG-1000, Vol. 1, and the seriousness of the 1983 Salem ATWS event, that the NRC should adopt a rule such as he proposes. He thinks that such a rule would lessen any of a number of possible accidents that may occur if a reactor is restarted after a reactor trip before ascertaining what caused the trip.

Dated at Washington, DC, this 5th day of February 1986.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 86-2954 Filed 2-10-86; 8:45 am]
BILLING CODE 7590-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 201

Missing Children Information in Commission Mailings; Proposed Amendments

AGENCY: U.S. International Trade Commission.

ACTION: Proposed amendment of rules; request for comments.

SUMMARY: This rule amends part 201 of the Commission's *rules of practice and procedure* to add a provision for implementing a policy of including information on missing children in certain mailing made by the Commission. This regulation is issued to comply with the requirement set out in 39 U.S.C. 3220. Comments are requested on the proposed amendments.

DATE: Comments will be considered if received by March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0375.

SUPPLEMENTARY INFORMATION: Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

List of Subjects in 19 CFR Part 201

Administrative practice and procedure.

PART 201—[AMENDED]

Part 201 is amended as set forth below:

1. Section 201.3a, concerning missing children information, is added as follows:

§ 201.3a Missing Children Information.

(a) Pursuant to 39 U.S.C. 3220, penalty mail sent by the Commission may be used to assist in the location and recovery of missing children. This section establishes procedures for such use and is applicable on a Commission-wide basis. The program and Planning Branch, Office of Management Services, 202-724-1234, shall be the point of contact for matters related to the implementation of this section.

(b) Missing children information shall be inserted in or affixed to such mailings of Commission monthly calendars, notices, press releases, and other documents as the Commission may direct. Such missing children information shall be obtained from the National Center for Missing and Exploited Children.

(c) The procedure established in subsection (b) above will result in missing children information being inserted in an estimated 25 percent of the Commission's penalty mail and will cost an estimated $1,500 for the first year of implementation. The Director of Administration shall make such changes in the procedure as he deems appropriate the maximize the use of missing children information in the Commission's mail.

Issued: February 6, 1986.
By order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 86-2939 Filed 2-10-86; 8:45 am]
BILLING CODE 7020-02-M

19 CFR Part 210

Conduct of Investigations of Unfair Practice in Import Trade; Imposition of Attorneys Fees and Costs as an Additional Remedy for Discovery Abuse

AGENCY: International Trade Commission.

ACTION: Proposed rule to authorize the Commission's administrative law judge to provide for the imposition of attorneys fees and costs as an additional remedy for discovery abuse.

SUMMARY: The proposal would amend the Commission's rules to add the additional remedy of imposition of attorneys fees and costs against a party for several types of discovery abuse in adjudications before Commission administrative law judges pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under current practice, discovery abuses may be remedied by evidentiary means (such as drawing adverse inferences and permitting the introduction of secondary evidence).

Under the proposed rules, the presiding administrative law judge (ALJ) would be authorized to impose the remedy of attorneys fees and costs in addition to or in lieu of the existing discovery remedies. Subject to the qualifications set forth in the proposed rules, the proposed rules authorize the imposition of attorneys fees and costs in the following instances: (1) When a party moves to compel discovery or opposes a motion to compel discovery; (ii) when a party fails to comply with a discovery order; (iii) when a party fails to answer or object to interrogatories, fails to appear for deposition, or fails to serve a proper response to a request for inspection; and (iv) when a party fails to admit the genuineness of a document or the truth of any matter. Comments are requested from the public regarding all aspects of the proposed rules.

DATES: All comments must be received on or before April 14, 1986.

ADDRESSES: All comments concerning the proposed rules should be submitted to the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0493.

SUPPLEMENTARY INFORMATION: Section 337 directs the Commission to conduct investigations of alleged unfair methods of competition and unfair acts in the importation of articles, or in their sale, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. These investigations must be concluded within one year, or 18 months in more complicated cases. In order to implement procedures to carry out the provisions of section 337, the Commission has adopted comprehensive rules of practice and procedure. 19 CFR Parts 210 and 211. These rules currently include provisions to authorize and regulate discovery and to authorize the ALJs to impose sanctions in cases where a party does not comply with discovery orders. 19 CFR 210.30 through 210.37. The proposed rules amend the current rules to authorize the ALJs to direct one party (other than the Commission investigative attorney) to reimburse another party's expenses (including costs and attorneys fees) in certain situations that amount to discovery abuse. The rules would provide an additional tool by which the ALJs could control the course of discovery in section 337 investigations. The proposed rules do not attempt to define the circumstances in which use of this sanction would be appropriate; that determination is left to the sound discretion of the ALJs for development on a case-by-base basis.

The proposed rules are not designed to punish a party who has engaged in improper discovery. Rather, they are

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intended to remedy particular instances of improper discovery conduct (i.e., make whole the aggrieved party) and to deter such conduct in the future. The proposed rules are also designed to discourage discovery abuse in present and future investigations.

The proposed rules allow the ALJ, *sua sponte* or on motion, to direct the payment of expenses. The rules permit the imposition of expenses after such proceedings as the ALJ deems appropriate. The Commission anticipates that in the usual case, such proceedings will consist of a motion by the aggrieved party and responses by the other party or parties. In the event that the ALJ considers the imposition of expenses *sua sponte*, the Commission anticipates that he will offer the parties an opportunity to present their views (perhaps by means of a show cause order). In either case, a hearing is not mandated, although the ALJ may hold one if he so chooses.

The ALJ's determination regarding the imposition of costs under the proposed rules will be treated as an initial determination (ID) under rule 219.53(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.53(c)). Accordingly, any party to the investigation may file a petition for Commission review of the ID in accordance with rule 210.54 or the Commission may determine to review the ID on its own motion in accordance with rule 210.55 of the Commission's Rules of Practice and Procedure. 19 CFR 210.54 and 210.55, respectively. To the extent that the ALJ's order on the imposition of expenses is incorporated into an ID on the merits of an investigation under rules 210.53(a) or 210.53(b), 19 CFR 210.53(a) and 210.53(b), the Commission intends to consider the ALJ's order as part of such ID.

The proposed rules do not permit recovery of more than the actual expenses incurred by the party or parties.

The proposed rules are patterned as closely as possible on the corresponding provisions of the Federal Rules of Civil Procedure. Decisions by the Federal courts explaining and interpreting the respective provisions of the Federal Rules will be treated as persuasive, but not necessarily conclusive, authority in the interpretation of the proposed rules.

Authority To Issue the Proposed Rule

The Commission's authority to issue the proposed rules are found in sections 335 and 337 of the Tariff Act of 1930, the Administrative Procedure Act (APA), and the due process provisions of the U.S. Constitution.

Congress has specifically authorized the Commission "to adopt such reasonable procedures and rules and regulations as it deems necessary to carry out its functions and duties." 19 U.S.C. 1335. The violation phase of Commission investigations under section 337 is conducted pursuant to the APA. 19 U.S.C. 1337(c). Section 337 investigations are adjudicative and the parties are granted a series of due process rights. *See generally* 19 CFR Part 210. Moreover, Congress has granted administrative agencies the power to take steps necessary to prevent the deprivation of rights in adjudications. 5 U.S.C. 556(c). Accordingly, the Commission is empowered, under both section 335 and the APA, to issue rules and regulations necessary for the fair conduct of its adjudications.

Administrative proceedings that determine property rights (as section 337 investigations do) turn on specific issues of fact regarding particular parties. In such cases, whether or not they are are governed by the APA, an adjudication is required by due process. "[D]iscovery must be granted if in the particular situation a refusal to do so would so prejudice a party as to deny him due process." *McClelland v. Andrus*, 606 F.2d 1278, 1286 (D.C. Cir. 1979). Agency discovery practice must conform to due process requirements. Denial of discovery could be a denial of due process in section 337 cases since, in most instances, there could be no full and fair proceeding without discovery.

Even in the absence of an express statutory grant of discovery authority, discovery authority is inherent in an agency's adjudicative authority. Courts have recognized that agencies may provide for discovery even in the absence of a specific statutory authorization. *E.g., McClelland, v. Andrus, supra.*

To make this discovery meaningful, an agency must have the ability to control the discovery process and to impose remedies for failures to abide by the rules. This need is particularly acute at the Commission because of the relatively short time period within which section 337 investigations must be completed.

Most agencies that conduct adjudications have enacted rules of procedure that provide sanctions for failure to make discovery and/or abuse of the discovery process. In general, agency rules provide for sanctions similar to those contained in the Federal Rules of Civil Procedure and those currently in force at the Commission. The Commission is aware of no reported decision in which a court has denied an agency the authority to issue discovery sanctions. In at least one instance, moreover, an agency was required to impose discovery sanctions, even though such sanctions were not contained in its rules. *International Union (UAW), v. N.L.R.B.* 459 F.2d 1329 (D.C. Cir. 1972).

Explanation of the proposed rules

A. Failure To Comply With Order Compelling Discovery

The Commission proposes to amend rule 210.36(b) by adding a new subsection (6) authorizing the ALJ to impose the expenses incurred by any party as a result of another party's failure to comply with a discovery order unless such failure was substantially justified. This rule is based on F.R.C.P. 37(b). Imposition of the remedial sanction authorized by the proposed rules is discretionary and would be in addition to, or in lieu of, existing discovery sanctions. Consideration of whether to impose this sanction may be triggered by motion by an allegedly prejudiced party or the ALJ may raise the matter *sua sponte*.

The proposed rules would authorize the ALJ, for example, to require the party failing to comply with the discovery order to reimburse other parties their costs in obtaining secondary evidence for the evidence covered by the order. The Commission contemplates that the ALJ, in determining remedies for failure to comply with a discovery order, will consider the costs that such an order may impose on the party. Thus, in some circumstances, it may be more appropriate to draw adverse inferences rather than permit the introduction of secondary evidence, thereby relieving the party of the expenses of procuring such evidence. In some circumstances, the ALJ may find it appropriate to issue more than one sanction.

In considering whether failure was substantially justified, it is anticipated that the ALJ will consider, *inter alia*, good faith efforts, if any, to comply with the motion.

An order issued under this proposed rule will be an ID within the meaning of rule 210.53(c) of the Commission's Rules of Practice and Procedures. 19 CFR 210.53(c). Any party to the investigation may petition for review of the ID as provided in rule 210.54. 19 CFR 210.54.

B. Expenses for Motion To Compel or for Protective Order

The Commission further proposes to amend rule 210.36 by adding a new subsection (c) to address those instances in which a party's conduct unnecessarily has caused another party to move for an order compelling discovery or for a protective order. The proposed rule is based on F.R.C.P. 37(a)(4). The purpose of this proposal is to encourage timely discovery and avoid needless delays. Here again, award of expenses by an ALJ is discretionary and will depend on the facts and circumstances of each particular instance. Among other factors, the Commission expects that the ALJ will consider whether the motion to compel or for protective order was filed absent informal attempts by the movant to amicably resolve the discovery dispute.

This proposed rule is not an alternative for the imposition of expenses under proposed rule 210.36(b)(6) and, in appropriate circumstances, expenses may be awarded both for obtaining an order to compel and for failure to comply with such an order.

Here again, an order issued under this proposed rule will be an ID within the meaning of rule 210.53(c) of the Commission's Rules.

c. Expenses on Failure To Admit

The Commission further proposes to amend rule 210.36 by adding a new subsection (d) to address those instances in which a party fails to admit the truth of any matter or the genuineness of a document as requested under rule 210.34. This rule is based on F.R.C.P. 37(c). The proposal is designed to remedy the situation in which one party is forced, because of another party's failure to admit, to take the time and expense to prove the truth of a matter or the genuineness of a document. This proposed rule will also foster economy at evidentiary hearings before the ALJ.

Although this proposal permits an award of attorneys fees and costs for failure to admit, its use by the ALJs is disretionary. It is expected that the ALJs will administer this provision in light of the realities of section 337 investigations, particularly the fact that there are usually foreign firms named as respondents. Thus, the Commission intends that the ALJs will give specific consideration to the timing of the request for admissions and will not impose attorneys fees and costs unless the party to whom the request is addressed has a reasonable opportunity, after notice, to ascertain the truth of the matter or the genuineness of the document and to communicate this to the other parties.

Here again, an order issued under this proposed rule will be an ID within the meaning of the Commission's Rules.

D. Failure To Attend Deposition, To Answer Interrogatories, or To Respond to Request for Inspection

The Commission proposes to amend rule 210.36 by adding a new subsection (e) to permit the ALJ to impose expenses in the event that a party or person designated to testify on behalf of a party fails to appear for deposition, fails to serve answers or objections to interrogatories, or fails to serve a written response to a request for inspection. This proposed rule is based on F.R.C.P. 37(d). The proposed rule would authorize the ALJs to impose this remedy without awaiting the filing of a motion to compel.

The asserted impropriety of the discovery sought may not be raised in opposition to the imposition of these costs. If the party believes that the discovery is improper, its remedy must be by way of seeking a protective order.

With regard to failure to attend at deposition, appearance at the deposition is, of itself, not sufficient to avoid the imposition of this remedy. It is expected that the deponent will substantially respond to the questions put. In the event that a party expects to object to major portions of the deposition, the proper procedures include good faith efforts among the parties to resolve their differences and, failing resolution, a motion for protective order. In the event that during the course of a deposition reasonably unforeseeable differences arise over lines of questioning, the proper procedures include good faith efforts among the parties to resolve those differences and, failing resolution, they may either recess that part of the deposition pending resolution by the ALJ or seek immediate resolution from the ALJ telephonically.

Here again, an order issued under this proposed rule will be an ID within the meaning of the Commission's Rules.

E. Conforming Amendments to Rule 210.53(c)

Since the Commission proposes that ALJ orders on motions regarding the imposition of expenses will be IDs, the Commission also proposes to amend rule 210.53(c) of the Commission's Rules of Practice and Procedure. 19 CFR 210.53(c). Rule 210.53(c) establishes certain enumerated ALJ orders as IDs. The proposed revisions to the rule add reference to ALJ orders on the impostition of expenses to that enumeration.

List of Subject in 19 CFR Part 210

Administrative practice and procedure; Business and industry, Customs duties and inspection, Imports, Investigations.

PART 210—[AMENDED]

1. The authority citation for Part 210 is revised to read as follows:

Authority: Secs. 333, 335, and 337 of the Tariff Act of 1930, 46 Stat. 699; 19 U.S.C. 1333 and 72 Stat. 680; 19 U.S.C. 1335; 5 U.S.C. 51 et. seq.

§ 210.36 [Amended]

2. Section 210.36 is amended by removing the word "and" following the semicolon in paragraph (b)(4).

3. Section 210.36 is further amended by removing the period at the end of paragraph (b)(5) and replacing it with "; and".

4. Section 210.36 is further amended by adding paragraph (b)(6) to read as follows:

* * * * *

(b) * * *

(6) *Sua sponte* or on motion and after such proceedings as he deems appropriate, rule that, in lieu of or in addition to any of the foregoing orders, the party failing to obey the order pay the reasonable expenses, including attorneys fees, caused by the failure, unless he finds that the failure was substantially justified or that other circumstances make an award of expenses unjustified.

5. Section 210.36 is further amended by adding paragraphs (c), (d), (e), and (f) to read as follows:

* * * * *

(c) *Expenses for motion to compel discovery or for protective order.* (1) If a motion to compel discovery under paragraph (a) of this section is granted or if a motion for protective order under paragraph (a) of § 210.37 is granted, the administrative law judge, *sua sponte* or on motion by a party and after such proceedings as he deems appropriate, may require the party whose conduct necessitated the motion to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys fees, unless the administrative law judge finds that the failure was substantially justified or that other circumstances make an award of expenses unjustified.

(2) If a motion to compel discovery under paragraph (a) of this section is denied or if a motion for protective order under paragraph (a) of § 210.37 is denied, the administrative law judge, *sua sponte* or on motion by party and after such proceedings as he deems appropriate, may require the moving party to pay the party who opposed the motion the reasonable expenses

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incurred in opposing the motion, including attorney's fees, unless it is found that the making of the motion was substantially justified or that other circumstances make an award of expenses unjustified.

(3) If a motion to compel discovery under paragraph (a) of this section or a motion of protective order under paragraph (a) of § 210.37 is granted in part and denied in part, the administrative law judge, *sua sponte* or on motion by a party and after such proceedings as he deems appropriate, may apportion the reasonable expenses incurred in relation to the motion among the parties in a just manner.

(d) *Expenses on failure to admit.* If a party ("requestee") fails to admit the genuineness of any document or the truth of any matter as requested under § 210.34, and if the party requesting the admissions ("requester") thereafter proves the genuineness of the document or the truth of the matter, the ALJ may, *sua sponte* or on motion of the requester, order that the requestee pay to the requester the reasonable expenses incurred in making that proof, including reasonable attorney fees. The administrative law judge shall not so order when it is found that (1) the request was held unreasonable under paragraph (c) of § 210.34 or paragraph (a) of § 210.37, or (2) that the admission sought was of no substantial importance, or (3) the requestee had reasonable ground to believe that it might prevail on the matter, or (4) there was other good reason for the failure to admit.

(e) *Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.* If a party or an officer, director, or managing agent of a party or person designated to testify on behalf of a party fails (1) to appear for deposition after being served with a proper notice, or (2) to serve answers or objections to interrogatories under § 210.32 after proper service of the interrogatories, or (3) to serve a written response to a request for inspection under § 210.33 after proper service of the request, the administrative law judge, *sua sponte* or on motion of a party and after such proceedings as he deems appropriate, may issue such orders in regard to the failure as are just, including any action authorized under paragraph (b) of this section. In lieu of any order or in addition thereto, the administrative law judge may require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the administrative law judge finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in paragraph (a) of § 210.37.

(f) *Nonavailability of expenses against United States and/or the Commission.* Expenses and attorneys fees may not be imposed upon the United States, the Commission, or the Commission investigative attorney under this section.

§ 210.53 [Amended]

5. Section 210.53(c) is redesignated as (c)(1).

6. Section 210.53 is amended by adding paragraph (c)(2) to read as follows:

* * * * *

(c) * * *

(2) *On issues concerning the imposition of attorney's fees and costs. Sua sponte* or following the filing of a motion for imposition of attorneys' fees and costs pursuant to § 210.36 (b)(6), (c), (d), or (e), the administrative law judge shall grant or deny the payment of attorneys' fees and costs by filing with the Commission an initial determination.

* * * * *

By order of the Commission.

Issued: January 29, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-2552 Filed 2-10-86; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Health and Safety Standards; Occupational Exposure to Benzene

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rules; changes in hearing schedule and dates for submission of documents.

SUMMARY: This notice announces changes in the hearing schedule and dates for submission of comments and other documents for the proposed rule and notice of hearing on occupational exposure to benzene (50 FR 50512, December 10, 1985). On January 28, 1986 (51 FR 3474), a notice was published canceling two of the four informal public hearings. Subsequently, a number of requests have been received by the Agency requesting an extension of the comment period. Consequently, OSHA has extended the date to receive public comments, notices of intention to appear and prehearing documentary evidence to March 6, 1986. The commencement date of the Washington hearing has been changed to March 18, 1986.

DATES: Comments concerning the proposed standard and notices of intention to appear at one of the informal rulemaking hearings must be received on or before March 6, 1986. Parties requesting more than 10 minutes for their presentation at the hearings and parties submitting documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than March 6, 1986. Two informal public rulemaking hearings are scheduled to commence as follows.

Washington, D.C.: March 18, 1986
Los Angeles, CA.: April 2, 1986.

The public hearings will begin at 10:00 A.M. on the commencement dates.

ADDRESSES: Comments are to be submitted to the Docket Officer, Docket No. H-059C, Room N-3670, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, D.C. 20210, telephone (202) 523-7894.

Notices of intention to appear at the informal rulemaking hearings, testimony and documentary evidence are to be sent to: Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-059C, Room N-3662, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 523-8024.

The locations of the informal public hearings are as follows:

Washington, D.C.: The Auditorium, Frances Perkins Department of Labor Building, Third and Constitution Avenue NW.

Los Angeles, CA: Redondo Room, Sheraton Plaza—La Reina Hotel, 6101 West Century Boulevard, Los Angeles, CA 90045-5308 (Telephone (213) 642-1111).

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA, U.S. Department of Labor, Office of Public Affairs, Rm 3641, 200 Constitution Avenue NW., Washington, D.C. 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On December 10, 1985 (50 FR 50512), the Assistant Secretary for Occupational Safety and Health issued a proposed rule and notice of hearing on occupational exposure to benzene. That notice scheduled hearings in Washington, D.C., New Orleans, Los Angeles and Chicago. In a second **Federal Register** notice published on January 28, 1986 (51 FR 3474), OSHA determined that it is not essential as part of this rulemaking to conduct all three regional hearings, especially in light of the impact of the Gramm-Rudman budget reductions. As a result, OSHA canceled the two hearings which were to be held in New Orleans, LA, on March 25, 1986, and in Chicago, IL, on April 8, 1986.

Subsequent to that notice, OSHA received four requests asking for an extension of the public comment period. The American Coke and Coal chemicals Institute (Ex. No. 201-1) asked the Agency to extend the public comment period from February 14, 1986 to March 16, 1986. The American Iron and Steel Institute (AISI) (Ex. No. 201-3) and the Chemical Manufacturers Association (CMA) (Ex. No. 201-6) asked for extension of the public comment period to March 13, 1986. The American Petroleum Institute (API) (Ex. No. 201-5) asked for extension of the public comment period and testimony documentation to March 24, 1986. API also asked for a three-week postponement of the hearings to about March 31, 1986. All four requests indicate the need for more time to develop their analyses and comments on the benzene proposal.

OSHA has reviewed these four requests, the time needed to run an orderly hearing process, and the regulatory schedule that OSHA has presented to the U.S. Court Appeals for the District of Columbia Circuit. Based on this review, OSHA has concluded that it is appropriate to extend the last date for the receipt of comments and notices of intention to appear from February 14, 1986 until March 6, 1986. It is also appropriate to extend the last date for receipt of testimony (for those requesting more than 10 minutes to testify) and documentary evidence from February 28, 1986, until March 6, 1986. (Note that testimony and prehearing evidence are due to the same date for receipt of comments and notices of intention to appear.) It is also appropriate that the hearing in Washington, D.C. scheduled to commence on March 11, 1986 be changed to commence on March 18, 1986. The commencement date for the hearing in Los Angeles will remain unchanged as April 2, 1986.

OSHA believes that these changes are reasonable, fair and responsive to the needs of the requestors. They are also consistent with the need to meet the schedule presented to the Court, as the date for the completion of the OSHA rulemaking hearing has not been extended.

The specific rules for submitting comments, notices of intention to appear, testimony and documentary evidence, and procedures for the hearings are set forth in the benzene proposal at 50 FR 50571-2 (December 10, 1985). Signed at Washington, D.C. this 5th day of February 1986.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 86-2947 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[OAR-FRL-2968-6]

Stratospheric Ozone Protection Activities

AGENCY: Environmental Protection Agency.

ACTION: Announcement of Upcoming Workshop and Conference.

SUMMARY: This notice provides information on an upcoming workshop and a conference being held as part of EPA's program related to stratospheric ozone protection (See 51 FR 1257; January 10, 1986). The first workshop, scheduled for March 6-7 in Washington, D.C., focuses on future use of chlorofluorocarbons (CFSs) and other ozone-modifying substances and the availability of technological controls to limit future emissions. The second meeting is scheduled for June 16-20 also in Washington, D.C. It is being co-sponsored by the United Nations Environmental Programme and the U.S. Environmental Protection Agency and is titled "Health and Environmental Effects of Ozone Modification and Climate Change." This notice sets forth the time and location of these meetings, and provides information for people who would like to present papers. EPA encourages the public's participation in these and other upcoming activities related to the issue of protecting the ozone layer.

DATES: Workshop on Demand and Technical Control Options; March 6-7, 1986. Conference on Health and Environmental Effects of Ozone Modification and Climate Change; June 16-20, 1986.

ADDRESSES: Workshop on Demand and Technical Control; Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, D.C. 20008.

Conference on Health and Environmental Effects of Ozone Modification and Climate Change; Hyatt Regency-Crystal City, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Stephen Seidel, U.S. Environmental Protection Agency, PM-220, 401 M Street, SW, Washington, D.C. 20460, (202) 382-2787.

SUPPLEMENTARY INFORMATION: In early January 1986, EPA announced in the **Federal Register** its program plan for examination of issues related to protection of stratospheric ozone (See 51 FR 1257; January 10, 1986). The goal of this plan was to provide a sound scientific and technical basis for future Agency decision-making related to both domestic and international aspects of this issue.

As part of the plan EPA identified a series of workshops and a conference related to specific aspects of that issue. This announcement presents additional information on two of those meetings.

Workshop on Demand and Control Technologies

The first meeting under the program plan is scheduled for March 6-7 in Washington, D.C. This meeting focuses specifically on examining possible future use of CFCs and other ozone-modifying substances and on possible technical control options for limiting their use.

Specific topics that will be addressed at this meeting include:

—Summary of atmospheric science issues related to ozone modification and climate change
—Overview of Federal and private sector programs and research activities related to stratospheric protection
—Analysis of short-term estimates of possible future demand for CFCs
—Review of currently available control technologies to limit emissions
—Analysis of issues related to longer-term demand for CFCs
—Analysis of possible nonregulatory constraints or limits to the future production of CFCs
—Review of future trends in other ozone-modifying substances.

EPA is encouraging broad participation and discussion of the issues presented above. The two-day workshop will be structured to allow those interested in participating to do so by presenting papers, serving as paper discussants, or raising issues during question and answer sessions.

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This meeting serves as the preliminary step in preparation for the United States' participation in an upcoming workshop on the same issues sponsored by the United Nations Environment Programme (UNEP) and scheduled for the last week in May in Rome. This and related UNEP workshops are aimed at providing an expanded information base and increasing the dialogue among nations before negotiations concerning possible global strategies to protect the ozone layer resume in late 1986.

Papers presented at this workshop in March will also be included as part of the United States' submittal for the UNEP workshop in May. As a result, papers are limited to 20 pages, but can include technical annexes of unlimited length. They must also be peer-reviewed by an expert selected by the author of the paper. The name and qualifications of the reviewer should be included in the paper. Paper titles and abstracts should be submitted by February 19th to Stephen Seidel at the address provided above.

Conference on Health and Environmental Effects of Ozone Modification and Climate Change

EPA and UNEP are co-sponsoring this conference in an effort to bring together researchers, industrial planners, public health professionals, and policy-makers concerned about the potential health and environmental consequences if ozone layer modification or climate change occurs. Unlike many other meetings which have focused on the degree of scientific certainty concerning ozone modification and climate change and the potential magnitude of such changes, this meeting looks specifically at the potential health and environmental consequences that could result from stratospheric or climatic change.

Specific topics that will be addressed at the conference include:

—Effects of increased exposure to UV–B radiation on human health
—Effects of increased exposure to UV–B radiation on plants and aquatic organisms
—Effects of increased exposure to UV–B radiation on materials degradation
—Effects of increased exposure to UV–B radiation on photochemical smog formation
—Effects of climate change on water resources
—Effects of climate change on agriculture and forests
—Effects of climate change on seal level rise.

Researchers interested in preparing papers for this conference should submit a one-page abstract including the paper's title, a brief summary of contents, and contact name and address. Abstracts must be received by March 1, 1986 and should be sent to Stephen Seidel at the address given above. Authors should state whether they want to be considered only for presentation of a paper or whether they would agree instead to present their research at a poster session. (All papers selected will also be presented at the poster session.)

EPA has also tentatively scheduled a second workshop on control strategies (e.g., product bans, emission fees, capacity limits) for July in Washington, D.C. This workshop precedes a UNEP meeting scheduled for September on the same topic. More information on this meeting will be presented in a forthcoming Federal Register notice.

Information and brochures concerning the March 6–7 and June 16–20 meeting can be obtained by contacting Stephen Seidel at the address give above.

Dated: February 5, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86–2943 Filed 2–10–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–5–FRL–2960–3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: On April 16, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a February 28, 1983, Illinois Pollution Control Board (IPCB) Order (R78–15) as a proposed revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP). This Order establishes a 0.6 lb. TSP/MMBTU emission limit for the City of Rochelle Municipal Steam Power Plant. Today's Federal Register notice announces USEPA's proposed approval of this revision and solicits public comment on the proposed SIP revision and USEPA's proposed rulemaking action.

DATE: Comments on this revision and on the proposed USEPA action must be received by March 13, 1986.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Randolph O. Cano, at (312) 886–6035, before visiting the Regional V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION: The City of Rochelle operates a municipal steam plant on South Main Street, Rochelle in Ogle County. Ogle County is a rural, primary agricultural area that is designated as attainment for the TSP National Ambient Air Quality Standards (NAAQS). The plant contains two coal-fired boilers with a maximum rated capacity of 107 MMBTU/hr. each. Both boilers are vented to a common 45.7m stack. On April 19, 1983, IEPA submitted a site-specific rule change for the City of Rochelle Municipal Steam Power Plant as a revision to the Illinois TSP SIP. The IPCB adopted Order R78–15 on February 24, 1983. This Order establishes Illinois Rule 203(g)(1)(C)(iii), which reads as follows:

(iii) As of March 14, 1983, the rate of emissions from Boiler # 1 and # 2 located at the Rochelle Municipal Steam Power Plant, South Main Street, City of Rochelle in Ogle County, Illinois; shall not exceed 0.6 lbs/ MMBTU of actual heat input.

This Order effectively establishes a 0.6 lb TSP/MMBTU emission limit for the Rochelle plant to replace the lower limit (i.e., 0.18 lbs/MMBTU), which, along with Rule 203(g), has been invalidated as a matter of State law by the Illinois Supreme Court. Illinois has recently recodified its air pollution control regulations and is currently seeking to revalidate old Rule 203(g). These other actions do not affect the applicability of the site-specific rule for the City of Rochelle.

On June 14, 1983, USEPA notified the State that the air quality analysis provided in support of the proposed SIP revision was not consistent with current air quality modeling guidelines and that the proposed SIP revision could not be approved for this reason. On May 24, 1985, the State submitted a revised modeling analysis intended to satisfy USEPA's concerns.

The revised modeling analysis was performed in order to demonstrate that the proposed TSP emission limitation would not cause or contribute to a violation of the TSP NAAQS. The Rochelle plant stack TSP emissions were modeled to determine their impact against background concentrations that were determined from available TSP monitor data. There are no other major TSP sources in the area expected to significantly interact with the Rochelle Steam plant. An examination of the revised modeling analysis indicates that it is consistent with USEPA modeling requirements. The modeling predicted a high, second-high TSP 24-hour concentration of 8.4 $\mu g/m^3$ (at 2.164 km) and a high annual concentration of 0.68 $\mu g/m^3$ due solely to the Rochelle plant. When these results are added to the monitored background concentrations, no violations of the TSP NAAQS are predicted.

Because the Prevention of Significant Deterioration (PSD) baseline date has not been triggered in Ogle County for TSP, an increment consumption analysis is not necessary for this revision. Regardless, it is noted the maximum predicted 24-hour and annual TSP concentrations from the Rochelle plant are well below the corresponding PSD increments for TSP.

USEPA proposes to approve the incorporation of Rule 203(g)(1)(c)(iii) into the Illinois TSP SIP. Public comment is solicited on this proposed SIP revision and on USEPA's proposed rulemaking action. Public comments received by the date indicated above will be considered in developing USEPA's final rulemaking action.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Ozone, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: December 24, 1985.

Alan Levin,

Acting, Regional Administrator.

[FR Doc. 86–2945 Filed 2–10–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–2–FRL–2968–5; Region II Docket No. 59]

State Implementation Plans for Visibility Monitoring Strategy

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA's) proposed approval of a visibility monitoring plan submitted to EPA by the New Jersey Department of Environmental Protection (NJDEP) to satisfy the requirements of 40 CFR 51.305 and section 109A of the Clean Air Act. This plan applies to the Brigantine National Wilderness "Class I" area of New Jersey. EPA approval of this plan will result in New Jersey starting a visibility monitoring program for the Wilderness area. This program will monitor trends in visibility and evaluate sources of visibility impairment.

DATE: Comments must be received on or before March 13, 1986.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the proposal submitted by the State of New Jersey are available for public inspection during normal business hours at the following addresses:

Environmental Protection Agency, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Air Quality Management and Surveillance, John Fitch Plaza, Labor and Industry Building, 11th Floor, Room 1110, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1985, at 50 FR 28544, the Environmental Protection Agency (EPA) noted that the New Jersey Department of Environmental Protection (NJDEP) had submitted a visibility monitoring plan for EPA's approval.

Such plans are required by regulations promulgated at 40 CFR 51.305. Interested readers should refer to EPA's July 12, 1985 notice and to EPA's October 23, 1984 proposed rulemaking at 49 FR 42670 for the history of EPA actions with regard to the visibility portion of state implementation plans.

EPA's Review Criteria

The criteria EPA uses to determine if visibility monitoring plans meet the requirements of 40 CFR 51.305 are that the plan must:

(1) Provide data for new source impact analysis;

(2) If possible, determine sources, of visibility impairment;

(3) Assess visibility conditions for the State Implementation Plan and periodic reports; and

(4) Consult with the Federal Land Manager (FLM).

These criteria were described at 50 FR 28544 and explained in more detail in a March 25, 1985 Visibility Monitoring Strategy Requirements memorandum from the Director of the Control Programs Development Division, of EPA's Office of Air Quality Planning and Standards to EPA Regional Office Air Division Directors.

The NJDEP plan was submitted for EPA review on May 5, 1985 and November 21, 1985, and meets the EPA criteria for approval.

The NJDEP proposal is reviewed against each EPA criterion as follows:

Criterion 1: The NJDEP plan meets the criterion of collecting data for new source review analysis by first using airport visibility data. NJDEP will monitor with appropriate instrumentation at a site in, or adjacent to, the Class I area, the Brigantine National Wilderness Area, by the end of 1986.

Criterion 2: The plan commits to evaluating the extent of haze or discoloration from the plume of the B.L. England Generating Station, a source of visibility impairment identified by the Federal Land Manager. It will also deal with other visibility impairment problems identified by the FLM and communicated by him to NJDEP.

Criterion 3: NJDEP will use the visibility data collected to assess visibility trends for the SIP and for regular reports.

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In addition, the NJDEP plan includes a statement noting where the plan, the data collected, and the correspondence related to the plan are available for public review, as required by 40 CFR 51.306(c).

Criterion 4: The NJDEP and the FLM are working together to define the extent of visibility impairment and to set up FLM review of State new source review and monitoring actions.

EPA's Proposed Action

Today, EPA proposes to approve the monitoring portion of the NJDEP visibility SIP since it meet EPA requirements for such plans.

EPA's proposed approval of the NJDEP visibility monitoring plan is based on its meeting Section 169A of the Clean Air Act and applicable EPA regulations and guidelines.

Interested parties are invited to comment on this proposed approval. Comments received by March 13, 1986, will be considered in EPA's final decision. All comments received will be available for inspection at the Region II office of EPA, at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under 5 U.S.C. section 605(b), I certify that this SIP approval will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control.

Authority: 42 U.S.C. 7401–7602.

Dated: December 10, 1985.

Christopher J. Daggett,

Regional Administrator, Environmental Protection Agency.

[FR Doc. 86–2942 Filed 2–10–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 65

[Docket No. 9–86–31; A–9–FRL–2967–1]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Delayed Compliance Order for Packaging Industries, Inc., San Leandro, CA

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue an administrative order to Packaging Industries, Inc. The Order requires the company to bring volatile organic compounds emissions from its flexographic printing and laminating lines in San Leandro, California into compliance with the Bay Area Air Quality Management District's Regulation 8, Rule 20, part of the Federally approved California State Implementation Plan (SIP); The SIP requires final compliance with Regulation 8, Rule 20 by July 1, 1985. Because the company is unable to comply with these regulations at this time, the proposed order would establish an expeditious schedule requiring final compliance by December 31, 1986. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on EPA's proposed issuance of the Order.

DATES: Written comments and requests for a public hearing must be received on or before March 13, 1986.

ADDRESS: Comments and requests for a public hearing should be submitted to Chief of the Compliance Section, Air Management Division, U.S. EPA, 215 Fremont Street, San Francisco, California 94105. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Abra Bennett, Compliance Section, Air Management Division, U.S. EPA, 215 Fremont Street, San Francisco, California 94105 at (415) 974–8057.

SUPPLEMENTARY INFORMATION: Packaging Industries, Inc. operates four flexographic printing and laminating lines in San Leandro, California. The proposed Order addresses volatile organic compounds (VOC) emissions from the flexographic printing and laminating lines at this facility, which are subject to the Bay Area Air Quality Management District's (BAAQMD) Rule 8–20, which is part of the Federally approved California SIP. Rule 8–20 limits the VOC emissions from graphic arts printing and coating operations. Rule 8–20–404.5 specifies July 1, 1985 as the date by which Packaging Industries, Inc. must be in compliance with the Rule. The Order requires final compliance with Rule 8–20–404 by December 31, 1986 by conversion to the use of either complying low solvent inks and hot melt laminates, or by the installation of an add-on control device. Packaging Industries, Inc. is to continue to evaluate its compliance options until August 31, 1986, at which time it will decide whether it will be able to convert to the use of complying inks and laminates, or must purchase an add-on control device consisting of an incinerator in order to reach final compliance by December 31, 1986. The source has consented to the terms of this Order. The source has agreed to meet the Order's increments during the period of this informal rulemaking.

The proposed Order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act): If the Order is issued, source compliance with its terms would preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded. However, Packaging Industries, Inc. has been notified that it is subject to and may be required to pay a noncompliance penalty under section 120 of the Act. Comments received by the date specified above will be considered in determining whether EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is a significant public interest in a hearing, it will be held twenty-one days after prior notice of the date, time, and place of the hearing has been given in this publication.

List of Subjects in 40 CFR Part 65

Air pollution control.

Judith E. Ayres,

Regional Administrator, Region IX.

Packaging Industries, Inc., by the duly authorized undersigned, hereby consents to the provisions of this Order and believes it to be a reasonable means by which its San Leandro, California facility can achieve compliance with the Bay Area Air Quality Management District's Rule 8–20, which is part of the California State Implementation Plan. Packaging Industries, Inc., further waives any and all rights under any provisions of law to challenge this Order.

Dated: January 20, 1986.

Ian H. Reed,

Packaging Industries, Inc.

[FR Doc. 86–2928 Filed 2–10–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 260, 261, 266, 270, and 271

[SW–FRL–2967–8]

Hazardous Waste Management System; Recycled Used Oil Standards

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules; Correction.

SUMMARY: The purpose of this notice is to correct certain typographical errors and omissions found in the proposed standards for recycled used oil published in the Federal Register of November 29, 1985.

DATES: The deadline for submitting written comments on the proposed standards for recycled oil is February 11, 1986.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH–565A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424–9348 or (202) 382–3000, or for technical information, Michael Petruska at (202) 382–7917.

SUPPLEMENTARY INFORMATION: In the November 29, 1985 issue of the Federal Register EPA proposed standards for the management of recycled oil [50 FR 49212–49258]. Since publication, EPA has identified the following typographical errors and omissions which, although of a non-substantive nature, could nonetheless cause confusion among commenters:

(1) [50 FR 49223.] The citation at the end of footnote 55 ["H.R. Rep. No. 98–198, 98th Cong., 1st Sess., at 67 (1983)"] is moved to the end of footnote 56.

(2) On 50 FR 49226, middle column, EPA explained that transporters who collect recycled oil from "small quantity recycled oil generators" would be subject to the special requirements of proposed § 266.42(e)(2)(iii). Phrases were omitted from the last two sentences in the paragraph. The last two sentences in the paragraph are corrected to read as follows:

EPA reasons that this approach would help ensure sound management of small quantity recycled oil generators' oil, while minimizing the requirements (and costs) imposed on the small generators. Comments are requested on EPA's proposed policy for regulating collected "small quantity" recycled oil, including the proposed § 266.42(2)(iii) transporter requirements.

§ 261.5 [Corrected]

(3) In the proposed regulations [50 FR 49250–49251], a regulatory action to delete § 261.6(a)(3)(iii) was inadvertently omitted. That section identifies used oil (recycled in some manner other than being burned for energy recovery) exhibiting one or more of the RCRA characteristics of hazardous waste as one of several hazardous wastes currently exempt from Subtitle C regulation. The proposed definition of "recycled oil," and the proposed requirements of §§ 261.5(j), 261.6(a)(2)(iii), 266.30(b)(1), and Part 266, Subpart E obviously would regulate recycled oil under Subtitle C, including recycling methods in addition to burning for energy recovery (and regardless of whether the oil exhibits one of the RCRA characteristics). Consequently, § 261.6(a)(3)(iii) is deleted and paragraphs (a)(3)(iv) through (a)(3)(ix) of the section are re-numbered accordingly.

§ 266.40 [Corrected]

(4) In the proposed regulations [50 FR 49251], one parameter of the Recycled Oil Fuel Specification (the table in proposed § 266.40(a)(2)(i)) is listed as: "Flashpoint, 100 ppm maximum." This parameter in the specification is corrected to read: "Flashpoint, 100 °F minimum."

§ 270.60 [Corrected]

(5) In the proposed regulations [50 FR 49258], the last sentence in proposed § 270.60(d)(3)(ii) refers to ". . . paragraph (b)[2] of this section . . ." (i.e., § 270.60). This is corrected to read ". . . paragraph (d)(2) of this section . . ."

(6) Footnote 168 in the preamble [50 FR 49244], last phrase, is corrected to read ". . . would generally be inconsistent with Congress' stated concern to reduce unnecessary impediments to recycling."

Dated: February 5, 1986.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86–2940 Filed 2–10–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 271

[SW–5–FRL–2968–4]

Michigan: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Michigan for final authorization, public hearing, and public comment period.

SUMMARY: The State of Michigan has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Michigan's application and has made the tentative decision that upon receipt of adequate assurances by the Michigan Attorney General, Michigan's hazardous waste program satisfies all of the requirements necessary to qualify for RCRA final authorization. Thus, EPA intends to grant final authorization to the State to operate its program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA). Michigan's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application if sufficient public interest is expressed.

DATE: If sufficient public interest is expressed in holding a hearing, a public hearing is scheduled for March 14, 1986 at 9:30 a.m. EPA reserves the right to cancel the public hearing if sufficient public interest in holding a hearing is not communicated to EPA by telephone or in writing by March 7, 1986. EPA will determine by March 12, 1986, whether there is sufficient interest to hold the public hearing. Michigan will participate in the public hearing held by EPA on this subject, if a hearing is to be held. All written comments on Michigan's final authorization application must be received by the close of business on March 14, 1986.

ADDRESSES: Copies of Michigan's final authorization application are available during the hours of 9:00 a.m. to 5:00 p.m., at the following addresses for inspection and copying:

1. Michigan Department of Natural Resources, Bureau of Environmental Protection, Hazardous Waste Division, South Ottawa Building, Lansing, Michigan 48909, Phone: (517) 373–2730

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2. U.S. EPA Headquarters Library, PM 2110, 401 M Street SW., Washington, DC 20460, Phone: (202) 382-5926
3. U.S. EPA, Region 5, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, 13th Floor, Chicago, Illinois 60604, Phone: (312) 886-3718.

Written comments on the application and written or telephone communication of interest in EPA's holding a public hearing on the Michigan application must be sent to, Ms. Diane Sharrow, EPA Region 5, P.O. Box A3587, Chicago, Illinois 60690-3587; (312) 886-3718. If you wish to find out whether or not EPA will hold a public hearing on the Michigan application based upon EPA's decision that there was sufficient public interest in such a hearing, write or telephone after March 10, 1986, Ms. Diane Sharrow, EPA Region 5, Solid Waste Branch, P.O. Box A3587, Chicago, Illinois 60690-3587, (312) 886-3718. If sufficient interest is expressed EPA will hold a public hearing on Michigan's application for final authorization at 9:30 a.m., on March 14, 1986, at the State of Michigan Capitol Complex, Law Building Auditorium, 525 West Ottawa, Corner of Pine and Ottawa Streets, Lansing, Michigan.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Sharrow, EPA, Region 5, Waste Management Division, Solid Waste Branch, 230 South Dearborn Street, 13th Floor, Chicago, Illinois 606909-3587. Phone: (312) 886-3718; FTS 886-3716.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize a State hazardous waste program to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006 (c), 42 U.S.C. 6926 (c)). EPA's implementing regulations at 40 CFR 271.121-271.137 establish a phased approach to interim authorization. Phase I covers EPA's regulations in 40 CFR Part 260-263, and 265 (universe of hazardous wastes generator standards, transporter standards, and standards for interim status facilities).

Phase II, in turn, has three components. Phase II A covers general permitting procedures and technical standards for containers and tanks. Phase II B covers permitting of incinerator facilities, and Phase II C addresses the permiting of landfills, surface impoundments, waste piles, and land treatment facilities. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program reverts to EPA on that date if a State with interim authorization has not received final authorization, as described below. Michigan did not receive Phase I Interim Authorization.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that a State's program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, (3) is no less "stringent" than the Federal program, and (4) provides for adequate enforcement authority and public participation in the permitting process (Section 3006 (b); 42 U.S.C. 6926(b)). States need not have obtained interim authorization in order to qualify for final authorization. EPA's regulations for final authorization appear at 40 CFR 271.1-271.23.

B. Michigan

On July 24, 1985, Michigan submitted a draft application for final authorization. The complete application for final authorization was submitted on November 7, 1985. Prior to submission of the application to EPA, Michigan solicited public comments from September 22, 1985, through October 29, 1985, and held a public hearing on October 29, 1985.

Notice of the submission of the application and public hearing were published in seven newspapers across the State. The State did not receive any comments.

On January 22, 1986, EPA transmitted to Michigan consolidated comments on the State's complete application for final authorization.

The EPA required further clarification from the Michigan Attorney General in the following areas: (1) Applicability of interim status of regulated facilities; (2) public hearing requirements for permitting; (3) warrant authority and its effect on enforcement actions; (4) ability to take court action and its effect on enforcement action; and (5) exemption from disclosure of confidential materials. Michigan is currently preparing a response to EPA's comments.

EPA has evaluated the Michigan Department of Natural Resources to determine its capability to administer a quality hazardous waste management program. EPA believes that the State is capable of administering a quality RCRA program. Michigan has been successful over the past four years in establishing the framework and the policies, and in developing the resources and management needed for an effective hazardous waste management program. One area of the Michigan program which needed improvement was identified. This was improper classification of violations which caused problems with enforcement escalation in the third and fourth quarters of FY'85. EPA believes Michigan has already corrected these problems and will be taking action to avoid its recurrence. Region V will verify this at the first quarter FY'86 evaluation. If any further action is required, Region V and the State may negotiate a Letter of Intent which would outline the further actions which both parties will take. Region V believes that the State is capable of administering a quality RCRA program.

EPA has reviewed Michigan's application and has tentatively determined that upon receipt and evaluation of Michigan's response to the EPA's comments identified above, the State's program will meet all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Michigan.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely, in lieu of EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6226(g), the new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in non-authorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of HSWA, there would be a dual State/Federal regulatory program in Michigan if final RCRA authorization is granted. To the extent the authorized program is unaffected by HSWA, the State program will operate in lieu of the Federal program. EPA will administer and enforce the portions of HSWA in Michigan until the State receives authorization to do so.

Among other things, this will entail the issuance of Federal permits for those areas in which the State will not be authorized. Once Michigan is authorized to implement a HSWA requirement or prohibition, the State program will operate in that area in lieu of the Federal provision. Until that time, the State will assist EPA's implementation of HSWA under a Cooperative Arrangement if final RCRA authorization is granted.

The HSWA-related requirements that are more stringent than the State's program will apply in Michigan. Any State requirement that is more stringent than a HSWA provision will also remain in effect; thus, the universe of the more stringent provisions in the authorized State program and today's tentative approval, defines the applicable requirements in Michigan.

The State of Michigan will be authorized for all the requirements of RCRA up to November 8, 1984 and includes: (1) Interim Status Applicability Standards, November 21, 1984; (2) Satellite Accumulation, December 20, 1984; (3) Redefinition of Solid Waste, January 4, 1985; (4) Interim Status Standards for TSDFs, April 23, 1985; (5) Technical Correction, April 11, 1985; and (6) Availability of Information Provision § 3006(f) of the HSWA, November 8, 1984.

Copies of Michigan's application are available for inspection and copying at the locations indicated in the "**ADDRESSES**" Section of this notice.

EPA will consider all significant public comments on this tentative determination. Issues raised by those comments may be the basis for changing our tentative decision to grant final authorization to Michigan. EPA expects to make a final decision on whether or not to approve Michigan's program by May 7, 1985, and will give notice of this decision in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby; eliminating duplicative requirements for handlers of hazardous wastes in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3, Executive Order 12291.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Inter-governmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b), and EPA Delegation 8-7.

Dated: January 24, 1986.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 86-2938 Filed 2-10-86; 8:45 am]

BILLING CODE 6560-50-M

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Notices

Federal Register
Vol. 51, No. 28
Tuesday, February 11, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Stanislaus National Forest Land and Resource Management Plan; Hearing

AGENCY: Forest Service, USDA.

ACTION: Notice of hearing.

SUMMARY: This notice sets for the schedule for a public hearing on the Stanislaus National Forest Proposed Forest Plan and Draft Environmental Impact Statement.

DATE: March 20, 1986, 2:00 p.m. to 5:00 p.m. and 7: 00 p.m. to 10:00 p.m.

ADDRESS: Home Economics Building, Mother Lode Fairgrounds, 220 S. Southgate Dr., Sonora, California.

FOR FURTHER INFORMATION CONTACT: Steve Waterman, Pubic Affairs Officer, Stanislaus National Forest, 19777 Greenley Road, Sonora, California 95370 (209/532–3671).

Dated: Feburary 5, 1986.

John D. Warnock,

Acting Forest Supervisor.

[FR Doc. 86–2952 Filed 2–10–86; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–044]

Stainless Steel Wire Rods From France; Initiation and Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Initiation and Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from Ugine Aciers, an exporter, the Department of Commerce has conducted an administrative review of the antidumping finding on stainless steel wire rods from France. The review covers exports to the United States by Ugine Aciers and the period August 1, 1983 through July 31, 1984. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these results.

EFFECTIVE DATE: February 11, 1986.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 Fr 9813) the final results of its last administrative review of the antidumping finding on stainless steel wire rods from France (38 FR 22961, August 28, 1973). In accordance with § 353.53a of the Commerce Regulations, Ugine Aciers, an exporter, requested an administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of stainless alloy steel wire rods, tempered, treated, or partly manufactured, currently classifiable under item 607.3400 of the Tariff Schedules of the United States Annotated. The review covers one exporter of French stainless steel wire rods, Ugine Aciers, and the period August 1, 1983 through July 31, 1984.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the f.o.b. warehouse price to the first unrelated purchaser in the United States. Where applicable, we made deductions for U.S. customs duties, U.S. entry and port charges, storage charges, ocean freight, marine insurance, loading charges, and foreign inland freight. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the delivered price, with adjustments, where applicable, for inland freight, insurance, differences in the physical characteristics of the merchandise, and credit costs. In addition, we used best information available to adjust for differences in other direct selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 8.19 percent exists for Ugine Aciers for the period August 1, 1983 through July 31, 1984.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any such written comments or hearings.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 8.19 percent shall be required on all shipments for Ugine Aciers. For any future entries from a new exporter not

covered in this or prior reviews, whose first shipments occurred after July 31, 1984, and who is unrelated to any covered firm, a cash deposit of 8.19 percent shall be required. These deposit requirements are effective for covered shipments entered,or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This initiation, administrative review, and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: January 27, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–2953 Filed 2–10–86; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Multiple Purpose Storage Project in the South Umpqua River Drainage Basin in Douglas County, OR

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to prepare a DEIS.

The Corps of Engineers, Portland District, is currently investigating the feasibility of constructing a multiple purpose storage project in the South Umpqua River drainage basin in Douglas County, Oregon. The project would consist of a dam, or combination of dams, on tributaries to the South Umpqua River to provide storage for flood control, augmenting low flows for increasing anadromous fish production and water quality, municipal and industrial and irrigation water supplies, hydropower and recreation. A dam is being considered because alternative structures would not be able to serve all of these purposes, which have been identified as needs by Douglas County. Alternative locations for dams are being considered on the West Fork of Cow Creek, Elk Creek and Jackson Creek.

The scoping process will formally commence in the spring of 1986 with the issuance of a scoping letter and preliminary listing of potential effects which will be discussed in the DEIS. Federal, State, and local agencies, Indian tribes, and interested organizations and individuals will be asked to comment on the draft outline and to identify significant issues relating to the potential effects of the alternatives. The DEIS is scheduled for agency and public review in the winter of 1988. The Final EIS is scheduled for publication in the spring of 1989.

ADDRESS: If you have any questions or need additional information, please contact Mr. Eric Braun, telephone (503) 221–6096, (FTS–423–6096), U.S. Army Corps of Engineers, Portland District, Natural Resources Branch, P.O. Box 2946, Portland, OR 97208–2946.

Dated: January 31, 1986.

Patrick J. Keough,

Chief, Planning Division.

[FR Doc. 86–2933 Filed 2–10–86; 8:45 am]

BILLING CODE 3710–AR–M

DEPARTMENT OF EDUCATION

Office of the Secretary

Education Appeal Board; Designation of Jurisdiction; Massachusetts

AGENCY: Department of Education.

ACTION: Notice of designation of jurisdiction to Education Appeal Board.

SUMMARY: The Secretary has designated the Education Appeal Board (EAB) as the forum which will review the appeal by the Commonwealth of Massachusetts (SEA) of the August 19, 1985 final letter of determination (FLD) issued by the Assistant Secretary for Special Education and Rehabilitative Services. That letter disallows $676,256 of the award for fiscal year 1985 received by the SEA under Part B of the Education of the Handicapped Act (EHA–B). The FLD claims that the child count upon which the fiscal year 1985 EHA–B award of the SEA was based included more than 12 percent of the population in Massuchusetts aged five through seventeen. This, according to the August 19, 1985 FLD, violated section 611(a)(5)(B) of the Act.

FOR FURTHER INFORMATION CONTACT: S. Crisler Lindsay, Acting Chairman, Education Appeal Board, 400 Maryland Avenue, SW. (Room 1065, FOB–6), Washington, DC 20202. Telephone: (202) 245–7835.

SUPPLEMENTARY INFORMATION:

Background

Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234–1234c), the EAB has jurisdiction to conduct: (1) Audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary. Such review is specifically available in cases that concern the use of funds provided under the EHA–B. Final regulations implementing the statutory provisions in Sections 451–454 of the General Education Provisions Act were published in the **Federal Register** at FR 27305 on May 18, 1981 (34 CFR Part 78). Section 78.2 of those regulations contain the present jurisdiction of the EAB, which includes the authority to review proceedings as designated by the Secretary of Education in the **Federal Register.**

On August 19, 1985 the Assistant Secretary for Special Education and Rehabilitative Services issued an FLD requesting the SEA to refund $676,256 of its fiscal year 1985 EHA–B grant. The FLD cites as the basis for this determination section 611(a)(5)(A) of the EHA–B, which provides that, for purposes of determining a State's allocation of funds under the Act, "the Secretary may not count handicapped children in such State . . . to the extent the number of such children is greater than 12 percentum of the number of all children aged five to seventeen, inclusive, in such State." 20 U.S.C. 1411(a)(5)(A).

The SEA filed an application for review of the FLD with the EAB on September 18, 1985. On September 23, 1985, the Acting Chairman of the EAB determined that the SEA's appeal of the August 19, 1985 FLD did not fall within the jurisdiction of the EAB. The decision to designate this case is not intended to reflect agreement or disagreement with the Acting Chairman's determination.

Designation of Jurisdiction

Under the authority in section 451(a)(4) of the General Education Provisions Act (20 U.S.C. 1234(a)(4)) and 34 CFR 78.2(a)(5) of the EAB regulations, the Secretary announces that on November 22, 1985, the Secretary designated the EAB as the forum to review the Assistant Secretary's August 19, 1985 FLD to the Commonwealth of Massachusetts. The EAB is to review the August 19, 1985 FLD under the rules of procedure governing final audit determinations, and those general rules governing the EAB's conduct of proceedings in 34 CFR 78.41–78.84.

Any questions should be addressed to S. Crisler Lindsay, Acting Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB–6), Washington, DC 20202, Telephone: (202) 245–7835.

(Catalog of Federal Domestic Assistance Number Not Applicable)

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Dated: February 7, 1986.
William J. Bennett,
Secretary of Education.
[FR Doc. 86-3070 Filed 2-10-86; 2:32 pm]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections, listed at the end of this notice, to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Monday, December 9, 1985 (50 FR 50200).

FOR FURTHER INFORMATION CONTACT:
John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-2306
Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7313

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., February 5, 1986.

Yvonne M. Bishop,
Director, Statistical Standards, Energy Information Administration.

DOE Collections Under Review By OMB

Collection No.	Collection title	Type of request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden HRS	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
FERC								
FERC-519	Disposition of Facilities, Mergers, and Acquisition of Securities.	Extension	On occasion	Mandatory	Businesses or other for profit.	20	1,700	The FPA requires that public utilities file for approval of dispositions of jurisdictional facilities, mergers of such facilities with other such facilities owned by another person, or acquisitions of securities of other public utilities. Supporting data is required to determine if such transactions are consistent with the public interest.
FERC-534	Application for Production-Related Costs.	Extension	On occasion	Mandatory	Businesses or other for profit.	9,652	205,686	The Commission needs the information in order to review producer claims for the recovery of certain production-related costs which first sellers incur after gas is produced at the wellhead and which are not included in NGPA price categories.
FERC-580	Fuel Purchase Practices.	Revision	Biennially	Mandatory	Businesses or other for profit.	67	6,700	The information requested is needed to comply with the requirements of Section 205(c)(2) of the Federal Power Act for a review "not less frequently than every two years" of "practices . . . to ensure efficient use of resources." The information will be used in a review of generic practices, and practices of individual utilities.

[FR Doc. 86-2935 Filed 2-10-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. ECAO-CD-81-2; ORD-2967-9]

Revised Air Quality Criteria for Lead; Availability of Draft Addendum

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Draft Addendum.

SUMMARY: The existing criteria document for lead, Air Quality Criteria for Lead (EPA-600/8-77-017), has been updated and revised pursuant to sections 108 and 109 of the Clean Air Act, as amended, 42 U.S.C. 7408 and 7409. The revised document, now in draft final form, will be used as a basis for review and, as appropriate, revision of the existing National Ambient Air Quality Standards (NAAQS) for lead.

In light of the recent publication of several important papers in the scientific literature concerning the relationship between blood lead levels and blood pressure, EPA is making available for public comment a draft addendum to the draft revised criteria document. The draft addendum discusses this newly available information, as well as recent papers concerning the relationship between blood and stature.

DATES: The Agency will make the draft addendum available on or about February 10, 1986. Comments must be postmarked by March 7, 1986.

ADDRESSES: To obtain a copy of the draft addendum, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, OH 45268, (513) 569-7562, (FTS: 684-7562), and request the draft addendum to the draft revised Air Quality Criteria for Lead, EPA-600/8-83-028B. Please provide your name and mailing address. The draft addendum will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street, SW, Washington, DC 20460.

Comments on the draft addendum should be sent in writing to the Project Manager, Air Quality Criteria for Lead, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711. Copies of the draft addendum, all public comments received, and the Agency's response to these comments will be included in the docket established for the revision of the lead criteria document (docket no. ECAO-CD-871-2). The docket is available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m. at EPA headquarters in the Central Docket Section (A-130), Gallery 1, West Tower, Waterside Mall, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711 (919) 541-3637 (FTS: 629-3637).

SUPPLEMENTARY INFORMATION: The draft addendum will also be reviewed by the Clean Air Scientific Advisory Committee (CASAC) of the Agency's Science Advisory Board. Advance notice of the time and place of the meeting will be provided in a subsequent Federal Register notice. After incorporation of revisions in response to public comment and CASAC review, the addendum will be included in the revised criteria document and considered in any revision of the NAAQS for lead.

Dated: February 5, 1986

F. G. Hueter,
Acting Assistant Administrator for Research and Development.
[FR Doc. 86-2941 Filed 2-10-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 221-004109-001.
Title: Georgia Ports Authority Terminal Agreement.
Parties:
Georgia Ports Authority (Port)
Japan Line, Ltd. (Line)
Kawasaki Kisen Kaisha, Ltd. (Line)
Mitsui O.S.K. Lines, Ltd. (Line)
Nippon Yusen Kaisha (Line)
Yamashita-Shinnihon Steamship Co., Ltd. (Line)
Synopsis: The proposed amendment would provide for the establishment of a "coordination center" to be staffed by, and represent the Lines in their dealings with the Port. The parties have requested a shortened review period.

Agreement No. 221-004109-002.
Title: Georgia Ports Authority Terminal Agreement.
Parties:
Georgia Ports Authority (Port)
Japan Line, Ltd. (Line)
Kawasaki Kisen Kaisha, Ltd. (Line)
Mitsui O.S.K. Lines, Ltd. (Line)
Nippon Yusen Kaisha (Line)
Yamashita-Shinnihon Steamship Co., Ltd. (Line)
Synopsis: The proposed amendment would permit the Port to lease to the Lines fourteen acres of paved parking space located within Containerport at the Garden City Terminal of the Georgia Ports Authority. The parties have requested a shortened review period.

Agreement No. 207-010884.
Title: Trans Freight Lines Joint Venture Agreement.
Parties:
Trans Freight Lines, Inc.
Overseas Containers Limited
112 Corporation
Orsett Depot Limited
Synopsis: The proposed agreement would operate an ocean common carrier service under the trade name Trans Freight Lines and would be a direct continuation of the services provided by Trans Freight Lines, Inc. The joint service will initially operate nine vessels, but shall be authorized to operate as many as twelve vessels. The joint service will be responsible for setting rates, terms and all other conditions of service regulating the number and character of its own sailings and volume and character of cargo. For purposes of all currently effective agreements and tariffs and other activities of Trans Freight Lines, the joint service shall be considered a direct successor.

By Order of the Federal Maritime Commission.
Dated: February 6, 1986.
John Robert Ewers,
Secretary.
[FR Doc. 86-2960 Filed 2-10-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Archer, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound

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banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Archer, Inc.*, Palmer, Nebraska, through the merger of its subsidiary, Osceola Insurance, Inc., Osceola, Nebraska, with The Gretna Company, Gretna, Nebraska, proposes to indirectly acquire the Gretna Company's subsidiary Bank, Gretna, Nebraska.

Applicant and its subsidiary has also applied to indirectly engage in the activity of acting as agent for the sale of credit related insurance sold in connection with credit granted by its proposed subsidiary bank, The Gretna State Bank, which would be acquired through the merger of Osceola Insurance, Inc., with The Gretna Company, pursuant to § 225.25(b)(8)(i). Comments on this application must be received not later than March 3, 1986.

2. *Fourthco, Inc.*, Tulsa, Oklahoma; to become a bank holding company by acquiring 90 percent of the voting shares of Fourth National Corporation, Tulsa, Oklahoma, indirectly acquiring The Fourth National Bank of Tulsa, Tulsa, Oklahoma, and United Bancshares, Inc., indirectly acquiring United Bank of Tulsa, Tulsa, Oklahoma.

Applicant has also applied to acquire Fourth National Corporation ("FNC"), and its subsidiaries: Diversified Mortgage and Investment Company ("DMIC"), and Fourth Investment Advisors, Inc. ("FIA"), all of which are located in Tulsa, Oklahoma. Applicant proposed to engage in the various activities described below through the indicated companies: (1) Through FNC directly—in making and servicing loans and leasing real or personal property, pursuant to section 225.25 (b)(1) and (b)(5), respectively of Regulation Y; (2) through FNC's subsidiary, DMIC,—in mortgage banking activities, pursuant to § 225.25(b)(1) of Regulation Y; (3) through FNC's subsidiary, FIA—in providing investment or financial advice, pursuant to § 225.25(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, February 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2904 Filed 2-10-86; 8:45 am]

BILLING CODE 6210-01-M

Florida National Banks of Florida, Inc., et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 5, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Florida National Banks of Florida, Inc.*, Jacksonville, Florida; to merge with Citrus Banking Corporation, Tampa, Florida, thereby indirectly acquiring Citrus Park Bank, Tampa, Florida.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Perry County Bancshares, Inc.*, Perryville, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Perry County Bank, Perryville, Arkansas.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Russell State Bancshares, Inc.*, Russell, Kansas; to acquire 100 percent of the voting shares of Security State Bank, Great Bend, Kansas.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bryant-Irvin Bancshares, Inc.*, Benbrook, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank, Benbrook, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2905 Filed 2-10-86; 8:45 am]

BILLING CODE 6210-01-M

McLaughlin Holding Co.; Applications To Engage de Novo in Permissible Nonbanking Activites

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 3, 1986.

A **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *McLaughlin Holding Company*, Moline, Illinois; to engage *de novo* through its subsidiary, MBC Financial Corp., Moline, Illinois, and thereby engaging in making and servicing loans as a commercial finance company, and the leasing of personal property as the functional equivalent of an extension of credit to the commercial lessee of the property, pursuant to § 225.25 (b)(1)(iv) and (b)(5), respectively.

Board of Governors of the Federal Reserve System, February 6, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2906 Filed 2-10-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Intergovernmental Review of Agency Programs and Activities

ACTION: Notice of proposed changes to program coverage, and of certain programs proposed to remain excluded.

SUMMARY: This notice proposes to make certain changes to the Department's lists of financial assistance programs that are subject to or excluded from E.O. 12372 and 45 CFR Part 100. This notice also proposes to continue excluding certain programs from coverage under E.O. 12372 and 45 CFR Part 100.

Background and Criteria

Executive Order 12372 of July 14, 1982, 47 FR 30959, as amended by E.O. 12416 of April 8, 1983, 48 FR 15887, established a new Federal policy of consultation and cooperation with State and local governments in the administration of Federal financial assistance and developing recommendations with respect to Federal programs, to accommodate State and local concerns or explain why those concerns cannot be accommodated, and to encourage simplification of the State planning requirements imposed by various Federal laws.

HHS published a list of programs covered by E.O. 12372 on June 24, 1983, at 48 FR 2903. This proposed notice would update the list of programs previously identified as subject to the Executive Order's requirements. The proposed revisions reflect an evaluation of new programs that have not previously been reviewed and a reevaluation of programs that had previously been determined to be subject to or excluded from the Executive Order's requirements. Programs may be excluded from the Executive Order's coverage if they do not directly affect State or local governments or if intergovernmental consultation and cooperation is inappropriate. Accordingly, programs are not covered by the Executive Order if they involve proposed Federal legislation, regulations, or budget formulation, direct payments to individuals, financial transfers for which HHS has no funding discretion or direct authority to approve specific sites or projects, national security matters, procurement, research and demonstration projects whose goals and objectives are national in scope, and assistance to Federally recognized Indian tribes. Our review of a program's coverage status under the Executive Order was guided by these criteria.

I. Additional Programs to be Covered

The Department proposes that the following financial assistance programs be covered. These programs have not been previously designated either as covered or excluded.

CFDA No.	Program title
13.116	Project Grants & Cooperative Agreements For Tuberculosis Control Programs.
13.125	Mental >Health Planning and Demonstration Projects.
13.126	Refugee Assistance—Mental Health.
13.283	Investigations and Technical Assistance.
13.663	Community Development Credit Union Revolving Loan Fund.
13.664	Rural Development Loan Fund.
13.665	Discretionary Grants Only-Community Services Block Grant.
13.866	Home Health Services And Training Grants and Loans.
None	WIN Discretionary Program.
None	Office of Refugee Resettlement Comprehensive Discretionary Social Services Grant Program.

2. Additional Research Programs To Be Excluded

The Department proposes to exclude the following financial assistance programs because they support research of national significance not directly affecting State and local governments. These programs have not been previously designated either as covered or excluded, unless otherwise stated.

CFDA No.	Program title
13.112	Characterization of Environmental Health Hazards.
13.113	Biological Response to Environmental Health Hazards.
13.114	Applied Toxicological Research and Testing.
13.115	Biometry and Risk Estimation.
13.118	Acquired Immunodeficiency Syndrome (AIDS) Activity.
13.121	Diseases of the Teeth and Supporting Tissues.
13.122	Disorders of Structure, Function and Behavior (Research).
13.389	Research Centers in Minority Institutions.
13.390	Academic Research Enhancement Award.
13.809	Child Support Enforcement Research.
13.811	Child Support Enforcement Interstate Grants.
13.978	Preventive Health/Sexually-transmitted Diseases Research (previously covered).

Both 13.809 and 13.811 were previously excluded under 13.812 SSA Research but are now split out in the Catalog of Federal Domestic Assistance as separate research programs. They continue to be excluded because the nature of the programs remain the same.

3. Additional Academic Training Programs to be Excluded

The Department proposes to exclude the following financial assistance programs because they support academic training that addresses national needs, and the location and purpose of the training does not directly affect States and local governments. These programs have not been previously designated either as covered or excluded.

CFDA No.	Program title and description
13.117	Grants for Preventive Medicine Residency Training: This program promotes the post-graduate education of physicians in preventive medicine to advance the cause of health promotion and disease prevention.
13.119	Grants for Pediatric Medicine Training: This program assists in the alleviation of the present geographic maldistribution of podiatrists by providing clinical training for students recruited from areas that are now underserved.
13.123	Health Professions Pregraduate Scholarship Program for Indians: This program provides scholarship grants to Indians for the purpose of completing compensatory preprofessional education to enable the recipient to qualify for enrollment or re-enrollment in a health professions school.
13.124	Nurse Anesthetist Traineeships—This program provides traineeships for full-time study in accredited training programs for registered nurses who have completed 12 months of study in a nurse anesthetist training program.
13.900	Grants for Faculty Development in General Internal Medicine and/or General Pediatrics—This program promotes the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal medicine and general pediatrics.

4. Closed-Ended Formula Grant Programs To Be Partially Excluded

The following closed-ended formula grant programs were previously designated as covered by the Executive Order. We propose to continue to allow the states to simplify and consolidate

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Federally required State plan submissions. These formula grant programs, however, are financial transfers for which HHS has no funding discretion or direct authority to approve specific sites or projects; we therefore propose to exclude these programs from the Executive Order provisions and implementing regulations of 45 CFR Part 100 which require HHS to accommodate State and local concerns or explain why those concerns cannot be accommodated.

CFDA No.	Program title
13.630	Developmental Disabilities—Basic Support and Advocacy Grants.
13.633	Aging—Title III A&B—Grants for Supportive Services and Senior Centers.
13.635	Aging—Title III C—Nutrition.
13.645	Child Welfare Services—State Grants.
13.646	WIN.

5. Programs to Remain Excluded

HHS excluded programs in the following categories previously: (1) Research That Does Not Directly Affect States or Local Governments (71 programs); (2) Payments to Individuals (14 programs); (3) Financial Transfers for Which HHS Has No Funding Discretion or Direct Authority To Approve Specific Sites or Projects (16 programs); and (4) Programs Administered by Federally Recognized Indian Tribes (6 programs). Unless otherwise stated in this notice, those programs remain excluded. (Note that some programs were excluded in more than one category.)

The following programs, however, are currently excluded and are proposed to remain excluded even though they do not fall into the above categories. The first three of these programs are proposed to remain excluded because they have special characteristics that are not amenable to coverage. All the rest are proposed to remain excluded because they support academic training that addresses well-documented national needs, and their location and purpose have no direct impact on States or local governments.

CFDA No.	Program title and description
13.614 (A&B)	Refugee and Entrant Assistance—State Administered Programs. This program helps needy eligible refugees, including Cuban and Haitian entrants, resettle throughout the country, by providing Social Services Assistance (Part A) and Cash and Medical Assistance (Part B) to designated State agencies. While this program is not statutorily a formula grant program, it is operated much like a formula grant program, with no exercise of funding discretion or prior approval of specific sites or projects by HHS. HHS, therefore, proposes to exclude both parts of this program from coverage under E.O. 12372.
13.615	Refugee Assistance—Voluntary Agency Programs: This program assists refugees to become self-supporting and independent members of American society by providing HHS grants to a very limited number of State Department-designated national voluntary resettlement agencies. These national voluntary agencies then subgrant funds to many other appropriate organizations across the nation. Since this is a unique grant program with well-defined national purposes in which HHS does not provide prior approval of the numerous specific subgrant sites or projects funded by the national agencies throughout the country, HHS proposes to exclude this program from coverage. To cover this program under Executive Order 12372 would generate an inordinate burden upon the national voluntary resettlement agencies as they attempt to comply with multiple State review processes and it would seriously frustrate the refugee program purposes.
13.982	Mental Health Disaster Assistance: This program is an emergency, short-term grant program which precludes an E.O. 12372 60-day State Single Point of Contact comment period. The program provides grants to support mental health services to individuals in a disaster area. The National Institute of Mental Health acts as the agent for the Federal Emergency Management Administration. The Governor of the applicant State must approve the applicant agency. To wait for E.O. 12372 State reviews would impede quick action for services in a disaster and run contrary to the purpose of the program.
13.244	Mental Health Clinical or Service-Related Training Grants: The objectives of this program are to increase the number of qualified minority personnel in the mental health professions, and the number of mental health personnel trained to deal with the special problems of children, adolescents, the elderly, the chronically mentally ill, and rural populations; to encourage mental health specialists to work in areas and settings where severe shortages exist; and to assure that the skills and knowledge of mental health personnel are appropriate to the needs of those they serve.
13.263	Occupational Safety and Health Grants: This program develops specialized professional personnel in occupational safety and health problems with training in occupational medicine, occupational health nursing, industrial hygiene and occupational safety.
13.272	Alcohol National Research Awards for Research Training: This program provides both individual fellowships and grants to training institutions for support of training alcohol researchers at both the predoctoral and postdoctoral levels.
13.278	Drug Abuse National Research Service Awards for Research Training: This program consists of training grants to institutions and fellowships to individuals to provide high quality training in drug abuse including: (1) Basic and applied studies in all the life sciences relevant to drug abuse; (2) Research on behavioral and societal factors and the epidemiology of drug abuse and use; and (3) Special training in experimental design methodology.
13.282	Mental Health National Research Service Awards for Research Training: This program provides training grants to institutions and fellowships to individuals at both the predoctoral and postdoctoral levels for training in basic biomedical, clinical and behavioral research and other mental health research.
13.298	Nurse Practitioner Training Programs and Nurse Practitioner Traineeships: This program supports the education of registered nurses who will be qualified to provide primary heath care.
13.299	Advanced Nurse Training Program: This program prepares nurses at the master's and doctoral levels to teach in the various fields of nurse training and to serve in administrative or supervisory capacities and in nursing specialties, and as nurse clinicians.
13.342	Health Professions—Student Loans: This program seeks to increase educational opportunities for students in need of financial assistance to pursue a course of study in specified health professions by providing long-term low interest loans.
13.358	Professional Nurse Traineeships: This program prepares registered nurses as administrators, supervisors, teachers, nursing specialists, and nurse practitioners for positions in hospitals and related institutions, in public health agencies, in schools of nursing, and in other roles requiring advanced training.
13.359	Nurse Training Improvement: This program helps schools of nursing and other institutions improve the quality and availability of nursing education through projects for specified purposes such as opportunities for individuals from disadvantaged backgrounds.
13.364	Nursing Student Loans: This program assists students in need of financial assistance to pursue a course of study in professional nursing education by providing long-term low interest loans, currently at the rate of 6 percent.
13.379	Grants for Graduate Training in Family Medicine: This program seeks to increase the number of physicians practicing family medicine by funding approved residency training programs and assistance to participants in such programs.
13.381	Health Professions—Financial Distress Grants: This program assists schools of medicine, osteopathy, dentistry, optometry, pharmacy, podiatry, public health and veterinary medicine which are in serious financial distress to meet costs of operation, which have special financial needs to meet accreditation requirements, or to carry out appropriate operational, managerial and financial reforms.
13.632	Developmental Disabilities—University Affiliated Facilities: This program assists with the cost of administration and operation of facilities for providing interdisciplinary training for personnel concerned with developmental disabilities.
13.648	Child Welfare Services Training Grants: This program provides grants to accredited institutions of higher learning for special projects for training personnel for work in the field of child welfare.
13.666	Special Programs for the Aging—Title IV: This program seeks to provide adequately trained personnel in the field of aging, improve knowledge of the problems and needs of the elderly, and to demonstrate better ways of improving the quality of life for the elderly.
13.820	Scholarships for First-Year Students of Exceptional Financial Need: This program makes funds available to authorized health professions schools to award scholarships to full-time, first-year health professions students of exceptional financial need.
13.822	Health Careers Opportunity Program: This program identifies, recruits and selects individuals from disadvantaged backgrounds for education/training in a health or allied health professions school.
13.824	Area Health Education Centers: —This program seeks to improve the distribution, supply, quality, utilization and efficiency of health personnel in the health service delivery system and for the purpose of increasing the regionalization of educational responsibilities of health professional schools.
13.884	Grants for Residency Training in General Internal Medicine and/or General Pediatrics: This program makes grants to promote the graduate education of physicians who plan to enter the practice of General Internal Medicine or General Pediatrics.
13.886	Grants for Physician Assistant Training: This program enables public or nonprofit private health or educational entities to meet the cost of projects to plan, develop, and operate or maintain programs for the training of physicians' assistants.
13.895	Grants for Faculty Development in Family Medicine: This program seeks to increase the supply of physician faculty available to teach in family medicine programs and to enhance the pedagogical skills of faculty presently teaching in family medicine.
13.896	Grants for Predoctoral Training in Family Medicine: This program assists schools of medicine and osteopathy in meeting the costs of projects to plan, develop, and operate or participate in professional predoctoral training programs in the field of family medicine.

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CFDA No.	Program title and description
13.897	Residency Training in the General Practice of Dentistry: This program funds training institutions to plan, develop, and operate an approved residency program in the general practice of dentistry.
13.962	Health Administration Graduate Traineeships: This program provides support for eligible students enrolled in accredited graduate degree programs in health administration, hospital administration, or health policy analysis and planning.
13.963	Graduate Programs in Health Administration: This program supports accredited graduate educational programs in health administration, hospital administration, and health planning.
13.964	Traineeships for Students in Schools of Public Health and Other Graduate Public Health Programs: This program supports traineeships for students in graduate educational programs in schools of public health or other public or nonprofit educational entities which offer graduate programs for training in: (1) Biostatistics or epidemology; (2) Health administration, health planning or health policy analysis and planning; (3) Environmental or occupational health; (4) Dietetics or nutrition; (5) Maternal and child health; or (6) Approved residency training in preventive medicine or dentistry.
13.969	(renamed) Health Professions Special Education Initiatives: This program assists allied health professional education programs to prepare allied health personnel for appropriate expanded roles in health promotion and disease prevention and to develop prototypical regional resource centers focused on strengthening multidisciplinary training of health professionals in gerontic health care.
13.984	Grants for the Establishment of Departments of Family Medicine: This program assists in establishing, maintaining, or improving family medicine academic administrative units to provide clinical instruction in family medicine in order that these units are comparable in status, faculty and curriculum to those other clinical units at the applying school.

6. Miscellaneous Programs

A. The following programs are discontinued. Eliminate them from the list of programs not subject to E.O. 12372:

CFDA No.	Program
13.256	Health Maintenance Organizations (funding discontinued).
13.274	Alcohol Clinical or Service-Related Training.
13.280	Drug Abuse Clinical or Service-Related Training.
13.363	Nursing Scholarships.
13.384	Health Professions Start-up Assistance.
13.776	Professional Standards Review Organizations.

B. The Cuban Haitian Special Placement Program listed on page 29203 in the June 24, 1983 Federal Register has been renamed the Mental Health Services for Cuban Entrants Program (13.120) and remains subject to E.O. 12372. Child Abuse and Neglect (13.628) has been separated into two programs in the Catalog of Federal Domestic Assistance and both remain subject to E.O. 12372. They are listed as Child Abuse & Neglect State Grants (13.669) and Child Abuse & Neglect Discretionary Activities (13.670). Adoption Assistance, Title IV–E (13.658), an open-ended entitlement program, is not subject to E.O. 12372 because it provides financial transfers for which HHS has no funding discretion or direct authority to approve specific sites or projects.

C. The following two closed-ended formula grant programs, recently authorized by Congress, are covered by the State plan provisions of E.O. 12372 and 45 CFR Part 100 but are excluded from the State and local review and comment provisions of the Executive Order and Part 100. These formula grant programs are financial transfers for which HHS has no funding discretion or direct authority to approve specific sites or projects:

No CFDA Family Violence Prevention and Services
No CFDA State Grants for Dependent Care Planning and Development.

DATE: Comments must be received by April 14, 1986.

ADDRESS: Send comments to Joel Feinglass, Director, Office of Assistance and Cost Policy, Department of Health and Human Services, Room 513D, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Joel Feinglass or Robert Maslyn, same address, (202)–245–7565.

Dated: February 3, 1986.

Otis R. Bowen, M.D.,

Secretary of Health and Human Service.

[FR Doc. 86–2965 Filed 2–10–86; 8:45 am]

BILLING CODE 4110-02-M

Poverty Income Guidelines; Annual Revision

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice provides a revision of the poverty income guidelines to account for increases in the Consumer Price Index.

DATE: Effective upon publication.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information about the poverty guidelines in general, contact Joan Turek-Brezina (telephone: (202) 245–6141).

Questions about applying these guidelines to a particular program should be referred to the Federal office which is responsible for the program.

For information about the Hill-Burton Uncompensated Services Program, contact the Office of the Director, Division of Facilities Compliance (telephone: (301) 443–6512).

This notice provides the 1986 revision of the poverty income guidelines required by sections 652 and 673(2) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). As required by the statute, this revision reflects changes in the Consumer Price Index; it was accomplished using the same methodology used in previous years.

These poverty income guidelines are used as an eligibility criterion by a number of Federal programs. The guidelines are a simplified version of the poverty thresholds used by the Bureau of the Census to prepare its statistical estimates of the number of persons and families in poverty. The *poverty income guidelines* issued by the Department of Health and Human Services (formerly by the Community Services Administration) are used for administrative purposes—for instance, for determining whether a person or family is financially eligible for assistance or services under a particular Federal program. The *poverty thresholds* are used primarily for statistical purposes.

In certain cases, as noted in the relevant authorizing legislation or program regulations, a program uses the poverty guidelines as only one of several eligibility criteria, or uses a modification of the guidelines (for example, 130 percent or 185 percent of the guidelines). Some other programs, while not using the guidelines as a criterion of individual eligibility, use them for the purpose of targeting assistance or services. In some cases, these poverty income guidelines may not become effective for a particular program until a regulation or notice specifically applying to the program in question has been issued.

The poverty guidelines given below are applicable to both farm and nonfarm families.

The following definitions (derived for the most part from language used in U.S. Bureau of the Census, Current Population Reports, Series P–60, No. 147 and earlier reports in the same series) are made available for use in connection with the poverty income guidelines. Programs may use somewhat different definitions.

(a) *Family.*—A family is a group of two or more persons related by birth, marriage, or adoption who reside together; all such related persons are considered as members of one family. (If a household includes more than one family and/or more than one unrelated individual, the poverty guidelines are applied separately to each family and/or unrelated individual, and not, to the household as a whole.)

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(b) *Family unit of size one.*—In conjunction with the povety income guidelines, a family unit of size one is an unrelated individual (as defined by the Census Bureau)—That is, a person 15 years old or over (other than an inmate of an institution) who is not living with any relatives. An unrelated individual may be the sole occupant of a housing unit, or may be residing in a housing unit (or in group quarters such as a rooming house) in which one or more persons also reside who are not related to the individual in question by birth, marriage, or adoption. (Examples of unrelated individuals residing with others include a lodger, a foster child, a ward, or an employee.)

(c) *Income.*—Refers to total annual cash receipts before taxes from all sources. (Income data for a part of a year may be annualized in order to determine eligibility—for instance, by multiplying by four the amount of income received during the most recent three months.) Income includes money wages and salaries before any deductions, but does not include food or rent received in lieu of wages. Income also includes net receipts from nonfarm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses). Income includes regular payments from social security, railroad retirement, unemployment compensation, workers' compensation, strike benefits from union funds, veterans' benefits, public assistance (including Aid to Families with Dependent Children, Supplemental Security Income, and General Assistance money payments), training stipends, alimony, child support, and military family allotments or other regular support, from an absent family member or someone not living in the household; private pensions, government employee pensions, and regular insurance or annuity payments; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. For eligibility purposes, income does not include the following money receipts: capital gains; any assets drawn down as withdrawals from a bank, the sale of property, a house, or a car; tax refunds, gifts, lump-sum inheritances, one-time insurance payments, or compensation for injury. Also excluded are noncash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or rent received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, and such Federal noncash benefit programs as Medicare, Medicaid, Food Stamps, school lunches, and housing assistance.

1986 POVERTY INCOME GUIDELINES FOR ALL STATES (EXCEPT ALASKA AND HAWAII) AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$5,360
2	7,240
3	9,120
4	11,000
5	12,880
6	14,760
7	16,640
8	18,520

For family units with more than 8 members, add $1,880 for each additional member.

POVERTY INCOME GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$6,700
2	9,050
3	11,400
4	13,750
5	16,100
6	16,450
7	20,800
8	23,150

For family units with more than 8 members, add $2,350 for each additional member.

POVERTY INCOME GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$6,170
2	8,330
3	10,490
4	12,650
5	14,810
6	16,970
7	19,130
8	21,290

For family units with more than 8 members, add $2,160 for each additional member.

Dated: February 5, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86-2964 Filed 2-10-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84N-0102]

Cumulative List of Orphan Products Designations

Correction

In FR Doc. 86-1994, in the issue of Thursday, January 30, 1986, beginning on page 3844, make the following corrections:

1. On page 3845, in the List, Biological Product Designations, under the heading, Name of biological product, first column, seventh line, "XMME" should read "XMMME". In the List, Drug Product Designations, under the heading, Name of drug product, first column, nineteenth line, "Clofazimine" should read "Colchicine".

2. On page 3846, in the List, Drug Product Designations, under the heading, Name of drug product, first column, thirtieth line from the bottom, "Prehnimustine" should read Prednimustine".

BILLING CODE 1505-01-M

Office of Human Development Services Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging, HHS.

Time and Date: Meeting begins at 9:00 AM and ends at 5:00 PM on Tuesday, February 25, 1986 and begins at 9:00 AM and ends at 3:00 PM on Wednesday, February 26, 1986.

Place: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, Rooms #503-529A (Fifth Floor).

Status; Meeting is open to the public.

Contact Person: Pete Conroy, Room #4243, HHS North Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on February 25 and 26, 1986 from 9:00 AM-5:00 PM and from 9:00 AM-3:00 PM respectively in Rooms 503A-529A in the Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

The agenda will include an update briefing by AOA Acting Commissioner Carol Fraser Fisk on Older Americans Act programs and a presentation by Robert A. Harootyan, Project Director, Officer of Technology Assessment dealing with Life Sustaining Technologies and the Elderly. In addition, a substantial amount of time will be devoted to FCA Committee meeting and prioritizing subject areas for 1986-87.

Dated: January 22, 1986.

Adelaide Attard,

Chairperson, Federal Council on the Aging.

[FR Doc. 86-2963 Filed 2-10-86; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Heart, Lung, and Blood Research Review Committee B; Meeting

Pursuant to Pub. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on April 3, 1986, in Building 31, Conference Room 9.

This meeting will be open to the public on April 3, 1986, from 8:30 AM to approximately 10:00 AM to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) Pub. L. 92-463, the meeting will be closed to the public on April 3, 1986, from approximately 10:00 AM to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential, trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 31, 1986.

[FR Doc. 86-2920 Filed 2-10-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; National High Blood Pressure Education Program Coordinating Committee; Meeting

Notice is hereby given of the meeting of the Natural High Blood Pressure Education Program Coordinating Committee, on April 21, 1986, 8 a.m. to 1 p.m., Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814, (301) 657-1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20892, (301) 496-1051.

Dated: February 4, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 2919 Filed 2-10-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research Special Grants Review Committee; Meeting

Pursuant to Pub. L. 96-463, notice is hereby given of the meeting of the National Institute of Dental Research Special Grants Review Committee, March 16-17, 1986, in the Sea Pines Conference Room, at the Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to 9:30 a.m. March 16 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 96-463, the meeting will be closed to the public from 9:30 a.m. March 16 to adjournment March 17 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. H. George Hausch, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, Room 507, Bethesda, MD 20892, (telephone 301/496-7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121-Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13-122-Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845-Dental Research Institutes; National Institutes of Health.)

Dated: January 31, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-2922 Filed 2-10-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496-5898), will provide summaries of the meetings and rosters of the committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Aging Review Subcommittee A.

Excutive Secretary: Dr. Walter Spieth, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892. Phone: 301/496-9666.

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Dates of Meeting: March 19–20, 1986.
Place of Meeting: National Institutes of Health, Building 31C, Conference Room 6, 9000 Rockville Pike, Bethesda, Maryland 20892.
Open: March 19, 8:30 a.m.–9:00 a.m.
Closed: March 19, 9:00 a.m. to recess, March 20, 6:30 a.m. to adjournment.
Closure Reason: To review grant applications.
Name of Committee: Aging Review Subcommittee B.
Executive Secretary: Dr. Marvin Kalt, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.
Dates of Meeting: March 20–21, 1986.
Place of Meeting: National Institutes of Health, Building 31C, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.
Open: March 20, 8:30 a.m.–9:00 a.m.
Closed: March 20, 9:00 a.m. to recess, March 21, 8:30 a.m. to adjournment.
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

[FR Doc. 86–2921 Filed 2–10–86; 8:45 am]
BILLING CODE 4140–01–M

National Library of Medicine; Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 13–14, 1986, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, to adjournment on March 14, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on March 14 from 2:00 p.m. to 5:00 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on March 13 will be open to the public from 8:30 to 11:00 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on March 13 from 11:00 a.m. to 5:00 p.m., and on March 14, from 8:30 a.m. to adjournment; and the subcommittee meeting on March 14 from 2:00 p.m. to 5:00 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 31, 1986.

Betty J. Beveridge,
NIH Committee Management Officer.

[FR Doc. 86–2923 Filed 2–10–86; 8:45 am]
BILLING CODE 4140–01–M

Division of Research Resources; Subcommittee on Animal Resources of the Animal Resources Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Subcommittee on Animal Resources, Animal Resources Review Committee, Division of Research Resources, on March 5, 1986, at 8:00 a.m., National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on March 5, from approximately 2:00 p.m. to approximately 4:00 p.m., for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on March 5, from 8:00 a.m. to approximately 2:00 p.m. for the review, discussion, and evaluation of individual grant applications submitted to the Laboratory Animal Sciences Program. These applications and the disscussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496–5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13,306, Laboratory Animal Sciences, National Institutes of Health)

Dated: January 31, 1986.

Betty J. Beveridge,
NIH Committee Management Officer.

[FR Doc. 86–2924 Filed 2–10–86; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Thursday, March 6, 1986, starting at 9:00 am, in the Auditorium of the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana 46204.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111–20th Street, NW, Washington, DC 20036–8547, (202) 634–7310.

Dated: February 5, 1986.

Victor H. Ashe,
Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 86–2949 Filed 2–10–86; 8:45 am]
BILLING CODE 4310–70–M

Bureau of Land Management

Owyhee River; Availability of Final National Wild River Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final National Wild River Management Plan for the Owyhee River in Oregon.

SUMMARY: Pub. L. 98–494 amended the Wild and Scenic Rivers Act (16 U.S.C. 1374) by adding 120 miles of the Owyhee River in Oregon to the National Wild and Scenic Rivers System. Section 3(b) of the Wild and Scenic Rivers Act requires management plans and detailed boundaries be developed and submitted to Congress. The Owyhee River Final National Wild River Management Plan was submitted to Congress on January 27, 1986, and will become effective on April 27, 1986.

Copies of the Final National Wild River Management Plan are available upon request.

ADDRESS: Requests for copies of the Owyhee River Final National Wild River Management Plan should be sent to: Bureau of Land Management (933), 825 Northeast Multnomah Street, Post Office Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Bruce R. Brown at (202) 343–9353, Washington, D.C., or Ken White at (503) 231–6972, Portland, Oregon.

Robert F. Burford,
Director.

[FR Doc. 86–2902 Filed 2–10–86; 8:45 am]
BILLING CODE 4310–84–M

Albuquerque District, NM; Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Advisory Council Meeting.

SUMMARY: The Bureau of Land Management's (BLM) Albuquerque District Advisory Council will meet on Saturday, March 1, 1986, at 10:30 a.m., in the Conference Room of the BLM's Rio Puerco Resource Area Office at 3550 Pan American Highway, Albuquerque, New Mexico.

The Council's first agenda item will be to hear the recommendations from the Rio Grande Technical Review Team concerning the management of recreational use on the Rio Grande near the village of Pilar, New Mexico. The Rio Grande Technical Review Team is an eight-member team formed by the Albuquerque District Advisory Council at its last meeting.

Other items on the agenda include an update on the BLM's management efforts in El Malpais Area.

The Council will elect officers for 1986.

This meeting date is contingent upon appointment of four members to the Council by the Secretary of the Interior. The meeting will be postponed if appointments are not finalized by March 1, 1986.

The District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1976, the Federal Advisory Committee Act of 1972, and the Rangeland Improvement Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting.

For additional information, contact R. Alan Hoffmeister, Public Affairs Specialist, P.O. Box 6770, Albuquerque, New Mexico 87197–6770, (505) 766–2328.

L. Paul Applegate,
District Manager.

[FR Doc. 86–2959 Filed 2–10–86; 8:45 am]
BILLING CODE 4310–FB–M

Fish and Wildlife Service

Intent To Prepare a Comprehensive Conservation Plan/Environmental Impact Statement, and Wilderness Suitability Assessment for the Arctic National Wildlife Refuge, AK, as well as Boundary Descriptions for the Management of the Ivishak, Wind, and Sheenjek Wild and Scenic Rivers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of a Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Arctic National Wildlife Refuge in northeastern Alaska. In accordance with Alaska National Interest Lands Conservation Act (ANILCA), sec. 605, the Service intends to recommend corridor boundaries and management strategies for the three Congressionally approved Wild and Scenic Rivers in the Refuge, the Ivishak, the Wind, and the Sheenjek Rivers. Public meetings regarding preparation of this plan and wilderness assessment will be held. This notice is being furnished as required by the National Environmental Policy Act (NEPA Regulations 40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the CCP/EIS. Comments and participation in this scoping process are solicited.

DATES: Formal, written comments should be received by June 1, 1986. Dates, times, and places for public scoping meetings or office visits or consultive conferences regarding the Arctic National Wildlife Refuge CCP, EIS, and wilderness assessment will be advertised by letters and print and broadcast media.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, Attention: Consuelo K. Wassink.

FOR FURTHER INFORMATION CONTACT: Consuelo K. Wassink, Public Involvement Specialist, Refuge Planning, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. Telephone (907) 786–3496.

SUPPLEMENTARY INFORMATION: This comprehensive conservation plan, wilderness-suitability assessment, and wilderness proposal is being prepared to fulfill requirements of the ANILCA of 1980, section 304g. The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations and Service procedures for compliance with those regulations.

We estimate the Draft Comprehensive Conservation Plan, Environmental Impact Statement will be made available to the public by January, 1987.

Dated: February 4, 1986.

Robert E. Gilmore,
Regional Director.

[FR Doc. 86–2925 Filed 2–10–86; 8:45 am]
BILLING CODE 4310–55–M

Intent To Prepare an Environmental Impact Statement on Operation of the National Wildlife Refuge System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) has begun the process of issuing a new programmatic environmnetal impact statement (EIS) on the operation of the National Wildlife Refuge System (NWRS). The purpose of thia notice is to start the scoping process, and publicize when and where scoping meetings will be held. This notice also solicits public comment as to

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what issues should be addressed in the EIS, and why.

DATE: Written comments should be submitted not later than May 3, 1986, to be considered in the preparation of the draft EIS.

ADDRESS: Comments should be addressed to: Director, U.S. Fish and Wildlife Service, Room 2343, Main Interior building, 18th and C Sts., NW, Washington, D.C. 20240.

Meeting Schedule

March 10, 1986: Newton Corner, MA; 7th Floor Conference Room, One Gateway Center; 7 pm; contact Curt Laffin, (617)965–5100, ext. 222

March 12, 1986: Washington, DC; Board Room, American Institue of Architects, 1735 New York Ave. NW; 9 am; contact Norma Opgrand, (202)653–2220

March 13, 1986: Portland, OR; Lloyd Center Meeting Room, Upper Level West Mall, 7pm; contact Blayne Graves, (503)231–6771

March 19, 1986: Anchorage, AK; FWS Regional Office Conference Room, 1011 E. Tudor Rd.; 7 pm; contact William Knauer, (907)786–3399.

March 20, 1986: Denver, CO; Stapleton Plaza Hotel, 3333 Quebec St., 7 pm; contact Gerald Nugent, (303)236–8150

April 1, 1986: Bloomington, MN; Thunderbird Motel, 2201 E. 78th St.; 7:30 pm; contact Wayne Weier, (612) 725–4689

April 2, 1986: Albuquerque, NM; Room H, Continuing Education Conference Center, University of New Mexico, 1634 University Blvd.; 7 pm; contact: Dave Segal (505) 766–8048

April 3, 1986: St. Louis, MO; Ramada Inn at the Airport, 9636 Natural Bridge Rd.; 7:30 pm; contact Wayne Weier, (612)725–4689

April 3, 1986: Atlanta, GA; L.D. Strom Auditorium, Richard B. Russell Bldg., 75 Spring St., SW; 7:30 pm; contact Patricia Prodriznik, (404)331–3551.

SUPPLEMENTARY INFORMATION: The NWRS is comprised of more than 430 national wildlife refuges throughout the United States, in every state except West Virginia. Some of these refuge units are as small as a few acres, while others, such as those in Alaska range into millions of acres; they represent a vast spectrum of fish and wildlife populations and their habitats.

Many law govern how the FWS can manage national wildlife refuges and what uses can occur. Two of the more important laws are the National Wildlife Refuge System Administration Act, which authorizes the FWS to permit uses on refuges when determined to be compatible with the major purposes for which a refuge was established: and the Refuge Recreation Act, which requires that any recreational use on a refuge be not only compatible, but also that sufficient funds are available for the development, operation and maintenance of the recreational use.

The FWS presently administers the NWRS using a variety of resource management programs that provide a wide diversity of productive fish and wildlife habitats and populations, while optimizing opportunities for compatible recreational, educational and economic uses. Examples of these varied wildlife management practices include forest management (such as timbering), cropland management (planting food and cover crops), burning vegetation, building dikes, or periodically draining marshes. Other management tools such as hunting, fishing, trapping, and haying also provide recreational and economic opportunities for the public. On some refuges, management may be much less intensive, as on designated wilderness or research natural areas.

Whatever the form of management, refuges are managed with certain goals in mind. Most refuges have been created to protect migratory waterfowl with a goal of assisting in the perpetuation of the migratory bird resource. On others, the goal is to preserve, restore and enhance threatened and endangered species. Some have been established in part to provide educational or recreational benefits.

In November 1976, the FWS published a final EIS on the operation of the NWRS. In that EIS, the FWS stated that in 10 years the document would be reviewed and revised if necessary. Over the past decade both changes in the way the NWRS operates, and changes in the method of preparing EIS's have led the FWS to conclude that a completely new programmatic EIS for the NWRS is desirable. Therefore, the FWS is beginning the scoping process, with a schedule for publishing the final EIS by December 1986.

The public is encouraged to participate in this process by providing your views on the management of the NWRS, and what options or alternatives should be considered and evaluated in the programmatic EIS. Written comments may be provided by May 3, 1986, to the address listed, or may be provided either verbally or in writing at any of the scoping meetings listed above. It is anticipated that a draft EIS will be published in the early summer, and the FWS will hold public meetings prior to the preparation of the final EIS.

Dated: February 5, 1986.

Ronald E. Lambertson,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 86–2880 Filed 2–10–86; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Analysis of Outer Continental Shelf Minimum Bid Policies

AGENCY: Minerals Management Service, Interior.

ACTION: Request for Comments.

SUMMARY: The Minerals Management Service (MMS) is analyzing Outer Continental Shelf (OSC) oil and gas minimum bid policies. The current minimum bid of $150 per acre was established by the Secretary in May 1982, providing for reconsideration based on experience. In conjunction with the preparation of the new 5-year OCS oil and gas leasing program, a preliminary analysis has been conducted of minumum bid policies entitled: *Analysis of Minimum Bid Policies*, Branch of Economic Studies, Offshore Resource Evaluation Division, June 7, 1985. A summary of this analysis was made available to the OCS Policy Committee at their meeting on November 5–7, 1985. The analysis focused on the effects of the current minimum bid level on bidding and Government receipts and the timing of leasing, exploration, and development in 21 OCS planning areas.

This solicitation requests comments on the analysis and summary results and recommendations from interested parties. The MMS will consider comments in response to this request as part of its analysis of the likely consequences of modifying the current minimum bid level on a sale-specific basis. Any policy changes may be implemented by specification in the appropriate Notice of Sale.

DATE: Comments should be postmarked or hand delivered no later than the close of business, of the 30th calendar day following publication of this notice.

ADDRESS: Request for Comments on Minimum Bid Policies, Director, Minerals Management Service, U.S. Department of the Interior, 12203 Sunrise Valley Drive, MS–643, Reston, Virginia 22091.

FOR FURTHER INFORMATION AND FOR A COPY OF THE ANALYSIS AND SUMMARY RESULTS CONTACT: Dr. Marshall Rose, Minerals Management Service, MS–643, Reston, Virginia 22091, (703) 860–7558.

SUPPLEMENTARY INFORMATION:

Background

On May 4, 1982, the Under Secretary of the Interior changed the minimum bid requirement for OCS oil and gas leases from $25 per acre to $150 per acre. The $150 per acre minimum was applied for the first time at Sale 73 (Diapir) on October 13, 1982, and has been applied to all subsequent sales to date.

The Draft Proposed 5-Year Program Secretarial Issue Document which was released in March 1985 raised the issue of further consideration and analysis of minimum bid levels as they relate to fair market value and economic efficiency. In June 1985, a subsequent preliminary analysis of minimum bid policies was completed. It is this analysis on which we are soliciting comments. The analysis focuses on the effects of minimum bid levels on Government receipts, extrapolating results from previous revenue studies; examines economic factors and their influence on the timing of exploration and development especially in high-risk/high-cost planning areas; and, derives a tentative listing of planning areas for reconsideration of the current $150 per acre minimum bid based on the sensitivity of their profitability to economic conditions.

Summary of Analysis

The analysis initially examines the effects of the current $150 per acre minimum bid on bidding and Government receipts. Using the theoretical and quantitative framework which formed the analytical basis for the change from $25 per acre to $150 per acre, it was found that in the 12 OCS lease sales examined from 1979 to 1984, raising the minimum bid from $25 per acre to $150 per acre would increase the high bids on the majority of affected tracts up to the new minimum. Beginning with the first areawide lease sale in the Gulf of Mexico and for each of the 5 subsequent sales it was estimated that the higher minumum bid of $150 per acre increased aggregate bonuses by as little as $50 million and as much as $84 million per sale. Further analysis of the effect of raising the minimum bid from $150 per acre to $300 per acre on aggregate bonus bids indicated a resulting decline of $50 to $100 million per sale.

Perhaps of greater importance in examining minimum bid levels is their influence on the timing of leasing, exploration, and development of oil and gas prospects in specific planning areas. The goals of the OCS Lands Act include, inter alia, encouragement of "orderly development . . . in an manner consistent with . . . other national needs." One way of meeting these goals is to lease tracts so as to maximize their economic value to the Nation. This requires that the sale of tracts be sequenced properly.

The minimum bid can be used as a tool to help produce the appropriate sequence.

The findings of the analysis derive from a mathematical model which initially solves for the smallest geologic field size (given estimates of costs, risks, and future prices of oil and gas) that should be leased currently from the perspective of economic efficiency. Next, the private value (after tax net present value (ATNPV)) of this designated field size is determined, incorporating taxes, royalties, etc. Finally, the minimum bid is specified at a level slightly above this private value, in order to preclude the leasing of smaller sized fields.

In general, the economic efficiency maximizing strategy requires that the largest, most valuable geologic fields and prospects be sold first, since in the presence of an assumed positive price growth for exhaustible resources, these prospects will grow in value most slowly. As might be expected, this strategy also requires adjustments to the minimum field size to be leased and to the minimum bid of the revised minimum field size as the input variables change, e.g., geologic and economic success, prices of oil and gas, costs of production, etc.

Typically, for changes in static system variables which increase the value of the geologic prospects, we find that it becomes desirable to accelerate the pace of leasing, so the minimum field size declines. Whether the private value and hence the minimum bid of this revised minimum field size to be leased increases or decreases depends upon the relative decline in private value owing to a reduction in the smallest field size to be leased compared to the increase in value of this revised minimum field size due to changes in the static system variables. Usually, we find that the decline in private value resulting from a smaller field size exceeds the gain in value from the changing static system variables, so that declines in the minimum field size are accompanied by declines in the minimum bid. For example, when resource prices increase or costs of production decline, the minimum field size to be leased declines, and the private value of this revised minimum field size as well as the minimum bid declines as compared to the original minimum field size and minimum bid. Similarly, an increase in the probability of success lowers the size of the smallest field to be leased. However, it is found that in this case the private value of this revised smallest field size is raised, along with the minimum bid.

Different forms of the outcome solution are found for the dynamic system variables, although the results are consistent within this category of variables. We typically observe that changes in these variables (e.g., discount rates, real resource price growth) which increase the value of the geologic propects also increase the minimum field size to be sold, because the benefits of holding inventory are increased. Further, the combination of larger minimum field size and higher valued fields results in a higher minimum bid.

Because of the inherent uncertainty about future states of nature, a supplemental analysis was conducted which views the minimum bid issues in a more aggregated setting. Within each planning area, some prospects' private value falls in the window between the minimum bid and zero value, making them highly sensitive to minimum bid policy. Using two levels of private value prospect—zero to $6 million and zero to $15 million, the percentage of undiscovered resources contained in these low valued prospects in each planning area was computed. The following planning areas were estimated to have 87 percent or more of their undiscovered resources (in positively valued prospects) in those prospects with a private value of less than $15 million: Hope Basin, Lower Cook Inlet, Gulf of Alaska, Kodiak, North Aleutian Basin, Norton, Shumagin, and the North Atlantic (the percentage of undiscovered resources in prospects worth less than $6 million in these same planning areas ranged from 36 to 108 percent). The planning areas were then ranked using the zero to $15 million private value per prospect category to determine the percent of the positively valued prospects within the range of these low private values. An additional 5 planning areas—the Chukchi Sea, Washington-Oregon, Mid-Atlantic, Northern California, and the South Atlantic were identified as having 24 to 51 percent of positively valued prospects valued at less than $15 million. This tentative listing of 13 planning areas represents prime candidates for reconsideration of their current minimum bid levels.

Focusing upon this listing of the 13 planning areas most sensitive to the minimum bid level, analysis of revised minimum bid levels can be conducted using the data and computer models developed for the quantitative economic

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analysis employed in the 5-year proposed program document. The results would provide ranges of minimum bid levels which can be assessed to determine how they compare to the current minimum bid level and the extent to which minimum bid policy can be used to assure receipt of fair market value and to encourage expeditious and orderly development in a manner consistent with maintenance of competition and other national needs.

Questions

1. Do you consider the qualitative relationships between the system variables and the minimum economic field size and ATNPV to be accurate?
2. Assuming that the minimum economic field size and the ATNPV are sensitive to the factors in the analysis, does this lead to considerations of varying the minimum bid on a sale-specific basis? For all planning areas? For high-cost/high-risk areas?
3. Should the high-risk/high-cost areas tentatively identified be considered for lowering the minimum bid level in order to encourage leasing, exploration, and development? Will any such change make a significant difference in your company's bidding?
4. Is the framework of the analysis appropriate? Are the quantitative and analytical findings correct? Should additional factors be considered?
5. Should encouragement of exploration and development in frontier areas be considered a primary factor in considering modifying minimum bid levels? Should frontier areas be defined as those in which no commercial discovery has taken place? Should another definition be considered?
6. Do you agree with our finding that current $150 per acre minimum has not adversely affected bidding interest or Government revenues in sales held in proven areas? Can the same statement be made about frontier areas?

Dated February 5, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-2918 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board—Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-463, 5 U.S.C. App. 1 and the Office of Management and Budget's Circular No. A-63, Revised.

The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet from 8:00 a.m. to 5:00 p.m., March 12 and 13, 1986, at the Sheraton Charleston, Charleston, South Carolina, (803-723-3000).

The meeting will cover the following principle subjects:

March 12, 1986

- Our Energy Future: Supplies, Prices, and Uncertainty
- 5-Year Oil and Gas Leasing Program

March 13, 1986

- Role of OCS gas in U.S. Energy Needs
- 5-Year Program: Discussion Panel
- Leasing Incentives and Strategies
- Commercial Fishing and the OCS

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the committee. Such requests should be made no later than February 28, 1986, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact the Executive Secretary, Michele Tetley at 202/343-9314.

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240.

John B. Rigg,

Associate Director for Offshore Minerals Management.

Dated: February 6, 1986.

[FR Doc. 86-2982 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 31, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by February 26, 1986.

Carol D. Shull,

Chief of Registration National Register.

ARIZONA

Maricopa County

Phoenix, *Blount Addition Historic District*, N side of W. Culver St. between Central and Third Aves.

CALIFORNIA

Humboldt County

Arcata, *Stone House*, 902 Fourteenth St.

CONNECTICUT

Fairfield County

Bridgeport, *U.S. Office—Bridgeport Main*, 120 Middle St.

New Haven County

Milford, *U.S. Post Office—Milford Main*, 6 W. River St.

New London County

Norwich, *U.S. Post Office—Norwich Main*, 340 Main St.

FLORIDA

Dade County

Cutler, *Deering, Charles, Estate*, SW Hundred Sixty-seventh St. and Old Cutler Rd.

INDIANA

Vigo County

Terre Haute, *Farrington's Grove Historic District*, Roughly bounded by Poplar and S. Fourth Sts. Hulman Ave., and S. Seventh St.

LOUISIANA

Lafourche County

Thibodaux, *Bank of Lafourche Building (Historic Resources of Thibodaux MRA)*, 206 Green St.
Thibodaux, *Breaux House (Historic Resources of Thibodaux MRA)*, 401 Patriot
Thibodaux, *Building at 106 Green Street (Historic Resouces of Thibodoux MRA)*, 103 Green St.
Thibodaux, *Chanticleer Gift Shop (Historic Resources of Thibodaux MRA)*, 103 W. Third
Thibodaux, *Citizens Bank of Lafourche (Historic Resources of Thibodaux MRA)*, 413 W. Fourth St.
Thibodaux, *Grand Theatre (Historic Resources of Thibodaux MRA)*, 401 Green St.
Thibodaux, *Lamortina Building (Historic Resources of Thibodaux MRA)*, 700-704 W. Third
Thibodaux, *McCullo House (Historic Resources of Thibodaux MRA)*, 422 E. First
Thibodaux, *Peltier House (Historic Resources of Thibodaux MRA)*, 403 Canal Blvd.
Thibodaux, *Percy-Lobdell House (Historic Resources of Thibodaux MRA)*, 314 St. Mary St.

Thibodaux, *Riviere Building (Historic Resources of Thibodaux MRA)*, 406 W. Third
Thibodaux, *St. Joseph's Co-Cathedral and Rctory (Historic Resources of Thibodaux MRA)*, 721 Canal Blvd.
Thibodaux, *Robichaux House (Historic Resources of Thibodaux MRA)*, 322 E. Second St.
Thibodaux, *Riviere House (Historic Resources of Thibodaux MRA)*, 208 Canal Blvd.

MASSACHUSETTS

Berkshire County

Pittsfield, *Berkshire Life Insurance Company Building*, 5-7 North St.

Hampshire County

Easthampton, *Main Street Historic District*, Main St. between Northampton and Center Sts.

Middlesex County

Lowell, *U.S. Post Office*, 50 Kearney Sq.

Suffolk County

Boston, *Bulfinch Triangle Historic District*, Roughly bounded by Canal, Causeway, Friend, and Lancaster Sts., Lowell Sq., Merrimack, Portland, and Traverse Sts.

Worcester County

Hudson *Felton Street School*, 29 Felton St.
Templeton, *Baldwinville Village Historic District*, Elm, Pleasant, Memorial, S. Main, and Circle Sts.

NEW HAMPSHIRE

Carroll County

Sandwich, *Bradbury—Jewell House*, Ferncroft Rd.

Grafton County

Plymouth, *Plymouth Historic District*, Bounded by Main, Highland, and Court Sts.

Hillsborough County

Hudson, *Sanders, G.O., House*, 10 Derry St.

Merrimack County

Suncook, *Noyes, Jacob, Block*, 48 Glass St.

Rockingham County

Londonderry, *Young, General Mason L., House*, 4 Young Rd.

Strafford County

Rochester, *Hayes, Richard, House*, 184 Gonic Rd.

Sullivan County

Washington, *Washington Common Historic District*, Intersection of Half Moon Pond Rd. and Millen Pond Rd.

OREGON

Benton County

Corvallis, *Kline, Lewis C., Building*, 146 SE Second St.

Coos County

Coos Bay, *Coos Bay Carnegie Library*, 515 Market St.

Jefferson County

Metolius, *Oregon Trunk Railway Passenger and Freight Station*, Washington St. at the foot of Sixth St.

Josephine County

Grants Pass, *Clark-Norton House*, 127 NW D St.

Multnomah County

Portland, *Ainsworth, Maud and Belle, House*, 2542 SW Hillcrest Dr.
Portland, *Cornelius Hotel*, 525 SW Park Ave.

Umatilla County

Pendleton, *Vey, Joseph, House*, 1304 SE Court Pl.
Pendleton, *Johnson—Ellis House*, 326 SE Second St.

Wasco County

The Dalles, *Bennett-Williams House*, 606 W. Sixth St.

Yamhill County

McMinnville, *Spence, Jack, House* 536 E. Fifth St.

PENNSYLVANIA

Allegheny County

Pittsburgh, *House at 200 W. North Ave.*, 200 W. North Ave.
Pittsburgh, *Stanley Theater and Clark Building*, 207 Seventh St. and 705-717 Liberty Ave.

Bucks County

Wrightstown Township, *Penns Park Historic District* Intersection of Second St. Pike and Penns Park Rd.

Cumberland County

Lower Allen Township, *Etters Bridge*, Green Lane Dr. and Yellow Beeches Creek (also in York County)

Franklin County

St. Thomas Township, *White House Inn*, 10113 Lincoln Way W

WASHINGTON

Pacific County

Tokeland, *Willapa Bay Boathouse*, US Coast Guard Station, Willapa Bay

WYOMING

Sweetwater County

Rock Springs, *Gras House*, 616 Elias

Washakie County

Worland, *Worland House*, 520 Culbertson

[FR Doc. 86-2932 Filed 2-10-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-No. 107); Docket No. AB-12 (Sub-No. 68)]

Baltimore and Ohio Railroad Co. et al.; Abandonment and Discontinuance of Service in Lawrence and Jackson Counties, OH; Findings

The Commission has found that the public convenience and necessity permit the Baltimore and Ohio Railroad Company (B&O) to (1) abandon its 22.81-mile rail line between milepost 4.64 at Wellston and milepost 7.87 at Coalton, and between milepost 13.17 at Jackson and milepost 32.25 at Firebrick, and (2) discontinue service over 5.30 miles of trackage of the Chesapeake and Ohio Railway Company (C&O) between milepost 7.87 at Coalton and milepost 13.17 at Jackson and C&O seeks to (1) abandon its line between Coalton and Jackson, and (2) discontinue service over the B&O trackage between Wellston and Coalton, in Lawrence and Jackson Counties, OH.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower-left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

By the Commission, Division 1, Commissioners Sterrett, Gradison, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-2927 Filed 2-10-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30770]

Consolidated Rail Corporation; Trackage Rights; Chicago and North Western Transportation Co.

Chicago and North Western Transportation Company (CNW), has

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agreed to grant Consolidated Rail Corporation trackage rights in Chicago, IL over the Rockwell Street Line between Ogden Avenue and Western Avenue. The trackage rights will be effective on January 28, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: February 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-3037 Filed 2-10-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General's Commission on Pornography; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Department of Justice announces the following meetings of the Attorney General's Commission on Pornography.

Meeting

Date and Time: February 26, 1986, 9:00 a.m.-11:00 p.m. (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevent matters.

Meeting

Date and Time: February 27, 1986, 9:00 a.m.-11:00 p.m. (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevent matters.

Meeting

Date and Time: February 28, 1986, 9:00 a.m.-11:00 p.m. (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevent matters.

Meeting

Date and Time: March 1, 1986, 9:00 a.m.-11:00 p.m. (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevent matters.

Meeting

Date and Time: March 2, 1986, 9:00 a.m.-12:00 noon (local time).

Place: Conference Room, Scottsdale City Hall, 3939 Civic Center Plaza, Scottsdale, Arizona 85251.

Status: Open to the public.

Matters to be considered at meeting: Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevent matters.

The meetings and hearings will be open to the public. Written comments may be submitted regarding relevant issues. Approximately 20 seats will be available on a first-come, first-served basis. The Commission may take lengthy breaks from the meeting during each day. These will be announced as early as can be determined during the morning sessions on each day.

Copies of minutes will be available upon request, at the actual cost of duplication, 60 days after the final meeting on March 2, 1986.

Contact person for more information or to submit written comments: Alan E. Sears, Executive Director, Attorney General's Commission on Pornography, Department of Justice, Room 1018, HOLC Building, 320 First Street, NW., Washington, D.C. 20530, (202) 724-7837.

Henry Hudson,

Commission Chairman.

[FR Doc. 86-2934 Filed 2-10-86; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

Reimbursable Services; Excess Cost of Preclearance Operations

Notice is hereby given that pursuant to Immigration and Naturalization Service Regulations (8 CFR 235.5(c)), the biweekly reimbursable excess costs for each preclearance installation are determined as set forth below and will be effective with the pay period beginning February 2, 1986.

Installation	Biweekly excess cost
Montreal, Canada	$10,209.48
Toronto, Canada	15,009.88
Kindley Field, Bermuda	2,165.55
Freeport, Bahama Islands	6,985.03
Nassau, Bahama Islands	7,025.64
Calgary, Canada	4,486.01
Edmonton, Canada	3,967.69
Vancouver, Canada	9,135.57
Victoria, Canada	2,298.58
Winnipeg, Canada	2,409.42

These amounts will be in effect and billed biweekly until the first full pay period after the next notice of reimbursable biweekly excess costs is published in the **Federal Register.**

Dated: February 2, 1986.

Malcolm E. Arnold,

Comptroller.

[FR Doc. 86-2958 Filed 2-10-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration
Work Application
1205-0001
Recordkeeping
Individuals or households; State or local governments; 52 recordkeepers; 208 hours

The Application is the basic operation document used in State public employment service and WIN local offices for new and partial applications for individuals seeking assistance in finding employment or employability development services. ETA proposes to eliminate the forms ETA 511, 511c and 516. The one-year recordkeeping requirement will be maintained.

Extension

Employment Standards Administration
Request from Claimant for Information on Earnings, Dual Benefits, Dependents, and Third Party Settlement
1215-0151; CA-1032
Annually
Individuals or households
38,000 responses; 12,667 hours; 1 form

The CA-1032 is used to obtain information from claimants receiving compensation on the Division of Federal Employees' Compensation periodic disability roll. This information is necessary to ensure that the compensation being paid is correct.

Signed at Washington, DC, this 6th day of February 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-2989 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-27, 4510-30-M

Consumer Price Index for All Urban Consumers, United States City Average

Pursuant to section 112 of the 1978 amendments to the Federal Election Campaign Act (Pub. L. 94-283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 118.1 percent from its 1974 annual average of 147.7 to its 1985 annual average of 322.2. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 118.1 percent from its 1974 annual average of 100 to its 1985 annual average of 218.1.

Signed at Washington, DC, on the 29th day of January 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-2991 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-24-M

Consumer Price Index for All Urban Consumers, United States City Average

Pursuant to section 604(c) of the Motor Vehicle Information and Cost Savings Act, which was added to the Motor Vehicle Theft Law Enforcement Act of 1984, and the delegation of the Secretary of Transportation's responsibilities under the Act to the Administrator of the National Highway Traffic Safety Administration (49 CFR 501.2(f)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 3.6 percent from its 1984 annual average of 311.1 to its 1985 annual average of 322.2

Signed at Washington, DC, on the 29th day of January 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-2992 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-15,843]

Nutone Division of Scovill Corp.; Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 20, 1985, applicable to all workers of the Nutone Division of Scovill Corporation, Cincinnati, Ohio. The Notice of Certification was published in the **Federal Register** on September 4, 1985 (50 FR 35881).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the certification. The additional information revealed that the production of components at the Reading, Ohio plant was substantially integrated into the production of import-impacted household products produced at Nutone's Cincinnati, Ohio plant. Workers at the Reading plant were not separately identifiable by product.

The intent of the certification is to cover all workers at the Reading, Ohio and Cincinnati, Ohio plants of the Nutone Division of Scovill Corporation who were affected by the decline in the sales or production of heaters, fans, and other household products related to import competition. The notice, therefore, is amended by including workers at the Reading, Ohio plant.

The amended notice applicable to TA-W-15,843 is hereby issued as follows:

"All workers of the Reading, Ohio and Cincinnati, Ohio plants of the Nutone Division of Scovill Corporation who became totally or partially separated from employment on or after March 6, 1984 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 3rd day of February 1986.

Carolyn M. Golding,

Director, Unemployment Insurance Services, UIS.

[FR Doc. 86-2988 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-15,772]

United Technologies Corp. Diesel Systems; Adjustment Assistance

On September 18, 1985, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers producing diesel fuel systems at United Technologies Corporation, Diesel Systems, Springfield, Massachusetts. This determination was published in the **Federal Register** on September 27, 1985 (50 FR 39185).

The application for reconsideration was filed by the International Union of Electrical Workers. The union claims that United Technologies' market share in the diesel pump business for trucks and farm vehicles has declined and that their leading competitors are foreign. The union also claims that imports of fully assembled trucks and farm vehicles with diesel fuel systems have adversely affected the workers at Springfield.

Findings in the Department's investigation for adjustment assistance show that all of the statutory criteria of the Trade Act of 1974 were met for workers producing nozzles at United Technologies' Springfield, Massachusetts plant. However, the findings did not substantiate that increased imports of diesel fuel systems contributed importantly to worker separations.

On reconsideration, the Department reviewed its findings on diesel fuel systems in the customer survey. The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The survey results showed that the respondents either did not purchase imported diesel fuel injection systems or had reduced import purchases in 1984 compared to 1983 and in the first quarter of 1985 compared to the same period in 1984. Therefore, the responding customers which accounted for a major part of United Technologies' 1984 sales, showed that they did not switch to foreign imports of diesel fuel injection systems and the subject firm was not adversely affected by foreign competition.

The findings also showed the United Technologies Corporation had increased sales and production of diesel pumps and nozzeles in 1984 compared to 1983 but had a substantial decrease in its export sales during the same periods. The loss of potential sales and declines in the export market would not provide a basis for certification under the Trade Act.

Imported products such as trucks and farm vehicles which incorporate diesel fuel systems adversely affecting domestic workers producing diesel fuel systems also would not provide a basis for certification. Final articles incorporating diesel fuel systems are not like or directly competitive with their component parts. Imports of diesel fuel systems must be considered by themselves in determining import injury to workers who manufactured this product at the Springfield plant. The courts have concluded that imported finished articles are not like or directly competitive with domestic component parts thereof, *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F 2d 174 (D.C. Cir., 1974). In that case the court held that imported, finished women's shoes were not like or directly competitive with shoe counters, a component of footwear.

Conclusion

After reconsideration, I affirm the original notice of determinations of eligibility to apply for adjustment assistance to workers and former workers at United Technologies Corporation, Diesel Systems, Springfield, Massachusetts.

Signed at Washington, DC, this 30th day of January 1986.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-2990 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistant; American Standard, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later February 21, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 21, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, D.C. this 31st day of January 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Standard, Inc. (UE)	Wilmerding, PA	1/23/86	1/17/86	TA-W-17,137	Freight-rail and mass transit systems equipment.
American Standard, Inc. (UE)	Greensburg, PA	1/23/86	1/17/86	TA-W-17,138	Freight-rail and mass transit systems.
American Standard, Inc. (UE)	Swissvale, PA	1/23/86	1/17/86	TA-W-17,139	Freight-rail and mass transit systems equipment.
Bamco, Inc. (company)	Bridgeport, CT	1/15/86	1/10/86	TA-W-17,140	Ladies dresses & blouses.
Becky Dresses (workers)	Woodhaven, NY	12/13/85	12/10/86	TA-W-17,141	Ladies dresses.
Edgewater Steel Co. (USWA)	Oakmont, PA	1/27/86	1/22/86	TA-W-17,142	Forged railroad wheels and seamless rolled rings.
Elder Manufacturing Co. (ACTWU)	Webb City, MO	1/15/86	1/13/86	TA-W-17,143	Boy shirts.
Magnetic Peripherals Inc. (workers)	Bloomington, MN (3 plants).	1/16/86	1/13/86	TA-W-13,144	Computer storage units.
Magnetic Peripherals Inc. (workers)	Burnsville, MN	1/14/86	1/9/86	TA-W-17,145	SMO computer storage units.
Pope & Talbot, Inc. (workers)	Oakridge, OR	1/27/86	1/21/86	TA-W-17,146	Sawmill, green veneerer, logging operation.
Roessing Bronze Co. (USWA)	Mars, PA	1/21/86	1/10/86	TA-W-17,147	Brass and bronze ingot/billets etc.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
U.S. Repeating Arms Co. (IAM)	New Haven, CT	1/23/86	1/17/86	TA-W-17,148	Sporting rifles & shotguns.
Willamette Industries, Inc., Griggs Division (workers)	Lebanon, OR	12/31/85	12/27/85	TA-W-17,149	Plywood.
Alcan Rolled Products Co. (USWA)	Fairmont, WV	1/10/86	1/3/86	TA-W-17,150	Semifabricated cold rolled aluminum sheet foil and circles.
Alliance Machine Co. (The) (USWA)	Alliance, OH	1/21/86	1/15/86	TA-W-17,151	Steel mill cranes, heavy mill machinery.
Bethlehem Steel Corp. Sparrows Point Shipyard (USWA)	Sparrows Point, MD	1/17/86	1/10/86	TA-W-17,152	Ocean going ships, tankers, etc.
Black & Decker, Inc. (company)	Hampstead, MD (2 plants)	1/14/86	1/10/86	TA-W-17,153	Power tools & accessories.
Eagle Plastics of Maine, Inc. (workers)	Sanford, ME	1/15/86	1/7/86	TA-W-17,154	Shoe heels, shoe shanks.
Greenlee Tree Co. (IAMAW)	Rockford, IL	1/17/86	1/15/86	TA-W-17,155	Machine tool transfer lines and work centers.
International Paper Co., Liquid Packaging Division (workers).	Turlock, CA	1/21/86	1/18/86	TA-W-17,156	Printed paper milk carton containers.
Koehring Cranes & Excavators, AMCA International (Iron Workers).	Milwaukee, WI	1/21/86	1/15/86	TA-W-17,157	Cranes & excavators, back hoes.
Marine Drilling Co. (workers)	Corpus Christi, TX	1/23/86	1/20/86	TA-W-17,158	Drilling contractor—offshore oil & gas.
Riley Creek Lumber Co. (IWA)	LaClede, ID	1/8/86	1/6/86	TA-W-17,159	Lumber products.
Trane Manufacturing (workers)	Kearns, UT	1/13/86	12/24/85	TA-W-17,160	Refrigeration and air conditioning equipment.
W. F. Davis Motor Co. (company)	Whitesburg, KY	1/23/86	1/6/86	TA-W-17,161	Ford and Chrysler cars and truck dealership parts and service.
Easco Hand Tools, Inc. (workers)	Springfield, MA	1/13/86	1/8/86	TA-W-17,162	Administrative office.
Erie Mining Co. (workers)	Hoyt Lakes, MN	1/27/86	1/21/86	TA-W-17,163	Taconite pellets.
Etonic, Inc. (workers)	Auburn, ME	1/22/86	1/17/86	TA-W-17,164	Running shoes.
General Electric Indicating Devices, Inc. (workers)	Caguas, PR	1/27/86	1/16/86	TA-W-17,165	Panel meter, meter relay, transducers AD and DB switchboards.
General Electric Co. Hermetic Motor Div. (workers)	Tiffin, OH	1/27/86	1/20/86	TA-W-17,166	Hermetics motors.
McKeesport Steel Foundry, Inc. (workers)	McKeesport PA	1/10/86	1/7/86	TA-W-17,167	Steel castings, valve castings.

[FR Doc. 86-2986 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Powder Metal Products, Inc., et. al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period January 27, 1986–January 31, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) The a significant number or porportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm of subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,287; Powder Metal Products, Inc., St. Marys, PA

TA-W-16,327; Beatty Machine & Manufacturing Co., Hammond, IN

TA-W-16,336; Consolidation Coal Co., Robena Preparation Plant, Greensboro, PA

TA-W-16,330; Champion International Corp., McCloud, CA

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA-W-16,305; LaBelle Processing Co., LaBelle, PA

The investigation revaled that criterion (3) has not been met. Aggregate U.S. imports of coal are negligible.

Affirmative Determinations

TA-W-16,341; Pioneer Ltd, Plant #2, Lake City, SC

A certification was issued covering all works of the firm separated on or after August 14, 1984 and before August 31, 1985.

TA-W-16,345; Trimfoot Shoe Co., Farmington, MO

A certification was issued covering all workers of the firm separated on or after August 7, 1984.

TA-W-16,358; Dover Handbag Co., Inc., Netcong, NJ

A certification was issued covering all workers of the firm separated on of after August 1, 1984 and before August 1, 1985.

TA-W-16,357; Doe Spun, Inc., Cumberland Plant, Cumberland, MD

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,322; Wayne Floral Co., Inc., Newark, NY

A certification was issued covering all workers of the firm separated on or after August 5, 1984 and before April 8, 1985.

I hereby certify that the aforementioned determinations were issued during the period January 27, 1986–January 31, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: February 3, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-2987 Filed 2-10-86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Hearing

ACTION: Notice of hearing.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy in Salons "A" and "B" of the Radisson Mart Plaza Hotel at 711 NW. 72nd Avenue, Miami, Florida.

DATE: Wednesday, March 5, 1986, 1:15 p.m. to 4:30 p.m.

Status: The hearing is open to the public.

Matters to be discussed: Commission members will hear testimony from

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various witnesses representing both the public and private sectors. They will testify on two panels. One will focus on the implementation of the Job Training and Partnership Act in the state of Florida; the second will focus on labor market issues, such as those pertaining to older workers, pertinent especially to the region but also to the Nation in general.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy McMichael, National Commission for Employment Policy, 1522 K Street NW, Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission offices through March 21, 1986.

Copies of the testimony and materials prepared for the hearing will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 3rd day of February 1986.

Carol J. Romero,

Acting Director.

[FR Doc. 86–2994 Filed 2–10–86; 8:45 am]

BILLING CODE 4510-30-M

Meeting

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a public meeting of the National Commission for Employment Policy in Salon "A" of the Radisson Mart Plaza Hotel at 711 NW. 72nd Avenue, Miami, Florida.

DATE: Tuesday, March 4, 1986, 9:00 a.m. to 11:30 a.m.

Status: The meeting is open to the public.

Matters to be discussed: Commission members will discuss the status of the Commission's *10th Annual Report* and the release of the *Computer's in the Work Place Report.* Other discussion includes past and future Commission hearings, plans for JTPA-related research and reports, and the status of the project on increased internationalization of the U.S. economy.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy McMichael, National Commission for Employment Policy, 1522 K Street, NW, Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made.

Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 3rd day of February 1986.

Carol J. Romero,

Acting Director.

[FR Doc. 86–2993 Filed 2–10–86; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following packages are being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Monthly Corporate Central Credit Union Report (3133–0067).

Respondents: Federally Insured Credit Unions.

Abstract: Federally insured credit unions are required by section 202(a) (1) and (2) of the Federal Credit Union Act of make reports of financial condition to the National Credit Union Administration Board upon dates which shall be selected by it.

Subject: Voluntary Liquidation Procedures for Insured Credit Union (31333–0076).

Respondents: Federally Insured Credit Unions.

Abstract: The booklet provides suggested forms and outlines procedures for voluntary liquidation of federally insured credit unions by the credit union officials.

OMB Desk Officer: Robert Neal.

A copy of the above information collection packages may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 357–1055.

Written comments and recommendations for the listed information collections should be sent directly to the OBM Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated February 6, 1986.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 86–2948 Filed 2–10–86; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Responses to Safety Recommendations

Recommendation number	Respondent	Date	Subject
Aviation			
A–82–81	National Association of Flight Instructors	Dec. 9, 1985	Accurate position reporting in communications with ATC facilities.
A–85–51	Federal Aviation Administration	Dec. 13, 1985	Fairchild/Swearingen SA–226/227 engine ignition system operation.
A–71–59	do	Nov. 13, 1985	Fuel system fire safety devices.
A–85–7	do	Nov. 12, 1985	Mandatory inspection, repair, and removal procedures recommended in General Electric Service Bulletin 72–839.
A–81–27	do	do	Use of emergency exits on small airplanes.
A–84–86	do	Nov. 18, 1985	Prestolite 100 ampere alternators, concerning loss of output when flying in icing conditions.
A–84–104 through –107	do	Nov. 12, 1985	Fuel reservoir tank quick drains, supplement flight manuals to include routine draining of fuel reservoir tanks, supplement pilot handbooks to the location of fuel reservoir tanks and drains.
A–80–19	do	Dec. 17, 1985	Attitude-indicating instrument on large turboprop aircraft.

Recommendation number	Respondent	Date	Subject
A–85–35 through –49.	do	Dec. 10, 1985	Equipment and procedures for air carrier water-contact accidents.
A–84–87	do	Dec. 12, 1985	Undetected structural deterioration on Mooney Model M–20 and M–20A airplanes.
A–80–50, A–84–8	do	Dec. 6, 1985	Illustrations of failure, failure trend information.
A–85–20 and –21	do	Dec. 10, 1985	Detection and repair of wing structural damage to Bellanca Model 86CBC.
A–76–100	do	Dec. 06, 1985	Simulated and actual engine-out emergencies in typical high performance multi-engine general aviation airplanes.
A–84–101	do	do	Uniform signs classified by function at all airports certificated for air carrier operations.
A–85–57 and –58	do	Dec. 10, 1985	Examination of piston connecting rods in Teledyne Continental Model TS10–360–E, –F, and –G engines which were installed in 1977, 1978, and 1979 model airplanes; and airworthiness design review of engines in Piper Model PA–28R–201T Turbo III Cherokee Arrow, PA–28RT–201T Turbo IV Cherokee Arrow, and PA–28–201T Turbo Dakota airplanes.
A–78–27 and –28	do	do	Minimum performance standards for flight recorders on complex aircrafts.
A–80–90, –92 and –94.	do	Nov. 20, 1985	Airworthiness regulations for flexible, crash-resistant fuel lines, couplings, fuel cells, and fuel system components.
A–75–35	do	Nov. 12, 1985	Establishment of a Terminal Radar Service Area (TRSA) for the Tidewater area.
A–85–68	Aircraft Owners and Pilot Association	do	Practice instrument approach at uncontrolled airports.
A–84–66	Federal Aviation Administration	do	Unwarranted actuation of the stall avoidance system in Fairchild Swearingen Models SA 226 and SA 227 airplanes.
A–85–66 and –67	National Business Aircraft Association, Inc	Nov. 27, 1985	Direct communications with the appropriate air traffic control facility at uncontrolled airports.
A–75–47	General Aviation Manufacturers Association	Nov. 21, 1985	Fuel conservation and minimum performance presentations at high density altitudes.
A–81–13	Federal Aviation Administration	Dec. 02, 1985	Fire safety standards for cargo or baggage compartments in transport category airplanes.
A–81–75 and –76	do	Nov. 29, 1985	Cockpit noise levels.
Highway			
H–85–41 through –43.	Department of Highways, State of Colorado	Dec. 06, 1985	Sign maintenance plan.
H–85–22	Nissan Motor Corp. in U.S.A.	do	Child Passenger Safety.
H–85–22	State of Hawaii	Dec. 09, 1985	Do.
H–85–22	State of Alabama	Nov. 27, 1985	Do.
H–85–22	State of North Dakota	Nov. 26, 1985	Do.
H–85–22	State of Virginia, DMV	Dec. 09, 1985	Do.
H–85–22	State of Maryland	Dec. 06, 1985	Do.
H–85–22	State of Nebraska	Dec. 04, 1985	Do.
H–85–22	State of Kentucky	Dec. 06, 1985	Do.
H–85–22	State of Minnesota	Nov. 27, 1985	Do.
H–85–22	State of New Mexico	Dec. 03, 1985	Do.
H–85–22	State of Mississippi	Dec. 12, 1985	Do.
H–85–22	State of Virginia	Nov. 20, 1985	Do.
H–85–22	Pennsylvania State Police	Dec. 03, 1985	Do.
H–85–22	State of Tennessee Department of Safety	Nov. 21, 1985	Do.
H–85–49 and –50	State of California, Office of Traffic Safety	Dec. 16, 1985	Improved reporting of alcohol involvement in highway crashes.
H–85–22	State of Florida	Dec. 20, 1985	Child Passenger Safety.
H–85–22	State of Nevada	Dec. 17, 1985	Do.
H–85–22	State of New York	Dec. 20, 1985	Do.
H–85–49 and –50	State of Utah, Office of Legislative Research and General Counsel.	Dec. 20, 1985	Improved reporting of alcohol involvement in highway crashes.
H–85–49 and –50	State of Nebraska	Dec. 20, 1985	Do.
H–84–75	National Highway Traffic Safety Administration	Dec. 23, 1985	Fail-safe latching devices on school bus seat cushions.
H–83–51	State of Rhode Island and Providence Plantations Department of Transportation.	Nov. 06, 1985	Child safety seat restraints.
H–79–31, H–84–72, and H–85–12.	Tennessee Department of Education	Nov. 21, 1985	Schoolbus driver qualifications.
H–82–35	State of New York	Nov. 18, 1985	Citizen reporting of drunk drivers.
H–82–35	Ohio Department of Highway Safety	Dec. 13, 1985	Do.
H–85–49 and –50	Alaska Department of Public Safety	Dec. 16, 1985	Improved reporting of alcohol involvement in highway crashes.
H–85–49 and –50	Commonwealth of Virginia	Dec. 16, 1985	Do.
H–85–16	Department of California Highway Patrol	Dec. 09, 1985	Deadbolt locks on emergency doors of schoolbuses.
H–82–25	Federal Highway Administration	Dec. 04, 1985	Proper use of citizens band radios.
H–84–94 and 95	Arkansas State Crime Laboratory	Nov. 08, 1985	Blood alcohol kits.
H–84–77 through –86.	State of New York	Nov. 06, 1985	Repeat offender study.
H–85–4 through –8.	State of North Dakota	Nov. 19, 1985	Schoolbus drivers and railroad crossing compliance.
H–82–16	State of Colorado	do	Proposal to raise the drinking age to 21.
H–79–31, H–84–72, and H–85–12.	Alaska Department of Education	Nov. 15, 1985	Schoolbus driver testing and licensing.
H–82–35	Florida Department of Community Affairs	Dec. 17, 1985	Citizen reporting of drunk drivers.
H–85–30	National Safety Council	Nov. 27, 1985	Daytime running lights.
H–83–44 and –45	National Highway Traffic Safety Administration	Nov. 12, 1985	State quality control procedures for schoolbus repairs.
H–82–16	State of Hawaii	Nov. 29, 1985	Proposal to raise the drinking age to 21.
H–85–19	American Trucking Associations, Inc	Dec. 02, 1985	Review of hours of service control policies and procedures.
Marine			
M–85–51 through –55.	United States Coast Guard	Dec. 12, 1985	Safety precautions for use of air-mover ventilators in potentially combustible atmospheres.
M–85–57 through –61.	do	Nov. 27, 1985	Instruction of inspectors conducting control verification examinations in emergency duties, fire drills, and safety demonstration.
Railroad			
R–85–113 through –116.	New York Public Transportation Safety Board	Dec. 13, 1985	Integrated reporting systems on track and structures fires; hardwire communications system throughout subway tunnels; overloading of working motor control groups.
R–84–29 and –30	Metro-Dade Transportation Administration	Nov. 20, 1985	Standard operating procedure for emergency response.
R–85–78 and –80	Seaboard System Railroad	Dec. 17, 1985	Notification of local emergency response agencies of derailments of trains carrying hazardous materials.
R–85–74	Florida East Coast Railway Co	Dec. 20, 1985	Railroad/highway grade crossing safety training for engineers.
R–84–19	New York City Transit Authority	Nov. 29, 1985	Training programs for track construction engineers and track inspectors.
R–85–102 through –104.	Seaboard System Railroad	Dec. 11, 1985	Removal of equipment temporarily stored on tracks before dispatching trains.

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Recommendation number	Respondent	Date	Subject
R-84-37 through -49.	Amtrak	Dec. 17, 1985	Carrier violation of safe operating practices; regular review of speed tapes, securing of luggage in baggage racks; speed control devices; crew performance monitoring.
R-85-53	Alaska Railroad Corp	Dec. 12, 1985	Emergency planning and response procedures for hazardous materials.
R-85-53	Chicago and Northwestern Transportation Co	Dec. 17, 1985	Do.
R-85-53	The Denver and Rio Grande Western Railroad Co	Dec. 19, 1985	Do.
R-85-68 and -69.	Federal Railroad Administration	Dec. 12, 1985	Inspection and loading facilities at petrochemical plants.
Pipeline			
P-72-11, P-73-29 and P-76-10.	Research and Special Programs Administration	Nov. 13, 1985	LPG pipeline failure, periodic hydrostatic retesting, and operator responsibility for piping inside building.
Intermodal			
I-85-7, -8, -10, and -11.	U.S. Department of Transportation	Dec. 18, 1985	Shipper responsibilities when transporting hazardous materials; audits of hazardous waste shippers; adequacy of general shipping information for emergency response personnel.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Alice F. Caldwell,

Alternate Federal Register Liaison Officer.

January 30, 1986.

[FR Doc. 86-2916 Filed 2-10-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-336]

Northeast Nuclear Energy Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Northeast Nuclear Energy Company, et al. (the licensee), for the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

Environmental Assessment

Identification of Proposed Action: The exemption would grant relief in eight fire areas to the extent that redundant safe shutdown related cable and equipment are not separated and/or protected in accordance with section III.G.2 of Appendix R. The eight fire areas are as follows: Main Control Room, Closed Cooling Water Pump Area, Boric Acid Pump Area, Chemical Addition Tank Area, Cable Vault, Intake Building, Charging Pump Room and Auxiliary Feed Pump Pit. Also, the exemption would grant relief for the main control room from the requirement of sections III.G.3 and III.L of Appendix R concerning independence for the alternate shutdown capability.

The exemptions are responsive to the licensee's applications for exemptions dated March 1 and July 16, 1982; April 15 and May 25, 1983, and January 31 and August 7, 1985.

The Need for the Proposed Action: The proposed exemption is needed because the features described in the licensee's requests regarding the existing and proposed fire protection at the plant for these items are the most practical methods for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final environmental Statements for the Millstone Nuclear Power Station, Unit No. 2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have significant effect on the quality of the human environment.

For further details with respect to the this action, see the applications for the exemptions previously listed, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland this 4th day of February, 1986.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, PWR Project Direcorate #8, Division of PWR Licensing-B.

[FR Doc. 86-2983 Filed 2-10-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 3; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-49 to Northeast Nuclear Energy Company and 15 owners listed below [1] (the licensees) which authorizes operation of the Millstone Nuclear Power Station, Unit No. 3 (the facility), at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. The issuance of this license was approved by the Nuclear Regulatory Commission at a meeting on January 29, 1986, and supersedes the License for Fuel Loading and Low Power Testing License NPF-44 issued on November 25, 1985.

The Millstone Nuclear Power Station, Unit No. 3 (Millstone Unit 3) is a pressurized water reactor located on the north shore of Long Island Sound in Waterford Township, New London County, Connecticut. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** on March 4, 1983 (48 FR 9408).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-49, with Technical Specifications (NUREG-1176) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated September 10, 1984; (3) the Commission's Safety Evaluation Report, dated July 1984 (NUREG-1031), and Supplements 1 through 5; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement dated December 1984 (NUREG-1064).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and in the Waterford Public Library, Rope Ferry Road, Route 156, Waterford Connecticut 06385. A copy of Facility Operating License NPF-49 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Project Director, PWR Licensing-A. Copies of the Safety Evaluation Report and Supplements 1 through 5 (NUREG-1031) and the Final Environmental Statement (NUREG-1064) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Bethesda, Maryland this 31st day of January 1986.

For the Nuclear Regulatory Commission.

Vincent S. Noonan,

Director, PWR Project Directorate #5 Division of PWR Licensing-A.

[FR Doc. 86-2984 Filed 2-10-86; 8:45 am]

BILLING CODE 7590-01-M

[1] Northeast Nuclear Energy Company acts as agent and representative for the following Owners: Central Maine Power Company, Central Vermont Public Service Corporation, Chicopee Municipal Lighting Plant, City of Burlington, Vermont, Connecticut Municipal Electric Energy Cooperative, The Connecticut Light and Power Company, Fitchburg Gas and Electric Company, Massachusetts Municipal Wholesale Electric Company, Montaup Electric Company, New England Power Company, Public Service Company of New Hampshire, The United Illuminating Company, The Village of Lyndonville Electric Department, Western Massachusetts Electric Company, and Vermont Electric Generation and Transmission Cooperative, Inc.

Continued

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on February 25, 1986, Room 1167, 1717 H Street NW., Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information and applied technology information.

The agenda for the subject meeting shall be as follows:

Tuesday, February 25, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will review the advanced liquid metal reactor (LMR) design concept submitted by DOE and its contractors.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by member of the Subcommitte, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. M. El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 5, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-2955 Filed 2-10-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14929; File No. 812-6270]

Allied Capital Corp., et al.; Application for an Order Pursuant to Section 17(b) of the Act Exempting Proposed Transaction From Section 17(a) of the Act and Pursuant to Section 17(d) of the Act and Rule 17d-1 Thereunder Approving Joint Transaction

January 31, 1986.

Notice is hereby given that Allied Capital Corporation ("Allied"), 1625 Eye Street, NW., Washington, DC 20006, a closed-end, internally managed investment company registered under the Investment Company Act of 1940 ("Act"), Allied Investment Corporation ("Investment") a wholly-owned subsidiary of Allied and also a registered, closed-end, internally-managed investment company which is licensed as a small business investment company under the Small Business Investment Company Act of 1958, Allied Advisory, Inc. ("Advisory"), another wholly-owned subsidiary of Allied and general partner of Allied Management

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Partners, a limited partnership, of which certain Allied officers are the limited partners and which serves as the general partner of Allied Venture Partnership ("Venture"), a limited partnership whose limited partners are institutional investors (collectively, "Applicants") filed an application on December 27, 1985, and an amendment thereto on January 27, 1986, requesting an order of the Commission, pursuant to section 17(b) of the Act, exempting Applicants from the provisions of section 17(a) of the Act to the extent necessary to permit the transaction described below, and, pursuant to section 17(d) of the Act and Rule 17d–1 thereunder, approving the participation of Venture and Investment to the extent of $500,000 each in a $10,000,000 senior subordinated debt financing. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the complete text of the applicable provisions.

The application indicates that Jiffy Lube International, Inc. ("Issuer") is a Nevada corporation which operates, directly through franchises, approximately 300 quick service fluid maintenance centers for cars and light trucks throughout the United States. The application further indicates that Investment and Venture propose to participate, upon the terms summarized below, to the extent of $500,000 each in a $10,000,000 senior subordinated debt financing with the Issuer and, along with the other participants in the debt financing, they will receive warrants to purchase in the aggregate approximately 13% of the Issuer's common stock.

Applicants state that, in addition to Investment and Venture, the senior subordinated notes ("Notes") and warrants have been purchased by six other institutional investors, three of which, Teribe S.A. ("Teribe"), Teribe Investment, Inc. ("TII"), and Terrego S.A. ("Terrego"), are Panamanian corporations affiliated with Enterprises Quilmes, S.A. ("EQ"), a Luxembourg holding company. Applicants further state that Teribe is the parent of ALCAP Limited ("ALCAP"), a British Virgin Islands corporation which holds 13.3% of Allied's outstanding capital stock and, together with TII, is a shareholder in ALCAP, S.A., a Panamanian corporation which is a limited partner of Venture. As a result, the application states that Teribe and TII may be deemed affiliates or affiliates of affiliates of Allied, pursuant to section 2(a)(3) of the Act. Applicants further state that Willem F.P. de Vogel, a deputy general manager of EQ and the president of Three Cities Research, Inc., New York ("Three Cities"), another EQ affiliate, is a member of Allied's, Investment's and Advisory's board of directors; in addition, he personally owns an incentive type equity interest in TII and, through a general partnership in which five other directors and certain officers of Allied are also partners, a limited partnership interest in Venture.

Applicants state that the purpose of the senior subordinated debt financing is to consolidate the Issuer's indebtedness and to provide it funds for further expansion. Applicants further state that the Notes will bear interest at 12% per annum, payable quarterly except in the first year, when a year's interest will be paid on December 15, 1986, and mature on December 15, 1992, subject to semi-annual mandatory prepayment without premiums of $1,250,000 each beginning June 15, 1989, to optional prepayments with a premium at any time, and to mandatory prepayments without premiums of 50% of the principal at the time outstanding from the proceeds of a public offering by the Issuer of its common stock from which it derives net proceeds of at least $10,000,000. The Notes are subordinated to other indebtedness for borrowed money or on mortgages.

The application indicates that the warrants entitle their holders to buy a number of shares (pro rata to their participation in the Notes financing) of the Issuer's common stock at $6.00 per share (subject to adjustment pursuant to anti-dilution provisions), which may be paid in whole or in part by applying unpaid principal of the Notes. The holders will be entitled to certain mandatory and piggy-back registration rights for such shares. Moreover, the application states that the Issuer has agreed that either (i) prior to June 15, 1990, the Issuer shall have made an underwritten registered public offering of its common stock for gross proceeds of at least $20,000,000 in which the participants have had the opportunity to sell at least 50% of their shares and such shares shall be traded on a national securities exchange or NASDQ at prices ranging from $17.50 in 1988 to $40.00 in 1990; or (ii) the participants will have a right to sell to the Issuer the Notes and the warrants or shares between December 20, 1990 and December 20, 1992, at a price calculated to provide to the participants a pre-tax internal rate or return on their investments in the Notes, warrants and shares of 30% per annum. Applicants state that no financing fees were or will be paid to any participant in this transaction.

Applicants submit that participation by Investment and Venture in a transaction in which affiliates of EQ also participate might be considered a participation by Investment or Venture and those EQ affiliates in a joint enterprise in contravention of section 17(d) of the Act and Rule 17d–1 thereunder unless authoried by order of the Commission. Applicants further submit that the terms of the transaction required the other parties to the transaction to proceed to a closing thereof on December 24, 1985, but that since it was impractical to obtain the required Commission order prior to that date, Teribe bought for its own account the participations proposed for Investment and Venture and has offered, upon issuance of the requested order within a reasonable time, to resell them to Investment and Venture at cost plus accrued interest at the rate applicable to those Notes being purchased by Investment and Venture. Applicants state that such resale would, however, contravene section 17 (a)(1) of the Act unless exempted therefor by the Commission, pursuant to Section 17 (b).

Applicants submit that the proposed transaction meets the standards for exemption of both sections 17 (b) and 17 (d) and Rule 17d–1 thereunder. Applicants represent that the boards of directors of Allied, Investment and Advisory unanimously approved the proposed transaction and state that those boards of directors include one representative of Alcap, two representative of other institutional investors not involved in the proposed transaction, and 10 others. The 12 directors unaffiliated with and not interested in EQ, Teribe, Terrego, TII, Three Cities, Alcap, Alcap S.A., or anyone else involved in the proposed transaction personally own, in the aggregate, a number of Allied's outstanding voting shares greater than the number owned by Alcap.

Applicants contend that the terms of the proposed transaction may be presumed to be fair and reasonable because they have been negotiated at armslength by parties all of whom are, or are advised by, sophisticated investment professionals. According to Applicants, none of the parties has the economic power or influence to overreach any of the other parties.

Applicants submit that the terms of Investment's and Venture's participation in the purchase of the Issuer's Notes and warrants are identical to the terms of participation by the other investors therein. Applicants represent that Investment, Venture and the EQ affiliates will exercise any warrants, conversion privilege, or other rights to acquire equity securities of the Issuer, or affiliate of the Issuer, which were acquired by them respectively in this transaction, only at the same time and in amounts proportonate to their respective holdings of such rights. Applicants further represent that Investment, Venture and the EQ affiliates will sell, exchange, or otherwise dispose of an interest in any security of a class held by them respectively as a result of this transaction only at the same times and for the same unit consideration and in amounts proportionate to their respective holdings of such securities, unless at the time of sale there exists a public trading market in securities of such class and the sale by any of them is made in such market. Applicants further submit that the proposed investment is consistent with the fundamental investment policies of Investment and, hence, of Allied and of Venture, and that the proposed transaction is consistent with the general purposes of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 25, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–2972 Filed 2–10–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24011; 70–7218]

CSW Credit, Inc, and Central and South West Corp.; Proposed Financing of Subsidiary To Provide Funds to Factor Accounts Receivable of Nonassociated Electric Utility Companies

January 31, 1986.

Central and South West Corporation ("CSW"), a registered holding company, and its nonutility subsidiary, CSW Credit, Inc. ("Credit"), 2121 San Jacinto Street, Dallas, Texas 75266–0264, have filed an application-declaration with this Commission pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

By order dated July 19, 1985 (HCAR No. 23767), CSW was authorized to organize Credit to purchase the accounts receivable (factoring) of the CSW operating companies and to finance such purchases with debt. Through December 31, 1986, Credit was authorized to borrow up to $320 million, and CSW was authorized to make equity investments in Credit of up to $80 million.

Credit now proposes to extend its business to the factoring of accounts receivable of nonassociated companies whose primary revenues are derived from the sale of electricity. Credit will use substantially the same procedures for factoring the accounts receivable of nonassociated electric utilities as are used for the transactions with CSW operating companies. Credit will purchase the accounts receivable from the respective nonassociated electric utilities on the day that such company prepares the bill. Accounts receivable will be assigned to Credit on a nonrecourse basis, except to the extent that such receivable is invalid, and Credit will bear the risk of the uncollectability of the account. Credit anticipates appointing each company from which accounts receivable are purchased as a collection agent. It is anticipated that all activities of Credit would be directed by existing CSW personnel, and no additional employees would be required.

Credit's operations will be conducted so that the risks associated with factoring operations for nonassociated electric utilities will be borne by the CSW shareholders and not the CSW operating companies or ratepayers. Separate audited accounting records would be maintained for any non-associated customer. Credit states that certain savings to the CSW operating companies may result from Credit's expanded activities and that, in no case, would the cost of factoring CSW operating companies' receivables be increased as a result of Credit's expanded operations.

It is stated that the amount of investment in accounts receivable of nonassociated electric utilities and the requisite borrowings of Credit will depend on the level of accounts receivable purchased from each company, which amounts may vary depending upon the time of the year, the percent of accounts receivable so financed, and other factors. In order to engage in such factoring, CSW proposes to borrow up to an additional $160 million through December 31, 1988. These borrowings will be secured by an assignment of accounts receivable purchased by Credit. The specific terms and conditions of the borrowings by Credit will be subject to negotiation with the particular lender or lenders. However, Credit states that, without prior approval of the Commission, such terms and conditions will be no less favorable than those of the financing previously approved by the Commission with respect to Credit's activities. Credit has received commercial paper ratings to enable it to sell commercial paper to finance its factoring.

CSW also proposes to make additional equity investments in Credit through capital contributions or the acquisition of Credit common stock of up to $40 million through December 31, 1988, depending upon the amount of borrowing by Credit. In connection therewith, Credit proposes to issue and sell up to $40 million of its common stock.

The application-declaration and any amendments thereto are available for public inspection through the Commission's office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

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For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2973 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14697]

Citicorp; Application and Opportunity for Hearing

January 31, 1986.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement (the "Agreement") dated as of November 1, 1985 under which certificates evidencing interests in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under either of such indentures or the Agreement.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1988, the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2-42915, 2-58355, 2-59396 and 2-64962 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On November 26, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of November 1, 1985 (the "1985-L Agreement") with Citibank, N.A., Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on November 26, 1985 Mortgage Pass-Through Certificates, Series 1985-L 11.00% Pass-Through Rate (the "Series 1985-L Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985-L Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $145,171,771.79 at the close of business on November 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-L Certificates. On November 26, 1985, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985-L Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985-L Certificates, to the liable for 5.5% of the initial aggregate principal balance of the 1985-L Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-L Guaranty. The 1985-L Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985-L Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985-L Certificates were registered under the Securities Act of 1933 (Registration Statement on Forms S-11 and S-3, File No. 33-780) as part of a delayed or continuous offering of $1,000,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985-L Certificates were offered by a Prospectus Supplement dated November 20, 1985, supplemental to a Prospectus dated October 9, 1985. The 1985-L Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) The obligations of Applicant under the Indentures and the 1985-L Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985-L Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1985-L Agreement.

(5) The Applicant Company has waived notice of hearing, waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14697, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is Further Given that any interested person may, not later than February 25, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2975 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14632]

Georgia-Pacific Corp.; Application and Opportunity for Hearing

February 3, 1986.

Notice is hereby given that Georgia-Pacific Corporation (the "Company"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Chase Manhattan Bank, N.A. ("Chase") under (i) the open end indenture of the Company dated as of March 1, 1983 (the "1983 Indenture") and (ii) the trusteeship of Chase under the indenture of the County of Otsego Industrial Development Agency (the "Issuer") dated as of December 1, 1982 (the "1982 Indenture") under which Bonds of the Issuer were issued, the principal, interest and redemption payments (including redemption premium, if any) on such Bonds to be funded (i) by payments to be received by the Issuer under a Sale Agreement dated as of December 1, 1982 between the Issuer and Riegel Textile Corporation ("Riegel"), as amended by a First Amendment to Sale Agreement dated September 30, 1985, between the Issuer and the Company (as amended, the "Sale Agreement") (the obligations under which indenture, Bonds and Sale Agreement were assumed by the Company pursuant to a Bond Assignment, Assumption and Indemnification Agreement dated September 30, 1985 (the "Assumption Agreement")), and (ii) by drawings under an irrevocable Letter of Credit dated September 30, 1985 (the "Credit") issued in favor of Chase, as trustee, by Chemical Bank, is not so likely to involve a material conflict of interest to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee under the 1983 Indenture or the 1982 Indenture.

In support of its application the Company alleges that:

1. The Company has outstanding as of December 23, 1985 $395,000,000 aggregate principal amount of unsecured debt securities of various series (the "Securities") issued under the 1983 Indenture between the Company and Chase. The Securities were registered under the Securities Act of 1933, as amended (the "Securities Act") (File Nos. 2-81929 and 2-97165), and the 1983 Indenture was qualified under the Act.

2. The Issuer has outstanding as of December 23, 1985 $5,000,000 aggregate principal amount of its Industrial Development Revenue Bonds ("Bonds") issued under the 1982 Indenture between the Issuer and Chase. Inasmuch as the Bonds were issued by a political subdivision of a state of the United States of America, the Bonds were not registered under the Securities Act, and the 1982 Indenture was not qualified under the Act.

3. Portions of the 1983 Indenture substantially conform to section 310(b)(1) of the Act which, with exceptions, prohibits service by a trustee under two indentures of one obligor, unless an order under section 310(b)(1)(ii) of the Act is obtained.

4. Service by Chase under 1982 Indenture may involve Chase in a conflict of interest within the meaning of section 6.10 of the 1983 Indenture since the 1982 Indenture has not been qualified under the Act and is not the subject of any other proceeding of the Commission.

5. The Company's obligations with respect to the Securities, the Bonds, the Sale Agreement and the Credit are wholly unsecured and rank on parity with each other. The only material differences between the provisions of the 1983 and 1982 Indentures relate to the fact that the Company is obligated with respect to the Bonds pursuant to the Assumption Agreement but is the primary obligor under the 1983 Indenture, and also relate to the aggregate principal amounts, dates of issue, events of default, maturity and interest payment dates, interest rates, redemption provisions, sinking fund provisions, trustee's reports, and other provisions of a similar nature. Any such differences and any other differences in the provisions of the 1983 and 1982 Indentures are unlikely to cause any conflict of interest between the respective trusteeships of Chase under said Indentures.

6. The Company is not in default under the 1983 or 1982 Indentures.

7. The Company has waived (a) notice of hearing, (b) hearing on the issues of its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14632 which is on file in the offices of the Commission at 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after February 28, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Act. Any interested person may, not later than February 27, 1986 at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission his views of any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2976 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24010; 70-6921]

Indiana & Michigan Electric Co.; Proposed Issuance and Sale of Short-Term Notes and Commercial Paper; Exception From Competitive Bidding

January 31, 1986.

Indiana & Michigan Electric Company ("Indiana"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, subsidiary of American Electric Power Company, Inc. ("AEP") a registered holding company, has filed a declaration with this Commission pursuant to sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) thereunder.

During the period ending December 31, 1986, Indiana proposes to issue and sell short-term notes to various banks and commercial paper to a dealer in an aggregate principal amount not to exceed $220 million outstanding at any one time. This amount exceeds 5% of the principal amount and par value of the other outstanding securities of Indiana. All bank notes will mature not more than 270 days after the date of issuance or renewal. None will mature later than June 30, 1987. No line of credit would result in an effective cost of borrowing exceeding 125% of the prime commercial rate in effect from time to time, or not more than 12.5% based on a prime rate of 10%.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request

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a hearing should submit their views in writing by February 24, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2974 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22861; File No. SR-NASD-86-1]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees

Pursuant to section 19(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 29, 1986 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Schedule A to the Association's By-Laws establishes a fee of $500.00 to be paid in connection with the application for registration by individuals subject to disqualification as enumerated in Article II, Section 4 of the Association's By-Laws. The proposed amendment would require those member firms seeking to employ or continuing to employ a statutorily disqualified individual to submit the proposed fee to the Association together with the filing by such member firms of the Membership Continuance Application (the "Form MC-400") on behalf of the disqualified individual.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries set forth in Sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed amendment to Schedule A is to assist the Association in recovering the costs associated with processing applications submitted by individuals who are statutorily disqualified from participation in the securities industry. Quite frequently, a hearing before a subcommittee of the Board of Governors is required in order to determine whether the admission of the subject individual into the securities industry is appropriate. The costs connected with these hearings involve, in addition to the commitment by the subcommittee members of their time, the costs of transportation and lodging when necessary, for the subcommittee members and Association attorney's as well as court reporter's fees. In addition, even in those situations where a hearing is not required, significant amounts of time and commitment of staff resources are required to process such applications.

For the foregoing reasons, the proposed fee is consistent with and in futherance of the provisions of section 15(A)(b)(5) of the Securities Exchange Act which require that the rules of the Association provide for the equitable allocation of dues, fees and other charges among members and other persons using any of systems or facilities controlled or operated by the Association.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed amendment contained in this filing.

III. Date of Effectiveness of Proposed Rule change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Securities Exchange Act in that it establishes a fee to be imposed by the Association exclusively upon its members and those individuals who wish to become associated with its members.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption, above and should be submitted by March 5, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.

Dated: February 4, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-2979 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22858; File No. SR-NSCC-86-01]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by the National Securities Clearing Corporation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 22, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change that modifies NSCC's Automated Customer Account Transfer ("ACAT") System. The Commission previously approved NSCC's ACAT system (SR-NSCC-85-7) in Securities Exchange Act Release No. 22461 (September 27, 1985). NSCC's ACAT system enables members to effect automated transfers of customer accounts among themselves.

Under NSCC's ACAT system, an NSCC member to whom a customer's securities account is to be transferred may initiate the account transfer process by filing with NSCC a Transfer Initiation Request ("TIR"). Currently, if there is an error in the customer's account number on the TIR, the transfer would be rejected and the NSCC Member to whom the account is being transferred would have to re-initiate the transfer process by submitting another TIR. The proposed rule change permits NSCC, where appropriate, to accept an adjustment to customers' account numbers rather than reject the transfers.

I. Text of Proposed Rule Change

Modify National Securities Clearing Corporation's ("NSCC") SCC Division Rule 50 (Automated Customer Account Transfer "ACAT" Service) Section 13 by adding the following:

(Italics indicate addition.)

Sec. 13.

* * * * *

In addition to the foregoing, to the extent that a Receiving Member and/or a Delivering Member determines that the account number of his customer as reported on the Transfer Initiation Request Form is inaccurate, he may cause an adjustment to be made to a report by submitting such form, as established by the Corporation from time to time, within such time as established by the Corporation from time to time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the current operation of the ACAT Service, the Corporation does not have the authority to adjust its records in order to rectify an error with respect to a customer's account number when the error was made on the Transfer Initiation Request Form submitted to the Corporation. Such errors may only be corrected by having the transfer rejected and re-initiated with the correct number. Since the intent of the service is to facilitate the processing of account transfers, it has been determined that such measures are counterproductive. Accordingly, in order to preclude the necessity for a transfer to be rejected merely because of an error in a customer account number, the Corporation has determined to modify its service in order to give the Corporation the authority to make such modifications to its records. Since the proposed rule change will facilitate the transfer of customer accounts, it is consistent with the requirements of the Securities Exchange Act of 1934 ("34 Act") and the rules and regulations thereunder applicable to the Corporation.

III. Self-Regulatory Organization's Statement on Comments on the Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact or impose a burden on competition.

IV. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on the proposed rule change have been solicited or received.

V. Extension of Time Period for Commission Action

Not Applicable.

Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

(a) The proposed rule change is being file pursuant to section 19(b)(3)(A) of the '34 Act.

(b) Since the proposed rule change will merely permit the Corporation, upon direction of a Member, to adjust its records to rectify errors in customer account numbers, it effects a change in an existing service that does not adversely affect the safeguarding of securities and funds in the Corporation's custody or control or for which it is responsible and does not significantly affect the rights or obligations for the Corporation or participants using the service.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-2981 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 2287; File No. SR-PSE-85-32]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to the Deletion of Rule XVII ("Wire Connections") of the PSE Rules of the Board of Governors

The Pacific Stock Exchange, Inc. ("PSE") submitted on November 15, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the

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Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to delete Rule XVII of the PSE Rules of the Board of Governors, which currently provides, among other things, that the PSE approve telephone communications access between non-members and the PSE trading floor and that the PSE be proveded prior notice of private wire connections between offices of members and non-members. According to the Exchange, it has proposed to delete the rule because "the primary basis for [it], *i.e.*, the regulation of fixed commissions charged by members of the Exchange, no longer exists." [1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22698, December 11, 1985) and by publication in the **Federal Register** (50 FR 51646, December 18, 1985). No comments were received regarding the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1986.

John Wheeler,

Secreatry.

[FR Doc. 86–2980 Filed 2–10–86; 8:45 am]

BILLING CODE 8010–01–M

[1] The Exchange has stated further that the requirements of Rule XVII no longer seem necessary or appropriate because the Exchange routinely approves wire connections on the Exchange floors requested by member firms and that the PSE has no policy restrictions on wire access. The PSE states that the proposed rule change is not intended to restrict access, but should not be deemed to be advance approval of application for instruments such as cellular phones or other non-wire connections. *See* letter from Kenneth S. Marcus, Staff Attorney, PSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated December 16, 1985.

[Release No. 34–22854; File No. SR–OCC–85–14]

Self-Regulatory Organizations; Proposed Rule Change; Options Clearing Corp.

The Options Clearing Corporation ("OCC") on August 22, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to authorize OCC to issue, clear and settle standardized options on the European Currency Unit ("ECU"),[1] which have been proposed for trading by the Philadelphia Stock Exchange ("Phlx").[2] The Commission published notice of the proposal to solicit public comment.[3] No comments were received. This Order approves the proposal.

I. Description and Rationale

OCC's proposal would amend several definitions in OCC By-Law Article XV, section 1 to accommodate ECU options.[4] Specifically, the term "foreign currency" in paragraph (a) now would include the ECU,[5] and new paragraph (*o*) would define "ECU" to "mean the European Currency Unit, which is the monetary unit of the European Monetary System representing a weighted average of the currencies of specified members of the European Economic Community." ECUs would be added to the list of underlying foreign currencies in paragraph (h) for purposes of calculating premiums. In paragraph (k), Belgium would be designated the "country of origin" for ECUs. The definition of "foreign government restrictions" in paragraph (*l*) would be amended to include restrictions imposed by the European Economic Community. Finally, Interpretation and Policy .01 to Article XV, section 1, which tracks Phlx's definition of the "unit of trading" to provide for Phlx-traded foreign currency options, would be amended to accommodate ECU options. The "unit of trading" would be set at 62,500 ECUs.

The proposal also would amend OCC By-Law Article XV, section 4, which authorizes OCC to adjust the terms of OCC foreign currency options in extraordinary events. Under the proposal, OCC could adjust the terms of ECU options if the monetary authorities of the European Economic Community issue a new currency to replace the ECU or if those authorities officially alter the ECU exchange rate or characteristics. The proposal states further that OCC will adjust ECU options terms only in exceptional cases when OCC's Securities Committee determines that fairness to holders and writers of ECU options requires it. OCC indicates that it does not intend to adjust ECU options to reflect periodic adjustments to the weight or identity of the ECU's component currencies.[6]

OCC's proposal also would add an Interpretation and Policy to OCC's By-Law Article XV, section 4. That Interpretation and Policy would clarify that OCC normally will not adjust the terms of any foreign currency option in response to devaluations or revaluations of underlying foreign currency. OCC represents in its filing that the proposed Interpretation and Policy incorporates a long-standing policy that already is included in OCC's foreign currency options disclosure documents.

Finally, OCC's proposal states that ECU option exercises would be settled like other foreign currency option exercises, with foreign currency deliveries generally in the country of origin.[7] Thus, because the proposal designates Belgium as the country of origin for the ECU, OCC, under OCC Rules 1606 and 1606A, will deliver ECUs via bank wire (for settlement of ECU option exercises) to the Receiving Clearing Member's bank in Belgium, with deliveries only on days Belgium banks are open for business. Foreign currency deliveries and receipts also could be effected through "multi-currency accounts" under OCC Rule 1607.

OCC believes that the proposal is consistent with the Act in general, and with section 17A of the Act in particular. OCC states that the proposal facilitates

[1] The ECU is the monetary unit of the European Monetary System representing a weighted average of the currencies of specified members of the European Economic Community. OCC's proposal would adopt this definition in OCC By-Law Article XV, section 1.

[2] *See* Securities Exchange Act Release No. 22056 (May 20, 1985), 50 FR 21536 (May 24, 1985), publishing notice of File No. SR-Phlx-85-10. The Commission today is issuing a companion Order to this Order approving the Phlx proposed rule change ("Phlx Approval Order." Securities Exchange Act Release No. 22853 (February 3, 1986). The Pacific Stock Exchange has proposed to trade cash-settled options on the ECU. *See* Securities Exchange Act Release No. 22508 (October 4, 1985), 50 FR 41431 (October 10, 1985) publishing notice of File No. SR-PSE-85-16. The Commission at this time is not taking action on the Pacific Stock Exchange proposal.

[3] Securities Exchange Act Release No. 22361 (August 27, 1985), 50 FR 35897 (September 4, 1985).

[4] OCC By-Law Article XV, section 1 defines special terms related to foreign currency options.

[5] Previously, a "foreign currency" was defined as "the standard unit of the official medium of exchange of a [foreign] sovereign government. . . ."

[6] The European Economic Community's monetary authorities review the ECU's composition every five years to ensure that it reflects economic and membership changes within the Community. Moreover, any state whose currency is an ECU component can request a special review of the ECU's composition if the weight of any currency in the ECU has changed by 25% or more since the last revision. Since the ECU's inception in 1978, the ECU's composition has been revised only once, on September 17, 1984, to include the Greek Drachma. No special reviews have been requested.

[7] *See* Chapter XVI of OCC's Rules for a detailed description of OCC's foreign currency option exercise settlement procedures.

the prompt and accurate clearance and settlement of options transactions by folding ECU options into OCC's existing foreign currency options clearance system, which has been proven safe and efficient.

II. Discussion

The Commission agrees with OCC that the proposal is consistent with the Act and should be approved. The Commission believes that OCC's proposal, to the greatest extent possible, applies its existing foreign currency options clearance and settlement system to ECU options. The Commission agrees with OCC that that system has been proven safe and efficient. Thus, ECU options processing should be accomplished safely and efficiently.

The Commission concurs with OCC's determination to amend the definition of "foreign currency" in OCC By-Law XV to include ECUs. In connection with the Phlx ECU options filing, the Commission received comments from the Chicago Mercantile Exchange ("CME") and Commodity Futures Trading Commission arguing for a variety of reasons that the Commission lacks jurisdiction to authorize trading of ECU options on a national securities exchange. As discussed fully in the Phlx Approval Order, the Commission disagrees and believes that it is authorized by the Act to permit the trading of ECU options on a national securities exchange.[8] Similarly, the Commission concludes that it has authority to approve OCC rule amendments intended to authorize the issuance, clearance and settlement of ECU options traded on a national securities exchange.

The Commission also believes it appropriate for OCC to apply its current rules governing adjustment of the terms of options in extraordinary circumstances to ECU options, with the limited exceptions included in OCC's proposal. Specifically, the Commission believes it appropriate for OCC to be authorized to adjust ECU options terms if the monetary authorities of the European Economic Community issue a new currency to replace the ECU or if those authorities officially alter the ECU exchange rate or characteristics. The Commission agrees with OCC, however, that OCC limit the exercise of that authority to extraordinary events. In particular, the Commission concurs with OCC's indication that it will not adjust the terms of ECU options to reflect periodic adjustments to the weight or identity of the ECU's component currencies.[9] Similarly, the Commission agrees with OCC that OCC, in general, not adjust the terms of foreign currency options in response to devaluations or revaluations of the underlying foreign currency. The Commission believes that to change the terms of these options to reflect periodic adjustments or devaluations and revaluations would be inconsistent with the economic use of ECU options (and other foreign curency options) as a hedge against such changes in the relative value of the ECU (and any other underlying foreign currency). The risks from these periodic adjustments and from possible currency devaluation or revaluation are "ordinary" in the sense that foreign currency options writers and holders contemplate these risks when deciding to sell or buy foreign currency options, including ECU options.

III. Conclusion

For the reasons discuesed above, the Commission finds that OCC's proposal is consistent with the Act, and in particular with section 17A of the Act. The proposal facilitates the prompt and accurate clearance and settlement of options transactions and ensures the safeguarding of funds and securities in OCC's custody or control or for which OCC in reasonsible.

Accordingly, IT IS THEREFORE ORDERED, under section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–85–14) be, and it hereby is, approved.

By the Commission.

Dated: February 3, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–2977 Filed 2–10–86; 8:45 am]

BILLING CODE 8010–01–M

[8] *See* Phlx Approval Order, text at notes 40–68.

[Release No. 22853; File Nos. SR–Phlx–85–10]

Self-Regulatory Organizations; Proposed Rule Change; Philadelphia Stock Exchange, Inc.

On April 12, 1985, the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 under the Act,[2] a proposed rule change to trade options on the European Currency Unit ("ECU").[3]

I. Description of the Proposal

The ECU consists of specified amounts of currencies of ten of the Member States [4] on the EEC.[5] The amount of each currency in the ECU is determined generally according to the relative gross domestic products of, and trade among, the Member States.[6] The composition of the ECU is re-examined every five years to reflect economic changes in the EEC as well as any membership changes in the EEC.[7]

While the composition of the ECU is relatively fixed, the exchange rate of the ECU fluctuates against each component currency as well as non-component currencies according to market forces.[8]

[9] For example, OCC would not have adjusted the terms of ECU options to reflect the September 1984 recomposition to include the Greek Drachma. *See* note 6, *supra*.

[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b–4 (1985).

[3] The proposed rule change was noticed in Securities Exchange Act Release No. 22056 (May 20, 1985), 50 FR 21536. The Phlx amended the proposed rule change twice subsequent to its original filing. Amendment No. 1, submitted on April 22, 1985, states that the Phlx's Board of Governors approved the proposed rule change on April 16, 1985. Amendment No. 2, filed on May 3, 1985, changed the size of the proposed ECU contract from 50,000 to 62,500 units.

[4] On January 1, 1986, Spain and Portugal became Member States of the European Economic Community ("EEC"), but their currencies are not yet included in the ECU.

[5] The EEC, popularly known as the "Common Market," was established by the Treaty of Rome. Under principles of international law, the EEC is an association of sovereign states with federal potential that can enter into treaties and send and receive envoys. Furthermore, EEC law overrides the national laws of the member states in case of conflict between the systems. *See generally*, D. Lasok & J.W. Bridge, *Introduction to the Law of European Communities*, (1982).

[6] The current composition of the ECU is as follows (numbers in parentheses indicate relative percentage weight of total ECU): Deutsch mark, .719 (32.3%); British pound sterling, .0878 (14.8%); French franc, 1.31 (19.2%); Italian lira, 140.00 (10.1%); Netherland guilder, .256 (10.2%); Belgian franc, 3.71 (8.2%); Luxembourg franc, .14 (0.3%); Danish kroner, .219 (2.7%); Irish pundt, .0087 (1.2%); Greek drachma, 1.15 (1.2%).

[7] The only revision of the ECU since its creation in 1979 occurred on September 17, 1984, pursuant to the scheduled five year re-examination. Any member state also may request re-examination if the weight of any currency in the ECU has changed by 25% or more since the previous revision, although no adjustment will be made without unanimous consent from the Council of the European Communities. No such special revision has been approved since the inception of the ECU.

[8] The value of the ECU as of January 30, 1986, in U.S. dollars was approximately 90 cents. *See Wall St. J.*, January 31, 1986. Official ECU exchange rates relative to the component currencies and six major currencies (including the U.S. dollar) are calculated daily by the EEC at 2:30 p.m. Brussels time (8:30 a.m. EST), and at approximately 11:30 a.m. EST, these rates are disseminated on the Dow Jones wire. Several major papers publish these rates daily, including the *London Financial Times* and the *Wall Street Journal*. *See* Paper by First Boston Corporation Capital Markets, December 1984, submitted to the Commission by the Phlx ("First Boston Paper").

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According to the First Boston Corporation, the ECU exchange rate "tends to be more stable than those of its component currencies, since changes in the latter may offset one another." [9]

The ECU was created in 1978 as part of the European Monetary System ("EMS") initiative to foster closer monetary cooperation among the EEC Member States.[10] Under the framework of the EMS, currencies are allowed to fluctuate within a narrow range around their parity rates. Any fluctuations wider than the stipulated limits require intervention by the Member State's central bank to stabilize its currency.[11] The ECU is used as a reference point for the calculation of these parities, as a measure of the claims and liabilities among the participating central banks, and as a reserve and settlement instrument created against gold and dollar deposits by those banks.[12]

Numerous other uses of the ECU also have developed. Among other things, the ECU is used in pricing, invoicing and settling commercial transactions, commercial lending by most major European banks, and for consumer travelers' checks and credit cards.[13]

According to the EEC, the ECU has all "the functional and fundamental characteristics of a currency," all Member States of the EEC (except West Germany) treat the ECU as a currency for all practical purposes including the application of foreign exchange regulations, and various countries outside the EEC (including Switzerland) have accepted the ECU and treat it as any other currency.[14] Certain European banks have established a clearing mechanism for the ECU, thus enabling the transfer of ECUs without having to make separate transactions in each of the component currencies.[15] Many financial institutions, primarily in Belgium, the Netherlands and Luxembourg, but also in Britain, France, Denmark and Italy, make both spot and forward markets in the ECU against the U.S. dollar and other currencies.[16] There is also an ECU market for overnight investments and investments with maturities of up to one year.

The ECU also is a significant currency for denominating international debt issues in the Eurobond markets. In 1983 and 1984, the ECU, accounting for 8.5% and 7.4%, respectively, of all new issues, was the third most utilized currency in the primary Eurobond market, after the U.S. dollar and Deutsch mark.[17] In the first nine months of 1985, the ECU has been the most widely used currency after the U.S. dollar in the Euromarket.[18] In 1984, the EEC made a public offering in the U.S. of ECU 200 million aggregate principal amount 12 year bonds, the first registered public offering in the U.S. of bonds denominated in a foreign currency.[19] In 1985 there were three registered offerings in the U.S. of ECU-denominated debt instruments.[20] Issuers of ECU-denominated bonds include several U.S. corporations; from October 1982 to mid-July 1985, eleven ECU-denominated bonds were brought to market by U.S. corporations, principally in the Euromarket.[21]

Transactions on the Phlx in ECU options will be governed by Phlx's existing foreign currency options rules. ECU options specifiations will be as follows: contract size (number of units of the underlying currency respresented in each options contract): 62,500 units strike price interval: one cent; premium quotations (cents per unit currency): .01=$6.25; .10=$62.50; 1.0=$625.00; minimum permium: .01 cents per unit of currency or $.75; bid/offer differentials: .40 or less=.04 ($25.00), .041—1.60=.08 ($50.00), more than 1.6=16 ($100.00); the ECU option will be traded on a March expiration cycle. The Phlx would apply to the ECU option its existing foreign currency options position and exercise limits of 50,000 contracts.

The ECU quotation disseminated to the Phlx floor will be calculatre for Phlx by Telerate Systems, Inc. ("Telerate"). Telerate applies the EEC-determined ECU composition to quotations in the ten underlying currencies to reach this quotation.[22] Options exercises will be settled by book-entry delivery of the approproate amount of ECUs and U.S. dollars.[23]

[8] First Boston Paper, note 8, *supra*, at 6, citing the following figures: For the period 1979–84 the ECU fluctuated 11.22% per year against the U.S. dollar, compared to 12.19% for the Deutsch mark against the dollar, 11.77% for the French franc, and 10.67% for the British pound sterling. *See also*, Exhibit 2 to SR–Phlx–85–10.

[9] The following account of the origin and uses of the ECU is taken from the First Boston Paper, note 8, *supra*, and from *The ECU*, published in March 1984 by the EEC.

[10] While the British pound is included in the ECU, the United Kingdom does not participate in the EMS exchange rate mechanism. Spain and Portugal, whose currencies are not yet included in the ECU, also do not yet participate in the EMS.

[11] Specifically, member states participating in the EMs are required to deposit 20% of their gold reserves and 20% of their dollar reserves with the European Monetary Corporation Fund ("EMCF"), an arm of the EEC that acts as clearinghouse for official transactions between Member States monetary authorities. Each Member State is credited with ECUs for these deposits. These ECUs are used to settle creditor and debtor balances that have arisen between the monetary authorities, subject, however, to the restriction that a creditor central bank is required to accept settlement in ECUs of a maximum of 50% of its claim on the debtor central bank. The creditor may request that the remaining 50% be settled in other reserve assets of the debtor central bank. See *The ECU*, note 10, *supra*.

[12] Letter from Dr. Manfred Beschel, Chef de Cabinet de Commissionare Pfeiffer, EEC (Assistant to Director General of the EEC) dated December 5, 1985 ("EEC letter") and the First Boston Paper, *supra*, note 8. *See also* Institutional Investor (Int. Ed.), "Will the ECU Prevail?", December 1984; and letter from Jacques Bellut, Senior Vice President, Treasury, and Foreign Exchange, Credit Lyonnais, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated July 16, 1985 ("Credit Lyonnais letter").

[13] Letter from Dr. Manfred Beschel, Chef de Cabinet de Commissionare Pfeiffer, EEC (Assistant to Director General of the EEC) dated December 5, 1985 ("EEC letter") and the First Boston Paper, *supra*, note 8. *See also* Institutional Investor (Int. Ed.), "Will the ECU Prevail?", December 1984; and letter from Jacques Bellut, Senior Vice President, Treasury, and Foreign Exchange, Credit Lyonnais, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated July 16, 1985 ("Credit Lyonnais letter").

[14] EEC letter note 13, *supra*. The EEC letter does point out that certain limitations apply in the Federal Republic of Germany (West Germany), which does not recognize the ECU as a currency. In West Germany, commercial banks are not permitted to open ECU accounts for West German residents. On the other hand, West German banks are allowed to participate freely even as lead managers in ECU denominated issues.

[15] Credit Lyonnais letter, note 13, *supra*.

[16] First Boston Paper, note 8, *supra*. Among other things, this means that these institutions provide ECU quotations.

[17] First Boston Paper, note 8, *supra*; letter from David C. Batten, Managing Director, First Boston Corporaton, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated july 2, 1985 ("First Boston Letter"), and Institutional Investor, note 13, *supra*. As of the end of 1984, there were 120 ECU denominated issues outstanding, representing over ECU 7.13 billion principal amount. First Boston Paper, note 8, *supra*. ECU issues included floating rate notes, low coupon notes, zero coupons and certificates of deposit. Institutional Investor, note 13, *supra*.

[18] EEC letter, note 13, *supra*.

[19] First Boston Paper and letter, notes 8 and 17, *supra*. The Commission notes that all payments relating to this issue are to be made in ECUs.

[20] Hercules, Inc., Credit Foncier and the Kingdom of Denmark issued U.S. registered ECU denominated bonds in 1985. There have also been several U.S. registered offerings of floating rate bonds denominated in U.S. dollars convertible to ECUs. ECU-denominated bonds are entitled to the same margin treatment as other bonds denominated in foreign currencies. Federal Reserve Board Staff Opinion, May 21, 1985, Federal Reserve Regulatory Service, 5–671.52.

[21] Citibank was the first U.S. corporation to issue ECU denominated bonds, issuing a 15 million ECU principal amount bond in October 1982. Since then ECU-bond issuers have included Chrysler, Motorola, IBM World Trade and Walt Disney Products. The Hercules, Inc., 1985 issue, note 20, *supra*, was the only one of these registered in the U.S.

[22] Letter from Robert B. Gilmore, Senior Vice President, Phlx, to Brandon Becker, Assistant Director, Divisionn of Market Regulation, SEC, dated October 8, 1985. Technically quotations in only nine of the ten ECU currencies will be used: because the Luxembourgin franc is always at par with the Belgian franc, only quotations for the latter will be used by Telerate in calculating the ECU. In addition, Telerate filters the quotations to:L (1) eleminate any quotation that differs by a predetermined amont from a previous quotation; and (2) eliminate generally the high and low quotations. Telerate then averages the bids and asks to reach the ECU bid and ask. While quotations for the ECU itself are available, note 8, supra, and text accompanying note 16, supra, Phlx proposes to use an ECU quotation derived from quotations in the underlying currencies because Telerate and other vendors do not vary consistently updated direct ECU quotations and it is to difficult for Phlx itself to obtain such quotations, directly from ECU deales. *See als* note 66, *infra*.

II. Comments

The Commission received letters from seven commentators regarding Phlx's proposal. The Chicago Mercantile Exchange ("CME") asserted that the SEC has no jurisdiction to approve the Phlx proposal because options on ECUs are not securities as defined in the Act.[24] According to the CME, the grant to the SEC of jurisdiction over "options . . . relating to foreign currency" [25] was intended to "deal with Phlx's then current filings," which involved options on five specific foreign currencies. In support of its interpretation of the Act, the CME cites the parallel amendments to the Commodity Exchange Act (CEA) in 1983, which excluded from the otherwise exclusive jurisdiction of the Commodity Futures Trading Commission ("CFTC") an "option *on* foreign-currency traded on a national securities exchange."[26] In pertinent part, the CME argues that, because the amendments to the CEA were enacted last, they should control, so that the language in the Act (option "relating to foreign currency") should be read to mean "option on [a] foreign currency."

CME contends that the ECU is not a foreign currency because, unlike the currencies on which the Phlx proposed to trade options in 1982, it is not a "medium of exchange or payment issued by a foreign national government."[27] The CME argues that Congress intended the term foreign currency to have its "conventional meaning," which CME asserts includes three characteristics: (1) It is issued by a sovereign government; (2) It is used in ordinary commerce; and (3) The issuing government established it as legal tender.[28] As evidence that Congress intended this meaning, CME points to discussion in the legislative history of gold coins such as discussions in the legislative history of gold coins such as the South African Krugerrand, and Congress' clear expression of intent that such gold coins not come within the definition of "currency" because they are not used in "ordinary commerce" and because their "true value derives from their gold content and not from the minimal currency value that may be attributed to them."[29] Because Krugerrands are legal tender and issued by a foreign government, CME argues that Congress, in indicating an intent that Krugerrands not be considered foreign currencies, indicated an intent that all three characteristics of a currency that the CME has identified must be present before an instrumentcan be deemed a foreign currency.[30] The CME argues that the ECU has note of these three characteristics because: (1) It is not issued by a sovereign government; (2) It is not used in ordinary every day commerce; and (3) It is not legal tender.[31]

The CFTC made arguments similar to the CME's.[32] Thus, the CFTC argues that the ECU is a group or index of currencies and not itself a "foreign currency;" and that options on groups of foreign currencies are not encompassed by the terms of the Act. The CFTC argues that Congress intended the term "foreign currency" to have its "commonly understood sense," and was intended to encompass units such as the British Pound "issued by a foreign government" and "used in ordinary commerce by the general public and whose value fluctuates in relation to the dollar." [33] The CFTC argues that the ECU at present is not a foreign currency because it is not "legal tender" and because it is not "used in every day commerce." [34]

In its comments [35], the Phlx contends that, because the ECU is a "widespread medium of exchange," and fluctuates in value against the U.S. dollar and other major currencies, it comes within the intended meaning of the term "foreign currency" as used in the Act. Like the CFTC and the CME, the Phlx refers to the portions of the legislative history of the amendments to the CEA discussing gold coins,[36] but according to Phlx these passages indicate that Congress intended to include within the definition of a foreign currency any widespread medium of exchange used in ordinary commerce whose value fluctuates with the value of the U.S. dollar.

As indicated above, the EEC also commented that "the ECU has acquired by its particular nature and stability all the functional and fundamental characteristics of currency."[37] The EEC also stated that the Member States of the EEC except West Germany treat ECUs as currency.[38]

Finally the Commission received letters from the First Boston Corporation and Credit Lyonnais supporting Phlx's view that the ECU is a foreign currency or at least has many of the characteristics of a foreign currency.[39]

[22] The Commission approved today a proposal by the Options Clearings Corporation to issue, clear and settle ECU options. Securities Exchange Act Release No. 22854 (February 3, 1986).

[24] CME's comments are contained in the three letters: Letter from William J. Brodsky, President, CME, to John Wheeler, Secretary, SEC, dated June 13, 1985; and letters from Robert S. Scales, Freeman, Freeman & Salzman, P.C., Counsel to CME, to John P. Wheeler, Secretary, SEC, dated December 6 and 16, 1985. The CME also requested that, if the Commission approves the Phlx proposal, it stay its order. *See* Request of the CME for a Stay of the Commission's Orders Approving Proposed Rule Changes, dated November 27, 1985. The CME subsequently withdrew that request. Letter from Robert P. Scales, Freeman, Freeman & Salzman, P.C., Counsel to CME, to John Wheeler, Secretary, SEC, dated January 14, 1986.

[25] Section 3(a)(10) of the Act, 15 U.S.C. 78c(a)(10) (1982), as amended by the 1982 amendments to the Act, Pub. L. No. 97–303, 96 Stat. 1409 (1982). The 1982 amendments to the Act and the 1983 amendments to the CEA, note 26, *infra*, (collectively the "Accord Amendments") represented the legislative enactment of the so-called "Shad-Johnson" Accord, named for the then Chairman, John S.R. Shad and Phillip McBride Johnson, of the respective Commissions.

[26] Pub. L. No. 97–444, 96 Stat. 2294 (1983), codified at section 4c(j) of the CEA, 7 U.S.C. 6c(f) (1982).

[27] Neither the CEA nor the Act specifically defines the term "foreign currency."

[28] CME's December 6, 1985 letter, note 24 *supra*.

[29] H.R. Rep. No. 97–565, (I), 97th Cong., 2d. sess. 152 (1982).

[30] The CME also cites other statutes and regulations which it believes support its understanding of the common meaning of a foreign currency, including Uniform Commercial Code section 1–201 (24), (defining money as a "medium of exchange authorized or adopted by a domestic or foreign government as part of its currency"); and 31 CFR 103.11(c), as amended effective November 21, 1985, 50 FR 92691 (Treasury regulations under the Foreign Currency Reporting Act), defining "currency" as "the coin and paper money of any country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. . . . Currency also includes official bank notes that are customarily under and accepted as a medium of exchange in a foreign country."

[31] The CME also disputes that the value of the EEC's 1985 statements that the ECU has the functional and fundamental characteristics of a currency and contends that the ECU's 1984 publication *The ECU these rates daily, including the London Financial Times* is inconsistent with these statements.

[32] Letter from Jean A. Webb, Secretary, CFTC, to John Wheeler, Secretary, SEC, dated September 27, 1985 ("CFTC letter").

[33] CFTC letter, note 32, *supra*. In support of its argument, the CFTC also cites the passages in the legislative history of the 1982 Amendments to the CEA discussing gold coins. Note 29, *supra*.

[34] CFTC letter, note 32, *supra*.

[35] Letters from Arnold F. Staloff, President, Philadelphia Board of Trade, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated July 1, and December 24, 1985.

[36] In addition to the passages cited by the CME and the CFTC, notes 29 and 33, *supra*, the Phlx cites S. Rep. No. 384, 97th Cong. 2d Sess., 78 (1982):" [t]he term foreign currency. . . refers only to those currencies whose worth is determined not primarily by their metallic content, but rather by their value relative to other countries' currencies . . . ."

[37] EEC letter, note 13, *supra*.

[38] *Id.*

[39] Credit Lyonnais and the First Boston letters, notes 13 and 17, *supra*, respectively. Credit

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Both the First Boston Corporation and Credit Lyonnais agreed with the Phlx that the ECU has become a "recognized medium of exchange in international commerce."[40]

III. Discussion

Under section 19(b)(2) of the Act,[41] the Commission must approve a proposed rule change submitted by a self-regulatory organization such as the Phlx if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations under the Act applicable to the self-regulatory organization. Section 6(b)(5) of the Act[42] requires that the rules of the exchange be designed "to prevent fraudulent and manipulative acts and practices" and "in general, to protect investors and the public interest." Section 6(b)(8) of the Act[43] requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 3(a)(10) of the Act[44] in pertinent part defines "security" as "any . . . option . . . entered into on a national securities exchange relating to foreign currency." No commentators have urged that the Phlx proposal is inconsistent with the standards contained in section 6(b) of the Act; rather, the principal issue raised by the Phlx proposal is whether ECU options are options "relating to foreign currency" as defined in section 3(a)(10) of the Act.

A. The Jurisdictional Issue

1. The Statutory Issues

In general, there are two bases for concluding that ECU options are securities for the purposes of section 3(a)(10). First, if the ECU is a foreign currency, then ECU options clearly are options relating to foreign currency. Second, even if the ECU is not itself viewed as a foreign currency, but rather as a composite index or group of the underlying currencies, ECU options still "relate to foreign currency" and, therefore, are securities under section 3(a)(10). For the reasons discussed below, the SEC concludes that, under both analytical approaches, the ECU options proposed by Phlx come within the SEC's jurisdiction pursuant to section 3(a)(10) of the Act.[45]

First, the Commission believes that the ECU is a "foreign currency" within the intended meaning of Congress.[46] While the term "foreign currency" is not defined in either the CEA or the Act, Congress did indicate that gold coins such as the South African Krugerand are not currencies because they do not fluctuate in value against the other currencies and are not used in ordinary commerce as a medium of exchange.[47] The Commission believes that Congress thus indicated that the primary indicia of a foreign currency are its fluctuation in value against other currency and its use as a medium of exchange in ordinary commerce. Furthermore, the Commission believes that a foreign currency's use in commerce as a medium of exchange and its ability to fluctuate in value vis-a-vis other currencies are the essential characteristics that determine the commercial hedging or investment utility of options or other derivative products relating to the currency. In contrast, the utility of an instrument as a medium for purchasing consumer goods would appear less relevant to these considerations.

In sum, the Commission believes that the term "foreign currency", as used in the Act means an instrument that is used as a medium of exchange in ordinary commerce whose value fluctuates with the value of other foreign currencies.[48]

As described above, Member States of the EEC maintain ECU reserves that are used to adjust claims arising from currency movements beyond the parity ranges established by the EMS. Furthermore, the ECU is used in pricing, invoicing and settling commercial transactions, and ECU-denominated travelers' checks and credit cards are available.[49] In addition, the ECU is now a major currency for denominating international debt issues in the Eurobond markets, and ECU denominated bonds have been publicly offered in the U.S. Furthermore, ECUs are used to purchase these bonds, and payments of principal and interest on these bonds are made in ECUs. In addition, ECU futures traded on the CME and New York Cotton Exchange ("NYCE") settle in ECUs, as will the Phlx options.[50] Significantly, the ECU is recognized as a foreign currency by the Member States of the EEC, except for West Germany, as well as by several countries outside the EEC.[51] Moreover, according to the EEC, the ECU has "the fundamental and functional characteristics of a currency."[52] For

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Lyonnais is one of the largest European banking institutions making markets in ECUs, and also is one of a consortium of five major European banks that presently provide for clearance and settlement of ECU transactions. First Boston has underwritten ECU offerings in the United States and effected for its customers multi-party currency and interest rate swaps involving ECU-denominated obligations.

[40] The PSE, which also submitted a proposal to trade cash-settled options on ECUs, (File No. PSE-85-28, noticed in Securities Exchange Act Release No. 22508, October 4, 1985, 50 FR 41431) submitted a comment letter making arguments essentially similar to those made by the Phlx. Letter from Robert F. Denham, Munger Tolles & Rickhershauser (counsel to the PSE), to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated October 1, 1985. The PSE has granted an indefinite extension of time for Commission action on its proposal.

[41] 15 U.S.C. 78s(b)(2) (1982).

[42] 15 U.S.C. 78f(b)(5) (1982).

[43] 15 U.S.C. 78f(b)(8) (1982).

[44] 15 U.S.C. 78c(a)(10) (1982).

[45] *Cf.* Section 3(b) of the Act, 15 U.S.C. 78c(b) (1982) (empowering the Commission to define terms used in the Act).

[46] There is no evidence in the legislative history that Congress intended to set up a different standard in the CEA. Therefore, the Commission believes that ECU options also are "options on foreign currency" as that phrase is used in the CEA. *See* note 57, *infra*.

[47] Notes 29, 33 and 36, *supra*.

[48] We reject, therefore, the CME's and CFTC's contention that an additional characteristic of a currency is that it is the "legal tender of a foreign government." We do not believe that the passages in the legislative history discussing gold coins, notes 29, 33 and 36, *supra*, support this proposition. Rather these passages support the simple proposition that Congress intended that the term foreign currency include the two characteristics that differentiate currencies from gold coins. We also believe that in common usage currency means something different than legal tender. For example, Webster's defines currency as "something that is in circulation as a medium of exchange including coin, government notes and bank notes." Webstars Unabridged Dictionary (3d. ed., 1966). The other statues and regulations CME cites, note 30, *supra*, clearly do not establish a "common" meaning of currency, but rather establish definitions intended for use in the specific statutory or regulatory contexts in which promulgated. The Commission also notes that the Treasury regulation the CME cites seems to specifically envision the possibility that the term "currency" may encompass something that is not legal tender. *See* the last sentence of the definition of currency, Treasury regulation § 103.11[c], quoted in note 30, *supra*. Finally, the Commission notes that while we do not believe it is essential that an instrument be legal tender to come within the intended definition of foreign currency under the Acts, the official ECU is required to be accepted by monetary authorities of the participants in the EMS as payment for a portion of their official EMS-related debts. Note 12, *supra*. To this extent, therefore, ECUs are legal tender within the system in which they originate and are issued.

[49] Note 13, *supra*.

[50] On December 18, 1985, and January 14, 1986, the CFTC approved the NYCE's and CME's respective applications for designation as contract markets for trading in physical delivery futures on ECUs. Trading in these futures commenced on January 7, 1986 and January 14, 1986, respectively. On January 28, 1986, the CFTC also approved an application by the Chicago Board of Trade ("CBT") for designation as a contract market for trading in physical delivery futures on ECUs, but the CBT has not yet commenced trading those futures. CBT also has pending with the CFTC an application for designation as a contract market for trading in options on ECUs.

[51] EEC letter, note 13, *supra*.

[52] The CME attempts to minimize the significance of this statement by arguing that it does not speak to the legal definition of a currency, and is contradicted by the EEC in the EEC's 1984

Continued

these reasons, the Commission believes that the ECU is used as a medium of exchange in ordinary commerce.[53] Moreover, the value of the ECU fluctuates in value vis-a-vis the U.S. dollar and other currencies.[54] Thus, the Commission believes that the ECU is both a "currency" and a "foreign currency."[55]

Second, whether or not the ECU itself is a "foreign currency," its value is comprised of the value of various foreign currencies. Thus, options on ECUs literally "relate to" foreign currency, and, thus, come within the plain meaning of section 3(a)(10).[56]

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publication *The ECU*, note 10, *supra*, as well as by an article by Mr. Joel Dixon, the Washington representative of the EEC, published in January 1985. Although the EEC's letter may not determine whether ECUs are "currency" within the meaning of the Act, the EEC letter does show that the issuer of ECUs believes that ECUs have the commonly understood characteristics of a "currency." The statements in *The ECU* the CME discusses indicate the EEC's belief that as of March 1984 the ECU was not legal tender and was not widely used in consumer transactions. As discussed above, however, the Commission does not believe that the ECU need be legal tender for it to be considered a foreign currency under the Act. Moreover, since the March 1984 publication of *The ECU* ECU-denominated travelers' checks and credit cards have been issued, indicating that the ECUs use in consumer transactions has increased.

Finally, Mr. Dixon's statement is not entitled to the weight of the EEC's own statement, and was published 10 months prior to the EEC's 1985 letter. Moreover, throughout Mr. Dixon's article the ECU is referred to as a currency, and indeed the article states that "from the investor's point of view it is exactly like any other foreign currency."

[53] The Commission disagrees with the CME's and CFTC's suggestions that, because members of the general public do not use ECUs in their every day affairs, the ECU is not used "in ordinary commerce." First, the availability of travelers' checks and credit cards denominated in ECUs indicates that some members of the general public do use ECUs in their every day affairs. Moreover, as described above, ECUs also are used in a broad variety of business and commercial transactions. *See* text at notes 13–21, *supra*. For these reasons, in assessing whether ECUs should be deemed a currency in the context of the proposed options contracts, the Commission believes that the various uses of the ECU as described above clearly constitute use "in ordinary commerce." In addition, the Commission notes that the fact that ECUs do not exist in scrip form does not prevent the ECU from being a medium of exchange. With advancing technology it is possible for a book-entry instrument to function as a medium of exchange.

[54] Note 8, *supra*.

[55] CME asserts that the ECU must be issued by a "sovereign government" in order to be "foreign currency." The Commission does not believe that in order to be "foreign" a currency needs to be issued by a "sovereign government." The Commission, however, also believes that the EEC has the essential attributes of a sovereign entity. *See* note 5, *supra*.

[56] *See, e.g., Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 197 (1975) ("The starting point in every case involing construction of a statute is the language itself.").

The CME and CFTC argue that both the CEA and the Act should be read to limit the SEC's jurisdiction to options "on foreign currency" (the words of the CEA), and that the preposition "on" must be read as meaning something less than "relating to." The Commission believes that Congress intended the amendments to the CEA and the Act to complement one another.[57] In addition, the Commission does not believe that, as a matter of semantics, an option "on" a basket or index of foreign currencies is not an option "on" foreign currency. The literal language of the CEA is "option on foreign currency," not "option on a foreign currency." This, coupled with the fact that the word "currency" is used for both singular and plural references, makes the approval of an option on an index of foreign currency on a national securities exchange perfectly consistent with the literal language of teh CEA.[58]

There is no indication in the legislative history of the amendments to either Act that Congress intended the reading of the Acts that the CFTC and CME suggest. The mere fact that, at the time of the Shad-Johnson Accord, the Phlx was proposing options on five specific foreign currencies does not compel a conclusion that Congress intended merely to give the SEC jurisdiction over those products. Indeed, Congress made it clear that its purpose in adopting the Accord Amendments was to put an end to the jurisdictional confusion that had delayed the trading of new and potentially useful instruments in the securities and commodities markets.[59] To limit the definitions added to the CEA and the Act by the Accord legislation to those products actually proposed or traded at that time would have merely resolved existing jurisdictional questions and postponed the resolution of the inevitable additional questions that would arise over products not yet specifically contemplated.[60] One clear purpose of the Accord Amendments was to resolve jurisdictional disputes in order to accommodate both existing proposals and the development of new and evolving financial instruments.[61] For these reasons, the Commission also believes that the options on the ECU proposed by Phlx represent options "relating to foreign currency," and, thus, are securities within the meaning of section (3)(a)(10) of the Act.

2. Policy Considerations

Apart from an analysis of the language of the CEA and the Act, the Commission believes there are important policy reasons—both economic and competitive—in support of its determination that options on the ECU are securities under section 3(a)(10) of the Act. ECU options could serve several economic purposes.[62] ECU options could be used by investors, issuers and underwriters of ECU-denominated bonds to manage the exchange rate risk inherent in such positions.[63] ECU options also could be used to manage the exchange rate risk associated with either transactions denominated in ECUs or with multi-national transactions involving a combination of currencies. In this latter function, the ECU option would represent a means not now available of diversifying exchange rate risk without incurring the cost of transacting in

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[57] The amendment to the CEA excluded from the exclusive jurisdiction of the CFTC the foreign currency options traded on national securities exchanges that were added to the SEC's jurisdiction in 1982. *See, e.g.*, Senate Rep. No. 384, 97th Cong., 2nd Sess., 2 and 22 (1982). ("The effect [of the amendments to the CEA] is to permit trading of options on foreign currencies on both commodity exchanges and stock exchanges."). Section 9(g) of the Act [15 U.S.C. 78i(g)(1982)] indicates that if an option comes within the definition of Section 3(a)(10) of the Act, the Commission has jurisdiction notwithstanding conflicting provisions of other statutes.

[58] The CME and CFTC also argue that, if Congress intended the SEC's jurisdiction to extend to instruments that constituted currency indexes, it would have specifically so provided. In this regard, they note that, in granting the CFTC jurisdiction over futures contracts on groups or indexes of securities in the same legislation setting forth SEC jurisdiction over foreign currency options, Congress demonstrated fully its ability to grant specific jurisdiction over index products when that was its intention.

But in enacting the legislation it was necessary for Congress to focus specifically on stock index futures because it specifically prohibited futures on individual non-exempt securities. *See* section 2(a)(1)(B)(iv) of the CEA, 7 U.S.C. 2a(1)(B)(iv) (1982). Thus, the absence of specific provisions dealing with foreign currency indexes, rather than evidencing an intept to exclude such products from SEC jurisdiction, reflects the fact that there was no reason or need for Congress to address separately foreign currency indexes.

[59] *See, e.g.*, S. Rep. No. 384, 97th Cong. 2d Sess., 22–23 (1982).

[60] The Commission notes that neither futures nor options on ECUs were trading or even proposed for trading at the time of the consideration and enactment of Accord Amendments.

[61] S. Rep. No. 384, 97th Cong., 2d. Sess., 22 (1982). *See also* remarks of Sen. D'Ameto and Sen. Garn, 128 Cong. Rec. S 13112, 13113 (October 1, 1982).

[62] The economic utility of ECU options is also important in evaluating whether Phlx's proposal is consistent with section 6(b)(5) of the Act, and particularly in determining whether the proposal is in the public interest. *See* Section B., *infra*.

[63] *See* Credit Lyonnais and First Boston letters, notes 13 and 17, *supra*. In this respect, ECU options would serve the same economic function as existing foreign currency options. *See, e.g.*, SEC, CFTC and Federal Reserve Board *Study of the Effects on the Economy of Trading of Futures and Options* [December 1984] ("Futures/Options Study"), II 27–33, IV 28–30, and Appendix IV–A, 38–40.

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several different individual foreign currency options.[64]

The primary practical effect of adopting the CME's and CFTC's reading of the Acts would be to preclude registered broker-dealers who are not registered futures commission merchants ("FCM") (and registered representatives who are not registered as FCM associated persons) from offering a useful alternative risk-shifting foreign currency option to their customers. In addition, this reading would preclude one group of market participants (*i.e.*, options traders) from competing with another group (*i.e.*, commodities traders). By contrast, the Commission's reading of the Acts allows for the introduction of a potentially useful product, is pro-competitive, and thus, accords more with the underlying policy concerns of the amendments to the Acts.

Significantly, neither the CME nor the CFTC has indicated any policy reasons for their interpretation of the two Acts. Options on ECUs will be used for the identical purposes of transferring foreign currency risk or dollar valuation risk that other foreign currency options provide. The trading of options on ECUs on a securities exchange concurrently with the trading of futures (or options on futures or physical options) on ECUs on commodity exchanges[65] would in no way threaten to disrupt the CFTC's regulation of those markets. Indeed, the amendments to both Acts specifically envisioned that competing options, options on futures and futures could trade concurrently on exchanges and boards of trades without altering the regulatory structure of either marketplace.

B. Section 6(b) of the Act

As discussed above, the proposed ECU options contract shares the essential attributes of Phlx's existing foreign currency options, and will trade subject to Phlx's existing foreign currency options rules. In light of the liquid cash markets for each of the currencies in this basket, particularly the most heavily weighted currencies, the fact that the ECU's value, unlike that of the other foreign currencies on which Phlx trades options, derives from the aggregate weighted value of a basket of ten currencies in itself raises no significant regulatory issues.[66] Moreover, the Phlx's position, and exercise limits for its existing foreign currency options will apply to the ECU options contract. In addition, because the ECU tends to be more stable than each of its component currencies,[67] the Phlx will apply its existing margin rules for its foreign currency options to the options on the ECU. As discussed above, the Commission also believes ECU options have a useful economic function.[68] Finally, the Phlx has submitted to the Commission an adequate surveillance program for ECU options.

For these reasons, the Commission finds that the Phlx proposal is designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. The Commission also finds that the Phlx proposal imposes no burden on competition not necessary or appropriate in furtherance of the Act.

IV. Conclusion

For the reasons discussed above, the Commission finds that Phlx's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

Dated: February 3, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86-2978 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24012; 70-7219]

Columbus and Southern Ohio Electric Co.; Proposed Sale of Electric Utility Assets

February 4, 1986.

Columbus and Southern Ohio Electric Company ("C&SOE"), 215 North Front Street, Columbus, Ohio 43215, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration with this Commission pursuant to section 12(d) of the Public Utility Holding Company Act of 1935 ("Act") and rule 44 promulgated thereunder.

C&SOE proposes to sell its existing Broadway Substation #166 to the City of Jackson, Ohio for a total price of $117,714.00, which includes all expenses expected to be incurred by C&SOE in the sale. The replacement cost, less observed depreciation, for the equipment is $108,151.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 28, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2966 Filed 2-10-86; 8:45 am]

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[64] *See* the Phlx filing, SR-Phlx-85-10, at 10. Of course, the extent to which this latter function would be viable would depend on the correlation between movements in the actual, multiple currency position being hedged and movements in the ECU.

[65] *See* note 58, *supra*.

[66] In this connection, the Commission notes that it previously has expressed concern with the susceptibility to manipulation of certain options and futures whose values are derived from quotations rather than last sale reports for the component securities. *See, e.g.*, letter from George A. Fitzsimmons, Secretary, SEC, to Paula Tosini, Director, Division of Economics and Education, CFTC, dated July 23, 1984 (commenting on Chicago Board of Trade application for designation as a contract market to trade futures contracts on the Municipal Bond Index ("Municipal Bond Index letter")); and Securities Exchange Act Release No. 22558, October 25, 1985, 50 FR 45516 (approving Chicago Board Options Exchange proposal to trade options on the Standard and Poor's OTC Industrial Index). The Commission does not believe that use of quotations in the underlying currencies to calculate the ECU values disseminated to the Phlx floor raise such manipulation concerns because: (1) Telerate's filtering of quotations, note 22, *supra*, tends to ensure that artificial quotations in the ECU currencies will not establish the ECU quotations; (*see* the Municipal Bond Index letter); (2) the markets for the ECU currencies, particularly those that have the greatest weight in the ECU, are large and liquid enough that it would be very difficult to enter artificial quotations that will effect the ECU quotation to any significant degree; and (3) the ECU option is settled in ECUs (and not, thus, cash-settled) so that manipulations of the quotations for the underlying currencies would not have the direct effect of potentially creating artificially profitable exercise opportunities.

[67] Note 9, *supra*.

[68] *See* section III.A.2., *supra*.

[Release No. 35-24013; 70-7167]

Indiana and Michigan Electric Co.; Proposal To Render Affiliated and Nonassociated Transportation Services

February 5, 1986.

Indiana & Michigan Electric Company ("I&M"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, Appalachian Power Company, 40 Franklin Road, SW., Roanoke, Virginia 24011, Ohio Power Company ("OPCo"), 301 Cleveland Avenue, SW., Canton, Ohio 44702, AEP Generating Company, 1 Riverside Plaza, Columbus, Ohio 43215, Columbus and Southern Ohio Electric Company, 215 North Front Street, Columbus, Ohio 43215, Kentucky Power Company 1701 Central Avenue, Ashland, Kentucky 41101 (referred to collectively as "Applicants") and other companies of the American Electric Power System ("System"), all direct or indirect subsidiaries of American Electric Power Company, Inc., a registered holding company, have filed an application-declaration with the Commission pursuant to sections 12(f) and 13 of the Public Utilities Holding Company Act of 1935 ("Act") and rules 43 and 80 through 95 thereunder.

For many years, the System has purchased coal and owned in fee or leased coal reserves, mined coal, and transported it to its various generating stations. As a national energy crisis deepened and environmental considerations became more complex in the early 1970's, the System made provisions for supplies of coal in addition to coal otherwise available to it under then existing arrangements. Accordingly, the System acquired additional coal reserves and coal mining, handling and transportation equipment for such purpose. Included in fuel transportation equipment, which was acquired by the System, either through direct ownership or through chartering or leasing arrangements with nonassociated charterers or lessors, were a number of towboats, barges and related property which have been employed in transporting coal for System use. This transportation property is currently being operated for the benefit of the System by the River Transportation Division of I&M ("River Transportation Division").

The Applicants propose for I&M, (1) to continue to own and operate the assets of its River Transportation Division for transportation services for itself and the other applicants, and during times of nonutilization by I&M and the other Applicants, to provide such services or equipment therefor to nonassociated companies, (2) to institute a schedule of fees and charges providing for transportation services to affiliates and nonassociates, and (3) to acquire ownership of the Lakin Facility from OPCo.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 3, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any notice or order issued in this matter. After said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-2969 Filed 2-10-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22851; File Nos. 4-281, S7-433]

Joint Industry Plan; Filing and Immediate Effectiveness of Admendments to the Consolidated Quotation Plan and Consolidated Tape Association Plan Relating to Consolidated Subscriber Form

The participants in the Consolidated Quotation Plan ("CQ Plan") and Consolidated Tape Association ("CTA") on January 29, 1986 submitted amendments [1] to the Plan governing the operation of the consolidated quotation reporting system ("CQS") and the "Restated and Amended Plan submitted to the Securities and Exchange Commission pursuant to rule 17a-15 under Securities Exchange Act of 1934" ("CTA Plan").[2]

I. Description of the Amendments

The purpose of the amendments is to adopt a new, consolidated form for use by professional subscribers to the CQ and CTA Plans. Section VIII of the CQ Plan and section VII of the CTA Plan currently require every "Professional" subscriber who receives quotation information or last sale prices relating to Network A Eligible Securities to, among other things, execute a form of agreement with the New York Stock Exchange (acting or behalf of the Network A Participants) substantially in the form of Exhibit D to the CQ Plan or Exhibit C to the CTA Plan ("Network A Form"). The Consolidated Form consolidates the Network A Form and several other subscriber agreements and addenda thereto.

The Commission believes that the amendments represent a positive enhancement to the administration of the CQ and CTA Plans that creates opportunities for more efficient and effective market operations.[3] In light of this conclusion, and because the CQ and CTA Plan participants have stated in their filings that the amendments involve solely technical and ministerial matters relating to subscriber forms, the amendments have become effective pursuant to paragraph (C)(3)(iii) of rule 11Aa3-2.

II. Request for Comment

Although the amendments were effective upon filing with the Commission, the Commission may summarily abrogate the amendments within 60 days of its filing and require refiling and approval of the amendments by Commission order pursuant to rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act.

In order to assist the Commission in determining whether to abrogate the amendments and to require refiling and further review, interested persons are invited to submit their views to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, within 21 days from the date of publication of this notice in the Federal Register. The amendments to the CQ and CTA Plans

[1] The amendments to the CQ and CTA Plans were submitted pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"). The CTA Plan also was submitted pursuant to Rule 11Ae3-1 under the Act.

[2] The CQ Plan and subsequent amendments are contained in File No. 4-281. The Commission approved the CQ Plan in Securities Exchange Act Release No. 16518 (January 22, 1980), 45 FR 6521. The CTA Plan and subsequent amendments are contained in File No. S7-433. The Commission approved the CTA Plan in Securities Exchange Act Release No. 1488 (July 16, 1980), 45 FR 49174.

[3] *See* section 11A(a)(1)(B) of the Act.

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will be available for public inspection in the Commission's public reference room. All communications should refer to File Nos. 4–281 or S7–433.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

John Wheeler,

Secretary.

January 31, 1986

[FR Doc. 86–2970 Filed 2–10–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22850; File No. S7–433]

Joint Industry Plan; Filing of Amendment to the Consolidated Tape Association Plan Relating to Regulatory Halt Periods.

The participants in the Consolidated Tape Association ("CTA") on January 20, 1986 submitted to the Commission, pursuant to rules 11Aa3–1 and 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Restated and Amended Plan submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 under the Securities Exchange Act of 1934" ("CTA Plan").[1]

I. Description of the Amendment

The amendment alters the regulatory halt provision of the CTA Plan. Section X(a) of the CTA Plan governs procedures for discontinuing dissemination of last sale information during regulatory halts and for the resumption of dissemination after termination of the halts. The procedures currently include two overlapping time periods that work to delay recommencement of dissemination of consolidated last sale information for at least 30 minutes from the time the primary market terminates a regulatory halt. The amendment deletes one period and shortens another, reducing the overall minimum delay to 15 minutes.[2] The CTA participants stated that the amendment will provide the investing public with faster access to market information, thereby contributing to the national market system objectives regarding dissemination of last sale information under sections 11A(a)(1) (C) and (D) and 11Aa(a)(3)(B) of the Act.

II. Request for Comment

Interested persons are invited to submit written comments on the amendment. Persons submitting comments should file six copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission and related items, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC All communications should refer to File No. S7–433 and should be submitted within 21 days from the date of publication of this notice in the **Federal Register.**

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(29).

Dated: January 31, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–2971 Filed 2–10–86; 8:45 am]

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[4] 17 CFR 200.30–3(a)(27).

[1] *See* Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.

[2] The procedures currently provide that the CTA Plan Processor may not disseminate indications of interest until at least 15 minutes after the primary market determines to terminate the regulatory halt ("T Time"). They also provide that the processor may generally resume disseminating last sale information 30 minutes after T Time. The amendment eliminates the initial 15 minute period to enable the processor to disseminate indications immediately. The amendment also permits the processor to resume disseminating last sale information 15 minutes after T Time.

DEPARTMENT OF STATE

[Public CM–8/933]

Oceans and International Environmental and Scientific Affairs Advisory Committee; Partially Closed Meeting

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will meet at 2:00 P.M., Thursday, February 20, 1986, in Room 1205, Department of State, Washington, D.C.

At this meeting, officers responsible for Antarctic affairs in the Department of State will discuss key issues and problems involving the Antarctic in the context of current domestic and international developments. This session will be open to the public. The public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussion according to the instructions of the Chairman. As access to the Department of State is controlled, persons wishing to attend the February 20 meeting should enter the Department through the Diplomatic ("C" Street) Entrance. Department officials will be at the Diplomatic Entrance to escort attendees to Room 1205.

The Antarctic Section of the Oceans and International Environmental and Scientific Affairs Advisory Committee will also meet on Friday, February 21, 1986 in Room 355 of the National Academy of Sciences' Joseph Henry Building, Pennsylvania Avenue, NW., Washington, D.C., in sessions that will not be open to the public. As these sessions will include discussion of classified material, they have been closed pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B). The disclosure of classified material and revelation of considerations which go into policy development would substantially undermine and frustrate the U.S. position in future negotiations. The purpose of these discussions will be to elicit views concerning the further development of United States policy regarding Antarctica particularly with respect to Antarctic resource issues. This portion of the meeting will include classified briefings and examination and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information on the meetings should be directed to R. Tucker Scully of OES/OPA, Room 5801, Department of State. He may be reached by telephone on (202) 647–3262.

John D. Negroponte,

Chairman.

[FR Doc. 86–2911 Filed 2–10–86; 8:45 am]

BILLING CODE 4710–09–M

[Public Notice CM–8/935]

Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 19, 1986 at 10:00 a.m. in Suite 301, Control Data Corporation, 1201 Pennsylvania Avenue, N.W., Washington, D.C.

Study Group B deals with the preparation of U.S. positions for CCITT Study Group PC/WATTC.

Study Group B will review contributions and U.S. positions relating to the upcoming meeting of CCITT Study Group PC/WATTC taking place in Geneva March 3–7, 1986. In addition, it will make its final preparations regarding the U.S. Delegation to that meeting; and its final assessment of the

current international contributions that have been submitted for consideration.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All persons wishing to attend the meeting should contact the office of Philip Onstad, Control Data Corporation, telephone (202) 789–6784.

Dated: January 22, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86–2909 Filed 2–10–86; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice, CM–8/936]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 26, 1986 at 9:30 a.m. in Room 1205, U.S. Department of State, 2201 C Street, NW., Washington, D.C.

The purpose of this meeting is to review the status of preparations and possible U.S. contributions to the May meeting of the CCITT Special "S" group, to be held at ITU Headquarters in Geneva.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 647–6700. All attendees must use the C Street entrance to the building.

Dated: January 22, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86–2910 Filed 2–10–86; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/939]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea Working Group on the Carriage of Dangerous Goods; Meeting

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on April 2, 1986 at 9:30 AM in Room 2417 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of this meeting is to discuss:

—United States positions on matters to be considered at the 38th Session of the International Maritime Organization (IMO) Subcommittee on the Carriage of Dangerous Goods to be held April 21–25, 1986;

—United States proposals made to the 38th Session of the IMO Subcommittee of the Carriage of Dangerous Goods;

—Revision of the International Maritime Dangerous Goods (IMDG) Code requirements for the shipment of explosives;

—Inclusion of additional shipping requirements in the IMDG Code for marine pollutants;

—Medical and emergency response for accidents involving hazardous materials with general not otherwise specified (N.O.S.) shipping names;

—Revision of the IMDG Code stowage and segregation requirements; and

—IMO activities of a continuing nature.

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant Commander John P. Aherne, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street, SW., Washington, D.C. 20593. Telephone: (202) 426–1577.

Dated: February 4, 1986.

Richard C. Seissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 86–2812 Filed 2–10–86; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice, CM–8/938]

Soviet and Eastern European Studies Advisory Committee; Recommendations Approved for FY–86 Awards

On December 23, 1985 the Department of State approved the recommendations of the Soviet and Eastern European Studies Advisory Committee for the following FY–86 awards.

1. *American Council of Teachers of Russian*—$76,540 to provide fellowships for *in situ* graduate study of Russian.[1] Contact: Dan E. Davidson, Director, USSR Programs Group, American Council of Teachers of Russian, 815 New Gulph Road, Bryn Mawr, PA 19010 (215) 525–8559.

2. *Hoover Institution/Stanford University*—$191,360 to fund post-doctoral fellowships and summer research grants.[1] Contact: John B. Dunlop, Associate Director, The Hoover Institution on War, Revolution and Peace at Stanford University, Stanford, CA 95405–2323 (415) 723–4273.

3. *University of Illinois*—$157,879 to partially fund the University's Slavic Reference Service and Summer Research Laboratory on Russia and Eastern Europe.[1] Contact: Diane Merridith, Program Administrator, Russian and East European Center, University of Illinois at Urbana-Champaign, 1208 W. California Avenue, Urbana, IL 61801 (217) 333–1244 or 3278.

4. *International Research and Exchanges Board*—$798,880 to provide improved field access to the US scholarly community by funding (1) short-term visits by senior specialists; (2) regular contact with the non-Russian areas of the USSR; (3) specialized on-site language training; (4) group research and collaborative projects; (5) enhancement of comparative studies using Soviet and EE materials; (6) better preparation for research abroad; and (7) systematic dissemination of field research results.[1] Contact: Dorothy Knapp, Assistant Director, International Research & Exchanges Board, 655 Third

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[1] Actual amounts pending grant negotiations.

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Avenue, New York, NY 10017 (212) 490–2002.

5. *The Joint Committee on Eastern Europe* of the ACLS and SSRC—$442,040 to fund research and training fellowships, continued start-up monies for journal on East European politics, and establishment of an Eaxt European summer language institute.[1] Contact: Jason Parker, Executive Associate, Joint Committee on Eastern Europe, 228 East 45th Street, New York, NY 10017 (212) 697–1505.

6. *The Joint Committee for Soviet Studies* of the SSRC and ACLS—$805,630 to fund (1) a national fellowship program for junior scholars entering graduate work in Soviet studies, further study by students already having completed two years of graduate work, completion of Ph.D. dissertations, and postdoctoral research by junior scholars, sharing with universities costs of initial appointments; (2) collaborative research projects and dissemination of results; (3) a national competition for grants to American institutions that offer intensive training in the Russian language.[1] Contact: Blair Ruble, Staff Associate, Social Science Research Council, Soviet Program, 605 Third Avenue, New York, NY 10158 (212) 661–0280.

7. *The National Council for Soviet and East European Research*—$1,245,220 to augment existing programs designed to develop and sustain long-term fundamental research dealing with major Soviet and East European policy issues on the basis of a national research agenda, soliciting responsive bids through an annual national competition, and the awarding of contracts.[1] Contact: Vladimir I. Toumanoff, Executive Director, The National Council for Soviet and East European Research, 1755 Masachusetts Avenue, N.W., Suite 304, Washington, D.C. 20036.

8. *The Woodrow Wilson Center* of the Smithsonian Institution—$789,360 to provide additional support to the Kennan Institute for Advanced Russian Studies ($526,240) and the East European Program ($263,120) for their research and dissemination programs.[1] Contact: Peter Reddaway, Secretary, Kennan Institute for Advanced Russian Studies, The Wilson Center, 955 L'Enfant Plaza, SW, Suite 7400, Smithsonian Institution Building, Washington, D.C. 20560 (202) 278–3105 and George Hoffman, Acting Secretary, East European Program, European Institute, The Wilson Center, Smithsonian Institution Building, Washington, D.C. 20560 (202) 357–2952.09

Those interested in program details should contact the grantees directly. A national, open competition for FY 1987 will be held depending upon availability of funds.

Dated: January 31, 1986.

Paul K. Cook,

Soviet and Eastern European Studies Advisory Committee.

[FR Doc. 86–2907 Filed 2–10–86; 8:45 am]

BILLING CODE 4710-32-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Shelby County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Shelby County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas J. Ptak, Division Administrator, Federal Highway Administration, Federal Building, U.S. Courthouse, 801 Broadway—Suite A—926, Nashville, Tennessee 37203, telephone (615) 736–5394.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Tennessee Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct Nonconnah Parkway, a four to six lane access control highway on new location, from Interstate Route 240 near Quince Road in southeast Memphis to State Route 57 (U.S. 72) west of Collierville in Shelby County, Tennessee. The proposed improvement would have a length of approximately 10 miles. Improvements to the corridor are considered necessary to provide for the proposed traffic demands.

Options under consideration include (1) taking no action; and (2) constructing a four to six lane roadway on new location.

Letters describing the proposed action and soliciting comments were sent to appropriate federal, state and local agencies on September 30, 1985. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program).

Issued on February 3, 1986.

Wright B. Aldridge, Jr.,

Community Planner, Tennessee Division, Nashville, Tennessee.

[FR Doc. 86–2915 Filed 2–10–86; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Kmart Corp., Motor Vehicle Safety Standards; Denial of Petition for Defect Remedy Hearing

This notice sets forth the reasons for the denial of a petition by Kmart Corporation of Troy, Michigan, to conduct a hearing to determine whether Kmart had reasonably met its obligation to notify purchasers and to remedy a noncompliance with Federal Motor Vehicle Safety Standard No. 108 (15 U.S.C. 1416).

On September 19, 1985, Kmart filed a "Petition for Hearing Pursuant to 49 CFR 557.3" so that it could be determined whether Kmart Corporation could reasonably have "done anything more" to fulfill its notification and remedial responsibilities under the National Traffic and Motor Vehicle Safety Act with respect to agency investigative files CIR 2564 and 2565. It also sought "to present factual and technical data which it considers relevant to the purpose of mitigation of compromise penalties". The agency investigative files referenced cover the failure of Kmart to certify approximately 878,080 hazard warning signal and turn signal flashers in accordance with section 114 of the National Traffic and Motor Vehicle Safety Act, and the universal failure of a representative sample of those flashers to comply with the requirements of Standard No. 108 for turn signal and hazard warning signal flashers.

NHTSA denied Kmart's petition on November 7, 1985, noting that the United States of America had filed a complaint against Kmart in the United States

District Court for the District of Maryland on August 14, 1985. The complaint alleges, among other things, that Kmart failed to file a noncompliance report as required by 49 CFR Part 573, and to conduct a notification campaign in a timely manner. The compliant also seeks recovery of maximum civil penalties for such failures. Kmart was informed that its petition was denied because the issues presented by its Petition were in litigation and the District Court had become the approrpiate forum for their resolution.

Kmart was also informed that its petition was moot because no useful purpose could be served by holding the kind of hearing contemplated by 49 CFR Part 557. That Part sets forth the procedures under which the agency conducts hearings upon whether manufacturers have reasonably met their obligations to notify and remedy pursuant to recall campaigns. If the Administrator determines that the manufacturer has not reasonably met such an obligation, the manufacturer is ordered to take specified action to comply with the obligation. This procedure is intended as a means of redress for improper notification and/or remedy by providing the Administrator with authority to order a specific course of action tailored to the deficiencies determined to exist in any individual case. Neither the wording of the regulation nor its statutory authority and associated legislative history indicate that a purpose of this section was to afford a means by which as manufacturer might itself petition for a determination of the adequacy of its part conduct where no remedial order is sought. To date no manufacturer other than Kmart has petitioned for such a determination under Part 557.

(Sec. 156, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1416); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 6, 1986.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 86–2966 Filed 2–10–86; 8:45 am]

BILLING CODE 4910-59-M

Urban Mass Transportation Administration

[Docket No. 85–D]

Classification of Contact Third Rail for Buy America Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: Section 165 of the Surface Transportation Assistance Act of 1982 provides, with exception, that Federal funds may not be obligated for mass transportation projects unless a preference is given to domestically produced products (the Buy America Requirement). The Urban Mass Transportation Administration (UMTA) has been requested by the L.B. Foster Company to reclassify coextruded (bi-metalic) contact third rail as an electrical conductor rather than as steel rail. This would permit contact third rail to be subject to the section 165(b)(3) exception to the Buy America requirements. UMTA is seeking the views and recommendations of all interested parties.

DATE: Comments must be received on or before March 13, 1986.

ADDRESS: Comments should be submitted to UMTA Docket No. 85–D, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward J. Gill, Jr., Office of the Chief Counsel, Room 9228, 400 Seventh Street SW., Washington, DC 20590, (202) 426–4063.

SUPPLEMENTARY INFORMATION: Section 165 of the Surface Transportation Assistance Act of 1982 provides that Federal funds may not be obligated by the Urban Mass Transportation Administration (UMTA) for mass transportation projects unless steel and manufactured products used in the project are produced in the United States. Section 165(b)(3) further provides an exception in the case of procurement of traction power equipment if the cost of components of the equipment which are produced in the United States is more than 50 percent of the cost of all components and final assembly takes place in the United States. UMTA Buy America regulations contained in 49 CFR Part 661 *et seq.* specifically exclude third rail from the section 165(b)(3) provision for traction power equipment. Third rail is therefore subject to the section 165(a) requirement that steel products be produced in the United States.

The L.B. Foster Company has brought to UMTA's attention the information that the Customs Service, Department of Treasury, has classified bi-metallic third rails for use in rapid transit system as electrical apparatus for tariff purposes. This classification of some third rail as electrical apparatus appears to be inconsistent with UMTA's classification of all third rail as subject to the Buy America requirement for steel contact rail. Indeed, UMTA has included in the Buy America exemption for traction power equipment other electrical apparatus, such as power cables.

Customs' classification of bi-metallic contact third rail as electrical apparatus is based upon a determination that the third rail is different, not only in name but also in use, from regular track rails. The third rail is a conductor of electricity. The third rail assembly, often referred to as a conductor rail, is used for electrical power distribution in a rapid transit system.

UMTA believes there are grounds to reclassify bi-metallic contact third rail as electrical apparatus categorized as traction power equipment subject to the section 165(b)(3) Buy America Requirement. Before acting on L.B. Foster's request for a reclassification of bi-metallic contact third rail, UMTA is seeking public comment from all interested parties on whether bi-metallic third rail should be categorized as traction power equipment and on whether *all* contact third rail should be categorized as traction power equipment.

Dated: February 4, 1986.

Ralph L. Stanley,

Administrator.

[FR Doc. 86–2985 Filed 2–10–86; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 582]

Dollar Limitation for Display and Retail Advertising Specialties

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: General notice.

SUMMARY: This notice sets forth the annually updated dollar limitations prescribed for industry members in 27 CFR Part 6, as established by the use of a "cost adjustment factor" in accordance with 27 CFR 6.82. Industry members who wish to furnish, give, rent, loan or sell product display or retailer advertising specialties to retailers are subject to dollar limitations (27 CFR 6.83, 6.85). Industry members making payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show are also subject to dollar

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limitations (27 CFR 6.100). The cost adjustment factor is defined as a percentage equal to the change in the Bureau of Labor Statistics' consumer price index. Adjusted dollar limitations are established each January using the consumer price index for the preceding December.

Based on data of the Bureau of Labor Statistics, the consumer price index was 3.8 percent higher in December 1985 than in December 1984. Therefore, effective January 1, 1986, the dollar limitation for "Product Displays" (27 CFR 6.83(c)) should be increased from $122.00 to $127.00 per brand. Similarly, the "Retailer Advertising Specialities" (27 CFR 6.85(b)) should be increased Room $60.00 to $62.00 per brand. Also, the "Participation in Retail Association Activities" (27 CFR 6.100(e)) should be increased from $122.00 to $127.00 per year.

EFFECTIVE DATE: This notice shall be effective as of January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Norbert Hymel, Tax and Trade Compliance Branch, 1200 Pennsylvania Ave., NW, Washington, DC 20226, (202) 566-7715.

Signed: January 31, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-2962 Filed 2-10-86; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

Correction

FR Doc. 86-2579 published February 6, 1986, at page 4681 and FR Doc. 86-2618 published February 5, 1986 at page 4561 are duplicate documents. Only one document should have been published.

BILLING CODE 1505-02-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 28
Tuesday, February 11, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Item
Equal Employment Opportunity Commission	1
Federal Energy Regulatory Commission	2
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Nuclear Regulatory Commission	7

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 4261, dated February 3, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, February 10, 1986.

CHANGE IN THE MEETING: The open portion of the meeting has been cancelled. The closed session wil begin at 2:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued February 6, 1986.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 86-3052 Filed 2-7-86; 1:48 pm]

BILLING CODE 6750-06-M

2

FEDERAL ENERGY REGULATORY COMMISSION

February 5, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: February 12, 1986, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 829th Meeting—February 12, 1986, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 9315-001, Sheep Falls Associates
CAP-2.
Project No. 3286-009, Puget Sound Power and Light Company
CAP-3.
Project No. 2934-008, New York State Electric and Gas Corporation
Project No. 4684-004, Long Lake Energy Corporation
CAP-4.
Project No. 9413-001, Winooski One Partnership Corporation
CAP-5.
Project No. 5926-003, city of Bellevue, Washington
CAP-6.
Project No. 9371-001, Browns Valley Associates
CAP-7.
Project No. 9074-001, Adirondack Hydro Development Corporation
CAP-8.
Project No. 2503-011, Duke Power Company
CAP-9.
Project No. 8194-007, James W. Caples
CAP-10.
Project No. 4456-002, Zoes J. Dimos and James C. Katsekas
CAP-11.
Project Nos. 7182-002, 003 and 004, Gerald L. and Lois R. Simms
Project No. 5449-001, Western Power, Incorporated
Project No. 8193-001, Public Utility District No. 1 of Lewis County, Washington
CAP-12.
Project No. 8929-001, Modular Hydro Research Corporation
CAP-13.
Project No. 2305-007, Sabine River Authority of Louisiana and Sabine River Authority of Texas
CAP-14.
Project No. 4113-003, Long Lake Energy Corporation
Project No. 6806-004, New York State Energy Research and Development Authority
CAP-15.
Docket No. QF85-139-000, Antrim Mining Company
CAP-16.
Docket No. ER86-212-000, Kentucky Power Company
CAP-17.
Docket Nos. ER81-428-001 and ER82-483-026, Middle South Services, Inc.
Docket No. EL81-12-001, State of Arkansas v. Middle South Utilities, Inc.
CAP-18.
Docket Nos. ER85-738-002 and 003, Pacific Gas & Electric Company
CAP-19.
Docket No. ER84-679-002, Florida Power Corporation
CAP-20.
Docket Nos. ER84-590-003 and ER84-591-002, Indiana & Michigan Electric Company
CAP-21.
Omitted
CAP-22.
Docket No. ID-2210-000, Dr. Gloria M. Shatto

Consent Miscellaneous Agenda

CAM-1.
Docket No. RM85-1-153 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Columbia Gas Transmission Corporation)
CAM-2.
Docket Nos. RM85-1-000 and 146 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (United Gas Pipe Line Company, Natrual Gas Pipeline Company of America and Delhi Gas Pipeline Corporation)
CAM-3.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (United Cities Gas Company)
CAM-4.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company, a division of Tenneco Inc.)
CAM-5.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (U.S. Steel)
CAM-6.
Docket Nos. GP84-23-022, 023 and 024, Stowers Oil & Gas Company, et al.
CAM-7.
Docket No. GP86-5-000, Northern Natural Gas Company, a division of Internorth, Inc.
CAM-8.
Docket No. GP85-50-000 Bureau of Land Management, State of New Mexico, J.E.M. Resources, Inc. and Diamondback Financial Corporation, section, 102 NGPA determinations, Levers No. 5 Well, Cave Gray San Andres Pool, FERC JD No. 82-56622, Levers No. 6 Well, Cave

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Gray San Andres Pool, FERC JD No. 82–56623
CAM–9.
Docket No. RO85–23–002, Petrotech Trading Company and David L. Hooper
CAM–10.
Docket No. RA85–2–000, Gulf States Oil & Refining Company
CAM–11.
Docket Nos. GP80–43–010 through 016 (Phase, I), Northern Natural Gas Company, Division of Internorth, Inc.
CAM–12.
Docket No. RA84–2–000, Caribou Four Corners, Inc.

Consent Gas Agenda

CAG–1.
Docket Nos. TA86–3–42–000 and 001 (PGA86–3), Transwestern Pipeline Company
CAG–2.
Docket No. RP85–175–003, Transwestern Pipeline Company
CAG–3.
Docket No. RP85–150–006, Natural Gas Pieipline Company of America
CAG–4.
Docket No. RP86–37–000, Southern Natural Gas Company
CAG–5.
Omitted
CAG–6.
Docket Nos. CP84–146–001, TA86–3–29–000, 001 and CP84–334–000, Transcontinental Gas Pipe Line Corporation
CAG–7.
Docket Nos. RP85–125–002 and RP85–165–010, Distrigas of Massachusetts Corporation
CAG–8.
Docket No. RP86–22–001, ANR Pipeline Company
CAG–9.
Docket Nos. TA86–1–48–000, 002 and 004, ANR Pipeline Company
CAG–10.
Docket No. TA86–1–33–004, El Paso Natural Gas Company
CAG–11.
Docket No. TA85–3–22–002, Consolidated Gas Transmission Corporation
CAG–12.
Docket Nos. TA86–1–7–000 and 002, Southern Natural Gas Company
CAG–13.
Docket No. TA85–3–28–003, Panhandle Eastern Pipe Line Company
CAG–14.
Docket No. TA86–1–42–002, Transwestern Pipeline Company
CAG–15.
Docket Nos. RP86–10–003 and 004, Williston Basin Interstate Pipeline Company
CAG–16.
Docket Nos. RP83–83–012, 013 and 014, Trunkline Gas Company
CAG–17.
Docket Nos. RP85–203–001 and 002, Panhandle Eastern Pipe Line Company
CAG–18.
Omitted
CAG–19.
Docket No. TA86–1–7–000, Southern Natural Gas Company
CAG–20.
Docket No. RP86–30–000, Alabama-Tennessee Natural Gas Company
CAG–21.
Docket No. TA86–1–49–000, Williston Basin Interstate Pipeline Company
CAG–22.
Docket Nos. RP82–16–005, 006 and RP85–209–000, United Gas Pipe Line Company
CAG–23.
Docket Nos. TA85–1–13–003 and 004, Gas Gathering Corporation
CAG–24.
Docket No. RP85–63–000, Northwest Pipeline Corporation v. Cascade Natural Gas Corporation
Docket No. RP85–103–000, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation
CAG–25.
Docket No. RI86–1–000, Cenergy Exploration Company
CAG–26.
Docket Nos. RI74–188–074, and RI75–21–069, Independent Oil & Gas Association of West Virginia
CAG–27.
Omitted
CAG–28.
Docket No. RP74–50–010, Florida Gas Transmission Company (Basic Magnesia, Inc.)
Docket Nos. RP74–50–011 and 015, Florida Gas Transmission Company (Wenczel Tile Company of Florida, Inc.)
Docket No. RP74–50–013, Florida Gas Transmission Company (Borden, Inc.)
Docket Nos. RP74–50–012 and 014, Florida Gas Transmission Company (Gardinier, Inc.)
CAG–29.
Docket Nos. CP85–636–000 and CP85–775–000, Northern Natural Gas Company, Division of Internorth, Inc.
CAG–30.
Docket No. CP86–42–000, Consolidated Gas Transmission Corporation
CAG–31.
Docket No. CP86–77–000, United Gas Pipe Line Company
CAG–32.
Docket No. CP85–801–000, United Gas Pipe Line Company
CAG–33.
Docket No. CP84–306–001, Consolidated Gas Transmission Corporation
CAG–34.
Docket No. CP83–151–005, Carnegie Natural Gas Company
CAG–35.
Docket No. CP79–115–024, Northwest Pipeline Corporation
CAG–36.
Docket No. TA83–1–59–007, Northern Natural Gas Company, a division of Internorth, Inc.
CAG–37.
Docket Nos. RP83–8–003, 004 and 005, et al., Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket Nos. CP84–441–004, 005 and 006, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CP85–264–001, Transcontinental Gas Pipe Line Corporation

I. Licensed Project Matters

P–1.
Omitted

II. Electric Rate Matters

ER–1.
Docket No. QF84–328–000, Adolph Coors Company

Miscellaneous agenda

M–1.
Reserved
M–2
Reserved
M–3
Omitted
M–4
Docket No. RM83–31–000, Emergency Natural Gas Sale, Transportation and Exchange Transactions
M–5
Omitted
M–6
Omitted
M–7
Docket No. GP84–44–000, Mobil Oil Exploration & Producing Southeast Inc.
Docket No. GP84–45–000, Exxon Corporation
Docket No. GP85–6–000, Gulf Oil Corporation

I. Pipeline Rate Matters

RP–1.
Omitted

II. Producer Matters

CI–1.
Omitted

III. Pipeline Certificate Matters

CP–1.
Omitted
CP–2.
Docket No. CP86–143–000, Texas Gas Transmission Corporation
CP–3.
Docket No. CP84–386–000, ANR Pipeline Company
CP–4.
Docket Nos. CP85–393–004 and TC82–63–000, Florida Gas Transmission Company

Kenneth F. Plumb.
Secretary.
[FR Doc. 86–3056 Filed 2–7–86; 1:53 pm]
BILLING CODE 6717–01–M

3

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, February 14, 1986.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.
STATUS: Open.
MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposal to extend, with revisions, the Survey of Terms of Bank Lending (FR 2028A, FR 2028A–s, and FR 2028B).

Discussion Agenda

2. Consideration of renewal of temporary seasonal discount credit program.
3. Proposals regarding the Federal Reserve System's 1986 budget.
4. Any items carried forward from a previously announced meeting.

Note. This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 6, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86–3050 Filed 2–7–86; 1:46 pm]
BILLING CODE 6210–01–M

4

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: Approximately 12:00 Noon, Friday, February 14, 1986, follow a recess at the conclusion of the open meeting.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, NW., Washington, DC 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 7, 1986.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 86–3051 Filed 2–7–86; 1:47 pm]
BILLING CODE 6210–01–M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE–86–5]

TIME AND DATE: Wednesday, February 12, 1986 at 10:00 a.m.
PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
   a. Certain prefabricated bow forms (Docket No. 1277).
5. Investigation Nos. 701–TA–253 [Final] and 731–TA–252, [Final] (Certain welded carbon steel pipes and tubes from Turkey and Thailand]—briefing and vote.
6. Investigation No. 731–TA–263 [Final] (Iron construction castings for Canada)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Dated: February 3, 1986.
Kenneth R. Mason,
Secretary.
[FR Doc. 86–3074 Filed 2–7–86; 2:41 pm]
BILLING CODE 7020–02–M

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INTERNATIONAL TRADE COMMISSON

TIME AND DATE: Thursday, February 20, 1986 at 3:00 p.m.
PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation No. TA–201–57 (Electric shavers)—briefing and vote on injury.
6. Investigation Nos. 731–TA–301/303 (Certain butt-weld pipe fittings from Brazil, Japan and Taiwan)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Dated: February 7, 1986.
Kenneth R. Mason,
Secretary.
[FR Doc. 86–3075 Filed 2–7–86; 2:42 pm]
BILLING CODE 7020–02–M

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 10, 17, 24, and March 3, 1986.
PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC
STATUS: Open and Closed.
MATTERS TO BE CONSIDERED:

Week of February 10

Tuesday, February 11

10:30 a.m.
Classified Security Briefing (Closed—Ex. 1)
10:45 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing by AIF on Technical Specification Improvements (Public Meeting)

Wednesday, February 12

2:00 p.m.
Discussion of Staff Recommendations on Enforcement Policy (Public Meeting)

Thursday, February 13

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule Establishing Criteria for Reopening Records to Formal Licensing Proceedings (Tentative)

Week of February 17—Tentative

Tuesday, February 18

2:00 p.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)

Wednesday, February 19

2:00 p.m.
Staff Briefing on Integrated Safety Assessment Program (Public Meeting)

Thursday, February 20

2:00 p.m.
Report on Safety Goal Evaluation (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, February 21

10:00 a.m.
Briefing by Southern California Edison Co. on San Onofre (Public Meeting)

Week of February 24—Tentative

Tuesday, February 25

10:00 a.m.
Briefing by Incident Investigation Team on Status of Rancho Seco (Public Meeting)

Wednesday, February 26

10:00 a.m.
Briefing on NUMARC Initiatives (Public Meeting)

Thursday, February 27

10:00 a.m.
Discussion of DOE High Level Waste Program (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)
2:30 p.m.

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Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)

Week of March 3—Tentative

Wednesday, March 5

10:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 & 7) (Tentative)

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Dated: February 6, 1986.

Julia Corrado,

Office of the Secretary.

[FR Doc. 86–3094 Filed 2–7–86; 343 pm]

BILLING CODE 7590–01–M

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Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

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Administrative Practice and Procedure
Federal Crop Insurance Corporation
Interior Department

Animal Drugs
Food and Drug Administration

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Fisheries
National Oceanic and Atmospheric Administration

Income Taxes
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Meat and Meat Products
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Medical Devices
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Agricultural Marketing Service

Price Support Programs
Commodity Credit Corporation

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WHO: The Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center,
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center,
303-236-7181

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Rules and Regulations

Federal Register
Vol. 51, No. 29
Wednesday, February 12, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Agricultural Marketing Service (1) changes the hourly fee rates for voluntary Federal meat grading and certification services and (2) establishes separate fee rates for services provided to commitment applicants and noncommitment applicants. These changes are being implemented on an interim basis without a prior proposal, because of the Agency's immediate need to increase revenue to cover the costs of providing service. The new fees are being published for comment as a means of providing full public participation in the rulemaking process.

DATES: Interim rule effective February 16, 1986; comments must be received on or before March 14, 1986.

ADDRESS: Written comments may be mailed to Eugene M. Martin, Chief; Meat Grading and Certification Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638–S; Washington, DC 20250. (For further information regarding comments, see "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin (202/382–1113).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under the USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to section 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*). The Administrator of the Agricultural Marketing Service has determined the rule will not have a significant economic impact on a substantial number of small entities. The changes in the hourly fee rates and the establishment of separate fee rates for services provided to commitment applicants and noncommitment applicants are necessary to recover the costs of providing voluntary Federal meat grading and certification services and reflect only a minimal increase in the current cost-per-unit of meat graded and/or certified. Additionally, the establishment of separate fee rates will make charges for services more commensurate with the actual cost of providing service.

Comments

Interested persons are invited to submit written comments concerning these interim amendments. Comments must be sent in duplicate to the Washington, D.C., Meat Grading and Certification Branch and should bear a reference to the date and page number of this issue of the Federal Register. Comments submitted pursuant to this document will be made available for public inspection during regular business hours.

Background

The Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat which they desire. The Act also provides for the collection of fees from users of Federal meat grading and certification services which are approximately equal to the costs of providing services. The hourly fees are designed to cover the program's costs of personnel salaries and fringe benefits, supervision, travel, training, and other administrative and overhead costs.

A fee increase is necessary to offset the reduction of 72,000 revenue hours for meat grading and certification services which the Agency experienced in fiscal year 1985 and to partially restore the program's depleted operating reserve fund. The dollar equivalent of 72,000 revenue hours is nearly $2 million. Since March 1985, the Agency has taken several actions to reduce its overall operating costs by nearly $1 million. These actions included (1) reducing the grading staff by nearly 10 percent, which will result in long term cost-savings of almost $775,000 and (2) closing one main station field office in September 1985, which will result in an annual cost-savings of slightly more than $150,000. While further substantial reductions in program management costs are planned during fiscal year 1986, most of the resulting savings will not be fully realized until the end of fiscal year 1986 or later. Therefore, without a fee increase, the Agency would expect to sustain a loss of nearly $1 million in fiscal year 1986.

Simultaneously with the fee increase, the Agency will establish separate base hourly fee rates for commitment applicants and noncommitment applicants in order to assess fees which more equitably reflect the cost of providing service. Currently, all applicants—commitment and noncommitment—are charged the same hourly fee rates for service. Agency records on revenue and operating expenses indicate that the cost of providing service to noncommitment applicants is substantially higher than the cost of providing service to commitment applicants.

A commitment applicant is a user of meat grading services who agrees to pay for 8 hours of service per day, 5 days per week, Monday through Friday. For purposes of applying the new fee rate, an applicant who guarantees the Agency 8 hours of revenue per day, Monday through Friday, whether by commitment or agreement by memorandum, will be assessed base hourly fees at the commitment rate. A noncommitment applicant is a user of meat grading services who requests services for a particular day and for the amount of time necessary to complete a specific task requiring official grading and/or certification. Noncommitment applicants pay only for the actual hours, plus travel time, during which they utilize a Federal meat grader. Since the Agency must be adequately staffed to provide services

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upon request, including the "as-needed requests" from noncommitment applicants, the Agency incurs nonrevenue hours whenever the requests for services are not sufficient to fully utilize graders assigned to service these applicants.

The unpredictability of service requests from noncommitment applicants accounts for a major portion of the Agency's nonrevenue time. For example, two applicants might request service for 4 hours a day beginning at 6 a.m. To service both applicants, two employees must work 4 hours each, rather than one employee servicing both applicants. If there are no requests for meat grading and certification services after 10 a.m., the Agency has incurred 16 hours of personnel costs, while earning only 8 hours of revenue. Similarly, an applicant who requests service for 2 or 3 days per week on an irregular basis also contributes to the number of nonrevenue hours. Employees are guaranteed a 40-hour workweek, even if they are not fully utilized for the entire week. In an effort to meet requests for service on an "as-needed basis," the Agency has increased the use of intermittent and cross-utilized employees. Nevertheless, it is still necessary to maintain a work force adequate to meet all requests for meat grading service, so the Agency continues to incur higher personnel costs than are covered by the total revenue hours.

As an alternative to establishing separate rates, the Agency considered further increases in the base hourly fee rate to cover the added cost of providing services to noncommitment applicants. However, this alternative would result in commitment applicants, in effect, paying a portion of the additional cost of providing services to noncommitment applicants.

In view of the circumstances described above, the base hourly rate for commitment applicants for voluntary Federal meat grading and certification services is increased from $26.40 to $27.40 and will be charged to users of the services who agree, by commitment or agreement by memorandum, to the use of a meat grader for 8 consecutive hours per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly rate for noncommitment applicants for voluntary Federal meat grading and certification services is increased from $26.40 to $29.80 and will be charged to applicants who utilize a meat grader for 8 consecutive hours or less per day, Monday through Friday, between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The premium hourly rate for all applicants is increased from $34.40 to $35.40 and will be charged to users of the service for the hours when a meat grader is utilized in excess of 8 hours per day, between the hours of 6 a.m. and 6 p.m., and for hours worked before 6 a.m. or after 6 p.m., Monday through Friday, and any time on Saturday and Sunday, except on legal holidays. The holiday hourly rate for all applicants is increased from $52.80 to $54.80 and will be charged to users of the service for all hours worked on legal holidays.

Pursuant to the authority in 5 U.S.C. 553, it is found that any other public procedure and notice with respect to these amendments are impracticable and unnecessary, and good cause is found for making these amendments effective February 16, 1986, on an interim basis. A final rule will be promulgated after evaluation of comments received in response to this notice.

Accordingly, the section of the regulations appearing in 7 CFR Part 54 relating to hourly fees for Federal grading and certification of meats, prepared meats, and meat products, is revised as set forth below:

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, and Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, sec. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR 54.27 is amended by revising paragraphs (a) and (b) to read as follows:

§ 54.27 Fees and other charges for service.

* * * * *

(a) *Fees For Service on Noncommitment Basis (Hourly Rates).* Except as otherwise provided in this section, fees for service shall be based on the time required to render the service, calculated to the nearest 15-minute period, including the official grader's travel and certificate(s) preparation time in connection with the performance of service. A minimum charge of one-half hour shall be made for service pursuant to each request notwithstanding that the time required to perform service may be less than 30 minutes. The base hourly rate for noncommitment applicants shall be $29.80 per hour for 8 hours or less of work performed between the hours of 8 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $35.40 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday except on Federal legal holidays; and $54.80 per hour for all work performed on Federal legal holidays.

(b) *Fees For Service on Commitment Basis.* Minimum fees for service performed under a commitment agreement or an agreement by memorandum shall be on the basis of 8 hours per day, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed. The base hourly rate for service performed under such agreements shall be $27.40 per hour for 8 consecutive hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on Federal legal holidays; $35.40 per hour for work performed in excess of 8 hours per day for each assigned official grader and for work performed before 6 a.m. and after 6 p.m., Monday through Friday, and any time Saturday or Sunday except on Federal legal holidays; and $54.80 per hour for all work performed on Federal legal holidays. The Agricultural Marketing Service reserves the right under such a commitment agreement or agreement by memorandum to use any grader assigned to the plant on a commitment basis to perform service for other applicants as provided in § 54.6(c), crediting the commitment applicant with the number of hours charged to the other applicant, provided the allowable credit hours, plus hours actually worked for the applicants, do not exceed 8 hours on any day, Monday through Friday, excluding all Federal legal holidays.

* * * * *

Done at Washington, D.C.: January 31, 1986.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 86-2961 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-02-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 2825S]

General Administrative Regulations; Appeal Procedure

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new Subpart J to Part 400 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. The intended effect of this rule is to prescribe procedures under which a person or organization may request review of determinations made by FCIC. This rule sets forth the various levels of appeal and prescribes the manner and format of the appeal procedure. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The purpose of these regulations is to provide administrative procedures under which any person or organization may request and obtain review and appeal of determinations made by FCIC. The regulations contained herein set forth the levels of appeal and prescribe the manner and format of such procedure.

On Tuesday, August 13, 1985, FCIC published a notice of proposed rulemaking in the Federal Register at 50 FR 32576, issuing a new Subpart 400 in Chapter IV of Title 7 of the Code of Federal Regulations (CFR), to be known as 7 CFR Part 400—General Administrative Regulations—Subpart J, Appeal Procedure. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

Minor changes have been made by FCIC in the proposed rule as published. In Section 400.92, the word "Part" has been corrected to read "Chapter." Section 400.93 provided that a written request for an initial hearing may be made within 30 days of the date of notification by FCIC of the determination being appealed from, and § 400.100 provided that the Appellant may appeal from the determination of the Hearing Officer in an initial hearing within 30 days of the date of determination.

Both of these Sections have been amended to provide 45 days for such requests to be made in accordance with the regulations of the Office of Management and Budget (OMB) implementing the Paperwork Reduction Act as contained in 5 CFR 1320.6. Since OMB has determined that such request for initial hearing or appeal constitutes information collection, FCIC is required to provide that a respondent shall have not less than 30 days to prepare a written response to an information collection request or requirement after it is received by the respondent.

Finally, § 400.101 has been corrected by changing the word "part" to read "Subpart." Therefore, with minor changes in language and format as outlined above, the proposed rule is hereby adopted as a final rule.

Because the regulations contained in this subpart affect present policyholders wishing to file requests for review of, or appeal from, determinations made by FCIC, and providing these regulations setting forth the procedures for such actions is determined by FCIC to be beneficial to persons or organizations affected by such determinations, good cause is shown for making these regulations effective in less than 30 days and upon publication in the Federal Register.

List of Subjects in 7 CFR Part 400

Crop insurance, Administrative regulations—review and appeal procedure, Administrative practice and procedure.

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby adds a new Subpart J to Part 400 of Chapter IV of Title 7 of the Code of Federal Regulations, to be known as 7 CFR Part 400, Subpart J—General Administrative Regulations; Appeal Procedure, to read as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart J—Appeal Procedure—Regulations

Sec.

400.90 Basis, purpose, and applicability.
400.91 Definitions.
400.92 Rights of appeal.
400.93 Requesting an initial hearing.
400.94 Notice of hearing.
400.95 Appeal without appearance.
400.96 Absent Appellant.
400.97 Authority of Hearing Officer.
400.98 Initial hearing.
400.99 Hearing Officer's determination.
400.100 Appeal hearing.
400.101 Reservation of authority.

Authority: Pub. L. 75-430, 52 Stat. 72 et seq. as amended, (7 U.S.C 1501 et seq.).

Subpart J—Appeal Procedure—Regulations

§ 400.90 Basis, purpose, and applicability.

The regulations contained in this part are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C 1501 et seq.), to prescribe the procedures under which a person may obtain review of determinations made by the

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Corporation. The regulations are applicable to any request for review filed after the effective date of this part. The procedures contained herein also apply to requests filed prior to the effective date hereof to the extent that they do not adversely affect any party in those proceedings.

§ 400.91 Definitions.

Unless the context indicates otherwise, words importing the singular include the plural, and words used in the present tense include the future. For the purpose of these regulations:

(a) "Appellant" means any person who requests a review of a determination made by the Corporation and includes an authorized representative of the Appellant.

(b) "Authorized Representative" means a person designated in writing by an appellant to act for and on behalf of the appellant.

(c) "Contract" means a written agreement entered into by a person with the Corporation.

(d) "Contractor" means a person who is a party to a contract with the Corporation.

(e) "Corporation" means the Federal Crop Insurance Corporation or any authorized officer or employee thereof, as applicable.

(f) "Hearing Officer" means the individual designated or appointed by the Corporation to conduct an initial or appeal hearing.

(g) "Person" means individual, corporation, association, partnership or other legal entity.

(h) "Transcript" means the verbatim record of a hearing.

§ 400.92 Rights of appeal.

Appeal is available to:

(a) Any person determined to be indebted to the Corporation as a result of:

(1) Overpaid indemnities; or

(2) Non-payment of premium;

(b) Any person whose claim for indemnity under insurance obtained pursuant to this Chapter has been denied;

(c) Any person whose request for insurance provided for in this Chapter has been denied;

(d) Any party to a contract who has received notification of a determination by the Corporation regarding any terms or conditions of the contract between the person and the Corporation which the party disputes; or

(e) Any person whose request for relief under the Good Faith Reliance on Misrepresentation provisions of the crop insurance regulations contained in this Chapter has been denied in whole or in part.

§ 400.93 Requesting an initial hearing.

Written requests for an initial hearing must be received by the Director, Kansas City Operations Office, Federal Crop Insurance Corporation, P.O. Box 293, Kansas City, Missouri, 64141, within forty five days of the date of notification by the Corporation of the determination or action being appealed from. The request for the hearing must be signed by the Appellant; contain a statement of the matter on which the hearing is sought; and a statement of the Appellant's reasons that the determinations or other matter appealed from is incorrect.

§ 400.94 Notice of hearing.

Written notice of the time and place of the hearing shall be given to the Appellant by Certified Mail, return receipt requested, at least thirty days prior to the date of the hearing. The Appellant may waive the requirements of this section.

§ 400.95 Appeal without appearance.

The Appellant may elect to waive appearance at a hearing and request that a determination be made on the basis of written material submitted by Appellant and other information available to the Hearing Officer.

§ 400.96 Absent Appellant.

If, at the time scheduled for a hearing, the Appellant is absent, the Hearing Officer may, after a lapse of such period of time as is deemed proper and reasonable, dismiss the hearing or may accept information and evidence submitted by other persons present at the hearing.

§ 400.97 Authority of Hearing Officer.

(a) The Hearing Officer has the power to:

(1) Rule upon motions and requests;

(2) Adjourn the hearing from time to time and change the time and place of hearing;

(3) Receive evidence;

(4) Admit or exclude evidence;

(5) Hear oral arguments on facts or law;

(6) Do all acts and take all measures necessary for the maintainance of order at the hearing for the efficient conduct of the proceeding; and

(7) Make a written determination based upon evidence submitted at the hearing.

(b) The Hearing Officer does not have the authority to compromise claims or to waive provisions of the regulations or the contracts of the Corporation unless the appeal is from a determination made under the good faith reliance on misrepresentation provisions of the crop insurance regulations.

§ 400.98 Initial hearing.

(a) The initial hearing will be conducted by a Hearing Officer at a time and place designated by the Hearing Officer taking into consideration the convenience of the Appellant. The hearing will be informal and conducted in a manner deemed most likely to obtain the facts relevant to the issues. The Hearing Officer shall not be a person who participated in determinations giving rise to the hearing.

(b) The Hearing Officer will restrict the hearing to pertinent matters under consideration and may exclude irrelevant, immaterial or unduly repetitious evidence. The Appellant will be given a full and complete opportunity to present evidence relevant tothe issue through oral or documentary information. Persons other than those appearing on behalf of the Appellant may be permitted to present information. All persons appearing at the hearing to present information may be questioned by the Appellant.

(c) A transcript may be taken if:

(1) the Appellant advises the Hearing Officer at least ten days prior to the hearing, makes arrangements with a certified court reporter or equivalent individual or company for such transcript at Appellant's expense, and agrees that the Corporation may obtain a copy of the transcript at the Corporation's expense, (if the Appellant wants the transcript to be considered a part of the record of the hearing, the Appellant must supply a copy for that purpose unless the Corporation purchases a copy); or

(2) the Hearing Officer feels that the nature of the case is such so as to make a transcript desirable, in which case a copy of the transcript will be made available to Appellant at Appellant's expense.

§ 400.99 Hearing Officer's determination.

(a) After the close of the hearing, the Hearing Officer will promptly prepare a determination containing a clear and concise statement of the Appellant's and the Corporation's contentions and of the material facts as found by the Hearing Officer. The report shall also contain the issues and the Hearing Officer's determination of those issues.

(b) Except as provided in §§ 400.95 and 400.96, the determination must be based upon information or evidence presented at the hearing or otherwise made known to the Appellant and made a part of the record of the hearing and the Appellant must be given the opportunity to examine and respond to all evidence presented prior to the determination of the Hearing Officer.

(c) The determination of the Hearing Officer shall be mailed to the Appellant by Certified Mail, return receipt requested.

§ 400.100 Appeal hearing.

(a) Except as they may be inconsistent with the provisions of this Section, the provisions of this Subpart applicable to the initial hearing shall be applicable to the appeal hearing.

(b) Appellant may appeal from the determination of the Hearing Officer in an initial hearing within forty five days of the date of the determination, to the Deputy Manager, FCIC, United States Department of Agriculture, Washington, DC 20250. The Hearing Officer designated to hold the hearing shall not be a person who participated in the decisions or determinations from which the Appellant is appealing. The hearing will be scheduled at a time and in Washington, DC, or at such other place as the Corporation may designate taking into consideration the interests of the Appellant.

(c) The hearing will be de novo but the record of the initial hearing will be admitted at the appeal hearing and considered by the Hearing Officer in making a determination. The record at the initial hearing may be supplemented by the Corporation and the Appellant. Evidence which duplicates written evidence or transcribed testimony appearing in the record of the initial hearing will not be admitted by the Hearing Officer absent a showing of good cause. The determination of the Hearing Officer at the initial hearing will not be considered by the Hearing Officer at the Appeal Hearing, however, the Hearing Officer at the Appeal Hearing may adopt relevant portions of the initial Hearing Officer's determination if the appeal Hearing Officer agrees with those portions after independent examination of the record.

§ 400.101 Reservation of authority.

Nothing contained in the regulations in this subpart shall preclude the Manager of the Corporation from determining any question arising under the programs to which the regulations in this Subpart apply or from revising or modifying any determination made by a Hearing Officer.

Done in Washington, DC, on October 2, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3038 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 430

[Docket No. 0060A]

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years in all states, except Arizona and California, where they will be effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add as a cause of loss the unavoidable failure of irrigation water supply; (2) Limit the insured's share of an indemnity on crops transferred before harvest; (3) Clarify processor contract requirements; (4) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (5) Change the method of computing indemnities when acreage, share or practice is underreported; (6) Change the method of crediting the replanting payment; (7) Change the calculation in computing replanting payments; (8) Change the stage guarantees; (9) Shorten the length of time an insured has to give notice when claiming an indemnity (10) Change the cancellation and termination dates in certain counties; (11) Provide a method for calculating production to count on harvested and appraised production; (12) Define at what stage of guarantee a replanting payment will be determined; (13) Add definitions of "ASCS", "Loss ratio", and "Normal Stand", (14) Amend definitions of "County", "Crop year", and "Harvest"; and (15) change the method of determining if a loss occurs when the beets are harvested and delivered to the processor. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

Merritt W. Sprague, Manager, FCIC (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; Therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must be on file by February 15, 1986, good cause is shown for making this rule effective in less than 30 days.

Other than minor changes in language and format, the principal changes in the sugar beet policy are:

1. *Section 1.*—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2. e. (2).

2. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops

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transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Clarify processor contract requirements and when such requirements must be met in order for sugar beet acreage to be insured.

3. *Section 4.*—Eliminate the current second stage guarantee and make the current third stage guarantee the second stage guarantee to provide protection which more closely reflects the investment cost of producing sugar beets after the first stage. Sugar beets which are destroyed in the second stage will now receive a full indemnity.

4. *Section 5.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made it will be deducted and applied to payment of the billed premium. This is a change from the current practice of applying the replanting payment to the outstanding premium in all cases.

6. *Section 8.*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

7. *Section 9.*—If the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted, allow the guarantee only on the acreage, share or practice reported. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations and reduce the indemnities to those producers underreporting after planting.

Add provisions to provide a method of calculating production to count for harvested and appraised production when claiming an indemnity.

Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment; clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date; and delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

Clarify the stage guarantee in determining a replanting payment.

8. Section 15.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

Change cancellation date from July 15 to August 31 in Arizona and Imperial County, California. Add a November 30 termination date for all other California counties. These changes are made to more closely conform to practices in these areas.

9. *Section 17.*—Add definitions of "ASCS", "Loss ratio", and "Normal stand".

Amend the "County" definition to clarify that land identified by an ASCS farm serial number and located outside the county and within the State will be included in the county.

Amend the "Crop year" and "Harvest" definitions.

On Thursday, December 26, 1985, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 50 FR 52782, to revise and reissue the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years in all states, except Arizona and California, for the 1987 and succeeding crop years for Arizona and California. The public was given 30 days in which to submit written comments on the proposed rule, but none were received. Therefore, with the exception of minor changes in language and format, the proposed rule as published at 50 FR 52782 is adopted as a final rule.

List of Subjects in 7 CFR Part 430

Crop insurance, Sugar beets.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years for all states, except Arizona and California, and for the 1987 and succeeding crop years in Arizona and California, to read as follows:

PART 430—SUGAR BEET CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in California and Arizona)

Sec.

430.1 Availability of sugar beet crop insurance.
430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
430.3 OMB control numbers.
430.4 Creditors.
430.5 Good faith reliance on misrepresentation.
430.6 The contract.
430.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in California and Arizona

§ 430.1 Availability of sugar beet crop insurance.

Insurance shall be offered under the provisions of this subpart on sugar beets in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugar beets which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 430.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 430.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 430.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sugar beet insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 430.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sugar beet crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 430.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the sugar beet crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sugar beet contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sugar Beet Crop Insurance Policy for the 1986 and succeeding crop years (1987 and succeeding crop years in California and Arizona) are as follows:

Department of Agriculture Federal Crop Insurance Corporation

Sugar Beet Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement To Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms And Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure or breakdown of irrigation equipment or facilities;
(3) The failure to follow recognized good sugar beet irrigation practices;
(4) The failure to follow recognized good sugar beet farming practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be sugar beets grown under a contract with a processor for processing as sugar, which are grown on insured acreage and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be sugar beets planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured sugar beets at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) Which is irrigated and an irrigated practice is not provided for in the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed, it is practical to replant to sugar beets and such acreage is not replanted;
(4) Initially planted after the final planting date set by the actuarial table, unless you agree, in writing, on our form to coverage reduction;
(5) Of sugar beets not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);

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(6) Planted to a type or variety of sugar beets not established as adapted to the area or excluded by the actuarial table;

(7) Planted to sugar beets:

(a) The preceding crop year in Michigan, Minnesota, North Dakota, and Ohio unless the acreage is designated as insurable by the actuarial table; or

(b) The two preceding crop years in all other states unless the acreage is designated as insurable by the actuarial table;

(8) In California, except Imperial county, planted before filing of the application until a normal stand is obtained;

(9) Of volunteer sugar beets; or

(10) Planted with another crop.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good sugar beet irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sugar beets in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sugar beets planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The second stage production guarantees are in the actuarial table. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First stage is from planting until July 1 except in California and Arizona where the first stage is from planting until the earlier of thinning or 90 days after planting. The first stage also applies to any acreage damaged in the first stage to the extent that growers in the area generally would not further care for the sugar beets;

(2) Second stage applies to all insured sugar beets after the first stage.

The production guarantee applicable to any acreage within a unit will be that established for the stage reached by the sugar beets on that acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year (1985 crop year in California and Arizona) under the terms of the experience table contained in the sugar beet policy in effect for the 1985 crop year (1986 crop year in California and Arizona), you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 (1991 crop year in California and Arizona) crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year (1986 crop year in California and Arizona);

(4) Once your loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when the sugar beets are planted and ends at the earliest of:

a. Total destruction of the sugar beets;

b. Harvest of the sugar beets on the unit;

c. Final adjustment of a loss; or

d. The following calendar date:

(1) July 15 for Arizona and Imperial County, California;

(2) The last day of the 12th month after the date of planting on the unit in all other California counties, unless a request for extension of the insurance period is received before such date and we approved the request;

(3) November 25 in Ohio; and

(4) November 15 in all other states.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sugar beets damaged due to any insured cause (see subsection 9f);

(b) During the period before harvest, the sugar beets on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sugar beets and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested sugar beets (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the sugar beets on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the sugar beets on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destory any of the sugar beets which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sugar beets on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sugar beets on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar beets to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information

reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in tons) to be counted for a unit will include all harvested and appraised production.

(1) Any harvested production of undamaged sugar beets will be determined by:

(a) Dividing the average percentage of sugar in such sugar beets, by the percentage of sugar shown in the actuarial table; and

(b) Multiplying the results (rounded to three places) by the tons of such sugar beets.

The average percentage of sugar will be determined by the processor from individual tests taken at the time of delivery. If individual tests of sugar content are not made at the time of delivery, the factor will be 1.000.

(2) (a) The production to count from acreage damaged due to insurable causes occurring within the insurance period, will be determined by:

(i) Dividing the gross amount received for the damaged sugar beets (including cooperative stock, patronage refunds, dollar values, etc.) by the applicable price per pound of sugar;

(ii) Dividing that result by 2,000; and

(iii) Dividing that result by the factor contained in the actuarial table for that purpose.

(b) The applicable price per pound for sugar will be the local market price on the earlier of:

(i) The day the loss is adjusted; or

(ii) The day the damaged sugar beets are sold.

(c) If the price per pound received for the damaged sugar beets is less than the highest average amount paid by the processor to any producer for sugar beets which were damaged by the cause of loss as claimed by you, you will be considered to have received that average amount per pound in determining the gross amount received.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) of this subsection (3) and which does not qualify for the second stage guarantee will be counted except as provided in (d) of this subsection (3); and

(d) The total appraisal for uninsured causes.

(4) There will be no adjustment for quality on any appraisal.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sugar beets becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any harvested or unharvested sugar beets may be determined on the basis of field appraisals or inspections conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the sugar beets are damaged by hail or fire, appraisels will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured sugar beets replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit, (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the second stage guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed one ton multiplied by the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sugar beets are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be made on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sugar beets produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

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b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us satisfactory production records for the crop year or the contract will be cancelled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation date	Termination date
Imperial County, California; and Arizona	Aug. 31	Aug. 31.
All other California counties	July 15	Nov. 30.
All other States	Apr. 15	Apr 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

a. December 31 preceding the cancellation date for counties with an April 15 cancellation date;

b. April 30 preceding the cancellation date for all other counties. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sugar beet crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sugar beet insurance in the county.

b. "ASCS means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) any land identified by the same ASCS farm serial number for the county but physically located in another county within the State.

d. "Crop year" means the period within which the sugar beets are normally grown and designated by the calendar year in which the sugar beets are normally harvested; however, in California and Arizona, it will be the period from planting until the applicable date for the end of the insurance period and is designated by:

(1) The calendar year in which planted if planted on or before July 15; or

(2) The next calendar year if planted after July 15.

e. "Harvest" means the completion of topping and lifting of sugar beets on any acreage for delivery to a processor.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means your ratio of indemnity to premium.

i. "Normal stand" means the number of live plants after thinning required to produce an average yield per acre for the area.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

k. "Replanting" means performing the cultural practices necessary to replant insured acreage to sugar beets.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the sugar beets or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of sugar beets in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugar beets on such land will be considered as owned by the lessee. Land which would otherwise be on unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on January 28, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3039 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Parts 434 and 436

[Amdt. No. 1; Docket No. 0061A]

Tobacco (Guaranteed Production Plan) Crop Insurance Regulations and Tobacco (Dollar Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule and termination.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1986 and succeeding crop years, by expanding the provisions of these regulations to incorporate insurance procedures for tobacco types 11, 12, 13, and 14, formerly insured under the Tobacco (Dollar Plan) Crop Insurance Regulations 7 CFR Part 434, and terminates the Dollar Plan effective for the 1986 crop year. The intended effect of this rule is to: (1) Broaden the provisions of the Guaranteed Plan regulations by combining the procedures for insuring tobacco under the Guaranteed Plan and Dollar Plan and terminate the Dollar Guaranteed Plan of insurance; (2) add end of insurance period dates by tobacco type; (3) shorten the length of time an insured has to give notice when claiming an indemnity; (4) add the requirement that stalks of certain tobacco types not be destroyed without consent; (5) change the cancellation and termination dates for some states and counties; and (6) redefine "Market price" to clarify its meaning. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action consitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must be on file by February 15, 1986, good cause is shown for making this rule effective in less than 30 days.

The current regulations for insuring tobacco under the guaranteed dollar plan are contained in 7 CFR Part 434. FCIC has determined to convert to Actual Production History (APH) on all crops except those under GYC-GYC/IYC plans. Under the Actual Production History (APH) program, the regulations for insuring tobacco under the dollar plan are only slightly different from those for insuring tobacco under the guaranteed production plan of insurance found in 7 CFR Part 436. The conversion to APH means that the dollar plan will no longer apply, since this insurance is offered on a dollar guarantee rather than a production guarantee. Therefore, FCIC determined that both policies for insuring tobacco be combined into one, differentiating the separate types of tobacco where necessary, effective for the 1986 and succeeding crop years.

In order to more effectively administer the tobacco crop insurance program with regard to these two plans of insurance, FCIC has incorporated those provisions applying to types 11, 12, 13, and 14 tobacco into the policy provisions contained herein through the following changes:

1. Section 7. Add end of the insurance period dates by tobacco type.

2. Section 8. Specify 5 days for inspection of tobacco not sold through auction warehouses prior to its sale or other disposition if an indemnity is to be claimed.

Add a clause requiring insureds to leave tobacco stalks standing for field inspection on any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed after harvest is completed.

Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

3. Section 9. Add a clause to enable FCIC to determine the fair market value of tobacco not sold through auction warehouses, by inspecting such tobacco before it is sold, contracted to be sold, or otherwise disposed of.

Add a provision to appraise acreage of tobacco types 11, 12, 13, or 14, at not less than the guarantee, if stalks are destroyed prior to our written consent.

4. Section 15. Add March 31 cancellation and termination dates for some states and counties.

5. Section 17. Amend the "Market price" definition to specify location.

On December 26, 1985, FCIC published a notice of proposed rulemaking in the Federal Register at 50 FR 52788, to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1986 and succeeding crop years by combining the provisions for tobacco types 11, 12, 13, and 14 of the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434) and to terminate the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective with the end of the 1985 crop year. The public was given 30 days in which to submit written comments on the proposed rule, but none were received. Therefore, with the exception of minor changes in language and format, the proposed rule as published at 50 FR 52788 is adopted as a final rule.

List of Subjects in 7 CFR Parts 434 and 436

Crop insurance; Tobacco (Dollar Plan and Guaranteed Production Plan).

Final Rule

PART 434—[AMENDED]

a. Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby amends the subpart heading to the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), effective through the 1985 crop year, as follows:

1. The authority citation for 7 CFR Part 434 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 434 is revised to read as follows:

Subpart—Regulations for the 1985 Crop Year

Final Rule

6. Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby amends the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1986 and succeeding crop years, in the following instances:

PART 436—[AMENDED]

1. The authority citation for 7 CFR Part 436 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

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2. 7 CFR 436.7(d) is revised to read as follows:

§ 436.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR § 400.37, § 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Guaranteed Production Plan) Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow recognized good tobacco irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, share insured.

a. The crop insured will be tobacco of the type shown as insurable in the actuarial table, which is grown on insured acreage, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;

(4) Initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to coverage reduction;

(5) Planted to tobacco of a discount variety under the provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;

(7) Designated as uninsurable by the actuarial table; or

(8) Tobacco planted for experimental purposes.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good tobacco irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantee will be reduced by 35 percent for any unharvested acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. The following dates immediately after the normal harvest period:

(1) Types 11 and 12	November 30;
(2) Type 13	October 31;
(3) Type 14	September 30;
(4) Type 36	January 31;
(5) Types 31 and 35	February 28;
(6) Types 21, 22, 23, 37, 54, and 55	March 31;
(7) All other types	April 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) For any unit of tobacco other than types 11, 12, 13, or 14, if probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) If tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us 5 days to inspect the cured tobacco prior to its sale or other disposition.

(6) For any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed and the tobacco stalks are to be destroyed, notice of loss must be given to us upon completion of harvest. The tobacco stalks must not be destroyed until we give consent.

(7) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco is completed on the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the value per pound by the market price per pound; and

(b) Multiplying the product by the number of pounds of such tobacco.

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of, and

(b) At our option to obtain additional offers on your behalf.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or put to another use without prior written consent; and

(c) Only the appraisal in excess of 35 percent of the production guarantee for all other unharvested acreage.

(4) We may make an appraisal of not less than the guarantee per acre for any acreage of tobacco types 11, 12, 13, or 14 on which the stalks have been destroyed prior to our consent.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and appraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(7) If you elect to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI–76, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount.

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any rights, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us,

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you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tobacco produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such record may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless cancelled or terminated as provided in this section.

b. This contract may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us, satisfactory production records for the crop year or the contract will be cancelled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina and all North Carolina counties east thereof; and South Carolina.	Mar. 31
All other North Carolina counties and all other States.	Apr. 15

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of guaranteed tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by the same ASCS farm serial number for the county even though physically located in another county within the state.

d. "Crop year" means the period within which the tobacco is normally grown and is designated by the calendar year in which the tobacco is normally harvested.

e. "Harvest" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio indemnity to premium.

i. "Market price" means the average price determined by us for the applicable type of tobacco. Such price will be the:

(1) Average price in the belt or area for the preceding crop year for any unit which is not to be harvested; or

(2) The average price in the belt or area for the week the loss is adjusted for any unit or part thereof which is harvested.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

k. "Planting" means transplanting the tobacco plant from the bed to the field.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify and ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C. on January 28, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3040 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1472

Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1982-1985)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt, as a final rule, an interim rule which was published in the Federal Register on August 23, 1985 (50 FR 34079). The interim rule amended the regulations at 7 CFR Part 1472 which set forth the requirements governing the Commodity Credit Corporation's (CCC) price support program for shorn and unshorn lambs (pulled wool). The interim rule amended the program with respect to: (1) Marketing of shorn wool eligible for price support payments; (2) definitions which are applicable to the program; (3) producers eligibility for price support payments; (4) contents of sales documents which are submitted in support of price support payment applications; and (5) the deletion of certain obsolete references. The interim rule is hereby adopted as a final rule without change.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Divisions, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Telephone (202) 447-5621.

SUPPLEMENTARY INFORMATION:

Information collection requirements contained in this regulation (7 CFR Part 1472) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560-0023 has been assigned.

This final rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this final rule applies are : Title—Commodity Loans and Purchases; § 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Interim Rule

An interim rule amending the Commodity Credit Corporation's (CCC) price support program for shorn wool and unshorn lambs (pulled wool) was published in the Federal Register on August 23, 1985 (50 FR 34079). The interim rule provided for a 60-day comment period.

The interim rule made several amendments with respect to the terms and conditions of the 1985 price support program for shorn wool and unshorn lambs (pulled wool). Most of the changes which were included in the interim rule were the result of a review conducted by the Office of the Deputy Administrator, State and County Operations (DASCO) of the Agricultural Stabilization and Conservation Service (ASCS) of a select number of 1983 shorn wool applications for payment and supporting documentation which revealed marketing practices which defeat the purposes of the program. The remaining changes involved the deletion of certain obsolete references.

The interim rule amended the regulations at 7 CFR Part 1472 by: (1) Adding the definitions of "shorn wool" and "family member" and amending the definition of "sale document"; (2) providing that the price support payment rate of shorn wool shall be determined and announced by the Executive Vice President , CCC or his designee, at the end of each specified marketing year; (3) clarifying that shorn wool which has been processed in any manner into a wool product, as determined by DASCO, shall not be eligible for price support payments; (4) providing that the sale of wool by a producer to a family member or to a business in which the producer has more than a 20 percent interest are not considered bona fide marketings; and (5) providing that any sales documents which are prepared by the purchaser of wool must have the original signature of the purchaser or authorized representative.

The Department received one comment with respect to the interim rule from a farm bureau federation which is on file and available for public inspection in Room 4091, South Building, 14th and Independence Avenue, SW., Washington, D.C. 20013. The comment supported the provisions of the interim rule as published and recommended that they be adopted. After reviewing the comments received and the provisions of the interim rule, it has been determined that the interim rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1472

Price support programs, Wool.

Final Rule

PART 1472—[AMENDED]

Accordingly, the interim rule published at 50 FR 34079, which amended 7 CFR 1472, is hereby adopted as a final rule without change.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714b. 714c); secs. 702-708, 68 stat. 910-912, as amended (7 U.S.C. 1781-1787).

Signed at Washington, D.C. on February 6, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-3103 Filed 2-11-86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-38, Amdt. 39-5226]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm Gmbh (MBB), Model BO-105 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain MBB Model BO-105 series helicopters, through serial number (S/N) 750. This AD requires a daily check for binding of the main rotor controls. In addition, within 10 hours' time in service, the System II tandem hydraulic

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actuator shall be cleaned and sealed. The AD is needed to prevent jamming of the main rotor controls due to freezing moisture in a valve cavity.

EFFECTIVE DATE: February 25, 1986, to all persons except those persons to whom it was made immediately effective by priority letter AD 85-26-02 issued December 23, 1985.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: A copy of the alert service bulletin is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106. The applicable service information may be obtained from MBB Helicopter Corp., P.O. Box 2349, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: J.H. Major, Helicopter Policy and Procedures Staff, ASW-111, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2549.

SUPPLEMENTARY INFORMATION: On December 23, 1985, priority letter AD 85-26-02 was issued and made effective immediately as to all known U.S. owners and operators of certain MBB Model BO-105 series helicopters certificated in any category. This AD is necessary to detect or prevent possible jamming of a main rotor control System II tandem hydraulic control actuator as a result of accumulated water freezing in a servo (spool) valve cavity of certain MBB BO-105 series helicopters as specified in MBB Alert Service Bulletin (ASB) No. 26 dated December 12, 1985. A daily operational check for control system binding shall be accomplished until the System II actuators are cleaned and sealed as prescribed to prevent possible accumulation and freezing of water in the actuator's cavity. The actuators must be cleaned and sealed within the next 10 hours' time in service or before next flight if control binding is detected. A possible jam in a System II actuator may prevent adequate control of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued December 23, 1985, to all known U.S. owners and operators of certain MBB Model BO-105 series helicopters, through S/N 750. These conditions still exist and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Messerschmitt-Bolkow-Blohm: Applies to Bo-105 series helicopters, through S/N 750, certificated in any category that are equipped with one of the following tandem hydraulic units: Part Numbers (P/N) 105-45021, 105-45023, 105-45028, 105-83001, D133-3073, and DSK1-30142.

Compliance is required as indicated, unless previously accomplished.

To detect or prevent possible jamming of the helicopter main rotor control system, accomplish the following:

(a) Before the first flight of each day after the effective date of this AD, operate the System II hydraulic actuators to detect binding of the control. If binding is detected, clean and seal the System II hydraulic actuators in accordance with paragraph (b) of this AD.

(b) Within the next 10 hours' time in service after the effective date of this AD, clean and seal System II hydraulic actuators in accordance with MBB BO-105, ASB No. 28, Part 2B, dated December 12, 1985, or with an equivalent approved in accordance with paragraph (d) of this AD. After sealing, the operational check in paragraph (a) is no longer required.

(c) The operational check in paragraph (a) may be performed by the pilot.

Note.—For the requirements regarding recording compliance and method of compliance with this AD in the aircraft's permanent maintenance records, see FAR § 91.173.

(d) Upon request, an equivalent means of compliance with this AD may be used when approved by the Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667-1011.

(e) The aircraft may be flown in accordance with FAR §§ 21.197 and 21.199 to a base where the actuators may be sealed in accordance with paragraph (b) of this AD.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to MBB Helicopter Corp., P.O. Box 2349, West Chester, Pennsylvania 19380. These documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective February 25, 1986 as to all persons except those persons to whom it was made immediately effective by priority letter AD 85-26-02, issued December 23, 1985, which contained this amendment.

Issued in Fort Worth, Texas, on January 22, 1986.

F.E. Whitefield,

Acting Director, Southwest Region.

[FR Doc. 86-2995 Filed 2-11-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ASO-26]

Designation of Transition Area; Greensboro, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates the Greensboro, Alabama, transition area to accommodate Instrument Flight Rules (IFR) operations at Greensboro Municipal Airport. This action lowers the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Cedarville Nondirectional Radio Beacon (NDB), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 9, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Greensboro, Alabama, transition area. This action provides controlled airspace for aircraft executing a new instrument approach procedure to Greensboro Municipal Airport (50 FR 50173). The operating status of the airport is changed to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Greensboro, Alabama, transition area and lowers the base of controlled airspace in the vicinity of Greensboro Municipal Airport from 1,200 to 700 feet above the surface.

The FAA had determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition Area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

Greensboro, AL—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Greensboro Municipal Airport (Lat. 32°40'54" N., Long. 87°39'43" W.).

Issued in East Point, Georgia, on February 3, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-2998 Filed 2-11-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 13

[Docket No. 51178-5178]

Intergovernmental Review of Agency Programs and Activities; Proposal To Amend Department of Commerce Program Coverage Under Executive Order 12372

AGENCY: Department of Commerce.

ACTION: Proposal to amend program coverage under E.O. 12372.

SUMMARY: The purpose of this notice is to inform state and local governments and other interested persons of the Department of Commerce's reexamination of seven programs previously excluded from coverage under Executive Order 12372, "Intergovernmental Review of Federal Programs." The following five programs, previously excluded from the Executive Order, will now be covered:

11.303 Economic Development Technical Assistance
11.405 Anadromous & Great Lakes Fisheries Conservation
11.417 Sea Grant Support
11.426 Financial Assistance for Marine Pollution Research
11.427 Fisheries Development & Utilization Research and Development Grants & Cooperative Agreements Program

This notice also sets forth justification to continue exclusion of two other programs on the basis that the programs do not directly affect state and local governments. A full understanding of the requirements of the Order may be gained by referring to the regulations published in 15 CFR Part 13 (48 FR 29126 dated June 24, 1983) and the Notice of Commerce programs subject to the order (48 FR 29138 dated June 24, 1983).

DATE: Comments must be received on or before March 31, 1986. Following the end of the comment period, the Department will review all comments received and make a decision on whether to exclude or include the TAA (11.109) and MBDA's Management & Technical Assistance Program (11.800). A notice will be published in the Federal Register announcing the determination.

ADDRESS: Interested persons should submit comments to Mary Ann T. Knauss, Deputy Assistant Secretary, Office of Intergovernmental Affairs, Room 5412, U.S. Department of Commerce, Washington, DC 20230. Comments will be available for inspection at the above address from 9:00 am to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Ann T. Knauss, Deputy Assistant Secretary, Office of Intergovernmental Affairs, Room 5412, U.S. Department of Commerce, Washington, DC 20230. Telephone (202) 377-3281.

SUPPLEMENTARY INFORMATION: The programs listed below by catalog of Federal Domestic Assistance Numbers are proposed for exclusion from the scope of Executive Order 12372 for the reasons stated. This notice is exempt from the requirements of 5 U.S.C. 533 because it is a matter relating to loans, grants, benefits, or contracts.

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11.109 Trade Adjustment Assistance (TAA)

The TAA program has no direct effect on state and local governments. This program is national in scope and helps trade-injured firms and industries develop and implement strategies to improve their ability to compete with foreign producers. Following is a description of how the program operates:

Firm Technical Assistance. Firms that satisfy the certification criteria, as specified in the Trade Act of 1974, may apply for and receive technical assistance to develop and implement an adjustment strategy. These technical assistance services are provided primarily through a network of Trade Adjustment Assistance Centers (TAACs) which are funded by the International Trade Administration (ITA) through cooperative agreements. Each TAAC covers a specified geographic area (most of which are multistate), employs professional staff with expertise in various business disciplines, and has funds to engage private management consultants. The first step in the technical assistance process is for the certified firm to receive help from a TAAC in diagnosing its problems and assessing its opportunities; and in development of an adjustment proposal. If the adjustment proposal is accepted by ITA, the firm can apply ITA and receive assistance in implementing the strategy. Most implementation assistance is provided through a TAAC contract with a management consultant. All firms are required to bear a minimum of 25% of the cost of the technical assistance.

Firm financial assistance. Certified firms with accepted adjustment proposals may also apply to the Office of Trade Adjustment Assistance (ITA) for a Trade Act loan or loan guarantee.

Industry technical assistance. The TAA program also helps industry associations or other organizations representing industries hurt by foreign trade to develop and implement industrial recovery strategies. The industry must be able to demonstrate injury from foreign trade, and a minimum of 25% cash cost-sharing is normally required. Assisted industry associations primarily represent a national industry with firms in many states.

11.800 Minority Business Development Management & Technical Assistance

The Minority Business Development Administration's (MBDA) State and Local Government (S&LG) program is designed to develop and strengthen public sector organizations engaged in minority business development. This particular funded effort does impact S&LGs and will continue to be covered under Executive Order 12372.

MBDA's other technical assistance programs, which encompass all funding efforts with the exception of its S&LG program, do not directly affect state and local governments.

Recipients of technical assistance funds provide clients with advice and counseling in such areas as preparing financial packages, business counseling, business information and management, accounting guidance, marketing, business/industrial site analysis, production, engineering, construction assistance, procurement, identification of potential business opportunities, and identification of capital sources. These services are reactive in nature and are designed to address the needs of the particular minority-owned firms receiving assistance.

These technical assistance programs have no direct effect on state or local governments or their budgetary processes by virtue of the fact that the programs are geared toward providing services to private sector firms or trade associations.

Dated: January 31, 1986.

Douglas A. Riggs,

General Counsel.

[FR Doc. 86-3068 Filed 2-11-86; 8:45 am]

BILLING CODE 3510-GA-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-LaRoche, Inc., providing for safe and effective use of lasalocid premixes in producing free-choice supplemental feeds for cattle on pasture for increased rate of weight gain.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Hoffmann-LaRoche, Inc., Nutley, NJ 07110, is sponsor of approved NADA 96-298 which currently provides for the use of lasalocid in cattle fed in confinement for slaughter for improved feed efficiency and increased rate of weight gain, and in pasture cattle for increased rate of weight gain. The firm has filed a supplement to the NADA providing for use of the same premixes (15-, 20-, 33.1-, and 50-percent lasalocid sodium activity per pound) in making supplemental feeds which are to be fed free-choice to pasture cattle for increased rate of weight gain. The supplemental NADA is approved and the regulations are amended accordingly. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) (April 26, 1985; 50 FR 16636) that this action of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.311 is amended in paragraph (b)(3) by removing "(7) and (9)" and replacing it with "(7), (9), and (11);" and by adding new paragraph (f)(11) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(f) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(11)		Cattle; for increased rate of weight gain.	For pasture (slaughter, stocker, and feeder cattle) only; feed continuously on a free-choice basis at a rate of not less than 60 mg nor more than 200 mg of lasalocid per head per day.	000004

Dated: February 4, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-3005 Filed 2-11-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8074]

Income Taxes; Stock Acquisitions and Target Corporation Assets; Section 338 International Aspects

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to international aspects of section 338 of the Internal Revenue Code of 1954 ("Code"), as added by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") and as amended by the Technical Corrections Act of 1982 ("TCA") and the Tax Reform Act of 1984 ("TRA"). The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the Federal Register.

DATE: These regulations are effective February 12, 1986. These temporary regulations generally apply to stock acquisitions made after August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3456, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulations § 1.338-5T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR") and amends temporary regulations §§ 1.338-1T, 1.338-4T, and 1.338(h)(10)-1T. This document also amends the table of OMB control numbers in Part 602 of Title 26 of the CFR to reflect the OMB control number assigned to § 1.338-5T.

Section 1.338-1T was published as T.D. 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722), and was amended and redesignated (as § 1.388-1T) by temporary regulations published as T.D. 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086). Section 1.338-1T also was amended by temporary regulations published as T.D. 8021 in the **Federal Register** on April 25, 1985 (50 FR 16402). The temporary regulations published on April 25, 1985, also added § 1.338-4T. Sections 1.388-1T and 1.338-4T were amended by temporary regulations published as T.D. 8068 in the **Federal Register** on January 8, 1986, and by temporary regulations published as T.D. 8072 in the **Federal Register** on January 29, 1986. The temporary regulations published on January 8, 1986, also added § 1.338(h)(10)-1T.

New § 1.388-5T provides guidance on international aspects of section 338 of the Code, as added by section 224 of TEFRA (Pub. L. No. 97-248; 96 Stat. 485) and as amended by section 306(a)(6) of the TCA (Pub. L. No. 98-448; 96 Stat. 2402) and section 712(k) of the TRA (Pub. L. No. 98-369; 98 Stat. 946). The temporary regulations added and amended by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

General Operation of Section 338

Effect of Election Under Section 338

Under section 338, a corporation ("purchasing corporation" or "P") that acquires the stock of another corporation ("target") in a qualified stock purchase (as defined in section 338(d)(3)) may elect (or may be deemed to elect under the consistency rules of section 338) to have the target treated as if it (1) sold all of its assets (as "old target") at fair market value at the close of the day on which the qualified stock purchase occurred ("acquisition date") and (2) purchased those assets as a new corporation ("new target") at the beginning of the following day for an amount generally equal to the price paid by P for target stock plus the liabilities of target and other relevant items. Section 338 (a) and (b). The deemed sale of assets by old target generally is governed by the nonrecognition rule of section 337. The application of section 337 is limited by section 338(c)(1). however, if the maximum percentage (by value) of target stock held by P during a one-year period beginning on the acquisition date is less than 100 percent. In general, the tax attributes of old target, including old target's earning and profits, are not available to new target. The net effect of a section 338 election is that P obtains a basis in target assets that generally reflects the price it paid for target stock.

Effect of Consistency Rules

Section 338 contains rules designed to ensure consistent treatment between stock and asset acquisitions. Consistency issues may involve a target or its target affiliate. A corporation is a "target affiliate" of a target if each of those corporations was a member of the same affiliated group at any time during so much of target's consistency period as ends on its acquisition date. Section 338(h)(6)(A). Section 338(h)(6)(B)(i), however, excludes foreign and certain domestic corporations from the status of target affiliates, except as otherwise provided in regulations (and subject to any conditions specified therein). Section 338 contains two sets of consistency rules: The asset consistency rule of section 338(e) and the stock consistency rules of section 338(f).

If a section 338 election is not made, then, under the asset consistency rule of section 338(e) (as implemented by § 1.338-4T(f)), a member of the affiliated group that includes P ("P group") generally is required, pursuant to a protective carryover election actually filed by the P group or pursuant to an affirmative action carryover election deemed made by the P group, to take a carryover basis in an asset acquired from target or its target affiliate during target's consistency period if the asset is acquired in a tainted asset acquisition (as defined in § 1.338-4T(f)(6)(i)(A)). For description of consistency period, see section 338(h)(4) and § 1.33-4T(g)(1). If a carryover basis is required pursuant to an affirmative action carryover election, however, the District Director is empowered, upon audit, to cause a deemed election for target under section 338(e)(1) (in lieu of a carryover basis in the asset acquired from target or its target affiliate) if a deemed election is appropriate to carry out the purposes of the consistency rules of section 338 (e), (f), or (i). See § 1.338-4T(f)(1)(ii). The

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asset consistency rule reflects the view that the P group should not be permitted to obtain, from another affiliated group within the consistency period, both the stock of a corporation (with its historic inside asset basis and other tax attributes intact) and selected assets at a cost basis.

Under the stock consistency rule of section 338(f)(1), a section 338 election for the first-acquired target ("original target") automatically applies to any target affiliate acquired by the P group in a qualified stock purchase during the consistency period. Under the stock consistency rule of section 338(f)(2), P's failure to make a section 338 election for the original target bars a section 338 election for any target affiliate acquired during the consistency period. The stock consistency rules reflect the view that the P group should not be permitted to selectively step-up the inside asset basis and eliminate the tax attributes of some but not all targets acquired during the consistency period from the same affiliated group.

Status of Corporations Described in Section 338(h)(6)(B)(i) As Target Affiliates

Introduction

The general rule prescribed in this document is that a corporation is not excluded from the status of a target affiliate by reason of section 338(h)(6)(B)(i) (relating to exclusion of foreign and certain domestic corporations from target affiliate status). There are exceptions. For purposes of the stock consistency rule of section 338(f)(1), the temporary regulations contain both a "transitional exclusion election" and a prospective "regular exclusion election" pursuant to which certain corporations described in section 338(h)(6)(B)(i) may be excluded from target affiliate status. For purposes of the asset consistency rule of section 338(e)(1), the temporary regulations contain a transition rule that, in effect, automatically excludes certain corporations described in section 338(h)(6)(B)(i) from target affiliate status. (No prospective exclusion rule is provided for asset consistency purposes.)

The notice of proposed rulemaking published in conjunction with this document proposes that the regular exclusion election be eliminated in the final regulations. Under the proposal, the regular exclusion election generally would be available only if the acquisition date of the original target occurred on or before the date of publication of the final regulations. The preamble to the notice contains a discussion of this matter.

Regular Exclusion Election

In General

If the original target for which an election under section 338(g) ("express election") is made is a domestic corporation, then § 1.338–5T(c)(2), as added by this document, permits P in certain cases to make a "regular exclusion election" under which all excludible foreign target affiliates are excluded from the status of target affiliates for purposes of section 338(f)(1). As a consequence, the excludable foreign target affiliates are not subject to deemed elections under section 338(f)(1) by reason of the express election. A foreign corporation is an excludable foreign target if (1) absent section 338(h)(6)(B), it would be subject to a deemed election under section 338(f)(1) by reason of the express election for the domestic original target and (2) its acquisition date occurs after March 15, 1986 (and does not occur pursuant to a binding contract in effect on February 19, 1986.

Under a transitional exclusion election described below, foreign corporations acquired on or before March 15, 1986 (or after that date but pursuant to a binding contract in effect on February 19, 1986 may be excluded from the status of target affiliates for purposes of section 338(f)(1). Unlike the regular exclusion election, the transitional exclusion also applies to domestic corporations described in section 338(h)(6)(B)(i) that are acquired during the prescribed period.

The regular exclusion election may be illustrated as follows. Assume that on June 1, 1986, P makes a qualified stock purchase of domestic target ("DT") and that DT directly holds all of the stock of controlled foreign corporations CFCT1, CFCT2, and CFCT3. The June 1, 1986, acquisition does not occur pursuant to a binding contract in effect on February 19, 1986. Each of the CFCs is an excludible foreign target affiliate. All of those excludible foreign target affiliates will be excluded from the status of a target affiliate for purposes of section 338(f)(1) if P makes a regular exclusion election in connection with an express election filed for DT. If the regular exclusion election is made, then the express election for DT will not cause deemed elections under section 338(f)(1) for CFCT1, CFCT2, and CFCT3. Because the normative rule under these temporary regulations is that corporations are not excluded from target affiliate status by reason of section 338(h)(6)(B)(i), each of the CFCs will be subject to a deemed election under section 338(f)(1) by reason of new DT's deemed purchase of their stock if a regular exclusion election is not made in connection with the express election for DT. See section 338 (a)(2) and (h)(3)(B).

An elective exclusion from target affiliate status for purposes of section 338(f)(1) is permitted because of the asserted hardship to taxpayers of imposing full stock consistency with respect to foreign corporations. It is recognized that the elective exclusion permits some selectivity and is complex. However, the potential for selectivity is limited since all of the excludible foreign target affiliates automatically are subject to the regular exclusion election.

Special Stock Basis Rules

New DT's basis in the stock of an excludible foreign target affiliate that is subject to a regular exclusion election is determined under a special basis rule if (1) old DT recognizes a section 1248(f) dividend as a result of its deemed sale of that stock (or would have recognized such a dividend if the excludible foreign target affiliate had earnings and profits), (2) the section 1248(f) dividend actually recognized (if any) is less than the gain realized by DT on its deemed sale of that stock, and (3) any earnings and profits that would have arisen had the regular exclusion election not been made would have increased that section 1248(f) dividend. Under the special basis rule, new DT's basis in that stock is the lesser of two amounts. The first amount is the basis allocable to that stock under the normal basis allocation rules of section 338(b). The second amount is old DT's basis in that stock, increased by the section 1248(f) dividend (if any) recognized by old DT with respect to its deemed sale of that stock. Section 1.338–5T(c)(3). The special basis rule also applies to stock in an excludible foreign target affiliate that is held by any other domestic target that is subject to a deemed election under section 338(f)(1).

Under a rule discussed below, a foreign target that derives a substantial portion of its income from the conduct of a trade or business in the United States may be treated as a domestic target ("FDT") for purposes of the regular exclusion election. An FDT cannot qualify as an excludible foreign target affiliate. Under certain circumstances, however, the special basis rule of § 1.338–5T(c)(3) will apply to an actual domestic target that holds stock in an FDT as if that FDT were an excludible foreign target affiliate subject to a regular exclusion election. Section 1.338–5T(c)(3)(iv). Assume, for example, that DT is deemed under section

338(a)(1) to sell all of the stock of FDT. As a result, FDT is subject to a deemed election under section 338(f)(1). If, on its acquisition date, FDT directly (or indirectly through another FDT) holds stock in an excludible foreign target affiliate that is subject to a regular exclusion election, then new DT's basis in FDT stock is determined as if FDT were an excludible foreign target affiliate. A similar basis rule applies to the excludible foreign target affiliate stock held by new FDT.

The purpose of the special basis rule of § 1.338–5T(c)(3) is to preserve potential section 1248 dividend consequences with respect to the earnings and profits of the excludible foreign target affiliate that would have been triggered had it been subject to a section 338 election, *i.e.*, the earnings and profits that would have resulted from its deemed sale of assets under section 338(a)(1) ("deemed sale earnings and profits"). As explained more fully below in the discussion of section 1248, the earnings and profits of a controlled foreign corporation that is subject to a section 338 election generally are increased, for purposes of determining the amount of the section 1248 dividend to the transferor, by that controlled foreign corporation's deemed sale earnings and profits.

Assume, for example, that DT holds all of the stock of controlled foreign corporation CFCT1 and that P makes a regular exclusion election (applicable to CFCT1) in connection with an express election for DT. As a result of its deemed sale under section 338(a)(1) of the stock of CFCT1, DT will recognize a section 1248(f) dividend equal to the lesser of the gain realized in the deemed sale of CFCT1 stock or the earnings and profits of CFCT1 that are attributable to that stock under the rules of section 1248. By reason of the regular exclusion election, however, CFCT1's deemed sale earnings and profits will not be triggered since CFCT1 will not be subject to a deemed election under section 338(f)(1). Thus, DT's section 1248(f) dividend with respect to the CFCT1 stock will reflect only the earnings and profits that result from the normal operations of CFCT1.

In addition, absent the special basis rule, new DT's basis in the stock of CFCT1 would approximate, in the typical case, the current fair market value of that stock, so that the gain recognition limitation of section 1248 likely would prevent a section 1248 dividend in the event of new DT's prompt sale of that stock in a transaction with respect to which the purchaser made an election under section 338. Assume, for example, that an unrelated corporation purchases the stock of CFCT1 from DT shortly after DT's acquisition date and makes a section 338 election for CFCT1. CFCT1 presumably will have deemed sale earnings and profits as a result of the section 338 election but, by reason of the gain recognition limitation (and in the absence of the special basis rule), a section 1248 dividend likely will not accrue to DT. Thus, the special basis rule is intended to preserve the possibility of a section 1248 dividend on CFCT1's deemed sale earnings and profits in the event of a post-acquisition date sale of CFCT1 stock by DT.

Carryover Basis in Certain Assets

A carryover basis may be imposed with respect to certain asset acquisitions when a regular exclusion election is made. This rule is discussed below in the section on asset consistency rules.

Invalidation Events

A regular exclusion election is not available, or may be invalidated retroactively, if an invalidation event occurs. Each of the two invalidation events provided for in §1.338–5T (c)(2)(iii) involves a factual situation in which a deemed election under section 338(f)(1) for one or more of the excludible foreign target affilitates is considered desirable. In such cases, the "all or nothing" policy underlying the regular exclusion election dictates that *none* of the excludible foreign target affiliates be excluded from the status of a target affiliate pursuant to a regular exclusion election. An invalidation event will be disregarded if, upon the examination of a relevant return, the District Director makes certain determinations described in § 1.338–5T(c)(2)(iii)(A). Unless and until those determinations are made, however, the invalidation event is given full effect.

The first invalidation event is a direct acquisition of the stock of an excludible foreign target affiliate by a P group member, provided that the excludible foreign target affiliate was a controlled foreign corporation at any time during so much of the taxable year within which its acquisition date occurs as ends on that acquisition date. (This rule also applies to the direct acquisition of stock in a domestic target described in section 1248(e) if that target holds stock in such an excludible foreign target affiliate.) Assume, for example, that P makes a qualified stock purchase of all of the stock of DT form S. Assume in addition that, during DT's consistency period, P makes a qualified stock purchase of all of the stock of FT, a target affiliate of DT, from S. All of these corporations but FT are domestic corporations. Thus, FT was a controlled foreign corporation during the relevant period. Accordingly, FT cannot be excluded from the status of a target affiliate pursuant to a regular exclusion election because, by reason of P's direct acquisition of the FT stock, a regular exclusion election cannot be made. Thus, FT will be subject to a deemed election under section 338(f)(1) if an express election is made for DT. As a result, the section 1248 dividend recognized by S will reflect FT's deemed sale earnings and profits. If FT were a subsidiary of DT, however, a regular exclusion election could be made so that FT would not be subject to a deemed election under section 338(f)(1). A potential section 1248 dividend reflecting the earnings and profits inherent in FT's asset (*i.e.*, the earnings and profits that would be triggered as deemed sale earnings and profits if FT were subject to a section 338 election) would be preserved, however, by reason of the special stock basis adjustment rule described above.

The purpose of the first invalidation event is to ensure that the section 1248 dividend (if any) recognized by S at the time it disposes of the FT stock reflects the deemed sale earnings and profits inherent in FT's assets. While it is considered appropriate to, in effect, transfer section 1248 dividend consequences associated with deemed sale earnings and profits from old DT to new DT by reason of the stock basis adjustment rule, it is not considered appropriate to transfer such a potential section 1248 dividend from S to P when S is a United States person that satisfies the stock ownership requirements of section 1248(a) with respect to FT. Nor is it practical to defer S's tax with respect to deemed sale earnings and profits until some event occurring after S disposes of the FT stock. The policy considerations underlying these determinations are examined in detail below in connection with the discussion of the "background" pertaining to the operation of section 1248 in the section 338 context.

The second invalidation event occurs if one or more excludible foreign target affiliates holds stock in a domestic corporation and that domestic corporation would be subject to a section 338 election only if the regular exclusion election did not apply. This rule ensures that all domestic targets are subject to the express election made for the domestic original target. Absent this rule, there would be an incentive, in a case in which section 338 treatment was desired for some but not all the domestic corporations to be acquired, to attempt

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to shield one or more of those domestic corporations from section 338 treatment by causing a pre-acquisition date transfer of its stock to an excludible foreign target affiliate subject to a regular exclusion election. Since that excludible foreign target affiliate would not be deemed to purchase the stock of the domestic corporation under section 338 (a)(2) and (h)(3)(B), section 338 treatment for that domestic corporation would be avoided. Section 367(a) would have discouraged such arrangements only in certain circumstances.

Notwithstanding the occurrence of an invalidation event after the regular exclusion election is filed, an excludible foreign target affiliate will not be made retroactively subject to a deemed election under section 338(f)(1) by reason of the section 338 election for the original target if such a deemed election would directly or indirectly increase the tax liability properly reportable in a return (of any person) with respect to which the time to make an assessment of tax has expired. Section 1.338–5T(c)(2)(iii)(D).

Original Target is Foreign

As noted above, the prerequisite for a regular exclusion election is a domestic original target. If the original target is a foreign corporation, a special rule may permit P to make an express election for a subsequently acquired domestic target affiliate of that foreign corporation while excluding that foreign corporation from the express election as if it were an excludible foreign target affiliate. Section 1.338–5T(c)(2)(iv). The special rule effectively operates as an exception to section 338(f)(2).

An express election may be made for the subsequently acquired domestic target pursuant to the special rule only if that express election includes a regular exclusion election, which will apply to the foreign original target as if it were an excludible foreign target affiliate. In addition, the special rule is applicable only if a regular exclusion election could have been made in an express election for the domestic target had it actually been the original target and had the foreign original target been a target affiliate of that domestic target. Thus, the special rule is not available if P's direct acquisition of the stock of the foreign original target would constitute an invalidation event under the hypothetical circumstances described in the preceding sentence, *e.g.*, if the original foreign target was a controlled foreign corporation during the relevant period. Absent this rule, the order in which domestic and non-CFC foreign targets are acquired would arbitrarily affect the availability of a regular exclusion election.

Foreign Corporation Treated as Domestic

For purposes of applying the provisions relating to the regular exclusion election, a foreign corporation is treated as a domestic corporation if 50 percent or more of its gross income from all sources for the 3-year period ending with the close of its taxable year that precedes the taxable year in which its acquisition date occurs is effectively connected with the conduct by that corporation of a trade or business in the United States. Section 1.338–5T(c)(5). The 50 percent test is similar to the dividend source rule in section 861(a)(2)(B) with one proviso: The Commissioner may exclude any transactions of a foreign corporation during the last year of this 3-year period from gross income for purposes of this 50 percent test if he determines (on the basis of all the facts and circumstances) that the transactions were entered into pursuant to a plan to treat or avoid treating a foreign corporation as a domestic corporation.

A foreign corporation the stock of which is directly acquired by P will not be treated as a domestic corporation, however, if it was a controlled foreign corporation at any time during so much of the taxable year within which its acquisition date occurs as ends on that acquisition date and if it holds stock in a corporation that would be an excludible foreign target affiliate if FT were treated as a domestic corporation. The exception described in the preceding sentence, which operates to bar a regular exclusion election, is designed to ensure that the deemed sale earnings and profits of the corporation that is or would be an excludible foreign target affiliate (if FT were treated as a domestic corporation) are triggered under these circumstances and are taken into account for purposes of applying section 1248 to the domestic sellers of the foreign corporation since the foreign corporation itself does not generally bear United States tax on a sale or deemed sale of the excludible foreign target affiliate stock. The rationale for this exception is the same as for the first invalidation event, as discussed above.

Transitional Exclusion Election

In connection with an express election for an original target (whether foreign or domestic), P may make a "transitional exclusion election" under which some or all of the transitional target affiliates are excluded from the status of target affiliates for purposes of section 338(f)(1). A corporation is a transitional target affiliate if (1) it is described in section 338(h)(6)(B)(i), (2) absent section 338(h)(6)(B), it would be subject to a deemed election under section 338(f)(1) by reason of the express election for the original target, and (3) its acquisition date occurs on or before March 15, 1986 (or after that date but pursuant to a binding contract in effect on February 19, 1986). A corporation that is eligible for the more generous transitional exclusion election because it is a transitional target affiliate will not be treated as an excludible foreign target affiliate.

The transitional exclusion election is provided because taxpayers reasonably could have expected during the transitional period that corporations described in section 338(h)(6)(B)(i) would not be treated as target affiliates and therefore would not be made subject to deemed elections under section 338(f)(1) in the event of an express election for the original target. Detailed rules are provided in § 1.338–5T(j)(5) for cases in which an overlap exists between the transitional exclusion election and the regular exclusion election.

The following table compares the transitional exclusion election to the regular exclusion election:

	Regular exclusion election (§ 1.338–5T(c))	Transitional exclusion election § 1.338–5T(j)(1)–(3)
Targets eligible for election.	Foreign targets acquired after 3–15–86.	Foreign targets and domestic targets described in section 338(h)(6)(B)(i) acquired on or before 3–15–86.
"All or nothing" election.	Yes	No [1].
Invalidation events	Yes	No.
Special carryover basis rule for stock in targets subject to election.	Yes	No.
Special carryover basis rule for certain asset acquisitions when election made [2].	Yes	Yes (but more limited than for regular exclusion election).
Special rule for treating foreign corporation as domestic.	Yes	No.
Section 338 election permitted for corporation other than original target.	Yes	Yes.

[1] It should be noted that, while P is permitted to make the transitional exclusion election for less than all of the transitional target affiliates, a transitional exclusion election for any one transitional target affiliate effectively applies automatically to any other corporation that would be a target but for that transitional exclusion election (*i.e.*, a corporation for which a qualified stock purchase would occur only if the transitional target affiliate were deemed under section 338(e)(2) to purchase its assets).

[2] These rules are discussed below in the section on asset consistency rules.

Special Asset Consistency Rules Applicable to Corporations Described in Section 338(h)(6)(B)(i)

General Rule for Target Affiliate Status

Subject to the transitional rule discussed herein, corporations described in section 388(h)(6)(B)(i) (*i.e.*, foreign and certain domestic corporations) are not excluded from the status of target affiliates for purposes of the asset consistency rule of section 338(e). Thus, an asset acquisition from such a corporation may be a tainted asset acquisition. (Note that if an exclusion election is made, whether regular or transitional, a carryover basis is imposed with respect to certain asset transfers even though those transfers technically do not constitute tainted asset acquisitions. The circumstances in which such a carryover basis is imposed are described in detail below.) The principal abuse against which the asset consistency rule of section 338(e)(1) is directed is the ability to selectively step-up the basis of directly acquired assets while preserving historic asset bases and tax attributes within the target. Because this abuse exists whether or not the transferor is described in section 338(h)(6)(B)(i), corporations described therein are not exempt, prospectively, from the asset consistency rule. The greatest potential hardship resulting from this rule is that a tainted asset acquisition from such a corporation may cause a deemed election under section 338(e) and § 1.338–4T(f)(1)(ii). The purchasing corporation may avoid this hardship, however, by filing a protective carryover election.

Transitional rule

Under the transitional rule, an asset acquisition from a corporation described in section 338(h)(6)(B)(i) that occurs on or before March 15, 1986 (or after that date but pursuant to a binding contract in effect on February 19, 1986 will in no case be considered a tainted asset acquisition. Section 1.338–5T(j)(6)(i). Thus, the acquiring P group member does not take a carryover basis in that asset pursuant to the asset consistency rule and, in the absence of a protective carryover election, is not at risk for a deemed election under section 338(e) as a result of that acquisition. This transitional rule exception is provided because taxpayers reasonably could have expected that asset acquisitions during the transitional period from corporations described in section 338(h)(6)(B)(i) would not be subject to the asset consistency rule of section 338(e).

Carryover Asset Basis: Regular Exclusion Election

As a general rule, a carryover basis under the authority of section 338 is imposed with respect to asset transfers only when an express election is not made, since the requirement is directed toward cases in which P wishes to avoid section 338 treatment and therefore does not make an express election. The only two exceptions to the general rule arise when a regular or transitional exclusion election is made.

If a regular exclusion election is made in connection with an express election for DT, then a P group member that acquires an asset from an excludible foreign target affiliate (or from a non-target foreign target affiliate) during the consistency period must take a carryover basis in that asset as if the acquisition were subject to an affirmative action carryover election if, in the absence of the express election, the asset acquisition would be a tainted asset acquisition. Section 1.338–5T(c)(4). The District Director does not have authority, in this context, to cause a deemed election for an excludible foreign target affiliate in lieu of a carryover basis in the transferred asset. Absent this special asset consistency rule, the P group could make a regular exclusion election for excludible foreign target affiliates but selectively step-up the basis of some assets held by such corporations (or by non-target foreign target affiliates). Under the special asset consistency rule, a carryover basis is retained both with respect to assets that remain inside excludible foreign target affiliates and with respect to assets directly acquired by P group members during the consistency period from such corporations and from non-target foreign target affiliates. Thus, the foreign corporations are treated, in effect, as a separate subgroup with respect to which an express election is not made.

Carryover Asset Basis: Transitional Exclusion Election

A carryover basis rule similar to the one applicable in the regular exclusion election context applies to asset acquisitions from (1) a transitional target affiliate for which a transitional exclusion election is made or (2) any other corporation that would be subject to a deemed election under section 338(f)(1) but for a transitional exclusion election. Thus, asset acquisitions from non-target foreign target affiliates are not subject to the carryover basis rule in the transitional exclusion election context. Compare § 1.338–5T(j)(6)(iii) with § 1.338–5T(c)(4). For a special overlap rule, see § 1.338–5T(j)(5)(iv).

Treatment of Stock Described in Section 338(h)(6)(B)(ii)

General Rule for Section 338(h)(6)(B)(ii) Stock

Under section 338(h)(6)(B)(ii), stock held by a target affiliate of target in a foreign corporation, a DISC, or a section 1248(e) corporation is excluded from the operation of section 338 except as otherwise provided in regulations (and subject to any conditions specified therein). Except during a transitional period, the temporary regulations added by this document provide that such stock is *not* excluded from the operation of section 338. Section 1.338–5T (c)(1)(ii) and (j)(7).

The apparent purpose of section 338(h)(6)(B)(ii) is to approximate the treatment that was available under repealed section 334(b)(2). Thus, for example, assume that domestic target DT holds all of the stock of domestic corporation DT1, and that DT1 holds all of the stock of controlled foreign corporation CFCT2. Under repealed section 334(b)(2), in the event of a liquidation of DT, a section 1248(f) dividend would not be triggered to DT1 with respect to its CFCT2 stock unless P also chose to liquidate DT1. In the section 338 context, absent section 338(h)(6)(B)(ii), an express election for DT causes a deemed election for DT1 under section 338(f)(1), and section 1248(f) is triggered by DT1's deemed sale of CFCT2 stock. Section 338(h)(6)(B)(ii) could be applied to bar section 1248(f) dividend at the DT1 level. By contrast, section 338(h)(6)(B)(ii) does not bar a section 1248(f) dividend at the DT level if DT rather than DT1 holds the CFCT2 stock.

Section 338(h)(6)(B)(ii) thus creates an arbitrary distinction between stock in a foreign corporation that is directly held by an original target for which an express election is made (DT in the above example) and stock in a foreign corporation that is held by a domestic target affiliate of the original target (DT1 in the above example). Because there is no reason not to treat CFC2 stock in the above example like any other recapture asset of DT1, the temporary regulations provide that section 338(h)(6)(B)(ii) does not apply except during a transitional period. Thus, section 1248(f) consequences with respect to CFCT2 stock will not turn on whether DT1 rather than DT holds the CFCT2 stock (except during the transitional period).

Transitional Rule for Section 338 (h)(6)(B)(ii) Stock

Under a transitional rule set out in § 1.338–5T(j)(7), stock described in

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section 338(h)(6)(B)(ii) that is held by a target subject to a deemed election under section 338(f)(1) may be excluded from the operation of section 338 if the acquisition date of the target occurs on or before February 12, 1986 or pursuant to a binding contract in effect on that date ("eligible target"). In order to obtain this treatment, P must make a transitional stock exclusion election in connection with an express election made for the original target. The transitional stock exclusion election may be made for one or more of the eligible targets. The transitional exclusion election applies to all excluded stock held by the eligible target for which the election is made, *i.e.*, all of the stock described in section 338(h)(6)(B)(ii) that is held by that eligible target at the close of its acquisition date, other than stock of a transitional target affiliate for which a transitional exclusion election is not made. Thus, excluded stock may include stock of a corporation that is not a target affiliate.

If a transitional stock exclusion election is made for an eligible target, then that eligible target is not deemed under section 338(a) to sell and purchase the excluded stock it holds at the close of its acquisition date. Thus, that eligible target will not recognize a section 1248(f) dividend with respect to excluded stock. In addition, that eligible target's basis (as new target) in excluded stock is the same as its basis in that stock as old target.

The transitional stock exclusion election is provided because taxpayers reasonably could have expected during the transitional period that stock described in section 338(h)(6)(B)(ii) would be excluded from the operation of section 338.

Special Rules for Operation of Offset Prohibition Election in International Context

Offset Prohibition Election Inapplicable if no U.S. Tax to Transferor

As noted above, the normative consequence of a tainted asset acquisition under the asset consistency rule of section 338(e) is a carryover basis to the acquiring P group member. If the tainted asset transfer occurs within a P group that does not file consolidated returns ("INA acquisition"), however, the acquiring P group member takes a basis in the transferred asset that is determined without regard to the carryover basis election if an offset prohibition election is made in connection with a protective carryover election. As a consequence of the offset prohibition election, the transferor in an INA acquisition may not offset the gain recognized on the transfer ("INA gain") by any deductions and the tax attributable to INA gain may not be offset by certain tax credits. See § 1.338–4T(f)(6)(iv) *Answer 2*(ii). If the tainted asset transfer occurs within a P group that files consolidated returns ("ICA acquisition") and if deferred gain on that transfer is restored because the transferor ceases to be a member of the P group ("remaining ICA gain amount"), then the existence of an offset prohibition election prevents a reduction (by the remaining ICA gain amount) in the transferred asset's basis in the hands of the transferee. As in the case of INA gain, the remaining ICA gain amount may not be offset by deductions of the P group and the tax attributable to that gain may not be offset by certain tax credits available to the P group. See § 1.338–4T(f)(6)(iv) *Answer 3*(iv). A carryover basis (or basis reduction) is not imposed when an offset prohibition election applies because, by reason of the limitations on deductions and credits, an appropriate tax on the transferor's gain will be collected.

Under the temporary regulations added by this document, an otherwise effective offset prohibition election does not apply to transfers by foreign and certain other corporations since, in many circumstances, an appropriate U.S. tax cannot be collected from the transferor. If, however, a foreign transferor corporation is required to pay U.S. tax on the transfer because income or gain on that transfer is effectively connected with the conduct by that transferor of a trade or business within the United States, then the offset prohibition election may apply to that asset. Section 1.338–5T(d)(1).

Special Limitation on Foreign Tax Credit When Offset Prohibition Election Made

The temporary regulations added by this document add a special section 904 limitation for offset prohibition gain. "Offset prohibition gain" is gain that is subject to limitations on deductions and credits by reason of an offset prohibition election. This special limitation ensures an appropriate foreign tax credit for foreign source offset prohibition gain. However, while foreign taxes on other income items and from other taxable years cannot be applied against any excess limitation for offset prohibition gain, foreign taxes attributable to offset prohibition gain ("offset prohibition foreign taxes") that exceed the separate limitation for offset prohibition gain may be credited in the current year to the extent that the otherwise applicable section 904 limitation exceeds the foreign taxes subject to that limitation that are paid or accrued during the current year. Any remaining offset prohibition foreign taxes carryover to other years as excess foreign taxes subject to the otherwise applicable limitation. Section 1.338–5T(d)(2).

Special Exceptions to Section 338(e)(1) Under the Authority of Section 338(e)(2)(D)

The temporary regulations added by this document add two exceptions to the asset consistency rule of section 338(e)(1) under the authority of section 338(e)(2)(D). Asset acquisitions subject to one of these exceptions, accordingly, will not be considered tainted asset acquisitions. The first exception is for an asset transfer in which the transferee takes a stepped-up basis solely by reason of the transferor's recognition of gain under section 367(a). The second exception applies to the transfer of foreign currency in certain cases. Section 1.338–5T(e). For additional exceptions under the authority of section 338(e)(2)(D), see § 1.338–4T(f)(5).

Operation of Section 1248 in Section 338 Context

Background

For a foreign target having solely trade or business income that is *not* effectively connected, the manner of taxing its deemed sale gain under section 338(a)(1) raises two questions: First, how should section 1248 be applied in the section 338 context? Second, do policy and administrative considerations regarding this foreign target outweigh policy and administrative considerations, developed in the context of domestic targets, that a purchaser's election under section 338 should not create a tax to a selling group filing consolidated returns?

In connection with the first question, in general, the United States directly taxes trade or business income of a foreign corporation that is effectively connected with its conduct of a trade or business within the United States. If a foreign corporation has neither effectively connected income nor U.S. source income but is a controlled foreign corporation ("CFC"), as defined in section 957, a principal mechanism since 1962 for exacting an indirect United States tax with respect to its income has been section 1248, under which a U.S. person holding at least 10 percent of the stock of the CFC (a "U.S. shareholder") is required to treat gain on the disposition of such stock as a dividend to the extent of the CFC's earnings and profits that are attributable to the transferred stock. If the foreign corporation is not a CFC, foreign personal holding company, foreign investment company, or, in the case of a foreign corporation that is a CFC, if the U.S. person holds less than 10 percent of its stock, the United States traditionally has declined to exact either a direct or an indirect tax on the foreign corporation's noneffectively connected income unless and until it is actually distributed.

In connection with the second question, a basic policy of section 338 in the domestic context is that P should not be permitted to unilaterally affect the tax liability of the seller of domestic target stock by making a section 338 election. Thus, under section 338(h)(9), a target acquired from a consolidated selling group is disaffiliated for purposes of its deemed sale of assets. As a result, P cannot trigger income reportable in the seller's consolidated return by making a section 338 election for the domestic target. Because deemed sale gain therefore is reported in a return for which new target is liable, P indirectly bears the liability for that tax. (Although an election under section 338(h)(10) causes deemed sale gain to be reported in the seller's consolidated return, both the seller and P must agree to that election.) Allowing P (the purchaser of all of the CFC's stock) to unilaterally elect section 338 and thereby affect the section 1248 dividend recognized by the U.S. sellers of the CFC is not consistent with this basic policy.

Allowing P to unilaterally affect the U.S. seller's section 1248 dividend would also create problems of administration. In order for the seller to properly calculate its section 1248 dividend, that seller would need to be notified of the section 338 election. Effective tax administration, moreover, would require that the Internal Revenue Service be notified of the identity of the U.S. sellers that may be affected under section 1248 by the section 338 election.

After reviewing the policy and administrative considerations, the Treasury Department has determined that the United States should indirectly tax under section 1248 the selling U.S. shareholders of CFC stock on the CFC's deemed sale gain under section 338(a)(1). This indirect tax is consistent with the traditional scope for exercising United States taxing jurisdiction on CFC's and would be imposed under the circumstances contemplated by existing law, principally section 1248.

Taxing a U.S. shareholder seller CFC stock on the CFC's deemed sale gain is appropriate. Section 338(a)(1) provides that the deemed sale is treated as if it were a transaction to which section 337 applies. Recapture items that are recognized notwithstanding section 337 increase section 1248 earnings and profits. *See Pielemeier* v. *United States*, 543 F.2d 81 (9th Cir. 1976); *Brigham* v. *United States*, 539 F.2d 1312 (3d Cir. 1976). This increase in section 1248 earnings and profits reflects an adjustment to the depreciation deductions ordinarily reflected in those earnings and profits. Upon the actual liquidation of a CFC under section 337, the section 1248 dividend reported by a U.S. shareholder takes into account in the single transaction (and subject to a single limitation for the shareholder's recognized gain) both the unadjusted section 1248 earnings and profits and the recapture earnings and profits. The result should be the same when section 337 is treated as applying to the CFC by reason of section 338(a)(1). In contrast, a domestic corporation typically reports its depreciation deductions and any recapture of those deductions in different taxable years.

Taking deemed sale earnings and profits into account in determining the section 1248 dividend to U.S. sellers also increases the likelihood that an appropriate foreign tax credit will be allowed with respect to the deemed sale earnings and profits. The prior deduction of the recaptured item will have decreased the earnings and profits of a prior taxable year of the CFC. Foreign taxes paid with respect to prior years, however, will be deemed paid by the U.S. seller to the extent that the section 1248 dividend derives from earnings and profits from prior years. (If earnings and profits from prior years were previously distributed, foreign taxes may be carried forward five years.) If deemed sale earnings and profits were taxed to the purchaser instead of the U.S seller, it is unlikely that an appropriate foreign tax credit would be allowed with respect to such income.

Taxing the selling U.S. shareholder on the deemed sale gain yields a result analogous to treatment of the deemed sale gain of a domestic target that was not included in a consolidated return of a selling group. That domestic target's deemed sale gain is included with its other income (or loss) in the final income tax return as old target for so much of its regular taxable year that was terminated at the close of its acquisition date. See § 1.338–1T(f)(2)(i). Similarly, a CFC's deemed sale gain is taken into account with other income (or loss) in its section 1248 earnings and profits for so much of its regular taxable year that was so terminated.

It is impractical to tax the purchaser ("P") on the recapture earnings and profits instead of the selling U.S. shareholder. In view of the manner in which the United States traditionally has taxed the earnings of such a foreign target, P (if it were to be taxed) ideally would be taxed on the section 1248 dividend that the U.S. sellers of target stock would have recognized had they been required to take into account the target's deemed sale earnings and profits. Thus, P would have to ascertain whether S was a U.S. shareholder. Moreover, in order to determine the amount of a section 1248 dividend, P would need detailed tax information relating to the holding period and basis of those selling U.S. shareholders in target stock. Even assuming that the correct dividend amount is calculated, taxing P would be a departure from the basic principle of section 1248 of indirectly taxing the shareholders of a CFC, especially since the actual tax effect to P of that dividend likely would differ from the tax effect of that dividend to the U.S. sellers due to differences in foreign tax credit positions and rates of U.S. tax as between P and such sellers. If P were a foreign corporation that did not file U.S. income tax returns, special procedures would be necessary in order to collect *any* tax measured by reference to deemed sale earnings and profits (*e.g.*, a toll charge in the amount of the tax as a condition for a valid section 338 election) which would have the indirect effect of S bearing the tax. Policy considerations aside, it is certainly more practical to tax S than P on the deemed sale earnings and profits.

In conclusion, these policy and administrative considerations favor imposing an indirect tax on deemed sale gain only on the U.S. seller of CFC stock and only through existing statutory mechanisms (with certain modifications), principally section 1248. An indirect tax should not be imposed on P. These policy and administrative considerations outweigh the domestic section 338 policy that P should not be permitted to unilaterally affect the tax liability of the seller of target stock by making a section 338 election.

Application of Section 1248 to Sellers of Stock in Foreign T

Temporary regulations § 1.338–5T(g), as added by this document, provides rules for the operation of section 1248 in connection with a section 338 election for a target that is a controlled foreign corporation ("CFCT"). As noted above, the deemed sale of assets under section 338(a)(1) is governed by section 337. Had CFCT actually sold its assets in a sale described in section 337, amounts a

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domestic corporation would have recognized notwithstanding the operation of section 337 would have been taken into account as earnings and profits for purposes of applying section 1248. See §§ 1.1248–2(d)(2)(ii) and 1.1248–3(b)(2)(ii). Section 1.338–5T(g)(2)(i) and (3) makes clear that the deemed sale under section 337 also creates earnings and profits ("deemed sale earnings and profits") that must be taken into account by the U.S. persons subject to section 1248 that sell CFCT stock to P on CFTC's acquisition date. However, any gains (or losses) that a domestic corporation would have recognized in the deemed sale of assets by reason of the operation of section 338(c)(1) are disregarded. (As discussed in more detail below, a tax on section 338(c)(1) gain may be collected from minority CFCT shareholders that do not transfer their CFCT stock to P.)

A special rule under section 1248 is provided for sales of CFCT stock to the P group by U.S. persons during CFCT's 12-month acquisition period but prior to CFCT's acquisition date ("staggered stock sale rule"). The staggered stock sale rule attributes to such CFCT stock the same share of deemed sale earnings and profits that would have been attributed to such stock had it been sold on CFCT's acquisition date, i.e., on last day of old CFCT's final taxable year. Absent this rule, only a pro rata portion of that share, based on the number of days in old CFCT's final taxable year during which the seller held the CFCT stock, would be attributed to that stock. Moreover, absent the staggered stock sale rule, *none* of the deemed sale earnings and profits would be attributed to that stock if it were sold during the prior taxable year. This staggered stock sale rule also applies to earnings and profits resulting from *actual* asset sales occurring on or after the first day of CFCT's taxable year in which the particular stock sale occurs and prior to the close of CFCT's acquisition date. Such an actual asset sale creates earnings and profits for this purpose, however, only to the extent of the gain on the asset sale that would have been recognized by old CFCT had it been a domestic corporation, had it held that asset on its acquisition date, and had the deemed sale price of that asset been equal to the actual amount realized on the sale or exchange of that asset. Section 1.338–5T(g)(2)(i) and (4). The staggered stock sale rule does not apply to stock transfers occurring on or before February 12, 1986 or after that date but pursuant to a binding contract in effect on that date.

Carryover CFCT Stock

A special rule under section 1248 also is provided for "carrover CFCT stock," *i.e.*, CFCT stock held by non-P group members on the close of CFCT's acquisition date ("minority stock") and nonrecently purchased CFCT stock as defined in section 338(b)(6)(B) for which a gain recognition election under section 338(b)(3)(A) is not made. With respect to carryover CFCT stock, the earnings and profits of old CFCT (along with the foreign taxes attributable to such earnings and profits) carryover to new CFCT for purposes of (1) characterizing distributions with respect to carryover CFCT stock as dividends, (2) characterizing gain on the disposition of CFCT stock as a section 1248 dividend, and (3) determining the amount of the foreign tax credit resulting from such dividends. The amount of old CFCT's earnings and profits that may be taken into account with respect to a share of carryover CFCT stock, however, shall not exceed the amount of the section 1248 dividend that the holder of that share would have recognized had it sold that share at fair market value to a member of the P group on CECT's acquisition date (or, with respect to nonrecently purchased stock, had such stock been subject to a gain recognition election) ("section 1248 amount"). Section 1.338–5T(g)(6).

The carryover CFCT stock rule ensures that appropriate section 1248 consequences will attend a post-acquisition date disposition of such stock. In addition, the rule eliminates the incentive for holders of minority stock to retain such stock until after CFCT's acquisition date, *i.e.*, until after its earnings and profits account is eliminated. Absent this rule, holders of minority stock could avoid a section 1248 dividend measured by old CFCT's earnings and profits simply by waiting until after CFCT's acquisition date to transfer such stock to P. Finally, the carryover CFCT stock rule serves as a mechanism whereby a tax on section 338(c)(1) gain is borne (if at all) only by the persons that caused that gain to exist. Thus, for purposes of determining the section 1248 amount, all of the earnings and profits of old CFCT resulting from gain (or loss) that a domestic corporation would have recognized by reason of the operation of section 338(c)(1) are allocated solely to the carryover CFCT stock that causes section 338(c)(1) to apply to the transaction, *e.g.*, carryover CFCT stock that is minority stock and that is not purchased by a member of the P group during the one-year period beginning on CFCT's acquisition date. The policies underlying the rules for carryover CFCT stock are generally similar to those underlying regulations promulgated under section 367(b).

Special CFC Definition

A special definition is provided for determining whether a foreign target is a controlled foreign corporation. Under this definition, for purposes of determining whether a foreign target is a controlled foreign corporation for a relevant taxable year, all sales of its stock that are included in the qualified stock purchase of such stock are deemed to occur on that foreign target's acquisition date if that foreign target ceases to be a CFC solely by reason of the qualified stock purchase of its stock. For example, assume that foreign purchasing corporation FP purchases 60 of the 100 outstanding shares of CFCT stock from domestic corporation S on December 31, 1986, and purchases the remaining 40 shares on January 1, 1987. Absent the special definition, CFCT is not a controlled foreign corporation in 1987 and, therefore, the earnings and profits resulting from its deemed sale of assets are not properly reflected in S's section 1248 dividend. The special definition ensures that such earnings and profits are properly reflected in that dividend.

Treatment of Gain On Deemed Sale as Effectively Connected Income and as Income From Sources Within the United States

Under temporary regulations § 1.338–5T(h)(1), as added by this document, a foreign target's gain on the deemed sale of an item of property under section 338(a)(1) is treated as income that is effectively connected with the conduct of a trade or business within the United States and as income from sources within the United States if, for the three-year period ending with the close of the taxable year preceding old foreign target's final taxable year (or for so much of that 3-year period as that target held the particular item of property), more than 50 percent of the gross income it derived from that item of property was effectively connected income. Similarly, under § 1.338–5T(h)(2), a domestic target's gain on the deemed sale of an item of property is treated as income from sources within the United States if, for the three-year period ending with the close of the taxable year preceding old domestic target's final taxable year (or for so much of that 3-year period as that target held the particular item of property), more than 50 percent of the gross income it derived from that item of property was income from sources within the United States. No inference should be drawn regarding the United States tax treatment of gain amounts not described in § 1.338–5T(h). These rules are designed to eliminate uncertainty as to the source of and the United States tax with respect to gain arising in the deemed sale of assets.

Amendments to § 1.338–1T

Special Suspension of Time Eliminated

Prior to publication of this document, § 1.338–1T(j) provided that the last day for making an election under section 338 was suspended until the date specified in a Treasury decision setting forth regulations under section 338(h)(6)(B) if (1) the target was a corporation described in section 338(h)(6)(B)(i) that had a target affiliate or (2) the target had a target affiliate that was described in section 338(h)(6)(B)(i) or that held stock in a foreign corporation, a DISC, or a corporation described in section 1248(e). In order to make a section 338 election notwithstanding the suspension, a special declaration was required in the statement of section 338 election.

Under § 1.338–1T(c), as amended by T.D. 8068, a section 338 election for any qualified stock purchase occurring after August 31, 1982, need not be filed before the later of the due date specified in section 338(g)(1) or March 15, 1986. Under § 1.338–1T(j), as amended by this document, the March 15, 1986, date also applies to corporations described in § 1.338–1T(j)(1), and no suspension of time after that date is provided for such corporations.

Under § 1.338–1T(j), as amended by this document, the requirement of a special declaration in the statement of section 338 election is retained but applies only to statements of section 338 election that are filed on or before March 14, 1986 and that do not contain a transitional or regular exclusion election or a transitional stock exclusion election.

Prior to amendment by this document, a statement of section 338 election that omitted the special declaration could be perfected only by the timely filing of a perfecting declaration. As amended by this document, however, § 1.338–1T(j) provides that such a statement of section 338 election may be perfected either by filing a perfecting declaration on or before March 15, 1986, or by making a timely regular exclusion election, transitional exclusion election, or transitional stock exclusion election. The making of such an election would be inconsistent with an intent *not* to perfect the statement of section 338 election.

The class of acquisitions subject to § 1.338–1T(j) is broadened by this document to include targets described in section 338(h)(6)(B)(i) that do *not* have a target affiliate ("stand-alone targets"). Stand-alone targets are included because of the substantial uncertainty that existed, prior to publication of this document, as to the application of section 338 to corporations described in section 338(h)(6)(B)(i). The effect of this rule is that a statement of section 338 election filed for such a corporation on or before March 14, 1986, is valid only if it contains the special declaration (or one of the exclusion elections) or is perfected pursuant to the procedures described above.

Notice to U.S. Persons Required

As noted above, the section 1248 dividend for a U.S. person that sells stock of a target that is a controlled foreign corporation ("CFCT") to P may be affected by P's decision to file a section 338 election for CFCT. Minority shareholders that retain CFCT stock also may be affected by that election. Accordingly, a new § 1.338–1T(k)(7) establishes a notice requirement for such persons. The penalty for failure to provide notice to certain U.S. persons is the invalidation of the section 338 election.

Schedule of Corporations

Section 1.338–1T(e) provides that a schedule containing information relating to corporations subject to an election under section 338 must be attached to the statement of section 338 election and to certain returns of targets subject to that election. As amended by this document, § 1.338–1T(e) also requires that the schedule contain information on excludible foreign target affiliates that are subject to a regular exclusion election. In addition, the schedule must contain information on the U.S. persons to whom P is required to provide notice under new § 1.338–1T(k)(7).

New rules are provided regarding the returns to which the schedule and certain other "required items" must be attached under § 1.338–1T(e)(2). If a U.S. person is required to report a section 1248 dividend in its income tax return by reason of its sale of foreign target stock to P, then the required items must be attached to that return. Section 1.338–1T(e)(2)(v)(B). Other U.S. persons that hold stock in foreign target on its acquisition date or on the first day thereafter must attach the required items to the Forms 5471 they are required to file with respect to foreign target for its taxable years that include those days. Section 1.338–1T(e)(2)(v)(C). (As part of the notice requirement, P must provide the required items to the U.S. persons described in the preceding two sentences.) If a foreign target's first return as new target is for a taxable year subsequent to its first taxable year, then the required items must be attached to that return (this is an existing requirement). Section 1.338–1T(e)(2)(v)(D). (Section 1.338–1T(e)(2)(v)(C) and (D) replaces § 1.338–1T(k)(6) of the existing regulations, which is removed by this document.)

Under § 1.338–1T(e)(3), the standard penalty for failure to comply with the requirements relating to the schedule of corporations is invalidation of the penalty waiver rule of § 1.338–1T(h) (automatic waiver of certain penalties). (The penalty will not apply solely by reason of the failure to attach the required items to certain returns over which P may have no control.) Under § 1.338–1T(e)(3), as amended by this document, the penalty also applies when amended returns required by reason of the retroactive invalidation of a regular exclusion election are not timely filed.

Miscellaneous Amendments

A number of minor technical and clarifying amendments are made to § 1.338–1T. (The enumeration in this paragraph is not inclusive.) Section § 1.338–1T(d)(2) (relating to the treatment of a common parent as the agent of P for purposes of signing the statement of section 338 election) is amended to make clear that it serves merely as a cross-reference to the relevant consolidated return regulation and is not intended to alter the rules provide therein. A number of amendments are made to § 1.338–1T(k). The meaning of "subject to United States tax" in § 1.338–1T(k) is clarified. (This change is not intended to be substantive.) Section § 1.338–1T(k)(1) is amended to apply to *any* election made under the authority of section 338, *e.g.*, the protective carryover election under § 1.338–4T(f)(6). Similarly, section 1.338–1T(k)(5), which exempts certain foreign corporations from the requirement that an employer identification number be furnished, is made applicable to *any* election made under the authority of section 338.

Amendments to § 1.338–4T

Exception to Section 338(e) for Property Subject to Timely Disposition

Section 1.338–4T(f)(5) *Answer* (vii) provides that an asset acquisition is subject to an exception to section 338(e)(1) (and therefore will not be a tainted asset acquisition for purposes of the consistency rule of section 338(e)) if

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the P group disposes of that asset to an unrelated person (not including a target affiliate of target) on or before the date specified in § 1.338–4T(f)(5) *Answer* (vii). This document amends that provision to also prohibit disposition to a target affiliate of an affected target. In addition, this document amends the provision to provide that the asset will be considered disposed of if the P group member holding the asset ceases to be a member of the P group (and ceases to be related to any member of the P group) on or before the specified date. A corporation is not treated as ceasing to be a member of the P group, however, if it ceases to exist during the consistency period by reason of a transaction described in section 381(a) and if the acquiring corporation (within the meaning of section 381(a)(1)) is a member of the P group.

Amendment to Rules Relating to P Group Members That Must Sign the Protective Carryover Election Statement

Under § 1.338–4T(f)(6)(ii) *Answer 1* (ii), each corporation included in the P group at any time during so much of the target's consistency period as ends on the day a protective carryover election is filed must join in making that protective carryover election. Under that provision, as amended by this document, a corporation that ceases to be a P group member prior to the day on which the protective carryover election is filed ("former P group member") need not join in making the protective carryover election if it did not make a tainted asset acquisition (as defined in § 1.338–4T(f)(6)(i)(A)) while a member of the P group. Caution should be exercised when relying on the rule described in the preceding sentence, however, if the former P group member made *any* asset aquisitions during the consistency period from the original target, an affected target, or a target affiliate of one of those targets, since it is not always clear that an acquisition is not a tainted asset acquisition. See, *e.g.*, the exception in § 1.338–4T(f)(3) for acquisitions in the ordinary course of trade or business. Note, however, that an asset acquisition that otherwise would be a tainted asset acquisition may be subject to the timely disposition exception of § 1.338–4T(f)(5) *Answer* (vii) if the former P group member ceased to be a member within the time specified in § 1.338–4T(f)(5) *Answer* (vii).

An additional exception to the requirement that all P group members must join in making the protective carryover election is made for certain foreign P group members, whether or nor they are members on the day the protective carryover election is filed. Under this exception, a representative of a foreign P group member is not required to sign the protective carryover election if that foreign P group member (1) is not required to file a United States income tax return for its taxable year in which the protective carryover election is filed, (2) is not, at any time during its taxable year in which the protective carryover election is filed, a controlled foreign corporation, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2), (3) does not purchase any of the stock included in the qualified stock purchase of the target (or of an affected target), and (4) does not hold stock in a foreign P group member that satisfies one or more of the three preceding conditions. If a foreign P group member is a controlled foreign corporation, its United States shareholders may make the protective carryover election on its behalf.

A foreign P group member subject to the exception described in the preceding paragraph must be identified in the protective carryover election as if it were required to join in making the election. Tainted asset acquisitions made by such a corporation will be subject to the affirmative action carryover basis rules, however, unless the corporation joins in making the election, *i.e.*, unless a representative signs the protective carryover election. The District Director will not have authority under these circumstances to impose a deemed election under section 338(e)(1) pursuant to § 1.338–4T(f)(1)(ii).

Miscellaneous Amendments

A number of minor technical and clarifying amendments are made to § 1.338–4T. (The enumeration in this paragraph is not inclusive.) A more comprehensive definition of a "tainted asset acquisition" is provided in amended § 1.338–4T(f)(6)(i)(A). As amended, that provision also clarifies that the protective carryover election is irrecovable. *Answer* 2 (II)(B) and *Answer 3* (iv)(D) of § 1.338–4T(f)(6)(iv) (relating to restrictions on the use of certain credits when an offset prohiblion election is made) are clarified. Finally, § 1.338–4T(k)(1) *Answer 3* (relating to the operation of section 338(h)(12)) is amended to clarify that nonrecognition on actual asset sales pursuant to section 338(h)(12) is available notwithstanding that a liquidation of target immediately after the plan of complete liquidation was adopted would have been governed by section 332, provided that each corporation that would have been a distributee corporation in that hypothetical liquidation is liquidated under the circumstances described in section 337(c)(3).

A number of typographical errors in § 1.338–4T are corrected by this document.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act of 1980

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. The collection of information contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (Control number 1545–0702).

Drafting Information

The principal author of these temporary regulations is Duane H. Pellervo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style."

List of Subjects

26 CFR 1.301–1—1.383–3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, Parts 1 and 602 of Title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * §§ 1.338–1T, 1.338–4T, 1.338–5T, and 1.338(h)(10)–1T also issued under 26 U.S.C. 338.

Par. 2. A new § 1.338–5T is added immediately after § 1.338–4T to read as follows:

§ 1.338–5T International aspects of section 338 (Temporary).

(a) *Introduction*—(1) *Effective date.* Except as otherwise provided in this section, this section applies to stock acquisitions for which the acquisition date (determined without section 224(d)(5) of TEFRA) occurs after August 31, 1982.

(2) *Outline of topics.* In order to facilitate the use of this section, this subparagraph (2) lists the paragraphs, subparagraphs and subdivisons contained in this section.

(a) Introduction.
(1) Effective date.
(2) Outline of topics.
(3) Application of § 1.338–4T to foreign persons and certain domestic corporations.
(4) Procedural rules.
(b) Nomenclature and definitions.
(1) Nomenclature.
(i) Corporations.
(ii) Individuals.
(2) Definitions.
(c) Application of section 338 to corporations and stock described in section 338(h)(6)(B).
(1) General rule.
(2) Elective exclusion of foreign corporations from target affiliate status.
(i) General rule.
(ii) Excludible foreign target affiliate.
(iii) Regular exclusion election not available in certain cases.
(A) General rule.
(B) Controlled foreign corporation directly acquired.
(C) Excludible foreign target affiliate holds stock in domestic corporation.
(D) Exception when statute of limitations has expired.
(iv) Special rule if original target is a foreign corporation.
(A) General rule.
(B) Foreign target as original target.
(C) Qualifying domestic target affiliate.
(D) Special rule inapplicable if express election for original foreign target filed.
(E) Effect of invalidation event.
(F) Coordination with protective carryover election.
(v) Procedure for making regular exclusion election.
(A) General rule.
(B) Contents of regular exclusion statement.
(C) Transitional rule.
(vi) Annotation on required schedule.
(vii) Procedure if regular exclusion election invalidated subsequent to filing.
(A) Required schedule must be amended.
(B) Filing of amended returns.
(3) Effect of regular exclusion election on basis in excludible foreign target affiliate stock.
(i) General rule.
(ii) Excess basis amount eliminated.
(iii) Subject to section 1248(f)(1).
(iv) Special rules if foreign target treated as domestic.
(v) Cross-reference.
(4) Special asset consistency rule if regular exclusion election made.
(i) General rule.
(ii) Deemed election not imposed.
(iii) Relevant target.
(5) Certain foreign corporations treated as domestic corporations.
(i) General rule.
(ii) Event year.
(iii) Exception.
(6) Examples.
(d) Special rules applicable to offset prohibition election.
(1) Offset prohibition election inapplicable to certain transfers
(i) General rule.
(ii) Exception for certain foreign transferors.
(2) Limit on crediting foreign tax against U.S. tax on offset prohibition gain.
(i) Definitions.
(A) Offset prohibition gain.
(B) Offset prohibition foreign taxes.
(C) Otherwise applicable section 904 limitation.
(ii) One-way special foreign tax credit limitation for offset prohibition foreign taxes.
(iii) Excess special limitation disregarded for purposes of section 904(c).
(iv) Special rule for creditability of offset prohibition foreign taxes in excess of special limitation.
(v) Coordination with restricted credit provisions of § 1.338–4T(f)(6)(iv).
(3) Examples.
(e) Certain transactions subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D).
(1) Basis step-up attributable to gain recognized under section 387.
(2) Acquisition of foreign currency.
(i) General rule.
(ii) No inference regarding character of gain or loss.
(f) Effect of section 338 on foreign target.
(g) Operation of section 1248 if section 338 election made.
(1) Scope.
(2) General rules.
(i) Transfer of CFCT on or before acquisition date.
(ii) Effect of gain recognition election.
(iii) Carryover CFCT stock.
(iv) Special rule for determining status as controlled foreign corporation.
(v) Section 1248(c)(2) subsidiary.
(vi) Special deemed stock sale rule.
(3) Enhanced earnings and profits amount if stock transferred on CFCT's acquisition date.
(4) Enhanced earnings and profits amount if stock transferred before CFCT's acquisition date.
(i) General rule.
(ii) Affected taxable year of CFCT.
(iii) CFCT's recapture earnings and profits.
(iv) Recapture amount.
(v) Exception to enhancement rule of paragraph (g)(4)(i) for transitional period stock transfer.
(vi) Section 1248(c)(2) subsidiary with same taxable year as CFCT.
(A) Recapture amounts for subsidiaries.
(B) Earnings and profits of subsidiaries.
(C) Recapture earnings and profits for block.
(D) Application of general rule.
(vii) Section 1248(c)(2) subsidiary with taxable year different from CFCT's.
(5) Section 338(c)(1) inapplicable.
(6) Carryover of old CFCT earnings and profits for purposes of carryover CFCT stock.
(i) General rule.
(ii) Cap on carryover of earnings and profits.
(iii) Section 1248 amount for stock other than section 338(c)(1) stock.
(iv) Section 1248 amount for section 338(c)(1) stock.
(v) Section 338(c)(1) stock.
(vi) Section 338(c)(1) amount.
(vii) Old CFCT earnings and profits unaffected by post-aquisition date deficits.
(viii) Character of CFCT stock as carryover CFCT stock eliminated upon disposition.
(7) Application of principles of this paragraph to section 1246.
(8) Examples.
(h) Treatment of gain in deemed sale of assets as income effectively connected with the conduct of a trade or business within the United States and as from sources within the United States.
(1) Foreign target.
(2) Domestic target.
(3) Measurement period.
(4) No inference regarding transactions not described.
(i) Reserved.
(j) Transitional rules for corporations and stock described in section 339(h)(6)(B).
(1) Transitional elective exclusion from target affiliate status.
(2) Transitional target affiliate.
(i) General rule.
(ii) Acquired on or before March 15, 1986.
(iii) Hypothetical acquisition date of transitional target affiliate.
(3) Special rule for certain original targets described in section 338(h)(6)(B)(i).
(i) General rule.
(ii) Transitional excludible original target.
(iii) Qualifying target affiliate.
(A) General rule.
(B) Excepted target.
(iv) Coordination with protective carryover election.
(4) Examples.
(5) Relationship between transitional exclusion election and regular exclusion election.
(i) In general.
(ii) Special rule for application of regular exclusion election.
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(3) *Applicotion of § 1.338–4T to foreign persons and certain domestic corporations.* Except as otherwise provided in this section, the provisions of § 1.338–4T apply to—
(i) Foreign corporations.
(ii) Domestic corporations described in section 338(h)(6)(B), and
(iii) Individuals that are not U.S. residents or citizens.

(4) *Procedural rules.* For additional procedural rules, see § 1.338–1T.

(b) *Nomenclature and definitions*—(1) *Nomenclature.* The nomenclature in § 1.338–4T(b)(1) also applies to this section except as follows:

(i) *Corporations.* Each term used in § 1.338–4T(b)(1) to refer to a corporation (*e.g.*, "T") is preceded in this section either by the letter "D," connoting a domestic corporation, the letter "F," connoting a foreign corporation (as defined in section 7701(a)(5)), or the letters "CFC," connoting a controlled foreign corporation (as defined in section 957). ("CFC" is used rather than "F" only when the corporation's status as a controlled foreign corporation is significant.) However, the term "P" is used without a prefix when the purchasing corporation's status as a foreign or domestic corporation is not significant. (All terms used in § 1.338–4T to refer to corporations are references to domestic corporations.)

(ii) *Individuals.* Each term used in § 1.338–4T(b)(1) to refer to an individual (*i.e.*, "A" and "B") is preceded in this section either by the letter "D," connoting a U.S. resident or citizen, or "F," connoting an individual other than a U.S. resident or citizen. (All terms used in § 1.338–4T to refer to individuals are references to U.S. residents or citizens.)

(2) *Definitions.* The definitions in § 1.338–4T also apply to this section, except that the definition of a domestic corporation in § 1.338–4T(b)(6) is applied without the exclusion therein for DISCs, corporations described in section 934(b) or 1248(e), and corporations to which and election under section 936 applies.

(c) *Application of section 338 to corporations and stock described in section 338(h)(6)(B)*—(1) *General rule.* Except as otherwise provided in this paragraph (c) and in paragraph (j) of this section (relating to transitional rules)—

(i) A corporation that would be a target affiliate within the meaning of section 338(h)(6)(A) but for section 338(h)(6)(B)(i) shall be considered a target affiliate for all purposes of section 336 and

(ii) Stock held by a target affiliate in a foreign corporation or in a domestic corporation that is a DISC or that is described in section 1248(e) shall not be excluded from the operation of section 338.

(2) *Elective exclusion of foreign corporations from target affiliate status*—(i) *General rule.* If P files an express election for DT, an original target, then, solely for purposes of the stock consistency rule of section 338(f)(1), P also may elect (in the manner prescribed in paragraph (c)(2)(v) of this section) to exclude all excludible foreign target affiliates from the status of target affiliate ("regular exclusion election"). If the regular exclusion election is not or cannot be made (*e.g.*, because DT is FT or because a section 338 election is not filed for DT), then none of the excludible foreign target affiliates may be excluded from the status of a target affiliate. A section 338 election cannot be made for any excludible foreign target affiliate that is subject to a regular exclusion election. For a special stock basis rule that applies when a regular exclusion election is made, see paragraph (c)(3) of this section. For a special asset consistency rule that applies when a regular exclusion election is made, see paragraph (c)(4) of this section. For treatment of certain foreign corporations as domestic corporations, see paragraph (c)(5) of this section. For transitional rules, see paragraph (j) of this section.

(ii) *Excludible foreign target affiliate.* An "excludible foreign target affiliate" is a foreign corporation that meets two conditions. The first condition is that, absent section 338(h)(6)(B), it would be subject to a deemed election under section 338(f)(1) by reason of the express election for DT. The second condition is that it must not be a transitional target affiliate within the meaning of paragraph (j)(2) of this section, *i.e.*, its acquisition date must not occur on or before March 15, 1986 (or after March 15, 1986, but pursuant to a binding contract in effect on February 19, 1986. See Examples (1) and (2) in paragraph (c)(6) of this section.

(iii) *Regular exclusion election not available in certain cases*—(A) *General rule.* Except as provided in paragraph (c)(2)(iii)(D) of this section (relating to effect of statute of limitations), a regular exclusion election cannot be made (or is retroactively invalidated) if an invalidation event described in this subdivision (iii) occurs and is not disregarded by the District Director. An invalidation event shall be disregarded only if the District Director determines, in connection with the examination of a return that would be affected by the invalidation event, that (*1*) a principal purpose for the transaction that constitutes the invalidation event is avoidance of the regular exclusion election and (*2*) the principles underlying his subdivision (iii) would not be significantly compromised by disregarding the invalidation event. The invalidation event shall be given full effect pursuant to the provisions of this subdivision (iii) unless and until these determinations are made by the District Director.

(B) *Controlled foreign corporation directly acquired.* An invalidation event occurs if, during the consistency period, P (or any other member of the P group) directly acquires (other than by reason of a deemed purchase under section 338(a)(2)) any stock in (*1*) an excludible foreign target affiliate that was a controlled foreign corporation at any time during so much of that excludible foreign target affiliate's taxable year within which its acquisition date occurs (or would occur if a valid regular exclusion election were not made in the express election) as ends on that acquisition date or (*2*) a domestic target described in section 1248(e) that is subject to a section 338 election and that holds stock in an excludible foreign target affiliate described in (*1*) of this

subdivision (B). For purposes of determining whether the excludible foreign target affiliate is a controlled foreign corporation during the relevant period, the special rule of paragraph (g)(2)(iv) of this section applies. For purposes of determining whether P directly acquires any stock, the special deemed stock sale rule of paragraph (g)(2)(vi) of this section applies. See Examples (3), (5), and (8) in paragraph (c)(6) of this section.

(C) *Excludible foreign target affiliate holds stock in domestic corporation.* An invalidation event occurs if one or more excludible foreign target affiliates hold stock in a domestic corporation and that domestic corporation would be subject to a section 338 election only if the regular exclusion election did not apply. See Examples (9) through (13) in paragraph (c)(6) of this section.

(D) *Exception when statute of limitations has expired.* If a regular exclusion election is retroactively invalidated by reason of a subsequent invalidation event, and if, as of the day of the invalidation event, the period within which to make an assessment of tax has expired for any return (of any person) that would be affected by treating a particular excludible foreign target affiliate as not subject to the previously made regular exclusion election ("barred target"), then, notwithstanding the invalidation event, the barred target will continue to be treated as subject to a regular exclusion election. Because of the invalidation event, however, excludible foreign target affiliates (other than barred targets) will not be treated as subject to a regular exclusion election. For purposes of this subdivision (D), a return would be affected by treating an excludible foreign target affiliate as not subject to a previously made regular exclusion election if such treatment would have the effect, directly or indirectly, of increasing the tax liability reported in that return.

(iv) *Special rule if original target is a foreign corporation*—(A) *General rule.* This subdivision (iv) applies if the original target is a foreign corporation other than a transitional excludible original target within the meaning of paragraph (j)(3)(ii) of this section, *i.e.*, other than an original target with an acquisition date that occurs on or before March 15, 1986 (or after March 15, 1986, but pursuant to a binding contract in effect on February 19, 1986. If, subsequent to its qualified stock purchase of the stock of such a foreign original target, P (or another member of the P group) makes a qualified stock purchase of the stock of a qualifying domestic target affiliate, then an express election may be made for the qualifying domestic target affiliate as if it were the original target, provided that a regular exclusion election is made in that express election. If the express election and regular exclusion election are made, then the foreign original target and all other foreign corporations that would have been subject to a deemed election under section 338(f)(1) by reason of an express election for that foreign original target will be treated as excludible foreign target affiliates subject to a regular exclusion election. Caution should be exercised when applying this subdivision (iv), since a subsequently acquired domestic target affiliate will not be considered a qualifying domestic target affiliate under paragraph (c)(2)(iv)(C) of this section if, under the hypothetical circumstances described therein, an invalidation event occurs before an express election for that domestic target affiliate (as a deemed original target) is filed. In such a case, the express election may be made only for the foreign original target. If the time to make that express election has expired, then, by reason of section 338(f)(2), the subsequently acquired domestic target affiliate cannot be made subject to section 338. If, by contrast, the invalidation event occurs *after* the express election is filed for the subsequently acquired domestic target affiliate, then that express election will be valid but the otherwise excluded foreign targets also will be subject to that express election. See paragraph (c)(2)(iv)(E) of this section. See also examples (7), (8), and (13) in paragraph (c)(6) of this section. For a similar rule applicable to a trasitional excludible original target, see paragraph (j)(3) of this section. For rules governing cases in which the provisions of this subdivision (iv) and paragraph (j)(3) of this section overlap, see paragraph (j)(5)(v) of this section.

(B) *Foreign target as original target.* Pursuant to the definition in § 1.338–4T(b)(4), a foreign target is an original target if there exists no previously acquired target as to which a section 338 election would cause a deemed election under section 338(f)(1) for the foreign target. For purposes of applying this definition, the section 338 election referred to therein should be considered one with respect to which a regular exclusion election is not made.

(C) *Qualifying domestic target affiliate.* A domestic target is a "qualifying domestic target affiliate" if four conditions are satisfied. The first condition is that the domestic target must be a corporation that would have been subject to a deemed election under section 338(f)(1) had an express election been made for the foreign original target. The second condition is that the qualified stock purchase of the domestic target's stock must not occur by reason of a deemed purchase under section 338(a)(2). The third condition is that a regular exclusion election could have been made in an express election filed for that domesic target had it been the original target, had the foreign original target been a target affiliate of that domestic target, and had the acquisition date of the foreign original target occurred during the consistency period of that domestic target. For purposes of the third condition, an invalidation event occurring after the express election is filed is disregarded. The fourth condition is that there must be no other domestic target that satisfies the first three conditions and that has an earlier acquisition date. If two or more domestic corporations with the same acquisition date satisfy the first three conditions, then P may select any one of them to be the qualifying domestic target affiliate. The selection is made by filing an express election that names one such domestic corporation as the original target. See Examples (7), (8), and (13) in paragraph (c)(6) of this section.

(D) *Special rule inapplicable if express election for original foreign target filed.* An express election for a qualifying domestic target affiliate cannot be made if an express election already has been made for the original foreign target.

(E) *Effect of invalidation event.* If an invalidation event occurs after the express election and regular exclusion election are filed, then, subject to the barred target rule of paragraph (c)(2)(iii)(D) of this section, the original foreign target will be treated as subject to a deemed election under section 338(f)(1) by reason of the express election and no corporation will be excluded from the status of a target affiliate pursuant to the previously filed regular exclusion election.

(F) *Coordination with protective carryover election.* If P wishes to make a protective carryover election under § 1.338–4T(f)(6) in lieu of an express election and if an express election could have been made for a target other than the actual original target pursuant to this subdivision (iv) or paragraph (j)(3) of this section, then the protective carryover election need not be filed before the close of the period within which an express election could have been made for a target other than the original target. For all purposes of the

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protective carryover election other than the time for filing that election, the actual original target is treated as the original target (e.g., for purposes of identifying the original target in the protective carryover election statement).

(v) *Procedure for making regular exclusion election*—(A) *General rule.* The regular exclusion election is made on the Form 8023 filed for DT in the manner shown on the form. If the revised Form 8023 showing the manner for making this election is not available, a statement ("regular exclusion statement") must be attached to the Form 8023. The regular exclusion election, once made, is treated as an integral part of the Form 8023, e.g., for purposes of § 1.338–1T(e)(2)(i) (requiring that the Form 8023 be attached to certain returns). The regular exclusion election is irrevocable.

(B) *Contents of regular exclusion statement.* The regular exclusion statement must be identified prominently as a regular exclusion election under § 1.338–5T(c)(2) and must contain the following declaration (or a substantially similar declaration): "THE REGULAR EXCLUSION ELECTION IS HEREBY MADE FOR ALL EXCLUDIBLE FOREIGN TARGET AFFILIATES (AS DEFINED IN § 1.338–5T(c)(2)(ii) and (iv))." The regular exclusion statement must be signed (in the manner prescribed in § 1.338–1T(d)(1)(v)) by a person authorized to act on behalf of P.

(C) *Transitional rule.* If a regular exclusion election is not made in an express election filed on or before March 15, 1986, a regular exclusion election nonetheless may be made if, on or before March 15, 1986, a copy of the previously filed express election (generally Form 8023), with a copy of the regular exclusion statement attached, is filed with the Internal Revenue Service Center(s) with which the express election is required to be filed under § 1.338–1T (c) and (d).

(vi) *Annotation on required schedule.* For additional information that must be included on the schedule required by § 1.338–1T(e) if a regular exclusion election is made, see § 1.338–1T(e)(1)(i)(F).

(vii) *Procedure if regular exclusion election invalidated subsequent to filing*—(A) *Required schedule must be amended.* If, subsequent to the making of a regular exclusion election, that exclusion election is invalidated by reason of an invalidation event described in paragraph (c)(2)(iii) of this section, then the schedule required by § 1.338–1T(e) must be amended pursuant to § 1.338–1T (e)(1)(ii)(B) and (e)(2)(ii)(B). See Examples (3) and (11) in paragraph (c)(6) of this section.

(B) *Filing of amended returns.* If any returns of P group members (determined as of the day of the invalidation event) need to be amended as a result of an invalidation event, then the penalty prescribed in § 1.338–1T(e)(3)(i) (inapplicability of the waiver rule of § 1.338–1T(h)) applies unless appropriate amended returns (with a copy of the previously filed Form 8023 and the revised schedule attached) are filed on or before the 120th day after the date of the invalidation event.

(3) *Effect of regular exclusion election on basis in excludible foreign target affiliate stock*—(i) *General rule.* If a domestic target (*i.e.*, DT or a domestic affected target) is subject to section 1248(f)(1) on its deemed sale under section 338(a)(1) of stock in an excludible foreign target affiliate to which a regular exclusion election applies ("EFTA stock"), then the basis of that EFTA stock in the hands of that domestic target, as new domestic target, shall be the lesser of—

(A) The basis amount that, absent this subparagraph (3), is allocable to that EFTA stock under section 338(b) ("regular basis amount") or

(B) Old domestic target's basis in that EFTA stock immediately before its deemed sale of assets under section 338(a)(1), increased by the dividend (if any) included in old domestic target's gross income under section 1248(f)(1) as a result of its deemed sale of that EFTA stock ("special basis amount").

(ii) *Excess basis amount eliminated.* If new domestic target's basis in EFTA stock is determined under this subparagraph (3), then the excess (if any) of the regular basis amount over the special basis amount is eliminated. For purposes of allocating new domestic target's adjusted grossed-up basis among the other assets of new domestic target, however, such excess is treated as if it were an amount allocated to the EFTA stock.

(iii) *Subject to section 1248(f)(1).* A domestic target is considered "subject to section 1248(f)(1)" on its deemed sale of EFTA stock if all of the following three requirements are satisfied:

(A) That target recognizes a section 1248(f) dividend as a result of such deemed sale (or would have recognized such a dividend if the excludible foreign target affiliate had earnings and profits).

(B) The section 1248(f) dividend (if any) actually recognized by that target is less than the gain it is deemed to realize on such deemed sale.

(C) If earnings and profits hypothetically would arise had the regular exclusion election not been made (whether or not they would actually arise), they would increase the section 1248(f) dividend recognized by that target on its deemed sale of that EFTA stock.

(iv) *Special rules if foreign target treated as domestic.* This subdivision (iv) applies if three conditions are satisfied. The first condition is that a domestic target (*i.e.*, DT or a domestic affected target) must be subject to section 1248(f)(1) on its deemed sale under section 338(a)(1) of stock in a foreign target that is treated as a domestic target under paragraph (c)(5) of this section (an "FDT"). (A domestic corporation described in section 1248(e) is considered an FDT for purposes of this subdivision (iv).) For purposes of applying the definition of paragraph (c)(3)(iii) of this section, stock in an FDT is considered EFTA stock. The second condition is that such FDT ("FDT1") must, at the close if its aquisition date, directly or indirectly (through one or more other FDTs ("intermediate FDTs")) hold EFTA stock. The third condition is that, if deemed sale earnings and profits of the excludible foreign target affiliate hypothetically would arise had the regular exclusion election not been made, they would increase the section 1248(f) dividend recognized by the domestic target on its deemed sale of FDT1 stock. If the three conditions are satisfied, then the following consequences apply:

(A) The basis of the domestic target, as new domestic target, in FDT1 stock shall be determined under paragraph (c)(3)(i) of this section as if FDT1 were an excludible foreign target affiliate.

(B) The basis of FDT1, as new FDT1, in directly held EFTA stock shall be the lesser of the following two amounts: The first amount is the regular basis amount (within the meaning of paragraph (c)(3)(i)(A) of this section). The second amount is the basis of old FDT1 in the EFTA stock, increased by an amount equal to the excess of the section 1248(f) dividend (if any) actually recognized by the domestic target on its deemed sale of FDT1 stock over the amount that dividend would have been had (*1*) FDT1 not held the stock of EFTA and (*2*) the gain realized on the deemed sale of the FDT1 stock were not effected by (*1*) of this subdivision (B).

(C) The basis of FDT1 in the stock of an intermediate FDT, and the basis of each intermediate FDT in the stock of another intermediate FDT or in EFTA stock, shall be determined in the same manner as under paragraph (c)(3)(iv)(B) of this section.

(v) *Cross-reference.* For nonapplication of this subparagraph (3) during a transitional period, see paragraph (j)(5)(iii) of this section. For examples of this subparagraph (3), see Examples (15) through (18) in paragraph (c)(6) of this section.

(4) *Special asset consistency rule if regular exclusion election made*—(i) *General rule.* A P group member must take a carryover basis in an asset acquired from an excludible foreign target affiliate or from a foreign target affiliate of a relevant target as if the asset acquisition were subject to an affirmative action carryover election if (A) a regular exclusion election is made and (B) in the absence of an express election, the asset acquisition would be considered a tainted asset acquisition (as defined in § 1.338–4T(f)(6)(ii)) with respect to any relevant target. See Examples (19) through (21) in paragraph (c)(6) of this section. For guidance on the affirmative action carryover election, see § 1.338–4T(f)(6). For a limitation on the rule of this subparagraph (4) in the transitional context, see paragraph (j)(5)(iv) of this section. Except as provided in this subparagraph (4) or in paragraph (j)(6)(iii) of this section (relating to a transitional rule), no asset acquisition shall be treated as a tainted asset acquisition if an express election is made.

(ii) *Deemed election not imposed.* In no event shall the District Director impose a deemed election under section 338(e)(1) for any excludible foreign target affiliate as a result of an asset acquisition described in this subparagraph (4).

(iii) *Relevant target.* A "relevant target" is the actual original target (and not a target deemed to be the original target in the express election actually filed) or any other corporation that, absent section 338(h)(6)(B), would be subject to a deemed election under section 338(f)(1) by reason of an express election for that original target.

(5) *Certain foreign corporations treated as domestic corporations*—(i) *General rule.* A foreign original target is treated as a domestic corporation for purposes of this paragraph (c) if 50 percent or more of its gross income from all sources for the 3-year period ending with the close of its taxable year that precedes its event year (or for so much of that 3-year period as that foreign corporation has been in existence) is effectively connected with the conduct by that corporation of a trade or business in the United States. This 50 percent gross income test also applies to a foreign corporation that otherwise would be an excludible foreign target affiliate (including by reason of the treatment of a foreign original target as a domestic original target pursuant to the preceding sentence). The 50 percent test of this subdivision (i) shall be applied in the same manner as the 50 percent test of section 861(a)(2)(B) (relating to source of certain dividends) except that the Commissioner may exclude any transactions of a foreign corporation during the last year of this 3-year period from gross income for purposes of this 50 percent test if he determines (on the basis of all the facts and circumstances) that the transactions were entered into pursuant to a plan to treat or avoid treating a foreign corporation as a domestic corporation. See Examples (4), (6), and (9) through (13) in paragraph (c)(6) of this section.

(ii) *Event year.* The "event year" of a foreign corporation is the taxable year of that corporation in which its acquisition date occurs (or would occur, absent a regular exclusion election, in the event of an express election for the original target).

(iii) *Exception.* If, during the consistency period, P (or any other member of the P group) directly acquires (other than by reason of a deemed purchase under section 338(a)(2)) any stock in a foreign target (including a foreign corporation that would be a target only if a regular exclusion election were not made in the express election), then that foreign target will in no case be treated as a domestic corporation if (A) it was a controlled foreign corporation at any time during so much of the taxable year within which its acquisition date occurs (or would occur if a regular exclusion election were not made in the express election) as ends on that acquisition date and (B) it holds stock in a corporation that would be an excludible foreign target affiliate if the foreign corporation were treated as a domestic corporation. For purposes of determining whether the corporation is a controlled foreign corporation during the relevant period, the special rule of paragraph (g)(2)(iv) of this section applies. See Examples (4) through (6) and (18) in paragraph (c)(6) of this section.

(6) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples. In each example, assume unless otherwise expressly indicated that all of the corporations are calendar year corporations and that none of the foreign corporations are treated as domestic corporations under paragraph (c)(5) of this section. Assume also that DS (or FS) has held all of the stock of the corporations it sells to P since those corporations were organized. Finally, assume that none of the invalidation events described in the following examples are subsequently disregarded pursuant to paragraph (c)(2)(iii)(A) of this section.

Example (1). On July 31, 1986, P purchases from DS all of the stock of DT in a qualified stock purchase. DT holds all of the stock of FT1, FT1 holds all of the stock of FT2, and FT2 holds all of the stock of FT3. Because a section 338 election for DT would cause deemed elections under section 338(f)(1) for FT1, FT2, and FT3 in the absence of section 338(h)(6)(B), those foreign corporations are excludible foreign target affiliates under paragraph (c)(2)(ii) of this section. If P makes a regular exclusion election in an express election filed for DT, then that express election will not cause deemed elections under section 338(f)(1) for FT1, FT2, and FT3, since those corporations will not be considered target affiliates for purposes of the stock consistency rule of section 338(f)(1).

Example (2). Assume the same facts as in Example (1). Assume in addition that on August 31, 1986, P also purchases from DS all of the stock of DT4, a domestic corporation, in a qualified stock purchase. DT4 holds all of the stock of FT5. Because a section 338 election for DT would cause a deemed election under section 338(f)(1) for FT5 in the absence of section 338(h)(6)(B), FT5 is an excludible foreign target affiliate under paragraph (c)(2)(ii) of this section. If P makes a regular exclusion election in an express election filed for DT, then that express election will cause a deemed election under section 338(f)(1) for DT4 but not for FT1, FT2, FT3, and FT5. If a regular exclusion election is *not* made in the express election filed for DT, then that express election will cause deemed elections for FT1, FT2, FT3, and FT5, as well as for DT4.

Example (3). Assume the same facts as in Example (2), except that DT4 is FT4, a foreign corporation. Because a section 338 election for DT would cause a deemed election under section 338(f)(1) for FT4 in the absence of a regular exclusion election, FT4 is an excludible foreign target affiliate under paragraph (c)(2)(ii) of this section. Because DS is a domestic corporation, FT4 was a controlled foreign corporation during the period beginning on January 1, 1986, and ending on August 31, 1986. Accordingly, that acquisition is an invalidation event and a valid regular exclusion election cannot be made in an express election filed for DT. See paragraph (c)(2)(iii)(B) of this section. (If a Form 8023 purporting to make a regular exclusion election already has been filed, then that regular exclusion election is retroactively invalidated by the qualified stock purchase of FT4 and the procedures described in paragraph (c)(2)(vii) of this section apply.)

Example (4). (i) Assume the same facts as in Example (3), except that FT4 satisfies the 50 percent gross income test of paragraph (c)(5)(i) of this section for the 3-year period preceding 1986. None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) FT4 is not treated as a domestic corporation even though the 50 percent gross income test is satisfied, however, since the exception of paragraph (c)(5)(iii) of this section applies, *i.e.*, FT4 was directly acquired by P (other than by reason of a deemed purchase under section 338(a)(2)).

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FT4 was a controlled foreign corporation during the period beginning on January 1, 1986, and ending on August 31, 1986, and FT4 holds the stock of a corporation, FT5, that would be an excludible foreign target affiliate if FT4 were treated as a domestic corporation. Accordingly, the result is the same as in Example (3).

Example (5). Assume the same facts as in Example (3), except that DS is FS. FS is not a controlled foreign corporation. Under these facts, FT4 is not a controlled foreign corporation at any time during the period beginning on January 1, 1986, and ending on August 31, 1986. Because the acquisition of FT4 therefore is not described in paragraph (c)(2)(iii)(B) of this section, P may make a regular exclusion election in an express election filed for DT, and that regular exclusion election will apply to FT1, FT2, FT3, FT4, and FT5.

Example (6). (i) Assume the same facts as in Example (1), except that DT is FT. FT satisfies the 50 percent gross income test of paragraph (c)(5)(i) of this section for the 3-year period preceding 1986. None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) A regular exclusion election cannot be made in an express election filed for FT, since FT is not a domestic original target. See paragraph (c)(2)(i) of this section. FT cannot satisfy the requirements for domestic corporation status under paragraph (c)(5) of this section, since the exception of paragraph (c)(5)(iii) of this section applies, *i.e.*, FT was directly acquired by P (other than by reason of a deemed purchase under section 338(a)(2)), FT was a controlled foreign corporation during the period beginning on January 1, 1986, and ending on July 31, 1986, and FT holds the stock of a corporation, FT1, that would be an excludible foreign target affiliate if FT were treated as a domestic corporation. Because a regular exclusion election cannot be made in an express election for FT, such an express election will cause deemed elections under section 338(f)(1) for FT1, FT2, and FT3.

Example (7). (i) Assume the same facts as in Example (6). Assume in addition that on August 31, 1986, P also purchases the stock of DT4 from DS in a qualified stock purchase. DT4 holds all of the stock of FT5.

(ii) Because a regular exclusion election cannot be made in an express election for FT, such an express election will cause deemed elections under section 338(f)(1) for DT4 and FT5 as well as for FT1, FT2, and FT3.

(iii) An express election cannot be made for DT4 under paragraph (c)(2)(iv) of this section because DT4 is not a qualifying domestic target affiliate within the meaning of paragraph (c)(2)(iv)(C) of this section. DT4 is not a qualifying domestic target affiliate within the meaning of paragraph (c)(2)(iv)(C) of this section because a regular exclusion election could not have been made in an express election for DT4 had DT4 been the original target, had FT been a target affiliate of DT4, and had the acquisition date of FT occurred during the consistency period of DT4. (Under those hypothetical circumstances, P's direct acquisition of FT from DS is an invalidation event under paragraph (c)(2)(iii)(B) of this section, since FT is a controlled foreign corporation during the relevant period.)

Example (8). (i) Assume the same facts as in Example (6), except that DS is FS. FS is not a controlled foreign corporation. Assume in addition that on August 31, 1986, P also purchases the stock of DT4 from FS in a qualified stock purchase. DT4 holds all of the stock of FT5.

(ii) FT is an original foreign target within the meaning of paragraph (c)(2)(iv)(B) of this section. In addition, DT4 is a qualifying domestic target affiliate within the meaning of paragraph (c)(2)(iv)(C) of the section. DT4 is a qualifying domestic target affiliate because it would be subject to a deemed election under section 338(f)(1) if an express election were made for FT and because a regular exclusion election could have been made in an express election for DT4 had DT4 been the original target, had FT been a target affiliate of DT4, and had the acquisition date of FT occurred during the consistency period of DT4. (Under those hypothetical circumstances, P's direct acquisition of FT is not an invalidation event under paragraph (c)(2)(iii)(B) of this section, since FT is not a controlled foreign corporation during the relevant period.) Accordingly, the special rule of paragraph (c)(2)(iv) of this section applies and an express election may be made for DT4 rather than for FT, provided that a regular exclusion election is made in that express election. If such an express election is made, FT, FT1, FT2, FT3, and FT5 will be treated as excludible target affiliates subject to that regular exclusion election.

Example (9). (i) Assume the same facts as in Example (1), except that FT2 satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 and therefore is treated as a domestic corporation for purposes of this paragraph (c). (1986 is the taxable year of FT 2 in which its acquisition date would occur, absent a regular exclusion election, in the event of an express election for DT. See paragraph (c)(5)(ii) of this section.) (The exception of paragraph (c)(5)(iii) of this section is inapplicable because P did not directly acquire any of the stock of FT2.) None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) A valid regular exclusion election cannot be made in an express election filed for DT, since an excludible foreign target affiliate, FT1, holds stock in a "domestic" corporation, FT2, that would be subject to a section 338 election only if the regular exclusion election did not apply. See paragraph (c)(2)(iii)(C) of this section.

Example (10). (i) Assume the same facts as in Example (1), except that both FT1 and FT2 satisfy the 50 percent gross income test of paragraph (c)(5) of this section and therefore are treated as domestic corporations for purposes of this paragraph (c). None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) A regular exclusion election (applicable to FT3 only) may be made in the express election filed for DT, since both FT1 and FT2 are considered domestic corporations under paragraph (c)(5) of this section (and therefore are no excludible foreign target affiliates). Accordingly, there exists no excludible foreign target affiliate that holds stock in a domestic corporation.

Example (11). (i) Assume the same facts as in Example (2), except that FT5 holds all of the stock of FT6 and that FT6 satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 (and therefore is treated as a domestic corporation for purposes of this paragraph (c)). None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) Since an excludible foreign target affiliate, FT5, holds stock in a "domestic" corporation, FT6, that would be subject to a section 338 election only if the regular exclusion election did not apply, the acquisition of DT4 is an invalidation event and a valid regular exclusion election cannot be made in the express election filed for DT4. See paragraph (c)(2)(iii)(C) of this section. (If a Form 8023 purporting to make a regular exclusion election already has been filed, then that regular exclusion election is retroactively invalidated by the acquisition of DT4 and the procedures described in paragraph (c)(2)(vii) of this section apply.)

Example (12). Assume the same facts as in Example (9), except that FT1 holds only 10 percent of FT2's only class of outstanding stock while a wholly-owned domestic subsidiary of DT holds the remaining 90 percent. A regular exclusion election (applicable to FT1 and FT3) may be made in the section 338 election filed for DT, since FT2, a "domestic" corporation, will be subject to a section 338 election even though the regular exclusion election is made. See paragraph (c)(2)(iii)(C) of this section.

Example (13). (i) Assume the same facts as in Example (8), except that FT2 satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 and therefore is treated as a domestic corporation for purposes of this paragraph (c). None of the other foreign corporations satisfy the 50 percent gross income test.

(ii) An express election cannot be made for DT4 under the special rule of paragraph (c)(2)(iv) of this section, since a regular exclusion election could not have been made in an express election for DT4 had DT4 been the original target, had FT been a target affiliate of DT4, and had the acquisition date of FT occurred during the consistency period of DT4. Although P's direct acquisition of FT is not an invalidation event under those hypothetical circumstances, since FT is not a controlled foreign corporation for the relevant period, an invalidation event nonetheless occurs because FT1, an excludible foreign target affiliate, holds stock in a "domestic" corporation, FT2. See paragraph (c)(2)(iii)(C) of this section.

(iii) Because the invalidation event occurs before an express election for DT4 could be filed, DT4 is not a qualifying domestic target affiliate within the meaning of paragraph (c)(2)(iv)(C) of this section. Accordingly, the express election can be made only for FT, and a regular exclusion election cannot be made in that express election.

Example (14). Assume that P makes a regular exclusion election under the facts described in Example (2). Notwithstanding

that, by reason of section 338(h)(3)(B), new DT and new DT4 are considered to have made qualified stock purchases of FT1 and FT5, respectively, a separate section 338 election cannot be made for either or both of those corporations. See paragraph (c)(2)(i) of this section.

Example (15). (i) Assume that P makes a regular exclusion election under the facts described in Example (1). Assume in addition that old DT4s basis in FT1 stock immediately before old DT's deemed sale of assets is $20,000, that old DT realizes gain of $80,000 on the deemed sale of FT1 stock (at a deemed sale price of $100,000), and that old DTD must include $55,000 in gross income as a dividend under section 1248(f)(1) as a result of that deemed sale. (That $55,000 does not include a $10,000 dividend under section 78.) Finally, assume that new DT's basis in FT1 absent this paragraph (c) would be $100,000.

(ii) The special stock basis rule of paragraph (c)(3)(i) of this section applies. Old DT is subject to section 1248(f)(1) (within the meaning of paragraph (c)(3)(iii) of this section) on its deemed sale of FT1 stock because (A) DT recognizes a section 1248(f) dividend on that deemed sale, (B) that dividend is less than the gain realized by DT in that deemed sale, and (C) earnings and profits that would have arisen had the regular exclusion election not been made would have increased the section 1248(f) dividend recognized by old DT. (Any earnings and profits that would have accured to FT1, FT2, or FT3 had section 338 applied to those foreign corporations would have increased old DT's section 1248 (f) dividend since each of those corporations is a controlled foreign corporation for the taxable year within which such earnings and profits would have been triggered. See paragraph (g) of this section.)

(iii) New DT's basis in FT1 stock is $75,000, the lesser of the regular basis amount of $100,000 or the special basis amount of $75,000, *i.e.*, $20,000+$55,000. See paragraph (c)(3)(i) of this sectdion. The $25,000 excess of the regular basis amount over the special basis amount is eliminated for income tax purposes except that, in allocating basis among the other assets of new DT, that $25,000 excess is treated as if it were an amount allocated to the FT1 stock. See paragraph (c)(3)(ii) of this section.

Example (16). (i) Assume the same facts as in Example (15), except that FT1 satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 and therefore is treated as a domestic corporation for purposes of this paragraph (c). None of the other foreign corporations satisfy the 50 percent gross income test. Thus, DT and FT1 are subject to elections under section 338 while FT2 and FT3 are excludible foreign target affiliates subject to the regular exclusion election. Assume further the following: Old DT's section 1248(f)(1) dividend increases from $55,000 to $60,000 as a result of the deemed sale earnings and profits triggered by FT1's deemed sale of assets. Old FT1's basis in FT2 stock is $10,000. Absent paragraph (c)(3) of this section, new FT1's basis in FT2 stock would be $90,000. The earnings and profits of FT2 and FT3 that are attributable to the FT1 stock under section 1248(c)(2) are $15,000 and $20,000, respectively.

(ii) Under these circumstances, the special basis rule of paragraph (c)(3)(iv) of this section applies. Accordingly, DT's basis in FT1 stock is determined under paragraph (c)(3) (i) and (iv)(A) of this section even though FT1 is not an excludible foreign target affiliate. Thus, new DT's basis in FT1 is $80,000 (*i.e.*, $20,000+$60,000), an amount less than the regular basis amount of $100,000. In addition, new FT1's basis in FT2 stock is the lesser of (A) the regular basis amount of $90,000 or (B) old FT1's $10,000 basis in the FT2 stock, increased by $35,000, *i.e.*, the excess of the section 1248(f) dividend actually recognized by DT, $60,000, over the amount that dividend would have been had FT1 not held the FT2 stock, $25,000 (*i.e.*, $60,000—($15,000+$20,000)). (Had FT1 not held the FT2 stock, the earnings and profits of both FT2 and FT3 would have been disregarded for purposes of calculating the amount of DT's section 1248 (f) dividend.)

Example (17). (i) Assume the same facts as in Example (16), except that FT2 also satisfies the 50 percent gross income test of paragraph (c)(5) of this section for the 3-year period preceding 1986 and therefore is treated as a domestic corporation for purposes of this paragraph (c). FT3 does not satisfy the 50 percent gross income test. Thus, DT, FT1, and FT2 are subject to elections under section 338 while FT3 is an excludible foreign target affiliate subject to the regular exclusion election. Assume further that, as a result of FT2's deemed sale of assets, its earnings and profits that are attributable to the FT1 stock under section 1248(c)(2) increase by $2,000, *i.e.*, from $15,000 to $17,000. (FT3's attributable earnings and profits are the same as in Example (16).) Thus, old DT's section 1248(f)(1) dividend increases from $60,000 to $62,000. Finally, assume that old FT2's basis in FT3 stock is $5,000, and that, absent paragraph (c)(3) of this section, new FT2's basis in FT3 stock would be $30,000.

(ii) New DT's basis in FT1 stock is determined in the same manner as in Example (16). Thus, new DT basis in FT1's is $82,000 (*i.e.*, $20,000+$62,000), an amount less than the regular basis amount of $100,000.

(iii) New FT1's basis in FT2 stock is the lesser of (A) the regular basis amount of $90,000 or (B) old FT1's $10,000 basis in the FT2 stock, increased $37,000, *i.e.*, the excess of the section 1248(f) dividend actually recognized by DT, $62,000, over the amount that dividend would have been had FT1 not held the FT2 stock, $25,000 (*i.e.* $62,000—($17,000+$20,000)).

(iv) New FT2's basis in FT3 stock is the lesser of (A) the regular basis amount of $30,000 or (B) old FT2's $5,000 basis in the FT3 stock, increased by $20,000, *i.e.*, the excess of the section 1248(f) dividend actually recognized by DT ($62,000) over the amount that dividend would have been FT2 not held the FT3 stock, $42,000 *i.e.*, $62,000–$20,000).

Example (18). (i) Assume the same facts as in Example (16), except that DT holds only 80 of the 100 outstanding shares of FT1's only class of stock and that on July 31, 1986, P purchases the remaining 20 shares of FT1 stock from DS.

(ii) FT1 cannot be treated as a domestic corporation since the exception of paragraph (c)(5)(iii) of this section applies, *i.e.*, 20 shares of FT1 stock were directly acquired by P (other than by reason of a deemed purchase under section 338(a)(2)), FT1 was a controlled foreign corporation for the relevant period, and FT1 holds the stock of a corporation, FT2, that would be an excludible foreign target affiliate if FT1 were treated as a domestic corporation. Thus, FT1 also is an excludible foreign target affiliate and P's direct acquisition of its stock is an invalidation event under paragraph (c)(2)(iii)(B) of this section. Accordingly, a valid regular exclusion election cannot be made in an express election for DT, and such an express election will cause deemed elections for FT1, FT2, and FT3.

Example (19). Assume that P makes a regular exclusion election under the facts described in Example (2). Assume in addition that on September 10, 1986, P purchases an asset from FT1 in an acquisition that, absent an express election for DT, would be considered a tainted asset acquisition (as defined in § 1.338–4T(f)(6)(i)). Under paragraph (c)(4) of this section, P is required to take a carryover basis in the acquired asset as if the acquisition were subject to an affirmative action carryover election. The result is the same if the asset is acquired by DT, FT2, FT3, DT4, of FT5.

Example (20). Assume the same facts as in Example (19), except that DS is FS, a foreign corporation, and that P purchases the asset from FS. The result is the same as in Example (19).

Example (21). Assume the same facts as in Example (19), except that P purchases the asset from DT. Because paragraph (c)(4) of this section does not apply to asset acquisitions from targets that are subject to the express election, P's basis in the asset is determined under section 1012. The result is the same if P acquires the asset from DT4.

(d) *Special rules applicable to offset prohibition election*—(1) *Offset prohibition election inapplicable to certain transfers*—(i) *General rule.* The consequences of an offset prohibition election under § 1.338–4T(f)(6)(iv) do not apply to a tainted asset acquisition if—

(A) The transferor is a foreign corporation, a corporation described in section 934(b), or a corporation to which an election under section 936 applies or

(B) The transfer is a transaction to which the pricing rules of section 994 (relating to DISC) or section 925 (relating to FSC) apply.

(ii) *Exception for certain foreign transferors.* Paragraph (d)(1)(i) of this section does not apply to an asset transfer by a foreign corporation if the gain recognized by that foreign corporation on the transfer is effectively connected with the conduct by that corporation of a trade or business within the United States.

(2) *Limit on crediting foreign tax against U.S. tax on offset prohibition gain*—(i) *Definitions*—(A) *Offset prohibition gain.* "Offset prohibition

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gain" is INA gain (or a remaining ICA gain amount) that is subject to an offset prohibition election under §1.338–4T(f)(6)(iv).

(B) *Offset prohibition foreign taxes.* "Offset prohibition foreign taxes" are foreign income taxes paid or accrued with respect to offset prohibition gain, as determined under the principles of § 1.904–4(d)(2).

(C) *Otherwise applicable section 904 limitation.* The "otherwise applicable section 904 limitation" is the limitation described in section 904(d)(1) or 907 (b) (prior to amendment by section 211(c)(1) of TEFRA) that would have applied to the offset prohibition gain but for this subparagraph (2).

(ii) *One-way special foreign tax credit limitation for offset prohibition foreign taxes.* A special foreign tax credit limitation applies to offset prohibition gain ("special limitation") in lieu of the otherwise applicable section 904 limitation. The special limitation is the limitation in section 904(a), computed by taking into account as foreign source income only offset prohibition gain from sources without the United States.

(iii) *Excess special limitation disregarded for purposes of section 904(c).* For purposes of carryback or carryover of excess foreign taxes under section 904(c) to the taxable year in which there is offset prohibition gain, any excess special limitation for that taxable year is disregarded. "Excess special limitation" is the special limitation for a taxable year in excess of offset prohibition foreign taxes paid or accrued in that year.

(iv) *Special rule for creditability of offset prohibition foreign taxes in excess of special limitation.* Offset prohibition foreign taxes in excess of the special limitation for the taxable year in which those taxes are paid or accrued nonetheless are creditable in that year if the otherwise applicable section 904 limitation (determined without regard to offset prohibition gain) exceeds the foreign taxes (not including offset prohibition foreign taxes) that are paid or accrued in that year and that are creditable under the otherwise applicable section 904 limitation in that year. Any remaining offset prohibition foreign taxes carry back or carry over to other taxable years as foreign taxes subject to the otherwise applicable section 904 limitation.

(v) *Coordination with restricted credit provisions of § 1.338–4T(f)(6)(iv).* *Answer 2* (ii)(B) and *Answer 3* (iv)(D) of § 1.338–4T(f)(6)(iv) each impose a special limitation on the amount of a restricted credit (as defined therein) allowable as a credit against the tax liability of a corporation (or of an affiliated group filing consolidated returns) for the taxable year in which that corporation (or group) recognizes offset prohibition gain. (The foreign tax credit is not defined as a restricted credit.) The tax liability taken into account for purposes of determining the amount of certain restricted credits (*e.g.*, the investment credit under section 46) is required by statute to be reduced by the foreign tax credit allowed for the year. See section 38(c)(2). Solely for purposes of that reduction, the portion of the foreign tax credit allowed for the year that is creditable under the special limitation of paragraph (d)(2)(ii) of this section is disregarded.

(3) *Examples.* The provisions of paragraph (d)(2) of this section may be illustrated by the following examples:

Example (1). (i) On December 31, 1984, P acquires all of the stock of DT in a qualified stock purchase and timely files a protective carryover election pursuant to § 1.338–4T(f)(6)(ii). P makes an offset prohibition election in the protective carryover election. P and DT file separate calendar year returns. On June 1, 1985, P purchases an asset from DT's foreign branch in a tainted asset acquisition subject to the offset prohibition election. See § 1.338–4T(f)(6)(iv) *Answer 2* (ii). For 1985, DT recognizes a foreign source offset prohibition gain of $40,000 as a result of the asset transfer and also recognizes $60,000 of other foreign source income. It is assumed for the sake of simplicity that T has no deductions allocable to foreign source income. Absent paragraph (d)(2) of this section, all $100,000 of DT's foreign source income would be subject to the section 904 limitation for income described in section 904(d)(1)(E). A foreign income tax of $20,000 is specifically allocable to the $40,000 offset prohibition gain, and a foreign income tax of $24,000 is specifically allocable to the remaining $60,000 of foreign source income. DT's total taxable income for 1985 from all sources is $200,000, all of which is ordinary income. The United States income tax (before the foreign tax credit) is $81,875. (This tax reflects an equal division of the taxable income bracket amounts between P and DT.) DT has no excess foreign taxes available as a carryover to 1985 under section 904(c).

(ii) DT makes the following foreign tax credit calculations for 1985:

	(A) Offset prohibition gain ($40,000)	(B) Other income ($60,000)
(1) Foreign tax	$20,000	$24,000
(2) Limitation on credit	[1] 16,375	[2] 24,563
(3) Preliminary amount of foreign tax creditable (lower of line (1) or line (2))	16,375	24,000
(4) Excess foreign tax (line (1)—line (2))	3,625	N/A
(5) Preliminary excess limitation (line (2)–line (1))	N/A	563
(6) Foreign tax in line (4) creditable in current year (lower of line (4) and line (5))	N/A	563
(7) Final creditable foreign tax: (i) By income class (line (3) + line (6))	16,375	24,563
(ii) Total: $40,936		
(8) Unused foreign tax available as carryover or carryback to other taxable years (line (4)—line (6))	N/A	3,062

[1] $81,875 × $40,000/$200,000.
[2] $81,875 × $60,000/$200,000.

The remaining offset prohibition foreign tax, $3,062, will carryback or carryover to other taxable years as a foreign tax allocable to income described in section 904(d)(1)(E). Had the offset prohibition foreign tax been less than the separate limitation for offset prohibition gain, the excess limitation would have been disregarded for purposes of carrying unused foreign taxes to 1985.

Example (2). (i) Assume the same facts as in Example (1), except that a foreign income tax of $15,375 is specifically allocable to the $40,000 offset prohibition gain and a foreign income tax of $25,563 is specifically allocable to the remaining $60,000 of foreign source income.

(ii) DT makes the following foreign tax credit calculations for 1985:

	(A) Offset prohibition gain ($40,000)	(B) Other income ($60,000)
(1) Foreign tax	$15,375	$25,563
(2) Limitation on credit (same as Example (1))	16,375	24,563
(3) Preliminary amount of foreign tax creditable (lower of line (1) or line (2))	15,375	24,563
(4) Excess foreign tax line (1)—line (2))	N/A	1,000
(5) Preliminary excess limitation (line (2)—line (1))	[1] N/A	N/A
(6) Foreign tax in line (4) creditable in current year (lower of line (4) and line (5))	N/A	N/A
(7) Final creditable foreign tax: (i) By income class (line (3) + line (6))	15,375	24,563
(ii) Total: $39,938		
(8) Unused foreign tax available as carryover or carryback to other taxable years (line (4)—line (6))	N/A	1,000

[1] Note that although the special limitation actually exceeds offset prohibition foreign taxes by $1,000, that excess special limitation is disregarded for all purposes.

Example (3). (i) Assume the same facts as in Example (1), except that foreign taxes paid in 1985 ($44,000) cannot be specifically allocated between the offset prohibition gain and other foreign source income.

(ii) Under the principles of § 1.904–4(d) (2) (ii), $17,600 of the total foreign income tax of $44,000 is allocated to offset prohibition gain (*i.e.*, $44,000 x $40,000/$100,000) and the remainder, $26,400, is allocated to the other foreign source income (*i.e.*, $44,000 x $60,000/$100,000). DT makes the following foreign tax credit calculations for 1985:

	(A) Offset prohibition gain ($40,000)	(B) Other income ($60,000)
(1) Foreign tax	$17,600	$26,400
(2) Limitation on credit (same as Example (1))	16,375	24,563
(3) Preliminary amount of foreign tax creditable (lower of line (1) or line (2))	16,375	24,563
(4) Excess foreign tax: (i) By income class (line (1)—line (2))	1,225	1,837
(ii) Total: $3,062		
(5) [1] Final creditable foreign tax— (i) By income class (line (3))	16,375	24,563
(ii) Total: $40,938		
(6) Unused foreign tax available as carryover or carryback to other taxable years (line (4)(ii))	N/A	3,062

[1] Note that lines (5) and (6) of the table used in Example (1) are eliminated here. Those lines are unnecessary because there is no excess limitation.

Example (4). (i) Assume the same facts as in Example (1). Assume in addition that for 1985 DT's current year investment credit earned (as calculated before application of the limitation based on amount of tax under section 38(c)) is $24,000. Assume also that DT's pre-credit tax liability would be $63,475 if the offset prohibition gain of $40,000 were disregarded.

(ii) DT's investment credit is a restricted credit. Accordingly, for purposes of determining the amount of that credit allowable as a credit against DT's tax in 1985, DT's pre-credit tax liability is calculated as if the offset prohibition gain were not income to DT. See § 1.338–4T(f)(6)(iv) *Answer 2*(ii)(B). Because the tax liability taken into account for purposes of determining the amount of the investment credit is required under section 38(c) to be reduced by the foreign tax credit, the special rule of paragraph (d)(2)(v) of this section applies. Accordingly, DT must make the following computations:

(1) Investment credit earned in 1985	$24,000
(2) Pre-credit U.S. tax liability (disregarding offset prohibition gain)	63,475
(3) Foreign tax credit as adjusted under paragraph (d)(2)(v) of this section	[2] 24,563
(4) Net tax liability under section 38(c)(2) line (2) minus line (3))	38,912
(5) Investment credit allowable as credit against tax for 1985 (lesser of line (1) or line (4)) [2]	24,000

[1] Note that the portion of the foreign tax credit allowed for the year that is creditable under the special limitation of paragraph (d)(2)(ii) of this section, $16,375 (line (7)(i), Col. (A) of table in Example (1)) is disregarded for purposes of the reduction required by section 38(c)(2).
[2] If the investment credit earned in 1985 exceeded $25,000, the maximum amount of that excess that would be allowable as an investment credit for 1985 would be $11,825, i.e., 85 percent of the net tax liability, in excess of $25,000. See section 38(c)(1)(B).

(e) *Certain transactions subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D)*—(1) *Basis step-up attributable to gain recognized under section 367.* The acquisition of property is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if, solely be reason of the transferor's recognition of gain under section 367(a), the transferee's basis in the transferred asset exceeds the transferor's basis in that asset immediately before the transfer.

(2) *Acquisition of foreign currency*—(i) *General rule.* The acquisition of foreign currency is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if the acquisition occurs in the ordinary course of the transferor's trade or business (as determined under principles similar to those in § 1.338–4T(f)(3)). Solely for purposes of this subparagraph (2), a transferor is considered to act in the ordinary course of its trade or business when it—

(A) Pays interest or principal on an obligation denominated in foreign currency,

(B) Makes a loan denominated in foreign currency, or

(C) Pays a dividend denominated in foreign currency.

(ii) *No inference regarding character of gain or loss.* No inference should be drawn regarding the character of exchange gain or loss realized on transactions described in this paragraph (e)(2).

(f) *Effect of section 338 on foreign target.* If, for its taxable year that includes its acquisition date and for any other relevant taxable year, a foreign target for which a section 338 election is made has no items of income for which it is taxable under chapter 1 of the Code (including an item of income resulting from the section 338 election), then, in general, the section 338 election results in potential United States tax consequences only for domestic shareholders of that foreign target. Thus, for example, the adjustment to the foreign target's earnings and profits that results from the section 338 election may affect the amount of a distribution that is treated as a dividend for the domestic shareholders. Similarly, if the foreign target is a controlled foreign corporation, section 338 may affect the amount included in the gross income of certain domestic shareholders under section 951 or 1248.

(g) *Operation of section 1248 if section 338 election made*—(1) *Scope.* This paragraph (g) applies section 1248 to the shareholders of a target that is a controlled foreign corporation and that is subject to a section 338 election ("CFCT"). The principles of this paragraph (g) also apply if a domestic corporation described in section 1248(e) is involved.

(2) *General rules*—(i) *Transfer of CFCT stock on or before acquisition date.* If a person transfers a block of CFCT stock on or before CFCT's acquisition date but during CFCT's 12-month acquisition period, then, for purposes of determining the amount (if any) treated as a dividend to the transferor under section 1248, old CFCT's earnings and profits attributable to the block is the enhanced earnings and profits amount as determined under paragraph (g) (3) or (4) of this section (as the case may be).

(ii) *Effect of gain recognition election.* If P makes a gain recognition election under § 1.338–4T(j)(2) of the nonrecently purchased CFCT stock, then paragraph (g)(2)(i) of this section shall apply to the gain recognized by P under section 338(b)(3)(A) as if the nonrecently purchased CFCT stock were actually sold at the close of CFCT's acquisition date.

(iii) *Carryover CFCT stock.* If on the close of CFCT's acquisition date a non-P group member holds CFCT stock (or if a P group member holds nonrecently purchased CFCT stock that is not subject to a gain recognition election under § 1.338–4T(j)(2)) ("carryover CFCT stock"), then, solely for purposes of that carryover CFCT stock, old CFCT's earnings and profits (adjusted to reflect deemed sale of assets under section 338) and the foreign taxes attributable to those earnings and profits shall carry over (in their annual layers) to new CFCT, subject to the special rules and limitations prescribed in paragraph (g)(6) of this section.

(iv) *Special rule for determining status as controlled foreign corporation.* If a foreign target ceases to be a controlled foreign corporation solely by reason of one or more purchases of its stock that constitutes a qualified stock purchase, then all of its stock that is included in that qualified stock purchase is deemed to have been acquired by the purchasing corporation on that foreign target's acquisition date for purposes of determining under this paragraph (g) the period during which that foreign target (and all of its section 1248(c)(2) subsidiaries) are controlled foreign corporations.

(v) *Section 1248(c)(2) subsidiary.* For purposes of this paragraph (g), a "section 1248(c)(2) subsidiary" with respect to a foreign target is any corporation whose earnings and profits may be deemed under section 1248(c)(2) to be included with the earnings and profits of that foreign target.

(vi) *Special deemed stock sale rule.* For all purposes of the Code, a transferor of stock in a controlled foreign corporation is deemed to sell the stock directly to P or a P group member on the transferee's acquisition date if

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(A) a member of the S group transfers the stock to a domestic member of the S group that becomes a target for which a section 338 election applies, (B) the transfer takes place on or before the transferee's acquisition date and during the consistency period of the original target or an affected target, and (C) the controlled foreign corporation becomes an affected target. The transferor shall not be deemed to sell stock under this subdivision (vi) if it is demonstrated that the transfer was not in anticipation of, or pursuant to a plan to make, a direct or indirect transfer of the transferee's stock to P or a P group member. Thus, for example, there will not be a deemed sale of the stock of a controlled foreign corporation to P or a P group member if, prior to the time the controlled foreign corporation becomes an affected target, section 351(a) applies to the transfer by an S group member of the stock of the controlled foreign corporation to a domestic member of the S group. The Internal Revenue Service may treat a transfer to a foreign member as subject to this subdivision (vi) if such treatment is appropriate to carry out the purposes of this subdivision (vi).

(3) *Enhanced earnings and profits amount if stock transferred on CFCT's acquisition date.* For a block of CFCT stock actually or deemed transferred on CFCT's acquisition date, the enhanced earnings and profit amount is the earnings and profits of CFCT (and any section 1248(c)(2) subsidiary) attributable to the block under the applicable section 1248 regulations. For purposes of this subparagraph (3), earnings and profits of CFCT (and of each section 1248(c)(2) subsidiary) shall be deemed to include the gains and other income amounts that each would have recognized in the deemed sale of assets under section 338(a)(1) had each been a domestic corporation.

(4) *Enhanced earnings and profits amount if stock transferred before CFCT's acquisition date*—(i) *General rule.* For a block of CFCT stock actually or deemed transferred beofore CFCT's acquisition date, the enhanced earnings and profits amount is the sum of the following amounts:

(A) Old CFCT's earnings and profits attributable to the block under the applicable section 1248 regulations, applied however by not including in CFCT's earnings and profits (accumulated for the taxable year of CFCT in which that stock transfer occurs) the recapture earnings and profits for that year, and

(B) CFCT's recapture earnings and profits for each affected taxable year of CFCT that would have been attributable to the block under the applicable section 1248 regulations had that block been transferred on CFCT's acquisition date.

(ii) *Affected taxable year of CFCT.* An affected taxable year of CFCT is the taxable year of CFCT in which the CFCT stock is transferred and each subsequent taxable year of CFCT up to and including its taxable year that includes CFCT's acquisition date.

(iii) *CFCT's recapture earnings and profits.* CFCT's recapture earnings and profits for an affected taxable year are an amount (not less than zero) equal to (A) CFCT's earnings and profits accumulated for that taxable year, minus (B) such earnings and profits as redetermined by disregarding recapture amounts for that taxable year. The recapture earnings and profits for a taxable year may not, however, exceed the earnings and profits of CFCT accumulated for that taxable year.

(iv) *Recapture amount.* A "recapture amount" for an affected taxable year is—

(A) The amount of gain realized as a result of an actual sale or exchange of an asset during that year, to the extent that such amount would have been recognized by CFCT in the deemed sale of assets under section 338(a)(1) had CFCT been a domestic corporation that held that asset on its acquisition date and had the deemed sale price of that asset been equal to the actual amount realized on the sale or exchange of that asset, and

(B) For the affected taxable year in which the deemed sale of assets under section 338(a)(1) occurs, the gains and other income amounts that would have been recognized by CFCT in the deemed sale of assets had CFCT been a domestic corporation.

(v) *Exception to enhancement rule of paragraph (g)(4)(i) for transitional period stock transfer.* Paragraph (g)(4)(i) of this section does not apply to a stock transfer occurring on or before *February 12, 1986* or after that date but pursuant to a contract of sale that is binding on both the acquiring P group member and the seller as of that date. Nevertheless, if such a transfer occurs during old CFCT's final taxable year, then the transferor's ratable share of old CFCT's earnings and profits accumulated for that year under the applicable section 1248 regulations will reflect the earnings and profits resulting from the deemed sale of assets under section 338(a)(1) (pro-rated on a daily basis for the period during which the transferor held the CFCT stock).

(iv) *Section 1248(c)(2) subsidiary with same taxable year as CFCT.* For a block of CFCT stock with respect to which there are one or more section 1248(c)(2) subsidiaries, all of which have the same taxable year as CFCT, the provisions of paragraph (g)(4)(i)–(iv) of this section shall apply in the following manner:

(A) *Recapture amounts for subsidiaries.* First, for each affected taxable year, (*1*) determine separately the recapture amounts of CFCT and of each section 1248(c)(2) subsidiary, (*2*) under the applicable section 1248 regulations attribute to the block the amount for CFCT, (*3*) under the principles of section 1248(c)(2) attribute to block the amounts for each such subsidiary, and (*4*) determine for the block the sum of the amount attributed from CFCT and the amounts attributed from the subsidiaries.

(B) *Earnings and profits of subsidiaries.* Second, the earnings and profits accumulated for each affected taxable year of CFCT and of each section 1248(c)(2) subsidiary shall be determined and, under the applicable principles, attributed for that year to the block.

(C) *Recapture earnings and profits for block.* Third, compute the recapture earnings and profits for each affected taxable year for the block as an amount (not less than zero) equal to (*1*) the sum of earnings and profits accumulated for that year of CFCT attributed to the block and of each section 1248(c)(2) subsidiary attributed under (B) of this subdivision (vi) to the block, minus (*2*) such sum as redetermined by disregarding recapture amounts for that year of CFCT and its section 1248(c)(2) subsidiaries. Recapture earnings and profits for a taxable year for the block may not, however, exceed the amount in (*1*) of this subdivision (C).

(D) *Application of general rule.* Fourth, apply the general rule in paragraph (g)(4)(i) of this section by using amounts attributed to the block under paragraph (g)(4)(vi) (B) and (C) of this section instead of the amounts determined solely for CFCT.

(vii) *Section 1248(c)(2) subsidiary with taxoble year different from CFCT's.* The principles of paragraph (g)(4)(vi) of this section shall apply if one or more section 1248(c)(2) subsidiaries have a different taxable year than CFCT.

(5) *Section 338(c)(1) inapplicable.* The enhanced earnings and profits amounts under paragraph (g) (3) and (4) of this section are determined without regard to section 338(c)(1) (relating to surrogate tax). For an exception applicable to certain carryover CFCT stock, see paragraph (g)(6)(iv) of this section.

(6) *Carryover of old CFCT earnings and profits for purposes of carryover CFCT stock*—(i) *General rule.* The earnings and profits (and attributable foreign taxes) attributable to old CFCT stock carry over to new CFCT stock under paragraph (g)(2)(iii) of this section solely for purposes of (A) characterizing an actual distribution with respect to a share of carryover CFCT stock as a dividend, (B) characterizing gain on a post-acquisition date transfer of a share of carryover CFCT stock as a dividend under section 1248, and (C) determining the foreign taxes deemed paid under section 902 with respect to the amount thereby treated as a dividend.

(ii) *Cap on carryover of earnings and profits.* The earnings and profits of old CFCT are taken into account with respect to a share of carryover CFCT stock only to the extent of the section 1248 amount for that share.

(iii) *Section 1248 amount for stock other than section 338(c)(1) stock.* The section 1248 amount for a share of carryover CFCT stock other than section 338(c)(1) stock is the amount (if any) of the gain that, under the enhanced earnings and profits provisions of paragraph (g)(3) of this section, would have been included in the shareholder's gross income as a dividend under section 1248 had the shareholder transferred that share to P on CFCT's acquisition date for a consideration equal to the fair market value of that share on that date (or, with respect to nonrecently purchased CFCT stock treated as carryover CFCT stock, had a gain recognition election under section 338(b)(3)(A) applied to that share).

(iv) *Section 1248 amount for section 338(c)(1) stock.* The section 1248 amount for a share of section 338(c)(1) stock is determined in the same manner as for other carryover CFCT stock, except that the earnings and profits attributable to a share of section 338(c)(1) stock for each taxable year of old CFCT under the principles of paragraph (g)(3) of this section (*i.e.*, without regard to section 338(c)(1)) are increased or decreased by the section 338(c)(1) amount for that share for that year.

(v) *Section 338(c)(1) stock.* For purposes of this paragraph (g)(6), "section 338(c)(1) stock" is carryover CFCT stock (other than nonrecently purchased CFCT stock) that is neither—

(A) Purchased by a P group member at any time during the one-year period beginning on CFCT's acquisition date nor

(B) Redeemed by CFCT in a transaction described in section 338 (h)(7)(B) during that 1-year period.

(vi) *Section 338(c)(1) amount.* The "section 338(c)(1) amount" for a share of section 338(c)(1) stock is a positive (or negative) amount equal to the net section 338(c)(1) gain or loss of old CFCT for its taxable year, divided by the total number of shares of section 338(c)(1) stock. For purposes of this subparagraph (6), the net section 338(c)(1) amount for a share takes into account the net section 338(c)(1) gain or loss for each section 1248(c)(2) subsidiary that is attributed under the principles of section 1248(c)(2) to the share. (If convenient, the section 338(c)(1) amount may be computed with respect to a block of stock.) Section 338(c)(1) gains or losses are gains or losses that, had CFCT (or the section 1248(c)(2) subsidiary) been a domestic corporation, would have been recognized by it under section 338(c)(1)—

(A) As a result of its deemed sale of assets under section 338(c)(1) or

(B) As a result of its actual sale of assets under the circumstances described in section 338(h)(12) and § 1.338–4T(k)(1) *Answer 3* (ii).

(vii) *Old CFCT earnings and profits unaffected by post-acquisition date deficits.* Notwithstanding that new CFCT incurs deficits in earnings and profits, a post-acquisition date distribution with respect to a share of carryover CFCT stock (or gain recognized in a post-acquisition date transfer of a share of carryover CFCT stock when that transfer is governed by section 1248) shall be treated as a dividend at least to the extent of the section 1248 amount for that share, reduced by prior post-acquisition date distributions with respect to that share out of the earnings and profits of old CFCT. Thus, for example, the first distribution by new CFCT with respect to a share of carryover CFCT stock is treated as a dividend by the distributee to the extent of the section 1248 amount for that share, notwithstanding that new CFCT's losses exceed old CFCT's earnings and profits at the close of the acquisition date. A distribution considered made out of old CFCT's earnings and profits pursuant to this subparagraph (6) has no effect on the earnings and profits of new CFCT.

(viii) *Character of CFCT stock as carryover CFCT stock eliminated upon disposition.* A share of CFCT stock is not considered carryover CFCT stock after it is disposed of in a transaction described in section 1248 (a)(1) or (f)(1)(B) by the person holding such stock on the close of CFCT's acquisition date, provided that all gain realized on the transfer is recognized at the time of the transfer, or that, if less than all of the realized gain is recognized, the recognized amount equals or exceeds the remaining section 1248 amount for that share.

(7) *Application of principles of this paragraph to section 1246.* The principles of this paragraph (g) also apply to shareholders of a foreign target that are subject to section 1246.

(8) *Examples.* The provisions of this paragraph (g) may be illustrated by the following examples:

Example (1). (i) CFCT is a calendar year foreign corporation. DA, a United States person, has owned 90 of the 100 shares of CFCT's only class of outstanding stock since CFCT was organized on March 13, 1977. P has held the remaining 10 shares of CFCT since CFCT was organized. (Those 10 shares constitute nonrecently purchased CFCT stock in P's hands within the meaning of section 338(b)(6)(B).) On November 1, 1986, P purchases all 90 shares of CFCT stock held by DA for $90,000 in cash and makes an express election for CFCT. Thus, for United States tax purposes, CFCT has a short taxable year ending at the close of November 1, 1986. Assume DA recognizes gain of $81,000 on the sale of the CFCT stock. All 90 shares of CFCT stock constitute a block of stock in DA's hands within the meaning of § 1.1248–2(b) and the conditions of § 1.1248–2(c) are satisfied with respect to that block of stock. CFCT has no earnings and profits accumulated (or deficit) for any taxable year prior to 1986. Assume that, if CFCT were a domestic corporation, it would recognize gain of $20,000 on November 1, 1986, by reason of its deemed sale of assets under section 338(a)(1). CFCT's earnings and profits accumulated for its short 1986 taxable year ending on November 1, 1986, without taking into account that $20,000 of gain, total $50,000. P also makes a gain recognition election for CFCT under section 338(b)(3)(A) and § 1.338–4T(j)(2).

(ii) DA's sale of CFCT stock to P on November 1, 1986, is a transfer to which section 1248 and paragraph (g) (2)(i) and (3) of this section apply. For purposes of applying section 1248(a) to DA, the earnings and profits accumulated by CFCT for its short taxable year ending on November 1, 1986, are $70,000, *i.e.*, the earnings and profits accumulated for that taxable year as determined under § 1.1248–2(b), taking into account the gain of $20,000 that CFCT would have recognized in the deemed sale of assets under section 338(a)(1) had CFCT been a domestic corporation ($50,000+$20,000). See paragraph (g)(3) of this section. Pursuant to § 1.1248–2(e), $63,000 of the $70,000 of earnings and profits accumulated for 1986 are attributable to the block of CFCT stock sold by DA on November 1, 1986 (*i.e.*, $70,000×90/100), since that block (A) was held for the entire taxable year ending on November 1, 1986, and (B) includes 90 of the 100 shares of outstanding CFCT stock. Accordingly, $63,000 of DA's gain of $81,000 on the sale of CFCT stock is included under section 1248(a) in DA's gross income as a dividend.

(iii) Assume that P recognizes a gain of $9,000 with respect to the 10 shares of nonrecently purchased CFCT stock by reason of the gain recognition election, which causes a hypothetical acquisition date sale of nonrecently purchased stock. Under paragraph (g) (2)(ii) and (3) of this section, that hypothetical sale is treated as a transfer

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of CFCT stock by a U.S. person to P on CFCT's acquisition date in a transfer to which section 1248 applies. Thus, under § 1.1248–2(e), $7,000 of the $70,000 of earnings and profits accumulated for 1986 are attributable to the block of 10 shares of CFCT stock hypothetically sold by P at the close of November 1, 1986 (*i.e.*, $70,000 × 10/100), since that block (A) was held for the entire taxable year ending on November 1, 1986, and (B) includes 10 of the 100 shares of outstanding CFCT stock. Accordingly, $7,000 of P's gain of $9,000 on the hypothetical sale of 10 shares of CFCT stock is included under section 1248(a) in P's gross income as a dividend.

Example (2). (i) Assume the same facts as in Example (1), except that P does not make a gain recognition election.

(ii) The nonrecently purchased CFCT stock held by P (*i.e.*, the 10 shares owned by P since CFCT was organized) is carryover CFCT stock (and not section 338(c)(1) stock). See paragraph (g)(2)(iii) of this section. Accordingly, the earnings and profits (and attributable foreign taxes) of old CFCT carry over to new CFCT solely for purposes of that block of 10 shares. However, the amount of old CFCT's earnings and profits taken into account with respect to that block in the event of a distribution by new CFCT with respect that block (or in the event of P's sale of that block in a transaction governed by section 1248) may not exceed the section 1248 amount for that block. The section 1248 amount for that block is the amount of the section 1248 dividend P would have recognized with respect to that block had it made a gain recognition election under section 338(b)(3)(A). Under the facts of Example (1)(iii), P would have recognized a gain of $9,000 with respect to that block, and $7,000 of that amount would have been a section 1248 dividend, *i.e.*, $70,000 × 10/100. Accordingly, the section 1248 amount for the block of 10 shares of nonrecently purchased CFCT stock is $7,000.

Example (3). (i) CFCT is a calendar year foreign corporation. DA, a United States person, has owned all 100 shares of CFCT's only class of outstanding stock since CFCT was organized on March 13, 1977. On August 7, 1986, P purchases 40 of the 100 shares of CFCT stock held by DA for cash. On May 26, 1987, P purchases the remaining 60 shares of CFCT stock from DA for cash and makes an express election for CFCT. Thus, for United States tax purposes, CFCT has a short taxable year ending on May 26, 1987. Assume that gain recognized by DA is $80,000 on the August 7, 1986, sale and $130,000 on the May 26, 1987, sale. The 40 shares and 60 shares of CFCT stock sold by DA constitute two blocks of stock in DA's hands within the meaning of § 1.1248–2(b). The conditions of § 1.1248–2(c) are satisfied with respect to each block. CFCT has no earnings and profits accumulated (or deficit) for any taxable year prior to 1986. In 1986, CFCT recognizes gain of $30,000 on the sale of used machinery. All of that gain would have been recognized by CFCT in the deemed sale of assets under section 338 as depreciation recapture under section 1245 had CFCT been a domestic corporation that held the machinery on the acquisition date. CFCT's earnings and profits accumulated for 1986 are $120,000 if that $30,000 gain is taken into account. (Accordingly, CFCT's earnings and profits accumulated for 1986, as determined without that $30,000, are $90,000.) If CFCT were a domestic corporation, it would recognize a gain of $20,000 on May 26, 1987, by reason of its deemed sale of assets under section 338(a)(1). CFCT's earnings and profits accumulated for its short 1987 taxable year ending on May 26, 1987, are $80,000 if that $20,000 gain is taken into account. (Accordingly, CFCT's earnings and profits accumulated for 1987, as determined without that $20,000, are $60,000.)

(ii) DA's sales of the blocks of CFCT stock to P are transfers to which section 1248 and paragraph (g)(2)(i), (3), and (4) of this section apply. Under paragraph (g)(4)(ii) of this section, CFCT's 1986 and 1987 taxable years are affected taxable years of CFCT for which CFCT's recapture earnings and profits must be determined. For 1986, CFCT has a recapture amount of $30,000, *i.e.*, the $30,000 of gain recognized by CFCT on the sale of machinery in 1986. See paragraph (g)(4)(iv)(A) of this section. Accordingly, under paragraph (g)(4)(iii) of this section, CFCT's recapture earnings and profits for 1986 are $30,000, *i.e.*, $120,000 – $90,000. For 1987, CFCT has a recapture amount of $20,000, *i.e.*, the $20,000 of gain hypothetically recognized by CFCT in its deemed sale of assets under section 338(a)(1)) and, accordingly, recapture earnings and profits of $20,000, *i.e.*, $80,000 – $60,000.

(iii) The enhanced earnings and profits of CFCT attributable to the block of 40 shares of CFTC stock sold on August 7, 1986, are determined under paragraph (g)(4) of this section and the applicable section 1248 regulations as follows:

Earnings and profits attributable to block for 1986 (determined without recapture earnings and profits), *i.e.*, $90,000 × 219/365 × 40/100	$21,600
Recapture earnings and profits attributable to block for 1986 *i.e.*, $30,000 × 40/100	12,000
Recapture earnings and profits attributable to block for 1987 under applicable section 1248 regulations, *i.e.*, $20,000 × 40/100	8,000
Total earnings and profits attributable to block	41,600

Accordingly, $41,600 of DA's $80,000 gain on the sale of the 40 shares of CFCT stock is included under section 1248(a) in DA's gross income as a dividend.

(iv) The enhanced earnings and profits of CFCT attributable to the block of 60 shares of CFCT stock sold on May 26, 1987, are determined as follows under paragraph (g)(3) of this section and the applicable section 1248 regulations:

Earnings and profits attributable to block for 1986, *i.e.*, $120,000 × 60/100	$72,000
Earnings and profits attributable to block for 1987, *i.e.*, $60,000 × 60/100	48,000
Total earnings and profits attributable to block	120,000

Accordingly, $120,000 of DA's $130,000 gain on the sale of 60 shares of CFCT stock on May 26, 1987, is included in DA's gross income as a dividend.

Example (4). (i) Assume the same facts as in Example (1), except that the 10 shares of CFCT stock not purchased by P from DA on November 1, 1986, are held by DB, a U.S. person, rather than by P. DB has held those shares, at an aggregate basis of $1,000 since CFCT was organized. New CFTC makes no actual distributions to DB. On December 15, 1987, P purchases those 10 shares of CFTC stock from DB for $12,000 in cash, and DB recognizes a gain of $11,000. Assume that the fair market value of those 10 shares on November 1, 1986, is $10,000. Assume in addition that, had CFCT been a domestic corporation, it would have recognized an additional $1,000 of gain in its deemed sale of assets under section 338(a)(1) on November 1, 1986, by reason of section 338(c)(1), for a total deemed sale gain of $21,000. Finally, assume that new CFCT incurs a $100,000 net operating loss for its short taxable year ending on December 31, 1986, and a $50,000 net operating loss for 1987.

(ii) The tax consequences to DA are the same as in example (1), since deemed sale gain under section 338(c)(1) is disregarded for purposes of determining the earnings and profits attributable to CFCT stock sold during the 12-month acquisition period ending on CFCT's acquisition date. See paragraph (g)(5) of this section.

(iii) The CFCT stock held by DB, a non-P group member, on the close of CFCT's acquisition date is carryover CFCT stock. See paragraph (g)(2)(iii) and (6) of this section. Accordingly, the earnings and profits (and foreign taxes attributable to such earnings and profits) carryover to new CFCT solely for purposes of the CFCT stock held by DB. (Under these facts, DB holds all of the carryover CFCT stock.) In addition, DB's sale of the CFCT stock to P on December 15, 1987, is a transfer to which section 1248 applies. DB's shares of CFCT stock constitute a block of stock in DB's hands within the meaning of § 1.1248–2(b) and the conditions of § 1.1248–2(c) are satisfied with respect to that block.

(iv) Because of the deficits incurred by new CFCT, DB's gain of $11,000 on the sale of its CFCT stock to P on December 15, 1987, is characterized as a section 1248 dividend only to the extent of the section 1248 amount. See paragraph (g)(6)(vii) of this section. Because the 10 shares held by DB constitute section 338(c)(1) stock (as defined in paragraph (g)(6)(v) of this section), the section 1248 amount is determined under paragraph (g)(6)(iv) of this section. Since each of the 10 shares has the same basis and holding period

in DB's hands, it is convenient to do the necessary calculations for the block of 10 shares rather than for each share.

(v) The first step in determining the section 1248 amount is to calculate the gain DB would have recognized had it sold its CFCT stock to P on CFCT's acquisition date for a consideration equal to the fair market value of the stock on that day ("hypothetical stock sale gain"). The fair market value of the 10 shares on that date is assumed to be $10,000. Thus, DB's hypothetical stock sale gain is $9,000, *i.e.*, $10,000–$1,000.

(vi) The second step in determining the section 1248 amount is to calculate the portion of the hypothetical stock sale gain that would have been a section 1248 dividend. This calculation also involves two steps. First, the earnings and profits attributable to the block for each relevant taxable year of old CFCT must be determined under paragraph (g)(3) of this section. The only relevant year under these facts is the short taxable year ending on November 1, 1986. The earnings and profits attributable to the block for that short year under such paragraph (g)(3) are $7,000, *i.e.*, $70,000 x 10/100. Note that the earnings and profits taken into account under such paragraph (g)(3) do not reflect the $1,000 gain under section 338(c)(1). The second step, in calculating the portion of the hypothetical stock sale gain that would have been a section 1248 dividend, is to increase (or decrease) that $7,000 by the section 338(c)(1) amount attributable to the block. Under these facts, there is a single section 338(c)(1) gain of $1,000. Because the block of stock at issue constitutes the entire amount of section 338(c)(1) stock, the entire $1,000 is the section 338(c)(1) amount attributable to the block. The portion of the hypothetical stock sale gain that would have been a section 1248 dividend therefore is $8,000, *i.e.*, the lesser of the attributable earnings and profits of $8,000 (i.e., $7,000 + $1,000) or the hypothetical stock sale gain of $9,000. Thus, the section 1248 amount for the block of stock sold by DB on December 15, 1987, is $8,000. Accordingly, $8,000 of DB's $11,000 gain on the actual December 15, 1987, stock sale is a section 1248 dividend.

(vii) If DB were a corporation it would be eligible for an indirect foreign tax credit on the section 1248 dividend it receives, since foreign taxes attributable to old CFCT's earnings and profits also carryover to new CFCT for purposes of the carryover CFCT stock. (Such deemed paid taxes would be treated as a dividend under section 78.)

Example (5). On December 31, 1986, P purchases from DS all of the stock of DT in a qualified stock purchase. For many years, DT has held as one block all of the stock of CFCT1 and CFCT1 has held all of the stock of CFCT2. All corporations use the calendar year as the taxable year and have no earnings and profits (or deficit) accumulated for any taxable year prior to 1986. P makes an express election for DT. A regular exclusion election under paragraph (c)(2) of this section is not made, so that CFCT1, and CFCT2 are subject to deemed elections under section 338(f)(1) as a result of the express election for DT. Pursuant to § 1.338–4T(c)(3), the acquisition date of DT and of each of its two subsidiaries is December 31, 1986. For purposes of calculating the amount of the section 1248(f) dividend recognized by DT as a result of its deemed sale of the block of CFCT1 stock, the enhanced earnings and profits attributable to the block are calculated under paragraph (g)(3) of this section in the table below, based upon the facts assumed:

	CFCT1 (A)	CFCT2 (B)
1. Earnings and profits accumulated for 1986 under § 1.1248–2 attributable to the block	$100	($80)
2. Deemed sale gain that would have been recognized if it were a domestic corporation	0	15
3. Sum of lines 1 and 2	100	(65)
4. Enhanced earnings and profits attributable to the block (sum of line 3 (A) and (B))	35	

Example (6). Assume the same facts as in *Example (5)* except that CFCT1 holds only 80 percent of the single class of outstanding stock of CFCT2. For purposes of calculating the amount of the section 1248 (f) dividend recognized by DT as a result of its deemed sale of the block of CFCT1 stock, the enhanced earnings and profits attributable to the block are calculated under paragraph (g)(3) of this section in the table below:

	CFCT1 (A)	CFCT2 (B)
1. Line 3 *Example (5)*	$100	($65)
2. Multiply line 1(B) by 80/100		(52)
3. Enhanced earnings and profits attributable to the block (sum of lines 1(A) and 2(B))	48	

(h) *Treatment of gain in deemed sale of assets as income effectively connected with the conduct of a trade or business within the United States and as from sources within the United States*—(1) *Foreign target.* If, during the measurement period, more than 50 percent of the gross income derived by old FT from an item of property is effectively connected with the conduct of a trade or business within the United States, then the gain that old FT would recognize with respect to that item of property in the deemed sale of assets under section 338(a)(1) if it were a domestic target is treated—

(i) As income that is effectively connected with the conduct of a trade or business within the United States and

(ii) As income from sources within the United States.

(2) *Domestic target.* If, during the measurement period, more than 50 percent of the gross income derived by old DT from an item of property is treated as income from sources within the United States, then the gain that old DT recognizes with respect to that item of property in the deemed sale of assets under section 338(a)(1) is treated as income from sources within the United States.

(3) *Measurement period.* The "measurement period" is the 3-year period ending with the close of the taxable year that precedes old target's final taxable year (or so much of that 3-year period as that target held the particular item of property).

(4) *No inference regarding transactions not described.* No inference should be drawn regarding either the source of or the United States tax with respect to gain arising in the deemed sale of property not described in paragraph (h) (1) or (2) of this section.

(i) [Reserved]

(j) *Transitional rules for corporations and stock described in section 338(h)(6)(B)*—(1) *Transitional elective exclusion from target affiliate status.* If P files an express election for any original target, then, solely for purposes of the stock consistency rule of section 338(f)(1), P also may elect (in the manner prescribed in paragraph (j)(8) of this section) to exclude some or all of the transitional target affiliates from the status of target affiliate ("transitional exclusion election"). If a transitional exclusion election is not made, then none of the transitional target affiliates may be excluded from the status of a target affiliate. A Section 336 election cannot be made for any transitional target affiliate that is subject to a transitional exclusion election.

(2) *Transitional target affiliate*—(i) *General rule.* A "transitional target affiliate" is any corporation described in section 338(h)(6)(B)(i) that is acquired on or before March 15, 1986, and that, absent section 338(h)(6)(B), would be subject to a deemed election under section 338(f)(1)(B) by reason of the express election for the original target. (Under the second condition of paragraph (c)(2)(ii) of this section, status as a transitional target affiliate precludes status as an excludible foreign target affiliate.)

(ii) *Acquired on or before March 15, 1986.* A corporation is considered acquired on or before March 15, 1986, if

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its acquisition date (or hypothetical acquisition date) occurs on or before March 15, 1986, or after that date but pursuant to a contract of sale that is binding on both the acquiring P group member and the seller as of February 19, 1986. A corporation that is not considered acquired on or before March 15, 1986, is considered acquired after that date.

(iii) *Hypothetical acquisition date of transitional target affiliate.* If the acquisition date of a transitional target affiliate actually would occur only if the transitional exclusion election were not made (*i.e.*, by reason of the operation of section 338(h)(3)(B) and (f)(1)), then that hypothetical acquisition date is treated as the acquisition date for the purposes of applying this subparagraph (2).

(3) *Special rules for certain original targets described in section 338(h)(6)(B)(i)*—(i) *General rule.* If the original target is a transitional excludible original target, then the following consequences apply:

(A) An express election may be made for the transitional excludible original target or for any qualifying target affiliate.

(B) Only the corporation for which the express election is made is deemed to be the original target.

(C) An express election for a qualifying target affiliate is valid only if a transitional exclusion election also is made for the following corporations (which are treated as transitional target affiliates under these circumstances): (*1*) the transitional excludible original target and (*2*) each qualifying target affiliate with an acquisition date occurring before the acquisition date of the qualifying target affiliate for which the express election is made.

(ii) *Transitional excludible original target.* A "transitional excludible original target" is a corporation described in section 338(h)(6)(B)(i) that is an original target acquired on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section). For purposes of applying § 1.338–4T(b)(4) (definition of original target) to this subdivision (ii), the section 338 election referred to therein is considered one with respect to which a transitional exclusion election is not made.

(iii) *Qualifying target affiliate*—(A) *General rule.* A corporation is a qualifying target affiliate if it is a potential qualifying target affiliate that is not an excepted target. A corporation is a potential qualifying target affiliate if (*1*) it is a target even in the absence of a section 338 election and (*2*) it would be subject to a deemed election under section 338(f)(1) if an express election (and no transitional exclusion election) were made for the transitional excludible original target.

(B) *Excepted target.* A potential qualifying target affiliate is an excepted target and thus is not a qualifying target affiliate if its acquisition date occurs after the acquisition date of a potential qualifying target affiliate that is not a transitional target affiliate. The determination of transitional target affiliate status is made without regard to the provisions of this subparagraph (3).

(iv) *Coordination with protective carryover election.* For guidance in a case in which P wishes to make a protective carryover election under § 1.338–4T(f)(6) instead of an express election, see paragraph (c)(2)(iv)(F) of this section.

(4) *Examples.* The provisions of paragraph (j) (1) through (3) of this section may be illustrated by the following examples.

Example (1). On December 31, 1984, P purchases from DS all of the stock of DT in a qualified stock purchase. DT holds all of the stock of FT1, FT1 holds all of the stock of FT2, and FT2 holds all of the stock of FT3. FT1, FT2, and FT3 are transitional target affiliates, since an express election from DT would cause deemed elections under section 338(f)(1) for FT1, FT2, and FT3, and since each of those three corporations is acquired on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section). Accordingly, P may elect to exclude FT1, FT2, and/or FT3 from the status of a target affiliate in a transitional exclusion election filed in connection with an express election for DT. Note that a transitional exclusion election for FT1 need not also specify FT2 and FT3, since the benefit of excluding FT1 from the status of a target affiliate (avoidance of a section 338 election for FT1) automatically will apply to FT2 and FT3. (A qualified stock purchase and section 338 election cannot occur for FT2 unless FT1 is deemed to sell its FT2 stock pursuant to an election under section 338. Similarly, a qualified stock purchase and section 338 election cannot occur for FT3 unless FT2 is deemed to sell its FT3 stock pursuant to an election under section 338. See section 338(a)(1) and (h)(3)(B).)

Example (2). (i) Assume the same facts as in Example (1), except that DT is FT. Assume also that P acquires the stock of FT4, FT5, DT6 and FT7 from DS in qualified stock purchases on January 31, 1985, April 1, 1985, June 1, 1985, and July 1, 1985, respectively. Assume in addition that FT4, FT5, DT6, and FT7 were members of the DS group on December 31, 1984. Finally, assume that DT6, is a domestic corporation that is not described in section 338(h)(6)(B)(i).

(ii) FT is a transitional excludible original target within the meaning of paragraph (j)(3)(ii) of this section. FT1, FT2, and FT3 are not qualifying target affiliates because they are not targets in the absence of a section 338 election. See paragraph (j)(3)(iii)(A)(*1*) of this section. (Such corporations would be targets only by reason of the deemed purchase of stock under section 338(a)(1). See section 338(h)(3)(B).) FT4, FT5, and DT6 are qualifying target affiliates within the meaning of paragraph (j)(3)(iii) of this section, since (A) they are targets even in the absence of a section 338 election, (B) they would be subject to deemed elections under section 338(f)(1) if an express election (and no transitional exclusion election) were made for the transitional excludible original target, and (C) they are not excepted targets. FT7 is not a qualifying target affiliate because it is an excepted target, *i.e.*, its acquisition date occurs after the acquisition date of DT6, a qualifying target affiliate that would not be a transitional target affiliate if an express election were made for FT. See paragraph (j)(3)(iii)(B) of this section.

(iii) Under these facts, an express election may be made for FT or, pursuant to paragraph (j) (3) of this section, FT4, FT5, or DT6. The express election cannot be made for FT7, since it is not a qualifying target affiliate. If, for example, P wishes to make an express election for FT4, then that express election will be valid only if a transitional exclusion election is made for FT, the transitional excludible original target that is treated as a transitional target affiliate under these circumstances. If the express election is made for FT4, then, at P's option, a transitional exclusion election may be made for FT5 and/or FT7. The transitional exclusion election cannot be made for DT6, since DT6 is not a transitional target affiliate. If P wishes to make an express election for FT5, then that express election will be valid only if transitional exclusion elections are made for FT and FT4. At P's option under these circumstances, a transitional exclusion election may be made for FT7.

(5) *Relationship between transitional exclusion election and regular exclusion election—(i) In general.* A transitional exclusion election applies only to transitional target affiliates. If a transitional exclusion election is or could be made in connection with an express election, then, in the absence of an invalidation event (within the meaning of paragraph (c)(2)(iii) of this section), a separate regular exclusion election also may be made for all of the excludible foreign target affiliates.

(ii) *Special rule for application of regular exclusion election.* Under paragraph (c)(2)(i) of this section, a domestic original target is a prerequisite for a regular exclusion election. If the express election is made for a foreign original target with an acquisition date that occurs on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section), however, that foreign corporation will be treated as if it were a domestic original target for purposes of applying such paragraph (c)(2)(i).

(iii) *Limitation on application of paragraph (c)(3) of this section.* The special basis rules of paragraph (c)(3) of this section do not apply if the acquisition date of the domestic target occurs on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section).

(iv) *Limitation on application of paragraph (c)(4) of this section.* If the acquisition date of the actual (as opposed to a deemed) original target occurs on or before March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section) and if a valid regular exclusion election is made, then paragraph (c)(4) of this section (relating to carryover basis in certain asset acquisitions) applies only to asset acquisitions from excludible foreign target affiliates and not from nontarget foreign target affiliates. For transitional asset consistency rules, see paragraph (j)(6) of this section.

(v) *Overlap between paragraphs (c)(2)(iv) and (j)(3) of this section*—(A) *In general.* This subdivision (v) provides rules for cases in which there is an overlap between the provisions of paragraphs (c)(2)(iv) and (j)(3) of this section. Those provisions provide prospective and transitional rules, respectively, for making an express election for a corporation other than the original target. In a case in which there are both transitional target affiliates and excludible foreign target affiliates, an express election may be made for (A) the transitional excludible original target, (B) a qualifying target affiliate pursuant to paragraph (j)(3) of this section, or (C) the qualifying domestic target affiliate pursuant to paragraph (c)(2)(iv) of this section, as modified by this subdivision (v).

(B) *Illustrative factual situation.* The rules of this subdivision (v) are set out in the context of the following factual situation: Assume that on April 1, 1985, FS owns all of the stock of FT1, FT2, FT3, FT4, and DT5. Assume in addition that P acquires the stock of those corporations in qualified stock purchases from FS on the dates indicated in the following table (the post-March 15, 1986, acquisitions are not made pursuant to a binding contract in effect on February 19, 1986:

4/1/85	10/1/85	4/1/86	7/1/86	8/1/86
FT1	FT2	FT3	FT4	DT5

(C) *Express election for transitional excludible original target or qualifying target affiliate.* Under paragraph (j)(3) of this section, an express election may be made for FT1, the transitional excludible original target, or for FT2 or FT3, both of which are qualifying target affiliates. An express election is not permitted under paragraph (j)(3) of this section for FT4 or DT5, since those corporations are excepted targets within the meaning of paragraph (j)(3)(iii)(B) of this section. FT4 and DT5 are excepted targets because their acquisition dates occur after the acquisition date of a potential qualifying target affiliate, FT3, that is not a transitional target affiliate. An express election for FT3, for example, is valid only if transitional exclusion elections also are made for FT1 and FT2, which are considered transitional target affiliates under these circumstances. See paragraph (j)(3)(i)(C) of this section.

(D) *Express election for qualifying domestic target affiliate.* Because one of the qualifying target affiliates for which an express election could be made under paragraph (j)(3) of this section (FT3), is a foreign target acquired after March 15, 1986 (within the meaning of paragraph (j)(2)(ii) of this section), this subdivision (v) also permits P to make the express election for DT5 (as the qualifying domestic target affiliate) rather than for FT1, FT2, or FT3 if three conditions are satisfied. The first condition is that DT5 must be a corporation that would have been a qualifying domestic target affiliate under paragraph (c)(2)(iv)(C) of this section had FT3 (*i.e.*, a foreign corporation that is a qualifying target affiliate acquired after March 15, 1986) been the actual original target. The second condition is that a valid regular exclusion election under paragraph (c)(2)(iv) of this section must be made in connection with the express election for DT5 in the same manner as if FT3 were the actual original target. (Pursuant to paragraph (c)(2)(iv) of this section, that regular exclusion election applies to FT3 and FT4.) The third condition is that transitional exclusion elections must be made as if the express election had been made for FT3, *i.e.*, transitional exclusion elections must be made for FT1 and FT2. See paragraph (j)(3)(i)(C) of this section.

(E) *Express election for FT3 bars regular exclusion election.* An express election under paragraph (j)(3) of this section for FT3, a foreign corporation acquired after March 15, 1986, bars a regular exclusion election. (Subject to the transitional rule of paragraph (j)(5)(ii) of this section, which is inapplicable on these facts, a regular exclusion election cannot be made if the original target for which the express election is made is a foreign corporation.) Thus, FT4 could not be excluded from the status of a target affiliate if an express election were made for FT3. If, however, an express election under paragraph (j)(3) of this section is made for FT2, a foreign corporation acquired on or before March 15, 1986, then the transitional rule of paragraph (j)(5)(ii) of this section applies and a regular exclusion election may be made (and will not be invalidated retroactively) unless an invalidation event under paragraph (c)(2)(iii) of this section occurs with respect to one of the excludible foreign target affiliates, *i.e.*, FT3 or FT4.

(F) *FT3 is DT3.* If FT3 were DT3, then (whether or not DT3 was described in section 338(h)(6)(B)(i)) an express election could be made only for FT1 or, pursuant to paragraph (j)(3) of this section, FT2 or DT3. An express election could not be made for DT5 on these facts because none of the qualifying target affiliates is a foreign corporation acquired after March 15, 1986. See paragraph (j)(5)(v)(D) of this section.

(G) *FT1 is DT1.* If FT1 were DT1, a domestic corporation not described in section 338(h)(6)(B)(i), then the express election could be made only for DT1 since the original target would not be a transitional excludible original target under paragraph (j)(3)(ii) of this section.

(H) *FT2 is DT2.* If FT2 were DT2, a domestic corporation not described in section 338(h)(6)(B)(i), then the express election could be made only for FT1 or DT2, since no corporation acquired after the acquisition date of DT2 is a qualifying target affiliate. See paragraph (j)(3)(iii)(B) of this section.

(I) *Effect of invalidation event after express election filed for DT5.* If an invalidation event occurs after an express election is made for DT5 (*e.g.*, the P group acquires an excludible foreign target affiliate that holds stock in a domestic corporation under the circumstances described in paragraph (c)(2)(iii)(C) of this section), then, subject to the barred target rule of paragraph (c)(2)(iii)(D) of this section, FT3 and FT4 will be subject to deemed elections under section 338(f)(1) by reason of the express election for DT5. See paragraph (c)(2)(iv)(E) of this section. FT1 and FT2 will not be affected by the invalidation event since they are not excludible foreign target affiliates. Accordingly, FT1 and FT2 will not be subject to deemed elections under section 338(f)(1) by reason of the invalidation event.

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(vi) *Examples.* The provisions of this subparagraph (5) may be illustrated by the following examples.

Example (1). (i) Assume the same facts as in Example (2) of paragraph (j)(4) of this section, except that the acquisition dates of FT5, DT6, and FT7 occur on June 1, 1985, April 1, 1986, and May 1, 1986, respectively. Assume in addition that a binding contract to acquire DT6 and FT7 is not in effect on February 19, 1986.

(ii) The result is the same as in Example (2) of paragraph (j)(4) of this section, except that FT7 is not a transitional target affiliate and therefore cannot be excluded from the status of a target affiliate pursuant to a transitional exclusion election. In addition, FT7 cannot be excluded from the status of a target affiliate pursuant to a regular exclusion election made in connection with an express election for FT, FT4, FT5, or DT6. A regular exclusion election cannot be made (or is retroactively invalidated) because P's acquisition of FT7 is an invalidation event under paragraph (c)(2)(iii)(B) of this section. (That acquisition is an invalidation event because FT7 was a controlled foreign corporation during the relevant period.)

Example (2). Assume the same facts as in Example (1), except that DS is FS. Assume further that FS is not a controlled foreign corporation and that FT7 does not hold stock of a domestic corporation under the circumstances described in paragraph (c)(2)(iii)(C) of this section. Under these facts, FT7 is not a controlled foreign corporation during the relevant period and P's direct acquisition of its stock is not an invalidation event. Accordingly, the results are the same as in Example (1), except that a regular exclusion election (applicable to FT7) may be made in connection with the express election for FT, FT4, FT5, or DT6.

(6) *Transitional asset consistency rules for corporations described in section 338(h)(6)(B)(i)*—(i) *General rule.* A transitional asset acquisition from a corporation that is described in section 338(h)(6)(B)(i) and that is not an excluded transferor shall in no case be treated as a tainted asset acquisition (within the meaning of § 1.338–4T(f)(6)(i)) with respect to any target. Accordingly, such an asset acquisition cannot cause an affirmative action carryover election and will not be subject to an otherwise applicable affirmative action or protective carryover election.

(ii) *Definitions*—(A) *Transitional asset acquisition.* A "transitional asset acquisition" is any asset acquisition made by P (or another member of the P group) on or before March 15, 1986.

(B) *Acquisition made on or before March 15, 1986.* An asset acquisition is considered made on or before March 15, 1986, if the asset actually is acquired on or before March 15, 1986, or if it is acquired after that date but pursuant to a contract of sale that is binding on both the acquiring P group member and the transferor as of February 19, 1986.

(C) *Excluded transferor.* An "excluded transferor" is a corporation that is either (*1*) a transitional target affiliate subject to a transitional exclusion election made in connection with an express election or (*2*) any other corporation that, but for the transitional exclusion election, would be subject to a deemed election under section 338(f)(1) by reason of the express election.

(iii) *Special asset consistency rule for acquisition for excluded transferor.*—(A) *General rule.* A P group member must take a carryover basis in an asset acquired from an excluded transferor as if the asset acquisition were subject to an affirmative action carryover election if, in the absence of an express election, the asset acquisition would be considered a tainted asset acquisition (as defined in § 1.338–4T(f)(6)(i)) with respect to any relevant target (as defined in paragraph(c)(4)(iii) of this section). For guidance on the affirmative action carryover election, see § 1.338–4T (f) (6). Except as provided in this subdivision (iii) or in paragraph (c)(4) of this section (which contains a similar prospective rule), no asset acquisition shall be treated as a tainted asset acquisition if an express election is made.

(B) *Deemed election not imposed.* In no event shall the District Director impose a deemed election under section 338(e)(1) as a result of an asset acquisition from any excluded transferor.

(iv) *Examples.* The provisions of this subparagraph (6) may be illustrated by the following examples.

Example (1). Assume the same facts as in Example (1) of paragraph (j)(4) of this section. Assume in addition that P makes a protective carryover election for DT in lieu of an express election,and that on January 1, 1985, P purchases for cash an asset from FT1, DT's wholly owned subsidiary. Because the asset is acquired in a transitional asset acquisition, it will in no case be considered a tainted asset acquisition subject to the protective carryover election. Accordingly, P's basis in the asset will be determined under section 1012. (The result is the same if P does not make a protective carryover election.)

Example (2). Assume that P makes an express election for DT under the facts of Example (1) of paragraph (j)(4) of this section. Assume in addition that P makes a transitional exclusion election for FT2 in that express election, and that on January 1, 1985, P purchases an asset from FT2 in a transaction that would be a tainted asset acquisition if an express election were not made. Because FT2 is an excluded transferor within the meaning of paragraph (j)(6)(ii)(C) of this section, P must take a carryover basis in the acquired asset as if the acquisition were subject to an affirmative action carrover, election.

Example (3). Assume the same facts as in Example (2), except that the asset is acquired from FT3. Although a transitional exclusion election was not made for FT3, FT3 is a corporation that would have been subject to a deemed election under section 338(f)(1) by reason of the express election for DT had the transitional exclusion election for FT2 not been made. Thus, FT3 is an excluded transferor and the result is the same as in Example (2).

Example (4). Assume the same facts as in Example (2), except that the asset is acquired from FT1. FT1, a transitional target affiliate that is not subject to the transitional exclusion election, is not an excluded transferor. (FT1 is subject to a deemed election under section 338(f)(1) by reason of the express election for DT.) Accordingly, P does not take a carrover basis in the asset under paragraph (j)(6) (iii) of this section but rather takes a basis determined under section 1012.

(7) *Treatment of stock described in section 338(h)(6)(B)(ii)—(1) Transitional stock exclusion election.* If P makes a transitional stock exclusion election in the manner prescribed in paragraph (j)(8) of this section for one or more eligible targets, then the following stock held by such an eligible target at the close of its acquisition date ("affected stock") shall be excluded from the operation of section 338:

(A) All section 338(h)(6)(B)(ii) stock other than stock in a transitional target affiliate (as defined in paragraph (j)(2) of this section) and

(B) All section 338(h)(6)(B)(ii) stock that is stock in a transitional target affiliate for which a transitional exclusion election is made under paragraph (j)(1) of this section.

(ii) *Section 338(h)(6)(B)(ii) stock.* "Section 338(h)(6)(B)(ii) stock" is stock in a foreign corporation or a domestic corporation that is a DISC or that is described in section 1248(e), whether or not the corporation is a target or a target affiliate.

(iii) *Eligible target.* An "eligible target" is a target that is subject to a deemed election under section 338(f)(1) and which is acquired on or before February 19, 1986 or pursuant to a binding contract in effect on that date.

(iv) *Effect of exclusion from operation of section 338.* If a transitional stock exclusion election is made for an eligible target, then—

(A) that eligible target is not deemed under section 338(a) to sell and purchase the affected stock it holds at the close of its acquisition date and

(B) that eligible target's basis as new target in that affected stock is the same as its basis in that stock as old target immediately before its deemed sale of

assets under section 338(a)(1) ("carryover basis amount").

(v) *Effect of difference between carryover basis amount and regular basis amount.* If the carryover basis amount for affected stock held by an eligible target (as new eligible target) is less than the basis amount that, absent paragraph (j)(7)(iv) of this section, would be allocable to that stock ("regular basis amount"), then the difference is eliminated. Whether or not the carryover basis amount is less than or exceeds the regular basis amount, however, that regular basis amount is treated as the total amount allocated to the affected stock for purposes of allocating new eligible target's adjusted grossed-up basis among the other assets of new eligible target.

(vi) *Tacking of old eligible target's holding period.* If a transitional stock exclusion election is made for an eligible target and if, subsequent to its acquisition date, the eligible target disposes of affected stock, then, for purposes of applying section 1248 to that disposition, the holding period of new eligible target for that affected stock includes the holding period of old eligible target for that stock.

(vii) *Examples.* The provisions of this paragraph (j)(7) may be illustrated by the following examples. In each example, assume that all of the corporations are calendar year corporations.

Example (1). On December 31, 1984, P purchases all of the stock of DT from DS in a qualified stock purchase and makes an express election for DT. DT holds 20 of the 100 shares of FX's only class of outstanding stock, and DS holds the remaining 80 shares. (Since all of the stock of FX is held by U.S. shareholders, FX is a controlled foreign corporation.) Although the stock of FX is affected stock within the meaning of paragraph (j)(7)(i) of this section and although the acquisition date of DT occurs on or before March 15, 1986, a transitional stock exclusion election applicable to DT cannot be made. An original target (*i.e.*, a target that is not subject to a deemed election under section 338(f)(1)) cannot be an eligible target. See paragraph (j)(7)(iii) of this section.

Example (2). (i) Assume the same facts as in Example (1), except that DT's wholly owned subsidiary, DT1, holds the 20 shares of FX stock. Assume in addition that old DT1's basis in that FX stock is $70 and that, absent paragraph (j)(7)(iv) of this section, new DT1's basis in the FX stock would be $100. Finally assume that DT1 sells the 20 shares of FX stock on January 15, 1985, for $90.

(ii) A transitional stock exclusion election applicable to DT1 (and thus to the FX stock held by DT1) may be made, since DT1 is an eligible target. DT1 is an eligible target because its acquisition date occurs on or before March 15, 1986, and it is subject to a deemed election under section 338 (f)(1) by reason of P's express election for DT. If a transitional stock exclusion election is made for DT1, then old DT1 will not include in its gross income a section 1248(f) dividend as a result of its deemed sale of assets, since it will not be deemed to sell the FX stock it holds. See paragraph (j)(7)(iv)(A) of this section. In addition, new DT1's basis in FX stock (*e.g.*, for purposes of DT1's sale of that FX stock on January 15, 1985) shall be the same as old DT1's basis in such stock immediately before DT1's deemed sale of assets, *i.e.*, $70. See paragraph (j)(7)(iv)(B) of this section. For purposes of allocating new DT1's adjusted grossed-up basis among the other assets of new DT1, however, the amount that, absent this paragraph (j)(7), would have been allocated to the FX stock held by DT1, (*i.e.*, $100) shall be deemed to be the amount actually allocated to that stock.

(iii) Accordingly, DT1's gain on the January 15, 1985, sale of FX stock is $20, *i.e.*, the difference between the selling price ($90) and DT1's carryover basis in the FX stock ($70). For purposes of applying section 1248 to that sale, new DT1's holding period in the stock of FX includes old DT1's holding period. Thus, the earnings and profits of FX that accrued during the period while old DT1 held the FX stock must be taken into account under the principles of section 1248 in determining new DT1's section 1248 divided (if any) on the January 15, 1985, sale.

Example (3). Assume the same facts as in Example (2), except that the 80 shares of FX stock are held by DT2, another wholly owned subsidiary of DT, rather than by DS. Thus, DT1 and DT2 are eligible targets and FX is a transitional target affiliate. Accordingly, a transitional stock exclusion election made for DT1 and/or DT2 will not apply to the stock of FX unless a transitional exclusion election is made for FX.

Example (4). Assume the same facts as in Example (2), except that the 80 shares of FX stock are held by an individual. Accordingly, FX is not a target affiliate of DT or DT1. The result is the same as in *Example (2)*, since affected stock need not be stock in a target affiliate.

(8) *Transitional section 338(h)(6)(B) election procedures*—(i) *General rule.* This subparagraph (8) prescribes procedures for making the transitional exclusion election and the transitional stock exclusion election under paragraph (j) (1) and (7) of this section, respectively ("transitional elections"). The transitional elections are made by attaching a transitional section 338(h)(6)(B) statement to the express election (Form 8023) filed for the original target (including a qualifying target affiliate treated as the original target under paragraph (j)(3) of this section). The transitional section 338(h)(6)(B) statement, once filed, is treated as an integral part of the Form 8023 (*e.g.*, for purposes of § 1.338–1T(e)(2)(i) (requiring that the Form 8023 be attached to certain returns)). The transitional elections are irrevocable.

(ii) *Special procedure if express election filed on or before March 15, 1986.* If a transitional section 338(h)(6)(B) statement is not attached to an express election filed on or before March 15, 1986, a transitional election(s) nonetheless may be made if, on or before that date, a copy of the previously filed express election, with a copy of the transitional section 338(h)(6)(B) statement attached, is filed with the Internal Revenue Service Center(s) with which the express election is required to be filed under § 1.338–1T (c) and (d).

(iii) *Amendment procedure if transitional statement filed on or before March 15, 1986.* A transitional section 338(h)(6)(B) statement filed on or before March 15, 1986, may be amended on or before that date for two purposes. First, if only one transitional election was made in the previously filed statement, then an amended statement may be made to include both transitional elections. Second, the previously filed statement may be amended to make additional corporations subject to a transitional election already made. The amended statement is filed pursuant to the procedure described in paragraph (j)(8)(ii) of this section, and a copy of the previously filed section 338(h)(6)(B) statement must be attached.

(iv) *Acquisition date of transitional target affiliate or eligible target occurs after transitional section 338(h)(6)(B) statement filed.* A transitional target affiliate or an eligible target will be subject to a transitional exclusion election or transitional stock exclusion election, respectively, only if such a corporation is named in the transitional section 338(h)(6)(B) statement (including an amended statement), notwithstanding that the acquisition date of such a corporation occurs after that statement is filed. The failure of the P group to actually acquire a corporation named in the transitional section 338(h)(6)(B) statement pursuant to this subdivision (iv) shall have no effect on the validity of that statement.

(v) *Contents of transitional section 338(h)(6)(B) statement.* The transitional section 338(h)(6)(B) statement must—

(A) Be identified prominently as a transitional exclusion election under § 1.338–5T(j)(1), as a transitional stock exclusion election under § 1.338–5T(j)(7), or both.

(B) Where applicable, indicate that it is an amended statement.

(C) Contain the following declaration (or a substantially similar declaration) if a transitional exclusion election is made: "THE TRANSITIONAL EXCLUSION ELECTION PERMITTED

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BY § 1.338–5T(j)(1) IS HEREBY MADE FOR THE TRANSITIONAL TARGET AFFILIATES IDENTIFIED HEREIN".

(D) Contain the following declaration (or a substantially similar declaration) if a transitional stock exclusion election is made: "THE TRANSITIONAL STOCK EXCLUSION ELECTION PERMITTED BY § 1.338–5T(j)(7) IS HEREBY MADE FOR THE ELIGIBLE TARGETS IDENTIFIED HEREIN".

(E) For each of the following corporations contain the name, address, employer identification number (if any), and, for a foreign corporation, the country (and, if relevant, the lesser political subdivision) under the laws of which it is organized. The following corporations are: (*1*) Each transitional target affiliate for which a transitional exclusion election is made, with corporations included pursuant to paragraph (j)(8)(iv) of this section so identified (such as by a footnote system), (*2*) each eligible target for which a transitional stock exclusion election is made, with corporations included pursuant to paragraph (j)(8)(iv) of this section so identified, and (*3*) if determinable as of the day of filing, each other corporation that would be subject to the expresa election absent the transitional elections.

(F) Be signed (in the manner prescribed in § 1.338–1T(d)(1)(v)) by a person authorized to act on behalf of P.

Par. 3. Section 1.338–1T is amended as follows:

1. Paragraph (b) is amended by adding a new paragraph (b)(9) to read as set forth below.

2. Paragraph (c) is revised to read as set forth below.

3. Paragraph (d) is amended by—

a. Revising the heading to read as set forth below.

b. Removing, from the first sentence of paragraph (d)(1), the words "statement of election under section 338" and by adding in their place the words "statement of section 338 election".

c. Removing, from the third sentence of paragraph (d)(1), the words "statement of election" and by adding in their place the words "statement of section 338 election".

d. Removing from paragraph (d)(1)(i) the word "target" and by adding in its place the words "original target".

e. Removing the word "and" from paragraph (d)(1)(iv), redesignating paragraph (d)(1)(v) as paragraph (d)(1)(vi), and adding a new paragraph (d)(1)(v) to read as set forth below.

f. Revising paragraph (d)(2) to read as set forth below.

g. Removing, from each place they appear in paragraph (d)(3), the words "statement of election" and by adding in their place the words "statement of section 338 election".

4. Paragraph (e) is amended by—

a. Revising paragraph (e)(1) to read as set forth below.

b. Revising paragraph (e)(2) (i), (ii), and (iii) to read as set forth below.

c. Removing, from the first sentence of paragraph (e)(2)(iv), the words "statement of election" and by adding in their place the words "statement of section 338 election".

d. Adding a new paragraph (e)(2)(v) to read as set forth below.

e. Revising paragraph (e)(3) to read as set forth below.

5. Paragraph (j) is revised to read as set forth below.

6. Paragraph (k) is amended by—

a. Revising paragraph (k)(1) to read as set forth below.

b. Removing from paragraph (k)(2)(i) the words "statement of election" and by adding in their place the words "statement of section 338 election".

c. Revising paragraph (k)(2)(v) to read as set forth below.

d. Removing paragraph (k)(3)(iii).

e. Revising the heading of paragraph (k)(4) to read as set forth below.

f. Removing from each place they appear in paragraph (k)(4), the words "statement of election" and by adding in their place the words "statement of section 338 election".

g. Revising paragraph (k)(5) to read as set forth below.

h. Removing paragraph (k)(6) and by redesignating paragraph (k)(7) as paragraph (k)(6).

i. Revising subdivisions (i) and (ii) of redesignated paragraph (k)(6) to read as set forth below.

j. Adding a new paragraph (k)(7) to read as set forth below.

§ 1.338–1T Elections under section 338(g) of the Internal Revenue Code of 1954 (temporary).

* * * * *

(b) *Definitions*—* * *

(9) *Cross-reference.* The definitions in § 1.338–4T (as modified by § 1.338–5T(b)(2)) also apply for purposes of this section.

(c) *Time and manner of making election.* The purchasing corporation makes an election under section 338(g) for the original target only by filing, not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs (or if later, March 15, 1986), a statement of section 338 election with the Internal Revenue Service Center with which it files its annual income tax return. If the statement of section 338 election for the original target will cause section 338(a) to apply to other corporations ("affected targets") by reason of section 338(f)(1), a separate statement of section 338 election need not be filed for those affected targets. See paragraph (e)(1) of this section for requirement to attach a schedule containing information relating to the original target and the affected targets. See paragraph (k)(7) of this section for a required notice to the domestic shareholders of foreign targets in certain cases. See also paragraph (k) of this section generally for other special rules applicable to certain foreign corporations and DISCs.

(d) *Statement of section 338 election*—(1) * * *

(v) For elections filed after February 19, 1986, specify (if the purchasing corporation or the original target is a foreign corporation) the country (and, if relevant, the lesser political subdivision) under the laws of which it is organized, and

(2) *Signature requirement if common parent is the agent of purchasing corporation.* If the common parent of an affiliated group filing consolidated returns is the agent of the purchasing corporation under § 1.1502–77, then the person authorized to sign the statement of section 338 election pursuant to paragraph (d)(1)(v) of this section is the person authorized to act on behalf of that common parent.

* * * * *

(e) *Schedule; attachments to target returns*—(1) *Schedule of information relating to certain corporations and persons*—(i) *Required data.* A schedule providing the information specified in this paragraph (e)(1)(i) ("required data") must be attached to the statement of section 338 election. That schedule must satisfy the following requirements:

(A) It must contain the name, address, and employer identification number each includible affected target, *i.e.*, each corporation that, as of the day the statement of section 338 election is filed ("day of filing"), is an affected target subject to that election by reason of section 338(f)(1). For each includible affected target that is a foreign corporation, it must also contain the country (and, if relevant, the lesser political subdivision) under the laws of which it is organized.

(B) It must disclose the fair market value of the consideration paid by the purchasing corporation for the stock of each directly acquired target, *i.e.*, (*1*) the original target, (*2*) each includible affected target, (*3*) each excludible foreign target affiliate identified under paragraph (e)(1)(i)(F) of this section, (*4*) each transitional target affiliate (that is identified in an attached transitional exclusion election pursuant to § 1.338–5T(j)(8) and that is actually acquired on or before the day of filing), and (*5*) each other corporation that, as of the day of filing, would be a target but for the transitional exclusion election (if any). For purposes of this subdivision (i), a directly acquired target does not include a corporation the qualified stock purchase of which occurs solely by reason of section 338(a)(2) and (h)(3)(B) (or would so occur if a regular or transitional exclusion election were not made) ("indirectly acquired corporation").

(C) It must identify the portion of the consideration paid for the stock of each directly acquired target that is represented by the following components: (*1*) Cash, (*2*) purchase money debt, and (*3*) other components of consideration (with each such other component separately stated).

(D) It must disclose the liabilities (with any tax liability resulting from the deemed sale of assets under section 338(a)(1) separately stated), as of the close of the acquisition date (or as of the close of the day that would be the acquisition date if a regular or transitional exclusion election were not made), of each of the corporations described in paragraph (e)(1)(i)(B) of this section and of each other corporation that would be so described but for the exception therein for indirectly acquired corporations.

(E) If an election under section 338(h)(10) is made, it must clearly identify (such as by a footnote system) each corporation listed on the schedule that is subject to that election, including corporations subject to deemed section 338(h)(10) elections under § 1.338(h)(10)–1T(h).

(F) If a regular exclusion election under § 1.338–5T(c)(2) is made, the schedule must contain the name, address, and employer identification number (if any) of, and country (and, if relevant, the lesser the political subdivision) under the laws of which is organized, each corporation that, as of the day the schedule is filed, is an excludible foreign target affiliate, with each such corporation clearly identified (such as by a footnote system) as an excludible foreign target affiliate subject to a regular exclusion election.

(G) It must contain the name, address, and identifying number (if available) of each U.S. person to whom notice of the election must be sent as of the day the statement of section 338 election is filed (see paragraph (k)(7) of this section).

(ii) *Corrective statements*—(A) *Transitional rule.* If a statement of section 338 election filed on or before March 15, 1986, does not include the schedule with all of the required data, the requirements of paragraph (e)(1)(i) of this section will be satisfied if, on or before March 15, 1986, a corrective statement in the form of the schedule (containing all of the required data, and with a copy of the previously filed statement of section 338 election attached) is filed with the Internal Revenue Service Center(s) with which the statement of section 338 election is required to be filed under paragraphs (c) and (d) of this section.

(B) *Regular exclusion election invalidated.* If, subsequent to the making of a regular exclusion election, that exclusion election is invalidated by reason of an invalidation event described in § 1.338–5T(c)(2)(iii) and if, by reason of the invalidation event, a previously filed schedule under this subparagraph (1) incorrectly identifies certain corporations as excludible foreign target affiliates subject to a regular exclusion election, then the requirements of paragraph (e)(1)(i) of this section will be satisfied if, on or before the later of March 15, 1986, or the 120th day after the date of the invalidation event, a corrective statement in the form of an amended schedule (along with a copy of the previously filed statement of section 338 election) is filed with the Internal Revenue Service Center(s) with which the statement of section 338 election is required to be filed under paragraphs (c) and (d) of this section. (The invalidated regular exclusion statement need not be attached.) The revised schedule must clearly identify (such as by a footnote system) the corporations that are no longer treated as excludible foreign target affiliates subject to a regular exclusion election. The following declaration (or a substantially similar declaration) must be set forth on the amended schedule: "THIS SCHEDULE IS AMENDED BY REASON OF THE INVALIDATION UNDER § 1.338–5T(c)(2)(iii) OF A REGULAR EXCLUSION ELECTION."

(C) *Schedule must be updated.* The schedule filed as a corrective statement under this subdivision (ii) must contain the required data described in paragraph (e)(1)(i) of this section for each corporation subject to the statement of section 338 election as of the day the schedule is filed.

(2) *Attachments to target returns; additional filings with certain Service Centers*—(i) *Attachments.* The items described in this subdivision (i) ("required items") must be attached to old target's final return and to the first return of new target. For purposes of this subparagraph (2), the term "target" refers to the original target and each affected target subject to the express election for the original target. The required items are—

(A) A copy of the statement of section 338 election (including a copy of any election made by filing a separate statement in connection with the statement of section 338 election) and

(B) The schedule described in paragraph (e)(1)(i) of this section ("schedule").

(ii) *Corrective statements*—(A) *Transitional rule.* If all of the required items (containing all of the information required to be included in those items) are not attached to a final return of old target or a first return of new target that is filed on or before March 15, 1986, the requirements of paragraph (e)(2)(i) of this section will be satisfied if, on or before that date a corrective statement consisting of all of the required items (containing all of the information required to be included in those items) is filed with the Internal Revenue Service Center(s) with which the returns to which the required items should have been attached were filed.

(B) *Special rule if regular exclusion election invalidated.* If, under the circumstances described in paragraph (e)(1)(ii)(B) of this section (relating to invalidation of regular exclusion election), a previously filed schedule under this paragraph (e)(2) incorrectly identifies certain corporations as excludible foreign target affiliates subject to a regular exclusion election, then the requirements of paragraph (e)(2)(i) of this section will be satisfied only if, on or before the 120th day after the date of the invalidation event, a corrective statement in the form of an amended schedule (containing the information and attachment required by paragraph (e)(1)(ii)(B) of this section) is filed with the Internal Revenue Service Center(s) with which the previously filed schedule was required to be filed.

(iii) *Additional filings with certain Service Centers.* On or before the day on which any return or corrective statement described in paragraph (e)(2)(i) or (ii) of this section is filed, the required items also must be filed with the Internal Revenue Service Centers with which the statement of section 338 election is required to be filed under paragraphs (c) and (d) of this section. If a gain recognition election under section 338(b)(3) is made in connection with the statement of section 338 election (so that a copy of the gain recognition statement ("GRS") under § 1.338–4T(j)(2) is a required item pursuant to paragraph (e)(2)(i)(A) of this section), then, on or before the day specified in the preceding sentence, the required items also must be filed with each other Service Center

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with which each affected P group member (determined as of day of filing) files its annual income tax return. For the definition of "affected P group member," see § 1.338-4T(j)(2) *Answer 5* (ii)(A). The required items need not, however, be filed with a Service Center that already has received the identical required items.

* * * * *

(v) *Special rules for returns to which required items must be attached*—(A) *Target subject to section 338(h)(10) election.* If a target is subject to an election under section 338(h)(10), then the required items specified in paragraph (e)(2)(i) of this section are considered filed with the last return of old target if they are attached to the return of the selling consolidated group for the taxable period that includes the acquisition date. For guidance under section 338(h)(10), see § 1.338(h)(10)-1T(d).

(B) *Certain returns filed by U.S. persons.* Each U.S. person to whom the purchasing corporation must provide notice under paragraph (k)(7)(ii)(B) of this section (relating to notice of a section 338 election for a foreign target) must attach the required items specified in paragraph (e)(2)(i) of this section to its income tax return in which it is required to report a section 1248 dividend by reason of its sale of stock in the foreign target to the purchasing corporation.

In addition, each other U.S. person that is required to file an information return (Form 5471) with respect to the foreign target for a relevant taxable year of that foreign target must attach the required items to that return if (*1*) the purchasing corporation must provide notice under paragraph (k)(7)(ii)(A) to that U.S. person or (*2*) that U.S. person is a member of the affiliated group that includes the purchasing corporation. A foreign target's relevant taxable years are its taxable year that includes its acquisition date and its taxable year that includes the first day thereafter. A U.S. person that receives a notice pursuant to paragraph (k)(7)(ii) of this section may assume that the required items received from the purchasing corporation as part of that notice are accurate for purposes of the attachment requirement.

(C) *First return of new foreign target after acquisition date.* If a United States income tax return is not required to be filed for new foreign target's taxable period that includes the first day after its acquisition date, then the required items must be attached to the first United States income tax return filed by that target for a subsequent taxable year.

(3) *Consequence of failure to comply with requirements of paragraph (e) (1) and (2) of this section*—(i) *General rule.* If the requirements of paragraph (e) (1) and (2) of this section or of § 1.338-5T(c)(2)(vii)(B) (requirement of amended returns if regular exclusion election invalidated) are not satisfied with respect to the original target or any affected target, then the waiver rule of paragraph (h)(1) of this section will not apply to any of those targets. Failure to comply with those requirements will not invalidate a statement of section 338 election or any other election under section 338.

(ii) *Exception for certain returns.* Failure to comply with the provisions of paragraph (e)(2)(v) of this section will not bar the application of the waiver rule of paragraph (h)(1) of this section.

* * * * *

(j) *Special rules for acquisitions affected by regulations under section 338(h)(6)(B*—(1) *Target subject to special rules.* This paragraph (j) applies to a target—

(i) That is a foreign corporation, a DISC, a corporation described in section 934(b), or a corporation to which section 936 applies or

(ii) That has a target affiliate (as defined in paragraph (k)(3)(ii) of this section) that either (A) is described in paragraph (j)(1)(i) of this section or (B) owns stock in a foreign corporation or a domestic corporation that is a DISC or described in section 1248(e).

(2) *No additional suspension of time to make election for target described in this paragraph.* Pursuant to paragraph (c) of this section, the time to make an express election (for an acquisition subject to this section) does not expire before March 15, 1986. Prior to amendment by T.D. 8074, this paragraph (j) provided for an indefinite suspension of time to make an express election for certain targets but permitted an option to make an express election notwithstanding that suspension. Rules applicable to this obsolete option are prescribed in paragraph (j) (3), (4), and (5) of this section.

(3) *Declaration required in statement of section 338 election.* If, on or before March 14, 1986, a statement of section 338 election is filed for a target described in paragraph (j)(1) of this section, and if a regular exclusion election, transitional exclusion election, or transitional stock exclusion election (as defined in § 1.338-5T (c)(2), (j)(1), and (j)(7), respectively) is not made in that statement of section 338 election, then that statement of section 338 election must include, in addition to the other requirements specified in this section, the following declaration (or a substantially similar declaration: "THIS ELECTION IS MADE PURSUANT TO THE OPTION IN § 1.338-1T(j)(2) TO MAKE THE SECTION 338 ELECTION NOTWITHSTANDING THE SUSPENSION."

(4) *Perfecting procedure*—(i) *General rule.* If a statement of section 338 election is required to include the declaration described in paragraph (j)(3) of this section but does not, the election nonetheless shall be valid if—

(A) A timely regular exclusion election, transitional exclusion election, or transitional stock exclusion election is filed or

(B) A timely perfecting declaration is filed.

(ii) *Perfecting declaration.* A "perfecting declaration" is a statement that contains the declaration described in paragraph (j)(3) of this section and that is signed by a person who states under penalties or perjury that he or she is authorized to make the perfecting declaration on behalf of the purchasing corporation. The perfecting declaration must be filed on or before March 15, 1986, with the Internal Revenue Service Center(s) with which the statement of section 338 election is required to be filed under paragraphs (c) and (d) of this section, and a copy of the previously filed statement of section 338 election must be attached.

(5) *Statement of section 338 election filed pursuant to this paragraph (j) is binding.* An election under section 338(g) that is made pursuant to the option in paragraph (j)(2) of this section is subject to all of the provisions of section 338 as well as to the provision of regulations issued or to be issued thereunder, including the regulations under section 338(h)(6).

(k) *Special rules for foreign corporations or DISCs*—(1) *Elections by certain foreign purchasing corporations.* A foreign purchasing corporation that is not required under § 1.6012-2(g) (other than subparagraph (2)(i)*(b)(2)* thereof) to file a United States income tax return for its taxable year that includes the acquisition date must file the statement of section 338 election (or any other election under section 338) with the Philadelphia Service Center, Philadelphia, Pennsylvania 19255.

(2) *Election not required until relevent*—(i) *General rule.* * * *

* * * * *

(v) *Subject to United States tax.* For purposes of this paragraph (k)(2), a foreign corporation is considered "subject to United States tax"—

(A) For the taxable year for which that corporation is required under § 1.6012-2(g) (other than subparagraph (2)(i)*(b)(2)* thereof) to file a United States income tax return and

(B) For the period during which that corporation is a controlled foreign corporation, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

* * * * *

(4) *Statement of section 338 election may be filed by United States shareholders in certain cases.* * * *

(5) *EIN not required for certain corporations.* If, without regard to section 338 or the regulations thereunder, a corporation is not required to have an employer identification number (EIN) and if such a corporation does not actually have an EIN, then the requirement that an EIN be provided in the statement of section 338 election (or in any other election under section 338) shall not apply to that corporation.

(6) *Special rules for due date of old target's final return.*—(i) *Old target a foreign corporation required to file U.S. return.* The final return of old target is due on the 15th day of the sixth calendar month following the month in which the acquisition date occurs if old target is a foreign corporation that is required under § 1.6012-2(g) (other than subparagraph (2)(i)*(b)(2)* thereof) to file a United States income tax return for its taxable year that includes its acquisition date but that does not have an office or fixed place of business in the United States during such period.

(ii) *Old target a foreign corporation not required to file U.S. return.* A final return of old target is not required if old target is a foreign corporation that is not required under § 1.6012-2(g) (other than subparagraph (2)(i)*(b)(2)* thereof) to file a United States income tax return for its taxable year that includes its acquisition date.

* * * * *

(7) *Notice requirement for U.S. persons holding stock in foreign target*—(i) *Scope.* This subparagraph (7) provides rules relating to notice to U.S. persons holding stock in a foreign target. For additional information that must be included on the schedule required by § 1.338-1T(e) if the notice requirement of this subparagraph (7) applies, see paragraph (e)(1)(i)(G) of this section. For rules applicable to the recipient of the notice, see paragraph (e)(2)(v)(B) of this section.

(ii) *General rule.* If a target subject to an express election (either as the original target or as an affected target) is a foreign corporation, then the purchasing corporation must deliver written notice of the election (with a copy of the statement of section 338 election attached) to—

(A) Each U.S. person (other than a member of the affiliated group that includes the purchasing corporation ("P group")) that, on the acquisition date of the foreign target or at the beginning of the first day after that acquisition date, holds stock in the foreign target and

(B) Each U.S. person (other than a P group member) that sells stock in the foreign target to a P group member during so much of the foreign target's 12-month acquisition period as ends on its acquisition date, provided that the foreign target was a controlled foreign corporation at any time during so much of the taxable year within which its acquisition date occurs as ends on that acquisition date.

(iii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must satisfy all of the following:

(A) The notice must contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which is organized, the purchasing corporation and the relevant target (*i.e.*, the target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (k)(7)(ii) of this section).

(B) The notice must identify those corporations as the purchasing corporation and the foreign target corporation, respectively.

(C) The notice must contain the following declaration (or a substantially similar declaration): "THIS DOCUMENT SERVES AS NOTICE OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS § 1.338-1T(k)(7)(ii). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 1248 OF THE INTERNAL REVENUE CODE OF 1954 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS § 1.338-5T(g). YOU MAY BE REQUIRED UNDER TREASURY REGULATIONS § 1.338-1T(e)(2)(v) TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS."

(D) The notice must contain (as an attachment) the required times specified in paragraph (e)(2)(i) of this section.

(iv) *Timing of notice.* The notice required by this subparagraph (7) must be delivered to the U.S. person on or before the latest of the dates specified in this subdivisions (iv). If notice is delivered by United States mail, the date of the United States postmark is deemed to be the date of delivery. The dates are as follows:

(A) March 15, 1986,

(B) The 120th day after the acquisition date of the particular target, or

(C) The day on which the statement of section 338 election is filed.

(v) *Consequence of failure to comply.* If a statement of section 338 election is filed after March 15, 1986, and if notice under this subparagraph (7) must be given to one or more U.S. persons on or before the day on which the statement of section 338 election is filed, then that statement of section 338 election shall not be valid if timely notice is not given to any such U.S. person. Failure to give notice to U.S. persons under circumstances other than those described in the preceding sentence shall not invalidate the statement of section 338 election, but the waiver rule of paragraph (h)(1) of this section will not apply to the same extent as if the requirements of paragraph (e) of this section were not satisfied.

* * * * *

Par. 4. Section 1.338-4T is amended as follows:

1. Paragraph (a) is amended by:

a. Removing the last sentence of paragraph (a) and by adding in its place the following sentence: "For guidance on international aspects of section 338 and on the extent to which the provisions of this section apply in that context, see § 1.338-5T."

b. Adding, immediately after item (f)(1)(ii) of paragraph (a)(3), a new time (f)(2) to read as follows: "(2) Asset acquisition by P (or another member of the P group) from T or T's target affiliate."

c. Removing, from item (f)(6)(iii) of paragraph (a)(3), the misspelled word "acquistions" and by adding in its place the word "acquisitions".

d. Removing, from item (k)(3) of paragraph (a)(3), the words "and 168(d)(92)(B)" and by adding in their place the words "and 168(d)(2)(B)".

e. Removing, from the beginning of item (k)(6) of paragraph (a)(3), the parenthetical"(".

2. Paragraph (b) is amended by:

a. Adding to the end of paragraph (b)(1)(ii) the following sentence: "Except as otherwise provided in this section, T is an original target if a qualified stock purchase is made of its stock."

b. Removing, from paragraph (b)(2), the words "section 338(h)" and by adding in their place the words "section 338".

3. Paragraph (c) is amended by:

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a. Removing, from the second sentence of paragraph (c)(1) *Answer 2*, the words "section 338(h)(3)A)(ii)" and by adding in their place the words "section 338(h)(3)(A) (ii)".

b. Removing, from the third sentence of paragraph (c)(1) *Answer 4* Ex. (4), the words "section 338(h)3)" and by adding in their place the words "section 338 (h)(3)."

c. Removing, from paragraph (c)(2) *Question*, the words "section 338(d)(3)" and by adding in their place the words "section 338(d)(3)."

d. Removing, from the first sentence of paragraph (c)(2) *Answer*, the misspelled word "acquistion" and by adding in its place the word "acquisition".

e. Adding a comma immediately after the word "date" in the fourth sentence of paragraph (c)(4) *Answer* Ex. (3).

f. Removing, from the sixth sentence of paragraph (c)(4) *Answer* Ex. (3), the word "that" and by adding in its place the word "the".

g. Removing, from the eighth sentence of paragraph (c)(4) *Answer* Ex. (3), the word "as" and by adding in its place the word "a".

h. Removing, from the second sentence of paragraph (c)(4) *Answer* Ex. (7)(ii), the misspelled word "contitute" and by adding in its place the word "constitute".

i. Removing, from the first sentence of paragraph (c)(5) *Answer* (i)(A), the words "the other of those corporation" and by adding in their place the words "the other of those corporations".

4. Paragraph (f)(1) is amended by:

a. Removing, from paragraph (f)(1)(ii) *Question 2*(ii), the words "target affiliate" and by adding in their place the words "a target affiliate".

b. Removing the colon that follows the word "paragraph" in paragraph (f)(1)(ii) *Question 2*(iv).

5. Paragraph (f)(3) *Answer* Ex. (3) is amended by removing from the third sentence the words "trade of" and by adding in their place the words "trade or".

6. Paragraph (f)(4) *Question 4*(i) is amended by removing the words "exchange asset" and by adding in their place the words "exchanged asset".

7. Paragraph (f)(5) is amended by:

a. Removing, from the title of paragraph (f)(5) *Answer* (vi), the word "*Property*" and by adding in its place the words "*Property acquired*".

b. Removing, from the sixth sentence of paragraph (f)(5) *Answer* (vi) Ex. (2), the words "remaining $28,000" and by adding in their place the words "remaining $16,000".

c. Revising paragraph (f)(5) *Answer* (vii) to read as set forth below.

d. Removing, from paragraph (f)(5) *Answer* (viii), the word "exception" and by adding in its place the words "exception to section".

8. Paragraph (f)(6) is amended by:

a. Revising paragraph (f)(6)(i)(A) to read as set forth below.

b. Revising paragraph (f)(6)(ii) *Answer 1*(i) by adding the following sentence at the end thereof: "For place to file in certain cases if the purchasing corporation is a foreign corporation, see § 1.338–1T(k)(1)."

c. Revising paragraph (f)(6)(ii) *Answer 1*(ii) to read as set forth below.

d. Revising paragraph (f)(6)(ii) *Answer 1*(iii)(C) to read as set forth below.

e. Removing, from the first sentence of paragraph (f)(6)(ii) *Answer 2*(ii), the words "with the protective" and by adding in their place the words "with which the protective".

f. Removing, from the second sentence of paragraph (f)(6)(iv) *Answer 2*(ii)(A), the words "tax liability.)" and by adding in their place the words "tax liability)."

g. Revising paragraph (f)(6)(iv) *Answer 2*(ii)(B) to read as set forth below.

h. Removing, from the first sentence of paragraph (f)(6)(iv) *Answer 3*(i), the misspelled word "*Answere*" and by adding in its place the word "*Answer*".

i. Removing, from (f)(6)(iv) *Answer 3*(ii)(C)(3), the words "the acquiring" and by adding in their place the words "The acquiring".

j. Revising paragraph (f)(6)(iv) *Answer 3*(iv)(D) to read as set forth below.

k. Removing, from the end of paragraph (f)(6)(iv) *Answer 3*(vi)(B), the word "rule.)" and by adding in its place the word "rule)."

l. Removing, from the fourth sentence of paragraph (f)(6)(iv) *Answer 3* Ex. (1)(ii), the words "January 1, 1985" and by adding in their place the words January 1, 1986".

m. Removing, from the first sentence of paragraph (f)(6)(iv) *Answer 3* Ex. (1)(iii), the words "§ 1.150–13(d)(1)" and by adding in their place the words "§ 1.1502–13(d)(1)".

n. Removing, from the fourth sentence of paragraph (f)(6)iv) *Answer 3* Ex. (1)(ii), the word "According" and by adding in its place the word "Accordingly".

o. Revising the first three sentences of paragraph (f)(6)(iv) *Answer 3* Ex. (3)(iii) to read as set forth below.

9. Paragraph (g)(2) is amended by:

a. Removing the colon from the first sentence of paragraph (g)(2) *Answer* (i).

b. Removing, from the heading of paragraph (g)(2) *Answer* (ii), the words "*in t*" and by adding in their place the words "*in T*".

c. Removing the colon from the end of paragraph (g)(2) *Answer* (v) and by adding in its place a period.

d. Removing, from the first sentence of paragraph (g)(2) *Answer* Ex. (2)(ii), the misspelled word "satisified" and by adding in its place the word "satisfied".

e. Removing, from the sixth sentence of paragraph (g)(2) *Answer* Ex. (2)(ii), the word "than" and by adding in its place the word "then".

f. Removing, from the fourth sentence of paragraph (g)(2) *Answer* Ex. (6), the word "Acquisition" and by adding in its place the word "acquisition".

g. Removing, from the parenthetical at the end of the second sentence of paragraph (g)(2) *Answer* Ex. (7)(ii), the misspelled word "hypotheticl" and by adding in its place the word "hypothetical".

10. Paragraph (h) is amended by:

a. Removing, from the first sentence of paragraph (h)(2)(iii), the word "ASDP" and by adding in its place the word "ADSP".

b. Removing, from the first sentence of paragraph (h)(3) *Answer 1*(i), the words "of all old" and by adding in their place the words "of all of old".

c. Removing, from the second sentence of paragraph (h)(3) *Answer 2*(i), the words "of P" and by adding in their place the words "to P".

d. Removing, from the third sentence of paragraph (h)(3) *Answer 2*(i), the words "or T" and by adding in their place the words "for T".

e. Removing, from the second sentence of paragraph (h)(3) *Answer 2* (iii), the words "that fact" and by adding in their place the words "the fact".

f. Removing, from the first sentence of paragraph (h)(3) *Answer 2* (iv), the words "gain an" and by adding in their place the words "gain on".

g. Removing, from the second sentence of paragraph (h)(3) *Answer 2* (vi)(B), the misspelled word "assests" and by adding in its place the word "assets".

h. Removing, from paragraph (h)(3) *Answer 2* (vi)(D), the words "of (section 1245 property)" and by adding in their place the words "of section 1245 property".

i. Removing, from the first line of the formula set out in paragraph (h)(3) *Answer 2* Ex. (1)(ii), the word "ANSP" and by adding in its place the word "ADSP".

j. Removing, from the formula set out in paragraph (h)(3) *Answer 2* Ex. (1)(ii), the words "ADSP= –.46ADSP=$51,816" and by adding in their place the words "ADSP–.46ADSP=$51,816".

k. Removing, from the second sentence of paragraph (h)(3) *Answer 2* Ex. (2), the misspelled word "aquisition" and by adding in its place the word "acquisition".

l. Removing, from the first line of the formula set out in paragraph (h)(3) *Answer 3* Ex. (ii) the letters "xx" and by adding in their place the letter "x".

(m) Removing, from the second sentence of paragraph (h)(3) *Answer 3* Ex. (iii) the words "*i.e.*, $189,422.71×1395348" and by adding in their place the words "*i.e.*, $189,422.71×.1395348".

11. Paragraph (j) is amended by:

a. Removing so much of the first sentence of paragraph (j)(1) as ends after the word "determination" and before the word "new" and by adding in place of the removed language the words "of the total sum ("adjusted grossed-up basis") to be allocated as basis to the assets of".

b. Removing, from the formula set out in paragraph (j)(2) *Answer 4* Ex. (i), the words "ADSP = $75,000 + × $13,616 + (.028 × ADSP – $2,240" and by adding in their place the words "ADSP = $75,000 + $13,616 + (.028 × ADSP) – $2,240".

c. Removing, from paragraph (j)(2) *Answer 5* (ii)(C), the words "§ 1.338–1T(d)(1)(v)" and by adding in their place the words "§ 1.338–1T(d)(1)(v))".

12. Paragraph (k) is amended by:

a. Removing, from paragraph (k)(1) *Question 1*, the word "liquidation" and by adding in its place the word "liquidations".

b. Removing, from the end of the third sentence of paragraph (k)(1) *Answer 3*(i), the words "("hypothetical distribution")".

c. Removing the fourth sentence of paragraph (k)(1) *Answer 3*(i) and by adding in its place the following sentence: "However, if section 332 would have applied to a distribution of all of T's assets in a hypothetical complete liquidation immediately after the plan of complete liquidation was adopted, then section 337(c)(2) will apply to bar the operation of section 337 through section 338(h)(12) unless each corporation that would have been a distributee corporation (within the meaning of section 337(c)(3)(B)(i)) with respect to that hypothetical liquidation also is completely liquidated under the circumstances described in section 337(c)(3)."

d. Removing, from the second sentence of paragraph (k)(1) *Answer 3* (ii), the word "applied" and by adding in its place the word "applies".

e. Removing, from paragraph (k)(1) *Question 4* (ii), the words "a causes T" and by adding in their place the words "A causes T".

13. Paragraph (l)(1) *Question* is amended by removing the words "new tax" and by adding in their place the word "tax".

§ 1.338–4T Questions and answers relating to miscellaneous issues under section 338 (temporary).

* * * * *

(f) *Application of the asset consistency rule of section 338(e)*—(1) * * *

(5) *Certain transactions excepted under section 338(e)(2)(D).*

Question: * * *

Answer: (i) * * *

* * * * *

(vii) *Property subject to timely disposition* (A) *General rule.* The acquisition of property is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if, on or before the required disposition date, (*1*) the P group disposes of that property to an unrelated person that is not a target affiliate of T or of an affected target or (*2*) the P group member holding the property ceases to be a member of the P group and ceases to be related to any member of the P group. A P group member is not treated as ceasing to be a member of the P group for purposes of this subdivision (A) if it ceases to exist by reason of a transaction described in section 381(a) and if the acquiring corporation (within the meaning of section 381(a)) is a member of the P group.

(B) *Required disposition date.* The "required disposition date" is the latest of the following three dates: (*1*) March 15, 1986, (*2*) the 90th day after the date on which a P group member acquires the property, or (*3*) the 90th day after the acquisition date of T.

* * * * *

(6) *Carryover basis election exception under section 338(e)(2)(D) and (i)*—(i) *Introduction*—(A) *Overview.* If P makes a qualified stock purchase of T stock and, in lieu of an express election, makes a protective carryover basis election for T under this paragraph (f)(6) ("protective carryover election"), then a tainted asset acquisition with respect to T or any affected target will in no case cause a deemed election under section 338(e)(1) for T or any affected target. A "tainted asset acquisition" occurs with respect to T (or with respect to an affected target) if an express election is not made and if, during the consistency period of T (or of the affected target), a P group member acquires an asset of T or its target affiliate (or of the affected target or its target affiliate) in an acquisition that is described in section 338(e)(1) and that is not subject to an exception (other than the carryover basis election exception of this paragraph (f)(6)) to section 338(e)(1). The protective carryover election is irrevocable and bars an express election for T and the affected targets. If the P group makes a tainted asset acquisition but does not make a protective carryover election for T, then the tainted asset acquisition will cause a carryover basis election by affirmative action ("affirmative action carryover election") as of the later of the day of the tainted asset acquistion or the expiration of the period within which to make the protective carryover election for T. Pursuant to paragraph (f)(1)(ii) *Answer 1* of this section, however, the District Director in appropriate cases may cause a deemed election under section 338(e)(1) in lieu of the otherwise applicable affimative action carryover election. Thus, the only certain way for the P group to avoid a deemed election under section 338(e)(1) in the event of a tainted asset acquisition is to make a timely protective carryover election. Apart from the District Director's authority to override an affirmative action carryover election and impose a deemed election under section 338(e)(1) in lieu thereof, the consequences of a protective carryover election and an affirmative action carryover election are identical, except that an offset prohibition election under this paragraph (f)(6) and the special increase in basis of transferee member stock under paragraph (f)(6)(iv) *Answer 1*(i)(B) of this section are available only if a *protective* carryover election is made. (For a special limitation on the application of the offset prohibition election, see § 1.338–5T(d)(1).) Unless otherwise indicated, any reference in this section to the carryover basis election exception of this paragraph (f)(6) is a reference to either the protective carryover election or the affirmative action carryover election.

* * * * *

(ii) *Procedure for making protective carryover election and affirmative action carryover election.*

Question 1: * * *

Answer 1: * * *

(ii) *Corporations required to join in making protective carryover election*—(A) *General rule.* Subject to two exceptions, each corporation included in the P group at any time during so much of T's consistency period as ends on the day the protective carryover election statement is filed is required to join in making the protective carryover election.

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(B) *Exception for certain prior P group members.* A corporation that ceases to be a P group member prior to the day on which the protective carryover election statement is filed is not required to join in making the protective carryover election if it did not make a tainted asset acquisition while a member of the P group. [Caution should be exercised when relying on this exception, since it is not always clear whether an asset acquisition is a tainted asset acquisition.)

(C) *Certain foreign P group members.* A foreign P group member is not required to join in making the protective carryover election if (*1*) it is not subject to United States tax (within the meaning of §1.338–1T(k)(2)(v)) for its taxable year in which the protective carryover election statement is filed or for any prior taxable year any day of which occurs during the consistency period, (*2*) it does not purchase any of the stock included in the qualified stock purchase of T or of an affected target, and (*3*) it does not directly or indirectly hold stock in a foreign P group member that satisfies one or both of the two preceding conditions. A foreign P group member that is not required to join in making the protective carryover election ("nonjoining member") nonetheless must be identified in that election as if it were so required (such as by a footnote system). In addition, tainted asset acquisitions by a nonjoining member shall be treated as asset acquisitions subject to an affirmative action carryover election unless that member actually joins in making the election, *i.e.*, unless a representative of that member signs the election on that member's behalf. The District Director shall not have authority, however, to impose a deemed election under section 338(e)(1) in the event of a tainted asset acquisition by a nonjoining member that is treated as subject to an affirmative action carryover basis election pursuant to the preceding sentence.

(D) *U.S. shareholders of CFC P group member may act on its behalf.* A P group member that is a controlled foreign corporation will be considered to have joined in making the protective carryover election if its U.S. shareholders sign the protective carryover election statement in its behalf. For purposes of this subdivision (D), the principles of § 1.338–1T(k)(4) (section 338 election made by U.S. shareholders) apply.

(iii) *Contents of protective carryover election statement—* * * *

(C) *Schedule of information relating to corporations subject to protective carryover election* A schedule providing the information specified in this subdivision (C) ("required data") must be attached to the protective carryover election statement. Failure to attach the schedule, however, will not invalidate the protective carryover election. The schedule must satisfy the following requirements:

(*1*) It must contain the name, address, and employer identification number (if any) of, and (for a foreign corporation) the country (and further political subdivision, if relevant) under the laws of which is organized, each corporation that, as of the day the protective carryover election statement is filed, is an affected target ("includible affected target").

(*2*) It must disclose the fair market value of the consideration paid by the purchasing corporation for the stock of each directly acquired target, *i.e.*, the original target and each includible affected target (other than an includible affected target for which a qualified stock purchase would occur solely by reason of section 338 (a)(2) and (h)(3)(B)).

(*3*) It must identify the portion of the consideration paid for the stock of each directly acquired target that is represented by cash, purchase money debt, and other components of consideration (with each such other component separately stated).

(*4*) It must disclose the liabilities of the original target and each includible affected target (whether or not a directly acquired target) as of the close of the acquisition date (or as of the close of the day that would be the acquisition date if an express election were made).

* * * * *

(iv) *Consequences of protective or affirmative action carryover election.*

Question 1: * * *

Answer 2: (i) * * *

(ii) *Exception if INA acquisition is subject to offset prohibition election—* * *

(B) *Limitation on application of certain credits.* For purposes of determining the amount of a restricted credit permitted as a credit against N's tax liability for N's taxable year in which there is INA gain subject to the offset prohibition, N's pre-credit tax liability is calculated as if that INA gain were not income to N. "Restricted credits" are credits against tax described in part IV (other than subparts A and C thereof and section 27(a)) of subchapter A of chapter 1 of the Code (*i.e.*, sections 27(b), 28–30, and 38–41). For a separate restriction applicable to the foreign tax credit and for a special rule coordinating that restriction with this subdivision (B), see § 1.338–5T(d)(2).

* * * * *

Answer 3: (1) * * *

(iv) *Limitations if C ceases to be a member and offset prohibition election applies—* * *

* * * * *

(D) *Limitation on application of certain credits.* For purposes of determining the amount of a restricted credit permitted as a credit against the P group's consolidated tax liability for a taxable year in which there is a remaining ICA gain amount subject to the offset prohibition, the P group's pre-credit consolidated tax liability is calculated as if that remaining ICA gain amount were not income to the P group. "Restricted credits" are credits against tax described in part IV (other than subparts A and C thereof and section 27(a)) of subchapter A of chapter 1 of the Code (*i.e.*, sections 27(b), 28–30, and 38–41). For a separate restriction applicable to the foreign tax credit and for a special rule coordinating that restriction with this subdivision (D), see § 1.338–5T(d)(2).

* * * * *

Example (1). * * *

* * * * *

Example (3). (i) * * *

* * * * *

(iii) Second, for purposes of determining the amount of any restricted credit (as defined in subdivision (iv)(D) of this *Answer 3*) permitted as a credit against the P group's consolidated tax liability for 1987, the pre-credit consolidated tax liability is calculated as if the remaining ICA gain amount of $4,500 were not income to the P group for 1987. Under these facts, the P group has no income (and therefore no pre-credit tax liability) in 1987 absent the remaining ICA gain amount. Thus, the P group's 1987 tax liability may not be reduced by restricted credits.

* * * * *

§ 1.338(h)(10)–1T [Amended]

Par. 5. Section 1.338(h)(10)–1T is amended as follows—

1. Paragraph (c)(3) is amended by removing "§ 1.338–1T(e)(1)(i)(D)" and by adding in its place "§ 1.338–1T(e)(1)(i)(E)".

2. Paragraph (d)(4) is amended by removing "§ 1.338–1T(e)(2)(i)" and by adding in its place "§ 1.338–1T(e)(2)(v)(A)".

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 7. Section 602.101(c) is amended by inserting in the appropriate place in the table "1.338–5T . . . 1545–0702".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitations of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 338 and 7805, respectively).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: January 21, 1986.

J. Roger Mentz,
Acting Assistant Secretary of the Treasury.

[FR Doc. 86–2951 Filed 2–6–86; 4:57 pm]
BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

Records and Testimony

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This document updates the current list of field offices of the Office of Hearings and Appeals in paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, to reflect changes which have been effected heretofore. It removes the first and third listed offices of Administrative Law Judges in Sacramento, CA, and Pittsburgh, PA, as well as the field office of Administrative Law Judge (Indian Probate) in Room 3319 of the ninth listed offices of Administrative Law Judges (Indian Probate) in Billing, MT, these offices having been closed heretofore. It changes the location of the listed field office of Administrative Law Judge (Indian Probate) in Phoenix, AZ, from Room 2021 to Room 3427, this change in location also having been effected heretofore.

EFFECTIVE DATE: March 14, 1986.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, 703–235–3810.

SUPPLEMENTARY INFORMATION: Since this is an action reflecting agency management and changes of field offices which have previously been effected, the proposed rulemaking process is determined to be unnecessary and impractical.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Classified information, Freedom of information, Privacy.

Therefore, under authority of the Secretary of the Interior contained in 5 U.S.C. 301, paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, is amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read:

Authority: 5 U.S.C. 301, 552, and 552a, 31 U.S.C. 9701 and 43 CFR 1460, unless otherwise noted.

Appendix B—[Amended]

2. Paragraph 3 of Appendix B—Bureaus and Offices of the Department of the Interior, 43 CFR Part 2, is amended by removing the first and third listed offices of Administrative Law Judges in Sacramento, CA, and Pittsburgh, PA, respectively, as well as the field office of Administrative Law Judge (Indian Probate) in Room 3319 of the ninth listed offices of Administrative Law Judges (Indian Probate) in Billings, MT; and by changing the room number of the sixth listed field office of Administrative Law Judge (Indian Probate) in Phoenix, AZ, from Room 2021 to Room 3427.

Dated: February 4, 1986

Joseph E. Doddridge, Jr.,
Deputy Assistant Secretary of the Interior.

[FR Doc. 86–3020 Filed 2–11–86; 8:45 am]
BILLING CODE 4310–10–M

Bureau of Land Management

43 Public Land Order 6613

[NM 57432]

New Mexico; Withdrawal of Public Lands for the Red Rock Wildlife Experimental Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 712.16 acres of land for 15 years in order to protect the breeding habitat of the desert bighorn sheep, a New Mexico State-listed endangered species. The order includes 312.16 acres of public land withdrawn from surface entry and mining, and 400 acres of private surface and Federal subsurface land withdrawn from mining. All the land will be open to mineral leasing.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Phil Beck, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504–1449, 505–988–6326.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, and entry under the general land laws including the United States mining laws (30 U.S.C. Ch. 2). The private surface and Federal subsurface land is withdrawn from location under the United States mining laws (30 U.S.C. Ch. 2). All of the land will be open to leasing under the mineral leasing laws.

The withdrawal is to protect the breeding habitat of captive desert bighorn sheep, a State-listed endangered species.

New Mexico Principal Meridian

Public land.
T. 18 S., R. 18 W.,
Sec. 9, Lots 1 through 4, S½NE¼SW¼, S½NW¼SE¼, SE¼SE¼;
Sec. 16, Lots 1 throught 5, NW¼SE¼.
Private surface, Federal subsurface land.
Sec. 15, NW¼NW¼, W½SW¼;
Sec. 21, NE¼NE¼, W½NE¼, W½NW¼;
Sec. 22, NW¼NW¼.

The area described contains 712.16 acres in Grant County.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 15 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: January 28, 1986.

J. Steven Griles,
Assistant Secretary of the Interior.

[FR Doc. 86–3033 Filed 2–11–86; 8:45 am]
BILLING CODE 4310–84–M

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 51180-5180]

Foreign Fishing, Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of the Pacific cod domestic annual harvest (DAH) and reserve in the Central and Western areas to total allowable level of foreign fishing (TALFF) under provisions of the fishery management plan for groundfish of the Gulf of Alaska. This notice also announces apportionments from reserves to TALFF of small amounts of other species necessary for bycatch in the Pacific cod directed fishery. This action is necessary to provide sufficient Pacific cod as a target species. This apportionment is intended as a management measure that promotes full utilizations of Gulf of Alaska groundfish.

DATES: This Notice is effective February 7, 1986. Comments on this action are invited until March 10, 1986.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. The aggregate data upon which this adjustment is based will be available for public inspection during business hours at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The regulations implementing the fishery management plan for groundfish of the Gulf of Alaska authorize the apportionment of surplus amounts of the DAH and reserve to TALFF if the Director, Alaska Region, NMFS (Regional Director), has determined that these portions of the DAH and reserve will not be harvested by domestic fishermen during the remainder of the year.

The Regional Director has determined that 11,640 metric tons (mt) of Pacific cod in the Gulf of Alaska will not be harvested by domestic fishermen during the remainder of the year and that it is necessary to apportion this amount immediately to TALFF in order to avoid disruption of foreign and domestic fisheries. Consequently, 11,640 mt of Pacific cod in the Western Area of the Gulf of Alaska is transferred from the domestic annual processing (DAP) and joint venture processing (JVP) portions of the DAH and from the reserve to TALFF as shown in Table 1 below. In the Central Area, 3,880 mt was reapportioned from the DAP portion of the DAH to TALFF by an earlier notice in the **Federal Register** (51 FR 4603, February 6, 1986); this amount is repeated in Table 1. Small amounts of other species necessary for bycatch in the Pacific cod directed fishery are apportioned from the reserves as shown in Table 1. The Regional Director has determined that these amounts will not be harvested by vessels of the United States during the remainder of the year. This action is consistent with the DAH and TALFF levels recommended by the North Pacific Fishery Management Council.

TABLE 1.—REAPPORTIONMENT TO TALFF OF DAH AND RESERVES BY REGULATORY AREA IN THE GULF OF ALASKA (FIGURES ARE IN METRIC TONS) DAH=DAP+JVP

	Current	This action	Revised
Pacific cod:			
Western			
DAH	13,248	−8,328	4,920
DAP	10,727	−7,327	3,400
JVP	2,521	−1,001	1,520
Reserve	3,312	−3,312	0
TALFF	0	+11,640	11,640
Central			
DAH	26,832	−3,880	22,952
DAP	23,673	−3,880	19,993
TALFF	0	+3,880	[1] 3,880
Pollock:			
Western/Central			
Reserve	16,000	−40	15,960
TALFF	0	+40	40
Flounders:			
Western			
Reserve	2,080	−60	2,020
TALFF	0	+60	60
Central			
Reserve	2,930	−10	2,920
TALFF	0	+10	10
Atka mackerel:			
Western			
Reserve	926	−20	906
TALFF	0	+20	20
Central			
Reserve	100	−10	90
TALFF	0	+10	10
Thornyhead:			
Gulf-wide			
Reserve	750	−10	740
TALFF	0	+10	10
Squid:			
Gulf-wide			
Reserve	1,000	−10	990
TALFF	0	+10	10
Other species:			
Gulf-wide			
Reserve	4,492	−160	4,312
TALFF	0	+180	180

[1] This amount was released previously (51 FR 4603, February 6, 1986) and is repeated here.

Classfication

This action is taken under 50 CFR Parts 611 and 672, and complies with Executive Order 12291.

In view of the need to avoid disruption of foreign and domestic fisheries, the Agency has determined that affording a prior comment period and delaying the effective date of this notice would be impracticable, unnecessary, and contrary to the public interest. Public comments are invited for 30 days after the effective date of this notice.

List of Subjects in 50 CFR Parts 611 and 672

Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: February 7, 1986.

William G. Gordon,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 86-3100 Filed 2-7-86; 4:15 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 29
Wednesday, February 12, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1135

[Docket No. AO-380-A5]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments To Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposal Rule.

SUMMARY: This decision recommends the adoption of several amendments to the Southwestern Idaho-Eastern Oregon Federal milk order. The recommended changes would relax the standards required under the order for distributing plants, supply plants, and producers to participate in the marketwide pool. The percentage of a pool distributing plant's total receipts that must be accounted for as route dispositions would be reduced from 40 to 25 percent. The amount of its receipts that a pool supply plant would be required to ship to pool distributing plants also would be reduced from 40 to 25 percent. The requirement that at least one day's production of milk be physically received at a pool plant during each of the months of September through February in order for the rest of the producer's milk to be eligible for unlimited diversion would be changed to a requirement that one day's production of each producer's milk must be physically received at a pool plant for three consecutive months on a one-time basis. The limit on the percentage of a handler's milk that may be diverted to nonpool plants would be changed from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

The amendments were proposed by Dairymen's Creamery Association, a cooperative association representing nearly two-thirds of the dairy farmers supplying milk to the Southwestern Idaho-Eastern Oregon market, and are based on the record of a public hearing held at Boise, Idaho, on October 16, 1985.

DATE: Comments are due on or before February 27, 1986.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would relax the pooling performance standards required of handlers and promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued August 29, 1985; published September 4, 1985 (50 FR 35829).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Southwest Idaho-Eastern Oregon marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Boise, Idaho, on October 16, 1985, pursuant to a notice of hearing issued August 29, 1985 (50 FR 35829). One Proponent brief was filed in support of the proposed amendments.

The material issues on the record of hearing relate to:

1. Pool plant qualification requirements.
   (a) Distributing plant.
   (b) Supply plant
2. Diversion of producer milk.
   (a) Producer delivery requirement.
   (b) Limitation on diversions to nonpool plants.
3. Continued suspension of producer delivery requirements and limitation on diversions to nonpool plants.
4. Correction of published Class I price computation procedure.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool plant qualification requirements

Dairymen's Creamery Association proposed that the pool plant qualification requirements be relaxed for both distributing and supply plants. Those requirements are discussed in the following findings.

(a) *Distributing plant.* The total route distribution requirement that must be met by distributing plants to qualify for pool status under the order should be reduced from 40 to 25 percent of the plant's total receipts of fluid milk products. The change was proposed by Dairymen's Creamery Association (DCA), and was supported at the hearing by spokesmen for DCA and Associated Dairies, a distributing plant operator with two distributing plants pooled under the order. The DCA representative introduced statistics showing that all of the producer milk of DCA, Mountain Empire Dairymen's Association (MEDA) and one long-term contract producer, representing over 50 percent of the producer milk on the

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market, is pooled on the basis of Associated Dairies' route dispositions. He testified further that, as Associated Dairies' fluid milk sales represent less than half of the Class I sales under the order, the Class I utilization of milk pooled through Associated Dairies is much less than the 16 percent currently experienced by the market as a whole.

The witness stated that the two Associated Dairies' plants currently receive more milk than is needed at either plant for milk products processed there in order to assure that all of the DCA and MEDA milk will be eligible for pooling. He introduced an exhibit that showed an average of over 2,500,000 pounds of milk per month delivered to Associated Dairies and transferred back out to nonpool plants during the period from January 1984 through August 1985. This practice, he testified, resulted in the failure of one of the two Associated Dairies' plants to meet the order's route disposition requirements for pooling during the summer of 1985, and necessitated the suspension of the limits on diversions of producer milk directly to nonpool plants to assure the continued pooling of the two cooperatives' milk supplies.

The president of Associated Dairies testified in favor of the proposed amendment to reduce the pooling standard for distributing plants. He stated that DCA is a half owner of Associated Dairies, and that Associated Dairies cooperates with DCA in helping to assure that a maximum amount of DCA's and MEDA's milk is eligible for pooling by maximizing receipts of the cooperatives' milk at Associated Dairies. In doing so, he said, Associated Dairies has incurred added costs, increased the potential for shrinkage in the milk for which they are held accountable, and caused additional work in their accounting and office operations. The witness also stated that in transferring unneeded milk to handlers with whom they had no priorir dealings, Associated Dairies had encountered some cashflow problems because of delays in payments for milk. The Associated Dairies' witness testified that an increase in Class II use has contributed to the difficulty of maintaining pool status for the handler's two plants. He stated that a contract to supply ice cream mix to a number of fast-food outlets in the Northwest has created an imbalance in the relationship between Class I and Class II sales within Associated Dairies' operations. The witness indicated that as Class II sales increase it will become more difficult to dispose of at least 40 percent of Associated Dairies' receipt as Class I route dispositioins, and urged adoption of the reduced percentage requirement.

Statistics introduced at the hearing by the Southwestern Idaho-Eastern Oregon market administrator's office show that the percentage of producer milk used in Class I in the market since the effective date of the order in 1981 has ranged from 13 to 24 percent. In the 18 months immediately preceding the hearing, the Southwestern Idaho-Eastern Oregon Class I use percentage at no time reached 20 percent. At the present time, Class I use in the market is increasing, but at a lesser rate than production. As a result, the percentage of the total producer milk used in Class I is declining.

Adoption of the proposed increase in the limits on the amount of milk that may be delivered directly to nonpool plants would allow DCA and Associated Dairies to reduce the amount of producer milk received at Associated Dairies' plants to a quantity more in line with Associated's requirements, and thereby increase the percentage of such receipts used in Class I. However, in the Associated Dairies' operation, Class II use apparently is accounting for a growing percentage of the handler's fluid milk receipts. Therefore, Associated Dairies is likely to continue to experience difficulty in meeting the pool plant qualification requirements since much of the milk received at Associated's plants will be needed for use in Class II products.

The current provision that requires a distributing plant to distribute on routes 40 percent of its fluid milk receipt is not consistent with the intent of the marketwide pooling provisions of the order, since it threatens the pooling status of a large proportion of the milk supply associated with the market. It is appropriate to adjust the requirement downward to better reflect the market's present balance between the supply of and demand for fluid milk. Accordingly, DCA's proposal to reduce from 40 to 25 percent the percentage of a distributing plant's fuild milk receipts that must be distributed on routes in order for the distributing plant to qualify for pooling should be adopted.

(b) *Supply plant.* The minimum delivery requirement to qualify a supply plant for pool status under the order should be reduced from 40 to 25 percent of the plant's receipts. The receipts to be included in calculation of a supply plant's pool qualification should continue to include producer milk diverted from the plant by the plant operator.

The proposal to lower the monthly delivery requirement for supply plants from 40 to 25 percent was made by Dairyman's Cooperative Association and supported by Associated Dairies. Mountain Empire Dairymen's Association, the operator of the only supply plant pooled under the order, did not testify at the hearing or file a post-hearing brief.

The witness for the proponent testified that the supply plant operated by MEDA at Meridian, Idaho, represents the primary supply of milk for Associated Dairies' Boise plant. He also stated that the supply plant is the only pool outlet for MEDA and DCA producer milk in addition to the Associated Dairies distributing plant at Twin Falls that receives deliveries of DCA member milk direct from farms. In order to assure that the supply plant is pooled, he said, milk is moved first to the supply plant and then to the Boise distributing plant or to a DCA nonpool manufacturing plant at Caldwell. The witness stated that some uneconomic handling is associated with pooling milk through the supply plant. In a post-hearing brief filed by DCA, it was pointed out that the milk supply has increased by 31 percent since 1981, causing a much higher volume of milk to be transferred to nonpool manufacturing plants. The brief stated that a reduction in the supply plant shipping standard would assist the cooperative in attaining orderly, efficient pooling of its milk supply. Although DCA had proposed the removal of diversions of producer milk to nonpool plants from the receipts to be included when computing the supply plant's qualification for pooling, the witness did not address that portion of the proposal in his testimony.

The amount of milk that a supply plant is required to ship to pool distributing plants in order to qualify for pooling should be reduced from 40 to 25 percent of its receipts of fluid milk. The reduced percentage would bring the supply plant pool qualification requirement into closer conformity with the market's percentage of Class I use. As stated by proponent witness in relation to the distributing plant qualification percentage, the Associated Dairies-DCA-MEDA group represents over 80 percent of the produce milk on the market, but less than 50 percent of the market's Class I sales. A requirement that the supply plant through which much of the group's milk is pooled ship 40 percent of its receipts to distributing plants when the the marketwide percentage of producer milk used in Class I products is less than 20 percent could only result in excessive levels of unnecessary and uneconomic handling and hauling of milk between

plants solely for the purpose of qualifying milk for pooling. In the absence of any support from proponent for the portion of the DCA proposal that would remove diverted milk from receipts in the computation of supply plant pool qualification that part of the proposal should not be considered.

2. Diversion of producer milk

Dairymen's Creamery association proposed that the producer milk definition in the order be amended to reduce the number of deliveries of a fairy farmer's milk that must be physically received at pool plants if the rest of the farmer's milk is to be eligible for diversion to nonpool plants, and to increase the percentage of a handler's total milk supply thay may be diverted directly form farms to nonpool plants. The president of DCA testified that four years' experience in pooling milk under the order had shown these order provisions to be unnecessarily burdensome on handlers and procedures in light of the low Class I use percentage of the market and the increasing supply of milk. The proposed amendments are discussed in the following paragraphs.

(a) *Producer delivery requriement.* The requirement that at least one day's production of each producer's milk be physically received at a pool plant during each of the months of September through February in order for the rest of the producer's milk to be diverted to nonpool plants as producer milk should be relaxed. Instead, one days' production of each producer's milk should be received at a pool plant for three consecutive months on a one-time basis, as proposed by DCA.

The DCA controller testified that the order's present "touch-base" requirements place an unneeded burden on handlers and producrs. He stated that compliance with the provisions causes unnecessary handling and hauling of producer milk to assure that it is received at pool plants as required by the order. The witness pointed out that the milk of producers located closer than others to pool plants can be delivered to those plants more economically than the milk of producers located farther away from the pool plants. At the same time, he noted, it is costly and inefficient to displace the milk of nearby producers to a distant nonpool plant when the milk of more distant producers must be moved to the pool plant solely for purposes of pool qualification.

The witness testified that the proposed requirement that new producers deliver at least one day's production per month to pool plants for three consecutive months will demonstrate that producers who wish their milk to be pooled actually are able to supply milk to meet the fluid needs of the market. The witness expressed his belief that once a producer's ability to supply the market has been established, there is no longer any need for the producer to prove that ability as long as he remains associated with the market. A requirement that a producer continue to demonstrate his ability to supply the market, he stated, serves only to increase the costs to producers of supplying the market by requiring unnecessary and uneconomic hauling and handling. The witness suggested, however, that if a producer is not pooled under the Southwestern Idaho-Eastern Oregon order for a period of 60 consecutive days, the producer should be required to demonstrate his willingness and ability to once again supply the market by again fulfilling the proposed three-month delivery requirement.

In support of DCA's proposal to relax the order's limitations on the diversion of producer milk from producers' farms directly to nonpool plants, the witness submitted an exhibit showing the amounts of producer milk moved unnecessarily to pool plants solely to qualify it for pooling, and the amount that failed to qualify for pooling, for each month of January 1984 through August 1985. During the months of September through February, when the "touch-base" provisions of the order were in effect, the amount of milk per day that failed to qualify for pooling averaged over 40 percent higher than the daily average amount of milk that went unpooled during the months of March through August.

The "touch-base" requirement proposed by DCA should represent an adequate standard for individual producers to meet in order to qualify their milk for unlimited diversion to nonpool plants. There is no indication in the record of the hearing that relaxation of the indivdual producer delivery requirements would attract additional unneeded supplies of milk to the market. A producer located at some distance from the marketing area would still have to maintain a close association with the market. If the milk of such producer were not pooled on the Southwestern Idaho-Eastern Oregon market for a priod of 60 days, the producer would have to requalify his milk for unlimited diversions.

It is apparent from the witnesses' testimony that the present "touch-base" requirements of the order are overly burdensome. Producers are required to demonstrate an association with the fluid market that substantially exceeds the market's demand for milk to be used in fluid products. As a result, the uneconomic hauling and handling required to comply with the provisions of the order are unnecessarily burdensome to producers and cooperative association supplying the market. Accordingly, DCA's proposed changes to the individual producer delivery standards should be adopted. For easier administration, however, the proposed 60-day period off the market after which a producer's milk would have to be requalified should be changed to two months.

(b) *Limitation on diversions to nonpool plants.* The limit on the percentage of a handler's milk that may be diverted from producers' farms directly to nonpool plants should be changed from 70 percent in the months of September through February and 80 percent in other months to 80 percent in all months.

Dairymen's Creamery Association proposed that the diversion limits of the order be relexed to enable cooperative associations and proprietary handlers to more easily handle milk supplies in excess of the market's fluid needs. The DCA controller cited market statistics that show milk production increasing substantially while Class I use has increased at a lesser rate. He stated that the growing imbalance between production and fluid use has caused increasing difficulties in assuring that all Grade A producer milk in the area and available for pooling will actually be pooled without incurring severe handling and hauling costs. The witness emphasized that all of the milk of DCA and MEDA producers that is pooled on the Southwestern Idaho-Eastern Oregon market is associated with the market on the basis of Associated Dairies' fluid milk sales. He stated that the DCA and MEDA milk represents over 80 percent of the milk pooled on the market, while Associates Dairies' represents less than half of the market's Class I disposition.

Given the Southwestern Idaho-Eastern Oregon marketwide average Class I utilization of approximately 16 percent for the first eight months of 1985, the Class I use percentage of all the DCA and MEDA milk pooled on the basis of Associated Dairies' fluid milk disposition would be less than 10 percent. The level of Class I use in the market is clearly not high enough to justify a requirement that 30 percent of all producer milk be received at pool plants during the months of September through February. In order that the milk of producer members of DCA and MEDA who have been supplying the fluid needs of the market since its

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inception in 1981 is not to be excluded from the pool or the cooperatives are not to undertake unnecessary, inefficient and burdensome hauling and handing practices to assure that their member producers' milk is pooled, the diversion limits should be relaxed in accordance with DCA's proposal.

3. Continued suspension of producer delivery requirement and limitation on diversions to nonpool plants

There is no need at this time for a further suspension of the order's diversion limits and "touch-base" requirements. At the time of the hearing, the diversion limits and producer delivery requirements had been suspended for the months of September 1985 through February 1986. The DCA witness testified that suspension of the provisions would be necessary until the order is amended. However, the order does not require each individual producer's milk to be received at pool plants during the period of March through August, and allows 80 percent, rather than 70 percent, of a handler's supply of producer milk to be diverted to nonpool plants. On cross-examination, the witness stated that DCA will be able to operate under the provisions of the order without incurring the costs of unnecessary hauling during the months of March through August 1986. There is no reason to believe that the process of amending the Southwestern Idaho-Eastern Oregon Milk order will not be complete will before September 1986. Therefore, the suspensions currently in effect through February 1986 need not be extended.

4. Correction of published Class I price computation procedure

The instructions currently contained in the order for computing the Class I price should be changed to reflect the findings and conclusions of the final decision published December 7, 1982 (47 FR 54978). The language of § 1135.50(a) should read "The Class I price shall be the basic formula price for the second preceding month plus $1.50." Due to a typographical error in the final order, published December 20, 1982 (47 FR 57445), § 1135.50(a) in the Code of Federal Regulations (CFR) reads "The Class I price shall be the basic formula price for the preceding month plus $1.50." This error must be corrected by means of a docket in order to be corrected in the CFR. This proceeding is an appropriate opportunity for making the correction.

Rulings on Proposed Findings and Conclusions

A brief and proposed findings and conclusions were filed on behalf of certain interested parties. This brief, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southerwestern Idaho-Eastern Oregon order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in veiw of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Diary products.

PART 1135—[AMENDED]

1. The authority citation for CFR Part 1135 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 1135.7, the first sentence of paragraph (a)(2) and the introductory text of paragraph (b) are revised to read as follows:

§ 1135.7 Pool plant.

* * * * *

(a) * * *

(2) Total route disposition (except filled milk) during the month equal to not less than 25 percent of such receipts.

* * * * *

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 25 percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to § 1135.13), subject to the following conditions:

* * * * *

3. In § 1135.13, paragraphs (f) (1), (2), (3), (4) and (5) are revised to read as follows:

§ 1135.13 Producer milk.

* * * * *

(f) * * *

(1) Milk of a dairy farmer who was not a "producer" in the preceding two months shall not be eligible for diversion until one day's production of milk is physically received at a pool plant;

(2) During each of a dairy farmer's first three months as a "producer" under this order, and after any period of two months or longer that a dairy farmer is not a "producer" under this order, milk of the dairy farmer shall not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during any month may not exceed 80 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 80 percent of the producer milk that the handler cause to be delivered to or diverted from pool plants during the month;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraphs (f) (3) and (4) of this section. The total quantity so diverted during any month may not exceed 80 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

* * * * *

4. In § 1135.50, paragraph (a) is revised to read as follows:

§ 1135.50 Class prices.

* * * * *

(a) The Class I price shall be the basic formula price for the second preceding month plus $1.50.

* * * * *

Signed at Washington, DC, on February 6, 1986.

James C. Handley,

Administrator, Agricultural Marketing Service.

[FR Doc. 86–2930 Filed 2–11–86; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–04–AD]

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection for proper self-locking torque of certain self-locking nuts, and replacement, if necessary. This action is prompted by detection of several nuts that were found to have insufficient self-locking torque for proper self-locking. This situation, if not corrected, could result in the loss of an affected nut and the loss of proper retention of the associated airplane component.

DATE: Comments must be received on or before April 6, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–04–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM–120S; telephone (206) 431–2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invented

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–NM–04–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

During the trouble shooting of a flight control problem on a Boeing Model 767 airplane in service, two self-locking nuts that attach the power control actuators to the elevator surface were found without the self-locking feature. After relieving the installation torque, these nuts could be removed with hand pressure. Boeing conducted checks at their manufacturing facilities for Model 757 airplanes and found additional nuts that had inadequate self-locking characteristics. The suspect nuts are installed on the nose gear door actuator attachment, rudder pedal adjustment cable retainer, main landing gear jury brace support attachment, main landing gear forward trunnion drag fitting aft attachment, and the Pratt and Whitney (P&W) 2037 engine front evener bar attachment. The loss of these self-locking nuts could result in the loss of proper retention of the associated component.

The Boeing Company issued Service Letter 757–SL–27–24 dated November 20, 1985, which identifies the locations of the suspect nuts and provides a procedure to verify if the nuts have the proper self-locking torque.

Since these conditions are likely to exist of develop on other airplanes of this type design, an AD is proposed that would require operators to inspect for the proper self-locking torque on certain self-locking nuts in accordance with the Boeing service letter. All nuts found to have insufficient self-locking torque must be replaced prior to further flight.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD to U.S. operators is estimated to be $32,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26,

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1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities becasue, few, it any, Boeing Model 757-200 airplane are operated by small entitles. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 757-200 series airplanes listed in Boeing Service Letter 757-SL-27-24, dated November 20, 1985. To detect nuts that have insufficient self-locking troque characteristics, installed on the nose gear door actuator attachment, rudder pedal adjustment cable retainer, main landing gear jury brace support attachment, main landing gear forward trunnion drag fitting aft attachment, and the P&W 2037 engine front evener bar attachment, accomplish the following, unless already accomplished:

A. Within the next 60 days after the effective date of this AD, check the self-locking nuts, P/N BACN10JC12CM or BACN10JC12CD, for proper self-locking torque in accordance with Paragraph II of Boeing Service Letter 757-SL-27-24, dated November 20, 1985, or later FAA-aproved revision. If any self-locking nut is found not to meet the self-locking torque criteria of Boeing Service Letter 757-SL-27-24, dated November 20, 1985, or later FAA-approved revision, it must be replaced prior to further flight with a nut which meets the self-locking torque criteria.

B. Alternate mens of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications requred by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3703, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 5, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-3000 Filed 2-11-86; 8:45 am]

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14 CFR Part 39

[Docket No. 85-NM-167-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 -10, -20, -30, -40, -50, -80, and C-9 Series Airplanes (Fuselage Number 1 through 1242)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) applicable to certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, that requires inspection of the elevator boost cylinder rod end nut. This proposal would revise the fuselage number applicability and provide a modification that constitutes terminating action for the repetitive inspection requirements of the AD.

DATE: Comments must be received no later than April 6, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Salas, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filled in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been several reports of elevator boost cylinder rod end nuts working loose on certain McDonnell Douglas Model DC-9 and C-9 series airplanes. In three cases, the nut was found completely removed from the rod end. This condition, if not corrected, could result in marginal elevator control authority. The FAA issued Airworthiness Directive (AD) 85-11-02, Amendment 39-5068 (50 FR 20896; May 25, 1985), applicable to Model DC-9 and C-9 series airplanes, fuselage numbers 1 through 1195, to require inspection and replacement, if necessary, of the elevator boost cylinder attach rod end nuts. After issuance of Amendment 39-5068, McDonnell Douglas issued DC-9 Service Bulletin 27-262, dated November 27, 1985, which provides instructions for replacing the existing rod end, and adding a self-lubricating bushing and a castellated nut and cotter pin. The Service Bulletin also includes additional airplanes which may be affected.

Since this condition may exist or develop on other airplanes of this same type design, an AD is proposed which would expand the applicability of AD 85-11-02 to include additional affected airplanes, and provide a modification, in accordance with the McDonnell Douglas service bulletin previously mentioned, which would constitute terminating action for the AD.

It is estimated that 1125 airplanes of U.S. registry would be affected by this AD. Should an operator decide to accomplish the modification, it would take approximately 7 manhours per airplane, and the average labor cost would be $40 per manhour. The cost of the new part would be $193. Based on these figures, the cost impact of the optional terminating action is estimated to be $473 per airplane, or $532,125 for the entire fleet.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 and C-9 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 85-11-02, Amendment 39-5068 (50 FR 20896; May 21, 1985), as follows:

A. Revise applicability statement to read:

McDonnell Douglas: Applies to McDonnell Douglas Model DE-9, -10, -20, -30, -40, -50, -80, and C-9 (Military) series airplanes (Fuselage Number 1 through 1242), certificated in any category.

B. Add new paragraph H. to read as follows:

"H. Modification of elevator hydraulic boost cylinder attach rod ends in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 27-262, dated November 27, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for the repetitive inspection requirements of this AD."

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on February 5, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-2999 Filed 2-11-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 703

Rule on Informal Dispute Settlement Procedures; Intent to Form Advisory Committee for Regulatory Negotiation

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to form advisory committee for regulatory negotiation.

SUMMARY: The Federal Trade Commission is considering the formation of an advisory committee to develop recommendations for revisions to the Commission's Rule on Informal Dispute Settlement Procedures, 16 CFR Part 703. The committee would be comprised of persons representing the major interests affected by the rule. The committee members would attempt to negotiate a consensus on recommended revisions. This notice contains tentative lists of the interests that would be represented on the committee, parties that might represent these interests, and issues that the committee might consider. The Commission invites public comment on these lists and on the suitability of the rule for regulatory negotiation.

DATE: Comments and suggestions must be received by March 14, 1986.

ADDRESS: Comments and suggestions should be marked "Rule 703 Regulatory Negotiation" and sent to the Division of Marketing Practices, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Convenor/Facilitators:

John A.S. McGlennon, ERM-McGlennon Associates Inc., 283 Franklin Street, Boston, MA 02110, (617) 357-443

Gail Bingham, The Conservation Foundation, 1255 23rd Street NW., Washington, D.C. 20037, (202) 293-4800.

FTC Staff:

David W. Koch, Division of Marketing Practice Federal Trade Commission, Washington, D.C. 20580, (202) 523-3911.

SUPPLEMENTARY INFORMATION:

Background

In Section 110(a)(1) of the Magnuson-Moss Warranty Act ("the Act"), 15 U.S.C. 2310(a)(1), Congress announced a policy of encouraging warrantors of consumer products to establish procedures for the fair and expeditious settlement of consumer disputes through informal dispute settlement mechanisms. To implement this policy, Congress provided in section 110(a)(3) of the Act that warrantors may incorporate into their written warranties a requirement that consumers resort to an informal dispute settlement procedure before pursuing judicial remedies available under the Act for warranty claims. To ensure fairness to consumers, however, Congress directed in section 110(a)(2) that the Commission establish minimum standards for any informal dispute settlement mechanism (IDSM) that is incorporated into a written consumer product warranty. Accordingly, the Commission promulgated the Rule on Informal Dispute Settlement Procedures ("Rule 703"), now codified at 16 CFR Part 703.[1]

Rule 703 is binding only on those who choose to be bound by it. Neither the Act nor the rule requires warrantors to establish an informal dispute settlement mechanism. Moreover, a warrantor is free to set up an IDSM that does not comply with the rule as long as the warrantor does not require consumers to resort to the IDSM before filing claims under the Act. In short, an IDSM must comply with the rule only if the warrantor voluntarily establishes an IDSM and writes into its warranty a requirement that consumers use the IDSM before going to court under the Act.

[1] The Statement of Basis and Purpose for the Rule on Informal Dispute Settlement Procedures appears at 40 FR 60190 (December 31, 1975).

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Before 1982, only two warrantors established IDSMs under Rule 703. Since that time, however, several additional IDSMs have been established by automobile manufacturers. Forty states have now adopted "lemon laws" entitling consumers to obtain a replacement or a refund for a defective new car if the warrantor is unable to make the car conform to the warranty after a reasonable number of repair attempts.[2] Paralleling Section 110(a)(3) of the Magnuson-Moss Warranty Act, most lemon laws provide that the consumer may not exercise lemon law rights in court unless the consumer has first presented the claim to the manufacturer's IDSM (if the manufacturer has chosen to establish one). However, those statutes also provide that consumers are required to use the manufacturer's IDSM only if it complies with the FTC standards for IDSMs, as expressed in Rule 703.

Almost all new car manufacturers now participate in some Rule 703 mechanism. In addition, three Rule 703 IDSMs, in the housing industry hear disputes between homeowners and builders who offer warranties on new housing. Outside of the housing and automobile industries, no warrantors have established Rule 703 mechanisms, although some participate in IDSMs operating outside the framework of the rule.

Experience under the existing rule on Informal Dispute Settlement Procedures has given interested parties, including the FTC, an opportunity to evaluate the rule's effectiveness in encouraging the establishment of informal dispute settlement procedures and in ensuring that those procedures are fair and easy to use for consumers. This experience has led to criticism of Rule 703 by warrantors, mechanism operators, consumer groups, and state governments. Some have argued that the rule is unduly burdensome and discourages the formation of new mechanisms as well as hindering the efficient operation of existing ones. Others, by contrast, have asserted that the rule is insufficiently stringent in many respects.

The Commission believes it is necessary to address the problem surrounding Rule 703. The Commission further believes that regulatory negotiation may offer the best means of developing sound proposals for reform.

[2] In most states, it is presumed that a resonable number of repair attempts have been made if (1) the same defect has been subject to repair four or more times within the first year of ownership, or (2) the car has been out of service for repairs thirty or more days during the first year of ownership.

Regulatory negotiation is a process in which representatives of each interest affected by the rule meet publicly under agency sponsorship and attempt to work out a mutually acceptable solution to their problems. The negotiations precede and, if successful, lay the groundwork for a traditional notice-and-comment rulemaking procedure. The agency represents one essential interest in the negotiation, with the same rights and responsibilities as any other interest.

Regulatory negotiation is particularly appropriate in light of the voluntary application of Rule 703. Because of this aspect of the rule, it is important that any revision of Rule 703 consider all competing interests. The regulatory negotiation process should allow for such consideration. Its purpose is to have representatives of all affected interests fully discuss the issues under conditions that provide incentives to narrow or eliminate their differences.

Regulatory Negotiation

A. Feasibility

The staff has engaged the services of two professional mediators to act as "convenors" for a possible regulatory negotiation involving Rule 703. The staff and the convenors have examined the issues and interests involved and have made preliminary inquiries among a broad range of parties to determine whether representatives of all essential interests would agree to participate in such a process. These inquiries have also sought to determine whether it is possible to reach agreement on:

- Individuals to represent those interests;
- The preliminary scope of the issues to be addressed; and
- A timetable for the negotiating process.

On the basis of our preliminary analysis and inquiries, the convenors and the Commission believe that negotiation can succeed with respect to this rule, and that the potential participants listed below could adequately represent the affected interests.

A group formed for the purpose of conducting regulatory negotiation is an "advisory committee," as that term is defined in the Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. I §§ 1–15. This notice announces the Commission's present intention to create an advisory committee in accordance with FACA and its implementing regulations. This notice also:

- Lists potential issues thus far identified as appropriate for negotiation;
- Identifies the interests we believe those issues affect;
- Identifies potential participants we have initially determined would adequately represent those interests in the negotiations; and
- Asks for comment on the use of regulatory negotiation in this context and on whether the issues, interests, potential participants, and procedures are adequate and proper.

B. Procedures

The following proposed procedures and guidelines would apply if the Commission decides to go forward with regulatory negotiation. They may be modified as a result of comments received on this notice or during the negotiating process.

1. *Convenor/Facilitators:* John A.S. McGlennon, President, ERM-McGlennon Associates, Inc., Boston, Massachusetts, and Gail Bingham, Senior Associate, The Conservation Foundation, Washington, D.C., would oversee the contemplated regulatory negotiation process. Both are professional third-party mediators with extensive experience in multi-party public policy disputes. Neither has had any involvement with the substantive content or enforcement of Rule 703. They would chair the actual negotiating sessions, assist individual parties in forming and presenting their positions, offer suggestions and alternatives that would help the parties reach consensus, and, if necessary, ask parties to submit additional information or to reconsider their positions.

2. *Committee Procedures:* Under the general guidance of the convenor/facilitators, the parties themselves would establish appropriate detailed procedures for conducting committee meetings. These procedures must, however, comply with the requirements of FACA and with regulations issued by the Commission to implement FACA. The FTC regulations would be published in the **Federal Register** prior to or concurrently with a notice formally establishing the advisory committee, if the Commission decides to form such a committee.

3. *Meetings:* Committee meetings would be announced in the **Federal Register** at least 15 days in advance and would generally be open to the public. Meetings of the full committee would be held approximately monthly in Washington, D.C. As required by FACA, the convenor/facilitators would prepare for the public record minutes of all

advisory committee meetings for approval by the participants.

4. *Participants:* The convenors have recommended twenty-seven parties for membership if an advisory committee is formed by the Commission to develop proposed revisions to Rule 703. The Commission will make a final determination regarding parties based on the comments recieved in response to this notice. The Commission will consider additional parties for membership if it appears that they have a direct stake in the terms of the rule and that their participation would be essential to a successful negotiation. However, the Commission does not believe that every individual or organization actually or potentially affected by Rule 703 must have its own member on the committee. Rather, it is sufficient that each major *interest* affected by the rule is adequately represented on the committee. The group must be kept to a manageable size in order to maximize the chances for efficient operation and successful negotiation. Lists of the major interests thus far identified and possible representatives for each appear later in this notice.

It is important that the members of the negotiating group have substantive expertise and that they represent all significant viewpoints on the issues presented for discussion. They must also be able to represent non-participants who have interests common with their own. It is expected that participants would periodically report the progress of the negotiations to their respective organizations and interest groups. By doing so, the ideas and concerns of non-participants could be taken into account at the negotiating table.

5. *Consensus:* The goal of the negotiating process is consensus. Consensus on any specific issue means that each essential interest represented on the committee concurs in the conclusion reached by the committee with respect to that issue.

6. *Notice of Proposed Rulemaking:* The advisory committee's specific objective would be to agree on the terms of a notice of proposed rulemaking (NPRM) that embodies proposals for a revised Rule 703. If the negotiations were successful, the committee would prepare a report describing the factual basis on which the committee relied in developing its proposals. The Commission agrees, absent extraordinary circumstances and subject to statutory requirements, to incorporate the committee's consensus recommendations in an NPRM initiating a proceeding to amend Rule 703.

7. *Failure to Agree on Recommendations:* If the advisory committee were unable to reach a consensus on any of the issues raised for discussion, the committee would prepare a report identifying the apparent reasons for failure to achieve a consensus on those issues. In the absence of a consensus, the Commission anticipates developing its own proposals incorporating such changes in Rule 703 as it deems appropriate.

Issues for Regulatory Negotiation Involving Rule 703

The convenor/facilitators have solicited the views of potential parties to the negotiation on the issues that would be appropriate for discussion. From these preliminary inquiries and from the FTC's experience with Rule 703, a number of possible issues have been identified. The Commission invites any interested person to suggest other issues relevant to Rule 703. The Commission anticipates that additional issues would be considered by the advisory committee as they arise.

The following list of issues is tentative and is not intended to be an agenda for the advisory committee's deliberations. The advisory committee itself, if formed, will be free to set its own agenda.

Possible Issues

1. Whether the purpose of Rule 703 mechanisms should be consumer satisfaction, enforcement of state lemon laws or other state requirements, or both;
2. Whether existing incentives to establish Rule 703 mechanisms are adequate, and whether other incentives could be built into the rule;
3. How much detail about the mechanism should be provided on the face of the warranty;
4. How the term "advance funding"should be defined;
5. What the rule should provide regarding direct access to the mechanism by consumer;
6. What the composition, qualifications, and training of mechanism decison-makers should be;
7. What the rule's provisions for oral hearings should be;
8. What the time limits on mechanism decision-making should be;
9. What kinds of incidental and/or consequential damages issues the mechanism should consider;
10. What the rule's record-keeping requirements should be, both in terms of quantity and in terms of the types of information that would be useful;
11. How broadly "compliance" with Rule 703 should be defined, and what consequences should follow from failure to comply;
12. Who should determine whether or not a mechanism is in compliance with Rule 703;
13. Whether flexibility should be provided for different approaches to informal dispute settlement for different types of warranted products;
14. Whether features could or should be built into the rule to encourage greater use of mediation as opposed to arbitration; and
15. How to encourage greater uniformity of standards for informal dispute settlement mechanisms.

Essential Interests Affected by Rule 703

Based on its experience and the preliminary inquiries, the Commission believes the following interests, besides the sponsoring agency, should be represented in negotiations to develop proposed revisions to Rule 703:

- Dispute resolution service providers
- New home warranty programs
- Domestic automobile manufacturers
- Automobile importers
- Automobile dealers
- Other major consumer product manufacturers
- Consumer affairs agencies and state Attorney General
- Consumer groups

Potential Parties

The convenor/facilitators, in consultation with the FTC, have tentatively determined that the following parties could adequately represent the essential interests that have been identified thus far. All of those listed have agreed to participate if an advisory committee is, in fact, formed. This list, however, is only tentative. The membership of the advisory committee will not be finally determined until (and unless) the Commission publishes a **Federal Register** notice formally announcing the formation of such a committee.

Sponsoring Agency

Federal Trade Commission

Dispute Resolution Service Providers

Council of Better Business Bureaus, Inc.
American Automobile Association
Major Appliance Consumer Action Panel

New Home Warranty Programs

Home Owners Warranty Corporation
Residential Warranty Corporation

Domestic Automobile Manufacturers

General Motors Corporation

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Ford Motor Company
Chrysler Corporation
American Motors Corporation

Automobile Importers

Automobile Importers of America, Inc.
Nissan Motor Corporation

Automobile dealers

National Automobile Dealers Association
American International Auto Dealers Association

Other Major Consumer Product Manufacturers

Association of Home Appliance Manufacturers
National Association of Home Builders

Consumer Affairs Agencies and State Attorneys General

Attorney General of Connecticut
Attorney General of Maryland
Attorney General of Massachusetts
National Association of Consumer Agency Administrators
Union County, New Jersey, Office of Consumer Affairs
U.S. Office of Consumer Affairs

Consumer Groups

Center for Auto Safety
Consumers Union
National Consumer Law Center
Conference of Consumer Organizations.

The Commission invites comment on this list of potential parties. If, in response to this notice, an additional interest, organization or person requests membership or representation in the negotiating group, the FTC, in consultation with the convenor/facilitators, will determine (1) whether that interest, organization or person would be substantially affected by the rule; (2) if so, whether the interest, organization or person would be adequately represented by someone already in the group; and (3) if not adequately represented, whether a representative of that interest, organization or person should be added to the group. Requests for membership or representation must be made in writing by the date appearing in this notice. After reviewing the comments, the Commission will finalize the list of participants.

Final Notice

After evaluating the comments on this announcement and any requests for representation, the Commission will finally determine whether to establish an advisory committee under FACA. If the Commission decides that a committee should be formed, the Commission will announce its decision in the **Federal Register.**

Tentative Schedule

The Commission hopes to announce its decision whether to form an advisory committee by early April 1986. If an advisory committee is established by that time, the first meeting of the committee would take place in late April or early May 1986. The first meeting would be organizational in nature, focusing on dates, times, locations, and procedures for future meetings and on answering any remaining questions of the participants. Negotiating sessions would again approximately one month after the organizational meeting and continue monthly thereafter.

Termination

The Commission plans to dissolve the negotiating group if the participants do not reach consensus within eight months after the first committee meeting. The Commission retains discretion to dissolve the committee at an earlier time if the agency detemines that the committee's activities are not being carried out in the public interest. If the committee dissolves without consensus on an NPRM, the Commission anticipates developing its own proposal to revise Rule 703.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-3054 Filed 2-11-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-35-84]

Income Taxes; Stock Acquisitions and Target Corporation Assets; International Aspects of Section 338; Cross Reference

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that add a new § 1.338–5T, relating to international aspects of section 338, and that amend existing temporary regulations §§ 1.338–1T, 1.338–4T, and 1.338(h)(10)–1T. Section 1.338–1T contains procedural rules and § 1.338–4T provides guidance on miscellaneous substantive matters under section 338, primarily in the domestic context. Section 1.338(h)(10)–1T provides guidance on the operation of section 338(h)(10). Subject to the modifications specifically identified in this document, the text of new § 1.338–5T and of the amendments to §§ 1.338–1T, 1.338–4T, and 1.338(h)(10)–1T also serves as the comment document for this notice of proposed rulemaking.

DATES:

Proposed Effective Date

The regulations are proposed to apply generally to stock acquisitions made after August 31, 1982. The regular exclusion election permitted by the temporary regulations that serve as the comment document for this notice of proposed rulemaking would be eliminated for stock acquisitions that occur subsequent to the date of publication of the final regulations (and that do not occur pursuant to a binding contract in effect on or before that date).

Date for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by April 14, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–35–84), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new temporary regulations § 1.338–5T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR") and amend temporary regulations §§ 1.338–1T, 1.338–4T, and 1.338(h)(10)–1T. The new temporary regulations also amend the table of OMB control numbers in Part 602 of Title 26 of the CFR to reflect the OMB control number assigned to § 1.338–5T.

Section 1.338–1T was published as T.D. 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722), and was amended and redesignated (as § 1.338–1T) by temporary regulations published as T.D. 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086). Section 1.338–1T also was amended by temporary regulations published as T.D. 8021 in the **Federal Register** on April 25, 1985 (50 FR 16402). The temporary regulations published on April 25, 1985, also added § 1.338–4T. Sections 1.338–1T and 1.338–4T were amended by temporary regulations published as T.D. 8068 in the **Federal Register** on January 8, 1986, and by temporary regulations published as T.D. 8072 in the **Federal Register** on January 29, 1986. The temporary regulations published on January 8, 1986, also added § 1.338(h)(10)–1T.

The final regulations are proposed to be based on the new and amended temporary regulations with certain modifications specifically identified herein. They would be added to Part 1 of Title 26 of the CFR. Those final regulations would provide guidance primarily on international aspects of section 338 of the Code, as added by section 224 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. No. 97–248; 96 Stat. 485) and as amended by section 306(a)(8) of the Technical Corrections Act of 1982 (Pub. L. No. 97–448; 96 Stat. 2402) and section 712(k) of the Tax Reform Act of 1984 (Pub. L. No. 98–369; 98 Stat. 948). For the text of the new and amended temporary regulations, see T.D. 8074, published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations, as supplemented by this preamble, explains the additions to the regulations.

Regular Exclusion Election Eliminated

It is proposed that the regular exclusion election permitted by § 1.338–5T(c)(2) of the temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** be eliminated in the final regulations. If this position is adopted in the final regulations, the regular exclusion election will not be available if (1) the acquisition date of the actual original target (as opposed to a deemed original target under § 1.338–5T(c)(2)(iv)) occurs subsequent to the date of publication of the final regulations and (2) that acquisition does not occur pursuant to a binding contract in effect on or before that date.

The regular exclusion election under the temporary regulations permits the purchasing corporation to elect, in certain cases, to exclude all foreign corporations (other than foreign corporations treated as domestic corporations under those regulations) from the status of target affiliates for purposes of the stock consistency rule of section 338(f)(1). As a result, such corporations are not subject to a deemed election under section 338(f)(1) when an express election is made for the original target. The preamble to the temporary regulations contains a detailed explanation of the regular exclusion election and of the ancillary consequences of such an election. The temporary regulations provide for a similar exclusion election ("transitional exclusion election") during a transitional period. See § 1.338–5T(j). (The provisions of the temporary regulations relating to the transitional exclusion election would be retained in the final regulations.)

The regular exclusion election is a response to the asserted hardship of imposing full stock consistency in the foreign context. It has been claimed, for example, that full stock consistency would create difficult valuation problems, since a valuation of all of the assets of all foreign subsidiaries subject to deemed elections under section 338(f)(1) would be required. It also has been claimed that full stock consistency would exacerbate the mismatch between asset basis as recognized by the United States and asset basis as recognized by the foreign taxing jurisdiction, since new foreign target's assets generally would have a stepped-up basis for United States tax purposes as a result of the section 338 election but a carryover basis for foreign tax purposes. (Even if the foreign target is not required to file a United States income tax return, the basis adjustment nevertheless is significant for purposes of calculating that target's earnings and profits in the event of actual or deemed distributions to U.S. persons).

It is not clear, however, that full stock consistency would cause a significant hardship. The assets of foreign subsidiaries presumably would be valued for general accounting purposes in any case. As for the mismatch in asset basis, such a mismatch is not unique to section 338 and in some cases actually may be beneficial to taxpayers. (Increased depreciation deductions by new foreign target as a result of an asset basis step-up would decrease its earnings and profits and correspondingly increase the effective rate of foreign tax on its earnings and profits as calculated for U.S. tax purposes.)

Although the applicaton of section 338 to the foreign branch of a domestic target corporation creates problems similar to those encountered by applying section 338 to a foreign subsidiary, the statute does not contemplate an exclusion of foreign branch operations from section 338 consequences. Thus, the regular exclusion election would result in differing tax consequences depending upon whether a U.S. corporation operated abroad through a foreign subsidiary or through a foreign branch. As a matter of general policy, it is believed that tax considerations should be a neutral factor in determinations regarding the form of foreign operations. See, *e.g.*, the deemed paid foreign tax credit under section 902. The regular exclusion election conflicts with that general policy.

The regular exclusion election also conflicts with the general policy of the consistency rules by permitting the purchasing corporaton to exclude all foreign corporations from an express election.

The regular exclusion election adds significantly to the complexity of the temporary regulations. The complexity is necessary in order to preserve appropriate section 1248 consequences and to ensure the proper operation of the consistency rules. See § 1.338–5T (c)(2)(iii)(B) and (c)(3)) (provisions related to the operation of section 1248) and § 1.338–5T (c)(2)(iii)(C), (c)(2)(iv), and (c)(4) (provisions related to the consistency rules).

For the foregoing reasons, it is proposed that the regular exclusion election be eliminated in the final regulations. Comments on this issue would be particularly helpful.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held,

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notice of the time and place will be published in the Federal Register. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests person submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Duane H. Pellervo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Parts 1.301–1—1.383–3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

These regulations are proposed to be issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 338 and 7805, respectively).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–2950 Filed 2–6–86; 4:57 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 249

[DoD Instruction 5230.XX]

Presentation of DoD-Sponsored Scientific and Technical Papers at Meetings

AGENCY: Defense.

ACTION: Proposed rule.

SUMMARY: This part provides policy and procedural guidance for considering national security in the dissemination of DoD-sponsored scientific and technical information at meetings, whether such meetings are conducted by the U.S. Government or private organizations.

DATE: Comments should be received no later than March 14, 1986.

ADDRESS: Office of the Deputy Under Secretary of Defense (Research and Advanced Technology), Room 3E114, The Pentagon, Washington, DC 20301–3080.

FOR FURTHER INFORMATION CONTACT: Francis Sobieszcyk, (202) 694–0205.

List of Subjects in 32 CFR Part 249

DoD scientific and technical information, meetings, conferences, classified information, information release and dissemination.

Accordingly, Title 32 is proposed to be amended by adding Part 249 to read as follows:

PART 249—PRESENTATION OF DOD-SPONSORED SCIENTIFIC AND TECHNICAL PAPERS AT MEETINGS

Sec.

249.1 Purpose.
249.2 Applicability and scope.
249.3 Definitions.
249.4 Policy.
249.5 Procedures.
249.6 Responsibilities

Authority: Sec. 1217, Pub. L. 98–94, (10 U.S.C. 140c).

§ 249.1 Purpose.

This part establishes policy for consideration of national security in the dissemination of scientific and technical information in the possession or under the control of the Department of Defense at conferences and meetings.

§ 249.2 Applicability and scope.

This part applies to the Office of the Secretary of Defense (OSD) and activities supported administratively by OSD, the military departments, the organization of the Joint Chiefs of Staff, the defense agencies, and the unified and specified commands (hereinafter referred to collectively as "DoD Components").

§ 249.3 Definition.

Contracted Fundamental Research: Includes grants and contracts that are (a) funded by budget Category 6.1 ("Research"), whether performed by universities or industry; or (b) funded by budget Category 6.2 ("Exploratory Development") and performed on-campus at a university, but for those rare exceptional circumstances where there is high likelihood of disclosing performance characteristics of military systems, or of manufacturing technologies that are unique and critical to defense.

§ 249.4 Policy.

It is DoD policy to:

(a) Encourage the presentation at technical meetings of scientific and technical information generated by or for the Department of Defense consistent with U.S. laws and the requirements of national security. Every effort should be made to develop presentations that are appropriate for delivery to the widest appropriate audience consistent with the sensitivity of the material.

(b) DoD components and personnel to sponsor, attend and participate in scientific and technical and conferences, and to consult with professional societies and associations in organizing meetings that are mutually beneficial.

(c) Allow the publications of unclassified contracted fundamental research to the maximum extent possible. When restrictions are required the normal mechanism for control of information generated during DoD-funded fundamental research in science, technology and engineering at colleges, universities, and laboratories is classification. Other U.S. statutes may restrict release of information, and such restrictions will be imposed in accordance with requirements of those statutes.

(d) Review and, if warranted, prescribe limitations for presentations of DoD employees and applicable DoD contractors. Controls will be used only when appropriate authority exists.

(e) Provide timely review of DoD employee and contractor presentations.

(f) Assist DoD contractors and, when practical, others in determining the sensitivity of or the applicability of export controls to technical data proposed for public disclosure.

(g) Release classified and/or export-controlled DoD information to foreign representatives when such release promotes mutual security or advances the interests of an international agreement or understanding. Presentation of such information in technical meetings attended by foreign representatives is appropriate when the release is made under the terms of existing security arrangements and when the U.S. and receiving government have established an understanding or agreement in that specific or technical area.

§ 249.5 Procedures.

(a) Conferences organized by DoD components, DoD contractors, scientific and engineering societies, and/or professional associations, among others, enhance the value of R&D sponsored by the Federal Government, and require full cooperation of all involved parties to maximize the benefits obtained. In general, national security concerns related to the release of DoD scientific and technical information at meetings

are influenced by two mutually dependent factors; i.e., the sensitivity of the material to be presented, and the identity of proposed recipients of the material. Either or both factors can be adjusted to some degree through consultation among authors, conference organizers, and officials responsible for authorizing release of DoD information. The purpose of this consultation is to ascertain which combination of factors will support the most productive exchange of information consistent with U.S. laws and the requirements of national security. Interaction among affected parties should commence at least six months prior to the meeting date. Elements to be considered in the consultative process include:

(1) *Constraints of Information to be Presented*—Possibilities range from completely unclassified/unlimited through highly classified information. Other considerations include, but are not limited to, proprietary data, export-controlled data, Privacy Act information, and foreign government-provided data. Classified information may only be presented at meetings organized in accordance with DoD Directive 5200.12. [1] Export-controlled DoD technical data may be presented only in sessions where recipients' eligibility to receive such data is established in accordance with 32 CFR Part 250. Release of proprietary information, privacy data, and foreign government-provided data requires approval of the party controlling that information.

(2) *Locotion and Physical Access Controls*—To a large degree this element is dependent on the type of material to be presented.

(i) Presentations which have been approved for public release may be presented at any location.

(ii) Meetings sponsored by a U.S. Government agency at which export-controlled DoD technical data is to be presented may be held in any location in the U.S. when control of physical access to be sessions is provided by a U.S. Government employee or a contractor specifically tasked by DoD for that duty. Non-government organizations who organize meetings in the United States at which export-controlled DoD technical data is to be presented will ensure that physical access to the presentations is limited to government employees and individuals certified under 32 CFR Part 250 procedures. Presentations of export-controlled DoD technical data in meetings held outside the U.S. may be permitted on a case-by-case basis after review of the situation by DoD

(iii) Classified information may only be presented at meetings held in a secure government or contractor facility, unless a waiver has been granted in accordance with DoD Directive 5200.12. Personnel access controls for classified meetings are also specified in that directive.

(3) *Foreign Access to Meeting*—

(i) For meetings sponsored by the DoD and conducted at a DoD or DoD contractor facility, guidelines for foreign participation are established in DoD Instruction 5230.17, [2] and DoD instruction 5230.20. [3]

(ii) Determining access to meetings sponsored by organizations other than DoD is the sole responsibility of those organizations.

(iii) DoD may wish to release export-controlled DoD technical data to certain foreign nationals at unclassifed meetings sponsored and conducted by non-government societies and associations in order to advance the interests of an international agreement or understanding. Release by DoD will be pursuant to appropriate exemptions to the International Traffic in Arms Regulations (22 CFR Part 126). The visit request procedures established in DoD Instruction 5230.20 will be used to inform the requestor and the meeting sponsor of the decision to release the information to the designated individual(s) and conditions pertaining to such release.

(b) DoD review is required by DoD Directive 5230.9 [4] for all presentation of DoD employees to be made outside the U.S. Government. DoD contractors are required to submit proposed presentations for DoD review if that is a specific contractual requirement.

(c) Proposed presentations will be reviewed to:

(1) Determine what information (if any) in the submitted paper and/or abstract is subject to security classification, or is subject to withholding from public disclosure under DoD Directive 5230.25 [5], or is otherwise restricted by statute, regulations or DoD policy.

(2) Recommend specific changes, if any, to allow the paper to be presented as requested.

(3) Indicate on the document its releasibility in original and altered versions.

(4) Provide information on appeal procedures to be followed if requested approval is denied.

(d) Reviews will be completed as speedily as possible after receipt of the document by an appropriate review authority. Except in rare and exceptional cases, reviews will be completed in:

(1) 10 working days for all abstracts.

(2) 20 working days for papers submitted for presentation at sessions which will have unlimited access.

(3) 30 working days for papers submitted for presentation at unclassified session which will have limited access.

(4) 30 working days for papers submitted for presentation at sessions which will be classified.

(5) If the review cannot be completed in time, an explanation will be provided.

(e) DoD may review for national security concerns other presentations submitted voluntarily and (1) inform the author that DoD has no objection to public presentation or (2) inform the author that DoD advises that presentation in a public forum would not be in the interest of national security, and provide appropriate reasons for the determination. The former determination, in paragraph (e)(1) of this section, satisfies an exemption from requirements for government review under the International Traffic in Arms Regulations. The latter determination, in paragraph(e) of this section, does not legally bar presentation. It is an advisory statement that, for the presentation concerned, DoD will not authorize public release, thereby premitting presentation under the aforementioned exemption. Such DoD action does not preclude recourse through normal State Department procedures.

(f) Authors who are DoD employees or DoD contractors will submit full text and/or abstract of paper for review before submitting it for presentation at meetings outside DoD. Requests for review will identify the conference sponsor(s), site, and access restrictions specified by the session organizers, and will state whether the paper is for presentation at a session which is to be unclassified with unlimited access, unclassified with limited access, or classified (specify level of classification).

(g) When required, a full text of any paper shall be submitted for public and/or foreign disclosure clearance in sufficient time to allow adequate review and possible revision. Authors should allow adequate time for their presentation to reach the appropriate

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19129 Attention code 301.

[2] See footnote 1 to § 249.5(a)(1).

[3] See footnote 1 to § 249.5(a)(1).

[4] See footnote 1 to §249.5(e)(1).

[5] See footnote 1 to §249.5(a)(1).

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review authority in addition to the review targets set in paragraph (d) of this section.

(h) At the time of submission of the full text of the presentation to the Conference Program Committee, DoD authors should state that their papers have been approved for presentation at the meeting and specify the security level or degree of access control required. When submitting abstracts that have been cleared for release, authors should indicate when and what kind of approval is expected on the presentation in its final form.

(i) In accordance with DoD Directive 3200.12[6] copies of proceedings and/or reprints of papers sponsored by DoD for all scientific and technical meetings will be provided to the Defense Technical Information Center for secondary distribution.

§249.6 Responsibilities.

(a) The *Under Secretary of Defense for Research and Engineering (USDRE)* shall have overall responsiblity for the implementation of this part.

(b) The *Deputy Under Secretary of Defense for Research and Advanced Technology* shall:

(1) Administer and monitor compliance with this Instruction.

(2) Establish procedures allowing DoD sponsorship of foreign national attendance at non-government meetings as described in paragraph 249.5 (a)(3)(iii).

(3) Provide, when necessary, technical assistance to DoD Components in determining sufficiency of protection of unclassified technical information that is to be presented at meetings.

(4) Provide, upon request, information and advice regarding controls on unclassified DoD information to scientific and engineering societies and professional associations.

(c) The *Under Secretary of Defense for Policy* shall develop and promulgate, as required, policy guidnace to DoD Components for implementing this part.

(d) The *Deputy Under Secretary of Defense (Policy)* shall establish, administer and monitor compliance with policies and procedures for release of classified information at meetings.

(e) The *Heads of DoD Components* shall promulgate and implement this part within 180 days.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 6, 1986.

[FR Doc. 86-3055 Filed 2-11-86; 8:45 am]

BILLING CODE 3810-01-M

[6] See footnote 1 to §249.5(a)(1)

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2920-3]

Standards of Performance for New Stationary Sources; Magnetic Tape Manufacturing Industry

Correction

In FR Doc. 86-1214 beginning on page 2996 in the issue of Wednesday, January 22, 1986, make the following corrections:

1. On page 3016, third column, third complete paragraph, second line, "3875 m^3" should have read "38 m^3".

2. On page 3021, first column, in § 60.710 (a)(2) and (c), "(the date of publication of the final rule in the Federal Register)" should have read "(date of publication in the Federal Register)" which would have been computed to read "January 22, 1986". Also, make the same correction on page 3022, first column, in § 60.712(c).

3. On page 3025, third column, in § 60.717(c)(5), fifth line, "which" should have read "the most."

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

[PR Docket No. 86-38; RM-5058; FCC 86-65]

Creation of a New Consumer Radio Service

AGENCY: Federal Communications Commission.

ACTION: Inquiry.

SUMMARY: This document requests public comment on the best approach to provide for unmet personal communications needs within the two 200 kHz frequency segments now assigned to the General Mobile Radio Service (GMRS). Public comment is sought because the Commission is considering creating a new Consumer Radio Service to more fully accommodate personal radio needs.

DATES: Comments may be filed on or before May 30, 1986. Reply comments may be filed on or before June 30, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 95

Communicatons equipment, General Mobile Radio.

Notice of Inquiry

In the Matter of Creation of a new Consumer Radio Service. (PR Docket No. 86-38, RM-5058).

Adopted: January 30, 1986.
Released: February 5, 1986.

By the Commission.

Introduction

1. We are considering significant changes in the Part 95, Subpart A General Mobile Radio Service (GMRS). Our purpose in issuing this Inquiry is to seek public comment on the best approach to accommodate unmet personal communications needs within the two 200 kHz frequency segments now assigned to the GMRS.[1] This document sets forth an alternative Consumer Radio Service which would emphasize transceivers carried on the person in order to respond to the communications needs of the contemporary citizen living and traveling in our mobile society.

Background

2. The present GMRS has roots extending back to May, 1945, when we allocated the 460-470 MHz frequency band to a new "Citizens Radio Service" in Docket 6651. We formulated rules to govern this service from 1947 through 1949 in Dockets 8449 and 9119. These rules provided for licensing two types of stations—Class A and Class B.

3. In 1958 in Docket 11994 much of the 460-470 MHz band previously available for Class A and Class B use was reallocated to other services. Class B stations were abolished. Class A operation was redefined and confined to sixteen specific channels, eight frequencies in each of two 200 kHz frequency segments. In Docket 20120, Class A operation was renamed the General Mobile Radio Service (GMRS). The rules governing the GMRS were updated and codified in PR Docket No. 82-84 in July, 1983.

4. Notwithstanding the evolution of three distinct Part 95 Personal Radio Services in Docket No. 20120 certain personal user communications needs remain unfulfilled. The GMRS provides

[1] The Personal Radio Steering Group (PRSG) filed a petition for rule making (RM-5058) on June 11, 1985, which sought to restructure the GMRS to address additional personal communications needs. PRSG and Dow Chemical Telecommunications Corporation submitted comments. M.C. Trahos filed reply comments. We will include PRSG's petition and the comments and reply comments filed thereon as comments in this proceeding.

relatively high quality two-way communications, but at considerable cost in terms of both price and spectrum consumption. The Radio Control (R/C) Radio Service, a one-way non-voice service for the remote operation of devices, attracts mostly model aircraft, model boat and model car enthusiasts. The Citizens Band (CB) Radio Service provides for short-range two-way personal and business communications, but requires continuous monitoring to hear a directed message. Both R/C and CB are in frequency bands subject to adverse propagation phenomena.

The Inquiry

5. We believe there is a need to restructure the GMRS into an affordable Consumer Radio Service. It would allow one person to contact another specific person over a short distance and conduct a brief voice conversation. It would allow, for example, two or more persons attending a large outdoor event together to keep in touch when they are out of sight of each other. Each person would thereby have greater mobility without losing contact with the other. Persons attending picnics, sporting events and parades should find such a device very useful. Campers, hikers, cyclists, commuters, shoppers, travelers, and participants in rallies, political campaigns and public service organizations such as REACT and neighborhood watch groups have similar needs. In each case, the need is for personal directed communications as the only possible means of contact between people.

6. The use best suited to personal communications needs is a critical component to design of a restructured GMRS. It appears that most of the personal communications needs we have discussed would be most suitably addressed by a service providing two-way voice communications between persons with transceivers carried on the person. We seek comment on whether this is indeed the optimum configuration. The type of equipment designed for the service could obviate the need to rely upon user familiarity with detailed operating regulations for rule compliance, particularly with regard to the prevention of interference. We could require that the equipment be user transparent. That is, rather than relying upon operator discipline and significant levels of Commission enforcement to prevent interference and achieve rule compliance, we could require equipment designed to control users actions automatically.

7. We envision units carried on the person for short-distance low-power communications that would, if they were readily and inexpensively available, assist people in the conduct of everyday living. While we do not contemplate that this service would be intended to duplicate those services which provide for vehicular mobile radios, there would be nothing to prevent a person from carrying the unit into a vehicle. This type of a unit could provide off-the-shelf technology which would allow people to have flexibility in the use of the equipment.

8. We believe the needs we have identified require directed communications and affordable portable equipment. The communications must include a reasonable degree of privacy and offer security from interference. The characteristics of the service should be designed to give it maximum utility for a variety of everyday applications. Thus, the equipment should be easy to use, and should have most operating functions built in to make it user transparent.

9. *System Technology.* We seek comment on the different methods available to maximize the number of uses in the two 200 kHz bands. We ask respondents to consider what range is needed to accommodate the envisioned personal communications requirements and what degree of service reliability is necessary within that range. The answers to these questions will help us determine whether to provide selective calling and whether to have single or paired frequency channels. We seek comment on the most appropriate trade-off between range and channel reuse in this service.

10. We encourage commenters to express their best judgments about suitable methods to maximize user transparency. We believe an essential aspect of this service would be automatic frequency selection in lieu of frequency assignment of "party" channels.

11. We ask for comments whether one-way services should be permitted if they can be accommodated without being detrimental to two-way services. We request commenters to address how the choice of one configuration over another would affect other choices to be made in a new Consumer Radio Service. If one or more digital channels are the best choice for automatic frequency selection, should excess capacity on these channels be available for paging or other appropriate uses and if so how should such functions be structured?

12. We request comment on the suitability of various emission modes for this service, particularly with regard to accomplishing minimum channel spacing and maximizing frequency reuse. We encourage comments on spectrum efficiency and on spectrum-saving technology. The relative merits of AM, FM, sideband technologies, and analog and digital technologies capable of providing voice transmission should be discussed. This technical analysis should address the usual parameters for each mode of operation: transmitter and receiver requirements, frequency tolerance, harmonic and spurious attenuation, frequency reuse considerations and the cost (both to the manufacturer and to the consumer) to obtain each specification. We request comment from equipment manufacturers on the type of market and likely demand for any such personal use-oriented equipment at 460-470 MHz. We wish to know the interrelationships of market size and equipment cost.

13. *Equipment Technology.* We wish input on the extent to which current technology would support narrower channels and the effect reducing the channel spacing would have upon equipment costs. Should we set the initial channel spacing at its practical minimum now, or should we consider a wider channel spacing and then redivide channels when technology has sufficiently advanced? We seek comment on whether choosing the latter course would minimize the impact of equipment frequency stability on initial equipment cost or result in premature obsolescence of equipment. We also seek comment on the advantages and disadvantages of equipment designed to facilitate the required upgrading in the event of such channel redivision.

14. Are certain techniques and innovations likely to improve the GMRS so much that they would attract so many users that there would be unacceptable levels of congestion? If so, should such techniques and innovations be rejected, or should we instead consider new technologies to increase the number of channels available to accommodate these techniques and innovations? Should we consider rules to limit use in congested metropolitan areas? Can we include certain techniques and innovations on the premise that any congestion would be self-limiting, with those desirous of, eligible for and able to pay for higher quality service choosing other alternatives?

15. *Interconnection.* In 1978 we decided to bar interconnection to the public switched telephone network in the GMRS because we saw no "practical way to accommodate a potentially large demand for such service with merely 8 pairs of frequencies." *First Report and Order,* Docket No. 20846, 69 FCC2d 1831, 1840

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(1978). It is our preliminary view that the same practical considerations militate against consideration of an interconnected service in only 400 kHz of available spectrum. While we do not discourage comment on whether there is any unmet need for interconnected personal communications which can be practically accommodated in a new Consumer Radio Service, we do not view the restructured GMRS as a new cordless telephone service.

16. *Equipment compatibility.* A restructured GMRS designed to accommodate large numbers of personal users in a relatively small portion of spectrum might require standardized protocols or algorithms for intersystem compatibility to permit use of the equipment in locations other than the user's normal service area. This would also assure that one user could communicate with any other user. We request respondents to address the question of equipment compatibility and associated costs.

17. *Emergency channels.* The Citizens Band Radio Service dedicates one channel (Channel 9) for emergency or travelers' advisory purposes. The GMRS has no current similar dedicated channel, but there are some emergency and safety-of-life or property communications in GMRS spectrum. We request comment on whether a restructured GMRS should include one or more selectable or priority channels for emergency or travelers' advisory purposes, or for coordination and intercommunication among emergency teams. We also seek comments on methods for assuring that non-emergency communications would not occur on these channels.

18. *Licensing and Regulation.* In the GMRS we license systems consisting of one or more transmitting units used by station operators to communicate messages. We do not wish to issue individual user licenses in a new Consumer Radio Service.[8]

19. Not issuing individual user licenses would probably require type acceptance of transmitters for a new Consumer Radio Service with specifications on output power, frequency stability, frequency coverage (channels), automatic channel selection, output bandwidth and modulation technique. However, this would eliminate the need for users to have the technical knowledge required to recognize any interference potential of their equipment or to remedy interference problems. We invite discussion.

20. While we anticipate that most of the equipment for the service we are considering would be carried on the person, we do not rule out the possibility that we might authorize certain land stations that would have greater authorized power, higher permissible antenna height, or possibly even the capability to act as a repeater. We seek comment on whether such a unit could be as user transparent as the basic unit, and, if not, whether this type of equipment would require licensing even if we did not generally license users in a restructured GMRS.

21. We also seek comment on personal and commercial use sharing in this spectrum. We wish to know whether the two uses have been compatible in the GMRS and whether they would be compatible under the concept advanced in this proceeding.

22. *Transition.* Any significant change in the nature of the GMRS or the permissible equipment in a restructured GMRS would of necessity have a large impact upon current GMRS licensees. We seek comment on how we should accommodate current GMRS licensees if we decide to restructure the GMRS. We could grandfather their operations on a permanent or temporary basis. Any grandfathering clause could be tied to a date certain, or could be tied to the license term. We think that current operations should be permitted until such time as the industry has had an adequate opportunity to develop and market new equipment for a restructured GMRS. Current GMRS licensees should be given opportunity to conform to the new rules or to find a suitable communications alternative. We seek comment on all of these considerations.

23. *Economic Issues.* We also want information on costs associated with a restructured GMRS. Will the market size be sufficient to provide incentive for equipment development? What is the projected cost demand relationship? Is the required technology available and manufacturable in volume at reasonable cost? Can anticipated demand be balanced against the available spectrum?

Conclusion

24. We seek information on the different types of usage desired, the maximum number of channels that can be obtained from the various technologies, the number of channels (if any) that should be reserved for particular usage, desirable channel bandwidths and spacings, and any band planning or coordinating necessary to accommodate the various uses in a restructured GMRS. This list, and the entire discussion above, is not all-inclusive. We encourage comments on any matter relevant to this proceeding.

25. Authority for issuance of this Notice is contained in sections 4(i), 303(r) and 403 of the Communications Act of 1934, as amended (47 U.S.C. 154(i), 303(r) and 403). Pursuant to applicable procedures set forth in Sections 1.415, 1.419 and 1.430 of the Commission's Rules (47 CFR 1.415, 1.419 and 1.430), interested parties may file comments on or before May 30, 1986 and reply comments on or before June 30, 1986.

26. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

27. For information concerning this proceeding contact John J. Borkowski, Federal Communications Commission, Washington, DC 20554 (202) 632-4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-3008 Filed 2-11-86; 8:45 am]

BILLING CODE 6712-01-M

[8] Authority for operation of radio stations in a Consumer Radio Service without individual licenses is derived from 47 U.S.C. 307(e), which authorizes such operation in the citizens band radio service. Subsection (3) provides that in this context "citizens band radio service" shall have the meaning given to it by rule. A Consumer Radio Service created for the use of the general public would also be a citizens band radio service. See 47 CFR 95.401.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Denial of a petition to undertake rulemaking.

SUMMARY: On August 8, 1985, the Fish and Wildlife Service (FWS) published a Notice of Receipt of a petition to undertake rulemaking (50 FR 32099) submitted by Safari Club International (SCI). SCI requested several modifications to 50 CFR Part 18 (Marine Mammal Protection Act implementing regulations) that would require periodic review of the status of marine mammal species and a determination on whether the moratorium on the taking and importation of any of these species should be waived. Under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, there is a strict moratorium on taking and importing marine mammals, unless one of several limited exceptions applies. Section 101(a)(3) of the MMPA provides that the Secretary, under certain circumstances consistent with the purposes and policy of the MMPA, may waive the moratorium for particular marine mammal species or population stocks. Under the SCI proposal, waivers, if not implemented within two years of publication of a proposed rulemaking under sections 101(a)(3) and 103 of the MMPA, would be withdrawn not later than thirty days thereafter. The FWS solicited comments on the merits of the SCI petition in order to determine whether or not to propose a rule to amend the regulations in 50 CFR Part 18. This a notice of denial of that petition.

ADDRESS: Requests for information on this Notice should be addressed to the Chief, Division of Wildlife Management, Room 514, Matomic Building, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy W. Sowl, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC, Telephone 202/632-2202.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1985, the SCI petitioned the Secretary of the Interior, as provided under the Administrative Procedure Act (APA) (5 U.S.C. 553(e)), for rulemaking requiring the FWS to conduct a periodic review of the status of marine mammal species and to determine whether the moratorium on any of these species should be waived. Specifically, the petitioner requested that the FWS implement six changes to 50 CFR Part 18. The proposed changes are as follows: (1) Add a new subpart to 50 CFR Part 18 requiring a review of the status of marine mammal species at least once every five years to determine whether the MMPA (16 U.S.C. 1361-1407) moratorium on the taking and importing of marine mammals and marine mammal products should be waived for any species; (2) with respect to the five-year review or waiver proceeding, amend § 18.74 of Title 50 by requiring the Director to publish the substance of any proposed waiver or five-year review in appropriate scientific journals; (3) amend 50 CFR 18.91(c) by adding the requirement that final regulations waiving the moratorium with respect to any species or marine mammal, or population stock thereof, will be published in the **Federal Register** not later than two years after the date of publication of the notice of proposed waiver; (4) if a final regulation is not adopted within this two-year period, the Director will published a notice of withdrawal in the **Federal Register** not later than 30 days after the end of this period; (5) the Director will not prepare a regulations waiving the moratorium with respect to any species of marine mammals, or population stock thereof, for which a proposed regulations has been withdrawn unless he receives sufficient new information to warrant the proposal of a regulation, or unless three years have elapsed since the withdrawal of a prior proposed regulations to waive the moratorium; and (6) publication in the **Federal Register** of any final regulation waiving the moratorium will include a summary of the data on which the regulations is based and must show the relationship of the data to the regulations.

Public Comments

The FWS received three letters commenting on the petition.

Comment: The Alaska Legal Service Corporation (ALSC) supported in part, the SCI proposal to establish periodic review of marine mammal species for the purpose of potential waiver of the moratorium on taking. They also, stated that the primary purpose expressed by Congress in enacting the MMPA was to protect and foster the health of marine mammal populations. The ALSC stated that what the SCI apparently proposes is that, in the case of some species, the purposes of the MMPA have been largely achieved and with respect to the sea otter they concur in this proposition. The ALSC went on to say that a proposal such as that put forth by the SCI would require the Secretary to undertake studies and obtain the evidence required to make sound decisions in these areas. According to the ALSC, it is not safe to assume that a blanket moratorium on taking is always in the best interest of a species or those that share its ecosystem. For that reason, the ALSC supports the mandatory periodic review of the status of marine mammal populations.

Responses: The MMPA does not require status reviews to be conducted on a set schedule. The MMPA "authorizes" and "directs" the Secretary to conduct reviews on the status of species "from time to time." The Secretary is free to initiate steps to waive the moratorium when a legally sufficient request to do so has been submitted by another party or when, based upon agency review of a particular situation, sufficient data exists to justify agency consideration of the propriety of a waiver.

As a matter of policy, Congress has determined that a blanket moratorium on the taking and importing of marine mammal species should exist unless and until the Secretary waives such moratorium in accordance with carefully prescribed standards. In the case of the sea otter in Alaska, existing procedures are adequate to evaluate any proposal to waive the taking moratorium for that subspecies.

Comments: The Center for Environmental Education (CEE) stated that there is no legal mandate in the MMPA for such a review to be held, although the Act does give the Secretary discretion to carry out such a review. The CEE believes that a specific waiver of the moratorium is clearly the intention of the petitioner and that the petitioner should, therefore, justify such a waiver. The CEE believes that the cost for conducting such a review, holding hearings and promulgating regulations should be borne by the petitioner. The CEE recommends that the FWS deny this petition.

Responses: The FWS notes that the administrative costs involved in reviewing a waiver proposal, holding hearings, and promulgating regulations must, by law, be borne by the FWS. The FWS also notes that SCI's petition did not request a specific waiver of the moratorium to take or to import a marine mammal species or population stock. Except for the above reservations, the FWS agrees with the CEE comments.

Comments: The Marine Mammal Commission (MMC) provided extensive comments on each aspect of the petition and recommended that the petition be denied in its entirety. Their discussion of the six elements of the petition is set out, in part, below.

1. "The Marine Mammal Protection Act does not require status reviews to be conducted on a set schedule. Instead, it 'authorizes' and 'directs' the Secretary to conduct reviews on the status of species 'from time to time. . . .' 16 U.S.C.

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1371(a)(3)(A). The apparent intent of this section is to provide the Secretary with flexibility to take action, whenever it comes to his attention that it is appropriate to do so, to waive the moratorium. Under this flexible approach, the Secretary is free to initiate steps to waive the moratorium when a legally sufficient request to do so has been submitted by another party or when, based upon agency review of a particular fact situation, it is determined that such action would be consistent with the Marine Mammal Protection Act. Petitioner has set forth no compelling reason why this workable statutory scheme should be abandoned in favor of the more inflexible procedure they propose."

The MMC questioned the legality of the proposed status review procedure and noted the considerable administrative burdens that such a procedure would impose on the FWS. Further, the MMC stated that much of the information sought by SCI is already available from the Fish and Wildlife Service's annual reports prepared under Section 103(f) of the MMPA and from regular species-specific reviews prepared by the FWS.

2. "Even if the Service grants Petitioner's five year status review request, we consider it unnecessary to publish notice in scientific journals. Federal Register notice should suffice for purposes of notifying interested parties of agency action under the Marine Mammal Protection Act, and there is no apparent reason to depart from this practice in the case of a five year status review. Such a requirement also could establish an undesirable precedent requiring journal publication of other Marine Mammal Protection Act and Endangered Sepcies Act actions. The request to amend 50 CFR Part 18 for this purpose should therefore be denied."

3. "There is no requirement in the Marine Mammal Protection Act that proceedings on a waiver be completed within a specified time period. Sufficient time limitations on conducting a waiver rulemaking are already contained in the Service's regulations in 50 CFR Part 18, Subpart G. Provided that scheduling problems do not arise, it is likely that most waiver proceedings would be completed within Petitioner's requested two year time frame. It is possible, however, that complicated waiver proceedings would require more time to complete. In such a situation, it would be contrary to section 101(a)(3)(A) of the Act to require by regulation that a waiver review be terminated before the Secretary has had an opportunity to 'determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product. . . .' 16 U.S.C. 1371(a)(3)(A). For this reason, and because there is no apparent benefit to be derived from such a limitation, the Commission recommends that this request be denied."

4. "As noted above, it is possible that adequate review of a waiver request will require more than two years. In such an instance, it would be inappropriate, if not contrary to the requirements of section 101(a)(3)(A) of the Marine Mammal Protection Act, to mandate 'withdrawal' of a waiver request at the end of the two year period. Section 101(a)(3)(A) requires the Secretary to 'adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111' of the Marine Mammal Protection Act with respect to each proposed waiver. 16 U.S.C. 1371(a)(3)(A). This mandatory administrative review and decision-making procedure should be allowed to run its course, regardless of the amount of time required. The request to amend 50 CFR Part 18 for this purpose should therefore be denied."

5. "There is no apparent need for such a regulation [to require that a proposed waiver may not be reproposed unless new information is received or unless three years have elapsed from withdrawal of the prior proposal]. Moreover, as Petitioner has noted, section 101(a)(3)(A) authorizes and directs the Secretary, from 'time to time,' to take action, in appropriate cases, to waive the moratorium. *Id.* Petitioner's proposed amendment could produce a result that is inconsistent with these requirements by imposing a mandatory three year period, instead of the Act's more flexible 'from time to time' authorization. Moreover, section 101(a)(3)(A) requires that such action be taken 'on the basis of the best scientific evidence available.' Petitioner would replace this requirement with a 'sufficient new information standard,' which also could produce a result that is inconsistent with the Act. The request to amend 50 CFR Part 18 for this purpose should therefore be denied."

6. "This requirement [that a final rule include a summary of the data supporting the waiver] is unnecessary. Section 101(a)(3)(A) requires that the procedures of section 103 of the Marine Mammal Protection Act be followed when promulgating waiver regulations. Section 103(d)(3) requires that the Secretary publish and make available to the public at the time of publication of a notice to waive the moratorium 'a statement describing the evidence before the Secretary upon which he proposes to [base] such regulations. . . .' 16 U.S.C. 1373(d)(3). Such publication should satisfy Petitioner's request on this point. In addition to this Marine Mammal Protection Act requirement, the general rulemaking requirements of the Administrative Procedure Act also would require that a summary similar to that proposed by the Petitioner be included in the proposed and final regulations. Petitioner's request on this point would therefore achieve no useful purpose and should be denied."

Response: The FWS agrees with the comments of the Marine Mammal Commission, except that the FWS believes that a properly-crafted, formal status review procedure could be lawfully implemented under the MMPA. However, the FWS agrees with the MMC that the existing regulations adequately provide for reviews of the status of marine mammal species and that the regulatory and administrative burdens of SCI's proposal are not justified.

Discussion

The FWS had denied the SCI's petition based on the determination that the MMPA does not require that status reviews be conducted on a specific schedule; rather, it directs that such reviews be conducted "from time to time." This aspect of the statute gives the FWS authority to review the status of species and to initiate waiver proceedings prescribed in the MMPA at any time that evidence is found that supports a waiver. The FWS believes that administrative resources can best be utilized if waiver proceedings are initiated only when there is an indication that a waiver may be appropriate or when a specific proposal is under consideration. The existing procedures have proven to be satisfactory for previous considerations of waviers of the moratorium, and the FWS has determined that the existing statutory scheme should not be abandoned in favor of the more inflexible procedures proposed in the petition.

The FWS has determined that the existing regulations regarding section 103(d) proceedings on proposed waivers of the moratorium are in conformance with the MMPA and the APA. Many of SCI's proposed changes to the statutory waiver procedures (e.g., deadlines, limitation on reproposal) are legally precluded by the MMPA. The existing regulatory requirement of publishing notice of wavier proceedings in the Federal Register provides for public participation in the process and preserves due process required by the APA. The Petitioner's recommendation to include a "summary by the Director of the data on which said regulations are based . . . ", is provided for by the MMPA and has been adhered to by the FWS in all previous waiver proceedings.

For these reasons, the petition of Safari Club International is denied.

List of Subjects in 50 CFR Part 18

Administrative practice and procedures, Alaska, Exports, Imports, Intergovernmental relations, Marine Mammals, Transportation.

Dated: February 3, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-3019 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-55-M

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Notices

Federal Register
Vol. 51, No. 29
Wednesday, February 12, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 7, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W, Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn.: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- *Agricultural Marketing Service*

Irish Potatoes Grown in Colorado, Marketing Order No. 948. Not agency report forms but administrative committee forms. Recordkeeping; annually. Businesses or other for-profit; 102 responses; 779 hours; not applicable under 3504(h). James Smith (202) 447–4140.

- *Food and Nutrition Service*

WIC Monthly Financial and Program Status Report, FNS–498, Monthly, State or local governments; 1,044 responses; 21,660 hours; not applicable under 3504(h). Chris Lipsey (703) 756–3710.

- *Foreign Agricultural Service*

Export Sales of U.S. Agricultural Commodities, FAS–97, –98, –99, –100, On occasion; Weekly; Quarterly, Businesses or other for-profit; 17,054 responses; 20,317 hours; not applicable under 3504(h). Richard E. Passig (202) 447–3273.

Reinstatement

- *Agricultural Stabilization and Conservation Service*

7 CFR Part 1464, ASCS 807, Annually, Individuals or households; 220,000 responses; 22,000 hours; not applicable under 3504(h). Donald M. Blythe (202) 447–2715.

- *Food and Nutrition Service*

7 CFR Part 220, School Breakfast Program, Recordkeeping; Annually, State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 591,676 responses; 5,623,628 hours; not applicable under 3504(h). Marian Stroud (703) 756–3600.

Jane A. Benoit,
Departmental Clearance Officer.
[Fr Doc. 86–3102 Filed 2–12–86; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Draft Environmental Impact Statement; Pacific Northwest Region

This Notice of Intent revises and updates a March 19, 1985, published revised Notice of Intent. That Notice identified a revised schedule for publication of Draft Environmental Impact Statements (DEIS's) for Pacific Northwest Region National Forests' Land and Resource Management Plans. The previous schedule indicated that the 19 Forests would publish their DEIS's by September 1985.

As a result of a decision to prepare a supplement to the Pacific Northwest Regional Guide providing minimum management requirements for spotted owl habitat management, those Forests in western Washington and western Oregon which have issues related to the spotted owl must wait for completion of that analysis before publication of Forest Plan DEIS's. Also, due to a variety factor, the Forest Plan analysis has taken longer than anticipated. DEIS's for the 19 National Forests in the Pacific Northwest Region are now expected to be published on the following schedule:

National Forest	DEIS date
Colville, Colville, WA	September 1986.
Deschutes, Bend, OR	January 1986.
Fremont, Lakeview, OR	July 1986.
Gifford Pinchot, Vancouver, WA	September 1986.
Malheur, John Day, OR	Do.
Mt. Baker-Snoqualmie, Seattle, WA	Do.
Mt. Hood, Gresham, OR	August 1986.
Ochoco, Prineville, OR	June 1986.
Okanogan, Okanogan, WA	March 1986.
Olympic, Olympia, WA	June 1986.
Rogue River, Medford, OR	August 1986.
Siskiyou, Grants Pass, OR	July 1986.
Siuslaw, Corvallis, OR	June 1986.
Umatilla, Pendleton, OR	July 1986.
Umpqua, Roseburg, OR	September 1986.
Wallowa-Whitman, Baker, OR	February 1986.
Wenatchee, Wenatchee, WA	April 1986.
Willamette, Eugene, OR	September 1986.
Winema, Klamath Falls, OR	Do.

Final EIS's should be completed within 9 to 12 months following the DEIS for each National Forest.

Dated: February 3, 1986.
Richard A. Ferraro,
Deputy Regional Forester.
[FR Doc. 86–3022 Filed 2–11–86; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Commerce.

SUMMARY: The Family, Neighborhood, and Workplace Committee of the Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on February 28, 1986. The Presidential Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

Time and Place: Friday, February 28, 1986, 11:00 a.m., at the National Center for Neighborhood Enterprise, 1367 Connecticut Avenue, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: February 6, 1986.
Nancy J. Olson,
Director, Office of Business Liaison.
[FR Doc. 86–3108 Filed 2–11–86; 8:45 am]
BILLING CODE 3510–BW–M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty, Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct admininstrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a) (5) and 355.10(a)(2) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspended investigations.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antiduming and countervailing duty orders, findings, and suspended investigations. We intend to issue the final results of these reviews not later than February 28, 1987.

	Periods to be reviewed
Antidumping Duty Proceeding and Firms	
Sugar and syrups from Canada:	
Dom foods	4/83–03/84
Lantic sugar	4/82–03/85
Lenizoo	4/82–03/85
Redpath sugars	4/82–03/85
Kraft condenser paper from Finland:	
Tervakoski	9/01/82–06/23/83
Viscose rayon staple fiber from France:	
Achille Bayart	3/84–02/85
Strontium nitrate from Italy:	
SABED	6/01/83–05/14/84
Calcium pantothenate from Japan:	
Nagase	1/82–05/82
M. Gurvey and Berry (Canada)	6/82–08/83
Chemeta BV (Netherlands)	6/82–12/84
BMP (West Germany)	1/82–08/83
Ultramar Sievers (West Germany)	7/81–03/82
Certain high capacity pagers from Japan:	
Matsushita	9/83–08/85
NEC	9/83–08/85
Fishnetting of manmade fibers from Japan:	
Fukui fishing net	10/83–05/85
Hakodate	6/82–04/84
Hakodate/Mitsui	10/83–04/84
Hirata Spinning	6/82–05/85
Inagaki/Moribun Shoten	6/82–04/84
Momoi	10/83–05/85
Moririn	6/82–05/85
Morishita	10/83–05/85
Morishita/Mitsui	10/83–05/85
Nippon Kenmo	10/83–04/84
Osada/Moribun Shoten	6/82–04/84
Osada/Nichimen	6/82–09/83
Taito Seiko	5/84–05/85
Taito Seiko/Mekamura Suisan	6/82–05/85
Yamaji	6/82–04/84
High powered amplifiers from Japan:	
NEC	7/84–06/85
Steel wire strand for prestressed concrete from Japan:	
Shinko wire/all exporters (except Mitsui)	12/82–11/84
Suzuki metal/all exporters (except Mitsui)	12/82–11/84
Tokyo rope/all exporters (except Mitsui)	12/82–11/84
Staples and staplers from Sweden:	
Grygols Bruks	12/83–11/84
J. Kihlberg	12/83–11/84
Barium carbonate from West Germany:	
Kali-Chemi	7/84–06/85
Drycleaning Machinery from West Germany:	
Boewe	11/82–10/84
Countervailing Duty Proceeding	
Pectin from Mexico	4/83–12/84

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)) and §§ 353.53a(c) and 353.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32556, August 13, 1985).

Dated: February 7, 1986.
Gilbert B. Kaplan,
Deputy Assistance Secretary, Import Administration.
[FR Doc. 86–3069 Filed 2–11–86; 8:45 am]
BILLING CODE 3510–DS–M

[C–535–001]

Cotton Shop Towels From Pakistan; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On September 30, 1985, the Department of Commerce published the initiation and preliminary results of its administrative review of the countervailing duty order on cotton shop towels from Pakistan. The review covers the period October 27, 1983, through March 31, 1984, and eight programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of all the comments received, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Alan Long or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 1985, in accordance with § 355.10(a) of the Commerce Regulations, the petitioner, Milliken &

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Company, requested an administrative review of the countervailing duty order on cotton shop towels from Pakistan (49 FR 8974, March 9, 1984). On September 30, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 39744) the initiation and preliminary results of its administrative review of this order. The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Pakistani cotton shop towels. Such merchandise is currently classifiable under item 366.2740 of the Tariff Schedules of the United States Annotated.

The review covers the period October 27, 1983, through March 31, 1984, and eight programs: (1) A compensatory rebate; (2) an excise tax rebate; (3) a sales tax rebate; (4) a customs duty rebate; (5) income tax reductions; (6) export credit insurance; (7) an import duty rebate; and (8) export financing.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Government of Pakistan and the petitioner.

Comment 1: The Government of Pakistan requested that the Department delay publication of these final results and combine this administrative review with the next administrative review of this order. The Government of Pakistan retained counsel after the publication of the preliminary results of this administrative review and counsel contends that, because of the late date, he had been unable to participate meaningfully in this review.

Department's Position: We believe it is inappropriate in this case to combine the current administrative review with the next review. We began this review under our old regulations on April 24, 1984, and sent a questionnaire to the Pakistani government on that day. We received an inadequate reply. We reiterated our request on December 27, 1984, and received no reply. At the request of the Government of Pakistan, we extended the deadline for responding to the questionnaire a number of times and have provided ample time and opportunity for all interested parties to participate fully.

Comment 2: Counsel for the Government of Pakistan requested an extension of the comment period on the preliminary results of this review to permit him sufficient time to review the record and make substantive comments concerning the preliminary results.

Department's Position: Our consistent practice has been not to extend the 30-day comment period except to allow comments on issues arising from a hearing or otherwise arising after the preliminary results. We also occasionally allow brief extensions due to logistical difficulties, as was done in this case. The comment period for this review allowed sufficient time for interested parties to review the record and comment on the preliminary results.

Comment 3: The petitioner contends that the Department properly used the best information available to arrive at the results of this administrative review.

Department's Position: We agree. (*See* the preliminary results of this review (50 FR 39744, September 30, 1985).)

Final Results of Review

After reviewing all of the comments received, the final results of the review are the same as the preliminary results. We determine the net subsidy to be 18.09 percent for the period October 27, 1983, through March 31, 1984.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the net subsidy determined under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the net subsidy, and refunded to the extent that the estimated duty is higher than the net subsidy, for merchandise entered, or withdrawn from warehouse, for consumption before the publication of the notice of the final affirmative injury determination by the International Trade Commission, here February 29, 1984. Therefore, we will instruct the Customs Service to assess countervailing duties at the appropriate rates for all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 27, 1983, the date of the Department's preliminary affirmative determination, and on or before February 28, 1984. We will also instruct the Customs Service to assess countervailing duties of 18.09 percent of the f.o.b. invoice price on any shipments of cotton shop towels entered, or withdrawn from warehouse, for consumption on or after February 29, 1984, and exported on or before March 31, 1984.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of 18.09 percent of the entered value on any shipment of Pakistani cotton shop towels entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: February 5, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-3071 Filed 2-11-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Application, Announcements; Mississippi

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $200,000 for the project performance of 7/1/86 to 6/30/87. The MBDC will operate in the Jackson, MS Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $170,000 in Federal funds and a minimum of $30,000 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The Project Number is 04-10-86007-01 for the Jackson, MS SMSA.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MEDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MEDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MEDA supports MEDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firms proposed approach to performing the work requirements included in the applications; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for applications is 3/14/86.

Applications must be postmarked on or before 3/14/86.

ADDRESS: Atlanta Regional Office, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia 30309, 404-347-4091.

FOR FURTHER INFORMATION CONTACT: Carlton L. Eccles, Regional Director, Atlanta Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street, NE., Suite 505, Atlanta, Georgia, Friday February 28, 1986, at 9:00 a.m.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: February 6, 1986.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 86-3057 Filed 2-11-86; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

Voluntary Product Standard; Approval of Amendment to PS 20-70, "American Softwood Lumber Standard"

An amendment to Voluntary Product Standard PS 20-70, entitled, "American Softwood Lumber Standard" became effective on January 31, 1986. Copies of the amendment are available from the Office of Product Standards Policy, A625 Administration Bldg., National Bureau of Standards, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Donald R. Mackay, Associate Manager, Standards Management Program, National Bureau of Standards, Gaithersburg, Maryland 20899, telephone number (301) 921-3287.

Dated: February 6, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 86-2944 Filed 2-11-86; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Joseph A. Malatesta; Alaska

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal Dismissal.

On August 28, 1986, Joseph A. Malatesta (Appellant) appealed to the Secretary of Commerce (Secretary) under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended. The appeal was taken from an objection by the Alaska Division of Governmental Coordination (State) to Appellant's proposed 30-by-60 foot fish receiving dock in Ninilchik Harbor, Alaska. The dock would require a U.S. Army Corps of Engineers dredge and fill permits under the Clean Water Act and the Rivers and Harbors Act.

Ths State found that Appellant's project would be inconsistent with the federally-approved Alaska Coastal Management Program because a beach access road could be blocked by construction activities.

On October 2, 1985, the State informed Appellant that it would no longer object to the proposed dock if Appellant agreed not to block the access road. Appellant agreed to this condition.

Because the consistency objection no longer existed, the Secretary agreed to dismiss Appellant's appeal on January 30, 1986.

FOR FURTHER INFORMATION CONTACT: L. Pittman, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235; (202)254-7512.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: February 5, 1986.

James W. Brennan,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86-3025 Filed 2-11-86; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by National Welders Supply Co.; North Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal Dismissal.

On May 21, 1985, National Welders Supply Company (National Welders) appealed to the Secretary of Commerce under section 307(c)(3)(A) of the Coastal Zone Management Act, as amended, 16 USC 1456(c)(3)(A). The appeal was taken from an objection by the North Carolina Department of Natural Resources and Community Development (DNRCD) to National Welder's proposed welding supply store and industrial gas transfill plant requiring an Army Corps of Engineers permit to fill approximately 0.5 acres of wetland near the Cape Fear River, Wilmington, North Carolina. DNRCD objected to the project based on a conflict with the City of Wilmington's land use plan which classified the area as "Conservation" based on its natural values and location within the 100-year flood hazard area.

National Welders has now decided not to pursue its project and requested permission to withdraw its appeal on December 27, 1985. On January 30, 1986, the Secretary of Commerce granted National Welders' request, dismissing the appeal.

FOR ADDITIONAL INFORMATION CONTACT: L. Pittman, Attorney-Advisor, National Oceanic and Atmospheric Administration, Office of the Assistant General Counsel for Ocean Services, 2001 Wisconsin Avenue, NW., Washington, DC 20232; 202/254-7512.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: February 5, 1986.

James W. Brennan,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86-3026 Filed 2-11-86; 8:45 am]

BILLING CODE 3510-08-M

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DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare an Environmental Impact Statement for the Over-the-Horizon Backscatter (OTH–B) Central Radar System

The Air Force intends to prepare an environmental impact statement on the proposal to construct and operate an over-the horizon backscatter radar in the central United States. The proposed locations for the transmit and receive sites are in the states of Minnesota, North Dakota and South Dakota. Locations under evaluation are: Dahlen, ND; Blanchard, ND; Galesburg, ND; Andover, SD; Thief River Falls, MN; and Wheaton, MN. The proposed location for the operations center is Grand Forks Air Force Base, ND.

The over-the-horizon radar will detect aircraft in a surveillance area from five hundred miles to eighteen hundred miles from radar. The radar will provide coverage and to the east, west and south. Detection and tracking information is needed to provide early warning of aircraft and cruise missile attack upon North America. The radar operates by refracting high frequency radio waves off the ionosphere to targets over the horizon. The reflected signal from the target returns over the same path. The east coast OTH–B system is under construction in Maine and two others are programmed for the west coast and Alaska.

The complete central radar system requires one transmit site, one receive site and one operations center. The antennas for this radar are fixed with the length of a single antenna measuring between 4,000 and 9,000 feet long. The transmit site requires a parcel of land of approximately 4,000 acres and the receive site requires a parcel of land of approximately 4,000 acres. The distance between the transmit and receive sites cannot be closer than 50 miles nor further apart than 150 miles. The system also requires buildings to support the operations and maintenance of the radar. New construction will include an operations center of approximately 14,000 square feet; transmit site support facilities of approximately 14,000 square feet for each antenna array; and receive site support facilities of approximately 6,000 square feet for each antenna array.

The Air Force plans to hold public scoping meetings in late February 1986. Announcement of the specific scoping meetings will be made through the local media by the 321 Strategic Missile Wing Public Affairs Office at Grand Forks Air Force Base, ND. Persons and organizations who wish to provide information on the proposed action, or express concerns which may be analyzed in the environmental impact statement, may contact the over-the-horizon backscatter (OTH–B) systems program office which is managing the development and deployment of the system for the Air Force.

Persons requiring more information on the proposed action and the environmental impact statement should contact: HQ Electronic Systems Division, OTH–B Systems Program Office, Attn: Colonel James A. Lee, Hanscom AFB, MA 01731, Phone: (617) 271–5387.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 86–3023 Filed 2–11–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2160] notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following transfer: RTD/SW (EU)–135, for the retransfer of MTR-prototype silicide fuel elements containing a total of 100 kilograms of uranium enriched to 19.95 percent in the U–235 isotope, from Nukem, in Hanau, the Federal Republic of Germany, to Studsvik, Sweden for use as fuel in the Swedish R–2 reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 7, 1986.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–3111 Filed 2–11–86; 8:45 am]

BILLING CODE 6450–01–M

New Fuel Form Workshop; Meeting

The Office of Fossil Energy (OFE), U.S. Department of Energy, is sponsoring a New Fuel Form Workshop on February 25–27, 1986, which is open to the public. The workshop will be held in Room GE–086, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. The objectives of the workshop are: (1) To stimulate the renewed interest to enhance coal use in the energy supply, user, markets, and the technical community that supports these markets; (2) to identify critical front-end research needs that will provide a fresh look at the coal structure, chemistry and properties to generate coal-derived new fuel forms; (3) to foster and facilitate increased use of coal-derived fuel forms in conventional energy conversion machines; and (4) to create an environment where all parties involved in the energy technology development can exchange ideas to provide for a balanced spectrum. As this is a ground breaking workshop designed to stimulate discussion that will help us to evaluate the potential of further work in these areas and because it is a new thrust, OFE most likely is not aware of all efforts which would contribute. Consequently, audience participation will be encouraged during question and answer periods after individual presentations and interjected during panel sessions. Proceedings will be published including papers from individual presenters and synthesis of panel discussions and audience stimulated exchanges. To receive an agenda, contact Ms. Denise Swink, Office of Coal Utilization, Advanced Conversion and Gasification at 301/353–2798.

Dated: January 30, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–3080 Filed 2–11–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 86–08–NG]

Western Gas Marketing U.S.A. Ltd.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 24, 1986, of an application filed by Western Gas Marketing U.S.A. Ltd. (Western), a wholly-owned indirect subsidiary of TransCanada PipeLines Limited (TransCanada), for blanket authorization to import up to a total of 300 Bcf of natural gas over a two-year period beginning on the date of first delivery. Western would sell gas supplied by TransCanada's Alberta supply sources to U.S. purchasers in the spot and short-term market. The specific terms, including price and volume, for each import and sale would be negotiated on an individual basis. Western expects the sales to be made on both a firm and an interruptible basis. Western proposes to file quarterly reports describing the import transactions.

Western requests the ERA to modify the reporting requirement imposed on similar authorizations to allow individual transactions to be treated as confidential for a 90-day period to be consistent with the policy of the Canadian National Energy Board.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than March 14, 1986.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9590.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984).

Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., March 14, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an orgal presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Western's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., February 5, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–2110 Filed 2–11–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER86–267–000, et al.]

Electric Rate and Corporate Regulation Filings; Connecticut Light and Power Co. et al.

February 4, 1986.

Take notice that the following filings have been made with the Commission:

1. Connecticut Light and Power Company

[Docket No. ER86–267–000]

Take notice that on January 30, 1986, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between CL&P and Montaup Electric Company (Montaup) dated as of November 1, 1985.

CL&P states that the Purchase Agreement provides for a sale to Montaup of a specified percentage of capacity and energy from various CL&P gas turbine units (the Units) during the

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period November 1, 1985 through April 30, 1986.

CL&P requests that the Commission permit the rate schedule filed to become effective on November 1, 1985.

CL&P states that the capacity charge rate for the proposed service is a negotiated rate, based on the market price for this capacity, and less than the cost-of-service rate. The monthly transmission charge rate is equal to one-twelfth of the annual average cost of transmission service on the transmission systems of CL&P and its affiliated Northeast Utilities companies at the time that the Purchase Agreement was executed and is determined in accordance with Section 13.9 of the New England Power Pool (NEPOOL) Agreement and the uniform rules adopted by the NEPOOL Executive Committee. The monthly Transmission Charge is determined by the product of (i) the appropriate monthly transmission charge rate ($/kW-month) and (ii) the number of kilowatts of winter capability which Montaup is entitled to receive during such month. The Energy Charge, Variable, and Additional Maintenance Charge are based on Montaup's portion of the applicable fuel expenses and hours of operation related to the Units and no special cost-of-service studies were made to derive these charges.

CL&P states that the services to be provided under the Purchase Agreement are the same services provided by CL&P and WMECO pursuant to purchase agreements with City of Chicopee Municipal Lighting Plant (FERC Rate Schedule Nos. CL&P 331, WMECO 267), and with the Village of Hyde Park Electric Department (FERC Rate Schedule No. WMECO 215).

CL&P states that a copy of the rate schedules have been mailed or delivered to CL&P, Hartford, Connecticut and to Montaup, Cambridge, Massachusetts.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket No. ER86-263-000]

Take notice that Duke Power Company (Duke) on January 28, 1986 tendered for filing a contract between Duke and the United States of America, Department of Energy, acting by and through the Southeastern Power Administration (SEPA), dated January 13, 1986. This contract supersedes the prior contract on file with the Commission and contains a proposed change in the amount of capacity and accompanying energy to be wheeled by Duke from the reservoir projects constructed by the Department of the Army in the Savannah River Basin, known as the Hartwell, Clarks Hill, and Richard B. Russell Projects, to certain preference customers of the United States Government located in Duke's service area in North Caroline and South Carolina. No change is being proposed in the current wheeling rate of $1.62 being charged under the present agreement.

Duke has requested that the contract become effective on the date of tender for filing or January 28, 1986, or as soon as the Commission deems appropriate. If waiver is not granted, however, Duke requests an effective date no later than sixty (60) days after the date of tender for filing or March 31, 1986.

Copies of the filing were served on the Southeastern Power Administration, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Power Company

[Docket No. ER86-255-000]

Take notice that American Electric Power Service Corporation (AEP) On January 23, 1986 tendered for filing on behalf of its affiliate Ohio Power Company (OPCO), which is an AEP affiliated operating subsidiary, Supplement No. 17 dated december 16, 1985 to the Operating Agreement dated January 1, 1952 between the Ohio Edison Company (Edison) and OPCO. The Commission has previously designated the 1952 Agreement as OPCO's Rate Schedule FERC No. 25 and Edison's Rate Schedule FERC No. 9.

Sections 1 through 5 of this Supplement increase the Parties' transmission demand rate for Emergency Energy to 2.75 mills/kWH, adds a transmission demand rate of 2.75 mills/kWH for Non-Displacement Energy transactions, and adds a 3.75 mills/kWH minimum to the Parties' provisions for the transmission of Economy Energy. Section 6 of this Supplement revises Edison's demand rate for Short Term Power from $0.85/kW-week to $1.25/kW-week. In addition, Sections 7 through 9 of this Supplement revise the Parties' Short Term Power Service Schedule by adding provisions for a rate of "up to" the Parties' respective demand and energy rates. Such reductions are, however, limited to 110% of the out-of-pocket cost associated with each specific reservation for Short Term Power and Energy. All of the rates proposed here, pertaining to OPCO, have previously been accepted for filing by the Federal Energy Regulatory Commission in various other filings between AEP affiliated operating subsidiaries and unaffiliated electric utility systems.

AEP has requested that the Commission permit this Supplement to become effective in two parts, allowing OPCO's 2.75 mills/kWH demand rate for the transmission of Non-Displacement Power and Energy to become effective as of October 8, 1985, and the remainder of this Supplement to become effective as of January 15, 1986. This request has been made so that OPCO could participate in multi-party opportunity sales to Edison that would not have otherwise been made.

Copies of this filing were served upon the Public Utilities Commission of Ohio.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER86-266-000]

Public Service Electric and Gas Company
Philadelphia Electric Company
Pennsylvania Power & Light Company
Baltimore Gas and Electric Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Potomac Electric Power Company
Atlantic City Electric Company
Delmarva Power & Light Company

Take notice that on January 29, 1986, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection filed, on behalf of the above listed parties to the PJM Agreement, that Agreement consisting of the original agreement dated September 26, 1956, all supplemental agreements thereto and all schedules thereto currently in effect.

The purpose of this filing is to supersede the current rate schedule designations for the individual parties listed above with a single rate schedule designation for the PJM Agreement to become effective April 1, 1986. No changes in terms, rates or facilities are proposed in this filing.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3058 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 2266-011, et al.]

Hydroelectric Applications, Nevada Irrigation District, et al.; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. Type of Application: Amendment of License.

b. Project No.: 2266-011.

c. Date Filed: July 25, 1985.

d. Applicant: Nevada Irrigation District.

e. Name of Project: Bowman Transmission Line.

f. Location: In Nevada and Sierra Counties, near Sierra City, California; within Tahoe National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Frederick G. Bandy, Manager, Nevada Irrigation District, P.O. Box 1019, Grass Valley, California 95945.

i. Comment Date: March 10, 1986.

j. Description of Project: Nevada Irrigation District was authorized to construct the 9-mile-long, 60-kV Bowman transmission line by an order amending its license for Project No. 2266. 31 FERC ¶ 62,238 (1985). This amendment relocates the Southern terminus of the Bowman transmission line to a switching point south of the Lake Spaulding along Pacific Gas and Electric Company's existing 60-kV transmission line. The total length of the proposed Bowman transmission line would be increased from 9 miles to 10 miles. All other project facilities and features of the project would remain the same as previously authorized.

k. Purpose of Project: The transmission line would transmit power from the Bowman Powerhouse, a part of FERC Project No. 2266, to PG&E's system. The cost of the project is estimated to be about $1,600,000.

l. This notice also consists of the following standard paragraphs: B and C.

m. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the National Environmental Policy Act, Pub. L. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license amendment. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

2a. Type of Application: Preliminary Permit.

b. Project No.: 9449-000.

c. Date Filed: September 11, 1985.

d. Applicant: Eugen Water and Electric Board.

e. Name of Project: Strube-Cougar.

f. Location: On the South Fork McKenzie River in Lane County, Oregon within the Willamette National Forest and located on U.S. land administered by the Corps of Engineers. T.16S., R.5E., Sections 19, 30, 31, and 32.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ms. Jean Reeder, Business Manager, Eugene Water & Electric Board, P.O. Box 10148, Eugene, Oregon 97440 and Mr. Erling T. Soli, Haner, Ross and Sporseen, Inc., 15 SE 82nd Drive, Gladestone, Oregon 97027 (505) 848-2411.

i. Comment Date: March 10, 1986.

j. Competing Application: Project No. 9055, Date Filed: March 27, 1985.

k. Description of Project: The proposed project would consist of two developments. The Cougar Development would consist of installing a new 35 MW generating unit in the Corps existing Cougar powerhouse, producing an estimated average annual energy output of 176,900 MWh. The Strube Lake Development would consist of: (1) An 80-foot-high, earth and gravel-fill dam having a concrete gravity gate controlled chute spillway, located 1.7 miles downstream from the existing Cougar Dam, creating; (2) a reservoir with a usuable storage capacity of 3,000 acre-feet and a surface area of 300 acres at a normal surface elevation of 1,236 feet; (3) a powerhouse at the dam containing a single unit with an installed capacity of 4,500 kW, producing an estimated average annual energy output of 21,300 MWh; (4) a tailrace discharging project flows into McKenzie River; and (5) a 0.9-mile-long, 12.5-kV transmission line extending to the Blue River Substation.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost of conducting these studies is $89,500.

l. Purpose of Project: Project power would be used by the Applicant.

m. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

3a. Type of Application: Preliminary Permit.

b. Project No.: 9539-000.

c. Date Filed: October 9, 1985.

d. Applicant: Trafalgar Power Inc.

e. Name of Project: Herkimer Project.

f. Location: West Canada Creek in Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Streets, Franklin, NH 03035, (603) 934-4202.

i. Comment Date: March 21, 1986.

j. Competing Application: Project No. 9254, Date Filed: May 31, 1985.

k. Description of Project: The proposed project would consist of (1) An existing timber crib dam consisting of: (a) a 9-foot-high, 160-foot-long section with a crest elevation of 420.0 feet m.s.l.; and (b) a 12-foot-high, 130-foot-long section with a crest elevation of 419.2 feet m.s.l.; (2) a reservoir with a surface area of 19 acres, a storage capacity of 125 acre-feet, and a normal water surface elevation of 420.5 feet m.s.l. with; (3) a timber flashboards; (4) an existing intake structure; (5) a new reinforced concrete and steel powerhouse containing one generating unit with a capacity of 200 kW and two generating units with a capacity of 589 kW each for a total installed capacity of

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1,378 kW; (6) a new transmission line, 50 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 5,695,000 kWh. The existing dam is owned by the Pennsylvania Egg Carton Company, Herkimer, New York.

l. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A6, A9, B, C, and D2.

n. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $30,000.

4a. Type of Application: Preliminary Permit.

b. Project No.: 9395–000.

c. Date Filed: August 6, 1985.

d. Applicant: Smitchie Hydroelectric Company, Inc.

e. Name of Project: Lake Solitude Dam.

f. Location: Raritan River in Hunterdon County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Allan Ritchie, 60 Broad Street, Seventh Floor, New York, NY 10004.

i. Comment Date: March 17, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 42-foot-high, 500-foot-long dam owned by A.R. Casella at water surface elevation 301 feet; (2) an existing reservoir with a surface area of 32 acres and a gross storage capacity of 540 acre-feet; (3) an existing 6-foot-diameter, 700 foot-long penstock; (4) an existing powerhouse that will contain a generating unit with a rated capacity of 400 kW; and (5) a proposed 0.5-mile-long transmission line tying into the existing New Jersey Central Power and Light Company system. The Applicant estimates a 2,500,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks a preliminary permit to prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9378–000.

c. Date Filed: August 1, 1985.

d. Applicant: Yuba County Water Agency.

e. Name of Project: Wambo Bar Water Power Project.

f. Location: On North Fork Yuba River and tributaries, including Slate, Canyon, Cherokee and Indian Creeks partially within the Plumas and Tahoe National Forests in Yuba, Butte and Sierra Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Arthur W. Aseltine, Administrator, Yuba County Water Agency, P.O. Box 1569, Marysville, CA 95901.

i. Comment Date: March 24, 1986.

j. Description of Project: The proposed project would consist of: (1) A 300-foot-high, 900-foot-long dam at elevation 2,265 feet; (2) a reservoir with a usable storage capacity of 70,000 acre-feet; (3) a 25-foot-diameter, 1,400-foot-long tunnel/penstock; (4) a powerhouse containing generating units with a combined rated capacity of 79 MW to operate under a head of 275 feet; and (5) a 4-mile-long, 115-kV transmission line will connect the project with an existing Pacific Gas and Electric Company's (PG&E) line northwest of the powerhouse.

k. Purpose of Project: The project's estimated 191 million kWh of annual generation will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6a. Type of Application: License (Minor).

b. Project No.: 6947–001.

c. Date Filed: November 30, 1984.

d. Applicant: F. & T. Services Corporation.

e. Name of Project: Lake Claiborne Dam.

f. Location: Bayou D'Arbonne, Claiborne Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. V. A. Forte, President, F.&T. Services Corporation, P.O. Box 64844, Baton Rouge, LA 70896.

i. Comment Date: March 17, 1986.

j. Description of Project: The proposed would consist of: (1) The existing Lake Claiborne Dam owned by the State of Louisiana, an approximately 5,500-foot-long, 24-foot-high earthfill structure; (2) an existing reservoir approximately 6,400 acres in surface area and having a storage capacity of approximately 99,500 acre-feet at the normal pool elevation of 185 feet (m.s.l.); (3) a proposed siphon intake structure; (4) a proposed penstock, 6 feet in diameter and approximately 250 feet long; (5) a proposed powerhouse containing a single 600-kW generating unit; (6) a proposed tailrace channel, approximately 20 feet wide and 150 feet long; (7) a proposed 200-foot-long 29-kV transmission line; and (8) appurtenant facilities.

k. Purpose of Project: The estimated average annual generation of 1,750,000 kWh would be sold to Claiborne Electric through Cajun Electric Cooperative.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

7a. Type of Application: Minor License.

b. Project No.: 9185–000.

c: Date Filed: May 10, 1985 and supplemented September 19, 1985.

d. Applicant: Northwestern Wisconsin Electric Company.

e. Name of Project: Clam River Dam Hydroelectric.

f. Location: On the Clam River near Union, Burnett County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Glen R. Tamke, Owen Ayres & Associates, Inc., Eau Claire, WI 54701.

i. Comment Date: March 14, 1986.

j. Description of Project: The project consists of: (1) A dam with a total length of 54 feet and height of 10 feet; (2) a reservoir with a storage capacity of 3,825 acre/feet at maximum pool level of 898.95 feet, m.s.l., (3) adjacent to the spillway is a powerhouse, approximately 46 feet long by 28.1 feet wide, housing two generating units at 500 kW each, and one generating units at 400 kW. For a total installed capacity of 1400 kW; (4) an earth dike 898-feet-long located to the left of the spillway dam and an earth dike 223-feet-long located to the right of the powerhouse; (5) approximately 100-foot-long 34.5-kV transmission line; and (6) appurtenant facilities. The owner and operator of the project facilities is the Northwestern Wisconsin Electric Co. The Applicant estimates an average annual energy generation Tof 4,768,250 kWh.

k. Purpose of Project: Applicant anticipates that project energy will be sold to customers within its utility system.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

8a. Type of Application: Preliminary Permit.

b. Project No.: 9426–000.

c. Date Filed: September 4, 1985.

d. Applicant: Marcal Mills Hydro Partners #1.

e. Name of Project: Welchville.

f. Location: Litile Androscoggin River, Oxford County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, NW., Suite 600, Washington, DC 20005 Phone (202) 783–2100.

i. Comment Date: March 14, 1986.

j. Description of Project: The project consists of: (1) An existing 11-foot-high, 180-foot-long timber-crib gravity dam; (2) an existing reservoir 385 acres in area with a storage capacity of 380 acre-feet at a normal maximum surface elevation of 302 feet mean sea level; (3) a proposed steel penstock 4 feet in diameter and 25 feet in length; (4) a proposed concrete powerhouse, 25 feet in length and 20 feet in width, housing one turbine/generator with a capacity of 275 kW; (5) a proposed concrete tailrace 20 feet in length, 5 feet in width and 5 feet in depth; (6) a proposed 12.5 kV transmission line 10 feet in length; and (7) appurtenant facilities. The estimated annual energy production of the project is 1,000,000 kWh. The estimated net hydraulic head is 10 feet. Project power would be sold to Central Maine Power Company. The owner of the dam is The Marcal Paper Mills, Inc.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $145,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9a. Type of Application: Preliminary Permit.

b. Project No.: 9511–000.

c. Date Filed: October 1, 1985.

d. Applicant: C&O Hydro Associates.

e. Name of Project: Georgetown Hydropower

f. Location: On the Chesapeake and Ohio Canal and Potomac River in Washington, DC.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David M. Coombe, 410 Severn Avenue, Suite 409, Annapolis, MD 21403.

i. Comment Date: March 13, 1986.

j. Description of Project: The proposed project would consist of: (1) Two existing square intakes and two metal headgates; (2) an existing 10-foot-diameter penstock 40 feet long; (3) an existing concrete powerhouse to contain one turbine/generator with an installed capacity of 700 kW; (4) a proposed tailrace approximately 12 feet in diameter and 140 feet long; (5) a new 13.2-kV transmission line approximately 50 feet long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 3.8 GWh operating under an hydraulic head of 36 feet. The proposed project is owned by Wilking-Rogers Corporation.

k. Purpose of Project: Project power will be sold to the Potomac Electric Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope and Cost of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

10a. Type of Application: Minor License.

b. Project No.: 8284–001.

c. Dated Filed: June 10, 1985.

d. Applicant: Geoffrey Shadroui.

e. Name of Project: Stevens No. 1.

f. Location: On the Stevens Branch of the Winooski River near Barre, in Washington County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Geoffrey Shadroui, 121 Maple Avenue, Barre, VT 05641.

i. Comment date: March 12, 1986.

j. Description of Project: The project would consist of: (1) An existing dam with an overall length of 61 feet and a height of 7 feet; (2) an existing 0.24-acre reservoir with a storage capacity of .7 acre-feet at the normal water surface elevation of 658.0 feet M.S.L.; (3) the proposed installation of three-foot-high flashboards which will increase the surface area of the reservoir to 0.26 acres at the normal maximum surface elevation of 661 feet msl; (4) a proposed powerhouse to contain an installed generating capacity of 35 kW; (5) a proposed 300-foot-long, 480V transmission line; (6) an existing 1,700-foot-long, 12-foot-wide, dirt access road; (7) a proposed 200-foot-long extension of the 12-foot-wide, access road; and (8) appurtenant facilities. The existing dam is owned by the City of Barre, Vermont. The Applicant estimates that the average annual energy generation will be 120 MWh. The Applicant anticipates that the power produced will be sold to the Vermont Power Exchange.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

11a. Type of Application: Preliminary Permit.

b. Project No.: P–9661–000.

c. Dated Filed: December 3, 1985.

d. Applicant: Auburn Naturalists, LTD.

e. Name of Project: Littlefield Corner.

f. Location: On the Little Androscoggin River in Androscoggin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, Suite 600, Washington, D.C. 20005.

i. Comment date: March 17, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 28-foot-high and 420-foot-long concrete dam with a spillway elevation of 211 feet NGVD; (2) an existing 101-acre surface area reservoir with a storage capacity of 750 acre-feet with a maximum surface elevation of 211 feet NGVD; (3) an existing 96-inch-diameter penstock extending 150 feet in length; (4) an existing powerhouse to contain one turbine/generator for an installed capacity of 900 kW; (5) an existing 50-foot-wide, 8-foot-deep and 120-foot-long tailrace; (6) a proposed 1320-foot-long, 12.5-kV transmission line: and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 5 GWh under a hydraulic head of 21 feet. The dam is owned by the City of Auburn.

k. Purpose of Project: Project power will be sold to Central Maine Power.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

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m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $145,000.

12a. Type of Application: Preliminary Permit.

b. Project No.: 9520–000.

c. Date Filed: October 3, 1985.

d. Applicant: Rocky Mountain Hydro, Inc.

e. Name of Project: Wind River.

f. Location: On the Bureau of Reclamation's Wyoming Canal on the Wind River near the town of Morton, Fremont County, Wymoning.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Michael L. Raisch, President, Rocky Mountain Hydro, Inc., 4065 South Roslyn Street, Denver, CO 80237.

i. Comment Date: March 17, 1986.

j. Description of Project: The proposed project would consist of: (1) An intake gate on the existing Wymoning Canal; (2) a 1,000–foot–long penstock; (3) a powerhouse containing two generating units with a total rated capacity of 3,700 kW; and (4) a connection to an existing 115–kV transmission line adjacent to the proposed powerhouse. Applicant estimates the average annual energy production to be 12 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $50,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the local power company.

l. This notice also consist of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13.a. Type of Application: Preliminary Permit.

b. Project No.: 9497–000.

c. Date Filed: October 1, 1985.

d. Applicant: Great Western Power and Light, Inc.

e. Name of Project: Missippi River L & D No. 25.

f. Location: On the Mississippi River in Lincoln County, Missouri and Calhoun County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham or Mr. Jordan Walker, 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 17, 1986.

j. Description of Project: The Applicant would utilize an existing dam and lands administered by the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed powerhouse containing two generating units with a total installed capacity of 36 MW; (2) a proposed inlet channel; (3) a proposed tailrace; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated averaged annual gereration is 175,000,000 kWh.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $85,000.

l. Purpose of Project: Power produced at the project would be sold to the Missouri Edison Company or other local utilities.

m. This notice also consist of the following standard paragraphs: A5, A7, A9, B, C, & D2.

14a. Type of Application: Preliminary Permit.

b. Project No.: 9461–000.

c. Date Filed: September 25, 1985.

d. Applicant: New Found Development.

e. Name of Project: Wilson Pond Dam/G.H. Bass & Company.

f. Location: Wilson Stream, Franklin County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jeffery A. Marlowe, 3 Spring Street, Newport, RI 02840; Phone: (401) 846–1426.

i. Comment Date: March 16, 1986.

j. Description of Project: The proposed project would consist of:

(1) An existing earthfill and masonry gravity dam 78 feet in length and 24 feet in height, including a 55 foot long masonry spillway and a 23 foot long concrete intake structure;

(2) An existing 275 foot long power canal, 15 to 30 feet wide, providing flow to a 4 foot diameter, 25 foot long steel penstock;

(3) An existing impoundment of 570 acres surface area and a capacity of 6,610 acre-feet at a normal maximum surface elevation of 570 feet mean sea level;

(4) An existing 100 kW turbine/generator housed in an existing sub-basement to the G.H. Bass & Company Shoe Factory facility;

(5) The proposed refurbishment of the existing generation and control equipment;

(6) A proposed 10 foot long, 230 volt-transmission line, and

(7) Appurtenant facilities.

The estimated annual energy production is 350,000 kWh. Project power would be consumed on site and surplus power sold to Central Maine Power Company. All existing facilities are owned by G.H. Bass & Company, Inc., Wilton, Maine, and Foster's Manufacturing Company, Inc., Wilton, Maine.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $14,000.

l. This notice also consists of the following standard paragraphs: A5. A7, A9, B, C, D2.

15a. Type of Application: Preliminary Permit.

b. Project No.: 9660–000.

c. Data Filed: December 3, 1985.

d. Applicant of Project: St. Maries Naturalists, Ltd.

e. Name of Project: St. Maries River.

f. Location: On the St. Maries River in the Panhandle National Forest near St. Maries, Benwah County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Esquire, 1350 New York Avenue, #800, Washington, DC 20005.

i. Comment Date: March 21, 1986.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 2,435 feet; (2) a 2,315-foot-long, 102-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 3,400 kW; and (4) a 4.5-mile-long transmission line. Applicant estimates the average annual energy production to be 14.9 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Washington Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 7477–000.

c. Date Filed: October 11, 1985.

d. Applicant: Burt Dam Associates.

e. Name of Project: Burt Dam Project.

f. Location: On the Eighteenmile Creek in Niagara County, New York.

g. Filed Pursuant to: Energy Security Act of 1980, section 408, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Jeffrey W. Moon, President, J. W. Corporation, 334 Black Lane, Wetherfield, CT 06109.

i. Comment Date: March 17, 1986.

j. Description of Project: The application was initially filed on August 1, 1983, and materially amended on October 11, 1985, as shown below. The proposed project would consist of: (1) The 328-foot-long and 58-foot-high Burt Dam; (2) a reservoir with storage capacity of 2,447 acre-feet; (3) existing intake structures; (4) an existing powerhouse at the downstream face of the east abutment, with a new 300-kW turbine-generator; (5) a new 200-foot-long transmission line; and (6) other appurtenances. Applicant executed an option to lease project facilities from the Olcott Harbor Board of Trade. It is estimated that the project would produce an average annual generation of 2,223,633 kWh.

k. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority to control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 9719–000.

c. Date Filed: December 24, 1985.

d. Applicant: F & T Services Corporation.

e. Name of Project: Mississippi River Lock & Dam No. 25.

f. Location: On the Mississippi River in Lincoln County, Missouri and Calhoun County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Jr., Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70986, 504–927–9321.

i. Comment Date: March 17, 1986.

j. Competing Application: Project No. 9497 Date Filed: October 1, 1985. Due Date: March 17, 1986.

k. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) A proposed powerhouse containing 4 generating units having a total rated capacity of 42 MW; (2) a proposed 150-foot-wide by 200-foot-long inlet channel; (3) a proposed 150-foot-wide by 350-foot-long outlet channel; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 175,000,000 kWh. Energy produced at the project would be sold to the Missouri Edison Company.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $30,000.

m. Purpose of Project: Power produced at the project would be sold to the Missouri Edison Company or other local utilities.

n. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9468–000.

c. Date Filed: September 19, 1985.

d. Applicant: Clearwater Hydro.

e. Name of Project: Willow Creek Hydroelectric.

f. Location: On Willow Creek at the Bureau, of Reclamation-administered Ririe Dam in Bonneville County, Idaho Sections 15, 16, 21, and 22, Township 3 North, Range 40 East.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard R. Gresham, P.O. Box 158, Clearwater Hydro, Clipper Mills, CA 95930, (916) 675–2855.

i. Comment Date: March 17, 1986.

j. Competing Application: Project No. 9348–000, Date Filed: July 11, 1985.

k. Description of Project: The proposed project would utilize the existing dam and reservoir and would consist of: (1) Placement of a steel lining in the existing outlet tunnel; (2) a 40-foot-long, 8-foot-diameter penstock; (3) a 50-foot-square concrete powerhouse at the base of the outlet tunnel containing one or two generating units with a total rated capaicty of 2.5 MW, producing an average annual output of 9.2 GWh; and (4) a 5-mile-long, 69-kV transmission line connecting to an existing Utah Power and Light Company line.

A preliminary permit does not authorize construction. Applicant seeks a preliminary permit to conduct engineering, economic, and environmental studies to ascertain project feasibility and to support an application for a license to construct and operate the project. Applicant has stated that no new roads are necessary and that drilling is not anticipated as part of the studies. The estimated cost of permit activities in $35,000.

l. Purpose of Project: The power produced by the project would be sold to Utah Power and Light Company.

m. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

19a. Type of Application: Preliminary Permit.

b. Project No.: 9605–000.

c. Dated Filed: November 1, 1985.

d. Applicant: Kittitas Reclamation District.

e. Name of Project: Kittitas Main Canal Station 1146.

f. Location: At Main Canal Station 1146, in Kittitas County, Washington Township 19N Range 16E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lemoyne C. Henderson, Manager, Kittitas Reclamation District, P.O. Box 276, Ellensburg, WA 98926, (509) 925–6158.

i. Comment Date: March 21, 1986.

j. Competing Application: Project No. 8332, Date Filed: June 1, 1984.

k. Description of Project: The proposed project would consist of: (1)

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An intake structure built alongside the existing wasteway control gate; (2) a 48-inch-diameter penstock run parallel to the wasteway; (3) a powerhouse at elevation 1785 feet containing two generating units with a combined capacity of 3,600 kW and an average annual generation of 7 GWh; and (4) a 70-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $65,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A8, B, C, D2.

20a. Type of Application: Preliminary Permit.

b. Project No: 9575–000.

c. Date Filed: November 1, 1985.

d. Applicant: Rosebud Creek associates.

e. Name of Project: Rosebud Greek.

f. Location: In Custer National Forest on Rosebud Creek in Carbon County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 17, 1986.

j. Competing Application: Project No. 9594, Date Filed November 1, 1985.

k. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam at elevation 6205 feet; (2) a 13,000-foot-long, 42-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 8000 kW and an average annual generation of 25 GWh; and (4) a 7-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $85,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

21a. Type of Application: Preliminary Permit.

b. Project No.: 9569–000.

c. Date Filed: November 1, 1985.

d. Applicant: Lower Slate Creek Associates.

e. Name of Project: Lower Slate Creek.

f. Location: In Nezperce National Forest on Slate Creek in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 21, 1986.

j. Competing Application: Project No. 9596, Date Filed: November 1, 1985.

k. Description of Project: The proposed project would consist of: (1) A 2-foot-high diversion dam at elevation 2030 feet; (2) an 18,000-foot-long, 54-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 3,824 kW and an average annual generation of 15,346 GWh; and (4) a 2-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $12,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application on later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the application(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

c. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are equested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsiblitities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issueance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's respresentatives.

Dated: February 6, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc.86–3060 Filed 2–11–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–270–000 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

February 5, 1986.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86–270–000]

Take notice that on January 15, 1986, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86–270–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation, on an interruptible basis, of up to 15,000 dt equivalent of gas per day for Northern Intrastate Pipeline Company (NIPCO), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, up to 15,000 dt equivalent of natural gas per day which NIPCO would cause its seller, Huffco Petroleum Corporation, to tender to Applicant in South Marsh Island area Block 260, offshore Louisiana. Applicant would perform such transportation service for NIPCO pursuant to a transportation agreement dated October 7, 1985. It is asserted that Applicant would transport the gas and deliver such quantities for NIPCO's account to Columbia Gulf Transmission Company at the Pecan Island Plant located in Vermilion Parish, Louisiana. Applicant proposes to charge NIPCO 23.2 cents per dt of gas transported, a rate derived from rate schedules X–118 and X–119 on file in the Applicant's FERC Gas Tariff, Original Volume No. 2. Applicant proposes to provide the requested transportation service for an initial term ending October 31, 1986, and such

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additional term as the parties would determine.

Comment date: February 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-279-000]

Take notice that on January 21, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-279-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northern to increase the currently authorized firm entitlement sold to Metropolitan Utilities District (MUD) by Mcf per day; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is explained that a residential subdivision known as Stony Brook, located in Douglas County, Nebraska, was annexed in 1984 by the City of Omaha, Nebraska. Northern states that Peoples Natural Gas Company, Division of InterNorth, Inc. (PNG), the local distribution company serving Stony Brook at the time of the annexation, has agreed to sell the natural gas distribution properties it currently uses to serve the Stony Brook addition to MUD, the local distribution company serving Omaha, Nebraska.

Northern explains that subsequently, Utilicorp United Inc. (Utilicorp) has purchased all of the assets and assumed all of PNG's obligations which was certificated by the Commission on December 19, 1985, in Docket No. CP86-192-000. Northern states that such certificate already reflected a reduction in PNG's firm entitlement equivalent to the 750 Mcf of gas per day of firm entitlement associated with serving Stony Brook.

Consequently, Northern herein seeks authorization to increase the firm entitlement of MUD by 750 Mcf of gas as a result of the transfer of these properties. Northern states that the authorized level of firm entitlement would be unchanged as a result of the proposal described herein.

Comment date: February 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP86-278-000]

Take notice that on January 21, 1986, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86-278-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon four compressors in the Hugoton area, Stevens County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to abandon by relocation, four compressors located in Stevens County, Kansas:

(1) *Breech low compressor station*—One 2673 horsepower Cooper Bessemer 8V275 compressor unit;

(2) *Panoma low compressor station*—One 2673 horsepower Cooper Bessemer 8V275 compressor unit;

(3) *Moscow compressor station*—One 2673 horsepower Cooper Bessemer 8V275 compressor unit;

(4) *Hugoton compressor station*—One 3523 horsepower Cooper Bessemer 10V275 compressor unit.

Applicant avers that it has experienced a stabilization of production rates from the gas reservoirs in the Hugoton field similar to other pipelines in the area. It is explained that a consequence of the stabilization of production rates is that compression previously installed to meet declining reservoir pressures would not be required in the near term. Applicant asserts that the present and anticipated operation of the Hugoton field precludes the need for specific compression facilities at the Breech, Panoma, Moscow and Hugoton stations. Applicant furthers asserts that the proposed abandonment would not adversely affect its ability to supply contractual volumes.

Applicant proposes to relocate the four compressors to its Louisburg compressor station to replace obsolete units with the relocated units which have substantially equivalent design capacity. It is asserted that there would be no change in the daily design nor peak day design capacity at Louisburg as a result of the proposed replacement.

Comment date: February 26, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3089 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Ordered Granting Requests for Waivers

Issued: February 6, 1986.

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C. M. Naeve.

Columbia Gas Transmission Corporation and Tennessee Gas Pipeline Company, a Division of Tenneco Inc., have filed a request for a waiver of the transitional provisions of Order No. 436 [1] as they apply to a transportation transaction performed under former § 284.221 of the Commission's Regulations. We will grant Columbia's and Tennessee's request, as discussed below.

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985.

On June 12, 1985, Columbia and Tennessee entered into an agreement whereby Tennessee agreed to transport gas for Columbia pursuant to former § 284.221 of the Commission's Regulations under authorization issued on February 21, 1980, in Docket No. CP80-132, 10 FERC ¶ 61,166.

In reliance on this transportation agreement, Columbia began to install pads, compressors, and related equipment on its lines in Mayville, New York, and Union City, Pennsylvania. By the end of September 1985, approximately $1,644,000 had been spent in Mayville with more construction necessary. All construction was completed in Union City by October 9, at an approximate cost of $365,000. Because of the construction schedule, transportation did not commence prior to October 9.

In *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386 (December 17, 1985, we established an economic substance test for grant of a waiver from the restrictions in the transitional provisions of Order No. 436. We stated that a "purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9." Columbia has spent significant funds and constructed substantial facilities before October 9 in reliance on a transportation contract.

Judel also stated that the economic substance test would not apply to a transporter because the "transporter has the option of utilizing the tranportation authority of Order No. 436." We applied that principle in *Exxon Gas System, Inc.*, 34 FERC ¶ 61,032 (January 21, 1986), where we held that a transporter did not meet the critiera of the economic substance test because the transporter has the power to "ameliorate its own economic detriment."

The case before us today, however, presents a different situation. Although Columbia is a pipeline, it is not the pipeline seeking transition treatment. Here, it is functioning in the role of shipper and purchaser, and not as a transporter. It is Tennessee's refusal to transport that prevents Columbia from obtaining supples for which it has contracted. For these reasons, we find that Columbia cannot improve its economic situation by transporting under Order No. 436 because it is dependent on the decisions of another participant to the transportation agreement. Thus, Columbia falls within the rationale of *Judel*. Accordingly, we will waive the restrictions in § 284.105 to the extent necessary to permit Tennessee's transportation transaction to commence.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3090 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-000 and Docket No. SA86-7-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Lone Star Gas Company, a Division of ENSERCH Corporation and Lone Star Gas Company, A Division of ENSERCH Corporation; Order Denying Request for Waiver

Issued February 6, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 23, 1985, Lone Star Gas Company, a Division of ENSERCH Corporation, filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Subpart K of Part 385 of the Commission's Rules of Practice and Procedure. Although not so characterized by Lone Star, the petition in essence requests waiver of the restrictions in the transitional provisions of Order No. 436,[1] and has been treated as such. For the reasons stated below, we will deny Lone Star's petition.

Lone Star states that "it has operational problems in providing adequate service during peak periods" in Northern Texas which has resulted in gas shortages for several residential customers. Lone Star further states that it has an adequate gas supply in East Texas which is difficult to deliver to North Texas. At the same time, Lone Star claims that United Gas Pipe Line Company has "experienced severe capacity problems in its East Texas system during non-peak periods." Due to these circumstances, Lone Star and United entered into an exchange agreement on August 23, 1985, whereby Lone Star agreed to deliver gas to United in East Texas and United agreed to deliver gas to Lone Star in North Texas under section 311 of the NGPA.[2]

In reliance on the exchange agreement, Lone Star states that it spend $20,000 to construct facilities. Since the facilities were not completed by October 9, 1985, the exchange service did not commence before the effective date of Order No. 436.[3]

In *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386 (December 17, 1985), we established a test for granting a waiver from the restictions in the transitional provisions of Order No. 436 based on whether a particular transaction had genuine economic substance prior to October 9, 1985. We stated that a "purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, expended substantial funds prior to October 9." This test is meant to grant relief from the transitional provisions of Order No. 436 without defeating its objectives.

The economic substance test will not be satisfied if the facilities were constructed or the funds expended by the transporter. A transporter, unlike a purchaser, seller, or end user, has the option of performing the transportation itself pursuant to the authority of the regulations adopted in Order No. 436, and thus has the power to ameliorate its own economic detriment. *See Exxon Gas System, Inc.*, 34 FERC ¶ 61,032 (January 21, 1985). Therefore, to the extent it is a transporter, Lone Star does not meet the criteria of the economic substance test established in *Judel*. However, the Commission recognizes that the transportation by Lone Star represents half of a transportation exchange. Lone Star can take steps toward ameliorating its own economic detriment by seeking authorization under Part 284 of our regulations as revised by Order No. 436.[4] (Accordingly, Lone Star also has the power to take steps to prevent its customers' loss of service.) It nevertheless still depends on another entity (United) to complete the exchange. Absent some contractual obligation, United's actions are beyond Lone Star's control. Accordingly, if Lone Star is in a position to implement its half of the exchange under any authorization available to it, thereby doing everything within its power to ameliorate its own economic detriment, the Commission will entertain a request for waiver of the transitional provisions of Order No. 436 with respect to United. In such situation, Lone Star would be in the same position as companies like Judel Glassware which had relied to their economic

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[2] Lone Star has intrastate and interstate facilities. The petition applies to its intrastate facilities.

[3] Lone Star's petition contains no information about whether United intends to transport gas under the provisions of Order No. 436.

[4] The Commission notes that an intrastate pipeline also has the option of seeking a "limited jurisdiction certificate." *See* Order No. 436-A, issued December 12, 1985, *mimeo.* at pp. 57-58.

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detriment on agreements, without the power to ameliorate that detriment.

For the reasons stated above, we will not waive the restrictions in § 284.125.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3091 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-000 and RM85-1-146]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Natural Gas Pipeline Company of America; Order Granting Rehearing for Further Consideration

Issued: February 6, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 10, 1986, and January 16, 1986, Delhi Gas Pipeline Corporation and Natural Gas Pipeline Company of America, respectively, filed applications for rehearing of the order issued by the Commission on December 17, 1985, in Docket No. RM85-1-000, 33 FERC ¶ 61,401.

Rehearing of the "Order Granting and Denying in Part, Request for Clarification" issued on December 17, 1985, in Docket No. RM85-1-000 is granted solely for the purpose of affording the Commission additional time to consider the request for rehearing. Pursuant to Rule 713(b) of the Commission's Procedural Rules, no answer to this order, or to the requests for rehearing, will be entertained.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3059 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8843-002, et al.]

Surrender of Preliminary Permits; Lawrence J. McMurtrey et al.

February 6, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Lawrence J. McMurtrey

[Project No. 8843-002]

Take notice that Lawrence J. McMurtrey, Permittee for the Foss River Project No. 8843, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8843 was issued May 28, 1985, and would have expired October 31, 1986. The project would have been located on the Foss River in King County, Washington.

The Permittee filed the request on December 27, 1985.

2. Amador County

[Project No. 8487-001]

Take notice that Amador County, Permittee for the proposed Irish Hill Water and Power Project No. 8487, has requested that its preliminary permit be terminated. The preliminary permit was issued on October 7, 1985, and would have expired on September 30, 1988. The project would have been located on Dry Creek in Amador County, California. The Permittee states taht a preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on January 15, 1985.

3. Lawrence J. McMurtrey

[Project No. 8842-001]

Take notice that Lawrence J. McMurtrey, Permittee for the Jim Creek Project No. 8842, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8842 was issued May 31, 1985, and would have expired October 31, 1986. The project would have been located on Jim Creek in Snohomish County, Washington.

The Permittee filed the request on December 27, 1985.

4. Pleasant Hill Hydro Associates

[Project No. 8270-001]

Take notice that Pleasant Hill Hydro Associates, Permittee for the proposed Pleasant Hill Project No. 8270, requested by letter dated December 23, 1985, that its preliminary permit be terminated. The preliminary permit was issued on November 1, 1984, and would have expired on April 30, 1986. The project would be located on the Clear Fork of the Mohican River in Ashland County, Ohio.

The Permittee filed the request on December 30, 1985.

5. R.G. Associates

[Project No. 8677-001]

Take notice that R.G. Associates, Permittees for the Aloma I Project No. 8677, have requested that their preliminary permit be terminated. The preliminary permit for the Project No. 8677 was issued on June 20, 1985, and would have expired on November 30, 1986. The project would have been located at Conconully Dam in Okanogan County, Washington.

The Permittees filed the request on December 5, 1985.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3092 Filed 2-11-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-403-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; WV Hydro Corp., et al.

February 6, 1986.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. WV Hydro Corp.

[Docket No. QF86-403-000]

On January 17, 1986, WV Hydro Corp. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1.5 megawatt hydroelectric facility (FERC P. 9673) is located on the Elk River, in Franklin County, Tennessee.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. The City of Broken Bow, Oklahoma

[Docket No. QF86-408-000]

On January 17, 1986, The City of Broken Bow, Oklahoma (Applicant), of P.O. Box 909, Broken Bow, Oklahoma 74728 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4 megawatt hydroelectric facility (FERC P. 3657) is located on Little River, in McCurtain County, Oklahoma.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Energy Growth Group, Inc.

[Docket No. QF86-485-000]

On January 8, 1986, Energy Growth Group, Inc. (Applicant), of 580 Fifth Avenue, New York, New York 10036 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 11.6 megawatt hydroelectric facility (FERC P. 6896) will be located on the Butte Creek, near Paradise, in Butte County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. The Town of Gassaway, West Virginia

[Docket No. QF86-407-000]

On January 17, 1986, The Town of Gassaway, West Virginia (Applicant), of Town Hall, Gassaway, West Virginia 26624 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 8 megawatt hydroelectric facility (FERC P. 3344) is located on the Elk River, in Braxton County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. The City of Marion, Kentucky and Smithland Hydroelectric Partnership

[Docket No. QF86-412-000]

On January 17, 1986, the City of Marion, Kentucky and Smithland Hydroelectric Partnership (Applicant), of 108 East Belleville Street, Marion, Kentucky 42064 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 80 megawatt hydroelectric facility (FERC P. 6641) is located on the Ohio River, in Livingston County, Kentucky.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

6. Noah Corp., Aiken S.C. (Opekiska Dam Hydroelectric Development)

[Docket No. QF86-406-000]

On January 17, 1986, Noah Corp., Aiken, S.C. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commissioner's regulations. No determination has been made that the submittal constitutes a complete filing.

The 9.6 megawatt hydroelectric facility (FERC P. 8654) is located on the Monongahela River, in Monongalia County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. Noah Corp., Aiken, S.C. (Tygart Dam Hydroelectric Development)

[Docket No. QF86-405-000]

On January 17, 1986, Noah Corp., Aiken, S.C. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 75 megawatt hydroelectric facility (FERC P. 7399) is located on the Tygart Valley River, in Taylor Country, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

8. Noah Corp., Aiken, S.C. (Hildebrand Dam Hydroelectric Development)

[Docket No. QF86-409-000]

On January 17, 1986, Noah Corp., Aiken, S.C. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commissioner's regulations. No determination has been made that the submittal constitutes a complete filing.

The 9.6 megawatt hydroelectric facility (FERC P. 8654) is located on the

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Monongahela River, in Monongalia County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Noah Corp., Aiken, S.C. (Gallipolis Dam Hydroelectric Development)

[Docket No. QF86-404-000]

On January 17, 1986, Noah Corp., Aiken, S.C. (Applicant), of 120 Calumet Ct., Aiken, South Carolina 29601 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 55 megawatt hydroelectric facility (FERC P. 8381) is located on the Ohio River, in Gallia County, Ohio.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

10. The Town of Summersville, West Virginia

[Docket No. QF86-410-000]

On January 17, 1986, the Town of Summersville, West Virginia (Applicant), of Town Hall, 400 Broad Street, Summerville, West Virginia 26651 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 70 megawatt hydroelectric facility (FERC P. 3493) is located on the Gauley River, in Nicholas County, West Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

11. Sun Cogeneration Limited Partnership

[Docket No. QF86-433-000]

On January 17, 1986, Sun Cogeneration Limited Partnership (Applicant), of P.O. Box 55060, 25115 W. Avenue, Stanford, Suite 120, Valencia, California 91355, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of three combustion turbine generating units with three waste heat recovery steam generators. Steam produced by the facility will be used by Sun Operating Limited Partnership in enhanced oil recovery operations. The electric power production capacity of the facility will be 225 MW. The primary energy source will be natural gas. The facility will begin operation in May, 1988.

The facility will be owned by a partnership consisting of Sun Cogeneration Inc., Sun Cogeneration Limited Partnership and Southern Sierra Energy Company (a subsidiary of Southern California Edison Company).

12. Warren County Energy Resources Co., L.P.

[Docket No. QF86-501-000]

On January 24, 1986, Warren County Energy Resources Co., L.P. (Applicant), of 4520 Executive Park Drive, Montgomery, Alabama 36116-1602 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Oxford Township, New Jersey. The facility will use biomass in the form of municipal solid waste (MSW) to generate approximately 11 MW of net electric power. No. 2 fuel oil will be used for start-ups and control uses.

Warren County Energy Resources Co., L.P. is a limited partnership with Blount Energy Resources Corp. as general partner and Louis A. Griffin as the limited partner. Neither partner is an electric utility or an electric utility holding company.

13. The Borough of Point Marion, Pennsylvania

[Docket No. QF86-413-000]

On January 17, 1986, the Borough of Point Marion, Pennsylvania (Applicant), of Point Marion Borough, Bldg., Point Marion, Pennsylvania 15474 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 5 megawatt hydroelectric facility (FERC P. 7660) is located on the Monogahela River, in Fayette County, Pennsylvania.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

14. The City of Broken Bow, Oklahoma

[Docket No. QF86-414-000]

On January 17, 1986, the City of Broken Bow, Oklahoma (Applicant), of P.O. Box 909, Broken Bow, Oklahoma 74728 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 3 megawatt hydroelectric facility (FERC P. 3555) is located on Kiamichi River, in Choctaw County, Oklahoma.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3093 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI86-175-000]

Felmont Oil Corp. and Essex Offshore, Inc., Application for Certificate of Public Convenience and Necessity and for Pre-Granted Abandonment Authorization

February 7, 1986.

Take notice that on January 23, 1986, Felmont Oil Corporation (Felmont) and Essex Offshore, Inc. (Essex), of P.O. Box 10336, Stamford, Connecticut 06004-2336, filed this application for a certificate of public convenience and necessity authorizing Applicants to sell and deliver natural gas from Vermilion Block 88, Offshore Louisiana, to The Brooklyn Union Gas Company (Brooklyn Union), pursuant to a Gas Purchase Contract dated January 16, 1986, which is not sold to Transco and for pre-granted abandonment of this sale.

This certificate application is filed pursuant to authority granted to Applicants in Commission Opinion No. 245, which permits Applicants to sell natural gas to third parties to the extent not purchased by Transcontinental Gas Pipe Line Corporation (Transco). Opinion No. 245 also requires that Applicants first offer natural gas to Transco's firm customers. Applicants state that they offered available volumes to all Transco customers. Brooklyn Union is a Transco customer.

The gas to be sold and delivered to Brooklyn Union under the Certificate applied for will be subject to the ceiling prices provided by section 104 and 106(a) of the Natural Gas Policy Act of 1978.

Since Opinion No. 245 permits Applicants only to sell volumes not purchased by Transco to third parties for a three-year term, Applicants request pre-granted abandonment authority in this case. Applicants note that the Commission has routinely approved pre-granted abandonment in other spot sales of released gas. *E.g., Tenneco Oil Company*, 33 F.E.R.C. ¶ 61,133 (1985); *Amoco Production Company*, 33 F.E.R.C. ¶ 61,172(1985).

Any person desiring to be heard or to make any protest with reference to said application should on or before February 25, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3084 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 308-001]

Pacific Power and Light Co.; Issuance of Annual Licenses(s)

February 6, 1986.

On February 19, 1985, Pacific Power and Light Company licensee for the Wallowa Falls Project No. 308, filed an application for a new license under the Federal Power Act and the Commission's regulations. The project is located on the East Fork of the Wallowa River and Royal Purple Creek a tributary of the Wallowa River, in Wallowa County, Oregon. The project occupies about twelve acres of public land within the Wallowa Whitman National Forest.

The current license for Project No. 308 was issued effective March 1, 1976, for a period of ten years. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application for a new license, it is appropriate and in the public interest to issue an annual license to the Pacific Power and Light Company.

Take notice than an annual license is issued to the Pacific Power and Light Company for the period from March 1, 1986 to February 28, 1987, or until Federal takeover, or until issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Wallowa Falls Project No. 308 subject to the terms and conditions of the original license. Take further notice that if Federal takeover or issuance of a new license does not take place on or before February 28, 1987, a new annual license will be issued each year thereafter, effective March 1 of each year, until such time as Federal takeover takes place or a new license issued, without further notice being given by the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3085 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER86-204-000]

Pennsylvania Electric Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motion To Reject, Ordering Summary Disposition, Granting Waiver of Notice Requirement, and Establishing Hearing Procedures

Issued: February 4, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

On December 6, 1985, Pennsylvania Electric Company (Penelec) tendered for filing a proposed two-step increase in rates to its wholesale customers for full requirements, partial requirements, and wheeling service.[1] The Phase A rates would increase jurisdictional revenues by approximately $4.7 million (11.2%), and the Phase B rates would increase revenues by an additional $500,000, based upon a calendar 1986 test period. The company requests that the Phase A rates become effective on February 4, 1986, and the Phase B rates become effective on February 5, 1986. In the event that the Commission suspends the Phase B rates for only one day, Penelec requests that the Phase A rates be deemed withdrawn. In addition, the comps ny submitted for filing an

[1] See Attachment for rate schedule designations.

BEST COPY AVAILABLE

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unexecuted transmission service agreement between Penelec and Allegheny Electric Cooperative, Inc. (Allegheny) for the transmission of power generated by the New York Power Authority (NYPA). Penelec requests waiver of the notice requirement to permit an effective date of July 1, 1985.

Notice fo the company's filing was published in the **Federal Register**, [2] with comments due on or before December 31, 1985. Timely motions to intervene were filed by American Municipal Power-Ohio, Inc. (AMP-Ohio), Hydro Corporation of Pennsylvania (Hydro Corp.) and, jointly, by Allegheny and the Borough of Berlin, Pennsylvania (Petitioners). Amp-Ohio requests a five month suspension of Penelec's rates, but it does not raise any substantive issues.

Hydro Corp., a small power producer presently negotiating with Penelec for wheeling services, states that its rates will probably be modeled on the rates established in the instant docket. Hydro Corp. requests that the rates be suspended for five months and set for hearing. In support, its alleges an excessive return on equity. Hydro Corp. expresses concern that Penelec has allegedly requested that the Phase A rates to Allegheny be made effective retroactively to July 1, 1985, and that this may establish a precedent for future retroactive rate implementations.[3] In addition, Hydro Corp. alleges that Penelec has placed a restrictive clause in its tariff which limits the availability of its filed transmission rates to Allegheny and AMP-Ohio. Hydro Corp states that such a clause is unduly discriminatory and preferential.[4]

The Petitioners request that the rates be suspended for five months and set for hearing. In support, they raise numerous cost of service issues.[5] The Petitioners further request that Penelec's filing be made deficient because the Company allegedly has failed to submit complete statements and workpapers. While the Petitioners do not object to the effective date of July 1, 1985, for the proposed transmission service agreement, they dispute the propriety of several provisions of the unexecuted agreement.

On January 10, 1986, Penelec filed an answer to the pleadings filed by the Petitioners, AMP-Ohio, and Hydro Corp. The company opposes Hydro Corp.'s intervention, stating that as a mere potential future customer of Penelec, Hydro Corp. has no interest which will be affected by the outcome of this proceeding. Penelec opposes the request for a five month suspension or rejection of its rates and disputes the specific allegations raised in the intervenors' motions.[6]

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make AMP-Ohio and the Petitioners parties to this proceeding. Notwithstanding the company's opposition to Hydro Corp.'s intervention, we find that good cause exists to grant its motion. We are satisfied that Hydro Corp. has alleged an interest in the outcome of this proceeding that is not represented by another party, and that its participation may be in the public interest. Accordingly, we shall grant the motion to intervene.

In support of their request for rejection, the Petitioners allege that Penelec has failed to submit complete statements and workpapers. Having evaluated the company's submittal, we find that it minimally satisfies our threshold filing requirements and is not patently deficient. Therefore, we shall deny the request for rejection.

We consider it appropriate to order summary disposition with respect to two items in the company's cost of service. First, Penelec has included Electric Power Research Institute (EPRI) costs in the cost of service. The inclusion of such costs contravenes clear Commission precedent.[7] Second, the company has included in rate base the unamortized portion of an extraordinary property loss relating to an abandoned coal mining venture. Whether or not amortization of this loss is otherwise approriate, rate base inclusion of the unamortized portion is contrary to well-established Commission precedent.[8] Because the cost of service impact resulting from the inclusion of these two items is *de minimus*, we shall not require Penelec to refile its rates at this time. However, we shall require Penelec to reflect our determinations in its compliance cost of service submitted at the conclusion of this proceeding.

Our review of Penelec's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the Phase A and the Phase B rates may not yield substantially excessive revenues. Accordingly, we shall accept the Phase B rates for filing and suspend them for one day, to become effective on February 6, 1986, subject to refund. In accordance with Penelec's requests, the Phase A rates will be deemed withdrawn.

Penelec requests waiver of the notice requirements to permit the transmission service agreement for the delivery of NYPA power to become effective on July 1, 1985, the date on which service commenced. In light of Allegheny's support for the waiver, but its objection to various provisions of the service agreement, we find good cause to grant waiver of the notice requirement and we shall accept the transmission service agreement for filing but we shall suspend it to become effective on July 1, 1985, subject to refund.

The Commission orders

(A) Hydro Corp.'s motion to intervene is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) The Petitioners' motion to reject Penelec's filing is hereby denied.

(C) Summary disposition is hereby ordered, as noted in the body of this order, with respect to: (1) Penelec's inclusion of EPRI expenses in the wholesale cost of service; and (2) the inclusion of the unamortized portion of extraordinary property losses in rate base. Penelec shall reflect these summary dispositions in its compliance cost of service filed at the conclusion of this proceeding.

(D) Penelec's Phase B rates are hereby accepted for filing and suspended for one day to become effective on February 6, 1986, subject to refund. Penelec's Phase A rates are hereby deemed withdrawn.

(E) Waiver of the notice requirement is hereby granted.

(F) The transmission service agreement is hereby accepted for filing and suspended, to become effective on July 1, 1985, subject to refund.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Penelec's rates and terms of service.

(H) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(I) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(J) Subdocket 000 of Docket No. ER86-204 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER86-204-001.

(K) The Secretary shall promptly publish this order in the **Federal Register.**

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3061 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

[2] 50 FR 53,006 (1985).

[3] We note the Hydro Corp. has mischaracterized Penelec's submittal in this regard. Penelec does not seek to implement the Phase A rates for any customer prior to February 4, 1986. Rather, the company proposes that, beginning on July 1, 1985, Allegheny will be served at the existing transmission rate under which Allegheny currently receives other transmission services.

[4] Contrary to Hydro Corp.'s assertion, Penelec does not have a transmission tariff, but rather provides transmission service to Allegheny and AMP-Ohio pursuant to separate rate schedules. There is, therefore, no availability restriction to be rejected or modified, as requested by Hydro Corp. Insofar as Hydro Corp. may be alleging that it is Penelec's practice to provide transmission service by way of individual bilateral agreements, rather than by tariff, there is nothing *per se* unlawful with providing services under individual rate schedules. In any event, Hydro Corp. has submitted a September 5, 1985 letter wherein Penelec states that it is willing to provide transmission services to Hydro Corp. Therefore, it appears that Hydro Corp. has not been harmed by Penelec's election not to adopt a tariff format.

[5] The issues raised include: (1) Excessive rate of return, cash working capital allowance, fuel inventory, and A&G expenses; (2) improper allocation of customer service, information and customer account expenses to the wholesale class; (3) improper classification of certain O&M expenses; (4) improper allocation of pollution control CWIP; and (5) failure to support the derivation of the make-up provision for deferred income taxes.

[6] On January 16, 1986, Hydro Corp. filed a response to Penelec's opposition to its intervention. Because the Commission's Rules of Practice and Procedure do not permit the filing of a responsive pleading to an answer, we shall disregard this pleading. 18 CFR 385.213(a)(2).

[7] *E.g., Northern States Power Co. (Wisconsin)*, 17 FERC ¶ 61,019

[8] *E.g., New England Power Company*, Opinion No. 49, 8 FERC ¶ 61,054, *reh. denied*, 10 FERC ¶ 61,279 (1980), *aff'd sub nom. NEPCO Municipal Rate Committee v. FERC, 668 F.2d 1327, 1332-35 (D.C. Cir. 1981) cert. denied*, 457 U.S. 1117 (1982). We are currently revisiting, on a generic basis, our policy regarding the treatment of the costs of cancelled plant, which is another type of extraordinary property loss. *See New England Power Company*, 32 FERC ¶ 61,453, (1985). As we stated in that order, any change in Commission policy would be prospective only, and utilities are required to adhere to the precedent established in Opinion No 49 pending reconsideration of our policy

[Docket No. G-2978-001, et al.]

Sun Exploration and Production Co., et al.; Applications for Abandonment of Service

February 7, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 24, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20428, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-2978-001, D, Feb. 3, 1986	Sun Exploration & Production Co. P.O. Box 2880, Dallas, Texas 75221-2880.	El Paso Natural Gas Company, Spraberry Trend Field, Midland, Upton and Reagan Counties, Texas.	(1)	
G-2978-002, D, Feb. 3, 1986	do	do	(2)	
G-18303-001, D, Feb. 3, 1986	do	El Paso Natural Gas Company, Rhodes Field, Lea County, New Mexico.	(3)	
CI66-172-002, D, Dec. 19, 1985	do	Texas Gas Transmission Corporation, Maurice Field, Lafayette and Vermilion Parishes, Louisiana.	(4)	
CI85-530-001, D, Jan. 27, 1986	Fina Exploration, Inc. (Succ. in interest to American Petrofina Company of Texas). P.O. Box 2159, Dallas, Texas 75221	Northern Natural Gas Company, Block A-571, High Island Area, South Addition, Offshore Texas.	(5)	
CI86-184-000, (G-17857) B, Jan. 27, 1986	Chevron U.S.A. Inc., P.O. Box, 7309, San Francisco, Calif. 94120-7309.	Texas Gas Transmission Corporation, North Dubberly Field, Webster Parish, Louisiana.	(6)	
CI87-1065-003, D, Jan. 31, 1986	Sun Exploration & Production Co.	Ringwood Gathering Company, Ringwood, S.W. Field, Major County, Oklahoma.	(7)	
CI61-737-003, D, Jan. 31, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Transwestern Pipeline Company, Catesby Field, Ellis County, Oklahoma.	(8)	
CI61-1429-002, D, Feb. 3, 1986	Sun Exploration & Production Co.	El Paso Natural Gas Company, Langlie Mattix & Rhodes Fields, Lea County, New Mexico.	(9)	
CI75-143-000, D, Feb. 3, 1986	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Trunkline Gas Company, South March Island Block 261 Field, Offshore Louisiana.	(10)	

[1] Sun Property No. 860005, Merchant Unit, sold to Cass Oil Company.
[2] Sun Property No. 889024, Trammel, sold to Cass Oil Company.
[3] Property sold to Texaco, Inc.
[4] Partial Assignment and Bill of Sale covering Sun Property No. 855212 Triumph Energy, Inc.
[5] Northern Natural gas has exercised its contractual right to decline to attach new reserves developed in this block and has released these reserves from the contract and abandoned in November 1978.
[6] There were two wells producing from the dedicated acreage. The Ada P. Alexander Unit #1 was plugged and abandoned in June 1970. The Thomas Crichton, Jr. Unit #1 was plugged and abandoned in November 1978.
[7] Partial Assignment and Bill of Sale covering Sun Property No. 827119, Ersel, to Ronny g. Altman (75%) and Paul J. Woodul (25%).
[8] A portion of the Catesby Field was assigned to Sun Exploration and Production Company effective December 1, 1985.
[9] Assignment of a part of Texaco's interest to Huffco Petroleum Corporation.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add coverage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-3086 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. RP74-41-038, et al.]

Texas Eastern Transmission Corp. et al.; Filing of Pipeline Refund Reports and Refund Plans

February 7, 1986.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before February 18, 1986. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary

APPENDIX

Filing date	Company	Docket No.	Type filing
1-2-86	Texas Eastern Transmission Corp.	RP74-41-038	Report.
1-10-86	Natural Gas Pipeline Co. of America.	RP85-99-005	Btu.*
1-24-86	Lone Star Gas Co.	RP85-76-003	Btu.*
1-27-86	East Tennessee Natural Gas Co.	RP81-54-023	Report.
1-27-86	Transcontinental Gas Pipe Line Corp.	RP85-99-004	Report.
1-27-86	Consolidated Gas Transmission Corp.	RP85-97-003	Btu.*
1-28-86	Algonquin Gas Transmission Co.	RP72-110-040	Report.

*Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings will receive new sub-docket numbers.

[FR Doc. 86-3087 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-209-000]

United Gas Pipe Line Co.; Informal Settlement Conference

February 4, 1986

Take notice that on February 13, 1986, at 10:00 a.m., an informal settlement conference will be convened to discuss the possibilities of settlement in the above-captioned case. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The conference will continue on February 14, 1986, if necessary.

All interested persons and Commission Staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to these proceedings must file a motion to intervene in accordance with Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

For further information, contact Joel L. Saltzman, (202) 357-5354, or Andrew P. Mosier, Jr., (202) 357-8063, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3062 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP86-40-000]

Westar Transmission Co. v. Northern Natural Gas Company, a Division of InterNorth, Inc.; Complaint

February 7, 1986.

Take notice that on January 26, 1986, Westar Transmission Company (Westar) tendered for filing a Complaint And Request For Investigation under section 5(a) of the Natural Gas Act. In its Complaint, Westar requests that the Federal Energy Regulatory Commission (Commission) find that Northern Gas Company's, (Northern) charged a rate, for the period from July 31, 1984, to October 27, 1985, which had never been filed. Westar asserts that Northern's action violated both the filed rate doctrine, embodied in sections 4 and 5 of the Natural Gas Act, the provisions of § 154.111 of the Commission's Regulations,[1] and Commission Order No. 380.[2] Westar also requests that the Commission find Westar's refusal to pay amounts sought to be collected by Northern's invoicing mechanism to be lawful.

Westar asserts that Northern has attempted to unlawfully collect $7 million from Westar, through the minimum bill provisions of Northern's Rate Schedule Nos. X-17 and X-86 (which Westar alleges provide for the recovery of both fixed and variable costs) for the period July 31, 1984, to October 27, 1985. Westar argues that Northern failed to change its tariff, as required by Order No. 380, before presenting Westar with monthly invoices which allegedly reflect minimum bill amounts that did not contain any variable charges. Westar further contends that it has lawfully refused to pay that amount because Northern is attempting to charge Westar a rate different from that which was on file and in effect under its Thirty-Eighth Revised Sheet No. 1C. Westar complains that the unfiled rate which Northern seeks to charge, as a minimum bill, is approximately 62¢ per Mcf and may contain certain variable costs.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure.[3] All such motions or protests should be filed on or before March 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Westar states that a copy of the complaint was served on Northern. Northern's answer shall be due on or before March 10, 1986.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3088 Filed 2-11-86; 8:45 am]
BILLING CODE 6717-01-M

[1] 18 C.F.R. § 154.111 (1985).

[2] 3 FERC Stat. & Reg. ¶30,571, Docket No. RM83-71-000.

[3] 18 C.F.R. 385.211, 385.214 (1985).

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of January 27 through January 31, 1986

During the week of January 27 through January 31, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. the following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

ESSRO, 1/30/86; KFA-0009

ESSRO, an Arizona non-profit association, filed an Appeal from a partial denial by the Authorizing Official of the Western Area Power Administration (WAPA) of a request for information which the association had submitted under the Freedom of Information Act. In the request, ESSRO sought information pertaining to the construction and operation of the Liberty-Coolidge and Parke-Phoenix No. 1 power transmission lines, as well as a fee waiver. The Authorizing Official denied the fee waiver, and stated that he would release some of the documents to ESSRO upon receiving payment for processing the association's information request. In considering the Appeal, the DOE determined that there was a significant public interest in the subject matter of the request and that ESSRO had the expertise to interpret and disseminate the information to the public. The DOE, however, also found that ESSRO's members—landowners, farmers, and businessmen—had a personal interest in using this information to oppose the construction of the power lines. The DOE, therefore, determined that a 50 percent reduction of fees was warranted. In addition, the DOE determined that the WAPA failed to respond adequately to ESSRO's information request. Specifically, the DOE determined that upon remand, the Authorizing Official must provide ESSRO with an index of withheld documents together with an explanation of the statutory exemption which permits the agency to withhold such documents. Further, the WAPA must determine whether any responsive segregable nonexempt material exists. Accordingly, the Appeal was granted in part and remanded for further consideration.

Arthur Scarla, 1/31/86; KFA-0002

Arthur Scarla filed an Appeal from a denial by the Department of Energy Albuquerque Operations Office of a Request for Information which he had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the determination by the Director of the Operations Office was inadequate because it did not fully explain the reasons for withholding the requested information under the specified FOIA exemptions. Accordingly, the DOE remanded the matter to the Director for either a release of the requested unit price information, or a new determination that adequately justifies withholding the requested information in light of the applicable regulations.

Requests for Exception

Deiter Brothers Fuel Company, Inc., 1/29/86; HEE-0152

On May 31, 1985 Deiter Brothers Fuel Co., Inc. (Deiter Brothers) filed an Application for Exception in which it sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Montly Petroleum Product Sales Report." After the firm's application was denied in a Proposed Decision, the firm filed a Statement of Objections on October 7, 1985. In considering Deiter Brothers' exception application and Statement of Objections, the DOE found that the firm was not adversely affected by the requirement that it file Form EIA-782b. Accordingly, exception relief was denied to Deiter Brothers.

Ozona Gas Processing Plant, 1/30/86; HEE-0080

On December 7, 1983, Ozona Gas Processing Plant (Ozona), filed an application for exception from the provisions of 10 CFR 212.131 in which the firm sought retroactive exception relief from the two month crude oil tier certification rule set forth at 10 CFR 212.131(a)(6). In considering the request, the OHA found that the firm had failed to make a sufficient showing to warrant the requested relief. In particular, the OHA found that Ozona had failed to pursue its administrative remedies promptly. Accordingly, exception relief was denied.

Implementation of Special Refund Procedures

Hicks Oil and Hicks Gas Company, Inc., 1/31/86, HEF-0091

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling $83,646 obtained as a result of a Consent Order entered into between the DOE and Hicks Oil and Hicks Gas Company, Inc. The Decision sets forth refund application procedures for certain customers who purchased propane from Hicks' wholly owned subsidiary, Rocket Supply Company, during the period covered by the Consent Order—November 1, 1973 through December 31, 1975. Specific information regarding the data to be included in refund applications is discussed in the Decision.

Refund Applications

Blaylock Oil Company, Inc./Defense Logistics Agency, 1/29/86; RF221-1

The DOE issued a Decision and Order granting a refund from the escrow account funded by Blaylock Oil Company, Inc. (Blaylock), of Homestead, Florida, to the Defense Logistics Agency (DLA), which purchased motor gasoline from Blaylock during the October 1, 1979 through December 31, 1979 consent order period. The DLA purchases petroleum products for the use of government agencies and as such petroleum products for the use of government agencies and as such is an end-user of those petroleum products. The DLA was therefore required only to establish its volume of purchases from Blaylock. The DLA was granted a refund of $2,686 ($1,783 principal plus $903 interest).

Boswell Oil Company/Borton Brands, Ltd. et al., 1/31/86; RF179-2 et al.

Applications for Refund were filed by five firms that purchased refined pertroleum products from the Boswell Oil Company. The applications were evaluated in accordance with the procedures set forth in *Boswell Oil Co.*, 13 DOE ¶ 85,068 (1985). The OHA issued a Decision and Order approving the applications and granting refunds totalling $20,910.

Cosby Oil Company/Yucca Valley Liquor Store, Five Point U-Serve, Inc.; 1/31/86, RF170-3, RF170-4

The DOE issued a Decision and Order concerning Applications for Refund filed by Yucca Valley Liquor Store and Five Point U-Serve, Inc. Although each applicant documented its purchase volumes of Cosby motor gasoline, the DOE determined that neither applicant was entitled to receive a refund. Specifically, the DOE found that the two applicants were under the same ownership and management as Cosby during the consent order period and should therefore be barred by the equitable doctrine of unclean hands from seeking restitution in the Cosby special refund proceeding. Accordingly, their Applications for Refund were denied.

Gulf Oil Corporation/Main-Shimmerville Gulf Service et al.; 1/31/86, RF40-02234 et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 7 purchasers of Gulf refined petroleum products. The refunds from these firms totaled $10,460, representing $8,924 in principal and $1,536 in interest.

Hendel's Inc./Star Chevron Gas; 1/30/86, RF79-25

The Office of Hearings and Appeals granted an Application for Refund filed by Star Chevon Gas from a fund obtained through a Consent Order which it entered into which Hendel's, Inc. The applicant was a retailer who requested a refund below the $5,000 small claims threshold level. The total amount of the refund granted was $2,359, consisting of $1,378 in principal plus $981 in interest.

Huskey Oil Company/Dallas & Mavis Forwarding Company, Inc., et al.; 1/27/86, RF161-5 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by Dallas & Mavis Forwarding Company, Inc., *et al.* Each of the applicants had purchased refined petroleum products from Husky Oil Company, and each sought a portion of the settlement fund obtained by the DOE through a consent order with Husky. Five of the six firms applied for refunds based upon the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). The one remaining applicant was eligible to apply for a refund greater than $5,000, but elected to limit its claim to $5,000 and follow the small claims procedures. After examining the applications, the DOE concluded that each of the six firms should receive a refund based on its volumetric per gallon refund amount. The total amount of refunds granted was $24,619.

Husky Oil Company/Kerbs Oil Co., Inc., et al.; 1/27/86, RF161-24 et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by Kerbs Oil Co., Inc., *et al.* Each of the applicants had purchased refined petroleum products from Husky Oil Company, and each sought a portion of the settlement fund obtained by the DOE through a consent order with Husky. Five of the seven firms applied for refunds based upon the procedures for filing small claims outlined in *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). The two remaining applicants were eligible to apply for refunds greater than $5,000, but elected to limit their claims to $5,000 and therefore also followed the small claims

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procedures. After examining the applications submitted by the firms, the DOE concluded that each of the seven firms should receive a refund based on its volumetric per gallon refund amount. The total amount of refunds granted was $26,158.

Inland U.S.A., Inc./UCO Oil Company, 1/27/86, RR176–1

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by UCO Oil Company. In that Motion, UCO requested that the DOE reconsider a November 25, 1985 Decision and Order granting in part an Application for Refund filed by the firm in the Inland U.S.A., Inc. Special Refund Proceeding. Specifically, UCO stated that it should receive a refund above the $5,000 small claims threshold despite its inability to demonstrate that it did not pass the alleged Inland overcharges through to its customers. In view of the fact the UCO neither submitted any additional evidence to support its refund claim, nor gave any compelling reasons why it should be exempt from the showing of injury requirement established in the November 25 Decision and Order, the DOE determined that UCO's Motion for Reconsideration should be denied.

Leese Oil Company/Glen's Chevrolet-Subaru et al.; 1/31/86, RF211–1 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by three end-users of motor gasoline purchased from Leese Oil Company. In accordance with the procedures established in the Leese Special Refund Proceeding, we determined that each applicant should receive a refund based on the volumes of motor gasoline it purchased during the consent order period. The total amount of refunds approved in this Decision is $2,383 ($2,016 principal plus $367 interest).

Standard Oil Company (Indiana)/Sauvage Gas Company; 1/31/85, RF21–12402

Sauvage Gas Company (Sauvage) filed an Application for Refund in which the firm sought a portion of the funds obtained by the DOE through a Consent Order with Standard Oil Company (Indiana) (Amoco). Sauvage was awarded a refund of $5,000 principal and $3,591 interest.

Windham Gas and Oil Co./Ohio National Helium Corp./West Virginia Pennzoil Co./West Virginia; 1/28/85, RM43–12, RM3–13, RM10–14

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order approving the State of Ohio's motion to modify its restitutionary plan which the OHA approved in an earlier decision for a portion of the Windham Gas and Oil Co. (Windham) escrow funds allotted to the state. Ohio was granted permission to use $6,000 of the Windham funds which it has received as a matching requirement for the purchase of a passenger vehicle to be operated in Portage County, Ohio. In that Decision, the OHA also approved West Virginia's restitutionary plan to use $174,869 in principal and interest from the National Helium Corp. and Pennzoil Co. escrow accounts to fund a traffic light synchronization program in Clarksburg, West Virginia and to expand the erection of interstate logo signs within the state. The OHA authorized disbursement of only the National Helium Corp. funds to West Virginia at this time because of litigation pending against the Pennzoil Co. funds.

Name	Dismissals case no.
Chuck Hansen	KFA–0015
Northside Gulf	RF40–724
Palmetto Gas Co.	RF21–12404
Quality Oil Co.	RF21–12403
Red Top Sedan Service Inc.	RF40–1544 thru RF40–1554, RF40–1558
Smith & Cyphers Service Station	RF40–606
Smokey's Gulf Service	RF40–689

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 4, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–3078 Filed 2–11–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $1,009,609.84 obtained as a result of a consent order which the DOE entered into with Northeast Petroleum Industries, Inc., a reseller-retailer of petroleum products located in Chelsea, Massachusetts. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0138.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $1,009,609.84 plus accrued interest obtained by the DOE under the terms of consent order entered into with Northeast Industries, Inc. The funds were provided to the DOE by Northeast to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the consent order period May 1, 1974, through August 31, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from Northeast. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Northeast and to demonstrate that it was injured by Northeast's pricing practices. Applicants must submit specific documentation regarding the date, place, price and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposing refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: February 4, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

February 4, 1986.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Northeast Petroleum Industries, Inc.

Date of Filing: October 13, 1983

Case Number: HEF–0138

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Northeast Petroleum Industries, Inc., (Northeast) and its subsidiaries.

I. Background

Northeast is a "reseller-retailer" of petroleum products as that term was defined in 10 CFR 212.31, with its home office located in Chelsea, Massachusetts. Based on an audit of Northeast's records, ERA alleged that Northeast had committed possible violations of the Mandatory Petroleum Price Regulations with respect to the firm's sale and allocation of motor gasoline during the period, May 1, 1974 through August 31, 1979. 10 CFR Part 212, Subpart F.

In order to settle all claims and disputes between Northeast and the DOE regarding the firm's sales of motor gasoline during the period covered by audit, Northeast and the DOE entered into a consent order on June 17, 1980. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Northeast does not admit that it violated the regulations.

Under the terms of the consent order, Northeast agreed to deposit $840,000, plus installment interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Including installment interest, Northeast's deposit totaled $1,009,609.84, which we will consider the principal figure in this proceeding. Northeast completed its payments on March 15, 1985. This decision concerns the distribution of the funds in the Northeast escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or readily ascertain the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of motor gasoline that were injured by Northeast's alleged pricing practices between May 1, 1974 and August 31, 1979 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (Amoco).

A. Refunds to Identifiable Purchasers

In the first stage of the Northeast refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Northeast's alleged overcharges. As we have done in many prior refund cases, we proposed to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users experienced injury.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Northeast times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.000998 per gallon.[2] In addition, successful

[1] As of December 31, 1985, the Northeast escrow account contained a total of $1,012,757.93, representing $1,009,609.84 in principal and $603,148.09 in accrued interest.

[2] The volumetric factor is computed by dividing the amount of principal by the total number of gallons of covered product sold by the consent order firm during the consent order period. In this case, since the audit papers included no information regarding Northeast's sales of motor gasoline, we contacted the firm to request sales volume information. The $0.000998 figure was derived by dividing the $1,009,609.84 principal amount by the

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claimants will receive a proportionate share of the accrued interest.

Second, we plan to presume that purchasers of Northeast's products seeking small refunds were injured by Northeast's pricing practices. There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. Such a demonstration, if even possible, would generally be very time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the value of any expected refund as well as any analytic benefits to be derived. Consequently, without simplified procedures, some potential claimants cound be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant that is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Principal among the factors which determine the value of this threshold is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the small claim threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

[1] 1,012,031,000 gallons of motor gasoline which Northeast reported it sold during the consent order period. *See*, January 24, 1986 Letter from Martin H. Levine, Senior Vice President of Finance and Administration for Northeast.

Unlike threshold claimants, a reseller or retailer applicant which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that it maintained a "bank" of unrecovered product costs, and that market conditions would not permit it to pass through those increased costs.[2]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because—

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from Northeast not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

We are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entitles were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of overcharges. *See Office of Enforcement*, 10 DOE ¶ 85,072, (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. In addition, the audit papers indicated that many of Northeast's customers were motorists which purchased motor gasoline from Northeast's retail stations. Obviously, individual, consumer-purchasers absorbed the increased product costs, as distinguished from resellers which may have had the opportunity to pass through those costs to their own customers. *See Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). Therefore, we propose that for all end users of motor gasoline sold by Northeast, documentation of purchase volumes will provide a sufficient showing of injury.[4]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Northeast's sales of gasoline. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545, at 85,244 (1982) (*Pennzoil*). Those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline from Northeast. An applicant claiming injury at a level greater than the threshold level should include specific information as to the volume and price of gasoline purchased, the date of purchase, the name of the firm from which the purchase was made, and the extent of any injury alleged. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finaly, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Northeast Petroleum Industries, Inc. pursuant to the Consent Order executed on June 17, 1980, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86–3079 Filed 2–11–86; 8:45 am]

BILLING CODE 6450–01–M

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[4] For motorists documentation might be in the form of credit card or other receipts and, if no gallonage is recorded on the receipt, customers may extrapolate purchase volumes by estimating the per gallon price of the motor gasoline purchased. If no such form of documentation exists, we propose that applicants may submit estimates of purchases accompanied by a detailed explanation of how the estimated purchase volumes were derived. This information might include, for example, the type and number of vehicles owned, the average number of miles driven, etc.

ENVIRONMENTAL PROTECTION AGENCY

[OPP–40006C; FRL 2941–4]

Approval of Revised Department of Defense Plan for Certification of Pesticide Applicators

Correction

In FR Doc. 85–30167, beginning on page 51947, in the issue of Friday, December 20, 1985, make the following correction:

In the third column, fourth line from the bottom of the page, the effective date should read "December 20, 1985".

BILLING CODE 1505–01–M

[OPP–00219; FRL–2968–7]

Pesticide Registration Standards; Notice of Registration Standards Issued in FY 85 and Registration Standards Scheduled for FY 86

AGENCY: Environmental Protection Agency [EPA].

ACTION: Notice.

SUMMARY: This notice lists pesticide Registration Standards that were issued in Fiscal Year (FY) 1985, as well as those scheduled for development and/or issuance in FY 86. The Agency requests the submission of comments and information on the pesticides scheduled for Registration Standard development in FY 86. Registration Standards may be purchased from the National Technical Information Service (NTIS) approximately 60 days after their issuance. This notice lists Registration Standards currently available from NTIS and Pesticide Fact Sheets which may be obtained from EPA.

ADDRESSES: Written comments on scheduled pesticides should be submitted on or before April 14, 1986. Comments should be identified with the docket number listed with each pesticide chemical and should be submitted to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of a comment that does not contain CBI must be submitted for inclusion in the public docket. Information not designated "confidential" may be disclosed publicly by EPA without prior notice to the submitter. The public docket will be available for public inspection and copying in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

Approximately 60 days after their issuance, Registration Standards may be purchased from the: National Technical Information Services (NTIS), 5285 Port Royal Rd., Springfield, VA 22151, (703) 487–4650.

Prices for paper copies vary depending on length of the document. As of the publication date of this notice, all microfiche copies may be obtained at a cost of $4.50 each. Since prices are subject to change, please call NTIS regarding current document prices before placing your order. NTIS accepts all major credit cards, as well as charges to deposit accounts. Documents may be ordered by supplying NTIS with the document stock number listed in Unit II of this notice. It the stock number is unlisted, the document may be ordered by the title "Guidance for the Reregistration of Pesticide Products Containing [Name of Chemical]."

FOR FURTHER INFORMATION CONTACT: By mail: David Alexander, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–3942.

For additional information on Pesticide Fact Sheets, and to obtain copies of specific fact sheets, contact:

By mail: Nancy Hemming, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7700).

SUPPLEMENTARY INFORMATION: The Registration Standards program is EPA's approach to the reassessment and reregistration of pesticides as mandated by Congress in section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The 48,000 pesticide products currently registered by EPA contain some 600 distinct active ingredients. Under this program the scientific data base underlying each active ingredient is thoroughly reviewed, and essential but missing scientific studies are identified.

The reassessment may result in requirements for submission of data needed to fully evaluate the safety of the compound according to contemporary scientific standards. The results of the review are reflected in a Registration Standard, which states the Agency's

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regulatory positions regarding the products containing an active ingredient and the rationale for each position, as well as requirements for submission of additional data needed to complete the assessment, and label warnings or other regulatory restrictions needed to protect health and the environment.

The purpose of this notice is to inform the public of Registration Standards issued in FY 85 and those currently under development. It also serves to provide the public with an opportunity to submit additional data pertinent to these reviews, and to explain how information resulting from the EPA's reviews can be obtained.

EPA encourages the public to provide information relevant to the review of individual active ingredients for which Registration Standards are scheduled in FY 86. The Agency is particularly interested in receiving the following types of information: human toxicology, residue chemistry, product chemistry, environmental fate, human exposure, or ecological effects.

I. Registration Standards Issued in FY 85

Registration Standards were issued for the following pesticides in FY 85, ending September 30, 1985:

Bentazon
Cyanazine
Cyhexatin
Demeton
Diflubenzuron
Dipropetryn
Disulfoton
Fluchloralin
Hyamine 3500
Landrin
Lindane
Metribuzin
Monocrotophos
Naptalam
Nitrapyrin
Norflurazon
Pendimethalin
Perfluidone
Picloram
Potassium permanganate
Propachlor
Sodium-Omadine
Sulfuryl fluoride
3,5-Dibromosalicylanilide

In addition, reviews of three additional pesticides were completed in FY 85: amitraz, acephate, and copper sulfate. A **Federal Register** notice was published on January 15, 1986 (51 FR 1986) announcing the availability of these draft Registration Standards for public comment. These standards are scheduled to be finalized in FY 86.

II. Registration Standards Under Development in FY 86

The chemicals in the following table will have Registrating Standards under development in FY '86:

Chemical	Docket No.	Approximate date of issuance
1. Chlordimeform	8164-66-3	December 1985.
2. Fluometuron	2164-17-2	Do.
3. Oryzalin	19044-88-3	Do.
4. Thiophanate-Ethyl	23564-06-9	Do.
5. Captan	133-06-2	February 1986.
6. Thiophanate-Methyl	23564-05-08	Do.
7. Ethyl Parathion	56-48-2	March 1986.
8. Trifluralin	1582-09-8	Do.
9. Pronamide	23950-58-5	Do.
10. Benomyl	17804-35-2	Do.
11. Paraquat dichloride	1910-42-5	Do.
12. 1,3-Dichloro-propene (Telone).	542-75-6	April 1986.
13. Diquat dibromide	85-00-7	May 1986.
14. Aldrin	309-00-2	June 1986.
15. Dieldrin	60-57-1	Do.
16. Methyl parathion	298-00-0	Do.
17. Bacillus thuringiensis	68038-71-1	Do.
18. Glyphosate	1071-83-6	July 1986.
19. Methyl bromide	74-83-9	Do.
20. Arsenic Acid	01-04-06	Do.
21. Coal tar	8007-45-2	Do.
22. Creosote	8021-39-4	Do.
23. Azinphos-Methyl (Guthion).	86-50-0	August 1986.
24. Phosmet	732-11-6	Do.
25. Dinoseb	88-85-7	Do.
26. Propargite	2312-35-8	Do.
27. Copper chlorides/Nitrates.	02-03-4	Do.
28. Terbutryn	886-50-0	September 1986.
29. PCNB	82-68-8	Do.
30. Metolachlor (Final Regulatory Standard & Tolerance Re-assessment).	51218-45-2	Do.
31. Heptachlor	76-44-8	Do.
32. Chlordane	12789-03-6	Do.
33. Formaldehyde	50-00-0	Do.
34. Chromated Arsenicals	01-03-05	Do.
35. Folpet	133-07-3	October 1986.
36. Diazinon	333-41-5	Do.
37. DDVP	62-73-7	December 1986.
38. EPN	2104-64-5	Do.
39. Nabam	142-59-6	Do.
40. Mancozeb	12001-34-2	Do.
41. Maneb	301-03-1	Do.
42. Metiram	01-02-08	Do.

III. Pesticide Fact Sheets

Upon request after issuance of a Registration Standard, EPA will furnish Pesticide Fact Sheets which summarize information about a specific pesticide or group of pesticides. Fact sheets include a description of the chemical use patterns and formulations, science findings, a summary of the Agency's regulatory position/rational, and a summary of major data gaps. They are issued if one of the following regulatory actions occurs:

(1) A Registration Standard is issued.
(2) A significantly different use pattern is registered.
(3) A new chemical is registered.

Fact sheets have been prepared for Registration Standards prepared since June 1983 and for new chemicals and for chemicals with significantly changed use patterns registered since January 1984. The fact sheets now available are as follows:

Chemical	Date issued	Fact Sheet No.
Actellic	June 30, 1985	59
Alachlor	Nov. 20, 1984	40
Aldicarb	Mar. 30, 1984	19
Allette	June 30, 1983	1
Amitrole	Mar. 30, 1984	20
Anilazine	Dec. 13, 1983	12
Aresurf	Feb. 15, 1984	17
Arsenal	Sept. 5, 1985	53
Bentazon	Sept. 30, 1985	64
Bronopol	Aug. 2, 1984	32
Butylate	Sept. 30, 1983	7
Captafol	Sept. 30, 1984	35
Carbaryl	Apr. 30, 1984	21
Carbofuran	June 25, 1984	24
Carbophenothion	June 30, 1984	25
Chlorobenzilate	Dec. 30, 1983	15
Chlorothalonil	Sept. 30, 1984	36
Chlorpyrifos	do	37
Chlorpyrifos methyl (Reldan)	June 30, 1985	57
Copper Sulfate	Sept. 30, 1985	69
Cryolite	June 30, 1983	2
Cyanazine	Dec. 1, 1984	41
Cyhexatin	June 30, 1985	56
Daminozide (Alar)	June 30, 1984	26
Dantochlor	Sept. 12, 1984	33
DCNA	Dec. 14, 1983	13
Demeton	Feb. 27, 1985	45
3,5-Dibromo salicylanilide	Sept. 30, 1985	67
Dicamba	Sept 30, 1983	8
Dicofol	Dec. 30, 1985	16
Diflubenzuron	Sept. 30, 1985	66
Dipropetryn	June 30, 1985	55
Disulfoton	Jan. 18, 1985	43
Diuron	Sept. 30, 1983	9
EPTC	Sept. 3, 1983	6
Ethalfluralin	June 30, 1985	58
Ethoprop	Feb. 30, 1985	3.1
Fenaminosulf	Sept 30, 1983	10
Fenarimol	Feb. 27, 1985	46
Fensulfothion	Feb. 1985	14.1
Fluchloralin	June 30, 1985	52
Fonofos	Feb. 1985	22.1
Formetanate HCl	Sept. 30, 1983	11
Glyceserve	Mar. 8, 1985	47
Heliothis	June 30, 1984	27
Linalool	Oct. 15, 1985	77
Lindane	Sept. 30, 1985	73
Linuron	June 30, 1984	28
Metribuzin	June 30, 1985	53
Monocrotophos	Sept. 30, 1985	72
Naled	June 30, 1983	4
Naptalam	Apr. 30, 1985	49
Nitrapyrin	June 28, 1985	54
Norflurazon	Dec. 1, 1984	60
Paclobutrazol	Aug. 14, 1985	62
Pendimethalin	Mar. 31, 1985	50
Perfluidone	Sept. 30, 1985	74
Phorate	Feb. 1985	34.1
Picloram	Mar. 29, 1985	48
Potassium bromide	Sept. 30, 1984	36
Potassium permanganate	Sept. 30, 1985	66
Propachlor	Feb. 11, 1985	44
Simazine	Mar. 30, 1984	23
Sodium omadine	July 16, 1985	61
Sulfuryl fluoride	June 30, 1985	51
Terbufos	Feb. 1986	5.1
Thiodicarb	Feb. 27, 1984	18
Thiram	June 30, 1984	29
TPTH	Sept. 30, 1984	39
Trichlorfon	June 30, 1984	30
Trimethacarb (Landrin)	Sept. 30, 1985	76
Vitamin D-3	Dec. 1, 1984	42
Wood preservatives	July 11, 1984	31

Members of the public may be placed on a mailing list to receive Pesticide Fact Sheets to be issued, by sending a name and address to Nancy Hemming at the address given above. A complete set of fact sheets issued may be ordered from the address first listed above.

Dated: February 4, 1986.

Steven Schatzow,
Director, Office of Pesticide Programs.

[FR Doc. 86-3049 Filed 2-11-86; 8:45 am]
BILLING CODE 6560-50-M

[OPP-30260; FRL-2933-5]

FMC Corp.; Applications To Register Pesticide Products

Correction

In FR Doc. 85-28696, beginning on page 49759, in the issue of Wednesday, December 4, 1985, make the following corrections:

1. Beginning on page 49759, in the third column, in items 1, 2, and 3, in the product name, "Talstar TN" should read "Talstar TM".

2. In item 1., in the sixth line, "3-3-(2-" should read "3-(2-". And in the eighth line, "methyl-1[1" should read "methyl-[1".

3. In item 2., in the fifth line, "(2-chloro-3" should read "3(2-chloro-3".

4. On page 49760, in the first column, item 3., in the fifth line, "3-2-chloro" should read "3-(2-chloro".

BILLING CODE 1505-01-M

[OPP-30263; FRL-2966-4]

Application To Register a Pesticide Product; ICI Americas, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register a pesticide product containing an active ingredient involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by March 14, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP-30263] and the file number (10182-TR) to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 15, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM#2, Attn: PM 15, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: George LaRocca, PM 15, (703-557-2400).

SUPPLEMENTARY INFORMATION: ICI Americas, Inc., Agricultural Chemicals Div., Wilmington, DE 19897, has submitted an application to EPA to conditionally register the pesticide product Demon TM WP Insecticide, an insecticide, EPA File Symbol 10182-TR, containing the active ingredient cypermethrin (±) alpha=cyano-(3-phenoxyphenyl)methyl ±-*cis, trans*-3-(2,2-dichloroethenyl)-2,2=dimethylcyclopropanecarboxylate at 40 percent, pursuant the provision of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use, to include in its presently registered use, new use in households to control cockroaches in cracks and crevices. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: January 28, 1986.

Douglas D. Campt,
Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-2683 Filed 2-11-86; 8:45 am]
BILLING CODE 6560-50-M

[OPP-180687; FRL-2969-1]

Pesticides; Emergency Exemptions for Sethoxydim, etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pest in the six States listed below, and the U.S. Department of Agriculture. Also listed are 42 quarantine exemptions granted to the U.S. Department of Agriculture. These exemptions, issued during the months of November and December, and two for the month of October, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific and quarantine exemption for the name of the contact person. The following information applies to all contact people:

By mail: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Commission of Agriculture and Horticulture for the use of sethoxydim on dry bulb onions to control grassy weeds; December 23, 1985 to May 31, 1986. (Stan Austin)

2. Arkansas State Plant Board for the use of dicamba on land to be used for cotton production to control redvine; October 22, 1985 to November 30, 1985. (Libby Pemberton)

3. Arkansas State Plant Board for the use of temephos in the Sulphur River to control the Buffalo gnat; December 3, 1985 to November 1, 1986. (Jack E. Housenger)

4. California Department of Food and Agriculture for the use of sethoxydim on

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dry bulb onions to control grassy weeds; November 25, 1985 to April 30, 1986. (Gene Asbury)

5. California Department of Food and Agriculture for the use of fenvalerate on cherry trees (post harvest) to control leaf hoppers; October 11, 1985 to November 30, 1985. California initiated a crisis exemption for this use. (Stan Austin)

6. California Department of Food and Agriculture for the use of prometryn on parsley to control weeds; December 6, 1985 to June 1, 1986. (Jim Tompkins)

7. Florida Department of Agriculture and Consumer Services for the use of benomyl on potatoes to control stalk rot or white mold in Dade County; December 16, 1985 to April 30, 1986. (Gene Asbury)

8. Hawaii Department of Agriculture for the use of avermectin B^1 on ornamental flowers to control celery leafminers (*Liriomyza trifolic*). A notice of receipt of the request for a specific exemption for this use was published in the **Federal Register** of November 13, 1985 (50 FR 46825). One comment was received and was taken into consideration in the decision to grant the request; December 12, 1985 to December 11, 1986. (Libby Pemberton)

9. Texas Department of Agriculture for the use of permethrin on collards, mustard greens, turnip greens, and kale to control cabbage loopers; December 23, 1985 to March 31, 1986. (Don Stubbs)

10. Texas Department of Agriculture for the use of temephos in the Sulphur River to control the Buffalo gnat; December 3, 1985 to November 1, 1986. (Jack E. Housenger)

11. U.S. Department of Agriculture for the use of naled baits to control the oriental fruit fly; December 4, 1985 to December 3, 1986. (Libby Pemberton)

12. U.S. Department of Agriculture for the use of methyl bromide on export logs for control of the oak wilt fungus; November 19, 1985 to November 18, 1986. (Libby Pemberton)

The following quarantine exemptions were granted to the U.S. Department of Agriculture (APHIS) for the use of various chemicals on various non-food items to control quarantinable pests around the country on November 19, 1985, and will be in effect until November 18, 1986. (Libby Pemberton)

1. Ethylene oxide-carbon dioxide on miscellaneous cargo, to control quarantinably important snails and slugs, in ship holds under tarpaulins or in other temporary enclosures. EPA completed a rebuttable presumtion against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of January 27, 1978 (43 FR 3801).

2. Hydrogen cyanide on cargo which is adversely affected when treated with methyl bromide, to control cotton insects, khapra beetles or snails, in ship holds under tarpaulins or in other temporary enclosures.

3. Methyl bromide on nonfood/nonfeed cargo, to control khapra beetles, woodboring insects, snails, and other quarantinable plant pests, in ship holds under tarpaulins or in other temporary enclosures.

4. Methyl bromide on machinery, plant, and nonplant materials to control golden nematodes, witchweed, cotton insects, and gypsy moths, under tarpaulins, in fields at ports of entry.

5. Aluminum phosphide to fumigate stored nonfood products in ships holds under tarpaulins or in other temporary enclosures.

6. Formaldehyde as a plant pest treatment to fumigate rice straw and containers.

7. Formaldehyde may be used as a plant pest treatment for bags and baggings, and rice hulls.

8. G–1707–Pyrethrum extract and synergist to control fruit flies and other soft-bodied insects in aircraft and cargo containers.

9. d–Phenothrin to control fruit flies and other soft-bodied insects in aircraft and cargo containers.

10. Malathion to control the infestation of quarantine insects on ship decks, bulkheads, pier areas or other storage facilities.

11. Malthion-carbaryl dip to treat orchids and other plants found not tolerant to methyl bromide fumigation.

12. Bordeaux mixture as a foliar spray on plants to reduce surface diseases at inspection stations and port areas around the country.

13. Carbon disulfide—carbon tetrachloride mixture to treat seeds for propagation at inspection stations.

14. Sodium hydrochlorite to treat propagative plant parts and plants materials at inspection stations.

15. Captan to treat seeds and other propagative plant parts for plant diseases at designated inspection stations. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of June 21, 1985 (50 FR 25864).

16. Cooper sulfate to treat some seeds and plant material at designated inspection stations for issuance of departmental permits.

17. Ferbam as a spray to control various plant diseases on propagative plant parts.

18. Zineb to treat certain plants or plant parts infested with diseases at designated inspection stations for issuance of departmental permits.

19. Propoxur for use in insect traps.

20. Dichlorvos (DDVP) for use in gypsy moth and khapra beetle traps.

21. Naled for use in fruit fly traps.

22. Ethyl for use in black light traps.

23. Triyluralin to control witchweed on established lawns and turf.

24. Methyl bromide to kill witchweed seed in soil on fallow fields and small plots of land released from quarantine.

25. Sodium carbonate to be applied to surfaces potentially exposed to certain animal diseases in semen containers.

26. Sodium carbonate to be applied to aircraft surfaces potentially exposed to certain animal diseases.

27. Sodium hypochlorite to be applied to aircraft surfaces potentially exposed to certain animal diseases.

28. Sodium hydroxide to be applied to exposed surfaces, animal product containers, hay and straw.

29. Resmethrin aerosol may be applied to control fruit flies and other soft-bodied insects in aircraft and cargo container when people are present.

30. Resmethrin may be applied as a micronized dust in aircraft containers or other temporary enclosures when the airplane crew, passengers, or animals are not present.

31. 8–Hydroxyquinoline sulfate-aqueous solution to treat plant diseases in citrus and othe rutaceous seeds at inspection stations.

32. Nicotine sulfate to control aphids on a wide variety of propagative plant materials while in quarantine at inspection stations.

33. d–Phenothrin to control mealy bugs and aphids on a wide variety of propagative plants while in quarantine.

34. Cyhexatin to control spider mites on a variety of propagative plants while in quarantine.

35. Dienochlor to control spider mites on a variety of propagative plants while in quarantine.

The following quarantine exemptions were granted to the U.S. Department of Agriculture (APHIS) to control citrus canker in Florida on November 29, 1985, and will be in effect until November 29, 1986. (Jack E. Housenger):

1. Diquat dibromide to defoliate citrus trees around confirmed citrus canker-infested areas.

2. Sodium hypochlorite on citrus for export.

3. Quaternary ammonium compounds on field equipment, clothing, shoes, vehicles, tires, and any other equipment taken into citrus canker-infested areas.

A quarantine exemption was granted to the U.S. Department of Agriculture, effective from November 5, 1985 to November 4, 1986, for the use of methyl bromide to control quarantinable pests on various food/feed commodities throughout the U.S. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: February 3, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 86–3046 Filed 2–11–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50649; FRL–2968–8]

Issuance of Experimental Use Permits; Abbott Laboratories et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275–EUP–47. Issuance. Abbott Laboratories, 14th St. and Sheridan Road, North Chicago, IL 60064. This experimental use permit allows the use of 1,000 grams of the plant growth regulator gibberellin A_3 on lemons (post-harvest) to evaluate the susceptibility of sour rot decay of lemons during storage. A total of 10,000,000 pounds are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from November 8, 1985 to November 8, 1987. A permanent tolerance for residues of the active ingredient in or on citrus fruits has been established (40 CFR 180.224). (Robert Taylor, PM 25, Rm. 245, CM #2, (703–557–1800))

7969–EUP–18. Extension. BASF Wyandotte Corporation, 100 Cherry Hill Road, P.O. Box 181, Parsippany, NJ 07054. This experimental use permit allows the use of 1,800 gallons of the fungicide N-cyclohexyl-N-methoxy-2, 5-dimethyl-3-furancarboxamide on cotton seed to evaluate the control of various diseases. A total of 3,850 pounds of seed are involved; the program is authorized only in the States of Mississippi and Texas. The experimental use permit is effective from December 6, 1985 to July 1, 1986. (Henry Jacoby, PM 21, Rm. 227, CM #2, (703–557–1900))

464–EUP–78. Extension. Dow Chemical Company, P.O. Box 1706, Midland, MI 48640. This experimental use permit allows the use of 53.5 pounds of the herbicide methyl 2–(4–[(3–chloro–5–(trifluoromethyl)–2–pyridinyl)oxy) phenoxy)propanoate on fallow land and soybeans to evaluate the control of annual and perennial grasses. A total of 214 acres are involved; the program is authorized only in the States of Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Mississippi, Nebraska, Tennessee, and Wisconsin. The experimental use permit is effective from April 17, 1986 to April 17, 1987. This permit is issued with the limitation that all crops are destroyed or used for research purposes only and that fallow land will remain fallow during 1986. (Richard Mountfort, PM 23, Rm. 253, CM #2, (703–557–1830))

352–EUP–129. Issuance. E.I. duPont de Nemours and Co., Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 37.5 pounds of the herbicide methyl 2-[[[[[(4, 6-dimethoxypyri-midin-2-yl)amion]carbonyl]amino] sulfonyl]methyl]benzoate on rice to evaluate the control of weeds. A total of 600 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from November 1, 1985 to February 1, 1988. A temporary tolerance for residues of the active ingredient in or on rice has been established. (Richard Mountfort, PM 23, Rm. 237, CM #2, (703–557–1830))

352–EUP–132. Issuance. E.I. duPont de Nemours and Co., Inc., Walkers' Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 500 pounds of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(ethylthio)-1,2,4-triazin-5(4H)-one on wheat to evalute the control of various weeds. A total of 500 acres are involved; the program is authorized only in the States of Colorado, Idaho, Kansas, Montana, Nebraska, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. The experimental use permit is effective from December 30, 1985 to December 30, 1986. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 253, CM #2, (703–557–1830))

279–EUP–102. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 307 pounds of the insecticide/nematicide O-ethyl S,S,-di-*sec*-butyl phosphorodithioate on field corn to evaluate the control of corn rootworms, cutworms, wineworms, and nematodes. A total of 153.5 acres are involved; the program is authorized in the States of Arizona, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit is effective from October 31, 1985 to October 31, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (William Miller, PM 16, Rm. 211, CM #2, (703–557–2800))

618–EUP–11. Issuance. Merck and Company, Inc., P.O. Box 2000, Rahway, NJ 07065–0914. This experimental use permit allows the use of 222 pounds of the fungicide thiabendazole on stored corn grain to evaluate the control of various fungal diseases. A total of 260,000 bushels are involved; the program is authorized only in the States of Iowa, Illinois, Indiana, and Michigan. The experimental use permit is effective from October 28, 1985 to August 31, 1987. This permit is issued with the limitation that all treated corn will be used only for animal feed. (Henry Jacoby, PM 25, Rm. 245, CM#2, (703–557–1800))

3125–EUP–195. Issuance. Mobay Chemical Corporation, Agricultural Chemicals Division, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of 1,250 pounds of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(ethylthio)-1,2,4-triazin-5(4*H*)-one on wheat to evaluate the control of weeds. A total of 1,000 acres are involved; the program is authorized only in the States of Arkansas, Colorado, Idaho, Kansas, Louisiana, Mississippi, Montana, Nebraska, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, and Washington. The experimental use permit is effective from December 12, 1985 to December 12, 1986. This experimental use permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. CM#2, (703–557–1830))

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45639–EUP–28. Extension. NOR–AM Chemical Company, 3509 Silverside Road, P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 375 pounds of the herbicide diethatyl-ethyl on cotton to evaluate the control of weeds. A total of 125 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit is effective from November 5, 1985 to November 5, 1986. A temporary tolerance for residues of the active ingredient in or on cotton has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830))

476–EUP–112. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 150 pounds of the herbicide 3-chloro-4-(chloromethyl)-1-[3-(trifluoromethyl]phenyl)-2-pyrrolidinone on grain sorghum to evaluate the control of annual grasses and broadleaf weeds. A total of 200 acres are involved; the program is authorized only in the States of Alabama, Arkansas, California, Colorado, Georgia, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, South Dakota, Tennessee, and Texas. The experimental use permit is effective from February 1, 1986 to February 1, 1987. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

612–EUP–2. Extension. Union Oil Company of California, 461 S. Boyleston C5, Los Angeles, CA 90017. This experimental use permit allows the use of 8,745 pounds of the nematicide sodium tetrathiocarbonate on grapes and citrus to evaluate the control of nematodes. A total of 55 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from October 11, 1985 to September 1, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Henry Jacoby, PM 21, Rm. 245, CM#2, (703–557–1900))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: February 4, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86–3048 Filed 2–11–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–400123; FRL–2968–9]

Interagency Testing Committee; Placement of Isopropanol in the Intent-to-Designate Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Interagency Testing Committee (ITC) decision to include isopropanol in its intent-to-designate category of chemical substances in the ITC selection process. The decision to establish this category and the ITC's rationale for so doing was published in the **Federal Register** of April 4, 1985 (50 FR 13418). Comments and information are desired before the ITC designates isopropanol for priority consideration for testing requirements.

DATE: Comments and information, identified by the document control number [OPTS–40013], should be submitted on or before March 31, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Brink, Executive Secretary, Interagency Testing Committee (TS–792), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and phone number: Rm. E–135, 401 M St., SW., Washington, DC 20460, (202–382–3820).

SUPPLEMENTARY INFORMATION: The ITC has established an "intent-to-designate" category of chemicals as part of its chemical selection process (50 FR 13418). Lists of chemicals in the intent-to-designate category are published in the **Federal Register** from time-to-time, as the need arises. The Committee cites specifically what additional information it needs on each chemical. The completeness and quality of the submitted information or data also plays a major role in the Committee's considerations. At the end of the submission period, the Committee will re-evaluate the chemical(s) in this category and make a final decision regarding their disposition.

The TSCA Interagency Testing Committee (ITC) intends to designate isopropanol (CAS No. 67–63–0) for certain health effects testing in a future report to the EPA Administrator. Those health effects are (1) genotoxicity, (2) carcinogenicity, (3) reproductive and developmental effects. Annual U.S. production of isopropanol is in excess of one billion pounds. There appears to be significant workplace exposure to isopropanol and the ITC has found only fragmentary and inconclusive information on the toxicological endpoints of concern with respect to isopropanol per se, uncontaminated with isopropyl sulfate.

If additional information is received by March 31, 1986, the Committee will determine whether the new information would justify modifying its intention to designate.

The information submitted will become part of the public record of the ITC review process unless it is clearly designated as Confidential Business Information (CBI). Submitters should separate CBI from other information and mark such information clearly as "TSCA CBI." It will be treated in accordance with procedures outlined in the "TSCA Confidential Business Information Security Manual."

Information or data are being solicited from industry and the public on isopropanol. Information is requested by March 31, 1986.

Dated: January 27, 1986.

Rodger L. Tatken,

Chairman, TSCA Interagency Testing Committee.

[FR Doc. 86–3047 Filed 2–11–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Common Carrier Services; Access Charge and Divestiture Related Tariffs; Investigation; Memorandum Opinion and Order

In the matter of Investigation of Special Access Tariffs of Local Exchange Carriers (CC Docket No. 85–166, Phase II, Part 1).

Adopted: January 16, 1986.

Released: January 17, 1986.

By the Chief, Common Carrier Bureau.

1. In this Order, we request information and establish a procedural schedule for our investigation of the special access rates of local exchange carriers (LECs). Special access tariff provisions have been under investigation since the original access tariffs were filed to be effective January 1, 1984. Two sets of tariffs were found unlawful. Special access tariffs were allowed to go into effect as of April 1, 1985, subject to revisions as specified in the Commission's February 19 and March 8 Orders.[1] Those tariffs had been filed on December 3, 1984 in response to the earlier Commission investigations and Orders. Although the Commission allowed the filed tariffs to take effect, it also determined that important issues remained concerning whether the special access rates, terms, and conditions in all of the tariffs were just and reasonable. It therefore directed a further investigation of all of the special access tariffs and imposed an accounting order to facilitate refunds of unreasonably high rates. In the March 8 Order, the Commission also prescribed a one year phase-in of rates for existing circuits provided to the other common carriers (OCCs) which had been subject to the Docket 20099 Settlement Agreement[2] tariffs. Rates for these circuits would be 50 percent of the special access rates for six months, until October 1, 1985, and 75 percent of those rates for the next six months, from October 1, 1985 until April 1, 1986.

2. On May 24, 1985, the Common Carrier Bureau released an Order[3] designating issues in Phase I of the Commission's investigation of the special access tariffs, as they become effective April 1, 1985. In Phase I the Commission examined a range of issues involving matters such as rate structures and methodologies. Phase II of our investigation, concerning the reasonableness of rate levels was delayed to allow a significant accumulation of actual operating experience as evidence to determine whether the special access rates proved to be reasonable in fact. The LECs proposed revised special access rates as part of their July 2, 1985 annual access tariff filings. Those rates, as reduced in some cases, were generally allowed to become effective on October 1, 1985, and were included in this investigation subject to the same accounting order.[4]

3. Complete actual data for the period during which the initial special access rates were in effect, generally from April 1 through September 30, 1985, should now be available. Accordingly, in the present Order we are initiating the investigation of rate levels as Phase II of CC Docket No. 85–166. Carriers and other entities which filed access tariffs with special access rates are directed to submit their direct cases with respect to the justness and reasonableness of all special access rates.[5] In addition, we are also directing the carriers to submit, prior to their direct cases, information concerning their costs, revenues, and returns during the April through September period. To facilitate analysis by the Commission and interested persons, this information is to be submitted by all carriers in a consistent format, both in printed form and as computer diskettes. The contents and format of this information requirement are contained in the Appendix to this Order.

4. In fashioning this data submission requirement, we sought to gather necessary information relevant to determining the reasonableness of the rates, by use of data generally available to the LEC's which can be provided without the imposition of unreasonable burdens. To accomplish this purpose we have consulted informally with both customers and providers of special access services. Specific features of the requested data require further explanation:

A. *Costs.* The costs for interstate special access are derived initially from the separations process. The information request seeks to include all separations data actually used for determining the interstate special access revenue requirement. We have not required, at least as part of this initial requirement, details of sub-accounts which, we believe, are not used in the rate development process. The definitions of the required line items as used by the Bell Operating Companies are also attached[6]

B. *Frequency of data.* The information request concerns the entire period within which the initial special access rates were in effect. The most accurate data based for this evaluation would be monthly cost and revenue data for the entire period. However, monthly cost data for the entire period would be voluminous and costly to compile. It is also reasonable to expect that separations-based investment data would not change significantly during the period in question. Although we would still prefer complete data, we will accept separations cost data for the single month of September 1985 upon two conditions. First, the carrier should present data supporting the fact that the underlying investment categories have not fluctuated substantially and that the sample month data is representative of the period. Table INV ANL in the Appendix requests information relevant to this point. To the extent that the LEC's seek to rely on the September 1985 data in their direct cases they should provide any further information needed to support the use of this data. Second, because the eventual purpose of this investigation is to determine whether refunds should be granted and, if so, their amount, the carrier should stipulate that the data for the sample month are an adequate basis for determining reasonable special access rates for the entire period under consideration for the purposes of calculating the carrier's liability for refunds. If it believes some adjustment is necessary to extrapolate to the entire period, that adjustment should be specified, explained, and justified.

C. *Investigation Request Period.* Most initial special access rates became effective on April 1, 1985, and were replaced by revised rates on October 1, 1985. In some cases, however, the initial rates became effective later than April 1, or were revised during the period, or remained in effect after October 1. The rates covered by the information requirement are the special access rates in the access tariffs from April 1 through September 30, 1985, including any revisions during that period. For consistency, we also include any period from October 1 until the date revised tariffs became effective in the case of deferred special access rates. Carriers should report all rate revisions and deferrals (as specified in the information submission requirement) and the data submitted should include this entire period. The data should not include the period before the initial special access tariffs became effective if this occurred after April 1, 1985. We have limited the information request to the April 1 through September 30 period because it represents a specific fixed period during which, for the most part, each carrier maintained a single set of rates. Analysis of actual results for this distinct period should allow a detemination of whether these particular rates were unreasonable and thus whether refunds should be ordered.

D. *NECA.* During the April 1 through September 30 period, about half of the Bell Operating Companies (BOCs) were members of the National Exchange Carrier Association (NECA) traffic

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[1] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I and Phase II, Part 1, FCC 85–70 and FCC 85–100, released February 19, 1985 [50 FR 12637; March 29, 1985) and March 8, 1985 [50 FR 11440; March 21, 1985], respectively.

[2] See AT&T, 47 FCC 2d 660 (1974) (Order initiating Docket No. 20099 investigation); AT&T, 52 FCC 2d 7217 (1975) (Order accepting settlement of docket); *aff'd sub nom.* Carpenter v. F.C.C., 539 F. 2d 242 (D.C. Cir. 1976).

[3] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85–166, CC 4726, released May 24, 1985. *(Designation Order.)*

[4] Annual 1985 Access Tariff Filings, CC 7401, released September 30, 1985.

[5] For reasons set out later in this Order, the initial round of proceedings, Part 1, will address only the reasonableness of the rates charged by the various Bell Operating Companies.

[6] A more complete list of the categories, apportionments, and definitions used by the BOCs is on file in the Commission's Tariff Reference Room, Room 513, 1919 M St. NW., Washington, DC.

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sensitive (TS) pool. NECA administered this pool and filed rates based upon the average costs of all TS pool members for special access and other rate elements. Each pool member charged these averaged rates and shared the resulting revenues. Thus, cost and revenues for pool members are necessary to evaluate the reasonableness of the NECA rates, but will not be individually meaningfull. For this reason, we have not requested certain data items from NECA pool members. In addition, we have established a staggered schedule of submissions. Pool members will submit their individual data to the Commission and to NECA at the same time. NECA itself will then be allowed an additional week to compile this information and present it in a form relevant to assessing results for special access as part of the NECA TS pool.

5. In addition to these specific points we wish to emphasize the role of the information submission requirements in the proceeding as a whole. The responsiblity for establishing the justness and reasonableness of these rates and the burden of proof lie with the filing carriers. *See* Section 204(a) of the Communications Act, 47 U.S.C. § 204(a). To the extent that additional information is necessary to explain and justify the rates, the carriers should submit such information as part of their direct cases. In particular, the information required to be submitted here does not address the reasonableness of the methodology used to allocate costs and determine rates for individual special access rate elements or services. Each filing carrier should as part of its direct case explain its methodologies and present relevant justification for the reasonableness of the rates which result.

This obligation extends to the post-October 1 rates. Those are included in this phase of the Docket 85–166 investigation, but only a limited amount of actual data on revenues and returns is currently available. Substantial changes in pool participation and tariff provisions and rates also affects comparisons before and after October 1. For these reasons we are not requiring data for periods after October 1 in the current information request. Carriers are directed nonetheless to present actual revenue and return data for October and November 1985 as part of their direct cases, and to present updated justification for the reasonableness of the post-October 1 rates.

7. Aside from this specific obligation, it may prove necessary or desirable (at a later point in this investigation) to require the submission of additional information from individual carriers or carriers generally. One specific instance involves program audio rates. We are preparing an information request to examine the reasonableness of the major rate changes experienced by this service in light of the complete actual data for the period involved which should now be available. Further information requests will also be considered. It may also be necessary or desirable to adopt additional procedural mechanisms to gather and test relevant information. It has been proposed, for example, that we select a bellwether carrier and refer specific issues to an administrative law judge for the taking of testimony.[7]

8. It appears to us most useful as an initial step to evaluate the basic, actual data included in this information submisson. The results generated by this submission should provide a useful foundation for determining any further information and proceedings which may be needed. A party may submit requests for such information and procedures, with appropriate justification, as part of the party's case in this proceeding.

9. In its *March 8 Order* the Commission also prescribed a transition plan for bringing the special access rates more closely in line with costs. The purpose of the transition plan was to ease the expected rate shock that OCCs would experience from the sudden shift from low OCC rates to higher special access rates for facilities obtained from the BOCs. This rate shock would have resulted from the BOCs' failure to revise the OCC rates in conformity with the Docket No. 20099 Settlement Agreement as accepted by the Commission in 1975.[8] The failure to update these rates caused the OCC rates to remain artificially lower than comparable rates for other customers. It was originally our intent to include all special access rates in this phase of our investigation. Recently, however, the Congress has urged the Commission to examine the reasonableness of special access rate levels before an increase in special access rates for OCCs under the last step in the Commission's transition plan (scheduled for April 1).[9] This last step in the transition would increase rates for channels formerly obtained under the Docket 20099 Settlement Agreement from the current level of 75 percent of the tariffed rate to 100 percent. This final step in the transition is not associated with the progress of this investigation and OCCs along with other customers are protected by our continuing accounting order and by the refund process in the event special access rate levels prove excessive. Nevertheless, we wish to make every effort to address the concern expressed by the Congress.

10. For this reason, we are bifurcating this phase of the investigation. In Part 1, as represented in this Order, we will examine only the special access rates of carriers subject to the April 1 transition step, *i.e.*, the BOCs. This will allow the Commission and interested parties to focus attention initially on the rates scheduled to increase, and defer analysis of rates of the numerous carriers that are not affected by the transition from Docket 20099 rates. Moreover, because the BOCs provide over 90 percent of all special access facilities and use relatively consistent methodologies and rate structures, an investigation of these rates will be of particular importance to customers and more manageable than an investigation of the rates filed by the many smaller, more diverse carriers. We accordingly are deferring the filing of information and direct cases by non-BOC providers of special access until further order, while we proceed with our investigation of the BOCs. NECA should compile the information requirement submissions of BOCs who were members of the NECA pool during the period under investigation and report results for the total TS pool and the special access portion. NECA should also summarize corresponding data for all non-BOC TS pool members. Because the separations cost data are apparently not meaningful on an aggregate basis NECA should summarize the cost data of the BOC pool members but need not aggregate the data.

11. In addition, the BOCs are directed to present in their direct cases information and data demonstrating the projected effect of the April 1 transition step upon their current special access revenues and returns. This information should include an update of projected returns based upon the April through September 1985 results and projected effects of the October and April OCC transition steps. The BOCs should also project expected results based on October and November 1985 actual results.[10]

[7] *See* Annual 1985 Access Charge Tariff Filings—Phase II, Petition for Rejection or Suspension and Investigation filed by AD Hoc Telecommunications Users Committee at 32 (Aug. 22, 1985).

[8] *See* AT&T, 52 FCC 2d 727 (1975) (Order accepting settlement).

[9] *See* H.R. Rep. No. 99–414 (Conference Report on H.R. 2965) 99th Cong., 1st Sess. 38 (1985).

[10] BOCs formerly in the NECA TS pool that do not choose to file individual direct cases should nevertheless submit this material.

12. All BOCs are directed to file the information specified in the attached data submission requirement no later than February 7, 1986. The BOCs (other than those BOCs electing to file their direct cases pursuant to paragraph 13) shall file their direct cases no later than February 14, 1986. BOCs who were members of the NECA TS pool during the April 1 through September 30, 1985 period should also submit the requested data to NECA no later than that date. NECA should submit the total data for the special acess portion of the TS pool no later than February 14, 1986.

13. NECA shall submit its direct case no later than February 21, 1986. BOCs who were members of the NECA TS pool may, if they wish, also submit direct cases no later than February 21, 1986. Opposition cases must be submitted no later than March 7, 1986. Rebuttal cases from the BOCs ad NECA must be submitted no later than March 14, 1986.

14. As we noted in the *Designation Order* [11], the investigation in this docket will be conducted as a notice and comment proceeding. The initial round of filings should be captioned "Direct Cases." The pleadings opposing the direct cases should be captioned "Opposition to Direct Case" or "Comments on Direct Case," not as petitions to suspend or reject, and the rebuttals of the BOCs and NECA to the oppositions and comment should be captioned "Rebuttals." In the event of any inconsistency, the specific procedures set out in this Order apply rather than the Commission's Rules.

15. Formal submissions should include in the heading the title of the proceeding and docket number. The pleadings should also reference the specific tariff or tariffs to which the pleading is directed, *e.g.*:

In the matter of
Investigation of Special Access Tariffs of Local Exchange Carriers; CC Docket No. 85–166, Phase II, Part 1
Local Telephone Co., Inc. Tariff F.C.C. No. XXX; Transmittal No. XXX.

16. An original and seven copies of the information submission and all pleadings shall be filed with the Secretary of the Commission. Two copies of the data filed in compliance with the information request shall allso be filed with the Tariff Division in the form of IBM PC-compatible diskettes. In addition, one copy of each pleading and diskette shall be delivered to the Commission's commercial firm for copying, International Transcription Services, Inc., (ITS) at its office in Room 246, 1919 M St. NW., Washington, DC. Parties should also serve copies on the carriers or organizations whose tariffs are specifically addressed in the pleadings and therefore listed in the heading. Because we expect a large number of filings dealing in many cases with individual tariffs, we believe that service on all persons interested in the outcome of this proceeding would be burdensome and unnecessary. Interested persons may obtain copies of the pleadings and information from ITS or may copy the pleadings maintained in the Commission's docket library in Room 239, 1919 M Street NW., Washington, DC.

17. Members of the general public who wish to express their views in an informal manner on the tariffs included in this investigation may do so by submitting one copy of their comments. There are no requirements as to form for such comments except that the docket number should be specified in the heading. Informal comments should be addressed to the Secretary, Federal Communications Commission, Washington, DC 20554.

18. *EX parte* contacts (*i.e.*, written or oral communications with a Commissioner or Commission staff members which address the merits of a proceeding, both procedural and substantive) are permitted in this proceeding until a public notice of scheduled Commission consideration of a final order or a final order itself is issued. Written *ex parte* contacts must be filed with the Secretary for inclusion in the public file. A written summary of oral *ex parte* presentations must be served on the Secretary and the Commission officials receiving each presentation. For other requirements, see generally § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

Note.—The Appendix of this order, which contains forms, definitions, and tables, will not be printed herein, due to the ongoing effort to minimize publishing costs. Complete copies of this order may be obtained from International Transcription Service, 1919 M St., Washington, DC 20554, Tel. No.: (202) 857–300.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86–2282 Filed 2–11–86; 8:45 am]

BILLING CODE 6712–01–M

[11] *See Designation Order* at para. 25–29.

National Industry Advisory Committee, Radio Communications Subcommittee and Common Carrier Subcommittee; Meeting

February 7, 1986.

Pursuant to the provisions of Pub. L. 92–463, announcement is made of a public meeting of the Radio Communications Subcommittee and the Common Carrier Subcommittee of the National Industry Advisory Committee (NIAC) to be held Tuesday, February 25, 1986. The meeting will be held at 10:00 A.M. in the Federal Communications Commission (FCC) meeting room 856, 1919 M Street, NW., Washington, DC.

Agenda

1. Welcome and remarks.
2. Review of past NIAC and government actions pertaining to the use of private radio resources during emergencies.
3. Briefings on the Private Radio and Common Carrier industries.
4. Discuss the administrative process for pursuing the use of private radio resources to help restore carrier systems during emergencies.
5. Present additional questions that need to be addressed by NIAC.
6. Old/New business: Adjournment.

Any member of the public may attend or file a written statement with the subcommittees involved either before or after the meeting. Anyone wishing to make an oral statement must consult with the subcommittees involved prior to the meeting. Those desiring additional information about the meeting may contact the NIAC Executive Secretariat, Claudette Pride, on (202) 632–3906.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–3009 Filed 2–11–86; 8:45 am]

BILLING CODE 6712–01–M

[Report No. W–6]

Radio Broadcasting; Window for the Filing of FM Broadcast Applications

Released: February 5, 1986.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed on the attached appendix may be submitted for filing during the period beginning February 14, 1986 and ending March 17, 1986 inclusive. Selection of a permittee for a group of acceptable applicants will be by the Comparative Hearings process.

Appendix

CHANNEL—282B1	
Casey	IL

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CHANNEL—286A	
Kearny	AZ
Century	FL
Sac City	IA
Harlan	KY
Lancaster	KY
Shepherdsville	KY
Great Barrington	MA
Lakeville	MN
Tracy	MN
Lindsay	OK
Johnsonville	SC
Robstown	TX
Bridgewater	VA

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-3017 Filed 2-11-86; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1565]

Actions in Rulemaking Proceedings

February 5, 1986.

The following listings of petitions for reconsideration, applications for review, motions for stay and petitions deny filed in Commission rulemaking proceedings is published pursuant to § 1.429(e). Oppositions to such petitions must be filed within 15 dasys after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Petitions for Reconsideration of Actions in Rulemaking Proceedings

Subject: Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84-231)

Filed by

Timothy K. Brady for Murray Communications on 11-29-85. (Colonial Heights, Tennessee)
Lauren A. Colby, Attorney for Lowery Broadcasting Co., on 11-29-85. (Hamburg, Arkansas & Ruston, Louisiana)
Robert W. Healy & Ronald D. Maines, Attorneys for Marine Broadcasting Corporation on 12-9-85. (Jacksonville, North Carolina)
David D. Oxenford for North Country Communications, Inc. on 12-9-85. (Montpelier, Vermont)
Randolph L. Johnston on 12-17-85. (Madera, California)
Glenn B. Hammond, Attorney for LCH Broadcasting Group, Inc., on 12-17-85. (Semora, North Carolina)
James K. Edmundson, Attorney for Roxboro Broadcasting Company on 12-18-85. (Semora, North Carolina)
William M. Barnard & Mark Van Bergh, Attorneys for Radio Brazos, Inc., on 12-18-85. (College Station, Texas)
Matthew H. McCormick, Attorney for Triple H Broadcasting, Inc., (WKYD-FM) on 12-18-85. (Pensacola, Flordia)
Ashton R. Hardy, James J. Popham & Bradford D. Carey, Attorneys for Edmond J. Muniz, d/b/a EJM Broadcasting, (WDLT-FM) on 12-18-85. (Pensacola, Florida)
Livingston County Broadcasting, Inc., on 12-18-85. (Pontiac and Spring Valley, Illinois)
John B. Kenkel, Attorney for Buford Broadcasting, Inc., on 12-19-85. (Mableton, Georgia)
Steven A. Lerman & Laura B. Humphries, Attorneys for L.M. Communications, Inc., (WCOZ-FM) on 12-19-85. (Wilmore, Kentucky)
John F. Garziglia, Attorney for Veer Broadcasting Co., Inc., (WGRK-FM) on 12-19-85.
Subject: Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84-231)

Filed by

William M. Barnard & Mark Van Bergh, Attorneys for Radio Vergennes, Inc., on 12-19-85. (Vergennes, Vermont)
Dean George Hill, Attorney for Jo Anne Yates on 12-19-85. (Long Beach and Bay St. Louis, Mississippi)
Subject: Amendment of Section 73.202(b), FM Table of Allotments.

Filed by

Lauren A. Colby, Attorney for Lowery Broadcasting Co., on 12-23-85. (RM-4994, El Dorado & Hamburg, Arkansas & Ruston, Louisiana)
Brian Dodge, President for W.T.I.J. Broadcasting Inc., on 12-26-85. (MM Docket No. 85-213, RM's 4907 & 5142, Hanover, New Hampshire); & (RM-4744, Waterbury, Vermont)
Eugene T. Smith, Attorney for Coursolle Broadcasting of Wisconsin, Inc., on 12-27-85. (Waupun, Wisconsin)
Mark E. Fields, Attorney for Tiner Broadcasting Co., on 12-30-85. (Kenedy and Victoria, Texas)
Robert A. Marmet & Harold K. McCombs, Attorneys for Metro Broadcasters, Inc., on 12-30-85. (RM-4912, Daingerfield, Texas)
William M. Barnard & Mark Van Bergh, Attorneys for Radio Brazos, Inc., on 12-30-85. (College Station, Texas)

Applications for Review of Actions in Rulemaking Proceedings

Subject: Amendment of § 73.202(b), FM Table of Allotments.

Filed by

J. Geoffrey Bentley & Georgia H. Burke, Attorneys for Harbor Cities Broadcasting Corporation on 12-30-85. (RM-4914, Kewaunee, Seymour, Plymouth & Brillion, Wisconsin)
Robert W. Healy, Attorney for Marine Broadcasting Corporation on 12-30-85. (Jacksonville, North Carolina)
George R. Borsari, Jr., Attorney for Superior Broadcasting, Inc., on 1-21-86. (Sullivan & Newton, Illinois)

Motions for Stay of Actions in Rulemaking Proceedings

Subject: Amendment of § 73.202(b), FM Table of Allotments.

Filed by

Matthew H. McCormick, Attorney for Triple H Broadcasting, Inc., (WKYD-FM) on 12-16-85. (Pensacola, Florida)
Ashton R. Hardy, James J. Popham, Bradford D. Carey, Attorneys for Edmond J. Muniz, d/b/a EJM Broadcasting, (WDLT-FM) on 12-18-85. (MM Docket No. 84-231 Pensacola, Florida) & (MM Docket No. 83-493, RM-4393, Gulf Breeze, Florida)

Petition to Deny Application

Subject: Capitol Broadcasting Corporation (WKSJ-FM), Mobile, Alabama. (File No. BPH-850822IF)

Filed by

Ashton R. Hardy, James J. Popham, Bradford D. Carey, Attorneys for Edmond J. Muniz, d/b/a EJM Broadcasting, (WDLT-FM) on 12-18-85.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 86-3018 Filed 2-11-86; 8:45 am]
BILLING CODE 6712-01-M

A.M. Renaissance, Inc., et al.; Hearing Designation Order

In re applications of MM Docket No. 86-30:

	File No.
A.M. Renaissance, Inc., Virginia City, Nevada: Req: 1160 kHz, 5kW-LS(1kW-CH), D.	BP-821020AI
All Kountry Music Broadcasters, Virginia City, Nevada; Req: 1160 kHz, 5kW(1kW-CH), D.	BP-830502AH
Kathleen Bailey d/b/a Placerville Radio Broadcasters, Placerville, California; Req: 1160 kHz, 1kW, 25kW-LS, DA-2, U.	BP-830502AN
December Group, KKMK Truckee, California; Has: 1400 kHz, /25kW, 1KW-LS, U, Req: 1160 kHz, 1 kW, 10kW-LS, DA-2, U.	BP-830502AQ

For Construction Permit.
Adopted: January 21, 1986.
Released: February 6, 1986.
By the Chief, Audio Services Division.

1. The Commission, by the Chief, Audio Services Division, acting pursuant to delegated authority, has under consideration: (i) The above-captioned mutually exclusive applications; (ii) petitions filed by Posen Communications Company and Bonneville International Corporation seeking denial of the application of A.M. Renaissance, Inc.; (iii) a petition filed by Bonneville International Corporation to deny the application of All Kountry Music Broadcasters; and (iv) related pleadings.

2. Since the proposals of Placerville Radio Broadcasters ("Placerville") and December Group ("December") constitute major environmental actions as defined by § 1.1305 of the Commission's Rules, they are required to submit the environmental information described in § 1.1311. Both the Placerville and December environmental impact statements fail to provide a description of the facilities, sites and surrounding areas (including such information as access roads and power lines). Additionally, the Placerville statement does not discuss considerations leading to selection of the site.

3. Accordingly, Placerville and December will be required to file within 30 days of the release of this Order their amended environmental narrative statements with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. The engineering portions of both the A.M. Renaissance, Inc. ("Renaissance") and All Kountry Music Broadcasters ("Kountry") applications contain the following omissions: (1) Site photos and (2) coverage maps showing the 5 mV/m contours during critical hours. The former omissions must be corrected by amendments filed with the presiding Administrative Law Judge within thirty (30) days of the release of this Order. The latter omissions make it impossible to determine compliance with Section 73.24(j) and an appropriate issue will be specified.

5. Bonneville International Corporation, licensee of station KSL, Salt Lake City, Utah, filed petitions to deny the Renaissance and Kountry applications. These petitions will be considered together, as Bonneville claims that both proposals for Virginia City, Nevada would cause severe interference to KSL's 0.1 mV/m groundwave contour during critical hours, based on a 20 to 1 protection ratio. Commission studies indicate that both proposals will provide full protection to KSL's 0.1 mV/m groundwave contour during critical hours. Therefore both proposals comply with Section 73.187 of the Commission's Rules. There is no provision in the rules concerning protection to skywave interference during critical hours on the basis of a 20 to 1 interference ratio. The proper vehicle for suggesting such a fundamental reevaluation is a rulemaking proceeding, not isolated application proceedings. Accordingly, Bonneville's petitions to deny will be denied.

6. *A.M. Renaissance, Inc., application.* In its petition to deny, Posen Communications contends that Renaissance was obligated under Section 1.1311 of our Rules, but failed, to provide a narrative statement with the requisite environmental information: namely, that construction of the proposed facility would constitute a "major action" since the transmitter was to be located in the Virginia City Historic District. This issue is now moot as Renaissance has filed an amendment changing its original transmitter site. Posen's petition will be dismissed accordingly.

7. Since no determination has been received from the Federal Aviation Administration as to whether the antenna proposed by Renaissance would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

8. *Placerville Radio Broadcasters application.* Placerville filed an amendment on August 8, 1983, which among other things, corrected its original application, substituting El Dorado County for Placer County as the transmitter site. However, in a later amendment filed November 14, 1983, Placer County is once again listed as the transmitter site. To remedy this inconsistency, the applicant must file an amendment indicating the correct transmitter site with the presiding Administrative Law Judge within 30 days of the release of this Order or an appropriate issue will be specified.

9. *December Group application.* Commission records indicate that on August 27, 1985, an application to assign station KKMK from December Group to AMERICOM, a California Limited Partnership, was granted. However, we have no documentation that this assignment was ever consummated and December Group remains the applicant of record here. If, in fact, the assignment was consummated, the present licensee of KKMK must amend its application to reflect the current licensee, listing all the principals, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order. The judge will evaluate the amendment and determine if further action is appropriate.

10. Applicants filing major modifications applications are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. We have no indication that December fulfilled this requirement. To remedy this deficiency, December must fulfill the local notice requirement, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

11. Except as indicated by the issues specified below, all aplicants are qualified to construct and operate as proposed.[1] However, since the proposals are for different communities, we will specify an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal or combination of proposals, would best provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

12. Accordingly, It is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are

[1] Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2 Rio de Janeiro 1981 and to bilateral and other multilateral agreements between the United States and other countries.

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designated for hearing in a consolidated proceeding to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to the applications of Placerville Radio Broadcasters and December Group, which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposals are consistent with the National Environmental Policy Act, as implemented by Sections 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicants are qualified to construct and operate as proposed.

2. To determine whether there is a reasonable possibility that the tower height and location proposed by A. M. Renaissance, Inc. would constitute a hazard to air navigation.

3. To determine whether the applications of A.M. Renaissance, Inc. and All Kountry Broadcasters comply with § 73.24(j) of the Commission's Rules with respect to coverage during critical hours, and, if not, whether waiver of this provision is warranted.

4. To determine: (a) The areas and populations which would receive primary aural service from the proposals of A.M. Renaissance, Inc., All Kountry Music Broadcasters, and Placerville Radio Broadcasters and the availability of other primary service to such areas and populations; (b) the areas and populations which would gain or lose primary aural service from the proposal of December Group and the availability of other primary service to such areas and populations; and (c) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which proposal would best provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that the Federal Aviation Administration is made a party to this proceeding.

14. It is further ordered, that § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 30 days of the release of this Order, Placerville Radio Broadcasters and December Group shall submit the amended environmental narrative statements required by Section 1.1311 of the Rules to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

15. It is further ordered, that A.M. Renaissance, Inc., and All Kountry Music Broadcasters file amendments to correct the engineering deficiencies in their proposals with the presiding Administrative Law Judge within 30 days of the release of this Order.

16. It is further ordered, that the petitions to deny filed by Bonneville International Corporation are denied.

17. It is further ordered, that the petition to deny filed by Posen Communications Inc. is dismissed.

18. It is further ordered, that Placerville Radio Broadcasters file an amendment to correct the inconsistency with respect to its transmitter site with the presiding Administrative Law Judge within 30 days of the release of this Order.

19. It is further ordered, that December Group must amend its application to reflect the current licensee, listing all the principals, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order.

20. It is further ordered, that December Group comply with the local notice requirements of § 73.3580 of the Commission's Rules, if it has not already done so, and submit the required certification to the presiding Administrative Law Judge within 30 days of the release of this Order.

21. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, DC.

22. It is further ordered, that to avail themselves of an opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

23. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–3014 Filed 2–11–86; 8:45 am]

BILLING CODE 6712–01–M

First Communications Group et al.; Hearing Designation Order

In re Applications of MM Docket No. 86–33:

	File No.
First Communications Group.	BPCT–850823KH
Constance J. Wodlinger.....	BPCT–851016KH

For construction permit, Steamboat Springs, CO

Adopted: January 24, 1986.
Released: February 6, 1986.

By the Chief, Video Service Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station on Channel 24, Steamboat Springs, Colorado, and a late-filed amendment to Constance J. Wodlinger's application.[1]

2. No determination has been reached that the tower height and location proposed by Constance J. Wodlinger would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5451) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. First Communications Group has not submitted such as certification. Accordingly, the applicant will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If First Communications Group cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Constance J. Wodlinger, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.
2. To determine which of the proposals would, on a comparative basis, better serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

7. It is further order, that Constance J. Wodlinger's December 23, 1985, amendment is accepted for § 1.65 purposes only.

8. It is further order, that First Communications Group shall, within 20 days after the release of this Order, file with the presiding Administrative Law Judge, a site availability certification, in the form required by the Commission, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–3015 Filed 2–11–86; 8:45 am]

BILLING CODE 6712–01–M

Florida Educational Television, Inc., et al.; Hearing Designation Order

In re Applications of MM Docket No. 86–47:

	File No.
Florida Educational Television, Inc.	BPET–850613KE
Islamorada Educators Broadcasting, Inc.	BPET–851018KN

For Construction Permit, Islamorada, FL.

Adopted: January 31, 1986.
Released: February 6, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Florida Educational Television, Inc. (Florida Educational), and Islamorada Educators Broadcasting, Inc. (Islamorada Educators) for authority to construct a new non-commercial educational television station on Channel 18, Islamorada, Florida; and an amendment filed by each of the applicants.[1]

2. No determination has been made that the tower height and location proposed by Islamorada Educators would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a resonable possibility that the tower height and location proposed by Islamorada Educators Broadcasting, Inc., would constitute a hazard to air navigation.
2. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants.
3. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served.
4. To determine whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service.
5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

6. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

7. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Moss Media Bureau.

[FR Doc. 86–3011 Filed 2–11–86; 8:45 am]

BILLING CODE 6712–01–M

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[1] The deadline for filing amendments to the above-captioned applications was December 9, 1985. On December 23, 1985, Constance Wodlinger amended her application pursuant to § 1.65 of the Commission's Rules. The amendment, which updates her broadcast interests, will be accepted for Section 1.65 purposes only.

[1] Floride Educational filed an amendment on December 12, 1985, after the "B" cut-off date. Since the amendment was required by § 1.65 of the Rules in order to maintain the accuracy and completness of the application, the amendment will be accepted for § 1.65 purposes only. On December 9, 1985 (the "B" cut-off date). Islamorada Educators filed an amendment with a facsimile signature. An original page was submitted December 11, 1985. The amendment was timely filed, only the original signature was missing. Since the amendment updates the applicants legal qualifications and programming, which is required by § 1.65 of the Commission's Rules, it will be accepted for § 1.65 purposes only

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Florida Keys TV et al.; Hearing Designation Order

In re Applications of MM Docket No. 86-34:

	File No.
June Gray d/b/a/ Florida Keys Tv.	BPCT-850905KE
Hispanic Keys Broadcasting Co.	BPCT-850917KF
Ernest A. Vendrell	BPCT-850918KE
Constance J. Wodlinger	BPCT-850920KE
Delmar Communications, Inc.	BPCT-850920KN.

For Construction Permit Key West, Florida.

Adopted: January 24, 1986.
Released: February 6, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of June Gray d/b/a/ Florida Keys TV (Gray), Hispanic Keys Broadcasting Corporation (Hispanic), Ernest A. Vendrell (Vendrell), Constance J. Wodlinger (Wodlinger), and Delmar Communications, Inc. (Delmar) for authority to construct a new commercial television station on Channel 3, Key West, Florida.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 47 dBu (Grade B) contour together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been made that the tower heights and locations proposed by Gray, Hispanic and Wodlinger would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Except as indicated by the issues specified below, the applicants are qualfied to construct and operate as proposed. Since these applications are mututally exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, It is Ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by June Gray d/b/a/ Florida Keys TV, Hispanic Keys Broadcasting Corporation, and Constance, J. Wodlinger would each constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

7. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

8. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3016 Filed 2-11-86; 8:45 am]

BILLING CODE 6712-01-M

Genesee Communications, Inc., et al.; Hearing Designation Order

In re Applications of MM Docket No. 86-48:

	File No.
Genesee Communications, Inc.	BPCT-851017KI
The M and M Partnership	BPCT-851209KG

For Construction Permit Batavia, New York.

Adopted: January 31, 1986.

Released: *February 6, 1986.*

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 51, Batavia, New York.

2. No determination has been reached that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Genesee Communications, Inc. has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and copies each to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

4. The transmitter site proposed by M and M Partnership is 20.9 km from Station WHYB(TV), Buffalo, New York, whereas § 73.610 of the Commission's Rules requires a minimum separation of 32.16km. Therefore, M and M Partnership's site would be 11.26 km short-spaced. Accordingly, an issue will be specified to determine whether circumstances exist which would warrant a waiver of § 73.610. Since an applicant proposing a short-spaced site is required to make the threshold showing that no suitable fully-spaced site is available, the Administrative Law Judge will, in assessing those circumstances, consider the fact that the other applicant in this proceeding has specified a fully spaced site.

5. Genesee Communications, Inc. proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposal poses no interference threat to United States television stations; however, it contravenes an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). Accordingly, in the event of a grant of Genesee Communications, Inc.'s application, the construction permit shall be appropriately conditioned.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine, with respect to M and M Partnership, whether circumstances exist which would warrant a waiver of § 73.610 of the Commission's Rules.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that, the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

9. It is further ordered, that Genesee Communications, Inc. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies each to the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

10. It is further ordered, that, in the event of a grant of Genesee Communications, Inc.'s application, the construction permit shall be conditioned as follows:

Subject to the condition that operation with visual effective radiated power in excess of 1000 kw is subject to the consent of Canada.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, given notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3012 Filed 2-77-86; 8:45 am]

BILLING CODE 6712-01-M

Myrtle Beach Broadcasting Ltd. Partnership, et al.; Hearing Designation Order

In re Applications of MM Docket No. 86-40:

	File No.
Myrtle Beach Broadcasting, a Limited Partnership.	BPCT-850716KE
Coastal Carolina Broadcasting Co.	BPCT-850827KH
Coastal Carolina Limited Partnership.	BPCT-850828KH
South Carolina Broadcasters Limited Partnership.	BPCT-850828KO
Sheila Lynn McManus	BPCT-850828KW
Myrtle Communications, Inc.	BPCT-850828KP

For Construction Permit Myrtle Beach, South Carolina.

Adopted: January 28, 1986.
Released: February 6, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it (1) the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 32, Myrtle Beach, South Carolina and (2) a petition to deny filed by Coastal Carolina Limited Partnership.

2. On October 18, 1985, Coastal Carolina Limited Partnership (CCLP), one of the applicants in this proceeding, filed a "Petition to Deny" the Coastal Carolina Broadcasting Company (CCBC) application. CCBC is a competing applicant. The petition alleges that CCBC's application is patently defective and should not have been accepted for filing, on the grounds that the application does not contain a "certification of site availability" as required by FCC Form 301. Although CCBC's application cannot be granted without the required certification, the standard for acceptability is "substantially complete." Except for the missing "site certification", CCLP points out no other defect in the application. The omission is the kind of minor error that can be, and in fact was in this case, corrected by minor amendment. *See, e.g., James River Broadcasting Corp.* v. *FCC*, 399 F.2d 585 (1968). We find that CCBC's application was "substantially complete" when filed, within the meaning of § 73.3564(a). CCLP's petition, therefore, will be denied.

3. No determination has been reached that the tower height and location proposed by each of the applicants, except Myrtle Communications, Inc., would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. Section V-C, Item 10, FCC Form 301, requires an applicant to submit figures for the area and population within its predicted Grade B contour. Sheila McManus has not submitted these figures. Accordingly, Ms. McManus will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge.

6. Section 73.610 of the Commission's Rules requires a minimum separation of 280.8 km between a UHF station in Zone II and a UHF station or city to which the same channel (co-channel) is allocated. Ms. Manus' proposed site would be 290 km from the reference point for vacant co-channel 32, High Point, North Carolina. Ms. McManus' site would, therefore, be shortspaced 0.8 km. An issue will be specified to determine whether circumstances exist to warrant a waiver of the rule. In assessing those circumstances, the presiding Administrative Law Judge will consider the fact that the other applicants in this

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proceeding have specified fully-spaced sites.

7. Myrtle Communications, Inc. has not certified its financial qualifications. McManus has given a qualified certification as to her financial qualifications. She indicates that she does not yet have the documentation to support reasonable assurance of the availability of her finances. Although the financial standards are unchanged, the Commission requires only certification as to financial qualifications. Accordingly, each applicant will be given 20 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and if appropriate, to submit a certification to the Administative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If either applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

8. Section 73.2080(c) of the Commission's Rules requires applicants employing at least five persons full-time to file with the Commission programs designed to provide equal employment opportunities. Myrtle Communications indicates that it will employ five or more full-time employees. However, Myrtle Communications has not submitted an EEO program. Accordingly, Myrtle Communications will be required to submit a copy of its EEO program to the presiding Administrative Law Judge, within 20 days after this Order is released.

9. Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580(h) of the Rules. We have no evidence that Myrtle Beach Broadcasting has published the required local notice. To remedy this deficiency, Myrtle Beach Broadcasting will be required to file a certification that it has or will comply with § 73.3580 of the Commission's Rules with the presiding Administrative Law Judge within 20 days of the release of this Order.

10. Section VII, FCC Form 301 requires an original signature of the applicant certifying that the application is true, complete and correct. Myrtle Beach Broadcasting has submitted a facsimile signature. Myrtle Beach Broadcasting will be required to submit a copy of Section VII, FCC Form 301 bearing an original signature, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, except Myrtle Communications, Inc., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Sheila McManus, whether the proposal is consistent with § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, that the petition to deny Coastal Caroline Broadcasting Company's application, filed by Coastal Carolina Limited Partnership, is denied.

14. It is further ordered, that Sheila McManus shall submit the area and population figures required by Item 10, Section V–C, FCC Form 301, in amendment form, to the presiding Administrative Law Judge within 20 days after this Order is released.

15. It is further ordered, that Sheila McManus and Myrtle Communications, Inc. shall each submit a financial certification in the form required by Section III, FCC Form 301, within 20 days after this Order is released or advise the Administrative Law Judge that the required certification cannot be made, as may be appropriate.

16. It is further ordered, that Myrtle Communications, Inc. shall submit a copy of its EEO program to the presiding Administrative Law Judge within 20 days after this Order is released.

17. It is further ordered, that Myrtle Beach Broadcasting shall file a certification with the presiding Administrative Law Judge within 20 days after this Order is released that it has or will comply with Section 73.3580 of the Commission's Rules.

18. It is further ordered, that Myrtle Beach Broadcasting shall submit a copy of Section VII, FCC Form 301 bearing an original signature to the presiding Administrative Law Judge within 20 days after this Order is released.

19. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

20. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

21. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–3013 Filed 2–11–86; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[Docket No. 86–108]

Agency Information Collection Activity Under OMB Review; Application to Establish a Branch Office

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

Dated: February 7, 1986

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension of its information collection "Application to Establish a Branch Office" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board at the address given below, where copies of the proposed information collection request and supporting documentation may be obtained: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Kathy O'Dea, Office of District Banks. Phone: (202) 377–6789.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86–3063 Filed 2–11–86; 8:45 am]

BILLING CODE 6720–01–M

[No. 86–109]

Agency Information Collection Activities Under OMB Review; Application for Permission to Change Office Location

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

Dated: February 7, 1986.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension of its information collection "Application for Permission to Change Office Location" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board at the address given below, where copies of the proposed information collection request and supporting documentation may be obtained: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Kathy O'Dea, Office of District Banks. Phone: (202) 377–6789.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86–3064 Filed 2–11–86; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 213–009835–009.

Title: Six Lines' Pacific Northwest Space Charter and Sailing Agreement.

Parties:

Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Showa Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would permit the termination of the agreement upon written notice to appropriate governmental agencies that the parties' vessels have ceased to operate under the agreement.

Agreement No.: 204–010064–008.

Title: U.S. Gulf/Colombia Equal Access Agreement.

Parties:

Lykes Bros. Steamship Co., Inc.
Flota Mercante Grancolombiana, S.A.
Coordinated Caribbean Transport
CTMT, Inc.
New York Navigation Co., Inc.

Synopsis: The proposed amendment would add New York Navigation Co., Inc. as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 213–010654–001

Title: Japan Line, Ltd. and Yamashita-Shinnihon Steamship Co., Ltd. Space Charter and Sailing Agreement in the FAR East-California Trades.

Parties:

Japan Line, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modiify the withdrawal provision of the agreement to permit the parties to terminate the agreement by written notice to the other parties, the Japanese Ministry of Transportation and the Commission signifying that all of their vessels have ceased to operate.

Agreement No.: 213–010655–001.

Title: Kawasaki Kisen Kaisha, Ltd. and Mitsui O.S.K. Lines, Ltd. Space Charter and Sailing Agreement in the Far East-California Trades.

Parties:

Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed amendment would modify the withdrawal provision of the agreement to permit the parties to terminate the agreement by written notice to the other parties, the Japanese Ministry of Transportation and the Commission signifying that all of their vessels have ceased to operate.

Agreement No.:213–010719–003.

Title: The EAC Lines Transpacific Service, Ltd. and Mitsui O.S. K. Lines, Ltd. Space Charter and Sailing Agreement.

Parties:

The EAC Lines Transpacific Service, Ltd.
Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed amendment would permit termination of the agreement upon written notice to the Commission that the parties' vessels have ceased to operate under the provisions of the agreement.

Agreement No.: 213–010885.

Title: The EAC Lines Transpacific Service, Ltd., Mitsui O.S.K. Lines, Ltd, and Kawasaki Kisen Kaisha, Ltd. Space Charter and Sailing Agreement in the Far East-U.S. Pacific Coast Trades.

Parties:

The EAC Lines Transpacific Service, Ltd.
Mitsui O.S.K. Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement would establish a sailing and space chartering arrangement between the

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parties in the trade between U.S. Pacific Coast ports and ports in the Far East, and inland points via such ports.

By Order of the Federal Maritime Commission.

Dated: February 7, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-3097 Filed 2-11-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meeting in February

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the Alcohol, Drug Abuse, and Mental Health Advisory Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

DATE AND TIME: February 26: 1:00 p.m.; February 27: 9:00 a.m.

PLACE: Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, Maryland 20857.

STATUS OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Barbara Wagner, Room 13C15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3820.

SUPPLEMENTARY INFORMATION: This Board was established by Pub. L. 98-509 to assess the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs receiving funds under Title V and Part B of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, ADAMHA, respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health problems.

This is the first meeting of the Alcohol, Drug Abuse, and Mental Health Advisory Board and will be organizational in nature. The Administrator, Institute Directors, and other appropriate staff will present an overview of their respective organizations and summarize programs and activities relevant to the Board's Charge. There will also be presentations and discussion of issues and problems proposed for Board consideration in future sessions.

Dated: February 6, 1986.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-3007 Filed 2-11-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86F-0018]

Arizona Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Arizona Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dipentene/*beta*-pinene/styrene resins as tackifying agents used in the production of adhesives intended for use in food-packaging materials.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3906) has been filed on behalf of Arizona Chemical Co., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of dipentene/*beta*-pinene/styrene resins as tackifying agents used in the production of adhesives intended for use in food-packaging materials.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 CFR 16636).

Dated: January 30, 1986.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-3003 Filed 2-11-86; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Endocrinologic and Metabolic Drugs Advisory Committee

Date, time, and place. March 3 and 4, 9 a.m., Lister Hill Auditorium, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, March 3, 9 a.m. to 10 a.m.; open committee discussion, March 3, 10 a.m. to 5 p.m.; March 4, 9 a.m. to 4 p.m.; A. T. Gregoire, Center for Drugs and Biologics (HFN-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1869.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will consider the following: March 3, (1) Discussion of pediatric multivitamin formulation for infants, (2) Guidelines for essential trace element preparations for parenteral use, (3) Aluminum content in parenteral nutrition and possible toxic effects; March 4, (4) General discussion of Aldose Reductase Inhibitors.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. March 27 and 28, 9 a.m., Lister Hill Auditorium, National Institutes of Health, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, March 27, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, March 27, 10 a.m. to 5:30 p.m.; March 28, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drugs and Biologics (HFN-110), Food and Drug Administration, 5600 Fishers Lane, Rockville MD 20857, 301-443-4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss Bepridil (NDA's 19-001 and 19-002), Carter Wallace, McNeil, for use as an anti-arrhythmic agent; Lidoflazine (Angex) (NDA 18-228), Janssen R&D for use as an anti-arrhythmic agent; Terazocin (Vasocard) (NDA 19-057), Abbott Laboratories, for use in hypertension; and Nimodipine (NDA 18-869), Miles Pharmaceuticals, for use in subarachnoid hemorrhage.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion: (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees Under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 6, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3004 Filed 2-11-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0003]

Corometrics Medical Systems, Inc.; Premarket Approval of Corometrics® Neotrak™ 515 Neonatal Monitor With $tcPCO_2$ Capability

Correction

In FR Doc. 86-2111 beginning on page 4037 in the issue of Friday, January 31, 1986, make the following correction:

In the heading, a register mark ® should have followed "Corometrics" as it appears above.

BILLING CODE 1505-01-M

Public Health Service

Grants for Projects for Adolescent Family Life Demonstration Projects; Change in Request for Copies of Application

AGENCY: Office of Adolescent Pregnancy Programs (OAPP), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is to notify applicants for financial assistance under Title XX of the Public Health Service Act that they must submit only an original and two copies of their application for review.

FOR FURTHER INFORMATION CONTACT: Donald A. Underwood, Grants Management Officer, Office of Population Affairs, Room 736-E, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (202) 245-0146.

SUPPLEMENTARY INFORMATION: On January 16, 1986, the OAPP published in the **Federal Register** an annuncement soliciting competitive applications for assistance under Title XX of the Public Health Service Act.

It has now been determined that the second sentence of section 1 under Application Requirements which reads "Five additional copies would facilitate processing, but no applicant will be penalized for submitting only the three required copies" should be deleted. This action deletes that sentence. Applicants are required to submit only an original and two copies of their application.

Dated: January 31, 1986.

Jo Ann Gasper,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 86-3101 Filed 2-11-86; 8:45 am]

BILLING CODE 4160-7-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Craig District Advisory Council Open Meeting

In accordance with Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on February 26, 1986.

The meeting will begin at 10 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

Agenda items will include:

1. Discussion on BLM/DOW Land Exchange
2. Report on K-T Copper Mine

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3. Review public comments on James Creek Coal Preference Right Lease Application Environmental Impact Statement

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 2 p.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council, or file a written statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by February 20, 1986.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: February 3, 1986.

Elizabeth G. Allen,

Acting District Manager.

[FR Doc. 86-30208 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-JB-M

Use of Helicopters and Motorized Vehicles to Gather Wild Horses and Burros; Hearing

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Las Vegas District: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses and burros in FY 1986.

SUMMARY: In accordance with Pub. L. 92-195, 94-579, and 95-514, this notice sets the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses and burros from the Las Vegas District during FY 1986.

DATE: March 21, 1986, at 10:00 a.m.

Place: The hearing will take place at the Las Vegas District Office, 4765 West Vegas Drive (P.O. Box 26569), Las VEgas, Nevada.89126, telephone: (702) 388-6403.

SUPPLEMENTAL INFORMATION: Helicopters and motorized vehicles will be used to gather wild horses and burros from the Nevada Wild Horse Range and other sites within the Las Vegas District as needed during FY 1986.

This meeting will be open to the public. Interested persons may make oral statements or submit written statements. If you wish to make oral comments, please contact Ben Collins by March 14, 1986. Written comments or statements must be received by this date also. For further information, contact Ben Collins, District Manager, P.O. Box 26569, Las Vegas, Nevada 89126, telephone (702) 388-6403.

Dated: February 7, 1986.

Ben Collins,

District Manager.

[FR Doc. 86-3029 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-HC-M

Roseburg District Advisory Council; Meeting Cancellation

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act (as amended), the Roseburg District Advisory Council meeting scheduled for February 14, 1986 is cancelled. The meeting is cancelled pending appointment of new members to the Advisory Council.

Dated: February 5, 1986.

Gordon Chenlae,

Associate District Manager.

[FR Doc. 86-3030 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-33-M

Filing of Plats of Survey: Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon, on January 15, 1986.

Willamette Meridian

OR T. 30 S., R. 3 W.
WA T. 22 N., R. 10 W.

All of the above listed plats represent dependent resurveys and subdivisional lines.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 31, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-3032 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Marine Mammal Annual Report Availability

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1984 Marine Mammal Annual Report.

SUMMARY: The U.S. Fish and Wildlife Service has issued the 1984 annual report on the Service's administration of the marine mammals under its jurisdiction, as required by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1, 1984, to December 31, 1984, and was submitted to the Congress on January 7, 1986. By this notice, the public is informed that the report is available and that any interested individual may secure a copy by written request to the Service.

ADDRESS: Written requests for copies should be addressed to: Publications Unit, U.S. Fish and Wildlife Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy W. Sowl, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Mail Code 355, Department of the Interior, Washington, DC 20240, 202/632-2202.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is responsible for eight species of marine mammals under the jurisdiction of the Department of the Interior, as assigned by the Marine Mammal Protection Act of 1972 (MMPA). These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. The report reviews the Service's marine mammal-related activities during the report period. Administrative actions discussed include MMPA appropriations, marine mammals in Alaska, endangered and threatened marine mammal species (specially the West Indian manatee and the sea otter in California), law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

This notice was prepared by Jeffrey L. Horwath, Wildlife Biologist, Division of Wildlife Management, Branch of Wildlife Assistance, 202/632-2202.

Dated: January 31, 1986.

Ronald E. Lambertson,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. 86-3024 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

The Scientific Committee of the OCS Advisory Board will meet on March 13 and 14, 1986, in the Charlestowne Rooms 1 and 2 of the Howard Johnson Riverfront Hotel, 250 Spring Street, Charleston, South Carolina 29403. The Scientific Committee will meet during the period 9:00 a.m. to 5:00 p.m.

The agenda for the meeting will include the following subjects:

- Reports of Subcommittee Meetings
- Update on the Regional and Washington Office Environmental Studies Programs
- Discussion of the Physical Oceanography Program
- Status of the National Academy of Science Review of the Environmental Studies Program
- Discussion of the Fisheries Program
- Discussion with Representatives of Southeastern States
- Status of the Environmental Studies Budget
- Update on Technical Proposal Evaluation Committee Membership
- Report on Information Transfer Meetings of the Environmental Studies Program

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come/first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, U.S. Department of the Interior, 18th & C Streets NW., Washington, DC 20240, telephone, (202) 343-7744.

Dated January 31, 1986.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-3077 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Shell Offshore, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5205, Block 211, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on January 31, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit, Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 4, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-3021 Filed 2-11-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF THE INTERIOR

Bureau of Mines

NUCLEAR REGULATORY COMMISSION

Nuclear Waste Repository Programs; Standard Operating Procedure

AGENCY: Nuclear Regulatory Commission and Bureau of Mines Interior.

ACTION: Standard Operating Procedure for BOM Interagency Agreement With DOE/NRC.

SUMMARY: The purpose of this notice is to advise interested persons that a protocol has been proposed in order to provide a standard operating procedure (SOP) for Bureau of Mines (BOM) support to the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) to avoid a possible conflict of interest in specialized activities pertinent to Nuclear Waste Repository (NWR) programs. This SOP will formally go into effect April 2, 1986. The text of the SOP is published below.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Tiktinsky, Project Manager, MS 623-SS, Division of Waste Management, NMSS, Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

A Protocol

To provide a Standard Operating Procedures (SOP) for Bureau of Mines (BOM) Support to the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) in Specialized Activities Pertinent to Nuclear Waste Repository (NWR) Programs.

Concern of Possible Conflicts of Interest

The NRC and the DOE have requested the services of the BOM relative to development and approval of Office of Civil Radioactive Waste Management

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Programs (OCRWMP). Because of the unique geotechnical and mining expertise of the BOM it is in the National interest to make this expertise available to ensure state-of-the-art development of NWR technology. The three principal types of activities where the BOM expertise is essential, and the agency likely to be in need of such expertise are:

Activity	Agency
Generic research	NRC, DOE
Site specific characterization or design	DOE
Technical assessment of a specific site and/or review of a design for same.	NRC

It is generally agreed that generic research as it relates to OCRWMP and the results of such research are of general public interest. BOM, NRC, and DOE agree to meet periodically to review proposed generic research to be undertaken by the BOM under the provisions of this Agreement to ensure that no conflict of interest exists with site-specific work.

Relative to site specific activities, if the same technical specialists were to be involved in the design and the review there could be concern over possible conflicts of interest. Fortunately the BOM has the requisite skills at a number of field Research Centers and hence has the ability to designate that specific Centers be assigned responsibility to assist DOE and NCR respectively on site specific problems. This separation of activities as enumerated below will provide the necessary isolation of DOE and NRC concerns as regards site specific activities to avoid the perception of conflicts of interest.

Steps Taken To Avoid Possible Conflicts of Interest

- BOM will dedicate personnel at their Pittsburgh (PRC) and Twin Cities (TCRC) Research Centers to work on DOE's OCRWMP.
- BOM will dedicate personnel at their Denver (DRC) and Spokane (SRC) Research Centers to work on NRC's High-Level Waste Repository (HLWR) program.
- Any nondedicated Bureau employee from either PRC or TCRC can work on NRC generic, nonsite specific research.
- Any nondedicated Bureau employee from DRC or SRC can work on DOE generic, nonsite specific research.
- BOM will maintain a record of which employes are dedicated to DOE and NRC site specific programs.
- BOM, Mining Research Directorate, will not work on other interagency agreements with DOE (OCRWMP) outside of this SOP.

To Further Avoid Possible Conflicts of Interest BOM Personnel Dedicated to Work on the New Repository Program for NRC Shall Not:

- Discuss unpublished information on NRC's HLWR program with Bureau personnel working on DOE's OCRWMP: unpublished information will not include *draft documents* submitted to NRC because this output is routinely made available by NRC as public information.
- Discuss unpublished information on NRC's HLWR program with contractors working on DOE's OCRWMP at PRC and TCRC.

To Further Avoid Possible Conflicts of Interest BOM Personnel Dedicated to Work on the OCRWMP for DOE Shall Not:

- Discuss unpublished information on DOE's OCRWMP with Bureau personnel working on NRC's HLWR program: unpublished information will not include *draft documents* submitted to DOE because this output is regarded as public information.
- Discuss unpublished information on DOE's OCRWMP with contractors working on NRC's HLWR program at DRC and SRC.

Discussion of Conflicts of Interest:

BOM, Mining Research Directorate, will have two responsibilities: to monitor administrative activities pertinent to the HLWR program with NRC and the OCRWMP with DOE and to propose modification of this SOP when potential problems are perceived in order to assure no actions will take place that could be perceived as a conflict of interest. All SOP's will be listed in the **Federal Register** for public comment before implementation.

NRC and DOE will issue their tasks through BOM, Assistant Director—Mining Research, as approved by BOM, Division of Procurement, under an interagency agreement. Research center reports and recommendations will be made directly to NRC and DOE. BOM may also provide additional technical comment to DOE and NRC on work performed by the research centers.

BOM, NRC (Office of Nuclear Material Safety and Safeguards), and DOE (Office of Geologic Repositories) will be included on the distribution lists for review of all BOM *draft* documents pertinent to the Nuclear Waste Repository program.

The undersigned agree.

David R. Forshey,
Assistant Director—Mining Research.

Robert E. Browning,
Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

William J. Purcell,
Associate Director, Office of Geologic Repositories.

EFFECTIVE DATE: The SOP will formally go into effect April 2, 1986

Dated: January 14, 1986.

Robert C. Horton,
Director, Bureau of Mines.

Dated: January 31, 1986.

R.E. Browning,
Director, Division of Waste Management, Office of Nuclear Materials and Safety and Safeguards.

[FR Doc. 86-3095 Filed 2-11-86; 8:45 am]
BILLING CODE 7560-01-M

DEPARTMENT OF THE INTERIOR

National Park Service; Upper Delaware National Scenic and Recreational River; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: February 28, 1986, 7:00 p.m..

Inclement weather reschedule date: March 14, 1986

ADDRESS: Town of Tusten, Narrowsburg, New York

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764-0159. (717) 729-7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involment in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include discussion of the 1986 draft plan. The meeting will be open to the public. Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles North of Narrowsburg, NY, Damascus Township, Pennsylvania.

Dated: February 3, 1986.

James W. Coleman, Jr.,
Regional Director, Mid-Atlantic Region

[FR Doc. 86-3081 Filed 2-11-86; 8:45 am]
BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-254 (Final)]

Import Investigation; Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of heavy-walled rectangular welded carbon steel pipes and tubes, provided for in item 610.39 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 22, 1985, following a final determination by the Department of Commerce that imports of heavy-walled rectangular welded carbon steel pipes and tubes from Canada were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 17, 1985 (50 FR 51648). The hearing was held in Washinton, DC, on January 10, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on February 4, 1986. The views of the Commission are contained in USITC Publication 1808 (February 1986), entitled "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada: Determination of the Commission in Investigation No. 731-TA-254 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: February 5, 1986.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-3066 Filed 2-11-86; 8:45 am]
BILLING CODE 7020-02-M

[1] The record is defined in section 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Commissioner Eckes dissenting.

[Investigation No. 337-TA-231]

Certain Soft Sculpture Dolls Popularly Known as "Cabbage Patch Kids"—Related Literature and Packaging; Commission Decision Not To Review Initial Determination Amending Complaint and Notice of Investigation To Add Two Respondents

AGENCY: U.S. International Commission.

ACTION: Nonreview of an initial determination (ID) joining two respondents to the investigation.

SUMMARY: Notice is hereby given that the Commission has determined not to review the ID of the presiding administrative law judge (ALJ) to join two firms as respondents in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0421.

SUPPLEMENTARY INFORMATION: On December 17, 1985, complaints Original Appalachian Artworks, Inc., and Coleco Industries, Inc., moved (Motion 231-7) to amend the complaint and the notice of investigation by joining as respondents: (1) Calila, Inc., of Los Angeles, CA; and (2) International Panasound, Inc., of New York, NY. On January 3, 1986, the ALJ issued an ID granting the motion. No petitions for review were filed, nor were any comments from other Government agenices reviewed.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: February 3, 1986.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-3067 Filed 2-11-86; 8:45 am]
BILLING CODE 7020-02-M

[332-224]

Import Investigations; Competitive Conditions in the U.S. Tuna Industry

AGENCY: International Trade Commission.

ACTION: Institution of Investigation.

SUMMARY: The Commission instituted the investigation, No. 332-224, on January 30, 1986, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of gathering and presenting information on the competitive conditions in the U.S. tuna industry, following receipt therefor from the United States Trade Representative (USTR). USTR requested the investigation at the direction of the President.

EFFECTIVE DATE: January 30, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Ingersoll or Roger L. Corey, Jr., Agriculture, Fisheries, and Forest Products Division, U.S. International Trade Commission, Washington, DC 20436, telephone (202) 724-0068 and 724-1759, respectively.

Background and Scope of Investigation

The USTR specifically requested the Commission to provide information in the following areas:

(A) The U.S. Industry—profile the U.S. tuna harvesting and canning industry;

(B) Foreign Industries—profile the

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tuna harvesting and canning industries in Thailand, Taiwan, and Philippines, Japan, and Mexico;

(C) The U.S. Market—describe the U.S. market for raw and canned tuna and discuss levels and trends in U.S. consumption, trade, and prices for domestic and foreign tuna;

(D) Market Trade Barriers—discuss barriers to U.S. tuna exports to Thailand, Taiwan, the Philippines, Japan, Mexico, and other relevant countries;

(E) Conditions of Competition in the U.S. Market—analyze the major competitive factors affecting domestic and foreign tuna suppliers in the U.S. market, including price, quality, resource availability, marketing, transportation, government involvement, exchange rates, and the probable impact of lifting the current embargo on U.S. imports of Mexican tuna products.

The Ambassador requested that the Commission report the results of its investigation no later than 10 months after receipt of the request, or by September 27, 1986.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but not later than July 1, 1986. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: February 3, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–3065 Filed 2–11–86; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Rail Carriers; Release of Waybill Data for use by A Consulting Firm

The Commission has received a request from Richard J. Barber Associates, Inc. to use the Commission's 1984 Carload Waybill Sample in connection with a petition to be filed by its client later this year for the exemption from regulation of lumber, plywood, and particleboard. Specifically, they seek way bill data for these three commodities at the five-digit STCC level in order to demonstrate that portion of each commodity that is subject to regulation as well as that portion that is currently exempt from regulation.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (49 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of the Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who filed objections will be timely notified of the Director's decision.

Contact: Elaine K. Kaiser (202) 275–0907.

James H. Bayne,

Secretary.

[FR Doc. 86–3042 Filed 2–11–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30775]

Fourteen-Eleven Corporation Exemption-Acquisition and Operation

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition and operation by Fourteen-eleven Corporation of a 2.5-mile rail line between milepost 37.2 and 39.7 in Lancaster County, PA, from the requirements of prior approval under 49 U.S.C. 10901.

DATES: This exemption will be effective on February 11, 1986. Petitions to reopen must be filed by March 4, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30775 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Daniel J. Sweeney, 1750 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll-free (800) 424–5403.

Decided: January 31, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 86–3041 Filed 2–11–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–52 (Sub-No.44)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment and Discontinuance in Neosho and Crawford Counties, KS; Notice of Findings

The Commission has issued a certificate authorizing The Atchison Topeka and Santa Fe Railway Company to: (1) Abandon its 53.26-mile line of railroad known as the Girard Subdivision of the Eastern Division, extending between milepost 0.0 at Chanute (A.U. Junction) and the end of the line at milepost 53.26 near Pittsburg and (2) to discontinue trackage rights operations over a 2.38-mile segment of Kansas City Southern Railway Company line extending between milepost 50.27 near Frontenac and milepost 52.65 at Pittsburg, all in Neosho and Crawford Counties, KS.

The abandonment and discontinuance of service certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer. "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne

Secretary

[FR Doc. 86–3219 Filed 2–11–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; C.R. Hudgins Plating, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 29, 1986, a proposed Consent Decree in *United States* v. *C.R. Hudgins Plating, Inc.*, Civil Action No. 85–0013–L, was lodged with the United States District Court for the Western District of Virginia. The proposed Consent Decree concerns the discharge of pollutants from the defendant's electroplating facility into the City of Lynchburg's Regional Wastewater Treatment Plant. The proposed Consent Decree requires the defendant to comply immediately with the general pretreatment standards and the pretreatment standards for the electroplating point source category and to pay a penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *C.R. Hudgins Plating, Inc.*, D.J. Ref. 90–5–1–1–2209.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Virginia, Room 325, Poff Federal Building, Roanoke, Virginia 24008 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19106. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86–3027 Filed 2–11–86; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Notice of Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C 3303a(a).

DATE: Comments must be received in writing on or before April 14, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street NW., Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service (N1–145–86–1). Records of the Livestock and Dairy Division consisting of bills of sale and a listing sheet of inventory reports covering operations of various wool handlers for 1945.

2. U.S. Department of Agriculture, Foreign Agricultural Service (N1–166–86–1). Compliance review case files consisting of the review report with related correspondence, memoranda, and exhibits.

3. U.S. Department of Agriculture, Agricultural Research Service (N1–310–86–1). Discontinued line project case

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files, 1950–65, and correspondence, memoranda, outlines, and reports relating to research activities, 1942–52.

4. Department of the Air Force (N1–AFU–86–17) Engineering Data Distribution and Control Records.

5. Department of the Air Force (N1–AFU–86–20). Air National Guard reenlistment bonus records.

6. Department of the Air Force (N1–AFU–86–21). Applications for ID cards and passes.

7. Department of the Navy, Headquarters U.S. Marine Corps (N1–127–86–2). Audio tapes of radio broadcasts.

8. Department of the Navy, Naval Data Automation Command (NC1–NU–84–2). A comprehensive schedule of all aeronautical and astronautical material records.

9. Department of State, Bureau of Consular Affairs, Visa Office (N1–84–86–1). Revision of disposition standards for certain categories of visa records maintained at Foreign Service posts.

10. Department of Transportation, Federal Aviation Administration (N1–237–86–2). Revision to standards for destruction of Federal Aid Airport Program/Airport Development Aid Program and Planning Grant Program records.

11. U.S. Postal Service, Finance Group (N1–28–86–1). Records used to develop volume forecasts and rate classifications.

12. Veterans Administration, (NC1–15–85–13). Plans and specifications relating to loans.

Dated: January 24, 1986.

Claudine Weiher,

Acting Archivist of the United States.

[FR Doc. 86–3113 Filed 2–11–86; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under an new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This by-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on January 29, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nucler Regulatory Commission, Washington, DC 20555.

By March 14, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party ot the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determnation will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 2.555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: April 17, 1985, as amended September 24, 1985.

Description of amendment request: This request supersedes the licensee's request dated March 20, 1984, which was noticed in the **Federal Register** on May 23, 1984 (49 FR 21825). The details of the ASME Boiler and Pressure Vessel Code Section XI Inservice Inspection (ISI) Program would be removed from the Technical Specifications by this amendment and placed in a controlled ISI Program document. The tables in the Technical Specifications listing snubbers on the Code Class 1, 2, and 3 systems would also be removed and placed in the controlled document. The revised Technical Specifications would then allow ISI changes for Code systems to be made without a subsequent Technical Specification change, which conforms to the approach use in the BWR Generic Technical Specifications in the area of ISI. However, this revision would not remove the requirements to perform ISI in accordance with Section XI and to test Code Class snubbers at required intervals.

As part of this amendment, the term "PNPS Procedure" would be substituted for references to the tables being removed. References to the 1974 Edition of the ASME Boiler and Pressure Vessel Code would be chaned to the 1980 Edition, Winter 1980 addenda. Thus, the revised Technical Specifications will require conformance with changes which were made in the latter edition of the Code, which is incorporated by reference in 10 CFR 50.55a. The bases pages for these Technical Specifications would also be revised to be consistent with the foregoing changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments are not likely to involve significant hazards considerations by providing certain examples (48 FR 14870). One example of an amendment that is considered not likely to involve a significant hazards consideration is "(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations."

The proposed amendment requires changes in the ISI program for the Pilgrim Station in keeping with changes in the ASME Boiler and Pressure Vessel Code, which is incorporated by reference in the Commission's regulations (10 CFR 50.55a). These changes in ISI requirements and shifting the tables of these requirements and snubbers from the Technical Specifications to a separate, controlled document are expected to have no effect on facility operations. This proposed amendment is, therefore, similar to example (vii) above and the staff proposes to determine that the application for this amendment does not involve a significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: December 23, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications administrative section relative to the licensee's Nuclear Safety Review and Audit Committee (NSRAC). The change would clarify the composition of NSRAC and its quorum requirements, identify specifically the types of safety evaluations to be reviewed by NSRAC, and delete a 14–day limit on the time allowed for preparation and distribution of the minutes of an NSRAC meeting.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Technical Specifications are all administrative in nature and do not physically affect plant safety-related systems. Therefore, these changes would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a

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margin of safety. Based on this finding, the staff has made an initial determination that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of amendment request: December 23, 1985.

Description of amendment request: The proposed amendment would change the Pilgrim Station Technical Specification by revising Note 1 to Table 3.1.1 and Note 1 to Table 3.2.A. These note changes would impose a time limit of 6 hours on keeping an instrument channel of the Reactor Protection System or the Primary Containment Isolation System out of service during testing and calibration. A time limit does not currently exist.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether license amendments involve significant hazards considerations by providing certain examples (April 6, 1983, 48 FR 14870). The examples of actions not likely to involve a significant hazards consideration include "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement."

The proposed change would add a restriction on the amount of time an instrument channel is deliberately made inoperable without placing the trip system in the tripped condition. Because this change is similar to example (ii), the staff has made a proposed determination that the proposed amendment would involve no significant hazard considerations.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: John A. Zwolinski.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: December 20, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant, Unit 2. The proposed revision to TS Tables 3.3.3–1, dnd 4.3.3–1 reflects modifications to be performed on the Brunswick 2 Automatic Depressurization Systems (ADS) during the Reload 6 outage commencing December 1, 1985. These modifications will remove the high pressure trip from the ADS logic sequence and add a manual inhibit switch, thereby, eliminating the need for manual ADS actuation to ensure core coverage. A similar request was granted for Brunswick 1 by Amendment No. 87 on July 30, 1985.

Currently, the ADS activates automatically upon coincident signals of low reactor vessel water level, high drywell pressure, and initiation of a low pressure emergency core cooling pump. Modifications to be peformed on the ADS logic will remove the need for high drywell pressure indication for automatic initiation of the ADS. As a result, transients which do not directly produce a high drywell pressure signal will be encompassed by the operation of the ADS. A time delay of approximately 2 minutes after receipt of the signals allows the operator to reset the logic and prevent an unnecessary actuation

The requested TS changes remove the ADS high drywell pressure instruments and add manual inhibit switches to the ADS in TS Tables 3.3.3–1, 3.3.3–2 and 4.3.3–1, A Boiling Water Reactor Owners Group (BWROG) study of alternatives to the present ADS actuation logic identified modifications to eliminate the need for manual actuation to ensure core coverage in the event of certain accident sequences. The proposed TS change is the second option outlined in the BWROG study and is one of the two options indicated to be acceptable by NRC letter dated June 3, 1983. The resulting reduction of logic devices will increase ADS reliability and will provide additional assurance of adequate core cooling by further automating reactor pressure vessel depressurization for certain system isolations and stuck open relief valve events, while satisfying design concerns associated with anticipated transients without scram.

Basis for proposed no significant hazards consideration determination: Carolina Power & Light Company (CP&L) has determined that the requested amendment does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated bacause the modifications result in an enhancement of the ADS and does not affect performance of the intended safety function. As a result of these modifications, ADA operation will be extended to encompass accident and transient condition which do not produce a high drywell pressure signal.

2. Create the possibility of a new or different kind of accident than previously evaluated for the same stated in item 1.

3. Involve a significant reduction in the margin of safety because removing the need for manual actuation eliminates the possibility of operator error thereby ensuring core coverage. In addition, reduction of the number of logic devices increases ADS reliability.

Based on the above reasoning, CP&L has determined that the proposed changes involve no significant hazards consideration.

The staff has reviewed the CP&L determinations and finds that the amendment request meets the standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)), that is, the proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident prevously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the above discussion the Commission proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Project Director: Daniel Muller.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 30, 1984, as supplemented December 19, 1985.

Description of amendment request: This submittal supplements the request for amendment dated May 30, 1984 which was noticed in the Federal Register on July 24, 1984 (49 FR 29906). The proposed Technical Specifications Revision would revise portions of Consolidated Edison's May 30, 1984 license amendment application to make the Specifications concerning Hydraulic Snubbers consistent with the Standard Technical Specifications. These changes were requested in a letter from NRC to Consolidated Edision dated October 11, 1985. The proposed changes would revise the specifications required testing of representative sample 10% of IP–2's safety related snubbers. The revision proposes to revise the specification to require that for each snubber found inoperable an additional 10% of that type of snubber shall be functionally tested. The revision also proposes to require retesting of failed snubbers and independent testing of snubbers with manufacturer or design defects.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve significant hazards considerations relates to a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specification: for example, a more stringent surveillance requirement. The proposed revision to the Technical Specification concerning snubber testing is consistent with example (ii) in that the proposed change constitutes more stringent requirements.

Therefore, the staff proposes to determine that the amendment does not involve a significant hazard determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Directorate: Steven A. Varga.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: December 12, 1985.

Description of amendment request: The amendment would modity the Technical Specifications (TS) to reflect the use of replacement control rods of the ASEA-ATOM (AA) plate design in addition to the currently used Allis-Chalmers (A–C) tube sheath design. The AA control rods for the La Crosse Boiling Water Reactor (LACBWR) have been designed to closely match the reactivity worth of the original A–C control rods and to be mechnicially compatible with all reactor components and control rod handling equipment. The amendment would also delete the requirement to go-gage control rods (i.e., gage the thickness to detect swelling), based on LACBWR and industry operating experience, and that Standard Technical Specifications for boiling water reactors do not contain a similar requirement.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has presented its determination of significant hazards considerations as follows:

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed.

Operation of the LACBWR in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Since the AA control rods are mechanically compatible in all respects with the LACBWR system and have essentially the same reactivity worth, their use will not involve a significant increase in the probability or consequences of an accident previously evaluated.

For negative reactivity insertion events (scram events) the slightly greater reactivity worth of the AA control rods is considered to be beneficial. Slightly more negative reactivity will be inserted faster than with the A–C control rods. The shutdown margin will also be slightly greater with AA control rods than with the current A–C control rods.

For positive reactivity insertion events, i.e. inadvertent control rod withdrawals and control rod drop accident, the slightly greater worth of the AA control rod is also expected to have a minimal effect. The limiting anticipated transient for the LACBWR is the inadvertent control rod withdrawal at operating power. A recalculation of the limiting control rod withdrawal transient for the beginning of Fuel Cycle 9 using a conservative 3% (relative) greater control rod worth resulted in a Minimum Critical Power Ratio (MCPR) of 1.529 compared to a MCPR of 1.539 calculated for the A–C rods. The effect produced by the actual LACBWR AA control rod with a relative worth equal or slightly less than the A–C rods in the operating reactor would be completely negligible. In the LACBWR, the consequences of a control rod drop accident are greatest when the reactor is at power. The results of the probability study of the LACBWR control rod drop accident are not very sensitive to the specific worth of the control rods and the small differences between the AA and the A–C control rods would have an insignificant effect on the results.

The deletion of TS 4.2.4.10, on go-gaging control rods, will not increase the probability or consequences of an accident, since it is a surveillance requirement which LACBWR and industry experience has shown to be ineffective. The requirement to gage the control rods was originally based on the belief that the life of the rod would be limited by the pressure buildup in the B_4C tubes due to helium release from the irradiated B_4C and that the gage would detect tube swelling before tube failure. Experience has shown that absorber tubes can fail by intergranular stress corrosion cracking (IGSCC) and B_4C be lost before any swelling is detected by gaging.

The industry has concluded, after extensive research, that absorber tube failure by IGSCC and B_4C loss is more a function of B–10 depletion, and resultant B_4C swelling and change in physical characteristics, than a result of pressure buildup from helium release. Therefore, TS 4.2.4.10 is no longer necessary.

2. Operation of the LACBWR in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the AA control rods are mechanically compatible in all respects with the LACBWR system and have essentially the same reactivity worth as

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the A–C control rods, their use will not create the possibility of a new or different kind of accident from any previously evaluated.

Elimination of the go-gaging surveillance requirement will not create the possibility of a new or different type of accident since industry experience has shown that swelling due to pressure buildup due to helium release is not the primary cause of absorber tube failure and that failures can occur prior to any swelling being detected by gaging.

3. *Operation of the LACBWR in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.*

The AA control rods for the LACBWR have been designed to closely match the reactivity worth of the original (A–C) control rods and to be mechanically compatible with all reactor components and control rod handling equipment. The AA control rod is slightly lighter (approximately 7 lbs.) than the A–C rod and therefore, scram times for the AA rod should be approximately the same as or slightly faster than for the A–C rod. Scram times for the AA control rods will be measured after installation in the reactor as required by current procedures and technical specifications.

The effect of the AA control rods on the margin of safety during an inadvertent control rod withdrawal transient, which is the limiting anticipated transient, for LACBWR, would be negligible. The limitations of other control rod related Technical Specifications such as 4.2.5.2 and 4.2.5.3 will still be conservatively met during operations with the AA control rods. Their improved design will significantly reduce the probability of IGSCC failure and resultant loss of control material (B_4C) and therefore, will increase the margin of safety.

The deletion of the go-gaging requirement will not decrease the margin of safety, since industry experience has demonstrated that pressure buildup in B_4C tubes due to helium release is not a dominant failure mode. This surveillance is not required by Standard Boiling Water Reactor (BWR) Technical Specifications. Control rod lifetime will be appropriately and prudently based on exposure histories, B–10 depletion and visual examinations as is currently the case for the rest of the U.S. BWR reactors. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

As determined by the analysis above, this proposed amendment has no significant hazards consideration.

The staff has reviewed the licensee's significant hazards consideration determination and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for license: Roy P. Lessy, Jr.; O.S. Heistand; Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: January 2, 1986.

Description of amendment request: The licensee proposed a technical specification amendment to permit a one time extension of the 12 month ±25% snubber visual inspection period (October 4, 1985 through April 4, 1986) to the fifth refueling outage, scheduled to begin in May 1986. The refueling outage is tentatively scheduled to begin within a short period of time beyond the currently specified snubber inspection period. Without the extension, plant shutdown would be needed to perform the visual inspections, since the snubbers inside containment are considered inaccessible during power operation due to the subatmospheric containment design. There has not been an outage of sufficient duration during the present fuel cycle to perform the required visual inspections.

Basis for proposed no significant hazards consideration determination: The proposed amendment would only extend slightly the period during which the snubbers will have to be inspected. It does not change the way the snubbers are to be inspected, nor does it reduce in any way inspeciton requirements. Consequently, the amendment would not result in a significant increase in the probability of occurrence of an accident or malfunction of equipment important to safety, would not create an accident of a different type, and would not significantly reduce the margin of safety of the plant. We, therefore, propose to characterize the proposed amendment as involving no signficiant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Project Director: Lester S. Rubenstein.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: January 17, 1986.

Description of amendment request: The proposed amendments would revise the Technical Specifications by adding a provision to allow two plant operation with 3 out of 4 Essential Service Water (ESW) pumps operational and the two plants' ESW systems aligned in the cross-tie mode.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples is (vi) a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed amendment is directly related to the example.

The design basis for the D.C. Cook Nuclear Plant is a loss of coolant accident (LOCA) in one unit and hot shutdown in the other and for this condition, only two of the four ESW pumps, one per Unit, are necessary. The three pumps in a cross-tie mode of operation, as proposed by this amendment, are capable of exceeding the design basis by supplying sufficient water for a LOCA in one unit and cooldown of the other unit. Therefore, the proposed amendment will allow operation which may reduce a margin of safety by not having the fourth pump operable but having three pumps in a cross-time mode is clearly within the acceptable criteria for the Essential Service Water system at the D.C. Cook Nuclear Plant. Therefore, the Commission proposes that the changes do not involve a significant hazard consideration.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee : Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Project Director: B.J. Youngblood.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 30, 1985.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications reflecting the DAEC conformance with 10 CFR 50, Appendix R, Section III.G related to fire protection program. Specifically, changes in the Technical Specifications relate to (a) Remote Shutdown Panels, (b) Automatic Fire Suppression System, (c) Heat Detectors and Ionization Smoke Detectors, and (d) Administrative changes required for the fire protection program. The proposed changes are described as follows:

(a) Remote Shutdown Panels. The Remote Shutdown Panels (RSPs) are required to achieve and maintain cold shutdown of the DAEC nuclear reactor in the unlikely event that the main Control Room becomes uninhabitable or is damaged by fire. The proposed Technical Specification change provides for periodic inspection and testing of the panels to verify operability. The inspection and operability requirements are consistent with those currently required for existing safe shutdown instrumentation.

The proposed inspection and testing requirements for the RSPs replace the existing requirements for the existing Emergency Shutdown Control Panel (ESCP) since the RSP system now incorporates the function of the ESCP. Incorporating the ESCP into the RSP system makes the ESCP one of the local control panels in the RSP system. Likewise, the proposed bases change the wording of paragraphs 3.10.B and 4.10.B to reflect the RSP system rather than the ESCP.

(b) *Automatic Fire Suppression Systems*. The Automatic Fire Suppression Systems are required to protect safety-related systems required for safe plant shutdown and must be operable whenever safe shutdown equipment in the protected area is required to be operable. The proposed Technical Specification change provides for periodic inspection and testing to verify operability of these new fire suppression systems.

(c) *Heat Detectors and Ionization Smoke Detectors*. These fire detection systems are required to protect safety-related systems when the safe shutdown equipment in the protected area is required to be operable. The proposed Technical Specification change provides for periodic testing and inspection to verify operability of the fire detection systems. The bases on page 3.13–10 have been revised to incorporate the new fire detection instrumentation and provide compatibility with Table 3.13–1.

(d) *Administrative Changes*. The proposed Technical Specification change corrects three typographical errors which consist of an unneeded period on page iii, a misspelling of the word "detection" on page 3.13.1, and an error in the fire pump discharge nozzle head value. Correction of the discharge pressure is needed to be in conformance with the correct value found in the Final Safety Analysis Report (FSAR) and the manufacturer's pump curve. One page 3.13–10 and in Table 3.13–1, the "Control Auxiliary Panel Room" has been renamed the "Control Room Back Panel Area" to conform to terminology used by plant personnel. The existing "Zones" in Table 3.13–2 have been changed to "Fire Detection Zones" to distinguish them from the Fire Zones listed in the DAEC Fire Hazards Analysis (FHA).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

We have reviewed the license's request and find that the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, because;

(a) The Remote Shutdown Panels are required to achieve and maintain cold shutdown of the reactor in the unlikely event that the main Control Room becomes uninhabitable or is damaged by fire and the proposed Technical Specification change provides for periodic inspection and testing to verify operability of the RSP, and constitutes an additional restriction in the Technical Specifications,

(b) The Automatic Fire Suppression Systems are required to protect certain safety-related systems, in case of fire, for safe plant shutdown, and the Technical Specification changes consisting of periodic testing and inspection to verify operability of the new fire protection systems, constitute additional restrictions in the Technical Specifications,

(c) Heat Detectors and Ionizing Smoke Detectors will be tested in the same manner as the existing detectors, and

(d) Administrative changes consist of an unneeded period on page iii, a misspelling of the word "detection" on page 3.13–1, and typographic correction of the fire pump nozzle discharge pressure value. In addition, changing the name of the "Control Auxiliary Panel Room" to the "Control Room Back Panel Area" conforms to terminology used by plant personnel and will eliminate a possible source of confusion, and changing the existing "Zones" in Table 3.13–1 to "Fire Detection Zones" clarifies the distinction between these detector zones and the "Fire Zones" described in the Fire Hazards Analysis (FHA).

(2) Does not create a possibility of a new or different kind of accident because;

(a) Remote Shutdown Panels (RSPs) utilize plant systems which have already been evaluated by the staff and the RSPs are inspected and tested in similar manner as the Control Room instrumentation,

(b) Automatic Fire Suppression Systems is an expansion of the existing Automatic Fire Suppression System, which has been evaluated by the staff,

(c) Fire detection system Technical Specification change provides for periodic testing and inspection to verify operability of these fire detection systems in the same manner as the existing detectors which have been evaluated by the staff, and

(d) Administrative changes described previously do not alter the meaning of the existing Technical Specifications.

(3) Does not involve a significant reduction in a margin of safety because;

(a) The inspection and testing of the Remote Shutdown Panels (RSPs) should increase the margin of plant safety since the RSPs provide increased capability to place the reactor in cold shutdown in the unlikely event that Control Room becomes uninhabitable or is damaged by fire. Furthermore, the staff has reviewed this method of alternate shutdown for BWRs and has issued a Safety Evaluation Report, dated January 6, 1983, approving its use at the DAEC,

(b) The inspection and testing of Automatic Fire Suppression Systems equipment does not reduce the margin of safety.

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(c) The testing of the fire detection system will improve the margin of safety for protection of the safety-related equipment and components which are part of the safe shutdown systems, and

(d) Administrative changes described previously do not affect margins of safety.

Therefore, the staff has made a proposed determination that the application involved no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

NRC Project Director: Daniel R. Muller.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York.

Date of amendment request: December 6, 1985, as supplemented January 13, 1986.

Description of amendment request: The amendment would modify the Technical Specifications (TS) to reflect the addition of Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits for the General Electric fuel bundle, type P8DRB299. These limits were calculated by using the same approved General Electric methods used for the present fuel type P8DNB277. This proposed amendment would allow the use of P8DRB299 in the upcoming and other future fuel cycles since appropriate MAPLHGR limits would be provided for this fuel type.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has presented its determination of significant hazards considerations as follows:

10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analysis using the standards in 10 CFR 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the following analysis has been performed.

1. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant increase in the probability or consequences of an accident previously evaluated.* The methods used to analyze the Loss of Coolant Accident response of the P8DRB299 fuel conform to Appendix K requirements and are identical to those previously used. Results for the type P8DRB299 fuel analysis are included as Figure 3.1.7(f). The peak cladding temperature and maximum oxidation fraction limits are approximately the same as for previous fuel types. Therefore, the proposed amendment will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not create the possibility of a new or different kind of accident from any accident previously evaluated.*

Results for the type P8DRB299 fuel analysis demonstrate that the Loss of Coolant Accident response is approximately the same as for the fuel currently used. The peak cladding temerature and maximum oxidation fraction limits are insignificantly different, and therefore, (the P8DRB299 fuel type) constitute a one-for-one replacement with the currently used fuel. Therefore, the proposed amendment will not create the possibility of a new of different kind of accident from any previously evaluated.

3. *The proposed amendment in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant reduction in the margin of safety.*

An analysis of the Loss of Coolant Accident response of proposed fuel bundle type P8DRB299 has been completed in accordance with methods previously used. The results of the analysis show that the peak cladding temperature and the maximum oxidation fraction limits are within the limits set by Appendix K and are approximately the same as those previously accepted. Therefore, the proposed amendemnt in accordance with the operation of Nine Mile Point Unit 1 will not involve a significant reduction in the maring of safety.

As determined by the analysis above, this proposed amendment has no significant hazards consideration.

The staff has reviewed the licensee's significant hazards consideration determination and based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: State University College at Oswego, Penfield Library — Documents, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Project Director: John A. Zwolinski.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: October 16, 1985.

Description of amendments requests: The proposed amendments request would revise the technical specifications regarding the method of calibration of the Analog Rod Position Indication Systems by providing more realistic operational requirements consistent with the safety requirements of the system. Specifically, the Unit 1 Technical Specifications would be modified as follows:

Replace 3.1.3.1 tlhrough 4.1.3.2 with revised Tech Specs 3.1.3.1 through 4.1.3.2.2.

Tech Specs 3.1.3.3 through 4.1.3.3 remain unchanged.

Replace 3.1.3.4 through 4.1.3.5 with revised Tech Specs 3.1.3.4 through 4.1.3.5.

Tech Spec Figures 3.1–1 and 3.1–2 remain unchanged.

Replace ¾.1.3 with revised Bases ¾.1.3

The Unit 2 Technical Specifications would be modified as follows:

Replace 3.1.3.1 through 4.1.3.2.2 with revised Tech Specs 3.1.3.1 through 4.1.3.2.2.

Tech Spec 3.1.3.3 through 4.1.3.3 remain unchanged.

Replace 3.1.3.4 through 4.1.3.5 remain revised Tech Spec 3.1.3.4 through 4.1.3.5.

Tech Specs Figures 3.1–1 and 3.1–2 remain unchanged.

Replace Bases ¾.1.3 with revised Bases ¾.1.3.

Bosis for proposed no significant hazards consideration determination: Shutdown Banks and Control Banks A and B positions need to be known accurately in a very limited range, near the top and bottom of the core. Accurate knowledge of these bank positions permits the operator to verify that the control rods in these banks are either fully withdrawn or fully inserted, the normal operating modes for these banks. Knowledge of these bank positions in these two areas satisfies all accident analysis assumptions concerning their position.

Recognizing that the Analog Rod Position Indication (ARPI) is very temperature sensitive, immediate verification of position after rod movement is shifted (in the revised Technical Specifications) from the ARPI to the group step counters with subsequent verification by the ARPI after temperature equilibration. Comparison of the group demand counters to the bank insertion limits with verifcation of rod position with the ARPI (after thermal soak after rod motion) is sufficient verification that the control rods are above the insertion limits as assumed in the accident analyses.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no signficant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a signficant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) Involve a signficant reduction in a margin of safety. The licensee has determined and the staff agrees that the requested amendments per 10 CFR 50.92 do not: (1) Involve a signficant increase in the probability or consequences of an accident previously evaluated for the Salem Units, since there are no changes to conditions assumed in the accident analyses; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated for the Salem Units, since no plant modifications resulted from change; or (3) Involve a signficant reduction in a margin of safety, since there are no changes to conditions assumed in the accident analyses.

Accordingly, the Commission proposed to determine the proposed changes to the Technical Specifications involve no signficant hazards considerations.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Project Directorate: Steven A. Varga.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: October 17, 1985.

Description of amendments request: The amendments request would change Technical Specifications Section 4, Table 4.3–1 for Salem Units Nos. 1 and 2 by adding surveillance requirements for the Reactor Trip Circuitry not presently included in the Technical Specifications. These additional requirements are responsive to NRC conclusions identified in Items 10 and 13 of the staff's Safety Evaluation dated June 25, 1984, that responded to the Public Service Electric and Gas Company's submittal regarding Item 4.3 of Generic Letter 83–28, "Reactor Trip Breaker Automatic Shunt Trip."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions which involve no significant hazards consideration include a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The proposed changes add surveillance requirements for the Reactor Trip Circuitry not presently included in the technical specifications. Therefore, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Project Directorate: Steven A. Varga.

Southern California Edison Company et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit No. 1 (SONGS 1), San Diego County, California

Date of amendment request: November 21, 1985.

Description of amendment request: The proposed change would delete the interim surveillance testing requirement established on November 5, 1981 which requires that Safety Injection System (SIS) valves be tested once every 92 days. Deletion of the interim testing requirement would allow valve operability testing to be performed in accordance with existing Technical Specification 4.2.1 at intervals no longer than normal plant refueling intervals, which are typically 18 months in duration. The proposed change would also modify the surveillance testing procedure to require that valve actuation be accomplished in three to five seconds in order for the test to be successful.

Basis for proposed no significant hazards consideration determination: The interim SIS valve testing frequency was established by the NRC on November 5, 1981 in order to evaluate the effectiveness of a design modification made to the SIS valves to increase their reliability. The interim program required that a long-term testing program based upon the results of the interim testing be established at the next refueling outage. Since SONGS 1 did not operate from February 1982 until November 1984, the next refueling outage began in November 1985. During the past fuel cycle, the SIS valves were tested six times and each time the actuator force required to open the valves was well within the capacity of the valve actuators. Thus, the licensee has concluded that the design modification has been verified and the valve testing frequency may be reduced from every 92 days to once each refueling shutdown. The valve actuation time limitation is added in order to ensure that the valves actuate within the time constraints approved by the staff's November 5, 1981 Safety Evaluation.

Based upon the above discussion, the staff has concluded that the operation of the facility in accordance with the proposed license amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in the margin of safety.

Accordingly, the Commission's staff proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: San Clemente Public Library, 242 Del Mar, San Clemente, California 92672.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel,

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James Beoletto, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: George E. Lear.

Southern California Edison Company, et al, Docket Nos. 50-361 and 50-362 San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: March 20, 1984, April 27, 1984 and October 10, 1985 (Reference PCN-8).

Description of Amendment Request: The proposed change would revise Technical Specification (TS) 3/4.6.1, "Containment Integrity" and 3/4.6.3, "Containment Isolation Valves." TS 3/4.6.1 requires that containment integrity be maintained when the plant is in the hot shutdown, hot standby, startup and power operation modes (Modes 1-4) and specifies surveillance requirements to verify containment integrity and actions to be taken when the requirements are not met. These requirements ensure that offsite doses resulting from postulated accidents are bounded by the accident analyses.

TS 3/4.6.3 requires that the containment isolation valves listed in Table 3.6-1 be operable when the plant is in Modes 1-4 and specifies surveillance requirements to verify operability and actions to be taken when the operability requirements are not met. The operability of containment isolation valves ensures that the containment atmosphere will be isolated from the outside environment in the event of a postulated accident. PCN-8 makes several revisions to TS 3/4.6.1 and 3/4.6.3 and the associated Bases. These changes are summarized as follows:

1. Reorganization of Table 3.6-1.
2. Removal of the Purge Isolation Valves from Section A.
3. Removal of Secondary System from Table 3.6-1.
4. Removal of Shutdown Cooling Relief Valves from Table 3.6-1.
5. Determination of "isolation time" from the Limiting Condition for Operation (LCO).
6. Restriction of Applicability of the existing action requirements to Sections A, B and C of Table 3.6-1.
7. Clarification of "penetration."
8. Revision of Surveillance Requirements.
9. Addition of a TS 3.0.4 Exception.
10. Correction of Typographical Errors.
11. Definition of "secured" and deletion of "deactivated."

Basis for proposed No Significant Hazards Consideration Determination: The Commission has provided guidance concerning the application of standards for determining whether a Significant Hazards Consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve Significant Hazards Considerations. Example (i) relates to a purely administrative change to technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error or a change in nomenclature. Example (vi) relates to a change which may either result in some increase in the probability or consequences of a previously analyzed accident or may, in some way, reduce a safety margin but where the results of the change are currently within all acceptance criteria with respect to a system or component provided in the Standard Review Plan (SRP); for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. Each of the changes identified above is similar to one of these examples, therefore, it is proposed that the proposed changes do not involve Significant Hazards Considerations. A more detailed description of each of the proposed changes and why each is similar to one of the examples is provided below:

(1) Reorganization of Table 3.6.1. The existing Table 3.6-1 consists of four sections: (A) Containment Isolation; (B) Containment Purge; (C) Manual; and (D) Other. The containment isolation valves are categorized into Table 3.6-1. The proposed change redefines the four sections of Table 3.6-1 and reassigns the containment isolation valves remaining in Table 3.6-1 accordingly. The proposed Section A is titled "Automatic Containment Isolation." Included in Section A are automatic containment isolation valves which are actuated by a containment isolation actuation signal (CIAS). Also included in Section A are check valves located inside containment which are considered to be automatic containment isolation valves from the standpoint of the 10 CFR 50 Appendix A general design criteria. Section B of the proposed table remains titled "Containment Purge" and includes the containment purge isolation valves. The proposed Section C remains titled "Manual" isolation valves and includes those manual containment isolation valves which are assumed to be closed post-accident and can be opened intermittently during normal operation under administrative control. Section D remains titled "Other" and includes those valves whose post-accident position may be open and whose operability requirements are defined by technical specifications other than 3.6-3, "Containment Isolation Valves." As a result of the proposed redefinition of the containment isolation valve table section described above, many valves have been moved from one category to another. The valves remaining in Sections A, B and C of the table continue to be subject to the current action and surveillance requirements. Valves which are relocated to Section D of the table have new action and surveillance requirements which reference the technical specifications governing their primary function which is other than containment isolation. The reorganization moves the following valves, which are currently listed in Section D, to Section A: demineralized water check valve, 3"-236-C-675, fire protection check valve 4"-061-C-681, quench tank makeup valve, 2"-573-C-611, service air supply line check valve 2"-017-C-627, instrument air supply line check valve 1½" -016-C-617, LP nitrogen check valve ¾"-002-C-611, component cooling water inlet isolation valve HV 6223, component cooling water outlet Isolation Valve 2"-129-A-544, and nitrogen supply to safety injection tank check valve 2"-108-C-627. No response time is included for the check valves noted above. Response times of 40 seconds are included for HV 6233 and HV 6236.

The proposed reorganization of Table 3.6-1 discussed above is similar to Example (i) of 48 FR 14870. The valves remaining in Sections A, B and C of Table 3.6-1, existing actions and surveillance requirement items as discussed below, continue to apply to these valves. The valves relocated or remaining in Section D of the table are subject to TS surveillance and action requirements for the systems in which they are included. The redefinition of Section D includes those valves whose normal safe post-accident safe position is open, the action requirements for the systems which include these valves would have these valves maintained opened if inoperable. However, the existing TS 3.6.3 action requirements, which currently apply to these valves, would require these valves to be closed if inoperable. The proposed change eliminates the applicability of the existing TS 3.6.3 action requirements to the valves included in Section D of Table 3.6-1. The proposed change would apply the action requirements corresponding to their primary system function which would maintain the valves in safe position, whereas existing requirements would force closure of an inoperable valve rendering the system

inoperable. Because this change resolves an inconsistency in the technical specifications, it is similar to Example (i) of 48 FR 14870.

(2) Removal of the Purge Isolation Valves from Section A. Section A currently includes the containment mini-purge isolation valves HV 9821,, HV 9823, HV 9824 and HV 9825. These valves are deleted from Section A of the table because they are also included in Section B of the table and their operability is also covered by TS 3/4.6.1.7, "Containment Ventilation System" and TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation." This change eliminates unnecessary repetition of requirements in the technical specification and is therefore editorial and similar to Example (i) of 48 FR 14870.

(3) Removal of Secondary System from Table 3.6-1. Table 3.6-1 currently includes all main steam system related isolation valves that are associated with containment penetrations. These valves close on a main steam isolation signal to limit RCS cool down during postulated main steam line break events. In addition, certain main steam system valves, such as the main steam isolation valve and backup feedwater isolation valve, receive a containment isolation actuation signal on containment pressure high and close on a main steam line break inside containment. This mitigates the consequences of main steam system piping ruptures inside containment and prevents containment overpressurization due to such events. Response times for all main steam system related valves that receive an MSIS or CIAS are included in Table 3.3-5, "ESFAS Instrumentation Response Time" which is part of Technical Specification 3/4.3.2. In addition, Technical Specification 3/4.7.1.5 specifically addresses operability of the main steam isolation valves. The main steam relief valves are also deleted from Table 3.6-1 in that their operability requirements are specified in Technical Specification 3/4.7.1.1, "Main Steam Relief Valves."

The result of this change will mean that the containment isolation valve action requirements no longer would apply to main steam system valves. However, Technical Specification 3/4.3.2 will require that those valves which receive a MSIS and/or a CIAS are operable with specified response times. In addition, more specific requirements exist as noted for the MSIV's and main steam relief valves. Because the containment isolation valves will not longer apply directly to main steam system related valves, this change constitutes a relaxation in existing requirements. In this case, acceptance criteria related to the proposed change is found in SRP Section 6.2.4 "Containment Isolation System" and SRP Section 16, "Technical Specifications." SRP Section 6.2.4 requires that the reviewer determine that technical specifications for containment isolation valves are adequate. SRP Section 16.0 considers technical specifications consistent with the standard technical specifications to be acceptable. In this case, the standard technical specifications do not specifically address whether the main steam related isolation valves be included in Table 3.6-1. There is considerable variance between recently licensed but similar plants. For example, some units licensed prior to SONGS 2 and 3 and at least one unit licensed following SONGS 2 and 3 do not have the main steam system related isolation valves included in Table 3.6-1. The main steam system related isolation valves do not serve a containment isolation function in the same sense as isolation valves on systems which communicate directly with the reactor coolant system or containment atmosphere. The primary function of the main steam related valves is to limit RCS overcooling and overpressurization of the containment barrier in main steam line break events. The calculational assumptions for these events relate to the response times of these valves. One means of ensuring that response times are adequately covered by the technical specifications is to include the main steam isolation valves in Table 3.6-1. However, as noted above, response times for these valves are included in other technical specifications. Also, the critical requirements for main steam system related isolation valves are adequately covered by the technical specifications without their inclusion in Table 3.6-1. Therefore, the proposed change ensures that operability requirements for the main stream system related isolation valves are adequately covered by technical specifications and in a manner consistent with the standard technical specification. Thus, the acceptance criteria of SRP Sections 6.2.4 and 16.0 are satisfied and the proposed change is similar to Example (vi) of 48 FR 14870.

(4) Removal of Shutdown Cooling Relief Valve from Table 3.6-1. The shutdown cooling system relief valve PSV9349 is currently included in Section D of Table 3.6-1. Operability requirements for the shutdown cooling system relief valve are defined in TS 3/4.4.8.3, "Overpressure Protection Systems." The proposed change deletes PSV9349 from Table 3.6-1 since the operability requirements are included in Technical Specification 3/4.4.8.3. This change eliminates unnecessary redundancy in the technical specifications and is editorial and similar to Example (i) of 48 FR 14870.

(5) Deletion of "isolation time" from the Limiting Condition for Operation (LCO) LCO 3.6.3 requires that the containment isolation valves specified in Table 3.6-1 be operable with isolation times as shown in Table 3.6-1. The proposed change will require that the containment isolation valves specified in Table 3.6-1 be operable and deletes the reference to isolation times. The operability of containment isolation valves is verified by performance of the surveillance requirements. Proposed surveillance requirement 4.6.3.3 requires that the isolation time for each automatic valve listed in Sections A and B of Table 3.6-1 be determined within its limit when tested in accordance with the Inservice Inspection (ISI) Program. Because performance of the surveillance requirements is a condition of operability, it is redundant to include the response time requirement in the LCO. Because this change eliminates unnecessary redundancy, it is editorial and is similar to Example (i) of 48 FR 14870.

(6) Restriction of Applicability of Existing Action Requirements to Sections A, B and C of Table 3.6-1. The existing action requirements, which apply to all containment isolation valves listed in Table 3.6-1, require that an operable containment isolation valve be maintained in any penetration that is open and that inoperable valves be either restored to operable status, the penetration be isolated, or that the plant be in hot standby and cold shutdown within specified periods of time.

The proposed change would restrict the applicability of the action requirements to Section A, B and C of the proposed table. As noted above, Section D of the table includes those valves whose safe post-accident position may be open and whose operability requirements and actions are included in other specifications addressing the primary functions of the systems in which they are included. As a result, isolation of a penetration in the event of inoperability of one of the valves included in Section D may conflict with the primary function technical specification action requirements and is likely not the safest position for the value. The proposed change references the action

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requirements for the LOC's pertaining to the valves or systems in which the valves in Section D are installed. This change eliminates the existing conflict in the existing technical specification and, therefore, is similar to Example (i) of 48 FR 14870.

(7) Clarification of Penetration. The action requirements refer to the affected penetration when a containment isolation valve is inoperable. Many penetrations branch prior to containment isolation valves; Thus each penetration may have one or more flow paths into containment associated with it. It is inappropriate to isolate all branches of such a penetration when a containment isolation valve is inoperable in only one branch. The existing word "penetration" may be misinterpreted to require that all branches be isolated. The proposed change resolves this potential misinterpretation by adding a note which defines a "penetration" as any flow path from the atmosphere or a piping system inside of containment to the atmosphere or a piping system outside of containment. Each flow path is considered as a separate penetration. Because the proposed change clarifies the existing specification and eliminates the possibility of misinterpretation, it is editorial and similar to Example (i) of 48 FR 14870.

(8) Revision of Surveillance Requirements. Currently there are three surveillance requirements for containment isolation valves. TS 4.6.3.1 requires that prior to returning an inoperable valve to service that it be demonstrated open by performing a cycling test and verification of isolation time. TS 4.6.3.2 requires that each isolation valve be demonstrated operable by verifying action on the appropriate ESF actuation signal. TS 4.6.3.3 requires that the isolation time of each power operated or automatic valve in Table 3.6–1 be determined within its limit when tested in accordance with the Inservice Inspection Program. These surveillance requirements are inadequate in that they fail to address the operability requirements for all valves that are not power operated or automatic isolation valves. The proposed change would institute surveillance requirements specifically addressing each type of isolation valve included in Table 3.6–1. The proposed TS 4.6.3.1 would require the isolation valve specified in Sections A and B of Table 3.6–1 (automatic containment isolation valves and containment purge isolation valves) to be demonstrated operable prior to returning an inoperable valve to service by performance of testing in accordance with the Inservice Inspection Program. This includes verification of isolation time where applicable. Additionally, valves secured in their actuated position are considered operable pursuant to this specification. The proposed TS 4.6.3.2 would require each isolation valve specified in Sections A and B of Table 3.6–1 except check valves, to be demonstrated operable by verifying that on a ESFAS test signal (CIAS, SIAS or CPIS as appropriate) each isolation valve actuates to its isolation position. This requirement corresponds to existing Specification 4.6.3.2. The proposed TS 4.6.3.3 requires that the isolation time of the valves (except check valves) included in Sections A and B, would be response time tested in accordance with the ISI Program. This surveillance requirement corresponds to the existing TS 4.6.3.3. A new surveillance requirement 4.6.3.4 is proposed to address operability of manual isolation valves specified in Section C of Table 3.6–1. This new surveillance requirement references existing surveillance requirements 4.6.1.1.A which requires verification of position on a routine basis and 4.6.1.2.D which requires leak rate testing in accordance with 10 CFR 50 Appendix J. The proposed TS 4.6.3.5 addresses surveillance requirements for the valves included in Section D. These valves shall be demonstrated operable in accordance with the ISI Program and surveillance requirements associated with those LCO's pertaining to each valve or the system in which it is installed. Valves secured in the ESFAS actuated position (i.e., safe post-accident position) are considered to be operable pursuant to this surveillance requirement. Again, TS 4.6.3.5 introduces no new requirements since the ISI Program is required by Specification 4.0.5 and the LCO's pentaining to the primary function of valves included in Section D already exist. The proposed surveillance requirements would consider valves secured in their safe positions to be operable. This is consistent with the definition of operable in that these valves are capable and, in fact, are performing their specified functions. Since the proposed surveillance requirements do not modify existing surveillance requirements, and restate other existing surveillance requirements for Sections C and D valves, the proposed change is editorial and is similar to Example (i) of 48 FR 14870.

(9) Addition of an Exception to TS 3.0.4. TS 3.0.4 prevents the plant from being taken to a higher operational mode while relying on the provisions of an action statement. The proposed change would add an exception to TS 3.0.4 in TS 3.6.3. As noted above, a valve which is secured in its safe position is performing its specified function and, therefore, is operable in accordance with operability definition. Thus, complying with the action requirements which require valves to be secured in their safe position, constitutes meeting the operability requirements. Therefore, once the action requirements are satisfied, the action is exited since the operability requirement is met. Thus, complies with the action statement does not restrict upward mode changes. Consistent with this, the TS 3.0.4 exception is added. Because the proposed change improves consistency within the technical specifications, the proposed change is similar to Example (i) of 48 FR 14870.

(10) Correction of Typographical Errors.

In Section C of Table 3.6–1 for Unit 2 only, the designation of Penetration 10C is changed to Penetration 10B to correct an existing error. For both units, the designations of hot leg injection isolation valves 3"–157–A–551 and 3"–158–A–551 are corrected to 3"–157–A–550 and 3"–158–A–550, respectively. These changes correct an existing error and are therefore similar to Example (i) of 48 FR 14870.

(11) Definition of Secure and Deletion of Deactivated.

Technical Specification 3/4.6.3 Action 1B currently requires that an affected penetration be isolated by the use of at least one deactivated automatic valve secured in the isolation position. Surveillance requirement 4.6.1.1.A requires that all penetrations not capable of being closed by automatic containment isolation valves and require to be closed during accident condition are closed by valves, blind flanges, or deactivated automatic valves secured in their positions. The proposed change would add notes to define secured as being locked, secured or otherwise prevented from unintentional operation. This definition of secured would be used in place of the word deactivated which is deleted from these specifications by the proposed change. Deletion of deactivated and institution of the definition of secured will prevent misinterpretations of the term deactivated.

The word deactivated can be interpreted to mean that an automatic valve closed be closed and deenergized for actuation with its main circuit breaker locked open. While this effectively prevents the valve from unintentional operation, it also, in many cases, deenergizes the position indication circuits. Verification of the position of valves inside containment, for example, would not be possible during operation in this condition. There are several ways of preventing valves from spurious or unintentional operation short of deactivating them by racking out the breaker. The definition of the word secured will provide the necessary facility to maintain position indication which taking measures to secure the valves and avoid misinterpretation of the existing word deactivated. Because this change merely clarifies existing requirements, i.e., valves will still be required to be prevented from unintentional operation by some mechanism, the proposed change is editorial in nature and is similar to Example (i) of 48 FR 14870.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for Licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards considerations.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: December 12, 1985.

Description of amendment request: The proposed amendment would increase the maximum average exposure of any fuel assembly not on the periphery of the core from 16,800 MWD/MTU to 18,000 MWD/MTU.

Date of publication of individual notice in Federal Register: January 21, 1986 (51 FR 2776).

Expiration date of individual notice: February 20, 1986.

Local Public Document Room Location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: November 27 and December 10, 1985.

Brief description of amendment: Technical Specification changes relating to the allowable range for the moderator temperature coefficient.

Date of publication of individual notice in Federal Register: December 27, 1985 (50 FR 53031).

Expiration date of individual notice: January 27, 1986.

Local Public Document Room Location: San Clemente Library, Avenida Del Mar, San Clemente, California 92672.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Alabama Power Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Unit Nos. 1 and 2, Houston County, Alabama

Date of application for amendments: September 19, 1985.

Brief description of amendments: The Administrative Controls section of the Technical Specifications were revised to reflect retitles of on-site and off-site licensee management. Other minor reorganizational changes were made for plant maintenance activities, and computer services and operations functions.

Date of issuance: January 27, 1986.

Effective date: January 27, 1986.

Amendment Nos.: 60 and 51.

Facilities Operating License Nos. NPF–2 and NPF–8. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register. November 6, 1985 (50 FR 46209).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1986.

No significant hazards consideration comments were received.

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

Arizona Public Service Company, et al. Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: October 16, 1985.

Brief description of amendment: The amendment extends the deadline for environmental qualification of electrical

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equipment from November 30, 1985 to March 30, 1986.

Date of issuance: January 29, 1986.
Effective date: November 18, 1985.
Amendment No.: 4
Facility Operating License No. NPF-41. Amendment revised the license.
Date of initial notice in Federal Register. December 18, 1985 (50 FR 51619).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 1986.

No significant hazards consideration comments were received.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Arizona Public Service Company, et al. Docket Nos. STN 50-528, and STN 50-529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, Arizona

Date of application for amendments: November 19, 1985.
Brief description of amendments: The amendments permit a one-time exception to the technical specifications for the purpose of making environmental qualification modifications to the hydrogen recombiner system.
Date of issuance: January 27, 1986.
Effective date: January 27, 1986.
Amendment Nos.: 5 (Palo Verde Unit 1) and 1 (Palo Verde Unit 2).
Facility Operating License Nos. NPF-41 ond NPF-46. Amendments revised the Technical Specifications.
Date of initial notice in Federal Register. December 18, 1985 (50 FR 51619).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 27, 1986.

No significant hazards consideration comments were received.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Commonwealth Edison Company, Dockets Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units Nos. 1 and 2, Benton County, Illinois

Date of application for amendments: June 28, 1985.
Brief description of omendments: These amendments would modify Section 3.22, 4.22 and 6.5.B. of the Technical Specifications, relating to mechanical and hydraulic snubbers, to conform with Standardized Technical Specifications.
Date of issuance: January 22, 1986.
Effective date: January 22, 1986.
Amendment Nos.: 93 and 83.
Facilities Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.
Date of initial notice in Federal Register. July 31, 1985 (50 FR 31068).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 22, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Zion Benton Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: June 7, 1985.
Brief description of amendment: Revises the Technical Specifications to change the limiting conditions for operation (LCO's) for containment cooling and Iodine Removal Systems and associated containment isolation provisions.

The amendment also contains editorial changes for consistency with the language used in other of the Indian Point 2 Technical Specifications.
Date of issuance: January 27, 1986.
Effective date: Immediately to be implemented within 30 days.
Amendment No.: 108.
Facilities Operating License No. DPR-26: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: August 14, 1985 (50 FR 32791).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: August 28, 1985.
Brief description of amendment: The amendment changes the Technical Specifications to permit an exception to the experience requirements for six identified candidates for senior reactor operator licenses.
Date of issuance: January 24, 1986.
Effective date: January 24, 1986.
Amendment No.: 2.
Facility Operating License No. NPF-35: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: November 6, 1985 (50 FR 46212). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 17, 1981.
Brief description of amendment: This amendment allows an increase in the reactor coolant system controlled leakage rate as shown in Specification 3.4.6.2.e, from 10 gpm to 12 gpm.
Date of issuance: January 23, 1986.
Effective date: January 23, 1986.
Amendment No.: 85.
Facility Operating License No. DPR-72: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: November 20, 1985, 50 FR 47862. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 28, 1985, as supplemented September 30, 1985.
Brief description of amendment: This amendment revises Figure 6-2 in the TMI-1 Technical Specifications. Figure 6-2 is an organization chart titled "TMI-1 Unit Staff." The amendment adds the positions titled "Manager(s), Plant Engineering" which report to the Plant Engineering Director, and limits the number of managers in these positions to six. In addition, the amendment changes the "Chemistry Supervisor" block title to "Staff Chemist."

Date of issuance: January 15, 1986.
Effective date: January 15, 1986.
Amendment No.: 112.
Facility Operating License No. DPR-50: Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: November 6, 1985, 50 FR 46214.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: July 31, 1985.
Brief description of amendment: The amendment updates Technical Specification Table 3.18-1, "Fire Detection Instrumentation," to include three locations where fire detection instrumentation has been added as a result of NRC acceptance of exemption requests.
Date of issuance: January 14, 1986.
Effective date: January 14, 1986.
Amendment No. 111.
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34942).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, Pennsylvania 17126.

Indiana and Michigan Electric Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: December 13, 1985, as supplemented December 19, 1985.
Brief description of amendment: The amendment extends on a one-time basis the 18 month surveillance frequency by 2 months for testing the reactor trip system instrumentation, the engineered safety feature actuation system instrumentation, the containment sump level and flow monitoring instrumentation, the reactor coolant pump system relief and block value instrumentation, the reactor coolant pump spray headers, the electrical power systems including: the alternate source, diesel generator and batteries, the energy core cooling system subsystem, some snubbers, and inspection of the divider barrier seal.
Date of issuance: January 28, 1986.
Effective date: January 28, 1986.
Amendment No. 78.
Facility Operating License No. DPR-74. Amendment revised the Technical Specifications.
Date of initial Notice in **Federal Register:** January 10, 1986 (51 FR 1315).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 1986.

No significant hazards consideration comments received: No.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of application for Amendment: June 6, 1985.
Brief description of amendment: This amendment revises the Technical Specifications by adding four smoke detectors in the Reactor Auxiliary Building and by correcting the identifying numbers of 3 containment isolation valves.
Date of issuance: January 27, 1986.
Effective date: January 27, 1986.
Amendment No.: 3.
Facility Operating License No.: NPF-38.

Amendment revised the Technical Specifications.
Date of initial Notice in **Federal Register:** The Commission's related evaluation is contained in a Safety Evaluation dated January 27, 1986.

No significant hazards consideration comments received: No.

Attorney for licensee: Mr. Bruce W. Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: October 17, 1985.
Brief description of amendment: Change Figure 6.2.1 to reflect a change in the management organization.
Date of issuance: January 16, 1986.
Effective date: January 16, 1986.
Amendment No.: 77
Facility Operating License No. DPR-63. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49787).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University College at Owsego, Penfield Library—Documents, Oswego, New York 13126.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: June 24, 1983.
Brief description of amendment: The amendment revises the Technical Specifications to provide limiting Conditions for Operation and Surveillance Requirements for the following items: (1) Overtime Limitations, (2) Reporting Safety/Relief Valve Failure and Challenges, (3) Reactor Core Isolation Cooling (RCIC) and RCIC Suction Transfer, (4) Isolation of RCIC Modifications and (5) Additional Monitoring Instrumentation. These changes relate to TMI Action Items covered by Generic Letters 83-02 and 83-36 dated January 10 and November 1, 1983 respectively. The items not included in this amendment either have been resolved or will be addressed separately.
Date of issuance: January 22, 1986.
Effective date: January 22, 1986.
Amendment No. 37.
Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41250).

The Commission's related evaluation of the amendment is contained in a safety Evaluation dated January 22,. 1986.

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No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Southern California Edison Company, et al. Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California.

Dates of application of amendments: November 27, 1985.

Brief description of amendments: The amendments change the Technical Specification 3/4.1.1.3, "Moderator Temperature Coefficient" to reflect the use of a more negative moderator temperature coefficient needed for end-of-cycle operations in Cycle 2.

Date of Issuance: 1/27/86.

Effective date: 1/27/86 and fully implemented within 30 days of issuance.

Amendment Nos.: 41 and 30.

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 27, 1985 (50 FR 53031).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated 1/27/86.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Tennessee Valley Authority , Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application of amendment: May 6, 1985.

Brief Description of amendment: The amendments change the Technical Specifications to require that acoustic monitors be one of the two required channels of pressurizer power relief valve and safety valve position indicators in accident monitoring tables and bases.

Date of Issuance: January 29, 1986.

Effective date: January 29, 1986

Amendment Nos.: 43 and 35.

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1985 (50 Fr 31072).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated Januaray 29, 1986

No Significant Hazards Consideration comments received: No.

Local Public Document Rom location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 13, 1985 as supplemented by letter dated November 15, 1985.

Brief description of amendment: Technical Specification 4.7.10.1.2.c has been revised to allow the 18-month inspection of a fire pump diesel engine to be performed when the plant is at power, as well as when the plant is shutdown. By letter dated November 15, 1985, the licensee informed us that the subject inspection will be performed either during shutdown or during power operation when the other two fire pumps are operable. By the November 15, 1985 letter, the licensee proposed wording for Specification 4.7.10.1.2.c to clarify this point.

Date of issuance: January 22, 1986.

Effective date: January 22, 1986.

Amendment No.: 11.

Facility Operating License No., NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38923).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 1986.

No significant hazards consideration comments received: No

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and Olin Library of Washington University, Skinker and Lindell Boulevard, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50-483, Callawary Plant, Unit No. 1, Callaway County, Missiouri

Date of amendment request: October 15, 1985, as supplemented by letter dated December 23, 1985.

Description of amendment request: The amendment revises Technical Specification Fiqures 3.9-1 and 5.6-1 with curves that represent criteria for storing Westinghouse optimized fuel or standard fuel in Region 2 of the spent fuel pool, revises the maximum initial enrichment limit for reload fuel in the reactor and for storage of reload fuel in the spent fuel pool from 3.5 weight percent uranium-235 to 4.2. weight percent uranium-235, and revises the nominal center-to-center distance between fuel assemblies placed in storage racks from 9.14 to 9.24 inches.

Date of issuance: January 24, 1986

Effective date: January 24, 1986

Amendment No.: 12

Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46218) as corrected by notice on December 2, 1985 (50 FR 49468)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library Of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Dated at Bethesda, Maryland, this 5th day of February 1986.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Acting Deputy Director, Division of PWR Licensing-A Office of Nuclear Reactor Regulation.

[FR Doc. 86-2881 Filed 2-11-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498A]

Houston Lighting and Power Co. et al. Receipt of Antitrust Information

The Houston Lighting and Power Company acting as agent for the City of Austin, the City Public Service Board of San Antonio, and Central Power and Light Company has submitted antitrust information in conjunction with the application for an operating license for a pressurized water reactor, known as South Texas, Unit 1, located in Matagorda County, Texas, 15 miles southwest of Bay City. The data submitted contain antitrust information for review, pursuant to NRC Regulatory Guide 9.3, necessary to determine whether there have been any significant changes since the antitrust settlement in September of 1980.

On completion of a staff antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not

been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the Federal Register notice. The results of any reevaluation that are requested will also be published in the **Federal Register** and copies sent to the Washington, DC and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW, Washington DC 20555, and in the local public document room at the Matagorda County Courthouse, 1700 7th Street, Bay City, Texas 77414.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred since the antitrust settlement should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation, on or before March 14, 1986.

Dated at Bethesda, Maryland, this 5th day of February, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-3096 Filed 2-11-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-63 issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 1, located in Oswego County, New York.

The amendment would modify Technical Specification Sections 3.6.2 and 4.6.2 allow Yarway water level column No. 12 to be out of service during the Spring 1986 refueling outage. This request is in accordance with the licensee's application for amendment dated January 15, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Yarway water level transmitter automatically initiates the core spray system which is required to be operational in the cold shutdown or refuel condition. In addition, the instrumentation that initiates a reactor scram is also required to be operational in the refuel condition. Since the core spray system or reactor scram can be actuated by the redundant Yarway water level column or by manual initiation in the event of a loss of water level in the reactor vessel, the proposed amendment will not increase the probability or consequences of an accident previously evaluated.

The proposed amendment will allow taking one of the Yarway water level columns out of service by cutting and capping the instrument line. Therefore, the proposal will not create the possibility of a new or different kind of accident from any accident previously evaluated.

While there is some reduction in the margin of safety as the tripping logic for the initiation of core spray is being reduced from a one out of two taken twice to a one out of one taken twice, it is not considered to be a significant reduction in the margin of safety. This will occur only during cold shutdown/refuel conditions when the reactor coolant is at or near ambient temperature. Therefore, the probability of both operable water level transmitters not accurately indicating a water level drop is extremely unlikely (i.e. there won't be any sensing line flashing due to high pressure and temperature). In addition, the core spray pumps and reactor scram can be manually initiated from the control room. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

By March 12, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petiton for

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leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first perhearing conference scheduled in the prceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the rquest for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski, Director, BWR Project Directorate #1, Division of BWR Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, D.C. 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the State University College at Oswego, Penfield Library Documents, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 10th day of February 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate #1 Division of BWR Licensing.

[FR Doc. 86–3217 Filed 2–11–86; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Proposed Revision of Circular A–21, "Cost Principles for Educational Institutions"

AGENCY: Office of Management and Budget.

ACTION: Proposed revision to OMB Circular A–21, "Cost Principles for Educational Institutions".

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed revision of Office of Management and Budget (OMB) Circular A–21, "Cost Principles for Educational Institutions." The revision is based on a recommendation by the Department of Health and Human Services and the Office of Science and Technology Policy to establish a fixed allowance for university administrative costs.

OMB Circular A–21 establishes Governmentwide accounting principles for the direct and indirect (allocated overhead) costs of Federal grants and contracts with colleges and universities. The Circular divides allocated overhead costs into seven "cost pools" that form the basis of a university's indirect cost rate. Four of these pools are administrative costs and, therefore, difficult to measure or evaluate in terms of their relevance to sponsored research projects. The remaining three cost pools are subject to less debate. They reflect costs of operation and maintenance, use charges for buildings and equipment, and libraries.

In Fiscal Year (FY) 1984 estimated Federal payments for university overhead were about $1.7 billion or 46% of an estimated $3.7 billion for direct scientific research.

The problem of rising overhead costs has been the subject of continuing and extensive debate by the Congress, the universities and research community, and others. This year the Inspector General for the Department of Health and Human Services (HHS) completed a study of indirect costs of federally-sponsored research, confirming the existence of opportunities to control these costs. Sharing the concern about the rapid rise in indirect costs, the Office of Science and Technology Policy (OSTP) provided HHS recommendations for Governmentwide options to control indirect cost growth.

As a followup, HHS proposed a ceiling on university administrative overhead costs for federally-sponsored grants and contracts. The proposal is consistent with a recommendation made by the OSTP that a fixed allowance, based on average rates over a five-year period, be used to reimburse administrative overhead costs. The 26% rate shown in the proposal is the average rate for all major universities over the last five years. The proposal would subsequently reduce that fixed rate to 20%.

A fixed rate for administrative costs will go a long way towards solving the problem of rising indirect costs and at the same time reduce paperwork for the institutions. It will reform and simplify the indirect cost process and eliminate the need for complex reporting to support charges for allocated administrative costs.

This proposed revision will also help reduce the budget deficit, consistent with the President's FY 1987 Budget and the Gramm-Rudman-Hollings "Balanced Budget and Emergency Deficit Control Act of 1985," Pub. L. 99–177. It is estimated that this proposal will save $100 million in FY 1987, and over $200 million in FY 1988.

In order to achieve these savings, agencies will limit Federal reimbursement for allocated administrative overhead to 26% by April 1, 1986, and then further limit reimbursement to 20% by April 1, 1987.

It is, therefore, proposed that the following changes be made to Section F. Identification and Assignment of Indirect Costs:

- Change the heading of Section F.3 to "Administrative Costs"
- Revise Section F.3 as follows:

(a) The expenses under this heading are those that have been incurred for: (1) General Administration and General Expenses; (2) Departmental Administration; (3) Sponsored Projects Administrtion; and, (4) Student Administration and Services.

(b) Effective April 1, 1986, administrative costs allocated to sponsored agreements shall be limited to 26% of modified total direct costs (as defined in G.2.) except that a lower rate shall be applicable where such rate is currently in effect for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services.

(c) Effective April 1, 1987 the rate specified in paragraph (b) shall be reduced to 20%.

(d) Implementation dates up to one year later than those specified in paragraphs (b) and (c) are authorized.

(e) No documentation shall be required to support the rates specified in paragraph (b) and (c). An institution shall not change its accounting practices to reclassify administrative costs from indirect costs to direct costs of sponsored agreements.

(f) Agencies may authorize reimbursement of additional administrative costs only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

- Delete Sections F.4., F.5. and F.7.

Comments: Comments should be submitted within 30 days to: Room SB 5000, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503.

Dated: February 7, 1986.

Carole J. Dineen,

Associate Director for Management.

[FR Doc. 86–3114 Filed 2–11–86; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Traffic Control Tower at Dade-Collier Airport, Miami, FL; Closing

Notice is hereby given that on or about February 15, 1986, the Airport Traffic Control Tower at Dade-Collier Airport, Miami, Florida, will be closed. Services to the general aviation public of Miami, Florida, formerly provided by this office, will be provided by the Miami Air Route Traffic Control Center in Miami, Florida. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Issued in Atlanta, Georgia, on February 4, 1986.

William H. Pollard,

Acting Director, Southern Region.

[FR Doc. 86–2996 Filed 2–11–86; 8:45 am]

BILLING CODE 4910–13–M

Airport Traffic Control Tower at Malcolm McKinnon Airport, St. Simons; Island, GA Closing

Notice is hereby given that on or about February 15, 1986, the Airport Traffic Control Tower at Malcolm McKinnon Airport at St. Simons Island, Georgia, will be closed. Services to the general aviation public of St. Simons Island, Georgia, formerly provided by this office, will be provided by the Brunswick Flight Service Station in St. Simons Island, Georgia, and the Jacksonville Air Route Traffic Control Center in Hilliard, Florida. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Issued in Atlanta, Georgia, on February 4, 1986.

William H. Pollard,

Acting Director, Southern Region.

[FR Doc. 86–2997 Filed 2–11–86; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

State Maritime School Contracts

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Intent.

SUMMARY: The Maritime Administration announces its intent not to renew its contracts with state maritime schools.

FOR FURTHER INFORMATION CONTACT: Arthur W. Friedberg, Director, Office of Maritime Labor and Training, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, Tel. (202) 426–5755.

SUPPLEMENTARY INFORMATION: The Maritime Administration does not intend to renew its existing agreements, as defined in 46 CFR 310.1(d) and 310.12–1, with the state maritime schools, including provisions pertaining to new student incentive payments, annual support payments and funds for maintenance and repair of training vessels.

These agreements will terminate on June 30, 1986. The affected schools are listed in 46 CFR 310.3 and are as follows:

California Maritime Academy, Vallejo, California
Maine Maritime Academy, Castine, Maine
Massachusetts Maritime Academy, Buzzards Bay, Massachusetts
State University of New York Maritime College, Ft. Schuyler, New York
Texas Maritime College, Texas A&M University, Galveston, Texas
Great Lakes Maritime Academy, Northwestern Michigan College, Traverse City, Michigan

This notice is in accordance with proposals contained in the President's FY 1987 budget message to Congress. If any new agreements are needed they will be developed in the near future. Any revisions to 46 CFR Part 310 also would be proposed for comment in a future rulemaking.

By Order of the Maritime Administration.

Dated: February 7, 1986.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 86–3098 Filed 2–11–86; 8:45 am]

BILLING CODE 4910–81–M

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Research and Special Programs Administration, Hazardous Materials Transportation; Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes March 13, 1986.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9563–N	W.R. Grace & Co., Lexington, MA	49 CFR 173.320(a) (1), (2)	To authorize highway shipment of nitrogen, refrigerated liquid (cryogenic liquid) as essentially non-regulated when offered under certain conditions. (Mode 1.)
9564–N	Alexander Manufacturing Co., Mason City, IA	49 CFR 173.365(a)(2)	To authorize a one-time shipment of 31 DOT Specification 17E and 17H drums, containing a poison B solid, weighing approximately 800 pounds each. (Mode 1.)
9566–N	United Technologies, San Jose, CA	49 CFR 173.7, 173.88, 173.92	To authorize shipment of rocket motors, Class B, in a propulsive state with igniters installed in a specially designed packaging and transport vehicle (Mode 1.)
9567–N	Burris Chemical, Inc., Charleston, SC	49 CFR 173.272(f)(i)(20)	To authorize shipment of sulfuric acid, classed as a corrosive material in concentrations of 77.5% to 95% in non-DOT specification portable tanks. (Mode 1.)
9568–N	AZTRON Chemical Services, Inc., South Houston, TX.	49 CFR 173.245(31), 173.249	To authorize shipment of sodium hydroxide in DOT Specification 12 gauge stainless steel MC-306 cargo tanks. (Mode 1.)
9569–N	Copps Industries, Inc., Menomonee Falls, WI	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids packed in one gallon or less tin cans secured in a polyethylene insert fitted to the lid of a 3½ gallon 29 gauge non-DOT specification steel pail containing a non-hazardous resin mix. (Mode 1, 2, 3, and 4.)
9570–N	Hoke Incorporated, Cresskill, NJ	49 CFR 173.3, Part 173, Subpart D, E, F, G	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT Specification 3E except they are constructed of monel metal for shipment of certain flammable and nonflammable gases, flammable liquids, corrosive materials and oxidizers. (Modes 1, 2, 3, and 4.)
9571–N	U.S. Department of Justice, Washington, DC	49 CFR 173.100(bb), 173.113(a)(1), 173.86	To authorize shipment of up to 5 grams of an explosive inspecially designed packaging as essentially nonregulated. (Mode 4.)
9572–N	DuBois Chemicals, Division of Chemed Corp., Cincinnati, OH.	49 CFR 173.256, 173.277	To authorize shipment of compound cleaning liquid not exceeding 14% hydrofluoric acid and hypochlorite solution not to exceed 16%, in 18 gauge steel 55 gallon capacity DOT Specification 6D drum with a DOT Specification 2U inside container (Modes 1, 2.)
9573–N	Chevron Resources Co., Grants, NM	49 CFR 173.425(c)	To authorize shipment of uranium ore, coated with dust retardant material, in open-top gondola cars. (Mode 2)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e))

Issued in Washington, DC, on February 4, 1986.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials Transportation.

[FR Doc. 86–3035 Filed 2–11–86; 8:45 am]

BILLING CODE 4910–60–M

Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Application To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes February 26, 1986.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2587–X	Denison, Inc., Fredonia, KA	2587
2787–X	U.S. Department of Defense, Falls Church, VA.	2787
2563–X	U.S. Department of Energy, Washington, DC.	3563
3667–X	Groendyke Transport, Inc., Enid, OK.	3667
3941–X	Kerr-McGee Chemical Corp., Oklahoma City, OK.	3941
4052–X	The Boeing Co., Seattle, WA	4052
4600–X	Great Lakes Chemical Corp., El Dorado, AR.	4600
4612–X	EM Science, Cincinnati, OH	4612
4612–X	Aldrich Chemical Co., Inc., Milwaukee, WI.	4612
4850–X	Halliburton Service, Inc., Duncan, OK.	4850
4884–X	Union Carbide Corp., Danbury, CT [1].	4884
5661–X	HTL Industries, Inc., Duarte, CA	5661
5691–X	U.S. Department of Energy, Washington, DC.	5691
5951–X	Dixie Petro-Chem, Inc., Dallas, TX.	5951
5951–X	Jones Chemicals, Inc., Caledonia, NY.	5951
5951–X	Hill Brothers Chemical Co., Tucson, AZ.	5951
6016–X	Guttman Welding Supply Co., Bells Vernon, PA.	6016
6016–X	Huber Supply Co., Mason City, IA.	6016
6309–X	Olin Corp., Stamford, CT	6309
6325–X	Mining Services International Corp., Salt Lake City, UT.	6325
6333–X	Allied Corp., Morristown, NJ	6333
6563–X	S.L.O. Health Products, Inc., Baywood Park, CA.	6563
6602–X	Great Lakes Chemical Corp., El Dorado, AR.	6602
6637–X	Russell-Stanley Corp., Red Bank, NJ.	6637
6735–X	Great Lakes Chemical Corp., El Dorado, AR.	6735
6787–X	Russell-Stanley Corp., Red Bank, NJ.	6787
6805–X	Union Carbide Corp., Danbury, CT.	6805
6904–X	Aldrich Chemical Co., Inc., Milwaukee, WI.	6904
6985–X	U.S. Department of Energy, Washington, DC.	6985
7011–X	Russell-Stanley Corp., City of Industry, CA.	7011
7052–X	Ballard Technologies Corp., North Vancouver, B.C..	7052
7052–X	Technical Oil Tool Corp., Norman, OK.	7052
7052–X	U.S. Department of Defense, Falls Church, VA.	7052
7052–X	Geophysical Research Corp., Tulsa, OK.	7052
7052–X	Datasonics, Inc., Cataumet, MA	7052
7052–X	Sonatech, Inc., Goleta, CA	7052
7052–X	Sparton Corp., Jackson, MI	7052
7052–X	Saft Corp., of America, Cockeysville, MD.	7052
7052–X	U.S. Department of Energy, Washington, DC.	7052
7052–X	Bren-Tronics, Inc., Commack, NY	7052
7052–X	Moli Energy Limited, Burnaby, B.C., Canada, PA.	7052
7052–X	Duracell Inc., Bethel, CT	7052
7052–X	Eagle-Picher Industries, Inc., Joplin, MO.	7052
7052–X	ENMET Corp., Ann Arbor, MI	7052
7052–X	Rockwell International Corp., Anaheim, CA.	7052
7052–X	Hazeltine Corp., Braintree, MA	7052
7454–X	E.I. du Pont De Nemours & Co., Inc., Wilmington, DE.	7454
7455–X	....do	7455
7477–X	Systron Donner Corp., Concord, CA.	7477
7548–X	U.S. Department of Defense, Falls Church, VA.	7548
7621–X	Great Lakes Chemical Corp., El Dorado, AR.	7621
7651–X	Austin Powder Co., Cleveland, OH.	7651
7654–X	Mallinckrodt, Inc., Paris, KY	7654
7674–X	U.S. Department of Defense, Falls Church, VA.	7674
7731–X	Minnesota Valley Engineering, Inc., New Prague, MN.	7731
7770–X	Eurotainer, S.A., Paris, France	7770
7891–X	Sigma-Aldrich Corp., Saint Louis, MO.	7891
7896–X	U.S. Department of Defense, Falls Church, VA.	7896
7915–X	Olin Corp., East Alton, IL	7915
7929–X	C–I–L Inc., North York, Ont. Canada.	7929
7943–X	Georgia-Pacific Corp., Montebello, CA.	7943
7948–X	Erickson, Inc., Richmond, CA	7948
7972–X	E.I. du Pont De Nemours & Co., Inc., Wilmington, DE.	7972
8006–X	Kilgore, Corp., Toone, TN	8006
8289–X	Olin Corp., East Alton, IL	8289
8299–X	HTL Industries, Inc., Duarte, CA	8299
8352–X	Degussa Corp., Teterboro, NJ	8352
8363–X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	8363
8390–X	Mallinckrodt, Inc., Paris, KY	8390
8390–X	Texas Instruments, Inc., Dallas, TX.	8390
8394–X	Whirlpool Corp., La Porte, IN	8394
8401–X	ERA Helicopters, Inc., Anchorage, AK.	8401
8413–X	Williams International, Walled Lake, MI [2].	8413
8427–X	U.S. Department of Defense, Falls Church, VA.	8427
8436–X	Pennwalt Corp., Buffalo, NY [3]	8436
8445–X	Kerr-McGee Chemical Corp., Oklahoma City, OK.	8445
8525–X	Associated Container Transportation (USA), New York, NY.	8525
8627–X	Exxon Chemical Co., Houston, TX.	8627
8627–X	Champion Chemicals, Inc., Houston, TX.	8627
8697–X	ERA Helicopters, Inc., Anchorage, AK.	8697
8717–X	Goodloe E. Moore, Inc., Danville, IL.	8717
8747–X	Copps Industries, Inc., Menomonee Falls, WI.	8747
8789–X	Turner, Sycamore, IL	8789
8811–X	American Hoechst Corp., Somerville, NJ.	8811
8870–X	Culligan International Co., Northbrook, IL.	8870
8870–X	Hach Co., Ames, IA	8870
8870–X	Everpure, Inc., Westmont, IL	8870
8885–X	Copps Industries, Inc., Menomonee Falls, WI.	8885
8987–X	Hedwin Corp., Baltimore, MD	8987
9005–X	Emerald Air, Austin, TX	9005
9077–X	Central Vermont Railway, Inc., St. Alban, VT.	9077
9094–X	CTL Distribution, Inc., Mulberry, FL.	9094
9105–X	Sea-Land Service, Inc., Elizabeth, NJ.	9105
9181–X	GTE Products Corp., Waltham, MA.	9181
9184–X	Cyanamid Canada, Inc., East Willowdale, Canada.	9184
9184–X	Midwest Carbide Corp., Keokuk, IA.	9184
9206–X	U.S. Department of Defense, Falls Church, VA.	9206
9209–X	Allied Chemical, Morristown, NJ	9209
9211–X	American Overseas Marine Corp., Quincy, MA.	9211
9213–X	Bulk-Pack, Inc., West Monroe, LA [4].	9213
9230–X	Nuclear Metals, Inc., Concord, MA.	9230
9241–X	Stoneco, Inc., Decono, CO	9241
9244–X	Stoneco, Inc., Decono, CO	9244
9400–X	Poly Cal Plastics, Inc., French Camp, CA [5].	9400
9545–X	Medical Diagnostics, Inc., Columbia, MD [6].	9545

[1] To authorize certain liquefied compressed gases as additional commodities in steel cylinders fabricated from 316 stainless steel in addition to the approved 304 stainless steel.

[2] To renew and to approve a high density polyethylene outside packaging instead of corrugated tri-wall container.

[3] To authorize an additional design cargo tank for shipment of organic peroxide solutions and to authorize use of a contract carrier.

[4] To authorize shipment of magnesium granules, classed as flammable solid.

[5] To authorize filling and discharge of portable tanks while attached to a chassis.

[6] To authorize rail as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
3330–P	Howmet Turbine Components Corp., Whitehall, MI.	3330
4453–P	Sierra Chemical Co., Reno, NV	4453
6045–P	Vickaise Corp., Chicago, IL	6045
6309–P	Foam Supplies Inc., Olivette, MO	6309
7052–P	Cincinnati Milacron Co., Worchester, MA.	7052
7052–P	The Fexboro Co., Fexboro, MA	7052
7052–P	GEODATA Systems Limited, Wiltshire, England.	7052
8244–P	Vann Systems, a Division of Halliburton Co., Houston, TX.	8244
8445–P	Merrell Dow Pharmaceuticals Inc., Cincinnati, OH.	8445
8988–P	Marathon Oil Co., Lafayette, LA	8988
8995–P	Foam Supplies Inc., Olivette, MO	8995
9130–P	Aquarius Pool & Spa Supply, Inc., Elk Grove Village, IL.	9130
9208–P	U.S. Department of Energy, Washington, DC.	9208
9262–P	Schlumberger Ltd., Houston, TX	9262
9262–P	Schlumberger Technology Corp., Houston, TX.	9262
9262–P	Gearhart Industries, Inc., Fort Worth, TX.	9262
9262–P	Schlumberger Offshore Services, Houston, TX.	9262
9275–P	Firmenich, Inc., Princeton, NJ	9275
9275–P	Mary Kay Cosmetics, Dallas, TX	9275
9275–P	Carter-Wallace, Inc., New York, NY.	9275
9529–P	Vickaske Corp., Chicago, IL	9529
9549–P	Schlumberger Ltd., Houston, TX	9549
9549–P	Schlumberger Technology Corp., Houston, TX.	9549
9549–P	Schlumberger Offshore Services, Houston, TX.	9549

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on February 4, 1986.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials Transportation.

[FR Doc. 86–3036 Filed 2–11–86; 8:45 am]

BILLING CODE 4910–60–M

[86–1]

Compressed Gas Cylinders; DOT Specification 39 and 4B240ET Cylinders; Potential Safety Problems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise interested persons that certain compressed gas cylinders marked as meeting either DOT specification 39 or

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4B240ET, in fact may not be in full compliance with those specifications, and consequently should not be used to transport in commerce hazardous materials required or permitted to be shipped therein.

FOR FURTHER INFORMATION CONTACT: James E. Henderson, Office of Hazardous Materials Transportation (OHMT), 400 Seventh Street, SW., Washington, DC 20590, (202) 755–5893.

SUPPLEMENTARY INFORMATION: In 1978, at the request of a shipper, Tube Manifold Corporation, 415 Bryant Street, North Tonawanda, New York, manufactured a number of non-DOT specification cylinders with a brazed ¾-inch National Gas Taper thread (NGI) fitting. There is reason to believe that these cylinders were filled with hazardous materials and shipped in probable violation of 49 CFR 171.2(a) and 173.302(a) of the Hazardous Materials Regulations. In 1980, while in transportation, one of these cylinders failed at the brazed joint where the threaded fitting is attached to the cylinder.

Recently, a cylinder manufactured by Tube Manifold in 1983, and marked to show compliance with the DOT–39 specification failed in the same manner. The size, design, and method of attachment of the threaded fitting are identical to those of the non-DOT specification cylinder involved in the first incident. An investigation by RSPA has determined that Tube Manifold has manufactured other cylinders marked as meeting DOT specification 39 or 4B240ET with this same fitting design and method of attachment.

In view of the mode of failure in these incidents, and possible problems with the company's manufacturing and testing practices, the RSPA believes that any cylinder marked by Tube Manifold Corporation as meeting DOT specification 39 or 4B240ET with a ¾-inch threaded fitting attached to the head by brazing may present a danger to carrier personnel and the public at large. Consequently, RSPA believes that persons in possession of such cylinders (marked on the head of cylinders marked DOT 4B240ET with Tube Manifold's manufacturer symbol "TMC", and on cylinders marked DOT 39 with Tube Manifold's registration number M–1045) should assure that they are in full compliance with the regulations. Any cylinders found not to be in compliance may not be used for the shipment of hazardous materials.

Persons in possession of cylinder subject to this notice who do not have the capability to determine compliance should contact Tube Manifold Corporation, 415 Bryant Street, North Tonawanda, New York 14120.

(49 U.S.C. 1802, 1803, 1804, 1805, 1806, 1808; 49 CFR 1.53(e))

Issued in Washington, DC on February 7, 1986 under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86–3034 Filed 2–11–86; 8:45 am]

BILLING CODE 4910–60–M

National Hazardous Materials Transportation Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Hazardous Materials Transportation Advisory Committee (NHMTAC) on February 27, 1986, 8:30 a.m. until 5:00 p.m. at the DOT Headquarters Building, 400 Seventh Street, SW., Room 2230, Washington, DC 20590.

The purpose of the meeting is to discuss revised reports on the findings and/or recommendations of the Committee's three working groups and to take action on these findings. The working groups are organized around the three areas of prevention, information exchange, and emergency response, which the Committee had previously determined to be issues of priority concern.

Attendance is open to the public but limited to the space available. Members of the public may present written statements to the Committee before or after any meeting of the Committee. Such statements should be sent to: National Hazardous Materials Transportation Advisory Committee, ATTN: Ms. Cecy Ivie, Office of Hazardous Materials Transportation, (DHM–2), Room 8432, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Dated: February 7, 1986.

Sherwood C. Chu,

Executive Director, NHMTAC, Office of Hazardous Materials Transportation.

[FR Doc. 86–3109, Filed 2–11–86; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: February 3, 1986.

The Department of the Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Bureau of Alcohol, Tobacco, and Firearms

OMB Number: 1512–0019
Form Number: ATF F 6A (5330.3C)
Type of Review: Extension
Title: Release and Receipt of Imported Firearms, Ammunition and Implements of War
Clearance Officer: Roy J. Betsill (202) 566–7641, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC. 20503
OMB Number: 1515–0118
Form Number: None
Type of Review: Extension
Title: Declaration by Originating Artist, or Seller, or Shipper that Goods Imported are Original Works of Art
OMB Number: 1515–0119
Form Number: None
Type of Review: Extension
Title: Trade Name Recordation
Clearance Officer: Vince Olive (202) 566–9181, U.S. Custom Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86–3043 Filed 2–11–86; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirement Submitted to OMB for Review

Dated: February 6, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission

may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0048.
Form Number: CF 7529.
Type of Review: Extension.
Title: Carrier Certification and Release Order.
Clearance Officer: Vince Olive (202) 566–9181, U.S. Customs Service, Room 6321, 1301 Constitution Avenue, NW., Washington, DC 20509.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86–3002 Filed 2–11–86; 8:45 am]

BILLING CODE 4810–25–M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 29
Wednesday, February 12, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 3461, January 27, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., February 10, 1986.

STATUS: Cancelled.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Ashworth, Secretary, Commodity Credit Corporation, Room 3086 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 447–8165.

Dated: February 7, 1986.

Richard L. Ashworth,

Secretary, Commodity Credit Corporation.

[FR Doc. 86–3159 Filed 2–10–86; 11:24 am]

BILLING CODE 3410-05-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:56 p.m. on Thursday, February 6, 1968, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available: (1) For the payment of insured deposits made in the Peoples National Bank and Trust Company, Albia, Iowa, which was closed by the Chief National Bank Examiner, Office of the Comptroller of the Currency, on Thursday, February 6, 1986, and (2) for an advance payment to uninsured depositors and other general creditors of the closed bank equal to 55 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(B)).

Dated: February 7, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–3163 Filed 2–10–86; 11:25 am]

BILLING CODE 6714-01-M

3

LEGAL SERVICES CORPORATION

Committee on the Provisions for the Delivery of Legal Services

TIME AND DATE: The meeting will commence at 8:30 a.m., Thursday, February 20, 1986, and continue until all official business is completed.

PLACE: Inn On The Point, Caribbean Room, 7627 W. Columbus Drive, Tampa, Florida 33607.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —October 18, 1985
   —November 7, 1985
3. Report on the Law School Civil Clinical Project
4. Discussion of Alternative Dispute Resolution
5. Presentation on Community Legal Education

CONTRACT PERSON FOR MORE INFORMATION: Daniel M. Rathbun, Staff Coordinator, Division of Policy Development (202) 863–1842.

Date issued: February 10, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–3209 Filed 2–10–86; 3:10 pm]

BILLING CODE 6820-35-M

4

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: The meeting will commence at 12:30 p.m., Thursday, February 20, 1986, and continue until all official business is completed.

PLACE: Inn On The Point, Caribbean Room, 7627 W. Columbus Drive, Tampa, Florida 33607.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —January 30, 1986
3. Lobbying—45 CFR 1612
   —Report from the Division of Policy Development
   —Public comment
   —Recommendations to Board
4. Private Attorney Involvement—45 CFR 1614 (Definition of "private attorney" in § 1614.1(d))
   —Report from the Division of Policy Development
   —Public comment
   —Recommendations to Board
5. Denial of Refunding—45 CFR 1625
   —Public comment
6. F.I.F.O.—Proposed 45 CFR 1631
   —Public comment
7. Other Regulations Adopted after April 27, 1984

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Counsel, Division of Policy Development, (202) 863–1842.

Date issued: February 10, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–3210 Filed 2–10–86; 3:11 pm]

BILLING CODE 6820-35-M

5

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, February 21, 1986, and continue until all official business is completed.

PLACE: Inn On The Point, Caribbean Room, 7627 W. Columbus Drive, Tampa, Florida 33607.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —January 31, 1986

3. Discussion and Action on the Recommendations of the Operations and Regulations Committee
   —Lobbying—45 CFR 1612
   —Private Attorney Involvement—45 CFR 1614
4. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863–1839.

Date issued: February 10, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–3211 Filed 2–10–86; 3:12 pm]

BILLING CODE 6820-35-M

6

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1363)

TIME AND DATE: 10:30 a.m. (E.S.T.), Friday, February 14, 1986.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on January 15, 1986.

Discussion Item

1. Low-Income Weatherization Efforts.
2. Staff recommendation regarding program for compliance with Environmental Protection Agency's Stack Height Regulation at Colbert, Johnsonville, Shawnee, and Widows Creek fossil plants.

Old Business Items

*1. Personal services contract with Quality Technology Company, Lebo, Kansas, for services in connection with the initiation and conduct of a TVA Employee Concern Program at TVA facilities.

*2. Supplement to personal services contract with Bechtel North American Power Corporation, Gaithersburg, Maryland, for performance of general engineering, design, and architectural services related to TVA's nuclear, fossil, and hydro power plants, requested by the Office of Engineering.

Action items

A–Budget and Financing

A1. Retention of new power proceeds and nonpower proceeds and payments to the U.S. Treasury in March 1986, pursuant to Section 26 of the TVA Act.

A2. Fiscal year 1986 operating budget financed from appropriations reflecting reductions by Gramm-Rudman-Hollings.

A3. Fiscal year 1986 capital budget financed from appropriations reflecting reductions by Gramm-Rudman-Hollings.

B–Purchase Awards

*B1. Requisition 52—Spot coal for Cumberland Steam Plant.

C–Power Items

C1. Proposed arrangements with Sequoyah Fuels Corporation concerning Uranium Hexafluoride Option Agreement.

C2. Agreement between the Institute of International Education and TVA whereby TVA will conduct an 8-week Energy Conservation Seminar for approximately 30 program participants from underdeveloped countries.

C3. Proposed form agreement amending Revised Home Insulation Program Agreement to include sunscreen option.

C4. Form agreement covering participation by distributors in TVA's New Cycle and Save Program.

D–Personnel Items

*D1. Employee loan agreement with Stone & Webster Engineering Corporation; Memorandum of understanding with Steven A. White; and Personal services contract with Stone & Webster Engineering Corporation relating to TVA's Nuclear Power Program.

*D2. Delegation of authority to increase amount of contract TV–66317A with Quality Technology Company, Inc., Lebo, Kansas, for services in connection with the TVA Employee Concern Program.

D3. Contract with Coopers & Lybrand, Knoxville, Tennessee, for professional accounting services.

E—Real Property Transactions

*E1. Grant of permanent easement to First Utility District of Knox County affecting three parcels of Fort Loudoun Reservoir land in Knox County, Tennessee, totaling 0.6 acres for a proposed sewerline and pumping station—Tract No. XTFL–120PS.

E2. Sale of noncommercial, nonexclusive permanent recreation easements to six applicants affecting a total of 1.07 acres of Tellico Reservoir shoreland in Loudon and Monroe Counties, Tennessee—Tract Nos. XTELR–43RE, –44RE, –46, –47RE, –48RE, and –49RE.

E3. Resolution designating approximately 0.008 acre of Tims Ford Reservoir land located in Franklin County, Tennessee, as surplus and authorizing its sale at public auction by Tennessee Elk River Development Agency as agent of TVA—Tract No. XTMFR–16.

F—Unclassified

F1. Establishment of the proposed TVA Savings and Deferral Retirement Plan; Proposed trust agreement between TVA and the TVA Retirement System; Proposed provisions of the Deferral Plan; Proposed trust agreement for Deferral Plan funds; and proposed amendments to the System's rules and regulations.

F2. Proposed amendments to TVA Retirement System rules and regulations.

F3. Resolution relating to procurement regulations issued by the General Services Administration implementing the Federal Property and Administrative Services Act of 1949.

F4. Subagreement to memorandum of agreement No. TV–23928A between TVA and U.S. Department of the Army, Corps of Engineers covering arrangements for TVA to perform engineering and design work for rehabilitation of Wilson Auxiliary Lock.

* Items approved by individual Board members. This would give formal ratification to Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: February 7, 1986.

John G. Stewart,

Manager of Corporate Administration and Planning.

[FR Doc. 86–3112 Filed 2–10–86; 8:45 am]

BILLING CODE 8120-01-M

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federal register

Wednesday
February 12, 1986

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 870

Cardiovascular Devices; Premarket Approval of the Replacement Heart Valve; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. 85N-0331]

Cardiovascular Devices; Premarket Approval of the Replacement Heart Valve

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the replacement heart valve, a medical device. The agency is also summarizing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and (2) the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Written comments by April 14, 1986; requests for a change in classification by February 27, 1986.

ADDRESS: Written comments or requests for a change in classification are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

SUPPLEMENTARY INFORMATION:

Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: class I, general controls; class II, performance standards; and class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, established as a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515, to premarket approval. (As an alternative procedure for premarket approval, section 515(f) of the act provides for the development of a PDP, the last stage of which is for FDA to declare that a PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or a notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing (1) the proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If the proceeding is terminated, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act requires that a PMA or a notice of completion of a PDP for the device be filed within 90 days of the date of promulgation of the final rule or 30 months after final classification of the device, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturers, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).

Classification of the Replacement Heart Valve

In the **Federal Register** of February 5, 1980 (45 FR 7948), FDA issued a final rule (21 CFR 870.3925) classifying the replacement heart valve into class III. The preamble to the proposal to classify the device (44 FR 13387; March 9, 1979) included the recommendation of the

Circulatory System Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the replacement heart valve. The preamble to the final rule classifying the device advised that the earliest date by which a PMA for the device (or a notice of completion of a PDP) could be required was September 30, 1982, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurred later.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the replacement heart valve, identified in § 870.3925(a), has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the replacement heart valve have an approved PMA or a PDP that has been declared completed.

Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is now proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the replacement heart valve within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the replacement heart valve during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days, of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.1(d), the preamble to any final rule based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c) (1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any replacement heart valve (1) that is not legally on the market on or before that date or (2) that is legally on the market on or before that date but for which a PMA or a notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the replacement heart valve is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

Description of Device

The replacement heart valve is a device intended to perform the function of any of the heart's natural valves, and is used when one (or more) of the natural heart valves is diseased, damaged, or malfunctioning. Human heart valves may become stenotic (the valve leaflets do not open fully and blood flow is impeded) or incompetent (the valve leaflets do not close properly and blood flows back through the valve when the valve should be closed). These conditions may occur due to disease or aging or they may be congenital. The replacement heart valve includes valves constructed of prosthetic materials, biologic materials (e.g., porcine valves), or valves constructed of a combination of prosthetic and biologic materials. The configuration of replacement heart valve products varies a great deal, and the design of a particular valve product is of importance in its effectiveness, as well as the complication rate observed.

In general, the replacement heart valve consists of a housing that is surgically affixed in the heart and a movable portion that performs the valve function, permitting unidirectional blood flow only. Materials used in the device should meet a generally accepted satisfactory level of tissue and blood compatibility, including requirements for adequate surface finish and cleanliness, which may affect the degree of compatibility. Performance characteristics, including blood flow properties and mechanical strength, should be maintained at a generally accepted satisfactory level and should be made known to the user through special labeling.

Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the replacement heart valve to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

Degree of Risk

Mechanical failure of replacement heart valves. A replacement heart valve may fail mechanically due to chemical or physical changes in portions of the valve, defects in materials, or faulty manufacturing processes. Occasionally, replacement heart valves fail to work properly due to malposition of the valve at the site of implantation although the valve is structurally intact (Ref. 19). Valve malfunction may occur due to impingement upon the valve mechanism by cardiac tissues or sutures (Ref. 28). Perier et al. reported an incidence of mechanical failure in 300 patients ranging from 0 for prosthetic valves to 5 percent for bioprostheses (Ref. 4). Replacement heart valves tend to fail in characteristic ways. The failure mode may be slow or sudden. If the replacement heart valve fails slowly, congestive heart failure may result. Reoperation will be required. Rapid failure results in the need for urgent reoperation, or may result in death. The reason for failure may be that of the valve sticking in the open position, sticking in the closed position, fracture of the occluder cage, or migration of the movable portion from the valve mechanism into the circulation (Ref. 20).

Unacceptable hemodynamic performance. A replacement heart valve may produce unacceptable

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hemodynamic performance, thus eliminating or reducing the benefits expected from surgery. Unacceptable obstruction to forward blood flow through the valve or unacceptable amounts of regurgitant flow may occur. These conditions may arise from replacement heart valve design, improper valve size for a particular patient, thrombus formation, perivalvular leak, or mechanical failure of the valve (Ref. 17). Attempts to achieve better hemodynamic performance have been one of the driving forces in the evolution of valve design.

Unacceptable hemodynamic performance usually requires reoperation for correction.

Perivalvular leak. Leakage of blood between the fixed portion of a replacement heart valve and heart tissues may occur. The incidence of this complication depends on replacement heart valve design, the condition of heart tissue at the site of implantation, and surgical technique (Ref. 12). A leak may also result from infection around the valve. Perivalvular leaks may develop early or late after implantation of a replacement heart valve, and may be of mild to severe degree. Leaks may be associated with hemolytic anemia or congestive heart failure of such severity as to require reoperation (Ref. 11).

Kastor et al. reviewed records respecting 203 patients in 1968 and found that the incidence of perivalvular leaks was 13 percent in patients receiving aortic, and aortic plus mitral, valve replacement (Ref. 11). Recently, the incidence at the Massachusetts General Hospital as reported by Johnson et al. was less than 1 percent (Ref. 13).

Surgical procedure. The operation required to implant a replacement heart value is not without risk. Cohn et al. reported operative mortality as 6.4 percent in a series of 640 patients undergoing aortic valve replacement (Ref. 3). The principal causes of death included myocardial infarction, low cardiac output, hemorrhage, and infection. Chaux et al. noted 6.6 percent mortality in 198 patients in the first 30 days after surgery; often the cause of death was from cardiac disease but not from the replacement heart valve (Ref. 29). Perier et al. observed approximately 15 percent mortality in 300 patients within 30 days after surgery; heart failure and valve problems were reported as the most common causes of death and were about equally represented (Ref. 4).

Thrombus (blood clot) formation on the device. Clotting occurs in association with replacement heart valves due to turbulence, stagnation, eddy currents, and shearing forces which may damage cellular elements in the blood and release biochemical factors that evoke the normal clotting reaction. In addition, valve materials may encourage clotting (Refs. 1, 2, and 3). Patients receiving replacement heart valves are usually placed on anticoagulant drugs to minimize clotting. Anticoagulant therapy may also produce morbidity as discussed below.

Thrombus formation on the valve may interfere with the action of the valve by producing obstruction of the valve opening (stenosis) or incomplete closure of the valve (incompetence) (Ref. 18). Such events commonly require reoperation. Stenosis or incompetence may occur slowly, or suddenly with catastrophic results.

The incidence of significant valve thrombus formation varies with replacement heart valve design and whether the mitral, aortic, or tricuspid valve is replaced (Ref. 26). Cohn et al. observed a figure of 0.34 percent per patient-year for tilting disc valves in studying 912 patients (Ref. 3). Perier et al. observed a thrombosis rate of 1.7 percent per patient-year in a study of 100 patients with various valves (Ref. 4).

Thromboembolism. Portions of clots formed in the heart may break off and travel through blood vessels to other organs which are then damaged by loss of blood supply. The greater the loss of blood supply the greater the damage to the affected organ. Examples of such injury include interference with brain circulation resulting in stroke and possible paralysis; loss of circulation to the heart resulting in myocardial infarction; loss of circulation to abdominal organs producing loss of function of portions of the digestive tract; loss of circulation to the extremities; and pulmonary infarction as a result of loss of circulation to the lungs. Thromboembolism may range from mild to severe, leading to transient injury or even death.

The incidence of thromboembolism is affected by replacement heart valve design and location and is decreased by the use of anticoagulant drugs. The reported incidence of fatal and nonfatal thromboembolism varies widely and is affected by statistical reporting methods. Edmunds, in a review of the literature respecting risks associated with replacement heart valves, tabulated rates varying from 0 per patient-year to 6.2 percent per patient-year for aortic valve prostheses (Ref. 10). Figures for mitral valve prostheses varied from 0.9 percent to 16.6 percent per patient-year, with most of the figures in the region of 4 percent per patient-year.

Anticoagulant complications. Implantation of replacement heart valves constructed entirely of prosthetic materials must be accompanied by the long-term use of anticoagulant drugs, which have been shown to significantly reduce the incidence of thrombosis and thromboembolism associated with the device (Refs. 6 and 10). Lefrak and Starr cited two reported series in which anticoagulants decreased the incidence of embolism from 20 percent to 7 percent (Ref. 7). Others have observed that patients with replacement heart valves have a threefold to sixfold increase in thromboembolic episodes without anticoagulants (Ref. 10).

The use of anticoagulants requires careful medical followup, and presents the hazard of bleeding episodes. Bleeding may occur into the brain, the gastrointestinal tract, the genitourinary system, and other locations in the body. Depending on severity and location, bleeding episodes may be mild to life threatening, and cause temporary or permanent disability (Ref. 10). Edmunds' review of the literature revealed an incidence of fatal bleeding episodes ranging from 0 to 1 percent per patient-year, with a mean of 0.17 percent per patient-year (Ref. 10). The weighted mean of 2.19 percent per patient-year was observed for serious, nonfatal hemorrhage due to anticoagulation.

Hemolytic anemia. A replacement heart valve produces some degree of hemolysis (breakdown of red blood cells) due to the exposure of blood to an artificial surface, turbulent blood flow, and shear forces (Ref. 8). Small degrees of hemolysis may not require treatment. Larger amounts of hemolysis may cause anemia requiring medication or replacement of the valve. Reoperation was required for anemia in 1.6 percent of 250 patients in 1 series, and 0.4 percent of 1,187 patients in another (Ref. 9).

Infection. A replacement heart valve may become the site of infection, either at the time of surgery, or later as a result of dental procedures, intravascular catheterization, or surgery elsewhere in the body (Ref. 14). Johnson et al. report that the incidence of infection is less than 2 percent, but often the outcome is fatal (Ref. 15). Lefrak and Starr report that mortality is 80 percent from infections occurring in the first few weeks after valve replacement (Ref. 16). The presence of infection can lead to other injury such as perivalvular leaks, valve disruption, and congestive heart failure, and can cause thrombus formation and thromboembolism even in the presence of anticoagulants. Treatment is reoperation as a rule, but prolonged antibiotic therapy alone is occasionally curative (Ref. 16).

Benefits of the Device

The benefits of the replacement heart valve are unquestioned in patients with valvular heart disease. Without the device, many such patients have a poor prognosis characterized by congestive heart failure, arrhythmias, chest pain, loss of consciousness, embolic phenomena, and death, as detailed by Wheeler et al. (Ref. 21). For some abnormalities of the natural heart valve, there is no satisfactory alternative to valve replacement (Ref. 22). Deformity of natural heart valves, when severe enough to produce significant stenosis or incompetence, is irreversible. The abnormal circulatory dynamics that result can be controlled by medication only to a limited degree. Following implantation of a replacement heart valve, many patients become asymptomatic and others experience a marked improvement in heart function and exercise tolerance. Oyer et al. cited improvement in New York Heart Association Class (a rating of cardiac function, with class 1 representing optimum function) from 2.8 to 1.2 (mean) after aortic valve replacement, and from 2.9 to 1.3 (mean) after mitral valve replacement in a series of 1,285 patients (Ref. 25).

As noted by Bristow and Kremkau, the hemodynamics of heart function, such as pressures in the heart, generally become normal at rest. During exercise, postoperative hemodynamics are improved as compared with preoperative values. Pressure gradients across the replacement heart valve are improved over the preoperative condition, although small pressure gradients remain (Ref. 26).

Information about the clinical course and survival of patients with untreated valvular heart disease has to be drawn from older data gathered before the use of replacement heart valves as the standard treatment became widespread. As an example of the effect of valvular heart disease on mortality, patients with aortic stenosis have an average survival of 5 years or less after the onset of symptoms; patients with aortic regurgitation have a 50 percent mortality 5 years or less after the onset of symptoms (Ref. 23). By contrast, patients who receive an aortic valve replacement have a 44 percent 15-year actuarial survival (Ref. 24). Another series showed 50 percent actuarial survival at 10 years for both mitral and aortic valve replacement (Ref. 27). Although these data are not strictly statistically comparable, the great difference in length of survival is of interest.

Discussion of Risks and Benefits

FDA classified the replacement heart valve into class III because insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish a performance standard to provide such assurance. FDA has weighed the probable risks and benefits to the public from use of the replacement heart valve and believes that the studies discussed above present evidence of significant risks associated with the use of the device.

FDA believes that the use of the replacement heart valve is effective in appropriate patients with valvular heart disease; in many such patients implantation of a valve represents the only effective treatment. The safety and effectiveness of a particular replacement heart valve, however, is related to its design and composition and to the manufacturing processes involved in its production. These facts, together with FDA's experience with premarket approval of postamendments replacement heart valves, confirm FDA's view that reasonable assurance of the safety and effectiveness of a particular replacement heart valve requires premarket approval.

Applicants should submit any PMA for a replacement heart valve product in accordance with FDA's "Guideline for the Arrangement and Content of a PMA Application." Any PMA for such a product is to contain the information required by section 515(c)(1)(A) of the act. Further guidance regarding the type of information required to be submitted is contained in "Replacement Heart Valves—Guidelines for Data to be Submitted to the Food and Drug Administration in Support of Applications for Premarket Approval" (available on request from Keith Lusted, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910).

Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in FDA's proposed rules to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the replacement heart valve is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by February 27, 1986.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the replacement heart valve is submitted, the agency will by April 14, 1986, after consultation with the appropriate FDA advisory committee and by order published in the Federal Register, either deny the request or give notice of its intent to intitiate a change in the classification of the advice in accordance with section 513(e) of the act and § 860.130 of the regulations.

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The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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20. Lefrak, E.A., and A. Starr, "Cardiac Valve Prostheses," pp. 386–389, New York, 1979, Appleton-Century-Crofts.
21. Wheeler, E.D., et al., *in* "The Practice of Cardiology," edited by R.A. Johnson, E. Haber, and W.G. Austen, pp. 435 and 479, Boston, 1980, Little, Brown & Co.
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26. Bristow, J.D., and E.L. Kremkau, "Hemodynamic Changes After Valve Replacement With Starr-Edwards Prostheses," *American Journal of Cardiology*, 35:716–724, 1975.
27. Hanson, H.E., et al., "Long-term Follow-up After Open Heart Valve Surgery," *Scandinavion Journal of Thoracic and Cardiovascular Surgery*, 18:105–110, 1984.
28. Jarvinen, A., et al., "Postoperative Disc Entrapment Following Cardiac Valve Replacement—A Report of Ten Cases," *Journal of Thoracic and Cardiovascular Surgery*, 32:152–156, 1984.
29. Cheux, A., et al., "The St. Jude Medical Bileaflet Valve Prosthesis," *Journal of Thoracic and Cardiovascular Surgery*, 88:706–717, 1984.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that eight firms will be affected by this proposed rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Comments

Interested persons may, on or before April 14, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before February 27, 1986, submit to the Dockets Management Branch a written request to change the classification of the replacement heart valve. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 870

Cardiovascular devices, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR Part 870 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; § 870.3925(c) also is issued under secs. 501, 515, 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)); 21 CFR 5.10.

2. In Part 870, § 870.3925 is amended by adding new paragraph (c), to read as follows:

§ 870.3925 Replacement heart valve.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (a date 90 days after date of promulgation of a final rule) for any replacement heart valve that was in commercial distribution before May 28, 1976, or that has on or before (a date 90 days after date of promulgation of a final rule) been found to be substantially equivalent to a replacement heart valve that was in commercial distribution before May 28, 1976. Any other replacement heart valve shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: November 6, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–3006 Filed 2–11–86; 8:45 am]
BILLING CODE 4160-01-M

federal register

Wednesday
February 12, 1986

Part III

Department of Education

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research; Final Funding Priorities for Research and Training Centers for Fiscal Year 1986; Notice

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research; Final Funding Priorities for Research and Training Centers for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education announces final funding priorities for research activities to be supported by the National Institute of Handicapped Research (NIHR) through the Research and Training Centers program in Fiscal Year 1986. NIHR is required under the Rehabilitation Act of 1973 as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. These priorities are derived from the NIHR Long-Range Plan and are articulated within the goals, objectives, and research activities specified in the Plan. These priorities are for the Research and Training Center (RTC) program only; priorities which NIHR expects to support under other programs were published on November 13, 1985 at 50 FR 46810 and on November 26, 1985 at 50 FR 48738.

EFFECTIVE DATE: These priorities will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3070), Washington, DC 20202. Telephone (202) 732–1139; Deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

SUPPLEMENTARY INFORMATION: Under this program, awards are issued to public and private agencies and organizations, including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months.

The purpose of the awards is to support the establishment and operation of Rehabilitation Research and Training Centers to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services.

The three final priorities contained in this notice represent areas in which NIHR intends to support Research and Training Centers through grants or cooperative agreements. Research and other activities which NIHR intends to procure through contracts will be announced by Requests for Proposals published in the *Commerce Business Daily;* other research priorities which NIHR intends to support under other grant program mechanisms were published on November 13, 1985 at 50 FR 46810 and on November 26, 1985 at 50 FR 48738.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priorities contained in this notice cover research and related activities to be conducted through Rehabilitation Research and Training Centers. Following is a brief description of this program.

Research and Training Centers. (RTCs) have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RTC's must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally, each Center conducts a program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as undergraduate and graduate texts and curricula, in-service training, and continuing education. Each RTC will conduct a program of rehabilitation research training which will contribute to the number of qualified researchers working in the area of rehabilitation research and will also conduct state-of-the-art studies in relevant aspects of their priority areas.

Priorities

Cardiovascular Rehabilitation

Currently, 4 million persons in the United States have some manifestation of coronary heart disease. Of these, approximately 600,000 will survive a myocardial infarction; while some of these survivors will return to their customary activities after convalescence, others will experience complications which will interfere with their rehabilitation. Prior evidence indicates that approximately one-third of the survivors will continue to experience cardiac symptoms in performing their daily activities, and may experience psychological difficulties which further impede their return to full functioning.

Research on cardiac improvement is needed to identify physical and psychological factors associated with reinfarction and rehabilitation, to refine quantitative methods for assessing cardiac performance, to develop and quantify norms for the demands made upon cardiac capacity by certain kinds of physical activity and psychological stress, and to study differences among various subgroups of survivors of myocardial infarction.

An absolute priority will be given to applications for an RTC which would:

—Evaluate the benefits and hazards of various prescribed exercise testing programs on survivors of myocardial infarction, including the changes that may be necessary to strengthen the protocols developed for exercise testing.
—Determine the factors in heart lesions that lead some patients to limit their exercise or fail to achieve normal exercise performance for their age following definitive coronary artery or valve repair;
—Determine the predictors that reflect progression of the athero-sclerotic process or additional impairment;
—Identify patient personality characteristics that enhance rehabilitation and those that retard it;
—Develop effective interventions to prevent and treat complications of cardiovascular disease and infarction;
—Identify and disseminate strategies which lead to more rapid return to normal daily activities and return to full employment following myocardial infarction; and
—Identify any technological devices which aid the rapid return to full employment after myocardial infarction.

Rehabilitation of Blind and Severely Visually Impaired Individuals

The blind and visually impaired population, particularly that of working age individuals, represents one of the biggest challenges to public and private rehabilitation agencies in the United States today. About two-thirds of this population is not working, and

underemployment has been documented to be a significant problem for this group.

Approximately 400,000 persons report a work disability due to visual problems. This population is projected to increase by 8 percent between 1980 and 1990 with the largest increase in the 20 to 44 year old category. Some additional data reported by NIHR-supported researchers indicate that many blind and visually impaired individuals served by private and public rehabilitation agencies have additional disabilities with resulting functional limitations that increase the challenge to the rehabilitation service delivery system. The problem is further complicated by the lower level of education of visually impaired persons as compared to other working-age Americans. Sixty percent of blind and severely visually impaired persons of working age have not graduated from high school. The intrinsic attributes of blindness and visual impairments such as reduced visual acuity are made more complex by the extrinsic attributes of blindness such as negative stereotyping and the failure of society to acknowledge the potential productivity of blind and visually impaired people. An RTC is needed to address the rehabilitation needs of blind and visually impaired youth in transition to the workplace and blind and visually impaired adults of working age, including those of older working age.

An absolute priority will be given to applications for an RTC which would:

—Identify and classify the career transition problems of blind and visually impaired youth and adults in order to develop strategies which may be used by consumers and professionals to reduce the unemployment and underemployment problems of blind and visually impaired persons;
—Identify management practices and other job tasks performed by blind persons in the operation of business enterprises established under the authority of the Randolph-Sheppard program and identify, introduce, and evaluate state-of-the-art technology which could be used to facilitate the increased productivity of the Business Enterprise Program;
—Develop long-term and short-term multidisciplinary training programs for rehabilitation and eye care professionals, educators, especially vocational educators, employers, and blind and visually impaired consumers concerned with rehabilitative and educational services;
—Develop curricula for graduate level courses in rehabilitation counseling of blind persons as well as short and long-term inservice training, continuing education, and other training mechanisms for professionals working with blind persons;
—Develop work assessment devices and techniques and study existing techniques to assist blind and visually impaired consumers and professionals to identify appropriate career objectives, training and employment opportunities;
—Develop a low vision database relating demographic characteristics, diagnoses, aids prescribed, treatment intervention, client employment history, and visual characteristics of the job environment to rehabilitation outcome;
—Identify the costs in time and money associated with blindness and visual impairment and the relationship of the costs of other factors, e.g., unemployment rate, in the United States as they affect the rehabilitation process;
—Study the Business Enterprise Program of the State licensing agencies in the areas of investment patterns, site selection, and facility design and develop training materials for inservice and short-term training programs based on best practices and innovative techniques;
—Provide technical assistance to State and private rehabilitation agencies and service providers through the assessment of factors in the rehabilitation process which lead to the competitive employment of blind and visually impaired individuals, especially those who are multiple handicapped;
—Investigate strategies and techniques for assessing the visual functioning of the low vision individual in the workplace and develop procedures to assist rehabilitation practitioners and consumers to use these strategies and techniques in the job modification and accommodation process;
—Investigate areas of current concern to those involved in the rehabilitation of deaf-blind persons and provide state-of-the-art training opportunities for those service providers who are involved in the career development and job placement of deaf-blind persons; and
—Identify the roles and functions of rehabilitation teachers, orientation and mobility instructors, and rehabilitation counselors for the blind in public and private rehabilitation agencies to be used as a base for developing curricula for long-term and short-term training programs.

Rehabilitation of Deaf and Hearing-Impaired Individuals

The estimated 14.2 million individuals with hearing impairment comprise the largest single disability group in the United States. A Research and Training Center on Deafness and Hearing Impairment is needed to address problems of the vocational, personal, social, and community adjustment problems resulting from severe hearing impairment and to disseminate and promote the use of research findings and knowledge through training and materials development.

An absolute priority will be given to applications for an RTC which would:

—Assess the factors which promote successful transition of deaf and severely hard-of-hearing individuals from educational and training settings to the work world, and devise and test rehabilitation interventions to facilitate this transition.
—Develop and test models for developing long-term supportive linkages between Vocational Rehabilitation agencies and employers to enhance the probability of successful work adjustment and career development for deaf and severely hard-of-hearing individuals;
—Assess the rehabilitation needs of, and identify effective rehabilitation interventions to address, the chronically unemployed, underemployed, and displaced deaf or severely hard-of-hearing worker;
—Devise strategies to assist families and rehabilitation personnel to work cooperatively and effectively in providing independent living or rehabilitation services that make optimal use of the client's personal resources (community, peers, interests, and abilities);
—Develop and test models to assess and address the needs of deaf and severely hard-of-hearing individuals to acquire the social and community living skills necessary for successful psychosocial functioning in the workplace and the community.
—Identify and evaluate innovative and effective practices in independent living services for severely disabled deaf and deaf-blind individuals in the United States and increase the use of these practices in other communities through training, dissemination, and technical assistance networks;
—Develop and test computer—assisted occupational information and exploration systems in the career guidance and counseling of deaf and severely hard-of-hearing rehabilitation clients;

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—Develop and test the use of a computerized statewide job bank which deaf applicants can access to obtain listing of employers who hire and/or are receptive to employing qualified deaf workers;
—Develop, validate, and calculate norms for a manual communication test battery which can be used in the rehabilitation assessment of the receptive and expressive sign language skills of deaf individuals;
—Provide technical assistance to State rehabilitation agencies and other service providers in the development and implementation of rehabilitation services for deaf and severely hard-of-hearing individuals; and
—Develop training programs for rehabilitation personnel in the core areas of: (1) Rehabilitation evaluation, (2) rehabilitation guidance, counseling, and placement, and (3) personal and social adjustment strategies and interventions.

Summary of Comments and Responses

On September 16, 1985, the Secretary published three proposed priorities in the **Federal Register** (50 FR 37571) for public comment. NIHR received 35 comments during the comment period. The substantive comments were generally favorable. There were, however, some negative comments relating to information which was contained in the Notice of Transmittal of Applications, which was published in the same issue of the **Federal Register.** These comments concerned factors as the amount of funds reserved for the Centers or other items not directly pertinent to the proposed priorities. The substantive comments and the Secretary's response are summarized below:

Comment: One commenter stated that further research in the area of exercise testing and documentation of the natural history of disease and recovery for survivors of myocardial infarction would be redundant.

Response: No change has been made. There are gaps in knowledge about the use and impact of exercise in cardiac patients, including gaps in knowledge about the effects of exercise in various subgroups of the population and in combination with other types of treatment.

Comment: This commenter also suggested that more emphasis should be placed on the development and testing of new intervention for use with survivors of myocardial infarctions.

Response: No change has been made. The Secretary notes that the priority provides for a broad scope of work "to identify and disseminate strategies which lead to a more rapid return to normal daily activities and return to work . . ." which would encompass any research on new interventions. The objectives described in the priority statement are considered the minimum scope of activities, but are not meant to restrict the Center in terms of other relevant research.

Comment: One commenter urged that the Center on deafness and hearing impairment be made a research center on all communicative disorders.

Response: No change has been made. This Center is intended to focus primarily on the rehabilitation and vocational problems of deaf individuals. NIHR has several other projects and Centers which address problems of hard-of-hearing persons and those with language disorders.

Comment: One commenter recommended that the Center on Rehabilitation of Blind and Severely Visually Impaired Individuals also focus on the deaf-blind.

Response: No change has been made. The statement of the priority does include some activities related to the deaf-blind population. The principal thrust of this Center is intended to be the vocational and other rehabilitation problems of blind and visually impaired individuals; the research and training issues involved would be substantially different if the focus were on deaf-blind individuals.

(29 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: February 6, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-3072 Filed 2-11-86; 8:45 am]

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H.R. 4027/Pub. L. 99-242

Extending the waiver authority of the District of Columbia Revenue Bond Act of 1985 to certain revenue bond acts of the District of Columbia, and for other purposes. (Feb. 7, 1986; 100 Stat. 4; 1 page) Price: $1.00

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2-13-86
Vol. 51 No. 30

federal register

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February 13, 1986

**********5-DIGIT 48106

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Briefings on How To Use the Federal Register—
For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

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Administrative Practice and Procedure
Securities and Exchange Commission
Air Pollution Control
Environmental Protection Agency
Animal Diseases
Animal and Plant Health Inspection Service
Animal Drugs
Food and Drug Administration
Aviation Safety
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Bridges
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Federal Crop Insurance Corporation
Drug Traffic Control
Drug Enforcement Administration
Endangered and Threatened Species
Fish and Wildlife Service
Fisheries
National Oceanic and Atmospheric Administration
Food Additives
Food and Drug Administration
Freedom of Information
Postal Service

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

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Government Procurement
General Services Administration

Hazardous Waste
Environmental Protection Agency

Income Taxes
Internal Revenue Service

Loan Programs—Education
Education Department

Marine Safety
Coast Guard

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Agricultural Marketing Service

Milk Marketing Orders
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Motor Vehicle Safety
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Security Measures
Coast Guard

Surface Mining
Surface Mining Reclamation and Enforcement Office

Underground Mining
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Water Pollution Control
Delaware River Basin Commission

Wine
Alcohol, Tobacco and Firearms Bureau

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center.
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
Denver Federal Information Center.
303-236-7181

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Presidential Documents

Title 3—

The President

Proclamation 5440 of February 11, 1986

National Burn Awareness Week, 1986

By the President of the United States of America

A Proclamation

Burn injuries are one of the leading causes of accidental death in the United States. Every year, approximately two million people in this country are victims of burn injury and about twelve thousand of these victims die.

The rehabilitative and psychological impact of burns is devastating. Children, the elderly, and the disabled are most likely to suffer serious burns.

It is estimated that approximately 75 percent of all burns could be prevented by proper education of children and adults. Therefore, it is appropriate that all Americans have called to their attention the risks from burn accidents and the importance of burn prevention programs.

The Congress, by Senate Joint Resolution 234, has designated the week beginning February 9, 1986, as "National Burn Awareness Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of February 9, 1986, through February 15, 1986, as National Burn Awareness Week, and I call upon the people of the United States and all Federal, State, and local government officials to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 3370
Filed 2-12-86; 10:32 am]
Billing code 3195-01-M

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Presidential Documents

Proclamation 5441 of February 11, 1986

National Humanities Week, 1986

By the President of the United States of America

A Proclamation

In 1986, the United States celebrates the twentieth anniversary of the establishment of the National Endowment for the Humanities. The overriding goal of this small but important Federal agency is the promotion of humanities scholarship and programming.

The study of the humanities increases our understanding of the great traditions of civilization and of the intellectual heritage of mankind. In partnerships with State and local governments, private foundations, and corporations, the National Endowment for the Humanities, over the past two decades, has provided critical leadership and direction for both individuals and institutions seeking to improve our understanding of the humanities.

As a Nation, we have benefitted from the fruits of this humanities programming in a variety of ways: through improvements in humanities education at all levels; through scholarly research at the cutting edge of contemporary issues in the humanities; and through programs and projects in museums, libraries, and the media that foster a heightened understanding of the humanities across America.

The Congress, by Senate Joint Resolution 219, has designated the week beginning February 9, 1986, as "National Humanities Week, 1986" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning February 9, 1986, as National Humanities Week, 1986. I call upon the people of the United States to observe the week with appropriate conferences, programs, ceremonies, and activities recognizing the importance of the humanities in the lives of all Americans and acknowledging the significant role the National Endowment for the Humanities has played in sustaining and enriching our cultural heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of February, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-3371
Filed 2-12-86; 10:33 am]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 403, 404, 408, 409, 411, 413, and 439

[Doc. No. 0058A]

Crop Insurance Regulations; Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on September 30, 1985 (50 FR 39635). The interim rule amended the Eastern and Western U.S. Apple, Peach, Almond, and Grape Crop Insurance Regulations, effective for the 1985 crop year only, and the Arizona-California Citrus and Texas Citrus Crop Insurance Regulations, effective for the 1986 crop year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is continued in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State; or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, September 30, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 39635, amending the Eastern and Western U.S. Apple, Peach, Almond, and Grape Crop Insurance Regulations, (7 CFR Parts 404, 408, 403, 439, and 411), effective for the 1985 crop year only, and the Arizona-California Citrus and Texas Citrus Crop Insurance Regulations (7 CFR Parts 409 and 413), effective for the 1986 crop year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 403, 404, 408, 409, 411, 413, and 439

Crop Insurance, Peach, Western U.S. Apple, Eastern U.S. Apple, Arizona-California Citrus, Grape, Texas Citrus, and Almond.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on September 30, 1985, at 50 FR 39635, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on January 8, 1986.

Edward Hews,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3153 Filed 2-12-86; 8:45 am]
BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86-011]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: The document amends the regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Nevada from Class B to Class A. This action is necessary because it has been determined that this State meets the standards for Class A status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the State of Nevada.

DATES: Effective date of the interim rule is February 13, 1986. Written comments must be received on or before April 14, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782.

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Comments should state that they are in response to Docket No. 86-011. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:
Dr. M. J. Gilsdorf, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5961.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine. This document changes the classification of the State of Nevada from Class B to Class A.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and cattle at slaughtering establishments, and provisions for indentifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the State of Nevada was classified as a Class B State. It had been necessary to classify this State as Class B rather than Class A because of the herd infection rate. To attain and maintain Class A status, States with more than 10,000 herds must maintain an accumulated 12-month herd infection rate for brucellosis not to exceed 2.5 herds per 1,000 (0.25 percent). With respect to the herd infection rate for States with 10,000 or fewer herds, the regulations provide for a special review by the Deputy Administrator to determine if such small herd population States qualify for Class A status. Locations of herds, sources of current infections, and control measures taken by the State are considered as a part of this review. A review of brucellosis program records establishes that the brucellosis classification of the State of Nevada, which has approximately 1,700 herds of cattle, should be changed to Class A since this State now meets the criteria for classification as Class A.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the State of Nevada reduces certain requirements on the interstate movement of these cattle. Cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from the State of Nevada.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register**.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. Section 78.20(b) is amended by adding "Nevada," immediately before "New Jersey,".

3. In § 78.20(c), "Nevada," is removed.

Done at Washington, DC, this 10th day of February 1986.

Billy G. Johnson,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-3226 Filed 2-12-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ANE-4; Amdt. 39-5236]

Airworthiness Directives; Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires visual inspection of the combustion chamber outer case for cracks adjacent to the rear flange bolt holes on certain PW JT8D engines. This AD is needed to prevent rupture of the combustion chamber outer case due to fatigue cracking, which could result in inflight shutdowns, engine cowl release, or airframe damage.

DATE: Effective—February 28, 1986.

Compliance schedule—As prescribed in body of the AD.

Comments for inclusion in the docket must be received on or before April 28, 1986.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-4, 12 New England Executive Park, Burlington, Massachusetts 01803.

or delivered in duplicate to Room Number 311 at the above address.

Comments delivered must be marked: Docket Number 86-ANE-4.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room Number 311, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:
Jim Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7121.

SUPPLEMENTARY INFORMATION: The FAA has determined that combustion chamber outer cases develop cracks during service. These cracks result from low cycle fatigue initiating in the higher stressed areas of the case. Analytical studies, substantiated by service experience, identified a high stressed area at the rear flange bolt holes. Fatigue cracks can initiate in the rear flange bolt holes, propagate into the wall of the case, and progress in an axial direction until the case ruptures. To date, there have been a total of 35 rear flange cracks reported on combustion chamber outer cases. Two resulted in uncontained ruptures, causing both engine cowling and airframe damage.

Since this condition is likely to exist or develop on other engines of the same type design, an AD is being issued which requires initial and repetitive visual inspections of the combustion chamber outer case adjacent to the rear flange. The purpose of these inspections is to identify and remove from service combustion chamber outer cases which have developed rear flange cracks.

The visual inspection may be accomplished on-wing by using an extended mirror inserted through the tailpipe in conjunction with a white light. The case wall adjacent to the rear flange area should be completely inspected for cracks which have propagated from the flange into the wall of the case. The equipment required to accomplish this inspection is a standard shop mirror on an extended rod and a white light.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical, and good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedures, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All commments submitted will be available for examination in the Rules Docket at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-4". The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of the final evaluation when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

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Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to § 39.13 the following new AD:

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent crack propagation and subsequent combustion chamber outer case rupture, visually inspect in accordance with Paragraph (f) below, combustion chamber outer case assembly Part Numbers 490547, 542155, 616315, 728629, 730413, 730414, 767197, and 767279, for rear flange cracks as follows:

For cases with total cycles in service on the effective date of this AD of 35,000 cycles or more for JT8D-1, -1A, -1B, -7, -7A, and -7B engines, 30,000 cycles or more for JT8D-9, -9A, and -11 engines, or 25,000 cycles or more for JT8D-15, -15A, -17, -17A, -17R, and -17AR engines, comply with paragraphs (a) through (e) within the next 200 cycles in service.

For cases with total cycles in service on the effective date of this AD of less than 35,000 cycles for JT8D-1, -1A, -1B, -7, -7A, and -7B engines, less than 30,000 cycles for JT8D -9, -9A, and -11 engines, or less than 25,000 cycles for JT8D-15, -15A, -17, -17A, -17R, and -17AR engines, comply with paragraphs (a) through (e) before the accumulation of 35,200 total cycles, 30,200 total cycles, or 25,200 total cycles in service, respectively.

(a) Inspect cases installed on PW JT8D-1, -1A, -1B, -7, -7A, and -7B engines, unless already accomplished within the last 2,600 cycles in service, and thereafter, reinspect at intervals not to exceed 3,000 cycles in service, since last inspection.

(b) Inspect cases installed on PW JT8D-9, -9A, and -11 engines, unless already accomplished within the last 1,600 cycles in service, and thereafter, reinspect at intervals not to exceed 2,000 cycles in service, since last inspection.

(c) Inspect cases installed on PW JT8D -15, and -15A engines, unless already accomplished within the last 1,300 cycles in service, and thereafter, reinspect at intervals not to exceed 1,500 cycles in service, since last inspection.

(d) Inspect cases installed on PW JT8D-17, -17A, -17R, and -17AR engines, unless already accomplished within the last 800 cycles in service, and thereafter, reinspect at intervals not to exceed 1,000 cycles in service, since last inspection.

(e) Remove cracked cases from service prior to further flight.

(f) Inspect by inserting an extended mirror through the tailpipe, and with a white light, examine the case wall within 3 inches of the rear flange and 360 degrees circumferentially around the case adjacent to the rear flange for cracks.

Notes.—(1) Inspection of the case rear flange at shop visit by visual or fluorescent penetrant inspection is considered an equivalent means of inspection for the purposes of this AD.

(2) Cases for which the total cycles in service cannot be determined from engine records or manufacturer's production records must be assigned a total cycle count equal to the highest cycle engine of that model in the owner/operators fleet for the requirements of this AD.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

This amendment becomes effective on February 28, 1986.

Issued in Burlington, Massachusetts, on February 5, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-3134 Filed 2-10-86; 10:16 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-32]

Aspen, CO, Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes 700' and 1,200' transition areas at Aspen, Colorado. It provides controlled airspace for aircraft executing a new instrument approach procedure to Aspen-Pitkin County Airport. The intended effect is to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions.

Aviation in the Aspen area has needed a public instrument approach procedure for several years. Recent development of a VOR/DME approach has followed a lengthy and difficult process to install a VOR atop Red Table Mountain. It is necessary to implement the procedure as soon as possible in order to make the associated safety improvements during the winter season when they are most needed. Therefore, it is determined to be in the public interest to make the procedure effective on March 13, 1986, instead of the next available charting date 56 days later.

EFFECTIVE DATE: 0901 UTC, March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, Federal Aviation Administration, Docket No. 85-ANM-32, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2530.

SUPPLEMENTARY INFORMATION:

History

On January 22, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) to establish 700' and 1,200' transition areas at Aspen, Colorado (51 FR 2896).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This Amendment to Part 71 of the Federal Aviation Regulations provides controlled airspace for aircraft conducting instrument flight rule (IFR) operations.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69].

2. By amending § 71.181 as follows:

Aspen, Colorado (New)

That airspace extending upward from 700' above the surface within an 11 mile radius centered on lat. 39°14'15", long. 106°52'30"W; and that airspace extending upward from 1,200' above the surface beginning at lat. 39°47'45"N, long. 107°09'00" W; to lat. 39°47'45"N, long. 106°43'30" W; to lat. 39°16'30"N, long. 106°43'30"W; to lat. 39°16'30"N, long. 107°09'00"W, to the point of beginning, excluding the Eagle, Colorado, transition areas.

Issued in Seattle, Washington, on February 4, 1986

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-3135 Filed 2-10-86; 10:31 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-26]

Transition Area Revocation; Grafton, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to revoke the transition area currently designated for Grafton, North Dakota and to return the associated 700-foot area to a non-controlled status.

EFFECTIVE DATE: 0901 G.m.t., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Thursday, December 26, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the transition area designated for Grafton, North Dakota (50 FR 52796).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the transition area currently designated for Grafton, North Dakota and to return the associated 700-foot area to a non-controlled status.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Grafton, North Dakota [Revoked]

Issued in Des Plaines, Illinois, on February 4, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86-3138 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-27]

Transition Area Alteration; Gwinner, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: The nature of this action is to revoke the transition area currently designated for Gwinner, North Dakota and to return the associated 700-foot area to a non-controlled status.

EFFECTIVE DATE: 0901 G.m.t, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, December 18, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the transition area designated for Gwinner, North Dakota (50 FR 51547).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the transition area currently designated for Gwinner, North Dakota and to return the associated 700-foot area to a non-controlled status.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

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1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Gwinner, North Dakota [Revoked]

Issued in Des Plaines, Illinois, on February 4, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86-3136 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-28]

Transition Area Alteration—Britton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the transition area currently designated for Britton, South Dakota. The present 1200-foot description excludes Gwinner, North Dakota. The intent of this action is to include Gwinner, North Dakota in the description by deleting the words "Gwinner, ND".

EFFECTIVE DATE: 0901 G.m.t., May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Thurdsay, December 26, 1985, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area designated for Britton, South Dakota (50 FR 52795).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985. The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the 1200-foot transition area description designated for Britton, South Dakota by deleting the words "Gwinner, ND".

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore— (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Britton, South Dakota [Amended]

Delete the words "Gwinner, ND" from the 1200-foot transition area description.

Issued in Des Plaines, Illinois, on February 4, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86-3137 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 33-6624]

Classification and Declassification of National Security Information and Material

AGENCY: Securities and Exchange Commission.

ACTION: Amendments to rules.

SUMMARY: The Securities and Exchange Commission is amending its regulation which designates the senior agency official responsible for conducting an oversight program to ensure appropriate implementation of Executive Order, 12356 (47 FR 14874, April 6, 1982) and its implementing directive, Information Security Oversight Office Directive No. 1 (47 FR 27836, June 25, 1982). These orders, effective August 1, 1982, establish procedures and criteria for classifying, declassifying and safeguarding national security information.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel, Office of the Executive Director, (202) 272-2700.

SUPPLEMENTARY INFORMATION: The Commission finds, in accordance with the Administrative Procedure Act ("APA"), that these amendments (1) relate solely to agency internal management, organization, procedure or practice, (2) do not relate to substantive rules, and (3) impose no significant burden on any member of the public. Accordingly, notice and opportunity for public comment pursuant to the APA are unnecessary. The Commission also finds that an immediate effective date is in the public interest.

Regulatory Flexibility Act

No regulatory flexibility analysis (or certification that one is not required) is necessary because the rule amendments are procedural and thus not within the definition of "rule" for purposes of Chapter 6, Title 5, U.S.C.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

Text of Amendments

In consideration of the foregoing, the Securities and Exchange Commission amends Subpart J of Part 200 of Chapter II, Title 17, Code of Federal Regulations, to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart J—Classification and Declassification of National Security Information and Material

1. The Authority citation for Part 200, Subpart J, continues to read as follows:

Authority: Sec. 19 of the Securities Act of 1933, as amended, 48 Stat. 84, 15 U.S.C. 77s. Executive Order 12356, 47 FR 14874, April 6, 1982. Information Security Oversight Office Directive No. 1 (47 FR 27836, June 25, 1982).

2. § 200.504 is amended by revising paragraph (g) as follows:

§ 200.504 Oversight Committee.

* * * * *

(g) Recommend to the Chairman of the Commission appropriate administrative action to correct abuse or violation of any provision of Executive Order 12356.

* * * * *

§§ 200.503, 200.504, 200,505, 200,508, 200,510, 200.511 [Amended]

3. In the following sections remove the word "Secretary" and replace it with the words "Executive Director."

(a) 17 CFR 200.503 Introductory text (2 places)
(b) 17 CFR 200.504 Introductory text
(c) 17 CFR 200.505(c)
(d) 17 CFR 200.508(a)
(e) 17 CFR 200.510(a)
(f) 17 CFR 200.511(a)

By the Commission.

Dated: February 6, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3187 Filed 2-12-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 82F-0271]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polymaleic acid and its sodium salt to control mineral scale in beet sugar juice and liquor or in cane sugar juice and liquor. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: February 13, 1986; objections by March 17, 1986. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 173.45 effective on February 13, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 17, 1982 (47 FR 41205), FDA announced that a petition (FAP 2A3652) had been filed by Ciba-Giegy Corp., Hawthorne, NY 10532, proposing that Part 173 (21 CFR Part 173), Subpart A—Polymer Substances for Food Treatment, be amended to provide for the safe use of polymaleic acid and its sodium salt to control mineral scale in beet sugar juice and liquor or in cane sugar juice and liquor.

FDA has evaluated data in the petitioner and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food and Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's findings of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before March 17, 1986 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives, Food processing aids, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 173 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In Subpart A by adding new § 173.45 to read as follows:

§ 173.45 Polymaleic acid and its sodium salt.

Polymaleic acid (CAS Reg. No. 26099-09-2) and its sodium salt (CAS Reg. No. 70247-90-4) may be safely used in food in accordance with the following prescribed conditions:

(a) The additives have a minimum average molecular weight of 550-650 and a weight-average molecular weight of 650-850, calculated as the acid. Molecular weight shall be determined by a method entitled "Determination of Molecular Weight Distribution of Poly(Maleic Acid)," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW.,

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Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(b) The additives may be used, individually or together, in the processing of beet sugar juice and liquor or of cane sugar juice and liquor to control mineral scale.

(c) The additives are to be used so that the amount of either or both additives does not exceed 0.4 part per million (calculated as the acid) by weight of the beet or cane sugar juice or liquor process stream.

Dated: February 3, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3149 Filed 2-12-86; 8:45 am.]

BILLING CODE 4160-01-M

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21 CFR Parts 175 and 178

[Docket No. 80F-0154]

Indirect Food Additives: Adhesives and Components of Coatings; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,4-benzenedicarboxylic acid, bis[2-(1,1-dimethylethyl)-6-[(3-(1,1-dimethylethyl)-2-hydroxy-5-methylphenyl]methyl]-4-methylphenyl] ester as a stabilizer in olefin polymers and adhesives intended for food-contact use. This action responds to a petition filed by Borg-Warner Chemicals on behalf of Société Francaise d'Organo Synthése.

DATES: Effective February 13, 1986; objections by March 17, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 20, 1980 (45 FR 33726), FDA announced that a petition (FAP 9B3445) had been filed by Borg-Warner Chemicals, Borg-Warner Corp., Technical Centre, Washington, WV 26161, proposing that the food additive regulations be amended to provide for the safe use of bis[2-*tertiary*-butyl-4-methyl-6-(3-*tertiary*-butyl-5-methyl-2-hydroxybenzyl)phenyl]terephthalate as a stabilizer in polymers intended for food-contact application. Since the filing notice published, FDA has reviewed additional data from the petitioner. Based on this information, FDA agrees with the petitioner that a more appropriate name for the additive is 1,4-benzenedicarboxylic acid, bis[2-(1,1-dimethylethyl)-6-[(3-(1,1-dimethylethyl)-2-hydroxy-5-methylphenyl]-4-methylphenyl] ester. This is the Chemical Abstracts name for this compound.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed uses of the food additive are safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before March 17, 1986 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Parts 175 and 178 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 175.105(c)(5) by alphabetically inserting a new item in the list of substances to read as follows:

§ 175.105 Adhesives.

* * * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * * * * *	
1,4-Benzenedicarboxylic acid, bis[2-(1,1-dimethylethyl)-6-[(3-(1,1-dimethylethyl)-2-hydroxy-5-methylphenyl]methyl]-4-methylphenyl] ester (CAS Reg. No. 57569-40-1)	For use as a stabilizer
* * * * * *	

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010(b) by alphabetically inserting a new item in the list of substances to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * * *

(b) * * *

Substances	Limitations
* * * * * *	
1,4-Benzenedicarboxylic acid, bis[2-(1,1-dimethylethyl)-6-[(3-(1,1-dimethylethyl)-2-hydroxy-5-methylphenyl]methyl]-4-methylphenyl]ester (CAS Reg. No. 57569-40-1)	For use only at levels not to exceed 0.075 percent by weight of olefin polymers complying with § 177.1520 of this chapter
* * * * * *	

Dated: January 24, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-3150 Filed 2-12-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium for Oral Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for use in cats of amoxicillin trihydrate and clavulanate potassium for oral suspension. The drug is indicated for treatment of certain skin and soft tissue infections.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed NADA 55-103 which provides for use in cats of amoxicillin trihydrate and clavulanate potassium for oral suspension. The drug is available as a powder for reconstitution and oral administration for treatment of skin and soft tissue infections such as wounds, abscesses and cellulitis/dermatitis due to susceptible strains of beta-lactamase producing *Staphylococcus aureus*, non-beta-lactamase producing *Staphylococcus aureus*, *Staphylococcus* spp., *Streptococcus* spp., *E. coli*, *Pasteurella multocida* and *Pasteurella* spp. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 540.103h is amended by adding paragraph (c)(3)(ii) to read as follows:

§ 540.103h Amoxicillin trihydrate and clavulanate potassium for oral suspension

* * * * * *

(c) * * *

(3) * * *

(ii) *Cats*—(*a*) *Amount.* 62.5 milligrams (1 milliliter) twice daily (50 milligrams of amoxicillin and 12.5 milligrams clavulanic acid).

(*b*) *Indications for use.* It is used in the treatment of feline skin and soft tissue infections such as wounds, abscesses, and cellulitis/dermatitis due to susceptible strains of beta-lactamase (pencillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, *Staphylococcus* spp., *Streptococcus* spp., *E. coli*, *Pasteurella multocida*, and *Pasteurella* spp.

(*c*) *Limitations.* Administer 48 hours after all symptoms have subsided. If no improvement is seen after 3 days of treatment, discontinue therapy and reevaluate the case. Maximum duration of treatment should not exceed 30 days. Not for use in cats maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: February 3, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-3152 Filed 2-12-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium Film-Coated Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Beecham Laboratories to correct a discrepancy existing between the moisture content specifications for amoxicillin trihydrate and clavulanate potassium tablets for human and veterinary use. The moisture content limit for the veterinary tablets is being increased from not more than 7 percent to not more than 10 percent so that it will be consistent with the limit for human tablets which have the same concentration ratio between the two drug components.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc.,

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Bristol, TN 37620, is the sponsor of approved NADA 55-099 which provides for the use of amoxicillin trihydrate and clavulanate potassium tablets in treating dogs for certain skin infections. In the Federal Register of November 16, 1984 (49 FR 45420), the approval of the NADA was published along with a regulation (21 CFR 540.103g) which contains a moisture content specification for the tablets of not more than 7 percent. The moisture content is significantly influenced by the amoxicillin trihydrate component. Therefore, in the regulation for the human use tablets (21 CFR 440.103d(a)(1)), the moisture content specification is not more than 7 percent when the milligrams of amoxicillin (as the trihydrate) to milligrams of clavulanic acid ratio is 2 to 1, respectively, but is not more than 10 percent when the ratio is 4 to 1. All of the veterinary use tablets in § 540.103g (4 drug concentration levels) contain an amoxicillin to clavulanic acid ratio of 4 to 1. Therefore, the sponsor should have specified a moisture content limit of not more than 10 percent, but the sponsor inadvertently specified not more than 7 percent. Consequently, the firm filed a supplemental NADA requesting correction of the discrepancy. The supplement is approved and the regulations are amended accordingly. The freedom of information summary for original NADA 55-099, which published in the November 16, 1984, Federal Register, also applies to this approval.

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 540.103g [Amended]

2. Section 540.103g *Amoxicillin trihydrate and clavulanate potassium film-coated tablets* is amended in paragraph (a)(1) by revising the fifth full sentence "Its moisture content is not more than 7 percent." to read "Its moisture content is not more than 10 percent."

Dated: February 3, 1986.

Marvin H. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-3148 Filed 2-12-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Beecham Laboratories, providing for use of amoxicillin trihydrate and clavulanate potassium tablets in cats. The drug is labeled for the treatment of certain skin, soft tissue, and urinary tract infections.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Beecham Laboratories, Division of Beecham, Inc., Bristol, TN 37620, filed NADA 55-102 for amoxicillin trihydrate and clavulanate potassium tablets for use in cats. The drug is for the treatment of skin and soft tissue infections due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase *Staphylococcus aureus*, *Staphylococcus* spp., *Streptococcus* spp., *E. coli*, and *Pasteurella* spp. The drug is also for the treatment of urinary tract infections due to susceptible strains of *E. coli*. The firm presently holds an approval for use of the product in dogs. The application is approved and the regulations amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 540

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 540 is amended as follows:

PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

1. The authority citation for 21 CFR Part 540 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 540.103g is amended by adding new paragraph (c)(3)(ii) to read as follows:

§ 540.103g Amoxicillin trihydrate and clavulanate potassium film-coated tablets.

* * * * *

(c) * * *

(3) * * *

(ii) *Cats*—(*a*) *Amount.* 62.5 milligrams twice daily (50 milligrams amoxicillin and 12.5 milligrams clavulanic acid).

(*b*) *Indications for use.* It is used in the treatment of skin and soft tissue infections such as wounds, abscesses and cellulitis/dermatitis due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus*, non-beta-lactamase producing *Staphylococcus aureus*, *Staphylococcus* spp., *Streptococcus* spp., *E. coli*, and *Pasteurella* spp. It is also used in the treatment of urinary tract infections (cystitis) due to susceptible strains of *E. coli*.

(*c*) *Limitations.* Skin and soft tissue infections: abscesses, cellulitis/dermatitis should be treated for 5 to 7 days or for 48 hours after all signs have subsided. If no response is seen after 3 days of treatment, therapy should be discontinued and the case reevaluated. Urinary tract infections may require treatment for 10 to 14 days or longer. The maximum duration of treatment should not exceed 30 days. Safety of use in pregnant or breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 29, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-3151 Filed 2-12-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1311, 1312 and 1316

Nomenclature and Other Changes

AGENCY: Drug Enforcement Administration.

ACTION: Final rule.

SUMMARY: This action updates Parts 1301 through 1316 of Title 21 of the Code of Federal Regulations. It contains no substantive changes in any regulation. Therefore, no comments have been solicited and the action is being issued as a final rule.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: C. Thomas Gitchel, Chief, Diversion Operations Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, telephone: (202) 633-1216.

SUPPLEMENTARY INFORMATION: This action changes certain office designations and titles which are currently listed in Parts 1301 through 1316 of Title 21 of the Code of Federal Regulations in order to accurately reflect the internal organization of the Drug Enforcement Administration. It also corrects several internal references, deletes sections no longer valid, reinserts a word deleted in a previous amendment, removes references to obsolete forms, and corrects the authority citations.

List of Subjects in 21 CFR Parts 1301-1316

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Security measures, Exports, Imports, Labeling, Packaging and containers, Reporting requirements, Prescription drugs, Narcotics, Research, seizures and forfeitures.

Therefore, pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) as delegated by 28 CFR 0.100 to the Administrator of the Drug Enforcement Administration, the Administrator of DEA hereby orders that Parts 1301-1316 of Title 21 of the Code of Federal Regulations be amended as follows:

1. The authority citations for Parts 1302, 1303, 1306, 1311, 1312, and 1316 are revised to read as follows:

Part 1302

Authority: 21 U.S.C. 821, 825, 871(b), 958(e).

Part 1303

Authority: 21 U.S.C. 821, 826, 871(b).

Part 1306

Authority: 21 U.S.C. 821, 829, 871(b).

Part 1311

Authority: 21 U.S.C. 952, 956, 957, 958.

Part 1312

Authority: 21 U.S.C. 952, 953, 954, 958.

Part 1316

Subpart A

Authority: 21 U.S.C. 822(f), 871(b), 880, 958(f), 965.

Subpart B

Authority: 21 U.S.C. 871(b), 872(c), 872(d).

Subpart C

Authority: 21 U.S.C. 871(b), 883.

Subpart D

Authority: 21 U.S.C. 811, 812, 871(b), 875, 958(d), 965.

Subpart E

Authority: 21 U.S.C. 871(b), 881, 965.

2. The authority citations for Parts 1301, 1304, 1305, 1307, and 1308 continue to read as follows:

Part 1301

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

Part 1304

Authority: 21 U.S.C. 821, 827, 871(b), 958(e), 965.

Part 1305

Authority: 21 U.S.C. 821, 828, 871(b).

Part 1307

Authority: 21 U.S.C. 821, 822(d), 871(b).

Part 1308

Authority: 21 U.S.C. 811, 812, 871(b).

§§ 1301.03, 1301.32, 1301.33, 1301.34, 1301.61, 1305.05, 1305.12, 1307.14, 1311.03, 1311.32 and 1311.61 [Amended]

3. 21 CFR 1301.03, 1301.32(c), 1301.32(f), 1301.33(c), 1301.34(a), 1301.61, 1305.05(b), 1305.05(d), 1305.12(b), 1307.14(a), 1311.03, 1311.32(c), 1311.32(f), and 1311.61 are amended by removing the words "Registration Branch" and replacing them with the words "Registration Unit."

§ 1301.24 [Amended]

4. 21 CFR 1301.24(b) is amended by removing the phrase "(For example, a pharmacist employed by a pharmacy need not be registered individually to fill a prescription for controlled substances if a pharmacy is so registered.)" and replacing it with the phrase, "(For example, a staff physician employed by a hospital need not be registered individually to administer and dispense other than by prescribing, controlled substances within the hospital.)"

5. 21 CFR 1301.26(e), 1301.71(d), 1312.12(a), 1312.14(a), 1312.16(b) 1312.18(b), 1312.19(a), 1312.19(b) 1312.22(a), 1312.24(a), 1312.25, 1312.27(a), 1312.28(c), 1312.28(d), 1312.31(b), 1312.32(a) are amended by removing the words "Compliance Division" and replacing them with the words "Diversion Operations Section."

§ 1301.32 and § 1316.03 [Amended]

6. 21 CFR 1301.32(a)(7) and 1316.03(d) are amended by removing the words "BND Form" and replacing them with the words "DEA Form."

§ 1301.32 and § 1311.32 [Amended]

7. 21 CFR 1301.32(f) and 1311.32(f) are amended by deleting the phrase "on DEA (or BND) Form 231(a)."

§ 1301.64 [Removed]

8. 21 CFR 1301.64 is removed.

§§ 1303.12, 1303.22, 1303.27, 1304.35, 1304.41 and § 1308.24 [Amended]

9. 21 CFR 1303.12(b), 1303.12(d), 1303.22, 1303.27, 1304.35(a), 1304.41(a), 1308.24(d) are amended by removing the words "Regulatory Control Division" and replacing them with the words "Drug Control Section."

§§ 1304.31, 1304.32 and § 1304.36 [Amended]

10. Sections 1304.31, 1304.32 and 1304.36 (a) and (b) are removed.

§§ 1304.33, 1304.34 and 1304.35 [Redesignated as 1304.31, 1304.32 and 1304.33]

11. Sections 1304.33, 1304.34 and 1304.35 are redesignated as 1304.31, 1304.32 and 1304.33, respectively.

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§§ 1304.37–1304.41 [Redesignated as §§ 1304.34–1304.38]

§ 1304.36 [Amended]

12. Sections 1304.37, 1304.38, 1304.39, 1304.40, and 1304.41 are redesignated as §§ 1304.34, 1304.35, 1304.36, 1304.37, 1304.38 and 1304.38(c) is redesignated as section 1304.34(c).

§ 1304.34 [Amended]

13. New section (as redesignated in 12 above) 1304.34 is amended by replacing the phrase "§§ 1304.38–1304.41" with the phrase §§ 1304.35–1304.38."

§ 1304.03 [Amended]

14. 21 CFR 1304.03(d) is amended by removing the citation "21 U.S.C. 335(i)" and replacing it with the citation "21 U.S.C. 355(i)".

§ 1304.04 [Amended]

15. Section 1304.04(f) is amended by adding the word "exporter" between the words "importer" and "narcotic treatment program."

16. Section 1304.04(g) is amended by removing the phrase "paragraph (b) of this section" and replacing it with the phrase "paragraph (f) of this section."

§ 1304.31 and § 1304.32 [Amended]

17. New sections 21 CFR 1304.31(a) and 1304.32(a) are amended by removing the words "Distribution Audit Branch" and replacing them with the words "Drug Control Section."

§ 1305.03 [Amended]

18. The internal reference in 21 CFR 1305.03(c) currently reading "1316.04(d)" is deleted and replaced by "1301.26(b)."

§ 1306.15 and § 1306.25 [Amended]

19. The internal reference in 21 CFR 1306.15 and 1306.25 currently given as "1304.04(d)" is deleted and replaced by "1304.04(h)."

§ 1306.23 [Amended]

20. 21 CFR 1306.23 is amended by removing the phrase "Schedule III, IV or V" and inserting in its place the phrase "Schedule III or IV."

§ 1306.31 [Amended]

21. 21 CFR 1306.31(a) is amended by removing the internal references to "1306.23" and "1306.24" and replacing them with "1306.24" and "1306.25", respectively.

§ 1308.04 [Amended]

22. 21 CFR 1308.04(a) is amended by removing the phrase "Regulatory Support Division" and replacing it with the phrase "Regulatory Support Section."

§ 1308.11 [Amended]

23. 21 CFR 1308.11(b)(16) is amended by removing the number "9818" and replacing it with the number "9166."

§ 1308.13 [Amended]

24. 21 CFR 1308.13(e)(3) and 1308.13(e)(4) are amended by adding the word "(hydrocodone)" after the word dihydrocodeinone.

§ 1311.32 [Amended]

25. 21 CFR 1311.32(b) and 1311.32(c) are amended by removing the number "227" and inserting in its place the number "225a."

§ 1311.64 [Removed]

26. 21 CFR 1311.64 is deleted.

§ 1312.02 [Amended]

27. 21 CFR 1312.02(b) is amended by removing the number "1002" and inserting in its place the number "102."

§ 1312.12 [Amended]

28. 21 CFR 1312.12(a) is amended by removing the phrase "(or BND) Form 85" and inserting in its place the phrase "Form 357."

It has been determined that this is an internal management matter not requiring consultation with the Office of Management and Budget (OMB). The Administrator of DEA hereby certifies that these matters will have no significant negative impact upon small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Dated: February 7, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–2903 Filed 2–12–86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8075]

Income Taxes; Treatment of Certain Hospital Services

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the treatment of certain hospital services furnished by one tax-exempt hospital to other such hospitals. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations affect those tax-exempt hospitals that furnish the services, and would provide the furnishing hospitals with the guidance needed to determine their unrelated business taxable income.

DATES: The regulations apply to taxable years beginning after December 31, 1953, and are effective after December 31, 1953.

FOR FURTHER INFORMATION CONTACT: Calder L. Robertson, Jr., of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:LR:T:EE–46–78) (202–566–3544) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1982, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 513(e) of the Internal Revenue Code of 1954 (47 FR 55696). These proposed amendments conform the regulations to section 1311 of the Tax Reform Act of 1976 (90 Stat. 3526). The regulations are issued under the authority contained in section 513(e) and in section 7805(b) of the Internal Revenue Code of 1954 (90 Stat. 3526, 68A Stat. 917; 26 U.S.C. 513(e), 7805). There was only one request for a public hearing. No public hearing was held because the request was withdrawn. After consideration of all written comments received, the regulations are adopted with minor clarification by this Treasury decision.

Effective Date

The regulations are effective for all taxable years beginning after December 31, 1953.

Non-Applicability of Executive Order 12291

The Commissioner has determined that this Treasury decision is not subject to review under Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of this regulation is Charles K. Kerby, III, of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

Public Comments

The public comments pertained to issues that were considered by the Internal Revenue Service prior to the publication of the notice of proposed rulemaking.

The majority of public comments concerned the 100 inpatient limitation of section 513(e). It was suggested that the limitation was arbitrary, and should be increased or eliminated. The final regulations do not adopt this suggestion because the statute explicitly requires the limitation.

Many commentators sought to temper the rules under section 513(e) which treat a particular service as an unrelated trade or business if the service is provided at a fee above actual cost to even one hospital, or is provided to one hospital with facilities to serve more than 100 inpatients. The approaches suggested involved treating only the excess of fees over actual cost, or the fees from the services provided to hospitals with more than 100 inpatient facilities, as derived from an unrelated trade or business. The final regulations do not adopt these approaches. Treatment of only the services provided to more than 100 inpatient hospitals as an unrelated trade or business was deemed to contradict the wording of the statute under section 513(e)(1) which requires that services be provided "solely" to hospitals that have facilities to serve no more than 100 inpatients. Similarly, treatment of the excess of fees above actual costs as unrelated trade or business income was rejected because section 513(e)(3) specifically requires that services be provided at a fee not in excess of actual costs to escape treatment as an unrelated trade or business under section 513(e). We note that section 513 deals with the characterization of a service as an unrelated or related trade or business. The statute does not directly deal with the characterization income, and does not address the fragmentation of income suggested. Therefore, if a service fails to meet the requirements of section 513(e)(3), the service is characterized under section 513(e) and the resulting treatment of income derived is governed by section 512.

Many commentators suggested that the regulations' reference to the reasonable cost and rate of return formulations prescribed by 42 U.S.C. 1395x(v)(1)(A) and (B) and the underlying regulations (permitting reimbursement to health care providers for reasonable costs including a reasonable return on equity capital in the Medicare program) was unwarranted. Some commenters felt that a "reasonable cost" fee standard, however determined, should not be adopted. Moreover, several commentators were concerned that many indirect costs of providing services would not be allowed in the Medicare determination of reasonable costs. These commentators generally felt the regulations should be silent on standards for determining fee levels.

After consideration of these comments, it was decided to retain the regulations' reference to the Medicare formulations as a safe harbor for use in complying with section 513(e). The wording of the statute in section 513(e)(3) requires that the services be provided at a fee or cost that *does not exceed* the actual cost of services, not provided *at* actual costs. The statute does not require actual cost fees. The nature of the fees subject to the actual cost limit is left unclear by the statute. The brief legislative history suggests strongly that Congress intended that section 513(e) operate to encourage cost savings to hospitals and their patients which implies a reasonable cost fee standard. S. Rep. No. 94–938, Part 2, 94th Cong., 2d Sess. 95 (1976). Further, the subsequent language of section 513(e)(3) which incorporates into actual costs reasonable allocations for depreciation (determined by the straight-line method) and a return on capital goods used (a reasonable rate of return) reinforces the reasonable cost fee standard adopted in the final regulations.

In addition, it was felt that a uniform standard for determining the fees or costs of services to be charged was necessary in the final regulations. Moreover, after examination of the Medicare regulations and consultation with Social Security Administration officials, it was determined that most direct and indirect costs are included in the determination of reasonable cost of services under the Medicare regulations. Further, it was determined that the cost records kept under the reimbursement method of repayment for Medicare providers would still be necessary under the new prospective payment method for Medicare providers. Thus, no additional recordkeeping would be required to demonstrate compliance with section 513(e).

Although the proposed regulations referred to the rate of return for equity capital in the Medicare regulations, it was not clear that the rate for section 513(e) purposes should change with any corresponding change in rate prescribed in the Medicare regulations. Therefore, the regulations are clarified to indicate that the safe harbor rate of return on equity capital is the rate prescribed in the regulations under 42 U.S.C. 1395x(v)(1)(A) and (B). The rate of return was lowered for periods after April 20, 1983, by a change to the Medicare regulations in October 1984. Concern was expressed over the fairness of applying the lower rate of return for periods before the publication of the final regulations. Therefore, the regulations are also clarified to make the lower rate applicable only for taxable years beginning 90 days after publication of the final regulations.

Several commentators suggested that the final regulations clarify that the failure of a hospital service under section 513(e) to qualify for the exception from treatment as an unrelated trade or business does not preclude a showing based on all the facts and circumstances that the service provided to one or more hospitals is substantially related to the providing hospital's exempt purpose. Treas. Reg. § 1.513–1(d). Nothing in the final regulations precludes a hospital from making the requisite showing under § 1.513–1(d) based on all the facts and circumstances. However, the Service has generally taken the position that the provision of commercially available services by an exempt hospital to other unrelated exempt hospitals is an unrelated trade or business. *See* Rev. Rul. 69–633, 1969–2 C.B. 121. Thus, absent a showing of special facts that indicate the provision of such a service to other unrelated hospitals is substantially related to the providing hospital's exempt purpose (other than through the production of needed income), the provision of such services to other unrelated hospitals will generally be deemed an unrelated trade or business. For these reasons, it was decided to reject any revision of the final regulations that implied as a general and practical matter a contrary result. As noted before, nothing in the final regulations precludes a special showing under § 1.513–1(d).

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List of Subjects in 26 CFR 1.501(a)-1—1.528-10

Income taxes, Exempt organizations, Unrelated trade or business.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are hereby adopted as clarified by this Treasury decision.

Amendments to the Regulations

1. The authority citation for Part 1 continues to read:

Authority: 26 U.S.C. 7805 * * *.

2. 26 CFR Part 1 is amended by adding the following new § 513.6 in the appropriate place:

PART 1—[AMENDED]

§ 1.513 Certain hospital services not unrelated trade or business.

(a) *In general.* Under section 513(e), the furnishing of a service listed in section 501(e)(1)(A) by a hospital to one or more other hospitals will not constitute unrelated trade or business if—

(1) The service is provided solely to hospitals that have facilities to serve not more than 100 inpatients,

(2) The service would, if performed by the recipient hospital, constitute an activity consistent with that hospital's exempt purposes, and

(3) The service is provided at a fee not in excess of actual cost, including straight line depreciation and a reasonable rate of return on the capital goods used to provide the service. For purposes of this section, a rate of return on capital goods will be considered "reasonable" provided that it does not exceed, on an annual basis, the percentage described below which is based on the average of the rates of interest on special issues of public debt obligations issued to the Federal Hospital Insurance Trust Fund for each of the months included in the taxable year of the hospital during which the captial goods are used in providing the service. Determinations as to the cost of services and the applicable rate of return should be made as prescribed by 42 U.S.C. 1395x(v)(1) (A) and (B) and the regulations thereunder (permitting a health care facility to be reimbursed under the Medicare program for the "reasonable cost of (its) services," including, in the case of certain proprietary facilities, a "reasonable return on equity capital"). For taxable years beginning on or before May 14, 1986, the rate of return shall be one and one-half times the average of the rates of interest on public debt obligations described above which were in effect on or before April 20, 1983.

(b) *Hospital defined.* As used in this section the word "hospital" means a hospital described in section 170(b)(1)(A)(iii).

(c) *Example.* The provisions of this section are illustrated by the following example:

Example. A large metropolitan hospital provides various services to other hospitals. The hospital furnishes a purchasing service to hospitals N and O, a data processing service to hospitals R and S, and a food service to hospitals X and Y. All the hospitals are described in section 170(b)(1)(A)(iii). All the hospitals have facilities to serve not more than 100 inpatients except hospitals N. The services are furnished at cost to all hospitals except that hospital R is charged a fee in excess of cost for its use of the data processing service. The purchasing service constitutes unrelated trade or business because it is not provided solely to hospitals having facilities to serve not more than 100 inpatients.

The data processing service constitutes unrelated trade or business because it is provided at a fee in excess of cost. The food service satisfies all three requirements of paragraph (a) of this section and does not constitute unrelated trade or business.

(d) *Effective date.* Section (513(e) and this section apply to taxable years beginning after December 31, 1953.

This Treasury Decision is issued under the authority contained in sections 513(e) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1729, 68A Stat. 917; 26 U.S.C. 513(e), 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: January 21, 1986.

J. Roger Mentz,
Acting Assistant Secretary of the Treasury.

[FR Doc. 86-3107 Filed 2-12-86; 8:45 am]
BILLING CODE 4830-01-M

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26 CFR Parts 1, 20, 25 and 602

[T.D. 8069]

Income Taxes; Qualified Conservation Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction.

SUMMARY: This document contains corrections to Treasury Decision 8069, which was published in the Federal Register on January 14, 1986 (51 FR 1496). T.D. 8069 issued final regulations relating to contributions not in trust of partial interests in property for conservation purposes.

EFFECTIVE DATE: The regulations that are the subject of these corrections are effective on December 18, 1980. These corrections are also effective on December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1986, the Federal Register published final regulations relating to contributions not in trust of partial interests in property for conservation purposes. The provisions set forth in those regulations reflected changes made by the Tax Reform Act of 1984 and the Temporary Tax Provisions, Extension.

Need for Correction

As published, Treasury Decision 8069 contains an incorrect internal citation in § 1.170A-14(b)(2); omits the word "of" in § 1.170A-14(f), *Example (5)*; contains an incorrect location reference in the amendatory language of subparagraph b of Par. 6; and uses the words "bequest" and "decedent's" instead of "gift" and "donor's", respectively, in the revised language for paragraph (c)(2)(i) of § 25.2522(c)-3.

Correction of Publication

Accordingly, the publication of Treasury Decision 8069, which was the subject of FR Doc. 86-727 (51 FR 1496), is corrected as follows:

§ 1.170A-14 [Corrected]

Paragraph 1. On page 1499, second column, in § 1.170A-14, paragraph (b)(2), line 17, the language "this paragraph (b)(3)" is removed and the language "this paragraph (b)(2)" is added in its place.

Par. 2. On page 1503, third column, in § 1.170A-14, paragraph (f), *Example (5)*, the conclusion of the fifth sentence, which now reads "worthy protection.", is revised to read "worthy of protection.".

Par. 3. On page 1507, second column, in the amendatory paragraph that is designated Par. 6, subparagraph b, line 1, thereof, the language "The eight sentence" is removed and the language "The seventh sentence" is added in its place.

Par. 4. On page 1507, third column, the amendatory paragraph that is designated Par. 8, subparagraph b thereof, in the revised language, the words "bequest" and "decedents's" are removed and the words "gift" and "donor's" are added in their respective places.

Paul A. Francis,
Acting Director, Legislation and Regulations Division.

[FR Doc. 86-3106 Filed 2-12-86; 8:45 am]
BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T. D. ATF-223; Re: Notice No. 567]

Lodi Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is establishing an American viticultural area located in Sacramento and San Joaquin counties, California, to be known as "Lodi." This final rule is the result of a petition submitted by a representative of the Lodi District Vintners Association. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

EFFECTIVE DATE: This final rule is effective March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Lori Weins, Technical Aide, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

In August 1982 ATF received the petition for the establishment of the "Lodi" viticultural area. The Lodi viticultural area is bounded on the east by the Sacramento and San Joaquin County lines, on the south by the Calaveras River and Eightmile Road, and on the west by Interstate Highway 5, Hood-Franklin Road, and Franklin Boulevard. The northern boundary includes the section line running due east from Franklin Boulevard and connecting to the western end of Sheldon Road, the Central California Traction Co. Railroad, Grant Line Road, California State Highway 16, and Deer Creek. The area of close to 458,000 acres includes approximately 39,000 acres of vineyards and 15 bonded wine cellars.

Public Comments

ATF received no comments in response to Notice No. 567. Therefore, after analyzing and evaluating all of the related evidence the viticultural area is adopted as proposed.

Viticultural Area Name

The name "Lodi" was well established in the petition. The petitioner submitted many newspaper articles dating from 1956 which show that this area has been known as Lodi for many years. Wine writers such as Leon D. Adams, in his book, *The Wines of America*, (McGraw-Hill Book Company, New York, NY, 1978, Second Edition) describe the wines and climate of the Lodi region. Hugh Johnson's, *The World Atlas of Wine*, (Simon and Schuster, New York, 1971), refers to Lodi as the heart of the northern Central Valley vineyards benefiting from the cooling effects of air from San Francisco Bay. Alexis Lichine, in his *New Encyclopedia of Wines and Spirits* (Alfred A. Knopf, New York, NY, 1978), described the Sacramento Valley as a region somewhat affected by the moderating influence of San Francisco Bay air, with the Lodi-Sacramento district as the dominant wine-growing area. All these authors, plus many more in various other books, wine-related magazines, and news columns have long recognized the Lodi wine district.

Geographical/Viticultural Features

The Lodi viticultural area is an inland area that is comprised mainly of alluvial fan, flood plain lands, and lower and higher terrace lands.

Although the land both north and south of the area has some similar soil structures, it is the combination of these soils with the climatically moderating effect of air from San Francisco Bay that makes this area distinctive. Any northern boundary for the Lodi viticultural area located significantly closer to Sacramento, and any other southern boundary located significantly closer to Stockton, would include land which experiences annual degree days more comparable to Sacramento and Stockton than to Lodi. To quote the United States Department of Agriculture (USDA) 1937 Soil Survey of the Lodi Area, "Owing to its location opposite the wind gap leading inland from the Golden Gate, the range in temperature is narrower than in more northerly and southerly parts of the great valley. Summer fogs are more common." Temperature data covering the period 1973 through 1982 compiled by the University of California Agricultural Extension Station at Sacramento, and the United States Department of Interior, Stockton, show a mean of 3570 degree days for Lodi, 4185 for Sacramento, and 4366 for Stockton.

The primary difference on the eastern boundary is the change into the Sierra-Nevada foothills and the more upland soils. Also, an increase of rainfall is associated with an increase in elevation. To quote the same USDA 1937 Soil Survey, "Lodi, representative of valley

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plain, has 18.26 inches (of annual rainfall); and Valley Springs, about eight miles east of the area, and more or less representative of the foothill country, has 24.03 inches."

The area west of Interstate Highway 5 and Franklin Boulevard is flood-prone, poorly drained, delta land consisting of Ryde soils and peat. The segment of Highway 5 that is part of the western boundary is primarily located on the first firm soil east of the Sacramento River system.

Soils in the Lodi viticultural area are primarily Hanford, Delhi, or Dinuba in the alluvial fan soils; or San Joaquin, Madera, Romona, or Redding in the lower and upper terrace soils as shown in, "Soils of San Joaquin County, California" and "Soils of Sacramento County, California," University of California, Berkely, California, 1952 and 1954.

Boundaries

The eastern terminus of the southern boundary is its point of intersection with the eastern boundary of San Joaquin County. A small segment of southwestern Calaveras County has been omitted from the proposed viticultural area in consideration of the total absence of current viticultural activity, and in the belief any future viticulturalists in the segment would not desire to be identified with Lodi.

The western boundary has used part of Interstate Highway 5, which is roughly parallel to Thornton Road, and runs from one-quarter to, at most, two miles west of Thornton Road. ATF believes that this is a well defined border. At the intersection of Interstate Highway 5 and Hood-Franklin Road the boundary jogs to the east approximately one-half mile to the intersection with Franklin Boulevard which it follows northeast to the meeting point with the section line running east which extends to Sheldon Road.

The northern boundary starts from the point where Franklin Boulevard meets the section line extending due east to the western end of Sheldon Road, then continuing east along Sheldon Road to its intersection with the Central California Traction Co. Railroad then southeast along the Central California Traction Co. Railroad to its intersection with Grant Line Road, and then extending northeast along Grant Line Road parallel to the Cosumnes River. At the point where Grant Line Road intersects California State Highway 16 the boundary follows Highway 16 southeast to Deer Creek, where it proceeds east along Deer Creek until it intersects the eastern boundary of Sacramento County.

The eastern boundary excludes a small area of southwest Calaveras County including the principal community, Valley Springs. The boundary follows the eastern boundaries for Sacramento and San Joaquin Counties from Deer Creek in the north to the Calaveras River in the south.

Miscellaneous

ATF does not wish to give the impression by approving Lodi as a viticultural area that it is endorsing the quality of the wine from this area. ATF is approving this area as being distinct and not better than other areas. By approving this area, Lodi wine producers would be allowed to claim a distinction on labels and in advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Lodi wines.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is proposed.

Drafting Information

The principal author of this document is Lori D. Weins, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

PART 9—[AMENDED]

Par. 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.107 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.107 Lodi.

Par. 3. Subpart C is amended to add § 9.107 as follows:

§ 9.107 Lodi.

(a) *Name.* The name of the viticultural area described in this section is "Lodi."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lodi viticultural area are 20 U.S.G.S. 7.5 minute series maps, and are titled as follows:

(1) "Valley Springs SW, Calif." (1962, photoinspected 1973);

(2) "Linden, Calif." (1968);

(3) "Waterloo, Calif." (1968, photoinspected 1978);

(4) "Lodi South, Calif." (1968, photorevised 1976);

(5) "Terminous, Calif." (1978);

(6) "Thornton, Calif." (1978);

(7) "Bruceville, Calif." (1968, photorevised 1980);

(8) "Florin, Calif." (1968, photorevised 1980);

(9) "Elk Grove, Calif." (1968, photorevised 1979);

(10) "Sloughouse, Calif." (1968, photorevised 1980);

(11) "Buffalo Creek, Calif." (1967, photorevised 1980);

(12) "Folsom SE, Calif." (1954, photorevised 1980);

(13) "Carbondale, Calif." (1968, photorevised 1980);

(14) "Goose Creek, Calif." (1968, photorevised 1980);

(15) "Clements, Calif." (1968);

(16) "Wallace, Calif." (1962);

(17) "Lodi North, Calif." (1968);

(18) "Galt, Calif." (1968, photoinspected 1978);

(19) "Clay, Calif." (1968); and

(20) "Lockeford, Calif." (1968, photoinspected 1973);

(c) *Boundaries.* The Lodi viticultural area is located in California in the counties of Sacramento and San Joaquin. The beginning point is located in the southeast corner of the viticultural area where the Calaveras River intersects the eastern boundary of San Joaquin County ("Valley Springs, SW" U.S.G.S. map).

(1) The boundary proceeds west along the Calaveras River to the point of intersection with Eightmile Road (Beginning in the "Valley Springs, SW" map, passing through the "Linden" map and ending in the "Waterloo" map);

(2) Thence west along Eightmile Road to the point of intersection with Interstate Highway 5 (beginning in the "Waterloo map and ending in the "Lodi South" map);

(3) Thence north and then northwest along Interstate Highway 5 to its intersection with an unnamed road (known locally as Hood-Franklin Road) (beginning on the "Lodi South" map passing through the "Terminous," and "Thornton," maps and ending in the "Bruceville" map);

(4) Thence east along Hood-Franklin Road to its intersection with Franklin Boulevard (beginning in the "Bruceville" map and ending to the "Florin" map);

(5) Thence northeast along Franklin Boulevard to its meeting point with the section line running due east and connecting to the western end of Sheldon Road ("Florin" map);

(6) Thence due east along the section line connecting to the western end of Sheldon Road ("Florin" map);

(7) Thence east along Sheldon Road to its intersection with the Central California Traction Co. Railroad (beginning in the "Florin" map and ending in the "Elk Grove" map);

(8) Thence southeast along the Central California Traction Co. Railroad to its point of intersection with Grant Line Road ("Elk Grove" map);

(9) Thence northeast along Grant Line Road to the point of intersection with California State Highway 16 (beginning in the "Elk Grove" map, passing through the "Sloughouse" map and ending in the "Buffalo Creek" map);

(10) Thence southeast along California State Highway 16 to the point of intersection with Deer Creek (beginning in the "Buffalo Creek" map and ending in the "Folsom, SE" map);

(11) Thence northeast along Deer Creek to the point of intersection with the eastern boundary of Sacramento County ("Folsom, SE" map);

(12) Thence southeast along the eastern boundary of Sacramento County and then along the eastern boundary of San Joaquin County to the point of intersection with the Calaveras River, the point of beginning (beginning in the "Folsom, SE" map, passing through the "Carbondale," "Goose Creek," "Clements," and "Wallace" maps and ending in the "Valley Springs, SW map).

Signed: January 14, 1986.

Stephen E. Higgins,

Director.

Approved: January 29, 1986.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 86-3082 Filed 2-12-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7 86-01]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule revocation.

SUMMARY: This amendment revokes the regulations for the Rickenbacker Causeway Bridge, mile 1091.6 at Miami because the bridge has been replaced by a fixed bridge.

EFFECTIVE DATE: This revocation is effective on February 13, 1986.

FOR FURTHER INFORMATION CONTRACT: Mr. Walt Paskowsky, (305) 536-4103.

SUPPLEMENTARY INFORMATION: This rule was not preceded by a notice of proposed rulemaking because it deletes a provision that is of no force. Therefore notice and public procedure thereon are unnecessary.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Economic Assessment and Certification

This rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this rule is expected to be so minimal that further evaluation in unnecessary. We conclude this because the rule merely deletes an inoperative provision from the regulations. Accordingly, the Coast Guard certifies that this action will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

§ 117.261 [Amended]

2. Section 117.261 is amended by removing paragraph (qq).

Dated: January 17, 1986.

G.S. Duca,

Captain, U.S. Coast guard; Acting Commander, Seventh Coast Guard District.

[FR Doc. 86-2087 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Diego Reg. 86-03]

Security Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency Rule.

SUMMARY: The Coast Guard is establishing a security zone in San Diego Bay, California, consisting of the water area within the area 200 yards (183 meters) immediately southeast of the previously-established security zone at Naval Air Station North Island Cruiser (J-K) and Carrier (L-P) Piers (SDC 85-17). This security zone is a temporary extension of that zone and is established only during the time three aircraft carriers are moored at Naval Air Station North Island. This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and

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property from sabotage or other subversive acts, accidents, criminal actions or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective on February 4, 1986. It terminates on May 30, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard, Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION:

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to secure the interests of the United States.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will occur from 4 February 1986 to 30 May 1986. During this period of time, three aircraft carriers will be moored at Naval Air Station North Island Carrier (L–P) Piers. These aircraft carriers extend beyond the quay wall which forms these piers, and out of the existing security zone. This temporary extension of the zone is intended to provide the same level of protection to these vessels when three carriers are moored at this location. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents criminal actions, or other causes of a similar nature, and secure the interests of the United States.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water); Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 33 CFR 160.5.

2. In Part 165, a new S165.T1113 is added to read as follows:

§ 165.T1113 Security Zone: San Diego Bay, California.

(a) *Location:* This security zone consists of the water area described as follows:

Commencing at a point on the shoreline of Naval Air Station North Island, Coronado, California at latitude 32°42'13.0" N., longitude 117°10'48.0" W. (Point A), for a place of beginning; thence northerly (approximately 020°T) to latitude 32°42'21.3" N., longitude 117°10'44.2" W. (Point B); thence easterly (approximately 110°T) to latitude 32°42'19.2" N., longitude 117°10'37.5" W. (Point C); thence southerly (approximately 200°T) to latitude 32°42'11.0" N., longitude 117°10'41.3" W. (Point D); thence westerly (approximately 290°T) to the place of beginning (Point A) on the shoreline of the Naval Air Station.

(b) *Effective Dates:* This security zone is effective on February 4, 1986. It terminates on May 30, 1986.

(c) *Regulations:* In accordance with the general regulations in § 165.33 of this part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port. Section 165.33 also contains other general requirements.

Dated: February 4, 1986.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 86–3213 Filed 2–12–86; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 265

Organization and Administration; Modification of Fees for Record Retrieval by Computer

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule modifies the fees charged for furnishing Postal Service records retrieved by computer to members of the public. The modified fees inplement existing policy to recover the actual cost incurred by the Postal Service for the retrieval and represent no change in policy concepts.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, (202) 268–5158.

SUPPLEMENTARY INFORMATION: On November 14, 1985 the Postal Service published in the Federal Register for comment (50 FR 47068) proposed modifications of 39 CFR Part 265 that would revise the fees for retrieving data by computer to reflect current labor and administrative costs. Existing fees were established in 1984 and do not reflect current direct costs.

No comments on the proposed modifications were received. Accordingly, part 265 of title 39 CFR is amended as follows:

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

List of Subjects in 39 CFR Part 265

Release of information, Postal Service.

PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 is revised to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552.

§ 265.8 [Amended]

2. In § 265.8, paragraph (b)(3) is amended by striking out "1984" and inserting "1986" in lieu thereof.

3. Appendix A to Part 265 is revised to read as follows:

Appendix A—Information Services Price List in Effect January 1, 1986

Whenever an individual requests information which must be retrieved by computer, standard charges will be incurred based upon resources required to furnish this information. Estimates are provided to the requester in advance and are based on the following standard price list.

Description of services	Price	Unit
A. System utilization services:		
Central processor unit (CPU).		Hour.
3033N (RA)	$866.00	
3033U (RA)	1,134.00	
Amdahl 5860 (MA NB)	2,608.00	
3081K (RA)	2,722.00	
Amdahl 5870 (MB MC SA SB).	4,158.00	
3084QX (SL ST)	5,198.00	
3090–200	5,766.00	
3090–400	10,849.00	
Disk usage (selector) channel.	366.25	Hour.
Multiplexor (Byte) channel	17.50	Hour.
Tape usage (block MPX) channel.	6.50	Hour.
Volume mounts	.50	Mount.
Minimum job charges, flushed.	1.00	Job.
Executed	2.00	Job.
3800 printing	1.70	1,000 lines.
Dedicated use of 370/135	$3,023.00	Per A/P.
B. System occupancy charges:		
Tape occupancy	34.00	Hour.
Unit record occupancy		Hour.
WDSS 1268 OCR	137.00	
Printers	1.10	1,000 lines.
Teleprocessing/graphics occupany.	5.00	Hour
C. System spooling charges:		
Cards read, local	6.35	1,000 cards.
Cards read, remote	.85	1,000 cards.
Lines printed, local	1.10	1,000 lines.
Lines printed, remote	.20	1,000 lines.
Cards punched, local	34.60	1,000 cards.
Cards punched, remote	3.40	1,000 cards.
D. Peripheral charges:		
Keypunching	10.00	100 cards.
Key-to-tape	17.00	Hour.
Xeroxing offline	3.80	100 pages
Magnetic tape purchase	13.50	Reel.
Microfilm processing, offline	.01	Frame.
Microfiche processing	.01	Frame.
Microfiché duplicating	.05	Sheet.
Programmer support	33.60	Hour.
Programmer support, overtime.	50.40	Hour.
Systems analysis support	39.40	Hour
Systems analysis support, overtime.	59.10	Hour.
Inspection service processing.	2,960.00	Per A/P
Wilkes-Barre Nucleus processing.	7.34	1,000 transact.
St. Louis nucleus processing.	7.34	1,000 transact.

[FR Doc. 86–3197 Filed 2–12–86; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[SW-FRL-2968-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending the regulations on hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous three wastes generated during the production of ethylene dibromide (EDB). The effect of this regulation is that all of these wastes will be subject to regulation as hazardous wastes under 40 CFR Parts 262–266, and Parts 270, 271, and 124.

DATES: Effective date: This regulation becomes effective on August 13, 1986.

Compliance Dates: *Notification*—The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement to be unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, that person must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

Interim Status—All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of hazardous wastes covered by today's rule, and that are currently operating pursuant to interim status under section 3005(e) of RCRA, must file with EPA an amended Part A permit application by [insert date six months from publication]. In addition, facilities which currently treat, store, or dispose of the wastes subject to this rule, but which have not received a permit pursuant to section 3005 and are not operating pursuant to interim status may also be eligible for interim status under the Hazardous and Solid Waste Amendments of 1984. See section 3005(e)(1)(A)(ii) of RCRA, as amended. In order to operate pursuant to interim status, such facilities must get an identification number pursuant to 40 CFR 262.12 and submit a Part A permit application by August 13, 1986. Land disposal facilities which qualify for interim status under section 3005(e)(1)(A)(ii) must also apply for a final determination regarding the issuance of a permit and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements within twelve months of becoming subject to such permit requirements. See RCRA section 3005(e)(3). If not, interim status will terminate on that date.

A hazardous waste management facility which has received a permit pursuant to section 3005, however, may not treat, store, or dispose of the wastes covered by today's rule until it submits an amended permit application pursuant to 40 CFR 124.5, and the permit has been modified pursuant to 40 CFR 270.41 to allow it to treat, store, or dispose of these wastes.

ADDRESSES: The official public docket for this rulemaking is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7392.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1984, EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as hazardous two wastes generated during the production of EDB.[1] See 49 FR 44718–44721. The Agency also stated that one more waste, still bottoms from purification of EDB, would be included in the final listing if the Agency determined that it is being generated. The Agency has now determined that still bottoms are being generated, or are likely to be generated, and, therefore, they are being listed as hazardous wastes (EPA Hazardous Waste No. K136) in this final rule (see 49 FR 44718, footnote 1). The hazardous constituent in these wastes, EDB, is carcinogenic, mutagenic, teratogenic, causes reproductive effects, and is otherwise chronically toxic. Moreover, it typically is present in each waste at significant concentrations; in addition, EDB is mobile and persistent and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. (See the preamble to the proposed rule at 49 FR 44718 and the listing background document for a more detailed explanation of our basis for listing these wastes.) After evaluating these wastes against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), EPA had determined that these wastes are hazardous because they are capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

The Agency recevied comments on these proposed waste listings from two commenters. We have evaluated these comments carefully, and have responded to them accordingly. This notice makes final the regulation proposed on November 8, 1984, and outlines EPA's response to the comments received on that proposal.

[1] It should be noted that the Hazardous and Solid Waste Amendments of 1984 require the Agency to make a determination as to whether wastes from organobromine manufacturing should be listed as hazardous; this listing would satisfy, in part, that requirement.

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II. Response to Comments

This section presents the comments received on the proposed rule, as well as the Agency's response.

A. Clarification of the Scope of Waste K117—Wastewater From the Reactor Vent Gas Scrubber in the Production of Ethylene Dibromide via Bromination of Ethene

One commenter, a producer of EDB, agreed that waste K117, wastewater from the reactor vent gas scrubber in the production of EDB via the bromination of ethene, may pose a substantial present or potential hazard to human health or the environment if allowed to exit the EDB production facility untreated. The commenter stated that this waste, however, is typically treated within the EDB process to the point that the waste stream ultimately exiting the facility has EDB levels significantly below the levels of concern noted in the proposed rule (*i.e.*, orders of magnitude below cited concentration range 0.01–0.22%). They claim that this treatment is an integral part of the process that recovers EDB. The commenter stated that the waste stream following this treatment does not pose a substantial hazard and, therefore, the definition of waste K117 should be amended to include only "untreated" wastewaters from a facility having a reactor vent gas scrubber.

The Agency disagrees with the commenter. The Agency has information that waste K117, as defined, is not always treated in the process as described by the commenter. More importantly, however, the Agency does not believe that treatment necessarily will render the waste non-hazardous. Treatment, as defined in the statute, includes methods, techniques, or processes that may be used solely to neutralize waste, or to recover energy or material resources, or to render such waste less hazardous, or to accomplish other goals, as well as to render waste non-hazardous. So, even if treatment does take place, it may not render the waste non-hazardous. Furthermore, no information was provided by the commenter to support their claim that the wastewater, after treatment, would contain insignificant levels of EDB. Waste K117, therefore, will continue to be listed as proposed. If any current or future producer of EDB believes that his particular waste does not meet the criteria for listing in 40 CFR 261.11(a)(3), however, he can petition the Agency to delist his waste (see §§ 260.20 and 260.22).

Any facility wishing to have its wastes delisted still would have to demonstrate, among other things, that the hazardous constituent cited as the basis for listing the waste is not present, or is present at a concentration that would not present a substantial hazard to human health or the environment, or although present in the waste in high concentrations, would not migrate from the waste into the environment (see 40 CFR 260.22(d)). Also, based on the Hazardous and Solid Waste Amendments of 1984, petitioners would have to provide sufficient information for the Agency to determine whether other factors (including additional constituents) reasonably may cause the waste to be hazardous still.

B. Impact of Federal Regulation of Waste K117

The same commenter stated that the impact from Waste K117 is local and not national in scale, since there are only four facilities producing EDB. Moreover, the commenter indicates that state agencies are currently regulating these facilities. Based on these factors, the commenter concludes that regulation of these EDB wastes should be left to the states.

In listing, the Agency looks primarily to the properties of the waste, such as toxicity, mobility, and persistence, although state and local regulation may be relevant under the criteria for listing a waste. The Agency is concerned, however, that waste K117 (or wastes such as sludges derived from K117) could be transported interstate. This is particularly true due to changes in the requirements for disposal of wastes resulting from the Hazardous and Solid Waste Amendments of 1984. Those requirements have already affected, and will continue to affect, the decisions made by the regulated community in how they manage waste. Many generators are reassessing existing practices for waste disposal. Given this environment, it is particularly difficult to conclude that this EDB waste will continue to be disposed of in the states in which the waste is generated. Accordingly, EPA did not give substantial weight to the existence of state regulatory controls over EDB wastes in making the listing decisions.

The commenter further appears to be asking for an exemption for certain downstream units receiving those wastes (*e.g.*, pipelines, vessels, reinjection brinewells). They also argue that the waste should not be regulated if it is subject to a state water permit.

The Agency notes that once a waste is regulated, residues of that waste downstream are also regulated. The commenter has provided no data or rationale for a blanket exemption. The only apparent rationale is that when a waste is subject to a state water permit, it would be duplicative to regulate that waste under RCRA as well. Although the commenter has not been clear, EPA assumes that the "state water permit" referred to is the state analog to the NPDES permit required under the Clean Water Act (CWA). RCRA does exempt discharges which are point sources subject to permits under Section 402 of the CWA. 42 U.S.C. 6903(27); 40 CFR 261.4. These water permits look primarily at the actual point-source discharge. The exclusion from RCRA coverage does not cover wastewaters while they are being collected, stored, or treated before discharge, or sludges generated by wastewater treatment. See comment following 40 CFR 261.4(a)(2); 45 FR 33120, May 19, 1980. The commenter has not indicated whether the "state water permit" referred to covers the multimedia impacts (*e.g.*, ground water, air) that may occur prior to the point of discharge. Given the absence of such an analysis, EPA sees no basis for excluding these units from regulatory controls.

C. Listing of Any Waste Containing EDB

One other commenter was concerned about EPA's apparent establishment of a precedent that the presence of any EDB in an undescribed process waste at an undefined concentration level could result in that process waste being labeled as a hazardous waste.

No such precedent has been established. A process waste is a hazardous solid waste only if it exhibits any of the characteristics of a hazardous waste identified in 40 CFR 261.21 to 261.24, or if it is listed as a hazardous waste. A waste will be listed if it meets the criteria of an acutely hazardous waste (40 CFR 261.11(a)(2)) or, when evaluated against the criteria for listing toxic wastes (40 CFR 261.11(a)(3)), EPA determines that the waste is hazardous because it is capable of causing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. The concentration of a constituent in a waste is only one of eleven factors against which the Agency evaluates the waste. The waste need not meet all the criteria for listing in 40 CFR 261.11(a)(3), but a combination of these factors is considered sufficient for listing a waste as hazardous.

In evaluating these wastes, we believe the concentration of EDB is significant. A 70 kg person daily consuming 2 liters of water containing 0.000003 mg EDB per liter throughtout his lifetime incurs an additional risk of developing cancer of one in a million.[2] The lowest concentration of EDB in the wastes we are listing is 0.01%, or 100 mg/l, which is approximately 3 million times that of the 10^{-6} cancer risk level. See 49 FR 44719, November 8, 1984. Accordingly, we are listing these wastes as hazardous.

III. Addition of Waste K136, Still Bottoms From the Purification of Ethylene Dibromide in the Production of Ethylene Dibromide via Bromination of Ethene

In the November 8, 1984 proposal, in footnote 1 (49 FR 44718), we specifically requested comments on the generation of still bottoms, and stated that if the Agency determined that they are being generated, or are likely to be generated, we would include still bottoms from the production of EDB in the final listing.

Based on industry-supplied data, we find that still bottoms are being generated, and that, as in the other two wastes listed here, EDB is the hazardous constituent present. Although the actual concentration of EDB in the still bottoms waste stream is confidential business information, it is on the same order of magnitude as in the spent adsorbent solids waste stream. Furthermore, EDB is mobile and persistent, and can reach environmental receptors in harmful concentrations if this waste is mismanaged. We, therefore, are listing still bottoms from the purification of EDB as EPA Hazardous Waste No. K136.

IV. Test Methods for New Appendix VII Compounds

On October 1, 1984, the Agency proposed, among other things, a number of test methods to be used in evaluating solid waste, and designated their use in analyzing for certain substances. Method Numbers 8010 and 8240 are designated to be used for EDB. Since there were no public comments received on the use of these specific methods for analyzing for EDB, EPA today is making final those proposed designations.

Persons wishing to submit delisting petitions are to use the methods identified in Appendix III to demonstrate the concentration of EDB in the waste.[3] See 40 CFR 260.22(d)(1). As part of their petitions, petitioners should submit quality control data demonstrating that the methods they have used yield acceptable recovery (*i.e.*, >50% recovery at concentrations above 1 μg/g) on spiked aliquots of their waste.

The above methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW–846, 2nd ed., July 1982, as amended, which is available from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238, Document Number: 055–002–81001–2.

V. CERCLA Impacts

All hazardous wastes designated by today's rule will, upon the effective date, automatically become hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Section 103(a) of CERCLA requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity equal to or greater than the reportable quantity (RQ) for that substance immediately notify the National Response Center (at (800) 424–8802 or (202) 426–2675) of the release.

Except as noted below, all hazardous wastes newly designated under RCRA will have a statutorily imposed RQ under section 102 of CERCLA until adjusted by regulation. If, however, a newly listed F or K hazardous waste stream has only one constituent of concern, the waste will have the same RQ as that of the constituent. (The RQ to be considered for this purpose would be the RQ of the constituent as promulgated in 50 FR 13456 (April 4, 1985), whether statutorily imposed or adjusted by regulation.) Since in the case of waste streams K117, K118, and K136, EDB is identified as the only hazardous constituent, and EDB currently retains its statutory RQ of 1000 pounds (see 50 FR 13487, April 4, 1985), these wastes also will have RQ's of 1000 pounds. The RQ methodology for carcinogens is currently being assessed, however, and EDB's RQ is subject to change when the Agency completes this assessment and proposes final RQ's for carcinogens. Thus, the RQ's of these wastes also may change if EDB's RQ is adjusted.

Although this rule is not changing Table 302.4 of 40 CFR 302.4, the RQ's stated here are effective upon the effective date of today's action, pursuant to the statutory requirements of CERCLA section 102(b). These listed wastes and their RQ's will be added to Table 302.4 of § 302.4 at the time of its next **Federal Register** publication, subject to change as noted above.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by HSWA. Therefore, it is being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

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[2] Average daily dose = 3×10^{-6} mg EDB/1 water × 2 l water/day × 1/70 kg/body weight = 8.6×10^{-8} mg/kg/day. Upper limit estimate of excess lifetime cancer risk = average daily dose × cancer potency = 8.6×10^{-8} mg/kg/day × 41/mg/day = 3.5×10^{-6}.

[3] Petitioners may use other test methods to analyze for EDB if, among other things, they demonstrate the equivalency of these methods by submitting their quality control and assurance information along with their analysis data. See 40 CFR 260.21.

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B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules, and the modification is approved by EPA. Because the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these listings in lieu of EPA until the State program modification is approved. Of course, States with existing listings may continue to administer and enforce their regulations as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including regulations equivalent to those promulgated. Once authorized, however, a State must modify its program to include regulations substantially equivalent or equivalent to EPA's within the time periods discussed above.

VII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. In the proposal, EPA addressed this issue by citing the results of an economic analysis; the total annual additional cost to industry was less than $10,000. The Agency received no comments on this figure.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, result in a measurable increase in cost or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency in required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency received no comments that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

IX. Paperwork Reduction Act

This rule does not contain any information collection requirement subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

X. List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: February 3, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—INDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

§ 261.32 [Amended]

2. In § 261.32, add the following waste streams to the subgroup 'Organic Chemicals':

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
K117	Wastewater from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethene.	(T)
K118	Spent adsorbent solids from purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)
K136	Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.	(T)

Appendix III—[Amended]

3. Add the following compound and analysis methods in alphabetical order to Table 1 of Appendix III of Part 261:

Compound	Method No.
Ethylene dibromide	8010, 8240

Appendix VII—[Amended]

4. Add the following entries in numerical order to Appendix VII of Part 261:

EPA hazardous waste No.	Hazardous constituents for which listed
K117	Ethylene dibromide.
K118	Ethylene dibromide.
K136	Ethylene dibromide.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

6. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
February 13, 1986	Listing wastes from the production of ethylene dibromide.

[FR Doc. 86–2946 Filed 2–12–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3110

Noncompetitive leases; Consideration of Request To Withdraw Simultaneous Oil and Gas Lease Applications and Offers

AGENCY: Bureau of Land Management, Interior.

ACTION: Consideration of Requests to Withdraw simultaneous Oil and Gas Lease Applications and Offers.

SUMMARY: In those instances where the Department of the Interior has suspended action on the application for a simultaneous oil and gas lease on a parcel for at least one year after a random selection has occurred, the Department has determined it would be in the public interest to accept and consider a request to allow the specific priority applicant for such parcel to withdraw said pending application or offer, and if allowed, to refund the first-year's rental to the priority applicant.

EFFECTIVE DATE: Feburary 13, 1986.

ADDRESS: Requests for withdrawal of the above described simultaneous oil and gas lease applications or offers should be filed with the Bureau of Land Management State Office where the results of the random selection process have been posted. The addresses for the State Offices are set forth in 43 FR 1821.2–1 .

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, (202) 653–2190.

SUPPLEMENTARY INFORMATION: As a result of a review of the procedures for issuing oil and gas leases on certain public domain lands and acquired lands, the Department of the Interior suspended action on the issuance of noncompetitive oil and gas leases involving such lands. This suspension has resulted in the United States retaining the first-year's rental for simultaneous oil and gas lease applications and offers, in some cases, for as long as two years. Even though 43 CFR 3110.2 prohibits the withdrawal of any simultaneous oil and gas application or offer, the Department has determined that the public interest would be served by offering those priority applicants whose applications or offers have been suspended for more than one year subsequent to their being selected through the random selection process the opportunity to request the withdrawal of said applications or offers. The opportunity to request a withdrawal is being made by the Department because it does not wish to create a situation where the narrow enforcement of an existing regulatory provision harms the public unnecessarily. Therefore, the Department has determined that it will provide a priority applicant affected by a suspension of a simultaneous oil and gas lease parcel for more than one year after the date of the selection of the winner of that parcel through the random selection process an opportunity to request a withdrawal of the application or offer. If the request for withdrawal is granted, the first-year's rental will be refunded to such priority applicant. In addition, the Department is considering amending 43 CFR 3110.2 through the rulemaking process, at which time the public will be given an opportunity to comment on this change.

The Department of the Interior has determined that a 30-day comment period is unnecessary on this notice because it is not required under 5 U.S.C. 553(b)(B). This opportunity to request a withdrawal of an application or offer does not adversely affect anyone and relieves a restriction that results from the Department's failure to act on a simultaneous oil and gas lease application or offer for more than one year subsequent to the selection of a winner through the random selection process. Therefore, this notice is effective immediately, without a 30-day wait, because it relieves a burdensome restriction and is consistent with 5 U.S.C. 553(d)(1).

Dated: February 7, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 86–3158 Filed 2–12–86; 8:45 am]

BILLING CODE 4310–84–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 533, and 536

[APD 2800.12 CHGE 23]

General Services Administration Acquisition Regulation; Protests to the GAO and Charges for Bidding Documents

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 is amended by amending Part 501 to prescribe a format for determinations to award a contract or continue contract performance pending a decision on a protest filed with GAO and to indicate the signatory authority for such determinations; by amending Part 533 to incorporate the substance of Acquisition Circular AC–85–4 which temporarily implemented Federal Acquisition Circular (FAC) 84–9, and by amending Part 536 to remove the restriction on charging for bid documents or using bid deposits for negotiated construction contracts. Miscellaneous and other minor editorial changes are made in Parts 501, 533, and 536 for clarity. Acquisition Circular AC–85–4 is canceled. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John Joyner, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4764.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1985, the General Services Administration (GSA) published in the **Federal Register** (50 FR 26998) Acquisition Circular AC–85–4 which temporarily amended Section 533.104 (b) and (c) of the GSAR to implement Federal Acquisition Circular 84–9 and invited comments from interested parties. No public comments were received. The comments received from various GSA offices have been reviewed, reconciled and incorporated, when appropriate, into this final rule.

Impact

This is not a major rule as defined in Executive Order 12291. Therefore, preparation of a regulatory impact analysis was not necessary. The GSA certifies that this document will not

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have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This rule implements the Federal Acquisition Regulation by providing internal agency procedures for making determinations regarding suspending the award or performance of contracts. Accordingly, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 501, 533, and 536

Government procurement.

1. The authority citation for 48 CFR Parts 501, 533, and 536, continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 501.704–70 is amended to add a new paragraph (e) to read as follows:

§ 501.704–70 Sample formats.

* * * * *

(e) *Determinations pending decision on protest to GAO.*

(1) *Protest filed before award.* The following format is prescribed for determinations and findings required by FAR 33.104(b):

General Services Administration
Determination and Findings

Authority To Proceed With Award Pending a Decision by GAO on Bid Protest

Findings

I hereby find that:

(1) The (Services/Office title) proposes to procure (describe work to be performed or product to be delivered). The estimated cost is ———.

(2) Solicitation (identify solicitation) was issued on ——— and bids/proposals were received on ———.

(3) On ——— (insert date GAO received protest) (identify protestor by name) submitted a protest to GAO concerning the solicitation (identify solicitation).

(4) (Set forth urgent and compelling circumstances which significantly affect the interests of the United States and will not permit waiting for the decision of GAO on the protest.)

(5) Award is anticipated within 30 calendar days from the date this determination and findings is signed.

(6) These findings are made pursuant to 31 U.S.C. 3553(c)(2) and FAR 33.104(b)(1).

Determination

I hereby determine that:

On the basis of the above findings, urgent and compelling circumstances will not permit waiting for the decision of the GAO on the protest filed by (identify protestor and solicitation).

Date ———

(Signature) ———

(2) *Protest filed after award.* The following format is prescribed for determinations and findings required by FAR 33.104(c):

General Services Administration
Determination and Findings

Authority To Continue Contract Performance Pending a GAO Decision on Protest Filed After Award

Findings

I hereby find that:

(1) The (Services/Office title) awarded a contract to (name contractor) on ——— for furnishing of (identify product, service or work to be performed). The contract is valued at ——— and resulted from solicitation ———.

(2) On ——— (insert date GAO received protest) (identify protestor by name) submitted a protest to GAO concerning contract number ———.

(3) (Set forth the facts and circumstances which indicate that: (a) continued contract performance will be in the best interest of the United States; or (b) urgent and compelling circumstances exist that significantly affect the interest of the United States and will not permit waiting for the GAO's decision.)

(4) These findings are made pursuant to 31 U.S.C. 3553(d)(2) and FAR 33.104(c)(2).

Determination

I hereby determine that:

On the basis of the above findings, (either (a) continued contract performance will be in the best interest of the United States, or (b) urgent and compelling circumstances exist which will not permit waiting for the GAO's decision) and that accordingly contract performance under contract ——— may continue pending GAO's decision on the protest.

Date ———

(Signature) ———

3. Section 501.707 is amended to revise the first sentence of the introductory paragraph; to revise the text of paragraph (a) in the signatory authority column of Table 501–1; to revise the text of paragraphs (b) and (c) of Table 501–1; to revise the first sentence of the text of paragraphs (e), (f), (g) and (h) in the signatory authority column of Table 501–1; to revise the text of paragraphs (i) and (j) in the signatory authority of Table 501–1; to revise the text of paragraph (k) in the D&F requirement column of Table 501–1; to revise the text of paragraph (m) in the signatory authority column of Table 501–1; and to add paragraph (n) to read as follows:

501.707 Signatory authority.

When a determination and findings is required, it must be signed by the appropriate official in accordance with Table 501–1 of this regulation. * * *

TABLE 501-1.—SIGNATORY AUTHORITY

D&F requirement	Signatory authority
a. * * *	Individual D&F's may be signed by the head of the contracting activity, as defined in GSAR 502.1, or a designee. Class D&F's must be signed by the head of the contracting activity. * * *
b. Determinations that the use of a cost, cost-plus-a-fixed-fee contract or an incentive contract is likely to cost less than other methods, or that it is impractical to secure property or services of the kind and quality required without using one of these types of contracts. (See 41 U.S.C. 254(b) and FAR 16.301–3, 16.302, 16.303, 16.304, 16.305, 16.403, and 16.404.).	Class D&F's must be signed by the head of the contracting activity.
c. Determinations to use a time-and-material or labor-hour contract. (See FAR 16.601 and 16.602.).	Individual D&F's must be signed by the contracting officer. Class D&F's must be signed by the head of the contracting activity. * * *
d. * * *	
e. * * *	Individual D&F's must be signed by the head of the contracting activity. * * *
f. * * *	Individual D&F's must be signed by the Administrator. This authority may not be redelegated. * * *
g. * * *	D&F's must be signed by the head of the contracting activity. * * *
h. * * *	Individual D&F's must be signed by the head of the contracting activity. * * *
i. * * *	Individual D&F's may be signed by the head of the contracting activity or a designee.
j. * * *	Individual D&F's must be signed by the Administrator with the concurrence of the Comptroller General or a designee. * * *
k. Determinations regarding the exceptions to the restrictions of the Buy American Act. (See FAR Subpart 25.1 and 25.2).	
l. * * *	
m. * * *	Individual D&F's must be signed by the head of the contracting activity in accordance with GSAR 525.402–71.
n. Determinations to proceed with an award or to continue contract performance pending a GAO decision on a protest. (See FAR 33.104 (b)(c).).	Individual D&F's must be signed by the head of the contracting activity. Class D&F's are not permitted.

4. Section 501.770 is amended to revise the last sentence of the introductory paragraph and to revise paragraphs (a), (b), (c), (e), (f), (g), (i), (j), and (k) to read as follows:

501.770 Determination and findings required.

* * * It lists the most commonly required D&F's.

(a) The determination required by section 304(b) of the Federal Property and Administrative Services Act (referred to in this section as "the act") (41 U.S.C. 254(b)) as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contract. (See FAR 16.306).

(b) The determination required by section 304(b) of the act that the use of a cost, a cost-plus-a-fixed-fee contract, or an incentive contract is likely to be less costly than other methods or that it is impractical to secure property or services of the kind or quality required without the use of a cost, cost-plus-a-fixed-fee contract, or an incentive contract. (See FAR 16.301–3, 16.302, 16.303, 16.304, 16.305, 16.403, and 16.404).

(c) The determination to use a time-and-material or labor-hour contract. (See FAR 16.601 and 16.602).

* * * * *

(e) The determination required by section 303(b)(1) of the act (41 U.S.C. 253(b)(1)) to exclude a particular source from a contract action in order to establish or maintain an alternate source or sources for supplies or services. (See FAR 6.202).

(f) The determination required by section 303(c)(7) of the act (41 U.S.C. 253(c)(7)) that it is not in the public interest to use full and open competition. (See FAR 6.302–7).

(g) The determination required by section 305(c) of the act (41 U.S.C. 255(c)) that the making of advance payments would be in the public interest. (See FAR 32.410).

* * * * *

(i) The determination required by section 304(c) of the act (41 U.S.C. 254(c)) with respect to omitting the clause specified in FAR 52.215–1, Examination of Records by Comptroller General, from contracts with foreign contractors or subcontractors regarding the rights of the Comptroller General of the United States to examine the contractor's records when it is determined (1) that the omission will serve the best interests of the United States, or (2) that the public interest will be served by the omission. (See FAR 15.106–1 and 25.904).

(j) Exceptions to the restrictions of the Buy American Act (41 U.S.C. 10(a–d)), determinations under the Balance of Payments program, and waivers under section 302(b)(2) of the Trade Agreements Act. (See FAR subparts 25.1, 25.2, 25.3 and 25.4).

(k) The determinations required to proceed with an award or to continue contract performance pending a GAO decision on a protest. (See FAR 33.104 (b) and (c) and GSAR 533.104 (b) and (c).)

5. Section 533.104 is amended to revise paragraph (a)(3) (v) and (vi), (a)(4), the third and fourth paragraphs of the format in (a)(5), paragraph (b), paragraph (c), and to add paragraph (d) to read as follows:

§ 533.104 Protests to GAO.

(a) * * *

(3) * * *

(v) The Regional Counsel's legal position, when requested, and the contracting officer's statement of fact and position, must be transmitted to the appropriate Assistant General Counsel, in triplicate. If other interested parties are involved, additional copies may be requested. The statement is due in the Office of the Assistant General Counsel no later than 10 workdays after the date on which the contracting officer originally received the protest: This time may be reduced if GAO invokes the express option. If a contracting officer is unable to prepare a statement of fact and position within 10 workdays, the appropriate Assistant General Counsel shall be notified promptly, by telephone, of the reasons for the delay and of the additional time needed. Additional time may be granted if the specific circumstances of the protest require a longer time. A request for an extension is proper only if the facts or legal issues affecting the resolution of a protest are so complicated that an adequate report cannot be prepared on time; the need to coordinate the report with other agencies, or with offices in distant locations, makes it impossible to prepare the report on time; or other compelling circumstances prevent preparing the report on time. Upon request of the Assistant General Counsel, the contracting officer shall confirm any oral request for extensions in writing. The contracting director shall concur in the request and send a copy to the HCA. A request for an extension, which will delay submission of the agency's report to GAO beyond 25 workdays from the date GSA originally received the protest, may be granted only by the GAO. The Assistant General Counsel will notify the Central Office contracting activity or Regional Counsel of the GAO's decision.

(vi) After submitting the statement to the Assistant General Counsel, the contracting officer or Regional Counsel shall advise the Assistant General Counsel of all later developments that may affect the case.

* * * * *

(4) The Office of General Counsel (OGC) shall furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests. The OGC is responsible for promptly advising the GAO of any change in the designated officials.

(5) * * *

Copies of the protest may be obtained for this office.

You may submit your views and relevant information regarding the protest directly to the General Accounting Office within 7 calendar days of receiving this notice. A copy of any submission to the GAO should be provided to this office.

* * * * *

(b) *Protests before award.* Under FAR 33.104(b), the HCA may determine in writing that urgent and compelling circumstances significantly affecting the interests of the United States do not permit waiting for the decision of GAO and award is likely to occur within 30 calendar days. The written determinations and findings (D&F), in the format shown at GSAR 501.704–70(e)(1), should be prepared by the contracting officer for the signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the appropriate Assistant General Counsel who notifies GAO of the agency's findings and intended action before the award is made.

(c) *Protests after award.* The procedures in paragraph (a) apply to the handling of protests after award. If the protest is received within 10 calendar days after an award, contract performance must be suspended under FAR 33.104(c) unless the HCA determines in writing that contract performance is in the best interests of the United States or that urgent and compelling circumstances that significantly affect the interests of the United States do not permit waiting for the GAO's decision. The written determinations and findings (D&F), in the format shown at GSAR 501.704–70(e)(2), should be prepared by the contracting officer for signature of the HCA. The D&F must be concurred in by the Regional Counsel (on regional procurements), and the appropriate Assistant General Counsel. After the D&F is approved, it must be returned to the Assistant General Counsel who notifies GAO of the agency's findings and intended action before contract performance is authorized.

(d) *Notice to GAO.* The head of the contracting activity responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General through the OGC within 60 calendar days of receipt of the GAO's recommendation if the agency

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has decided not to comply with the recommendation. The report shall explain the reasons why the GAO's recommendation will not be followed.

(6) Section 533.105 is amended to revise paragraph (a)(1) introductory text, (a)(1)(ii), the fourth paragraph in the format in (a)(1)(iii), paragraph (b) introductory text, and paragraphs (c) and (d)(3) to read as follows:

533.105 Protests by GSBCA.

(a) * * *

(1) All firms solicited, or those who have submitted sealed bids or offers if the protest is filed after the closing date of the solicitation, and the appropriate delegating official in the Information Resources Management Service. When giving such notification, the contracting officer should follow these procedures:

* * * * *

(ii) Use appropriate electronic means to ensure delivery to all the firms by the workday after the date of filing with the GSBCA. The Standard Form 14, Telegraphic Message, is to be used when sending notices through the GSA Communications Center. When preparing the Standard Form 14, the text should be doubled spaced, typed in uppercase letters, and the priority "Immediate" assigned. Each address on the mailing list must contain a street address and a zip code. If available, a facsimile, teletype, or TWX number should also be included as the first line of each address.

(iii) * * *

Copies of the protest may be obtained from the Office of the Clerk of the GSBCA, 18th & F Streets NW., Washington, DC 20405, or from the contracting officer.

* * * * *

(b) *Protest file.* To ensure timely submission, the contracting officer should begin assembly of the protest file by the second workday after receiving the protest. The protest file must be forwarded to LC by overnight delivery not later than the 8th workday after the protest is filed with the GSBCA. LC will distribute the copies to the GSBCA, the protester, and retain one copy for itself. If additional copies are needed, LC will advise the contracting officer. The following rules govern the assembly of protest files:

* * * * *

(c) *Protest conference.* Within 6 working days of filing a protest, a conference may be convened by the Board to establish further proceedings for the protest. Although the protest file and answer will most likely not have been filed, the Government must be prepared to discuss the issues in the protest, whether a record submission or hearing is desired, and other matters raised by the Board or any other interested party. The Government must also be prepared, if required, to object to the scope of discovery in any protest action.

(d) *Procedure following decision of the GSA Board of Contract Appeals.*

* * * * *

(3) If the Board revokes, suspends, or revises procurement authority after the award of a contract for ADP resources, the contracting officer shall consider the contract valid as to all goods or services delivered and accepted before the Board's decision (40 U.S.C. 759(h)(6)(B)).

7. Section 536.302–70 is amended to revise paragraphs (c), (c)(1) and (c)(2) to read as follows:

536.302–70 Charges and deposits for bidding documents.

* * * * *

(c) If the contracting officer determines before issuance of the solicitation that an insufficient number of sets of bid documents were returned on previous projects, a refundable bid document deposit may be required. Under extraordinary circumstances, a nonrefundable charge may be required for bid documents if approved by the head of the contracting activity.

(1) The amount of deposit for bid documents should be determined on the basis of the actual printing costs of the documents. The following table is for guidance only, and the contracting officer may require amounts higher or lower than those shown. Deposits should not be so high as to discourage bidder participation. Refundable bid document charges are intended to ensure the return of bid documents to the Government for use by the successful contractor and Government personnel, and thus minimize the need for duplication of additional sets. When the administrative cost of processing bid document deposits and returning bid documents is greater than the value of returned documents, the contracting officer should not require deposits.

Estimated project cost range	Guide for refundable bid document deposit
Up to $1,000,000	None
$1,000,000 to $5,000,000	$30
$5,000,000 to $10,000,000	40
$10,000,000 and over	50

(2) When a bid document deposit is required, the presolicitation notice shall require that the deposit be made by certified check, cashier's check, or money order payable to the General Services Administration. If a deposit is not submitted as specified, a reasonable attempt must be made to obtain the deposit in the proper form without delay. A record of the attempt must be placed in the contract file. The document deposit will be refunded if bid documents are returned in good condition, without marks, notes, or mutilations, within 20 calendar days after bid opening. Refunds will not be made for bid documents returned more than 20 days after bid opening.

(8.) Section 536.303 is revised to read as follows:

536.303 Invitations for bids.

The invitation for bids must include the following, when applicable:

(a) Special instructions concerning bids and awards of contracts that include base bid, alternatives, and/or options (see GSAR 536.570–4).

(b) Instructions concerning the pre-bid conference (see FAR 14.207, Pre-bid Conference).

9. Section 536.303–70 is revised to read as follows:

536.303–70 Bids that include alternates.

(a) The base bid must include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to include all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in the order of priority. Alternates may be used only when they are clearly justified and should involve substantial amounts of work in relation to the base bid. Their use must be limited and should involve only "add" alternates.

(b) The language used in soliciting alternates must be approved in writing by counsel.

(c) All solicitations requiring a base bid and alternates must include the Alternate II provision at GSAR 552.236–73, Basis of Award—Construction Contract, which prescribes the method for evaluating bids.

(d) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded must be announced at the beginning of the bid opening and must be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus the combination of alternate items do not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

Dated: January 29, 1986.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 86–3164 Filed 2–12–86; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Part 552

[GSAR AC–85–1, Supplement 2]

Payment Due Date; Construction Contracts

ACTION: Temporary Regulation.

SUMMARY: This supplement to the General Services Administration Acquisition Regulation Acquisition Circular AC–85–1 extends the expiration date to June 28, 1986. The intended effect is to extend the policies and procedures as established in AC–85–1, which revised the Payment Due Date clause for construction contracts at GSAR 552.232–70(f).

DATES: *Effective Date:* January 28, 1986.

Expiration Date: This circular expires June 28, 1986, unless extended or canceled.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–3822.

Regulatory Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted agency procurement regulations from Executive Order 12291. The exemption applies to this rule. When AC–85–1 was originally issued, the General Services Administration certified under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) that the document would not have a significant economic effect on a substantial number of small entities. Therefore, no regulatory analysis was prepared. The rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Part 552

Government procurement.

1. The authority citation for 48 CFR Part 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. 48 CFR Part 552 is amended by the following supplement to Acquisition Circular AC–85–1:

General Services Administration Acquisition Regulation Acquisition Circular AC–85–1; Supplement 2

To: All GSA contracting activities.

Subject: Payment Due Date—Construction Contracts.

1. *Purpose.* This supplement extends the expiration date of General Services Administration Acquisition Regulation Acquisition Circular AC–85–1.

2. *Effective.* January 28, 1986.

3. *Expiration date.* The General Services Administration Acquisition Regulation Acquisition Circular AC–85–1 and this supplement will expire on June 28, 1986, unless canceled earlier.

Richard H. Hopf III,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 86–3165 Filed 2–12–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 18]

Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 213, *Child Restraint Systems*, by requiring all child restraints equipped with tether straps (other than child harnesses, booster seats, and restraints designed for use by physically handicapped children) to pass the 30 miles per hour (mph) test with the tether strap unattached. This change is being made because survey results consistently show that, in the vast majority of instances, child restraints with tether straps are used by the public without attaching the tether strap to the vehicle. This amendment will ensure that children riding in child restraints with unattached tethers will be afforded crash protection equivalent to that afforded to children riding in child restraints designed without a tether.

This rule also eliminates the requirement that those child restraints pass a 20 mph test with the tether unattached. Since those restraints will now be required to pass the 30 mph test under the same test conditions, it is unnecessary for those restraints to also be tested at a lower speed.

Finally, this rule clarifies two items of information required to be included in the instructions accompanying child restraints. These clarifications do not alter the amount of information that must be included in the instructions; they simply explain what the agency intended to require.

DATES: *Effective Date:* This rule becomes effective August 12, 1986.

Petitions for Reconsiderations: Any petitions for reconsideration of this rule must be received by NHTSA not later than March 17, 1986.

ADDRESS: Any petitions for reconsideration of this rule should be addressed to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Vladislav Radovich, Office of Vehicle Safety Standards, NRM–12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) currently provides two different test configurations applicable to child restraint systems. First, a 30 mph frontal crash test is conducted for all child restraints. In that test, the restraints are installed according to the child restraint manufacturer's instructions. This test is referred to as Test Configuration I in section S6.1.2.1.1 of Standard No. 213.

Second, a 20 mph test is conducted for two types of child restraint systems. One type is a child restraint equipped with an anchorage belt. Anchorage belts, more commonly referred to as tether straps, are supplemental belts used to attach the child restraint to the vehicle. The other type of restraint subject to the 20 mph crash test is a child restraint with a fixed or movable surface which helps to restrain the child's forward movement in the event of a crash. This type of child restraint provides protection by the use of its own belt system and a surface which can be used independently of the belt system. Both of these types of child restraints are tested with only the vehicle lap belt holding the child restraint to the standard test seat and, in the case of restraints with a fixed or movable surface forward of the child, without attaching the restraint's belt system to hold the test dummy in place. This test, referred to as Test Configuration II in section S6.1.2.1.2. in Standard No. 213, is intended to take account of the possibility that the tether strap or the restraint's belt system will either be misused or not used at all by parents. If this happens, Test Configuration II should ensure that these types of

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restraints will offer minimal protection even when they are not properly used.

This rulemaking action addresses only the question or restraints with tether straps, and does not affect restraints with fixed or movable surfaces forward of the child. Tether straps have presented a difficult question for the agency since at least 1979. When a tether strap is properly attached, a child restraint equipped with a tether strap will generally offer the best protection for child occupants, particularly those riding in the front seat or involved in side impact crashes.

However, the results of surveys have continually shown that tether straps are not attached by the vast majority of the public. The most recent study available to the agency on this topic (Cynecki and Goryl, "The Incidence and Factors Associated with Child Safety Seat Misuse"; December 1984, DOT HS–806 676) found that nearly 85 percent of child restraints with tether straps were used without properly attaching the tether strap. The Cynecki and Goryl study recommended that the best solution for this problem would be to redesign the restraints to eliminate the need for tether straps.

This same suggestion has been made previously by several commenters in connection with the final rule substantially upgrading the performance requirements of Standard No. 213; 44 FR 72131, December 13, 1979. At the time of that rulemaking action, however, restraints with tethers comprised more than 70 percent of all sales of child restraints. The agency decided that it would be inappropriate to issue a rule which would have the effect of requiring a major redesign of most child restraint systems then on the market, especially when the public was just beginning to appreciate the importance of using child restraints. Further, NHTSA expected that proper usage of restraints with tethers would grow as public awareness and knowledge of child restraints grew.

When NHTSA reexamined this decision in light of the Cynecki and Goryl report, the reasoning no longer seemed valid. First, at this time, approximately one-fifth of all new child restraints, including booster seats, are equipped with a tether strap necessary for the protection of the child occupant. Thus, a rule which would have the effect of requiring a redesign of these restraints would have a substantially smaller impact on the child restraint market now than it would have had in 1979.

Second, and most significant, the expectation of increased proper use of tether straps has not been realized. Perhaps the most troubling fact in the Cynecki and Goryl report cited above was that 78 percent of the persons not using the tether strap to attach the child restraint to the vehicle *knew that its use was necessary*. This indicates that, while public awareness and knowledge of child restraints has grown significantly since 1979, that awareness and knowledge has not resulted in increased proper use of tether straps.

Because of its concern for the safety of children riding in motor vehicles, NHTSA tentatively decided that it was no longer reasonable to allow restraints with tethers to be tested in only a 20 mph crash in the way they will be used by the public, that is, without attaching the tether strap. The agency believed that those restraints, like restraints without tethers, should be tested in a 30 mph crash in the way they will be used by the public. This would ensure that all child restraints afforded equivalent protection to children riding therein.

Accordingly, NHTSA published a notice of proposed rulemaking (NPRM) on July 5, 1985; 50 FR 27633, proposing that all child restraints other than child harnesses be tested in the 30 mph crash test when attached to the test seat only by means of the lap belt. This proposal was intended to ensure that restraints with tethers afford the same level of protection to child restraint occupants as do restraints without tethers when tested in the manner both will be used by the public.

That NPRM also proposed some less significant changes to Standard No. 213. These were as follows:

(1) The standard currently specifies that the child restraint be installed in the center seating position during the testing. However, many new vehicles are produced without a front or rear seating position. This trend raised the concern that the tests were growing less representative of the conditions which would be encountered by the child restraint when it was in use. Accordingly, the NPRM proposed to amend Standard No. 213 to require that child restraints be tested in one of the two outboard seating positions. An anticipated added benefit of this change would be that it would reduce testing costs for the child restraint manufacturers, because two child restraints could be evaluated in the same test.

(2) Standard No. 213 requires that all child restraints equipped with a tether strap be permanently labeled with a notice that the tether strap must be properly secured as specified in the manufacturer's instructions. The NPRM proposed that the phrase "For extra protection in frontal and side impacts" be added in front of that notice. This change would convey the fact that the tether strap was a supplementary safety device, as proposed in the NPRM, while also affirming that additional safety protection is afforded when the tether strap is properly attached.

(3) Two changes were proposed to clarify what was meant in the requirements concerning the installation instructions to be provided along with the child restraint by the restraint's manufacturer. These were:

(a) The installation instructions are currently required to state that, in most vehicles, the rear center seating position is the safest seating position for installing a child restraint. This statement in the instructions has resulted in numerous inquiries to the agency by consumers wanting to know the safest seating position for vehicles with only two rear outboard seating positions. To eliminate this confusion on the part of the public, the NPRM proposed that the installation instructions be modified to state that, for maximum safety protection, the child restraint should be installed in a rear seating position in vehicles with two rear seating positions and in the center rear seating position in vehicles with three rear seating positions.

(b) The installation instructions in Standard No. 213 also require the child restraint manufacturer to "specify in general terms the types of vehicles, seating positions, and vehicle lap belts with which the system can or cannot be used." This requirement has frequently been erroneously interpreted to mean that child restraint manufacturers are required to state the specific vehicles, specific seating positions, and the specific vehicle lap belts with which a child restraint can or cannot be used. The NPRM proposed an amendment to make clear the agency's intent that the instructions specify the *types* of vehicles (e.g., passenger cars, pickup trucks, vans, buses, etc.), the *types* of seating positions (e.g., front, rear, bench, bucket, side facing, rear facing, folding, etc.) and the *types* of vehicle safety belts (e.g., diagonal, lap-shoulder, emergency locking, etc.) with which the restraint system can or cannot be used.

A total of 15 comments were received on the NPRM. The commenters included vehicle manufacturers, child restraint manufacturers, the National Transportation Safety Board, researchers from two state universities, child safety advocates, and individual consumers. Each of these comments was considered and the most significant ones are addressed below.

Attaching Tether Straps During the 30 MPH Test and the Need for the 20 MPH Test

Before discussing the comments received on this issue, the most significant one raised in the NPRM, NHTSA believes it would be useful to explain the differences between the different types of child restraints.

1. *Child seats.* A child seat is a child restraint that uses a plastic shell as a frame around the child, and has a shield, belts, or the like attached to the shell to restrain the child in the event of a crash. All but one of the currently produced models of child seats do not need to have an attached tether strap to pass the 30 mph test. However, two of the models which do not need a tether strap to pass the 30 mph test offer a tether strap as an option for extra protection of the child restraint's occupant.

2. *Booster seats.* A booster seat is a platform used to elevate a child in a vehicle. It does not have a frame or any other structural protection behind the child's back or head. Booster seats are designed to be used by older children who have outgrown child seats. By elevating these children, the booster seat allows the child to see out of the vehicle and to use the belt system in the vehicle. About half the current production of booster seats uses a special harness system attached to the vehicle by a tether strap to provide upper torso restraint for the booster seat occupant. The other half of current production of booster seats uses a small shield in front of the child to provide upper torso restraint.

3. *Child harnesses.* A child harness consists of a web of belts which are placed around the child, and is then anchored to the vehicle by a tether strap. Only one model of child harness is currently in production. Child harnesses are tested only in the 30 mph test with the tether attached according to the manufacturer's instructions, and are not subjected to the 20 mph test. The reason for this differing treatment for child harnesses as compared to other child restraints is the agency's opinion that child harness tethers are in fact properly used by the public, due to the nature of the device—i.e., if the tether strap is not attached, it would be obvious that the child would be completely unrestrained in the event of a crash.

4. *Restraints for use by physically handicapped children.* These restraints are essentially wheelchairs, some of which fold so that the wheelchair can be positioned in the rear seat of passenger cars. Other restraints are simply devices to tie down a wheelchair while the child is traveling in a van, bus, or similar vehicle. All currently produced child restraints for use by physically handicapped children use their own belt system and tether straps to provide the necessary upper torso restraint. The NPRM did not propose any exemption for these restraints from the proposed requirement that they pass the 30 mph test without attaching any tether straps. Thus, if the NPRM were adopted as proposed, all of these restraints would have to be redesigned.

This final rule establishes the following requirements for the different types of child restraints. Child seats will not be allowed to have any tether straps attached during the 30 mph test required by Standard No. 213. They will also no longer be required to be tested in the 20 mph test. However, child harnesses, booster seats, and restraints for use by physically handicapped children will be allowed to continue to have tether straps attached during the 30 mph test. The reasoning supporting these decisions is set forth below.

Child Seats

Almost all of the commenters addressing the agency's proposal to require child seats equipped with tether straps to pass the 30 mph test without attaching the tether supported the requirement. The only commenter which opposed this requirement was a child restraint manufacturer, arguing that a change at this time would "cause confusion of dealers and consumers with units that required tethers". The manufacturer further argued that if this change were made, "the Federal government must give child restraint manufacturers some sort of security blanket to protect them from lawsuits and recall of existing units."

NHTSA does not believe it is very likely that either dealers or consumers will be confused by the requirement that child seats with tethers pass the 30 mph test with the tether strap unattached. The new requirement would apply only to child seats manufactured after the effective date of this rule. Child seats manufactured before the effective date of this rule may be sold even if their tether strap must be attached to pass the 30 mph test. Hence, the agency does not see any reason for child seat dealers to be confused by this rule. Moreover, the public will receive the manufacturer's instructions with the child seat explaining how it is to be used. Thus, there does not appear to be any reason for the public to be confused by this rule.

NHTSA does not have any authority to give child restraint manufacturers a "security blanket" to protect them from lawsuits or recalls of child seats with tethers. Even if NHTSA believed it was appropriate to protect a manufacturer from lawsuits in a particular instance, only Congress has authority to do so. A recall of child seats must be based on a determination that the seats either do not comply with the requirements of Standard No. 213 in effect on the date of manufacture of the seat or that the seat contains a safety-related defect, as specified in sections 151 and 152 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1411 and 1412). If either determination were made, the manufacturer is required by section 154 of the Safety Act (15 U.S.C. 1415) to remedy the noncompliance or defect.

For the reasons set forth at length in the NPRM and briefly reiterated at the beginning of this preamble, and because only one child seat model is being produced that requires the tether strap to be attached, NHTSA is adopting the proposed requirement that all child seats pass the 30 mph test without any tether straps attached. This requirement applies to all child seats manufactured after the effective date of this rule.

As an adjunct to this rulemaking, child seats equipped with a tether strap will no longer be subject to the requirement that they also pass a 20 mph test with the tether unattached. Since these child seats will now be subject to the 30 mph test with the tether unattached, no purpose would be served by requiring the seats to be tested in a less severe manner under the same conditions.

Booster Seats

The commenters split on the issue of whether booster seats should be required to pass the 30 mph crash test with the tether strap unattached. The Insurance Institute for Highway Safety, Chrysler Corporation, the National Transportation Safety Board, and two individuals supported the proposed requirements for the reasons explained in the NPRM. However, the National Child Passenger Safety Association, Physicians for Automotive Safety, the University of Michigan, and researchers associated with the University of North Carolina opposed the proposed requirement. The gist of these opposing comments was as follows: The only means currently available for providing the needed upper torso restraint to booster seat occupants is with either a tether strap and harness or with a short shield in front of the child. A requirement to pass the 30 mph test without an attached tether strap would force manufacturers to equip all booster seats with a short shield. These

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commenters were concerned about the adequacy of the safety protection afforded to booster seat occupants by these short shields.

The University of Michigan commented that it is currently engaged in a research program to develop an abdominal penetration sensor for the 3-year-old dummy currently used in Standard No. 213 testing. They stated that they have undertaken this research because of their concern about the abdominal loading to which the short shield exposes the child during the 30 mph crash test. The University of Michigan concluded its comment by stating that its preliminary tests with a prototype of its abdominal penetration sensor suggests that children are in fact exposed to high abdominal loading by the short shields used on booster seats without tethers. The researchers associated with the University of North Carolina concurred with the University of Michigan on the need to examine the abdominal loading associated with booster seats without tethers before mandating that all booster seats be capable of passing the 30 mph test without an attached tether.

The agency is also aware of other concerns which have been expressed by child safety researchers in connection with the short shields used in booster seats without tethers. For example, there is concern that older children could be seriously injured by having their head and neck wrap around the shield, since the shield is not large enough to restrain those parts of the body in a crash situation. This concern was raised in the comments submitted by the National Child Passenger Safety Association. Another concern is that the short shield booster seats do not provide any crotch restraint. It is possible that small children could submarine under the short shields on booster seats, leaving these children completely unrestrained in the event of a crash.

NHTSA wishes to emphasize that booster seats without tethers comply with all current requirements of Standard No. 213 using the 3-year old dummy. Nevertheless, the issues raised by the commenters regarding the effectiveness of short shields on booster seats are matters of concern to the agency. Since the short shields used on booster seats without tethers represent the only current alternative to the use of tether straps on booster seats, NHTSA has concluded that it would be an unwise policy to essentially require the use of short shields on booster seats (by adopting the proposed requirements) before the agency has investigated the validity of the above-mentioned safety concerns. If testing showed that short shields did not provide adequate safety protection to children after the agency had essentially required the use of such shields on all booster seats, this rulemaking would not achieve the agency's goal of improving the protection offered to child restraint occupants. Therefore, it is premature to adopt the proposed requirements as they apply to booster seats.

The agency will investigate the allegations that have been made about the short shields on booster seats. The agency investigation, together with the University of Michigan testing on the abdominal loading imposed by these short shields, should help resolve the stated concerns.

There is also an important distinction between child seats with tethers and booster seats with tethers, which suggests that it is not as imperative to require the booster seats not be permitted to have an attached tether strap during the 30 mph test. Booster seats equipped with tethers are designed to be used *either* with the tether strap attached to the vehicle *or* with a lap-shoulder belt. When a lap-shoulder belt is available, booster seats with tethers are designed to use the shoulder belt in a vehicle so that it will provide the necessary upper torso support. When upper torso support is provided by a vehicle shoulder belt, it is not necessary to attach the tether strap to provide the necessary upper torso support.

This feature resulted in observed correct usage of booster seats equipped with tethers in 38.0 percent of the total cases in the Cynecki and Goryl report cited above. The tether strap was properly attached in 8.5 percent of the cases, and the lap-shoulder belt was correctly used with the booster seat in 29.5 percent of the observed cases. This 38.0 percent correct usage of booster seats with tethers compares favorably with the 41.2 percent correct usage of child seats not equipped with tethers, and both stand in sharp contrast to the 7.0 percent correct usage of child seats equipped with tethers.

The reason explained in the NPRM for proposing that tether straps not be attached during the 30 mph test was because of the overwhelming incorrect usage of child restraints with tethers by the public. However, the data available to the agency suggest that booster seats equipped with tethers are used correctly almost as often as child seats without tethers.

Child Harnesses

The NPRM did not propose to change the current treatment for child harnesses in the Standard No. 213 testing. The surveys and data available to the agency have not examined the extent to which child harness tethers are misused by the public. Moreover, NHTSA believes it would be obvious to users of child harnesses that the failure to attach the tether strap would leave the child completely unrestrained in a crash. The absence of data indicating misuse of child harness tether straps, together will the obvious need to attach these tether straps, resulted in the agency's position that the NPRM should not propose any changes to Standard No. 213 in this regard; that is, child harnesses would be permitted to have their tether straps attached during the 30 mph test and not be subject to the 20 mph test. No commenters addressed this area of the proposal, and the final rule does not make any changes to the current requirements for child harnesses for the reasons explained above.

Child Restraints for Physically Handicapped Children

A number of commenters urged the agency to exempt child restraints designed for handicapped children from the proposal that all child restraints, except child harnesses, pass the 30 mph test in Standard No. 213 without any tether strap attached. A manufacturer of child restraints for physically handicapped children commented: "Now that safe transportation for the handicapped child has become a reality through the use of restraint harnesses, tether systems, and wheelchairs engineered to meet Standard No. 213, it seems counterproductive for the handicapped population and manufacturers to start over again."

NHTSA did not intend to require any changes to these restraints, and a statement proposing the continuation of current testing requirements for restraints for physically handicapped children was inadvertently omitted from the NPRM. The agency thus will allow these child restraints to have tethers attached during the 30 mph test and will not require these restraints to be subjected to the 20 mph test without the tether attached. NHTSA has no data showing that these restraints are frequently misused by the public. Additionally, there is no alternative at present to the use of tether straps to provide the necessary upper torso support for physically handicapped children. Hence, any requirement to eliminate the use of tether straps on restraints for physically handicapped children would lessen the protection available for those children. This was not the agency's intent in the NPRM.

Other Issues

The NPRM proposed that child restraints be installed at one of the two outboard seating positions on the standard seat during the testing. As explained above, this was proposed to ensure that the testing would be representative of the way in which child restraints would be used by the public. It was also proposed to enable child restraint manufacturers to reduce testing costs by evaluating two child restraint systems in a single test.

The commenters that addressed this proposed change generally opposed it. The University of Michigan commented that there was no basis for the concern expressed in the NPRM that testing in the center seating position might not be representative of the way in which child restraints are used by the public. The University stated: "We know from field experience that those restraints that meet the 30 mph test in the center seating position also effectively protect children in most crashes." Stated differently, child restraints that pass the 30 mph crash test in the center seating position have performed well when installed in the outboard seating positions of vehicles in use. The available data on the performance of child restraint systems indicate that the Standard No. 213 test procedures are representative of the condition encountered by restraint systems when in use.

Further, one child restraint manufacturer and the University of Michigan stated that the agency's proposed change might increase testing costs, instead of achieving the agency's stated intent of reducing those costs. This could happen because child restraints would be subjected to slightly differing forces produced by asymmetrical lap belt anchorages at the outboard seating positions. Further, it was stated that all child restraints are not symmetrical, and their test performance might be affected by a twist in one direction, but not the other. These facts would mean that all existing models of child restraints would have to be retested to ensure that the restraints would pass the Standard No. 213 requirements when installed at the outboard seating positions. In addition, the child restraints would have to be tested at both the left and right outboard seating positions, because of the different forces presented at these different seating locations.

The proposed change to the required seating position for testing child restraints is not adopted in this final rule, because of the reasons set forth in the comments.

The NPRM also proposed that manufacturers be required to insert the phrase "For extra protection in frontal and side impacts" before the notice on the label that tether straps must be attached in accordance with the manufacturer's instructions. This change was proposed in connection with the proposal to require all child restraints equipped with tethers to pass the 30 mph test without attaching the tethers. The change in the label language was intended to inform the public that the tether strap would offer supplementary safety protection when attached, but that it was not necessary to attach the tether for adequate protection.

BMW commented that the proposed change would have the unintended effect of implying that it was not necessary to use tether straps, and this implication would decrease the already low use of tether straps. The agency believes that the BMW comment has merit. The possibility of decreasing tether usage, combined with the fact that child harnesses, booster seats, and restraints for physically handicapped children may include tether straps, the attachment of which is necessary for adequate protection of the child, have led the agency to conclude that the proposed change to the label language should not be adopted in this final rule.

The other proposed changes were clarifications to the instructions which must accompany each child restraint. No commenters addressed these clarifications, and they are adopted for the reasons explained in the NPRM.

Costs and Other Impacts

NHTSA has analyzed this final rule and determined that it is not "major" within the meaning of Executive Order 12291. It is, however, "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the high level of public and Congressional interest.

The requirement that child seats be tested at 30 mph without attaching the tether will result in the elimination or redesign of the one model which is current on the market and that NHTSA believes will not meet this requirement. This model has limited sales. Thus, both the costs and the safety benefits of this final rule will be limited. The rule will also ensure that other child seats that cannot pass the 30 mph test without attaching a tether cannot be offered for sale to the public. A final regulatory evaluation explaining these impacts has been prepared and placed in Docket No. 74–09; Notice 18. A copy of this evaluation may be obtained by any interested person by writing to: Docket Section, NHTSA, Room 5108, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 426–2768.

NHTSA also considerd the impacts of this final rule on small entities, as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The only manufacturer that will have to redesign or halt production of a child seat is not considered a small entity. Small organizations and small governmental jurisdictions are purchasers of child restraints. However, they will be minimally affected by the provisions of this rule.

Finally, the NHTSA has considered the environmental implications of this rule in accordance with the National Environmental Policy Act, and determined that it will not significantly effect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.213 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.213 [Amended]

2. S4 is amended by adding the following definition immediately before the definition of "car bed":

S4. *Definitions.*

"Booster seat" means a child restraint which consists of only a seating platform that does not extend up to provide a cushion for the child's back or head.

* * * * *

3. S5.6.1 is revised to read as follows:

S5.6.1 The instructions shall state that, for maximum safety protection, child restraint systems should be installed in a rear seating position in vehicles with two rear seating positions and in the center rear seating position in vehicles with such a seating position.

4. S5.6.2 is revised to read as follows:

S5.6.2 The instructions shall specify in general terms the types of vehicles, the types of seating positions, and the types of vehicle safety belts with which the system can or cannot be used.

5. S6.1.2.1 is revised to read as follows:

S6.1.2.1 *Test configuration.*

S6.1.2.1.1 *Test configuration I.* In the case of each child restraint system other

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than a child harness, a booster seat with a top anchorage strap, or restraint designed for use by physically handicapped children, install a new child restraint system at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6, except that the restraint shall be secured to the standard vehicle seat using only the standard vehicle lap belt. A child harness, booster seat with a top anchorage strap, or a restraint designed for use by physically handicapped children shall be installed at the center seating position of the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.

S6.1.2.1.2 *Test configuration II.* In the case of each child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, or a booster seat with a top anchorage strap, install a new child restraint system at the center seating position of the standard seat assembly using only the standard seat lap belt to secure the system to the standard seat.

Issued on February 10, 1986.

Diane K. Steed,

Administrator.

[FR Doc. 86-3234 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 51, No. 30
Thursday, February 13, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 417

[Doc. No. 3026S]

Sugarcane Crop Insurance Regulations.

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) clarify that acreage will not be insured when planted with another crop; (3) change the method of calculating the insureds share of any indemnity on crops transferred before harvest; (4) add a provision to insure acreage cut for seed by written agreement; (5) add a provision to insure by written agreement acreage grown for a third or succeeding year from stubble; (6) change the method of computing indemnities when acreage, share, or practice is underreported; (7) provide continuous protection for stubble cane; (8) change the notice of loss provision to make it more applicable to seed cane; (9) shorten the length of time an insured has to give notice when claiming an indemnity; (10) change the unit of measure for sugarcane; (11) clarify the method of appraising stubble acreage; (12) add definitions of "ASCS" and "Loss ratio"; (13) change the filing date for contract changes; (14) redefine "County" to clarify when land located outside the county is included in the county; and (15) delete the definition for "Standard sugarcane." The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Comment date: Written comments, data, and opinions on this proposed rule must be submitted not later than April 14, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectivenes of these regulations under these procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. -based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the sugarcane policy are:

1. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This change prevents the practice of collecting an indemnity on a crop in which the insured no longer has an interest.

Specify that insurance will apply on seed cane cut for seed, if FCIC agrees, in writing, to insure such acreage.

Add a provision that acreage grown for a third or succeeding year from stubble is not insured unless FCIC agrees in writing.

Specify that acreage will not be insured when planted with another crop. This change is made to be consistent with other crop policies.

2. *Section 5.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1991 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. *Section 7.*—Add a provision to provide continous protection for stubble cane.

4. *Section 8.*—Change the "notice of probable loss" provision to make it more applicable to seed cane.

Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities in a more timely fashion.

5. *Section 9.*—When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are

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underreported and will reduce the complexity of calculations.

Change the unit of measure from "tons" to "pounds" to more closely conform to industry practice.

6. *Section 15.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

7. *Section 16.*—Change the date for filing contract changes from May 31 to June 30.

8. *Section 17.*—Add definitions for "ASCS" and "Loss ratio."

Amend the "County" definition to clarify when land located outside the county is deemed to be in the county.

Delete the "Standard sugarcrane" definition since it is no longer used in subsection 9.e.(2).

FCIC is soliciting public comment on this proposed rule for 60 days after publication in the Federal Register. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 417

Crop insurance, Sugarcane.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1987 and succeeding crop years, to read as follows:

PART 417—SUGARCANE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

417.1 Availability of sugarcane crop insurance.
417.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
417.3 OMB control numbers.
417.4 Creditors.
417.5 Good faith reliance on misrepresentation.
417.6 The contract.
417.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 417.1 Availability of sugarcane crop insurance.

Insurance shall be offered under the provisions of this subpart on sugarcane in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 417.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugarcane which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 417.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 417.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 417.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sugarcane crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 417.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sugarcane crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 417.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the sugarcane crop as landlord, owner-operator, or tenant. The applicant shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sugarcane contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sugarcane Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugarcane—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good sugarcane farming practices;
(3) The failure or breakdown of irrigation equipment or facilities;
(4) The failure to follow recognized good sugarcane irrigation practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in subsection 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be sugarcane grown for processing for sugar, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be plant and stubble cane grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured sugarcane at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) Cut for seed unless we agree, in writing, to insure such acreage;
(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(4) Which is destroyed, it is practical to replant to sugarcane, and such acreage is not replanted;
(5) Initially planted after the final planting date contained in the actuarial table;
(6) Planted to a type or variety of sugarcane not established as adapted to the area or excluded by the actuarial table; or
(7) Planted with another crop.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good sugarcane irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sugarcane in the county in which you have a share;
b. The practice; and
c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sugarcane in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on the report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times you share at the time insurance attaches.

b. Interest wil accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1985 crop year under the terms of the experience table contained in the sugarcane policy in effect for the 1986 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;
(2) The premium reductions will not increase because of favorable experience;
(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1986 crop year;
(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and
(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches on:

(1) Plant cane at the time of planting unless otherwise provided for by the actuarial table; and
(2) Stubble cane on the first day following harvest for the first or second crop year cane from stubble on the unit, except when stubble has been damaged by conditions occurring before harvest in the previous crop year and we notify you, in writing, by:
(a) January 31 following harvest in Louisiana; or
(b) April 30 following harvest in all other States.

b. Insurance ends at the earliest of:

(1) Total destruction of the sugarcane;
(2) Harvest;
(3) Final adjustment of a loss; or
(4) The following dates immediately following the normal starting of harvest.

(a) Louisiana ..... January 31;
(b) All other states ..... April 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:
(a) During the period before harvest, the sugarcane on any unit is damaged and you decide not to further care for or harvest any part of it;
(b) You want our consent to put the acreage to another use; or
(c) After consent to put acreage to another use is given, additional damage occurs.

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Insured acreage may not be put to another use until we have appraised the sugarcane and given written consent. You must notify use when such acreage is put another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest:

(a) If you anticipate a loss on any unit; and

(b) For any acreage which is insured as seed cane.

(3) If probable loss is determined within 15 days of or during harvest, immediate notice must be given and a representative sample of the unharvested sugarcane (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the sugarcane on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destory any of the sugarcane which is not be harvested.

c. If an indemnity is to be claimed on any unit, you must leave intact the stalks on unharvested acreage and the stubble on harvested acreage until inspected by us.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sugarcane on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sugar on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar to be counted (see subsection 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in pounds of sugar) to be counted for a unit will include all harvested and appraised production.

(1) Sugar production to count from acreage damaged by freeze within the insurance period which adversely affects the boiling house operation and cannot be processed for sugar will be determined by dividing the dollar amount received from the mill for the damaged sugarcane by the price per pound of raw sugar.

The applicable price for raw sugar will be the local market price on the earlier of:

(a) The day the loss is adjusted; or

(b) The day such sugar is sold.

(2) Appraised production to be counted will include:

(a) Any appraisal under subsection 9.e.(3) and 9.e.(4);

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sugarcane farming practices;

(c) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any appraised production on unharvested acreage.

Appraisals and harvested production not processed for sugar will be given in pounds of sugar.

(3) We may make an appraisal of not less than the production guarantee per acre on any harvested acreage on which the stubble is destroyed prior to our inspection.

(4) Except for acreage on which insurance attached the first day following harvest of the previous crop, an appraisal for inadequate stand will be made on any stubble acreage, at the time of inspection, if the product of the number of plants per acre multiplied by 2, multiplied by the factor (percentage of sugar) shown by the actuarial table does not equal the per acre guarantee. The per acre appraisal for inadequate stand will be the difference between the appraised production and the production guarantee.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production to count unless such acreage is:

(a) Not put to another use before harvest of sugarcane becomes general in the county and reappraised by us;

(b) further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested sugarcane may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the sugarcane is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claims. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1, and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

j. If you have other fire insurance, first damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sugar produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us, satisfactory production records for the crop year or the contract will be canceled for next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are September 30.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by June 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sugarcane crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sugarcane insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Land identified by the same ASCS farm serial number for the county but physically located in another county within the state.

d. "Crop year" means the period from planting for plant cane and the day following harvest for stubble cane until the end of the insurance period and will be designated by the calendar year in which the sugarcane harvest normally begins in the county.

e. "Harvest" means the cutting and removing of sugarcane from the field.

F. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Plant cane" (see definition of sugarcane).

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Stubble cane" (see definition of sugarcane).

m. "Sugarcane" means either:

(1) Sugarcane the initial year planted (plant cane);

(2) Sugarcane growing from the stubble left to produce another crop from previously harvested sugarcane (stubble cane).

n. "Tenant" means a person who rents land from another person for an share of the sugarcane or a share of the proceeds therefrom.

o. "Unit" means all insurable acreage of sugarcane in the county on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugarcane on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC on December 9, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3156 Filed 2-12-86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 444

[Doc. No. 3002S]

Fresh Tomato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Fresh Tomato Crop Insurance Regulations (7 CFR Part 444),

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effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add excessive rain as an insurable cause of loss; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) clarify that acreage will not be insured when planted with another crop; (4) allow insurance on tomatoes not grown on plastic mulch; (5) remove the Premium Adjustment Table; (6) change the method of crediting the replanting payment; (7) add a provision to specify that coverage terminates when tomatoes are damaged after a specified period; (8) increase the time an insured has to give notice when claiming an indemnity; (9) add a provision that notice of loss is to be given within 72 hours after a specific period; (10) change the method of computing indemnities when acreage, share, or practice is underreported; (11) change the method for calculating production to count on harvested and appraised production; (12) establish the minimum value for harvested and appraised production; (13) increase the amount of acreage which must be replanted to obtain replanting payments; (14) add definitions for "ASCS", "Excessive rain", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression"; and (15) redefine "County" to clarify when land located outside the county is included in the county. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Comment date: Written comments, data, and opinions on this proposed rule must be submitted not later than March 17, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (1) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the pfovisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the fresh tomato policy are:

1. *Section 1.*—Add excessive rain as an insurable cause of loss. This provides for coverage for rain damage when more than 10 inches of rain falls in a twenty-four hour period.

2. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss. Add a provision to allow FCIC to insure tomatoes in other areas which are not grown on plastic mulch. Good cultural practices to grow tomatoes does not require plastic mulch.

Specify that acreage will not be insured when planted with another crop. This change is made to be consistent with other policies.

3. *Section 5.*—Remove the Premium Adjustment Table. The Premium Adjustment Table was removed for actuarial purposes. The Federal Crop Insurance Act requires that premiums be established to pay anticipated losses and establish a reasonable reserve. Discounting premiums established in accordance with the Act is not a sound actuarial practice and FCIC proposes to discontinue the practice.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premium. In other cases it will be paid to the insured. This changes the current practice of applying the replanting payment to the outstanding premium in all cases.

5. *Section 7.*—Add a provision to specify that coverage terminates and will not pay for damage occurring 140 days after the date of direct seeding, transplanting or replanting. Tomatoes should be harvested within 140 days of establishment. Damage occurring after that date will not be covered. Since tomatoes should be harvested by the end of the 140 day period, this change eliminates coverage for any damage occurring after that determinable date.

6. *Section 8.*—Increase from 48 to 72 hours the length of time an insured has to give notice of loss when claiming an indemnity. This change allows the insured to give timely notice when damage occurs over weekends and during periods of intense activity.

Add a provision for notice of loss after the end of the 140 day insurance period terminating coverage at a determinable date when all tomatoes should be harvested. This change allows for an inspection to determine potential production remaining on plants not harvested.

7. *Section 9.*—When acres are underreported, the production from all acres will count against the reported acres in calculating indemnities. This change will reduce the amount of indemnities when acres are underreported and will reduce the complexity of calculations.

Change the method of computing the total value of production to be counted for a unit on harvested and appraised production when claiming an indemnity.

Add a provision to establish that the value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes appraised by $3.00.

Indemnities have been paid after an insurable cause of loss occurred, when production was normal, but the prices were low. Also, marketing of production, part of which proves rotten and is destroyed, has resulted in a minus value after deduction of allowable costs from the price received. The result has been a total devaluation of the production actually marketed and an inflated indemnity.

Establishing a minimum price for marketed and appraised production returns the coverage to a production guarantee program and reduces the possibility that FCIC may pay indemnity when production is normal. It also removes the tendency to insure market prices.

Since the price of a normal crop when harested ordinarily exceeds the insurance amount, the $3.00 amount represents the point at which the dollar amount of insurance on appraised production of a given number of units would zero out.

This change also simplifies the method of determining value and informs the insured of the minimal value of appraised production.

Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment. Clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. Delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

8. *Section 17.*—Add definitions of "ASCS", "Excessive rain", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression."

Amend the "County" definition to clarify when land located outside the county is deemed to be in the county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 444

Crop insurance; Fresh tomato.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Fresh Tomato Crop Insurance Regulations (7 CFR Part 444), effective for the 1987 and succeeding crop years, to read as follows:

PART 444—FRESH TOMATO CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

444.1 Availability of fresh tomato crop insurance.
444.2 Premium rates, coverage levels, and amounts of insurance.
444.3 OMB control numbers.
444.4 Creditors.
444.5 Good faith reliance on misrepresentation.
444.6 The contract.
444.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 444.1 Availability of fresh tomato crop insurance.

Insurance shall be offered under the provisions of this subpart on fresh tomatoes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 444.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for fresh tomatoes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts shown on the actuarial table for the crop year.

§ 444.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 444.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 444.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the fresh tomato crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 444.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh tomato crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 444.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the fresh tomato crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the

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insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a fresh tomato insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Fresh Tomato Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Fresh Market Tomato—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Excessive rain;

(2) Frost;

(3) Freeze;

(4) Hail;

(5) Fire;

(6) Tornado;

(7) Tropical depression; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) Disease or insect infestation;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good tomato farming practices;

(4) The impoundment of water by any governmental, public, or private dam or reservoir project;

(5) The failure or breakdown of irrigation equipment or facilities;

(6) The failure to follow recognized good tomato irrigation practice; or

(7) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be tomatoes (excluding cherry-type tomatoes) planted for harvest as fresh market tomatoes, grown on insured acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be tomatoes planted on irrigated acreage as designated insurable by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tomatoes at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage of tomatoes grown by any person if the person had not previously:

(1) Grown tomatoes for commercial sales; or

(2) Participated in the management of the tomato farming operation.

e. We do not insure any acreage:

(1) Of tomatoes grown for direct consumer marketing;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is not irrigated;

(4) On which tomatoes are not grown on plastic mulch unless provided for by the actuarial table;

(5) On which tomatoes, peppers, eggplants or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting tomatoes;

(6) Which was planted to tomatoes the preceding planting period, unless the tomato plants of the preceding planting period were destroyed less than:

(a) 30 days after the date of transplanting; or

(b) 60 days after the date of direct seeding;

(7) Which is destroyed, it is practical to replant to tomatoes, and such acreage was not replanted. (The unavailability of plants is not a valid reason for failure to replant);

(8) Initially planted after the final planting date set by the actuarial table;

(9) Of volunteer tomatoes;

(10) Planted to a type or variety of tomatoes not established as adapted to the area or excluded by the actuarial table;

(11) Planted for experimental purposes; or

(12) Planted with another crop.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter, and spring-planted tomatoes in the county in which you have a share;

b. The practice, including the bed size; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tomato plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual pemium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you claim the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the tomatoes are planted in each planting period and ends at the earliest of:

a. Total destruction of the tomatoes on the unit;

b. Discontinuance of harvest of tomatoes on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. 140 days after the date of direct seeding, transplanting or replanting;

e. Final harvest; or

f. Final adjustment of a loss.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant tomatoes damaged due to any insured cause (see subsection 9f);

(b) During the period before harvest, the tomatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tomatoes and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

(a) After total destruction of the tomatoes on the unit;

(b) After discontinuance of harvest of any acreage on the unit;

(c) Before harvest would normally start if any acreage on the unit is not to be harvested; or

(d) After the 140th date ending the insurance period in accordance with Section 7.

b. You may not destroy or replant any of the tomatoes on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the tomatoes which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received for all tomatoes on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the stage of production defined by the actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.e.); and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

e. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 25 pound cartons of tomatoes harvested on the unit by $3.00; or

(b) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable cost as set by the actuarial table. However, such price shall not be less than zero for any carton.

(2) The value of appraised production to be counted will include:

(a) The value of the potential production on any tomatoes that have not been harvested the third time and the value of unharvested production of mature green and riper tomatoes with classification size of 7X7 (2⅝s inch minimum diameter) or larger remaining after the third harvest;

(b) The value of the potential production lost due to uninsured causes; and

(c) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes appraised by $3.00.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by use; or

(c) Harvested.

(4) The amount and value of production of any unharvested tomatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the tomatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78–A, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured tomatoes replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage sustaining a loss in excess of 50 percent of the plant stand for the unit as determined on the final planting date for the planting period.

(1) No replanting payment will be made on acreage on which a replanting payment bas been made during the current planting period for the crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $175.00 per acre by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tomatoes are planted for any crop year, any indemnity will be paid to the persons determined to be beneficiary entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from your policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

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We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act of omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tomatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of tomato crop insurance:

a. "Acre" means 43,560 square feet of plastic mulch of not more than 6 foot widths (6-foot bed) on which at least 7,260 linear feet (rows) are planted.

b. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding tomato insurance in the county.

c. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

d. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by the same ASCS farm serial number for the county but physically located in another county within the state.

e. "Crop year" means the period within which the tomatoes are normally grown beginning August 1 and continuing through the harvesting of the spring-planted tomatoes and is designated by the calendar year in which the spring-planted tomatoes are normally harvested.

f. "Excessive rain" means more than 10 inches of rain fall upon the tomato field within a 24-hour period, after the tomatoes have been seeded or transplanted.

g. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause crop damage.

h. "Frost" means the condition of air temperature around the plant falling to 32 degrees Fahrenheit or below.

i. "Harvest" means the picking of marketable tomatoes on the unit.

j. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

k. "Insured" means the person who submitted the application accepted by us.

l. "Loss ratio" means the ratio of indemnity to premium.

m. "Mature green tomato" means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well formed jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife slicing; and

(4) Shows no red color.

n. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

o. "Planting" means transplanting the tomato plants into the field or direct seeding in the field.

p. "Planting Period" means tomatoes planted within the dates set by the actuarial table, as fall-planted, winter-planted or spring-planted.

q. "Plant Stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

r. "Potential production" means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 7×7 or larger which the tomato plants would produce or would have produced, per acre, by the end of the insurance period.

s. "Replanting" means performing the cultural practices necessary to replant insured acreage to tomatoes.

t. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

u. "Tenant" means a person who rents land from another person for a share of the tomatoes or a share of the proceeds therefrom.

v. "Tomatoes grown for direct consumer marketing" means tomatoes grown for the purpose of selling directly to the consumer; and which are grown on acreage not subject to an agreement between producer and packer to pack the production (the producer-packer agreement must be made before you report your acreage).

w. "Tropical depression" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been identified by the United States Weather Service in which the minimum sustained surface wind (1-minute mean) is 33 knots (38 miles per hour) or more at the U.S. Weather Service reporting station nearest to the crop damage at the time of the crop damage.

x. "Unit" means all insurable acreage of tomatoes for each planting period in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on November 26, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3157 Filed 2-12-86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 445

[Docket No. 2994S]

Pepper Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Pepper Crop Insurance Regulations (7 CFR Part 445), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add excessive rain as an insurable cause of loss; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) clarify that acreage will not be insured when planted with another crop; (4) remove the Premium Adjustment Table; (5) change the method of crediting the replanting payment; (6) add a provision to specify that coverage terminates when peppers are damaged after a specified period; (7) increase the length of time an insured has to give notice of loss when claiming an indemnity; (8) add a provision that notice of loss is to be given within 72 hours after a specified period; (9) change the method of computing indemnities when acreage, share, or practice is underreported; (10) change the method for calculating production to count on harvested and appraised production; (11) establish the minimal value for harvested and appraised production; (12) increase the amount of acreage which must be replanted to obtain replanting payments; (13) add definitions of "ASCS", "Excessive rain", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression"; and (14) redefine "County" to clarify when land located outside the county is included in the county. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than March 17, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprised to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the pepper policy are:

1. *Section 1.*—Add excessive rain as an insurable cause of loss. This provides for rain damage coverage when more than 10 inches of rain falls in a twenty-four hour period.

2. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Specify that acreage will not be insured when planted with another crop. This change is made to be consistent with other policies.

3. *Section 5.*—Remove the Premium Adjustment Table. The Premium Adjustment Table was removed for actuarial purposes. The Federal Crop Insurance Act requires that premiums be established to pay anticipated losses and establish a reasonable reserve. Discounting premiums established in accordance with the Act is not a sound actuarial practice and FCIC proposes to discontinue the practice.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 6.*—Specify that the replanting payment will only be applied

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to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premium. In other cases it will be paid to the insured. This changes the current practice of applying the replanting payment to the outstanding premium in all cases.

5. *Section 7.*—Add a provision to specify that coverage terminates and will not cover damage occurring 150 days after the date of direct seeding, transplanting or replanting. Peppers should be harvested within 150 days of establishment. Damage occurring after that date will not be covered. Since peppers should be harvested by the end of the 150 day period, this change eliminates coverage for any damage occurring after that determinable date.

6. *Section 8.*—Increase from 48 to 72 hours the length of time an insured has to give notice of loss when claiming an indemnity. This change allows the insured to give timely notice when damage occurs over a weekend and during periods of intense activity.

Add a provision for notice of loss after the end of the 150 day insurance period to terminate coverage at a determinable date when all peppers should be harvested. This change allows for an inspection to determine potential production remaining on plants not harvested.

7. *Section 9.*—When acres are underreported, the production from all acres will count against the reported acres in calculating indemnities. This change will reduce the amount of indemnities when acres are underreported and will reduce the complexity of calculations.

Change the method of computing the total value of production to be counted for a unit on harvested and appraised production when claiming an indemnity.

Add a provision to establish that the value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 1⅛ bushels appraised by $4.00.

Indemnities have been paid after an insurable cause of loss occurred, when production was normal, but the prices were low. Also, marketing of production, part of which proves rotten and is destroyed, has resulted in a minus value after deduction of allowable costs from the price received. The result has been a total devaluation of the production actually marketed and an inflated indemnity.

Establishing a minimum price for marketed and appraised production returns the coverage to a production guarantee program and reduces the possibility that FCIC may pay indemnity when production is normal. It also removes the tendency to insure market prices.

Since the price on a normal crop when harvested ordinarily exceeds the insurance amount, the $4.00 amount represents the point at which the dollar amount of insurance on appraised production of a given number of units would zero out.

This change also simplifies the method of determining value and informs the insured of the minimal value of appraised production. Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment. Clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. Delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

8. *Section 17.*—Add definitions of "ASCS", "Excessive rain", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression."

Amend the "County" definition to clarify when land located outside the county is deemed to be in the county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the Federal Register. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 445

Crop insurance, Pepper.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Pepper Crop Insurance Regulations (7 CFR Part 445), effective for the 1987 and succeeding crop years, to read as follows:

PART 445—PEPPER CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

445.1 Availability of pepper crop insurance.
445.2 Premium rates, coverage levels, and amounts of insurance.
445.3 OMB control numbers.
445.4 Creditors.
445.5 Good faith reliance on misrepresentation.
445.6 The contract.
445.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Year

§ 445.1 Availability of pepper crop insurance.

Insurance shall be offered under the provisions of this subpart on peppers in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 445.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for peppers which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts shown on the actuarial table for the crop year.

§ 445.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 445.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 445.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the pepper crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 445.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the pepper crop as provided in the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 445.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the pepper crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any colunty upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a pepper insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Pepper Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Pepper—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

terms and conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Excessive rain;
(2) Frost;
(3) Freeze;
(4) Hail;
(5) Fire;
(6) Tornado;
(7) Tropical depression; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) Disease or insect infestation;
(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(3) The failure to follow recognized good pepper farming practices;
(4) The impoundment of water by any governmental, public, or private dam or reservoir project;
(5) The failure or breakdown of irrigation equipment or facilities;
(6) The failure to follow recognized good pepper irrigation practice; or
(7) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be peppers planted for harvest as fresh market peppers, grown on insured acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be peppers planted on irrigated acreage as designated insurable by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured peppers at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage of peppers grown by any person if the person has not previously:

(1) Grown peppers for commerical sales; or
(2) Participated in the management of the pepper farming operation.

e. We do not insure any acreage:

(1) Of peppers grown for direct consumer marketing;
(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(3) Which is not irrigated;
(4) On which peppers are not grown on plastic mulch unless provided for on the acturial table;
(5) On which tomatoes, peppers, eggplants or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting peppers;
(6) Which was planted to peppers the preceding planting period, unless the pepper plants of the preceding planting period were destroyed less than:
(a) 30 days after the date of planting; or
(b) 60 days after the date of direct seeding;
(7) Which is destroyed, it is practical to replant to peppers, and such acreage was not replanted (The unavailability of plants is not a valid reason for failing to replant);
(8) Initially planted after the final planting date set by the actuarial table;
(9) Of volunteer peppers;
(10) Planted to a type or variety of peppers not established as adapted to the area or excluded by the actuarial table;
(11) Planted for experimental purposes; or
(12) Planted with another crop.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter and spring-planted peppers in the county in which you have a share;

b. The practice, including the bed size; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any pepper plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All

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indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-half percent (1-½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the peppers are planted in each planting period and ends at the earliest of:

a. Total destruction of the peppers on the unit;

b. Discontinuance of harvest of peppers on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. 150 days after the date of direct seeding, transplanting or replanting;

e. Final harvest; or

f. Final adjustment of a loss.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant peppers damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the peppers or any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the peppers and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

(a) After total destruction of the peppers on the unit;

(b) After discontinuance of harvest of any acreage on the unit;

(c) Before harvest would normally start if any acreage on the unit is not to be harvested; or

(d) After the 150th day ending of the insurance period in accordance with section 7.

b. You may not destroy or replant any of the peppers on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the peppers which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 6 days after the earliest of:

(1) Total destruction of the peppers on the unit;

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received from all peppers on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the stage of production defined by the actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.e.); and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

e. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 1⅛ bushels of peppers harvested on the unit by $4.00; or

(b) The dollar amount obtained by multiplying the number of 1⅛ bushels of peppers sold by the price received for each of 1⅛ bushel of peppers minus allowable cost set by the actuarial table. However, such price shall not be less than zero for any 1⅛ bushel.

(2) The value of appraised production to be counted will include:

(a) The value of the potential production on any peppers that have not been harvested the third time and the value of unharvested mature green and red peppers;

(b) The value of the potential production lost due to uninsured causes; and

(c) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without our prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 1⅛ bushels appraised by $4.00.

(3) Unharvested peppers damaged or defective due to insurable causes and which cannot be marketed will not be counted.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to enother use before harvest of peppers becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The amount and value of production of any unharvested peppers may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the peppers are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78-A, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured peppers replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage sustaining loss in excess of 50 percent of the plant stand for the unit, as determined on the final planting date for the planting period.

(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current replanting period for the crop year.

(2) The replanting payment per acre will be your actrual cost per acre for replanting, but will not exceed the product obtained by multiplying $300.00 per acre by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brough in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees,

or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form. If the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1, and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the peppers are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Becuase you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all peppers proudced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such payment and setoff are approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise.

If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of pepper crop insurance:

a. "Acre" means 43,560 square feet of plastic mulch of not more than 6 foot widths (6-foot bed) on which at least 7,260 linear feet (rows) are planted.

b. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding pepper insurance in the county.

c. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

d. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county as shown by the actuarial table; and

(3) Any land identified by the same ASCS farm serial number for the county but physically located in another county within the state.

e. "Crop year" means the period within which the peppers are normally grown beginning August 1 and continuing through the harvesting of the spring-planted peppers and is designated by the calendar year in which the spring-planted peppers are normally harvested.

f. "Excessive rain" means more than 10 inches of rain fall upon the pepper field within a 24-hour period after the peppers have been seeded or transplanted.

g. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause crop damage.

h. "Frost" means the condition of air temperature around the plant falling to 32 degrees Fahrenheit or below.

i. "Harvest" means the final picking of marketable peppers on the unit.

j. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

k. "Insured" means the person who submitted the application accepted by us.

l. "Loss ratio" means the ratio of indemnity to premium.

m. "Mature green pepper" means a pepper which has reached the stage of development that will withstand normal handling and shipping.

n. "Peppers grown for direct consumer marketing" means peppers grown for the purpose of selling directly to the consumer, and which are grown on acreage not subject to an agreement between producer and packer to pack the production (the producer-packer agreement must be made before you report your acreage).

o. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

p. "Planting" means transplanting the peppr plant into the field or direct seeding in the field.

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q. "Planting period" means the peppers planted within the dates set by the actuarial table, as fall-planted, winter-planted or spring-planted.

r. "Plant stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

s. "Potential production" means the number of 1-⅑ bushels of mature green peppers which the pepper plants would produce or would have produced, per acre, by the end of the insurance period.

t. "Replanting" means performing the cultural practices necessary to replant insured acreage to peppers.

u. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

v. "Tenant" means a person who rents land from another person for a share of the peppers or a share of the proceeds therefrom.

w. "Tropical depression" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been identified by the United States Weather Service in which the minimum sustained surface wind (1-minute mean) is 33 knots per hour (38 miles per hour) or more at the U.S. Weather Service reporting stetion nearest to the crop damage at the time of loss.

x. "Unit" means all insurable acreage of peppers for each planting period in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peppers on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person heving an interest therein.

16. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on November 26, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3154 Filed 2-12-86; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 449

[Doc. No. 3027S]

Fresh Market Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR 449), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (2) clarify that acreage will not be insured when planted with another crop; (3) change the method of crediting the replanting payment; (4) change the method of computing indemnities when acreage, share, or practice is underreported; (5) establish the minimum value for harvested and appraised production; (6) provide that a replant payment is no longer considered an indemnity; (7) increase the length of time an insured has to give notice of loss when claiming an indemnity; (8) increase the amount of acreage which must be replanted to obtain replanting payments; (9) provide for paying interest on late paid indemnities; (10) change the cancellation and termination dates; and (11) add definitions of "ASCS" "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression"; and (12) redefine "County" to clarify when land located outside the county is included in the county. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

DATES: Comment Date: Written comments, data, and opinions on this proposed rule must be submitted not later than March 17, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The principal changes in the fresh market sweet corn policy are:

1. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Specify the acreage will not be insured when planted with another crop.

This change is made to be consistent with other crop policies.

2. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premium. In other cases it will be paid to the insured. This changes the current practice of applying the replanting payment to the outstanding premium in all cases.

3. *Section 8.*—Increase from 48 to 72 hours the length of time an insured has to give notice of loss when claiming an indemnity. This change follows the insured to give timely notice when damage occurs over weekends and during periods of intense activity.

4. *Section 9.*—When acres are underreported, the production from all acres will count against the reported acres in calculating indemnities. This change will reduce the amount of indemnities when acres are underreported and will reduce the complexity of calculations.

Change the method of computing the total value of production to be counted for a unit on harvested and appraised production when claiming an indemnity.

Add a provision to establish that the value of any appraised production will not be less than the dollar amount obtained by multiplying the number of crates appraised by $2.00.

Indemnities have been paid after an insurable cause of loss occurred, when production was normal, but the prices were low. Also, marketing of production, part of which proves rotten and is destroyed, has resulted in a minus value after deduction of allowable costs from the price received. The result has been a total devaluation of the production actually marketed and an inflated indemnity.

Establishing a minimum price for marketed and appraised production returns the coverage to a production guarantee program and reduces the possibility the FCIC may pay indemnity when production is normal. It also removes the tendency to insure market prices.

Since the price on a normal crop when harvested ordinarily exceeds the insurance amount, the $2.00 amount represents the point at which the dollar amount of insurance on appraised production of a given number of units would zero out.

This change also simplifies the method of determining value and informs the insured of the minimal value of appraised production.

Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment. Clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. Delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

Add a provision to pay interest whenever indemnities are not paid timely.

5. *Section 15.d.*—Change the cancellation and termination dates from July 1 to July 31 to be consistent with farming practices in the area.

6. *Section 17.*—Add definitions of "ASCS", "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression".

Amend the "County" definition to clarify when land located outside the county is deemed to be in the county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 449

Crop insurance, Fresh market sweet corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to revise and reissue the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Part 449), effective for the 1987 and succeeding crop years, to read as follows:

PART 449—FRESH MARKET SWEET CORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

449.1 Availability of fresh market sweet corn insurance.
449.2 Premium rates, coverage levels, and amounts of insurance.
449.3 OMB control numbers.
449.4 Creditors.
449.5 Good faith reliance on misrepresentation.
449.6 The contract.
449.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and succeeding crop years

§ 449.1 Availability of fresh market sweet corn insurance.

Insurance shall be offered under the provisions of this subpart on fresh market sweet corn in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 449.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverge levels, and amounts of insurance for fresh market sweet corn which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts contained in the actuarial table for the crop year.

§ 449.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 449.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer, or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 449.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the fresh market sweet corn crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the

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Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 449.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh market sweet corn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 449.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the fresh market sweet corn crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a fresh market sweet corn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37; 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Fresh Market Sweet Corn Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Fresh Market Sweet Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Frost;
(2) Freeze;
(3) Hail;
(4) Fire;
(5) Tornado;
(6) Tropical depression; or
(7) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) Disease or insect infestation;
(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(3) The failure to follow recognized good sweet corn farming practices;
(4) The impoundment of water by any governmental, public, or private dam or reservoir project;
(5) The failure or breakdown of irrigation equipment or facilities;
(6) The failure to follow recognized good sweet corn irrigation practices; or
(7) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be sweet corn planted for harvest as fresh market sweet corn, grown on insured acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be sweet corn planted on irrigated acreage as designated insurable by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

(c.) The insured share is your share as landlord, owner-operator, or tenant in the insured sweet corn at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage of sweet corn grown by any person if the person had not previously:

(1) Grown sweet corn for commercial sales; or
(2) Participated in the management of the sweet corn farming operation.

(e.) We do not insure any acreage:

(1) Of sweet corn grown for direct consumer marketing;
(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(3) Which is not irrigated;
(4) Which is destroyed, it is practical to replant to sweet corn, and such acreage is not replanted;
(5) Initially planted after the final planting date set by the actuarial table;
(6) Of volunteer sweet corn;
(7) Planted to a type or variety of sweet corn not established as adapted to the area or excluded by the actuarial table;
(8) Planted for experimental purposes; or
(9) Planted with another crop.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice. You must report at the time of each planting period on our form:

a. All the acreage of fall, winter and spring-planted sweet corn in the county in which you have a share;
b. The practice; and
c. Your share.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sweet corn plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the table of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage levels and amounts of insurance.

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the sweet corn is planted in each planting period and ends at the earliest of:

a. Total destruction of the sweet corn on the unit;
b. Discontinuance of harvest of sweet corn on the unit;
c. The date harvest should have started on the unit on any acreage which will not be harvested;
d. Final harvest; or
e. Final adjustment of a loss.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sweet corn damaged due to any insured cause (See subsection 9f);

(b) During the period before harvest, the sweet corn on any unit is damaged and you decide not to further care for or harvest any part of the sweet corn;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sweet corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

(a) After total destruction of the sweet corn on the unit;

(b) After discontinuance of harvest of any acreage on the unit; or

(c) Before harvest would normally start if any acreage on the unit is not to be harvested.

b. You may not destroy or replant any of the sweet corn on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the sweet corn which is not to be harvested.

d We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sweet corn on the unit;
(2) Discontinuance of harvesting on the unit; or
(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received for all sweet corn on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the stage of production defined by the actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see section 9e); and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

e. The total value of production to be counted for a unit will include all harvested and appraised produciton.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of crates of sweet corn harvested on the unit by $2.00; or

(b) The dollar amount obtained by multiplying the number of crates of sweet corn sold by the price per crate received minus allowable cost set by the actuarial table; however, such price shall not be less than zero for any crate.

(2) The value of appraised production to be counted will include:

(a) The value of any potential production and unharvested mature sweet corn; and

(b) The value of unharvested production on harvested acreage and the value of the potential production lost due to uninsured causes; and

(c) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of crates appraised by $2.00.

(3) Unharvested sweet corn damaged or defective due to insurable causes and which cannot be marketed will not be counted.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The amount and value of production of any unharvested sweet corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the sweet corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78–A, "Request to Exclude Hail and Fire".

f. A replanting payment may be made on any insured sweet corn replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage sustaining a loss in excess of 25 percent of the plant stand for the unit, as determined on the final planting date for the planting period.

(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current planting period for the crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $40.00 per acre by your share.

If the information reported by you results in a lower premium then the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity.

The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1. The interest rate to be paid on any

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indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sweet corn is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidence will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer or right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other then us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sweet corn produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at out option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign such claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sweet corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding sweet corn insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county as shown by the actuarial table; and

(3) Any land identified by the same ASCS farm serial number for the county but physically located in another county within the state.

d. "Crop year" means the period within which the sweet corn is normally grown beginning July 15 and continuing through the harvesting of the spring-planted sweet corn and is designated by the calendar year in which the spring-planted sweet corn is normally harvested.

e. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause crop damage.

f. "Frost" means the condition of air temperature around the plant falling to 32 degrees Fahrenheit or below.

g. "Harvest" means the final picking of marketable sweet corn on the unit.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us.

j. "Loss ratio" means the ratio of indemnity to premium.

k. "Marketable sweet corn" means the sweet corn has reached the stage of development that will withstand normal handling and shipping.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

m. "Planting period" means the sweet corn planted within the dates set by the actuarial table, as fall-planted, winter-planted or spring-planted.

n. "Plant stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

o. "Potential production" means the number of crates of sweet corn the sweet corn plants would produce or would have produced, per acre, by the end of the insurance period.

p. "Replanting" means performing the cultural practices necessary to replant insured acreage to sweet corn.

q. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

r. "Sweet corn" means a type of corn with kernels containing a high percentage of sugar and adapted for table use.

s. "Sweet corn grown for direct consumer marketing" means sweet corn grown for the purpose of selling directly to the consumer; and which is grown on acreage not subject to an agreement between producer and packer to pack the production (the producer-packer agreement must be made before you report your acreage).

t. "Tenant" means a person who rents land from another person for a share of the sweet corn or a share of the proceeds therefrom.

u. "Tropical depression" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been identified by the United States Weather Service in which the minimum sustained surface wind (1-minute mean) is 33 knots (38 miles per hour) or more at the U.S Weather Service reporting station nearest to the crop damage at the time of loss.

v. "Unit" means all insurable acreage of sweet corn for each planting period in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn or such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determining by the time of our receipt of the written notice.

Done in Washington, DC, on December 9, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3155 Filed 2-12-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 905 and 913

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; and Grapefruit Grown in the Interior District in Florida; Proposed Redistricting and Reapportionment of Grower Members

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the redistricting of grower districts and the reapportionment of grower members on the Citrus Administrative Committee (CAC) and the Interior Grapefruit Marketing Committee (IGMC) under Marketing Order Nos. 905 and 913, respectively. The proposals are based on changes in the average percent of acreage, production, and shipments of regulated fruits during the preceding five-year period (1980–1985). The proposals were recommended at meetings of the CAC and IGMC on February 4, 1986.

DATE: Comments must be received by February 24, 1986.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2057 South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: George Kelhart Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250. Telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 95 handlers of citrus under the Marketing Order for Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, and approximately 57 handlers of grapefruit under the Marketing Order for Grapefruit Grown in the Interior District in Florida will be subject to regulations during the course of the current season and that the great majority of these groups may be classified as small entities. While regulations issued under these orders impose some costs on affected handlers and the number of such firms may be substantial, the added burden imposed on small entities, if present at all, is not significant.

This proposed rule is issued under Marketing Order Nos. 905 and 913 regulating the handling of Oranges, Grepefruit, Tangerines, and Tangelos Grown in Florida and Grapefruit Grown in the Interior District in Florida, respectively. The Marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This proposed rule provides for a comment period less than 30 days. A longer comment period would be contrary to the public interest, as any comments on the rule need to be received prior to the issuance of the final rule, if issued, which must be made effective on or before March 1 as presecribed in the orders.

Section 905.13 of the order covering Florida oranges, grapefruit, tangerines and tangelos defines five citrus districts comprising the production area for purposes of grower representation on the CAC. The apportionment of grower members for each citrus district is described in § 905.23. Currently, each district is represented by two grower members and alternates except Citrus District Two, which has one grower member and alternate for a total of nine grower members of the CAC.

Section 905.14 of the order authorizes the CAC, with the approval of the Secretary, to redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of the districts, or both. The membership of the CAC must consist of at least eight but not more than nine grower members. The number

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of members from each district and the grouping of the districts are based, insofar as practicable, upon the respective averages for the immediately preceding five fiscal periods of: (1) The volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and (3) the total number of acres of citrus in each district. This section also requires any such redistricting and reapportionment to be announced on or before March 1.

During the five year period (1980–85) the combined average percentages used as a basis for this proposal for Marketing Order 905 are as follows: Citrus District One, 16.54 percent; Citrus District Two, 8.36 percent; Citrus District Three, 30.59 percent, Citrus District Four, 23.39 percent; and Citrus District Five, 21.12 percent. The average percent of Citrus District Two shows a decrease in acreage, production, and shipments for the five-year period. The proposal would: (1) Combine Citrus Districts One and Two to become Citrus District One with two grower members and alternates; (2) change Citrus District Five to Citrus District Two with two grower members and alternates; (3) change Citrus District Four to Citrus District Three with two grower members and alternates; and (4) change Citrus District Three to Citrus District Four with three grower members and alternates. The proposal would result in more proportionate averages as follows: Citrus District One, 24.90 percent; Citrus District Two, 21.12 percent, Citrus District Three, 23.39 percent; and Citrus District Four, 30.59 percent.

The reason for the proposal is to more accurately align the districts in accordance with the proportionate quantities of shipments, production, and acreage of Florida citrus.

For Florida Interior District grapefruit, § 913.13 of the order defines four grower districts for purposes of grower representation on the IGMC. The apportionment of grower members for each grower district is described in § 913.18 of the order. Currently, Grower Districts Two and Three are represented by one grower member and alternate; Grower District One has two grower members and alternates, and Grower District Four has three grower members and alternates for a total of seven grower members on the IGMC.

Section 913.14 authorizes the IGMC, with the approval of the Secretary, to redefine the districts into which the production area is divided or reapportion or otherwise change the grower membership of the districts, or both. The membership of the IGMC must consist of at least six but not more than seven grower members. The redistricting of grower districts and the reapportionment of grower members are based on the same criteria as contained in § 905.14 for Florida citrus.

The combined average percentages for M.O. 913 during the 1980–85 five-year period are: Grower District One, 21.09 percent; Grower District Two, 7.74 percent; Grower District Three, 26.48 percent; and Grower District Four, 44.69 percent. The proposal would: (1) Combine Grower Districts One and Two to become Grower District One with two grower members and alternatives; (2) change Grower District Four to Grower District Two with three grower members and alternates; and (3) change the representation from one grower member and alternate to two grower members and alternates in Grower District Three. The proposal would result in the following average percentages: Grower District One, 28.83 percent; Grower District Two, 44.69 percent; and Grower District Three, 26.48 percent.

The proposal would more accurately align the districts in accordance with the proportionate quantities of shipments, production, and acreage of Florida Interior District grapefruit.

List of Subjects in 7 CFR Parts 905 and 913

Marketing Agreements and Orders, Oranges, Grapefruit, Interior District, Tangerines, Tangelos, and Florida.

1. The authority citation for 7 CFR Parts 905 and 913 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 905—[AMENDED]

2. Section 905.114 is proposed to be added to Subpart—Rules and Regulations (7 CFR 905.120–905.152) to read as follows:

§ 905.114 Redistricting of citrus districts and reapportionment of grower members.

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) "Citrus District One" shall include the Counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Osceola, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee, and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the Counties of Indian River and Brevard not included in Regulation Area II. This district shall have two grower members and alternates.

(b) "Citrus District Two" shall include the County of Polk. This district shall have two grower members and alternates.

(c) "Citrus District Three" shall include the Counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and that part of the Counties of Palm Beach and Martin not included in Regulation Area II. This district shall have two grower members and alternates.

(d) "Citrus District Four" shall include the County of St. Lucie and that part of the Counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district shall have three grower members and alternates.

PART 913—[AMENDED]

3. Section 913.114 is proposed to be added to Subpart—Rules and Regulations (7 CFR 913.120–913.160) read as follows:

§ 913.114 Redistricting of grower districts and reapportionment of grower members.

Pursuant to § 913.14, the grower districts and membership allotted each district shall be as follows:

(a) "Grower District One" shall include the Counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Osceola, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwanee, and County Commissioner's Districts 1, 2, and 3 of Volusia County, and that part of the Counties of Indian River and Brevard which is included in the Interior District. This district shall have two grower members and alternates.

(b) "Grower District Two" shall include the County of Polk. This district shall have three grower members and alternates.

(c) "Grower District Three" shall include the Counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and the parts of the Counties of Palm Beach and Martin which are included in the Interior District. This district shall have two grower members and alternates.

Dated: February 11, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86-3309 Filed 2-12-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098 and 1099

[Docket Nos. AO-366-A25, et al.]

Milk in the Georgia and Certain Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing area	Docket Nos.
1007	Georgia	AO-366-A27
1006	Upper Florida	AO-356-A25
1011	Tennessee Valley	AO-251-A30
1012	Tampa Bay	AO-347-A28
1013	Southeastern Florida	AO-286-A35
1046	Louisville-Lexington-Evansville.	AO-123-A56
1093	Alabama-West Florida	AO-366-A6
1094	New Orleans-Mississippi	AO-103-A48
1096	Greater Louisiana	AO-257-A35
1098	Nashville, TN	AO-184-A50
1099	Paducah, KY	AO-183-A42

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by cooperative associations and dairy processors to amend 11 southeastern Federal milk marketing orders. Proponents indicate that the proposals are designed to change the location adjustment provisions in the 11 orders to conform with the Class I differentials mandated by the Food and Security Act of 1985.

Consideration will also be given to whether these provisions should be adopted on an expedited basis.

DATE: The hearing will convene at 9:30 a.m., local time, on February 25, 1986.

ADDRESS: The hearing will be held at the Ramada Inn Central, 1630 Peachtree Street, NW., Atlanta, Georgia 30367 (404/875–9711).

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Section 556 and 557 of Title 5 of the United States Code, and therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Inn Central, 1630 Peachtree Street, NW., Atlanta, Georgia 30367 (404/875–9711), beginning at 9:30 a.m., on February 25, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Georgia and certain other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR Part 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act (Pub. L. 96–354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their appliability to small businesses.

List of Subjects in 7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098 and 1099

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1098 and 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Dairymen, Inc.:

Proposal No. 1—Georgia, Part 1007:

A. Revise § 1007.52(a)(1) to read as follows:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Bartow, Cherokee, Dawson, Floyd, Forsyth, Gilmer, Gordon, Habersham, Hall, Lumpkin, Pickens, Towns, Union, and White.

B. Revise § 1007.52(a)(2) to read as follows:

(2) "North Central Zone" means all the territory in the following Georgia counties:

Banks, Barrow, Butts, Carroll, Clarke, Clayton, Cobb, Coweta, DeKalb, Douglas, Elbert, Fayette, Franklin, Fulton, Greene, Gwinnett, Haralson, Hart, Heard, Henry, Jackson, Jasper, Lamar, Lincoln, Madison, Meriwether, Morgan, Newton, Oconee, Oglethorpe, Paulding, Pike, Polk, Putnam, Rockdale, Spalding, Stephens, Taliferro, Troup, Walton, and Wilkes.

C. Add new paragraphs (3) and (4) to § 1007.52(a) to read as follows:

(3) "South Central Zone" means all the territory in the following Georgia counties:

Baldwin, Bibb, Bleckley, Burke, Chattahoochee, Columbia, Crawford, Crisp, Dodge, Dooly, Emanuel, Glascock, Hancock, Harris, Houston, Jefferson, Jenkins, Johnson, Jones, Laurens, Macon, Marion, McDuffie, Monroe, Muscogee, Peach, Pulaski, Richmond, Schley, Stewart, Sumter, Talbot, Taylor, Treutlen, Twiggs, Upson, Warren, Washington, Webster, Wilcox, and Wilkinson.

(4) "Southern Zone" means all the territory within the marketing area not specified in subparagraph (1), (2), or (3) of this paragraph.

D. Revise § 1007.52(b) to read as follows:

(b) The Class I price for producer milk at a plant located outside the North Central Zone shall be adjusted as follows. Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

(1) For producer milk at a plant located in the "Northern Zone" the Class I price shall be reduced by 15 cents;

(2) For producer milk at a plant located in the "South Central Zone" the Class I price shall be increased by 15 cents;

(3) For producer milk at a plant located in the "Southern Zone" the

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Class I price shall be increased by 30 cents;

(4) For producer milk at a plant located in the State of North Carolina the Class I price shall be decreased by 11 cents;

(5) For producer milk at a plant located outside the marketing area and south of the southern boundary of the States of Tennessee and North Carolina the Class I price shall be the Class I price applicable at the nearer of the city halls in Augusta, Savannah, Lavonia, Waycross, Albany, Columbus, Atlanta, and Rome, Georgia; and

(6) For producer milk at a plant located outside the areas specified in subparagraph (1), (2), (3), (4) or (5) of this paragraph the Class I price shall be reduced 20 cents and an additional 2.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the city hall in Atlanta, Georgia.

Proposed by Independent Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, and Upper Florida Milk Producers Association:

Proposal No. 2—Upper Florida, Part 1006:

A. Amend the table contained in § 1006.52(a) to read as follows:

Location of plant	Rate per cwt.
Outside the State of Florida:	
In excess of 70 but not more than 85 miles.	Subtract 15 cents.
For each additional 10 miles or fraction thereof.	Subtract 2.0 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.	Add 30 cents.
In the defined marketing area of Part 1013.	Add 60 cents.
The remaining area within the State of Florida.	No adjustment.

Proposed by Cumberland Farms, Inc.:

Proposal No. 3—Upper Florida, Part 1006

A. In § 1006.52, plant location adjustments for handlers, revise paragraph (a) to reflect the following:

Location of plant	Rate per cwt.
Outside the State of Florida:	
In excess of 70 but not more than 85 miles.	Subtract 15 cents.
For each additional 10 miles or fraction thereof.	Subtract 2.3 cents.

Proposed by Dairymen, Inc.:

Proposal No. 4—Tennessee Valley, Part 1011:

A. Revise § 1011.52(a) Plant location adjustments for handlers to read as follows:

(a) For milk received from producers or from a handler described in Section 1011.9(c) or (d) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows: Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

(1) For such milk which is physically received at a plant located within the State of North Carolina, or south of the southern boundary of the States of North Carolina and Tennessee, the Class I price shall be increased by 20 cents;

(2) No adjustment shall be applicable on such milk which is physically received at a plant located within the marketing area, or in the State of Virginia;

(3) For such milk which is physically received at a plant located within the Kentucky counties of Adair, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Jackson, Lincoln, Harlan, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, Russell, Wayne and Whitley, the Class I price shall be decreased by 32 cents; and

(4) For such milk which is physically received at a plant located more than 90 miles by the shortest hard-surfaced highway distance as determined by the market administrator from the nearest of the city halls of Bristol, Chattanooga, and Knoxville, Tennessee, and outside the areas specified in subparagraph (1), (2), or (3) of this paragraph, the Class I price applicable at the nearer of the city halls in Bristol, Chattanooga, or Knoxville, Tennessee shall be reduced by 2.5 cents for each 10 miles or fraction thereof that such plant is from the nearest of the city halls in Bristol, Chattanooga, and Knoxville, Tennessee.

Proposed by Independent Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, and Upper Florida Milk Producers Association:

Proposal No. 5—Tampa Bay, Part 1012:

A. Amend the table contained in § 1012.52(a) to read as follows:

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the city hall in Tampa, FL.	Subtract 2.0 cents.
Inside the State of Florida:	
In the defined marketing area of Part 1013.	Add 30 cents.
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of Part 1013.	No adjustment.
The remaining area within the State of Florida.	Minus 30 cents.

Proposed by Cumberland Farms, Inc.:

Proposal No. 6—Tampa Bay, Part 1012:

A. In § 1012.52, plant location adjustments for handlers, revise paragraph (a) to reflect the following:

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the city hall in Tampa, FL.	Subtract 2.3 cents.

Proposed by Independent Dairy Farmers' Association, Tampa Independent Dairy Farmers' Association, and Upper Florida Milk Producers Association:

Proposal No. 7—Southeastern Florida, Part 1013:

A. Amend the table contained in paragraph 1013.52(a) to read as follows:

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the U.S. Post Office in West Palm Beach, FL.	Subtract 2.0 cents.
Inside the State of Florida:	
South of a line forming the southern boundary of the counties of Alachua, Dixie, Gilchrist, Putnam and St. Johns, but outside the defined marketing area of this order.	Subtract 30 cents.
The remaining area within the State of Florida.	Subtract 60 cents.

Proposed by Cumberland Farms, Inc.:

Proposal No. 8—Southeastern Florida, Part 1013;

A. In § 1013.52, plant location adjustments for handlers, revise paragraph (a) to reflect the following:

Location of plant	Rate per cwt.
Outside the State of Florida:	
For each 10 miles or fraction thereof from the U.S. Post Office in West Palm Beach, FL.	Subtract 2.3 cents.

Proposed by Dairymen, Inc.:

Proposal No. 9—Louisville-Lexington-Evansville, Part 1046:

A. Revise § 1046.52(a) to read as follows:

(a) For milk received from producers or from a handler described in Section 1046.9(c) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows: Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

(1) For such milk that is physically received at plants located in the Kentucky counties of Adair, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Jackson, Lincoln, Harlan, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, Russell, Wayne and Whitley, the Class I price shall be increased by a location adjustment of 34 cents;

(2) For such milk that is physically received at plants located in the Kentucky counties of Allen, Barren, Bath, Bourbon, Boyle, Butler, Caldwell, Carter, Christian, Clark, Crittenden, Edmonson, Elliott, Estill, Fayette, Fleming, Garrard, Green, Hart, Hopkins, Jessamine, Lee, Logan, Lyon, Madison, Marion, Metcalfe, Menifee, Mercer, Monroe, Montgomery, Morgan, Muhlenberg, Nicholas, Powell, Rowan, Taylor, Todd, Trigg, Scott, Simpson, Washington, Warren, Wolfe, and Woodford, the Class I price shall be increased by a location adjustment of 15 cents;

(3) For such milk that is physically received at plants located within the defined marketing area of the Paducah, Kentucky, Federal Milk Marketing Order, Part 1099, excluding those counties specified in paragraph (2) of this section, the Class I price shall be increased by a location adjustment of 28 cents;

(4) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina, the Class I price shall be increased by a location adjustment of 41 cents;

(5) For such milk that is physically received at plants located in the marketing area or the state of Kentucky and outside the areas specified in paragraphs (1) (2), (3), or (4) of this section, no location adjustment shall apply; and

(6) For such milk that is physically received at plants located outside the areas specified in paragraphs (1), (2), (3), (4), or (5) of this section, and 85 miles or more from the City Halls in Louisville and Lexington, Kentucky, and Evansville, Indiana, by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price shall be reduced by a location adjustment of 2.5 cents for each 10 miles or fraction thereof that such plant is from the City Hall in Louisville, Lexington or Evansville, whichever is nearest.

Proposed by Southeastern Dairies, Inc.:

Proposal No. 10—Louisville-Lexington-Evansville, Part 1046:

A. Amend § 1046.75 to read as follows:

§ 1046.75 Plant location adjustments for producers and on nonpool milk.

(a) Subject to the conditions of paragraph (b) of this section—

(1) The uniform price for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1046.52; and

(2) For purposes of computations pursuant to §§ 1046.71 and 1046.72 the weighted average price shall be adjusted at the rates set forth in § 1046.52 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

(b) When milk of an individual producer is physically received at more than one location (including any nonpool plant) during the month, the location adjustment rate shall be the weighted average (rounded to the nearest one-half cent) of the amounts computed for the respective locations, except that if 75 percent or more of such producer's milk is delivered to a plant or plants at which the same rate is applicable, such rate shall be applicable to all deliveries of such producer during the month regardless of point of delivery.

Proposed by Dairymen, Inc.:

Proposal No. 11—Alabama-West Florida, Part 1093:

A. Revise § 1093.52(a) by adding the following proviso:

Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

B. Revise the table in § 1093.52(a)(1) to read as follows:

Zone	Adjustment per cwt.
Zone 1	Minus 23 cents.
Zone 2	No adjustment.
Zone 3	Plus 27 cents.
Zone 4	Plus 57 cents.
Zone 4a	Plus 40 cents.

C. Revise the introductory text of § 1093.52 (a)(2) to read as follows:

(2) For a plant located in any of the Tennessee and Georgia counties listed below, the adjustment shall be minus 25 cents;

* * * * *

D. Revise the introductory text of § 1093.52(a)(3) to read as follows:

(3) For a plant located in any of the Tennessee and Kentucky counties listed below or in the Fort Campbell military reservation, the adjustment shall be minus 56 cents;

* * * * *

E. In § 1093.52(a)(4) replace the words "20 cents. Such minus adjustment shall be increased 1.5" with the words "23 cents. Such minus adjustment shall be increased 2.5".

F. Revise § 1093.52(a)(6) to read as follows:

(6) For a plant located outside the marketing area and in the State of Florida, the adjustment shall be a plus 50 cents.

Proposed by Beatrice Dairy Products:

Proposal No. 12—Alabama-West Florida, Part 1093:

A. In § 1093.52(a)(1), change the adjustment for Zone 1 from minus 20 cents per hundredweight to minus 26 cents per hundredweight.

Proposed by Dairy Fresh Corporation:

Proposal No. 13—Alabama-West Florida, Part 1093:

A. Make no adjustment to table in § 1093.52(a)(1).

Zone	Adjustment per cwt.
Zone 1	Minus 20 cents.
Zone 2	No adjustment.
Zone 3	Plus 15 cents.
Zone 4	Plus 37 cents.
Zone 4a	Plus 20 cents.

Proposed by Dairymen, Inc.;

Proposal No. 14—New Orleans—Mississippi; Part 1094:

A. Revise § 1094.2 New Orleans-Mississippi marketing area by creating a new Zone 2A and redefining Zone 3 as follows:

Zone 2A

Mississippi Counties

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthal, Wayne, and Wilkinson.

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Zone 3

Mississippi Counties

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren, and Yazoo.

Zone 3A

Mississippi Counties

Attala, Holmes, Humphreys, Noxubee, Washington, and Winston.

Zone 4

Mississippi Counties

Bolivar, Carroll, Choctaw, Leflore, Lowndes, Montgomery, Oktibbeha, Sunflower, and Webster.

B. Revise § 1094.52(a) by adding the following proviso:

Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

C. Revise the table in § 1094.52(a)(1) to read as follows:

Zone	Adjustment per cwt.
Zone 1	No adjustment.
Zone 2	Minus 20 cents.
Zone 2A	Minus 30 cents.
Zone 3	Minus 50 cents.
Zone 3A	Minus 65 cents.
Zone 4	Minus 75 cents.
Zone 5	Minus 80 cents.
Zone 6	Minus 95 cents.

D. Revise § 1094.52(a)(2) to read as follows:

1. In paragraph (i) replace the words "No Adjustment." with the words "Minus 7 cents.";

2. In paragraph (ii) replace the words "Minus 19 cents." with the words "Minus 30 cents."; and

3. In paragraph (iii) replace the words "Minus 38 cents." with the words "Minus 57 cents.".

E. Revise § 1094.52(a)(3) to read as follows:

(3) For a plant located in the State of Mississippi outside the marketing area the adjustment shall be minus 95 cents.

F. Revise § 1094.52(a)(5) by replacing the word "1.5" with the word "2.5".

Proposed by Barber Pure Milk Company, Tupelo, Mississippi:

Proposal No. 15—New Orleans-Mississippi, Part 1094:

A. Set the location differential in Zone VI in the New Orleans-Mississippi Federal order at $2.85 or at a level whereby it is no higher than the differential in Zone 1 in the Alabama-West Florida marketing area.

Proposed by Dairy Fresh Corporation:

Proposal No. 16—New Orleans-Mississippi, Part 1094:

A. Revise the table in § 1094.52(a)(1) to read as follows:

Zone	Adjustment per cwt.
Zone 1	No adjustment.
Zone 2	Minus 25 cents.
Zone 3	Minus 50 cents.
Zone 4	Minus 70 cents.
Zone 5	Minus 80 cents.
Zone 6	Minus 90 cents.

Proposed by Dairy Fresh Corporation:

Proposal No. 17—Greater Louisiana, Part 1096:

A. Make no adjustment to table contained in § 1096.52(a)(1).

Zone	Adjustment per cwt.
Zone 1	No adjustment.
Zone 2	Plus 19 cents.
Zone 3	Plus 38 cents.

Proposed by Dairymen, Inc.:

Proposal No. 18—Greater Louisiana, Part 1096:

A. Revise § 1096.52(a) by adding the following proviso:

Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant:

B. Revise the table contained in § 1096.52(a)(1) to read as follows:

Zone	Adjustment per cwt.
Zone 1	No adjustment.
Zone 2	Plus 27 cents.
Zone 3	Plus 50 cents.

C. Revise § 1096.52(a)(2)(i) by replacing the word "38" with the word "57".

D. Revise § 1096.52(a)(2)(ii) by replacing the word "19" with the word "37".

E. Revise § 1096.52(a)(3)(i) by replacing the word "19" with the word "37".

F. Revise § 1096.52(a)(3)(ii) to read as follows:

(ii) Plus 27 cents.

Amite, Covington, Forrest, Franklin, Greene, Jefferson Davis, Jones, Lamar, Lawence, Lincoln, Marion, Perry, Pike, Walthal, Wayne, and Wilkinson.

G. Add a new § 1096.52(a)(3)(iii) to read as follows:

(iii) Plus 7 cents.

Adams, Claiborne, Clarke, Copiah, Hinds, Issaquena, Jasper, Jefferson, Kemper, Lauderdale, Leake, Madison, Neshoba, Newton, Rankin, Scott, Sharkey, Simpson, Smith, Warren, and Yazoo.

H. Revise § 1096.52(a)(4)(i) by replacing the word "38" with the word "54".

I. Revise § 1096.52(a)(4)(ii) by replacing the word "19" with the word "37".

J. Revise § 1096.52(a)(5) by replacing the word "1.5" with the word "2.5".

Proposal No. 19—Nashville, Tennessee, Part 1098:

A. Revise § 1098.52(a) Plant location adjustment for handlers to read as follows:

(a) For milk received from producers or from a handler described in Section 1098.9(c) at a plant and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the Class I price shall be adjusted as follows: Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant.

(1) For such milk that is physically received at plants located in the Kentucky counties of Adair, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Jackson, Lincoln, Harlan, Knott, Knox, Laurel, Leslie, Letcher, McCreary, Owsley, Perry, Pulaski, Rockcastle, Russell, Wayne and Whitley, the Class I price shall be decreased by a location adjustment of 7 cents;

(2) For such milk that is physically received at plants located in the Kentucky counties of Allen, Barren, Bath, Bourbon, Boyle, Butler, Caldwell, Carter, Christian, Clark, Crittenden, Edmonson, Elliott, Estill, Fayette, Fleming, Garrard, Green, Hart, Hopkins, Jessamine, Lee, Logan, Lyon, Madison, Marion, Metcalfe, Menifee, Mercer, Monroe, Montgomery, Morgan, Muhlenberg, Nicholas, Powell, Rowan, Taylor, Todd, Trigg, Scott, Simpson, Washington, Warren, Wolfe, and Woodford, the Class I price shall be decreased by a location adjustment of 26 cents;

(3) For such milk that is physically received at plants located within the defined marketing area of the Paducah, Kentucky, Federal Milk Marketing Order Number 1099, excluding those counties specified in paragraph (2) of this section, the Class I price shall be decreased by a location adjustment of 13 cents;

(4) For such milk that is physically received at plants located outside the areas specified in paragraphs (1), (2), or (3) of this section and north of the northern boundary of Tennessee or the northern boundary of North Carolina and more than 50 miles from the State Capitol in Nashville by the shortest hard-surfaced highway distance as determined by the market administrator, the Class I price shall be reduced by 17.5 cents plus 2.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from the State Capitol; and

(5) For such milk that is physically received at plants located east of the Mississippi River and south of the northern boundary of Tennessee or the northern boundary of North Carolina, no adjustment shall be made under this paragraph.

Proposal No. 20—Paducah, Kentucky, Part 1099:

A. Revise § 1099.52(a) to read as follows:

(a) For milk received from producers at a plant located outside the State of Kentucky and north of an east-west line running through the southern boundary of the state of Kentucky and more than 40 miles by shortest highway distance as measured by the market administrator, from the nearest County Courthouse in any of the counties included in the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to Section 1099.50(a) shall be reduced by 12.5 cents, plus 2.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles: Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order that is applicable at the location of the transferor plant.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 21:

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator of each of the 11 orders

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: February 7, 1986.

James C. Handley,

Administrator, Agricultural Marketing Service.

[FR Doc. 86-3162 Filed 2-12-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1136

Milk in the Great Basin Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend the requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pool status under the Great Basin Federal milk order. Suspension of the provision was requested by cooperative associations representing most of the producers supplying the market to assure that the milk of all producers historically associated with the market will continue to be pooled. The proposed suspension would be for the months of February through July 1986.

DATES: Comments are due not later than February 20, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Great Basin marketing area is being considered for the months of February through July 1986:

In § 1136.7(a), the language "or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13".

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968 South Building, U.S. Department of Agriculture, Washington, DC 20250, not later than 7 days from the date of publication of this notice in the **Federal Register**. The period for filing comments is limited because a longer period would not provide the time needed to complete the required procedures and include February 1986 in the suspension period.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove, for the months of February through July 1986, the requirement that milk diverted from a distributing plant be included in the plant's receipts for purposes of determining whether the plant is qualified for pooling under the Great Basin milk order. The order provides that a certain percentage of a distributing plant's receipts in each month be disposed of as route disposition if the plant is to be qualified for pooling. In addition to fluid milk products physically received at the plant, diversions of producer milk to nonpool plants are included as part of the receipts of which a particular percentage must be disposed of on routes.

The proposed suspension was requested by Western General Dairies, Inc., and Lake Mead Cooperative Association, cooperative associations

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that supply most of the market's fluid milk needs and handle most of the market's reserve milk supplies. The cooperatives state that due to an increased amount of milk production surplus to the fluid needs of the market, approximately 15,000,000 pounds of their members' milk failed to qualify for pooling during each of the months of November and December 1985. According to the cooperatives, suspension of the requested provisions would assure that all of their members' milk would qualify for inclusion in the marketwide pool.

The cooperatives have requested that a public hearing be held to merge the Great Basin and Lake Mead orders, and expect that the pool plant qualification standards contained in the proposed merged order would offer a long-term solution to the problems of qualifying all of the cooperatives' member milk for pooling.

List of Subjects in 7 CFR Part 1136

Milk marketing orders, milk, dairy products.

The authority citation for 7 CFR Part 1136 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; U.S.C. 601–674.

Signed at Washington, DC, on February 11, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–3286 Filed 2–12–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1139

Milk in the Lake Mead Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend certain diversion provisions of the Lake Mead Federal milk order. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also proposed to be suspended is the "touch-base" requirement that at least one day's production of each producer's milk be received each month at a pool plant. The proposed suspension would be for the months of February through July 1986. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconmic movements of milk.

DATES: Comments are due no later than February 20, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Divisions, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Market Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given, that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Lake Mead marketing area is being considered for February through July 1986:

In § 1139.13(d)(2), all of the language following the parenthetical phrase.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include February 1986 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove for the months of February through July 1986 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and remove the requirement that at least one day's production of each producer's milk be received at a pool plant each month. The suspension was requested by Lake Mead Cooperative Association, which supplies some of the market's fluid milk needs and handles most of the market's reserve supplies.

The order now provides that a cooperative may divert a quantity of milk not in excess of 50 percent in the months of March through July, and 40 percent in other months, of the producer milk delivered to or diverted from pool plants during the month. Suspension of the requested language would allow unlimited amounts of a coopertive's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

Lake Mead Cooperative Association states that suspension of the order's diversion limits is necessary to assure that all of the member milk of the cooperative is eligible to prticipate in marketwide pooling and pricing under the Lake Mead Federal order. The cooperative claims that all of the production of a large nonmember producer is shipped to a distributing plant for fluid use, displacing the milk of cooperative members, and causing it to be hauled long distances to manufacturing facilities. Recently, increased production by this nonmember source of milk has caused greater displacement of the cooperative's member milk supply, which has also been increasing. As a result, the cooperative is unable to pool all of its members' milk within the diversion limits of the order.

The cooperative has requested that a public hearing be held to merge the Great Basin and Lake Mead orders, and expects that the diversion provisions contained in the proposed merged order would offer a long-term solution to the problems of operating within the order's present diversion limits.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, milk, dairy products.

The authority citation for 7 CFR Part 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on February 11, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–3285 Filed 2–12–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence; Withdrawal of Proposed Rule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Immigration and Naturalization Service is withdrawing its proposal to amend 8 CFR 245.1(e) and 8 CFR 245.2(a). The rule proposed to change the Service definition of immediate visa availability. The Service has determined not to change the existing regulation at this time.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3320.

SUPPLEMENTARY INFORMATION: On July 23, 1984 at 49 FR 29618, the Service published a proposed rule that would redefine the current Service definition of immediate visa availability for adjustment of status to conform with that of Department of State. After careful consideration, the Service has decided to withdraw the proposal.

Dated: January 30, 1986.

Richard E. Norton,

Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 86–3212 Filed 2–12–86; 8:45 am]

BILLING CODE 4410–10–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Parts 410 and 430

Revised Proposed Amendment to Comprehensive Plan and Water Code of the Delaware River Basin and Proposed Amendment to the Commission's Ground Water Protection Area Regulations for Southeastern Pennsylvania

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rules and public hearings.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold public hearings to receive comments on a revised proposed amendment to its Comprehensive Plan and Water Code and a proposed amendment to its Ground Water Protected Area Regulations for Southeastern Pennsylvania in relation to source metering, recording, and reporting of waters withdrawn from the Basin.

DATES: The public hearings on the Revised Proposed Amendment to the Comprehensive Plan and Water Code are scheduled as follows:

March 6, 1986 at 6:30 p.m. and March 26, 1986 at 1:30 p.m.

The public hearing of the Proposed Amendment to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania will be held on March 26, 1986 at 1:30 p.m.

Persons wishing to testify at either of these hearings are requested to register with the Secretary in advance of the hearings. The comment closing dates will be announced at the hearings.

ADDRESSES: Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. The public hearings will be held as follows:

March 6, 1986 in the High School Auditorium, Hancock Inn Center School, 16 Read Street, Hancock, New York.

March 26, 1986 in the Benjamin West Room of the Holiday Inn Center City, 1800 Market Street, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, telephone (609) 883–9500.

SUPPLEMENTARY INFORMATION: As noticed in the October 16, 1985 **Federal Register**, Vol. 50 No. 221, the Commission held a public hearing on November 26, 1985 on a proposed amendment to its Comprehensive Plan and Water Code to require source metering and recording of both new and existing ground water withdrawals that exceed 100,000 gpd during any 30-day period. Based upon comments received both during and following that hearing, the Commission has revised its proposed amendment to expand coverage to include surface as well as ground water withdrawals. As most of the Basin's ground and surface waters comprise an interdependent hydrologic resource, impacts of withdrawals on the total resource can best be evaluated with a common metering and reporting base. Further amendments to the October 16 proposal would require measurement of water withdrawn to within two percent of actual flow and the addition of calibration to the items subject to approval and inspection by the designated State agencies.

The Commission is also proposing a similar amendment to the Ground Water Protected Area Regulations for Southeastern Pennsylvania. It would require metering, recording and reporting of ground water withdrawals in excess of 10,000 gpd with the flow measurement and calibration provisions noted above. This amendment would set the metering and reporting requirement at the existing 10,000 gpd permitting level in the Protected Area.

The record compiled in connection with the Commission's November 26, 1985 public hearing on the proposed amendment to the Comprehensive Plan and Water Code relating to ground water withdrawal metering, recording and reporting shall be incorporated into and considered by the Commission as a part of these hearings. It will not be necessary to resubmit comments previously provided in order to be considered part of the hearing record. Documents relating to these proposed amendments may be examined at the Commission's offices.

The subjects of the hearings will be as follows:

Amendment to the Comprehensive Plan Relating to Source Metering, Recording and Reporting.

List of Subjects

18 CFR Part 410

Water pollution control.

18 CFR Part 430

Water supply, ground water protection.

PART 410—[AMENDED]

Article 2 of the *Water Code of the Delaware River Basin* includes Commission policy relating to conservation, development and utilization of Basin water resources. It is proposed to:

1. Amend the Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin* by addition of a new subsection 2.50.2 which is referenced in 18 CFR Part 410, to read as follows:

2.50.2 *Source metering, recording and reporting.*

(1) Except as provided in subsection (2), each person, firm, corporation, or other entity whose cumulative daily average withdrawal(s) from the surface and/or

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ground waters of the Basin from any surface water intake, spring, or well, or any combination of surface water intakes, springs, or wells operated as a system, exceeds 100,000 gallons per day during any 30-day period shall meter and record their withdrawals and report such withdrawals to the designated agency of the state where the withdrawals are located. Withdrawals shall be metered by means of an automatic continuous recording device, flow meter, or other method capable of measuring accurately the quantity of water withdrawn to within two percent of actual flow. Meters or other methods of measurement shall be subject to approval and inspection by the designated state agency as to installation, maintenance, calibration, and reading. Withdrawals shall at a minimum be recorded on a daily basis and reported as monthly totals annually.

(2) The following water uses and operations are exempt from the requirement of metering ground water withdrawals: farm irrigation; dewatering incidental to mining and quarrying; and dewatering incidental to construction. Persons engaged in such withdrawals in excess of 100,000 gallons per day during any 30-day period shall, in lieu of metering, record the pumping rates and the dates elapsed hours of operation of any well or pump used to withdraw water, and report such information as monthly totals annually to the designated state agency.

(3) The following are the designated state agencies for the purposes of this regulation: Delaware Department of Natrual Resources and Environmental Control; New Jersey Department of Environmental Protection; New York State Department of Environmental Conservation; and Pennsylvania Department of Environmental Resources.

(4) Pursuant to Section 11.5 of the Compact, the designated state agencies shall administer and enforce programs for metering, recording, and reporting of water withdrawals, in accordance with this regulation and any applicable state regulations.

(5) This regulation shall be effective January 1, 1987.

Amendment to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania Relating to Ground Water Withdrawal Metering, Recording, and Reporting.

PART 430—[AMENDED]

Part 430 is proposed to be amended as follows:

1. The Authority citation for Part 430 continues to read as follows:

Authority: Pub. L. 87–328 (75 Stat. 688).

2. Existing §§ 430.19, 430.21, 430.23, 430.24, 430.25, 430.27, 430.29, and 430.31 are redesignated as §§ 430.21, 430.23, 430.25, 430.27, 430.29, 430.31, 430.33 and 430.35 respectively and the new § 430.19 is added to read as follows:

§ 430.19 Ground water withdrawal metering, recording, and reporting.

(a) Except as provided in subsection (b), each person, firm, corporation, or other entity whose cumulative daily average withdrawal of ground water from a well or group of wells operated as a system exceeds 10,000 gallons per day during any 30-day period shall meter and record their withdrawals and report such withdrawals to the Pennsylvania Department of Environmental Resources. Withdrawals shall be metered by means of an automatic continuous recording device, flow meter, or other method capable of measuring accurately the quantity of water withdrawn to within two percent of actual flow. Meters or other methods of measurement shall be subject to approval and inspection by the Pennsylvania Department of Environmental Resources as to installation, maintenance, calibration, and reading. Withdrawals shall at a minimum, be recorded on a daily basis and reported as monthly totals annually.

(b) The following water uses and operations are exemt from the requirement of metering ground water withdrawals: farm irrigation; dewatering incidental to mining and quarrying; dewatering incidental to construction; and space heating or cooling uses that are exempt from permit requirements in Section 430.13. Except for space heating and cooling uses described herein, persons engaged in such exempt withdrawals in excess of 10,000 gallons per day during any 30-day period shall, in lieu of metering, record the pumping rates and the dates and elapsed hours of operation of any well or pump used to withdraw ground water, and report such information as monthly totals annually to the Department of Environmental Resources. Space heating and cooling uses that are exempt from permit requirements in Section 430.13 shall also be exempt from the requirement for recording and reporting.

(c) Pursuant to Section 11.5 of the Compact, the Pennsylvania Department of Environmental Resources shall administer and enforce a program for metering, recording, and reporting ground-water withdrawals in accordance with this regulation.

(d) This regulation shall be effective January 1, 1987.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,

Secretary.

February 6, 1986.

[FR Doc. 86–3115 Filed 2–12–86; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Changes in Definitions; Use of Administrative Controlled Substances Code Numbers; Addition of an Emergency Scheduling Regulation

AGENCY: Drug Enforcement Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Dangerous Drug Diversion Control Act of 1984, as part of the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which became effective on October 12, 1984, amended portions of the Controlled Substances Act (CSA) pertaining to the schedules and scheduling of controlled substances. These amendments include a new definition of the term "isomer," a redefinition of the term "narcotic drug," and a revision of Schedule II(A)(4) to specifically list cocaine, ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives. In addition, the Administrator of the Drug Enforcement Administration (DEA) is given an emergency authority to expeditiously and temporarily place new substances of abuse into Schedule I of the CSA in order to avoid an imminent hazard to the public safety. The Dangerous Drug Diversion Control Act of 1984 also amended portions of the Controlled Substances Import and Export Act which necessitates the use of the Admininstration Controlled Substances Code Number by registrants. The proposed revisions to 21 CFR Part 1308 reflect these statutory changes.

DATE: Written comments and objection must be received on or before March 17, 1986.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: The Dangerous Drug Diversion Act of 1984, as part of the Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), effective October 12, 1984, represents the first major updating of the regulatory provisions of the CSA. The majority of the revisions pertain to tightening

regulatory controls in order to prevent the diversion of abusable prescription drugs from legitimate distribution channels. Several sections of this Act, however, modify those portions of the CSA regarding the scheduling and schedules of controlled substances. The proposed revisions to 21 CFR Part 1308 reflect these statutory changes in the schedules and scheduling of controlled substances.

Section 507(a) of the Dangerous Drug Diversion Act of 1984 defines the term "isomer" as it is used in section 202 of the CSA (21 U.S.C. 812). Prior to the passage of this bill the term "isomer" was defined only in 21 CFR 1308.02(c). The Dangerous Drug Diversion Act of 1984 expands the existing definition of isomer to include the optical and geometric isomers of cocaine, ecgonine and their salts and derivatives. Under this provision the levorotatory and dextrorotatory forms of cocaine, ecgonine and their derivatives and salts as well as the diastereomers, pseudococaine, pseudoecgonine, allococaine, alloecgonine, pseudoallococaine and pseudoalloecgonine and their optical isomers and salts are included in the term "isomer" as used in 21 U.S.C. 812 Schedule II(a)(4). This amendment clarifies which of the various isomers of cocaine, whether produced naturally or synthetically, are included in the term "isomer" as used in 21 U.S.C. 812 Schedule II(A)(4) and hence are controlled in Schedule II of the CSA. A revision of § 1308.02(c) of 21 CFR is proposed to reflect this change.

Section 507(b) of the Dangerous Drug Diversion Act of 1984 also modifies the existing defintion of the term "narcotic drug" in the CSA. The modified definition includes poppy straw and concentrate of poppy straw which are narcotic raw materials that are imported into the United States. Cocaine, its salts, optical and geometric isomers and salts of isomers and ecgonine, its derivatives, their salts, isomers, and salts of isomers are now specifically included in the definition of "narcotic drug." Previously, cocaine and ecgonine were considered to be narcotic drugs because they were derivatives of coca leaves. Coca leaves are listed as a narcotic drug except when cocaine, ecgonine and derivatives of ecgonine or their salts have been removed. The new definition also clarifies the narcotic status of derivatives of opium and opiates under the CSA. These changes allow the language of the CSA to more clearly parrallel that of the Single Convention on Narcotic Drugs, 1961 pertaining to the narcotic status of opium and opiates. An amendment to § 1308.02 of 21 CFR adds the revised definition of "narcotic drug" to reflect the statutory change.

Section 507(c) of the Dangerous Drug Diversion Act of 1984 amends Schedule II(a)(4) to specifically list cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives. Coupled with the amended definition of isomer which includes optical and geometric isomers of cocaine and ecgonine, the listing of these substances expands the Schedule II control of cocaine to include the isomeric forms of cocaine, ecgonine and their derivatives. Section 1308.12 Schedule II(b)(4) of 21 CFR will be revised to reflect this statutory change.

Section 508 of the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General to temporarily and expeditiously place substances into Schedule I of the CSA if it is determined that such scheduling is necessary to avoid an imminent hazard to the public safety. Authority granted to the Attorney General by Congress in the CSA has been delegated to the Administrator of DEA by 28 CFR 0.100. The emergency scheduling provision is intended to allow the Administrator to react quickly when a new substance such as controlled substance analogs (so-called Designer Drugs) enter the illicit market and exhibit the potential of becoming a hazard to the public safety.

Under this emergency scheduling provision, the Attorney General may temporarily place a substance into Schedule I of the CSA without regard to the requirement of section 201(b) of the CSA (21 U.S.C. 811(b)) relating to the scientific and medical evaluation and scheduling recommendation of the Secretary of Health and Human Services. A notification of intention to schedule a substance under the emergency scheduling provision must be published in the **Federal Register** and transmitted to the Secretary of Health and Human Services. An emergency scheduling action may become effective after the expiration of 30 days from the date that the notification of intention to do so was published in the **Federal Register** and transmitted to the Secretary of Health and Human Services. Any comments submitted by the Secretary regarding the emergency scheduling of a substance will be considered.

The emergency scheduling provision of the CSA may be invoked only for those substances not listed in any schedule in section 202 of the CSA (21 U.S.C. 812) or if the substance has no currently accepted medical use in treatment in the United States as defined by an approved New Drug Application or an exemption from such approval granted by the Food and Drug Administration.

Before finding that temporarily scheduling a substance in Schedule I is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider only three of the eight factors set forth in Section 201(c) of the CSA (21 U.S.C. 811(c)): (1) its history and current pattern of abuse; (2) the scope, duration and significance of abuse; and (3) what, if any, risk there is to the public health. The Administrator is directed to consider the actual abuse, diversion and clandestine production, distribution and importation of the substance. An emergency scheduling order may be effective for one year with a possible extension for up to six months if scheduling procedures have been initiated pursuant to section 201(a) of the CSA (21 U.S.C. 811(a)). An emergency scheduling order will be terminated upon the completion of a subsequent rulemaking proceeding initiated under section 201(a) of the CSA (21 U.S.C. 811(a1)). Emergency scheduling orders, consistent with other temporary and emergency orders, are not subject to judicial review. A new section 21 CFR 1308.52 is proposed to describe the emergency scheduling process in the regulations.

Section 524 of the Diversion Control Amendments amends 21 U.S.C. 958(b) to limit the import and export of controlled substances by DEA registrants to those controlled substances specified in their registration. In order to make this determination, DEA will require registrants and applicants to use the Administration Controlled Substances Code Number which is described in 21 CFR 1308.03. An amendment to § 1308.03 is proposed to reflect this statutory change.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 871(b) and delegated to the Administrator of the Drug Enforcement Administration by 28 CFR 0.100, the Administrator hereby proposes that 21 CFR Part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

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2. Section 1308.02 is amended by revising paragraph (c), adding a new paragraph (e), and redesignating existing paragraphs (e) and (f) as (f) and (g) as follows:

§ 1308.02 Definitions.

* * * * *

(c) The term "isomer" means the optical isomer, except as used in §1308.11(d) and § 1308.12(b)(4). As used in § 1308.11(d), the term "isomer" means the optical, positional, or geometric isomer. As used in § 1308.12(b)(4), the term "isomer" means the optical or geometric isomer.

* * * * *

(e) The term "narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(2) Poppy straw and concentrate of poppy straw.

(3) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine and derivatives of ecgonine or their salts have been removed.

(4) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(5) Ecgonine, its derivatives, their salts, isomers and salts of isomers.

(6) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (e) (1) through (5) of this section.

* * * * *

3. Section 1308.03 is amended by revising paragraph (a) to read as follows:

§ 1308.03 Administration Controlled Substances Code Number.

(a) Each controlled substance, or basic class thereof, has been assigned an "Administration Controlled Substances Code Number" for purposes of identification of the substances or class on certain Certificates of Registration issued by the Administration pursuant to §§ 1301.44 and 1311.43 of this chapter and on certain order forms issued by the Administration pursuant to § 1305.05(d) of this chapter. Applicants for procurement and/or individual manufacturing quotas must include the appropriate code number on the application as required in §§ 1303.12(b) and 1303.22(a) of this chapter. Applicants for import or export permits must include the appropriate code number on the application as required in §§ 1312.12(a) and 1312.22(a) of this chapter. Authorized registrants who desire to import or export a controlled substance for which an import or export permit is not required must include the appropriate Administration Controlled Substances Code Number beneath or beside the name of each controlled substance listed on the DEA Form 236 (Controlled Substance Import/Export Declaration) which is executed for such importation or exportation as required in §§ 1312.18(c) and 1312.27(b) of this chapter.

* * * * *

4. Section 1308.12(b)(4) is revised to read as follows:

§ 1308.12 Schedule II.

* * * * *

(b) * * *

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

* * * * *

5. A new § 1308.52 is added to read as follows:

§ 1308.52 Emergency scheduling.

Pursuant to section 201(h) of the Act (21 U.S.C. 811(h)), and without regard to the requirements of section 201(b) of the Act (21 U.S.C. 811(b)) relating to the scientific and medical evaluation of the Secretary of Health and Human Services, the Administrator may place a substance into Schedule I on a temporary basis, if he determines that such action is necessary to avoid an imminent hazard to the public safety. An order issued under this section may not be effective before the expiration of 30 days from (a) the date of publication by the Administrator of a notice in the **Federal Register** of his intention to issue such order and the grounds upon which such order is to be issued, and (b) the date the Administrator has transmitted notification to the Secretary of Health and Human Services of his intention to issue such order. An order issued under this section shall be vacated upon the conclusion of a subsequent rulemaking proceeding initiated under section 201(a) (21 U.S.C. 811(a)) with respect to such substance or at the end of one year from the effective date of the order scheduling the substance, except that during the pendency of proceedings under section 201(a) (21 U.S.C. 811(a)) with respect to the substance, the Administrator may extend the temporary scheduling for up to six months.

The Administrator hereby certifies that this proposal will have no significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. These changes are predominantly clarifications of existing regulations. The new regulation regarding emergency scheduling applies only to clandestinely produced and harmful drugs of abuse which have no currently accepted medical use in the United States, and therefore does not impact upon the legitimate pharmaceutical industry.

Pursuant to section 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the proposed action has been submitted for review by the Office of Management and Budget, and approval of that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

Dated: February 3, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-3195 Filed 2-12-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 581]

Grape Variety Names; Wine Labeling

Correction

In FR Doc. 86-2300 beginning on page 4392 in the issue of Tuesday, February 4, 1986, make the following corrections:

1. On page 4395, in the second column, in § 4.91, in the second column of the list, in the sixteenth line, *"Emeral Riesling"* should read *"Emerald Riesling"*; in the third column, in the first column of the list, *"Rugy Cabernet"* should read *"Ruby Cabernet"*; and in the second column of the list *"(Welshriesling)"* should read *"(Welschriesling)"*.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio as amendments to the State's permanent regulatory progrom (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed changes to the Ohio statute concerning collection of a fee by the county recorder for filing a permit application and procedures for removing permit applications from the county recorder's files after public notice, and procedures for the recording and discharging of liens.

This notice sets forth the times and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., March 17, 1986, will not necessarily be considered in the decision on whether the proposed amendments should be approved and incorporated into the Ohio regulatory program. If requested, a public hearing on the proposed amendments has been scheduled for March 5, 1986. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by February 28, 1986. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing if requested, is scheduled for 1:00 p.m. in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus Ohio. 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Filed Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus Ohio 43227; Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed modification to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 "L" Street, NW., Washington, DC 20240.

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1983 **Federal Register.**

II. Submission of Revisions

By letter dated November 15, 1985, the Ohio Department of Natural Resources submitted proposed amendments to Ohio Law Sections 1513.07, 1513.33 and 1513.37 consisting of:

(1) A revision to 1513.07(B)(6) requires the county recorder to charge a fee of ten dollars for his services in filing the application. The application shall remain on file until the recorder's office is notified by the bureau of reclamation that the application may be removed. Thirty days after receipt of notification, the application will be destroyed if not claimed. The notice will remain on file with the county recorder;

(2) Revisions to 1513.33 concerning the teatment of recording and discharging liens at county recorder's offices; and

(3) Revisions to 1513.37(F)(3) and (4) which record and index property liens and set forth procedures for the discharge of the liens.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSMRE's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendments. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

III. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1982, the Office of Management and Budget (OMB) granted OSMRE an exemption from section 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require

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approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1986.

Brent Wahlquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 86-3206 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 265

Freedom of Information Act; Disclosure of Information From Customers' Mailing Records

AGENCY: Postal Service.

ACTION: Revised Proposed Rule.

SUMMARY: The Postal Service is revising a proposed rule published in 1985 with respect to the public disclosure of customers' mailing records. The present proposal revises the 1985 proposal only with respect to the disclosure of publishers' mailing transaction records. While the present proposal continues to identify as exempt from mandatory disclosure most mailing transaction records, it permits the disclosure of statements of mailing for periodical publications having second-class entry and for other periodical publications that do not meet one or more of the requirements for second-class entry, such as "shopper" publications and free circulation newspapers that are mailed at regular bulk third-class rates. In all other respects, the present proposal retains the provisions of the earlier one.

The present proposal affects the administration of the Postal Servcie's informaton disclosure policies and is consistent with the Freedom of Information Act and the Postal Reorganization Act.

DATE: Comments must be received on or before March 17, 1986.

ADDRESS: Written comments should be mailed or delivered to the Records Office, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: John Gunnels (202) 268-4873.

SUPPLEMENTARY INFORMATION: On January 9, 1985, the Postal Service published in the **Federal Register** (50 FR 1069) and invited public comments on a proposal to clarify its public information regulations with respect to records maintained about its customers who mail in bulk at reduced rates, such as: Presorted First-Class, Carrier Route First-Class, Presorted Zip+4 First-Class, second-class, regular and special bulk third-class, bulk fourth-class zone, bulk bound printed matter, and special fourth-class presort.

As stated in its 1985 proposal, the Postal Service receives and maintains the following categories of information about its customers who mail at presort or bulk rates:

- Applications for permission to mail at rates other than the full First-Class rate, including statements of continued eligibility for reduced rates, and applications to use certain special services or alternative methods for payment of postage.
- Mailing transaction records that contain detailed information about individual bulk mailings, or summary information about bulk mailings during a specific period of time.
- Financial records that contain information about balances in advance deposit or trust fund accounts, and amounts of postage and fees paid, or information about customers' postage meter settings.

The 1985 proposal would have permitted the disclosure of customers' applications for special privileges (and related documents) and of records relating to specific bulk mailings of political campaign literature. It also stated the general policy of withholding all other records containing information about a particular customer's mailing habits, practices or operations; information about specific bulk mailing transactions; and information relating to a customer's payment of postage and fees. An explanation of the legal authority for the proposed rule accompanied its publication.

Although the nondisclosure provision was referred to in the informational section of the 1985 proposal in terms of "prohibiting" disclosure, the proposed rule was intended to amend the section of the Postal Service's public information regulations, 39 CFR 265.6(b), that identifies certain categories of records that are not subject to mandatory disclosure but which may, nevertheless, under appropriate circumstances be made available as a matter of discretion when disclosure would serve the public interest.

To resolve what may be preceived as an inconsistency between the 1985 proposed rule and the discussion of its purpose and effect, the Postal Servcie wishes to make clear that the purpose of the present proposed rule is to state a general policy of withholding certain types of information about its customers' mailing habits and transactions. The rule is not intended, however, to work as an absolute prohibition against disclosure; rather, it identifies certain categories of records as exempt from mandatory disclosure and at the same time retains the discretion vested in the Postal Service to disclose in the appropriate case when the public interest would be better served by disclosure.

We note also that these proposed regulations must be applied in conformity with the Freedom of Information Act, 5 U.S.C. 552, including 552(b), which requires the segregation of exempt and non-exempt material in agency records, as applicable, and the disclosure of non-exempt portions. In any instance of a request for a record having exceptional contents, this statutory provision could require the disclosure of parts of an otherwise exempt record or justify the exemption of parts of an otherwise non-exempt record.

The proposal as here revised continues to permit disclosure of applications for special privileges and records relating to specific bulk mailings of political campaign literature. It also continues to identify as exempt from mandatory disclosure most other records relating to a customer's mailing habits, specific mailing transactions, or financial transactions. The provision relating to disclosure of transaction records for political campaign mailings has been made more precise by specific reference to the campaign mailings or registered political candidates or campaign organizations and qualified political committees. This modification makes it clear that the mailings intended to be covered by the rule are the same as those political campaign mailings that are defined or described for the purposes of mail processing procedures in 454 of the Postal Operations Manual.

The only additional substantive change now being proposed would permit the disclosure of records about specific mailing transactions for periodical publications mailed in bulk either at second-class rates or at regular bulk third-class rates. This change is proposed on account of the comments received from the mailers of these publications, as discussed below.

The Postal Service received 15 comments on the 1985 proposal from various associations of direct mail

advertisers and merchandisers as well as newspaper and magazine publishers. Approximately one-half of the comments supported the proposal while the remainder opposed it.

Two commenters stated that the applications of those seeking second or third-class rates should be open to public inspection. The Postal Service had not intended, however, to withhold these applcations and will disclose applications for mail privileges or special services to any person upon specific request. In addition, it will disclose any information required to be filed pursuant to 39 U.S.C. 3685(a) for the purposes of determining eligibility to mail at the second-class postage rate.

Some commenters properly objected to the use of the term "bulk business mail" to include second-class publications now treated as surface preferential mail. The term has been replaced in the revised proposal by the more generic description, "bulk rate mailings," to make clear that the intended coverage of the rule extends to all records generated on account of mailings presented in bulk, regardless of the service standard applied.

The Postal Rate Commission commented that, while it recognizes the confidential character of individual mailer's business data, the proposed restriction against disclosure to the public should not be read as a restriction on the Commissions access to information necessary to its functions in rate and classification proceedings. The proposed rule addresses the public's right of access pursuant to the Freedom of Information Act, and is not intended to affect the flow of information in proceedings before the Commission.

The balance of the comments focused on the proposal to withhold mail transaction records, specifically the statements of mailing submitted in connection with second-and third-class bulk mailings (PS Forms 3541 and 3602, respectively). The Postal Service has proposed to withheld these statements based upon the assessment that the statements may contain details about a customer's business operations and transaction with the Postal Service which the customer would regard as proprietary information and would not ordinarily and voluntarily divulge to its competitors. The Postal Service had, therefore, determined that these statements could properly be withheld pursuant to the Freedom of Information Act's exemptions of confidential commercial information, 5 U.S.C. 552(b)(4) and 39 U.S.C. 410(c)(2).

The comments indicate that postal customers who mail in bulk are divided on the question whether their mailing statements should be made available to the public. The perceptions of these mailers as to the proprietary nature of the information contained in these statements appear to differ depending upon the type of business in which the mailers engage and upon the purpose for which they use the mails.

Those commenters who wrote on behalf of firms engaged in direct mail advertising and merchandising generally favored the withholding of their mailing statements, because they consider that information about their mailing practices or the details of a specific mailing is proprietary and confidential, and disclosure of such information to competitors would, in their view, place them at a competitive disadvantage. Included in this group are American Retail Federation, Mail Order Association of America, and Columbia House.

The commenters representing the publishing industry, however, unanimously oppposed the proposed withholding of mailing statements submitted in connection with bulk mailings of publications. This group includes American Business Press, American Newspaper Publishers Association, National Newspaper Association and Landmark Community Newspapers, Inc., representing in the aggregate approximately 7,500 publications. While most of these publications have second-class entry, there are also included in this group some publications, commonly referred to in the trade as "shoppers," and some free circulation newspapers, which are mailed at regular bulk third-class rates. The comments suggest that the mailers of all of these publications, regardless of whether they are mailed at second- or third-class rates, are united in the view that the mailing statements for these publications should be made available to the public.

The commenters who wrote on behalf of these publications expressed the general view that members of the publishing industry do not ordinarily regard circulation and distribution information as confidential, that they have no expectation of privacy with respect to the circulation and distribution information they routinely supply to the Postal Service in mailing statements, and that they would have no objection to its disclosure. Several of these commenters also expressed the concern that withholding these statements would benefit only those publishers who make exaggerated circulation claims, and that the availability of the statements to competing publishers would help to keep competitiors honest in the circulation claims they make to advertisers. In sum, none of these commenters advanced a legally cognizable interest which they considered would be protected by withholding these mailing statements from the public, nor did they express a desire or expectation that their mailing statements be withheld.

In consequence of the views expressed by the publishers who submit this information, the Postal Service proposes to structure the rule so as to make available to the public upon proper request any mailing statement submitted for a periodical publication mailed in bulk at second- or third-class rates. The other provisions of the proposed rule remain substantially unaltered.

In summary, the purpose of this proposed regulation is to state a general policy of nondisclosure for records relating to a particular customer's mailing habits, specific bulk mailing transactions, and payment of postage and fees. The limited exceptions from this general policy of nondisclosure are: (1) Applications and statements of eligibility for second-class mail privileges and for special rates or services; (2) records related to bulk mailings of political campaign literature; (3) statements of mailing for publications having second-class entry; and (4) statements of mailing for periodical publications mailed in bulk at third-class rates.

For the purposes of this proposed rule, the term "periodicial publication" is intended to include only those publications that are published at a known office of publication at a stated frequency, are issued regularly with the intent to continue publication indefinitely, and have continuity from issue to issue in either style, format, theme or subject matter. The term is not meant to include any of the other types of material mailed in bulk at third- or fourth-class rates, such as circulars, printed letters, or catalogs, containing advertising or promotional material. Nor is is meant to include "marriage mail" pieces that may consist of a combination of various types of printed matter.

The comments indicate that customers who use the mails for the purpose of direct marketing or advertising of products and services consider the information contained in their mailing statements to be proprietary and do not make a practice of disclosing the information to their competitors. Since

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disclosure of the information would pose the risk of substantial harm to the business interests of these customers, the Postal Service proposes to extend the policy of nondisclosure to all mail transaction records except for those specifically identified in the proposed rule that follows.

Further comment from the customers affected by these proposed changes is invited to ensure that any final rule adopted has a sound factual basis and comports, to the extent permitted by law, with the legitimate business interests of postal customers. The Postal Service, therefore, invites further public comment on the following proposed revisions to Title 39, Code of Federal Regulations.

List of Subjects in 39 CFR Part 265

Freedom of Information, Postal Service.

PART 265—RELEASE OF INFORMATION

1. The authority citation for Part 265 is revised to read as follows:

Authority: 39 U.S.C. 401, 410, 3685; 5 U.S.C. 552.

2. In § 265.6, paragraphs (b)(3) (viii), (ix) and (x) are added to read as follows. The introductory text of paragraph (b)(3) is shown for the convenience of the reader.

§ 265.6 Availability of records.

* * * * *

(b) * * *

(3) Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed. This class includes, but is not limited to:

* * * * *

(viii) Records that would reveal details of the mailing habits, practices or operations of postal customers other than: applications and statements of eligibility for second-class mail privileges and for special rates or services.

(ix) Records of specific bulk rate mailing transactions other than: Political campaign mailings by a registered political candidate or campaign organization; mailings at special bulk third-class rates by a qualified political committee; and mailings of periodical publications at second-or third-class rates.

(x) Records of a postal customer's payment of postage and fees.

* * * * *

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-3196 Filed 2-12-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42030C FRL-2969-7]

Mesityl Oxide; Proposed Test Standards; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on Mesityl Oxide (MO) test standards. Extension of the comment period is necessary because certain revisions to TSCA test guidelines cited as test standards in this proposed rule for MO were not available for comment at the time of proposal.

DATES: Written comments on the proposed rule should be submitted on or before February 28, 1985. Requests to make oral comments at a public meeting have already been submitted to the Agency, and a public meeting will be held.

ADDRESS: Address written comments in triplicate identified by the document control number OPTS-42030C to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, DC 20460.

The public records supporting these actions are available for inspection in Rm. E-107 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, Toll Free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: Proposed rulemaking for MO in response to the Fourth Interagency Testing Committee (ITC) Report was published in the **Federal Register** of December 20, 1985 (50 FR 51888). The proposed rule noted that the Agency intended to propose shortly in a separate **Federal Register** document certain revisions to the TSCA test guidelines cited as test standards for the test rule to provide more explicit guidance on the necessary minimum elements in each study. The Agency proposed that these revisions be adopted in the test standards for the test rule for MO. The proposed revisions were published in the **Federal Register** of January 14, 1986 (51 FR 1522). Because the Agency was delayed in issuing these proposed revisions, the Agency is extending the comment period for the proposed thest rule for MO to provide sufficient opportunity for comment on those revisions as they apply to the test standards for MO. Written comments should be submitted on or before February 28, 1986, which is 45 days after publication in the **Federal Register** of these revisions. Requests to make oral comments at a public meeting have already been submitted to the Agency. Information on the exact time and place of the meeting will be available from the TSCA Assistance Office.

Authority: 15 U.S.C. 2603.

Dated: February 7, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 86-3161 Filed 2-12-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 20, 1985, the Department of the Interior (Department) proposed a rule establishing procedures for assessing damages to natural resources from a discharge of oil or a release of a hazardous substance and compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, or under the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act). The Department is extending the period for comment on the proposed regulation from February 18, 1986, to March 21, 1986.

DATE: Comments on the proposed rule (50 FR 52126) must be submitted by March 21, 1986.

ADDRESS: Comments should be sent to: Keith Eastin, Associate Solicitor, CERCLA 301 Project Director, Room 4354, Department of the Interior, 1801 "C" Street NW., Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 A.M. to 4:15 P.M.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Keith Eastin, (202) 343-5757;
Sheryl Katz, (202) 343-1301;
Alison Ling, (202) 343-1301.

SUPPLEMENTARY INFORMATION: On December 20, 1985, the Department proposed a rule for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substances for the purposes of CERCLA and section 311(f) (4) and (5) of the CWA. The December 20, 1985 notice stated that the proposed rule was being developed under a deadline imposed by the court in *State of New Jersey et al.* v. *Ruckelshaus et al.*, Cir. No. 84-1668 (D.C.N.J.), which required promulgation of final "B regulations" on or before April 22, 1986. Because of that deadline, the notice stated that comments on the proposed rule were to be submitted on or before February 3, 1986.

The Department received numerous requests from the public for additional time to comment on this proposed rule. The parties to the litigation referred to above, agreed upon, and petitioned the court to approve a modification in the schedule for the promulgation of the final "B" regulations. While awaiting the court's ruling on this motion, the Department extended the comment period to February 18, 1986.

On February 3, 1986, the court signed an order approving the modification of the schedule agreed upon by the parties. The comment period is now extend to March 21, 1986, to assure that all members of the public have adequate time to comment fully on this proposed rule.

Dated: February 7, 1986.

Keith Eastin,

Associate Solicitor.

[FR Doc. 86-3167 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 58 and 160

[CGD 79-168]

Lifesaving Equipment; Launching Equipment for Liferafts

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: The Coast Guard proposes to adopt specifications for approving liferaft launching devices and automatic disengaging devices. This equipment is often used to lower liferafts from vessels with high freeboard, and its use is required on mobile offshore drilling units and deepwater ports. Most of the standards and tests in these specifications have been applied as guidelines for several years in approving liferaft launching equipment.

DATES: Comments on this proposal must be received on or before May 14, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 79-168) U.S. Coast Guard, Washington, DC 20593. The comments, draft evaluation, and materials referenced in this notice will be available for examination and copying and comments may also be hand delivered between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: LCDR William M. Riley (202) 426-1444.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice as CGD 79-168, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on these proposed rules. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal drafters of these proposed rules are: LCDR William M. Riley, Office of Merchant Marine Safety, and William R. Register, Office of the Chief Counsel.

Discussion of the Proposed Regulations

Launching equipment is often used on vessels with high freeboard for lowering liferafts, and its use is required on deepwater ports and mobile offshore drilling units. By using this equipment, liferafts can be lowered over long descents while fully loaded and then released automatically into the water. The automatic releasing feature is provided by a specially designed disengaging device.

The standards and tests in the proposed rules are based on those developed several years ago to supplement requirements in 46 CFR Subpart 75.27, for launching devices installed on large passenger vessels. These standards and tests have been revised to comply with the 1983 amendments to Chapter III of the International Convention For The Safety Of Life At Sea, 1974 (SOLAS 1974), and to take into account the recommendations in International Maritime Organizations (IMO) Resolution A521(3) concerning implementation of SOLAS 1974 provisions. The amendments to SOLAS 1974 are expected to come into force on July 1, 1986.

Four manufacturers are currently authorized to produce approved launching devices. Devices approved under the previous standards and tests will probably meet the requirements proposed in this notice for launch heights up to approximately 10 m (33 ft.). However, they would have to undergo supplemental testing in order to renew their approvals should the rules become final as proposed in this notice.

Sections 75.27-5 and 108.508 of Title 46, CFR, and Section 149.525 of Title 33, CFR, contain various equipment requirements for launching devices. Those requirements are also included in rules proposed in this rulemaking and they will be deleted from 46 CFR 75.27-5, 108.508 and 33 CFR 149.525 when the rules in this proposal are finalized.

The proposed rules require all testing to be done by or under the supervision of an independent laboratory. In the past, approval testing of liferaft launching equipment has been done under Coast Guard supervision.

The proposed rules require approved launching equipment to have instruction plates or placards explaining how to use

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the equipment. The recent amendments to SOLAS 1974 include a requirement that the information on these plates and placards be posted on or in the vicinity of each launching device and liferaft. The Coast Guard is currently preparing a rulemaking proposal which includes this requirement as well as other lifesaving equipment requirements that would implement the amendments to SOLAS 1974. Notice of the SOLAS rulemaking project appeared in the **Federal Register** on December 31, 1984.

In preparing these proposed rules, the Coast Guard consulted with various launching device equipment manufacturers and potential manufacturers. Each manufacturer was asked to comment in writing on a preliminary draft of the proposal. One letter reply was received and most of its comments and recommendations have been incorporated into the proposal. A copy of the letter is available for inspection and copying in the public docket.

Proposed § 160.063–11(o)(1) requires wire rope falls of a launching device to be rotation resistant. Comments are specifically requested concerning any criterion that could be prescribed to define acceptable or unacceptable rotation resistance in launching device falls.

Economic Analysis and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the address listed above under **"ADDRESSES"**. Copies may also be obtained by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT"**.

Total annual manufacturers' costs to test and approve launching equipment under these proposed regulations would be approximately $35,940. This represents an annual cost increase of $10,940 over costs incurred under current methods to test and approve equipment. Annual costs to the government under this proposal would be about $1,663, i.e. $16,315 per year less than costs currently incurred. The benefits of this proposal would include: (1) Less governmental involvement in required testing because of the use of independent laboratories and (2) international marketability of U.S. manufactured products because of conformity to SOLAS 74.

Manufacturer costs under this proposal would be approximately 2.3% per installation more than costs incurred under current methods. This increase in costs should not materially affect the price that vessel owners would have to pay for equipment. Although some vessel owners and manufacturers would be "small entities" under this proposal, a 2.3% cost increase is not considered to be significant for these businesses.

Based upon the estimated cost increases involved, the Coast Guard certifies that these proposed rules would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains information collection requirements in §§ 160.063–15, 160.063–21, 160.070–15, and 160.070–21. These requirements have been previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB under control number 2115–0141. The information collection requirements in this rulemaking and their corresponding control numbers will be listed in 46 CFR Part 159 concurrently with the publication of final rules.

List of Subjects

46 CFR Part 58

Vessels, Oil and gas exploration, Marine safety.

46 CFR Part 160

Marine safety.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Title 46 of the Code of Federal Regulations as follows:

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

1. The authority citation for Part 58 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

§ 58.30–1 [Amended]

2. By revising § 58.30–1(a)(7) to read as follows:

(a) * * *

(7) Lifeboat handling equipment and liferaft launching devices.

* * * * *

PART 160—LIFESAVING EQUIPMENT

2. By adding a new Subpart 160.063 to Part 160 to read as follows:

Subpart 160.063—Launching Devices for Liferafts

Sec.

160.063–1 Scope.
160.063–3 Working Load.
160.063–5 Independent laboratory.
160.063–7 Approval procedure.
160.063–9 Materials.
160.063–11 Construction.
160.063–13 Performance.
160.063–15 Instruction manual and placard.
160.063–17 Approval tests.
160.063–19 Production tests.
160.063–21 Marking.

Authority: 46 U.S.C. 3306 and 3703; and 49 CFR 1.46.

Subpart 160.063—Launching Devices for Liferafts

§ 160.063–1 Scope.

(a) This subpart prescribes standards, tests, and procedures for approving liferaft launching devices.

(b) The standards and tests apply to a liferaft launching device that has a davit, winch, wire rope falls, and a brake to control lowering of rafts.

§ 160.063–3 Working load.

(a) The term "working load" means the sum of the weights of—

(1) The largest liferaft listed in the application for approval of the launching device;

(2) The total number of persons for which the raft is rated under Subpart 160.051; and

(3) The equipment required for the raft by this chapter.

§ 160.063–5 Independent laboratory.

(a) The approval and production tests in this subpart must be conducted by, or under the supervision of, an independent laboratory accepted by the Coast Guard under Subpart 159.010 of this chapter.

§ 160.063–7 Approval procedure.

(a) *General.* A launching device is approved by the Coast Guard under the procedures in Subpart 159.005 of this chapter, except as modified in paragraphs (d) and (e) of this section.

(b) *Approval testing.* Each approval test must be conducted in accordance with § 160.063–17.

(c) *Approval of alternate designs.* A launching device which does not meet the requirements of §§ 160.063–9, 160.063–11, and 160.063–13 may be approved if standards and tests prescribed by the Commandant in place of or in addition to tests in § 160.063–17 show that the launching device provides at least the same degree of safety provided by launching devices that do comply with §§ 160.063–9, 160.063–11, and 160.063–13.

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(d) *Application.* The application required by § 159.005–5 of this chapter—

(1) Need not include a sample of the equipment; and

(2) Must include, in addition to information required by that section—

(i) A list of approved liferafts that the launching device is designed to launch;

(ii) A description of the test apparatus and test procedure that applicant proposes to use;

(iii) Stress diagrams and calculations that show the strength of each gear and structural part of the launching device; and

(iv) The maximum proposed height of installation above the light waterline.

(e) *Test report.* The test report required by § 159.005–11 of this chapter must include, in addition to information required by that section, a list of approved liferafts that the launching device is designed to launch.

§ 160.063–9 Materials.

(a) *Machine-cut parts.* Each gear, cam, pawl, and similar part in the winch must be—

(1) Machine cut steel;

(2) Machine cut bronze; or

(3) Of a design of equivalent strength, durability, reliability, and accuracy.

(b) *Corrosion resistant parts.* Each part exposed to water, spray, or high humidity must be—

(1) Corrosion resistant or must be treated to be corrosion resistant; and

(2) Galvanically compatible with each adjoining part.

(c) *Aluminum alloys.* Any aluminum alloy which is not resistant to stress corrosion in marine atmospheres (i.e., contains more than 0.6 percent copper) must not be used in a structural component or in any other component subject to stress.

(d) *Extreme Temperature Tolerance.* Each load-carrying part must be of a material which retains its strength when exposed to temperatures as low as −30 °C.

§ 160.063–11 Construction.

(a) *Load-carrying parts.* Except as specified in paragraph (o)(4) of this section, each load-carrying part of a launching device must be designed to have a minimum breaking strength of at least 4.5 times the load imposed on the part by the working load during operation of the launching device, under all combinations of list up to 20° and trim up to 10°.

(b) *Boarding points.* Each launching device must be constructed so that a person can board a liferaft at deck level when the raft is at the outboard suspension point of the launching device.

(c) *Brake.* Each launching device must have a mechanical brake to control the lowering of liferafts. The brake must be of a type that is engaged by a weighted lever and must be designed so that it is always engaged unless manually moved to the disengaged position. The lever must be located adjacent to the launching device in a position where the liferaft is visible to the operator of the lever during launching. The lever must be capable of being moved to the disengaged position from within the liferaft being lowered.

(d) *Bearings.* Each bearing of a moving part of a launching device must have a means to retain the bearing in its normal operating position. Each journal bearing must be made of nonferrous metal.

(e) *Means of lubrication.* Each launching device must have a means to lubricate its bearings and all moving parts of blocks, sheaves, fairleads, etc. Sliding-contact gearing, such as worm gears, must operate in an oil bath, or have another means of lubricating the gear teeth on each revolution. Each lubricant enclosure must be designed so that it can be readily filled, drained, and checked for lubricant level. The bearings in the hub of each wire rope sheave must be lubricated by a fitting which is not located on the sheave itself.

(f) *Sheaves and drums.* Each sheave and each winch drum must be of a size recommended by the wire rope supplier for the diameter and construction of the wire rope being used. Each sheave must have a device that prevents the wire rope from jumping out of the sheave groove. The fleet angle of a grooved drum must not exceed 8°, and the fleet angle of a non-grooved drum must not exceed 4°.

Note.—The term "fleet angle" is defined in §§ 94.33–10 and 108.509(e) of this chapter.

(g) *Machinery.* Each machinery housing on a launching device must be designed so that all internal moving parts may be examined using only common tools. Each machinery housing, except gear boxes and other enclosures that retain lubricants, must be designed to prevent moisture accumulation.

(h) *Exposed moving parts.* Each exposed moving part of a launching device that poses a hazard to personnel must have a guard or screen.

(i) *Fasteners.* Each fastener securing a part of a launching device must have a means to prevent the fastener from loosening.

(j) *Electrical equipment.* Electrical equipment of a launching device must meet the Electrical Engineering Regulations in Part 111 of this chapter.

(k) *Hydraulic and pneumatic equipment.* Each hydraulic or pneumatic part and system of a launching device must comply with the Marine Engineering Regulations in Subpart 56.30 of this chapter.

(l) *Welding.* Each weld must be made using automatic welding equipment or be made by a welder who is qualified by the U.S. Coast Guard, U.S. Navy, American Bureau of Shipping, American Welding Society, American Society of Mechanical Engineers, or other organization that has similar procedures for welder qualifications that are acceptable to the Commandant.

(m) *Hand-operated mechanism and interlock.* Each launching device must have a hand-operated lifting mechanism for lifting and moving unloaded liferafts to the outboard suspension point on the device. The mechanism must be operable from a standing position. The device must have an interlock that prevents simultaneous operation of its hand-operated mechanism and any mechanical, electric, or gravity power source. Any removable hand gear, crank, or wheel of the hand-operated mechanism must be securely stowed on the device.

(n) *Hand-powered fall retrieval.* Each launching device must have a hand-powered retrieving mechanism capable of recovering its wire rope falls. The device must have an interlock that prevents simultaneous operation of its hand-operated mechanism and any mechanical, electric, or gravity power. Any removable hand gear, crank, or wheel of the hand operated mechanism must be securely stowed on the device.

(o) *Wire rope falls.* Each launching device must have wire rope falls that—

(1) Are rotation-resistant;

(2) Are of galvanized steel, stainless steel, or other material with equivalent corrosion-resistant properties;

(3) Are equal or superior, with respect to flexibility and wear, to 6x19 regular lay filler wire that is pre-lubricated during construction;

(4) Have a minimum breaking strength of 6 times the working load, including each chain, link, block, connector, and other device used on the fall, and;

(5) Are not more than single part falls.

(p) *Nonfunctional sharp edges and projections of excessive length.* A launching device must not have nonfunctional sharp edges and must not have fasteners or other projections of excessive length.

(q) *Gears.* Each gear of a launching device must be keyed to or integral with its shaft.

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§ 160.063–13 Performance.

(a) Each launching device must be designed to pass the tests in § 160.063–17.

(b) Each launching device must have a means for protecting the device from ice formation which could make the device inoperative.

§ 160.063–15 Instruction manual and placard.

(a) Each launching device must have an instruction manual and one or more instruction plates or placards with operating instructions for the launching device.

(b) *Instruction manual.* The instruction manual required by paragraph (a) of this section must—

(1) Be written so that an operator not having previous experience with liferaft launching devices can understand it;

(2) Be in English;

(3) Be illustrated with diagrams, pictures, or both, to aid in understanding the instructions; and

(4) Contain detailed operating instructions that—

(i) Explain in sequence each of the steps to follow in launching two liferafts in succession; and

(ii) Include in this sequence a step stating that the automatic disengaging device used with the launching device—

(A) Is to be cocked for automatic release just before the liferaft enters the water; and

(B) Can be manually released after the liferaft is in the water;

(5) Include—

(i) Procedures for conducting drills in the use of the equipment;

(ii) Monthly inspection checklist;

(iii) Maintenance and repair instructions;

(iv) Schedule of periodic maintenance;

(v) Diagram of lubrication points with recommended lubricants;

(vi) List of replaceable parts;

(vii) List of sources of spare parts;

(viii) Log for recording inspections and maintenance; and

(ix) Installation instructions.

(c) *Instruction plates or placards.* The instruction plates or placards required by paragraph (a) of this section must—

(1) State in sequence, each of the steps to follow in launching two liferafts in succession; and

(2) Include in this sequence a step stating that the automatic disengaging device used with the launching device—

(i) Is to be cocked for automatic release just before the liferaft enters the water; and

(ii) Can be manually released after the liferaft is in the water;

(3) Use bright red letters to present the information described in paragraph (c)(2)(i) of this section;

(4) Be corrosion-resistant or weatherproof; and

(5) Be in English and include diagrams to aid in understanding the instructions.

§ 160.063–17 Approval tests.

(a) *General.* Each launching device submitted for approval must be tested in accordance with this section. The launching device must be completely assembled and installed on a test tower in a manner that simulates intended shipboard installation. The launching device must have an automatic disengaging device of a type approved under Subpart 160.070.

(b) *Test failure.* If a launching device fails one of the tests in this section, the cause of the failure must be identified and any needed design changes made. After a test failure and any design change, the failed test, and any previously completed tests affected by the change, must be rerun.

(c) *Tests.* The following approval tests must be conducted:

(1) *Empty raft loading.* A test weight equal to the weight of a fully-equipped liferaft of the largest size listed in the application for approval is attached to the falls. One person operating the hand-powered lifting mechanism must be able to raise the weight 1 m (3.3 ft.) without undue exertion and then move it from the full inboard position of the launching device to its full outboard position. The total time to raise and move the weight must not exceed 90 seconds.

(2) *Maximum speed.* A test weight equal to the working load is suspended from the launching device in its full outboard position. Thereafter, the weight is lowered by gravity power to the water or ground level. The lowering speed must be measured and must not exceed 1.3 m/sec. (240 ft./min.). During lowering the brake may not be used.

(3) *Minimum speed.* A test weight equal to the weight of a fully equipped liferaft of the smallest size listed in the application for approval plus the weight of one person is suspended from the launching device in its full outboard position. The raft is then lowered by gravity power alone to the water or ground level. The lowering speed must be measured.

(4) *Retrieval of falls.* A test weight equal to the weight of the automatic disengaging device is attached to the falls at water or ground level. One person using the hand-powered retrieving mechanism must be able to raise the automatic disengaging device 4.5 m (15 ft.) above the water or ground level. The total time to raise the device this distance must not exceed 60 seconds.

(5) *List and trim.* The tests described in paragraphs (c)(1), (c)(2) and (c)(3) of this section must be repeated with the launching device installed in a position that simulates an inboard vessel list of 20° in combination with 10° of trim.

(6) *Overload.* A weight of 2.2 times the working load is suspended from the launching device in its full outboard position. The load is swung in a fore and aft direction twice through an arc of approximately 20°. The falls must not slip or break during this test. The outboard suspension point of the launching device must not move laterally in either direction during this test. The test must be repeated with the launching device in a position that simulates a 20° outboard list, and must be repeated with the launching device in a position that simulates a 20° inboard list.

(7) *Static brake overload.* If the brake is not used to hold the weight during the test in paragraph (c)(6) of this section, a weight of 1.5 times the working load is suspended from the launching device in its full outboard position. The brake must hold the weight for two minutes without permitting it to drop.

(8) *Dynamic brake overload.* A weight of 1.1 times the working load is attached to the falls and lowered at maximum lowering speed through a distance of at least 3 m (10 ft.). The brake is then quickly engaged. The test weight must stop within 1 m (3.3 ft.) therefore. This test must be repeated along with the test in paragraph (c)(9) of this section (if applicable) until the accumulated lowering distance in testing equals 150 m (492 ft.) or more.

(9) *Wet dynamic brake overload.* If the launching device has external braking surfaces, the test described in paragraph (c)(8) of this section must be repeated after the braking surfaces have been thoroughly wetted with water. The test weight must stop when the brake is engaged, but need not stop within 1 m (3.3 ft.) This test must be repeated at least 5 times.

(d) *Visual examination.* Upon completing the tests described in paragraph (c) of this section, the launching device is disassembled. Its parts are then examined for evidence of noncompliance with the requirements in §§ 160.063–9 and 160.063–11. The examination must also not disclose any deformation, excessive wear, or other damage.

§ 160.063–19 Production tests.

(a) Each launching device manufactured under Coast Guard approval must be tested—

(1) In accordance with Subpart 159.007 of this chapter; and

(2) As prescribed in §§ 160.063–17(c)(7) and (9).

(b) If a device fails testing, its defects must be corrected and the device retested until it passes.

(c) The independent laboratory that conducts or supervises the testing must also conduct the visual examination described in § 160.063–17(d), except that the device need not be disassembled.

(d) A launching device may not be sold as Coast Guard approved unless—

(1) It passes testing; and

(2) Each defect uncovered in the visual examination is corrected.

§ 160.063–21 Marking.

(a) *Nameplate.* Each launching device manufactured under Coast Guard approval must have a corrosion resistant nameplate.

(b) Each nameplate must contain the—

(1) Name of manufacturer;

(2) Coast Guard approval number;

(3) Manufacturer's brand or model designation;

(4) Serial number;

(5) Working load;

(6) Maximum length of falls which the winch drum will accommodate;

(7) Maximum height of installation above the light waterline as calculated under paragraph (d) of this section; and

(8) Date of manufacture.

(c) Each launching device must be permanently and legibly marked with the name of the laboratory that conducted the production test.

(d) The maximum height of installation above the light waterline for marking on the nameplate is the lesser of—

(1) The distance "H" calculated from the formula:

$$H = 50(S - 20)$$

where H is in meters and S is the lowering speed determined under § 160.063–17(c)(2) in meters per second. (The formula is H=0.83 (S−66) if H is measured in feet and S is in feet per minute.); or

(2) The height at which the maximum length of falls specified on the nameplate will reach the light waterline with at least two turns of wire remaining on the winch drum, assuming no list or trim.

4. By adding a new Subpart 160.070 to Part 160 to read as follows:

Subpart 160.070—Automatic Disengaging Devices for Liferafts

Sec.

160.070–1 Scope.
160.070–3 Working load.
160.070–5 Independent laboratory.
160.070–7 Approval procedure.
160.070–9 Materials.
160.070–11 Construction.
160.070–13 Performance.
160.070–15 Instruction manual and placard.
160.070–17 Approval tests.
160.070–19 Production tests.
160.070–21 Marking.

Authority: 46 U.S.C 3306 and 3703; and 49 CFR 1.46.

Subpart 160.070—Automatic Disengaging Devices for Liferafts

§ 160.070–1 Scope.

(a) This subpart prescribes standards, tests and procedures for approving automatic disengaging devices.

(b) The standards and tests apply to an automatic disengaging device designed for use with an inflatable liferaft of a type approved under this part and a launching device of the type approved under Subpart 160.063.

§ 160.070–3 Working load.

(a) The term "working load" means the sum of the weights of—

(1) The largest liferaft listed in the application for approval of the automatic disengaging device;

(2) The largest number of persons for which the raft is rated under Subpart 160.051; and

(3) The equipment required for the raft by this chapter.

§ 160.070–5 Independent laboratory.

(a) The approval and production tests in this subpart must be conducted by, or under the supervision of, an independent laboratory accepted by the Coast Guard under Subpart 159.010 of this chapter.

§ 160.070–7 Approval procedure.

(a) *General.* An automatic disengaging device is approved by the Coast Guard under the procedures in Subpart 159.005 of this chapter, except as modified in paragraphs (d) and (e) of this section.

(b) *Approval testing.* Each approval test must be conducted in accordance with § 160.070–17.

(c) *Approval of alternate designs.* An automatic disengaging device which does not meet the requirements of §§160.070–9, 160.070–11, and 160.070–13 may be approved if standards and tests prescribed by the Commandant in place of or in addition to tests in § 160.070–17 show that the device provides at least the same degree of safety provided by automatic disengaging devices that do comply with §§ 160.070–9, 160.070–11, and 160.070–13.

(d) *Application.* The application required by § 159.005–5 of this chapter—

(1) Need not include a sample of the equipment, and

(2) Must include, in addition to information required by that section—

(i) A list of approved liferafts that the automatic disengaging device is designed to handle;

(ii) A description of the test apparatus and test procedure that applicant proposes to use; and

(iii) Stress diagrams and calculations that show the strength of each structural part of the automatic disengaging device.

(e) *Test report.* The test report required by § 159.005–11 of this chapter must include, in addition to information required by that section, a list of approved liferafts that the automatic disengaging device is designed to handle.

§ 160.070–9 Materials.

(a) *Corrosion resistant parts.* Each part exposed to water, spray, or high humidity must be—

(1) Corrosion resistant or must be treated to be corrosion resistant; and

(2) Galvanically compatible with each adjoining part.

(b) *Aluminum alloys.* Any aluminum alloy which is not resistant to stress corrosion in marine atmospheres (i.e., contains more than 0.6 percent copper) must not be used in a structural component or in any other components subject to stress.

(c) *Machine-cut parts.* Each cam, pawl, bushing, bearing, or similar part must be—

(1) Machine-cut steel;

(2) Machine-cut bronze; or

(3) Of a design of equivalent strength, durability, reliability, and accuracy.

§ 160.070–11 Construction.

(a) *Load-carrying parts.* Each load-carrying part of an automatic disengaging device must be designed to have a minimum breaking strength of at least six times the load imposed on the part by the working load during operation of the device.

(b) *Attachment to falls.* Each automatic disengaging device must be designed for attachment to the wire rope falls of a lauching device by a splice or socket which, when installed, will comply with the strength requirements of § 160.070–11(a).

(c) *Trip mechanism.* Each automatic disengaging device must have a trip mechanism that can be manually preset for release.

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(d) *Welding.* Each weld must be made using automatic welding equipment or be made by a welder who is qualified by the U.S. Coast Guard, U.S. Navy, American Bureau of Shipping, American Welding Society, American Society of Mechanical Engineers or other organization that has similar procedures for welder qualifications that are acceptable to the Commandant.

(e) *Means of lubrication.* Each automatic disengaging device must have a means to lubricate all moving parts without prior disassembly.

(f) *Fasteners.* Each fastener securing a part of an automatic disengaging device must have a means to prevent the fastener from loosening.

(g) *Hook.* The hook of an automatic disengaging device must be of appropriate size for use with the lifting ring, shackle, or eye of the lifting attachment of each liferaft that the device will handle.

§ 160.070–13 Performance.

(a) Each automatic disengaging device must be designed to pass the tests in § 160.070–17.

§ 160.070–15 Instruction manual and placard.

(a) Each automatic disengaging device must have an instruction manual and an instruction plate or placard.

(b) *Instruction manual.* The instruction manual required by paragraph (a) of this section must—

(1) Be written so that an operator not having previous experience with automatic disengaging devices can understand it;

(2) Be in English;

(3) Be illustrated with diagrams, pictures, or both, to aid in understanding the instructions; and

(4) Contain detailed operating instructions that explain in sequence each of the steps to follow in—

(i) Cocking the device for automatic release; and

(ii) Manually releasing the device;

(5) Include—

(i) Procedures for conducting drills in the use of the equipment;

(ii) Monthly inspection checklist;

(iii) Maintenance and repair instructions;

(iv) Schedule of periodic maintenance;

(v) Diagram of lubrication points with recommended lubricants;

(vi) List of replaceable parts;

(vii) List of sources of spare parts;

(vii) Log for recording inspections and maintenance; and

(ix) Installation instructions.

(c) *Instruction plate or placard.* The instruction plate or placard required by paragraph (a) of this section must—

(1) State in bright red letters that the automatic disengaging device is to be cocked for automatic release just before the liferaft enters the water;

(2) Explain in sequential steps how to—

(i) Cock the automatic disengaging device for automatic release, and

(ii) Manually release the device;

(3) Be corrosion-resistant or weatherproof; and

(4) Be in English.

§160.070–17 Approval tests.

(a) *General.* Each automatic disengaging device submitted for approval must be tested in accordance with this section. The device must be attached to wire rope falls by means of a spliced in thimble or a swaged fitting. The falls must be attached to a winch of a launching device, davit, crane, or other fixture that can be used to perform the tests described in this section.

(b) *Test weights.* Each test weight must have a lifting ring, shackle, or eye of the same size as the lifting attachments of the liferafts listed in the application for approval.

(c) *Test sequence.* Each test in this section, except test #12, must be performed three times. Test #12 need be done only once. In each test, except test #1, the automatic disengaging device must be attached to the lifting ring, shackle, or eye of the test weight used. If the automatic disengaging device is intended for use with lifting attachments of different sizes, each test must be repeated with each size of lifting attachment. In test #1, the automatic disengaging apparatus must be attached to the jig referred to in subparagraph (e)(1) of this section.

(d) *Test failure.* If an automatic disengaging device fails one of the tests in this section, the cause of the failure must be identified and any needed design changes made. After a test failure and any design change, the failed test, and any previously completed tests affected by the change, must be rerun.

(e) *Tests.* The following approval tests must be conducted:

(1) *Test #1.* The automatic disengaging device shall be tested to destruction in a suitable jig. The breaking strength of the device, as determined in this test, must be greater than or equal to its working load multiplied by a safety factor of six.

(2) *Test #2.* The automatic disengaging device is attached to a test weight equal to 1.1 times the working load and the trip mechanism is locked in its closed position. The device and attached weight are then raised so that the weight clears the ground. The trip mechanism of the device is then cocked for automatic release. The initial action of cocking the trip mechanism must not release the test weight.

(3) *Test #3.* Test #2 is repeated with a test weight equal to the weight of the smallest liferaft listed in the application for approval and the equipment required for the raft by this part.

(4) *Test #4.* The automatic disengaging device is attached to a test weight equal to 1.1 times the working load and the trip mechanism locked in its closed position. The weight is then raised to a height of at least 6 m (20 ft.). Then the weight is lowered at a speed of 0.6 m/sec. (120 ft./min.) (±10%) and before striking the ground or water surface, is stopped as abruptly as possible. The automatic disengaging device must not release the test weight during the test.

(5) *Test #5.* Test #4 is repeated with the trip mechanism cocked for automatic release.

(6) *Test #6.* The automatic disengaging device is attached to a test weight equal to 1.1 times the working load and the trip mechanism locked in its closed position. The test weight then is raised to a height of at least 1.5 m (5 ft.) and then lowered so that it strikes the ground or water surface and the wire rope falls become slack. The device must not release when the test weight strikes the ground or water surface. Thereafter, one person following the instructions on the placard required by § 160.070–15(c), and without the use of tools, must be able to manually disconnect the test weight from the device.

(7) *Test #7.* The automatic disengaging device is attached to a test weight equal to 1.1 times the working load and the trip mechanism locked in its closed position. The test weight is raised to a height of at least 6 m (20 ft.) and then lowered at a speed of 0.6 m/sec. (120 ft./min.) (±10%) but is not allowed to strike the ground or water surface. During the lowering operation, the test weight is swung so that it strikes a vertical wall at least three times. The initial impact must be at a velocity of at least 1 m/sec. (3.3 ft/sec.). The automatic disengaging device must not release the test weight during the test.

(8) *Test #8.* Test #7 is repeated with the trip mechanism cocked for automatic release.

(9) *Test #9.* The automatic disengaging device is attached to a test weight equal to 1.1 times the working load and the trip mechanism locked in its closed position. The test weight is raised at least 6 m (20 ft.) and then lowered at a speed of 0.6 m/sec. (120 ft./min.) (±10%) but is not allowed to strike the ground or water surface. During the lowering operation, the test weight is kept in continuous contact with a surface inclined 20° from the vertical. The automatic disengaging device must not release the test weight during the test.

(10) *Test #10.* Test #9 is repeated with the trip mechanism cocked for automatic release.

(11) *Test #11.* The automatic disengaging device is attached to a test weight equal to 1.1 times the working load and the trip mechanism is then locked in its closed position. The test weight is raised to a height of at least 6 m (20 ft.) and then lowered at a speed of 0.6 m/sec. (120 ft./min.) (±10%). When the test weight is 1.5 m (5 ft.) (±10%) above the ground or water surface, the trip mechanism is cocked for automatic release. The lowering operation is then completed. The automatic disengaging device must release the test weight when the test weight strikes the ground or water surface.

(12) *Test #12.* Test #11 is repeated with a test load that is 2.2 times the working load.

(f) *Visual examination.* Upon completing the tests described in paragraph (e) of this section, the automatic disengaging device is disassembled. Its parts are then examined for evidence of noncompliance with the requirements in §§ 160.070–9 and 160.070–11. There must be no evidence of deformation, excessive wear, or other damage.

§160.070–19 Production tests.

(a) Each automatic disengaging device manufactured under Coast Guard approval must be tested—

(1) In accordance with Subpart 159.007 of this chapter; and

(2) As prescribed in §§ 160.070–17(e)(5) and 160.070–17(e)(10) [Test #5 and Test #10].

(b) If a device fails testing, its defects must be corrected and the device retested until it passes.

(c) The independent laboratory that conducts or supervises the testing must also conduct the visual examination described in § 160.070–17(f), except that the device need not be disassembled.

(d) An automatic disengaging device may not be sold as Coast Guard approved unless—

(1) It passes testing; and

(2) Each defect uncovered in the visual examination is corrected.

§ 160.070–21 Marking.

(a) *Nameplate.* Each automatic disengaging device manufactured under Coast Guard approval must have a corrosion resistant nameplate.

(b) Each nameplate must contain the—

(1) Name of manufacturer;

(2) Coast Guard approval number;

(3) Manufacturer's brand or model designation;

(4) Serial number;

(5) Working load; and

(6) Date of manufacture.

(c) Each automatic disengaging device must be permanently and legibly marked with the name of the laboratory that conducted the production tests.

Dated: January 27, 1986.

J.W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86–2090 Filed 2–12–86; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

49 CFR Part 584

[Docket No. 83–05; Notice 3]

Splash and Spray Suppression Devices; Reopening of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopens the comment period for a notice of proposed rulemaking published April 12, 1985, regarding splash and spray suppression devices. The comment period for this rulemaking action closed on August 12, 1985. However, NHTSA received at least three comments after the comment closing date that presented significant new data from field tests of splash and spray suppression devices. Additionally, one of those comments offered a new method of evaluating the data derived from field testing. NHTSA has spent much time analyzing these data and the suggested new method for evaluating the data, as well as analyzing the comments and data that were timely filed. This notice is intended to inform the public of the significant data in the comments received after the comment closing date, and to invite comments and analysis of the late data. To that end, NHTSA is reopening the comment period for an additional 60 days.

DATE: Comments should be received by NHTSA not later than April 14, 1986.

ADDRESS: Comments should refer to Docket No. 83–05 and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are 8:00 am to 4:00 pm Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Rutland, Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590, (202–426–2154).

SUPPLEMENTARY INFORMATION: NHTSA published a notice of proposed rulemaking regarding the installation of splash and spray suppression devices on truck tractors, trailers, and semitrailers at 50 FR 14632, April 12, 1985. The comment period for that proposal was scheduled to close June 11, 1985. However, NHTSA extended the comment period so that it closed August 12, 1985; 50 FR 24550, June 11, 1985.

NHTSA received more than 20 comments after the comment closing date. At least three of these comments presented significant new data based on field testing of splash and spray suppression devices. The most comprehensive field testing was sponsored by the Motor Vehicle Manufacturers Association (MVMA). The report and data from that testing are filed at Docket 83–05–N01–163. NHTSA's initial analysis of these data verified some aspects of other field testing, but called into question some aspects of previous testing. Specifically, the new MVMA testing showed an inconsistency in the measured spray suppression when aeroaids are used on short-nosed conventional (SNC) tractor-van trailer combinations. NHTSA has been analyzing these data to try to determine the effects an aeroaid has on potential spray suppression.

Moreover, the MVMA comments suggested a new method of analyzing the field data. Under this method, the only measurements used in the analysis of the spray generated during a vehicle run are those taken by the particular sensors that are downwind of the prevailing winds at the time of the run. If applied to data generated in previous field tests, this method could significantly change the conclusions drawn from those data.

Another late comment relating to field tests was submitted by Taft, Stettinius & Hollister, on behalf of the Effective Spray Control Organization (83–05–N01–1550. This comment asserted that field tests showed that the Monsanto flap, rated at 83 percent in the spray tunnel, and a textured rubber flap, rated at 40 percent in the spray tunnel, performed virtually identically in the field tests.

One other late comment relating to performance of spray suppression devices on highways was submitted by Schlegel Corporation (83–05–N01–159).

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Based on the evaluation of trucks equipped with spray suppression devices used on highways in the State of Oregon, this comment asserted that the visibility improvements associated with use of those devices are perceptible and significant enough to make it safer on highways on rainy days.

NHTSA has been thoroughly analyzing and evaluating these comments as well as those that were timely filed. In addition, the agency is continuing its research and testing on the effectiveness of spray suppression devices, and the correlation between measured effectiveness in the spray tunnel and in field tests. NHTSA believes that the data in the late-filed comments could significantly affect the analysis of splash and spray suppression devices and the resulting rulemaking decision. The agency is, therefore, reopening the comment period for this rulemaking action for an additional 60 days and inviting public comment on that data.

In this reopened comment period, it is not necessary for commenters to resubmit views and data that have been expressed in previous comments. The reason for reopening the comment period is to invite all persons to comment on the late data that have been submitted since August 12, 1985, the close of the comment period. NHTSA is particularly interested in comments on the field tests conducted in the three comments outlined above, and the commenters' analysis of the data collected therein.

Authority: 49 U.S.C. 2314; delegations of authority at 49 CFR 1.50 and 49 CFR 501.6.

Issued on February 10, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-3235 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Threatened Status for the Flattened Musk Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The Service gives notice that the comment period on the proposal to list the flattened musk turtle as a threatened species will be extended to allow for review and comment on the flattened musk turtle study by Dr. C. Kenneth Dodd for the Office of Surface Mining.

DATE: Comments on this proposal must be received by March 18, 1986.

ADDRESS: Written comments and materials should be sent to the Endangered Species Field Office, U.S Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The flattened musk turtle is a small aquatic turtle found only in Alabama in the upper Black Warrior River system from Bankhead Dam northward. About 15 percent of this habitat seems to contain healthy reproducing populations. The flattened musk turtle was included in a notice of review of 12 species of turtles, published in the **Federal Register** for June 2, 1977 (42 FR 28903). The Service then contracted a status survey to Dr. Robert H. Mount and the following year included the species as a category 1 species in a Notice of Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (December 30, 1982; 47 FR 58454). Additional survey work was sponsored by the Alabama Coal Association and Drummond Coal Company.

On December 1, 1983, the Service received a petition to list the flattened musk turtle, dated November 30, 1983, from the Environmental Defense Fund. On November 1, 1985, the Service proposed the species as threatened in the **Federal Register** (50 FR 45638). A public hearing was held in Birmingham, Alabama, on February 6, 1986. The comment period was reopened until February 16, 1986, to receive comments from the hearing.

A flattened musk turtle study, recently completed by Dr. C. Kenneth Dodd for the Office of Surface Mining, has provided additional data that was not available at the time the proposal was published. The Service is extending the comment period to March 18, 1986, to allow for review and comment on this data. Copies of the report may be requested from the Regional Director, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303. Written comments may now be submitted until March 18, 1986, to the Jackson Endangered Species Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is Mr. John J. Pulliam (see **ADDRESSES** section) at (601/965-4900 or FTS 490-4900).

Authority

The authority for this section is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife; Fish; Marine mammals; Plants (agriculture).

Dated: February 5, 1986.

David B. Allen,

Acting Regional Director.

[FR Doc. 86-3116 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted an amendment to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) for review by the Secretary of Commerce (Secretary), and is requesting comments from the public. The amendment would establish quarterly quotas and effort control measures for the Nantucket Shoals surf clam fishery, provide for adjustment of New England surf clam quotas between quarterly periods and years, and prohibit fishermen from making more than one surf clam trip during an authorized Mid-Atlantic Area surf clam fishing period. The amendment is intended to augment the management program for surf clams on Nantucket Shoals and to foreclose

opportunities for fishing outside of authorized Mid-Atlantic surf clam fishing periods and is in response to disapproval of §§ 652.7(n), 652.21(b), and 652.22(b).

DATE: Comments on the amendment should be submitted on or before March 11, 1986.

ADDRESS: All comments should be sent to Mr. Bruce Nicholls, Surf Clam Management Coordinator, National Marine Fisheries Service, 2 State Fish Pier, Gloucester, Massachusetts 01930-3097. Clearly mark "Comments on Surf Clam and Ocean Quahog Amendment 6" on the envelope.

Copies of the revised FMP, the amendment, and revised environmental assessment/regulatory impact review are available upon request from Mr. John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19901

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617-281-3600, ext. 263.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended [16 U.S.C. 1801 *et seq.*] at section 304(b)(3)(B), requires each regional fishery management council to submit any revised fishery management plan or amendment it prepares to the Secretary for review and approval or disapproval. The act also requires that the Secretary, upon receiving the revised plan or amendment, must immediately publish a notice that the revised plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the revised plan or amendment.

Amendment 6 to the FMP was submitted by the Council early in 1985. The Secretary approved portions of the amendment, and disapproved several provisions (50 FR 32707, August 14, 1985). The Council reviewed and reconsidered the measures which were disapproved and has submitted a revised Amendment 6 which includes provisions establishing quarterly quotas and effort control measures for the Nantucket Shoals surf clam fishery, provides for adjustment of New England surf clam quotas between quarterly periods and years, and prohibits fishermen from making more than one surf clam fishing trip during an authorized Mid-Atlantic surf clam fishing period.

Proposed regulations based on this amendment will be published within 10 days.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

Dated: February 10, 1986.

Richard B. Roe,

Director, Office Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3216 Filed 2-10-86; 3:56 pm]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 30
Thursday, February 13, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Western Spruce Budworm Insect Control; Environmental Impact Statement Cancellation

The Department of Agriculture, Forest Service has withdrawn its intent to prepare an Environmental Impact Statement for the control of the Western Spruce Budworm insect infestations in Oregon and Washington during 1986. Following a successful field trial of the nonchemical insecticide, Bt, it has been determined that the 1986 Western Spruce Budworm control programs will not use chemicals. The proposed application of Bt has been found to cause no significant impact on the quality of the human environment and, therefore, an Environmental Impact Statement will not be prepared.

The Notice of Intent, published in the Federal Register of February 12, 1985, is hereby rescinded (85–3452).

For further information, contact Bruce Hostetler, Forest Pest Management, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208; Telephone (503) 221–3605.

Dated: February 5, 1986.

Wayne Lewis,
Acting Regional Forester.

[FR Doc. 86–3166 Filed 2–12–86; 8:45 am]
BILLING CODE 3410–11–M

Intent To Prepare an Environmental Impact Statement; Herbicide use for Weed Control in Deerlodge National Forest, Butte, MT

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to use herbicides to control noxious weeds on the Deerlodge National Forest.

A range of alternatives will be considered including alternate methods of weed control and a no action alternative.

Federal, state, and local agencies; other individuals; and organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperative agencies and assignment of responsibilities.

Frank Salomonsen, Forest Supervisor, Deerlodge National Forest, Butte, Montana is the responsible official.

The analysis is expected to take about five months. The draft environmental impact statement should be available for public review by April 1986. The environmental impact statement is scheduled to be completed by June, 1986.

Written comments and suggestions concerning the analysis should be sent to Frank Salomonsen, Deerlodge National Forest, Butte, Montana 59703, by March 15, 1986.

Questions about the proposed action and environmental impact statement should be directed to Tom Griffith, Resource Coordinator, Deerlodge National Forest, telephone (406) 496–3457.

Dated: February 3, 1986.

Frank E. Salomonsen,
Forest Supervisor.

[FR Doc. 86–3228 Filed 2–12–86; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–016]

Industrial Nitrocellulose From France; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on industrial nitrocellulose from France. The review covers the period March 22, 1983, through December 31, 1983, and 12 programs.

As a result of the review, the Department has preliminarily determined the net subsidy for the period of review to be 0.44 percent *ad valorem*, a rate we consider *de minimis*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 28521) a countervailing duty order on industrial nitrocellulose from France. We began this review under our old regulations on November 23, 1983, and sent a questionnaire to the French government on that day. After the promulgation of our new regulations, a foreign exporter, the Société Nationale des Poudres et Explosifs ("SNPE"), on September 8, 1985, requested an administrative review of the order, in accordance with § 355.10(a) of the Commerce Regulations. We published the new initiation on November 27, 1985 (50 FR 48745). The Department has now conducted that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of French industrial nitrocellulose containing between 10.8 percent and 12.2 percent nitrogen, not explosive grade nitrocellulose which contains over 12.2 percent nitrogen. Industrial nitracellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. Industrial nitrocellulose comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing ink. Such

merchandise is currently classifiable as cellulosic plastic materials, other than cellulose acetate, under item 445.2500 of the Tariff Schedules of the United States Annotated.

The review covers the period March 22, 1983, through December 31, 1983, and 12 programs: (1) Cross-subsidization through military sales; (2) a grant from the Ministry of Defense; (3) a grant from DATAR; (4) the assumption of labor costs for civil servants; (5) increased government equity; (6) raw material purchases from government-owned firms; (7) assumption of labor costs by the FNE; (8) research and development assistance; (9) financing from the Fonds de Developpement Economique et Social; (10) loans from Crédit National; (11) financing from the Caisse des Dépôts et Consignations; and (12) loans from the Ministry of Research and Industry. SNPE is the only known producer and exporter to the United States of this merchandise.

Analysis of Programs

(1) Cross-Subsidization through Military Sales.

In our final determination in this case (48 FR 11971, March 22, 1983), we found on the basis of the best information available that the French government conferred a countervailable benefit on industrial nitrocellulose by paying excessive prices for SNPE's military nitrocellulose. Again on the basis of the best information available, we determined that SNPE used those "excess" profits to subsidize the purchase of fixed assets for the production of industrial nitrocellulose. We used the best information available because the French government and SNPE refused to provide data on the cost of production of industrial nitrocellulose. We requested the cost of production data to test whether the French government was conferring such a subsidy.

In this review, we requested, received, and verified complete cost of production information. After examining the data, we conclude that it cannot serve to show whether cross-subsidization occurs.

Cross-subsidization involves the issue of the fungibility of money because it implies that a benefit tied to a particular product is in fact not tied only to that product. If we were to consider money as fungible, we would treat a benefit ostensibly for a particular product as part of a pool of funds indirectly affecting other products. A strict fungibility of money approach would allow us to capture the effects of such a benefit by allocating it over all products, whether under investigation or not.

However, in Appendix II of *Certain Steel Products from Belgium (47 FR 39316)*, we stated that:

> [w]e have not viewed all aid received for any purpose by companies under investigation as fungible, and thus equally beneficial to all products made by the company in question. While the law clearly envisions reaching subsidies which benefit the product under investigation indirectly, as well as directly, it would distort and be inconsistent with the clear intent of the statute, as reflected in its legislative history, to allocate to products under investigation any portion of benefits clearly tied to products not under investigation. This is particularly true since we are compelled to allocate fully to the products actually being investigated any subsidies directly tied to them. . . .

We continued to adhere to this interpretation of the statute. If we applied the fungibility approach in all cases, we would have to allocate over a company's total sales those benefits that we formerly allocated only over sales of the product under investigation. If Congress had intended that we universally apply the fungibility concept, we would have to countervail export subsidies on sales to countries other than the United States, allocate export subsidies on U.S. sales over total sales instead of over only export sales, and dilute benefits tied to a product under investigation by allocating them over total sales.

In fact, an export subsidy does not ordinarily provide an incentive to produce for domestic sale; a third country export subsidy does not ordinarily provide an incentive to export to the United States; and a benefit tied to a specific product does not ordinarily provide an incentive to produce anything other than that product.

We should not allocate benefits tied to products not under investigation over a product under investigation unless we have a clear reason to believe that such benefits do encourage the production or export to the United States of the merchandise under investigation. When we refer to tied benefits, the intent to subsidize must at times become a surrogate for the effect of a subsidy when that effect is not demonstrable. In the absence of evidence to the contrary, we conclude that a benefit tied to a specific product is intended to affect only that product and provides an incentive to produce or sell only that product.

In this case, we have no evidence that the French government does in fact pay excessive prices for military nitrocellulose. Even if the French government does pay excessive prices, such prices would normally encourage the production of sale of that product rather than industrial nitrocellulose. We have no evidence that any of the payments for military nitrocellulose are diverted to, or otherwise encourage, the production or sale of industrial nitrocellulose.

For these reasons, we preliminarily determine that cross-subsidization does not occur and that any benefit from potentially excessive prices on military nitrocellulose would be tied to a produce not under investigation.

(2) Grant From the Ministry of Defense

The Ministry of Defense provided a grant to SNPE in 1975 to modernize the company's Bergerac plant, where SNPE produces (among other products) industrial nitrocellulose. We determined in our original investigation that this grant constitutes a subsidy.

To calculate the benefit, we applied the grant methodology outlined in the Subsidies Appendix to the notice of "Final Affirmative Countervailing Duty Order on certain cold-rolled carbon steel flat-rolled products from Argentina" (49 FR 18006, April 26, 1984) ("the Subsidies Appendix"). We allocated the grant over 10 years, the average useful life of assets in the nitrocellulose industry, according to the Asset Guideline Classes of the Internal Revenue Service. We used as the discount rate the 1975 national average corporate bond rate in France (as reported in Morgan Guarantee Trust Company's *World Financial Markets*) because we have no information on SNPE's weighted cost of capital for that year. On this basis, we preliminarily determine the benefit from this program to be 0.23 percent *ad valorem*.

(3) DATAR Grant

The Délégation à l'Aménagement du Territoire et à l'Action Régionale ("DATAR") coordinates the programs of various government agencies that provide incentives to establish or expand businesses in certain regions of France. SNPE received a grant from DATAR in 1979 to improve the production facilities and general infrastructure of the Bergerac plant. We determined in the original investigation that this program constitutes a subsidy.

Using the same methodology as described for the Ministry of Defense grant, we allocated the grant over 10 years and used as the discount rate the 1979 national average corporate bond rate in France. On this basis, we preliminarily determine the benefit from this program to be 0.04 percent *ad valorem*.

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(4) Assumption of Labor Costs for Civil Servants

Some employees of SNPE retain government civil service status as a result of the company's change from a government agency to a government-owned private corporation in 1971. SNPE is responsible for paying the wages and benefits of all its employees.

In general, SNPE's contribution for social security benefits, such as health insurance, pensions, and unemployment insurance, is lower for its employees with civil service status than for other employees. Because the French government assumes part of SNPE's contributions for those with civil service status, we determined in the original investigation that this program constitutes a subsidy.

To calculate the benefit, we took the difference between SNPE's annual contribution for its civil service employees and for other employees and multiplied it by the number of its civil service workers involved in industrial nitrocellulose production. We allocated the result over total sales of industrial nitrocellulose during the period of review. On this basis, we preliminarily determine the benefit from this program to be 0.17 percent *ad valorem*.

(5) Increased Government Equity in SNPE

In 1983, the Government of France increased its equity holdings in SNPE. To determine whether the purchase of additional shares by the French government was made in accordance with commercial considerations, we examined SNPE's financial ratios for 1981 and 1982.

In our final determination, we found that SNPE had reported a profit in every year between 1972 and 1981 except 1975, when one of the company's plants was accidentally destroyed. SNPE continued to report healthy and rising profits in 1982 and 1983. For 1981 and 1982, we examined the company's interest to income ratio, its quick ratio, its current ratio, its cash flow from operations, its return on sales, and its return on equity. Interest expenses for this period represented only a fraction of net income. The quick ratios were below one during this period, showing that a significant portion of the company's current assets was made up of inventory. However, the current ratios, which give the relationship of current assets plus inventory to current liabilities, were well above one and therefore reasonably strong. Although the 1982 cash flow from operations was slightly in the red, the company reported a high return on sales and an even higher return on equity for both years.

We also examined several trade journals and periodicals published in France and abroad in 1982 and early 1983 in order to determine whether a commercial investor would have considered investment in the nitrocellulose industry attractive. Industrial nitrocellulose is classified as part of the plastics industry in the Office of Management and Budget's *Standard Industrial Classification Manual*, and as part of the chemical industry in the IRS Asset Guideline tables. Articles in *Usine Nouvelle* and the *Financial Times* of London indicated that the chemical industry in France suffered losses of FF5 billion in 1982. However, the *Wall Street Journal Europe* reported operating profits for the French chemical industry in 1982. *European Chemical News* and *I1 Sole 24 Ore* of Milan reported that French chemical output would rise somewhere between 0.6 percent and 3 percent in 1983. *Information Chimie* predicted that the basic demand for chemicals in France would rise more than overall industrial output through 1987 and that plastics output would increase through 1986. *Chimie Actualités* reported that plastic materials output in France rose in 1982 and compared to 1981 and Monde reported that the French chemical sector's turnover would rise 11 percent in 1982 as compared to 1981.

Given SNPE's favorable data and the preponderance of encouraging news reported in trade journals at the time of the French government's new equity infusions in SNPE, we conclude that a commercial investor would have considered investment in that company to be an attractive prospect. Based on this information, we find that SNPE remained equity-worthy during the period of review and that the government's 1983 purchase of shares in SNPE was not inconsistent with commercial considerations. Therefore, we preliminarily determine that the government's 1983 equity infusions in SNPE do not constitute a subsidy.

(6) Raw Material Purchases From Government-Owned Firms

During the period of review, SNPE purchased nitric acid, oleum, and woodpulp from companies recently nationalized by the Government of France. The petitioner alleges that SNPE benefited from the government's acquisition of those suppliers.

SNPE signed a contract with one government-owned supplier of nitric acid long before that supplier was nationalized. The price formula set in that contract is still in effect. We also examined SNPE's purchases of woodpulp and oleum and found that it paid prices negotiated at arm's length.

We therefore preliminarily determine that SNPE did not benefit from purchases of its raw materials from government-owned suppliers.

(7) Fonds National d'Emploi

In 1982, SNPE signed a contract with the Fonds National d'Emploi ("FNE") with two significant features: 1) to allow early retirement for employees provided each were replaced by a newly-hired employee, and 2) to hire new employees for training. In return, SNPE agreed that the total number of employees would not drop below the level of employment at the time the contract with the FNE was signed. Any firm in France may use this program. Because the program is generally available, we preliminarily determine that it does not constitute a subsidy.

(8) Other Programs

We also examined the following programs and preliminarily find that SNPE did not use them during the period of review:

(A) Research and development assistance;

(B) Financing from the Fonds de Developpement Economique et Social;

(C) Preferential loans from Crédit National;

(D) Financing from the Caisse des Dépôts et Consignations; and,

(E) Loans from the Ministry of Research and Industry.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.44 percent and *ad valorem* for the period of review. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department therefore intends to instruct the Customs Service not to assess countervailing duties for shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 22, 1983, the date of our affirmative final determination (48 FR 37051), and exported on or before December 31, 1983.

Further, the Department intends to instruct the Customs Service to waive deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days from the date of publication, or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: February 10, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86-3203 Filed 2-12-86; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. OEE-2-85]

Export Privilege; Actions Affecting; Werner Scheele, et al.

In the matter of: Werner Scheele, individually and doing business as CHB Computer Hardware Vertriebs GmbH; a/k/a; CHB GmbH and Comserv GmbH and Comserv Computer Leasing GmbH, with addresses at 427 Langenberger Strasse, 4300 Essen 14, Federal Republic of Germany and 449/451 Langenberger Strasse, 4300 Essen 14, Federal Republic of Germany; Bengt, Andersson, individually with an address at Bodalsvagen 20 XII, Lidingo, Sweden, and doing business as BEA Computer, Vasagatan 15-17, S-111 20 Stockholm, Sweden; and Beacom International AB, Vasagatan 15-17, S-111 20 Stockholm, Sweden, VEB Deutrans International, Sassnitzgatan 2, 231 00 Trelleborg, Sweden, Respondents.

Order Renewing Temporary Denial of Export Privileges

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of Section 388.19 of the Export Administration Regulations, 15 CFR Parts 368-399 (1985) (the Regulations,[1] issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), has asked that the order temporarily denying all export privileges to Werner Scheele, individually and doing business as CHB Computer Hardware Vertriebs GmbH, a/k/a CHB GmbH, Comserv GmbH and Comserv Computer Leasing GmbH, all of Essen, Federal Republic of Germany, to Bengt Andersson of Lidingo, Sweden, individually and doing business as BEA Computer and Beacom International AB of Stockholm, Sweden, and to VEB Deutrans International of Trelleborg, Sweden (hereinafter collectively referred to as respondents), initially issued on December 9, 1985 (50 FR 50931 (December 13, 1985)), be renewed.

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have (1) conspired and acted in concert to violate the Act and the Regulations; (2) indirectly caused the filing of false and misleading information with the Department for the purpose of effecting exports from the United States; and (3) reexported U.S.-origin equipment, U.S.-origin computers and computer-related equipment, to proscribed destinations without authorization from the Department. The Department states that it has reason to believe that the conspiracy involves Scheele's obtaining U.S.-origin goods, both from the United States and abroad, through his companies located in the Federal Republic of Germany (FRG). The Department states further that it believes that Scheele exported the U.S.-origin goods to Andersson in Sweden, using export documents obtained from the FRG government wherein Scheele declared that the goods were intended for ultimate end-use in Sweden. However, the Department has reason to believe that respondents intended that, once the goods were in Sweden, the respondents would, and in fact did, reexport the U.S.-origin goods to proscribed destinations.

The Department further states that it has reason to believe that respondents are continuing in their efforts to obtain U.S.-origin goods. The Department states that its investigation continues to give it reason to believe that the violations under investigation were deliberate, covert and likely to occur again. The Department submits that renewal of the order temporarily denying export privileges to respondents is necessary in order to prevent an imminent violation and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that they will continue to engage in activities which are in violation of the Act and the Regulations.

Based upon the showing made by the Department, I find that renewal of the order temporarily denying all export privileges to respondents and to any person now or hereafter related to them is necessary in the public interest to prevent an imminent violation of the Act and the Regulations. This order is issued without a hearing, the respondents' not having filed any opposition to the Department's renewal request within the time specified in Section 388.19(d)(2) of the Regulations.

Accordingly, it is hereby ordered:

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization

[1] Parts 387 and 388 were recently amended and republished. See 50 FR 53130 (December 30, 1985).

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with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent denied export privileges, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of § 388.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support thereof.

VI. Pursuant to section 388.19(d)(2)(iii) of the Regulations, I am issuing this order today upon the expiration of the time specified for my receipt of any opposition by any respondent to the Department's renewal request. This order shall become effective on February 7, 1986 and shall remain in effect for 60 days.

VII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order renewing the temporary denial of export privileges to the respondents shall be served upon the respondents and published in the **Federal Register**.

Dated: February 6, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86-3204 Filed 2-12-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, March 5–6 1986, at the Ramada Inn, Essington, PA (telephone: 215–521–9600), to discuss joint venture applications, swordfish, billfish, bluefish and other fishery management matters. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street, Room 2115, Dover, DE 19901; telephone: (302) 674–2331.

Dated: February 7, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR. Doc. 86-3223 Filed 2-12-86; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

A workgroup of the Plan Team for the Gulf of Alaska Groundfish Fishery Management Plan will convene a public meeting, February 27, 1986 at 9 a.m., through February 28, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, Building 4, Room 2143, Seattle, WA, to continue development of a frameworked groundfish plan. For further information contact Steve Davis, North Pacific Fishery Management Council, 411 West Fourth Avenue, Box 103136, Anchorage, AK 99510; telephone (907) 274–4563.

Dated: February 7, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3224 Filed 2-12-86; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Plan Development Team will convene a public meeting, February 10–14, 1986, at the Council's Office, Metro Center, 2000 S.W. First Avenue, Suite 420, Portland, OR to draft the 1986 stock status report for presentation to the Council in March. The meeting will convene February 10 at 1 p.m. Written or oral statements pertaining to salmon abundance projections will be accepted at appropriate times during the meeting. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 S.W. First Avenue, Suite 420, Portland, OR 97201; telephone: (503) 221–6352.

Dated: Februrary 3, 1986.

Richard B. Roe.

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3225 Filed 2-12-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Mr. Jeffrey D. Goodyear (P317A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name Mr. Jeffrey D. Goodyear, Ecology Research Group, Inc.

b. Address 97–B Howland Avenue, Jamestown, RI 02835.

2. Type of Permit: Scientific Research/ Scientific Purposes.

3. Name of Marine Mammals:

Humpback whale (*Megaptera novaeangliae*)

4. Type of Take and number: Up to 60 humpback whales per year will be taken by harassment a maximum of six times each. Of these, 30 will be taken by radio-tagging.

5. Location of Activity: Western North Atlantic.

6. Period of Activity: 1986–1988.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee on Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: February 6, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3202 Filed 2-12-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals, Receipt of Application for General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. Fishery Conservation Zone during 1986 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

Applicant: FEDERPESCA, Rome, Italy has applied for a Category 1: Towed or Dragged Gear general permit to take up to 20 small cetaceans and 20 harbor seals in the North Atlantic Ocean.

The application is available for review in the the following office:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Interested parties may submit written comments on this application within thirty (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

Dated: February 5, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3202 Filed 2-12-86; 8:45 am]

BILLING CODE 3510-22-M

Listing Endangered and Threatened Species and Designating Critical Habitat; Action on a Petition to List; Winter-Run Chinook Salmon in the Sacramento River, California

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of Determination on Petition and Request for Information.

SUMMARY: The National Marine Fisheries Service has received a petition to add the winter-run of chinook salmon (*Oncorhynchus tshawytscha*) in the Sacramento River, to the U.S. List of Endangered and Threatened Wildlife. In accordance with Section 4 of the Endangered Species Act of 1973, the Assistant Administrator for Fisheries has determined that the petition presents substantial scientific information indicating that the action may be warranted. As required by section 4(b)(3)(A) of the Act, the Service has commenced a review of the status of *O. tshawytscha* to determine if the petitioned action is warranted. To ensure that the review is comprehensive, the Service is soliciting information and data concerning the status of *O. tshawytscha*.

DATE: Comments and information should be received by April 14, 1986.

ADDRESS: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Carter, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235 (202/634–7471) or Mr. James Lecky, U.S. Department of Commerce, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731 (213/548–2575).

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the Endangered Species Act of 1973 (ESA) contains provisions allowing interested persons to petition the Secretary of the Interior or the Secretary of Commerce to add a species to, or remove a species from the List of Endangered and Threatened Wildlife (List). Section 4(b)(3)(A) of the ESA requires that, to the maximum extent practicable, within 90 days after receiving such a petition the Secretary must determine whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This information standard for petitions is the result of amendments made to section 4 of the ESA in 1982. Regulations implementing these amendments were published in the **Federal Register** (49 FR 38908) on October 1, 1984. The Service interprets "substantial scientific or commercial information" to mean the amount of information that would lead a reasonable person to believe that the proposed measure may be warranted. The criteria used in making such determinations are found in 50 CFR 424.14(b). These criteria essentially are the same as those contained in the regulations implementing the 1982 amendments to Section 4 of the ESA (49 FR 38908).

Listing Factors and Basis for Determination

Pursuant to section 4(a)(1) of the ESA, a species is determined to be endangered or threatened for any of the following reasons: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence.

The 1982 amendments to the ESA clarify that determinations concerning decisions on listings shall be made solely on the best scientific and commercial data available after conducting a status review of the species and after taking into account those efforts, if any, being made by any State, or foreign nation, or subdivision thereof, to protect such species. The purpose of these amendments is to

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ensure that decisions in every phase of the process to list or delist species are made solely on biological criteria and to prevent non-biological considerations from affecting such decisions (H.R. Rep. No. 97–835, 97th Cong., 2d Sess. 19 (1982) Conference Report).

Petition Received

On November 7, 1985, the Service received a petition from Mr. Cay C. Goude, California-Nevada Chapter, American Fisheries Society, to list the winter-run of chinook salmon (*Oncorhynchus tshawytscha*) in the Sacramento River, California, as a threatened species.

The Assistant Administrator for Fisheries has determined that the petition presents substantial scientific information indicating that the petitioned action may be warranted. Pursuant to section 4 of the ESA, this determination requires that a review of the status of *O. tshawytscha* be conducted to determine if the petitioned action is warranted. In addition, section 4 also requires that within 12 months of receipt of a "substantial" petition the Secretary must make one of the following findings: (1) The petitioned action is not warranted; (2) the petitioned action is warranted; or (3) the petitioned action is warranted, but pending listing proposals preclude immediate proposal of a regulation to implement the action. A Notice of the finding must be published in the **Federal Register** and in the case of (2) above, the completed text of a proposed regulation to implement the action must be included.

The petition does not address the designation of Critical Habitat. If it is determined that the petitioned action is warranted, section 4(a)(3)(A) of the ESA requires that Critical Habitat be addressed in the publication of proposed and final rules listing the species.

Biological Information Solicited

To ensure that the review is complete and is based on the best available scientific and commercial data concerning *O. tshawytscha*, the Service is soliciting information and comments concerning the status of the species from any interested party. The Service requests that such data, information, and comments be accompanied by: (1) Supporting documentation, such as maps, bibliographic reference, or reprints of pertinent publications; (2) the Party's name, address, and any association, institution, or business that the Party represents.

Dated: February 6, 1986.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–3199 Filed 2–12–86; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fur Seals; Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of meeting.

SUMMARY: This notice is to announce a meeting to discuss fur seal issues in preparation for the Ottawa Meeting Concerning North Pacific Fur Seals. This notice also announces the availability of a draft issue paper on the Ottawa meeting. Issues that will be discussed include the future role of the Interim Convention on Conservation of North Pacific Fur Seals, long-term research planning, the entanglement problem, and the U.S. regulated 1985 subsistence harvest. The issue paper is available on request from the information contact listed below.

DATE: March 19, 1986, 10:00 a.m. to 4:00 p.m.

ADDRESS: National Marine Fisheries Service, Northwest Region, Building 9-Auditorium, 7600 Sand Point Way, N.E., Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ted I. Lillestolen, Office of International Fisheries (F/M31), National Marine Fisheries Service, Washington, DC, 20235, (202) 634–7257.

Dated: February 10, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–3200 Filed 2–12–86; 8:45 am]

BILLING CODE 3510–22–M

[Docket No. 50720–5154]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Gulf of Alaska sablefish fishery.

SUMMARY: This notice announces that anyone entering the commercial sablefish fishery in the Gulf of Alaska after September 26, 1985 (control date) will not be assured of future access to the sablefish resource if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the Gulf of Alaska sablefish resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fishery based on speculation while discussions continue on whether and how access to the sablefish resource should be controlled.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Resource Management Specialist), NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) was developed and recently amended by the North Pacific Fishery Management Council (Council). The final rule implementing this Amendment 14 to the FMP was approved by the Director, Alaska Region, NMFS (Regional Director), on September 26, 1985, and published in the **Federal Register** (50 FR 43193 October 24, 1985).

This notice is not part of Amendment 14. However, in his letter to the Council approving the amendment, the Regional Director noted that NMFS was ". . . convinced that the rapid increase in fishing effort experienced in the sablefish fishery is likely to continue if not checked." Since the current fishing fleet is capable of harvesting the entire sablefish quota, additional fishing effort would lead to harvesting inefficiencies, more management constraints, and increased conservation risks. The Regional Director recommended that the Council begin immediately to address this problem by developing additional controls on fishing effort. Such controls contemplated in his letter include those that control access to the sablefish fishery resource.

To assist the Council, the Regional Director offered ". . . to publish a notice in the **Federal Register**, announcing that anyone entering the sablefish fishery after September 26, 1985, will not be assured to future participation should the Council develop, and the Secretary [of Commerce] implement, an effort control regime that limits the number of participants in the fishery." At its meeting of December 11–13, 1985, the Council voted to accept this offer and adopted September 26, 1985, as the control date. No further action was taken on this issue at that time.

The NMFS and the Council intend, in making this announcement, to discourage speculative entry into the sablefish fishery while potential entry or access control management regimes are discussed by the Council and possibly developed. If the Council decides to develop an access or entry control management regime, some fishermen who do not currently fish for sablefish in the Gulf of Alaska and never have done so may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of sablefish. Such a record generally is considered indicative of economic dependence on the fishery. On this basis, the fishermen may successfully claim access to a fishery that is otherwise limited to traditional participants. New entrants may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant. This speculation often is responsible for a rapid increase in fishing effort in fisheries already fully or over developed when management authorities begin to consider use of a limited access management regime. The original problems become exacerbated by those who seek possible windall gain from the solutions being discussed. To help distinguish *bon fide*, established sablefish fishermen from the speculative entrants to a fishery, a management authority may set a control date before discussions and planning of controlled access regimes begin. Fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation. Other qualifying criteria may be applied for entry.

This announcement establishes September 26, 1985, as such a control date for potential use in determining historical or traditional participation in the Gulf of Alaska sablefish fishery. This action does not commit the Council or the Secretary to any particular management regime or criterion for entry to the sablefish fishery. Fishermen are not guaranteed future participation in the sablefish fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery.

Dated: February 3, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 86–2659 Filed 2–12–86; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Thursday, March 19, 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc. 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: February 10, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–3221 Filed 2–12–86; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, March 18, 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: February 10, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–3222 Filed 2–12–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Civilian Radioactive Waste Transportation Business Plan; Availability

AGENCY: Department of Energy.

ACTION: Notice of Availability of the Civilian Radioactive Waste Transportation Business Plan.

The Office of Civilian Radioactive Waste Management (OCRWM), U.S. Department of Energy, has developed a Transportation Business Plan to assist in implementing section 137 of the Nuclear

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Waste Policy Act of 1982. The document will provide information on the plans and strategies for the development and operation of the projected system to transport spend fuel or high-level waste as authorized by the Act.

Two preliminary documents entitled: (1) Transportation Business Plan: Strategy Options Document and (2) Draft Transportation Business Plan were issued for public review. Comments received have been incorporated in the Transportation Business Plan which is being provided at this time to all interested parties.

This document, which will be updated periodically, is specifically intended to be an instrument for interaction between industry, State, local and tribal governments, and the public. The Department seeks (1) to identify industry interests in participating with the Department to establish and operate the waste transportation system, (2) to identify and address State, local and tribal concerns in development of specific strategies and action plans and (3) to understand the public's concerns. This is in accord with the principle of consultation and cooperation among affected parties as established by the Nuclear Waste Policy Act.

Copies of the Transportation Business Plan may be obtained after February 10, 1986, by telephoning (202) 252–5575, or by direct pickup from Room 1E206, or requesting in writing the Transportation Business Plan (OCRWM), from the U.S. Department of Energy, Office of Public Affairs, 1000 Independence Avenue, SW., Forrestal Building, Washington, DC 20585.

Issued in Washington, DC February 4, 1986.

Ben C. Rusche,

Director, Office of Civilion Radioactive Waste Management.

[FR Doc. 86–3147 Filed 2–12–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Alliance Oil and Refining Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Action taken on Consent Order.

SUMMARY: The Ecomomic Regulatory Administration (ERA) of the Department of Energy (DOE) announces that it has adopted a Consent Order with Alliance Oil and Refining Company (Alliance) as a final order of the Department.

FOR FURTHER INFORMATION CONTACT: Sandra K. Webb, Director, Houston Office, Ecomomic Regulatory Administration, One Allen Center, Suite 610, 500 Dallas St., Houston, Texas 77002.

SUPPLEMENTARY INFORMATION: On November 19, 1985, 50 FR 47584, the ERA published a notice in the **Federal Register** ("Notice") that it had executed a proposed Consent Order with Alliance Oil and Refining Company on October 21, 1985 which would not become effective sooner than 30 days after publication of that Notice. Pursuant to 10 CFR 205.199J(c), interested persons were invited to submit comments concerning the terms and conditions of the proposed Consent Order. ERA received two comments. Neither of the commenters questioned the basis of the settlement or the adequacy of the settlement amount, and both commenters concurred with the proposal to implement the Subpart V refund procedures. The Consent Order therefore was made final and effective as proposed.

Issued in Houston, Texas on the 28th day of January, 1986.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 86–3144 Filed 2–12–86; 8:45 am]

BILLING CODE 6450–01–M

Proposed Consent Order With Atlantic Richfield Company

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Proposed Consent Order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order between the Department of Energy (DOE) and Atlantic Richfield Company (ARCO). The agreement proposes to settle matters not previously resolved in the Consent Order with ARCO dated January 23, 1985 (1985 Consent Order). The 1985 Consent Order explicitly excluded from its coverage ARCO's compliance with federal petroleum price regulations which pertained to the prices charged by ARCO in sales of price-controlled crude oil which were related, or linked, to transactions involving other crude oil. Based upon findings developed in an audit of such transactions, ERA issued a Proposed Remedial Order (PRO), Case Number KRO–0170, alleging liability for overcharges in the amount of $239,948,207.00 and $259,347,879.00 in interest. This amount, plus subsequently accrued interest, represents ARCO's liability were the government to prevail in litigating the issues raised in the PRO. This Consent Order would resolve ARCO's potential liability for overcharges in linked crude oil transactions during the period January 1, 1973 through January 27, 1981. ARCO has disputed ERA's allegations of regulatory violations and denies any overcharge liability.

ERA proposes that ARCO's liability for potential overcharges and interest be settled for $313 million. This proposed settlement reflects negotiated compromises present in every settlement, including assessments of litigation risks in significant areas of dispute between ERA and ARCO.

Within thirty days of the effective date of the Consent Order, ARCO will make a restitutionary payment of $313 million, plus interest from January 24, 1986, the date the Consent Order was executed by DOE. ERA will direct that these monies be deposited in a suitable account for appropriate distribution by DOE. In addition, within thirty days of the effective date of the Consent Order ARCO will pay $2 million for deposit into the Miscellaneous Receipts account of the United States Department of the Treasury as a compromise of civil penalites which DOE might have asserted pursuant to section 5 of the Emergency Petroleum Allocations Act of 1973, as amended.

Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Order for thirty (30) days following publication of this Notice. Comments should be addressed to: ARCO Consent Order Comments, RG–13, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585.

Following this coment period, on March 21, 1986, at 10:00 a.m. in the Department of Energy Auditorium, Room GE–086, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments, information and recommendations as to whether the settlement should be made final by DOE.

Requests to make presentations must be received in writing by 5:00 p.m., March 17, 1986, and should be marked "Requests to Make Oral Comments" and forwarded to the same address indicated for written comments.

The request should identify the person (with address and telephone number) who wishes to make a presentation and

the amount of time desired. Presentations should be limited to 15 minutes. Persons wishing to participate in the hearing who have not scheduled time will be allowed to make presentations following those who have been scheduled.

ERA will consider the comments, information and recommendations received from the public in evaluating whether to make final the proposed settlement. This will result in one of the following courses of action: Rejection of the settlement; acceptance of the settlement and issuance of a final Order; or renegotiation of the agreement and, if successful, issuance of the modified agreement as a final Order. DOE's final decision will be published in the **Federal Register**, along with an analysis of and response to the significant written and oral comments, as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Robert Heiss, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6727.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Negotiation Process
III. Determination of Reasonable Settlement Amount
IV. Terms and Conditions of the Consent Order
V. Resolution of Litigation Matters

I. Introduction

ARCO is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by this proposed Order (January 1, 1973 until January 28, 1981), ARCO engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids and natural gas liquid products.

ERA conducted an intensified audit of ARCO's compliance for the period of September 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287). On March 1, 1985, ERA issued a notice announcing a proposed consent order between DOE and ARCO which, with specific exceptions, would resolve all matters relating to ARCO's compliance with federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. 50 FR 8366 (March 1, 1985). That proposed order, which required ARCO to pay $85.7 million, plus interest accrued while that amount was in an escrow account, settled ARCO's potential liability for $66 million in alleged overcharges plus attributable interest. Following the solicitation of written comments and a public hearing, ERA issued a notice on June 19, 1985 announcing that the proposed consent order was made a final order of DOE. 50 FR 26603 (June 27, 1985). Pursuant to that Order, ARCO paid DOE $68,035,416.00.

One of the matters expressly excluded from the coverage of the 1985 Consent Order, as provided in paragraph 501(g) of that agreement, was ARCO's compliance with the federal petroleum price and allocation regulations which pertain to the sale or other transfer of lower or upper tier crude oil in transactions which were related by sale, purchase, exchange or other transfer to transactions involving other crude oil. In the 1985 Consent Order ARCO expressly agreed to maintain, and to produce on written request, records, documents, data, contracts, correspondence and information concerning such transactions. Pursuant to this commitment, ARCO submitted materials to ERA. Following completion of an audit, ERA raised issues with respect to certain of ARCO's crude oil purchase and sale transactions. In October 1985 ERA issued to ARCO a PRO, 50 FR 48120 (November 21, 1985), which, as amended, charges ARCO with selling domestic price-controlled crude oil at prices in excess of those permitted by DOE regulations at 10 CFR 212.183(b), 205.202, 210.62(c), and 212.10(a) during the period March 1, 1978 through January 27, 1981.

The PRO alleges that during the period from August 1, 1977 through January 27, 1981, ARCO sold 48,251,710 barrels of domestic price-controlled crude oil to eleven crude oil resellers, conditioning those sales upon ARCO's receipt of various price concessions from those resellers on linked, or tied-in, transactions, in the form of discounts on ARCO's purchases of foreign, stripper well, and other crude oil, or in the form of premiums on its sales of foreign crude oil. As a result, the PRO alleges, ARCO received prices in excess of those permitted in its sales of controlled crude oil.

During the period of alleged violation, March 1, 1978 through January 27, 1981, the total excess consideration, or premiums, alleged to have been unlawfully received by ARCO from the eleven resellers for the 48,251,710 barrels of domestic price-controlled crude oil was $239,948,207.00, exclusive of interest. The interest thereon, computed through October 31, 1985, was $259,347,879.00, yielding a total of $499,296,086.00.

ERA has preliminarily agreed to the settlement amount after assessing the litigation risks associated with establishing the alleged overcharges, and considering the asserted facts and legal issues underlying the PRO, and appropriate settlement compromises related to those issues.

The settlement calls for ARCO to make $313 million (plus interest from the date of execution by DOE) in restitutionary payment and $2 million in compromise of civil penalties to discharge in full all of its obligations under the price and allocation regulations with respect to its linked, or tied-in, transactions between January 1, 1973 and January 28, 1981, particularly including, as noted above, the violations alleged in the PRO.

The restitutionary sum would be paid to DOE for appropriate distribution. The amount paid in compromise of civil penalties which DOE might have asserted pursuant to Section 5 of the Emergency Petroleum Allocation Act of 1973, as amended, would be for deposit into the Miscellaneous Receipts account of the United States Department of the Treasury.

II. Negotiation Process

As described above, the pending PRO alleges that ARCO's maximum liability for crude oil overcharges in linked transactions, exclusive of interest, is approximately $240 million. ERA's investigation did not disclose violations in the period of price controls prior to March 1, 1978.

In the negotiation process which led to this proposed settlement, ERA analyzed the results of the audit which underlies the PRO, and the nature of the alleged regulatory violations. During the ARCO negotiations, ERA reexamined the regulatory violations alleged in the PRO and ARCO's total liability exposure. ERA also considered alternative measures of liability urged by ARCO during the course of discussions which preceded this proposed settlement.

Although ERA has issued a PRO on the crude oil price violations resulting from linked transactions, ARCO has the opportunity to defend against ERA's determination before DOE's Office of Hearings and Appeals. If unsuccessful, ARCO may appeal an adverse decision

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to the Federal Energy Regulatory Commission and thence to federal district and appeal courts.

III. Determination of Reasonable Settlement Amount

The total amount of the violation alleged in the PRO could only be recovered by the government if, in litigation, all issues raised in the PRO were adjudicated in ERA's favor. The risks inherent in litigation make such an outcome uncertain.

In addition to the analysis of litigation risks, ERA took into account such factors as the interest which could be added to possible adjudicated refund amounts, the number and complexity of the legal and factual issues, the time and expense required for the government to fully litigate every issue, as well as the operative principle necessary in most successful settlement—recognition by the parties of the need to reasonably compromise their respective interests and expectations. Based on all of these considerations, ERA concludes that the resolution of these matters for $313 million in restitution, plus $2 million in compromise of civil penalties, for a total of $315 million, is an appropriate settlement. This amount represents $75 million more than the PRO's alleged violation amount. Given all these factors, ERA has made a preliminary determination that this settlement is in the public interest.

IV. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order, ARCO will pay DOE the principal restitutionary amount of $313 million, plus interest, for appropriate distribution by DOE, and $2 million in compromise of civil penalties for deposit into the Miscellaneous Receipts account of the United States Department of the Treasury. If the settlement is not made final by June 1, 1986, ARCO may withdraw from the proposed agreement.

The proposed Consent Order would supplement the 1985 Consent Order. Specifically, ARCO and DOE mutually release each other from issues and claims regarding ARCO's compliance with the federal petroleum price and allocation regulations which pertain to the sale or other transfer of lower or upper tier crude oil or other price-controlled crude oil in transactions which were related by sale, purchase, exchange or other transfer, agreement, exchange or promise of consideration, or otherwise, to transactions involving other crude oil, as excluded from the 1985 Consent Order. The proposed Consent Order would also release ARCO from all undertakings contained in paragraph 501(g) of the 1985 Consent Order relating to the provision of materials pertaining to the linked transactions. All matters resolved by the 1985 Consent Order are unaffected by the Consent Order. However, several matters enumerated in paragraph 501 of this proposed Consent Order remain unresolved by the parties.

Finally, this agreement only resolves certain civil liabilities and makes no attempt to resolve any criminal liability that might be established by the government against ARCO.

V. Resolution of Litigation Matters

The proposed settlement resolves the matters covered in the PRO, Case No. KRO-0170, that is being litigated by ARCO and ERA before DOE's Office of Hearings and Appeals.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested persons are invited to submit written comments concerning this proposed Consent Order to the address noted above. Although this settlement does not resolve a wide range of issues within the meaning of the Notice published at 49 FR 12301 (March 29, 1984), DOE has determined it would be useful to hold a public hearing on this proposed Consent Order because it would resolve issues concerning a large monetary amount. Accordingly, interested persons are also invited to appear at a public hearing beginning at 10:00 a.m. on March 21, 1986. All comments received by the thirteenth day following publication of this Notice in the **Federal Register**, and all statements made at the hearing, will be considered by DOE in determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If, after considering the comments it has received and the comments at the hearing, ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register**.

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, D.C., on February 7, 1986.

M.C. Lorenz,

Special Counsel, Economic Regulatory Administration.

Consent Order With Atlantic Richfield Company by the United States Department of Energy

I. Introduction

101. This Consent Order is entered into between Atlantic Richfield Company ("ARCO") and the United States Department of Energy ("DOE"). Except as specifically excluded herein, this Consent Order settles and finally resolves all civil and administrative claims and disputes, irrespective of whether heretofore asserted, between DOE and ARCO, and its subsidiaries and affiliates, relating to ARCO's compliance with the Federal Petroleum Price and Allocation Regulations administered and enforced by DOE and its predecessor agencies during the period of January 1, 1973 through January 27, 1981. This Consent Order supplements the Consent Order between ARCO and DOE dated January 23, 1985 ("1985 Consent Order"), notice of which was originally published at 50 FR 8366 (1985), and approval of which was published at 50 FR 26603 (1985). All matters resolved by the 1985 Consent Order are unaffected by this Consent Order.

II. Jurisdiction, Regulatory Authority, and Definitions

201. This Consent Order is entered into by DOE pursuant to the authority conferred upon it by sections 301 and 503 of the Department of Energy Organization Act ("DOE Act"), 42 U.S.C. 7151 and 7193 (1983); Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J (1985).

202. The Economic Regulatory Administration ("ERA") was created by section 206 of the DOE Act, 42 U.S.C. 7136 (1982). In DOE Delegation Order No. 0204-4, the Secretary of Energy delegated responsibility for the administration of the Federal Petroleum Price and Allocation Regulations to the Administrator of the ERA. In ERA Delegation Order No. 0204-4A, the Administrator delegated authority to settle enforcement actions to the Special Counsel.

203. For purposes of this Consent Order, the phrase "Federal Petroleum Price and Allocation Rgulations" means all statutory requirements and administrative regulations regarding the pricing and allocation of crude oil and refined petroleum products, including

the entitlements and mandatory oil import programs, administered by DOE. The Federl Petroleum Price and Allocation Regulations, for purposes of this Consent Order, include, without limitation, the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or pursuant to the Economic Stabilization Act of 1970; the Emergency Petroleum Allocation Act of 1973; the Federal Energy Administration Act of 1974; Presidential Proclamation 3279; all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J (1985) and the definitions under the Federal Price and Allocations Regulations shall apply to this Consent Order, except to the extent inconsistent herewith, in which case the terms of this Consent Order shall govern. Reference herein to "DOE" includes the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Department of Energy, the Economic Regulatory Administration; the Office of Special Counsel ("OSC") and all predecessor agencies. References in this Consent Order to "ARCO" include, without limitation: (1) Atlantic Richfield Company, its subsidiaries, affiliates (but only with respect to the acts of such companies while they were subsidiaries or affiliates of ARCO), predecessors and successors, and (2) all of its petroleum related activities as refiner, producer, operator, reseller, retailer, natural gas processor, or otherwise, and (3) its officers, directors, employees and agents.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. ARCO was a "refiner" and a "producer" of crude oil as those terms are defined in the Federal Petroleum Price and Allocation Regulations, and was subject to the jurisdiction of the DOE. During the period covered by this Consent Order, ARCO engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids, and natural gas liquid products.

302. Following an audit by DOE to determine ARCO's compliance with the Federal Petroleum Price and Allocation Regulations, ARCO and DOE entered into the 1985 Consent Order. The stipulated facts upon which the 1985 Consent Order was based are set forth in paragraphs 301–304 of the 1985 Consent Order and are incorporated herein by reference. Pursuant to the 1985 Consent Order, ARCO has paid sixty-five million seven hundred thousand dollars ($65,700,000) which is now subject to distribution in accordance with Subpart V of 10 CFR Part 205.

303. The matters described in paragraph 501(g) of the 1985 Consents Order were not resolved in that Consent Order. Pursuant to ARCO's commitment reflected in paragraph 501(g) of the 1985 Consent Order, ARCO provided DOE with extensive records, documents, data, contracts, correspondence and information concerning ARCO's importation, purchases, sales, exchanges or other transfers of crude oil, and the consideration given or received by ARCO in such transactions. In addition, ARCO made requested employees available for interviews by DOE. These documents and interviews fulfilled ARCO's obligation under paragraph 501(g) of the 1985 Consent Order. DOE used this information, as well as extensive materials and information received from third parties (including audits of certain resellers), as the basis of an audit to determine whether any such transfers of crude oil were related to transactions in which lower or upper tier crude oil was transferred by ARCO and, if so, the exact nature of the relationship.

304. Following completion of its audit, DOE raised certain issues with respect to ARCO's crude oil purchase, sale, and exchange transactions. DOE also took administrative enforcement action against ARCO by issuing a Proposed Remedial Order ("PRO"), dated October 4, 1985 (and amended October 11, 1985), alleging violations by ARCO of the Federal Petroleum Price and Allocation Regulations in connection with such transactions. ARCO maintains, however, that its conduct with respect to such transactions was in all respects lawful and in accordance with the Federal Petroleum Price and Allocation Regulations. DOE and ARCO disagree in several respects concerning the factual matters pertaining to such transactions and the proper application of the Federal Petroleum Price and Allocation Regulations to ARCO's activities during the period covered by this Consent Order, and each believes that its respectives legal and factual positions on the matters resolved by this Consent Order are meritorious. However, in order to avoid the expense of protracted, complex litigation and disruption of its orderly business functions, ARCO has agreed to enter into this Consent Order. DOE believes that entering into this Consent Order is in the public interest and constitutes a satisfactory resolution of the matters covered herein.

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might have been sought by DOE for such matters under 10 CFR 205.199J (1985) or otherwise, ARCO shall pay three hundred thirteen million dollars ($313,000,000) pursuant to paragraph 403 of this Consent Order, plus interest earned as provided in paragraph 402, and in addition ARCO shall pay two million dollars ($2,000,000) as specified in paragraph 404.

402. Interest shall be deemed to be earned from the date of execution by DOE of this Consent Order at an interest rate reflecting the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Therefore, the interest deemed to be earned shall be revised to reflect the average price bid at the auction of 13-week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The revised interest rate will apply on the first day after the relevant auction, and will continue to apply until and including the date of the next relevant auction. Upon each quarterly revision of the interest rate or upon payment to DOE, the interests earned since the date of execution of this Consent Order by DOE in the case of the first such quarterly revision or in the case of payment to DOE before such quarterly revision or since the immediately preceding quarterly revision in all other cases shall be computed and added to the balance at the end of the computation period. The interest for the computation period shall be computed at a rate equal to the annual coupon equivalent for the 13-week U.S. Treasury Bill auction average bid price at the auction governing the interest rate for the computation period times a fraction the numerator of which shall be the number of calendar days in the computation period and the denominator of which shall be 365. Interest shall be deemed earned at of 2:00 P.M. Eastern Time.

403. ARCO agrees to make a restitutionary payment of three hundred thirteen million dollars ($313,000,000), plus the interest accured as prescribed by paragraph 402 through the date of

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payment, to DOE within 30 days of the effective date of this Consent Order. Payment shall be made by wire transfer, pursuant to directions provided to ARCO by DOE. The Administrator or ERA, or his designee, shall direct that these monies be deposited in a suitable account pending DOE's determination of appropriate restitutionary distribution.

404. ARCO also agrees to pay to DOE the sum of two million dollars ($2,000,000) as a compromise of civil penalties which DOE might have asserted pursuant to section 5 of the Emergency Petroleum Allocation Act of 1973, as amended 15 U.S.C. 754(a)(A)(i) (1982). Such payment shall be made within 30 days of the effective date of this Consent Order by wire transfer for deposit in the miscellaneous receipts account of the United States Department of Treasury.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings regarding ARCO's compliance with the Federal Petroleum Price and Allocation Regulations during the period covered by this Consent Order, irrespective of whether heretofore raised by an issue letter, notice of probable violation, notice of proposed disallowance, proposed remedial order, proposed order of disallowance, remedial order, notice of disallowance, or otherwise, are resolved and extinguished by this Consent Order, except that this Consent Order does not cover or affect:

(a) Issues or claims resolved by the 1985 Consent Order;

(b) The issues or claims pending or arising out of the subject matter now before the courts in *Atlantic Richfield Company* v. *DOE* No. 79–1204 (D. Kan.) consolidated in *In Re DOE Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.);

(c) The issues or claims pending or arising out of the subject matter now before the courts in *Texaco* v. *DOE and 341 Tract Unit of the Citronelle Field* No. 81–99 (D. Del.) and before the DOE's Office of Hearings and Appeals in Case Nos. BEN–0078, et al.;

(d) The issues or claims pending or arising out of the subject matter now before the courts in *Diamond Shamrock Refining and Marketing Co.* v. *Standard Oil Co.* v. *DOE No. C2–84–1432 (S.D. Ohio)*;

(e) Any obligation to buy or right to sell entitlements which may be imposed upon or made available to ARCO should the entitlements notice of January 1981 be published or should any obligation to buy or sell entitlements be imposed on ARCO pursuant to the operation of 10 CFR 211.69, including any adjustments made to the entitlements notice for January 1981 or to any notice issued pursuant to 10 CFR 211.69 as a result of the granting of exception relief by the Office of Hearings and Appeals; provided however, that DOE expressly waives any right to inititate enforcement proceedings against ARCO predicated on the effects on the Entitlements Program or on participants in the Entitlements Program (including their direct and indirect customers) by reason of the crude oil transactions which were excluded from the 1985 Consent Order pursuant to paragraph 501(g) of that Consent Order;

(f) Any entitlements obligations or reporting requirements which may be imposed on Entitlements Program participants pursuant to future modification of the requirements of the Entitlements Program (10 CFR 211.67 *et seq.* 1985)) either by the DOE on its own initiative, or at the direction of a final judgment of a court of competent jurisdiction;

(g) ARCO's rights or obligations concerning claims under 10 CFR Part 205, Subpart V.

502. (a) This Consent Order specifically resolves all issues and claims regarding ARCO's compliance with the Federal Price and Allocation Regulations which pertain to the sale or other transfer of lower or upper tier crude oil or other price-controlled crude oil in transactions which were related by sale, purchase, exchange or other transfer, agreement, exchange or promise of consideration, or otherwise, to transactions involving other crude oil, as excluded from the 1985 Consent Order pursuant to paragraph 501(g) of that Consent Order.

(b) This Consent Order also releases ARCO from all undertakings contained in paragraph 501(g) of the 1985 Consent Order. ARCO and DOE agree that ARCO shall be deemed to have complied fully with all such undertakings. DOE will not initiate any further administrative or judicial enforcement proceedings against ARCO based on those undertakings.

503. (a) Except as otherwise provided in this Consent Order, compliance by ARCO with this Consent Order shall be deemed by DOE to constitute full compliance for administrative and civil purposes with all Federal Petroleum Price and Allocation Regulations for the matters covered by this Consent Order. In consideration for performance as required under this Consent Order by ARCO, except as to those matters excluded by paragraph 501, DOE hereby releases ARCO completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action, specifically including claims for civil penalties, that DOE has asserted or may otherwise be able to assert against ARCO for alleged violations of the Federal Price and Allocation Regulations with respect to the matters covered by this Consent Order. DOE will not (1) initiate or prosecute any such administrative or civil matter against ARCO, (2) voluntarily assert in any administrative or civil judicial proceeding that ARCO has violated the Federal Petroleum Price and Allocation Regulations with respect to the matters covered by this Consent Order, or (3) otherwise take action with respect to ARCO in derogation of this Consent Order.

(b) Nothing contained herein shall preclude DOE from defending the validity of the Federal Petroleum Price and Allocation Regulations. DOE also reserves the right to initiate and prosecute enforcement actions against any party other than ARCO for noncompliance with the Federal Petroleum Price and Allocation Regulations.

(c) DOE expressly agrees that it will not seek or recommend any criminal fines or penalties based solely on the information and evidence presently in its possession for the matters covered by the Consent Order; provided that nothing in this Consent Order precludes DOE from exercising its obligations under law with regard to forwarding information of possible criminal violations of law to the appropriate authorities. Nothing contained herein may be construed as a bar, an estoppel, or a defense against any criminal action, or against any civil action brought by any purchaser of covered products from ARCO, or against any civil action brought by an agency of the United States other than by DOE under (i) section 201 of the Economic Stabilization Act or (ii) any statute or regulation other than the Federal Petroleum Price and Allocation Regulations.

(d) This Consent Order does not affect or prejudice any private action brought by a third party against ARCO, or by ARCO against any third parties, including an action for contribution, nor may this Consent Order be used to establish, enlarge, or abridge the rights of third parties seeking contribution from ARCO, or the rights of ARCO to seek contribution from third parties.

(e) ARCO expressly agrees that in consideration of DOE's performance under the Consent Order, ARCO releases DOE completely and for all

purposes from all administrative and civil judicial claims, liabilities or causes of action that ARCO has asserted or may otherwise be able to assert against DOE under the Federal Petroleum Price and Allocation Regulations, except for matters specifically excluded from this Consent Order. ARCO and DOE agree that this Consent Order constitutes a settlement and compromise of complex factual and legal issues, and is entered into in order to avoid the expense of protracted litigation in which those factual and legal issues would otherwise be resolved.

504. Within fifteen (15) days of the execution of this agreement, DOE agrees to join with ARCO in written notification to DOE's Office of Hearings and Appeals ("OHA") of the fact of the execution of this Consent Order, which notice shall request that OHA stay all further proceedings regarding the PRO dated October 4, 1985 (as amended on October 11, 1985) until such time as DOE shall notify OHA that the Consent Order has become effective as a final order pursuant to the provisions of paragraph 901, or until such time as DOE provides notice to OHA that this Consent Order has been withdrawn pursuant to the provisions of paragraph 902.

505. Within thirty (30) days after the effective date of this Consent Order, DOE will file appropriate pleadings to dismiss with prejudice the PRO dated October 4, 1985 (as amended on October 11, 1985).

506. Execution of this Consent Order constitutes neither an admission by ARCO nor a finding by DOE of any violation ARCO of any statute or regulation. Except as expressly provided in paragraph 404 above, none of the payments or expenditure made by ARCO pursuant to this Consent Order are to be considered for any purpose as penalties, fines, or forfeitures or as settlement of any potential liability for penalties, fines, or forfeitures. Payments made by ARCO pursuant to this Consent Order are attributable only to the civil matters resolved by this Consent Order.

507. Notwithstanding any other provision herein with respect to the matters covered by this Consent Order, DOE reserves the right to initiate an enforcement proceeding, or to seek appropriate penalties, respecting any newly discovered regulatory violations committed by ARCO, if ARCO has knowingly concealed facts relating to such violations. DOE and ARCO also reserve the right to seek appropriate judicial remedies other than full rescission of this Consent Order, respecting any misrepresentation of material fact during the course of the audit or during the course of the negotiations that preceded this Consent Order.

VI. Reporting, Recordkeeping Requirements and Confidentiality

601. Subject to the provisions of paragraph 601 of the 1985 Consent Order, ARCO shall maintain all records covered by the recordkeeping requirements set forth at 10 CFR 210.1(a) of the DOE regulations, and such records as are necessary to demonstrate compliance with the terms of this Consent Order, until ARCO completes all restitutionary payments required by this Order. After completing all such payments ARCO shall maintain all records for the matters covered by this Consent Order evidencing sales volume data for each product subject to controls and customers' names and addresses, until one of the following: Six months after ARCO completes all such payments, unless this period is extended by notice given in writing by DOE; the end of such extension; or until DOE notifies ARCO in writing that its records are no longer needed. ARCO will not be subject hereafter to any audit requests, report orders, subpoenas or other administrative discovery by DOE with respect to the matters covered by this Consent Order, except for (1) requests for information maintained pursuant to this paragraph; and (2) discovery or requests for information regarding compliance by other firms with DOE regulations and requests made by DOE pursuant to its information gathering and reporting authority. This Consent Order does not believe ARCO of any obligation imposed by or pursuant to 10 CFR 210.1 to maintain records.

602. DOE will treat the sensitive commercial and financial information provided by ARCO pursuant to ARCO's undertakings under paragraph 501(g) of the 1985 Consent Order, pursuant to negotiations which are conducted with respect to the settlement agreed to in this Consent Order, or obtained by DOE in its audit of ARCO and related to the matters covered by this Consent Order, as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, DOE will, if possible, provide ARCO with ten (10) days actual notice, or such lesser actual notice as is possible, of any pending disclosure of any such information, unless prohibited or precluded from doing so by law or written request of Congress. Pursuant to DOE's records retention policy, DOE will retain for law enforcement or other lawful purposes the audit information which it has acquired during its review of ARCO's compliance with the Federal Petroleum Price and Allocation Regulations. Notwithstanding the otherwise confidential treatment afforded such information by the terms of the Consent Order, DOE will make such information available to the Department of Justice in repsonse to a request by a duly authorized representative pursuant to that department's statutory authority. If so requested by the Department of Justice, DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right ARCO may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractural Undertaking

701. It is the understanding and express intention of ARCO and DOE that this Consent Order constitute a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Notwithstanding any other provision herein, ARCO and DOE each reserves the right to institute a civil action in any appropriate United States District Court, if necessary, to secure enforcement of the terms of this Consent Order, and DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. Consistent with Departmental policy, DOE will undertake the defense of the Consent Order as finalized, in response to any litigation challenging the Consent Order's validity in which DOE is named as a party. ARCO agrees to cooperate with DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial Order issued purusant to section 503 of the DOE Act, 42 U.S.C. 7193 (1982), and 10 CFR 205.199B (1985). ARCO hereby waives its right to initiate administrative or judicial review of this Consent Order. However, ARCO specifically reserves the right to participate fully in any administrative or judicial review of this Consent Order initiated by any third party.

IX. Effective Date

901. This Consent Order shall become effective as a final order of the DOE upon notice to that effect published in

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the Federal Register. Prior to that date, DOE will published notice of the proposed Consent Order in the Federal Register and, in that notice, will provide thirty (30) days for members of the public to submit written comments to DOE and to appear at a public hearing conducted by ERA. DOE will consider the written comments and statements made at the hearing to determine whether to make the Consent Order effective, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, DOE reserves the right to withdraw consent to the Consent Order by written notice to ARCO, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before June 1, 1986, ARCO reserves the right, at any time thereafter until the effective date, to withdraw its agreement to this Consent Order by written notice to DOE, in which event this Consent Order shall be null and void.

[FR Doc. 86-3145 Filed 2-12-86; 8:45 am]

BILLING CODE 6450-01-M

Final Consent Order with Bass Enterprises Production Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Bass Enterprises Production Co. (Bass) shall be made a final order of the DOE. The Consent Order resolves issues of compliance by Bass with the federal petroleum price and allocation regulations concerning production and first sales of domestic crude oil for the period June 1, 1979 through December 31, 1980. Bass will pay to the DOE the sum of $1,679,352.37 within 10 days of publication of this notice. The Consent Order is effective as a final order of the DOE on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002, (713) 229-3715.

SUPPLEMENTARY INFORMATION:

I. Introduction

ERA previously issued a notice announcing a proposed Consent Order between DOE and Bass which would resolve matters relating to the company's compliance with the federal petroleum price and allocation regulations pertinent to production and first sales of domestic crude oil for the period June 1, 1979 through December 3, 1980. (50 FR 49598, December 3, 1985). The proposed Consent Order requires Bass to pay $1,679,352.37 within ten days of the effective date of the Consent Order. The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received only one timely comment. That comment addressed the question of the ultimate disposition of the funds to be paid by Bass pursuant to the settlement, but did not question the basis of the settlement or the adequacy of the settlement amount.

The comment was devoted exclusively to establishing the proposition that monies received under the Bass Consent Order that could not be paid to parties injured by alleged overcharges should be paid to the States and should not be deposited in the U.S. Treasury.

During the period covered by this Consent Order the violations allegedly committed by Bass related to the miscertification of its crude oil. Such violations resulted in cost increases that were distributed among all refiners by the entitlements program and refiners could than pass the overcharges on to others. See *United States* v. *Exxon Corp.*, 773, F.2d 1240 (Em. App. 1985).

The DOE's Office of Hearings and Appeals in a report to the District Court of the District of Kansas in *In re: the Department of Energy Stripper Well Litigation, MDL No. 378*, determined that where alleged crude oil violations involve crude oil miscertifications, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying Statement of Restitutionary Policy:

> Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. Tracing of overcharges is impossible in view of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent inability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.

OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program. . . . is consistent with the conclusions of two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. 50 FR 27460 (July 2, 1985).

DOE then examined the possible use of econometric modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methodology, DOE concluded:

> It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

The comment on the Bass Consent Order appears to assume that DOE will distribute, or attempt to distribute, funds received under the Consent Order to parties injured by the alleged overcharges. However, as discussed above, it is impossible to determine which persons were ultimately injured by crude oil miscertifications. Therefore, DOE will not attempt to make such a determination here, and the funds received from Bass pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual injured claimants are not feasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund of the U.S. Treasury.

Because the terms of the settlement are consistent with the foregoing action, ERA has determined to make the Consent Order final. The ERA, however, modified the Consent Order to reflect a higher interest rate that would apply should the company, not meet the 10-day payment deadline.

III. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between Bass and DOE shall become a final order of the DOE on the date of publication of this notice in the Federal Register.

Issued in Houston, Texas on February 3, 1986.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 86-3146 Filed 2-12-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (The Alpha Corporation); Order Granting Petition for Clarification

Issued: February 10, 1986.

Before Commissioners: A.G. Sousa, Acting chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

On January 28, 1986, the Alpha Corporation filed a request for expedited clarification that the transportation arrangements it has with Panhandle Eastern Pipe Line Company (Panhandle) and Trunkline Gas Company (Trunkline) qualify for transitional treatment under § 284.223(g)(1) of the regulations adopted in Order No. 436.[1] We will grant Alpha's request.

Alpha is a manufacturer of unsaturated polyester resins. It uses natural gas for plant protection and for process and feedstock needs, a high-priority end use of gas under § 157.202(b)(13) of our regulations. On December 17, 1984, Alpha entered into gas transportation agreements with Panhandle and Trunkline. On February 22, 1985, pursuant to those agreements, Panhandle and Trunkline filed requests for authority to transport gas on behalf of Alpha under § 157.209(e).

Alpha's transportation, however, was authorized automatically under former § 157.209(a)(1) with the commencement of service by Panhandle and Trunkline.[2] Accordingly, Alpha's transportation arrangements with Panhandle and Trunkline qualify for continuing transportation authorization under § 284.223(g)(1).

Finally, we wish to emphasize that orders clarifying Order No. 436 apply to *all* regulated pipelines and *all* transactions covered by the regulations that are clarified. We expect that transactions coming within the regulations as clarified will proceed without the need for a Commission order in each case.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3227 Filed 2-12-86; 8:45 am]

BILLING CODE 6717-01-M

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

[2] Order Granting Rehearing, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Midwest Solvents Company), 33 FERC ¶ 61,395 (issued December 19, 1985).

ENVIRONMENTAL PROTECTION AGENCY

[A-9-FRL-2969-4]

Extension of the Suspension of the Arizona State Implementation Plan Sulfur Dioxide Emission Standards for Phelps Dodge Corporation; Section 119 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Suspension of the Arizona State Implementation Plan Emission Limitation for Sulfur Dioxide; Notice of Administrative Action.

SUMMARY: Under section 119 of the Clean Air Act, the Administrator may issue a nonferrous smelter order (NSO) to an eligible nonferrous smelter, suspending certain otherwise applicable SIP requirements for sulfur dioxide (SO2) until not later than January 1, 1988. On May 15, 1985, Phelps Dodge submitted a substantially complete NSO application to EPA for its smelter located at Douglas, Arizona, resulting in an automatic regulatory suspension of the applicable SO2 limits until August 13, 1985. EPA subsequently extended the suspension for "good cause" until November 12, 1985 and again until February 10, 1986.

EPA has not yet completed its review of Phelps Dodge's NSO application and all supplementary information submitted. EPA therefore finds that there is "good cause" to extend the suspension for an additional sixty days from the previous extension or until EPA proposes action on Phelps Dodge's NSO application, whichever is sooner. Therefore, in accordance with 40 CFR 57.202(b), EPA is extending the suspension to and including the sooner of April 11, 1986, or the date of EPA's proposal.

DATE: April 11, 1986, or date of proposal.

FOR FURTHER INFORMATION CONTACT: David Howekamp, a Director, Air Management Division, EPA Region 9, 215 Fremont Street, San Francisco, CA 94105 (415) 974-8201, FTS: 454-8201.

Background

Section 119 of the Clean Air Act permits the issuance of an NSO to a nonferrous smelter if no method of control which would enable it to meet its applicable SO2 SIP emission limitations has been adequately demonstrated to be reasonably available (as determined by the Administrator taking into account the cost of compliance, non-air quality health and environmental impact, and energy considerations). An NSO may temporarily defer the SIP requirements for compliance with the SO2 stack emission limitations and schedules for installation of the pollution control equipment necessary to meet those limitations. An NSO may also temporarily defer compliance with any other SIP requirements which are integrally related to such requirements, and which would be pointless to enforce in light of the deferral. (See 50 FR 6434).

On February 15, 1985, EPA promulgated regulations to implement the NSO program. 50 FR 6434 (Feb. 15, 1985) (to be codified at 40 CFR Part 57). The NSO regulations set forth the minimum requirements for an NSO, and the procedures a smelter owner must follow in applying for an NSO.

An NSO may be issued either by the applicable State agency or by EPA. To initiate the NSO process, a smelter owner must submit to the issuing agency (i.e., the agency to which the application is made) a notice of intent to apply for an NSO and an agreement to supply the agency with any required information. Upon the receipt of this notice and agreement by the issuing agency, the applicable SIP emission limitations for sulfur dioxide and the related SIP requirements are suspended for sixty days.

The regulations, 40 CFR 47.202(b), also provide that if the smelter owner submits a substantially complete application within the initial sixty-day notice period, the suspension of the SIP emission limitation for sulfur dioxide and the related requirements will continue until the issuing agency issues or declines to issue an NSO or until ninety days after the date the issuing agency receives the substantially complete application, whichever occurs sooner. However, if the issuing agency has not issued or declined to issue an NSO within the ninety-day period, EPA may extend the suspension for good cause. (40 CFR 57.202(b)).

Phelps Dodge initiated the NSO application process by submitting to EPA a notice of intent to apply for an NSO and an agreement to supply the requisite information, by letter dated March 14, 1985. On May 15, 1985, Phelps Dodge submitted its application to EPA. While the Agency has requested Phelps Dodge to supplement its application and

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may ask for additional supplementary information, the May 15, 1985, submittal was deemed substantially complete for purposes of § 57.202(b) and thus extended the suspension for 90 days, until August 13, 1985.

On October 10, 1985, the Administrator of EPA signed a notice extending for "good cause" the suspension of the sulfur dioxide emission limitations for an additional 90 days beyond the expiration of the previous suspension, or until November 12, 1985. 50 FR 47841 (Nov. 20, 1985). On December 19, 1985, the Regional Administrator of Region 9 EPA, to whom authority to extend the suspension has been delegated, signed another notice extending the suspension for "good cause" an additional 90 days, or until February 10, 1986. 51 FR 1294 (Jan. 10, 1986).

Administrative Action

EPA has not yet completed its review of Phelps Dodge's NSO application and all supplementary information submitted. After EPA completes its review, it will propose action on the application and solicit public comment before taking final action. Based on the volume and complexity of the information being considered, the Agency believes that it may not complete its action on Phelps Dodge's application earlier than sixty days after the date of expiration of the previous suspension. Accordingly, EPA concludes that good cause exists for extending the suspension for an additional sixty days from the expiration of the previous extension (until April 11, 1986) or until EPA proposes action on Phelps Dodge's NSO application, whichever is sooner.

This extension should not be construed as reflecting any conclusion on the merits of Phelps Dodge's application. It is simply a procedural action to extend the suspension while the application is pending.

Dated: February 4, 1986.

John Wise,

Regional Administrator.

[FR Doc. 86-3180 Filed 2-12-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2965-8]

Intent To Form an Advisory Committee To Negotiate New Source Performance Standards for Residential Wood Combustion Units

Correction

In FR Doc. 86-2587 beginning on page 4800 in the issue of Friday, February 7, 1986, make the following correction:

On page 4801, in the first column, in the DATE paragraph, in the second line, the closing date for comments should have read "February 24, 1986."

BILLING CODE 1505-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations; American Kings, Inc., et al.

Notice is herby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 2228
Name: American Kings, Inc.
Address: P.O. Box 522823, Miami, FL 33152
Date Revoked: January 22, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2668
Name: S & Z International Air Forwarders, Inc.
Address: P.O. Box 8778, BWI Airport, MD 21240
Date Revoked: January 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2734
Name: Alfomar International, Inc.
Address: 9900 NW 80th Ave., Hialeah Gardens, FL 33046
Date Revoked: January 23, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2887
Name: Key International, Inc.
Address: S. Highland Street, Baltimore, MD 21224
Date Revoked: January 23, 1986
Reason: Failed to maintain a valid surety bond

Eugene P. Stakem,

Deputy Director, Bureau of Tariffs.

[FR Doc. 86-3160 Filed 2-12-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Jackie International Corp. et al.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Jackie International Corp., 12401 S.W. 207 Terrace, Miami, FL 33177, Officer: Jackie Johns, President/Secretary/Treasurer/Director

B.P. Mata & Co. (U.S.A.) Inc., 1411 West 15th Street, Long Beach, CA 90813, Officer: Benjamin P. Mata, President, Edgardo Q. Nadal, Director, International Operations, Augustus A. Roche, Vice President, Int'l Forwarding.

By the Federal Maritime Commission.

Dated: February 10, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-3161 Filed 2-12-86; 8:45 am]

BILLING CODE 6730-01-M

U.S. Atlantic-North Europe Conferences, et al.; Filing of Petition to Amend Rules

February 7, 1986.

Notice is hereby given that a petition has been filed by the U.S. Atlantic-North Europe and North Europe-U.S. Atlantic Conferences requesting the Commission to amend its rules so as to ". . . provide some further elaboration of the term 'shipper' as it is used in the regulations the Commission has issued to implement the Shipping Act of 1984, and particularly in the Commission's service contract regulations 46 CFR 580.7." [1] The sections to be affected by the proposed language include § 510.2(r), 572.104(aa), 580.2(t) and 580.7(a)(5).

Specifically, Petitioner proposes to add at the end of the definition of "shipper" in each section, another sentence to read as follows:

For purposes of this definition, (i) *owner* means a person holding legal title to the cargo for which transportation is purchased, (ii) person for whose account the ocean transportation of cargo is provided means (A) a person, other than an owner, having a beneficial interest in the cargo for which transportation is purchased, or (B) a person who purchases transportation for its account and sells such transportation to others under a tariff it has filed pursuant to this part, and (iii) person to whom delivery is to be made means the person to whom cargo is to be ultimately delivered.

In order for the Commission to make a thorough evaluation of the petition, interested persons are requested to submit views, arguments or data on the petition no later than March 14, 1986. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in an original and 15 copies. Responses shall also be served on counsel for petitioner: Howard A. Levy, Esq., Suite 1408, 90 West Street, New York, New York 10006-1201.

Copies of the petition are available for examination at the Washington, DC, office of the Commission, 1100 L Street, NW., Room 11101.

John Robert Ewers,

Secretary.

[FR Doc. 86-3044 Filed 2-12-86; 8:45 am]

BILLING CODE 6730-01-M

[1] The Commission, in Docket No. 86-6, is proposing to completely revise its service contract regulations in a new Part 581. The Proposed Rule will appear in the **Federal Register** within the next week or so, with public comments due in mid April, 1986.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-53-FN]

Medicare Program; Freestanding Home Health Agencies to Designated Regional Intermediaries; Assignment and Reassignment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: Section 1816(e)(4) of the Social Security Act (the Act) (as amended by section 2326(b) of the Deficit Reduction Act of 1984, Pub. L. 98-369) requires that the number of regional intermediaries designated to service freestanding home health agencies (HHAs) be limited to not more than ten. In accordance with section 1816(e)(4) of the Act and existing regulations, this notice announces our designation of regional intermediaries to process the workload of these HHAs, the States each intermediary would service, the general criteria used to select these intermediaries, and the procedures we will use during the change-over period.

The goal of this initiative and the legislation on which it is based is to achieve more consistent and effective administration of the home health benefit under the Medicare program.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT:

Norman Fairhurst, (301) 594-9498, Regarding transition

Toba Winston, (301) 597-0471, Regarding intermediary selection.

SUPPLEMENTARY INFORMATION:

Background

In the Medicare program, in general, fiscal intermediaries under contract with HCFA are responsible for making payment to providers of services for the covered services they furnish to Medicare beneficiaries.

Section 1816 of the Social Security Act (the Act) gives any group or association of providers the option of nominating an intermediary to determine the proper amount of reimbursement and to make those payments. This section also authorizes the Secretary, notwithstanding the nomination process, to assign and reassign providers that had nominated intermediaries to other intermediaries and to designate regional or national intermediaries for a class or classes of providers.

Section 1816(e)(4) of the Act requires the Secretary to designate regional agencies or organizations that have entered into an agreement under section 1816 of the Act to perform functions under that agreement for freestanding home health agencies (HHAs) in the region. For purposes of this notice, we consider a freestanding HHA as one that is not a subdivision of another Medicare provider of services; i.e., a hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility or hospice.

Section 1816(e)(4) of the Act also requires that if an HHA is hospital-affiliated (i.e., the hospital and HHA are under common control) the Secretary shall assign that HHA to a regional intermediary only if the Secretary, after applying published criteria relating to administrative efficiency and effectiveness, determines that the assignment would result in the more effective and efficient administration of the Medicare program. We are also applying this approach to HHAs that are affiliated with Medicare providers of services other than hospitals. An HHA is determined to be provider-affiliated when it is an integral and subordinate part of another Medicare provider and is operated with other departments of the provider under common licensure, governance, and professional supervision; that is, all services of both the provider and the HHA are fully integrated. The existence of either (1) an agreement between an HHA and a Medicare provider with respect to the referral of patients or (2) a share-service arrangement (a common arrangement recognized by both Medicare and Medicaid) does not necessarily mean an HHA is provider-affiliated and is not considered in determining the status of the facility.

To implement the provisions of section 1816(e)(4) of the Act, we amended our regulations (42 CFR 421.117) to require that all freestanding HHAs serviced by a nominated intermediary be serviced instead by a regional intermediary designated by HCFA (47 FR 38535, September 1, 1982). At that time we defined, in the preamble to those amendments, "regional" as meaning "State" and, therefore, we designated one intermediary to service freestanding HHAs in each State.

More recently, we amended our regulations (42 CFR 421.103) concerning providers' options to elect to receive payments directly from HCFA rather than through a fiscal intermediary (49 FR 3648, January 30, 1984). In addition, in 42 CFR 421.117 (e), (f), and (g), we made available to all HHAs the option of requesting an alternative designated regional intermediary if the HHA could demonstrate that such an arrangement would be consistent with the effective and efficient administration of the Medicare program (49 FR 3660).

Subsequently, section 2326 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amended section 1816(e)(4) of the Act to require that, by not later than July 1, 1987, HCFA reduce the number of regional intermediaries designated to service freestanding HHAs to not more than ten.

On April 10, 1985, we published a proposed notice (50 FR 14162) announcing our proposal to reduce the number of designated regional intermediaries that would service HHAs to not more than ten. In addition, we announced our tentative selection of the ten designated regional intermediaries and invited interested parties to submit comments.

Proposed Actions and Intermediary Selections

In the proposed notice we discussed considerations leading to our decision to designate ten intermediaries rather than fewer. There would be: a smaller distribution of workload and providers, resulting in greater potential for first-hand knowledge of the HHA provider communities and less administrative complexity; the least risk of transition problems, since it would require reassigning fewer providers; and greater HCFA flexibility with respect to both short-term and long-term contingency planning than would result from having fewer than ten intermediaries.

We proposed four exceptions to the standard HCFA regional configuration in order to provide a more even distribution of providers and bill volume per intermediary.

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In making our proposed selections, we did not use a precise mathematical formula for ranking the intermediaries; rather we considered each intermediary's performance against an entire array of criteria and compared it against other existing intermediaries available within the proposed regional configurations. The major criteria we used included each intermediary's electronic data processing capability and its past performance as measured by HCFA's fiscal year 1983 Contractor Performance Evaluation Program (CPEP). (We also stated that we planned to review our selections in light of FY84 CPEP results when they were available, and we have done so.) In addition, we evaluated each intermediary's performance specific to servicing HHAs, including evaluation of performance in the following areas:

- Ensuring that coverage and payment requirements are met;
- Ensuring that correct utilization determinations are made;
- Establishing interim payments for participating HHAs to approximate Medicare reimbursable costs as closely as possible;
- Accurately applying principles of reimbursement to ensure that only reasonable and allowable costs of furnishing covered services to Medicare beneficiaries are reimbursed to HHAs;
- Completing accurate coverage compliance reviews;
- Completing timely HCFA cost report settlements; and
- Processing reconsideration requests timely and accurately.

In addition, we attempted to evaluate an intermediary's performance in the area of provider relations; e.g., whether the intermediary provides adequate training to providers, whether it responds to telephone and written inquiries from HHAs promptly, and whether it demonstrates a willingness to communicate coverage and reimbursement policies fully to HCFA providers.

Furthermore, we considered an intermediary's past performance and cooperation in implementing HCFA initiatives in a timely and cost effective manner. We also looked at the number of providers that would need to be reassigned based on various intermediary selections and the percentage of workload increase for a selected intermediary.

Our tentative selections to service the freestanding HHAs in the indicated States and the District of Columbia and Puerto Rico were as follows:

1. Associated Hospital Service of Maine—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
2. The Prudential Insurance Company of America*—New Jersey, New York, Puerto Rico and the Virgin Islands.
3. Blue Cross of Greater Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia.
4. Blue Cross and Blue Shield of South Carolina—Kentucky North Carolina, South Carolina, and Tennessee.
5. Aetna Life and Casualty—Alabama, Florida, Georgia and Mississippi.
6. Blue Cross and Blue Shield of Michigan—Indiana, Michigan and Ohio.
7. Health Care Service Corporation (Chicago, Illinois)—Illinois, Minnesota and Wisconsin.
8. New Mexico Blue Cross and Blue Shield, Inc.—Arkansas, Louisiana, New Mexico, Oklahoma and Texas.
9. Blue Cross of Iowa, Inc.*—Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.
10. Blue Cross of California*—Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon and Washington.

(Intermediaries annotated with an asterisk (*) would also continue to serve as alternative designated regional intermediaries)

We received a total of 272 comments from various entities: 211 providers, 25 provider associations, four consumer advocacy groups, 16 members of Congress, one State senator, two State Medicaid agencies, eight county health departments, four intermediaries, and one trade association.

In the majority of comments, the commenters stated they were for or against our selection of the intermediary that would service them; the commenters amplified by giving reasons.

Below we discuss the comments and our responses to them.

Comments and Responses

1. *Comment:* We received 53 comments to the effect that the increased distance from the designated intermediary would create problems; e.g., additional provider administrative costs (such as long distance telephone charges) and lack of easy access to the designated intermediary.

Response: We do not agree that increased distance by itself will lead to problems. A number of HHA providers, per their request, are currently serviced by the alternative designated regional intermediary. In many cases, the provider is located over 800 miles from the intermediary. This has not created problems. Additionally, for years, many providers, located throughout the United States, elected to be serviced by HCFA's Office of Direct Reimbursement (ODR). They also did not find distance from ODR to be a problem.

If the transfer should result in increased costs, and there may not be an increase, all provider costs will be reimbursed according to established Medicare reimbursement principles to the extent they are reasonable, allocable, and verified by the intermediary. If the HHA's costs exceed the limits on home health agency costs that may be reimbursed under the Medicare program as a result of the required transfer to a designated regional intermediary, an exception to the limits may be granted in accordance with the provisions for handling exceptions requested under 42 CFR 405.460(f)(2).

While face-to-Face provider/intermediary contacts may be less frequent, experience has shown that most issues can be resolved timely and satisfactorily either by telephone or written correspondence.

2. *Comment:* One hundred forty-seven commenters recommended selection of an intermediary other than the tentative designee. Most of the commenters supported selection of their current intermediaries as the regional HHA intermediaries. The largest number of these comments came from HHA providers in New York State and recommended the designation of Blue Cross/Blue Shield of Greater New York (BC/BSGNY) instead of The Prudential Insurance Company of America (Prudential). They pointed out BC/BSGNY's excellent performance in the areas of timeliness of bill processing and provider relations, as well as lower-than-average bill processing unit cost.

Response: We are pleased to hear that providers have been satisfied with the service given by their current intermediaries. We are confident that many intermediaries, other than those selected, would do a good job as an HHA regional intermediary. We are, however, required by statute to reduce the number of intermediaries serving freestanding HHAs to no more than ten. This means that some intermediaries, while capable, will not be selected. We believe, however, that our selectees are equally capable and, based on all considerations, are the best choices. We also believe that, in general, the provider community agrees. While commenters wrote to request that their current intermediary be designated in place of another intermediary, we received few negative comments about our tentatively designated intermediaries.

Regarding the selection of Prudential, a prime consideration was Prudential's role as an alternative designated intermediary. In this capacity, Prudential serves 185 HHAs, 109 of which were transferred to it as a result of the phaseout of ODR. We did not wish to require these HHAs to be reassigned again. Nonetheless, we proposed Prudential as a designated regional intermediary only after a review of the performance data and other criteria listed in the proposed notice supported its selection. We also noted that while we received negative comments about Prudential from HHA providers that supported the selection of their current intermediary, we received a negative comment from only one HHA provider currently served by Prudential. Furthermore, in 1982 Prudential demonstrated its ability to assume a unique type of national workload when it became the single intermediary for comprehensive health centers (CHC). Prudential has also demonstrated (e.g., in the assumption of ODR provider workload) that it is capable of assuming a large workload with little disruption to its operations and without lowering the quality of performance or service.

3. *Comment:* Twenty-one commenters stated that they agree with out tentative designation.

Response: Although we received relatively few comments in support of our tentative intermediary selections, we assume that such support exists. We received extremely few negative comments about our tentatively selected intermediaries from providers that are currently served by them. We are interpreting this lack of comment as support for the tentatively designated intermediaries.

4. *Comment:* Sixty-six commenters questioned whether some of the tentatively designated intermediaries could satisfactorily absorb the additional workload. We received one comment regarding South Caroline Blue Cross and three regarding Iowa Blue Cross. The majority, however, concerned Maine Blue Cross and New Mexico Blue Cross. Some of the comments concerned Maine Blue Cross' ability to accommodate HHAs that receive the periodic interim payment (PIP) method of reimbursement.

Response: It is true that the above intermediaries will be assuming a substantial increase in their home health workload. This would be true for any of the intermediaries considered viable choices in the respective regions. The assumption of this workload will be a gradual one, taking place over a period of one year, since providers will be transferred based on their fiscal year ending dates.

In the case of selecting an intermediary for Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), we considered all intermediaries that are currently designated HHA intermediaries in the Region. A review of long term performance and cost data indicated that Maine Blue Cross is an effective and efficient intermediary. Additionally, the FY84 CPEP ranked Maine Blue Cross as the best intermediary in Region I. After making our tentative selections, we asked the involved intermediaries to submit an implementation plan. Based on the plan submitted by Maine Blue Closs, we are confident that Maine Blue Cross will be able to assume the additional workload without disruption of service to the HHA providers.

All intermediaries have the capability to pay providers on the PIP method. Determining the rate of interim payment is a simple accounting procedure. The volume of HHAs on PIP transferring to Maine potentially could have highlighted the need for intensified accounting activities. However, a recent study of HHAs in Region I shows that of the 300 freestanding HHAs, only 16 use the PIP method. Our plan of action to assure no slippage in payments is discussed in the Transition Issues section of this notice.

Many commenters expressed concern that Maine Blue Cross is unable to accept electronic media claims (EMC). They point out that no HHAs in Maine submit bills via EMC. This indicates a misunderstanding. Maine Blue Cross has the capability and will accept EMC bills in the standard billing format. Maine Blue Cross could not have been under consideration as a regional intermediary had it not had this capability. No intermediary in Region I receives automated bills from HHAs.

Regarding the selection of New Mexico Blue Cross, some commenters felt that Texas Blue Cross would be a more appropriate choice given the large number of HHAs currently served by them. We do not agree. Texas Blue Cross has been experiencing problems in implementing HCFA initiatives timely when such initiatives require systems changes. To add a larger home health workload to this contractor would, in our view, be inappropriate.

We are confident that New Mexico Blue Cross will be able to assume the additional workload without disruption in service to the HHA providers. This view is also shared by the Texas Association of Home Health Agencies, which, following discussions with the staffs of Texas Blue Cross, Iowa Blue Cross, and New Mexico Blue Cross, has written to us in support of New Mexico Blue Cross designation. They believe, as do we, that New Mexico Blue Cross understands the requirements of HHAs and is able to meet them.

With the exception of Aetna, Prudential, California Blue Cross and Iowa Blue Cross, which already service providers in more than one State, all of the designated intermediaries must prepare themselves to service providers in a multi-State area. New Mexico Blue Cross has demonstrated the ability to reach beyond State boundaries. In the spring of 1984, New Mexico was designated the single Medicare intermediary for Indian Health Service (IHS) facilities located across the country, including Alaska. The intermediary successfully assumed the IHS workload and continues to work well with those facilities.

5. *Comment:* Fifty-five commenters were concerned about the criteria that were used to select our tentative designees. We received:

(A) Comments about vagueness of criteria, absence of a numerical ranking and unavailability of data;

(B) Suggestions for additional criteria;

(C) Statements that we used criteria that were not specified; i.e., the results of HCFA's Recovery Review Program, intermediary handling of exception requests for cost limits, and "cost and performance criteria under the competitive contracting provision of section 2326 of Pub. L. 98-369;"

(D) Comments about lack of opportunity for input;

(E) Suggestions that we use competitive bidding in selecting the intermediaries; and

(F) Requests that we issue a new proposed notice (with comment period), publishing scores and rankings of intermediaries.

(A) *Comment:* Comments were made that our criteria were vague, that a numerical ranking should have been developed and that commenters were not able to make informed comments because the data we used were not available to them.

Response: We do not agree with most of the comments made on this issue. We listed several very specific criteria in the proposed notice. Some of these criteria, such as responsiveness to HCFA initiatives and minimum disruption to providers, do not lend themselves to a strict ranking process. In addition, the weights that could be assigned to various criteria are subjective and would not be uniformly accepted. Also,

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the FY83 CPEP did not rank intermediaries, but placed intermediaries in three groupings. This lack of a ranking tended to blur the differences in performance among intermediaries within each grouping and complicated arriving at a definitive ranking for purposes of selecting the regional HHA intermediaries.

Regarding the unavailability of data (that is, the data were not published in the proposed notice), the volume of data made this impractical. The data were available upon request and were, in fact, furnished to requestors, such as the National Association for Home Care.

(B) *Comment:* Commenters suggested the use of additional criteria, such as denial rates, timeliness of processing HHA interim payment rate changes, timeliness of making payments, and current staffing capabilities.

Response: Denial rates are subject to ambiguous interpretation; e.g., a high denial rate may indicate an assiduous application of coverage policy or it may indicate that the intermediary has been deficient in relaying coverage policy to the providers. Generally, denial rates need to be looked at in conjunction with reversal rates upon reconsideration and hearing. Finally, it has recently come to our attention that some errors in reporting these data have been made and that comparable figures for all intermediaries do not exist.

We did not use other additional criteria suggested, such as timeliness of processing HHA interim payment rate changes and timeliness of making payments (vs. timeliness of bill processing) because we do not maintain performance data on these areas. We made every effort to identify and include all relevant data specific to HHAs, and we believe we have done so. Additionally, there are areas where, while data are not available specific to HHA providers, overall performance for all types of providers is included as part of the CPEP, results of which were used as one of the criteria.

One commenter stated that we did not assess an intermediary's data processing system capability, but only looked at the intermediary's current level of electronic media claims (EMC) submissions. This apparently reflects a misunderstanding of the criteria listed in our proposed notice. As stated in the proposed notice, we considered each intermediary's electronic data processing capability. This meant we evaluated the capacity of the current data processing system of our tentative selections to be sure the system could handle the increased workload. While a high level of EMC submission of HHA bills was a plus, we also looked at EMC submissions in connection with assessing an intermediary's responsiveness to HCFA initiatives; that is, whether the intermediary achieved its EMC goal.

One commenter also suggested that we should have looked at and included as a criterion an intermediary's current staffing capabilities. We do not agree. In most cases, a selected intermediary's total bill processing workload will be increased by more than 30 percent. We would not expect an intermediary to have the "excess" staff on board to assume an additional workload of this magnitude. We do expect hiring and training of additional staff to be necesary by most, if not all, of our designated intermediaries.

One agency suggested that sound financial statements from the potential intermediaries be one of the selection criteria used. Such a criterion is not necessary. Solvency is required of all Medicare contractors before they can administer any functions of the Medicare program (42 CFR 421.110(b)(2) and 421.202(b)).

(C) *Comment:* We received comments stating that we used criteria that were not specified; i.e., the results of HCFA's Recovery Review Program, intermediary handling of exception requests for cost limits, and "cost and performance criteria under the competitive contracting provision of section 2326 of Pub. L. 98-369."

Response: While the commenter stated that we used the results of the Recovery Review Program, since no such program exists, we assume the commenter is referring to the Reimbursement Review Program. We did not use the results of the Reimbursement Review Program because it does not include data on all intermediaries. We also did not use handling of exception requests as a criterion, since information on exception requests is anecdotal in nature.

However, the HCFR components responsible for these areas were asked if they were aware of any performance problems with our tentatively selected intermediaries in these areas.

The so-called "2326 ranking" was used in making our selections. This, however, is not a distinct performance criterion, but rather a 4-year weighted ranking of CPEP and cost performance. In this ranking greater weight is given to the most recent performanse. This ranking was developed in connection with section 2326(a) of the Deficit Reduction Act, which, allows us to replace, via a competitive bidding process, two intermediaries and two carriers whose longterm performance and cost has caused them to be ranked in the lowest 20th percentile of intermediaries and carriers. It was used as a tool to aid us in "narrowing in" on viable choices by eliminating from further consideration those intermediaries whose long-term performance had placed them in the bottom 20th percentile.

Comment: Some commenters stated that they did not have an opportunity to provide input into our selection process.

Response: The very purpose of the proposed notice was to solicit input on all aspects of the assignment of HHAs to designated intermediaries, including criteria for selection. In addition, in making the tentative selections, we took into consideration comments received from HHAs and their associations, including a survey of the home health industry conducted by the American Federation of Home Health Agencies, Inc. We have met with staff from the National Association for Home Care and the American Hospital Association and have been willing to meet with other involved parties upon request.

Comment: Some commenters suggested we use competitive bidding in selecting the designated intermediaries.

Response: HCFA is, in selecting intermediaries, exempt by operation of law from the requirement of competition that governs most Federal procurements. Historically, with the exception of a few contracts entered into under an experimental contracting authority, intermediaries have been administratively selected without competition. Because administrative designation of regional home health intermediaries is specifically permitted by law and is consistent with existing policy, we decided not to solicit competitive bids for taking over the HHA workloads, but to base our selections on demonstrated performance.

(F) *Comment:* We received requests that we issue a new proposed notice with comment period publishing scores and ranking of intermediaries.

Response: We are not issuing a new proposed notice for the purpose of publishing scores and rankings and soliciting comments on them. As explained above, the criteria do not lend themselves to the development of a ranking, scores are too voluminous to publish, and we have provided ample opportunity for input.

6. *Comment:* Three commenters were concerned about a possible conflict-of-interest situation existing if Blue Cross and Blue Shield of South Carolina becomes a designated intermediary since it owns a home health agency.

Response: We agree that the above situation has the potential for creating a conflict of interest. This however, is now a moot issue since Blue Cross and Blue Shield of South Carolina has agreed to take steps to divest itself of the HHA immediately.

7. *Comment:* We received several comments regarding subcontracting. Three commenters suggested we allow subcontracting of some intermediary functions. Twelve commenters opposed subcontracting on the grounds that it would have a negative effect on the goal of achieving consistency.

Response: We prefer that the designated intermediary perform all intermediary functions. However, if necessary to maintain cost effectiveness and efficiency, we will allow subcontracting of cost report field audit work. Such subcontracting must have he concurrence of the appropriate HCFA Regional Office. In all circumstances, including those instances in which a subcontractor performs some of the intermediary duties, the designated regional intermediary is accountable for the quality of the service performed.

Regarding consistency, it is our goal to achieve consistency in coverage determinations. Making these determinations is a part of the claims processing function. Since this function will not be subcontracted, unless exceptional circumstances arise, we will achieve consistency in coverage determinations. Also, prior to their designation as regional intermediaries, some of the designated intermediaries subcontracted the processing of requests for reconsideration (i.e., the reexamination of a determination). All of the designated regional intermediaries will now process HHA reconsideration requests themselves.

8. *Comment:* We received 121 comments recommending that we also assign provider-based HHAs to the designated intermediaries. The commenters pointed out that unless we do so, we will not achieve the prime goal of the DRA, which is more consistent coverage determinations and application of policy.

We received three comments, including two from hospital associations, supporting the current policy of provider-based HHAs being serviced by the intermediary that services the parent provider. One of the associations stated that it believes this arrangement is the most effective and efficient relationship for claims processing, cost reporting and audit activities. It pointed out that having a single intermediary servicing both the parent provider and HHA permits streamlined communication on coverage, payment, and cost settlement issues.

Response: One of the important goals of the legislation on which this notice is based is to reduce the number of intermediaries making coverage decisions within a given area so that we can achieve greater consistency. We recognize that, while this notice will result in more consistent coverage determinations for the freestanding HHAs, assigning only freestanding HHSs to the designated intermediaries will not achieve complete consistency in HHA determinations within a geographic area. Consequently, we are seriously considering proposing amendments to regulations in order to assign provider-based HHAs to the designated intermediaries. The statutory authority to do this is contained in section 1616(e)(4) of the Act.

We do not share the concern of the hospital association that assigning provider-based HHAs to the designated intermediaries would complicate communication. Although the HHA and parent may be served by a different intermediary, audit and cost report settlement for both will remain the responsibility of the intermediary servicing the parent provider. Claims processing (and the concomitant function of making coverage determinations) will be done by the servicing intermediary for each facility. We believe that we can clearly delineate responsibilities and authorities.

9. *Comment:* We received two similar comments from 55 commenters concerning choice of alternative designated regional intermediaries. One comment was that HHAs should be allowed to elect to be serviced by the appropriate alternative designated regional intermediary without having to demonstrate that such assignment would be consistent with the effective and efficient administration of the Medicare program. The other comment was that those HHAs whose designated regional intermediary is also currently the alternative designated regional intermediary for its area should be able to choose among all alternative designated regional intermediaries.

Response: We are continuing to make provision for alternative designated intermediaries. We believe, however,that HHAs should be governed by the same policy regarding change of intermediaries that applies to other providers. Therefore, we will approve requests to be serviced by the alternative designated regional intermediary only if, after evaluation in accordance with the provisions of 42 CFR 421.106, it is determined to be in the best interest of the Medicare program to do so.

Because of the reconfiguration of the HHA workload and the reduction in the number of designated intermediaries, HHAs in New York, Puerto Rico, the Virgin Islands, Kansas, Missouri, Nebraska, Arizona, California, Hawaii, Nevada, Idaho, Oregon, Washington, and Alaska will now have as their designated intermediary the intermediary we had previously designated (49 FR 3656, January 30, 1984) as their alternative intermediary for their State. In order to make an alternative intermediary available to these providers, we have made changes in the service areas of the alternative designated intermediaries. In the section discussing the final selection of intermediaries, we list the alternative designated regional intermediary for each State.

10. *Comment:* We received 21 comments concerning the effect of designation of regional intermediaries on beneficiaries. A concern was expressed that it will be confusing for beneficiaries to have claims for different services going to different intermediaries. One commenter raised the concern that some beneficiaries currently receiving services covered by their current intermediary may be denied coverage by their new intermediary because of the variability of "covered services" from one intermediary to another.

Response: It is true that one result of this initiative is that claims for services provided an individual beneficiary by various providers may be processed by different intermediaries. This situation cannot be completely avoided, given the legislative mandate to reduce the number of intermediaries servicing HHAs. This should not be a problem for most beneficiaries, however. Claims for services are submitted to the intermediaries by the providers and reimbursement is made to the providers. There is usually very little direct communication between the beneficiary and the intermediary, unless the beneficiary wishes to request a reconsideration or appeal a decision.

It is possible that a beneficiary may find that a service that was determined to be covered by the former intermediary is denied by the designated regional intermediary. We expect that these situations will be rare. Should this occur and the beneficiary believes an error has been made, a reconsideraiton or hearing (as appropriate) may be requested. Our main concern is that payment be made for covered services and not for

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noncovered services. By reducing the number of intermediaries, we will be able to more easily communicate coverage policy and monitor their performance in educating providers.

11. *Comment:* One commenter suggested instituting a beneficiary appeals process that would begin upon a telephone request and conclude within ten calendar days of that request.

Response: We see no need to change the current beneficiary appeals mechanisms, which are working in a satisfactory manner for all types of services. We view it as inappropriate to single out one class of services for special treatment. It is necessary and appropriate that a beneficiary submit requests for a reconsideration or a hearing in writing along with the medical or other information he or she believes will support the claim. Given the potential need to request additional information before making a decision, we view it as unrealistic to require this process to be completed within ten working days. Our primary objective is that the process be accurate and thorough.

12. *Comment:* We received three comments suggesting that regionalization of intermediaries for home health agencies may affect Medicaid negatively; i.e., it may complicate communication and affect common audit arrangements that exist between Medicare and Medicaid.

Response: The commenters are correct that regionalization of intermediaries will require that some State Medicaid agencies establish relealtionships with an additional intermediary. However, we do not see this as presenting a difficulty. Given the present alternative designated regional intermediary configuration, there already exists a need for Medicaid coordination with more than one intermediary. We are unaware of any additional administrative costs resulting from this situation.

13. *Comment:* We received three comments requesting that HHAs in Puerto Rico be serviced by the designated intermediary for Region II. There were indications given earlier that these providers would continue to be serviced by Cooperative de Seguros de Vida under a subcontracting arrangement.

Response: Prudential Insurance Company of America is the designated intermediary for freestanding HHAs in Puerto Rico. Prudential intends to service these providers directly.

14. *Comment:* One commenter did not believe it appropriate to reassign the chain home office intermediary responsibilities automatically to the designated regional intermediary based on the geographic location of the home office. The commenter suggested that the final notice specify that HCFA will retain authority to reassess these assignments based on existing (prior to April 10, 1985) guidelines.

Response: In implementing the reduction in HHA intermediaries, we have selected those intermediaries we believe can best service the providers in a given geographic territory. It is our view that overall performance and service to HHAs will improve as a result of this intitiative. All responsibilities related to the chain home office function will, therefore, become the jurisdiction of the designated regional intermediary for a geographic locality and all provider chains whose home offices are within a specifically assigned territory will be serviced by the designated regional intermediary. Providers that wish to avail themselves of the lead/local provisions contained in 42 CFR 421.117(d) or the alternative designated regional intermediary provisions contained in § 421.117(e) may continue to do so. We will evaluate any request for change of servicing intermediary in terms of whether the change is consistent with the effective and efficient administration of the Medicare program. We will continue to monitor the performance of the designated HHA intermediaries to assure that their performance is acceptable and retain our option to make future changes, if the change would improve service in a given geographic locality.

15. *Comment:* Two commenters noted that the proposed notice explained that, in the future, one or more of the ten selected intermediaries may cease to serve as an HHA intermediary and that HCFA reserves the right to either fill the vacancy or vacancies or to operate with fewer than ten intermediaries. The commenters asked what criteria HCFA would use to change intermediaries and/or reduce the number of HHA intermediaries, whether the affected intermediaries would have an opportunity for a hearing and a right to a judicial review, and whether HCFA plans to give all affected HHAs, their trade association representatives and other affected parties advance notice of the proposed changes and opportunity to comment.

Response: The effective and efficient administration of the Medicare program is the most important factor in a decision to either reduce the number of designated HHA intermediaries or replace an intermediary. Should it become evident, at some future date, that having fewer designated intermediaries would be in the best interest of the Medicare program, we would take steps, based on careful analysis, to reduce the number of intermediaries. How this would be accomplished would depend on the circumstances. Ordinarily, we do not issue Federal Register notices and solicit public comments when we change intermediaries or make other decisions involving our contracting activities. However, in connection with determining whether an intermediary is effective and efficient, we do publish in the Federal Register our standards and criteria for evaluating intermediaries and carriers and provide an opportunity for public comment before implementation.

A situation may arise where, because of deterioration in performance or unacceptable increases in cost, an intermediary's voluntary withdrawal from the program, or a decision by HCFA to run an experimental procurement, it may become necessary to replace one or more designated intermediaries. At this time we contemplate that we would select a replacement intermediary using basically the same cirteria we have used in making the selections annouced in this notice.

We reserve the right to either select a new designated regional intermediary, or, should it be determined to be the better course of action, to transfer the workload to an already existing designated intermediary. We would continue to examine the operation of the designated intermediaries and to assess the appropriate number of intermediaries.

In the event it becomes necessary to replace and/or reduce the HHA intermediaries, we reserve the right to do so without first publishing a notice. We would, however, give all affected HHAs reasonable advance notice of proposed changes.

The designation of regional intermediaries is based on section 1816(e)(4) of the Act. This section contemplates an exception to the hearing and review process, so that affected intermediaries would not have a right to a hearing or judicial review.

16. *Comment:* We received 118 comments about the following transition issues:

A. Assurance of cash flow;

B. Transition costs;

C. Transition schedule;

D. Delineation of responsibilities during the change over period;

E. Waiver of liability status during the change over period; and

F. Subcontracting.

A. *Comment:* Many HHAs were concerned that delays in cash flow could seriously hamper the agencies abilities to meet payrolls and other expenses.

Response: We will make every effort to assure that there will be no interruption of cash flow to HHAs. We have identified each home health agency, its method of reimbursement and its frequency of receiving that reimbursement so that we could identify potential problem areas. As we have done in past transitions, we will work closely with the intermediaries and HHAs to resolve problems that could interrupt cash flow. Additionally, we will use existing payment procedures to meet provider cash flow requirements under special circumstances.

In related comments, HHAs questioned whether the new intermediary could accommodate providers using the periodic interim payment method of reimbursement (PIP). All intermediaries have the capability to pay providers on the PIP method. Determining the rate of interim payment is a simple accounting procedure. We have identified those HHAs currently on PIP that are moving to a new intermediary. This information will be forwarded to the new intermediary. Consequently, the new intermediary will know, before the actual transfers, each affected agency's amount and payment schedule so that we can assure no slippage in payments.

B. *Comment:* Several commenters believed that transition costs should not be incorporated into an HHA's request for an exception to the cost limits. They believe that such an inclusion distorts per visit costs and does not accurately reflect a normal visit cost. Additionally, one commenter stated that exception requests can take a significant time to process.

Response. The amount of incremental administrative cost attributable to the transition should not be a significant percentage of an HHA's total administrative cost. The incremental cost will be incurred for a short period of time, but will be averaged in with all other costs for the entire 12 months of an HHA's fiscal year. This small amount of cost should not produce a measurable distortion in any per visit cost. Reasonable transition costs incurred by HHAs under the limits will be included on the cost report and reimbursement by intermediaries. However, for those providers with costs in excess of the limits, the exception provided at 42 CFR 405.460(f)(2) is designed to recognize higher costs due to extraordinary circumstances beyond the control of the provider. In our experience, the average HCFA processing time for an adequately documented exception request, accompained by a properly completed cost report, is less than 30 days. Therefore, concerns about excessive processing time do not appear to be warranted.

C. *Comment:* Commenters had several problems with the proposed transition schedule. They believed that (1) 60 days was inadequate notice; (2) the transfers should be delayed until the uniform bill (UB–82), Form HCFA–1450, has been implemented; (3) the transfers should be delayed until the HCFA Forms 485–488 have been implemented; and (4) tranfers should be delayed when the intermediary is not ready to handle the HHA's particular automated billing. The commenters urged that we carefully plan and monitor the transitions.

Response: Shortly following the publication of this notice, HCFA will formally notify each affected HHA of its designated intermediary and its transfer date. Those in the first group of HHAs to be moved will have a minmum of 60 days notice; the remainder will have additional time. We do not expect this to create a hardship for the HHAs, as past experience has shown that 60 days notice is adequate to facilitate smooth transfers. We hope all HHAs will be able to transfer at the beginning of their fiscal year. However, transfers will be delayed if the intermediary is not ready to assume the additional claims workload.

The uniform bill (UB–82), Form HCFA–1450, had to be implemented in all States by October 1, 1985, and the HCFA Forms 485–488 had to be completed for all starts of care and recertifications starting September 1, 1985. Thus, we do not need to delay HHA transfers to accommodate these two HCFA initiatives as they were fully operational well before HHA transfers were to begin.

Regarding delays while an intermediary adjusts to a particular automated biller: We do not expect the providers to forego the benefits of automation, but there usually will be no need for a delay. We are not guaranteeing that there will be absolutely no need for systems changes; rather, during the transition, the HHAs and the intermediary will have to accommodate each other. The HHAs will accommodate the intermediary in the format used, content and submission requirements. The HHAs will be trained before transfer in proper billing procedures. The intermediary will accommodate the HHAs' billing media (tape cassette, disk, etc.). We will grant delays in transfer if the intermediary is not able to accommodate the HHA's billing medium.

We follow a transition procedure whenever providers are transferred from one intermediary to another. This procedure requires implementation plans for the incoming intermediary, HCFA approval of the plans and subsequent close HCFA monitoring throughout the transition.

Comment: HHAs questioned whether the facilities with pending requests to use discrete costing, and those that have received interim approval to use discrete costing from their current intermediary, should receive a ruling from the new intermediary on the acceptability of their methodology before transfer to the new intermediary.

Response: Since all providers will be given at least 60 days advance notice of transfer to a new intermediary, HHAs using, or desiring to use, discrete costing will have adequate time to request interim approval of their methodology from their intermediary. Receiving intermediaries are expected to process such requests expeditiously, and will be so advised.

However, we do not agree that transfers should be contingent upon intermediary determination of the acceptability of a discrete costing scheme. Providers are also cautioned that interim approval of a discrete costing methodology is subject to verification, by audit, that all elements of the methodology approved by the intermediary have been followed. Failure to maintain required records will result in a disapproval of the discrete costing request for that fiscal year.

Comment: New intermediaries should be required to rule on corporate reorganization proposals prior to transfer.

Response: This comment involves similar issues to those in discrete costing, discussed above. The minimum 60-day advance notice to be given each HHA should provide adequate time to request a decision on the HHAs' corporate structure from the new intermediary. Intermediaries will be advised to process such requests timely. However, we cannot agree to making transfers to the new intermediary contingent upon such approval. We also note that approval of a structure involving two or more entities (corporations, sole proprietorships or partnerships) assumes that separate books and records will be kept for each of the entities. Should the intermediary find, on audit, a commingling of the assets, books and records of two or more reputedly separate entities, these operations will be considered a single

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entity for Medicare cost reporting purposes.

D. *Comment:* The proposed notice stated that each HHA would be notified of procedures to follow during the change over process. One commenter suggested that we identify who would notify the HHAs.

Response: HCFA will notify the HHAs of their new designated intermediary and will give the HHAs a contact in the HCFA regional office should they have any questions. Following these notifications, the designated intermediary will notify each facility, give an intermediary contact, schedule meetings and training date, etc..

E. *Comment:* Two of the national HHA associations and one trade association that represents some intermediaries offered suggestions on the handling of HHAs' limitation of liability status. Two of these commenters recommended that all transferring HHAs' automatically be given a "favorable presumption" for the first calendar quarter with their new intermediary. The other commenter suggested that only those HHAs with a favorable presumption at the time of transfer should retain this status through the first calendar quarter with the new intermediary.

Response: We agree with the latter approach. Use of the favorable presumption was established as an administrative device to assure payment under special circumstances to providers (in this case HHAs) that closely follow Medicare coverage guidelines. The HHAs must have no more than a 2.5 percent denial rate of their bills submitted per quarter for payment. If an HHA does not exceed this denial rate and a submitted claim is denied because the services furnished were not medically reasonable and necessary and there is no clear evidence in the file to show that the HHA should have known of the noncoverage, a finding will be made that the HHA did not know that the services were not covered. In these instances where both the beneficiary and the provider are found not to have knowledge of the noncoverage of the services, Medicare will pay for the services provided. Any HHA that has a favorable presumption at the time of transfer will retain it throughout the first full calendar quarter with the new intermediary. Other providers will not be given a favorable presumption automatically. This is the normal procedure used whenever a provider changes from one intermediary to another.

All providers should take note that we published a proposed rule on February 12, 1985 (50 FR 5787) concerning limitation of liability policies. Current budget estimates assume final implementation of this regulation. A general change in limitation of liability regulations could alter the application of existing procedures when final rules are published during the transition period.

F. *Comment:* Some commenters who recognized the potential need for subcontracting suggested that we list those activities that may be subcontracted.

Response: As we have stated elsewhere in this notice, to the extent practicable, the designated intermediary will perform all functions. However, where it is more cost effective and efficient and with HCFA regional office concurrence, the designated regional intermediary may subcontract cost report field audits. Field audit work may be subcontracted to either the local intermediary or an approved CPA firm. The final decisions in cost reporting settlements are the responsibility of the servicing intermediary. We expect the ten designated intermediaries to perform all compliance review functions.

17. Comment: We received three comments regarding our voluntary impact analysis. These included a question about the accuracy of the $3 million estimate of administrative costs contained in the impact analysis, concern that a local intermediary's loss of the HHA workload would hurt the State's economy and requests that we do a full scale inpact analysis.

Response: The $3 million is our best estimate (based on our experience in the transfer of providers to other intermediaries from the Office of Direct Reimbursement) of intermediary administrative costs that will be incurred as a direct result of this initiative.

While some intermediaries may find it cost effective to reduce staff because of the loss of the HHA workload, this should not generally be the case. Intermediaries have the option of reducing staff by attrition or deploying staff to their private health insurance business. In most instances, HHA bills account for only a small portion of an intermediary's Medicare workload. This small decrease in the workload of one organization within a State should have insignificant consequences for the economy.

The commenter did not provide any information to substantiate a need for a full regulatory impact analysis. See the Regulatory Impact Statement section in this notice for further discussion of this issue.

Final Selection of Intermediaries

HCFA is designating ten intermediaries to service freestanding HHAs in the indicated States, the District of Columbia, Puerto Rico and the Virgin Islands as follows:

1. Associated Hospital Service of Maine—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

2. The Prudential Insurance Company of America—New Jersey, New York, Puerto Rico and the Virgin Islands.

3. Blue Cross of Greater Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia.

4. Blue Cross and Blue Shield of South Carolina—Kentucky, North Carolina, South Carolina and Tennessee.

5. Aetna Life and Casualty—Alabama, Florida, Georgia and Mississippi.

6. Blue Cross and Blue Shield United of Wisconsin—Wisconsin, Michigan and Minnesota.

7. Health Care Service Corporation (Chicago, Illinois)—Illinois, Indiana and Ohio.

8. New Mexico Blue Cross and Blue Shield, Inc.—Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

9. Blue Cross of Iowa, Inc.—Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

10. Blue Cross of California—Alaska, Arizona, California, Hawaii, Idaho, Oregon, Nevada and Washington.

Note that there is some variance from the designations and service areas listed in the proposed notice of April 10, 1985. As we indicated we would do in the proposed notice, we have reevaluated our tentative selections based on more recent data, including the results of the FY84 CPEP. These data supported the tentative selections, with one exception.

Since conversion to the Uniform Bill format (UB–82), excessive claims backlogs have developed at Blue Cross and Blue Shield of Michigan. Additionally, we have concerns regarding dollar returns in the areas of audit, medical review, and Medicare secondary payer identification. While we are working with the intermediary to correct these problems we are fearful that adding the HHA workload at this time would only exacerbate them. Therefore, we have concluded that selecting Blue Cross and Blue Shield of Michigan as a designated regional intermediary would be inappropriate. We are selecting instead Blue Cross and Blue Shield United of Wisconsin as a designated regional intermediary.

A review of the most recent performance and cost data indicates that Blue Cross and Blue Shield United of Wisconsin is the best intermediary in Region V to assume the role of a designated intermediary for Region V, along with Health Care Service Corporation.

This change from our tentative designation also makes advisable a change in the service areas of the two intermediaries that will serve in Region V. HHAs in Minnesota and Wisconsin (which we had proposed be serviced by Health Care Service Corporation) and in Michigan (which we had proposed be serviced by Blue Cross and Blue Shield of Michigan) will be serviced by Blue Cross and Blue Shield United of Wisconsin. HHAs in Indiana and Ohio (which we had proposed be serviced by Blue Cross and Blue Shield of Michigan) will be serviced by Health Care Service Corporation. These changes are being made in order to achieve a more balanced distribution of providers and workload.

The current provisions of 42 CFR 421.117(e), which allow HHAs to request to receive payment from a alternative designated regional intermediary, depending upon the State in which the HHA is situated, are not affected by this notice. Those HHAs that do not wish to be serviced by the designated regional intermediary may request to be serviced by the alternative designated regional intermediary. We will, in accordance with the provisions of 42 CFR 421.106, evaluate the request to determine whether the change is consistent with the effective and efficient administration of the program. An HHA that has already been approved to use an alternative designated regional intermediary, as provided in section 421.117, is not affected by this notice (since we are not selecting new alternative designated intermediaries), unless such an HHA wishes to be serviced by the new designated regional intermediary.

The alternative designated intermediaries and where they will be available as alternates are as follows:

The Prudential Insurance Company of America—Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia;

Blue Cross of Iowa, Inc.—Alaska, Arizona, Arkansas, California, Hawaii, Idaho, Illinois, Indiana, Louisiana, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Puerto Rico, Texas, Virgin Islands, Washington, and Wisconsin; and

Blue Cross of California—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Under 42 CFR 421.117, an HHA chain not desiring to receive payment from more than one designated regional intermediary has the opportunity to request to be serviced by a single designated regional intermediary. Alternatively, the chain may request to be serviced by one lead intermediary with the assistance of the local designated regional intermediary. These options will also continue to be made available. The lead, local, or a single intermediary must, as required by the regulations, be a currently designated regional intermediary.

Under 42 CFR 421.117(c)(2), a hospice that is based in another Medicare provider is required to be serviced by the same intermediary that services its parent provider. In accordance with that provision, a hospice that is based in an HHA will also be assigned to the designated HHA intermediary which services its parent.

Implementation

A. Notificotion to HHAs

HCFA will send a notice to each affected HHA provider, advising it of the name of its designated regional intermediary and the date each HHA is scheduled to transfer.

B. Transfer Schedule

Home health agencies will receive at least 60 days' notice prior to the date of their transfer. The transfer date will generally be based on the HHAs cost report year ending date. We will consider other transfer dates only if extraordinary circumstances exist.

C. Procedures During the Change-Over Period

Each HHA will be notified by mail of procedures to follow during the change-over process. We plan to arrange for an orderly transition of service.

1. HHAs will submit bills for services provided before the transfer date to the outgoing intermediary. The intermediary will be responsible for the processing of reconsideration claims arising from the denial of payment for services provided before the transfer date.

This same intermediary will be responsible for the settlement of the currently due cost report, prior unsettled cost reports, and any appeals arising from those cost reports.

2. All bills for services provided on and after the transfer date will be submitted to the receiving intermediary.

3. We are continuing ombudsmen-type positions that have been established in each HCFA regional office to assist HHAs in resolving and problems encountered during the transition or thereafter.

D. Assurance of Cash Flow

We will make every effort to assure that there will be no interruption of cash flow to HHAs. We will work closely with the designated intermediary and HHAs to identify and resolve problems that could potentially interrupt HHAs' cash flow.

E. Transition Cost

Provider costs incurred due to the transfer will be allowable and reimbursable under established Medicare reimbursement principles. If the HHA's costs exceed the applicable HHA cost limits as the result of the required transfer to a designated regional intermediary, an exception to the limits may be granted under the usual rules; that is, to the extent that the costs are reasonable, attributable to the circumstances specified, separately identified by the provider and verified by the intermediary. Request for transition cost exception will be processed by HCFA consistent with the provisions for handling other exceptions requested under 42 CFR 405.460(f)(2).

Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any rules that are considered major rules because they would be likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or have an adverse impact on competition, employment, productivity, or innovation. This document is not a rule. It contains our general statement of policy about how we propose to interpret and implement section 1816(e)(4) of the Act and implementing regulations. As such, it is not subject to the Executive Order. Nevertheless, in the spirit of the Excutive Order, we are voluntarily providing the following information.

Approximately 3,000 freestanding HHAs will be reassigned from their present intermediary to a different regional intermediary. We project that we will incur one-time administrative costs of $3 million for extensive travel, training, and system changes related to the reassignment of these HHAs. We expect to achieve some savings as a result of the consolidation of HHAs and the reduction in the number of intermediaries servicing HHAs. Savings will be associated with economies-of-

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scale that will lower unit processing costs. The potential savings, coupled with the one-time costs, will not exceed the $100 million threshold and will not produce a major increase in cost or prices.

Generally, we consider an adverse effect on employment, productivity, innovation, or competition to be significant only if that effect is equivalent to an economic loss of $10 million or more, and the adverse effect results in a 10 percent of greater change in a year for a common measurement of an economic variable of the affected entities. For the reasons discussed above, we expect these proposed reassignments to have beneficial, rather than adverse, effects on productivity, and possibly on innovation. Further, although the reassignment of HHAs to fewer intermediaries may result in a reduced level of employment by those intermediaries that will not longer service freestanding HHAs, we do not believe this will be of a significant magnitude. Finally, we have determined that this notice will not have an adverse effect on competition. Section 1816 of the Act gives providers the right to nominate their servicing intermediary. Because of this, HCFA is, in selecting intermediaries, exempt by operation of law from the requirement of competition the governs most Federal procurements. Historically, with the exception of a few contracts entered into under an experimental contracting authority, intermediaries have been administratively selected without competition. This designation of regional home health intermediaries is consistent with this existing policy.

For these reasons, we have determined that the assignment and reassignment of HHAs to the designated regional intermediaries does not meet any of the criteria for identifying major rules. Therefore, we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612) we perform and publish a regulatory flexibility analysis unless the Secretary certifies that the rule will not result in a significant impact on a substantial number of small entities. This document is not a rule. It contains our general statement of policy about how we interpret and implement section 1816(e)(4) of the Act and implementing regulations. We believe it is not subject to the Regulatory Flexibility Act. Nevertheless, in the spirit of the Regulatory Flexibility Act, we are voluntarily providing the following information.

We are requiring reassignment of a substantial number of freestanding HHAs to designated regional intermediaries, and, for purposes of regulatory flexibility analysis, we consider all providers and other entities participating in Medicare to be small entities. However, we have determined that the impact on the affected entities will not be significant.

We are minimizing the impact on the affected HHAs. We will try to assure a continued cash flow for each of the affected HHAs, to base reassignment dates upon the provider cost report year ending dates and to provide an exception for those HHAs whose costs exceed their limits as a result of transition costs incurred through the redesignation. For these reasons, we believe, and the Secretary certifies, that this notice will not result in a significant impact on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

(Sec. 1816(e)(4) of the Social Security Act; 42 U.S.C. 1395h(e)(4); 42 CFR 421.117)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: February 6, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 86–3099 Filed 2–12–86; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. D–86–811; FR–2201]

Redelegation of Authority To Execute Legal Instruments in the Name of the Secretary

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Amendment of notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Community Planning and Development, on July 26, 1982 redelegated authority to execute written instruments relating to section 312 Rehabilitation Loans to certain officials, 47 FR 33324, August 2, 1982. A subsequent redelegation added other officials, 50 FR 13667, April 5, 1985. This amendment adds to those officials the Rehabilitation Program Specialist in the Office of Urban Rehabilitation, appointed as Government Technical Representative to the section 312 Loan Servicing Contract.

FOR FURTHER INFORMATION CONTACT: Robert I. Dodge, III, Director, Office of Urban Rehabilitation, Room 7170, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 755–5685 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under section 312 of the Housing Act of 1964, 42 U.S.C. 1452b, the authority to execute legal instruments under the section 312 Loan Program has been delegated to the Assistant Secretary for Community Planning and Development, except for those legal instruments which relate to the property management and disposition functions delegated to the Assistant Secretary for Housing (see 45 FR 54143, August 14, 1980). In order to expedite property foreclosures and judgments against section 312 borrowers in default, the Assistant Secretary for Community Planning and Development has determined that his authority to execute legal instruments should be redelegated to the Rehabilitation Program Specialist in the Office of Urban Rehabilitation, appointed as Government Technical Representative to the Section 312 Loan Servicing Contract.

Accordingly, the Assistant Secretary's delegation of July 26, 1982, 47 FR 33324, is amended as follows:

A. Authority Redelegated

The Deputy Assistant Secretary for Program Management, Office of Community Planning and Development; the Director and Deputy Director of the Office of Urban Rehabilitation; the Director of the Relocation and Real Estate Division and the Rehabilitation Program Specialist, in the Office of Urban Rehabilitation, appointed as Government Technical Representative to the section 312 Loan Servicing Contract, are hereby redelegated the authority to execute in the name of the Secretary written instruments relating to section 312 Rehabilitation Loans, including deeds of release, substitutions of trustees, assignments, and satisfactions of mortgages and deeds of trust. However, this redelegation does not cover the execution of written instruments that relate to certain section 312 loan-related property management and disposition functions that have been delegated to the Assistant Secretary for Housing (see 45 FR 54143, August 14, 1980).

B. Effect

This Redelegation adds to, and does not modify or supersede, the redelegation of authority to field officials at 46 FR 21244 (April 9, 1981).

Authority: Sec. 312 of the Housing Act of 1964, 42 U.S.C. 1452b.

Dated: January 3, 1986.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 86–3230 Filed 2–12–86; 8:45 am]

BILLING CODE 4210–29–M

Office of Assistant Secretary for Community Planning and Development

[Docket No. N–86–1588; FR–2176]

Urban Development Action Grants; Revised Minimum Standards for Large Cities and Urban Counties

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with 24 CFR 570.452(b)(1), the Department is providing Notice of the most current minimum standards of physical and economic distress for large cities (metropolitan cities and other cities over 50,000 population), and urban counties for the Urban Development Action Grant program.

This Notice revises the Notice published February 9, 1984 (47 FR 5050).

The minimum standards of distress have changed generally as a result of applying new data from the Bureau of the Census, the Department of Labor/Bureau of Labor Statistics, and the Department of Labor/Employment Training Administration.

This Notice contains three lists: The first list identifies all those cities and urban counties which qualify as distressed communities based upon the new minimum standards; the second list identifies those cities and urban counties which did not qualify when the February 9, 1984 list was published but which do qualify now; the third list identifies those cities and urban counties which were classified as distressed on the February 9, 1984 list, but which no longer qualify under the new minimum standards.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Ridenour, Office of Urban Development Action Grants, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Telphone: 202/755-6784. for information on minimum distress standards or the data used to determine whether a community qualifies as distressed contact: Wendy Mellinger, Telephone: 202/755-7390.

SUPPLEMENTARY INFORMATION: A Notice published by the Department on February 9, 1984 provided the minimum standards of physical and economic distress which were applicable up to the effective date of this Notice for large cities and urban counties.

Part I of this Notice specifies the new minimum standards of physical and economic distress. Part II of this Notice contains a revised list of all the large cities and urban counties which meet the new standards. Part III of this Notice lists those large cities and urban counties which, based upon the new minimum standards, appear on the list in Part II but did not qualify when the February 9, 1984 list was published. Part IV is a list of those cities which were classified as distressed on the February 9, 1984 list but which no longer qualify under the new minimum standards. These cities listed in Part IV have a period of time as specified in Part IV, during which they may submit Action Grant applications.

The seven minimum standards of distress have been changed as a result of new data from the Bureau of the Census, the Department of Labor/Employment Training Administration, and the Department of Labor/Bureau of Labor Statistics. The data cover units of government incorporated through June 1984. The updated census data are 1982 population, 1981 per capita income, 1980 housing and poverty (adjusted for boundary changes through 1982) and 1982 retail and manufacturing jobs (which reflect the change over the period from 1977 to 1982, instead of 1972 to 1977). The previous Census data were 1980 population, 1979 per capita income, 1980 housing and poverty (reflecting boundary changes through the 1980 Census) and 1972 retail and manufacturing jobs. The Bureau of Labor Statistics data are updated from 1982 unemployment rates to 1984 unemployment rates. The updated data from the Employment and Training Administration are Labor Surplus Areas designated as of October 1, 1984. The specified unemployment rate for the 1982–1983 period is 10 percent. A list of eligible labor surplus areas was published in the Federal Register on September 26, 1984 (49 FR 37865). The previous Labor Surplus Area were designated as of October 1, 1983.

This Notice is published pursuant to 24 CFR 570.452(b)(1).

I. A large city or urban county must past three minimum standard of physical and economic distress, except that if the percentage of poverty is less than half the minimum standards identified in paragraph I. F. below, the city or urban county must pass four standards. As in the past years, the minimum standards of distress for age of housing, per capita income change, population growth lag/decline, unemployment, job lag/decline and poverty are based on the median for all large cities. The minimum standards of distress for Labor Surplus Area is based on the national average unemployment rate over a two year period. The most current minimum standards of physical and economic distress are:

A. *Age of Housing.* At least 20.6 percent of the applicant's year-round housing units must have been constructed prior to 1940, based on 1980 U.S. Census data, in order to meet this minimum standard;

B. *Per Capita Income Change.* The net increase in per capita income for the period of 1969–1981 must have been $5,467 or less, based on U.S. Census data, in order to meet this minimum standard;

C. *Population Growth Lag/Decline.* For the period 1960–1982 the percentage rate of population growth (based on corporate boundaries in 1960 and as of 1982) must have been 23.9 percent or less, based on U.S. Census data, in order to meet this minimum standard;

D. *Unemployment.* The average rate of unemployment for 1984 must have been 7.0 percent or greater, based on data compiled by the Bureau of Labor Statistics, in order to meet this minimum standard;

E. *Job Lag/Decline.* The rate of growth in retail and manufacturing employment for the period 1977–1982 must have increased by 3.4 percent or less, based on U.S. Census data, in order to meet this minimum standard. If data are not available for both retail and manufacturing employment, the percentage used will be the median for either retail employment (8.3%) or manufacturing employment (0.0%), based upon the data available. If neither data source is available, this standard will not be considered.

F. *Poverty.* The percentage of persons within the applicant's jurisdiction at or below the poverty level must be 12.3 percent or more, based on 1980 U.S. Census data, in order to meet this minimum standard;

G. *Labor Surplus Area.* The city or urban county must either coincide with or be within or be partially within an area which meets the criteria for

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designation as a Labor Surplus Area as of October 1984. These areas include cities with populations of 50,000 or more, counties or county balance with an unemployment rate of 10 percent for calendar years 1982–1983.

II. A. The following cities and urban counties meet the current minimum standards of physical and economic distress:

State and Place

AL Anniston
AL Bessemer
AL Birmingham
AL Dothan
AL Florence
AL Gadsden
AL Mobile
AL Montgomery
AL Tuscaloosa
AR Pine Bluff
AR Texarkana
AR West Memphis
CA Alhambra
CA Baldwin Park
CA Bellflower
CA Berkeley
CA Chico
CA Compton
CA El Cajon
CA El Monte
CA Fresno
CA Inglewood
CA Lodi
CA Lompoc
CA Long Beach
CA Los Angeles
CA Lynwood
CA Napa City
CA National City
CA Norwalk
CA Oakland
CA Oxnard
CA Pasadena
CA Pico Rivera
CA Pomona
CA Porterville
CA Richmond
CA Sacramento
CA Salinas
CA San Bernadino
CA San Francisco
CA Santa Cruz
CA Seaside
CA South Gate
CA Stockton
CA Tulare
CA Turlock
CA Woodland
CA Yuba
CO Denver
CO Greeley
CO Pueblo
CT Bridgeport
CT Hartford
CT Meriden
CT Middletown
CT New Britain
CT New Haven
CT New London
CT Norwich
CT Waterbury
DE Willmington
DC Washington
FL Fort Pierce
FL Hialeah
FL Lakeland
FL Miami
FL Miami Beach
FL Panama City
FL Pensacola
FL Tampa
FL West Palm Beach
FL Winterhaven
GA Albany
GA Athens
GA Atlanta
GA Augusta
GA Columbus
GA Macon
GA Savannah
IL Alton
IL Aurora
IL Belleville
IL Berwyn
IL Bloomington
IL Champaign
IL Chicago
IL Chicago Heights
IL Cicero
IL Decatur
IL East St Louis
IL Elgin
IL Evanston
IL Granite City
IL Joliet
IL Kankakee
IL Moline
IL Pekin
IL Peoria
IL Rantoul
IL Rockford
IL Rock Island
IL Springfield
IL Urbana
IL Waukegan
IN Anderson
IN Bloomington
IN East Chicago
IN Elkhart
IN Evansville
IN Fort Wayne
IN Gary
IN Hammond
IN Indianapolis
IN Kokomo
IN Lafayette
IN Mishawaka
IN Muncie
IN New Albany
IN South Bend
IN Terre Haute
IL West Lafayette
IA Cedar Falls
IA Cedar Rapids
IA Council Bluffs
IA Davenport
IA Des Moines
IA Dubuque
IA Sioux City
IA Waterloo
KS Kansas City
KS Lawrence
KS Leavenworth
KY Ashland
KY Covington
KY Hopkinsville
KY Louisville
KY Owensboro
LA Alexandria
LA Houma
LA Lake Charles
LA Monroe
LA New Orleans
LA Shreveport
LA Thibodaux
ME Auburn
ME Bangor
ME Lewiston
ME Portland
MD Baltimore
MD Cumberland
MD Hagerstown
MA Attleboro
MA Boston
MA Brockton
MA Cambridge
MA Chicopee
MA Fall River
MA Fitchburg
MA Gloucester
MA Haverhill
MA Holyoke
MA Lawrence
MA Leominster
MA Lowell
MA Lynn
MA Malden
MA New Bedford
MA Northampton
MA Pittsfield
MA Quincy
MA Salem
MA Somerville
MA Springfield
MA Waltham
MA Westfield
MA Worcester
MI Ann Arbor
MI Battle Creek
MI Bay City
MI Benton Harbor
MI Dearborn Heights
MI Detroit
MI East Lansing
MI Flint
MI Grant Rapids
MI Holland
MI Jackson
MI Kalamazoo
MI Lansing
MI Lincoln Park
MI Muskegon
MI Muskegon Heights
MI North Shores
MI Potiac
MI Port Huron
MI Roseville
MI Royal Oak
MI Saginaw
MI Taylor
MI Westland
MI Wyoming
MN Duluth
MN Minneapolis
MN St Cloud
MN St Paul
MS Biloxi
MS Gulfport
MS Moss Point
MS Pascagoula
MO Columbia
MO Joplin
MO Kansas City
MO St Joseph
MO St Louis
MO Springfield
MT Great Falls
NE Omaha
NH Dover
NH Manchester
NH Portsmouth
NJ Asbury Park
NJ Atlantic City
NJ Bayonne
NJ Bridgeton
NJ Camden
NJ East Orange
NJ Elizabeth
NJ Hoboken
NJ Irvington
NJ Jersey City
NJ Long Branch
NJ Millville
NJ Newark
NJ New Brunswick
NJ Passaic
NJ Paterson
NJ Perth Amboy
NJ Trenton
NJ Union City
NJ Vineland
NM Las Cruces
NY Albany
NY Binghamton
NY Buffalo
NY Elmira
NY Glen Falls
NY Middletown
NY Mount Vernon
NY Newburgh
NY New Rochelle
NY New York
NY Niagara Falls
NY Poughkeepsie
NY Rochester
NY Rome
NY Schenectady
NY Syracuse
NY Troy
NY Utica
NY White Plains
NY Yonkers
NC Ashville
NC Burlington
NC Concord
NC Durham
NC Fayetteville
NC Gastonia
NC Hickory
NC High Point
NC Salisbury
NC Wilmington
OH Akron
OH Barberton
OH Bowling Green
OH Canton
OH Cincinnati
OH Cleveland
OH Cleveland Heights
OH Columbus
OH Dayton
OH Elyria
OH Hamilton City
OH Kent
OH Lakewood
OH Lancaster
OH Lima
OH Lorain
OH Mansfield
OH Marietta
OH Massillon
OH Middletown
OH Newark
OH Springfield
OH Steubenville
OH Toledo
OH Warren
OH Youngstown
OK Shawnee
OR Eugene
OR Medford
OR Portland
OR Salem
OR Springfield
PA Allentown
PA Altoona
PA Beneslem Township
PA Bethlehem
PA Bristol Township
PA Carlisle
PA Chester
PA Easton
PA Erie
PA Harrisburg
PA Hazleton
PA Johnstown
PA Lancaster
PA Lebanon
PA McKeesport
PA Norristown
PA Penn Hills Township
PA Philadelphia
PA Pittsburgh
PA Reading
PA Scranton
PA Sharon
PA State College
PA Upper Darby Township
PA Wilkes-Barre
PA Williamsport
PA York
RI Cranston
RI East Providence
RI Pawtucket
RI Providence
RI Woonsocket
SC Anderson
SC Charleston
SC Columbia
SC Florence
SC Greenville
SC North Charleston
SC Rock Hill
SC Spartanburg
TN Bristol
TN Chattanooga
TN Clarksville
TN Jackson
TN Johnson City
TN Kingsport
TN Knoxville
TN Memphis
TN Murfreesboro
TN Nashville-Davidson
TX Beaumont
TX Brownsville
TX Edinburg
TX El Paso
TX Galveston
TX Harlingen
TX Killeen
TX Laredo
TX McAllen
TX Marshall
TX Mission
TX Orange
TX Pharr
TX Port Arthur
TX San Benito
TX Texarkana
TX Waco
UT Ogden
UT Provo
UT Salt Lake City
VT Burlington
VA Bristol
VA Charlottesville
VA Danville
VA Hopewell
VA Lynchburg
VA Newport News
VA Norfolk
VA Petersburg
VA Portsmouth
VA Richmond
VA Roanoke
VA Suffolk
WA Bellingham
WA Bremerton
WA Everett
WA Olympia
WA Pasco
WA Seattle
WA Spokane
WA Tacoma
WA Vancouver
WA Yakima
WV Charleston
WV Huntington
WV Parkersburg
WV Weirton
WV Wheeling
WI Beloit
WI Eau Claire
WI Green Bay
WI Kenosha
WI La Crosse
WI Madison
WI Milwaukee
WI Oshkosh
WI Racine
WI Superior
WI Waukesha
WI Wausau
WI West Allis
PR Aguadilla Municipio
PR Arecibo Municipio
PR Bayamon Municipio
PR Cagues Municipio
PR Carolina Municipio
PR Fajardo Municipio
PR Guaynabo Municipio
PR Mayaguez Municipio
PR Ponce Municipio
PR San Juan Municipio
PR Toa Baja Municipio
PR Trujillo Alto Municipio

II. B.

State and Place

CA Fresno County
CA Kern County
CA San Bernardino County
CA San Joaquin County
FL Polk County
IL Madison County
IL St Clair County
KY Jefferson County
MI Genesee County
NJ Hudson County
NY Erie County
NY Orange County
PA Allegheny County
PA Beaver County
PA Luzerne County
PA Washington County
PA Westmoreland County
PA York County
WA Clark County
WA Pierce County

III. A. The following large cities and urban counties which have been added to the list under Section II, above, meet the new standards of physical and economic distress:

State and Place

CA Bellflower
CA El Cajon
CA Lodi
CA Napa City
CA Woodland
CO Greeley
GA Athens Macon
IL Bloomington
IL Elgin
IL Evanston
IL Rantoul
IA Cedar Falls
KS Leavenworth
LA Houma
LA Shreveport
MA Leominster
MA Westfield
MI Ann Arbor
MI Dearborn Heights
MI Norton Shores
MI Roseville
MI Royal Oak
MI Taylor
MI Westland
MI Wyoming
MO Columbia
MT Great Falls
NM Las Cruces
NY White Plains
NC Durham
NC Fayetteville
OH Lakewood
OR Eugene
OR Medford
OR Salem
PA Bensalem Township
PA Penn Hills Township
TN Jackson
TX Beaumont
WI Madison
WI Waukesha
WI West Allis

III. B.

State and Place

CA San Bernardion County
CA San Joaquin County
KY Jefferson County
MI Genesse County
NY Orange County
PA York County
WA Clark County
WA Pierce County

IV. The following list contains the names of those large cities and urban counties which met the minimum standards of physical and economic distress on February 9, 1984 but which no longer meet those standards. The final date for submission of an application by the cities listed below is November 30, 1985.

State and Place

AL Huntsville
AZ Tucson
CA Ontario
CT Norwalk
CT West Haven
FL Cocoa
FL Jacksonville
FL St Petersburg
GA Marietta
IN Goshen
MD Annapolis
MA Brookline
MA Medford
MI St Clair Shores
NH Rochester
NC Jacksonville
NC Winston Salem
OH Stark County
OK Lawton
TX Denison

Other Cities Over 50,000
Guam
Virgin Islands

Dated: February 5, 1986.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc 86-3229, Filed 2-12-86; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Facilities Improvement and Repair (FI&R) Priority Ranking System

February 4, 1986.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8. Pub. L. 98-473 requires the Bureau to revise the FI&R Priority System by publishing in the **Federal Register** by October 1 of each year, the national list of projects expected to be accomplished that fiscal year within the available funds. The priorities must be based on published criteria to be used systemwide. This notice provides the criteria by which a national list of FI&R projects will be developed within available funds.

A facilities construction operations and maintenance system (FACCOM) has been developed and includes a listing of all unfinished facilities work for each location throughout the Bureau. This listing is used by Agency and Area staff to identify their priority needs. Priorities are then developed by these staff and ranked in priority order for construction using the following FACCOM class code categories:

1—Safety—related work of a critical nature
2—Sanitary—related work
3—Safety—related work of a non-critical nature
4—Work required because of a violation of code or regulation
5—Work required or desired because of functional deficiencies

The projects included in these categories will be evaluated according to the degree of severity of problems in these categories. At the Agency and Area levels, project development and rank is coordinated with the user client(s), i.e. Education, Law Enforcement, Administration, etc. The Areas' ranking lists are then reviewed by BIA Central Office staff responsible for facilities management and the Office of Construction Management which advises the Assistant Secretary—Indian Affairs on facilities matters. A nationwide list is then developed by BIA facilities staff and forwarded to the Assistant Secretary—Indian Affairs for decision-making.

EFFECTIVE DATE: February 13, 1986.

INFORMATION CONTACT: Alfred H. Barth, Office of Construction Management, 18th & C Streets, NW., Room 5145, Washington, DC 20240, (202) 343-3403.

Ronal D. Eden,

Acting Deputy Assistant Secretary-Indian Affairs (Operations).

[FR Doc. 86-3118 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Conveyance or Leasing of Public Lands; Arizona; Correction

Conveyance of Lease of Public Land in Mohave County, Arizona (originally published in the **Federal Register** January 27, 1986 on page 3435, columns two and three).

In column two after the first paragraph, the first and second line should read:

Gila and Salt River Meridian, Arizona (not Sale River)

T. 13 N., R. 20 W. (not 22)

In the third column under Gila and Salt River Meridian, Arizona change the next line to read T. 13 N., R. 20 W., (not 22).

Dated: February 7, 1986.

J. Darwin Snell

District Manager.

[FR Doc. 86-3205 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-32-M

Exchange of Lands; Arizona; Correction

Exchange of Public Land; Mohave County, Arizona (originally published in the **Federal Register** January 27, 1986 on page 3436, columns one and two).

In column one in the third paragraph, under the subheading *Gila and Salt River Meridian*, delete the last sentence which reads "The State will apply for the remaining lands under State Indemnity Selections." and replace it with "The Bureau of Land Management will offer the remaining lands in satisfaction of State Indemnity Selections."

Dated: February 7, 1986.

J. Darwin Snell,

District Manager.

[FR Doc. 86-3206 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-32-M

[NM 58259]

Issuance of Land Exchange Conveyance Document; New Mexico

The United States has issued an exchange conveyance document to C. L. Crowder Investment Company, Box 1, Santa Teresa, NM 88008, under the provisions of the Navajo-Hopi Settlement Act (Pub. L. 93-531, 88 Stat. 1712), as amended by the Navajo and Hopi Relocation Amendments Act of 1980 (Pub. L. 96-305, 94 Stat. 929).

The conveyance is for the surface estate only in Sec. 16, T. 29 S., R. 3 E.,

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NMPM, in Dona Ana County and lands in Sierra County and for the surface and nonleasable mineral estates in all other lands in Dona Ana County as described in Notice of Realty Action published in the **Federal Register**, Volume 49, No. 131, dated July 6, 1984 and amended Notices published in Volume 49, No. 192, dated October 2, 1984, Volume 49, No. 211, dated October 30, 1984, and Volume 50, No. 48, dated March 12, 1985.

In exchange for these lands, the United States acquired the surface estate only in lands in Apache County, Arizona, from C. L. Crowder Investment Company as described in amended Notices of Realty Actions published in the **Federal Register**, Volume 49, No. 211, dated October 30, 1984, and Volume 49, No. 226, dated November 21, 1984.

The purpose of this exchange was to acquire the non-Federal land selected by the Navajo Tribe for relocation purposes and transfer it without cost to the Navajo Tribe into trust status.

The values of the Federal public land and the non-Federal land in the exchange were equal.

Dated: February 3, 1986.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86-3120 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-FB-M

Proposed Reinstatement of Terminated Oil and Gas Lease; Carter County, MT

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease M 49991, Carter County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: February 5, 1986.

Karen L. Skauge,

Chief, Leasing Unit.

[FR Doc. 86-3169 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-GN-M

[U-52625-FE]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-52625-FE for lands in Carbon County, Utah, was timely filed and required rentals and royalties accruing from May 1, 1985, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16 2/3 percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U-52625-FE as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective May 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-3170 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-DQ-M

[SERIAL NO. I-8360]

Idaho; Order Providing for Opening of Public Lands

The Blaine County Commissioners have relinquished their lease which was issued under the authority of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869-4) for the following-described lands:

Boise Meridian, Idaho

T. 3 N., R. 18 E.
Sec. 15, S½NE¼SW¼NW¼, N½SE¼SW¼NW¼.
Containing 10 acres.

The lands are located in Blaine County, Idaho.

Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, the lands will at 9:00 a.m. on February 18, 1986, be open to the operation of the public land laws.

Inquiries concerning the lands should be addressed to the Chief, Realty Operations Section, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: February 7, 1986.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 86-3171 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-GG-M

[NM 56102]

Order Providing for Opening of Public Lands; New Mexico

A **Federal Register** notice published on January 3, 1986 (Vol. 51, No. 2, Pg. 257), inadvertently failed to include the time and date. The last paragraph is amended to read as follows:

At 10:00 a.m. on March 17, 1986, the reconveyed lands shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on March 17, 1986, shall be considered as simultaneously filed at that time.

Dated: February 3, 1986.

Monte G. Jordan,

Associate, State Director.

[FR Doc. 86-3121 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-FB-M

[C-40760]

Lease and Sale of Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action C-40760, Recreation and Public Purposes Classification and Application for Lease and Sale of Public Lands in Fremont County, Colorado.

SUMMARY: The following described public land has been examined and found suitable for public recreation use and is hereby classified for lease and sale under the Recreation and Public Purposes Act pursuant to 43 CFR Parts 2740 and 2912.

Sixth Principal Meridian

T. 19 S., R. 72 W.

Tract 46—95.72 acres less 1.02 acres in the southeast corner previously leased to the Deer Mountain Volunteer Fire Department.

This tract is in sections 30 and 31 of the township. The Grand Encampment of the Independent Order of Odd Fellows has applied for this land, case number C-40760, to construct a recreation area to include camping, picnicking, baseball, volleyball,

horseshoes, toilets, barbecue grills, and shelter.

Classification of this land under the Recreation and Public Purposes Act will segregate it from all appropriations, including location under the mining laws, except as provided for by this classification. This will provide necessary protection of the land from interference on development of the recreation area as described above and the orderly disposal.

DATES: Interested Parties may submit comments or protests until 45 days after receipt of this notice. Send comments to the District Manager, Bureau of Land Management, P.O. Box 311, Canon City, Colorado 81212.

Comments will be evaluated and the classification may be vacated or modified. The proposed lease and sale may also be rejected or modified as a result of comments.

Details

For further information relating to this Recreation and Public Purposes application contact the above office.

Donnie R. Sparks,

District Manager.

[FR Doc. 86-3165 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-JB-M

[NM 56613-OK]

Public Land Sale in Latimer County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Land Encompassing 77.82 Acres in Latimer County, Oklahoma.

SUMMARY: This Notice of Realty Action cancels the sale of public land in Latimer County, Oklahoma as published in the **Federal Register**, Volume 50, No. 143, on July 25, 1985, at page 30303 and herewith changes the method of sale for the subject land from modified competitive to competitive. The land will be sold competitively, due to increased interest in the Bureau of Land Management's (BLM) lands disposal program in Oklahoma.

DATE: For a period of 45 days after the date of publication of this Notice, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, 9522-H East 47th Place, Tulsa, Oklahoma, 74145.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, 405-231-5491.

The following described lands have been examined and identified as suitable for disposal by sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2742, 43 U.S.C. 1701) at no less than the appraised fair market value of $19,500.00:

LATIMER COUNTY (LT)

Tract	Legal Description	Acres
LT-2 and LT-3	T. 8 N., R. 21 E., I.M. Sec. 31: NE¼SW¼ and Lot 3.	77.82

The proposed sale is consistent with the Bureau's planning system and the FLPMA of 1976. Public interest will be served by disposition of these isolated tracts that are difficult and uneconomical to manage as part of the public lands, and are not suitable for management by another Federal department or agency. The tracts do not have legal access and the BLM will not guarantee legal access.

Patents, when issued, will contain the following reservations:

1. All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this Bureau of Land Management office.

2. The sale of the lands will be subject to all valid existing rights and reservations of record.

3. The tracts will be subject to a floodplain restriction under Executive Order 11988.

4. The successful bidder agrees that he takes the real estate subject to the existing grazing use of Mr. Vernon D. Lyons, holder of grazing authorizing No. 0757. The rights of Mr. Lyons to graze domestic livestock on the real estate according to the conditions and terms of grazing authorization No. 0757 shall cease on February 28, 1991. The successful bidder is entitled to receive annual grazing fees from Mr. Lyons in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register**.

The patent to parcel number LT-2 (section 31) will contain a wetland protection patent restriction. The type, location, and size of the wetland will appear in the patent as well as the following restrictive language:

In accordance with section 209 of the FLPMA of 1976, 43 U.S.C. 1718 (1976) and section 4 of Executive Order 11990 (1978), 3 CFR 121 (1978), the patentee's use of the patented lands is restricted as follows:

1. Restrictions on use of wetlands contained in applicable Federal, state, or local wetlands regulations are incorporated hereby as if set forth fully herein.

2. The patentee may not use the patented land, or authorize its use, in such a manner that would directly or indirectly result in an adverse alteration of the wetland characteristics or category of that portion of the lands identified above as wetlands.

The patent restrictions are binding upon the patentee and his successors, heirs, and assigns.

The tracts offered for disposal will be sold by sealed bid. Federal law requires that bidders be United States citizens or, in the case of a corporation, subject to the laws of any State of the United States. Sealed written bids will be considered only if received by the BLM, Oklahoma Resource Area Headquarters, 200 N.W. Fifth Street, Oklahoma City, Oklahoma, 73102, prior to 10:00 a.m., Monday, March 31, 1986. The tract numbers should be printed on the lower left hand corner of the mailing envelope (example, Land Sale—Tract LT-2 and LT-3). Each written sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashiers check made payable to the Department of the Interior, Bureau of Land Management, for at least twenty percent of the amount bid. The written, sealed bids will be opened and publicly declared at the beginning of each sale. If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be the highest bid shall be by supplemental sealed bids.

Once a high bid price is accepted, the successful bidder shall submit the remainder of the full bid price within 180 days of the sale. Failure to pay the full bid price within 180 days shall result in cancellation of the sale of the tracts, and the deposit shall be forfeited and disposed of as other receipts of sale. All bids will be either returned, accepted, or rejected within 30 days of the sale date.

If Tracts LT-2 and LT-3 are not sold on the indicated sale date, they will be available for sale by sealed bid for a period of six months. Sealed bids will be opened and the high bidder will be publicly declared on the first Monday of each month at 10:00 a.m. as follows: (1) April 7, 1986; (2) May 5, 1986; (3) June 2, 1986; (4) July 7, 1986; (5) August 4, 1986; (6) September 8, 1986.

For a period of 45 days after the date of issuance of this Notice, interested parties may submit comments to the District Manager, Tulsa District Office. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence

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of any objections, this realty action will become the final determination of the Department of the Interior.

Jim Sims,

District Manager.

[FR Doc. 86-3122 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-FB-M

Sale of Public Land in Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The sale of public land (U-54698), described as T. 26S., R. 22E., SLM, Section 6, Lot 9, as announced in 50 FR 25791, June 21, 1985 and postponed in 50 FR 32116, August 8, 1985 is hereby resumed. In response to a protest of the proposed direct sale, the 2.5-acre parcel has been divided into three parcels to be offered by direct sale to three adjacent landowners at no less than the appraised fair market value.

Parcel No.	Acreage	Appraised fair market value	Adjacent landowner
A	0.18	$100	A.R. Stocks.
B	0.5	$250	George P. Johnson.
C	1.81	$850	Loren H. Johnson.

The terms and conditions applicable to the sale are:

1. The sale of the parcels will be subject to valid existing rights including the following:

Parcels A, B, and C: a. A 100' wide right-of-way for powerline U-058195.

Parcel C: Flood control structures owned by the City of Moab.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. A right-of-way for ditches and canals shall be reserved to the United States (43 U.S.C. 945).

The sale will be held at 10:00 AM on March 28, 1986 at the Bureau of Land Management, Grand Resource Area Office, Sand Flats Road, Moab, Utah 84532. Each of the adjacent landowners above, or his designated agent, must submit a deposit for no less than one-fifth of the fair market value. This can be a personal check, certified check, postal money order, bank draft or cashier's check made payable to the Department of the Interior, Bureau of Land Management. The remainder of the purchase price must be paid prior to 4:30 PM on September 24, 1986 (180 days from the date of the sale). The segregative effect of the June 21, 1985 notice will remain until such time that the parcels are sold or it expires under provisions of 43 CFR 2711.1-2(d).

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 4, 1986.

Gene Nodine,

District Manager.

[FR Doc. 86-3123 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-DQ-M

[ES-035926, Group 80]

Filing of Plat of Dependent Resurvey; Arkansas

February 7, 1986.

1. The plat of the dependent resurvey of a portion of the east boundary, Township 14 North, Range 20 West, the south boundary, Township 15 North, Range 19 West, and a portion of the subdivisional lines, Township 14 North, Range 19 West, Fifth Principal Meridian, Arkansas, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on March 24, 1986.

2. The dependent resurvey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., March 24, 1986.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 86-3124 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-GJ-M

Filing of Survey Plat; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Plats of survey of the lands described below accepted December 9, 1985, were officially filed in the Montana State Office effective 10 a.m. on January 16, 1986.

Principal Meridian, Montana

T. 7 N., R. 1 E.

This plat represents the dependent resurvey of portion of the subdivisional lines, Township 7 North, Range 1 East, Principal Meridian, Montana. The area described is in Broadwater County.

Principal Meridian, Montana

T. 11 N., R. 9 W.

This plat represents the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the survey of the subdivision of section 34, Township 11 North, Range 9 West, Principal Meridian, Montana. The area described is in Powell County.

Principal Meridian, Montana

T. 10 N., R. 9 W.

This plat represents the retracement of a portion of the Deer Lodge Guide Meridian and a portion of the north boundary; and the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the survey of the subdivision of section 6, Township 10 North, Range 9 West, Principal Meridian, Montana. The area described is in Powell County.

Principal Meridian, Montana

T. 11 N., R. 16 W.

This plat represents the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the survey of the subdivision of section 2, Township 11 North, Range 16 West, Principal Meridian, Montana. The area described is in Missoula County.

These surveys were executed at the request of the Butte District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: December 9, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: January 29, 1986.

Saundra L. Porenta,

Chief, Branch of Records.

[FR Doc. 86-3125 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-DN-M

Filing of Survey Plat; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: Plats of survey of the lands described below accepted January 6, 1986, were officially filed in the

Montana State Office effective 10 a.m. on January 29, 1986.

Principal Meridian, Montana

T. 14N., R. 12 W.

This plat represents the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 18, Township 14 North, Range 12 West, Principal Meridian, Montana. The area described is in Powell County.

Principal Meridian, Montana

T. 14 N., R. 13 W.

This plat represents the dependent resurvey of a portion of the south and east boundaries and a portion of the subdivisional lines, and the survey of the subdivision of sections 14 and 24, Township 14 North, Range 13 West, Principal Meridian, Montana. The area described is in Powell County.

Principal Meridian, Montana

T. 13 N., R. 14 W.

This plat represents the dependent resurvey of a portion of the Third Standard Parallel North, a portion of the east boundary and a portion of the subdivisional lines, and the survey of the subdivision of sections 25, 26, 27, 34, and 35, Township 13 North, Range 14 West, Principal Meridian, Montana. The area described is in Missoula County.

These surveys were executed at the request of the Butte District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: January 30, 1986.

Saundra L. Porenta,

Chief, Branch of Records.

[FR Doc. 86-3126 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-DN-M

[Serial No. I-14962]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, Department of Agriculture proposes a 160.00 acre withdrawal for the Kaufman Administrative Site continue for an additional 30 years, which is the anticipated time the site will continue to be used as an administrative site. These lands will remain closed to surface entry, mining and mineral leasing.

DATE: Comments should be received on or before May 14, 1986.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, Idaho State Office, 208-334-1735.

The Forest Service proposes that the existing land withdrawal made by Secretarial Order of November 14, 1908, be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is located in the following-described township and section:

Boise Meridian, Idaho

T. 11 N., R. 29 E.,

Sec. 35, SW¼.

The area involved totals 160.00 acres in Clark County.

The withdrawal is essential for the administration of remote backcounty, watershed, range and protection of valuable riparian habitat far removed from District Ranger Offices. The withdrawal closed the described land to surface entry, mining and to mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: February 7, 1986.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 86-3172 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 40 Field Federal Unit Agreement No. 14-08-001-3847, submitted on January 31, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Main Pass Block 40 Federal unit

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 6, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-3173 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Exxon Co.

AGENCY: Minerals Management Service; Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1619, Block 93, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to

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be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on February 7, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0676.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979. (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 7, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-3174 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma. Louisiana.

DATE: The subject DOCD was deemed submitted on February 3, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf, of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to secton 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of effected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 6, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-3175 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3328, Block 261, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intercoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 4, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd. Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of effected states, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 6, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-3178 Filed 2-12-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-201-60]

Import Investigation; Steel Fork Arms

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Following receipt of a petition filed on January 17, 1986, on behalf of the Ad Hoc Committee of Steel Fork Arm Producers, the United States International Trade Commission instituted investigation No. TA-201-60 under section 201 of the Trade Act of 1974 to determine whether steel arms for fork-lift trucks and similar vehicles, provided for in item 692.40 of the Tariff Schedules of the United States, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. The Commission will make its determination in this investigation by July 17, 1986 (see section 201(d)(2) of the act (19 U.S.C. 2251(d)(2))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 206, Subparts A and B (19 CFR Part 206), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Maria Papadakis (202-523-0439), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 7, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary of the Commission not later than the close of business (5:15 p.m.) on April 23, 1986. All persons desiring to appear at the hearing and make oral presentations, with the exception of public officials and persons not represented by counsel, should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 28, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 1, 1986. Posthearing briefs must be submitted not later than the close of business on May 14, 1986. Confidential material should be filed in accordance with the procedures described below.

Parties are encouraged to limit their testimony at the hearing to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 14, 1986. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Remedy.—In the event that the Commission makes an affirmative injury determination in this investigation, remedy briefs will be due to the Secretary no later than the close of business on June 16, 1986, and must conform with the requirements of § 201.6 of the Commission's rules. Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present oral arguments on the issue of remedy may do so at the hearing sheduled for May 7, 1986.

Authority: This investigation is being conducted under the authority of section 201 of the Trade Act of 1974. This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: February 7, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3119 Filed 2-12-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30773]

Elgin, Joliet and Eastern Railway Co.; Trackage Rights; Baltimore and Ohio Chicago Terminal Railroad Co.

Baltimore and Ohio Chicago Terminal Railroad Company has agreed to grant overhead trackage rights to Elgin, Joliet and Eastern Railway Company between Calumet Tower, IN, and Burnham, IL, a distance of approximately 3.8 miles. The trackage rights will be effective on January 31, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 5, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-3289 Filed 2-12-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Revocation of Registration; John M. Thorkelson, M.D.

Correction

In FR Doc. 86-2487 appearing on page 4543 in the issue of Wednesday, February 5, 1986, make the following corrections:

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In the first column, first line, "1085" should read "1985" and in the second line, "Administration" should read "Administrator".

BILLING CODE 1505-01-M

[Docket No. 85-52]

Rex A. Pittenger, M.D.; Revocation of Registration

On October 15, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Rex A. Pittenger, M.D. (Respondent) of 369 Sunset Road, Pittsburgh, Pennsylvania 15237 and Hancock Brooke M.H. Service, P.O. Box 2010, Weirton, West Virginia 26062, an Order to Show Cause proposing to revoke his DEA Certificates of Registration, AP1657569 and AP4685155, and to deny any pending applications for renewal of these registrations. The proposed action regarding DEA Certificate of Registration AP1657569, issued to Dr. Pittenger at his Pennsylvania address, was predicated upon his lack of state authorization to handle controlled substances in the Commonwealth of Pennsylvania. The proposed action regarding DEA Certificate of Registration AP4685155, issued to Dr. Pittenger at his West Virginia address, was predicated upon Dr. Pittenger's controlled substance-related felony conviction on June 8, 1984, in the Court of Common Pleas, Allegheny County, Commonwealth of Pennsylvania.

By letter dated November 12, 1985, Respondent's counsel requested a hearing on the issues raised by the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. Judge Young held a prehearing conference on November 25, 1985, and ordered that prehearing statements be submitted by January 6, 1986. By letter dated January 3, 1986, Respondent's counsel withdrew Dr. Pittenger's request for a hearing and consented to the revocation of both of the DEA Certificates of Registration. Consequently, Judge Young entered an Order Terminating Proceedings before him. Accordingly, the Administrator enters his final order in this matter based on the investigative file. 21 CFR 1301.57.

The Administrator first considers whether there is a lawful basis for the revocation of DEA Certificate of Registration AP4685155, issued to Dr. Pittenger at his West Virginia address. The Administrator finds that an agent of the Pennsylvania Bureau of Narcotics Investigation and Drug Control began an investigation in August 1982, of Dr. Pittenger's indiscriminate prescribing practices. The investigation revealed that Respondent prescribed numerous controlled substances for no apparent legitimate medical reason. In some instances, Dr. Pittenger prescribed these controlled substances to known drug addicts. Dr. Pittenger rarely performed any physical examination on his "patients" before prescribing them controlled substances. The investigation further revealed that Respondent prescribed large quantities of morphine and methadone to one of his "patients". This "patient" died of a drug overdose. The autopsy revealed that the death occurred as a result of a combined drug overdose of morphine, methadone and cocaine.

As a result of this investigation, on October 13, 1983, the December 1981, Allegheny County Investigating Grand Jury returned a seventeen count criminal complaint against Dr. Pittenger charging him with one count of involuntary manslaughter, eleven counts of prescribing not in accordance with accepted medical treatment principles and five counts of prescribing to drug dependent persons. On May 23, 1984, in the Court of Common Pleas, Allegheny County, Pennsylvania, Respondent pled *nolo contendere* to one count of involuntary manslaughter and pled guilty to the remaining 16 counts of the criminal complaint. These are felony offenses related to controlled substances. Therefore, there is a lawful basis for the revocation of Dr. Pittenger's West Virginia DEA Certificate of Registration. 21 U.S.C. 824(a)(2).

The Administrator next considers whether there is a lawful basis for the revocation of DEA Certificate of Registration AP1657569, issued to Dr. Pittenger at his Pennsylvania address. In response to Dr. Pittenger's convictions, in an Order dated September 4, 1985, the State Board of Medical Education and Licensure for the Commonwealth of Pennsylvania revoked Respondent's license to practice medicine and surgery in the Commonwealth of Pennsylvania. Therefore, there is lawful basis for the revocation of Dr. Pittenger's Pennsylvania DEA Certificate of Registration. 21 U.S.C. 824(a)(3).

The Drug Enforcement Administration cannot register a practitioner to handle controlled substances who is not duly authorized to handle controlled substances in the state in which he does business. 21 U.S.C. 823(f). This Administrator and all of his predecessors have consistently held that they cannot register practitioners who lack state authorization to handle controlled substances. See *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Sam S. Misasi, D.O.*, 50 FR 11469 (1985) and cases cited therein.

The Administrator concludes that both of Dr. Pittenger's DEA Certificates of Registration should be revoked. There is a lawful basis for the revocation of both of the registrations. Additionally, Dr. Pittenger has consented to such revocations. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration AP4685155 and AP1657569, previously issued to Dr. Rex A. Pittenger M.D., be, and they hereby are revoked. The Administrator further orders that any pending applications for registration are hereby denied. This order is effective March 17, 1986.

Dated: February 7, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-3196 Filed 2-12-86; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

1. Date: March 6-7, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: M-14.
Program: This meeting will review applications submitted for the "Humanities Instruction in Elementary and Secondary Schools" programs, for project beginning after January 1987.

2. Date: March 6-7, 1986.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Exemplary Projects and Teaching Materials Programs, Division of Education Programs, for projects beginning after July 1986.

3. Date: March 14, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review State Humanities Council applications for Exemplary Project awards for activities beginning after November 1, 1986.

4. Date: March 10, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for support of editions of non-Anglo-American materials submitted to the Editions category of the Texts Program in the Division of Research Programs, for projects beginning after July 1, 1986.

5. Date: March 3, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for support of editions in the fields of Musicology and British Literature and History submitted to the Editions category of the Texts Program in the Division of Research Programs, for projects beginning after July 1, 1986.

6. Date: March 7, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review Literature and Fine Arts applications submitted to the Tools category, Reference Materials Program, Division of Research Programs, for projects beginning after July 1, 1986.

7. Date: March 7, 1986.
Time: 8:30 a.m. to 5:00 p.m.
Room: 730.
Program: This meeting will review applications for preservation projects, Office of Preservation, for projects beginning after July 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-3178 Filed 2-12-86; 8:45 am]

BILLING CODE 7536-01-M

Long-Term Enhancement to the National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Ad Hoc Meeting on Long-Term Enhancement to the National Council on the Arts will be held on February 24-25, 1986 from 9:00 a.m. to 5:30 p.m. in Room MO-9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be Overview of the Challenge Grant Program and discussion of Long-Term Enhancement.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5469 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 4, 1986.

[FR Doc. 86-3127 Filed 2-12-86; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Demonstration Section) will be held on Wednesday and Thursday, February 26-27, 1986 from 9:00 a.m. to 5:30 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Thursday, February 27, 1986 from 3:30 p.m. to 5:30 p.m. Topic for discussion will be policy.

The remaining sessions of this meeting on Wednesday, February 26, 1986 from 9:00 a.m. to 5:30 p.m., 1986 and Thursday, February 27, 1986 from 9:00 a.m. to 3:30 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 4, 1986.

[FR Doc. 86-3128 Filed 2-12-86; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Visual/Media/Design/Literature Section) will be held on Thursday, February 27, 1986 from 9:00 a.m. to 6:00 p.m. and Friday, February 28, 1986 from 9:00 a.m. to 5:30 p.m., Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on Thursday, February 27, 1986 from 9:00 a.m. to 10:15 a.m. and Friday, February 28, 1986 from 3:30 p.m. to 5:30 p.m. Topic for discussion will be general program overview and policy issues.

The remaining sessions of this meeting on Thursday February 27, 1986 from 10:15 a.m. to 6:00 p.m., and Friday February 28, 1986 from 9:00 a.m. to 3:30 p.m. are for the purpose of Panel review, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as

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amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

February 6, 1986.

[FR Doc. 86–3129 Filed 2–12–86; 8:45 am]

BILLING CODE 7537–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions Section) to the National Council on the Arts will be held on February 24–27, 1986 from 9:00 a.m.–5:30 p.m., in Room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 3, 1986

[FR Doc. 86–3130 Filed 2–12–86; 8:45 am]

BILLING CODE 7537–01–M

President's Committee on the Arts and Humanities; Meeting

Wednesday, February 26, 1986 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary meeting XI which will be open to the public. This meeting has been scheduled in the Council Room, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, in Washington, DC. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported. The meeting is expected to adjourn before lunch.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

The primary presentation of the meeting will be that of J. Carter Brown, Director of National Gallery of Art on the needs of the National Gallery. In addition, there will be a discussion of the role of the State Humanities Councils.

For further information individuals may call 202–682–5409.

John H. Clark,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

February 3, 1986.

[FR Doc. 86–3131 Filed 2–12–86; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Mime Section) to the National Council on the Arts will be held on February 27, 1986, from 10:00 a.m. 5:30 p.m., in Room MO–7 of the Nancy Hanks Center, 100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 6, 1986.

[FR Doc. 86–3132 Filed 2–12–86; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on Friday, February 28, 1986 from 9:00 a.m.–5:30 p.m., in Room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington. DC 20506.

A portion of this meeting will be open to the public on Friday, February 28, 1986 from 12:00 noon to 5:30 p.m. Topics for discussion will include 5-Year Planning, Presenters, Second Homes, Actor/Designer Fellows, Multi-Year Funding, Institution Development & Guidelines.

The remaining session of this meeting on Friday, February 28, 1986 from 9:00 a.m.–12:00 noon is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants, and for discussion and development of confidential materials and projections regarding FY 1987 and future year budget levels to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 6, 1986.

[FR Doc. 86–3133 Filed 2–12–86; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Class 9 Accidents (Severe Accident Phenomena); Rescheduled Meeting

The ACRS Subcommittee on Class 9 Accidents (Severe Accident Phenomena) published in the **Federal Register** dated February 4, 1986 (51 FR 4448) scheduled for February 19, 1986 *has been changed to Monday, February 24, 1986,* 8:30 A.M., Room 1046, 1717 H Street, NW, Washington, DC. All other items regarding this meeting remain the same as previously published.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

The Subcommittee will review the NRR implementation plan for the Severe Accident Policy.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 10, 1986

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–3238 Filed 2–12–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 13–15, 1986, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the Federal Register on January 21, 1986. This revised notice reflects changes in the timing and scope of some activities previously noticed.

Thursday, February 13, 1986

8:30 A.M.–8:45 A.M.: Report of ACRS Choirman (Open—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.–10:45 A.M.: Radioactive Waste Management and Reactor Radiological Effects (Open)—The members will hear and discuss activities considered during the January 15–17, 1986 subcommittee meeting on radioactive waste management and control, including proposed *de minimis* levels for radioactive releases to the environment, as well as features related to research, regulation, and policy coordination on this subject. Representatives of the NRC Staff, DOE, and the nuclear industry will participate as appropriate.

10:45 A.M.–11:45 A.M. ACRS Procedures and Administration (Open)—The ACRS members will hear and discuss the remainder of the report of its Subcommittee on Procedures and Administration regarding the recommendations of the Panel on ACRS Effectiveness and other aspects of ACRS procedures and practices.

11:45 A.M.–12:15 P.M.: Future Activities (Open—The members will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:15 P.M.–3:15 P.M.: Safety Research Program (Open)—The members will discuss the proposed ACRS Annual Report to the U.S. Congress regarding the proposed NRC safety research program and budget for FY 1987.

3:15 P.M.–5:15 P.M.: Three Mile Island Unit 2 Core Criticality (Open)—Members of the Committee will hear and discuss the report of its subcommittee regarding the actions being taken to prevent criticality of the Three Mile Island Unit 2 core during the defueling operation.

5:15 P.M.–6:30 P.M.: San Onofre, Unit 1 Nuclear Generating Station (Open)—The Committee members will hear and discuss the report of its subcommittee and the NRC Staff regarding the November 21, 1985 loss of AC power/water hammer event at this Station. Representatives of the Licensee will participate in the discussion as appropriate.

Friday, February 14, 1986

8:30 A.M.–9:30 A.M.: NRC Outage Inspection Program (Open)—The members will hear and discuss a briefing by representatives of the NRC Staff regarding an NRC Outage Inspection Program.

9:30 A.M.–11:45 A.M.: Security Provisions at Nuclear Power Plants (Open)—The Committee will consider proposed changes in NRC regulations regarding protection of nuclear plants from sabotage by insiders. Representatives of the NRC and the nuclear industry will take part in the discussion as appropriate.

11:45 A.M.–12:00 Noon: ACRS Subcommittee Activities (Open)—The members will hear and discuss the report of its Subcommittee regarding the proposed resolution of USI A–46, "Seismic Qualification of Equipment in Operating Plants."

1:00 P.M.–3:30 P.M.: Use of the "Check-Operator" Concept for Requalification of Reactor Operators (Open)—The members will hear and discuss reports from representatives of the NRC Staff, the FAA, and the nuclear industry regarding the use of a "check-operator" for requalification of nuclear power plant operators.

3:30 P.M.–5:00 P.M.: DOE High-Level Radwaste Program (Open)—The members will hear and discuss a briefing by representatives of DOE regarding the anticipated DOE program for the management and disposal of civilian, high-level, radioactive wastes.

5:00 P.M.–6:30 P.M.: Reactor Operations (Open/Closed))—The members will hear and discuss reports from the designated ACRS subcommittee, members of the NRC Staff, and representatives of the nuclear industry as appropriate regarding recent operating events and incidents at nuclear power stations. The subcommittee will also report to the full Committe regarding NRC proposed changes in requirements for nuclear power plant technical specifications.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the topics being considered.

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Saturday, February 15, 1986

8:30 A.M.–11:40 Noon—Preparation of ACRS Reports (Open)—Discuss proposed reports to the U.S. Congress and to the NRC regarding items considered during this meeting.

11:40–12:00 Noon—DOE Advanced Reactors (Open/Closed)—The members will hear and discuss the report of its subcommittee meeting on January 30, 1986 regarding DOE development of advanced nuclear steam supply systems.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

1:00 P.M.–3:30 P.M.—ACRS Subcommittee Activities (Open)—Discuss ACRS reports regarding safety-related matters proposed by ACRS Members including: NRC programs on the quantification of seismic design margins; the state of nuclear power plant safety; reactor pressure vessel pressurized thermal shock-related transients; containment sump performance in nuclear stations; *de minimis* levels of radiation dose in risk calculations; venting of nuclear power plant containments.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questons may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portons of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduing would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)] applicable to the matters being discussed.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: February 11, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–3314 Filed 2–12–86; 10:20 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A86–10, Order No. 664]

South Grafton, Arthur H. Boutiette, et al., Petitioners; Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: February 6, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket number: A86–10

Name of affected post office: South Grafton, Massachusetts 01560

Name(s) of petitioner(s): Arthur H. Boutiette, *et al.*

Type of determination: Consolidation

Date of filing of initial appeal papers: February 3, 1986

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic Savings [39 U.S.C. 404(b)(2)(D)].
4. Observance of procedural requirements [39 U.S.C. 404(b)(5)(B)].
5. Substantial of procedural requirements [39 U.S.C. 404(b)(5)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before February 18, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Feb. 3, 1986	Filing of Petition.
Feb. 6, 1986	Notice and Order of Filing of Appeal
Feb. 28, 1986	Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].
Mar. 10, 1986	Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
Mar. 31, 1986	Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
Apr. 15, 1986	(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
Apr. 22, 1986	(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral arguement only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
June 3, 1986	Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86–3177 Filed 2–12–86; 8:45 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–24014; 70–7222]

Central and South West Corp.; Proposed Issuance of Options To Purchase Common Stock and Stock Appreciation Rights, and Issuance and Sale of Common Stock Pursuant to Stock Option Plan; Exception From Competitive Bidding; Order Authorizing Solicitation of Proxies

February 6, 1986.

Central and South West Corporation ("CSW"), 2121 San Jacinto Street, Suite 2500 Dallas, Texas 75222, a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50, 62, and 65 thereunder.

CSW seeks authority to issue options to purchase shares of its common stock ("CSW Common Stock") and stock appreciation rights, and to issue and sell shares of CSW Common Stock pursuant to a Stock Option Plan ("Plan"). CSW also seeks authority to solicit proxies for approval of the Plan.

The purpose of the Plan is to aid in securing and retaining key executive employees of outstanding ability for CSW and its subsidiaries. Employees selected by a committee of the Board of Directors ("Committee") will be eligible from time to time during the term of the Plan to be awarded options to purchase shares of CSW Common Stock and stock appreciation rights. The number of options and stock appreciation rights granted pursuant to the Plan, and all of the associated terms and conditions, are to be determined by the Committee. Without further authorization by the shareholders of CSW and by this Commission under the Act, no more than 1,500,000 shares of CSW Common Stock will be issued and sold under the Plan, subject to certain adjustments to reflect combinations, reclassifications or subdivisions of such shares. The maximum number of shares with respect to which stock appreciation rights may be granted pursuant to any particular award shall not exceed 50% of the shares subject to the options granted under such award. The exercise price for options granted under the Plan will not be less than the fair market value of the shares covered by the option at the time the option is granted. The Plan also permits CSW to grant stock appreciation rights which would permit an optionee to receive from CSW, upon exercise, cash or shares of CSW Common Stock with an aggregate fair market value equal to the aggregate appreciation in value of the shares in respect of which the right was exercised.

The Plan is subject to approval by CSW shareholders. CSW therefore proposes to solicit proxies in this regard, has filed its proxy solicitation material, and requests that the effectiveness of its application-declaration with respect to the solicitation of proxies be accelerated as provided in Rule 62.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 3, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

It appearing to the Commission that CSW's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It appearing to the Commission that CSW's declaration regardaing the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3188 Filed 2–12–86; 8:45 am.]

BILLING CODE 8010–01–M

[File No. 22–14019]

Application and Opportunity for Hearing; Ford Motor Credit Co.

Notice is hereby given that Ford Motor Credit Company (The "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Manufacturers Hanover Trust Company ("Manufacturers") with respect to certain indentures of the Applicant which were previously qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to prevent Manufacturers from acting as trustee under any of such indentures.

The Applicant has issued and outstanding the following debt securities secured by the following indentures, in each case between the Applicant and Manufacturers, as trustee, all of which are the subject of the application:

(1) Medium-Term Notes due from 9 months to 5 years from date of Issue, under an Indenture dated as of March 15, 1973, as supplemented by a First Supplemental Indenture dated as of April 15, 1977, a Second Supplemental Indenture dated as of April 1, 1979, a Third Supplemental Indenture dated as of September 30, 1981, a Fourth Supplemental Indenture dated as of October 13, 1981, a Fifth Supplemental Indenture dated as of April 30, 1982, a Sixth Supplemental Indenture dated as of September 15, 1982, a Seventh Supplemental Indenture dated as of January 1, 1983, an Eighth Supplemental Indenture dated as of August 1, 1983, a Ninth Supplemental Indenture dated as

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of November 15, 1983, a Tenth Supplemental Indenture dated as of March 15, 1984, and an Eleventh Supplemental Indenture dated as of December 1, 1984;

(ii) 8.70% Debentures due April 1, 1999, under an Indenture dated as of April 1, 1974;

(iii) 10½% Debentures due January 15, 1995, under an Indenture dated as of October 1, 1974;

(iv) 9⅛% Debentures due January 15, 1995, under an Indenture dated as of January 15, 1975;

(v) 8.85% Notes due July 15, 1985, under an Indenture dated as of July 15, 1975;

(vi) 9.70% Debentures due January 15, 2000, under an Indenture dated as of July 15, 1975;

(vii) 8⅞% Notes due January 15, 1986, under an Indenture dated as of December 15, 1985;

(viii) 9¾% Debentures due January 15, 2001, under an Indenture dated as of December 15, 1975;

(ix) 8⅝% Notes due June 1, 1986, under an Indenture dated as of June 1, 1976;

(x) 9⅛% Debentures due June 1, 2001, under an Indenture dated as of June 1, 1976;

(xi) 8¾% Debentures due November 1, 2001, under an Indenture dated as of November 1, 1976;

(xii) 9¾% Notes due March 15, 1987, under an Indenture dated as of March 15, 1979;

(xiii) 9.85% Debentures due March 15, 2004, under an Indenture dated as of March 15, 1979;

(xiv) 9.45% Notes due June 15, 1989, under an Indenture dated as of June 15, 1979;

(xv) 15¾% Notes due December 1, 1990, under an Indenture dated as of December 1, 1980;

(xvi) 16¼% Notes due January 15, 1987, under an Indenture dated as of November 15, 1981;

(xvii) Floating Rate Notes, Under an Indenture dated as of June 1, 1982, as supplemented by a First Supplemental Indenture dated as of June 15, 1982;

(xviii) One Year Extendible Notes, under an Indenture dated as of July 15, 1982;

(xix) Capital Notes, under an Indenture dated as of September 30, 1982;

(xx) 12⅜% Notes due November 15, 1987, under an Indenture dated as of November 1, 1982;

(xxi) Floating Rate Notes, under an Indenture dated as of December 15, 1982, as supplemented by a First Supplemental Indenture dated as of March 15, 1983;

(xxii) 11¼% Notes due June 1, 1986, under an Indenture dated as January 15, 1983;

(xxiii) 12¾% Notes due January 15, 1988, under an Indenture dated as of January 15, 1983;

(xxiv) Variable Rate Notes, under an Indenture dated as of April 1, 1983, as supplemented by a First Supplemental Indenture dated as of April 15, 1984;

(xxv) Five-Year Extendible Notes, under an Indenture dated as of September 15, 1983;

(xxvi) Quarterly Variable Rate Notes and Semi-annual Variable Rate Notes, under an Indenture dated as of May 1, 1984, as supplemented by a First Supplemental Indenture dated as of May 1, 1984 and a second supplemental Indenture dated as of December 1, 1984;

(xxvii) Annual Adjustable Rate Notes due March 1977, 11¾% Notes due April 1, 1990, 11⅞% Notes due April 15, 1990, Extendible Notes due April 15, 2000, Annual Adjustable Rate Notes due June 1999 and 11% Notes due June 1, 1995, under an Indenture dated as of February 1, 1985;

(xxviii) 8⅞% Debentures due April 15, 1990, under an Indenture dated as of April 15, 1970 (the "April 15, 1990 Debentures Indenture"); and

(xxix) 8⅞% Debentures due November 1, 1990, under Indenture dated as of November 1, 1970 (the "November 1, 1990 Debentures Indenture", which together with all the previously mentioned Indentures, shall hereinafter be referred to collectively as the "Indentures" and individually as an "Indenture").

The original trustee under each of the Indentures except for the April 15, 1990 Debentures Indenture and the November 15, 1990 Debentures Indenture is Manufacturers. The original trustee under the April 15, 1990 Debenture Indenture and the November 15, 1990 Debentures Indenture was Morgan Guaranty Trust Company of New York ("Morgan") who resigned and the Company duly appointed Manufacturers as successor trustee, which appointment Manufacturers accepted, all pursuant to Instruments of Appointment and Acceptance of Successor Trustee and Appointment of Agent among the Applicant, Morgan and Manufacturers.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (b)(1) of this section provides, with certain exceptions stated herein, that a trustee under a qualified indenture of a company shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities of such company are outstanding.

The application, filed pursuant to clause (ii) of section 310(b)(1) of the Act seeks to exclude the Indenture from the operation of section 310(b)(1) of the Act.

The effect of clause (ii) of section 310(b)(1) of the Act on the application is such that the Indentures may be excluded from the operation of section 310(b)(1) of the Act if the Applicant shall have sustained the burden of proving, by this application to the Commission and after opportunity for hearing thereon, that the trusteeship of Manufacturers under the Indentures is not so likely to involve such a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as trustee under any Indenture. In support of its application the Applicant alleges that:

(1) The Indentures are wholly unsecured and the debt securities secured by the Indentures rank *pari passu inter se*. The only material differences among the Indentures and among the rights of the holders of the debt securities secured by the Indentures relate to aggregate principal amounts, dates of issue, Events of default as defined in the Indentures, maturity and interest payment dates, interest rates, redemption prices and procedures, sinking fund provisions, and other provisions of a similar nature.

(2) Each Indenture under which Manufacturers is the original trustee specifically describes each previously executed Indenture under which Manufacturers is the original trustee, in accordance with one of the exceptions provided in section 310(b)(1) of the Act and the corresponding section of each such Indenture.

(3) No default has at any time existed under any Indenture.

(4) Such differences as exist among the Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Manufacturers from acting as trustee under any one or more of the Indentures.

The Applicant waives (a) notice of hearing, (b) hearing on the issues raised by this Application and (c) all rights to specify procedures unde Rule 8(b) of the Commission Rules of Practice.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14019, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, DC.

Notice is further given that any interested person may, not later than March 3, 1986 request in writing that a hearing be held on such matters, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or in the interest of investors, unless a hearing is ordered by the Commission.

For the Commission by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

Service List

Hurley D. Smith, Ford Motor Credit Company, The American Road, P.O. Box 1732, Dearborn, Michigan 48121-1732

David H. Potel, Esq., Securities and Exchange Commission, Stop 3-3, 450 Fifth Street, NW., Washington, DC 20549

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[FR Doc. 86-3189 Filed 2-12-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14932; File No. 812-6280]

Merrill Lynch Retirement Benefit Government Securities Fund, Inc.; Application for an Order Granting Exemption

February 5, 1986.

Notice is hereby given that Merrill Lynch Retirement Benefit Government Securities Fund, Inc. ("Applicant"), P.O. Box 9011, Princeton, New Jersey 08540-9011, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on January 13, 1986, requesting an order of the Commission pursuant to section 6(c) of the Act, exempting Applicant, and any other registered mutual fund or series thereof which has a contingent deferred sales charge substantially the same as that which Applicant proposes herein, and which Merrill Lynch Asset Management, Inc. ("MLAM"), or its affiliate, Fund Asset Management, Inc., may serve as investment adviser or manager, or any such company for which Merrill Lynch Funds Distributor, Inc. ("Distributor"), also a wholly-owned subsidiary of MLAM, serves as principal underwriter or distributor (such other mutual funds, together with Applicant, may hereinafter be referred to as "Funds"), from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act, and Rule 22c-1 thereunder, to the extent necessary to permit the Funds to assess a contingent deferred sales charge on certain redemptions of their shares, and to permit the Funds to waive the contingent deferred sales charge in certain cases. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

According to Applicant, mutual funds sold with a sales charge, have traditionally imposed a front-end charge, so that the purchase payments are invested after the deduction of any applicable sales charge. Applicant proposes the Funds' shares be offered without an initial sales charge so that investors will have the entire amount of their purchase payments fully invested when made. However, Applicant also proposes to pay the Distributor a contingent deferred sales charge from the proceeds of certain redemptions of its shares. Applicant states that in no event could the amount of such charges, in the aggregate, exceed 4% of the aggregate purchases made by the investor.

Applicant represents that the contingent deferred sales charge will not be imposed on redemptions of a Fund's shares which were purchased more than four years prior to redemption, or which were derived from reinvestment of distributions. Also, with respect to shares purchased during the preceding four years, no contingent deferred sales charge would be imposed on an amount which represents an increase in the value of the particular shares being redeemed due to capital appreciation. Applicant states that, for purposes of determining whether a contingent deferred sales charge would be imposed, it will be assumed that a redemption is made, first, of shares purchased more than four years prior to the redemption, second, of shares derived from reinvestment of distributions and, third, of shares purchased less than four years prior to the redemption. Where a contingent deferred sales charge is imposed, the amount of the charge would depend upon the number of years elapsed since the investor made the purchase payment from which an amount is being redeemed. Such charge would be 4% in the first year, reducing by 1% per year.

Applicant states further that, in determining the rate of any applicable contingent deferred sales charge, it will be assumed that a redemption is made of a Fund's shares held by the investor for the longest period of time within the applicable four-year period.

Applicant believes that the imposition of the contingent deferred sales charge would be fair and in the best interests of the Fund's shareholders. Applicant submits that the proposed transaction permits shareholders to enjoy the advantages of greater investment dollars working for them from the time of their purchase of shares of a Fund. Moreover, Applicant states that, because the contingent deferred sales charge would apply only to redemptions of amounts representing purchase payments, it does not apply to increase in net asset value per share, or to amounts representing reinvestment of distributions.

Applicant proposes, as well, to finance the Fund's distribution expenses pursuant to a plan adopted under Rule 12b-1 under the Act ("Plan"). Under the Plan, the Funds will pay an annual fee to the Distributor, in order to defray certain costs incurred in connection with the offering of Fund shares, including advertising and promotional costs, sales administration and related sales expenses such as the costs of printing and distributing prospectuses to prospective investors, and sales commissions and incentive compensation. Applicant's distribution fee will be calculated on the basis of 1% per annum of the average daily net assets of a Fund. The distribution fee will be treated as an expense by the Funds.

Where amounts attributable to purchase payments are redeemed (and thus no longer contribute to the annual distribution charge), Applicant believes that it is fair: (1) To impose on the withdrawing shareholder a lump-sum payment reflecting expenses which have not been recovered through payments by a Fund, and (2) to remove the assets on which the contingent deferred sales charge was imposed from the base amount on which the Fund's distribution

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fee is calculated. Applicant asserts that the amount, computation and timing of the contingent deferred sales charge thus are designed to promote fair treatment of all shareholders, while permitting the Funds to offer investors the advantage of having purchase payments fully invested on their behalf immediately. Applicant states that, in its review of the Plan pursuant to Rule 12b–1, Applicant's board of directors will consider the use by the Distributor of revenue raised by the contingent deferred sales charge.

Applicant proposes to waive the contingent deferred sales charge on any redemption following the death or disability of a shareholder. An individual will be considered disabled for this purpose if he meets the definition thereof set forth in section 72(m)(7) of the Internal Revenue Code of 1954 ("Code"). Applicant states that the waiver is applicable where the decedent or disabled person is either an individual shareholder or owns the shares with his or her spouse as a joint tenant with right of survivorship, and where the redemption is made within one year of the death or initial determination of disability. In addition, the Funds may provide for certain exchange privileges with certain Merrill Lynch-sponsored mutual funds.

Applicant also proposes to waive the contingent deferred sales charge when a total or partial redemption is made in connection with certain distributions from IRA's or other qualified retirement plans. It is proposed that the charge be waived for any redemption in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 408(d) (4) or (5) of the Code, or upon the death or disability of the employee.

Applicant submits that the proposed contingent deferred sales charge is consistent with all provisions of the Act and that no exemptive relief is required in order to to implement the proposed transactions. However, to avoid any possibiljty that questions may be raised as to the potential applicability of various definitional and regulatory sections of the Act, and to permit the charge to be waived, Applicant requests an exemption from the provisions of the Act denoted above.

Applicant asserts that imposition of the contingent deferred sales charge in the manner described above would not cause shares of the Funds to fall outside the definition of "redeemable securities" in section 2(a)(32) of the Act. Applicant believes that imposition of the contingent deferred sales charge in no way restricts a shareholder from receiving his proportionate share of the current net assets of the Fund, but merely defers the deduction of a sales charge and makes it contingent upon an event which may never occur. However, in order to avoid uncertainty in this regard, Applicant requests an exemption from the operation of section 2(a)(32) of the Act to the extent necessary to permit implementation of the proposed contingent deferred sales charge.

Applicant submits that the proposed contingent deferred sales charge is consistent with the intent of the definition "sales load" contained in the Act. The contingent deferred sales charge will be paid to the Distributor for sales compensation and to reimburse it for expenses related to offering the Funds' shares for sale to the public, and, therefore, Applicant submits that this arrangement is within the section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicant contends that deferral of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the basic nature of this charge, which is in every other respect a sales charge.

Applicant further submits that implementation of the proposed contingent deferred sales charge is in no way violative of section 22(c), or Rule 22c–1 thereunder. When a redemption of shares of a Fund is effected, the price of the shares on which redemption will be effected will be based on current net asset value. The contingent deferred sales charge will merely be deducted at the time of redemption in order to determine the shareholder's proportionate redemption proceeds. However, in order to resolve any question that might be raised as to the potential applicability of section 22(c) and Rule 22c–1, Applicant requests an exemption from the provisions of Rule 22c–1 to permit Applicant to implement the proposed contingent deferred sales charge. Applicant will disclose the contingent deferred sales charge in its prospectus. Applicant submits, in addition, that, because the proposed contingent deferred sales charge and the waiver thereof will be applied as described in the Funds' registration statements, Rule 22d–1 exempts the contingent deferred sales charge and the waiver thereof from the prohibitions of section 22(d) of the Act. Nonetheless, to preclude any assertion that Rule 22d–1 is inapplicable to the waiver and the contingent deferred sales load, Applicant requests an exemption from section 22(d) to the extent necessary to implement the contingent deferred sales load and waiver thereof as described above. In this regard, Applicant asserts that the waiver of the contingent deferred sales charge in the extraordinary circumstance of death or total disability of the investor is justified on basic consideration of fairness. It is stated that such a reduction in or elimination of the sales load has not been proposed with respect to investment companies having traditional initial sales loads because the impact of such a charge is not sustained by the shareholder at the time of redemption (as it is with a contingent deferred sales charge).

Furthermore, the waiver of the contingent deferred sales charge under the circumstances contemplated would not, it is claimed, adversely affect existing shareholders. Waiver of the charge would not result in the loss of any revenue to the Funds because proceeds from the charge would, be paid to the Distributor. Moreover, Applicant asserts that, because the 1% distribution fee payable pursuant to the Plan is based on the average daily net assets of a Fund, amounts redeemed, including amounts upon which the contingent charge is waived, will be removed from the base upon which the fee is calculated.

Applicant submits that the exemptions it has requested are appropriate and in the public interest, consistent with the protection of investors and the purpose fairly intended by the Act. Applicant further submits that waiver of the contingent deferred sales charge under the above-described circumstances will not harm the Funds or their remaining shareholders or purchasers. Additionally, Applicant represents that it will fully disclose the waiver provision in the Funds' prospectuses.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than February 26, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued as a course unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3190 Filed 2–12–86; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–14373]

Application and Opportunity for Hearing; Sohio/BP Trans Alaska Pipeline Capital Inc., et al.

Notice is hereby given that Sohio/BP Trans Alaska Pipeline Capital, Inc. has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the proposed trusteeship of The Chase Manhattan Bank (National Association) ("Chase") under an Indenture, dated as of December 1, 1974 (the "1974 Indenture"), between Sohio/BP Trans Alaska Pipeline Capital Inc. (the "Company") and Morgan Guaranty Trust Company of New York, which was heretofore qualified under the Act, relating to the Company's 9¾% Debentures Due 1999 (the "9¾% Debentures") and (i) an Indenture, dated as of January 1, 1970 (the "1970 Indenture"), between The Standard Oil Company, an Ohio corporation ("Sohio"), and Chase; (ii) and Indenture, dated as of May 1, 1976 (the "1976 Indenture"), among Sohio Pipe Line Company ("Sohio Pipe Line"), Sohio, as Guarantor, and Chase; (iii) and Indenture, dated as of July 1, 1982 (the "1982 Indenture"), between Sohio and Chase; (iv) and Indenture, dated as of August 15, 1975 (the "1975 Indenture"), among BP North American Finance Corporation ("Finance"), The British Petroleum Company Limited (now The British Petroleum Company p.l.c.), as Guarantor ("BP"), and Chase; (v) an Indenture, dated as of February 1, 1976 (the "1976 Finance Indenture"), among Finance, BP, as Guarantor, and Chase; and (vi) and Indenture, dated as of June 15, 1983 (the "1983 Indenture"), among Finance, BP, as Guarantor, and Chase (the 1970 Indenture, the 1976 Indenture, the 1982 Indenture, the 1975 Indenture, the 1976 Finance Indenture and the 1983 Indenture are sometimes referred to collectively as the "Existing Indentures") is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as Trustee under the 1974 Indenture and the Existing Indentures (the 1974 Indenture and the Existing Indentures are sometimes referred to collectively as the "Indentures").

The provisions of section 310(b) of the Act, which are among those of the Indentures, provide in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the same issuer are outstanding.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act, seeks to exclude the 1974 Indenture from the operation of section 310(b)(1) of the Act with respect to the Existing Indentures.

The effect of the proviso contained in clause (ii) of section 310(b)(1) of the Act on the matter of the present application is such that the 1974 Indenture may be excluded from the operation of section 310(b)(1) of Act with respect to the Existing Indenture if the Company shall have sustained the burden of proving, by application to the Commission and after opportunity for hearing thereon, that the trusteeship of Chase under the 1974 Indenture and under the Existing Indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Chase from acting as trustee under the 1974 Indenture and the Existing Indentures. In support of its application the Company alleges that:

(1) As of July 30, 1985, the Company had outstanding $218,830,000 aggregate principal amount of its 9¾% Debentures issued under the 1974 Indenture. The 9¾% Debentures were registered (File No. 2–52263) under the Securities Act of 1933, as amended (the "1933 Act"), and the 1974 Indenture was qualified under the Act. As of July 30, 1985, Sohio had outstanding $109,636,000 aggregate principal amount of its 8½% Debentures Due 2000 (the "8½% Debentures") issued under the 1970 Indenture. The 8½% Debentures were registered under the 1933 Act (File No. 2–35722) and the 1970 Indenture was qualified under the Act. As of July 30, 1985, Sohio Pipe Line had outstanding $250,000,000 aggregate principal amount of its 8¾% Guaranteed Debentures Due 2001 (the "8¾% Guaranteed Debentures") issued under the 1976 Indenture.

The 8¾% Guaranteed Debentures were registered under the 1933 Act (File No. 2–56041) and the 1976 Indenture was qualified under the Act. As of July 30, 1985, Sohio had outstanding $150,000,000 aggregate principal amount of its 13⅜% Notes Due September 15, 1992 (the "13⅜% Notes") issued under the 1982 Indenture and %150,000,000 aggregate principal amount of 10⅞% Debentures Due May 1, 2013 (the "10⅞% Debentures") issued thereunder. The 13⅜% Notes and 10⅞% Debentures were registered under the 1933 Act (File No. 2–78399) and the 1982 Indenture was qualified under the Act. As of July 30, 1985, BP North American Finance Corporation ("Finance") has outstanding $75,000,000 aggregate principal amount of 10% Guaranteed Debentures Due 2000 (the "10% Guaranteed Debentures") issued under the 1975 Indenture, The 10% Guaranteed Debenture were registered under the 1933 Act (File No. 2–54233) and the 1975 Indenture was qualified under the Act. As of July 30, 1985, Finance had outstanding $126,000,000 aggregate principal amount of 9¼% Guaranteed Debentures Due 2001 (the "9¼% Guaranteed Debentures") issued under the 1976 Finance Indenture. The 9¼% Guaranteed Debentures were registered under the 1933 Act (File No. 2–55357) and the 1976 Finance Indenture was qualified under the Act. As of the date hereof, Finance had not issued any indebtedness under the 1983 Indenture which was qualified under the Act;

(2) No debt securities other than the securities listed in paragraph (1) above have been issued under any of the Existing Indentures;

(3) The 1974 Indenture and the Existing Indentures are wholly unsecured, and will rank *pari passu inter se*. The Company alleges in particular with respect to the 9¾% Debentures and the 1974 Indenture that:

a. The Company, a Delaware corporation, is jointly owned by Sohio and BP. Sohio beneficially owns 67.8% of Pipeline's common stock and BP beneficially owns 32.2% of such common stock.

b. In connection with the issuance of the 9¾% Debentures by the Company, Sohio Pipe Line, a Delaware corporation and a wholly-owned subsidiary of Sohio ("Sohio Pipe Line"), entered into a Note Purchase Agreement, dated December 1, 1974 (the "Sohio Pipe Line Note Purchase Agreement"), with the Company, BP and Morgan, under which Sohio Pipe Line issued to the Company its 9¾% Guaranteed Note Due 1999 (the "Sohio Pipe Line Note") in the aggregate principal amount of $169,500,000,

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representing 67.8% of the aggregate principal amount of the 9¾% Debentures issued under the 1974 Indenture. The Sohio Pipe Line Note is unconditionally guaranteed as to payment of principal thereof and premium, if any, and interest thereon by Sohio (the "Sohio Guarantee"). The Sohio Guarantee is endorsed on the Sohio Pipe Line Note.

c. In addition, Sohio and Sohio Pipe Line entered into a Completion Agreement and a Financing Agreement, each dated as of December 1, 1974 (respectively, the "Sohio Completion Agreement" and the "Sohio Financing Agreement"), pursuant to which Sohio agreed to guarantee the obligations of Sohio Pipe Line relating to the costs of the pipeline project, including the costs of any indebtedness incurred in order to finance such project. Each of the Sohio Financing Agreement and Sohio Completion Agreement creates general unsecured obligations of Sohio without any pledge or mortgage of any assets of Sohio. By Assignments each dated as of December 1, 1974, the rights of Sohio Pipe Line to receive payments from Sohio under the Sohio Completion Agreement and the Sohio Financing Agreement were assigned to Morgan by Sohio Pipe Line for the equal and ratable benefit of the holders of the 9¾% Debentures.

d. Likewise, in connection with the issuance of the 9¾% Debentures by the Company, BP Pipeline Inc., a Delaware corporation and a wholly-owned subsidiary of BP ("BP Pipelines"), entered into a Note Purchase Agreement, dated December 1, 1974 (the "BP Pipeline Note Purchase Agreement"), with the Company, BP and Morgan, under which BP Pipelines issued to the Company its 9¾% Guaranteed Note Due 1999 (the "BP Pipeline Note") in the aggregate principal amount of $80,500,000 representing 32.2% of the aggregate principal amount of the 9¾% Debentures isued under the 1974 Indenture. The BP Pipeline Note is unconditionally guaranteed as to payment of principal thereof and premium, if any, and interest thereon by BP (the "BP Guarantee"). The BP Guarantee is endorsed on the BP Pipelines Note.

e. In addition, BP and BP Pipelines entered into a Completion Agreement and a Financing Agreement, each dated as of December 1, 1974 (respectively, the "BP Completion Agreement" and the "BP Financing Agreement"), pursuant to which BP agreed to guarantee the obligations of BP Pipelines relating to the costs of the pipeline project, including the cost of any indebtedness issued in order to finance such project. Each of the BP Completion Agreement and the BP Financing Agreement creates general unsecured obligations of BP without any pledge or mortgage of any assets of BP. By assignments, each dated as of December 1, 1974, the rights of BP Pipelines to Sohio Pipe Line to receive payments from BP under the BP Completion Agreement and the BP Financing Agreement were assigned to Morgan by BP Pipelines for the equal and ratable benefit of the holders of the 9¾% Debentures.

f. Under the 1974 Indenture, the term "Obligors" means (i) the Company, as obligor on the 9¾% Debentures; (ii) BP Pipelines, as obligor on the BP Pipelines Note; (iii) BP, as obligor on the BP Guarantee; (iv) Sohio Pipe Line, as obligor on the Sohio Pipe Line Note; and (v) Sohio, as obligor on the Sohio Guarantee. The 1974 Indenture also provides that the term "Obligor on the Debentures" includes, but is not limited to, BP and Sohio as a result of their "indirect obligation" to pay 32.2% and 67.8%, respectively, of the principal of, premium, if any, and interest on the 9¾% Debentures under the BP Guarantee and the Sohio Guarantee.

g. The Sohio Guarantee with respect to the 9¾% Debentures will rank *pari passu* with the 8½% Notes, the 8¾% Notes, the 13⅜% Notes, the 10⅞% Debentures, and any indebtedness issues under the 1983 Indenture. The BP Guarantee with respect to the 9¾% Debentures will rank *pari passu* with the 10% Guaranteed Debentures and the 9¼% Guaranteed Debentures.

(4) The Company's obligation to make payments on the 9¾% Notes issued under the 1974 Indenture will not be superior or inferior in right of payment to: (i) The obligation of Sohio to make payments on the 8½% Debentures; (ii) the obligation of Sohio Pipe Line or Sohio to make payments on the 8¾% Debentures; (iii) the obligation of Sohio to make payments on the 13⅜% Notes or the 10⅞% Debentures; (iv) the obligation of Finance or BP to make payments on the 10% Guaranteed Debentures or the 9¼% Guaranteed Debentures; or (v) any indebtedness issued under the 1983 Indenture;

(5) The Company is not in default under the 1974 Indenture or the 9¾% Debentures;

(6) Sohio is not in default under the 1970 Indenture or the 8½% Debentures. Sohio Pipe Line and Sohio are not in default under the 1976 Indenture or the 8¾% Guaranteed Debentures. Sohio is not in default under the 1962 Indenture, the 13⅜% Notes or the 10⅞% Debentures. Finance and BP are not in default under (i) the 1975 Indenture or the 10% Guaranteed Debentures; (ii) the 1976 Finance Indenture or the 9¼% Guaranteed Debentures; or (iii) the 1983 Indenture;

(7) Such differences as exist between the 1974 Indenture and the Existing Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors or holders of the 9¾% Debentures, the 8¾% Guaranteed Debentures, the 8¾% Guaranteed Debentures, the 13⅜% Notes, the 10⅞% Debentures, the 10% Guaranteed Notes or the 9¼% Guaranteed Debentures to disqualify Chase from acting as trustee under the 1974 Indenture and the Existing Indentures.

(8) Such differences as exist between the 1983 Indenture, the 1984 Indenture and the New Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of any of the investors to disqualify Bankers from acting as Trustee under one of the Indentures. The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–14373, which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Notice if further given that an order granting the application may be issued by the Commission at any time on or after March 6, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(i) of the Trust Indenture Act of 1939. Any interested person may, not later than March 1, 1986 at 5:30 p.m., Eastern Time, in writing, submit to the Commission his views of any additional facts bearing upon this application or request a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

Service List

Sullivan & Cromwell, 125 Broad Street, New York, New York 10004
Scott Nemeroff, Esq., Securities & Exchange Commission, 450 5th Street, NW., Room 7019 Stop 7–2, Washington, DC 20549
David Potel, Esq., Securities & Exchange Commission, 450 5th Street, NW., Stop 3–3, Washington, DC 20549

[FR Doc. 86–3191 Filed 2–12–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22865; File No. SR–CBOE–86–03]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on January 22, 1986, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b–4 thereunder, to revise the Exchange's Committee system.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self/regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item II below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to streamline the Exchange's committee system. Rules 2.1 through 2.3 have been combined and amended. Rule 2.1 becomes Rule 2.1(a), with the Appeals, Floor Officials and Market Performance Committees added to the list of committees in the first sentence. The new rule 2.1(a)-(d) reads as follows:

Committees of the Exchange

Rule 2.1. (a) Establishment of Committees. In addition to committees specifically provided for in the constitution, there shall be the following committees: Appeals, Arbitration, Business Conduct, Equity Floor Procedure, Floor Officials, Market Performance, Membership, Product Development and such other committees as may be established in accordance with the Constitution. The Chairman of the Executive Committee, with the approval of the Board, with the approval of the Board, shall appoint the chairmen and members of such committees to serve for terms expiring at the regular meeting of the Board following the next succeeding Annual Election Meeting or until successors are appointed. Consideration shall be given to continuity and to having, where appropriate, a cross section of the membership represented on each committee. The Chairman of the Executive Committee may, at any time, with or without cause, remove any member of such committees. Any vacancy occurring in one of these committees shall be filled by the Chairman of the Executive Committee for the remainder of the term. Notwithstanding the foregoing, the Chairman of the Board, with the approval of the Board, shall appoint Directors to serve on the Audit and Compensation Committees, whose members shall not be subject to removal except by the Board.

(b) Committee Procedures. Except as otherwise provided in the Constitution, the Rules or a resolution of the Board, each committee shall determine its own time and manner of conducting its meetings, and the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee. Committees may act informally by written consent of all of the members of the committee.

(c) Interested Persons. No member of a committee shall participate in the adjudication of any matter in which he is personally interested, although his presence at a meeting at which such matter is considered shall count toward the quorum requirements for the meeting.

(d) General Duties and Powers of Committees. Each committee shall administer the provisions of the constitution and the rules of the Exchange pertaining to matters within its jurisdiction. Each committee shall have such other powers and duties as may be delegated to it by the Board of Directors. Each committee is subject to the control and supervision of the Board of Directors.

In Rule 2.1 and in other rules, the Floor Procedure and the Securities Committee have been renamed respectively the Equity Floor Procedure and the Product Development Committees. A new sentence emphasizes the importance of continuity and representation of Exchange constituencies in committee appointments. The last sentence of Rule 2.1(a) also is new and simply makes clear that appointments to the Audit and Compensation Committees are recommended by the Chairman, because the Vice Chairman recommends appointments to other committees. Rule 2.2 concerning procedures becomes Rule 2.1(b). Rule 2.3 concerning interested persons becomes Rule 2.1(c). Rule 2.1(d) is new; it makes clear that Exchange committees are committees of the Board of Directors.

Rules 2.4 through 2.13, concerning specific committees, have been eliminated as unnecessary. Rule 2.1 establishes those committees that have significant responsibilities under Exchange rules and makes their procedures uniform. There is no reason to list every Exchange committee in the rules. The requirements that: (1) At least two floor officials must agree on an application or interpretation of trading rules and (2) floor officials must file written reports of actions taken pursuant to Exchange rules, have been moved from Rule 2.10 to the end of Rule 6.20(b). All references to the pit official pilot program, which has ended, have been removed from Rules 2.10 and 6.20.

Several functions have been moved from one committee to another. The CBOE believes it is more appropriate for the Market Performance Committee (instead of the Membership Committee) to register floor brokers and market makers under Rules 6.71 and 8.2, because the Market Performance Committee will have centralized authority (instead of both the Market Performance and the Floor Procedure Committees) to: (1) Suspend or terminate floor broker and market maker registrations under Rules 6.71 and 8.2 and (2) make, suspend or terminate market maker appointments under Rule 8.3.

The statutory basis for this proposed rule change is section 6(b)(1) and (3) of the Act, in that it streamlines the Exchange's committee system.

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B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(g)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act because it is concerned solely with the administration of the exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the **Federal Register** during the week of February 2, 1986. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–CBOE–86–03.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the CBOE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 5, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–3192 Filed 2–12–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22855; File No. SR–PHLX–85–33]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(91), notice is hereby given that on December 30, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Exchange", or "PHLX") proposes to amend Exchange Rule 1047, Commentary .01(c), as follows:

(Brackets indicate material proposed to be deleted; italics indicate material to be added.)

Exchange Rule 1047 Trading Rotations, Halts and Suspensions (a) through (c) No change.

Commentary:

.01 (a) and (b) No change.

.01 (c) On the last trading day with respect to expiring stock option contracts a closing rotation in each series of expiring options shall be commenced at 4:[0] 10 p.m., *or after a closing price of the stock in its primary market is established, whichever is later.* On the last trading day with respect to expiring foreign currency option contracts a closing rotation in each series of expiring options shall be commenced at 1:30 p.m. Except as otherwise provided by the Exchange, if both puts and calls covering the same underlying security or the same underlying foreign currency are traded, the Specialist may determine which type of expiring options series should close first, any may alternate the close of put series and call series or may close all series of one type before closing any series of the other type, depending on current market conditions.

.02 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The Exchange is proposing to change its rule requiring closing rotations on expiring option series to begin at 4:00 p.m. on the business day before the expiration. The proposed rule change would require a closing rotation to begin at 4:10 p.m., but not until a final price for the underlying stock is established in the primary market, on the business day before expiration in all expiring series of options.

When existing Exchange Rule 1047 was originally established, one underlying purpose was to coordinate the closing rotation with the close of trading of the underlying stock in its primary market, to obtain an established final price. Under this current rule, however, the Exchange must commence closing rotations at 4:00 p.m., even if closing prices for the underlying stock are not yet available. As a result, prices established during closing rotations in expiring series of individual stock options may not be correctly priced in relationship to the closing price of the underlying stock in the primary market.

If the proposed rule change is adopted, option market participants will be able to execute option transactions in expiring option series with prices known to be in relationship to the final closing price of the underlying stock on the primary market.

The Chicago Board Options Exchange ("CBOE") and the American Stock Exchange ("AMEX") have adopted this proposed change and filed it with the Securities and Exchange Commission.[1]

[1] *See* Securities Exchange Act Release Nos. 21507, December 2, 1984, 46 FR 50850, December 31, 1984, and 20832, April 6, 1984, 49 FR 14612, April 12, 1984, in which the Commission approved substantially identical rule filings by the CBOE adn the AMEX.

The Exchange believes it is important to maintain uniformity in this regard.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934 in that it is intended to foster cooperation and coordination amony persons engaged in facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change is not expected to be a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 ("Act") because the Amex and CBOE currently employ similar rules, and the Exchange seeks to maintain uniformity of rules where practicable.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the rule change is substantially identical to the rule proposals filed previously by Amex and CBOE. The CBOE proposal was published for notice and comment and no comments were received by the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 6, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–3193 Filed 2–12–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22856; File No. SR–Phlx–86–02]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 15, 1986 Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Change

The Philadelphia Stock Exchange, Inc. ("PHLX") or ("Exchange") hereby proposes to extend the applicability of its allocation and evaluation rules (Rules 500 through 506) through July 1, 1986.[1] The Exchange has been applying these rules and intends to continue to apply them until a permanent rule proposal is approved by the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule change is to extend the Exchange's allocation and evaluation pilot program to enable it to study alternative rule proposals regarding these topics. The Exchange has appointed a subcommittee which is in the process of formulating a rule proposal concerning this matter. The Exchange expects that such a proposal will be filed with the Commission by the end of February.

(2) *Basis.* The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed pilot is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act to enable it to continue its allocation and evaluation pilot without interruption.

The Commission finds the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6

[1] The Exchange originally requested an extension through February 28, 1986. The Exchange subsequently filed Amendment No. 1 to the proposed rule change to request an extension through July 1, 1986.

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and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because of the necessity to allow the Phlx to continue its allocation and evaluation pilot. The Exchange needs the extension to further evaluate the pilot and to develop any changes and amendments to the program which may be appropriate.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 6, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 4, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3194 Filed 2-12-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 86-2-19; Docket 43781]

Revocation of the Section 418 Certificate of Aero Union Corporation

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the section 418 certificate of Aero Union Corporation.

DATE: Persons wishing to file objections should do so no later than February 28, 1986.

ADDRESSES: Responses should be filed in Docket 43781 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Patricia T. Szrom, Special Authorities Division, DC 20590, (202) 755-3812.

Dated: February 7, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-3231 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43754; Order 86-2-21]

Joint Application of NWA Inc. and Republic Airlines, Inc. for an Exemption or Approval of Acquisition of Control

Issued by the Department of Transportation on the 7th day of February, 1986.

Order

On January 28, 1986, NWA Inc. ("NWA") and Republic Airlines, Inc. ("Republic") filed a joint application for an exemption from, or prior approval under, section 408 of the Federal Aviation Act of 1958, 49 U.S.C. 1378, for NWA's proposed acquisition of Republic, a certificated air carrier. NWA controls another certificated air carrier, Northwest Airlines, Inc. ("Northwest"). The application included information concerning NWA, Northwest, and Republic required to be filed by the Department's rules, 14 CFR Part 303, 50 FR 31134, 31144-31146 (July 31, 1985).

NWA also submitted an application for approval to acquire ten percent or more of the voting securities of Republic, and to place all shares in excess of 9.9 percent of Republic's voting securities in an independent voting trust pending the completion of the Department's review of the joint application.

Based on our preliminary review of the application and supporting material filed by the applicants, it appears to contain in substantial part the information required for analysis under section 408. We have, therefore, determined that we should not reject the application as incomplete.

Under the Department's rules, answers to section 408 applications are due twenty-one days after filing of the application (in this case, February 18, 1986). 14 CFR 303.42, 50 FR 31148 (July 31, 1985). Comments on applications for exemption under section 416 of the Act are normally due fifteen days after the application is filed, or February 12, 1986. 14 CFR 303.54, 50 FR 31149 (July 31, 1985). Applicants have requested that those response dates be accelerated to February 7, 1986. Their request for expedition is based on their desire to close the proposed transaction and hold a shareholder vote by April 30, 1986, and their desire to consolidate the two carriers' operations in time for the peak travel season.

While we are sensitive to the need to avoid undue delay in reviewing section 408 transactions, the applicants have not shown that a reduction of the answer period to ten days is advisable or necessary. The proposed consolidation would eliminate a substantial amount of overlap service between the two carriers. *See* Ex JA-225. Even if the applicants are correct in their assertions that closer examination, in light of section 408 precedent, will reveal no anticompetitive effect, interested parties should be afforded a reasonable opportunity to examine the proposed transaction and formulate their comments. Moreover, advancing the comment period will not materially increase the likelihood that our review will be completed by the dates applicants desire. If the issues are as clear as the applicants assert, expedited exemption or show-cause procedures can likely be completed before the applicants' target date without shortening the comment period. If, on the other hand, a more intensive inquiry is required, it will be difficult to complete our section 408 review within the time requested by applicants, regardless of the time permitted for comments.

With respect to the application for approval of a voting trust, NWA has asked generally for expedition, but has not requested a shortening of the comment period. Therefore, we see no current need to disturb the twenty-one day comment period provided for in the regulations.

Accordingly, we will not shorten the comment periods provided by our rules, and will make comments on the request for exemption due at the same time as comments on the application for section 408 approval. Interested parties shall submit comments on the merits of the joint application, additional information that should be required, procedures that should be followed, the advisability of exercising our exemption authority, or other matters, by February 18, 1986. Comments on NWA's voting trust application shall be submitted by that date as well.

Part of the supporting information filed by Northwest and Republic was filed under the cover of Rule 39 motions for confidential treatment. Northwest's and Republic's motions request that only attorneys of record and outside experts of other parties be permitted access to the confidential documents, and then only upon submission of an affidavit indicating that the affiant will preserve the documents' confidentiality and use the information only in connection with this proceeding. Northwest asks that in-house experts of other parties be denied access to the documents. In the alternative, Northwest requests that in addition to the expert's submission of a confidentiality affidavit, an in-house expert be permitted access only after: (1) The expert indicates his/her position, job responsibilities, area of expertise and area of proposed testimony; (2) an attorney screens and sorts the documents and submits an affidavit averring that the in-house expert needs the information contained in the identified documents to prepare his or her testimony in this proceeding; and (3) Northwest and Republic have five days in which to object to release of the documents to the in-house expert.

Northwest also requests permission to withhold from filing three documents that it claims are highly sensitive and only marginally relevant.[1] Northwest argues that the highly sensitive nature of these documents justifies exempting them from the usual filing requirements.

We will grant Northwest's and Republic's motions to treat the documents submitted pursuant to 14 CFR 303.10(g) and 303.13(b)-(d) as confidential, subject to reconsideration at any time for good cause shown. We have not completed our evaluation of the requests to deny access to in-house experts and Northwest's request to exempt three documents from the filing requirements of 14 CFR Part 303. As to both requests, applicants have raised valid concerns about the sensitivity of corporate planning documents. The resolution of those requests depends on a balancing of those concerns against the needs of interested parties to develop and present their cases, and the relevance of the sensitive documents to the issues in this case. We will be in a much better position to weight those competing considerations after we have more closely evaluated the issues presented here in light of the comments of interested persons on the application in general and on the confidentiality motions in particular.

Pending resolution of applicants' motion to deny access to in-house experts, we will allow only attorneys of record and *outside* experts of other parties to inspect *in camera* the documents for which we granted confidential treatment. Counsel and outside experts may inspect those documents at the offices of the Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, DC, upon submission of an affidavit indicating the party by whom, and the capacity in which, they have been retained, and that they will preserve the confidentiality of the information contained therein and will use the information only in connection with this proceeding. Any answer or other filing raising matters contained in the confidential documents must be accompanied by a Rule 39 motion requesting confidential treatment.

Accordingly, 1. Answers and comments on the joint application and on NWA's application for approval of a voting trust are due February 18, 1986;

2. We grant, subject to reconsideration at any time for good cause shown, the motion of Northwest and Republic for confidential treatment of certain documents;

3. We grant Northwest's and Republic's request for waiver of: (1) The requirements of Rule 302.3(c) regardng the number of copies of certain documents to be filed and (2) because of their volume, the requirement to serve copies of publicly available financial information, collective bargaining agreements, and current fares;

4. Pending Department resolution of Northwest's and Republic's motion to deny access to in-house experts, attorneys of record and *outside* experts may veiw the confidential documents *in camera* at the Department, upon submission of an appropriate affidavit; and

5. This order will be published in the **Federal Register.**

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 3232 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-62-M

[1] Northwest has submitted a copy of the documents to the Department's Assistant General Counsel for Litigation, as we have required in similar circumstances. Order 85-10-65 at 3 (October 22, 1985).

Federal Aviation Administration

Organization and Functions; Martha's Vineyard, MA

Notice is hereby given that on May 15, 1986, through October 30, 1986, the airport traffic control tower at the Martha's Vineyard Airport, Martha's Vineyard, Massachusetts, will be commissioned as a part-time Federal Aviation Administration (FAA) facility. Tower hours of operation will be established in advance by a Notice to Airmen, and thereafter published in the Airman's Information Manual. The designated facility identification for the FAA airport control tower will be: VINEYARD TOWER.

This information will be reflected in the FAA organization statement.

Communications to the tower should be directed to: Federal Aviation Administration, Airport Traffic Control Tower, P.O. Box 369, Vineyard Haven, Massachusetts 02568.

(Secs 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in Burlington, Massachusetts, on February 4, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-3140 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[FRA General Docket No. H-85-4]

Train Air Brake Test Program; Burlington Northern Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is given that the Burlington Northern Railroad Company (BN) has requested a waiver until March 31, 1991, of certain provisions of the Federal Railroad Administration's (FRA's) power brake regulations (49 CFR Part 232) in order to use and test trains with air repeater units. Air repeater units (repeaters) are freight cars and locomotives that have been outfitted with a power source (usually a diesel engine), an air compressor, reservoir, and a special valve rack. The valve rack is designed: (i) To provide control of the air supply to charge the rear brake pipe and (ii) to relay pneumatic signals from the engineer's brake equipment to the rear portion of the train to apply and release the train air brakes. On a conventional train, the brake pipe is charged from the hauling locomotive. When a repeater is placed in a train, however, only the brake pipe forward of

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the repeater is charged by the hauling locomotive; the brake pipe to the rear of the repeater is charged by the repeater.

BN's specific request is for relief from the obligation to conduct a leakage test on the portion of the train to the rear of the air repeater unit. See 49 CFR 232.12(b)(1), (d)(1), (d)(3), (e), (i)(2), (i)(3); 232.13(d)(1), (d)(2). Test trains would operate on various subdivisions of the BN's Chicago, Twin Cities, Billings, Seattle, and Denver Regions.

In response to BN's request, FRA has granted a temporary, conditional waiver, pending receipt and evaluation of public comments. The waiver is conditioned on BN's adherence to the parameters of the test program set forth in this notice.

In support of its application for relief, BN states that it is not possible to make a standard leakage test with a repeater in operation. In the past, in order to assure full compliance with the regulations, FRA has required that repeaters be isolated during train air brake tests by manually repositioning three valves at the valve rack and then restoring them to their original position after the test is completed. BN regards this activity as too time consuming and unnecessary.

In further support of its request, BN states that it has been experimenting with repeaters for several years and that safety and train operations are enhanced by their use, especially during very cold weather. BN contends that the improvement in brake pipe gradient provides for better train handling, and the benefits in time saved in charging trains for initial testing far exceed the benefits derived from a leakage test on the rear portion of the trains. For example, on June 3, 4, and 5, 1985, BN conducted tests of a 120-car train that included a repeater. These tests showed definite improvements in gradient, recharge times, release times, and application times as a result of employing a repeater.

On review of BN's test data and other data obtained through FRA's field investigation, FRA has determined that granting the required waiver would be consistent with railroad safety, provided that BN adheres to the following conditions:

A. At least 50 percent of the test trains shall receive a separate leakage and gradient test on the portion of the train forward of the repeater and the portion to the rear of the repeater, and the repeater must be isolated and a leakage and gradient test be performed on these trains for comparison purposes;

B. All mechanical and operating personnel involved with repeater equipment must be given training and be provided with a copy of BN instructions concerning repeater operations and maintenance, train brake test procedures, and procedures to be followed when a repeater unit fails;

C. All test trains must be provided with an end-of-train monitoring system (telemetry device); and

D. For each month of the test period, a written report shall be submitted to FRA providing the following information:

1. A list of repeater locomotives and cars by indentification number;

2. A list of test trains operated each day during the month, including the number, symbol, initial terminal, and final destination of each train;

3. The results of the tests described in paragraph A of this Notice;

4. Any air brake problems found during train air brake testing of test trains;

5. Any air brake problems experienced en route;

6. Any train handling problems; and

7. All failures of repeaters, including

a. Identification number

b. Reason for failure

c. Action taken at time of failure.

FRA responded promptly to the BN petition, granting a conditional waiver of compliance on a temporary basis. That temporary waiver was granted with the understanding that FRA's decision would be reviewed in the light of any public comments received in response to this public notice. The decision to grant a temporary waiver, pending receipt and consideration of public comment, was based on the determination that immediate action was required in the public interest. In particular, the determination reflects FRA's desire that the test program be conducted during very cold weather. BN's prior experiments with repeaters indicates that safety and train operations are especially enhanced by their use during very cold weather.

FRA is now seeking information and comments of all interested parties on this waiver request. As noted, FRA intends to review its initial decision in light of these comments. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not appear to warrant it. An opportunity to present oral comments will be provided, however, if, by April 3, 1986, the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H–85–4" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th ST., SW., Washington, DC 20590.

Comments received by April 3, 1986 will be considered before final action is taken in this proceeding. All comments received will be available for examination by interested persons at any time during regular working hours in Room 8201, Nassif Building, 400 7th St., SW., Washington, DC 20590.

Issued in Washington, DC., on February 7, 1986.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86–3233 Filed 2–12–86; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

[Docket No. IP86–03; Notice 1]

Chrysler Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Chrysler Corporation, of Detroit, Michigan has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.1.1 of Federal Motor Vehicle Safety Standard No. 108, in essential part lists the required items of motor vehicle lighting equipment. A backup lamp is required, designed to conform to SAE J593C. Paragraph S4.1.1.22 of FMVSS No. 108 specifies an alternative method of photometric compliance for backup lamps. In essence, this section requires that each backup lamp meet minimum total candela measurements at six grouped test points. In Group 4 the total minimum reading of the six test points within that group is 360 candela.

The petitioner produced approximately 800 Chrysler New Yorker passenger cars between August 12 and August 23, 1985, with backup lamps that do not meet the photometric requirements of paragraph S4.1.1.22.

Chrysler states that:

Specifically, the discrepancy is that the Group 4 photometric value exhibited by each of the dual backup lamps installed on an affected vehicle is 292 candela, whereas the required minimum value is 360 candela—four of the six points in Group 4 are below the minimum values. All other group and point photometric values exceed the specified minimum by substantial margins.

Chrysler's position that the subject discrepancy is inconsequential in relation to motor vehicle safety is based on the following evaluation factors:

1. The overall candela output level provided by the subject backup lamps exceeds the minimum required by FMVSS 108.

• The sum of the candela measured at all 22 test points (or all six groups of test points) is 881 for the subject lamp, as compared with the required minimum total of 650—35% more than required.

• The central portion of the lamp output pattern, which includes both the discrepant Group 4 and the Group 3 immediately above it, provides an overall candela output which is 20% greater than the minimum required for the two groups combined.

2. The performance of the installed backup lamps is adequate in all regards, specifically including their illumination capability for both rear field of view visibility and signaling of reverse gear operation. Chrysler's comparative jury evaluation concluded that the lamp's photometric performance for both rearward illumination and signal warning is at least equal to a lamp which provides candela output that marginally exceeds FMVSS 108 minimum requirements.

3. The closest ground level point visible to the driver when the roadway is indirectly viewed through the inside rearview mirror is 50 feet from the rear of the vehicle. The ground intercept point of the backup lamp center line (V)-five degree down (5D) discrepant test point light ray is 25 feet from the rear of the vehicle. Therefore, the driver's visibility to the rear is not benefited by the light cast upon the roadway by the V–5D test point.

4. Of the four test points having discrepant photometric values, only one (the H–V point) affects illumination on the field of view target seen indirectly through the inside rearview mirror and the backlight at a distance of 25 feet behind the vehicle. The sum of the photometric values for the six test points which affect illumination of this target is 311 candela for the subject lamps as compared to the 245 required minimum—27% more than required. Influence of this discrepant test point (H–V) on field of view illumination decreases as the target is moved closer to the rear of the vehicle.

5. Chrysler is not aware of any owner complaints, field reports, or allegations of hazardous circumstances relating to the illumination or signaling capability of the subject backup lamps.

6. The discrepant condition was the result of an inadvertent design released error. A bulb socket other than the one specified for the final design was mistakenly selected from bulb socket selection charts and released. This resulted in the bulb being located 0.44 inch rearward of the design position, causing defocus of the lamp.

7. Existence of the discrepant condition was detected during routine quality control tests by the lamp supplier with production wiring harness bulb sockets. Chrysler then took immediate, expedited action to correct the condition by specifying the correct socket for harness assembly and reworking available harnesses prior to installation into cars.

Interested persons are invited to submit written data, views and arguments on the petition of Chrysler Corporation described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 17, 1986.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 7, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–3141 Filed 2–12–86; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. IP86–02; Notice 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation of Detroit, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.110, Motor Vehicle Safety Standard No. 110, *Tire Selection and Rims*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.4.1 of the Federal Motor Vehicle Safety Standard 110, *Tire Selection and Rims*, which covers rim construction dimensions, and by reference to FMVSS No. 109, *New Pneumatic Tires*, paragraph S4.4, tire and rim matching information, in essential parts requires that a listing of the approved tire and rim combinations be published in at least one of several recognized worldwide, tire and rim specification and usage guides. The publication referenced for use in the United States is by The Tire and Rim Association.

The petitioner determined that 4,100 Buick Grand National passenger cars manufactured during the 1984 and 1985 model years, with P215/65R15 tires and 7.25 inch rims do not comply with one of the requirements of FMVSS No. 110, *Tire Selection and Rims*. This tire and rim are not listed as an approved combination in The Tire and Rim Association publications.

General Motors states that—

• • • However, the P215/65R15 tire with 7 and 7.5 inch rims are both listed as approved combinations by the Tire and Rim Association. In addition, GM Engineering and GM Tire and Wheel Systems have determined that performance is not affected in any way by use of the 7.25 inch rim, with the P215/65R15 tire. Accordingly, General Motors believes that this specific noncompliance with FMVSS No. 110 is inconsequential as it relates to motor vehicle safety.

The petitioner also indicated that the 7.25 inch rim has been cancelled and is being replaced with a 7 inch rim, and is not aware of any customer complaints relative to the performance of the tire and rim combination.

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corporation, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 17, 1986.

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(Sec. 102, Pub. L. 93-462, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on February 7, 1986.

Barry Felrice,
Associate Administrator for Rulemaking.

[FR Doc. 86-3142 Filed 2-12-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: January 22, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Office of the Secretary

OMB Number: 1505-0023
Form Number: TIC-CM
Type of Review: Revision
Title: Dollar Deposit and Certificate of Deposit Claims on Banks Abroad

OMB Number: 1505-0024
Form Number: CQ-1 and CQ-2
Type of Review: Revision
Title: Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners
Clearance Officer: Joan M. Kotze (202) 566-3678, Office of the Assistant Secretary for International Affairs, Room 5453, Main Treasury Building, Washington, DC 20220
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0128
Form Number: ATF F 3066 (5210.10)
Type of Review: Extension
Title: Record of Small Cigars and Large and Small Cigarettes
Clearance Officer: Roy J. Betsill (202) 566-7641, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Internal Revenue Service

OMB Number: New
Form Number: IRS Forms 5435 and 5434A
Type of Review: New
Title: Application for Enrollment (5434); Application for Renewal of Enrollment (5434A)

OMB Number: New
Form Number: IRS Form 23
Type of Review: New
Title: Application for Enrollment to Practice Before the Internal Revenue Service

OMB Number: 1545-0057
Form Number: IRS Form 1024
Type of Review: Revision
Title: Application for Recognition of Exemption Under section 501(a) or for Departmental Determination Under section 120

OMB Number: 1545-0534
Form Number: IRS Form 5303
Type of Review: Revision
Title: Application for Determination for Collectively-Bargained Plan
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,
Departmental Reports Management Office.

[FR Doc. 86-3143 Filed 2-12-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 9-86]

Treasury Bonds of 2016

Washington, January 30, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,000,000,000 of United States securities, designated Treasury Bonds of 2016 (CUSIP No. 912810 DV 7), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated February 15, 1986, and issued February 18, 1986. Payment for the Bonds will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from February 15, 1986, to February 18, 1986. Interest on the Bonds is payable on a semiannual basis on August 15, 1986, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 2016, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable [without additional interest) on the next-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Bonds in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Bonds in book-entry form will be issued in multiples of those amounts. Bonds will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Bonds, exchanges of Bonds between registered definitive and book-entry forms, and transfers will be permitted.

2.6. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.7. The Department of the Treasury's general regulations governing United States securities apply to the Bonds offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedure

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Thursday, February 6, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, February 5, 1986, and received no later than Tuesday, February 18, 1986.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.750. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations.

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from February 15, 1986, to February 18, 1986. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 18, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 13, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 18, 1986. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted are not required to be assigned if the new Bonds are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Bonds are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Bonds offered by this

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circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Bonds, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Bonds will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Bonds in registered definitive form will be made after the request form of registration has been validated, the registered interest account has been established, and the Bonds have been inscribed.

6. Separability of Principal and Interest

6.1 Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the bond-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of the Bond are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Bonds. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on February 15, 2016.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once the book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Bonds on full-paid allotments, and to maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A and B are incorporated as part of this offering circular.

Gerald Murphy,

Fiscal Assistant Secretary.

BILLING CODE 4810-40-M

ATTACHMENT A

CUSIP NUMBERS AND DESIGNATIONS FOR THE
PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF
TREASURY BONDS OF FEBRUARY 15, 2016, CUSIP NO. 912810 DV 7

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2016 due February 15, 2016, CUSIP No. 912803 AF 0.

INTEREST COMPONENTS

DESIGNATION	CUSIP NUMBER 912833	DESIGNATION	CUSIP NUMBER 912833
Treasury Interest (TINT) 2016 due		Treasury Interest (TINT) 2016 due	
August 15, 1986	AY 6	August 15, 2001	CE 8
February 15, 1987	AZ 3	February 15, 2002	CF 5
August 15, 1987	BA 7	August 15, 2002	CG 3
February 15, 1988	BB 5	February 15, 2003	CH 1
August 15, 1988	BC 3	August 15, 2003	CJ 7
February 15, 1989	BD 1	February 15, 2004	CK 4
August 15, 1989	BE 9	August 15, 2004	CL 2
February 15, 1990	BF 6	February 15, 2005	CM 0
August 15, 1990	BG 4	August 15, 2005	CN 8
February 15, 1991	BH 2	February 15, 2006	CP 3
August 15, 1991	BJ 8	August 15, 2006	CQ 1
February 15, 1992	BK 5	February 15, 2007	CR 9
August 15, 1992	BL 3	August 15, 2007	CS 7
February 15, 1993	BM 1	February 15, 2008	CT 5
August 15, 1993	BN 9	August 15, 2008	CU 2
February 15, 1994	BP 4	February 15, 2009	CV 0
August 15, 1994	BQ 2	August 15, 2009	CW 8
February 15, 1995	BR 0	February 15, 2010	CX 6
August 15, 1995	BS 8	August 15, 2010	CY 4
February 15, 1996	BT 6	February 15, 2011	CZ 1
August 15, 1996	BU 3	August 15, 2011	DA 5
February 15, 1997	BV 1	February 15, 2012	DB 3
August 15, 1997	BW 9	August 15, 2012	DC 1
February 15, 1998	BX 7	February 15, 2013	DD 9
August 15, 1998	BY 5	August 15, 2013	DE 7
February 15, 1999	BZ 2	February 15, 2014	DF 4
August 15, 1999	CA 6	August 15, 2014	DG 2
February 15, 2000	CB 4	February 15, 2015	DH 0
August 15, 2000	CC 2	August 15, 2015	JT 8
February 15, 2001	CD 0	February 15, 2016	KG 4

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ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 86-3245 Filed 2-11-86; 11:17 am]
BILLING CODE 4810-40-C

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[Department Circular—Public Debt Series—No. 6–86]

Treasury Notes of February 15, 1989, Series Q–1989

Washington, January 30, 1986.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of February 15, 1989, Series Q–1989 (CUSIP No. 912827 TE 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1 The Notes will be dated February 18, 1986, and will accrue interest from that date, payable on a semiannual basis on August 15, 1986, and each subsequent 6 months on February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2 The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3 The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4 Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5 Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6 The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1 Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, February 4, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 3, 1986, and received no later than Tuesday, February 18, 1986.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3 A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4 Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5 Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6 Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7 Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the

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amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1 Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 18, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 13, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 18, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3 Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4 Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested from of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1 As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2 The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3 The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-3246 Filed 2-11-86; 11:17 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 7-86]

Treasury Notes of February 15, 1996, Series A-1996

Washington, January 30, 1986.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,000,000,000 of United States securities, designated Treasury Notes of February 15, 1996, Series A-1996 (CUSIP No. 912827 TF 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated February 15, 1986, and issued February 18, 1986. Payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from February 15, 1986, to February 18, 1986. Interest on the Notes is payable on a semiannual basis on August 15, 1986, and each subsequent 6 months of February 15 and August 15 through the date that the principal becomes payable. They will mature February 15, 1996, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. A book-entry Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

2.7. After March 22, 1986, the Treasury may issue, through the Federal Reserve Bank of New York, as fiscal agent of the United States, additional amounts of the Notes offered in this circular in exchange for equal par amounts of the Foreign-Targeted Treasury Notes of February 15, 1996, Series B-1996 (CUSIP No. 912827 TG 7). Such exchanges must be conducted in accordance with Section 10 of Department Circular, Public Debt Series—No. 8-86, dated January 29, 1986.

2.8. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 5, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 4, 1986, and received no later than Tuesday, February 18, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentages allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement must include accrued interest from February 15, 1986, to February 18, 1986. The amount of accrued interest will be determined after the auction, and investors will be notified of the amount. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, February 18, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, February 13, 1986. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, February 18, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has

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been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, on amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscription or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registerred definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future seminannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a seminannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Notes. The chart in Attachment B hereto provides the minimun and multiple par amounts required to separate a security into components at various stated interest rates.

6.3. Only Notes in book-entry form may be separated into their components. Such separation may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on February 15, 1996.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

BILLING CODE 4810-40-M

ATTACHMENT A

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF TREASURY NOTES OF FEBRUARY 15, 1996, SERIES A-1996, CUSIP NO. 912827 TF 9

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series A-1996 due February 15, 1996, CUSIP No. 912820 AF 4.

INTEREST COMPONENTS

DESIGNATION	CUSIP NUMBER 912833	DESIGNATION	CUSIP NUMBER 912833
Treasury Interest (TINT) A-1996 due		Treasury Interest (TINT) A-1996 due	
August 15, 1986	AY 6	August 15, 1991	BJ 8
February 15, 1987	AZ 3	February 15, 1992	BK 5
August 15, 1987	BA 7	August 15, 1992	BL 3
February 15, 1988	BB 5	February 15, 1993	BM 1
August 15, 1988	BC 3	August 15, 1993	BN 9
February 15, 1989	BD 1	February 15, 1994	BP 4
August 15, 1989	BE 9	August 15, 1994	BQ 2
February 15, 1990	BF 6	February 15, 1995	BR 0
August 15, 1990	BG 4	August 15, 1995	BS 8
February 15, 1991	BH 2	February 15, 1996	BT 6

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 86-3247 Filed 2-11-86; 11:47 am]
BILLING CODE 4810-40-C

VOL
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[Department Circular—Public Debt Series—No. 6-86]

Foreign-Targeted Treasury Notes of February 15, 1996, Series B-1996

Washington, January 29, 1986.

Special Notice—Payment for these notes must include accrued interest. See Section 7.1.

Outside the United States, this offering circular is for informational purposes and does not constitute an offer or solicitation, and it may not be used for the purpose of or in connection with any offer or solicitation by any person in any jurisdiction in which such offer or solicitation is not authorized or to any person to whom it is unlawful to make such offer or solicitation.

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Section 1. Invitation for Tenders

1.1. Introduction. The Secretary of the Treasury, pursuant to the authority granted him by Chapter 31 of Title 31, United States Code, invites tenders for up to $1,000,000,000 of United States securities designated Foreign-Targeted Treasury Notes of February 15, 1996, Series B-1996 (CUSIP No. 912827 TG 7) (collectively the "Notes", individually a "Note"). The Notes will be auctioned in the United States on February 5, 1986, by competitive bidding only. Payment must be made as set forth below in United States dollars. The stated interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described in Section 6.7.

1.2. Target Nature of the Notes. Treasury will sell the Notes only to Bidders as defined in Section 2.1. Bidders must acquire the Notes only for themselves or on behalf of, or for sale or other transfer to, United States Aliens as defined in Section 2.19. or foreign branches of United States Financial Institutions. In addition, any transfers by Bidders after March 22, 1986, to Qualified Holders as defined in Section 2.15. that are United States Persons must be consistent with the tax certification described in Section 11.2.

1.3. Transfer Restrictions. Before March 23, 1986, the Notes may not be sold or transferred to a United States Person as defined in Section 2.20. other than a foreign branch of a United States Financial Institution. Each Bidder for the Notes must certify on the tender form for the Notes that it will not sell, contract to sell, or otherwise transfer the Notes to a United States Person, other than a foreign branch of a United States Financial Institution, before March 23, 1986. Each Bidder further agrees that, if it sells, contracts to sell, or otherwise transfers the Notes before March 23, 1986, it will confirm to such purchaser or transferee in writing that (i) there is a restriction on sale or other transfer to United States Persons other than foreign branches of United States Financial Institutions and (ii) such confirmation is required to be given to any subsequent purchaser or transferee that acquires the Notes before March 23, 1986. The transfer restriction of this Section 1.3. is in addition to the tax certification of a Bidder described in Section 11.2. As described in Section 11.2., the Bidder must certify that, as of the date of issuance, Notes acquired by the Bidder will not be owned by a United States Person, other than a foreign branch of a United States Financial Institution, and that the Notes are not being acquired on behalf of such a person, or for offer to resell or for resale to such a person. This tax certification requirement is independent of the transfer restriction of this Section 1.3.

1.4. Tax Treatment. The Notes are subject to United States federal income tax as provided in the Internal Revenue Code as defined in Section 2.8. Interest on the Notes paid to a United States Alien is not subject to United States federal income tax if the conditions of section 871(h) or 881(c) of the Internal Revenue Code and the regulations related thereto are satisfied. The discussion in Section 11 is only a summary of the currently applicable tax requirements. The tax consequences of holding the Notes derive solely from the Internal Revenue Code and regulations now or hereafter promulgated thereunder.

Section 2. Definitions

The following terms, whenever used and capitalized in this offering circular, shall have the meanings set forth below.

2.1. Bidder. (i) A United States Alien, other than an individual, or (ii) a foreign branch of a United States Financial Institution.

2.2. Definitive Notes. Notes (as defined in Section 1.1.) evidenced by a certificate that is inscribed with the name of the Registered Owner.

2.3. Domestic Notes. Companion securities sold at auction on February 5, 1986, and designated Treasury Notes of February 15, 1996, Series A-1996 (CUSIP No. 912827 TF 9).

2.4. Exchange Adjustment. As defined in Section 10.3.

2.5. Financial Institution. A securities clearing organization, a bank, or other financial institution, other than an International Financial Organization, that holds customers' securities in the ordinary course of its trade or business, within the meaning of section 871(h)(4)(B) of the Internal Revenue Code.

2.6. FRB NY. The Federal Reserve Bank of New York, located at 33 Liberty Street, New York, New York.

2.7. Holding Institution. A Financial Institution or an International Financial Organization that has a book-entry account with FRB NY.

2.8. Internal Revenue Code. The United States Internal Revenue Code of 1954, as amended from time to time (Title 26 of the United States Code).

2.9. International Account. A book-entry account of a Holding Institution with FRB NY for which records are maintained by FRB NY that specifically identify a foreign Financial Institution, a foreign branch of a United States Financial Institution, or an International Financial Organization. A United States branch of a foreign Financial Institution may not establish an International Account. A United States subsidiary of a foreign Financial Institution may establish an International Account in accordance with the requirements of the first sentence of this Section 2.9.

2.10. International Financial Organization. A central bank or monetary authority of a foreign government or a public international organization of which the United States is a member that is characterized as a foreign corporation for United States federal income tax purposes to the extent that such central bank, authority, or organization holds Notes solely for its own account and is exempt from United States federal income tax under sections 892 or 895 of the Internal Revenue Code.

2.11. Note or Notes. As defined in Section 1.1.

2.12. Payment Guarantee. A guarantee of payment to Treasury for an amount equal to 5 percent of the par amount of Notes for which a tender is submitted by or on behalf of a Bidder.

2.13. Paying Institution. A Financial Institution that has a reserve, clearing, or other dollar account with FRB NY and that has been designated on the

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tender form to pay for the Notes or an International Financial Organization designated to pay for Notes for which it is the Registered Owner.

2.14. Primary Dealer. A dealer on the list of reporting dealers published by FRB NY.

2.15. Qualified Holder. Before March 23, 1986, a United States Alien or a foreign branch of a United States Financial Institution and after March 22, 1986, a United States Alien or a United States Person.

2.16. Registered Owner. The Financial Institution or International Financial Organization specifically identified on the records of FRB NY maintained for an International Account, or, for Notes held in a book-entry account other than an International Account, the Holding Institution, or, for a Definitive Note, the person whose name is inscribed on the Note and recorded on the books of FRB NY.

2.17. Secretary. The Secretary of the United States Department of the Treasury, the legal successor of the Secretary, and delegates of the Secretary or such legal successor.

2.18. Treasury. The United States Department of the Treasury.

2.19. United States Alien. A corporation, partnership, individual, or fiduciary that for United States federal income tax purposes, as to the United States (including its territories, possessions, all areas subject to its jurisdiction and the Commonwealth of Puerto Rico), is a foreign corporation, a nonresident alien individual, a nonresident alien fiduciary of a foreign estate or trust; a foreign partnership one or more of the members of which is, for United States federal income tax purposes, a foreign corporation, a nonresident alien individual, or a nonresident alien fiduciary of a foreign estate or trust; or an International Financial Organization.

2.20. United States Person. A citizen, national, or resident of the United States; a corporation, partnership, or other entity created or organized in or under the laws of the United States or any political subdivision thereof; or an estate or trust that is subject to United States federal income tax regardless of the source of its income.

2.21. United States-Related Person. A United States Person, a controlled foreign corporation within the meaning of section 957(a) of the Internal Revenue Code, or a foreign corporation 50 percent or more of whose gross income from all sources for the three-year period ending with the close of the taxable year preceding the subject payment was effectively connected with the conduct of a trade or business in the United States.

2.22. Withholding Agent. The United States Person that would be required to deduct and withhold United States Federal income tax from interest on the Notes under sections 1441(a) or 1442(a) of the Internal Revenue Code if such interest were not portfolio interest within the meaning of sections 871(h) and 881(c) of the Internal Revenue Code.

Section 3. Fiscal Agent as Registrar

3.1. Fiscal Agent as Registrar. FRB NY is designated to act on behalf of Treasury as the exclusive fiscal agent and, as such, registrar for this issue. FRB NY is authorized to receive tender forms and payment, issue the Notes, maintain and service securities accounts, pay principal and interest, conduct exchange and conversion transactions, redeem the Notes at maturity, and otherwise act as necessary in its capacity as fiscal agent.

Section 4. Description of the Notes

4.1. The Notes. The Notes will be issued as direct obligations of the United States of America. The Notes will be dated February 15, 1986, and issued February 18, 1986, in book-entry form. They will bear interest at the stated rate determined in the manner described in Section 6.7, payable on an annual basis on February 15, 1987, and on February 15 of each subsequent year through the maturity date. The Notes will mature on February 15, 1996, and are not subject to call for redemption prior to maturity . After March 22, 1986, the Notes may be converted to Definitive Notes as described in Section 9. Interest and principal on the Notes will be paid in United States dollars in accordance with the procedures set forth in Sections 8.5. and 9.3. After March 22, 1986, the Notes will be acceptable to secure deposits of public monies of the United States.

4.2. Transfer and Exchange. Ownership of the Notes is transferable as provided in Sections 8 and 9. The Notes may be exchanged for Domestic Notes as provided in Section 10. If the applicable requirements of Section 11 have been complied with, after March 22, 1986, the Notes may be acquired and owned by a United States Person, and Domestic Notes acquired in exchange for the Notes may be acquired and owned by either a United States Alien or a United States Person.

4.3. No Gross-up. There will be no future increase in payments to offset any changes in tax requirements affecting these Notes.

4.4. Denominations. Definitive Notes will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in those denominations or in multiples of those amounts.

4.5. Governing Regulations. Treasury's general regulations governing United States securities (Part 306 of Title 31 of the Code of Federal Regulations) apply to the Notes offered in this offering circular, except as otherwise provided herein.

Section 5. Domestic Notes

5.1. Domestic Auction. On February 5, 1986, Treasury also will auction Domestic Notes that will be issued on the same day as the Notes and will have the same maturity date and stated interest rate as the Notes. After March 22, 1986, the Notes may be exchanged for Domestic Notes in accordance with the procedures set forth in Section 10.

5.2. Domestic Features. The Domestic Notes will be eligible for STRIPS (Separate Trading of Registered Interest and Principal of Securities). The Notes offered in this circular will not be eligible for STRIPS.

Section 6. Bidding and Sale Procedures

6.1. Bidders. Tender forms may be submitted only by or on behalf of Bidders. Individuals may not be Bidders. A syndicate must be comprised only of Bidders to be considered a Bidder. Tender forms may be submitted by an agent of a Bidder if the identity of the Bidder is disclosed.

6.2. Tender Submission. Bids must be submitted on the prescribed tender form and must be received at FRB NY, First Floor, before 1:00 p.m. New York time, on Wednesday, February 5, 1986. Persons submitting tender forms will receive time-stamped receipts. Beginning at 1:00 p.m. New York time on February 5, 1986, bids are irrevocable. A sample tender form is set forth at Attachment A. Tender forms may be obtained at FRB NY and at Treasury offices in Washington, DC.

6.3. Payment Instructions. Bidders are required to make arrangements to pay for the Notes before submitting a bid. Each Bidder must designate a Paying Institution on the tender form. Except as set forth below, each Paying Institution must advise FRB NY no later than 12:00 noon New York time on February 4, 1986, that it has agreed to serve as a Paying Institution for a named Bidder. That advice must be given in the form set forth at Attachment B to this offering circular. The Attachment B notice is not required if: (i), The Bidder and its designated Paying Institution are the same legal entity or (ii) the Paying Institution is submitting the tender form as agent for a Bidder,

and if the signature of the authorized signer of the Paying Institution on the tender form is on file with FRB NY as an authorized signature of the Paying Institution. The Paying Institution may withdraw or modify its agreement to serve as Paying Institution by notifying FRB NY in accordance with Attachment B. The withdrawal of a Paying Institution after a bid has been accepted does not relieve the Bidder of its obligation to pay for the Notes in funds available to Treasury at FRB NY no later than 9:00 a.m. New York time on February 18, 1986. FRB NY will retain paying instructions on file and, if not revoked by the Paying Institution, Bidders may use such instructions in subsequent auctions of Treasury foreign-targeted securities.

6.4. Payment Guarantees. A Payment Guarantee is required unless (i) the Bidder and its designated Paying Institution are the same legal entity or (ii) the Bidder is a foreign branch (not a subsidiary) of a Primary Dealer. A Payment Guarantee may be provided by a Paying Institution or by a Primary Dealer. If the Payment Guarantee is provided by a Paying Institution or a Primary Dealer that is signing the tender form, it must be provided on the tender form. If the Payment Guarantee is provided by a Paying Institution that is not signing the tender form, it must be provided in a letter in the form of Attachment C. If the Payment Guarantee is provided by a Primary Dealer that is not signing the tender form, it must be submitted in a letter in the form of Attachment C. Payment Guarantees in the form of Attachment C must be received by FRB NY no later than 12:00 noon New York time on February 4, 1986. In addition to any other remedies available to the Secretary, the amount of this Payment Guarantee is subject to forfeiture in the Secretary's sole discretion if full payment for the Notes is not made in funds available to Treasury at FRB NY no later than 9:00 a.m. New York time on February 18, 1986. FRB NY will retain Payment Guarantees on file and, if not revoked by the Paying Institution or Primary Dealer providing the Payment Guarantee, Bidders may use such Payment Guarantee in subsequent auctions of Treasury foreign-targeted securities.

6.5. Minimum Bid. The par amount of the bid must be stated on each tender form. Multiple bids by a single Bidder are permitted. Each bid, however, must be submitted on a separate tender form. All bids must be in multiples of $1,000,000, and the aggregate amount bid at the lowest yield by each Bidder must be at least $50,000,000. A bid must show the annual yield for which it is submitted to two decimals, e.g., 7.10%, based on an annual interest payment. Fractions may not be used.

6.6. Maximum Awards. A Bidder, whether bidding individually or as a member of one or more syndicates, will not be awarded Notes with a par value in excess of $350,000,000. A syndicate will not be awarded Notes in excess of $500,000,000. If a Bidder submits one or more bids with a total par value in excess of such maximum awards, the excess (starting at the highest yield bid) will be disregarded for purposes of the prorated calculations referred to in Section 6.8. A syndicate must disclose: (i) the identity of any syndicate member that is submitting one or more other bids (either individually or as a member of another syndicate) if that member's total bids exceed $350,000,000 and (ii) the available for pick-up by each successful Bidder and by its Paying Institution (and its Holding Institution, if different) at FRB NY, First Floor, by 12:00 noon New York time on February 6, 1986.

6.10. Reservations. It is the intent of the Secretary to issue $1,000,000,000 of the Notes. The Secretary expressly reserves the right to accept or reject any or all of the bids in whole or in part. If acceptable bids of less than $500,000,000 are submitted, no bids will be accepted. The Secretary's action under this Section 6.10. is final.

Section 7. Payment for Notes

7.1. Payment. Payment for the Notes will be made on February 18, 1986, by FRB NY debiting the account of each successful Bidder's Paying Institution. The amount of payment for the Notes will be based on the price equivalent to the bid yield determined in accordance with this circular, plus accrued interest from February 15, 1986, to February 18, 1986. The amount of accrued interest will be determined after the auction, using the day-count conventions (as defined in Attachment D) for securities paying annual interest, and investors will be notified of the amount.

Section 8. Book-Entry Notes

8.1. Notes Held in Book-Entry Form. On the books of FRB NY, Notes may be held only by a Holding Institution. Before March 23, 1986, Notes may be held only in a Holding Institution's International Account. After March 22, 1986, Notes may be held in any book-entry accout of a Holding Institution. Holding Notes in an account other than an International Account may affect the certifications required for tax purposes. See Section 11. A Holding Institution that has more than one available book-entry account with FRB NY may have more than one International Account. Each Bidder must identify on its tender form a Holding Institution with an International Account.

8.2. Transfer of Book-Entry Notes. Before March 23, 1986, FRB NY will transfer the Notes only between International Accounts. After March 22, 1986, the Notes may be transferred between any book-entry accounts of any Holding Institutions.

8.3. Book-Entry System. Book-entry records at FRB NY will reflect the aggregate holdings of Notes of each Holding Institution by account. The Holding Institution, and each subsequent holder in the chain to the beneficial owner, will have the responsibility of establishing and maintaining accounts for its customers. FRB NY will be responsible only for maintaining the book-entry accounts in its system, effecting transfers on its books, and ensuring that payments are made to the Holding Institution identified in its book-entry system. With respect to the Notes, FRB NY will act only upon instructions of the Holding Institution holding the Notes.

8.4. FRB NY as Fiscal Agent. FRB NY acts as fiscal agent of Treasury. All other holders in the chain between FRB NY and the beneficial owner act as agents of the beneficial owner or as agents of intermediary Financial Institutions and not as agents of Treasury.

8.5. Payment of Interest and Principal. Interest on Notes in book-entry form will be paid on the interest payment date, and Notes will be redeemed at par on the maturity date. Funds for interest or redemption payments will be credited to the Holding Institution. In the case of a Holding Institution that is an International Financial Organization, interest and redemption payments will be made at a foreign office of such International Financial Organization. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other day on which Treasury in Washington, DC, or FRB NY is not open for business, the interest or principal is payable (without additional interest) on the next day that both Treasury in Washington, DC, and FRB NY are open for business.

Section 9. Definitive Notes

9.1. Definitive Notes. After March 22, 1986, book-entry Notes held at FRB NY may be converted to Definitive Notes. Each Definitive Note will contain on its face the following legend: "This obligation has been sold at original issuance in accordance with procedures

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reasonably designed to ensure that it will be sold only to a person that is not a United States person, other than a foreign branch of a United States financial institution, pursuant to sections 871(h) and 881(c) of the Internal Revenue Code of 1954, as amended."

9.2. Requests for Conversion to Definitive Notes. The request for conversion of book-entry Notes to Definitive Notes may be made to FRB NY only by a Holding Institution and must provide the name and address of the Registered Owner. The Registered Owner of a Definitive Note may be the beneficial owner or an entity (other than an International Financial Organization) holding the Note on behalf of a beneficial owner. FRB NY will deliver the Definitive Note either over the counter or via registered mail in accordance with the instructions provided by the Holding Institution submitting the request for a Definitive Note.

9.3. Payment of Interest and Principal. Interest and maturity payments will be made by check payable to the Registered Owner or by credit to the reserve, clearing, or other dollar account of a Financial Institution that is the Registered Owner, if that Financial Institution maintains such an account with FRB NY. Interest and maturity payments will be mailed or credited on the date such payments are due. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other day on which Treasury in Washington, DC, or FRB NY is not open for business, the interest or principal is payable (without additional interest) on the next day that both Treasury in Washington, DC, and FRB NY are open for business. Definitive Notes will be redeemed by FRB NY at par upon presentment by the Registered Owner or by a Holding Institution on behalf of the Registered Owner on or after the naturity date. Notes will not accrue interest after the maturity date.

9.4. Conversion to Book-Entry Form. A Registered Owner may convert a Definitive Note to book-entry form by submitting the Definitive Note to FRB NY through a Holding Institution. The signature of the Registered Owner must be guaranteed by the Holding Institution or certified by: (1) A United States diplomatic or consular representative; (2) a manager, assistant manager, or other officer of a foreign branch of a bank or trust company incorporated in the United States, its territories or possessions, or the Commonwealth of Puerto Rico; or (3) a notary public or other officer authorized to administer oaths, provided that the official position and authority of any such officer is certified by a United States diplomatic or consular representative under seal of office. An International Financial Organization may convert a Definitive Note to book-entry form by submitting the Definitive Note, duly executed by an authorized official of such International Financial Organization, to FRB NY.

9.5. Transfer of Ownership. Ownership of Definitive Notes may be transfered by assignment. In order to reflect the change of ownership on the books of FRB NY, assigned Definitive Notes must be submitted for reregistration to FRB NY, together with the name and address of the new Registered Owner. The signatures of all assignors must be guaranteed by an institution that at the time of transfer is eligible to serve as a Paying Institution or certified by an individual who may certify signatures for purposes of Section 9.4. above.

9.6. Closed-Book Periods. Transactions involving Definitive Notes will not be accepted at FRB NY during closed-book periods. Such transactions include conversions between book-entry and Definitive Notes and changes in the registration of Definitive Notes. Books for Definitive Notes will be closed for one calendar month prior to and ending on an interest payment date and the maturity date. The Definitive Note books will be reopened on the next day that FRB NY is open for business following an interest payment date. No conversions or changes in registration will be allowed after the maturity date. During periods when the books for Definitive Notes are open, conversions and changes in registration of Definitive Notes generally will be processed by FRB NY within one week of receipt.

9.7. No Fees Imposed. FRB NY will not impose any fee for the issuance, transfer, exchange, or redemption of Definitive Notes.

Section 10. Exchange for Domestic Notes

10.1. Exchange Provision. After March 22, 1986, Notes issued under this offering circular may be exchanged for Domestic Notes. Definitive Notes or Notes in book-entry form may be exchanged for Domestic Notes in an equal par amount in either book-entry or definitive form. Exchanges of Domestic Notes for Notes will not be permitted.

10.2. Taxotion. Upon exchange for Domestic Notes, the holder of such Domestic Notes will be required to comply with the tax requirements (including certification requirements) applicable to Domestic Notes. See also Section 11.

10.3. Adjustment Upon Exchange. At the time of the exchange of Notes for Domestic Notes, an adjustment will be made for the difference between the present value of the Notes based on the formula in Attachment D for Treasury notes paying annual interest and the present value of the Notes based on the formula in Attachment D for Treasury notes paying semiannual interest. This net adjustment consists of the Exchange Adjustment and accrued interest, if applicable. As used in this offering circular, "Exchange Adjustment" means the difference in the present values of the Notes resulting from applying the formulas in Attachment D, after adjusting for the difference in accrued interest. In determining present values, the future payments of interest and principal will be discounted by using the weighted average yield of the Notes at the time of auction in applying the annual formula and by using the semiannual equivalent of that yield in applying the semiannual formula. Calculation of the present values will be made using the formulas shown in attachment D hereto. In the event the present value of the Notes based on semiannual interest payments exceeds the present value of the Notes based on annual interest payments, the holder must pay to Treasury an amount equal to the excess before the exchange will be processed. In the event the present value of the Notes based on the annual interest payments exceeds the present value of the Notes based on the semiannual interest payments, the holder will receive on the exchange an amount equal to the excess. The net adjustment will not reflect or take into account any market-based factor.

10.4. Closed-Book Periods. Exchange transactions involving Notes or Domestic Notes in definitive form will not be accepted during closed-book periods that will be in effect during the period of one calendar month prior to and ending on an interest payment date and the maturity date. Exchange transactions involving only Notes and Domestic Notes in book-entry form may not be accepted on the last day on which FRB NY is open for business preceding an interest payment date and the maturity date. The registration books for Notes and Domestic Notes in definitive form will be reopened on the first day following an interest payment date on which FRB NY is open for business. Except for the closed-book periods, exchange transactions involving only book-entry securities normally will be processed within one day; all other exchange transactions normally will be processed within one week of receipt of FRB NY. No exchanges will be allowed after the maturity date of the Notes.

Section 11. United States Taxation

11.1. Taxation of Interest and Principal to United States Aliens. Payments of interest and principal on the Notes to a United States Alien will not be subject to withholding of United States federal income tax if the Withholding Agent receives an effective certificate under Sections 11.4., 11.5., 11.6., or 11.7. and the other requirements described in the applicable section are satisfied. Failure to satisfy the requirements described in this Section 11.1. may result in imposition of a withholding tax.

11.2. Certification at Initial Issuance. A Bidder will be required to provide a written certification on the tender form that, as of the date of issuance, none of the Notes acquired by the Bidder will be beneficially owned by a United States Person, other than a foreign branch of a United States Financial Institution, or is being acquired on behalf of such a person, or for offer to resell or for resale to such a person. This certification is in addition to and not limited by the transfer restriction in Section 1.3. A certification made by a clearing organization must be based on such statements provided to the clearing organization by its member organizations. (Alternatively, a member organization of a clearing organization may provided the written certification directly to the Issuing FRB that received the clearing organization's bid.)

11.3. Confirmations. Each Issuing FRB will include a confirmation in the notification described in Section 6.9. that it is understood that the purchaser represents that it is not a United States Person or that if it is a United States Person it is a foreign branch of a United States Financial Institution. If the sale is to a dealer, the confirmation will state that the dealer is required to send a similar confirmation to its purchaser. Financial Institutions buying on behalf of or for resale to others are considered to be dealers and will be required to send confirmations to their customers.

11.4. Annual Interest Certification: Financial Institutions and Clearing Organization Members. A Withholding Agent may make a payment of interest on a Note to a Financial Institution, or to a clearing organization member that is not a Financial Institution and that is the beneficial owner of the Note (hereinafter in this Section 11 referred to as "Clearing Organization Member"), without withholding United States federal income tax if (i) the Withholding Agent does not have actual knowledge that the beneficial owner of the Note is a United States Person, (ii) the Note was sold in accordance with the procedures described in Sections 11.2. and 11.3., (iii) the Registered Owner is a Financial Institution, and the interest is paid to the Registered Owner by a United States Person at an address outside the United States, and (iv) the Financial Institution or Clearing Organization Member provides a certificate as described below between January 15 and January 31 of each year. The certificate must state that (a) since the last time the Financial Institution or Clearing Organization Member provided an interest certification with respect to the Note and while the Financial Institution or Clearing Organization Member has held the Note, either: (1) The beneficial owner of the Note has not been a United States Person on each interest payment date, or (2) if the person providing the certification is a Financial Institution which is holding or has held a Note on behalf of a beneficial owner, the beneficial owner has been a United States Person on one or more interest payment dates and the Financial Institution has forwarded or will forward to the Withholding Agent a "U.S. beneficial ownership notification" (as described in Section 11.5. below) and (b) during the period ending on the next interest certification and while the Financial Institution or Clearing Organization Member holds the Note, the beneficial owner of the Note will not be a United States Person on each interest payment date and, if the person providing the certification is a Financial Institution, the Financial Institution will forward a "U.S. beneficial ownership notification" (as described in Section 11.5. below) in the event this certification becomes false during such period because the the Financial Institution holds the Note on behalf of the beneficial owner that is a United States Person. No particular form is required for the certificate. A certificate with respect to a Note may be included as part of a single annual certification with respect to all foreign-targeted registered obligations held or to be acquired during the next year by the Financial Institution or Clearing Organization Member, so long as the Note (or the issuance of which it is a part) is described on a list of all foreign-targeted registered obligations held by the Financial Institution or Clearing Organization Member and the list is attached to, and incorporated by reference into, the certification. The certification provided in January 1986 need not include the statement in clause (a) above with respect to a Note. Internal Revenue Service regulations provide special rules for the first interest certification by a Financial Institution or Clearing Organization Member with respect to the first foreign-targeted registered obligation it acquires (whether a Note or another foreign-targeted registered obligation). Interest will be considered paid outside the United States if the Note is either recorded in a Holding Institution's International Account and interest is credited for that account or interest on a Definitive Note is delivered to the holder outside the United States.

A Withholding Agent also may make a payment of interest (whether inside or outside the United States) on a Note to a Financial Institution without withholding United States federal income tax if a certificate identifying the beneficial owner of the Note is provided to the Withholding Agent by the Financial Institution and the Withholding Agent does not have actual knowledge that the beneficial owner of the Note is a United States Person. In such case the certificate must describe the obligation, be signed under penalties of perjury by an authorized representative of the Financial Institution, and state (i) that the Financial Institution has received from the beneficial owner the statement set out below, or (ii) that it has received from another Financial Institution a similar certificate that it, or another Financial Institution acting on behalf of the beneficial owner, has received the statement set out below from the beneficial owner. In the case of multiple Financial Institutions between the beneficial owner and the Withholding Agent, this certificate must be given by each Financial Institution to the one above it in the chain. No particular form is required for the certification provided by the Financial Institutions. However, the certificate must provide the name and address of the beneficial owner, and a copy of the statement set out below and provided by the beneficial owner must be attached. The statement from the beneficial owner referred to above must (i) be signed by such owner under penalties of perjury, (ii) certify that such owner is not a United States Person, or in the case of an individual, that he is neither a citizen nor a resident of the United States, and (iii) provide the name and address of such owner. The statement may be made, at the option of the Withholding Agent, on Internal Revenue Service Form W–8 or on a substitute form that is substantially similar to a Form W–8.

11.5. Interest Certification: U.S. Beneficial Ownership Notification. The "U.S. beneficial ownership notification" referred to in Section 11.4. above must

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be provided by a Financial Institution holding a Note on behalf of a beneficial owner to the Withholding Agent within 30 days after any interest payment date on a Note held by it on which the beneficial owner is a United States Person and must state that (i) the Note has been beneficially owned by a United States Person on an interest payment date (identifying such date), (ii) the owner has provided to the Financial Institution the statement set out below, and (iii) the Financial Institution has been and will be complying with the information reporting requirements under section 6049 of the Internal Revenue Code, if applicable. The statement from the beneficial owner must (i) be signed by the beneficial owner under penalties of perjury, (ii) provide the name and address of the beneficial owner, (iii) provide the United States taxpayer identification number of the beneficial owner and state that it is the benficial owner's correct number, and (iv) state that the beneficial owner is not subject to backup withholding due to notified payee underreporting. This statement may be provided on Internal Revenue Service Form W–9 or a substitute form that is substantially similar to a Form W–9. A Financial Institution that is not a United States-Related Person must provide the Form W–9 or substitute form together with the notification to the Withholding Agent. A Financial Institution that is a United States-Related Person must provide a statement that it is a United States-Related Person together with the notification to the Withholding Agent. If the Form W–9 (or substitute form) or statement regarding identity as a United States-Related Person is not provided, the Withholding Agent must withhold tax from the next interest payment unless it receives before the next interest payment date such Form W–9 (or substitute form) or statement regarding identity as a United States-Related Person, or statement that the beneficial owner of the obligation is no longer a United States Person.

11.6. Interest Certification: Clearing Organizations. An annual certificate described in Section 11.4. may be provided by a Financial Institution acting in its capacity as a clearing organization only if the clearing organization has received such a certificate from the member organizations to which the interest is paid and states that it has received such a certificate in the certificate provided to the Withholding Agent.

A clearing organization relying on an annual certificate from member organizations must send each such member organization a quarterly reminder of its duty to notify the clearing organization within 30 days after an interest payment date on which the beneficial owner of a Note held by such member organization is a United States Person that the beneficial owner was a United States Person on the interest payment date.

11.7. Interest Certification When Interest is Paid Directly to Beneficial Owners that are United States Persons. A person may make a payment of interest on a Note to the beneficial owner of a Note (whether the owner is a Financial Institution, Clearing Organization Member, or other person) without withholding United States federal income tax if the person receives a Form W–9 or substitute form from such owner.

11.8. Interest Certification When Interest is Paid Directly to Beneficial Owners that are not United States Persons. A Withholding Agent may make a payment of interest on a Note to the beneficial owner of the Note without withholding United States federal income tax if (i) the Withholding Agent does not have actual knowledge that such person is a United States Person, and if (ii) the Withholding Agent receives, within the period beginning 90 days prior to and ending on the first interest payment date on which the Withholding Agent pays interest to such owner, a Form W–8 or substitute form from such beneficial owner. If the form is received less than 30 days before the interest payment date, the Withholding Agent may, in its discretion, withhold tax.

Where the Withholding Agent is a foreign branch of a United States Financial Institution and the beneficial owner is neither a Financial Institution nor a Clearing Organization Member, the Withholding Agent need not receive the Form W–8 or substitute form, provided that the beneficial owner furnishes the Withholding Agent, within the period beginning 90 days prior to and ending on the first interest payment date on which the Withholding Agent pays interest to such owner, with documentary evidence that such owner is not a United States Person. Such evidence may include a written certification from the beneficial owner (e.g., appearing on an account application form) that the beneficial owner is neither a citizen nor a resident of the United States. Internal Revenue Service regulations provide further guidance as to what constitutes sufficient documentary evidence. The beneficial owner must confirm to the Withholding Agent the continuing validity of the documentary evidence provided within the period beginning 90 days prior to the first day of the third calendar year following the provision of such evidence and during the same period every three years thereafter while the owner still owns the Note. If, on any interest payment date after the obligation was acquired by the person who provided the documentary evidence or Form W–8 (or substitute form), the beneficial owner is a United States Person, then the beneficial owner must provide a Form W–9 (or substantially similar form) to the person who paid interest to such beneficial owner within 30 days after such interest payment date.

11.9. Prospective Determinotion. Any determination by the Secretary with respect to certification requirements pursuant to section 871(h)(4) of the Internal Revenue Code will be published and will be effective only with respect to payment of interest made more than one month after the publication of such a determination.

11.10. Certain Information Reporting. A Withholding Agent that receives a Form W–9 or substantially similar form pursuant to Section 11.5. from a Financial Institution that is not a United States-Related Person must send a copy of such form to the Internal Revenue Service within 30 days after receiving it and must attach a statement that the form is with respect to a United States Person that has owned a foreign-targeted registered obligation on one or more interest payment dates. A payor of interest that receives a Form W–9 or substitute form from a beneficial owner pursuant to Sections 11.7. or 11.8. must comply with information reporting requirements under section 6049 of the Internal Revenue Code. A Withholding Agent that receives a Form W–8 or substitute form pursuant to Sections 11.4. or 11.8. must make an information return on Internal Revenue Service Form 1042S of the payment with respect to which the form is required for the calendar year in which the payment is made. The form received with respect to the payment shall be attached to the Form 1042S required to be filed with respect to the payment.

11.11. Retention of Certificates. The Withholding Agent and a clearing organization relying on a certification from a member organization are required to retain the written certifications for a period of four years after the close of the calendar year in which they were, respectively, obtained.

11.12. Information Reporting and Backup Withholding. Neither information reporting under section 6049 of the Internal Revenue Code nor backup withholding will apply to interest paid on a Note to a United States Alien if (i) The conditions of Section 11.1. are satisfied, (ii) the payor of the interest does not have actual knowledge that the payee is a United States Person, and (iii) if the payor is a United States-Related Person acting as a custodian, nominee, or other agent of the payee, the payor has documentary evidence in its records that the payee is not a United States citizen or resident. Neither information reporting under section 6045 of the Internal Revenue Code nor backup withholding will apply to payments of principal made outside the United States on a Note to a United States Alien (i) If the payor of the principal is not a United States-Related Person; or (ii) if the payor is a United States-Related Person acting as a custodian, nominee, or other agent of the payee, the payor does not have actual knowledge that the payee is a United States Person (other than a foreign branch of a United States Financial Institution) and has documentary evidence in its records that the payee is not such a person. Principal will be considered paid to a Registered Owner outside the United States if either the Note is recorded in a Holding Institution's International Account and principal is credited for that account, or principal on a Definitive Note is delivered to the holder outside the United States.

11.13. Original Issue Discount. The Secretary shall determine whether the Notes will be considered issued with original issue discount within the meaning of section 1273(a)(1) of the Internal Revenue Code. In the event the Notes are issued with original issue discount, that fact and the amount of the discount will be announced in an Internal Revenue Service publication. See also Section 11.14. A United States Alien described in Section 11.2. that is a holder of a Note will not be subject to United States federal income tax, and no withholding of United States federal income tax will be required as a consequence of the Note's having original issue discount if the conditions of Section 11.1. are satisfied with respect to stated interest on the Note. A holder of a Note that is a United States Person generally will be required to include in income the portion of the original issue discount allocable to each day during the year on which the Note is held. Any such income will increase such holder's tax basis for the Note, and any gain or loss on a sale of the Note, determined by comparing the amount realized in such sale with the holder's basis as so adjusted, generally will be capital gain or loss.

11.14. Taxation of Gains to United States Aliens. A holder of a Note that is a United States Alien will not be subject to the United States federal income tax and no withholding of United States federal income tax will be required with respect to any gain realized on the sale, redemption, or exchange of the Note provided such gain is not effectively connected with a United States trade or business, and further provided that: (i) If such United States Alien is a nonresident alien individual, such individual is not present in the United States for a total of 183 days or more during the taxable year in which such gain is realized, is not subject to tax under section 877 of the Internal Revenue Code as an expatriate of the United States, and is not treated as a resident of the United States for the taxable year in which the gain is recognized under sections 6013(g) or 6013(h) of the Internal Revenue Code; or (ii) if such United States Alien holder is a foreign corporation, such foreign corporation will not have a past or present status as a personal holding company with respect to the United States or as a corporation which accumulates earnings to avoid United States federal income tax.

11.15. Exchange for Domestic Notes. A holder of a Note will not recognize gain or loss on the exchange of a Note for a Domestic Note under the procedures in Section 10. Upon the exchange, a holder will be considered to have received interest accrued on the Note up to the time of the exchange and to have paid to Treasury the Exchange Adjustment amount. (Actual payments will be only of the net amount. See Section 10.3.) The amount of the Exchange Adjustment will be considered an increase in the original issue price (which will reduce original issue discount, if any, with respect to the Note).

11.16. Federal Estate Taxation of United States Aliens. Any Note held by an individual who at the time of his death is not a citizen of or domiciled in the United States will not be included in the decedent's gross estate for purposes of United States federal estate tax at the time of such individual's death if interest paid on the Note to the individual at the time of his death would not have been subject to withholding of United States federal income tax because the conditions described in Section 11.1. are satisfied but without regard to whether a certificate or statement described in Section 11 has been received by the Withholding Agent since the last interest payment.

11.17. State and Local Taxation. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except for: (i) A nondiscriminatory franchise or other nonproperty tax instead of a franchise tax imposed on a corporation, or (ii) an estate or inheritance tax. See section 3124 of Title 31 of the United States Code.

Section 12. Sanctions

12.1. Sanctions. In the Secretary's sole discretion, any person found to be in violation of any requirement or provision set forth in this offering circular may be excluded from bidding for or purchasing some or all future issues of Treasury foreign-targeted securities and may be subject to such other sanctions as determined by the Secretary.

Section 13. General Provisions

13.1. Applicable Law. The law governing all matters relating to the terms and conditions of the Notes is the federal law of the United States.

13.2. Modifications. The Secretary may supplement or amend provisions of this offering circular governing the offering if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such future changes will be promptly provided.

13.3. Monthly Information. The Secretary will publish the total amount of Notes outstanding in the Monthly Statement of the Public Debt.

13.4. Listing. The Notes will be listed on the New York Stock Exchange as of February 18, 1986.

13.5. Eligibility for Clearance. The Notes will be eligible for clearance on Euro-Clear and CEDEL.

13.6. Headings. The headings of sections and subsections in this offering circular are inserted for convenience of reference only and shall not be deemed to be part of this offering circular.

13.7. Attachments Incorporated. Attachments A through D and any terms and conditions set forth therein are incorporated as part of this offering circular.

13.8. Waiver. The Secretary reserves the right, in his discretion, to waive any provision or provisions of this offering circular.

13.9. Sale in the United States. The Notes are offered for sale only in the United States. Resale or reoffering of the Notes outside the United States is

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authorized only when such resale or reoffering complies with the securities laws and other applicable laws of jurisdictions in which such resale or reoffering occurs. Bidders and their agents are responsible for ensuring compliance with the laws of such jurisdictions.

Donald A. Chiodo,

Acting Fiscal Assistant Secretary.

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Attachment A

TENDER FOR SAMPLE FOREIGN - TARGETED TREASURY NOTES OF _____ SERIES _____

IMPORTANT — ONLY COMPETITIVE TENDERS WILL BE ACCEPTED AND MUST BE RECEIVED BY THE FEDERAL RESERVE BANK OF NEW YORK BEFORE 1:00 P.M. NEW YORK TIME ON _____

To: Federal Reserve Bank of New York
Fiscal Agent of the United States
33 Liberty Street
New York, New York 10045

The undersigned offers to purchase the above-described Notes in the amount indicated below and agrees to make payment therefor at FRB NY in accordance with the provisions of the official offering circular (Department Circular, Public Debt Series No. _____). The definitions in the official offering circular apply to this tender form.

The total par amount bid at the lowest yield must be at least $50,000,000. Par amount bid for must be a multiple of $1,000,000. Bidders may submit multiple bids but each bid must be submitted on a separate tender form.

COMPETITIVE TENDER

PAR AMOUNT	ANNUAL YIELD
$.....(United States dollars) (maturity value)	..... *(Yield must be expressed to two decimal places, for example, 7.10%)*

☐ Check here if this is a syndicate bid.

DELIVERY AND PAYMENT INSTRUCTIONS

Issue book-entry Notes to be held at FRB NY in an International Account of .....

.....
(Name and Address of Holding Institution)

Payment for Notes awarded will be made through.....
(Name and Address of Paying Institution)

☐ By charge to reserve account; ☐ By charge to clearing account; ☐ By charge to other dollar account

Authorization for such charge must be on file with FRB NY in accordance with the provisions of the official offering circular. If otherwise eligible, the Holding Institution and the Paying Institution may be, but do not have to be, the same.

Bid may be submitted only by or on behalf of Bidders as defined in the official offering circular. If the tender form is submitted by a United States Person, other than a foreign branch of a United States Financial Institution, it must be acting solely as agent for a disclosed Bidder.

TENDER FORM IS SUBMITTED BY: (Please print or type)

NAME.....

ADDRESS.....

CITY.....STATE...ZIPCODE.....

COUNTRY.....

AREA CODE..... TELEPHONE NUMBER.....

If acting as agent, Bidder must be identified below. If Bidder is a syndicate, the head of the syndicate must be identified below.

NAME.....

ADDRESS.....

.....

BIDS WILL BE CONSIDERED ONLY IF THE REVERSE SIDE IS COMPLETED AND EXECUTED.

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Attachment A
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CERTIFICATIONS AND GUARANTEE

1. WE HEREBY CERTIFY that (i) as of _____ none of the Notes awarded to us will be beneficially owned by a United States Person, other than a foreign branch of a United States Financial Institution, and (ii) none of the Notes awarded to us is being acquired on behalf of a United States Person, other than a foreign branch of a United States Financial Institution, or for offer to resell or for resale to such a person.

2. WE FURTHER CERTIFY that we will not sell, contract to sell, or otherwise transfer Notes issued to us to a United States Person, other than a foreign branch of a United States Financial Institution, until after _____. We further agree that if we sell, contract to sell, or otherwise transfer a Note before _____ we will confirm to such purchaser or transferee in writing that (i) there is a restriction on sale or other transfer to United States Persons other than foreign branches of United States Financial Institutions and (ii) that such confirmation is required to be given to any subsequent purchaser or transferee that acquires the Note before _____. We understand that this certification is independent of, and that any transfer must be consistent with, the certification of the preceding paragraph.

3. If this is a syndicate bid, WE FURTHER CERTIFY that, except as identified below, no syndicate member is bidding for Notes in excess of $_____ either through this syndicate, individually, or through another syndicate. (Supply below the identity of any syndicate bidders whose total bids are in excess of $_____ and the amount of Notes included in this syndicate bid for each such member.)

_____

_____

☐ Check here if entity submitting the bid is eligible to and does hereby guarantee payment to Treasury, in accordance with the terms of the official offering circular, of an amount equal to 5% of the Notes for which the tender is submitted. If this box is not checked, a payment guarantee in the form specified in the official offering circular must have been submitted previously to FRB NY unless the Bidder is exempt from such guarantee requirement.

If this tender form is submitted by an agent for a Bidder, the above certifications are made by the agent on behalf of, and are binding on, that principal.

TENDER IS SUBMITTED BY: _____

AUTHORIZED SIGNATURE: _____

NAME AND TITLE OF AUTHORIZED SIGNER: _____

DATE: _____

INSERT THIS TENDER FORM IN ENVELOPE MARKED "TENDER FOR FOREIGN - TARGETED TREASURY NOTES"

Attachment B

[Letterhead of Paying Institution]

Federal Reserve Bank of New York
33 Liberty Street, Room 835
New York, New York 10045
Attn: Mr. Stuart Zorfas
Chief, Securities Department

Gentlemen:

1. We hereby authorize you to debit our (reserve, clearing, or other dollar) account in an amount not to exceed $_____, as payment for United States Treasury securities targeted to foreign investors ("Securities") awarded to (name Bidder). Terms used herein shall have the same meaning as set forth in the official offering circular applicable to the Securities.

2. We retain the right to modify or withdraw this authority. We understand that any such modification or withdrawal must be in writing and must be delivered to FRB NY. We understand that, unless restricted to a specific auction, this letter will be retained by FRB NY and, until modified or withdrawn, may be used by (name Bidder) to pay for any Securities purchased by (name Bidder).

3. We further understand that any Securities paid for by a debit to our (reserve, clearing, or other dollar) account will be issued to our International Account. (This sentence is not required if the Paying Institution signing this letter is willing to permit the Securities paid for under this authorization to be issued to another Holding Institution's International Account.)

4. The following signature(s) is (are) a specimen of the authorized signature(s) which will appear on the tender form submitted by (name Bidder):

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Attachment B
page 2

_____
(Authorized Signature of Bidder or Bidder's Agent)

_____
(Name of Authorized Signer)

_____
(Title of Authorized Signer)

ATTACH SEPARATE SHEET FOR ADDITIONAL SIGNATURES

_____
(Name of Paying Institution)

By: _____
(Authorized Signature)

_____
(Name of Authorized Signer)

_____
(Title of Authorized Signer)

_____
(Date)

Receipt Acknowledged:

_____
FRB NY

TERMS AND FORM OF THIS LETTER MAY NOT BE ALTERED EXCEPT AS INDICATED IN PARAGRAPH 3

Attachment C

[Letterhead of Guarantor]

Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045
Attn: Mr. Stuart Zorfas
Chief, Securities Department

Gentlemen:

This is to advise you that we guarantee payment to Treasury of an amount equal to 5% of the par amount, but not in excess of $_____, of any United States Treasury securities targeted to foreign investors ("Securities") for which _____ bids.
(name of Bidder)

We acknowledge that this guarantee may not be withdrawn during any period between the deadline for submission of bids for Securities and payment for those Securities.

_____
(Name of Guarantor)

By: _____
(Authorized Signature)

_____
(Name and Title of Authorized Signer)

_____ _____
(Date)

Receipt Acknowledged:

_____
FRB NY

TERMS AND FORM OF THIS LETTER MAY NOT BE ALTERED

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Attachment D

Formulas for Calculating the Present Value (Price Plus Accrued Interest) And Yield to Maturity of Treasury Notes Paying Annual Interest 1/

Case A: Calculations during an initial "short" interest period for Treasury notes with long coupons

$$(P+A) = \frac{(r''/360)(C)(v) + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r''-r)/360](C)$

Case B: Calculations during the first "regular" interest period for Treasury notes with long coupons (for use beginning with the first coupon frequency date 2/)

$$(P+A) = \frac{(r''/360)(C) + C + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r''/360) + (360-r)/360](C)$

Case C: Calculations during an initial "short" period for Treasury notes with short first coupons

$$(P+A) = \frac{(r''/360)(C) + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r''-r)/360](C)$

Case D: Calculations when the coupon paid on the next coupon frequency date is a regular coupon

$$(P+A) = \frac{C + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(360-r)/360](C)$

Attachment D
page 2

where:

P = Price in decimals.
A = Accrued interest from original issue date or last interest payment date to valuation date.
r = Days from valuation date to next coupon frequency date calculated on a 360 days per year basis from and including the day following the valuation date up to and including the next coupon frequency date. A full month will be counted as thirty days and a date occurring on the thirty-first calendar day of a month shall be the same as the first calendar day of the following month. If the valuation date falls on a coupon frequency date then r will be defined to be equal to 360.
f = r/360
r'' = Days from the original issue date of the security to the first coupon frequency date of the security calculated using the same conventions used in calculating r.
i = Interest rate (yield to maturity), expressed in decimals and based on annual interest payments.
C = Regular annual coupon, payable annually.
n = Number of full annual periods from valuation date to maturity except that if the valuation date occurs on a coupon frequency date n will be one less than the number of full annual periods remaining to maturity.
$v = 1/(1+i)$
$v^{n} = \frac{1}{(1+i)^{n}}$
$a_{\overline{n}|} = (1-v^{n})/i = v + v^{2} + v^{3} + \ldots\ldots\ldots + v^{n}$ = present value of 1 per period for n periods.

1/ These formulas are specifically intended only for use with the foreign-targeted notes described in this offering circular.

2/ A coupon frequency date is a coupon payment date except for a note with an initial long coupon in which case there is no payment on the first coupon frequency date.

Note: The day count conventions used for determining short and long coupon and accrued interest and for discounting over partial periods for targeted Notes do not conform to regular Treasury practice for domestic securities. The conventions for the targeted Notes assume that each month has thirty days and that a date occurring on the thirty-first calendar day of a month is the same as the first calendar day of the following month. Unlike the convention for corporate bonds in the United States, the last day of February is not defined to be the thirtieth day of the month. Thus, application of these rules results in three days between February 28th and March 1st and zero days between March 31st and the first of April. Similarly, a strict application of these rules leads to 181 days between September 30th and March 31st.

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Formulas for Calculating the Present Value (Price Plus Accrued Interest) And Yield to Maturity of Treasury Notes Paying Semiannual Interest 1/

Case A: Calculations during an initial "short" interest period for Treasury notes with long coupons

$$(P+A) = \frac{(r''/s)(C/2)(v) + (C/2)a_{\overline{n}|} + 100v^{n}}{(1+i/2)^{f}}$$

and $A = [(r''-r)/s](C/2)$

Case B: Calculations during the first "regular" interest period for Treasury notes with long coupons (for use beginning with the first coupon frequency date 2/)

$$(P+A) = \frac{(r''/s'')(C/2) + (C/2) + (C/2)a_{\overline{n}|} + 100v^{n}}{(1+i/2)^{f}}$$

and $A = [(r''/s'') + (s-r)/s](C/2)$

Case C: Calculations during an initial "short" period for Treasury notes with short first coupons

$$(P+A) = \frac{(r''/s)(C/2) + (C/2)a_{\overline{n}|} + 100v^{n}}{(1+i/2)^{f}}$$

and $A = [(r''-r)/s](C/2)$

Case D: Calculations when the coupon paid on the next coupon frequency date is a regular coupon

$$(P+A) = \frac{C/2 + (C/2)a_{\overline{n}|} + 100v^{n}}{(1+i/2)^{f}}$$

and $A = [(s-r)/s](C/2)$

where:

P = Price in decimals.
A = Accrued interest from original issue date or last interest payment date to valuation date.
r = Exact number of days from valuation date to next coupon frequency date.
r'' = Exact number of days from the original issue date to the first coupon frequency date.
f = r'/180 where r' is the number of days from the valuation date to the next coupon frequency date calculated on a 360 days per year basis from and including the day following the valuation date up to and including the next coupon frequency date. A full month will be counted as thirty days and a date occurring on the thirty-first calendar day of a month shall be the same as the first calendar day of the following month. If the valuation date falls on a coupon frequency date then f will be defined to be equal to one.
s = Exact number of days in the current semiannual period. On a coupon frequency date s is the exact number of days to the next coupon frequency date.
s'' = Exact number of days in the semiannual period containing the issue date.
i = Interest rate (yield to maturity), expressed in decimals and based on semiannual interest payments.
C = Regular annual coupon, payable semiannually.
n = Number of full semiannual periods from valuation date to maturity except that if the valuation date occurs on a coupon frequency date n will be one less than the number of full semiannual periods remaining to maturity.
$v = 1/(1+i/2)$
$v^{n} = 1/(1+i/2)^{n}$
$a_{\overline{n}|} = (1-v^{n})/(i/2) = v + v^{2} + v^{3} + \ldots\ldots\ldots + v^{n}$ = present value of 1 per period for n periods.

1/ These formulas will only be used for making calculations involved in exchanging targeted registered issues for companion regular Treasury issues.

2/ A coupon frequency date is a coupon payment date except for a note with an initial long coupon in which case there is no payment on the first coupon frequency date.

Note: The day count conventions used for pricing domestic Treasury notes in making exchange calculations do not conform to regular Treasury practice for domestic securities. The conventions assume that each month has thirty days and that a date occurring on the thirty-first calendar day of a month is the same as the first calendar day of the following month. Unlike the convention for corporate bonds in the United States, the last day of February is not defined to be the thirtieth day of the month. Thus, application of these rules results in three days between February 28th and March 1st and zero days between March 31st and the first of April. Similarly, a strict application of these rules leads to 181 days between September 30th and March 31st (but note the definition of f above).

SAMPLE EXCHANGE VALUES FOR A HYPOTHETICAL 10-YEAR NOTE ISSUED 2/18/1986 AND MATURING 2/15/1996
WITH ACCRUED INTEREST PAYABLE AT ISSUE FROM 2/15/1986 TO 2/18/1986.

DATES OF EXCHANGE	9.125% ANNUAL COUPON @ 9.20% ANN	9.125% SEMIANNUAL COUPON @ 9.00% S/A	ACCRUED INTEREST	EXCHANGE ADJUSTMENT	NET ADJUSTMENT (TO TREASURY) TO INVESTOR
4/15/86	P= 99.472660	P=100.815835			
	A= 1.520833	A= 1.487224			
	P+A=100.993493	P+A=102.303059	.033609	(1.343175)	(1.309566)
5/31/86	P= 99.448853	P=100.813584			
	A= 2.686806	A= 2.646754			
	P+A=102.135659	P+A=103.460338	.040052	(1.364731)	(1.324679)
10/31/86	P= 99.461729	P=100.768407			
	A= 6.488889	A= 1.909307			
	P+A=105.950618	P+A=102.677714	4.579582	(1.306678)	3.272904
2/ 1/87	P= 99.537517	P=100.747188			
	A= 8.770139	A= 4.215353			
	P+A=108.307656	P+A=104.962541	4.554786	(1.209671)	3.345115
9/30/87	P= 99.480423	P=100.705670			
	A= 5.703125	A= 1.140625			
	P+A=105.183548	P+A=101.846295	4.562500	(1.225247)	3.337253
5/31/88	P= 99.515634	P=100.689276			
	A= 2.686806	A= 2.657280			
	P+A=102.202440	P+A=103.346556	.029526	(1.173642)	(1.144116)
6/30/90	P= 99.587931	P=100.542432			
	A= 3.421875	A= 3.402970			
	P+A=103.009806	P+A=103.945402	.018905	(.954501)	(.935596)
8/15/91	P= 99.633031	P=100.454299			
	A= 4.562500	A= .000000			
	P+A=104.195531	P+A=100.454299	4.562500	(.821268)	3.741232

FIGURES MERELY ILLUSTRATE EXCHANGE VALUE COMPUTATIONS AND ARE NOT INTENDED TO APPLY TO THE NOTES OFFERED IN THIS CIRCULAR.

[FR Doc. 86-3263 Filed 2-11-86; 11:17 am]
BILLING CODE 4810-40-C

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PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[Notice 86-11]

Presidential Commission on the Space Shuttle Challenger Accident; Meeting

AGENCY: Presidential Commission on the Space Shuttle Challenger Accident.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the forthcoming meetings.

DATE AND TIME: February 13, 1986 beginning at 11:00 a.m. and February 14, 1986, beginning at 9:00 a.m.

ADDRESS: John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, Florida 32899.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director, Presidential Commission on the Space Shuttle Challenger Accident. (202/395-6190)

Purpose of meeting: Briefing to the Commission by NASA personnel at the Kennedy Space Center regarding status of NASA investigation of matters related to the Space Shuttle Challenger accident; examination of NASA facilities and data at Kennedy Space Center regarding Space Shuttle Challenger accident.

SUPPLEMENTARY INFORMATION: The Presidential Commission on the Space Shuttle Challenger Accident was established as a group of distinguished leaders of the government and the scientific, technical and management communities to investigate the accident of the Space Shuttle Challenger which occurred on January 28, 1986. The meetings will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) because the nature of the meetings are likely to disclose information if disclosed prematurely would be likely to significantly frustrate implementation of proposed action by the Commission.

Exceptional circumstances requiring less than 15 days notice: The meetings were required to be held promptly due to the Presidential direction that the Commission investigate the January 28, 1986 Space Shuttle Challenger accident and submit a final report to the President and the Administrator of National Aeronautics and Space Administration within one hundred and twenty days of issuance of Executive Order 12546 dated February 3, 1986.

Richard L. Daniels,

Acting Director, Logistics Management and Information Program Division, Office of Management, National Aeronautics and Space Administration.

February 12, 1986.

[FR Doc. 86-3399 Filed 2-12-86; 1:19 pm]

BILLING CODE 7510-01-M

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Sunshine Act Meetings

Federal Register
Vol. 51, No. 30
Thursday, February 13, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., February 19, 1986.

PLACE: Hearing Room One, 1100 L Street, NW, Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public

1. Consideration of Draft Proposed Rule—Revision of 46 CFR 552—Financial Reports of Vessel Operating Carriers by Water (Tug and Barge Operators) in the Domestic Offshore Trades.

Portions closed to the public

1. Docket No. 83-46—Southeastern Maritime Company v. Georgia Ports Authority—Consideration of the record.

2. Docket No. 84-28—Petchem, Inc. v. Canaveral Port Authority, et al.—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: John Robert Ewers, Secretary (202) 523-5725.

John Robert Ewers,
Secretary.
[FR Doc. 86-3110 Filed 2-11-86; 3:59 pm]
BILLING CODE 6730-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, February 18, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 10, 1986.
William W. Wiles,
Secretary of the Board.
[FR Doc. 86-3240 Filed 2-11-86; 9:11 am]
BILLING CODE 6201-01-M

3

NEIGHBORHOOD REINVESTMENT CORPORATION

TIME AND DATE: 2:00 p.m., Tuesday, February 18, 1986.

PLACE: 1850 K Street, NW., Suite 400, Washington, DC 20006.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 653-2705.

AGENDA:

I. Appointment of Temporary Chairman
II. Election of:
  Chairman
  Vice Chairman
III. Approval of Minutes, January 8, 1986
IV. Executive Director's Activity Report
V. Audit Committee Report
VI. Treasurer's Report

Carol J. McCabe,
Secretary.
[FR Doc. 86-3305 Filed 2-11-86; 2:31 pm]
BILLING CODE 7570-01-M

federal register

Thursday
February 13, 1986

Part II

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Commercial Chemical Products; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL 2762-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Commercial Chemical Products

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today proposing to amend its hazardous waste identification regulations under the Resource Conservation and Recovery Act to bring under regulation acutely toxic commercial chemical products composed of mixtures of ingredients, which would become hazardous wastes when discarded or intended to be discarded. Until now, only products in which a listed chemical was the sole active ingredient were regulated. This amendment will change the scope of the hazardous waste regulations by including certain commercial chemical products composed of mixtures. The rule will also permit a number of products containing low concentrations of acutely toxic ingredients to be regulated as toxic hazardous wastes. EPA believes that this rule will more consistently and accurately identify and characterize commercial chemical products that are hazardous wastes when discarded or intended to be discarded.

DATES: EPA will accept public comments on this proposed rule until April 14, 1986.

Any person may request a hearing on this amendment by filing a request with Eileen B. Claussen, whose address appears below, by March 5, 1986.

The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement to be unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, he must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

ADDRESSES: Comments should be sent to the Docket Clerk, ATTN: § 261.33 Mixture Rule, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Requests for a hearing should be addressed by Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street., SW., Washington, DC 20460.

The public docket for this amendment is located in Room S-212, Southeast Mall entrance, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Todd A. Kimmell, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background
II. Scope of Proposed Rule
III. Basis of Proposed Rule
IV. Application of Harmonic Mean Formula
V. Harmonic Mean Formula Application to Inhalation and Dermal Toxicity
VI. Use of Toxicity Data
VII. Treatment of Formula Results
VIII. Use of Experimental Data
IX. Treatment of Inert Materials
X. State Authority
XI. Regulatory Impact
XII. Regulatory Flexibility Act
XIII. Paperwork Reduction Act
XIV. References
XV. List of Subjects in 40 CFR Part 261

I. Background

Under the authority of section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the Agency promulgated, under 40 CFR 261.33, a list of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded. The phrase "commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commerical or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient.

The chemical products referred to in § 261.33 have been gathered into two lists. The first consists of chemical substances which pose an acute toxic hazard, *i.e.*, have been shown to be fatal to humans in low doses or, in the absence of data on human toxicity, have been shown in animal studies to have an oral LD50 of less than 50 milligrams per kilogram (rat), a dermal LD50 of less than 200 milligrams per kilogram (rabbit), or an inhalation LC50 of less than 2 milligrams per liter (rat). Also included in this list are substances which exhibit explosive reactivity. This list is contained in § 261.33(e). The second list is comprised of chemical substances which meet the criteria of § 261.11(a)(1), exhibiting the characteristics of Extraction Procedure toxicity, reactivity, corrosivity, or ignitability or which satisfy the criteria in § 261.11(a)(3). These substances are listed in § 261.33(f).

The primary difference between these two lists lies in the small quantity exclusion levels. According to the provisions of 40 CFR 261.5, acutely hazardous wastes have a small quantity exclusion level of 1 kg/month, while wastes that are hazardous for reasons other than acute toxicity have a small quantity exclusion level of 1000 kg/month. Note, however, that on August 1, 1985, the Agency proposed to lower the small quantity generator exclusion level to 100 kg/month for non-acutely toxic hazardous wastes.

EPA recognized at the time of promulgation of these two lists in the **Federal Register** of November 25, 1980 (40 FR 78539), that "this regulation is deficient in its failure to address products containing mixtures of chemicals listed in § 261.33 as their ingredients". There are in fact many commercial chemical products consisting of more than one active ingredient. These are formulations composed of two or more active ingredients, one or more of which might be acutely toxic, but which are unregulated under the present rule. Additionally, since the concentration of the active ingredient is not currently taken into consideration, a mixture containing a low concentration of an acutely toxic ingredient, as well as inert substances, would still be considered as acutely hazardous under the current regulation even though the toxicity of the product may not meet the aforementioned criteria. It is highly desirable, therefore, to revise the rule to address the hazard posed by mixtures of chemicals. The preamble to the regulation of November 25, 1980, noted the Agency's intention to propose an amendment to § 261.33 to cover active ingredient mixtures. Such an amendment is now being proposed.

II. Scope of Proposed Rule

It would be preferable to cover the substances listed in both § 261.33(e) (acutely toxic) and (f) in a single mixture rule. Mixtures containing substances listed in § 261.33(f), however, do not lend themselves readily to evaluation, because they exhibit diverse hazardous characteristics and toxic properties. Acute toxicity on the other hand, as found in most substances listed in § 261.33(e), does permit such an evaluation. This proposed amendment, therefore, applies only to those substances listed in § 261.33(e) for acute toxicity.

The Agency is working on a two-pronged approach for mixtures containing substances in § 261.33(f). First, we are developing a "mixture rule", analogous to that being proposed today, to accommodate the various attributes of toxicity that may be present in the chemicals; this could be proposed within the next several years. Also, we will propose expanding the Extraction Procedure toxicity characteristic (§ 261.24) to include additional organic chemicals. The characteristic would set a level for each compound below which the waste is not expected to pose a hazard. As compounds are added to the Toxicity Characteristic they will be deleted from § 261.33(f). With time, the Agency expects to incorporate all of the § 261.33(f) compounds into the characteristic thus eliminating § 261.33(f).

It should be noted, however, that this proposed rule has no impact on household wastes or certain farm wastes. In both cases, regulatory exemption provided under the RCRA program remain in effect.

III. Basis of Proposed Rule

The toxicological manifestations of individual chemical substances may vary considerably from compound to compound. Some substances show immediate toxic effects after administration, others exhibit delayed effects. The toxic effects of chemical agents may also differ in their degree of reversibility and in their locus of action—local or systemic. It is, therefore, difficult to predict the toxic response of most chemicals without actual experimentation.

If one considers mixtures of chemicals rather than individual substances, the problem of toxicity prediction becomes more complicated. The only way to establish the toxicity of a chemical mixture with certaintly would be by experiment. For some mixtures, particularly pesticide mixtures, acute toxicity has been determined experimentally. However, the toxicity of most chemical mixtures remains undetermined. Since it would be virtually impossible to undertake comprehensive toxicological testing of all commerical chemical products, an alternative means of determining the toxicity of mixtures has been developed. This method will be used when EPA-accepted experimental data is not available. This alternative involves a mathematical model, known as the harmonic mean formula, and a discussion regarding its development follows.

A mathematical approach to estimating the toxicity of mixtures of chemicals was first made by Finney (1), who presented mathematical models for describing the ways in which the response of chemicals acting jointly may differ in degree from that to be expected from their individual toxicity. These models are characterized by the terms additive (*i.e.*, the toxicity of the mixture is equal to the sum of the toxicity of its components), synergistic or potentiating (*i.e.*, the toxicity of the mixture is greater than the sum of the toxicity of its components), antagonistic (*i.e.*, the toxicity of the mixture is less than the sum of the parts), and independent (*i.e.*, each component behaves independently).

Pozzani *et al.* (2) carried out experiments to determine the relationship between the inhalation LC50 values of composite chemical vapors and the LC50 values of the individual components of the vapors. The relationship between the inhalation LC50 and the oral LD50 was also investigated. Animals were exposed to vapors containing individual components as well as mixtures made up of 2 to 4 components. A total of 15 commercial chemical mixtures and 36 chemical pairs were tested. Pozzani compared the LC50 values of the mixtures to the LC50 values of the individual components by applying Finney's model for additive toxicity, known as the harmonic mean formula, which is described below.

$$\frac{1}{\text{Mixture LC50}} = \frac{Pa}{\text{Component A LC50}} + \frac{Pb}{\text{Component B LC50}} + \ldots + \frac{Pn}{\text{Component N LC50}}$$

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Where Pa, Pb, and Pn refer to the proportion of the mixture made up of components A, B, and N, respectively, and Pa+Pb . . .+Pn=1.00.

This formula assumes an additive toxic effect for the components of chemical mixtures, with the qualifications that the components have similar modes of action and parallel dose response curves. Even though these qualifications were not always satisfied, Pozzani found that the components of the mixtures did not act in a markedly less or markedly more than additive manner by the respiratory route.

This observation was also true for all the commercial mixtures and for over half of the chemical pairs when tested orally. The highest correlations were found between the predicted and observed inhalation values. The lower but still significant correlations found between the observed oral and predicted inhalation values suggested that a single inhalation LC50 value can also be estimated from oral data with a fair degree of reliability.

The work of Pozzani was continued by Smyth *et al.* in two studies that explored the joint toxic action of 27 commercial organic chemicals. The oral LD50 was determined experimentally for equivolume mixtures of all possible pairs of the chemicals, 350 in all, and the values were compared with the predicted LD50 of each mixture, as calculated by Finney's harmonic mean formula (3). In addition, the toxicity of equitoxic mixtures of 53 pairs of the same chemicals was also determined experimentally and compared to calculated values (4). An equitoxic mixture was defined as a mixture of the two chemicals in volumes directly proportional to their respective oral LD50 values, so that each component contributed the same degree of toxicity to the mixture.

The results of both studies demonstrated that Finney's harmonic mean formula for additive joint toxicity adequately predicted the toxicity of most of the pairs. When it did not, the formula over-estimated toxicity, indicating that there was some sort of antagonism taking place. Recognizing that the prediction of the safety or hazard of exposure to mixtures of chemicals is often made in the absence of knowledge of the mode of their joint action, the investigators concluded that the soundest hypothesis for the joint action of untested pairs is that of additive toxic action.

Numerous evaluations have been made of the toxicity of mixtures of pesticides, particularly anticholinesterase insecticides, to ascertain whether potentiation of toxic action might occur. Although isolated instances of potentiation did occur, particularly in mixtures containing malathion paired with other organic phosphorus pesticides, in the overwhelming number of cases, the observed toxicity of the mixture closely approximated that to be expected on the basis of additive action (5). The experiments of DuBois and Deininger (6), at the University of Chicago, provide an excellent example of one such study. These researchers evaluated the acute oral toxicity to rats of dioxathion in combination with 12 other organic phosphorus containing insecticides to ascertain whether the compound was capable of producing potentiation of acute toxicity. The study is particularly pertinent for the purposes of this document, since several of the pesticides evaluated are listed in § 261.33(e).

The acute oral toxicity of the 13 pesticides were first individually determined, with results as shown in Table 1. Equitoxic mixtures of dioxathion in combination with each of the other pesticides were then prepared, and the LD50 of each combination was determined experimentally. The results, shown in Table 2, present the calculated or expected LD50 for each combination, as well as the observed LD50, and the ratio of expected to observed values. The authors concluded that the administration of equitoxic mixtures of dioxathion plus each of the other organic phosphates included in the study resulted in LD50 values that approached the values expected on the basis of additive toxic effects. Additional examples for commercially available mixtures of pesticides, demonstrating the applicability of the harmonic mean formula for additive joint toxicity, are provided in the Appendix.

The harmonic mean formula is now regarded as perhaps the only way of assessing the acute toxicity of mixtures of chemicals, other than by actual experimental determination. Thus, the Safe Drinking Water Committee of the National Academy of Science's Board on Toxicology and Environmental Health Hazards, recommended applying the harmonic mean formula to multicomponent mixtures of toxic substances in water (7). Although, the Committee recognized that a large number of interactions is possible, and agreed that uncertainty should be anticipated, they recommended the use of such formulas for events such as chemical spills as it "may be the only way of estimating the toxicity of the mixture."

TABLE I.—ACUTE TOXICITY OF SEVERAL ORGANIC PHOSPHATES

Compound [1]	Oral (rat) LD50 (mg/kg)
Dioxathion	45.
Parathion	5.5
Methyl parathion	11.5
Malathion	1350.
EPN	24.0
Demeton	5.3
Azinphos-methyl	15.0
Diazinon	400.0
Carbophenothion	35.0
Trichlorfon	450.0
Mevinphos	4.5
Tetram	5.4
Disulfoton	12.5

[1] Common names of the various insecticides are used, where available, instead of the trade names utilized by DuBois and Deninger.

TABLE 2.—ACUTE TOXICITY OF MIXTURES OF SEVERAL ORGANIC PHOSPHATES

Mixture	Composition of equitoxic mixture (percent)	Expected LD50 (mg/kg)	Observed LD50 (mg/kg)	Expected/observed LD50
Dioxathion plus Parathion	89.1 10.9	25.2	28	0.90
Dioxathion plus Methyl parathion	79.6 20.4	28.2	39	0.72
Dioxathion plus Malathion	3.2 96.8	606	560	1.25
Dioxathion plus EPN	65.2 34.8	34.5	36	0.95
Dioxathion plus Demeton	89.5 10.5	25.2	33	0.76
Dioxathion plus Azinphos-methyl	75.0 25.0	30.0	32	0.94
Dioxathion plus Diazinon	10.1 89.9	222	260	0.86
Dioxathion plus Carbophenothion	56.2 43.8	40.0	33	1.21
Dioxathion plus Trichlorfon	9.1 90.9	248	330	0.75
Dioxathion plus Mevinphos	90.8 9.1	24.8	41	0.60
Dioxathion plus Tetram	89.1 10.7	25.2	28	0.90
Dioxathion plus Disulfoton	78.3 21.7	28.8	31	0.93

IV. Application of the Harmonic Mean Formula

In applying the harmonic mean formula, the percentages of constituents, rather than their proportions, will be utilized as follows:

$$\frac{100}{\text{Mixture LD50}} = \frac{Pa}{\text{Component A LD50}} + \frac{Pb}{\text{Component B LD50}} + \cdots + \frac{Pn}{\text{Component N LD50}}$$

where:
Pa=percentage by weight of component A,
Pb=percentage by weight of component B,
etc.
and Pa + Pb + . . . + Pn = 100

V. Harmonic Mean Formula Application to Inhalation and Dermal Toxicity

Although the examples provided in the Appendix pertain to the calculation of acute oral toxicity, the formula is equally applicable to the calculation of the inhalation LC50 of chemical mixtures, as noted earlier from the studies of Pozzani *et al.* A modification of the harmonic mean formula has been adopted by the American Conference of Governmental Industrial Hygienists (8) for calculating threshold limit values of mixtures of industrial air contaminants. The harmonic mean formula can also be used for dermal toxicity provided that this information is available on the same species for all constitutents (9).

In cases where the formula applies, but the individual components act on different body systems (e.g., one chemical component has a low inhalation LC50 but a high dermal and oral LD50 and another chemical component has a high inhalation LC50 and high dermal LD50 but a low oral LD50), the formula should be applied to each category separately (*i.e.*, oral rat, dermal rabbit, inhalation rat). If the mixture is found to meet any criteria of § 261.11(a)(2), the mixture will be considered as an acute hazardous waste.

VI. Use of Toxicity Data

Granting that the harmonic mean formula is applicable to the calculation of the acute toxicity of mixtures, the accuracy of the calculated LD50 value will depend on the quality of the data in the sources used to obtain LD50 values. There are often considerable differences reported in the literature for LD50 values for the same chemical. Table 3, for example, shows the rat LD50 (oral) values published in the Registry of Toxic Effects of Chemical Substances (RTECS) (10) as compared to those found in the Farm Chemicals Handbook (11), for some of the pesticides listed in § 261.33(e).

TABLE 3.—COMPARISON OF ORAL RAT LD50 VALUES FOR SEVERAL PESTICIDES

Hazardous waste No. and pesticide	Oral Rat LD50 (mg/kg)	
	RTECS	Farm chemicals handbook
P070—Aldicarb	0.9	0.9
P004—Aldrin	39	67
P008—4-a-Amino pyridine	20	20
P037—Dieldrin	46	46
P020—Dinoseb	25	40–80
P039—Disulfoton	2	2–12
P050—Endosulfan	18	30–110
P088—Endothall	38	51
P051—Endrin	3	7–15
P057—Fluoroacetamide	5.75	15
P058—Fluoroacetic acid, sodium salt	0.22	0.22
P059—Heptachlor	40	147–220
P066—Methomyl	17	17–24
P071—Methyl parathion	8	9–25
P097—Famphur	35	36–82
P089—Parathion	2	4–13
P094—Phorate	1.10	2–4
P085—Octamethylpyrophosphoramide	5	6
P123—Toxaphene	40	69

There are a number of factors which may cause differences in LD50 values obtained for the same chemical on the same animal species. Among the more important factors are sex, age, strain, number of animals used, nutritional and prandial state, presence of impurities in the chemical, the suspending medium used, and differences in administration and time of observation. The Farm Chemicals Handbook, for example, lists three different LD50 values for endosulfan, depending on the suspension medium, as follows: 30 mg/kg in alcohol suspension; 70 mg/kg in aqueous suspension; 110 mg/kg in oil. This helps to explain the wide range in LD50 values reported for endosulfan in different laboratories over approximately 10 years of testing (12).

It seems obvious, therefore, that one may obtain several different values for the LD50 of a mixture, when applying the harmonic mean formula, depending on the source used for the LD50 of the components. To obviate this possibility, EPA is proposing that the LD50 values of the individual substances utilized in the calculation of the LD50 of a mixture be obtained from a single accepted reference source. The most readily available and complete source for data on the toxicity of all classes of chemicals is the Registry of Toxic Effects of Chemical Substances (RTECS). EPA is proposing that values recorded in the 1981–82 issue of RTECS be employed when calculating the toxicity of mixtures. The Agency will accept corrected values occurring in updates of RTECS.

Under the RCRA, generators are responsible for determining whether wastes they generate are hazardous wastes as defined in the regulations. When the generator wishes to use data other than that published in RTECS, including experimentally determined toxicity of mixtures, the generator will be required to have such data approved by EPA through the petitioning process outlined in 40 CFR 260.20 and 260.22. Approved non-RTECS data will be published in the **Federal Register.**

While the rat is probably the most widely used animal for assaying acute oral toxicity, and the rabbit for determining acute dermal toxicity, RTECS will sometimes contain data only for other species, such as the mouse or guinea pig. In those instances where rat and/or rabbit data may be lacking, equivalent data from other animals may be used, based on the observation that acute toxicity for animals is directly related to body surface area. The following relationships have been derived utilizing the estimation that body surface area varies as the ⅔ power of body weight:

$$LD50a = \left[\frac{Wb}{Wa}\right]^{1/3} \times LD50b$$

where:
a=rat
b=animal B (e.g., mouse)
Wa=weight of animal A
Wb=weight of animal B

RTECS gives the following standard weights for various animals:

Rat=200 gm
Mouse=25 gm
Guinea pig=500 gm
Rabbit=2 kg

Applying the formula then:

LD50 rat (mg/kg)=0.5 LD50 mouse
LD50 rat (mg/kg)=1.36 LD50 guinea pig
LD50 rat (mg/kg)=2.25 LD50 rabbit
LD50 rabbit (mg/kg)=0.23 LD50 mouse
LD50 rabbit (mg/kg)=0.46 LD50 rat
LD50 rabbit (mg/kg)=0.63 LD50 guinea pig

Note that the above relationships are also valid when inhalation LC50 rate data or dermal LD50 rabbit data are not available.

EPA recognizes that these may be acceptable sources of toxicity data other

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than, or in addition to, RTECS for use in calculating the toxicity of mixtures. The public is invited to submit comments on criteria which could guide EPA in deciding whether to accept data from other sources.

VII. Treatment of Formula Results

In the absence of EPA-accepted experimental data, the Agency proposes to use the harmonic mean formula to predict the toxicity of mixtures. For mixtures containing one or more of the substances listed in § 261.33(e), if the predicted toxicity meets the criteria for an acute hazardous waste (see § 261.11(a)(2)), the mixture will be considered as an acute hazardous waste. (This proposal applies to all formulated products containing a chemical listed in § 261.33(e), including those in which the listed chemical is the sole active ingredient.) In the case where a calculated LD50 value falls beyond the criteria for acute toxicity in § 261.11(a)(2), that mixture will be considered as if it were listed under § 261.33(f) as a toxic waste.

The provisions of the foregoing paragraph do not apply to mixtures containing substances that were listed in § 261.33(e) because of reactivity. Nor does it apply to mixtures containing substances listed in § 261.33(e), because they have been found to be fatal to humans in low doses. Mixtures containing such § 261.33 substances, will be considered as acutely hazardous, and will be subject to regulation as acutely hazardous wastes. Section 261.33(e) already identifies those compounds listed because of reactivity. Commercial chemical products listed in § 261.33(e) for human toxicity will be identified by the letter "T*." Of course, generators may petition EPA to consider experimental or other data to change the hazard category for these mixtures through the petition process, as outlined in §§ 260.20 and 260.22.

VIII. Use of Experimental Data

Use of the harmonic mean formula is based on the premise that experimental data are unavailable. While it would be desirable to have data from animal assays establishing the toxicity of mixtures, EPA does not believe that it would be justified in routinely requiring such data from the regulated community. However, when acute toxicity data on mixtures are available and found acceptable by EPA, they may be used instead of the calculated values. In cases EPA is petitioned to adopt the measured values, accepted experimentally determined toxicity data will be published in the **Federal Register.**

As noted previously, the harmonic mean formula for calculating the acute toxicity of chemical mixtures is based on additive toxicity. Although this model is adequate, there will undoubtedly be instances where interactions will be involve strong synergism or antagonism. When the Agency has valid experimental data, the mixture will be treated as indicated by the experimental data. Although, no proposed listing will accompany this proposed rule, the Agency may specifically include such mixtures under the appropriate § 261.33 list should someone petition for such action (following the procedures in §§ 260.20 and 260.22), or should the Agency do so of its own initiative.

It may sometimes be difficult for generators to obtain information from the manufacturer regarding the toxicity of the product or the composition of the product. If this information is unknown or unobtainable because of trade secrets or otherwise, such that the predicted toxicity of the mixture cannot be calculated, EPA is proposing that either an experimental assay be performed to determine toxicity, or, as an alternative, the mixture can be considered as acutely hazardous.

IX. Treatment of Inert Materials

As is apparent from the formula simply by inspection, inert materials occurring in chemical mixtures, (*i.e.*, those components of the mixture which exhibit no significant acute toxicity by themselves), can be disregarded in applying the formula since their contribution to the total toxicity of the mixture will be relatively insignificant. For purposes of this proposed rule, an inert substance will be defined as one with an oral LD50 greater than 5000 mg/kg.

It should be recognized, however, that inert substances as often defined for pesticidal purposes, may not necessarily be inert toxicologically. These are materials which are used as fillers, solvents, wetting agents, or propellants, but do not add any significant pesticidal effect. Although such substances are, for the most part, also inert toxicologically, this cannot necessarily be assumed.

For example, pesticide labels often identify the inert ingredients "aromatic hydrocarbon solvents" or "petroleum distillate solvents." These materials do offer some toxicity, however, acute toxicity data is not often reported for such generic substances. The toxicity of an "aromatic hydrocarbon solvent" may be considered as approximately that of xylene, as suggested by Gosselin et al. (13) and EPA is proposing that the LD50 value for xylene, as reported in RTECS, be used in this case. In the same way, kerosene may be considered as representative of "petroleum distillate solvents." When EPA becomes aware of situations where "inert ingredients" may be inert toxicologically, such information and appropriate data will be published in the **Federal Register.** Similarly, generators may petition EPA, following the procedures outlined in §§ 260.20 and 260.22, to consider such data.

X. State Authority

Once a State receives interim or final authorization, it operates the RCRA program instead of EPA. If promulgated, these modifications to the mixture rule and the related management standards will not apply in interim authorized States. Furthermore, unless a State received final authorization on the basis of a universe of hazardous wastes which included these changes, these modifications to the mixture rule and the related standards would not apply in States with final authorization until the State revises its program to adopt the mixture rule, and the revision is approved by the EPA. The process and schedule for the State adoption of these regulations is described in 40 CFR § 271.21, as amended by 49 FR 21678–21682, May 22, 1984.

If this proposed rule is made final, States which now have final authorization and which do not regulate mixtures as stringently as this proposed rule, would have to revise their programs within one year from the date of promulgation if only regulatory changes are necessary, and within two years from the date of promulgation if statutory changes are required. This deadline may be extended in exceptional cases (see § 271.21 (e) (3)). States now applying for final authorization would be able to receive it without making these revisions if the official State application is submitted less than one year after this proposal, if made final, is promulgated. The date which States must modify their programs is governed by § 271.21 (e) (iii).

XI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule is not major since it does not meet any of the stated criteria.

Many of the commercially available formulated chemical products which would be affected by the proposed rule are pesticides. The World Health Organization lists three possible approaches to evaluation of the toxicity of pesticide mixtures—in order of preference:

(a) Require the formulator to obtain reliable acute oral and dermal toxicity data on the actual mixture as marketed; or

(b) Classify the formulation according to the most hazardous constituent of the mixture; or

(c) Apply the harmonic mean formula to predict the toxicity of the mixture.

Requiring experimental data for the toxicity of mixtures would not only be very costly but would probably also tax the capabilities of testing laboratories. The second alternative would cause more stringent regulation of mixtures than seems justified. EPA is requiring the use of the least costly and most reasonable alternative.

There are approximately 35,000[1] commercial chemical pesticide products available, of which about 15,000[1] are composed of mixtures of two or more active ingredients, with the remaining 20,000[1] being formulations containing only one active ingredient. Considering that only a relatively small fraction of the two-or-more active ingredient products contain substances listed in § 261.33 (e), there will not be many new products regulated as a result of this proposal. Moreover, since all of the active ingredients in pesticides must be specified by chemical or common name and concentration, the LD50 of any formulation can be readily calculated if the toxicity of the formulation has not already been determined experimentally.

For these reasons, costs incurred as a result of application of the rule should be minimal.

An additional factor reducing the cost of the regulation is that the regulated community discards relatively few commercial chemicals, because of their inherent value. This has been shown for individual chemicals by EPA studies, and probably applies to commercial chemical mixtures as well.

Although there will be a small increase in costs which the regulated community will incur with the application of the mixture rule to currently unregulated mixtures, this is offset, at least in part, by the effect of the rule on substances containing a highly toxic chemical in low concetration. The current regulation applies to substances listed in §261.33(e), regardless of concentration. For many such formulations, the concentration of the active ingredient may be so low that the product actually is no longer acutely hazardous. At present, a time-consuming petition procedure is required to place the product in a lower hazard category (*i.e.*, the §261.33 (f) list). Under the proposed mixture rule, formulations containing highly toxic active ingredients, at a low enough concentration, will no longer be considered acute hazardous wastes if the mixtures do not meet the criteria of §261.11 (a) (2). In this case, the requirements associated with substances listed in § 261.33 (f) apply. No petition is necessary. This element of the proposed amendment, therefore, will reduce paperwork requirements, and thus costs, for both the regulated community and EPA.

For the above reasons, the proposed rule is not a major regulation, therefore, no Regulatory Impct Analysis is required.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

XII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, (U.S.C. 601–612 *et. seq.*), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

The same considerations discussed in Section XI, Regulatory Impact, regarding the relatively small economic impact of the proposed regulations on the community in general, apply as well to small entities. The Agency does not believe that small entities will dispose of large quantities of the commercial chemical mixtures which will come under regulation. It is unlikely, therefore, that the rule will markedly affect their costs, or reduce their competitive status. Accordingly, I hereby certify that this proposed regulation would not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

XIII. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*).

XIV. References

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9. *Guidelines to the Use of the WHO Recommended Classification of Pesticides by Hazard.* World Health Organization. Geneva, Switzerland. Publication No. VBC/78.1. Revision May, 1979.

10. *1981–82 Registry of Toxic Effects of Chemical Substances.* National Institute for Occupational Safety and Health. Cincinnati, OH. June, 1983.

11. *Form Chemicals Handbook.* Meister Publishing Co. Willoughby, OH. 1983.

12. *Hexachlorohexahydromethano-2.4.3–benzodioxothiepin 3-oxide (Endosulfon)*

[1] Many products are identical in formulation but are made or sold by several firms.

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XV. List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: February 3, 1986.

Lee M. Thomas,

Administrator.

Appendix—Calculation of Toxicity of Chemical Mixtures

Examples for the calculation of the acute oral toxicity of some commercial chemical products containing at least one substance listed in § 261.33(e), are presented in this section. In addition to values calculated by use of the harmonic mean formula, experimentally determined LD50 values for a number of the products are also shown. All of the examples are of pesticide products, since data are most readily available for this class of substances. Note that some of the products indicated may no longer be available commercially.

Example No. 1

Temik-TSK Granular Pesticide (EPA Reg. No. 264–319)

Ingredients	Concentration (percent)	LD50 (mg/kg)
Aldicarb	5.0	0.9
Pentachloronitrobenzene	10.0	1,850.0
Terrazole*	2.5	1,077.0
Inert ingredients	82.5	

Notes.—

100 divided by Predicted LD50 equals 5.0 divided by 0.9 plus 10 divided by 1,650 plus 2.5 divided by 1,077 equals 5.55 plus 0.067 plus 0.002 equals 5.62

Predicted LD50 equals 100 divided by 5.62 equals 17.8 mg/kg

Observed LD50 equals 10.1 mg/kg (5.7 to 15.5 mg/kg)*

The predicted LD50 of this product falls within the acutely hazardous range. It must therefore be treated as a § 261.33(e) material. The observed LD50 for this product approximates the predicted LD50 reasonably well, and the product would be considered as acutely hazardous on the basis of both predicted and observed values.

Example No. 2

Cygard 630 (EPA Reg. No. 3743–321)

Ingredients	Concentration (percent)	LD50 (mg/kg)
Malathion	58.4	885
Methyl parathion	29.2	6
Xylene	6.2	4,300
Inert ingredients	6.2	

Notes.—

100 divided by Predicted LD50 equals 58.0 divided by 885 plus 29.2 divided by 6 plus 6.2 divided by 4,300 equals 0.066 plus 4.87 plus 0.001 equals 4.94

Predicted LD50 equals 100 divided by 4.94 equals 20.2 mg/kg

Observed LD50 (15) equal
Male rats = 26 mg/kg (18.5 to 37 mg/kg)*
Female rats = 44 mg/kg (21 to 76 mg/kg)*

The predicted LD50 of this product falls within the acutely hazardous range; it must therefore be treated as a § 261.33(e) material.

The observed LD50s for this product approximate the predicted value well, and the product would be considered acutely hazardous on the basis of observed as well as predicted values.

Example No. 3

Mocap Plus (EPA Reg. No. 2224–5649)

Ingredients	Concentration (percent)	LD50 (mg/kg)
Ethoprop	10	34
Disulfoton	5	2
Inert ingredients	85	

Notes.—

100 divided by Predicted LD50 equals 10 divided by 34 plus 5 divided by 2 equals 0.29 plus 2.50 equals 2.79

Predicted LD50 equals 100 divided by 2.79 equals 35.8 mg/kg

Observed LD50 (16) equals 50±6.3 mg/kg (male rats)

The predicted LD50 of this product falls within the acutely hazardous range. It must therefore be treated as a § 261.33(e) material.

The observed LD50 of this product is somewhat higher than the predicted LD50. This may relate to the fact that male rats were used in the experimental determination of the LD50, whereas the LD50's used to calculate the predicted LD50, as derived from RTECS, correspond to values for female rats, which often have lower LD50 values for many pesticides than do male rats. In the case of either predicted or observed values for this product, however, the LD50 falls in the acutely hazardous range.

Example No. 4

ORTHO 3-Way Rose and Flower Care (EPA Reg. No. 239–2292)

Ingredients	Concentration (percent)	LD50 (mg/kg)
Disulfoton	1.0	2
Trifluralin	0.174	10,000
Inert ingredients	98.8	

Notes.—

100 divided by Predicted LD50 equals 1.0 divided by 2 plus 0.174 divided by 10,000 equals 0.50

Predicted LD50 equals 100 divided by 0.50 equals 200 mg/kg

Observed LD50 (17) =
Male rats = 1161 mg/kg (1005 to 1390 mg/kg)*
Female rats = 349 mg/kg (270 to 451 mg/kg)*

The predicted LD50 of this product falls outside of the acutely hazardous range, and the product may be managed as a § 261.33(f) material. Note that the LD50 for trifluralin was not included in the calculation, since its toxicity is insignificant.

It should be noted that the predicted LD50 for this product is appreciably lower than the observed LD50 for male rats, and lower, as well, then the observed LD50 for female rats. The product was administered by stomach tube as a finely ground powder for the experimental determinations of acute toxicity. It seems likely that the method of administration may have affected the observed LD50s since acute toxicity values obtained with materials administered as solids are often higher than those where the same materials are administered as solutions or suspensions in a suitable solvent. At any rate, the product falls outside the acutely hazardous range for both predicted and observed values.

Example No. 5

ORTHO Thiodan 2 Emulsive (EPA Reg. No. 239–1305–AA)

Ingredients	Concentration (percent)	LD50 (mg/kg)
Endosulfan	23.5	18
Aromatic petroleum derivative solvent	68.5	4,300
Inert ingredients	8.0	

Notes.—

100 divided by Predicted LD50 equals 23.5 divided by 18 plus 68.5 divided by 27,200 equals 1.30 mg/kg

Predicted LD50 equals 100 divided by 1.30 equals 77 mg/kg

*95% Confidence limit.

*95% Confidence limits.

*95% Confidence limits.

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The predicted LD50 of this product falls outside of the acutely hazardous range. The product therefore may be treated as a § 261.33(f) material. As suggested earlier, the LD50 value of kerosene was used for the acute toxicity of the aromatic petroleum derivative solvent.

Example No. 6

ORTHO Parathion Toxaphene 2–15 Dust (Calif. Reg. No. 239–50656–AA)

Ingredients	Concentration (percent)	LD50 (mg/kg)
Parathion	2	2
Toxaphene	15	40
Inert ingredients	83	

Notes.—

100 divided by Predicted LD50 equals 2 divided by 2 plus 15 divided by 40 equals 1 plus 0.38 equals. 1.38

Predicted LD50 equals 100 divided by 1.38 equals 72 mg/kg

Although this product contains two highly toxic ingredients, their concentrations are sufficiently low to place the mixture outside of the acutely hazardous range, and the product may be managed as a § 261.33(f) material.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—Identification and Listing of Hazardous Waste

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a) 6921 and 6922).

2. Amend § 261.33 by redesignating the text of paragraph (a) as paragraph (a) (1) and by adding paragraph (a) (2), removing the comment which follows paragraph (d), and revising paragraph (e) to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(a) * * *

(2) For the purpose of this section, the phrase "commercial chemical product or manufacturing chemical intermediate" means a chemical substance manufactured or formulated for commercial or manufacturing use which consists of:

(i) The commercially pure grade of the chemical,

(ii) Any technical grades of the chemical that are produced or marketed,

(iii) Any formulation in which the chemical is the sole active ingredient, and

(iv) Any formulation consisting of a mixture of ingredients, one or more of which is listed in paragraph 261.33(e)(1) of this section for acute toxicity. The phrase "commercial chemical product of manufacturing chemical intermediate having the generic name listed in . . ." refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f). Where a manufacturing process waste is deemed to be a hazardous waste because it contains a substance listed in paragraphs (e) or (f), such waste will be listed in either §§ 261.31 or 261.32 or will be identified as a hazardous waste by the characteristics set forth in Subpart C of this part.

* * * * *

(e)(1) The commercial chemical products, manufacturing chemical intermediates or off-specification commercial chemical products or manufacturing chemical intermediates referred to in paragraphs (a) through (d) of this section, are identified as acute hazardous wastes (H) and are subject to be the small quantity exclusion defined in § 261.5(e).

[*Comment:* For the convenience of the regulated community the primary hazardous properties of these materials are indicated by the letters T* (Human Toxicity), and R (Reactivity). Absence of a letter indicates that the compound is listed on the basis of animal toxicity data.]

These wastes and their corresponding EPA Hazardous Waste Numbers are:

Hazardous waste No.	Substance
P023	Acetaldehyde, chloro-
P002	Acetamide, N-(aminothioxomethyl)-
P057	Acetamide, 2-fluoro-
P058	Acetic acid, fluoro-, sodium salt
P066	Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester
P001	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts, when present at concentrations greater than 0.3%
P002	1-Acetyl-2-thiourea
P003	Acrolein
P070	Aldicarb
P004	Aldrin
P005	Allyl alcohol
P006	Aluminum phosphide (T*)
P007	5-(Aminomethyl)-3-isoxazolol
P008	4-Aminopyridine
P009	Ammonium picrate
P119	Ammonium vanadate
P010	Arsenic acid (T*)
P012	Arsenic (III) oxide (T*)
P011	Arsenic (V) oxide (T*)
P011	Arsenic pentoxide
P012	Arsenic trioxide (T*)
P038	Arsine, diethyl- (T*)
P054	Aziridine
P013	Barium cyanide
P024	Benzenamine, 4-chloro-
P077	Benzenamine, 4-nitro-
P028	Benzene, (chloromethyl)-
P042	1,2-Benzenediol, 4-[1-hydroxy- 2-(methylamino)ethyl]-
P014	Benzenethiol
P028	Benzyl chloride
P015	Beryllium dust (T*)
P016	Bis(chloromethyl) ether
P017	Bromoacetone (T*)
P018	Brucine
P021	Calcium cyanide
P123	Camphene, octachloro-
P103	Carbamimidoselenoic acid
P022	Carbon bisulfide (T*)
P022	Carbon disulfide (T*)
P095	Carbonyl chloride (T*)
P033	Chlorine cyanide
P023	Chloroacetaldehyde
P024	p-Chloroaniline
P026	1-(o-Chlorophenyl)thiourea
P027	3-Chloropropionitrile
P029	Copper cyanides
P030	Cyanides (soluble cyanide salts), not elsewhere specified (T*)
P031	Cyanogen
P033	Cyanogen chloride
P036	Dichlorophenylarsine
P037	Dieldrin
P038	Diethylarsine (T*)
P039	0,0-Diethyl S-[2-(ethylthio)ethyl] phosphorodithioate (T*)
P041	Diethyl-p-nitrophenyl phosphate
P040	0,0-Diethyl O-pyrazinyl phdsphorothioate
P043	Diisopropyl fluorophosphate
P044	Dimethoate (T*)
P045	3,3-Dimethyl-1-1-(methylthio)-2-butanone, O-[(methylamino)carbonyl] oxime
P071	0,0-Dimethyl O-p-nitrophenyl phosphorothioate
P062	Dimethylnitrosamine
P046	alpha,alpha-Bimethylphenethylamine (T*)
P047	4,6-Dinitro-o-cresol and salts
P034	4,6-Dinitro-o-cyclohexylphenol (T*)
P048	2,4-Dinitrophenol
P020	Dinoseb
P085	Diphosphoramide, octamethyl-
P039	Disulfoniton (T*)
P049	2,4-Dithiobiuret
P109	Dithiopyrophosphoric acid, tetraethyl ester
P050	Endosulfan
P088	Endothall
P051	Endrin
P042	Epinephrine
P048	Ethanamine, 1,1-dimethyl-2-phenyl- (T*)
P084	Ethanamine, N-methyl-N-nitroso-
P101	Ethyl cyanide
P054	Ethyleneimine
P097	Famphur
P056	Fluorine
P057	Fluoroacetamide
P058	Fluoroacetic acid, sodium salt
P065	Fulminic acid, mercury(II) salt (R, T)
P059	Heptachlor
P061	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo, 1,4:5,8-dimethanonaphthalene
P037	1,2,3,4,10,10-Hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo, exo-1,4:5,8-dimethanonaphthalene
P060	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene
P004	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, exo-dimethanonaphthalene
P060	Hexachlorohexahydro-exo, exo-dimethanonaphthalene
P062	Hexaethyl tetraphosphate
P116	Hydrazinecarbothioamide
P068	Hydrazine, methyl-
P063	Hydrocyanic acid
P063	Hydrogen cyanide
P096	Hydrogen phosphide

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Hazardous waste No.	Substance
P064	Isocyanic acid, methyl ester
P007	3(2H)-Isoxazolone, 5-(aminomethyl)-
P092	Mercury, (acetato-O)phenyl-
P065	Mercury fulminate (R,T)
P016	Methane, oxybis(chloro-
P112	Methane, tetranitro- (R)
P118	Methanethiol, trichloro-
P059	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P066	Methomyl
P067	2-Methylaziridine
P068	Methyl hydrazine
P064	Methyl isocyanate
P069	2-Methyllactonitrile
P071	Methyl parathion
P072	alpha-Naphthylthiourea
P073	Nickel carbonyl
P074	Nickel cyanide
P074	Nickel(II) cyanide
P073	Nickel tetracarbonyl
P075	Nicotine and salts (T*)
P076	Nitric oxide (T*)
P077	p-Nitroaniline (T*)
P078	Nitrogen dioxide
P076	Nitrogen(II) oxide
P078	Nitrogen(IV) oxide
P081	Nitroglycerine (R,T*)
P082	N-Nitrosodimethylamine
P084	N-Nitrosomethylvinylamine
P050	5-Norbornene-2,3-dimethanol, 1,4,5,6,7,7-hexachloro, cyclic sulfite
P085	Octamethylpyrophosphoramide
P087	Osmium oxide
P087	Osmium tetroxide
P088	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid
P089	Parathion (T*)
P034	Phenol, 2-cyclohexyl-4,6-dinitro- (T*)
P048	Phenol, 2,4-dinitro-
P047	Phenol, 2,4-dinitro-6-methyl-, and salts
P020	Phenol, 2,4-dinitro-6-(1-methylpropyl)-
P009	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P036	Phenyl dichloroarsine
P092	Phenylmercuric acetate
P093	N-Phenylthiourea
P094	Phorate (T*)
P095	Phosgene (T*)
P096	Phosphine
P041	Phosphoric acid, diethyl p-nitrophenyl ester
P044	Phosphorodithioic acid, 0,0-dimethyl S-[2-(methylamino)-2-oxoethyl] ester (T*)
P043	Phosphorofluoridic acid, bis(1-methylethyl) ester
P094	Phosphorothioic acid, 0,0-diethyl S-(ethylthio) methyl ester (T*)
P089	Phosphorothioic acid, 0,0-diethyl 0-(p-nitrophenyl) ester (T*)
P040	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester
P097	Phosphorothioic acid, 0,0-dimethyl 0-[p-[(dimethyl-amino)-sulfonyl]phenyl] ester
P110	Plumbane, tetraethyl-
P098	Potassium cyanide
P099	Potassium silver cyanide
P070	Propanal, 2-methyl-2-(methylthio)-, 0-[(methylamino) carbonyl]oxime
P101	Propanenitrile
P027	Propanenitrile, 3-chloro-
P069	Propanenitrile, 2-hydroxy-2-methyl-
P081	1,2,3-Propanetriol, trinitrate- (R,T*)
P017	2-Propanone, 1-bromo- (T*)
P102	Propargyl alcohol
P003	2-Propenal
P005	2-Propen-1-ol
P067	1,2-Propylenimine
P102	2-Propyn-1-ol
P008	4-Pyridinamine
P075	Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts (T*)
P111	Pyrophosphoric acid, tetraethyl ester
P103	Selenourea
P104	Silver cyanide
P105	Sodium azide
P106	Sodium cyanide
P107	Strontium sulfide (T*)
P108	Strychnidin-10-one, and salts (T*)
P018	Strychnidin-10-one, 2,3-dimethoxy-
P108	Strychnine and salts (T*)
P115	Sulfuric acid, thallium(I) salt
P109	Tetraethyldithiopyrophosphate
P110	Tetraethyl lead
P111	Tetraethylpyrophosphate
P112	Tetranitromethane (R)
P062	Tetraphosphoric acid, hexaethyl ester
P113	Thallic oxide
P113	Thallium(III) oxide
P114	Thallium(I) selenide
P115	Thallium(I) sulfate
P045	Thiofanox
P049	Thioimidodicarbonic diamide
P014	Thiophenol
P116	Thiosemicarbazide
P026	Thiourea, (2-chlorophenyl)-
P072	Thiourea, 1-naphthalenyl-
P093	Thiourea, phenyl-
P123	Toxaphene
P118	Trichloromethanethiol
P119	Vanadic acid, ammonium salt
P120	Vanadium pentoxide
P120	Vanadium(V) oxide
P001	Warfarin, when present at concentrations greater than 0.3%
P121	Zinc cyanide
P122	Zinc phosphide, when present at concentrations greater than 10%

(2) Except as provided by paragraphs (e) (3) through (6) of this section, when one or more of the substances listed in paragraph (e)(1) of this section for acute toxicity is included in a commercial chemical mixture, the mixture will be considered as an acute hazardous waste.

(i) If the mixture has an acute oral LD50 <50 mg/kg (rat), an acute inhalation LC50 <2 mg/l (rat), or an acute dermal LD50 <200 mg/kg (rabbit), as determined by experimental data approved and noticed in the **Federal Register** by EPA, the mixture will be considered to be acutely hazardous. Generators may petition EPA following the requirements of §§ 260.20 and 260.22 of this chapter to approve the use of such data, or EPA may do so on its own initiative.

(ii) If actual experimental data approved and noticed in the **Federal Register** by EPA are not available to establish mixture toxicity, the predicted toxicity of the mixture must be calculated using the following formula:

$$\text{Predicted LD50} = \frac{100}{\frac{Pa}{LD50\ A} + \frac{Pb}{LD50\ B} + \frac{Pn}{LD50\ N}}$$

Where:

Pa = percentage by weight of ingredient A
Pb = percentage by weight of ingredient B
Pn = percentage by weight of ingredient N
and Pa + Pb . . . + Pn = 100%

(iii) Any mixture in which the individual components act on different bodily systems will be considered as acutely hazardous if after applying the formula to each toxicity category, oral (rat), dermal (rabbit), and inhalation (rat), the mixture meets any of the criteria indicated in (i) above.

(iv) (A) Acute oral, dermal or inhalation LD50s, or LC50s must be taken from the 1981–82 Edition of National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances (RTECS).

(B) Any component of a mixture having an acute oral LD50 over 5000 mg/kg may be disregarded.

(C) The LD50 value for xylene must be used for "aromatic hydrocarbon solvents", and the LD50 value for kerosene must be used for "petroleum distillate solvents" in applying the formula when such ingredients are indicated as present in mixtures.

(D) If RTECS does not list rat or rabbit LD50 or LC50 values, equivalent data from other animals may be used by applying the following factors:

LD50 rat (mg/kg) = 0.5 LD50 or LC50 mouse
or = 1.36. LD50 or LC50 guinea pig
LD50 rat (mg/kg) = 2.25 LD50 or LC50 rabbit
LD50 rabbit (mg/kg) = 0.23 LD50 mouse
= 0.48 LD50 rat
= 0.63 LD50 guinea pig

(v) Any person may petition EPA, following the requirements of §§ 260.20 and 260.22 of this chapter, to approve the use of toxicity data other than that presented in RTECS.

(3) If actual experimental data are available which contradict the predicted formula toxicity (except where the § 261.33(e) listing was based on reactivity or known human toxicity), the Agency will treat the mixture as indicated by the actual experimental data, in accordance with the following procedures:

(i) If a mixture meets the criteria for an acute hazardous waste by application of the formula, and experimental data indicate that it could be categorized as a toxic waste under § 261.33(f), any person may petition the Agency using the procedures described in §§ 260.20 and 260.22 of this chapter to treat the mixture as a § 261.33(f) material. The petitioner must submit the experimental data upon which he bases his petition. Upon approval by the Agency, the mixture may be specifically listed in paragraph (f) of this section.

(ii) If a mixture does not meet the criteria for an acute hazardous waste by application of the formula, and experimental data indicate that it should be categorized as an acute hazardous waste, any person may petition the Agency following the procedures in §§ 260.20 and 260.22 of this chapter to list the mixtures in § 261.33(e) or the Agency may do so on its own initiative.

(4) A mixture found to be an acute hazardous waste, either by experimental

animal assay, or, in the absence of experimental data, on the basis of its predicted toxicity, is subject to the requirements of substances listed in §261.33(e), including the small quantity exclusion defined in §261.5.

(5) A mixture that does not meet the criteria for an acute hazardous waste is subject to the requirements of substances listed in paragraph (f) of this section, including the small quantity exclusion defined in § 261.5. This paragraph does not apply to mixtures containing substances listed in §261.33(e) because they have been found to be reactive or fatal to humans in low doses. Mixtures containing such substances will continue to be acutely hazardous, and will be subject to the requirements of substances listed in §261.33(e).

(6) If the ingredients of a mixture are unknown to, and unobtainable by, the generator because of trade secrets or otherwise, such that the predicted toxicity cannot be calculated, the generator may either conduct an experimental animal assay on the mixture to determine its toxicity and submit such information to the Agency following the procedures described in §§ 260.20 and 260.22 of this chapter, or he may treat the mixture as if it were an acute hazardous waste.

[FR Doc. 86–3045 Filed 2–12–86; 8:45 am]
BILLING CODE 6560–50–M

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FE
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UMI

federal register

Thursday
February 13, 1986

Part III

Department of Education

34 CFR Part 674
National Direct Student Loan Program; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 674

National Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the National Direct Student Loan (NDSL) Program. These proposed regulations are designed to reduce the high number of defaulted loans under the NDSL Program and the unacceptably high default rate of certain participating institutions of higher education by amending the current funding procedures. The Secretary proposes these regulations to encourage institutions to improve the management of their NDSL Programs. Institutions which reduce their default rate by increasing repayments will better preserve the NDSL fund as a revolving fund, and will increase the funds available for loans to future borrowers.

DATES: Comments must be received by March 31, 1986.

ADDRESS: All comments concerning these proposed regulations should be addressed to Ms. Margaret O. Henry, Chief, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, SW. (Room 4018, ROB-3), Washington, DC 20202. Telephone (202) 245-9720.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry, Chief, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue, SW. (Room 4018, ROB-3), Washington, DC 20202. Telephone (202) 245-9720.

SUPPLEMENTARY INFORMATION:

Background

Under the National Direct Student Loan Program, Title IV-E of the Higher Education Act of 1965, as amended, institutions of higher education may receive Federal funds to make loans to students. The current regulations governing NDSL funding procedures provide that a participating institution may not receive a Federal capital contribution (FCC) under the program if its NDSL default rate exceeds 25 percent. The current regulations reduce the FCC provided to an institution with a default rate between 10 percent and 25 percent. The Secretary proposes to revise these procedures in an effort to reduce the high number of defaulted loans under the NDSL Program and the unacceptably high default rate of certain participating institutions of higher education.

Summary of Major Changes

These proposed regulations would change the impact of an institution's default rate on its receipt of Federal capital contribution (FCC), would amend the definition of "default" or "in default," and would amend the appeal process as part of the application review process.

A. Definition of "default" or "in default": Section 674.2

Current regulations provide that a borrower who fails to make an installment payment when due, or to comply with other terms of the promissory note, is regarded as in default on a loan unless the institution reasonably concludes, from written statement(s) from the borrower, that he or she intends to repay the loan. A borrower who reaffirms that intention in this way is thereafter eligible to receive further Title IV assistance, and when computing its default rate, the institution can exclude that borrower's loan from the amount of its loans in default. The institution can also exclude a previously-defaulting borrower's loan from the amount of its loans in default if that borrower executes and complies with a new repayment agreement.

The Secretary intends to continue the existing option for curing a default by the execution of a new repayment agreement, but is proposing to revise this rule for those borrowers who have defaulted and have not executed a new agreement. Under this proposed rule, an institution can exclude from the category of loans "in default" only those past-due loans on which the borrowers do not merely profess their intention to repay, but evidence that promise by making realistic efforts to cure their past defaults. The Secretary considers those borrowers who failed to make required payments in the past but are now making payments currently due and additional payments large enough to continually reduce their arrearages to be demonstrating a serious intention to honor their loan obligations. The Secretary believes that these borrowers deserve to be treated as no longer in default and therefore proposes to amend the rule to exclude from the category of loans in default only the loans of these borrowers who demonstrate serious attempts to cure past defaults by making satisfactory payments to reduce arrearages.

Under this proposal, a borrower previously in default will be considered to be no longer in default while the following conditions are satisfied. First, the borrower has stated in writing his or her intention to repay the loan. Second, the borrower has made a payment or payments sufficient to reduce satisfactorily the amount in arrears: if any amount was past due six months before the date of the payment in question, that payment, together with any intervening payments, must reduce the amount in arrears when the payment in question is made to less than the amount that was past due six months earlier. If no amount was past due six months before the payment in question, that payment, with any others made after the default, must reduce the amount in arrears to less than the amount of the first missed payment within that six month period. Third, if the determination of loan status is made in a month after the borrower made a satisfactory payment described here, the borrower is not in default if he or she has resumed payments in accordance with the repayment agreement most recently executed with the institution, and has included in those regularly-scheduled payments additional amounts necessary to continue to reduce the amount in arrears.

The following examples illustrate the effect of the proposed rule:

Case 1. A borrower owes $3,000, and is required to make monthly payments of $50. The borrower misses payments due on January 1 and each month thereafter until July 5, when he makes a $200 payment, accompanied by a written promise to repay the loan. The determination of the borrower's status in this situation is governed by the second condition: the borrower went into default on January 2, and continued in default through July 5. Six months before the July 5 payment, the borrower was $50 in arrears. Thereafter, the borrower missed six payments, and the total amount past due on July 5 (excluding interest and late charges) was therefore $350. The borrower's July 5 payment of $200 does not reduce the amount past due to less than that past due six months earlier, and the borrower is still in default.

Case 2. A borrower owes $4,000, and is required to make monthly payments of $100. The borrower misses payments due on September 1 and October 1. On October 30, the borrower makes a payment of $100. The borrower misses the payment due on November 1, and on November 15 makes a payment of $150 and reaffirms her intent to repay the loan. The determination of the status of this borrower is governed by the first and second conditions described here. The borrower is in default on September 2 and continues in default through October 30. The borrower is $200 in arrears on October 30, and her $100 payment does not suffice to cure the default because it is not accompanied by a written reaffirmation. Even if it were, it does not reduce the amount then in arrears to *less* than the amount of the first payment ($100) missed within a six-month period ending on the date of the payment in question. However, the borrower cures her default on November 15 because she then makes a written promise to repay together with a payment which, with the other payment she made after her default, reduced the $200 in arrears on that date (the sum of the amount still in arrears, $100, on November 1, and the regularly-scheduled payment of $100 due November 1) to $50, an amount less than the amont of the first missed payment ($100) during the six-month period ending on November 15.

Case 3. The borrower in Case 2 is required under her repayment schedule to make her payment on the first day of the month. On December 1, when her past due amount (excluding interest and late charges) is still $50, the borrower pays $100; on January 1, she pays $110, and on February 1, another $100. The determination of the borrower's status in Case 3 is governed by the third condition. The borrower, as explained in Case 2, was no longer in default on November 15. However, although she makes the required payment on December 1, that payment does not reduce the amount in arrears, which remains $50. The borrower therefore remains in default through December 31; on January 1, her $110 payment not only satisfies the amount then due under her repayment agreement ($100), but reduces the amount of principal in arrears from $50 to $40. The borrower is therefore not in default during the month of January. She lapses back into default status on February 1, however, because her $100 payment on that date, while satisfying the amount due under the repayment agreement, does not further reduce the principal amount in arrears on her account, which remains $40.

B. Default Rate Penalty: Section 674.6a

Under the current regulations, any institution with a default rate in excess of 25 percent is ineligible to receive FCC, and institutions with default rates greater than 10 percent but not more than 25 percent may receive a reduced FCC allocation. Since the implementation of this default rate penalty, the median default rate for those institutions that participate in the NDSL program has declined from 9.56% as of June 30, 1980, to 8.96% as of June 30, 1984. For several reasons, the Secretary concludes that it is reasonable to require a continued reduction in the default rates which disqualify an institution from receiving full, or any additional, FCC it requests.

It is important to emphasize that the term default rate as used in these regulations has always been, and continues to be, a measurement of several factors over which the institution has control, a fact at times overlooked or misunderstood by commenters in the past. First, the term includes the amount of loans which entered default and remained in default for at least 120 days. Available information regarding the gradual nature of the decline in default rates suggests that continued improvement in collection efforts can yield a continuing reduction in the number of accounts which remain in default for 120 days, or a continuing increase in the number of accounts on which borrowers who were in default resume payments. Second, loans which the institution assigns to the Department are excluded from the measurement of its default rate. Unlike the first factor, this second is entirely within the control of the institution; the institution can assign any loan which has been in default for at least two years to the Department if the institution has exercised due diligence in attempting to collect that loan. Whether or not an institution succeeds in reducing its default rate by improving its collection activities, it can still reduce that default rate under these regulations by assigning these uncollectible loans to the Department.

There is no reasonable basis for providing additional FCC to an institution which is neither successful in collecting nor willing to relinquish to the Department the accounts which remain uncollectible despite responsible collection efforts. Therefore, in an effort to continue to lower the NDSL default rate, the Secretary proposes to modify the default rate penalty beginning with the 1986-87 award year, so that institutions with a default rate in excess of 20 percent would be ineligible to receive an FCC allocation, institutions with a default rate over 7.5 percent but not in excess of 20 percent may receive a reduced FCC allocation, and institutions with a default rate equal to or less than 7.5 percent may receive a full FCC allocation. The Secretary intends to issue proposed rules in the near future which may further modify the calculation and effect of the default rate on allocations of FCC; these rules will be proposed for the 1987-88 and subsequent award years.

The Secretary determines the amount of new FCC for an institution by subtracting from its conditionally guaranteed level of expenditure both its projected collections and its reimbursements for Direct loan cancellations received in the base year. The difference obtained by that subtraction together with an institution's State and National fair share increase would be multiplied by 90 percent to determine its FCC.

In projecting an institution's collections, the Secretary would consider its default rate. As used here, this term excludes all defaulted loans assigned to and accepted by the Department of Education (ED) through the base year for that application, those defaulted loans referred to and accepted by ED as of September 15, 1979, and those loans for borrowers whose accounts are past due but not in default. As an example, for the 1986-87 award year, if the default rate of an institution is 7.5 percent or less, its collections would be projected by multiplying the institution's actual base year collections by 121 percent. (One hundred and twenty-one percent is used because the Secretary continues to set the standard of a 10 percent per year increase in collections in both the current year and the award year. A 10 percent collection increase over a two year period equals 121 percent of base year collections.) If an institution's default rate is greater than 7.5 percent but not more than 20 percent, its collections would be projected by multiplying the institution's actual base year collections by 121 percent, plus the additional amount which the institution would have collected if its base year default rate were 7.5 percent.

In order to calculate the additional amount that an institution would have collected if its default rate were only 7.5 percent (that is, the "excess overdue amount"), the Secretary would determine the amount of defaulted loans that an institution would hold if its default rate was 7.5 percent. This is done by multiplying the total amount of its matured loans by 7.5 percent. Second, the Secretary would subtract 7.5 percent of the matured loans from the principal amount outstanding on defaulted loans that the institution reports on its Fiscal Operations Report (FISAP). Third, this difference would be divided by the principal amount outstanding on defaulted loans that the institution reports on its FISAP. Fourth,

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the principal amount past due on defaulted loans would be multiplied by the percent resulting from the division in step three to determine the excess overdue amount.

As an example, if an institution's NDSL fund has:

- Matured loans totalling $616,480;
- Principal amount outstanding on defaulted loans of $83,909;
- Principal amount past due on defaulted loans of $62,582; and
- Total principal and interest collected, as reported on its fiscal-operations report, of $23,178;

then, based on the above figures, the institution's excess overdue amount would be calculated as follows:

(a) 7.5 percent of $616,480 (matured loans) equals $46,236.

(b) $83,908 (principal amount outstanding on defaulted loans) minus $46,236 equals $36,673.

(c) $37,673 divided by $83,909 equals 0.4489.

(d) 0.4489 times $62,582 (past due principal) equals $28,093, the excess overdue amount.

(e) $23,178 (the amount actually collected in the base year) multiplied by 121% equals $28,045.

(f) $28,045 plus $28,093 (the excess overdue amount) equals $56,136, the projected collections.

C. Application Appeal Review—Section 674.7.

The Secretarty proposes to delete parts of § 674.7 which permit an institution to appeal findings under certain elements of the funding formula used to compute its funding level. The Secretary proposes that these deletions from the appeals process would be effective beginning with the 1987–88 award year application review process.

The Secretary proposes to exclude appeals regarding: the computation of the excess overdue amount used to measure collections that would be available if the institution had a lower default rate, the disqualification for FCC for institutions with a default rate greater than 20 percent, and the extent to which an institution can justify that its base year default rate does not reflect current collection efforts. The Secretary believes that an institution's base year default rate is an accurate barometer of the institution's capability to administer the NDSL Program, and therefore proposes these deletions.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The small entities affected by these regulations are small institutions of higher education. In order to identify small institutions and to assess the impact of these regulations on those institutions, using actual current data, one must select an objective measure for determining institutional size. In lieu of a formal definition, it is useful to adopt the proposed definition of small institution of higher education published by the Secretary on January 16, 1981 (46 FR 3920), defining small institutions as those with a total student population of fewer than 550. These regulations change the procedures for allocating program funds by placing increased emphasis on lower default rates. The Secretary certifies that, for the reasons set forth here, this rule will not have a significant economic impact on a substantial number of small institutions of higher education.

As described more fully above, under current regulations two categories of institutions are affected by the default rate criterion: those with a default rate between 10 and 25 percent, which have their FCC reduced, and those with a rate exceeding 25 percent, which receive no FCC for that application year. For those institutions in the first category, with default rates between 10 and 25 percent, the FCC is reduced by 90 percent of the "excess overdue amount," that portion of their defaulted loans which would have been collected if the institution had a 10 percent default rate. The institution, in other words, is treated as if it had an acceptable default rate, and had collected the amount it would have recovered had it a 10 percent rate. Institutions in the second category, those with default rates over 25 percent, do not qualify for new FCC.

These proposed regulations will change the procedures for allocating FCC among institutions by modifying the current default rate parameters, 10 and 25 percent, to 7.5 and 20 percent for the first year these regulations are in effect. Because the impact of the default rate criterion will vary with the level of appropriation, the amount of funds received by an institution as collections and reimbursements for teacher and military cancellations, and other reasources available to the institution, it is impossible to determine exactly the impact of the proposed rule on either large or small institutions.

At most, an estimate of its impact which relies on current program experience can be offered here. In the 1985–86 award year, 2966 institutions participated in the NDSL program and requested new FCC; 1068 of these institutions fell within the definition of small institution used here. The NDSL funds appropriated for this award year were allocated as FCC under the current rule so that small institutions received eight (8) percent of all funds allocated as FCC, and other, or larger, institutions received ninety-two (92) percent of these funds. If the appropriated amounts, FCC requests, collections and default rates that resulted in this 1985–86 FCC allocation remain the same for 1986–87, the distribution of FCC funds under the proposed rule for 1986–87 will remain the same: eight percent of all FCC will be allocated to small institutions, and ninety-two percent to all others. Thus, the proposed rule can reasonably be expected to have no net economic impact on small institutions as a group in 1986–87.

For these reasons the Secretary concludes that the new rule will not have a significant economic impact on a substantial number of small institutions.

Paperwork Reduction Act of 1980

These proposed regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) which govern such requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4018, Regional Office Building 3, 7th & D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is especially invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 674

Education, Loan programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parenthesis on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Number 84.038 National Direct Student Loan Program)

Dated: February 7, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 674 of Title 34 of the Code of Federal Regulations as follows:

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

1. The authority citation for Part 674 continues to read as follows:

Authority: NDSL Title IV, Part E of the Higher Education Act of 1965, as amended (20 U.S.C 1087aa–1087ii), and Title II of the National Defense Education Act of 1958, as amended (20 U.S.C. 421–429), unless otherwise noted.

2. Section 674.2 is amended by revising the definition of "Default or in default" to read as follows:

§ 674.2 Definitions.

* * * * *

Default or in default: (a) Except as provided in paragraph (b) of this definition, a borrower is in default on a Direct or Defense loan if he or she fails to—

(1) Make an installment payment when due; or

(2) Comply with other terms of the promissory note.

(b) A borrower who failed to make a timely repayment is not in default on a Direct or Defense loan if—

(1) The borrower's loan is current, paid in full or discharged in bankruptcy; or

(2)(i) The borrower states in writing to the institution an intention to repay the loan;

(ii) The borrower evidences that intention by making a payment which reduces the amount then past-due to less than—

(A) Any amount past-due six months before the date of the payment; or

(B) If no amount was past-due six months before the payment is made, the balance of the first required payment missed within that six-month period; and

(iii) If the borrower made the payment described in paragraph (b)(2)(ii) of this definition in a prior month, the borrower has continued to make payments when required under the most recent repayment agreement and each payment has included—

(A) The amount due under that agreement; plus

(B) The additional amount necessary to continue to reduce the past-due amount.

* * * * *

3. Section 674.6a is revised to read as follows:

§ 674.6a Funding procedures—Federal capital contributions (FCC).

(a) An institution may receive a Federal capital contribution (FCC) calculated under this section if its default rate is not more than 20 percent.

(b) An institution's FCC equals 90 percent of its—

(1) Conditions guarantee minus the sum of its reimbursements for Direct loan cancellations received in the base year and loan repayment calculated under paragraph (c) of this section;

(2) Fair share State increase; and

(3) Fair share National increase.

(c) For purposes of paragraph (b)(1) of this section—

(1) If the institution's default rate is 7.5 percent or less, the Secretary considers its loan repayments to equal 121 percent of the amount it collected in the base year; and

(2) If an institution's default rate is greater than 7.5 percent but not more than 20 percent, the Secretary considers its loan repayments to be—

(i) 121 percent of the amount collected in the base year; plus

(ii) The additional amount it would have collected in the base year if its default rate were 7.5 percent (excess overdue amount).

(3) The Secretary calculates an institution's excess overdue amount—

(i) Determining the amount of defaulted loans that would equal a 7.5 percent default rate by multiplying the total amount of matured loans of the institution by 7.5 percent;

(ii) Subtracting the amount obtained in paragraph (c)(3)(i) of this section (7.5 percent of the matured loans) from the defaulted principal amount outstanding;

(iii) Dividing the amount obtained in paragraph (c)(3)(ii) of this section by the defaulted principal amount outstanding; and

(iv) Multiplying the actual amount of principal past due on defaulted loans by the fraction obtained in paragraph (c)(3)(iii) of this section.

(d) The definitions of "default rate," "defaulted principal amount outstanding" and "matured loans" are contained in § 674.2. However, for purposes of this section, the Secretary, when calculating an institution's default rate, excludes from the numerator of that fraction the following:

(1) Notes referred to the U.S. Commissioner of Education on or before September 15, 1979, if the institution received either a notification of acceptance or a receipt from the Office of Education, and that referral has not been rescinded or rejected.

(2) Notes assigned to the United States on or before June 30 of the base year and accepted by the United States.

(3) Notes for borrowers whose accounts are past due but nor in default.

(e) No institution may receive more Federal capital contribution than it requested.

(20 U.S.C. 1087bb)

4. Section 674.7 is revised to read as follows:

§ 674.7 Application appeal review for the 1987–88 and subsequent award years.

(a) An institution may, at the time specified by the Secretary, request a review of its computed NDSL level of expenditure and its Federal capital contribution (FCC).

(b) A National Appeal Panel appointed by the Secretary conducts the review.

(c) An institution may appeal the following elements used in determining an institution's NDSL level of expenditure of its FCC:

(1) For purposes of determining an institution's FCC award, the expectation of an annual increase in its NDSL collections of 10 percent.

(2) For purposes of determining an institution's self-help need—

(i) The average cost of books and supplies;

(ii) The established expected family contributions;

(iii) The enrollment data used to determine average tuition and fee costs; and

(iv) The award year used as the base year.

(d) The Secretary and the appeal panel evaluate appeals on the basis of the following criteria and documentation required by the Secretary:

(1) The extent to which the institution can justify that an increase in NDSL collections of 10 percent per year is unreasonable.

(2) The extent to which the institution can justify that the average cost of books and supplies does not accurately reflect these costs at the institution.

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(3) The extent to which the institution can justify that the standard expected family contribution figures do not accurately reflect the characteristics of the student body at the institution.

(4) The extent to which the institution can justify that the average tuition and fee costs derived from the institution's enrollment data do not accurately reflect these costs at the institution.

(5) The extent to which the institution can justify that the base year used to determine its self-help need under the fair share formula does not accurately reflect the institution's current self-help need.

(e) In establishing an institution's level of expenditure and Federal capital contribution, the Secretary considers the appeal panel's recommendations and its reasons for the recommendations.

(f) The Secretary establishes an approved level of expenditure and Federal capital contribution based on procedures in §§ 674.6 and 674.6a and the appeal panel's recommendations.

(20 U.S.C. 1087bb)

[FR Doc. 86-3073 Filed 2-12-86; 8:45 am]
BILLING CODE 4000-01-M

federal register

Thursday
February 13, 1986

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 887

Abandoned Mine Land Reclamation Program; Final Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 887

Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior's fiscal year 1985 continuing appropriations resolution (H.J. Res. 648–Pub. L. 98–473) authorized the expenditure of Abandoned Mine Land (AML) Funds for the establishment of self-sustaining, individually administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved under section 405 of the SMCRA. These States are, at the present time, the following: Alabama, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Missouri, Montana, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virgina, and Wyoming.

In order to implement the amendment and provide for grants to eligible States for subsidence insurance programs, the Office of Surface Mining is promulgating final rules allowing States with approved reclamation programs under Title IV of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87 (SMCRA) to request funds for the establishment and administration of mine subsidence insurance programs.

EFFECTIVE DATE: February 13, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Fary, Office of Surface Mining, Division of Abandoned Mine Land Reclamation, 1951 Constitution Avenue, NW., Washington, DC 20240, or telephone 202–343–7960.

SUPPLEMENTARY INFORMATION:

Background

SMCRA was enacted to establish a nationwide program to protect the environment from the adverse effects of surface coal mining activities and to promote the reclamation of mined areas left without adequate reclamation prior to August 3, 1977. The SMCRA, as formulated, is a complex, comprehensive and broadly remedial regulatory statute intended to govern the conduct and impact of present day coal mining operations.

In addition, Congress recognized that a serious problem existed because of past mining practices, and that a substantial source of funding was needed to support rehabilitation programs to reclaim vast areas of lands affected by these practices. H. Rept. 95–218, 95th Cong., 1st Sess. 135–140 (1977). The SMCRA established the Abandoned Mine Reclamation Fund, 30 U.S.C.A. 1231, to help pay for the restoration of land harmed by past coal mining activities. The reclamation fund derives its revenue from a fee levied on current coal production. All operators of coal mining operations subject to the provisions of SMCRA must pay to the Secretary of the Interior, for deposit in the Fund, a reclamation fee of 35 cents per ton of coal produced by surface coal mining and 15 cents per ton of coal produced by underground mining or 10 per centum of the value of the coal at the mine, as determined by the Secretary, whichever is less, except that the reclamation fee for lignite coal is at a rate of 2 per centum of the value of the coal at the mine, or 10 cents per ton, whichever is less. Regulations implementing the abandoned mine land reclamation program were published on October 25, 1978 (43 FR 49932–49952) and revised on June 30, 1982 (47 FR 28574–28604) and codified in 30 CFR Chapter VII, Subchapter R.

Congress included language in section 324 of H.J. Res. 648–Pub. L. 98–473 that amended section 401(c)(1) of SMCRA. The amendatory language provides that moneys in the fund may be used for:

> establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining in those States which have reclamation plans approved in accordance with Section 503 of this Act, provided that funds used for this purpose shall not exceed $3,000,000 of the funds made available to any State under section 402(g)(2) of this Act.

In order to implement the Congressional direction that OSM provide for grants to eligible States for the establishment of self-sustaining, individual State administered programs to insure private property against damages caused by land subsidence from underground coal mining, OSM published proposed rules on July 25, 1985. The public comment period closed August 25, 1985. This document contains the final rules implementing Congress' amendatory language along with a discussion of all relevant comments received.

Responses to Public Comments and Discussion of Final Rule

Final Part 887 consists of the following:

Section 887.1 (Scope)

Indicates that the scope of the final rule is to set forth procedures for grants to States having approved State reclamation plans for the establishment, administration, or operation of self-sustaining individual State administered coal mine subsidence insurance programs. One commenter indicated that in several States mine subsidence problems, and mine subsidence insurance programs, exist with respect to other minerals in addition to coal. For this commenter "it is not clear whether States with programs providing coverage from damage caused by other kinds of mines (than coal) are wholly ineligible to apply for funds." The commenter suggested that OSM make moneys available for States whose insurance programs cover subsidence caused by both coal and noncoal mining, but that the States be required to "segregate and account for the grants to ensure that Federal moneys are used for coal mine subsidence." OSM's response is that § 887.12(d) would prevent granted funds from being used to administer noncoal mine subsidence insurance programs since granted moneys may not be used for lands that are ineligible for reclamation under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87). Despite the fact that funds granted under this Part cannot be used for noncoal mine subsidence insurance programs, State programs which cover both coal and noncoal subsidence are still eligible to receive funding for the coal mine subsidence part of their programs. As the commenter suggested, in those States with both coal and noncoal subsidence coverage, funds granted under this Part must be segregated and accounted for to ensure that the granted funds are used only for coal mine subsidence programs.

Section 887.3 (Authority)

Provides authority for the Director of OSM to approve or disapprove applications for grants up to a total amount of $3,000,000 for each State with an approved State reclamation plan provided that moneys are available in the State share of the Abandoned Mine Land Reclamation Fund. This provision gives the Director of OSM the flexibility of making a one-time grant of $3,000,000 or a series of grants up to a total amount of $3,000,000. This flexibility is necessary because some eligible States

do not have sufficient funds in their State share of the AMLR Fund at the present time to support funding a grant at the $3,000,000 level. This provision will then allow these States the latitude to request funds for subsidence insurance programs over a period of years so as not to exhaust their capacity to continue to receive grants provided for in 30 CFR Part 886 necessary to support their State AML Reclamation Programs.

Section 887.5 (Definitions)

Since certain essential terms used in the legislation establishing subsidence insurance programs have not been defined, OSM, in order to implement the Congressional direction, is promulgating the following definitions:

Establishment—is defined to mean either the development of a subsidence insurance program or the operation or administration of a subsidence insurance program. By defining "establishment" to mean operation and administration of a program as well as development of a new program, OSM is implementing the Congressional intent found in the legislative history of the amendment. Senator Byrd, the sponsor of the amendment, indicated (Congressional Record—Senate of October 2, 1984 at p. S 12691) that the amendment would permit States to use a portion of their AMLR funds to operate subsidence insurance programs.

Private Property—is defined to mean any or all of the following: dwellings and improvements, commercial and industrial structures, utilities, underground structures such as sewers, pipes, wells, and septic systems, sidewalks and driveways, and land. This inclusive definition will allow the States the greatest latitude to design subsidence insurance programs to meet their specific local and State needs. States are given the authority to specify the extent of insurance coverage needed for their specific subsidence insurance programs. The extent of the coverage provided by each State will be directly related to the type of program each State elects to operate. For example, one State may want to provide extensive coverage for land, structures, commercial, residential, and private utilities for their full replacement value. Another State may want to put in place a program that pays only for a portion of structural damage.

Self-sustaining—means that a subsidence insurance program maintains an insurance rate structure which is designed to be actuarially sound. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining shall not preclude the use of funds from other non-Federal sources. One commenter indicated that the sentence "self-sustaining shall not preclude the use of funds from other non-Federal sources" might imply that a program is self-sustaining as long as it can obtain contingency funds to cover losses as well as that a program, notwithstanding its actuarially sound structure, can also obtain additional funds from other sources. The commenter requests that OSM clarify the language to make clear the intent. OSM agrees and states that the intent of the sentence is to mean that a program, notwithstanding its actuarially sound structure, can also obtain additional funds from other sources. This interpretation is meant to ensure that mine subsidence insurance programs established in the States can have a rate structure that can be subsidized from non-Federal sources. Another commenter suggested that in order to make the State programs "self-sustaining", a requirement should be included that the State-administered programs, in order to be eligible for funding, contain clauses which require subrogation of the rights of the insured against the company or companies responsible for the subsidence occurrence to the limits of the payments made under the policy. This commenter further suggested that the State program contain procedures to obtain such recovery of payments made from the responsible company or companies consistent with the subsidence laws of that State. This commenter further argues that such a provision is necessary because only with such a provision can the subsidence insurance program "truly be self-sustaining, since the premiums paid by individuals for elective coverage in many of the coal States would be insufficient unless they were set at a prohibitively high rate, if the program were dependent entirely on premiums after the seed money was expended." OSM agrees and has added the following provision to the definition of "self-sustaining" in the final rule: "Self-sustaining requires that State subsidence insurance programs provide for recovery of payments made in settlements for damages from any party responsible for the damages under the law of the State."

State administered—is defined to mean a subsidence insurance program administered either directly by a State agency or for a State through a State authorized commission, board, contractor, such as an insurance company, or other entity subject to State direction. This grant program is intended only to provide seed money for the creation of State programs which will be administered solely by the participating States. Neither the establishment or operation of these programs will give rise to any further Federal responsibility. One commenter noted that the Congressional direction (in establishing the program) indicates that the program may only cover those damages caused by land subsidence "resulting from underground coal mining." The commenter asked if there is a need to define the broadness of the phrase "resulting from underground coal mining". The commenter further asked if the phrase could include land subsidence which is indirectly related to underground mine voids? The commenter also asked how conclusive must the facts be to support a claim that the damage was a result of an underground mine void? For this commenter, it is "often, without extensive testing, hard to affirmatively conclude that damage is mine subsidence related." The commenter asks "should your office (OSM) provide direction on this point?" OSM's response is that it does not have to provide direction on the issue because the party which asserts damage bears the burden of proof of such damage and that such damage be directly related to past coal mining practices. The nature and adequacy of such proof will necessarily vary on a case-by-case basis.

Section 887.11 (Eligibility for Grants)

Provides that only States with approved reclamation plans under 30 CFR Part 884 are eligible to receive grants for subsidence insurance programs provided the State has sufficient funds in its State share of the AMLR Fund.

Section 887.12 (Coverage and Amount of Grants)

Paragraph (a) provides that moneys granted may be used to cover costs to the grantee agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A–87. One commenter expressed concern that proposed paragraph (a) does not permit use of the funds to pay claims, to pay adjusters, and for administrative costs involved with issuing policies under a program. The commenter asserts that these costs often are billed to the State program directly by a private contractor and will not necessarily be charged by "State or Federal agencies or local jurisdictions." For this commenter, it is

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preferable for the granted funds to be used for a broad range of purposes. The commenter concluded that "if OSM interprets the Act to forbid use of these funds to pay claims, it should consider allowing these funds to be used for other expenses, such as payments to claim adjusters and administrative expenses." OSM's response is that the commenter is reading section (a) too narrowly. The intent of section (a) was to authorize the grantee agency to use moneys to cover costs to that agency for services and materials obtained from other State, Federal or local agencies. The intent was not to exclude payments to other persons or entities.

Moreover, it is clearly the intent of the Congressional amendment and these implementing rules to allow granted funds to be used to pay for administrative costs associated with the establishment and operation of subsidence insurance programs.

One commenter indicated that it is "stated (in the proposed rule) that the grant monies may be used to cover capitalization requirements and initial reserve requirements if allowed by law or Federal regulations." The commenter requested clarification with respect to the phrase "if otherwise allowed by law or Federal regulation." OSM's response is that the phrase was included in the proposed rules because pending enabling legislation to set up subsidence insurance programs in some States contained capitalization or initial reserve requirements. OSM wanted to assist the establishment of such programs by allowing granted funds to be utilized for capitalization or initial reserve requirements as mandated by any enabling State legislation. In reviewing the proposed rule, OSM does not know of any applicable Federal regulation on the issue of capitalization or initial reserve requirements. OSM has, therefore, modified the language in the final rule to clarify the issue by deleting the phrase "if otherwise allowed by law or Federal regulation" so that the final rule now reads: "Moneys granted may be used to cover capitalization requirements and initial reserve requirements mandated by State law provided use of such moneys is consistent with OMB Circular A–102." To comply with OMB Circular A–102, grant funds may be identified in the letter of credit as being used to meet capitalization or reserve requirements. However, such funds must remain in the Federal letter of credit until the time they are needed for expenditure. Funds may not be withdrawn from the letter of credit and deposited in State accounts prior to their being needed.

Paragraph (b) provides that grant applications must contain narrative statements describing how the subsidence insurance program is "State administered" and how the funds requested will achieve a self-sustaining individual State administered program to insure private property against subsidence resulting from underground coal mining. These narrative statements are necessary in order to evaluate the grant application's objectives relative to the purposes for which the subsidence insurance program was established. One commenter indicated that proposed paragraph (b) lacks sufficient level of detail in the requirement that a State demonstrate that the State insurance program will be self-sustaining. For this commenter, the State should provide a "reasoned analysis of the insurance risk under the proposed State program, including an assessment of the historical and projected magnitude of the subsidence program and the population at risk, the projected level of participation and premium costs involved, and other factors necessary for a reasoned and informed OSM projection that the program will truly be self-sustaining beyond the seed funding." OSM's response is that it declines to specify what particular elements need to go into the narrative statement describing how the funds requested will achieve a self-sustaining individual State administered program. OSM will review each narrative on its merits and determine if the statement is reasonable and justifiable since it believes the requirements for "self-sustaining" will vary from State-to-State.

Section (c) provides that grants cannot exceed a total of $3,000,000 per State. This provision allows each State the flexibility to request grant funds as needed or as available in its State share of the AMLR Fund up to a total of $3,000,000. Grant funds can be used for all eligible and necessary expenses related to establishment, administration, and operation of a subsidence insurance program, including payments to other State agencies for services provided in establishing and administering the Program.

Paragraph (d) provides that moneys granted may not be used for lands that are ineligible for reclamation funding under Title IV of SMCRA. Specifically, this provision excludes payments from granted funds for subsidence damage caused by all active mining, mines abandoned or inadequately reclaimed after August 3, 1977, and noncoal mining. In addition, granted funds cannot be used to pay for the actual construction costs of housing or for damages to public property.

Paragraph (e) provides that insurance premiums shall be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with the Uniform Administrative Requirements for Grants to States and Local Governments, OMB Circular A–102, attachment E. The purpose of this Subsection is to clarify for the States how to account for moneys received as insurance premiums. The insurance premiums, however, will only be considered program income during the existence of the grant. Once the grant is closed out, there are no further obligations on the State. One commenter expressed a preference that "income to a subsidence insurance program as premiums not be treated as program income under A–102." For this commenter, the "accounting, reporting and possible threat of return of premiums could impact the overall objective of establishing self-sustaining programs in States needing these programs." OSM's response is that the treatment of insurance premiums as program income is required under OMB Circular A–102 and program income must be used to further eligible subsidence insurance program objectives.

Section 887.13 (Grant Period)

Establishes the grant funding period to be no longer than eight years. Eight years was chosen in order to allow sufficient time for granted funds to be utilized in operating the subsidence insurance program.

Section 887.13 (Grant Administrative Requirements and Procedures)

Cross references the rules applicable to State reclamation grants. This cross reference provides for consistency and uniform treatment of grants under the AMLR program. One commenter indicated that the grant of funds should be subject to the same provision for termination or suspension where it appears that they are being utilized inconsistently with amended section 401 of SMCRA. OSM's response is that by cross referencing the rules applicable to State reclamation grants, provisions governing termination or suspension of subsidence insurance grants are addressed (see 30 CFR 886.18).

Procedural matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

These rules will not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets; nor would they increase costs or prices for consumers, individual industries, Federal, State, Tribal or local governmental agencies or geographic regions.

There would be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

Since the information collection requirement contained in the rules involve fewer than 10 respondents annually, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

Notional Environmental Policy Act

With respect to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), OSM has prepared an environmental assessment (EA) on this final rule and has determined that this rule will not significantly affect the quality of the human environment. The EA and finding of no significant impact are on file in the OSM Administrative Record, Room 5124B, 1100 L Street, NW, Washington, DC.

Under 5 U.S.C. 553(d), good cause exists to make this rule effective immediately upon publication. The legislative mandate for use of AML moneys for establishing insurance programs was passed in 1984 and must be fully implemented. At least one state has informed OSM that it intends to submit its subsidence insurance program for approval as soon as this rule is made final. The immediate implementation of this rule will assist in providing essential protection to citizens who may be affected by coal mine-related subsidence.

List of Subjects in 30 CFR Part 887

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Acordingly, 30 CFR Chapter VII, Subchapter R is amended by adding part 887.

Dated: January 21, 1986.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

1. Part 887 is added as follows:

PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

Sec.

887.1 Scope.
887.3 Authority.
887.5 Definitions.
887.10 Information collection.
887.11 Eligibility for grants.
887.12 Coverage and amount of grants.
887.13 Grant period.
887.15 Grant administration requirements and procedures.

Authority: Sec. 401(c)(1), Pub. L. 95–87, 91 Stat. 456, as amended by Pub. L. 98–473, 98 Stat. 1875 (30 U.S.C. 1231).

§ 887.1 Scope.

This part sets forth procedures for grants to States having an approved State reclamation plan for the establishment, administration and operation of self-sustaining individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining.

§ 887.3 Authority.

The Director is authorized to approve or disapprove applications for grants up to a total amount of $3,000,000 for each State with an approved State reclamation plan provided moneys are available under § 872.11(b)(2) of this chapter and section 402(g)(2) of Pub. L. 95–87 (30 U.S.C. 1232).

§ 887.5 Definitions.

As used in this part—

Establishment—means either the development of a subsidence insurance program or the administration or operation of a subsidence insurance program.

Private Property—means any or all of the following: dwellings and improvements, commercial and industrial structures, utilities, underground structures such as sewers, pipes, wells and septic systems, sidewalks and driveways, and land.

Self-sustaining—means maintaining an insurance rate structure which is designed to be actuarially sound. Self-sustaining requires that State subsidence insurance programs provide for recovery of payments made in settlement for damages from any party responsible for the damages under the law of the State. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining shall not preclude the use of funds from other non-Federal sources.

State Administered—means administered either directly by a State agency or for a State through a State authorized commission, board, contractor, such as an insurance company, or other entity subject to State direction.

§ 887.10 Information collection.

Since the information collection requirement contained in 30 CFR 887.12 has fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

§ 887.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State reclamation plan approved under Part 884 of this Chapter and if it has funds available under § 872.11(b)(2) of this Chapter and section 402(g)(2) of Pub. L. 95–87 (30 U.S.C. 1232).

§ 887.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this Part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A–87. Moneys granted may be used to cover capitalization requirements and initial reserve requirements mandated by applicable State law provided use of such moneys is consistent with OMB Circular A–102.

(b) The grant application shall contain the following:

(1) A narrative statement describing how the subsidence insurance program is "State administered," and

(2) A narrative statement describing how the funds requested will achieve a self-sustaining individual State administered program to insure private property against subsidence resulting from underground coal mining.

(c) Grants funded under this Part cannot exceed a total of $3,000,000 per State.

(d) Moneys granted may not be used for lands that are ineligible for reclamation funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87).

(e) Insurance premiums shall be considered program income and must be

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used to further eligible subsidence insurance program objectives in accordance with the Uniform Administrative Requirements for Grants to States and Local Governments, OMB, Circular A–102, attachment E.

§ 887.13 Grant period.

The grant funding period shall not exceed eight years from the time the grant is approved by OSM. Unexpended funds remaining at the end of any grant period shall be returned according to OMB Circular A–102, attachment E.

§887.15 Grant administration requirements and procedures.

The requirements and procedures for grant administration set forth for State reclamation grants in Part 886 of this chapter shall be used for subsidence insurance grants.

[FR Doc. 86–3207 Filed 2–12–86; 8:45 am]
BILLING CODE 4310–05–M

federal register

Thursday
February 13, 1986

Part V

Department of the Interior

Minerals Management Service

Outer Continental Shelf Lease Sale 91 in the Northern California Area; Call for Information and Nominations and Intent To Prepare Environmental Impact Statement; Notice

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UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Northern California
OCS Lease Sale 91
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call for Information and Nominations

The purpose of the Call is to assist the Secretary of the Interior in carrying out his responsibilities under the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and regulations appearing at 30 CFR 256.23, with regard to proposed OCS Lease Sale 91 in the Northern California Planning Area tentatively scheduled for April 1988.

This early information gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior (DOI) for future decision points in the leasing process. This Call does not indicate a preliminary decision to lease in the area described below.

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and use conflicts will be used in the analysis of environmental conditions in and near the Call area. Together these two considerations will allow a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. Thus, it may be possible to make key decisions in connection with the next step in the planning process--Area Identification--to further resolve conflicts by deferring blocks where there is sufficient information to justify that action. However, the Area Identification represents only a preliminary step to select the area to be analyzed in the environmental impact statement (EIS). The Area Identification is scheduled for July 1986.

A third purpose for this Call is to use the comments collected to initiate scoping of the EIS, which will include public meetings, and to identify and analyze alternatives to the proposed action. A Notice of Intent to Prepare an EIS which covers scoping is located later in this document. Fourth, comments may be used in developing lease terms and conditions to assure safe offshore operations. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities, California coastal zone management policies as established by the California Coastal Act of 1976 (as amended December 1984), and approved local coastal plans.

Description of Area

The area of this Call is offshore Northern California from about 12 miles south of Point Arena north about 75 miles to Pt. Delgada, and from about 12 miles south of Eureka to about 15 miles north of Eureka. The area is shown in general on the map at the end of this Call, and in more detail on the Call map available free from the Regional Supervisor, Office of Leasing and Environment, Pacific Region, Minerals Management Service (MMS), 1340 West Sixth Street, Los Angeles, California 90017, telephone (213) 894-7107.

For the presale steps for this sale, we are using the proposed Northern California Planning Area since the sale, if held, would occur under the new 5-Year OCS Oil and Gas Leasing Program. If adopted, the proposed Northern California Planning Area would extend northward from the approximate seaward extension of the Sonoma-Mendocino County line northward to the California-Oregon border.

One Federal OCS sale was held in 1963 in this planning area. Only five leases were awarded in the area of this Call as a result of that sale. Three wells were drilled on those leases and hydrocarbons were encountered but were not considered to be economically recoverable. All five leases were relinquished in June 1967.

The Fiscal Year (FY) 1986 Continuing Resolution (Public Law 99-190) for DOI directs the Secretary of the Interior to make every effort during the balance of FY 1986 to resolve outstanding conflicts with respect to the future leasing of lands on the California OCS. The DOI will carefully address the issues and concerns raised by the 19-member congressional delegation during this planning and negotiation process. Presale activities such as this Call for Information and Nominations were, however, recognized and anticipated under the Statement of Managers Report relative to the FY 1986 Continuing Resolution. Public Notice is hereby provided that the congressional concerns will also be considered throughout the prelease decision process with a view to resolving underlying issues as the presale process continues.

The following list identifies the Official Protraction Diagrams and blocks comprising this Call area. The diagrams may be purchased for $2.00 each from the Regional Supervisor, Office of Leasing and Environment, Pacific Region, at the address given above.

NK 10-7, Crescent City (Approved November 5, 1976)

994-1001

NK 10-10, Eureka (Revised April 18, 1979)

27-34
71-77
115-121
159-164
203-208
247-251
291-295
335-338
1001-1003

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NJ 10-1, Noyo Canyon (Approved November 2, 1976)

34-36	473-476
78-80	517-520
122-124	561-564
166-168	607-608
210-212	651-652
254-256	695-696
298-300	739-740
341-344	783-784
385-388	827-828
429-432	871-872
	916

NJ 10-2, Ukiah (Approved November 2, 1976)

1	529-532
45-46	573-576
89-90	617-620
133-135	661-664
177-179	705-708
221-223	749-752
265-268	793-797
309-312	837-841
353-356	881-885
397-400	925-930
441-445	970-974
485-488	

NJ 10-5, Santa Rosa (Approved November 2, 1976)

2-5	
46-49	
91-94	
136-139	
180-184	

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Instructions on Call

The Call map delineates the Call area. Respondents are requested to nominate any or all of the Federal blocks within the Call area that they wish to have included in Sale 91. Although the identities of those submitting nominations become a matter of public record, the individual indications of interest are considered to be proprietary and confidential information.

Those indicating such interest are required to do so on the Call map, available free from the Regional Supervisor, Office of Leasing and Environment, Pacific Region, at the address stated under "Description of Area." Interest should be shown by listing block numbers or outlining the area(s) of interest along block lines.

Companies may submit a detailed list of whole and partial blocks nominated (by OCS Official Protraction Diagram designations) to ensure correct interpretation of nominations.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 (high), 2, or 3). If there are areas within the Call area for which respondents have no interest, no priority should be assigned to them. Areas where interest has been indicated but on which respondents have not specified priorities will be considered priority 3. The telephone number and name of a person to contact in the respondent's organization for additional information should be included. Information concerning both location and priority of interest submitted by individual companies will be held proprietary and will help determine the area upon which the EIS analysis will be focused. In addition to indications of interest by respondents, further consideration of areas for analysis in the EIS will be based on hydrocarbon potential and environmental, economic, and multiple-use (including military use) considerations.

Comments are sought from all interested parties about particular geologic, environmental, biological, archeological, or socioeconomic conditions or conflicts, or other information which might bear upon potential leasing and development of particular areas. Comments are also sought on potential conflicts that may result from the proposed sale between future oil and gas activities and the California Coastal Act and approved local coastal management plans. If possible, these comments should identify specific California coastal zone management policies, the nature of the conflicts foreseen, and steps that MMS can take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern.

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For this Call, the nomination and comment period is being extended. Nominations and comments must be received no later than 90 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Northern California Sale 91" or "Comments on the Call for Information and Nominations for Northern California Sale 91," as appropriate.

The original Call map and indications of interest and/or comments must be submitted to the Regional Supervisor, Office of Leasing and Environment, Pacific Region, at the address stated under "Description of Area." Two copies of the Call map showing interest and any comments are also to be sent to the Chief, Offshore Leasing Management Division, U.S. Department of the Interior, MMS, Mail Stop 645, Room 2523, 18th and C Streets, N.W., Washington, D.C. 20240.

Tentative Schedule

Final delineation of the area for possible leasing will be made at a later date only after compliance with established departmental procedures and applicable laws, including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and regulations (40 CFR 1501.7), and the OCSLA, as amended. If a decision to offer blocks is made, a final Notice of Sale will be published in the Federal Register detailing areas to be offered for competitive bidding, stating the terms and conditions for leasing, and announcing the location, date, and time bids will be received and opened.

The following is a list of tentative milestones which will precede this sale, proposed for April 1988.

Comments due on the Call	May 1986
Area Identification	July 1986
Draft EIS published	March 1987
Hearings on draft EIS held	April 1987
Final EIS published	October 1987
Proposed Notice of Sale issued	December 1987
Governor's Comments due on proposed Notice	February 1988
Final Notice of Sale published	March 1988
Sale	April 1988

Existing Information

Information already available for the Call area includes that gathered during the EIS process for the 5-Year Oil and Gas Leasing Program approved in 1982 and during the EIS process for Sales 53 and 73. Also available are results of past exploration in the area, including exploratory drilling which has occurred in the Eel River and Point Arena Basins, as a result of the 1963 Northern and Central California Lease Sale.

In addition, comments concerning past OCS actions previously received by the Department from State and local governments, other Federal Agencies, environmental groups, and the oil and gas industry will be considered.

The following is a list of other data available in the Department which have been used in making decisions on offshore Central and Northern California sales and will be available for decisions regarding Sale 91.

Pacific Region Summary Reports and Indexes

Summary Reports

Initial	May 1980
Revision	May 1982
Revision	December 1982
Revision	September 1983
Revision	July 1984
Revision	April 1985

Indexes

Initial	October 1980
Revision	June 1981
Revision	March 1983
Revision	October 1984

Summary Reports and Indexes are available for review at the Pacific Region (see address under "Description of Area"). Contact Ms. Frieda Star of that office at (213) 894-2062.

Copies of the reports and indexes may also be obtained from:

OCS Information Program
Office of Offshore Information Services
MMS, Mail Stop 640
12203 Sunrise Valley Drive
Reston, Va. 22091

The following technical and geologic reports are available for review at the Pacific Region:

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Technical and Geologic Reports

1. Technical Monograph, Pacific OCS Lease Offering 1985, Northern and Central California, prepared by MMS.
2. Geologic Report for Proposed Central and Northern California Lease Offering, September 1985, prepared by MMS.

NORTHERN CALIFORNIA PLANNING AREA - COMPLETED ENVIRONMENTAL STUDIES

Air Quality

1. Air Quality Analysis in Relation to Potential OCS Oil and Gas Development off Central and Northern California. Environmental Resources Group. 1980.
2. Sale 73 and 80 Air Quality Modeling. Form and Substance, Inc. 1983.
3. Offshore Meteorological and Tracer Measurements in Central California Coastal Waters. U.S. Naval Postgraduate School. 1981.

Physical Oceanography and Meteorology

4. Climatology and Oceanographic Analysis of the California Pacific OCS Region. National Oceanic and Atmospheric Administration (NOAA). 1981.
5. California Meteorological Buoy Data Analysis. Aerocomp. 1981.
6. Establishment and Operation of a West Coast Buoy Network. NOAA. 1982, 1983, 1984, 1985.
7. Evaluation of Effluent Dispersion and Fate Models for OCS Platforms. Marine Biological Consultants. 1985.
8. Assessment of the Long-Term Fate and Effective Methods of Mitigation of California OCS Platform Particulate Discharges. Continental Shelf Associates, Inc. 1985.
9. Formation Water Dispersion Study. Dr. Tom Dickey, University of Southern California. 1980.

Marine Mammals and Seabirds

10. California Seabird Oil Spill Behavior Study. Nero and Associates. 1982.
11. Seabird Nesting and Seasonal Use Survey for the Central and Northern California Coastal Region. Fish & Wildlife Service (FWS). 1981.

Marine Ecology

12. Summary of Knowledge of Central and Northern California Coastal Zone and Offshore Areas. Winzler and Kelly. 1977.
13. Barium and Vanadium Methodology. Science Applications, Inc. 1977.
14. Ecological Characterization of Central and Northern California Coastal Region. Jones and Stokes Associates/FWS. 1981.

15. Central and Northern Coastal California Marine Habitats: Oil Residence and Biological Sensitivity Indices. Woodward and Clyde Consultants. 1982.
16. California Commercial and Sports Fish Oil Toxicity Study. Marine Biological Consultants. 1983.

Socioeconomics

17. Inventory and Evaluation of California Coastal Recreation and Aesthetic Resources. The Granville Corporation. 1981.
18. Mitigation of Sea Floor Conflicts Between Oil and Gas Pipelines and Commercial Trawl Fisheries. Centaur Associates, Inc. 1984.
19. Development of Baseline Data for Socioeconomic Characterization and Modeling in California as Related to Offshore Oil and Gas Activities. ECOS Management Criteria, Inc. 1985.

Environmental Hazards

20. Potential Geological Hazards to Oil and Gas Development in the Eel River Basin off Northern California and Coos Bay, Oregon. USGS. 1980.
21. Geological Hazards Assessment for Proposed Lease Sale No. 53; Central and Northern California. USGS. 1980.
22. California Geological Hazards Assessment for Proposed Lease Areas for OCS Sales 73 and 80. USGS. 1981.
23. Assessment of Earthquake Risk in Certain Areas of the United States OCS. USGS. 1977.

Program Support

24. Northern California Public Meeting. San Francisco State University. 1977.

Completed study reports are available for review at the Pacific Region at the address listed under "Instructions on Call" above and at many depositories throughout the State. Also, many reports may be purchased from the National Technical Information Service (NTIS). For a list of depositories or to obtain an NTIS phone number, please contact Ms. Ora Woods, Pacific Region, at (213) 894-6626.

NORTHERN CALIFORNIA PLANNING AREA - ACTIVE ENVIRONMENTAL STUDIES

Air Quality

1. Air Quality Modeling for OCS Lease Sales. Jacobs Engineering.

Physical Oceanography and Meteorology

2. California Shelf Physical Oceanography Circulation Model. Dynalysis of Princeton, Inc. Initiated October 1981 and continuing through July 1986.

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3. Operation of a West Coast OCS Meteorological Buoy Monitoring Network. NOAA. Initiated 1981, continuing through 1986.
4. Central California Coastal Circulation Study. Raytheon Service Co. 1986.

Marine Mammal and Seabirds

5. Population Status of California Sea Otters. University of Minnesota. 1987.
6. Seabird Oil Toxicity Study. Nero & Associates, Inc. Initiated September 1981, continuing through February 1986.
7. Central and Northern California Marine Mammal and Seabird Study. University of California, Santa Cruz. Initiated September 1979, continuing through 1985.
8. California Seabird Ecology Study. University of California, Santa Cruz. Initiated September 1984, continuing through 1987.
9. Sea Otter Oil Spill Avoidance Study. Hubbs Marine Research Institute. 1987.
10. Sea Otter Oil Spill Mitigation Study. Hubbs Marine Research Institute. 1986.

Marine Ecology

11. Successional and Seasonal Variation of the Central and Northern California Rocky Intertidal Communities as Related to Natural and Man-Induced Disturbances. Kinnetic Laboratories, Inc. Initiated September 1983 and continuing through 1985.
12. Study of the Effects of Offshore Geophysical Acoustic Survey Operations on Important Commercial Fisheries in California. Battelle Memorial Institute. 1987.

Socioeconomics

13. Impacts of OCS Development on Recreation and Tourism. David M. Dornbush & Co., Inc. Initiated October 1984 and continuing through February 1986.
14. California OCS Fisheries Data Base. MBC Applied Environmental Sciences, Inc. 1987.

Program Support

15. Environmental Data Management System for the Pacific Region. Howard University. 1986.
16. Environmental Studies Information Transfer Meeting. MBC Applied Environmental Sciences, Inc. 1986.

NORTHERN CALIFORNIA PLANNING AREA - PLANNED ENVIRONMENTAL STUDIES
(TO BE AWARDED IN FY 1986)

These studies are briefly described in the Pacific OCS Environmental Studies Plan for FY 1986.

1. Northern California Coastal Circulation Study.
2. Coastal Wave Statistical Data Base.
3. Development of Baseline Data for Socioeconomic Modeling of California Coastal Counties.
4. Whale Behavior Relative to OCS Activity.
5. Operation of a West Coast OCS Meteorological Buoy Monitoring Network, Year VI.
6. Development of Baseline Data for Socioeconomic Modeling of California Coastal Counties.
7. Sensory Detection of Oil by Seabirds.

For further information on these studies, please contact Ms. Ora Woods, Pacific Region, at (213) 894-6626.

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provision of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Northern California OCS Lease Sale 91. The Notice of Intent also serves to announce the scoping process which will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS. The public may present comments and recommendations at scoping meetings which will be held in appropriate locations for the purpose of obtaining additional comments and information regarding the scope of the EIS following a decision on Area Identification. In addition, comments and recommendations may be submitted in writing. The times and locations of these scoping meetings and the date scoping comments are due will be announced at a future date in the Federal Register and by press release.

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The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identificatiun procedure as the proposed area of the Federal action. Alternatives to the proposal which may be considered are to delay the sale, cancel the sale, or modify the sale.

Director, Minerals Management Service
William D. Bettenberg

Approved:

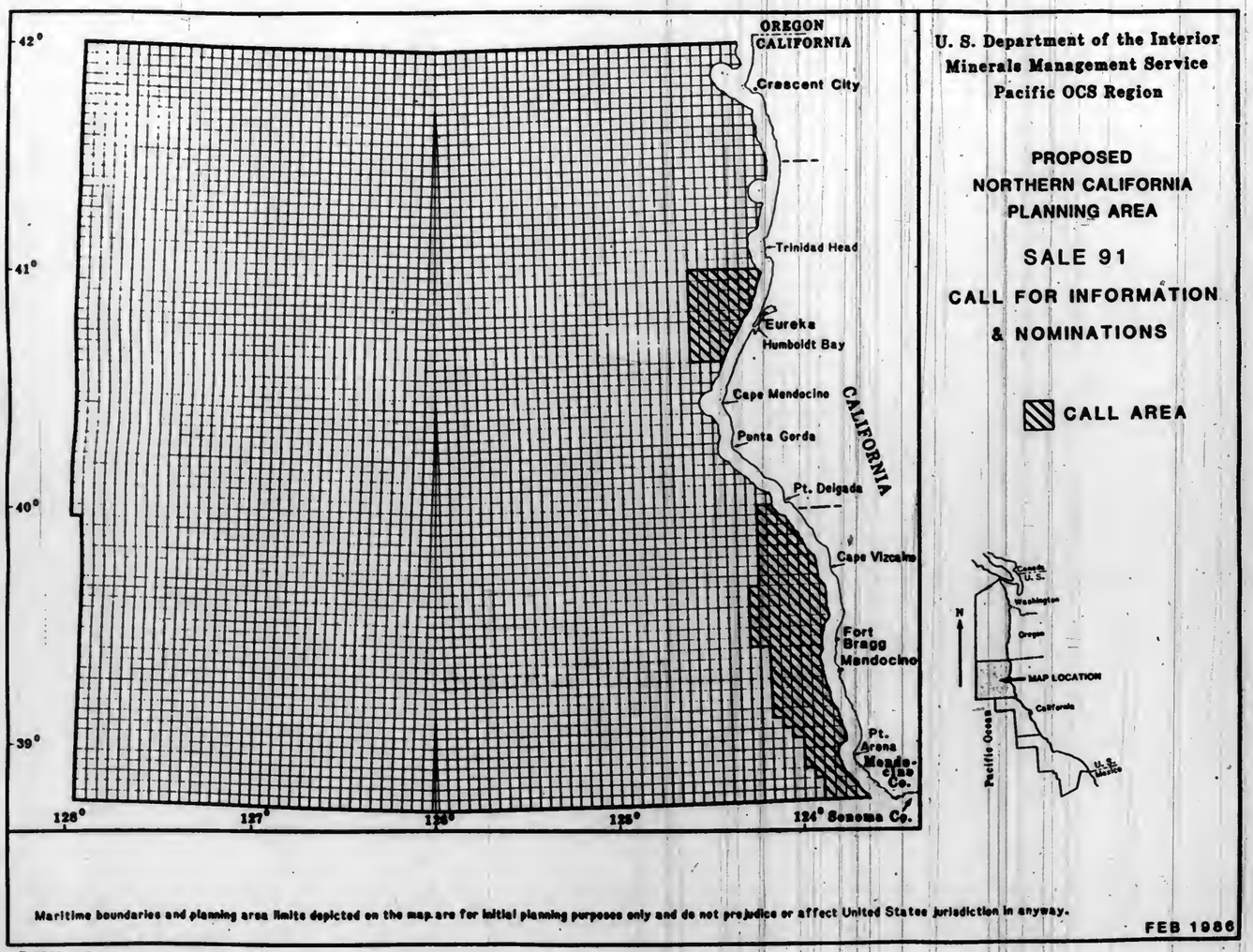
Assistant Secretary - Land and Minerals Management
J. Steven Griles

Date: 2/10/86

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[FR Doc. 86-3236 Filed 2-12-86; 8:45 am]
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federal register

Thursday
February 13, 1986

Part VI

Environmental Protection Agency

40 CFR Part 52
State Implementation Plans for Visibility New Source Review and Monitoring Strategy; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-2945-5]

State Implementation Plans for Visibility New Source Review and Monitoring Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action EPA is promulgating Federal regulations for visibility monitoring and visibility new source review (NSR) for Kentucky, New Mexico, and Tennessee. The EPA is also promulgating visibility NSR regulations in nonattainment areas for the State of Florida. The regulations were proposed for 34 States including these four at 49 FR 42670 on October 23, 1984. These four States submitted draft State implementation plan (SIP) revisions to incorporate provisions to meet the requirements for visibility monitoring and visibility NSR. However, the SIP revisions have not been adopted by the States. Therefore, EPA is promulgating Federal regulations for these States.

Today's action also corrects an error in listing the State of Vermont in a July 12, 1985, promulgation notice at 50 FR 28544.

EFFECTIVE DATES: This action will become effective on March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Janet C. Metsa, Control Programs Development Division (MD-15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5540, FTS 629-5540.

ADDRESSES: Docket A-84-32 was established for this rulemaking and can be inspected Monday through Friday between 8:00 a.m. and 4:00 p.m. at EPA's Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks as described in section 162(a) of the Act, 42 U.S.C. 7472(a). The mandatory Class I Federal areas where visibility is an important value are identified in EPA regulations at 40 CFR 81.400-437. Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their SIP's to provide visibility protection. On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et. seq. In December 1982, the Environmental Defense Fund (EDF) filed a citizen suit alleging that EPA failed to perform a nondiscretionary duty under section 110(e) of the Act to promulgate visibility SIP's for States that had failed to submit such SIP revisions to EPA. The EPA and EDF negotiated a settlement agreement for deficient States which the court approved on April 20, 1984.

The settlement agreement requires EPA to promulgate visibility SIP's on a specified schedule for those States that have not submitted visibility SIP revisions to EPA. (For more information on the settlement agreement, see 49 FR 20647 on May 16, 1984.) The EPA proposed SIP revisions for 34 States including Florida, Kentucky, Tennessee, and New Mexico on October 23, 1984, at 49 FR 42670. The EPA promulgated Federal regulations for a visibility monitoring strategy for 19 States and for visibility NSR for 16 States on July 12, 1985, at 50 FR 28544. Fifteen States, including three of the four, submitted draft or final SIP revisions designed to meet the visibility monitoring requirements of § 51.305. Eighteen States, including the above four, submitted draft or final SIP revisions designed to meet the visibility NSR requirements of § 51.307. The settlement agreement constrains EPA to approve the State submittals or to promulgate Federal programs by January 6, 1986. The EPA is publishing decisions on the submittals in separate notices. In today's action, EPA is promulgating Federal programs for Kentucky, Florida, New Mexico, and Tennessee because while they submitted draft revisions, they have yet to submit final SIP's.

Kentucky

On May 3, 1985, Kentucky submitted a draft visibility SIP to EPA for review. As yet, Kentucky has not submitted a final SIP to EPA. Therefore, EPA is promulgating the Federal visibility monitoring strategy (§ 52.26) and visibility NSR program (§§ 52.27 and 52.28) for Kentucky.

Kentucky has informed EPA that it is continuing to develop its own programs and plans to submit final provisions to EPA as early as February 1986. If Kentucky does submit a final SIP, and EPA approves it, that approval will supersede today's promulgation.

Florida

On September 23, 1985 Florida submitted final SIP revisions to EPA. Florida's submittal included revisions to its prevention of significant deterioration (PSD) and nonattainment NSR programs designed to meet the Federal visibility NSR requirements of § 51.307. (The EPA promulgated the Federal visibility monitoring strategy for Florida on July 12, 1985, at 50 FR 28544.) The EPA found the revisions to Florida's PSD program adequate to meet the requirements of § 51.307(a) and has approved them in a separate notice. Florida's entire NSR program for nonattainment areas, Rule 17-2.510, was submitted December 23, 1981, and December 23, 1982, and has never been approved by EPA. The EPA requested the State to submit additional information and is waiting for that submittal before taking action. Therefore, EPA cannot approve the revisions to Rule 17-2.510 designed to meet § 51.307(b). The EPA is promulgating the Federal visibility NSR program for nonattainment areas (§ 52.28) for Florida. When EPA approves Florida's entire NSR program, including the provisions to meet § 51.307(b), that action will supersede today's promulgation.

New Mexico

In December 1984 and January 1985, New Mexico submitted a draft visibility SIP but subsequently withdrew the submittals. Therefore, EPA is promulgating the Federal visibility monitoring strategy (§ 52.26) and the appropriate visibility NSR programs (§ 52.21 and 52.28) for the State.

Recently New Mexico submitted SIP revisions designed to meet the PSD requirements of § 51.24 and NSR requirements of § 51.18. The State has sought to incorporate the visibility NSR requirements of § 51.307 in these revisions. The EPA is currently reviewing the submittals. If New Mexico's PSD and NSR programs are ultimately approved, that action will supersede today's promulgation.

Tennessee

On March 29, 1985 Tennessee submitted monitoring and NSR SIP. The EPA has reviewed the visibility monitoring plan and preliminarily determined that it could not approve it until the State submitted additional information on obtaining and using the monitoring data. The State has agreed to provide the information but as yet has not done so. Therefore, EPA is promulgating the Federal visibility monitoring strategy (§ 52.26) for Tennessee. When the State submits the additional details, the EPA will review the submittal and, if it approves the submittal, that approval will supersede today's promulgation.

Tennessee also submitted NSR revisions designed to meet the requirements in § 51.307. Although the rule changes have been adopted by the State, they have not yet been made effective by the Secretary of State. The EPA is, therefore, promulgating the appropriate Federal visibility NSR programs (§§ 52.27 and 52.28) for Tennessee. Again, when the NSR provisions become enforceable in Tennessee, and are formally submitted as revision to the SIP, EPA will review them. If EPA approves the submittal, that action will supersede today's promulgation.

Comments

The EPA took comment on the proposed disapprovals and Federal programs in the fall of 1984. These comments can be obtained through Docket A-84-32 at the address given in the beginning of this notice. All major issues raised during the comment period were addressed in the promulgation notice of July 12, 1985, at 50 FR 28544. No comments were submitted that were specific to these four States.

Correction for the State of Vermont

The section on visibility protection for the State of Vermont was incorrectly listed as 52.2382 in revisions to the Code of Federal Regulations in the July 12, 1985, promulgation notice at 50 FR 28544. The correct listing is 52.2383. Today's notice corrects this error.

Classification

The Administrator certifies pursuant to the provisions of 5 U.S.C. 605(b) that the attached rules will not have a major impact on a substantial number of small entities.

The rules promulgated today do not contain any information collection requirements subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980, U.S.C. 3501 et. seq.

The rules have been submitted to OMB for review under Executive Order 12291. Any written comments from that office have been placed in Docket A-84-32.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide, Incorporation by reference.

Dated: February 3, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52, Chapter 1 of Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.936 (Kentucky) is added to read as follows:

§ 52.936 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.26, 52.27, and 52.28 are hereby incorporated and made part of the applicable plan for the State of Kentucky.

3. Section 52.2234 (Tennessee) is added to read as follows:

§ 52.2234 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.26, 52.27, and 52.28 are hereby incorporated and made part of the applicable plan for the State of Tennessee.

4. Section 52.1636 (New Mexico) is added to read as follows:

§ 52.1636 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.21, 52.27, and 52.26 are hereby incorporated and made part of the applicable plan for the State of New Mexico.

5. Section 52.2383 (Vermont) is revised to read as follows:

§ 52.2383 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for visibility monitoring and new source review. The provisions of §§ 52.26 and § 52.27 are hereby incorporated and made part of the applicable plan for the State of Vermont.

6. Section 52.534 (Florida) is revised to read as follows:

§ 52.534 Visibility protection.

(a) The requirements of section 169A of the Clean Air Act are not met because the plan does not include approvable procedures meeting the requirements of 40 CFR 51.305 and 51.307 for protection of visibility in mandatory Class I Federal areas.

(b) Regulations for visibility new source review. The provisions of § 52.26 are hereby incorporated and made part of the applicable plan for the State of Florida.

[FR Doc. 86-3179 Filed 2-12-86; 8:45 am]

BILLING CODE 6560-50-M

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federal register

Thursday
February 13, 1986

Part VII

Department of Energy

Office of Fossil Energy

Solicitation of Statements of Interest; Prospective Offer To Sell the Great Plains Coal Gasification Facility in Mercer County, North Dakota, in the Event the Secretary Pursues a Proposed Sale; Notice

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DEPARTMENT OF ENERGY

Office of Fossil Energy

Solicitation of Statements of Interest; Information Regarding the Prospective Offer To Sell the Great Plains Coal Gasification Facility Located in Mercer County, North Dakota, in the Event That the Secretary Pursues a Proposed Sale of the Facility

AGENCY: Office of Fossil Energy; Department of Energy.

ACTION: Solicitation of Statements of Interest to Assist the Office of Fossil Energy to Identify and Qualify Prospective Offerors for a Proposed Purchase of the Great Plains Coal Gasification Facility Located in Mercer County, North Dakota.

SUMMARY:

Introduction

The United States Department of Energy (DOE), Office of Fossil Energy (FE), is issuing this announcement pursuant to its authority under the Federal NonNuclear Energy Research and Development Act of 1974 (Act), Pub. L. 93–577, as amended by section 207 of Title II of Pub. L. 95–238, as amended. On January 29, 1982, acting under authority of the Act, the DOE entered into a loan guarantee agreement in the principal amount of $2,020,000,000 with the Great Plains Coal Gasification Associates (GPGA) in connection with a coal gasification facility to be constructed in Mercer County, North Dakota. GPGA has constructed and operated a 125 million standard cubic feet/day (mmscf/d) gasification facility at that location until August 1, 1985. On that date, GPGA defaulted on the repayment of the guaranteed notes. DOE has paid to the Federal Financing Bank the amount equal to the outstanding principal and interest of $1,571,500,000. It is the intention of the Secretary to utilize the proceeds of the sale of the facility to recover as much as possible of the principal and interest which has been paid.

The Act provides that if the borrower of indebtedness guaranteed by DOE fails to make principal and interest payments, as a result of which DOE is required to pay the indebtedness pursuant to its guarantee, DOE, through its security interest in the project's assets, may recover from those assets to the extent of their value any payments made by DOE pursuant to the guarantee. In addition, because a default(s) has occurred, DOE has the right to complete, operate or dispose of the facility and all its assets. While DOE has elected to operate the facility since August 1985, such operations may only continue so long as revenues exceed expenses.

The Secretary of Energy (Secretary), wishes to take action to sell the project to an appropriate buyer(s) who would be bound by the Gas Purchase Agreements (as described elsewhere herein) and would make a good faith effort to keep the project in operation for the duration of the Gas Purchase Agreements. Therefore, DOE has elected to identify qualified sources who, through the purchase of the facility and its assets, can obtain economic benefit from the ownership and long-term operation of a technologically advanced coal gasification facility. The facility consists of real and personal property, tangible and intangible, including, but is not limited to, the gasification complex, including all real and personal property, certain pieces of mining equipment (e.g., draglines), excess real estate, improved and unimproved, located in the town of Beulah and elsewhere, and a large semipermanent construction worker camp made up of modular units. No coal resource is subject to this announcement. DOE holds a first lien in all of the real and personal, tangible and intangible, property owned by GPGA. All of the real property is located in Mercer County, North Dakota. DOE has not yet obtained title to the property but has prevailed in a suit to foreclose its mortgage and security interest in the project. DOE may sell its first lien interest in the project or title to the project after the foreclosure sale.

It should be emphasized that DOE is not with this announcement soliciting proposals for the purchase of the facility. DOE expects to analyze Statements of Interest which are submitted in response to this notice with the intent of using these in the DOE's deliberations to determine the most appropriate means to secure a viable owner of the Great Plains Gasification Project (Project) in order to recover as much as possible of the principal and interest which has been paid pursuant to DOE's guarantee and to continue, for a sustained period of time, the operation of the gasification plant to produce substitute natural gas (SNG) and other product slates for sale in the marketplace.

Objective

The objective of this announcement is to request Statements of Interest and Information Proposals from the public and private sector, for expressions of interest and information regarding acquisition of the project for the principal purposes (1) repayment to DOE of funds expended pursuant to the guarantee and (2) sustained operation of the facility in Beulah, North Dakota, to produce and sell SNG, as well as marketable co- and by-products in the marketplace.

It is DOE's intent to review and analyze all submissions, provide a summary of such activities to the Secretary and, utilizing input contained in the Statements of Interest and Information Proposals, consider which one of several options to dispose of the facility would be the most appropriate and advantageous. DOE cannot reimburse respondents for any expenses that they may incur in responding to this announcement.

Plant Description

The Project represents the first major commercial coal gasification plant constructed in the United States for the production of SNG. The SNG production process is based on Lurgi Coal Gasification technology. Fourteen Lurgi Mark VI moving bed, dry bottom gasifiers are included in the plant. Additional Lurgi Units in the plant are Gas Cooling, Shift Conversion, Rectisol, Methanation, Gas Liquor Separation and Phenosolvan. A small methanol plant is also included to provide makeup methanol to the Rectisol Unit. Other licensed processes included USS Engineers & Consultants' Phosam-W Ammonia Recovery Process and R. M. Parsons' Stretford Sulfur Recovery Process.

In addition to the process units, various utility and support units comprise the balance of the plant. These units include Coal Handling, Ash Handling, Oxygen Plant, Boiler Plant, Superheaters, Primary Water Treatment, Cooling Water System, Wastewater Treatment, Liquid Storage, Flare and Potable Water.

Plant Location

The site of the coal gasification complex is approximately 90 miles northwest of Bismarck, North Dakota, in a multistate region generally known as the Northern Great Plains. Within North Dakota, the plant and mine lie entirely within Mercer County, 7 miles south of Lake Sakakawea, a large reservoir formed by Garrison Reservoir on the Missouri River. The Fort Berthold Indian Reservation is located 9 miles to the northwest. Straighline distances to North Dakota cities are: 65 miles SE to Bismarck, 65 miles NNE to Minot, 58 miles SW to Dickinson, and 100 miles NW to Williston. Local municipalities nearby include: Beulah, 7 miles SSE; Hazen, 11 miles SE; and Zap, 7 miles SSW.

Land Requirements

The site for the coal gasification complex includes both the plant site and the mine site. Land acquired for the Project consists of 1,127 acres. of the acreage, about 535 acres are occupied by the Project's buildings, process equipment, and coal storage. The remainder of the Project's property (about 592 acres) was used for construction laydown or as areas to deposit overburden from the initial mining cuts. Any property unused is left for future development.

In addition to the plant site proper, a railroad spur was extended 9 miles from an existing Burlington Northern railroad spur near Hazen to the plant. About 8.2 miles of new roads were built near the plant and mine. An underground water pipeline, 7.6 miles in length, was construction from Lake Sakakawea southward to the plant site. The product pipeline (24 inches in diameter) extending 32 miles SSE from the plant site connects into the existing 365-mile long Northern Border Pipeline, near Elen Ullin. The SNG mixes with large volume natural gas carried in the Northern Border Pipeline and pumped SE into North Central Iowa.

The mine site consists of four areas within close proximity of the plant. The mines and future coal resources are not included as part of the contemplated sale action. Three areas are located adjacent to the plant site and one is located about 5 miles NE. Approximately 500 acres per year are scheduled to be mined, totaling about 12,500 acres during the first 25 years of mine operation. The mining plan allows the majority of land within the mine area to remain in its current use until mining reaches each segment. Reclamation will commence as soon as mining of each segment is completed.

The identification of what property may be sold and what property may be made available for use by a purchaser of the plant is available in the public reading rooms referred to later herein.

Coal Resources

The estimated size of the coal reserves near the plant site is about 1.5 billion tons (947 million currently recoverable tons). All of the coal to be mined for the proposed project could come from private coal leases held by Coteau Properties Company or the Meridian Minerals Company. However, the Federal Government has retained extensive coal rights in the area and, at some future date, some of these rights could be obtained by Coteau Properties Company or the plant owner for use by the project, subject to appropriate laws and regulations.

Product Slate

Substitute Natural Gas (SNG)

The main product of the Project is NG of sufficient quality to make it suitable for use in place of, or mixed with, natural gas.

The plant design capacity is 137.5 mmscf/d SNG on a stream day basis. The average production, which is guaranteed by Lurgi based on a 0.91 onstream factor, is 125 mmscf/d on a calendar day basis. The 0.91 onstream factor takes into account the planned and unplanned production interruptions. Heating value guarantee is 970 Btu/scf minimum.

Other Products

Sulfur

Sulfur is a product of the Stretford Unit. The H_2S content of the waste gas is converted to a saleable molten sulfur. The expected production is 93 long tons per stream day or 84.6 long tons per calendar day. Specific gravity is 1.8 and weight percent purity is 99.8%.

Ammonia

Ammonia is a product of the Phosam-W Unit. The ammonia from the gasification process wastewater is recovered and upgraded to anhydrous ammonia. The expected production is 92.4 tons per stream day and 84.0 tons per calendar day. The quality is agricultural grade containing not less than 99.5 weight percent NH_3.

Carbon Dioxide

The treated waste gas from the Stretford Unit can be considered as a saleable product. In the present design, the treated waste gas is consumed as a fuel by burning in the boilers. As an alternative, the treated waste gas, after drying and compressing (units not included in the present plant design) could be sold as CO_2 primarily for tertiary oil recovery. Approximately 8 mmscf/h (11,000 tons/stream day) could be available containing approximately 98.5 volume percent of CO_2.

Operations

Information regarding the operating history and associated costs of the facility are available in the public reading rooms referred to later herein.

Environmental Permitting Status

A total of 48 Federal, state and local permits have been issued to the operators of the facility to ensure compliance with appropriate regulations. A listing of all permits and status of such permits is included in documents which are presently available in the public reading rooms identified herein.

Statements of Interest and Informational Proposals

Statements of Interest and Informational Proposals submitted under this announcement shall be limited to a total of fifty (50) 8½"×11" double-spaced pages and shall include:

(1) The proposed ownership of the facility.

(2) A description of the financial structuring of the project including the identification of lenders and/or investors or other sources of capital (and the form of the capital) together with evidence of a commitment, if such commitment is available, from these sources and an evidence of the financial ability of each to honor its prospective commitment.

(3) information regarding the management experience of the submitting organization and the experience of each officer or key person in the submitting organization who will be associated with the project.

(4) A general description of the submitting organization's management concept and business plan or plan of operations to be employed in carrying out the business of the facility, including, to the extent possible, the methodology to be used for securing contracts for sale of products and by-products.

(5) A statement of the project economics which identifies the assumptions used.

(6) Any other options, alternatives, etc., which the submitter believes the Secretary might wish to consider in assessing his options, or for consideration in the evaluation of various sale methodologies which are available to DOE.

(7) Specified period of time during which submitter would commit to operate the facility.

(8) A description of the plan to carry out the business of the project by the use of environmentally acceptable processes in such manner as to comply with any applicable environmental protection and pollution control requirements.

(9) A statement of the estimated time that it would take the submitting organization to prepare a formal proposal under a competition to purchase the facility should the DOE seek an owner by the process of a competitive sale.

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(10) A brief history of the existing organization and the impact of the facility acquisition.

(11) The company's audited financial statements for the previous three (3) years and unaudited financial statements for such "stub" periods as are less than an audit year.

(12) The current balance sheet dated within the last 90 days.

(13) A description of the submitting organization's plans for supplying adequate working capital.

(14) Identification of those contracts and agreements (available in the reading rooms referred to later herein) that would be deemed necessary to the successful operations of the plant under the submitter's proposed plan for purchase and continued operation of the facility.

The limitation of submission length does not include or restrict appendices or other such supplementary material or attachments.

Qualifications

No restrictions are placed with respect to ownership. DOE seeks Statements of Interest from qualified submitters from either the public or private sector.

Qualifications that are required of all submitters are:

1. The submitter must commit to operate the facility in Beulah, North Dakota, and make a good faith effort to keep the project in operation for the duration of the Gas Purchase Agreements. The DOE will not provide any additional financial assistance to the project.

2. The submitter must be able to meet the qualifications set by the licensors of proprietary process equipment utilized at the plant.

Proprietary Information

License rights to certain proprietary data which was utilized, embodied or generated in the project and which may be necessary for the continued operation of the facility will be transferable to the awardee after selection upon realization by the Secretary of the security under the Mortgage, subject to the requirements of the applicable licenses or contracts under which the data were obtained. In the case of Lurgi Kohl and Mineraloeltechnik Gmbh, USS Engineers and Consultants, Inc., and the Ralph M. Parsons Company, the applicable license agreements require, as a minimum, that any successor licensee be a financially responsible nongovernmental person who is not engaged in the design or development of technology having features similar to the licensor proprietary data nor engaged in the construction of plants using a similar technology or, if so engaged, the person must be a licensee or the owner of the proprietary technology. The awardee may not be able to obtain a license under or access to the proprietary data of these licensors unless these conditions are met. Copies of the license and contract documents containing these requirements are available in the reading rooms referred to later herein. The available data and terms relating thereto are to be determined solely by reference to these documents. DOE makes no warranty with respect to infringement of patents or proprietary rights of any person.

If prospective respondents are providing, as part of their Information Proposal certain data containing trade secrets or commercial or financial information that is privileged or confidential and which the respondent does not want disclosed to the public or used by the Government for any purpose other than proposal evaluation, the respondent should place the following notice on the Information Proposal:

Notice

The data contained in pages —— of this Statement of Interest have been submitted in confidence and contain trade secrets or commercial of financial information that is confidential or privileged, and such data should be used or disclosed only for evaluation purposes, provided that if an agreement is entered into as a result of or in connection with the submission of this Statement of Interest, the Government shall have the right to use or disclose the data herein to the extent provided in such agreement. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the respondent.

Reference to this notice should be placed on each page to which the notice applies.

Current Litigation

DOE has sued in federal court in North Dakota to foreclose its mortgage and security interest in the project. DOE also sought a declaration that the four Gas Purchase Agreements are valid and enforceable. On January 14, 1986, the federal district court held that the four Gas Purchase Agreements are valid and enforceable, and that the gas purchasers must pay the price stipulated in the Gas Purchase Agreements. The court also held that DOE is entitled to foreclose its security interest in the mortgaged property. A judicial foreclosure sale will be held in the near future. Other litigation may be pending.

Information Sources

Additional detailed information on design, process, process areas and plant systems, and other documents and reports associated with the Project may be found in microfiche at the following DOE Public Reading Room locations:

Public Reading Room, U.S. Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Washington, DC
Public Reading Room, U.S. Department of Energy, San Francisco Operations Office, Oakland, California
Public Reading Room, U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois

Documents Available for Review

The following are the types of documents and reports that are available in the listed DOE Public Reading Rooms:

GPGA Project Management Plans
The Loan Guarantee Agreement (Including Gas Purchase Agreement)
Financial Analysis and Economic Feasibility
DOE's Great Plains Monitoring Plans
GPGA Monthly Progress Reports
GPGA Quarterly Technical Progress Reports
GPGA Quarterly Environmental Progress Reports
DOE Monthly GPGP Progress Reports
Environmental Assessments and Impact Statements
Socioeconomic Impact Reports
Technical Feasibility Studies
GAO Reports to Congress
Advisory Committee on Federal Assistance for Alternative Fuels Demonstration Facilities Reports
Public Design Report
Current Financial Cost/Revenue Statements
Schedule 3.19 Contracts
Comprehensive Property Listing (available after February 20, 1986).

Title listings of other documentation pertaining to the Great Plains Coal Gasification Project and/or the gasification technology may be found in issues of the following publications, which are generally available in libraries:

Fossil Energy Update;
Coal-Based Synfuels;
Energy Research Abstracts;
Government Reports Announcements and Index;
Scientific and Technical Abstract Reports; and
NTIS–PR–360

NTIS–PR–360 is available from the:

National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22061

Assistance in locating reports may also be obtained by contacting the:

Technical Information Division, Office of Scientific and Technical Information, U.S. Department of Energy, P.O. Box 62, Oak Ridge, Tennessee 37831

Number of Copies Required and Marking of Submission

Each submission should be provided in one (1) original and eight (8) copies, and should clearly identify itself as a submission under this announcement by carrying the following legend on its face page:

This submission is provided in response to the DOE Program Announcement for Information Regarding the Prospective Offer to Sell the Great Plains Coal Gasification Facility Located in Mercer County, North Dakota.

Submission Preparation Costs

The Department is under no obligation to pay for any costs associated with the preparation of Statements of Interest or Informational Proposals.

Date

The deadline date for receipt of submissions at the addresses identified below is 3:30 p.m., e.s.t., on April 4, 1986.

Hand-delivered submissions should be brought Monday through Friday, except Federal holidays, between the hours of 8:30 a.m. to 3:30 p.m., e.s.t., to: U.S. Department of Energy, North Lobby, 1000 Independence Ave., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

(As to legal matters):

U.S. Department of Energy, Mail Stop GC–43, 1000 Independence Avenue, SW., Washington, DC 20585. ATTN: Lawrence R. Oliver, Acting Assistant General Counsel for Procurement and Financial Incentives.

(As to Contracting Officer matters):

U.S. Department of Energy, Mail Stop MA–454, 1000 Independence Avenue, SW., Washington, DC 20585. ATTN: Stephen J. Michelsen, Contracting Officer (202) 252–5655.

Issued in Washington, DC, February 10, 1986.

Donald L. Bauer,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 3271 Filed 2–12–86; 8:45 am]

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Last List February 12, 1986

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.J. Res. 520/Pub. L. 99–243

Making an urgent supplemental appropriation for the fiscal year ending September 30, 1986, for the Department of Agriculture. (Feb. 10, 1986; 100 Stat. 5; 1 page) Price: $1.00

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For information on briefings in St. Louis, MO, and Denver, CO, see announcement on the inside cover of this issue.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; at 9 am.

WHERE: Room 1612,
Federal Building,
1520 Market Street, St. Louis, MO.

RESERVATIONS: Delores O'Guin,
St. Louis Federal Information Center.
314-425-4109

DENVER, CO

WHEN: March 24; at 9 am.

WHERE: Room 239,
Federal Building,
1961 Stout Street, Denver, CO.

RESERVATIONS: Elizabeth Stout
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303-236-7181

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 306

[Docket No. 60101-6001]

Business Development Program; Financial Assistance for Industrial and Commercial Purposes

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration (EDA) is hereby providing notice that the interim final rule published May 20, 1985 (50 FR 20746) is now a final rule without change. This rule increases EDA's ordinary maximum participation for business loan projects from $10,000 and $20,000 per job created or saved. Findings from EDA and GAO studies indicate that the current average government cost per job saved or created far exceeds the $10,000 limit. An increased limit of $20,000 per job created or saved is consistent with these findings.

DATE: The interim final regulation was effective May 20, 1985 and remains in effect without change.

FOR FURTHER INFORMATION CONTACT: Travis P. Dungan, Deputy Assistant Secretary for Finance, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7844, Washington, D.C. 20230, (202) 377-5067.

SUPPLEMENTARY INFORMATION: EDA published this interim rule regarding its business development program regulation on May 20, 1985 (50 FR 20746) and allowed interested persons 60 days to comment. No comments were received.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act and all other relevant laws.

Since notice and opportunity for comment are not required to be given for this rule under Section 553 of the APA (5 U.S.C. 553) or any other law, under Sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. § 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of subjects in 13 CFR Part 306

Business and industry; Community development, Indians, Loan programs—business, Loan programs—community development, Rent subsidies.

Accordingly, for the reasons set forth above, the interim rule published at 50 FR 20746, May 20, 1985, is adopted as final with the following change:

PART 306—BUSINESS DEVELOPMENT PROGRAM [AMENDED]

1. The authority citation for Part 306 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211) Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

Dated: December 17, 1985.

Orson G. Swindle, III,
Assistant Secretary for Economic Development.

[FR Doc. 86-3264 Filed 2-13-86; 8:45 am]
BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-01-AD; Amdt. 39-5237]

Airworthiness Directives: Cessna Model S550 Airplanes, Serial Numbers S550-0001 Through S550-0079

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons a new airworthiness directive (AD), which was previously made effective as to all known U.S. owners and operators of certain Cessna Model S550 airplanes by individual priority letters. This AD is necessary because the manufacturer has reported that the cotter pins securing the left and right main landing gear torque link connections may be broken. Broken cotter pins could result in the loss of the nuts and bolts, which could lead to a landing accident and result in the loss of an airplane. This AD requires inspection to ensure that these cotter pins are in place, and repair, if necessary.

DATES: Effective March 7, 1986.

This AD was effective earlier to all recipients of Priority Letter AD 86-01-02, dated January 6, 1986.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

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ADDRESSES: The applicable service information may be obtained from Citation Marketing Division, Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This information may also be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: Cessna, the manufacturer of the Model S550 airplane, reported finding broken cotter pins, which secure the nuts to bolts in the left and right main landing gear torque link connections, on undelivered and in-service airplanes. Four broken pins were found on in-service planes; three were found on undelivered planes. Cessna issued Alert Service Letter (SLA) S550-32-03, dated December 20, 1985, which recommends certain inspections prior to each flight to ensure that the cotter pins securing the left and right main landing gear torque link connections are in place, and describes additional inspections and repair procedures to establish that the total installation is correct.

Since this situation is likely to exist or develop on other airplanes of the same type design, Priority Letter AD 86-01-02 was issued on January 6, 1986, and made effective immediately to all known U.S. owners and operators of certain Cessna Model S550 airplanes. This AD requires inspection and repair, if necessary, of the main landing gear torque link connections in accordance with the Cessna alert service letter previously mentioned.

Since a situation existed and still exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

CESSNA: Applicable to Model S550 airplanes, Serial Numbers S550-0001 through S550-0079, certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent failure of the cotter pins securing the left and right main landing gear torque link connections, accomplish the following:

A. Incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"Prior to each flight, verify that the cotter pins securing the left and right main landing gear torque link connections are installed. If either cotter pin is broken or missing, prior to further flight, accomplish the repair procedure referenced in Cessna Alert Service Letter S550-32-03, dated December 20, 1985."

B. Within the next 30 days or 20 hours time-in-service after the effective date of this AD, whichever occurs first, inspect and repair, if necessary, the left and right main landing gear torque link connections, in accordance with Cessna Alert Service Letter S550-32-03, dated December 20, 1985. Compliance with the requirements of this paragraph constitutes terminating action for the requirements of paragraph A., above.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the inspection requirements of this AD.

All persons affected by this directive may obtain copies of Cessna Alert Service Letter S550-32-03 upon request to the Citation Marketing Division, Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277. This material may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at FAA, Central Region, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas.

This Amendment becomes effective March 7, 1986, as to all persons, except those persons to whom it was made immediately effective by Priority Letter AD 86-01-02, dated January 6, 1986.

Issued in Seattle, Washington, on February 6, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-3242 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-3]

Alteration of Control Zone, Troutdale, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the present description of the Troutdale, Oregon (Portland-Troutdale Airport), control zone by deleting reference to the 154 degree radial of the Portland VORTAC. Due to a change to the Portland, Oregon, control zone description (84-ANM-16), action is necessary to redescribe that portion of the Troutdale control zone which abuts the Portland control zone.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM-534, Federal Aviation Administration, Docket No. 85-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1985, the FAA proposed to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by redefining the current boundaries of the Troutdale, Oregon, Control Zone (50 FR 28591). This action deletes reference to the 154 degree radial of the Portland VORTAC in the present description and redescribes that portion of the Troutdale Control Zone which abuts the Portland Control Zone.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the description of the Troutdale, Oregon (Portland-Troutdale Airport), control zone by deleting reference to the 154 degree radial of the Portland VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.89].

2. By amending § 71.171 as follows:

Troutdale, Oregon, Control Zone (Revised)

That airspace bounded on the north and west by a 5-mile radius area centered on the Portland-Troutdale Airport (lat. 45°33'30"N/ long. 122°23'49"W), on the south and east by a line 2 miles north and parallel to the Laker LOM (lat. 45°32'36"N/long. 122°27'49"W) 119° and 299° bearing extending from the LOM to 8 miles southeast, excluding the airspace within the Portland, Oregon, control zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/ Facility Directory.

Issued in Seattle, Washington, on February 6, 1986.

David E. Jones,

Manager, Air Traffic Division Northwest Mountain Region.

[FR Doc. 86-3241 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 275

Tender Offers by Issuers and Uniform Investment Adviser Registration Application Form; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules; corrections.

SUMMARY: This document corrects final rules which appeared at 51 FR 3031 (January 23, 1986) and 50 FR 42903 (October 23, 1985). This action is necessary to correct typographical errors.

FOR FURTHER INFORMATION CONTACT: Deren Manasevit (202) 272-7494—Rule 13e-4; Jay Gould (202) 272-2810—Rule 204-1.

Accordingly, the Securities and Exchange Commission is correcting 17 CFR 240.13e-4 and 275.204-1 as follows:

§ 240.13e-4 [Corrected]

1. In Section 240.13e-4(f)(2)(i) remove the word "and" at the end of the paragraph and insert the word "and" at the end of paragraph (f)(2)(ii).

§ 275.204-1 [Corrected]

2. In Section 275.204-1(b)(1) after the first sentence, insert "(b)(2)" designating the rest of the text as paragraph (b)(2).

February 11, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3331 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8070]

Income Tax; Coordination of Loss Deferral and Wash Sale Rules and Treatment of Holding Periods and Losses Under Section 1092; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction.

SUMMARY: This document contains corrections to Treasury Decision 8070, which was published in the Federal Register on January 15, 1986 (51 FR 1785). T.D. 8070 amended temporary regulations that had been published in the Federal Register on January 24, 1985 (50 FR 3317). The regulations that are subject of this correction relate to loss deferral, wash sale, and holding period rules for straddles.

EFFECTIVE DATE: These corrections are effective January 15, 1986.

FOR FURTHER INFORMATION CONTACT: Timothy J. McKenna of the Legislative and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC (Attention: CC:LR:T). Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1985, the Federal Register published Treasury Decision 8007 (50 FR 3317) which adopted temporary regulations relating to coordination of loss deferral and wash sale rules. In part, T.D. 8007 added § 1.1092(b)-1T to the regulations. Paragraph (f) of § 1.1092(b)-1T consisted of examples numbered *(1)* through *(17)*.

On January 15, 1986, the Federal Register published Treasury Decision 8070 which amended the regulations set forth in T.D. 8007. Part of those amendments removed *Examples (13), (14)* and *(15)*; and redesignated *Examples (9), (10), (11)* and *(12)* as *(Examples (10), (11), (12)* and *(13)*, respectively.

Need for Correction

In § 1.1092(b)-1T (f), the first sentence in *Examples (10), (11)*, and *(12)*, as numbered prior to their redesignation in T.D. 8070, contains a reference to "example (9)". This example (9) is the same *Example (9)* that was redesignated *Example (10)* in T.D. 8070. Inadvertently, the internal references were not revised to reflect that redesignation.

Correction of Publication

Accordingly, the publication of Treasury Decision 8070, which was the subject of FR Doc. 86-726 (51 FR 1785), is corrected as follows:

§ 1.1092(b)-1T [Corrected]

Paragraph 1. On page 1786, beginning in the first column and continuing into the second column, in the instructional paragraph that is numbered Par. 2, a new subparagraph (9) is added

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immediately following subparagraph (8), to read as follows:

(9) In the first sentence in redesignated *Examples (11), (12)* and *(13),* the language "example (9)" is removed and the language "*example (10)*" is added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-3353 Filed 2-13-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed program amendment submitted by the State of Montana as a modification to its permanent regulatory program, hereinafter referred to as the Montana program, which the Secretary of the Interior approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Montana Strip and Underground Reclamation Act which address: (1) Permit review procedures; (2) bond release procedures; and (3) a cap on the $750 per-day civil penalty provisions. After considering all comments received and conducting a thorough review of the proposed amendments, the Director has determined that the proposed modifications meet the requirements of SMCRA and the Federal regulations, and is approving the proposed amendment as submitted by Montana on July 3, 1985. The Federal regulations at 30 CFR Part 926 codifying decisions concerning the Montana program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to Federal standards in accordance with SMCRA without undue delay.

EFFECTIVE DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION:

I. Background

Information concerning the general background on the Montana program submission and the approval process, the Secretary's findings, the disposition of comments, an explanation of the initial conditions of approval and program amendments can be found in the April 1, 1980 **Federal Register** (45 FR 21560), February 11, 1982 **Federal Register** (47 FR 6266), January 3, 1984 **Federal Register** (49 FR 66), January 3, 1985 **Federal Register** (50 FR 260) and November 18, 1985 **Federal Register** (50 FR 47386).

II. Submission of Amendment

On July 3, 1985, the State of Montana submitted to OSMRE an amendment to its permanent regulatory program. The amendment consists of three bills passed by the Montana Legislature which amend the Montana Strip and Underground Mine Reclamation Act.

The July 6, 1985 **Federal Register** announced receipt of the proposed revisions and requested public comments on their adequacy. In that same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held. The public comment period closed on September 6, 1985.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.17, the Director finds that the proposed amendments as submitted by Montana on July 3, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII. All of the amended provisions are cited at the end of this notice in the amendatory language for Section 926.15.

The first bill, House Bill 784, revises the Department of State Land (DSL) strip mine permit review procedure. In light of OSMRE oversight findings and subsequent recommendations to Montana, the State submitted to OSMRE this bill which amends Montana's law at section 82-4-231 concerning the administrative completeness review for permit applications and associated public comment period. As a result of the amended language, Montana will coordinate its permit review process and environmental impact statement preparation process with those of OSMRE for proposed operations involving Federal lands. The Director finds the amendment submitted by Montana concerning procedures for processing permit applications and areas of responsibility for both applicants and the DSL are no less effective than the Federal permitting provisions at 30 CFR Part 773.

The second bill, House Bill 769, repeals most of the statutory provisions of section 82-4-232 concerning bond release procedures and replaces it with language intended to be no less effective than the revised Federal provisions at 30 CFR 800.40 concerning bond release procedures.

Specifically House Bill 769 requires the applicant, within 30 days after filing an application for bond release, to publish notification of his request for bond release, including specific detail as to the location of land affected, permit number, acres affected and other pertinent information once a week for four consecutive weeks in a newspaper of general circulation in the locality of the operation. In turn, the Department of State Lands, within 30 days of receipt of the application, is required to notify certain entities of the operator's request for bond release and to inspect the site for adequate reclamation.

House Bill 769 also sets forth specific procedures to be followed by the Montana DSL when processing operators' requests for bond release. The amendment specifies the public notification requirements to be followed, procedures for both approval and disapproval of requests, operators' rights to appeal DSL decisions and procedures to be followed by the operator when requesting a hearing on the State's decision. The Director finds the amendment submitted by Montana concerning procedures for processing an operator's request for bond release to be no less effective than the Federal provisions at 30 CFR 800.40.

The third bill, Senate Bill 359, amends the State law at Section 82-4-254 concerning penalties for violations by adding provisions which place a cap on the $750 per-day civil penalty for failure to comply with an abatement order. The Director finds the amendment submitted by Montana placing a cap on civil penalties for unabated violations to be no less effective than the comparable Federal provision at 30 CFR 845.15.

Montana has also added language in Senate Bill 359 that requires the DSL to institute appropriate alternative enforcement action against an operator who fails to abate a violation within the prescribed 30-day abatement period. The Director finds the alternative enforcement actions identified at Sections 82-4-251(3) and 82-4-254 (4) and (6) of the Montana Strip and Underground Mine Reclamation Act to be as stringent as the Federal alternative enforcement provisions identified at sections 518 (e) and (f) and 521 (a)(4) and (c) of SMCRA.

IV. Public Comments

Pursuant to Section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were solicited from various Federal agencies. Of those agencies invited to comment, the Army Corps of Engineers, the Department of the Interior's Bureau of Indian Affairs, Bureau of Land Management and Bureau of Reclamation, responded, all with non-substantive comments.

V. Director's Decisions

The Director, based on the above findings is approving the proposed amendment to the Montana program, as submitted to OSMRE on July 3, 1985. The Federal rules at 30 CFR Part 926 are being amended to implement this decision.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 926

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1986.

Brent Wahlquist,

Acting Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

30 CFR Part 926 is amended as follows:

PART 926—MONTANA

1. The authority citation for Part 926 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 926.15 is amended by adding a new paragraph (f) to read as follows:

§ 926.15 Approval of regulatory program amendments.

* * * * *

(f) The following amendment, as submitted to OSMRE on July 3, 1985, is approved effective February 14, 1986: Modification to the Montana Strip and Underground Mine Reclamation Act at the following sections: 82-4-231 concerning submission of and action on reclamation plans; 82-4-232 concerning bond release procedures and 82-4-254 concerning penalties for violations of the Montana program.

[FR Doc. 86-3311 Filed 2-13-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS KEY WEST (SSN 722) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS KEY WEST (SSN 722) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS KEY WEST (SSN 722) is a member of the SSN 688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS KEY WEST (SSN 722).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is

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impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

1. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights relationship of aft light to forward light in meters, § 2(k), Annex I
USS Key West	SSN 722			209°	4.2	6.1	3.4	1.7 below.

2. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, § 2(a)(i), Annex I
USS Key West	SSN 722	3.5

Dated: February 3, 1986.
Approved:
John Lehman,
Secretary of the Navy.
[FR Doc. 86-3292 Filed 2-13-86; 8:45 am]
BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-5-FRL-2970-5]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The State of Indiana requested that USEPA change the Total Suspended Particulates (TSP) attainment status designation from unclassifiable to attainment for four townships in Wayne County, Indiana. USEPA is (1) disapproving the redesignation request for Wayne Township, and (2) approving the redesignation request for Webster, Center and Boston Townships. In addition, the State of Indiana submitted a request to revise the Indiana State Implementation Plan (SIP) for TSP for Richmond State Hospital. USEPA is approving a revised emission limit for this facility.

EFFECTIVE DATE: This final rulemaking becomes effective on March 17, 1986.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Anne E. Tenner, at (312) 886-6036, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

Wayne County Redesignation

The current designation under section 107 of the Clean Air Act for TSP in Wayne County, Indiana is that the area included within Boston, Center, Wayne, and Webster Townships in Wayne County, Indiana is unclassifiable and the remainder of the County is designated attainment. (46 FR 543401; November 2, 1981.) On September 11, 1984 the State of Indiana requested USEPA to revise the TSP designation for Webster, Center, Wayne and Boston Townships from unclassifiable to attainment. To support its request, the State of Indiana submitted 8 consecutive quarters (July 1982–August 1984) of air quality data from two sites in Richmond, which is located in Wayne Township in eastern Wayne County. No violations of the TSP NAAQS were measured during this period.

The State of Indiana also submitted air quality modeling analyses which indicate, however, that the two monitors are not located in the area of poorest air quality in Wayne Township. These analyses project secondary nonattainment for a small area in the northern part of the City of Richmond.

The available modeling and monitor data do indicate that the TSP primary and secondary NAAQS are attained in Webster, Center, and Boston Townships in Wayne County. The technical data are discussed in more detail in the technical support document which is available at USEPA's Region V office.

On May 6, 1985 (50 FR 19038), USEPA proposed to disapprove the redesignation of Wayne Township from unclassified to attainment for TSP, and to propose approval of the redesignation of Webster, Center, and Boston Townships in Wayne County to full attainment.

There were no public comments received by the Agency on this proposal. Therefore, based on the available technical data from the State, USEPA disapproves the redesignation of Wayne Township and approves the designation of Webster, Center, and Boston Townships in Wayne County to full attainment for TSP. The remainder of the County will remain designated attainment.

Richmond State Hospital SIP Revision

On March 28, 1984, the State of Indiana requested that Richmond State Hospital, a major TSP source in Wayne County, be permitted to utilize its four boilers simultaneously and increase its TSP emission limit to 0.60 lbs/MMBTU. The current federally approved SIP for Richmond State Hospital allows simultaneous operation of the four boilers, but restricts each boiler to a 0.35 lb/MMBTU emission limit. In response to the State's original request, USEPA determined that this revision could not be approved because the State had not submitted an air quality modeling analysis consistent with USEPA reference modeling methodology which demonstrate that the revision would not cause or contribute to a violation of the TSP standards.

On September 11, 1984, the State submitted additional information which supported the earlier request to revise the SIP for Richmond State Hospital. As a supplement, USEPA modeled the Richmond State Hospital's emission increases. USEPA also determined that because the Prevention of Significant Deterioration (PSD) baseline date has not been triggered in Wayne County for TSP, the increase in allowable emissions from Richmond State Hospital does not consume PSD increment.

On May 6, 1985 (50 FR 19038), USEPA proposed approval of the revised emission limit as a revision to the SIP. A detailed discussion of USEPA's action can be found in the notice of proposed rulemaking and the technical support docuement which is available at USEPA's Region V office.

USEPA has also analyzed whether this revision is consistent with USEPA's stack height regulation (July 8, 1985; 50 FR 27892). USEPA has determined that the emission limitation for Richmond State Hospital is not affected by illegal credit for stack height or any other dispersion technique because the present stack configuration is the same as it was on December 31, 1970. (See Section 123 of the Clear Air Act and USEPA's regulations on stack height credit, July 8, 1985; 50 FR 27892).

In response to this action, only the City of Richmond submitted comments. The City of Richmond formally supported the State of Indiana's position of allowing Richmond State Hospital to utilize its four boilers simultaneously and increase its TSP emission limit to 0.60 lbs/MMBTU. As a result of the aforementioned analyses, USEPA approves the revised emission limit as a revision to the SIP.

The Office of Management and Budget has exempted this rulemaking from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by Reference, Particulate matter, Intergovernmental relations.

40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 7, 1986.
Lee M. Thomas,
Administrator.

Title 40 of the Code of Federal Regulations, Chapter I, Parts 52 and 81, are amended as follows:

1. The authority citation for Parts 52 and 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

PART 52—[AMENDED]

2. Section 52.770 is revised by adding new paragraph (c)(54) as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(54) On March 28, 1984, Indiana submitted a revised TSP emission limitation for Richmond State Hospital, Wayne County, Indiana. This limitation replaces the one in 325 IAC 6-1-14 which was previously approved at (c)(34).

(i) *Incorporation by reference.* (A) On January 13, 1984, Indiana issued to Richmond State Hospital an amendment to operating permit, 89-04-85-0153, which revised its TSP emission limitations for the four boilers to 0.60 lbs/MMBTU with an annual total limit of 452 tons/yr.

* * * * *

PART 81—[AMENDED]

3. Section 81.315 is amended by revising the Wayne County designation in the Indiana Table for Total Suspended Particulates (TSP) as follows:

§ 81.315 Indiana.

INDIANA—TSP

Designated Area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Wayne County:				
Wayne Township			X	
The remainder of Wayne County				X

[FR Doc. 86-3277 Filed 2-13-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 85-87; FCC 86-28]

Common Carrier Services; Preemption of Local Zoning and Other Regulation of Receive-Only Satellite Earth Stations

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: This action adopts a final rule stating Commission policy with respect to federal preemption of local regulation of satellite earth stations. This rule is necessary to ensure that non-federal regulations do not interfere unreasonably with the federal right to construct and use antennas to receive satellite delivered signals. Under this rule, non-federal regulations which differentiate in their treatment of satellite earth stations are preempted unless they have a valid health, safety or aesthetic objective and do not impose unreasonable limitations on reception. Regulation of transmitting antennas is similarly preempted except that non-federal health and safety regulation is not preempted.

EFFECTIVE DATE: March 14, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalee C. Gorman, (202) 634-1781.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 25

Communications common carriers, communications equipment, Radio, Satellites.

Report and Order

In the matter of Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations (CC Docket No. 85-87).

Adopted: January 14, 1986.
Released: February 5, 1986.

By the Commission: Commissioner Dawson dissenting and issuing a statement.

I. Introduction

1. On March 28, 1985 the Commission issued a *Notice of Proposed Rulemaking* (*Notice*) [1] stating its initial

[1] Preemption of Local Zoning Regulations of Receive-Only Satellite Earth Stations, 50 FR 13966 (April 9, 1985).

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determination to adopt a rule preempting certain state and local zoning or other regulations of satellite receive-only antennas.[3] We have received extensive comments on a wide variety of issues raised in connection with this proceeding and are now in a position to adopt a final rule. The rule we are adopting is:

State and local zoning or other regulations that differentiate between satellite receive-only antennas and other types of antenna facilities are preempted unless such regulations

(a) Have a reasonable and clearly defined health, safety or aesthetic objective; and

(b) Do not operate to impose unreasonable limitations on, or prevent, reception of satellite delivered signals by receive-only antennas or to impose costs on the users of such antennas that are excessive in light of the purchase and installation cost of the equipment.

Regulation of satellite transmitting antennas is preempted in the same manner except that state and local health and safety regulation is not preempted.

2. This rule differs from that originally proposed [4] reflecting modifications made in response to the comments submitted.[5] Due to the large number of documents filed in this matter,[6] we will not discuss each individually. However, all parties' suggestions have been fully considered.

3. In making our initial proposal, we determined that we had the legal authority to preempt [7] and that a limited preemption of state and local zoning regulation was warranted.[8] The objective of the *Notice* was to solicit comments on the implementation of such a preemption, recognizing our obligation to ensure that federal communications policies are not frustrated while also acknowledging the strong, non-federal interest in land use regulation.[9]

II. Comments

A. Authority to Preempt

4. Commenters in agreement with our decision to preempt analyzed precedent supporting such Commission action.[9] Preemption, according to proponents, is fully consistent with Commission policy, has been sustained in court challenges,[10] and is not limited to cases in which discrimination is found.[11]

5. Parties opposing preemption [12] argued that the federal interest in the availability of satellite-delivered service is insufficient to rebut the presumption of validity which attaches to local regulation of traditionally local matters.[13] The League stated that municipal regulation does not directly affect the availability of Commission licensed satellites. Where alternative methods to receive video entertainment programming exist, (i.e. cable television, direct broadcast satellites, multipoint distribution systems), a federal preemption allowing the unregulated proliferation of satellite antennas where no fee is paid for programming will hurt these other services by depriving them of revenue which will in turn hurt the satellite industry by affecting its financial base.[14] The League argues that by eliminating local regulation the Commission may harm rather than advance its federal objective:

6. Section 705 of the Communications Act, 47 U.S.C. 705, according to the League, creates only a limited "sanction" of reception of satellite delivered programming. Brooks Satellite, Inc. (Brooks), in contrast, calls section 705 rights "unequivocal" and "fundamental." [15] The League would limit the application of a case relied upon for preemption authority [16] on the basis of the "unique characteristics of MDS" where entry regulation was preempted because a reduction of reception points in one state placed a burden on interstate commerce.[17]

7. The McLean Citizens Association (McLean Citizens) stated that the cases relied on as precedent for Commission preemption were inapplicable because they involved state regulation of entry by new communications services. Comments filed by United States Satellite Broadcasting Co., Inc. (USSB), although favoring preemption, cautioned that the Commission must take care to respect the "legitimate land use concerns of state and local governments." USSB agreed with McLean Citizens that there is a distinction between federal preemption authority exercised under the Interstate Commerce Clause when the regulations are economic as opposed to based on state police powers. It stated that the Commission should try to harmonize its rule with legitimate zoning enactments [18]

8. The League also asserted that the record before the Commission does not establish the existence of a problem and that therefore Commission action is unjustified.[19] Other parties disagreed, offering examples of ordinances which would violate the proposed preemption rule, detailing individual problems with restrictive zoning, and citing cases in which a denial of an application to install an antenna was sustained by court action, thus preventing the reception of programming.[20]

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[3] This action was taken in response to a Petition for Declaratory Ruling filed by United Satellite Communications, Inc. Because of the significant local interest in the issues involved and due to the limited record compiled, especially with respect to the views of local governments, we issued a Notice of Proposed Rulemaking soliciting further comments.

[4] The proposed rule read as follows: "State and local zoning or other regulations that discriminate against satellite receive-only antennas in favor of other communications facilities are preempted unless they have a direct and tangible relationship to reasonable, valid, demonstrable and clearly articulated health, safety or aesthetic objectives and constitute the least restrictive method available to accomplish such objectives."

[5] Several parties have made specific alternative rule proposals. Although none of these suggestions has been adopted in full, aspects of these proposals have been incorporated in our final action. *See, e.g.*, Comments of RCA Communications, Inc. (RCA), Hughes Communications, Inc. (Hughes), and Satellite Television Industry Association, Inc. (Space).

[6] Approximately 170 comments were filed in this proceeding in addition to many informal letters indicating interest and over 2000 postcards supporting preemption. A list of the commenters is attached as Appendix A.

[7] *Notice* at paras. 9–21.

[8] *Id.* at para. 30.

[9] *Id.* at para. 17.

[10] *See e.g.*, Comments of Hughes, Space, Cable Com. Corp.

[11] Comments of SPACE, Curtis Mathes Corp./Southern Satellite Systems, Inc./Spectrodyne, Inc. (Curtis Mathes), RCA.

[12] Comments of Brooks Satellite, Inc. at 4.

[13] At the suggestion of the National League of Cities (League), many cities stated objections to our proposed preemption. These were (1) the action is an improper federal interference in traditionally local matters; (2) the Commission does not have authority to preempt under the Communications Act; (3) local law provides adequate remedies; (4) preemption would impose unreasonable administrative burdens on states and localities. *See, e.g.*, Comments of Manhattan Beach, Ca.

[14] Space contends that this assertion is incorrect because the lawfulness of preemption action depends upon the impact local regulation has on federal objectives and not on the degree of local interest. Space comments at 8.

[15] League Comments at 5.

[16] Comments of Brooks at 11.

[17] In the Matter of Orth-O-Vision, Inc., 69 FCC 2d 657 (1978), *aff'd sub nom.* New York State Commission on Cable Television v. FCC, 669 F.2d 58 (2d Cir. 1982) (Ortho-O-Vision). The League does not comment on our order in Earth Satellite Communications, Inc., 95 FCC 2d 1223 (1983), *aff'd sub nom.* New York State Commission on Cable Television v. FCC, 749 F. 2d 804 (D.C. Cir. 1984) (Earth Satellite) which preempted state regulation of SMATV systems where signals were delivered by satellite.

[18] League comments at para. 4.

[19] USSB cited Hybud Equipment Corp. v. Akron, 645 F.2d 1187, 1194 (6th Cir. 1981) in support of this proposition. The constitutional basis of the Communications Act is the Interstate Commerce Clause.

[20] League Comments at 11 quoting Home Box Office, Inc. v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977).

[21] Space comments at 5–6; USSB Comments at 1–3. Other parties' comments described particular difficulties that individual companies have encountered. *See, e.g.*, Comments of Atlantic Satellite, Spectradyne, American Satellite, Direct Broadcast Satellite Association, Curtis Mathes.

Continued

9. A final objection by the League is that the Commission's preemption will result in a significant amount of litigation and necessitate review by either the Commission or the courts. Because the proposed rule's standards are vague, judicial review would result in inconsistencies and agency review would impose extraordinary burdens on the Commission and on local authorities. Space replied that the adoption of a national standard would reduce litigation and encourage accommodation of disputes between antenna users and communities.[21]

B. Implementation of Rule

10. Most parties, whether in favor of, or opposed to, preemption, offered suggestions with respect to the scope of the specific rule to be adopted. Many believed that requirements of the rule were vague and unclear and stated that it did not offer sufficient guidance to local communities [22] or would not be susceptible to application in specific cases.[23]

11. Some commenters suggested that the "discrimination" requirement be stricter and invalidate any regulation that discriminates in effect as well as on its face.[24] Others asserted that the phrase "in favor of other communication facilities" be deleted because this created a harder burden for those challenging local action.[25] Several parties suggested deleting the entire discrimination requirement, stating that the proper focus of preemption should be on the effect of the local regulation on federal objectives and not on differences in treatment.[26]

12. It was also urged by opponents that we delete the "least restrictive means" test. They claimed that requiring the least restrictive alternative would prevent zoning for legitimate objectives such as historical preservation.[27] Space argued that the least restrictive means test was consistent with first amendment requirements where local regulations were restricting constitutionally protected communications.[28]

13. Several cities and representative groups stated that the proposed rule's general exception for ordinances enacted pursuant to police power objectives was duplicative as general zoning law requires that regulations be based on legitimate health, safety or, in some cases, aesthetic objectives.[29] They asserted that such a rule was thus unnecessary. Some preemption advocates also objected to this criterion because it would allow circumvention of the discrimination requirement by creating multiple loopholes.[30] SPACE asked that any aesthetic zoning power be limited to "bona fide historic districts" that also restrict other "accoutrement or modern living." [31] American Satellite suggested that any health hazard relied upon by local authorities be required to be documented.[32]

14. Some commenters suggested preemption guidelines based on size and land use characteristics of the proposed antenna site. For example, the International Association of Satellite Users and Suppliers (IASUS) proposed an absolute preemption for construction in industrial, commercial and high density areas as well as for antennas of less than 3.5 meters with a limited preemption allowing non-aesthetically based regulation of antennas over 3.5 meters in low density single family zones.[33]

C. Alternative Approaches

15. The APA asserts that the Commission should avoid the vagueness of the proposed rule by exercising preemption on a case-by-case basis and only in those instances where one communications technology is favored over another. Although acknowledging that the Commission's administrative burden might be increased under this approach, the APA maintained that there would only be a few cases of egregious discrimination necessitating review.[34]

16. Many parties supporting preemption action urged that any final rules be extended to transmitting as well as receiving antennas despite our tentative decision to limit consideration to the latter.[35] The rationale offered for this suggestion is that many smaller transmitting antennas are not visually or otherwise different from receive-only facilities and thus should not be subject to discriminatory local regulation.[36] These commenters argue that the record established in this proceeding is sufficient to justify Commission action with respect to transmitting antennas.[37] It was also suggested that the Commission, by establishing the ANSI standards for regulation of radiation levels of transmitting equipment, has already preempted local control for health objectives.[38]

17. Other parties asserted that because we had stated a tentative conclusion to limit the rule under consideration to receive-only antennas, a new rulemaking might have to be established to consider preemption of local regulation of transmit antennas.[39]

18. Parties on both sides of the issue requested that in addition to, or instead of, a general rule, we should give examples of those ordinances or regulations that would be acceptable under our preemption standards.[40]

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[22] Comments of Space at 12–15.

[23] *See* Comments of APA. *See also* Reply Comments of Space at 13. Comments of the National Capital Planning Commission at 7 requested the inclusion of "security" as a criteria but did not elaborate.

[24] Comments of International Association of Satellite Users and Suppliers at 6.

[25] Comments of Space at 17. Cable Com. Corp. at 7 suggested eliminating aesthetics as an acceptable local objective.

[26] Comments of American Satellite at 1.

[27] *See also* Comments of M/A Com, Brooks, USSB, Sat Time Inc., Direct Broadcast Satellite Association (DBSA) and National Association of Broadcasters (NAB) with respect to suggested size criteria. *Cf.* Comments of Contemporary Communications Corp. which cautioned against emphasis on size or physical characteristics of antennas.

[28] Comments of Atlantic Satellite, Spectradyne, American Satellite, Direct Broadcast Satellite Association, Curtis Mathes.

[29] Reply Comments of Space at 8–9.

[30] Comments of American Planning Association (APA), Mutual Broadcasting System, Inc.

[31] Comments of National Satellite Cable Association and Hughes.

[32] Comments of USSB at 3.

[33] Comments of Equatorial Communication Services (Equatorial) and Associated Press.

[34] Comments of Curtis Mathes, Cablecom and Hughes. *Contra*, Comments of M/A Com and Equatorial urging that a clear stand be taken against discrimination.

[35] Comments of National Trust for Historic Preservation. *See also* Comments of National Capital Planning Association.

[36] Comments of APA at 9. Many cities agreed with APA's recommended approach. *See e.g.* Cincinnati, Ohio; Tuscaloosa, Ala.; Warwick, R.I. *See also* Comments of David Preece.

[37] *See, e.g.*, Comments of Equatorial; Hughes; IASUS; RCA; Public Broadcasting Service (PBS); Satellite Business Systems (SBS); M/A Com; Atlantic Satellite; Sat Time, Inc. *See also* Comments of Contemporary Communications Corp. which urged extension to all telecommunications antennas.

[38] Comments of PBS. *See also* Comments of RCA which suggest a preemption against local regulation of antennas under 2 meters in order to encourage construction of small antenna bi Ainess networks to operate in the 12/14 GHz frequency bands.

[39] *See* Reply Comments of PBS.

[40] *See* Comments of Atlantic Satellite citing LIMA Partners vs. Northvale, Docket No. L-17049-84 P.W. (Superior Court of New Jersey, Law Division, Bergen County, May 10, 1985) where a state court reached this conclusion.

[41] *See* Comments of NAB. Atlantic Satellite has filed a petition requesting the establishment of a separate rulemaking to consider preemption of local regulation of satellite transmitting antennas. RM-5021.

[42] *See* Comments of National Capital Planning Association at 6; Curtis Mathes at 5.

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Space, however, cautioned that such an approach was inadvisable because in limiting our rule with such examples, a wide variety of "local abuses" would not be properly addressed.[41]

D. Other Issues

19. The League suggested that our preemption action would violate both the National Environmental Policy Act (NEPA) and the Regulatory Flexibility Act.[42] With respect to the former, it stated that under NEPA standards, the Commission is obligated to consider the authorization of an antenna over 30 feet in diameter or those to be built in an historic or scenic area a major action requiring an environmental impact statement.[43] The League contended that a similar approach is required in adopting a final preemption rule. Space, however, states that because the Commission is not authorizing any construction here and because the receive-only antennas under consideration are not required to be licensed, there is no inconsistency with NEPA. In addition, receive-only antennas usually do not approach thirty feet in height or diameter and therefore even if this rulemaking were an NEPA defined "action," no environmental policies have been implicated.[44]

20. The League also asserts that the *Notice* did not comply with the Regulatory Flexibility Act.[45] According to the League, we did not consider alternative approaches such as exempting small cities from preemption or allowing any compliance with our rules to be voluntary. Space disagreed, asserting that any exemption for small jurisdictions would circumvent Commission objectives in proposing a uniform regulatory policy. In addition, the rule would not impose any new record keeping or other additional administrative filing requirements on small cities, a determination which was made in our Initial Regulatory Flexibility Statement.

21. The National Trust for Historic Preservation (Trust) stated that the Commission illegally ignored the provisions of the National Historic Preservation Act by failing to consult with the Trust prior to enacting any rule. In addition, the Trust asserted that because historic preservation is also a federal objective, preemption is not authorized.

22. Both the District of Columbia and the National Capital Planning Association asserted that because zoning regulation in the District is promulgated under federal auspices, the Commission cannot preempt these regulations.

III. Discussion

A. Preemption

23. In our *Notice* we concluded that we had the authority to preempt non-federal regulations which stood as obstacles to the accomplishment of federal objectives. We determined that the broad mandate of Section 1 of the Communications Act, 47 U.S.C. 151, to make communications services available to all people of the United States and the numerous powers granted by Title III of the Act with respect to the establishment of a unified communications system [46] establish the existence of a congressional objective in this area. More specifically, the recent amendment to the Communications Act, 47 U.S.C. 705, creates certain rights to receive unscrambled and unmarketed satellite signals.[47] These statutory provisions establish a federal interest in assuring that the right to construct and use antennas to receive satellite delivered signals is not unreasonably restricted by local regulation.

24. As stated in our *Notice*,[48] when "state regulation stands as an obstacle to the accomplishment of a congressional purpose," such regulation is subject preemption.[49] Our conclusion was that the record showed local and state regulatory interference with established federal objectives and thus some of preemption was warranted.

25. The comments submitted in this proceeding do not support a contrary conclusion and thus our final rule will implement a limited preemption. The arguments offered by commenters opposed to preemption state that a federal objective has not been established because other means of obtaining video programming are available and that a preemption in this proceeding would harm other services.[50] This position ignores the clear statement in our *Notice* that we will not permit a state to arbitrarily favor one particular communications service over another and that local ordinances which engage in arbitrary discrimination will be preempted. The existence of alternative communications media is not a sufficient justification for discriminatory local regulations. In many cases, satellites deliver a wider range of programming than that available over other media such as cable television systems or MDS. Thus, local regulation may deprive local residents of access to the broader range of choices available to antenna users in other parts of the country. In addition, this Commission repeatedly has emphasized its policies to maximize consumer choices by developing a competitive marketplace for the provision of telecommunications goods and services.[51]

26. If individuals cannot use antennas to receive satellite delivered signals because of discrimination or excessive state and local regulation, their right of access as established by section 705 to interstate communications delivered by satellite will be useless.[52] Whether the use of satellite antennas will cause economic harm to other communications industries is not a proper basis for local regulations that effectively deny citizens direct access to satellites. Such regulations would frustrate our competitive regulatory policies which have been promulgated to provide for a variety of services by consumers. It would be contrary to those policies to permit discriminatory local regulation which reduces the range of choice.

27. The League and most commenting cities [53] have emphasized the traditionally local nature of zoning regulations. We recognized this concern in our *Notice* [54] and it was this factor which resulted in our original conclusion to propose a limited preemption. Despite this recognition, it must be emphasized that the relative importance to states or local jurisdictions of their own laws is not the proper focus in a decision to preempt.[55] The Supreme Court has recently held that a local transit authority was required to comply with the federal minimum wage and overtime requirements. The transit authority claimed it was immune from federal regulation when operating in areas of traditional local government functions. The court held that "a rule of state immunity from federal regulation that turns on a judicial appraisal of whether a particular governmental function is 'integral' or 'traditional' " is unworkable.[56] The same principle applies in this case in that it cannot be argued that preemption is automatically precluded merely because zoning has been called a traditionally local matter.

28. Other parties have questioned our reliance on prior Commission actions that have preempted state regulation of MDS and SMATV systems [57] pointing out that these cases involved non-federal economic regulations and not those promulgated under states' police powers such as zoning.[58] An analysis of cases cited which address this issue, however, demonstrates that the question of preemption authorized under the Interstate Commerce Clause is not dependent on whether the regulation at issue is economic but on whether its effect on interstate commerce is more than "incidental." [59] In this proceeding, the communications delivered by satellite are unquestionably interstate in nature and, as we found in the *Notice*, denial or reasonable access to antenna facilities significantly, not incidentally, interferes with individual rights to receive such communications.

29. An additional contention raised by commenters opposed to preemption is that the existence of a problem has not been sufficiently established to warrant action. However, the volume of comments submitted which detail significant problems with local zoning encountered by antenna users leads to a contrary conclusion.[60] In addition, the existence of cases in which an antenna user was able to obtain a favorable court result is insufficient evidence upon which to base a conclusion that a rule is unnecessary, especially when other cases to the contrary exist.[61] Whether a judicial remedy might be available in some cases and to those who can afford litigation is not determinative of our ability or of the necessity to preempt state regulations when they are obstructing federal objectives.

B. Final Rule

30. Most commenters urged that we make adjustments to our final rule that would clarify its requirements and offer more effective guidance to local communities.[62] In formulating the rule adopted here, we have taken into consideration the criticism of our original proposal and to the extent possible in a general policy statement, have made our standard clearer and easier to apply to specific situations.

31. We have retained the criterion that a preemptible regulation must differentiate but have modified the rule to apply only to antenna facilities. This change is based on our conclusion that to require comparable treatment for antennas and cable systems would be unworkable in light of their distinct technologies.[63] This action is not a retreat from our condemnation of ordinances such as that of Chicago which prompted the petition initiating this rulemaking.[64] The Chicago ordinance imposed its stringent procedural requirements only on applications for satellite antennas and thus would differentiate in the treatment of other antenna facilities. This ordinance would be subject to preemption under our final rule because it would not comply with paragraphs (a) and (b).

32. Non-federal regulations may impose, under our adopted rule, reasonable requirements on all antennas as long as these local standards are uniformly applied and do not single out satellite receive-only facilities for different treatment.[65] An ordinance attempting to regulate all antennas by enacting restrictions on those of a certain shape, for example a ban on all spherical antennas, would differentiate between satellite antennas and other types of facilities and therefore would be preempted under our rule. Communities wishing to preserve their historic character may limit the construction of "modern accoutrements" provided that such limitations affect all fixed external antennas in the same manner.[66] In adopting this rule we intend that it be a valid accommodation of local interests as well as of two federal interests, namely promoting interstate communications and historic preservation.[67] Communities which are truly concerned with preserving their unique historic character may do so if they do not discriminate against satellite receive-only antennas.

33. If a community chooses to enact an ordinance which differentiates in its treatment of different types of antennas, it must bear a high burden. Our objective is to ensure that satellite receiving antennas are not treated less favorably than other antenna devices such as Amateur Radio antennas and Satellite Master Antenna Systems (SMATVs).[68] A community must

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[41] Comments of Space at 13.

[42] 42 U.S.C. 4321 *et seq.*; 5 U.S.C. 601 *et seq.*

[43] Comments of League at 17.

[44] Reply Comments of Space.

[45] Comments of League at 18. We are considering this issue raised by the League's comments despite the fact that it failed to submit separate comments directed to our initial Regulatory Flexibility Analysis as required by paragraph 34 of our *Notice*.

[46] Earth Satellite Communications, Inc., note 16, *supra*, *citing* General Telephone Co. of California v. FCC, 413 F.2d 390, 398, 401 (D.C. Cir. 1969).

[47] The state court cases cited by the League at pp. 9–10 of its comments for the proposition that the Communications Act does not authorize preemption of zoning involve questions with respect to height limitations on amateur radio facilities. In this proceeding, we are not preempting reasonable, non-discriminatory local restrictions. In addition these cases do not involve section 705 rights.

[48] *Notice* at para. 9.

[49] Capitol Cities Cable, Inc. v. Crisp, 104 S. Ct. 2694 (1984). *See also* Michigan Canners and Freezers Association, Inc. v. Agricultural Marketing and Bargaining Board, 104 S. Ct. 2518 (1984); Florida Avocado Growers v. Paul, 373 U.S. 132 (1963); Hines v. Davidowitz, 312 U.S. 52 (1941).

[50] The League claims that cable television systems are the primary method of delivering video programming and that existence of a dual federal-local regulatory scheme for that service precludes preemption action with respect to satellite antennas.

[51] *See e.g.*, Policy and Rules Concerning rates for Competitive Common Carrier Service and Facilities Authorizations Therefore, 95 FCC 2d 554 (1983).

[52] *See Notice* at para. 10.

[53] *See, e.g.*, Comments of Mankato, Minn.; Aurora, Colo.; Delaware County Planning Dept.

[54] *Notice* at para. 15. *See also* Columbia Plaza Ltd. Partnership v. Cowles, 403 F. Supp. 1337 (D. D.C. 1975).

[55] Free v. Bland, 369 U.S. 663, 666 (1962). *See also* Fidelity Federal Savings and Loan Assoc. v. De La Cuesta, 458 U.S. 141, 153 (1982).

[56] Garcia v. San Antonio Metropolitan Transit Authority, 105 S. Ct. 1005, 1016 (1985).

[57] Orth-O-Vision, *supra* note 16; Earth Satellite, *supra* note 16. *See* Canton Township v. Brenner, No. 86 CT3551 (35th Dist. Ct. Plymouth, Michigan September 29, 1985) at 10 where the Court stated that the Commission in its Earth Satellite order has already preempted local zoning regulation "to a significant extent."

[58] Comments on McLean Citizens.

[59] Hybud Equipment Corp. v. Akron, 654 F.2d 1187, 1194 (6th Cir. 1981) *citing* Hughes v. Oklahoma 441 U.S. 322 (1979).

[60] *See e.g.*, Comments of Space discussing ordinances of Baltimore, Md., and Gaithersburg, Md. *See also* note 20, *supra*.

[61] For a favorable result, *see* Morgan v. Coral Gables, #83-42783 C.S. 22 (Cir. Ct. Fla. June 18, 1984); Canton v. Brenner, No. 85 CT 3551. For a contrary result, *see* Minera v. Rose, #13686/84. (Special Term, Nassau Co., NY, March 25, 1985); Gouge v. Snellville, 287 S.E.2d 539 (Sup. Ct. Ga. 1982). *See also* Reply Comments of Space at 7–8.

[62] We adopt USSB's suggestion that our preemption apply to all non-federal action including ordinances, statutes and regulations. In addition, we have received comments filed by Max Dean Parsons which urge extension of preemption to private restrictions such as those found in deed convenants. This issue was not raised in our Notice and raises some issues not presented in a consideration of local governmental action. We decline to rule on it in this proceeding and deny the request.

[63] *See* Comments of Hughes which indicate that construction approval requirements may differ for small satellite antennas and inner-city cable construction.

[64] *See Notice* at paras. 17–21. Any ordinance enacted solely for the purpose of giving economic protection to a cable system might be invalid under state law. *See* Comments of League at 12 which cites 6 McQuillin, The Law of Municipal Corporation, Sec. 25.61 at 161 (3d. ed. 1971) for the proposition that zoning ordinances must be equal in operation and effet.

[65] Some Commenters claim that the impact on interstate commerce and not discriminatory treatment is the proper focus of a preemption action. *See, e.g.*, Comments of Curtis Mathes and Hughes. It is precisely our concern that states are impermissibly burdening interstate satellite service that leads us to issue this preemption.

[66] *See* Comments of National Trust, National Capital Planning Association, Space.

[67] The National Trust states that sections 106 & 110 of the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, requires us to consult with them prior to rulemaking. Even if this assertion is correct, the National Trust had full opportunity to comment and its comments have been considered in formulating the final rule.

[68] *See, e.g.*, Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, 50 FR 38813 (September 25, 1985) where we stated: "State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must

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demonstrate that its regulation meets both paragraphs (a) and (b) of our rule. With respect to paragraph (a), we agree with the commenters who said that our original proposal should be recast to reduce undefined and vague terms.[69] The rule has been revised in an effort to respond to that criticism, but any general policy formulation will have aspects subject to varying interpretations.

34. We have retained the use of health, safety and aesthetic objectives[70] but have merely required these to be "reasonable" and "clearly defined." These terms are readily susceptible to application by local authorities and give some flexibility in the application of local regulations to individual locations.[71] To be more specific in a general national policy statement would be inadvisable.[72] In addition, requiring local authorities to justify a differentiation in treatment will help ensure that local zoning power is not used to restrict unreasonably the installation of satellite receive-only antennas.

35. Although many commenters have argued that all aesthetic regulation should be preempted,[73] or severely restricted,[74] under prevailing law, aesthetics are permissible regulatory objectives. The preservation of such community values has been sustained even in light of first amendment challenges. Thus, any preemption which failed to recognize this strong local interest would not be sound.[75]

36. In addition to defining the reasonable objective of an ordinance which differentiates in its treatment of antennas, a community is limited in the types of restrictions it can apply. It cannot unreasonably limit or prevent reception by requiring, for example, that a receive-only antenna be screened so that line of sight [76] is obscured. Moreover, an ordinance which discriminates cannot impose size restrictions only on receive-only antennas which would effectively preclude reception.[77]

37. As a further standard we are requiring that any local restriction which fails to meet our discrimination tests must not impose costs which are excessive in light of the costs of the equipment. Again, in a general policy statement, it is inadvisable to specify what "excessive" would mean in a particular situation but we are confident that local authorities who are familiar with local situations will be capable of making accurate distinctions.[78] If antenna users are not satisfied with the results of local determinations, it would be within the ability of a court to make legal determinations of reasonableness or excessiveness.

38. The requirements of paragraph (b) are more specific and more easily applied than our original "less restrictive means" test. We agree with some commenters that the proposed requirement would be difficult to apply and might lead to unintended results.[79]

C. Alternatives

39. It has been suggested that instead of adopting a general policy statement, we should review specific zoning cases to determine if preemption is warranted in individual situations.[80] We rejected this approach in our *Notice* and disagree with the APA and others that the administrative burden created by case-by-case review will be minimal. Initially, as we stated in the *Notice*, we do not intend to operate as a national zoning board. Those cities commenting have consistently indicated their opposition to Commission involvement in local disputes and such individual review will increase rather than decrease a national presence. By issuing a rule, we expect that local authorities will conform their regulations to our standards and that they will make determinations which are in the best interests of their communities that reflect federal policy. Commission intervention in individual cases as a general policy will not further this objective.

40. We also disagree with the suggestion that if we impose a stringent threshold discrimination test, we need not adopt a general rule and could minimize the extent of Commission involvement in a policy which would instead require case-by-case review.[81] There has been increased interest and publicity surrounding this issue and we conclude that the large number of cases which might be presented for individual review would place a severe burden on our administrative process. Satellite antenna users who are dissatisfied with the results of any local zoning decision can use the standards adopted here in pursuing any legal remedies they might have.[82] In addition, we would entertain requests for further action if it appears that local authorities are generally failing to abide by our standards.[83] Any party requesting Commission review of a controversy will be expected to show that other remedies have been exhausted.

41. Many of the comments submitted urge us to include transmitting antennas in our preemption. Transmitting equipment, while visually similar to receive-only earth stations, does raise regulatory issues with respect to health and safety because of the emission of radio frequency radiation (RF radiation). This Commission has declined to preempt state or local RF radiation standards but has reserved this issue if it is brought to our attention that such standards are "adversely affecting a licensee's ability to engage in Commission authorized activities."[84] On the record before us, it would be premature to preempt health or safety standards, especially where our *Notice* indicated that issues with respect to transmitting equipment would be excluded.[85]

42. However, we see no similar impediment to the preemption of discriminatory, non-justified aesthetic regulation of transmitting antennas. There are no significant differences in the visual appearance of transmit and receive-only facilities and the same federal interest exists with respect to local restriction of access to satellite services. Thus, if a state or local regulation based on aesthetics differentiates between satellite transmitting antennas and other types of antennas, it is preempted as described in the rule adopted herein unless it has a reasonable aesthetic purpose and does not operate to unreasonably restrict or prevent transmission. At this time, we are reserving the issue of preemption based on the health and safety aspect of RF radiation for consideration in a separate proceeding.[86] In taking this action, however, we are not preempting non-federal authority distinctions based on land use criteria such as those designating certain areas for residential, commercial or other uses.

43. We decline to attach a list of acceptable sample zoning ordinances. As has been repeatedly stated here, our preemption is intended to afford local communities some flexibility. Sample laws would curtail this flexibility. Moreover, a list of specific rules would be incomplete and could lead to circumvention of our objectives.[87]

D. Other Issues

44. We agree with Space that our rulemaking does not violate either the National Environmental Policy Act or the Regulatory Flexibility Act. We are not authorizing the construction of any antenna facilities in this proceeding but merely are stating guidelines for local authorities. Thus, the NEPA regulations with respect to "major actions" do not apply. Because we are adopting a policy which will ultimately be reflected in individual local regulations including those based on aesthetics, we are taking no action in this proceeding which significantly affects the "quality of the human environment."[88]

45. In our *Notice*, pursuant to section 603 of the Regulatory Flexibility Act, we stated that our rule would have a beneficial effect on local governments by affording guidance as to acceptable limits of governmental action. We adhere to this conclusion in adopting a final rule. Our objective in this proceeding is to avoid inconsistent local regulations which unreasonably restrict interstate communications. Any exemptions for small communities such as suggested by the League would certainly frustrate this objective. Our policies must be applied by all local jurisdictions and the commenters have not demonstrated why smaller communities should not be subject to our rule.

46. It has been argued by the District of Columbia and by the National Capital Planning Association that zoning ordinances in the District of Columbia cannot be preempted because they are promulgated under federal authority. However, it has been held that this factor is not of decisional significance in a federal preemption action.[89] With respect to federally controlled locations, if is presumed that federal authorities will follow the policy adopted here.

IV. Conclusion

47. Accordingly, pursuant to sections 151, 303, 403 and 705 of the Communications Act, it is ordered that Part 25 of Chapter I of Title 47 of the Code of Federal Regulations is amended as set forth in Appendix B, effective March 14, 1986.

48. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, we make the following determination. The policy adopted herein is intended to preempt local regulations which are interfering with the federal objective of promoting interstate satellite delivered communications. Local governments of all sizes would be affected by our rule. In addition, small businesses selling receive-only antennas would possibly be benefited by an enhanced competitive market. The National League of Cities has objected stating that we have not considered as an alternative the exemption of small governments from the rule's operation. We conclude that any such exemption would result in undesirable inconsistencies which might impede the distribution of interstate communications. There are no effective alternatives.

49. It is further ordered that the Secretary shall cause this Report and Order to be published in the **Federal Register.**

50. It is further ordered that the Petition for Declaratory Ruling filed by United Satellite Communications, Inc. is granted in part and denied in part as set forth above.

51. It is further ordered that the proceedings in CC Docket No. 85–87 are terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. Accomack-Northampton Planning Dist. Comm.
2. Agoura Hills, CA
3. Aikens, SC
4. Alameda, CA
5. Albuquerque, NM
6. Amarillo, TX
7. American Planning Assoc.
8. American Satellite Co.
9. Ames, IA
10. Associated Press
11. Atlantic, GA
12. Atlantic Sat. Communications
13. Aurora, CO
14. Avantek
15. Berkshire Nat. Res. Coun.
16. Bethlahmy, Nogah
17. Beverly Hills, CA
18. Big Bear Lake
19. Boca Raton, FL
20. Boschwitz, Sen. Rudy
21. Bothell, WA
22. Broadcast Data Corp.
23. Brooks Satellite, Inc.
24. Brunswick, OH
25. Cable Com Corp.
26. Cadillac, MI
27. Calabrese, Frank P.
28. Carbondale, IL
29. Carmel-by-the-Sea, CA
30. Carol Stream
31. Cattaraugus County
32. Cert. Local Gov't Project
33. Cincinnati, OH
34. Coldwater, MI
35. Collins, RA. & Ruby S.
36. Columbus, IN
37. Connecticut Siting Council
38. Contemporary Communications Corp.
39. Conway, SC
40. Crookston, MN
41. Curtis Mathis Corp.
42. Dearborn Hgts., MI
43. Delaware County Planning Dept.

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be preempted." *See also* Earth Satellite Communications, Inc., *supra* note 16, where we stated: "we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the nonfederal regulation is applied in a non-discriminatory manner. Local authority over such concerns must be exercised so that a local jurisdiction in fact does not inhibit or interfere with the delivery of interstate signals through the exercise of its authority."

[69] Such terms as "valid", "clearly demonstrable" and "direct and tangible relationship" were in this category. *See* comments of National Satellite Cable Association.

[70] We find that the National Capital Planning Association's suggestion to include "security" as a criteria has no relevance to the issues raised here as national security issues relating to communications are subject to federal, not state, jurisdiction.

[71] It was such flexibility that many cities insisted was necessary if they were to exercise legitimate zoning powers. *See* Comments of David J. Preese; League at 7.

[72] For example, we cannot say that the requirements of 10 as opposed to 5 bushes of a certain kind or size for screening of satellite antennas is unreasonable without becoming involved as a national zoning arbitrator, a result we sought to avoid in our *Notice*.

[73] *See* Comments of Curtis Mathes.

[74] *See* Comments of Space.

[75] *See Notice* at n. 21 and cases cited there where we noted the Supreme Court's requirements of careful scrutiny of local aesthetic regulations which involve first amendment considerations. Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981). *See also* Canton v. Brenner, No. 85 CT 3551, L.I.M.A. Partners v. Borough of Northvale, Doc. No. 17049–84(PW) (May 10, 1985). Because we are relying on our statutory authority under the Communications Act as a basis for preemption, we are not reaching first amendment issue raised in connection with this proceeding.

[76] A receive-only antenna must have an unobstructed line of sight to a satellite in order to receive signals. It has been asserted by SPACE that cities, in enacting zoning ordinances, were sometimes unaware of the technical requirements for reception. Reply Comment at 4.

[77] Under current technology, an antenna must be at least 8 to 12 feet in diameter to adequately receive video signals transmitted by satellite. Space Reply Comments at 15 n. 7. Antenna size for Direct Broadcasting Service reception can be much smaller but that service has not as yet been instituted.

[78] This is the type of flexibility that cities have said they need to effectively enforce their zoning power. *See* Comments of Midland, Mich.; Pinellas Park, Fla.; Carmel by the Sea, Ca.; Connecticut Siting Council. Examples of excessive costs might be high filing fees or unreasonable hearing requirements.

[79] *See, e.g.*, Comments of Trust at 2.

[80] *See* para. 14 *supra*.

[81] Our preemption is broader than that suggested by APA by requiring that discriminatory ordinances be justified.

[82] As Hughes observes "the preemption standard is intended to be operational, and enforceable by private parties, without further involvement of the agency." Comments at 8.

[83] *See* Comments of USSB.

[84] Responsibility of the Federal Communications Commission to Consider Biological Effects of Radio Frequency Radiation when Authorizing the Use of Radio-Frequency Devices, FCC 85–90 (released March 14, 1985) at para. 43.

[85] *Notice* at para. 27.

[86] The rulemaking requested in RM–5021 specifically addresses this issue. *See* note 39, *supra*.

[87] Comments of SPACE at 14.

[88] *See* 47 CFR 1.1301.

[89] Columbia Plaza Limited Partnership v. Cowles, 403 F. Supp. 1337, 1341 n.11 (Dist. Ct. D.C. 1975). In this case, the court found that the fact that the District of Columbia's rent control program was established pursuant to a federal enabling statute did not by itself indicate a congressional intent that the area of regulation should not be preempted.

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44. Direct Broadcast Satellite Assoc.
45. District of Columbia
46. Donovan, William A.
47. Drenner, Don V. R.
48. Duluth, MN
49. East, Sen John P.
50. El Cajon, CA
51. Elizabethtown, KY
52. Equatorial Communications
53. Euclid, OH
54. Fairfax (County of)
55. Frankfort, KY
56. Fredericksburg, VA
57. Fullerton, CA
58. GTE Spacenet Corp.
59. Gaithersburg, MD
60. Garden Grove, CA
61. Georgia Trust for Hist. Preservation
62. Glendale, CA
63. Goldwater, Sen. Barry
64. Goldwater Resolution (Petition Supporting with signatures)
65. Gore, Sen. Albert, Jr.
66. Grover City, CA
67. Hamilton, OH
68. Hampton, VA
69. Harper Woods, MI
70. Hattiesburg, MS
71. Helms, Sen. Jesse
72. Henderson, Richard S.
73. Holt, Hon. Marjorie S
74. Howard, Charles F.
75. Hoyt Lakes, MN
76. Hughes Communications, Inc.
77. Int'l Assoc. Sat. Users and Suppliers
78. Irvine, CA
79. Iva, SC
80. Jersey City Planning Board
81. Kassebaum, Sen. Nancy Landon
82. Kasten, Sen. Bob
83. Kirkwood Kampers
84. Kurzer, Ronald S.
85. Laguna Beach, CA
86. Lake Forest, IL
87. League of Minnesota Cities
88. Lancaster, SC
89. Laxalt, Sen. Paul
90. Lexington, KY
91. Long Beach, CA
92. Los Gatos, CA
93. M/A-Com Development Corp.
94. Madison Hghts., MI
95. Malone Enterprises
96. Manhattan Beach, CA
97. Mankato, MI
98. Maplewood, MI
99. Marquette, MI
100. McLean Citizens Assoc.
101. McQueen, Robert N.
102. Melbourne, FL
103. Microband Corp. of America
104. Middletown, PA
105. Midland, MI
106. Mississippi Chapter APA
107. Modesto, CA
108. Mountainview, CA
109. Mutual Broadcasting Systems
110. Naperville, IL
111. Nat'l Assoc. of Broadcasters
112. National Capital Planning Commission
113. Nat'l League of Cities
114. Nat' Trust for Hist. Preservation
115. Nat'l Sat. Cable Assoc.
116. Neptune, NJ
117. New York, NY
118. Newport, OR
119. Niles, MI
120. Ninety Six, SC
121. North Miami, FL
122. Omnivision
123. Owatonna, MN
124. Pacifica
125. Palo Alto, CA
126. Parsons, Max Dean
127. Pawtucket City Planning Comm.
128. Pinellas Park, FL
129. Pittsford, NY (Village)
130. Plantation, FL
131. Plymouth, MI
132. Preece, David J.
133. Pressler, Sen. Larry
134. Price Municipal Corp.
135. Public Broadcasting Service
136. RCA Communications, Inc.
137. Rancho Mirage
138. Redmond, WA
139. Riverton, WY
140. Rochester, MI
141. SAT Times, Inc.
142. San Clemente, CA
143. San Mateo, CA
144. Shoreview, MN
145. Shreveport, LA
146. Satellite T.V. Inc.
147. Satellite Television Industry Association (SPACE)
148. San Buenoventura, CA
149. San Mateo, CA
150. Sanibel, FL
151. Santa Monica, CA
152. Santa Paula, CA
153. Satellite Business Systems
154. Sherwood, Glenn V.
155. Shoreview
156. Sioux City, IA
157. Skokie, IL
158. South Bristol, NY
159. South Euclid, OH
160. Spectradyne
161. Stevens, Sen. Ted
162. Troy, MI
163. Tucsan, AR
164. Tuscaloosa, AL
165. Tustin, CA
166. United States Sat. Broadcasting Co., Inc.
167. Upland, CA
168. Warren, MI
169. Warwick, RI
170. Wauwotosa, MN
171. West Carrollton
172. West Goshen, PA
173. West Michigan Reg. Planning Comm.
174. Western New York Planners Assoc.
175. Westminster, CO
176. Woodbury, MN
177. Yedenach, Stephen J.
178. Yountville, CA

PART 25—[AMENDED]

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 25) is amended as follows:

1. The authority citation for Part 25 continues to read as follows:

Authority: Sections 25.101 to 25.531 issued under sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 54. Interpret or apply Secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744.

2. By adding new § 25.104 as follows:

§ 25.104 Preemption of local zoning of earth stations.

State and local zoning or other regulations that differentiate between satellite receive-only antennas and other types of antenna facilities are preempted unless such regulations:

(a) Have a reasonable and clearly defined health, safety or aesthetic objective; and

(b) Do not operate to impose unreasonable limitations on, or prevent, reception of satellite delivered signals by receive-only antennas or to impose costs on the users of such antennas that are excessive in light of the purchase and installation cost of the equipment.

Regulation of satellite transmitting antennas is preempted in the same manner except that state and local health and safety regulation is not preempted.

Statement of Commissioner Mimi Weyforth Dawson Dissenting in Part

Re: Preemption of Local Zoning or Other Regulation of Receive-Only Satellite Earth Stations. CC Docket 85–87:

If this decision were consistent with the press reports of it, I might be inclined to support it.[1] Unfortunately, since I cannot support the Commission's blessing of either blanket bans against all communications antennas or local ordinances which allow discrimination *in effect* against satellite antennas [TVROs], I must dissent in part.

A careful reading of the rule adopted by this decision reveals just how narrow the Commission's preemption is. The rule adopted by the majority essentially divides local ordinances into two categories: (1) Those local ordinances which "differentiate between . . . [TVRO] antennas and other types of antenna facilities" [2]; and (2) those which do not "differentiate". This latter group falls entirely outside the majority's rule and, thus, is not preempted or otherwise affected by the rule.

However, this dichotomy creates—and seems intended to create—an enormous loophole which I cannot support. First, since blanket bans against *all* antennas (or blanket bans which grandfather existing antennas) do not "differentiate" among types of antennas, they are entirely permissible under the majority's rule. And this ability to ban all antennas rests with the local authority whether or not the ban involves some nationally registered historic district since the majority's rule simply suggests no different treatment for historic districts.

Moreover, the majority's reading of "differentiate" allows numerous rules which *have the effect* of discriminating against TVROs. For example, the majority seems to include within the definition of "differentiate" only those ordinances which separate TVROs by name or those which identify some "shape" characteristic unique to TVROs (as an ordinance which prohibits spherical antennas). Other ordinances—even if they have the *effect* of discriminating against TVROs—do not come within the ambit of the majority's rule and, thus, are not preempted by the Commission.

Such ordinances are not difficult to imagine. For example, a city ordinance might prohibit all antennas over eight feet tall or might prohibit all antennas which are more than 20 feet high and more than three feet wide. Neither ordinance, in the majority's view, would "differentiate" between TVROs and other antennas because neither would single out TVROs by name or "shape". But each would have the *effect* of prohibiting satellite antennas.

I cannot support such a local blanket veto power over interstate communications. In 1984 Congress amended the Communications Act to recognize the legal right (with certain enumerated exceptions) of individuals to intercept and receive "any satellite cable programming for private viewing". 47 U.S.C. Sec. 705. By allowing localities to prohibit satellite antennas as part of a blanket ban or as the effect of some "non-discriminatory" ordinance, I think we do great damage to that Congressional goal.

In addition, this decision is wholly inconsistent with the Commission's recently announced policy with regard to SMATV and amateur antennas. In its SMATV decision, the Commission explicitly stated that local regulation could not "inhibit or interfere with the delivery of interstate [SMATV] signals" and that local regulation could not discriminate *in fact* or be "undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective". *Earth Satellite Communications, Inc.*, 95 F.C.C. 2d 1223 (1983).[3]

Likewise, in its amateur antenna decision, the Commission clearly and unequivocally said that "[s]tate and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted." *Federal Preemption of State and Local Regulations.* And the Commission stated that "local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose." *Id.* It is difficult to square these policies with a TVRO rule which allows localities to prohibit satellite antennas.

Finally, I simply cannot understand this decision in its attempt to reconcile these various pronouncements by stating the objective "to ensure that satellite receiving antennas are not treated less favorably than other antenna devices such as Satellite Master Antenna Systems (SMATVs) and Amateur Radio antennas." *Decision* at para. 33 (footnote omitted). How can this be the case if on the one hand localities are prohibited from banning amateur and SMATV antennas but may ban TVROs (and broadcast antennas for that matter)?

I would be less concerned about this had the discussion at the Commission meeting produced a consistent, well-reasoned explanation for these obvious conflicts. But what I fear that we have done is leave the area hopelessly confused. Indeed, I am unable to read this language and discover whether the Commission intended to conform the TVRO decision to its previous decisions or, as seems more likely, to conform its previous decisions to the TVRO decision—without the requisite record or notice for doing so.

While I am sympathetic to localities' traditional role in use planning,[4] this is not a purely local issue. It involves the right of individuals, as guaranteed by the First Amendment and the Communications Act, to receive interstate communications. As Senator Goldwater said in introducing S.R. 35,

> as a political conservative, I believe that each State possesses broad authority and responsibility on a wide range of subjects. However, the basic question here is not Federal preemption of local powers. It is whether cities and counties can thwart a clear national policy which has been repeatedly enunciated by the Congress and the FCC to encourage the development of new communications technologies and services in the public interest.
>
> 131 Cong. Rec. 5357 (January 3, 1985, statement of Sen. Goldwater).

Accordingly, insofar as the majority's decision allows localities to ban all antennas or to discriminate against TVROs in effect, I dissent.

[1] For example, the Associated Press reported that "[t]he only way local zoning authorities can ban the use of backyard or rooftop satellite TV receiving dishes is by showing they violate a 'reasonable and clearly defined health, safety or aesthetic' consideration". As shown above, this is clearly incorrect. Similarly, it is incorrect to say, as reported by the *New York Times*, that in order to be valid "zoning regulations limiting homeowners' right to install [TVRO] antennas 'must have a reasonable and clearly defined' health, safety or a esthetic objective."

[2] even those ordinances which *do* discriminate are not necessarily prohibited. The rule allows discriminatory ordinances as long as they "have a reasonable and clearly defined health, safety or aesthetic objective" and do not "impose unreasonable limitations on, or prevent" TVROs or impose "excessive costs" or TVROs.

[3] On reconsideration the Commission declined to go further and preempt all local zoning regulation by noting that that "is not appropriate for discussion here" and that the "scope of the initial proceeding did not include review of this issue." Slip Op. at para. 6.

[4] Requiring a TVRO to be securely fastened or requiring that it be as unobtrusive as practicable would, as far as I am concerned, be reasonable local regulation and would comport with states' traditional police power. However, I cannot agree that this power to regulate includes the power to prohibit. In addition, it seems possible that, to accommodate the competing federal policies of fostering interstate communications and preserving historic areas, the Commission could adopt a liberal waiver policy or even an exemption for areas covered by the national Historic Preservation Act. 16 U.S.C. Secs. 470, *et seq.*

[FR Doc. 86–3258 Filed 12–13–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 67

[CC Docket No. 78–72; CC Docket No. 80–286; FCC 86–6]

MTS and WATS Market Structure; Correction

AGENCY: Federal Communications Commission.

ACTION: Final Rule (Decision and Order); correction.

SUMMARY: On January 21, 1986, the Commission published a Decision and Order in this proceeding concerning MTS and WATS Market Structure (FR Doc. 86–682, 51 FR 2708). Through inadvertence, the wrong Preamble was associated with that item. The Preamble which appeared is to be associated with another action in this proceeding yet to be published. The correct Preamble, concerning the separations treatment of equal access and network reconfigurations costs, is included here.

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FOR FURTHER INFORMATION CONTACT:
David Siddall, Common Carrier Bureau, Washington, D.C. 20554, (202) 632–0745.

William J. Tricarico,
Secretary, Federal Communications Commission.

AGENCY: Federal Communications Commission.

ACTION: Decision and Order.

SUMMARY: The Federal Communications Commission adopts the Federal-State Joint Board's recommendations concerning the separations treatment of equal access and network reconfiguration costs. The Commission adopted the separations procedures recommended by the Joint Board because they will produce a cost based allocation of these costs between the jurisdictions. Implementation of separations procedures which reflect cost causation principles will promote efficient use of the telephone network.

EFFECTIVE DATE: February 20, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
David Siddall, Common Carrier Bureau, Washington, D.C. 20554, (202) 632–0745.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 67

Jurisdictional separations, Telephone.

[FR Doc. 86–3259 Filed 2–13–86; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–179; RM–4870]

TV Broadcast Station in Fredericksburg, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Steven D. King, assigns VHF Television Channel 2 to Fredericksburg, Texas, as that community's first television service. In addition, offset changes are made for Channel 2 at both Amarillo and Midland, Texas.

EFFECTIVE DATE: March 17, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
Pat Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Fredericksburg, Texas) MM Docket No. 85–179, RM–4870.

Adopted: January 24, 1986.
Released: February 7, 1986.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 50 FR 26008, published June 24, 1985, proposing the assignment of VHF Television Channel 2 to Fredericksburg, Texas, as that community's first commercial television assignment, at the request of Steven D. King ("petitioner"). In order to accomplish the assignment, the licensee of Station KMID–TV, Channel 2, Midland, Texas, was requested to show cause why its license should not be modified to specify change in offset from "plus" to "minus." Further, the offset for unused but applied-for Channel *2, Amarillo, Texas [1], must be changed from "minus" to "plus." Supporting comments were filed by petitioner reaffirming his intention to apply for the channel. No other comments were received.

2. Fredericksburg (population 6,412) [2], seat of Gillespie County (population 13,532) is located in central Texas, approximately 120 kilometers (75 miles) west of Austin, Texas.

3. The assignment can be made in compliance with the minimum distance separation and other technical requirements provided offset changes are made as indicated above. Since Fredericksburg and Midland, Texas, are within 400 kilometers (250 miles) of the U.S.-Mexican border, concurrence from the Mexican government has been obtained.

4. As stated in the *Notice*, the ultimate permittee of Channel 2, Fredericksburg, Texas, will be required to reimburse the licensee of Station KMID–TV, Channel 2, Midland, Texas, for reasonable expenses incurred as a result of the change in offset. The petitioner agrees to reimburse Station KMID–TV for reasonable expenses incurred in changing its offset if selected as the ultimate permittee of Channel 2 at Fredericksburg.

PART 73—[AMENDED]

5. We believe the public interest will be served by the assignment of Channel 2 to Fredericksburg. Accordingly, pursuant to authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective March 17, 1986, the TV Table of Assignments, § 73.606(b) of the Commission's Rules, is amended with respect to the communities listed below, as follows:

City	Channel No.
Amarillo, Texas	*2+, 4, 7, 10, 14+
Fredericksburg, Texas	2+
Midland, Texas	2–, 16

6. It is further ordered, that pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Telepictures Broadcasting Corporation for Station KMID–TV, Midland, Texas, is modified to specify operation on Channel 2– in lieu of Channel 2+ subject to the following conditions:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

7. Family Media, Inc., and Amarillo Junior College District will be permitted to amend their applications to reflect the change in offset from "minus" to "plus" for Channel *2 at Amarillo, Texas, without their filing status affected.

8. It is further ordered, that the Secretary of the Commission shall send a copy of this Order by Certified Mail, return receipt requested, to Family Media, Inc., 1700 Duncan, Pampa, Texas 79065 and Amarillo Junior College District, P.O. Box 447, Amarillo, Texas 79178, the applicants for Channel 2 at Amarillo, Texas.

9. It is further ordered, that this proceeding is terminated.

10. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–3260 Filed 2–13–86; 8:45 am]
BILLING CODE 6712–01–M

[1] The applicants for Channel *2, Amarillo, Texas, are: Family Media, Inc. (BPET–831017KH); and Amarillo Junior College District (BPET–831219KM).

[2] Population figures are extracted from the 1980 U.S. Census.

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Proposed Rules

Federal Register
Vol. 51, No. 31
Friday, February 14, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California; Reapportionment of Valencia Orange Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed action would reapportion the membership on the Valencia Orange Administrative Committee to assure equitable representation among the different marketing organizations in the industry.

DATE: Comments due: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 447–5053.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

This action would increase the number of members on the Valencia Orange Administrative Committee representing "other cooperatives" from two to three and decrease the number of members representing independents from three to two. Such allocation of representation reflects the proportional amount of Valencia oranges handled by the respective types of marketing organizations.

It is estimated that approximately 104 handlers of California-Arizona Valencia oranges will be subject to regulation under the marketing order during the course of the current season and that the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

This rule is issued under Marketing Order 908, as amended (7 CFR Part 908, 50 FR 1429, 34076), regulating the handling of Valencia oranges grown in Arizona and a designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as "the act". It is hereby found that this proposed rule will tend to effectuate the declared policy of the act.

On January 14, 1986, the Valencia Orange Administrative Committee (VOAC), which administers the marketing order locally, voted to recommend to the Department that membership on the committee be reallocated to more accurately reflect the quantity of oranges handled by the various marketing organizations eligible for membership on the committee. The committee recommended that the number of members in the other cooperative category of membership be increased by one grower member and that the members in the independent or unaffiliated category of membership be decreased by one grower member. Presently, there are two other cooperative member positions (one grower and one handler and their respective alternates) and three independent positions (two growers and one handler and their respective alternates).

The committee's recommendation is in line with § 908.29(n) of the marketing order which states that the committee may, with the approval of the Secretary, "reapportion the number of grower members or handler members on the Valencia Orange Administrative Committee who are nominated pursuant to §§ 908.22 (c) and (d). Any such changes shall be based, insofar as practicable, upon the proportionate amount of Valencia oranges handled by the respective types of marketing organizations, provided that each of the grower groups described in §§ 908.22 (c) and (d) shall be entitled to nominate at least one grower and one handler member together with their respective alternates." As of December 26, 1985, other cooperative marketing organizations handled 20.34 percent (4,848,070 cartons) of the Valencia oranges shipped to fresh domestic markets while independents handled 13.98 percent (3,332,700 cartons).

Comments on this proposal will be accepted until March 3, 1986. A 15-day comment period is considered adequate because: (1) The current term of office for committee members expired on January 31, 1986; (2) a new committee should be appointed prior to the completion of deliberations on the marketing policy for the 1985–86 Valencia orange season; (3) there are currently nine vacancies (including alternates and additional alternates) in the other cooperative and independent categories of membership due to the new selection criteria for members (50 FR 50759) which became effective on January 13, 1986; and (4) no useful

purpose would be served by delaying the effective date of this rule.

List of Subjects in 7 CFR Part 908

Marketing Agreements, California, Arizona, oranges (Valencia).

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Paragraphs (a) (2) and (3) of § 908.102 would be revised to read as follows:

§ 908.102 Nomination procedure.

(a) * * *

(2) All cooperative marketing organizations which are not qualified to nominate members and alternate members pursuant to § 908.22(b), or the growers affiliated therewith, shall nominate two grower members, two alternate grower members, two additional alternate grower members, one handler member, one alternate handler member, and one additional alternate handler member of the committee. The vote of each such organization shall be weighted, as provided in § 908.22(e), by the quantity of oranges which it handled during the marketing year in which the nominations are made.

(3) Not less than five meetings shall be held at such times and places throughout the production area as may be designated by the agent of the Secretary, at which growers who are not members of, or affiliated with, the organizations included under paragraphs (a) (1) and (2) of this section may vote. At each such meetings, the growers present shall nominate one grower member, one alternate grower member, one additional alternate grower member, one handler member, one alternate handler member, and one additional alternate handler member. The number of ballots to be cast in selecting the nominees at any such meeting shall be determined at that meeting. All growers voting at any such meeting shall submit their names and addresses to the agent of the Secretary.

* * * * *

Dated: February 10, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86–3267 Filed 2–13–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1124

[Docket No. AO–366–A14]

Milk in the Oregon-Washington Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision adopts changes in the Oregon-Washington milk order that will enable handlers to pool producer milk that is surplus to the fluid (bottling) needs of the market without costly, inefficient and unnecessary handling and hauling of the milk. The changes would reduce the amount of milk that supply plants must deliver to pool distributing plants in order to meet pool performance standards, eliminate some of the deliveries of individual producers' milk that are required to be made to pool plants if the remainder of the producers' milk is to be eligible to be diverted to nonpool plants, and increase the amount of a handler's supply of milk not needed for fluid use that may be moved from producers' farms directly to nonpool plants for manufacturing use.

Other amendments would cause the fluid equivalent of nonfluid milk receipts used in Class II products to be allocated to Class II use instead of to Class III, and would provide that nonmember producers who are not paid under the Oregon State Quota plan may be paid directly by their handler rather than by the market administrator.

The order amendments, which are based on industry proposals considered at a public hearing held in July 1985, are necessary to reflect current marketing conditions and to assure orderly marketing in the Oregon-Washington marketing area.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more orderly marketing of milk by regulated handlers and will tend to ensure the use of efficient milk marketing practices.

Prior Documents in this Proceeding

Notice of Hearing: Issued July 3, 1985; published July 9, 1985 (50 FR 27972).

Recommended Decision: Issued November 20, 1985; published November 27, 1985 (50 FR 48776)

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Oregon-Washington marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Portland, Oregon, on July 24, 1985. Notice of such hearing was issued on July 3, 1985, and published July 9, 1985 (50 FR 27972).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Programs, on November 20, 1985, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Two new paragraphs are added at the end of Issue 2.

2. The last (tenth) paragraph under Issue 3 has been revised, and a new paragraph has been added at the end of Issue 3.

The material issues on the record of hearing relate to:

1. Pool supply plant performance standards.
2. Producer delivery requirements.
3. Diversion limits.
4. Allocation of nonfluid milk receipts used in Class II products.
5. Payments to producers.
6. Producer base percentage.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pool Supply Plant Performance Standards

The percentage of a supply plant's receipts that must be shipped to pool distributing plants in order for the

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supply plant to be pooled should be decreased to 40 percent in the months of September, October and November, and 30 percent in all other months. Supply plant pooling standards are currently 50 percent in the months of October through December; 40 percent in September, January and February; and 30 percent in the months of March through August.

Oregon Milk Marketing Federation (OMMF), a federation of three cooperative associations that historically have supplied milk to the Oregon-Washington market, proposed that the percentage of producer milk receipts that supply plants must provide to pool distributing plants in order to qualify as pool supply plants be reduced. The association members of the federation are Farmers Cooperative Creamery (Farmers), Oregon Jersey Cooperative (Oregon Jersey), the Tillamook County Creamery Association (Tillamook). Oregon Milk Marketing Federation markets the milk of 347 Grade A producers, or slightly over one-third of the producers pooled under the order at the time of the hearing. Farmers owns and operates a nonpool manufacturing plant at McMinnville, Oregon, which handles reserve supplies for the Federation and for the market. The milk of Farmers' producers, located throughout the marketing area, is pooled on the basis of direct deliveries to pool distributing plants. The milk of Oregon Jersey members is received primarily at pool distributing plants and at nonpool cheese plants. Tillamook operates a large nonpool cheese manufacturing plant, a small fluid processing operation and, since 1983, a pool supply plant, all at the same location in Tillamook, Oregon.

The manager of the Federation testified that the supply plant operated by Tillamook is one of two supply plants pooled under the Oregon-Washington order. He stated that during the first five months of 1985, the Tillamook supply plant would not have met the order's present pooling standards if Tillamook had found it necessary to qualify all of its member producer milk supply for pooling through its supply plant. Tillamook's entire producer milk supply did not have to be pooled through the Tillamook supply plant during that period because a letter requesting that allowable diversions be computed on the basis of the cooperatives' combined producer deliveries had been filed with the market administrator by Tillamook, Farmers and Northwest Dairymen's Association (NDA). The letter was terminated June 1, 1985. In the absence of such a combining request, the witness stated, Tillamook would not be able to pool its entire supply of producer milk through its supply plant by shipping milk to distributing plants in Portland unless the percentages of milk required by the pool plant definition to be moved to pool distributing plants are reduced. The witness introduced data indicating that the percentage required to be delivered to pool distributing plants would have had to be approximately 10 percentage points lower in January and February of 1985 if Tillamook's entire milk supply were to be eligible for pooling on the basis of its supply plant operations. He testified that Tillamook could operate within the present percentages only by moving milk received at the supply plant to Portland-area distributing plants, unloading it into the distributing plants, then reloading the milk back into the same trucks and hauling it back to the Tillamook nonpool cheese manufacturing plant. Such an operation was described by the witness as unnecessarily burdensome and expensive, and potentially harmful to the quality of the milk handled.

The OMMF witness described the three cooperatives comprising the Federation as playing an historically important role in supplying the fluid needs of the market and in providing outlets for the reserve supplies of many of the market's handlers. He explained that the recent trends of production accelerating more rapidly than fluid demand, nationally as well as in the Northwest U.S., and the growth of nonmember numbers and production in the Oregon-Washington market have resulted in the displacement of OMMF producer milk from distributing plants at which the cooperatives' milk was required in past years. The witness stated that because of these trends, the percentage of OMMF milk required by fluid handlers is declining at a rate greater than the decline in the marketwide percentage of producer milk used in Class I.

Statistics introduced by the witness show production increases of OMMF members of nine percent for the first six months of 1985 over the same period in 1984. While OMMF production and Oregon-Washington production in general have been increasing, production by nonmember producers has increased at the still-higher rate of 11.1 percent from January–June 1984 to January–June 1985. The witness testified that as a rule nonmember milk in the Oregon-Washington market is used primarily in fluid milk, supplemented when necessary by reserve supplies from cooperative sources. Consequently, he stated, increases in nonmember supplies cause lesser amounts of cooperative member milk to be required by distributing plants, especially during times of flush production and low fluid consumption. According to the witness, OMMF's problem in continuing to secure a large enough percentage of the market's fluid sales to assure that all of its members' milk will be able to participate in the marketwide pool is further exacerbated by the fact that NDA, another large cooperative association operating in the marketing area owns and operates three Darigold pool distributing plants that together account for a larger volume of Class I sales than any other distributing plant operator in the market. NDA production has increased at a rate similar to the production increases in the market as a whole, a trend that has resulted in less of OMMF's supply of milk to be required by the Darigold plants. The milk produced by OMMF cooperative members, therefore, currently is being displaced from its historical fluid outlets by increased nonmember production and from the NDA-owned Darigold plants by NDA production, which also is rising significantly.

The increasing difficulty involved in finding sufficient fluid outlets for OMMF milk to assure its pool status is the principal problem confronting Tillamook in qualifying its supply plant for pooling. It is clear from the testimony and exhibits presented that in some months Tillamook is not able to qualify all of its producer milk for pooling through its supply plant under the order's present supply plant shipping standards, and that increasing milk production in the market by both OMMF members, nonmember producers and NDA members will make the cooperative less able to qualify its supply plant for pooling. Therefore, it is appropriate at this time to reduce the delivery requirement for supply plants to reflect more nearly the prevailing market conditions. The percentage should be reduced to the levels requested by OMMF, as those are the standards within which the Tillamook plant is expected to be able to operate. A requirement that 40 percent of a supply plant's receipts be delivered to pool distributing plants during September, October and November, the months during which Class I utilization is at its peak, and 30 percent in other months, will assure that the plant will continue to have a close association with the fluid market without requiring the cooperative to engage in inefficient and uneconomic hauling practices solely for the purpose of pooling its milk.

Retention of the provision currently in the order that allows automatic pooling status for a supply plant during the months of March through August if it has qualified as a pool plant during the previous September through February period will help to ensure that unnecessary hauling costs will not be incurred during the market's months of high production relative to demand solely to keep the cooperative's member milk pooled.

2. Producer Delivery Requirements

The present order requirements that a new producer's milk be delivered to a pool plant at least once during each of the two months following the original shipment and that every producer's milk be delivered at least once to a pool plant during each month of September, October and November in order for the producer's milk to be eligible for unlimited diversion to nonpool plants during the remainder of the year should be eliminated. In addition, the requirement that for a producer's milk to be pooled, its first Grade A delivery must be received at a pool plant should be changed to require only that at least one delivery during the producer's first month on the market is received at a pool plant.

Oregon Milk Marketing Federation proposed that the yearly "touch-base" requirement during the months of September through November be eliminated. Darigold, on behalf of Northwest Dairymen's Association, concurred with the OMMF proposal and extended it to include the two months following a producer's initial shipment to a pool plant.

The OMMF manager and the assistant manager of Tillamook testified in favor of their proposal to eliminate the annual requirement that each producer's milk be received at a pool plant at least once during each of the months of September, October and November. The OMMF manager explained that the provision has proven to be greatly inefficient and a sometimes costly problem for member producers and cooperatives in the market, and probably for some nonmember producers and proprietary handlers as well. The witness described the impact of the requirement on members of all three of the cooperatives comprising OMMF as causing shipments of milk to be made from areas of production near nonpool plants to pool plants 100 or more miles away solely to meet the order requirement. He stated that such shipments to pool plants displace the normal sources of milk for those plants, requiring the handlers to move their regular milk supplies to other outlets. Thus, he claimed, the provision requires unnecessary and uneconomic movements of milk and disrupts local procurement routes to assure that each producer's milk is delivered to a pool plant.

The witness stated that the annual "touch-base" requirement is the source of numerous audit billings to handlers from the market administrator to reimburse the pool for milk disqualified for pooling because of failure to get some producers' milk into pool plants during each of the three consecutive months. Such failure, he said, most often results from clerical or hauler errors in dealing with degraded milk and producers shifting between routes. He also explained that in some cases failure to qualify producers in each of the three months has resulted in those producers failing to earn a daily Federal order base and thus not participating equitably in the marketwide base milk pool for a year.

The witness expressed the belief that producers established on the market should not have to qualify annually thereafter, and that the percentage limits on a handler's allowable diversions assure that the handler's milk supply is meeting the pooling standards on a collective basis. He stated that if the cooperative meets its overall performance standards for supplying milk to the market, it should make no significant difference which individual producer's milk is actually delivered to pool plants as long as the milk of each producer participating in the marketwide pool qualifies for Grade A status and is available to the market if and when needed.

The witness stated further that he could see no potential problem for distributing plants in obtaining needed milk supplies as a result of elimination of the annual "touch-base" requirement. He testified that retaining the requirement that each new producer's milk be received at pool plants at least once during each of its first three months on the market would give producers an awareness of their obligation to the Class I market. Under cross-examination, however, he indicated that individual dairy farmers very likely do not understand the order's qualification requirements for pooling. The witness also testified that he had no disagreement with elimination of the requirement that a new producer's first Grade A delivery be to a pool plant as long as at least one delivery in the producer's first month of Grade A production is to a pool plant.

The Tillamook representative testified that elimination of the annual "touch-base" requirement would simplify the procedure of qualifying producers for pooling and for unlimited diversion to nonpool plants, and significantly reduce the costs of extra hauling for the purpose of assuring that each producer's milk is delivered to a pool plant during each month of September, October and November. The witness stated that to date no Tillamook producers had failed to meet the individual producer delivery requirements, but that such a lapse would be inevitable at some point through oversight or error in the hauling or accounting procedures. The Tillamook witness also testified to the need for elimination of the requirement that a producer's first Grade A delivery must be to a pool plant if any of the producer's milk is to be eligible for pooling in that month.

A witness for Darigold testified in favor of eliminating not only the annual "touch-base" requirement, but the requirement that a producer's milk be received at a pool plant at least once in each of the two months immediately following the month in which it is first pooled. He also urged that a new producer be required to deliver milk to a pool plant during his first month of association with the market rather than on his first day of such association. The witness stated that at the time the order was promulgated, there may have been a need to ensure that the milk of each producer in the market be received regularly at pool plants so that their milk would be available when needed. He pointed out that since the early 1970's, however, the Class I utilization percentage of the market has declined from over 70 percent to less than 50 percent at the present time. In view of the fact that current production increases are significantly greater than the growth in Class I sales, the witness predicted that the Class I use percentage will continue to decline. Over the same period of time, he observed, the number of bottling plants has decreased greatly and the number of organizations controlling the milk supply has declined. Because of the combination of a centralization of control and a decrease in the percentage of Class I sales, the witness stated, there have been no problems in securing an adequate amount of milk for Class I needs, and the "touch-base" requirements are no longer necessary. He testified that the milk of producers located close to manufacturing plants should be allowed to be delivered to those plants, and be moved to Class I outlets only when it is really needed there. He stated that it is more efficient and economical to deliver producer milk to nearby plants, and that there are adequate milk supplies to fill

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fluid needs located close-in to fluid processing plants. Therefore, the witness concluded, it is neither desirable nor economical to move milk from areas close to nonpool manufacturing plants to bottling plants in the city markets when that milk is not needed in those plants.

In regard to eliminating the delivery requirement for the two months immediately following a producer's first delivery, the Darigold witness pointed out that those months may fall during the flush months of production when milk supplies are most surplus to the needs of the market. He stated that one delivery to a pool plant during a producer's first month on the market should be sufficient to demonstrate that the producer's milk is available for fluid use when and if needed. The witness testified that it should not be necessary to reroute a truck to a distant pool plant on the day a new producer enters the market, or during the two months immediately following the producer's entry. For the purpose of delivering milk in the most efficient manner possible and at the least expense to dairy farmers, the witness expressed Darigold's belief that a new producer's initial delivery to a pool plant should be some time within the first month in which the producer becomes associated with the market, so that the handler has some flexibility in scheduling the delivery of the milk. He testified that milk delivered by a handler from a dairy farm to a nonpool plant after issuance of a farm health permit but before any delivery to a pool plant should be considered producer milk during the month.

As a conforming change to relaxation of the "touch-base" provisions of the order, the Darigold witness also suggested that the "Dairy farmer for other markets" provision should be changed to allow Grade A milk delivered to nonpool plants before any of the producer's production is received at a pool plant to be considered a diversion of pooled producer milk. He stated that the current language of the provision would require the producer's milk for the whole month to be considered nonpool, with the portion received at a pool plant considered a receipt from a "dairy farmer for other markets."

The office manager for Northwest Dairymen's Association testified about the specific administrative problems and hauling inefficiencies caused by the present order provisions. He stated that during the qualifying months of September, October and November, NDA must move 30 to 35 loads of milk on special trips to pool plants to "touch base" for the producers involved. After the milk arrives at pool plants, the witness said, it then must be reloaded and shipped to nonpool plants where it can be used. He specified the cost of such special hauling arrangements as over $10,000 per month, costs which are in turn distributed back to the cooperative's member producers.

In addition to the annual delivery requirements, the witness stated that the deliveries to pool plants required during each new producer's second and third months of production on the market also cause handlers to incur additional hauling costs and inefficiencies. He described the difficulties of assuring that all producer milk is picked up and processed, especially during the months of flush production when processing plants are filled to capacity, and trying to reroute tankers to qualify new producers at the same time.

The NDA representative described the present order requirement that a producer's first delivery of Grade A milk be to a pool plant as very difficult to administer and offered several illustrations. He explained that the consequence of failing to meet the requirement is that none of the producer's milk would be eligible for pooling for the producer's entire first month of Grade A production, a status that would continue until the producer's first delivery for a month is received at a pool plant. He stated that problems of coordination with the Oregon State Department of Agriculture, which issues Grade A permits, can cause the cooperative to miss delivering a producer's first Grade A production to a pool plant when the permit is backdated by the health authority, or to arrange for a producer's milk to be delivered to a pool plant where it then fails to meet the State's Grade A standards. The witness described the complexity of scheduling milk into pool plants solely for qualifying it for diversion while trying to coordinate the pick-up and delivery of producer milk to pool and nonpool plants by Darigold's fleet of trucks and a number of contract haulers. He explained that some producers' first deliveries must be made on weekends when some pool plants are not receiving milk. In that case, he said, the milk must be delivered to alternative plants, displacing their usual supplies of producer milk to still other plants. The extra milk movements involved in such coordination were described by the witness as costly and inefficient.

In view of the expensive, inefficient and unnecessary movements of milk undertaken by handlers to assure that the milk of all of their producers will be eligible to be included in the marketwide pool, the provisions of the order that require each producer's milk to be received at least once at a pool plant during each of the months of September, October and November and during the producer's second and third months on the market should be eliminated. The requirement that a producer's first Grade A delivery must be received at a pool plant in order for any of the producer's milk to be pooled in that month also should be removed. To the extent the "Dairy farmer for other markets" definition does not allow Grade A milk diverted to nonpool plants to be considered producer milk before a producer's milk is delivered to a pool plant, that provision should be changed. However, all of a producer's Grade A production for a given month should be pooled under this or another Federal order if any of it is to be pooled.

Elimination of the second- and third-month and annual "touch-base" requirements should have no effect on the ability of fluid milk outlets to attract the supplies of milk necessary to satisfy consumer demand. In combination with the increasing volume of Grade A production compared with the amount needed for Class I use in the Oregon-Washington market, the milk of nonmembers that is regularly received at pool distributing plants and the supply of NDA milk that is associated with the Darigold plants, the order's diversion limits and supply plant shipping standards should assure that pool distributing plants will experience no difficulty in obtaining adequate supplies of milk.

Also, requiring handlers to cause a producer's first Grade A delivery to be received at a pool plant if any of such producer's Grade A production for the month is to be pooled is an unnecessary standard in this market. Before any of a producer's milk is pooled, it should be demonstrated that the handler of the milk has the ability and is willing to deliver the milk to a pool plant. However, the pooling process takes place after the end of the month in which milk is produced and delivered. Therefore, the order should provide that a producer's qualifying delivery to a pool plant may be made at any time during the producer's first month on the market.

An exception to the recommended decision filed by Darigold pointed out that the language of the "Dairy farmer for other markets" definition contained in the recommended decision would result in a dairy farmer having such status if the dairy farmer, rather than the handler of his milk, were responsible for movement of milk to a nonpool plant as other than a diversion. Darigold expressed concern that the handler might find out only at a later date that the producer had delivered some milk to a nonpool plant, and might be caused some unexpected difficulties as a result. The cooperative did not specify precisely what unexpected difficulties might be encountered, but suggested that language be added to the provision that would result in "Dairy farmer for other markets" status only if the delivery of Grade A milk to a nonpool plant was directed by the handler operating the pool plant at which the dairy farmer's milk was previously received.

It is difficult to foresee what difficulties the proposed order language might cause for a handler whose producer delivers Grade A milk to a nonpool plant as other than a diversion by the handler. If such a transaction were discovered at a later time, of course, the producer's milk would be depooled as a result of an audit. Depooling producer milk as a result of an audit of a handler's records, however, is not an uncommon or onerous occurrence. The intent of the "Dairy farmer for other markets" provision is that all of a producer's Grade A milk production be pooled if any of it is to be eligible for pooling. The language of the definition contained in the recommended decision fulfills that intent more completely than the alternative language suggested by Darigold. Therefore, the language should not be changed from that included in the recommended decision.

3. Diversion Limits

The limit on the percentage of a handler's total milk supply that may be diverted to nonpool plants should be relaxed as proposed by the Oregon Milk Marketing Federation. The change would increase the present 60-percent diversion limit in all months to a limit of 70 percent in the months of September through November, January and February; and 80 percent in the months of December, March and April. No diversion limit should apply during the months of May through August. A proposal by Darigold to increase diversion limits to 80 percent during the months of September through April with no limits in other months should not be adopted.

The OMMF manager testified about the difficulties of assuring that all of the milk of OMMF members would be able to continue participation in the marketwide pool while operating within the order's present diversion limits. He explained that the demand by pool distributing plants for milk from the OMMF cooperatives has declined as milk production in the market has increased. He attributed the loss of the OMMF cooperatives' fluid market to the disproportionate growth in the number of nonmember producers and their production and the role played by NDA's producers in supplying their Darigold plants. The witness stated that as milk production increases seasonally, more of the market's Class I use is absorbed by nonmember producers whose milk is shipped to proprietary distributing plants, and by NDA members supplying Darigold plants. Consequently, less of the OMMF milk is needed for use at fluid processing plants when milk production is at its peak. If handled most economically, milk produced in excess of fluid needs must be diverted to manufacturing uses. Milk surplus to the needs of the fluid market could be received first at pool plants, the witness said, then reloaded and shipped to nonpool plants where it could be used. Such extra handling and hauling would enable a cooperative to qualify all of its milk supply for pooling within the order's diversion limits. However, he characterized such movements as costly and uneconomical, and detrimental to milk quality.

The witness stressed the importance of assuring that all of the OMMF milk continue to be subject to the order's marketwide pooling and pricing provisions. He stated that a large volume of Grade A milk, eligible and available for fluid use but eliminated from the pool by failure to meet diversion limits, would create a very disruptive influence in the marketing area. Such a situation, he predicted, would result in the unpooled producers searching competitively for a fluid outlet for their milk to regain pool status and be able to share in the pool. He referred to the sort of potentially disruptive situation that might result from depooling large amounts of producer milk as one of the factors that necessitated the creation of Federal milk marketing orders.

The OMMF manager also emphasized the importance of retaining OMMF milk supplies in the pool as a necessary reserve for serving the supplemental needs of the market. He described the needs of distributing plants for milk supplies as fluctuating according to the day of the week, with less milk being required on weekend days, and greater volumes on weekdays. He explained that because of the supplemental function served by OMMF's milk supplies, the effect of distributing plant's daily fluctuation in demand has a disproportionate effect on the daily volume of OMMF milk required by distributing plants.

The witness submitted an exhibit that showed the daily variability of OMMF movements of milk to pool plants during the months of January and June 1985. January is generally a month of seasonally low production and relatively high Class I use. In June, Class I use is generally at its lowest level in relation to milk production, which is at or near its seasonal peak. The exhibit showed that in January 1985, OMMF's largest daily volume of sales to pool plants was more than three times the amount of OMMF milk required at pool plants on the lowest-volume weekend day. The amount of milk delivered to fluid processing plants on the higest-volume day in January represented approximately 60 percent of OMMF's average daily production for the month. During the month of January in total, however, only 43 percent of OMMF's milk was received at pool plants, with the remaining 57 diverted to nonpool plants.

For the month of June 1985, the largest volume of OMMF milk moved to pool plants on any day was more than twice the smallest daily volume, and was approximately 40 percent of the average daily supply of OMMF milk during June. However, during the whole month of June, only 27 percent of OMMF's milk supplies were delivered to pool plants, with 73 percent diverted to nonpool plants. It is apparent from these statistics that OMMF producers play a significant role in handling the necessary reserve milk supplies of the market. At the same time, it is also evident that OMMF cannot handle its entire milk supply in the most efficient and economic manner without an increase in the order's present diversion limits.

A witness representing Darigold, Inc., testified in favor of Darigold's proposal to increase the Oregon-Washington order's diversion limits from 60 percent in each month to 80 percent during the months of September through April, with no limit effective for the months of March through August. The witness characterized the current limits as too restrictive in view of the large volume of milk in the market relative to the use of milk in Class I products, and the absence of alternative markets. He stated that Northwest Dairymen's Association has experienced no difficulty in meeting the current 60-percent limit on diversions, and had assisted other cooperatives in qualifying their milk supplies by joining them in

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requesting that the deliveries of NDA's and the other cooperatives' milk be combined for the purpose of determining allowable diversions. The Darigold witness predicted that other cooperatives in the market might experience difficulties within the near future in meeting the 60-percent diversion limit, since milk production is over the level of the previous year. He stated that even Darigold may have trouble operating within the present diversion limit without engaging in artificial and uneconomic interplant movements of milk if milk production continues to increase at present rates.

The Darigold representative recommended that the diversion limits be increased to 80 percent for the months of September through April with no limit during the May through August period on the basis that such diversion limits would be similar to provisions of the neighboring Puget Sound-Inland order which, he said, permit the efficient handling and routing of producer milk. He stated that there have been no problems in that market in securing adequate supplies of milk for Class I use, despite the higher diversion limits there.

The Darigold witness presented no statistical evidence that would indicate that diversion limits should be increased by 20 percentage points. His testimony that NDA has had no difficulty in operating within the present 60-percent limit and, indeed, has been able through combination of deliveries to assist other cooperatives in assuring that their milk supplies will be eligible for pooling indicates that the limits adopted herein would be adequate to assure that NDA will continue to be able to pool its member producer milk supply on the Oregon-Washington market without resorting to inefficient and uneconomical movements of milk. The assertion that diversion percentages in the Oregon-Washington milk order should be the same as those in Puget Sound-Inland is not persuasive. The two markets historically have different Class I use percentages, with the Oregon-Washington Class I percentage approximately 10 points higher than the same statistic for Puget Sound-Inland. A diversion limit that allows 80 percent of the producer milk supply for the Puget Sound-Inland market to be diverted to nonpool manufacturing plants may therefore be too high to assure that pool plants in the Oregon-Washington market receive enough producer milk to satisfy their Class I needs.

It is apparent from analysis of the data supplied by the Oregon Milk Marketing Federation that during some months the organization currently finds it impossible to limit its diversions of producer milk to 60 percent of its production without engaging in unnecessary and inefficient movements of milk to pool plants. The 70- and 80-percent limit proposed by OMMF for the months of September through April, with no limit on diversions during May through August, should allow the Federation to assure the continued pooling of the milk of all of its members. Projections of production and OMMF deliveries to pool plants, based on the statistics in the hearing record and current rates of increase in production, indicate that the 70-percent limit during the months of greatest Class I use should accommodate OMMF activities for at least the next year. There is no reason to base diversion limits on the assumption that production will continue to increase indefinitely at the same rate as it had for the last few months of statistics in the hearing record. Therefore, a diversion limit which varies between 70 and 80 percent during the months of September through April and is adequately supported by the hearing record would appear to be more appropriate for the Oregon-Washington market at the present time than an 80-percent limit during those months for which there is no basis beyond conjecture.

In comments and exceptions filed in regard to the recommended decision, Darigold pointed out that the basis for determining the amount of milk of which a particular percentage may be diverted by a cooperative association has been omitted from the order language defining the term "Producer." The amount of milk on the basis of which a cooperative association's allowable diversions are computed should be the total volume of milk delivered to pool plants and diverted to nonpool plants by the cooperative. Such language has been incorporated in the order language included in this decision.

4. Allocation of Nonfluid Milk Receipts Used in Class II Products

The allocation provisions of the order should be changed to begin deducting the fluid milk equivalent of nonfluid milk receipts used to produce Class II products first from Class II use instead of from Class III, as proposed by Umpqua Dairy Products Company (Umpqua).

Umpqua urged that the portion of the classification provisions common to most milk orders that allocates to Class II use nonfluid milk receipts used in Class II products be incorporated in the Oregon-Washington milk order. The witness testified that Umpqua has Class III use in the form of diversions of producer milk to a nonpool cheese plant, butter churned at the dairy and shrinkage (milk lost or unaccounted for in hauling and processing). He stated, however, that in only 5 of the 17 months preceding the hearing was any producer milk at Umpqua allocated to Class III except as shrinkage. All of the producer milk diverted to the cheese plant or churned into butter during 12 of the preceding 17 months was allocated to Class II and billed to Umpqua at the Class II price because under the order nonfluid receipts used in Class II products are deducted first from Class III use. This reduced Class III use available for allocation purposes to the extent that producer milk receipts had to be allocated to Class II use. The witness explained that although Umpqua is obligated to the pool at the Class II price for milk used in Class III products but allocated to Class II, the handler is unable to recover more than the Class III price from the cheese plant operator or from sales of butter. He introduced an exhibit showing that the present treatment of nonfluid milk receipts in the allocation sequence costs Umpqua an average of $440 per month more than if the nonfluid receipts were allocated to the class in which they are used. In addition to the cost of the present allocation sequence, the witness explained that determining the cost of butter production in advance is impossible given the unknown factor of the class to which the skim milk and butterfat used to produce butter will be allocated.

The Umpqua representative included in his testimony data computed by the market administrator's office for the first five months of 1985 that show the impact the proposed change would have on the Oregon-Washington pool. The total pool values for the five months would have declined by an average of $6,830 per month, resulting in an average reduction in the weighted average price to producers of .4 cents per hundredweight. For none of the five months would the effect on producer prices have been as much as a whole cent.

Under cross-examination, the witness stated that the solids in nonfluid milk products are necessary ingredients in the manufacture of ice cream, and are not merely lower-cost substituted for producer milk. Use of such receipts does not, therefore, displace producer milk from Class II use to Class III. Under further questioning, the witness determined that, in fact, if the solids in producer milk receipts were easily extractable, producer milk would be a lower-cost source of solids than nonfluid milk products.

A spokesman for a proprietary handler operating two distributing plants regulated under the Oregon-Washington Federal milk order and two under the Puget Sound-Inland order testified in support of Umpqua's proposal. He stated that allocation of nonfluid milk receipts used in Class II products under the Puget Sound-Inland order is done as proposed by Umpqua, and that the allocation provisions of the Oregon-Washington order should be amended to be the same as those in the Puget Sound-Inland order. He pointed out that the difference between the Class II and III prices in Oregon-Washington was a constant 25 cents per hundredweight for a number of years. However, he said, with the recent advent of advance Class II pricing, the price difference between the two classes varies by month, and has been as much as 60 cents. The witness stated that the potentially greater price difference between the two classes makes it more important that the nonfluid receipts used in Class II products be allocated to Class II.

The Darigold witness testified in favor of adoption of Umpqua's proposal to amend the allocation provisions. He stated that the classification provisions in the neighboring Puget Sound-Inland order and Oregon-Washington order should be the same so that handlers in the two markets who compete with each other for Class I and Class II sales would all be operating under the same rules and procedures.

The Oregon Milk Marketing Federation manager testified in favor of amending the order's allocation procedure as proposed by Umpqua. In addition, the brief filed by OMMF on the basis of the hearing record stated that the present allocation provision has the effect of upgrading the allocation of producer milk from Class III to Class II by assigning it to a use category in which it could not have been used. Curly's Dairy, a proprietary handler regulated under the order, filed a letter supporting the proposal. There was no oppositions to the proposed amendment.

There is ample testimony and data in the record to support adoption of the proposal to allocate nonfluid milk receipts used in Class II products to Class II use. It is evident that nonfluid milk products are needed in the production of Class II products and cannot be used interchangeably with producer milk for those purposes. Allocation to Class II use of the nonfluid milk receipts used in Class II products therefore could not have the effect of displacing producer milk from Class II use to the lower-valued Class III use.

It is also apparent that the present allocation sequence for nonfluid milk receipts creates accounting problems and unjustified extra costs for pool plant operators producing ice cream and other Class II products which require the use of nonfluid milk ingredients. These additional costs have the potential of making Oregon-Washington pool handlers unable to compete, not just with pool handlers in neighboring orders, but also with nonpool handlers manufacturing the same products.

5. Payments to Producers

The order should be changed to allow handlers to make direct final payments to their nonmember producers who are not paid on the basis of the State of Oregon Quota payment plan. At the present time, producers paid on the basis of their Federal order base and who are not members of a cooperative association must receive their final payments for each month's production from the market administrator. An amendment proposed by Umpqua Dairy Products Company would allow the handlers of such producers' milk to make direct payment for their milk rather than channeling payments through the market administrator.

The proposal was presented by Umpqua Dairy's secretary-treasurer and office manager. He explained that an Umpqua nonmember producer previously paid under the Oregon Quota system recently decided to drop his quota and be paid on his Federal order base. The witness expressed his surprise and dismay at the fact that final payment to the producer could no longer be made by Umpqua, but would have to be made by the market administrator. The witness stated that handlers are entrusted with the responsibility of paying assigned bills out of the amounts due to producers and making deductions for their insurance, and should be able to have the personal connection with the producer of issuing the check for final payment.

A witness representing Carnation Company testified in favor of the proposal. He stated that the handler does all of the accounting involved in paying producers and issues final payments to all of its other nonmember producers, so that adoption of such a procedure would not require any additional burden for handlers. The witness pointed out that allowing handlers to pay their own producers would save the market administrator the time and effort of doing so, and might reduce the cost of administering the order.

Witnesses for both Darigold and OMMF testified that the cooperative associations favored the proposal as contributing to the efficiency of the operation of the market administrator's office. There was no opposition to adoption of the proposal, either in testimony at the hearing or in post-hearing briefs.

Handlers ought to be able to make direct payments to the milk producers who represent their regular source of supply. The proposal made by Umpqua Dairy would enable them to do so, and should be adopted. Under the order's present provisions, the handler of the milk of a nonmember producer paid under the Federal base plan may pay various obligations on behalf of the producer and must make an advance payment for milk shipped by the producer during the first 15 days of the month, but may not issue the producer's final payment check for the month. The market administrator must issue the final payment to such producers, but does not make any payments directly to producers who are members of cooperative associations or who are paid under the Oregon State Quota system. Adoption of the proposal should remove the extra procedures required in both the handlers' and market administrator's payment process to accomplish the payment of nonmember Federal base producers, and thereby allow their operations to run more efficiently.

According to the language of the proposed amendment, a handler's failure to make any payments due under the order to producers or to the market administrator would cause payment responsibility to revert to the market administrator until the handler's obligations are kept current for a three-month period.

A new § 1124.33 entitled "Reports of payments to producers" should be added to the order to assure that the market administrator receives a copy of the final payment statement to each nonmember producer paid under the Federal base plan. The completed payroll should show the pounds of base, excess and total milk for which the producer is being paid, its butterfat content, the respective prices and total values of the milk, any adjustments and deductions, and the net amount paid to the producer. The check number and date of payment should also be reported.

6. Producer Base Percentages

A proposal by Darigold to increase the percentage by which base pounds are computed for a producer who has

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not earned a daily base should not be adopted. Under the provisions of the order, producers are paid a higher, or "base", price for the portion of their production which does not exceed the daily average of their production during the market's base-building period. The base-building period is the market's four low months of production, usually Janaury, February, November and December. Bases are computed and issued each February 1 on the basis of the previous year's four low months. A producer who has not earned a daily base by producing milk for at least 90 days during the previous year's base-building period will have base pounds computed as a percentage of each month's production instead of using a daily average production history as a base. The percentage used for each month is specified in the order, and varies by month from 45 to 70 percent.

The witness representing Darigold testified that the base portion of the production of a producer who has not earned a daily base should be calculated by multiplying each month's production by 80 percent rather than by the present percentages specified in the order. He based the proposal on his contention that the present rates are not reflective of the current seasonality of production of dairy farmers in the area, and that they are unduly restrictive for producers who might wish to enter the Oregon-Washington market. The Darigold representative stated that a producer entering the market after February 1 in a given year would not earn a daily base until February two years later. As a result, the producer would be paid on the present variable base percentages for nearly two years. He further stated that the percentage of base pounds of producers on the market averages approximately 87 percent of their total production, and that the base pounds of producers entering the market without an earned base average only 61.3 percent of their total production.

The Darigold witness testified that the monthly base percentages in the Oregon-Washington order have not changed since the order was promulgated in 1970, on the basis of a 1968 hearing. He asserted that the seasonal pattern of production in the market has changed considerably since then, while the percentages by which base pounds are computed for producers without earned base have not been adjusted to reflect the market's changed seasonality. The witness described at length the history of the calculation of base percentages in the Puget Sound market in the 1950's, and stated that the base percentages in the Oregon-Washington order were derived from those percentages. He advocated updating the base percentages in the Oregon-Washington order by use of the same method used to adjust the Puget Sound percentages annually. By comparing monthly production in the current year with the average production for the four low production months of the previous year, the witness showed that seasonal variation of production in the Oregon-Washington market in 1984 was markedly less than that in Puget Sound in 1953, and somewhat less than in the Oregon-Washington market in 1971. He concluded that because seasonality of production has declined in the Northwest since 1953, base percentages should be constant throughout the year. He also concluded that because use of the formula used under the Puget Sound order in the 1950's to determine base percentages yields an average percentage of 84.9 for Oregon-Washington for 1984, the appropriate updated base percentage for Oregon-Washington would be 80 percent.

The proponent witness testified that base percentages in the Puget Sound order were adjusted downward from an initial range of 55 to 85 percent to a range of 45 to 70 percent, and indicated that the adjustment was needed because producers were relinquishing their daily bases to be paid on percentage bases while their production was increasing. As a corollary to the Darigold proposal, the witness proposed that the producers' option of relinquishing their earned daily bases be eliminated from the Oregon-Washington order so that producers would be prevented from choosing to be paid on percentage bases in order to increase their monetary returns while increasing production. He also proposed that any producer who transfers his earned daily base to another producer but continues to produce milk should not be able to use the monthly percentages provided by the order to be paid the base price for some of his production. Although neither of the additional two proposals was included in the hearing notice, the witness expressed his belief that both proposals are directly related to the question of percentage bases, and are important to the proper use and function of the order as proposed to be amended.

Under cross-examination, the witness indicated that if the base percentage were increased to 80 percent, he expected that some producers presently pooled under the Puget Sound-Inland order would attempt to pool their milk on the Oregon-Washington market in order to receive the benefit of the Oregon-Washington weighted average price, which is generally about 20 cents per hundredweight higher than the blend price in the Puget Sound-Inland market. He further testified that as producers changed from the Puget Sound-Inland market to the Oregon-Washington market, the Class I utilization percentage and prices paid to producers in the Puget Sound-Inland market would increase, while the Class I utilization percentage and producer prices in the Oregon-Washington market would decline. Although the witness stated that there probably would not be enough producer movement between the two markets to cause any significant change in the utilization percentage or prices paid to producers in either market, he also said that there are a lot of dairy farmers located in areas from which they could supply milk to either market. He indicated that the current base percentages are very likely the factor that has restrained producer movement from the Puget Sound-Inland market to the Oregon-Washington market. The witness stated that the purpose of a base plan is to even out seasonal variations in production, and that production in the Oregon-Washington market has become very level.

A representative of Carnation Company opposed the proposal on the basis that its adoption would lead to economic hardship for Carnation's nonmember producers whose milk is pooled under the Oregon-Washington order. He agreed that the lower producer price received by producers paid on percentage bases helps to keep producers from shifting from the Puget Sound-Inland market to the Oregon-Washington market. However, the witness expressed his company's concern that an increase in the returns to producers paid on percentage bases would cause Carnation producers in the Chehalis area to change Federal order markets, leaving Carnation with a shortage of milk to supply its Seattle plant. He testified that Carnation currently pays a premium to its producers who are pooled on the Puget Sound-Inland market, and that any change in the present equilibrium between the two markets that would encourage producers to change markets would create an unstable marketing condition.

The Carnation witness calculated that a new producer on the Oregon-Washington market who was paid on an 80-percent base would have received a price of $12.11 for this milk in June 1985, compared to the Oregon-Washington weighted average price of $12.10 for the same month. He stated that such a price

available to a producer who has no established relationship with the market would have the effect of attracting a flood of milk to the Oregon-Washington market from the Puget Sound-Inland market until the producer prices of the two markets are equal. He asserted that the result of lowering Oregon-Washington producer prices to the level of Puget Sound-Inland prices would be unfair to Oregon dairymen who have worked hard to produce at the amount of their base and keep their price advantage. The witness estimated that there are approximately 30 to 40 Puget Sound-Inland producers in the Chehalis and Yakima Valley areas that may find it advantageous to change to the Oregon-Washington market if they could obtain a higher price for their milk. He indicated that the 80-percent base proposal, if adopted, would increase the prices available to those producers enough to cause them to change markets and flood the Oregon-Washington market with unneeded supplies of milk that would serve only to depress producer prices. The witness credited the Federal order base plan and the Oregon State Quota system with discouraging uncontrolled production increases and thereby keeping surplus supplies in check. He expressed concern that an 80-percent base provision would have the opposite effect. Under cross-examination, the witness also made the point that relaxing supply plant pooling standards, diversion limits and "touch-base" requirements will make it much easier for the milk of producers with no real on-going association with the Oregon-Washington market to be pooled, and that the 80-percent base provision would allow such producers to enjoy a share of the pool equivalent to that accruing to producers with a long-standing role as suppliers of the fluid needs of the market.

An Oregon-Washington producer testified against adoption of the proposal. He stated that increasing the percentage base to 80 percent would have the effect of blending down the base price to producers already supplying the market while paying higher prices to new producers on the market then they are currently receiving. He questioned paying new producers a larger share of the base pool than producers who currently supply the Oregon-Washington market but produce less than 80 percent base milk. The witness testified that giving new producers a larger market share than the percentage they currently receive would only encourage additional milk production at a time when there are already excessive surplus supplies on the market which may result in additional government support price reductions.

A producer board member of Portland Independent Milk Producers, a cooperative association representing 35 to 40 producers pooled under the Oregon-Washington order, testified in opposition to the proposal. He stated that the proposal would allow an advantage to new producers wishing to ship to the Oregon-Washington market, and encourage unneeded additional production. The witness testified that in view of the present surplus of milk production, there is no injustice in requiring a new producer to ship milk at a slight disadvantage to established producers while earning a base within the system.

The Oregon Milk Marketing Federation manager testified that the Federation does not find it necessary to amend the order's base plan in any way. He quoted the promulgation decision (34 17701) as justifying the order's present base percentages as "adjusted seasonally to reflect the supply situation in the market. The lower rates in the flush production months should not encourage new producers to come on the market at a time when their production is not needed for Class I use. Neither are the stated percentages low enough to discourage entry into the market of a producer who intends to become permanently associated with the market." The witness testified that the base plan has not served as a barrier to the entry of new producers to the market, and introduced an exhibit that showed steadily increasing milk supplies in the market from 1971 through 1984 at an average annual rate of 4 percent. Over the same period, Class I use in the market increased at an average annual rate of only 2.4 percent. On the basis of that data, the witness concluded that adjustment of the base plan cannot be supported on the basis that it has brought about any milk shortage in the market. Instead, he stated, the declining relationship between Class I sales and production should not be reinforced by encouraging new producers to enter the market. The witness testified that the present percentage base provisions have discouraged seasonal dumping of surplus supplies from other markets on the Oregon-Washington market, and have helped to discourage wide seasonal fluctuations in the production of Oregon-Washington producers. He pointed out that if the present base plan has had the effect of excluding producers from the market, base would have developed a market value of its own. The fact that Federal order base never has developed any significant valve, he testified, is an indication that it does not serve to exclude the milk of new producers.

The OMMF witness testified that OMMF does not expect the Oregon-Washington base plan to prevent the shifting of producers between markets. In view of the present price difference between the Oregon-Washington and Puget Sound-Inland markets, he conceded, such a shift is inevitable. He stated that OMMF would prefer to see a shift that is gradual and orderly, rather than one which would lead to the development excess manufacturing capacity that would in turn provide an incentive to continue levels of surplus production in order to operate manufacturing plants at an efficient level. Under cross-examination, the witness indicated that during peak periods of milk productions, there is not enough manufacturing capacity in the Oregon-Washington market to provide outlets for the surplus production of producers already on the Oregon-Washington market.

A base plan is incorporated in an order for the purpose of smoothing out seasonal fluctuations of production. Such fluctuations tend to occur in opposite directions as fluctuations in demand for fluid milk. In the fall and winter months, when consumption of fluid milk is highest, milk production is generally at its lowest level of the year. Handlers needing milk for bottling purposes take a larger proportion of the market's supplies during the fall and winter months. In the spring and early summer, however, milk production peaks at the same time consumer demand for fluid milk products has declined. Plants that operate for the purpose of manufacturing storable dairy products out of surplus milk may find it difficult to handle all of the milk that is produced in excess of fluid consumption during the market's flush production period.

The variable base percentages were included in the Oregon-Washington base plan as part of an attempt to level out production fluctuations through the year. According to proponent's testimony, the present base plan appears to have had the desired effect on seasonal fluctations. However, although seasonal variation of production in the Oregon-Washington market has leveled out since promulgation of the order in 1970, seasonality is still a feature of milk production in this market. The month of highest average daily production in both 1982 and 1983 exceeded the month of

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lowest average daily production by over 12 percent. For 1984, the seasonal fluctations declined to 10 percent but increased to over 19 percent in 1985. The years of 1984 and 1985 are unreliable for use in analysis of any milk production trends, however, because of the existence of the paid diversion program which was in effect from January 1984 through March 1985 for the purpose of encouraging dairy farmers to reduce production. Because of increasingly higher levels of milk production, seasonal peaks in production place at least as much burden on the capacity of the market to handle large surplus milk supplies as they did when seasonal variations in production were greater and the general level of production was lower. For this reason, it would be at least as undesirable to encourage new producers to enter the market during the months of high production at the present time as it was in 1970 when the order was promulgated and the present base percentages were included. It is apparent that the provisions of the present base plan have been effective in evening out seasonal fluctuations of production in the Oregon-Washington market. Adoption of a constant base percentage could very well reverse this trend and result in increased seasonal variations. Therefore, a constant base percentage throughout the year should not be adopted.

Federal milk orders cannot contain provisions that serve as barriers to the entry of any new producers or handlers who otherwise would have an opportunity to supply the needs of the market. In relation to the proposal to adopt a year-round percentage base of 80 percent, however, it cannot be found that the present variable base percentages accomplish such a barrier. There is testimony in the hearing record that producers convert freely from Grade B to Grade A status, and that new producers enter the market and established producers leave it, just as in any market without such a base plan. Given the average percentage that base pounds are of total producer milk, however, there may be some basis for increasing the variable percentages used to compute base pounds. Unfortunately, optimal percentages are not easily discernable from the hearing record. Until there is some indication that the present base percentages are causing disorderly marketing conditions, or that other base percentages would improve milk marketing conditions under the order, there is no basis upon which to change them.

With respect to producers wishing to change from the Puget Sound-Inland market to the Oregon-Washington market, such producers would be able to change markets with only a small decrease in price below what they have been receiving under the Puget Sound-Inland market. After being associated with the Oregon-Washington market for one base-earning period, the producer would be issued an earned daily base. Of course, a producer who changes markets as a result of a plant gaining pool status under the Oregon-Washington market would be eligible for a full producer base on the basis of milk deliveries to that plant. It is apparent from studying the pool statistics for the Puget Sound-Inland and Oregon-Washington markets for the months of July and August 1985 [1] that the present Oregon-Washington base plan provisions present no barrier to the entry of producers previously pooled under the Puget Sound-Inland market. The number of producers pooled under the Puget Sound-Inland order declined by 92 from July to August, while the number of producers pooled under the Oregon-Washington order increased by 88. At the same time, the difference between the Puget Sound-Inland and Oregon-Washington weighted average prices declined from 20 cents to 8 cents. Any price advantage enjoyed by Oregon-Washington producers appears to be rather vulnerable, and evidently not at all well-protected by the variable base percentages in the Oregon-Washington base plan.

If the proposal to change the base percentage to a constant 80 percent were adopted, it would not be possible to include the Darigold representative's suggested corollary to the proposal to eliminate the option of a producer to relinquish his earned base in favor of being paid on a percentage base. That part of the proposal is one on which producers would probably want an opportunity to comment. Failure to give adequate notice in the notice of hearing that such an amendment would be considered would constitute unfair treatment of such producers, and could not be justified. The witness had indicated that elimination of the base relinquishment option was important to the 80-percent base amendment. However, it would be inequitable to allow new producers to enter the market with a guarantee that 80 percent of their production would be base while depriving established producers of the same assurance.

[1] Official notice is taken of the Market Administrator's Report for Federal Order Nos. 124, 125 and 135 for the months of August and September 1985, Vol. 10, Nos. 8 and 9.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Oregon-Washington order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Oregon-Washington marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

October 1985 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Oregon-Washington marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing orders, Milk, Dairy products.

Signed at Washington, DC, on: February 11, 1986.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order [2] Amending the Order, Regulating the Handling of Milk in the Oregon-Washington Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oregon-Washington marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Oregon-Washington marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Programs, on November 20, 1985, and published in the **Federal Register** on November 27, 1985 (50 FR 48776), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, with a modification of § 1124.11(a).

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

1. The authority citation for Part 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. Section 1124.2 is revised to read as follows:

§ 1124.2 Dairy farmer for other markets.

"Dairy farmer for other markets" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority and from whose farm milk previously has been received at a pool plant, if during the month milk from the same farm that was produced in compliance with the inspection requirements of a duly constituted health authority is received at a nonpool plant (except another order plant) as other than a diversion from a pool plant.

3. In § 1124.9, paragraph (b) the text preceding paragraph (b)(1) is revised to read as follows:

§ 1124.9 Pool plant.

* * * * *

(b) A supply plant from which not less than 40 percent in any month of September through November and not less than 30 percent in any other month, of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.11 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; *Provided,* That:

* * * * *

4. In § 1124.11, paragraphs (a) and (b) are revised to read as follows:

§ 1124.11 Producer.

* * * * *

(a) A cooperative association may divert for its account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is received subsequently at a pool plant in the same month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 80 percent in the months of December, March and April, of the producer milk which the association or its agent causes to be delivered to pool plants, or diverted therefrom. No diversion limit shall apply during the months of May through August. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of

[2] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month such agreement is effective. This request shall specify the basis for assigning any over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator.

(b) A handler in its capacity as the operator of a pool plant may divert for his account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is subsequently received at a pool plant in the same month, and who is not a member of a cooperative association which is diverting milk pursuant to paragraph (a) of this section during the month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 80 percent in the months of December, March and April, of the producer milk received at or diverted from such handler's pool plant(s) and for which the operator of such plant(s) is the handler during the month. No diversion limit shall apply during the months of May through August.

* * * * *

5. A new § 1124.33 is added to read as follows:

§ 1124.33 Reports of payments to producers.

On or before the 25th day after the end of the month, each handler paying producers who have not authorized a cooperative association to receive payment for their milk, and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, shall report to the market administrator in detail and on forms prescribed by the market administrator as follows for each such producer:

(a) The producer's name, address and days of delivery;

(b) The total pounds of milk received from such producer, the average butterfat test thereof, and the pounds of butterfat contained in the producer's milk;

(c) The pounds of base and excess milk for each producer;

(d) The value of each producer's milk at the base and excess prices for the month;

(e) The nature and amount of any adjustments to and deductions from the payments due each producer; and

(f) The net amount of the payment made to each such producer for milk delivered during the month.

6. In § 1124.46, paragraphs (a)(4) and (5)(i) are revised to read as follows:

§ 1124.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(4)(i) With respect to a plant that was fully regulated in the preceding month under this or any other Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(*a*) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month; and

(*b*) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged cream in inventory at the beginning of the month;

(ii) Subtract from the pounds of skim milk in Class II, the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or cream) that is used to produce, or added to, any product specified in § 1124.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(5) * * *

(i) Other source milk in a form other than that of a fluid milk product or cream that was not subtracted pursuant to paragraph (a)(4)(ii) of this section;

* * * * *

7. In § 1124.82, paragraphs (c)(1) and (2) are revised and a new paragraph (c)(3) is added to read as follows:

§ 1124.82 Payments from the producer-settlement fund.

* * * * *

(c) * * *

(1) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, and which is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments;

(2) To the Director, Milk Audit and Stabilization Division, Oregon State Department of Agriculture, for each producer and cooperative association for milk subject to the Oregon Base Plan pursuant to § 1124.68, the aggregate of the payments otherwise due such individual producers and cooperative associations pursuant to paragraph (b) and paragraph (c)(1) of this section; and

(3) To each handler who so requests, for milk received by the handler from producers who have not authorized a cooperative association to receive payment for their milk and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section subject to the provisions of § 1124.86. The handler then shall pay the individual producers the amounts due them on or before the date specified in paragraph (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months.

[FR Doc. 86-3320 Filed 2-13-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1230

Pork Promotion, Research, and Consumer Information: Invitation To Submit Proposals for an Initial Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Invitation to submit proposals for an initial order.

SUMMARY: Interested persons are invited to submit proposals for a pork promotion, research, and consumer information order, as provided for by the Pork Promotion, Research, and Consumer Information Act of 1985 (Title XVI, Subtitle B of the Food Security Act of 1985).

DATES: Proposals must be received by March 3, 1986.

ADDRESS: Proposals (two copies) should be mailed to: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp (202-447-2650).

SUPPLEMENTARY INFORMATION: The Pork Promotion, Research, and Consumer Information Act (Title XVI, Subtitle B of the Food Security Act of 1985), enacted on December 23, 1985, provides for issuance by the Secretary of Agriculture of a national pork promotion, research, and consumer information program that would be funded by all domestic pork producers and all importers of porcine animals, pork, and pork products.

The Act permits that any person who may be affected by its provisions may submit a proposal for an initial order. Accordingly, notice is hereby given that the Department of Agriculture will receive written proposals for a pork promotion, research, and consumer information order, or for various provisions thereof. Proposals must be submitted in duplicate to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250. Proposals should be received in the Department by March 3, 1986 to be ensured consideration.

Interested persons should refer to the provisions of the Pork Promotion, Research, and Consumer Information Act in preparing their proposals. Proposals that are authorized by the Act will be published in the **Federal Register** for public comment. All views received will be considered in the development of a final order.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Pork and pork products.

Signed at Washington, DC on February 12, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-3390 Filed 2-13-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1260

Beef Promotion and Research; Invitation To Submit Proposals for an Initial Beef Promotion and Research Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Invitation to submit proposals for an initial order.

SUMMARY: Interested parties are invited to submit proposals for a beef promotion and research order as provided for by the Beef Promotion and Research Act of 1985 (Title XVI, Subtitle A, of the Food Security Act of 1985).

DATE: Proposals must be received by March 3, 1986.

ADDRESS: Proposals (two copies) should be mailed to Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Room 2610-S; Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, (202/447-2650).

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act (Title XVI, Subtitle A, of the Food Security Act of 1985), enacted on December 23, 1985, provides for the issuance by the Secretary of Agriculture of a national beef promotion and research program that will be funded by all domestic cattle producers and all importers of cattle, beef, and beef products.

The Act permits that any person who may be affected by its provisions may submit a proposal for an initial order. Accordingly, notice is hereby given that the Department of Agriculture will receive written proposals for a beef promotion and research order, or for various provisions thereof. Proposals must be submitted in duplicate to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th Street and Independence Avenue SW., Room 2610-S; Washington, DC 20250. Proposals must be received in the Department by March 3, 1986, to be ensured consideration.

Interested persons should refer to the provisions of the Beef Promotion and Research Act in preparing their proposals. Proposals authorized by the Act will be published in the **Federal Register** for public comment. All views received will be considered in the development of a final order, which must be made effective within 120 days of the date of publication of proposed order.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef and beef products.

Signed at Washington, DC, February 12, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-3389 Filed 2-13-86; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 111

Pollution Control Eligibility Policy

AGENCY: Small Business Administration.

ACTION: Proposed rule correction.

SUMMARY: This corrects the SBA's proposed rule governing the Pollution Control Financing Guarantee program published in the **Federal Register** on January 9, 1986 (51 FR 966-967.)

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Tallon, Office of Special Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Arlington, Virginia 22203 (703) 235-2902.

In the table appearing at 51 FR 966, the correct figures for the year 1985 should read 5 (five) for the total number of pollution control guarantees and 2 (two) for the number of waste disposal concerns. The corrected table should look like this:

Year	Total pollution control guarantees	Waste Disposal concerns
1980	93	[1] 16
1981	63	[1] 15
1982	3	1
1983	4	1
1984	4	0
1985	5	2

[1] Estimates.

Dated: February 5, 1986.

James C. Sanders,

Administrator.

[FR Doc. 86-3306 Filed 2-13-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-164-AD]

Airworthiness Directives: Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes and amendment which would supersede an existing airworthiness directive (AD) applicable to Boeing Model 707/720 airplanes. The existing AD requires inspection and repair, as necessary, of cracks in the wing front spar upper chord. A recent reassessment by the manufacturer has revealed that the maximum allowable length of a crack which may be repaired in accordance with previous releases of the applicable service bulletin must be reduced from 2.5 inches to 2.0 inches. Cracks between 2.0 and 2.5 inches in length, previously repaired in accordance with the existing AD, may be subject to failure under maximum design conditions, and could result in buckling of the spar chord.

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DATE: Comments must be received on or before April 7, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-164-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2928. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submiting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All coments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-164-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: On April 18, 1985, the FAA issued Amendment 39-5044 (50 fR 16465), AD 85-08-07, which requires inspection and repair of cracks on the wing front spar upper chord in accordance with Boeing Service Bulletin No. 3240, Revision 1, or later FAA-approved revisions. The amendmemt was prompted by numerous reports of corrosion and cracking, and in one case a 46-inch long crack, in the dry bay area. Revision 1 of Service Bulletin 3240 included repair schemes for chord cracks up to 2.5 inches in length; repairs of larger cracks had to be individually FAA-approved. Upon reassessment, it has become clear that the repair schemes in the service bulletin are inadequate for cracks exceeding 2.0 inches in length. The double nesting angle repair (Category III) of drawing 65C14869 does not provide adequate stability of the wing front spar upper chord for cracks exceeding 2.0 inches in length. This could result in a compression failure of the spar chord under maximum wing bending conditions.

Boeing has issued Revision 3 of Service Bulletin 3240 which limits the applicability of the repair called for in the previous revision to cracks less than 2.0 inches in length (the previous limit was 2.5 inches).

Since this situation is likely to exist or develop on airplanes of the same type design, this proposed rule would supersede the existing AD and require that Model 707/720 airplanes with cracks in the upper front spar chords which exceed 2.0 inches, be repaired in accordance with Boeing Service Bulletin 3240, Revision 3, or later FAA-approved revisions. Furthermore, airplanes previously repaired in accordance with Service Bulletin 3240, Revisions 1 or 2, which had cracks in the 2.0 to 2.5-inch range, must be reassessed and have repairs individually FAA-approved.

In addition, it has been established that inspections in accordance with Revisions 1, 2, and 3 are equivalent. Therefore, this proposal would not change the inspection requirement of the existing AD, but would specify inspections in accordance with Revision 1, or later FAA-approved revisions, of Boeing Service Bulletin 3240.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD. Airplanes which have been previously repaired would require approximately 40 manhours per airplane to review the existing repairs. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed reassessment would be $28,800.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulations which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89

2. By superseding Airworthiness Directive (AD) 85-08-07, Amendment 39-5044 (50 FR 16465; April 26, 1985), with the following new airworthiness directive:

Boeing: Applies to Model 707 and 720 series airplanes, certificated in any category, with 15,000 or more landings. To ensure continued structural integrity of the wing front spar upper chord, accomplish the following within 100 landings or 60 days, whichever occurs first, unless previously accomplished within the last 900 landings or 305 days:

A. Perform a close visual inspeciton of the wing front spar upper chord for cracks in accordance with Boeing Service Bulletin 3240, Revision 1, or later FAA-approved revision. Repeat the inspection at intervals not to exceed 1,000 landings or one year, whichever occurs first.

B. If cracks or corrosion areas are found, repair prior to further flight in accordance with Boeing Service Bulletin 3240, Revision 3, or later FAA-approved revision, or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Cracks which have been repaired in accordance with the "stop drilling" procedure described in Part III, Figure 2, of Service Bulletin 3240 Revision 3, or later FAA-approved revision, must be visually inspected at intervals not exceeding 300 landings, until permanently repaired in accordance with Part III, Figure 2, of Service Bulletin 3240, Revision 3, or later FAA-approved revision, or in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. A permanent repair must be completed within 1,000 landings or one year, whichever occurs first after the effective date of this AD.

D. Cracks between 2.0 and 2.5 inches in length, which have been previously repaired in accordance with Boeing Service Bulletin 3240, Revision 2, or earlier, must be repaired in accordance with Revision 3, or later FAA-approved revision, or repaired in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, within 1,000 landings or one year, whichever occurs first after the effective date of this AD.

E. After each of the above inspections and repairs have been performed, apply BMS-3-23 corrosion inhibitor, or equivalent, to the affected areas.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents form the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This AD supersedes AD 85-08-07, Amendment 39-5044.

Issued in Seattle, Washington, on February 6, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-3243 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AGL-1]

Proposed Alteration of Transition Area; West Branch, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the West Branch, Michigan, transition area to accommodate a new VOR Runway 27 Standard Instrument Approach Procedure (SIAP) to West Branch Community Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before March 20, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 86-AGL-1, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Admininstration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone, (312) 694-7360.

SUPPLEMENTARY INFORMATION: The present transition area is being expanded to accommodate a new VOR Runway 27 SIAP. The additional airspace designated will be approximately a one-mile radius expansion and a one-mile expansion to the east of the airport on the West Branch VOR 083 radial.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area near West Branch, Michigan.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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List of Subjects in CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending Section 71.181 by revising the following transition area to read as follows:

West Branch, MI

That airspace extending upward from 700 feet above the surface, within a 6.5 mile radius of the West Branch Community Airport (lat. 44°14'36" N., long. 84°10'58" W.) and within 3 miles each side of the 087° bearing from the airport, extending from the 6.5 mile radius area to 13 miles east of the airport and within 3 miles each side of the West Branch VOR 083 radial, extending from the 6.5 mile radius area to 7.5 miles east of the airport.

Issued in Des Plaines, Illinois, on February 4, 1986.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 86-3139 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mines; Ventilation; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comment.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's preproposal draft standards for ventilation for underground coal mines in 30 CFR Part 75.

DATES: Written comments on the preproposal draft for ventilation standards must be received on or before April 4, 1986.

ADDRESSES: All comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone: (703) 235-1910.

SUPPLEMENTARY INFORMATION: On November 19, 1985, MSHA published a notice (50 FR 47702) announcing the availability of a preproposal draft of revisions to current ventilation standards for underground coal mines. The comment period was scheduled to end on February 18, 1986. Due to requests from the public, MSHA is extending the time for commenting on this preproposal draft. The comment period is extended to April 4, 1986. All interested members of the mining community are encouraged to submit comments prior to that date.

Dated: February 10, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-3322 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 173, 174, 175, 177, 179, 181, and 183

46 CFR Part 25

[CGD 86-012]

Review of Boating Safety Regulations

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard will be conducting a comprehensive review of currently effective Boating Safety regulations at the next meeting of the National Boating Safety Advisory Council in Virginia Beach, VA, on May 13-14, 1986. The purpose of the review is to determine if any of the Coast Guard Boating Safety regulations are in need of change or revision. This notice describes the existing regulations that will be reviewed and solicits comments from the boating public in response to specific questions related to the review.

DATES: Comments are requested by April 7, 1986.

ADDRESS: Written comments should be mailed or delivered to the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Comments will be available for inspection at this address between the hours of 8:00 a.m. and 3:00 p.m. Monday through Friday, except holidays. Persons submitting comments should refer to the docket number of this notice (CGD 86-012), identify the specific Boating Safety regulations on which comments are being submitted, state what changes in the regulation are necessary, and provide reasons to support the recommended changes.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Regulatory Coordinator, Office of Boating, Public, and Consumer Affairs, (202) 426-1080. Normal office hours are between 7:30 a.m. and 4:00 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) provides advice to the Coast Guard on significant boating safety matters. The Council consists of 21 members drawn equally from three segments of the boating community: the boating industry; State boating safety officials; and the general boating public. The Coast Guard consults with NBSAC in the formulation of all Coast Guard Boating Safety regulations.

The Coast Guard conducted its first comprehensive review of the Boating Safety regulations in May 1981 as part of the NBSAC meeting held in Newport, R.I. The Coast Guard asked NBSAC to review the regulations to determine if they were still necessary, beneficial, cost-effective, and in step with current technology. As a result of that review, NBSAC made many recommendations to improve and update specific provisions in the regulations.

Because of this experience, the Coast Guard has decided to conduct similar reviews with NBSAC at approximately 5 year intervals. The next review is scheduled to take place at the NBSAC meeting on May 13-14, 1986, in Virginia Beach, VA. The meeting will be open to the public. (Details of the exact time and location of the meeting will be published in the notices section of the **Federal Register** at a later date). The review will encompass existing Coast Guard regulations that have been issued under the authority of the Chief, Office of Boating, Public, and Consumer Affairs at Coast Guard Headquarters. The review will not consider any proposed rules not yet issued as final rules. The existing regulations to be reviewed include:

- Permit requirements for persons organizing Marine regattas and parades (Part 100 of Title 33, Code of Federal Regulations).
- Requirements for boat operators and States in boat numbering and accident reporting (Parts 173 & 174 of Title 33, Code of Federal Regulations).
- Operator requirements for carrying personal flotation devices on boats (Subpart B of Part 175, Title 33, Code of Federal Regulations).
- Operator requirements for carrying visual distress signals on boats (Subpart C of Part 175, Title 33, Code of Federal Regulations).
- Requirements for boat operators in especially hazardous conditions (Part 177 of Title 33, Code of Federal Regulations).
- Boat and associated equipment manufacturer and importer requirements for safety defect notification and recall (Part 179 of Title 33, Code of Federal Regulations).
- Boat manufacturer and importer requirements for certification of compliance (Subpart B of Part 181, Title 33, Code of Federal Regulations).
- Boat manufacturer and importer requirements for hull identification numbering (Subpart C of Part 181, Title 33, Code of Federal Regulations).
- Personal flotation device manufacturer requirements for instruction pamphlets (Subpart G of Part 181, Title 33, Code of Federal Regulations).
- Boat manufacturer requirements for the determination and display of safe loading and safe powering capacities (Subparts B, C, D, and N of Part 183, Title 33, Code of Federal Regulations).
- Boat manufacturer requirements for flotation performance (Subparts F, G, and H of Part 183, Title 33, Code of Federal Regulations).
- Boat manufacturer requirements for electrical and fuel systems (Subparts I & J of Part 183, Title 33, Code of Federal Regulations).
- Boat Manufacturer requirements for engine and fuel tank ventilation systems (Subpart K of Part 183, Title 33, Code of Federal Regulations).
- Outboard engine manufacturer requirements for start-in-gear protection (Subpart L of Part 183, Title 33, Code of Federal Regulations).
- Operator requirements for carrying fire extinguishers on boats (Subpart 25.30 of Title 46, Code of Federal Regulations).
- Operator requirements for carrying backfire flame arrestors on boats (Subpart 25.35 of Title 46, Code of Federal Regulations).
- Operator requirements for engine and fuel tank ventilation systems on boats (Subpart 25.40 of Title 46, and Subpart D of Part 175, Title 33, Code of Federal Regulations).

The Coast Guard is soliciting comments from all segments of the boating community on recommended changes to these existing regulations, including elimination or revocation of a requirement. The Coast Guard is particularly interested in receiving views, data and reasons on the following review questions:

- *Need*—Is there still a reasonable need for the regulation? Is the problem the regulation was originally intended to solve still relevant?
- *Technical Accuracy*—Has the regulation kept pace with changes in technological, economic, or other relevant conditions? Are there any changes that could be made to the regulation that would make it more effective in achieving its intended goal?
- *Cost/Benefit*—What are the costs or other burdens/adverse effects of the regulation? What are the perceived benefits of the regulation in terms of personal safety or in other terms? Do the costs outweigh the benefits?
- *Problems*—Are there any problems or complaints in understanding or complying with the regulation?
- *Alternatives*—Are there any non-regulatory ways to achieve the goal of the regulation at a lower cost or reduced burden?

All comments received by the Coast Guard as a result of this notice will be summarized and provided to NBSAC for their consideration prior to the May meeting. The Coast Guard will consider all relevant comments in the formulation of any changes to the Boating Safety regulations.

Dated: February 10, 1986.

L.C. Kindbom,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 86-3216 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Parts 140, 143, and 149

46 CFR Parts 107, 108, and 109

[CGD 79-059]

Offshore Cranes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to issue regulations concerning offshore crane design standards and operation on Outer Continental Shelf (OCS) facilities, on deepwater ports, and on mobile offshore drilling units (MODUs). Presently, the only regulations for cranes apply on MODUs; yet the hazards of crane operation on OCS facilities and deepwater ports are in many ways similar to those on MODUs. This rulemaking proposes to apply crane requirements to OCS facilities and deepwater ports and to clarify and eliminate unnecessarily burdensome requirements from the existing regulations for cranes on MODUs. These proposals are intended to reduce the degree of hazard associated with crane operation.

DATE: Comments must be received on or before June 16, 1986.

ADDRESSES: Comments may be mailed to Commandant (G-CMC/21) (CGD 79-059), U.S. Coast Guard, 2100 Second St. SW., Washington, D.C. 20593. Comments will be available for inspection or copying at the Office of the Marine Safety Council (G-CMC), Room 2110, at the above address, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. The telephone number is (202) 426-1477.

FOR FURTHER INFORMATION CONTACT: Lt. William T. Burke, Office of Merchant Marine Safety, (202) 426-2307.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 79-059) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. Persons desiring acknowledgement that their comments have been received should enclose a stamped, addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are LT William T. Burke, Project Manager, Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Project Counsel, Office of the Chief Counsel.

Background and Objectives

On January 10, 1980, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (45 FR 2052) entitled "Standards for Offshore Crane Design, Inspection, Testing, Operation, and Operator Qualification." The ANPRM

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requested the public's response to numerous questions relating to what, if any, regulations are needed to promote safe crane operations offshore. A total of thirty-five comments were received from a cross section of oil companies, manufacturers, offshore operators, and standards development organizations.

Twenty-one comments urged that design and equipment requirements be based on American Petroleum Institute (API) Specification for Offshore Cranes, API Spec. 2C. This performance standard is currently applied under Coast Guard regulations to cranes on mobile offshore drilling units and under the Minerals Management Service's Outer Continental Shelf (OCS) Order #5, Section 7. To be consistent with current regulations and OCS Orders, this proposal adopts that standard.

One comment requested that casualty statistics, including age, number of accident free hours, and the design standard of each crane on which the statistics are based, be published to aid in evaluating the necessity of design regulations. The Coast Guard does not have detailed information of this type. A review of over fourteen hundred general personnel casualty reports on file for the years 1982 and 1983, however, revealed that structural failure of cranes, including cases of overloading, accounted for approximately 5% of personnel casualties occurring during crane operations on MODUs and platforms. The incidence of structural failure is clearly uncommon. Therefore, the Coast Guard has included a proposal to accept an authorized API nameplate as an indication of compliance with the standard in API Spec. 2C. By precluding the need for a separate plan review for each crane, use of the API nameplate would likely be the least expensive means of achieving compliance. Because this procedure, if adopted, would be a significant departure from our current requirements for cranes on MODUs, the Coast Guard specifically requests comments on the use of API nameplates as an indication of compliance with design requirements.

While structural failure accounts for approximately 5% of personnel casualties during crane operations, the vast majority (over 85%) can be attributed to errors made by crane operators, load riggers (loaders), and signal persons. The most commonly recurrent cause of personnel casualties during crane operations are injuries to personnel acting as loaders/signal persons while maneuvering the load or by workers improperly being in the vicinity of the loading operation. Of seventy-four personnel casualties involving cranes identified for the years 1982 and 1983, fifty-one occurred in this fashion. This proposal would adopt the operator qualifications currently outlined in API Recommended Practice (RP) 2D, "Operation and Maintenance of Offshore Cranes," while adding a more detailed requirement that the person in charge of the unit or facility designate the crane operator in writing after considering recommended minimum qualifications more specific than those outlined in API RP 2D. Consistent with this approach, this proposal outlines the minimum familiarity with proper procedures required prior to acting as loader/signal person, as well. These proposed regulations do not make formal training for crane operators mandatory. Instead, the person in charge of the unit or facility is required to designate personnel who are qualified after considering recommended minimum qualification requirements. Because the casualty data indicates the eighty to ninety percent of crane-related personnel casualties can be attributed to either operator or loader/signal person error, we are particularly interested in comments about the adequacy of this proposed approach to operator designation, and loader/signal person training.

In addition, crane operation at sea can result in both static loading and dynamic loading when the crane is used to make lifts to or from a vessel. The recently published third edition of API Spec. 2C addresses the dynamic rated load. The safety margin which results from use of API Spec. 2C will, in most instances, compensate for the operator error of overloading the crane.

Based upon a review of the comments submitted, the Coast Guard has decided to take the following actions at this time:

a. To propose amendments to the existing provisions relating to cranes on mobile offshore drilling units (MODUs) under Subchapter I–A, Chapter I, Title 46 of the Code of Federal Regulations (CFR), to incorporate the latest industry standards, simplify the approval process for cranes, correct certain errors, clarify misleading provisions, and correct out of date addresses.

b. To propose that a new subpart be added to Subchapter N, Chapter I, Title 33 of the CFR which would apply provisions similar to those in paragraph (a) above to cranes on Outer Continental Shelf (OCS) facilities.

c. To propose that a new section be added to Subchapter NN, Chapter I, Title 33 of the CFR which would apply, by cross reference, the provisions of paragraph (b) above to cranes on deepwater ports.

The overall effect of this approach would be to revise the existing regulations for cranes on MODUs and apply similar provisions to cranes on OCS facilities and on deepwater ports.

Amendments to Title 33 and 46 Combined into a Single Rulemaking

Amendments to more than one title in the Code of Federal Regulations (CFR) normally require separate rulemaking publications in the **Federal Register**. The Coast Guard, as a Federal agency, is somewhat unusual in having the bulk of its regulations located in two titles of the Code of Federal Regulations (33 and 46) rather than one. Because of the importance in making, where appropriate, the requirements for cranes on OCS facilities and deepwater ports (Title 33) consistent with the proposed requirements for cranes on MODUs (Title 46), the Coast Guard has received permission to combine these proposed amendments into a single document. To do otherwise would be a disservice to the reader, complicate submission and review of comments, and clutter the **Federal Register** with duplicative documents.

Discussion of Proposed Amendments

The proposed amendments will be discussed as needed in the order in which they appear in this document.

Title 33, Subchapter N–OCS Activities

A new Subpart E (Cranes) is proposed to be added to Part 143 of Subchapter N to address cranes on OCS facilities.

Proposed § 143.403. This subpart would apply to cranes on "OCS facilities". The term "OCS facility" is used throughout Subchapter N and is defined in that subchapter's definition section (33 CFR 140.10). In general, an "OCS facility" means any artificial island, installation, or other device permanently or temporarily attached to the subsoil or seabed of the Outer Continental Shelf, erected for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources. The term does not include any pipeline or deepwater port (as the term "deepwater port" is defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502)). Proposed paragraph (a) lists certain cranes which would be excluded from regulation under this subpart, such as cranes on MODUs. Cranes on MODUs engaged in OCS activities are regulated through the application of Subpart C of 33 CFR Part 143.

Cranes which are designed and used (dedicated usage) as part of a separate industrial system, such as blowout preventer gantry cranes, diving bell hoists, and air hoists, would be excluded, because they are not used for loading, offloading, and transferring material on the unit. These cranes are regulated, where necessary, as part of their associated industrial system.

Proposed § 143.404. This proposal incorporates by reference certain provisions of the American Petroleum Institute Specification for Offshore Cranes (API Spec. 2C) and Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D). These publications are based on industry experience and expertise and are intended as an aid or guide. However, for the purposes of these proposed regulations, reference in the regulations to provisions in these publications would make those provisions mandatory. This section is added to clarify this point.

Proposed § 143.405. Application of the incorporated API provisions discussed above or any other provision in this subpart may not, in every case, by appropriate. There may be other acceptable alternatives that provide an equivalent or greater level of safety. Section 143.405 would provide a procedure whereby the Coast Guard Officer in Charge, Marine Inspection may authorize deviations from the requirements for cranes in this new Subpart. This provision is in addition to, and would supplement, the broad provision for review of equivalent equipment or procedures in existing § 140.15.

Proposed § 143.406. This section would require crane owners to ensure that their cranes, other than cranes under the grandfather provision discussed below, meet the performance standards in API Spec. 2C as well as certain additional requirements. A grandfather provision would exempt cranes which were contracted for construction, under construction, or installed on a unit before the effective date of final regulations from compliance with this section.

Proposed § 143.407. This section would establish three means of verifying that a crane was designed and equipped to the performance standards in API Spec. 2C. The first means is by use of an API nameplate described in Section 15 of API Spec. 2C. As provided under Section 1.1.3 (d) of API Spec. 2C, use of the API monogram which appears on the nameplate is a warranty by the manufacturer to the purchaser that the manufacturer has obtained a license from API to use the monogram and that the product which bears the mongram conforms to the applicable API standard.

A second means is through certification by organizations and associations recognized by the Coast Guard under the procedure set forth in proposed § 143.409. This procedure, involving plan review, is similar to the certification process now in effect for MODUs.

A third means is by statement of the crane's manufacturer certifying that the crane is a duplicate of one already certified under proposed § 143.409. By use of manufacturer's statements, a separate plan review for each duplicate crane is avoided.

The mere fact that a crane has an API nameplate or is otherwise certified is only evidence that it is in compliance with the API standards. If, in fact, the crane is not in compliance, it would have to be brought into compliance before being used on an OCS facility.

Proposed § 143.409. This section describes the procedures for obtaining crane certification from a crane approval authority recognized or accepted by the Coast Guard in the event that the crane does not carry a valid API nameplate or is not a certified duplicate. The crane approval authorities are discussed further under proposed § 108.604 in this preamble.

Proposed § 143.411. This section would establish requirements applicable to alterations made to both new and grandfathered cranes. Whenever a crane is altered, as opposed to merely having a component replaced with one of like design and materials, this section would require the alteration to meet either the current performance standards in API Sec. 2C or, if grandfathered, the original design standards of the component in question.

Proposed § 143.413. To accomodate proposals for the use of mobile cranes, this section sets the rated load requirements for mobile cranes, based on the lesser of the load limits required to meet API Spec. 2C or the load limits necessary to guard against tipping of the mobile crane on its base. The rated load must not be greater than 67 percent of the load which would cause the crane to begin to tip. This margin allows for the dynamic loading which occurs when lifting loads at sea.

Proposed § 143.415. This section describes inspection requirements. It is similar to the existing inspection section for cranes on MODUs (46 CFR 107.259) but, as explained in this preamble under the discussion of proposed §107.258, is less burdensome on industry.

Proposed §143.417. This section describes the crane testing requirements under this Part. It is more flexible than the requirement of MODUs under existing or proposed 46 CFR 107.260 insofar as there is no mandatory load test or non-destructive testing requirement on a quadrennial basis. This exception reflects the lower dynamic loading and less intensive use of cranes on facilities as compared with MODUs. Since no provision is made under proposed §143.405 for replacement of parts or repairs to critical components that do not equal or exceed the original specifications, no load test is required as described in Section 3.2.2 of API RP 2D. This proposed section would require that each crane installed on the facility be operationally tested upon installation and following major repair. This requirement is consistent with Section 3.2.1 of API RP 2D.

Proposed §143.419. This section is based upon the operation and maintenance requirements in effect for cranes on MODUs (46 CFR 109.521 and 109.525). Compliance with the provisions of API RP 2D concerning operation and maintenance is currently mandatory under Minerals Management Service OCS Order #5, Section 7.

Proposed §143.421. This section is similar to existing 46 CFR 109.527 for crane operator designation on MODUs but clarifies responsibilities of the person in charge and adds factors to be considered by the person in charge in designating operators. The Coast Guard historically has not issued licenses or certificates of competency for industrial occupations and believes that the person in charge (supervisor) is in the best position to determine if an operator is qualified to competently and safely operate a crane.

Under this section, the person in charge would be responsible for permiting only designated operators, trainees, and inspectors to operate cranes on the unit and the individual operator would be designated with respect to a particular crane. If the operator is qualified to operate one type of crane, the operator may not necessarily be qualified to operate other types. Proposed paragraph (d) would require that the name of the operators designated to operate a particular crane be entered into the crane record book for that crane.

In considering whether a particular operator should be designated as qualified to operate the crane in question, the person in charge would have to consider whether the operator, by reason of experience, training, and skill, is capable of conducting safe operations. In view of the variety of

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cranes and differing installations, and the need for individualized designation, no fixed criteria for training or experience are proposed. Instead, to assist the person in charge, proposed paragraph (c) lists factors which the person in charge shall consider in evaluating the operator.

Proposed §143.422. This section specifies minimum qualifications for persons acting as load riggers and/or signal persons on the facility. The person in charge would ensure that minimum qualifications are held by workers involved in load rigging and signalling. This requirement is considered to be necessary in order to emphasize the need to place only qualified persons in these positions. As outlined in the Background and Objectives section of this NPRM, available casualty statistics clearly demonstrate that unsafe loading and unsafe movements by loaders and/or signal persons comprise the single most prevalent cause of personal injury during crane operations. Because these functions have general applicability and are not related to individual crane operating characteristics, establishing minimum qualifications appears feasible.

Although this proposed section would require all load riggers and signal persons to be "qualified" or be a trainee working toward qualification, the Coast Guard is considering adding an additional requirement—that the qualified load riggers/signal persons be designated in writing as would be required for crane operators under proposed §143.421(o). In recognition of the higher turnover rate of personnel employed in load rigging and signalling, the Coast Guard is concerned that the benefits to written designation of loaders and signal persons may be outweighed by the paperwork burdens and has not included this in the items submitted of the Office of Management and Budget for approval under the Paperwork Reduction Act. Specific comments on the desirability of written designation of loaders/signal persons is requested, along with comments on the proposed qualifications.

Proposed §143.423. This section is based on existing 46 CFR 109.437 concerning crane record keeping on MODUs. Under proposed §143.423, each crane on the facility must have a crane record book. It would be permissible to combine the information on more than one crane into a single volume as long as it is clear which crane is being addressed.

Proposed § 143.425. This section would require that crane certificates, approval letters, and other documents relating to the crane be maintained as part of, or at the same location as, the crane record book.

Title 33, Subchapter NN—Deepwater Ports

This proposal would add a single section (33 CFR 149.219) to the existing deepwater ports regulations in order to apply the regulations already discussed for cranes on OCS facilities to cranes on deepwater ports. The deepwater ports regulations (Subchapter NN) are located immediately after the OCS regulations (Subchapter N) in the same volume of the Code of Federal Regulations. By merely cross-referencing the crane regulations, a restatement in Subchapter NN of the entire set of regulations proposed for Subchapter N would be avoided.

In applying the provisions of Subchapter N to cranes on deepwater ports, the reader would substitute the term "deepwater port" for "facility" and "Port Superintendent" for "person in charge" wherever "facility" and "person in charge" appear in the text of Subchapter N. Otherwise, the requirements for cranes on OCS facilities and deepwater ports would be the same.

Title 46, Subchapter I–A—Mobile Offshore Drilling Units

Existing Subchapter I–A already contains requirements for cranes on U.S. flag MODUs. The proposed amendments to Subchapter I–A are basically intended to improve procedures, correct errors, clarify misleading provisions, and update addresses and references to API standards. The effect of these amendments should reduce the overall burden imposed by the existing regulations while reducing the degree of hazard associated with crane operations. In addition, they should facilitate the Coast Guard's ability to administer, and the operator's ability to comply with, the requirements. The grandfather provisions in Appendix A to existing Part 109 (NVC 4–78) would continue to apply.

To indicate alignment with the proposed changes to 33 CFR Parts 140 and 143 and to avoid duplication of comments within this preamble, the following comments on proposed changes to Subchapter I–A include a reference to similar proposed amendments to Parts 140 and 143.

Part 107—Inspection and Certification

Proposed § 107.115. This provision is similar to proposed § 143.404 on incorporated material. The addresses for American Bureau or Shipping and the American Petroleum Institute are corrected.

Proposed § 107.116. This is a new section similar to proosed § 143.405 and concerns authorization to deviate from the crane requirements.

Proposed § 107.231. The existing provision refers to inspection and testing under § 107.258. Proposed § 107.258, however, would relate to inspection and proposed § 107.259 to testing. Existing paragraph (o) would be revised to include § 107.259.

Proposed § 107.258. Existing § 107.258, concerning crane approval, would be transferred to proposed § 108.604. The new § 107.258 would address crane inspection and is similar to existing § 107.259 and proposed § 143.415.

Paragraphs (a) and (b) in existing § 107.259, as worded, require that every inspection called for in Section 3 of API RP 2D, including frequent and periodic inspections, be conducted by the Coast Guard or a recognized crane approval authority. The proposed change states that only the annual inspection would have to be conducted by one of these organizations.

Paragraph (b) in this proposed section differs from proposed § 143.415(b) insofar as no allowance is made on MODUs for inspection by the crane manufacturer's inspector. The annual inspection would be required to be conducted by the Coast Guard or by a recognized crane approval authority. This is in response to the more intensive use on MODUs of cranes under conditions of greater dynamic loading.

Paragraph (b)(2) of existing § 107.259 limits inspections by ABS and the International Cargo Gear Bureau to cranes certified by those organizations. Section 107.258 would permit the recognized crane approval authority to conduct annual inspections under this section on all cranes regardless of which organization certified them or whether the crane has an API nameplate.

Proposed § 107.259. This is similar to proposed § 143.417 on operational tests.

Proposed § 107.260. This section would make several changes to existing § 107.260-on load testing.

Proposed paragraph (b) would require that load tests and non-destructive tests be witnessed by a representative of the Coast Guard or a recognized crane approval authority. This is already required by existing § 107.259(b) but would be transferred to proposed § 107.260 to combine it with other provisions relating to load testing.

Proposed paragraph (c) would make it clear that the person in charge is responsible for ensuring compliance with the load test requirements in this section. In addition, paragraph (c) lists the times when a load test would be required. These intervals are the same as in paragraph (c) of the existing § 107.260(c), with the exception that proof load testing is mandatory only upon initial installation.

Though most comments received by the ANPRM indicated that load tests are presently conducted on extensively repaired or altered cranes (as specified by Section 3.2.2(a) of API RP 2D) and new installations, many comments objected to the four year requirement. They suggested that periodic tests would unnecessarily overstress the crane and increase the crane's chances of failure during normal operations. However, a crane under API Spec. 2C is designed to withstand a load 33 percent greater than its static rated load, whereas proof loads exceed the static rated load by, at most, only 25 percent. Therefore, it is unlikely that components will be overstressed unless they have been weakened by corrosion or damage and need replacement. In light of the strong interest in the subject of periodic load testing, the Coast Guard is offering, in proposed paragraph (d), the option of non-destructive testing of critical components, those whose failure would result in either loss of load control or structural instability of the crane, in lieu of a load test every four years. Interested parties are requested to respond specifically to this issue. Detailed information, statistical data, and case histories would be appreciated.

Proposed paragraph (c)(3), concerning load testing when a critical component is altered, repaired, or replaced, would add to the existing provision an option to conduct non-destructive testing of these components in lieu of proof load testing.

Proposed paragraph (g) would allow smaller proof loads if the crane loading is limited by relief valves or other devices. In such cases the limiting load, provided it is greater than the static rated load, could be used as a proof load.

Proposed paragraph (h) would require a thorough visual examination following proof loading to check for structural damage.

Paragraph (i) is new and would require the crane owner to supply the equipment and personnel necessary to perform the load test or non-destructive test.

Proposed § 107.305. The requirement for plan review of crane foundations and substructure would be reworded and transferred to this section from existing § 107.309.

Proposed § 107.309. The existing section would be removed. The provisions of this section have been transferred to proposed § 108.604 to combine them with other provisions relating to design approval.

Proposed § 107.317. The address for the American Bureau of Shipping would be corrected. The reference to existing § 107.309 would be deleted because § 107.309 would be removed, as described above.

Part 108—Design and Equipment

Proposed § 108.601. This section is similar to proposed § 143.406 on design and performance standards. The requirements in proposed paragraphs (b), (c), and (d) are from existing § 108.601(b) (2), (3), and (4). The provisions in existing § 108.601(b) (1) and (5) concerning marking of controls and use of spark arrestors are excluded from this proposal because they are now addressed in the latest edition of API Spec. 2C. Proposed paragraph (e) on load indicating devices is added because of its deletion from the latest edition of API Spec. 2C. Proposed paragraph (b) restates an existing requirement concerning electrical equipment in hazardous areas. Cranes currently grandfathered under Appendix A to existing Part 109 would remain grandfathered.

Proposed § 108.603. This is a new section similar to proposed § 143.407, which lists the means of evidencing conformance to the standards in API Spec. 2C. Currently, the MODU regulations provide for mandatory plan review of cranes. This proposal would exempt cranes with API nameplates or duplicate cranes from having to be separately certified.

Proposed § 108.604. This section on crane approval is similar to proposed § 143.409 and is presently located in §§ 107.258 and 107.309. The list of authorities for crane approval (ABS, ICGB, and the Coast Guard) would be revised to delete the Coast Guard and to add "other similar classification societies accepted by the Commandant." Permitting the use of other accepted classification societies would align this provision with current Coast Guard requirements for cargo gear in Chapter I of Title 46.

Proposed § 108.605. This is a new section added for the purpose of clarifying the special requirements contained in existing § 107.309(b) which apply to electrical and hydraulic systems on MODUs and providing for approval of those systems by a recognized crane approval authority or for certification by a U.S. registered professional engineer.

Proposed §§ 108.607 and 108.609. These are new sections similar to proposed §§ 143.411 (approval of alterations) and 143.413 (mobile crane rating).

Part 109—Operations

Proposed § 109.437. This proposal would revise existing § 109.437 on crane record books to align it with proposed § 143.423. New paragraph (b)(2) would require entering the name of each person designated under proposed § 109.527 as qualified to operate the crane.

Proposed § 109.439. This proposal would amend existing § 109.439. It is similar to proposed § 143.425.

Proposed § 109.521. This section on operation and maintenance is revised and aligned with proposed § 143.419.

Proposed § 109.525. The existing section would be removed. Tables indicating the safe working loads for various angles of the boom would be required by application of Section 2.3 of API Spec. 2C.

Proposed § 109.527. This proposal substantially revises existing § 109.527 and aligns it with proposed § 143.421 on operator designation.

Proposed § 109.528. This section is new and is similar to proposed § 143.422 on load riggers and signal persons.

Incorporation by Reference

The American Petroleum Institute documents, API RP 2D (Second Edition, June 1984) and API Spec. 2C (Third Edition, March 1983), are proposed for incorporation by reference. Copies of this material are available for inspection at U.S. Coast Guard Headquarters, Room 1404, 2100 Second Street, SW., Washington, D.C. 20593. A copy of the material may be obtained at the addresses listed in proposed 33 CFR 140.7 and 46 CFR 107.115.

Before the final rule is published, the Coast Guard will submit this material to the Director of the Federal Register for approval of the material for purposes of incorporation by reference.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C., (202)

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428–1477 from 7:30 a.m. to 3:30 p.m. Copies may also be obtained by contacting that office.

The following comprises a summary of the costs estimated to be associated with the proposed regulations.

The economic impact of the proposed regulations for cranes on OCS facilities is made less burdensome by the fact that a significant number of them are currently in effect under Minerals Management Service (MMS) OCS Order #5, Section 7. This OCS Order, insofar as it requires periodic inspections, recordkeeping, and operational testing to be conducted in accordance with API RP 2D, makes the proposed Coast Guard regulations in these areas no more burdensome than the provisions of the current OCS Order. As the regulatory responsibility for cranes on OCS facilities is being assumed by the Coast Guard in accordance with a Memorandum of Understanding between the Coast Guard and the U.S. Geological Survey (MMS) (46 FR 2199; January 8, 1981), MMS provisions corresponding to Coast Guard provisions would be deleted from the OCS Orders.

Certain proposed regulations, however, could represent new economic burdens on OCS facilities. These include the following proposed requirements:

1. That all newly contracted and installed cranes meet API Spec. 2C performance standards.
2. That alterations to both new and existing cranes be approved as meeting either API Spec. 2C or the original design specifications for the component being altered.
3. That both new and existing cranes be inspected at least once annually by either the crane manufacturer or by one of the recognized crane approval authorities.
4. That crane operators and load riggers/signal persons meet minimum levels of qualification.
5. That a Crane Record Book be maintained.
6. That mobile cranes be rated for tipping by the crane manufacturer.

The possible increased economic burdens resulting from these proposals are discussed, in order, below.

The proposed requirement that all newly contracted and installed cranes meet API Spec. 2C requirements would impact those prospective owners who need or desire to purchase cranes from non-API authorized manufacturers. In this case, the prospective new owners will incur additional expense in obtaining plan approval. This cost can range from $5,000 to $10,000. It should be noted that, in this case, such additional expense would be a one-time occurrence. The proposed regulations provide for duplicate cranes approved in this manner, without incurring the expense of plan approval for each subsequent duplicate crane. Two other factors tend to reduce the potential economic impact of this proposed requirement. The first is the grandfather provision exempting all cranes currently contracted for construction, under construction, or installed on OCS facilities from the requirements of API Spec. 2C. Consequently, this proposed requirement would initially affect only cranes installed after the effective date of these regulations. Second, because MMS has long been recommending the use of API Spec. 2C as a guidelines in purchasing cranes for use offshore and because these standards have been widely adopted by the industry, it is believed that the actual economic impact of this proposed regulation would be relatively small. The Coast Guard has no precise data on the current purchasing practices of the industry, with regard to adoption of API Spec. 2C, and specific information on this economic burden is solicited.

The economic impact of the requirement that alterations to both new and existing cranes be approved is difficult to determine. Approval would be required by one of the recognized crane approval authorities or, in the case of MODUs, by a U.S. registered professional engineer. This expense, while dependent on many variables such as the nature and extent of the alteration, estimated to be less than $5,000 per alteration. The Coast Guard has no current requirements for approval of alterations to cranes on OCS facilities, and it has no information as to the frequency of alterations on existing cranes. Therefore, the Coast Guard encourages comment on the economic impact of this proposed requirement from all knowledgeable sources.

The requirement that both new and existing cranes be inspected annually by the crane manufacturer or by one of the recognized crane approval authorities represents the most burdensome economic impact in the proposed regulations. Based on discussions with currently recognized crane approval authorities, this cost is estimated at $2,000 per crane per year. The actual cost of annual inspection, however, would depend upon the circumstances of each inspection, e.g., location, number, type of crane, and selection of inspection organization. As crane manufacturers may perform certain inspections, in addition to crane approval authorities, it is unknown as to how their inclusion would impact the cost of inspection. Based on current information, however, the $2,000 estimate appears to be neither unreasonably low nor high. If the total number of cranes being regulated under this proposal is estimated at $2,000 then the annual cost of inspection, industry-wide, may be approximately $4 million. Reliable data on these figures is solicited from all knowledgeable sources.

The cost of improving training of crane operators and load riggers/signal persons cannot be accurately estimated by the Coast Guard. Because most companies currently provide some level of training for crane operators, this increase in cost would be measured by the extent to which each company's training program falls short of the minimum levels proposed in these regulations. Specific cost estimates are solicited.

Because recordkeeping costs are already incurred by industry through the mandatory application of API RP 2D under OCS Order #5, the recordkeeping required in these proposed regulations should not represent a significant increase in cost. While the Coast Guard cannot identify any significant economic burdens over and above current recordkeeping costs, comments are solicited on this subject.

The Coast Guard currently has no requirement in place to rate mobile cranes against tipping. Therefore, the cost associated with obtaining such a rating from the crane manufacturer is unknown. It is known, however, that mobile cranes comprise a very small percentage of the cranes subject to these requirements. Cost estimates of obtaining the proposed rating are solicited from crane manufacturers.

For cranes on deepwater ports, the above discussion of the costs associated with cranes on OCS facilities would apply. The proposed requirements for deepwater ports are the same as those for OCS facilities and both carry the same grandfather provisions. It should be noted that, at present, only one crane is affected by these proposals because there is only one deepwater port in operation.

The MODU regulations presently in effect in 46 CFR Parts 107, 108, and 109 were evaluated prior to their publication on December 4, 1978. Those requirements include periodic inspection, annual inspection, recordkeeping, load testing, operational testing, design and equipment standards, approval of alterations, and the requirement to maintain a crane record book. The only new costs

imposed would result from the following proposed requirements:

1. To have alterations to cranes approved by a recognized crane approval authority.
2. To rate mobile cranes.
3. To train crane operators and load riggers/signal persons.

Under the current MODU regulations, crane owners have the option to seek approval of alterations from the Coast Guard, as well as from recognized crane approval authorities. Under these proposed regulations the option to use the Coast Guard would be eliminated to align this provision with the one for cranes on OCS facilities. In this category, the discussion above with respect to the cost of approving alterations to cranes on OCS facilities applies.

Similarly, the discussion above with respect to the rating of mobile cranes on OCS facilities and with training of crane operators and load riggers/signal persons applies to cranes on MODUs as well. Comments regarding the perceived economic impact of these proposals are solicited.

It should be noted that some reductions in costs are apparent with respect to cranes on MODUs. For example, under the current § 107.259, all inspections and tests conducted under Section 3 of API RP 2D must be witnessed and/or conducted by the Coast Guard or one of the crane certifying authorities. Under the proposed regulations, only the annual inspection would require attendance by one of these organizations. Also, where current regulations under § 107.260 require load testing upon installation, major repair, and every 48 months, the proposed regulations would require the load test upon initial installation only. Thereafter, crane owners would have the option of conducting non-destructive testing instead of a load test. Because this option is new, no information is available on whether or not this represents a possible savings. Cost estimates comparing the average load test costs versus those which might accrue for non-destructive testing are solicited. Finally, while current regulations under §§ 107.309 and 107.317 require plan approval of each crane regardless of whether or not the crane bears an API nameplate, certain cost savings would be realized from the proposed change allowing for the elimination of plan approval for those cranes bearing API nameplates and for those cranes certified to be duplicates of previously approved cranes.

The benefits resulting from these proposals would arise from the application of industry developed standards and the new requirements for operator and load rigger/signal person qualification. For MODUs, these proposals would mean a possible cost reduction in the approval of cranes by addressing API nameplates and duplicate cranes, by providing an alternative to load testing, and by reducing the need to have certain inspections performed by outside crane approval authorities. The number of injuries or fatalities which would be prevented by implementing these proposed regulations cannot be estimated precisely. Coast Guard figures indicate that, on the average, one person per year is fatally injured as a result of a crane accident. Minerals Management Service figures place that number at more than three fatalities per year (See "Risk Analysis of Crane Accidents, Gulf of Mexico OCS Region," U.S. Department of Interior OCS Report #MMS 84–0056 (1984)). The common thread running through both Coast Guard and Minerals Management Service accident surveys is that crane accidents occur when the loaders/signal persons follow unsafe procedures, when the crane operator makes a mistake, or when the crane itself suffers a structural failure. By addressing all three of these root causes of accidents, it is expected that one to three fatalities and approximately 35 serious injuries will be prevented annually, offsetting the relatively low per-unit cost of implementing these proposed regulations.

The Coast Guard believes that the net benefits of these proposed regulations will outweigh the net costs. The total economic impact of the proposed amendments to Titles 33 and 46 is conservatively estimated to be $4.5 million annually. This is based upon the maximum annual inspection cost of approximately $2,000 per crane for 2,000 cranes and the costs associated with recordkeeping requirements. Annual inspection costs would be the greatest costs of this proposal and could vary from $500 to $2,000 per crane, depending on the type of crane involved, the number of cranes inspected on the unit at that time, the travel costs of the inspector, and other factors. Because we have no basis for arbitrarily averaging these costs, the Coast Guard has assumed the high end cost of $2,000 per crane for the purpose of these estimations. Specific cost estimates are solicited from all interested and knowledgeable parties. As a result of these comments, the regulatory evaluation will be revised accordingly. These rules would not affect state or local government and would have a negligible effect on costs to consumers. Costs to crane manufacturers are not known.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 USC 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). These regulations would affect owners of cranes on, and persons in charge of, OCS facilities, MODUs, and deepwater ports. As the cranes covered by this proposal are, for the most part, permanently mounted on the unit, they are usually owned by the owner of the units. Because of the extremely high costs of these units, their owners tend to be major corporations or subsidiaries of major corporations.

The effect of the proposed regulations on persons in charge are of a supervisory nature and do not create a significant economic impact.

Crane manufacturers would be affected because only cranes meeting API performance standards would be desirable for purchase by offshore users. This may require certain manufacturers to redesign their cranes in order to remain competitive in the offshore market. The Coast Guard believes the effect on manufacturers would not be substantial because most cranes currently being purchased for offshore use already meet API standards.

For the above reasons, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you feel that your business may qualify as a small entity and that the proposed rules would have a significant economic impact on the business, please notify the Coast Guard (see **ADDRESSES**) and explain why you feel your business qualifies and in what way and to what degree the proposed regulations would economically affect your business.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in the following sections: §§ 143.405, 143.407, 143.409, 143.411, 143.413, 143.415, 143.417, 143.419, 143.421, 143.423, 143.425, and 149.219 of Title 33 and §§ 107.116, 107.258, 107.259, 107.260, 107.305, 108.603, 108.604, 108.605, 108.607, 108.609, 109.437, 109.439, 109.521, and 109.527 of Title 46.

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They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under **"ADDRESSES"**.

Environmental Assessment

The Coast Gurad has considered the environmental impact of the regulations and concluded that preparations of an environmental impact statement is not necessary. An environmental assessment with a finding of no significant impact has been prepared and is on file in the rulemaking docket.

List of Subjects

33 CFR Parts 140 and 143

Continental shelf, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 149

Deepwater ports, Navigation, Oil imports, Reporting and recordkeeping requirements.

46 CFR Part 107

Continental shelf, Marine safety, Marine resources, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 108

Continental shelf, Fire prevention, Marine safety, Marine resources, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 109

Continental shelf, Marine safety, Marine resources, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, Parts 140 and 143, Subchapter N, Chapter I of Title 33; Part 149, Subchapter NN, Chapter I of Tile 33; and Parts 107, 108, and 109, Subchpater I–A, Chapter I of Tile 46 of the Code of Federal Regulations are proposed to be amended as follows:

TITLE 33—[AMENDED]

CHAPTER I [AMENDED]

SUBCHAPTER N—OUTER CONTINENTAL SHELF ACTIVITIES

PART 140—GENERAL

1. The authority citation for Part 140 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1346(c), 1356; 49 CFR 1.46(z).

2. By adding alphabetically new entries to paragraph (b) of § 140.7 to read as follows:

§ 140.7 Incorporated by reference.

* * * * *

(b) The materials approved for incorporation by reference in this subchapter are:

* * * * *

American Petroleum Institute (API), Production Department, 211 N. Ervay, Suite 1700, Dallas, TX 75201

API RP 2D—Recommended Practice for Operation and Maintenance of Offshore Cranes, Second Edition, June 1984.

API Spec. 2C—Specification for Offshore Cranes, Third Edition, March 1983.

* * * * *

3. By adding in alphabetical order in § 140.10 a definition for the term "crane", to read as follows:

§ 140.10 Definitions

* * * * *

"Crane" means a powered machine, either fixed or mobile, designed primarily to raise, lower, and shift loads.

* * * * *

PART 143—DESIGN AND EQUIPMENT

4. The authority citation for Part 143 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356(a)(2); 49 CFR 1.46(z).

5. By adding a new Subpart E to read as follows:

Subpart E—Cranes

Sec.

143.401 Purpose.
143.403 Applicability.
143.404 Applicaitom of material incorporated by reference.
143.405 Authorization ot deviate.
143.406 Design and performance standards.
143.407 Evidence of conformance to standards.
143.409 Crane approval.
143.411 Alteration of cranes and approval of alterations.
143.413 Mobile crane rating.
143.415 Inspection.
143.417 Operational tests.
143.419 Operation and maintenance.
143.421 Crane operator designation.
143.422 Crane load riggers and signal persons.
143.423 Crane record book.
143.425 Certificates and other documents.

Subpart E—Cranes

§ 143.401 Purpose.

This subpart prescribes requirements for design, marking, approval, inspection, testing, operation, maintenance, operator designation, recordkeeping, and other matters relating to cranes on OCS facilities.

§ 143.403 Applicability

This subpart applies to all cranes on OCS facilities other than—

(a) Cranes on mobile offshore drilling units; and

(b) Auxiliary hoisting mechanisms, such as drawworks, blowout preventer gantry cranes, diving bell hoists, and air hoists, which function as part of an industrial system.

§ 143.404 Application of material incorporated by reference.

(a) All of the provisions in the material incorporated by reference under § 140.7 of this chapter which are referred to in this subpart are mandatory, regardless of the use in the incorporated material of "should" or other discretionary terminology. Necessary deviations from the incorporated provisions, depending upon the circumstances of each case, may be permitted in accordance with § 143.405.

(b) Provisions in the material incorporated by reference which are referred to in this subpart apply to all cranes under tis subpart, not just pedestal-mounted revolving cranes.

§ 143.405 Authorization to deviate.

(a) The Officer in Charge, Marine Inspection (OCMI), of the Marine Inspeciton Zone in which the OCS facility is located may, upon request, authorize deviations from provisions of this subpart or of the material incorporated by reference under § 140.7 of this chapter.

(b) A request for authorization to deviate must be in writing, state the need for the deviation, and describe the proposed alternative.

(c) If the OCMI finds that the requested alternative provides a level of safety generally equivalent to or greater than that provided under this subpart, the OCMI issues to the requesting party a letter evidencing the authorization.

(d) Letters of authorization to deviate must be maintained in accordance with § 143.425.

§ 143.406 Design and performance standards.

Except for cranes which were contracted for construction, under construction, or installed on an OCS facility before [the effective date of final regulations], the owner of each crane shall ensure that the crane—

(a) Conforms to the performance standards in American Petroleum Institute Specification for Offshore Cranes (API Spec. 2C);

(b) Has control instruments which are illuminated by built in lighting or interior cab lighting;

(c) Does not have fuel tank fills and overflows that run onto engine exhausts;

(d) Has no gasoline engines; and

(e) Has a functional load indicating device.

§ 143.407 Evidence of conformance to standards.

(a) As evidence of conformance to the standards in API Spec. 2C, each crane, other than one exempted under § 143.406, must—

(1) Have a nameplate as specified under Section 15.1 of API Spec. 2C containing all of the information called for on the nameplate illustrated in that section;

(2) Be approved under § 143.409; or

(3) Be certified by the manufacturer to be a duplicate of a crane previously approved under § 143.409.

(b) If the crane is a duplicate of one already approved under § 143.409, the following documents must be maintained in accordance with § 143.425:

(1) A copy of the certificate of approval issued for the previously approved crane.

(2) A statement from the crane's manufacturer certifying that the crane is a duplicate of the crane described in the certificate of approval under paragraph (b)(1) of this section.

§ 143.409 Crane approval.

(a) Approval of a crane as conforming to the standards in API Spec. 2C, as provided in § 143.407(a)(2), must be obtained from one of the following crane approval authorities:

(1) American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, NJ 07652, or other similar classification society accepted by the Commandant.

(2) International Cargo Gear Bureau, Inc. (ICGB), 17 Battery Place, New York, NY 10004.

(b) Requests for approval must be submitted in writing and contain the following items which relate to the crane:

(1) Stress and arrangement diagrams, bills of materials, and supporting calculations for all critical components as the term "critical component" is defined in Appendix B to API Spec. 2C.

(2) Drawings of the means provided to stop motion and set brakes during a power failure.

(c) If, upon review of the items submitted, the approval authority determines that the crane conforms to the standards in API Spec. 2C and the requirements of § 143.406, the authority issues a certificate of approval to the requesting party along with one copy of the items submitted stamped "APPROVED".

(d) Certificates of approval must be maintained in accordance with § 143.425.

§ 143.411 Alteration of cranes and approval of alterations.

(a) Except as provided in paragraph (b) of this section, any alteration to a crane on or after [the effective date of final regulations] must conform to the standards in API Spec. 2C, applicable to the altered component, before the crane is again put into operation on an OCS facility. "Alteration", under this section, does not include replacement of a component with one of like design and materials.

(b) For cranes contracted for construction, under construction, or located on a unit before [the effective date of final regulations], any alteration to the crane on or after that date must conform to the standards in API Spec. 2C, or to the original design standards, applicable to the altered component, before the crane is again put into operation on an OCS facility.

(c) Approval of alterations as conforming to the requirements of this section must be obtained from one of the crane approval authorities listed in § 143.409(a).

(d) Requests for approval must be submitted in writing and need contain only the items listed in § 143.409(b) which relate to the component altered.

(e) If, upon review of the items submitted, the approval authority determines that the alteration conforms to the requirements of this section, the authority issues a certificate of approval to the requesting party along with one copy of the items submitted stamped "APPROVED".

(f) Certificates of approval must be maintained in accordance with § 143.425.

§ 143.413 Mobile crane rating.

(a) Except for cranes exempted under § 143.406, mobile cranes must be rated so that, with the crane in the least stable horizontal position with regard to tipping, the crane does not tip when a load equal to 1.5 times the rated load is applied along the hoist line. This requirement is in addition to the requirement that the crane conform to the standards in API Spec. 2C.

(b) The owner of each mobile crane under this section shall obtain a written statement by the crane's manufacturer certifying that the crane was rated in accordance with paragraph (A) of this section. The statement must be maintained in accordance with § 143.425.

§ 143.415 Inspection.

(a) The person in charge of each OCS facility shall ensure that, for each crane on the OCS facility, the items listed in Sections 3.1.2, 3.1.3, 3.1.5a, 3.4, and 3.5 and Appendix B of American Petroleum Institute Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D) are inspected at intervals specified in those sections. These inspections must be conducted by a "qualified inspector" as the term is defined in Section 1.3 of API RP 2D; except that the inspector must be so designated by the person in charge.

(b) The person in charge shall ensure that, for each crane on the OCS facility, the items listed in Section 3.1.4 of API RP 2D are inspected upon initial installation and at intervals not exceeding 12 months by an inspector from the crane's manufacturer or from one of the crane approval authorities listed in § 143.409. The inspector must be a "qualified inspector" as defined in Section 1.3 of API RP 2D.

(c) Upon request by the inspector, the person in charge shall provide the inspector with the crane record book and other documents under §§ 143.423 and 143.425 for the crane being inspected.

(d) Before the crane is returned to use on an OCS facility, each deficiency which constitutes a hazard must be—

(1) Corrected; and

(2) Reinspected by a qualified inspector of the organization which noted the deficiency.

(e) A record of each monthly, quarterly, and annual inspection conducted under this section must be maintained in accordance with § 143.423. Daily inspections need not be logged.

§ 143.417 Operational tests.

(a) The person in charge of each OCS facility shall ensure that each crane on the facility is operationally tested in accordance with Section 3.2.1 of API RP 2D.

(b) The tests must be performed by a "qualified inspector" as the term is

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defined in Section 1.3 of API RP 2D, except that the inspector must be so designated by the person in charge or by the crane's manufacturer.

(c) The results of all operational tests must be recorded in the crane record book in accordance with § 143.423.

§ 143.419 Operation and maintenance.

(a) The person in charge of the OCS facility shall ensure that each crane on the facility is operated and maintained in accordance with Sections 2, 3.3, and 3.4 of API RP 2D, except as otherwise provided in this subpart.

(b) A record of preventive maintenance must be maintained for two years after the maintenance was performed in accordance with Section 3.3.1a of API RP 2D and § 143.425.

§ 143.421 Crane operator designation.

(a) The person in charge of each OCS facility shall ensure that each crane on the facility is operated only by the following persons:

(1) Qualified crane operators designated under this section to operate the crane.

(2) Trainees under the supervision of a qualified crane operator.

(3) Qualified inspectors while conducting inspections or tests under this subpart.

(b) For each crane on the OCS facility, the person in charge of the facility designates as qualified crane operators those persons who, by reason of experience or instruction, are qualified to safely operate the crane. In determining whether a particular person is a qualified crane operator, the person in charge shall consider the recommended qualifications in paragraph (c) of this section.

(c) A person designated as a qualifed crane operator should, at a minimum—

(1) Have been trained in the recommended practices of crane operation in Sections 2 and 3 and Appendix A of API RP 2D;

(2) Meet the recommendations of API RP 2D concerning the physical condition of crane operators;

(3) Have successfully completed a practical written examination pertaining to the operation of the specific type of crane or cranes that the person operates;

(4) Have successfully conducted a minimum of 40 lifts under the supervision of a qualified crane operator, involving both loading and offloading between an OCS facility and a vessel; and

(5) Be familiar with the following:

(i) API RP 2D.

(ii) Recommendations of the manufacturer of the specific type of crane that the person operates.

(iii) Dynamic loading.

(iv) Use of rated load charts.

(v) General maintenance and inspection procedures and schedules for the specific type of crane that the person operates.

(vi) All restrictions observed on the OCS facility concerning the use of cranes during helicopter operations.

(vii) All crane signals customarily used on the OCS facility.

(viii) The effects of the environment, such as wind and sea states, on the operation of offshore cranes.

(ix) The use of manufacturer prescribed outriggers or tie-downs on mobile cranes, if applicable.

(x) The regulations relating to offshore cranes in this subpart concerning inspection, testing, operation, operator designation, maintenance, and recordkeeping.

(d) The person in charge shall enter the name of each person designated under paragraph (a)(1) of this section to operate a particular crane in the crane record book for that crane before allowing that person to operate the crane.

§ 143.422 Crane load riggers and signal persons.

(a) The person in charge of each OCS facility shall ensure that each individual acting in the capacity of load rigger and/or signal person meets the following minimum qualifications:

(1) Be a "qualified person" as that term is defined in Section 1.2 of API RP 2D; or

(2) Be a trainee under the direct supervision of a qualified crane load rigger or signal person.

(b) In determining whether a particular person is a qualified crane load rigger or signal person, the person in charge shall consider the minimum recommended skill levels in paragraph (c) of this section.

(c) A person designated as a qualified load rigger or signal person should, at a minimum—

(1) Be proficient in the use of Standard Hand Signals in Figure 2–1 of API RP 2D;

(2) Be aware of the safe operation practices and the restrictions specified in Section 2 of API RP 2D; and

(3) Have successfully conducted a minimum of 20 lifts under the direct supervision of a qualified load rigger or signal person.

§ 143.423 Crane record book.

(a) The person in charge of each OCS facility shall ensure that a crane record book is maintained for each crane on the facility. Information on more than one crane may be combined into a single volume as long as it is clear which crane is being addressed. The crane record book must be kept on the OCS facility or, if the facility is unmanned, either on the facility or on the controlling manned facility in the field area. The person in charge shall make the crane record book available upon request to inspectors under § 143.415(c) and to Coast Guard inspectors.

(b) The crane record book must contain—

(1) Descriptive information which identifies the crane, including the following:

(i) Name of the crane's manufacturer.

(ii) Manufacturer's address.

(iii) Manufacturer's model number.

(iv) Manufacturer's serial number.

(v) Design service temperature.

(2) The name of each qualified crane operator designated under § 143.421 as qualified to operate the crane;

(3) The chart of the rated load for each line reeving configuration at operating radii increments not exceeding five feet or at the corresponding boom angles;

(4) Date and results of each monthly, quarterly, and annual inspection under § 143.415, the name of the person conducting the inspection, and the name of that person's employer or of the organization which that person represents;

(5) Date and results of each operational test under § 143.417, the name of the person performing the test, and the name of the organization which that person represents;

(6) Date of each replacement or renewal of wire rope, hooks, and other load components;

(7) Date and description of each failure of the crane or any component or safety feature of the crane; and

(8) Date and description of each repair or alteration of the crane.

§ 143.425 Certificates and other documents.

(a) The owner of each crane shall ensure that the following documents relating to the crane are maintained as part of, or at the same location as, the crane record book:

(1) Letters of authorization to deviate under § 143.405.

(2) Certificates of approval issued under §§ 143.409 and 143.411.

(3) Written statements by crane manufacturers and other documents described in §§ 143.407(b) and 143.413(b).

(4) Maintenance records under § 143.419(b).

(b) The person in charge shall make the documents under this section available upon request to inspectors under § 143.415(c) or to Coast Guard inspectors.

SUBCHAPTER NN—DEEPWATER PORTS

PART 149—DESIGN, CONSTRUCTION, AND EQUIPMENT

6. The authority citation for Part 149 is revised to read as follows:

Authority: 33 U.S.C. 1504(a), (b); 49 CFR 1.46(s).

7. By adding new § 149.219 to read as follows:

§ 149.219 Cranes.

(a) This section applies to all cranes and crane operations on each deepwater port, except to auxiliary hoisting mechanisms, such as diving bell or air hoists, which function as part of an industrial system.

(b) All cranes and crane operations are subject to the same requirements, including those relating to design, marking, certification, inspection, testing, operation, maintenance, operator designation, and recordkeeping, as are prescribed for cranes and crane operations on Outer Continental Shelf facilities under Subpart E of Part 143 of this chapter.

(c) For the purposes of this section, reference in Subpart E of Part 143 of this chapter to—

(1) "OCS facility" means "deepwater port" as defined in § 148.3 of this chapter; and

(2) "Person in charge" means the Port Superintendent of a deepwater port.

Title 46—[Amended]

CHAPTER I—[AMENDED]

SUBCHAPTER I-A—MOBILE OFFSHORE DRILLING UNITS

PART 107—INSPECTION AND CERTIFICATION

8. The authority citation for Part 107 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356(a)(2); § 107.05 also issued under 44 U.S.C. 3507, 49 CFR 1.45; § 107.258 also issued under 46 U.S.C. 3316; 49 CFR 1.46(b), (n)(6), (z).

9. By adding in alphabetical order in § 107.111 a definition for the term "crane" to read as follows:

§ 107.111 Definitions.

As used in this subchapter:

* * * * *

"Crane" means a powered machine, either fixed or mobile, designed primarily to raise, lower, and shift loads; but the term does not include auxiliary hoisting mechanisms, such as drawworks, blowout preventer gantry cranes, diving bell hoists, and air hoists, which function as part of an industrial system.

* * * * *

10. By revising § 107.115 to read as follows:

§ 107.115 Incorporation by reference.

(a) In this subchapter, portions or the entire text of certain standards and specifications are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. Unless specifically limited, modified, or replaced by the regulations, these standards and specifications requirements specifically referred to in this subchapter are the governing requirements for the subject matters covered and are mandatory, regardless of the use in the incorporated material of "should" or other discretionary terminology.

(b) These materials are incorporated into this subchapter under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table are found citations to the particular sections of this subchapter where the material is incorporated. To enforce an edition other than one listed in this subchapter, notice of the change must be published in the Federal Register and the material made available. All approved material is on file at the Office of the Federal Register, Washington, D.C. 20408 and at U.S. Coast Guard Headquarters, Room 1404, 2100 Second Street, SW., Washington, D.C. 20593. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) These materials are available from the appropriate organization at the following address:

(1) American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, New Jersey 07652.

(2) American National Standards Institute (ANSI), American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.

(3) American Petroleum Institute (API), Production Department, 211 North Ervay, Suite 1700, Dallas, Texas 75201.

(4) International Cargo Gear Bureau (ICGB), 17 Battery Place, New York, New York 10004.

(5) National Fire Protection Association (NFPA), 470 Atlantic Avenue, Boston, Massachusetts 02210.

(6) Underwriters Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062.

11. By adding a new § 107.116 to read as follows:

§ 107.116 Authorization to deviate for requirements for cranes.

(a) The Officer in Charge, Marine Inspection (OCMI), of the Marine Inspection Zone in which the unit is located may, upon request, authorize deviations from provisions of this subchapter or of the material incorporated by reference under § 107.115, which relate to cranes.

(b) A request for authorization to deviate must be in writing, state the need for the deviation, and describe the proposed alternative.

(c) If the OCMI finds that the requested alternative provides a level of safety generally equivalent to or greater than that provided under this subchapter, the OCMI issues to the requesting party a letter evidencing the authorization.

(d) Letters of authorization to deviate must be maintained in accordance with § 109.439 of this chapter.

12. By revising paragraph (o) of § 107.231 to read as follows:

§ 107.231 Inspection for certification.

* * * * * *

(o) Each crane is inspected and tested in accordance with §§ 107.258 and 107.259.

* * * * * *

13. By revising §§ 107.258, 107.259, and 107.260 to read as follows:

§ 107.258 Crane inspection.

(a) The person in charge of each unit shall ensure that, for each crane on the unit, the items listed in Sections 3.1.2, 3.1.3, 3.1.5a, 3.4., and 3.5 and Appendix B of American Petroleum Institute Recommended Practice for Operation and Maintenance of Offshore Cranes, API RP 2D, Second Edition, June 1984, are inspected at the intervals described in those sections. These inspections must be conducted by a "qualified inspector" as the term is defined in Section 1.3 of API RP 2D; except that the inspector must be so designated by the person in charge.

(b) The person in charge shall ensure that, for each crane on the unit, the items listed in Sections 3.1.4 of API RP 2D are inspected upon initial installation and at intervals not exceeding 12 months by an inspector from the Coast Guard or from one of the crane approval

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authorities listed in § 108.604(a) of this chapter. Each inspector from a crane approval authority must be a "qualified inspector" as defined in Section 1.3 of API RP 2D.

(c) Upon request by an inspector under paragraphs (a) and (b) of this section, the person in charge shall provide the inspector with the crane record book and other documents under §§ 109.437 and 109.439 of this chapter for the crane being inspected.

(d) Before the crane is returned to use on a unit, each deficiency which constitutes a hazard must be—

(1) Corrected; and

(2) Reinspected by an inspector of the organization which noted the deficiency.

(e) A record of each monthly, quarterly, and annual inspection conducted under this section must be maintained in accordance with § 109.437 of this chapter. Daily inspections need not be logged.

§ 107.259 Crane operational tests.

(a) The person in charge of each unit shall ensure that each crane on the unit is operationally tested in accordance with Section 3.2.1 of API RP 2D.

(b) The tests must be performed by a "qualified inspector" as the term is defined in Section 1.3 of API RP 2D, except that the inspector must be so designated by the person in charge or by the crane's manufacturer.

(c) The results of all operational tests must be recorded in the crane record book in accordance with § 109.437 of this chapter

§ 107.260 Crane load tests.

(a) Load tests under this section consist of both proof loading the crane and examining it for defects.

(b) When performed under this section, proof loading and non-destructive testing must be witnessed by, and examinations conducted by, an inspector of the Coast Guard or of a crane approval authority listed in § 108.604(a) of this chapter.

(c) The person in charge of each unit shall ensure that each crane on the unit is load tested in accordance with this section—

(1) when the crane is installed;

(2) Every four years, except when non-destructive testing of all critical components, as defined in Appendix B to the American Petroleum Institute Specification for Offshore Cranes, API Spec. 2C, Third Edition, March 1983, is conducted in accordance with paragraph (d) of this section; and

(3) Except as provided for under paragraph (e) of this section, after any critical component, as defined in Appendix B to API Spec. 2C, is altered, repaired, or replaced and before the crane is returned to use on the unit.

(d) Non-destructive testing instead of proof loading may be conducted every four years on all critical components. The test procedure must be acceptable to the inspector under paragraph (d) of this section who witnesses the testing.

(e) For components under paragraph (c)(3) of this section, non-destructive testing may be conducted on the components involved, instead of proof loading the crane.

(f) Except for the proof loads specified for certain cranes under paragraph (g) of this section, each crane, when load tested under this section, must be tested as normally rigged with the proof load listed in Table 107.260. Proof must be suspended from the main hoist line at both the maximum and minimum boom angles normally used in material transfers over the side of the unit. If the load test is being performed as a result of component repair, alteration, or replacement under paragraph (c)(3) of this section, the boom angle to be used must be the one which places the greatest stress on the component repaired, altered, or replaced. The weight of the hook, hook blocks, slings, and other rigging, with the exception of the hoist line, is considered part of the proof load. The static rated load of a crane varies with boom angle and radius; thus, the proof load for each lift must be determined using the crane's rated load chart and the boom angle and radius of the lift.

TABLE 107.260

Static rated load of assembled gear (ton = 2240 pounds)	Proof load
Less than or equal to 20 tons	25 pct. in excess.
Greater than 20 tons but less than or equal to 50 tons	5 tons in excess.
Greater than 50 tons	10 pct. in excess.

(g) For cranes with relief valves or current limiting devices which prevent the crane from lifting the proof loads specified in paragraph (f) of this section, the greatest proof load that can be lifted in excess of the static rated load without bypassing or adjusting the valves or devices must be used.

(h) Upon completion of the proof loading portion of the load test, all component parts of the crane must be given a thorough visual examination, supplemented as necessary by other means, such as a hammer test or testing with electronic or ultrasonic devices, to check for parts which are damaged, deformed, or otherwise rendered unsafe for further use. Dismantling or disassembling of the crane may be required to the extent necessary to conduct this examination. If parts are found defective, they must be replaced and the crane retested before being returned to use on a unit.

(i) The crane's owner must arrange for all equipment, test instruments, and personnel necessary for conducting the proof loading and non-destructive testing required by this section.

(j) A record of each load test and each non-destructive test under this section must be maintained in the crane record book in accordance with § 109.437 of this chapter.

14. By revising paragraph (o) of § 107.305 to read as follows:

§ 107.305 Plans and information.

* * * * *

(o) Arrangement of cranes and detailed drawings of crane foundations and substructures with calculations showing that these foundations and substructures are adequate for their intended purpose.

* * * * *

§ 107.309 [Removed]

15. By removing § 107.209, *Crane plans and information.*

16. By revising the introductory text and paragraph (c) and removing the note to paragraph (c) of § 107.317 to read as follows:

§ 107.317 Addresses for submittal of plans, specifications, and calculations.

The copies of each plan, drawing, specification, and calculation required under §§ 107.305, 108.605, and 108.607 of this chapter must be submitted to one of the following, as applicable:

* * * * *

(c) The American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, NJ 07652, or other similar classification society accepted by the Commandant.

* * * * *

PART 108—DESIGN AND EQUIPMENT

17. The authority citation for Part 108 is revised to read as follows and all section authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 43 U.S.C. 1333(d)(1), 1347(c) 1356(a)(2); 49 CFR 1.46(b), (n)(6), (z).

18. By revising § 108.601 to read as follows:

§ 108.601 Crane design and performance standards.

The owner of each crane shall ensure that the crane—

(a) Conforms to the performance standards in American Petroleum Institute Specification for Offshore Cranes, API Spec. 2C, Third Edition, March 1983;

(b) Has control instruments which are illuminated by built in lighting or interior cab lighting;

(c) Does not have fuel tank fills and overflows that run onto engine exhausts;

(d) Has no gasoline engines;

(e) Has a functional load indicating device; and

(f) If the crane is located in or can enter hazardous areas, as defined in § 111.105–33 of this chapter, the crane must meet the requirements in Subpart 111.107 of Part 107 of this chapter applicable to the crane's electrical equipment.

19. By adding new §§ 108.603, 108.604, 108.605, 108.607, and 108.609, under the centerheading "cranes", to read as follows:

§ 108.603 Evidence of conformance to standards.

(a) As evidence of conformance to the standards in API Spec. 2C, each crane, other than one exempted under § 108.601(c), must—

(1) Have a nameplate as specified under Section 15.1 of API Spec. 2C containing all of the information called for on the nameplate illustrated in that section;

(2) Be approved under § 108.604; or

(3) Be certified by the manufacturer to be a duplicate of a crane previously approved under § 108.604.

(b) If the crane is a duplicate of one already approved under § 108.604, the following documents must be maintained in accordance with § 109.439 of this chapter:

(1) A copy of the certificate of approval issued for the previously approved crane.

(2) A statement from the crane's manufacturer certifying that the crane is a duplicate of the crane described in the certificate of approval under paragraph (b)(1) of this section.

§ 108.604 Crane approval.

(a) Approval of a crane as conforming to the standards in API Spec. 2C, as provided in § 108.603(a)(2), must be obtained from one of the following crane approval authorities:

(1) American Bureau of Shipping (ABS), 45 Eisenhower Drive, Paramus, NJ 07652, or other similar classification society accepted by the Commandant.

(2) International Cargo Gear Bureau, Inc. (ICGB), 17 Battery Place, New York, NY 10004.

(b) Requests for approval must be submitted in writing and contain the following items which relate to the crane:

(1) Stress and arrangement diagrams, bills of materials, and supporting calculations for all critical components as the term "critical component" is defined in Appendix B of API Spec. 2C.

(2) Drawings of the means provided to stop motion and set brakes during a power failure.

(c) If, upon review of the items submitted, the approval authority determines that the crane conforms to the standards in API Spec. 2C and the requirements of § 108.601, the authority issues a certificate of approval to the requesting party along with one copy of the items submitted stamped "APPROVED".

(d) Certificates of approval must be maintained in accordance with § 109.439 of this chapter.

§ 108.605 Additional equipment and installation requirements for cranes.

(a) In addition to the requirements in § 108.601, the owner of each crane shall ensure that the crane conforms to the requirements in this section.

(b) Electrical systems must meet Subpart 111.01 and §§ 111.05–3, 111.05–7, 111.05–11, 111.50–3(b), 111.50–3(g), and 111.50–3(h) of this chapter.

(c) Hydraulic or pneumatic power and control systems considered fail-safe must meet § 58.30–50 of this chapter. Systems not considered fail-safe must meet §§ 58.30–5, 58.30–10, 58.30–15, 58.30–17, 58.30–20, 58.30–25, 58.30–30, 58.30–35, and 58.30–40 of this chapter. A system is considered fail-safe if a component failure will result in a slow and controlled release (or, for personnel handling cranes, where a component failure will result in a slow and controlled stop) of the load so as not to endanger personnel.

(d) Supporting structures and stiffeners under and adjacent to cranes must be adequate for the loads and allowable unit stresses contained in Section 3 of API Spec. 2C.

(e) As evidence of conformance to the requirements in paragraphs (b), (c), and (d) of this section, the following plans and specifications must be approved by one of the crane approval authorities listed in § 108.604(a), or certified by a U.S. registered professional engineer, as conforming to the requirements of this section:

(1) One line diagrams of the electrical power systems showing overcurrent protection.

(2) Schematic diagrams of the electrical control systems with a written description of the sequence of events.

(3) Diagrams of the hydraulic or pneumatic power and control systems, as applicable under paragraph (b) of this section.

(4) Details of crane supporting structures.

(5) General arrangement diagram showing crane installation on the unit.

(f) The standards used (e.g., National Electrical Code, Classification Society Rules, etc.) must be indicated on the plans and specifications submitted under paragraph (e) of this section.

(g) Each diagram and analysis must be marked to indicate approval or certification.

(h) If the plans and specifications are certified by a U.S. rgistered professional engineer, three certified copies of each plan and specification must be submitted to the Coast Guard at the appropriate address under § 107.317 of this chapter.

(i) One approved or certified copy of each set of plans and specifications submitted under paragraph (e) of this section must be maintained on the unit in accordance with § 109.429 of this chapter.

§ 108.607 Alteration of cranes and approval of alterations.

(a) Any alteration to a crane must meet the requirements of §§ 108.601 and 108.605, applicable to the altered component, before the crane is again put into operation on a unit.

(b) Plans and specifications of the alteration must be—

(1) Approved as meeting the requirements of paragraph (a) of this section by one of the crane approval authorities listed under § 108.604(a); or

(2) Be certified as meeting the requirements of paragraph (a) of this section by a U.S. registered professional engineer, in which case the certification must appear on all diagrams and analyses and be submitted under § 107.317 of this chapter.

(c) Requests for approval must be submitted in writing and need contain only the items listed in §§ 108.604(b) or 108.605(e), as applicable.

(d) If, upon review of the items submitted, the approval authority determines that the alteration conforms to the requirements of this section, the authority issues a certificate of approval to the requesting party along with one copy of the items submitted stamped "APPROVED".

(e) Certificates of approval must be maintained in accordance with § 109.439 of this chapter.

§ 108.609 Mobile crane rating.

(a) Except for mobile cranes which were contracted for construction, under construction, or located on a unit before [the effective date of final regulations], mobile cranes must be rated so that, with the crane in the least stable horizontal position with regard to

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tipping, the crane does not tip when a load equal to 1.5 times the rated load is applied along the hoist line. This requirement is in addition to the specifications in API Spec. 2C.

(b) The owner of each mobile crane under this section shall obtain a written statement by the crane's manufacturer certifying that the crane was rated in accordance with paragraph (a) of this section. The statement must be maintained in accordance with § 109.439 of this chapter.

PART 109—OPERATIONS

20. The authority citation for Part 109 is revised to read as follows and all section authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 43 U.S.C. 1333(d)(1), 1347(c); §§ 109.411 and 109.413 also issued under 46 U.S.C. 6101; § 109.431 also issued under 46 U.S.C. 10104; 49 CFR 1.46 (b), (n)(6), (z).

21. By revising §§ 109.437 and 109.439 to read as follows:

§ 109.437 Crane record book.

(a) The person in charge of each unit shall ensure that a crane record book, for each crane on the unit, is kept on board the unit. Information on more than one crane may be combined into a single volume as long as it is clear which crane is being addressed. The person in charge shall make the crane record book available upon request to inspectors under § 107.258(c) of this chapter and to Coast Guard inspectors.

(b) The crane record book must contain—

(1) Descriptive information which identifies the crane, including the following:

(i) Name of the crane's manufacturer.

(ii) Manufacturer's address.

(iii) Manufacturer's model number.

(iv) Manufacturer's serial number.

(v) Design service temperature.

(2) The name of each qualified crane operator designated under § 109.527 as qualified to operate the crane;

(3) The chart of the rated load for each line reeving configuration at operating radii increments not exceeding five feet or at the corresponding boom angles;

(4) Date and results of each monthly, quarterly, and annual inspection under §107.258 of this chapter, the name of the person conducting the inspection, and the name of that person's employer or of the organization which that person represents;

(5) Date and results of each operational test, load test, or non-destructive testing under §§ 107.259 and 107.260 of this chapter, the name of the person witnessing the proof loading on non-destructive testing and conducting the examination or inspection, and the name of the organization which that person represents;

(6) Date of each replacement or renewal of wire rope, hooks, and other load components;

(7) Date and description of each failure of the crane or any component or safety feature of the crane; and

(8) Date and description of each repair or alteration of the crane.

§ 109.439 Crane certificates and other documents.

(a) The owner of each crane shall ensure that the following documents relating to the crane are maintained as part of, or in the same location as, the crane record book:

(1) Letters of authorization to deviate under §107.116 of this chapter.

(2) Certificates of approval issued under §§ 108.604 and 108.607 of this chapter.

(3) Written statements by crane manufacturers and other documents described in §§ 108.603(b) and 108.609(b) of this chapter.

(4) Maintenance records under § 109.521(b).

(5) Plans and specifications under §108.605(i) of this chapter.

(b) The person in charge shall make the documents under this section available upon request to inspectors under §107.258(c) of this chapter and to Coast Guard inspectors.

22. By revising §109.521 as follows:

§ 109.521 Cranes: Operation and maintenance.

(a) The person in charge of the unit shall ensure that each crane on the unit is operated and maintained in accordance with Sections 2, 3.3, and 3.4 of American Petroleum Institute Recommended Practice for Operation and Maintenance of Offshore Cranes, API RP 2D, Second Edition, June 1984, except as provided in this subchapter.

(b) A record of preventive maintenance must be maintained for two years after the maintenance was performed in accordance with Section 3.3.1a of API RP 2D and § 109.439.

§ 109.525 [Removed]

23. By removing §109.525, Cranes Working loads.

24. By revising §109.527 to read as follows:

§109.527 Cranes: Operator designation.

(a) The person in charge of each unit shall ensure that each crane on the unit is operated only by the following persons:

(1) Qualified crane operators designated under this section to operate the crane.

(2) Trainees under the supervision of a qualified crane operator.

(3) Qualified inspectors while conducting inspections or tests under this subchapter.

(b) For each crane on the unit, the person in charge of the unit designates as qualified crane operators those persons who, by reason of experience or instruction, are qualified to safely operate the crane. In determining whether a particular person is a qualified crane operator, the person in charge shall consider the recommended qualifications in paragraph (c) of this section.

(c) A person designated as a qualified crane operator should, at a minimum—

(1) Have been trained in the recommended practices of crane operation in Sections 2 and 3 and Appendix A of API RP 2D;

(2) Meet the recommendations of API RP 2D concerning the physical condition of crane operators;

(3) Have successfully completed a practical written examination pertaining to the operation of the specific type of crane or cranes that the person operates;

(4) Have successfully conducted a minimum of 40 lifts under the supervision of a qualified crane operator, involving both loading and offloading between a unit and a vessel; and

(5) Be familiar with the following:

(i) API RP 2D.

(ii) Recommendations of the manufacturer of the specific type of crane that the person operates.

(iii) Dynamic loading.

(iv) Use of rated load charts.

(v) General maintenance and inspection procedures and schedules for the specific type of crane that the person operates.

(vi) All restrictions observed on the unit concerning the use of cranes during helicopter operations.

(vii) All crane signals customarily used on the unit.

(viii) The effects of the environment, such as wind and sea states, on the operation of offshore cranes.

(ix) The use of manufacturer prescribed outriggers or tie-downs on mobile cranes, if applicable.

(x) The regulations relating to offshore cranes in this subchapter concerning inspection, testing, operation, operator designation, maintenance, and recordkeeping.

(d) The person in charge shall enter the name of each person designated under paragraph (a)(1) of this section to operate a particular crane in the crane record book for that crane before

allowing that person to operate the crane.

25. By adding new § 109.528 as follows:

§ 109.528 Crane load riggers and signal persons.

(a) The person in charge of each unit shall ensure that each individual acting in the capacity of load rigger and/or signal person meets the following minimum qualification:

(1) Be a "qualified person" as that term is defined in Section 1.2 of API RP 2D; or

(2) Be a trainee under the supervision of a qualified crane load rigger or signal person.

(b) In determining whether a particular person is a qualified crane load rigger or signal person, the person in charge shall consider the minimum recommended skill levels in paragraph (c) of this section.

(c) A person designated as a qualified load rigger or signal person should, at a minimum—

(1) Be proficient in the use of Standard Hand Signals in Figure 2–1 of API RP 2D;

(2) Be aware of the safe operation practices and the restrictions specified in Section 2 of API RP 2D; and

(3) Have successfully conducted a minimum of 20 lifts under the supervision of a qualified load rigger or signal person.

Dated: February 10, 1986.

J.W. Kime,

Rear Admiral (Lower Half) U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-3214 Filed 2-13-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[Docket No. DCO-A-4-FRL-2943-4]

Air Quality Implementation Plans; State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Florida

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed rule.

SUMMARY: The EPA gives notice that the proposed approval of the Arnold Cellophane Delayed Compliance Order (DCO) has been withdrawn. On October 9, 1984 (49 FR 39583), EPA proposed approval of a Delayed Compliance Order (DCO) for Arnold Cellophane Corp., located in Miami, Florida. Upon further EPA review of the DCO and the Florida regulations, it was determined that the Order does not meet the Clean Air Act (CAA) section 113(d)(1)(D) requirements, and Agency policy, as stated in Courtney Price's February 12, 1985, memorandum, "Enforcement of VOC Limits Under the CAA." This memo states that DCOs and Consent Decrees must require final compliance consistent with the relevant State Implementation Plan (SIP). This action is taken without prior proposal because it is noncontroversial and EPA anticipates no comments on it.

DATE: The proposed rule was withdrawn on February 14, 1985.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Compliance Branch, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Mark Armentrout, Air Compliance Branch, Region IV, EPA, at 345 Courtland St. NE., Atlanta, Georgia 30365 and phone 404/881-7854 or FTS 257-7654.

SUPPLEMENTARY INFORMATION: The Arnold Cellophane Order allowed final compliance to be determined by averaging VOC emissions across like (paper coating) lines. The paper coating regulation contained in the Florida SIP requires line-by-line compliance. Because the Order is contrary to the SIP, the DCO cannot be approved and is withdrawn. However, Arnold Cellophane has proceeded to attempt compliance on a line-by-line basis using low solvent technology.

For more information on the specifics of the proposed Order, see the proposed rule published on October 9, 1984 (49 FR 39583).

Authority: 42 U.S.C. 7413, 7601.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: January 9, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 86-3278 Filed 2-13-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 264 and 270

[SW-FRL-2970-4]

Availability and Opportunity To Comment on Technical Guidance for Ground-Water Analysis

AGENCY: Environmental Protection Agency.

ACTION: Availability and opportunity to comment.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) is preparing to propose changes to its regulations requiring the analysis of ground water for hazardous constituents at hazardous waste management facilities under the Resource Conservation and Recovery Act (RCRA). The notice also announces that EPA has issued new interim guidance on these requirements. EPA is inviting the public to comment on the technical aspects of the new guidance. EPA will use the comments to refine both the rulemaking proposal and the interim guidance.

DATES: EPA is requesting that comments be submitted by March 17, 1986.

ADDRESS: Comments should be submitted to the RCRA Docket Section (WH-562), Room SE212, U.S. EPA, 401 M Street, SW., Washington, DC 20460 (Attention: Docket No. 14002-68-2).

FOR FURTHER INFORMATION CONTACT: For a copy of the guidance contact the RCRA Hotline, toll-free (800) 424-9346; in Washington, DC 382-3000. For information about the project, contact either the Hotline or Dr. Robert April, Office of Solid Waste, WH-565E, U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-4654.

SUPPLEMENTARY INFORMATION: In 1982 EPA promulgated regulations under RCRA for the issuance of permits to land-based hazardous waste facilities. (47 FR 32274; July 19, 1982). Regulations codified in 40 CFR Parts 264 and 270 require some owners and operators to analyze ground water for each of the approximately 375 hazardous constituents listed in Appendix VIII to 40 CFR Part 261. Attempts to implement the rules have shown that it is not possible to analyze ground water for all of these constituents. This notice announces the availability of a new interim guidance document presenting the Agency's latest views on the analytical potential of the Appendix VIII constituents, and invites the public to comment on these views. EPA will consider the comments in the context of rulemaking efforts to review the ground-water analysis requirements, and may

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also use the comments to revise the new interim guidance. As discussed below in more detail, EPA believes that the changes recommended in the guidance will not reduce environmental protection, since the recommended ground-water monitoring will continue to adequately identify any contamination.

I. Background

EPA promulgated Appendix VIII in 1980 to identify a broad range of chemicals that should be considered for regulation under the RCRA hazardous waste program. (45 FR 33084; May 19, 1980). EPA used the list primarily to assist in identifying substances that should be listed as hazardous wastes. In 1982, however, EPA adopted the same list as an important element in its ground-water protection regulations for land-based hazardous waste facilities. (47 FR 32774; July 26, 1982). Under some circumstances, these rules require owners and operators to analyze ground water for each constituent on the Appendix VIII list.

When it promulgated these rules, EPA acknowledged that it lacked methods for analyzing ground water for nine of the Appendix VIII constituents. (47 FR 32296: July 26, 1982). However, subsequent attempts to implement the regulation ahve shown that analysis would be difficult or impossible for a larger number of constituents. Since it is impossible to analyze for all constituents, facility owners and operators have submitted a variety of analytical schemes purporting to be an "Appendix VIII analysis." Analytical laboratories have provided data they may have felt to be of dubious rellability to try to cover as much of Appendix VIII as conceptually possible. Moreover, analysis for a number of constituents, particularly those lacking standardized test methods, is very difficult and time-consuming.

To respond to these problems, EPA issued a guidance memorandum recommending the use of enforcement discretion. See "Enforcing Ground-Water Monitoring Requirements in RCRA Part B Permit Applications," from Courtney Price and Lee Thomas, August 16, 1984. Also, in 1984 EPA proposed to eliminate from the ground-water analysis requirements 22 Appendix VIII constituents for which it believed analysis was impossible. (47 FR 38786; October 1, 1984).

In the spring of 1985 EPA organized an Agency working group to re-examine the suitability of using Appendix VIII to define ground-water monitoring requirements and to develop a new proposal for regulatory revisions. Based on this group's early efforts, EPA expects to propose to exclude more constituents from the analytical requirements on the basis of the technical limitations of ground-water analysis. EPA will propose changes as soon as possible, but believes that it will take several months. A number of additional months will be required to promulgate final rules.

The working group is also considering broader issues that may affect the number of constituents that should be analyzed routinely at all facilities. Based on this work group, EPA may propose to delete additional constituents. The Agency may also propose to add new constituents to the ground-water monitoring requirements. EPA currently plans to propose and promulgate these additional changes at a later date.

II. New Interim Guidance

In November 1984, Congress comprehensively amended RCRA. One of these new amendments requires EPA to take final action on all permits for land-based hazardous waste facilities by November 1988. Section 3005(c). The 1982 regulations for land-based facilities require some owners or operators to analyze for each Appendix VIII constituent as part of their permit applications. See 40 CFR 270.14(c)(4), (6), (8). This is impossible to do. Also, the number of laboratories capable of testing for each Appendix VIII constituent for which analysis is conceptually possible is limited. Requiring broad Appendix VIII analyses for all facilities required to meet these regulations will slow all permits. Ultimately, EPA will almost certainly miss the final deadline for permitting for some facilities. Moreover, in some cases, cleanup of hazardous releases under the new provisions for "corrective action" would be postponed. EPA's goal is to facilitate environmental protection by issuing permits and implementing corrective action as quickly as possible. Consequently, EPA believes it necessary to provide new interim guidance to expedite permit issuance while it pursues regulatory changes.

The new interim guidance document advises EPA permit writers that they may exercise discretion in requiring Appendix VIII analysis under the waiver authority for permit applications in 40 CFR 270.14(a), where analysis would be impossible or so time-consuming as to interfere with the statutory permit deadline or the timely initiation of corrective action.

The guidance also advises permit writers that, if they grant waivers for any Appendix VIII constituents, they must also write permit conditions that will "reopen" the waivers when EPA completes the first stage of its Appendix VIII rulemaking. If the final rule requires analysis of any constituent that the permit writer had waived, the condition would authorize EPA to modify the permit to require owners and operators to test for those constituents as soon as possible.

The guidance document also contains the Agency's latest recommendations on the analytical potential of each Appendix VIII constituent. These recommendations are the product of an intensive four-day working session held December 10–13, 1985, and attended by experts from EPA and State environmental agencies. These experts concluded that use of the Appendix VIII list for ground-water monitoring poses a number of technical problems. Some Appendix VIII listings are for inorganic chemicals which dissociate into ions in water, while others are chemicals which readily react with water and decompose. Analyzing for these constituents as listed would be impossible. Insisting on analysis would make it impossible for owners and operators ever to complete their permit applications. The guidance recommends waiving analysis for the unstable compounds and analyzing for the most significant ions produced by ionic compounds.

Some Appendix VIII listings are actually large or indeterminant groups of chemicals. Requiring analysis for each member of the group would be time-consuming or impossible. In all such cases, the guidance recommends suitable group members to represent each group. Finally, experience has shown that, for a variety of reasons, some of the Appendix VIII chemicals are not reliably measured by generally applicable analytical methods. Analysis for many of these constituents is conceptually possible, but would require laboratories to perform time-consuming experiments that would produce results only for an individual waste matrix at a single site. Because attempting such analyses could delay the issuance of permits and the initiation of corrective action, the guidance recommends that permit writers exercise discretion, and require such analyses only where the need to try to develop data about one of these constituents outweighs the potential for delay. For example, a facility that produces a compound may have developed a method to analyze for its presence in ground water. Regional Offices might find that this expertise would make analysis feasible within a reasonable time. The experts at the meeting believe that some of the chemicals listed in the guidance would be present at any site contaminated by any Appendix VIII constituent. Thus, no plume of contamination should escape identification and control and there will be no loss of environmental protection.

The guidance concludes with three lists. The first contains constituents from the Appendix VIII list that EPA believes can generally be analyzed at all sites. The second contains 25 other constituents that appear on the Superfund Hazardous Substances List, but do not appear on the Appendix VIII list. EPA recommends that owners or operators of facilities test for all constituents on these two lists. The final list reviews all of the Appendix VIII constituents and notes for specific constituents the specific analytical difficulties that the group of experts identified.

It is important to emphasize that this guidance does not consider factors such as cost, mobility in ground water, or the nature of wastes at particular sites, and that it applies only to ground-water analyses. Furthermore, it is not intended to impact the use of Appendix VIII for other purposes such as listing hazardous waste or requiring corrective action in other environmental media.

III. Request for Comment

EPA is advising its Regional Offices that they may use these recommendations on technical problems to guide the exercise of discretion in applying the permit application requirements. EPA also intends to use these recommendations in the development of its new regulatory proposal. To increase the value of these recommendations, and to expedite the new rule, EPA is announcing that the guidance is available and is requesting comment on the technical issues involved. EPA will consider comments on the technical issues as it develops its new regulatory proposal. EPA may also respond to comments by revising the interim guidance. Comments should be sent to the address given above. Since EPA is trying to publish the proposal as soon as possible, EPA will be able to give most attention to comments submitted in the next 30 days.

Dated: February 7, 1986.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86-3280 Filed 2-13-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 440

[OW-FRL-2970-3]

Ore Mining and Dressing Point Source Category; Gold Placer Mining; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Regulation; Notice of New Information and Request for Comment, and Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of new information, request for comment and extension of comment period.

SUMMARY: EPA has obtained additional data and other information to be used to develop gold placer mining effluent limitations guidelines, and new source performance standards under the authority of the Clean Water Act. EPA requests comments on this new information. In addition EPA is extending the comment period on the November 20, 1985 proposed regulation to close at the same time as the comment period for this notice of new information.

DATES: Comments on this new information and on the proposed regulation must be submitted by April 14, 1986.

ADDRESSES: Send comments to William A. Telliard, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention ITD Docket Clerk. The supporting information and data described in this notice are available for inspection and copying at the following locations:

EPA Public Information Reference Unit, Room 2404 (Rear) PM-213, 401 M Street, SW., Washington, DC 20460
EPA Region X Library, 1200 Sixth Avenue, Seattle, Washington 98101
EPA Alaska Regional Office, Federal Building Room E556, 701 C Street, Anchorage, Alaska 99513
ADEC Northern Regional Office, 675 7th Avenue, Station K, Fairbanks, Alaska 99707

The comments on this notice will be considered in the development of the final effluent limitations guidelines and standards. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Willis E. Umholtz at (202) 382-7191.

SUPPLEMENTARY INFORMATION: EPA proposed effluent limitations guidelines and new source performance standards for the gold placer mining subcategory of the ore mining and dressing point source category on November 20, 1985 (50 FR 47982). In that notice, EPA stated that the comment period on the proposal would close on March 14, 1986. In order to enable the public to review and comment on the additional information described in this notice at the same time it comments on the proposal, EPA is hereby extending the end of the comment period on the November 20th proposal to April 14, 1986. The comment period for the new information described in this notice will also close on April 14, 1986.

A. Method Detection Limit

The limit for settleable solids (SS) in the gold placer mining industry historically has been a controversial issue with resultant litigation between industry and the various regulatory agencies. As the use of settling ponds has increased over the years (in order to comply with NPDES permit limitations, and to meet mining water needs in water short areas), and the design, operation and maintenance of these facilities have continued to improve, it has become apparent that this effluent parameter could be established at a somewhat lower limit than in the past. The NPDES permits issued to Alaska placer miners in 1984 established limits of 0.7 ml/l SS for a monthly average and 1.5 ml/l SS as a daily maximum. These levels, which were set after a review of the 1981, 1982 and 1983 data, were based on averages of all the data available. In the course of preparing the proposed guidelines and standards, the Agency reexamined the same data and determined that a very high percentage of the mines for which it had data could reach 0.2 ml/l SS or less (21 mines) all the time and a large number (107 mines) could reach 0.2 ml/l SS or less part of the time (based on 2610 individual SS tests). This information is in the record for the proposal.

The information indicates that the better designed, operated and maintained settling ponds could attain these lower limits for SS. In addition, EPA contractor field tests in 1984 at a number of different mines confirmed that this same limit (0.2 ml/l or less) was attainable.

In order to verify that this 0.2 ml/l SS limit can be read on a reasonable repeatable basis, and therefore is the appropriate limit to include in the Agency's regulations, the Agency performed a "Method Detection Limit (MDL)" test. The purpose of this test was to determine the lowest level of SS

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that can be read accurately. This test was performed in July 1985 at 10 different mine sites in Alaska utilizing the exact same test procedures at each site.

The test procedures used are described in:

1. "Guidelines Establishing Test Procedures for Analysis of Pollutants under the Clean Water Act," 40 CFR Part 136 (50 FR #694, #696, January 4, 1985).

2. "Definition and Procedures for the Determination Limit," Appendix A, Revision 1–11, prepared by EPA's Office of Research and Development, Environmental Monitoring and Support Laboratory (EMSL), Cincinnati, Ohio.

First, inlet and outlet waters at each mine were tested for SS. Than inlet and outlet waters were blended to form two different test samples. One sample was approximately 0.20 ml/l SS and the other was about 0.10 ml/l SS. Then seven replicates of each of the blends were made an SS tests were performed. At the end of the test period, each replicate of each of the samples was independently read and recorded by the miner, an EPA contractor, and an EPA employee. The same samples were bottled and shipped to the EPA Environmental Laboratory in Cincinnati, Ohio, where the tests were rerun using the same procedures. A statistical analysis of these data resulted in a 0.19 ml/l 95th percentile reproducibility level, which was then rounded off to 0.2 ml/l. In addition, the EPA Headquarters' Analysis and Evaluation Division analyzed the same field data, and derived the same reproducibility level.

The reproducibility level represents the ultimate confidence level (UCL) in readability for any given data set at a specified percentile. In this case, the 95th percentile was selected. Thus this test indicates that one can reproduce and read the 0.2 ml/l SS limit with confidence of acceptable accuracy 95 percent of the time.

The results of both these test series and additional supporting documents are included in the record for this notice. EPA invites comment on its MDL analysis and how it should be used in setting effluent limitations guidelines and standards.

B. Additional Technical and Economic Data

During the 1985 mining season, in order to broaden its economic and technical data bases, the Agency visited more than 50 mines in Alaska, Washington, Montana, Idaho and Oregon. About a dozen of these mines had been visited in prior years. Agency personnel obtained twenty new mine profile questionnaires during the summer. The Agency also employed an independent Alaska-based contractor to collect additional economic and technical data; he obtained completed questionnaires from 24 mining operations. Five more questionnaires were completed by a group of miners in the McGrath area of Alaska. A total of 49 additional mine profiles and questionnaires were obtained from these various sources during the 1985 season and are included in the record for this notice. The information contained in these questionnaires will be helpful in refining the model mine framework EPA developed to assess the economic impacts of the proposed regulation.

The profile sheets contain information concerning in-place gold values, gold recovery rates, labor costs, equipment usage and costs, settling pond construction and maintenance costs and other topics relevant to the economics of gold placer mining. Mine sizes represented range from very small (8 to 10,000 cubic yards processed in a season) to quite large (over 200,000 cubic yards processed during a season). Twelve of the 49 mines are located in the lower 48 states and the balance (37 mines) are in Alaska.

The Agency will use this information to reevaluate its previous assumptions concerning average or "typical" assay values (i.e. gold content in ore), types and amounts of heavy equipment in use at mine sites (including age and earth-moving capacities), and especially "auxiliary expense" requirements. The latter refers to such ancillary equipment and cost items as pumps, generators, wiring, controls, camp supplies, freighting, start-up and clean-up, on-site and off-site maintenance, and financing charges. The bulk of these items were not specifically accounted for in the Agency's model mine framework, but were included in the work-up for each model's operating costs by the addition of a generalized "auxiliary expenses" parameter, calculated as 20 percent of the mine's total heavy equipment cost. The Agency intends to use these data to more accurately quantify these costs for the final regulation.

The Agency solicits comments on all of the technical and economic data gathered plus its ultimate use by the Agency in formulating the effluent limitations guidelines and standards.

Dated: February 5, 1986.

Larry Jensen,

Assistant Administrator for Water.

[FR Doc. 86–3279 Filed 2–13–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–58; RM–5033; RM–5093]

FM Broadcast Station in Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotments of Channels 233A and 241A to Tomah, Wisconsin, as that community's second and third FM services, in response to separate requests from Tony J. Trunkel and Phyllis Rice, respectively.

DATES: Comments must be filed on or before March 31, 1986, and reply comments on or before April 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1061, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Tomah, Wisconsin) (MM Docket No. 86–58, RM–5033, RM–5093).

Adopted: January 29, 1986.

Released: February 7, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration two separate petitions for rule making requesting the allotment of Class A channels to Tomah, Wisconsin, as that community's second and third FM service. The first petition, filed by Tony J. Trunkel ("Trunkel"), seeks the allotment of Channel 233A. The second petition filed by Phyllis Rice ("Rice"), licensee of Station WTMB (AM), Tomah, Wisconsin, requests the allotment of Channel 241A. Each petitioner has stated an intention to apply for the respective channel, if allotted.

2. Both channels may be allotted consistent with the Commission's minimum distance separation requirements provided site restrictions are imposed. Channel 233A requires a site restriction of 0.8 kilometers (0.5 miles) east of Tomah to avoid short spacing to Station WIAL–FM, Channel 231, at Eau Clair, Wisconsin, Channel 241A requires a site restriction of 1.1 kilometers (0.7 miles) northeast of the community to avoid short spacing to Station KSAY(FM), Channel 241, Clinton, Iowa.

PART 73—[AMENDED]

3. In view of the fact that the proposed allotments could provide a second and third FM service to Tomah, Wisconsin, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Tomah, Wisconsin	255	233A, 241A, 255

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 31, 1986, and reply comments on or before April 15, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Tony J. Trunkel, RT. 5 Box 286, Tomah, WI 54660 (Petitioner)

James R. Bayes, Anne D. Neal, Wiley & Rein, 1776 K Street, NW., Washington, DC 20006 (Counsel to Phyllis Rice)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86–3261 Filed 2–13–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 392, 393, 394, 395, 396, 397, 398, and 399

[BMCS Docket No. 118]

Motor Carrier Safety Act of 1984; Submission of State Safety Regulations for Review; Analysis

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Announcement of review of State safety regulations.

SUMMARY: This notice requests each State to submit to the Commercial Motor Vehicle Safety Regulatory Review Panel any State law or regulation pertaining to

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commercial motor vehicle safety which may have been enacted or promulgated since the date of the State's last submission. States are also requested to submit an analysis of the stringency of the State laws and regulations relative to the Federal Motor Carrier Safety Regulations. Such analysis of State laws and regulations should be done based on the Federal Motor Carrier Safety Regulations and the State laws and regulations as they are in effect on April 30, 1986.

DATES: States are requested to submit their analyses by June 30, 1986.

ADDRESSES: States are requested to submit their analysis to the Commercial Motor Vehicle Safety Regulatory Review Panel, Bureau of Motor Carrier Safety, Office of the Chief Counsel, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph J. Fulnecky, Bureau of Motor Carrier Safety, (202) 755–1011; or Mr. Thomas P. Holian, Esq., Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Motor Carrier Safety Act of 1984 (the Act) 49 U.S C.A. 2501–2520 (West 1985), calls for the submission of State laws and regulations pertaining to commercial motor vehicle safety to the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) for review. 49 U.S.C.A. 2506 (West 1985). The Safety Panel was established by the Federal Highway Administration (FHWA) on June 18, 1985, pursuant to section 209 of the Act, 49 U.S.C.A. 2508 (West 1985). *See* 50 FR 31452 (1985). Under the provisions of the Act, the Safety Panel will review State laws and regulations, including laws and regulations of political subdivisions of States, to identify those which pertain to commercial motor vehicle safety. The Safety Panel will then analyze and determine their stringency relative to the Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR Parts 390–399 (1985), and make recommendations to the Secretary of Transportation, through the Administrator of the Federal Highway Administration, as to which State laws and regulations should remain in force and effect after October 30, 1989. 49 U.S.C.A 2507 (West 1985). The Secretary will then initiate rulemaking to determine which State laws and regulations may remain in force and effect after October 30, 1989. 49 U.S.C.A. 2507(c) (West 1985. In making these determinations the Secretary is directed to give great weight to the corresponding determination of the Safety Panel. 49 U.S.C.A. 2507(c)(5)(A) (West 1985).

In order to identify which State laws and regulations pertain to commercial motor vehicle safety, the FHWA issued initial guidelines for the submission of State laws and regulations for review under section 207(c) of the Act, 49 U.S.C.A. 2506(c) (West 1985). *See* 50 FR 1243 (1985). *See also* 50 FR 7357 (1985) (public notice of clarification of guidelines to States). In response to this notice, the States submitted copies of their laws and regulations by April 30, 1985. This information is being compiled, indexed, and computerized by a contractor for the FHWA to facilitate the work of the Safety Panel and the agency. The Safety Panel, which will be kept apprised of the progress of this work by the contractor, is scheduled to meet again at the end of June 1986 to consider the work of this contractor. In order to ensure that the compilation of State laws and regulations is as complete as possible, States are reminded that section 207(b) of the Act provides that each State shall send a copy of any State law or regulation enacted or promulgated after April 30, 1985, to the Safety Panel. 49 U.S.C.A. 2506(b) (West 1985). Such laws or regulations may be sent to the Bureau of Motor Carrier Safety of the Federal Highway Administration, U.S. Department of Transportation, at the address given above. Reference should be made to the Docket number indicated above.

In anticipation of the next phase of the Safety Panel's work, *i.e.*, the analysis of the State laws and regulations to determine their stringency relative to the FMCSR, the Safety Panel is requesting States to indicate in writing whether each State law or regulation submitted by it—

(A) Has the same effect as;

(B) Is less stringent than; or

(C) Is additional to or more stringent than;

any provision of the Federal Motor Carrier Safety Regulations. This request is made pursuant to section 207(d) of the Act. 49 U.S.C.A. 2506(d) (West 1985). States are requested to compare the State laws and regulations to the FMCSR as these laws and regulations may exist on April 30, 1986. Under section 206(e) of the Act, if the Department has not issued new regulations pertaining to commercial motor vehicle safety under the authority of section 206 of the Act by April 30, 1986, then the regulations previously issued by the Department pertaining to commercial motor vehicle safety (*i.e.*, the FMCSR) are deemed to be issued under the new Act. 49 U.S.C.A. 2505(e) (West 1985).

Initial guidance for the submittal and analysis of State laws and regulations was published by the FHWA in the **Federal Register** on January 10, 1985. *See* 50 FR 1243 (1985). *See also* 50 FR 7357 (1985) (public notice of clarification of guidelines to States). Particular attention should be paid to Guideline D regarding the analysis of State laws and regulations. That guideline discusses the need for an analysis of both the applicability of any State law or regulation and the relative stringency of that requirement. The guideline further suggested the use of an information matrix chart similar to that produced in the notice for reporting the State's determinations. The States are requested to submit their analyses by June 30, 1986, to the Safety Panel, addressed to the Bureau of Motor Carrier Safety of the Federal Highway Administration, U.S. Department of Transportation, at the address given above and referencing the Docket number indicated above.

Copies of new State laws or regulations submitted to the Safety Panel pursuant to section 207(b) of the Act should be accompanied by a copy of the State's analysis of that law or regulation under section 207(d) of the Act.

Once the Safety Panel has identified which State laws and regulations pertain to commercial motor vehicle safety, and determined the relative stringency of each, it will turn its attention to a closer review of those State laws and regulations determined to be additional to or more stringent than the Federal regulations. This review will be to determine whether, with respect to such additional or more stringent State requirement—

(A) There is no safety benefit associated with such State law or regulation;

(B) Such State law or regulation is incompatible with the Federal regulation; or

(C) Enforcement of such State law or regulation would be an undue burden on interstate commerce.

49 U.S.C.A. 208(b)(2)(B) (West 1985). When the Safety Panel begins this portion of its review, States and other interested parties will be requested to provide their views to the Panel.

Issued on: February 10, 1986.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 86–3341 Filed 2–13–86; 8:45 am]

BILLING CODE 4910–22–M

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Notices

Federal Register
Vol. 51, No. 31
Friday, February 14, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

Special Volunteer Programs, Availability of Funds; Demonstration Grants

The Office of Voluntarism Initiatives of ACTION announces the availability of funds during fiscal year 1986 for a demonstration grant under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1983, as amended (Pub. L. 93–113, Title I, Part C; 42 U.S.C. 4992).

The purpose of this competitive announcement is to identify and support an innovative project that can demonstrate an ability to work with, support, and encourage the development of various volunteer groups and individuals throughout the nation who are working to prevent drug use among youth.

A. Objective

Volunteer Demonstration Projects which address areas of human concern where citizens, as volunteers, can contribute toward the overall health and well-being of their communities. This particular request for applications is designed to fund a national drug information resource center with the demonstrated capability of providing a substantial amount of technical information and assistance both over the phone and in writing to the general public with regard to drug use prevention, especially in areas such as: Volunteer parent, citizen, and youth group development; current pharmacological data on illegal drugs; and conference organizing.

This project must also be capable of identifying volunteer drug use prevention efforts throughout the country, enabling the public to learn of volunteer drug use prevention groups in their own states and/or communities from which they can obtain advice and information.

B. Eligible Applicants

Only applications from private, non-profit incorporated organizations and public agencies will be considered.

C. Available Funds and Scope of the Grant

Up to $225,000 may be available for this grant. The budget period for this demonstration grant begins on April 1, 1986 and ends December 31, 1986. Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for demonstration grants.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants with a demonstrated competence in drug use prevention efforts using volunteers will be given preference. The General Criteria are as follows:

1. Experience in managing a high-volume, toll-free number and responding to large numbers of oral and written inquiries per year in order to give technical assistance and accurate information to the general public regarding the prevention of drug use by youth, expecially in areas such as: Volunteer parent, citizen, and youth group development; current pharmacological information on illegal drugs; the identification of local volunteer groups throughout the country; and organizing drugh use prevention conferences.

2. Evidence of cooperation on the part of a large number of parent, citizen, and youth groups throughout the country willing to serve as volunteer resources in the area of drug use prevention among youth.

3. Promise of developing innovation or knowledge in the area of preventing drug use among youth and demonstrated ability to survey the impact of drug use preventin activities and provide survey results to volunteer organizations.

4. Cabability of proposed staff, including demonstrated achievements in the drug use prevention field and providing technical assistance to volunteer organizations such as parent, citizen, and youth groups.

5. Capability of obtaining support from a broad range of private and public organizations for the volunteer movement which seeks to prevent drug use among the nation's youth.

6. Carefully formulated, time-phased and measurable objectives with feasible methods for meeting those objectives.

7. Feasibility of proposed budget. While applicants are not required to contribute a specific portion of the project's costs, they are encouraged to do so. Applicants capable of such contributions should specify the sources and amounts of non-federal contributions, and the sources and nature of in-kind, non-federal contributions.

8. Plans for becoming self-sufficient following the completion of the project supported by ACTION funds.

E. Application Review Process

ACTION's Office of Voluntarism Initiatives staff, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for Voluntarism Initiatives will make the final selection from among the highest ranked applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the Associate Director for Voluntarism Initiatives, Room 516, 806 Connecticut Avenue, NW., Washington, DC 20525. The deadline for receipt of applications is March 11, 1986. Only those that are received by 5:00 p.m. on this date will be eligible for consideration.

All grant applications must consist of:

a. Application for Federal Assistance (Form A–1017) with narrative budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Articles of incorporation.

d. Proof of non-profit status, which should be made through documentation.

e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.

f. List of sponsor's governing board members and their relationship to the community.

To receive an application form, please call ACTION's Office of Voluntarism Initiatives at (202) 634–9749.

Signed at Washington, DC this 11th day of February 1986.

Donna M. Alvarado,
Director.

[FR Doc. 86–3312 Filed 2–13–86; 8:45 am]
BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting; Committee on Rulemaking

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States, to be held at 2:00 p.m. Friday, March 7, 1986, at the offices of Hughes, Hubbard & Reed, 1201 Pennsylvania Avenue, NW., Suite 300, Washington, DC. The committee will meet to discuss a draft report by Professor William Funk of Lewis and Clark College, Northwestern School of Law, on implementation of the Paperwork Reduction Act of 1980.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the committee before, during or after the meeting.

Contact Persons: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037 (Telephone: (202) 254–7065). Minutes of the meeting will be available on request.

Dated: February 11, 1986.

Richard K. Berg,
General Counsel.

[FR Doc. 86–3287 Filed 2–13–86; 8:45 am]
BILLING CODE 6110–01–M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet in Room 105, National Archives and Records Administration Building, Eighth and Pennsylvania Avenue NW, Washington, DC, on Monday and Tuesday, February 24–25, 1986.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Housing and Urban Development, Treasury, and Transportation; the Director, Office of Administration; the Chairman of the National Trust for Historic Preservation; the Chairman of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; and eight non-Federal members appointed by the President.

The Agenda for the meeting includes the following:

Monday, February 24, 1986
Room 105
Eighth and Pennsylvania Avenue NW
Washington, DC 20408

9:30 a.m.
Call to Order
Chairman's Welcome
Swearing In Ceremony

I. Revision of Section 106 Regulations
II. Report of the 1986 Annual Report Task Force
III. Report of the Executive Director
  A. FY 1986 Appropriations
  B. FY 1987 Budget Request
IV. Report of the General Counsel
  A. Council Regulations Concerning Nondiscrimination on the Basis of Handicaps
V. Report of the Office of Cultural Resource Preservation
  A. Section 106 Status Report
VI. 1986 ICCROM General Assembly
VII. New Business.

DATE: The meeting will begin at (9:30 a.m., Monday, February 24, 1986.

Note.—The meetings of the Council are open to the public. To fecilitate entrance into the National Archives and Records Administration Building, it is recommended that those wishing to attend the meeting call the offices of the Advisory Council on Historic Preservation (202/786–0503) in advance.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW, Suite 809, Washington, DC 20004.

Dated: February 10, 1986.

Robert R. Garvey, Jr.,
Executive Director.

[FR Doc. 86–3282 Filed 2–13–86; 8:45 am]
BILLING CODE 4310–10–M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 7:00 p.m., on March 21, 1986, at the Two Rivers Plaza, 159 Main, Grand Junction, Colorado. The subcommittee will meet to receive information on problems related to Hispanic dropouts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,
Assistant Staff Director for Regional Programs.

[FR Doc. 86–3342 Filed 2–13–86; 8:45 am]
BILLING CODE 6335–01–M

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m. on March 5, 1986 at the Paine-Whitney Gymnasium, Yale University, Tower Parkway, Trophy Room, New Haven, Connecticut. The purpose of the meeting is to review plans for its

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proposed study of affirmative action in the construction industry.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Stewart or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3343 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Connecticut Advisory Committee; Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission originally scheduled for February 19, 1986, convening at 3:00 p.m. and adjourning at 5:00 p.m., at the Yale University, Tower Parkway, Varsity Room, New Haven, Connecticut (FR Doc. 86–1965, Page 3815) has been canceled.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3344 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Education Subcommittee of the Maryland Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 9:00 p.m. on March 6, 1986, at Anne Arundel County Board of Education, 2644 Riva Road, Center 3A, Annapolis, Maryland. The purpose of the subcommittee meeting is to review a transcript of the community forum on equity issues in special education programs in preparation to draft a briefing memorandum on the subject.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lorretta Johnson or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254–6717, (TDD 202/254–5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3345 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Massachusetts Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on February 27, at the U.S. Commission on Civil Rights, 55 Summer Street, 8th Floor, Boston, Massachusetts. The purpose of the meeting is to discuss plans for FY '86 projects and community forums.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Philip Perlmutter or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3346 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Mississippi Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 2:00 p.m., on March 3, 1986, at the Law Center, Conference Room, University of Mississippi, Oxford, Mississippi. The purpose of the meeting is to review the draft memorandum to the Commissioners on equality of municipal services in Tunica, Mississippi.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lewis Westerfield or Bobby Doctor, Director of the Southern Regional Office at (404) 221–4391, (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3347 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

New Hampshire Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on March 20, at McLane, Graf, Raulerson & Middleton, 40 Stark Street, Manchester, New Hampshire. The purpose of the meeting is to make plans for the implementation of the Committee's Elderly and Disabled Voter Access Project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert Wells or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5)

working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3348 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Oklahoma Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 5:00 pm., on March 4, 1986, at Lincoln Plaza, 4345 N. Lincoln Blvd., Seminole Road, Oklahoma City, Oklahoma. The purpose of the meeting is to conduct a community forum on desegregation in the Oklahoma public higher education system.

Persons desiring additional information, or planning a presentation to the Committee, should contact committee Chairperson, Charles L. Fagin or J. Richard Avena, Director of the Southwestern Regional Office at (512)229–5570, (TDD 512/229–5580). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 6, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3349 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on March 19, 1986, at the Gressette Senate Office Building, State Capitol Complex, Room 105, Columbia, South Carolina. The purpose of the meeting is to review community forums on voting rights and develop plans for next year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth Patterson or Bobby Doctor, Director of the Southern Regional Office at (404) 221–4391, (TDD 404/221–4391). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) workings days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3350 Filed 2–13–86; 8:45 am]

BILLING CODE 6335–01–M

Wyoming Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m., on March 1, 1986, at the Casper Public Library, 307 East 2nd Street, Casper, Wyoming. The purpose of the meeting is to plan a community forum on current civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Tolin or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 10, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–3351 Filed 2–3–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison.

SUMMARY: The Communications Committee on the Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on February 21, 1986. The Presidential Board of Advisors was established on August 8, 1985, to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

Time and Place: Friday, February 21, 1986, 2:00 p.m., at the National Alliance of Business, VTW Room, 1771 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATON CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Council, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: February 11, 1986.

Nancy J. Olson,

Director, Office of Business Liaison.

[FR Doc. 86–3354 Filed 2–13–86; 8:45 am]

BILLING CODE 3510–BW–M

Foreign-Trade Zones Board

[Docket No. 4–86]

Proposed Foreign-Trade Zone Washington Dulles International Airport, Virginia; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Washington Dulles Foreign Trade Zone, Inc., a Virginia non-profit corporation affiliated with Fairfax and Loudoun Counties, requesting

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authority to establish a general-purpose foreign-trade zone at the Washington Dulles International Airport, Virginia, within the Washington, DC Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 5, 1986. The applicant is authorized to make this proposal under section 62.1–162 of the Code of Virginia.

The proposed foreign-trade zone would cover 250 acres within the Washington Dulles International Airport Complex, Fairfax and Loudoun Counties, Virginia. The site, located west of the North Service Road, contains several buildings for aircargo activity. United Air Warehousing Associates would be the zone operator.

The application contains evidence of the need for zone services in the area. A number of firms have indicated an interest in using zone procedures for handling products such as electronic and communication equipment, medical devices, sports equipment, specialty educational supplies and photographic equipment. No specific manufacturing approvals are being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 SE. 5th St., Miami, FL 33131; and Colonel Martin W. Walsh, Jr., District Engineer, U.S. Army Engineer District Baltimore, P.O. Box 1715, Baltimore, MD 21203.

As part of its investigation, the examiners committee will hold a public hearing on March 11, 1986, beginning at 9:00 a.m., in Salon B of the Dulles Marriott Hotel, West Service Road, Washington Dulles International Airport.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by March 4. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through April 10, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, DC 20230.

Dated: February 10, 1986.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 86–3291 Filed 2–13–86; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A–351–502]

Antidumping; Fuel Ethanol From Brazil; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that fuel ethanol from Brazil is being, or is likely to be sold in the United States at less than fair value. We also have determined that critical circumstances do not exist. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, the ITC will make a final determination by March 21, 1986.

EFFECTIVE DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp or Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1769 or (202) 377–5332.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The dumping margins range from 17.6 to 298.7 percent, and the weighted-average margins for the two respondents are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On February 25, 1985, we received a petition filed in proper form by the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the domestic producers of fuel ethanol. We were informed, by letter dated March 15, 1985, that the Oil Chemical And Atomic Workers International Union (OCAW) joined the Ad Hoc Committee of Fuel Ethanol Producers as petitioners. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, an U.S. industry. The petitioners also alleged that sales in the home market were made at prices below the cost of production, and that "critical circumstances" exist.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 18, 1985 (50 FR 11748), and notified the ITC of our action.

On April 11, 1985, the ITC found that there is a reasonable indication that imports of fuel ethanol from Brazil are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1678, April 1985).

Based on information obtained in response to preliminary questionnaires, we presented questionnaires to Cooperative Central dos Produtores de Acucare de Acool do Estado de Sao Paulo (COPERSUCAR) and certain of its distiller members and related sugar cane growers and Matarazzo Trading Cia. de Exportacao e. Importacao (Matarazzo), formerly known as Comac Trading, because these companies knew that the merchandise was being sold for export to the United States.

Three independent trading houses, Companhia de Comercio Exterior (I.A.T.), Cotia Comercio Exportacao e. Importacao S.A. (Cotia), and S.A. Costa Pinto Exportacao e. Importacao (Costa Pinto), filed voluntary responses. The responses from Cotia and Costa Pinto were incomplete and, therefore, were not used. I.A.T.'s response, being

complete, was used for purposes of the preliminary determination.

By letter dated June 12, 1985, the petitioners alleged that Interbras, the major trading company selling fuel ethanol to the United States, was reselling the merchandise in the United States at prices which did not cover its costs of acquisition from unrelated suppliers plus the costs incurred in selling the merchandise to the unrelated U.S. purchasers. After careful consideration we initiated an investigation of the facts relating to this allegation. Therefore, we presented Petrobras Comercio International S.A. Interbras (Interbras) with a questionnaire on July 18, 1985. The responses to this questionnaire included information from various entities in the Petrobras corporate family These entities are referred to collectively and separately as P.I.I. throughout this notice.

The preliminary determination was postponed until September 18, 1985 (50 FR 29494, 50 FR 33814) at the request of the petitioners. The preliminary determination was made on September 18, 1985 (50 FR 38871).

On October 7, October 8, 1985, and January 8, 1986, requests were received from respondents requesting that the final determination be postponed until February 7, 1986. the requests were granted on January 13, 1986 (51 FR 2748).

Scope of Investigation

The product covered by this investigation is fuel grade ethyl alcohol (fuel ethanol), currently classifiable in the *Tariff Schedules of the United States Annototed* (TSUSA) under dual item number 427.8800/901.50, as well as that entered as blended ethanol under TSUSA item numbers 430.10, 430.20, and 432.10.

Other blends may be included in the scope of the investigation.

The Department intends to work closely with the U.S. Customs Service to prevent circumvention of our determination through importation of ethanol blends.

We made comparisons on approximately 90 percent of sales of fuel ethanol to the United States during the period of investigation, September 1, 1984, through February 28, 1985.

Fair Value Comparisons

To determine whether sales or the subject merchandise in the United States were made at less than fair value, we compared the United States price with foreign market value as specified below, for P.I.I. and Copersucar.

United States Price

P.I.I.

Based on the allegation that P.I.I. was selling Fuel ethanol at a loss (i.e. at prices which were, after the deduction of all costs incurred in selling the merchandise in the United States, lower than its costs of acquisition from unrelated suppliers), we analyzed P.I.I.'s prices and costs relative to all sales to the United States during the period of investigation. In order to determine whether P.I.I. recovered its acquisition costs, we deducted all costs and expenses incurred in selling the merchandise by Interbras and its U.S. subsidiary, Internor, from the selling price to the first unrelated U.S. purchaser. We made deductions from the selling price for special customs duties, regular customs duties, general selling expenses, insurance, credit costs, storage and handling, commissions, and discounts incurred in the United States. We also deducted operating costs incurred in Brazil, and ocean freight charges. Finally, we made an addition to the selling price to the first unrelated U.S. customer for payments received under the IPI export credit premium program because these payments were directly related to the exportation of the ethanol and because they effectively enhanced the net return to Interbras.

Certain of the costs incurred by P.I.I. were denominated in cruzeiros. For purposes of converting cruzeiro denominated amounts to United States dollar equivalants, we used the certified exchange rate for the date of exportation. We considered these rates as reflecting most accurately the actual costs incurred. All other charges were reported in U.S. dollars. Therefore, no currency conversion was required.

Based on our analysis of all sales by P.I.I. in the U.S. during the period of investigation, we have determined that a substantial portion of those sales were at prices which resulted in substantial losses to P.I.I. relative to its acquisition costs. Normally a determination of whether there are sales at less than fair value focuses on a manufacturer's or producer's sales. However, the law recognizes that where a trading company (middleman) is involved in sales under investigation, that trading company also can be the cause of less than fair value sales. Congress, in the legislative reports to the Trade Agreements Act of 1979, left to this agency the task of establishing a methodology which would accurately capture this "middleman dumping."

We determined whether such "middleman dumping" was occurring by analyzing whether a substantial portion of the trading company's sales to the United States during the period of investigation were at prices substantially below its acquistion costs for the merchandise. We do not believe that an analysis based solely upon whether any sales have been made at prices below acquisition costs by any amount is appropriate here. P.I.I. commingles acquisitions of ethanol (a fungible product) both prior to exportation and between importation and sale in the United States. Thus, they cannot attribute acquisition costs directly to specific sales. Under these circumstances we do not believe it would be reasonable to determine there was "middleman dumping" based on a few sales determined after the fact to be slightly below acquisition cost. Instead, we believe that measurement of the proportion of sales priced below the cost of acquisition as well as the magnitude of the resulting losses on those sales forms an appropriate basis for determining that it was selling the merchandise at less than acquisition cost.

Based on our determination of sales at less than acquisition cost, we have determined that the appropriate level at which to make fair value comparisons is on sales by Interbras and its related U.S. subsidiary, Internor, to the United States. Because all of the U.S. sales by P.I.I. were made after importation, we based United States price on exporter's sales price, in accordance with section 772(c) of the Act. We calculated the exporter's sales price on the basis of ex-tank prices with deductions for the costs indicated above in the discussion of the analysis of sales at less than acquisition costs, with the exception of selling expenses incurred in Brazil which we did not deduct.

Copersucar

As provided for in section 772(b) of the Act, for sales by Copersucar through a trading company other P.I.I., we based United States price on purchase price because Copersucar knew that the fuel ethanol was destined for the United States prior to this sale. The term of sales was ex-tank, therefore, a deduction was made for inland freight.

I.A.T. and Matarazzo

Although we received and verified completed questionnaire responses from I.A.T. and Matarazzo, we did not make fair value comparisons on ethanol sold to the United States through these two companies for purposes of this determination. Matarazzo, despite its original statement to the contrary, now claims that its suppliers knew at the

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time of the sales to Matarazzo that the merchandise was destined for the United States. I.A.T. claims that its suppliers did not know the destination of the ethanol it purchased. However, based on our knowledge of the industry, we have determined that the only export market for fuel grade anhydrous ethanol from Brazil during the period of investigation was the United States. Since I.A.T. and Matarazzo do not sell in the home market, we have determined that their suppliers know or should have known that the anhydrous ethanol was being sold for export to the United States. Therefore, the appropriate level at which to make fair value comparison is sales prices between these companies and their suppliers for United States price and sales between suppliers and suppliers' customers in the home market for foreign market value. However, we do not have information on the suppliers' prices or costs, because in their original responses both trading companies asserted that their suppliers had no knowledge of destination. Since we do not not have a basis for determining United States price or foreign market value for sales of these suppliers to I.A.T. and Matarazzo, we have not calculated margins for these sales. Instead, we are applying the "all others" rate set forth in the "Continuation of Suspension of Liquidation section of this notice from entries of merchandise from these companies.

Foreign Market Value

General

Petitioner's alleged that home market prices of fuel ethanol were made at prices which were below cost of production, in substantial quantities over an extended period of time, and were at prices which do not permit the recovery of costs over a reasonable period.

P.I.I.

For P.I.I. in accordance with section 773(a)(1)(A), we considered home market sales by its parent, Petrobras, because there was a viable home market. P.I.I. claims that due to the nature of price controls in Brazil, the home market sales are inappropriate for use in determining foreign market value. We determined that home market sales could be used since (1) the mere existence of price controls does not invalidate home market prices (see, *Certain Carbon Steel Products from Brazil*, 49 FR 28298), and (2) these home market sales were in the ordinary course of trade of fuel ethenol in Brazil.

We compared P.I.I.'s home market prices to its costs of acquisition plus expenses to determine whether the home market sales were made at prices below costs. Because the formulation of P.I.I.'s home market prices did not account for the total selling, general and administrative expenses incurred on home market sales, we determined that all home market sales were at prices below cost. Therefore, we based foreign market value on constructed value. Since P.I.I.'s general expenses were less than the statutory minimum of 10 percent, we added the statutory minimum to the acquisition costs. Since the actual profit was below the statutory minimum of 8 percent, we added the statutory minimum. There were no packing costs. We made a circumstance of sale adjustment for the I.P.I. credit premium payment in accordance with § 353.15 of our regulations.

Copersucar

For purposes of determining Copersucar's foreign market value, we determined that Copersucar had a sufficient number of home market sales for purposes of our determination. We compared the home market prices to Copersucar's cost of production to determine whether these sales were at prices below the cost of production. Cost of production was based on the costs of materials, fabrication and general expenses. Due to the hyperinflationary nature of the Brazilian economy, comparisons of prices and the cost of production were made on a monthly basis. We found that Copersucar's prices were below the cost of production for a substantial number of sales, over an extended period of time and were at prices which did not permit the recovery of costs over a reasonable period of time. Therefore, we based foreign market value on the constructed value in the month of the sale to the United States. We calculated the constructed value on the basis of the costs of materials and fabrication. Since the actual general expenses exceeded the statutory minimum of 10 percent, we used the actual expenses. Since profit was less than the statutory minimum of 8 percent, we used the statutory minimum. We made adjustments for differences in credit terms and post-sale storage in accordance with §353.15 of our regulations.

Currency Conversions

All transactions involving Copersucar were denominated in cruzeiros. Therefore, no currency conversions were necessary.

For fair value comparisons for P.I.I. involving exporter's sales price, we used the official exchange rate on the date of purchase in the U.S., consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). Therefore, we chose not to follow § 353.56(a)(2) of our regulations which predate the 1984 Act.

Petitioners' Comments

Comment 1: Petitioners contend that the Department should follow the precedent it established in *Color Television Receivers from Korea* in calculating the credit expenses incurred on U.S. sales by P.I.I. Under this approach the credit period is broken into two segments; first, from date of export to date of sale to the unrelated customer in the United States and second, from the time of that sale to receipt of payment from the unrelated customer. Also, the credit costs associated with these segments should be the parent company's cost of short-term credit and the U.S. subsidiary's short-term credit cost, respectively. Finally, the Department must ascertain the actual number of days associated with each segment and not rely on average periods.

DOC Response: For purposes of this final determination we have continued to use the methodology employed in the preliminary determination, and in numerous previous cases, and have included only those credit expenses incurred between the date of sale to the unrelated U.S. customer and payment by that customer.

Comment 2: Petitioners ask that the Department use best information available for determining direct expenses incurred in Brazil on U.S. sales by P.I.I. because the response contained only a lump-sum amount, thus denying the Department an opportunity to judge the completeness and accuracy of the reported costs.

DOC Response: During the verification of the response, we carefully examined all expenses incurred by P.I.I. on its U.S. sales and we have deducted those in our analysis of sales at less than the cost of acquisition.

Comment 3: Petitioners claim that all indirect selling expenses incurred in Brazil should be deducted from the exporter's sales price.

DOC Response: For purposes of this final we have continued to use the methodology employed in the preliminary determination, and in numerous previous cases, and have not deducted selling expenses incurred prior to importation.

Comment 4: Petitioners argue that all cruzeiro-denominated expenses relating to U.S. sales should be converted to dollars at the exchange rates in effect at

the time the expenses are incurred for the analysis of "trading company dumping" as well as for the calculation of exporter's sales prices. Alternatively, if conversions are made as of the date of sale, cruzeiro costs should be adjusted to reflect what cost would have been had it been incurred in the month of the sale.

DOC Response: For all conversions involved in the ESP calculations we used the exchange rate in effect on the date of sale for reasons stated in the "Foreign Market Value" section of this notice. For our "middleman dumping" analysis, we used exchange rates in effect at the time the cost was incurred as most accurately reflecting the true value of money. The use of different exchange rates for the two types of comparisons is appropriate. In trading company dumping analysis we are looking at whether the trading company is covering its cost of acquisition and selling expenses. In exporter's sales price we are deducting charges actually incurred in bringing the merchandise to the U.S. so as to arrive at an ex-tank comparison with foreign market value.

Comment 5: Petitioners argue that because Interbras' subsidary, Interbras Cayman Co., is involved in sales to the U.S. the Department should deduct direct or indirect expenses incurred prior to importation by that subsidiary from exporter's sales price.

DOC Response: See our response to Petitioners' Comment 3.

Comment 6: Petitioners point out that Internor's income statement includes a fund for doubtful accounts and request that a portion of this amount be deducted from exporter's sales prices.

DOC Response: The fund for doubtful accounts was accounted for in the selling, general and administrative expenses of Internor and the appropriate amount was deducted from the selling price in our calculations.

Comment 7: Petitioners claim that the proper basis for the allocation of Internor's general and administrative expenses is sales value, not number of invoices.

DOC Response: We agree that the number of invoices is not an appropriate basis for allocating general and administrative expenses. The Department has applied its usual basis, costs of goods sold, to allocate general and administrative expenses.

Comment 8: Petitioners argue that the Department should reject Interbras/Internor's claim that Petrobras' home market prices, set by the Brazilian National Petroleum Council (CNP), should not be used for foreign market value. Petitioners contend that these sales are at the same level of trade, are made in the ordinary course of trade, and are at quantities similar to Internor's U.S. sales. They argue further that the fact that these prices are set by a state agency does not invalidate the prices.

DOC Response: We agree that the fact that CNP sets than does not invalidate the prices by Petorbras in the home market for use in determining foreign market value. However, since we found that the CNP prices are below Petrobras' costs, we disregarded them.

Comment 9: Petitioners argue that various deductions from the CNP price claimed by Interbras/Internor, including contributions to CNP fund, cannot be allowed. Specifically, petitioners argue that these deductions cannot be treated as circumstance of sale adjustments because they are not directly related to the sales under consideration.

DOC Response: Since we did not base foreign market value on the CNP prices, the issue is moot.

Comment 10: Petitioners contend that a separate margin should not be calculated for Copersucar. Since virtually all of the fuel ethanol sold by Copersucar for export to the United States was sold to Interbras, and since Interbras was selling at less than its acquisition cost plus expenses, the appropriate analysis is at the Interbras level.

DOC Response: We have calculated a separate rate for Copersucar based on its sales to a trading company other than Interbras, because Copersucar knew the destination of the ethanol prior to the sale and because Copersucar filed an adequate response. For Copersucar's sales through Interbras, we did not make fair value comparisons at the Copersucar level.

Comment 11: Petitioners contend that if the Department does calculate a separate margin for Copersucar, the Department does calculate a separate margin for Copersucar, the Department should reconcile the discrepancy between the prices reported by Copersucar and the acquisition costs reported by Interbras.

DOC Response: Since we did not make fair value comparisons on Copersucar's sales through Interbras, the issue is moot.

Comment 12: Petitioners argue that if a separate margin is calculated for Copersucar, the Department should take account of inventory costs incurred prior to the export sale because any ethanol produced above the distilleries' domestic production quotas can only be sold for export. Thus, any inventory expense incurred in the storage of excess production is directly related to export export sales. In addition, any costs incurred between the sale and the date the ethanol leaves the distilleries should also be taken into account.

DOC Response: We disagree that such inventory costs are directly related to U.S. sales because ethanol sold in both markets is drawn from the same inventory. Moreover, production above the quota is not necessarily exported. With regard to the post-sale period, no storage costs were incurred relative to the sale to the sale to the trading company for export to the United States.

Comment 13: Petitioners argue that if a separate margin is calculated for Copersucar, foreign market value should be based on constructed value because of the degree to which Copersucar's home market sales were at prices below the cost of production.

DOC Response: For purposes of our comparison, we determined that Copersucar's home market sales were made over an extended period of time and in substantial quantities at prices which did not permit recovery of all costs within a reasonable period of time. Therefore, we based foreign market value on constructed value.

Comment 14: Petitioners argue that the Department should properly match contemporaneous costs and prices in the context of Brazil's hyper-inflationary economy.

DOC Response: We agree. In the analysis of sales below cost of production, the Department followed its usual practice in hyper-inflationary economies and compared prices in each month to the industry weighted-average cost of production of the same month.

Comment 15: Petitioners argue that in calculating the cost of production for fuel ethanol, the Department should not use the average cost of producing hydrous and anhydrous ethanol, as reported by certain respondents. This is because hydrous ethanol is a prior stage product and less costly to produce. Therefore, use of average ethanol production costs understates the cost of producing anhydrous.

DOC Response: We agree. The Department did not use the average cost of hydrous and anhydrous ethanol production, but adjusted this average cost for the additional processing required to produce anhydrous ethanol.

Comment 16: Petitioners allege that the depreciation costs reported by Copersucar's member distilleries appear to be understated.

DOC Response: The depreciation expenses reported in the responses did not reflect the full amount of the respondent's depreciation. However, depreciation expenses were included as a part of the monetary correction and

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also, in some cases, as part of "other" expenses. After considering the full amount of depreciation included in the various cost categories, the Department concluded that such expenses were not understated.

Comment 17: Petitioners claim that the ICM tax paid on ethanol inputs may have been understated.

DOC Response: The Department verified the amount of the ICM tax paid on ethanol inputs and did not find any discrepancies. Therefore, the verified amount was used.

Comment 18: Petitioners allege that distillery costs which are shared between ethanol and sugar production may be improperly allocated by (1) including costs which can be directly tied to the production of one of the products and (2) by allocating the costs on the basis of costs of goods sold rather than production volume.

DOC Response: Distillery costs were allocated between ethanol and sugar production based on production volume, not cost of goods sold. Costs which were allocated by production volume were costs incurred in the common processes used for the production of ethanol and sugar.

Comment 19: Petitioners argue that intercrop and sugar cane production costs should be adjusted by a Brazilian inflation index, such as ORTN, so that they can be properly allocated.

DOC Response: We agree. The methodology used by the Department indexes all intercrop planting, fallow and cultivation costs.

Comment 20: Petitioners argue that the Department erred in calculating Copersucar's credit expenses by not treating prepayment for home market sales as a credit revenue.

DOC Response: For purposes of this determination we have treated prepayment as a credit revenue.

Comment 21: Petitioners contend that Copersucar's claim for home market inventory costs should be denied unless they are shown to have been incurred after the sales and are borne by Copersucar since there is evidence on the record that the government may be absorbing these costs.

DOC Response: Since we are using the date of invoicing as the date of sale, we do not consider these costs as post-sale inventory costs and have made no adjustment.

Comment 22: Petitioners argue that the margins calculated for Matarazzo and I.A.T. were calculated at the incorrect level of trade since knowledge of destination can be attributed to their suppliers at the time of sale.

DOC Response: See our response to Petitioner's Comment 25.

Comment 23: Petitioners contend that margins on sales through Matarazzo and I.A.T. should be based on their suppliers' constructed value since those suppliers are probably selling in the home market at prices below the cost of production.

DOC Response: See our discussion in the "United States Price" section of this notice.

Comment 24: Petitioners argue that the margin for "all others" was based on an average which improperly included the Copersucar margin. Since the vast majority of Copersucar's exports were through Interbras, this ethanol was double-counted in the calculation of the "all others" rate.

DOC Response: For purposes of this determination, we based the margin for "all others" on the weighted average of the margins for sales by P.I.I. and sales by Copersucar to a trading company other than Interbras. Therefore, we avoid double-counting.

Comment 25: Petitioners contend that the Department should not consider the amended voluntary responses filed by Cotia and Costa Pinto after the preliminary determination since they were not filed in a timely manner.

DOC Response: Since distillers selling through independent trading companies have or should have had knowledge of destination, imputed or actual, the information in the responses is irrelevant to this determination. Therefore, issues relating to our use of these responses are moot.

Comment 26: Petitioners support the Department's inclusion of fuel ethanol containing certain additives within the scope of the investigation. Petitioners urge a clarification of the scope of the investigation of Brazilian ethanol which has been treated in the Caribbean Basin region by removing water to create anhydrous ethanol for fuel use.

DOC Response: The issue concerning wet Brazilian non-fuel grade ethanol which is shipped to third countries to be dehydrated into anhydrous fuel ethanol for export to the United States was first raised in Petitioners' Prehearing Brief. As we have no knowledge of actual shipments of this nature, originating from Brazil, entering into the United States, we determine that a clarification of the scope of our determination would be premature. If, at a later date, or at the time of any administrative review there is evidence of such imports, the Department will address the issue more fully.

Comment 27: Petitioners argue that the Department should follow the practice adopted in its recent findings on *Hydrogenated Castor Oil* and *12-Hydroxystearic Acid from Brazil* and not make an adjustment for the IPI credit premium on P.I.I.'s U.S sales.

DOC Response: We have determined that these payments are a circumstance of sale which is directly related to the export sales and adjusted the foreign market value accordingly.

Comment 28: Petitioner argue that no adjustments can be made to the CNP price charged by P.I.I. in the home market without a detailed reporting of sales transactions and related costs.

DOC Response: Since we did not calculate foreign market value for P.I.I. based on its home market prices, the issue is moot.

Comment 29: Petitioners argue that if a Copersucar rate is deemed appropriate, the analysis should be made at the distillery level since the distillers were aware of the destination of the ethanol.

DOC Response: Copersucar is a cooperative made up of member distillers. As such, all are related parties and are treated as one corporate entity. Therefore, all analysis of prices and costs includes factors relating to the total corporate organization.

Comment 30: Petitioners argue that I.A.T.'s response should be disregarded since certain information was not included in the response and the response was a voluntary response.

DOC Response: Since we did not use I.A.T's response for other reasons, the issue is moot.

Comment 31: Petitioners concur with the Department's use of I.A.T.'s third country sales in the same month as the U.S. sales if analysis is to be done at the I.A.T. level.

DOC Response: Since we did not make fair value comparisons for these sales, the issue is moot.

Comment 32: Petitioners argue that if the Department compares I.A.T.'s third contry sales of hydrous ethanol to U.S. sales of anhydrous ethanol, adjustments for differences in physical characteristics of the merchandise should be based on actual production costs rather than acquisition costs.

DOC Response: Since we did not make fair value comparisons for these sales, the issue is moot.

Comment 33: Petitioners argue that the "all other" rate should reflect the weighted-average margins calculated for P.I.I., I.A.T. and Matarazzo as reflecting actual sales behavior.

DOC Response: See our response to Petitioners' Comment 24.

Respondents' Comments

Comment 1: P.I.I. argues that fair value comparisons for the fuel ethanol that it and its subsidiary Interior sold in the United States should have been based solely on the pricing practices of its major supplier since that supplier knew that the merchandise was destined for the United States at the time of sale. In P.I.I.'s view, there exists a statutory presumption that the purchase price will be the producer's price to the United States before importation, where the producer knew the destination at the time of its sale to the exporter, and a reseller's price cannot be considered the basis for exporter's sales price once a purchase price transaction is identified.

DOC Response: The legislative history of the 1979 amendments to the Act, while sustaining the Treasury Department's administrative practice of using the price between a manufacturer and unrelated trading company for exports to the United States when the manufacturer knew the destination at the time of its sale to the exporter, was not intended to bar us from looking at all facets of a transaction. Where there is a specific allegation that a trading company is failing to recover its costs in transactions concerning the subject merchandise, we will investigate that allegation to determine whether there is "middleman dumping." See *Roller Chains from Japan*, 48 FR 51801. Based on the allegation in this investigation that P.I.I. was selling fuel ethanol at a loss, we analyzed P.I.I.'s prices and costs relative to all sales to the United States during the period of investigation. We found that P.I.I. was selling substantial quantities in the United States at prices substantially below acquisition costs and expenses.

Therefore, we determined that the appropriate level to analyze for our investigation of dumping was that between the trading company and the unrelated United States purchaser. In calculating United States price, the statute directs that either the purchase price, or the exporter's sales price, of the merchandise be utilized, whichever is appropriate. Since the merchandise in question is sold by P.I.I. in the United States after the time of importation, use of the exporter's sales price was appropriate. 19 U.S.C. 1677a.

Comment 2: Interbras contends that any selling below acquisition and selling costs by P.I.I. was, at most, *de minimis* since offsetting profits on some sales offset losses on others resulting in a minimal overall loss, if any.

DOC Response: Our analysis shows that a substantial portion of these sales were made at prices significantly below costs of acquisition plus selling expenses.

Comment 3: P.I.I. argues that there is no statutory or regulatory basis for investigating "middleman dumping."

DOC Response: We disagree. The legislative history to section 772 of the Tariff Act of 1930 directs the Department to examine sales from the foreign producer to middlemen (trading companies) and any sales between middlemen before sale to the first unrelated U.S. purchaser to avoid below cost sales by the middlemen.

Comment 4: P.I.I. argues that the Finsocial tax should be added to the United States price since it is paid only on home market sales.

DOC Response: The statute provides for an addition to United States price for any tax which is rebated or not imposed by reason of exportation of the merchandise, but only if the tax is added or included in home market sales. Since we did not base our comparisons on home market sales, but on constructed value, no adjustment to United States price is required.

Comment 5: P.I.I. contends that in calculating its United States price, freight included in the reported expenses incurred in Brazil should not be deducted since it relates to the acquisition of the merchandise, not delivery to the point of exportation.

DOC Response: The freight expenses reflected costs incurred in acquiring the ethanol which were not included in the acquisition price. Therefore, these costs were deducted only in the calculation of sales below acquisition costs.

Comment 6: P.I.I. argues that the deduction of the special tariff on ethanol in determining whether prices obtained on U.S. sales covered acquisition costs and selling expenses and in the calculation of the exporter's sales price is inappropriate since the tariff was imposed in contravention of the General Agreement on Tariffs and Trade (GATT) and is the subject of compensation in the form of a reduced U.S. tariff on canned corned beef from Brazil.

DOC Response: The Department is required to subtract from the exporter's sales price any United States import duties incident to bringing the merchandise from the place of shipment to the place of delivery in the United States. 19 U.S.C. 1677a(d)(2). As this duty is a cost incurred by P.I.I. in selling the merchandise which has not been reduced by revenues received by P.I.I. from any other source, the Department has deducted the full amount in accordance with the statute. With respect to the respondent's concerns regarding the legality of the United States tariff, the Department does not have the authority, nor is an antidumping duty investigation under the Act an appropriate forum, to make such a legal determination.

Comment 7: P.I.I. argues that in determining whether its sales to the United States have been at prices above acquisition costs plus expenses, the Department should determine whether costs have been recovered over a reasonable period of time. P.I.I. claims that any short term analysis is invalid since ethanol prices are tied to those of gasoline and are therefore not set by the seller. P.I.I. bases its argument on the statutory language of section 773(b) of the Act which sets the parameters for determining whether home market sales are made at prices which were less than the cost of production.

DOC Response: The Department finds that the period of investigation provides a reasonable period of time during which to determine whether P.I.I. recovers its costs of acquisition plus expenses on its sales of ethanol to the United States. We do not find evidence that any relationship between the prices for ethanol, the prices for gasoline and the alcohol crop year requires a larger investigatory period before costs can be recovered. Therefore, using the parameters of section 773(b) of the Act, P.I.I. has not recovered its costs of acquisition plus expenses over a reasonable period of time.

Comment 8: P.I.I. argues that if fair value comparisons are made at the P.I.I. level, Petrobras' home market prices cannot be used in determining foreign market value since they are unrelated to the real value of fuel ethanol sold in Brazil. This argument is based on the fact that the ethanol market in Brazil is completely controlled by the government.

DOC Response: We are not persuaded that Petrobras' home market prices are an inappropriate basis for calculating foreign market value. Its sales are in the ordinary course of trade and government price controls do not invalidate these prices for fair value comparisons. Thus, where we did not use CNP prices for foreign market value it was because those prices were below the cost of production.

Comment 9: P.I.I. argues that when converting cruzeiro-based costs for purposes of determining exporter's sales price, foreign market value, and acquisition price and expenses, in a trading company dumping determination, the Department must use the rate in effect on the date of sale to the United States. It is asserted that the use of different rates of conversion for P.I.I.'s costs is by itself responsible for the finding of trading company dumping.

DOC Response: We disagree. For ESP and FMV calculations the Department uses a conversion rate based on the date

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of sale to the United States. However, neither of these calculations are designed to evaluate whether an exporter is selling above acquisition cost plus expenses for purposes of trading company dumping. See Response to Petitioners' Comment 4.

Comment 10: P.I.I. argues that if foreign market value is based on the CNP price charged by Petrobras, certain deductions should be made for elements of the price which are unrelated to the value of fuel ethanol. These deductions include proceeds maintained for the account of the CNP, the costs of maintaining excess inventory, taxes, and certain freight costs. P.I.I. would have the CNP fund treated as a federal tax requiring an addition to the United States price for the amount of the fund, or as a direct expense for which a circumstance of sales adjustment is required.

DOC Response: Since foreign market value for P.I.I. was based on constructed value, issues pertaining to the CNP price and adjustments thereto are moot.

Comment 11: Copersucar argues that its foreign market value must be determined on the basis of the price in effect on the date of the U.S. sale to which it is being compared rather than prices in effect throughout the month of sale since there were significant price increases between the dates of sale to the United States and the end of the month.

DOC Response: Because we found Copersucar's home market prices to be below cost in months where U.S. sales occurred, we based foreign market value on constructed value during the month of the sale to the trading company for export to the United States.

Comment 12: Copersucar argues that the costs related to home market inventory should be treated as directly related, post sale expenses since home market prices, production levels and delivery terms are set prior to production.

DOC Response: We have determined the date of invoicing to be the date of sale. Therefore, the inventory costs incurred prior to invoicing cannot be considered directly related to the sales in question.

Comment 13: Copersucar claims that inventory carrying costs incurred relative to U.S. sales are not directly related to sales since there are no requirements in the contracts to hold inventory.

DOC Response: We agree and have no adjustment.

Comment 14: Copersucar argues that the entire amount of a January 1985 sale should be included in our analysis even though a substantial portion of the ethanol was delivered after the period of investigation because all of the ethanol was included in a single contract and because payment for a large portion of the ethanol was made prior to delivery.

DOC Response: This sale was excluded in our calculation of Copersucar's margin, because it was a sale to Interbras (see Petitioners' Comment 10).

Comment 15: Copersucar argues that the Department should compare home market prices to production costs by matching monthly production costs to the sale prices in the months in which that production was actually sold since there is often a two or three month lag between production and sale.

DOC Response: We disagree. In a hyper-inflationary economy such as Brazil, we match prices with costs incurred in the month of sale as the most accurate way to compare equivalent currency values. We have done so for purposes of this determination.

Comment 16: Copersucar argues that the Department should accept the production costs reported by the distillers and the methodologies used by them because they are reasonable, consistent with company practices and financial statements, and are not contrary to methodologies employed by the Department in dealing with hyper-inflationary economies.

DOC Response: After analysis of the companies' accounting practices, the Department made adjustments to certain costs to reflect the effects of inflation, and also to allocation methods so as to account for the additional costs attributable to anhydrous ethanol.

Comment 17: Copersucar contends that the Department improperly included ethanol blends in the scope of the investigation because they were not included in the scope of the petition and they have not been investigated.

DOC Response: The Department has the authority not only to define the scope but also to clarify the statement of scope of an investigation. *See Royal Business Machines* v. *United States* 1 CIT 80 (1980), AFFD, 669 F.2d 692 (Fed. Cir. 1982). The Department has determined that certain fuel-grade ethanol blends are the same class or kind of merchandise as fuel grade ethanol. Further, the statute does not require the Department to make price comparisons on all types of merchandise within the class or kind that are subject to an investigation. *See, e.g.*, Large Power Transformers from France (47 FR 10268). Therefore, the Department properly included certain ethanol blends within the scope of the investigation.

Comment 18: I.A.T. argues that the Department erred in only considering two of its four sales to third countries for purposes of the preliminary determination.

DOC Response: Since we did not use I.A.T.'s data for purposes of this determination, the issue is moot.

Comment 19: I.A.T. argues that its United States prices should be increased in order to reflect revenues received from the Government of Brazil under the I.P.I. credit premium program.

DOC Response: Since we did not use I.A.T.'s data for purposes of this determination, the issue is moot.

Comment 20: I.A.T. argues that, due to unusual circumstances of its sales activities, the Department should use a more liberal standard than normal for determining whether less than fair value margins are *de minimis*. This claim is based on uncertainties involved in comparisons of similar rather than identical merchandise.

DOC Response: Since we did not use I.A.T.'s sales for purposes of this determination, the issue is moot.

Comment 21: I.A.T. argues that the Department should use a weighted-average United States price since the total safety margin on one sale is greater that the total margin on the other U.S. sales.

DOC Response: Since we did not use I.A.T.'s sales for purposes of this determination, the issue is moot.

Comment 22: I.A.T. contends that the Department should not use the constructed value of its suppliers as the basis for calculating I.A.T.'s foreign market value because I.A.T.'s suppliers did not know and could not have known anhydrous ethanol sold to I.A.T. was destined for the United States.

DOC Response: We have determined on the basis of our current knowledge of the ethanol market, including I.A.T.'s commercial activities, that the distillers supplying the trading companies knew or should have known the destination of the anhydrous fuel ethanol at the time of the sale to the trading companies during our review period. Therefore, we determined that fair value comparisons should be made at the distiller level.

Comment 23: Costa Pinto argues that the Department erred in using the acquisition cost of fuel ethanol as the basis of constructed value for Matarazzo, a trading company which only had sales to the United States during the period of investigation. Instead, Costa Pinto contends that the constructed value should be based on cost of production information provided by Copersucar, which is a respondent in this investigation, instead of the acquisition cost.

DOC Response: Since we did not make fair value comparisons for Matarazzo for purposes of this determination, the issue is moot.

Comment 24: Costa Pinto and Cotia contend that the Department erred in not considering their voluntary response since the information which was not provided, acquisition costs, is not relevant to the investigation and since Costa Pinto was not notified of the response deficiencies.

DOC Reponse. See our response to Petitioners' Comment 25.

Comment 25: Costa Pinto argues that since its response was corrected in time to permit verification, the Department is obligated to consider the response for purposes of this final determination.

DOC Response: See our response to Petitioners' Comment 25.

Comment 26: Costa Pinto argues that if the Department does not verify its response, documents supplied for the record should form the basis of the best information available concerning Costa Pinto's selling practices.

DOC Response: See our response to Petitioners' Comment 25.

Comment 27: Cotia contends that the Department erred in not requiring it to respond to the questionnaire in this investigation since it is historically a substantial exporter of fuel ethanol to the United States and it had informed the Department that its suppliers did not know the destination of the merchandise.

DOC Response: See our response to Petitioners' Comment 25.

Comment 28: Costa Pinto and Cotia contend that information obtained from Interbras should not be used to calculate the weighted-average margin used as the "all others" rate because it would be improper to spread the impact of trading company dumping beyond the actual trading company involved since such behavior is so unusual and only Interbras is the subject of exporter's sales price analysis.

DOC Response: It is our standard practice to use all affirmative rates in calculating the "all other" rate because this weighted average is the best approximation of the behavior of investigated and non-investigated firms. To the extent that other exporters have behaved differently from P.I.I., that will be reflected in actual antidumping duty assessment.

Verification

As provided in section 776(a) of the Act, we verified all the information provided by respondents by using standard verification procedures, including examination of relevant sales and accounting records of the companies.

Final Negative Determination of Critical Circumstances

The petitioner alleged that imports of fuel ethanol from Brazil present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when (1) there is a history of dumping in the United States, or elsewhere, of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise, which is the subject of the investigation, at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above average imports calculated over the last three years.

Based on our analysis of these factors, we have determined that imports of fuel ethanol from Brazil were not massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of fuel ethanol, or whether the person by whom or for whose account this product was imported knew or should have known that the exporter were selling this product at less than fair value.

We have determined, for the reasons described above, that "critical circumstances" do not exist with respect to fuel ethanol from Brazil.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Petroleos Comercio Internacional S.A. (Interbras)	101.12
Copersucar	56.46
All others	66.81

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination of fuel ethanol from Brazil, we found export subsidies (51 FR 33611). Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amount of the export subsidies will be subtracted for deposit or bonding purposes from the dumping margins.

ITC Notification

In accordance with section 735(c) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on fuel ethanol from Brazil entered, or withdrawn from

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warehouse, from consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: February 7, 1986.

Paul Freedenberg

Assistant Secretary for Trade Administration.

[FR Doc. 86-3288 Filed 2-13-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-501]

Antidumping Duty Order; Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China (PRC)

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce (the Department) and the United States International Trade commission (the ITC) have determined that natural bristle paint brushes and brush heads from the PRC are being sold at less than fair value and that an industry in the United States is threatened with material injury by reason of imports of this merchandise from the PRC. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of this product made on or after the date of publication of this antidumping duty order in the **Federal Register**, will be liable for the assessment of antidumping duties. Further, a cash deposit or estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230; telephone (202) 377-4136 or (202) 377-5288.

SUPPLEMENTAL INFORMATION: The products covered by this investigation are natural bristle paint brushes and brush heads as currently provided for in item 750.65 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on July 29, 1985, the Department issued its preliminary determination that there was reason to believe or suspect that natural bristle paint brushes and brush heads from the PRC were being sold in the United States at less than fair value (50 FR 31636). On December 18, 1985, the Department issued its final determination that these imports were being sold at less than fair value (50 FR 52814).

On January 29, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)), the ITC notified the Department that imports of natural bristle paint brushes and brush heads from the PRC are threatening to materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to 127.07 percent, the amount by which the foreign market value of the merchandise exceeds the United states price for all entries of natural bristle paint brushes and brush heads from the PRC.

Because the ITC determined that imports of natural bristle paint brushes and brush heads from the PRC are threatening to materially injure, rather than materially injuring, a U.S. industry, these antidumping duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are directing United States Customs officers to release any bond or other security, and refund any cash deposit made, to secure the payment of antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before this antidumping duty order was published in the **Federal Register**.

On and after the date of publication of this notice, United States Customs officers must collect on all entries, at the same time as importers would normally deposit estimated Customs duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 127.07 percent.

This determination constitutes an antidumping order with respect to natural bristle paint brushes and brush heads from the PRC pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex 1 of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Dated: February 10, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-3289 Filed 2-13-86; 8:45 am]

BILLING CODE 3510-DS-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

SUMMARY: The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act.

Time and place: March 4, 1986, 9:30 a.m., the Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Remarks by Deputy Assistant Secretary Walter Olson on the TAC role in DOC for 1986.
4. Discussion of TAC goals for 1986.
5. Video tape technical regulations and decontrol.
6. Discussion of the letter to the Committee from the Deputy Assistant Secretary dated 12/23/85 regarding the changes in policy and procedure for 1565A.
7. Additional commodities for decontrol.
8. New membership issues.
9. Election of subcommittee chairmen.
10. Discussion of attendance by DOD.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation: The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the committee to the public on January 10, 1986, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes call 202-377-2583.

Dated: February 11, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 86-3356 Filed 2-13-86; 8:45 am]

BILLING CODE 3510-DT-M

[C-791-008]

Steel Wire Rope From South Africa; Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation.

SUMMARY: On December 13, 1985, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on steel wire rope from South Africa and announced its tentative determination to terminate the suspended investigation. The review covers the period from January 1, 1984.

We gave interested parties an opportunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the suspended investigation, and we are determining the suspended investigation. In accordance with the petitioner's notification, the termination will apply to all steel wire rope entered, or withdrawn from warehouse, for consumption on or after January 1, 1984.

EFFECTIVE DATE: January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 50930) the preliminary results of its changed circumstances administrative review of the suspended countervailing duty investigation on steel wire rope from South Africa (47 FR 54130, December 1, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of South Arfican steel wire rope. Such merchandise is currently classifiable under items 642.1200, 642.16154, 642.16520, and 642.1650 of the Tariff Schedules of the United States Annotated. The review covers the period from January 1, 1984.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to terminate. We received no comments.

As a result of our review, we determined that the domestic interested parties are no longer interested in continuation of the suspended countervailing duty investigation on steel wire rope from South Africa and that the investigation should be terminated on this basis. Therefore, we are terminating the suspended investigation on steel wire rope from South Africa effective January 1, 1984.

This administrative review and notice are in accordance with section 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: February 10, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-3290 Filed 2-13-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Advisory Committee for International Legal Metrology; Notice of Open Meeting

The Advisory Committee for International Legal Metrology will meet from 9:30 a.m. to 5:00 p.m. on Tuesday, March 18, 1986. The meeting will be held in Lecture Room A, Administration Building, National Bureau of Standards, Gaithersburg, Maryland.

The Committee, initially established in March 1974 (39 FR 6136), advises the Department, through the Director of the National Bureau of Standards (NBS), on technical and policy matters relating to NBS' assigned general responsibilities for the development of U.S. positions on technical issues arising in the International Organization of Legal Metrology (OIML). The Committee consists of approximately 40 members selected to ensure balanced representation among government, professional metrologists, national standards bodies, industry trade associations, and consumers.

The purpose of the March meeting of the Committee is to recommend U.S. positions for the 21st Meeting of the International Committee of Legal Metrology (CIML) to be held April 16-18, 1986, in Paris, France.

The following items are on the agenda:

1. Report on ACILM Status and Changes Since Last Meeting.
2. Preparations for 21st Meeting of the International Committee of Legal Metrology (CIML).
   a. Report on OIML Financial Situation.
   b. Report on Pilot Secretariat Program Plans for 1986-88 Period.
   —New Projects
   —Priorities
   —Potential Impact on United States
   c. Discussion of Program Plans for U.S. Administered Pilot/Reporting Secretariats for 1986-88 Period.
   d. Report on Draft International Recommendations/Documents to be Submitted to the CIML.
   —"Electronic Weighing Instruments"
   —"General Requirements for Electronic Measuring Instruments"
   —Other Drafts
   e. Report on Progress towards OIML Certification System.
3. Report on the Planned Meeting of ISO TAG 4 Metrology.
4. Other Business.

The meeting will be open for public observation, and a period will be set aside for oral comments or questions by the public which do not exceed ten minutes each. More extensive questions or comments should be submitted in

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writing before March 10, 1986. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first come, first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Committee Control Officer, Standards Management Program, Office of Product Standards Policy, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301–921–3267.

Dated: February 11, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 86–3283 Filed 2–13–86; 8:45 am]

BILLING CODE 3510–13–M

National Voluntary Laboratory Accreditation Program; Program Establishment

AGENCY: National Bureau of Standards, Commerce.

ACTION: Request for comments on need for establishing a laboratory accreditation program.

SUMMARY: The National Bureau of Standards (NBS) has received a request to establish a laboratory accreditation program (LAP) under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) (15 CFR Part 7). In a letter dated January 6, 1986, Walter C. McCrone Associates, Inc., Chicago, Illinois, requested that NBS establish a LAP for asbestos abatement testing. A copy of the request letter is set out as an appendix to this notice. Announcement of this request by Walter C. McCrone Associates, Inc., and of the NBS request for comments with respect thereto are being made under § 7.11(d) of the referenced procedures.

ADDRESS: Persons desiring to comment on the need for such a LAP are invited to submit their comments in writing on or before April 15, 1986 to the Director, Office of Product Standards Policy, National Bureau of Standards, ADMIN A 603, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Peter Unger, Associate Manager, Laboratory Accreditation, National Bureau of Standards, ADMIN A 531, Gaithersburg, MD 20899; phone (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Scope of LAP

The requestor identified three test procedures required in association with asbestos abatement operations as the scope of the proposed LAP: (1) Determination of whether material contains asbestos; (2) Monitoring of airborne levels of asbestos during an asbestos abatement operation, and (3) Following an asbestos abatement operation, the clearance monitoring procedure. The requestor indicated that the methodology is referenced in regulations of the U.S. Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration.

Procedure Following Receipt of Comments

After the 60 day comment period, NBS will thoroughly evaluate all comments pertaining to the proposed LAP and will notify all interested persons (those who submit comments or request to be placed on the NVLAP mailing list) of the decision, by the Director of NBS, regarding development of this LAP. If the decision is made to develop the LAP, technical assistance will be sought from all interested parties to develop the technical requirements for assessing applicants and establishing appropriate proficiency testing programs.

Documents in Public Record

All comments in response to this notice will be made part of the public record and will be available for inspection and copying at the NBS Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland.

Dated: February 11, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

Appendix

January 6, 1986.

Director,

National Bureau of Standards, ADMIN A1134, Gaithersburg, MD 20899

Dear Sir:

RE: Request for Lab Accreditation Programs.

Your attention is drawn to an area in which laboratory accreditation programs would be both useful and relevant. This area is the area of the abatement of asbestos in buildings. The test procedures required in association with such abatement operations are: firstly, the identification of asbestos in building materials and, secondly, the monitoring or determination of asbestos during and immediately following asbestos abatement operations. It is conceivable that two or possibly even three laboratory accreditation programs may be required in these areas.

Background

Asbestos-containing materials found widespread use in buildings in a variety of building products. The Environmental Protection Agency has determined that airborne asbestos contamination in buildings is a significant environmental problem (EPA 560/5–85–024: Guidance for Controlling Asbestos-Containing materials in Buildings). Surveys conducted by the Environmental Protection Agency estimate that asbestos-containing materials can be found in approximately 31,000 schools and 733,000 other public and commercial buildings in the United States. As a result, considerable industry has developed around the control of asbestos contamination in buildings. Laboratory testing associated with this abatement work takes place at several stages.

(A) Prior to any asbestos abatement operation it is necessary to determine whether material present in a building does, indeed, contain asbestos. EPA, in its regulations for identifying friable asbestos-containing materials in schools (40 CFR 763: 47 FR 23360, May 27, 1982; 47 FR 38535, September 1, 1982) describes an interim method for the determination of asbestos in bulk insulation samples. This procedure is split into two sections; polarized light microscopy and x-ray diffraction. At the present time, there is no accreditation procedure for such analyses. EPA sponsors a round-robin testing program administered by Research Triangle Institute in which four samples are submitted to participating laboratories every three months and the results are tabulated. It is in no way, however, a certification or accreditation program. The last series of such tests resulted in the participation of 307 commercial laboratories and 119 non-commercial laboratories—an increase of 74 commercial and 29 non-commercial laboratories over the number which participated in the previous three months. This is, thus, an area in which the number of participating laboratories is experiencing a very rapid growth.

(B) During an asbestos abatement operation, OSHA requires the monitoring of airborne levels of asbestos to which workers might be exposed. This procedure involves collecting air samples on a membrane filter and analyzing by a microscopical technique. The American Industrial Hygiene Association administers a NIOSH-sponsored proficiency assurance testing (PAT) program for laboratories engaged in the analysis of such filters and AIHA's laboratory accreditation program includes accreditation for asbestos analysis. It should be pointed out, however, that such accreditation does not extend beyond the physical confines of the laboratory and is, therefore, not relevant to field sampling or to the field analyses which are so commonly carried out during asbestos abatement operations.

In addition to the OSHA requirements, the EPA has advised that area sampling should be performed during the work operation, both inside and outside the work area, in order to determine the potential (or the actual) contamination of surrounding areas due to failure of containment barriers.

(C) Following an asbestos abatement operation, the mechanism by which a contractor may be released from site is the so-called clearance monitoring procedure. At the present moment, both phase contrast microscopy as performed for OSHA compliance and an electron microscopical method are in use. EPA's most recent documentation (referenced above) suggests that the transmission electron microscopical method should be used in all areas where it is considered essential to determine that even the finest fibers (those below the resolution limit of the light microscope) should be measured. The EPA has published a methodology for such electron microscopical analysis (USEPA–600/2–77–178: Electron Microscope Measurement of Airborne Asbestos Concentrations). In addition, a draft of a report revising this methodology has been prepared in 1984 under EPA Contract No. 68–02–3266. At the present time, there is no quality assurance program of proficiency testing program in this area, although the National Bureau of Standards has prepared a standard reference material (SRM 1876). Currently, there are probably less than 20 laboratories in the country who have the combination of equipment and expertise to perform such analyses. There are, however, many analytical electron microscopes available which could be used for such techniques, and it is likely that the number of laboratories offering this service will increase as dramatically as the number of laboratories offering polarized light microscopy and phase contrast microscopy services. At the present time, however, there are no training programs available for such TEM analysis comparable to those programs which are offerred in the area of asbestos identification and phase contrast monitoring. There is, thus, clearly a need for some quality control measures in this area.

In summary, then, the growth of activity in the area of abatement of asbestos-containing materials in buildings has placed a burden on the analytical community to provide competent analytical services in. (A) the identification of asbestos-containing materials, (B) the monitoring of air quality during and immediately following asbestos abatement operations by the techniques of (1) Phase Contrast Microscopy, and (2) Transmission Electron Microscopy. This need is nationwide and is spurred by the activities of the Environmental Protection Agency and a growing public consciousness of a need for improvements in indoor air quality. At the present time, over 400 laboratories participate in the EPA-sponsored voluntary round-robin program for asbestos identification materials. It is not known how many additional laboratories are involved in this activity but do not participate in this program. About 350 laboratories participate in the voluntary proficiency assurance testing program administered by the American Industrial Hygiene Association. No program exists for quality assurance testing of laboratories engaged in electron microscopical determination of asbestos.

I believe there is a clear need for LAPs in the areas referenced in this letter. In a telephone discussion with Ms. Susan Vogt, Director of the Environmental Protection Agency's Asbestos Action Program, I discussed with her the NVLAP program (of which she was not aware) and she has indicated an EPA interest in such a program for asbestos. It is likely that Ms. Vogt will be contacting you directly on this subject. I believe the establishment of LAPs in the areas indicated would fill a national need and would be a significant contribution to environmental health monitoring.

McCrone Environmental Services, Inc. would be pleased to assist the National Bureau of Standards with technical assistance in the development of an asbestos-related LAP.

Yours sincerely,

Ian M. Stewart,

Vice President.

[FR Doc. 86–3281 Filed 2–13–86; 8:45 am]

BILLING CODE 3510–13–M

National Voluntary Laboratory Accreditation Program; Hazardous Waste Analysis

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of decision regarding a hazardous waste laboratory accreditation program.

SUMMARY: The National Bureau of Standards (NBS) has decided to postpone indefinitely the development, under the National Voluntary Laboratory Accreditation Program (NVLAP), of a laboratory accreditation program (LAP) for laboratories that perform hazardous waste analysis. The decision is in response to a written request from the U.S. Environmental Protection Agency (EPA).

FOR FURTHER INFORMATION CONTACT: Peter S. Unger, Associate Manager, Laboratory Accreditation, National Bureau of Standards, Admin A531, Gaithersburg, MD 20899, (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Background

NBS has decided to postpone indefinitely the development of a hazardous waste laboratory accreditation program. This action is being taken in response to a letter from Donald J. Ehreth, Acting Assistant Administrator for Research and Development, EPA, dated December 18, 1985. The letter requests NBS to "postpone its acceptance of the petition to evaluate and accredit hazardous waste and other laboratories until we (EPA) have determined the current needs of all EPA programs relative to laboratory accreditation."

NBS had previously received a request for this LPA from the State of Indiana Environmental Management Board in August 1984 and had requested comments on the need for a LAP in the **Federal Register** on February 20, 1985 (50 FR 7095–7096). Comments were originally due by April 22, 1985, but in response to an EPA request to extent the comment preiod, written comments were accepted through October 1985.

Documents in Public Record

Copies of the comment letters, including the EPA letter of December 18, 1985, are available for review and copying at the NBS Records Inspection Facility in the Administration Building, Room E106, Gaithersburg, Maryland.

Dated: February 11, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 86–3282 Filed 2–13–86; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the City of Hudson, New York, from Objection of the New York State Department of State

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Notice of Appeal Dismissal.

SUMMARY: On August 6, 1984, the Secretary of Commerce (Secretary) received an appeal by the City of Hudson, New York (Appellant), from an objection by the New York State Department of State (Department) to the Appellant's application for a federal Department of Housing and Urban Development Action Grant (UDAG) to construct an octane petroleum recovery and finishing facility in the South Bay waterfront area of the City of Hudson. The appeal was filed pursuant to section 307(d) of the Coastal Zone Management Act of 1972, as amended, (CZMA), 16 U.S.C. 1456(d), and implementing regulations at 15 CFR Part 930 Subpart H. Notice of the appeal was published at 49 FR 33303 (1984). The Secretary granted the Appellant's request of November 5, 1984, for an indefinite stay of consideration of the appeal pending negotiations between the parties to resolve the Department's consistency objection (49 FR 48349) (1984).

By letter of September 17, 1985, to the NOAA Office of General Counsel, Appellant requested dismissal of its consistency appeal, because it no longer wished to pursue the project and because the UDAG had been terminated by the Department of Housing and

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Urban Development. No objection to the dismissal was filed by the Department.

On January 2, 1986, the Secretary of Commerce dismissed the City of Hudson's appeal in light of the disposal of the underlying controversy.

FOR FURTHER INFORMATION CONTACT: Tony Giedt, Attorney-Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Ave., NW., Washington, DC 20235; (202/254–7512).

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration]

Dated: February 7, 1986.

James W. Brennan,

Acting General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–3274 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-08-M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's workgroup on Gulf of Alaska groundfish will convene a public meeting, February 27–28, 1986, at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, Seattle, WA, to review goals and objectives for the Gulf of Alaska groundfish fishery. The workgroup also may meet with the Plan Team on the revision of the Gulf of Alaska Groundfish Fishery Management Plan. For further information contact Clarence Pautzke, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: February 10, 1986.

Rickard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86–3275 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish/Seamount Groundfish Plan Development Team will convene a public meeting, February 14, 1986 at 9 a.m., at the Council's Office, 1164 Bishop Street, Room 1405, Honolulu, HI, to: (1) Review the final draft of the combined fishery management plan/environmental assessment and regulatory impact review for the bottomfish and seamount groundfish fisheries of the Western Pacific Region, (2) discuss the need for access limitation in the bottomfish fishery of the Northwestern Hawaiian Islands, as well as to discuss other Team business. For further information contact Kitty M. Simonds, Executive Director, Western Pacific Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: February 10, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–3276 Filed 2–13–86; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting in the Fifth Floor Hearing Room at the Commission's Washington, DC headquarters located at Room 532, 2033 K Street NW., Washington, DC 20581, on February 28, 1986 beginning at 9:30 a.m. and lasting until 4:00 p.m. The agenda will consist of.

Agenda

1. Welcoming Remarks—Susan M. Phillips, Chairman, CFTC.
2. Discussion of CFTC Reauthorization.
3. Discussion of CFTC "Audit Trail" rules.
4. Discussion of CFTC Proposed Financial Rules Amendments.
5. Status Report on Proposed Expansion Of Agricultural Options Pilot Program.
6. Discussion of Minimum Price Guarantee Contracts.
7. Discussion of Other Issues for Potential Committee Consideration; Timing of Next Meeting; Other Committee Business.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the June 4, 1985 first renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Kalo A. Hineman, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Charles O. Conrad, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Mr. Conrad in writing at the latter address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC on February 11, 1986.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 86–3328 Filed 2–13–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Strategic Defense and Naval Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Defense and Naval Warefare Task Force will meet March 4 and 7, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defense architecture, and related intelligence. The entire agenda for the meeting will consist of discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: February 11, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86–3293 Filed 2–13–86; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet March 5–6, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review key issues related to Navy fleet operations. The entire agenda for the meeting will consist of discussions of key issues related to national security policy and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia. Phone (703) 756–1205.

Dated: February 11, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer,

[FR Doc. 3294 Filed 2–13–86; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet on March 6, 1986, at the Office of the Chief Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 A.M. and terminate at 4:00 P.M. on March 6. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide update briefings for the Committee members on maritime strategy, weapons systems and Technology Base management. The agenda for the meeting will consist of briefings on naval maritime strategy, the MK 46 torpedo and Navy Technology Base management. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code 00NR), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: February 11, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86–3295 Filed 2–13–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Continuing Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a Council meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: March 6–7, 1986.

ADDRESS: The Sheraton Grand Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC 20036, Telephone: (202) 634–6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(1) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Council will meet from 9:00 a.m. to 5:00 p.m. on March 6, and from 9:00 a.m. to 12:00 Noon on March 7, 1986.

The proposed agenda includes:

—Plans for 1986 activities
—Discussion of program coordination and partnerships
—Legislative update
—Review of NACCE/OECD Conference Report
—Update of inventory of federal continuing education and training programs
—Other business.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, DC.

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Signed at Washington, DC, on February 7, 1986.

William G. Shannon,

Executive Director.

[FR Doc. 86-3340 Filed 2-13-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Arrangements; Switzerland Subsequent Arrangement; Switzerland

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement."

The proposed subsequent arrangement involves the loan, for two to three years of approximately 3,000 kilograms of uranium depleted in the isotope uranium-235, for use as absorption material for a high energy physics experiment at the CERN facility, Geneva, Switzerland, under Contract Number WC-SD-22.

In accordance with sections 62 and 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the interests of the United States or to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: February 10, 1986.

R. Sean Randolph,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 86-3273 Filed 2-13-86; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Proposed Funding of the Tumwater Dam and Dryden Dam Fish Passage Projects; Finding of No Significant Impact

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of a finding of no significant impact (FONSI) for Bonneville Power Administration's (BPA's) proposed funding of the Tumwater Dam and Dryden Dam Fish Passage Projects.

SUMMARY: BPA proposes to fund the design and construction of new fish ladders at both Tumwater Dam and Dryden Dam which are located 12 miles apart on the Wenatchee River in central Washington. The Chelan County Public Utilities District (PUD) will provide operation and maintenance of the proposed fish passage facilities. The project will partially mitigate the effects of past hydroelectric dams upon anadromous fish passage. The project has been included in the Northwest Power Planning Council's 1984 Columbia River Basin Fish and Wildlife Program, section 604(C)(3). BPA is authorized by the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Pub. L. 96-501) to use BPA funds for such purposes.

BPA has prepared an Environmental Assessment (EA) to assess the environmental effects associated with the construction of the Tumwater Dam and Dryden Dam Fish Passage Project. Alternatives to the proposed action that were evaluated and then dismissed were: (1) Construction of righ and left bank fish ladders at Tumwater Dam; (2) four different fish ladder designs at the Tumwater Dam and Dryden Dam sites; and (3) a no-action alternative (see pages 9-11 of the EA). For further discussion of the purpose and need for the project, see pages 2-3 of the EA.

SUPPLEMENTARY INFORMATION: The following discussion describes why the proposed action will not have a significant effect on the existing environment:

1. The construction of new fish ladders at both dams will have minor short-term effects on fish. Construction will take place during periods of low flow and limited fish migration to avoid interfering with fish passage over both dams. Temporary fish passage will be provided by installing a weir and pool-type fish ladder at the Dryden site, and by installing a denil-type fish ladder at the Tumwater site. This temporary fish passage over both dams will minimize any delay that could occur to adult fish attempting to migrate upstream past the facilities during construction.

Impacts to fish will not be significant because of timing of construction to avoid periods of heavy migration. Temporary rerouting of fish around the area of construction will eliminate any delay that could occur to migrating adults during this time.

2. The project may be temporarily increase water turbidity and may release minor amounts of sediments to the streambed downstream of the dams during the construction period. The small amount of sediment that may be temporarily releasod into the Wenatchee River system will not be significant because of the following. Sediment will be controlled by dewatering the fish ladder areas prior to construction through the use of cofferdams and placement of non-erodable waterproof membrane on the outside of the cofferdams. This will isolate construction activities from the Wenatchee River. Construction will be timed to avoid high water conditions. Streamside areas disturbed during the construction period will be restabilized and revegetated.

3. In consultation with the Chelan County Planning Commission the proposed facilities will occupy sites where similar uses currently apply. Therefore, the project will be consistent and compatible with the existing comprehensive plans for Chelan County. The Washington State Department of Ecology was contacted and it was determined that the project will be consistent with state plans and programs.

4. According to a letter from the U.S. Fish and Wildlife Service (USFWS) on August 8, 1985, the bald eagle is listed as a threatened species and may occur within the project areas. The bald eagle (*Haliaeetus leucocepholus*), has been known to use the project vicinity between early November and late March. Over the past 5 years of mid-winter surveillance, 0 to 4 bald eagles have been sighted in the project vicinity. A Biological Assessment was prepared and sent to the USFWS for Formal Consultation on September 19, 1985. The USFWS responded to the Biological Assessment in an October 28, 1985, letter and concurred with BPA's finding of no effect to the bald eagle. The Biological Assessment is included as Appendix B of the Environmental Assessment.

5. The dam structures upon which the new fish ladders will be constructed may be eligible for inclusion in the "National Register of Historic Places." A Cultural Resource Assessment has been conducted for the sites (EA, Appendix C) and was submitted to the Washington State Historic Preservation Office (SHPO) on August 26, 1985. The BPA shall seek determination of eligibility for the facilities and shall mitigate any adverse project effects on the eligible structures prior to project construction.

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Consultation with the SHPO has revealed that there are no other known properties listed on the "National Register of Historic Places" or the "Register of Historic Landmarks" within the area of the proposed activities. The proposed activities would not have an effect on the ceremonial rites of Native Americans.

6. The existing Tumwater Dam and Dryden Dam fish ladders are located entirely within the 100-year floodplain, as defined by the Federal Emergency Management Agency Flood Insurance Rate Maps. Alternatives which would have avoided location within the floodplain would not meet the need or the purpose for the facility (see EA, Chapter 2). Therefore, a determination has been made that there is no practicable alternative to locating the fish ladders within the Wenatchee River floodplain and that the proposed action includes all practicable measures to minimize harm to or within the floodplain. The proposed fish ladders will be concrete structures and will be designed and built to withstand damages from peak flows and to operate over a considerably wider range of flows than the present structures. Peak flows will inundate the downstream entrance pools to the fish ladder but will not damage the ladder which will be designed to withstand a 100-year flood.

The physical presence of the fish ladder in the floodplain will not alter the floodplain's physical characteristics. No adverse impacts of floods on human, safety, health, and welfare will exist due to the project because the channel discharge capacity will not be diminished nor will hazardous materials be contributed to floodwaters. Due to these factors, the proposed construction and presence of the fish ladder will not significantly affect the existing floodplains.

7. According to the National River Inventory, the Wenatchee River in the area of Tumwater Dam and Dryden Dam has "outstandingly remarkable" values, especially for recreation. No long-term alterations to these values, however, will result from project development. During construction, the interruption of recreational activities at the sites will not be significant because neither of the sites have developed or specific recreational nses where the construction will occur. At the Dryden Dam site, river rafters will not be able to float their rafts over the weir during construction; however, access will be provided for rafters to carry rafts around the construction sites. There will be no significant impact on recreation because the proposed improvements will occur at existing facilties and will produce little or no changes to the surrounding recreational values and use of the area.

8. BPA evaluated the proposal with respect to current legislation affecting Federal projects and found it to comply with those laws and regulations. (See the EA, pages 12-35.)

There will be no effect on: (a) Special recreational areas such as Wild and Scenic Rivers, National Trails, etc. (EA, page 33); (b) farmland which is designated prime or unique (EA, page 16); (c) designated wetlands (EA, pages 25); (d) air quality (EA, page 30); (e) water quality (EA, pages 27-29); (f) noise levels (EA, page 30); and (g) visual quality (EA, page 35).

Related Documents: The following documents have been prepared by BPA and Chelan County PUD and are related to the proposed project: "Tumwater Falls and Dryden Dam Fish Passage Project, Preliminary Engineering Design Report," Bonneville Power Administration; "Dryden Hydroelectric Project, Final Environmental Impact Statement," Public Utility District No. 1 of Chelan County; "Dryden Hydroelectric Project, Planning Report," Public Utility District No. 1 of Chelan County; "Tumwater Hydroelectric Project Redevelopment Proposal," Public Utility District No. 1 of Chelan County.

Public Availability: BPA distributed a preliminary copy of the EA for public review to each landowner in the area and to governmental agencies involved with the project. Copies of the EA and this finding will also be distributed to these landowners and governmental agencies. Copies of both documents are available upon request from the Environmental Manager, Bonnerville Power Administration, P.O. Box 3621-SJ, Portland, Oregon 97208, telephone (503) 230-5136.

Determination: Based upon the information in this EA, the Department of Energy has determined that BPA's proposal to fund the Tumwater Dam and Dryden Dam Fish Passage facilities does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Issued in Washington, DC, January 27, 1986.

Mary Walker,

Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 86-3272 Filed 2-13-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Case No. CAC-001]

Energy Conservation Program for Consumer Products; Petition for Waiver of Central Air Conditioner Test Procedures From Carrier Corporation

AGENCY: Conservation and Renewable Energy Office, DOE.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Carrier Corporation (Carrier), of Syracuse, New York, requesting a waiver from the existing Department of Energy (DOE) test procedures for central air conditioners. Carrier manufactures residential and commercial air conditioning appliances. The petition requests DOE to grant relief from the test procedure relating to the compressor speed specification for Carrier's 38EV/38QV model series central air conditioners (heat pumps). Carrier seeks to test using intermediate compressor speeds instead of the single speed specified. Carrier requests the test and calculation methods of Appendix B to the Air Conditioning and Refrigeration Institute Standard 210/240-84, with modifications, be substituted for the DOE test procedures for central air conditioners. DOE is soliciting comments, data, and information respecting the petition.

DATE: DOE will accept comments, data and information not later than March 17, 1986.

ADDRESSES: Written comments and statements shall be sent to Michael McCabe at the address indicated in the next section. Please label both the envelope and the comment with the following: Case No. CAC-001.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station, CE-132, Forrestal Building, 1000 Independence Avenue, Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9513.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Pub.

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L. 95–619, 92 Stat. 3206, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has amended the prescribed test procedures by adding 10 CFR 430.27, Petitions for Waiver, to allow the Assistant Secretary for Conservation and Renewable Energy temporarily to waive test procedures for a particular basic model. 45 FR 64108 (September 26, 1980). Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedures, or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Carrier's petition seeks a waiver from the DOE test provisions that require testing at a single compressor speed. Instead, Carrier requests the allowance of test and calculation procedures which incorporate test data for system operation at intermediate speeds. Specifically, Carrier requests allowance to use Appendix B of the Air Conditioning and Refrigeration Institute (ARI) Standard 210/240–84 with amendments. The amendments to ARI Standard 210/240–84 requested by Carrier include revisions to cycling period, intermediate steady state test points, demand defrost credit and indoor air flow rate.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, January 31, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

December 4, 1985.

Assistance Secretary for Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Re: Petition for Waiver

Gentleman: This is a petition for waiver which is being submitted pursuant to Title 10 CFR 430.27. Waiver is requested from Test Procedures for Central Air Conditioners, Including Heat Pumps found in Appendix M to Subpart B of Part 430. Waiver is requested for variable speed product model heat pumps and cooling units.

Models in the variable speed product line employ variable speed motors to drive the compressor and the indoor blower. The motors are controlled by a microprocessor and can be operated over a wide range of incremental values of speed. An "intelligent" room thermostat is linked to the microprocessor controller in the equipment. The cycling of the compressor is controlled from within the unit rather than directly by the thermostat, which leads to significantly different cyclic patterns when compared to conventional single or two speed equipment.

York demonstrated in the Application for Exception for their ENMOD system (Case BEE–1338, January 13, 1981) that the test procedures for two speed systems in 430.24 do not properly represent the seasonal performance of variable capacity systems. York was allowed to make use of a modified test and rating procedure which incorporated test data for system operation at intermediate speeds. Since then, ARI has published a rating procedure for air conditioners with variable speed compressors in Appendix B of ARI Standard 120/240–84. The ARI rating procedure is very similar to the method York was allowed to use in rating the ENMOD system, and a high level of consistency is maintained between ARI 210/240–84 and 430.24.

This petition is a request for authorization to substitute the test and calculation methods in Appendix B of Standard 210/240–84 for the test and calculation methods in Appendix M to Subpart of Part 430. In addition, it is requested that several modifications to Appendix B of 210/240–84 be included in the waiver to allow fair and proper representation of the unique operating characteristics of the equipment. The requested amendments are modifications are as follows:

1. It is requested that the cyclic test pattern of 6 minutes "on" and 24 minutes "off" for compressor operation during the cyclic heating and cyclic cooling tests be replaced by a test pattern of 12 minutes "on" and 48 minutes "off" for compressor operation (ARI Standard 210/240–84, Appendix B, Table B1, page 15, footnote 4).

It is further requested that the capacity integration period be changed from 8 minutes to 14 minutes (ARI Standard 210/240–84, Section 5.1.3.1). The microprocessor control of the equipment has a minimum run time of 12 minutes at the minimum speed, and it is not possible for an "on" period of less than 12 minutes to occur in normal operation of the equipment. Since the capacity of the variable speed equipment at minimum speed is approximately half that of a conventional single speed unit, a minimum run time of 12 minutes has the effect of maintaining the same magnitude of inferior temperature fluctuations during cyclic operation as those which occur with a single speed unit with a minimum run time of 6 minutes. The effect of changing the cyclic test pattern from 6 minutes "on", 24 minutes "off" to 12 minutes "on", 48 minutes "off" is to improve the seasonal efficiency ratings by 3% for cooling and 2% for heating. Test data are available to support these efficiency rating improvements. This change in the cyclic test pattern is required to correctly account for the improved cyclic performance of the variable speed equipment.

2. The intermediate speed steady state test point for cooling is specified by temperature conditions and equipment capacity (ARI Standard 210/240–84, Appendix B, Table B1, page 15). This requires an iterative test to determine the correct speed for the equipment in order to achieve the specified capacity. No tolerances are provided, and given the discrete nature of speed settings for the equipment, it may be impossible to exactly match the required capacity. This test is unnecessarily burdensome.

It is requested that the test be specified by temperature conditions and speed, with the temperature conditions unchanged and the speed specified only as a value between the minimum and maximum values for the equipment. The capacity and power for this intermediate speed point can then be corrected with respect to outdoor dry bulb temperature using the minimum speed and maximum speed test points to find the outdoor temperature at which the equipment capacity matches the load line. The temperature, capacity and power values for this intersection are then used in the ARI interpolation equations for determining SEER. The means for correcting the intermediate speed point to determine the intersection with the load line is included as Appendix A to this waiver request.

3. There is currently no intermediate speed test point for evaluation of the heating seasonal performance factor. As a result, the ARI method has been found to underpredict the HSPF by as much as 2% when compared to more detailed bin calculations incorporating intermediate speed data. The frost accumulation test point, which is run at maximum speed is not well matched to the load line and as a result has almost no influence on the HSPF value (ARI Standard 210/210–84, Appendix B, Table B1, page 15).

It is proposed that the frost accumulation test point be an intermediate speed point. The temperature conditions will remain the same but the speed will be specified as a value between the minimum and maximum speeds for the equipment. The capacity and power for this intermediate speed point will be corrected with respect to temperature in the same manner as the intermediate speed cooling point to find the intersection with the heating load line. The interpolation procedure for heating will be modified to allow the use of an intermediate speed point in the same manner as it is in the cooling season calculations. Changing the frost accumulation test point to an intermediate speed will place the proper weighting on this test point and it will also provided a more representative measure of integrated system performance under high frost accumulation conditions.

4. ARI Standard 210/240–84 Appendix B does not provide a direct HSPF credit to systems which employ a demand defrost control. Since the HSPF calculation method for variable speed systems is substantially different from that for single speed systems, it is not appropriate to simply increase the capacity at the frost accumulation test by 7% (Appendix M to Subpart B of Part 430, Section 5.2).

It is requested that the HSPF be increased by 4% directly and that no adjustment be made to the frost accumulation test point data. This request is based on comments published in 44 Federal Register 249 p 76703 (12/27/79) which reads: "Although this improvement does vary by region, analysis shows that in most areas a 4 percent improvement in the seasonal performance factor is the minimum which would be expected . . . DOE has adjusted the enhancement factor . . . in order to achieve a resultant effect of 4 percent improvement in the HSPF for units which use demand defrost."

5. ARI Standard 210/240–84 Appendix B references ANSI/ASHRAE Standard 116–1983 for definition of test conditions and test methods. While Section 8.3 of 116–1983 prescribes that the indoor air flow rate is to vary in accordance with the control system of the unit being tested, there are no instructions concerning modifications to the test procedures to allow for variation in indoor air flow rate. It is necessary to set both the air flow rate and the fan speed for intermediate fan speeds.

It is proposed that the air flow rate at fan speeds less than the maximum speed be determined using the fan laws for a fixed resistance system. The air flow rate is then given by the ratio of fan speed to maximum fan speed multiplied by air flow rate at maximum fan speed. Minimum static pressure requirements only apply when the fan is running at the maximum speed, which will normally occur at the capacity rating point.

Test data are available to support the changes in seasonal rating factors cited above and to support the use of ARI 210/240–84, Appendix B as a basis for rating the variable speed equipment. These data are confidential and can be provided on the basis they are not disclosed outside of the Department of Energy.

It is our understanding that York is no longer manufacturing the ENMOD variable speed air conditioner. We are presently unaware of any order manufacturer(s) who offer for sale in the United States air conditioners which incorporate variable speed compressors and blowers in their design.

Sincerely,

Edward A. Baily,

Director Industry Relations.

Appendix A

Modifications to ARI 210/240–84 Appendix B Interpolation Methods

1. Section 2.1, Cooling Season Performance Factor.

Intermediate Speed Performance Point.

It is necessary to determine capacity and power as a function of outdoor dry bulb temperature for the intermediate speed. These relationships can be written as:

$QV(T = QV(87) + QSLP * (T-87)$

where QV(T) is the capacity at the chosen intermediate speed as a function of outdoor dry bulb temperature (T), QV(87) is the intermediate speed capacity point (tested at 87 outdoor dry bulb), and QSLP is the capacity versus temperature slope given by:

$QSLP = 1-QWT) * QL(82)-(QL(87))/(82-67)) + QWT * ((QH(95)-QH(82))/(95-82))$

$QWT = ((QV(87)-QL(87))/QH(87)-QL(87))$

where QH(95) and QH(82) are the maximum speed test point capacities, QL(82) and QL(67) are the minimum speed test point capacities, and QH(87) and QL(87) are the maximum and minimum speed capacities estimated at 87 outdoor dry bulb using the test point capacity data.

Once (QV(T) has been determined, the temperature where QV(T) and the load line intersect can be determined. This temperature, designated TVC, replaces 87 in the interpolation equations for Case II in ARI 210/240–84 Appendix B. The intermediate speed point power, EV(87), is replaced by the intermediate speed power equation evaluated at TVC. The equation for EV(T) is determined in the same manner as the equation for QV(T) by replacing capacity values with the corresponding power values.

2. Section 2.2, Heating Season Performance Factor.

Intermediate Speed Performance Point.

It is necessary to determine QV/(T) and EV(T) for the intermediate speed in heating. These equations are found in the same manner as is described above for cooling points, but the heating test conditions and temperature values are for the heating test points. Similarly, the temperature where QV(T) and the heating load line intersect, TVH, must be determined. The interpolation procedure for Case II in heating must be expanded to permit the use of the intermediate speed temperature and power value. The form of the expanded interpolation procedure for heating is the same as Case II in cooling when the intermediate speed heating point is used.

December 13, 1985.

Assistant Secretary for Conservation and Renewable Energy,

U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585

Re: *AMENDMENT TO CARRIER CORPORATION'S DECEMBER 4, 1985 PETITION FOR WAIVER*

Gentlemen: Carrier Corporation amends its Petition for Waiver from DOE Test Procedures for its variable speed air conditioners and heat pumps as follows for clarification and specificity:

(a) Substitute the following sentence for the last sentence in the first paragraph of our December 4, 1985 Petition:

Waiver is requested for Carrier Corporation's 38EV/38QV variable speed central air conditioners/heat pumps.

(b) Amend the first sentence of the second paragraph to read:

Models in the 38EV/38QV variable speed product lines employ variable speed motors to drive the compressor and the indoor blower.

(c) Insert the following paragraph between the second and third paragraphs of the Petition dated December 4, 1985:

The 38EV/38QV equipment can be tested under the Appendix M procedures but the results of such testing are not representative of the true efficiency of the equipment.

Very truly yours,

Edward A. Baily,

Director, Industry Relations.

[FR Doc. 86–3355 Filed 2–13–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59212; FRL–2969–9]

Certain Chemicals Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of sixteen applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: March 3, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–59212]" and the specific TME number should be sent to: Document Control Officer (TS–793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW, Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above

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address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 86-12

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted biphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-13

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted biphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-14

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted biphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-15

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted biphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-16

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemicol. (G) Substituted benzoate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant; Ames Test: Non-mutagenic.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-18

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted fluorobiphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-19

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted fluorobiphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-20

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted fluorobiphenyl.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-21

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted propylcyclohexyl ether.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-22

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted methyl cyclohexyl ether.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-23

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted ethyl cyclohexyl ether.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-24

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted cyclohexyl butyrate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-25

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted propylcyclohexyl carboxylate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-26

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted pentylcyclohexyl carboxylate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.

Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-27

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted propylcyclohexyl carboxylate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

T 86-28

Close of Review Period. March 20, 1986.
Manufacturer. Confidential.
Chemical. (G) Substituted pentylcyclohexyl carboxylate.
Use/Production. (S) Liquid crystal. Prod. range: Less than 10 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No release.

Dated: February 7, 1986.

V. Paul Fuschini,
Acting Director, Information Management Division.

[FR Doc. 86-3184 Filed 2-13-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59752; FRL-2970-1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provides a summary of each.

DATES: Close of Review Period:
Y 86-64, 86-65, 86-66, 86-67 and 86-68; February 20, 1986.
Y 86-69, 86-70, 86-71 and 86-72; February 23, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-64

Manufacturer. Confidential.
Chemical. (S) Polymer of neopentyl glycol, 1,6-hexanediol, adipic acid, isophthalic acid, terephthalic acid, trimellitic anhydride, and butyl stannoic acid.
Use/Production. (G) Polymer for industrial metal coating. Prod. range: 19,800-380,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 3 hrs/da, up to 15 da/yr.
Environmental Release/Disposal. 20 kg/batch released to air and land. Disposal by incineration.

Y 86-65

Manufacturer. Polychrome Chemical Corporation.
Chemical. (S) Polyester polymer of tall-oil fatty acids, 1,2-benzenedicarboxylic acid, benzoic acid, 2,2-dimethyl-1,3-propanediol and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.
Use/Production. (S) Industrial resin for high solid baking paint enamels. Prod. range: 110,000-220,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-66

Manufacturer. Polychrome Chemical Corporation.
Chemical. (S) Polyester polymer of tall-oil fatty acids, 1,2-benzenedicarboxylic acid, benzoic acid and 2-ethyl-2-(hydroxy methyl)-1,3-propanediol.
Use/Production. (S) Industrial resin for high solid baking paint enamels. Prod. range: 110,000-220,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-67

Manufacturer. Polychrome Chemical Corporation.
Chemical. (S) Polyester polymer of tall-oil fatty acids, 1,2-benzenedicarboxylic acid, benzoic acid and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.
Use/Production. (S) Industrial resin for high solid baking paint enamels. Prod. range; 110,000-220,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-68

Importer. Hitachi Chemical Company America, Ltd.
Chemical. (G) Pyrrolidone—polyamide polymer.
Use/Import. (S) Site-limited and industrial insulation and protective film for display circuits. Import range: 30-100 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-69

Manufacturer. The Dow Chemical Company.
Chemical. (G) Crosslinked sodium acrylate copolymer.
Use/Production. (G) Intermediate in polymer manufacturing. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by incineration, navigable waterway and on-site wastewater treatment plant.

Y 86-70

Manufacturer. The Dow Chemical Company.
Chemical. (G) Weak acid on ion exchange resin.
Use/Production. (G) Industrial and commercial water softening. Prod. range: Confidential.
Toxicity Data. No data submitted.

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Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to water. Disposal by navigable waterway and on-site wastewater treatment plant.

Y 86-71

Manufacturer. Confidential.
Chemical. (G) Polymer of alkenyl benzene and mixed alkyl ester of alkenyl carboxylic acids.
Use/Production. (G) Non-dispersive use in a formulation. Prod range: 100-200 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-72

Manufacturer. Confidential.
Chemical. (G) Polymer of mixed glycols, a terephthalate and an alkyl dicarboxylic acid.
Use/Production. (G) Non-dispersive use in a formulation. Prod. range: 3,200-250,000 kg/yr.
Toxicity Data. Acute dermal: >1 g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: >5,000 mg/m; Skin sensitization: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: February 7, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86-3185 Filed 2-13-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51610; FRL-2969-6]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

DATES: Close of Review Period:
P 86-466 and 86-467—April 30, 1986.
P 86-468, 86-469, 86-470, 86-471, 86-472, 86-473, 86-474, and 86-475—May 3, 1986.
P 86-476, 86-477, 86-478, 86-479, 86-480, 86-481, 86-482, 86-483, 86-484, 86-485, and 86-486—May 4, 1986.
P 86-487 and 86-488—May 5, 1986.
P 86-489, 86-490, 86-491, 86-492, 86-493, 86-494, and 86-495—May 6, 1986.
Written comments by:
P 86-466 and 86-467—March 31, 1986.
P 86-468, 86-469, 86-470, 86-471, 86-472, 86-473, 86-474, and 86-475—April 3, 1986.
P 86-476, 86-477, 86-478, 86-479, 86-480, 86-481, 86-482, 86-483, 86-848, 86-485, and 86-486—April 4, 1986.
P 86-487 and 86-488—April 5, 1986.
P 86-489, 86-490, 86-491, 86-492, 86-493, 86-494, and 86-495—April 6, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51610]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 6:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-466

Importer. Confidential.
Chemical. (G) Hydrogen 2-[alpha(2-hydroxy-3-sulfo-5-ethenylsulfonylphenylazo)-benzilidene hydrazino]-5-substituted, cuprate, sodium salt.
Use/Import. (S) Textile dye. Import range: Confidential.
Toxicit Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; LC_{50} 48 hr (Zebra fish): 100 to 500 mg/1, 96 hr: 100 mg/1.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-467

Manufacturer. Hack Company.
Chemical. (S) Formic acid, magnesium salt.
Use/Production. (S) Industrial and commercial primary standard for magnesium (as in water hardness testing). Prod. range: 30 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 8 hrs/da, up to 4 da/yr.
Environmental Release/Disposal. 0.75 to 5 kg/batch released to water. Disposal by publicly owned treatment works (POTW).

P 86-468

Manufacturer. Confidential.
Chemical. (G) Microgel non-aqueous dispersing.
Use/Production. (S) Industrial coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 10 workers, up to 8 hrs/da.
Environmental Release/Disposal. No data submitted.

P 86-469

Importer. Crescent Chemical Company Inc.
Chemical. (S) 2-naphthalenecarboxamide, N-(4-chloro-2-methoxy-5-methylphenyl)-3-hydroxy-, monosodium salt.
Use/Import. (S) Industrial azoic coupling component of a 2 component dyeing system. Import range: 60,000-75,000 kg/yr.
Toxicity Data. Acute oral: >5 g/kg; Irritation: Skin—Slight, Eye—Moderate.
Exposure. Processing: dermal, a total of 1 worker, up to 16 hrs/yr.
Environmental Release/Disposal. No release. Disposal by wastewater treatment.

P 86-470

Importer. Crescent Chemical Company, Inc.
Chemical. (S) 2-naphthalenecarboxamide, N-(4-chloro-2,5-dimethoxyphenyl)-3-hydroxy-7-methoxy-, potassium salt.
Use/Import. (S) Industrial azoic coupling component of a 2 component dyeing system. Import range: 5,000-7,000 kg/yr.
Toxicity Data. Acute oral: <15,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Irritant.
Exposure. Processing: dermal, a total of 1 worker, up to 16 hrs/yr.
Environmental Release/Disposal. No release. Disposal by wastewater treatment.

P 86-471

Importer. Crescent Chemical Company, Inc.

Chemical. (S) 2-hydroxy-N-(4-methoxy-2-methylphenyl)-11-H-benzo[a]-carbazole-3-carboxamide.
Use/Import. (S) Industrial azoic coupling component of a 2 component dyeing system. Import range: 12,000-15,000 kg/yr.
Toxicity Data. Acute oral: >15 g/kg; Irritation: Skin—Nonirritant, Eye—Moderate.
Exposure. Processing: dermal, a total of 1 worker, up to 16 hrs/yr.
Environmental Release/Disposal. No release. Disposal by wastewater treatment.

P 86-472

Importer. Nuodex, Incorporated.
Chemical. (G) Copolyamide from dibasic acid, diamine and C_{12}-lactam.
Use/Import. (G) Industrial hot melt adhesive. Import range: 10,000-30,000 kg/yr.
Toxicity Data. Acute oral: >10,000 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-473

Importer. Confidential.
Chemical. (G) t-amyl peroxy mono carbonate.
Use/Import. Polymerization initiator (curing agent) for unsaturated polyester resins. Import range: Confidential.
Toxicity Data. No data Submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-474

Importer. Peerless Photo Products, Inc.
Chemical. (G) Maleic acid, styrene, methylmethacrylate polymer.
Use/Import. (S) Industrial matting agent for photographic applications. Import range: 1,200-1,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 17 workers up to 24 hrs/da, up to 50 da/yr.
Environmental Release/Disposal. No release.

P 86-475

Manufacturer. USM Corporation.
Chemical. (G) Polyamide.
Use/Production. (G) Adhesive, open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86-476

Manufacturer. Confidential.
Chemical. (G) Substituted ammonium carboxylate.
Use/Production. (G) Dispersive use. Prod. range; Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 30 workers, up to 4 hrs/da, up to 33 da/yr.
Environmental Release/Disposal. Release to air or land. Disposal by land fill and Resource Conservation and Recovery Act (RCRA).

P 86-477

Importer. Confidential.
Chemical. (G) 1,4-benzenedisulfonic acid, 2,2'-[1,2-ethenediyl]bis[3-sulfo-4-phenylene]imino[6-[(disubstituted)imino]-1,2,3,5-triazine-4,2-diyl]]bis-, hexasodium salt.
Use/Import. (S) Industrial and consumer optical brightener for use in textile as liquid and powder products. Import range: Confidential.
Toxicity Data. Acute oral: 15,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. Processing: dermal, a total of 2 workers.
Environmental Release/Disposal. 5 kg released to water. Disposal by POTW.

P 86-478

Importer. Confidential.
Chemical. (G) 1,4-benzenedisulfonic acid,2,2'-[2-ethenediyl]bis[3-sulfo-4,1-phenylene]imino-[6-disubstituted)imino]-1,2,3,5-triazine-4,2,diyl]]-bis-, hexasodium salt.
Use/Import. (S) Industrial and commercial brightener for use in paper as a liquid and powder products. Import range: Confidential.
Toxicity Data. Acute oral: Powder—11,300 mg/kg, liquid—>5,000 mg/kg; Irritation: Skin—Powder—Non-irritant, Liquid—Slight, Eye—Non-irritant; TOC 120 mg/l; LC_{50} 48 hr (Rainbow trout): >500 mg/1.
Exposure. Processing and use: dermal, inhalation and ocular, a total of 3 workers, 1 person/shift, 24 hrs/shifts.
Environmental Release/Disposal. Release to water. Disposal by sanitary landfill.

P 86-479

Manufacturer. Confidential.
Chemical. (G) Polymer of alkyl propenoates, substituted alkyl propenoates, ethenyl benzene and ethylene carboxylic acid.
Use/Production. (S) Site-limited metal coating intermediate. Prod. range: 125,000-375,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 1 hr/da, up to 25 da/yr.
Environmental Release/Disposal. None expected. Disposal by approved landfill.

P 86-480

Manufacturer. Confidential.
Chemical. (G) Polymer of alkyl propenoates and ethenyl benzene.
Use/Production. (S) Site-limited intermediate used in metal coating fomulations. Prod. range: 50,000-150,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 1 hr/da, up to 20 da/yr.
Environmental Release/Disposal. No release. Disposal by approved landfill.

P 86-481

Manufacturer. Eastman Kodak Company.
Chemical. (S) N-[5-(dibutylamino)-2,4-pentadienylidene]-N-butyl-1-butanaminium hexafluoro phosphate.
Use/Production. (G) Highly controlled non-dispersive use. Prod. range: 30-40 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 4 workers, up to 0.4 hr/da, up to 4 da/yr.
Environmental Release/Disposal. No release. Less than 0.2 to 6 kg/batch incinerated.

P 86-482

Manufacturer. Eastman Kodak Company.
Chemical. (S) N-[5-(dibutylamino)-2,4-pentadienylidene]-N-butyl-1-butanaminium chloride.
Use/Production. (G) Chemical intermediate. Prod. range: 30-40 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 2 workers, up to 0.1 hr/da, up to 1 da/yr.
Environmental Release/Disposal. No release.

P 86-483

Importer. Sunrize Corporation.
Chemical. (G) Diarylaroyl phosphine oxide.
Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions and rapid small in FRP part manufacturing and coating for thin shell molds. Prod. range: 100,000-1,000,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. 200 resin spillage/year released to air and land with 3,000 user styrene loss to air. Disposal by rain drainage.

P 86-484

Importer. Sunrize Corporation.

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Chemical. (G) Diarylaroyl phosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions and rapid small in FRP parts manufacturing and coating for thin shell molds. Prod. range: 100,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200 resin spillage/year released to air and land with 3,000 user styrene loss to air. Disposal by rain drainage.

P 86-485

Importer. Sunrize Corporation.

Chemical. (G) Diarylaroyl phosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions and rapid small in FRP parts manufacturing and coating for thin shell molds. Prod. range: 100,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200 resin spillage/year released to air and land with 3,000 user styrene loss to air. Disposal by rain drainage.

P 86-486

Importer. Sunrize Corporation.

Chemical. (G) Diarylaroyl phosphine oxide.

Use/Import. (S) Site-limited and industrial top coat for lowering styrene emissions and rapid small in FRP parts manufacturing and coating for thin shell molds. Prod. range: 100,000–1,000,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. 200 resin spillage/year released to air and land with 3,000 user styrene loss to air. Disposal by rain drainage.

P 86-487

Manufacturer. Confidential.

Chemical. (G) Monosubstituted phenyl azo disubstituted naphthalene sulfonic acid, substituted alkyl amine salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-488

Manufacturer. Confidential.

Chemical. (G) Monosubstituted phenyl azo disubstituted naphthalene sulfonic acid, sulfonic acid, salt.

Use/Production. (G) Site-limited isolated intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-489

Manufacturer. Confidential.

Chemical. (G) [(Dimethylchloro)silyl] propyl ester of a propenoic acid.

Use/Production. (G) Destructive use. Prod. range: 200–300 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 5 workers.

Environmental Release/Disposal. Less than 0.01 to 1 kg released by liquid solution. Disposal by landfill.

P 86-490

Manufacturer. Confidential.

Chemical. (G) Copolymer of methacrylate esters.

Use/Production. (S) Industrial, commercial and consumer polymer for use in coatings, adhesives and inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-491

Manufacturer. Confidential.

Chemical. (G) Alkyl ether amine.

Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-492

Manufacturer. Confidential.

Chemical. (G) Alkyl ether amine.

Use/Production. (G) Polymerization catalyst. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-493

Manufacturer. Rexnord, Inc.

Chemical. (G) Oxazolidine.

Use/Production. (S) Site-limited and industrial reactive additive to eliminate bubbling in moisture cure urethane coating and sealants. Prod. range; Confidenital.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. 1 to 10 kg/batch released to land. Disposal by licensed burial.

P 86-494

Manufacturer. Confidential.

Chemical. (G) Aryl alkyl ketone.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86-495

Manufacturer. Confidential.

Chemical. (G) Aryl alkyl ketone.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

Dated: February 7, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86-3166 Filed 2-13-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ER-FRL-2970-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 27, 1986 through January 31, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 1986 (51 FR 4804).

Draft EISs

ERP No. DS-AFS-D65010-00, Rating LO, George Washington Nat'l Forest, Land and Resource Mgmt. Plan, Uneven—aged Timber Mgmt. System, Additional Alternative, WV and VA. SUMMARY: EPA recommends that more detailed discussions of stream classifications, timber cutting, and fish and wildlife benefits be included in the final EIS and management plan.

ERP No. D-BLM-L70004-ID, Rating E02, Lemhi Resource Area, Resource Mgmt. Plan, ID. SUMMARY: EPA's primary concern is that water quality and beneficial uses would not be adequately protected under the EIS preferred alternative (and therefore the proposed RMP). EPA supports redesignating Alternative C as preferred, for it would better protect water quality by setting more specific standards for livestock forage use in riparian areas. Additionally, of the alternatives presented in the Eighteenmile Wilderness Study Area EIS, included in the RMP, only the "All Wilderness" alternative would comply with federally approved state water quality standards. EPA notes, therefore, that the Bureau of Land Management may only select the "All Wilderness" alternative for implementation at this time.

ERP No. D-COE-D39006-00, Rating EC1, Hydrilla Mgmt. and Control in the Potomac R. and Tributaries, Chain Bridge to the US 301 Bridge, District of Columbia, MD, and VA. SUMMARY: EPA has environmental concerns, but concurs with the Corps of Engineers recommendations for hydrilla control.

ERP No. D-COE-E32065-FL, Rating LO, Port Sutton Channel Navigation Improvements, Hillsborough Bay, FL. SUMMARY: EPA does not anticipate any important and or long-term adverse consequences from this action.

ERP No. D-JUS-C81010-NJ, Rating LO, Fairfield Federal Correctional Institution, Construction and Operation, NJ. SUMMARY: EPA anticipates that no significant environmental impacts will result from implementation f this project.

ERP No. D-SFW-C84001-NJ, Rating LO, Great Swamp Nat'l Wildlife Refuge, Comprehensive Mgmt. Plan, NJ. SUMMARY: Based on its review of the DEIS, EPA believes that no significant adverse environmental impacts will result from implementing the proposed master plan. However, EPA cautioned against acquiring certain areas that may contain hazardous waste sites, and suggested that the proposed long-term water quality monitoring program be modified.

Final EISs

ERP No. RF-NOA-A91053-00, Taking of Marine Mammals Associated With Tuna Purse Seining Operations, 1986 Amendments to Regulations. SUMMARY: EPA made no formal comments. EPA has no objections to the final EIS on the amendments to the regulations as proposed.

ERP No. F-NSF-A84027-00, Scientific Ocean Drilling Program, Expansion, Drilling in High Latitudes, In and Near Environmentally Sensitive Regions, On Continental Margins, and With a Riser and Blowout Prevention System. SUMMARY: EPA made no formal comments. EPA has reviewed the final EIS and has no objections to the program as proposed.

Amended Notice

The following review was completed during the week of January 13, 1986 through January 17, 1986 and should have appeared in the FR Notice published on January 31, 1986.

ERP No. F-AFS-J67004-MT, Stillwater Valley Platinum—Palladium, Mining and Milling Project, Operation Approval, Custer Nat'l Forest, MT. SUMMARY: EPA made no formal comments. The final EIS addressed EPA's concerns regarding the draft EIS.

Dated: February 11, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-3358 Filed 2-13-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2970-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed February 3, 1986 Through February 7, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860033, Draft, COE, TN, Mill Creek Basin Flood Damage Reduction Plan, Mill and Sevenmile Creeks Dry Dam Construction and Channel Widening, Davidson and Williamson Cos., Due: April 4, 1986, Contact: Lizabeth Rhodes (615) 736-5028.

EIS No. 860034, Final, COE, ND, Lake Darling Dam Modifications, Lake Darling Flood Control Project, Souris River, Due: March 17, 1986, Contact: Wayne Knott (612) 725-7745.

EIS No. 860035, FSuppl, COE, WI, State Road and Ebner Coulees Flood Control Project, Modifications, LaCrosse County, Due: March 17, 1986, Contact: Gary Paleah (612) 725-7745.

EIS No. 860036, Draft, BLM, UT, Utah Statewide Wilderness Study Areas, Wilderness Designation, Due: June 15, 1986, Contact: Dr. Gregory Thayn (801) 524-3135.

EIS No. 860037, Final, COE, MS, Pearl River Basin Flood Control Plan, Hinds and Rankin Cos., Due: March 17, 1986, Contact: Glenn Coffee (205) 690-2729.

EIS No. 860038, Report, COE, TX, Lake Wichita-Holliday Creek Flood Control Plan, Holliday Creek Channelization, Discharge of Fill Materials, Lake Wichita Dam to Wichita River Confluence, Wichita County, Contact: Buell Atkins (918) 581-7857.

EIS No. 860039, FSuppl, COE, MS, IL, Mississippi and Illinois Rivers Pools 24, 25, and 26, Operation and Maintenance, Shoreline Management Plan for Fleeting on Pool 26, Due: March 17, 1986, Contact: Owen D. Dutt. (314) 263-5711.

EIS No. 860040, Draft, FHW, MD, MD-36 Construction, Seldom Seen Road to Buskirk Hollow Road, Allegany County, Due: March 31, 1986, Contact: Edward Terry, Jr. (301) 952-4010.

EIS No. 860041, Final FAA, MA, Barnstable Municipal Airport, Runway 15-33 Extension and Navigational Aid Installation, Barnstable County, Due: March 17, 1986, Contact: M. Ashraf Jan (617) 273-7060.

EIS No. 860042, DSuppl, COE, NJ, NY, Newark Bay and Kill Van Kull Navigation Channel Improvements, Additional Information, Aquatic Population, Sediment Quality, Hydraulic Impacts and Disposal Alternative Update, Due: March 31, 1986, Contact: Joseph Debler (212) 264-4663.

EIS No. 860043, Draft, EPA, REG, Magnetic Tape Manufacturing Industry Volatile Organic Compound Limitations, Emission Standards, Due: April 7, 1986, Contact: James Berry (919) 541-5671.

EIS No. 860044, Draft, BLM, UT, West Desert Pumping Project, Great Salt Lake Flood Control, Right-of-Way Permit, Box Elder and Tooele Cos., Due: April 22, 1986, Contact: Jack Peterson (801) 524-5348.

Amended Notice

EIS No. 86013, Draft, AFS, Santa Fe National Forest, Land and Resource Management Plan, Published FR 01-24-86—Incorrect status.

Dated: February 11, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-3359 Filed 2-13-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Community Television, Inc., et al.; Hearing Designation Order

In re Applications of MM Docket No. 86-45:

	File No.
Community Television, Inc..	BPET-850829KE.
Acorn Television in Action for Communities, Inc.	BPET-851018KF.

For Construction Permit, Atlanta, Georgia.

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Adpoted: January 31, 1986.
Released: February 7, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new non-commercial educational television station to operate on Channel 57, Atlanta, Georgia and a petition to deny the application of Acorn Television in Action for Communities, Inc. (Acorn).

2. On November 21, 1985, a petition to deny Acorn's application was filed by Community Television, Inc., the competing applicant in this proceeding, on ground that Acorn's application was signed by its technical consultant, Anita Softness, instead of by an officer as required by § 73.3513(a)(3) of the Commission's rules. In response to the petition, Acorn filed an opposition on December 23, 1985, explaining that Ms. Softness is the Executive Director of Acorn and, as such, is an ex-officio member of the Board of Directors. Acorn, also filed a duly authenticated copy of its By-laws. While Article One, (Board of Directors), Section 1, provides that the Executive Director shall be an ex-officio member of the Board, Article Three (Officers), Section 1, provides that the officers shall be a President, Vice President, Secretary, Treasurer and Executive Director. It seems clear, therefore, that Ms. Softness is an officer of Acorn and that she can properly execute the application on behalf of the applicant. Since a pleading does not constitute an amendment of an application, Acorn will be required to amend its application, pursuant to the provisions of § 1.65 of the Commission's rules, to show, in section II, Table I, FCC Form 340, that Ms. Softness is the Executive Director and an officer of Acorn. However, since Acorn did not identify Ms. Softness as an officer in its original application and provide the information required by Table I, an appropriate issue will be specified. The petition to deny filed by Community Television, Inc. will be denied.

3. The deadline for filing applications in this proceeding was October 18, 1985 ("A" cut-off date). Acorn filed its application on October 18, 1985, with a facsimile signature. The applicant indicates that the original application was erroneously delivered by a courier service to another city. The application containing the original signature was filed on October 21, 1985. Acorn has, in effect, requested that the October 21, 1985, amendment be accepted *nunc pro tunc*. This situation is governed by a longstanding Commission policy which dictates that the signed original be accepted *nunc pro tunc*. *Bocanegra/Gerald Broadcasting Group*, Mineo No. 1470, released December 22, 1982; *Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976). Accordingly, the signed original of the application will be accepted *nunc pro tunc*.

4. Section V–C, Item 10(e) of the current (May 1985) edition of FCC Form 340 requires the applicant to furnish figures for the area and population within its proposed Grade B Contour. Acorn submitted this information, but Community Television used an obsolete (January 1983) edition of the form which does not require area and population figures. Consequently, Community Television did not furnish this information. However, § 73.3511(a) of the Commission's rules requires that the proper edition of FCC forms be used. Community Television must, therefore, provide this information. The applicant will be required to furnish this information to the presiding Administrative Law Judge within 20 days after the release of the Order.

5. No determination has been reached that the tower height and location proposed by Community Television would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Community Television, Inc., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation;

2. To determine with respect to Acorn Television In Action For Communities, Inc.:

(a) Whether the applicant complied with section 73.3514(a) of the Commission's Rules in failing to identify Ms. Anita Softness as an officer in its original application; and

(b) In light of the evidence adduced pursuant to the foregoing issues, the effect of the omission on the applicant's basic or comparative qualifications.

3. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;

4. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served;

5. To determine whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service;

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that the petition to deny filed by Community Television, Inc. is denied.

9. It is further ordered, that Community Television, Inc. shall submit an amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

10. It is further ordered, that Acorn Television in Action for Communities, Inc. shall file an amendment, pursuant to § 1.65 of the Rules, to show that Ms. Anita Softness is the Executive Director and an officer of Acorn, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. It is further ordered, that the signed original application of Acorn is accepted *nunc pro tunc* as of October 18, 1985.

12. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

13. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–3253 Filed 2–13–86; 8:45 am]

BILLING CODE 6712-01-M

First Communications Group et al.; Hearing Designation Order

In re applications of MM Docket No. 86–46:

	File No.
First Communications Group.	BPCT–850823KF
Virginia L. and Frederic O. Fruits.	BPCT–851018KI
The Mad River Broadcasting Company, Inc.	BPCT–851016KH
Kathleen Bailey, d/b/a Capital Foothills Broadcasters.	BPCT–851018KP

For construction permit: Fort Bragg, California.

Adopted: January 31, 1986.
Released: February 7, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Divsion, acting pursuant to delegated authority has before it (1) the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 8, Fort Bragg, California, and (2) a petition to deny First Communications Group's (FCG) application.

2. On October 18, 1985, the Mad River Broadcasting Company, Inc. (Mad River), one of the applicants in this proceeding, filed a petition to deny the FCG application. The petition alleges that FCG's application does not contain a "certification of site availability." The petition also notes that FCG does not provide the home addresses of the parties and that the application contains errors with respect to the location of the proposed transmitter site. Mad River's argument is that the application is patently defective and should not have been accepted for filing. Although FCG's application cannot be granted without the required certification and other information, the standard for acceptability is "substantially complete." The matters raised by Mad River are the kinds of omissions that can be corrected by minor amendment. *See, e.g., James River Broadcasting Corp.* v. *FCC*, 399 F.2d 585 (1968). The application was "substantially complete" when filed, within the meaning of § 73.3564(a). Mad River's petition, therefore, will be denied.[1]

3. Section II, Table 1, of FCC Form 301, specifically requests parties to the application to list their names and home addresses. FCG's two principals who are husband and wife, only provide a Post Office Box mailing address. Accordingly, FCG will be required to provide the home addresses of its principals to the presiding Administrative Law Judge within 20 days after this Order is released.

4. FCG lists its transmitter site coordinates in sections V–G and V–C, FCC Form 301, as 39° 41' 12" N, 123° 32' 30" W. However, the transmitter site depicted on FCG's site map are at different coordinates. Additionally, the transmitter site described on FCG's contour map is at still another set of coordinates. It appears that FCG would meet spacing requirements from any of the site coordinates. However, FCG will be required to eliminate the discrepancies by amendment to the presiding Administrative Law Judge within 20 days after the release of this Order.

5. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. FCG has not submitted such a certification. Accordingly, FCG will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

6. Section 73.3555(a)(3) of the Commission's Rules provides that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more television broadcast stations and the grant of such license will result in any overlap of the Grade B contours of the existing and proposed stations. Note 5 to § 73.3555 states that "paragraphs (a)–(d) of this section will not be applied to cases involving television stations which are primarily "satellite" operations, and such cases will be considered on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest." Mad River is the permittee of unbuilt Station KREQ(TV), Arcata, California, and intends to operate the Fort Bragg station as a satellite of KREQ–TV. The predicted Grade B contours of the two proposed stations would overlap. The other applicants propose full-service operations. Accordingly, appropriate issues will be specified.

7. The application of Virginia L. and Frederic O. Fruits (Fruits) specifies a maximum visual effective radiated power of 316 kW and an antenna height above average terrain of 2,340 feet. This combination of power and height exceeds the maximum permitted by § 73.614 of the Commission's Rules. Accordingly, Fruits will be required to submit a corrective amendment to the presiding Administrative Law Judge within 20 days after this Order is released.[2]

8. Our review of Fruits' application shows that section V–C, Item 15, FCC Form 301, makes reference to an exhibit (exhibit V–4) that is missing. Accordingly, Fruits will be required to submit the exhibit as an amendment to their application, to the presiding Administrative Law Judge, within 20 days after this Order is released.

9. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 56 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accure to any of the applicants.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, that pursuant to section 309(e) of the

[1] It should be noted that elsewhere in this Order we call for amendments covering the omissions noted by Mad River.

[2] Reduction of height or power may require the submission of new engineering data such as new contour maps, new vertical tower sketch, and changed area and population figures. If so, this information must be submitted as part of the required amendment.

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Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Mad River Broadcasting Company, Inc., whether circumstances exist which would make operation as a "satellite" necessary for Fort Bragg, California.

2. To determine, with respect to Mad River Broadcasting Company, Inc., whether its proposal is consistent with § 73.3555 of the Commission's Rules and, if not, whether common ownership, operation or control of Station KREQ–TV, Arcata, California, and the proposed station would be consistent with the public interest.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, that First Communications Group shall, within 20 days after the release of this Order, file with the presiding Administrative Law Judge, a site availability certification, in the form required by the Commission, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

13. It is further ordered, that First Communications Group shall, within 20 days after the release of this Order, file an amendment with the presiding Administrative Law Judge providing the home addresses of its principals.

14. It is further ordered, that First Communications Group shall, within 20 days after the release of this Order, file an amendment with the presiding Administrative Law Judge eliminating the discrepancies in its site coordinates as discussed in paragraph 4, supra.

15. It is further ordered, that Virginia L. and Frederic O. Fruits shall submit and amendment to show compliance with § 73.614 of the Commission's Rules pertaining to power and antenna height above average terrain, to the presiding Administrative Law Judge, within 20 days after this Order is released.

16. It is further ordered, that Virginia L. and Frederic O. Fruits shall submit, as an amendment to their application, the exhibit omitted from Section V–C, Item 15, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordered, that the petition to deny filed by Mad River Broadcasting Company, Inc. is denied.

18. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

19. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–3254 Filed 2–13–86; 8:45 am]

BILLING CODE 6712–01–M

Florida Education Television, Inc., et al.; Hearing Designation Order

In re applications of; MM Docket No. 86–42.

	File No.
Florida Educational Television, Inc.	BPET–850612KE
Marathon Educators Broadcasting, Inc.	BPET–851018KL

For construction permit: Marathon, Florida.

Adopted: January 30, 1986.

Released: February 7, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Florida Educational Television, Inc. (Florida Educational), and Marathon Educators Broadcasting, Inc. (Marathon Educators) for authority to construct a new non-commercial educational television station on Channel 9, Marathon, Florida, and an amendment filed by one of the applicants.[1]

2. No determination has been reached that the tower height and location proposed by Marathon Educators would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. Florida Educational's proposed tower is to be located 3.21 kilometers from the directional array of AM station WFFG, Marathon, Florida. Because of the proximity of the applicant's proposed tower to WFFG, any grant of a construction permit to the applicant will be conditioned to ensure that WFFG's radiation pattern is not adversely effected by the construction of the proposed station.

4. Florida Educational's proposed site is 0.77 kilometers from the site of the United States Information Agency's AM radio station ("Radio Marti"). Because the proximity of the applicant's proposed tower to Radio Marti could adversely affect Radio Marti's radiation pattern,[2] any grant of the Florida Educational application will be subject to a condition intended to assure that Radio Marti's radiation pattern is not distorted.

5. Except as indicated by issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issue specified below.

6. Accordingly, It Is Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the application ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Marathon Educators Broadcasting, Inc. would constitute a hazard to air navigation.

2. To determine the extent to which each applicant's proposed operation will be integrated into the overall cultural and educational objectives of the respective applicants;

[1] Marathon Educators filed an amendment on December 9, 1985 (the "B" cut-off date) with a facsimile signature. An original page was submitted December 11, 1985. The amendment was timely filed, only the original signature was missing. Since the amendment updates the applicant's legal qualifications and programming, which is required by § 1.65 of the Commission's Rules, it will be accepted for 1.65 purposes only.

[2] The applicant should be fully aware of the fact that Radio Marti is a powerful station and the presence of a strong AM field should be considered in designing the technical aspects of the television station.

3. To determine the manner in which each applicant's proposed operation meets the needs of the community to be served;

4. To determine whether the factors in the record demonstrate that one applicant will provide a superior non-commercial educational broadcast service.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It Is Further Ordered, That the amendment filed by Marathon Educators Broadcasting, Inc. dated December 11, 1985 Is Accepted for section 1.65 purposes only.

8. It Is Further Ordered, That the Federal Aviation Administration Is Made A Party Repondent to this proceeding with respect to issue 1.

9. It Is Further Ordered, That in the event of a grant of the application of Florida Educational Television, Inc., the contruction permit shall be conditioned as follows:

A. Prior to construction of the tower authorized herein, permittee shall notify the licensee of AM Station WFFG Marathon, Florida, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, DC to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

B. Due to the proximity of the proposed television tower to the Radio Marti facility, prior to the commencement of construction of the television station authorized herein, the permittee shall consult with appropriate officials of the United States Information Agency, Bureau of Broadcasting (Voice of America) and shall continue such consultations periodically during the course of construction. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects on the radiation pattern of the radio station.

10. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–3255 Filed 2–13–86; 8:45 am]

BILLING CODE 6712–01–M

National Industry Advisory Committee Long Range Planning Committee; Meeting

February 10, 1986.

Pursuant to the provisions of Pub. L. 92–463, announcement is made of a public meeting of the Long Range Planning Committee of the National Industry Advisory Committee (NIAC) to be held on February 26, 1986. The Committee will meet at 2:00 PM at the Washington Marriott Hotel, 22nd & M Sts., NW, Washington, DC.

Agenda

1. Welcome and remarks.
2. Overview of NIAC activities since 1981.
3. Questions and discussion.
4. Old/New Business: Adjournment.

Any member of the public may attend or file a written statement with the Committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may contact the NIAC Executive Secretary, Claudette E. Pride, on (202) 632–3906).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–3249 Filed 2–13–86; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1567]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

February 7, 1986.

The following listings of petitions for reconsideration and clarification filed in Commission rulemaking proceedings is published pursuant to CFR § 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the Federal Register. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Petition to amend Part 97 to enhance the Radio Amateur Civil Emergency Service (RACES)
Filed by: Mark Foster for The City of Beverly, Massachusetts, Department of Civil Defense on 1–27–86

Subject: Amendment of Part 69 of the Commission's Rules to Ensure Application of Access Charges to all Interstate Toll Traffic. (RM–5056)
Filed by: William C. Sullivan, Linda S. Legg, Paul G. Lane & Edward L. Eckhart, Attorneys for Southwestern Bell Telephone Company on 1–20–86

Subject: Amendment of the Commission's Rules to Allow the Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings. (CC Docket No. 83–1096)
Filed by:
Jonathan D. Blake & Jonathan L. Wiener, Attorneys for The Cellular Telecommunications Division of Telocator Network of America, Inc., on 12–12–85.
Richard L. Vega for Richard L. Vega & Associates, Inc., on 12–27–85.
Joseph F. Hennessey, Attorney for A. Bates Butler III and James A. Mather on 1–17–86.
Robert W. Maher & Elizabeth F. Maxfield for Cellular Telecommunications Industry Association on 1–21–86.
Russell D. Lukas, Thomas Gutierrez & Frederick M. Joyce, Attorneys for Mobile Communications Corporation of America on 1–21–86

Subject:
Deletion of AM Application Acceptance Criteria in § 73.37(e) of the Commission's rules. (MM Docket No. 85–39, RM–3683)
Amendment of Part 73 of the Commissions rules, Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services. (Docket

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No. 18651)

Filed by: David Honig, Attorney for The National Black Media Coalition and the New York Affiliate, National Black Media Coalition on 1-16-86.

Federal Communications Commission.
William J. Tricarico,
Secretary.

[FR Doc. 86-3252 Filed 2-13-86; 8:45 am]
BILLING CODE 6712-01-M

Randy Chandler Ministries, Inc., et al., Hearing Designation Order

In re applications of MM Docket No. 86-44; *File No.*

Randy Chandler Ministries, Inc.	BPCT-850920KM
Garcia Communications	BPCT-851209KE

For construction permit: Wolfforth, Texas.
Adopted: January 31, 1986.
Released: February 7, 1986.

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 22, Wolfforth, Texas, and a petition to deny Garcia Communications' application.[1]

2. No determination has been reached that the tower height and location proposed by Rand Chandler Ministers, Inc. would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. On June 28, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. Randy Chandler Ministeries, Inc. has not submitted such a certification. Accordingly, the applicant will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

4. The transmitter site proposed by Randy Chandler Ministeries, Inc. will be located 1.10 km from AM Station KRLB, Lubbock, Texas, 2.69 km from AM Station KLFB, Lubbock, Texas and .78 km from AM Station KTLK, Lubbock, Texas. Because of the proximity of the proposed tower to KRLB, KLFB and KTLK, if Randy Chandler Ministries, Inc. is the successful applicant in this proceeding, the construction permit will be conditioned to ensure that the radiation patterns of KRLB, KLFB and KTLK will not be adversely affected.

5. The transmitter site proposed by Garcia Communications will be located 2.69 km from AM Station KLFB, Lubbock, Texas. If Garcia Communications is the successful applicant in this proceeding, the construction permit will be appropriately conditioned to ensure that KLFG's radiation patterns will not be adversely affected.

6. Section I, Item 3(a), FCC Form 301, inquires whether the applicant is in compliance with the provisions of section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments. Randy Chandler Ministries, Inc. answered the question negatively. Accordingly, the applicant will be required to submit an explanation of its response to Item 3(a), to the presiding Administrative Law Judge, within 20 days after this Order is released.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, It Is Ordered, That pursuant to section 390(e) of the communications Act of 1934, as amended, the applications Are Designated For Hearing In A Consolidated Proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Randy Chandler Ministries, Inc., whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It Is Further Ordered, That the Federal Aviation Administration Is Made a Party Respondent to this proceeding with respect to issue 1.

10. It Is Further Ordered, That the petition to deny filed by Randy Chandler Ministries, Inc. IS DISMISSED.

11. It Is Further Ordered, That Randy Chandler Ministries, Inc. shall file a site availability certification, in the form required by the Commission, with the presiding Administrative Law Judge, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

12. It is further Ordered, That, in the event that Randy Chandler Ministries, Inc. is the successful applicant for Channel 22, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KTLK, Lubbock, Texas, so that the station may commence determining operating power by the indirect method. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, antenna impedance measurements of the AM station shall be made and sufficient field strength measurements, taken at 10 locations along each of eight equally spaced radials, shall be made to establish that the AM radiation pattern is essentially omnidirectional. Prior to or simultaneous with the filing of an application for a license to cover this permit, the results of the field strength measurements and the impedance measurements shall be submitted to the Commission in an application for the AM station to return to the direct method of power determination.

Prior to construction of the tower authorized herein, permittee shall notify AM Stations KRLB and KLFB, Lubbock, Texas, so that, if necessary, the AM stations may determine operating power by the indirect method and request temporary authority from the Commission in Washington, DC to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits.

[1] On January 22, 1986, Randy Chandler Ministries, Inc. filed its petition to deny Garcia Communications' application, alleging that the application was not substantially complete when it was filed and, therefore, it should be denied. Although, petitioner characterizes its objection in terms of "substantial completeness", the petition in effect, challenges the quality or sufficiency of the data submitted. It is, essentially, a petition to specify issues. Since such petitions are no longer permitted, the petition will be dismissed. *Revised Procedures for Processing of Contested Broadcasting Applications*, 72 FCC 2d 202 (1979).

Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation patterns of the AM stations. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM arrays have not been adversely affected and, prior to or simultaneous with the filing of the application for a license to cover this permit, the results submitted to the Commission.

13. It Is Further Ordered, That Randy Chandler Ministries, Inc, shall submit an explanation of its response to section I, item 3(a), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

14. It Is Further Ordered, That, in the event that Garcia Communications is the successful applicant for Channel 22, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station KLFB, Lubbock, Texas, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, DC, to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for a license to cover this permit, the results submitted to the Commission.

15. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

16. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.
Roy J. Stewart,
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-3256 Filed 2-13-86; 8:45 am]
BILLING CODE 6712-01-M

Seattle Public Schools, et al.; Hearing Designation Order

In re applications of MM Docket No. 86-60. *File No.*

Seattle Public Schools for renewal of license for station KNHC(FM), Seattle, Washington.	BRED-830922AQ
and	
Jack Straw Memorial Foundation, Seattle, Washington, Req: 88.5 MHz, Channel 206C; 100 kW(H), 98 kW(V); 348 meters (H&V).	BPED-840103AM

For Construction Permit for a new FM Station.

Adopted: February 3, 1986.
Released: February 7, 1986.

By the Commission:

1. The Commission has before it: (a) an application for renewal of license for station KNHC(FM), Seattle, Washington, filed on September 22, 1983, by the Seattle Public Schools ("School System"); (b) an application to operate on the frequency currently occupied by KNHC, filed on January 3, 1984, by Jack Straw Memorial Foundation ("Jack Straw"); (c) the School System's December 8, 1984, "Petition to Deny or Dismiss" Jack Straw's application; and (d) related responsive pleadings.

2. Jack Straw proposes to share the specified frequency with the School System on a mutually acceptable basis. However, because or an uncertainty as to the applicability of 47 CFR 73.561(b), which provides for applications for share-time operations, Jack Straw prepared its application "to ensure its favorable consideration regardless of how the Commission's Rules are interpreted." Specifically, while that application proposes "unlimited time operation," it states that it was "filed pursuant to and consistent with the intent and meaning of [47 CFR 73.561(b)]."[1] Further, the application "emphasize[s] that [Jack Straw] is not seeking to displace the [School System] as the licensed operator on the channel currently occupied exclusively by station KNHC," but instead "hopes through this application to ultimately share this channel with the [School System] on a mutually acceptable basis." Jack Straw Application at Ex. 1, pp. 1-2. As indicated in paragraph 7, *infra*, Jack Straw's application shall be treated as an application to share time.

3. In its petition, the School System argues, on the basis of the above extracts from Jack Straw's application, that the application contains "two separate and distinct, yet conflicting proposals": one to share time on the channel presently used exclusively by KNHC and the other to operate full time on that channel. The School System contends that making alternative proposals in a single application violates the spirit of the Commission's Rules on contingent and applications, 47 CFR 73.3517, 73.3518. Accordingly, the School System maintains that Jack Straw's application must be either dismissed or denied. With respect to the proposal to share time, the School System also asserts that "there is nothing in § 73.561(b)] to indicate that another applicant may file for time sharing where the licensee is operating at least 12 hours per day." Petition at 2. The School System states that KNHC has operated more than 12 hours per day since April 7, 1983, and plans to continue such operation in the future. The School System argues that those hours of operation exceed the level set by § 73.561(b) and, therefore, that it cannot be forced to share time with Jack Straw.

4. The School System's argument that the alternative proposal for full-time and part-time operation contained in Jack Straw's application make that application inconsistent with the spirit behind §§ 73.3517 and 73.3518 of the Rules misconstrues those rules. Section 73.3517 proscribes only the filing of applications which are contingent upon action on another Application pending before the Commission. *See Contingent applications in the Broadcast Services*, 22 RR 299 (1961), in conjunction with former FCC Form 301, p. 1, item 3 (Mar. 1960). *See also Contingent Applications*, 61 FCC 2d 236 (1976). Jack Straw's application is not now, and never has been, contingent upon Commission action on any other application. Section

[1] The response to the pertinent item of FCC Form 340 which proposes unlimited time operation refers to a statement in an Exhibit appended to the application. The Exhibit qualifies the unlimited-time proposal and clearly enunciates the intent of the applicant to seek a share-time authorization.

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73.3518 provides that "[w]here an application is pending and undecided before the Commission, no subsequent inconsistent or conflicting application may be filed by or on behalf of the same applicant, successor or assignee." There is not now, and there has never been, any application pending before the Commission filed by or on behalf of Jack Straw which was or is inconsistent or in conflict with Jack Straw's instant application. The Commission's longstanding policy with regard to competing applications for full-time operation on the same noncommercial educational channel is to direct the presiding Administrative Law Judge to consider whether a share-time arrangement would serve the public interest better then would operation restricted to a single licensee. *See Granfalloon Denver Educational Broadcasting, Inc.*, 43 FR 49560 (Broadcast Bur. 1978). *See also Cleveland Board of Education*, 87 FCC 2d 9, 16 (1981). In view of that policy, the inclusion of alternative proposals for full-time and part-time operation in Jack Straw's application provides no ground for dismissing or denying that application. The proffering of those alternatives did not make Jack Straw's application "contingent," "inconsistent," or "conflicting" within the meaning of the Commission's Rules, but instead was a reasonable response to Jack Straw's uncertainty as to what effect, if any, KNHC's hours of operation at the time Jack Straw filed its application would have on an application which proposed only part-time operation. Jack Straw's application repeatedly indicates that Jack Straw intended its application to be treated as an application to share time unless the Commission were to find that § 73.561(b) did not apply to the School System. Accordingly, we will examine whether that rule is applicable in this case.

5. Section 73.561(b) states, in pertinent part, that any noncommercial educational FM station "which do[es] not operate 12 hours per day each day of the year, will be required to share use of the frequency [on which the station operates] upon the grant of an appropriate application proposing such share time arrangement." A licensee opposing an application for time sharing on the ground that the station's hours of operation exceed the level established by this rule must provide the Commission with a "compilation of the hours broadcast" showing that its station had broadcast "at least 12 hours per day each day of this year." *Noncommercial Educational Stations*, 44 RR 2d 235, 252 (1978). Implicit in the requirement for a "compilation of the hours broadcast" is a requirement that a licensee's showing be based upon its *established record* of having broadcast "at least 12 hours per day each day of the year." Jack Straw filed its construction permit application on January 3, 1984. According to the information provided by the School System, as of Jack Straw's filing date, KNHC had been operating continuously for at least 12 hours per day only since April 7, 1983, a period of less than nine months.[2] It appears from the record that Jack Straw approached the School System in the Spring of 1981 concerning the possibility of sharing time on the channel occupied by KNHC. Two years later, in Spring, 1983, Jack Straw presented the School System with a written presentation containing a share-time proposal after renewed discussions initiated by Jack Straw on that subject. At about the time of the renewed verbal overtures, KNHC increased the duration of its daily operations to at least 12 hours per day. We do not construe the language of the rule to literally require 12 hours of broadcasting every single day for an entire year to prevent the invocation of the rule. Nor does the rule's invocation mandate time sharing where, as in this case, the parties have been unable to agree on operating hours.[3] But the circumstances presented here, including broadcasting at less than the required hours for a quarter of the year prior to the Jack Straw filing plus the circumstances surrounding the return to a longer broadcast schedule (immediately following Jack Straw's renewed approaches to the School System on the matter of sharing time), persuade us that Jack Straw is entitled under the terms of the rule to have its application considered through the hearing process.

6. The conclusion that the School System is not exempt from the possibility of forced time sharing under § 73.561(b) leaves open the question whether we should treat Jack Straw's application as an application to share time rather than as an application for full-time operation on the specified frequency. In answering this question, we find it significant that the subject applications will have to be designated for a comparative hearing on a share-time issue regardless of how Jack Straw's application is treated. *Compare Granfalloon Denver Educational Broadcasting, Inc., supra* (share-time issue designated where application for full-time operation conflicted with renewal application) *with Southern Keswick, Inc.*, 34 FCC 2d 624, 626 (1972) (share-time issue would be designated where share-time applications conflict). Therefore, the question of how we should treat Jack Straw's application is, in effect, a question whether the School System should have to face the prospect of losing its license for KNHC entirely.

7. We believe that the School System should not have to face that prospect. The School System is fully qualified to remain a Commission licensee. Its license renewal application for KNHC would have been granted routinely but for Jack Straw's competing application for the specified frequency. Moreover, Jack Straw's stated goal in filing its application was to obtain a share-time arrangement with the School System, and that application makes clear Jack Straw's intent to have its application treated as an application to share time in the event the School System can be forced to share time under § 73.561(b). Inasmuch as paragraph 5, *supra*, holds that the School System must face the prospect of sharing time under that rule, we will treat Jack Straw's application as an application to share time and designate the subject applications for a comparative hearing on a share-time issue. *Cf. Southern Keswick, Inc., supra* at 626. In taking that action, we note that while operating at least 12 hours per day for less than one year prior to the filing of an application to share time and a statement of future intention to operate at least 12 hours per day every day do not exempt a licensee from the *possibility* of involuntary time sharing, the presiding Administrative Law Judge may consider the licensee's entire record during the license term for which renewal is sought as well as the licensee's statement of future intention, in determining whether the public interest would be served by a share-time arrangement between the renewal applicant and the share-time applicant rather than by the renewal applicant's continued, increased operating

[2] Immediately prior those nine months, the pleadings indicate that the School System broadcast an average of approximately 67 hours per week.

[3] Section 73.561(b) states that each station "which does not operate 12 hours per day each day of the year, will be required to share use of the frequency" on which it operates. But the rule also states that the station will be required to do so "upon the grant of an appropriate application proposing [a] share time arrangement." We do not interpret this section as providing an absolute right to share time for any applicant proposing such use. Rather, a decision as to whether a share use application is "appropriate" within the meaning of that rule requires a public interest determination by the presiding Administrative Law Judge, just as any application for a broadcast facility does. In particular, as in this case, the Judge will be required to make a determination of whether full-time use by the School System on an expanded schedule or shared use between the School System and Jack Straw is preferred. *See* ¶¶ 7, 14 *infra*.

schedule.[4] *See, e.g., Committee for Community Access* v. *F.C.C.*, 737 F.2d 74, 77 (D.C. Cir. 1984). Accordingly, our action here should not be construed as implying that the School System's broadcast record has been less than meritorious, or that a share-time arrangement between the School System and Jack Straw would serve the public interest better than would operation restricted to the School System. *See, e.g., Rodio Station WABZ, Inc.*, 90 FCC 2d 818 (1982), *aff'd sub nom. Victor Broodcasting, Inc.* v. *FCC*, 722 F.2d 756 (D.C. Cir. 1983).

8. Section II, item 2a, of Form 340 asks each applicant for a new noncommercial educational station to state whether it is a nonprofit educational *institution*. Jack Straw's "yes" answer to this question appears to be inconsistent with that applicant's articles of incorporation. Section II of Jack Straw's articles states that Jack Straw is a corporation organized "exclusively" for "the establishment and operation for educational and cultural purposes of one or more radio broadcasting stations. . . ." Such corporations are classified as nonprofit educational organizations rather than nonprofit educational institutions. *Lower Cape Communications, Inc.*, 47 RR 2d 1577, 1578 (1980). Accordingly, Jack Straw shall be required to submit an amendment either setting forth Jack Straw's basis for claiming to be a nonprofit educational institution or specifying that Jack Straw is a nonprofit educational organization. In the event the amendment specifies that Jack Straw is a nonprofit educational organization, Jack Straw will be required to submit an additional amendment responding to section II, item 2b, of Form 340, which directs each nonprofit educational organization applying for a construction permit for a new noncommercial educational station to submit an exhibit stating how the proposed station would be used for the advancement of an educational program. In the event Jack Straw's submissions are deficient, the presiding Administrative Law Judge shall specify an appropriate issue directed to Jack Straw's basic qualifications (or lack thereof) to be a noncommercial educational FM licensee.

9. The financial information submitted by Jack Straw does not demonstrate its financial qualifications. That information fails to indicate the total cost of constructing the proposed station,[5] and whether sufficient funds will be available to cover these costs as well as operational costs for the first three months.[6] Accordingly, an appropriate issue will be specified. *See South Florida Broadcasting Co.*, 94 FCC 2d 452 (1983).

10. Jack Straw has not indicated whether it has provided local notice of the filing of its application, as required by 47 CFR 73.3580(f). To avoid delay, we will waive 47 CFR 73.3564(c) on our own motion, and require Jack Straw to provide local notice of its application, if it has not already done so, and so inform the presiding Administrative Law Judge within thirty days of the release of the Order.

11. Jack Straw has proposed a transmitter site at Cougar Mountain, Washington. This location is the site of numerous transmitters, and was recently the subject of a joint survey by the United States Environmental Protection Agency and the Commission's Office of Science and Technology which determined that in some areas human exposure to radiofrequency (RF) radiation emitted by the transmitters currently in operation exceeded the guideline adopted by the Commission in its *Report and Order in Gen. Docket No. 79-144*, FCC 85-90, 100 FCC 2d 543 (1985), *recon. denied in pertinent part, Memorandum Opinion and Order in Gen. Docket 79-144*, 50 FR 38653 (1985).[7] A proposed operation which would exceed those guidelines or which would increase the extent to which those guidelines are being exceeded would constitute a major environmental action. 47 CFR 1.1305(d); *Report and Order in Gen. Docket No. 79-144, supra* at 561. Accordingly, Jack Straw will be directed to determine whether the operation of its proposed facility, together with the continuation of the operations presently at Cougar Mountain, would result in RF radiation levels exceeding those guidelines, and to submit its findings to the presiding Administrative Law Judge within thirty days of the release of this Order. If Jack Straw determines that the guidelines would be exceeded, Jack Straw shall, in addition, submit to the presiding Administrative Law Judge an environmental narrative complying in all respects with 47 CFR 1.1311. Jack Straw shall file a copy of each submission with the Chief, Audio Services Division, who will then proceed in this matter in accordance with the provisions of 47 CFR 1.1313(b). We will waive 47 CFR 1.1317 to the extent that the comparative phase of the case may begin before the completion of the environmental phase. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied*, 83 FCC 2d 337 (1980).

12. Except as may be indicated by the issues specified below, the School System and Jack Straw are qualified to operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding upon the issues specified below.

13. Accordingly, It Is Ordered, That the "Petition to Deny or Dismiss," filed December 8, 1984, by the Satellite Public Schools, Is Denied.

14. It Is Further Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the applications of the Seattle Public Schools and Jack Straw Memorial Foundation Are Designated For Hearing In A Consolidated Proceeding, at a time and a place to be specified in a subsequent Order, upon the following issues:

1. To determine whether, in light of the evidence adduced concerning the deficiency set forth in paragraph 9, *supra*, Jack Straw is financially qualified.

2. If a final environmental impact statement is issued with respect to Jack Straw which concludes that the

[4] We note, for example, that the School System operated KNHC at least 12 hours per day from January 1, 1980, through August 31, 1982, and from April 7, 1983, through the completion of the pleading cycle in this case.

[5] Section III of Jack Straw's application makes reference to its Exhibit 4 in an apparent attempt to provide the costs of obtaining monitoring and studio equipment, land, and buildings for the proposed station. Exhibit 4, however, is merely an equipment inventory for station KRAB(FM), Seattle, Washington, a station which Jack Straw has sold to SCS, Inc. *See* Application for Assignment of License, BALED-830620GR, granted February 7, 1984. Furthermore, Exhibit 6 to Jack Straw's construction permit application indicates that at least some of the equipment listed in Exhibit 4 was sold to SCS, Inc.

[6] Jack Straw indicates that the proceeds from the KRAB sale may not be available for the construction and first three-month operation of the proposed station, and therefore, proposes to rely on a $250,000 loan from the Reginald A. Fessenden Fund ("Fund"). That loan, however, is contingent on Jack Straw's agreeing to make the Fund a party to the trust deed on certain real property; and there is no indication that Jack Straw has agreed to meet that contingency. While the KRAB sale was consummated after Jack Straw filed its construction permit application, Jack Straw has not updated its application to indicate whether the proceeds of the sale will be available for the construction and first three-month operation of the proposed station. Since Jack Straw's application proposed reliance on the loan rather than on the sale proceeds, Jack Straw was entitled to assume that there would be no decisionally significant question regarding the availability of those proceeds. Therefore, no 47 CFR 1.65 issue will be specified.

[7] Those guidelines are set forth in *OST Bulletin No. 65, Evaluating Compliance with FCC Specified Guidelines for Human Exposure to Radiofrequency Radiation*, 33-35 (Oct. 1985).

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proposed facilities are likely to have an adverse effect on the quality of the environment:

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 CFR 1.1301–19; and

(b) whether, in light of the evidence adduced pursuant to (a) above, Jack Straw is qualified to construct and operate as proposed.

3. To determine whether a share-time arrangement between the School System and Jack Straw would result in more effective use of the specified channel than would operation restricted to the School System and thus better serve the public interest, and, if so, the terms and conditions of the arrangement.*

15. It Is Further Ordered, That, in the event the applicants are otherwise qualified, the presiding Administrative Law Judge shall take the following action:

1. If it is determined pursuant to issue 3, *supra*, that a share-time arrangement between the School System and Jack Straw would result in more effective use of the specified channel than would operation restricted to the School System, grant the applications of the School System and Jack Straw to the extent consistent with the terms and conditions of the arrangement determined pursuant to that issue; or

2. If it is determined pursuant to issue 3, *supra*, that operation restricted to the School System would result in more effective use of the specified channel than would a share-time arrangement between the School System and Jack Straw, grant the application of the School System and deny the application of Jack Straw.

16. It is Further Ordered, That, within thirty days of the release of this order, Jack Straw shall either

1. inform the presiding Administrative Law Judge of its basis for claiming to be a nonprofit educational institution, or

2. specify that it is a nonprofit educational organization and show how its proposed station would be used for the advancement of an educational purpose.

17. It is Further Ordered, That, 47 CFR 73.3584(c) Is Waived to the extent indicated herein. Within thirty days of the release of this Order, Jack Straw shall inform the presiding Administrative Law Judge as to whether local notice of the filing of its application has been published.

18. It is Further Ordered, That, 47 CFR 1.1317 Is Waived to the extent indicated herein. Within thirty days of the release of this Order Jack Straw shall submit to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division:

(1) Its findings as to whether the operation of its proposed facility, together with the continuation of the operations presently at Cougar Mountain, would result in RF radiation levels exceeding Commission guidelines, cited in paragraph 11, above; and

(2) In the event Jack Straw finds that the guidelines would be exceeded, an environmental narrative complying in all respects with 47 CFR 1.1311.

19. It is Further Ordered, That, in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, DC 20554.

20. It is Further Ordered, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 CFR 1.221(c), in person or by attorney, within twenty days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

21. It is Further Ordered, That, the applicants herein, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 311(a)(2), and 47 CFR 73.3594, shall give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of such notice as required by 47 CFR 73.3594(g).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–3257 Filed 2–13–86; 8:45 am]

BILLING CODE 6712–01–M

* Our action in specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or during the hearing, from negotiating a settlement on their own.

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities Under OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Wm. Jarrel Smith, Jr., Director of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone (202) 523–5866. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

Forms FMC–17A, FMC–17B, and FMC–17C—Carrier, Port and Shipper.

Surveys Regarding Section 18(a) Data.

FMC requests extension of clearance for these voluntary surveys which request information from the shipping industry concerning the impact of the Shipping Act of 1984 upon the international ocean shipping industry on an annual basis. The Commission estimates that the survey will be sent to approximately 250 carriers, 60 ports, and 180 shippers. Representatives from each of these entities will be chosen after consultation with various associations that represent these groups. If anyone in the carrier, port or shipper community, wishes to participate in these surveys, they should contact the Secretary of the Federal Maritime Commission at the address listed above. Total estimated annual cost to the Federal Government is approximately $10,700.00; total estimated annual cost to respondents is approximately $120,000.00.

John Robert Ewers,

Secretary.

[FR Doc. 86–3321 Filed 2–13–86; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003985–004.

Title: Port of Seattle and Seacon Terminals, Inc.

Parties:

Port of Seattle (Port)

Seacon Terminals, Inc. (Lessee)

Synopsis: The proposed amendment amends the lease agreement between the Port and the Lessee, by deleting 58,128 square feet from the leased premises. The parties have requested a shortened review period for the agreement.

Agreement No.: 213–010886.

Title: Costa-Italia/Trasatlantica Space Charter and Sailing Agreement.

Parties:

Costa Container Lines, S.p.A.

"Italia" di Navigazione, S.p.A.

Compania Trasatlantica Espanola, S.A.

Synopsis: The proposed agreement would permit the parties to charter space on each others vessels, coordinate sailings and agree on certain ocean carrier services in the trade between ports on the Atlantic Coast of the United States (from Eastport, Maine, to but not including Jacksonville, Florida), on the one hand, and ports on the Mediterranean Sea, the Iberian Peninsula, the Black Sea, the Arabian/Persian Gulf and adjacent waters, the Red Sea and the Gulf of Aden, ports in India and Pakistan, and all ports on the African Continent (including Canary Islands), on the other hand; and between interior or coastal points served via such ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: February 11, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86–3268 Filed 2–13–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fleetwood Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 10, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fleetwood Bank Corporation*, Fleetwood, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in Fleetwood, Fleetwood, Pennsylvania.

B. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Williamsburg Bancshares, Inc.*, Williamsburg, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of Farmers National Bank, Williamsburg, Kentucky.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Harper Bancshares, Inc.*, Harper, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank, Harper, Texas.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Sierra Tahoe Bancorp*, Truckee, California; to become a bank holding company by acquiring 100 percent of the voting shares of Truckee River Bank, Truckee, California.

Board of Governors of the Federal Reserve System, February 10, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–3265 Filed 2–13–86; 8:45 am]

BILLING CODE 6210–01–M

UNB Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *UNB Corp.*, Canton, Ohio; to engage through its subsidiary, United Credit Life Insurance Company, Phoenix, Arizona, in underwriting, as reinsurer, credit life and accident and health insurance in connection with loans made by affiliates, pursuant to § 225.25(b)(9) of the Board's Regulation Y. Applicant will engage in this activity in the State of Ohio.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230

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South LaSalle Street, Chicago, Illinios 60690:

1. *Naperville Financial Corporation*, Naperville, Illinois; to engage through its subsidiary, Naper Securities Corporation, Naperville, Illinois, in discount brokerage activities.

2. *Banks of Iowa, Inc.*, Des Moines, Iowa; to engage through its subsidiary, Banks of Iowa Credit Corporation, Des Moines, Iowa, in acquiring loans from banking subsidiaries of Applicant; purchasing participations in loans made by the banking subsidiaries for the sole purposes of providing liquidity to the subsidiaries and facilitating the needs of the subsidiaries customers; servicing loans for the subsidiaries; and making additional extensions of credit, related to loans acquired from subsidiaries and participations purchased from subsidiaries.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquetts Avenue, Minneapolis, Minnestoa 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to engage through its subsidiary Norwest Investment Management, Inc., Minneapolis, Minnesota, in the following activities: (i) Serving as the advisory company for a mortgage or a real estate investment trust; (ii) serving as investment adviser (as defined in section 2(a)(2) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and management a closed-end investment company; (iii) providing portfolio investment advice to any other person; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and, (v) providing financial advice to state and local governments, such as with respect to the issuance of their securities.

2. *Bank Shares Incorporated*, Minneapolis, Minnesota; to engage through its subsidiary, Marquette Investor Services Incorporated, Minneapolis, Minnesota, in discount brokerage activities.

Board of Governor of the Federal Reserve System, February 10, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86–3286 Filed 2–13–86; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF THE SECRETARY

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 31, 1986.

Social Security Administration

Subject: Streamlined State Plan for AFDC as Amended by Final Regulations on Disregard of Support and Maintenance Assistance Based on Need—Revision—(0960–0252)
Respondents: State or Local Governments
Subject: Student's Statement Regarding Resumption of School Attendance—Revision—(0960–0143)
Respondents: Individuals or Households
OMB Desk Officer: Judy A. McIntosh

Public Health Services

Centers for Disease Control

Subject: Day-Care Center Study: A Baseline for Disease Prevention—New Collection
Respondents: Individuals or Households

Food and Drug Administration

Subject: Medical Device and Laboratory Product Problem Reporting Program—Reinstatement—(0910–0143)
Respondents: Individuals or Households
Subject: Good Manufacturing Practices for Blood and Blood Components 21 CFR Part 606—Revision—(0910–0116)
Respondents: Blood Establishments
OMB Desk Officer: Bruce Artim

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Report Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer).

Dated: February 10, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–3220 Filed 2–13–86; 8:45 am]

BILLING CODE 4160–04–M

Food and Drug Administration

[Docket No. 85N–0514]

Grants and Cooperative Agreements; Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Funds; Request for Applications; Amended Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the notice that published January 10, 1986 (51 FR 1299), by removing the request for the submission of a letter of intent to file a grant application for funds to support clinical trials on safety and effectiveness of orphan products. This action is necessary because the agency does not have Office of Management and Budget approval under the Paperwork Reduction Act of 1980 for the Letter of Intent.

FOR FURTHER INFORMATION CONTACT: Benjamin P. Lewis, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rm. 12A–40, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 10, 1986 (51 FR 1299), FDA announced the anticipated availability of funds for Fiscal Year 1986 for awarding grants to support clinical trials on safety and effectiveness of orphan products. That notice is amended by removing from the "Dates" paragraph in the first column on page 1299 the statement "Letter of intent should be submitted by February 10, 1986," and in the center column on page 1301 by removing the paragraph "A. *Letter of Intent.*"

Dated: February 6, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–3301 Filed 2–13–86; 8:45 am]

BILLING CODE 4160–01–M

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[Docket No. 85M–0526]

Medical Devices; CooperVision, Inc.; Premarket Approval of PERMATHIN™ (Tetrafilcon A) Hydrophilic Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by CooperVision, Inc., San Jose, CA, for premarket approval, under the Medical Device Amendments of 1976, of the PERMATHIN™ (tetrafilcon A) Hydrophilic Contact Lens. After reviewing the recommendation of the Ophthalmic Devicea Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 17, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for adminstrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On December 21, 1984, CooperVision, Inc., San Jose, CA, 95134, submitted to CDRH a supplemental application for premarket approval of the spherical PERMATHIN™ (tetrafilcon A) Hydrophilic Contact Lens. The lens ranges in powers from plano to −10.00 diopters (D). The lens is indicated for extended wear of from 1 to 30 days between removals for cleaning and disinfection or as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic. The lens may be worn by persons who may exhibit astigmatism of 2.50 D or less that does not interfere with visual acuity. The lens is to be disinfected using either heat or chemical lens care system. On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On October 30, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of the PERMATHIN™ (tetrafilcon A) Hydrophilic Contact Lens states that the lenses are to be used only with certain solutions for disinfection and other purposes. This restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decison in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 17, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 7, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–3302 Filed 2–13–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0032]

Medical Devices; IOLAB Corp.; Premarket Approval of Model 91–50 Anterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOLAB Corp., Covina, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Model 91–50 Anterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by March 17, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757

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Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

SUPPLEMENTARY INFORMATION: On July 12, 1982, IOLAB Corp., Covina, CA 91722, submitted to CDRH an application for premarket approval of the Model 91–50 Anterior Chamber Intraocular Lens (IOL's). The device can be used for primary or secondary implantation in patients 60 years of age or over where a cataractous lens has been removed by intracapsular or extracapsular extraction methods. On January 27, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 27, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Under the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), IOL's are regulated as class III devices (premarket approval).

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 17, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 7, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–3303 Filed 2–13–86; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1986 and Rate of Insurance Premium

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1986, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 11 percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (7.38 percent), and rounding the result (10.88 percent) upward to the nearest ⅛ percent (11 percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1986 is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 12 percent for the quarter ending June 30, 1985; 11⅞ percent for the quarter ending September 30, 1985; and 10⅞ percent for the quarter ending December 31, 1985.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 11 percent. Using the regulatory formual (42 CFR 60.13(a)(3)) in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.38 percent); adding 3.50 percent (10.88 percent); and rounding that figure to the next higher one-eighth of 1 percent (11 percent).

3. For fixed rate loans executed during the period of January 1, 1986 through March 31, 1986, and for variable rate loans executed on or after October 22, 1985, the interest rate is 10½ percent. The Health Professions Educational Assistance Amendments of 1985 (Pub. L. 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a) (2) and (3)) and substituting the new statutory change of 3 percent, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (7.38 percent); adding 3.0 percent (10.38 percent) and rounding that figure to the next higher one-eighth of 1 percent (10½ percent).

B. The Health Professions Educational Assistance Amendments of 1985 contain modifications to the insurance premium calculation that become effective 9 months after enactment of the statute (July 21, 1986). Until that date, § 60.14(b) of the regulations remains in effect. It provides that the rate of the insurance premium shall not exceed 2 percent per year of the loan principal and that the Secretary will announce the rate of the insurance premium on a quarterly basis through a notice published in the **Federal Register**.

The Secretary announces that for the period ending March 31, 1986, the rate of the insurance premium continues to be 2 percent per year of the loan principal for loans executed through the HEAL program.

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: February 10, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–3304 Filed 2–13–86; 8:45 am]

BILLING CODE 4160–16–M

National Institutes of Health

National Cancer Institute; Meeting

Correction

In FR Doc. 86–1529, beginning on page 3258, in the issue of Friday, January 24, 1986, make the following correction:

In the fourth line, the date "February 25, 1986, should read February 2–5, 1986".

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

Intention To Extend a Concession Permit; Exum Mountain Guide Service

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of Interior, through the Director of the National Park Service, proposes to extend the concession permit with Exum Mountain Guide Service, authorizing them to continue to provide mountain climbing school and guide service to the public at Grand Teton National Park, Wyoming for a period of two (2) years from January 1, 1986, through December 31, 1987.

This permit extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessions have performed their obligations to the satisfaction of the Secretary under existing concession permit which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposals, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, Denver, Colorado, 80225, for information as to the requirements of the proposed permit.

Dated: January 23, 1986.

Lorraine Mintzmeyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 86–3248 Filed 2–13–86; 8:45 am]

BILLING CODE 4310–70–M

Intention To Extend Concession Permits; Heart Six Ranch, et al.

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of Interior, through the Director of the National Park Service, proposes to extend the concession permits with Heart Six Ranch, National Park Float Trips, Osprey Float Trips, Parkland Expeditions, Barker-Ewing Scenic Tours, Inc., Fort Jackson Float Trips, Solitude Float Trips and Rivermeadows Inc. authorizing them to continue to provide river running facilities and service for the public at Grand Teton National Park, Wyoming for a period of two (2) years from January 1, 1986, through December 31, 1987.

These permit extensions have been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing concession permits which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permits and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, Denver, Colorado, 80225, for information as to the requirements of the proposed permits.

Dated: January 23, 1986.

Lorraine Mintzmeyer,

Regional Director, Rocky Mountain Region.

[FR Doc. 86–3251 Filed 2–13–86; 8:45 am]

BILLING CODE 4310–70–M

Intention To Extend a Concession Permit; Teton Trail Rides, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of Interior, through the Director of the National Park Service, proposes to extend the concession permit with Teton Trail Rides, Inc., authorizing them to continue to provide saddle and pack horse services for the public at Grand Teton National Park, Wyoming for a period of two (2) years from January 1, 1986, through December 31, 1987.

This permit extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioners have performed their obligations to the satisfaction of the Secretary under existing concession permit which expires by limitation of time on December 31, 1985, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioners, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Rocky Mountain Region, 655 Parfet Street, Denver, Colorado, 80225, for information as to the requirements of the proposed permit.

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Dated: January 23, 1986.
Lorraine Mintzmeyer,
Regional Director, Rocky Mountain Region.
[FR Doc. 86-3250 Filed 2-13-86; 8:45 am]
BILLING CODE 4310-70-M

Bureau of Reclamation

Realty Action; Competitive Sale of Public Land

AGENCY: Bureau of Reclamation.

ACTION: Notice of Realty Action.

SUMMARY: The following described land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. section 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the lands described below and will reject any bids for less than the appraised values.

DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mrs. Valerie Smithe, Realty Technician, Lower Colorado Regional Office, Bureau of Reclamation, 1404 Colorado Street, Boulder City, Nevada 89005, telephone (702) 293-8428.

Tract LC-86-1-1

SUPPLEMENTARY INFORMATION:

A tract of land situated in the city of La Quinta, Riverside County, California, in the Northwest quarter (NW¼) of Section Seventeen (17), Township Six (6) South, Range Seven (7) East, San Bernardino Base and Meridian, and being all that portion of said Northwest quarter (NW¼) lying easterly of the easterly right-of-way line of the Coachella Canal, and as described in those certain deeds to the United States of America as follows:

Deed dated June 11, 1952, recorded August 12, 1952, in Book 1392, Page 329, and Deed dated March 5, 1952, recorded April 18, 1952, in Book 1360, Page 541; said deeds being recorded in the Official Records, Riverside County, California. Said tract of land being more particularly described by metes and bounds as follows:

Commencing at the northeast corner of said Northwest quarter (NW¼) being the True Point of Beginning: thence South 0°06'18" West 1721.07 feet along the east line of said Nortwest quarter (NW¼) to a point on the easterly right-of-way line of the Coachella Canal; thence North 36°55'16" West 926.66 feet along the said easterly right-of-way line to a point on the south line of the North half South half North half Northwest quarter (N½S½N½NW¼); thence South 89°51'31" East 12.49 feet along the south line of the North half South half North half Northwest quarter (N½S½N½NW¼) to a point on said easterly right-of-way line; thence North 36°55'16" West 406.17 feet along said easterly right-of-way line to a point on the south line of the South half North half Northwest quarter (S½N½N½NW¼); thence South 89°47'43" West 12.47 feet along the south line of the South half North half North half Northwest quarter (S½N½N½NW¼) to a point on said easterly right-of-way line; thence North 36°55'16" West 166.24 feet along said easterly right-of-way line to the beginning of a curve; thence Northeasterly along said easterly right-of-way line on a curve to the right having a radius of 83.22 feet through a central angle of 67°25'53" for an arc distance of 97.94 feet to the end thereof; thence North 30°30'37" East 496.16 feet along said easterly right-of-way line to a point on the north line of said Northwest quarter (NW¼); thence North 89°38'27" East 465.60 feet along the north line of said Northwest quarter (NW¼) to the south one-quarter corner of Section Eight (8), Township Six (6) South, Range Seven (7) East, San Bernardino Base and Meridian; thence South 89°59'17" East 191.40 feet along the north line of said Northwest quarter (NW¼) to said True Point of Beginning.

Said above described tract of land contains 21.97 acres, more or less.

Tract LC-86-1-2

Parcels 1 and 2.

The subject parcels are situated in the city of La Quinta, Riverside County, California, within the West one half of the East one half (W½E½) of Section Thirty-one (31), Township Five (5) South, Range even (7) East, San Bernardino Base and Meridian, and as described in that certain Grant Deed as follows:

Grant Deed dated March 9, 1953, recorded June 5, 1953, in Book 1479, Page 114, said document being recorded in the Official Records, Riverside County, California. Said parcels of land being more particularly described by metes and bounds as follows:

Parcel 1: Commencing at the Northwest corner of said West half East half (W½E½) of said section Thirty-one (31), thence South 0°12'21" East, 470.91 feet along the west line of said West half East half (W½E½) thence North 89°47'39" East, 30.00 feet to the point of beginning and thence from said point of beginning by metes and bounds as follows:

1st course: Parallel to and 30.00 feet east of the west line of said West half East half (W½E½) South 0°12'21" East, 74.00 feet.

2nd course: North 89°47'39" East, 26.50 feet.

3rd course: Parallel to and 56.50 feet east of the west line of said West half East half (W½E½) North 0°12'21" East, 74.00 feet.

4th course: South 89°47'39" East. 26.50 feet to the said point of beginning.

Said above described parcel of land contains 0.05 arce, more or less.

Parcel 2: Commencing at the Northwest corner of said West half East half (W½E½) of said Section Thirty-one (31), thence South 0°12'21" East, 1036.00 feet along the west line of said West half East half (W½E½) thence North 89°47'39" East, 30.00 feet to the point of beginning and thence from said point of beginning by metes and bounds as follows:

1st course: Parallel to and 30.00 feet east of the west line of said West half East half (W½E½) South 0°12'21" East, 150.00 feet.

2nd course: North 89°47'39" East, 270.00 feet.

3rd course: Parallel to and 300.00 feet east of the west line of said West half East half (W½E½) North 0°12'21" West, 150.00 feet.

4th course: South 89°47'39" West. 270.00 feet to the said point of beginning.

Said above parcel of land contains 0.93 acre, more or less.

Said above described Parcel 1 and Parcel 2 aggregate 0.98 acre, more or less.

Said above tracts shall be subject to easements or right-of-way existing or of record in favor of the public as to third parties.

The tracts will be offered for sale through the competitive bidding process. A public auction will be held in Forbes Auditorium, Coachella Valley Water District, Avenue 52 and Highway 111, Coachella, California 92236 on April 23, 1986, at 10 a.m., at which time the sealed bids will be opened and oral bids will be accepted. Sealed bids will be accepted at the Bureau of Reclamation, Lower Colorado Region, 1404 Colorado Street P.O. Box 427, Boulder City, Nevada 89005, until close of business on April 18, 1986. Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. section 374), or other applicable laws.

Both tracts are within the incorporated city of La Quinta, Riverside County, California, and have the potential for residential and recreational development. The sale is consistent with Coachella Valley Water District and the Bureau of Reclamation land use planning and it was determined that the public interest would best be served by offering these lands for sale.

Resource clearances consistent with the National Environmental Policy Act requirements have been completed and approved. A Categorical Exclusion, an Environmental Analysis, and a Land Report have been completed and approved, and are available for public review at the Bureau of Reclamation, Lower Colorado Region, 1404 Colorado Street, Boulder City, Nevada 89005.

Tract No. LC-86-1-2 (Parcels 1 and 2) lies within a designated fee area, as outlined in the Coachella Valley Fringed-Toed Lizard Habitat Conservation Plan, dated June 1985, pursuant to section 10(a) of the Endangered Species Act of December 28, 1973 (87 Stat. 8840, as amended, and will be subject to a $600 per acre fee to be extracted from the developer, if and when developed, at either grading or building stage of project approval conducted by local Government.

The quitclaim deeds issued for the tracts sold will be subject to any rights-of-way record, and any public road and utility easements identified by the city of La Quinta, and the county of Riverside, if applicable. This land sale will be for the surface estates only, minerals estates will remain in ownership of record.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005. Any adverse comments will be evaluated by the Region Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: February 5, 1986.
Roy D. Gear,
Acting Regional Director, Lower Colorado Region, Bureau of Reclamation.

Sales Procedures—La Quinta Land Sale

April 23, 1986

Introduction

Action: The Department of the Interior, Bureau of Reclamation, is offering Federal lands in the city of La Quinta, California for Sale at Public Auction.

Date: April 23, 1986, Bidder Registration begins at 9:00 a.m., Auction begins at 10:00 a.m.

Location: Coachella Valley Water District, Forbes Auditorium, Avenue 52 and Highway 111, Coachella, California 92236.

Price: No bid will be accepted for less than the appraised fair market value for each tract.

Copies of the report, maps, descriptions, and actions relating to this sale are available for review at the Division of Water and Land Operations, Bureau of Reclamation, Lower Colorado Region, 1404 Colorado Street, Boulder City, Nevada 89005 between 8 a.m. and 4 p.m., Monday through Friday, telephone (702) 293-8428.

Before submitting bids, it is recommended that prospective buyers inspect the tracts of land.

Sale Procedures

The auction will begin at 10 a.m. and will proceed continously until all tracts have been offered. No preference rights are recognized in this sale.

Should any tracts remain unsold, they may be reoffered for sale at a later date as determined by the Regional Director, Bureau of Reclamation, Boulder City, Nevada.

No conveyance of land will be made to Federal employees or their dependents who might reasonably be expected to have information with regard to the property or its uses which is not readily available to members of the public, or who participate in the decision to dispose of this property, or in this sale itself.

Federal law limits sale of this land to United States citizens (18 years of age or over); corporations subject to the law of any State or of the United States; and any entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. The purchaser is deemed to be the individual(s) or corporation that will actually take title to the land from the Government. The citizenship limitation does not apply to agents who bid on behalf of an associate, client, or employer.

Registration

On the day of the sale, anyone intending to bid on any of the offered land must register and obtain a bidder's identification card. Registration will be conducted by a Bureau of Reclamation registration official at a *Registration Table* at the public land sale. Registration will begin at 9 a.m. Bidders may register anytime during the sale; however, they must be registered before bidding. The bidder identification card is merely a numbered card which must be displayed when offering a bid, so the auctioneer can conduct an orderly bidding process.

Bidding Information and Instructions

Bids may be made either by sealed bids or by oral bidding at the sale.

Sealed bids sent by mail or personally delivered will only be considered if received prior to the close of business on April 18, 1986, at the following address:

Lower Colorado Regional Office, Bureau of Reclamation, P.O. Box 427, 1404 Colorado Street, Boulder City, Nevada 89005, Attention: Receiving Officer, Code: LC-375, La Quinta Sale.

Sealed bids must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Reclamation for not less than one-fifth (20 percent) of the amount of the bid, and must be in a separate sealed envelope enclosed within the transmittal envelope. The sealed bid envelope must be marked conspicuously on the face of the envelope as follows:

SEALED BID
LA QUINTA LAND SALE
SALE NO. LC-86-1
TRACT NO. ———
SALE TO BE ———, 198—

Oral bids will be received immediately after all sealed bids have been opened and the highest sealed bid is announced. The highest sealed bid for each tract will then become the base price for the oral bids. If the highest bid is an oral bid, the successful bidder will be required to pay immediately one-fifth (20 percent) of the high bid amount by cash, personal check, money order, bank draft, cashier's check, or any combination of these. Failure to deposit the required high bid amount will result in disqualification as the high bidder. The authorized officer shall determine whether to accept the highest bid, withdraw the tract from the market, or reoffer the tract of land for sale at a later date.

Post Sale Information and Requirements

The successful bidder will be mailed "A Notice of High Bidder Declared" along with other documents. Upon receipt of this notice, the successful bidder will have 30 days to make payment of the full purchase amount. Failure to do so will disqualify the bid and forfeiture of all deposits.

General Sales Information

Prospective buyers are encouraged to visit the tracts prior to submitting bids.

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Land Description

Tract LC–86–1–1 (21.97 acres)

A tract of land situated in the city of La Quinta, Riverside County, California, in the Northwest quarter (NW¼) of Section Seventeen (17), Township Six (6) South, Range Seven (7) East, San Bernardino Base and Meridian, and being all that portion of said Northwest quarter (NW¼) lying easterly of the easterly right-of-way line of the Coachella Canal.

Tract LC–86–1–2 (0.98 acre)

Parcel 1 (0.05 acre)
Parcel 2 (0.93 acre)

The subject parcels are situated in the city of La Quinta, Riverside County, California, within the West one half of the East one half (W½E½) of Section Thirty-one (31), Township Five (5) South, Range Seven (7) East, San Bernardino Base and Meridian.

Appraised Fair Market Value (Minimum Bid)

Tract No. LC–86–1–1 $438,000
Tract No. LC–86–1–2 $62,750

Reservations:

(1) Tracts will be sold subject to easements or rights-of-way existing or of record in favor of the public as to third parties.

(2) Easements for Streets, Roads, and Public Utilities, Tract No. LC–86–1–1.

An easement for public roads now existing on said property in favor of the public.

Location:

These lands are located within the incorporated area of the city of La Quinta, California, approximately 3 miles apart, adjacent to areas presently being developed or proposed for residential and recreational development.

Access:

Physical and legal access to these lands is from Avenue 54 for Tract No. LC–86–1–1, and from Washington Street for Tract No. LC–86–1–2, both asphalt paved public roads.

Topography:

The lands are generally flat. Tract No. LC–86–1–1 was used as an equalizing reservoir and is surrounded by an earth levee. The levee is approximately 20 feet wide; the outside dike is approximately 8 feet in height; the inside height is approximately 15 feet.

Flood Potential:

Tract No. LC–86–1–1 is located in the area of the La Quinta storm drain and is classified as W–1, Water Course and Water Way. Storm runoff from the nearby foothills of the Santa Rosa Mountains Drains through the area of this tract.

Tract No. LC–86–1–2 is not in a flood zone.

Vegetation:

Tract LC–86–1–1

The bottom area is covered with several species of dead perennials and annuals, such as mustard and thistle. The edge of the levee is primarily bare with sparse occurrences of white bur-sage (*Ambrosia dumosa*).

Tract LC–86–1–2

Parcel 1 is approximately 90 percent bare ground with sparse occurrences of white bur-sage and salt-bush (*Atriplex sp.*).

Parcel 2 is approximately 95 percent bare ground with very sparse ocurrences of bur-sage and salt-bush.

Utilities:

Tract LC–86–1–1 is served with electricity, telephone, and irrigation water. Tract LC–86–1–2 is served with electricity, telephone, and irrigation water. Domestic water is available from Washington Street and sewer connections are available on Eisenhower Drive.

Land Use—Subject Parcels and Adjacent Lands

The subject tracts are located within the corporate limits of the city of La Quinta, California. Tract LC–86–1–1 is zoned A–1–10 which is for light agricultural, 10-acre Minimum Parcel size, low-density residential (two to four units per acre). The adjacent lands are being developed by Landmark Land Company in connection with a 2,300-acre residential and recreational development known as PGA West. Tract LC–86–1–2 is zoned R–2 which is multiple family residential with a general plan of low-density residential (two to four units per acre). The section in which it is located is generally undisturbed land with the adjacent lands planned for a residential and recreational development. Property lying across from the tract on Washington Street is a developed residential area surrounding a golf course.

[FR Doc. 86–3053 Filed 2–13–86; 8:45 am]
BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub-No. 107X)]

Southern Pacific Transportation Co.—Abandonment Exemption—Sacramento County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Southern Pacific Transportation Company of 2.3 miles of railroad in Sacramento County, CA, subject to standard employee protective conditions.

DATES: This exemption will be effective on March 17, 1986. Petitions to stay must be filed by February 25, 1986, and petitions for reconsideration must be filed by March 6, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 107X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: February 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–3270 Filed 2–13–86; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Applied Science Laboratories; Registration

By Notice dated November 18, 1985, and published in the **Federal Register** on November 25, 1985; (50 FR 227), Applied Science Laboratories, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Dihydromorphine (9145)	I
D-iso-lysergic acid diethylamide (7307)	I
D-lysergic acid Methylpropylamide (7328)	I
Mescaline HCL (7387)	I
Cyclohexamine (PCE) HCL (7456)	I
1-phenylcyclohexylpyrrolidine HCL (7461)	I
Thiophene Analog of PCP (HCL salt) (7469)	I
Normorphine HCL (9360)	I
1-phenylcyclohexylmaine (7460)	II
1-piperidinocyclohexanecarbonitrile (PCC) (8603)	II
Morphine (9300)	II
Dihydrocodeine (9120)	II
Phencyclidine HCL (7472)	II
Codeine-6-glucuronide (9069)	II
Norcodeine HCL (9115)	II
Ecgonine methyl ester (9185)	II
Ecgonine HCL (9189)	II
Ethylmorphine HCL (9191)	II
Dextropropoxyphene (9316)	II
6-Monoacetylmorphine (9316)	II

Pursuant to the provisions of Title 21 Code of Federal Regulations § 1301.43, any registered manufacturer of the listed substances, or any applicant for such registration, was invited to file comments or to request a hearing with respect to Applied Science Laboratories' application. One such comment was received, Mallinckrodt, Inc., a registered bulk manufacturer of several of the listed basic classes of controlled substances, noted that in 1984, in response to a similar notice of application, Mallinckrodt and McNeilab, Inc. had filed comments and a third manufacturer, Penick Corporation, had requested a hearing. The request for a hearing was withdrawn, and the concerns of the other commenters resolved, when DEA received assurances taht Applied Science Laboratories had no intention of manufacturing bulk quantities of controlled substances for resale to dosage form manufacturers.

The applicant is engaged in producing standards for chemical research and will continue to engage in that activity. Accordingly, Mallinckrodt's present comment poses no objection to the registration of Applied Science Laboratories.

Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 823, and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above-named firm, for registration as a bulk manufacturer of the basic classes of controlled substances listed above, be and it hereby is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 86–3296 Filed 2–13–86; 8:45 am]
BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Eli Lilly Industries, Inc.; Registration

By Notice dated November 16, 1985, and published in the **Federal Register** on November 25, 1985; (50 FR 48500), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7 State Road 2, Mayaquez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–3297 Filed 2–13–86; 8:45 am]
BILLING CODE 4410–09–M

Importation of Controlled Substances; Sigma Chemical Co.; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 31, 1985, Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Bufotenine (7433)	I
Dimethyltryptamine (7435)	I
Diethyltryptamine (7434)	I

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (March 17, 1986).

This procedure is to be conducted simultaneously with an independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–3298 Filed 2–13–86; 8:45 am]
BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Stepan Chemical Company Natural Products; Registration

By Notice dated June 4, 1985, and published in the **Federal Register** on June 10, 1985; (50 FR 24330), Stepan Chemical Company Natural Products, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of

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the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registeration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-3299 Filed 2-13-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Upjohn Co.; Registration

By Notice dated November 18, 1985, and published in the Federal Register on November 25, 1985; [50 FR 48501], Upjohn Company, 7171 Portage Road, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
2,5-dimethoxyamphetamine (7396)	I
Methamphetamine, its salts, isomers, and salt of its isomers (1105).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, section 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-3300 Filed 2-13-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rate and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended [46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix , as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

These numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related acts" are listed by Volume, State, and page number(s).

Volume II

Oklahoma
OK86-15 ..... pp. 839a-839c.

Modification to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates and publications in the Federal Register are in parentheses following the decisions being modified.

Volume I

New York
NY86-7 (Jan. 3, 1986) ..... p. 695.
New York
NY86-17 (Jan. 3, 1986) ..... p. 777.
Pennsylvania
PA86-2 (Jan. 3, 1986) p. 804
pp. 807-808 pp. 813-814..
Pennsylvania
PA86-18 (Jan. 3, 1986) ..... pp. 912-917.
Pennsylvania
PA86-22 (Jan. 3, 1986) ..... pp. 937-938.

Volume II

Iowa
IA86-3 (Jan. 3, 1986) ..... p. 35.
Kansas
KS86-5 (Jan. 3, 1986) ..... p. 324.
Louisiana
LA86-5 (Jan. 3, 1986) ..... p. 374.
Oklahoma
OK86-13 (Jan. 3, 1986) ..... pp. 824-829.
Listing by Location (Index) ..... p. xi.
Listing by Decision (Index) ..... p. 1iii.

Volume III

California
CA86-1 (Jan. 3, 1986) ..... pp. 35-37.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since the subscriptions may be ordered for any or all of the three separate volumes, arranged by state. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 7th day of February 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-3083 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-85-179-C]

Cedar Grove Mining Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cedar Grove Mining Inc., P.O. Box 007, Mousecard, Kentucky 41548 has filed a petition to modify the application of 30 CFR 75.1719 (illumination in working places) to its Cedar Grove No. 4 Mine (I.D. No. 15-15361) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all mobile equipment be equipped with illumination devices.

2. The coal seam ranges from 32 to 36 inches in height and once roof bolts are installed, there is clearance of only 31 inches in the working section.

3. Petitioner states that the lighting devices installed on the mining equipment have been subject to broken electrical conductors and broken glass, resulting in exposed energized components which present possible ignition sources for methane, creating a more hazardous condition.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3323 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-175-C]

Kaiser Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kaiser Coal Corporation, P.O. Box D, Sunnyside, Utah 84539 has filed a petition to modify the application of 30 CFR 75.321 (stoppage of fans, plans) to its Sunnyside No. 1 Mine (I.D. No. 42-00093), its Sunnyside No. 2 Mine (I.D. No. 42-00094) and its Sunnyside No. 3 Mine (I.D. No. 42-00092) all located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that operators adopt a plan which will provide that when any mine fan stops, immediate action will be taken to withdraw all persons from the working sections, to cut off power in the mine in a timely manner, to provide for restoration of power and resumption of work if ventilation is restored within a reasonable period and after a certified person has examined the working areas where methane is most likely to accumulate, and to provide for withdrawal of all persons from the mine if ventilation cannot be restored within such reasonable time.

2. Petitioner has three mines which are interconnected and ventilated by four fans. Different mines are not affected by the shutdown of different fans.

3. Petitioner proposes that, if a fan stoppage occurs, the following basic procedures will be followed:

a. The official in charge of underground operations will be notified promptly and communications will be maintained during the interruption;

b. All miners will be withdrawn from the working section to an area outby the loading point, and all power except that necessary to provide transportation for the miners out of the mine will be de-energized;

c. If the interruption of the fan(s) is for less than 15 minutes, power may be restored and work resumed after the working places and other active workings where methane is likely to accumulate are re-examined by a certified person or, if for greater than 15 minutes, all miners will be promptly withdrawn to the surface and all power de-energized in a timely manner to allow evacuation of the miners;

d. If the fan is restarted while the miners are leaving the mine, the miners will continue to the surface and remain there until a complete pre-shift examination of the mine is made after which they may return to their working sections and resume work. Power will not be restored to areas until they are examined; and

e. Upon restoration of normal ventilation and after the fan has been in operation for at least 15 minutes at normal water gauge, an examination will be made of the mine and conducted in accordance with the regular pre-shift examination requirements before the

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miners are permitted to return or power re-energized to any part of the mine.

4. In the event of a power failure at either the No. 1 or No. 3 Mine, standby diesel motors activate automatically and operate the Whitmore Canyon and No. 3 Mine fans. Hence, fan stoppage means the fan is inoperable. If the diesel activates, activities proceed as normal.

5. Petitioner proposes the following exceptions to the basic procedures outlined above:

a. At the No. 1 Mine, power to the water pumps will not be de-energized unless methane concentrations of 1.5 volume percent or more are found. Sections or areas of the other mines not affected by a failure of the Whitmore Fan will continue to operate as normal;

b. At the No. 3 Mine, if the No. 3 Mine fan fails for longer than one hour, all miners in the No. 1 Mine will be withdrawn to the surface and remain there until the fan has operated for 15 minutes. If the Fan Canyon Fan fails, power to the water pumps in the No. 3 Mine will not be de-energized unless methane concentations of 1.5 volume percent or more are found. Sections or areas of any mine not affected by the failure will continue to operate as normal.

c. If the No. 2 Canyon Fan fails, power to the water pumps will not be de-energized unless methane concentations of 1.5 volume percent or more are found. Sections or areas of any mine not affected by the failure of this fan may continue to operate as normal.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3324 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-188-C]

Lackey Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lackey Coals, Incorporated, P.O. Box 284, Summersville, West Virginia 26651 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 3 B Mine (I.D. No. 46-06203) located in Braxton County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use spring-loaded metal locking devices in lieu of padlocks. The metal locking devices will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The fabricated spring-loaded metal locking devices will be securely attached to the battery receptacles to prevent accidental loss of the devices.

3. Operators and maintenance personnel of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulation and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

[FR Doc. 86-3325 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-205-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 14495, St. Louis, Missouri 63178 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundments and impounding structures; abandonment) to its Tebo Mine (I.D. No. 23-00403) located in Henry County, Missouri. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a plan for abandonment contain provisions to preclude the probability of future impoundment of water.

2. As an alternative method, petitioner proposes to leave the Fresh Water Lake in its present impounding configuration and to turn it over to the current owner of the land on which it lies.

3. Mining activities at the Tebo Mine were suspended in 1979 and the decision was made to permanently close it. Final reclamation activities were begun in 1984 and should be near completion. No future mining activities are expected in the vicinity of the Fresh Water Lake, including the downstream area. The lake has been classified as a low hazard potential structure.

4. The current owner has expressed interest in and agreed to take over the operation, inspection and maintenance of the lake in a responsible and safe manner, which would necessitate abandonment of the impoundment by Peabody without first breaching or filling the structure.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3328 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-25-M]

Union Oil Company of California; Petition for Modification of Application of Mandatory Safety Standard

Union Oil Company of California, 2117 County Road 215, P.O. Box 76, Parachute, Colorado 81635 has filed a petition to modify the application of 30 CFR 57.11056 (check-in, check-out system) to its Parachute Creek Mine (I.D. No. 05-03143) located in Garfield County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator of an underground mine establish a check-in and check-out system which will provide an accurate record of persons in the mine. These records are to be kept on the surface in a place chosen to minimize the danger of destruction by fire or other hazards. Every person underground shall carry a positive means of being identified.

2. As an alternate method, petitioner proposes to locate its primary check-in and check-out system in the underground lamp room. The lamp room is part of an underground office and change rooms complex.

3. Persons accessing the underground building complex enter and exit through a specially constructed 354 foot manway originating on the bench. These persons would check-in in the lamp room before proceeding further into the mine and would check-out before exiting the mine at the end of the shift.

5. Persons in vehicles entering the mine through the 100 and/or the 300 portals would proceed directly to the underground lamp room to check-in before proceeding any further into the mine.

6. The building is constructed of metal, and is equipped with an adequate number of strategically placed #20 dry chemical extinguishers. The start/stop switches for the main fans are located in this building and the fire alarm activating switches can be activated from this building.

7. For these reasons, the petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3327 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-187-C]

Southern Utah Fuel Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Utah Fuel company, P.O. Box P, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.328 (aircourses and belt haulage entries) to its Southern Utah Fuel mine (I.D. No 42-00099) located in Sevier County, Utah. The petition is filed under Section 101(c) of the Frderal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return air courses be separated from belt haulage entries.

2. Due to ground control problems encountered in a three-entry system, petitioner proposes to develop a longwall mine through a two-entry panel system. This will require utilization of the panel belt entry as a return aircourse during development and as an intake aircourse during longwall mining operations.

3. In further support of this request petitioner states that:

a. Weekly examinations will be conducted and recorded to verify travelability of the tailgate entry;

b. Two complete sets of SCSR units will be provided for each longwall crew;

c. Low-level carbon monoxide monitors will be installed in all intake escapeways of all longwall development entries and longwall panels;

d. All longwall panel overcasts and stoppings will be structurally equivalent to an eight inch hollow-core concrete block stopping with mortared joints;

e. All electrically-powered equipment used on longwall development or on longwall panels will use fire-resistant hydraulic fluid or be protected by a fire-suppression system; and

f. Branch and feeder circuits located in the longwall development and panel entries will be provided with sensitive ground fault protection.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 17, 1986. Copies of the petition are available for inspection at that address.

Dated: February 7, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-3010 Filed 2-13-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a)a.

DATE: Comments must be received in writing on or before April 15, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street NW, Washington, DC 20408.

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SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration (N1–AFU–86–19). Family Support Centers records.

2. Department of the Air Force, Directorate of Administration (N1–AFU–86–24). On/Off Base Housing Records.

3. Department of the Air Force, Directorate of Administration (N1–AFU–86–25). Manpower standards application records and commercial activities cost comparision studies.

4. Department of the Army, Records Management Operations Office (N1–AU–86–6). Case files pertaining to commercial arms export licenses.

5. Department of the Army, Records Management Operations Office N1–AU–86–11. Test material inventory files.

6. Department of Commerce, Office of the Secretary, Administrative Law Judge (NC1–40–85–2). Subject files and civil penalty files.

7. Department of Commerce, Office of the Secretary, Office of Finance and Federal Assistance (N1–40–86–1). Records relating to financial assistance administration, accounting matters, and travel management.

8. Department of Commerce, bureau of International Programs (N1–151–86–1). Press clippings, trade reports, and correspondence relating to European trade regulations, 1930–56.

9. Department of Commerce, Foreign Economic Administration, Office of Economic Warfare (NC1–169–85–1). Case papers and subject files relating to settlement of claims.

10. Office of the Secretary of Defense (N1–330–86–1, and N1–330–86–2). Records relating to the administration of the Department of Defense Civilian Health and Medical Program of the Uniform Services (CHAMPUS) consisting of case files involving contractor claims, appeals and hearings, certification of institutional providers of health care, recoupment of funds, fraud and abuse, and related litigation.

11. Environmental Protection Agency, Occupational Health and Safety Staff (NC1–412–85–8). Occupational health and safety records.

12. Department of Labor, Office of Workers' Compensation Programs (N1–271–86–1). A modification of retention periods for records pertaining to Black Lung Benefit claims and benefit payments.

13. National Archives and Records Administration. Kansas City Regional Archives Branch (NC2–75–85–1). Records of cash and check remittances received and forwarded by the Pierre Indian School of the Bureau of Indian Affairs, 1949–60.

14. Office of Personnel Management, Information Management Division (NC1–146–84–1). Records relating to the development of pay and leave regulations for Federal employees and working papers relating to the development of classification and qualification standards for Federal job series.

15. Department of State, Bureau of European and Canadian Affairs, Office of Soviet Union (NC1–59–85–4). Correspondence and case files relating to consular issues, resolved and inactive emigration cases and binational marriage cases.

16. Tennessee Valley Authority, Office of Natural Resources and Economic Development, Division of Air and Water Resources, Flood Protection Branch (NC1–142–85–7 and NC1–142–85–8). Flood routing studies and reservoir flood information used in the management of the agency's flood control program in the Tennessee River Valley.

17. Department of the Treasury, Bureau of the Public Debt, Division of Securities Operations (N1–53–86–2). Treasury and agency securities interest coupons, redeemed, unissued and unmatured.

18. Department of the Treasury, Internal Revenue Service, Appeals Division, National Office (NC1–58–82–6). Statistical tables of cases in the U.S. Tax Court, 1967–68, and a preliminary case study relating to the plywood industry, 1960

Dated: February 7, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–3244 Filed 2–13–86; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee.

Date: Thursday, March 6, 1986.

Time: 9 a.m. to 5 p.m.

Place: Rm. 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mrs. Lois J. Hamaty, Executive Secretary, Alan T. Waterman Award Committee, National Science Foundation, Washington, DC 20550. Telephone: 202/357–7512.

Purpose of Committee: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review nominations, with supporting documentation, as part of the selection process for the Award.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are within exemption 6 of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: The determination made on February 7, 1986 by the Director of the National Science Foundation pursuant to the provisions of Section 10(d) of Pub. L. 92–463.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–3329 Filed 2–13–86; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Physics, Subcommittee for Review of the NSF Gravitational Physics Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, P.L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics; Subcommittee for the Review of the NSF Gravitational Physics Program.

Date and Time: March 3, 1986; 9:00 a.m. to 6:00 p.m.; March 4, 1986; 8:30 a.m. to 4:00 p.m.

Place: Room 341, National Science Foundation, 1800 G Street NW., Washington, DC 20550

Type of Meeting: Closed.

Contact Person: Dr. Marcel Bardon, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550; Telephone (202) 357–7885.

Purpose of Subcommittee: To provide oversight concerning NSF support and planning for research in gravitational physics.

Agenda: To review NSF Gravitational Physics Program documentation as part of the program oversight function.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86–3330 Filed 2–13–86; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–456–OL, 50–457–OL and ASLBP No. 79–410–03–OL]

Commonwealth Edison Co.; Braidwood Station, Unit Nos. 1 and 2; Hearing

Before Administrative Judges: Herbert Grossman, Chairman, Richard F. Cole, A. Dixon Callihan.

February 10, 1986.

Please take notice that at 9:00 a.m. on March 11, 1986 at the Will County Courthouse, Courtroom #313, at 14 West Jefferson Street, Joliet, Illinois, 60431, the evidentiary hearing will reconvene. It will continue until all of the remaining emergency planning issues are concluded. No other issues will be heard at this hearing session.

The public is invited to attend.

For The Atomic Safety and Licensing Board.

Herbert Grossman,

Chairman, Administrative Judge.

[FR Doc. 86–3315 Filed 2–13–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–155]

Consumers Power Co.; Environmental Assessment and Finding of No Significant Impact

Correction

In FR Doc. 86–1465, beginning on page 3132 in the issue of Thursday, January 23, 1986, make the following correction: On page 3132, in the last line of the middle column, "2.7x10^{5}" should read "2.7x10^{-5}".

BILLING CODE 1505–01–M

[Docket No. 50–414]

Duke Power Co. et al. Catawba Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of partial exemptions from the requirements of Appendices A and J to 10 CFR Part 50 to Duke Power Company, North Carolina Municipal Power Agency No. 1 and Piedmont Municipal Power Agency (the licensees) for the Catawba Nuclear Station, Unit 2, located at the licensees' site in York County, South Carolina.

Environmental Assessment

Identification of Proposed Actions: The first proposed exemption would provide relief to the licensees, in relation to General Design Criteria (GDC) 16, 36 and 50 of Appendix A to 10 CFR Part 50, from completing ice loading, ice weighing and reinstallation of ice condenser components prior to fuel load. These items will be completed prior to the Reactor Collant System (RCS) temperatures' exceeding 200 degrees F (Mode 4). The ice condenser is not required to be operable in Modes 5 and 6 because there is insufficient energy stored in the RCS to challenge containment integrity, and the unit will have no fission product inventory. The second exemption would relieve licensees from the requirement of conducting a full pressure airlock leakage test, pursuant to Paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50, whenever airlocks are opened during periods when containment integrity is not required.

Licensees would rely, instead, on the seal leakage test decribed in Paragraph III.D2(b)(iii) when the reactor is in cold shutdown (Mode 5) or refueling (Mode 6) and when no maintenance has been performed on the airlock. The third exemption would relieve the licensees from complying with Paragraph III.B of Appendix J insofar as it requires that a type B leakage rate test be performed, at full pressure (Pa, peak calculated accident pressure), on piping penetrations fitted with expansion bellows. The fourth exemption would allow licensees to exclude certain piping which penetrates the containment from the venting and draining requirements in Paragraph III.A.1(d) of Appendix J. These types of exemption were previously approved and granted for Catawba Unit 1.

Licensees' requests for exemptions and the bases therefor are contained in letters dated July 30, 1985, December 17, 1985 and January 21, 1986. *The Need for the Proposed Actions:* The partial exemption from GDCs 16, 36 and 50 regarding completion of the ice loading and weighing and reinstallation of ice condenser components is needed to allow efficient and expeditious fuel loading and testing of facility components prior to completion of the ice condenser which may not be completed for several weeks after fuel loading. Thus partial exemption from the above GDCs, when the ice condenser is not required, would provide the licensees with greater plant availability to perform precriticality testing. The second exemption, described in the staff's Safety Evaluation Report, Supplements 3 and 4, for Catawba Nuclear Station, is from performance of the leakage rate test required by Paragraph III.D.2(b)(ii) of 10 CFR Part 50, Appendix J, which takes at least 6 hours per airlock. Exemption from full pressure leakage tests on airlocks opened during a period when containment integrity is not required would provide the licensees with greater plant availability over the lifetime of the plant. Exemption from Type B leakage rate tests on piping penetrations fitted with expansion bellows is required because the bellows design for mechanical penetration will not allow the space to be pressurized to peak accident pressure, Pa, as required by Paragraph III.B of Appendix J. Exemption of certain piping penetrations from the Appendix J venting and draining requirements is needed to prevent leakage, during Integrated Leak Rate Tests, through process containment isolation valves which receive a sealing fluid.

Environmental Impacts of Proposed Actions: The first proposed exemption would permit fuel loading and precriticality testing when the unit is in cold shutdown (Mode 5). During this time period, the unit will have no fission product inventory and the RCS has insufficient energy to challenge containment integrity. This exemption

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does not affect the risk of facility accidents. Thus, post-accident radiological releases will not, due to the proposed exemption, be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, or result in any significant occupational exposure. Likewise the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed exemption.

The second proposed exemption would permit the substitution of an airlock seal leakage test (Paragraph III.D.2(b)(iii) of Appendix J, 10 CFR Part 50) for the full pressure airlock test otherwise required by Paragraph III.D.2(b)(ii) when the airlock is opened while the reactor is in a cold shutdown or refueling mode. If the tests required by III.D.2(b) (i) and (iii) are current, no maintenance having been performed on the airlock and with it properly sealed, this exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

The third proposed exemption will provide alternative tests of piping penetrations fitted with expansion bellows such that there is adequate assurance that containment integrity is not affected. Appendix J requires that leak testing of expansion bellows assemblies on containment penetrations be conducted at a test pressure of Pa, the peak calculated accident pressure; for the Catawba plant, Pa is 14.7 psig. The bellows assemblies cannot be pressurized beyond 3 to 5 psig. The exemption, therefore, is form the requirement that the test pressure equal Pa. During testing of the bellows assemblies, the inner ply is pressurized in a direction opposite to that which would be imposed in the event of an accident. Testing at Pa would jeopardize integrity of the inner ply. Alternatively, stiffening of the inner ply to better accommodate an increased test pressure would necessitate engineering compromises contrary to overall safety. Since the expansion bellows must flex during plant heat-up and cooldown, additional rigidity would increase the likelihood of inner ply failure. However, the proposed test pressure (3 to 5 psig) is sufficient for monitoring bellows assembly integrity. Therefore, from the standpoint of overall safety, plant operation with the exemption is at least as safe as requiring compliance with the leak testing requirement of the regulations. Consequently, the probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

The fourth proposed exemption will allow the licensees to use an alternative to the vent and drain method for accounting for the leakage of certain containment isolation valves. Granting of this exemption would allow use during Integrated Leak Rate Tests (ILRTs) of the seal water system which has been installed at Catawba. Containment isloation valves served by this system will not leak containment atmosphere to the environment during an accident and so need not be exposed to test pressure by being vented and drained during ILRTs. Other valves which are not served by the seal water system, but which are in the lines to be exempted from the venting and draining requirements, will be subjected to local leakage rate testing and the results will be added to the ILRT results. Thus, all leakage will be accounted for. Consequently, the post-accident radiological releases will not be greater with the alternative tests than they would be without the requested exemption, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Actions: Because we have concluded that there is no measurable environmental impact associated with the proposed exemptions, any alternatives to the exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemptions. Such action would not reduce environmental impacts of Catawba Unit 2 operations and would result in reduced operational flexibility or unwarranted delays in power ascension.

Alternative Use of Resources: These actions do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Catawba Nuclear Station, Units 1 and 2," dated January 1983.

Agencies and Persons Consulted: The NRC staff reviewed the licensees' requests that support the proposed exemptions. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed exemptions will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to the proposed actions, see the licensees' requests for exemptions dated July 30, 1985, December 17, 1985, and January 21, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland, this 11th day of February 1986.

For the Nuclear Regulatory Commission.

Darl Hood,

Acting Director, PWR Project Directorate #4, Division of PWR Licensing–A, NRR.

[FR Doc. 86–3313 Filed 2–13–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–70]

General Electric Co., General Electric Test Reactor; Renewal of Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. TR–1 for the General Electric Company (the licensee) which renews the license for possession only of the test reactor located at Vallecitos Nuclear Center in Alameda County, California. The renewed Operating License No. TR–1 will expire on October 1, 1992.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notices of the proposed issuance of this renewal in the **Federal Register** on September 15, 1977 at 42 FR 46427 and on September 11, 1985 at 50 FR 37083.

Following the September 15, 1977 notice, six individuals and groups filed a petition to intervene. From 1977 to 1983, litigation on a Commission Order to Show Cause interrupted the renewal proceeding. In August 1982 the Atomic Safety and Licensing Board (ASLB) in the Show Cause proceeding found in favor of continued operation, subject to certain conditions. This finding subsequently was upheld by the Atomic Safety and Licensing Appeal Board and the Commission.

Following notification of General Electric Company's plan to continue operation of the facility, a reconstituted Atomic Safety and Licensing Board contacted the original intervenors and determined that only one intervenor timely demonstrated an interest in proceeding with hearings on GE's license renewal request. Following a prehearing conference and other proceedings, an agreement between GE and the intervenor was reached whereby the licensee agreed to modify its renewal application to request a possession only status and the intervenor agreed to withdraw his opposition to the license renewal request. On April 23, 1985, the proceeding was terminated by the ASLB. No request for a hearing or petition for leave to intervene was filed following notice of the proposed possession only action on September 11, 1985.

The Commission has prepared a Safety Evaluation for the renewal of Facility Operating License No. TR–1 and has, based on that report, concluded that the facility can continue to be maintained by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment for the renewal of Facility Operating License No. TR–1 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see (1) the application for renewal dated October 21, 1975, as supplemented, and the possession only request dated June 26, 1985, as supplemented July 15, 1985, (2) Amendment No. 14 to Facility Operating License TR–1, (3) the Commission's related Safety Evaluation and (4) the Environmental Assessment and Finding of No Significant Environmental Impact. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland this 5th day of February 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing–B.

[FR Doc. 86–3316 Filed 2–13–86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–410A]

Niagara Mohawk Power Corp. et al.; Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 2 of the Nine Mile Point Nuclear Power Station. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director of the Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Nine Mile Point Unit 2 construction permit to Niagara Mohawk Power Corporation, *et al.*, the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation, and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in the state of New York, the events revelant to the Nine Mile Point, Unit 2 construction permit reviews and the events that have occurred subsequent to the construction permit reviews.

The conclusion of the staff's analysis is as follows:

Nine Mile Point Nuclear Station, Unit 2 (NMP 2) is to be jointly owned by five investor owned utilities in New York as follows:

	Percent
Niagara Mohawk Power Corp	41
Long Island Lighting Co	18
New York State Electric and Gas Corp	18
Rochester Gas and Electric Corp	14
General Hudson Gas and Electric Corp	9

The five co-owners of NMP 2 received antitrust reviews by the Department of Justice with respect to their participation in NMP 2 and in various other planned nuclear generating plants during the period from 1972 through 1978. The Attorney General, in his antitrust advice letters to the Nuclear Regulatory Commission, expressed concern only with respect to Niagara. One concern was that Niagara might not be willing to wheel power for the Jamestown municipal electric system if Jamestown decided to purchase at wholesale all of its electric power requirements. The other concern regarded Niagara's continuing opposition to the efforts of the town of Messena to establish a municipal electric system. Although the Attorney General did not recommend a hearing, he did advise the Commisison to monitor the subsequent activities of Niagara with respect to these two issues.

Subsequently, Jamestown decided to install electrostatic precipitators on its coal fired plants rather than purchase its total power requirements. Also, Messena has established a distribution system, and Niagara has agreed to wheel power to Messena. Thus, the two concerns expressed by the Attorney General have been resolved.

Staff's review of changes in load forecasts, capacity expansion programs, and rate schedules does not suggest any anticompetitive effects. New York State Electric and Gas Corporation's acquisition of the Peach Lake system did not significantly alter regional market concentration and was a business transaction with no apparent consumer or regulatory opposition.

In light of the Commission's guiding criteria, none of the changes which have been surfaced in this review can be considered "significant", and therefore, staff does not recommend a finding of "significant change."

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of Nine Mile Point, Unit 2 is not required.

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Signed on February 6, 1986 by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 for 30 days from the date of the publication of the Federal Register notice.

Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated in Bethesda, Maryland on February 10, 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-3317 Filed 2-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-445]

Texas Utilities Electric Co. et al., Commanche Peak Steam Electric Station, Unit 1; Order Extending Latest Construction Completion Date

The Texas Utilities Electric Company, Texas Municipal Power Agency, Brazos Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc. (Applicants) are the holders of Construction Permit No. CPPR-126 issued by the Atomic Energy Commission [1] on December 19, 1974 for construction of the Comanche Peak Steam Electric Station Unit 1, a nuclear facility utilizing a Westinghouse Electric Corporation nuclear steam supply system presently under construction at the Applicants' site in Somervell County, Texas.

By letter dated January 29, 1986, as supplemented on February 4, 1986, the Applicants filed a request for extension of the latest construction completion date specified in Construction Permit No. CPPR-126 to August 1, 1988. The Applicants state that, although construction on Comanche Peak Unit 1 was essentially completed early in 1985, major efforts to reinspect and reanalyze various structures, systems, and components are currently underway. These efforts are being conducted by the Applicants' Comanche Peak Response Team to verify both design and construction adequacy as well as to respond to numerous issues raised in the operating license proceeding by the NRC's Technical Review Team, and by other sources. This activity has been ongoing since the fall of 1984. The Applicants anticipate that it will not be complete before the second quarter of 1988. Because of uncertainties associated with these activities and with the hearing process, the Applicants request an extension until August 1, 1988 to cover such contingencies.

As discussed more fully in the staff's related Evaluation of Request dated February 10, 1986, we have concluded that good cause has been shown for the delay, and that the requested extension is for a reasonable period. We have further concluded that the requested extension involves no significant hazards consideration, and therefore no prior public notice is required.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the Federal Register on February 7, 1986 (51 FR 4834). The NRC staff has concluded that this action will not have a significant impact on the quality of the human environment and therefore no environmental impact statement need be prepared.

The Applicants' letter dated January 29, 1986, as supplemented on February 4, 1986, and the NRC staff's letter and evaluation dated February 10, 1986 issued in support of this Order are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Somervell County Public Library, On the Square Glen Rose, Texas 76043.

It is hereby ordered that the latest completion date for CPPR-126 be extended to August 1, 1988.

Date of Issuance: February 10, 1986.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A.

[FR Doc. 86-3318 Filed 2-13-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Callaway Plant, Unit 1

Notice is hereby given that the Director, Office of Inspection and Enforcement, has denied a petition under 10 CFR 2.206 filed by Alan S. Nemes, Esq. on behalf of Missouri Coalition for the Environment and Kay Drey. This petition is related to the Callaway Plant, Unit 1. In the petition, Missouri Coalition for the Environment and Kay Drey alleged that the Union Electric Company's revoking the certification of quality control inspectors found to have questionable qualifications in early 1985 raised questions as to the adequacy of the inspection process and the safety of the Callaway Plant. In addition, they alleged that the failure of Union Electric Company's management to identify the problem with inspector qualifications for at least four years showed that the utility violated its legal obligation to continually monitor safety inspections at the plant and to provide inspectors with direct access to levels of management sufficient to assure prompt reaction to safety violations.

The reasons for the denial of the petition are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date, which is available for public inspection in the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and in the local public document room for the Callaway Plant, located at the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, MO 63130. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 10th day of February, 1986.

For The Nuclear Regulatory Commission

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 86-3319 Filed 2-13-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Positions Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

[1] Effective January 20, 1975, the Atomic Energy Commission was abolished and its regulatory authority transferred to the Nuclear Regulatory Commission.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on December 24, 1985 (50 FR 52573). Individual authorities established or revoked under Schedule A, B, or C between December 1, 1985 and December 31, 1985 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked in December.

Schedule B

No Schedule B exceptions were established or revoked in December.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Deputy Assistant Secretary for Natural Resources and Environment. Effective December 2, 1985.

One Private Secretary to the Assistant Secretary for Governmental and Public Affairs. Effective December 4, 1985.

One Confidential Assistant to the Secretary. Effective December 31, 1985.

Department of the Air Force

One Staff Assistant to the Secretary of the Air Force. Effective December 5, 1985.

Agency for International Development

One Supervisory Public Affairs Specialist to the Deputy Assistant Administrator, Bureau for External Affairs. Effective December 18, 1985.

One Supervisory Public Affairs Specialist to the Supervisory Public Affairs Specialist. Effective December 18, 1985.

Commission on Civil Rights

One Special Assistant to the Vice Chairman, with duty location in New York, New York. Effective December 2, 1985.

One Deputy General Counsel to the General Counsel. Effective December 9, 1985.

One Special Assistant to the Staff Director. Effective December 9, 1985.

One Special Assistant to the General Counsel. Effective December 20, 1985.

Department of Commerce

One Special Assistant to the Administrator, National Oceanic and Atmospheric Administration. Effective December 6, 1985.

One Confidential Assistant to the Special Assistant to the Secretary. Effective December 16, 1985.

One Confidential Assistant to the Assistant Secretary for Trade Administration. Effective December 19, 1985.

One Confidential Assistant to the Special Assistant to the Deputy Secretary. Effective December 31, 1985.

Consumer Product Safety Commission

One Special Assistant to a Commissioner. Effective December 31, 1985.

One Special Assistant to a Commissioner. Effective December 31, 1985.

Department of Defense

One Private Secretary to the Assistant Secretary of Defense (International Security Policy). Effective December 31, 1985.

One Personal and Confidential Assistant to the Assistant Secretary of Defense (International Security Policy). Effective December 31, 1985.

Department of Energy

One Principal House Liaison Specialist to the Director, Office of Congressional Affairs. Effective December 3, 1985.

One Staff Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective December 5, 1985.

One Staff Assistant to the Special Assistant to the Secretary. Effective December 10, 1985.

One Technical Advisor to a Member of the Federal Energy Regulatory Commission. Effective December 10, 1985.

One Special Assistant to the Assistant Secretary for Defense Programs. Effective December 30, 1985.

Three Legal Advisors to three Members of the Federal Energy Regulatory Commission. Effective December 31, 1985.

One Confidential Assistant (Secretary) to the General Counsel. Effective December 31, 1985.

Department of Transportation

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective December 10, 1985.

One Staff Assistant to the Assistant Secretary for Public Affairs. Effective December 10, 1985.

One Director, Special Operations Division to the Deputy Assistant Secretary for Administration. Effective December 12, 1985.

One Special Assistant to the Executive Secretary. Effective December 20, 1985.

Two Staff Assistants to the Deputy Secretary. Effective December 30, 1985.

One Special Assistant to the Director, Executive Secretariat. Effective December 30, 1985.

One Receptionist to the Deputy Secretary. Effective December 30, 1985.

Department of Education

One Confidential Assistant to the Deputy Under Secretary for Management. Effective December 2, 1985.

One Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective December 2, 1985.

One Special Assistant to the Under Secretary. Effective December 20, 1985.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective December 20, 1985.

One Special Assistant to the Deputy Assistant Secretary for Policy and Planning, Office of the Assistant Secretary for Educational Research and Improvement. Effective December 20, 1985.

One Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective December 20, 1985.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective December 20, 1985.

One Special Assistant to the Director, Intergovernmental Affairs. Effective December 20, 1985.

One Director, Historically Black Colleges and Universities Staff, to the Assistant Secretary for Postsecondary Education. Effective December 31, 1985.

One Director, Regional Liaison, to the Under Secretary. Effective December 31, 1985.

Environmental Protection Agency

One Special Assistant to the Deputy Administrator. Effective December 18, 1985.

One Special Assistant to the Assistant Administrator, Office of Water. Effective December 18, 1985.

One Special Assistant to the Deputy Administrator. Effective December 20, 1985.

Federal Home Loan Bank Board

One Director of Communications to the Chairman. Effective December 2, 1985.

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Department of Housing and Urban Development

One Special Advisor to the Assistant Secretary for Legislation and Congressional Relations. Effective December 17, 1985.

One Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective December 17, 1985.

One Special Assistant (Speech Issues) to the Assistant Secretary for Public Affairs. Effective December 17, 1985.

One Special Assistant to the Deputy Assistant Secretary for Program Policy Development and Evaluation, Office of Community Planning and Development. Effective December 20, 1985.

Department of Interior

One Confidential Assistant to the Assistant to the Secretary and Director of External Affairs. Effective December 19, 1985.

One Special Assistant to the Assistant Secretary for Fish and Wildlife and Parks. Effective December 31, 1985.

International Trade Commission

One Confidential Assistant to a Commissioner. Effective December 11, 1985.

Department of Justice

One Special Assistant to the Assistant Attorney General, Office of Legal Policy. Effective December 2, 1985.

One Public Affairs Specialist to the Deputy Director, Office of Public Affairs. Effective December 2, 1985.

One Deputy Assistant Attorney General, Civil Rights Division. Effective December 2, 1985.

One Attorney Advisor (General) to the Assistant Attorney General, Antitrust Division. Effective December 5, 1985.

One Special Assistant to the Assistant Attorney General, Office of Legislative and Intergovernmental Affairs. Effective December 10, 1985.

One Special Assistant to the Assistant Attorney General, Civil Rights Division. Effective December 16, 1985.

One Director, Regulatory and Legislative Affairs Staff, to the Assistant Attorney General, Civil Division. Effective December 19, 1985.

Department of Labor

One Executive Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration. Effective December 2, 1985.

One Special Assistant to the Assistant Secretary for the Occupational Safety and Health Administration. Effective December 6, 1985.

One Staff Assistant to the Associate Deputy Under Secretary for Intergovernmental Affairs. Effective December 10, 1985.

One Special Assistant to the Assistant Secretary for the Employment and Training Administration. Effective December 10, 1985.

One Special Assistant to the Assistant Secretary for Occupational Safety and Health Administration. Effective December 11, 1985.

One Confidential Staff Assistant to the Assistant Secretary for the Employment and Training Administration. Effective December 20, 1985.

One Regional Representative to the Associate Deputy Under Secretary for Intergovernmental Affairs, with duty location in Denver, Colorado. Effective December 20, 1985.

One Special Assistant to the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs. Effective December 20, 1985.

One Special Assistant to the Secretary. Effective December 31, 1985.

National Aeronautics and Space Administration

One Secretary (Stenography) to the Deputy Administrator. Effective December 11, 1985.

One Secretary (Stenography) to the Deputy Administrator. Effective December 31, 1985.

National Credit Union Administration

One Executive Assistant to the Chairman. Effective December 2, 1985.

One Confidential Assistant to the Chairman. Effective December 9, 1985.

National Endowment for the Humanities

One Special Assistant to the Chairman. Effective December 6, 1985.

National Transportation Safety Board

One Secretary (Typing) to the Chairman. Effective December 2, 1985.

Office of Management and Budget

One Staff Assistant to the Administrator, Office on Information and Regulatory Affairs. Effective December 10, 1985.

One Confidential Assistant to the Executive Associate Director for Budget and Legislation. Effective December 31, 1985.

Pension Benefit Guaranty Corporation

One Secretary (Stenography) to the Executive Director. Effective December 10, 1985.

Small Business Administration

One Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective December 31, 1985.

One Special Assistant to the Associate Administrator for Minority Small Business and Capital Ownership Development. Effective December 31, 1985.

Securities and Exchange Commission

Two Confidential Assistants to two Commissioners. Effective December 12, 1985.

Department of State

One Staff Assistant to the Assistant Secretary for the Bureau of Human Rights and Humanitarian Affairs. Effective December 9, 1985.

One Protocol Officer (Ceremonials) to the Chief of Protocol. Effective December 19, 1985.

Department of the Treasury

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective December 2, 1985.

United States Trade Representative

One Confidential Secretary to the General Counsel. Effective December 31, 1985.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-3284 Filed 2-13-86; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22679; File No. SR-CBOE-85-22]

Self-Regulating Organizations; Amendment No. 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to the Electronic Routing of Options Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 27, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission Amendment No. 2 to the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The electronic routing of orders to the book, under the Exchange's Order Support System ("OSS"), and parameters for OSS were described generally in SR-CBOE-84-12.[1] Until further notice, the "C" parameter will apply to OSS in the classes of options on over-the-counter ("OTC") stocks. In addition, CBOE proposes that OSS be utilized to route orders on options on stocks selected by the Exchange to printers at trading posts for handling by floor brokers.

The proposal to grant CBOE the discretion to select those options for which OSS may be utilized is an amendment to a previous proposal which would have permitted the electronic routing of OSS-eligible options orders on "OTC" stocks to a printer at the trading post for direct representation by floor brokers in the trading crowd.[2] The proposal as originally submitted to the Commission was not approved in order that the CBOE could clarify how the process would work. This amendment to the proposed rule change is intended to broaden the options classes where the crowd printer may be used, and to describe more fully how the process will work.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Floor broker routing is intended to afford member firms the ability to route orders to a printer at the trading crowd rather than have the order print at the firm's booth, from which the orders need to be taken by hand to the crowd and back. This will expedite both the delivery of orders and fill reporting. OSS currently allows a firm's public customer orders to be routed to two destinations only, the book and the booth. The order will be directed to the book, if not at or within the prevailing parameter. Otherwise, at present the order is routed to the firm's booth on the floor, from where it is handled manually. Each firm can set its own parameters on OSS routing, so long as the parameter is not less restrictive than the Exchange's parameter. Thus, if an options class is at the "C" parameter for up to 300 contracts, a firm could, for example, establish a parameter that only orders of up to 10 contracts and a ½ point away from the market are to be routed to the book, all others to go to the booth.

Under this proposed rule change, member firms, rather than having an order go to the booth, may have an OSS order print at the trading crowd when the parameters do not allow the order to be accepted by the book. The firm will have the ability to set parameters for routing orders to the book, the printer at the crowd, and the booth, or to set one parameter for routing orders to the book with all others going either to the crowd printer or the booth. This feature only will be available at such trading stations as the Exchange in its discretion so equips.

Where available, there will be a printer at or adjacent to the trading crowd, which printer will print out orders to be handled in the crowd. The printer will be staffed by one or more Exchange employees. In order to be eligible to use this system, a firm will designate a floor broker to receive orders at a particular station, agree that the designated floor broker assumes responsibility for the order once it is printed, and that if the designated floor broker is unavailable when an order is printed, the Exchange representative will hand the order to another floor broker in the trading crowd. The designated floor broker may be an independent or house broker.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received. However, the Exchange's Office of the Chairman approved this amendment to the rule change on January 20, 1986.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3332 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[1] SR-CBOE-84-12 was noticed and approved in Securities Exchange Act Release No. 20811 (April 2, 1984), 49 FR 13832.

[2] SR-CBOE-85-22 and Amendment No. 1 to the rule filing were noticed in Securities Exchange Act Release No. 22105 (May 31, 1985), 50 FR 24073. The Commission at that time approved that part of the proposal which imposed narrow price parameters in connection with the use of OSS for classes of options on OTC stocks.

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[Release No. 34-22876; File No. SR-CBOE-86-04]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Index Option Expiration Months

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 29, 1986, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would give the Exchange limited flexibility in adding expiration months in index option contracts by providing that there may be up to five expiration months, none further out than twelve months.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to give the Exchange limited flexibility in adding expiration months in index option contracts in order to avoid unnecessary rule change filings. The statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it is designed to facilitate transactions in index option contracts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3333 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22881; File No. SR-NYSE-86-06]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc.; Relating To Extending the Close of NYSE Index Options Trading From 4:10 P.M. to 4:15 P.M.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 4, 1986 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 700 series of Rules, as follows:

(Brackets indicate language deleted; italics indicate language added.)

Trading Rotations, Halts and Suspensions

Rule 717. (a) through (c) No change.

. . . Supplementary Material:

.10 (a) through (b) No change.

(c) A closing rotation in expiring *stock option* series initiated on the business day prior to the expiration date in accordance with paragraphs (e) of Rule 703 (Series of Options Open for Trading) and (a)(iv) of this Rule [(in the case of a stock option) or paragraph (a)(iii) (in the case of an index stock group option)] shall commence at 4:00 p.m. *If, in accordance with paragraph (a)(iii) of this Rule, a closing rotation in index stock group options is deemed necessary, such closing rotation shall commence at 4:15 p.m.* Orders may be entered, modified or canceled in a particular expiring series until the commencement of the rotation in such series. The Specialist shall proceed in the following manner: Taking each class in which he is acting in turn, the Specialist should generally close the one or more series of each class having the lowest exercise price and so forth, until all series have been closed. Except as otherwise provided by the Exchange, if both puts and calls covering the same stock or index stock group are traded, the Specialist may determine which type of options should close first, and may alternate the closing of put series and call series or may close all series of one type before closing any series of the other type, depending on current market conditions.

.20 through .60 No change.

* * * * *

Exercise of Option Contracts

Rule 780. (a) through (c) No change.

. . . Supplementary Material:

.10 The following additional procedures shall apply to the exercise of index stock group options.

(a) A member organization shall not tender an exercise notice unless it has received or prepared a memorandum in respect of the exercise by no later than [4:10] *4:15* p.m. New York time and has time-stamped the memorandum at the time it is received or prepared. In the event a member organization receives an exercise instruction or tenders an exercise notice pursuant to one of the exceptions set forth in the third sentence of paragraph (b) of this Rule, the member organization shall prepare a memorandum setting forth the circumstances giving rise to such exception.

(b) In the case of exercises of 25 or more contracts of the same series on the same business day on behalf of any account, each member or member organization shall also deliver an "exercise advice" in a form prescribed by the Exchange, to a place designated by the Exchange no later than [4:10] *4:15* p.m. New York time. For purposes of this paragraph (b), exercises for all accounts controlled by the same individual must be aggregated.

(c) Member organizations must accept exercise instructions until [4:10] *4:15* p.m. New York time, except that they may impose an earlier deadline for contracts subject to paragraph (c) of this Rule in order to allow a reasonable amount of time for compliance with that paragraph. The [4:10] *4:15* p.m. deadline for receipt and acceptance of exercise instructions, for delivery of exercise advices and for preparation of exercise memoranda is not applicable to expiring series on the business day prior to expiration.

* * * * *

Rule 792. (a) Except as may be otherwise determined by the Board of Directors as to particular days, the Exchange shall be open for business on every business day, excluding Saturdays, and the hours during which options transactions may be made on the Floor shall correspond to the hours set forth in Rule 51 (Hours for Business), plus an additional ten minute period following the referent hours *for stock options and an additional fifteen minute period for index stock group options.*

No further changes to Rule 792.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Through an amendment to Rule 792, the proposed rule change will extend open trading in index options contracts from 4:10 p.m. to 4:15 p.m. The changes to Rule 717.10(c) clarify that open trading in all index option series continues until the close of trading, even on the business day prior to expiration, and that should a closing rotation in index options be necessary, it should commence at 4:15 p.m. as well. Amendments to Rule 780.10 extend the deadline for submission of exercise memoranda and advices to 4:15 p.m. to coincide with the end of trading.

The proposed rule change coordinates the close of trading in options on the NYSE Composite and Double Indices ("NYA" and "NDX", respectively) with the close of trading of futures contracts on the NYSE Composite Index and on other broad based stock market indices. Futures and options on identical or very similar indices allow investors and traders to hedge their positions in one contract with positions in the other. Positions held in NYSE Composite Index futures are frequently offset with positions in NYA or NDX options and positions held in NYSE index options are offset by the same futures contracts. The current difference in closing times hobbles the adjustment of risk by investors and traders with futures-options offsetting positions. Synchronizing the closing times will solve this problem. The identical closing times should also add to the depth and liquidity of the market in index options.

With heavier stock trading volumes, particularly at the close of trading on the Exchange's equity floor, the "run-off" of closing stock transactions can occasionally go beyond 4:10 p.m. While only small changes to the NYSE Composite Index value have occurred in the period after 4:10 p.m., the additional five minutes will allow trading based on a more complete picture of the market's close.

The statutory basis of the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"). The proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated effectiveness of the proposed rule change concurrent with approval of CBOE-85-49 and Amex 86-2, which propose to extend trading in their broad based index options to 4:15 p.m. The terms of the proposed rule change is substantively identical to the rule changes mentioned above. (See Release No. 34-22790 (January 13, 1986) 51 FR 2614 (January 17, 1986).)

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

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with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

February 7, 1986.

[FR Doc. 86-3334 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22872; SR-PSE-85-38]

Self Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing and Order Granting Immediate Effectiveness to Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1985, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In 1984 in connection with the relocation of its options trading floor, the PSE installed a conduit for cables linking its San Francisco equities and options trading floors. The conduit contains 30 coaxial cables and eight 25-pair telephone cables. The Exchange is currently providing, without charge, the use of one 25-pair telephone cable to three member organizations, at their request. Use of these cables results in substantial monthly savings to these member organizations, which would otherwise use external telephone lines and equipment between their equities and options operations.

At this time, the Exchange is proposing to implement monthly service charges for the use of these cables by its members, as follows: $40.00 per month for the use of each coaxial cable; $20.00 per month for each pair of telephone cables; $32.00 per month for the use of two pair of telephone cables; and $320.00 per month for the use of an entire 25-pair telephone cable. These charges are intended to permit the Exchange to recover the costs associated with the installation and maintenance of the conduit and cables.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As noted above, the Exchange is currently providing the use of certain cables linking its San Francisco equities and options trading floors to several member organizations at no charge to them. In addition, at least one other firm has expressed an interest in using these facilities. The PSE has advised these organizations of its intention to impose reasonable monthly charges for this service. The proposed monthly charges are intended to permit the Exchange to recover the costs associated with the installation and maintenance of the conduit and cables.

PSE member organizations which use the cables and conduit installed by the Exchange will continue to realize significant costs savings over the cost of external telephone lines and equipment which they would otherwise have to obtain to connect their San Francisco equities and options trading floor facilities. The Exchange does not anticipate that the use of the cables by its members will present a capacity problem now or in the future, as it does not expect that more cable than is currently in place will be needed. If necessary, however, the number of cables in the existing conduit could be increased and a second conduit could be installed.

The proposed charges are consistent with section 6(b)(4) of the Securities Exchange Act of 1934 ("Act"), in that they provide for the equitable allocation of reasonable fees and charges among members which use facilities provided by the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not have an impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4 because it establishes or changes a due, fee or other charge. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Publication of the submission is expected to be made in the **Federal Register** during the week of February 3, 1986. Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the PSE. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3335 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22873; File No. PHILADEP-86-2]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Depository Trust Company Relating to Provision of Penalties for Failure by Participants To Conform Promptly the Accuracy of Monthly Account Statements

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 27, 1986, the Philadelphia Depository Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) Philadelphia Depository Trust Company (PHILADEP) proposes *a new Rule 29* to provide penalties for failure by participants to respond in timely manner to confirmation requests as to the accuracy of monthly account statements. The text of the rule is attached as Exhibit 1.

(b) PHILADEP does not expect that the proposed rule change will have any direct effect or significant indirect effect on the application of any of its other rules.

(c) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

(a) The purpose of the proposed rule change is to emphasize to members or participants the importance of verifying or taking exception, on a timely basis, to the monthly statements issued by PHILADEP for the various types of accounts carried for them. The clearance and settlement of securities transactions and the maintenance of the numerous accounts in connection therewith is a complex activity involving many persons and entities. Promptness in confirming accounts and identifying errors will increase efficiency, reduce the time and effort required for adjustments, and lessen risk. Fairness calls for all participants to follow the same standards. Empowering the Corporation to impose reasonable penalties related to occasional or multiple delinquencies is a legitimate enforcement aid.

(b) The proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. It also provides, in accordance with section 17A(b)(3)(H), a fair procedure with respect to the disciplining of participants.

B. Self-Regulatory Organizations Statement on Burden on Competition

PHILADEP does not perceive any burdens on competition as a result of the proposed rule change. It promotes sound business procedures and is not unduly burdensome.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

Exhibit 1

Rule 29 (new) re response by participants to account statements.

(a) Philadelphia Depository Trust Company (PHILADEP) will render to participants a daily bookkeeping form. This statement must be verified upon receipt and any exceptions or corrections thereto promptly reported to PHILADEP.

(b) As of the last Friday of each month except December, which will be as of the last business day, PHILADEP will request each participant to respond in writing as to whether monthly account statements issued by PHILADEP and received by the participant are accurate for each type of account. If a statement is incorrect, any differences should be reported on research requests to be enclosed with the written reply. The reply must be signed by the participant and returned to PHILADEP by the 20th day of the month following the date of the statement.

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(c) The following penalties shall be imposed upon a participant who fails to respond to confirmation requests in a timely manner, as required by section (b) of this rule:

(1) First offense within a twelve-month period: warning;

(2) Second offense within a twelve-month period: $100 fine;

(3) Third offense within a twelve-month period: $250 fine;

(4) Fourth offense within a twelve-month period: the deliquent participant, upon due notice, shall be required to appear before the Board of Directors for the imposition of such further sanctions as the Board may deem appropriate. Such sanctions may include fine, suspension of depository privileges or termination of depository privileges. A written report of the reasons for any such action shall be made promptly and filed with the corporations' records. The participant shall be sent a copy thereof.

(d) Notwithstanding the foregoing, the corporation or the Board of Directors may extend the times fixed for compliance with this rule whenever, in the judgment of either, such extension is necessary or desirable.

[FR Doc. 86-3336 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22878; File No. OCC-86-1]

Self-Regulatory Organizations; The Options Clearing Corp.; Order Granting Approval To Supplement to Option Disclosure Document

On February 4, 1986, the Options Clearing Corporation ("OCC") and the Philadelphia Stock Exchange, Inc. ("Phlx") submitted to the Securities and Exchange Commission ("SEC") [1] copies of a supplement to the options disclosure document pursuant to Rule 9b-1 ("Rule") under the Securities Exchange Act of 1934 ("Act").[2] The supplement, entitled "ECU Disclosure Rider," is intended to disclose potential risks to holders and writers of options on the European Currency Unit ("ECU") in the event that a court were to set aside the SEC's February 3, 1986 orders approving the rules of Phlx and OCC pertaining to ECU options.[3]

The Commodity Futures Trading Commission ("CFTC") and the Chicago Mercantile Exchange ("CME") submitted comments on the Phlx and OCC ECU options proposals contending that ECU options were not "securities" within the SEC's jurisdiction but rather were commodity options with the exclusive jurisdiction of the CFTC.[4] The SEC carefully considered these comments and concluded that the ECU options proposed by the Phlx are within the SEC's jurisdiction and are otherwise consistent with the Act.[5]

The supplement to the options disclosure document recites this history, and indicates that counsel to OCC and Phlx believe that, while the SEC order should be "conclusive," the issue of the SEC's jurisdiction is not free from doubt in the absence of a court decision. The supplement then discusses the possible effects of a court setting aside the SEC's approval of Phlx's proposal to trade ECU options, including the possible cessation of trading in ECU options, or a prohibition on transactions in new series of options or on all opening transactions. The supplement indicates that if all trading is halted, holders and writers of outstanding ECU options "might find it difficult or impossible to close out or otherwise liquidate their open positions," and that there may be additional risks, including an inability to excercise these options, if a court were to set aside the SEC's approval.

As discussed in the Phlx Release, the SEC believes that ECU options are securities within the SEC's juriadiction. Because the SEC has received comments suggesting otherwise, however, the SEC believes it is appropriate for OCC and Phlx to disclose the potential risks to holders and writers of ECU options in the event the question is litigated and a court sets aside the SEC's orders. The SEC finds that the disclosures in the supplement are adequate to allow prospective ECU options holders and writers to assess the risks of transacting in ECU options at this time.[6]

Rule 9b-1(b)(2)(i) provides that copies of amendments to an options disclosure document must be filed with the SEC at least 30 days prior to the date definitive copies are furnished to investors unless the SEC determines otherwise, having due regard to the adequacy of the information disclosed and the protection of investors. This provision is intended to permit the SEC either to accelerate or extend the time period definitive copies of a supplement to a disclosure statement may be distributed to the public. The OCC and Phlx have requested a waiver of the 30-day period in order to allow delivery of the supplement to prospective buyers and writers of ECU options before February 12, 1986, the date that Phlx plans to commence trading ECU options.[7] The supplement will be required to be delivered for the 60-day period following publication of the Commission's orders in the Federal Register but not thereafter.[8] The SEC finds that it is consistent with the protection of investors and the public interest to allow the distribution of the "ECU Disclosure Rider" as of the date of this order.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3337 Filed 2-13-86; 8:45 am]

BILLING CODE 8010-01-M

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[1] Letter from William H. Navin, Schiff Hardin & Waite, Counsel to OCC, to Brandon C. Becker, Assistant Director, Division of Market Regulation, dated February 4, 1986 ("Navin Letter").

[2] 17 CFR 240.9b-1 (1985).

[3] Securities Exchange Act Release Nos. 22855 ("Phlx Release") and 22854 (February 3, 1986).

[4] The CFTC's and CME's comment letters were summarized in the Phlx Release, note 3, *supra*, at 8-11.

[5] Phlx Release, note 3, *supra*, at 13-27.

[6] In this regard, the Commission notes that in conversations with the Commission's staff, counsel for OCC indicated that various drafting changes to the supplement would be made before the supplement is issued. The Commission believes that the supplement, as so amended, adequately describes the risks of transacting in ECU options.

[7] Counsel for OCC represents that it understands "from Phlx that its members will be required to deliver the supplement to prospective buyers and writers of ECU options before executing any orders in such options for their accounts." Navin Letter, *note 1, supra*, at 1.

[8] *See* section 25(a)(1) of the Act.

[9] Prior to February 12, 1986, the anticipated day for commencement of trading ECU options, Post-Effective Amendment No. 2 to OCC's Form 20 registration statement, which includes a revised legal opinion reflecting the commencement of offering of ECU options, will become effective. *See* File No. 3-06384.

[Release No. 34-22874; File No. SCCP 86-1]

Self-Regulatory Organizations; Proposed Rule Change by the Stock Clearing Corporation of Philadelphia Relating to Provision of Penalties for Failure by Participants To Conform Promptly the Accuracy of Monthly Account Statements

Pursuant to section 19(b)[1] of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)[1], notice is hereby given that on January 27, 1986, the Stock Clearing Corporation of Philadephia Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) Stock Clearing Corporation of Philadelphia (SCCP) proposes as a rule change an amendment to its Rule 21 to provide penalties for failure by participants to respond in timely manner to confirmation requests as to the accuracy of monthly account statements. The text of the rule is attached as Exhibit 1.

(b) SCCP does not expect that the proposed rule change will have any direct effect or significant indirect effect on the application of any of its other rules.

(c) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis, for the Proposed Rule Change

(a) The purpose of the proposed rule change is to emphasize to members or participants the importance of verifying or taking exception, on a timely basis, to the monthly statements issued by SCCP for the various types of accounts carried for them. The clearance and settlement of securities transactions and the maintenance of the numerous accounts in connection therewith is a complex activity involving many persons and entities. Promptness in confirming accounts and identifying errors will increase efficiency, reduce the time and effort required for adjustments, and lessen risk. Fairness calls for all participants to follow the same standards. Empowering the Corporation to impose reasonable penalties related to occasional or multiple delinquencies is a legitimate enforcement aid.

(b) The proposed rule change is consistent with section 17A(b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. It also provides, in accordance with section 17(b)(3)(H), a fair procedure with respect to the disciplining of participants.

B. Self-Regulatory Organizations Statement on Burden on Competition

SCCP does not perceive any burdens on competition as a result of the proposed rule change. It promotes sound business procedures and is not unduly burdensome.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

February 7, 1986.

Exhibit 1

Rule 21 re response by participants to account statements, as proposed to be amended. Brackets indicate deletions, italics indicate new material.

(a) Stock Clearing Corporation *(SCCP)* will render to clearing members a daily bookkeeping form. This statement must be verified upon receipt and any exceptions or corrections thereto promptly reported to SCCP.

(b) As of the last Friday of each month except December, which will be as of the last business day [Stock Clearing Corporation will issue to clearing members a month-end exception letter indicating whether the statement received on that day is] *SCCP will request each member to respond in writing as to whether monthly account statements issued by SCCP and received by the member are* accurate for each type of account [(CNS or margin)]. If a statement is incorrect, any differences should be reported on research requests to be enclosed with the [exception letter. The verification letter] *written reply. The reply* must be signed by the member and returned to [Stock Clearing Corporation] *SCCP* by the [15th] *20th* day of the month following the date of the statement.

(c) The following penalties shall be imposed upon a clearing member who fails to respond to confirmation requests in a timely manner, as required by section (b) of this rule:

(1) First offense within a twelve-month period: warning;

(2) Second offense within a twelve-month period: $100 fine;

(3) Third offense within a twelve-month period: $250 fine;

(4) Fourth offense within a twelve-month period: the delinquent member, upon due notice, shall be required to appear before the Board of Directors for the imposition of such further sanctions as the Board may deem appropriate. Such sanctions may include fine, suspension from clearing privileges or termination of clearing privileges. A written report of the reasons for any such action shall be made promptly and filed with the corporation's records. The clearing member shall be sent a copy thereof.

(d) Notwithstanding the foregoing, the corporation or the Board of Directors may extend the time fixed for compliance with this rule whenever, in

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the judgment of either, such extension is necessary or desirable.

[FR Doc. 86-3338 Filed 2-13-86; 8:45 am]
BILLING CODE 8010-01-M

[File No. 22-14694]

Application & Opportunity for Hearing; Chrysler Financial Corporation

February 11, 1986.

Notice is hereby given that Chrysler Financial Corporation (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeships of Manufacturers Hanover Trust Company ("MHTC") under a 1983 indenture, a January 1984 indenture, a June 1984 indenture and a June 1985 indenture which were qualified under the Act, and the trusteeship of MHTC, as successor trustee, under an indenture, dated as March 15, 1984 (the "March 1984 indenture"), previously qualified under the Act with Morgan Guaranty Trust Company of New York as trustee (the "retired trustee"), are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as trustee under one of such indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likey to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On November 22, 1984, the Applicant filed a Registration Statement (Registration No. 2-88098), covering $300,000,000 principal amount of 13¾ Notes Due 1988 (the "13¾% Notes").

2. the 13¾% Notes were issued pursuant to an Indenture, dated as of December 15, 1983, between MHTC, as Trustee, and the Applicant (the "1983 Indenture").

3. On January 19, 1984, the Applicant filed a Registration Statement (Registration No. 2-89931), covering $300,000,000 principal amount of Medium Term Notes of varying interest rates and dates of maturity (the "Medium Term Notes").

4. The Medium-Term Notes were issued pursuant to an Indenture, dated as of January 15, 1983, between MHTC, as Indenture Trustee, and the Applicant (the "January 1984 Indenture").

5. On January 25, 1984 the Applicant filed an application pursuant to section 310(b)(1)(ii) of the Act for a determination that the trusteeships under the 1983 Indenture and the January 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as Indenture Trustee under one of such Indentures. Said application was granted on October 17, 1984.

6. On June 21, 1984, the Applicant filed a Registration Statement (Registration No. 2-91792), covering $1,500,000,000 principal amount of Senior Debt Securities of varying interest rates and dates of maturity (the "1984 Senior Debt Securities").

7. On June 24, 1984, the Applicant filed an application pursuant to section 310(b)(1)(ii) of the Act for a determination that the trusteeships under the 1983 Indenture, the January 1984 Indenture and the June 1984 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MHTC from acting as Indenture Trustee under one of such Indentures. Said application was granted on October 17, 1984.

8. The 1984 Senior Debt Securities were issued pursuant to an Indenture, dated as of June 15, 1984, as supplemented by the First Supplemental Indenture, dated as of July 15, 1984, between MHTC, as Indenture Trustee, and the applicant (the Indenture, the First Supplemental Indenture and the Second Supplemental Indenture hereinafter collectively referred to as the "June 1984 Indenture").

9. On May 29, 1985, the Applicant filed a Registration Statement (Registration No. 2-98039), covering $1,500,000,000 principal amount of Senior Debt Securities of varying interest rates and dates of maturity (the "1985 Senior Debt Securities").

10. The 1985 Senior Debt Securities were issued pursuant to an Indenture, dated as of June 1, 1985, between MHTC, as Indenture Trustee, and the Applicant (the "June 1985 Indenture").

11. The Applicant is not in default in any respect under the 1983 Indenture, the January 1984 Indenture, the June 1984 Indenture, the June 1985 Indenture or under any other existing Indenture.

12. On March 8, 1984, the Applicant filed a Registration Statement (Registration No. 2-989721), covering $200,000,000 principal amount of 13½% Notes Due 1991 (the "13½% Notes").

13. The 13½% Notes were issued pursuant to an Indenture, dated as of March 15, 1984, between Morgan Guaranty Trust Company of New York ("Morgan"), as Indenture Trustee, and the Applicant (the "March 1984 Indenture").

14. Morgan, pursuant to an Agreement dated as of September 9, 1985, among the Applicant, Morgan, as Retiring Trustee, and MHTC, as Sucessor Trustee, resigned as Indenture Trustee and the Applicant appointed MHTC, by resolution of the Board of Directors, as Indenture Trustee under the March 1984 Indenture.

15. The securities issued pursuant to the 1983 Indenture, the January 1984 Indenture, the March 1984 Indenture, the June 1984 Indenture and the June 1985 Indenture are or will be wholly unsecured and of equal rank, when issued. Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the 1983 Indenture, the January 1984 Indenture, the March 1984 Indenture, the June 1984 Indenture, the June 1985 Indenture are not so likely to involve material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such Indentures.

The Applicant waives (a) notice of hearing, (b) hearing and (c) any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14694, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street NW., Washington, DC.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after March 12, 1986, unless prior thereto a hearing upon the application is ordered by the Commission.

Any interested person may, not later than March 11, 1986 at 5:30 p.m., Eastern Time, in writing, submit to the Commission his views of any additional facts bearing upon this application or request a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3339 Filed 2-13-86; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0286]

Gill Capital Corp.; Filing of Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.601 of the Regulations governing small business investment companies (13 CFR 107.601 (1986)) for transfer of ownership and control of Gill Capital Corporation (Gill), 615 Soledad, San Antonio, Texas 78205, a Federal License under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*). The proposed transfer of ownership and control of Gill, which was licensed October 22, 1984, is subject to prior written approval of SBA. Gill is a subsidiary of Gill Financial Corporation (Financial) of the same address.

The transfer of control arises because of the acquisition of 100 percent of the outstanding common stock of Gill by Sunwestern Holding Company (SHC), Three Forest Plaza, 12221 Merit Drive, Dallas, Texas 75251.

Gill is owned and managed by the following:

Name, Position, and Percent of Ownership
William R. Cain, President and director, 0
Morris Wosnig, executive vice president, director, 0
Thad Dorsey, secretary, treasurer, 0
Gary Imig, assistant Secretary, assistant treasurer, 0
Christopher Gill, director, 0
Peter Gill, director, 0
Edward Mattson, director, 0
Gill Financial Corp., 100

If approved the new ownership and management will be as follows:

Dan M. Krausse, 6305 Alpha Rd. Dallas, TX 75240, chairman, chief executive officer, 0
Thomas W. Wright, 6019 Twin Coves, Dallas, TX 75248, president, treasurer, 0
James F. Leary, 7225 South Janmar Circle, Dallas, TX 75230, executive vice president, 0
William R. Cain, 13315 Vista Arroya, San Antonio, TX 78216, executive vice president, 0
Tom H. Delimitros, 6813 Golf Drive, Dallas, TX 78205, senior vice president, 0
Craig A. Meier, 2183 Carmel Drive, Carrollton, TX 75006, secretary, controller, 0
Sunwestern Holding Co., Three Forest Plaza, Ste. 1680, 12221 Merit Drive, Dallas, TX 75251, 100
Sunwestern Investment Fund II, Three Forest Plaza, Ste. 1680, 12221 Merit Drive, Dallas, TX 75251, 78 [1]
Sunwestern Investment Co., Ltd., Three Forest Plaza, Ste. 1680, 12221 Merit Drive, Dallas, TX 75251 22[1]
State of Michigan, Employees' Retirement System, 10
National Gypsum Company, Employees' Retirement Trust 10
G.T. Management, Ltd., London, England 10

As a part of the transfer of control, the name of the Licensee will be changed to Sunwestern Ventures Company.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under this management, including profitability and financial soundness in accordance with the Small Business Investment Act and the Regulations.

Notice is hereby given than any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of the Notice will be published in newspapers of general circulation in Dallas, Texas and San Antonio, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: February 10, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-3307 Filed 2-13-86; 8:45 am]
BILLING CODE 8025-01-M

[1] Indirect ownership through of Sunwestern Holding Company. The entities deemed to own as much as 10% of Gill through ownership of the aboves entities are.

[Application No. 02/02-5494]

Zaitech Capital Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations governing small business investment companies (13 CFR 107.102 (1985)) under the name of Zaitech Capital Corporation (the Applicant), 229 Powder Mill Road, Morris Plains, New Jersey 07950 for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661 *et seq.*) and the Rules and Regulations promulgated thereunder.

The proposed officers directors and stockholders of the Applicant are as follows:

Name, Address, and Title or Relationship
Fu-Tong Hsu, 229 Powder Mill Rd., Morris Plains, NJ 07950, president, director and 9 percent shareholder.
Yeh Bin Wu, 16 Ground Pine Rd., Morris Plains, NJ 07950, treasurer, director and 71 percent shareholder
Wen Hong Chen, 96 Mohawk Ave., Norwood, NJ 07648, secretary, director and 20 percent shareholder.

The Applicant will begin operations with a capitalization of $1,000,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit to SBA, in writing, revelant comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in the Piscataway County area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

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Dated: February 4, 1986.
Robert G. Lineberry,
Deputy Associate Administrator for Investment.
[FR Doc. 86-3308 Filed 2-13-86; 8:45 am]
BILLING CODE 8025-01-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private Organizations", expiration date January 31, 1987.

Private sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Turner Parliamentary Exchange Program: The Office of Private Sector Programs plans to support a two week parliamentary exchange program for relatively younger parliamentarians representing Australia, New Zealand, and Canada in addition to Members of the U.S. Congress. The program will focus on the evolution and development of democracy, social and economic opportunity on the American frontier. The project is scheduled to take place in late spring 1986 in the U.S. midwest and west (from Chicago west) and in Western Canada. Institutions choosing to compete for this program must demonstrate both logistical and administrative capability as well as programmatic competence.

Your submission of a letter indicating interest in the above project concept begins the consultative process. This letter should further explain why your organization has the substantive expertise and logistical capability to successfully design, develop and conduct the above project.

Emphasis during the preliminary consultative process will be on identifying organizations whose goals and objectives clearly complement or coincide with those of USIA.

Futhermore, USIA is most interested in working with organizations that show promise for innovative and cost effective programming, and with organizations that have potential for obtaining third party private sector funding in addition to USIA support. Organizations must also demonstrate a potential for designing programs which will have a lasting impact on their participants. In your response, you may also wish to include other pertinent background information. To be eligible for consideration, organizations *must* postmark their general letter of interest within 20 days of the date of this notice.

This is not a solicitation for grant proposals. After consultation, selected organizations will be invited to prepare proposals for the financial assistance available.

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (Attn: Initiative Programs), United States Information Agency, 301 Fourth Street SW., Washington, DC 20547.

Dated: February 11, 1986.
Charles N. Canestro,
Federal Register Liaison.
[FR Doc. 86-3076 Filed 2-13-86; 8:45 am]
BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 31
Friday, February 14, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 18, 1986.
PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Enforcement Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 86-3269 Filed 2-12-86; 10:23 am]
BILLING CODE 6351-01-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, February 24, 1986, 2:00 p.m. (Eastern Time).
PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.
STATUS: Closed to the public.
MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization: General Counsel Recommendations
Discussion of Certain Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: February 12, 1986.
Cynthia C. Matthews,
Executive Officer, Executive Secretariat.
Issued: February 12, 1986.
[FR Doc. 86-3420 Filed 2-12-86; 8:45 am]
BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:42 p.m. on Friday, February 7, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Johnson County Bank, Tecumseh, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, February 7, 1986; (2) accept the bid for the transaction submitted by State Bank of Elk Creek, Elk Creek, Nebraska, an insured State nonmember bank; (3) approve the application of State Bank of Elk Creek, Elk Creek, Nebraska, for consent to purchase certain assets of and assume the liability to pay deposits made in Johnson County Bank, Tecumseh, Nebraska, and for consent to establish the sole office of Johnson County Bank as a branch of State Bank of Elk Creek; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 4:44 p.m., and at 4:53 p.m. on Saturday, February 8, 1986, the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted: (1) A resolution (a) making funds available for the payment of insured deposits in Valencia Bank, Placentia, California, which had been closed by the Superintendent of Banks for the State of California on Friday, February 7, 1986, (b) accepting the bid of Barclays Bank of California, San Francisco, California, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank, and (c) designating Barclays Bank of California, San Francisco, California, as the agenct for the Corporation for the payment of insured and fully secured or preferred deposits of the closed bank; and (2) an Order approving the application of Barclays Bank of California, San Francisco, California, for consent to purchase certain assets of and to assume the liability to pay certain deposits made in Valencia Bank, Placentia, California.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 11, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-3362 Filed 2-12-86; 8:45 am]
BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, February 10, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by

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Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re:
Columbia Pacific Bank & Trust Company, Portland, Oregon

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: February 11, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-3382 Filed 2-12-86; 8:45 am]

BILLING CODE 6714-01-M

5

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, February 19, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, February 20, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1986-1
Robert B. Brauer, Office of Representative Ronald V. Dellums
Draft AO 1986-2
R. Verl Hansen, Gary Robbins for Congress Campaign
Draft AO 1986-3
Julie A. Mackay, Ezzard U.S. Senate Committee, Inc.
Routine Administrative Matters

PERSON TO CONTRACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-3398 Filed 2-12-86; 1.02 pm]

BILLING CODE 6715-01-M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 19, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3357 Filed 2-12-86; 9:19 am]

BILLING CODE 6210-01-M

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FOREIGN CLAIMS SETTLEMENT COMMISSION

Meeting Notice No. 3-86 (Announcement in Regard to Commission Meetings and Hearings)

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Tuesday, February 25, 1986 at 10:30 a.m.

SUBJECT MATTER: Consideration of Final Decisions issued on objections under the Vietnam Claims Program (Pub. L. 96-606).

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC on February 12, 1986

Judith H. Lock,

Administrative Officer.

[FR Doc. 86-3396 Filed 2-12-86; 12:47 pm]

BILLING CODE 4410-01-M

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NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, February 19, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Outlook.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Request from Valley Federal Credit Union, Auburn, Washington to convert from Associational to Community Field of Membership.

RECESS: 10:00 a.m.

TIME AND DATE: 10:15 a.m., Wednesday, February 19, 1986.

PLACE: 1776 G Street, NW., Washington, DC 20456, Filene Board Room, 7th Floor.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Authority for Federal Credit Unions to Purchase Loans of an Insured Credit Union in Accordance with section 205(h) of the Federal Credit Union Act. Closed pursuant to exemption (9)(A)(ii).
3. Administrative Actions Under section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
4. Administrative Actions Under section 208 of the Federal Credit Union Act. Closed pursuant to exemption (8).
5. Corporate Federal Credit Unions. Closed pursuant to exemptions (8) and (9)(B).
6. Board Briefings. Closed pursuant to exemptions (2), (5), (6), and (8).
7. Agency's FY 86 Budget. Closed pursuant to exemptions (2) and (9)(B).

8. Action Under section 206(d) of the Federal Credit Union Act. Closed pursuant to exemptions (6) and (8).
9. Personnel Actions. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 86-3397 Filed 2-12-86; 12:48 pm]

BILLING CODE 7535-01-M

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POSTAL SERVICE BOARD OF GOVERNORS

By telephone vote on February 7 and 10, 1986, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for March 3, 1986, in Washington, DC. The meeting will involve consideration of the Postal Rate Commission's recommended decision in *Complaint of ADVO-SYSTEM, Inc.*, (Docket No. C85-1).

The meeting is expected to be attended by the following persons: Governors Camp, Griesemer, McConnell, McKean, Peters, Ryan, Setrakian and Voss; Postmaster General Casey; Deputy Postmaster General Strange; Secretary to the Board Harris; General Counsel Cox; and Counsel to the Governors Califano.

The Board of Governors has determined that, pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with proceedings under chapter 36 of Title 39 (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code. The Board also determined that pursuant to section 552b(c)(10) of Title 5, United States Code, and § 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern the participation of the Postal Service in a civil action or proceeding or the litigation of a particular case involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b(c)(3) and (10) of Title 5 and section 410(c)(4) of Title 39, United States Code, and § 7.3(c) and (j) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 86-3409 Filed 2-12-86; 2:48 pm]

BILLING CODE 7710-12-M

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federal register

Friday
February 14, 1986

Part II

Office of Management and Budget

Technical Committee on Industrial Classification's Recommendations for the 1987 Revision of the Standard Industrial Classification

VOL 51 ISS 31 FE 14 1986 UMI

OFFICE OF MANAGEMENT AND BUDGET

Technical Committee on Industrial Classification's Recommendations for the 1987 Revision of the Standard Industrial Classification

AGENCY: Office of Management and Budget.

ACTION: Notice of solicitation of comments on the Technical Committee on Industrial Classification's recommendations for the 1987 revision of the Standard Industrial Classification.

SUMMARY: The Office of Management and Budget is soliciting public comment on the recommendations of the Technical Committee on Industrial Classification for revision of the 1972 Standard Industrial Classification Manual and the 1977 Supplement. The due date for receipt of comments is April 15, 1986. The revision is scheduled to become effective January 1, 1987.

Background: The Standard Industrial Classification (SIC) is a major statistical classification system used to promote the comparability of establishment data describing various facets of the U.S. economy. The SIC's basic classification unit is the establishment, i.e., an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed, such as a farm, mine, factory, store, or hotel. The SIC covers the entire field of economic activities by defining industries in accordance with the composition and structure of the economy. It is revised periodically to reflect the economy's changing industrial composition and organization. The 1972 SIC Manual, as supplemented in 1977, contains the current classification of industries.[1]

On February 22, 1984, the Office of Management and Budget (OMB) published a **Federal Register** notice of intent to revise the Standard Industrial Classification for 1987, containing the "Principles and Procedures for the Review of the SIC."[2] In response, businesses; trade associations; individuals; and Federal, State, and local government agencies submitted proposals for over 1100 individual changes.

To provide technical advice for the 1987 SIC revision and to make recommendations on the individual proposals, OMB established a multiagency Technical Committee on Industrial Classification (TCIC). The TCIC is chaired by OMB and is composed of senior economists, statisticians, and classification specialists representing 18 of the Federal agencies that use the SIC. The TCIC evaluated each of the submitted changes and recommends approximately 40 percent for acceptance and inclusion in a revised SIC. The proposed industry changes included in this announcement are the TCIC's recommendations.

In evaluating each proposed change, the TCIC followed the guidelines presented in the published "Principles and Procedures." These guidelines specify how the proposed change should relate to: the structure of the classification; historical continuity of data; economic significance criteria; specialization and coverage ratios; compatibility with international industry and product classification systems; classification stability; the ability of statistical agencies to classify, collect, and publish industry data; disclosure of individual firm data; the cost and reporting burden to respondents; and the cost to the government.

The primary reasons why the TCIC accepted proposals to establish new industries are: (1) Proposed industries meet the minimum criteria for economic significance, (2) proposed industries meet required specialization and coverage ratios, (3) proposed industries present no significant difficulties or costs in collecting the information needed to make a correct classification of establishments, and (4) improvement in statistical information is large relative to the costs of the proposed change. Similarly, the TCIC generally recommended accepting proposals to combine an existing industry with a compatible category if the existing industry no longer meets the economic significance, specialization, or coverage criteria.

Scope of Revision: The TCIC believes that the recommended changes to the SIC shown in this announcement represent a reasonable balance between the benefits and costs that must be considered in determining the appropriate scope of a revision. The benefits of a revision are the improvements in statistical data that result from a closer alignment of the classification system with the existing structure of the economy. The principal costs of a revision are the costs of implementing a revised SIC and the disruptions to users from breaks in the continuity of some data series. In attempting to achieve an overall balance between benefits and costs, the TCIC considered the benefits and costs of each recommended change.

Decision Process: Taking into consideration benefits and costs, comments submitted in response to this notice, and other factors, including the operating budgets of the Federal agencies that must implement the revised SIC, OMB will make the final determination of the scope and substance of the 1987 revision. Thus the scope of the revision may be substantially reduced or even expanded from that implied by the TCIC recommendations listed below. Therefore, public comments are invited on the following questions: Does the scope of the recommended revision appear to provide a reasonable balance between benefits and costs? If the costs of implementing the recommended revision are greater than available Federal funds, should the scope of the revision be reduced or should its implementation be extended over a longer period? Despite costs considerations, should more extensive revisions be considered because their benefits are substantial?

Implementation: The revision is scheduled to become effective January 1, 1987. In some programs, data based on the new SIC will be available beginning in 1988. However, for most programs, such data will be introduced over several years. Data series for these programs may not always be revised for years prior to the programs' implementation of the new SIC.

Highlights of Proposed Changes: The TCIC proposes a net increase of one from the current 1005 four-digit industries. This represents the deletion of 78 current industries by merger into other industries and the addition of 79 new industries by subdividing or restructuring existing industries. There is a net increase of 18 industries for Services (Division I), 9 for Manufacturing, and 8 for Wholesale, with a net decrease of 34 for the other SIC Divisions. Various industries are also changed by transfers of individual activities, primarily to increase data classification accuracy, consistency, and usefulness, or by renumbering to change the existing three-digit structure.

Most of the industries recommended for deletion no longer meet the economic significance criteria for continued recognition as separate industries. However, a few are dropped because the number of companies represented by the establishments classified in the industry is now so small as to cause disclosure problems in publishing data or because the distinctions required cause difficulties in classfication.

In addition to other proposals submitted, the TCIC made a comprehensive review of Transportation (Major Groups 40–47), Communication (Major Group 48), and Finance (Major Groups 60–62, and 67) to identify revisions needed due to changes in technology and government regulation. Basic revisions are recommended for the structure and detail of banking and other credit agencies (Major Groups 60–61), in particular to recognize changes in depository regulations. In addition, the TCIC recommends the recognition of new industries for Cable and Other Pay Television (from 4833 and 4899) and Radiotelephone Communication Services (from 4811).

The growth of computer-related activities has resulted in a number of new industries. Several new industries are recognized for computers and computer peripheral equipment in Manufacturing (from 3573). A separate industry is recognized for Prepackaged Computer Software in Manufacturing (from 7372). The TCIC recommends that industries for the sale of Computers and Computer Peripheral Equipment and Software be established in Wholesale Trade (from 5081) and Retail Trade (from 5732). Computer establishments will be classified in Wholesale Trade if they sell primarily for business or government use and in Retail Trade if they sell primarily for household use. Additional detail is also recommended for computer services within current Group 737.

The TCIC recommendations place considerable emphasis on improved detail for Services (Division I). Industry 7392, Management, Consulting, and Public Relations, is subdivided into four new industries, and 8911, Engineering, Architectural, and Surveying Services, is subdivided into three. A number of changes are recommended for Major Group 80, Health Services, to improve detail and data accuracy for this area of rapid growth. The TCIC proposes a new Major Group 87 for selected professional and technical services, comprising elements of the current Business Services (Major Group 73) and Miscellaneous Services (Major Group 89). Other important changes are the recognition of industries for Physical Fitness Facilities (from 7299, 7997, and 7999), Video Tape Rentals (from 7394), and Tax Return Preparation Services (from 7299). Various other industries are also subdivided (e.g., 7321, 7393, and 7539).

The TCIC recommends subdivisions of some of the largest and fastest growing current industries in Manufacturing, including Miscellaneous Plastics Products (3079), Radio and Television Communication Equipment (3662), and Electronic Components, NEC (3679). Recognition of a distinct operating technology is extended to fluid power (from 3494, 3561, 3566, 3569 and 3728) and of a different fabrication technology to the distinction between die casting and other casting (from 336). Existing problems in data collection and accuracy are corrected by grouping together all relays (from 3613, 3622 and 3679) and all packaging equipment (from 3551 and 3569) and by moving or combining instruments and instrumentation systems currently covered by 3662, 3811, 3829, and 3832.

Notable changes in other SIC Divisions include the recognition of Animal Aquaculture (from 0279) and of Record and Prerecorded Tape Stores (from 5733). Establishments selling used automobile parts at wholesale or retail are placed together in a new industry in Wholesale Trade, because of difficulties in determining whether individual units sell primarily to households or to businesses.

Description of the List of Changes: The attached list of recommended changes shows only industries for which the TCIC is recommending substantive changes in content, detail, or structure. However, updating and clarification of industry titles and descriptions will be made in many other industries and numerous new example items will be added to the indexes to reflect new acitivities.

The current 1972/77 industries for which the TCIC is recommending changes are listed in the left-hand column with the corresponding 1987 recommendations directly opposite in the right-hand column. Where two or more current industries are combined into one, a brace indicates which industries are to be combined.

Recommendations in which new industries are created or an existing industry changed are indicated by: (1) Specifying each changed 1972/77 industry code and title in the left-hand column, (2) listing short descriptions of the activities involved in any multiple changes to an industry beneath the industry title, and (3) listing in the right-hand column the corresponding 1987 industry code and title for each listed change. A 1987 industry having a code without an asterisk includes only those activities now covered by the industry code in the left-hand column. A 1987 industry having a code preceded by an asterisk includes the corresponding activities described in the left-hand column plus activities from one or more other 1972/77 industries; the other activities are included in the 1972/77 industries specified in the parenthetical note. For example, current Industry 2065 is changed by moving certain nut processing to new Industry 2068 (which also includes activities from current Industries 2034 and 2099) and establishing a new Industry 2064 (which includes only the remaining activities from current Industry 2065).

Note that only industry (four-digit) changes are listed. Changes at the two-digit and three-digit levels are only implied. For instance, Major Groups 11 and 66 would be deleted since all their industries will be moved. Industry group 739 will be deleted and industry group 738 will be added because of the four-digit industry changes.

Please note that the abbreviation "nec" used in the attached list stands for Not Elsewhere Classified.

Comment Procedure: Comments on the revisions must be in writing. When you want to comment on interrelated changes, your comments should deal with all the interrelated implications. Comments will be accepted only on: (1) Making the listed industry changes or retaining the current classifications (1972 Manual as supplemented in 1977), (2) making changes that were submitted previously but are not recommended by the TCIC (alternatives to such proposed changes such as fewer industries or a narrower scope for change will also be considered), and (3) the issues of benefits and costs of implementation described above.

Address: Please send two copies of your comments to Paul Bugg, Office of Management and Budget, 3001 New Executive Office Building, Washington, DC 20503.

Due Date: To assure consideration, all comments must be received on or before April 15, 1986.

Availability of Comment Materials: All written comments and materials received in response to this notice will be available for public inspection throughout 1986 during normal business hours, 9:00 am to 5:30 pm, in Room 3001, New Executive Office Building, 17th Street and Pennsylvania Avenue NW., Washington, DC 20503. Individuals wishing to inspect these materials must call (202) 395–3093 to obtain an appointment to enter the building.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, Office of Management and Budget, telephone number (202) 395–3093.

Wendy L. Gramm,

Administrator for Information and Regulatory Affairs.

BILLING CODE 3110-01-M

[1] The *Standard Industrial Classification Manual 1972* and the *1977 Supplement* are available from the Government Printing Office. Stock numbers and prices are 041–001–00066–6, $15.00, and 003–005–00176–0, $2.75, respectively.

[2] For your information the "Principles and Procedures for the Review of the SIC" are reprinted at the end of this notice.

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TCIC Recommendations for the 1987 SIC Revision
Summary of Changes in 1972/77 Sequence

1972/77		1987	
0181	Ornamental nursery products	* 0181	Ornamental nursery products (See 0189)
0182	Food crops grown under cover	* 0182	Food crops grown under cover (See 0189)
0189	Horticultural specialties, nec		
	Ornamental nursery products	* 0181	Ornamental nursery products (See 0181)
	Food crops grown under cover	* 0182	Food crops grown under cover (See 0182)
0279	Animal specialties, nec		
	Animal aquaculture	0273	Animal aquaculture
	Other	0279	Animal specialties, nec
0721	Crop planting and protection	* 0721	Crop planting and protection (See 0729)
0722	Crop harvesting	* 0722	Crop harvesting (See 0729)
0723	Crop preparation services for market	* 0723	Crop preparation services for market (See 0729)
0724	Cotton ginning	* 0724	Cotton ginning (See 0729)
0729	General crop services		
	Crop planting and protection	* 0721	Crop planting and protection (See 0721)
	Crop harvesting	* 0722	Crop harvesting (See 0722)
	Crop preparation services for market	* 0723	Crop preparation services for market (See 0723)
	Cotton ginning	* 0724	Cotton ginning (See 0724)
0821	Forest nurseries and seed gathering		
0843	Extraction of pine gum	0831	Forest products ex. timber
0849	Gathering of forest products, nec		
1051	Bauxite and other aluminum ores		
1092	Mercury ores	1099	Metal ores, nec
1099	Metal ores, nec		
1111	Anthracite	1231	Anthracite mining
1112	Anthracite mining services	1241	Coal mining services
1213	Bituminous & lignite mining services		
1211	Bituminous coal and lignite		
	Bituminous coal mining, underground	1222	Bituminous coal mining, underground
	Other	1221	Bituminous and lignite coal mining, surface, and bituminous coal preparation plants

* part

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1972/77		1987	
1452	Bentonite	1459	Clay and related minerals, nec
1453	Fire clay		
1454	Fuller's earth		
1459	Clay and related minerals, nec		
1472	Barite	1479	Chemical and fertilizer mining, nec
1473	Fluorspar		
1476	Rock salt		
1477	Sulfur		
1479	Chemical and fertilizer mining, nec		
1492	Gypsum	1499	Nonmetallic minerals, nec
1496	Talc, soapstone, and pyrophyllite		
1499	Nonmetallic minerals, nec		
1611	Highway and street construction		
	Recreational facilities: trailer camps	* 1629	Heavy construction, nec (See 1629)
	Culverts and curbs	* 1771	Concrete work (See 1771)
	Other	1611	Highway and street construction
1629	Heavy construction, nec		
	Land clearing and earthmoving	* 1794	Excavating and foundation work (See 1794)
	Pile driving	* 1799	Special trade contractors, nec (See 1799)
	Other	* 1629	Heavy construction, nec (See 1611)
1771	Concrete work	* 1771	Concrete work (See 1611)
1794	Excavating and foundation work	* 1794	Excavating and foundation work (See 1629)
1799	Special trade contractors, nec	* 1799	Special trade contractors, nec (See 1629)
2016	Poultry dressing plants	* 2015	Poultry dressing and processing (See 2017)
2017	Poultry and egg processing		
	Poultry processing	* 2015	Poultry dressing and processing (See 2016)
	Egg processing	2018	Egg processing
2032	Canned specialties		
	Fish cakes	* 2091	Canned and cured seafoods (See 2091)
	Other	2032	Canned specialties
2034	Dehydrated fruits, vegetables, soups		
	Nuts	* 2068	Salted and roasted nuts and seeds (See 2065, 2099)
	Other	2034	Dehydrated fruits, vegetables, soups

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1972/77		1987	
2038	Frozen specialties		
	Bakery products	2031	Frozen bakery products
	Other	2036	Frozen specialties, except frozen bakery products
2047	Dog, cat, and other pet food		
	Dog and cat food	2047	Dog and cat food
	Other pet food and meat not fit for human consumption	* 2048	Prepared feeds, nec (See 2048)
2048	Prepared feeds, nec	* 2048	Prepared feeds, nec (See 2047)
2065	Confectionery products		
	Salted and roasted nuts	* 2068	Salted and roasted nuts and seeds (See 2034, 2099)
	Other	2064	Confectionery products
2066	Chocolate and cocoa products	* 2066	Chocolate and cocoa products (See 2099)
2091	Canned and cured seafoods	* 2091	Canned and cured seafoods (See 2032)
2099	Food preparations, nec		
	Chocolate	* 2066	Chocolate and cocoa products (See 2066)
	Potato chips and similar products	2096	Potato chips and similar products
	Salted and roasted seeds	* 2068	Salted and roasted nuts and seeds (See 2034, 2065)
	Other	2099	Food preparations, nec

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1972/77		1987	
2271	Woven carpets and rugs	2273	Floor covering mills
2272	Tufted carpets and rugs		
2279	Carpets and rugs, nec		
2281	Yarn mills	* 2281	Yarn mills (See 2283)
2282	Throwing and winding mills	* 2282	Throwing and winding mills (See 2283)
2283	Wool yarn mills		
	Thread	* 2284	Thread mills (See 2284)
	Yarn, made in spinning mills	* 2281	Yarn mills (See 2281)
	Yarn, made in throwing and winding mills	* 2282	Throwing and winding mills (See 2282)
2284	Thread mills	* 2284	Thread mills (See 2283)
2291	Felt goods, except woven felts and hats	2299	Textile goods, nec
2292	Lace goods		
2293	Paddings and upholstery filling		
2294	Processed textile waste		
2299	Textile goods, nec		

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1972/77		1987	
2321	Men's and boys' shirts and nightwear		
	Shirts	2321	Men's and boys' shirts
	Nightwear	* 2322	Men's and boys' underwear and nightwear (See 2322)
2322	Men's and boys' underwear	* 2322	Men's and boys' underwear and nightwear (See 2321)
2328	Men's and boys' work clothing		
	Jeans and jean-cut casual slacks	2325	Men's and boys' jean-cut casual slacks
	Other	2326	Men's and boys' work clothing
2351	Millinery	2353	Hats, caps, and millinery
2352	Hats and caps, exc. millinery		
2363	Children's coats and suits	2369	Children's outerwear, nec
2369	Children's outerwear, nec		
2411	Logging camps and contractors	* 2411	Logging (See 2421)
2421	Sawmills and planing mills		
	Logging	* 2411	Logging (See 2411)
	Other	2421	Sawmills and planing mills
2431	Millwork	* 2431	Millwork (See 3442)
2492	Particleboard	* 2493	Reconstituted wood products (See 2499, 2661)

* part

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1972/77		1987	
2499	Wood products, nec		
	Reconstituted wood products (e.g., medium density fiberboard, waferboard, oriented strandboard, hardboard)	* 2493	Reconstituted wood products (See 2492, 2661)
	Other	2499	Wood products, nec
2522	Metal office furniture	* 2522	Office furniture, except wood (See 2599)
2542	Metal partitions and fixtures	* 2542	Partitions and fixtures, except wood (See 2599)
2599	Furniture and fixtures, nec		
	Office furniture	* 2522	Office furniture, except wood (See 2522)
	Partitions and fixtures	* 2542	Partitions and fixtures, except wood (See 2542)
	Other	2599	Furniture and fixtures, nec
2611	Pulp mills	* 2611	Pulp mills (See 2621, 2631)
2621	Paper mills, except building paper		
	Pulp mills	* 2611	Pulp mills (See 2611, 2631)
	Other	* 2621	Paper mills (See 2661)
2631	Paperboard mills		
	Pulp mills	* 2611	Pulp mills (See 2611, 2621)
	Other	* 2631	Paperboard mills (See 2661)

* part

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1972/77		1987	
2641	Paper coating and glazing		
	Paper coating and laminating for packaging	2671	Paper coating and laminating for packaging
	Other	2672	Paper coating and laminating, except for packaging
2642	Envelopes	2677	Envelopes
2643	Bags, except textile bags		
	Bags: uncoated paper and multiwall	2674	Bags: uncoated paper and multiwall
	Other	2673	Bags: plastics, laminated and coated
2645	Die-cut paper and paperboard	2675	Die-cut paper and paperboard
2646	Pressed and molded pulp goods	* 2679	Converted paper products, nec (See 2649)
2647	Sanitary paper products	2676	Sanitary paper products
2648	Stationery products	2678	Stationery products
2649	Converted paper products, nec	* 2679	Converted paper products, nec (See 2646)
2651	Folding paperboard boxes	* 2657	Folding paperboard boxes (See 2654)
2654	Sanitary food containers		
	Folding	* 2657	Folding paperboard boxes (See 2651)
	Other	2656	Sanitary food containers

* part

1972/77		1987	
2661	Building paper and board mills		
	Insulation board	* 2493	Reconstituted wood products (See 2492, 2499)
	Paper	* 2621	Paper mills (See 2621)
	Paperboard	* 2631	Paperboard mills (See 2631)
2753	Engraving and plate printing		
	Platemaking	* 2796	Platemaking (See 2754, 2793, 2794, 2795)
	Printing	2755	Printing from engraved plates
2754	Commercial printing, gravure		
	Platemaking	* 2796	Platemaking (See 2753, 2793, 2794, 2795)
	Other	2754	Commercial printing, gravure
2793	Photoengraving	* 2796	Platemaking (See 2753, 2754)
2794	Electrotyping and stereotyping		
2795	Lithographic platemaking services		
2819	Industrial inorganic chemicals, nec	* 2819	Industrial inorganic chemicals, nec (See 2869)
2831	Biological products		
	Diagnostic substances	2835	Diagnostic substances
	Other	2836	Biological products, except diagnostic substances

* part

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1972/77		1987	
2869	Industrial organic products, nec		
	Hydrazine	* 2819	Industrial inorganic chemicals, nec (See 2819)
	Other	2869	Industrial organic products, nec
3031	Reclaimed rubber	* 3069	Fabricated rubber products, nec (See 3069, 3555)
3069	Fabricated rubber products, nec	* 3069	Fabricated rubber products, nec (See 3031, 3555)
3079	Miscellaneous plastics products		
	Unsupported sheet and film	3071	Unsupported sheet and film
	Laminated plate and sheet	3072	Laminated plate and sheet
	Pipe	3073	Pipe
	Bottles	3074	Bottles
	Unsupported profile shapes	3075	Unsupported profile shapes
	Foam products	3076	Foam products
	Custom compounding of resins	3077	Custom compounding of resins
	Plumbing fixtures	3078	Plumbing fixtures
	Plumbing fixture fittings: plastics	* 3432	Plumbing fixture fittings (See 3432)
	Other	3079	Plastics products, nec
3264	Porcelain electrical supplies	* 3264	Porcelain electrical and electronic supplies (See 3679)

* part

1972/77		1987	
3332	Primary lead		
3333	Primary zinc	3339	Primary nonferrous metals, nec
3339	Primary nonferrous metals, nec		
3361	Aluminum foundries		
	Die castings	3363	Aluminum die castings
	Other	3365	Aluminum foundries
3362	Brass, bronze and copper foundries		
	Die castings	* 3364	Nonferrous die castings, except aluminum (See 3369)
	Other	3366	Copper foundries
3369	Nonferrous foundries, nec		
	Die castings	* 3364	Nonferrous die castings, except aluminum (See 3362)
	Other	3369	Nonferrous foundries, except aluminum and copper
3423	Hand and edge tools, nec	* 3423	Hand and edge tools, nec (See 3555)
3432	Plumbing fixture fittings and trim (brass goods)	* 3432	Plumbing fixture fittings (See 3079)

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1972/77		1987	
3433	Heating equipment, except electric		
	Incinerators, metal: domestic and commercial	* 3567	Industrial furnaces and ovens (See 3567)
	Other	3433	Heating equipment except electric
3442	Metal doors, sash, and trim		
	Doors, windows, etc. of wood covered with metal	* 2431	Millwork (See 2431)
	Other	3442	Metal doors, sash, and trim
3444	Sheet metal work		
	Curtain wall	* 3449	Miscellaneous metal work (See 3449, 3469)
	Other	3444	Sheet metal work
3449	Miscellaneous metal work	* 3449	Miscellaneous metal work (See 3444, 3469)
3469	Metal stampings, nec		
	Curtain wall	* 3449	Miscellaneous metal work (See 3444, 3449)
	Other	3469	Metal stampings, nec
3494	Valves and pipe fittings		
	Hydraulic and pneumatic valves and hose fittings and assemblies	* 3492	Fluid power valves and hose fittings (See 3728)
	Industrial valves	3491	Industrial valves
	Plumbing and heating valves; fittings, flanges, and unions	3494	Valves and pipe fittings, nec

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1972/77		1987	
3531	Construction machinery	* 3531	Construction machinery (See 3536)
3536	Hoists, cranes and monorails		
	Aerial work platforms; automobile wrecker hoists	* 3531	Construction machinery (See 3531)
	Automatic stacking machines	* 3537	Industrial trucks and tractors (See 3537)
	Other	3536	Hoists, cranes and monorails
3537	Industrial trucks and tractors	* 3537	Industrial trucks and tractors (See 3536)
3549	Metalworking machinery, nec		
	Welding and soldering machines, nonelectric	* 3548	Welding apparatus (See 3623)
	Automotive maintenance equipment	* 3559	Special industry machinery, nec (See 3559, 3636)
	Other	3549	Metalworking machinery, nec
3551	Food products machinery		
	Packaging machinery	* 3565	Packaging machinery (See 3569)
	Other	3556	Food products machinery

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1972/77		1987	
3555	Printing trades machinery		
	Printers' rolls, blankets and roller covers	* 3069	Fabricated rubber products, nec (See 3031, 3069)
	Printers mallets	* 3423	Hand and edge tools, nec (See 3423)
	Other	3555	Printing trades machinery
3559	Special industry machinery, nec	* 3559	Special industry machinery, nec (See 3549, 3636)
3561	Pumps and pumping equipment		
	Fluid power equipment	* 3562	Fluid power pumps and motors (See 3566, 3569, 3728)
	Other	3561	Pumps and pumping equipment, except fluid power pumps
3562	Ball and roller bearings	3594	Ball and roller bearings
3565	Industrial patterns	3595	Industrial patterns
3566	Speed changers, drives and gears		
	Hydrostatic drives (transmissions)	* 3562	Fluid power pumps and motors (See 3561, 3569, 3728)
	Other	3566	Speed changers, drives and gears
3567	Industrial furnaces and ovens	* 3567	Industrial furnaces and ovens (See 3433)

* part

1972/77		1987	
3569	General industrial machinery, nec		
	Fluid power equipment	* 3562	Fluid power pumps and motors (See 3561, 3566, 3728)
	Packaging machinery	* 3565	Packaging machinery (See 3551)
	Other	3569	General industrial machinery, nec
3572	Typewriters	* 3579	Office machines, nec (See 3579)
3573	Electronic computing equipment		
	Computers	3571	Computers
	Computer storage devices	3572	Computer storage devices
	Terminals	* 3575	Computer terminals (See 3661)
	Magnetic disks	* 3695	Recording media (See 3679)
	Other	3577	Computer peripheral equipment, nec
3574	Calculating and accounting machines	3578	Calculating and accounting machines
3576	Scales and balances, except laboratory	3596	Scales and balances, except laboratory
3579	Office machines, nec	* 3579	Office machines, nec (See 3572)
3585	Refrigeration and heating equipment	* 3585	Refrigeration and heating equipment (See 3699)

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1972/77		1987	
3599	Machinery, except electrical, nec		
	Fluid power cylinders and actuators	• 3593	Fluid power cylinders and actuators (See 3728)
	Other	3599	Machinery, except electrical, nec
3613	Switchgear and switchboard apparatus		
	Relays	• 3625	Relays and industrial controls (See 3622, 3679)
	Other	3613	Switchgear and switchboard apparatus
3622	Industrial controls	• 3625	Relays and industrial controls (See 3613, 3679)
3623	Welding apparatus, electric	• 3548	Welding apparatus (See 3549)
3636	Sewing machines		
	Household	• 3639	Household appliances, nec (See 3639)
	Commercial and industrial	• 3559	Special industry machinery, nec (See 3549, 3559)
3639	Household appliances, nec	• 3639	Household appliances, nec (See 3636)
3641	Electric lamps	• 3641	Electric lamps (See 3699)

• part

1972/77		1987	
3661	Telephone and telegraph apparatus		
	Teletypewriters	• 3575	Computer terminals (See 3573)
	Other	• 3661	Telephone and telegraph apparatus (See 3662)
3662	Radio and television communication equipment		
	Modems and other interface equipment	• 3661	Telephone and telegraph apparatus (See 3661)
	Radio and TV communication systems and equipment, and broadcast and studio equipment	3663	Radio and TV communication systems and equipment, and broadcast and studio equipment
	Search, detection, navigation and guidance systems and equipment	• 3812	Search, detection, navigation, and guidance systems and instruments (See 3811)
	Other communications equipment	3669	Other communications equipment, nec
	Hydrological, hydrographic, meteorological, and geophysical equipment	• 3829	Measuring and controlling devices, nec (See 3811, 3829, 3832)
	Other	• 3699	Electrical equipment and supplies, nec (See 3699)
3671	Electron tubes, receiving type	• 3671	Electron tubes (See 3679)
3672	Cathode ray television picture tubes		
3673	Electron tubes, transmitting		

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1972/77		1987	
3679	Electronic components, nec		
	Ferrite electronic parts and porcelain electronic supplies	* 3264	Porcelain electrical and electronic supplies (See 3264)
	Relays	* 3625	Relays and industrial controls (See 3613, 3622)
	Electron tube parts	* 3671	Electron tubes (See 3671, 3672, 3673)
	Printed circuit boards	3672	Printed circuit boards
	Recording media	* 3695	Recording media (See 3573)
	Other	3679	Electronic components, nec
3693	X-ray apparatus and tubes		
	Electromedical and electrotherapeutic apparatus	3845	Electromedical and electrotherapeutic apparatus
	Other	3844	X-ray apparatus and tubes
3699	Electrical equipment & supplies, nec		
	Electric lamp bulb parts	* 3641	Electric lamps (See 3641)
	Electric comfort heating equipment	* 3585	Refrigeration and heating equipment (See 3585)
	Other	* 3699	Electrical equipment and supplies, nec (See 3662)

1972/77		1987	
3728	Aircraft equipment, nec		
	Hydraulic and pneumatic valves	* 3492	Fluid power valves and hose fittings (See 3494)
	Fluid power pumps and motors	* 3562	Fluid power pumps and motors (See 3561, 3566, 3569)
	Fluid power cylinders and actuators	* 3593	Fluid power cylinders and actuators (See 3599)
	Other	3728	Aircraft equipment, nec
3811	Engineering & scientific instruments		
	Search, detection, navigation, and guidance instruments	* 3812	Search, detection, navigation, and guidance systems and instruments (See 3662)
	Laboratory apparatus and furniture	3821	Laboratory apparatus and furniture
	Surveying and drafting apparatus	* 3829	Measuring and controlling devices, nec (See 3662, 3829, 3832)
	Analytical instruments	* 3826	Analytical instruments (See 3832)
3829	Measuring & controlling devices, nec	* 3829	Measuring and controlling devices, nec (See 3662, 3811, 3832)
3832	Optical instruments and lenses		
	Analytical instruments	* 3826	Analytical instruments (See 3811)
	Meteorological, hydrographic, hydrological, and geophysical instruments	* 3829	Measuring and controlling devices, nec (See 3662, 3811, 3829)
	Optical instruments	3827	Optical instruments

1972/77		1987	
3962	Artificial flowers	3999	Manufacturing industries, nec
3999	Manufacturing industries, nec		
3963	Buttons	3965	Needles, pins, buttons, and clothing fasteners
3964	Needles, pins, and fasteners		
4141	Local passenger charter service	4143	Transportation charter service
4142	Charter service, except local		
4171	Bus terminal services	4173	Bus terminal and service facilities
4172	Bus service facilities		
4224	Household goods warehousing	4226	Special warehousing and storage, nec
4226	Special warehousing and storage, nec		
4421	Noncontiguous area transportation	4424	Deep sea domestic transportation
4422	Coastwise transportation		
4423	Intercoastal transportation		
4453	Lighterage	4459	Local water transportation, nec
4459	Local water transportation, nec		
4464	Canal operation	• 4469	Water transportation services, nec (See 4469)

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1972/77		1987	
4469	Water transportation services, nec		
	Marinas	4468	Marinas
	Oil spill cleanup	• 4959	Sanitary services, nec (See 4959)
	Other	• 4469	Water transportation services, nec (See 4464)
4511	Certificated air transportation	• 4512	Air transportation-scheduled (See 4521)
4521	Noncertificated air transportation		
	Air transportation-scheduled	• 4512	Air transportation-scheduled (See 4511)
	Other	4522	Air transportation-non-scheduled
4582	Airports and flying fields	• 4581	Services related to air transportation (See 9621)
4583	Airport terminal services		
4712	Freight forwarding	4731	Freight forwarding and arrangement
4723	Freight transportation arrangement		
4722	Passenger transportation arrangement		
	Travel agencies	4724	Travel agencies
	Tour operators	4725	Tour operators
	Other	4729	Arrangement of passenger transportation, nec

• part

1972/77		1987	
4742	Railroad car rental with service	4741	Railroad car rental
4743	Railroad car rental without service		
4782	Inspection and weighing services	4785	Inspection services, fixed facilities, nec
4784	Fixed facilities for vehicles, nec		
4811	Telephone communication		
	Radiotelephone communication services	4812	Radiotelephone communication services
	Other	4813	Telephone communications, except radio telephone
4821	Telegraph communication	* 4822	Telegraph and other message communicstions (See 4899)
4833	Television broadcasting		
	Subscription television	* 4841	Cable and other pay TV (See 4899)
	Other	4833	Television stations
4899	Communication services, nec		
	Cable television	* 4841	Cable and other pay TV (See 4833)
	Message communications	* 4822	Telegraph and other message communications (See 4821)
	Other	4899	Communication services, nec

* part

1972/77		1987	
4959	Sanitary services, nec	* 4959	Sanitary services, nec (See 4469)
5013	Automotive parts and supplies		
	New automotive parts and automotive equipment	5013	Motor vehicle parts and supplies, new
	Used automotive parts	* 5015	Motor vehicle parts, used (See 5931)
5039	Construction materials, nec		
	Brick, stone, and related products	5032	Brick, stone, and related products
	Roofing, siding, and insulation	5033	Roofing, siding, and insulation
	Other	5039	Construction materials, nec
5041	Sporting and recreational goods	5091	Sporting and recreational goods
5042	Toys and hobby goods and supplies	5092	Toys and hobby goods and supplies
5063	Electrical apparatus and equipment		
	Communication equipment	* 5065	Electronic parts and equipment (See 5065)
	Measuring and testing equipment	* 5084	Industrial machinery and equipment (See 5084)
	Other	5063	Electrical apparatus and equipment
5065	Electronic parts and equipment	* 5065	Electronic parts and equipment (See 5063)

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1972/77		1987	
5081	Commercial machines and equipment		
	Computers and computer peripheral equipment and software	5045	Computers and computer peripheral equipment and software
	Office equipment	5044	Office equipment
	Other	5046	Commercial equipment, nec
5084	Industrial machinery and equipment	* 5084	Industrial machinery and equipment (See 5063)
5086	Professional equipment and supplies		
	Medical and hospital equipment	5047	Medical and hospital equipment
	Ophthalmic goods	5048	Ophthalmic goods
	Other	5049	Professional equipment, nec
5133	Piece goods	5131	Piece goods and notions
5134	Notions and other dry goods		
5152	Cotton	5159	Farm-product raw materials, nec
5159	Farm-product raw materials, nec		
5161	Chemicals and allied products		
	Plastics materials and basic shapes	5162	Plastics materials and basic shapes
	Other	5169	Chemicals and allied products, nec

1972/77		1987	
5199	Nondurable goods, nec		
	Books, periodicals, and newspapers	5192	Books, periodicals, and newspapers
	Flowers and florists' supplies	5193	Flowers and florists' supplies
	Other	5199	Nondurable goods, nec
5311	Department stores		
	Having fewer than 50 employees	* 5399	Misc. general merchandise stores (See 5399)
	Other	5311	Department stores
5399	Misc. general merchandise stores	* 5399	Misc. general merchandise stores (See 5311)
5422	Freezer and locker meat provisioners	5421	Meat and fish (seafood) markets
5423	Meat and fish (seafood) markets		
5462	Retail bakeries--baking and selling	5461	Retail bakeries
5463	Retail bakeries--selling only		
5561	Recreation and ut'lity trailer dealers		
	Utility trailers	* 5599	Automotive dealers, nec (See 5599)
	Other	5561	Recreational vehicle dealers
5599	Automotive dealers, nec	* 5599	Automotive dealers, nec (See 5561)

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1972/77		1987	
5631	Women's accessory and specialty stores	5632	Women's accessory and specialty stores
5681	Furriers and fur shops		
5732	Radio and television stores		
	Computer and software stores	5734	Computer and software stores
	Radio, television, and electronics stores	5731	Radio, television, and electronics stores
5733	Music stores.		
	Record and prerecorded tape stores	5735	Record and prerecorded tape stores
	Musical instrument stores	5736	Musical instrument stores
5931	Used merchandise stores		
	Automotive parts, used	* 5015	Motor vehicle parts, used (See 5013)
	Other	5932	Used merchandise stores
5982	Fuel and ice dealers, nec		
	Ice	* 5999	Miscellaneous retail stores, nec (See 5999)
	Other	5989	Fuel dealers, nec
5999	Miscellaneous retail stores, nec	* 5999	Miscellaneous retail stores, nec (See 5982)

* part

1972/77		1987	
6022	State banks, Federal Reserve		
	Stock savings banks	* 6031	State mutual or stock savings banks, federally insured (See 6023)
	Commercial banks	* 6022	State commercial banks, federally insured (See 6023)
6023	State banks, not Federal Reserve, FDIC		
	Stock savings banks	* 6031	State mutual or stock savings banks, federally insured (See 6022)
	Commercial banks	* 6022	State commercial banks, federally insured (See 6022)
6024	State banks, not Federal Reserve, not FDIC		
	Stock savings banks	* 6037	State mutual or stock savings banks, not federally insured (See 6034)
	Commercial banks	6024	State commercial banks, not federally insured
6025	National banks, Federal Reserve		
6026	National banks, not Federal Reserve, FDIC	6021	National banks
6027	National banks, not FDIC		
6028	Private banks, not incorp., not FDIC	6029	Commercial banks, nec

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1972/77		1987	
6032	State mutual savings banks, Federal Reserve	* 6031	State mutual or stock savings banks, federally insured (See 6033)
1/	Federal savings banks, FDIC	6035	Federal mutual or stock savings banks, FDIC
1/	Federal savings banks, FSLIC	6036	Federal mutual or stock savings banks, FSLIC
6033	State mutual savings banks, not Federal Reserve, FDIC	* 6031	State mutual or stock savings banks, federally insured (See 6032)
6034	State mutual savings banks, not FDIC	* 6037	State mutual or stock savings banks, not federally insured (See 6024)
6042	Nondeposit trust, Federal Reserve	6091	Nondeposit trust facilities
6044	Nondeposit trust, not FDIC		
6052	Foreign exchange establishments		
	Branches and agencies of foreign banks	6081	Branches and agencies of foreign banks
	Other	* 6099	Functions related to banking, nec (See 6054, 6055, 6056, 6059)
6054	Safe deposit companies	* 6099	Functions related to banking, nec (See 6052, 6055, 6056, 6059)
6055	Clearinghouse associations	* 6099	Functions related to banking, nec (See 6052, 6054, 6056, 6059)

1/ Federal savings banks did not exist prior to 1982.

1972/77		1987	
6056	Corporations for banking abroad		
	Foreign trade and international banking institutions	6082	Foreign trade and international banking institutions
	Other	* 6099	Functions related to banking, nec (See 6052, 6054, 6055, 6059)
6059	Functions closely related to deposit banking, nec	* 6099	Functions related to banking, nec (See 6052, 6054, 6055, 6056)
6112	Rediscounting, not for agricultural		
	Federal and federally sponsored credit agencies	* 6111	Federal and federally sponsored credit agencies (See 6113, 6131, 6159)
	Central reserve depository institutions	6019	Central reserve depository institutions, nec
6113	Rediscounting for agricultural	* 6111	Federal and federally sponsored credit agencies (See 6112, 6131, 6159)
6122	Federal savings and loans	6071	Federal savings and loans
6123	State savings and loan associations, insured	6072	State savings and loans, federally insured
6124	State savings and loan associations, noninsured, FHLB		
6125	State savings and loan associations, noninsured, nec	6073	State savings and loans, not federally insured

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1972/77		1987	
6131	Agricultural credit institutions		
	Federal and federally sponsored	* 6111	Federal and federally sponsored credit agencies (See 6112, 6113, 6159)
	Other (i.e., private)	* 6159	Miscellaneous business credit institutions (See 6159, 6611)
6142	Federal credit unions	6061	Federal credit unions
6143	State credit unions	6062	State credit unions
6144	Nondeposit industrial loan companies	* 6141	Personal credit institutions (See 6611)
6145	Licensed small loan lenders		
6146	Installment sales finance companies		
6149	Miscellaneous personal credit institutions		
6159	Miscellaneous business credit institutions		
	Federal and federally sponsored	* 6111	Federal and federally sponsored credit agencies (See 6112, 6113, 6131)
	Other	* 6159	Miscellaneous business credit institutions (See 6131, 6611)

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1972/77		1987	
6281	Securities and commodity services		
	Investment advice and research	6282	Investment advice and research
	Other	6289	Services allied with the exchange of securities or commodities
6411	Insurance agents, brokers, and service	* 6411	Insurance agents, brokers, and service (See 6611)
6531	Real estate agents and managers	* 6531	Real estate agents and managers (See 6611)
6611	Combinations of real estate, insurance, loans, law offices		
	Loans, personal	* 6141	Personal credit institutions (See 6144, 6145, 6146, 6149)
	Loans, business	* 6159	Miscellaneous business credit institutions (See 6131, 6159)
	Insurance	* 6411	Insurance agents, brokers and service (See 6411)
	Real estate	* 6531	Reel estate agents and managers (See 6531)
	Law offices	* 8111	Legal services (See 8111)

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1972/77		1987	
6722	Management investment offices, open-end	6721	Management investment offices
6723	Management investment offices, closed-end		
6724	Unit investment trusts	6726	Unit investment trust and face-amount certificate offices
6725	Face-amount certificate offices		
6793	Commodity traders	6799	Investors, nec
6799	Investors, nec		
7214	Diaper services	* 7219	Laundry and garment services, nec (See 7219, 7299)
7219	Laundry & garment services, nec	* 7219	Laundry and garment services, nec (See 7214, 7299)
7299	Miscellaneous personal services		
	Tax return preparation services	7291	Tax return preparation services
	Invalid supplies rental	* 7384	Equipment rental and leasing, nec (See 7394)
	Health clubs and spas	* 7991	Physical fitness facilities (See 7997, 7999)
	Seamstress and dressmaking services, except custom	* 7219	Laundry and garment services, nec (See 7214, 7219)
	Other	7299	Miscellaneous personal services

* part

1972/77		1987	
7321	Credit reporting and collection		
	Adjustment and collection services	7322	Adjustment and collection services
	Other	7323	Credit reporting
7332	Blue printing and photocopying services	* 7334	Photocopying and duplicating services (See 7339)
7333	Commercial photography, art, and graphics		
	Commercial photography	7335	Commercial photography
	Other	7336	Commercial art and graphic design
7339	Stenographic and reproduction services, nec		
	Stenographic and court reporting services	7338	Stenographic and court reporting services
	Duplicating services	* 7334	Photocopying and duplicating services (See 7332)
7341	Window cleaning	7349	Building maintenance services, nec
7349	Building maintenance services, nec		
7362	Temporary help supply services	* 7363	Personnel supply services, nec (See 7369)
7369	Personnel supply services, nec		
	Facilities support management services	8744	Facilities support management services
	Other ..	* 7363	Personnel supply services, nec (See 7362)

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1972/77		1987	
7372	Computer programming and other software services		
	Prepackaged computer software	3653	Prepackaged computer software
	Computer integrated system design	7373	Computer integrated system design
	Custom computer programming services	7371	Custom computer programming services
7374	Data processing services		
	Electronic information retrieval services	7375	Electronic information retrieval services
	Computer facilities management services	7376	Computer facilities management services
	Other	7374	Computer processing and data preparation services
7379	Computer related services, nec		
	Computer rental and leasing	7377	Computer rental and leasing
	Computer maintenance and repair	7378	Computer maintenance and repair
	Other	7379	Computer related service, nec
7391	Research and development laboratories	8731	Commercial physical and biological research

1972/77		1987	
7392	Management, consulting, and public relations		
	Management services	8741	Management services
	Management consulting services	8742	Management consulting services
	Public relations services	8743	Public relations services
	Commercial economic, sociological, and educational research	8733	Commercial economic, sociological, and educational research
	Other consulting services	* 8999	Services, nec (See 8999)
7393	Detective and protective services		
	Detective, guard, and armored car services	7381	Detective, guard, and armored car services
	Security systems services	7382	Security systems services
7394	Equipment rental and leasing		
	Heavy construction and earthmoving equipment rental and leasing	7383	Heavy construction and earthmoving equipment rental and leasing
	Video tape rentals	7841	Video tape rentals
	Other	* 7384	Equipment rental and leasing, nec (See 7299)
7396	Trading stamp services	* 7389	Business services, nec (See 7399)
7397	Commercial testing laboratories	8735	Testing laboratories
7399	Business services, nec	* 7389	Business services, nec (See 7396)

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1972/77		1987	
7523	Parking lots	7521	Automobile parking
7525	Parking structures		
7531	Top and body repair shop	7532	Top, body, and upholstery repair and paint shop
7535	Paint shops		
7539	Automotive repair shops, nec		
	Motor vehicle exhaust systems repair shops	7533	Motor vehicle exhaust systems repair shops
	Motor vehicle glass replacement shops	7536	Motor vehicle glass replacement shops
	Motor vehicle transmission repair shops	7537	Motor vehicle transmission repair shops
	Other	7539	Automotive repair shops, nec
7813	Motion picture production, except for television	7812	Motion picture production
7814	Motion picture production for television		
7823	Motion picture film exchanges	7822	Motion picture and tape distribution
7824	Film or tape distribution services		
7932	Billiard and pool establishments	* 7999	Amusement and recreation services, nec (See 7999)

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1972/77		1987	
7997	Membership sports and recreation clubs		
	Physical fitness facilities	* 7991	Physical fitness facilities (See 7299, 7999)
	Other	7997	Membership sports and recreation clubs
7999	Amusement and recreation services, nec		
	Museums (commercial)	* 8412	Museums and art galleries (See 8411)
	Botanical and zoological gardens (commercial)	* 8422	Botanical and zoological gardens (See 8421)
	Nonmembership physical fitness facilities	* 7991	Physical fitness facilities (See 7299, 7997)
	Other	* 7999	Amusement and recreation services, nec (See 7932)
8011	Offices of physicians	* 8011	Offices and clinics of physicians (See 8081)
8021	Offices of dentists	* 8021	Offices and clinics of dentists (See 8081)
8049	Offices of health practitioners, nec		
	Offices of podiatrists	8043	Offices of podiatrists
	Other	8049	Offices of health practitioners, nec

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1972/77		1987	
8059	Nursing and personal care facilities, nec		
	Intermediate care facilities for the mentally retarded	8052	Intermediate care facilities for the mentally retarded
	Intermediate care facilities except for the mentally retarded	8053	Intermediate care facilities except for the mentally retarded
	Other	8059	Nursing and personal care facilities, nec
8081	Outpatient care facilities		
	Clinics of physicians	* 8011	Offices and clinics of physicians (See 8011)
	Clinics of dentists	* 8021	Offices and clinics of dentists (See 8021)
	Kidney dialysis centers	8092	Kidney dialysis centers
	Specialty outpatient clinics	8093	Specialty outpatient clinics, nec
8091	Health and allied services, nec		
	Home health care agencies	8082	Home health care agencies
	Other	8099	Health and allied services, nec
8111	Legal services	* 8111	Legal services (See 6611)
8241	Correspondence schools		
	Data processing	* 8243	Data processing schools (See 8243)
	Business and secretarial schools	* 8244	Business and secretarial schools (See 8244)
	Other	* 8249	Vocational schools, nec (See 8249)

* part

1972/77		1987	
8243	Data processing schools	* 8243	Data processing schools (See 8241)
8244	Business and secretarial schools	* 8244	Business and secretarial schools (See 8241)
8249	Vocational schools, nec	* 8249	Vocational schools, nec (See 8241)
8321	Individual and family social services	* 8322	Individual and family social services (See 8399)
8399	Social services, nec		
	Services to individuals and families (e.g., self-help; agencies for retarded, blind, etc.)	* 8322	Individual and family social services (See 8321)
	Other	8399	Social services, nec
8411	Museums and art galleries, noncommercial	* 8412	Museums and art galleries (See 7999)
8421	Botanical and zoological gardens, noncommercial	* 8422	Botanical and zoological gardens (See 7999)
8911	Engineering, architectural, and surveying services		
	Engineering services	8711	Engineering services
	Architectural services	8712	Architectural services
	Surveying services	8713	Surveying services
8922	Noncommercial research organizations		
	Physical and biological research	8732	Noncommercial physical and biological research
	Economic, sociological, and educational research	8734	Noncommercial economic, sociological, and educational research

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1972/77		1987	
8931	Accounting, auditing, and bookkeeping services	8721	Accounting, auditing, and bookkeeping services
8999	Services, nec	* 8999	Services, nec (See 7392)
9621	Regulation and administration of transportation programs		
	Control tower operations	* 4581	Services related to air transportation (See 4582)
	Other	9621	Regulation and administration of transportation programs

nec = not elsewhere classified

* part

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Principles and Procedures for the Review of the SIC

A. Introduction

Standard Industrial Classification (SIC) is a system for classifying establishments by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments; and (2) to promote uniformity and comparability in the presentation of statistical data describing the economy. The SIC is used by agencies of the U.S. government that collect or publish data by industry. It is also widely used by state agencies, trade associations, private businesses, and other organizations.

The SIC system is designed for statistical purposes. Although the classification is also used for various administrative purposes, the requirements of government agencies that use it for non-statistical purposes play no role in development and revision of the SIC.

B. Principles of Classification

The following are the basic principles underlying the SIC classification (described more fully in the SIC Manual):

(1) The classification is organized to reflect the structure of the U.S. economy. It does not follow any single principle, such as end use, nature of raw materials, product, or market structure.

(2) The unit classified is the establishment. An establishment is an economic unit that produces goods or services—for example, a farm, mine, factory, or store. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. Any establishment is not necessarily identical with a company or enterprise.

(3) Each establishment is classified according to its *primary* activity. Primary activity is determined by identifying the predominant product or group of products produced or handled, or service rendered.

(4) An industry (4-digit SIC) consists of a group of establishments primarily engaged in the same activity. To be recognized as an industry, such a group of establishments must meet certain criteria of economic significance, as described in Section D.

C. Purpose and Scope of Review

The SIC is reviewed and revised periodically to reflect the changing structure of the U.S. economy. Revisions take account of technological change and the economic growth and decline of individual industries. They may include changes in industry detail or coverage, improvements to industry definitions, or the clarification of the classification of individual activities.

Review and revision of the SIC are the responsibility of the Office of Management and Budget, which has developed these principles and procedures with the assistance of the Technical Committee on Industrial Classification. Committee members include the following agencies: Office of Management and Budget (Chair), Board of Governors of the Federal Reserve System, Bureau of Economic Analysis, Bureau of Labor Statistics, Bureau of Mines, Bureau of the Census, Department of Transportation, Economic Research Service (USDA), Federal Emergency Management Agency, Federal Trade Commission, Internal Revenue Service, International Trade Administration, Interstate Commerce Commission, National Center for Health Statistics, National Science Foundation, Small Business Administration, Social Security Administration, and U.S. International Trade Commission.

(1) Structure of the Classification. The overall structure is a general-purpose framework which can have its 4-digit detail rearranged for various analytical purposes. Proposed changes should be designed to fit within this structure with minimum disruption to the existing configuration.

For example, a change which consists of breaking one 4-digit industry into two or more within the same 3-digit industry group is easier and less expensive than a change which affects 3-digit groups, particularly if this in turn affects the 2-digit or divisional groupings. Changes to the basic 2- or 3-digit structure require exceptionally strong justification showing that they reflect changes in the economy and not simply a different view of what the basic structure should be.

(2) Historical continuity. Maintaining the continunity of major Federal statistical series will be an important consideration in evaluating proposed changes in the SIC. Changes that would result in weakening principal economic indicators or that would necessitate costly backward revision of time series will require very strong justification on other grounds in order to be acceptable.

(3) Economic Significance. To be recognized as an industry, a group of establishments must have economic significance measured in terms of numbers of establishments, employment, payroll, value added, and volume of business (value of shipments or receipts). The following scoring system is used to evaluate economic significance for SIC purposes.

Values for the "average" industry are calculated by division (manufacturing, construction, retail trade, etc.) for each of the five factors. These values are used in evaluating the economic significance of a proposed SIC industry by composing the industry averages to the values for the proposed industry, as illustrated below. For each factor, a proposed industry is assigned points. The number of points is equal to the value of the factor for a proposed industry as a percentage of the value for the average industry.

The number of employees and value added are considered more significant and reliable measures of industry importance and are therefore given double weight when calculating the final score. The table below presents calculations (based on 1977 data) for a proposed potato chip and similar snack industry in Division D (manufacturing). The final score for this industry is 59 (column E total divided by column D total).

	Proposed industry (A)	Average industry (B)	Number of points (A as percent of B) (C)	Weights (D)	Weighted points (C×D) (E)
Number of establishments	230	796	29	1	29
Number of employees (thousands)	26.7	43.0	62	2	124
Payroll (million dollars)	301.3	584.0	52	1	52
Value added (million dollars)	934.5	1,295.0	72	2	144
Shipments (million dollars)	1,929.0	3,006.0	64	1	64

In general, a score of at least 20 is needed to warrant recognition as a new SIC industry. However, an existing SIC industry will be retained if it has a score of at least 10.

The 1987 review will be based on the most recent data available. In cases where data are not available for all five factors, scores will be weighted averages of those factors for which data are available.

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(4) Specialization and Coverage. In order that an industry properly reflect the activity being measured, the output of the establishments in the industry should: (1) Consist mainly of the goods or services defining the industry, and (2) account for the bulk of the specified goods and services provided by all establishments. For manufacturing industries these factors are measured by the primary product specialization ratio and the coverage ratio.

The primary product *specialization ratio* indicates how much the establishments in a given industry concentrate on the activities that define the industry. This ratio is calculated by dividing the value of the primary product shipments of the establishments classified in the industry by the value of all shipments (both primary and secondary) for the same establishments.

The *coverage ratio* indicates the volume of shipments of products which define the industry that are accounted for by establishments classified in the industry. The coverage ratio is the proportion of products defining the industry shipped by establishments classified in the industry to total shipments of these products by all manufacturing establishments.

For example, establishments classified in 1977 as primarily producing transformers (SIC 3612) had shipments of $2051.1 million for transformers, total shipments for all products of $2160.6 million, and a resulting specialization ratio of 95. Total shipments by all industries of transformers were $2117.8 million, yielding a coverage ratio of 97.

A 4-digit SIC industry should have a minimum primary product specialization ratio of 80. The minimum for the coverage ratio is generally 70 for establishments producing for commercial sale. This may be reduced some for industries having significant interplant transfers or production for use within the same establishment (e.g., Gray Iron Foundries, Iron and Steel Forgings) or for industries producing the same final product as another industry but made from materials that are at a more advantaged stage of manufacture (e.g., Blended and Prepared Flour). Where existing industries have relatively few large plants producing a wide range of products, the coverage ratio criterion often precludes the establishment of further industry detail.

(5) *Other Statistical Considerations.* In general, proposed new industries should meet each of the criteria of economic significance, specialization and coverage. However, industries that substantially exceed one or two of the criteria and fall slightly short on the others also may be accepted in some cases.

For example, industries which are not yet large enough, but are growing rapidly may be accepted based on current size and evidence of growth by a specified time. Proposed industries which meet the criteria only marginally should also show substantial current growth and likelihood of future growth.

Special consideration will be given to new industries and industry changes that increase comparability of the SIC with the United Nation's International Standard Industrial Classification and that increase the capability of assessing the impact of international trade on domestic industries such as increasing possibilities for comparability with the Customs Cooperation Council's Harmonized System.

Proposed new industries will be evaluated to make sure they provide for relatively stable classification of individual establishments. In some fields of activity, it is normal for the primary activity, if defined restrictively, to fluctuate from year to year. For example, shipbuilding establishments may work on defense contracts one year and on civilian contracts the next. Or establishments may perform primarily new work one year and rebuilding another. Separate industries will not be created where the distinction would result in industry shifts for establishments that are still engaged in similar industrial activity.

In some cases a proposed industry may meet all previously stated criteria but be rejected because the remaining part of the existing industry is too small for separate industry status and cannot logically be merged into other industries.

(6) *Administrative Considerations.* Cost to the government, as well as cost and burden to businesses that furnish data to the government, will be major considerations in evaluating proposed changes in the SIC. Revisions that involve major changes in record-keeping by business or in government agencies' procedures, records, and data series will require very strong justification to be considered.

The ability of government agencies to classify, collect, and publish data on the proposed basis will also be taken into account. Proposed changes must be such that they can be applied by agencies within their normal processing operations.

Proposed industries must also include a sufficient number of companies that industry data can be published without disclosing information about the operations of individual firms.

[FR Doc. 86-3237 File 2-13-86; 8:45 am]
BILLING CODE 3110-01-M

federal register

Friday
February 14, 1986

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 35, 905, 965, and 968
Lead-Base Paint Hazard Elimination in Public and Indian Housing; Proposed Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 35, 905, 965, and 968

[Docket No. R-86-1165; FR-1748]

Lead-Based Paint Hazard Elimination in Public and Indian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD invites public comment concerning amendment to its regulations regarding the elimination of hazards due to lead-based paint in Public and Indian housing. This proposed rule would amend 24 CFR Part 35, Lead-Based Paint Poisoning Prevention in Certain Residential Structures, propose a new subpart H in 24 CFR Part 965, PHA-owned or Leased Projects—Maintenance and Operation, and amend 24 CFR Parts 905, Indian Housing, and 968, Comprehensive Improvement Assistance Program (CIAP).

Changes in the funding priorities for CIAP are also proposed. Revised funding groups are proposed with certain lead-based paint testing and hazard abatement preferences.

DATE: Comment due date April 15, 1986.

ADDRESSES: Comments on rule: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Comments should refer to the above docket number and date of publication. A copy of each comment submitted will be available for public inspection during regular business hours at the above address.

Comments on information collection: Comments on the information collection requirements contained in this proposed rule should be submitted both to the HUD Rules Docket Clerk at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD. They should contain the docket number and date of publication.

FOR FURTHER INFORMATION CONTACT: Nancy Chisholm, Director of Policy, Office of Public and Indian Housing, (202) 755-6713, Room 4116, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

HUD is reconsidering its current regulations implementing section 302 of the Lead-Based Paint Poisoning Prevention Act in light of advances in knowledge regarding the causes of elevated blood lead levels of children as well as hazard detection and abatement techniques. HUD is also reexamining its regulations pursuant to the mandate of *Ashton v. Pierce*, 716 F.2d 56 (D.C. Cir. 1983), a case in which public housing tenants in the District of Columbia challenged the adequacy of HUD's lead-based paint regulations. This rulemaking was initiated by publication of an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 19210, May 4, 1984), which solicited public comment on issues relating to implementation of lead-based paint detection and hazard abatement procedures in the many distinct HUD programs to which the statute applies.

This proposed rule, which relates primarily to public housing, is being published separately at this time pursuant to a subsequent order of the Federal District Court. The same order requires publication of a final rule not later than August 1, 1986.

Pursuant to a subsequent order of the District Court, HUD will publish, not later than July 1, 1986, proposed rules prescribing lead-based paint hazard detection and abatement requirements applicable to the FHA single-family and multifamily insurance programs and the Section 8 Existing Housing Certificate program. In addressing the issue of what procedures may be "practicable" within these program contexts, HUD must consider factors that are different from those considered in the instant rulemaking because, in each of such programs, the cost of hazard abatement is a private cost. In the single-family insurance programs, for example, the cost of hazard abatement required to qualify an existing property for FHA mortgage insurance on resale of the property must be borne by the seller of the home. In Section 8 Existing Housing, the cost of any hazard abatement required to qualify the rental unit as one in which a low-income tenant's rental payment will be subsidized must be borne by the landlord. The impact of such costs on availability of the programs to their intended participants is a relevant consideration in determining whether requirements are "practicable"; see discussion of *Ashton* decision below.

Additional proposed rules prescribing procedures applicable to rehabilitation assisted under the Community Development Block Grant and other HUD programs will be published not later than August 1, 1986. Any additional program-specific proposed rules, plus any amendments to the general requirements of 24 CFR Part 35, which will remain applicable to programs not covered by a program-specific rule, will be published not later than September 1, 1986.

This preamble is divided into the following six sections: (1) Background (discussion of statutory and regulatory requirements and the *Ashton* decision); (2) ANPR (summary of the comments that focus on public housing); (3) Recent HUD Experience (summary of a recent public housing funding set-aside for lead-based paint testing and abatement); (4) Recent Studies of the Lead-Based Paint Problem (including a public housing study, the Centers for Disease Control's January 1985 Statement on Preventing Lead Poisoning in Young Children, and the Environmental Protection Agency's Air Quality Criteria for Lead); (5) Proposed Requirements for Public and Indian Housing's Proposed Program; and (6) Section-by-Section Review of Proposed Regulations.

A. Statutory and Regulatory Requirements

HUD's authority to issue this rule is based on section 302 of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4822 ("LPPPA"). Added in 1973, section 302 requires the Secretary of HUD to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." The statute further prescribes that such procedures shall "as a minimum provide for . . . appropriate measures to eliminate as far as practicable immediate hazards due to the presence of paint which may contain lead and to which children may be exposed"; and, further, that the procedures must apply to housing constructed prior to 1950 and "may apply to housing constructed during or after 1950 if the Secretary determines, in his discretion, that such housing presents hazards of lead based paint."

HUD regulations implementing section 302 were promulgated in 1976 and are found at 24 CFR Part 35. The development of the regulation is fully described in the ANPR. The key provisions of Part 35 define an "immediate hazard" requiring treatment as "paint (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling or loose." That is, the definition did not require that the lead content in the paint be measured or identified, only that the condition of the paint be defective. Also, the definition excluded intact, or "tight", paint regardless of its lead content. The hazard elimination procedures in Part 35 are applicable to all "HUD-associated housing" regardless of construction date.

B. The Ashton Decision

In *Ashton* v. *Pierce*, public housing tenants in th District of Columbia challenged the adequacy of the Department's lead-based paint regulations. The individual plaintiff lived with her three children in a public housing project from 1975 to 1981. In 1980, on of plaintiff's children was hospitalized for five days for treatment of an elevated lead level which was alleged to have resulted from ingestion of lead-based paint from the interior of the dwelling unit.

The plaintiff alleged that HUD's lead-based paint regulation was deficient for failing to define "tight" lead-based paint surfaces as an "immediate hazard" requiring treatment.

The plaintiff's action was certified as a class action on behalf of "all tenants or residents of HUD-associated public housing in the District of Columbia who are, or who have, young children who have experienced or who may in the future experience lead poisoning as a result of the presence of lead-based paint in their dwelling units."

The District Court determined the issues on motions for summary judgment based on the statutory language and legislative history and the administrative record of the Department's rulemaking. The District Court found that the regulations were deficient in not treating lead based paint accessible to children as a immediate hazard, and in failing to prescribe sufficient steps to eliminate accessible lead-based paint "as far as practicable."

The District Court ordered the Department to "undertake further rulemaking to establish appropriate procedures for the elimination of lead-based paint hazards in federally-associated public housing, including so-called tight paint." *Ashton* v. *Pierce*, 541 F. Supp. 635, 642 (D.D.C. 1982).

The Court of Appeals affirmed the District Court order. *Ashton* v. *Pierce*, 716 F.2d 56 (D.C. Cir. 1983). The Court of Appeals found, first, that Congress intended the phrase "immediate hazard" not to be limited to paint in a defective condition. The Court of Appeals also held that the Department had applied an erroneous standard in determining whether it was "practicable" to eliminate the immediate hazard of intact lead paint. In the Court of Appeals' view, HUD had construed "as far as practicable" to mean "most practicable." The Court expressly rejected what it considered to be a "cost-benefit analysis" approach employed by the Department.

> In plain language Congress commanded that if it is "practicable" to eliminate an immediate hazard, that hazard must be eliminated. The statute admits of no exceptions to the required elimination procedures on the basis of the degree of practicability. Neither Congress' concern about the cost of the elimination program nor congressional silence in the face of the Department's interpretation of the statute can overcome the clear statutory directive. *Id.* at 64.

The Court of Appeals concluded, however, that the administrative record had not established that elimination of chewable intact paint "is in fact practicable. *Id.* Both the Court of Appeals and the District Court made specific reference to a HUD options paper considered by Secretary Carla A. Hills before promulgation of this final rule. The paper listed five alternatives:

Alternative I—require *scraping* of loose, peeling, flaking paint and repainting (1972 regulation).

(Alternative II—require *removal* of all paint from loose, flaking, peeling surfaces.

Alternative III—require *scraping* of loose, peeling, flaking paint and *removal* of all paint from chewable surfaces.

Alternative IV—require *removal* of all paint from both flaking, peeling surfaces and chewable surfaces.

Alternative V—require removal of all paint from all accessible, intact surfaces.

HUD had considered the following factors when evaluating these alternatives: (1) Total costs both to government and private owners, (2) benefits to children (qualitatively assessed), (3) impact on the effectiveness and availability of FHA program activities, and (4) possible redlining of neighborhoods and abandonment of housing. HUD had selected alternative I.

The District Court approved HUD's conclusion that alternatives IV and V were impracticable due to adverse impacts of the major costs involved on continued FHA activity and "unreasonable burden" placed on the FHA fund. But the District Court concluded that the Department had inappropriately used costs to compare the first three alternatives on a cost-effectiveness basis and reject alternatives II and III because it found alternative I alone to be cost-effective.

The Court of Appeals, however, rejected the District Court's conclusion that HUD, by implication, had found options II and III to be practicable. Ambiguity in the administrative record to the 1976 rule, it held, did not support this inference. Moreover, the Court of Appeals did not question the District Court's acceptance of HUD's rejection of alternatives IV and V. The Court of Appeals stated:

> It is peculiarly within the expertise of the Department to determine the practicability of a given elimination procedure. We agree with the district court that the "as far as practicable" standard allows the Department "to consider cost and technical considerations in developing its regulations" and that the threshold of practicability is reached if there exist "reasonably available techniques" for eliminating the hazard . . . *Id.*

The Court of Appeals affirmed the requirement to reopen rulemaking to determine under what conditions intact paint containing lead constituted an immediate hazard. The Court affirmed the Department's broad discretion in making this determination.

> • • • Like the district court, we note that "in carrying out further rulemaking [the Department] retains substantial discretion to adopt regulations of a scope and effect it deems appropriate. • • • We simply hold that the Department's "complete failure to address the hazards associated with "tight" paint containing lead is contrary to the intent of Congress." *Id.*

II. Advance Notice of Proposed Rulemaking and Comments

HUD commenced rulemaking by publishing an Advance Notice of Proposed Rulemaking (ANPR) (49 FR 19210, May 4, 1984). The ANPR raised four major regulatory issues: (1) Hazard Determination; (2) Program Coverage; (3) Notification; and (4) Monitoring and Enforcement. Several questions were raised within each of the principal issues. Thirty-nine comments were received from commenters including PHAs, state, county and city health departments, cities, trade associations, public interest organizations, state housing authorities and individuals. Commenters submitted or referred to numerous articles and papers that addressed additional aspects of the problem.

This section will discuss the ANPR questions and comments as they relate to public housing.

1. Health vs. Housing Approach

Eighteen questions were posed regarding the major issue of hazard

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determination. The issue which received the most public comment, was "Should HUD adopt elements of a health approach?" A "health approach" would involve: (1) An initial screening of children to determine their blood lead level; (2) the identification and treatment of children found to have an elevated blood lead level; and (3) the deleading of the homes in which such children reside. In contrast, a "housing approach" would involve an inspection of all housing for lead-based paint and the removal of such paint where found, regardless of the age and blood lead level of the inhabitants. Twelve commenters opposed HUD's adoption of only a health approach. Six commenters favored the use of a health approach and four commenters suggested combining health and housing approaches.

Commenters opposing use of the health approach alone generally concluded that the health approach should not be used by HUD because they asserted: (1) It is an "illness approach" which incorrectly assumes that a high risk child can be identified before irreversible damage ensues; (2) screening programs are limited to a few localities; (3) the approach is inconsistent with HUD's statutory responsibility to prevent lead poisoning; and (4) the approach is not cost-effective. Some commenters favored the health approach because, they said, it eliminates the hazards of loose, peeling and cracking lead paint where the danger is the greatest and deals effectively with children on an individual basis and where a clear health problem exists. One commenter thought the health approach was feasible particularly when dealing with low-income governmental housing. Four commenters suggested combining components of both approaches or using a health approach only where lead screening is available.

Based on these comments and the studies mentioned in the ANPR (49 FR 19217) which suggest that other sources also cause lead poisoning (namely food, gasoline, household dust and garden soil, and dust and fumes produced as a result of renovation or demolition of older buildings) and that emissions are the primary cause of lead poisoning, HUD is proposing a housing approach to deal comprehensively with the lead-based paint problem in public and Indian housing family projects. However, lead screening programs in localities which operate them and screening by health professionals and the Indian Health Service will be utilized to establish priorities for testing and abating units housing children with identified elevated blood lead levels.

2. Screening Programs

Several questions within the issue of hazard determination focused on screening programs. A majority of the commenters did not believe screening program coverage was broad enough to justify HUD reliance on their availability. A majority of the commenters also suggested that HUD abatement requirements should be activated by a referral from a screening program. It was asserted that HUD should request assistance from local public health agencies or the state or regional departments of public health on how to offer HUD clients lead poisoning prevention programs. Where lead screening is unavailable, HUD was advised to either establish a pilot screening program or use the housing approach.

Several commenters raised issues of confidentiality or administrative feasibility concerning securing data on individuals for use by HUD or parties undertaking inspection and abatement actions. It was suggested that HUD could require residents to present a health record on each child or information specific to the location of the dwelling and the conditions to be corrected. Another commenter suggested as a procedure to satisfy confidentiality requirements, that parents could sign a waiver at the time the child's blood specimen is obtained giving the health care provider permission to report abnormal screening results to the appropriate PHAs. However, another commenter stated that shifting the responsibilities of screening and informing HUD of results to an already overburdened health care system is not practical or feasible. It was stated that discrimination in housing for families with young children might result if property owners were obligated to assume deleading costs upon identification of a child suffering from blood lead elevation. A systematic housing inspection approach would preclude this possibility, it was said, by application of uniform abatement requirements. Generally, commenters agreed that cooperation between the PHA and health care providers is an absolute prerequisite if inspection for lead-based paint and intervention (including abatement and notification by PHAs and health authorities) is to be effective.

For public and Indian housing, HUD will require PHAs and Indian Housing Authorities (IHAs) (hereinafter PHA includes IHA) to rely upon existing screening programs and health professionals to obtain information regarding children with EBLs and respond by taking emergency action. The Indian Health Service field staff may assist with this effort in Indian areas. See Section V.A. below.

3. Health Standard

HUD invited suggestions on health standards. Many standards were suggested based upon both a child's blood lead level and the level of lead in painted surfaces. EBLs of any degree or, in the alternative, greater than or equal to 25 μg/dl (micrograms of lead per deciliter of whole blood) were suggested. For painted surfaces, it was suggested that readings of 0.5–2.0 mg/cm² (milligrams per square centimeter) should require abatement.

Unlike other agencies such as the Environmental Protection Agency and the Centers for Disease Control (CDC), HUD does not have the scientific or medical expertise to define its own standard; therefore, the Department is predisposed to adopt a standard used by these agencies. For public and Indian housing, HUD proposes to use the CDC definition of EBL and the standards for measurement of lead content in painted surfaces. In *Preventing Lead Poisoning in Young Children: A Statement by the Centers for Disease Control; January 1985* (CDC, 1985), CDC defined an EBL which reflects excessive absorption of lead as a confirmed concentration of lead in whole blood at 25 μg/dl or greater. CDC recommends that readings by X-ray fluorescence analyzers (XRFs) greater than or equal to 0.7 mg/cm² for lead on painted surfaces be considered positive.

4. Hazard Elimination Requirements for Painted Surfaces; Interrelation of Lead Content and Blood Lead Level

The ANPR requested comments as to whether hazard elimination requirements should pertain to: (a) All accessible surfaces; (b) accessible chewable surfaces; or (c) exterior surfaces. Comments were diverse. Seven commenters favored an "all accessible surfaces" requirement. These commenters noted that: (1) Any other alternative would reduce the effectiveness of the hazard elimination and diminish the appearance and condition of subsidized housing; (2) "accessible" should be defined as up to a level of five feet; and (3) all intact surfaces and any exposed (accessible to children) areas as well as interior and exterior surfaces should be included in the definition of "accessible". Six commenters favored an "accessible chewable requirement for interior and exterior surfaces." Another commenter suggested requiring abatement of "exterior surfaces reachable by children 7 years old". One commenter urged requiring abatement of surfaces which are "accessible or, inaccessible and chewable".

When asked what level of lead content in intact paint, if any, should be considered an immediate hazard, ten commenters suggested .06% to .5% lead by dry weight or 0.5 to 2.0 mg/cm² of surface. Three commenters stated that any level of lead in paint is unsafe and suggested that if lead can be detected by existing technology, it should be eliminated. CDC's comment stated, "Peeling, chipping, deteriorated paint containing lead of any level is an immediate hazard, if it is accessible to a child. The exposure of the child to the paint over time is more significant than the lead level in the paint; moreover, the condition and accessibility of the paint is vastly more important than precise measurement of the amount of lead in the paint." In its January 1985 statement, CDC stated that a lead-based paint hazard exists when (a) the XRF reading is positive and (b) the surfaces being tested are chewable or contain damaged (cracked, chipped, loosened, chewed) paint. CDC has also stated that lead-based paint on intact walls, ceilings, or other surfaces that are not chewable does not constitute an immediate hazard. CDC has recommended that there is no level of lead in wall paint that may be assumed to produce a given blood lead level, and there is no need to place great emphasis on the precise measurement of lead in paint once a positive determination is made. Other commenters also indicated that a precise correlation between lead in paint and lead in blood need not be demonstrated, nor is a precise correlation likely to be found.

On the basis of the state of both detection and abatement technology, HUD proposes that, in public and Indian housing, paint surfaces where lead analysis produces a reading greater than or equal to 0.7 mg/cm² that are in unsound condition or on chewable surfaces be provided hazard abatement treatment. See Section V.B. below.

5. Construction Cut-Off Date

Section 302 of LPPPA provides that its requirements must be applied to housing constructed prior to 1950 and that they may be applied to housing constructed during or after 1950 "if the Secretary determines, in his discretion, that such housing presents hazards of lead-based paint."

The hazard elimination requirements contained in Subpart C of Part 35 apply to all "HUD-associated housing," whenever constructed. On the other hand, the notification requirements contained in Subpart A of Part 35 are limited to purchasers and tenants of housing constructed prior to 1950. The administrative record of the rulemaking does not make clear the basis of the Secretary's determination that prompted extension of the hazard elimination requirements to post-1950 housing, and the record suggests that no determination of the presence or absence of a hazard was made in the context of addressing the notification requirements. In *Ashton*, however, the Court of Appeals confirmed that it was within the Secretary's discretion both whether to make such a determination and whether to apply requirements to housing constructed during or after 1950.

In the ANPR, the Department opened this question by soliciting comment as to whether there was a reasonably satisfactory cut-off date of construction after which units should be presumed, for purposes of mandatory testing and hazard abatement requirements, to be free of lead-based paint.

Commenters suggested various cut-off dates and supporting rationales. A small number supported a 1950 cut-off. Several recommended 1971, when the LPPPA's prohibition on use of lead-based paint in Federally assisted construction or rehabilitation was enacted. Others recommended 1977, when the Consumer Product Safety Commission banned the commercial sale of paint having a lead content by weight of over .06%.

As indicated below, a recent sample survey of public housing units indicates the presence of lead-based paint in some units constructed as late as 1977. However, HUD is cognizant that the use of lead-based paint in Federally-assisted construction and rehabilitation has been prohibited since 1971. Section 401 of LPPPA, as enacted in 1971, directed the Secretary of Health, Education and Welfare to prohibit the use of lead-based paint in such construction or rehabilitation. The Secretary of HEW promulgated regulations in March 1972, and complementing regulations were adopted by the Secretary of HUD in August 1972.

HUD believes it inappropriate to impose extensive testing requirements on an assumption of noncompliance with its regulations. Accordingly, its proposed rule for public and Indian housing mandates testing for family projects constructed prior to 1973. Testing of projects constructed during or after 1973 and prior to 1978 will be required only if there is positive evidence of lead-based paint having a lead content greater than or equal to 0.7 mg/cm² in some units operated by the PHA that were constructed in that period. See Section V.A. below.

6. Detection and Abatement Technologies

Many commenters requested that HUD prescribe particular detection or abatement technologies. Some commenters asserted, however, that PHAs are best able to judge the appropriate detection and abatement approach for a given locality. Other commenters suggested that HUD should prescribe the use of XRFs or standard technologies to eliminate confusion and unnecessary deleading work.

Commenters mentioned new techniques including high pressure water guns, low intensity heat guns, wall systems for covering and liquid paint removers. Many problems are associated with removal methods. With the exception of abatements involving wall coverings, hazardous dusts or fumes are produced.

CDC recommended that "it is better to establish performance standards than design criteria: This does not preclude new approaches in the search for better instrumentation to detect lead in wall coverings. The marketplace can decide the least expensive method of hazard abatement as long as the objective of permanently eliminating the hazard, either through removal or covering the lead paint surface, is met. To prescribe a particular method sometimes stops research into better ways to meet the goals."

For lead abatement for public and Indian housing, HUD is proposing CDC's approach which establishes performance standards rather than design criteria. Establishing performance standards does not preclude the development of new approaches for the removal of lead-based paint.

HUD is not prescribing the method of abatement, but is requiring that the paint either be thoroughly removed or covered. Covering the hazard could include such methods as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Removing the hazard could include scraping after softening the lead-based paint with a chemical or heat treatment. Washing and repainting without thorough removal or covering does not constitute hazard abatement. See Section V.B. below.

7. Notice of Abatement Hazards

All commenters agreed that there is a need for written, verbal or posted notice of hazards arising from abatement

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techniques. HUD proposes to extend the notification requirement to housing constructed at any time prior to 1978, in contrast to its requirements for testing and, consequently, abating hazards in public and Indian housing, because of the likelihood that some units constructed after 1972 may contain lead-based paint and unnecessary complexity of basing a notification requirement on positive identification of lead-based paint in some units constructed after 1972. This complexity would be more severe in the context of the general requirements of Part 35, where it could not be tied practicably to discovery of other units within the control of a single owner, such as a PHA.

8. State or Local Requirements

Most commenters agree with the concept of taking into account state and local requirements. One commenter disagreed because of an asserted lack of enforcement by state or local governments. Commenters suggested that HUD should develop a model ordinance based on a review of state and local standards; it was suggested that HUD's regulations on abatement technologies should be consistent with state and local requirements. Many commenters suggested that state and local standards be used where they provide greater protection than HUD regulation.

HUD proposes to continue its current provision that the PHA is responsible for compliance with state or local laws, ordinances, codes, or regulations governing lead-based paint hazard abatement. HUD funds may be used to meet all state or local codes. In order to promote efficiency, HUD will defer to state or local requirements that provide for a comparable level of protection from lead-based paint hazards.

III. Recent HUD Experience

A. Comprehensive Improvement Assistance Program (CIAP) Lead-Based Paint Set-Aside

In public and Indian housing the cost of lead-based paint hazard abatement is a public cost, borne directly by PHAs. PHAs are funded through tenant contributions toward rent (which are based on tenant income without regard to the operating costs of the housing) and by operating subsidy and modernization funds authorized and appropriated by Congress. Pursuant to Notice PIH 83–48, HUD initiated a $35 million set-aside under CIAP in FY 1984 for lead-based paint hazard identification and treatment or elimination. Instructions for application and processing of the 1984 CIAP set-aside were issued in Notice PIH 84–6. Thirty-nine PHAs received funding to treat 99 projects and approximately 14,000 units.

IV. Recent Studies of the Lead-Poisoning Problem

Since publication of the ANPR, several new studies involving lead-based paint poisoning have been released. These studies include a public housing study, the CDC January 1985 Statement and the EPA Air Quality Criteria for Lead. HUD solicits comments on other recent lead-based paint poisoning studies.

A. Public Housing Study

HUD awarded a research contract to Abt Associates to provide an estimate of the incidence and condition of lead-based paint in public housing units and common areas and an estimate of the cost of abatement under different regulatory program approaches. This research, which is in draft and under review by the Department, was part of a larger contract to determine unfunded modernization needs in public and Indian housing. In this study, the Department requested Childhood Lead Poisoning Prevention Programs (CLPPPs) to assist in data collection by visiting five randomly selected local public housing projects (in areas with less than five local public housing projects, all projects were inspected) and inspecting them for the presence of lead paint. A total of 34 local programs visited 131 public housing projects and 262 units to test for the presence of lead-based paint. The programs used XRFs to test units, common areas such as halls, and site-wide facilities for the presence of leaded paint, and the amount of lead. The local inspectors also reported whether the paint was in good condition or defective (*e.g.*, peeling or chipping).

Because prior research led the researchers to expect a higher proportion of lead-based paint hazards in the oldest projects, the analysts split the sample into four age strata and obtained inspections in a larger number of older projects than newer projects. The proposed public housing regulation effectively regards as immediate hazards as paint with over 0.7 lead per mg/cm^2 on chewable surfaces accessible to children or in defective paint on flat surfaces such as walls or ceilings. Using this definition, the preliminary data show immediate hazards in 79% of the sample units built in 1950 or before, 60% of units built between 1951 and 1959, 54% of units built between 1960 and 1977, and only 13% of units built between 1978 and 1983. Analysis of the units inspected that were built in 1978 or later showed only 2 of the 15 sampled units with leaded paint, and none of 15 units had any defective lead-based paint. Also, in the units that did have some lead-based paint, the lead was always found to be at a relatively low level, marginally over the 0.7 mg/cm^2 standard. These findings were expected because, as noted above, it became illegal to sell paint with significant amounts of lead starting in 1977.

At the threshold of 0.7 mg/cm^2, total costs for public housing units requiring abatement average about $1,100 per unit. This includes testing and removing leaded paint from protruding woodwork and covering defective lead paint on walls using a layer of strong fiberglass cloth or wallboard. Abatement costs are estimated without regard to other modernization activities. To the extent that lead paint abatement overlaps work that is required during renovation, the incremental cost of the abatement would be less than the amount estimated.

B. Centers of Disease Control's January 1985 Statement

In January 1985, the Centers for Disease Control (CDC) issued a second revision to its statement entitled *Preventing Lead Poisoning in Young Children*. Based on new research findings on lead toxicity, CDC redefined lead poisoning at a lower blood lead level (from 30 to 25 ug/dl) and updated its recommendations on lead-based paint hazard abatement.

C. EPA Air Quality Criteria for Lead

EPA's Air Quality Criteria for Lead evaluates and assesses scientific information on the health and welfare effects associated with exposure to various concentrations of lead in ambient air. The document considers all sources of lead including lead-based paint. At the time of publication of this proposed rule, the criteria document is still under review. HUD considers this document to be a potential source of helpful information for this rulemaking and expects to consider its conclusions in developing a final rule.

V. Proposed Requirements for Public and Indian Housing's Proposed Program

The Department proposes to alter the structure of its regulation implementing the LPPPA. Currently, all regulatory requirements are found in 24 CFR Part 35. It is proposed that Part 35 will continue to state generally applicable minimum requirements but will authorize Assistant Secretaries to promulgate program-specific regulations which will supersede the general requirements. This will enable requirements to be better integrated into the administrative and operational structures of different programs and will allow for "practicability" determinations to be based on specific program circumstances. (It will not engender undue inconsistency between programs because, under the internal Departmental procedures, all regulations issued by Assistant Secretaries under their delegated authority must be approved by the Secretary.

Few substantive changes in Part 35 are proposed at this time, except that the notification requirements in Subpart A are proposed to be extended to housing constructed during the period 1950–1977 and the testing and hazard abatement requirements of Subpart C are proposed to be limited to housing constructed prior to 1978. Subpart C will apply to "HUD-associated housing" other than public and Indian housing, and inspection and abatement requirements will continue to be based on defective paint. As noted above, the Department will propose regulations superseding Part 35 with respect to other programs.

Requirements for public housing are contained principally in a new Subpart H to 24 CFR Part 965. The proposed regulation in many ways resembles Notice PIH 84–6 for the 1984 CIAP set-aside discussed above in Section III. The five major elements of the public and Indian housing lead-based paint program are: (1) Testing; (2) abatement; (3) funding; (4) notification; and (5) monitoring and enforcement. The lead-based paint program is proposed to be integrated with the existing maintenance and modernization activities.

HUD specifically invites futher comments on (1) Whether all paint surfaces where lead analysis produces a reading greater than or equal to 0.7 mg/cm^2 that are in unsound condition or on chewable surfaces (as defined), and in the locations described in the proposed rule, must be considered "immediate hazards due to the presence of paint which may contain lead and to which children may be exposed" in all circumstances, regardless of date of construction and the presence or absence of children in a unit, and (2) whether the abatement treatment required in this proposed rule is "practicable" in all circumstances encompassed by the proposed rule and should, in the Secretary's discretion, be required for housing constructed after 1950 and, if so, for what periods or under what circumstances. During the further course of this rulemaking proceeding, HUD will continue to evaluate, with the assistance of other Federal agencies with greater experience in the assessment and treatment of environmental health risks, the evidence submitted in response to the ANPR, the further studies referred to in this preambel, and such additional evidence and comments as may be received in response to this notice of proposed rulemaking, that are relevant to the foregoing questions.

A. Testing

The testing requirements incorporate a health approach by establishing, as the first priority, the testing of any unit, regardless of construction date, in which there resides a child with an identifiable elevated blood lead level.

After this first priority and in areas where blood lead level screening is not available, HUD proposes to require PHAs to test their housing by using a random statistical sample large enough to indicate with a high degree of reliability (95%) whether or not there is lead-based paint in each project tested. HUD used this approach in the 1984 CIAP set-aside Notice PIH 84–6. In that notice, PHAs were instructed to use a random sample and test 10 units in each building of 20 units or more and test five units in each building of less than 20 units. Where there are fewer than five units in a building, PHAs were to test all units in that building.

HUD proposes testing on a project basis. HUD believes a project basis is as valid as a building because PHAs generally treat all the buildings within a given project similarly when undertaking maintenance such as painting and because the buildings are usually built at the same time with similar materials. A project would mean a family or mixed development project, excluding buildings for the elderly. An elderly project as defined in the proposed rule means any project assisted under the U.S. Housing Act of 1937 (other than Section 8 or 17 of the Act), including any building within a mixed-use project, that was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a building within a mixed use project) to elderly families.

Testing units at a project that is proposed for possible abatement is intended to do three things: (1) Determine whether or not there is any lead-based paint at that project; (2) determine the budget required for abatement activities; and (3) identify the specific parts of the project that require abatement.

Even in older buildings, it is possible that there is no lead-based paint present. The only way to determine this is to thoroughly test a number of units using XRFs. Using random selection, the inspectors will test 10 units in each project of 20 units or more and will test six units in each project with less than 20 units, as well as common areas and chewable exterior surfaces. Since the only purpose of the sample and screening process is to determine whether the project has any lead-based paint, it is unnecessary to screen the project if the PHA is already certain from prior testing that lead-based paint is present.

Once it is determined that lead-based paint is present in a project, the PHA must inspect each unit, common area and chewable exterior surface for lead-based paint hazards. This is necessary in order to budget and plan for the abatement process. For example, the budget for abatement will be greatly affected if other comprehensive modernization actions are undertaken at the same time. When the windows are replaced for energy conservation purposes, paint removal is unnecessary and the abatement cost is saved. In other cases, the additional cost of paint removal makes replacement cost-effective, while it may not be cost-effective without this consideration. Thus, the lead paint inspections are important for budgeting and planning decisions.

Data from field testing have shown that there are no certain patterns of lead-based paint. It is possible that five doors in a row show leaded conditions while the sixth door is free of lead-based paint and need not be abated. Testing using XRFs is always much less expensive than abatement, so testing of each part of each unit is required even when general patterns of hazards are present. Careful records of the testing must be kept to guide the abatement actions so that abatement will occur at each place with a lead-based paint immediate hazard, but not where it is unnecessary.

If additional testing is required as described above, it is an eligible activity under CIAP. This differs from the instructions in Notice PIH 84–6. Under that notice, if a PHA wished to test beyond the sample, it could do so at its own expense.

Based on statutory considerations and the likelihood of risk, HUD proposes to prioritize the testing by project type and

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age. For project type, the following testing priorities are proposed: (1) Units housing children with EBLs as identified by a health professional at any time; (2) common areas and exteriors or projects housing children with EBLs as identified by a health professional at any time; and (3) all other family projects, including common areas and exteriors and non-dwelling facilities that are commonly used by children under seven years of age (such as community, health care and day care centers). In cases where a project consists of buildings for families and for elderly persons, the units, common areas, and exteriors of the family buildings would be tested. No projects for the elderly or buildings occupied only by elderly persons would be tested because the hazards of lead-based paint poisoning are associated with children.

Testing is proposed to be conducted first in pre-1950 projects, and, secondly, in projects constructed between 1950 and 1972. Projects constructed after 1972 and prior to 1978 need be tested only if there has been a previous demonstration that lead-based paint is present in some projects operated by the PHA and constructed during that period. Such a demonstration could occur through testing of a unit occupied by a child with identified elevated blood lead level or through a state or local testing program.

The proposed rule would require PHAs to test all walls, ceilings, doors and frames, windowsills and frames, and woodwork in all rooms of the units sampled. PHAs would be required to maintain records of which units, buildings, and projects have been tested and the results of the testing and the condition of the painted surfaces by location within the unit, common area and exterior. Units previously tested according to the specifications of this rule or tested according to substantially equivalent state or local laws, ordinances, codes or regulations, are not required to be retested. PHAs must have records which demonstrate the testing was conducted according to the specifications of this rule, or a HUD determination that testing was performed according to substantially equivalent specifications. HUD proposes to require that all testing be completed within two years from the effective date of a final rule with this provision except where there is a lack of testing equipment or funds. HUD requests public comments on the feasibility of the two-year timeframe, given the number of testing machines or CLPPPs in the country and the size and number of PHAs.

HUD intends to provide funds from CIAP over the next two years which together with funds likely to be available from PHA operating income and state, local and tribal sources will be sufficient to complete testing within the two-year timeframe. The regulation proposes that a PHA first rely on local or state public health or housing agencies for testing and to seek HUD's financial assistance only as a last resort after other resources have been exhausted. PHAs would be required to certify, if they need CIAP funds for testing, that no local, state or tribal resources were currently available and they would not use CIAP funding if local, state or tribal resources became available during the testing period. The regulation would require the PHA to begin testing for lead-based paint immediately after a final regulation is effective. HUD suggests this approach because there are approximately 50 active CLPPP programs capable of testing lead-based paint, which have provided services to PHAs in the past at nominal or no cost. HUD also requests comments on other available testing resources for PHAs.

The PHA has various options regarding the testing service. The PHA could contract with public or private entities for testing or contract with the public or private entities to train the PHA staff. HUD may fund the testing if other sources are unavailable and is considering the possibility of placing testing services on the Consolidated Supply Program.

In testing for lead-based paint, HUD proposes that the standard for reliable detection of surface area would be readings of greater than or equal to 0.7 mg/cm². The 0.7 mg/cm² standard is recommended in CDC's January 1985 statement. Testing to more stringent standards is permitted if required by state or local law.

For quality control, HUD also proposes to require the PHA to certify that it has complied with local and state public health or housing requirements for test procedures. The PHA certification must be supported by evidence from the locality or state that the testing program meets local or state standards. This evidence must be available in the PHA's files. HUD requests comments regarding other quality control techniques and HUD's responsibility when there are no local or state standards or supervision. HUD also requests comments regarding any tribal quality control standards.

In cases where HUD is paying for the testing, portable XRFs or substantially equivalent methods are required for testing. Portable XRFs are industry acceptable, recommended by CDC, effective and efficient, and less costly than laboratory chemical analysis. Laboratory chemical analysis is discouraged because there is no direct equivalence between this type of analysis and the readings given by the XRFs. Lead paing analysis by laboratory chemical analysis also takes longer than by use of an XRF. The XRF provides immediate readings. In the laboratory chemical analysis approach, it is estimated that thirty to forty samples can be analyzed per day at a cost of $12 per sample in a public laboratory. Typically, six to eight samples are taken per room. Thus, it costs about $84 per room to test for lead paint using the laboratory chemical analysis method. The cost for this service at private laboratories is estimated at $25 per sample or $175 per room. The cost of using an XRF is estimated at $20 per room (taking twenty to twenty-five readings per room) and typically five two-bedroom units can be tested in one day. Two companies are currently manufacturing XRFs. The cost is between $6,500 and $8,900 per machine, and the yearly maintenance is approximately $1,500. Certain CLPPPs may be using only laboratory chemical analysis. HUD is interested in learning which localities use only this method. HUD is considering paying (through CIAP) for the equivalent cost of using XRFs, but requests comments from local lead programs and the scientific community regarding laboratory chemical analysis standards and equivalency of test results with XRFs.

B. Abatement

When defective lead-based paint or intact lead-based paint on a chewable surface is identified, the order of abatement is as follows: (1) Units housing children identified with EBLs; (2) common areas and exterior surfaces of projects housing children with EBLs; and (3) all other family projects including common areas and exterior surfaces and non-dwelling facilities which are commonly used by children under seven years of age (such as community, health care and day care centers). These priorities are generally the same as provided under Notice PIH 84-6. Within the third category, abatement activity should be conducted in various projects, and within projects, in various areas (*i.e.*, exterior, interior, common spaces, units) in priority order in relation to the extent of the lead-based paint immediate hazard to children under seven years of age, as determined by the testing results.

The degree of abatement is based upon the CDC statement, local and state practices, risk to tenants and practicability. The degree of abatement would vary between interior and exterior surfaces including common areas. For interior surfaces, abatement treatment would be provided to defective and intact chewable lead-based paint surfaces. In the unit where defective paint is found on any portion of a wall or ceiling surface, the entire wall or ceiling would be abated. Within five days after an EBL child has been identified and the PHA has been notified and before the hazards can be fully abated, the proposed rule would require the PHA to take temporary emergency intervention actions. These actions include removal of all scaling paint from places such as walls, windowsills and frames, door frames and doors that are within easy reach of the child. Full abatement treatment is required within fourteen days after identification of an EBL, if the PHA has available funds. The PHA may request reprogramming of previously approved CIAP funds or apply immediately for emergency modernization funds, if other funding sources are unavailable. For common areas and exterior surfaces and interiors and exteriors of non-dwelling facilities, abatement would include all defective spots and chewable surfaces.

In this rule, HUD proposes to define "defective lead-based paint" to mean any paint on applicable surfaces, having a lead content greater than or equal to 0.7 mg/cm ², that is cracking, scaling, chipping, peeling or loose, and to define "chewable surfaces" as any painted surface, that is reachable up to 5 feet from the floor, and chewable, *i.e.*, protruding corners of walls, windowsills and frames, doors and frames and protruding woodwork. Defective and intact chewable lead-based paint surfaces are considered, in the statutory phrase, "immediate hazards." Intact lead painted surfaces and other chewable surfaces are considered potential hazards rather than immediate hazards because of lack of evidence of poisoning from these surfaces.

The methods of abatement are not prescribed, but the proposed rule requires that the immediate hazard be thoroughly removed or covered. Covering could include such methods as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Removal could include such methods as scraping, after softening the lead-based paint with a chemical or heat treatment. Washing and repainting without thorough removal or covering does not constitute hazard abatement. HUD suggests that PHAs consult the CDC guidelines on hazard abatement. CDC recommends that abatement involve the following four steps: (1) Removing lead paint from protruding wood trim and covering or removing defective lead-based paint on walls; (2) thorough vacuuming to clean up the debris; (3) wet scrubbing for maximum elimination of fine lead-bearing particles; and (4) repainting the area with lead-free paint (that is, paint containing less than 0.06% of lead in the final dried solid).

HUD joins CDC in cautioning PHAs of the abatement hazards in standard removal methods. Before and during abatement, certain precautions are essential. Carpets, rugs, upholstered furniture, bedding, clothing, and eating and cooking utensils must be sealed as tightly as possible in plastic to protect them from the enormous increase in lead-bearing dust created by the removal procedures. When feasible, this work should be carried out in one room at a time, with the room closed off and all furnishings removed. Until the first three steps of the abatement process discussed above are completed, all young children and pregnant women should live elsewhere both day and night. Those doing the work should comply with OSHA standards [29 CFR Part 1910); they should use respirators and wear coveralls, which must not be taken to the workers' homes for laundering.

Removing paint by heat, sanding, scraping and liquid paint removers is hazardous. Most solvents in liquid paint removers evaporate rapidly and are flammable and toxic. When gas torches, heat guns, and sanding devices are used to remove paint, air lead levels increase in the work area. Sanding produces the greatest deposits of lead in dust, with rates as high as 10mg of lead/sq. ft./hour. Scraping will probably produce fewer fine particles than sanding. Therefore, sanding down to bare surfaces is not recommended.

Cleanup after lead-paint removal is important. The area should be vacuumed thoroughly and then wet-scrubbed with strong detergents. PHAs and their contractors shall deposit lead-based paint debris in accordance with all local, State and Federal requirements. EPA regulations provide that if the concentration of lead is 5.0 milligrams per liter, the waste is considered hazardous and toxic and must be disposed of in a hazardous waste landfill (40 CFR 264.300). See also 40 CFR parts 260-271.

Tenant relocation should be considered during certain methods of abatement. The regulation would require PHAs to take appropriate steps to protect tenants from hazards such as lead-based paint dust and fumes during the abatement process. At a minimum, the PHA should assure that young children and pregnant women are not exposed to lead-based paint dust and fumes.

C. Funding

If State and local funds are unavailable for testing and abatement, HUD expects that PHAs will comply with this regulation through the use of operating income or the Comprehensive Improvement Assistance Program (CIAP) under section 14 of the United States Housing Act of 1937 (42 U.S.C 1437), which is funded by annual appropriations. No revision to Performance Funding System calculations will be based on these requirements. The demand for CIAP funds exceeds the available amounts; therefore, needs are prioritized by urgency. Lead-based paint testing and abatement will fit within this framework.

The ANPR requested comments concerning lead-based paint hazard elimination as emergency modernization. All but one of the 11 commenters responding to this question agreed that lead-based paint hazard elimination may be considered emergency modernization under at least some circumstances. Some commenters specified conditions for the use of emergency modernization funds including: (1) Use emergency modernization funds when a child living in or frequently visiting a dwelling unit is identified as having undue lead absorption; (2) do not limit use of emergency modernization assistance to housing with children under seven years of age; and (3) use emergency modernization assistance if the unit is occupied by an "at-risk" family and paint is chipped, peeling or cracking. Some commenters believed because of PHAs' ongoing maintenance programs and participation in the CIAP program, lead-based paint has been virtually eliminated as a major hazard in conventional public housing. Some commenters suggested that the criteria in the 1984 CIAP set-aside Notice PIH 84-6 should be applied to PHAs seeking funds under emergency modernization.

The ANPR also asked to what extent should the priority decisions between lead-based paint abatement and other modernization needs, such as safe wiring, working furnaces, workable incinerators, leaking roofs or non-working sanitary facilities or elevators,

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be left with PHAs in designing modernization programs and applying for funds. Seven commenters responded to this question. One PHA believed that it should be permitted to set its own priorities on emergency items. Other commenters rated lead-based paint removal as a high priority as indicated by the following comments: (1) Lead-based paint abatement should be considered the first priority or at least one of the first; (2) lead-based paint abatement should have priority over other needs if children under seven years of age are present; and (3) funds should be allocated on the basis of the most immediate effect on health and safety. CDC declined to suggest "where lead hazard abatement ranks in the competition for modernization" where children do not have elevated blood lead levels but the unit has lead-based paint. One commenter suggested that intact lead-based paint should be considered a low priority. One commenter suggested a work schedule for lead-based paint removal (*i.e.*, remove lead-based paint first from units with children six months to seven years old, and secondly from units with children seven years to twenty years old, and then from all units). Another commenter recommended a five-year period for the elimination of all lead-based paint with priority based on age and condition of housing regardless of tenant inconvenience.

The first step in the CIAP funding decision is Preliminary Application. Preliminary Applications are first screened on the basis of such factors as the urgency of the need and the management and modernization capability of the PHA. Lead-based paint needs will be considered among others at this screening. Section 968.5(d) is being amended to state that the HUD office shall review the Preliminary Applications. Those selected for Joint Review receive further scrutiny during a HUD on-site review. After Joint Review HUD decides which PHAs will be invited to submit Final Applications based upon the funding preferences.

Under CIAP, there are currently three funding preferences. *Group 1* includes projects having emergency conditions that pose an immediate threat (*i.e.*, must be corrected within one year of funding approval) to tenant health or safety (emergency modernization and emergency work under homeownership modernization). Under emergency modernization, funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. *Group 2* includes projects (a) having conditions which threaten tenant health or safety or having a significant number (10 percent or more) of vacant or substandard units and (b) located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose and homeownership modernization). *Group 3* includes other projects not meeting the criteria of Groups 1 or 2 (comprehensive, special purpose and homeownership modernization).

HUD is proposing to amend the funding preferences. Lead-based paint hazard abatement would fit within revised Groups 1 and 2. Testing and abatement of EBL units, common areas and exteriors would be an eligible activity under Group 1. The PHA may request reprogramming of previously approved CIAP funds or apply immediately for emergency modernization funds, if other funding sources are unavailable.

All other required lead-based paint testing (not abatement) would also be eligible under Group 1. Testing under this category would be a lower priority than testing and abatement of EBL units, common areas and exteriors and other emergencies and would not have to be completed within a year. The Department may control the use of funds for this purpose by setting a limit in the annual funding notice.

All other lead-based paint abatement would fall within Group 2 as a condition that threatens tenant health and safety and is a funding preference within that Group. Other funding preferences may include correction of physical disparities under the nondiscrimination preference, funding of subsequent stage comprehensive modernization and cost benefit. To be eligible under Group 2, lead-based paint abatement would have to occur as part of comprehensive modernization and may be subject to cost benefit ranking within established ranges, based on severity of abatement needs. Cost benefits are composed of a cost benefit ratio and improved habitability. The cost benefit ratio is the total estimated annual savings of all proposed physical and management improvements divided by the total cost of such improvements. Improved habitability includes those factors for which actual dollar savings are difficult to identify and includes such factors as prevention of unit turnover and vacancies, improved security and reduced vandalism.

To the extent funds are available, a PHA would be required to address lead-based paint hazards within 5 years after completion of testing of the entire PHA inventory of pre-1972 housing, excluding projects, buildings and common areas for the elderly. Actions to address lead-based paint hazards would be required to be reflected in a PHA's comprehensive plan for modernization. It is important that PHAs with comprehensive modernization programs in process comply with the lead-based paint requirements and inform HUD whether the projects within such programs have been tested for lead-based paint. If they have not included such testing and abatement as part of their comprehensive modernization program, they must inform HUD how they intend to accomplish this and with what resources they will carry out testing and abatement, through local resources, operating funds, or CIAP. PHAs may not enter into contracts under CIAP for treatment of areas which could have lead-based paint, other than for testing lead-based paint, until such testing is completed and any necessary abatement is included in the revised modernization budget, if necessary.

D. Notification

All commenters responding to the notification questions of the ANPR agreed that HUD should revise present notifications to reflect current knowledge. One commenter suggested including CDC guidelines relating to low-lead exposure. Other commenters suggested informing parents of the probable absence of noticeable symptoms and the possibility of learning disabilities related to lead-based paint poisoning. Other commenters suggested that the hazards to those other than children should be described and that every tenant's file should include a signature acknowledging receipt of the notice.

The ANPR also asked if there was a need to clarify the notices by shortening and simplifying them. All commenters responding to this question agreed that the notices should be shortened and simplified. Other suggestions included multilingual notices, notices that advise residents to contact PHAs about loose, peeling, cracking and falling paint, and notice in the form of a hand-out for owners outlining the effects of lead poisoning, treatment methods and the results of court cases that have involved lead poisoning. It was stated that the hand-out should also outline the action a tenant should consider whenever their dwelling contains lead-based paint. Notices should also warn the tenants of where lead poisoning can occur and suggest periodic screening.

All commenters who addressed the question suggested that notices should be distributed to occupants of post-1950 housing. One commenter added that the notices should be orally explained by appropriately trained personnel. Another commenter suggested that HUD field offices should verbally notify tenants of their plan for dealing with a particular unit.

The proposed regulation would require that purchasers and tenants of all HUD-associated housing constructed prior to 1978 be notified about the hazards of lead-based paint. HUD proposes to delete the notices (Appendices I and II) from Part 35 to permit the issuance of more program-specific notices. HUD expects that the notice for public housing tenants will request tenants to notify the PHA of defective paint conditions.

E. Monitoring and Enforcement

The ANPR asked to what extent HUD should alter its present monitoring and enforcement approaches as applied to specific progams. One PHA suggested that a PHA should be required to certify compliance with applicable regulations as part of its engineering survey. In case of noncompliance, HUD could require the PHA to develop a work plan and monitor it. Two commenters stated that the current regulations are not being carried out and suggested that HUD could: (1) Condition its disbursement of CIAP funds to a PHA on the use of those funds for lead paint abatement as a high priority; (2) impose conditions on or threaten the withdrawal of operating subsidies as well as receivership for a PHA's disregard of the regulations; and (3) encourage communication between local programs.

Other general suggestions included: (1) Monitoring at the regional level; (2) increasing funding for monitoring and enforcement functions; (3) enforcing regulations uniformly and using sanctions to encourage prompt compliance; and (4) training personnel to administer the regulations and providing HUD field offices with health professionals to provide technical assistance. This assistance could include: (a) Ensuring that XRFs are calibrated correctly, (b) giving notice of the hazards of lead-based paint to tenants in housing units, (c) assisting the tenants in moving to safe quarters during the abatement process, (d) assisting with lead screening of all children (under seven years of age) in housing units, and (e) supervising clean-up units following abatement and safe disposal of lead-based paint debris.

Field office monitoring of PHAs will cover compliance with these regulations. Monitoring of completion of testing and abatement of lead-based paint immediate hazards will be carried out in several ways. All PHAs must address lead-based paint in their comprehensive plans. Comprehensive plans asses a PHA's needs and how they will be met. These plans are reviewed and approved by HUD. PHAs with comprehensive modernization programs in progress will be required to explain how they will test and where necessary, abate immediate hazards. Monitoring will also be conducted through annual performance reviews, project engineering surveys and maintenance operations reviews. Sanctions available to the Department will be used, as needed.

VI. Section by Section Review of Proposed Regulations

The proposed regulations amend Parts 35, 905, 965 and 968. Each of these amendments are described below.

Part 35

In Subpart A, § 35.1 is proposed to be amended by changing the reference to 1950 to 1978. Definitions of immediate hazard and potential hazard in § 35.3 are proposed to be deleted. Section 35.5 is proposed to be amended to refer to the hazards of lead-based paint in HUD-associated housing constructed prior to 1978 and to delete reference to the prescribed text of notices in Appendix I.

In Subpart C, § 35.20 has been revised to more accurately reflect section 302 of the LPPPA. Definitions used only in Subpart C of Part 35 are listed in § 35.22. Section 35.24 has also been amended to limit inspection and abatement treatment prescribed as minimum requirements for all programs to housing constructed prior to 1978, authorize superseding program-specific regulations, and revise treatment methods. Section 35.25, which provides for a lead-based paint clearinghouse in HUD, is proposed to be deleted. HUD has received little information or suggestions with respect to elimination of lead-based paint hazards through this clearinghouse.

Subpart E of Part 35 is proposed to be amended by simplifying the definitions and amending the requirements in a similar fashion to § 35.24.

Part 905

Section 905.107 is proposed to be amended by adding a specific requirement for lead-based paint poisoning prevention compliance. IHAs are also covered by Part 965 as amended herein.

Part 965

These proposed rules would add a new Subpart H to Part 965 for lead-based prevention. The subject matter of this new subpart is discussed extensively above.

Part 968

Section 968.4 is proposed to be amended by specifically including lead-based paint testing and abatement as eligible modernization costs. Section 968.5(g)(3) is proposed to be amended by allowing funding of lead-based paint testing and abatement in one or two stages. Testing is to be completed within two years and abatement is to be completed within five years after completion of testing subject to fund availability. The funding preferences in § 968.5(h) are also proposed to be expanded to include lead-based paint testing and abatement. This proposed rule also revises and expands the funding preferences and the application screening process under CIAP. This section is discussed above in detail in Section V.C.

Other Matters

Regulatory Flexibility Act Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. HUD finds that there are not anticompetitive discriminatory aspects of the proposed rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410.

OMB Control Number

The information collection requirements contained in §§ 965.703(d), 965.704(f), 968.705(a), 968.5(i)(6)(ix) and 968.9(e) of this proposed rule have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3502). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be

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announced by separate notice in the **Federal Register**.

Regulatory Impact Analysis

This rule qualifies as a major rule as defined in Executive Order 12291. The Department is conducting a cost analysis of the proposed regulations as part of the public and Indian housing modernization needs study. Once completed, this cost analysis will serve as a Regulatory Impact Analysis. The Department interprets the Executive Order to require an analysis of potential costs and cost alternatives without regard to the degree to which cost-effectiveness is an appropriate standard under the applicable statute. The cost study will be available for the final rulemaking. The procedures otherwise required under Executive Order 12291 were not completed as to this proposed rule because of a deadline imposed by judicial order, as described above.

Semiannual Agenda of Regulations

This rule was listed as sequence number 764 under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44165, 44177) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 35

Lead poisoning, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs: housing and community development, Grant programs: Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 965

Energy conservation, Loan programs: housing and community development, Public housing, Utilities.

24 CFR Part 968

Loan programs: housing and community development, Public housing, Reporting and recordkeeping requirements, Substantial rehabilitation.

Accordingly, 24 CFR Parts 35, 905, 965, and 968 would be amended as follows:

PART 35—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation of Part 35 would be revised as set forth below and any authority citations following any section in Part 35 would be removed.

Authority: Pub. L. 91–695, 84 Stat. 2078, as amended by Pub. L. 93–151 (42 U.S.C. 4801–4846); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

2. Subpart A would be revised to read as follows:

Subpart A—Notification To Purchasers and Tenants of HUD-Associated Housing Constructed Prior to 1978 of the Hazards of Lead-Based Paint Poisoning

§ 35.1 Purpose and scope.

This Subpart A establishes procedures to assure that purchasers and tenants of all HUD-associated housing constructed prior to 1978 are notified of the hazards of lead-based paint which may exist in such housing, of the symptoms and treatment of lead-based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards.

§ 35.3 Definitions.

Act. The Lead-Based Paint Poisoning Prevention Act, Pub. L. 91–695, 84 Stat. 2078, as amended by Pub. L. 93–151 and Pub. L. 94–317 (42 U.S.C. 4801–4846).

Assistant Secretaries. The Assistant Secretaries in the Department of Housing and Urban Development.

Department of HUD. The U.S. Department of Housing and Urban Development.

HUD-associated housing. Any residential structure, as defined in this section, that is owned by the Department or Secretary of HUD or financially assisted under any program administered by the Secretary, when such structures are being constructed, sold, purchased, leased, rehabilitated (including routine maintenance work), modernized or improved with any form of HUD financial assistance whether by grant, loan, advance, housing assistance payments, the proceeds of a HUD-guaranteed loan or a HUD-insured mortgage.

Residential structure. Any house, apartment or structure intended for human habitation, including any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center, or extended care facilities, college housing, hospitals, group practice facilities and community facilities.

Secretary. The Secretary of Housing and Urban Development or a HUD official delegated the Secretary's authority with respect to the Act.

§ 35.5 Requirements.

(a) Purchasers and tenants of HUD-associated housing constructed prior to 1978 shall be notified:

(1) That the property was constructed prior to 1978;

(2) That the property may contain lead-based paint;

(3) Of the hazards of lead-based paint;

(4) Of the symptoms and treatment of lead-based paint poisoning; and

(5) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards).

Prospective purchasers or renters shall receive the above notifications prior to purchase or rental.

(b) Each Assistant Secretary shall take necessary actions to implement the requirements of paragraph (a) of this section with respect to the HUD programs within his/her administrative jurisdiction. Such actions shall include the preparation and prescription of appropriate notices or brochures providing the required information, and the establishment of procedures to:

(1) Provide evidence (including certification) that the prescribed notification has been received by purchasers and tenants of HUD-associated housing constructed prior to 1978, and

(2) Require the inclusion of appropriate provisions in contracts of sale, rental or management of HUD-associated housing to assure that purchasers and tenants receive the prescribed notification.

3. Section 35.20 would be revised to read as follows:

§ 35.20 Purpose and scope.

This Subpart C implements the provisions of section 302 of the Act with respect to establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing HUD-associated housing which may present such hazards.

4. Section 35.22 would be revised to read as follows:

§ 35.22 Definitions.

As used in this subpart:

HUD-associated housing shall have the meaning ascribed in § 35.3.

Residential structure shall have the meaning ascribed in § 35.3.

Applicable surface means any interior surface of a residential structure, whether accessible or not, and any exterior surface of a residential

structure such as a stair, deck, porch, railing, window, or doors which is readily accessible to children under seven years of age.

Defective paint surface means an applicable surface on which the paint is cracking, scaling, chipping, peeling, or loose.

5. Section 35.24 would be amended by revising paragraphs (a), (b) introductory text, (b)(1) introductory text, (b)(1)(v), (3), and (4) and adding (b)(5) to read as follows:

§ 35.24 Requirements.

(a) Each Assistant Secretary shall establish procedures with respect to programs involving HUD-associated housing within his or her administrative jurisdiction to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to such housing which may present such hazards.

(b) Subject to the provisions of separate regulations promulgated with respect to any program by the Assistant Secretary having jurisdiction over such program, the following minimum requirements shall apply to all programs:

(1) All applicable surfaces of HUD-associated housing constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist. Responsibility for such inspections shall be as follows:

* * * * *

(v) Low-income public and Indian housing (including occupied units) shall be inspected and abated by the local housing authority, local public agency or other agency responsible for maintenance, management, repair and operation of such housing.

* * * * *

(3) Treatment necessary to eliminate immediate hazards shall, at a minimum, consist of covering or removal of defective paint surfaces found in HUD-associated housing constructed prior to 1978. Covering may be accomplished by such means as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Removal may be accomplished by such methods as scraping, after softening the lead-based paint with a chemical or heat treatment. Washing and repainting without thorough removal or covering does not constitute adequate treatment. Where possible due to the nature of the HUD mortgage insurance or other assistance being provided, required treatment shall be completed before occupancy and shall constitute a condition to the provision of such mortgage insurance or other assistance.

(4) Appropriate provisions for the inspection of applicable surfaces and elimination of hazards and provisions necessary for enforcement of the requirements of this section shall be included in contracts and subcontracts involving HUD-associated housing constructed prior to 1978.

(5) Any requirement of this section shall be deemed superseded by a regulation promulgated by an Assistant Secretary with respect to any program under his or her jurisdiction which states expressly that it is promulgated pursuant to the authorization granted in this section and supersedes, with respect to programs with its defined scope, the requirements prescribed by this section. See, *e.g.*, 24 CFR Part 965, Subpart H (Public and Indian Housing).

§ 35.25 [Removed]

6. Section 35.25 would be removed.

7. Section 35.54 would be revised to read as follows:

§ 35.54 Definitions.

The definitions contained in §§ 35.3 and 35.22 shall apply to this Subpart E. The following definitions are also applicable to this Subpart E:

Federal agency. The United States or any executive departments, independent establishments, administrative agencies and instrumentalities of the United States, including corporations in which all or substantially all of the stock is beneficially owned by the United States or by any of the foregoing departments, establishments, agencies or instrumentalties.

Federally-owned properties. Any properties owned by a federal agency as defined in this section.

Use for residential habitation. The use of a property as a residential structure as defined in § 35.3.

8. Section 35.56 would be amended by revising paragraphs (a)(1), (2), and (3) and removing (a)(4) to read as follows:

§ 35.56 Requirements.

(a) * * *

(1) All applicable surfaces of residential structures constructed prior to 1978 shall be inspected to determine whether defective paint surfaces exist. For this purpose all defective paint surfaces shall be assumed to be immediate hazards; and

(2) Treatment necessary to eliminate immediate hazards shall consist of covering or removal of defective paint surfaces. Covering may be accomplished by such means as adding a layer of gypsum wallboard or a fiberglass cloth barrier to the wall surface. Removal may be accomplished by such methods as scraping, after softening the lead-based paint with a chemical or heat treatment. Washing and repainting without thorough removal or covering does not constitute adequate treatment.

(3) Prospective purchasers are provided all notifications described in § 35.5(a).

* * * * *

Appendices I and II [Removed]

9. Appendices I and II would be removed.

PART 905—INDIAN HOUSING

10. The citation of authority for Part 905 would be revised to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437l, 1437j, 1437n); sec. (7)(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); § 905.107(f) also issued under sec. 302, Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822).

11. Section 905.107 would be amended by adding paragraph (f) to read as follows:

§ 905.107 Compliance with other Federal requirements.

* * * * *

(f) *Lead-based paint poisoning prevention.* The IHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846), Subparts A and B of 24 CFR Part 35, and Subpart H of 24 CFR Part 965, PHA-Owned or Leased Projects—Maintenance and Operation.

PART 965—PHA-OWNED OR LEASED PROJECTS—MAINTENANCE AND OPERATION

12. Part 965 would be amended by adding Subpart H—Lead-Based Paint Prevention to read as follows:

Subpart H—Lead-Based Paint Poisoning Prevention

Sec.

965.701 Purpose and applicability.
965.702 Definitions.
965.703 Inspection and testing.
965.704 Hazard abatement requirements.
965.705 Compliance with state and local laws.
965.706 Monitoring and enforcement.

Authority: Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846).

Subpart H—Lead-Based Paint Poisoning Prevention

§ 965.701 Purpose and applicability.

The purpose of this subpart is to implement the provisions of section 302

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of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801–4186, by establishing procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to establishing maintenance procedures to eliminate, as far as practicable, the immediate hazards due to the presence of paint which may contain lead and PHA/IHA-owned housing assisted under the United States Housing Act of 1937. This subpart applies to PHA-owned low income public housing projects, including Turnkey III, Mutual Help and conveyed Lanham Act and Public Works Administration projects, and to Section 23 Leased Housing Bond-Financed projects. This subpart does not apply to projects under the Section 23 Leased Housing Non-Bond-Financed Program, the Section 10(c) Leased Housing Program, and the Section 23 and Section 8 Housing Assistance Payments Programs. This subpart is promulgated pursuant to the authorization granted in 24 CFR 35.24(b)(5) and supersedes, with respect to all housing to which it applies, the requirements prescribed by Subpart C of 24 CFR Part 35.

§ 965.702 Definitions.

Applicable surface. Any interior surface, whether accessible or not, and any exterior surface such as a stair, deck, porch, railing, window, or doors which is readily accessible to children under seven years of age.

Chewable surface. Any painted surface reachable up to five feet from the floor and chewable, *e.g.* protruding corners, windowsills and frames, doors and frames, and other protruding woodwork.

Defective lead-based paint. Paint on applicable surfaces having a lead content of greater than or equal to 0.7 mg/cm^2, that is cracking, scaling, chipping, peeling or loose.

Elevated blood lead level or EBL. Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 ug/dl (micrograms of lead per deciliter of whole blood) or greater.

Fomily project. Any project assisted under the U.S. Housing Act of 1937 (other than Section 8 or 17 of the Act) which is not an elderly project. For this purpose, an elderly project is one which was designated for occupancy by the elderly at its inception (and has retained that character) or, although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project to elderly families. A building within a mixed-use project which meets these qualifications shall, for purposes of this subpart, be excluded from any family project.

Lead-based paint. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 0.7 mg/cm^2.

§ 965.703 Inspection and testing.

(a) *General.* All units within the coverage of this section shall be tested in accordance with the requirements set forth herein not later than [two years after effective date of rule]. If records establish that units or projects were tested or treated in accordance with the standards prescribed in this subpart prior to [effective date of this rule], such units or projects are not required to be re-tested or re-treated.

(b) *Random sample.* Where random sample testing is prescribed, ten units shall be tested in projects with 20 or more units, and six units shall be tested in projects with fewer than 20 units, together with a sample of common areas and exterior applicable surfaces. Common areas included in the sample should include non-dwelling facilities commonly used by children under seven years of age, such as community, health care and day care centers. All applicable surfaces in selected units shall be tested. If none of the tested units, common areas or exterior applicable surfaces contain lead-based paint, the project may be considered free of lead-based paint and no further testing or abatement action will be required. If lead-based paint is found in any units in the sample, all units in the project are required to be tested. If lead-based paint is found in any common areas or exterior applicable surfaces in the sample, all common areas and exterior applicable surfaces in the project are required to be tested.

(c) *Testing requirements.* Testing shall be conducted in the following order of priority:

(1) Any unit housing a child with an elevated blood lead level as identified by a health professional at any time, and the remaining units, and, by random sample, the common areas and applicable exterior surfaces of a project in which a unit tested under this priority has been found to contain lead-based paint. Testing of the unit housing a child with an elevated blood lead level shall be completed within five days after notification to the PHA of the identification of the child.

(2) By random sample, all family projects constructed prior to 1950.

(3) By random sample, all family projects constructed after 1949 and prior to 1973.

(4) By random sample, all family projects constructed during or after 1973 and prior to 1978, if the presence of lead-based paint in any project operated by the PHA constructed during such period has been confirmed in a test conducted under the priority established in paragraph (c)(1) of this section or in any other manner, such as by an inspection under a local Childhood Lead Poisoning Prevention Program.

Testing services available from state, local or tribal health or housing agencies shall be utilized to the extent available. Testing will be considered an eligible modernization cost under Part 968 only upon PHA certification that testing services are otherwise unavailable. Testing shall be performed by X-ray fluorescence analyzer (XRF) or a substantially equivalent method approved by HUD. Test readings of 0.7 mg/cm^2 or higher are considered positive for presence of lead-based paint. The PHA shall maintain records of which units, buildings and projects have been tested, results of the testing, and the condition of painted surfaces by location in or on the unit, common area or exterior surface.

(d) *Records.* The PHA shall maintain records of lead-based paint testing, and shall report information regarding such testing, in accordance with such requirements as shall be prescribed by HUD.

§ 965.704 Hazard abatement requirements.

(a) *General.* Subject to availability of resources, all abatement actions required by this section shall be completed within five years after completion of all testing required by § 965.703.

(b) *Abatement actions.* Hazard abatement actions shall be carried out in accordance with the following requirements and order of priority:

(1) Unit housing a child with an identified elevated blood lead level. If defective lead-based paint is found in any portion of a wall or ceiling surface within the unit, the entire wall or ceiling, and any chewable surface found to contain lead-based paint, shall be treated. Full abatement treatment shall be completed within 14 days after positive testing, unless funding sources are not immediately available. In such event, reprogramming of previously approved CIAP funds, or emergency modernization funds, should be requested immediately. If full treatment cannot be completed within five days after positive testing, emergency intervention actions (including removing defective lead-based paint and scrubbing surfaces after such removal with strong detergents) shall be taken within such time.

(2) Common areas and exterior applicable surfaces of projects in which children with identified blood lead levels reside. Abatement treatment shall be provided to defective lead-based paint spots on applicable surfaces other than chewable surfaces, and to complete chewable surfaces containing defective or intact lead-based paint.

(3) Other family projects. Abatement treatment shall be provided to all applicable surfaces for which positive testing results have been found. Where defective lead-based paint is found on a wall or ceiling surface within a unit, the entire wall or ceiling surface should be treated. In common areas, including interior surfaces of non-dwelling facilities, and on applicable exterior surfaces, treatment should be provided to defective lead-based paint spots and to complete chewable surfaces containing defective or intact lead-based paint. Treatment within a project should be prioritized in relation to the immediacy of the hazards found to children under seven years of age.

(c) *Abatement methods.* Abatement treatment shall be provided by such methods (including removal by heat, chemicals, sanding or covering with fiberglass cloth barrier or gypsum wallboard) as the PHA shall select as being the most cost-effective adequate treatment for the surface under the circumstances. Washing and repainting without thorough removal or covering does not constitute adequate abatement treatment.

(d) *Tenant protection.* The PHA shall take appropriate action to protect tenants from hazards associated with abatement procedures. Where deemed necessary, tenant relocation during abatement procedures may be accomplished with CIAP assistance.

(e) *Disposal of lead-based paint debris.* The PHA shall dispose of lead-based paint debris in accordance with applicable local, state or Federal requirements. (See, *e.g.*, 40 CFR Parts 260–271.)

(f) *Records.* The PHA shall maintain records of abatement treatment provided under this subpart, and shall report information regarding such treatment, and its compliance with the requirements of 24 CFR Part 35, Subpart A, in accordance with such requirements as shall be prescribed by HUD.

§ 965.705 Compliance with state and local laws.

(a) *PHA responsibilities.* Nothing in this subpart H is intended to relieve a PHA of any responsibility for compliance with state or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement. The PHA shall maintain records evidencing compliance with applicable state or local requirements, and shall report information concerning such compliance, in accordance with such requirements as shall be prescribed by HUD.

(b) *HUD responsibility.* If HUD determines that a state or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of this subpart and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may modify or waive the requirements of this subpart in such manner as may be appropriate to promote efficiency while ensuring such comparable level of protection.

§ 965.706 Monitoring and enforcement.

PHA compliance with the requirements of this subpart will be included in the scope of HUD monitoring of PHA operations. Noncompliance with any requirement of this subpart may subject a PHA to sanctions provided under the Annual Contribution Contract or to enforcement by other means authorized by law.

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

13. The citation of authority for Part 968 would be revised to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437), sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)), Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846).

14. Section 968.4 would be amended by adding new paragraphs (h) and (i) to read as follows:

§ 968.4 Eligible costs.

* * * * *

(h) *Lead-based paint testing.* Lead-based paint testing costs, as described in § 965.703, are eligible modernization costs.

(i) *Lead-based paint hazard abatement.* Lead-based paint hazard abatement costs, as described in § 965.704, are eligible modernization costs.

15. Section 968.5 would be amended by revising paragraph (d), adding a new paragraph (g)(3), revising paragraph (h), and adding a new paragraph (i)(6)(ix) to read as follows:

§ 968.5 Procedures for obtaining approval of a modernization program.

* * * * *

(d) *HUD screening.* The HUD office shall review the Preliminary Application. The HUD office shall select the Preliminary Application for further processing on the basis of such factors as, the urgency of the need and the management and modernization capability of the PHA.

* * * * *

(g) * * *

(3) *Lead-based paint testing and abatement funding.* In general, modernization involving lead-based paint testing and abatement may be funded in one or two stages as described in paragraphs (g) (1) and (2) of this section. All testing shall be completed within two years from [the effective date of this rule] except where there is a lack of testing equipment or funds to meet this requirement, and all abatement shall be completed within five years (unless funding is unavailable) after completion of testing of the entire PHA pre-1973 inventory, excluding projects, buildings and common areas for the elderly.

(h) *HUD preliminary funding decisions.* After all of the Joint Reviews, the HUD office will determine whether the PHA will be invited to submit the Final Application for the identified project(s) by considering whether the PHA has adequately addressed all relevant issues, as determined by HUD, giving preferences to PHAs which request assistance for:

(1) Group 1, projects having emergency conditions that pose an immediate threat *(i.e.,* must be corrected within one year of funding approval) to tenant health or safety. Funding is limited to correction of emergency conditions and may not be used for substantial rehabilitation. Emergency conditions include all testing required by § 965.703 and lead-based paint hazard abatement in public and Indian housing family units, common areas, and exteriors of buildings in which children with elevated blood levels (EBLS) reside (see § 965.704(b) (1)–(2)).

(2) Group 2, projects having conditions which threaten tenant health or safety or having a significant number (10 percent or more) of vacant or substandard units and located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose and homeownership modernization). Within this category,

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the Secretary may give priority to additional factors, such as the correction of physical disparities under the nondiscrimination preference, second or subsequent stage of comprehensive modernization, cost benefit, and the severity of lead-based paint hazard abatement needs. Lead-based paint hazard abatement pursuant to § 965.704(b)(3) is includible within this group.

(3) Group 3, other projects located in PHAs having demonstrated a capability of carrying out the proposed modernization activities (comprehensive, special purpose and homeownership modernization). The Secretary may give priority to factors which demonstrate that the modernization will result in the greatest cost benefit.

* * * * *

(i) * * *

(6) * * *

(ix) The PHA must certify that it will comply with local and state public health testing requirements.

* * * * *

16. Section 968.9 would be amended by revising paragraph (e) to read as follows:

§ 968.9 Other program requirements.

* * * * *

(e) *Lead-based paint poisoning prevention.* The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801–4846) and HUD implementing regulations (24 CFR Part 35 and Part 965, Subpart H). PHAs with comprehensive modernization programs in progress on (effective date of final rule) shall inform HUD whether the projects within such programs have been tested for lead-based paint. If not, the PHA must inform HUD how it intends to accomplish this. PHAs may not enter into contracts under CIAP for treatment of areas which could have lead-based paint, other than for testing lead-based paint, until such testing is completed and any necessary abatement is included in the revised modernization budget, if necessary.

Dated: February 11, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-3360 Filed 2-13-86; 8:45 am]
BILLING CODE 4210-32-M

federal register

Friday
February 14, 1986

Part IV

Environmental Protection Agency

40 CFR Part 180

Tolerance for Ethylene Dibromide; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL-2971-3; OPP-300141A]

Tolerance for Ethylene Dibromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of ethylene dibromide (EDB) *per se* of .03 ppm (30 ppb) in the edible pulp of mangoes that have been fumigated after harvest with the insecticide ethylene dibromide (EDB) in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture, effective until September 30, 1986, with the possibility of extension for an additional year.

EFFECTIVE DATE: Effective on February 14, 1986.

ADDRESS: Written objections, identified by the document control number [OPP-300141A] may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room M-3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Linda K. Vlier, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Room 711, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-7451).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 27 (50 FR 48779), which proposed the reestablishment of an interim tolerance for residues of EDB *per se* on the raw agricultural commodity mangoes resulting from the fumigation of this commodity after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. The Agency proposed that this tolerance would expire on September 30, 1986, with the possibility of renewal for no more than one additional year. This one-year renewal would be considered if by September, 1986, USDA and the exporting countries had substantially moved toward completion of the basic research required to establish alternative fruit fly disinfestation protocols, and data indicate that implementation of non-EDB fruit fly disinfestation techniques by the 1987/1988 harvest season is probable.

An interim tolerance of 30 ppb (.03 ppm) had previously been established in 40 CFR 180.397 for residues of EDB in the edible pulp of mangoes resulting from the fumigation of this commodity after harvest in accordance with the Mediterranean Fruit Fly Control Program of the U.S. Department of Agriculture (50 FR 2550, January 17, 1985). That tolerance rule expired on September 1, 1985.

By notice published in the **Federal Register** of December 27, 1985 (50 FR 52964), the comment period on the proposed rule was extended to January 10, 1986.

No requests for referral to an advisory committee were received in response to the proposed rulemaking.

The Agency received approximately 140 comments in response to the proposed tolerance rule. These comments fell into the following four general categories:

(1) Comments from foreign mango growers (primarily Mexican), foreign governments, and U.S. importers of mangoes supporting reestablishment of a tolerance for residues of EDB on mangoes.

(2) Comments submitted by or on behalf of Florida mango growers protesting reestablishment of a tolerance for residues of EDB on mangoes.

(3) Comments submitted by other interested individuals and environmental and other public interest groups opposed to the reestablishment of the proposed tolerance.

(4) Comments submitted by firms involved in the development of food irradiation facilities as an alternative fruit fly control technique.

Numerous comments supporting the reestablishment of the tolerance were submitted to the Agency by foreign governments (i.e. Haiti, Mexico, Brazil, Columbia, San Salvador, and Peru), foreign mango growers and grower organizations, and U.S. importers, distributors and retailers of imported mangoes. The foreign interests argued that severe adverse economic impacts would result to the affected countries if the EDB tolerance on mangoes were not reestablished because there is no alternative fruit fly disinfestation technique currently available to allow entry of Mexican, Caribbean, Latin American, and South American mangoes into the United States. These comments pointed out that, in addition to providing direct revenue to mango producing countries, the sale of mangoes to the U.S. provides additional economic activity in the agrochemical, transportation, packing and shipping container production industries in those countries.

Haiti, for example, in its comments in support of the proposed tolerance, noted that mangoes are its second largest export crop and that 8 percent of the Haitian population is directly affected by the fresh mango export industry. Haitian interests argued that the economic consequences would be devastating on that country if the tolerance rule were not reinstated. Also strongly in favor of the proposed tolerance was Mexico, which argued that 60,000 Mexican workers would suffer adverse economic consequences if the rule were not established. Mexico claimed that in addition to further immigration pressure other possible consequences would include (1) the tripling of mango prices in the United States; (2) a severe impact on the packaging, transporting and fertilizing industries; and (3) a loss of 5-6 million dollars of tax revenues by the U.S. Government. The Mexican state of Sinaloa likewise pointed out that mango production requires a year round labor force providing permanent employment for farm families, who would contribute to the migratory problems of the United States if they were not employed. Further support was provided by the government of Peru, which contended that the exportation of mangoes from Peru to the United States is of vital importance to numerous Peruvian families, and that the export of mangoes by Peru provides much needed sources to cover expenses for economic development in that country as well as continuing payment of the debt. Comments received from Brazil also focused on the significant local economic problems for mango producing areas in Brazil in the absence of the tolerance rule. The government of Columbia pointed out, moreover, that the premature termination of the EDB disinfestation program would adversely affect plans to redress debt imbalances through the generation and diversification of exports.

The North American Plant Protection Organization, representing the plant protection organizations of Canada, Mexico, and the United States, claimed that the adverse economic impacts on mango producing countries would also affect the ability of these countries to deal effectively with other plant health matters, including cooperative programs affecting more than the exporting countries. The organization also argued that the current lack of an effective treatment for mangoes would be likely to result in the increased smuggling of

infested fruit into the United States with the resultant introduction of exotic fruit flies and an increase in pesticide usage in the domestic market.

U.S. mango importers, distributors and trade associations who supported the reestablishment of the tolerance (e.g. Texas Citrus and Vegetable Import Association, United Fresh Fruit and Vegetable Association, Produce Marketing Association, North American Mango Importers Association) commented that the marketing of imported mangoes results in beneficial economic activity to many U.S. businesses. They also pointed out that the consumption of mangoes in the United States has significantly increased in recent years, and that the reestablishment of the tolerance would prevent a marketing interruption for mangoes. One Texas importer argued that the expiration of the tolerance would probably force his company out of business. This commentor also contended that the Florida mango crop is small and only available during the months of June and July. Florida Citrus Mutual, an organization representing 12,982 Florida citrus growers, also supported the mango tolerance proposal.

The grower countries and U.S. trade associations also agreed with the Agency's assessment that the health risks associated with the actual levels of EDB in imported mangoes at the time of consumption are acceptable for the short-term period of the tolerance rule. In fact, M.A. Hanna, a fifty percent owner of a Brazilian fruit exporter, requested that the tolerance rule be established for a full year, arguing that no real risk would be added during this short additional period, but the extra time would be crucial to the financial well-being of its import business.

Many mango growing countries and organizations (primarily Mexican) indicated that they have been performing studies to find alternative methods to the use of EDB in coordination with the U.S. Agricultural Research Service (USDA). Such alternatives include heat treatment, treating the fruit with non-toxic hormones, and irradiation. In addition, many mango growing areas have implemented costly phytosanitary campaigns which have made progress in minimizing and controlling the fruit fly populations. Many commenters claimed that they expected alternatives to be available by the end of the extension period (e.g., irradiation facilities in Columbia).

The Agricultural Research Service (ARS), U.S. Department of Agriculture, provided the Agency with detailed information on the potential alternatives to EDB treatment, and research progress to date. Preliminary radiation studies were conducted in 1985 and research in this area is continuing in order to determine the radiation dose necessary to achieve quarantine security. ARS is also actively working on the hot water treatment method; studies to date show promise that quarantine security can be achieved under submersion conditions that will not lead to phytotoxicity (fruit damage). The North American Plant Protection Organization also provided detailed information on the development status of alternatives to EDB.

Additional comments on the development of alternatives were received from the North American Mango Importers Association (NAMIA), which contended that significant progress had been made in developing a replacement quarantine treatment for EDB in mangoes, but that as much as two years of work were required for the success of these efforts. NAMIA argued that without the reestablishment of the tolerance rule, the funding for this research, which comes largely from the mango industry itself, would not be available and the future of the mango industry would be quite hopeless. In its view, the establishment of the proposed rule would result in the long-term viability of the mango import trade, and would provide benefits to the domestic mango producers as well as the foreign producers by allowing the development of a new quarantine treatment.

Comments submitted to the Agency by or on behalf of Florida mango growers generally opposed reestablishment of the tolerance based on three concerns, namely that (1) the use of EDB by foreign producers gives such foreign interests an unfair advantage over Florida growers who cannot use EDB; (2) EDB poses a public health risk; and (3) other quarantine treatments are available. Requests were also made that a hearing be held before a final rule was issued. Additional arguments presented by representatives of a number of Florida mango growers were that (1) harm to foreign countries is not a valid reason for EPA's failure to protect the public from dangerous pesticides; (2) little if any information is in the record about the efforts being made to develop alternatives to EDB for mangoes; (3) the adoption of the proposal would be a disincentive to the development of alternatives; (4) the comment period should not have been expedited based on Article 2.6.1 of the Standards Code under the Agreement on Technical Barriers to Trade; (5) the Agency has not provided any new risk/benefit data or scientific information to justify the reestablishment of the tolerance; and (6) the residues on imported mangoes are likely to be higher than the 30 ppb tolerance limit. These commenters contended that to allow for equal treatment for U.S. growers the proposal must either be withdrawn or that EPA should allow the domestic producers to fumigate their mangoes with EDB as long as they meet the 30 ppb tolerance.

Comments received from certain interested individuals and environmental and other public interest organizations were also opposed to the reestablishment of the tolerance. Specifically, the Public Voice for Food and Health Policy argued that the proposed rule would present an unreasonable delay in the elimination of EDB's use as a fumigant and would only prolong consumer exposure to the pesticide. The National Coalition Against the Misuse of Pesticides likewise expressed concern over the potential health risks associated with exposure to EDB from mango consumption, and argued that the establishment of this interim tolerance would be a disincentive to the development of alternative treatment methods by mango producing countries. Congressman Dante Fascell also submitted a comment in opposition to the proposal based on his concern over the public health hazard posed by the tolerance. The Massachusetts Department of Public Health expressed its view that reinstituting the tolerance would not be in the best interest of the consumer and would pose a needless health risk.

Finally, comments submitted by three U.S. firms engaged in the business of developing and/or operating commercial irradiation facilities were divided in their views about the appropriateness of establishing the tolerance. Radiation Technology, Inc. expressed a concern that the reintroduction of an EDB tolerance for mangoes would inhibit the development and use of irradiation facilities for fruit fly disinfestation, and therefore urged that the Agency not establish the 1-year tolerance. Emergent Technologies, Inc. also urged that there be no relaxation of the pressures for growers, importers, etc. to contract for the use of alternatives as quickly as possible, but recognized the appropriateness and economic importance of maintaining the use of EDB for the 6-to-12 months required until the alternatives are in place and operational. The third firm, Isomedix, supported the proposed tolerance for EDB in mangoes. Isomedix pointed out that the irradiation facilities for mango treatment would not be operative until

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well into 1987, and that therefore the reestablishment of the EDB tolerance was necessary to assure the uninterrupted importation of the increasingly popular fruit and ensure the survival and viability of mango industries of friendly foreign exporter countries and their U.S. distributors.

The Agency has carefully considered the large number of comments submitted in response to the proposed tolerance. These comments, and information received from the U.S. Department of Agriculture have persuaded the Agency that the adverse economic impacts associated with the expiration of the EDB tolerance on mangoes are more severe than originally anticipated by the Agency.

Contrary to the assertions of some commenters, the Agency does not believe that a viable alternative to EDB is available at the current time. For example, vapor heat treatments may be efficacious in disinfecting the mangoes, but have unacceptably high phytotoxic effects to the fruit. Without the establishment of the interim tolerance, economic impacts will result at many levels of the economy, both in the United States and abroad. There is ample evidence that foreign producers and the United States Department of Agriculture are working diligently and rapidly toward the development of alternative treatment methodologies and that the establishment of this short-term tolerance will not be a disincentive towards that effort.

Although the Agency appreciates the concerns expressed by American mango growers, the fact Florida mangoes can be shipped throughout the United States without fruit fly disinfestation treatment, with the exception of California and Texas. While these two states represent an estimated 10 to 15 percent of the national market for mangoes, these states have not been traditional markets for Florida produced mangoes. During the time that EDB was a registered fumigant for use on mangoes, mangoes were not typically fumigated in the Florida EDB fumigation facilities, except for small quantities of mangoes shipped from Florida to California for processing.

The Agency has not received any risk information which changes its assessment that the public health risks are very low (in the 10^{-6} to 10^{-7} range) for the 1-year time period covered by this tolerance rule. To the extent that there is any potential concern that mangoes with residues over the 30 ppb limit could be shipped to the United States, the Agency notes that the Food and Drug Administration carries out its enforcement activities at the time of entry of the fruit into the country. Thus, any violative fruit will not be accepted into the United States and will not reach the American consumer.

In conclusion, the Agency believes that it has properly assessed all relevant factors, pursuant to the requirements of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), in reaching its conclusion that the establishment of this interim tolerance will protect the public health. Taking all relevant information into account, the Agency has concluded that the adverse economic consequences are greater than previously anticipated and that the risk to the public health is very low for the short time this tolerance rule will be in effect. Moreover, in the Agency's view, the establishment of this tolerance rule has met all the procedural requirements of the FFDCA, the Administrative Procedure Act, and the GATT Convention. The Agency has, in fact, allowed more time to comment than required in this action by § 408(e) of the FFDCA. Judging from the numerous comments, diverse views and wide ranging arguments presented to the Ageny, it is clear that a meaningful comment period has been afforded.

With regard to the contention that there is no basis for expediting the comment period based on Article 2.6.1 of the Standards Code under the Agreement on Technical Barriers to Trade, the Agency notes that the GATT provisions at issue address notice to the international community, not to domestic interests. The importance of the timeliness of this tolerance rule is amply clear, given the expiration of the previous tolerance rule for EDB on mangoes and the lack of current alternatives for fruit fly disinfestation on that perishable commodity.

Based on the information considered by the Agency, and discussed in detail in the November 27, 1985 **Federal Register** notice and support documents available from the Agency at the address given above, and after consideration of the comments submitted to the docket, the Agency has concluded that the tolerance established by amending 40 CFR 180.397 will protect the public health. Therefore, the regulation is established as set forth below. This regulation is effective immediately, and will expire on September 30, 1986. A one-year renewal will be considered if by September, 1986 USDA and the exporting countries have substantially moved toward completion of the basic research required to establish alternative fruit fly disinfestation protocols, and data indicate that implementation of non-EDB fruit fly disinfestation techniques by the 1987/1988 harvest season is probable.

Any person adversely affected by this regulation establishing a tolerance of 30 ppb for residues of EDB per se in the edible pulp of mangoes may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections must be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

In the event that a hearing is requested, this tolerance rule remains effective during the pendency of the hearing. Section 408(d)(4), FFDCA.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: February 11, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 180—[AMENDED]

Therefore, 40 CFR 180.397 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346(a).

2. By amending § 180.397 by revising paragraph (c) to read as follows:

§ 180.397 Ethylene dibromide; tolerances for residues

* * * * *

(c) Tolerances are established for residues of ethylene dibromide *per se* in or on the following raw agricultural commodities resulting from use of ethylene dibromide as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture.

Commodities	Parts per million	Expiration date
Mangoes	.03 ppm in edible pulp.	Sept. 30, 1986.

[FR Doc. 86-3491 Filed 2-13-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
February 14, 1986

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127 and 135

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Reopening of Comment Period

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135

[Docket No. 23799; Notice No. 85-16]

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period on notice of proposed rulemaking (NPRM).

SUMMARY: This action reopens the comment period on the notice proposing future requirements pertaining to the use, installation, inspection and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S Transponders in U.S.-registered civil aircraft. The reopening of the comment period was requested by the Air Transport Association and the Air Line Pilots Association. The requests were made on the following bases: more time would be needed to more fully evaluate effects of the upcoming issuance of the Technical Standard Order (TSO) on Mode S Transponders as they might affect Mode S Transponder requirements in the National Airspace System (NAS); and more time is needed by a widely dispersed membership to review additional material just made available to the petitioners on the proposed Mode S System. Upon examination of the petitioners' requests, the FAA has determined it appropriate to reopen the comment period.

DATE: Comments must be received on or before March 3, 1986.

ADDRESS: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 23799, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposal by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposals. Comments are specifically invited on the overall economic, environmental, and energy aspects of the proposals. Communications should identify the notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23799." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking any future action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of the NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2, "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

On September 17, 1985, the FAA published a Notice of Proposed Rulemaking announcing the proposed use of Mode S Transponders in the NAS (50 FR 37674, Notice No. 85-16). This notice, the comment period for which closed on Dec. 16, 1985, proposed mandatory use of either the ATCRBS or Mode S Transponder as well as automatic pressure altitude reporting equipment within all terminal control areas (TCA) (specifically to include Group II TCA's), and above 12,500 feet mean sea level (MSL) within the contiguous U.S. and the District of Columbia excluding airspace at and below 2,500 feet above ground level (AGL). Also, transponder installation requirements were proposed which would result in a gradual phase-in of Mode S in the National Airspace System (NAS). After January 1, 1992, all newly installed transponders in U.S.-registered civil aircraft would be required to meet requirements of the technical standard order (TSO) for airborne Mode S Transponder equipment. Projected increases in air traffic will require improved aircraft location and identification information, which will be provided by the proposed Mode S and automatic pressure altitude reporting equipment requirements. Those requirements are an essential component of the NAS Plan. The notice also proposed test and inspection requirements for the Mode S Transponder and a new output power test requirement for the ATCRBS transponder.

By letter dated December 10, 1985, the ATA, on behalf of its member airlines requested an extension of the comment date. To support its request, ATA submitted that the proposed new equipment requirements contained in Notice No. 85-16 are based on a FAA Technical Standard Order C112. Since the TSO has as yet not been issued, and considering the potential impact of the proposed rulemaking, it would be reasonable for FAA to extend the date for comments until 30 days after public availability of the adopted TSO C112. From information available, ATA believed that the final TSO would likely be issued by the FAA sometime in mid January 1986. ATA maintained that an extension of 30 days would permit the aviation community and the public to comment on Notice 85-16 with full knowledge of the impact of all its provisions, consistent with the intent of the Administrative Procedures Act. In summary, ATA said it believed Notice 85-16 proposed important changes to the regulations which cannot be completely evaluated without knowledge of the final form of TSO C112 and that in light of the extended time schedule proposed in the rule, it appears prudent to fully consider the anticipated effects prior to adoption.

In addition to ATA's request, the Air Line Pilots Association requested an extension of the comment period until January 15, 1986. ALPA said that an extension is necessary in order to review additional material that has just been made available to them relating to the proposed Mode S System. In addition, ALPA's request was made in consideration of their widely dispersed membership structure, the attendant coordination problems, the forthcoming holiday season, and the fact that this is not an immediate safety-related issue.

Upon examination of petitioners' reasons for extension, the FAA has determined that good cause exists to reopen the comment period on Notice No. 85-16. In consideration of the forthcoming issuance of the TSO for the Mode S Transponder, a reopening of the comment period would provide the aviation community and the public adequate time to review and comment on Notice 85-16 with a more complete knowledge of the impact of its provisions.

For the reasons set forth in the preamble: (1) The FAA has determined that the proposal does not involve a major proposal under Executive Order 12991; (2) is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the draft Regulatory Evaluation prepared for this action is contained in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption, **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects

14 CFR Part 43

Air transportation, Aircraft, Aviation safety, Safety.

14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, Airports.

14 CFR Part 121

Aviation safety, Safety, Air traffic control, Air transportation, Aircraft, Airplanes, Airports, Airspace, Transportation.

14 CFR Part 127

Aircraft, Airworthiness, Air traffic control, Helicopters, Airspace.

14 CFR Part 135

Aviation safety, Safety, Air transportation, Airworthiness, Aircraft, Transportation, Helicopters, Air traffic control, Airspace, Airplanes.

Proposed Rule; Reopening of Comment Period

PART 43—[AMENDED]

1. The authority citation for Part 43 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

PART 91—[AMENDED]

2. The authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 21, 1983).

PART 121—[AMENDED]

3. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

PART 127—[AMENDED]

4. The authority citation for Part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

PART 135—[AMENDED]

5. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

6. For the above reasons, the comment period on Notice No. 85-16 is reopened. Comments must be received on or before March 3, 1986.

Issued in Washington, DC, on February 12, 1986.

Walter S. Luffsey,

Associate Administration for Air Traffic.

[FR Doc. 86-3495 Filed 2-13-86; 10:24 am]

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S.J. Res. 74/Pub. L. 99–244

To provide for the designation of the month of February, 1986, as "National Black (Afro-American) History Month." (Feb. 11, 1986; 100 Stat. 6; 1 page) Price: $1.00

S.J. Res. 219/Pub. L. 99–245

To designate the week of February 9, 1986, through February 15, 1986, as "National Humanities Week, 1986." (Feb. 11, 1986; 100 Stat. 7; 1 page) Price: $1.00

S.J. Res. 234/Pub. L. 99–246

To designate the week of February 9, 1986 through February 15, 1986 as "National Burn Awareness Week." (Feb. 11, 1986; 100 Stat. 8; 1 page) Price: $1.00

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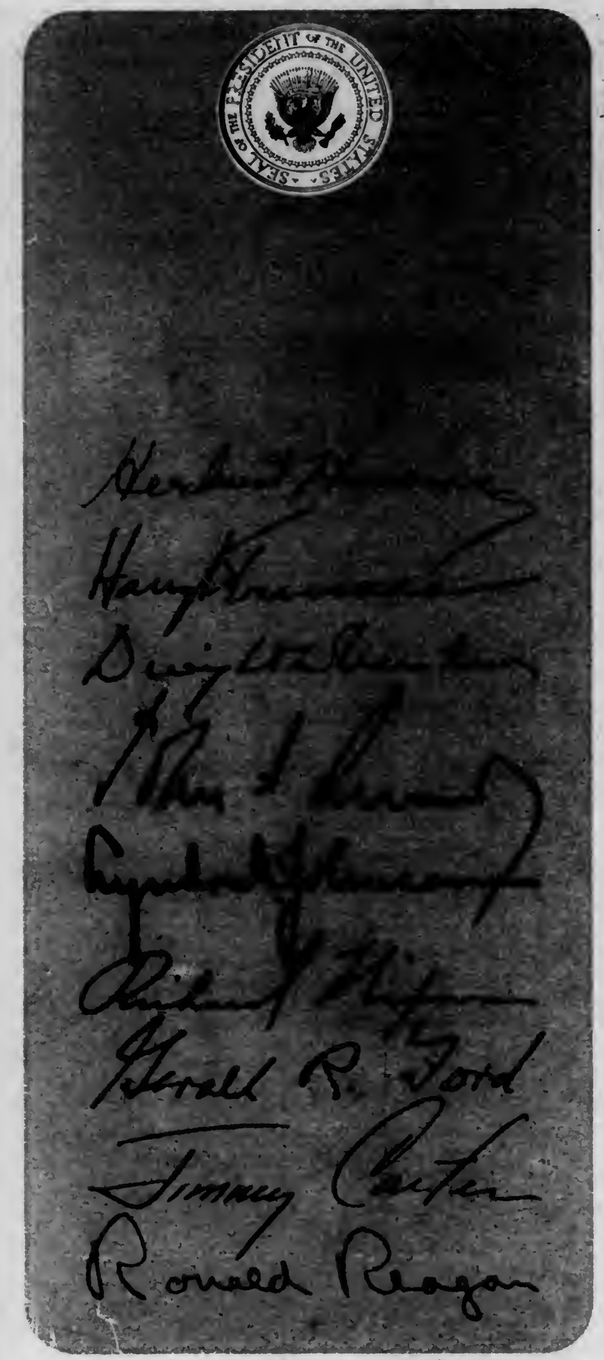
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Rules and Regulations

Federal Register
Vol. 51, No. 32
Tuesday, February 18, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

[Docket No. 0059A]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1986 and succeeding crop years in all states, except Florida and certain California counties, and for the 1987 and succeeding crop years the remaining California counties and Florida. The intended effect of this rule is to: (1) Add provisions for insurance coverage in Alabama, New Jersey, and Texas; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) change the end of the insurance period in Delaware, Maryland, Missouri, Nebraska, Nevada, North Carolina, Virginia, and Wyoming; (4) define the type of potatoes grown in Idaho, Maine, Oregon, and Washington for insurance purposes and change the end of the insurance period in such states to coincide with the harvest date; (5) shorten the length of time an insured has to give notice when claiming an indemnity; (6) change the cancellation and termination dates in Delaware, Missouri, Maryland, North Carolina, and Virginia; (7) introduce, on an experimental basis, a quality potato option amendment; (8) shorten the length of time for acreage to qualify for entry into the Certified Seed Program; (9) require records of production to be furnished by the cancellation date; (10) delete the term "marketable potatoes" and all reference thereto from the policy; (11) add a definition for the term "ASCS"; and (12) redefine "County" to provide that land identified by the same ASCS Farm Serial Number and located outside the county and within the State will be included in the county. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must be on file by February 15, 1986, good cause is shown for making this rule effective in less than 30 days.

Other than minor changes in language and format, the principal changes in the potato policy and in the certified seed potato option amendment are:

1. *Section 2.c.*—Change the method of calculating the insured's share of the indemnity on crops transferred before harvest. This limits indemnities to the insured's insurable interest at the time of loss.

2. *Section 7.b*—Add Alabama, New Jersey, and Texas for insurance coverage and provide end of the insurance period dates. Change the end of the insurance period for Delaware and Maryland from October 31 to August 15; Missouri from October 15 to July 15; North Carolina from October 15 to July 25; Virginia from October 15 to August 15; Nevada from October 15 to October 31. Add an end of insurance period of October 31 for Maine Russett type potatoes only and change the end of the insurance period for Maine (all other types) from October 31 to October 15. Change the end of insurance period of October 15 to October 10 for Nebraska and Wyoming. These date changes are made to reflect the harvesting periods for these areas.

3. *Section 8.a*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

4. *Section 9.e.*—Remove the word "marketable" and its related provision because it is no longer used in determining production.

5. *Section 15.c*—Amend the recordkeeping requirement to require a producer to furnish records by the cancellation date. This change will provide a more up-to-date coverage based on the producer's actual production.

6. *Section 15.e.*—Add a December 31 cancellation and termination date for Alabama and New Jersey and a November 30 cancellation and termination date for Texas. Change the cancellation and termination dates in

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Delaware, Maryland, Missouri, North Carolina, and Virginia from April 15 to December 31. This change is made to conform to the insurance period.

7. *Section 17.*—Add a definition for the term "ASCS". Amend the "County" definition to state that land identified by the same ASCS Farm Serial Number and located outside the county but within the State will be included in the county.

8. Add a Quality Potato Option Amendment to 7 CFR Part 422 applicable on an experimental basis.

On Thursday, December 19, 1985, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 50 FR 51687, to revise and reissue the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1986 and succeeding crop years in all states, except Florida and certain California counties, and for the 1987 and succeeding crop years the remaining California counties and Florida. The public was given 30 days in which to submit written comments on the proposed rule. One comment was received from a reinsured company which noted that the proposed rule indicated changes in the end of insurance period in a number of states to more nearly reflect the harvesting periods for these states. The comment suggested that FCIC change the end of insurance period for Nebraska and Wyoming from October 15 to September 15 to reflect harvesting time. The commenter stated that (1) the average freeze date was September 19; (2) because of the price elections offered insureds are encouraged to leave potatoes in the ground beyond the freeze date; and, (3) producers should be encouraged to plant varieties of potatoes that would be ready for harvest ahead of the freeze date. Therefore, the commenter states that an unnecessary risk is assumed because of the liability involved on potatoes in Nebraska and Wyoming.

FCIC reviewed the end of insurance period schedule for Nebraska and Wyoming and the reasons submitted for change. An average of freeze dates for 1974 through 1985 indicated that the earliest freeze occured on September 20, 1983 and the latest occured on October 22, 1981. FCIC has determined that, while this suggestion has merit, the September 15 date is inappropriate, and will move the end of insurance period to October 10, the average freeze date for 1974 through 1985.

FCIC, at a Board of Directors meeting held on January 8–9, 1986, determined to expand potato crop insurance into selected counties in Alabama and Texas. Therefore, FCIC has determined to allow more than the proposed selected counties to be eligible under the Quality Potato Option Amendment. FCIC, therefore, removes the reference to the list of counties published in the proposed rule. These changes are reflected in this rule. Therefore, with the exception of these and other minor changes in language and format, the proposed rule as amended above is adopted as a final rule.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1986 and succeeding crop years in all states, except certain California counties and Florida, and for 1987 and succeeding crop years in the remaining California counties and Florida, to read as follows:

PART 422—POTATO CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in Certain California Counties and Florida)

Sec.

422.1 Availability of potato crop insurance.
422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
422.3 OMB control numbers.
422.4 Creditors.
422.5 Good faith reliance on misrepresentation.
422.6 The contract.
422.7 The application and policy.
422.8 Certified seed potato option amendment.
422.9 Quality potato option amendment.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Year (1987 and Succeeding Crop Year in Certain California Counties and Florida)

§ 422.1 Availability of potato crop insurance.

Insurance shall be offered under the provisions of this subpart on potatoes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for potatoes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 422.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 422.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 422.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the potato insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 422.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the potato crop as provided in the policy. The contract shall consist of the application, the policy, the Certified Seed Potato Option Amendment, if applicable, the Quality Potato Option Amendment, if applicable, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 422.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the potato crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectively will result during the extended period.

However, if adverse conditions should develop during the such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a potato insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Potato Crop Insurance Policy for the 1986 and succeeding crop years (1987 and succeeding crop years in certain California counties and Florida) are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are expected, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the potatoes have been placed in storage;
(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(3) The failure to follow recognized good potato irrigation practices;
(4) The failure or breakdown of irrigation equipment or facilities;
(5) The failure to follow recognized good potato farming practices;
(6) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(7) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and share insured.

a. The crop insured will be potatoes planted for harvest as certified seed stock or for human consumption, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be potatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured potatoes at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) Planted with noncertified seed unless allowed by the actuarial table;
(2) Which does not meet the rotation procedures required by the actuarial table;
(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(4) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(5) Which is destroyed, it is practical to replant to potatoes, and such acreage is not replanted;
(6) Initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to coverage reduction;
(7) Of volunteer potatoes;
(8) Planted to a type or variety of potatoes not established as adapted to the area or excluded by the actuarial table;
(9) Planted with a crop other than potatoes; or
(10) Planted for the development or production of hybrid seed or for experimental purposes.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good potato irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter, spring, and summer-planted potatoes in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any potatoes planted in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

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4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the potato policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year.

(2) The premium reduction will not increase because of favorable experience.

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year.

(4) Once the loss ratio exceeds .80, no further premium reduction will apply.

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches when the potatoes are planted (in Alabama, California and Florida insurance attaches when the potatoes are planted in each planting period).

b. Insurance ends at the earliest of:

(1) Total destruction of the potatoes on the unit;

(2) Harvesting or removal from the field;

(3) Final adjustment of a loss;

(4) The following dates of the calendar year in which potatoes are normally harvested:

(a) Missouri and Texas—July 15;

(b) North Carolina—July 25;

(c) Delaware, Maryland, New Jersey and Virginia—August 15;

(d) Alaska—October 1;

(e) Nebraska and Wyoming—October 10;

(f) Connecticut, Massachusetts, Nevada, New York, and Pennsylvania—October 31;

(g) Idaho, Maine, Oregon, and Washington, (Russet type only)—October 31;

(h) All other states (except Alabama, California and Florida) and all other types—October 15;

(i) Alabama, California and Florida, the dates established by the actuarial table for each planting period.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the potatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the potatoes and given written consent. We will not consent to another use until it is too late to replant for that planting period. You must notify us when such acreage has been put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested potatoes (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the potatoes on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. We must be given the opportunity to inspect any harvested production on any unit for which you have given notice of probable loss if such production will not be delivered directly to a processing plant.

c. You must obtain written consent from us before you destroy any of the potatoes which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the potatoes on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any idemnity unless you:

(1) Establish the total production of potatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Substracting therefrom the total production of potatoes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in hundredweight) to be counted for a unit will include all harvested and appraised production.

(1) The extent of any loss may be determined at the time the potatoes are placed in storage or delivered to e processor.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than the guarantee for any acreage from which the harvested production is disposed of without our prior written consent and such disposition prevents accurate determination of production; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of potatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested potatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the potatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–76, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless all policy provisions are complied with.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure

to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the potatoes are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment of fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our prescribed form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expensse, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all potatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us, satisfactory production records for the crop year or the contract will be cancelled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Manatee, Hardee, Highlands, Okeechobee, and St. Lucie Counties, Florida and all Florida counties lying south thereof.	September 30
Contra Costa, San Joaquin, Calaveras, and Alpine Counties, California and all California counties lying south thereof; and Texas.	November 30
Alabama; Delaware; Maryland; Missouri; New Jersey; North Carolina; Virginia; and all other Florida counties.	December 31
All other California counties and all other states.	April 15

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

a. June 30 prior to the cancellation date for counties with a September 30 cancellation date;

b. September 30 preceding the cancellation date for counties with a November 30 or December 31 cancellation date; or

c. December 31 preceding the cancellation date for counties with an April 15 cancellation date.

Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of potato crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding potato insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by the same ASCS farm serial number for the county but physically located in another county within the State.

d. "Crop year" means the period within which the potatoes are normally grown and is designated by the calendar year in which the spring-planted potatoes are normally harvested.

e. "Harvest" means the digging of potatoes on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

j. "Planting period" means potatoes planted within the dates set by the actuarial table, as fall-planted, winter-planted, spring-planted, or summer-planted

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k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the potatoes or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of potatoes in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owed by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the potatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

§ 422.8 Certified seed potato option amendment.

(a) Notwithstanding the provisons of § 422.7(d)(9)(e) of this part, an insured producer may, upon submission and approval of a Certified Seed Potato Option Amendment elect to insure all of the insurable acreage of potatoes grown for certified seed in which the insured has a share, under the provisions of the Certified Seed Potato Option Amendment. To be eligible for this amendment:

(1) Insurance must be in effect under the provisions of the potato policy,

(2) All potatoes grown for seed must be insured;

(3) The insured must be a certified seed producer having acceptable production records; and

(4) The management practices required for the production of certified seed potatoes as stated in the amendment must be met.

The Certified Seed Potato Option Amendment shall be applicable only for one crop year. A new amendment must be submitted for each subsequent crop year.

(b) For those insureds who elect to insure potatoes under this Amendment, all provisions of the Potato crop insurance policy shall apply except those in conflict with the amendment. The terms of the amendment are:

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy

Certified Seed Potato Option Amendment

Insured's Name _____
Address _____

Contract No. _____
Crop Year _____
Identification No. _____
SSN ___ Tax ___

When you submit this Amendment each crop year on or before the final date for accepting applications and we approve such amendment, your insurable acreage of potatoes grown for certified seed will be insured, if:

1. You are currently insured under the potato insurance program;

2. All potatoes which are grown for certified seed on insurable acreage are insured;

3. You are a person whose potatoes have qualified for entry into the Certified Seed porgram for the previous 3 years, (After initial approval, you will be exempt from this requirement provided you have discontinued participation in the program for not more than one crop year out of any three consecutive crop years);

4. You provide acceptable records of your certified seed potato acreage and production for at least the previous 3 years;

5. Potatoes for seed are not grown on the same land on which potatoes of the same variety as the seed potatoes have been grown more than 2 years out of the preceding 4 years;

6. Elite or high-grade foundation seed potatoes or seed potatoes having a winter test reading of not more than 3 percent common virus are used in planting; and

7. Your acreage insured for certified seed production is managed in accordance with standard practices and procedures required for certification as prescribed by the certifying agency and applicable state regulations regarding seed potato certification.

Your production guarantee and premium rate will be provided by the actuarial table for certified seed potatoes. If, due to insurable causes occurring within the insurance period, potato production will not qualify as certified seed on any insured certified seed potato acreage within a unit, we will pay you one dollar ($1.00) per cwt., times your production guarantee for such acreage, times your share. Any production which will not qualify as certified seed because of your failure to carry out the standard practices and procedures required for certification will be considered lost due to uninsured causes.

Insurable acreage grown under the provisions of this amendment may be designated as a separate unit.

Any claim for indemnity on a unit must be submitted to us on our form no later than 10 working days after you receive your records from the certification agency.

All provisions of the potato policy not in conflict with this amendment are applicable.

This amendment is not continuous. A new amendment must be submitted each crop year to take advantage of the certified seed potato option.

The insured estimates that the Certified Seed Potato Acreage for the____ crop year will be ____

Insured's Signature _____
Date _____

Corporation Representative's Signature and Code Number_____
Date _____

Field Actuarial Office Approval _____
Date _____

Following is the Privacy Act Statement found on the reverse side of the Certified Seed Potato Option Amendment:

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring potatoes under the Potato Crop Insurance Regulations (7 CFR Part 422). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the amendment to insure certified seed potatoes, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, other State and Federal law enforcement agencies if litigation becomes necessary, a court in response to its orders, an administrative tribunal, or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security Number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security Number, is also voluntary; however, failure to furnish the correct, complete information requested, except the Social Security Number, may result in rejection of the amendment for insuring certified seed potatoes, and/or subsequent denial of any

claim for indemnity which may be filed under such amendment or may substantially delay acceptance of the Certified Seed Potato Option Amendment, and any subsequent claim for indemnity.

§ 422.9 Quality potato option amendment.

(a) Notwithstanding the provisions of § 422.7(d)9.e of this part, an insured producer may, upon submission and approval of a Quality Potato Option Amendment (Amendment), elect to insure all insurable acreage of potatoes under this Amendment. The Amendment is not continuous and a signed Amendment must be submitted to an FCIC representative on or before the final date for accepting application for each year the insured wishes to insure potatoes under this Amendment.

(b) For those insureds who elect to insure potatoes under this Amendment, all provisions of the potato crop insurance policy will apply except those in conflict with the Amendment. The terms of the Amendment are:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy Quality Potato Option Amendment

Insured's name

Address

Contract No.

Crop Year

Identification No.

SSN

Tax

Upon our approval this amendment is applicable for the 1986 crop year.

1. A signed Quality Potato Option Amendment will be submitted to us on or before the final date for accepting applications for each crop year you wish to insure your potatoes under this amendment.

2. You must have a Federal Crop Insurance Potato Policy (Basic Policy) in force. The basic policy provides guaranteed protection on a hundredweight basis only.

3. All acreage of potatoes insured under the basic policy must be insured under this amendment.

4. Failure to submit a quality option for the crop year will result in your potatoes being insured under the terms and conditions of the basic policy.

5. In addition to subsection 9.e. of the basic policy, the total production (hundredweight) to be counted for a unit will include all harvested and appraised production as follows:

a. The production to count for any unharvested appraised mature production will be determined by dividing the actual percentage of potatoes grading U.S. No. 2° or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of hundredweight of such potatoes.

b. The production to count for any potatoes stored:

(1) Without an acceptable inspection will be 100 percent of the gross weight; or

(2) With an acceptable inspection will be determined by dividing the actual percentage of potatoes grading U.S. No. 2° or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of hundredweight of stored potatoes.

c. Any sold production which due to insurable causes, contains a portion of potatoes which grade less than U.S. NO. 2° will be determined by dividing the actual percentage of potatoes grading U.S. No. 2° or better, by your percentage factor, and multiplying the result, not to exceed 1.000, by the hundredweight of sold potatoes.

6. "Percentage factor" means your actual average percentage of potatoes grading U.S. No. 2° or better, determined from your records. If more than four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed ten years. If less than four years of records are available, the percentage factor will be the one contained on the actuarial table. The Actuarial Table may provide for percentage factors by type.

7. Your premium rate for quality potatoes will be set by the Actuarial Table.

°The actuarial table may provide U.S. No. 1 or better.

Insured's Signature
Dates _____

Corporation Representative's Signature And Code Number
Dates _____

Following is the Privacy Act Statement found on the reverse side of the Quality Potato Option Amendment:

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring quality potatoes under the Potato Crop Insurance Regulations (7 CFR part 422). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the amendment to insure quality potatoes, determined the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, other State and Federal law enforcement agencies, a court in response to its orders, an administrative tribunal, or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security Number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security Number, is also voluntary; however, failure to furnish the correct, complete information requested, other than the Social Security Number, may result in rejection of the amendment for insuring quality potatoes, and subsequent denial of any claim for indemnity which may be filed under such amendment or may substantially delay acceptance of the Quality Potato Option Amendment, and any subsequent claim for indemnity.

Done in Washington, D.C., on January 22, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3239 Filed 2-14-86; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 443

[Docket No. 0062A]

Hybrid Seed Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Require timely planting of the male seed; (2) limit the insured's share of an indemnity on crops transferred before harvest; (3) provide both a coverage reduction and a reduction in the amount of insurance when the acreage of the female seed is planted after the final planting date; (4) change to the dollar value per bushel of production for each type and variety to determine coverage; (5) remove the provision for determining production guarantees from the policy; (6) clarify when insurance by type and variety will attach; (7) shorten the length of time an insured has to give notice when claiming an indemnity; (8) change the method of computing indemnities for production; (9) change the method of computing indemnities when acreage, share, or practice is underreported; (10) add a clause to limit the total insurability of the crop; (11) add definitions for "Approved yield", "ASCS", "Inadequate germination", "Loss ratio", "Non-seed production", "Sample", and "Seed production"; and (12) redefine "County" to provide that land identified by an ASCS farm serial number and located outside the county and within the State

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will be included in the county. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: February 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1984.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Since policy changes must be on file by February 15, 1986, good cause is shown for making this rule effective in less than 30 days.

Other than minor changes in language and format, the principal changes in the Hybrid Seed policy are:

1. Section 1.—Add a provision to require timely planting of the male seed before insuring against inadequate germination. This requirement will help assure adequate pollination of the female plant.

2. Section 2.—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Delete "coverage reduction" and add "reduction in the dollar amount of insurance" to provide both a coverage reduction and a reduction in the amount of insurance.

Delete "average yield" and add "dollar value per bushel of production for each type and variety." This change will enable FCIC to determine the coverage for the producer.

3. Section 4.—Delete the production guarantee provisions from the section. This change will allow the dollar value to be used in determining the amount of insurance.

4. Section 7.—Clarify that insurance attaches for each type and variety when both the male plant seed and the female plant seed of that type and variety are planted in accordance with the production management practices of the seed company, provided that the female plant seed for the type and variety is planted not later than the final planting date shown in the actuarial documents. This change will clearly state when insurance by type and variety will attach.

5. Section 8.—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change allows FCIC to determine indemnities in a more timely fashion.

6. Section 9.—Change the method of computing the indemnity because the production guarantee has been taken out of the policy. This change will allow the dollar amount obtained by multiplying seed production to count for each type and variety by the respective dollar value per bushel of production in determining the indemnity.

When acres are underreported, the production from all acres will count against the reported acres in calculating indemnities. This change will reduce the amount of indemnities when acres are underreported.

Delete "production guarantee" and add "the dollar amount of insurance".

Add a clause to limit the total insurability of the crop. This change will allow FCIC to consider the fair market value of production on the unit before the loss to the limited to 1½ times the highest price election available.

7. Section 17.—Add definitions for "Approved yield", "ASCS" "Inadequate germination", "Loss ratio", "Non-seed production", "Sample", and "Seed production".

Amend the "County" definition to clarify that land identified by an ASCS farm serial number and located outside the county and within the State will be included in the county.

On Thursday, January 9, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 961, to revise and reissue the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule. One comment was received from the American Seed Trade Association (ASTA) and six letters from various seed companies. The comments from the seed companies were in the form of a statement and all copies were identical. These are treated below as one comment for the purpose of this rule. FCIC herein addresses comments on those provisions appearing in the notice of proposed rulemaking. Other comments on the provisions of the hybrid seed insurance program in general, not contained in the proposed rule, or comments in agreement with the proposed rule, will not be addressed.

FCIC has reviewed each item on the statement and herewith provides its response:

1. *Comment:* Section 1.b. appears to have a typographical error by using the word "germination" instead of "pollination."

FCIC response: The word "germination" is used because FCIC guarantees the *germination* of hybrid seed produced by the female plant. Therefore, this suggestion is not adopted.

2. *Comment:* Disagreed with the provision in section 1.b.(9) disallowing insurance coverage for the failure to follow good hybrid seed irrigation practices, stating that this would not cause a problem unless the crop had been destroyed and the grower still expected to irrigate the crop.

FCIC response: If the crop is destroyed it would not make any difference if the crop is irrigated or not, but, if only partially destroyed, the remaining crop will require adequate irrigation to produce a normal crop on the remaining plants. This provision is therefore unchanged.

3. *Comment:* Delete "Coverage reduction" in section 2.e.(9) and add "reduction in the dollar amount of insurance" to provide both a coverage reduction and an amount of insurance.

FCIC response: The Corporation feels the $400.00 per acre is an adequate amount of insurance for female acres planted. If the male acreage was also insured, the dollar amount of insurance would have to be adjusted downward to reflect the lower value of production (if any) produced by the male plants. This suggestion was not accepted.

4. *Comment:* Delete the production guarantee provisions from section 4. The change would allow the dollar value to be used in determining the amount of insurance. Add "Growers will have their approved yields before sales closing for the crop. Any yields determined after sales closing may terminate the insurance if not approved by the grower." This will allow each grower to know what the guarantee is.

FCIC response: This will be addressed in procedure. The producer will be informed what the production guarantee and dollar value per bushel is, as soon as the seed company provides records of production to the Field Actuarial Office from which the average yield for the variety of hybrid seed will be determined. The suggestion is not adopted.

5. *Comment:* Change the billing date from October 1 to September 1. When the insured reports a loss it may take up to 60 days to finalize the claim. When the claim is finalized most of the time there is interest attached. If the billing date was thirty days earlier and the premium paid, it would prevent over or under paid indemnities.

FCIC response: The billing dates for all spring planted crops are set for uniformity, therefore, the billing date will remain October 1, the same as other spring planted crops. Further, the insurance contract provides that the premium is due and payable when insurance attaches at planting or seeding. At the time of billing, an additional 30 days is provided before interest attaches. For these reasons, the suggestion is not adopted.

6. *Comment:* Change the provision in section 8 requiring notice at least 15 days before the beginning of harvest if the producer anticipates either a germination of less than 80 percent or a loss on any unit. Change to read 85 percent warm test; 80 percent could be an acceptable germination standard if the test was to be a cold test; 80 percent warm test is 10 to 12 percent lower than the industry standard.

FCIC response: The 80 percent germination was put in place to be a very limited quality provision with the anticipation that it would provide protection only in the case of a disastrous freeze. In a separate letter to ASTA, FCIC agreed that the basis for establishing yield and calculating a loss should be the same and wording has been added to this section to provide that when determining quantity FCIC will use the company accepted record when such record is on the same basis as the dollar value per bushel was determined. The germination conditions will be monitored in the future by FCIC, however, for the purposes of this rule, the suggestion to change the 80 percent germination figure is not accepted.

7. *Comment:* Recommend that Section 8.a.(3) requiring a representative sample be left in the field if a probable loss is late determined. Comments suggested that leaving the sample in the field invites more risk of damage; that harvesters may have to travel many miles to return to the fields where the strips are located; and, that genetically impure seeds may result from leaving such sample in the fields.

FCIC response: If the seed is good, the company will accept and harvest and FCIC will determine the germination from a sample taken at the time of delivery. If, however, the seed is rejected by the company before harvest, FCIC will need that 15 days to take and analyze a sample to determine germination in order to calculate a loss. Therefore, this suggestion is rejected.

8. *Comment:* Add "as seed production" to the provision in section 9.e.(1)(a)(i) because corn delivered to the seed company may also contain stalk parts and other "non-production".

FCIC response: Section 9.c. was added to the rule to provide for this problem, therefore, the suggestion is not necessary.

9. *Comment:* Objected to the lowering of the weight increase from 2.0 to 1.5 pounds for each percentage point of moisture in excess of 14 percent when measuring the weight of ear corn (70 pounds of ear corn equaling 56 pounds of shelled corn).

FCIC response: This level has been established at 2.0 pounds of weight increase for each percentage point of moisture in excess of 14 percent, as recommended.

Comment: FCIC has been requested to implement a hybrid seed program for grain sorghum in selected counties.

FCIC response: FCIC's Board of Directors has determined that no new programs of crop insurance will be initiated prior to October 1, 1986. Further consideration to this request will be given when this new program constraint is lifted.

Therefore, with the exception of minor changes in language and format, and in consideration of the comments addressed herein, the proposed rule as published at 51 FR 961 is adopted as a final rule.

List of Subjects in 7 CFR Part 443

Crop insurance; Hybrid seed.

Final rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Hybrid Seed Crop Insurance Regulations (7 CFR Part 443), effective for the 1986 and succeeding crop years, to read as follows:

PART 443—HYBRID SEED CROP INSURANCE REGULATIONS

Subpart: Regulations for the 1986 and Succeeding Crop Years

Sec.

443.1 Availability of hybrid seed crop insurance.
443.2 Premium rates, coverage levels, and amounts of insurance.
443.3 OMB control numbers.
443.4 Creditors.
443.5 Good faith reliance on misrepresentation.
443.6 The contract.
443.7 The application and policy.

Authority: Secs. 506, 516, Pub.L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

§ 443.1 Availability of hybrid seed crop insurance.

Insurance shall be offered under the provisions of this subpart on hybrid seed in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 443.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for hybrid seed which will be included in the actuarial table in file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts shown on the actuarial table for the crop year.

§ 443.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

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§ 443.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefits under the contract.

§ 443.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Hybrid Seed insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation of other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation in writing.

§ 443.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the hybrid seed crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 443.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the hybrid seed crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in polices issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a hybrid seed insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Hybrid Seed Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Hybrid Seed Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The use of unadapted, incompatible or genetically deficient male or female seed;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good farming practices or the grower provisions of the seed contract;

(4) The impoundment of water by any governmental, public, or private dam or reservoir project;

(5) Frost or freeze after the date set by the actuarial table;

(6) Inadequate germination even though a result of an insured cause of loss unless inspected and accepted by us before harvest is completed;

(7) Inadequate germination caused by the failure to plant the male seed at a time sufficient to assure adequate pollination of the female plant;

(8) The failure or breakdown of irrigation equipment or facilities;

(9) The failure to follow recognized good hybrid seed irrigation practices; or

(10) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be any type of female seed ("crop") you elect:

(1) Which is planted for harvest and the production is intended for the purpose of commercial seed to produce a type of the crop for grain or silage;

(2) Which is grown under a contract executed with a seed company before the acreage reporting date;

(3) Which is grown on insured acreage; and

(4) For which an amount of insurance per acre and premium rate are set by the actuarial table.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price will be treated as a contract under which you have the share in the crop.

c. The acreage insured for each crop year will be the crop planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

d. The insured share is your share as landlord, owner-operator, or tenant in the insured crop at the time of planting.

However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

e. We do not insure any acreage:

(1) Which is destroyed, it is practical to replant the crop, and such acreage is not replanted;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) On which the female seed is initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to reduction in the dollar amount of insurance;

(5) Of a volunteer crop;

(6) Planted to a type or variety of the crop not established as adapted to the area or indicated as noninsurable by the actuarial table;

(7) Planted with another type of crop;

(8) Occupied by rows planted with a mixture of female and male seed;

(9) Planted and occupied by the male plants;

(10) Planted for experimental purposes;

(11) Planted for any purpose other than for commercial seed; or

(12) Grown under a contract with any seed company and that seed company refuses to provide us with the records we require to determine the dollar value per bushel of production for each type and variety.

f. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good crop irrigation practice.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, Type, and Practice.

You must report on our form:

a. All the acreage of the crop planted in the county in which you have a share;

b. The practice;

c. The type; and

d. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any acreage of the insured crop in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, practice, and type or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Coverage Levels and Amounts of Insurance.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and the amount of insurance per acre on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on insuring experience through the 1983 crop year under the terms of the experience table contained in the hybrid seed policy in effect for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches for each type and variety when both the male plant seed and the female plant seed of that type and variety are completely planted in accordance with the production management practices of the seed company, provided that the female plant seed for the type and variety is planted not later than the final planting date shown in the actuarial documents. Insurance terminates at the earliest of:

a. Total destruction of the crop;

b. Combining, threshing, or picking;

c. Final adjustment of a loss; or

d. The calender date established by the acturial table.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us prompt written notice if:

(a) During the period before harvest, the crop on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs. Insured acreage may not be put to another use until we have appraised the crop and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage has been put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate either a germination rate of less than 80 percent or a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative area of the field of the unharvested crop (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the area.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the crop on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the crop which is not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

(a) Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the crop on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production for the type and variety of the crop on the unit at the time of harvest and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Subtracting from this product the sum of:

(a) The dollar amount obtained by multiplying seed production to count for each type and variety (see section 9e) by the respective dollar value per bushel of production plus;

(b) The dollar amount obtained by multiplying non-seed production to count (see section 9e) by the local market price of such production on the earlier of the date the loss is adjusted or the date such production is sold; and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as

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insurable, will count against the amount of insurance.

e. The total production to be counted for a unit will include all harvested and appraised seed and non-seed production.

(1) For crop type field corn:

(a) Total seed production to count will include:

(i) All corn delivered to and accepted by the seed company;

(ii) All corn which would pass over 16/64 screen unless the germination rate is less than 80 percent warm test as determined by a certified seed test conducted from a clean sample taken at the time of delivery or if the mature corn is appraised, at the time of appraisal; and

(iii) All harvested and appraised production which does not qualify under (i) and (ii) above because the damage was caused by uninsured causes.

(b) For the purpose of determining the quantity of mature production:

(i) Shelled corn will be adjusted .12 percent for each .1 percentage point of moisture to 15.5; and

(ii) Ear corn will be measured at 70 pounds of ear corn equaling 56 pounds (one bushel) of shelled corn. The weight of ear corn required to equal one bushel of shelled corn will be increased 2.0 pounds for each percentage point of moisture in excess of 14 percent.

(c) When records of seed production, provided by the seed company, have been adjusted to a shelled corn basis of 15.5 percent moisture, and 56-pound test weight (b) above will not apply for harvested production and the records of the seed company will be used to determine the amount of indemnity; provided, that such production records were based on the same criteria as the criteria used to determine the dollar value per bushel.

(2) Appraised production to count as seed production will include:

(a) Unharvested production on harvested acreage and the percent of the approved yield lost due to uninsured causes;

(b) Not less than the dollar amount of insurance for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraisal on non-mature production; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage and given written consent to be put to another use will be considered as seed production unless such acreage is:

(a) Not put to another use before harvest of the crop becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested acreage of the crop may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the crop is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other insurance against the perils insured under this contract and damage as a result of those perils occurs during the insurance period, we will be liable for loss due to those perils only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from those perils exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from those perils will be the difference between the fair market value of the production on the unit before the loss and after the loss. The fair market value of production on the unit before the loss is limited to 1½ times the highest price election available.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you or the seed company have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Becuse you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will paid to you.

14. Records and Access to Farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all of the crop produced on each unit, including separate records showing the same information for production for any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice to the other on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) A payment under another program administered by United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof.

Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of hybrid seed crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the coverage levels, premium rates, amounts of insurance, practices, insurable and uninsurable acreage, and related information regarding hybrid seed insurance in the county.

b. "Approved yield" means the result obtained by dividing the amount of insurance per acre by the dollar value per bushel of production.

c. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

d. "Commercial seed" means the offspring of two individual seeds of different genetic character which is produced as a result of crossing. A portion of this resultant offspring is the product intended for the purpose or use on a commercial basis by an agricultural producer to produce a field crop type for grain or silage.

e. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land indentified by the same ASCS farm serial number for the county but physically located in another county within the State.

f. "Crop year" means the period within which the crop is normally grown and is designated by the calendar year in which the crop is normally harvested.

g. "Female plant" means the plants grown for the purpose of producing commercial seed.

h. "Harvest" means the completion of combining, threshing, or picking of the crop on the unit.

i. "Inadequate germination" means less than 80 percent of the seed produced from female plants germinated as determined by a warm test using clean seed.

j. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

k. "Insured" means the person who submitted the application accepted by us.

l. "Loss ratio" means the ratio of indemnity to premium.

m. "Male plant" means the plants grown for the purpose of shedding pollen on female plants.

n. "Non-seed production" means all seed with inadequate germination. (Designation as non-seed production under this definition may be production to count under section 9 through appraisal if the inadequate germination was due to an uninsurable cause. (See 9e(2)(a)).

o. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

p. "Sample" means at least 3 pounds of shelled corn representative (field run) for each variety of seed corn grown on the unit.

q. "Seed company" means a company which contracts with a grower to produce or grow for the production of hybrid seed.

r. "Seed production" means all seed with a germination rate of at least 80 percent on a warm test using clean seed.

s. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

t. "Shelled-corn" means the grain (corn) after its removal from the cob.

u. "Tenant" means a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

v. "Type" means the crop grown: i.e., corn, grain sorghum, sunflower, popcorn, etc.

w. "Unit" means all insurable acreage of any one of the crop types in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported.

Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

x. "Variety" means the seed produced from a pair of genetically identifiable parents.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on February 11, 1986.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3440 Filed 2-14-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 626]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 626 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 14–20, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 626 (§ 907.926) is effective for the period February 14–20, 1986.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "nonmajor" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby

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found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 11, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges continues weak. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 970.926 Navel Orange Regulation 626 is hereby added to read:

§ 907.926 Navel Orange Regulation 626.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 14, 1986, through February 20, 1986, are established as follows:

(a) District 1: 1,400,000 cartons;

(b) District 2: Unlimited cartons;

(c) District 3: Unlimited cartons;

(d) District 4: Unlimited cartons.

Dated: February 12, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricuitural Marketing Service.

[FR Doc. 86–3438 Filed 2–14–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–89–AD; Amdt. 39–5238]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment adds a new airworthiness directive (AD) which requires modification of the counterbalance gearbox assembly on certain Boeing Model 767 entry/service doors. This action is prompted by reports of gearbox failure, which could prevent the door from opening when necessary for emergency evacuation.

DATES: Effective March 27, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Aerospace Engineer, Airframe Branch, ANM–120S; telephone (206) 431–2931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require modification of the counterbalance gearbox assembly on certain Boeing Model 767 entry/service doors was published in the **Federal Register** on October 21, 1985 (50 FR 42565).

The comment period for the NPRM, which ended December 9, 1985, afforded interested persons an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Only one comment was received.

The Air Transport Association (ATA) of America, representing operators of Boeing Model 767 airplanes, noted that the proposed compliance period of six months after the effective date of the AD is unrealistic, since the last replacement kit is not scheduled for completion until June 15, 1986, and since the modifications can only be effectively accomplished at the operators' main base facilities. The ATA also noted that an inoperative brake mechanism would be first detected during normal door usage and be corrected at that time, and the probability of a brake shoe support arm failure occurring during an emergency mode operation is extremely remote. In consideration of the above factors, the ATA considers that the safety of flight would not be compromised if the compliance period were extended to 12 months. In consideration of kit availability and the need to perform the modification at the operators' main base facilities, the FAA concurs with an extension of the compliance period. However, the compliance period has been revised from six months to nine months. It is estimated that the effective date of this AD will be in March 1986, and consequently, completion of the modification by December 1986 will not impose an undue hardship on any operator. Also, in response to the statement that failure would be detected during normal door operation, the FAA has determined that not all potential failures could be detected. For example, a disconnected brake shoe return spring that is loose could not be detected during normal operation, but could cause jamming of the gearbox at any time.

After a careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change noted above.

It is estimated that 58 airplanes of U.S. registry will be affected by this AD. Approximately 10 manhours at a cost of $40 per manhour will be required to modify each airplane. Parts will be furnished to operators at no cost in accordance with Boeing Service Bulletin 767–52–0029. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $23,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 series airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, as specified in Boeing Service Bulletin 767–52–0029 dated August 2, 1985, certificated in any category.

To assure proper entry/service door operation during emergency evacuation, accomplish the following within nine months after the effective date of this AD, unless previously accomplished:

A. Modify the counterbalance gearbox assemblies in accordance with Boeing Service Bulletin 767–52–0029 dated August 2, 1985, or later FAA-approved revisions.

B. An alternate means of compliance which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received copies of the manufacturer's service bulletin may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 27, 1986.

Issued in Seattle, Washington, on February 10, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–3361 Filed 2–14–86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–22684A]

Freedom of Information Act; Public Reference Facilities in Regional Offices of the Commission; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments; correction.

SUMMARY: This document corrects a final rule on public reference facilities in regional offices of the Commission that appeared at page 50286 in the **Federal Register** of December 10, 1985 (50 FR 50286). This action is necessary to correct a typographical error which inadvertently omitted the clause of the rule including among documents available in the public reference rooms in New York and Chicago registration statements and periodic reports filed pursuant to the Securities Exchange Act of 1934.

FOR FURTHER INFORMATION CONTACT: Jonathan G. Katz, Director, Office of Consumer Affairs and Information Services, (202) 272–7440.

Accordingly, the Securities and Exchange Commission is correcting 17 CFR 200.80(c)(1)(iii), introductory text, to read as follows:

§ 200.80 Commission records and information.

* * * * *

(c)(1) * * *

(iii) The New York and Chicago regional offices, microfiche of all recent registration statements filed pursuant to the Securities Act of 1933, registration statements and periodic reports filed pursuant to the Securities Exchange Act of 1934, and periodic reports filed pursuant to the Investment Company Act from 1969 to date are available for inspection and reproduction

* * * * *

Shirley E. Hollis,

Assistant Secretary.

February 6, 1986.

[FR Doc. 86–3365 Filed 2–14–86; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34–22682; File No. S7–32–84]

Prompt Response to Inquiries Concerning Dividend and Interest Payments and the Buy-in of Securities in Cases of Actual Overissuance

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to rules.

SUMMARY: The Securities and Exchange Commission is adopting amendments to regulations for registered transfer agents under the Securities Exchange Act of 1934 that are designed to enhance confidence in, and increase the efficiency of, the National System for the Clearance and Settlement of Securities Transactions (the "National System"). The amendments require registered transfer agents to respond promptly to written inquiries from securityholders respecting dividend and interest payments. The amendments also expand the period during which transfer agents must buy in securities in cases of actual overissuance.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Ester Saverson, Jr. or Jerry Greiner at (202) 272–2775, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting amendments to Rules 17Ad–5 and 17Ad–10 under the Securities Exchange Act of 1934 ("Act").[1]

I. Background

On October 4, 1984, the Commission proposed for comment revised amendments to Rule 17Ad–5 that would establish certain performance standards for registered transfer agents.[2] The proposed amendments, among other things, would require registered transfer agents to respond to written inquiries

[1] 17 CFR 240.17Ad–5 and 240.17Ad–10.

[2] *See* Securities Exchange Act Release No. 21374 (October 5, 1984), 49 FR 40416 (October 16, 1984) (hereinafter cited as "October 1984 Release"). In June 1983 the Commission proposed similar amendments to Rule 17Ad–5. *See* Securities Exchange Act Release No. 19661, 48 FR 28109 (June 20, 1983) (hereinafter cited as "June 1983 Release"). In reponse to modifications suggested by commenters to the June 1983 Release, the Commission revised those amendments and reproposed them in the October 1984 Release.

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from securityholders respecting dividend and interest payments within specified time periods.

In response to suggestions by several transfer agents, the Commission also proposed amendments to Rule 17Ad–10 in the October 1984 Release. The proposed amendments to Rule 17Ad–10 would: (1) Expand the buy-in timeframe from within 30 calendar days of discovery to within 60 calendar days of discovery; (2) clarify the meaning of "discovery of the overissuance"; and (3) afford transfer agents additional time to buy in securities when they have obtained certain commitment letters.[3]

In response to the October 1984 Release, the Commission received 19 comment letters.[4] Although the commenters agreed generally that the proposals should be adopted, they made additional operational suggestions about the proposed rules. The Commission has determined to adopt the amendments of Rules 17Ad–5 and 17Ad–10 as proposed in the October 1984 Release, with some modifications to accommodate several commenter's suggestions.[5]

II. Amendments to Rule 17Ad–5

A. Written Responses to Dividend and Interest Inquiries

As adopted today, the amendments to Rule 17Ad–5 require registered transfer agents to respond to written inquiries from securityholders concerning dividend and interest payments, if the inquiries include sufficient detail.[6] A registered transfer agent must respond within ten business days to inquiries concerning payments with payment dates within the past six months. For inquiries concerning payments with payment dates more than six months old, the transfer agent must respond within twenty business days. The amendments require transfer agents to indicate whether further research is required to resolve the inquiry and, if so, to provide a reasonable estimation of how long that research will take. If no further research is required, the transfer agent must indicate whether the interest or dividend payment is being or will be paid and, if not, the reason for not making the payment. A transfer agent also must devote diligent attention to all unresolved inquiries and resolve all inquiries as soon as possible.

Finally, if the transfer agent receives an inquiry concerning a dividend or interest payment for which the transfer agent is not the dividend disbursing agent ("DDA") or interest payment agent ("IPA"), the transfer agent must respond to the inquiry and may do so by returning the inquiry with a response stating that the transfer agent is not the DDA or IPA for the security. If, however, the transfer agent performed DDA, IPA, or any transfer agent functions for that security issue within the preceding three years, the transfer agent must, within five business days of receipt of the inquiry, provide the inquirer with the name and address of the current DDA or IPA.

The Rule as adopted today incorporates several commenter suggestions. For example, several commenters believed the term "claim" was not sufficiently defined in proposed Rule 17Ad–5.[7] Those commenters noted that industry practice considers "dividend or interest claim" a term of art that includes only claims involving an insufficient dividend or interest payment and not claims for non-receipt of interest or dividend payments. The Commission believes that registered transfer agents should be required to respond to both types of claims. Accordingly, the Commission has revised the definitions of "current claim" and "aged claim" to clarify that transfer agents must respond to all inquiries respecting dividend or interest payments, including non-receipt inquiries.

Nine commenters believed that the proposed five-day response timeframe for current claims and fifteen-day response timeframe for aged claims were unduly restrictive, especially for claims including inquiries concerning non-receipt of dividend or interest payments.[8] Several commenters stated that current non-receipt inquiries often take longer than five days to process. Those commenters explained that, when an inquirer has cashed a payment, the transfer agent customarily resolves the inquiry by forwarding a copy of the canceled check to the inquirer. The commenters indicated that it regularly takes longer than five days to obtain a copy of a canceled check and forward it to the inquirer. Those commenters believed the five-day response time was unduly burdensome because it would cause transfer agents to send two responses: one to acknowledge the inquiry within the response timeframe and another to resolve the inquiry several days later.[9]

The Commission believes that the response times in Rule 17Ad–5 should balance the transfer agent's need for reasonable flexibility against a securityholder's need to receive prompt response to dividend and interest inquiries. For this reason, the Commission would be concerned if the time periods in the rule caused firms to prepare multiple responses on a routine basis because they were unable to obtain the information necessary to provide substantive responses within the prescribed periods. The Commission therefore is changing the response requirements of Rule 17Ad–5(e)(1) to ten business days for current claims and twenty business days for aged claims. Based upon the comment letters, the Commission believes these time frames generally should avoid the necessity of sending two responses within a brief time period to comply with the rule while still providing reasonably prompt responses to securityholders.

The Commission understands that some transfer agents periodically mail notices to securityholders that have not cashed dividend or interest payments.[10] The Commission also understands that other transfer agents and issuers make periodic mailings to locate "lost" securityholders. Those mailings may include as many as 10,000 notices and generate substantial numbers of securityholder inquiries. The Commission strongly encourages such mailings, and recognizes that application of the originally proposed five- and fifteen-day response times to

[3] Certain technical amendments to paragraph (c) of Rule 17Ad–10 also were proposed in the October 1984 Release.

[4] Comments were received from the Depository Trust Company ("DTC"); Bank of Boston; Bank of New York; Comptroller of the Currency; Chevron Corporation; Bradford National Corporation; The Stock Transfer Association, Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Midwest Clearing Corporation and Midwest Securities Trust Company; Norwest Banks; New England Power Service Company; Otter Tail Power Company; Western Stock Transfer Association, Inc.; The Southeastern Securities Transfer Association Inc.' American Stock Transfer, Incorporated; American Bankers Association; Stein Roe & Farnum; American Transtech; and Morgan Guaranty Trust Company of New York.

[5] In accordance with Section 17A(d)(3)(A)(i) of the Act, the Commission consulted with, and requested the views of, the federal bank regulatory agencies at least 15 days prior to this announcement.

[6] *See* Rule 17Ad–5(e)(3)(iii), which defines sufficient detail to include: the issue; the registered owner; the number of shares or principal amount of debt or number of units of the security; the approximate record or payment date related to the inquiry; and, depending on the status of the inquirer, certificate numbers related to the inquiry. *See* discussion *infra* at note 12.

[7] *See* File No. S7–32–84, letters from Southeastern Securities Transfer Association, Inc.; Western Stock Transfer Association, Inc.; American Transtech; and the Stock Transfer Association, Inc.

[8] *See, e.g.*, comments of Bank of Boston; New England Power Service Company; Norwest Banks; Chevron Corporation and Western Stock Transfer Association.

[9] Also, one commenter indicated that it could adequately respond to approximately 70% of all current dividend and interest inquiries within the five-day time period for current claims. The remaining 30%, however, would require, on the average, seven days for an adequate response.

[10] *See, e.g.*, File No. S7–32–84, letter from Westinghouse Corporation.

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resulting inquiries could prove burdensome. The Commission believes that the modified ten- and twenty-day response times should substantially ameliorate any burdens arising from these transfer agent-initiated inquiry programs. Nevertheless, in the event individual transfer agents believe these response limits could impose burdens on specific securityholder communications programs they conduct, the Commission believes it would be appropriate to grant relief from these responsibilities on a case-by-case basis.

Several commenters suggested that the rule define current claim and aged claim by reference to the dividend or interest payment date, instead of dividend or interest record date as proposed in the October 1984 Release. Those commenters indicated that most securityholders are more likely to know the payment date than the record date. The Commission agrees with the suggestion and is revising Rule 17Ad–5(e) (3) (i) and (ii) to depend on payment date instead of record date.

Two commenters indicated that their procedure for handling misdirected dividend and interest claims is to forward the inquiry to the current DDA or IPA and send a copy of the referral to the inquirer.[11] Those commenters believe that their procedure is more efficient than simply providing the name and address of the current DDA or IPA to the inquirer. The Commission agrees with that conclusion and believes that, provided the response to the inquirer includes the name and address of the current DDA or IPA, referring the inquiry to the current DDA or IPA is an acceptable method of complying with Rule 17Ad–5(e)(2).

In response to commenters' suggestions, the Commission also is changing the requirement to provide an inquirer whose inquiry is misdirected with the name and address of the current IPA or DDA. As proposed, the requirement would have been imposed on any transfer agent that performed IPA, DDA, or any transfer agent functions for the issue within the past five years. Commenters suggested that the five-year period was excessive because issuers may change interest paying or dividend disbursing agents numerous times over a five-year period. Those commenters suggested that a reduction in the five-year period would ease the research burden on the transfer agents that receive misdirected inquiries for issues the transfer agent is no longer servicing. As adopted, the requirement is imposed on any transfer agent that has performed IPA or DDA functions for the issue within the past three years.

B. Responses to Inquiries Containing Insufficient Detail

As proposed in the October 1984 Release, the amendments would have required transfer agents to confirm receipt of an insufficiently detailed inquiry and to respond to it. Some commenters expressed concern that the Rule might enable securities professionals, such as registered broker-dealers, registered clearing agencies and banks, to shift research burdens inappropriately to transfer agents, thereby avoiding the costs of researching their own records.[12]

The Commission has modified the proposal to address these concerns. As adopted, the amendments require transfer agents to respond to such inquiries within the required time frames in one of two ways: (1) by treating the inquiry in accordance with subparagraph (e)(1) as though sufficient detail had been provided, or (2) by requesting additional necessary detail. Although transfer agents are encouraged to respond to any inquiry lacking detail, the adopted amendments define "sufficient detail" narrowly, enabling transfer agents flexibility under subparagraph (e)(1) not to respond to inquiries that do not include applicable certificate numbers unless those inquiries come from persons who are not securities professionals.

C. Telephone Responses to Dividend and Interest Inquiries

As adopted, the amendments to Rule 17Ad–5 provide that a transfer agent may satisfy the written response requirements by telephone if: (1) the inquirer does not request a written response; and (2) if the telephone response resolves the inquiry. Moreover, a transfer agent may telephone an inquirer for additional information, but if such additional detail is not received within ten business days of the telephone request, the transfer agent must make a written request for the needed information.

Commenters overwhelmingly supported the provision for telephone responses as proposed in the October 1984 Release because it affords transfer agents common-sense flexibility in complying with the Rule, and might expedite inquiry responses. Some commenters, however, criticized the provision requiring transfer agents to follow-up a telephone request for information with a written request within ten business days.[13] These commenters complained that the provision places the responsibility for obtaining needed information on the transfer agent, rather than on the inquirer.

The Commission recognizes that a written follow-up requirement imposes some burdens on the transfer agent. The Commission is concerned, however, that where informed telephone communication has not provided information to resolve an inquiry within two weeks, that may reflect confusion or misunderstanding on the part of the inquirer. In those circumstances, a written follow-up creates a useful audit trail for the transfer agent and may well provide the inquirer a clear basis for providing the additional needed information.[14]

One commenter noted that, in some cases, the additional detail may cross in the mail with the follow-up written request, causing unnecessary confusion. The Commission recognizes that this may happen, but believes this risk of confusion is outweighed by the benefits of written clarification by the transfer agent and by the need for certainty that the inquirer has been contacted for the additional information.[15] For this reason, the Commission has retained the provision requiring a transfer agent to send a written follow-up request if the transfer agent does not receive the additional detail within ten business days of the telephone request.[16]

[11] *See* letters from of Morgan Guaranty Trust Company and Stock Transfer Association.

[12] One commenter feared that the amendment in practice might oblige a transfer agent to provide a securities professional with a transcript of its account without compensation. For example, a securities professional attempting to resolve apparent discrepancies in dividend and interest payments might seek to rely on the transfer agent to reconstruct its account rather than researching its own records to pinpoint the specific certificates, number of shares or dollar amounts that might be responsible for the discrepancies. Under the Rule as adopted, a transfer agent would not be obligated to produce a transcript of the account for a securities professional without compensation.

[13] *See* letters from Morgan Guaranty Trust Company and the Stock Transfer Association, Inc.

[14] The transfer agent, of course, may call the inquirer again before the end of the ten business day period to attempt to obtain the necessary information and thereby avoid sending a written request for the information.

[15] A written follow-up letter helps place an inquirer on notice that additional detail is needed before research can be completed. Once a request for additional detail is sent to an inquirer, a transfer agent need not conduct further research, respond to the inquiry or make another request for information until the inquirer responds to the transfer agent's request for additional detail.

[16] Two commenters asked about acceptable methods of documenting telephone responses. Although the present proposal does not establish specific recordkeeping requirements, the Commission does expect transfer agents to maintain

Continued

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III. Amendments to Rule 17Ad–10

In the October 1984 Release, the Commission proposed for comment amendments to Rule 17Ad–10 that would expand the mandatory thirty-day buy-in time period and would clarify when the buy-in time clock starts to run.[17] Under proposed subparagraph (g)(1), transfer agents would have sixty days, instead of the current thirty days, to recover overissued securities before they are required to execute the buy-in. In addition, proposed subparagraph (g)(2) would grant a further thirty-day extension for execution of the buy-in whenever the transfer agent obtains, within the sixty-day recovery period, a letter from the party holding the overissued securities agreeing to return promptly the overissued certificates. Proposed subparagraph (g)(3) would define "discovery of the overissuance" as the date the transfer agent identifies the erroneously issued certificate(s) and the registered securityholder(s).[18] Finally, the Commission also requested comment in the October 1984 Release concerning the effect of surety bond coverage on the buy-in requirement.[19]

The Commission proposed the amendments in response to several transfer agents' suggestions that a thirty-day recovery period between the date of discovery of an actual overissuance and the date of execution of a buy-in may be too short to conduct an extensive research and recovery effort. These transfer agents noted that expanding the recovery period under the Rule would avoid unnecessary transaction costs associated with buying in overissued securities whenever the overissued certificates are recovered in specie from non-*bona fide* purchasers within a short time, but not within thirty days.[20]

The Commission received twelve comment letters that address the proposed amendments to Rule 17Ad–10. None of the commenters objected to the proposed expansion of the buy-in time frame from thirty to sixty days; the proposed additional thirty-day extension; or the proposed definition of "discovery of the overissuance."[21] Accordingly, the Commission is adopting those amendments as proposed for comment.

In response to the Commission's request for comment about overissuances resulting from the replacement of a lost or stolen securities certificate covered by a surety bond, many commenters recommended that these overissuances either be exempt from the buy-in requirement or be granted a thirty-day extension similar to that proposed in subparagraph (g)(2). Some commenters noted that when such transactions are covered by a surety bond, the buy-in requirement provides little, if any, additional financial protection to the transfer agent, issuer or securityholder because the surety company is obligated to reimburse the transfer agent for all expenses associated with repairing an overissuance.[22]

When securities certificates are lost or stolen, the loss or theft is usually reported to the appropriate transfer agent which places a stop on its files. To obtain a replacement certificate, the transfer agent usually requires the registered owner to obtain an open penalty surety bond indemnifying the transfer agent of all liabilities and expenses that the transfer agent may incur if a *bona fide* purchaser ("BFP") presents the lost or stolen certificate for transfer.[23] Only then will the transfer agent issue a replacement certificate.

If a BFP subsequently presents the lost or stolen certificates for transfer, the transfer agent may be required, under the Uniform Commercial Code ("U.C.C."), to honor the transfer. The transfer of the lost or stolen certificate would probably create an overissuance and, under the U.C.C., the transfer agent would be liable for the overissuance.[24] The open penalty surety bond, however, would cover all transfer agent liabilities and expenses associated with honoring that certificate.

Two commenters urged the Commission not to exempt overissuances covered by open penalty surety bonds because of perceived delays such an exemption might add to the process of replacing lost or stolen certificates. For example, a depository commented that even a relatively short wait for replacement certificates during time-critical transactions, such as tender offers, may increase significantly the potential liability of financial intermediaries because of the need to make timely delivery to the tender agent.

The Commission believes that these commenters misunderstand the purpose of Rule 17Ad-10 and its relationship to state laws that govern the rights of securityholders and issuers generally and the issuance of replacement certificates in particular. Rule 17Ad-10 was designed, among other things, to ensure transfer agent financial and operational integrity, by complementing state law requirements. Those state law requirements, however, specify when and how replacement certificates may or must be issued. As noted in Securities Exchange Act Release No. 19860, Rule 17Ad-10 is not intended to affect rights or remedies granted to securityholders under § 8–104 of the Uniform Commercial Code or under any other applicable state law.[25] Thus, Rule 17Ad-10 does not affect the timing of replacing lost or stolen certificates, but instead operates only after a replacement certificate has been issued and a *bona fide* purchaser presents the original lost or stolen certificate for transfer.

Although the Commission believes there is some financial risk to transfer agents related to overissuances covered by an open penalty surety bond (*e.g.*, the surety company might fail to honor its obligation under the terms of the bond), the risk is remote in light of the substantial resources and favorable pay-out history of surety companies. Therefore, the Commission is exempting from the buy-in requirement actual overissuances covered by open penalty surety bonds.[26] The transfer agent, upon discovery of the overissuance, should contact immediately the surety company to coordinate recovery efforts. If the surety company does not honor its obligation, the Commission believes that it can rely on private remedies accorded securityholders under state law, which require buy-ins in appropriate circumstances, to effectuate investor protection, rather than imposing a separate buy-in requirement under Rule 17Ad-10(g).[27]

IV. Regulatory Flexibility Act

A. Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 604, as amended by the Regulatory Flexibility Act (the "RFA"), regarding the amendments to Rule 17Ad-5. The Analysis notes that the amendments to this Rule are part of the Commission's review of the Turnaround Rules. The Analysis notes that the amendments to Rule 17Ad-5 affect all registered transfer agents that perform dividend disbursing or interest payment activities on behalf of issuers, including approximately 1,400 small transfer agents.[28] Because the amendments concern only the speed with which registered transfer agents must respond to securityholder inquiries respecting dividend and interest inquiries, the Analysis also notes that the only type of transfer agent cost affected by the amendments to Rule 17Ad-5 is personnel expenses. Furthermore, the Analysis notes the Commission's belief that a majority of the 1,400 small transfer agents affected by the amendments to Rule 17Ad-5 will not incur significant additional compliance costs because many of these registered transfer agents currently comply with the amendments.

The Commission recognizes its obligation to formulate compliance and reporting requirements that take into account the economic impact on small transfer agents. The RFA directs the Commission to consider significant alternatives to the amendments that would accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small transfer agents. As discussed in the Analysis, the Commission considered the alternatives set forth in the RFA in developing the amendments. The amendments to Rule 17Ad-5 do not impose reporting or recordkeeping requirements,[29] and establish minimum performance standards, rather than particular design standards. Moreover, in response to transfer agent comments, the Commission has extended the time frames incorporated in the Rule by five business days, thereby easing compliance costs for transfer agents and small transfer agents in particular. Accordingly, the Commission believes that any costs that may be incurred by small transfer agents because of the amendments are far outweighed by the benefits that will accrue to the securities industry from the more efficient and effective operation of the National System.

A copy of the Analysis may be obtained by contacting Ester Saverson, Jr., Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, or at (202) 272–2900.

B. Regulatory Flexibility Certification

On October 11, 1984, the Chairman of the Commission certified that the proposed amendments to Rule 17Ad-10, if promulgated, would not have a significant economic impact on a substantial number of small entities.[30]

The Commission did not receive any comments specifically addressing the Chairman's certification. The Commission received several comments concerning the cost of complying with Rule 17Ad-10(g). In response to those comments, as discussed in greater detail above, the Commission has generally relaxed the buy-in requirement. That change should reduce significantly the frequency and expense of required buy-ins.

V. Competitive Considerations

The Commission, pursuant to Section 23(a)(2) of the Act, has considered whether the rule amendments will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes the rule amendments will not impose any burden on competition and finds that any potential burden resulting from the rule amendments would be necessary or appropriate in furtherance of the purpose of the Act and, in particular, Section 17A of the Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VI. Statutory Basis and Text of Amendments

The Commission is amending Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended; (15 U.S.C. 78w) * * * §§ 240.17Ad–5 and 240.17Ad–10 are also authorized under Sections 3 and 17A; 48 Stat. 882, as amended, and 89 Stat. (15 U.S.C. 78c and 78q–1)

2. Section 240.17Ad–5 is amended by redesignating paragraph (e) as paragraph (g)(1) revising newly redesignated (g)(1), adding new paragraph (g)(2), and by adding new paragraphs (e) and (f) as follows:

§ 240.17Ad–5 Written inquiries and requests.

* * * * *

(e)(1) *Response to Written Inquiries Concerning Dividend and Interest Payments.* A registered transfer agent shall respond, within ten business days of receipt, to current claims that contain sufficient detail. A registered transfer agent shall respond, within twenty business days of receipt, to aged claims that contain sufficient detail. The response shall indicate in writing that the inquiry has been received, whether the claim requires further research and, if so, a reasonable estimate of how long that research may take. If no further research is required, the response shall indicate whether that claim is being or will be paid and, if not, the reason for not paying the claim. A registered transfer agent shall devote diligent attention to unresolved inquiries and

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a log or other records sufficient to document telephone responses. In addition, the Commission plans to review more generally transfer agent recordkeeping and record retention requirements in the near future and may consider establishing appropriate recordkeeping and record retention requirements for dividend and interest inquiries at that time. *See* 17 CFR 240.17Ad–6(a)(b) and 17 CFR 240.17Ad–7(a) and (b).

[17] As originally adopted, Rule 17Ad–10(g) required a transfer agent that is responsible for creating an actual overissuance to buy in securities within thirty days of discovering the overissuance.

[18] One commenter expressed confusion over the term "cause" as used in paragraph (g) of the Rule. The term "cause" is used to focus on the transfer agent that created the overissuance and not on the events that led to the discovery of the overissuance. Thus, a transfer agent that discovered the overissuance but was not the transfer agent at the time the overissuance was created is not required to execute a buy-in under the Rule because the transfer agent did not "cause" the overissuance.

[19] Two technical amendments also were proposed. One amendment would specifically include within paragraph (g)(1) of the Rule a statement that the buy-in is required only of a transfer agent that caused a physical overissuance subsequent to September 30, 1983, the effective date of the Rule. The other amendment concerns paragraph (c) of Rule 17Ad–10 which requires a co-transfer agent to promptly dispatch to the recordkeeping transfer agent certificate detail for every certificate cancelled or issued. The narrative portion of the adopting release, Securities Exchange Act Release No. 19860 (June 10, 1983), 48 FR 28231 (June 21, 1983), defined "promptly" as "within two business days after transfer" but as "daily" with respect to transfers occurring within five business days of record date. The latter definition of "promptly" was unintentionally omitted from the text of the Rule in the adopting release but incorporated in the October 1984 Release. None of the commenters objected to those technical changes and, accordingly, the Commission is adopting those amendments.

[20] *See* File No. S7–32–84, letters from Morgan Guaranty Trust Company of New York, Continental Stock Transfer and Trust Company and the First National Bank of Boston.

[21] Indeed, several commenters strongly supported the changes. *See, e.g.*, comment letters from American Transtech, Southeast Securities Transfer Association, American Stock Transfer, Inc., Bank of New York, Norwest Banks, and Stein Roe & Farnum.

[22] As noted by a commenter, only an "open penalty" surety bond reimburses the transfer agent for all expenses associated with the overissuance, particularly fluctuations in market prices.

[23] *See* U.C.C. Section 8–405(2). The U.C.C. allows the issuer or its agent to require the registered owner to obtain a surety bond sufficient to indemnify the transfer agent from any liability or expenses that might occur.

[24] Under § 8–405(3) of the U.C.C. the issuer or its agent is required to register the transfer to a BFP of the original certificated securities. If the transfer would create an overissuance, section 8–104 of the U.C.C. requires the issuer or its agent to purchase an identical number of securities, cancel them, and re-issue new certificates to the BFP.

[25] *See* U.C.C. 8–405 and 8–401.

[26] (June 10, 1983), note 31, 48 FR 28231 (June 21, 1983).

[27] *See* U.C.C. 8–104 (1977).

[28] *See* 17 CFR 240.010(h) (1982) (definition of small entity with respect to a registered transfer agent)

[29] Generally, transfer agent recordkeeping requirements are found in Rule 17Ad-6. Transfer agents that are exempt under Rule 17Ad-4(b) are exempt from certain of the recordkeeping requirements of Rule 17Ad-6.

[30] *See* Securities Exchange Act Release No. 21374A (October 11, 1985) and the October Release.

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shall resolve all inquiries as soon as possible.

(2) *Misdirected Written Inquiries Concerning Dividend and Interest Payments.* In the event that a transfer agent is not the dividend disbursing or interest paying agent for an issue that is the subject of a claim under this section, but performed those or any transfer agent services for that issue within the preceding three years, the transfer agent shall provide in writing to the inquirer, within ten business days of receipt of the inquiry, the name and address of the current dividend disbursing or interest paying agent. If the transfer agent did not perform those or other transfer agent services for the issue within the preceding three years, the transfer agent must respond to the inquiry and may respond by returning the inquiry with a statement that the transfer agent is not the current dividend disbursing or interest paying agent and that it does not know the name and address of the current dividend disbursing or interest paying agent.

(3) As used in this paragraph:

(i) A "current claim" means a written inquiry concerning non-payment or incorrect payment of dividends or interest, the payment date for which occurred within the preceding six months.

(ii) An "aged claim" means a written inquiry concerning non-payment or incorrect payment of dividends or interest, the payment date for which occurred more than six months before the inquiry.

(iii) "Sufficient detail" means a written inquiry or request that identifies: the issue; the name(s) in which the securities are registered; the number of shares (or principal amount of debt securities or number of units for any other kind of security) involved; the approximate record date(s) or payment date(s) relating to the claim; and, with respect to registered broker-dealers, registered clearing agencies, or banks, certificate numbers.

(f) *Telephone Response.* (1) A transfer agent may satisfy the written response requirements of this section by a telephone response to the inquirer if:

(i) The telephone response resolves that inquiry; and

(ii) The inquirer does not request a written response.

(2) When any person makes a written inquiry or request that would qualify under paragraph (e) of this section except that it fails to provide sufficient detail as specified in paragraph (e)(3)(iii), a registered transfer agent may telephone the inquirer to obtain the necessary additional detail within the time periods specified in paragraph (e)(1). If the transfer agent does not receive the additional detail within ten business days, the transfer agent immediately shall make a written request for the additional information.

(g) (1) When any person makes a written inquiry or request which would qualify under paragraphs (a), (b), (c), or (d) of this section except that it fails to provide all of the information specified in those paragraphs, or requests information which refers to a time earlier than the time periods specified in those paragraphs, a registered transfer agent shall confirm promptly receipt of the inquiry or request and respond to it as soon as possible.

(2) When any person makes a written inquiry or request which would qualify under paragraph (e) of this section except that it fails to provide sufficient detail as specified in paragraph (e)(3)(iii), a registered transfer agent must respond to the inquiry within the time periods specified in paragraph (e)(1). A registered transfer agent may respond to such an inquiry in accordance with paragraph (e)(1) as though sufficient detail had been provided, or may return it to the inquirer, requesting the additional necessary details.

3. Section 240.17Ad–10 is amended by revising paragraphs (c)(1) and (g) as follows:

§ 240.17Ad–10 Prompt posting of certificate detail to master securityholder files, maintenance of accurate securityholder files, communications between co-transfer agents and recordkeeping transfer agents, maintenance of current control book, retention of certificate detail and "buy-in" of physical overissuance.

* * * * *

(c)(1) Every co-transfer agent shall dispatch or mail promptly to the recordkeeping transfer agent a record of debits and credits for every security transferred or issued. For the purposes of this paragraph, "promptly" means within two business days following transfer of each security, and, with respect to transfers occurring within five business days of record date, daily.

* * * * *

(g)(1) A registered transfer agent, in the event of any actual physical overissuance that such transfer agent caused and of which it has knowledge, shall, within 60 days of the discovery of such overissuance, buy in securities equal to the number of shares in the case of equity securities or the principal dollar amount in the case of debt securities. During the sixty-day period, the registered transfer agent shall devote diligent attention to resolving the overissuance and recovering the certificates. This paragraph requires a buy-in only by the transfer agent that erroneously issued the certificate(s) giving rise to the physical overissuance, and applies only to those physical overissuances created by transfers or issuances subsequent to September 30, 1983.

(2) If a transfer agent obtains a letter from the party holding the overissued certificates that confirms that the overissued certificate(s) will be returned to the transfer agent not later than thirty days after the expiration of the sixty-day period, the transfer agent need not buy in securities by the sixtieth day. If, however, the certificate(s) are not returned to the transfer agent within the additional thirty-day period, the transfer agent immediately must execute the buy-in in accordance with paragraph (g)(1) of this section.

(3) If the certificates involved are covered by a surety bond indemnifying the transfer agent for all expenses incurred as a result of actual overissuance, the transfer agent need not buy in the securities. The transfer agent, however, shall devote diligent attention to resolving the overissuance and recovering the certificates.

(4) For purposes of this paragraph, "discovery of the overissuance" occurs when the transfer agent identifies the erroneously issued certificate(s) and the registered securityholder(s).

* * * * *

Dated: February 10, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86–3433 Filed 2–14–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: The Secretary of the Interior is announcing his decision on the adequacy of proposed amendments to the North Dakota permanent regulatory program which was approved by the Secretary pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments submitted by North Dakota for the Secretary's approval include modifications to the State statute and regulations intended to satisfy the remaining three program conditions concerning the following: (1) Revised definition of "valid existing rights"; (2) requirement that applicants shall identify all outstanding violations of SMCRA and any other State law or rule and (3) compensation to landowners for damage to structures or facilities that occurs as a result of subsidence. North Dakota also submitted, as part of the amendment package, several minor revisions to the statute and regulations unrelated to the program conditions.

After providing opportunity for public comment and conducting a thorough review of the program amendments to satisfy the conditions, the Secretary has decided to approve the modifications and remove the conditions of approval. The Federal rules at 30 CFR Part 934 codifying decisions concerning the North Dakota program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: February 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 328–5830.

SUPPLEMENTARY INFORMATION:

I. Background on Approval

The North Dakota program was approved by the Secretary of the Interior on December 15, 1980, conditioned on the correction of 13 minor deficiencies. Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214), February 9, 1983 **Federal Register** (48 FR 8902), November 9, 1983 **Federal Register** (48 FR 51456), July 19, 1984 **Federal Register** (49 FR 29214), and January 3, 1985 **Federal Register** (50 FR 260).

II. Proposed Amendments

On June 18, 1985, the State of North Dakota submitted to OSMRE amendments to its permanent regulatory program. The amendment package is intended primarily to address the three remaining conditions of approval by the Secretary of the Interior on the North Dakota program. The State revised its definition of "valid existing rights" in both the statute and rules to substitute "August 3, 1977" for the date "July 1, 1979" as the correct date by which the regulatory authority will evaluate and make valid existing rights determinations. This statutory and rule change is intended to satisfy condition (m).

The State revised its statute and regulations to require all applicants for permits to identify all permits held by the applicant within the last five years in any State. The revised provision requires applicants to identify all outstanding violations in all States prior to permit issuance. This revison is intended to satisfy conditon (e).

The State also submitted material intended to address condition (n). The proposed rule revision provides for compensation to owners of structures or facilities damaged by underground mine subsidence.

In addition to the above required amendments, North Dakota submitted additional program amendments to OSMRE. The majority of the additional revisions are clarifying in nature. The most substantive of the additional amendments involves the revision of a State rule to allow qualified registered land surveyors to prepare and certify maps, plans and cross sections. This revision implements comparable changes made to the Federal provision.

In the July 29, 1985 **Federal Register** (50 FR 30721), OSMRE sought comment on whether North Dakota's proposed statutory revisions are as stringent as SMCRA and whether the State's proposed regulation modifications are no less effective than the requirements of the revised Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17. The public comment period ended August 28, 1985. A public hearing scheduled for August 23, 1985, was not held since no person requested the hearing.

III. Secretary's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Secretary finds that the amended provisions to the North Dakota program submitted to OSMRE on June 18, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII with certain exceptions, as discussed below.

1. Condition (m)

Condition (m) stipulates that North Dakota must amend its program to revise the date for establishment of valid existing rights under North Dakota Century Code (NDCC) 38–14.1–07(i) and North Dakota Administrative Code (NDAC) 69–05.2–01–02 to be consistent with section 522(e) and 30 CFR 761.5.

North Dakota has amended NDCC 38–14.1–07 and NDAC 69–05.2–01–02(114) and 69–05.2–04–01 concerning valid existing rights under section 522(e) of SMCRA to substitute the date "August 3, 1977" for for the date "July 1, 1979." The Secretary finds the revised North Dakota provisions to be consistent with section 522(e) and the Federal rules at 30 CFR 761.5 and 761.11, and meet the requirements set forth in condition (m).

2. Condition (e)(1)

Condition (e)(1) stipulates that North Dakota must amend NDAC 69–05.2–10–03(i) to prohibit issuance of permits to any person with an outstanding violation or pattern of violations outside of North Dakota in a same or similar manner as section 510(c) of SMCRA and 30 CFR 786.17 and 786.19(i) (now 30 CFR 773.15(b)).

a. North Dakota has amended NDCC 38–14.1–21(5) and NDAC 69–05.2–10–03(1) to provide that a permit may not be issued to any person if information available to the Public Service Commission indicates that any surface coal mining operation owned or controlled by the applicant is currently in violation of the North Dakota statute, the Act or any law or rule of the United States or any department or agency in the United States pertaining to air or water environmental protection. The NDCC contains the further limitation that the violation be: "incurred by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of application." However, NDAC 69–05.2–10–03, the State's criteria for permit approval or denial, does not contain any temporal limitation with regard to an applicant being in violation of any law or rule of North Dakota, or of any law or rule in any State enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection or surface coal mining and reclamation.

Therefore, the Secretary finds that taken together the changes to NDCC 38–14.1–21(5) and NDAC 69–05.2–10–03(1) and the criteria for permit approval in NDAC 69–05.2–10–03 include provisions

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that are no less stringent than section 510(c) of SMCRA and no less effective than 30 CFR 773.15(b)(1).

b. North Dakota has amended NDCC 38–14.1–33(3) and NDAC 69–05.2–10–03(2) to provide that no permit shall be issued to an applicant after a finding by the commission that the applicant or operator controls or has controlled mining operations with a demonstrated pattern of willful violations of the North Dakota statute or the Act, of such nature and duration and with such resulting irreparable environmental damage as to indicate an intent not to comply with the provisions of the North Dakota statute or the Act. The Secretary finds that the North Dakota provisions are consistent with section 510(c) of the Act and 30 CFR 773.15(b)(3).

The amended provisions of the North Dakota program cited above meet the requirements set forth in Condition (e)(1) of the Secretary's approval.

3. Condition (e)(2)

Condition (e)(2) stipulates that North Dakota must amend NDAC 69–05.2–06–01(4) to require a permit applicant to submit the names under which the applicant, partner or principal shareholder previously operated a coal mine in any State within the five preceding years in a same or similar manner as section 507(b)(4) of SMCRA and 30 CFR 778.13(b)(3) (now 778.13(c)(2)).

North Dakota has amended NDCC 38–14.1–14(1)(e)(3) to require the permit application to include a list of names under which the applicant, partner, or principal shareholder previously operated a surface coal mining operation within any State within the five-year period preceding the date of the application. The provision is no less stringent than section 507(b)(4) of SMCRA, which requires all names under which the applicant or other persons previously operated a coal mining operation. The Federal rule also requires information on current operations. North Dakota requires information on current operations under the provisions of NDCC 38–14.1(1)(f). (See also discussion of conditions (e)(3) below).

Therefore, the amended provisions taken together satisfy condition (e)(2) of the Secretary's approval.

4. Condition (e)(3)

Condition (e)(3) stipulates that North Dakota must amend subsection 1 of NDAC 69–05.2–06–02 to require the permit applicant to submit a statement of any permits held subsequent to 1970 in States other than North Dakota in a same or similar manner as section 507(b)(3) of SMCRA and 30 CFR 778.13(d).

North Dakota has amended NDCC 38–14.1(1)(f) to require a statement of any current or previous permits and pending applications held by the applicant in any State, and has amended NDAC 69–05.2–06–02(1) to require the same information for the applicant, partner or principal shareholder. The Secretary finds these two provisions, taken together, are no less stringent than section 507(b)(3) of SMCRA and no less effective than 30 CFR 778.13(d) which requires information on all pending permit applications, and previous and current permits help during the five years preceding the date of application by the applicant, partner or principal shareholder. Therefore, the amended provisions of the North Dakota program cited above satisfy the requirements set forth in condition (e)(3) of the Secretary's approval.

5. Condition (e)(4)

Condition (e)(4) stipulates that North Dakota must amend subsection 3 of NDAC 69–05.2–06–02 to require the permit applicant to submit a list of notices of violation of the Act or Federal and State laws pertaining to air or water environmental protection that he has received in a same or similar manner as section 510 and 30 CFR 778.14(c).

North Dakota has amended NDCC 38–14.1–14(1)(g) to require the application to include a list of all violations of the North Dakota statute, the Act, and any Federal or State statute or regulation pertaining to air or water environmental protection during the three-year period to the date of application. This provision is no less stringent than section 510(c) of the Act. However, the Federal requirements in 30 CFR 778.14(c) were amended subsequent to the imposition of the condition to expand the information requirement to include such violation information for any subsidiary, affiliate or persons controlled by or under common control with the applicant. Therefore, the North Dakota program technically satisfies the literal language of condition (e)(4), but a further amendment is required to make the State's provisions consistent with 30 CFR 778.14(c). Therefore, the Secretary is removing condition (e)(4) but will require that additional changes be made to the North Dakota program to address changes made in the Federal regulations on September 28, 1983. The Director, OSMRE, on February 3, 1986, notified North Dakota pursuant to 30 CFR 732.17(f) that such a revision to the State program is required because the State's regulations are now less effective than the revised Federal regulations.

6. Condition (n)

Condition (n) stipulates that North Dakota must amend its program to address compensation to an owner of a structure or facility damaged by subsidence in a manner no less effective than the compensation provided by the Federal provisions at 30 CFR 819.17 and 817.121.

30 CFR 819.17 requires that auger mining be conducted in accordance with the requirements of 30 CFR 817.121 (a) and (c), concerning subsidence protection.

North Dakota has amended NDAC 69–05.2–13–12 to require the operator to compensate for or correct material damage to structures caused by subsidence. However, the State's provision contains the following phrase *to the extent required under State law.* The Federal rule at 30 CFR 817.121(c), concerning protection for structures damaged by subsidence, was suspended, in part, on February 21, 1985. The phrase, "to the extent required under State law" was that part suspended by OSMRE. As a result of the suspension, the modified Federal provision at 30 CFR 817.121(c) now requires either correction of material damage to structures caused by subsidence, or compensation to the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Therefore, the North Dakota amendment technically satisfies the literal language of condition (n) but a further revision is required to make the State's provisions consistent with 30 817.121(c) as modified by OSMRE's suspension of the phrase discussed above. Therefore, the Secretary is removing condition (n) but will require that additional changes be made to the North Dakota program to address the suspension of portions of Federal rule 30 CFR 817.12(c) on February 21, 1985 resulting from a ruling in *In re: Permanent Surface Mining Regulation Litigation II.* The Director, OSMRE, on February 3, 1986, notified North Dakota pursuant to 30 CFR 732.17(f) that such an amendment to the State program is required because the State's regulations are now less-effective than the revised Federal regulations.

7. Other Amendments

North Dakota amended NDCC 38–14.1–14 and NDAC 69–05.2–09–02 and 09 in response to an amendment to section 507(b)(14) of SMCRA as published in the April 24, 1985 **Federal Register.** The North Dakota amendment, as does the amendment to SMCRA, authorizes qualified registered land surveyors to prepare and certify maps, plans and cross-sections. This amendment is no less stringent than section 507(b)(14), as amended, and no less effective than the provisions found at 30 CFR Chapter VII.

North Dakota amended NDCC 38–14.1–10, 38–14.1–14, 38–14.1–21 and 38–14.1–30 concerning the cultural resources permitting requirements. North Dakota has, through the revised provision, consolidated all statutory and regulatory requirements of the cultural resources components of the approved program into the North Dakota Century Code. The revised provisions shift the authority for all cultural resources actions and decisions from the Public Service Commission to the Superintendent of the State Historical Board. These revised provisions are not inconsistent with SMCRA and are no less effective than the requirements of 30 CFR Chapter VII.

IV. Public Comments

Pursuant to section 503 of SMCRA and 30 CFR 732.17(a)(10)(i), comments were solicited from various Federal agencies on the proposed State program amendment. Of those agencies invited to comment, the U.S. Department of Labor, Mine Safety and Health Administration, the U.S. Department of Agriculture, Soil Conservation Service, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Army Corps of Engineers responded, all with non-substantive comments.

V. Secretary's Decision

Based on the findings, the Secretary is removing the remaining three conditions (e), (m) and (n) of his approval of the North Dakota program. The Secretary is also approving the proposed amendments to the North Dakota program, as submitted to OSM on June 18, 1985. The Federal rules at 30 CFR Part 934 are being amended to reflect his decision.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 7, 1986.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

PART 934—NORTH DAKOTA

30 CFR Part 934 is amended as follows:

1. The authority citation for Part 934 continues to read as follows:

Authority: Sec. 503, Pub. L. 95–87 (30 U.S.C. 1253).

§ 934.11 [Removed]

2. 30 CFR Part 934 is amended by removing § 934.11.

3. 30 CFR 934.15 is amended by adding a new paragraph (f) as follows:

§ 934.15 Approval of amendments to State regulatory program.

* * * * *

(f) The following amendments to the North Dakota permanent regulatory program submitted to OSMRE on June 18, 1985, are approved effective February 18, 1986.

(1) Modifications to NDCC 38–14.1–04.2 and .3 concerning cultural resources;

(2) Modifications to NDCC 38–14.1–7 concerning valid existing rights;

(3) Modifications to NDCC 38–14.1–10 concerning cultural resources;

(4) Modifications to NDCC 38–14.1–14 concerning permit application requirements;

(5) Modifications to NDCC 38–14.1–21 concerning permit approvals;

(6) Modifications to NDCC 38–14.1–30 concerning administrative review of decisions made by the State Historical Board;

(7) Modifications to NDCC 38–14.1–33 concerning permit revocation;

(8) Modifications to NDAC 69–05.2–10–03 concerning criteria for permit approval;

(9) Modifications to NDAC 69–05.2–06–02 concerning compliance information required of permit applicants;

(10) Modifications to NDAC 69–05.2–06–02 and NDAC 69–05.2–04–01 concerning the date for valid existing rights determinations;

(11) Modifications to NDAC 69–05.2–13–12 concerning performance standards for auger mining operations;

(12) Repeal of NDAC 69–05.2–08–03 concerning cultural resources;

(13) Modifications to NDAC 69–05.2–09–08 concerning operations plans;

(14) Modifications to NDAC 69–05.2–09–02 and NDAC 69–05.2–09–09 concerning the responsibilities of registered land surveyors; and

(15) Modifications to NDAC 69–05.2–16–09 concerning sedimentation ponds.

[FR Doc. 86–3412 Filed 2–14–86; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 4 and 146

[CGD 86–011]

Station Bills; OMB Paperwork Control Numbers

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the existing provision concerning station bills (muster lists) on manned Outer Continental Shelf facilities other than mobile offshore drilling units. Though this provision appears in the Code of Federal Regulations, it has not been in effect because it had not been assigned an information collection control number by the Office of Management and Budget. Now that the information collection has been approved and a control number assigned, this rule adds the control number at the end of the provision and makes the station bill requirements effective. This rule also adds the number, as well as several other previously omitted numbers, to the list of numbers assigned to provisions throughout that volume of the Code of Federal Regulations.

EFFECTIVE DATE: This rule becomes effective on February 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Allen W. Penn, Office of Merchant Marine Safety (202) 426–2307.

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SUPPLEMENTARY INFORMATION: When subchapter N of 33 CFR Chapter I on Outer Continental Shelf Activities was revised on March 4, 1982 (47 FR 9366), the preamble to the rule indicated that 33 CFR 146.130 (Station bill) has information collection requirements not yet approved by the Office of Management and Budget (OMB). Under 44 U.S.C. 3507(f), an agency shall not engage in a collection of information without obtaining an OMB control number to be displayed on the information collection request. Upon application by the Coast Guard, OMB has since approved the information collection requirements in § 146.30 and assigned OMB Control Number 2115–0542.

This rulemaking makes § 146.130 effective and amends that section and 33 CFR 4.02 to display the assigned OMB control number. This rule also adds several previously omitted OMB control numbers to § 4.02 which relate to various parts and sections throughout 33 CFR Chapter I.

This final rule was not preceded by a notice of proposed rulemaking and is being made effective in less than 30 days after publication in the **Federal Register**. This rule merely displays existing OMB control numbers pertaining to specific Coast Guard regulations for the public's information. Therefore, the Coast Guard has determined that notice and public procedure thereon are unnecessary under 5 U.S.C. 553(b)(3)(B). Since this rule has no substantive effect, good cause exists for making it effective in less than 30 days after publication, under 5 U.S.C. 553(d).

Drafting Information

The principal persons involved in drafting this rule are Mr. Allen W. Penn, Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Office of Chief Counsel.

This regulation is considered to be non-major under Executive Order 12291 and non-significant under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely displays existing OMB Control Numbers for the public's information and imposes no new substantive requirement. Since the impact of his rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 4

Reporting requirements.

33 CFR Part 146

Continental shelf, Marine safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, Parts 4 and 146 of Chapter I, Title 33, Code of Federal Regulations, are amended as follows:

PART 4—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

1. The authority citation for Part 4 is revised to read as follows:

Authority: 44 U.S.C. 3507; 49 CFR 1.45(a).

2. The table in § 4.02 is amended by deleting the entries for § 153.303 and § 154.740 and adding new entries to read as follows:

§ 4.02 Display.

* * * * *	
Part 115	2115–0050.
* * * * *	
Section 126.15(o)(1)	2115–0105.
* * * * *	
Section 146.130	2115–0542.
* * * * *	
Section 153.203	2115–0137.
* * * * *	
Section 154.740(a)–(e)	2115–0096.
Section 154.740(f)	2115–0506.
Section 155.107	2115–0097.
Section 155.740	2115–0120.
Section 155.820(a)–(c)	2115–0096.
Section 155.820(d)	2115–0506.
Section 156.107	2115–0097.
Section 156.150	2115–0506.
Part 156, Subpart B	2115–0539.
* * * * *	
Section 165.15	2115–0076.
Section 165.25	2115–0076.
Section 165.803(i)	2115–0092.
* * * * *	

PART 146—OPERATIONS

3. The authority citation for Part 146 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347, 1348; 49 CFR 1.46(z).

4. Section 146.130 is amended by removing the Effective Date Note at the end of the section and by adding an OMB control number in its place as follows:

§ 146.130 Station bill.

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 211–0542)

Dated: February 12, 1986.

W. J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 86–3429 Filed 2–14–86; 8:45 am]

BILLING CODE 4910-14-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1130

[Docket No. 37130; Sub-3]

Special Docket Proceedings; Exemption From Letter of Intent Requirement Involving Amounts of $10,000 or Less

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules.

SUMMARY: In response to a request by the association of American Railroads, the Commission is adopting revised rules (as set forth in the appendix) that would eliminate the letter of intent requirement in special docket cases involving amounts of $10,000 or less. The AAR suggests that adoption of a $10,000 threshold would eliminate costly paperwork and enable refunds and waivers of undercharge to be made more quickly.

DATES: The rules will become effective March 20, 1986. Comments of those opposed to the revision are due March 10, 1986. If adverse comments are received, the effectiveness of the decision will be automatically postponed pending a further decision.

ADDRESS: An original and, if possible, ten copies of negative comments should be sent to: Room 4310, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Donald W. Simmons, (202) 275–7358.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (D.C. metropolitan area) or toll free (800) 424–5403.

The Commission certifies that the rules will not have a significant economic impact on a substantial number of small entities. These final rules will allow carriers to save clerical costs and allow for speedier waiver of undercharges and reparations.

This action does not significantly effect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1130

Administrative practice and procedure.

Decided: February 7, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

Appendix

Title 49, Part 1130, of the Code of Federal Regulations is amended as follows:

PART 1130—[AMENDED]

1. The authority citation following § 1130.1 is removed and the authority citation for Part 1130 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10707; 5 U.S.C. 553 and 559. § 1130.2 [Amended]

2. In the first sentence of § 1130.2(e)(1), the amount "$5,000.00" is revised to read "$10,000.00".

3. In the fourth sentence of the last paragraph of § 1130.2(e)(1), the amount "$5,000.00" is revised to read "$10,000.00".

4. In the first sentence of § 1130.2(e)(2), the amount "$5,000.00" is revised to read "$10,000.00".

5. In the penultimate sentence of § 1130.2(e)(2), the amount "$2,000.00" is revised to read "$10,000.00".

[FR Doc. 86–3393 Filed 2–14–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 41276–4176]

Fishery Conservation and Management; Foreign Fishing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of initial specifications; correction.

SUMMARY: This document corrects the specifications table in the notice of initial specifications for all foreign fisheries that was published January 30, 1986, 51 FR 3788.

FOR FURTHER INFORMATION CONTACT: Elizabeth D. Haynes, 202–634–7432.

In FR Doc. 86–2061 beginning on page 3788 in the issue of January 30, 1986, make the following corrections in the specifications table that begins on page 3789.

1. On page 3789 under the Alaska Region, the species code for Greenland turbot is corrected to "116" and the species code for Arrowtooth flounder is corrected to "721".

2. On page 3790 under the species Pacific cod in the Western area under the "Reserve" heading, the figure "3,320" is corrected to "3,312".

3. On page 3791 under the species Mahimahi in the American Samoa area under the "TALFF" heading, the figure "20" is corrected to "2.0".

4. On page 3791, footnote 2, to the table is corrected by inserting "Appendix II" before "figure 2" at the end of the sentence.

Dated: February 12, 1986.

William G. Gordon,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 86–3476 Filed 2–14–86; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 640

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Gulf of Mexico and South Atlantic spiny lobster fishery.

SUMMARY: This notice announces that anyone entering the commercial spiny lobster fishery in the Gulf of Mexico and South Atlantic after January 15, 1986 (control date) will not be assured of future access to the spiny lobster resource if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the Gulf of Mexico and South Atlantic spiny lobster resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fishery based on speculation while discussions continue on whether and how access to the spiny lobster resource should be controlled.

FOR FURTHER INFORMATION CONTACT: Michael Justen, NMFS, 813–893–3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP) was developed in 1982 and is currently being amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils). The draft Amendment 1 was approved by the Councils, on January 15, 1986, and January 22, 1986, respectively, and notice of public hearing published in the **Federal Register** on January 23, 1986 (51 FR 3087).

This notice is not part of the proposed draft Amendment 1. However, the Councils have been requested by their industry advisory panels (AP) to develop alternative limited access systems for review by the industry by 1987. This action by the Councils will be announced at public hearings on Amendment 1. The fishery currently has more participants and spiny lobster traps than are necessary to harvest the optimum yield (OY) from the fishery. The number of spiny lobster permits and traps has doubled since the 1975–1976 season. Annual catch per trap has declined substantially in the last ten years and has been lower in the past two years than in all previous years. Since the current fishing fleet is capable of harvesting the entire spiny lobster OY, additional fishing effort would lead to harvesting inefficiencies, more management constraints, and increased conservation risks. The Assistant Administrator for Fisheries, NMFS, has concurred that the Councils begin immediately to address this problem by developing additional controls on fishing effort. Such controls contemplated by the Councils may include those that control access to the spiny lobster fishery resource.

To assist the Councils, the Assistant Administrator has agreed to publish a notice in the **Federal Register**, announcing that anyone entering the spiny lobster fishery after January 15, 1986, will not be assured of future participation should the Councils develop, and the Secretary [of Commerce] implement, an effort control regime that limits the number of participants in the fishery. At their meeting of January 13–16, 1986, and January 20–23, 1986, the Councils voted to recommend this action and adopted January 15, 1986, as the control date.

NMFS and the Councils intend, in making this announcement, to discourage speculative entry into the spiny lobster fishery while potential entry or access control management regimes are discussed by the Councils and possibly developed. If the Councils

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decide to develop an access or entry control management regime, some fishermen who do not currently fish for spiny lobster in the Gulf of Mexico and South Atlantic and never have done so may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of spiny lobster. Such a record generally is considered indicative of economic dependence on the fishery. On this basis, the fishermen may successfully lay claim to access to a fishery that is otherwise limited to traditional participants. New entrants may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant. This speculation often is responsible for a rapid increase in fishing effort in fisheries already fully or over-developed when management authorities begin to consider use of a limited access management regime. The original problems become exacerbated by those who seek possible winfall gain from the solutions being discussed. To help distinguish *bona fide*, established spiny lobster fishermen from the speculative entrants to a fishery, a management authority may set a control date before discussions and planning of controlled access regimes begin. Fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation. Other qualifying criteria, such as holding a permit before the control date and documentation of commercial landings and sales, may be applied for entry.

This announcement establishes January 15, 1986, as such a control date for potential use in determining historical or traditional participation in the Gulf of Mexico and South Atlantic spiny lobster fishery. This action does not commit the Councils or the Secretary to any particular management regime or criterion for entry to the spiny lobster fishery. Fishermen are not guaranteed future participation in the spiny lobster fishery regardless of their date of entry or intensity of participation in the fishery before or after the control date. The Councils may choose a different control date, or they may choose a management regime that does not make use of such a date. The Councils may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Councils may choose also to take no further action to control entry or access to the fishery.

Dated: February 11, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3421 Filed 2-14-86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 654

Stone Crab Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date for entry into the Gulf of Mexico stone crab fishery.

SUMMARY: This notice announces that anyone entering the commercial stone crab fishery in the Gulf of Mexico after January 15, 1986 (control date) will not be assured of future access to the stone crab resource if a management regime is developed and implemented that limits the number of participants in the fishery. This announcement is necessary for public awareness of a potential eligibility criterion for access to the Gulf of Mexico stone crab resource. This announcement does not prevent any other date for eligibility in the fishery or another method of controlling fishing effort from being proposed and implemented. The intended effect of this announcement is to discourage new entry to the fishery based on speculation while discussions continue on whether and how access to the stone crab resource should be controlled.

FOR FURTHER INFORMATION CONTACT: Donald Geagan, NMFS, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP) was developed and is currently being amended by the Gulf of Mexico Fishery Management Council (Council). The draft Amendment 3 was approved by the Council, on January 15, 1986, and a notice of public hearings was published in the **Federal Register** on February 5, 1986 (50 FR 4527).

This notice is not part of the proposed draft Amendment 3. However, the Council has been requested by its industry advisory panel (AP) to develop alternative limited access systems for review by the industry by 1987. This action by the Council will be announced at public hearings on Amendment 3. The fishery currently has more participants and stone crab traps than are necessary to harvest the optimum yield (OY) from the fishery. The number of commercial vessels has increased by 179 percent and number of traps by 160 percent since the 1977-1978 season. The fishery historically was characterized as an expanding fishery with yield (landings) increasing in a direct linear fashion with effort (number of traps). However, landings of crab claws have declined significantly, by 45 and 38 percent over the last two seasons, respectively. Since the current fishing fleet is capable of harvesting the entire stone crab OY, additional fishing effort would lead to harvesting inefficiencies, more management constraints, and increased conservation risks. The Assistant Administrator for Fisheries, NMFS, has concurred that the Council begin immediately to address this problem by developing additional controls on fishing effort. Such controls contemplated by the Council may include those that control access to the stone crab fishery resource.

To assist the Council, the Assistant Administrator has agreed to publish a notice in the **Federal Register**, announcing that anyone entering the stone crab fishery after January 15, 1986, will not be assured of future participation should the Council develop, and the Secretary [of Commerce] implement, an effort control regime that limits the number of participants in the fishery. At its meeting of January 13-16, 1986, the Council voted to recommend this action and adopted January 15, 1986, as the control date.

NMFS and the Council intend, in making this announcement, to discourage speculative entry into the stone crab fishery while potential entry or access control management regimes are discussed by the Council and possibly developed. If the Council decides to develop an access or entry control management regime, some fishermen who do not currently fish for stone crab in the Gulf of Mexico and never have done so may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of stone crab. Such a record generally is considered indicative of economic dependence on the fishery. On this basis, the fishermen may successfully lay claim to access to a fishery that is otherwise limited to traditional participants. New entrants may have to buy the fishing rights or a permit from an existing participant. Hence, initial access to the fishery at little or no cost may result in a windfall gain when selling an access right to a new entrant. This speculation often is responsible for a rapid increase in fishing effort in fisheries already fully or over-developed when management authorities begin to consider use of a limited access management regime. The

original problems become exacerbated by those who seek possible windfall gain from the solutions being discussed. To help distinguish *bona fide*, established stone crab fishermen from the speculative entrants to a fishery, a management authority may set a control date before discussions and planning of controlled access regimes begin. Fishermen are notified that entering the fishery after that date will not necessarily assure them of future access to the fishery resource on grounds of previous participation. Other qualifying criteria, such as holding a permit before the control date and documentation of commercial landings and sales, may be applied for entry.

This announcement establishes January 15, 1986, as such a control date for potential use in determining historical or traditional participation in the Gulf of Mexico stone crab fishery. This action does not commit the Council or the Secretary to any particular management regime or criterion for entry to the stone crab fishery. Fishermen are not guaranteed future participation in the stone crab fishery regardless of their date of entry or intensity or participation in the fishery before or after the control date. The Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. The Council may choose also to take no further action to control entry or access to the fishery.

Dated: February 11, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3422 Filed 2-14-86; 8:45 am]

BILLING CODE 3510-22-M

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Proposed Rules

Federal Register
Vol. 51, No. 32
Tuesday, February 18, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 85-127]

Change in Disease Status of Chile Because of Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: This document reopens the comment period for a proposed rule which proposed to amend the regulations in 9 CFR Part 94 based on a determination that Chile is free of foot-and-mouth disease. This action is needed to allow industry representatives and other interested persons adequate time in which to prepare comments.

DATE: Written comments must be received on or before April 21, 1986.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-109. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION: On November 8, 1985, a document published in the Federal Register (50 FR 46443-46444) proposed to amend the regulations in 9 CFR Part 94 which regulate the importation into the United States of specified animals and animal products. These regulations are designed to help prevent the introduction into the United States of various diseases, including rinderpest and foot-and-mouth disease. It was proposed to amend § 94.1 of the regulations by adding Chile to the list of countries declared to be free of rinderpest and foot-and-mouth disease. It was further proposed to amend § 94.11 of the regulations by adding Chile to the list of countries which are declared free of rinderpest and foot-and-mouth disease and from which the importation of meat and animal products into the United States is subject to special restrictions. Chile was not eligible to be on either of these lists solely because foot-and-mouth disease had been found to exist in that country. The effect of adopting the proposed rule would be to allow the importation of cattle, sheep, other ruminants, and swine, and fresh, chilled, and frozen meats of such animals into the United States from Chile under certain restrictions.

The proposed rule provided for receipt of comments on or before December 9, 1985. A number of industry representatives and other interested persons have requested additional time to review the proposal and offer substantive comments. It has been determined that additional time is needed to allow industry representatives and other interested persons adequate time in which to prepare comments. Therefore, the comment period is reopened for an additional 60 days. Accordingly, any additional written comments must be received on or before April 21, 1986.

A number of comments were received after December 9, the original closing date for the receipt of comments. These comments will also be considered in determining what action to take concerning the proposal.

Done at Washington, DC, this 12th day of February 1986.

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-3441 Filed 2-14-86; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 94

[Docket No. 84-095]

Importation of Certain Pork Hams

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the importation into the United States of pork and pork products. The regulations, among other things, regulate the importation of hams in order to help prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. It is proposed to amend the regulations to allow the importation, under specified conditions, of certain pork hams. It appears that such hams can be imported into the United States without presenting a significant risk of introducing any of the specified diseases.

DATE: Written comments must be received on or before April 21, 1986.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 84-095. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Dulin, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations), among other things, regulate the importation into the United States of pork and pork products in order to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease.

The Parma Ham Consortium in Italy has requested that the regulations be amended to allow the importation into the United States of pork hams processed in accordance with certain procedures used by the Consortium. Under the current regulations, such hams are not allowed to be imported into the United States from Italy because of foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease.

The Department has considered this request and has conducted research concerning the procedures used by the Parma Ham Consortium. Further, the Department has developed provisions which are designed to allow the importation of such pork hams from countries where foot-and-mouth disease, African swine fever, hog cholera, or swine vesicular disease exist, without presenting a significant risk of introducing these diseases.

In this connection, it is proposed to add a new § 94.17 to read as follows:

§ 94.17 Certain hams.

Notwithstanding any other provisions in this part, a ham shall not be prohibited from being imported into the United States if it meets the following conditions:

(a) The ham came from a swine that was never out of the country in which the ham was processed;

(b) The ham came from a country determined by the Deputy Administrator, Veterinary Services, to have laws requiring the immediate reporting to the national veterinary services in that country of any premises found to have swine infected with foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease;

(c) The ham came from a swine that was not on any premises where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swing vesicular disease exists or had existed within 60 days prior to slaughter;

(d) The ham was accompanied from the slaughtering facility to the processing establishment by a numbered certificate issued by a person authorized by the government of the country of origin stating that the provisions of paragraphs (a) and (c) of this section have been met;

(e) The ham was processed as set forth in paragraph (h) of this section in only one processing establishment; [1]

(f) The ham was processed in a processing establishment that prior to the processing of any hams in accordance with this section, was inspected by a veterinarian of Veterinary Services and determined by the Deputy Administrator, Veterinary Services, to be capable of meeting the provisions of this section for processing hams for importation into the United States;

(g) The ham was processed in a processing establishment for which the operator of the establishment has signed an agreement with Veterinary Services within 12 months prior to receipt of the hams for processing, stating that all hams processed for importation into the United States will be processed only in accordance with the provisions of this part;

(h) The ham was processed for a period of not less than 400 days in accordance with the following conditions: after slaughter the ham was held at a temperature of 0°-3° C. (32°-34.7° F.) for a minimum of 72 hours during which time the "aitch" bone was removed and the blood vessels at the end of the femur were massaged to remove any remaining blood; thereafter the ham was covered with an amount of salt equal to 4-6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 5-7 days on racks in a chamber maintained at a temperature of 0°-4° C. (32°-39.2° F.) and at a relative humidity of 70-85 percent; thereafter the ham was covered with an amount of salt equal to 4-6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 21 days in a chamber maintained at temperature of 0°-4° C. (32°-39.2° F.) and at a relative humidity of 70-85 percent; thereafter the salt was brushed off the ham; thereafter the ham was placed in a chamber maintained at a temperature of 1°-6° C. (33.8°-42.8° F.) and at a relative humidity of 65-80 percent for between 52 and 72 days; thereafter the ham was brushed and rinsed with water; thereafter the ham was placed in a chamber for 5-7 days at a temperature of 15°-23° C. (59°-73.4° F.) and at a relative humidity of 55-85 percent; thereafter the ham was placed for curing in a chamber maintained for a minimum of 314 days at a temperature of 15°-20° C. (59°-68° F.) and at a relative humidity of 65-80 percent at the beginning and increased by 5 percent every 2½ months until a relative humidity of 85 percent was reached; and during all of the procedures described above the ham had no contact with any meat or animal product other than pork fat that was heat treated to at least 76° C. (168.8° F.) that may have been placed over the ham during curing;

(i) The ham bears a hot iron brand or an ink seal (with the identifying number of the slaughtering establishment) which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, bears a button seal (approved by the deputy Administrator, Veterinary Services, as being tamper-proof) on the hock that states the month and year the ham entered the processing establishment and a hot iron brand (with the identifying numbr of the processing establishment and the date salting began) which were placed thereon at the processing establishment immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin;

(j) The ham came from an establishment where a person authorized by the veterinary services of the national government of the country of origin to conduct activities under this paragraph, maintained original records (which shall be kept for a minimum of two years) identifying the ham by the date it entered the processing establishment, by the slaughtering facility from which it came, and by the number of the certificate which accompanied the ham from the slaughtering facility to the processing establishment, and where such original records are maintained under lock and key by such person, with access to such original records restricted to officials of the government of the country of origin, officials of the United States government, and such person maintaining the records;

(k) The ham came from a processing establishment which allows the unannounced entry into the establishment of Veterinary Services personnel, or other persons authorized by the Deputy Administrator, Veterinary Services, for the purpose of inspecting the establishment and records of the establishment;

(l) The ham was processed in a country which has been determined by the Deputy Administrator, Veterinary Services, to be free of rinderpest, and which has through its veterinary services submitted to the Deputy Administrator, Veterinary Services, a

[1] As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR Part 301 *et seq.*), including requirements that the pork or pork products be prepared only in approved establishments.

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written statement stating that it conducts a program to authorize persons to supervise activities specified under this section;

(m) The ham came from a processing establishment that has entered into a trust fund agreement executed by the operator of the establishment or a representative of the establishment and Veterinary Services, and that pursuant to the trust fund agreement is current in paying all costs for a veterinarian of Veterinary Services to inspect the establishment (it is anticipated that such inspections will occur up to four times per year), including travel, salary, subsistance, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, the operator of the processing establishment shall deposit with the Deputy Administrator, Veterinary Services, an amount equal to the approximate costs for a veterinarian to inspect the establishment one time, including travel, salary, subsistence, administrative overhead and other incidental expenses (including an excess baggage provision up to 150 pounds), and as funds from that amount are obligated, bills for costs incurred based on official accounting records will be issued to restore the deposit to its original level. Amounts to restore the deposit to its original level shall be paid within 14 days of receipt of such bills.

(n) The ham is accompanied at the time of importation into the United States by a certificate issued by a person authorized to issue such certificates by the veterinary services of the national government of the country of origin, stating that the ham was processed for at least 400 days and that all of the provisions of this section (9 CFR 94.17) have been complied with.

These provisions consist of various types of safeguards designed to ensure that any processed hams imported into the United States under the proposed provisions would be free of virus of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease.

Based on testing by the Department's Foreign Animal Disease Diagnostic Laboratory,[2] it has been determined that the processing procedures set forth in proposed paragraph (h) are adequate to destroy any virus of foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease that might have been present in the hams prior to processing. Also, the provisions of proposed paragraphs (b) and (c) concerning reporting and premises disease status are included as a precautionary measure to help ensure that the hams come from swine that are free of the specified diseases.

The testing of the hams conducted by the Department did not include testing for rinderpest. Provisions in proposed paragraphs (a) and (1) are designed to ensure that the hams do not come from swine from countries that have rinderpest.

Provisions in proposed paragraphs (e), (f), (g), (i), (j), (k), (l), and (n) are designed to ensure that the identity of the hams would be maintained from the time of slaughter through processing and importation, to ensure that the hams would be processed only in processing establishments capable of meeting the proposed provisions, and to ensure that the operator of the establishment would understand and agree to comply with all of the proposed requirements.

The proposal includes provisions which would require that the operator of the processing establishment or a representative of the establishment execute a trust fund agreement ensuring that costs for Veterinary Services to conduct inspections at the establishment would be paid, in order to import the hams.

The footnote to the proposed provisions (quoted above) would be included to inform persons of additional requirements for the importation of hams that are imposed under the Federal Meat Inspection Act and regulations thereunder.

[2] Laboratory results can be obtained from Dr. Mark Dulin, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8499.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this proposal have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. A duplicate copy of such documents should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the number of pork hams that would be imported annually under the proposed provisions would be an insignificant number compared to all pork hams imported into the United States. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products.

Additional Terms

African Swine Fever, Exotic Newcastle Disease, Foot-and-Mouth Disease, Fowl, Garbage, Hog Cholera, Lethal Avian Influenza (AI), Rinderpest, Swine Vesicular Disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, it is proposed to amend 9 CFR Part 94 as follows:

1. The authority citation for Part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134b, 134a, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. A new § 94.17 would be added to read as follows:

§ 94.17 Certain hams.

Notwithstanding any other provisions in this part, a ham shall not be prohibited from being imported into the United States if it meets the following conditions:

(a) The ham came from a swine that was never out of the country in which the ham was processed;

(b) The ham came from a country determined by the Deputy Administrator, Veterinary Services, to have laws requiring the immediate reporting to the national veterinary services in that country of any premises found to have swine infected with foot-and-mouth disease, rinderpest, African swine fewer, hog cholera, or swine vesicular disease;

(c) The ham came from a swine that was not on any premises where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists or had existed within 60 days prior to slaughter;

(d) The ham was accompanied from the slaughtering facility to the processing establishment by a numbered certificate issued by a person authorized by the government of the country of origin stating that the provisions of paragraphs (a) and (c) of this section have been met;

(e) The ham was processed as set forth in paragraph (h) of this section in only one processing establishment;[12]

(f) The ham was processed in a processing establishment that prior to the processing of any hams in accordance with this section, was inspected by a veterinarian of Veterinary Services and determined by the Deputy Administrator, Veterinary Services, to be capable of meeting the provisions of this section for processing hams for importation into the United States;

(g) The ham was processed in a processing establishment for which the operator of the establishment has signed an agreement with Veterinary Services within 12-months prior to receipt of the hams for processing, stating that all hams processed for importation into the United States will be processed only in accordance with the provisions of this part;

(h) The ham was processed for a period of not less than 400 days in accordance with the following conditions: after slaughter the ham was held at a temperature of 0°–3° C. (32°–34.7° F.) for a minimum of 72 hours during which time the "aitch" bone was removed and the blood vessels at the end of the femur were massaged to remove any remaining blood; thereafter the ham was covered with an amount of salt equal to 4–6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 5–7 days on racks in a chamber maintained at a temperature of 0°–4° C. (32°–39.2° F.) and at a relative humidity of 70–85 percent; thereafter the ham was covered with an amount of salt equal to 4–6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 21 day in a chamber maintained at a temperature of 0°–4° C. (32°–39.2° F.) and at a relative humidity of 70–85 percent; thereafter the salt was brushed off the ham; thereafter the ham was placed in a chamber maintained at a temperature of 1°–6° C. (33.8°–42.8° F.) and at a relative humidity of 65–80 percent for between 52 and 72 days; thereafter the ham was brushed and rinsed with water; thereafter the ham was placed in a chamber for 5–7 days at a temperature of 15°–23° C. (59°–73.4° F.) and at a relative humidity of 55–85 percent; thereafter the ham was placed for curing in a chamber maintained for a minimum of 314 days at a temperature of 15°–20° C. (59°–68° F.) and at a relative humidity of 65–80 percent at the beginning and increased by 5 percent every 2½ months until a relative humidity of 85 percent was reached; and during all of the procedures described above the ham had no contact with any meat or animal product other than pork fat that was heat treated to at least 76° C. (168.8° F.) that may have been placed over the ham during curing;

(i) The ham bears a hot iron brand or an ink seal (with the identifying number of the slaughtering establishment) which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, bears a button seal (approved by the Deputy Administrator, Veterinary Services, as being tamper-proof) on the hock that states the month and year the ham entered the processing establishment and a hot iron brand (with the identifying number of the processing establishment and the date salting began) which were placed thereon at the processing establishment immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin;

(j) The ham came from an establishment where a person authorized by the veterinary services of the national government of the country of origin to conduct activities under this paragraph, maintained original records (which shall be kept for a minimum of two years) identifying the ham by the date it entered the processing estalishment, by the slaughtering facility from which it came, and by the number of the certificate which accompanied the ham from the slaughtering facility to the processing establishment, and where such original records are maintained under lock-and key by such person, with access to such original records restricted to officials of the government of the country of orgin, officials of the United States government, and such person maintaining the records;

(k) The ham came from a processing establishment which allows the unannounced entry into the establishment of Veterinary Services personnel, or other persons authorized by the Deputy Administrator, Veterinary Services, for the purpose of inspecting the establishment and records of the establishment;

(l) The ham was processed in a country which had been determined by the Deputy Administrator, Veterinary Services, to be free of rinderpest, and which has through its veterinary services submitted to the Deputy Administrator, Veterinary Services, a written statement stating that it conducts a program to authorize persons to supervise activities specified under this section;

(m) The ham came from a processing establishing that has entered into a trust fund agreement executed by the operator of the establishment or a representative of the establishment and Veterinary Services, and that pursuant to the trust fund agreement is current in paying all costs for a veterinarian of Veterinary Services to inspect the establishment (it is anticipated that such inspections will occur up to four times per year), including travel, salary, subsistence, administrative overhead, and other incidential expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, the operator of the processing establishment shall deposit with the Deputy Administrator, Veterinary Services, an amount equal to the approximate costs for a veterinarian to inspect the establishment one time, including travel, salary, subsistence, administrative overhead and other incidental expenses (including an excess baggage provision up to 150 pounds), and as funds from that amount are obligated, bills for costs incurred based on official accounting records will be

[12] As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR Part 301 *et seq.*), including requirements that the pork or pork products be prepared only in approved establishments.

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issued to restore the deposit to its original level. Amounts to restore the deposit to its original level shall be paid within 14 days of receipt of such bills.

(n) The ham is accompanied at the time of importation into the United States by a certificate issued by a person authorized to issue such certificates by the veterinary services of the national government of the country of origin, stating that the ham was processed for at least 400 days and that all of the provisions of this section (9 CFR 94.17) have been complied with.

Done at Washington, DC this 12th day of February 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 86-3439 Filed 2-14-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. EFT-2]

Electronic Fund Transfers; Proposed Update to Official Staff Commentary; Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation; extension of comment period.

SUMMARY: By notice published on December 11, 1985 (50 FR 50623), the Board of Governors requested comment on proposed revisions to the official staff commentary to Regulation E (Electronic Fund Transfers). The proposed commentary changes were in the form of two new questions. Proposed question 3-7.5 would make clear that a biweekly mortgage program requiring payment by preauthorized electronic fund transfers (EFTs) would not violate the compulsory use prohibition in section 913 of the Electronic Fund Transfer Act (15 U.S.C. 1693(k)(1)). Proposed question 10-18.75 would make clear that the requirement that preauthorized EFTs be "authorized by the consumer only in writing" is not met by a payee signing a written authorization as the consumer's agent, based on the consumer's oral authorization of the preauthorized EFTs in a taped telephone conversation. Comment was requested on the proposal by February 7, 1986. In order to provide interested parties additional time in which to present their views, the Board is extending the comment period by two weeks.

EFFECTIVE DATE: The comment period is extended through February 21, 1986.

FOR FURTHER INFORMATION CONTACT: Gerald P. Hurst or John C. Wood, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667 or (202) 452-2412.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

By order of the Board of Governors, acting through its Secretary under delegated authority, February 11, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-3372 Filed 2-14-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ASO-2]

Proposed Revocation of Control Zone, Miami, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revoke the control zone which is predicated on Dade-Collier Airport, Miami, Florida. The intended effect of this action is to raise the floor of controlled airspace, in the vicinity of the airport, from the surface to 700 feet above ground level. The basic requirements for retaining a control zone are that there must be communications capability to the surface of the airport and weather observations, both hourly and special, be taken and reported to the air traffic control facility having jurisdiction of the controlled airspace. Dade-Collier Airport does not meet the criteria for retention of the control zone since weather observations are not available.

DATE: Comments must be received on or before: March 30, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. _____." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will revoke the Dade-Collier Airport, Miami, Florida, control zone and raise the floor of controlled airspace in the vicinity of the airport from the surface to 700 feet above ground level. This action will provide additional uncontrolled airspace for the conduct of Visual Flight Rules aeronautical activity. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Miami Dade-Collier Training and Transition Airport, FL—[Revoked].

By revoking the title and text.

Issued in East Point, Georgia, on February 6, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-3382 Filed 2-14-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22883; File No. S7-5-86]

Depository Shipment Control Lists Transfer Instructions; Definition of Item

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment proposed rule amendments designed to enhance confidence in and increase the efficiency of the National System for the Clearance and Settlement of Securities Transactions (the "National System"). The proposal would amend the definition of "Item" as it relates to transfer instructions on depository shipment control lists. Under the proposed definition, each line on a depository SCL would be a separate item.

DATE: Comments must be received on or before April 15, 1986.

ADDRESS: Persons wishing to submit written views, data, and comments should file three copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. All comments should refer to File No. S7-5-86 and will be available at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Joseph M. Furey, Esquire, at (202) 272-2416, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Recently, several transfer agents and depositories have expressed concern about the treatment of depository shipment control lists ("SCLs") in determining compliance with the turnaround requirements of Rule 17Ad-2 [1] under the Securities Exchange Act of 1934 (the "Act"). Transfer agent and depository participants at the 1984 Securities Processing Roundtable questioned the continuing validity of current rule interpretations specifying that each SCL, regardless of the number of lines or transfer instructions it contains, be considered one item for purposes of determining turnaround compliance.[2] To address these concerns, the Commission is proposing for comment amendments to Rule 17Ad-1(a), which defines the term "item" for purposes of Rules 17Ad-2 through 17Ad-7.[3] If adopted, the proposed amendments would allow transfer agents to count each line on an SCL as a separate item for purposes of determining compliance with the turnaround requirements.

II. Background

In 1977, the Commission adopted Rules 17Ad-1 through 17Ad-7 (the "turnaround rules").[4] These rules were designed to protect investors and persons facilitating transactions by or on behalf of investors and to contribute to the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Rule 17Ad-2, in particular, seeks to assure that registered transfer agents perform their functions in a prompt and accurate manner by requiring them to turnaround 90% of the routine items they receive for processing within three business days. For purposes of these rules, an item is the basic unit for which turnaround times and other requirements are prescribed. An item is defined as the certificates of a single issue of securities presented under one ticket, or, if there is no ticket (as is often the case with mail items from individuals), presented at one time by one presentor.[5]

Transfer agents often receive submissions from depositories that contain many lines of individual transfer instructions concerning the same securities issue. These depository submissions generally are referred to as SCLs. SCLs are submitted to transfer agents either on paper or magnetic tape. SCLs contain either deposit or withdrawal instructions, but never both.

[1] 17 CFR 240.17Ad-2.

[2] *Report of the Division of Market Regulation 1984 Securities Processing Roundtable*, May 31, 1984 at 32-33.

[3] In accordance with section 17A(d)(3)(A)(i) of the Act, the Commission consulted with, and requested the views of, the federal bank regulatory agencies at least fifteen days prior to this announcement.

[4] 17 CFR 240.17Ad-1 through 17Ad-7, *See* Securities Exchange Act Release No. 13638, 42 FR 32404 (June 24, 1977).

[5] 42 FR at 32405.

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Generally, deposit SCLs contain instructions to the transfer agent to transfer record ownership of securities from depository participants or their customers to the depository. One line of a deposit SCL might contain numerous individual transfer instructions. For example, one line of a deposit SCL could contain individual transfer instructions with respect to 10 certificates registered in the names of different customers of, for example, Paine Webber, all of which are to be transferred to the depository's nominee.

The second type of SCL is a withdrawal-by-transfer, by which registered ownership of securities is transferred from the depository to individual customers of depository participants or other entities that are not participants of the depository. Each line of a withdrawal-by-transfer SCL generally consists of one individual transfer instruction. For example, a line on a withdrawal-by-transfer SCL might provide that 200 shares of IBM registered to a depository are to be transferred to John A. Smith.

Transfer agents and depository participants at the 1984 Securities Processing Roundtable discussed the need for a review of the Commission's interpretation of the term "item." Some transfer agents advised the staff that the average number of lines on certain SCLs has doubled in recent years, with no additional credit given transfer agents with respect to turnaround compliance.[6] They noted that although the percentage of depository requests for transfer has increased in relation to all requests for transfer, undue weight is being given to non-depository items solely as a result of the definition of the term "item."

When the Commission adopted the turnaround rules, several commenters suggested that the term "item," for purposes of determining compliance with the turnaround rules, be defined to mean each individual transfer instruction for certificates of a single issue of securities included within a single ticket.

Under this definition, each individual transfer instruction contained on an SCL would be counted as one item. The Commission, however, concluded that each SCL a transfer agent received for processing should be counted as one item, regardless of the number of certificates that the transfer agent eventually issued pursuant to the SCL. The Commission believed this approach would yield a simple, uniform method for counting transfer agent production efforts. In addition, the depositories indicated that their operating procedures were such that the number of lines on each SCL should not materially increase, or at the least that any upward variation of the size of SCLs "would not be of a magnitude to create difficulties for transfer agents." Accordingly, the Commission adopted the position that each SCL should be considered an item.[7]

[6] Moreover, they indicated that each depository tape transmission sent to transfer agents is treated as an SCL and may contain anywhere from one to several hundred transfer instructions.

III. Discussion

In light of the increased number of SCLs transfer agents receive from depositories and the increased number of individual transfer instructions contained on each SCL, the Commission is proposing for comment amendments to Rule 17Ad–1 that, if adopted, would change the treatment of SCLs. Under the proposed amendments, each line of an SCL would be counted as a separate item for purposes of determining compliance with the turnaround rules.

The proposed amendments generally would retain the current definition of "item." Thus, certificates of the same issue of securities covered by one ticket presented for transfer would be treated as one item for purposes of Rule 17Ad–2. Accordingly, a single broker-originated-window-ticket ("BOWT") relating to multiple certificates would be treated, as it is today, as one item for purposes of Rule 17Ad–2. However, the proposed amendments would revise the current treatment of SCLs in connection with transfers to and from registered clearing agencies. Each line on a "deposit shipment control list" or a "withdrawal shipment control list" would be treated as a separate item for purposes of determining compliance with the turnaround requirements. A "deposit shipment control list" would be defined as a list of transfer instructions that accompanies certificates to be cancelled and reissued in the nominee name of a clearing agency registered under section 17A of the Act. Similarly, a withdrawal shipment control list would be defined as a list of instructions from a registered clearing agency that: (i) Directs the issuance of certificates to a clearing agency's participants or their customers; and (ii) either accompanies certificates to be cancelled or directs the transfer agent to reduce certificate or position balances maintained by the transfer agent on behalf of a clearing agency under that clearing agency's transfer agent custody program.

The Commission understands that deposit SCLs may contain one or more "BOWTs" and that each BOWT is listed on a separate line of the SCL. Under the proposed amendments, each BOWT would be treated as a separate item, rather than each of the transfer instructions and certificates covered by the BOWT. Thus, a BOWT covering multiple certificates would be treated as a single item whether included on a deposit shipment control list or presented directly to a transfer agent.

The proposed amendments would have certain collateral effects on other turnaround rules. For example, an increase in the number of items received for transfer and processing might change a transfer agent's status under Rule 17Ad–4(b), which provides an exemption from the three-day turnaround standards for certain transfer agents,[8] and exemptions from Rule 17Ad–3 and certain provisions of Rule 17Ad–6.[9] Although the definitions in Rule 17Ad–1 specifically apply to Rules 17Ad–2 through 17AD–7, the term "item" is also used in other Commission rules. For example, proposed Rule 17Ac2–2, if adopted, would exempt from filing certain portions of proposed Form TA–2 transfer agents that receive fewer than 500 items for processing and

[7] The Depository Trust Company ("DTC"), the principal user of SCLs at that time, indicated that on the average SCLs would contain no more than twenty lines resulting in the issuance of no more than 24 certificates. *See* Securities Exchange Act Release No. 13636, 42 FR 32404 (June 24, 1977) at 32405. *See also*, Letter to Donald B. Herterich, President, Stock Transfer Association, Inc. dated May 6, 1981, in which Division of Market Regulation staff noted that if circumstances were to change—*i.e.*, if the number of transfer instructions contained in SCLs increased greatly—the staff would reconsider its interpretation of item as it relates to SCLs. The current interpretation of item was adopted in Securities Exchange Act Release No. 17111, 45 FR 59840 (September 11, 1980).

[8] Rule 17Ad–4(b) sets forth the conditions under which a registered transfer agent may become "exempt" from the three-day turnaround performance standard and certain recordkeeping rules. To qualify as "exempt," a transfer agent, among other things, must receive fewer than 500 items for transfer and fewer than 500 items for processing during the preceding six months. Rule 17Ad–2(e) sets forth a five-day turnaround standard for "exempt" transfer agents that handle depository-eligible items, including SCLs.

[9] Rule 17Ad–3 prohibits transfer agents that fail to comply with turnaround requirements, under certain circumstances, from taking on any new transfer agent business. Rule 17Ad–6 requires transfer agents to maintain certain records. In addition, those transfer agents losing their "exempt" status under Rule 17Ad–4(b) also may be required to meet stricter time frames for posting information to the issuer's master securityholder file in connection with purchases, sales or transfer (*see* 17 CFR 240.17Ad–10(a)); and unless otherwise exempt under § 240.17Ad–13(d), may be required to obtain an annual report on the transfer agent's system of accounting control. The Commission encourages commenters to address whether alternative formulations of those exemptions would be appropriate, such as raising the exemption thresholds.

transfer in a six month period.[10] Also, the number of items received by a transfer agent is used as a measure in determining whether a transfer agent is a small entity for purposes of the Regulatory Flexibility Act and Commission rulemaking.[11] The Commission therefore invites commenters to address whether the term "item," as proposed to be defined, should only apply to Rules 17Ad–2 through 17Ad–7, rather than Rule 17Ac2–2 or other Rules that incorporate the term "item."

A. Bases for Amendments

In general, the Commission believes that the proposed amendments may be appropriate for several reasons. First, the amendments, if adopted, should enhance development of the national clearance and settlement system for securities transactions. Second, the proposed amendments should balance, more equitably to agents and depositories, the relative work transfer agents receive for processing depository and nondepository items. In addition, the Commission believes the proposed amendments would advance the goal of uniform transfer agent processing standards, particularly transfer agent turnaround requirements.[12]

B. National Clearance and Settlement System

In section 17A of the Act, Congress directed the Commission to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Acting pursuant to this authority, the Commission, among other things, has promulgated rules designed to ensure that transfer agents expeditiously and accurately process securities presented for transfer.[13] The Commission also has been actively involved in efforts to immobilize securities certificates at depositories, and to expand the use of book-entry accounting systems for the transfer of securities.[14]

As the volume of securities certificates immobilized in securities depositories has grown, so has the volume of SCLs and SCL instructions. Growth in the number of securities immobilized at depositories is expected to continue. Institutional and retail investors are increasingly aware of the efficiency, safety and cost-savings associated with securities immobilization and are expected to continue to take advantage of immobilization opportunities. Moreover, because of recent Municipal Securities Rulemaking Board ("MSRB") rule changes,[15] the number of municipal securities immobilized in securities depositories continues to grow dramatically. As this growth continues, SCLs will constitute a larger percentage of transfer agent work volume.

Consistent with the Congressional directive to establish a national system for the clearance and settlement of securities transactions, the Commission believes it appropriate to encourage further immobilization of securities certificates and more efficient processing of securities transactions. The current interpretation of item as it relates to SCLs, however, does not appear to further these goals. Transfer agents currently receive less turnaround credit for processing an SCL than other items submitted for transfer because SCLs are considered only one item. As SCL with ten lines might require much more work than a single presentment, but receives no greater credit. Moreover, as the volume of SCLs transfer agents receive increases, and as the number of transfer instructions on each SCL expands, transfer agents will continue to receive relatively less credit for processing a relatively greater volume of work. Thus, instead of encouraging expeditious processing of SCLs, the current interpretation creates a significant incentive for transfer agents in danger of not meeting their 90 percent turnaround requirement intentionally to bypass depository SCLs in favor of other items with fewer individual transfer instructions for which they will receive greater turnaround credit. In effect, this penalizes depositories, a result that inhibits rather than furthers the development of the national clearance and settlement system. The proposed amendments, on the other hand, by crediting transfer agents for processing each line of an SCL, would encourage transfer agents to expeditiously process depository SCLs and discourage them from processing nondepository items over depository items.

C. Equitable Credit for Depository and Nondepository Items

The Commission believes that counting each line contained in SCLs (particularly deposit SCLs) as a separate item for purposes of the turnaround rules more equitably balances the credit transfer agents receive for processing depository versus nondepository items. In reaching this conclusion the Commission believes this approach may be preferable to treating each individual transfer instruction contained on a deposit SCL as a separate item.

In order to provide uniformity between BOWTs presented to transfer agents by mail, at the transfer agent's offices, or through depositories, under the proposed amendments, each line of an SCL containing a BOWT, which may include a series of individual transfer instructions, will be considered one item. The Commission specifically invites commenters to address whether the treatment of BOWTs should be changed and, if so, whether the Commission should continue to maintain uniform treatment of BOWTs regardless of the delivery medium chosen. For example, commenters should consider whether each transfer instruction on a BOWT should be counted as a separate item, and whether the BOWT is presented by a broker or by a depository.

[10] As proposed in Securities Exchange Act Release No. 21950 (April 17, 1985), 50 FR 15912 (April 23, 1985), portions of Form TA–2 need not be filed by transfer agents that receive fewer than 500 items for transfer and processing in a six month period and do not maintain master security holder files for more than 1000 securityholder accounts.

[11] 17 CFR 240.0–10(h).

[12] In 1984, the Commission amended Rule 17Ad–2 to require exempt transfer agents that handle depository-eligible securities issues to complete, within five business days of receipt from securityholders, the transfer of record ownership with respect to 90% of all routine items presented for transfer each month. At that time, several commenters urged the Commission to require these transfer agents to meet the three business day time frame specified in Rule 17Ad–2(a), thereby establishing a uniform time frame for transfer and processing of all "routine" items involving depository-eligible securities issues. Although the Commission declined to adopt that suggestion in 1984, the Commission nevertheless announced its intention to establish a uniform three day time frame in the near future. The Commission believes the proposed amendments may represent an important step towards the goal of uniform processing standards for depository-eligible issues.

[13] *See* 17 CFR 240.17Ad–1 through 17Ad–14.

[14] *See, e.g.*, Division of Market Regulation Draft Staff Report, *Progress and Prospects: Depositary Immobilization of Securities and Use of Book-Entry Systems*, June 14, 1985. Securities immobilization provides a safer, more efficient and cost-effective environment for securities transactions for several reasons. First, physical certificate movement is minimized. As a result, problems associated with lost and stolen securities certificates and error-prone physical handling are greatly reduced. Second, because securities transfers among depository participants are effected by book-entry movements, rather than physical delivery, settlement fails decrease and same day turnaround increases. Third, immobilization provides economies of centralization and encourages economical use of automated data processing, which increases efficiency at all stages of clearance and settlement. Finally, depositories provide centralized control and standardized procedures that improve safety and discipline in securities processing.

[15] *See* MSRB Rules G–12 and G–15. Under these Rules, effective February 1, 1985, most inter-dealer and institutional trades in depository eligible municipal securities must settle through clearing agency facilities.

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D. Effect on Recordkeeping Requirements

The Commission recognizes that treating each line of an SCL as a separate routine item for purposes of determining compliance with the turnaround provisions would affect existing transfer agent recordkeeping systems. Rule 17Ad–6(a) requires registered transfer agents to make and keep current a receipt, ticket, schedule, log or other record showing the business day each routine and nonroutine item is received and made available to the presentor; and a log, tally, journal, schedule or other record showing monthly, among other things, the number of routine items received and processed within three business days, the number of routine items received and not processed within three business days, and the number of nonroutine items received and the time frame within which they were processed. Since each SCL currently is treated as one routine item, transfer agents record SCLs as a routine item in accordance with Rule 17Ad–6(a). By changing the number of items on an SCL from one to the number of lines that appear on the SCL, transfer agents would be required to modify their recordkeeping procedures to reflect this change. The Commission understands that such modifications would not create significant difficulties for transfer agents.[16] Nevertheless, because some modification would be required, the Commission specifically requests commenters to focus on this issue, quantifying the expected costs of modifying their respective recordkeeping procedures and weighing those costs against the benefits associated with credit for having processed more than one item.

IV. Summary of Initial Regulatory Flexibility Analysis

On February 10, 1986, the Commission prepared an Initial Regulatory Flexibility Analysis (the "Analysis") in accordance with 5 U.S.C. 603 as amended by the Regulatory Flexibility Act (the "RFA") regarding the proposed amendments to Rule 17Ad–1. The following is a summary of the Analysis.

The Analysis notes that the amendments to this Rule are being proposed as part of the Commission's ongoing evaluation of Rules 17Ad–1 through 17Ad–7. Under the proposed amendments, affected entities generally would be subjected to increased compliance costs to the extent that the number of items received for transfer and processing during the preceding six months increased beyond 500. If these transfer agents receive more than 500 items for transfer and 500 items for processing during the preceding six months, they would lose their exempt status under Rule 17Ad–4(b), and therefore would be subject to the more stringent three-day turnaround standard that applies to other transfer agents that handle depository-eligible issues. Loss of exempt status also would require these transfer agents to comply with certain recordkeeping provisions of Rule 17Ad–6 and, possibly, the annual study and evaluation of internal accounting control requirements of Rule 17Ad–13. The proposed definition of "item" also might affect Commission rules other than Rules 17Ad–1 through 17Ad–7 (the turnaround rules). For example, if Rule 17Ac2–2 and Form TA–2 are adopted as proposed, transfer agents who receive more than the 500 items for transfer and processing in a six month period might lose their exemption from filing certain portions of Form TA–2. Also, the number of items received for transfer and processing is used to determine whether a transfer agent qualifies as a "small entity" under Rule 0–10(h) for purposes of the RFA.

The Commission estimates in the Analysis that the proposed amendments could affect 700 of the 1400 registered transfer agents that qualify as small entities for purposes of the RFA. The estimate is only 700 out of 1400 transfer agents because many of the 1400 small entity transfer agents, particularly small entity bank transfer agents, perform transfer agent activities for their own depository-ineligible securities issues.[17] The Commission also notes in the Analysis that because many of the affected transfer agents already process SCL presentments within three or five business days, these transfer agents would not be affected significantly by the proposed amendments.

For those small entity transfer agents affected, however, the Commission notes that maintenance of logs of items received for tranfer and processing, as required by Rule 17Ad–6 for non-exempt transfer agents, can be established using relatively inexpensive recordkeeping systems. The Commission believes the primary expense associated with the loss of exempt status as it pertains to increased recordkeeping requirements would be increased personnel costs to process routine items for transfer within three, rather than five, business days. Finally, the Commission notes that small entity transfer agents losing their exempt status under Rule 17Ad–4(b), if unable to rely on another exemption provided in Rule 17Ad–13(d), would incur additional expenses in complying with Rule 17Ad–13's requirement that an independent accounting firm conduct an annual audit and prepare an annual report concerning the transfer agent's internal accounting controls.

A copy of the Analysis may be obtained from Joseph Furey, Esq. at (202) 272–2416.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis and Text of the Proposed Amendments

The Commission is proposing to amend Chapter II of title 17 of the Code of Federal Regulations as follows: Brackets indicate old text which will be removed, and arrows indicated text which will be added.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is proposed to be amended by adding the following citation.

Authority: Section 23, 48 stat. 901, as amended, 15 U.S.C. 78W. * * * § 240.17Ad–1 is also authorized under sections 2, 17, 17A and 23(a); 48 Stat. 841, as amended, 48 Stat. 897, as amended, 89 Stat. 137, 141, and 48 Stat. 901 (15 U.S.C. §§ 78b, 78q, 78q–1, 78w) * * *

2. Section 240.17Ad–1 is proposed to be amended by revising the introductory text and paragraph (a) as follows:

§ 240.17Ad–1 Definitions.

►Unless specified otherwise, ◄ [A] ►a◄s used in this section and §§ 240.17Ad–2, 240.17Ad–3, 240.17Ad–4, 240.17Ad–5, 240.17Ad–6 and 240.17Ad–7:

(a)►(1)◄ The term "item" means a certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket presented by one presentor) presented for transfer, or an instruction to a transfer agent which holds securities registered in the name of the presentor to transfer or to make available all or a portion of those securities. In the case of an outside registrar each certificate to be countersigned is an item.

►(2) Each line on a "deposit shipment control list" submitted by a registered clearing agency shall be treated as a separate item. A "deposit shipment control list means a list of transfer instructions that accompanies certificates to be cancelled and reissued in the nominee name of a registered clearing agency.

(3) Each line on a "withdrawal shipment control list" submitted by a registered clearing agency shall be treated as a separate item. A "withdrawal shipment control list" means a list of instructions (either in paper or electronic medium) that:

(i) directs issuance of certificates in the names of persons or entities other than the registered nominee of the registered clearing agency; and (ii) accompanies certificates to be cancelled, which are registered in the nominee name of a registered clearing agency, or directs the transfer agent to reduce certificate or position balances maintained by the transfer agent on behalf of a registered clearing agency under that clearing agency's transfer agent custody program.◄

* * * * *

Dated: February 10, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86–3434 Filed 2–14–86; 8:45 am]

BILLING CODE 8010–01–M

[16] The Commission understands that each SCL currently is accompanied by an index, either on a peper or tape medium, and that the number of lines on an SCL therefore can be discerned with little difficulty upon receipt.

[17] The proposed amendments would not change the definition of "item" as it relates to non-depository eligible securities issues.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A–6–FRL–2970–9]

Standards of Performance for New Stationary Sources; Proposed Alternative Performance Test Requirement for Alcoa of Rockdale, TX

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve an alternative air emissions testing frequency requirement for Alcoa's primary aluminum reduction plant at Rockdale, Texas as provided for at 40 CFR 60.195(b). The intended effect of this proposed approval is to allow annual fluoride emissions performance tests on Alcoa's anode bake plant. The source would not be required to test fluoride emissions on a monthly basis. This action is approvable based on previous fluoride emission data provided by the company. This action should have no effect on the National Ambient Air Quality Standards.

DATE: Interested persons are invited to submit comments on this proposed action on or before March 20, 1986.

ADDRESS: Written comments should be submitted to the address below: Environmental Protection Agency, Region 6, Air, Pesticides and Toxics Division, 1201 Elm Street, Dallas, Texas 75270, Attention: Raymond Magyar (6T–ES).

Background information and comments received on the proposal will be available for public inspection at the address given above and at the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Raymond Magyar at the above EPA address, telephone 214/767/9876.

SUPPLEMENTARY INFORMATION: On January 26, 1976 (41 FR 3828), EPA promulgated Standards of Performance for New Primary Aluminum Reduction Plants as Subpart S of 40 CFR Part 60, pursuant to the provisions of section 111 of the Clean Air Act. Under the original standards, affected facilities at a new primary aluminum reduction plant were required to conduct performance tests on startup and when required by the Agency under section 114 of the Clean Air Act. On June 30, 1980 (45 FR 44207), EPA revised 40 CFR 60.195 to require performance testing at least once per month for the life of an affected facility. At the same time, however, the Agency provided that alternative test requirements could be established for the primary control system or an anode bake plant if the source could demonstrate that emissions have low variability during day-to-day operations.

On November 15, 1978, the Environmental Protection Agency (EPA) delegated to the Texas Air Control Board (TACB) authority to administer Subpart S of 40 CFR Part 60. Under the terms of the delegation, performance tests were to be scheduled and performed in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the Administrator of EPA. Accordingly, the TACB has transmitted to EPA for its approval a petition for alternative test requirements submitted by Alcoa for its Rockdale, Texas plant.

Alcoa is requesting a change in the testing requirements established for primary aluminum reduction plants by 40 CFR Part 60. Specifically, the source wishes to be allowed to change the frequency of testing for anode baking furnaces known as numbers 162 and 164 from once a month to once a year. On the basis of the supporting information submitted, EPA now proposes to grant this request since it meets the requirements of 40 CFR 60.195(b). Actual emissions from the anode bake plant systems are far below the allowable emissions. The anode bake plant emissions have low variability during day-to-day operations, and they are less than half the allowable standard for fluorides. This alternative requirement would not preclude the Agency or the TACB from requiring performance testing at any time. In addition, the alternative requirement could be withdrawn at any time that the Administrator found that it was not adequate to assure compliance with the emission standards applicable to this source.

The public is invited to participate in this proposed rulemaking by submitting written comments during the next 30 days on the proposed alternative test requirements. After carefully considering all pertinent comments received, the Administrator will take final action on Alcoa's petition under 40 CFR 60.195(b).

Under 5 U.S.C. 605(b), I hereby certify that today's proposed action will not if promulgated, have a significant economic impact on a substantial number of small entities. Under Executive Order 12291, today's proposed action is not "major." Today's proposed action would change the requirements for only one entity, not a small entity, and would have minimal and positive economic effect on that entity. This proposed action has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, will be available for public inspection at the Region 6 office listed under **ADDRESS** above.

This notice of proposed approval is issued under the authority of sections 111, 114 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7411, 7414 and 7601.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Intergovernmental relations, Metals.

Dated: December 31, 1985.

Frances E. Phillips,

Regional Administrator.

[FR Doc. 86–3402 Filed 2–14–86; 8:45 am]

BILLING CODE 6560–50–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-349-P]

Medicare Program; Reasonable Charge Limitations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would state the circumstances under which HCFA would consider establishing special reasonable charge payment limits for services (including supplies and equipment) reimbursed under Part B of the Medicare program, as will as the procedures it would follow in establishing them. The limits would be either a specific dollar amount, or a special method to be used in determining maximum reasonable charges to be allowed for a particular service or category of service.

The proposed rule would also specify procedures for public participation in establishing limits, and that procedures for exceptions would be included in each notice of limits, as appropriate.

The purpose of this proposed rule is to establish a stronger framework for setting special reasonable charge limits for services when the standard reimbursement methodology results in payments that are not reasonable. A related purpose is to protect the Medicare program from excessive outlays and to prevent any adverse effects on both Medicare beneficiaries and consumers in general that we believe would result from a lack of such limits.

DATES: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on March 20, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-349-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:.

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C.; or

Room 132 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting please refer to BERC-349-P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Ronald Wren, (301) 594-7107.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act requires that all payments under Part B of the Medicare program must be reasonable.

Reasonable charge determinations under Part B are generally based on customary and prevailing charges derived from historic charge data. The reasonable charge for a service is generally the lowest of (1) The actual charge, (2) the customary charge made by a particular supplier, or (3) the prevailing charge, which is set at the 75th percentile in the range of customary charges for similar services in the locality. An economic index limits the annual increases in prevailing charges for physicians' services.

This standard method of determining the reasonable charge for service can, in some instances, result in payments that may not be reasonable. This may occur, for example when (1) The marketplace is not truly competitive because of limited suppliers; (2) the Medicare and Medicaid programs are the primary source of payment for a service; (3) the charge involves the use of new, expensive technology for which there is not an extensive charge history; (4) the charges do not reflect changing technology or increased facility with that technology (for example, when first done, a medical procedure may require considerable skill and entail substantial risk, but becomes more routine with additional experience); (5) prevailing charges in a locality are clearly out-of-line with prevailing charges in other localities; or (6) charges are grossly in excess of acquisition or production costs.

We are primarily concerned about those cases in which payments may be excessive. We believe that situations in which the reasonable charge mechanism results in a significantly deficient amount are virtually non-existent. Moreover, Medicare operating instructions (Medicare Carriers Manual, Part III, § 5010.2, "Equity Adjustments in Customary Charge Screens") already provide for adjustments in a customary charge profile in those unusual situations in which an increase in payment is appropriate.

II. Proposed Regulations

In order to ensure that Medicare payments are reasonable (not excessive), we propose to adopt special reasonable charge limits. The Medicare statute authorizes the Secretary to adopt special reasonable charge limits when the usual reimbursement mechanism under Part B of the program does not yield the desired result of reasonable payment. The Senate Finance Committee, in its report accompanying the Social Security Amendments of 1972, Pub. L. 92-603, expressed this purpose of section 1842(b) of the Act: ". . . present law provides for special reasonable charge rules and limits with respect to any item or service for which such special rules are found to be necessary and appropriate". (S. Rep. No. 1230, 92d Cong., 2d Sess. 193 (1972).) We believe that the proposed regulations follow the language and spirit of the law by establishing the process and criteria we would use in considering and setting limits when it appears that the standard process allows payment that is not reasonable.

We propose to add a new paragraph (g) to 42 CFR 405.502 which concerns the determination of reasonable charges. The new paragraph would provide that we may establish national reasonable charge limits for a category of service if we determine that the standard procedures for calculating reasonable charges result in unreasonably excessive charges. (We note that a category of service could contain only one particular service.) In determining the need for and in setting special payment limits, we would use information that is furnished by members of Congress, the public, carriers and others regarding excessive or unwarranted program expenditures that we routinely investigate.

We considered the possibility of trying to establish specific criteria for setting limits. We rejected this alternative, however, because the situations in which special reasonable charge limits could be necessary are varied, and an inflexible process could result in limits being based on factors not specifically relevant to the issue. We chose the proposed system because it permits us to set limits based on careful analysis of each individual situation, and to use criteria and data directly pertinent to that situation. We believe this is a more rational approach, both from the program viewpoint and those of affected beneficiaries, physicians and other suppliers of services. In our view, the procedure we propose for developing and justifying these limits, including publishing them for public comment, will result in limits that are well-conceived, reasonable, and properly documented as fulfilling the purpose of these proposed regulations.

Thus, the regulations at § 405.502(g)(1) would describe factors to be considered in determining the need for and setting a limit. These factors include, but are not limited to, the following:

1. *Price markup*—We would compare the specific markup on a category of service with that on similar services and with general industry pricing trends.

2. *Utilization*—In some situations, we would impute a cost-effective utilization rate in order to establish a limit.

3. *Charges made*—We would compare the amounts charged to non-Medicare and Medicare patients, and charges made for similar services furnished to institutions or other large volume purchasers.

4. *Cost of providing the service or obtaining the supply equipment*—We would consider cost data in order to determine whether charges are significantly out of proportion with the costs of furnishing or acquiring the service.

5. *Charges in other areas*—We would consider the prevailing charges in other localities in determining whether a charge is inherently unreasonable. For example, we may consider as unreasonable prevailing charges that deviate more than a certain percentage above an area, regional or national average.

6. *Other appropriate factors*—We would consider other relevant factors in determining the need for and in setting a limit for a particular category of service.

As noted above, we would obtain some of this information from sources that have noted excessive or unwarranted program expenditures. We also would obtain this information from a variety of other sources, including not only charge data and price lists from Medicare, Medicaid and other government agencies, but also data from manufacturers, wholesalers and retail dealers, and studies, reports and research papers published by government agencies and private entities.

Once we have reviewed the available data on a specific category of service, we would determine whether a special reasonable charge limit is appropriate and, if so, what type of limit is needed and the dollar level, if applicable. If a dollar limit were not applicable, we would develop a special method the Medicare carriers would use in determining maximum reasonable charges for the category of service. For example, the limit might be expressed in terms of a relationship to prevailing charges for similar services.

The proposed regulations at § 405.502(g)(2) would provide that affected beneficiaries and suppliers would be able to request an exception to any limit if the criteria and circumstances for an exception, that will be issued with the notice of the limit, are met. This exception process would apply only when a special limit had been applied under § 405.502(g) and would not create any right to apply for exceptions in other cases. The exception process recognizes the fact that while special reasonable charge limits might be fair in the vast majority of cases, circumstances may arise in which their application would result in inequity for a particular beneficiary or supplier.

The proposed regulations would specify, at § 405.502(g)(3), that we would publish any proposed limit as a notice in the **Federal Register** and provide an opportunity for public comments. When all comments have been fully considered, we would also publish our final determination and our response to those comments, in the **Federal Register**.

Each notice published in the **Federal Register** would also set forth the criteria and circumstances, if any, under which a carrier may grant an exception to the specific limit. For example, a carrier might be permitted to grant an exception when a service is needed in a particular area, but the area is so sparsely populated that it cannot support cost-efficient utilization of the service. Carriers would review each request for an exception received from a beneficiary or a supplier and would grant it only in accordance with the published criteria for each specific limit.

It should be noted that an individual carrier or groups of carriers will retain their present authority to make inherent reasonableness determinations (which may involve setting a reasonable charge limit for a specific locality) without publishing a notice in the **Federal Register**. Existing regulations at 42 CFR 405.502(a)(7), concerning the determination of reasonable charges, provide that "other factors" may be found necessary and appropriate in judging whether a charge for a specific service is inherently reasonable. Carriers have and will continue to use this authority to make inherent reasonableness decisions. This differs from the proposed regulations in that the proposal would provide a basis for HCFA to promulgate national reasonable charge limits for particular services.

Our intention is to use the authority to establish limits in a selective manner. We envision using the authority only if it is clear that reliance on the standard reasonable charge mechanism and the carrier's existing inherent reasonableness authority cannot effectively deal with the problem. An example of this would be a totally new medical service that would be widely used and approved for Medicare coverage but for which the carriers' initial pricing of the service produced greatly inconsistent results.

We do not believe this proposal would have any substantial adverse effects on beneficiaries. When a beneficiary receives a covered medical service for which he or she may receive direct payment under Part B, the beneficiary may assign the right to that payment to the supplier of the services is the supplier agrees to the assignment. Under the terms of the assignment, a supplier agrees to accept the Medicare reasonable charge as payment in full for services and the beneficiary is responsible for a coinsurance amount. The establishment of limits on reasonable charges would lessen beneficiary cost sharing requirements if assignment is taken. More than 65 percent of all Part B claims are now paid under assignment. Further, as indicated above, the limits will be used selectively. Thus, the impact on beneficiaries will be minimal in most instances.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed major rule. A major rule is defined as any regulation that is likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed regulation would have no direct effect on the economy or on Federal or State expenditures. It specifies rules under which special limits might be established. Any actual limits would be published in the **Federal Register**, first as a proposal that would allow the public a period to submit comments and data on the proposed

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limits and, then as final limits. The final limits would not be promulagated without fully considering their economic impact. Therefore, we conclude that this proposed rule, in itself, would have no effect on the economy and no threshold criteria under E.O. 12291 would be exceeded. Consequently, an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulation would not have a significant economic impact on a substantial number of small entities. As discussed above, this proposed regulation would not, by itself, have an economic impact. Indirectly, it might result in future issuances whereby small entities might be affected. However, in each of these cases, procedures consistent with the RFA would be followed and a regulatory flexibility analysis performed, if warranted. Therefore, we conclude, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities and that an initial regulatory flexibility analysis is not required.

IV. Response to Comments

Because of the large number of pieces of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the end of the comment period and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart E would be amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * *

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

* * * * *

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. Section 405.502 would be amended by adding a new paragraph (g) to read as follows:

§ 405.502. Criteria for determining reasonable charges.

* * * * *

(g) *Determination of reasonable charges in special circumstances.* (1) HCFA may establish special reasonable charge limits for a category of service if it determines that the standard rules for calculating reasonable charges set forth in this subpart result in unreasonably excessive charges. The limits would be either a specific dollar amount, or a special method to be used in determining maximum reasonable charges to be allowed. In determining the need for a limit, and in calculating a limit, HCFA will consider the available data that are relevant to the category of service. The factors to be considered may include, but are not limited to:

(i) *Price markup.* This is the relationship between the retail and wholesale prices or manufacturer's costs of a category of service. HCFA may consider the markup on similar services and information on general industry pricing trends.

(ii) *Utilization.* HCFA may impute a reasonable rate of use for a category of service in order to arrive at cost-effective utilization.

(iii) *Differences in charges.* HCFA may consider the differences in charges to non-Medicare and Medicare patients or to institutions and other large volume purchasers.

(iv) *Cost.* HCFA may consider cost data that indicate a substantial unjustified differential between costs and charges.

(v) *Charges in other localities.*

(vi) *Other relevant factors.*

(2) (i) A beneficiary or supplier may request an exception to a special reasonable charge limit.

(ii) The carrier will grant an exception to the special reasonable charge limits if the criteria and circumstances specified under paragraph (g)(3)(ii) of this section are met.

(3) (i) HCFA will publish in the Federal Register a proposed and a final special reasonable charge limit before it is adopted.

(ii) Each Federal Register notice proposing or adopting a special reasonable charge limit will set forth the criteria and circumstances, if any, under which a carrier may grant an exception to the limit.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: October 23, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: January 13, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-3391 Filed 2-14-86; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Part 447

[BERC-275-P]

Medicaid Program; Revisions to Medicaid Payment for Hospital and Long-Term Care Facility Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes several changes to our current regulations on Medicaid payment for hospital and long-term care facility services. First, we would require submittal of assurances and related information by States for all changes in the methods and standards used for determining payment rates regardless of whether the State considers the changes to be significant or insignificant. Second, we would amend the existing regulations concerning payments to hospitals for inappropriate level of care services to clarify that coverage for this type of care is at the State's option. We would clarify that, if the State chooses to cover this type of care, Medicaid payment must be at rates commensurate with the level of care acutally received. Third, we would require the application of a separate upper payment limit for each category of facilities for which the State utilizes a separate payment methodology in setting payment rates for inpatient hospital or long-term facility services. In addition, we would clarify that Federal Financial Participation is not available for payments that exceed amounts allowable under the regulations

governing payments for inpatient hospital and long-term care services. Also, we would clarify the application of the upper payment limit to outpatient services. Finally, we would implement section 2369 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) to allow States more flexibility concerning payment for routine extended care services provided in a swing-bed hospital.

These changes are intended cumulatively to promote increased economy in the administration of the Medicaid program while retaining State flexibility to the maximum extent possible.

DATE: To be considered, comments must be mailed or delivered to the appropriate address as provided below, and must be received by 5:00 p.m. on April 21, 1986.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-275-P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addesses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C.;

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland

In commenting, please refer to BERC-275-P. Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Janet Wellman, (301) 597-1939, Swing-Bed provisions

Tzvi Hefter, (301) 597-1808, All other provisions

SUPPLEMENTARY INFORMATION:

I. Changes in Submittal of Assurances and Related Information

A. Background

Section 1902(a)(13)(A) of the Social Security Act (the Act) (42 U.S.C. 1396a(a)(13)(A)), as amended by section 2173 of Pub. L. 97-35 (the Omnibus Budget Reconciliation Act of 1981) requires that a State must find, and provide satisfactory assurances to HCFA, that Medicaid payments for inpatient hospital and long-term care facility services provided under a State plan are made through the use of rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and ecnomically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards. In enacting this provision, Congress intended to reduce the previous burdensome requirements that the regulations imposed on States, and to allow States greater flexibility in adjusting payment rates in response to changing fiscal conditions. (See the Senate Finance Committee Report on H.R. 934 (Senate Report No. 96-471).) Congress reasoned that the Federal regulations implementing the prior "reasonable cost-related" and "reasonable cost" statutory requirements relied too greatly on the inflationary Medicare reasonable cost reimbursement principles. This provision of the Statute is now implemented in 42 CFR 447.253.

Section 447.253(b) specifies that the State agency must submit assurances that its rates are reasonable and adequate whenever the agency wishes to make a *significant* change in its methods and standards for determining the rate for inpatient hospital or long-term care facility services. Thus, under the current regulation, a State must submit to HCFA assurances and related information only when it is making what it has determined to be a *significant* change in its methods and standards for establishing rates. Implicit in this regulation is the assumption that a State's determination that a change is either significant or not significant would be based on a test reasonableness. This means that a State would exercise sound and practical judgment in making the determination. For example, it was expected that in making such a determination the State would consider the impact of the proposed change on both the rates and the number of providers that would be affected. However, based on our experience since this regulation was originally published as part of an interim final rule on September 30, 1981, and as a result of subsequent litigation of this issue, we have concluded that the determination by a State that a plan amendment is not significant is often problematic in that "significance" is a relative term. For example, a State may conclude that an amendment is not significant in terms of total Medicaid program impact. However, the providers and ultimately HCFA may reach a different conclusion in terms of impact on the affected providers. An additional problem has been that when a State determines an amendment is not significant, the State is not required to issue public notice of the change or to submit to HCFA related information with the amendment, with the result that the basis for the determination is frequently unclear.

B. Proposed Change

We are proposing to amend § 447.253 to provide that the State agency would be required to submit the required assurances whenever the agency makes a change in its methods and standards for determining the payment rate. The State agency also would be required to submit with the assurances the required related information in order to ensure consistency in the review of all State plan changes and that the review includes an evaluation of the impact on payment rates and availability of services. These proposed changes would eliminate the difference in procedures for significant and not significant plan amendments and thereby avoid confusion as to when assurances are required. In addition, the change would facilitate a more consistent and comprehensive review of all plan amendment changes for compliance with the requirements of the statute and regulations.

If a State plan amendment is minor and does not materially change the methods and standards used to compute payment rates and does not affect the average rate payable to facilities within a State, a State may either reiterate or submit a copy of the applicable assurances and related information that were previously approved by HCFA. It would only be necessary for a State to provide new assurances and revised related information when a proposed State plan change affects the amount of the average rate payable to facilities within the State. Accordingly, we do not anticipate that this proposed change will substantially increase the reporting burden on the States.

II. Payment for Inappropriate Level of Care Days

A. Background

Section 1902(a)(13)(A) of the Act, as cited above, also provides for lower Medicaid payment rates to reflect accurately the level of care actually received by hospital inpatients who receive services at an inappropriate level of care (under conditions similar to those set forth for the Medicare program in section 1861(v)(1)(G) of the Act (42 U.S.C. 1395x(v)(1)(G))). Essentially,

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inappropriate level of care means the level of care furnished to individuals who are hospital inpatients but who require only skilled nursing (SNF) or intermediate care facility (ICF) services.

In effect, section 1902(a)(13)(A) of the Act conforms the required reduction in Medicaid payment rates for inappropriate level of care services to the Medicare requirement. This provision of the Medicaid statute is implemented in § 447.253 of the regulations. Specifically, § 447.253(b)(1)(ii)(B) requires that the methods and standards used by a State agency to determine Medicaid payment rates must provide that payment for hospital inpatients receiving services at an inappropriate level of care under conditions similar to those described in section 1861(v)(1)(G) of the Act will be made at lower rates, reflecting the level of care actually received, in a manner consistent with that section of the Act.

Generally, section 1861(v)(1)(G) of the Act prescribes payment for long-term care services that are received in a hospital because a bed was not available in a facility that is approved to provide the necessary level of care. For example, this section of the law applies when a Peer Review Organization (PRO) or other authorized body determines that inpatient hospital services for a patient are not medically necessary but that post-hospital extended care services for this same patient are medically necessary. Payment for these services is required to be made at a payment rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in SNFs under the State Medicaid plan, for the State in which the hospital is located. In addition, section 1861(v)(1)(G) of the Act provides an exception to this general rule. If there is not an excess of hospital beds in the hospital providing the care and there is not an excess of hospital beds in the area of the hospital, then payment will be made at the regular rate for inpatient hospital services payable under Part A of Medicare, rather than at the reduced rate. The statute further provides that in the case of a public hospital, in determining whether or not there is an excess of hospital beds in the area of the hospital, the determination would be made on the basis of only the public hospitals (including the hospital providing care) that are in the area of the hospital and that are under common ownership with that hospital.

The references in the Medicaid statute and in the implementing regulations to section 1861(v)(1)(G) of the Act have caused some confusion as to exactly which requirements States are to meet when providing coverage for inappropriate level of care. Our policy for the Medicaid program with regard to inappropriate level of care days is that coverage is optional with the States. A State is not required to provide coverage and payment for inpatient hospital services furnished to individuals who do not require that level of care. However, if a State decides to provide for coverage of this type of care in hospitals, the State is obligated to find and assure us that its methods and standards for determining rates provide for reduced payment rates for hospital inpatients receiving an inappropriate (but covered) level of care, consistent with section 1861(v)(1)(G) of the Act.

We have not placed specific requirements on States concerning the relationship between the excess beds rules contained in section 1861(v)(1)(G) of the Act and the Medicaid program. States are not required under Medicaid to provide for the same exception as that required under Medicare for hospitals that do not have excess beds in the specific hospital or in the area of the hospital. States have the option of either reducing the rate in all cases, even where there are no excess beds, or providing for an exception to the reduced rate where there are no excess beds.

If a State wishes to pay the full inpatient hospital rate where there are no excess beds, it must establish criteria for an excess bed determination. The criteria would have to be reasonable and consistent with section 1861(v)(1)(G) of the Act. (HCFA has on an operational guideline basis allowed an 80 percent occupancy threshold as an acceptable definition of hospitals with no excess capacity.) We are not proposing to mandate that States provide for an excess bed exception, nor to prescribe parameters for criteria for the exception if a State chooses to adopt the excess bed exception, because the State is in a better position to develop reasonable standards for excess capacity determined in accordance with the State's needs, and health planning. Of course, the State's standards, if any, in this regard, as well as the payment methodology would have to be incorporated and approved as part of the State plan.

B. Proposed Clarification

We are proposing to clarify § 447.253(b)(1)(ii)(B) by specifying that coverage for services at an inappropriate (but covered) level of care provided to hospital inpatients is at the State's option. If the State elects to cover this type of care, then a statement of this coverage must be included in the State plan and payment for this type of care must be made at lower rates than those paid for other inpatient hospital services. The lower rates would be commensurate with the lower level of care required by the patient.

III. Upper Payment Limits

A. Background

Section 1902(a)(30) of the Act (42 U.S.C. 1396a(a)(30)) requires that State plan methods and standards used to determine payment rates result in payments that are consistent with efficiency, economy and quality care. This provision was orginally implemented by § 447.272 as issued in the interim final rule we published on September 30, 1981 (46 FR 47964). This section of the regulations was subsequently revised and redesignated in part as § 447.253 by final regulations published December 19, 1983 (48 FR 56046). Section 447.253 now requires that a State agency assure that it has estimated that under the proposed average payment rate, the State will not pay more in the aggregate for inpatient hospital services or long-term care facility services than the amount that would have been paid for the services under the Medicare principles of reimbursement. As a result of the enactment of section 962 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499) and section 2173 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), both of which amended Section 1902(a)(13)(A) of the Act, many States amended the payment provisions of their previously approved State plans. Several States have amended their State plans in order to utilize different payment methodologies for different classes or types of facilities approved to provide the same type of care. In order to meet the purpose of the application of the Medicare upper payment limit, it appears necessary to refine its application to fit these situations.

Intermediate care facilities (ICFs) are classified as either State operated or privately operated facilities. Based on this class distinction, a State may reimburse each class of facility on a different basis by using different methodologies for each class. Various Departmental audit agency reports have highlighted instances in which payments to a specific class of facility have been excessive. However, since the upper limit is currently applied on an aggregate basis for all long-term care facility or inpatient hospital services, these payments may not cause the upper limit, as currently determined, to be exceeded.

As noted above, § 447.272 (46 FR 47973, September 30, 1981) of the interim final regulations implemented section 962 of Pub. L. 96-499 and section 2173 of Pub. L. 97-35. However, we did not specify when the upper limit requirement must be met. To correct this situation, in the final regulations issued on December 19, 1983 (48 FR 56046), we removed § 447.272 and made the upper limit requirement part of the general requirements in § 447.253 to show that the determination must be made by the State when the payment rate is set. However, based on our experience since making this change, we believe that a distinction must be made in the regulations between the upper limit assurance and the application of the separate program requirement of the upper limit.

B. Proposed Change

We are proposing to add a new § 447.272 to require that separate Medicare upper payment limits be computed for hospitals, SNFs, ICFs, and ICFs/MR. In addition, if a State utilizes separate payment methodologies within these categories of facilities, the State agency would be required to compute and apply a separate Medicare upper payment limit for each type of facility for which it has adopted a different payment method or standard within each category of facilities. This proposal would serve to establish more accurately the amount that would be paid to those facilities for those services under the Medicare principles of reimbursement. In our view, this proposal is necessary to assure that payments, irrespective of the use of various payment methodologies, are consistent with the intent of sections 1902(a)(13)(A) and 1902(a)(30) of the Act, which require that payments be reasonable and adequate and be consistent with efficiency, economy and quality of care.

We would also revise § 447.253(b)(2) to clarify that a State is required to provide an assurance that it has found that its proposed payment rate and ratesetting methodologies will pay no more to each category of facilities for inpatient hospital services or long-term care facility services than the Medicare upper limit, as specified in the new § 447.272. In establishing the upper limit to be applied to each category and ratesetting methodology within each category, the State would be required to apply the appropriate Medicare provisions (for example, reasonable cost reimbursement, the rate of increase limits on inpatient hospital costs enacted by section 101 of the Tax Equity and Fiscal Responsibility Act (Pub. L. 97-248), and the Medicare prospective payment system) in effect at the time. It should be noted that in establishing the upper limit for ICFs and ICFs/MR, Medicare principles of reasonable cost reimbursement must be considered. Even though Medicare does not cover ICF and ICF/MR services, it is the principles of reasonable cost reimbursement that should be utilized by the State in determining that it has met the upper limit requirement.

In effect, the new § 447.272 would provide that, aside from the requirement that a State assure HCFA under § 447.253(b)(2) that it has found that a proposed change in its payment rate is not expected to exceed what Medicare would pay, the Medicare upper payment limit constitutes a separate program requirement. Therefore, under section 1903(a)(1) of the Act, which deals with State payments, Federal financial participation (FFP) would not be available for any expenditure for which a State pays more to any category of facilities for inpatient hospital services or long-term care services than the amount that can reasonably be estimated to be paid for those services under the Medicare reimbursement principles in effect at the time since these payments would not constitute payment for "medical assistance under the plan". It is important to repeat that, in the application of the Medicare upper limit, the State is required to apply all the Medicare principles in effect at the time. These may include the specific requirements applicable to the allocation of home office costs to chain organizations and of costs to related organizations, as well as to general requirements that incurred costs, including administrative and overhead costs, be related to patient care in order to be allowable.

Finally, we have found that in certain instances the discrepancy between rates payable to similar facilities may be caused by the inclusion of non-covered services in the rate calculation. Section 1903(a)(1) of the Act provides that FFP is available to match only the expenditures incurred in providing medical assistance under the State plan. Further, section 1902(a)(13)(A) of the Act requires that payment rates be reasonable and adequate to meet the costs that *must* be incurred in the provision of care and services. It is clear that the Congressional intent is that payments be made only for providing care and services. Accordingly, in determining the amounts payable to facilities, we would require that a State consider only those factors specifically applicable to the provision of covered care and services to Medicaid patients. Therefore, we are proposing to add a new § 447.257 to specify that FFP is not available for State expenditures for services that exceed the amounts allowed under 42 CFR Part 447 Subpart C. That subpart governs payment for inpatient hospital and long-term care facility services. We believe it necessary to add this section in order to clarify that noncompliance with the provisions contained in Part 447 Subpart C would constitute not only a State plan violation but would also trigger a disallowance of FFP payments.

C. Clarification of Upper Payment Limit on Outpatient Hospital Services

We want to clarify our policy with respect to the upper limit on payments for hospital outpatient services. Section 1902(a)(30) of the Act, as previously discussed, requires that State payments are consistent with efficiency, economy and quality of care. Section 447.321 of our regulations specifies that a State, "may not pay more than the combined payments the provider gets from the beneficiaries and carriers or intermediaries for providing comparable services under comparable circumstances under Medicare". This section has been misinterpreted to mean that the final calculation applies on a provider-by-provider basis. However, this is not our intent. Section 447.321 came into existence as the result of the recodification of the Medicaid regulations on September 29, 1978 (43 FR 45178). The prior Medicaid regulations (that is 42 CFR 450.30(b)(5)), stated in part that, "schedules of payment established by the State agency shall not exceed the combined payments received by providers". This prior Medicaid regulation required the upper limit to be calculated based on total payments. The recodification of 1978 was intended only to reorganize and simplify the regulations and not to make policy changes. Accordingly, the recodified regulation at § 447.321 should not be interpreted as a change in the outpatient upper limit from a total payments basis to a provider specific basis. We are, therefore, proposing to revise § 447.321 to state clearly that the upper limit for outpatient services is calculated based on total payments received by all providers, which of course would be the result of determining the payments made to individual providers during the period.

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IV. Payment to Hospital Providers of Extended Care Services (Swing-Beds)

A. Background

Section 1913 of the Act (42 U.S.C. 13961) as enacted by section 904 of Pub. L. 96–499, established Medicaid reimbursement provisions for swing-beds (that is, a bed that is used by a hospital to furnish SNF or ICF services rather than acute inpatient care based on the hospital's needs at the time) comparable to the Medicare provisions contained in section 1883 of the Act. Section 1913 of the Act established the following provisions concerning Medicaid reimbursement for swing-beds:

- Swing-bed hospitals must be paid for SNF and ICF routine services at the statewide average rates paid under the State plan during the previous calendar year to SNFs and ICFs, as appropriate.
- The reasonable costs of ancillary services must be determined in the same way as for inpatient hospital services.
- In order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients must be subtracted from the hospital's total routine costs before determining reimbursement for routine hospital services under the State plan.

Regulations implementing section 1913 of the Act (§ 447.280) were published in the **Federal Register** on July 20, 1982 (47 FR 31518).

Section 2369(a) of the Deficit Reduction Act of 1984 (Pub. L. 98–369) enacted on July 18, 1984 amends section 1913(b) of the Act by allowing States to pay for swing-bed SNF and ICF routine services, at a rate equal to the average rate per patient day paid under the State plan to SNFs or ICFs (other than ICFs/MR), as appropriate, for routine services furnished during the previous calendar year, or at a payment rate established by the State in accordance with section 1902(a)(13)(A) of the Act. Section 1902(a)(13)(A) of the Act, as amended by section 2173 of Pub. L. 97–35, as discussed above, allows States considerable flexibility in setting payment rates for hospitals, SNFs, ICFs, as well as the long-term care ancillary and inpatient hospital services furnished by swing-bed hospitals. Section 1913, as amended by section 2369 of Pub. L. 98–369, merely extends this flexibility to States in setting payment rates for routine SNF or ICF services furnished in swing-bed hospitals. However, in accordance with the Conference Committee Report on Pub. L. 98–369 (Rep. No. 98–861, 98th Cong. 2d Sess., 1370 (1984)) the State would be required to apply the same payment method to all swing-bed hospitals within the State for purposes of Medicaid reimbursement. The amendment to section 1913 of the Act is effective for payment for services furnished after July 18, 1984.

B. Proposed Change

We are proposing to revise § 447.280 to implement section 2369 of Pub. L. 98–369. The revised § 447.280 would give States the flexibility to pay swing-bed hospitals for routine SNF and ICF services at either the average rate per patient day paid to SNFs or ICFs (other than ICFs/MR) in the State for services furnished during the previous calendar year or at a rate established by the State. If a State elects to establish its own rate for routine SNF oir ICF services furnished in a swing-bed, the rate must meet the State plan and payment requirements described in Part 447 Subpart C, as applicable (that is, those assurances and related information requirements that are appropriate for swing-bed services). The proposed § 447.280 also provides that the State must apply the same payment method to all swing-bed hospitals in the State.

V. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612) we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, small entities include all nonprofit and most for-profit hospitals. Under both the Executive Order and the Regulatory Flexibility Act, such analyses, must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize unnecessary burden or otherwise ensure the regulations to be cost-effective.

First, we do not believe that any savings would result from the proposed changes in the requirements for the submittal of assurances and related information. Nonetheless, we believe this change is necessary as explained above, even though the change would increase the paperwork burden on those States that choose to make changes in their methods and standards that would be considered to be not significant under the existing regulations. The increase in burden would be slight and would not increase their administrative costs significantly.

The proposed amendment regarding payment for inappropriate level of care days does not constitute a change in policy but merely clarifies our existing policy. We expect no savings or costs to result from this clarification. However, we are aware that some States are paying the full hospital rate for all or part of a hospital stay during which a hospital provides inappropriate level of care services. Therefore, we anticipate that bringing these States into compliance with our existing regulations would save around $5 million in the first Federal fiscal year, with increasing savings in subsequent years. Nonetheless, this would be independent from the effects of the proposed amendment, which merely makes it clear that a State may elect not to pay for inappropriate level of care services.

We are unable to estimate potential savings from the proposed upper payment limit for each type or category of facility services because we do not have sufficient data to permit us to quantify accurately the magnitude of the problem nationwide. Departmental audits have found substantial overstatement of costs for certain categories of facilities in various States. Based on the limited information available to us, we expect this proposal would primarily affect some facilities, owned by States, that are currently paid at levels that would exceed the proposed limits. As a result, the affected States would experience reduced FFP and an increased share of the costs of medical care furnished in affected facilities. In addition, calculation and application of the upper payment limits could result in some administrative costs to States. However, because we believe the problem described above is limited to relatively few States, we do not expect either the overall economic impact or the administrative costs to be significant.

Finally, we estimate the provisions regarding State payment for swing-bed services would have a negligible impact on program expenditures. There are only about 400 swing-bed hospitals, each of which has fewer than 50 beds. Further, even though the States would have increased flexibility in setting swing-bed payment rates, the potential range of options open to them would be constrained. A State would not be able to set rates that would be less than reasonable and adequate under the requirements of § 447.252, nor would it be able to pay more than the upper limits described in the proposed § 447.272. Therefore, we do not expect these provisions to have a significant impact on potentially affected hospitals.

For the above reasons, we have determined that this proposed rule is not a major rule and that a regulatory impact analysis is not required. Further, the Secretary certifies under 5 U.S.C. 605(b), under the Regulatory Flexibility Act, that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

VI. Other Required Information

A. Paperwork Burden

Section 447.253(a) of this proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

A notice will be published in the **Federal Register** when approval is obtained. An individual or organization desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Desk Officer for HCFA at the following address: Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, D.C. 20503, Attention: Fay Iudicello.

B. Public Comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to respond to them individually. However, we will consider all comments contained in correspondence that we receive by the date specified in the "Dates" section of this preamble and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42. CFR Part 447 would be amended as set forth below:

PART 447—PAYMENTS FOR SERVICES

A. The authority citation for Part 447 continues to read as follows:

Authority. Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. Subpart C is amended as follows:

SUBPART C—PAYMENT FOR INPATIENT HOSPITAL AND LONG-TERM CARE FACILITY SERVICES

1. The table of contents for Subpart C is amended by adding an undesignated center heading and titles for new §§ 447.257 and 447.272 to read as follows:

Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services

Sec.

* * * * *

Federal Financial Participation

§447.257 FFP: Conditions relating to institutional reimbursement.

* * * * *

§447.272 Application of upper payment limits.

* * * * *

2. In section 447.253 paragraph (a) is revised, the introductory language of paragraph (b) is revised, the introductory language of paragraph (b)(1)(ii) is reprinted unchanged for the convenience of the reader, and paragraphs (b)(1)(ii)(B) and (b)(2) are revised to read as follows:

§447.253 Other requirements.

(a) *State assurances.* In order to receive HCFA approval of a State plan change in payment methods and standards, the Medicaid agency must make assurances satisfactory to HCFA that the requirements set forth in paragraphs (b) through (g) of this section are being met, must submit the related information required by § 447.255 of this subpart, and must comply with all other requirements of this subpart.

(b) *Findings.* Whenever the Medicaid agency makes a change in its methods and standards, but not less often than annually, the agency must make the following findings:

(1) *Payments rates.*

* * * * *

(ii) With respect to inpatient hospital services—

* * * * *

(B) If a State elects in its State plan to cover inappropriate level of care services (that is, services furnished to hospital inpatients who require a lower covered level of care such as skilled nursing or intermediate care services) under conditions similar to those described in section 1861(v)(1)(G) of the Act, the methods and standards used to determine payment rates must specify that the payments for this type of care must be made at rates lower than those for inpatient hospital level of care services, reflecting the level of care actually received, consistent with section 1861(v)(1)(G) of the Act; and

* * * * *

(2) *Upper payment limits.* The agency's proposed payment rate will not exceed the upper payment limits as specified in §447.272.

* * * * *

3. A new undesignated center heading and a new § 447.257 are added to read as follows:

Federal Financial Participation

§ 447.257 FFP: Conditions relating to institutional reimbursement.

FFP is not available for a State's expenditures for hospital inpatient or long-term care facility services that are in excess of the amounts allowable under this subpart.

4. A new § 447.272 is added to read follows:

§ 447.272 Application of upper payment limits.

Payments by an agency for inpatient hospital services or long-term care facility services to hospitals, SNFs, ICFs, or ICFs for the mentally retarded (ICFs/MR) may not exceed the amount that can reasonably be estimated would have been paid for the services under Medicare reimbursement principles in effect at the time the services were furnished. If a State uses separate ratesetting methodologies for these categories of facilities, then the agency must apply the upper payment limit to the payments made to each facility or group of facilities that is paid under each of the separate ratesetting methodologies.

5. Section 447.280 is revised to read as follows:

§ 447.280 Hospital providers of SNF and ICF services (swing-bed hospitals).

(a) *General rule.* If the State plan provides for SNF or ICF services furnished by a swing-bed hospital, as specified in §§ 440.40(a) and 44.150(f) of this chapter, the methods and standards used to determine payment rates for routine SNF or ICF services must—

(1) Provide for payment at the average rate per patient day paid to SNFs or ICFs, other than ICFs/MR, as applicable, for routine services furnished during the previous calendar year; or

(2) Meet the State plan and payment requirements described in this subpart, as applicable.

(b) *Applicotion of the rule.* The payment methodology used by a State to set payment rates for routine SNF or ICF services must apply to all swing-bed hospitals in the State.

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C. Subpart D is amended as follows:

Subpart D—Payment Methods for Other Institutional and Noninstitutional Services

1. Section 447.321 is revised to read as follows:

§ 447.321 Outpatient hospital services and clinic services: Upper limits of payment.

(a) *General rule.* FFP is not available for any payment that exceeds the amount that would be payable to providers under comparable circumstances under Medicare.

(b) *Application of the rule.* Payments by an agency for outpatient hospital services may not exceed the total payments received by all providers from beneficiaries and carriers or intermediaries for providing comparable services under comparable circumstances under Medicare.

(Catalog of Federal Domestic Assistance Programs No. 13.714, Medical Assistance Program)

Dated: October 30, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: December 26, 1985.

Otis R. Bowen,

Secretary.

[FR Doc. 86-3392 Filed 2-14-86; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 33, 75, 78, 94, 97, 108, 160, 167, 192, 196

[CGD 79-160]

Lifesaving Equipment; Line-Throwing Appliances, Required Equipment on Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: This rule dealt with the requirements for line-throwing appliances for vessels on other than international voyages. This rule would also have removed the approval for lyle-gun type line-throwing appliances. This action is being withdrawn because some provisions of this rulemaking action are covered by other rulemaking dockets and a reevaluation of the remaining provisions indicates that the proposed changes may not now be appropriate from a safety viewpoint.

FOR FURTHER INFORMATION CONTACT: Lieutenant Donald W. Gold (G-MVI-1/14), Room 1400, U.S. Coast Guard Headquarters, Washington, D.C. 20593, (202) 426-1464.

Drafting Information: The principal persons involved in drafting this rule are: Lieutenant Donald Gold, Project Manager, Office of Merchant Marine Safety, and Lieutenant Sandra R. Sylvester, Project Attorney, Office of Chief Counsel.

SUPPLEMENTARY INFORMATION: On December 11, 1980, the Coast Guard published a proposed rule (45 FR 81616) concerning these amendments. Interested persons were given until March 11, 1981 to submit comments. A total of five comments were received. Three responders, from the offshore drilling industry, supported this proposal which would have removed the requirement for line-throwing appliances on mobile offshore drilling units (MODUs) except while on international voyage.

Limiting the requirement for line-throwing appliances on mobile offshore drilling units to only those on an international voyages was never the intent of this rulemaking action. On April 15, the MODU OCEAN EXPRESS capsized while moving between drilling locations on the Outer Continental Shelf. During the move, one of three tow lines in use parted. The tow line could not be reestablished due to the absence of a line-throwing device and the prevailing sea conditions. The resulting loss in directional control of the OCEAN EXPRESS allowed the unit to drift broadside to the seas and capsize. It is the intention of the Coast Guard that MODUs be equipped with line-throwing appliances while moving between geographic locations. A correction to the proposed rule was published on January 15, 1981 (46 FR 35732) to clarify the intent of this rulemaking action in regard to MODUs.

One responder supported the proposal as it related to vessels and one responder expressed concern over the deletion of line-throwing appliances on board tankers on voyages between Cook Inlet, Alaska and the 48 contiguous States. It is noted that definitions of international voyage in the various subchapters of Title 46 CFR include voyages between the contiguous States and Alaska within the scope of their definitions.

A comment was received which discussed a need for emergency towing equipment on certain tank vessels. The International Maritime Organization (IMO) has published a resolution concerning emergency towing requirements for disabled tankers.

One of the considerations discussed in the initial rulemaking notice was the assertion that there are sufficient shore based salvage vessels that provide proper towing capacity and recent advances in communications capability to obviate the need for vessels to carry the equipment themselves. The extension of offshore exploration and production ever farther offshore in the Gulf of Mexico has made the time delay in providing shore-based towing equipment to disabled vessels adrift in the oil production areas of the coast unacceptable. Some form of emergency towing equipment and a method of passing a tow line should be present on all vessels. The removal of the requirement that vessels operating in this area carry line-throwing equipment is inappropriate in light of the risk presented by disabled vessels adrift among oil production platforms.

In consideration of the foregoing, the notice of proposed rulemaking (CGD 79-160) is hereby withdrawn.

February 12, 1986.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Officer of Merchant Marine Safety.

[FR Doc. 86-3430 Filed 2-14-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 86-6]

Service Contracts

AGENCY: Federal Maritme Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to substantially revise its service contract regulations in a newly created part, based on comments received and experience gained in processing service contracts over the past year. This action would reaffirm that a shipper cannot commit all or a fixed portion of its cargo without the resulting arrangement becoming a Loyalty Contract and would clarify statutory concepts relating to parties to, and duration and geographical scope of, contracts. The rule would provide for additional filings to facilitate Commission surveillance and availability of terms to similarly situated shippers, and would also refine procedures involving the essential terms' publication and statements, contingency clauses, termination, and rejection of filings by the Commission. The Commission also invites comments on specified minimums for liquidated damages and for cargo and service

commitments, a new, combined format for filing, "most-favored-shipper" clauses and a possible exemption for carriers and conferences from the requirement of making foreign port ranges available to shippers under certain circumstances, each of which could be the subject of future rulemakings.

DATE: Comments due on or before April 21, 1986.

ADDRESS: Comments (original and 20 copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In 1984, the Federal Maritime Commission implemented the service contract provisions of section 8(c) of the Shipping Act of 1984 (46 U.S.C. app. 1707(c)). See Docket No. 84-21, *Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States—Service Contracts and Time/Volume Contracts.* An interim rule was published in the **Federal Register** on May 3, 1984 [49 FR 18849]; a revision to the interim rule was published on June 14, 1984 [49 FR 24701]; and a final rule was published as 46 CFR 580.7 on November 15, 1984 [49 FR 45364], with corrections on December 17, 1984 [49 FR 48927]. The final rule became effective on December 15, 1984.

Since the 1984 Act became effective on June 18, 1984, there have been some 3000 service contracts filed with the Commission. The Commission has closely scrutinized each of them and has, in addition, responded to numerous inquiries from the ocean shipping industry. This proposed rule attempts to address the various problems identified to date and, in some areas, to clarify for the shipping public the manner in which service-contract issues are now treated on an *ad hoc* basis.

One of the Commission's prime concerns throughout the preparation of the proposed rule is the extent to which many so-called service contracts have been drifting away from what it believes was the intent of Congress. As a general matter, it can be said that as the use of service contracts has become more widespread, the contracts themselves have become more amorphous. In many instances, the degree of flexibility allowed shippers calls into question the validity of the arrangement as a legally binding contract. It is hoped that the proposed changes to the service contract rule will aid in alleviating problems of this nature.

Structure

It is proposed to delete § 580.7 of Title 46, Code of Federal Regulations, governing the filing and content of service contracts and place the new service contract regulations in a newly created CFR Part 581, for clarity and facility of utilization. The following table attempts, in a general way, to "track" the previous sections in relation to the new structure:

New section	Old section
581.1	580.7(a)
581.2	
581.3	580.7(b) (1), (2); 580.7(e); 580.7(i); See also 580.7(g) (1); 580.7(h) (1); and 580.7(k)
581.4(a)	580.7(b)(3)
581.4(b)	580.7(h)(2) thru 580.7(h)(5)
581.5	580.(7)(b)(3)(ii); 580.7(g)(2)
581.6	580.7(g)(1)
581.7	580.7(d); 580.7(k)
581.8	580.7(f)
581.9	580.7(c)
581.10	580.7(j)
581.91	580.91

Section-by Section Analysis

Section 581.1—Definitions

The definitions of "Act," "Carrier," "Common carrier," "Filing," "Non-vessel-operating common carrier," "Ocean common carrier," "Ocean freight forwarder," "Person," Shipment" and "Submission" are carried over to the new part from Part 580 where the regulations concerning service contracts are currently located (at § 580.7(a)). The definition of "Commission" is added for convenience.

The definition of "Conference" is the same as that contained in § 580.2(f), except that the proposed new language provides that service contracts may also be entered into by "any association of ocean common carriers which is permitted, pursuant to an effective agreement, to fix rates and to enter into service contracts." This, the Commission believes, reflects current practices and effectuates the intent of the 1984 Act to authorize parties to a rate-fixing agreements, which do not utilize a common tariff, to enter into service contracts.

The revised definition of "Contract party" reflects the 1984 Act's intention that only vessel-operating ("ocean") carriers (or conferences) may offer a service contract, as *carrier.* The definition of "service contract" is revised to clarify that service contracts can be entered into by more than one carrier, conference, shipper or shippers' association.

Section (8)(c) of the 1984 Act (46 U.S.C. app. 1707(c)) requires that a service contract be filed with the Commission with a separate, concise statement of its essential terms to be made available to the general public in tariff format, and that the essential terms be made available to all shippers similarly situated. New definitions, "Essential Terms Publication" and "Statement of essential terms" are proposed to help clarify the three distinct aspects of "essential terms":

1. The "essential terms" set forth in the contract as defined in section 8(c) of the Act;

2. A "statement of essential terms" which is a concise summary of the essential terms in 1, above, and which must be filed with the Commission at the same time as the service contract, like a tariff page; and

3. An "Essential Terms Publication" containing the various statements of essential terms in 2, above, and maintained in tariff format for the purpose of making available the essential terms in 1, above, to similarly situated shippers.

The definitions of "Geographic area," "Port range," "Shipper," and "Shippers' association" are substantially the same as in the current rule. The definition of "Tariff of general applicability" is added to facilitate the use of this concept in several places in the rule.

Section 581.2—Scope and Application

Section 581.2(a)—Geographical scope (U.S. commerce only).

A number of proposed service contracts which have been filed with the Commission have attempted to include within the scope of the contract foreign-to-foreign movements. The Commission believes that this practice is, at the very least, legally questionable. The Commission does not accept rates in tariffs which are predicated on combining cargo in U.S. commerce with cargo that moves between foreign ports, and it can see no compelling reason why it should do so in the context of service contracts.

There is nothing in the legislative history of the 1984 Act that would indicate that Congress contemplated that foreign-to-foreign movements would be incorporated as part of a service contract. Moreover, if the Commission did accept such filings, it is doubtful that the Commission could monitor or

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enforce the terms of the contracts. The Commission could not ensure that minimum volume commitments, penalty provisions and other essential terms were being implemented, so long as the foreign-to-foreign portion of a service contract remained beyond its jurisdiction.

As a result, proposed § 581.2(a) limits acceptable service contracts to those involving transportation of cargo which moves through a United States port in the foreign commerce of the United States. Service contracts covering any foreign-to-foreign movements would be rejected.

Section 581.2(b)—Parties: NVO's and Forwarders.

This paragraph clarifies that non-vessel-operating common carriers (NVOCC's) and ocean freight forwarders (OFF's), which cannot offer service contracts as carriers, may enter into them as shippers, but only under certain conditions. An NVOCC may sign only in its capacity as shipper to the offering underlying ocean carrier. An OFF, on the other hand, must make a choice between two mutually-exclusive alternatives, *i.e.*, it must either sign as the actual shipper, in which case it may not collect compensation from the ocean carrier or sign as the shipper's agent, in which case, written authorization for its signature as agent must be submitted to the carrier or conference contract party, which must then file it with the service contract. In order to adequately enforce the provisions of the 1984 Act, the Commission believes it is necessary to require these clarifications of the roles of such entities under any given contract.

Section 581.3—Filing and Maintenance of Service Contract Materials

This section describes the types of documents which must be filed or maintained at the Commission, as well as, when, how, with whom, and by whom. It also provides for filings on commodities otherwise exempted from service contract regulations under certain conditions.

Section 581.3(a)(1)—Service Contract.

These provisions basically reflect the present requirements of § 580.7(b)(1) and (e), except that proposed paragraph (a)(1) makes a cross-reference to form and content requirements which are now in separate sections under the proposed rule.

Section 581.3(a)(2)—Statement of essential terms.

This subparagraph contains provisions currently found in § 580.7(i), but adds the clarification that statement-of-essential-terms pages are to be filed in the Essential Terms Publication to clarify the distinctions set forth in the discussion under § 581.1, above.

Section 581.3(a)(3)—Notice of changes to contract, contract party or rate; availability of changed term to similarly-situated shippers, and settlement of account.

One of the problems in administering the service contract provisions of the 1984 Act has been the inherent conflict between the parties' desire for flexibility and the statutory requirement that the essential terms be disclosed and offered to the public. Although service contracts themselves are private commercial arrangements, they must be legally binding contracts and the essential terms of such arrangements must be publicly offered to similarly situted shippers.

The essential terms to be made available in tariff format are originally filed contemporaneously with the underlying service contract. The Commission has developed and refined a system whereby the statement of the terms is made available in tariff format to the shipping public, which in turn, facilitates the essential terms, themselves, being made available to similarly-situated shippers.

Over the past year, however, the Commission has become increasingly concerned that the essential terms initially contained in a service contract may not, after a period of time, provide the same overall arrangement originally agreed to by the parties, due to some change of events, whether or not contemplated by the contract. Where such changes affect the basic arrangement, especially the effective rate or remuneration, they can readily become new essential terms which the Commission by law must ensure are made available to similarly-situated shippers. The Commission is also concerned that such changes do not otherwise result in conduct prohibited by the 1984 Act.

Unfortunately, the Commission's experience over the past year in administering the 1984 Act indicates that many substantive changes in existing service contracts may not have been made available as essential terms to similarly-situated shippers, nor effectively or timely brought to the attention of the Commission.

Accordingly, the proposed rule attempts to address these situations. In light of the Commission's experience in administering its current service contract rules, it has become clear that certain minimum restrictions on the available methods of contract modification are necessary to ensure fulfillment of the legislative directives of section 8(c).

The areas which the Commission has identified as problems include the triggering of contract "contingency clauses" upon a described event, such as may be sometimes be found in a "force majeure" article; the failure to make available the newly operable essential term resulting from the occurrence of the described event to similarly-situated shippers; and, where not anticipated by a service contract clause, termination by mutual agreement or by breach or default because the minimum quantity required by the contract has not been met. Depending upon the circumstances, any of these occurrences can materially change the original understanding arrived at between shipper and carrier, but may not be promptly disclosed to another shipper or to the Commission, ff disclosed at all.

Similarly, the carrier's assessment of a certain amount of contract liquidated damages, as well as its obligation to rerate shipments upon a deviation from an original term, require more stringent surveillance by the Commission to *inhibit facto* discrimination and the unlawful use of service contracts to circumvent otherwise applicable tariff rates.

Finally, for proper surveillance, the Commission must be promptly apprised of the results of the assessment of liquidated damages, rerating or other adjustment in the original contract compensation, *i.e.*, the final settlement, both as to the fact of settlement and the amount.

The individual situations previously discussed, their limitations and other duties of the parties are covered more thoroughly in the correlative sections, *i.e.*, §§ 581.5–581.8. Section 581.3(a)(3) merely provides that when such an event occurs, a detailed notice must be filed with the Commission within 30 days of the occurrence, in the same confidential manner as a service contract itself. While the Commission considered requiring the filings to be in the same, non-confidential manner as statements of essential terms, there appear to be substantial, practical difficulties with this approach, such as protecting the names of shippers, timeliness in relation to the original period of availability, etc. The one exception, contained in proposed § 581.6(b)(5), is that the carrier or conference must directly contact other shippers subject to the same, original essential terms and make available to them the newly operable essential term(s). The notice of this event can simply be a copy of the letter to the shippers filed with the Commission.

Rather than make all circumstantial changes to essential terms available to all similarly situated shippers and, possibly, extending the period of availability, the approach of the proposed rule continues to allow commercial flexibility while, at the same time, providing for the minimum surveillance necessary to ensure compliance with law. It must also be emphasized that if there are no deviations or irregularities in the original service contract arrangement, nothing further need be filed.

In order to enable the Commission to determine who is entitled to a service contract provision, proposed section 581(a)(3)(v) requires the prompt filing of any change in the name of a contract party or affiliate entitled to use a contract.

Section 581.3(b)—Maintenance of Essential Terms Publication.

This proposed paragraph is based on current section 580.7(h)(1) but uses the new term "Essential Terms Publication" and restates the requirement that it be maintained in a "single, current" publication in the form prescribed under section 581.4(b)(2).

Section 581.3(c)—Who must file.

This paragraph identifies those who have the duty of filing and maintaining service contract materials. The appropriate carrier and/or conference would be required to file service contracts, statements of essential terms and notices under paragraph (a), and maintain an Essential Terms Publication under paragraph (b), of § 581.3.

Under the proposed rule, the conference must file service contracts (and corresponding statements of essential terms) not only where executed on behalf of the conference, but also, where permitted by the conference to be executed by one or more of its member lines. Moreover, when a contract covers service not within the scope of the conference, and the conference files it on behalf of a member line, the statement of essential terms must be filed in the Essential Terms Publications of both the conference and carrier involved.

Section 581.3(d)—Exempt commodities.

This paragraph continues to provide the option contained in current §§ 580.7(b) (1) and (2), *i.e.*, that an exempted commodity, such as forest products, may be included in a service contract and that, upon filing, such a contract will be subject to the same requirements as contracts covering non-exempt commodities. The proposed requirement in subparagraph (2), however, limits the option to where there already is a rate on the exempted commodity in a tariff of general applicability. Otherwise, if the contract were to be rejected or for other reasons rerated, there would be no governing tariff to use as the basis for determining the proper charges. This proposed approach to exempt commodity service contracts appears to comport with the statutory treatment of such contracts. Parties to these arrangements are not required to file them with the Commission. If they do file them, however, they become subject to the requirements of this rule, including the requirement that they have a rate for the exempt commodity on file in a tariff of general applicability.

Section 581.4—Form and Manner

This section contains the basic form requirements for the three types of service-contract materials and is based on current §§ 580.7(b)(3) and 580.7(h).

Section 581.4(a)—Service Contract.

As a result of experience gained over the past year, the Commission is expressly requiring that service contract provisions be clear, legible and accurate and that other references within the document to contract parties be consistent with the first reference. The form prescribed is intended to facilitate processing. The paragraph provides that conference members, as well as members of shippers' associations, need not be listed, but retains the requirement that the accurate, legal names of all other affiliates entitled to contract terms be set forth. The duty to describe the shipment records is retained, but a new requirement is added in view of proposed § 581.10(b), *i.e.*, to list the name, address and telephone number of the individual who will make shipment records available to the Commission.

Section 581.4(b)(1)—Statement of essential terms.

In addition to minor format requirements for the statements of essential terms, this proposed subparagraph requires the period of availability of terms to shippers under proposed § 581.6(b) to be set forth in a prominent place and that such period show both the beginning date and the expiration date. It is important for both the Commission and similarly-situated shippers to be able to immediately and accurately determine the period of availability.

Section 581.4(b)(2)—Essential Terms Publication.

In addition to format refinements from the current rule, this proposed subparagraph adds a requirement that the Essential Terms Publication contain an index of the statements of essential terms. This will enable shippers who might be interested in a comparable contract to be made aware of a contract's effective date and cancellation date. The indexing requirement will also serve to facilitate Commission processing. Because the Essential Terms Publication will contain such indices and other materials different from the actual statements of essential terms, the proposed rule will also now require that all pages of the Publication be printed in black on yellow paper [like statements of essential terms].

Section 581.5—Content of Essential Terms; Contingency and Force Majeure Clauses

This section is based on current § 580.7(g)(2) and clarifies the statutory content requirements for essential terms that must be in the service contract and which must be concisely summarized in the statements of essential terms that are filed in the Essential Terms Publication. Proposed subparagraph (a)(3)(viii) sets forth more specific requirements for events contemplated by contract clauses which change the original arrangement and paragraphs (b) and (c) contain new provisions for notice to the Commission of the occurrence of such events and the duty of one contract party to notify the other contract party of adjusted amounts due which result from such changes.

Section 581.5(a)—Essential Terms—certainty and consistency.

As further discussed below, this paragraph provides that the essential terms may not be uncertain, vague or ambiguous and that the contract may not provide for future modification by mutual agreement of the parties other than in full compliance with Commission regulations. While basic contract law might permit such modification, the requirement to make essential terms available to similarly situated shippers militates against a contract "novation" which dilutes the rights of other shippers. As provided under proposed section 581.7, substantial changes which are not covered by the original essential terms of a contract, such as breach or default because minimum volume requirements have not been met, cause the existing service contract to be terminated with rerating of the shipments, and any further arrangement must be contained in a new contract or governed by the applicable tariff.

Section 581.5(a)—Essential terms required by statute.

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Section 8(c) of the 1984 Act (46 U.S.C. app. 1707(c)) provides that the essential terms shall include:

(1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination of geographic areas in the case of through intermodal movements;

(2) the commodity or commodities involved;

(3) the minimum volume;

(4) the line haul rate;

(5) the duration;

(6) service commitments; and

(7) the liquidated damages for nonperformance, if any. Proposed section 581.5(a) repeats and clarifies these statutory requirements. In addition to provisions carried over from current § 580.7, the proposed rule requires that the duration of the contract be set forth as a specific, fixed time period, with a beginning date and ending date. The word "duration" is used here and elsewhere to avoid confusion with the word "term" ("essential term") or the word "period" ("period of availability").

It should be noted each of these mandatory provisions must be set forth in both the contract and also the statement of essential terms. If not, then either or both will be rejected. Moreover, the Commission will monitor such provisions to ensure that they are not being utilized to circumvent the statute's tariff requirements, *e.g.*, by service or cargo-volume commitments that are obviously minimal as consideration for corresponding contractual privileges; and liquidated damages that are similarly out of proportion to the injury sustained by breach, *i.e.*, either much too high or much too low under the circumstances. [See the discussion under § 581.(a)(3)(viii) below.] In addition, the Commission will reject service contracts and essential terms which do not contain the *defined* service level required by the statute, *e.g.*, assured space, transmit time, port rotation, and/or similar service features. It is *not* sufficient for a contract or statement of essential terms merely to recite that the carrier agrees to offer regular service during the contract period.

Section 581.5(a)(3)(v)—Loyalty Contracts.

In issuing a final rule governing service contracts in Docket No. 84–21, the Commission determined that any contract for carriage which specifies that the shipper may obtain a lower rate by committing all or a fixed portion of its cargo to that carrier or conference is a loyalty contract. Section 10(b)(9) of the 1984 Act (46 U.S.C. app. 1709(b)(9)), prohibits the use of a loyalty contract, except in conformity with the antitrust laws.

The Commission's determination in Docket 84–21 was challenged in a petition for reconsideration filed on behalf of various conferences.[1] Petitioners argued that service contracts and time volume rates could properly be based on the shipper committing all or a fixed portion of its cargo to the carrier or conference. In view of, *inter alia*, section 10(b)(9) of the 1984 Act, and after considering all the arguments submitted on this issue, the Commission rejected Petitioners' argument. However, in its Order of April 5, 1985 denying this and other petitions for reconsideration of the Commission's final rules implementing the 1984 Act, the Commission advised:

> It is the intention of the Commission to take this same approach to another issue raised in the Petitions and to inaugurate a future rulemaking on service contracts which will address the question of whether the Shipping Act of 1984 allows a service contract to be stated in terms of a fixed portion or percentage of the total quantity of the commodity described in the contract.

Since that time, the Commission has seen nothing to alter its earlier position. A reduced rate which is conditioned upon the shipper committing all or a fixed portion of its cargo to the carrier or conference does not depend on the volume of cargo shipped, but rather on the loyalty of the shipper. The shipper, whether it ships a single container per year or hundreds of containers, is effectively tied to the carrier or conference. Regardless of the name by which the carrier or conference may call such an arrangement, the Commission believes that it must be considered a loyalty contract and not a service contract for purposes of regulation under the 1984 Act.

Accordingly, § 581.5(a)(3)(v) of the proposed rule precludes carriers and conference from utilizing service contracts which states the minimum quantity necessary to obtain the rate in terms of a fixed percentage of the shipper's cargo. This provision is in accordance with the previously stated view of the Commission that any rate which is conditioned on the shipper committing all or a fixed portion of its cargo to the carrier or conference must be treated as a loyalty contract.

[1] The Petition for Reconsideration was filed January 3, 1985 on behalf of Australia/Eastern U.S.A. Freight Conference; Greece/U.S. Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Med-Gulf Conference; Mediterranean-North Pacific Coast Freight Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; and West Coast of Italy, Sicilian and Adriatic Ports/North Atlantic Range Conference.

Section 581.5(a)(3)(viii)—Contingencies, Force Majeure, etc.

Some service contracts which have been received in the past year contain contract provisions which permit subsequent modification to an original, essential term, but which are so vague as to be incomprehensible. Others contain provisions which are so highly subjective that they give one party virtual "carte blanche" to alter the contractual relation. An example of the latter is a so-called "commercial contingency clause" (usually keyed to a "Force Majeure" article) which allows a shipper to cancel or modify a contract if, in "its sole discretion" it determines that it is unable to market its products in the area which the service contract covers. Such contracts may lack the mutuality of obligation which is an essential requirement for a contract at law.

Provisions such as these, which allow modification or termination based upon vague or subjective criteria, appear to render the shipper's "obligations" under the contract a nullity and the publication of essential terms becomes essentially meaningless. To obviate this situation, proposed § 581.5 provides that, subject to rejection, essential terms of a service contract may not be "uncertain, vague or ambiguous," nor contain any provision "permitting modification by the parties other than in full compliance with" part 581 §§ 581.5(a) (1) and (2). Moreover, where parties to service contracts are going to provide for deviations from the initial arrangement in the contracts themselves, the circumstances permitting such deviations must be "readily verifiable and objectively measurable" § 581.5(a)(3)(viii)—Introductory Text). These requirements would appear to benefit everyone involved in service contracts. As between the parties, they would remove a potential source of future disputes. They will also permit the Commission to more easily determine whether a service contract has been complied with. Lastly, similarly situated shippers can better understand the initial offering and determine whether thy wish to take advantage of it through a comparable contract.

Presently, § 581.7(g)(2)(vii) states, in general, that the essential terms must include "liquidated damages for nonperformance, if any," but also sets forth requirements for one particular type of nonperformance, *i.e.*, the failure to meet the volume requirement. Proposed § 581.5 clarifies these two situations.

Section 581.5(a)(3)(vii) states that the essential terms shall include liquidated damages for nonperformance, if any. This is consistent with the language in section 8 of the 1984 Act. Any given service contract contains a multitude of obligations on the part of either party and the proposed regulation permits the parties to agree in advance on an amount of liquidated damages for the breach of any particular obligation. Parties to service contracts should be aware, however, that this does not mean that their discretion is unlimited in the area of liquidated damages. The Commission has received a few contracts in which the liquidated damages for failure to meet the volume commitment are *de minimis*. Some contracts have even contained clauses stating that a defaulting party need pay no damages. These contracts would appear to constitute devices to evade the otherwise applicable tariff rate. In certain situations, they would appear to result in a lack of mutuality of obligation. Parties to service contracts should keep in mind that liquidated damages, by their very nature, must bear some good-faith relation to the actual injury which will be sustained, if a breach of the contract occurs.

Proposed § 581.5(a)(3)(viii)(C) relates to the situation where there is a failure to meet the volume requirement for which the parties have made provision in their initial contract. The new rule requires that, when parties make provision for such an eventuality, their contract must include the "rate, charge, or rate basis which will be applied." This will enable similarly situated shippers and the Commission to adequately assess the complete agreement between the parties.

Section 581.5(a)(3)(viii) also classifies as an essential term, those clauses which relate to options for renewal or extension of the contract duration, discontinuance of the contract, assignability of the contract by either basic party and any other deviation from an original, essential term of the contract.

It is the policy of the Commission not to interfere with or abridge the commonlaw rights of parties to a service contract beyond the necessary requirements imposed by law. The listed contingencies, however, without adequate disclosure of both their authorization by the contract and their occurrence, can all too easily be utilized as devices or means to evade a tariff rate or as vehicles for discrimination. Where such contingencies are made part of the contractual arrangement, they must be fully described as essential terms.

Section 581.5(b)—Notice.

This proposed new paragraph provides that notice be sent to the Commission within 30 days of: (1) Any account adjustment resulting from either nonperformance for which liquidated damages may lie, or the occurrence of any event under a contingency or force majeure clause; and (2) the final settlement of such adjusted account. (See the discussion under §§ 581.3(a)(3) and 585.5(c).)

Section 585.5(c)—Issuance of proposed final accounting.

In addition to the occurrence of an event which could alter the original, basic arrangement of a service contract and, as a result, be used as a device for evasion of the requirements of the 1984 Act, the Commission is also concerned about the opportunity for abuse in the area of collection or non-collection of the final amount due under such contracts, especially where the account requires adjustment for liquidated damages for breach or for rerating under the tariff. Where, for example, the contract does provide for realistic liquidated damages for breach of the cargo-volume or service commitments and the collection of those liquidated damages is not diligently pursued, the regulatory scheme of the 1984 Act may be undermined. The effect is the same as having no rate at all, under either a tariff or service contract.

Accordingly, proposed § 581.3(c) requires that, once there has been a change to the basic compensation under the original terms of the service contract, which is adjusted because of the occurrence of an event contemplated by another essential term (*e.g.*, liquidated damages, rerating, etc.), the final amount due one party or another under the service contract must be billed promptly after the contract is terminated or discontinued, by a proposed, detailed billing or account stated of the adjusted total amount within 30 days of termination of the contract. As provided in § 581.5(b)(2) [see discussion above], notice of this billing or account stated must also be submitted to the Commission, which can be accomplished by merely filing a copy of the billing or account stated under § 581.3(a)(3)(iv). Lastly, notice of final disposition (*e.g.*, collection) must also be submitted under § 581.3(a)(3)(v). (See discussion under that section.)

Section 581.6—Availability of Essential Terms

As suggested by experience and comments received by the Commission, the procedures for a similarly-situated shipper obtaining a contract's essential terms, now contained in § 580.7(g)(1), require clarification and expansion. To that end, proposed §§ 581.6(b) (1)–(4), would: (1) Require the request by the shipper to be in writing; (2) establish a time limit for carrier/conference response; and (3) provide that the resulting contract may not become effective until it is signed by all necessary parties and filed with the Commission.

The period of availability under proposed paragraph (b)(1) is no less than 30 days from the date of filing of the service contract, which period will be suspended if there is a notice of intent to reject under proposed § 581.8(d).

Where the service contract provides for an expressly described event which may cause deviation from one original essential term of the contract (triggering another essential term) under proposed § 581.5(a)(3)(viii), notice of such event and the same opportunity must be immediately made available to other shippers and shippers associations subject to the same, original essential terms, with copies to the Commission under § 581.3(a)(3)(ii). The same would be true for a reversion to the original term after the condition, *e.g.*, disability, etc., has expired.

Section 581.7—Modification, Termination or Breach not Covered by the Contract

This section is based on current §§ 580.7(d) and (k) and covers changes to the original essential terms which are not contemplated by any clause in the contract (as contrasted with proposed section 581.5, above, covering the occurrence of events which change the original contract arrangement and which are provided for by contract clauses). The fundamental requirement of present § 580.7(d), *i.e.*, that essential terms of contracts may not be modified by mutual agreement of the parties after their publication, has not been altered. (See also proposed § 581.5(a)(2) which prohibits a contract clause permitting modification other than in full compliance with Part 581.)

A serious problem in service contract administration has been the premature termination of contracts because a shipper cannot meet its volume commitments. While the parties may mutually agree to terminate the contract, it was not clear in the current rule whether a carrier could unilaterally terminate the contract when a shipper breached its volume commitment. The rule is clarified in new § 581.7 to permit a carrier to terminate a contract under such a circumstance, but, if the contract is terminated, either by mutual agreement or by breach not covered by

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the contract, further implementation of the service contract is prohibited.

The Commission proposes that, in the absence of a valid contract rate to be applied, previous shipments must be rerated according to the otherwise applicable tariff. Fulfillment of a meaningful volume cargo commitment is the legislative *quid pro quo* for being relieved of the obligation to adhere to tariff rates. As discussed under § 581.5, liquidated damages are only relevant as between the contract parties and do not necessarily satisfy the statutory requirement to adhere to tariff rates which would apply in the absence of a valid service contract.

As under proposed §§ 581.5 (b) and (c), there is a requirement for an account adjustment based on a rerating resulting from termination, breach or default not provided for by contract clause (proposed § 581.7(b)(4)), and notices similar to those described under § 581.5(b) are required to be filed under § 581.3(a)(3).

Section 581.8—Contract Rejection and Notice; Implementation

The Commission is also proposing to amend its procedures for the return and rejection of service contracts or statements of essential terms, presently in § 580.7(f). The amended procedure gives the Commission 30 days, rather than 15, within which to notify the filing party of its intent to reject a service contract and/or statement of essential terms for failure to conform to the form, content or filing requirements of the Act or the Commission's rules. In such situations, the Commission will continue to furnish an explanation of its reasons for intending to reject. The parties would then have 20 days, rather than 15, within which to refile a corrected contract or statement of essential terms.

If the contract or statement is not refiled within 20 days or if it is, but it still does not conform, the Commission could then reject it. If rejected, all services performed under the contract would have to be rerated in accordance with applicable tariff provisions and detailed notice of the rerating and final settlement resulting from the rerating must be filed with the Commission under proposed § 581.3(a)(3). (See also the discussion under §§ 581.5 (b) and (c).) To do otherwise, would allow the parties to obtain the benefit of a contract that was found unlawful. Proposed § 581.8(c)(2)(i) also makes it clear that further or continued use of a service contract after rejection is prohibited.

Section 581.8(d) also proposes to suspend the minimum 30-day period of availability of essential terms upon receipt of a notice of intent to reject and to start a new 30-day period upon refiling of a conforming contract or statement of essential terms.

Section 581.9—Confidentiality

This section is substantially the same as current section 580.7(c), *i.e.*, service contracts and amendments to non-essential terms (*e.g.*, names of affiliates, addresses, etc.) will be held confidential to the full extent permitted by law.

Section 581.10—Recordkeeping and Audit

This section includes the provisions of present § 580.7(j), except that a further requirement is added to ensure that contract shipment records are maintained on a current basis to facilitate inspection by the Commission.

A new requirement is proposed to be added that the carrier or conference maintaining shipment records tender such records to the Commission upon request. To this end, the Commission reconsidered the requirement to maintain shipment records in the United States, which was deleted from the original interim rule. (See 49 FR 45364 et seq., Nov. 15, 1984.) At this time, however, the Commission believes that it is sufficient for surveillance purposes to be given the opportunity to audit such records upon reasonable request. If necessary, of course, the Commission could seek such records by order. Upon request by the Commission, the responsible individual listed in the service contract under proposed § 581.4(a)(2)(ii)(B) will be required by proposed § 581.10(b) to tender the requested records to the Commission. If this becomes difficult to administer, the Commission may have to return to the requirement to maintain shipment records in the United States.

Section 581.91—OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act

This section will eventually display the control numbers issued by the Office of Management and Budget for the information collection requirements of new Part 581. The collection of information requirements contained in the original § 580.7 of Title 46, Code of Federal Regulations, were approved by the Office of Management and Budget (OMB) under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3504) and have been assigned control number 3072–0044 (See 46 CFR 580.91). The new requirements contained in new part 581 have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. A copy of the request for OMB review and supporting documentation may be obtained from the Commission's Secretary. Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

The Commission believes that the proposed rule will better assist it in its task of monitoring compliance with the service contract requirements of the Act and its regulations. Moreover, these provisions should provide the parties to service contracts with clearer guidance as to their obligations under such circumstances.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or geographic regions; or,

(3) Significant adverse effect on competition, employment, investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions.

Comments on Foreign Port Range, Specified Minimums, Combined Form, "Most-Favored-Shipper" Clauses and Other Matters

Foreign Port Range.

One of the essential terms of a service contract which must be made available to similarly situated shippers is "the origin and destination port ranges in the case of port-to-port movements . . . ." Consistent with the 1984 Act's legislative history, the Commission has defined "port range" to mean "those ports in the countries of loading or unloading of the contract cargo that are regularly served by the contracting carrier or conference, as specified in the tariff applicable to the service in which the contract is to be employed, even if the contract itself contemplates use of but a single port within that range." 46 CFR 580.7(a)(3). As a result, a carrier entering into a service contract to a particular port must presently offer those same essential terms to all similarly situated shippers within the port range.

This requirement does not appear to have caused any problems when applied to United States ports, since U.S. port ranges are relatively compact and the same rate generally applies regardless of the port. Foreign ports, however, present a different set of circumstances. In the first place, the ports within a foreign port range are often geographically dispersed over a wide area. In addition, the rates to ports within these ranges vary considerably, reflecting, in part, the differences in the distances involved in ocean transportation.

In light of these factors, it may be that carriers are reluctant to enter into port-to-port service contracts involving foreign ports. Moreover, if they are entering into such arrangements, their essential terms offering may not fully comport with the port range requirement. The Commission is interested, therefore, in ascertaining whether the port range requirement is inhibiting in any way the use of service contracts in foreign commerce and, if so, whether an adjustment from the requirement for foreign ports might be warranted. Interested parties are invited to comment on the merits of a foreign port range adjustment and, in so doing, to address with particularity any problems which presently exist. In addition, commenters should address the Commission's authority to grant such an exemption and are free to offer alternative solutions.

Specified Minimums—Cargo and Service Commitments and Liquidated Damages

As indicated in the commentary on proposed section 581.5, the Commission is concerned about contracts where the volume commitments are so low that the contract may be being utilized as a device to circumvent otherwise applicable tariff requirements. The same can also be said for carrier service commitments which appear to be *de minimis* when compared to the shipper's volume commitments, as well as contractual liquidated damages which bear no relation to the otherwise applicable tariff rate. These situations suggest the possible desirability of requiring service contract "minimums," *e.g.*, a certain number of containers committed, commensurate with the number and frequency of voyages, and liquidated damages which are realistic in relation to the tariff rate that would apply in the absence of the service contract for whose breach or termination the damages are assessed. The Commission also invites comments on the need for additional regulations in this area.

More Convenient, Combined Form

After processing three thousand service contracts, the Commission has developed certain procedures to facilitate their filing and maintenance, some of which appear in the proposed rule. In addition to those requirements which directly affect the shipping public, however, the Commission has developed internal systems to cope with the increased volume and complexity of filed contracts not originally foreseen when the rules were first developed in 1984. For example, service contract information is currently being placed (confidentially, when appropriate) into an automated data processing system since this may be the only practical way such data can be conveniently retrieved. This could be facilitated by, for example, using optical scanning equipment.

The Commission is, therefore, considering, and invites comments on, a new filing format which would eliminate multiple submissions. This could consist of one filing with detachable sections, for example:

1. Machine-readable ADP form (data confidential, where necessary);
2. Essential terms; and
3. Shipper data and signature (confidential).

Most-Favored-Shipper Clauses.

The Commission is also inviting comment on what, for lack of a better term, are referred to as "most-favored-shipper" clauses. Under such arrangements, a carrier agrees to lower the agreed-upon service contract rate to meet a rate, either offered to that particular shipper by another carrier, or a lower rate which is being offered to any shipper in the trade by the service-contract carrier or by any other carrier or rate group. The use of such clauses may call into question whether the shipper is agreeing to ship a specific minimum volume in exchange for a specific rate as statutorily required. Such clauses also could in effect remove the "risk" of entering into a service contract on the shipper's part, possibly negating any rate stability that service contracts are generally intended to confer. The Commission, therefore, is seeking comment on the use of "most-favored-shipper" clauses, whether they are a problem in practice and whether they should be prohibited or in some manner limited.

Other Service Contract Problems and Suggestions.

Similarly, comments are invited apprising the Commission of other service contract problems that may have arisen over the past year and which are not addressed by the instant rule. Commenters are requested to propose suggested solutions.

List of Subjects in 46 CFR Parts 580 and 581:

Administrative practice and procedure, Antitrust, Automatic data processing, Cargo vessels, Confidential business information, Contracts, Exports, Freight forwarders, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, for the reasons set forth in the preamble and pursuant to 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718, Title 46, Code of Federal Regulations, is amended as follows:

PART 580—[AMENDED]

1. The Authority Citation to Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1718 and 1718.

§ 580.7 [Removed]

2. Section 580.7 is removed:

3. A new Part 581 is added to read as follows:

PART 581—SERVICE CONTRACTS

Sec.

581.1 Definitions.
581.2 Scope and application.
581.3 Filing and maintenance of service contract materials.
581.4 Form and manner.
581.5 Content of essential terms; contingency clauses.
581.6 Availability of essential terms.
581.7 Modification, termination or breach not covered by the contract.
581.8 Contract rejection and notice; implementation.
581.9 Confidentiality.
581.10 Recordkeeping and audit.
581.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 46 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716 and 1718.

§ 581.1 Definitions.

In this part:

(a) *"Act"* means the Shipping Act of 1984 [46 U.S.C. app. 1701–1720].

(b) *"Carrier"* or *"common carrier"* means a person holding itself out to the general public to provide transportation by water of cargo between the United

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States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

(c) *"Commission"* means the Federal Maritime Commission.

(d) *"Conference"* means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff. The term shall also include any association of ocean common carriers which is permitted, pursuant to an effective agreement, to fix rates and to enter into service contracts, but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement.

(e) *"Contract party"* means any party signing a service contract as an ocean common carrier, conference, shipper or shippers' association.

(f) *"Essential Terms Publication"* means the single publication which is maintained by each carrier or conference for service contract(s) and which contains statements of essential terms for every such contract.

(g) *"File"* or *"Filing"* of service contract materials means actual receipt at the Commission's Washington, D.C. offices.

(h) *"Geographic area"* means the general location from which and/or to which cargo subject to a service contract will move in intermodal service.

(i) *"Non-vessel-operating (NVO) common carrier"* means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

(j) *"Ocean common carrier"* means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

(k) *"Ocean freight forwarder"* means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

(l) *"Person"* includes individuals, corporations, partnerships and associations existing under or authorized by the laws of the United States or of a foreign country.

(m) *"Port range"* includes those ports of loading or unloading of service-contract cargo that are regularly served by the contracting carrier or conference, as specified in its tariff of general applicability, even if the contract itself contemplates use of but a single port within that range.

(n) *"Service contract"* means a contract between one or more shippers or shippers' associations and one or more ocean common carriers or conferences, in which the shipper makes a commitment to provide a certain minimum quantity of its cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of either party.

(o) *"Shipment"* means all of the cargo carried under the terms of a single bill of lading.

(p) *"Shipper"* means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(q) *"Shippers' association"* means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(r) *"Statement of essential terms"* means the concise summary of all essential terms of a service contract required to be filed with the Commission and made available to the general public in tariff format by the carrier or conference in its Essential Terms Publication.

(s) *"Submit"* or *"submission"* means "file" or "filing" under this section.

(t) *"Tariff of general applicability"* means the effective tariff, on file at the Commission under Part 580 of this chapter, that would apply to the transportation in the absence of a service contract.

§ 581.2 Scope and application.

(a) *Geographical Scope.* Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States.

(b) *Parties: NVO's and Forwarders.*—(1) A *non-vessel-operating common carrier* may sign a service contract only in its capacity as a shipper to the offering ocean common carrier or conference.

(2) (i) A *licensed ocean freight forwarder* may sign a service contract only in its capacity either as the actual shipper or as forwarding agent for and on behalf of a named shipper contract party.

(ii) Whenever a licensed ocean freight forwarder:

(A) Signs a service contract as the actual shipper, all bills of lading covering shipments under the contract shall indicate as "shipper" [on the shipper line of the bill of lading] the name of the licensed ocean freight forwarder, and in no event may the forwarder collect ocean freight compensation on such shipments; or

(B) Acts as forwarding agent in signing a service contract, written authorization for such signature as agent shall be submitted to the carrier or conference contract party; shall accompany the service-contract filing under § 581.3(a)(1); and shall be kept confidential under § 581.9.

§ 581.3 Filing and maintenance of service contract materials.

(a) *Filing.* There shall be filed with the Director, Bureau of Tariffs, the following:

(1) *Service contract.* On or before the effective date of every service contract, a true and complete copy of the contract shall be submitted in form and content as provided by §§ 581.4(a) and 581.5, in single copy contained in a double envelope which contains no other material, as follows:

(i) The outer envelope shall be addressed to the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

(ii) The inner envelope shall be sealed, contain only the executed contract, and shall state: "This Envelope Contains a Confidential Service Contract."

(iii) The top of each page of a filed service contract shall be stamped "Confidential."

(2) *Statement of essential terms.* At the same time as the filing of the service contract under paragraph (a)(1) of this section, the statement of essential terms of the contract shall be submitted:

(i) In form and content as provided in §§ 581.4(b) and 581.5;

(ii) In tariff format;

(iii) On page(s) to be included in the Essential Terms Publication as described in paragraph (b) of this section; and

(iv) (A) With an accompanying transmittal letter in an evelope which contains only matter relating to essential terms; and

(B) The envelope and the inside address on the transmittal letter are to be addressed to the "Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573."

(3) *Notices of: change to contract, contract party or rate; availability of changed terms to similarly-situated shippers; and settlement of account.* There shall be filed with the Commission pursuant to the procedures of paragraph (a)(1) of this section, a detailed notice, within 30 days of the occurence, of:

(i) The making available of newly operable essential terms to similarly situated shippers under § 581.6(b)(5);

(ii) Termination by mutual agreement, breach or default not covered by the service contract under § 581.7(b);

(iii) The adjustment of accounts, by rerating, liquidated damages, or otherwise under §§ 581.5–581.8;

(iv) Final settlement of any account adjusted as described in paragraph (a)(3)(iii) of this section, attested to by the involved shipper or shippers' association; and

(v) Any change to:

(A) The name of a basic contract party under § 581.4(a)(1)(v); and

(B) The list of affiliates under § 581.4(a)(1)(vi) of any contract party entitled to receive or authorized to offer services under the contract.

(b) *Essential Terms Publication; maintenance.* Each carrier or conference shall maintain a single, current Essential Terms Publication in the form prescribed under § 581.4(b)(2).

(c) *Who must file.* (1) As further provided in paragraph (c)(2) of this section, the duty under this part to file service contracts, statements of essential terms and notices, and to maintain an Essential Terms Publication, shall be upon:

(i) A service-contract signatory carrier which is not a member of a confernce for the services covered by the contract; or

(ii) The conference which:

(A) Is signatory to the service contract; or

(B) Has one or more member carriers signatory to a service contract for a service otherwise covered by the conference agreement.

(2) When a conference files a service contract for and on behalf of one or more of its member lines and the contract covers service from, to or between ports and/or points not included within the scope of the conference, the complete text of the statement of essential terms shall be simultaneously filed in the Essential Terms Publications of both the conference(s) and carrier(s) involved, which shall comply with all other Essential Terms Publication filing and maintenance requirements under paragraph (b) of this section and § 581.4(b).

(d) *Exempt commodities.* (1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, this section does not apply to contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper or paper waste.

(2) An exempt commodity listed in paragraph (d)(1) of this section may be included in a service contract filed with the Commission, but only if there is a tariff of general applicability for the transportation which contains a specific commodity rate for the exempted commodity.

(3) Upon filing under this paragraph, the service contract and essential terms shall be subject to the same requirements as those contracts involving non-exempt commodities.

§ 581.4 Form and manner.

(a) *Service contract.* Every service contract shall clearly, legibly and accurately set forth in the following order:

(1) On the first page, preceding any other provisions:

(i) A unique service contract number bearing the prefix "SC";

(ii) The FMC number [FMC No. ____] of the carrier's or conference's Essential Terms Publication;

(iii) A reference to the statement of essential terms number ["ET No. ____"] as provided in paragraph (b)(1)(iii) of this section;

(iv) The FMC number(s) [FMC No. ____] of the tariff(s) of general applicability;

(v) The names of the contract parties. Any further references in the contract to such parties shall be consistent with the first reference (*e.g.*, "[exact name]," "carrier," "shipper," or "association," etc.); and

(vi) Every affiliate of each contract party named under paragraph (a)(1)(v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract signed by a conference or shippers' association, individual members need not be named. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information; and

(2) Following the first page of the service contract:

(i) The complete terms of the contract, including all essential terms required under § 581.5; and

(ii) (A) A description of the shipment records which will be maintained to support the contract; and

(B) The name, address and telephone number of the individual who will make shipment records available to the Commission for inspection under § 581.10.

(b) *Essential terms.*—(1) *Statement of essential terms.* Every statement of essential terms shall:

(i) Be printed in black on yellow paper;

(ii) Be subject to the form and manner requirements applicable to governing tariffs as set forth in Part 580 of this chapter;

(iii) Be identified by an essential-terms number bearing the prefix "ET No." which shall be located on the top of each page of the statement of the essential terms; and

(iv) Contain on the first page, in a manner similar to that set forth in §§ 580.5(a)(8) and 580.5(a)(10) of this chapter, the period of availability of essential terms to similarly situated shippers under § 581.6(b), *i.e.*, both the beginning date [which shall be the date the contract is filed at the Commission] and the expiration date [which shall be no less than 30 days after the beginning date].

(2) *Essential Terms Publication.* The Essential Terms Publication shall:

(i) Have all its pages printed in black on yellow paper;

(ii) Be subject to the form and manner requirements applicable to governing tariffs as set forth in Part 580 of this chapter;

(iii) (A) Contain a currently maintained "Index of Statements of Essential Terms" structured as follows:

ET No.	Effective date	Expiration date	Page No(s).	Section No(s).	Date of cancellation of page(s)

The Index shall include for every statement of essential terms, the ET number, as provided in paragraph (b)(1)(iii) of this section, the effective duration, as provided in § 581.5(a)(3)(i), the page and section number(s) [where used], and a column for cancellation dates which shall be used as an

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alternative to cancelling each individual page of the Essential Terms Publication; and

(B) The statement of essential terms may not be cancelled until after the duration of the contract, including any renewal or extension, has expired;

(iv) Include an alphabetical index of the commodities covered by the service contracts in which each commodity shall make reference to the relevant ET number or numbers;

(v) Contain on its title page, or in a rule, reference to each carrier's or conference tariff of general applicability; and

(vi) Be referenced in each of the carrier's or conference's tariffs of general applicability, where required to be filed under the Act and this chapter.

§ 581.5 Content of essential terms; contingency clauses.

(a) *Essential terms:*

(1) May not be uncertain, vague or ambiguous;

(2) May not contain any provision permitting modification by the parties other than in full compliance with this part; and

(3) Shall include the following:

(i) The *duration* of the contract, stated as a specific, fixed time period, with a beginning date and ending date;

(ii) The *origin and destination port ranges* in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas" but shall reflect the actual locations agreed to by the contract parties;

(iii) *The contract rate, rates or rate schedule(s),* including any additional or other charges [*i.e.*, general rate increases, surcharges, terminal handling charges, etc.] that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges;

(iv) *The commodity or commodities* involved;

(v) *The minimum quantity of cargo or freight revenue* necessary to obtain the rate or rate schedule(s), except that the minimum quantity of cargo committed by the shipper may not be expressed as a fixed percentage of the shipper's cargo.

(vi) The *service commitments* of the carrier or conference, such as, assured space, transit time, port rotation or similar service features;

(vii) *Liquidated damages for nonperformance,* if any; and

(viii) Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, a clear and specific description of the event, the existence or occurrence of which shall be readily verifiable and objectively measurable. This requirement applies to, *inter alia,* the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in which case the contract shall set forth a rate, charge, or rate basis which will be applied;

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential terms of the contract.

(b) *Notice.* Detailed notice shall be given to the Commission under § 581.3(a)(3) within 30 days of:

(1) Any account adjustment resulting from either liability for liquidated damages under paragraph (a)(3)(vii) of this section, or the occurrence of an event described in paragraph (a)(3)(viii) of this section; and

(2) Final settlement of any account adjusted under paragraph (b)(1) of this section.

(c) *Issuance of proposed final accounting.* Any proposed final account adjustment resulting from liability for liquidated damages or the occurrence of an event under paragraph (b)(1) of this section shall be issued to the appropriate contract party within 30 days of the termination or discontinuance of the service contract.

§ 581.6 Availability of essential terms.

(a) *Availability of statement.* A statement of the essential terms of each service contract as set forth in tariff format shall be made available to the general public pursuant to the requirements of this section and §§ 581.3, 581.4(b) and 581.5.

(b) *Availability of terms.* (1) The essential terms of each service contract shall be made available to all other shippers or shippers' associations similarly situated under the same terms and conditions for a specified period of no less than thirty (30) days from the date of filing of the service contract as may be adjusted under § 581.8(d).

(2) Whenever a shipper or shippers' association desires to enter into a service contract with the same essential terms, a request shall be submitted to the carrier or conference in writing.

(3) The carrier or conference shall reply to the request by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or a valid reason in writing why the applicant is not entitled to such a contract.

(4) The service contract resulting from a request under this section may not go into effect until an executed copy, signed by all necessary parties, is filed with the Commission under this section.

(5) In the case of any expressly described event which results in a change to an original essential term by the operation of a contract clause in the service contract under § 581.5(a)(3)(viii), the newly operable essential term(s) shall be immediately made available in writing to other shippers and shippers' associations subject to the same, original essential terms, with copies to the Commission under § 581.3(a)(3)(ii).

§ 581.7 Modification, termination or breach not covered by the contract.

For purposes of this part:

(a) *Modification.* The essential terms originally set forth in a service contract may not be modified during the duration of the contract.

(b) *Termination or breach not covered by contract.* In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or from breach or default because the minimum quantity required by the contract has not been met:

(1) Further or continued implementation of the service contract is prohibited;

(2) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of each shipment; and

(3) Detailed notice shall be given to the Commission under § 581.3(a)(3) within 30 days of:

(i) The occurrence of the contract termination, breach or default under this paragraph;

(ii) any rerating or other account adjustment resulting from the contract termination, breach or default under this paragraph; and

(iii) Final settlement of the account adjusted under paragraph (b)(3)(ii) of this section.

(4) Any proposed rerating or other final account adjustment resulting from termination, breach or default under this paragraph shall be issued by the carrier or conference to the shipper or shippers' association within 30 days of the termination of the service contract.

§ 581.8 Contract rejection and notice; implementation.

(a) *Initial filing and notice of intent to reject.*

(1) Within 30 days after the initial filing of the contract and statement of essential terms, the Commission may notify the filing party of the Commission's intent to reject a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the Act or this part. The Commission will provide an explanation of the reasons for such intent to reject.

(2) The parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract and/or statement of essential terms, modified to satisfy the Commission's concerns, as set forth in paragraph (a)(1) of this section.

(b) *Rejection.* The Commission may reject the contract and/or statement of essential terms if the objectionable contract or statement:

(1) Is not resubmitted within 20 days of the notice of intent to reject; or

(2) Is resubmitted within 20 days of the notice of intent to reject as provided in paragraph (a)(2) of this section, but still does not conform to the form, content or filing requirements of the Act or this part, as set forth in paragraph (a)(1) of this section.

(c) *Implementation; prohibition and rerating.* (1) Performance under a service contract may begin without prior Commission authorization on the day both the service contract and statement of essential terms are on file with the Commission, except as provided in paragraph (c)(2) of this section:

(2) When the fiing parties receive notice that the service contract or statement of essential terms has been rejected under paragraph (b) of this section:

(i) Further or continued implementation of the service contract is prohibited;

(ii) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper or shippers' association within 30 days of the date of rejection; and

(iii) Detailed notice shall be given to the Commission under § 581.3(a)(3) within 30 days of:

(A) The rerating or other account adjustment resulting from rejection under this paragraph; and

(B) Final settlement of the account adjusted under paragrpah (c)(2)(iii)(A) of this section.

(d) *Period of availability.* The minimum 3-day period of availability of essential terms required by § 581.6(b) shall be suspended on the date of the notice of intent to reject a service contract and/or statement of essential terms under paragraph (a)(1) of this section and a new 30-day period shall commence upon the resubmission thereof under paragraph (a)(2) of this section.

§ 581.9 Confidentiality.

(a) *Service contracts.* All service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

(b) *Amendments to non-essential terms.* Amendments to non-essential terms of a service contract shall be accorded similar confidential treatment.

§ 581.10 Recordkeeping and audit.

Every common carrier or conference shall:

(a) Maintain service contract shipment records currently and for a period of five years from the termination of each contract; and

(b) Tender service contract shipment records to the Commission for inspection upon request.

§ 581.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations [46 CFR 581] have been approved by the Office of Management and Budget [OMB] in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB Control Number [1].

By the Commission

John Robert Ewers,

Secretary.

[FR Doc. 86-3410 Filed 12-14-86; 8:45 am]

BILLING CODE 6730-01-M

[1] To be set forth in final rule after being supplied by OMB.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178, and 180

[Docket Nos. HM-183, 183A]

Meeting on Proposed Revisions to Requirements for Cargo Tanks

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA), DOT.

ACTION: Meeting on proposed revisions to cargo tank requirements.

SUMMARY: In response to a request by the Truck Trailer Manufacturers Association [TTMA], a meeting will be held. The purpose of this meeting will be to discuss certain technical areas pertaining to the manufacture, repair and requalification of specification cargo tanks as proposed under Docket Nos. HM-183, 183A, Notice No. 85-4 [50 FR 37766, September 17, 1985; 50 FR 49866, December 5, 1985]. Anticipated items to be discussed by representatives of TTMA and RSPA at this meeting include, but are not limited to, the following:

1. Dynamic highway induced loads,
2. Application of the ASME Code to low pressure MC 306 and MC 307 cargo tanks,
3. Accident damage protection loads,
4. Vents fittings, and closures,
5. Authorized Inspector (third party inspection).

Interested persons are invited to attend.

DATE: the meeting will be held on March 4, 1986, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held in Room 7200, Nassif Building, 400 Seventh Street, SW., Washington DC.

A recording of the meeting will be made available in the Dockets Branch. The Dockets Branch is located in Room 8426 of the Nassif Building (office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, except public holidays).

FOR FURTHER INFORMATION CONTACT: Hattie L. Mitchell, (202) 426-2075; office hours are from 8:00 a.m. to 4:30 p.m., Office of Hazardous Materials Transportation, U.S. Department of Transportation, Washington, DC 20590.

Issued in Washington, D.C., on February 11, 1986 under the authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 86-3381 Filed 2-14-86; 8:45 am]

BILLING CODE 4910-60-M

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of Critical Habitat Proposals for the Key Largo Woodrat and the Key Largo Cotton Mouse

AGENCY: Fish and Wildlife Serivce, Interior.

ACTION: Notice of Withdrawal of Proposed Rule.

SUMMARY: The Service gives notice of its withdrawal of proposed critical habitat for the Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allopaticola*). Both species are native to Key Largo, Monroe County, Florida, and were proposed as endangered species, with critical habitat, on February 9, 1984, and were listed as endangered on August 31, 1984. Designation of critical habitat was deferred to expedite the listing process. Public land acquisition and preliminary land planning efforts involved in an ongoing Habitat Conservation Plan, pursuant to Section 10(a) of the Endangered Species Act, as amended, indicate that it is not prudent to designate critical habitat for the Key Largo woodrat and Key Largo cotton mouse at this time.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) are small mammals native to the tropical hardwood forests of Key Largo, Monroe County, Florida. The range of both species on Key Largo has been reduced by commercial and residential development, and future development, if unplanned, could continue to destroy habitat of these species.

In the **Federal Register** of September 21, 1983 (48 FR 43040), the Service issued an emergency rule determining endangered status for the Key Largo woodrat and cotton mouse, pursuant to the Endangered Species Act of 1973, as amended. The emergency designation expired on May 18, 1984. On February 9, 1984 (49 FR 4951), the Service proposed endangered status and critical habitat for both species under the usual procedures of the Act. A public hearing on the proposal was held April 24, 1984, in Tavernier, Monroe County, Florida. On August 31, 1984 (49 FR 34504), the Service published a final rule determining endangered status for the Key Largo woodrat and cotton mouse. The critical habitat designation was deleted from the final rule to expedite the listing process, as provided for by section 4(b)(6)(C) of the Act, as amended in 1982. Section 4(b)(6)(C) requires, however, that critical habitat be designated within 2 years of its proposal, if not designated concurrently with the final regulation listing the species.

The comment period for critical habitat designation was reopened on November 21, 1984 (49 FR 45887), and August 30, 1985 (50 FR 35271). The extensions of the comment period were to allow for receiving additional information which would affect critical habitat designation. The primary source of such information was anticipated to be the Habitat Conservation Plan (HCP), being developed for North Key Largo pursuant to section 10(a) of the Act, as described below.

Following the proposal of the two species as endangered species, certain landowners on North Key Largo expressed an interest in development of a HCP pursuant to section 10(a) of the Act. Under section 10(a), the Service may issue a permit authorizing the taking of listed species as an incident to otherwise lawful activities.

The Service may issue a Section 10(a) incidental take permit provided that, among other things, the permit application is supported by a HCP whose implementation will ensure the long term conservation of the species and the taking of the species will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Issuance of such a permit is subject to the requirements of section 7(a)(2) of the Act as well as section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(C). Subsequent to the listing of the Key Largo woodrat and cotton mouse as endangered species, the U.S. Congress allocated $98,000, to be matched with non-Federal funds, to be used in developing a HCP. The Service, which was charged with administering the Congressional funding, entered into a grant agreement with the Florida Department of Community Affairs (DCA) under which Monroe County, in cooperation with the DCA, will prepare a HCP for North Key Largo. The HCP will be used to support an application to the Service for a permit to authorize taking endangered species as an incident to development on North Key Largo.

The proposed issuance of the incidental take permit may have significant effects on the quality of the human environment and thus will be the subject of an environmental impact statement (EIS) prepared pursuant to section 102(2)(C) of the NEPA. Scoping meetings, to determine the issues and alternatives to be considered in the EIS, were announced on April 11, 1985 (50 FR 14299), and October 19, 1985 (50 FR 41224); and held on May 16, and October 23, 1985.

A prototype HCP was originally scheduled for completion by September 1985; however, this date has been met, due to the large number of agencies, landowners, and other parties with an interest in the process. It appears now that a draft HCP will not be available before February 1986.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service's criteria for designation of critical habitat (50 CFR Part 424.12; see **Federal Register** of October 1, 1984, 49 FR 38900) specify that critical habitat designation is not prudent when such designation would not be beneficial to the species. It is the Service's decision that critical habitat designation is neither beneficial nor prudent for the Key Largo woodrat and cotton mouse for the following reasons.

Since the February 9, 1984, proposal of these species as endangered, with critical habitat, several changes have occurred. Public land acquisition has proceeded by the U.S. Fish and Wildlife Service (Crocodile Lake National Wildlife Refuge) and Florida's Department of Natural Resources (North Key Largo and New Mahogany Hammock projects). The Federal acquisition will total approximately 7,000 acres, roughly 385 of which are presently habitat for the woodrat and cotton mouse. The State projects include 986 acres, about 300 of which are present woodrat-cotton mouse habitat. Public land acquisitions will therefore include just over half of the habitat currently known to be occupied by the two species. The remaining woodrat-cotton mouse habitat on North Key Largo is in private ownership, but would be subject to the beneficial conservation provisions of the HCP. The most likely alternatives for development under the HCP would take place without widespread destruction of hardwood hammocks, with development to be clustered, particularly in areas that have already been cleared. Service approval of a section 10(a) permit would require that incidental take not appreciably reduce the likelihood of the survival and recovery of the Key Largo woodrat and cotton mouse. The permitting process itself will be subject to consultation under section 7(a)(2) of the Act, which requires any Federal agency to insure that its actions are not likely to jeopardize the existence of any endangered or threatened species.

A recent study of the Key Largo woodrat and cotton mouse (Goodyear 1985) slightly expanded previously documented range (Barbour and Humphrey, 1982). The study also showed that the cotton mouse was capable of colonizing areas in early successional stages following burns. The woodrat and cotton mouse are still known to occur naturally only on North Key Largo, north of U.S. 1–S905 intersection.

Since the listing of these species, a major Section 7 consultation between the Rural Electrification Administration and the Service has been completed; the lack of critical habitat designation did not affect the resultant biological opinion; which recommended that Federal funding not subsidize electrical delivery to hammock areas supporting the Key Largo woodrat or cotton mouse. It is anticipated that any such future consultations would likewise protect the species and their habitat without the designation of critical habitat. Since critical habitat, by definition, affects only Federal agency activities, it has no application to or regulatory effect on purely private, county, or State actions. Critical habitat designation does not preclude development activities within the designated area, nor does it establish a reserve or indicate an area that is likely to be acquired by the Federal government. Critical habitat serves as an indication to Federal agencies of areas in which their planning may need to consider the needs of endangered or threatened species. If a Federal action outside critical habitat may affect an endangered or threatened species, the action would still be subject to Section 7 consultation; coversely, if a Federal action within critical habitat does not affect a listed species, no consultation is required and the action would not conflict with the Act. Since the areas in which the Key Largo woodrat and cotton mouse occur are well-defined (hardwood hammocks of North Key Largo), and since the areas are currently subject to intensive planning efforts, it is extremely unlikely that any Federal action could be proposed or carried out without coming to the Service's attention. Moreover, the Service believes that the requirements of the Endangered Species Act will ensure that no actions adverse to the species or their habitat will occur.

For all of the above reasons, the Service concludes that designation of critical habitat for the Key Largo woodrat and Key Largo cotton mouse is not prudent. The Service is therefore withdrawing the proposal of February 9, 1984, to designate critical habitat for these species.

References

Barbour, D.B., and S.R. Humphrey. 1982. Status and habitat of the Key Largo woodrat and cotton mouse (*Noetoma floridana smalli*) and (*Peromyscus gossypinus allapaticola*). J. Mamm. 63:144–148.

Goodyear, N.C. 1985. Results of a study of Key Largo woodrats and cotton mice: Phase I. Unpublished report to North Key Largo Study Committee, 76 pp.

Author

The primary author of this notice is Dr. Michael Bentzien, U.S. Fish and Wildlife Service, Endangered Species Field Office, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq;* Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: February 9, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–3413 Filed 2–14–86; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Docket No. 40211–4050]

Foreign Fishing; Atlantic Mackerel, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed allocation of reserve and request for public comment.

SUMMARY: NOAA proposes to allocate 51,030 metric tons (mt) of Atlantic mackerel to the total allowable level of foreign fishing (TALFF). This action is allowed by regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP). The intended effect of the allocation is to promote full use of the optimum yield by all harvesters in this fishery.

DATE: Comments must be submitted in writing on or before March 5, 1986.

ADDRESS: Comments should be sent to Salvatore A. Testaverde, NMFS, State Fish Pier, Gloucester, MA 01930–3097. Mark "Comments on Atlantic Mackerel Reserve" on the outside of the envelope.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–218–3600, extension 273.

SUPPLEMENTARY INFORMATION: Section 655.23(a)(1) established a mechanism to allocate all or part of the mackerel reserve to TALFF (48 FR 44834, September 30, 1983). For the 1985–86 fishing year (April 1, 1985, through March 31, 1986), a reserve of 51,050 mt of Atlantic mackerel was established (50 FR 20103, May 14, 1985). The regulations require the Director, Northeast Region, NMFS (Regional Director), to project the total domestic harvest for the entire fishing year, based on U.S. landings from April through September and the results of a survey of the intent of domestic fishermen to harvest mackerel during the remainder of the year. Based upon this projection, the Regional Director determines the dipsoition of the reserve allocation.

The reported domestic commercial harvest of Atlantic mackerel from April 1, 1985, through December 31, 1985, was approximately 4,300 mt, and this figure was used to project the total catch for the entire fishing year. The Regional Director estimates that the U.S. harvest for the fishing year, including an estimated recreational catch of 10,200 mt, would total 17,000 to 18,000 mt. The November-December 1985 survey of Atlantic mackerel processors indicated

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that they intend to take approximately 13,000 mt for the fishing year.

The new TALFF of 102,100 mt may accommodate directed fishing for Atlantic mackerel for all nations within the fishery conservation zone for the remainder of the fishing year. Note that 51,030 mt is released and not 51,050 mt, since the Allowable Catch (AC), the total of DAH and TALFF, cannot exceed 225,300 mt. Bycatch TALFF specifications will be adjusted accordingly as specified for squid at § 655.21(b)(1)(iv) and for butterfish at § 655.21(b)(3)(iii). The following species incidental catch TALFF specifications will increase: *Loligo*, 1 percent; *Illex*, 1 percent; and butterfish, 1 percent.

This table lists the sum of all adjustments since the beginning of the 1985–1986 fishing year for the Atlantic mackerel and other species bycatch specifications in metric tons for the maximum optimum yield (Max OY), allowable catch (AC), allowable biological catch (ABC), proposed initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), Reserve, and total allowable level of foreign fishing (TALFF).

1985–1986 Fishing Year Specifications (in metric tons)

	Squid		Butterfish	Atlantic mackerel
	Loligo	Illex		
Max OY	44,000	30,000	[1] 16,000	225,300
AC				225,300
ABC	44,000	30,000	[1] 16,000	
Proposed IOY	30,735	20,410	12,655	225,300
DAH	22,500	16,000	11,000	[2] 123,200
DAP	20,500	11,500	11,000	13,000
JVP	2,000	4,500		100,000
Reserve	0	0	0	20
TALFF	8,235	4,410	1,655	102,100

[1] Up to the figure given.
[2] Includes 10,200 mt for recreational catch.

The domestic annual harvest of 123,200 mt, including the joint venture processing amount of 100,000 mt, is expected to accommodate and continue the development of the domestic fishing industry on a long-range basis.

Comments on this proposed allocation of resserve will be considered by the Regional Director in the final allocation decision.

Other Matters

This action is required by 50 CFR Part 655, and complies with Executive Order 12291.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 655

Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: February 12, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–3477 Filed 2–14–86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 641

[Docket No. 51181–5181]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the implementing regulations for the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The regulations for the FMP exempted persons fishing from headboats from the minimum size limit and incidental catch allowance for red snapper until May 8, 1986. The proposed rule will extend the exemption period one year until May 8, 1987, and make minor word changes in the effort limitations section. The intent of the proposed rule is to provide additional time to conduct survival studies for undersized red snapper and to evaluate the economics of these measures.

DATE: Comments must be received on or before March 20, 1986.

ADDRESS: Comments on the proposed rule should be sent to Donald W. Geagan, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813–893–3722.

SUPPLEMENTARY INFORMATION: The FMP was approved June 3, 1984 and implemented on October 9, 1984 (49 FR 39553). The implementing rule contained an exemption from the minimum size limit and incidental catch allowance for undersized red snapper for persons fishing from headboats until May 8, 1986.

This exemption was authorized because of the strong reliance of the headboat industry on small red snapper, and the deficiency of data that would allow specification of the economic impacts associated with these measures on that particular sector of the fishery. Concern was also expressed by the headboat industry regarding the survivability of the undersized fish that their customers would be required to release. During the 18-month exemption period, studies were to be conducted to determine if there is an acceptable rate of survival of red snapper hooked at various depths and released at the surface, and the extent to which size limits and catch allowances for undersized fish affect the economic viability of various sectors of the fishery, especially the headboat sector in the northwestern Gulf of Mexico which purportedly is largely dependent upon the catch of small red snapper.

Studies to date to evaluate the survival of released reef fishes (particularly red snapper) have met with limited success. Some information has been obtained by NMFS at depths of 90–100 feet off Texas and off the coast of Florida; however, studies attempted in deeper waters (165 feet) off Texas from a fixed platform and from a headboat in May 1985 were relatively unsuccessful because of the unavailability of red snapper. NMFS is presently attempting to identify areas of sufficient red snapper abundance to repeat the study later this year.

Although a certain amount of statistical data are being collected under existing programs, information sufficient for evaluating the economic impacts of the red snapper size limit and catch allowance for undersized fish will not become available until the reef fish data reporting system for this FMP is implemented. A regulatory amendment to institute such data reporting requirements is currently under review, but at best will not be implemented until early 1986. The data reporting requirements have already been approved by OMB. This revised schedule would allow for the collection of at least one full year of statistical information to evaluate the impacts of these measures on various sectors of the fishery before implementation of a proposed amendment to the FMP by May 1987. New stock assessment data will also be available in February 1986.

In view of the above, the Council believes it will be in a better position to evaluate the management structure and recommend any necessary modifications to the FMP when these data become available. Therefore, the Council has requested further deferral of the headboat exemption.

Also, the text in § 641.25 is proposed to be revised to clarify that the limitation of 200 traps applies to those traps actually assigned to a vessel.

Classification

The Assistant Administrator for Fisheries, NOAA, has previously determined that the FMP and implementing regulations, of which this proposed rule is to be a part, is consistent with the national standards ans other provisions of the Magnuson Act and other applicable law (49 FR 39548, October 9, 1984).

It was previously determined, on the basis of a regulatory impact review (RIR) and regulatory flexibility analysis (RFA) that rules to implement the FMP are not major under Executive Order 12291. The RIR and RFA were summarized in the preamble to the final rule for the FMP (see 49 FR 39548) and are not repeated here. This is an extension of the time period for a measure in the final rule and, therefore, a supplemental RIR has not been prepared.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the proposed rule simply extends an exemption in the implementing regulations. The proposed rule will lessen impacts on the headboat fleet for an extended period of time.

This rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing.

Dated: February 12, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 641 is proposed to be amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for Part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 641.23, paragraph (b)(2) is revised to read as follows:

§ 641.23 Size and incidental catch restrictions.

* * * * *

(b) * * *

(2) Persons fishing from headboats in the FCZ are exempt from the minimum size limit and incidental catch limit for red snapper until May 8, 1987.

* * * * *

3. Section 641.25 is revised to read as follows:

§ 641.25 Effort limitations.

The maximum number of fish traps that may be assigned to a vessel in the FCZ is 200.

[FR Doc. 86–3475 Filed 2–13–86; 8:48 a.m.]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 32
Tuesday, February 18, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

National Volunteer Advisory Council Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the National Volunteer Advisory Council.

Date, time and place: March 5, 1986, 9:00 a.m., the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008.

Purpose: To select nominees for the President's Volunteer Action Awards for 1986, and hold the regular Council meeting.

In accordance with the determination of the Director of ACTION, this meeting will be partially closed to the public, from 9:30 a.m. until 3:00 p.m., pursuant to subsection (c)(9)(B) of section 552b of Title 5, United States Code. The determination of the Director of ACTION is available to the public at 806 Connecticut Avenue, NW., Washington, DC 20525, during regular working hours of 8:30 a.m. to 5:30 p.m.

For further information contact: Gayle Speirs, Executive Secretariat, at (202) 634–9380.

Signed this 12th day of February, 1985, in Washington, DC.

Donna M. Alvarado,
Director of ACTION.

[FR Doc 86–3473 Filed 2–14–86; 8:45 am]
BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Governmental Processes of the Administrative Conference of the United States, to be held at 10:00 a.m. on Monday, February 24, 1986 Covington and Burling, 1201 Pennsylvania Avenue, NW., Main Conference Room (11th floor), Washington, D.C.

The Committee will meet to discuss the following projects:

(a) The intervention and competition advocacy programs of the Antitrust Division of the Department of Justice and the Federal Trade Commission, studied for ACUS by Susan Braden, Esq.

(b) The use by federal agencies of private attorneys, studied for ACUS by Charles G. Kopp and Mark L. Alderman, Esqs. of the firm by Wolf, Block, Schorr and Solis-Cohen of Philadelphis, Pennsylvania.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference by Friday, February 21. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact David M. Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L. Street, NW., Suite 500,. Washington, D.C. (Telephone: 202–254–7065.) Minutes of the meetings will be available on request.

Richard K. Berg,
General Counsel.
February 13, 1986.

[FR Doc. 86–3594 Filed 2–14–86; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Forest Service

Availability of Final Addendum to the Final Environmental Impact Statement on Gypsy Moth Suppression and Eradication Projects

AGENCY: Animal and Plant Health Inspection Service and Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Animal and Plant Health Inspection Service and the Forest Service hereby give notice of the availability of a final addendum to the Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects—as Supplemented, 1985. The final addendum contains a plain language version of a worst case analysis discussed in the FEIS filed with the U.S. Environmental Protection Agency on March 18, 1985. The final addendum responds to a ruling in *Oregon Environmental Council* v. *Kunzman* (Civil No. 82–504–RE) which found that the FEIS was legally adequate, but that the worst case analysis in Appendix F failed to meet the regulatory requirements for clarity.

ADDRESSES: Interested parties may obtain copies of the final addendum or FEIS, as Supplemented, 1985, by writing:

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 302–E, Administration Building, 14th & Independence Ave., NW., Washington, DC 20250

Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 657 Federal Building, Room 511 N.W. Broadway, Portland, OR 97209–3490

Northeastern Area State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008

Northeastern Area State and Private Forestry, Forest Service, U.S. Department of Agriculture, 180 Canfield Street, Morgantown, WV 28505

Copies may be inspected at the above locations as well as at the following other field offices:

Plant Division, Oregon Department of Agriculture, Agricultural Building, Salem, OR 97310

Gypsy Moth Office, Oregon Department of Agriculture, 950 W. 13th Street, Eugene, OR 97402

Pacific Southwest Region, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 630 Sansome Street, San Francisco, CA 94111

Eastern Region, Regional Forester, U.S. Department of Agriculture, 310 W. Wisconsin Avenue, Room 500, Milwaukee, WI 53203

Pacific Northwest Region, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 319 Southwest Pine Street, P.O. Box 3623, Portland, OR 97208

FOR FURTHER INFORMATION CONTACT: Gary Moorehead, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, APHIS, USDA, Room 663, Federal Building, Hyattsville, MD 20782, (301) 436–8295.

Peter Orr, Assistant Director, Insect and Disease Management Staff, Northeastern Area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, PA 19008 (215) 461–3153.

SUPPLEMENTARY INFORMATION: The 1985 Final Environmental Impact Statement (FEIS), as supplemented, on gypsy moth suppression and eradication projects was filed with the U.S. Environmental Protection Agency and made available to the public on March 18, 1985. Since the issuance of the FEIS, as supplemented, the United States District Court of Oregon ruled on April 26, 1985, that although the body of the FEIS was legally adequate, the worst case analysis in Appendix F failed to meet the regulatory requirement of readability (*Oregon Environmental Council* v. *Kunzman*, Civil No. 82–504–RE). As a result of this ruling, the Forest Service and Animal Plant Health Inspection Service prepared a plain language summary of the health risk analysis presented in Appendix F.

A notice was published on October 25, 1985, (50 FR 43430–43431) announcing the availability and requesting comments on a draft addendum to the FEIS. The official comment period ended December 12, 1985. However, comments on the draft were accepted and responded to through December 23. In preparing the final addendum, all comments regarding the addendum were reviewed and considered in detail. The primary portion of the addendum to the FEIS contains a plain language version of the human health risks presented in Appendix F and translates the technical data into language that all readers can understand. This version is contained in Appendix H. Appendix I includes toxicity information presented to the court during *OEC* v. *Kunzman*, and Appendix J contains the comment letters and agency responses. The final addendum is being sent to agencies, organizations, and individuals listed in Appendix B of the FEIS, as Supplemented.

For the Forest Service.

R. Max Peterson,
Chief, Forest Service.

Dated: February 12, 1986.

For the Animal and Plant Health Inspection Service.

Bert W. Hawkins,
Administrator, Animal and Plant Health Inspection Service.

Dated: February 12, 1986.

[FR Doc. 86–3387 Filed 2–14–86; 8:45 am]
BILLING CODE 3410–34–M
BILLING CODE 3410–11–M

Forest Service

Management Plan for the Illinois Wild and Scenic River; Siskiyou National Forest; Josephine and Curry Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of river management plan.

SUMMARY: The Illinois River was designated as a component of the National Wild and Scenic River System by Pub. L. 98–494, October 19, 1984. The Forest Service hereby gives notice of the availability for public inspection of the final Illinois River Management Plan. The plan establishes the classification of the river by section, establishes the detailed boundary of the classified river, and prescribes future management and development.

EFFECTIVE DATE: The management plan for the Illinois Wild and Scenic River becomes effective May 19, 1986.

ADDRESSES: The River Management Plan is available for public inspection and review at the following offices:

Director, Recreation Staff, Forest Service, USDA, Room 4231, South Agriculture Building, 12th and Independence Avenue, SW., Washington, DC 20013.

Regional Forester, Pacific Northwest Region, Forest Service, USDA, 319 S.W. Pine Street, Portland, Oregon 97208.

Forest Supervisor, Siskiyou National Forest, 200 N.E. Greenfield Road, Grants Pass, Oregon 97526.

District Ranger, Gold Beach Ranger District, Siskiyou National Forest, 1225 South Ellensburg, Box 7, Gold Beach, Oregon 97444.

District Ranger, Illinois Valley District, Siskiyou National Forest, 26566 Redwood Highway, Cave Junction, Oregon 97523.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lennon, Recreation Staff, Forest Service, P.O. Box 2417, Washington, DC 20013, phone no. (202) 447–2311.

Dated: February 5, 1986.

F. Dale Robertson,
Associate Chief.

[FR Doc. 86–3386 Filed 2–14–86; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received timely requests to conduct administrative reviews of various antidumping and countervailing duty orders and suspended investigations with January anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 18, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32558) a notice outlining the procedures for requesting administrative reviews during the anniversary month of a proceeding. The Department has received timely requests, in accordance with §§ 353.53a(a) (1), (2), and (4) and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and suspended investigations with January anniversary dates.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and suspended investigations. We intend to issue the final results of these reviews not later than February 28, 1987.

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	Periods to be reviewed
Antidumping Duty Proceedings and Firms	
Anhydrous sodium metasilicate from France: Rhone-Poulenc	1-12/85
Truck trailer axles from Hungary: RABA	1-12/85
Cell-site transceivers from Japan:	
Kokusai Electric	6/12/84-12/31/85
Mitsubishi Electric	6/12/84-12/31/85
Countervailing Duty Proceedings	
Fabricated automotive glass from Mexico	11/84-12/85
Roses and other cut flowers from Colombia	7/83-12/85
Carbon steel wire rod from Trinided/Tobago	1-12/85
Nonrubber footwear from Argentina	1-12/85

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and sections 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32556, August 13, 1985).

Dated: February 10, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-3406 Filed 2-14-86; 8:45 am]

BILLING CODE 3510-DS-M

Carleton College et al.; Notice of Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 86-064. Applicant: Carleton College, One North College Street, Northfield, MN 55057. Instrument: Electron Microscope, Model JEM-100CX and Accessories. Manufacturer: JEOL Co., Ltd., Japan.

Intended use: The instrument is intended to be used to conduct various studies in the following courses: Plants in Action, Energetics and Genetics, Cell Biology, Cell Physiology, Plant Physiology, Phycology, Mycology, Genetics, Advanced Genetics, Neurobiology, Developmental Botany, Plant Anatomy/Morphology, Reproductive Physiology, Growth and Development, Independent Study and Honors Research. Application received by Commissioner of Customs: December 13, 1985.

Docket Number: 86-066. Applicant: Harvard University, Purchasing Department, 1350 Massachusetts Avenue, Cambridge, MA 02138.

Instrument: Electron Microscope, Model EM 109 with Accessories.

Manufacturer: Carl Zeiss Inc., West Germany. Intended use: The instrument is intended to be used for the study of the role of ultraviolet light in the mechanism of melanocyte function. The research involves both *in vivo* and *in vitro* melanogenesis in mammals, especially humans. Application received by Commissioner of Customs: December 13, 1985.

Docket Number: 86-070. Applicant: Saint Joseph Medical Center, 501 South Buena Vista Street, Burbank, CA 91505-4866. Instrument: Kidney Lithotripter. Manufacturer: Dornier System GmbH, West Germany.

Intended use: Investigations of the efficacy of the lithotripter in the medical treatment of renal and ureterolithiasis. The education of other physicians and medical personnel in the use and maintenance of the lithotripter and its accessories. Application received by Commissioner of Customs: December 13, 1985.

Docket Number: 86-072. Applicant: University of California, San Diego, Department of Chemistry, B-017, La Jolla, CA 02093. Instrument: Gas Source Isotope Ratio Mass Spectrometer System, Model 251EM.

Manufacturer: Finnigan Corporation, West Germany. Intended use: The instrument will be used to measure the stable isotopic ratios of oxygen, carbon, nitrogen and sulfur. Experiments will be performed for stable isotopic analysis of meteoritic inclusions in order to enhance understanding of solar system evaluation, analysis of balloon collected samples for their nitrogen and oxygen isotopic ratios and analysis of isotopic fractionations in laboratory experiments. In addition, the instrument will be used for educational purposes in the courses Chemistry 199, Chemistry 251, and Chemistry 299. Application received by Commissioner of Customs: December 13, 1985.

Docket Number: 86-073. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, 506 South Wright Street, Urbana IL 61801. Instrument: Excimer Laser, Model EMG 150E. Manufacturer: Lambda-Physik GmbH, West Germany. Intended use: The instrument will be used in conjunction with a dye laser to carry out studies of the structure and kinetics of atoms and molecules. Application received by Commissioner of Customs: December 13, 1985.

Docket Number: 86-074. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, 506 South Wright Street, Urbana, IL 61801. Instrument: Dye Laser, Model FL 2002. Manufacturer: Lambda Physik, West Germany. Intended use: The dye laser's output will be used to examine the properties of gases, surfaces and plasmas using Laser-Induced-Fluorescence, stimulated Raman scattering and multi-photon-ionization techniques. Application received by Commissioner of Customs: December 13, 1985.

Docket number: 86-075. Applicant: University of Michigan, Kresge Hearing Research Institute, 1301 E. Ann Street, Ann Arbor, MI 48109.

Instrument: Electron Microscope, Model JEM-1200EX with Accessories.

Manufacturer: JEOL, Japan. Intended use: Examination of the cochlea and auditory portions of the brain to investigate the structure, connections, and transmitters of the normal auditory system and examination of the pathology and plasticity of the auditory system. In addition, the instrument will be used in studies to develop prosthetic devices to aid in hearing and to relate auditory anatomy to auditory function. Also the instrument will be used for training graduate students in Physiological Acoustics, Psychology, Toxicology and other disciplines; postdoctoral fellows and residents in Otolaryngology; and visiting scientists. Application received by Commissioner of Customs: December 13, 1985.

Docket number: 86-093. Applicant: Macalester College, 1600 Grand Avenue, St. Paul, MN 55105. Instrument: Electron Microscope, Model EM 109 with attachments. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument will be used to examine a variety of biological materials for information concerning the morphology and cellular ultrastructure. In addition, the instrument will be used for educational purposes in General Biology I and II, Cell Biology, Electron Microscopy and other biology courses. Application received by Commissioner of Customs. January 17, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3407 Filed 2-14-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Issuance of General Permit

On February 4, 1986, a general permit to incidentally take marine mammals during commercial fishing operations in 1986 was issued to:

Associacion Nacional de Armadores de Buques Congeladores de Pesquerias Varias, Vigo, Spain

in Category 1: Towed or Dragged Gear, to take 5 harbor seals and 15 cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Dated: February 5, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-3385 Filed 2-14-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to Procurement List 1986 a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: March 20, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1986, October 15, 1985 (50 FR 41806): Janitorial/Custodial, Jacob Javits Federal Building, 26 Federal Plaza, together with Court of International trade, 1 Federal Plaza and Center Street Garage, 203-209 Center Street, New York, New York.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-3417 Filed 2-14-86; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1986; Proposed Additions; Correction

In FR Doc. 86-2738 appearing on page 4786 in the issue of Friday, February 7, 1986, make the following correction:

In the second column, the second entry should read:

Commissary Shelf Stocking and Custodial

Fort Irwin, California

Because of this change, the time for receipt of comments on the proposed addition of this service is extended until March 20, 1986.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-3418 Filed 2-14-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

President's Blue Ribbon Commission on Defense Management; Closed Meeting

ACTION: Notice of Closed Meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:30 a.m. on March 12 and 13, 1986, at 735 Jackson Place, NW., Washington, D.C. 20503.

Discussion during the meeting will include classified matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b (c)(1) and (c)(9)(B) of Title 5, United States Code, this meeting will be closed to the public.

Agenda: The Commission will meet to continue its consideration of defense management policy and procedures and its preparation of reports to the President on acquisition and procurement issues and on defense organization.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert E. Hetu (Public Affairs), 1899 L Street NW., Suite 400, Washington, D.C. 20036. Telephone: (202) 466-7080 or (202) 395-3198.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 12, 1986.

[FR Doc. 86-3432 Filed 2-14-86; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Alternative Flood Control Solutions Along San Luis Obispo Creek, San Luis Obispo County, CA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action:* A feasibility of San Luis Obispo County Streams was authorized under section 119(a) of the Water Resources Development Act of 1974, which stated: "The Secretary of the Army is hereby authorized and directed to cause surveys to be made of the following locations for flood control and allied purposes, and subject to all applicable provisions of section 217 of the Flood Control Act of 1970 (Pub. L. 91-611): . . . San Luis Obispo County, California." The Corps is considering various flood control solutions for the communities along San Luis Obispo Creek in the vicinity of the City of San Luis Obispo, California.

2. *Alternatives:* Preliminary studies investigated several potential alternative flood control solutions.

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Upstream dam and detention basin alternatives were economically infeasible and have been eliminated from further study. Eight combinations of the four remaining flood control measures, along with the No Action alternative, constitute the project alternatives. The four flood control measures are: (a) Construction of a diversion channel to divert high flows from San Luis Obispo Creek where it enters the undercity culvert, flowing along either Marsh Street or Pacific Street, returning to San Luis Obispo Creek just below its confluence with Stenner Creek; (b) Installation of movable floodwalls along Marsh Street and/or Higuera Street between the entrance to the undercity culvert and the confluence of San Luis Obispo Creek and Stenner Creek; (c) Modification (raising) of the Marsh Street Bridge (at its crossing of San Luis Obispo Creek); and (d) Channel widening of San Luis Obispo Creek between its confluence with Stenner Creek and the sewage treatment plant. The nine alternatives to be evaluated in the DEIS are: (1) The No Action alternative; (2) Measure (a) only; (3) Measures (a) and (d); (4) Measures (a), (c), and (d); (5) Measure (b) only; (6) Measures (b) and (d); (7) Measures (b), (c), and (d); (8) Measure (c) only; and (9) Measures (c) and (d).

3. *Scoping Process:* Public workshop session are planned for March 1986 to assist the Corps to further develop and refine the project alternatives. The workshops will help screen alternatives and identify concerns and issues for further study. Federal, State, and local agencies, local organizations, and members of the public are invited to participate in the scoping process, including U.S. Fish and Wildlife Service, Bureau of Land Management, U.S. Forest Service, California Department of Fish and Game, California Coastal Commission, the City and County of San Luis Obispo, the San Luis Obispo Land Conservancy, ECOSLO, and local chapters of Audubon Society and Sierra Club. The Corps is also coordinating formally with appropriate agencies to identify and resolve potential environmental problems. The main environmental concerns identified thus far include: (a) Impacts to spawning and rearing habitat (via altered water quality or substrate) for the local Steelhead Trout fishery, (b) destruction of valuable riparian habitat along San Luis Obispo Creek between the Stenner Creek confluence and the sewage treatment plant, (c) disruption of downtown commerce during and after the installation of the movable floodwalls (d) potential impacts to significant cultural and historical structures in the city of San Luis Obispo, and (e) secondary impacts to current land use from induced growth.

4. *Future Public Meetings:* The public workshop is scheduled for mid March 1986 for the purpose of hearing public views regarding the project alternatives.

5. *Availability of the Draft EIS:* The DEIS is anticipated to be circulated for public review for 45 days on or about 1 Sept. 1986.

6. *Questions about the proposed action, upcoming public meetings, and the DEIS can be answered by:* Mr. Byrt Wammack, Project Manager, Water Resources Branch, U.S. Army Corps of Engineers, P.O. Box 2711, Los Angeles, California 90053-2325.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-3549 Filed 2-14-86; 8:45 am]

BILLING CODE 3710-KF-M

DEPARTMENT OF ENERGY

Solicitation for Partnerships in Low-Income Residential Retrofit

AGENCY: Department of Energy.

ACTION: Notice of Solicitation Number DE-PS01-86CE63466 Partnerships in Low-Income Residential Retrofit.

SUMMARY: The United States Department of Energy, Office of State and Local Assistance Programs, Energy Management Programs, is entering into a pilot competitive grants program to provide technical and financial assistance for up to five states to demonstrate their ability to stimulate non-federal support which will result in low-income home energy improvements. Up to five grants of $100,000 per state will be made subject to the availability of funds.

The objective of this solicitation is to assess the capability of the states to encourage the retrofitting of low-income homes by private and non-profit entities. The project also seeks to determine the extent to which the private and non-profit sectors are willing to provide the resources needed to improve the energy efficiency of low-income homes, and the extent to which the resources provided can be translated into high-quality retrofits equal to those provided under the Weatherization Assistance Program.

Eligibility: The fifty states and the District of Columbia are eligible under this solicitation.

Solicitations will be issued in February of 1986. Written requests should be sent to: U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room 1J-005, 1000 Independence Avenue, SW., Washington, D.C. 20535, Attn: Document Control Specialist, MA-451.1

Point of Contact: Pat Wyatt, telephone number (202) 252-1236.

Issued in Washington, D.C. on February 11, 1986.

Edward T. Lovett,

Director, Contract Operations Division "B" Office of Procurement Operations.

[FR Doc. 86-3601 Filed 2-14-86; 8:45 am]

BILLING CODE 6450-01-M

Receipt and Financial Settlement Provisions for Nuclear Research Reactor Fuels

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy is amending the provisions of its current policy providing for the receipt and financial settlement of U.S.-origin spent research reactor fuels to include certain research reactor fuels in which the uranium-235 content is less than 20 percent of the total uranium weight. Additionally, the Department is providing its financial settlement terms for providing this service.

FOR FURTHER INFORMATION CONTACT: Louis R. Willett, Mail Stop DP-131, Office of Nuclear Materials Production, U.S. Department of Energy, Washington, DC 20545, 301/353-3968.

SUPPLEMENTARY INFORMATION: On November 9, 1982, the Department of Energy announced in the **Federal Register** that is was extending until December 31, 1987, its policy for the receipt and financial settlement of U.S.-origin spent research reactor fuels (47 FR 50737). At that time, the provisions of this policy were restricted to: (1) uranium-aluminum research reactor fuels with enrichments; i.e., uranium-235 content as a percentage of total uranium weight, of greater than 20 percent; and (2) uranium-zirconium hydride TRIGA fuel types. In this notice, DOE indicated that it was studying the reprocessing of uranium-aluminum fuel compositions with uranium enrichments of less than 20 percent and would extend the provisions of the notice to include these

LEU fuels if a reprocessing capability could be established.

The DOE has determined that reprocessing capabilities for LEU fuels will be available and is, therefore, prepared to extend the provisions of its current policy to include the LEU uranium-aluminum fuel types currently under development. The conditions governing DOE's offer to provide this service remain unchanged; i.e., that commercial fuel processing services must be unavailable at reasonable terms and conditions and that the reactor fuel must be of U.S. origin (composed of nuclear materials produced or enriched in this country). The fuel processing charges used for settlement under this program for LEU fuel receipt are based upon the estimated actual cost of providing this service at a DOE spent fuel processing facility.

In its reviews of this policy extension, DOE has determined: (1) No commercial fuel processing services for LEU fuels are expected to be available to meet anticipated needs; (2) basic beneficial nuclear research would have to be curtailed absent a spent fuel disposal capability; and (3) availability of an LEU fuels disposal capability will encourage the conversion of research reactors currently using highly enriched uranium to LEU. Since it is anticipated that these disposal services for LEU fuels will not be needed until completion of reactor conversions planned for the late 1980's, DOE proposes to extend the LEU fuel receipt provisions from the date of this publication through December 31, 1992. The need for extension beyond this time will be evaluated when appropriate.

To provide for inclusion of LEU fuels in DOE's current policy, the terms and conditions for DOE services described in paragraphs numbered 1 through 11 in the **Federal Register** notice entitled "Receipt and Financial Settlement Provisions for Nuclear Research Reactor Fuels" 47 FR 50737 published November 9, 1982, are hereby deleted and the following substituted in place:

1. This policy applies to irradiated nuclear research reactor fuels and blanket materials (reactor materials). This policy pertains only to reactor materials from research reactors other than those involved in the conduct of research and development activities leading to the demonstration of the practical value of such reactor for industrial or commercial purposes.

2. Commercial fuel processing must be unavailable at reasonable terms and conditions.

3. The fuel must be of U.S origin—that is, composed of nuclear materials produced or enriched in the United States.

4. This policy applies solely to the following types of reactor fuels:

a. Aluminum-clad reactor fuels where the uranium-235 content is greater than 20 percent, by weight, of the total uranium content. The active fuel region of these fuels may be configured as uranium-aluminum alloy, uranium oxide or uranium-aluminide. Fuels containing significant quantities of uranium-233 are excluded from receipt.

b. Aluminum-clad reactor fuels where the uranium-235 content is less than or equal to 20 percent by weight of the total uranium content. The active fuel regions of these fuels may be configured as uranium-silicide, uranium-aluminide or uranium oxide. Fuels containing significant quantities of uranium-233 are excluded from receipt.

c. Aluminum or stainless steel clad, uranium-zirconium hydride (other than uranium-233) TRIGA fuel types.

The percentage of uranium-235 of the eligible fuel types shall be that measured or estimated at the time of delivery to DOE.

5. DOE will undertake, under contracts individually negotiated with persons licensed pursuant to sections 53.a.(4), 63.a.(4), 103 or 104 of the Atomic Energy Act of 1954, and persons operating research reactors abroad fueled with materials produced or enriched in the United States, who possess or will possess eligible reactor materials, to receive such reactor materials at DOE-designated facilities, and to make a settlement, therefore, in accordance with this Notice and other established DOE policies. This settlement will take into account the charges for chemical processing of received reactor materials and any conversion of recovered uranium to the standard form, uranium hexafluoride, for which specifications and prices have been established by DOE. Furthermore, DOE may chemically process and convert all such received reactor materials to the extent, in such manner, and at such time, and place as it deems advisable, or otherwise dispose of such materials as it may deem advisable.

6. DOE's commitment to provide fuel receipt and financial settlement services will terminate on the following dates:

a. For research reactor fuels described in 4.a. and 4.c.-December 31, 1987; and

7. Firm charges for DOE services provided under this policy will be a part of each contract. These charges will be expressed in terms of a unit weight charge fixed by DOE to the reactor materials in question, to apply over the total number of units of weight.

The charges for chemical processing services provided under this policy will reflect the Government's full cost for providing this service, in accordance with the provisions of 10 CFR Part 1009. The basic charges for processing services will be reviewed periodically and adjusted when necessary.

8. For those research reactor fuels described in 4.a. and 4.c. above, as of January 1, 1983, the following charges will be applied to DOE processing services under this policy:

a. For aluminum-clad research reactor fuels, including alloy, oxide and aluminide composition, $1000 per kilogram of total delivered weight. Of this charge, $375 is capital related and $625 is related to operating costs; and

b. For aluminum and stainless steel-clad uranium-zirconium hydride research reactor fuel, $1050 per kilogram of total delivered weight. Of this charge, $395 is capital related and $655 is related to operating costs.

The capital-related charges for DOE-provided services shall be adjusted to reflect changes in price levels from the base date of June 1982, in accordance with the Official Monthly Construction Cost Indices appearing in "Engineering News Record." The operations-related charges for DOE-provided services shall be adjusted to reflect changes in price levels from the base date of June 1982, in accordance with the Basic Inorganic Chemical Index appearing in "Wholesale Price Indexes," published by the U.S. Bureau of Labor Statistics.

9. For those research reactor fuels described in 4.b. above, as of July 1, 1985, the following charges will be applied to DOE processing services under this policy:

a. For uranium oxide fuel compositions—$660 per kilogram of total delivered weight;

b. For uranium-silicide compositions—$835 per kilogram of total delivered weight; and

c. For uranium-aluminide compositions—$1110 per kilogram of total delivered weight.

DOE will periodically review the charges for processing of these research reactor fuels and revise said charges as appropriate.

10. The charge for conversion to uranium hexafluoride of the purified nitrate salt of uranium that is converted by DOE in its processing of reactor materials is $175 per kilogram of contained uranium.

11. A minimum charge of $44,500 will

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be applied to each batch of fuel material delivered to DOE under the provisions of this policy. This charge reflects the minimum cost to DOE of providing processing services for small-batched fuel materials. The size of the processing batch to be shipped shall be as specified by the person seeking the processing services. DOE will permit a person to combine its batch with those of other persons in order to avoid the full impact of the minimum charge for handling a small batch size. Persons must notify DOE of their intent to combine batches prior to the delivery of any reactor materials to be included in a proposed batch. Specific arrangements must include a formula for distributing the processing charges and other settlement factors associated with delivery of the reactor materials to DOE.

12. DOE has the option of compensating the reactor operator for enriched uranium recovered in the processing of reactor materials delivered to DOE facilities in accordance with the appropriate DOE-published price schedule for enriched uranium material. Such compensation by DOE will consist of providing materials or services of equivalent value. DOE will, thereby, acquire title to the uranium for which it provides compensation. DOE will also acquire title, without cost, to all waste and other materials contained in the reactor materials.

The enriched uranium recovered in processing reactor materials (or its equivalent) delivered to DOE facilities and not compensated for by DOE, shall be returned to the reactor operator. Enriched uranium will be returned to the reactor operator f.o.b. the DOE processing site, in a reactor-operator furnished cask suitable for shipment offsite.

13. In lieu of processing uranium-zirconium hydride fuel types, DOE will agree to provide disposition services for such fuels. In this case, no compensation for recovered uranium will be made. Research reactor operators may prefer to write off the value of uranium contained in the fuel and accept this service. Additional information concerning DOE's disposition service may be obtained from the Manager, Idaho Operations Office, U.S. Deprtment of Energy, 785 DOE Place, Idaho Falls, Idaho 83402.

Dated: January 3, 1986.

Sylvester R. Foley, Jr.,

Assistant Secretary for Defense Programs.

[FR Doc. 86-3452 Filed 2-14-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement Between European Atomic Energy Community and Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)-136, for the retransfer of 10,500 grams of uranium, containing 350 grams of uranium-235, from Lingen, the Federal Republic of Germany to Studsvik, Sweden. The nuclear material is included in 250 barrels of contaminated waste, which is to be incinerated and returned to the European Community for disposal as waste.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: February 10, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-3462 Filed 2-14-86; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangements; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-EU-872, to the Franco-Belge de Fabrication de Combustibles, Romans-suv-Isere, France, 148.4 grams of natural uranium for use as standard reference materials.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice. For the Department of Energy.

Dated: February 10, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-3460 Filed 2-14-86; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no longer included in these notices.

During the first quarter of fiscal year 1986 (October 1, 1985 through December 31, 1985), changes were made to the October 1, 1985, inventory of DOE information collections, which was published in the **Federal Register**, 50 FR 50938 (December 13, 1985). The changes are listed below, and include new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control

or form number, the title, the OMB control number, and the OMB approval expiration date are listed by DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Joyce Beattie, EI-73, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2313.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI-22, Forrestal Building, U.S. Department of Energy, Washington, DC 20585 (202) 252-8800.

Issued in Washington, D.C. February 12, 1986.

Dr. H. A. Merklein,

Administrator, Energy Information Administration.

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Economic Regulatory Administration			
ERA-329R *	Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, 504	19030075	07/31/88	10 CFR 500, 501, 503, 504, 505, 508, 515.
ERA-330R *	Electric Utility Conservation Plans	19030078	10/31/87	10 CFR 508.
ERA-766R *	Recordkeeping Requirements of DOE's General Allocation and Price Rules	19030073	10/12/87	10 CFR 210.1, 211.66, 213.6, 221.36.
	Energy Information Administration			
EIA-1	Weekly Coal Monitoring Report—General Industries (Standby Form)	19050167	11/30/88	
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050167	06/30/86	
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050167	11/30/88	
EIA-5	Coke Plant Report—Quarterly	19050167	06/30/86	
EIA-6	Coal Distribution Report	19050167	06/30/86	
EIA-7A	Coal Production Report	19050167	06/30/86	
EIA-20	Weekly Coal Monitoring Report of Coal-Burning Electric Utilities (Standby Form)	19050167	11/30/88	
EIA-28	Financial Reporting System	19050149	12/31/86	
EIA-182	Domestic Crude Oil First Purchase Report	19050143	01/31/87	
	Federal Energy Regulatory Commission			
FERC-580	General Interrogatory On Fuel Purchase Practices	19020137	03/31/88	
FPC-14	Annual Report for Importers and Exporters of Natural Gas	19020027	12/31/88	16 CFR 260.4.

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
	Energy Information Administration			
EIA-5A	Coke Plant Report—Annual Supplement	19050013	12/11/85	
EIA-7A(SUPP)	Coal Production Report (Supplement)	19050150	12/11/85	
EIA-97	Boiler Order Report	19050123	12/11/85	

NOTE.—Forms EIA-5A, EIA-7A(SUPP), and EIA-97 have been temporarily discontinued pending final action by the Office of Management and Budget.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date	CFR citation
NONE.				

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Energy Information Administration			
EIA-846	Manufacturing Energy Consumption (Survey Pilot Test)	19050186	04/30/86	
EIA-863	Petroleum Production Sales Identification Survey	19050186	12/31/88	

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CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE No. as previously listed	Changes
EIA-194	OMB Number changed from 1905-0083 to 1902-0142
EIA-800	OMB Number changed to 1905-0165, clearance extended through 1/31/89 and some revisions were made to the forms.
EIA-801	
EIA-802	
EIA-803	
EIA-804	
EIA-805	
EIA-810	
EIA-811	
EIA-812	
EIA-814	
EIA-816	
EIA-817	
EIA-818	
EIA-820	
EIA-825	
EIA-821	Minor revision to form.
FERC-1	Revision to reporting requirements.
FERC-9	Revision to reporting requirements and extension to 12/31/88.
FERC-18	Revision to reporting requirements and extension to 12/31/88.
FERC-518	Revision to reporting requirements and extension to 11/30/88.
FERC-73	Revision to reporting requirements.
FERC-500	
FERC-505	
FERC-530	
FERC-531	
FERC-532	
FERC-537	
FERC-542	
FERC-547	
FERC-549	
FERC-567	
FERC-568	
FERC-548	Revision to reporting requirements and extension to 11/30/88.

[FR Doc. 86-3448 Filed 2-14-86; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-11 OFP Case No. 50300-9299-20-22]

Powerplant and Industrial Fuel Use: Boston Edison Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting Boston Edison Company Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On October 24, 1985, Boston Edison Company (BEC), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a proposed new peakload powerplant at its existing Walpole substation (Walpole), from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

BEC requested a permanent peakload exemption under 10 CFR 503.41 for a simple cycle combustion turbine generating facility with a maximum net electrical generation of 85 MW. Low sulfur No. 2 fuel oil will be the primary fuel, utilized at a maximum rate of 950 MM Btu/hr. The proposed facility will be located at the existing Walpole substation, Walpole Station 146, South Street, Walpole, Massachusetts. The turbine will be capable of using commercial grade natural gas when available.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to BEC Walpole a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed simple cycle combustion turbine facility at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 19, 1986.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045 Washington, D.C. 20585, Telephone (202) 252-4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, D.C. 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. BEC has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Walpole facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to the petition in the **Federal Register** on December 6, 1985 (50 FR 49987), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of BEC's petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requestiing a public hearing closed January 21, 1986. No comments were received and no hearing was requested.

BEC certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definitions for "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multipiled by 1500 hours."

BEC has further certified that it will, prior to operating the unit under the exemption, secure all applicable environmental permits and approval pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(11) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that BEC has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants BEC a permanent exemption for a peakload

powerplant to be installed at its Walpole facility in Walpole, Massachusetts, permitting the use of petroleum or natural gas as a primary energy source in the unit.

Pursuant to section 102(c) of the Act and 10 CFR 501.63 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C. on February 10, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-3455 Filed 2-14-86; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-024; OFP Case No. 61055-9285-20-24]

Powerplant and Industrial Fuel Use; ARCO Petroleum Products Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to ARCO Petroleum Products Company Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to ARCO Petroleum Products Company, a division of the Atlantic Richfield Company (ARCO). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a combined cycle process facility located in Carson, California. The final exemption order and detailed information are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATE: The order shall take effect on April 19, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Telephone (202) 252-4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6749.

SUPPLEMENTARY INFORMATION: On July 30, 1985 ARCO petitioned ERA for a permanent cogeneration exemption from prohibitions of FUA for a facility consisting of four gas turbines that have a rated electrical generating capacity of 344 MW. The turbines are coupled with heat recovery boilers that produce a maximum of 1.2 million pounds of steam per hour to satisfy ARCO's refinery needs.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold to Southern California Edison Company.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including ARCO's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on September 20, 1985 (50 FR 39755), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on November 13, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that ARCO has satisfied the eligibility requirement for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to ARCO to permit the use of natural gas as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C. on February 10, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-3456 Filed 2-14-86; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-25; OFP Case No. 66020-9308-21, 21-24]

Powerplant and Industrial Fuel Use; Acceptance of Petition for Exemption and Availability of Certification by Pacific Thermonetics, Inc.

AGENCY: Economic Regulatory Administration.

ACTION: Notice.

SUMMARY: On January 13, 1986, Pacific Thermonetics, Inc. (PTI) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for their Crockett Cogeneration Facility located in Crockett, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in certain new powerplants. Final rules setting forth the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503 Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to

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support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before April 14, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Room GA–045, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA–C&E–86–25 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Division of Coal & Electricity, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–045, Washington, D.C. 20585, Telephone (202) 252–8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: PTI proposes to construct a 230 Megawatt (MW) cogeneration facility to produce steam for industrial use and to generate electrical power. The facility will be located at the C&H Sugar Company (C&H) refinery in the town of Crockett, California in Contra Costa County. The facility is designed to produce sufficient steam for C&H to run the sugar refinery in a cost effective manner and to generate electricity for sale to Pacific Gas and Electric Company (PG&E).

The facility will consist of two gas turbine generators with a rated capacity of 80 MW each and two 35 MW steam turbine generators. The firing rate for each of the combustion units will be 908.5 MMBtu per hour. The exhaust heat from the gas turbines will be used to generate steam in the Heat Recovery Steam Generators (HRSGs) which will then be sent to the steam turbines. The HRSGs will be supplementally fired with natural gas, not in excess of 800,000 million Btu's per calendar year. Natural gas will be piped to the site from an upgraded PG&E gas transmission line located about one-half mile away from the site beneath the Carquinez Bridge.

The facility will burn oil only in a curtailment situation. The maximum number of hours that the facility may burn fuel oil is 330 hours per year.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), PTI has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of §503.37(c) (and in addition to the certifications discussed above), PTI has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 et seq.; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that PTI is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on February 10, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–3454 Filed 2–14–86; 8:45 am]

BILLING CODE 6450–0–M

Federal Energy Regulatory Commission

[Docket No. CP84–654–013 and CP82–119–017]

Algonquin Gas Transmission Co.; Filing Changes in FERC Gas Tariff

February 11, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on February 3, 1986, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Revised Second Substitute Seventh Revised Sheet No. 203 proposed to be effective November 1, 1985.

Revised Second Alternate Eighth Revised Sheet No. 203 proposed to be effective December 31, 1985

Revised Ninth Revised Sheet No. 203 proposed to be effective January 1, 1986

Revised Tenth Revised Sheet No. 203 proposed to be effective January 1, 1986

Revised Substitute Tenth Revised Sheet No. 203 proposed to be effective January 1, 1986

Revised Second Substitute Third Revised Sheet No. 204 proposed to be effective November 1, 1985

Revised Second Alternate Fourth Revised Sheet No. 204 proposed to be effective December 31, 1985

Revised Fifth Revised Sheet No. 204 proposed to be effective January 1, 1986

Revised Sixth Revised Sheet No. 204 proposed to be effective February 1, 1986

Revised Seventh Revised Sheet No. 204 proposed to be effective February 1, 1986

Second Substitute Original Sheet No. 205 proposed to be effective December 31, 1985

Revised First Revised Sheet No. 205 proposed to be effective January 1, 1986

Revised Second Revised Sheet No. 205 proposed to be effective February 1, 1986

Substitute First Revised Sheet No. 222 proposed to be effective November 1, 1985

Second Substitute Second Revised Sheet No. 222 proposed to be effective December 31, 1985

Algonquin Gas states that these tariff sheets are being filed to reflect adjusted rates for service under Rate Schedules T–CON, F–2 and F–3 for the period November 1, 1985 through October 31, 1986 and Rate Schedule F–4 service for the period December 31, 1985 through October 31, 1986. These changes are made in accordance with the provisions of two Commission-approved settlement agreements in Algonquin Gas' Docket Nos. CP82–119–004 through –009, and reflect the application of the methodology previously approved by the Commission to the actual cost facts known with respect to the facilities constructed to render Rate Schedule T–CON, F–2 and F–3 service beginning November 1, 1985, and Rate Schedule F–4 Service beginning December 31, 1985.

Algonquin Gas requests that the Commission accept such tariff sheets, to be effective as proposed.

Algonquin Gas proposes to make a refund (including interest) for monies overcollected under Rate Schedules T–CON, F–2, F–3 and F–4 for the period beginning November 1, 1985 until the next month's billing following Commission acceptance of the revised rates filed herein.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before February 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretory.

[FR Doc. 86–3483 Filed 2–14–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–61–003]

Bayou Interstate Pipeline System; Compliance Filing

February 11, 1986.

Take notice that on January 31, 1986 Bayou Interstate Pipeline System (Bayou), tendered for filing First Revised Original Sheet No. 76 of its FERC Gas Tariff, Original Volume No. 1. Bayou states that the tariff sheet was filed to comply with Ordering Paragraph B of the Commission's July 31, 1985 "Order Accepting for Filing and Suspending Tariff Sheets Subject to Refund and Conditions," 32 FERC ¶ 61,200 (1985), related to exchange gas transactions. Bayou further states that the tariff sheet was amended to add Account Nos. 801 and 802 to the Gas Cost Charge provision and to the Current Average Gas Cost provision. Copies of the filing were mailed to Bayou's jurisdictional customer and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–3484 Filed 2–14–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA86–9–000]

Illinois Power Co., Petition for Exemption From Incremental Pricing and for Interim Relief

Issued: February 11, 1986.

Take notice that on January 24, 1986, Illinois Power Company (Illinois Power) filed with the Director, Office of Pipeline and Producer Regulation, pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NGPA) a petition for interim and permanent exemptions, effective January 1, 1986, from the Commission's incremental pricing regulations which impose a surcharge on its natural gas sales to ten non-exempt industrial boiler fuel customers located in the State of Illinois.

In support of its petition, Illinois Power states that without exemption relief the incremental pricing surcharge will cause the gas cost of the specific industrial customers to exceed the cost of available alternative fuels and that such increased costs will likely cause these customers to (1) switch to alternative fuels such as coal, fuel oil, or propane, (2) relocate production lines to other areas where available fuels are not subject to incremental pricing, or (3) cease or significantly reduce operations. Illinois Power states that the loss of gas sales to the said industrial customers will result in its high priority customers paying a larger portion of its fixed costs. Illinois Power requests interim relief from the incremental pricing regulations pending Commission action on its petition for a permanent exemption.

The procedures applicable to the conduct of this proceeding are set forth in Rules 1101–1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–3485 Filed 2–14–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RE80–69–006]

Interstate Power Co.; Application for Exemption

February 10, 1986

Take notice that Interstate Power Company (IPC), filed an application on December 24, 1985 for exemption from certain requirements of Part 290 of the

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Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or before prior to June 30, 1984 and bennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption IPC states, in part, that it should not be required to file the specified data for the following reasons:

IPC believes that the purposes of Section 133 of PURPA have been met since the primary customer load research data and all required cost of service studies have been furnished to the State regulatory commissions; the majority of the historical data required to be filed is duplicated by other federal and state reporting requirements; the State regulatory commissions have or are currently reviewing the federal standards as required by the Part 290 regulations; the cost of providing an additional report for 1984 and in the future would be very expensive with little foreseeable benefit for our State regulatory commissions and our customers.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. K. M. Ragsdale, Staff Counsel, Interstate Power Company, 1000 Main Street, Dubuque, Iowa 52001

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3486 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-46-000]

Minnesota Public Utilities Commission and Department of Public Service et al.; Complaint and Motion for Summary Disposition

February 12, 1986.

Take notice that on January 29, 1986, the Minnesota Public Utilities Commission and Department of Public Service, the Iowa State Commerce Commission and Peoples Natural Gas Company, Division of UtiliCorp United Inc. (Complainants) tendered for filing a Complaint and Motion For Summary Disposition against Northern Natural Gas Company, Division of InterNorth, Inc. (Northern Natural). Complainants request that the Commission order Northern Natural to immediately reduce its rates to reflect, dollar for dollar, the additional net jurisdictional revenues resulting from the sale of Peoples Natural Gas Company (Peoples). Complainants request summary disposition of the complaint.

Complainants state that Northern Natural made a general rate filing on September 26, 1985 in Docket No. RP85-206-000 in which it treated Peoples, then a division of InterNorth, Inc. as a nonjurisdictional customer. Complainants state the filing noted that Peoples had been sold and that its status would change to a jurisdictional customer, and at that time Northern Natural's rate filing in Docket No. RP85-206-000 would be modified to reflect the change. Complainants assert Northern Natural stated, in response to an information request, that the effect of the change would be to reduce certain rates. Complainants assert Northern Natural has not filed to adjust its rates to reflect the sale of Peoples. Complainants believe it is not reasonable to wait until the conclusion of Northern Natural's rate case in Docket No. RP85-206-000 to reflect the effects of the Peoples sale in rates. Complainants, therefore, request the Commission to act immediately as waiting until the conclusion of Northern Natural's general rate case will result in Northern Natural collecting $105,479.50 per week of excessive and unwarranted revenues from its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before March 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Complainants state that a copy of the complaint has been served on Northern. Northern's answer shall be due on or before March 14, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3468 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE86-45-001]

Nebraska Public Power District; Application for Exemption

February 10, 1986

Take notice that Nebraska Public Power District (NPPD), filed an application on January 27, 1986 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44-FR-58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986 and biennially thereafter, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption NPPD states, in part, that it should not be required to file the specified data for the following reason:

Provision of the required data requires extensive research and the purchase and installation of special metering equipment. The accompanying expense is considered an unnecessary burden to NPPD's ratepayers.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before 45 days following the date this notice is published in the Federal Register. Within that 45 day period, such person must also serve a copy of such comments on: Mr. Larry Liss, Wholesale Rate Specialist, Nebraska Public Power District, P.O. Box 499, Columbus, Nebraska 68601-0499.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3467 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT86-2-000]

Northwest Central Pipeline Corp.; Proposed Changes in FERC Gas Tariff

February 11, 1986.

Take notice that Northwest Central Pipeline Corporation (Northwest Central) on January 31, 1986, tendered for filing to become a part of its FERC Gas Tariff:

Original Volume No. 1
- Title Page
- First Revised Sheet Nos. 3, 78, 80, and 116
- Second Revised Sheet Nos. 2, 77, 79, 143, 145, 147, and 153
- Third Revised Sheet Nos. 144, 149-152, and 154

Original Volume No. 2
- Title Page
- Original Sheet Nos. 88A and 155A
- First Revised Sheet Nos. 1, 28, 80, 83-88, 137-139, 142-152, 154, 155 and 193
- Second Revised Sheet No. 153
- Third Revised Sheet Nos. 191, and 207-209

These pages comprise a general maintenance filing to update Northwest Central's FERC Gas Tariff, Original Volume Nos. 1 and 2.

Northwest Central states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3489 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-009]

Northwest Pipeline Corp.; Proposed Change in FERC Gas Tariff

February 11, 1986.

Take notice that on January 31, 1986 Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1-A, the following tariff sheet:

Substitute Original Sheet No. 411

On July 12, 1985, Northwest tendered for filing and acceptance Original Volume No. 1-A pursuant to Northwest's Offer of Settlement in the above referenced docket which was approved by Commission order dated May 31, 1985. Staff has requested and Northwest has agreed to add a statement providing for the payment of interest on deposits required by Northwest to section 5.9 of the General Transportation Terms and Conditions of Northwest's Original Volume No. 1-A. The tariff sheet listed above constitutes that revision.

Northwest requests an effective date of May 1, 1985, for the above tariff sheet which is the effective date of the rates approved by a Commission order dated May 31, 1985. *Northwest Pipeline Corp.*, 31 FERC ¶ 61,263 (1985).

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3488 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-29-000, 001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

February 10, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on February 2, 1986, tendered for filing Thirty-Ninth Revised Sheet No. 12 to its FERC Gas Tariff Second Revised Volume No. 1. The proposed effective date is February 1, 1986. The revised tariff sheet reflects a storage "tracking" rate decrease effective February 1, 1986 in accordance with Section 26 of Transco's General Terms and Conditions. Section 26 provides for, among other things, changes in rates for storage service rendered under Transco's Rate Schedule S-2 to reflect changes in charges by Texas Eastern Transmission Corporation (Texas Eastern) under Texas Eastern's Rate Schedule X-28.

As a result of Texas Eastern's filing of December 31, 1985 in Docket No. TA86-2-17-000, 001, proposed effective February 1, 1986, Transco will decrease its demand charge and demand charge adjustment in Rate Schedule S-2 in order to flow through to Transco's customers a decrease of approximately $53,000 annually from the amount included in Transco's filing of November 1, 1985.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 18, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3490 Filed 2-14-86; 8:45 am]

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[Docket No. CI63-1513-000]

Tenneco Oil Co.; Application for Limited-Term Abandonment

February 12, 1986.

Take notice that on January 28, 1986, as supplemented on February 5, 1986, Tenneco Oil Company (Applicant), P.O. Box 2511, Houston, Texas 77001 filed an application pursuant to section 7(b) of the Natural Gas Act and 18 CFR 2.77 and 157.30 of the Commission's Regulations thereunder for authorization to abandon on a limited-term basis for a period of one year, service originally certificated in Docket No. CI63-1513 pursuant to a May 8, 1963, sales contract on file as Tenneco's FERC Gas Rate Schedule No. 166. The certificate authorized sales to Valero Interstate Transmission Company (VITCO) from the McAllen Ranch Field, Hidalgo County, Texas, and gas subject to the certificate qualifies under NGPA section 104 as Post 1974 gas. VITCO resold the gas, along with gas purchased from other producers, to Transcontinental Gas Pipeline Corporation (Transco). The Transco/VITCO contract expired on December 12, 1983, and Applicant's contract with VITCO expired in 1984. Upon expiration of the Transco/VITCO contract, Transco filed to cease purchases and VITCO filed for abandonment authorization on behalf of the producers which sold gas to VITCO and for abandonment of its sale to Transco. Under the VITCO proposal, VITCO would be the sole marketing agent for the producers. Several producers opposed VITCO's request.

A settlement between the parties was approved by the Commission by order of August 2, 1985, issued in *Transcontinental Gas Pipe Line Corporation*, Docket Nos. CP84-183-000 and CP84-183-001; *Valero Interstate Transmission Company*, Docket No. CP85-186-000; and *Shell Western E&P Inc.*, Docket Nos. CI85-206-000, CI85-207-000 and CI85-213-000, 32 FERC ¶ 61,208 (1985). Under the terms of the settlement, producers, including Applicant, received limited-term abandonment of their certificated gas for 160 days, with the last day being January 28, 1986. The producers were to be their own exclusive marketers of gas for the first 90 days and VITCO could sell 50% of the producers' deliverability for the seocnd 90 days. The settlement provides that if at the end of 180 days VITCO has not developed a market to guarantee takes of 50% of the producers' deliverability for a five-year period, the Commission would set the producer abandonment applications for an expedited hearing.

Applicant, herein seeks a limited-term abandonment for a period of one year, while giving VITCO the monthly right to nominate and take the gas it requires for system supply. Since the August 2, 1985, order described above, Applicant has been selling all released gas in intrastate commerce to THC Pipeline Company (THC) for system supply. Applicant states that although VITCO has the option to call on 50% of such released gas during the second 90-day period, VITCO purchased no gas from Applicant during that period. Applicant proposes that excess volumes not nominated or taken by VITCO would then be abandoned to permit continued sales to THC or any other purchaser or for use by Applicant for its own purposes. Applicant states that unless the Commission grants abandonment it will be forced to shut in its affected supplies with potential revenue losses estimated at $10,000 a day. By letter dated February 5, 1986, Applicant states that average daily deliverability from its interest in the wells subject to this application is 3,400 Mcf.

Any person desiring to be heard or to make any protest with reference to said application should, on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20428, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3469 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. G-14227-000 and CI77-337-001]

Union Texas Petroleum Corp.; Applications for Abandonment of Service

February 11, 1986.

Take notice that on January 21, 1986, as supplemented on January 30, 1986, in Docket No. G-14227-000 and on January 17, 1986, as supplemented on January 29, 1986, in Docket No. CI77-337-001, Union Texas Petroleum Corporation (Applicant) P.O. Box 2120, Houston, Texas 77252-2120 filed applications pursuant to section 7(b) of the Natural Gas Act and 18 CFR 2.77 and 157.30 of the Commission's regulations thereunder for authorization to partially abandon for a period of three years its sales to Transcontinental Gas Pipe Line Corporation (Transco) certificated in Docket Nos. G-14227 and CI77-337, respectively. Applicant proposes to abandon up to 90% of deliverability (5,000 mcf/d) in Docket No. G-14227-000 from the Lower Vacherie Field, St. James and LaFourche Parishes, the High Island Area Block 154 Field (HI 154), Offshore Texas. Applicant states that Transco has curtailed deliveries from the leases to approximately 5% of capacity subjecting Applicant to substantially reduced takes without payment. Applicant states that the gas from HI 154 qualifies under NGPA section 104 as replacement/recompletion gas and 1973/1974 biennium gas. The gas from the Lower Vacherie Field qualifies under NGPA section 104 as replacement/recompletion gas. Applicant further states that if abandonment is granted, it intends to provide Transco with take-or-pay relief for any quantities of gas released and sold to third parties. In addition, Applicant states it will, within the limits of any agreement with a third party for the abandoned and released quantities, deliver, upon Transco's request, the daily contract quantity as provided under the current gas purchase contracts.

Any person desiring to be heard or to make any protests with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be

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unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3472 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-275-000 et al.]

Central Illinois Light Co. et al.; Electric Rate and Corporate Regulation Filings

February 10, 1986.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Light Company

[Docket No. ER86-275-000]

Take notice that on January 31, 1986, Central Illinois Light Company (CILCO) tendered for filing an executed transmission agreement with the Illinois Municipal Energy Agency (IMEA) providing for specified transmission service to a designated interconnection point between CILCO and the Village of Chatham, Illinois. CILCO, with the support of IMEA and Chatham, requests waiver of the Commission's notice requirements to permit an effective date of February 1, 1986.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER86-280-000]

Take notice that on February 3, 1986, Florida Power & Light Company (FPL) tendered for filing an Exhibit A to its FERC Electric Tariff, Second Revised Volume No. 1, for a new delivery point for service to Seminole Electric Cooperative, Inc. ("Ellenton").

FPL requests an effective date of January 14, 1986, which corresponds to the commencement of service to the Ellenton delivery point, and therefore requests waiver of the Commission's notice requirements.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Central and South West Services, Inc.

[Docket No. ER86-277-000]

Take notice that on January 31, 1986, Central and South West Services, Inc. ("CSWS"), on behalf of the four Central and South West Corporation operating companies, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company, tendered for filing an Internal Transmission Loss Compensation Procedure and a Transaction Cost Compensation Procedure for the Central and South West System. The Internal Transmission Loss Compensation Procedure establishes a method for allocating responsibility to internal transmission losses resulting from energy transfers among the four Operating Companies. The Transaction Cost Compensation Procedure establishes a method for allocating among the four Operating Companies transmission service charges by non-CSW entities. CSWS requests that the Transaction Cost Compensation Procedure be made effective as of December 14, 1984 and that the Internal Loss Compensation Procedure be made effective as of the date of commencement of operations under the CSW Energy Management System. Accordingly, CSWS requests waiver of the notice requirements under the Federal Power Act.

Copies of the filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utilities Commission of Texas. Copies of the filing are also available for inspection in the main office and the division offices of each of the CSW operating subsidiaries.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Georgia Power Company, Oglethorpe Power Corporation v. Georgia Power Company

[Docket Nos. ER85-659-001 and ER85-660-001, Docket No. EL85-40-001 (Consolidated Dockets)]

Take notice that Georgia Power Company ("Georgia Power"), on February 4, 1986, tendered for filing proposed changes in its FERC Electric Tariff, Original Volumes No. 1 (full requirements service) and No. 2 (partial requirements service). The proposed changes would reduce revenues from partial requirements service by approximately $4,104,000 and reduce revenues from full requirements service by approximately $10,000, for the twelve-month period ending July 31, 1986. This reduction in revenues results from the Company's voluntary removal from rate base of CWIP attributable to its Rocky Mountain hydroelectric project.

The Company requests that it be permitted to substitute the tendered rates for its suspended PR-8 and FR-5 rates which will become effective, subject to refund, on March 1, 1986, pursuant to Commission order of September 30, 1986 in these consolidated dockets. Accordingly, the Company requests waiver of the Commission's notice requirements so that the reduced rates may become effective March 1, 1986.

Georgia Power states that copies of the filing were served upon all of its jurisdictional customers.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Electric Company

[Docket No. ER86-72-000]

Take notice that on January 31, 1986 El Paso Electric Company ("EPE" or "the Company") requested the Commission to extend a previously granted waiver of the fuel adjustment clause regulations. The relief sought and the basis for that relief are as follows:

On October 28, 1985, EPE tendered for filing revisions to its fuel adjustment clause to defer the pass-through of fuel cost savings from generation of test power by treating such savings as a reduction in plant investment rather than as a reduction in current fuel costs, in accordance with Commission policy. The Company requested waiver of the fuel clause regulations to permit the deferral.

The Company also requested waiver of the 60 day notice requirement in order to permit the filing to become effective on June 10, 1985 when the Palo Verde No. 1 unit began test generation.

The Company's wholesale customers filed petitions to intervene and one customer, Imperial Irrigation District, opposed the Company's request for waiver of the 60 day notice requiremet. On December 27, 1985 the Commission accepted the filing, granted waiver of the fuel clause regulations but denied waiver of the notice requirement. As a result the filing was not allowed to become effective until December 29, 1985, two days after Palo Verde No. 1 had already entered commercial service. EPE has refunded with interest amounts collected under the filing for the period when that unit was generating test energy.

Proceedings have nonetheless commenced in Docket No. ER86-72-000 on the lawfulness of the Company's filing. A prehearing conference has been held before Presiding Administrative Law Judge Zimmet and the Staff and intervenors have served discovery requests on the Company. The Company is proceeding to answer these requests on the assumption that, while the filing will not be applied to Palo Verde No. 1, all issues concerning test power can be resolved in Docket No. ER86-72-000 as to Palo Verde Nos. 2 and 3, which are expected to begin generating test energy in April 1986 and in the third quarter of

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1987, respectively. The intervenors have informally expressed support for a single resolution here of all Palo Verde test power issues. The parties are working under a schedule which requires them to settle any such issues or sumbit a proposed procedural schedule to Judge Zimmet by February 21, 1986.

The revisions to the fuel adjustment clause as accepted for filing on December 27, 1985 are cast in broad enough terms to permit deferral of fuel cost savings from any test generation regardless of source and thus apply their terms to Palo Verde Nos. 1 and 2. However, the request for waiver of the fuel clause regulations was related to test generation at the Palo Verde No. 1 unit and does not by its terms extend to the other two units.

The Company therefore needs to have the waiver extended in order to apply the rate schedule revisions now in effect during the periods of test generation at Palo Verde Nos. 2 and 3. The Company requests that the extension of the waiver requested here be made effective 60 days from today, on April 1, 1986. The Company understands that, pursuant to the Commission's order of December 27, 1985, the amounts collected under the rate schedule revisions accepted in that order will be subject to refund pending a final resolution of the case.

The Company has served copies of this letter on all of its wholesale customers who would be affected by the waiver, on counsel for all parties in Docket No. ER86-72-000 and on the Public Utility Commission of Texas and the New Mexico Public Service Commission.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this document.

6. Kansas City Power & Light Company

[Docket No. ER86-273-000]

Take notice that on January 31, 1986, Kansas City Power & Light Company (KCPL) tendered for filing with the Commission proposed changes in Service Schedules for Firm Power Service to supersede and replace Service Schedules for Firm Power Service in contracts and agreements with the following wholesale customers:

1. City of Marshall, Missouri (Marshall), FPC No. 83
2. Missouri Public Service Company (MPS), FPC No. 74
3. City of Gardner, Kansas (Gardner), FPC No. 79
4. City of Higginsville, Missouri (Higginsville), FERC No. 91
5. City of Pomona, Kansas (Pomona), FPC No. 82
6. City of Prescott, Kansas, (Prescott), FPC No. 76
7. City of Salisbury, Missouri (Salisbury), FERC No. 100
8. City of Slater, Missouri (Slater), FERC No. 97
9. City of Baldwin City, Kansas (Baldwin), FERC No. 85
10. City of Carrollton, Missouri (Carrollton), FERC No. 86
11. City of Garnett, Kansas (Garnett), FPC No. 78
12. City of Osawatomie, Kansas (Osawatomie), FPC No. 77
13. City of Ottawa, Kansas (Ottawa), FERC No. 90
14. Kansas Electric Power Cooperative, Inc.—Coffey County (KEPCo-Coffey), FPC No. 69
15. Kansas Electric Power Cooperative, Inc.—United (KEPCo-United), FPC No. 84

The proposed changes would increase revenues from jurisdictional sales and service by $971,331 based on the 12 month period ending September 30, 1985.

KCPL states that its proposed changes are necessary to reflect the costs of the Wolf Creek Generating Station in rates and to reflect continuing escalation of all its costs to provide service.

Copies of the filing were served upon KCPL's jurisdictional customers, as well as the Missouri Public Service Commission and the State Corporation Commission of the State of Kansas.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

7. Minnesota Power & Light Company

[Docket No. ER86-251-000]

Take notice that on January 10, 1986, Minnesota Power & Light Company tendered for filing an Energy Sales Agreement between Minnesota Power & Light Company (Minnesota Power) and Wisconsin Public Power, Inc. SYSTEM (WPPI). Under this Agreement, Minnesota Power may sell electric energy to WPPI from time to time when Minnesota Power has energy available to sell to other utilities and when purchases of such energy are advantageous to WPPI. This Agreement provides for energy sales from January 1, 1986 to December 30, 1986, subject to annual renewals unless cancelled by either party.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Power & Light Company, an assumed business name of PacifiCorp.

[Docket No. ER86-279-000]

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on February 3, 1986, tendered for filing, in accordance with Section 35.12 of the Commission's Regulation's, Power Sales Contract dated December 31, 1985, between Pacific and Southern California Edison Company (SCE).

Pacific requests waiver of the Commission's Notice requirements to permit this rate schedlue to become effective January 1, 1986, which it claims is the date of commencement of service.

Copies of this filing were supplied to the Public Utilities Commission of the State of California and SCE.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this document.

9. Pacific Power & Light Company, an assumed business name of PacifiCorp

[Docket No. ER86-284-000]

Take Notice that on February 3, 1986, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing, in accordance with Section 35.12 of the Commission's Regulations, an Agreement dated September 5, 1985, between Pacific and Public Utility District No. 1 of Snohomish County (Snohomish), providing for the storage of Snohomish-owned energy in Pacific's system.

Pacific requests this rate schedule to become effective September 5, 1985, which it claims is the date of commencement of service.

Copies of the filing were supplied to the Washington Utilities and Transportation Commission and to Snohomish.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

10. Pennsylvania Power & Light Company

[Docket No. ER86-283-000]

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on February 5, 1986 on executed Transmission Service Agreement with Westwood Energy Properties Limited Partnership as presently on file with the Commission as Rate Schedule FERC No. 89. PP&L had previously submitted an unexecuted agreement which was accepted by the Commission by letter order dated November 20, 1985 in Docket No. ER86-86-000. The instant filing is intended solely to substitute an executed agreement for the unexecuted agreement on file with the Commission.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER86-278-000]

Take notice that on February 3, 1986, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during December of 1985, along with a cost justification for the rates charged.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commissioner.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

12. San Diego Gas & Electric Company

[Docket No. ER86-276-000]

Take notice that on January 31, 1986, San Diego Gas & Electric Company ("SDG&E") tendered for filing Amendment No. 1 of the San Diego-Edison Firm Transmission Service Agreement between San Diego Gas & Electric Company and Southern California Edison Company (Edison).

Under the terms of the Amendment, the amount of firm transmission will be increased from 28 MW to 56 MW for the first three months of the Agreement and a total of 70 MW seven months thereafter.

SDG&E has requested an effective date of on or before March 1, 1986.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

13. Southern California Edison Company

[Docket No. ER86-274-000]

Take notice that, on January 31, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of change of rates for the Amendment of the Service Agreement between Arizona Public Service Company ("APS") and Edison to delete reference to the discontinued Castle Rock delivery point under the provisions of the following rate schedule:

	Rate Schedule FERC No.
Arizona Public Service Company	180.2

Edison requests, to the extent necessary, Waiver of Notice requirements.

Copies of tis filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

14. Utah Power & Light Company

[Docket No. ER86-282-000]

Take notice that Utah Power & Light Company on February 3, 1986, tendered for filing a Notice of Cancellation of the agreement with the City of Manti, Utah for the purchase of wholesale power and energy and also filed a change in its Rate Schedule RS-PR. The proposed change in Rate Schedule RS-PR makes changes necessary to provide for the continued service of wholesale power and energy to the City of Manti, Utah pursuant to that Rate Schedule. The rates of all partial requirements purchasers, including Manti, will not be affected by this change in the Rate Schedule.

Copies of the filing were served upon the City of Manti, Utah, legal counsel for the City of Manti, Utah, and the Utah Public Service Commission.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this document.

14. Pacific Gas and Electric Company

[Docket No. ER86-272-000]

Take notice that on January 31, 1986, Pacific Gas and Electric Company [PGandE] gave notice, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations under the Federal Power Act, of an increase in the level of rates and charges for certain electric transmission and distribution services rendered to the Western Area Power Administration (WAPA) pursuant to Schedule Nos. 79 and 63 on file with the Commission.

PGandE tendered for filing and acceptance, as part of its FPC Electric Tariff, the revised tariff sheets listed below.

1. PGandE's FPC Electric Tariff, Rate Schedule No. 79, proposed Supplement 19 superseding Supplement No. 18 (Original Volume No. 4 proposed fourth Revised Sheets Nos. *60* and *61* superseding third Revised Sheets Nos. *60* and *61*), for WAPA transmission and distribution wheeling service under Contract No. 14-06-200-2948A.

2. PGandE's FPC Electric Tariff, Rate Schedule No. 63, proposed Supplement No. 4 superseding Supplement No. 3 (Original Volume No. 4 proposed third Revised Sheet No. 206 superseding second Revised Sheet No. 206) for WAPA transmission service to Delta Pumping Plant under Contract No. DE-AC65-80WP5900.

The proposed effective date for the tariff sheets is April 1, 1986, 60 days from the date of this filing.

The proposed rates represent a $5.2 million or 36.5 percent increase in revenue on an annualized basis over the level provided by present rates.

The filing affects rates to WAPA for transmission and distribution wheeling service under Contract No. 14-06-200-2948A dated July 31, 1967 filed with this Commission as Original Volume No. 4 and Contract No. DE-AC65-80WP5900, filed with this Commission as Rate Schedule No. 63. Article 32 of Contract No. 14-06-200-2948A provides that charges for wheeling services provided by PGandE to WAPA may be jointly reviewed by the parties to the contract and adjusted, as appropriate, on April 1, 1971 and every five years thereafter. Article 32 further provides that if the parties are unable to agree on a change of any rate or charge, the matter shall be submitted to this Commission for final decision.

PGandE's principal reason for filing the proposed change in rate for which notice is given herein is to assure that adequate revenues and returns for the costs of providing transmission and distribution service to WAPA will be collected by PGandE.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3479 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 2558-006, et al.]

Hydroelectric Applications (Vermont Marble Co. et al.)

Take notice that the hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Amendment of License.
b. Project No.: 2558-006.
c. Date Filed: November 22, 1985.
d. Applicant: Vermont Marble Company.
e. Name of Project: Proctor Beldens Huntington.
f. Location: Otter Creek, Addison and Rutland Counties, Vermont.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. David L. Ferris, Vermont Marble Company, 61 Main Street, Proctor, Vermont 05765.
i. Comment Date: March 16, 1986.
j. Description of Project: The Proctor Beldens Huntington Project No. 2558 as licensed consists of, in part, an existing dam, intake and powerhouse known as the Beldens Station and an existing dam, intake, and powerhouse known as the Huntington Falls Station. The proposed project would consist of; (1) A new 35-foot-long, 35-foot-wide concrete intake structure; (2) a new 95-foot-long, 6-foot-wide sluiceway; (3) a new 45-foot-long, 12-foot-diameter penstock; (4) a new 40-foot-wide, 75-foot-long concrete powerhouse enclosing a new 4.1–MW turbine/generator, and (5) a new tailrace channel excavation 35 feet wide and 120 feet long; all at the Beldens Station. The proposed project would also consist of (1) a new concrete intake structure 40 feet long and 26 feet wide; (2) a new 75-foot-long, 12-foot-diameter penstock; (3) a new concrete powerhouse 40 feet wide and 75 feet long, enclosing a new 4.1–MW turbine/generator; and (4) a new tailrace channel excavation 50 feet wide and 120 feet long; all at the Huntington Falls Station. The net hydraulic head at both sites is 42 feet. The estimated increase in annual generation is 23.140,000 kWh. The Applicant states that no changes in impoundment size or elevation will be made at either site. The existing dams and facilities are owned by Vermont Marble Company.
k. Purpose of Project; Project energy will be used by Vermont Marble Company or sold to Vermont Power Exchange, Inc.
l. This notice also consists of the following standard paragraphs: B, C, D1.
2 a. Type of Application: Preliminary Permit.
b. Project No.: 9670–000.
c. Date Filed: December 3, 1985.
d. Applicant: Lake Placid Village, Inc.
e. Name of Project: North Elba.
f. Location: On the Chubb River in Essex County, NY.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Robert J. Peacock, Mayor, Lake Placid Village, Inc., 301 Main Street, Lake Placid, NY 12946, Phone (518) 523–2597.
i. Comment Date: March 28, 1986.
j. Description of Project: The proposed project would consist of: (1) An existing concrete dam 24 feet in height and 136 feet in length, with an existing intake structure on the north abutment; (2) an existing reservoir with surface area of nine acres at a normal maximum surface elevation of 1706 feet mean sea level; (3) an existing steel penstock 800 feet in length, 66 inches in diameter, and requiring repair; (4) an existing steel surge tank, 15 feet in diameter and 40 feet in height; (5) an existing concrete powerhouse 40 feet long, 30 feet wide and 12 feet high to house a proposed turbine/generator unit or units with total proposed capacity of 265-kW at a net hydraulic head of 33 feet; (6) an existing concrete tailrace 20 feet long, 12 feet wide and 2 feet deep; (7) a proposed transmission line, either 115 kV and 1 mile in length or 4.16 kV and 100 feet in length; (8) a proposed electrical switchyard; and (7) appurtenant facilities.
The estimated annual power production is 880,000 kWh. Project power will be sold to Niagara Mohawk Power Corporation or will be supplied to the Lake Placid Village municipal system. Lake Placid Village, Inc. is the owner of the dam.
k. Proposed scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit wold be $50,000.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
3 a. Type of Application: Preliminary Permit.
b. Project No.: 9502–000.
c. Date Filed: October 1, 1985.
d. Applicant: Shell Creek Developers.
e. Name of Project: Shell Creek.
f. Location: On Shell Creek in Big Horn County, Wyoming within the Bighorn National Forest.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. Contact Person: Mr. Louis Rosenman, Attorney at Law, 1350 New York Avenue, #600, Washington, D.C. 20005, (202) 783–1200.
i. Comment Date: March 31, 1986.
j. Description of Project: The proposed project would consist of: (1) A 2-foot-high, 60-foot-long, concrete diversion structure at elevation 5,640 feet; (2) a 36-inch-diameter, 10,000-foot-long steel penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 12,000 kW, producing an estimated average annual energy output of 24.0 GWh; (4) a 10-foot-wide, 20-foot-long concrete tailrace; and (5) a 1,200-foot-long, 35-kV transmission line tying into an existing Montana-Dakota Utility line.
A preliminary permit, if issued does not authorize construction. The Applicant seeks a permit to study the feasibility of constructing and operating the project. No new access road will be needed for the purpose of conducting these studies. The estimated cost for conducting these studies is $145,000.
k. Purpose of Project: Project power would be sold to Montana-Dakota Utility Company.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
4 a. Type of Application: Preliminary Permit.
4 b. Project No.: 9624–000.
c. Date Filed: November 18, 1985.
d. Applicant: Amador County Water Agency.
e. Name of Project: Middle Bar.
f. Location: On Mokelumne River, near Jackson, within U.S. lands administered by Bureau of Land Management, in Amador and Calaveras Counties, California (In Sections 1, 2, 10, 11, 12, 14, 15 and 16 of T5N, R11E, Sections 5 and 6 of T5N, R12E, and Section 32 of T6N, R12E, M.D.B.&M.)
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Thomas F. Bailey, President of the Board of Directors, Amador County Water Agency, P.O. Box 905, Jackson, CA 95642, (209) 223–3018.
i. Comment Date: March 28, 1986.
j. Description of Project: The proposed storage-type project would consist of: (1) A 190-foot-high, 360-foot-long concrete gravity dam located across Mokelumne River at elevation 660 feet msl; (2) a 560-acre reservoir with a storage capacity of 24,000 acre-feet; (3) a powerhouse,

located at the base of the dam, operating under a head of 101 feet and with a total installed capacity of 15 MW; and (4) a 230-kv, 3-mile-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line south of the powerhouse. The project's estimated average annual generation of 56 GWh would be sold to PG&E and/or other utilities.
A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be between $350,000 and $500,000.
k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
5 a. Type of Application: Preliminary Permit.
b. Project No.: 9601–000.
c. Date Filed: November 1, 1985.
d. Applicant: Hydra-Tek, Inc.
e. Name of Project: Boulder Rapids Power Project.
f. Location: On the Snake River near the town of Buhl in Gooding and Twin Falls Counties, Idaho.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, NW, Suite 600, Washington, DC 20005.
i. Comment Date: March 28, 1986.
j. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam at elevation 2,976 feet; (2) a 1,100-foot-long concrete lined power canal; (3) a powerhouse containing two generating units with a total rated capacity of 6,600 kW; and (4) a 1-mile-long transmission line. Applicant estimates the average annual energy production to be 37 GWh.
A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $110,000. No new roads would be constructed or drilling conducted during the feasibility study.
k. Purpose of Project: The proposed power is to be sold to Idaho Power Company.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
6 a. Type of Application: Preliminary Permit.
b. Project No.: 9469–000.
c. Date Filed: September 19, 1985.
d. Applicant: Connecticut River Hydro Partners.
e. Name of Project: Chase Island.
f. Location: On the Connecticut River in Windsor County, VT and Sullivan County, NH.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, NW #600, Washington, DC 20005, Phone (202) 457–7500.
i. Comment Date: March 31, 1986.
j. Description of Project: The proposed project would consist of: (1) An existing timber and concrete gravity dam 1500 feet in length and 24 feet in height; (2) an existing impoundment with surface area of 1,442 acres and a storage capacity of 14,420 acre-feet at a normal maximum surface elevation of 30 feet mean sea level; (3) a proposed steel penstock 15 feet in diameter and 60 feet in length; (4) a proposed cinderblock powerhouse 125 feet long and 125 feet wide, housing a proposed 18.3 MW capacity turbine/generator exhausting to a proposed concrete tailrace 180 feet in length, 25 feet in depth, and 50 feet in width; (5) a proposed 64.5 kV transmission line 500 feet in length; and (6) appurtenant facilities. The estimated annual power production is 109,000,000 kWh. Project power would be sold to the Public Service Company of New Hampshire. The net hydraulic head is 20 feet. The dam is owned by Chase Island, Inc., P.O. Box 1011, Portsmith, NH 03801.
k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $145,000.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
7 a. Type of Application: Preliminary Permit.
b. Project No.: 9531–000.
c. Date Filed: October 9, 1985.
d. Applicant: Pennsylvania Environmental Resource Partners.
e. Name of Project: Plymouth Dam.
f. Location: On the Schuylkill River in Montgomery and Chester Counties, Pennsylvania.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§791(a)–825(r).
h. Contact Person: Louis Rosenman, 1350 New York Avenue, NW #600, Washington, DC 20005.
i. Comment Date: March 28, 1986.
j. Description of Project: The proposed project would consist of: (1) The existing 8.2-foot-high and 530-foot-long gravity and timber crib Plymouth Dam owned by the Pennsylvania Department of Environmental Resources; (2) a reservoir with a surface area of 500 acres; (3) a new intake structure at the west side of the dam; (4) a new 10-foot-diameter and 50-foot-long steel penstock; (5) a new powerhouse with 1 turbine-generator unit with an installed capacity of 1,600 kW; (6) a new 12-kV and 150-foot-long transmission line; and (7) other appurtenances. Applicant estimates an average annual generation of 7,000,000 kWh.
k. Purpose of Project: Project energy would be sold to Philadelphia Electric Power.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.
m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $50,000.
8 a. Type of Application: Preliminary Permit.
b. Project No.: 9427–000.
c. Date Filed: September 4, 1985.
d. Applicant: Sunbury Hydro Partnership.
e. Name of Project: Sunbury Dam.
f. Location: Susquehanna River, Snyder County, Pennsylvania.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).
h. Contact Person: Louis Rosenman, 1350 New York Avenue, NW., Suite 600, Washington, DC 20005.
i. Comment Date: March 28, 1986.
j. Description of Project: The proposed project would consist of:

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(1) An existing 8-foot-high and 2,000-foot-long fabridam/masonry gravity dam;

(2) An existing reservoir 3,000 acres in area, with a storage capacity of 14,000 acre-feet at a normal maximum surface elevation of 428 feet mean sea level;

(3) A proposed cinderblock powerhouse 85 feet in width and 450 feet in length, housing one turbine/generator unit with a capacity of 14,200 kW;

(4) A proposed concrete tailrace 180 feet in length, 9 feet in depth, and 350 feet in width;

(5) A proposed 66 kV transmission line 400 feet in length; and

(6) Appurtenant facilities.

The estimated annual energy production of the project is 74,635,000 kWh. The net hydraulic head is 8 feet. Project power would be sold to Pennsylvania Power and Light Company.

The dam is owned by the City of Sunbury, Pennsylvania.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $145,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

a. Type of Application: Preliminary Permit.

b. Project No.: 9676–000.

c. Date Filed: December 9, 1985.

d. Applicant: Mr. David Davison.

e. Name of Project: Galloway Ridge.

f. Location: On unnamed tributary (in Hungry Mouth Canyon) to North Yuba River, near Downieville, partly within the Tahoe National Forest, in Sierrra County, California (In Section 35 of T2ON, RIOE, M.D.B. & M.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. David K. Davison, P.O. Box 5357, Hopkins, MN 55343–2357.

i. Comment Date: March 28, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A modification, to accomodate the pipeline intake, of the existing 9-foot-high, 22-foot-long wood-lined reinforced concrete diversion structure located across an unnamed tributary at elevation 3,270 feet msl; (2) a 14-inch diameter, 2,700-foot-long pipeline and 800–foot-long penstock; (3) a powerhouse containing one turbine-generator unit with a rated capacity of 100 kW, operating under a head of 350 feet; and (4) a 300-foot-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) 12-kV transmission line located across North Yuba River. The project's estimated average annual generation of 269,000 kWh would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $6,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

a. Type of Application: Major License.

b. Project No: 5264–002.

c. Date Filed: March 11, 1985.

d. Applicant: L. Maurice Baker.

e. Name of Project: Stone Creek/ Shellrock Creek.

f. Location: On Stone Creek, Shellrock Creek, and the Oak Grove Fork of the Clackamas River, tributary to the Williamette river, in Clackamas County, Oregon, and affecting U.S. lands within the Mt. Hood National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jay R. Bingham, 165 Wright Brothers Drive, Salt Lake City, UT 84116.

i. Comment Date: March 28, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) The Stone Creek Development comprising: (a) A 300-foot-long, 12-foot-high diversion structure having spillway crest elevation 3,037.0 feet msl; (b) a screened, gated intake structure and a fish ladder; (c) a 350-foot-long, 8-foot-high earthen dike surmounted by an access road; (d) a 24,350-foot-long, buried steel penstock varying in size from 78-inch-diameter to 66-inch-diameter; (e) a powerhouse containing a generating unit rated at 12,000-kW operated at a net head of 602 feet and at a flow of 250 cfs; (f) a 300-foot-long powerhouse access road; (g) a tailrace; (h) a substation; and (i) a 1.7-mile-long, 115-kv transmission line; (2) the Shellrock Creek Development comprising: (a) an 80-foot-long, 6-foot-high diversion structure having spillway crest elevation 2,674.0 feet msl; (b) a screened, gated intake structure and a fish ladder; (c) an access road to the diversion; (d) an 18,100-foot-long buried steel penstock varying in size from 42-inch-diameter to 36-inch-diameter; (e) a powerhouse containing a generating unit rated at 2,750-kW operated at a net head of 622 feet and at a flow of 60 cfs; (f) a tailrace; (g) a substation; and (h) a 0.2 mile-long, 115-kV transmission line; and (3) a 2.7-mile-long, 115-kv transmission line and an upgraded 7-mile-long, 115-kV transmission line connecting to the Portland General Electric Three Lynx Substation. The average annual energy generation is estimated to be 83.56 million kWh. Applicant estimates that the total project construction cost in 1985 would be $16,239.700. Project energy would be sold to Portland General Electric. The application was filed during the term of Applicant's preliminary permits.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9572–000.

c. Date Filed: November 1, 1985.

d. Applicant: Skookumchuck Creek Associates.

e. Name of Project: Skookumchuck Creek.

f. Location: On the North Fork Skookumchuck Creek near the town of Riggins, Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan Walker, Great Western Power & Light, Inc., 484 East 300 North, Manti, UT 84642.

i. Comment Date: March 28, 1986.

j. Description of Project: The proposed project would consist of: (1) A 2-foot-high diversion dam at elevation 3,260 feet; (2) an 18,000-foot-long penstock; (3) a powerhouse containing one generating unit with a rated capacity of 4,278 kW; and (4) a 3-mile-long transmission line. Applicant estimates the average annual energy production to be 7,402 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $12,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9675–000.

c. Date Filed: December 9, 1985.

d. Applicant: Idaho City Associates.

e. Name of Project: North Fork Boise River.

f. Location: On the North Fork Boise River in the Boise National Forest near Idaho City, in Boise and Elmore Counties, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, #600, Washington, D.C. 20005.

i. Comment Date: March 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high diversion dam at elevation 5,350 feet; (2) a 20,500-foot-long penstock; (3) a powerhouse containing one generating unit with a rated capacity of 10,000 kW; and (4) a 250-foot-long transmission line. Applicant estimates the average annual energy production to be 30 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $145,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The power produced is proposed to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9693–00.

c. Date Filed: December 19, 1985.

d. Applicant: Birch Power Company, Inc.

e. Name of Project: Challis Canal.

f. Location: On the Salmon River at the Challis Canal near Challis, Custer County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) – 825(r).

h. Contact Person: Mr. Ted S. Sorenson, 550 Linden Drive, Idaho Falls, ID 83401.

i. Comment Date: March 27, 1986.

j. Description of Project: The proposed project would consist of : (1) An existing 3-foot-high diversion dam at elevation 5,640 feet; (2) a 1,900-foot-long, 60-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 1,600-kW; and (4) a 2-mile-long transmission line. Applicant estimates the average annual energy production to be 11.5 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $45,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to Utah Power & Light.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

14 a. Type of 'Application: Preliminary Permit.

b. Project No.: 9674–000.

c. Date Filed: December 9, 1985.

d. Applicant: Nettle Creek Hydropower Corporation.

e. Name of Project: Nettle Creek.

f. Location: On Nettle Creek, a tributary to the Crystal River, near Carbondale, in Pitkin County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) – 825(r).

h. Contact Person: Mr. Gerald E. Bergmann, Nettle Creek Hydropower Corporation, Suite 205, Village Plaza, Glenwood Springs, CO 81601, (303) 945–8676.

i. Comment Date: March 31, 1986.

j. Description of Project: The proposed project would utilize the Town of Carbondale's spring fed municipal water system and would consist of : (1) An existing 10-inch-diameter, 2,500-foot-long pipeline/penstock; (2) a 12-foot by 12-foot powerhouse located at elevation 6,870 feet msl, just above an existing water treatment plant backwash storage tank, containing a single Pelton turbine-generator unit with an installed capacity of 60 kW and producing an estimated average annual generation of 0.3 GWh; (3) a 10-inch-diameter tailrace pipeline conveying water to the backwash tank; (4) a 400-foot-long, 14.4-kV transmission line interconnecting the project to an existing Holy Cross Electric Association line. Project power would be sold to either the Colorado-Ute Electric Association or the Public Service Company of Colorado. The project would be partially located on White River National Forest lands.

A preliminary permit, if issued, does not authorize construction. Applicant seeks to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $10,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9541–000.

c. Date Filed: October 11, 1985.

d. Applicant: Geoffrey Shadroui.

e. Name of Project: Fair Haven.

f. Location: On the Castleton River in Rutland County, Vermont.

g. File Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Geoffrey Shadroui, 121 Maple Avenue, Barre, VT 05641, Phone (802) 476–7598.

i. Comment Date: May 28, 1986.

j. Description of Project: The proposed project would consist of: (1) Two existing masonry gravity dams, known as the Depot Street site and the Adams Street site; the former 75 feet in length and six feet in height, the latter 60 feet in length and nine feet in height; (2) two existing reservoirs: at Depot Street, one acre in surface area, having no storage capacity at a normal maximum surface elevation of 353 feet mean sea level; at Adams Street, ¾ acre in surface area, having no storage capacity at a normal maximum surface elevation of 310 feet mean sea level; (3) an existing stone and concrete intake structure at Adams Street, 16 feet in length, 10 feet in height, and 15 feet in width; (4) a proposed concrete intake structure at Depot Street, 10 feet in height, 6 feet in width, and 5 feet in depth; (5) two proposed concrete powerhouses: at Depot Street, 20 feet in height, 25 feet in width, and 15 feet in length, and housing two proposed turbine/generators of 150 kW and 70 kW capacity; at Adams Street, 20 feet in height, 12 feet in width, and 20 feet in length and housing one proposed turbine/generator of 110 kW capacity; (6) two proposed 5-foot-diameter steel penstocks; at Depot Street, 60 feet in length; at Adams Street, 100 feet in length; (7) two proposed excavated tailraces; at Depot Street, 15 feet in length and 10 feet in width; at Adams Street, 5 feet in length and 6 feet in width; (8) two proposed 480 volt, 100-foot-long transmission lines, one at each site; and (9) appurtenant facilities. The net hydraulic head is 22 feet at the Depot Street site and 10 feet at the Adams Street site. The estimated annual energy production is 1,115,000 kWh. Project power would be sold to the Vermont Power Exchange. The existing

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dams are owned by the Town of Fair Haven, Vermont.

k. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $10,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9534–000.

c. Date Filed: October 9, 1985.

d. Applicant: Big Sky Hydro Limited Partnership.

e. Name of Project: Willow Creek.

f. Location: On the Willow Creek at the State of Montana owned Willow Creek Dam near Harrison, Madison County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Mr. Archie R. Ford, P.O. Box 1940, Orofino, ID 83544.

i. Comment Date: March 26, 1986.

j. Description of Project: The proposed project would involve constructing a 316-kW powerplant at the existing Willow Creek Dam. The proposed project would consist of: (1) An existing 105-foot high dam; (2) an 885-acre reservoir with a storage capacity of 18,000 acre-feet at normal water surface elevation 4,736 feet; (3) a 640-foot-long, 30-inch-diameter penstock; (4) a powerhouse containing two generating units with a total rated capacity of 316 kW; and (5) a 1.5-mile-long transmission line. Applicant estimates the average annual energy production to be 1,564,743 KWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $48,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 9561–000.

c. Date Filed: October 28, 1985.

d. Applicant: Old Station Power Company.

e. Name of Project: Old Station No. 1.

f. Location: On Hat Creek, near Old Station, within the Lassen National Forest, in Shasta County, California (In Section 8 of T33N, R5E, M.D.B. & M.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis J. Simpson, 2704 Hartnell Avenue, St. C, Redding, CA 96002, (916) 222–43110.

i. Comment Date: March 28, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 6-foot-high, 60-foot-long natural fill and concrete diversion structure located across Hat Creek at elevation 3,895 feet msl; (2) a 54-inch-diameter, 200-foot-long penstock; (3) a powerhouse containing one or more turbine-generator units with a combined rated capacity of 1500 kW operating under a head of 125 feet; and (4) a 12-kV, 100-foot-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line east of the powerhouse. The project's estimated average annual generation of 7.2 GWh would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $25,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 9537–000.

c. Date Filed: October 9, 1985.

d. Applicant: Big Sky Hydro Limited Partnership.

e. Name of Project: Ruby Dam.

f. Location: On the Ruby River at the State of Montana owned Ruby Dam near Alder, Madison County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Archie R. Ford, P.O. Box 1940, Orofino, ID 83544.

i. Comment Date: March 26, 1986.

j. Description of Project: The project involves constructing a powerplant at the existing Ruby Dam. The proposed project would consist of: (1) An existing 111-foot-high dam; (2) a 970-acre reservoir with a storage capacity of 38,850 acre-feet at normal water surface elevation 5,392 feet; (3) a 750-foot-long, 54-inch-diameter penstock; (4) a powerhouse containing two generating units with a total capacity of 896 kW; and (5) a 0.5-mile transmission line. Applicant estimates the average annual energy production to be 5,362 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $52,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 9219–000.

c. Date Filed: May 22, 1985.

d. Applicant: Tehama Power Authority.

e. Name of Project: Dippingvat.

f. Location: On South Fork Cottonwood Creek and Red Bank Creek, near Cottonwood, partially within lands administered by the Bureau of Land Management, in Tehama County, California (In Section 31 of T27N, R6W, and Sections 16 & 18 of T26N, R6W, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence A. Coleman, Engineer/Administrator, Tehama Power Authority, 9380 San Benito Avenue, Gerber, CA 96035 (916) 385–1462.

i. Comment Date: March 27, 1986.

j. Description of Project: The proposed project would consist of: (1) A 210-foot-high, 750-foot-long zoned earthfill dam (Dippingvat Dam) at elevation 1,183 feet msl; (2) a 280-foot-high, 800-foot-long zoned earthfill dam (Schoenfield Dam) at elevation 990 feet msl; (3) a concrete diversion structure at elevation 1,183 feet msl; (4) a reservoir (Dippingvat) with a storage capacity of 71,000 acre-feet and a surface area of 1,000 acres; (5) a reservoir (Schoenfield) with a storage capacity of 170,000 acre-feet and a surface area of 2,400 acres; (6) a 6-foot-diameter, 580-foot-long penstock (Dippingvat); (7) an 8.5-foot-diameter, 600-foot-long penstock (Schoenfield); (8) a 10-foot-diameter, 9,000-foot-long diversion conduit connecting the two dams; (9) a powerhouse (Dippingvat) containing a single turbine-generator unit with a rated capacity of 5,000 kW and operating under a head of 250 feet; (10) a powerhouse (Schoenfield) containing a single turbine-generator unit with a rated capacity of 15,000 kW and operating under a head of 300 feet; (11) a powerhouse (diversion) containing a single turbine-generator unit with a rated capacity of 4,000 kW and operating under a head of 70 feet; and (12) 21.75 miles of 69-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line. The project's estimated average annual generation of 53 GWh would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $200,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 9218–000.

c. Date Filed: May 22, 1985.

d. Applicant: Tehama Power Authority.

e. Name of Project: Fiddlers.

f. Location: On Middle Fork Cottonwood Creek, near Cottonwood, in Shasta and Tehama Counties, California (In Section 28 of T29N, R7W, M.D.M.&B.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence A. Coleman, Engineer/Administrator, Tehama Power Authority, 9380 San Benito Avenue, Gerber, CA 96035 (916) 385–1462.

i. Comment Date: March 27, 1986.

j. Description of Project: The proposed project would consist of: (1) A 350-foot-high, 3,500-foot-long zoned earthfill dam at elevation 1,100 feet msl; (2) a reservoir with a storage capacity of 545,000 acre-feet and a surface area of 5,500 acres; (3) an 8-foot-diameter, 2,250-foot-long penstock; (4) a powerhouse containing a single turbine-generator unit with a rated capacity of 20,000 kW and operating under a head of 350 feet; and (5) a 69-kV, 15.5-mile-long transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) line. The project's estimated average annual generation of 70 GWh would be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be $200,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 9532–000.

c. Date Filed: October 9, 1985.

d. Applicant: Marseilles Revitalization LTD.

e. Name of Project: Marseilles Lock and Dam.

f. Location: On the Illinois River near Marseilles, La Salle County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, 1350 New York Avenue, NW., #600, Washington, DC 20005.

i. Comment Date: March 27, 1986.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Marseilles Lock and Dam and would consist of: (1) A proposed steel penstock approximately 10 feet in diameter by 50 feet long; (2) a new concrete powerhouse housing a 10,000–kW generator; (3) a proposed concrete tailrace approximately 15 feet deep, 190 feet wide, and 900 feet long; (4) a new 64–kV transmission line approximately 3,450 fet long; and (5) appurtenant facilities. The Applicant estimates that the average annual generation would be 60.0 GWh. All project energy generated would be sold to a local utility.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be 145,000.

22 a. Type of Application: Major License (Over 5 MW).

b. Project No.: 7633–002.

c. Date Filed: December 20, 1984.

d. Applicant: Kenai Hydro Inc.

e. Name of Project: Grant Lake.

f. Location: On Grant Lake in the Borough of Kenai, Alaska near the town of Moose Pass and within the Chugach National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Jonathan M. Hanson, P.O. Box 1776, Lummi Island, WA 98262.

Mr. Richard L. Poole, 1937 Seacrest Drive, Lummi Island, WA 98262.

i. Comment Date: March 28,1986.

j. Description of Project: The proposed project would consist of: (1) Grant Lake with a usable storage capacity of 48,000 acre-feet between the minimum pool at elevation 660 and the maximum pool at elevation 691 feet, and a surface area of 1,650 acres; (2) a submerged lake tap intake structure that consists of a 10-foot-diameter inclined tunnel with an invert at elevation 643 feet, located on the west shore of Lower Grant Lake 900 feet north of the Grant Lakes outlet; (3) a 12-foot-diameter gate shaft and gate house at elevation 715 feet, having a 9-foot by 12-foot slide gate, located 200 feet downstream of the intake; (4) a 9-foot-diameter, 3,200-foot-long horseshoe-shaped tunnel terminating at; (5) the powerhouse adjacent to the east shore of Upper Trail Lake, containing a single vertical Francis turbine-generator unit with an installed capacity of 7,000 kW operating at a net head of 206 feet, producing an estimated average annual energy output of 25.40 GWh; (6) a 640-foot-long tailrace discharging project flows into Upper Trail Lake; (7) a 1.2 mile-long, 115–kV transmission line tying into the proposed 115–kV transmission line from the City of Seward; (8) a-1.2-mile-long access road from Seward-Anchorage Highway to the powerhouse and 1.2 miles of access road from the gate shaft to the recreation area at Grant Lake; (9) a 140-foot-long concrete bridge at the n arrows between Upper and Lower Trail Lakes; (10) a 60-foot-long, timber bridge across Grant creek to the recreation area; (11) a switchyard south of the powerhouse and (12) appurtenant facilities.

The recreation facilities located on the southern end of Grant Lake would

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consist of a picnic area, fireplace, a vault toilet, a boat launch, and a parking lot.

The Applicant proposes to provide the following mitigation facilities, a salmon spawning channel, an egg incubation house and a 10-inch-diameter fish bypass tunnel located in the power tunnel invert.

The estimated cost of the project is $25,578,000, in 1983 dollars.

k. Purpose of Project: Project would be sold to the City of Seward, Alaska.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

23 a. Type of Application: Preliminary Permit.

b. Project No.: 9608–000.

c. Date Filed: November 4, 1985.

d. Applicant: McCallum Hydro Enterprises.

e. Name of Project: Samuel P. Senior Reservoir Dam.

f. Location: On the Saugatuck River in Fairfield County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Donald Szarmach, 805 Housatonic Ave., Bridgeport, Connecticut 06604.

i. Comment Date: March 28, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 100-foot-high and 990-foot-long concrete gravity dam with an existing spillway at elevation 286 feet msl; (2) an existing 868-acre surface area reservoir with a storage capacity of 42,000 acre-feet with a maximum surface elevation of 280 feet msl; (3) six existing 48-inch influent sluice gates which diverts the flow into; (4) an existing 48-inch blow off and 28-inch drain which transports water to; (5) an existing powerhouse to contain one turbine/generator unit with an installed capacity of 100 kW which discharges flows back into the river; (6) a proposed 13.8-kV transmission line; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 414,720 kWh operating under a net hydraulic head of 89 feet. The owner of the dam is Bridgeport Hydraulic Company.

k. Purpose of Project: Project Power will be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard pargraphs: A5, A7, A9, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A Preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $5,600.

24 a. Type of Application: Preliminary Permit.

b. Project No.: 9646–000.

c. Date Filed: November 25, 1985.

d. Applicant: Hunter Creek Hydro Company.

e. Name of Project: Hunter Creek Project.

f. Location: On Hunter Creek in Washoe County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Bill Bertelson, President, Hunter Creek Hydro Company, 335 West First, Reno, NV 89503.

i. Comment Date: March 26, 1986.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 50-foot-long diversion dam at elevation 5,050 feet; (2) a 48-inch-diameter, 3,300-foot-long diversion conduit; (3) a 36-inch-diameter, 350-foot-long penstock; (4) a powerhouse with a total installed capacity of 270 kW; and (5) a 1-mile-long, 12.5-kV transmission line connecting with an existing Sierra Pacific Power Company (SPPC) transmission line. The estimated 855,000 kWh generated by the project would be sold to SPPC.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

k. This notice also consists of the following standard pargraphs: A5, A7, A9, B, C, and D2.

25 a. Type of Application: License (5MW or Less).

b. Project No.: 8361–001.

c. Date Filed: May 6, 1985.

d. Applicant: Olsen Power Project, Inc.

e. Name of Project: Olsen Hydroelectric Project.

f. Location: On Old Cow Creek in Shasta County, California, within U.S. Bureau of Land Management (BLM) land.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred Castagna, Executive Officer, Olsen Power Project, Inc., 2576 Hartnell Avenue, Redding, CA 96002.

i. Comment Date: March 26, 1986.

j. Description of Project: The proposed project would consist of: (1) A 7.5-foot-high diversion dam at elevation 2,381 feet; (2) a 54-inch-diameter, 16,750-foot-long low pressure conduit; (3) a 48-inch-diameter, 2,350-foot-long penstock; (4) a powerhouse containing a single 5,000-kW generating unit operating under a head of 660 feet; and (5) a 2-mile-long, 60-kV transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The estimated 14 million kWh generated by the project would be sold to PG&E. The estimated cost of constructing the project is $6,250,000. No recreational facilities are proposed. The application was filed pursuant to a 24-month preliminary permit issued to the Applicant on January 17, 1985, 30 FERC ¶62,044 (1985).

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

26. a. Type of Application: Preliminary Permit.

b. Project No.: 9536–000.

c. Date Filed: October 9, 1985.

d. Applicant: Tongue River Limited Partnership.

e. Name of Project: Tongue River Hydroelectric Project.

f. Location: On the Tongue River at the State of Montana owned Tongue River Dam near Decker, Big Horn County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Archie R. Ford, P.O. Box 1940, Orofino, ID 83544.

i. Comment Date: March 28, 1986.

j. Description of Project: The proposed project would involve constructing a powerplant at the existing Tongue River Dam. The project would consist of: (1) An existing 91-foot-high dam; (2) a 3,500-acre reservoir with a storage capacity of 69,400 acre-feet at normal water surface elevation 3,424 feet; (3) a 700-foot-long, 78-inch-diameter penstock; (4) a powerhouse containing two generating units with a total capacity of 1335 kW; and (5) a 4.6-mile-long transmission line. Applicant estimates the average annual energy production to be 7,954,237 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $52,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project; The proposed power produced is to be sold to the Montana Power Company.

l. This notice also consists of the following standard paragraphs; A5, A7, A9, B, C, and D2.

27 a. Type of Application: Preliminary Permit.

b. Project No.: 9629–000.

c. Date Filed: November 19, 1985.

d. Applicant: Wilsonville Hydro-Electric, Inc.

e. Name of Project: Wilsonville.

f. Location: On the French River in Windham County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Brooke J. Pennypacker, Hydro-Tech, Inc., P.O. Box 277, South Barre, MA 01074.

i. Comment Date: March 31, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high and 159-foot-long stone masonry dam with a spillway crest elevation of 383 feet msl; (2) an existing 19-acre reservoir with a storage capacity of 50 acre-feet at 383 feet msl; (3) an existing power canal to be rehabilitated; (4) an existing powerhouse to be rehabilitated to contain one turbine generator for an installed capacity of 150 kW; (5) an existing trailrace channel 37 feet wide and 25 foot long: (6) an existing 13.8–kV transmission line approximately 125 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 500,000 kWh under a hydraulic head of 14 feet. The dam is owned by the Belmont Real Estate & Power, Inc.

k. Purpose of Project: Project power will be sold to the Connecticut Light and Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed peliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of work to be performed under the preliminary permit would be $5,200.

28 a. Type of Application: Minor License.

b. Project No.: 8578–001.

c. Date Filed: September 16, 1985.

d. Applicant: Timothy R. Fallon.

e. Name of Project: Lock 27.

f. Location: Erie Canal, Wayne County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Timothy R. Fallon, 3 Maplewood Point, Ithaca, NY 14850, Telephone: (607) 273–2012.

i. Comment Date: March 26, 1986.

j. Description of Project: The project would consist of: (1) An existing concrete gravity dam 23 feet in height and 169 feet in length, equipped with a 33-foot-long uncontrolled spillway and two 20-foot-wide taintor gates, and forming part of the Erie Canal Lock 27 structure; (2) an existing masonry powerhouse foundation, 36 feet in length and 36 feet in width, with integral headgates, open flumes, and tailrace; (3) an existing impoundment with surface area of 82 acres and a capacity of 1250 acre-feet at a normal maximum surface elevation of 399 feet mean sea level; (4) a proposed wood and steel powerhouse, 20 feet in width and 38 feet in length and housing two submersible turbine/generators of 130 kW capacity each, operating at a het hydraulic head of 11 feet; (5) a proposed 4.8–kV transmission line 400 feet in length; and (6) appurtenant facilities. The owner of the existing facilities is the New York State Department of Transportation. The estimated annual power generation is 1.2 million kWh.

k. Purpose of Project: Project power would be sold to the New York State Electric & Gas Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

29 a. Type of Application: License (5MW or Less).

b. Project No.: 7964–001.

c. Dated Filed: May 28, 1985.

d. Applicant: JDJ Energy Company.

e. Name of Project: Dam 3 Spring River.

f. Location: On the Spring River in Fulton County, Arkansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Doyle W. Jones, P.O. Box 225, Jones Mill, AK 72105.

i. Comment Date: March 26, 1986.

j. Description of Project: The Applicant would utilize an existing dam and lands leased to the Kroger Company by the Arkansas Power and Light Company. The proposed project would consist of: (1) An existing 30-foot-high, 504-foot-long concrete dam, the dam is surmounted with spillway gates, approximately 3.9 feet high; (2) an existing reservoir with a surface area 51 acres and a storage capacity of 380 acre feet at powerpool elevation of 476 feet m.s.l.; (3) an existing powerhouse which would contain one generating unit rated at 350-kW; (4) an existing tailrace; (5) two proposed 13,800 volt transmission lines 3300 feet long and 1,200 feet long respectively; and (8) appurtenant facilities. The estimated average annual energy output is 2,500,000 kWh. Power produced at the project would be sold to the Arkansas Power and Light Company.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D1.

30 a. Type of Application: Preliminary Permit.

b. Project No.: 9651–000.

c. Date Filed: November 27, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: James V. Turner Reservoir.

f. Location: Ten Mile River in Providence County, Rhode Island and Bristol County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: March 26, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 18-foot-high, 800-foot-long earth dam; (2) and existing 15-foot-high, 200-foot-long concrete spillway; (3) a reservoir with a surface area of 86 acres, a storage capacity of 400 acre-feet, and a normal water surface elevation of 49 feet m.s.l.; (4) an existing intake gate; (5) an existing masonry and concrete powerhouse containing one generating unit with a capacity of 170 kW; (6A) a new transmission line, 250 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 750,000 kWh. The existing dam is owned by the City of East Providence, Rhode Island.

k. Purpose of Project: Project power would be sold to the Narragansett Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project

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construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $12,500.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 12, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–3480 Filed 2–14–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. QF86–519–000 et al.]

City of Cleburne et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. City of Cleburne

[Docket No. QF86–519–000]

February 7, 1986.

On February 3, 1986, City of Cleburne (Applicant), of P.O. Box 657, Cleburne, Texas 76031 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 2.5 miles North Northwest of downtown Cleburne, Johnson County, Texas. The facility will use biomass in the form of municipal solid waste (MSW) to generate a maximum of 860 kW of electric power. A minimal amount of natural gas will be used for control purposes.

2. Nelson Industrial Steam Company

[Docket No. QF86–512–000]

February 7, 1986.

On January 3, 1986, Nelson Industrial Company (Applicant), a Texas joint venture, of 350 Pine Street, Beaumont, Texas 77706 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a topping-cycle cogeneraton facility located on the south bank of the Houston River in Westlake, Calcasieu Parish, Louisiana, approximately five miles northwest of Lake Charles, Louisiana. The facility, through a two-phased process of development, will have a power production capacity of 237.257 MW. Phase I occurs during the construction of new coke/coal-fired fluidized bed combustors (FBCs). During Phase I the facility will be operated temporarily as a topping-cycle cogeneration facility using existing gas- and oil-fired boilers. Once the FBCs are constructed Phase II will commence and natural gas will be used only as a back-up fuel. The primary energy source of the topping-cycle facility to be used during Phase II is petroleum coke or coal. Process steam from the facility will be sold to nearby industrial facilities.

3. American Electric & Power, I, Ltd.

[Docket No. QF86–452–000]

February 12, 1986.

On January 27, 1986, American Electric Power, I, Ltd. (Applicant), of 2285 Schoenersville Road, Suite 207, Bethlehem, Pennsylvania 18017 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility consists of six vessels moored in the Susquehanna River, utilizing river current to push paddle wheels extended from each side of the vessels. The paddle wheels are connected to a central shaft on each vessel. As the paddle wheels turn, mechanical energy is produced which is converted into electrical energy via an alternator (or generator). The maximum electric power production capacity of the facility will be 720 kilowatts.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. Pinetree Power-Tamworth, Inc.

[Docket No. QF86–511–000]

February 10, 1986.

On January 30, 1986, Pinetree Power-Tamworth, Inc. (Applicant), of c/o Pinetree Power Development Corporation, 31 Industrial Park, Concord, New Hampshire 03301 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Tamworth, New Hampshire. The primary energy source will be biomass in the form of wood chips, bark and fines. The net electric power production capacity will be 20 megawatts. There is no planned usage of natural gas, oil or coal by this facility.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211

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and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3474 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP79-224-008 et al.]

El Paso Natural Gas Co. et al. Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP79-224-008]

February 10, 1986.

Take notice that on January 29, 1986, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP79-224-008 pursuant to section 7(c) of the Natural Gas Act a petition to amend the order issued in Docket No. CP79-224-005 on February 19, 1985, so as to authorize a one-year extension of time from February 19, 1986, through February 19, 1987, within which El Paso may complete the construction and operations of those minor facilities necessary for the expansion of the deliverability from 250,000 Mcf of natural gas per day to 500,000 Mcf of natural gas per day of the Washington Ranch storage project, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

El Paso states that by order issued February 19, 1985, in Docket No. CP79-224-005, the Commission approved El Paso's November 2, 1984, proposed settlement which, *inter alia*, permitted El Paso to obtain permanent authority to construct and operate facilities necessary to increase the deliverability of its Washington Branch storage project from 250,000 Mcf of natural gas per day to 500,000 Mcf per day. Ordering paragraph (B) of the order February 19, 1985, provided that the construction and operation of the minor new facilities necessary to implement the proposed increase in deliverability be completed within one year from the date of the order. El Paso states that in view of the ongoing changes being experienced in the industry due to the issuance of Order No. 436, *et seq.*, it has not committed the funds necessary for the expanded level of deliverability for its Washington Ranch storage project. El Paso further states that in consideration of these changes presently being experienced by industry and itself, it has not yet installed the facilities necessary to effectuate the proposed increase in deliverability. El Paso adds, however, that it is still of the belief that the additional deliverability of its Washington Ranch storage project is necessary and would be required by El Paso in its future operations. Therefore, El Paso requests a one-year extension of time in which to construct and operate the new facilities at its Washington Ranch storage project to increase the deliverability from 250,000 Mcf to 500,000 Mcf of gas per day.

Comment date: February 28, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Gas Transport, Inc.

[Docket No. CP86-291-000]

February 10, 1986.

Take notice that on January 24, 1986, Gas Transport, Inc. [Applicant], Post Office Box 1323, Parkersburg, West Virginia 26101, filed in Docket No. CP86-291-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant indicates that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Applicant states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations. Applicant notes that its currently effective rate for transportation (Rate Schedule T-1) is a one-part rate on file with the Commission for transportation under Part 284 which conforms, it is said, with the requirements of interim rates prescribed by § 284.7(b)(1) of the Commission's Regulations. Applicant further states that it intends to file new transportation rates to be effective no later than July 1, 1986, in compliance with the provisions of § 284.7(b)(2) of the Commission's Regulations.

Comment date: February 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP No. CP86-267-000]

February 10, 1986.

Take notice that on January 14, 1986, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-267-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with ANR Pipeline Company (ANR) and Wisconsin Gas Company (Wisconsin Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Wisconsin Gas had initially established a gas sale and exchange agreement with Northern States Power Company—Wisconsin (NSP-Wisconsin). To effectuate this arrangement, reports Applicant, Wisconsin Gas concluded a separate gas exchange agreement with Applicant and ANR on August 30, 1973, as amended on June 1, 1978, and on March 31, 1983.

Applicant states that Wisconsin Gas and NSP-Wisconsin have subsequently concluded a new contract that does not require the intermediary gas exchange services of Applicant and ANR. In accordance with this new arrangement, Applicant says, Wisconsin Gas has arranged with Applicant and ANR to terminate their separate gas exchange agreement as of December 2, 1985.

Comment date: February 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. MIGC, Inc.

[Docket No. CP86-282-000]

February 10, 1986.

Take notice that on January 22, 1986, MIGC, Inc. (MIGC), 10701 Melody Drive, Northglenn, Colorado 80234, filed in Docket No. CP86-282-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Ecological Engineering Systems, Inc. (EES), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MIGC proposes to transport up to 10,000 Mcf of natural gas per day on an interruptuible basis for EES. It is stated that such service would be necessary to effectuate the sale of natural gas by EES to RMT Properties, Inc., a wholly owned subsidiary of Flying J, Inc. (Flying J), pursuant to a five-year gas purchase and sales contract entered into between those parties on September 1, 1985. It is further stated that Flying J is the owner and operator of an oil refinery in Cheyenne, Wyoming.

MIGC states that some of the natural gas would be delivered to it at two existing points of interconnection with MGTC, Inc., its intrastate affiliate, in Campbell County, Wyoming. It is further stated that the remainder of the natural gas would be received by MIGC at a receipt point with Williston Basin Interstate Pipeline Company, also in Campbell County, Wyoming. MIGC indicates that it would redeliver thermally equivalent volumes of natural gas, less fuel used and lost and unaccounted-for volumes for EES' account to an existing point of interconnection with the facilities of Colorado Interstate Gas Company (CIG) in Converse County, Wyoming. It is further indicated that CIG would transport and redeliver the natural gas to Cheyenne Light, Fuel and Power Company (Cheyenne) in Weld County, Colorado. It is stated that Cheyenne would make the ultimate delivery of the natural gas to Flying J's plant.

MIGC states that it proposes to charge EES its systemwide transportation rate of 25.0 cents per Mcf for the transportation of the volumes after deducting the applicable fuel gas and unaccounted-for volumes. However, MIGC further states that its currently effective transportation rate is 63.42 cents per Mcf, but, according to a settlement agreement pending Commisison approval in Docket No. RM84-15-000, the systemwide rate would become 25.0 cents, with refunds by MIGC to EES to the extent that the requested service commences before the Commisison approves the settlement, thus effectuating the 25.0 cent rate.

Comment date: February 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP86-273-000]

February 10, 1986.

Take notice that on January 16, 1986, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-273-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation of natural gas related to sales of gas currently being rendered to two direct sale customers in Neosho County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest Central's request for abandonment authorization involves the transfer of two direct sale industrial customers, Custom Covers & Campers, Inc., and Atchison, Topeka & Santa Fe Railway, to the City of Chanute, Kansas. Northwest Central states that, pursuant to Commission authorization granted in Docket No. CP85-485-000, it has sold pipeline, metering and regulating facilities to the City of Chanute, including the facilities serving these customers, and now desires to transfer the customers to the City of Chanute.

Comment date: February 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP86-280-000]

February 10, 1986.

Take notice that on January 21, 1986, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP86-280-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation, on an interruptible basis, of up to 100,000 Mcf of natural gas per day for the account of Pacific Gas and Electric Company (PG&E), the gathering of up to 100,000 Mcf of gas per day for PG&E's account, and the addition and deletion of related unspecified transportation receipt points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is explained that PG&E has acquired, and hereafter may acquire, supplies of natural gas in the states of Utah, Wyoming, Colorado, and Idaho which PG&E has arranged, or would arrange, to be delivered to Applicant for gathering and/or transportation.

Applicant proposes to gather up to 100,000 Mcf of natural gas per day for PG&E's account from numerous wells located near Applicant's facilities in Utah, Wyoming, Colorado, and Idaho under a gathering agreement, dated November 2, 1979, as amended. Applicant proposes to charge cost-of-service rates for gathering PG&E's gas. The term of the gathering agreement is for ten years, it is stated.

It is further explained that Applicant would receive the gathered PG&E gas, plus other gas delivered to it for PG&E's account by third party transporters, at existing transportation receipt points on its system. Applicant proposes to transport the gas so received, up to 100,000 Mcf per day, for PG&E's account through its system and redeliver, on an interruptible basis, thermally equivalent volumes, less fuel, to PG&E at existing points of interconnection near Spokane, Washington, and Stanfield, Oregon, or to El Paso Natural Gas Company (El Paso), for PG&E's account, near Ignacio, Colorado.

It is explained that Applicant would transport such gas for PG&E under a twenty-year transportation agreement, dated November 2, 1972, as amended. Applicant proposes to charge PG&E its interruptible off-system transportation rate for all PG&E volumes transported under the agreement.

Applicant requests authorization to add and delete unspecified transportation receipt points related to the proposed interruptible transportation service. Applicant states that it would make appropriate tariff filings to update such receipt points annually.

Comment date: February 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP86-277-000]

February 10, 1986.

Take notice that on January 17, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-277-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Alabama Gas Corporation (Alagasco) and for permission and approval to abandon the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 189 billion Btu of natural gas per day for Alagasco, on an interruptible basis, for a two-year term. It is indicated that Alagasco would purchase the gas from SNG Trading, Inc. Applicant states that it would receive the gas for the account of Alagasco at 25 existing points in Texas, Missouri, Louisiana, and offshore Louisiana. Applicant proposes to redeliver equivalent volumes of gas, less 3.25 percent for fuel and company-use gas, at existing delivery points to Alagasco in the Selma, Montgomery, and Birmingham areas of Alabama.

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Applicant proposes to charge Alagasco a transportation rate of 39.9 cents per million Btu where the aggregate of the voumes transported by Applicant for Alagasco, when added to the volumes of gas delivered under Rate Schedule OCD of Applicant's FERC Gas Tariff do not exceed Alagasco's daily contract demand; for those volumes that exceed the daily contract demand, the transportation rate would be 64.9 cents per million Btu. In addition Applicant proposes to collect the GRI surcharge of 1.35 cents per Mcf.

Comment date: February 28, 1986, in accordance with Standard Paragragh F at the end of this notice.

8. Texas Gas Transmission Corporation

[Docket No. CP86-269-000]

February 10, 1986.

Take notice that on January 15, 1986, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-269-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation on an interruptible basis of up to 150 million Btu of gas per day for Texaco Inc. (Texaco), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that it would transport such gas from a point in Lafayette Parish, Louisiana, where Texaco is purchasing such gas, to a point in Cameron Parish, Louisiana, where such gas would be delivered to Texaco. Texaco would pay Applicant the legally effective rate as specified in Applicant's Rate Schedule T-SL/Z-SL, plus the legally effective GRI funding unit, it is stated. Such rate, it is stated, is currently 12.31 cents per million Btu.

Applicant states that no new facilities are necessary to render the requested transportation service. The term of the proposed service, it is stated, would be for an initial term of two years and from year to year thereafter unless cancelled by either party upon sixty days prior written notice.

Texaco has requested such transportation service, Applicant states, in order to effectuate delivery of gas it has purchased for use in its gas-lift operations in the Grand Lake field, Cameron Parish, Louisiana.

Comment date: February 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP86-268-000]

February 10, 1986.

Take notice that on January 14, 1986, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-268-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transportation of natural gas for UER Marketing Company, as agent for Entex, Inc. (UER), under a gas transportation agreement dated December 9, 1985, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that the agreement provides for UER to cause the delivery of up to the maximum daily quantity of 60,000 Mcf of natural gas to Applicant at various existing delivery points in Louisiana, Texas, Alabama and Mississippi and Applicant would redeliver equivalent quantities to UER at various existing redelivery points in Texas, Louisiana and Mississippi.

Applicant states that the rate for such service would be equal to the Type V Rate in Applicant's Transportation Rate Schedule IT, which includes the Gas Research Institute surcharge and the cost of company-use gas, as set forth on Sheet No. 4-E of Applicant's FERC Gas Tariff First Revised Volume No. 1. The currently effective Type V Rate contained in Applicant's IT Rate Schedule is 43.15 cents per Mcf, it is stated.

The proposed transportation service, it is stated, would be for a primary term beginning on the date of first deliveries and ending on January 1, 1987, and from year to year thereafter.

Comment date: February 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Company.

[Docket No. CP86-274-000]

February 7, 1986.

Take notice that on January 16, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP86-274-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a sales tap on United's 16-inch Baxterville line in Forrest County, Mississippi, under the certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to install the tap to serve Willmut Gas & Oil Co. (Willmut), and to deliver up to 40 Mcf of natural gas per day, which Willmut, a local distribution company, would resell to residential customers in the Hattiesburg, Mississippi, service area. It is stated that deliveries through the proposed tap would not represent an increase in Willmut's maximum daily quantity of gas from United.

Comment date: March 24, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3482 Filed 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ID-1751-001 et al.]

C. Robert Everman et al.; Interlocking Directorate Applications

February 10, 1986.

Take notice that the following filings have been made with the Commission:

1. C. Robert Everman

[Docket No. ID-1751-001]

Take notice that on January 28, 1986 C. Robert Everman, pursuant to section 305(b) of the Federal Power Act, submitted for filing an application to hold the following positions:

Vice President and treasurer.	The Cincinnati Gas and Electric Co.	Public utility.
Vice-President and treasurer.	The Union Light, Heat and Power Co.	Public utility.
Vice-President and treasurer.	Miami Power Corp.	Public utility.

Comment date: February 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Eastern Utilities Associates

[Docket No. ID-1884-001]

Take notice that on January 27, 1986 Eastern Utilities Associates (EUA) submitted for filing notice of changes in positions held by Donald G. Pardus. EUA said Mr. Pardus resigned from the position of Vice President and was elected to the position of Vice Chairman of the Board of Directors of Eastern Edison Company and of Blackstone Valley Electric Company. EUA further stated that Mr. Pardus resigned from the position of Vice President and was elected to the position of President of Montaup Electric Company. These changes in position have not caused changes in the duties of Mr. Pardus.

Comment date: February 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Jackson H. Randolph

[Docket No. ID-1864-003]

Take notice that on January 28, 1986, Jackson H. Randolph, pursuant to section 305(b) of the Federal Power Act, submitted for filing an application to hold the following positions:

Director, Executive Vice-President.	The Cincinnati Gas and Electric Co.	Public utility.
Director, Executive Vice-President.	The Union Light, Heat and Power Co.	Public utility.
Director, Executive Vice-President.	Miami Power Corp.	Public utility.

Comment date: February 19, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. R. Drake Keith

[Docket No. ID-2151-001]

Take notice that on February 5, 1986, R. Drake Keith filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

Senior Vice President, Chief Financial Officer, and Treasurer.	Middle South Energy, Inc.
Assistant Treasurer and Assistant Secretary.	Arkansas Power & Light Co.
Assistant Treasurer and Assistant Secretary.	Louisiana Power & Light Co.
Assistant Treasurer and Assistant Secretary.	Mississippi Power & Light Co.
Assistant Treasurer and Assistant Secretary.	New Orleans Public Service, Inc.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. James J. Mayer

[Docket No. ID-1962-001]

Take notice that on January 28, 1986, James J. Mayer, pursuant to Section 305(b) of the Federal Power Act, submitted for filing an application for authority to hold the following positions:

General counsel	The Cincinnati Gas & Electric Co.	Public utility.
General counsel	The Union Light, Heat and Power Co.	Public utility.
General counsel	Miami Power Corp.	Public utility.

Comment date: February 19, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3481 File 2-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-16765-000 et al.]

Tenneco Oil Co. et al.; Applications for Certificates, Abandonments of Service and Petition To Amend Certificates[1]

February 12, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 26, 1986, file with the Federal Energy Regulatory Commission, Washington, DC. 20426 petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

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Docket No. G-18765-000, et al. - 2 -

Filing Code:

A - Initial Service
B - Abandonment
C - Amendment to add acreage
D - Amendment to delete acreage
E - Total Succession
F - Partial Succession

Docket No. and Date Filed	Applicant	Purchaser and Location	Price Per Mcf	Pressure Base
G-18765-000 D 2/3/86	Tenneco Oil Company P. O. Box 2511 Houston, Texas 77001	Valero Interstate Transmission Company North Monte Christo Field, Hidalgo County, Texas	1/	
CI62-1253-003 D 2/3/86	"	Arkansas Louisiana Gas Company Centrahoma Field, Coal County, Oklahoma	2/	
CI64-1011-000 D 2/3/86	"	Valero Interstate Transmission Company North Monte Christo Field, Hidalgo County, Texas	1/	
CI68-1211-000 D 2/3/86	Shell Offshore Inc. P. O. Box 4480 Houston, Texas 77210	Trunkline Gas Company South Timbalier Block 175 Field, Offshore Louisiana	4/	
CI86-187-000 (CI71-323) B 1/10/86	Chandler & Associates, Inc.	Mountain Fuel Supply Company Sugar Loaf Field, Moffat County, Colorado	5/	
CI86-188-000 B 1/31/86	Texaco Inc. P. O. Box 52332 Houston, Texas 77052	Phillips Petroleum Company Eunice Plant and Skaggs Drinkard Field, Lea County, New Mexico	6/	
CI86-189-000 D 2/3/86	Sun Exploration & Production Co. P. O. Box 2880 Dallas, Texas 75221-2880	Arkansas Louisiana Gas Company Anthon Field, Custer County, Oklahoma	7/	
CI86-190-000 (G-19182) B 2/3/86	Tenneco Oil Company	Valero Interstate Transmission Company North Monte Christo Field, Hidalgo County, Texas	8/	
CI86-191-000 F 2/4/86	Exxon Corporation (Succ. in Interest to Amax Petroleum Corporation) P. O. Box 2180 Houston, Texas 77252-2180	Southern Natural Gas Company Big Escambia Creek Field, Escambia County, Alabama	9/	
CI86-192-000 F 2/4/86	Exxon Corporation (Succ. in Interest to Grace Petroleum Corporation)	Florida Gas Transmission Company Big Escambia Creek Field, Escambia County, Alabama	10/	
CI86-193-000 F 2/4/86	"	Southern Natural Gas Company Big Escambia Creek Field, Escambia County, Alabama	10/	
CI86-194-000 F 2/4/86	"	"	10/	
CI86-195-000 F 2/6/86	Tenneco Oil Company (Succ. in Interest to Texas Gas Exploration Corporation)	Natural Gas Pipeline Company of America West Cameron Block 229, West Cameron Area, Offshore Louisiana	11/	

FPC Form 973
Rev (6-70)

Docket No. G-18765-000, et al. - 3 -

FOOTNOTES

1/ Surrender of certain dedicated leases.

2/ Depletion of reserves.

3/ Not used.

4/ By Agreement dated 12-10-84, Shell Offshore Inc. has farmed-out certain acreage to Seagull Energy E&P Inc.

5/ Well no longer producing in commercial quantities. No additional workover potential exists.

6/ The terms of Texaco's contract with Phillips expired 1-1-84 and 11-5-85, with a day-to-day sales thereafter. Texaco intends to enter into a percentage-of-proceeds type Casinghead Gas Contract with Texaco Producing Inc. (TPI) covering gas from the leases previously contracted and delivered to Phillips. After processing, 60% of the residue gas would continue to be sold to El Paso by TPI at its Eunice New Mexico Plant but under TPI's G.R.S. No. 390, Certificate No. CI72-771 and 40% of the residue gas would be sold to Northern Natural Gas Company by TPI at its Eunice New Mexico Plant but under TPI's G.R.S. No. 389, Certificate No. CI72-762.

7/ Assignment and Bill of Sale covering the only producing property under contract.

8/ Surrender of all dedicated leases. Tenneco no longer has an interest in the acreage dedicated ot its contract dated 8-1-58.

9/ By assignment dated 8-29-85, Exxon acquired certain acreage covered by Amax Petroleum Corporation's Small Producer Certificate Docket No. CS72-419.

10/ By assignment dated 3-29-85, Exxon acquired certain acreage covered by Grace Petroleum Corporation's (successor in interest to Mallard Exploration, Inc.) Small Producer Docket No. CS71-825.

11/ Tenneco Oil Company succeeded by Assignment dated 7-24-85.

BEST COPY AVAILABLE

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Office of Hearings and Appeals

Cases Filed the Week of January 17 Through January 24, 1986

During the Week of January 17 through January 24, 1986, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purpose of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 17 through Jan. 24, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 7, 1985	Economic Regulatory Administration, Washington, DC	KRZ-0017	Interlocutory. If granted: The Nov. 7, 1985, Response to Request of Economic Regulatory Administration to Present Testimony filed by Consolidated Materials, Inc. (Case Nos. HRO-0107 and HRH-0023) would be stricken from the record.
Jan. 17, 1986	Economic Regulatory Administration, Washington, DC	KRR-0005	Request for modification/rescission. If granted: The Dec. 10, 1985, Remedial Order (Case No. HRO-0161) issued to Oil-Tex Petroleum, Inc. would be modified regarding the firm's sales to American Petrofina, Inc.
Jan. 21, 1986	Economic Regulatory Administration, Washington, DC	KRZ-0018	Interlocutory. If granted: The remedial provisions in the Proposed Remedial Order issued to Lantern Petroleum Corporation (Case No. HRO-0251) would be modified.
Do	Plumbers and Steamfitters Local 106, Metairie, LA	KFA-0011	Appeal of an information request denial. If granted: The Dec. 20, 1985, Freedom of Information Request Denial issued by the Strategic Petroleum Reserve Project Management Office would be rescinded and the Plumbers and Steamfitters Local 106 would receive access to the certified payroll records filed by PDO Contractors, Inc.
Jan. 22, 1986	Dennis M. O'Brian, Wheeling, IL	KFA-0012	Appeal of an information request denial. If granted: Dennis M. O'Brian would receive access to certain DOE information.
Do	Donald W. Dalziel, San Francisco, CA	KRH-0004	Request for evidentiary hearing. If granted: An evidentiary hearing would be convened in connection with the statement of objections submitted by Donald W. Dalziel in response to a Proposed Remedial Order (Case No. HRO-0155) issued to John Holland, et al.
Jan. 23, 1986	Committee to Bridge the Gap, Los Angeles, CA	KFA-0013	Appeal of an information request denial. If granted: The Jan. 3, 1986, Freedom of Information Request Denial issued by the Office of Nuclear Energy would be rescinded and the Committee to Bridge the Gap would receive access to a copy of the "Safety Assessment for Space Reactors" by B.W. Bertram and D.W. Pyatt.
Jan. 24, 1986	Ivan Von Zuckerstein, Darien, IL	KFA-0014	Appeal of an information request denial. If granted: The Jan. 16, 1986, Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded and Ivan Von Zuckerstein would receive access to a memo from A.S. Kennedy to M. Meshenberg.

REFUND APPLICATIONS RECEIVED

[Week of Jan. 17 to Jan. 24, 1986]

Dates	Name of refund proceeding/name of refund applicant	Case No.
1/21/86	Harris/Reese Oil Co.	RF193-19
1/21/86	Mobil/Floyd Pike, Jr	RF225-9
1/21/86	Mobil/Upton Fuel & Construction Co	RF225-10
1/21/86	Quaker State/Bill Gunter Dist. Co.	RF213-46
1/21/86	Gulf/Gresham Petroleum Co	RF40-3091
1/21/86	Gulf/Rebel Gas, Inc	RF40-3092
1/21/86	Midway/Credit Island Zephyr	RF207-4
1/21/86	Conoco/Russell Stewart Oil Co	RF220-5
1/21/86	Gulf/Graeber Bros., Inc. of Grenada	RF40-3093
1/22/86	Harris/McCall Oil & Chemical	RF193-19
1/22/86	Ayers/American Cyanamid Co.	RF177-5
1/22/86	Aminoil/Machine Rite Products	RF139-145
1/21/86	Gulf/Graeber Brothers	RF40-3095
1/22/86	Mobil/Bolin Oil Co	RF225-11
1/23/86	Gulf/Tallahatchie Farmers Supply	RF40-3096
1/22/86	Gulf/AAA Cooper Transportation	RF40-3094
1/22/86	National Helium/Washington	RQ3-265
1/23/86	Indian/Jim Martin, Inc	RF226-2
1/23/86	Belcher/Grimaldi, Inc	RF227-2
1/21/86	Belcher/Robbins Trailer	RF227-1
1/23/86	Gulf/C.P. House Gas Co., Inc	RF20-3097
1/23/86	Mobil/Dave's Service, Inc	RF225-12
1/23/86	Mobil/Corey Oil, Ltd	RF225-13
1/23/86	Mobil/R.E. Smith Fuel Co., Inc	RF225-17
1/23/86	Mobil/Verona Service Center	RF225-16
1/23/86	Mobil/Bob Gerenyi Mobil Service	RF225-15
1/23/86	Mobil/Aaron's Mobile Service	RF225-14
1/23/86	Quaker State/Automotive Service	RF213-50
1/23/86	Quaker State/Laurel Oil & Supply	RF213-49
1/23/86	Quaker State/Arthur F. Hazen & Son	RF213-48
1/23/86	Eastern/Reech Electric, Inc	RF215-8
1/24/86	Harris/Sisters Union Station	RF192-20
1/23/86	Sid Richardson/Steven's Petro	RF26-23
1/24/86	Mobil/Old Towne Service Station	RF225-19
1/24/86	Mobil/Kimber Petroleum Corp	RF225-18

REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 17 to Jan. 24, 1986]

Dates	Name of refund proceeding/name of refund applicant	Case No.
1/24/86	Harris/Gray's Crane International	RF193-21
1/23/86	Gulf/Fourth Avenue Gulf	RF40-3098
1/23/86	Gulf/Hopper Gulf Service	RF40-3099
1/23/86	Gulf/Sexton's Gulf	RF40-3100
1/24/86	Pennzoil/Louisiana	RQ10-266
1/24/86	Sid Richardson/Manito Oil & Propane Co	RF26-24
1/24/86	Quaker State/Witco Corp	RF213-52
1/24/86	Gulf/Graber Bros., Inc. of Clarksdale	RF40-3104
1/24/86	Gulf/G.A. Norris Butance Co., Inc	RF40-3103
1/24/86	Mobil/David R. Surface	RF225-24
1/24/86	General Equities/Maurice's Service Station	RF224-2
1/24/86	Quaker State/Capital Buick-GMC, Inc	RF213-47
1/24/86	Quaker State/Quality Poultry Company	RF213-57
1/23/86	Gulf/Flatley Oil Company	RF40-3101
1/24/86	Gulf/Cunningham Bu-ane Gas Co., Inc	RF40-3102
1/24/86	Mobil/Louis & Richard Wening	RF225-23
1/24/86	Mobil/Nor-Bel Service Center	RF225-20
1/24/86	Mobil/James Jezwinski	RF225-21
1/24/86	Mobil/Jim's Service	RF225-22
1/23/86	Resources/Mobil Oil Corporation	RF228-1
1/24/86	Post/Eastmen Building Products	RF229-1
1/21/86	Amoco/Quality Oil Co. et al	RF21-12404 thru RF21-12563

[FR Doc. 86-3458 Filed 2-14-86; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed the Week of January 24 Through January 31, 1986

During the Week of January 24 through 31, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 24 through Jan. 31, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 23, 1985	Keystone Fuel Oil Company, Washington, DC	KCX-009	Supplemental order. If granted: The July 13, 1984 Decision and Order (Case No. BRO-1166) issued to Keystone Fuel Oil Company by the Office of Hearings and Appeals would be modified as specified in the December 12, 1985 order affirming remedial order in part, reversing remedial order in part and remanding proceeding, issued by Federal Energy Regulatory Commission.
Jan. 28, 1986	Chuck Hansen, Sunnyvale, CA	KFA-0015	Appeal of an information request denial. If granted: Chuck Hansen would receive access to the Final Report of Mark IV MOD O FM Bomb. Report SL-82.
Jan. 30, 1986	Ford Products Corporation, Valley Cottage, NY	KEE-0019 and KEL-0019	Exception from the Energy Conservation Program for Consumer Products. If granted: Ford Products Corporation would receive an exception allowing the firm to test its model CF and FG water heaters using procedures other than those set forth in a Nov. 22, 1985 waiver.

REFUND APPLICATIONS RECEIVED

[Week of Jan. 24 to Jan. 31, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
1/27/86	Amoco/United Power Association	RF21-12564
1/27/86	Conoco/Enterprise Products Co	RF220-6
1/27/86	Quaker State/Dowling Pool Co., Inc	RF213-53
1/27/86	Belcher/Krupa Oil Company	RF227-3
1/27/86	South Hampton/City Public Service	RF230-1
1/27/86	Mobil/John P. Cullinan	RF225-25
		RF225-26
		RF225-27
1/27/86	Quaker State/Ray Johnson's Imports	RF213-54
1/27/86	Mobil/A&M Service Station	RF225-28
1/27/86	Quaker State/The Leonard Co., Inc	RF213-55
1/27/86	CONOCO/Delmarva Power	RF220-7
1/27/86	Quaker State/Redfield's Sales & Service	RF213-56
1/28/86	Quaker State/Jack's Auto Supply Co	RF213-57
1/28/86	Mobil/S&K Servicenter	RF225-29
1/28/86	Sid Richardson/Schupback & Streitmatter Gas Company	RF26-25
1/28/86	Resources/Gas Producers Liquids, Ind	RF228-2

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REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 24 to Jan. 31, 1986]

Date received	Name of refund proceeding/name of refund applicant	Case No.
1/26/86	Point Landing/Riverway Barge Co	RF122-19
1/29/86	Mobil/Petroleum Marketers, Inc	RF225-30
1/29/86	Quaker State/Sterling Service Store	RF213-58
1/27/86	Malco/O'Brien Cut Stone Company	RF231-2
1/27/86	Malco/Morgan Services, Inc	RF231-1
1/30/86	Mobil James J. Zorn	RF225-31
1/30/86	Mobil/Billy J. Newman	RF225-32
1/30/86	Amerodl/McKaig L.P. Gas, Inc	RF139-143
1/31/86	Quaker State/J.W. McGuire	RF213-61
1/31/86	LAPCO/Baxley Oil Company	RF112-167
1/31/86	Quaker State/Tate & Sons	RF213-59
1/31/86	Mobil/B.F. Smith	RF225-33
1/31/86	Quaker State/Double Play Enterprise	RF213-60
1/31/86	Amoco/Arch Minerals Corporation	RF21-12567
1/31/86	Amoco/Arch Minerals Corporation	RF21-12565
1/31/86	Amoco/Arch Minerals Corporation	RF21-12566
1/31/86	Mobil/Irving Lash	RF225-34
1/31/86	Mobil/Bob's Mobil Service Center	RF225-35
1/31/86	Belcher/New England Smelting Works	RF227-4
1/31/86	F.O. Fletcher/McCall Oil & Chemical	RF172-28

[FR Doc. 86-3459 Filed 2-14-86; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Filed With the Office of Hearings and Appeals; January 6 Through January 31, 1986

During the period of January 6 through January 31, 1986, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Magna Energy Corporation, Houston, Texas, KRO-0230

On January 31, 1986, Magna Energy Corporation, 11511 Katy Freeway, Suite 365, Houston, Texas 77079 filed a Notice of Objection to a Proposed Remedial Order which the DOE Houston District Office of Enforcement issued to the firm on December 5, 1985. In the PRO the Houston District found that from December 1978 through December 1980, Magna resold crude oil at prices in excess of its actual purchase prices in violation of 10 CFR 212.186, 210.62(c) and 205.202.

According to the PRO the violation resulted in $15,034,984.76 of overcharges. In addition, Houston District found that, during 1979, Magna charged prices for crude oil resales in excess of its permissible average markup in the amount of $1,738,637.00 in violation of 10 CFR 212.183.

[FR Doc. 86-3457 Filed 2-14-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds totalling over $4,000,000 obtained from Beacon Oil Company in settlement of all issues regarding the firm's application of the federal petroleum price and allocation regulations during the period August 19, 1973 through March 31, 1975.

DATE AND ADDRESS: Applications for refund must be filed by May 19, 1986, should conspicuously display a reference to case number HEF-0203, and should be addressed to: Beacon Oil Company Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order establishes procedures for distributing funds obtained as a result of a consent order between the DOE and Beacon Oil Company. The consent order settled all disputes between the DOE and Beacon concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period August 19, 1973 to March 31, 1975

Any members of the public who believe that they are entitled to refunds in this proceeding may file Applications for Refund. Specific information to be included in Applications for Refund is set forth in Section III of the Decision and Order. All Applications should be postmarked by May 19, 1986, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made availabe for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

February 7, 1986.

Name of Case: Beacon Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF-0203.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of enforcement proceedings involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Beacon Oil Company (Beacon). Under the terms of the consent order, Beacon agreed to refund a total of $6,800,000, including payments to the DOE, in settlement of all civil and adminstrative claims by the DOE relating to Beacon's compliance with the federal petroleum price regulations applicable to refiners of petroleum products during the period from August 19, 1973 through March 31, 1975 (the consent order period).

I. Background

Beacon was a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, Beacon was engaged in the production, refining, and marketing of products covered by the federal petroleum price regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. The ERA audited Beacon to determine the firm's compliance with these regulations. In the course of the audit process, Beacon entered into a consent order with the DOE, whereby the firm agreed to refund a total of $6.8 million to various parties to resolve all issues regarding Beacon's application of the regulations during the consent order period. Notice of this proposed consent order was published for public comment at 44 FR 58950 (1979). Claims and comments were filed by approximately 100 interested parties. The proposed consent order was adopted without modification as a final order of the DOE on December 17, 1979. 44 FR 73139 (1979).

The consent order set forth different methods for refunding the settlement funds to various categories of Beacon customers. Beacon paid refunds to ultimate consumers either directly by check or by issuing credit memoranda to be applied against future purchases from Beacon. The firm also instituted a price rollback through its company-operated service stations to effect refunds to end-users. To customers other than ultimate consumers, Beacon paid refunds either by issuing credit against future purchases or by making payments to the DOE for appropriate distribution. In the latter category, Beacon paid a total of $2,297,505 into an escrow account administered by the DOE. In addition, the consent order stipulated that if petroleum products were decontrolled, Beacon would pay any remaining unpaid credit or price rollback amounts into the DOE escrow account. After deregulation occurred on January 28, 1981, *see* Executive Order 12287, 46 FR 9909 (January 30, 1981), Beacon paid a total of $106,550 to the DOE to cover the portion of credit payments and price rollbacks to certain customers which were planned but never instituted. Therefore, this ERA Petition to OHA pertains to Beacon's total payment to escrow of $2,404,055, plus accumulated interest (hereinafter referred to as the consent order fund).[1]

On August 21, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Beacon consent order fund. 50 FR 34897 (August 28, 1985). In the PD&O, we described a two-stage process for disbursing refunds. In the first stage, refunds would be made to identifiable purchasers of Beacon covered products that may have been injured by the firm's pricing practices during the consent order period. This decision describes the information that purchasers of Beacon products should submit in order to demonstrate eligibility for a portion of the consent order fund. After these meritorious claims are paid, a second stage may become necessary if funds remain.

Comments were solicited regarding the proposed refund procedures outlined in the PD&O. Beacon Oil Company and Mr. Willard T. Clark filed comments in response to the proposal of the first stage of refund distribution. These comments are discussed in the following presentation of the procedures we are adopting. In addition, eight states commented on the distribution of residual funds in a second-stage proceeding.[2] The formulation of procedures for the final disposition of any funds remaining after meritorious claims have been paid will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by the states' comments concerning disposition of second-stage funds.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing plans to distribute funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may be eligible to receive refunds as a result of enforcement proceedings or to ascertain readily the amounts that such persons should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

Beacon filed comments in response to the PD&O requesting that the consent order funds be used primarily to implement previous DOE orders granting the firm approximately $3.4 million in exception relief from the DOE Entitlements Program for the years 1979 and 1980. Beacon contends that the refund plan outlined in the PD&O should be effected only after the firm has received full payment for the relief to which it states that it is entitled, but which it has never received.

There is no legitimate basis for Beacon's request. First allowing Beacon to recover in this proceeding any exception relief to which it is allegedly entitled would place the firm in a vastly superior position to all other similarly situated firms. The DOE has determined to pay all firms which, like Beacon, have unsatisfied entitlements receive orders, and funds have been put aside in separate, interest-bearing accounts for this purpose. *Amber Refining, Inc.*, 13 DOE ¶ 85,217 at 88,571 (1985). Beacon's receive order is taken into account in the *Amber* decision and we know of no reason why Beacon should now be treated differently than provided for in that decision. Of equal importance is the fact that there is no direct or even necessary relationship between the Beacon entitlements relief and the

[1] The Beacon escrow account contained $4,322,963.43 as of January 31, 1986.

[2] The States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia submitted comments as a group. The State of California filed separate comments.

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monies paid by Beacon to settle the various regulatory violations alleged by the ERA. After all, these settlement monies involved here relate to Beacon's sale of petroleum products, while the exception relief involved the financial impact of Beacon of its disproportionate access to price-controlled crude oil. *See Beacon Oil Company*, 8 DOE ¶ 82,604 (1981). Moreover, granting Beacon's request would substantially reduce the size of the consent order fund and the extent to which restitution to injured purchasers can be made. It would be ludicrous to evaluate the interests of Beacon, the firm which paid to settle its alleged violations, over the interests of the purchasers allegedly injured by Beacon's actions, who are the true focus of this Subpart V proceeding. *See* 10 CFR 205.280 *et seq.* Accordingly, this request will not be granted.

A. Refunds to Identifiable Purchasers

During the first stage in the refund process, the consent order funds will be distributed to claimants who satisfactorily demonstrate that they were adversely affected by Beacon's alleged overcharges in sales of covered products. We will accept applications from all parties who can demonstrate that they either directly or indirectly purchased products which originated with Beacon.

In order to be eligible to receive a refund, claimants must file an application and, with three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. Firms or individuals will be eligible for a share of the consent order fund to this extent. While there are a variety of ways in which a showing of injury may be made, a reseller or retailer will generally be required to demonstrate that competitive market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, this type of claimant must show that during the consent order period, it maintained a "bank" of unrecovered increased product costs at least equal to the refund amount claimed, indicating that the claimant did not actually pass on alleged overcharges to its own customers. If actual, contemporaneously calculated cost banks are not available for specific reasons, we will accept other information, *e.g.*, monthly profit margin data, which conclusively proves that the alleged overcharges were not passed along. *See Husky Oil Company*, 13 DOE ¶ 85,045 (1985); *see also Tenneco Oil Company/Northern Petroleum, Inc.*, 13 DOE ¶ 85,207 (1985).

In this case we will adopt three rebuttable presumptions regarding the demonstration of injury. These presumptions have been used in many previous refund proceedings. First, we will presume that purchasers of Beacon products who are claiming small refunds ($5,000 or less, not including interest)[2] were injured by the alleged overcharges. Claimants in this category need not provide us with a showing of injury, as described above.[3] Second, we will not require a detailed showing of injury from regulated utilities or agricultural cooperatives that passed on the alleged overcharges to their end-user members. Third, we will adopt a presumption that spot purchasers were not injured and are generally not eligible to apply for refunds.[4] Prior OHA decisions provide detailed explanations of the basis for these presumptions. *E.G., VGS Corporation, et al.*, 13 DOE ¶ 85,165 at 88,451–53 (1985). We also explained the rationale for these presumptions in the PD&O. 50 FR 34897 at 34899–900 (August 28, 1985). These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Finally, we will adopt a finding made in the PD&O that end-users or ultimate consumers of Beacon products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges, and therefore need not demonstrate injury. *Id.* [5]

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund up to the $5,000 level, without being required to submit further evidence of injury. Likewise, firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,396 (1981).

[3] If a spot purchaser believes it was injured, it must submit additional documentation of this injury to overcome the presumption that this category of Beacon customers suffered no harm.

[4] The consent order stipulated that all ultimate consumers or end-users who purchased products directly from Beacon during the consent order period would receive refunds either by direct payment or by credit issued against future purchases. Based on information in the Beacon audit file, we believe that all refunds to these end-users have been paid fully, in accordance with the consent order. However, we will accept claims from other end-users of Beacon products who demonstrate conclusively that they were customers during the consent order period but did not receive refunds pursuant to the consent order. This category of purchaser may include ultimate consumers who bought Beacon products from resellers.

B. Calculation of Refund Amounts

In the PD&O, we proposed using a volumetric method to divide the consent order funds among eligible applicants, whereby a refund amount generally would be computed by multiplying the number of gallons of Beacon products which a claimant purchased during the consent order period by a per-gallon fraction. Mr. Willard T. Clark filed comments objecting to the use of this method. Mr. Clark is a reseller of Beacon products who received refund payments in the form of credit memoranda from Beacon pursuant to the consent order, until those payments were suspended when petroleum products were deregulated on January 28, 1981. Mr. Clark contends that he is entitled to receive the amount of credit which remained unpaid to him when the previous refund program was suspended, a sum of $5,642 plus accrued interest.

After considering Mr. Clark's comments and the circumstances of the credit program established by the Beacon consent order, we have decided to adjust the proposed method of calculating refunds with respect to reseller and retailer customers who, like Mr. Clark, did not receive the full credit amount prior to decontrol on January 28, 1981. Records in the Beacon audit files indicate that a total of $95,215 in credit remained unpaid to 22 Beacon motor gasoline resellers and retailers upon decontrol, and that Beacon later deposited this sum into the DOE escrow account. Our information also includes the individual amount which remained unpaid to each of the 22 Beacon customers, in addition to the amounts each actually received prior to decontrol. The total credit amounts constituted the measure of restitution which the consent order originally deemed appropriate for each customer. Therefore, we have determined that it is proper to allow each of the 22 firms with an unpaid credit balance the opportunity to apply for a refund equal to that balance, instead of an amount based on the firm's level of purchases during the consent order period.

However, in order to assure the equitable nature of this refund proceeding, we will subject the 22 "credit amount" applicants to a requirement that they show injury. This requirement is similar to that imposed upon other reseller and retailer applicants, none of whom has yet received any refunds pursuant to the Beacon consent order. Under this requirement, applicants seeking refunds greater than $5,000 must demonstrate

that they were injured in their purchases of Beacon products during the consent order period. *See* text at 4–5, *supra; see also* 50 FR 34897 at 34899–900 (August 28, 1985). In determining the size of the injury "threshold" appropriate for the "credit amount" applicants, we must consider that the credit program involving resellers and retailers of Beacon motor gasoline was conducted during 1980 and January 1981, a period when prices for this product were still regulated by the DOE. Under that regulatory scheme, a refund from Beacon in the form of credit memoranda constituted a cost reduction for a recipient firm and, under the regulations in effect at that time, could either be kept by the firm or passed on to its customers through price reductions, depending in part on whether the firm was selling motor gasoline at its maximum lawful selling price (MLSP). *See* 10 CFR 212.93(a)(2)(i). To this extent, the consent order envisioned that credit refunds would be shared among purchasers of Beacon products and their customers. For example, if a firm which received credit demonstrates that it reduced its selling prices by the entire amount of the credit, we would conclude that it passed through the refund fully to its own customers and was not compensated itself. By contrast, if evidence indicates that a firm did not change its selling price after receiving credit, we would conclude that its profit margins increased and therefore the firm was compensated by that amount.

In analyzing the refund claims of the 22 Beacon customers with outstanding credit balances, we will use the method described above to detrermine the amount of compensation the firm has already received. We will count that amount toward the $5,000 threshold for that firm. If a firm's total refund (previous credit payments *not* passed through to its own customers plus the unpaid credit amount) exceeds $5,000, that firm must either demonstrate injury based on the standards outlined in Section II(A) above, or limit its total claim to $5,000.

Since we have received no other objections, we will adopt the proposed volumetric method of calculating refund amounts outlined in the PD&O for all other applicants. The volumetric method presumes that the alleged overcharges were spread equally over all the gallons of products which Beacon sold during the consent order period. We have calculated the volumetric amount to be used in this proceeding by dividing the total amount of consent order funds—$2,404,055 exclusive of interest—by the estimated total volume of regulated petroleum products sales by Beacon during the consent order period, which we have determined to be 446,571,042 gallons. This calculation results in a volumetric refund amount of $.005383 per gallon. A successful claimant will receive a refund equal to its eligible volume of petroleum product purchases from Beacon during the period from August 19, 1973 through March 31, 1975, multiplied by the volumetric amount, plus a pro rata share of accrued interest.[6]

III. Applications for Refund

We have determined that the refund procedures described above are the best means of distributing the Beacon consent order fund. Accordingly, we will now accept applications for refunds.

Applications must be in writing, signed by the applicant, and make reference to Case Number HEF–0203. Applications must include the following information:

(i) the business address of the firm during the consent order period, August 19, 1973 through March 31, 1975;

(ii) monthly schedules indicating the volume of products purchased from Beacon during the consent order period, or, if no documentation is available, a detailed estimate of purchases;[7]

(iii) a showing of injury, as explained above, or a statement that the applicant need not show injury because it was an end-user of the product, an agricultural cooperative or regulated utility, or is claiming a refund of $5,000 or less;

(iv) an indication of the firm's level in Beacon's chain of distribution, *e.g.*, ultimate consumer, reseller, etc.;

(v) a statement of whether there has been a change in the ownership of the firm during the consent order period. If there has been a change of ownership, the applicant must provide the names and addresses of any other owners and either a statement of the reasons why the refund should be paid to the applicant rather than to the other owners, or a signed statement from the other owners indicating that they do not claim a refund;

(vi) a statement of whether the firm has previously received refunds from Beacon pursuant to the consent order;

(vii) the name, title, and telephone number of a person who the OHA may contact for additional information concerning the application; and

(viii) the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c), 18 U.S.C. 1001.

In addition, if the applicant was a reseller or retailer and received credit refunds from Beacon in 1980 and 1981, it must submit information showing the total amount of credit received from Beacon pursuant to the consent order and material which indicates the extent to which the credit was passed through to the applicant's customers by way of price reductions.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. All applications should be sent to:

Beacon Oil Company Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Beacon Oil Company pursuant to the Consent Order executed on December 17, 1979, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: February 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–3449 Filed 2–14–86; 8:45 am]

BILLING CODE 6450–01–M

[6] Any applicant that believes it suffered a disproportionate share of Beacon's alleged violations may apply for a refund greater than the amount computed by the volumetric method. Such applicants will be required to document conclusively the disproportionate impact. In addition, we intend to set a minimum refund amount for potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,214 (1982). We will utilize the same minimum refund in the present case.

[7] Applicants claiming refunds based on unpaid credit memoranda need not supply this information. *See* Section II(B), *supra*.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

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ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy is republishing a Proposed Decision and Order in order to solicit comments concerning the appropriate procedures to be followed in refunding to adversely affected parties approximately $42,000,000 obtained as a result of a consent order which the DOE entered into with Getty Oil Company. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0209.

FOR FURTHER INFORMATION CONTACT: Geoffrey Stein, Staff Analyst, M. Terry Johnson, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6602.

SUPPLEMENTARY INFORMATION: On December 20, 1985, in accordance with Section 205.282(b) of the procedural regulations of the Department of Energy, 10 C.F.R. § 205.282(b), the DOE published notice in the **Federal Register** of the issuance of the Proposed Decision and Order set out below. Certain confidential, proprietary information was deleted from the text of that determination as published. *See* 50 Fed. Reg. 51934 (December 20, 1985). At that time, the Office of Hearings and Appeals indicated that the Getty Proposed Decision would be republished with the deleted information restored in the event it obtained a waiver of the rights to confidential treatment.

Getty Oil Company and its parent company, Texaco Inc. (Texaco) have now approved publication of the Proposed Decision without deletions and thereby waived any right they may have to confidential treatment of the deleted information. We appreciate the cooperation of Getty and Texaco in agreeing to publication of the Proposed Decision in full. This will facilitate greater public understanding and fuller participation in the refund process.

Getty and Texaco still consider as confidential the data underlying the Proposed Decision, which consists of monthly volume and price information for motor gasoline, middle distillates and propane, for the period July 1975 through December 1978. This information was obtained by the Office of Hearings and Appeals from the DOE's Energy Information Administration subject to a disclosure agreement that requires the firms' approval for disclosure of the data. Consequently, disclosure of this data will only be made to parties entering into an appropriate protective order which will protect the data's confidentiality and limit its use.

We have decided that the period for public comments on the Getty Proposed Decision, which otherwise expires on February 18, 1986, should be extended until 30 days after this republication of the determination in the **Federal Register**. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW, Washington, DC 20585.

Dated: February 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of The Department of Energy

Implementation of Special Refund Procedures

December 13, 1985.

Name of Firm: Getty Oil Company.
Date of Filing: October 13, 1983.
Case Number: HEF–0209.

On October 13, 1983, the Economic Regulatory Administration (ERA) filed with the Office of Hearings and Appeal (OHA) a Petition for the Implementation of Special Refund Procedures to distribute the proceeds of a December 3, 1979 consent order which ERA entered into with Getty Oil Company (Getty). In its Petition, ERA requests that OHA formulate and implement special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the Getty consent order.

I. Background

Getty Oil Company was an integrated refiner of crude oil and petroleum products during the period of federal price controls and was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150, and 10 CFR Parts 210, 211, and 212. The ERA conducted an extensive audit of Getty's operations and, as a result of that audit, contended in the course of a number of judicial and administrative procedings that Getty, and its wholly-owned affiliate, Skelly Oil Company (generally referred to collectively as Getty) had violated applicable DOE price and allocation regulations in its sales of crude oil and petroleum products during the audit period.[1] On December 3, 1979, the ERA executed a consent order with Getty that, with the exception of three enumerated issues, settled all compliance issues involving the firm's regulated operations during the period August 19, 1973, through December 31, 1978 (hereinafter referred to as the consent order or settlement period).[2] In that consent order, Getty agreed to deposit $25 million into an escrow account for subsequent distribution under DOE's supervision and to reduce its banks of unrecovered product and non-product costs, *see generally* 10 CFR 212.83(e), by $50 million. Consent Order, ¶ 5. In exchange for Getty's performance under the consent order, the ERA agreed not to challenge Getty's compliance with the specified DOE regulations, except for the three specific issues which were listed in the consent order. The Getty consent order specifically provided that "[E]xecution of this Consent Order constitutes neither an admission by Getty nor a finding by Special Counsel or DOE that Getty has violated any statutes or applicable regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, or the Department of Energy." Consent Order, ¶ 11. The amount of escrowed funds currently held in an interest-bearing account with the United States Treasury had grown to $42,738,567.73 as of November 30, 1985.

On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures concerning the Getty settlement fund. The purpose of this determination is to set forth tentative procedures for the distribution of the Getty refund monies to persons who were likely to have been injured by Getty's alleged regulatory infractions. As in other similar proceedings, distribution of the Getty refunds should take place in two stages. The first stage will provide for refunds to identifiable purchasers of refined petroleum products who may have been injured by Getty's pricing and allocation practices during the period August 19, 1973 through December 31, 1978. If any funds remain after meritorious claims are paid in the first stage, a second stage may be necessary. We will not, however, propose second-stage procedures at this time. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*).

II. Jurisdiction and Authority To Fashion Refund Procedures

The DOE procedural regulations at 10 CFR Part 205, Subpart V, provide that the OHA may, upon petition by ERA, formulate and implement special procedures by which refunds may be made to injured persons. For the following reasons, we conclude that we should assume jurisdiction over the Getty settlement fund.

During the consent order period, Getty was a producer of crude oil, a refiner and marketer of a full slate of petroleum products, and a natural gas plant operator. Getty was the twentieth or twenty-first largest domestic seller of refined petroleum products during each of the six years encompassed by the consent order. "Major Oil Companies—Refined Products Sales," *International Petroleum Encyclopedia*, 1982, XV, 424. The ERA audits which led to the Getty consent order alleged a substantial number of refiner pricing formula violations, the effects of which would generally have been spread across all of Getty's petroleum products customers. Although a few firms have identified themselves as potential refund recipients, most are not identified, and the number of potentially eligible reseller applicants alone approaches 8,000 persons in 43 states.[3] Accordingly, we have concluded that a Subpart V proceeding is appropriate to distribute the Getty settlement fund.

III. Proposed Refund Procedures

The Subpart V refund process is used by the DOE to identify and compensate persons for injuries incurred as a result of actual or alleged violations of the DOE regulatory program. *See* 44 FR 8562 (1979) ("The new subpart provides a general framework pursuant to which the DOE Office of Hearings and Appeals may order refunds to be made to *injured* persons from funds ½remitted by regulated firms . . ."") (emphasis added). The analysis of refund claims focuses on the question of whether firms were economically injured as a result of allegedly unlawful regulatory practices, rather than on whether they were "overcharged" in a technical sense. *See Denny Klepper Oil Co. v. Dept. of Energy*, 598 F. Supp. 527 (D.C.D.C. 1984). Restitution is, however, an inexact process. Relevant case law, the Subpart V regulations and the DOE decisions in this area recognize the difficulties inherent in deciding what would have happened had overcharges not occurred.

In the case of crude oil miscertifications that were spread through the entitlements program to the entire refining industry and then to all consumers, we have previously found that it is impossible to trace the increased costs resulting from such miscertifications through an individual refiner's refining, distribution and marketing operations. *Report to the United States District Court for the District of Kansas, In re Department of Energy Stripper Well Exemption Litigation*, June 1985 at 25. Based upon that Report, the Department concluded that in the case of such crude oil miscertifications, where the harm was spread through the entire petroleum distribution system and then through the whole economy, attempts to make payments to individual firms based upon the econometric modeling techniques analyzed in our Stripper Well Report were not appropriate. Department of Energy Statement of Restitutionary Policy, 50 FR 27,400 (July 2, 1985). But in the case before us here, involving the far simpler task of analyzing the effects of alleged overcharges on the petroleum products sold by a single refiner, and where the alleged overcharges did not directly affect the costs of all competitors of those who dealt in Getty's products, it is feasible to use approximations of injury to facilitate the distribution of refunds.

Since the inception of the special refund program, the OHA has used a variety of approaches to achieve proper restitution of petroleum product overcharge funds, depending upon the particular circumstances of each case. The most important variables from case to case include the amount of information available about the alleged violations underlying a settlement, the amount of money available for distribution, and the type of business in which the consent order firm was involved. Thus, for example, in cases involving petroleum products resellers where the audit record is well-developed and includes a list of alleged overcharge victims and the overcharge amounts each party allegedly incurred, we have relied heavily upon the audit information to make preliminary determinations of alleged overcharges. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *J.A.L. Oil Co., Inc.*, 12 DOE ¶ 85,138 (1984). In contrast, where little information concerning the alleged violations underlying a consent order was available, we have adopted more flexible procedures. *See, e.g., Thornton Oil Co.*, 12 DOE ¶ 85,112 (1984).

This proceeding is unusual. The underlying consent order involved all aspects of the operations of an integrated refiner. Getty marketed motor gasoline and middle distillates through a long distribution network. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*); *Mobil Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058 (proposed decision) (hereinafter cited as *Mobil*). In addition, the consent order fund of $45 million is large and potential claimants number several thousand. Consequently, we began our analysis of possible Getty refund procedures by utilizing all relevant marketing information available, including publicly available information, information in the Getty audit files, and proprietary data collected by the Energy Information Administration (EIA). With this data we hoped to fashion product-specific presumptions that could be used to streamline the refund application process.[4]

[1] During the consent order period, Getty exercised indirect control over Skelly. It owned a 3.56 percent interest in Skelly and a 87.93 percent interest in Mission Corporation (Mission), which in turn held a 72.53 percent interest in Skelly. Skelly also marketed motor gasoline under the "Surfco" brand name. Getty and Skelly were generally considered by the agency to be a single "firm" pursuant to 10 CFR 212.83(b), but received exception relief that permitted them to report their crude oil receipts and their increased costs separately and to calculate separate allocation fractions for the period May 19, 1972 through January 25, 1977. *See* Getty Oil Co., 2 FEA ¶ 83,041 (1975); Getty Oil Co., 2 FEA ¶ 80,646 (1975). On January 25, 1977, the DOE rescinded the exception relief at Getty's request because Getty, Skelly and Mission were merging their operations effective January 31, 1977. Getty Oil Co., 5 FEA ¶ 67,009 (1977). The important fact for present purposes is that the consent order covered all of both firms' regulated activities during the settlement period.

[2] The three issues exempted from the consent order relate to: (i) a June 27, 1978 Notice fo Probable Violation (NOPV) involving crude oil production at Getty's Kern River field; (ii) the decision and order in Getty Oil Co., 1 DOE ¶ 80,102 (1977) and Getty Oil Co., Civ. No. 77–434 (D. Del.) (subsequently *aff'd* as Getty Oil Co. v. DOE, 749 F.2d 734 (Temp. Emer. Ct. App. 1984), *cert. denied*, 105 S. Ct. 1176 (1985)), concerning certain crude oil exchanges with Standard Oil Company of Ohio; and (iii) issues relating to the propriety of the costs reported by Getty or its predecessors for interaffiliate purchases of natural gas liquids or natural gas liquid products or shrinkage costs under 10 CFR Part 212, Subpart K.

[3] According to information in the record, Getty and Skelly sold motor gasoline to about 6800 wholesalers and dealers and propane through 1000 dealers.

[4] Most of the information in the Getty audit files consists of (i) arguably confidential, proprietary data, (ii) interagency memoranda containing recommendations and preliminary findings concerning the Getty audit, and (iii) investigatory material gathered during the course of ERA's enforcement investigation. These documents are likely to be exempt from disclosure under

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We first examined the record to determine whether any conclusions could be drawn about potential crude oil refund claims. The audit records revealed that the auditors did not identify many significant issues concerning Getty's compliance with the DOE regulations applicable to sales of crude oil. The only significant dispute, which concerned Getty's crude oil production in a Kern County, California oil field, was excluded by agreement from the ambit of the consent order. *See* Consent Order, ¶ 3(a).[5] Moreover, an agency attorney who was involved in the negotiation of the consent order confirmed that the audit underlying the consent order included few crude oil issues. *See* December 16, 1983, Letter from Leslie Adams, Deputy Solicitor, ERA, to Terry Johnson, OHA. As a result, we anticipate that the refund applications in this case will be filed by firms that purchased Getty refined products.[6]

Potential claimants will therefore claim injury in the sale of Getty refined products. These claimants are likely to be numerous. For example, evidence in the record indicates that in 1974 alone Getty was marketing motor gasoline through 6,881 retail outlets. It would be extremely difficult, if not impossible, to trace the effects of Getty's alleged violations to these particular customers because of many factors, including the large number of purchasers, the much larger number of individual transactions which are relevant to that analysis, and the complex interplay between various aspects of the DOE pricing regulations over an extended period of time. For example, the fact that a refiner's accounting for particular transactions, *e.g.*, motor gasoline sales, may not have been in conformity with the DOE regulations does not necessarily mean that overcharges to particular customers occurred, since the firm may have had adequate banks of unrecovered costs increases to cover any cost violations. Nevertheless, our experience with petroleum products marketing, combined with an analysis of Getty pricing data at various levels, yield useful information about the most likely incidence of injury. We will use this information about the incidence of injury to adopt certain general presumptions that we have used successfully in other proceedings and will also formulate specific presumptions based upon the particular circumstances presented in this case.

A. General Presumptions

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. These presumptions will be founded upon our experience in prior Subpart V proceedings involving refined products. In addition, we will adopt some product-specific presumptions for motor gasoline based upon specific information concerning Getty's regulated operations for that product during the settlement period.

We will first adopt the presumption that the maximum refund available to a particular applicant shall be that proportion of the total consent order fund equal to the volume of Getty purchases made by that applicant divided by all sales of refined products by Getty during the relevant period. Under this "volumetric presumption," the effects of Getty's alleged violations are presumed to have been spread evenly over all of the controlled petroleum products marketed by the firm during the consent order period. We have used this presumption successfully in a number of prior cases. *See, e.g., Amoco* at 88,198. In the absence of better information, this assumption is sound because the DOE price regulations generally required refiners to account for their increased costs on a firm-wide basis in determining their prices. *See generally* 10 CFR Part 212, Subpart E. However, we also recognize that the impact of a particular refiner's pricing practices on an individual purchaser could have been greater, and we will allow purchasers to file refund applications based on a claim that the applicant suffered disproportionate injury from Getty's alleged overcharges *See, e.g., Standard Oil Co. (Indiana)/ Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). Consequently, this presumption will be rebuttable, as will all of the presumptions which we will adopt. *See Amoco* at 88,199.

We estimate that Getty's sales of refined products that were subject to price and allocation controls during the settlement period totalled 16,687,285,701 gallons.[7] When divided into the current Getty escrow account balance of $42,736,587.73 this yields a per gallon refund of $0.002564 ($0.001426 in principal plus $0.001038 in interest accrued through September 30, 1985).[8] As in previous cases, we will establish a minimum refund amount of $15.00 for claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982).

In addition to the volumetric presumption of injury, we will adopt a presumption that any reseller or retailer who made only spot purchases from Getty probably did not suffer an injury and thus will be ineligible for a refund for those purchases. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Getty motor gasoline. *See Amoco* at 88,200.

An additional class of Getty customers that will be presumed not to have been injured by the firm's regulatory practices is consignee agents. Those firms established their prices at a set, per-gallon commission fee that was added to Getty's wholesale price. That type of arrangement made it likely that a consignee did not absorb any alleged overcharges. We therefore propose to adopt a rebuttable presumption that claims based on alleged overcharges which are submitted by consignees should not be approved. *See Amoco* at 88,200; *Gulf Oil Corp./C.R. Hill Oil Co.*, Case No. RF40–1004 (proposed Decision issued September 11, 1985). *Cf. Tenneco Oil Co./Kellermyer Inc.* 10 DOE ¶ 85,092 (1983) (consignee's allocation-based claim granted while its price violation claim denied).

The volumetric presumption of injury will not be applied to claims based on alleged violations of the allocation regulations. Refunds based upon allocation claims—alleging a failure by Getty to furnish product which it was obliged to supply to the claimant under the DOE allocation regulations, 10 C.F.R. Part 211—have in past cases been approved on the basis of monetary damages (if any) caused by the failure to deliver product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982). An allocation claimant should have been aware of the alleged violation at the time it occurred, and should have taken some contemporaneous action to mitigate the injury. Consequently, an allocation claimant must include with its refund application an explanation of the contemporaneous actions it took to mitigate its injury. In addition, an allocation claimant will be required to submit sufficient information to demonstrate that its claim is credible, including the best available evidence of the injury which was sustained by the claimant. The burden of establishing eligibility for a refund based on an allocation-type claim will rest on the claimant, and cases will be adjudicated on a case by case basis.

Our experience with Subpart V proceedings indicates that the likely claimants in this category in this proceeding, when more fully identified, will fall into two categories: (1) Resellers (including refiners and retailers) of Getty refined products and (2) firms, individuals, or organizations that were consumers (end-users) of Getty refined products. The products purchased by these claimants were probably purchased either directly from Getty or from other firms in a chain of distribution leading back to Getty.

As in previous cases, we will adopt a presumption of injury for small claims filed by resellers of Getty refined products other than motor gasoline. *See, e.g., J.A.L. Oil Co.*, 12 DOE ¶ 85,138 (1984). The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Getty consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, considerable expense can be entailed in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to OHA of analyzing it, can easily exceed the amount of the possible refund. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and to employ its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Getty and were in the chain of distribution where the alleged overcharges occurred. Therefore, they felt at least the initial impact of the alleged overcharges. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happended downstream of that initial impact.

Under the small claims presumption that we intend to adopt a reseller or retailer claimant (for products other than motor gasoline) will not be required to submit any additional evidence of injury beyond Getty purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. As in other cases, we believe that the establishment of a threshold of $5,000, exclusive of interest, is appropriate. *See Texas Oil & Gas Corp.; Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein.

Finally, as in past refined product cases we will adopt a presumption that regulated industries and agricultural cooperatives need not prove that they absorbed alleged overcharges in order to qualify for a refund on purchases they used or sold to members. Consequently, we will permit these entities to receive a full volumetric refund, provided that they include in their refund application a full explanation of the manner in which refunds will be passed through to their customers. *See Tenneco* at 85,203.

We will also treat end-users or ultimate consumers who purchased products other than middle distillates and motor gasoline, and whose business is unrelated to the petroleum industry, as having been injured by the alleged petroleum product overcharges settled in the consent order. These entities were not subject to DOE regulations during the relevant period, and thus are outside our inquiry about passthrough of overcharges. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of Getty petroleum products other than motor gasoline need only document their purchase volumes from Getty to show that they were injured by the alleged overcharges.

B. Product-Specific Presumptions

The petroleum industry is highly integrated, and some petroleum products such as motor gasoline are frequently sold or transferred more than once before reaching the ultimate consumer. Accordingly, the impact of any Getty overcharges on these products was felt at each level of the distribution system for those products. The presumptions and criteria discussed below are intended to provide a mechanism for assessing what portion of the presumed per gallon injury on each gallon of Getty products was experienced at the different levels of distribution for that product.

Exemptions 4, 5 and 7 of the Freedom of Information Act, 5 U.S.C. 552, and the exempt material will be protected from disclosure. In addition, the Getty-specific date obtained from the EIA is covered by a disclosure agreement that limits third-party access to the information to firms that enter into a protective order. *See* July 12, 1984 Disclosure Agreement between EIA and OHA. This information will also be kept confidential.

[6] Due to this exclusion, we will not accept refund applications from purchasers of the crude oil specified in the referenced Notice of Probable Violation. No proposed Remedial Order was ever issued in that case. *See* Memorandum of December 11, 1984, Telephone Conversation Between Leslie Adams, Deputy Solicitor, ERA, and Terry Johnson, OHA.

[7] This is consistent with the fact that refined produce pricing violations were the focus of the Getty Consent Order. *See e.g.*, March 31, 1978, Notice of Probable Violation (alleging overstatement of costs due to excessive shipping costs); June 24, 1975, Notice of Proposed Disallowance (alleging overstatement of costs for imported crude for the months of October 1973 through April 1974).

[7] This total was calculated based upon Getty's and Skelly's refined product sales figures in the company's annual reports for 1973 through 1978.

[8] This figure is provided in order to enable claimants to estimate potential refund amounts. The appropriate *pro rata* share of interest will be added to each refund at the time of payment.

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1. Motor Gasoline

Motor gasoline sales accounted for over one-half of the volumes covered by the Getty consent order. Only a small portion of these sales were made through Getty-operated retail outlets; most of the motor gasoline sold by Getty passed through at least one intermediate distributor before it was sold to its ultimate consumer. These distributors and consumers number in the thousands. *See* note 3, *supra*. Consequently, it would be useful if we could use the data available to the agency to discern the injury absorbed by each level of the distribution chain. This would obviate the need for individual claimants to submit detailed historical data concerning their pricing practices during the consent order period, *see, e.g., Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶85,009 (1982), as well as the need for OHA to conduct a case-by-case analysis of each firm's injury. *See id.*

In previous cases involving major refiner consent order funds, *see, e.g., Amoco*, we have examined the approximate average prices charged by those refiners at each level of distribution and made findings as to the probable share of injury that was absorbed at each level in the distribution system, as reflected by the effect the refiner's price changes had on each level's profit margins. This analysis for mid-level distributors is proper because motor gasoline retailing and reselling is essentially a single-item business. Motor gasoline sales dominate for that type of firm, and its other sales of goods and sevices, such as tires, batteries and accessories, are tied to the traffic generated by motor gasoline customers. Moreover, the cost of motor gasoline represents the bulk of the firm's selling price and is the key factor in its pricing decisions.

Our profit margin analyses in two previous refiner cases used national average refiner prices, based upon our finding that the prices of each refiner involved substantially mirrored national average refiner prices. *See Amoco* at 88,208; *Mobil* at 90,117. However, those firms had large market shares during the period of price controls and their prices corresponded closely with the national average. In contrast, Getty was only the twentieth or twenty-first ranked largest seller of petroleum products during the consent order period and its reported prices for motor gasoline varied significantly from reported national averages at all distribution levels. As a result, we have concluded that Getty-specific data should be used to analyze injury for motor gasoline claimants.

Our information concerning Getty's motor gasoline prices was obtained from data which Getty filed with the EIA during the period July 1975 through December 1978.[9] In the absence of data for the other periods, we will assume that market conditions during these 42 months are representative of the market conditions which prevailed throughout the entire consent order period.

This information shows generally that Getty's wholesale motor gasoline prices were usually below the national average, while its dealer tankwagon (DTW) price, the price Getty charged independent retailers, was often close to or slightly above the national average. These near-average DTW prices did not conform to our expectation that Getty motor gasoline, as a "minor" brand product, was marketed at lower than average prices. On the other hand, Getty's *retail* motor gasoline prices were, as expected, always much lower than the national average. In other words, consumers and end-users of Getty motor gasoline paid less than purchasers of other motor gasoline nationwide during the consent order period. In addition, the data showed that including Skelly in Getty's reports beginning in February 1977 caused a significant shift in the reported sales patterns and prices. *See* note 10 below. Based upon these general observations, it appeared that the great majority of the injury experienced by Getty motor gasoline customers as a result of overcharge allegations settled in the consent order was likely absorbed by independent retailers of Getty motor gasoline. We subsequently analyzed the available data in greater detail and our analysis of each individual distribution level follows.

a. Jobbers' Sales at Dealer Tankwagon (DTW) Prices: Conclusions about the effect of Getty's prices on its jobbers can be drawn by comparing Getty's wholesale prices (sales to jobbers) and its dealer tankwagon (DTW) prices (sales to retailers) during the 42-month period from July 1975 through December 1978. That information shows that while the Getty jobbers' profit margins for sales at DTW varied between the pre-Skelly and post-Skelly periods, they were generally better than the national average.[10]

During the pre-Skelly period, Getty jobbers' margins on sales at DTW average $.0340 per gallon, compared to $.0315 for their competitors. The post-Skelly period found the jobbers' profit margins increased to an average of $.045, with only the last three months of 1978 slipping below $.040, compared to a national average of $.0295. In other words, during the entire period, Getty jobbers' profit margins were, in all but six months, either higher or virtually the same as their competitors. In fact, from February 1977 onward, when Skelly was included in Getty's reports, the Getty jobbers' profit margins on sales at DTW were consistently higher by $.01 or more than competing jobbers supplied by other major refiners. The six months when Getty jobbers' profit margins were lower than national average jobber profit margins were November 1975, and January, February, May, June, and October 1976.

Getty's jobbers thus enjoyed a relative advantage over their jobber competitors throughout the period because Getty's wholesale prices were usually lower than average, while Getty's DTW prices remained generally at or above the average. The data indicate therefore that Getty jobbers did not pass on their price advantage to their DTW customers and, because of this advantageous competitive position, rarely were in a position where they would have had to absorb any of the alleged Getty overcharges. As stated above, the Getty jobbers' margins on sales at DTW were depressed in only six of the forty-two months for which we have data. Nor do the jobbers' sales volumes reflect any decline in market share during the relevant period. As noted above, we are assuming here and in the discussions below that these 42 months are representative of the entire consent order period and are concludifig by extrapolation that the same level of injury occurred during the 23 months for which we lack price data.

Based on the foregoing analysis of this critically important data, we have concluded that it is appropriate to adopt a presumption that jobbers were injured in their sales at DTW only during the six months that their profit margins declined to a point below the national

[9] This information was collected on Forms FEA-P302-M-1 and EIA-460, "Monthly Petroleum Product Price Report." The EIA did not have information for either Getty or Skelly for the period prior to July 1975. In addition, Skelly was not included in these EIA reports until February 1, 1977. *See* note 1, *supra*.

[10] This corresponded to the shift in sales patterns that also was reflected in the combined reports. The Getty distribution system had relied more heavily than the national average on DTW sales to retailers. After Getty and Skelly combined, the system changed and funnelled half of the combined entity's motor gasoline sales volumes through jobbers. This may be attributable to Skelly's Midwest location, where jobbers are particularly important. Motor gasoline in that region must frequently be transported by jobbers from remote pipeline terminals, in contrast to the situation in the more populous Northeastern region of the United States, where Getty Eastern marketed its motor gasoline.

average, *i.e.*, November 1975 and January, February, May, June and October 1976. However, since we find below that firms selling Getty motor gasoline at retail—including jobbers—were also injured during those six months, the jobbers will split the volumetric refund with retailers on motor gasoline sales in those months, and the percentage of the full pro rata refund per gallon to be applied against gasoline volumes sold by a Getty jobber at DTW prices will be 7 percent (6 months of injury divided by 2 (to represent the sharing of injury), divided by 42 months in the period, or (6÷2)/42, and rounded to the nearest whole figure).

b. Retailers: As we have previously indicated, the retail price (*i.e.*, price charged to consumers) for Getty motor gasoline at Getty-owned and operated outlets for the period for which we have data was significantly below the national average. In fact, in all but one of the 42 months studied, Getty's retail prices were lower than its competitors by at least $ .020. This conformed to our expectations because at all levels of distribution non-major branded motor gasoline is usually sold at lower than average prices in order to overcome the traditional buyer preference for major-branded gasoline. However, as noted above, Getty's DTW prices were at or above national averages. While this price disparity certainly created no hardship for consumers, assuming that independent dealers had to meet the Getty price, Getty's pricing adversely affected the independent retailers and the jobber-operated retailers marketing Getty motor gasoline. Throughout the consent order period, margins for Getty independent retailers were always substantially lower than those of their competitors, except for the last three months of 1978. Similarly, Getty's jobber-owned retail outlets' margins, *i.e.*, the difference between wholesale and retail prices, were $ .04 to $ .05 below the national average prior to the addition of Skelly to the data base, and afterwards recovered only to a consistent $ .02 below national average, except in the last two months of 1978.

We therefore conclude that all retailers of Getty motor gasoline were not able to pass through the Getty alleged overcharges and were therefore injured by the alleged Getty overcharges during the period for which we have data, except for the last two months of 1978, and we shall adopt a presumption that reflects this finding. For ease of applicants and for processing purposes, the presumption will be set at 93 percent, rather than varying according to the source (*i.e.*, Getty, jobber or owner-jobber) of the motor gasoline for which the retailer is filing a claim. We believe that that percent approximates the average injury suffered by this group.[11]

c. Consumers: Prior to its consolidation with Skelly, Getty's direct sales to consumers at Getty-owned and -operated retail outlets comprised a meager 1.7 percent of its total motor gasoline sales volumes, compared with a national average of 11.6 percent. During that period, almost three-quarters of Getty's sales were at DTW. After February 1977, the proportion of Getty motor gasoline sold at retail increased to 7 percent for the period February 1977 through December 1978, which was still much less than the national average of 13 percent. The addition of Skelly shifted Getty's motor gasoline marketing composition to about one-half sales at wholesale, reflecting Skelly's operations in the Midwest, where sales by refiners to jobbers are usually more prevalent. Overall, Getty's motor gasoline sales at retail accounted for only 5.69 percent of Getty's total sales of motor gasoline for the period for which we have data.

During the period which we examined, Getty's retail prices were always substantially below national average prices. As noted above, we find that this significant price disparity apparently forced Getty's jobbers and retailers to absorb the vast majority of the alleged overcharges on motor gasoline for all but the last three months of 1978, when Getty's retail prices began to rise faster than the national average. Consequently, we have concluded that persons filing claims based upon purchases of Getty motor gasoline at retail will be presumed to have absorbed injury only for 7 percent of volumes purchased during the consent order period (100 percent minus 93 percent). Consumers that purchased motor gasoline directly from Getty did not share the impact of the alleged overcharges with any intermediate party and, accordingly, those claimants will receive 100 percent of the volumetric refund

d. Motor Gasoline Refund Procedures: Where a refund applicant states that it is willing to be subject to the applicable presumption for its motor gasoline purchase volumes, we propose to pay a refund to each claimant, depending upon that claimant's position in the distribution chain, for the appropriate percentage of the refund per gallon on the volumes which it purchased, without any further showing of injury. These presumptions are as follows:

Type of claimant	Applicable percentage
Jobber (sales at DTW)	7
Jobber (sales at retail)	93
Retailer (product purchased directly from Getty)	93
Retailer (product purchased from reseller)	93
Consumer (purchases at retail)	7
Consumer (product purchased directly from Getty)	100

These presumptions are rebuttable, like all of the presumptions we use in Subpart V proceedings, so that claimants may offer additional evidence of injury which could form the basis for the approval of larger refunds. Firms that did not purchase Getty-Skelly-, or Surfco-branded product should explain the basis for their belief that the product which they purchased was Getty motor gasoline. A claimant filing a non-presumption type of refund application will be obliged to provide, in addition to a schedule of its purchase volumes, information to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each reseller or retailer will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recoup the alleged overcharges by increasing its prices. *See Vickers.* In addition, a non-presumption claimant must demonstrate that, at the time it purchased motor gasoline from Getty, market conditions would not permit it to increase its prices to pass through the additional costs associated

[11] In the case of independent retailers supplied by jobbers, the applicable percentage is calculated by adjusting to account for the six months during which both retailers and jobbers experienced an impact as a result of the alleged overcharges. This figure is 85.71 percent (42 months minus 3 months of non-injury, less ½ of the six months in which jobbers shared injury, divided by the 42 months of the period, or $^{36}/_{42}$). Similarly, for jobbers who sold motor gasoline through their own retail outlets, the presumption of injury would include all but the last two months of 1978, when their profit margins exceeded the national average, and is precisely calculated to be 95.24 percent of their purchases for the period (42 months minus 2 months, divided by 42 months). Finally, retailers who purchased product directly from Getty at DTW prices, and thus did not share the burden of the alleged overcharges with any intervening reseller, absorbed 92.86 percent of the volumetric amount for the volumes which they purchased (42 months minus 3 months, divided by 42 months). This last group represents about one-half of the total motor gasoline volumes, and jobber-owned outlets represent the majority of the rest of the Getty retail market. We therefore chose 93 percent, rather than 91.27 percent, the arithmetic mean of these three figures. The use of an average will further administrative efficiency by permitting more rapid agency processing. In addition, each retailer will only be obliged to provide the volume and source of the Getty motor gasoline it purchased, not the regulatory status of its supplier. Retailers themselves are often uncertain as to the exact status of their supplier.

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with the alleged overcharges. *See Amoco* at 88, 223.[12]

2. Middle Distillates and Propane

Unlike motor gasoline, middle distillates and propane are customarily sold at only two levels of distribution, wholesale and retail. Reliable information about the marketing of these products sufficient for us to propose level-of-distribution presumptions is not currently available to the DOE. Consequently, we propose to adopt for applicants filing a claim for these products the generally applicable presumptions set forth in Section III.A above. However, we will state the information that is currently available, and we invite commenters to supplement that data or to propose analyses of the data which we have obtained that might lead to formulation of reliable level-of-distribution presumptions of injury for these products.

Middle distillates, which include heating oil and diesel fuel, were subject to price controls for only a portion of the Getty settlement period—from August 19, 1973 through June 30, 1976. Since the EIA did not begin its systematic collection of price data until July 1975, it was only able to provide us with Getty and national average wholesale and retail middle distillate price information from one year of the Getty consent order, the period July 1975 through June 1976, or 12 months out of the 35 relevant months. Moreover, since Skelly was not included in Getty's reports until February 1977, the EIA data only encompass Getty's operations in the eastern United States. Consequently, we have serious reservations as to whether this data could form a sufficient basis for the adoption of level-of-distribution presumptions for this product.

Upon closer examination, we found other difficulties involving the middle distillate data. During the year for which we have EIA data, Getty's reported wholesale middle distillate prices fluctuated dramatically in comparison to the national average, which rose gradually over the period. The same effect was observed for retail middle distillate prices. Without an explanation for this erratic behavior, we cannot confidently use this data to propose level-of-distribution presumptions for middle distillate resellers and consumers.

Propane was subject to federal price and allocation controls throughout the entire Getty consent order period. Again, EIA did not make a systematic collection of propane prices until July 1975, and Skelly, which could be expected to make greater than average sales of propane due to its midwestern location was not included in Getty's reports to EIA until February 1977. EIA reports that, although Form FEA P302–M–1 sought information concerning propane sales volumes and prices in the categories of residential, commercial, industrial, and agricultural sales, Getty did not report any sales in the residential class. The EIA considers all sales to other than residential customers to be wholesale; consequently, it was only able to furnish us price information for one level of distribution. We are therefore unable to conduct an analysis of propane profit margins in order to discern injury at the different levels of distribution.

Nevertheless, these products form a substantial portion of Getty's sales of refined products during the consent order period. Middle distillates comprise 12 percent, and propane almost 17 percent, of the refined products covered by the Getty consent order. Without the aid of presumptions concerning the amount of injury that was absorbed at each level of distribution, those middle distillate and propane claimants who were resellers will be obliged either to submit detailed information concerning their pricing practices during the consent order period, in order to demonstrate that they were unable to pass on the injury to their customers, or to limit their claims to the $5,000 threshold amount. *See, e.g., Tenneco.* Similarly, OHA will be obliged to conduct a case-by-case analysis of the level of injury sustained by each claimant.

In order to remedy this information gap, we would be willing to accept from responsible industry representatives any compilations or studies of Getty middle distillate and propane prices that are documented sufficiently to provide a reliable basis for analyses of the impacts on wholesalers and consumers of Getty's price changes for these products during the consent order period. This information need not cover the entire consent order period, but it should cover enough time to enable us to extrapolate confidently over the rest of the consent order period. Commenters may also wish to propose analyses of the data which we have obtained that would support level-of-distribution presumptions of injury for these products. If we are unable to obtain further information or to formulate appropriate level-of-distribution presumptions, we propose to distribute refunds to middle distillate and propane refund applicants based upon the general principles and presumptions discussed above.

3. Other Refined Products

The remaining refined products other than motor gasoline, middle distillates and propane made up about 4.67 percent of Getty's product sales during the consent order period. We were unable to locate enough reliable information about Getty's and other refiners' marketing practices for these refined products to allow us to formulate appropriate level of distribution presumptions for them. Firms filing refund applications based upon their purchases of these products will therefore be required to demonstrate the amount of injury which they absorbed. However, we will employ the presumptions of injury which we discussed above, including the presumption for small claimants.

IV. Summary of Refund Procedures

In order to receive a refund each claimant will be required to submit a schedule of monthly purchases of covered products from Getty for the period August 19, 1973 through December 31, 1978. A suggested application format will be provided in the final Decision. If the products were not purchased directly from Getty, the claimant will be required to include a statement setting forth reasons for believing the product originated with the firm. *See, e.g., Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶85, 007 (1093) In addition, a reseller or retailer of refined petroleum products (other than a claimant relying on the presumptions for motor gasoline) that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each reseller or retailer will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 (1982) at 88,125. In addition, it will have to demonstrate that, at the time it purchased covered products from Getty, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In the alternative, purchasers of Getty products which limit their claims to $5,000 will only be required to provide sufficient evidence of Getty product purchases to qualify for a refund.

We solicit comments on all aspects of the foregoing Proposed Decision from interested individuals and organizations. All comments must be filed within 60 days of publication of this Proposed Decision in the **Federal Register.**

It is therefore ordered that:

The refund amount remitted by Getty Oil Company pursuant to the consent order executed on December 3, 1979, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86–3450 Filed 2–14–86; 8:45 am]

BILLING CODE 6450–01–M

[12] For example, a refund applicant could provide a complete schedule showing its purchase and selling prices for motor gasoline during the settlement period, so that we could identify and approve refunds for each month in which the firm's profit margin fell significantly. *See, e.g.* Standard Oil Co. (Indiana)/Lou's All Service, Inc., 12 DOE¶ 85,061 (1984); Standard Oil Co (Indiana/East Side Truck Stop, 11 DOE ¶ 85,141 (1983)

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $35,971 obtained as a result of consent orders which the DOE entered into with the following parties:

Leathers Oil Co. of Portland, Oregon;
Marlen L. Knutson Distributors, Inc., of Stanwood, Wisconsin.

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, with reference to the appropriate proceeding:

Leathers Consent Order Proceeding (Case No. HEF–0113);
Knutson Consent Order Proceeding (Case No. HEF–0110).

All comments should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Nancy Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to consent orders which settled possible pricing violations with respect to two firms' sales of motor gasoline during the consent order periods listed below. Under the terms of the consent orders, each firm remitted a specified sum of money to the DOE. Each fund is being held in an individual interest-bearing escrow account pending determination of its proper distribution.

Consent order firm	Consent order period	Consent order amount
Leathers Oil Co., Portland, OR.	Mar. 1, 1979–Dec. 31, 1979.	$10,000
Marlen L. Knutson, Distributors, Inc., Stanwood, WI.	Mar. 1, 1979–Dec. 31, 1979.	$25,971

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to three first purchasers of motor gasoline from Knutson who may have been overcharged. In order to obtain a refund each claimant will be required either to submit either a schedule of the volumes of motor gasoline purchased during the consent order period relevant to the firm from which it purchased the product, or to submit a statement verifying that it purchased motor gasoline from Knutson and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds any remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

February 7, 1986.

Name of Firms: Leathers Oil Co., Marlen L. Knutson Distributors, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF–0113. HEF–0110.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with Leathers Oil Co. (Leathers), and Marlen L. Knutson Distributors, Inc. (Knutson) (hereinafter both of the companies referenced above will be collectively referred to as the consent order firms).

I. Background

Leathers and Knutson are both "reseller-retailers" of motor gasoline as that term was defined in 10 CFR 212.31. Leathers is located in Portland, Oregon, and Knutson is located in Stanwood, Wisconsin. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to EPA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the consent orders state that the consent order firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The Leathers consent order covers the period March 1, 1979 through December 31, 1979. In order to settle all claims and

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disputes between Leathers and the DOE regarding Leathers' compliance with the DOE's price regulations in its sales of motor gasoline during the period covered by the audit, the firm entered into a consent order with the DOE on October 15, 1981. The consent order amount represented 38 percent of the potential liability, including interest. In accordance with the consent order, Leathers agreed to remit $10,000 to the DOE for deposit into an interest-bearing escrow account pending distribution by the DOE. Leathers paid the $10,000 in full on October 20, 1980.[1]

The Knutson consent order covers the firm's sales of motor gasoline made during the same period, March 1, 1979 through December 31, 1979. The consent order, which was made effective on September 24, 1981, resolved a Notice of Probable Violation (NOPV) issued on October 6, 1980. The consent order required that Knutson deposit $25,971 into an interest-bearing escrow account for ultimate distribution by the DOE. Knutson fulfilled this requirement on October 19, 1981.[2]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who might have been injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by the consent order firms' pricing practices during their particular consent order periods. Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified and Unidentified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. We have consistently maintained that the information contained in ERA's audit files may reasonably be used to determine the identities of purchasers allegedly overcharged in the first instance and the amounts of the overcharges. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984). In the Knutson proceeding three first purchasers were identified in the material developed by the DOE during its audit of Knutson. The total amount of refunds assigned to these purchasers equals $753, plus accrued interest. The first purchasers identified by the audit and the share of the settlement earmarked for each are listed in the Appendix.

In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the purchasers identified in the audit, and other as yet unidentified customers that may have been injured by purchases from the consent order firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Co.*, 12 DOE ¶ 85,150 (1984). Therefore, in the Knutson proceeding we will allot the remaining $25,218 plus accrued interest to those unidentified purchasers. No first purchasers were identified in the DOE's audit of Leathers. Therefore, all of the funds in the escrow account will be allotted to customers who are as yet unidentified.

As we have done in many prior refund cases, we propose to adopt certain presumptions which will be used to help determine the level of a purchaser's injury. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. 10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

As an initial matter, we will adopt a presumption that the alleged overcharges committed by the consent order firms were dispersed evenly among all sales of motor gasoline made by the firms during their relevant consent order periods. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases therein at 88,164.

Using a volumetric approach, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of motor gasoline purchased by the claimant. For claimants which purchased motor gasoline from Leathers the volumetric factor is $0.000658 per gallon.[3] For successful applicants applying for a share of the Knutson escrow account, the volumetric factor is $0.002045 per gallon.[4] In addition, successful claimants will receive a proportionate share of the accrued interest.

Second, we plan to presume that purchasers of the consent order firms' products seeking small refunds were injured by the consent order firms' pricing practices. There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the

[1] As of January 31, 1986, the Leathers escrow account contained $15,162, representing $10,000 in principal, and $5,162 in accrued interest.

[2] As of January 31, 1986, the Knutson escrow account contained $39,597 representing $25,971 in principal, and $13,626 in accrued interest.

[3] This figure was derived by dividing the $10,000 principal amount by the estimated 15,188,084.73 gallons of motor gasoline sold by Leathers during the consent order period.

[4] This figure was derived by dividing the $25,218 principal amount by the 12,331,179 gallons of motor gasoline which the company stated it sold during the consent order period.

expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

Unlike threshold claimants, an applicant which claims a refund in excess of $5,000 will be required to document its injury. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. [5] In addition, a reseller claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

We propose that retailer claimants be subject to a different requirement for demonstrating injury than that outlined above for reseller applicants. We believe a modification of the injury requirement for retailers is justified because during most of the firms' consent order periods, specifically, from July 16, 1979 to December 31, 1979, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.*

We note that retailer applicants in other refund proceedings are generally unable to claim refunds above the threshold amount if they lack a showing of banks of unrecouped product costs, since banks help to prove that a firm absorbed rather than passed through its increased product costs. However, for the purposes of this proceeding, we propose that retailers which lack banks subsequent to July 16, 1979 may still file a claim for a refund for that period which exceeds the small claim threshold.[6] Retailers should, however, submit bank calculations from March 1, 1979 through July 16, 1979. In addition, like resellers, they must show that market conditions prevented them from recovering those increased costs. Indicators of a competitive disadvantage include a detailed description of lowered profit margins, decreased market shares, or depressed sales volumes.[7]

As noted, we are proposing a finding that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, to prove injury, ultimate consumers must document only their purchase volumes.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases from the consent order firm. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as party in DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address

[5] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[6] The cost bank requirement has been relaxed in other instances regarding the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[7] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

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alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Leathers Oil Co. and Marlen L. Knutson Distributors, Inc. pursuant to the consent orders executed on October 15, 1981 and September 24, 1981, respectively, will be distributed in accordance with the foregoing decision.

APPENDIX

MARLEN L. KNUTSON DISTRIBUTORS, INC.

First purchasers	Share of settlement
Elger Bay, 1882S Elger Bay Road, Camano Island, Washington 98292	$52
Gary Drivstuen, Red Barn Snow King, 202 Ferry Street, Monroe, Washington 98272	632
Whitehorse Mercantile, 38710 SR530, Arlington, Washington 98223	78

[FR Doc. 86-3451 Filed 2-14-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $6,500 obtained as a result of a consent order which the DOE entered into with Lakes Gas Co.,Inc., a retailer of propane located in Forest Lake Minnesota. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0112.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $6,500 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Lakes Gas Co., Inc. The funds were provided to the DOE by Lakes to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of propane during the consent order period November 1, 1973 through February 29, 1980.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentively determined that a portion of the consent order funds should distributed to one first purchaser who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Lakes or to submit a statement verifying that it purchased aviation fuel from Lakes and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: February 7, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

February 7, 1986.

Name of Petitioner: Lakes Gas Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0112.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administrating (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connecting with a consent order entered into with Lakes Gas Company, Inc. (Lakes).

I. Background

Lakes is a "retailer" of propane as that term was defined in 10 CFR 212.31 and is located in Forest Lake, Minnesota. Based on an audit of Lakes' records, ERA issued a Remedial Order on July 11, 1979, alleging that Lakes committed certain pricing violations with respect to its sales of propane.

In order to settle all claims and disputes between Lakes and the DOE regarding the firm's sales of propane during the period covered by the Remedial Order, Lakes and the DOE entered into a consent order on April 17, 1980. The consent order funds represented 48.28 percent of the amount of the overcharges originally stated in the Remedial Order. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Lakes does not admit that it violated the regulations.

The consent order required Lakes to refund $50,000 plus accrued interest to its customers. Through a series of price rollbacks, Lakes reduced this amount to $9,925. At that point, Lakes and the DOE negotiated a settlement in which Lakes agreed to deposit $6,500 into an interest-bearing escrow account for ultimate distribution by the DOE. Lakes remitted this sum on June 11, 1981. This decision concerns the distribution of funds in the Lakes escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement,* 8 DOE ¶ 8,2597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of propane that were injured by Lakes' alleged pricing practices between November 1, 1973 and February 29, 1980 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified and Unidentified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. In this proceeding one first purchaser was identified in the material developed by the DOE during its audit of Lakes.[2] We have consistently maintained that the information contained in ERA's audit files may reasonably be used to determine the identities of purchasers allegedly overcharged in the first instance and the amounts of the overcharges. *See, e.g., Marion Corp.,* 12 DOE ¶ 85,014 (1984).

In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the purchasers identified in the audit, and other as yet unidentified customers that may have been injured by purchases from the consent order firm. *See, e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Richards Oil Co.,* 12 DOE ¶ 85,150 (1984). Therefore, we will allot the remaining $6,373 plus accrued interest to those unidentified purchasers. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users experienced injury.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Product Co. Siouxland Propane Co.,* 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we propose to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Lakes times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.000179.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by Lakes' pricing practices. There are a number of bases for such a presumption. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore experienced some impact of the alleged overcharges. Under the small-claims presumption, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain threshold level.[4]

As noted, we are proposing a finding that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to prive controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement,* 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.,* 12 DOE 88,209, and cases cited therein. Therefore, to prove injury, ultimate

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[1] As of January 31, 1986, the Lakes escrow account contained a total of $10,471, representing $6,500 in principal and $3,971 in accrued interest.

[2] The identified purchaser is Thurnbeck of Forest Lake, Minnesota. He is entitled to 1.955 percent of the settlement, which equals $127 plus accrued interest.

[3] This figure is derived by dividing the $6,373 remaining principal amount by the estimated 35,500,000 gallons of product sold by Lakes during the consent order period.

[4] Due to the relatively small size of the escrow account, we will not include a detailed discussion of the threshold amount here. The usual standards for claims in excess of this $5,000 threshold are applicable here, however. For a more detailed discussion of these standards, see Texas Oil & Gas Corp., 12 DOE ¶ 85,069 (1984) Office of Special Counsel, 11 DOE ¶ 85,226 (1984) (Conoco), and cases cited therein.

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consumers must document only their purchase volumes.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Ubain Oil Co.*, 9 DOE At 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases from Lakes. Applicants should also provide all relevant information necessary to support their claims in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Lakes Gas Company, Inc., pursuant to the consent order executed on April 17, 1980, will be distributed in accordance with the foregoing decision.

[FR Doc. 86-3453 Filed 2-14-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ORD-FRL-2971-1]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Determination

Notice is hereby given that on December 31, 1985, the Environmental Protection Agency received an application from Dasibi Environmental Corporation to determine if its Model 4108 U.V. Fluorescence SO_2 Analyzer should be designated by the Administrator of the EPA as an equivalent method under 40 CFR Part 53 (40 FR 7044, 41 FR 11255). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register.**

For Further Information Contact: Mr. Frederick Smith at (919) 541-4173.

Donald J. Ehreth,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86-3405 Filed 2-14-86; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

Coronado Federal Savings and Loan Association, Kansas City, KS; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed Max M. Polk as sole conservator for Coronado Federal Savings and Loan Association, Kansas City, Kansas on February 7, 1986.

Dated: February 11, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-3378 Filed 2-14-86; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 86-7]

The Secretary of the Army on Behalf of the Department of Defense v. the Port of Seattle; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Secretary of the Army on behalf of the Department of Defense against the Port of Seattle was served February 12, 1986. The complaint pertains to Army-Air Force Exchange Service shipments of palletized bags of flour by rail boxcar from Pendleton, Oregon through the Port of Seattle, Washington (Port) to the Far East. Complainant alleges that respondent has violated sections 10(b)(12) and 10(d) of the Shipping Act of 1984 with regard to services provided in cross-loading pallets from rail cars to outbound marine containers at the Port.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 12, 1987, and the final decision of the Commission shall be issued by June 12, 1987.

John Robert Ewers,

Secretary.

[FR Doc. 86-3431 Filed 2-14-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Barnett Banks of Florida, Inc.; Correction

This notice corrects a previous Federal Register document (FR Doc. No. 86-924), published at page 2433 of the issue for Thursday, January 16, 1986.

Barnett Banks of Florida, Inc., Jacksonville, Florida; to engage *de novo* through its subsidiary, Statewide Administrative Services, Inc., Jacksonville, Florida, in data processing activities pursuant to § 225.25(b)(7) of Regulation Y by monitoring the loan portfolios of affiliated banks in order to identify loans with uninsured collateral, by force-placing vendor's single interest insurance with respect to such collateral, and by performing recordkeeping and administrative functions on behalf of the insurer, including the collection of premiums. These services would be conducted in the State of Florida. Comments on this application must be received not later than March 1, 1986.

Board of Governors of the Federal Reserve System, February 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3373 Filed 2-14-86; 8:45 am]
BILLING CODE 6210-01-M

First Commercial Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Cos.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 6, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Commercial Bancshares, Inc.*, Metairie, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial Bank and Trust Company, Metairie, Louisiana, thereby indirectly acquiring First National Bank of St. Bernard Parish, Arabi Louisiana.

Board of Governors of the Federal Reserve System, February 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3374 Filed 2-14-86; 8:45 am]
BILLING CODE 6210-01-M

Independence Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Independence Bancorp, Inc.*, Perkasie, Pennsylvania; to engage *de novo* through its subsidiary, Independence Abstract, Inc., Perkasie, Pennsylvania, in title insurance business activities and also to act as an authorized agent for a title insurance underwriter, pursuant to section 225.25(b)(7) of Regulation Y.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Mortgage Company, Houston, Texas, in the origination of mortgage loans; sale of mortgage loans to mortgage servicing companies and other parties, including member banks of Texas Commerce; servicing of mortgage loans and sale of servicing rights to mortgage loans, pursuant to § 225.25(b)(1) of Regulation Y.

2. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Capital Markets, Inc., Houston, Texas, in the origination, sale and servicing of commercial loans, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3375 Filed 2-14-86; 8:45 am]
BILLING CODE 6210-01-M

Southgate Banking Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

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application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 10, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Southgate Banking Corporation,* Prairie Village, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Southgate Bank, Prairie Village, Kansas.

Applicant has also applied to acquire through its newly formed Company, The Southgate Trust Company, Prairie Village, Kansas, certain assets and fiduciary obligations of the trust department of The Southgate Bank, Prairie Village, Kansas, and thereby engage in performing trust company functions, pursuant to, and in keeping with, the restrictions of § 225.25(b)(3) of Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3376 Filed 2-14-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health: Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 49 FR 30598, July 31, 1984) is amended to reflect the following changes in the Office of Research Services (HNAA): (1) Delete the Division of Administrative Services (HNAA3); and (20 establish the Division of Space Management (HNAA5), the Division of Procurement (HNAA6), the Division of Logistics (HNAA7), and the Division of Technical Services (HNAA8). These changes will enable the Office of Research Services to better fulfill its mission which is to provide appropriate leadership for research and facilities services.

Section HN-B, Organization and Functions is amended as follows: (1) Under the heading *Office of Research Services (HNAA),* delete the statement for the Division of Administrative Services (HNAA3) in its entirety.

(2) After the statement for the *Division of Engineering Services, (HNAA4),* insert the following:

Division of Space Management (HNAA5). (1) Responsible for all aspects of real property management, owned and leased quarters; (2) administers the assignment of space made by the Director, NIH, on and off campus; and (3) manages non-Federal support and concession activities, e.g., the cafeterias and the Credit Union.

Division of Procurement (HNAA6). (1) Provides the central service and is responsible for all aspects of station support and intramural procurement, (accounting for several hundreds of million dollars annually); (2) manages the program using small purchases, formal advertisement and negotiated contracting procedures; (3) provides technical assistance in specification preparation and in Small and Disadvantaged Business opportunities; (4) provides for follow-up on orders and for continuing contract administration; (5) formulates and disseminates policies and procedures to implement Federal and Departmental regulations (meeting needs for guidance in the procurement function); and (6) provides oversight and technical assistance (manuals and training guides) to decentralized station support procurement operations.

Division of Logistics (HNAA7). (1) Plans and operates a centralized NIH-wide supply system providing a variety of needed chemical and other scientific and medical requirements; (2) provides transport services both in connection with the central supply system and the self service stores as well as support of all campus activities, and (3) manages a personal property program (which accounts for and effectively utilizes government property used at the NIH).

Division of Technical Services (HNAA8). (1) Plans and conducts a centralized program of specialized services in support of the scentific and research community; (2) manages the NIH telecommunications programs which serve the campus, rental buildings and field activities; (3) provides printing and other comprehensive written communications service; (4) manages a program of travel consultation, policy dissemination and services; (5) conducts a program of comprehensive laboratory and general cleaning services; (6) plans and provides a variety of conference services; and (7) provides other administrative services as required.

Dated: February 4, 1986.

Donald Ian Macdonald,

Acting Assistant Secretary for Health.

[FR Doc. 86-3419 Filed 2-14-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-85-1573; FR-2133]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management, and Property Disposition Program, Moderate Rehabilitation Program and Housing Voucher Program; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed notice; correction.

SUMMARY: This document corrects a notice published on January 2, 1986 in the **Federal Register** proposing Fair Market Rent Schedules for the Section 8 Existing Housing Certificate Program and Moderate Rehabilitation Program (Part 882), including space rentals by owners of manufactured homes under the Section 8 Existing Housing Certificate Program (Part 882, Subpart F) and for existing housing assisted under Part 886, Subparts A and C. The FMRs also are used to determine the Initial Payment Standard and subsequent Payment Standard schedules in the Housing Voucher Program. The proposed notice contained errors for several counties, which are corrected in this Notice.

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DATES: *Comment Due Date:* Comments on the Fair Market Rents proposed in today's document must be submitted on or before April 21, 1986. Please note that this comment period applies only to *today's* proposed rents.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410-0500. Each comment should include the commenter's name and address and must refer to the docket number indicated in the heading of this Notice. Each commenter should simultaneously submit a copy of its comments to the Economic and Market Analysis Division in the appropriate HUD Field Office. A copy of each comment submitted to the Rules Docket Clerk will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Ellis V. St. Clair, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5590. For other program information, contact Cecelia D. Livingston, Existing Housing Division, Office of Elderly and Assisted Housing, telephone (202) 755-6477. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department published proposed Fair Market Rents on January 2, 1986 (see 51 FR 75). This document contained proposals for approximately 2,400 nonmetropolitan counties and 330 metropolitan areas. The proposed FMRs for approximately 150 nonmetropolitan counties in Census County Groups that include both metropolitan and nonmetropolitan counties are not calculated correctly, because the data for the metropolitan counties were not deleted from the county group base data. The inadvertent inclusion of the metropolitan county data resulted in proposed FMRs that are higher than they should be for these 150 nonmetropolitan counties. The proposed FMRs for these counties are being corrected in this document.

Because of the potential impact on these 150 nonmetropolitan counties, the Department is providing for a full 60-day comment period for the counties listed at the end of this document. Comments should include the same kind of data requested in the January 2, 1986, **Federal Register** notice, which are repeated below for the use of the commenter. Areas affected by the correction document *need not* submit a notice of intent to comment, as was required for earlier commenters. However, comments should meet the following guidelines:

Comments on FMR levels should include sufficient information (including a full description of local data and methodology used) to justify any proposed changes. Changes may be proposed in all or any of the unit sizes on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire market area (nonmetropolitan county).

Local housing market studies, rental market surveys or other comprehensive rental market data may be submitted to show the 45th percentile rent levels for standard quality rental housing units. To be representative, the local data must exclude units built within the last two years of the PHA's survey, should not be drawn solely from vacant units, and should approximate the same proportion of units by structure type (for example, highrise or single family detached) and date of construction as exists in the total local inventory. A weighted sample may be used to obtain appropriate coverage. Since the Department's data base includes only recent movers, where possible commenters may wish to submit surveys based only on recent movers.

Local rental market surveys may be conducted to cover all bedroom sizes, or only selected bedroom sizes. Surveys that cover only two-bedroom units are acceptable if rent proposals for other size units are consistent with established HUD differentials by bedroom size, or if other pertinent data is supplied to support the proposals for other size untis. When three- and four-bedroom units are surveyed, the following procedure must be used to determine appropriate FMR proposals: (1) Determine the 45th percentile rents for the three- and four-bedroom units surveyed, (2) multiply the 45th percentile three-bedroom rent by 1.087 to determine the three-bedroom FMR, and (3) multiply the four-bedroom rent by 1.077 to determine the four-bedroom FMR. The use of these factors will produce the same upward adjustments in the rent differentials by bedroom size as those applied to the standard rent differentials for three- and four-bedroom units in the HUD methodology.

For areas where gross rents have increased significantly as a result of taxes or the cost of fuel and utilities applicable to a major portion of the FMR area, data relating to these increased costs may be submitted to justify revision of the FMRs. Data must be adequately described to facilitate evaluation and comparison with tax, fuel and utility costs data used in the Department's FMR calculations, and must be representative of the rental inventory.

Accordingly, FR-Doc. 85-30962, appearing in the January 2, 1986, issue of the **Federal Register** (51 FR 75-127) is corrected by revising the proposed rents for the areas listed below:

Dated: February 11, 1986.

Silvio J. DeBartolomeis,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

BILLING CODE 4210-27-M

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 012986

STATE: ALABAMA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BARBOUR	185	224	264	330	370
COVINGTON	155	224	264	330	370
FRANKLIN	179	217	255	319	367
HENRY	185	224	264	330	370
WINSTON	179	217	255	319	367

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COFFEE	185	224	264	330	370
ESCAMBIA	170	207	243	304	340
GENEVA	185	224	264	330	370
MARION	179	217	255	319	357

STATE: ARKANSAS

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CLEVELAND	191	232	273	341	382
GRANT	191	232	273	341	382
MONROE	167	202	238	298	333
PRAIRIE	167	202	238	298	333

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FRANKLIN	172	208	245	306	343
LOGAN	172	208	245	306	343
POLK	172	208	245	306	343
SCOTT	172	208	245	306	343

STATE: CALIFORNIA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
IMPERIAL	314	381	448	560	627
SIERRA	371	451	530	663	742

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
NEVADA	371	451	530	663	742

STATE: CONNECTICUT

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
MIDDLESEX COUNTY TOWNS OF CHESTER, DEEP RIVER, ESSEX, OLD SAYBROOK, WESTBROOK	378	466	537	671	762

STATE: FLORIDA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BAKER	187	227	267	334	374

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
WALTON	148	177	208	260	291

STATE: GEORGIA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CRAWFORD	169	206	241	301	337
GREENE	190	230	271	338	378
MONROE	169	206	241	301	337
OGLETHORPE	190	230	271	338	378
TWIGGS	169	206	241	301	337

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ELBERT	182	223	274	343	384
LAMAR	180	220	266	333	372
MORGAN	190	230	271	339	378
PIKE	186	228	266	333	372
UPSON	186	228	266	333	372

STATE: INDIANA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SCOTT	237	288	338	424	475

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS

STATE: IOWA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BENTON	228	277	326	408	456
JONES	228	277	326	408	456

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
IOWA	228	277	326	408	456
WASHINGTON	228	277	326	408	456

STATE: KANSAS

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
FRANKLIN	202	246	288	360	403
OSAGE	202	246	289	361	405

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
JEFFERSON	202	246	288	361	405

STATE: KENTUCKY

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CARROLL	212	258	303	378	424
GALLATIN	212	258	303	378	424
HANCOCK	214	260	306	383	428
HENRY	189	230	270	338	378
LIVINGSTON	191	232	273	341	382
MCLEAN	214	260	306	383	428

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ELLIOTT	190	231	272	340	381
GRANT	212	258	303	378	424
HARRISON	187	227	267	334	374
LAWRENCE	190	231	272	340	381
LYON	191	232	273	341	382
NICHOLAS	187	227	267	334	374

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 10 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.10 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

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SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 012986

STATE: KENTUCKY

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
OHIO	214	260	308	383	428
PENDLETON	212	258	303	378	424
SPENCER	189	230	270	338	378
TRIGG	191	232	273	341	382
UNION	214	260	306	383	428

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
OWEN	212	258	303	379	424
POWELL	187	227	267	334	374
TODD	191	232	273	341	382
TRIMBLE	189	230	270	338	378
WEBSTER	214	260	306	383	428

STATE: LOUISIANA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ALLEN	162	197	232	290	326
BEAUREGARD	162	197	232	290	328
JEFFERSON DA	162	197	232	290	328
ST JAMES	176	213	250	313	350

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ASSUMPTION	176	213	250	313	360
CAMERON	162	197	232	290	328
PLAQUEMINES	293	356	418	523	585
WEBSTER	181	220	259	324	363

STATE: MINNESOTA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
DODGE	221	268	315	394	441
WABASHA	221	268	315	394	441

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GOODHUE	221	268	315	394	441

STATE: MISSISSIPPI

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
COPIAH	181	220	259	324	363

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SIMPSON	181	220	259	324	363

STATE: NEW HAMPSHIRE

NONMETROPOLITAN COUNTIES OR PARTS OF COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
ROCKINGHAM COUNTY TOWNS OF CHESTER, DEERFIELD, EPPING, FREMONT, HAMPTON FALL, KENSINGTON, NORTHWOOD, NOTTINGHAM, RAYMOND, SOUTH HAMPTO	303	368	433	541	606

STATE: NEW MEXICO

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
RIO ARRIBA	205	249	293	386	410
TAOS	205	249	293	368	410

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
SANDOVAL	260	318	371	464	519

STATE: NEW YORK

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
YATES	242	294	348	433	484

STATE: NORTH CAROLINA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CHATHAM	218	264	311	389	436

STATE: NORTH DAKOTA

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
EMMONS	209	253	298	373	417
KIDDER	209	253	298	373	417
MERCER	209	253	298	373	417
RANSOM	218	261	307	384	430
SARGENT	218	261	307	384	430
SIOUX	209	253	298	373	417
TRAILL	216	261	307	384	430

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
GRANT	209	253	298	373	417
MCLEAN	209	253	298	373	417
OLIVER	209	253	298	373	417
RICHLAND	218	261	307	384	430
SHERIDAN	209	253	298	373	417
STEELE	216	261	307	384	430

STATE: TENNESSEE

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HOUSTON	184	224	263	328	368
JOHNSON	193	236	278	345	386

NONMETROPOLITAN COUNTIES	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
HUMPHREYS	184	224	263	328	368
STEWART	184	224	263	328	368

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 18 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.18 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

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SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 012986

STATE: TEXAS

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BORDEN	203	247	290	363	406	BURLESON	180	230	271	339	379
CALHOUN	232	282	332	415	465	CHAMBERS	263	319	375	469	525
COKE	193	235	276	345	386	CONCHO	193	235	276	345	386
CROCKETT	183	225	276	345	386	DAWSON	203	247	290	363	406
DE WITT	232	282	332	415	465	GLASSCOCK	203	247	290	363	406
GOLIAD	232	282	332	415	465	GONZALES	232	282	332	415	465
GRIMES	190	230	271	339	379	HOWARD	203	247	290	363	406
IRION	193	235	276	345	386	JACKSON	232	282	332	415	465
JIM HOGG	197	239	281	351	393	KARNES	182	221	260	326	364
KIMBLE	193	236	276	345	386	LAVACA	232	282	332	415	465
LEON	190	230	271	339	379	MCCULLOCH	193	235	276	345	386
MADISON	190	230	271	339	379	MARTIN	203	247	290	363	406
MASON	193	236	276	345	386	MENARD	193	235	276	345	386
REAGAN	193	236	276	345	386	ROBERTSON	190	230	271	339	379
SCHLEICHER	193	235	276	345	386	STARR	197	239	281	351	393
STERLING	193	236	276	345	386	SUTTON	183	236	276	345	386
UPTON	203	247	290	363	406	WASHINGTON	190	230	271	339	379
WILSON	182	221	260	326	364	ZAPATA	197	239	281	351	393

STATE: VIRGINIA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CRAIG	197	238	281	351	393

STATE: WEST VIRGINIA

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
BOONE	232	281	331	414	463	CALHOUN	197	239	281	351	393
CLAY	232	281	331	414	463	JACKSON	197	239	281	351	393
PLEASANTS	197	239	281	351	393	RITCHIE	197	239	281	351	393
ROANE	197	239	281	351	393	TYLER	197	239	281	351	393
WETZEL	238	286	337	421	472	WIRT	197	239	281	351	393

STATE: WISCONSIN

NONMETROPOLITAN COUNTIES

	0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS		0 BEDROOMS	1 BEDROOM	2 BEDROOMS	3 BEDROOMS	4 BEDROOMS
CRAWFORD	216	263	309	386	433	VERNON	216	263	309	386	433

NOTE: THE FMRS FOR UNIT SIZES LARGER THAN FOUR-BEDROOMS ARE CALCULATED BY ADDING 16 PERCENT TO THE FOUR-BEDROOM FMR FOR EACH ADDITIONAL BEDROOM. TO ILLUSTRATE, THE FMR FOR A FIVE-BEDROOM UNIT IS 1.16 TIMES THE FOUR-BEDROOM FMR, AND THE CALCULATION OF THE FMR FOR A SIX-BEDROOM UNIT IS 1.30 TIMES THE FOUR-BEDROOM FMR, ETC.

[FR Doc. 86-3423 Filed 2-14-86; 8:45 am]
BILLING CODE 4210-27-C

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Thursday, March 6, 1986, starting at 9:00 am, in the Supreme Court Chamber in the Indiana State Capitol located at Capitol and Market Streets, Indianapolis, IN 46208.

This is a change of location from the Auditorium of the Indiana State Museum, 202 North Alabama, Indianapolis, Indiana 46204 as listed in the **Federal Register** dated February 11, 1986 on page 5108.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation programs in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and he may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111 20th Street, NW, Washington, DC 20036–8547, (202) 634–7310.

Dated: December 12, 1986.

Victor H. Ashe,

Executive Director, President's Commission on Americons Outdoors.

[FR Doc. 86–3415 Filed 2–14–86; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

[U–36863]

Grand County, Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act, (Pub. L. 97–451), a petition for reinstatement of oil and gas lease U–36863 for lands in Grand County, Utah, was timely filed and required rentals and royalties accruing from September 1, 1985, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $7 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U–36863 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective September 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–3379 Filed 2–14–86; 8:45 am]

BILLING CODE 4310-DQ-M

Nevada; Order Providing for Opening of Public Lands

Correction

In FR Doc. 86–2196, beginning on page 4041, in the issue of Friday, January 31, 1986, make the following correction:

On page 4042, first column, the fourth line, should read:

T35N., R19E.,

BILLING CODE 1505-01-M

[U–56231

Carbon County, Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act, (Pub. L. 97–451), a petition for reinstatement of oil and gas lease U–56231 for lands in Carbon County, Utah, was timely filed and required rentals and royalties accruing from August 1, 1985, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this Notice.

Having met all the requirements for reinstatement of lease U–56231 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective August 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–3380 Filed 2–14–86; 8:45 am]

BILLING CODE 4310-DQ-M

National Wildlife Federation v. Burford; Publication of Court Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Publication of Court Order.

SUMMARY: On February 10, 1986, the United States District Court for the District of Columbia rendered a memorandum opinion and order in the case of *National Wildlife Federation* v. *Burford,* Civil Action No. 85–2238. The court ordered the defendant to publish the order in the **Federal Register.** In compliance therewith, the order is hereby published:

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Notional Wildlife Federotion, Plaintiff, v. *Robert F. Burford, et al,* Defendants.

Civil Action No. 85–2238

Order

Upon consideration of plaintiff's motion for a preliminary injunction, defendants' opposition and plaintiff's reply, and

Finding that a preliminary injunction is necessary to preserve the relative positions of the parties until the case can be decided on the merits, and further

Finding that the plaintiff has shown a substantial likelihood of success on the merits, and further

Finding that plaintiff will suffer irreparable harm if the requested injunction is not issued, and further

Finding that issuance of the requested injunction would serve the public interest, it is by the court this 10th day of February, 1986,

Ordered that plaintiff's motion for a preliminary injunction is granted, and it is

Ordered that—

(1) Defendants, their officers, agents, servants, employees, and attorneys and those persons in active concert or participation with them are hereby enjoined from:

(a) modifying, terminating or revoking, in full or in part, under the Federal Land Policy and Management Act (FLPMA), any withdrawal or classification that was in effect on January 1, 1981; or

(b) taking any action inconsistent with the specific restrictions of a withdrawal or classification in effect on January 1, 1981, including, but not limited to, the issuance of leases, the sale, exchange or disposal of land or interests in land, the granting of rights-of-

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way, or the approval of any plan of operations;

(2) Terminations or modifications under the FLPMA of classifications and revocations or modifications under the FLPMA of withdrawals occurring since January 1, 1961, are hereby suspended until further action by this court;

(3) Nothing in this order shall be construed to prohibit or affect:

(a) The acceptance by the Department of the Interior of filings required to be made by Federal law;

(b) State election and conveyance rights afforded to the State of Alaska by § 906 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371 or

(c) Native conveyance rights afforded to Alaskan natives by the Alaska Native Claims Settlement Act, 85 Stat. 688, and the Alaska National Interest Lands Conservation Act, 94 Stat. 2371;

(d) The construction of the All American Pipeline project pursuant to a right-of-way grant issued by the Bureau of Land Management on May 17, 1985;

(e) Any transactions or other activity of the Frisco Administrative Site No. 2 S1/2SE1/4, Section 26, Township 5 South, Range 78 West of the Sixth Principal Meridian in Summit County, Colorado.

(4) Defendants shall forthwith cause a copy of this order to be published in the **Federal Register** and posted and made available to the public in defendants' offices in any State where the order might affect any person.

(5) Pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, plaintiff shall post security for this injunction in the amount of one hundred dollars ($100.00).

(6) Nothing in this order shall be construed to affect any party's right to appeal this order.

(7) This preliminary injunction shall take effect upon publication in the **Federal Register** or on the fifth day after this order is filed, whichever day occurs sooner, and it is

Further Ordered that the parties shall appear for a status call on February 19, 1986 at 9:30 a.m., Courtroom No. 12, United States Courthouse.

John H. Pratt,

United States District Judge.

Dated: February 11, 1986.

Guy E. Baier,

Acting Deputy Director.

[FR Doc. 86-3408 Filed 2-14-86; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

[INT-DES 86-3]

Stagecoach Reservoir Project, Routt County, CO; availability and Public Hearings—Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a draft environmental statement on a proposed development that would provide water for agriculture, municipal and industrial uses, hydroelectric power generation, fish and wildlife, and recreation. The draft statement was made available to the public on February 12, 1986.

The draft statement presents a recommended plan and four alternatives. The recommended Stagecoach Reservoir Project would consist of Stagecoach Dam, Reservoir, and Powerplant and related facilities located on the Yampa River about 17 miles south of Steamboat Springs. The alternatives include a smaller and a larger reservoir at the Stagecoach Damsite, a similar reservoir at a different site on the Yampa River, and a no action alternative.

The Upper Yampa Water Conservancy District has applied for a loan and grant under provisions of the Small Reclamation Projects Act of 1956 (Pub. L. 84-984), as amended, to finance about 50 percent of the project costs. The remaining costs would be financed through a loan from the Colorado Water Conservation Board and through District funding. Because the Bureau of Reclamation is processing the Federal loan and grant applications, it has prepared the environmental statement.

Copies of the statement are available for inspection at the following locations:

Director Office of Environmental Affairs, Bureau of Reclamation, Room 7622, Department of the Interior, Washington, D.C. 20240, Telephone: (202) 343-4991

Property and Services Branch, Technical Publications and Library Branch, Engineering and Research Center, Code 960, Denver Federal Center, Denver, Colorado 80225, Telephone: (303) 236-5972

Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, P.O. Box 11568, Salt Lake City, Utah 84147, Telephone: (801) 524-5580

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, or the Regional Director at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

To obtain views and comments from interested individuals and organizations relating to the environmental impacts of the proposed project, Reclamation will hold a public hearing at 3 p.m. on March 14, 1986, at the Community Center, 12th Street, Steamboat Springs, Colorado.

Oral statements will be limited to 10 minutes each. Speakers may not trade their time to obtain a longer oral presentation; however, the person conducting the hearing may allow any speaker additional opportunity to comment after all scheduled speakers have been heard. Whenever possible, speakers will be scheduled according to the time preference requested. Speakers not present when called will lose their turn in the scheduled order, but will be given an opportunity to speak at the end of the scheduled presentations. Requests for scheduled presentations will be accepted until 4 p.m., March 12, 1986. Subsequent requests will be handled at the hearing on a first-come first-served basis following the scheduled presentations. Organizations or individuals desiring to present statements at the hearings should contact the Regional Director in Salt Lake City by letter or telephone.

Oral and written statements presented at the hearing will be summarized and responded to in the final environmental statement. Written comments for the hearing record from individuals unable to attend and from those wishing to supplement their oral presentations at the hearings should be sent to the Regional Director, Salt Lake City, to be received by April 14, 1986. Written comments received by this date will be printed in full in the final environmental statement.

Dated: February 12, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 85-3388 Filed 2-14-86; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Advisory Commission Meeting

A meeting of the Statue of Liberty/Ellis Island Commission is scheduled for March 4, 1986, from 1:00 PM to 5:00 PM, Room 5160, at the Department of the Interior, 18th and C Streets NW, Washington, D.C. The purpose of this meeting is for the consideration of subcommittee reports on the recommendation for use of the south side of Ellis Island, and such other business as may properly be before the Commission.

Dated: February 12, 1986.

Denis P. Galvin,

Acting Director.

[FR Doc. 86-3416 Filed 2-14-86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF INTERIOR

Intention To Negotiate Concessions Contract; Glacier Bay Lodge, Inc.

SUMMARY: Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 970; 16 U.S.C. 20d), and section 1307 of the Alaska National Interest Lands Conservation Act (94 Stat. 2479; 16 U.S.C. 3197), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Glacier Bay Lodge, Inc., authorizing it to continue to provide lodging, food and beverages, gifts and sundries, fuel and oil, marine tours and charter vessel services, vessel towing and repair, bus and taxi services and facilities for the public at Glacier Bay National Park and Preserve, Alaska, for a period of fifteen (15) years from January 1, 1988, through December 31, 2000.

This proposed contract requires construction and improvement of the facilities. The construction and improvement program has been addressed in the Glacier Bay National Park and Preserve General Management Plan, dated September 1984. Additionally, an assessment of the environmental impact of this proposed action has been made and it has been determined that it will no significantly affect the quality of the environment, and that it is not a major Federal action having significant impact on the environment under the National Evnironmental Policy Act of 1969. The environmental assessment and finding of no significant impact may be reviewed in the Glacier Bay National Park and Preserve Office.

Glacier Bay Lodge, Inc., has performed its obligation to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1985, and, therefore, pursuant to the second act cited above, is entitled a right of first refusal in the renewal of said contract. The concessioner will have 60 days from January 27, 1986 in which to exercise this right.

Should Glacier Bay Lodge, Inc. fail to accept the terms and conditions of the proposed contract, the Director of the National Park Service will issue a prospectus and solicit offers from the public for a period of 60 days. The foregoing concessioner who has performed its obligations to the satisfaction of the Secretary under the existing contract is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as addressed in this paragraph, pursuant to the Act of October 9, 1965 as cited above.

FOR FURTHER INFORMATION CONTACT: The Alaska Regional Director, National Park Service, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503, telephone (907) 261-2690, or the Superintendent, Glacier Bay National Park and Preserve, Gustavus, Alaska 99826, telephone (907) 697-2232

M.V. Finley,

Acting Regional Director, Alaska Region.

[FR Doc. 86-3394 Filed 2-14-86; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF THE INTERIOR

Leasing of Historic Buildings; Skagway, AK

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

The National Park Service is soliciting interested parties as lessees for several historic buildings located in the City of Skagway, Alaska. These one- and two-story storefront buildings typify boom-town, wood frame, commercial architecture associated with the Klondike Gold Rush of 1898.

1. Boss Bakery: A one-story, wood frame building on a portion of lot 7 & 8, block 24 on Broadway Street between 5th and 6th Avenues.

2. Boss Tailor and Furrier: A two-story, wood frame building on a portion of lot 6, block 35 on Broadway Street between 2nd and 3rd Avenues.

3. Verbauwhedes Store and Confectionery: A two-story, wood frame building on a portion of lot 5, 6, block 35 on Broadway Street between 2nd and 3rd Avenues.

4. Verbauwhedes Alley Structure: A one-story, wood frame building behind Verbauwhedes Store on a portion of lots 5 and 6, block 35, between 2nd and 3rd Avenues.

These buildings are suitable for a variety of uses, including food services, retail sales, offices, storage, and other uses permitted by state and local ordinances and regulations. The National Park Service will consider any potential use that is lawful, non-polluting, compatible with visitor use, and tasteful and respectful of and compatible with the historic building being leased and its setting. From mid-May through September, Skagway expects 70,000 to 80,000 visitors on over 160 cruise ships; in addition, it is served daily by the state ferry system, air tours, land tours, and casual visitation. Local shops are normally open daily for 16 to 18 hours to meet visitor demand.

These buildings will be restored and rehabilitated historic structures complete with state of the art heating, electrical, plumbing, intrusion alarm, fire suppression and fire warning system. Finish floor coverings and finish interior painting will be the responsibility of the lessee. All improvements beyond the scope of the existing National Park Service work are the responsibility of the lessee, but must be designed according to the Secretary of the Interior's Standards and Guidelines for Rehabilitating Historic Buildings, and approved by the Regional Historical Architect prior to the implementation. It is anticipated the restoration will be completed between April and May 1986.

Leases will be awarded based upon evaluation and negotiation of proposals. The length of the lease will be negotiated, but will not exceed 99 years. The leases will be for at least fair market rental value of the structure(s).

The National Park Service issued a formal request for proposals on February 1, 1986. The requests outlines in greater detail the potential uses and restrictions and the factors which will be used in evaluating proposals. All parties interested in leasing these buildings and receiving the request for proposals should notify in writing the Superintendent, Klondike Gold Rush National Historic Park, PO Box 517, Skagway, Alaska 99840; or the Chief of Concessions, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503-2892. This solicitation will close April 1 1986.

William C. Welch,

Acting Regional Director.

[FR Doc. 86-3395 Filed 2-14-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 8, 1986. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 5, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Crittenden County

Earle, *Missouri Pacific Depot*, Main and Commerce Sts.

Pike County

Murfreesboro, *Conway Hotel*, 108 Courthouse Sq.

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CALIFORNIA

Amador County

Jackson, *St. Sava Serbian Orthodox Church*, 724 N. Main

Los Angeles County

Pomona, *Pomona YMCA Building*, 350 N. Carey Ave.

Sonoma County

Petaluma, *Petaluma Silk Mill*, 420 Jefferson St.

CONNECTICUT

Fairfield County

Stamford, *South End Historic District*, Roughly bounded by Penn Central Railroad Tracks, Stamford Canal, Woodland Cemetery, and Washington Blvd.

New Haven County

New Haven, *Imperial Granum-Joseph Parker Buildings*, 47 and 49–51 Elm St.

FLORIDA

Jackson County

Monticell, *Palmer Perkins House (Boundary Increase)*, Walnut St.

Palmetto County

Palmetto, *Woman's Club of Palmetto*, 910 Sixth St. W

GEORGIA

Coweta County

Newman, *Crowder, Willaim Leonard, Home Place*, 1615 Handy Rd.

Fulton County

Atlanta, *Booker T. Washington High School*, 45 Whitehouse Dr. SW

Atlanta, *Grant Park North*, Roughly bounded by Woodward Ave., Boulevard, Interstate 20, and Hill St.

Murray County

Chatsworth Vicinity, *Carter's Quarters*, Old US 411 9 mi. S of Chatsworth

Walton County

Between, *Upshaw, James Berrien, House*, US 78 & GA 11

Wilkes County

Washington, *Washington Commercial Historic District*, Roughly bounded by Court and Jefferson St., Robert Toombs Ave., and Allison St.

INDIANA

Elkhart County

Elkhart, *Elkhart River Race Industrial District*, Roughly bounded by E. Jackson Blvd., Clark St., Elkhart Ave., and Elkhart River

MAINE

Piscataquis County

Archeological Site 133.7
Archeological Site 133.8

MARYLAND

Anne Arundel County

Linthicum Heights, *Twin Oaks*, 421 Twin Oaks Rd.

Millersville, *Childs Residence*, 1003 Cecil Ave.

Baltimore (Independent City)

Baltimore, *School No. 27 (Commodore John Rodgers Elementory School)*, 2031 E. Fayette St.

Baltimore County

Parkton, *Hill House*, 19301 York Rd.

MISSOURI

Macon County

Macon, *Wardell House*, 1 Wardell Rd.

Jackson County

Independence, *Woodson-Sawyer House*, 1604 W. Lexington

NEVADA

Clark County

Boulder City Vicinity, *Willow Branch Gauging Station*, Lake Mead National Recreation Area

NEW JERSEY

Hudson County

Union City, *Monastery and Church of St. Michael the Archangel*, 2019 West St.

NEW YORK

Erie County

Buffalo, *17—21 Emerson Place Row (Masten Neighborhood Rows TR)*, 17—21 Emerson Pl.

Buffalo, *33—61 Emerson Place Row (Masten Neighborhood Rows TR)*, 33—61 Emerson Pl.

Buffalo, *Laurel and Michigan Avenues Row (Masten Neighborhood Rows TR)*, 1335—1345 Michigan Ave.

Buffalo, *Woodlawn Avenue Row (Masten Neighborhood Rows TR)*, 75—81 Woodlawn Ave.

Queens County

New York City, *Fort Totten Officer's Club*, Totten and Murray Aves.

NORTH CAROLINA

Cabarrus County

Rocky River Vicinity, *Rocky River Presbyterian Church*, NC 1139 at jct. of NC 1158

Sampson County

Clear Run, *Clear Run (Sampson County MRA)*, NC 411 at Black River

Clinton, *Bethune-Powell Buildings (Sampson County MRA)*, 118–120 E. Main St.

Clinton, *Clinton Depot (Sampson County MRA)*, West Elizabeth St.

Clinton, *College Street Historic District (Sampson County MRA)*, 600–802 College St.

Clinton, *Herring, Robert, House (Sampson County MRA)*, 218 Sampson St.

Clinton, *Pugh-Boykin House (Sampson County MRA)*, 306 Elizabeth St.

Clinton, *Royal-Crumpler-Parker House (Sampson County MRA)*, 512 Sunset Ave.

Clinton, *West Main-North Chesnutt Streets Historic District (Sampson County MRA)*, Roughly N.

Chesnutt, Fayetteville, and Williams Sts., between W. Main and Margaret Sts.

Clinton Vicinity, *Boykin, General Thomas, House (Sampson County MRA)*, NC 1214 SW of NC 1222

Clinton Vicinity, *Killett, Marcheston, Farm (Sampson County MRA)*, NC 1222 N of US 701

Clinton Vicinity, *Oates, Livingston, Farm (Sampson County MRA)*, NC 1748 W of NC 403

Clinton Vicinity, *Pigford House (Sampson County MRA)*, NC 1751 S of US 701

Clinton Vicinity, *Pope House (Sampson County MRA)*, NC 1146 N of NC 1145

Clinton Vicinity, *Pugh, Francis, House (Sampson County MRA)* NC 1751 at NC 403

Delway, *Dell School Campus (Sampson County MRA)*, US 421 and NC 1003

Dunn Vicinity, *Wilson John E., House (Sampson County MRA)*, NC 1631 at NC 1630

Garland Vicinity, *Lamb, James H., House (Sampson County MRA)*, NC 1135 N of NC 411

Garland Vicinity, *Murphy-Lamb House and Cemetery (Sampson County MRA)*, NC 1135 of US 701

Garland Vicinity, *Sloan, Dr. David Dickson, Farm (Sampson County MRA)*, US 701 N of South River

Giddensville Vicinity, *Lee, Lavett, House (Sampson County MRA)*, NC 1725 and NC 1730

Harrells Vicinity, *Highsmith, Lewis, Farm (Sampson County MRA)*, US 421 S of NC 41

Harrells Vicinity, *Seavey, Dr. John B. House and Cemetery (Sampson County MRA)*, NC 1100 S of NC 1007

Ingold Vicinity, *Johnson, Samuel, House and Cemetery (Sampson County MRA)*, NC 1157 S of NC 1004

Ivanhoe, *Black River Presbyterian and Ivanhoe Baptist Churches (Sampson County MRA)*, NC 1102 E of NC 1100

Ivanhoe Vicinity, *Beatty-Corbett House (Sampson County MRA)*, NC 701 at NC 1200

Ivanhoe Vicinity, *Delto Farm (Sampson County MRA)*, NC 1100 N of NC 1105

Kerr Vicinity, *Kerr, James, House (Sampson County MRA)*, NC 1005 S of NC 1007

McDaniels Vicinity, *Owen Family House and Cemetery (Sampson County MRA)*, NC 1212 N of NC 1214

Roseboro, *Caison, Dan E., Sr. (Sampson County MRA)*, Broad St.

Roseboro, *Herring, Troy, House (Sampson County MRA)*, Broad St. S of NC 24

Roseboro, *Howell-Butler House (Sampson County MRA)*, Broad and McLamb Sts.

Rosin, *Bizzell, Asher W., House (Sampson County MRA)*, US 13 and NC 1845

Rosin, *McPhail, Jonas, House and McPhail, Annie, Store (Sampson County MRA)*, US 13 E of NC 1845

Salemburg, *Howard-Royal House (Sampson County MRA)*, 202 N. Main St.

Salemburg Vicinity, *Butler, Marion, Birthploce (Sampson County MRA)*, NC 242 at NC 1414

Suttontown, *Kornegay, Marshall, House and Cemetery (Sampson County MRA)*, NC 1725 and NC 1720

Taylors Bridge Vicinity, *Matthews, Dr. James O. (Sampson County MRA)*, NC 1960 S of NC 1004

Taylors Bridge Vicinity, *Matthis, Fleet, Farm (Sampson County MRA)*, US 421 S of NC 1146

Turkey Vicinity, *Cherrydale (Sampson County MRA)*, NC 1919 at NC 1952

Turkey Vicinity, *Hollingsworth-Hines Farm (Sampson County MRA)*, NC 1926 S of NC 1004

Waycross Vicinity, *Oak Plain Presbyterian Church (Sampson County MRA)*, NC 1943 S of NC 1945

PENNSYLVANIA

Centre County

Houserville Site (36 CE 65)

Erie County

Sommerheim Park Archeological District

York County

Fawn Township, *Payne Folly*, Watters Rd.

[FR Doc. 86–3478 Filed 2–14–86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-156)]

Seaboard System Railroad, Inc.; Abandonment in Franklin and Lincoln Counties, TN; Notice of Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc. to abandon its 38.37-mile line of railroad between Decherd (milepost JC–1.595) and Fayetteville, TN (milepost JC–40.0) including milepost JD 21.47 to milepost JD–22.00 near Elora, TN, in Franklin and Lincoln Counties, TN.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 days period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–3531 Filed 2–14–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Filing of Written Notification of Evaluation of the Mechanisms of Heavy-Duty Diesel Particulate Trap Regeneration Project Pursuant to the National Cooperative Research Act of 1984 and Southwest Research Institute

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98–462("the Act"), Southwest Research Institute ("SWRI") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled: *"Evaluation of the Mechanisms of Heavy-Duty Diesel Particulate Trap Regeneration."* The notification discloses (1) the identities of the parties to the project and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to this project are:

Cummins Engine Company
Isuzu Motors, Ltd.
Volvo Truck Corporation
Nissan Diesel Motor Co.
NGK Insulators, Ltd.
John Deere Company
Nippon Shokubai Kagaku Kogyo Company, Ltd.
Babcock & Wilcox
Caterpillar Tractor Company
Mitsubishi Motors
Corning Glass Works
Hino Motors Ltd.
Saab-Scandia
General Motors Corporation (AC Spark Plug Division)
Ford Tractor Operations
Exxon Chemical Company
International Harvester
Donaldson Company
Isolite Babcock Refractories Company, Ltd.
Tsuchiya Seisakusho
Fuel Tech Inc.

The purpose of the project is to determine the mechanism of particulate combustion within a trap, by investigating the various parameters affecting diesel particulate trap regeneration; to define one or more new or improved regeneration methods; to develop and evaluate the new technology for regeneration and if desired by the parties to further evaluate a selected particulate trap regeneration system.

Membership in this group research project remains open.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 86–3443 Filed 2–14–86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Challenge Section) to the National Council on the Arts will be held on March 3, 1986 from 9:00 a.m. to 5:30 p.m., Room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–3425 Filed 2–14–86; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

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L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Communication Section) will be held on March 5, 1986 from 9:00 a.m. to 6:00 p.m. and March 6, 1986 from 9:30 a.m. to 6:00 p.m., Room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on March 6, 1986 from 5:00 p.m. to 6:00 p.m. Topics for discussion will be Policy issues.

The remaining sessions of this meeting on March 5, 1986 from 6:00 a.m. to 6:00 p.m. and March 6, 1986 from 9:30 a.m. to 5:00 p.m. are for the purpose of Panel review, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–3426 Filed 2–14–86; 8:45 am]

BILLING CODE 7537–01–M

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on Monday and Tuesday, February 24–25, 1986 from 9:00 am – 5:30 pm in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with references to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–3424 Filed 2–14–86; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training Section) to the National Council on the Arts will be held on March 5, 1986 from 9:00 a.m.–8:00 p.m. and March 6, 1986 from 9:00 a.m. to 6:00 p.m., Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on March 6, 1986 from 11:00 a.m. to 12:30 p.m. Topics for discussion will be policy and guidelines.

The remaining sessions of this meeting on March 5, 1986 from 9:00 a.m. to 8:00 p.m., March 6, 1986 from 9:00 a.m. to 11:00 a.m. and March 6, 1986 to 12:30 p.m. to 6:00 p.m. are for the purpose of Panel review, discussion, evalation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5498 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–3427 Filed 2–14–86; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Forums Section) to the National Council on the Arts will be held on March 4–6, 1986 from 9:00 a.m. to 6:00 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–3428 Filed 2–14–86; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements for Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: Security Termination Statement.

3. The form number if applicable: NRC–136.

4. How often the collection is required: Occasionally.

5. Who will be required or asked to report: Approximately 22 NRC licensees and 35 contractors.

6. An estimate of the number of responses: 400.

7. An estimate of the total number of hours needed to complete the requirement or request: 40.

8. An indication of whether section 3504(h). Pub. L. 96–511 applies: Not applicable.

9. Abstract: The NRC Form 136 affects the employees of licensees and contractors who have been granted an NRC access authorization (security clearance). When the access authorization is no longer needed, the execution of the form apprises the respondent of their continuing security responsibilities and is used to initiate termination of the access authorization.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585. Dated at Bethesda, Maryland this 12th day of February 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86–3464 Filed 2–14–86; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Revision 2 to Regulatory Guide 1.105, "Instrument Setpoints for Safety-Related Systems," describes a method acceptable to the NRC staff for complying with the Commission's regulations for ensuring that instrument setpoints are initially within and remain within the technical specification limits. The guide endorses an Instrument Society of America standard, ISA–S67.04–1982, "Setpoints for Nuclear Safety-Related Instrumentation Used in Nuclear Power Plants."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of active guides may be purchased at the current Government Printing Office price. Information on current GPO prices may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 10th day of February 1986.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 86–3465 Filed 2–14–86; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number ME 305–4 (which should be mentioned in all correspondence concerning this draft guide), is proposed Revision 2 to Regulatory Guide 1.99 and is entitled "Radiation Damage to Reactor Vessel Materials." This guide describes general procedures acceptable to the NRC staff for calculating the effects of neutron radiation damage to the low-alloy steels currently used for light-water-cooled reactor vessels. The calculational procedures described in the guide are different from those in the pressurized thermal shock rule (§ 50.61 of 10 CFR Part 50), and public comments are requested on the relative merits of the two calculational procedures.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Comments will be most helpful if received by April 15, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555,

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Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 11th day of February 1986.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 86-3466 Filed 2-14-86; 8:45am]

BILLING CODE 7590-01-M

Illinois Power Co.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-461]

The U.S. Nuclear Regulatory Commission (the Commission) is issuing exemptions from certain requirements of 10 CFR Part 50 to the Illinois Power Company (the applicant) for the Clinton Power Station, Unit 1 facility located in Dewitt County, Illinois.

Environmental Assessment

A. Containment Airlock Testing

Identification of Proposed Action: The exemption would eliminate the full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J each time the air lock is opened during periods when containment integrity is not required and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The exemption is in accordance with the applicant's request dated December 9, 1985.

The Need for the Action: The exemption is required to provide the applicant with greater plant availability over the lifetime of the plant.

Environmental Impact of the Action: The exemption would allow the substitution of an airlock seal test for an airlock pressure test while the reactor is in a shutdown or refueling mode. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability and the magnitude of containment leakage during an accident which would lead to potentially greater offsite radiological consequences. However, the potential increase due to this exemption is small and would result from the potential leakage path through the door mechanism which will not be measured by this modified test. The 6-month test requirement of paragraph III.D.2(b)(i) of Appendix J, the 3-day test requirement of paragraph III.D.2(b)(iii) of Appendix J and the test requirements when maintenance is performed on the airlock, will measure the leakage through the door mechanism and provide assurance that the air lock will not leak excessively.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no exemption impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

B. Leak Rate Testing of Main Steam Isolation Valves (MSIV's)

Identification of Proposed Action: The exemption would exclude the measured leakage from the MSIV's from the summation of the local leak rate test results. The proposed exemption is in accordance with the applicant's request dated December 9, 1985.

The Need for the Proposed Action: The exemption is needed because the NRC staff in Supplement 2 to the Clinton Safety Evaluation Report found the applicant's proposed MSIV leakage test program acceptable, and concluded that the design of the MSIV leakage control system at Clinton is acceptable. The Clinton Technical Specifications have been written based on the NRC staff's evaluation in Supplement 2 to the Clinton SER.

Environmental Impact of the Action: The proposed exemption would exclude the measured leakage through the MSIV's from the combined local leak rate test results. The MSIV leakage control system at Clinton is designed to control and minimize the release of fission products that could leak through the closed MSIV's after onset of a loss of coolant accident (LOCA) by maintaining a negative pressure between the MSIV's in each line. The effluent will be discharged into a volume where it will be processed by the standby gas treatment system before being released to the environs. A radiological analysis including this potential source of containment atmosphere leakage was performed, and the MSIV's will be periodically leak rate tested to verify that the leakage assumed in the radiological analysis is not exceeded.

Alternative to the Proposed Action: The proposed CPS Technical Specification requirements will provide reasonable assurance against undue MSIV leakage and that no material increase in the probability or extent of MSIV leakage is to be expected. Therefore, there is no significant increase in the probability of higher post-accident offsite or onsite doses related to the proposed exemption and no significant increase in environmental impact beyond that experienced with no exemption.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impact of plant operations and would provide no greater assurance that offsite or onsite doses, in the event of an accident that resulted in fission product release, would be any less.

Alternative Use of Resources: These actions in the granting of exemptions A and B above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Clinton Power Station, Unit 1," dated May 1982.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's requests that support the requested exemptions A and B above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the requested exemptions.

Based upon the foregoing environmental assessment, we conclude that the requested actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemptions as listed herein, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Bethesda, Maryland, this 12th day of February 1986

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, BWR Project Directorate No. 4, Division of BWR Licensing.

[FR Doc. 86-3467 Filed 2-14-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Babcock and Wilcox Water Reactors; Revised Notice of Meeting

The scheduled time for the February 25, 1986 ACRS Subcommittee on Babcock and Wilcox (B&W) Water Reactors published in the **Federal Register** (51 FR 4833) on February 7, 1986, Room 1046, 1717 H Street, NW, Washington, DC has been changed from 8:30 A.M. to *12:30 P.M.* The other items regarding this meeting remain the same as previously published.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1413) between 8:15 a.m. and 5 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 11, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-3447 Filed 2-14-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Proposed Modification of the List of Articles Eligible for Duty-Free Treatment Under the U.S. Generalized System of Preferences (GSP) To Remove Imports of Sodium Bromide From Israel

Notice is hereby given that the Trade Policy Staff Committee (TPSC) has initiated a review concerning the removal of Sodium Bromide classified under TSUS 420.82 of the Tariff Schedules of the United States Annotated, when imported from Israel, from the list of products currently eligible for duty-free treatment under the U.S. Generalized System of Preferences (19 U.S.C. 2461-2465). The review is initiated pursuant to a petition filed by the U.S. Bromine Alliance. Anyone interested in this matter is requested to provide written comments to the TPSC regarding the U.S. Bromine Alliance request not later than March 14, 1986. A public hearing on the proposed modification will not be scheduled unless a request for such hearing is received no later than close of business February 21, 1986.

All submissions should conform to 15 CFR 2003.2 and be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee. Information submitted in connection with the proposed modification will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2007.7. Parties submitting briefs or statements containing confidential information must indicate clearly on the cover page of each of the twenty copies submitted and each page within the document, where appropriate, that confidential materials are included. Non-confidential summaries of all confidential material must be submitted in twenty copies, in English, at the same time that confidential submissions are filed.

All communications with regard to the proposed modification should be addressed to the GSP Subcommittee, Office of the United States Trade Representative, 600 17 th Street NW., Room 517, Washington, D.C. 20506. Questions may be directed to the GSP Information Center at (202) 395-6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86-3589 Filed 2-14-86; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Production Planning Advisory Committee; Open Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Genetic principles
- Outplanting
- Site ranking update
- Other
- Public comment

DATE: February 21, 1986; 9:30 a.m.

ADDRESS: The meeting will be held in the Council's meeting room, 850 SW. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-3377 Filed 2-14-86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Order No. 667; Docket No. A86-9]

Tie Plant, Mississippi 38960 (Lewis M. Moore, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5)

Issued February 10, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher, Bonnie Guiton; Patti Birge Tyson.

Docket Number: A86-9.
Name of Affected Post Office: Tie Plant, Mississippi 38960.
Name(s) of Petitioner(s): Lewis M. Moore, Jr.
Type of Determination: Consolidation.
Date of Filing of Appeal Papers: February 3, 1986.
Categories of Issues Apparently Raised:
1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before February 18, 1986.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

February 3, 1986—Filing of Petition

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February 6, 1986—Notice and Order of Filing of Appeal
February 28, 1986—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)]
March 10, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)]
March 31, 1986—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
April 15, 1986—(1) Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)]
April 22, 1986—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116]
June 3, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-3363 Filed 2-14-86; 8:45 am]
BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24015; 70-6985]

Middle South Energy, Inc., et al.; Notice of Proposed Amendments to Foreign Bank Loan Agreement

February 10, 1986.

Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, its electric generating subsidiary, Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, and MSU's electric utility subsidiaries, Arkansas Power & Light Company, P.O. Box 551, Little Rock, Arkansas 72203, Louisiana Power & Light Company, 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company, P.O. Box 1640, Jackson, Mississippi, 39205, and New Orleans Public Service Inc., 317 Baronne Street, New Orleans, Louisiana 70112, have filed with this Commission post-effective amendments to the declaration in this proceeding pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

By supplemental order in this proceeding dated August 2, 1985 (HCAR No. 23782), this Commission authorized the conversion of MSE's revolving-credit borrowing to term loans pursuant to a Third Amended and Restated Bank Loan Agreement ("Domestic Bank Loan Agreement") among MSE, Manufacturers Hanover Trust Company and Citibank, N.A., as co-agents, and the banks listed therein ("U.S. Banks") and a Fourth Amendment to Loan Agreement ("Foreign Bank Loan Agreement") among MSE, Credit Suisse First Boston Limited, as agent, and the banks listed therein ("Foreign Banks"), respectively. MSE now owes $1,466,417,500 under the Domestic Bank Loan Agreement and $328,750,000 under the Foreign Bank Loan Agreement.

On January 10, 1986 (HCAR No. 23989), notice was given of MSE's proposal for certain amendments to the Foreign Bank Loan Agreement. MSE proposes an increase of 1% per annum over the present interest rate which is the London Interbank Offered Rate ("LIBOR") plus 1%. The new effective rate would thus be LIBOR plus 2%. The same increase would apply to loans made on certain alternative bases and to penalty interest in the event of a default. MSE also proposes to make certain changes in the Foreign Bank Loan Agreement related to Unit 2 of the Grand Gulf Nuclear Project. Specifically: (1) Clause 12(B), which presently requires prepayment of loans under the Foreign Bank Loan Agreement in the event of condemnation or abandonment of the entire Grand Gulf Project, would be amended to require that this could occur only if such events relate to Unit 1 of such Project. (2) Clause 12(C)(i), which presently requires prepayment of loans under the Foreign Loan Agreement in the event a governmental order or the like makes completion of the Project impracticable, would be amended to eliminate this prepayment requirement. (3) Clause 19(E), which presently requires MSE to use its best efforts to complete and maintain the Project in commercial operation, would be amended so that this obligation relates only to Unit 1 of the Project.

By a further post-effective amendment, MSE proposes to condition the effectiveness of some of the preceding proposed amendments to the Foreign Bank Loan Agreement (which collectively eliminate various references to Unit 2 of the Grand Gulf Project in the Foreign Bank Loan Agreement) on the payment in full by MSE of the Deferred Installments (defined below) and the payment when scheduled on or before the next scheduled payment date of any subsequent installment. The next scheduled installment under the Foreign Bank Loan Agreement is August 5, 1986.

MSE is seeking to: (1) Defer the payment of the February 3, 1986, and March 1, 1986, installments, in the amounts of approximately $115,000,000 and $125,000,000, respectively ("Domestic Deferred Installments"), due under the Domestic Bank Loan Agreement and (2) defer the payment of the February 5, 1986, installment, in the amount of approximately $45,300,000 ("Foreign Deferred Installment," and together with the Domestic Deferred Installments, the "Deferred Installments"), due under the Foreign Bank Loan Agreement, in each case, to March 17, 1986. MSE may also seek, if necessary, a further deferral from the U.S. Banks and the Foreign Banks after the end of the first deferral period for a period (to be specified by MSE) of up to 90 days in return for collateral pledged as security for the unpaid amount of the Deferred Installments. The collateral would be in the form of MSE first mortgage bonds ("MSE Collateral Bonds").

MSE proposes various amendments of the Domestic Bank Loan Agreement and the Foreign Bank Loan Agreement to accomplish, among other things, the following: (1) An additional 1% per annum (in excess of the respective interest rates currently provided for in the Domestic and Foreign Bank Loan Agreements) will accrue and be payable on each of the Deferred Installments. (2) All interest under the Domestic and Foreign Bank Loan Agreements and the commitment commissions will be paid monthly in arrears. (3) In the case of the Domestic Bank Loan Agreement, MSE will not be permitted (with certain limited exceptions) to pay any dividends on its common stock until payment in full of the Deferred Installments. In the case of the Foreign Bank Loan Agreement, MSE will not be permitted to pay any dividends on its capital stock until payment in full of the Deferred Installments. (4) MSE will pay ratably to the U.S. Banks and the Foreign Banks on a monthly basis all of it cash flow in excess of its requirements, such payments to be applied to reduce the outstanding amount of the Deferred Installments. (5) MSE will pledge MSE Collateral Bonds in an aggregate principal amount equal to the unpaid amount of the Deferred Installments to secure payments of the same. The amendments proposed in items 1 through 5 above would be terminated, and the MSE Collateral Bonds would (at the option of MSE, exercisable at any time) be released to MSE, when the Deferred Installments have been paid in full.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 6, 1986, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 86-3368 Filed 2-14-86; 8:45am]
BILLING CODE 8010-01-M

[Release No. 34-22880; File No. SR-NASD-85-37]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on December 30, 1985, [1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to require NASD members to maintain a record of aggregate "short" positions in NASDAQ securities in all customer and proprietary firm accounts and to report such information to the NASD on a monthly basis. Member's reports will be non-public, and will be used by the NASD solely for an internal short sale study.

Notice of the proposed rule change, together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22761, January 2, 1986) and by publication in the **Federal Register** (51 FR 801, January 8, 1986). No comments were received with respect to the proposed filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200. 30-3(a).

John Wheeler,
Secretary.

February 7, 1986.

[FR Doc. 86-3366 Filed 2-14-86; 8:45 am]
BILLING CODE 8010-01-M

[1] On January 29, 1986, the NASD filed an amendment to the proposed rule change that would allow members' monthly reports to be received by the NASD no later than the second business day after the reporting settlement date. The Commission determined that the amendment was technical in nature and, therfore, it was unnecessary to publish the amendment for public comment.

[Release No. 34-22875; File No. SR-NYSE-86-4]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Amendments to Rule 431, "Margin Requirements," and Rule 432, "Daily Record of Required Margin"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 23, 1986, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to comprehensively revise its margin requirements to reflect the regulatory and credit/risk concerns in today's markets and the recent revision of Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statement concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise the Exchange's margin requirements so that they reflect the regulatory and credit/risk concerns in today's markets. The rule change would also resolve inconsistencies between the Exchange's margin requirements and Regulation T resulting from the latter's revision and simplification in 1984.

Rule 431, "Margin Requirements," had not been subjected to a comprehensive review since its adoption in 1954. Since that time, the rule has been amended on an ad hoc basis, generally in response to the development of new products and situations that arose in its application unforeseen at the time of its adoption. The Exchange recognized that an examination of the rule was required to determine the extent to which the rule's effectiveness, applicability, and understandability had been affected and compromised, in particular by the evolution and diversification of the securities industry. In conjunction with a committee of representatives from the securities industry, the Exchange developed recommendations to resolve the rule's deficiencies; such recommendations from the basis of the proposed rule change.

The following significant changes are proposed to be made to Rule 431:

• Replace the 5 percent of principal amount requirement for U.S. government securities with a sliding scale of requirements (from 1 to 6 percent of principal amount), similar to the Commission's net capital rule, setting margin on the basis of time to maturity. The proposal would generally lower margin requirements for shorter term U.S. government securities while increasing the requirements for longer term U.S. government securities, in recognition, respectively, of the

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diminishing risk as securities near maturity and the greater risk associated with securities having a longer time to maturity.

• Change the basis for computing requirements for municipal securities from the *lowen* of 15 percent of principal amount or 25 percent of market value to the *greater* of 7 percent of principal amount or 15 percent of market value. Margin requirements generally would be unchanged from current requirements for municipal securities purchased at par, but lower for those purchased below par and higher for those purchased above par, in recognition of the greater risks associated with higher priced municipal securities, which are more likely to react to current market conditions.

• Reduce the requirements for non-convertible corporate debt securities eligible for "good faith" margin under Regulation T from 25 percent of market value to 20 percent of market value and impose a new minimum requirement of 7 percent of principal amount. The new minimum requirement would ensure adequate margin for, and thereby prevent over-speculation in, lower priced non-convertible corporate debt securities

• Allow the use of accrued interest on U.S. government, municipal, and non-convertible corporate debt securities as an offset to margin required.

• Allow the accounts of market makers, OTC market makers, and specialists to be carried on a margin basis satisfactory to both parties, provided the carrying organization takes a capital charge for the difference between the equity in the account and the margin otherwise required.

• Allow the proprietary positions of other broker/dealers to be carried on a margin basis satisfactory to both parties (to the extent permitted by Regulation T), provided the carrying organization takes a capital charge for the difference between the equity in the account and the margin otherwise required.

• Increae the amount of control and restricted securities that can be margined, subject to capital and concentration charges.

• Impose a capital charge when any account is guaranteed by another account and the total margin deficiencies guaranteed exceed 10 percent of the member organization's excess net capital.

• Limit the time period in which the amount of margin required must be obtained to 15 business days (rather than the current nonspecific "reasonable time"), unless the Exchange grants additional time.

• Eliminate the formula for establishing special initial margin requirements, but allow the Exchange to impose higher requirements, initial or maintenance, as it deems necessary.

• Require the establishment by member organizations of credit evaluation procedures to review credit risks, formulate requirements, and institute higher maintenance requirements when appropriate.

• Conform the rule to current Regulation T.

Proposed amendments to Rule 432, "Daily Record of Required Margin," parallel, to the extent necessary, the changes proposed to Rule 431.

Upon approval of the proposed rule change by the Commission, the Exchange would delay its effectiveness to allow adequate lead time in which member organizations may train personnel and develop computer systems to implement the revision. Voluntary compliance with the new requirements will be permitted 3 months after Commission approval of the rule change; compliance will be required 6 months after such approval.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") in that it is designed to protect investors and the public interest, in accordance with section 6(b)(5) of the Act, by ensuring that the Exchange's margin requirements adequately reflect current regulatory and credit/risk concerns. In addition, the change is consistent with section 7(a) of the Act, and the rules and regulations of the Board of Governors of the Federal Reserve System enacted pursuant to that provision, in that it is designed for the purpose of preventing the excessive use of credit for the purchase or carrying of securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In May 1985, the Exchange circulated an initial version of the proposed rule change to its membership for comment. Thirty letters of comment were received. Several changes were made to the proposed rule change to reflect suggestions made in the comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 11, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 7, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3367 Filed 2-14-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 10, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Ames Department Stores, Inc., Common Stock, $0.50 Par Value (File No. 7-8781).

Anheuser-Busch Companies, Inc., $3.60 Redeemable Convertible Preferred Stock, Series A (File No. 7-8782).

Baxter Travenol Laboratories, Inc., 7% Cumulative Convertible Exchangeable Preferred, Series A and B (File No. 7-8783).

Data-Design Laboratories, Common Stock, $0.33⅓ Par Value (File No. 7-8783).

Enserch Exploration Partners, Ltd., Depositary Units (File No. 7-8784).

Getty Petroleum Corporation, Common Stock, $0.10 Par Value (File No. 7-8785).

IP Timberlands, Ltd., Class A Depositary Units (File No. 7-8786).

Manor Care, Inc., Common Stock, $0.10 Par Value (File No. 7-8787).

Pansophic Systems, Inc., Common Stock, No Par Value (File No. 7-8788).

The Plessey Company plc, American Depository Receipts (File No. 7-8789).

Pope & Talbot, Inc., Common Stock, $2.00 Par Value (File No. 7-8790).

Primark Corporation, Common Stock, No Par Value (File No. 7-8791).

Revco D.S., Incorporated, Common Stock, $1.00 Par Value (File No. 7-8792).

Safety-Kleen Corporation, Common Stock, $0.10 Par Value (File No. 7-8793).

The Travelers Corporation, $4.16 Series A Convertible Preferred Stock (File No. 7-8794).

Triangle Pacific Corporation, Common Stock, $0.50 Par Value (File No. 7-8795).

United Jersey Banks, Common Stock, $1.66⅔ Par Value (File No. 7-8796).

West Point—Pepperell, Inc., Common Stock, $5.00 Par Value (File No. 7-8797).

Weyerhaeuser Company, $2.80 Cumulative Convertible Preferred (File No. 7-8798).

Weyerhaeuser Company, $4.50 Cumulative Convertible A Preferred (File No. 7-8799).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 3, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3437 Filed 2-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22889; SR-NYSE-85-43]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

The New York Stock Exchange, Inc. ("NYSE") submitted on November 29, 1985 copies of proposed rules changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 to amend the Supplementary Material to NYSE's Rule 451 (Proxies) and Rule 465 (Company Reports to Stockholders) concerning approved charges by member organizations to issuers in connection with Rules 14b-1(c) and 17a-3(a)(9)(ii) under the Act. The proposed changes relate to the following: (1) The second, and final, surcharge that may be charged by NYSE member organizations to issuers in connection with proxy solicitations, which surcharge is intended to complete the recoupment of direct and indirect start-up costs incurred by NYSE member organizations in complying with the requirements of Rules 14b-1(c) and 17a-3(a)(9)(ii); and (2) a charge intended to ensure that NYSE members and their agents receive a fair and reasonable rate of reimbursement for costs incurred to comply with Rule 14b-1(c) in providing beneficial ownership information to requesting issuers.[1]

I. Background

In July, 1983, the Commission adopted new paragraph (c) of Rule 14b-1 under the Act to improve the process whereby issuers communicate with shareholders whose securities are held in street name.[2] New paragraph (c) required brokers to provide issuers, upon request and assurance of reimbursement of reasonable expenses (direct and indirect), with the names, addresses and securities positions of customers who are beneficial owners of the issuers' securities and who have not objected to such disclosure. The Commission also adopted a corresponding amendment to Rule 17a-3(a)(9) under the Act to require that the customer records maintained by brokers for street name holders include whether the beneficial owner has objected to the disclosure to issuers of his or her identity, address, and securities positions.[3]

In adopting the direct shareholder communications rules the Commission left the determination of reasonable costs to the SROs, because, as representatives of both issuers and brokers, they were deemed to be in the best position to make a fair evaluation and allocation of the costs associated with the amendments, including start-up and overhead costs.[4] Accordingly, the NYSE formed an Ad Hoc Committee on Identification of Beneficial Owners ("Ad Hoc Committee"), composed of issuers, broker-dealers, banks, transfer agents, and proxy solicitors, to provide guidance on this issue.

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[1] Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission release (Securities Exchange Act Release No. 34-22663, December 2, 1985) and by publication in the **Federal Register** (50 FR 50245, December 9, 1985). No written comments were filed with the Commission on this proposal.

[2] Securities Exchange Act Release No. 20021 (July 28, 1983), 48 FR 35082.

[3] To provide time for the determination of reasonable costs by self-regulatory organizations ("SROs") and to minimize costs, the Commission established January 1, 1985, as the effective date for both provisions. Thereafter, associations representing the entities most directly affected by the rules jointly recommended that the effective date be deferred to January 1, 1986, and agreed to facilitate the determination and allocation of reasonable costs and the development of an efficient means of furnishing beneficial owner information to issuers. The Commission deferred the effective date, as requested, in the belief that a cooperative effort would result in the best system for communicating with shareholders while maintaining the system of nominee registration.

In October 1985, the Commission further amended the shareholder communication rules. Rule 14b-1 was amended to allow a broker or dealer to employ an intermediary to act as its designated agent in performing its obligations under the rules. The amendments further specified the time frames within which brokers must perform those actions requested by the issuer as required under the rules. *See e.g.*, Rule 14b-1 (a), (b), (c). New Rule 14b-1(d) makes clear that, without assurance of reimbursement by the issuer of reasonable direct and indirect expenses incurred in connection with performing its obligations under the rules, a broker or dealer need not satisfy its obligations under Rule 14b-1 (b) or (c). These amendments became effective January 1, 1986. Securities Exchange Act Release No. 22533 (October 15, 1985); 50 FR 42672.

[4] Securities Exchange Act Release No 20021 (July 28, 1983), 48 FR 35082.

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A. Surcharge for Proxy Mailings for Annual Meetings

Based on the recommendations of the Ad Hoc Committee, the NYSE proposed a rule change in January 1985 that the start-up costs associated with the implementation of the rules be funded by a surcharge of $.20 per proxy for each of an issuer's two annual meeting proxy solicitations subsequent to the approval of the surcharge. At the request of the Commission staff, the NYSE modified its original proposal to apply the surcharge for only one year and agreed to submit actual cost data when it proposed an additional surcharge for the following year's proxy dissemination.[5]

To satisfy their commitment to provide the Commission with actual cost data to support the request for a second year's surcharge, the NYSE conducted a survey to determine actual start-up costs incurred and the approximate number of proxies mailed to recoup brokers' start-up charges under the initial proxy surcharge. The NYSE obtained data providing the number of carrying accounts reported to the Commission in the consolidated FOCUS Report as of December 31, 1984. As of that date, brokers reported an aggregate of 22.5 million carrying accounts. The NYSE survey covered member organizations reporting 9.9 million carrying accounts.[6]

The NYSE states that available survey data indicates that a second and final surcharge of approximately $.185 per set of proxy material would be necessary to reimburse brokers for start up costs.[7]

[5] The Commission approved an initial $.20 surcharge for one year's annual meeting proxy solicitations on March 28, 1985 in Securities Exchange Act Release No. 21900, March 28, 1985, 50 FR 13297.

The NYSE's initial cost estimates which served as the basis for the original fee proposal were based on the assumption that broker-dealers would be required to solicit "some 34 million shareowners" as to whether they would object to disclosure of their names and other information to issuers, at an estimated cost of $0.70 per shareholder. The 34 million number was taken from a 1983 NYSE survey of all shareowners including those who hold securities in their own names and those who hold securities through banks. Because broker-dealers only will be required to solicit consent of those shareowners whose securities are held by the broker in street name, this number appeared to be inflated. 1983 FOCUS data for all broker-dealers and 1984 FOCUS data for NYSE firms indicated that broker-dealer street name customer accounts totaled just under 20 million as of December 31, 1984. Therefore, the Commission determined that further cost data was necessary to assess adequately a second year surcharge.

[6] NYSE member organizations actually account for approximately 18.8 million of the 22.5 million carrying accounts reported in the FOCUS Report. The NYSE's survey, however, was limited to member organizations representing 9.9 million carrying accounts (or 44% of the consolidated FOCUS total).

[7] Specifically, the NYSE survey data indicated the following:

- Start-up costs averaged approximately $.609 per carrying account reported at December 31, 1984.
- An average of approximately 1.6 sets of proxy material was provided per carrying account reported at December 31, 1984.
- The aggregate amount of the surcharge necessary to reimburse the indicated start-up costs incurred by the brokerage industry ($.609 per account), would be $.385 per set of proxy materials mailed in connection with the issuer's proxy solicitations for the two annual meetings held after March 28, 1985.
- Based on this data, and given the first year's proxy surcharge of $.20 per proxy, the second and final surcharge would need to be $.185 to recover estimated start-up costs.

The survey data used by the NYSE was compiled in October 1985 and, according to the Exchange, represents the best data available at the time the Exchange prepared the proposed rule change for filing with the Commission. Telephone conversation between Michael Cavalier, Branch Chief, Division of Market Regulation, and Paul Wyciskala, NYSE, January 29, 1986.

[8] As the NYSE noted in its filing, both the Commission and the Ad Hoc Committee believe that an intermediary, acting as the designated agent of responding broker-dealers, is necessary to the effective implementation of the shareholder communication rules as amended in Securities Exchange Act Release No. 22533 (October 15, 1985), 50 FR 42672. The intermediary would serve as a central processing agent between brokers and issuers in the transmission of beneficial ownership data and would perform related brokers' administrative functions. The use of an intermediary would assure both client confidentiality and standardized delivery format. Rule 14b-1(c) allows a broker to employ an intermediary to act as its designated agent in performing its obligations under the Rule. While the Commission anticipates that brokers generally will choose to employ an agent under the Rule, and that the agent employed generally will be the intermediary selected by the Ad Hoc Committee—IECA Intermediary Services, a wholly-owned subsidiary of Independent Election Corporation of America—employing an intermediary is not required by the Rule.

The NYSE also noted that the Ad Hoc Committee had considered the fees IECA Intermediary Services proposes to charge issuers for its services and determined the charges to be reasonable. The proposed rate of reimbursement of brokers for providing such information to issuers do not include fees which might be charged by an intermediary agent used by the broker to comply with its obligations under Rule 14b-1(c).

[9] In a separate matter, the NYSE has filed with the Commission a proposed rule change (File No. SR-NYSE-85-46) amending the Supplementary Material to Rules 451 and 465 relating to reasonable rates of reimbursement of member organizations in connection with forwarding proxy and annual report mailings to beneficial shareowners. Securities Exchange Act Release No. 22740 (December 23, 1985), 50 FR 43413.

The Ad Hoc Committee reviewed and approved the results of the NYSE's study and recommended to the NYSE that a second and final surcharge at the rate of $.185 per proxy be adopted. The NYSE believes that the aggregate $.385 per proxy surcharge will reimburse the brokerage industry as a whole although it cannot assure that each individual brokerage firm will recover all of its start-up costs.

B. Charge for Providing Beneficial Ownership Information to Requesting Issuers

Under the requirements of Rule 14b-1(c), a broker, either directly or through its agent, is required to provide an issuer with names, addresses and securities positions of the borker's customers who are beneficial owners of the issuer's securities and who have not objected to disclosure of such information. Rule 14a-13(b)(3) requires that issuers who request brokers to provide them with information relating to beneficial owners of the issuers' securities, pursuant to Rule 14b-1(c), pay the brokers' reasonable expenses, both direct and indirect, of providing the beneficial owner information. Rule 14b-1(d) permits a broker not to comply with the requirements of Rule 14b-1(c) where the issuer does not provide assurances of reimbursement of the broker's reasonable expenses, both direct and indirect, incurred in complying with these requirements.

The Ad Hoc Committee considered what the borkers' reasonable costs for maintaining and providing beneficial ownership data would be.[8]

Representatives from the Securities Industry Association estimated the costs to be approximately $.065 per name. The Committee accepted this figure and recommended to the NYSE that the fair and reasonable charge for reimbursement of brokers for providing beneficial ownership information to requesting issuers be set at $.065 per name.[9]

II. Discussion

Under Section 19(b) of the Act, the standard for approval of a proposed SRO rule change is that the proposal be consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 6(b) of the Act sets forth the general requirements for exchange rules. Section 6(b)(4) requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange. Section 6(b)(5) requires, among other things, that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers, or dealers. Section 6(b)(8) prohibits any exchange rule from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this case, the Commission believes that, to the extent that the surcharge for proxy mailings for annual meetings and the allowable charge for brokers providing beneficial ownership information to requesting issuers that would be allowed under the proposal are reasonable and fairly allocated, they will meet the standards of the Act.

In determining to have the SROs develop a reasonable allocation of costs, the Commission recognized the need to balance the interests of broker-dealers and issuers in an area requiring difficult estimates. The data collected by the NYSE in the course of its study of brokers' start-up costs appear to support the NYSE's assertion that a second, and final, surcharge of $.185 is necessary to reimburse brokers for start-up costs incurred in complying with the requirements of Rules 14b-1(c) and 17a-3(a)(9)(ii). In addition, the estimates of representatives of the Securities Industry Association, as proposed by the NYSE and its Ad Hoc Committee, provide a reasonable basis for establishing a charge of $.065 per name as the fair and reasonable rate of reimbursement for brokers for providing beneficial ownership information to requesting issuers.[10] Moreover, the fees do not appear to unfairly discriminate among issuers because all issuers have the opportunity to request information regarding their beneficial owners, and more than a narrow class of issuers appears to be interested in receiving this information.[11]

The Commission believes that this proposal is the result of good faith negotiation between representatives of broker-dealers and issuers and is endorsed by associations representing both groups. Accordingly, the amount of the final surcharge and the charge for brokers providing beneficial ownership information to issuers appears to be reasonable and thus consistent with the section 6(b)(4) of the Act.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6(b)(4), 6(b)(5), and 6(b)(8), and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 11, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3435 Filed 2-14-86; 8:45 am]

BILLING CODE 8010-01-M

[10] The Commission notes that the American Society of Corporate Secretaries ("ASCS") did not object to the proposed charges. *See* letter from Stephen P. Norman, Chairman, Securities Industry Committee, ASCS, to Richard A. Grasso, Executive Vice President, NYSE, dated November 25, 1985.

[11] It is, of course, possible for a rule nominally to apply across-the-board but, by virtue of an uneven impact, to impose inappropriate competitive burdens. The Commission has been unable to identify any such impacts from this proposed rule. The costs of this proposal for any given issuer will not be significant, and they will be borne proportionately by each issuer in accordance with the number of proxies it distributes.

[Release No. 34-22687; File No. SR-OCC-86-1]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On January 3, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this Notice to solicit comment on the rule change.

OCC stated that the purpose of the filing is to permit its Clearing Members to use an electronic data processing pledge system ("EDP Pledge System")[1] for pledging securities to meet margin and clearing fund obligations. The present procedure requires physical delivery of a depository receipt representing securities held in the custody of an approved bank, trust company or other depository. The proposed rule change provides that the underlying securities pledged through the EDP Pledge System are pledged with the same legal effect as if a depository receipt had been filed.

OCC states in its filing that the proposal is consistent with the purposes and requirements of section 17A of the Act in that it will increase processing efficiency without affecting the rights that OCC presently has in respect of securities deposited by Clearing Members as collateral.

The rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by March 11, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 10, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-3436 Filed 2-14-86; 8:45 am]

BILLING CODE 8010-01-M

[1] Currently, OCC accepts pledges through the Depository Trust Company's (the "DTC") Participant Terminal System. DTC's electronic data processing pledge system was the subject of two previous filings, SR-DTC-85-2 and SR-DTC-85-7.

DEPARTMENT OF STATE

[Public Notice 955]

Agency Form Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—New.

(2) Originating office—Office of Legal Adviser.

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(3) Title of information collection—Questionnaire Involving South Africa and Fair Labor Standards.

(4) Frequency—Annual.

(5) Respondents—U.S. firms operating in South Africa.

(6) Estimated number of responses—100.

(7) Estimated total number of hours needed to respond—3,000.

The final rule containing this collection of information was published in the **Federal Register** on December 31, 1985 (50 FR 53308).

Additional information or comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 632–3528. Comments and questions should be directed to (OMB) Francine Picoult (202) 395–7231.

Dated: February 14, 1986.

Donald J. Bouchard,

Assistant Secretary for Administration.

[FR Doc. 86–3364 Filed 2–14–86; 8:45 am]

BILLING CODE 4710–24–M

[Public Notice CM–8/941]

American Private Sector Overseas Security Advisory Council; Meeting

Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), dated October 6, 1972, the Department of State announces a closed meeting of the State Department—American Private Sector Overseas Security Advisory Council on April 3, 1986 at 9:30 A.M. in Room 1105, U.S. Department of State. Under the provision of the United States Code Title 5, Section 552b(c)(1) and (4) and Executive order #12356, it has been determined the meeting will be closed to the public. This decision relates to the anticipated disclosure of matters that are to be kept secret in the interest of national defense and foreign policy and items of a privileged commercial nature. The agenda will include a discussion of current U.S. foreign policy on responses to terrorist incidents and threats, committee reports on contingency planning and results of a survey conducted by the Council on security needs of the American private sector operating overseas. For further information, please contact Mr. Vernon E. Bishop at 202–647–5220.

Dated: February 7, 1986.

David C. Fields,

Director of the Diplomatic Security Service.

[FR Doc. 86–3919 Filed 2–14–86; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Application of Atlantic Gulf Airlines for Certificate Authority

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause (Order 86–2–25), Docket 43184.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order granting Air Illinois, Inc. d.b.a. Atlantic Gulf Airlines a certificate to engage in foreign scheduled air transportation of persons, property, and mail.

DATE: Persons wishing to file objections should do so no later than March 5, 1986.

ADDRESS: Responses should be filed in Docket 43184 and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P–47, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 755–3814.

Dated: February 11, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–3436 Filed 2–14–86; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Proposed Revocation of the Sections 401 and 418 Certificates of Capitol Air, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause, (Order 86–2–24) Docket 43797.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of Capitol Air, Inc., issued under section 401 and 418 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than March 5, 1986.

ADDRESSES: Responses should be filed in Docket 43797 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, D.C. 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P–47, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755–3812.

Dated: February 11, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86–3445 Filed 2–14–86; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended February 7, 1986

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the applicaiton by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket number	Description
Feb. 3, 1986	43775	Olson Air Service, Inc., c/o Bill Miller, Bill Miller Associates, Suite 604, 1341 G Street, NW., Washington, DC 20005. Application of Olson Air Service, Inc., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests authority to engage in interstate air transportation of persons, property and mail: Between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by March 3, 1986.

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Date filed	Docket number	Description
Feb. 7, 1986	48782	Pakistan International Airlines Corporation, c/o James L. Devall, Zuckert, Scoutt, Rasenberger & Johnson, 888 Seventeenth Street, NW., Washington, DC 20006. Application of Pakistan International Airlines Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations requests an amendment to its foreign air carrier permit to add, as an intermediate point to its current United States-Pakistan route, Copenhagen, Denmark. Answers may be filed by March 7, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86–3444 Filed 2–14–86; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petitions

This notice sets forth the reasons for the denials of petitions submitted to the National Highway Traffic Safety Administration under section 124 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381, 1410a).

On May 30, 1985 the agency informed Delmer Harris of Stanley, Kansas, that it was denying his petition to determine that a safety related defect attributable to rust exists in MacPherson front suspension towers on 1974 Subaru DL passenger cars. The agency had previously investigated alleged corrosion of the body/undercarriage sheet metal supporting the front suspension and steering components on 1973-74 Subarus (Engineering Analysis E80–025) but had closed the investigation in June 1983 because of the relatively low number of reports with low severity levels. The agency decided that further investigation of Mr. Harris' problem was unwarranted.

On October 7, 1985, Ed Strelau of Cincinnati, Ohio, asked the agency to conduct an investigation into corrosion and breakage of the sheet metal tie rod arms on 1976 Audi Fox vehicles. The agency's files revealed only one other complaint, and concluded that there was no justification for conducting an investigation, and Mr. Strelau was informed on November 19, 1985, that his petition was denied.

Jeffrey T. Meyers of Detroit, Michigan, asked the agency on April 26, 1985, to conduct a safety investigation into breakage of flexible blade engine cooling fans on 1977 Chevrolet Camaro passenger cars. Mr. Meyers' petition was assigned file number P85–22. In response to NHTSA inquiry, General Motors forwarded 29 complaints covering 1976 and 1977 Camaro fans (both models share the same engine compartment, fan, and engine specifications), and the agency found six more in its files. However, in relation to the overall size of the fleet, no pattern or failure trend emerged that would suggest the existence of a safety related defect. Since there did not appear to be a reasonable possibility that an order requiring the manufacturer to notify and remedy would be issued at the conclusion of an investigation, Mr. Meyers' petition was denied on November 20, 1985.

The agency has also recently denied two petitions filed by the Center for Auto Safety. The first, dated May 24, 1985, alleged that 1983–85 Ford passenger cars with fuel injected 3.8 and 5.0 litre engines may contain a safety related defect due to stalling. The petition was assigned file P85–24. NHTSA inquiry did disclose the existence of a problem: there were a reported fourteen accidents and three injuries allegedly resulting from stalling. Through its service information, Ford acknowledged the existence of driveability problems in cars equipped with electronic ingnition controls. These problems involve surge, spark knock, momentary increase of idle speed, fast idle, loss of power, mechanical noise, bucking, jerking on deceleration, rough idle, unexpected momentary engine speed decrease, failure to start, stalling on transmission engagement, hesitation and misfire during steady speeds, etc. However, the service bulletins and NHTSA analysis revealed no one item which could be described as the causal factor for these problems and no pattern emerged. Moreover, given the vehicle population of 2.2 million vehicles, the number of complaints did not indicate a trend indicating a safety related defect.

The second petition, filed on June 13, 1985, alleged the existence of a safety related defect caused by cracking of the junction of the fuel filler neck with the fuel tank on 1975–1981 Chevrolet Camaro and Pontiac Firebird passenger cars. This file was designated P85–25. Agency review indicated that twenty-five complaints had been made covering a vehicle population exceeding two million and the odor of raw gasoline alerted the drivers to the need for service attention. None indicated that there had been a rear end collision or a fire, and because of the facts that there are no spark sources at the rear, and leakage in the unconfined air space results in an air-fuel ratio too lean for ready ignition, the agency determined that were an investigation conducted, there was no reasonable possibility that an order would be issued at the end of it requiring notification and remedy.

The first petiton was denied on November 26, 1985, and the second, November 27, 1985.

(Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 12, 1986.

George Parker,

Associate Administrator for Enforcement.

[FR Doc. 86–3442 Filed 2–14–86; 8:45 am]

BILLING CODE 4910–59–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the forum, (3) The agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–

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2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: February 11, 1986.

By direction of the Administrator.

Susan Livingstone,

Associate Deputy Administrator for Management.

Extension

1. Office of Budget and Finance
2. Monthly Summary of Payroll Deductions for Government Life Insurance
3. VA Form 4-800a
4. Monthly
5. Businesses or other for-profit
6. 588 responses
7. 147 hours
8. Not applicable

[FR Doc. 86-3384 Filed 2-14-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 32
Tuesday, February 18, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

1

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 5141, February 11, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 12, 1986, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No. and Docket Nos. and Companies

M-8—RM85-1-000, 148, 150 and 152 (Parts A-D), Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Citizens Energy Corporation, Natural Gas Pipeline Company of America, Southern Natural Gas Company, Texas Eastern Transmission Corporation, Northwest Pipeline Corporation and American Gas Association and Arkla Energy Resources)

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3567 Filed 2-13-86; 3:22 pm]

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federal register

Tuesday
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Part II

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

In accordance with the Impoundment Control Act of 1974, I herewith report seventy-seven new rescission proposals totaling $9,945,651,335, twenty-seven new deferrals of budget authority totaling $15,191,970,509, and fifteen revised deferrals of budget authority totaling $7,663,442,822.

The rescissions affect programs in the Departments of Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, Transportation, and Treasury, Funds Appropriated to the President, National Aeronautics and Space Administration, Office of Personnel Management, Appalachian Regional Commission, Corporation for Public Broadcasting, National Endowment for the Humanities, State Justice Institute, and the United States Railway Association.

The deferrals affect programs in the Department of Commerce, Defense—Military and Civil, Energy, Health and Human Services, Housing and Urban Development, Justice, Labor, Transportation, and Treasury, Funds Appropriated to the President, the Commission on the Ukraine Famine, the Railroad Retirement Board, and the United States Information Agency.

The details of these rescission proposals and deferrals are contained in the attached report.

Ronald Reagan,

The White House,

February 5, 1986.

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NUMBER	ITEM	BUDGET AUTHORITY Original Rescission	Sequester	Current Rescission
	Funds Appropriated to the President			
	Multilateral Assistance			
R86-1	International organizations and programs	51,711	11,951	39,760
	Department of Agriculture			
	Agricultural Stabilization and Conservation Service			
R86-2	Rural clean water program	6,000	0	6,000
R86-3	Agricultural conservation program	140,839	0	140,839
R86-4	Water bank program	8,371	0	8,371
R86-5	Dairy indemnity program	95	0	95
	Rural Electrification Administration			
R86-6	Reimbursement to the Rural electrification and telephone revolving fund for interest subsidies and losses	100,000	0	100,000
R86-7	Purchase of Rural Telephone Bank capital stock	30,000	1,290	28,710
	Farmers Home Administration			
R86-10	Rural development loan fund	13,674	0	13,674
	Soil Conservation Service			
R86-11	Watershed and flood prevention operations	60,401	0	60,401
R86-12	Great plains conservation program	6,606	0	6,606
	Food and Nutrition Service			
R86-13	Food donations program	5,183	0	5,183
	Department of Commerce			
	Economic Development Administration			
R86-14	Economic development assistance programs	109,200	7,891	101,309
	International Trade Administration			
R86-15	Operations and administration	20,000	710	19,290
	National Oceanic and Atmospheric Administration			
R86-16	Operations, research, and facilities	66,604	3,281	63,323
	National Telecommunications and Information Administration			
R86-17	Public telecommunications facilities, planning and construction	22,800	980	21,820
	Department of Education			
	Office of Elementary and Secondary Education			
R86-18	Compensatory education for the			

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NUMBER	ITEM	BUDGET AUTHORITY Original Rescission	Sequester	Current Rescission
	disadvantaged	7,500	323	7,177
R86-19	Special programs	40,200	2,418	37,782
	Office of Bilingual Education and Minority Languages Affairs			
R86-20	Immigrant education	30,000	1,290	28,710
	Office of Special Education and Rehabilitative Services			
R86-21	Education for the handicapped	104,688	60,324	44,364
R86-22	Rehabilitation services and handicapped research	126,585	$1,146	75,439
R86-23	Payments to institutions for the handicapped	3,111	2,665	446
	Office of Vocational and Adult Education			
R86-24	Vocational and adult education	245,962	35,625	210,337
	Office of Postsecondary Education			
R86-25	Student financial assistance	456,347	0	456,347
R86-26	Higher education	193,160	12,278	180,882
	Special Institutions			
R86-27	Howard University	6,000	301	5,699
	Office of Educational Research and Improvement			
R86-28	Libraries	34,500	1,483	33,017
	Department of Health and Human Services			
	Health Resources and Services Administration			
R86-9	Health resources and services	211,455	0	211,455
R86-29	Indian health	24,262	0	24,262
R96-30	Indian health facilities	38,642	0	38,642
	Centers for Disease Control			
R86-31	Disease control, research, and training	34,096	0	34,096
	National Institutes of Health			
R86-32	National Cancer Institute	6,800	0	6,800
R86-33	National Heart, Lung and Blood Institute	11,469	0	11,469
R86-34	National Institute of Diabetes and Digestive and Kidney Diseases	7,980	0	7,980
R86-35	National Institute of Neurological and Communicative Disorders and Strokes	9,554	0	9,554
R86-36	National Institute of Allergy and Infectious Disease	1,513	0	1,513
R86-37	National Institute of General Medical Sciences	7,358	0	7,358
R86-38	National Institute of Child Health and Human Development	1,150	0	1,150

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NUMBER	ITEM	BUDGET AUTHORITY Original Rescission	Sequester	Current Rescission
R86-39	National Eye Institute.....	5,224	0	5,224
R86-40	National Institute on Aging....	2,879	0	2,879
R86-41	Office of the Director.....	23,055	0	23,055
	Alcohol, Drug Abuse, and Mental Health Administration			
R86-42	Alcohol, drug abuse, and mental health.....	39,718	0	39,718
	Health Care Financing Administration			
R86-43	Program management.....	912	0	912
	Social Security Administration			
R86-44	Refugee and entrant assistance.	87,551	0	87,551
	Human Development Services			
R86-45	Human development services.....	29,980	0	29,980
R86-46	Family social services.....	6,157	0	6,157
R86-47	Work incentives.....	55,000	9,116	45,884
R86-48	Community services block grant.	182,139	0	182,139
R86-49	Community development credit union revolving fund.....	2,529	0	2,529
	Departmental Management			
R86-50	General Departmental management	19,619	0	19,619
R86-51	Policy research.....	220	0	220
	Department of Housing and Urban Development			
	Housing Programs			
R86-52	Subsidized housing programs....	4,416,131	0	4,416,131
R86-53	Congregate services program....	2,555	0	2,555
R86-54	Housing counseling assistance..	3,313	0	3,313
	Community Planning and Development			
R86-55	Urban development action grants	220,062	0	220,062
	Department of the Interior			
	Bureau of Land Management			
R86-56	Land acquisition.....	3,000	0	3,000
	United States Fish and Wildlife Service			
R86-57	Land acquisition.....	4,951	0	4,951
	National Park Service			
R86-58	Construction.....	13,613	0	13,613
R86-59	Land acquisition.....	83,917	0	83,917
R86-60	Historic preservation fund.....	18,523	0	18,523
	Department of Justice			
	Federal Prison System			
R86-61	National Institute of Corrections.....	3,315	0	3,315
	Office of Justice Programs			
R86-62	Justice assistance.....	140,393	5,727	134,666

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NUMBER	ITEM	BUDGET AUTHORITY Original Rescission	Sequester	Current Rescission
	Department of Labor			
	Employment and Training Administration			
R86-63	Training and employment services	534,786	118,749	416,037
	Department of Transportation			
	Federal Railroad Administration			
R86-64	Rail service assistance.....	15,000	645	14,355
R86-65	Northeast corridor improvement program.....	12,500	538	11,962
R86-66	Railroad rehabilitation and improvement financing funds...	33,500	1,441	32,059
	Urban Mass Transportation Administration			
R86-67	Discretionary grants.....	521,275	0	521,275
	Department of the Treasury			
	Office of Revenue Sharing			
R86-68	Payments to State and local government fiscal assistance trust fund.....	759,975	0	759,975
	Federal Law Enforcement Training Center			
R86-69	Salaries and expenses.....	4,976	0	4,976
	United States Customs Service			
R86-70	Salaries and expenses.....	4,169	0	4,169
R86-71	Operation and maintenance, air interdiction program.....	19,275	0	19,275
	National Atmospheric and Space Administration			
R86-72	Research and development.....	26,796	0	26,796
	Office of Personnel Management			
R86-73	Government payment for annuitants, employees health benefits.....	600,000	0	600,000
R86-73	Employees health benefits fund.	0	0	0
	Other Independent Agencies			
	Appalachian Regional Commission			
R86-74	Appalachian regional development programs.....	81,000	0	81,000
R86-75	Corporation for Public Broadcasting Public broadcasting fund.....	44,000	0	44,000
	National Endowment for the			

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NUMBER	ITEM	BUDGET AUTHORITY Original Rescission	Sequester	Current Rescission
	Humanities			
R86-76	Grants and administration.....	1,903	0	1,903
	State Justice Institute.....			
R86-78	Salaries and expenses.....	7,656	0	7,656
	United States Railway Association			
R86-79	Administrative expenses.....	640	0	640
	Total, rescissions.....	10,275,823	330,172	9,945,651

Note -- Excludes $351 million reduction in the Rural housing insurance fund and $361 million reduction in FFB loan asset purchases, Rural housing insurance fund, Farmers Home Administration, Department of Agriculture.

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NUMBER	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President	
	International Security Assistance	
D86-32	Foreign military sales credit..	4,590,000
D86-24A	Economic support fund.....	3,158,276
D86-33	Military assistance program....	661,350
D86-34	International military education and training.....	27,245
	Multilateral Development Banks	
D86-35	Contribution to the special facility for sub-saharan Africa	75,000
	Department of Commerce	
	Economic Development Administration	
D86-36	Economic development assistance programs.....	40,000
	National Oceanic and Atmospheric Administration	
D86-25A	Fisheries loan fund.....	2,297
	Department of Defense - Military	
D86-4A	Military construction.....	1,841,658
D86-27A	Family housing.....	221,842
	Department of Defense - Civil	
	Wildlife Conservation, Military Reservations	
D86-5A	Wildlife conservation.....	1,256
	Department of Energy	
	Energy Programs	
D86-38	Energy supply, research and development activities.....	65,763
D86-58	Uranium supply and enrichment activities.....	584,158
D86-6A	Fossil energy research and development.....	64,812
D86-8A	Naval petroleum and oil shale reserves.....	166,466
D86-37	Strategic petroleum reserve....	197,941
D86-10A	SPR petroleum account.....	577,534
D86-11A	Alternative fuels production...	1,899
	Power Marketing Administration	
D86-13A	Southwestern Power Administration, Operation and maintenance.....	13,243
	Department of Health and Human Services	
	Health Care Financing Administration	
D86-57	Program management.....	8,489
	Social Security Administration	

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CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NUMBER	ITEM	BUDGET AUTHORITY
D86-28A	Limitation on administrative expenses (construction).....	6,647
D86-39	Limitation on administrative expenses (excludes disability determination services).....	30,000
D86-40	Limitation on administrative expenses (information technology systems).....	114,641
	Department of Housing and Urban Development	
	Housing Programs	
D86-41	Annual contributions for assisted housing - budget authority....	7,032,443
D86-42	Annual contributions for assisted housing - contract authority..	641
D86-43	Rental housing development grants.....	77,400
D86-44	Congregate services program....	2,670
D86-45	Housing for the elderly or handicapped fund.....	599,801
D86-46	Nonprofit sponsor assistance...	1,000
	Community Planning and Development	
D86-47	Rental rehabilitation grants program.....	77,000
D86-48	Community development grants...	500,000
D86-49	Urban development action grants	251,000
D86-50	Rehabilitation loan fund.....	135,535
	Department of Labor	
	Employment and Training Administration	
D86-51	State unemployment insurance and employment service operation.....	37,000
	Department of Justice	
	Federal Prison System	
D86-17A	Buildings and facilities.....	30,730
	Office of Justice Programs	
D86-18A	Crime victims fund.....	103,396
	Department of Transportation	
	Federal Railroad Administration	
D86-52	Conrail labor protection.....	4,565
D86-29A	Federal Aviation Administration	
	Facilities and equipment (Airport and airway trust fund)	1,368,162
	Maritime Administration	
D86-53	Operations and training.....	9,350

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NUMBER	ITEM	BUDGET AUTHORITY
	Department of the Treasury	
	Office of Revenue Sharing	
D86-30A	Local government fiscal assistance trust fund.....	105,226
	Other Independent Agencies	
	Commission on the Ukraine Famine	
D86-54	Salaries and expenses.....	233
	Railroad Retirement Board	
D86-55	Dual benefits payments account.	2,201
	United States Information Agency	
D86-56	Acquisition and construction of radio facilities.....	66,545
	Total, deferrals.....	22,855,413

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SUMMARY OF SPECIAL MESSAGES
FOR FY 1986
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Third special message:		
New items	10,275,823	15,191,971
Revisions to previous special messages	0	4,544,529
Sequestered amounts	330,172	0
Effects of third special message	9,945,651	19,736,499
Amounts from previous special messages that are changed by this message (changes noted above)	0	3,118,914
Subtotal, rescissions and deferrals	9,945,651	22,855,413
Amounts from previous special messages that are not changed by this message	0	533,178
Total amount proposed to date in all special messages	9,945,651	23,388,592

Note - Of the amount initially withheld for rescission, $211,423 thousand has been sequestered pursuant to Public Law 99-177. The amount proposed for rescission after sequestration is $10,415,896 thousand. The details by account are noted in the Table of Contents above and on the individual reports that follow. Not all rescission reports are affected by sequestration because some amounts were not determined until after the sequestration had been made.

FUNDS APPROPRIATED TO THE PRESIDENT

Multilateral Economic Assistance

International organizations and programs

Of the amounts made available under this head in Public Law 99-190, $39,760,475 are rescinded.

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Rescission Proposal No: R86-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**.....$247,922,475 1/ (P.L. 99-190)
Bureau: Multilateral Assistance	**Other budgetary resources**
Appropriation title and symbol: International organizations and programs 11\61005	**Total budgetary resources** 247,922,475
	Amount proposed for rescission $ 51,711,475
OMB identification code: 11-1005-0-1-151	**Legal authority** (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account funds voluntary contributions by the United States to selected multilateral developmental, humanitarian, and scientific programs, most of which are associated with the United Nations. A rescission of $51,711,475 is proposed because, useful as some of these programs may be, a higher priority must be afforded other foreign assistance activities accomplishing the same objectives. The proposed rescission would reduce the 1986 program to the original 1986 request level.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
326,660	299,831	26,829	12,931	---	---	--	---

1/ Does not include $30,000,000 for the International Fund for Agricultural Development, the availability of which is contingent upon receipt of a budget request by the Congress and the United States entering into an agreement to participate in the second replenishment of the organization.

Note - $11,951,000 of the amount originally withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $39,760,475.

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R86-2

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Rural clean water program

Of available funds under this head, $6,000,000 are rescinded.

Rescission Proposal No. R86-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ (P.L.)
Bureau: Agriculture Stabilization and Conservation Service	Other budgetary resources $ 16,635,093
Appropriation title and symbol:	Total budgetary resources $ 16,635,093
Rural clean water program 12X3337	Amount proposed for rescission $ 6,000,000
OMB identification code: 12-3337-0-1-304	Legal authority (in addition to Sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: Under the experimental Rural Clean Water Program (RCWP), a total of $70 million was appropriated in 1980 and 1981 to develop and test means of controlling agricultural nonpoint source water pollution in rural areas. Twenty-one projects were approved, for which full funding over the 3 to 10-year life of the project areas was estimated to be $70 million. Due to a decline in the inflation rate from 15 percent to 5 percent, and to a lower level of farmer participation as a result of the depressed farm economy, revised cost estimates, assuming a relatively stable inflation rate, indicate that approximately $64 million is sufficient to complete the 21 RCWP projects. Cost-share funds sufficient to meet projected demand will be available to complete the 19 projects not yet completed under this program. The balance of $6 million is proposed for rescission.

Estimated Program Effect: None

Outlay Effect: None

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R86-3

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Agricultural conservation program

Of the funds included under this head in the conference version of H.R. 3037, making appropriations for Agriculture, Rural Development, and Related Agencies, 1986, and made available by section 101(a) of Public Law 99-190, $140,839,000 are rescinded.

Rescission Proposal No: R86-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $190,000,000 (P.L. 99-190)
Bureau: Agricultural Stabilization and Conservation Service	Other budgetary resources 27,476,369
Appropriation title and symbol: Agricultural conservation program 12X3315	Total budgetary resources $217,476,369
	Amount proposed for rescission $140,839,000
OMB Identification code: 12-3315-0-1-302	Legal authority (in addition to sec. 1012): |__| Antideficiency Act
Grant program: |__| Yes |X| No	|__| Other
Type of account or fund: |__| Annual	Type of budget authority: |X| Appropriation
|__| Multiple-year (expiration date)	|__| Contract authority
|X| No-Year	|__| Other

Justification: The primary objectives of the program are: (1) to help assure a continued supply of food and fiber necessary for a strong and healthy economy and people, (2) to facilitate sound resource management systems through soil and water conservation, (3) to control erosion and sedimentation from agricultural land, (4) to control pollution from animal wastes, (5) to encourage voluntary compliance by agricultural producers with State and Federal requirements to solve point and nonpoint sources of pollution, (6) to improve water quality, (7) to help achieve national priorities in the National Environmental Policy Act, (8) to help achieve national priorities in the Federal Water Pollution Control Act, and (9) to encourage the energy conservation measures specified in the Energy Security Act of 1980. The rescission is proposed to achieve the goals of the Balanced Budget and Emergency Deficit Control Act of 1985. In addition, Presidental policy calls for privatization when possible. Responsibility for the maintenance of the productivity and profitability for the individual farm is primarily the responsibility of its owner, who has an economic stake in preserving its productivity. Finally, financial assistance under the Food Security Act of 1985 should be concentrated on the longer term conservation of cropland that meets strict criteria for entry in a Conservation Reserve Program.

Estimated Program Effect: No new activity bevond what is currently under contract will be initiated under this program in fiscal year 1986. Practices for which funds were previously obligated will be completed. Existing long-term agreements will be honored.

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
203,377	160,000	43,377	80,452	3,780	3,780	3,780	5,670

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Water bank program

Of the funds included under this head in the conference version of H.R. 3037, making appropriations for Agriculture, Rural Development, and Related Agencies, 1986, and made available by section 101(a) of Public Law 99-190, $8,371,000 are rescinded.

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Rescission Proposal No: R86-4

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Agriculture	**New budget authority.....** (P.L. 99-190) $8,800,000
Bureau: Agricultural Stabilization and Conservation Service	**Other budgetary resources** 529,315
Appropriation title and symbol: Water bank program 12X3320	**Total budgetary resources** 9,329,315
	Amount proposed for rescission $8,371,000
OMB identification code: 12-3320-0-1-302	**Legal authority (in addition to sec. 1012):** |__| Antideficiency Act; |__| Other
Grant program: |__| Yes |X| No	
Type of account or fund: |__| Annual; |__| Multiple-year (expiration data); |X| No-Year	**Type of budget authority:** |X| Appropriation; |__| Contract authority; |__| Other

Justification: The objectives of the Water Bank Program are to conserve water; preserve, maintain, and improve the Nation's wetlands; increase waterfowl habitat in migratory waterfowl nesting, breeding, and feeding areas in the United States; and secure recreational and environmental benefits for the Nation. The program was authorized by the Water Bank Act, approved December 19, 1970, as amended by Public Law 96-182, approved January 2, 1980. A rescission is proposed to achieve the goals of the Balanced Budget and Emergency Deficit Control Act of 1985. In addition, the major program thrust for waterfowl habitat protection is in the Department of Interior which has a dedicated source of funding for water fowl habitat preservation authorized by the Migratory Bird Conservation Act. Finally, the "swampbuster provision" of the Food Security Act of 1985 would deny farm benefits to producers who convert wetlands to crop use in the future, except where the impact of the action is found to be minimal.

Estimated Program Effect: No new contracts will be signed in FY 1986. Expiring agreements will not be renewed and payment rates on 5-year old contracts will not be increased. However, existing agreements through 1995 will be honored.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
9,944	8,900	1,044	862	862	862	862	3,874

R86-5

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Dairy indemnity program

Of the funds included under this head in the conference version of H.R. 3037, making appropriations for Agriculture, Rural Development, and Related Agencies, 1986, and made available by section 101(s) of Public Law 99-190, $95,000 are rescinded.

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Rescission Proposal No: R86-5

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Agriculture
Bureau:
Agri. Stabilization and Conserv. Svc.

Appropriation title and symbol:
Dairy indemnity program 1/
12X3314

OMB identification code:
12-3314-0-1-351

Grant program:
|X| Yes |___| No

Type of account or fund:
|___| Annual
|___| Multiple-year (expiration date)
|X| No-Year

New budget authority..... $100,000
(P.L. 99-190)
Other budgetary resources -5,000
Total budgetary resources 95,000

Amount proposed for rescission $ 95,000

Legal authority (in addition to sec. 1012):
|___| Antideficiency Act
|___| Other

Type of budget authority:
|X| Appropriation
|___| Contract authority
|___| Other

Justification: This program makes indemnification payments to dairy farmers and manufacturers of dairy products when milk is found to contain residues of chemicals or nuclear radiation and is removed from commercial markets. This is a low priority program for which no fiscal 1985 claims for losses have been filed to date. The $95,000 provided by the 1986 appropriation addresses a problem which is of limited scope. Rescission of the funds is proposed because of the need to reduce Federal spending pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
112	17	95	---	---	---	---	---

1/ This account was the subject of similar rescission in 1985 (RR5-23).

R86-6

Department of Agriculture

Rural Electrification Administration

Rural Electrification and Telephone Revolving Fund Loan Authorization

All funds included under this head in the conference version of H.R. 3037, making appropriations for Agriculture, Rural Development, and Related Agencies, 1986, and made available by section 101(a) of Public Law 99-190 are rescinded.

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PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture **Bureau:** Rural Electrification Administration **Appropriation title and symbol:** Reimbursement to the Rural Electrification and Telephone Revolving Fund 1/ 1263101 **OMB identification code:** 12-3101-0-1-271 **Grant program:** |__| Yes |X| No	**New budget authority** ..... $100,000,000 (P.L. 99-190) **Other budgetary resources** _____ **Total budgetary resources** 100,000,000 **Amount proposed for rescission** $100,000,000 **Legal authority** (in addition to sec. 1012): |__| Antideficiency Act |__| Other _____
Type of account or fund: |X| Annual |__| Multiple-year _____ (expiration date) |__| No-Year	**Type of budget authority:** |X| Appropriation |__| Contract authority |__| Other _____

Justification: This appropriation is to reimburse the Rural Electrification and Telephone Revolving Fund for interest subsidies and losses sustained in prior years. This rescission is proposed because the Fund has not incurred a loss that would necessitate use of the appropriations. In fact, the Fund has never incurred a loss since its inception in 1973. In 1984, interest receipts collected into the Fund exceeded interest expenses paid by the fund by almost $84 million as shown in the following table:

1984 Interest Receipts.....	$479,165,007
Less 1984 Interest Expenses.....	395,563,755
Net Income.....	83,601,252
1984 interest paid by Treasury without reimbursement from the Fund on advances totaling $7.9 billion.....	307,163,252

Only when this net income is reduced by imputed interest costs incurred and paid by Treasury without reimbursement from the revolving fund does the fund realize a loss. It should be emphasized that the imputed interest costs are not paid for by the revolving fund, as provided by P.L. 93-32, which forgave REA this interest. Therefore, for the operations of the fund in fiscal year 1984 there is no need for a reimbursement to the fund since actual interest income to the fund exceeded the actual interest expenses incurred.

Estimated Program Effect: None

Outlay Effect: Elimination of the interest subsidy would reduce outlays substantially (see Administration's legislative proposal for REA direct loan interest rates). The following table represents the effect of the rescission on this account only since the Rural Electrification and Telephone revolving fund could still borrow (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
100,000	---	100,000	---	---	---	---	---

1/ A similar rescission was proposed in 1985 (R85-28).

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R86-7

Department of Agriculture

Rural Electrification Administration

Rural Telephone Bank

All funds included under this head in the conference version of H.R. 3037, making appropriations for Agriculture, Rural Development, and Related Agencies, 1986, and made available by section 101(a) of Public Law 99-190, are rescinded.

Rescission Proposal No: R86-7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $30,000,000 (P.L. 99-190)
Bureau: Rural Electrification Administration	Other budgetary resources
Appropriation title and symbol: Purchase of Rural Telephone Bank Capital Stock 1/ 12X3102	Total budgetary resources 30,000,000
	Amount proposed for rescission $30,000,000
OMB identification code: 12-3102-0-1-452	Legal authority (in addition to sec. 1012): |_| Antideficiency Act
Grant program: |_| Yes |X| No	|_| Other
Type of account or fund: |_| Annual	Type of budget authority: |X| Appropriation
|_| Multiple-year (expiration date)	|_| Contract authority
|X| No-Year	|_| Other

Justification: This account funds the purchase of class A stock of the Rural Telephone Bank, providing capital to the Bank with a 2 percent rate of return. The difference between 2 percent and Treasury's rates is borne by U.S. taxpayers. The Federal Government has already provided through 1985 $420 million in capital to the Bank. The statute requires that the funds begin to be repaid starting in 1996. The Bank has the authority to raise funds in private credit markets on the capital base provided by the Federal Government, and it is authorized to borrow virtually without limitation from the U.S. Treasury at the same interest rate the Treasury pays. Even without the capital proposed for rescission, the Bank would continue to be heavily subsidized with taxpayer dollars, and rural telephone borrowers would continue to enjoy low-cost money. The Bank's current lending rate is 4.5 percent. This proposal would not affect the Bank's lending levels or outlays.

Estimated Program Effect: None

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Outlay Effect: There would be a Government-wide savings of about $64 million in interest subsidy over the life of the single $30 million capital loan. The following table represents the impact only on this account (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
28,710	---	28,710	---	---	---	---	---

1/ A similar rescission was proposed in 1985 (R85-29).

Note - $1,290,000 of the amount originally withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $28,710,000.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Rural development loan fund

Of available funds under this head, $13,674,000 are rescinded.

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Rescission Proposal No: R86-10

R86-10

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $_____ (P.L. _____)
Bureau: Farmers Home Administration	Other budgetary resources 13,674,000
Appropriation title and symbol: Rural development loan fund 12X4233	Total budgetary resources 13,674,000
OMB identification code: 12-4233-0-3-452	Amount proposed for rescission $13,674,000
Grant program: [X] Yes [ ] No	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other_____
Type of account or fund: [ ] Annual [ ] Multiple-year _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other_____

Justification: Funding for the Rural development loan fund is authorized under Section 623 and 633 of the Community Development Act of 1981 (42 U. S. C. 9801 et seq.). The Rural development loan fund assists low income rural residents through the provision of loans and guarantees to eligible borrower organizations at a reasonable cost to improve, develop, or finance business and industrial development; to create employment opportunities; to develop local ownership; to attract additional private capital into rural communities; and to improve and expand the ability of rural institutions to better serve the economic needs of low income residents. The proposed rescission is part of the Administration's effort to reduce the size and scope of Federal programs and their adverse impact on the management of future fiscal policy. The Administration believes that the most efficient way to manage both local community investment and local business investment is to rely upon the American private credit market--not federal loans, guarantees and grants.

Estimated Program Effect: The proposed rescission would eliminate unobligated balances of $13,674,000.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
13,274	-400	13,674	---	---	---	---	---

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R86-11

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Watershed and flood prevention operations

Of the funds included under this head in the conference version of H.R. 3037, making appropriations for Agriculture, Rural Development, and Related Agencies, 1986, and made available by section 101(a) of Public Law 99-190, $60,401,000 are rescinded.

Rescission Proposal No: R86-11

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 230,795,000 (P.L. 99-190)
Bureau: Soil Conservation Service	Other budgetary resources 24,788,064
Appropriation title and symbol: Watershed and flood prevention operations1/ 12X1072	Total budgetary resources 255,583,064
	Amount proposed for rescission $ 60,401,000
OMB identification code: 12-1072-0-1-301	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: This program provides for cooperation between the Federal Government and States and their political subdivisions in installing works of improvement: to reduce damage from floodwater, sediment and erosion; for the conservation, development, utilization, and disposal of water; and for the conservation and proper utilization of land. This rescission is proposed to prepare for proposed termination of the Watershed and Flood Prevention Operations Program in 1987. No new contracts will be initiated after January 31, 1986. This action is taken to assist in achieving the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The watershed structures for which funding is being terminated are small and relatively inexpensive with local benefits that are well within the capabilities of local communities to finance.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
236,456	218,336	18,120	27,180	15,101	---	---	---

1/ This account was the subject of a rescission proposal in 1985 (R85-34).

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R86-12

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Great Plains conservation program

Of the funds included under this head in the conference version of H.R. 3037, making appropriations for Agriculture, Rural Development, and Related Agencies, 1986, and made available by section 101(a) of Public Law 99-190, $6,606,000 are rescinded.

Rescission Proposal No: R86-12

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture Bureau: Soil Conservation Service Appropriation title and symbol: Great Plains Conservation Program 12X2268 OMB identification code: 12-2268-0-1-302 Grant program: | | Yes | X | No Type of account or fund: | | Annual | | Multiple-year (expiration date) | X | No-Year	New budget authority..... $21,500,984 (P.L. 99-190) Other budgetary resources -920,000 Total budgetary resources $20,580,000 Amount proposed for rescission $ 6,606,000 Legal authority (in addition to sec. 1012): | | Antideficiency Act | | Other Type of budget authority: | X | Appropriation | | Contract authority | | Other

Justification: This program provides cost-share and technical services to participating landowners or operators in the Great Plains area in the development and installation of long-term conservation plans and practices for their land under contracts entered into in prior years. It is a voluntary program in 519 designated counties of 10 Great Plains States. Contracts with individual landowners range in time from 3 to 10 years. This rescission action is proposed to reflect the termination of the Great Plains Conservation Program during FY 1986. No new contracts will be signed after February 1, 1986. Remaining program funds would be used to pay severance pay and other costs associated with terminating those employees assigned to this program.

Estimated Program Effect: This low priority program would be terminated.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
21,101	21,101	---	1,580	1,623	1,366	905	754

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food donations program

Of the funds included under this head in the conference version of H.R. 3037, making appropriations for Agriculture, Rural Development, and Related Agencies, 1986, and made available by section 101(a) of Public Law 99-190, $5,183,000 are rescinded.

Rescission Proposal No: R86-13

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture **Bureau:** Food and Nutrition Service **Appropriation title and symbol:** Cash and commodities for selected groups 1/ 12X3503 **OMB identification code:** 12-3503-0-1-605 **Grant program:** [X] Yes [ ] No **Type of account or fund:** [X] Annual [ ] Multiple-year _____ (expiration date) [ ] No-Year	**New budget authority** (P.L. 99-190) ..... $194,573,000 **Other budgetary resources** -1,168,000 **Total budgetary resources** $193,405,000 **Amount proposed for rescission** $ 5,183,000 **Legal authority** (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other _____ **Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account provides commodities for needy Indian families in lieu of food stamps and subsidies for meals served to the elderly, regardless of their incomes. A rescission is proposed for the Elderly Feeding program within this account. The Department of Agriculture reimburses meal providers for each meal they serve within the conetraint established by the program's authorized level. For 1986, an amount exceeding the authorization was appropriated. The proposed rescission would return program resources to the authorized level.

Estimated Program Effect: Depending on final counts of meals served by meal providers, the reimbursement rate would be approximately 62 cents rather than from 61 cents to 63 cents per meal.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
149,631	144,934	4,697	486	---	---	---	---

1/ This account was formerly titled "Food donations program".

R86-14

DEPARTMENT OF COMMERCE

Economic Development Administration

Economic development assistance programs

Of the funds made available under this head in Public Law 99-180, $101,309,000 are rescinded.

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Commerce **Bureau:** Economic Development Administration **Appropriation title and symbol:** Economic development assistance programs 1/ 13 62050 13X2050	New budget authority..... $183,500,000 (P.L. 98-180, 99-190) Other budgetary resources 535,000 Total budgetary resources 184,035,000 Amount proposed for rescission $109,200,000
OMB identification code: 13-2050-0-1-452 **Grant program:** [X] Yes [ ] No	**Legal authority** (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account provides public works projects, planning and technical assistance grants, and research and evaluation to state and local governments for economic development activities. In order to reduce the Federal deficit and to reflect Administration policies to rely on the private sector to create jobs and to transfer responsibility for community and economic development assistance to state and local governments, a rescission is proposed for the unobligated balances of the Economic Development Administration's grant programs.

Estimated Program Effect: This reduction along with other proposals will reduce unnecessary spending. The effect of the reduction will be to transfer responsibility for economic development to private, state, and local sources.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
240,498	230,367	10,131	20,262	25,327	25,327	15,196	5,066

1/ This account is also the subject of a deferral (D86-36) and was the subject of similar rescission proposals in 1985 (R85-55 and R85-56).

Note - $7,891,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $101,309,000

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R86-15

DEPARTMENT OF COMMERCE

International Trade Administration

Operations and administration

Of the funds made available under this head in Public Law 99-180, $10,180,000 are rescinded; an additional $9,110,000 is rescinded from other available balances.

Rescission Proposal No: R86-15

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Commerce Bureau: International Trade Administration Appropriation title and symbol: Operations and administration 1/ 13X1250	New budget authority..... $192,000,000 (P.L. 98-180) Other budgetary resources 22,254,225 Total budgetary resources 214,254,225 Amount proposed for rescission $20,000,000
OMB identification code: 13-1250-0-1-376 Grant program: [X] Yes [ ] No	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justifications: This account funds programs intended to promote an improved trade posture for U.S. industry in a manner consistent with national security and foreign and economic policy. The Trade Adjustment Assistance (TAA) program, funded in this account, provides technical assistance, grants, direct loans, and loan guarantees to businesses adversely affected by increased imports. The fact that a firm has been harmed by import competition should not in and of itself constitute justification for special Government assistance. U.S. trade laws provide remedies against unfair import competition. In addition, high TAA default rates suggest that a large proportion of these loans and loan guarantees have not resulted in the intended adjustment. A rescission of $20,000,000 (including $9,110,000 in unobligated balances from prior year appropriations) is part of an overall proposal to reduce this program. Supplemental language reducing the direct and guaranteed loan programs is included in the 1987 President's budget.

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Estimated Program Effect: The Trade Adjustment Assistance program would be terminated.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
Operations and administration							
171,306	160,016	11,290	---	---	---	---	---
Miscellaneous appropriations							
---	---	---	6,490	1,510	---	---	---

1/ This account was the subject of a similiar rescission in 1985 (R85-60A).

Note - $710,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $19,290,000.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Operations, Research, and Facilities

(including transfers of funds)

Of the funds made available under this head in Public Law 99-180, $63,323,000 are rescinded.

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PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Commerce **Bureau:** Nat'l Oceanic and Atmospheric Admin. **Appropriation title and symbol:** Operations, research, and facilities 1/ 13X1450	New budget authority..... $1,172,399,000 (P.L. 99-180, 99-190) Other budgetary resources 211,238,046 Total budgetary resources 1,383,637,046 Amount proposed for rescission $ 66,604,000
OMB identification code: 13-1450-0-1-306 **Grant program:** [X] Yes [ ] No	**Legal authority** (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account funds a variety of programs related to the oceanic and coastal areas, marine fisheries, the atmosphere, satellites, and environmental data. Consistent with the President's policy to eliminate unnecessary and low priority Federal programs to achieve deficit reduction targets established by the Balanced Budget and Emergency Deficit Control Act of 1985, the following are proposed for rescission:

Coastal Zone State Assistance Grants ($36,000,000)

This program was created to help states build capacity to manage coastal resources. The program has completed its mission and additional Federal funding is no longer necessary. Over $500 million have been provided since 1974 and approved plans now cover 90 percent of the U.S. coastline.

Sea Grant ($30,604,000)

The Sea Grant program was created to develop a network of colleges and universities with marine education programs. The program has completed its goal and 21 institutions have established marine science programs. The Sea Grant program has become primarily an ongoing funding source for local and regionally oriented research projects and marine services. More than $460 million has been awarded to these colleges since the inception of the program 20 years ago.

Estimated Program Effect: These rescissions will not affect essential Government services and will enable Federal budget resources to be used for programs that are appropriate Federal responsibilities.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
1,102,870	1,063,707	39,163	19,582	4,578	---	---	---

1/ This account was the subject of a similar rescission proposed in 1985 (R85-64A).

Note - $3,281,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $63,323,000.

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R86-17

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Public telecommunications facilities, planning and construction

Of the funds made available under this head in Public Law 99-180, $21,820,000 are rescinded;

Rescission Proposal No: R86-17

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Commerce Bureau: National Telecommunications and Information Administration Appropriation title and symbol: Public telecommunications facilities, planning and construction 1/ 13X0551 OMB identification code: 13-0551-0-1-503 Grant program: [X] Yes [ ] No	New budget authority..... $24,000,000 (P.L. 99-180) Other budgetary resources 2,118,053 Total budgetary resources 26,118,053 Amount proposed for rescission $22,800,000 Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	

Justification: The public telecommunications facilities program provides grants to plan for and construct non-commercial broadcasting in areas not served by public television and radio. Over 95 percent of the United States currently receives public broadcasting. This rescission will eliminate the funds available from grants from the FY 1986 appropriation while allowing for an orderly phase out of the program.

Estimated Program Effect: The objective of this program was to provide initial funds for the development of public telecommunications facilities. With over 95 percent of the United States currently receiving public broadcasting, this objective has been accomplished.

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
Public telecommunication facilities, planning and construction:							
19,805	17,623	2,182	---	---	---	---	---
Miscellaneous appropriations, General Administration:							
---	---	---	11,448	6,546	1,636	---	---

1/ This account was the subject of a similar rescission proposal in 1985 (R85-69A)

Note - $980,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $21,820,000.

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Compensatory education for the disadvantaged

Of the funds made available under this head in Public Law 99-178 for carrying out section 418A of the Higher Education Act, as amended, $7,177,000 are rescinded.

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Rescission Proposal No: R86-18

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education **Bureau:** Office of Elementary and Secondary Education	New budget authority..... $3,695,663,000 (P.L. 99-178)
Appropriation title and symbol: Compensatory education for the disadvantaged 9160900 916/70900 915/60900	Other budgetary resources -154,816,420 Total budgetary resources $3,540,846,580 Amount proposed for rescission $ 7,500,000
OMB identification code: 91-0900-0-1-501	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [X] Annual [X] Multiple-year Sept. 30, 1986 / Sept. 30, 1987 (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	Rescission Proposal
Compensatory education for the disadvantaged.....	9160900	$7,177,000

Justification: This account funds activities authorized under chapter 1 of the Education Consolidation and Improvement Act of 1981. Funds for the High School Equivalency ($6,029,000) and the College Assistance Migrant ($1,148,000) programs are proposed for rescission. Both programs are expensive relative to the number of students served and other Federal programs provide similar services at a lower cost. The Department, in its 1987 Higher Education Act reauthorization proposal, will seek to consolidate the authority for High School Equivalency program with the Upward Bound, Talent Search, and Educational Opportunity Centers programs to form a new postsecondary outreach program and to merge the College Assistance Migrant program authority with the Special Services program to create a new program designed to provide special services to disadvantaged college students. This reduction will help achieve the deficit reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985.

R86-18

Estimated Program Effect: Two lower priority, expensive programs will be terminated.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
2,951,933	2,950,928	1,005	4,594	1,578	---	---	---

Note - $323,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $7,177,000.

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R86-19

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Special programs

Of the funds made available under this head in Public Law 99-178, $37,782,000 are rescinded, of which $6,968,000 are rescinded from funds available for section 403 of the Civil Rights Act of 1964; $5,742,000 are rescinded from funds available for title IX, part C of the Elementary and Secondary Education Act; $4,785,000 are rescinded from funds available for section 1524 of the Education Amendments of 1978; $1,914,000 are rescinded from funds available for section 1525 of the Education Amendments of 1978; $1,627,000 are rescinded from funds available for Public Law 92-506; $7,392,000 are rescinded from funds available for title VI of the Education for Economic Security Act; $7,177,000 are rescinded from funds available for the Follow Through Act; and $7,177,000 are recinded from funds available for title IX of Public Law 98-588.

Rescission Proposal No: R86-19

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... (P.L. 99-178) $705,109,000
Bureau: Office of Elementary and Secondary Education	Other budgetary resources -18,392,832
Appropriation title and symbol: Special Programs 1/ 916/71000 91X1800 916/1000 915/61000 91X3000 91X1700	Total budgetary resources 686,716,168
OMB identification code: 91-1000-0-1-501	Amount proposed for rescission $ 40,200,000
Grant program: [X] Yes [ ] No	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Type of account or fund: [X] Annual [X] Multiple-year Sept. 30, 1986 Sept. 30, 1987 (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	Rescission Proposal
Special programs	916/1000	$26,586,000
Special programs	916/71000	8,804,000
Special programs	91X3000	2,392,000
		$37,782,000

Justification: The Special Programs account includes funds appropriated for: the Chapter 2 State block grant and discretionary fund, the science and mathematics education program, the Magnet schools program, and eight other small grant programs. Within the Special Programs account, funds were appropriated for a number of narrow categorical programs authorized under such authorities as the Education Amendments of 1978, the Elementary and Secondary Education Act (ESEA), and the Education for Economic Security Act. In order to eliminate program duplication, to focus support on priority programs, and to restrain Federal spending to help achieve the deficit reductions required by P.L. 99-177, the following funds are proposed for rescission: $6,968,000 from Training and advisory services authorized under

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title IV of the Civil Rights Act of 1964; $5,742,000 for the Women's Educational Equity Act (WEAA); $4,765,000 for General assistance to the Virgin Islands; $1,914,000 for Territorial teacher training; $1,627,000 for Ellender fellowships; $2,392,000 for the Excellence in education program; $7,177,000 for the Follow Through Act; and $7,177,000 for the Leadership in educational administration (LEAD) program. The rescission for Training and advisory services would be the first step in a two-year program termination. Funding for the other seven programs would be terminated immediately. In all cases, these programs can be considered nonessential uses of Federal resources.

Estimated Program Effect: The rescission for Training and advisory services would result in reductions of $3,484,000 each for ESEA grants and Grants for desegregation assistance centers. The other rescissions would result in elimination of the following projected activities: 57 WEEA grants, 5,900 Ellender fellowships, 90 Follow through grants, 94 Excellence in education grants; 50 LEAD contracts, and 6 grants-in-aid to the Outlying Areas.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
661,779	659,609	2,170	27,506	7,401		705	--- ---

1/ This account was the subject of a similar rescission proposal in 1985 (R85-76).

Note - $2,418,000 of the amount originally withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $37,782,000.

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Bilingual education

Of the funds made available under this head in Public Law 99-178 for Emergency immigrant education activities, $28,710,000 are rescinded.

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Rescission Proposal No: R86-20

R86-20

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Education
Bureau: Office of Bilingual Education and Minority Languages Affairs

Appropriation title and symbol:
Bilingual education 1/
915/61300
9161300

OMB identification code:
91-1600-0-1-501

Grant program: |X| Yes |___| No

Type of account or fund:
|X| Annual
|X| Multiple-year 9/30/86 (expiration date)
|___| No-Year

New budget authority..... (P.L. 99-178)	$172,951,000
Other budgetary resources	-5,417,262
Total budgetary resources	167,533,738
Amount proposed for rescission	$ 30,000,000

Legal authority (in addition to sec. 1012):
|___| Antideficiency Act
|___| Other

Type of budget authority:
|X| Appropriation
|___| Contract authority
|___| Other

Coverage:

Appropriation	Account Symbol	Rescission Proposal
Bilingual education.....	9161300	$28,710,000

Justification: The Emergency Immigrant Education Program provides grants for educational services to recent immigrant children to districts that have 500 such children or where these students represent at least three percent of the enrollment. Children in need of assistance who are eligible for these services may also qualify for services under other programs if they are educationally disadvantaged or have limited English proficiency. Funds available under Chapters 1 and 2 of the Education Consolidation and Improvement Act of 1981 and Title VII of the Elementary and Secondary Education Act are sufficient to provide educational services to any eligible immigrant children in need of them. In addition, this rescission will help achieve the deficit reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: An estimated 32 states will not receive grants to help cover the cost of educational services for 390,000 immigrant children.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
127,615	127,615	---	14,642	12,632	1,436	---	---

1/ This account was the subject of a similar rescission proposal in 1985 (R85-77).

Note - $1,290,000 of the amount originally withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $28,710,000.

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R86-21

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

Education for the handicapped

Of the funds made available under this head in Public Law 99-178, $44,364,000 are rescinded, of which $28,137,000 are rescinded from funds available for section 611 of the Education of the Handicapped Act.

Rescission Proposal No: R86-21

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority.... $1,411,000,000 (P.L. 99-178)
Bureau: Office of Special Education and Rehabilitation Services	Other budgetary resources 61,359,175
Appropriation title and symbol: Education for the handicapped 916/70300 91X0300 916O300 915/60300	Total budgetary resources 1,472,359,175
	Amount proposed for rescission $ 104,688,000
OMB identification code: 91-0300-0-1-501	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [X] Annual [X] Multiple-year Sept. 30, 1986 Sept. 30, 1987 (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Symbol	OMB Identification Code	Rescission Proposal
Education for the handicapped.....	916O300	91-0300-0-1-501	$16,227,000
Education for the handicapped.....	916/70300	91-0300-0-1-501	28,137,000
			$44,364,000

Justification: This account funds formula grants to states to assist in providing appropriate public education to handicapped children, preschool incentive grants and special purpose projects. Within the Education for the Handicapped account, funds were appropriated for numerous discretionary and formula grant activities under the Education of the Handicapped Act. As part of the President's program to eliminate unnecessary Government spending, to direct Federal support to priority programs, and to help achieve the deficit reductions required by P.L. 99-177, the following funds are proposed for rescission: $28,137,000 for the State Grant Program, $2,355,000 for Deaf-Blind Centers, $485,000 for Severly Handicapped Projects, $468,000 for Early Childhood Education, $269,000 for Innovation and Development, $247,000 for Media Services and Captioned Films, $29,000 for Regional Resource Centers;

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$37,000 for Recruitment and Information, $11,248,000 for Special Education Personnel Development, and $1,089,000 for Special Studies. The proposed rescissions would bring the funding for these programs in line with the President's budget request for fiscal year 1986.

Estimated Program Effect: Fewer new awards will be made.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
1,512,329	1,508,565	3,764	31,900	6,806	1,894	---	---

Note - $60,324,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $44,364,000.

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

Rehabilitation services and handicapped research

Of the funds made available under this head in Public Law 99-178, $75,439,000 are rescinded, of which $2,105,000 are rescinded from funds available for section 316 of the Rehabilitation Act; $718,000 for South Carolina and $4,785,000 for the Oregon Hearing Institute are rescinded from funds available for section 311 of the Rehabilitation Act, and $45,148,000 are rescinded from funds available for grants to States under part B of title I of the Rehabilitation Act: Provided, That of the funds available, $1,098,694,084 are made available for State allotments under section 100(b)(1) and $1,305,916 are made available forpayments under section 110(b)(3).

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Rescission Proposal No: R86-22

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... (P.L. 99-178) $1,362,000,000
Bureau: Office of Special Education and Rehabilitation Services	Other budgetary resources -51,704,000
Appropriation title and symbol:	Total budgetary resources 1,310,296,000
Rehabilitation services and handicapped research 91X0301 9160301	Amount proposed for rescission $ 126,585,000
OMB identification code: 91-0301-0-1-506	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account funds vocational rehabilitation state grants, client assistance formula grants, service projects, the Helen Keller Center, independent living centers, training and evaluation, and the National Institute of Handicapped Research. Within the Rehabilitation Services and Handicapped Research account, funds were appropriated for numerous formula and discretionary grant activities authorized under the Rehabilitation Act of 1973, as amended. As part of the President's program to eliminate unnecessary Government spending, to direct Federal support to priority programs, and to help achieve the deficit reductions required by P.L. 99-177, the following funds are proposed for rescission: $45,148,000 for vocational rehabilitation State grants; $112,000 for client assistance; $5,503,000 for special demonstration programs; $2,105,000 for recreation programs; $7,000 for migratory worker projects; $625,000 for grants to Indian tribes; $1,547,000 for projects with industry; $5,527,000 for comprehensive services for independent living; $11,000 for independent living centers; $4,705,000 for independent living services for older blind; $5,838,000 for training; $3,108,000 for National Institute of Handicapped Research; and $1,123,000 for evaluation. The proposed rescissions are consistent with the President's budget request for 1986 and would return most programs to their 1985 funding levels.

R86-22

Estimated Program Effect: Under this rescission proposal, State vocational rehabilitation agencies will reduce the level of services available to some clients or serve slightly fewer clients; earmarked funds will not be awarded to South Carolina or the Oregon Hearing Institute under the special demonstration program; fewer new awards will be made for migratory worker projects, grants to Indian tribes, projects with industry, independent living centers, research activities, and evaluation studies; no new awards will be made for training; and no awards will be made for independent living services for older blind or for recreation programs.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
1,490,009	1,431,923	58,086	12,072	5,281	---	---	---

Note - $51,146,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $75,439,000.

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R86-23

DEPARTMENT OF EDUCATION

Special Institutions

Gallaudet College

Of the funds made available under this head in Public Law 99-178, $446,000 are rescinded.

Rescission Proposal No: R86-23

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education Bureau: Office of Special Education and Rehabilitation Services	New budget authority..... (P.L. 99-178) $ 99,500,000 Other budgetary resources -4,278,000 Total budgetary resources 95,222,000
Appropriation title and symbol: Payments to institutions for the handicapped 9160602 9160601 9160600	Amount proposed for rescission $ 3,111,000
OMB identification code: 91-0604-0-1-500	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Symbol	OMB Identification Code	Rescission Proposal
Gallaudet College.....	9160602	91-0604-0-1-500	$446,000

Justification: This account provides operating funds to three institutions serving handicapped students. Funds were appropriated that are not necessary for adequate program operations at Gallaudet College for the College Programs ($250,000), the Model Secondary School for the Deaf (MSSD) ($94,000), and the Kendall Elementary School (KDES) ($102,000). Therefore, as part of the President's program to eliminate unnecessary Federal spending in order to control the Federal deficit, the funds are proposed for rescission.

Estimated Program Effect: None.

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Outlay Effect: (in thousands of dollars)

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
123,707	123,288	419	27	---	---	---	---

Note - $2,665,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $446,000.

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

Vocational and adult education

Of the funds made available under this head in Public Law 99-178, $210,337,000 are rescinded, of which $2,593,290 are rescinded from funds available for programs authorized by section 103, $170,292,710 are rescinded from funds available for State grants under title II, $7,178,000 are rescinded from funds available for part A of title III, and $30,273,000 are rescinded from funds available for part B of title III of the Carl D. Perkins Vocational Education Act: Provided, That of the funds available, no more than $39,694,397 shall be available for State administration: Provided further, That notwithstanding the provisions of sections 102 and 202 of said Act, of the funds available, $390,876,328 shall be for programs authorized by title II, part A, of which $68,574,794 shall be for handicapped individuals, $150,864,849 shall be for disadvantaged individuals, $82,289,753 shall be for adults who are in need of training and retraining, $58,288,575 shall be for individuals who are single parents or homemakers, $24,001,178 shall be for individuals who are participants in programs designed to eliminate sex bias and stereotyping in vocational education and $6,857,479 shall be for criminal offenders who are in correctional institutions.

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Rescission Proposal No: R86-24

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Education
Bureau: Office of Vocational and Adult Education
Appropriation title and symbol:
Vocational and adult education
91X0400
916/70400
915/60400
OMB identification code:
91-0400-0-1-501
Grant program: [X] Yes [ ] No
Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1986 Sept. 30, 1987 (expiration date)
[X] No-Year

Smith Hughes Act 7,148,154
New budget authority..... (P.L. 99-178) $940,777,000
Other budgetary resources 99,635,151
Total budgetary resources 1,047,560,310
Amount proposed for rescission $245,962,000
Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Coverage:

Appropriation	Account Symbol	Rescission Proposal
Vocational and adult education.....	916/70400	$210,337,000

Justification: This account funds grants for vocational education, including programs for Indians and native Hawaiians. As part of the President's program to eliminate the Federal deficit and to direct available funds to higher priority programs, the following vocational educational funds are proposed for rescission: $2,993,240 from Indian and Hawaiian Natives programs; $170,792,710 from basic grants; $7,178,000 from the community-based organization program; and $30,273,000 from the consumer and homemaking education program. Activities authorized by the consumer and homemaking education and community-based organizations programs can, at State and local discretion, be carried out with basic grant funds.

Estimated Program Effect: Under this rescission proposal: States would no longer receive separate categorical grants to support consumer and homemaking activities; States would not receive first-time categorical awards for community-based organizations; basic grants would be reduced by an average of 23 percent; and the number of awards under the Indian program would be reduced by 10. Within basic grants, States may reserve up to 7 percent for State administration. Title II, part A of the Perkins Act, that vocational education opportunities for six special populations, will be funded at $390,876,328. The remaining basic grant funds will be available for title II, part B, which authorizes funds for improvement, innovation, and expansion activities. Therefore, funding earmarked for programs for the handicapped, the disadvantaged, adult training and retraining, single parents and homemakers, sex equity, and persons in correctional institutions, will be kept to the post-sequester levels.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
992,425	988,218	4,207	143,029	52,585	10,516	---	---

Note.-- $35,625,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $210,337,000.

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Student financial assistance

Of the funds made available under this head in Public Law 99-178, $456,347,000 are rescinded, of which $137,262,000 are rescinded from funds made available for subpart 2 of part A of title IV of the Higher Education Act.

Rescission Proposal No: R86-25

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Education	New budget authority..... (P.L. 99-178) $4,887,000,000
Bureau: Office of Postsecondary Education	Other budgetary resources 1,414,988,658
Appropriation title and symbol: Student financial assistance 915/60200 916/70200	Total budgetary resources 6,301,988,658
	Amount proposed for rescission $ 456,347,000
OMB identification code: 91-0200-0-1-501	Legal authority (in addition to sec. 1012): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[X] Multiple-year Sept. 30, 1986 Sept. 30, 1987 (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other

Justification: The Student financial assistance account finances five student aid grant, loan and work study programs. Rescissions are proposed in all programs, except Pell grants, to curtail Federal spending and help achieve deficit reduction. The affected programs are all of lower priority or are unnecessary given State and institutional sources of aid funds. Student aid would continue to be available to the neediest students. Rescissions are proposed as follows: $137,262 thousand for supplemental opportunity grants; $64,523 thousand for work study; $181,830 thousand for the Federal capital contribution for direct student loans; and $72,732 thousand for State student incentive grants.

Estimated Program Effect: The proposed rescissions would reduce the number of awards to students as follows: 240 thousand supplemental grants; 85 thousand work study awards; 193 thousand direct student loans; and 291 thousand State incentive grants.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
5,064,895	4,990,168	74,727	335,585	46,035	---	---	---

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DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Higher education

Of the funds made available under this head in Public Law 99-178, $180,882,000 are rescinded, of which $86,416,000 are rescinded from funds available from Part A, subpart 4 of title IV of the Higher Education Act of 1965, as amended; $2,871,000 are rescinded from funds available for section 420 of the Higher Education Act of 1965, as amended; $2,163,000 are rescinded from funds available for title X of the Higher Education Act of 1965, as amended; $29,408,000 are rescinded from funds available for title VI of the Higher Education Act of 1965, as amended; $5,263,000 are rescinded from funds available for section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961; $13,761,000 are rescinded from funds available for title VIII of the Higher Education Act of 1965, as amended; $9,570,000 are rescinded from funds available for part B of title VII of the Higher Education Act of 1965, as amended; $18,901,000 are rescinded from funds available for parts B, C, D, and E of title IX of the Higher Education Act of 1965, as amended; $9,570,000 are rescinded from part E of title V of the Higher Education Act of 1965, as amended; $718,000 are rescinded from funds available for title XIII, part H, subpart 1 of the Education Amendments of 1980; $479,000 are rescinded from funds available for section 1204(c) of the Higher Education Act of 1965, as amended; and $5,742,000 are rescinded from funds available for title V, section 501 of the Human Services Reauthorization Act.

Rescission Proposal No: R86-26

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Education
Bureau:
Office of Postsecondary Education
Appropriation title and symbol:
Higher education 1/
9160201 915/60201
916/70201
91X0201

OMB identification code:
91-0201-0-1-502

Grant program: | | Yes | X | No

Type of account or fund:
| X | Annual
| X | Multiple-year Sept. 30, 1986 Sept. 30, 1987 (expiration date)
| X | No-Year

New budget authority..... $ 455,238,000
(P.L. 99-178; 99-190
Other budgetary resources 28,863,405
Total budgetary resources $484,101,405
Amount proposed for rescission $193,160,000

Legal authority (in addition to sec. 1012):
| | Antideficiency Act
| | Other

Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other

Coverage:

Appropriation	Symbol	OMB Identification Code	Amount Proposed for Rescission
Higher education.....	9160201	91-0201-0-1-502	$156,000,000
Higher education.....	916/70201	91-0201-0-1-502	5,742,000
Higher education.....	91X0201	91-0201-0-1-502	19,140,000
			$180,882,000

Justification: This account provides aid to developing institutions, special programs to the disadvantaged, the minority institution science improvement program, and interest subsidy grants. The following programs are proposed for rescission: $86,416,000 for special programs for the disadvantaged; $2,871,000 for veterans' cost-of-instruction; $2,163,000 for the Fund for the Improvement of Postsecondary Education; $30,671,000 for international education and foreign language studies; $13,761,000 for cooperative education;

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$9,570,000 for academic facilities construction grants; $18,901,000 for graduate programs; $9,570,000 for Carl D. Perkins scholarships; $718,000 for the Robert A. Taft Institute of Government; $479,000 for assistance to Guam; and $5,742,000 for the Center for Excellence in Education. The activities proposed for rescission either are duplicative of or similar to other Federal, state, or local programs, or are narrow in purpose and nonessential. In addition, this reduction will help achieve the deficit reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: This rescission would result in eliminating approximately 600 veterans' cost-of-instruction grants, 90 national resource centers, 960 domestic and overseas fellowships and 170 other domestic and overseas international education projects, 180 cooperative education grants, 40 academic facilities construction grants, 4,000 graduate fellowships, 50 Carl D. Perkins scholarship grants, two special purpose grants to individual institutions of higher education, and one grant to Guam. Continuation grants under special programs for the disadvantaged would be ratably reduced by 50 percent, and the number of new grants would be reduced. The number of new grants awards under the Fund for the Improvement of Postsecondary Education would be reduced by 20 percent and the average grant award would be reduced by 10 percent.

Outlay Effect: (in thousands of dollars)

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
477,379	456,610	20,769	121,643	35,412	3,058	---	---

1/ This account was the subject of a rescission proposal in 1985 (R85-78).

Note - $12,278,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $180,862,000.

DEPARTMENT OF EDUCATION

Special Institutions

Howard University

Of the funds made available under this head in Public Law 99-178, $5,699,000 are rescinded.

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PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Education
Bureau: Office of Postsecondary Education
Appropriation title and symbol:
Howard University
9160603
91X0603

OMB identification code:
91-0604-0-1-502

Grant program: |__| Yes |X| No

Type of account or fund:
|X| Annual
|__| Multiple-year (expiration date)
|X| No-Year

New budget authority..... (P.L. 99-178)	$164,230,000
Other budgetary resources	-6,462,000
Total budgetary resources	157,768,000
Amount proposed for rescission	$ 6,000,000

Legal authority (in addition to sec. 1012):
|__| Antideficiency Act
|__| Other

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other

Coverage:

Appropriation	Symbol	OMB Identification Code	Amount Proposed for Rescission
Howard University.....	9160603	91-0604-0-1-502	$4,785,000
Howard University.....	91X0603	91-0604-0-1-502	914,000
			$5,699,000

Justification: This provides funding for the academic program and the teaching hospital facilities at this educational institution that receives 61 percent of its support from the Federal government. The rescission proposal would reduce funds available for matching Howard's endowment to a level more consistent with the University's demonstrated ability to generate non-Federal funds. The rescission proposed for the research funds reflects the fact that the 1985 appropriation for this purpose was intended to be a one-time supplemental to improve Howard's research grant acquisition capacity. Research is an integral part of University academic operations and should not be funded as if it were a separate activity.

Estimated Program Effect: The rescission would reduce the amount of Federal endowment matching funds to the level the University is expected to raise in 1986. Research projects would be financed from academic program funding and through applying for competitive grants.

Outlay Effect: (in thousands of dollars)

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
181,534	176,540	4,994	705	---	---	---	---

Note - $301,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $5,699,000.

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DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Libraries

Of the funds made available under this head in Public Law 99-178, $33,017,000 are rescinded, of which $21,533,000 are rescinded from funds available for title II and $4,785,000 from funds available for title VI of the Library Services and Construction Act, and $957,000 are rescinded from funds available for part B and $5,742,000 from funds available for part C of title II of the Higher Education Act.

Rescission Proposal No: R86-28

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Education

Bureau:
Office of Educational Research and Improvement

Appropriation title and symbol:
Libraries
9160104
91X0104

OMB identification code:
91-0104-0-1-503

Grant program: |X| Yes |___| No

Type of account or fund:
|X| Annual
|___| Multiple-year (expiration date)
|X| No-Year

New budget authority..... $127,500,000
(P.L. 99-178.)
Other budgetary resources 3,976,298

Total budgetary resources 131,476,298

Amount proposed for rescission $ 34,500,000

Legal authority (in addition to sec. 1012):
|___| Antideficiency Act
|___| Other

Type of budget authority:
|X| Appropriation
|___| Contract authority
|___| Other

Coverage:

Appropriation	Symbol	OMB Identification Code	Amount Proposed for Rescission
Libraries.....	9160104	91-0104-0-1-503	$11,484,000
Libraries.....	91X0104	91-0104-0-1-503	21,533,000
			$33,017,000

Justification: Federal funds have been provided through grants to States and through project grant awards to public library systems, institutions of higher education, major research libraries and for training of paraprofessionals and professionals in the library field. Within the Libraries account, funds were appropriated for programs authorized under both the Library Services and Construction Act (LSCA) and title II of the Higher Education Act (HEA). The following funds are proposed for rescission under LSCA: Public Library Construction, $21,533,000; Library Literacy Programs, $4,785,000; under HEA: Training and Demonstrations, $957,000; and Research Libraries, $5,742,000. This proposal is based on the recognition that State and local governments are in a better position to assume responsibility for public library construction and that other public and private sources of funds can be made available to support the other efforts.

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Estimated Program Effect: The rescission would eliminate about 230 public library construction projects, about 192 literacy projects in public libraries, about 69 fellowships for librarians, about 3 library research contracts, and about 43 awards to assist major research libraries.

Outlay Effect: (in thousands of dollars)

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
132,753	128,963	3,790	19,955	6,976	2,296	---	---

Note - $1,483,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $33,017,000.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health resources and services

Of the funds made available under this head in Public Law 99-178, $206,455,000 are rescinded, and in addition, $5,000,000 are rescinded from available balances.

Rescission Proposal No: R86-9

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... (P.L. 99-178) $1,497,934,000
Bureau: Health Resources and Services Administration	Other budgetary resources -552,000
Appropriation title and symbol: Health resources and services 7560350 755/60350 75X0350	Total budgetary resources $1,497,097,000
	Amount proposed for rescission $ 211,455,000
OMB identification code: 75-0350-0-1-550	**Legal authority (in addition to sec. 1012):** | | Antideficiency Act | | Other
Grant program: |X| Yes | | No	
Type of account or fund: |X| Annual |X| Multiple-year Sept. 30, 1986 (expiration date) |X| No-Year	**Type of budget authority:** |X| Appropriation | | Contract authority | | Other

Justification: The appropriation supports health resources and health services categorical programs and health services block grants. Federal efforts in support of the health professions have resulted in long-term trends of steadily increasing supplies of physicians and nurses and an improvement in the distribution of health care practitioners among the medically underserved areas of the country. At the same time, cumulative Federal contributions to health professions and nursing student loan funds, combined with Health Educational Assistance Loans (HEAL) loan guarantees, have put in place a foundation of Federal health professions student aid. Because of this, programs providing general support to health education to increase the numbers and improve the distribution of practitioners are no longer needed. The authorization for health planning program expired at the end of 1982 and the programs are scheduled for phase-out in 1986. Emergency construction of outpatient facilities is available through disaster relief funds. Direct operations funds are being reduced to reflect proposed program rescissions. These savings are being proposed for rescission from appropriations realized

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in excess of the 1986 President's Budget Request to achieve the goals of the Balanced Budget and Emergency Deficit Control Act of 1985. Reductions are proposed for the following items (in thousands of dollars):

Community health centers	21,000
Migrant health	646
Home health service	1,435
National health service crops	2,445
National health service crops scholarships	2,201
Payment to Hawaii for treatment of Hansen's disease	658
Exceptional need scholarships	6,699
Health Profession Institutional Assistsnce: Conversion	479
Public health capitation	4,785
Health administration grants	1,436
Public health traineeships	2,871
Health administration traineeships	479
Preventive medicine residencies	1,531
Family medicine/general dentistry residencies and training	21,452
General internal medicine and pediatrics	11,862
Family medicine departments	6,699
Physician assistants	4,594
H.P. special education initiative	7,656
Area health education centers	12,483
Disadvantaged assistance	11,403
Health professions analytical studies and reports	414
Nurse training:	
Advanced nurse training	12,071
Nurse practitioner	11,106
Special projects	6,747
Traineeships	11,005
Fellowships	1,181
Research	7,790
Nurse anesthetists	766
Special projects for new purposes	1,292
Faculty fellowships	526
Direct operations, BHPR	4,291
Local planning	11,566
State planning	4,594
Planning methods development	400
Outpatient facilities construction	4,035
Direct operations, BHMORD	1,046
Program management	1,195
Facilities planning and engineering	1,185
Organ transplant	2,471
Center for Nursing Research	5,000
Total, savings	211,455

Estimated Program Effect: The above programs providing general support to health education, unauthorized health planning programs, and other health services activities will be reduced and/or terminated.

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
1,559,335	1,453,983	105,352	106,103	---	---	---	---

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Indian health

Of the funds made available under this head in Public Law 99-190, $24,262,000 are rescinded.

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Rescission Proposal No: R86-29

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of Health and Human Services	**New budget authority**..... $818,194,000 (P.L. 99-190)
Bureau: Health Resources and Services Administration	**Other budgetary resources** 54,985,000
Appropriation title and symbol: Indian health 7560390	**Total budgetary resources** $873,179,000
	Amount proposed for rescission $ 24,262,000
OMB identification code: 75-0390-0-1-551	**Legal authority** (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This program provides medical care, public health services, and health profession scholarships for American Indians and Alaska Natives. These savings are being proposed for rescission from appropriations realized in excess of the 1986 President's Budget Request to achieve the goals of the Balanced Budget and Emergency Deficit Control Act of 1985. Reductions are proposed for the following items (in thousands of dollars):

Clinical services	9,265
Preventive services	11,085
Urban health projects	2,444
Tribal management	1,468
	24,762

Estimated Program Effect: Clinical Services - Reduces funding for direct and contract health care. The reduction may be offset by increased third-party reimbursements and by better negotiated contract care rates.

Preventive Services and Urban Health Projects - Funds are available for the continued operation of Community health representative program through March 1986 and the orderly phase out of operations during April 1986.

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Tribal Management - Eliminates support for the Tribal health development activities.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
760,097	743,352	16,745	5,520	1,422	575	---	---

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Indian health facilities

Of the funds made available under this head in Public Law 99-190, $38,642,000 are rescinded.

Rescission Proposal: R86-30

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $46,947,000 (P.L. 99-190)
Bureau: Health Resources and Services Administration	Other budgetary resources 38,356,455
Appropriation title and symbol: Indian health facilities 75X0391	Total budgetary resources $85,303,455
OMB identification code: 75-0391-0-1-551	Amount proposed for rescission $38,642,000
Grant program: |__| Yes |X| No	Legal authority (in addition to sec. 1012): |__| Antideficiency Act |__| Other_____
Type of account or fund: |__| Annual |__| Multiple-year _____ (expiration date) |X| No-Year	Type of budget authority: |X| Appropriation |__| Contract authority |__| Other_____

Justification: This program funds construction, major repair, improvement, and equipment for health and related auxiliary facilities, including quarters for personnel; preparation of plans, specifications, and drawings; acquisition of sites; purchase and erection of portable buildings, purchases of trailers and provision of domestic and community sanitation facilities for Indians, as authorized by section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Indian Self-Determination Act and the Indian Health Care Improvement Act. These savings are being proposed for rescission from appropriations realized in excess of the 1986 President's Budget request to achieve the goals of the Balanced Budget and Emergency Deficit Control Act of 1985. Reductions are proposed for the following items (in thousands of dollars):

Hospitals:	
New and replacement	12,262
Modernization and repair	639
Subtotal	12,901
Outpatient care	715
Sanitation facilities	19,456
Personnel quarters	5,570
Total	38,642

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Estimated Program Effect: Prior year unobligated balances of $38 million are available in 1986 for current projects.

Eliminates funding for construction in 1986 for Rosebud, SD hospital and quarters at Kanakanak, AK and Ft. Thompson, SD.

Eliminates funding for planning and design in 1986 of Kotzebue, AK hospital and outpatient clinics located in Toppenish, WA and Wagner, S.D.

Eliminates funding for provision of sanitation facilities to 2,200 Indian homes in 1986, but funding for sanitation facilities will be provided to 700 Indian homes in 1986.

Eliminates funding for renovating quarters located in Sacaton, AZ.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
77,297	65,523	11,774	16,492	5,281	5,095	---	---

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Disease control

Of the funds made available under this head in Public Law 99-178, $34,096,000 are rescinded.

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Rescission Proposal No: R86-31

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $461,861,000 (P.L. 99-178)
Bureau: Centers for Disease Control	Other budgetary resources 45,032,000
Appropriation title and symbol: Disease control 75 4 0943 75 6/7 0943 75 X 0943	Total budgetary resources 506,893,000
	Amount proposed for rescission $ 34,096,000
OMB identification code: 75-0943-0-1-550	Legal authority (in addition to sec. 1012): |_| Antideficiency Act |_| Other
Grant program: |X| Yes |_| No	
Type of account or fund: |X| Annual |X| Multiple-year Sept. 30, 1987 (expiration date) |X| No-Year	Type of budget authority: |X| Appropriation |_| Contract authority |_| Other

Justification: This account funds the activities of the Centers for Disease Control, including preventive health, developing new immunizations, treating chronic and environmental diseases, occupational health and safety, necessary facilities, and program management. Amounts are being proposed for rescission that are in excess of the 1986 President's Budget to achieve the goals of the Balanced Budget and Emergency Deficit Control Act of 1985. Reductions are proposed for the following items (in thousands of dollars):

Prevention centers	1,436
Infectious diseases	16,633
Chronic and environmental diseases	5,742
Occupational safety and health	8,383
Buildings and facilities	1,902
Total	34,096

Estimated Program Effect: This proposal maintains CDC's high priority disease prevention programs and high priority AIDS funding for the AIDS program proposed by HHS. This proposal would reduce low priority health promotion and equipment funding. The proposal also reflects ADAMHA's existing expertise on drug and alcohol abuse.

R86-31

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
457,206	436,123	21,083	13,013	---	---	---	---

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R86-32

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Cancer Institute

Of the funds made available under this head in Public Law 99-178, $6,800,000 are rescinded.

Rescission Proposal No R86-32

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $1,252,737,000 (P.L. 99-178)
Bureau: National Institutes of Health	Other budgetary resources -54,958,000
Appropriation title and symbol: National Cancer Institute 7560849	Total budgetary resources 1,197,779,000
	Amount proposed for rescission $ 6,800,000
OMB identification code: 75-0849-0-1-550	Legal authority (in addition to sec. 1012): | | Antideficiency Act
Grant program: | | Yes | X | No	| | Other
Type of account or fund:	Type of budget authority:
| X | Annual	| X | Appropriation
| | Multiple-year (expiration date)	| | Contract authority
| | No-Year	| | Other

Justification: The central mission of the National Cancer Institute is to develop the means of reducing the incidence of morbidity from cancer through a broad range of basic and applied research, control, and resource development activities. Funds for research project grants in excess of the 1986 President's Budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 74, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
1,190,433	1,187,101	3,332	3,468	---	---	---	---

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R86-33

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Heart, Lung and Blood Institute

Of the funds made available under this head in Public Law 99-178, $11,469,000 are rescinded.

Rescission Proposal No: R86-33

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $859,239,000 (P.L. 99-178)
Bureau: National Institutes of Health	Other budgetary resources -37,616,000
Appropriation title and symbol: National Heart, Lung and Blood Institute 7560872	Total budgetary resources $821,623,000
OMB identification code: 75-0872-0-1-550	Amount proposed for rescission $ 11,469,000
Grant program: |__| Yes |X| No	Legal authority (in addition to sec. 1012): |__| Antideficiency Act |__| Other
Type of account or fund: |X| Annual |__| Multiple-year (expiration date) |__| No-Year	Type of budget authority: |X| Appropriation |__| Contract authority |__| Other

Justification: This program provides Federal support for research and research training in the areas of heart, lung, blood vessel, and blood diseases. Funds for research project grants in excess of the 1986 President's Budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 69, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
853,792	848,747	5,045	6,424	---	---	---	---

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R86-34

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases

Of the funds made available under this head in Public Law 99-178, $7,980,000 are rescinded.

Rescission Proposal: R86-34

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $569,340,000 (P.L. 99-178)
Bureau: National Institutes of Health	Other budgetary resources -25,098,000
Appropriation title and symbol: National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases 7560884	Total budgetary resources $544,242,000
	Amount proposed for rescission $ 7,980,000
OMB identification code: 75-0884-0-1-550	Legal authority (in addition to sec. 1012): |__| Antideficiency Act |__| Other
Grant program: |__| Yes |X| No	
Type of account or fund: |X| Annual |__| Multiple-year (expiration date) |__| No-Year	Type of budget authority: |X| Appropriation |__| Contract authority |__| Other

Justification: This program provides Federal support for research and training in the areas of arthritis, diabetes, digestive and kidney diseases. Funds for research project grants in excess of the 1986 President's budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 99, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
562,259	558,647	3,612	4,368	---	---	---	---

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R86-35

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Institute of Neurological and Communicative Disorders and Stroke

Of the funds made available under this head in Public Law 99-178, $9,544,000 are rescinded.

Rescission Proposal No: R86-35

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... (P.L. 99-178) $433,362,000
Bureau: National Institutes of Health	Other budgetary resources -18,903,000
Appropriation title and symbol: National Institute of Neurological and Communicative Disorders and Stroke 7560886	Total budgetary resources $414,459,000
OMB identification code: 75-0886-0-1-550	Amount proposed for rescission $ 9,554,000
Grant program: |__| Yes |X| No	Legal authority (in addition to sec. 1012): |__| Antideficiency Act |__| Other____
Type of account or fund: |X| Annual |__| Multiple-year ____ (expiration date) |__| No-Year	Type of budget authority: |X| Appropriation |__| Contract authority |__| Other____

Justification: This program provides Federal support for research and research training in the areas of neurological and communicative disorders and strokes. Funds for research project grants in excess of the 1986 President's Budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 48, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
418,000	413,796	4,204	5,350	---	---	---	---

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R86-36

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Institute of Allergy and Infectious Diseases

Of the funds made available under this head in Public Law 99-178, $1,513,000 are rescinded.

Rescission Proposal: R86-36

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... (P.L. 99-178) $383,452,000
Bureau: National Institutes of Health	Other budgetary resources -16,709,000
Appropriation title and Symbol: National Institute of Allergy and Infectious Diseases 7560885	Total budgetary resources $366,743,000
OMB identification code: 78-0885-0-1-550	Amount proposed for rescission $ 1,513,000
Grant program: |__| Yes |X| No	Legal authority (in addition to sec. 1012): |__| Antideficiency Act |__| Other
Type of account or fund: |X| Annual |__| Multiple-year (expiration date) |__| No-Year	Type of budget authority: |X| Appropriation |__| Contract authority |__| Other

Justification: This program provides Federal support for research and training in immunology, allergic and immunologic diseases and in microbiology and infectious diseases. Funds for research project grants in excess of the 1986 President's Budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 63, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
373,446	372,720	726	787	---	---	---	---

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Institute of General Medical Sciences

Of the funds made available under this head in Public Law 99-178, $7,358,000 are rescinded.

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $514,765,000 (P.L. 99-178)
Bureau: National Institutes of Health	Other budgetary resources -22,372,000
Appropriation title and symbol: National Institute of General Science Medical Sciences 7560851	Total budgetary resources $492,393,000
	Amount proposed for rescission $ 7,358,000
OMB identification code: 75-0851-0-1-550	Legal authority (in addition to sec. 1012): |__| Antideficiency Act
Grant program: |__| Yes |X| No	|__| Other_____
Type of account or fund:	Type of budget authority:
|X| Annual	|X| Appropriation
|__| Multiple-year _____ (expiration date)	|__| Contract authority
|__| No-Year	|__| Other_____

Justification: This program provides Federal support for biomedical research and research training in the areas of cellular and molecular basis of disease, genetics, pharmacological sciences, physiology, biophysics, physiological sciences, and minority access to research careers. Funds for research project grants in excess of the 1986 President's Budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 162, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
491,911	488,000	3,311	4,047	---	---	---	---

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R86-38

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Institute of Child Health and Human Development

Of the funds made available under this head in Public Law 99-178, $1,150,000 are rescinded.

Rescission Proposal: R86-38

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... (P.L. 99-178) $321,796,000
Bureau: National Institutes of Health	Other budgetary resources -14,053,000
Appropriation title and symbol: National Institute of Child Health and Human Development 7560844	Total budgetary resources $307,743,000
	Amount proposed for rescission $ 1,150,000
OMB identification code: 75-0844-0-1-550	Legal authority (in addition to sec. 1012): | | Antideficiency Act
Grant program: | | Yes | X | No	| | Other
Type of account or fund:	Type of budget authority:
| X | Annual	| X | Appropriation
| | Multiple-year (expiration date)	| | Contract authority
| | No-Year	| | Other

Justification: This program provides Federal support for research and research training in maternal and child health and in population sciences. Funds for research project grants in excess of the 1986 President's Budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 16, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
313,683	313,183	500	650	---	---	---	---

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R86-39

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Eye Institute

Of the funds made available under this head in Public Law 99-178, $5,224,000 are rescinded.

Rescission Proposal: R86-39

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $195,094,000 (P.L. 99-178)
Bureau: National Institutes of Health	Other budgetary resources -8,490,000
Appropriation title and symbol: National Eye Institute 7560887	Total budgetary resources $186,604,000
OMB identification code: 75-0887-0-1-550	Amount proposed for rescission $ 5,224,000
Grant program: | | Yes | X | No	Legal authority (in addition to sec. 1012): | | Antideficiency Act; | | Other
Type of account or fund: | X | Annual; | | Multiple-year (expiration date); | | No-Year	Type of budget authority: | X | Appropriation; | | Contract authority; | | Other

Justification: This program provides Federal support for research and research training in the areas of eye diseases and visual disorders. Funds for research project grants in excess of the 1986 President's Budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 27, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
178,279	175,929	2,350	2,874	---	---	---	---

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R86-40

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

National Institute on Aging

Of the funds made available under this head in Public Law 99-178, $2,679,000 are rescinded.

Rescission Proposal: R86-40

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $156,491,000 (P.L. 99-178)
Bureau: National Institutes of Health	Other budgetary resources -6,868,000
Appropriation title and symbol: National Institute on Aging 7560843	Total budgetary resources $149,623,000
	Amount proposed for rescission $ 2,679,000
OMB identification code: 75-0843-0-1-550	Legal authority (in addition to sec. 1012): |__| Antideficiency Act
Grant program: |__| Yes |X| No	|__| Other
Type of account or fund:	Type of budget authority:
|X| Annual	|X| Appropriation
|__| Multiple-year (expiration date)	|__| Contract authority
|__| No-Year	|__| Other

Justification: This program provides Federal support for research and research training in the area of aging. Funds for research project grants in excess of the 1986 President's Budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: The proposed rescission would reduce the number of research grants by 24, thus insuring a smooth transition from the 1985 NIH total of 18,357 to the 18,000 NIH grant total requested in the President's 1987 budget. In addition, the rescission would result in this Institute's share of an NIH-wide 4.5% average increase in the cost of a grant.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
133,882	132,336	1,546	1,133	---	---	---	---

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R86-41

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health

Office of the Director

Of the funds made available under this head in Public Law 99-178, $23,055,000 are rescinded.

Rescission Proposal No: R86-41

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $116,992,000 (P.L. 99-178)
Bureau: National Institutes of Health	Other budgetary resources -5,033,000
Appropriation title and symbol: Office of the Director 7560846	Total budgetary resources 111,959,000
	Amount proposed for rescission $ 23,055,000
OMB identification code: 75-0846-0-1-550	Legal authority (in addition to sec. 1012): |___| Antideficiency Act |___| Other
Grant program: |___| Yes |X| No	
Type of account or fund: |X| Annual |___| Multiple-year (expiration date) |___| No-Year	Type of budget authority: |X| Appropriation |___| Contract authority |___| Other

Justification: The Office of the Director provides overall administration to the National Institutes of Health through centralized services, policy development, and program coordination. Funds in excess of the 1986 President's budget request are being proposed for rescission to help achieve the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985. The following items are affected (in thousands of dollars):

Acquired Immune Deficiency Syndrome (AIDS).....	$13,915
Research Centers in Minority Institutions (RCMI and Academic Research Enhancement Award (AREA).....	9,140
Total.....	23,055

Estimated Program Effect: The rescission of AIDS funds will not affect on going projects, but new initiatives will be reduced in scope and some proposed projects will not be funded. The rescission of funds for RCMI/AREA grants will reduce the number of projects selected for funding.

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R86-42

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Alcohol, drug abuse, and mental health

Of the funds made available under this head in Public Law 99-178, $39,718,000 are rescinded.

R86-43

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
52,324	35,263	17,061	5,994	---	---	---	---

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Rescission Proposal No: R86-42

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services **Bureau:** Alcohol, Drug Abuse, and Mental Health Administration **Appropriation title and symbol:** Alcohol, drug abuse, and mental health 75X1361 75X1361 **OMB identification code:** 75-1361-0-1-550 **Grant program:** |X| Yes |__| No	**New budget authority**..... $968,860,000 (P.L. 99-178) **Other budgetary resources** -38,669,000 **Total budgetary resources** 930,191,000 **Amount proposed for rescission** $ 39,718,000 **Legal authority** (in addition to sec. 1012): |__| Antideficiency Act |__| Other **Type of budget authority:** |X| Appropriation |__| Contract authority |__| Other
Type of account or fund: |X| Annual |__| Multiple-year (expiration date) |X| No-Year	

Justification: This program provides Federal support for research and research training in the areas of alcohol, drug abuse, and mental health. Amounts are being proposed for rescission that are in excess of the 1986 President's Budget to achieve the goals of the Balanced Budget and Emergency Deficit Control Act of 1985. Reductions are proposed for the following items (in thousands of dollars):

General Mental Health:	
Planning and demonstration	$11,008
Training	19,140
Protection and advocacy	9,570
Total	39,718

Estimated Program Effect: The community support demonstrations are completed and further Federal support is not required. The clinical training program has built a national training capacity which will continue without further Federal support. The administration believes that States have the capacity to monitor care for the mentally ill.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
902,487	862,474	20,013	19,705	---	---	---	---

R86-43

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Health Care Financing Administration
Program management

Of the funds made available under this head in Public Law 99-178, $912,000 are rescinded: Provided, That not to exceed $1,079,296,000 shall be transferred to this appropriation as authorized by section 201(g) of the Social Security Act, from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds.

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327 Rescission Proposal No: R86-43

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Health and Human Services

Bureau: Health Care Financing Administration

Appropriation title and symbol:

Program management 1/

75660511

OMB Identification code:

75-0511-0-1-550

Grant program: |X| Yes |__| No

Type of account or fund:

|X| Annual
|__| Multiple-year (expiration date)
|__| No-Year

New budget authority.....$ 89,533,000
(P.L. 99-176)
Other budgetary resources 1,176,206,000

Total budgetary resources 1,265,739,000

Amount proposed for rescission $ 912,000

Legal authority (in addition to sec. 1012):

|__| Antideficiency Act
|__| Other

Type of budget authority:

|X| Appropriation
|__| Contract authority
|__| Other

Justification: This account funds research, medicare contractors, State certification, and administrative costs. This rescission is being proposed to achieve the deficit reduction goals of the President and of the Balanced Budget and Emergency Deficit Control Act of 1985. Reductions are proposed for the following items (in thousands of dollars):

Medicare Contractor Activity	$2,069
Funding for claims payment will be reduced.	
Research Activity	7,332
The rescission would result in a reduction in new awards amounting to $2.3 million for Alternative Payment Systems, $.9 million for Hospital Payment Systems, and $4.1 million for Program Analysis Evaluation and Quality of Care.	
Total savings	9,401
Reduced trust fund transfer	-8,489
Amount proposed for rescission	912

Estimated Program Effect: Funding for lower priority programs will be reduced.

Outlay Effect (in thousands of dollars):

1986 Outlay estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
86,345	85,725	620	292	---	---	---	---

1/ This account is the subject of a related deferral (D86-57).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee and entrant assistance

Of the funds made available in section 101(j) of Public Law 99-180 for refugee and entrant assistance activities under the provisions of title IV of the Immigration and Nationality Act, $87,551,000 are rescinded.

Rescission Proposal No: R86-44

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $427,861,000 (P.L. 99-190)
Bureau: Office of Refugee Resettlement	Other budgetary resources -18,398,000
Appropriation title and symbol: Refugee and entrant assistance 7560473	Total budgetary resources 409,463,000
	Amount proposed for rescission $ 87,551,000
OMB identification code: 75-0473-0-1-609	Legal authority (in addition to sec. 1012): [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other
Type of account or fund: [X] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other

Justification: This program provides funding to assist in the refugee settlement process. Services include cash and medical assistance, English and vocational training, educational assistance, and health screening. States are subsidized for administering the refugee assistance program. Amounts proposed for rescission (pursuant to 31 U.S.C. 1512 - the Antideficiency Act) are in excess of any ability to use them effectively. Reductions are proposed for the following items (in thousands of dollars):

State administered programs - social services...	23,815
Targeted assistance.....	47,850
Educational assistance.....	15,886
Total.....	87,551

Recent funding under continuing resolutions has resulted in maintaining resources at a higher than necessary level in the face of declining refugee flows.

Estimated Program Effect: None. Remaining social services funding will be sufficient to provide services for recent arrivals who are most in need. The targeted assistance program has already accumulated resources sufficient to address any backlogs of need -- 1985 targeted assistance grants are expected to last well into 1987. The educational assistance program has put in place the capacity necessary to meet the needs of refugee students.

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
413,143	397,850	20,293	44,620	22,008	---	---	---

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Human Development Services

Human development services

Of the funds made available under this head in Public Law 99-178, $24,980,000 are rescinded, and in addition, $5,000,000 are rescinded from available balances from prior year appropriations for Child Abuse Challenge Grants.

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Rescission Proposal No. R86-45

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Service	New budget authority..... (P.L. 98-178) $2,015,922,000
Bureau: Human Development Services	Other budgetary resources -81,685,000
Appropriation title and symbol: Human development services 7561636 75X1636	Total budgetary resources $1,934,237,000
	Amount proposed for rescission $ 29,980,000
OMB identification code: 75-1636-0-1-506	**Legal authority** (in addition to sec. 1012): |__| Antideficiency Act
Grant program: |X| Yes |__| No	|__| Other_____
Type of account or fund: |X| Annual	**Type of budget authority:** |X| Appropriation
|__| Multiple-year (expiration date)	|__| Contract authority
|X| No-Year	|__| Other_____

Justification: This account funds human development services activities, including Head Start, child abuse state grants, Title III services and meals for senior citizens, state grants and advocacy for developmental disabilities, and financial assistance for native Americans. Amounts are being proposed for rescission that are in excess of requirements for several existing human development services activities and for duplicative new categorical programs. Reductions are proposed for the following items (in thousands of dollars):

1985 appropriation:	
Child abuse challenge grants.....	$5,000
1986 appropriation:	
Child abuse discretionary activities.....	3,296
Dependent care.....	4,785
Aging research training and discretionary projects.....	11,425
Developmental disabilities program.....	3,943
Native American discretionary activities.....	1,531
	29,980

R86-45

Estimated Program Effect:

1. Child abuse challenge grants - The rescission would eliminate this new categorical program for which no grants have been made.
2. Child abuse discretionary - All categories of grants currently being funded will continue to be funded, but less will be spent in each category.
3. Dependent care - The rescission would eliminate this new categorical program for which no grants have been made.
4. Aging research training and discretionary activities - The number of grant awards will be decreased, but with careful analysis selected grants will be of the highest quality.
5. Development disabilities - For state grants, protection and advocacy, and University Affiliated grants, 1985 levels would be continued. The Special projects program would be eliminated.
6. Native American programs - Discretionary activities would be eliminated as a separate line item. Similar activities would be carried out under the financial grant program.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
1,928,211	1,921,522	6,689	20,696	2,795	---	---	---

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R86-46

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Human Development Services

Family social services

Of the funds made available under this head in Public Law 99-178, $6,157,000 are rescinded.

Rescission Proposal No: R86-46

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services Bureau: Human Development Services Appropriation title and symbol: Family social services 7561645	New budget authority..... $777,237,000 (P.L. 98-178) Other budgetary resources -16,407,000 Total budgetary resources 760,830,000 Amount proposed for rescission $ 6,157,000
OMB identification code: 75-1645-0-1-506 Grant program: [X] Yes [ ] No	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account funds family social services activities, including foster case, adoption assistance, child welfare services, child welfare training, adoption opportunities, and child welfare research and demonstration. Amounts are being proposed for rescission that are in excess of requirements for research and demonstration activities and adoption opportunities. Reductions are proposed for the following items (in thousands of dollars):

Adoption opportunities.....	$3,385
Child welfare research and development	2,772
Total.....	6,157

Estimated Program Effect: The rescission will return both programs to the 1986 President's Budget request level. All categories of grants currently made will continue to be made, but the number of grants in each category will be decreased from the number without the rescission.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
754,119	752,703	1,416	4,504	237	---	---	---

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R86-47

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Human Development Services

Work incentives

Of the funds made available under this head in Public Law 99-178, $45,884,000 are rescinded.

Rescission Proposal No. R86-47

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... (P.L. 99-178) $220,000,000
Bureau: Human Development Services	Other budgetary resources
Appropriation title and symbol: Work Incentives 7561639	Total budgetary resources 220,000,000
OMB identification code: 75-1639-0-1-504	Amount proposed for rescission $ 55,000,000
Grant program: [X] Yes [ ] No	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: The work incentive (WIN) program was designed to encourage and assist individuals receiving support from the aid to families with dependent children (AFDC) program to achieve self-support through a program of employment, training, and support services. Repeated studies of WIN have shown that it is not a cost-effective program. This rescission will eliminate new financing for the program in the last quarter of FY 1986. The program will be phased out with unexpended carryover funds. Fiscal restraint requires that marginal and ineffective programs be constrained or eliminated, especially where alternative programs are in operation.

Estimated Program Effect: AFDC recipients may use programs financed under the Social Services Block Grant and the Job Training Partnership Act (which requires equitable services to AFDC recipients) for job-finding, job training, and social services in lieu of identical services previously provided by WIN.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
217,382	179,707	37,675	7,328	881	---	---	---

Note - $9,116,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $45,884,000.

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R86-48

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

Community services block grants

Of the funds made available under this head in Public Law 99-178, $182,138,500 are rescinded.

Rescission Proposal No: R86-48

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... $370,300,000 (P.L. 99-178)
Bureau: Office of Community Services	Other budgetary resources -15,923,000
Appropriation title and symbol: Community services block grant 7561635	Total budgetary resources 354,377,000
	Amount proposed for rescission $182,138,500
OMB identification code: 75-1635-0-1-506	Legal authority (in addition to sec. 1012): | | Antideficiency Act | | Other
Grant program: | X | Yes | | No	
Type of account or fund: | X | Annual | | Multiple-year: (expiration date) | | No-Year	Type of budget authority: | X | Appropriation | | Contract authority | | Other

Justification: The Community services block grant (CSBG) funds community services activities and Federal administration block grants. The proposed rescission for this non-entitlement program is based on the following: most of the CSBG funds allocated to the States are used to administer other Federal programs which already have their own built-in administrative overhead allowances; other CSBG funds allocated to the States are used for direct services to the poor that duplicate the kinds of services funded under the Social Services Block Grant (SSBG); and approximately 9% of the CSBG is used for direct Federal grants to some 75-80 organizations operating projects that duplicate those funded by other Federal agencies such as the Departments of Housing and Urban Development, Agriculture, and Labor, and the Environmental Protection Agency.

Estimated Program Effect: Existing community action agencies (CAAs) could continue to function since the CSBG accounts, on average, for only 12% of CAA funding. 86% or $2.4 billion of CAA funds, including money for salary and operating expenses, derives from other Federal funding authorities, with 2% supplied by State and local governments and the private sector.

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
357,091	233,189	123,902	53,807	---	---	---	---

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

Community development credit union revolving loan fund

Of the funds available under this head, $2,528,562 are rescinded.

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Rescission Proposal No: R86-49

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Health and Human Services
Bureau:
Office of Community Services
Appropriation title and symbol:

Community development credit union revolving loan fund

75X4441

OMB identification code:

75-4441-0-3-452
Grant program: |__| Yes |X| No

Type of account or fund:

|__| Annual
|__| Multiple-year _____ (expiration date)
|X| No-Year

New budget authority..... $_____
(P.L.)
Other budgetary resources 2,528,562
Total budgetary resources 2,528,562
Amount proposed for rescission $ 2,528,562

Legal authority (in addition to sec. 1012):
|__| Antideficiency Act
|__| Other_____

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other_____

Justification: Because no new direct loans or loan guarantees are planned from this fund in 1986 or 1987, the unobligated balances are proposed for rescission and return to the Treasury general fund.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
-500	-500	---	---	---	---	---	---

R86-50

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Departmental Management

General departmental management

Of the funds made available under this head in Public Law 99-178, $19,619,000 are rescinded.

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Rescission Proposal No: R86-50

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... (P.L. 99-178) $144,449,000
Bureau: Departmental Management	Other budgetary resources 27,283,000
Appropriation title and symbol: General departmental management 7560120	Total budgetary resources $171,732,000
	Amount proposed for rescission $ 19,619,000
OMB identification code: 75-0120-0-609	Legal authority (in addition to sec. 1012): | | Antideficiency Act | | Other
Grant program: |X| Yes | | No	
Type of account or fund: |X| Annual | | Multiple-year (expiration date) | | No-Year	**Type of budget authority:** |X| Appropriation | | Contract authority | | Other

Justification: This account funds leadership, policy or administrative guidance and services to components of the Department of Health and Human Services. Amounts are proposed for rescission for construction projects that are in excess of National Institutes of Health program needs ($4,307,000). The rescission proposal also includes funds for demonstration on Acquired Immune Deficiency Syndrome (AIDS) health care services delivery, maintaining the Federal focus on AIDS control and research ($15,312,000). Neither of these projects is consistent with the mission of General Department management.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
136,002	118,541	17,461	1,079	1,079	----	----	----

R86-51

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Departmental Management

Policy research

Of the funds made available under this head in Public Law 99-178, $220,000 are rescinded.

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Rescission Proposal No: R86-51

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Health and Human Services	**New budget authority.....** $6,500,000 (P.L. 99-178)
Bureau: Departmental Management	**Other budgetary resources** 220,000
Appropriation title and symbol: Policy research 7560122	**Total budgetary resources** 6,720,000
	Amount proposed for rescission $ 220,000
OMB identification code: 75-0122-0-1-609	**Legal authority** (in addition to sec. 1012): |__| Antideficiency Act |__| Other
Grant program: |X| Yes |__| No	
Type of account or fund: |X| Annual |__| Multiple-year (expiration date) |__| No-Year	**Type of budget authority:** |X| Appropriation |__| Contract authority |__| Other

Justification: This activity supports research to develop new policy initiatives and improve existing HHS programs. This proposal would rescind funds for low priority social research projects in excess of the President's fiscal year 1986 Budget.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
8,183	8,082	101	83	25	---	---	---

R86-52

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Annual contributions for assisted housing

Of the budget authority provided under this head in Public Law 99-160, $4,413,430,643 are rescinded, of which $143,550,000 are rescinded from funds available for rental rehabilitation and development grants pursuant to section 17(a)(1) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437o): Provided, That of the balances of budget authority provided under this head in Public Law 99-160, and in lieu of the provisions of the second and ninth provisos thereof, $80,731,140 shall be for assistance in financing the development or acquisition cost of public housing; $458,325,000 shall be for modernization of existing public housing projects pursuant to section 14 of such Act (42 U.S.C. 1437l); $12,810,000 shall be for assistance for projects developed for the elderly or handicapped under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q); $184,462,500 shall be for the section 8 existing housing program, $102,853,890 shall be for the section 8 moderate rehabilitation program, and $1,115,207,500 shall be for the housing voucher program under section 8(o) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f): Provided further, That notwithstanding any provision under this heading in Public Law 99-160, all amounts of budget authority (and contract authority) equal to the amounts of such budget authority (and contract authority) which are recaptured during fiscal year 1986 from amounts provided for assistance payments under section 235 of the National Housing Act and for development grants under

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section 17(a)(1)(B) of the United States Housing Act of 1937, shall be rescinded.

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority.....$ 9,815,607,781 (P.L. 99-160)
Bureau: Housing Program	Other budgetary resources 918,498,386
Appropriation title and symbol: Annual contributions for assisted housing 1/ 86X0164	Total budgetary resources $10,734,106,167
	Amount proposed for rescission $ 4,416,131,175
OMB identification code: 86-0164-0-1-999	Legal authority (in addition to sec. 1012): |__| Antideficiency Act; |__| Other
Grant program: |X| Yes |__| No	
Type of account or fund: |__| Annual; |__| Multiple-year (expiration date); |X| No-Year	Type of budget authority: |X| Appropriation; |__| Contract authority; |__| Other

Coverage:

Appropriation	Symbol	OMB Identification Code	Rescission Proposal
Annual contributions for assisted housing:			
Budget authority	86X0164	86-0164-0-1-999	$4,269,880,642
Contract authority	86X0164	86-0164-0-1-999	640,533
Rental housing development grants	864/60164	86-0164-0-1-999	(
	865/60164	86-0164-0-1-999	(73,855,000
	8660164	86-0164-0-1-999	(
Rental rehabilitation grants programs	864/60164	86-0164-0-1-999	(71,755,000
	865/60164	86-0164-0-1-999	(
	8660164	86-0164-0-1-999	(
Total			$4,416,131,175

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Justification: This account funds subsidized housing programs such as section 8 lower-income housing, and public and Indian housing development. The President's budget proposes to fund 50,000 housing vouchers in 1986, in lieu of mix of activities presumed in the 1986 HUD-Independent Agencies Appropriations Act. Because vouchers require less budget authority than the new construction and the 15-year section 8 existing programs that vouchers will replace, the $4.4 billion in budget authority is no longer necessary. The rescission package also includes a rescission of $143,550,000 of new budget authority for the Rental Housing Development program (HODAG) and the Rental Rehabilitation grant programs and an estimated additional $2 million rescission of recoveries of prior year obligations. HODAG is an expensive means to house very low-income households relative to housing vouchers and unnecessary as a housing stimulus program for moderate- and upper-income persons in a time when national vacancy rates are at their highest levels in 18 years. Continued spending for rental rehabilitation grants cannot be justified in the current atmosphere of budget restraint, especially when the program's purpose can be achieved by other programs like the Community Development Block Grant program and through market forces.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
10,206,876	10,164,219	42,657	63,389	44,707	60,275	104,002	117,200

1/ This account is the subject of deferrals in 1986 (D86-41, D86-42, D86-43, and D86-47).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Congregate services

Of the funds made available under this head in Public Law 99-160, $2,555,477 are rescinded.

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Rescission Proposal No: R86-54

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Housing and Urban Development

Bureau:
Housing Program

Appropriation title and symbol:

Congregate services
86X0178
86S/60178
86G/70178

OMB identification code:

86-0178-0-1-604

Grant program:
[ ] Yes [X] No

Type of account or fund:

[ ] Annual

[X] Multiple-year Sept. 30, 1986 Sept. 30, 1987 (expiration date)

[X] No-Year

New budget authority..... $2,670,300
(P.L. 99-160)
Other budgetary resources 2,887,961
Total budgetary resources $5,560,261

Amount proposed for rescission $2,555,477

Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This demonstration program tested whether contracting directly with local public housing agencies and section 202 Housing for the elderly or handicapped sponsors was more effective than Department of Health and Human Services and other social services programs. It included meal services and essential support services. The demonstration has been concluded and no further resources are required. The results of the demonstration were inconclusive.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
5,900	5,900	---	1,022	1,278	255	---	---

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R86-54

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Housing counseling assistance

Of the funds made available under this head in Public Law 99-160, $3,312,656 are rescinded.

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Rescission Proposal No: R86-54

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $3,461,500 (P.L. 99-160)
Bureau: Housing Programs	Other budgetary resources -148,844
Appropriation title and symbol: Housing counseling assistance 8660156	Total budgetary resources 3,312,656
	Amount proposed for rescission $3,312,656
OMB identification code: 86-0156-0-1-506	**Legal authority** (in addition to sec. 1012): |__| Antideficiency Act
Grant program: |X| Yes |__| No	|__| Other
Type of account or fund:	**Type of budget authority:**
|X| Annual	|X| Appropriation
|__| Multiple-year (expiration date)	|__| Contract authority
|__| No-Year	|__| Other

Justification: The Housing counseling assistance program provides comprehensive housing counseling services to eligible homeowners or tenants, including default, prepurchase and renter counseling. This rescission is proposed to effect outlay savings consistent with deficit reduction policies included in the Balanced Budget and Emergency Control Act of 1985.

Estimated Program Effect: Funds will not be provided from this program to support comprehensive counseling assistance. However, communities may use their Community Development Block Grant funds for counseling assistance.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
3,500	3,500	---	3,313	---	---	---	---

R86-55

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Urban development action grants

Of the funds made available under this head in Public Law 99-160, $206,377,639 are rescinded; in addition, amounts previously appropriated, and subsequently deobligated but not reobligated before February 7, 1986, for grants to carry out urban development action grant programs authorized in section 119 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), pursuant to section 103 of that Act that are in excess of amounts required to fund projects which have received preliminary approval (in accordance with regulations promulgated by the Department of Housing and Urban Development) before February 7, 1986, are rescinded; and in addition, amounts deobligated after February 7, 1986 are rescinded.

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Rescission Proposal No: R86-55

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Housing and Urban Development

Bureau:
Community Planning and Development

Appropriation title and symbol:

Urban development action grants 1/

86 3/80170, 86 4/70170
86 5/80170, 86 6/90170

OMB identification code:

86-0170-0-1-451

Grant program:
[X] Yes [ ] No

Type of account or fund:

[ ]	Annual	Sept. 30, 1986 Sept. 30, 1987
[X]	Multiple-year	Sept. 30, 1988 (expiration date)
[ ]	No-Year	Sept. 30, 1984

New budget authority..... $330,000,000
(P.L. 99-160)
Other budgetary resources 153,998,675
Total budgetary resources 483,998,675

Amount proposed for rescission $220,061,959

Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This account makes grants to cities and urban counties to attempt to stimulate economic development activity. The administration doubts whether these grants actually perform this function efficiently and whether it is appropriate to continue a program of this type in the current environment of intense budget restraint. This rescission is proposed to effect outlay savings consistent with the deficit reduction goals of the Balanced Budget and Emergency Deficit Control Act of 1985 and this administration's spending priorities.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
499,290	488,300	10,990	44,010	50,460	50,459	50,459	---

1/ This account is also the subject of a deferral (D86-49).

R86-56

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Land acquisition

Of available funds provided for equalization payments in connection with land exchanges pursuant to the Navajo-Hopi Relocation Act, as amended, $3,000,000 are rescinded.

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Rescission Proposal No: R86-56

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Department of the Interior **Bureau:** Bureau of Land Management **Appropriation title and symbol:** Land acquisition 14X5033	New budget authority..... $2,300,000 (P.L. 99-190) Other budgetary resources 4,602,455 Total budgetary resources 6,902,453 Amount proposed for rescission $3,000,000
OMB identification code: 14-5033-0-2-302 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1012):** [X] Antideficiency Act [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account provides for acquiring lands or interests in lands when necessary for public recreation use and other appropriate uses that are essential to improving management of the public lands. Unobligated balances from funds provided in fiscal year 1984 for equalization payments in connection with land exchanges to be carried out under the Navajo-Hopi Relocation Act, as amended, are no longer needed for those payments. All required land exchanges have been completed, and these funds are not needed for the purposes for which they were provided. This rescission proposal is made pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
3,114	114	3,000	---	---	---	---	---

R86-57

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Land acquisition

Of the funds made available under this head in Public Law 99-190, $4,951,000 are rescinded.

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Rescission Proposal No: R86-57

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior **Bureau:** Fish and Wildlife Service	**New budget authority**..... $40,670,000 (P.L. 99-190) **Other budgetary resources** 31,709,191
Appropriation title and symbol: Land acquisition 14X5020	**Total budgetary resources** 72,379,191 **Amount proposed for rescission** $ 4,951,000
OMB identification code: 14-5020-0-2-303 **Grant program:** |__| Yes |X| No	**Legal authority** (in addition to sec. 1012): |__| Antideficiency Act |__| Other
Type of account or fund: |__| Annual |__| Multiple-year (expiration date) |X| No-Year	**Type of budget authority:** |X| Appropriation |__| Contract authority |__| Other

Justification: These funds are used to acquire areas which have important fish and/or wildlife values and provide natural resource benefits over a broad geographical area. A rescission of $4,951,00 is proposed for two low priority land acquisition projects. This amount includes $4,000,000 for Tortuguero Lagoon (PR) and $951,000 is for Bon Secour (AL). Funding for these acquisitions can be eliminated without significant impact.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
50,800	47,829	2,971	1,980	---	---	---	---

R86-58

DEPARTMENT OF THE INTERIOR

National Park Service

Construction

Of the funds made available under this head in Public Law 99-190, $8,713,000 are rescinded, and in addition, $4,900,000 are rescinded from available balances of prior year appropriations.

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Rescission Proposal No: D86-58

R86-59

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of the Interior

Bureau:
National Park Service

Appropriation title and symbol:
Construction
14X1039

OMB identification code:
14-1039-0-1-303

Grant program:
| | Yes | X | No

Type of account or fund:
| | Annual
| | Multiple-year _____ (expiration date)
| X | No-Year

New budget authority..... (P.L. 99-190)	$ 108,558,274
Other budgetary resources	117,775,848
Total budgetary resources	226,334,122
Amount proposed for rescission	$ 13,613,000

Legal authority (in addition to sec. 1012):
| | Antideficiency Act
| | Other_____

Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other_____

Justification: This account funds construction projects in national parks (highways, bridges, cultural resources, operational facilities). Emergency repairs and planning are also funded. This rescission is proposed to withdraw 1986 appropriations for construction projects regarded to be of lower priority and prior year appropriations for a project which has been cancelled at Fort Sumter National Monument.

Estimated Program Effect: Low priority construction projects will be postponed or cancelled.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
104,880	103,177	1,703	3,502	3,986	3,159	1,263	---

DEPARTMENT OF THE INTERIOR

National Park Service

Land acquisition and State assistance

Available balances of the contract authority provided for fiscal year 1986 by 16 U.S.C. 460L-10a are rescinded; and in addition, of the funds made available under this head in Public Law 99-190, $55,207,000 are rescinded.

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Rescission Proposal No: R86-59

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of the Interior
Bureau:
National Park Service
Appropriation title and symbol:
Land acquisition and State assistance 1/
14X5035
OMB identification code:
14-5035-0-2-303
Grant program: [X] Yes [ ] No

Type of account or fund:
[X] Annual 2/
[ ] Multiple-year _____ (expiration date)
[X] No-Year

(16 U.S.C. 460L-10a)
New budget authority..... $128,600,000
(P.L. 99-190)
Other budgetary resources 154,756,161
Total budgetary resources 283,154,161

Amount proposed for rescission $ 83,917,000

Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[X] Contract authority 2/
[ ] Other_____

Justification: This appropriation provides (1) funds to acquire land for inclusion in the National Park system, and (2) grants to States for outdoor recreation purposes. Under existing law (16 U.S.C. 460L-10a), $30 million in contract authority is made available each fiscal year for use as an anti-cost escalation measure in purchasing authorized Federal recreation land. This authority was last used in 1969 and 1970, and there are no plans to use it in the future. The contract authority lapsed in fiscal years 1971-1981 and was rescinded by congressional action for 1982 (P.L. 97-257), 1983 (P.L. 98-63), 1984 (P.L. 98-396) and 1985 (P.L. 99-88). Consequently, the $28,710,000 in 1986 contract authority remaining after reductions pursuant to P.L. 99-177 is proposed for rescission. The Administration is also requesting that Congress permanently terminate the availability of this contract authority. In addition, the rescission proposes to effect savings ($19,306,000) by withdrawing 1986 appropriations for low priority projects and part of the funds ($35,901,000) appropriated for State grants.. This is consistent with the Administration's position that the cost of State programs should be borne by the States and based on the States' priorities.

Estimated Program Effect:
1. Low priority acquisition projects will not be undertaken ($19,306,000)
2. Grants for States will be reduced by $35,901,000
3. Contract authority - none

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
186,921	173,542	13,379	11,041	30,787	---	---	---

1/ This account was also subject to a similar rescission proposal in 1985 (R85-146).
2/ A portion of the funding proposed for rescission is non-grant contract authority with a one-year availability.

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R86-60

DEPARTMENT OF THE INTERIOR

National Park Service

Historic preservation fund

Of the funds made available under this head in Public Law 99-190, $18,523,330 are rescinded.

Rescission Proposal No: R86-60

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Interior	New budget authority..... $24,945,000 (P.L. 99-190)
Bureau: National Park Service	Other budgetary resources -1,215,670
Appropriation title and symbol: Historic preservation fund 146/75140	Total budgetary resources $23,729,330
	Amount proposed for rescission $18,523,330
OMB identification code: 14-5140-0-2-303	Legal authority (in addition to sec. 1012): | | Antideficiency Act
Grant program: | X | Yes | | No	| | Other
Type of account or fund:	Type of budget authority:
| | Annual	| X | Appropriation
| X | Multiple-year Sept. 30, 1987 (expiration date)	| | Contract authority
| | No-Year	| | Other

Justification: This program funds State historic preservation grants and the National Trust for Historic Preservation. This proposal would rescind funds appropriated for State grants and to the National Trust for Historic Preservation. It is consistent with the Administration's position that the cost of the State programs should be borne by the States based on the States' priorities for these activities. The amounts proposed to be rescinded do not include amounts committed under the Continuing Resolution prior to enactment of Public Law 99-190.

Estimated Program Effect: Grants to States and to the National Trust for Historic Preservation will be reduced.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
24,712	18,044	6,668	5,557	6,298	---	---	---

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R86-61

DEPARTMENT OF JUSTICE

Federal Prison System

National Institute of Corrections

Of the funds made available under this head in Public Law 99-180, $3,315,000 are rescinded.

Rescission Proposal No: R86-61

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Justice	New budget authority..... (P.L. 99-180) $11,000,000
Bureau: Federal Prison System	Other budgetary resources 4,584,158
Appropriation title and symbol: National Institute of Corrections 1/ 15X1004	Total budgetary resources 15,584,158
	Amount proposed for rescission $ 3,315,000
OMB identification code: 15-1004-0-1-754	Legal authority (in addition to sec. 1012): |_| Antideficiency Act |_| Other
Grant program: |X| Yes |_| No	
Type of account or fund: |_| Annual |_| Multiple-year (expiration date) |X| No-Year	Type of budget authority: |X| Appropriation |_| Contract authority |_| Other

Justification: The National Institute of Corrections awards contracts and grants to provide technical assistance to requesting correctional organizations; to maintain an information service to provide information on the latest developments, research results, et cetera, in the field of corrections; to provide training to the correctional community; to improve systems and skills; and to conduct limited research and evaluation of correctional activities. Unobligated grant funds from prior years totaling $3,315,000 are proposed to be rescinded. In light of the increasing Federal deficit, the Federal Government can no longer afford to fund programs to benefit State and local governments at the same level as in the past. The remaining funds are adequate to carry out the National Institute of Corrections' mission.

Estimated Program Effect: Lower priority programs will not be funded.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
19,356	16,041	3,315	---	---	---	---	---

1/ A rescission was proposed for this account in 1985 (R85-160).

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R86-62

DEPARTMENT OF JUSTICE

Office of Justice Programs

Justice assistance

Of the funds made available under this head in Public Law 99-180, $122,109,000 are rescinded, of which $5,000,000 are rescinded from funds available for grants to states for their expenses of incarcerating Mariel Cubans; in addition, $12,557,351 are rescinded from other available balances.

Rescission Proposal No: R86-62

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Justice	New budget authority..... $203,982,000 (P.L. 99-180)
Bureau: Office of Justice Programs	Other budgetary resources 62,755,212
Appropriation title and symbol: Justice assistance 1/ 15X0401 1560401	Total budgetary resources 266,737,212
	Amount proposed for rescission $ 140,393,351
OMB identification code: 15-0401-0-1-754	Legal authority (in addition to sec. 1012): |_| Antideficiency Act |_| Other
Grant program: |X| Yes |_| No	
Type of account or fund: |X| Annual |_| Multiple-year (expiration date) |X| No-Year	Type of budget authority: |X| Appropriation |_| Contract authority |_| Other

Coverage:

Appropriation	Symbol	OMB Identification Code	Amount Proposed for Rescission
Justice assistance...	15X0401	15-0401-0-1-754	$135,393,351
Justice assistance...	1560401	15-0401-0-1-754	5,000,000
			$140,393,351

Justification: The Justice Assistance appropriation provides for activities authorized by the Juvenile Justice and Delinquency Prevention Act, Missing Children's Assistance Act, and Justice Assistance Act. In order to meet the goals of the Balanced Budget and Emergency Deficit Control Act of 1985 for 1987, it is necessary to rescind obligational authority in 1986 for programs which have a significant impact on outlays in 1987. About 50 percent of the

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Justifications: (continued)
budget authority for these programs would be outlayed in 1987. Three major programs are being proposed for rescission. The first, juvenile justice grants, has already accomplished its major program objectives, as established by the authorizing legislation -- i.e., separation of adult from juvenile offenders and deinstitutionalization of status offenders. The second program, State and local assistance grants, funds projects that are beneficial only to particular State or local communities, and should, therefore, be funded by those communities rather than by the Federal Government. The third program ($5 million) will reduce the reimbursement to 16 states for part of the costs of incarcerating Mariel Cubans.

Estimated Program Effect: These rescission requests will result in a reduction of grant funds to the Criminal and Juvenile Justice Systems. However, their termination will have negligible impact on the Federal criminal justice program.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
207,062	167,165	39,897	63,540	31,229	---	---	---

1/ This account was the subject of a proposed rescission (R85-162) and a deferral (D85-60) in 1985.

Note - $5,727,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $134,666,351.

DEPARTMENT OF LABOR

Employment and Training Administration

Training and employment services

Of the funds made available under this head in Public Law 99-178, $416,037,000 are rescinded: Provided, That notwithstanding section 251 of the Job Training Partnership Act, the Secretary of Labor shall allot the funds made available in Public Law 99-178 for the Summer Youth Employment and Training Program to specific geographic areas most in need of such programs as determined by the Secretary.

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Rescission Proposal No: R86-63

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1017 of P.L. 93-344

AGENCY: Department of Labor	New budget authority..... $3,461,045,000 (P.L. 99-178)
Bureau: Employment and Training Administration	Other budgetary resources 2,420,000
Appropriation title and symbol: Training and employment services 1/ 166/70174	Total budgetary resources $3,461,465,000
	Amount proposed for rescission $ 534,786,000
OMB identification code: 16-0174-0-1-504	**Legal authority** (in addition to sec. 1012): |___| Antideficiency Act
Grant program: |X| Yes |___| No	|___| Other
Type of account or fund:	**Type of budget authority:**
|___| Annual	|X| Appropriation
|X| Multiple-year Sept. 30, 1987 (expiration date)	|___| Contract authority
|___| No-Year	|___| Other

Justification: This account funds a flexible and decentralized system of Federal and local programs of training and other services for economically disadvantaged persons, designed to lead to permanent gains in employment. Fiscal restraint requires reducing certain program levels and directing resources more effectively to areas most in need. Rescissions are proposed for Job Training Partnership Act (JTPA) programs for summer youth employment ($207,976,000), the Job Corps ($196,487,000), and for Native Americans, migrants, and veterans ($2,004,000). A rescission of $9,570,000 for a setaside for four service delivery areas under JTPA is proposed since it provides special financing above the levels these areas would receive under formula allocations contained in law. The Job Corps rescission will return the program to its capacity before it was increased during a time of fiscal stimulus by phasing out the most costly and least effective residential centers; summer youth job resources will be allocated to areas where youth unemployment is most serious.

Estimated Program Effect: Program levels will be reduced for the above JTPA programs, but remaining resources will be directed to areas with the greatest need for summer jobs for youth and to the most effective Job Corps centers located nearest to the target population.

R86-63

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
3,663,188	3,645,870	17,318	359,167	39,523	29	---	---

1/ This account was the subject of a rescission proposal in 1985 (R85-164A).

Note - $118,749,000 of the amount previously withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $416,037,000.

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R86-64

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Rail service assistance

Of the funds made available under this head in Public Law 99-190, $14,355,000 are rescinded.

Rescission Proposal No: R86-64

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation Bureau: Federal Railroad Administration Appropriation title and symbol: Rail service assistance 1/ 69X0122	New budget authority..... $20,200,000 (P.L. 99-190) Other budgetary resources 33,285,310 Total budgetary resources 53,485,310 Amount proposed for rescission $15,000,000
OMB identification code: 69-0700-0-1-401 Grant program: [X] Yes [ ] No	Legal authority (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Justification: Local rail service assistance provides discretionary and formula grants to States for rail planning and track rehabitation of light density branchlines. This rescission is proposed because the rail abandonment problems are local in nature and are more appropriately the responsibility of the State and local governments.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
51,379	45,924	5,455	4,019	4,881	---	---	---

1/ This account was the subject of a rescission proposal (R85-181) and a deferral (D85-49) in 1985.

Note - $645,000 of the amount originally withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $14,355,000.

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R86-65

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Northeast corridor improvement program

Of the funds made available under this head in Public Law 99-190, $11,962,000 are rescinded.

Rescission Proposal No: R86-65

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... (P.L. 99-190) $12,500,000
Bureau: Federal Railroad Administration	Other budgetary resources 19,831,925
Appropriation title and symbol: Northeast corridor improvement program 1/ 69X0123	Total budgetary resources 32,331,925
	Amount proposed for rescission $12,500,000
OMB identification code: 69-0123-0-1-401	Legal authority (in addition to sec. 1012): | | Antideficiency Act
Grant program: | | Yes | X | No	| | Other
Type of account or fund:	Type of budget authority:
| | Annual	| X | Appropriation
| | Multiple-year (expiration date)	| | Contract authority
| X | No-Year	| | Other

Justification: This program provides for capital improvements for the rail line between Boston, MA and Washington, D.C. Appropriations of $2.3 billion have been made through 1985 for this program, representing funding required to complete the necessary projects. This rescission is proposed because no additional funds are required. Sufficient unexpended balances are available to complete the remaining projects.

Estimated Program Effect: None

Outlay Effect: (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
192,120	191,400	720	3,230	5,620	2,392	---	---

1/ This account was the subject of a rescission proposal (R85-181) and a deferral (D85-50) in 1985.

NOTE - $538,000 of the amount originally withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $11,962,000.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Railroad rehabilitation and improvement

Redeemable preference shares

All of the proceeds authorized to be expended under this head in Public Law 99-190 are rescinded.

Rescission Proposal No: R86-66

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Transportation **Bureau:** Federal Railroad Administration **Appropriation title and symbol:** Railroad rehabilitation and improvement financing funds 69X4411 **OMB identification code:** 69-4411-0-3-401 **Grant program:** | | Yes | X | No	New budget authority..... $33,500,000 (P.L. 99-190) Other budgetary resources 12,923,715 Total budgetary resources 46,423,715 Amount proposed for rescission $33,500,000 **Legal authority (in addition to sec. 1012):** | | Antideficiency Act | | Other **Type of budget authority:** | X | Appropriation | | Contract authority | | Other
Type of account or fund: | | Annual | | Multiple-year (expiration date) | X | No-Year	

Justification: This program, which provides direct loans to private freight railroad companies, has served the purpose for which it was intended and should have expired at the end of 1985 as scheduled. The proposed rescission would eliminate the Redeemable Preference Share funding consistent with the President's 1986 budget proposal. The provision of low cost loans to rehabilitate railroad lines is no longer necessary in light of the improved health of the railroad industry and the availability of private sector loans.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
31,603	30,000	1,603	1,603	6,411	11,221	11,221	---

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Note - $1,441,000 of the amount originally withheld for rescission is sequestered pursuant to P.L. 99-177. The current proposed rescission is $32,059,000.

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Discretionary grants

The limitation on the use of contract authority included under this head in Public Law 99-190 is reduced to $702,868,150; in addition, balances of limitations included in prior year limitations are reduced by $223,600,000.

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Rescission Proposal No: R86-67

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Department of Transportation
Bureau: Urban Mass Transportation Administration

Appropriation title and symbol:
Discretionary grants
69X8191

OMB identification code:
69-8191-0-7-401

Grant program: [X] Yes [ ] No

Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority..... $1,100,000,000
(P.L. 97-424)
Other budgetary resources $511,812,260
Total budgetary resources $1,611,812,260
Amount proposed for rescission $ 521,274,850

Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other

Type of budget authority:
[ ] Appropriation
[X] Contract authority
[ ] Other

Justification: Section 3 of the Urban Mass Transportation Act of 1964, as amended, authorizes the Secretary of the Department of Transportation to make grants for the construction, acquisition, and rehabilitation of public transportation vehicles and facilities. Congress provided a total of $3.45 billion in contract authority for 1984, 1985, and 1986, the obligation of which was limited to $3.39 billion in the 1984, 1985, and 1986 appropriation acts. This limitation on section 3 obligations, according to the Appropriations Committees' Conference Reports for 1984, 1985 and 1986, includes $1.207 billion for "new start" projects. Of these 1984 and 1985 "new start" funds, $359.0 million was included for projects in five cities: Los Angeles ($234.4 million), Miami ($84.0 million), San Diego ($11.3 million), Jacksonville ($17.3 million), and St. Louis ($12.0 million). Through 1985, $135.4 million has been obligated for these projects.

The Administration has determined that the balance of $223.6 million of 1984 and 1985 funds should not be obligated since these funds would not provide sufficient resources to complete the desired "new start" projects in these five cities. More specifically, the $223.6 million would only provide about five percent of the estimated $4.0 billion needed in Federal funds to construct fully the desired "new start" projects in these cities.

The Appropriations Committees' Conference Report for 1986 includes $385.0 million for "new start" projects. Of these "new start" funds, $311.05 million has been included for projects in eight cities: Los Angeles ($101.0 million), Miami ($38.0 million), San Diego ($9.3 million), St. Louis ($13.5 million), Seattle ($24.65 million), Atlanta ($69.0 million), Houston ($54.75 million), and Buffalo ($0.85 million). Sequestering will cut $13.38 million from these 8 cities, leaving a balance of $297.67 million.

The Administration has determined that the $297.67 million in 1986 funds should not be obligated since these funds would not provide sufficient resources to complete the desired "new start" projects in these eight cities. More specifically, the $297.67 million would only provide about seven percent of the estimated $4.4 billion needed in Federal funds to fully construct the desired "new start" project in these cities.

Given the need to reduce Federal expenditures now and in the coming years, especially in light of the Balanced Budget and Emergency Deficit Reduction Act of 1985, the Federal Government cannot promise that this $4 to $5 billion shortfall in Federal funding will be provided. This Administration opposes funding new fixed investments under the Discretionary Grants program. Investment in "new start" projects can result in the development of many inefficient, expensive transit systems that will cost more to operate than other transit alternatives. Therefore, the Administration proposes rescinding a total of $521.27 million; that is the sum of $297.67 of 1986 funds and $223.6 in 1984-1985 funds.

Estimated Program Effect: $521.27 million will not be provided for specific "new start" projects in Los Angeles ($225.66 million), Miami ($107.87 million), San Diego ($20.2 million), Jacksonville ($1.8 million), St. Louis ($22.92 million), Seattle ($23.59 million), Houston ($52.4 million), Buffalo ($0.81 million), and Atlanta ($66.03 million).

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
776,150	750,086	26,064	104,255	156,382	104,255	104,255	26,064

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R86-68

DEPARTMENT OF THE TREASURY

Office of Revenue Sharing

Local government fiscal assistance trust fund

Notwithstanding the provisions of 31 U.S.C. 6701-6724, payments to local governments from the Local Government Fiscal Assistance Trust Fund shall not exceed $3,425,025,000, and the amount provided to the trust fund by Public Law 99-160 shall be reduced by $759,975,000 through the elimination of such payments for the final quarter of the entitlement period beginning October 1, 1985 and ending September 30, 1986. The $759,975,000 is hereby rescinded, and shall be transferred to the General Fund of the Treasury.

Rescission Proposal No: R86-68

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Treasury	New budget authority..... (P.L. 99-160) $4,185,000,000
Bureau: Office of Revenue Sharing	Other budgetary resources 54,349,000
Appropriation title and symbol: Local government fiscal assistance trust fund 1/ 20X8111	Total budgetary resources 4,239,349,000
	Amount proposed for rescission $ 759,975,000
OMB Identification code: 20-8111-0-7-851	Legal authority (in addition to sec. 1012): |__| Antideficiency Act; |__| Other____
Grant program: |X| Yes |__| No	
Type of account or fund: |X| Annual; |__| Multiple-year ____ (expiration date); |__| No-Year	Type of budget authority: |X| Appropriation; |__| Contract authority; |__| Other____

Justification: This account makes payments to local governments under the General Revenue Sharing (GRS) program. The program was first enacted in 1972 to distribute the resources raised by the highly responsive Federal tax structure to states and localities, which in general had less flexible tax systems. Since enactment of GRS, the relative fiscal conditions of Federal and local governments have changed dramatically. Local governments, in the aggregate, have gone from deficit to surplus conditions while the Federal government deficit has deepened substantially. The Federal government can no longer afford to fund a program which does not serve a targeted national purpose; GRS does not encourage localities to shift or increase spending on national priorities. The Administration proposes to eliminate the final quarterly payment before the program's authorization expires at the end of 1986. This rescission will result in a 1987 outlay savings of $760 million and will help achieve the goals of the Balanced Budget and Emergency Deficit Control of 1985.

Estimated Program Effect: The level of funding requested will provide three full General Revenue Sharing Payments to localities during 1986 before the program's authorization expires at the end of FY 1986. The rescission eliminates the final quarterly payment, which the 1986 appropriation act had already reduced by $382 million.

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
4,433,483	4,433,483	---	759,975	---	---	---	---

1/ This account is the subject of deferrals in 1986 (D86-30, D86-31) and in 1985 (D85-12, D85-13).

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

Salaries and expenses

Of the funds included under this head in the conference version of H.R. 3036, Treasury/Postal Service, and General Government Appropriations Act, 1986, as amended, and made available by section 101(h) of Public Law 99-190, $4,976,000 are rescinded.

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Rescission Proposal No. R86-69

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Treasury **Bureau:** Federal Law Enforcement Training Center	New budget authority..... (P.L. 99-190) $23,803,000 Other budgetary resources 13,582,000 Total budgetary resources $37,385,000
Appropriation title and symbol: Salaries and expenses 2060104	Amount proposed for rescission $ 4,976,000
OMB Identification code: 20-0104-0-1-751 **Grant program:** | | Yes | X | No	**Legal authority** (in addition to sec. 1012): | | Antideficiency Act | | Other
Type of account or fund: | X | Annual | | Multiple-year (expiration date) | | No-Year	**Type of budget authority:** | X | Appropriation | | Contract authority | | Other

Justification: This account funds the necessary operating expenses of the Federal Law Enforcement Training Center. A rescission is proposed to eliminate funds for construction of a new dormitory at the Center.

Estimated Program Effect: A new 200-bed dormitory will not be constructed at the Center. The flexible nature of the Center facilities can currently accommodate in excess of 1,400 resident students. During those times when the Center housing facilities are full, some students will be housed at local commercial facilities.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
22,433	17,457	4,976	--	---	---	---	---

R86-70

DEPARTMENT OF THE TREASURY

United States Customs Service

Salaries and expenses

Of the funds included under this head in the conference version of H.R. 3036, Treasury/Postal Service, and General Government Appropriations Act, 1986, as amended, and made available by section 101(h) of Public Law 99-190, $4,169,000 are rescinded.

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Rescission Proposal No. R86-70

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Treasury **Bureau:** United States Customs Service **Appropriation title and symbol:** Salaries and expenses 2060602	New budget authority..... (P.L. 99-190) $717,000,000 Other budgetary resources 41,533,000 Total budgetary resources $758,533,505 Amount proposed for rescission $ 4,169,000
OMB Identification code: 20-0602-0-1-751 **Grant program:** | | Yes |X| No	**Legal authority (in addition to sec. 1012):** | | Antideficiency Act | | Other
Type of account or fund: |X| Annual | | Multiple-year (expiration date) | | No-Year	**Type of budget authority:** |X| Appropriation | | Contract authority | | Other

Justification: This account funds the salaries and expenses for the United States Customs Service. A rescission is proposed to reduce discretionary investigatory spending and to slow down the acquisition of marine vessels.

Estimated Program Effect: Some lower-priority investigations will not take place.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
719,325	715,302	4,023	146	---	---	---	---

R86-71

DEPARTMENT OF THE TREASURY

United States Customs Service

Operations and maintenance, air interdiction program

Of the funds included under this head in the conference version of H.R. 3036, Treasury/Postal Service, and General Government Appropriations Act 1986, as amended, and made available by section 101(h) of Public Law 99-190, $19,275,000 are rescinded.

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'07 Rescission Proposal No: R86-71

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of the Treasury **Bureau:** United States Customs Service **Appropriation title and symbol:** Operations and maintenance, air interdiction program 20X0504	New budget authority..... $75,000,000 (P.L. 99-190) Other budgetary resources -3,225,000 Total budgetary resources 71,775,000 **Amount proposed for rescission** $19,275,000
OMB identification code: 20-0504-0-1-751 **Grant program:** [ ] Yes [X] No	**Legal authority** (in addition to sec. 1012): [ ] Antideficiency Act [ ] Other
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account funds the operations and maintenance for the U.S. Customs Service air interdiction program. A rescission is proposed to reduce spending for P-3A aircraft enhancements and to eliminate funds for the purchase of an aerostat.

Estimated Program Effect: Some changes in lower priority operating activities will be required to meet the proposed rescission.

Outlay Effect (in thousands of dollars):

1986 Outlay estimate Without Rescission	1986 Outlay estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
101,814	89,960	11,854	5,937	1,787	238	47	10

R86-72

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Research and development

Of the funds made available under this head in Public Law 99-160, $26,796,000 are rescinded.

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Rescission Proposal No: R86-72

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
National Aeronautics and Space Administration

Bureau:

Appropriation title and symbol:
Research and development
806/70108

OMB identification code:
80-0108-0-1-999

Grant program:
|__| Yes |X| No

Type of account or fund:
|__| Annual
|X| Multiple-year Sept. 30, 1987 (expiration date)
|__| No-Year

New budget authority..... $2,756,800,000
(P.L. 99-160)
Other budgetary resources 614,657,000
Total budgetary resources 3,371,457,000

Amount proposed for rescission $ 26,796,000

Legal authority (in addition to sec. 1012):
|__| Antideficiency Act
|__| Other

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other

Justification: This appropriation provides for research and development activities of the National Aeronautics and Space Administration. This proposal would rescind funds for the Advanced Communications Technology Satellite (ACTS) flight demonstration of advanced communications technology. This is part of the administration's effort to avoid possible competition with the private sector and to minimize Government subsidies for activities more appropriately and effectively undertaken by the private sector.

Estimated Program Effect: ACTS will be terminated.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
2,676,225	2,653,256	22,969	3,827	---	---	---	---

R86-73

OFFICE OF PERSONNEL MANAGEMENT

Government payment for annuitants, employee health benefits

Of the funds included under this head in the conference version of H.R. 3036, Treasury/Postal Service, and General Government Appropriations Act, 1986, as amended, and made available by section 101(h) of Public Law 99-190, $600,000,000 are rescinded.

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Rescission Proposal No. R86-73

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
Office of Personnel Management
Bureau:
Appropriation title and symbol:
Government payment for annuitants, employees health benefits
24X0206
OMB identification code:
24-0206-0-1-551
Grant program:
[ ] Yes [X] No
Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority..... (P.L. 99-190) $1,606,165,000
Other budgetary resources 118,699,543
Total budgetary resources $1,724,864,543
Amount proposed for rescission $ 600,000,000
Legal authority (in addition to sec. 1012):
[ ] Antideficiency Act
[ ] Other
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This appropriation covers: (1) the Government's share of the cost of health insurance for 1,484,000 annuitants as defined in sections 8901 and 8906 of title 5, United States Code; (2) the Government's share of the cost-of-health insurance for 45,000 annuitants (who were retired when the Federal employees health benefits law became effective), as defined in the Retired Federal Employees Health Benefits Act of 1960; and (3) the Government's contribution for payment of administrative expenses incurred by the Office of Personnel Management in administration of the act. This rescission is based on (1) enactment of legislation enabling refunds to Federal Employees Health Benefits enrollees and (2) the return of excess carrier reserves to the contingency reserves of the Federal Employees Health Benefits (FEHB) Fund. The anticipated return of reserves in 1986 reduces the need for 1986 appropriations for annuitants health benefits.

Estimated Program Effect: None.

R86-73

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
Government payment for annuitants, employee health benefits:							
1,373,523	913,523	460,000	134,000	6,000	---	---	---
Employees health benefits fund:							
-700,553	-230,553	-470,000	-134,000	---	---	---	---

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R86-74

APPALACHIAN REGIONAL COMMISSION

Appalachian regional development programs

Of the funds made available under this head by Public Law 99-141, $81,000,000 are rescinded.

Rescission Proposal No: R86-74

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Appalachian Regional Commission	New budget authority..... $120,000,000 (P.L. 99-141)
Bureau:	Other budgetary resources 57,789,679
Appropriation title and symbol: Appalachian regional development program 1/ 46X0200	Total budgetary resources 177,789,679
	Amount proposed for rescission $ 81,000,000
OMB identification code: 46-0200-0-1-452	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: This appropriation provides funds for the Appalachian Regional Commission's highway, area development, and local development district support activities. This rescission is proposed to effect savings required as a result of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177). Consistent with the proposed termination of the Commission on September 30, 1986, currently uncommitted funds are proposed for rescission. This 20-year old program has outlined its usefulness.

Estimated Program Effect: This action would reduce funds available for highway construction and other programs in the 13 state Appalachian region.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
158,831	154,349	4,482	21,730	24,300	13,770	10,530	6,588

1/ This account is also the subject of a deferral (D86-1) and was the subject of a similar rescission proposal in 1985 (R85-1).

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R86-75

Corporation for Public Broadcasting

Public broadcasting fund

Of the funds provided for The Corporation for Public Broadcasting for fiscal year 1988 in Public Law 99-178, $44,000,000 are rescinded.

Rescission Proposal No: R86-75

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Corporation for Public Broadcasting	New budget authority..... $214,000,000 (P.L. 98-178)
Bureau:	Other budgetary resources ____
Appropriation title and symbol: Public broadcasting fund 1/ 20801S1	Total budgetary resources 214,000,000
	Amount proposed for rescission $ 44,000,000
OMB identification code: 20-0151-0-1-503	Legal authority (in addition to sec. 1012): |___| Antideficiency Act
Grant program: |X| Yes |___| No	|___| Other____
Type of account or fund:	Type of budget authority:
|X| Annual (1988 advanced appropriation)	|X| Appropriation
|___| Multiple-year (expiration date)	|___| Contract authority
|___| No-Year	|___| Other____

Justification: The Corporation for Public Broadcasting (CPB) provides Federal assistance to the 273 radio and 180 television stations which comprise the non-commercial broadcasting system. It is the Administration's policy to encourage user and private support and whenever possible, to reduce the need for Federal support. The two year advance notice provided by this rescission proposal should permit time to plan for ensuing funding reductions.

Estimated Program Effect: The allocation of the CPB's appropriation among its programs is mandated by the Omnibus Reconciliation Act of 1981. Therefore, the $44 million proposed rescission would be similarly distributed. This proposal will have some effect on program planning levels.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
159,500	159,500	---	---	44,000	---	-----	-----

1/ This account was the subject of a similar rescission proposal in 1985 (R85-244).

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R86-76

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

National capital arts and cultural affairs

Of the funds made available under this head in Public Law 99-190, $1,903,000 are rescinded.

Rescission Proposal No: R86-76

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: National Endowment for the Humanities	New budget authority..... $ 1,988,000 (P.L. 99-190)
Bureau:	Other budgetary resources -85,000
Appropriation title and symbol: Grants and administration 59X0201	Total budgetary resources $ 1,903,000
OMB identification code: 59-0200-0-1-503	Amount proposed for rescission $ 1,903,000
Grant program: |X| Yes |__| No	**Legal authority (in addition to sec. 1012):** |__| Antideficiency Act; |__| Other
Type of account or fund: |__| Annual; |__| Multiple-year (expiration date); |X| No-Year	**Type of budget authority:** |X| Appropriation; |__| Contract authority; |__| Other

Coverage:

Appropriation	Account Symbol	Rescission Proposal
National capital arts and cultural affairs.....	59X0201	$1,903,000

Justification: This appropriation supports non-competive grants to large Washington, D.C., cultural organizations. These organizations are eligible to compete, along with other U.S. cultural organizations, for funding under a variety of existing programs of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum Services. A separate, non-competitive subsidy program for Washington, D.C. organizations is not warranted.

Estimated Program Effect: No grants would be made under the program.

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
478	---	478	1,425	---	---	---	---

STATE JUSTICE INSTITUTE

Salaries and expenses

Of the funds made available under this head in Public Law 99-180, $7,656,000 are rescinded.

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Rescission Proposal No. R86-78

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY:
State Justice Institute
Bureau:

Appropriation title and symbol:
Salaries and expenses
4860052

OMB identification code:
48-0052-0-1-752
Grant program: [X] Yes [ ] No

Type of account or fund:
[X] Annual
[ ] Multiple-year _____ (expiration date)
[ ] No-Year

New budget authority..... $8,000,000
(P.L. 99-180)
Other budgetary resources -344,000
Total budgetary resources $7,656,000
Amount proposed for rescission $7,656,000

Legal authority (in addition to sec. 1012):
[X] Antideficiency Act
[ ] Other_____

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other_____

Justification: The State Justice Institute, a Federally-financed, private non-profit corporation, was established to provide grants and contracts to state courts to improve state and local judicial systems. The Administration opposes the creation of the State Justice Institute not only for budgetary concerns, but also because it is intended to address questions that are more appropriately the responsibility of the states. If this is deemed a priority by the states, they have sufficient funds to support judicial reform projects without Federal assistance.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
6,890	---	6,890	766	---	---	---	---

R86-79

UNITED STATES RAILWAY ASSOCIATION
Administrative expenses

Of the funds made available under this head in Public Law 99-190, $640,000 are rescinded.

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Rescission Proposal No: R86-79

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: United States Railway Association	New budget authority..... $ 2,400,000 (P.L. 99-180)
Bureau:	Other budgetary resources 30,083
Appropriation title and symbol: Administrative expenses 98X0100	Total budgetary resources 2,430,083
	Amount proposed for rescission $ 640,000
OMB identification code: 98-0100-0-1-401	Legal authority (in addition to sec. 1012):
Grant program: | | Yes | | No	| | Antideficiency Act
Type of account or fund:	| | Other
| | Annual	**Type of budget authority:**
| | Multiple-year (expiration date)	| X | Appropriation
| X | No-Year	| | Contract authority
	| | Other

Justification: The United States Railway Association (USRA) was created by the Regional Rail Reorganization Act of 1973 (3R Act). It was intended to be a temporary agency responsible for overseeing the formation of Conrail, monitoring its performance, and acting as a conduit for Federal assistance. Conrail is now operating as a profitable corporation and the Administration has sponsored legislation to sell its 85% interest to the Norfolk Southern Corporation. This legislation, currently pending before Congress, is expected to be enacted by the end of 1986. The USRA did not request new 1986 funds nor did the President's budget include such funding. The activities the USRA was created to perform have been completed. Therefore, this rescission is being proposed to eliminate all funding for the USRA as of May 1, 1986.

Estimated Program Effect: This rescission will result in the termination of the USRA. Any remaining activities related to the oversight of Conrail can be easily absorbed by the Department of Transportation or other parties participating in the proposed sale of Conrail.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Rescission	1986 Outlay Estimate With Rescission	Outlay Savings 1986	1987	1988	1989	1990	1991
2,897	2,257	640	---	---	---	---	---

Deferral No: D86-32

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $5,190,000,000 (P.L. 99-190)
Bureau: International Security Assistance	Other budgetary resources
Appropriation title and symbol: Foreign military sales credit 1/ 1161082	Total budgetary resources 5,190,000,000
	Amount to be deferred: Part of year $4,590,000,000
OMB identification code: 11-1082-0-1-152	Entire year
Grant program: | | Yes | X | No	Legal authority (in addition to sec. 1013):
Type of account or fund:	| X | Antideficiency Act
| X | Annual	| | Other
| | Multiple-year (expiration date)	**Type of budget authority:**
| | No-Year	| X | Appropriation
	| | Contract authority
	| | Other

Justification: The President is authorized by the Arms Export Control to sell or finance by credit or guarantees articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit and guarantee transactions that are based upon national security and financial policies. These funds have been deferred pending approval of specific loans to eligible countries by the Departments of State, Defense and the Treasury. Consultation among these Departments will ensure that each approved program is consistent with the foreign national security and financial policies of the United States and will not exceed the limits of available funds. In addition, it is anticipated that $223,170,000 of the deferred funds will be subject to sequestration as required by the Balanced Budget and Emergency Deficit Control Act of 1985. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-24).

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D86-24A

Supplementary Report

Report pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-24 transmitted to the Congress on November 25, 1985.

This revised deferral of Funds Appropriated to the President for the Economic support fund increases the amount previously reported as deferred from $1,222,216,000 to $3,158,276,343. This increase of $1,936,060,343 is attributable to funds provided in the Foreign Assistance and Related Programs Appropriation Act, 1986, as included in Public Law 99--190. Funds are deferred pending approval of specific grants and loans by the Secretary of State.

Deferral No: D86-24A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:

Economic support fund 1/

115/71037 11X1037
* 115/61037 * 1161037

OMB identification code:

11-1037-0-1-152

Grant program:
[X] Yes [ ] No

Type of account or fund:
[X] Annual
[X] Multiple-year 9/30/86; 9/30/87 (expiration date)
[X] No-Year

New budget authority..... *$3,706,000,000 (P.L. 99-190)
Other budgetary resources *1,247,045,343
Total budgetary resources *4,953,045,353

Amount to be deferred:
Part of year *2,971,342,050
Entire year * 186,934,293

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Coverage: 1/

Appropriation	Symbol	Identification Code	Amount Deferred
Economic Support Fund...	1161037	11-1032-0-1-152	*2,028,547,000
Economic Support Fund...	115/61037	11-1037-0-1-152	*942,795,850
Economic Support Fund...	115/71037	11-1037-0-1-152	170,000,000
Economic Support Fund...	11X1037	11-1037-0-1-152	*16,934,293
			*3,158,276,343

Justification: *This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State. *This will insure that each approved program is consistent with the foreign, national security and financial policies of the U.S. and will not exceed the limits of available funds. *This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-2C).

*/ Revised from previous report.

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Deferral No: D86-33

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $782,000,000 (P.L. 99-179)
Bureau: International Security Assistance	Other budgetary resources _____
Appropriation title and symbol: Military assistance program 1/ 1161080	Total budgetary resources 782,000,000
OMB identification code: 11-1080-0-1-152	Amount to be deferred: Part of year $661,350,000
Grant program: |__| Yes |X| No	Entire year _____
Type of account or fund:	Legal authority (in addition to sec. 1013):
|X| Annual	|__| Antideficiency Act
|__| Multiple-year _____ (expiration date)	|__| Other_____
|__| No-Year	**Type of budget authority:**
	|X| Appropriation
	|__| Contract authority
	|__| Other_____

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace, Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until the budget implications of the Balanced Budget and Emergency Deficit Control Act of 1985 are reviewed. Subsequently, release of funds will follow approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-3A).

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Deferral No: D86-34

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 54,489,500 (P.L. 99-179)
Bureau: International Security Assistance	Other budgetary resources _____
Appropriation title and symbol: International military education and training 1/ 1161081	Total budgetary resources 54,489,500
OMB identification code: 11-1081-0-1-152	Amount to be deferred: Part of year $ 27,244,500
Grant program: |__| Yes |X| No	Entire year _____
Type of account or fund:	Legal authority (in addition to sec. 1013):
|X| Annual	|__| Antideficiency Act
|__| Multiple-year _____ (expiration date)	|__| Other_____
|__| No-Year	**Type of budget authority:**
	|X| Appropriation
	|__| Contract authority
	|__| Other_____

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to friendly countries or international organizations. These funds are being deferred until the budget implications of the Balanced Budget and Emergency Deficit Control Act of 1985 are reviewed. Subsequently, release of funds will follow approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-25).

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Deferral No: D86-35

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DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $75,000,000 (P.L. 99-190)
Bureau: Multilateral Development Bank	Other budgetary resources ____
Appropriation title and symbol: Contribution to the Special Facility for Sub-Sahara Africa 11X0086	Total budgetary resources $75,000,000
	Amount to be deferred: Part of year $75,000,000
	Entire year ____
OMB identification code: 11-0086-0-1-151	Legal authority (in addition to sec. 1013): |__| Antideficiency Act
Grant program: |__| Yes |X| No	|__| Other ____
Type of account or fund: |__| Annual	Type of budget authority: |X| Appropriation
|__| Multiple-year ____ (expiration date)	|__| Contract authority
|X| No-Year	|__| Other ____

Justification: The FY 1986 continuing resolution provided authorization and appropriation for a $75 million payment to the Special Facility for Sub-Saharan Africa. Administered by the International Development Association, the Facility provides fast-disbursing loans to support Sub-Saharan African countries willing to undertake economic reforms. Funds were deferred until the budget implications of the Balanced Budget and Emergency Deficit Control Act of 1985 were reviewed. On January 17, 1986, the funds were made available for obligation.

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D86-36

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Commerce	New budget authority..... $183,500,000 (P.L. 99-180, 99-190)
Bureau: Economic Development Administration	Other budgetary resources 535,000
Appropriation title and symbol: Economic development assistance programs 1/ 1362060	Total budgetary resources 184,035,000
	Amount to be deferred: Part of year $ 40,000,000
	Entire year ____
OMB identification code: 13-2050-0-1-452	Legal authority (in addition to sec. 1013): |__| Antideficiency Act
Grant program: |X| Yes |__| No	|__| Other ____
Type of account or fund: |X| Annual	Type of budget authority: |X| Appropriation
|__| Multiple-year ____ (expiration date)	|__| Contract authority
|__| No-Year	|__| Other ____

Justification: This account provides public works projects, planning and technical assistance grants, and research and evaluation to state and local governments for economic development activities. The President's 1987 Budget proposes termination of the Economic Development Administration (EDA) grant and loan guarantee programs, as well as several other Commerce Department financial assistance programs that are not appropriate Federal responsibilities. The Budget proposes creation of a Grants and Loans Administration in the Office of the Secretary of Commerce to close-out and monitor these programs. The Grants and Loans Administration costs for 1987-1991 would be financed by a proposed reappropriation in 1986. These funds are deferred pending Congressional consideration of that proposal.

Estimated Program Effect: This deferral will ensure that funds are available to be reappropriated for closing out EDA without appropriation of new resources.

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Change					
Without Deferral	With Deferral	1986	1987	1988	1989	1990	1991
Economic development assistance programs:							
238,986	235,217	-4,000	-8,000	-10,000	-10,000	-6,000	-2,000
Grants and loans administration:							
---	---	---	19,000	12,409	4,973	2,566	1,052

1/ This account is also the subject of a rescission proposal (R86-14). It was the subject of rescission proposals in 1985 (R85-55) and (R85-56).

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-25 transmitted to Congress on November 25, 1985.

This increases by $338,436 the previous deferral of $1,959,000 in the Department of Commerce's National Oceanic and Atmospheric Administration Fisheries loan fund, resulting in a total deferral of $2,297,436. The additional deferral is the result of anticipated recoveries of prior year obligations and are deferred because $1.8M of these funds are proposed for transfer in FY 1987 to NOAA's Operations, research and facilities account.

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Deferral No: D86-25A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Commerce
Bureau: National Oceanic and Atmospheric Administration
Appropriation title and symbol:
Fisheries loan fund 1/
12X5123

OMB identification code:
13-5123-0-2-376

Grant program:
|___| Yes |_X_| No

Type of account or fund:
|___| Annual
|___| Multiple-year _____ (expiration date)
|_X_| No-Year

New budget authority..... $*
(P.L. _____)
Other budgetary resources 2,297,436
Total budgetary resources * 2,297,436

Amount to be deferred:
Part of year $_____
Entire year 2,297,436

Legal authority (in addition to sec. 1013):
|___| Antideficiency Act
|___| Other_____

Type of budget authority:
|___| Appropriation
|___| Contract authority
|_X_| Other_____

Justification: *The Fisheries loan fund provides direct loans to vessel operators at subsidized rates (3% interest) for purchasing, contracting, equipping, maintaining, repairing, or operating new or used fishing vessels or gear. Loans are made primarily from direct appropriations. Loan recipients should be able to obtain financing from private sources without Federal Government intervention. The amount proposed for deferral is the carryover from 1985 to 1986 of unobligated balances, anticipated interest and repayments during 1986 from outstanding loans and anticipated recoveries of prior year obligations. The Fisheries loan fund is proposed for termination and extension of the authorization is not part of the President's 1986 legislative program. These funds are deferred pending Congressional consideration of the President's 1987 budget which proposes a transfer of $1.8 million to NOAA's Operations, research and facilities account.

Estimated Program Effect: None

D86-25A

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Savings					
Without Rescission	With Rescission	1986	1987	1988	1989	1990	1991
* 2,675	378	-2,297	---	---	---	---	---

1/ This account was the subject of a rescission proposal in 1985 (R85-65).

* Revised from previous report.

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D86-4A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-4 transmitted to Congress on October 1, 1985.

This increases by $1,488,578,960 the previous deferral of $353,079,040 in the Department of Defense, Military construction, resulting in a total deferral of $1,841,658,000. The increase in the amount deferred results from deferral of funds included in the 1986 Military Construction Appropriation Act.

Deferral No: D86-4A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military

Bureau:
Military Construction

Appropriation title and symbol:
See Coverage Section below 2/

OMB identification code:
See Coverage Section below 2/

Grant program: | | Yes | X | No

Type of account or fund:

	Annual	Sept. 30, 1986
X	Multiple-year	Sept. 30, 1987 Sept. 30, 1988 (expiration date)
X	No-Year	Sept. 30, 1989 *Sept. 30, 1990

New budget authority.....*$5,552,583,000
(P.L. 99-178)
Other budgetary resources *3,781,227,000
Total budgetary resources *9,333,801,000

Amount to be deferred:
Part of year
Entire year *1,841,658,456

Legal authority (in addition to sec. 1013):
| X | Antideficiency Act
| | Other

Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other

Coverage: 2/

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Army.....	216/02050	21-2050-0-1-051	*$342,122,000
Military construction, Army.....	215/92050	21-2050-0-1-051	*174,442,000
Military construction, Army.....	214/82050	21-2050-0-1-051	---
Military construction, Army.....	213/72050	21-2050-0-1-051	---
Military construction, Army.....	212/62050	21-2050-0-1-051	---
*Military construction, Navy.....	216/01205	17-1205-0-1-051	*686,577,000
Military construction, Navy.....	175/91205	17-1205-0-1-051	---
Military construction, Navy.....	174/81205	17-1205-0-1-051	---
Military construction, Navy.....	173/71205	17-1205-0-1-051	---
Military construction, Navy.....	172/61205	17-1205-0-1-051	---
*Military construction, Air Force.	576/03300	57-3300-0-1-051	*295,048,000
Military construction, Air Force.	575/93300	57-3300-0-1-051	---
Military construction, Air Force.	574/83300	57-3300-0-1-051	---
Military construction, Air Force.	573/73300	57-3300-0-1-051	---
Military construction, Air Force.	572/63300	57-3300-0-1-051	---

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Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Defense Agencies	976/00500	97-0500-0-1-051	*78,196,000
Military construction, Defense Agencies	975/90500	97-0500-0-1-051	*
Military construction, Defense Agencies	974/80500	97-0500-0-1-051	*5,000,000
Military construction, Defense Agencies	973/70500	97-0500-0-1-051	*
Military construction, Defense Agencies	972/60500	97-0500-0-1-051	*6,864,000
*Military construction, Army National Guard	216/02085	21-2085-0-1-051	*12,233,000
Military construction, Army National Guard	215/92085	21-2085-0-1-051	---
Military construction, Army National Guard	214/82085	21-2085-0-1-051	---
Military construction, Army National Guard	213/72085	21-2085-0-1-051	---
Military construction, Army National Guard	212/62085	21-2085-0-1-051	---
*Military construction, Air National Guard	576/03830	57-3830-0-1-051	*19,690,000
Military construction, Air National Guard	575/93830	57-3830-0-1-051	---
Military construction, Air National Guard	574/83830	57-3830-0-1-051	---
Military construction, Air National Guard	573/73830	57-3830-0-1-051	---
Military construction, Air National Guard	572/63830	57-3830-0-1-051	---
*Military construction, Army Reserve	216/02086	21-2086-0-1-051	*13,156,000
Military construction, Army Reserve	215/92086	21-2086-0-1-051	---
Military construction, Army Reserve	214/82086	21-2086-0-1-051	---
Military construction, Army Reserve	213/72086	21-2086-0-1-051	---
Military construction, Army Reserve	212/62086	21-2086-0-1-051	---
*Military construction, Naval Reserve	176/01235	17-1235-0-1-051	*19,150,000
Military construction, Naval Reserve	175/91235	17-1235-0-1-051	---
Military construction, Naval Reserve	174/81235	17-1235-0-1-051	---
Military construction, Naval Reserve	173/71235	17-1235-0-1-051	---
Military construction, Naval Reserve	172/61235	17-1235-0-1-051	---

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Air Force Reserve	576/03730	57-3730-0-1-051	*21,980,000
Military construction, Air Force Reserve	575/93730	57-3730-0-1-051	---
Military construction, Air Force Reserve	574/83730	57-3730-0-1-051	---
Military construction, Air Force Reserve	573/73730	57-3730-0-1-051	---
Military construction, Air Force Reserve	572/63730	57-3730-0-1-051	---
*North Atlantic Treaty Organization Infrastructure	97X0804	97-0804-0-1-051	*167,200,000
Total			*$1,841,658,000

Justification: These funds are deferred due to administrative delays, such project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ Includes all accounts included under this appropriation title.

2/ These accounts were the subject of a similar deferral in 1985 (D85-6 and D85-6A).

* Revised from previous report.

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D86-27A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-27 transmitted to the Congress on November 25, 1985.

This increases by $210,042,000 the previous deferral of $11,800,000 in the Department of Defense, Family housing, resulting in a total deferral of $221,842,000. The increase in the amount deferred results from deferral of funds included in the 1986 Military Construction Appropriation Act.

Deferral No: D86-27A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military

Bureau:
Family Housing, Defense

Appropriation title and symbol:
See Coverage Section below 1/

OMB identification code:
See Coverage Section below 1/

Grant program: |__| Yes |X| No

Type of account or fund:
|__| Annual 9/30/86
|X| Multiple-year 9/30/87
9/30/88
9/30/89 (expiration date)
|__| No-Year *9/30/90

New budget authority.....*$2,990,877,000
(P.L. 99-178)
Other budgetary resources 276,164,000
Total budgetary resources *3,267,041,000

Amount to be deferred:
Part of year *$ 94,842,000
Entire year

Legal authority (in addition to sec. 1013):
|X| Antideficiency Act
|__| Other

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Deferred
*Family housing, Navy.....	176/00703	17-0703-0-1-051	$47,750,000
*Family housing, Army.....	216/00702	21-0702-0-1-051	35,292,000
*Family housing, Air Force.....	576/00704	57-0704-0-1-051	127,000,000
Family housing, Air Force.....	575/90704	57-0704-0-1-051	11,800,000
Family housing, Air Force.....	574/80704	57-0704-0-1-051	---
Family housing, Air Force.....	573/70704	57-0704-0-1-051	---
Family housing, Air Force.....	572/60704	57-0704-0-1-051	---
			*$221,842,000

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-26).

* Revised from previous report.

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D86-5A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-5 transmitted to Congress on October 1, 1985.

This increases by $87,783 the previous deferral of $1,168,157 in the Department of Defense - Civil's Wildlife Conservation, military reservations account, resulting in a total deferral of $1,255,940. The increase in the amount deferred is attributable to increased estimates of receipts and adjustments in unobligated balances brought forward on October 1, 1985.

Deferral No: D86-5A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Civil
Bureau: Wildlife Conservation, Military Reservations
Appropriation title and symbol:
Wildlife Conservation, Army - 21X5095
Wildlife Conservation, Navy - 17X5095
Wildlife Conservation, Air Force - 57X5095

OMB identification code:
97-5095-0-2-303
Grant program: | | Yes | X | No

Type of account or fund:
| | Annual
| | Multiple-year (expiration date)
| X | No-Year

New budget authority..... *$1,824,000
(P.L. 16 U.S.C. 670f)
Other budgetary resources *1,414,994
Total budgetary resources *3,238,994

Amount to be deferred:
Part of year $ ....
Entire year *1,255,940

Legal authority (in addition to sec. 1013):
| X | Antideficiency Act
| | Other

Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Amount Deferred
Wildlife Conservation, Army....	21X5095	21-5095-0-2-303	$ 873,000
Wildlife Conservation, Navy....	17X5095	17-5095-0-2-303	74,428
Wildlife Conservation, Air Force	57X5095	57-5095-0-2-303	308,512
			*$1,255,940

Justification: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law--to carry out a program of natural resource conservation. These funds are being deferred because: (1) installations may be accumulating funds over a period of time to fund a major project, (2) the installation may be designing and obtaining approval for the project, and (3) there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned if program requirements are identified. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

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Deferral No: D86-5A

Estimated Program Effect: None

Outlay Effect: None

1/ These accounts were the subject of a similar deferral in 1985 (D85-7 and D85-7A).

* Revised from previous report.

Deferral No: D86-38

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $1,772,271,000 (P.L. 99-141)
Bureau: Energy Programs	Other budgetary resources 629,565,559
Appropriation title and symbol: Energy supply, research and development 1/ 89X0224	Total budgetary resources $2,401,836,559
OMB identification code: 89-0224-0-1-271	Amount to be deferred: Part of year $ ____ Entire year $ 65,763,000
Grant program: | __ | Yes | X | No	Legal authority (in addition to sec. 1013): | __ | Antideficiency Act | __ | Other ____
Type of account or fund: | __ | Annual | __ | Multiple-year ____ (expiration date) | X | No-Year	Type of budget authority: | X | Appropriation | __ | Contract authority | __ | Other ____

Justification: The purpose of Energy supply research and development activities is to: (1) Support long-term research and development on a mix of technologies that have the potential to provide adequate supplies of energy at reasonable cost, and (2) fund other research programs which provide significant benefits to the Government and the public. The deferral consists of (in thousands of dollars):

University construction projects (Center for Science and Technology, Advanced Science Center, Energy and Mineral Research Center, Center for Energy and Biomedical Technology, Demonstration Center for Information Technologies, and the National Center for Chemical Research)	$38,489
Solar and renewables research	23,351
In-house energy management projects	1,923
Total	$65,763

The university projects are deferred because during this period of budgetary restraint, funding for these lower priority activities can better be used to finance the 1987 appropriation request. Specific appropriation language is

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proposed in the 1987 budget to reprogram these funds. The solar and renewables research and development activities are deferred because they are inconsistent with Administration Energy research and development policy or of lower priority, particularly in times of tight fiscal restraint. The funds for in-house energy management projects are in excess of current program requirements. These funds will be reprogrammed to defray costs in the Technical Information Management program in 1987.

Estimated Program Effect: Funding for lower priority projects will be reduced or terminated.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Deferral	1986 Outlay Estimate With Deferral	Outlay Savings 1986	1987	1988	1989	1990	1991
1,898,172	1,853,498	-44,674	33,128	7,003	9,543	---	---

1/ This account was the subject of a deferral in 1986 (D85-70).

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy
Bureau:
Energy Programs
Appropriation title and symbol:
Uranium supply and enrichment activities 1/
89X0226
OMB identification code:
89-0226-0-1-271
Grant program: | | Yes | X | No
Type of account or fund:
| | Annual
| | Multiple-year (expiration date)
| X | No-Year

New budget authority..... $1,612,700,000
(P.L. 99-141)
Other budgetary resources 6,003,298
Total budgetary resources 1,618,703,298
Amount to be deferred:
Part of year $
Entire year 584,156,000
Legal authority (in addition to sec. 1013):
| X | Antideficiency Act
| | Other
Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other

Justification: The purpose of the uranium enrichment program is to meet domestic, foreign, and United States Government requirements for uranium enrichment services in the most economical, reliable, safe, and environmentally acceptable manner possible. On June 5, 1985, the Department of Energy announced its decision to begin the immediate termination of the Gas Centrifuge Enrichment Plant (GCEP) and to place the Oak Ridge Gaseous Diffusion Plant (ORGDP) in standby. Budget authority from 1986 and prior years of $434,757,000 is deferred as a result of terminating GCEP. An additional $149,401,000 is deferred as a result of placing the ORGDP in standby and as a result of current and prior year power savings. The DOE Defense Program is retaining the option to start up the ORGDP in some future year. New budget authority for decontamination and decommissioning of the ORGDP and the GCEP facilities may be required in some future year for these or other purposes. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Deferral	1986 Outlay Estimate With Deferral	Outlay Changes 1986	1987	1988	1989	1990	1991
1,567,300	1,265,000	-302,300	-281,858	---	---	---	---

1/ This account was the subject of a similar deferral in 1985 (D85-65).

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D86-6A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-6 transmitted to Congress on October 1, 1985.

This increases by $55,565,000 the previous deferral of $9,247,000 in the Department of Energy's Fossil energy research and development account, resulting in a total deferral of $64,812,000. The increase results from funds related to projects and activities that are inconsistent with the Administration's policy of longer term higher risk research in Fossil energy.

Deferral No: D86-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy
Bureau:
Energy Programs
Appropriation title and symbol:
Fossil energy research and development 1/
89X0213
OMB identification code:
89-0213-0-1-271
Grant program: | | Yes | X | No

Type of account or fund:
| | Annual
| | Multiple-year (expiration date)
| X | No-Year

P.L. 99-190 *310,471,000
New budget authority..... $ 15,000,000
(P.L. 98-146)
Other budgetary resources *56,899,015
Total budgetary resources *382,870,015

Amount to be deferred:
Part of year $
Entire year *64,812,000

Legal authority (in addition to sec. 1013):
| | Antideficiency Act
| | Other

Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other

Justification: *This account funds research and development activities in coal, petroleum and unconventional gas. The deferral consists primarily of funds appropriated in the 1986 budget that are commercially-oriented and inconsistent with Administration research and development policy, as well as unobligated balances not required, the 1985 reduction of Fossil energy consulting services per Section 515 of the Treasury, Postal Service, and General Government Appropriations Act, 1985, and recoveries of prior year obligations. Of the deferred amount, $62,205,000 is related to projects and activities which are inconsistent with the Administration's policy of longer term higher risk research in Fossil energy. They are also inconsistent with efforts to reduce the Federal deficit. The balance of the deferred amount, $2,607,000, is unnecessary to the accomplishment of the Fossil energy program. All funds are being deferred through 1986 and will be applied to offset 1987 appropriation requirements.

Estimated Program Effect: None

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Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Deferral	1986 Outlay Estimate With Deferral	Outlay Changes 1986	1987	1988	1989	1990	1991
322.389	302,945	-19,444	-12,962	19,444	12,962	---	---

1/ This account was the subject of a similar deferral (D85-27A) and rescission proposals in 1985 (R85-84 and R85-85).

* Revised from previous report.

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-8 transmitted to the Congress on October 1, 1985.

This revision to a deferral of funds available to the Department of Energy for Naval petroleum and oil shale reserves increases the amount previously reported as deferred from $155,667,981 to $166,465,981. This increase of $10,798,000 is attributable funds not obligated in 1985 and not needed in 1986.

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Deferral No: D86-8A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy **Bureau:** Energy Programs **Appropriation title and symbol:** Naval Petroleum and Oil Shale Reserves 1/ 89X0219 **OMB identification code:** 89-0219-0-1-271 **Grant program:** |__| Yes |X| No **Type of account or fund:** |__| Annual |__| Multiple-year (expiration date) |X| No-Year	**New budget authority.....** *$13,668,000 (P.L. 99-190) **Other budgetary resources** *208,193,586 **Total budgetary resources** *222,581,586 **Amount to be deferred:** Part of year $_____ Entire year *166,465,981 **Legal authority (in addition to sec. 1013):** |X| Antideficiency Act |__| Other_____ **Type of budget authority:** |X| Appropriation |__| Contract authority |__| Other_____

Justification: *This account primarily funds activities necessary to operate, explore, conserve, develop, and produce the Naval Petroleum Reserves at the maximum efficient rate and to conserve the oil shale reserves. This deferral consisted of recoveries of prior year obligations that were deferred in 1985 and other funds not obligated in 1985. These funds were made available for obligation on January 9, 1986. This action was taken pursuant to the Antideficiency Act (31 U.S.C. 1512). The current deferral of $36.461 million in prior year funds results from: close-out of facilities construction at NPR-1 ($7 million); program direction due to understaffing ($.961 million); NPR-3 due to rescheduling of EOR expansion to allow for Pilot verification results ($9 million); NPR-1 reduced development drilling program and costs ($1.805 million); development facilities at NPR-1 due to cost savings and lower facility construction requirements than anticipated ($4 million); NPR-1 cost savings and reduced operations and maintenance requirements associated with lower level of development drilling ($13.695 million).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral (D85-298) and a rescission proposal in 1985 (R85-86).

* Revised from previous report.

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Deferral No: D86-37

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Energy
Bureau:
Energy Programs
Appropriation title and symbol:
Strategic Petroleum Reserve 1/
89X0218

OMB identification code:
89-0218-0-1-274
Grant program: |__| Yes |X| No

Type of account or fund:
|__| Annual
|__| Multiple-year (expiration date)
|X| No-Year

New budget authority..... $112,364,742
(P.L. 99-190)
Other budgetary resources 302,204,083
Total budgetary resources 414,568,825

Amount to be deferred:
Part of year $_____
Entire year 197,940,825

Legal authority (in addition to sec. 1013):
|X| Antideficiency Act
|__| Other_____

Type of budget authority:
|X| Appropriation
|__| Contract authority
|__| Other_____

Justification: Funds appropriated to this account are for the development, operation and management of the Strategic Petroleum Reserve (SPR). The deferral consists primarily of prior year appropriations for crude oil storage facilities construction and results from a proposed indefinite moratorium on further development of the SPR after December 1985. This moratorium will be reassessed as fiscal and oil market conditions warrant. These funds cannot be effectively used this year and will be used to offset part of the 1987 appropriation request. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: This deferral will result in an indefinite curtailment of new storage facilities construction. The partially completed storage facilities will be secured and maintained in a mothballed condition and all completed facilities will be maintained in a state of standby operational readiness in the event of a possible drawdown.

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-31A).

D86-10A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-10 transmitted to Congress on October 1, 1985.

This increases by $40,575,903 the previous deferral of $536,958,000 for the Department of Energy's SPR Petroleum account, resulting in a total deferral of $577,533,903. The increase in the amount deferred is the impact of an Administration proposal to impose a moratorium on the fill of the Strategic Petroleum Reserve after inventory reaches 500 million barrels.

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Deferral No: D86-10A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... $ (P.L.)
Bureau: Energy Programs	Other budgetary resources *727,079,014
Appropriation title and symbol: SPR Petroleum Account 1/ 89X0233	Total budgetary resources *727,079,014
	Amount to be deferred: Part of year $ *
	Entire year *577,533,903
OMB identification code: 89-0233-0-1-274	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other

Justification: *This account funds the costs of acquiring crude oil for the Strategic Petroleum Reserve (SPR). The Administration is proposing an indefinite moratorium on the SPR fill at the end of April 1986, when the SPR inventory will reach 500 million barrels, less SPR test sale deliveries of 1 million barrels in December and January as required by law. With this inventory, the SPR provides a level of protection commensurate with that envisioned when the detailed plans for a 750 million barrel Reserve were set in 1979. Consequently, the balance of funds in the account are deferred until such time as fiscal and oil market conditions warrant their release. This balance consists of $536,968,316 that were approved for deferral in 1985, $27,948,889 of receipts from the test sale of SPR oil and $12,626,698 in other unneeded funds. The Administration is proposing legislation to eliminate requirements concerning SPR fill and linkages to Naval Petroleum Reserve production and sales. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: (in thousands of dollars):

1986 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1986	1987	1988	1989	1990	1991
516,287	389,290 2/	-126,997	---	---	---	---	---

1/ This account was the subject of a similar deferral in 1985 (D85-42).
2/ This is an increase of $126,340,000 from the amount shown in the 1987 Budget.
* Revised from previous report.

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D86-11A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-11 transmitted to Congress on October 1, 1985.

This revision to a deferral of the Department of Energy's Energy security reserves and alternative fuels production account increases the amount previously reported as deferred from $1,149,000 to $1,898,713. This net increase of $749,713 is attributed to additional recoveries of prior year obligations.

Deferral No: D86-11A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy	New budget authority..... *$48,359,307 (P.L. 93-577; 99-238)
Bureau: Energy Programs	Other budgetary resources *2,101,210
Appropriation title and symbol: Alternative Fuels Production 1/ 89X5180	Total budgetary resources *50,460,517
OMB identification code: 89-5180-0-2-271	Amount to be deferred: Part of year $ *1,898,713
Grant program: | | Yes | X | No	Entire year *
Type of account or fund:	Legal authority (in addition to sec. 1013):
| | Annual	| X | Antideficiency Act
| | Multiple-year (expiration date)	| | Other
| X | No-Year	Type of budget authority:
	| X | Appropriation
	| | Contract authority
	| | Other

Justification: *This program funds feasibility studies and cooperative agreements for the development and production of alternative fuels, administrative expenses associated with the Great Plains Gasification Project, and interest on borrowing from Treasury by the Department to meet its loan guarantee obligation to the Federal Financing Bank on the defaulted FFB loan to Great Plains Gasification Associates. The deferral consisted of recoveries of prior year obligations amounting to $1,898,713 for projects and activities which were completed or terminated. These funds were released on January 9, 1986. This action was taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a rescission proposal in 1985 (RS5-93).

* Revised from previous report.

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D86-13A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D85-13 transmitted to Congress on October 1, 1985.

This revision to a deferral of the Department of Energy's Southwestern Power Administration's operation and administration increases the amount previously reported as deferred from $5,000,000 to $13,243,000. This net increase of $8,243,000 is attributed to additional unobligated balances carried over from 1985.

Deferral No: D86-13A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Energy Bureau: Power Marketing Administration Appropriation title and symbol: Southwestern Power Administration, Operation and maintenance 1/ 89X0303	New budget authority..... $*29,500,000 (P.L. 99-141) Other budgetary resources *23,054,293 Total budgetary resources *52,554,293 Amount to be deferred: Part of year $_____ Entire year *13,243,000
OMB identification code: 89-0303-0-1-271 Grant program: |__| Yes |X| No	Legal authority (in addition to sec. 1013): |X| Antidaficiency Act |__| Other_____
Type of account or fund: |__| Annual |__| Multiple-year _____ (expiration date) |X| No-Year	Type of budget authority: |X| Appropriation |__| Contract authority |__| Other_____

Justification: *This account funds the activities of the Southwestern Power Administration (SWPA), an agency that markets wholesale hydroelectric power produced at Corps of Engineers dams in six southwestern States. SWPA activities also include construction, operation and maintenance of approximately 1,660 miles of transmission lines over which power is distributed to customers. In 1985, funds were in excess of amounts required to purchase power and pay non-Federal utilities to deliver it. The level of unobligated funds carried into 1986 for purchasing power was $13,243,000 million higher than previously assumed. There currently is no plan to use these funds in 1986, although the funds will be released later this year if a critical need arises. If a critical need does not arise, however, the funds will be deferred until 1987. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral (D85-17A) and a rescission proposal in 1985 (R85-96).
*/ Revised from previous report.

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Deferral No: D86-57

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Health and Human Services

Bureau:
Health Care Financing Administration

Appropriation title and symbol:

Program management

7560511

OMB identification code:

75-0511-0-1-550

Grant program: | | Yes | X | No

Type of account or fund:

| X | Annual

| | Multiple-year _____ (expiration date)

| | No-Year

New budget authority..... $ 89,533,000
(P.L. 99-178)

Other budgetary resources 1,176,206,000

Total budgetary resources 1,265,739,000

Amount to be deferred:
Part of year $...._____

Entire year 8,489,000

Legal authority (in addition to sec. 1013):

| X | Antideficiency Act

| | Other_____

Type of budget authority:

| X | Appropriation

| | Contract authority

| X | Other Trust Fund transfer

Justification: This account funds research, medicare contractors, State certification, and administrative costs. Part of the expenses are funded by transfers from trust funds. This deferral is being proposed to achieve the deficit reduction goals of the President and of the Balanced Budget and Emergency Deficit Control Act of 1985. A related rescission (R86-43) also includes supplemental language to reduce the transfer from trust funds by $8,489,000 to fund these activities. This deferral will provide the Congress the time and flexibility to consider the supplemental language after the funds withheld pending rescission have been released. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D86-28A

Supplementary Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-28 transmitted to the Congress on October 1, 1985.

This increase by $157,419 the previous deferral of $6,489,137 in the Department of Health and Human Services, Limitation on administration expenses (construction) account, resulting in a total deferral of $6,646,556. This increase is due to an overestimation of field construction obligations in 1985 and unanticipated additional recoveries.

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Deferral No: D86-28A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Svcs	New budget authority..... $ (P.L.)
Bureau: Social Security Administration	Other budgetary resources *10,030,616
Appropriation title and symbol:	Total budgetary resources *10,030,616
Limitation on Administrative Expenses (Construction) 1/ 75X8704	Amount to be deferred: Part of year $ Entire year *6,646,556
OMB identification code: *75-8704-0-7-571	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: *This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office buildings. Obligational authority in the amount of this deferral is not needed at the present time. The increase of $157,419 is due to an overestimation of field construction obligations in FY 1985 ($151,463) and unanticipated additional recoveries ($5,956). There are no changes in projected FY 1986 obligations for construction. Should new requirements arise, subsequent apportionment requests will include revisions to this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-9).

* Revised from previous report.

Deferral No: D86-39

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health & Human Services	New budget authority..... $3,068,341,000 (P.L. 99-178)
Bureau: Social Security Administration	Other budgetary resources -133,066,300
Appropriation title and symbol:	Total budgetary resources 2,935,008,700
Limitation on administrative expenses (excludes disability determination services) 1/ 7568704	Amount to be deferred: Part of year $ 30,000,000 Entire year
OMB identification code: 75-8007-0-7-571	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multiple-year (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: This account funds administrative costs of the Social Security and Supplemental Security Income (SSI) programs, including funds for reimbursable work done by the Social Security Administration (SSA) for other organizations. Current evaluation of 1986 resource requirements reveals that of the total obligational authority provided by P.L. 99-178, $30,000,000 is not needed at this time. The $30,000,000 was provided to ensure that service to the public does not deteriorate as a result of insufficient budgetary resources. At this time there is no reason to believe that deterioration of public service will occur. However, we will be reporting quarterly to Congress on a number of key indicators of public service such as a regional and national average processing times for new and revised claims and payment accuracy. A final decision regarding the need of these resources is expected to be made by March 31, 1986 based on the assessment of information contained in the quarterly reports sent to Congress. In the interim, these resources will not be used for any other purposes. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ Two separate limitations in this same account are also the subject of deferrals (D86-28A and D86-39). This account was the subject of similar deferrals in 1985 (D85-9A, D85-44, and D85-67).

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Deferral No: D86-40

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health & Human Services	New budget authority..... $182,939,000 (P.L. 99-178)
Bureau: Social Security Administration	Other budgetary resources 217,503,121
Appropriation title and symbol: Limitation on administrative expenses (information technology systems) 1/ 75X8704	Total budgetary resources 400,442,121
	Amount to be deferred: Part of year $ ____
	Entire year 114,641,121
OMB identification code: 75-8007-0-7-571	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other ____

Justification: This account funds the lease and purchase of ADP hardware and software, ADP supplies and contractual services, and major competitive telephone system procurements for the Social Security Administration. Current evaluation of 1986 projects and acquisition plans reveals that all resources available this year will not be required for obligation during the year. This is due in part to the carry-over of unobligated funds from 1985. Should new requirements arise, this deferral will be revised. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ Two separate limitations in this same account are also the subject of deferrals (D86-28A and D86-38). This account was the subject of similiar deferrals in 1985 (D85-9A, D85-4M and D85-67).

Deferral No: D86-41

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $9,815,607,781 (P.L. 99-180)
Bureau: Housing Programs	Other budgetary resources 918,498,386
Appropriation title and symbol: Annual contributions for assisted housing (budget authority) 1/ 86X0164	Total budgetary resources 10,734,106,167
	Amount to be deferred: Part of year $7,032,442,637
	Entire year ____
OMB identification code: 86-0164-0-1-999	Legal authority (in addition to sec. 1013): [ ] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other ____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[X] Contract authority
[X] No-Year	[ ] Other ____

Justification: This account funds subsidized housing programs such as section 8 lower income housing, public and Indian housing. Funds were temporarily deferred to preserve the options available to the Administration and the Congress to respond to the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985. The President's 1987 Budget request assumes that $2.9 billion of these funds will be used to finance the 1987 housing program.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is the subject of a rescission proposal (R86-52).

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380 Deferral No: D86-42

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ (P.L.)
Bureau: Housing Programs	Other budgetary resources 640,533
Appropriation title and symbol: Annual contributions for assisted housing (contract authority) 1/ 86X0164	Total budgetary resources 640,533
	Amount to be deferred: Part of year $ 640,533
	Entire year
OMB identification code: 86-0164-0-1-999	**Legal authority (in addition to sec. 1013):** | | Antideficiency Act
Grant program: |X| Yes | | No	| | Other
Type of account or fund: | | Annual	**Type of budget authority:** | | Appropriation
| | Multiple-year (expiration date)	|X| Contract authority
|X| No-Year	| | Other

Justification: This account funds subsidized housing programs such as section 8 lower income housing, public and Indian housing. Funds were temporarily deferred to preserve the options available to the Administration and the Congress to respond to the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is the subject of a rescission proposal (R86-52).

352 Deferral No: D86-43

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $75,000,000 (P.L. 99-160)
Bureau: Housing Programs	Other budgetary resources 2,400,000
Appropriation title and symbol: Rental housing development grants 1/ 864/60164 865/60164 8660164	Total budgetary resources 77,400,000
	Amount to be deferred: Part of year $77,400,000
	Entire year
OMB identification code: 86-0164-0-1-999	**Legal authority (in addition to sec. 1013):** | | Antideficiency Act
Grant program: |X| Yes | | No	| | Other
Type of account or fund: |X| Annual	**Type of budget authority:** |X| Appropriation
|X| Multiple-year Sept. 30, 1986 (expiration date)	| | Contract authority
| | No-Year	| | Other

Justification: Assistance is provided to states and units of local government to enable the development of rental housing, funds were temporarily deferred to preserve the options available to the Administration and the Congress to respond to the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is the subject of a rescission proposal (R86-52).

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380 Deferral No: D86-44

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $2,670,300 (P.L. 99-160)
Bureau: Housing Programs	Other budgetary resources 2,889,961
Appropriation title and symbol: Congregate services program 1/ 86X0178 865/60178 866/70178	Total budgetary resources 5,560,261
	Amount to be deferred: Part of year $2,670,300
	Entire year _____
OMB identification code: 86-0178-0-1-604	Legal authority (in addition to sec. 1013): |___| Antideficiency Act
Grant program: |___| Yes |X| No	|___| Other_____
Type of account or fund:	Type of budget authority:
|___| Annual	|X| Appropriation
|X| Multiple-year Sept. 30, 1986 Sept. 30, 1987 (expiration date)	|___| Contract authority
|X| No-Year	|___| Other_____

Justification: This demonstration program tested whether contracting directly with local public housing agencies and section 202 Housing for the elderly or handicapped sponsors is more effective than Department of Health and Human Services and other social services programs. It included meal services and other support services. Funds were temporarily deferred to preserve the options available to the Administration and the Congress to respond to the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is the subject of a rescission proposal (R86-53).

380 Deferral No: D86-45

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $600,962,000 (P.L. 99-160)
Bureau: Housing Programs	Other budgetary resources 558,905,000
Appropriation title and symbol: Housing for the elderly and handicapped 86X4115	Total budgetary resources 1,159,867,000
	Amount to be deferred: Part of year $ 599,801,000
	Entire year _____
OMB identification code: 86-4115-0-3-371	Legal authority (in addition to sec. 1013): |___| Antideficiency Act
Grant program: |___| Yes |X| No	|___| Other_____
Type of account or fund:	Type of budget authority:
|___| Annual	|___| Appropriation
|___| Multiple-year _____ (expiration date)	|___| Contract authority
|X| No-Year	|X| Other Borrowing Authority

Justification: This fund provides direct loans to nonprofit organizations building and managing housing projects for lower income persons who are elderly or handicapped. Funds were temporarily deferred to preserve the options available to the Administration and the Congress to respond to the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985. The President's Budget includes a supplemental request to lower the direct loan limitation to $54.6 million in 1986.

Estimated Program Effect: None

Outlay Effect: None

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380 Deferral No: D86-46

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $ _____ (P.L. _____)
Bureau: Housing Programs	Other budgetary resources 6,824,887
Appropriation title and symbol: Non-profit sponsor assistance 86X4042	Total budgetary resources 6,824,887
	Amount to be deferred: Part of year $ 1,000,000
	Entire year _____
OMB identification code: 86-4042-0-3-604	Legal authority (in addition to sec. 1013): |___| Antideficiency Act
Grant program: |___| Yes |X| No	|___| Other _____
Type of account or fund:	**Type of budget authority:**
|___| Annual	|X| Appropriation
|___| Multiple-year _____ (expiration date)	|___| Contract authority
|X| No-Year	|___| Other _____

Justification: This program funds interest-free loans to nonprofit organizations to cover initial start-up costs for housing projects financed under the section 202 housing for the elderly and handicapped program. Funds deferred to preserve the options available to the Administration and the Congress to respond to the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985. The President's Budget includes a proposed supplemental to lower the non-profit sponsor assistance direct loan limitation to $500 thousand -- funding sufficient to cover expected needs for section 202 projects reserved prior to 1986. No new section 202 loans are proposed for 1986 or 1987.

Estimated Program Effect: None

Outlay Effect: None

333 Deferral No: D86-47

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... $75,000,000 (P.L. 99-160)
Bureau: Community Planning and Development	Other budgetary resources 4,471,360
Appropriation title and symbol: Rental rehabilitation grants program 865/60164 866/60164 866/60164	Total budgetary resources 79,471,360
	Amount to be deferred: Part of year $77,000,000
	Entire year _____
OMB identification code: 86-0164-0-1-999	Legal authority (in addition to sec. 1013): |___| Antideficiancy Act
Grant program: |X| Yes |___| No	|___| Other _____
Type of account or fund:	**Type of budget authority:**
|X| Annual	|X| Appropriation
|X| Multiple-year Sept. 30, 1986 (expiration date)	|___| Contract authority
|___| No-Year	|___| Other _____

Justification: The Rental Rehabilitation Grants Program appropriation is devoted to increasing the supply of standard rental housing available to lower-income families in areas experiencing a shortage of decent rental housing units. Rehabilitation subsidies are provided through a one-time front-end mechanism such as a grant, a deferred payment loan, or a below market-rate interest loan. Funds were temporarily deferred to preserve the discretion of the Administration and Congress to decide on how to comply with the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is the subject of a rescission proposal (R86-52).

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Deferral No: D86-48

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Housing and Urban Development

Bureau:
Community Planning and Development

Appropriation title and symbol:
Community development grants
866/80162

OMB identification code:
86-0162-0-1-451

Grant program: [X] Yes [ ] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1988 (expiration date)
[ ] No-Year

New budget authority..... $3,124,800,000
(P.L. 99-160)
Other budgetary resources 106,651,365

Total budgetary resources 3,231,451,365

Amount to be deferred:
Part of year $
Entire year 500,000,000

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This appropriation is devoted to making grants to units of general local government and States for the funding of local community development programs. The program's overall objective is to provide decent housing and a suitable living environment and expand economic opportunities, principally for persons of low- and moderate- income. Supplemental language has been proposed to reduce the limitation on loans guaranteed under the Community Development Grants loan guarantee program that are disbursed by the Federal Financing Bank to $50,000,000. Funds are deferred to preserve the discretion of the Administration and Congress to comply with the Balanced Budget and Emergency Deficit Control Act of 1985. Most communities may be able to absorb this deferral through tighter budgeting and drawing down available balances.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1986	1987	1988	1989	1990	1991
3,577,400	3,567,400	-10,000	-9,000	-7,500	23,000	3,500	---

Deferral No: D86-49

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Housing and Urban Development

Bureau:
Community Planning and Development

Appropriation title and symbol:
Urban development action grants 1/
866/80170

OMB identification code:
86-0170-0-1-451

Grant program: [X] Yes [ ] No

Type of account or fund:
[ ] Annual
[X] Multiple-year Sept. 30, 1988 (expiration date)
[ ] No-Year

New budget authority..... $330,000,000
(P.L. 99-160)
Other budgetary resources 163,998,675

Total budgetary resources 493,998,675

Amount to be deferred:
Part of year $251,000,000
Entire year

Legal authority (in addition to sec. 1013):
[ ] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This appropriation provides grants to cities and urban counties which are experiencing severe distress to help stimulate economic development activity needed to aid in economic recovery. Funds were temporarily deferred to preserve the discretion of the Administration and Congress to comply with the Balanced Budget and Emergency Deficit Control Act of 1985.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is the subject of a rescission proposal (R86-55).

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Deferral No: D86-50

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	**New budget authority.....** $ (P.L.)
Bureau: Community Planning and Development	**Other budgetary resources** 166,234,949
Appropriation title and symbol: Rehabilitation loan fund 86X4036	**Total budgetary resources** 166,234,949
	Amount to be deferred: Part of year $
	Entire year 135,534,949
OMB identification code: 86-4036-0-3-451	**Legal authority (in addition to sec. 1013):** | | Antideficiency Act
Grant program: | | Yes | X | No	| | Other
Type of account or fund:	**Type of budget authority:**
| | Annual	| X | Appropriation
| | Multiple-year (expiration date)	| | Contract authority
| X | No-Year	| | Other

Justification: The Rehabilitation Loan Fund makes rehabilitation loans for single family and multifamily residential properties and non-residential properties (section 312 loans). Loans may only be made if the rehabilitation is: (1) necessary for the execution of an approved community development program; or (2) is in support of an approved Urban Homesteading program. In making Section 312 loans, priority generally is given to applications submitted by low- and moderate- income persons who own property and will occupy it upon completion of rehabilitation. The purposes of this program can and should be met by a combination of other federal programs, state and local government support, and private enterprise.

This deferral preserves the discretion for the Administration and Congress to reconsider the expenditure of 1986 funds on this program in light of the current deficit and the Balanced Budget and Emergency Deficit Control Act of 1985. The President's Budget includes supplemental appropriation language that would transfer the unobligated and obligated balances in this account to the Revolving fund (liquidating programs). This language would also limit the direct loan activity in this account to $11 million in 1986.

Estimated Program Effect: Section 312 loans will be temporarily delayed.

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Changes					
Without Deferral	With Deferral	1986	1987	1988	1989	1990	1991
77,000	-5,000	-82,000	29,000	53,000	---	---	---

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D86-17A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-17 transmitted to Congress on October 1, 1985.

This increases by $10,730,000 the previous deferral of $20,000,000 for the Department of Justice-Federal Prison System, Building and facilities, resulting in a total deferral of $30,730,000. The increase in the amount deferred is attributable to delays in several projects.

Deferral No: D86-17A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Justice Bureau: *Federal Prison System Appropriation title and symbol: Buildings and facilities 1/ 15X1003	New budget authority..... $*46,063,000 (P.L. 99-180) Other budgetary resources *122,301,259 Total budgetary resources *168,364,259 Amount to be deferred: Part of year $ ____ Entire year *30,730,000
OMB identification code: 15-1003-0-1-753 Grant program: [ ] Yes [X] No	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other ____
Type of account or fund: [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: *This appropriation finances planning, acquisition of sites, and construction of new penal and correctional facilities as well as construction, remodeling, and equipping necessary buildings and facilities at existing penal and correctional institutions. Projects are undertaken to reduce overcrowding, close old and antiquated penitentiaries and provide a safe and humane environment for staff and inmates. The deferral contains $24,330,000 for the Northeast facility, $53,000 for the new housing unit at Montgomery, $1,674,000 for buildings 8 and 9 at Springfield, $25,000 for Cellhouse A at El Reno, $51,000 to renovate inmate housing at Texarkana, $4,414,000 for the Englewood Detention Unit and $183,000 for the Tucson Core Building. Due to the time required for these projects, it will be impossible to complete them during 1986. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-14).

* Revised from previous report.

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D86-18A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-18 transmitted to Congress on October 1, 1985.

This increases by $3,395,535 the previous deferral of $100,000,000 for the Department of Justice's Crime victims fund account, resulting in a total deferral of $103,395,535. The increase in the amount deferred is attributable to a proposal to establish a 1986 obligation limitation of $64,917,420.

Deferral No: D86-18A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Justice	New budget authority..... $100,000,000 (P.L. 98-473)
Bureau: Office of Justice Programs	Other budgetary resources *68,312,955
Appropriation title and symbol: Crime victims fund 15X5041	Total budgetary resources *168,312,955
	Amount to be deferred: Part of year ____
	Entire year *103,395,535
OMB identification code: 15-5041-0-2-754	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other ____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other ____

Justification: *This appropriation is a special fund which is credited with Federal criminal fines, forfeited appearance bonds, and penalties not to exceed $100,000,000 each fiscal year. It is used to provide grants to states for crime victim compensation and assistance programs. Since FY 1985 funds will be obligated in early 1986, $100,000,000, which is estimated to be collected during 1986, is deferred until 1987. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512). In addition, an obligation limitation of $64,917,420 is proposed for 1986, with the balance of the collections ($3,395,536) deferred until 1987. It will only affect the amount that is spent by Federal agencies for victims activites; no grant funds targeted for the States would be affected.

Estimated Program Effect: None

Outlay Effect: None

* Revised from previous report.

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Deferral No: D86-51

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: U.S. Department of Labor	New budget authority..... $ 22,700,000 (P.L. 98-619)
Bureau: Employment and Training Admin.	Other budgetary resources 769,500,000
Appropriation title and symbol: State Unemployment Insurance and Employment Service Operations 1/ 166/70179	Total budgetary resources 792,200,000
	Amount to be deferred: Part of year $ ____
	Entire year 37,000,000
OMB identification code: 16-0179-0-1-999	Legal authority (in addition to sec. 1013): [ ] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other ____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[X] Multiple-year June 30, 1987 (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other ____

Justification: The State Unemployment Insurance and Employment Service Operations appropriation provides for State grants for payment of salaries and expenses of State Unemployment Insurance and Employment Services staff and for related operations. The Wagner-Peyser Act, as amended, gives States great flexibility in the use of these grants to provide employment services, particularly in comparison to the relative inflexibility that characterized the grants prior to 1985. The amount deferred was provided from the Unemployment Trust Fund for the Employment Service for the 1986 program year beginning July 1, 1986. The reduction, part of overall efforts to constrain expenditures in order to meet deficit reduction goals, would reduce these grants three percent below the level of such grants for the program year that began July 1, 1985. The amount is deferred pending Congressional action on the Administration proposal to delete this funding.

Estimated Program Effect: None

D86-51

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate Without Deferral	1986 Outlay Estimate With Deferral	Outlay Changes 1986	1987	1988	1989	1990	1991
2/	2/	-7,400	-29,600	---	---	---	---

1/ This account was the subject of a similar deferral in 1985 (D85-62).
2/ Outlays are included within the totals for the Unemployment trust fund.

Note - $33,049 thousand of the amount previously deferred is sequestered pursuant to P.L. 99-177. The current deferral is $3,911 thousand.

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Deferral No: D86-52

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation	New budget authority..... $_____ (P.L.)
Bureau: Federal Railroad Administration	Other budgetary resources 7,213,697
Appropriation title and symbol: Conrail labor protection 69X0710	Total budgetary resources 7,213,697
	Amount to be deferred: Part of year $_____ Entire year $ 4,565,000
OMB identification code: 69-0707-0-1-603	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other_____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multiple-year _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other_____

Justification: Unobligated balances that were carried over from 1985 totalled $35,713,697. As specified in P. L. 99-190, $28,500,000 of these funds are being transferred to Amtrak, leaving a balance of $7,213,697. The House and Senate Appropriations Committee have directed the Department of Transportation to initiate discussions with Conrail regarding the Railroad assuming full financial responsibility for labor protection costs. It is anticipated that approximately $2.6 million will be obligated in 1986 and no further funds will be required after that. The 1987 Budget proposes transfer of $4,565,000, the remaining unobligated funds, to the Office of the Administrator to offset a reduction in budget authority for that year in support of deficit reduction efforts. Funds are deferred to permit Congressional consideration of this proposal.

Estimated Program Effect: None

Outlay Effect: None

D86-29A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-29 transmitted to Congress on November 25, 1985.

This increases by $681,723,252 the previous deferral of $686,438,312 in the Department of Transportation's Facilities and equipment, FAA trust fund account, resulting in a total deferral of $1,368,161,564. The increase results from projects and equipment funded in the Department of Transportation Appropriation Act, 1986, that cannot be constructed or contracted for this year.

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Deferral No: D86-29A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation **Bureau:** Federal Aviation Administration **Appropriation title and symbol:** Facilities and equipment (Airport and airway trust fund) 1/ 69X8107 693/78107 695/98107 692/68107 694/88107 *696/08107 **OMB identification code:** 69-8107-0-7-402 **Grant program:** [ ] Yes [X] No **Type of account or fund:** [ ] Annual 692/68107 9/30/86; 693/78107 9/30/87; 694/88107 9/30/88 [X] Multiple-year 695/98107 9/30/89 (expiration date) [X] No-Year *696/08107 9/30/90	**New budget authority.....** (P.L. 99-190) *$ 993,000,000 **Other budgetary resources** *1,266,161,564 **Total budgetary resources** *$2,259,161,564 **Amount to be deferred:** Part of year $ ____ Entire year $1,368,161,564 **Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____ **Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: Funds from this account are used to continue to procure specific Congresionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings and the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion and improvement in the navigational and landing aid systems. These activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested. Due to the lengthy procurement and construction time for interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This action is consistent with FAA's full funding approach and Congressional intent to provide multi-year funding for the total costs of projects. This action is taken under provisions of the Antideficiency Act (31 U.S.C. 1512), which authorizes the establishment of reserves for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-11B).

* Revised from previous report.

Deferral No: D86-53

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation **Bureau:** Maritime Administration **Appropriation title and symbol:** Operations and training 1/ 69X1750 **OMB identification code:** 69-1750-0-1-403 **Grant program:** [ ] Yes [X] No **Type of account or fund:** [ ] Annual [ ] Multiple-year ____ (expiration date) [X] No-Year	**New budget authority.....** (P.L. 99-180) $ 69,700,000 **Other budgetary resources** 32,847,935 **Total budgetary resources** 102,547,935 **Amount to be deferred:** Part of year $ ____ Entire year 8,350,000 **Legal authority (in addition to sec. 1013):** [ ] Antideficiency Act [ ] Other ____ **Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: The Operations and training appropriation funds all the administrative expenses and most program expenses of the Maritime Administration. Included are three programs of Federal financial support to state maritime schools: (1) direct payments to the schools, (2) student incentive payments, and (3) maintenance and repair of training ships. Operations and training has $9,350,000 of unobligated balances that are no longer needed for the originally intended purposes of replacing the training vessel for the State University of New York Maritime College ($8,500,000) and fuel for operating training vessels at five State maritime schools ($850,000). The $8,500,000 was proposed for deferral and reprogramming in the 1986 budget on the basis that the existing training vessel for the New York State maritime school is adequate. Congress denied the deferral. The 1987 budget proposes to discontinue all financial support for State maritime schools, except for honoring student incentive payments already awarded to enrolled students. Accordingly, the $8,500,000 for the replacement training vessel for the New York maritime school is deferred. The $850,000 is left-over from

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$3,000,000 of fuel funds added by Congress in 1984. In that year, the State maritime schools consumed only $2,150,000 of fuel and the residual $850,000 has not been obligated since. The deferral will be used to offset 1987 appropriation requirements. The necessary supplemental language permitting the use of the $8,500,000 is pending.

Estimated Program Effect: None

Outlay Effect (in thousands of dollars):

1986 Outlay Estimate		Outlay Change					
Without Deferral	With Deferral	1986	1987	1988	1989	1990	1991
89,140	80,640	-8,500	8,500	---	---	---	---

1/ This account was the subject of a similar deferral (D85-54) and a rescission proposal (R85-193) in 1985.

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D86-30 transmitted to Congress on November 25, 1985.

This increases by $97,483,234 the previous deferral of $7,742,617 in the Department of the Treasury's Local government fiscal assistance trust fund account, resulting in a total deferral of $105,225,851. The funds are payments withheld for local governments due to reorganization or for noncompliance with General Revenue Sharing requirements.

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Deferral No: D86-30A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of the Treasury
Bureau:
*Office of Revenue Sharing
Appropriation title and symbol:
Local Government Fiscal Assistance Trust Fund 1/
20X8111
OMB Identification code:
20-8111-0-7-851
Grant program:
[X] Yes [ ] No
Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority..... $3,425,025,000
(P.L. 99-103)
Other budgetary resources 54,000,000
Total budgetary resources 3,479,025,000
Amount to be deferred: 2/
Part of year $ *105,225,851
Entire year
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act P.L. 98-371
[X] Other P.L. 96-488
P.L. 96-604, P.L. 97-512, P.L. 98-185
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: The Local Government Fiscal Assistance Trust Fund is the vehicle for disbursement of General Revenue Sharing funds. This deferral represents payments withheld from various governments involved in annexations or disincorporations and for reasons of non-compliance with the requirements of the Local Government Fiscal Assistance Amendments of 1983.

Estimated Program Effect: None

Outlay Effect: None

1/ This account is subject to another deferral (D86-31) and was the subject of a similar deferral in 1985 (D85-12).

2/ Deferral of outlays only.

* Revised from previous report.

Deferral No: D86-54

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Commission on the Ukraine Famine
Bureau:
Appropriation title and symbol:
Salaries and expenses
48X0050
OMB Identification code:
48-0050-0-1-153
Grant program:
[ ] Yes [X] No
Type of account or fund:
[ ] Annual
[ ] Multiple-year (expiration date)
[X] No-Year

New budget authority..... $400,000
(P.L. 99-180)
Other budgetary resources
Total budgetary resources 400,000
Amount to be deferred:
Part of year $
Entire year 233,000
Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other
Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Justification: This appropriation funds the expenses of the Commission on the Ukraine Famine established pursuant to Public Law 99-180. The Commission will not hold its first organizational meeting until February 1986, and the work of the Commission is expected to extend into 1987. These funds are being deferred to ensure that sufficient resources will be available in the next fiscal year to carry out the commission's responsibilities.

Estimated Program Effect: None

Outlay Effect: None

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Deferral No: D86-55

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Railroad Retirement Board

Bureau:

Appropriation title and symbol: Dual benefits payments account 6060111

OMB identification code: 60-0111-0-1-601

Grant program: | | Yes | X | No

Type of account or fund:
| X | Annual
| | Multiple-year _____ (expiration date)
| | No-Year

New budget authority..... $392,000,000 (P.L. 99-178)
Other budgetary resources 201,280
Total budgetary resources 392,201,280
Amount to be deferred:
Part of year $ 2,201,280
Entire year _____

Legal authority (in addition to sec. 1013):
| X | Antideficiency Act
| | Other _____

Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other _____

Justification: This is a Federal subsidy for costs not financed by the railroad sector. Not all funds appropriated are needed to fully fund benefits payable to eligible beneficiaries for the year. The transfer of reimbursement for uncashed checks ($201,280) under the Railroad Retirement Solvency Act (P.L. 98-76) is being deferred as it is not needed to fully fund benefits in the fiscal year. Also, $2 million of the 1986 appropriation is being deferred as it is not needed to fully fund benefits. The amount deferred is being reserved for contingencies under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No: D86-56

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: U.S. Information Agency

Bureau:

Appropriation title and symbol: Acquisition and construction of radio facilities 1/ 67X0204

OMB identification code: 67-0204-0-1-154

Grant program: | | Yes | X | No

Type of account or fund:
| | Annual
| | Multiple-year _____ (expiration date)
| X | No-Year

New budget authority..... $114,000,000 (P.L. 99-180)
Other budgetary resources 80,545,332
Total budgetary resources 194,545,332
Amount to be deferred:
Part of year $ _____
Entire year 66,545,364

Legal authority (in addition to sec. 1013):
| X | Antideficiency Act
| | Other _____

Type of budget authority:
| X | Appropriation
| | Contract authority
| | Other _____

Justification: The United States Information Agency (USIA) is authorized by the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431, et. seq.), the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2451, et. seq.), Executive Order 11034 of June 25, 1962, as amended, and Reorganization Plan No. 2 of 1977 to carry out international communication, cultural, and education exchange programs. The Appropriations Act for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the fiscal year ending September 30, 1986 appropriated $114,000,000 to remain available until expended for the "Acquisition and construction of radio facilities" account, primarily to enhance the Voice of America's world-wide broadcasting system. It is estimated that $66,545,364 will not be obligated during 1986. Several major procurement actions, particularly those for high-powered transmitters and generators for a number of new stations, will get underway in 1986, but award of the contracts will not occur until 1987. Funds for these purposes had to be appropriated in FY 1986 so that these major procurements could be launched. Accordingly, these funds are reserved for use in succeeding years. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1985 (D85-75).

[FR Doc. 86-3001 Filed 2-14-86; 8:45 am]
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Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 174, 175, 176, 177, and 178

Transportation of Hazardous Materials; Miscellaneous Amendments; Final Rule

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 106, 107, 171, 172, 173, 174, 175, 176, 177, and 178

[Docket No. HM-166T; Amdt. Nos. 106-5, 107-14, 171-86, 172-103, 173-196, 174-59, 175-37, 176-24, 177-68, and 178-95]

Transportation of Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to incorporate into the Department's Hazardous Materials Regulations a number of changes based on petitions from industry and initiation within the Department. This action is necessary to update the regulations, to eliminate the need for a DOT approval, and to reduce RSPA's backlog of rulemaking petitions.

The amendments in this rulemaking are intended primarily to reduce government regulation and paperwork, and to clarify existing regulations.

EFFECTIVE DATE: This amendment is effective March 20, 1986. However, compliance with the regulations as amended herein, is authorized as of February 5, 1986. The incorporation by reference of certain publications in the regulations is approved by the Director of the Federal Register as of March 20, 1986.

FOR FURTHER INFORMATION CONTACT: Darrell L. Raines, Chief, Exemptions and Regulations Termination Branch, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Washington, DC 20590, (202)-426-2075.

SUPPLEMENTARY INFORMATION: On January 3, 1985, the RSPA published a Notice of Proposed Rulemaking, Docket No. HM-166T; Notice No. 84-14 (50 FR 288), which proposed a number of miscellaneous amendments to the Hazardous Materials Regulations. Notice 84-14 included a brief statement regarding each proposal and invited public comment prior to the closing date of March 7, 1985.

The RSPA received twenty-four comments regarding Notice 84-14. Ten of the comments received were to express their support of the proposed amendments.

One commenter pointed out that the proposed change to § 173.427, among other things, exempts empty packaging from certification requirements whereas § 173.421-1(a) would be amended by requiring the certification described therein to be applied to empty packaging. The RSPA agrees that these changes are contradictory and the introductory text of § 173.427 has been editorially revised to eliminate the contradiction.

One commenter pointed out that the proposed maximum net quantity of 1 quart for passenger carrying aircraft and 10 gallons for cargo aircraft for Nitroethane and Nitropropane would be in conflict with International Civil Aviation Organization and International Air Transport Association. The RSPA agrees with the commenter and has increased the maximum net quantity to 15 gallons for passenger carrying aircraft and 55 gallons for cargo aircraft.

The notice proposed to allow Class B poisons to be transported on the same vehicle with materials that are marked or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals when overpacked in a steel drum under specified conditions. Seven commenters supported this proposed amendment as written. One recommended that the maximum rated capacity of the drum be 83 gallons because this size drum is stocked by most carriers and experience has shown that some drums with external head fastening devices will not fit inside a 65 gallon recovery drum. Two commenters expressed concern about the proposed amendment but no comments were received on how to improve the proposed wording.

The use of the steel drum overpacks specified in § 173.25(c) is considered to be adequate to prevent damage to the inside packaging during transportation and to provide the required levels of safety. The outside packaging must be marked and labeled. Except for an increase in size to 85 gallons, § 173.25(c) and § 177.841(e) are amended as proposed.

A proposed change recommended by one commenter to add an additional paragraph in § 178.410 will be considered in a separate rulemaking.

One commenter stated that he felt that the exception proposed in § 172.507 pertaining to the marking and placarding of nurse tanks on only three sides under specified conditions is unwarranted and could set an unfavorable precedent. This commenter also stated that it appears inappropriate to address marking exceptions in Subpart F rather than in Subpart D. Reference to marking has been moved from § 172.507 to § 172.328(c). RSPA disagrees that by waiving the marking-placarding requirements on the end of a nurse tank that has valves, fittings, regulators, and gauges would set an unfavorable precedent. Photographs of some of the nurse tanks in question clearly indicate they do not have enough space on the end to affix the required marking and placard. In view of the manner in which these nurse tanks are operated and the fact that there is no practical way to comply with the present requirements, § 172.507 is amended as proposed.

Two commenters objected to the proposed removal of paragraph (a)(7) of § 175.45 which pertains to reporting hazardous materials incidents. Because of these two objections and after further consideration, paragraph (a)(7) of § 175.45 has not been changed by this rulemaking.

One commenter suggested that the proposed change in § 173.115(d)(2) be reworded. The RSPA believes that the commenter's proposed change and the wording in the notice are essentially the same. Therefore, § 173.115(d)(2) is amended as proposed.

One commenter agreed that paragraph (f) in § 173.260 is redundant. However, this commenter recommended that § 173.260(a)(3) be amended by adding a sentence at the end to clarify the marking and labeling of skids or pallets of electric storage batteries. The RSPA agrees with this commenter that this revision will reduce vagueness and add clarity to marking and labeling of batteries which are exempt from specification packaging requirements. However, they are not exempt from the marking and labeling requirements. A sentence has been added to § 173.260(a)(3) to read "Unless specifically exempt from marking and labeling, each pallet or skid must be marked and labeled as required by Part 172."

Included in this rulemaking, but not included in the notice are twelve additional changes which the RSPA believes are necessary. These changes are not considered to be controversial and they do not impose any additional cost or record keeping. These twelve changes revise (1) § 172.101 Table, (2) § 172.512(a), (3) § 172.12(b), (4) § 173.304, (5) § 173.465(d)(2), (6) § 174.81(f) and § 177.848(f), (7) § 175.30, (8) § 178.92-12(a), (9) § 178.98-9, § 178.99-9, § 178.131-9 and § 178.132-9, (10) § 178.102-4(a), (11) § 178.205-16, and (12) § 178.337-17(a), § 178.338-18 (a) and (b), and § 178.340-10(b).

An editorial correction has been made in column (5)(a) of the § 172.101 Table for the entry Diisooctyl acid phosphate.

The revision to § 172.512 (a)(1) and (a)(2) removes the reference to obsolete subparagraphs (c)(1) and (c)(2) of § 172.504.

In § 173.12, paragraph (b) has been revised to authorize the compression test for the polyethylene drum to be the same as specified in § 178.19-7(c)(2), as applicable. At the present time, the polyethylene drum must withstand a compression test of 2400 pounds regardless of the size.

In § 173.304, the table in paragraph (a)(2) for the entry "Bromotrifluoromethane" has been amended by adding "DOT-4BA400" in the third column. This specification cylinder was inadvertently omitted from the list of authorized cylinders in Docket HM-176 (47 FR 13816) on April 1, 1982.

In § 173.465, paragraph (d)(2) has been amended by changing the word "horizontally" to read "vertically". The specification of the surface area of a Type A package which must be used in determining the compression test requirements of § 173.465(d)(2) has caused some confusion. The term used in the International Atomic Energy Agency and Nuclear Regulatory Commission transport regulations to specify a horizontal surface area is "vertically projected area". RSPA wishes to be consistent in this specification and consequently the word "horizontally" is hereby changed to read "vertically".

In § 174.81(f) and § 177.848(f) the Segregation and Separation Chart of Hazardous Materials has been changed by removing the reference to footnote "2" at the intersection of column "e" and line "13". The "2" was inadvertently added when the two charts were revised under Docket No. HM-191.

In § 175.30, paragraph (e)(1) has been revised because the present wording is confusing and shipments of industrial gauges containing sealed source (special form) radioactive materials in Type A quantities have been delayed or refused because the outside package does not provide clear visibility without cutting windows in the overpack. Paragraph (c)(1) of § 175.85 authorizes this type of material to be stowed inaccessible to the crew.

In § 178.92-12, the introductory text of paragraph (a) has been revised to authorize DOT Specification 5P lagged steel drums to be marked by steel stamping. Recent amendment under Docket No. HM-166R inadvertently removed this method of marking.

In § 178.98-9, § 178.99-9, § 178.131-9, and § 178.132-9 paragraph (a)(1) in each section has been revised to specifically require the authorized gross weight to be included as part of the marking requirements.

In § 178.102-4, the introductory text of paragraph (a) has been revised to authorize altered DOT Specification 6D steel overpacks to be embossed on the body of the drum, no more than six inches from the top curl. This proposed change was included in Notice No. 84-3 [49 FR 10780] on March 22, 1984, but was omitted in the final rule.

In § 178.205-16, the Table in paragraph (a) is reprinted to correct an error in columns 4, 5, and 6 for an authorized gross weight of 40 pounds which appeared in Docket No. HM-169C on October 11, 1985 (50 FR 41523).

On March 19, 1985, Docket No. HM-166R [50 FR 11048] revised parts of § 178.337-17(a), § 178.338-18 (a) and (b), and § 178.340-10(b) to require the metal certification plate to be on the left side on all new DOT Specification MC 306, MC 307, MC 312, MC 331, and MC 338 cargo tanks. Inquiries were received regarding the effective date for which the new tanks must have the "plate" on the left side. Since HM-166R had an effective date of July 1, 1985, cargo tanks built after that date must have the "plate" on the left side instead of the right side. RSPA is adding this date to the regulation for purposes of clarification.

Based on limited information available concerning size and nature of entities likely to be affected, I certify that this regulation will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, in view of the type of changes, the RSPA has further determined that this rulemaking (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is considered unnecessary because the anticipated impact is minimal.

List of Subjects

49 CFR Part 106

Hazardous materials transportation, Administrative practice and procedures.

49 CFR Part 107

Hazardous materials transportation, Programs procedures, penalties.

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Labeling, packaging and containers.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, 49 CFR Parts 106, 107, 171, 172, 173, 174, 175, 176, 177, and 178 are amended as follows:

PART 106—RULEMAKING PROCEDURES

1. The authority citation for Part 106 is revised to read as follows:

Authority: Sec. 902(h)(1), Pub. L. 85-726, 72 Stat. 784 (49 U.S.C. 1472(h)(1)); sec. 3, Pub. L. 90-481, 82 Stat. 720 (49 U.S.C. 1672); 105, Pub. L. 93-633, 88 Stat. 2157, (49 U.S.C. 1804); sec. 21(a), Pub. L. 93-627, 88 Stat. 2146 (33 U.S.C. 1520); (49 CFR 1.45 and 153 and App. A of Part 1); Pub. L. 89-670 (49 U.S.C. 1653); sec. 203, Pub. L. 96-126, 93 Stat. 1004 (49 U.S.C. 2002).

2. In Part 106, Appendix A to Part 106 is amended by removing and reserving paragraph (a)(1).

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

3. and 4. The authority citation for Part 107 is revised to read as follows:

Authority: 49 U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53 and App. A of Part 1, Pub. L. 89-670 (49 U.S.C. 1653(d), 1655).

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

5. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

6. In § 171.7, paragraph (d)(4)(iii) and (d)(23) are revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

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(4) * * *

(iii) American National Standard N14.1 is titled, "Packaging of Uranium Hexafluoride for Transport," 1982 edition.

* * * * *

(23) USDOT, "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials."

* * * * *

7. In § 171.8, the definitions of "Hazardous waste", "State designated route", and "Transport vehicle" are revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Hazardous waste", for the purposes of this chapter, means any material that is subject to the Hazardous Waste Manifest Requirements of the U.S. Environmental Protection Agency specified in 40 CFR Part 262.

* * * * *

"State-designated route" means a preferred route selected in accordance with U.S. DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials" or an equivalent routing analysis which adequately considers overall risk to the public. Designation must have been preceded by substantive consultation with affected local jurisdictions and with any other affected States to ensure consideration of all impacts and continuity of designated routes.

* * * * *

"Transport vehicle" means a cargo-carrying vehicle such as an automobile, van, tractor, truck, semitrailer, tank car or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, rail car, etc.) is a separate transport vehicle.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

8. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806; 49 CFR Part 1, unless otherwise noted.

9. In § 172.101, the Hazardous Materials Table is amended to read as follows:

§ 172.101 Hazardous Materials Table

+EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Packaging		Maximum net quantity in one package		Water shipments		
					Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo aircraft only	Cargo vessel	Passenger vessel	Other requirements
(1)	(2)	(3)	(3a)	(4)	5(a)	5(b)	6(a)	6(b)	7(a)	7(b)	7(c)
	(ADD)										
	* * * * *										
	Nitroethane	Flammable liquid	UN2842	Flammable liquid	173.118	173.119	35 gallon	55 gallons	1, 2	1	
	Nitropropane	Flammable liquid	UN2608	Flammable liquid	173.118	173.119	15 gallon	55 gallons	1, 2	1	
	(REVISE)										
	Dioctyl acid phosphate	Corrosive material	UN1902	Corrosive	173.244	173.266	1 quart	1 quart	1, 2	1, 2	Glass carboys in hampers not permitted under deck.
	Radioactive material, empty packages.	Radioactive material.	UN2908	Empty	173.421-1 173.427	173.421-1 173.427			1, 2	1, 2	
	* * * * *										

10. In § 172.202, paragraph (e) is revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

* * * * *

(e) Except for those materials in the UN Recommendations, the ICAO Technical Instructions, or the IMDG Code, a material that is not a hazardous material according to this subchapter may not be offered for transportation or transported when its description on a shipping paper includes a hazard class or an identification number specified in § 172.101.

* * * * *

11. In § 172.203, paragraph (h) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(h) *Transportation by highway.* Following the basic description for a hazardous material in a Specification MC 330 or MC 331 cargo tank, there must be entered for—

(1) *Anhydrous ammonia.* (i) The words "0.2 PERCENT WATER" to indicate the suitability for shipping anhydrous ammonia in a cargo tank made of quenched and tempered steel as authorized by § 173.315(a)(1), Note 14 of this subchapter, or

(ii) The words "NOT FOR Q and T TANKS" when the anhydrous ammonia does not contain 0.2 percent or more water by weight.

(2) *Liquefied petroleum gas.* (i) The word "NONCORROSIVE" or "NONCOR" to indicate the suitability for shipping "Noncorrosive" liquefied petroleum gas in a cargo tank made of quenched and tempered steel as authorized by § 173.315(a)(1), Note 15 to this subchapter, or

(ii) The words "NOT FOR Q and T TANKS" for grades of liquefied petroleum gas other than "Noncorrosive".

* * * * *

12. In § 172.328, the introductory text of paragraph (c) is revised to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(c) *Required markings: Gases.* Except for certain nurse tanks which must be marked as specified in § 173.315(m) of this subchapter, each cargo tank transporting flammable or nonflammable gas (including a cryogenic liquid) subject to this subchapter must be marked as specified in this part on each end and each side with—

* * * * *

13. In § 172.502, the introductory text of paragraph (a), paragraph (b), and the introductory text of paragraph (c) are revised to read as follows:

§ 172.502 Prohibited placarding.

(a) Except as provided in paragraph (c) of this section, no person may affix or display on a transport vehicle, portable tank or freight container any placard described in this subpart unless:

* * * * *

(b) No person may affix or display any sign or other device on a transport vehicle, portable tank, or freight container, that by its color, design, shape, or content could be confused with any placard prescribed in this subpart.

(c) The restrictions in paragraphs (a) and (b) of this section do not apply to transport vehicles, portable tanks, or freight containers which—

* * * * *

14. In § 172.504, paragraphs (a), (b), and (c), the heading in columns 1 and 2 of Table 1 and Table 2, footnotes 2 and 5 of Table 1, and footnote 9 of Table 2, are revised to read as follows:

§ 172.504 General placarding requirements.

(a) Except as otherwise provided in this subchapter, each transport vehicle and freight container containing any quantity of a hazardous material must be placarded on each end and each side with the type of placards specified in the following tables and other placarding requirements of this subpart, including the specifications for the placards named in the tables and described in detail in §§ 172.519 through 172.558.

(b) A transport vehicle or freight container containing two or more classes of materials requiring different placards specified in Table 2 may be placarded DANGEROUS in place of the separate placarding specified for each of those classes of material specified in Table 2. However, when 5,000 pounds or more of one class of material is loaded therein at one loading facility, the placard specified for that class in Table 2 must be applied. This paragraph does not apply to a portable tank, cargo tank, or tank car.

(c) When the gross weight of all hazardous materials covered by Table 2 is less than 1000 pounds, no placard is required on a transport vehicle, or freight container for the Table 2 materials. A Table 1 material must be placarded as specified in Table 1. This paragraph does not apply to portable tanks, cargo tanks, tank cars, transportation by air or water, or transport vehicles and freight containers subject to § 172.505.

(d) * * *

TABLE 1

If the transport vehicle, or freight container contains a material classed (described) as—	The transport vehicle or freight container must be placarded on each side and each end—
* * * * *	

[2] EXPLOSIVES B placard not required if the transport vehicle or freight container contains class A explosives and is placarded EXPLOSIVES A as required.

[5] For exclusive use shipments (see § 173.403) of low specific activity radioactive materials transported in accordance with § 173.425 (b) or (c).

* * * * *

TABLE 2

If the transport vehicle, or freight container contains a material classed (described) as—.	The transport vehicle or freight container must be placarded on each side and each end—
* * * * *	

[9] BLASTING AGENTS, OXIDIZER and DANGEROUS placards need not be displayed if a transport vehicle or freight container also contains Class A or Class B explosives and is placarded EXPLOSIVES A or EXPLOSIVES B as required.

* * * * *

15. Section 172.507 is revised to read as follows:

§ 172.507 Special placarding provisions: Highway.

(a) Each motor vehicle used to transport a package of highway route controlled quantity radioactive materials (see § 173.403(1) of this subchapter) must have the required RADIOACTIVE warning placard placed on a square background as described in § 172.527.

(b) A nurse tank, meeting the provisions of § 173.315(m) of this subchapter, is not required to be placarded on an end containing valves, fittings, regulators or gauges when those appurtenances prevent the markings and placard from being properly placed and visible.

16. In § 172.510, paragraph (d) is revised to read as follows:

§ 172.510 Special placarding provisions: Rail.

* * * * *

(d) *FUMIGATION placard.* Each transport vehicle and freight container containing lading that has been fumigated or treated with poisonous liquid, solid, or gas, and that is offered for transportation by rail must have the placard specified in § 173.9 of this subchapter affixed on or near each door.

17. In § 172.512, paragraph (a)(2) is revised to read as follows:

§ 172.512 Freight containers and aircraft unit load devices.

* * * * *

(2) The placarding exception provided in § 172.504(c) applies to each freight container and aircraft unit load device being transported for delivery to a consignee immediately following an air or water shipment, and,

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

18. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

19. To add § 173.5a to read as follows:

§ 173.5a Oilfield service vehicles.

Notwithstanding § 173.29 of this subchapter, a cargo tank mounted on a transport vehicle used in oilfield servicing operations is not subject to the specification requirements of this subchapter if—

(a) The cargo tank and equipment contains only residual amounts (i.e., it is emptied so far as practicable) of a flammable liquid alone or in combination with water,

(b) No flame producing device is operated during transportation, and

(c) The proper shipping name is preceded by "Residual" on the shipping paper for each movement on a public highway.

20. In § 173.12, paragraph (b) is revised to read as follows:

§ 173.12 Exceptions for shipment of waste material.

* * * * *

(b) *Outside packaging.* The outside packaging must be a DOT specification metal or fiber drum. It may also be a polyethylene drum capable of withstanding:

(1) The vibration and compression tests specified in § 178.19-7(c)(1) and (2), and

(2) A four-foot drop test as specified in § 178.19-7(a)(1).

* * * * *

21. In § 173.25, paragraph (c) is added to read as follows:

§ 173.25 Authorized packages and overpacks.

* * * * *

(c) Hazardous materials classed Poison B, may be transported in the same motor vehicle with material that is marked or known to be foodstuffs, feed or any edible material intended for consumption by humans or animals provided the Poison B material is marked, labeled, and packaged in accordance with this subchapter, conforms to the requirements of paragraph (a) of this section and is overpacked as specified in § 177.841(e), or is in an overpack meeting the following requirements:

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(1) The overpack conforms to Specification 5C (§ 178.83 of this subchapter), or

(2) The overpack is a salvage drum as prescribed in § 173.3(c) of this subchapter, and—

(i) Has a maximum rated capacity of 85 gallons;

(ii) Is constructed of steel with a minimum thickness of 16 gauge; and

(iii) It meets the requirements of Specification 17C (§ 178.115 of this subchapter) except for size and marking.

22. In § 173.31, paragraph (b)(4) is removed and reserved as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

* * * * *

(b) * * *

(4) [Reserved]

* * * * *

§ 173.32 [Amended]

23. In § 173.32, paragraph (b)(3) is removed and paragraph (b)(4) is redesignated paragraph (b)(3).

24. In § 173.34, paragraph (c)(3) is amended by adding a sentence at the end, and paragraph (g)(4)(ii) is revised to read as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(c) * * *

(3) * * *. A service pressure change is not authorized for a cylinder which fails to pass the prescribed periodic hydrostatic retest, unless it is reheat treated and requalified in accordance with this section.

* * * * *

(g) * * *

(4) * * *

(ii) The permanent expansion shall not be less than 3 percent nor more than 10 percent of the total expansion in the hydrostatic retest, in which case the flattening and physical tests are not required. For this alternative method the hydrostatic retest pressure may not exceed 115 percent of the minimum prescribed test pressure.

* * * * *

25. In § 173.112, paragraph (a)(2) is revised to read as follows:

§ 173.112 Oil well cartridges.

(a) * * *

(2) Specification 12B, 12H, 23F or 23H (§§ 178.205, 178.209, 178.214, 178.219 of this subchapter). Fiberboard boxes. Gross weight not to exceed 65 pounds. Hand holes are not authorized.

* * * * *

26. In § 173.114a, paragraph (h)(3) is removed, paragraph (i) is redesignated paragraph (j) and a new paragraph (i) is added to read as follows:

§ 173.114a Blasting agents.

* * * * *

(i) Blasting agents may not be transported in bulk packagings except in accordance with the terms of specific exemptions issued pursuant to Part 107 of this chapter.

* * * * *

27. In § 173.115, paragraph (d)(2) is revised to read as follows:

§ 173.115 Flammable, combustible, and pyrophoric liquids; definitions.

* * * * *

(d) * * *

(2) For a liquid that is a mixture of compounds that have different volatility and flash points, its flash point shall be determined as specified in paragraph (d)(1) of this section, on the material in the form in which it is to be shipped. If it is determined by this test that the flash point is higher than 20 °F (−6.67 °C), a second test shall be made as follows: a portion of the mixture shall be placed in an open beaker (or similar container) of such dimensions that the height of the liquid can be adjusted so that the ratio of the volume of the liquid to the exposed surface area is 6 to one. The liquid shall be allowed to evaporate under ambient pressure and temperature (20 to 25 °C) for a period of 4 hours, or until 10 percent by volume has evaporated, whichever comes first. A flash point is then run on a portion of the liquid remaining in the evaporation container and the lower of the two flash points shall be the flash point of the material.

* * * * *

28. In § 173.118a, paragraph (b)(5) is amended by removing the word "and" the second time it appears and the comma; paragraph (b)(6) is amended by removing the period and inserting in its place a semicolon followed by the word "and"; paragraph (b)(7) is added to read as follows:

§ 173.118a Exceptions for combustible liquids.

* * * * *

(b) * * *

(7) The requirements of §§ 173.1, 173.24, 174.1 and 177.804 of this subchapter.

29. In § 173.120, paragraph (c) is revised to read as follows:

§ 173.120 Automobiles, motorcycles, tractors, or other self-propelled vehicles.

* * * * *

(c) *Truck bodies or trailers on flat cars.* Except as specified in § 173.21, truck bodies or trailers with automatic heating or refrigerating equipment of the flammable liquid type may be shipped with fuel tanks filled and equipment operating or not operating, when used for the transportation of other freight and loaded on flat cars as part of a joint rail highway movement. The heating or refrigerating equipment is considered to be a part of the truck body or trailer, and is not subject to any other requirements of this subchapter.

* * * * *

30. In § 173.131, the introductory text of paragraph (a) is revised to read as follows:

§ 173.131 Road asphalt, or tar, liquid.

(a) Road asphalt, or tar, liquid, must be packaged as follows:

* * * * *

31. In § 173.245, paragraph (a)(38) is revised to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(38) Specification 57 (§ 178.253 of this subchapter). Steel portable tank. Authorized for transportation by water when having a minimum design pressure of 9 psig and equipped in accordance with § 178.253–4, except that frangible devices are not authorized. Also, for water transportation, no pressure relief device may open at less than 5 psig.

* * * * *

32. In § 173.260, paragraph (a)(3) is amended by adding a sentence at the end and paragraph (f) is removed and reserved as follows:

§ 173.260 Electric storage batteries, wet.

(a) * * *

(3) * * * Unless specifically exempt from marking and labeling, each pallet or skid must be marked and labeled as required by Part 172.

* * * * *

(f) [Reserved]

* * * * *

33. In § 173.272, paragraph (i)(18) is revised to read as follows:

§ 173.272 Sulfuric acid.

* * * * *

(i) * * *

(18) Specification 17F (§ 178.117 of this subchapter). Metal barrels or drums (single-trip only). Authorized for sulfuric acid of 77.5 percent to 98 percent concentrations with or without an inhibitor, provided the acid has a corrosive effect on steel no greater than 93.2 percent sulfuric acid, measured at 100 °F.

* * * * *

34. In § 173.304, the table in paragraph (a)(2) is amended and paragraph (a)(3) is revised to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in § 173.34 (a), (b), § 173.301(i) (see notes following table)
*	*	*
(Revise) Bromotrifluoromethane (R–13B1 or H–1301).	124	DOT–3A400; DOT–3AA400; DOT–3B400; DOT–4A400; DOT–4AA480; DOT–4B400; DOT–4BA400; DOT–4BW400; DOT–3E1800; DOT–39; DOT–3AL400.
*	*	*

(3) Specification 3AL (§ 178.46 of this subchapter) cylinders are authorized for the following liquefied gases: cyclobutane, hydrogen selenide, propylene, silane, carbonyl sulfide, vinyl bromide, and dimethyl ether. Shipments of flammable gases are authorized only when transported by highway, rail and cargo aircraft only.

* * * * *

35. In § 173.306, paragraph (d)(1) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(d) * * *

(1) Except as specified in § 173.21, truck bodies or trailers with automatic heating or refrigerating equipment of the gas burning type may be shipped with tanks containing fuel and equipment operating or not operating, when used for the transportation of other freight and loaded on flat cars as part of a joint rail-highway movement. The heating or refrigerating equipment is considered to be a part of the truck body or trailer and is not subject to any other requirements of this subchapter.

* * * * *

36. In § 173.315, Note 2, following the Table in paragraph (a)(1) is amended by adding the following sentence at the end; paragraph (m)(7) is revised to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tank containers.

(a) * * *

(1) * * *

Note 2: * * *. Specification MC 330 cargo tanks may be painted as specified for MC 331 cargo tanks.

* * * * *

(m) * * *

(7) Is in conformance with the requirements of Part 172 of this subchapter except that shipping papers are not required; and it need not be marked or placarded on one end if that end contains valves, fittings, regulators or gauges when those appurtenances prevent the markings and placard from being properly placed and visible.

37. In § 173.346, paragraph (a)(10) is revised to read as follows:

§ 173.346 Poison B liquids not specifically provided for.

(a) * * *

(10) Specification 103,[1] 103W, 103A,[1] 103ALW, 103AW, 103BW, 104,[1] 104W, 105A100,[1] 105A 100W, 105A200ALW, 109A300ALW, 111A60ALW1, 111A60F1, 111A60W1, 111A60W2, 111A100F2, 111A100W4, 112A400W, 114A400W, or 115A60W6 (§§ 179.100, 179.101, 179.200, 179.201, 179.220, 178.221 of this subchapter). Tank cars. Specification 103BW tank cars must be rubberlined and are authorized only for arsenic acid as prescribed in § 173.348 of this subchapter.

* * * * *

§ 173.366 [Amended]

38. In § 173.366, paragraph (a)(3) is removed.

39. In § 173.417, Table 5, footnote 8, following paragaph (b)(2)(ii) is revised and in paragraph (b)(5) the second sentence is revised to read as follows:

§ 173.417 Authorized packaging-fissile materials.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

Table 5—Authorized Contents for Specifications 6M Packages[1]

* * * * *

[8] H/X is the ratio of hydrogen to fissile atoms in the inner containment.

* * * * *

(5) * * *. Handling procedures and packaging criteria shall be in accordance with U.S. Department of Energy Report No. ORO–651 or ANSI Standard N–14.1–1982. * * *.

* * * * *

40. In § 173.421–1, the section title, paragraph (a), and the introductory text of paragraph (b) are revised to read as follows:

§ 173.421–1 Additional requirements for excepted radioactive materials.

(a) Excepted radioactive materials prepared for shipment under the provisions of § 173.421, § 173.422, § 173.425, or § 173.427 must be certified as being acceptable for transportation by having a notice enclosed in or on the package, included with the packing list, or otherwise forwarded with the package. This notice must include the name of the consignor or consignee and the statement "This package conforms to the conditions and limitations specified in 49 CFR 173.421 for excepted radioactive material, limited quantity, n.o.s., UN2910; 49 CFR 173.422 for excepted radioactive material, instruments and articles, UN2911; 49 CFR 173.424 for excepted radioactive material, articles manufactured from natural *or* depleted uranium *or* natural thorium, UN2909; or 49 CFR 173.427 for excepted radioactive material, empty packages, UN2908", as appropriate.

(b) An excepted radioactive material classed radioactive material and prepared for shipment under the provisions of § 173.421, § 173.422, § 173.424, § 173.427 or § 173.421–2 is not subject to the requirements of this subchapter, except for: * * *.

41. In § 173.427, the introductory text and paragraphs (c) and (d) are revised, paragraph (e) is added to read as follows:

§ 173.427 Empty radioactive materials packaging.

A packaging which previously contained radioactive materials and has been emptied of contents as far as practical, is excepted from the shipping paper and certification, marking and labeling requirements of this subchapter, and from requirements of this subpart, provided that:

* * * * *

(c) Internal contamination does not exceed 100 times the limits in § 173.443;

(d) Any labels previously applied in conformance with Subpart E of Part 172 of this subchapter are removed, obliterated or covered and the "Empty" label prescribed in § 172.450 is affixed to the packaging; and

(e) The packaging is prepared for shipment as specified in § 173.421–1.

§ 173.465 [Amended]

42. In § 173.465, paragraph (d)(2) is amended by removing the word "horizontally" and inserting in its place the word "vertically".

43. In addition to the amendments set forth above, Part 173 is amended by removing the words "tank motor vehicles" or "tank motor vehicle", as

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appropriate, and inserting, in their place, the words "cargo tanks" in the following sections:

§ 173.6(b)(7)	§ 173.267(a)(7)
§ 173.33(f)(5)	§ 173.268(b)(3)
§ 173.119 (m)(10), (m)(11), (m)(12)	§ 173.271 (a)(6), (a)(8)(iv) § 173.272(i)(21)
§ 173.123(a)(6)	§ 173.273(a)(5)
§ 173.134(a)(6)	§ 173.274(a)(4)
§ 173.135(a)(9)	§ 173.276(a)(6)
§ 173.136(a)(8)	§ 173.277(a)(9)
§ 173.141(a)(8)	§ 173.280(a)(6)
§ 173.145(a)(7)	§ 173.287(a)(8)
§ 173.146(a)(5)	§ 173.289(a)(4)
§ 173.154 (a)(4), (a)(18)	§ 173.292(a)(2)
§ 173.190(b)(4)	§ 173.294(a)(3)
§ 173.209(c)(3)	§ 173.295(a)(9)
§ 173.224(a)(4)	§ 173.296(a)(2)
§ 173.245 (a)(29), (a)(30), (a)(31)	§ 173.297(a)(1) § 173.315(h)(13)
§ 173.247(a)(12)	§ 173.346(a)(12)
§ 173.247a(a)(3)	§ 173.347(a)(3)
§ 173.248(a)(6)	§ 173.348(a)(1)
§ 173.249(a)(6)	§ 173.352(a)(5)
§ 173.252(a)(4)	§ 173.353(e)
§ 173.253(a)(6)	§ 173.354, Note 1
§ 173.254(a)(5)	§ 173.358(a)(14)
§ 173.255(a)(5)	§ 173.359(a)(16)
§ 173.263(a)(10)	§ 173.369(a)(14)
§ 173.264 (a)(14), (b)(3)	§ 173.373(a)(6)
§ 173.266(e)	

PART 174—CARRIAGE BY RAIL

44. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806; 49 CFR 1.53, unless otherwise noted.

45. In § 174.61, paragraph (b) is revised to read as follows:

§ 174.61 Truck bodies, trailers or freight containers on flatcars.

* * * * *

(b) Except as specified in § 173.21, a truck body, trailer, or freight container equipped with heating or refrigerating equipment which has fuel or any article classed as a hazardous material may be loaded and transported on a flat car as part of a joint rail highway movement. The heating or refrigerating equipment is considered to be a part of the truck body or trailer and is not subject to any other requirements of this subchapter. The truck body, trailer, or freight container must be secured on the flatcar so that it cannot change position during transit.

* * * * *

§ 174.81 [Amended]

46. In § 174.81, the Segregation and Separation Chart of Hazardous Materials is amended by removing the reference to footnote "2" at the intersection of column "e" and line "13".

47. In § 174.101, the introductory text of paragraphs (n) and (o) are revised to read as follows:

§ 174.101 Loading explosives.

* * * * *

(n) A container car or freight container on a flatcar or a gondola car other than a drop-bottom car, when properly loaded, blocked, and braced to prevent change of position under conditions normally incident to transportation, may be used to transport any Class A explosive except black powder packed in metal containers. A freight container must be designed, constructed, and maintained so as to be weather tight and capable of preventing the entrance of sparks. In addition:

* * * * *

(o) Class A or Class B explosives may be loaded and transported in a tight closed truck body or trailer on a flatcar car. Wooden boxed bombs, rocket ammunition, and rocket motors, Class A or Class B explosives, which due to their size cannot be loaded in tight, closed truck bodies or trailers, may be loaded in or on open-top truck bodies or trailers. However, they must be protected against accidental ignition. In addition:

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

48. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

49. In § 175.30 paragraph (e)(1) is revised to read as follows:

§ 175.30 Accepting and inspecting shipments.

* * * * *

(e) * * *

(1) The overpack does not contain a package bearing the "CARGO AIRCRAFT ONLY" label unless—

(i) The overpack affords clear visibility of and easy access to the package; or

(ii) The package contains a material which may be carried inaccessibly under the provisions of § 175.85(c)(1).

* * * * *

PART 176—CARRIAGE BY VESSEL

50. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806(b), 1808; 49 CFR Part 1, unless otherwise noted.

51. In § 176.5, paragraph (c) is removed and reserved as follows:

§ 176.5 Application to vessels.

* * * * *

(c) [Reserved]

* * * * *

§ 176.15 [Amended]

52. In § 176.15, paragraph (b) is removed.

§ 176.18 [Amended]

53. In § 176.18, paragraph (a)(4) and (b) are amended by removing the reference to "46 U.S.C. 170 and".

§ 176.48 [Amended]

54. In § 176.48, paragraph (c) is amended by removing the words "and the Commandant (GMHM)".

55. Section 176.96 is revised to read as follows:

§ 176.96 Materials of construction.

Only barges constructed of steel may be used to transport hazardous materials.

56. In § 176.135, the third and fourth sentences of paragraph (c) are revised to read as follows:

§ 176.135 Location of magazines.

* * * * *

(c) * * *. 'Tween deck hatch covers of wood forming the base of a magazine must be completely covered with bulkhead panels approved by the Coast Guard under 46 CFR 164.008, or an equivalent thermal insulative material acceptable to the Captain of the Port. The joints of the panels must be staggered midway between the joints formed by the wooden hatch covers and the magazine must be constructed in accordance with the applicable provisions of § 176.138, except that the panels must be completely covered with wood dunnage. * * *.

* * * * *

§ 176.163 [Amended]

57. In § 176.163, paragraph (c) is removed and reserved.

* * * * *

58. In § 176.410, paragraph (e)(2) is revised to read as follows:

§ 176.410 Blasting agents, ammonium nitrate, and ammonium nitrate-mixtures.

* * * * *

(e) * * *

(2) In proximity to the explosives, if the two are separated by a steel deck or bulkhead, or a fire retardant wooden bulkhead built to the specifications of § 176.138(b)(3). The deck or bulkhead must be sheathed on the oxidizing materials stowage side with an appropriate fire-resistant insulation.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

59. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 49 CFR Part 1, unless otherwise noted.

60. In § 177.825, paragraph (b)(1)(ii) is revised to read as follows:

§ 177.825 Routing and training requirements for radioactive materials.

(b) * * *

(1) * * *

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials".

* * * * *

§ 177.841 [Amended]

61. In § 177.841, paragraph (e) is amended by removing the period at the end of the paragraph and adding the words "or when overpacked in a metal drum as specified in § 173.25(c) of this subchapter".

§ 177.848 [Amended]

62. In § 177.848, the Segregation and Separation Chart of Hazardous Materials is amended by removing the reference to footnote "2" at the intersection of column "e" and line "13".

63. In addition to the amendments set forth above, Part 177 is amended by removing the words "tank motor vehicles" or "tank motor vehicle", as appropriate, and inserting, in their place, the words "cargo tanks" (except in § 177.854 (f)(1) and (f)(2) only the word "tanks" need to be inserted) in the following sections:

§ 177.835(c)(3)	§ 177.841(d)
§ 177.837(e)	§ 177.854 (f)(1), (f)(2)
§ 177.839(d)	§ 177.859(b)
§ 177.840 (d), (f)	

PART 178—SHIPPING CONTAINER SPECIFICATIONS

64. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

65. In § 178.50, § 178.50–19 is revised to read as follows:

* * * * *

§ 178.50–19 Marking.

(a) Marking on each cylinder by stamping as follows:

(1) DOT–4B followed by the service pressure (for example, DOT–4B300, etc.).

(2) A serial number and an identifying symbol of the maker. The symbol must be registered with the Director, OHMT. Duplications are not authorized. Lot numbers, not over 500 cylinders in each lot, in place of serial numbers authorized for cylinders not over 2 inches outside diameter or for cylinders with volumetric capacity not exceeding 60 cubic inches.

(3) Inspector's official mark.

(4) Date of test (such as 8–80 for April 1980).

(5) Additional markings are permitted.

(b) *Sequence of marks.* Serial number shall be just below or immediately following the DOT mark; identifying symbol shall be just below or immediately following the serial number; inspector's official mark shall be near the serial number. Date of test shall be so placed that dates of subsequent test can easily be added. Symbol in front of or following the serial number, with space between, or symbol and serial number stamped into welded or brazed-on valve spud directly above the DOT mark located on head of cylinder are also authorized. Other variations in sequence of marks authorized only when necessitated by lack of space.

(c) *Location of markings.* Markings may be stamped plainly and permanently in the following locations on the cylinder:

(1) On shoulders and top heads when they are not less than 0.087-inch thick.

(2) On side wall adjacent to top head for side walls which are not less than 0.090 inch thick.

(3) On a cylindrical portion of the shell which extends beyond the recessed bottom of the cylinder, constituting an integral and non-pressure part of the cylinder.

(4) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16-inch thick and must be attached by welding, or by brazing. The brazing rod is to melt at a temperature of 1100 °F. Welding or brazing must be along all the edges of the plate.

(5) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(6) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

66. In § 178.51, § 178.51–19, paragraph (c) is amended by revising paragraph (5) and adding paragraph (6) to read as follows:

§ 178.51 and § 178.51–19 [Amended]

* * * * *

(c) * * *

(5) On the neck, neckring, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(6) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

* * * * *

67. In § 178.61, § 178.61–20, paragraphs (a)(2), (b), and (c) are revised to read as follows:

* * * * *

§ 178.61 and § 178.61–20 [Amended]

(a) * * *

(2) A serial number and an identifying symbol of the maker. The symbol must be registered with the Director, OHMT; duplications unauthorized. Lot numbers, not over 500 cylinders in each lot, in place of serial numbers authorized for cylinders not over 2 inches outside diameter or for cylinders with volumetric capacity not exceeding 60 cubic inches.

* * * * *

(b) *Sequence of marks.* Serial number shall be just below or immediately following the DOT mark; identifying symbol shall be just below or immediately following the serial number; inspector's official mark shall be near the serial number. Date of test shall be so placed that dates of subsequent test can easily be added. Symbol in front of or following the serial number, with space between, or symbol and serial number stamped into welded or brazed-on valve spud directly above the DOT mark located on head of cylinder are also authorized. Other variations in sequence of marks authorized only when necessitate by lack of space.

(c) *Location of markings.* Markings may be stamped plainly and permanently in the following locations on the cylinder:

(1) On shoulders and top heads when they are not less than 0.087-inch thick.

(2) On a metal plate attached to the top of the cylinder or permanent part thereof; sufficient space must be left on the plate to provide for stamping at least six retest dates; the plate must be at least 1/16-inch thick and must be attached by welding, or by brazing. The brazing rod is to melt at a temperature of 1100 °F. Welding or brazing must be along all the edges of the plate.

(3) On the neck, valve boss, valve protection sleeve, or similar part permanently attached to the top of the cylinder.

(4) On the footring permanently attached to the cylinder, provided the water capacity of the cylinder does not exceed 25 pounds.

* * * * *

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66. In § 178.92, § 178.92–12, the introductory text of paragraph (a) is revised to read as follows:

§ 178.92 and § 178.92–12 [Amended]

(a) Each drum must be marked by embossing on a permanent head or by steel stamping on the top head of the outside shell or on a permanently attached head protection ring with clearly legible raised characters as follows:

* * * * *

69. In § 178.98, § 178.98–9 is amended by revising paragraph (a)(1) to read as follows:

§ 178.98 and § 178.98–9 [Amended]

(a) * * *

(1) DOT–6B * * *; stars to be replaced by the authorized gross weight (for example, DOT–6B880, etc.).

* * * * *

70. In § 178.99, § 178.99–9 is amended by revising paragraph (a)(1) to read as follows:

§ 178.99 and § 178.99–9 [Amended]

(a) * * *

(1) DOT–6C * * *; stars to be replaced by the authorized gross weight (for example DOT–6C880, etc.).

* * * * *

71. In § 178.100, § 178.100–9 is amended by revising paragraph (a)(1) to read as follows:

§ 178.100 and § 178.100–9 [Amended]

(a) * * *

(1) DOT–6J * * *; stars to be replaced by the authorized gross weight (for example, DOT–6J880, etc.).

* * * * *

72. In § 178.102, § 178.102–4, the introductory text of paragraph (a) is revised to read as follows:

§ 178.102 and § 178.102–4 [Amended]

(a) Each new steel overpack must be marked by embossing on a permanent head. *Altered drums.* Drums which have been altered to Specification 6D from an all 18-gauge tight head drum may be embossed on the body of the drum, no more than six inches from the top curl. Embossment must be with clearly legible raised characters as follows:

* * * * *

73. In § 178.131, § 178.131–9 is amended by revising paragraph (a)(1) to read as follows:

§ 178.131 and § 178.131–9 [Amended]

(a) * * *

(1) DOT–37A * * *. Stars to be replaced by the authorized gross weight, or less, at which the drum was type tested (for example, DOT-37A150, etc.) and the letters STC located near the DOT mark to indicate a single-trip drum.

* * * * *

74. In § 178.132, § 178.132–9 is amended by revising paragraph (a)(1) to read as follows:

§ 178.132 and § 178.132–9 [Amended]

(a) * * *

(1) DOT–37B * * *. Stars to be replaced by the authorized gross weight, or less, at which the drum was type tested (for example, DOT–37B450, etc.) and the letters STC located near the DOT mark to indicate a single-trip drum.

* * * * *

75. In § 178.150, § 178.150–3, paragraph (a)(2) is revised to read as follows:

§ 178.150 and § 178.150–3 [Amended]

(a) * * *

(2) Single bottle cases:

	Nominal capacity of inside containers			
	Pint	Quart	5 pts.	Gallon
Side wall, inches	⅝	⅝	⅝	1½
Top wall, inches (See Note 1)	⅝	⅝	⅝	1
Bottom wall, inches	1	1	¾	1½

Note 1.—In the recess for the closure cap for the inside container, ¼-inch thickness is permissible: the closure cap shall not be in contact with the inside of the top wall.

76. In § 178.205–16, paragraph (a), is revised as follows:

§ 178.205–16 Authorized gross weight and parts required.

(a) The authorized gross weight (when packed) and the parts required are as follows:

Authorized gross weight (pounds)	Strength of fiberboard (minimum) Mullen or Cady test						
	Solid board			Doublefaced corrugated		Doublewall corrugated	
	Box	Lining [2]	Heads [3]	Box	Lining [2]	Box	Lining [2]
15	175		([4])	175		200	
30	200		275	200		200	
40	275		350	275		200	
				200	175		
55	325		([4])	325		275	
65 [4]	375		([4])	375			
				275	175	275	
	275	175	350	200	200		

[1] For recessed heads when used, in other cases same as for the box.
[2] As prescribed in § 178.205–15. A complete box is acceptable in place of the lining.
[3] Recessed heads are not authorized.
[4] Except as otherwise authorized herein or by Part 173 of this chapter.

* * * * *

77. In § 178.209, § 178.209–8, paragraph (a)(2) and Note 1 are revised to read as follows:

§ 178.209 and 178.209–8 [Amended]

(a) * * *

(2) Box is to consist of full depth top and bottom sections completely telescoping. No inner lining tube is required. Four variations are authorized: the first is with the bottom slotted on the ends and the cover slotted on the sides; the second, with both the cover and bottom slotted on the sides; the third, with the bottom slotted on the sides and the cover slotted on the ends; and the fourth, with the sides and ends (both covers and bottom) not slotted, manufacturer's joint a side lap glued or stapled to end, closing flaps to form top and bottom of box with side closing flaps out and overlapping.

Note 1.—Hand-holes, oval in shape, not more than 1 inch in width by 3 inches in length, and horizontal with top score line, are authorized in the ends of the top section of the boxes.

* * * * *

78. In § 178.337, § 178.337–17 the first sentence in paragraph (a) is revised to read as follows:

§ 178.337 and § 178.337–17 [Amended]

* * * * *

(a) *Metal identification plate.* Each tank built after July 1, 1985 shall have a corrosion resistant metal plate permanently affixed by brazing or welding around its perimeter, on the left side (on the right side prior to July 1, 1985) near the front, in a place readily accessible for inspection. It must be maintained in a legible condition. * * *.

* * * * *

79. In § 178.338, § 178.338–18, the first sentence in paragraphs (a) and (b) is revised to read as follows:

§ 178.338 and § 178.338–18 [Amended]

* * * * *

(a) *Nameplate.* Each tank built after July 1, 1985 shall have a corrosion resistant metal plate permanently affixed by brazing or welding around its perimeter, on the left side (on the right side prior to July 1, 1985) near the front. * * *.

* * * * *

(b) *Specification plate.* Each tank built after July 1, 1985 shall have an additional plate, in the form specified in paragraph (a) of this section. It must be welded, brazed, or riveted to the jacket on the left side (on the right side prior to July 1, 1985) near the front, or at the control station, in a position readily legible to operating personnel. * * *

* * * * *

80. In § 178.340, § 178.340–10 the first two sentences in paragraph (b) are revised to read as follows:

§ 178.340 and § 178.340–10 [Amended]

* * * * *

(b) *Metal certification plate.* After July 1, 1985, each cargo tank, or tank compartment if constructed to a different specification, must have a metal certification plate attached to its shell or to an integral supporting structure. The certification plate shall not be subject to corrosion, and must be located on the left side (on the right side prior to July 1, 1985) near the front in a place readily accessible for inspection. * * *.

* * * * *

§§ 178.337–1, 178.337–10, 178.337–13 and 178.337–17 [Amended]

81. In addition to the amendments set forth above, Part 178 is amended by removing the words "tank motor vehicle" and inserting, in their place, the words "cargo tank" in the following sections:

§ 178.337–1(d)
§ 178.337–10(d)
§ 178.337–13(b)
§ 178.337–17(b)

Issued in Washington, DC on January 28, 1986 under authority delegated in 49 CFR Section 1.53.

M. Cynthia Douglas,

Administrator, Research and Special Programs Administration.

[FR Doc. 86–2312 Filed 2–14–86; 8:45 am]

BILLING CODE 4910–60–M

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federal register

Tuesday
February 18, 1986

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

VOL 51 ISS 32 FE 18 1986 UMI

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

February 1, 1986.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of February 1, 1986, of 31 deferrals contained in the first two special messages of FY 1986. There were no rescissions proposed. These messages were transmitted to the Congress on October 1 and November 25, 1985.

Rescissions (Table A and Attachment A)

As of February 1, 1986, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of February 1, 1986, $3,168.2 million in 1986 budget authority was being deferred from obligation and $7.7 million in 1986 outlays was being deferred from expenditures. Attachment B shows the history and status of each deferral reported during FY 1986.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 50, FR p. 41100, Tuesday, October 8, 1985

Vol. 50, FR p. 49498, Monday, December 2, 1985

James C. Miller III,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1986 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1986 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$3,652.9
Routine Executive releases through February 1, 1986	-253.4
Overturned by the Congress	-223.6
Currently before the Congress	$3,175.9 a/

a/ This amount includes $7.7 million in outlays for a Department of the Treasury deferral (D86-30).

Attachments

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Attachment A - Status of Rescissions - Fiscal Year 1986

As of February 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
None.								

Attachment B - Status of Deferrals - Fiscal Year 1986

As of February 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 2-1-86
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs	D86-1	10,000		10-1-85					10,000
International Security Assistance									
Economic support fund	D86-24	1,222,216		11-25-85	130,279				1,091,937
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D86-2	77,913		10-1-85					77,913
Timber salvage sales	D86-3	22,854		10-1-85					22,854
DEPARTMENT OF COMMERCE									
National Oceanic and Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	D86-26	32,333		11-25-85	32,333				0
Fisheries loan fund	D86-25	1,959		11-25-85					1,959
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services	D86-4	353,079		10-1-85	42,323				310,756
Family Housing									
Family housing, Air Force	D86-27	11,000		11-25-85					11,000
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation	D86-5	1,160		10-1-85	124			106	1,150

Attachment B - Status of Deferrals - Fiscal Year 1986

As of February 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 2-1-86
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy research and development	D86-6	9,247		10-1-85	6,640				2,607
Fossil energy construction	D86-7	7,038		10-1-85	4,964				2,074
Naval petroleum and oil shale reserves	D86-8	155,868		10-1-85					155,868
Energy conservation	D86-9	9,800		10-1-85	3,000				6,800
SPR petroleum account	D86-10	536,958		10-1-85					536,958
Alternative fuels production	D86-11	1,149		10-1-85	1,149				0
Power Marketing Administration									
Southeastern Power Administration, Operation and maintenance	D86-12	25,344		10-1-85	23,936			681	2,089
Southwestern Power Administration, Operation and maintenance	D86-13	5,000		10-1-85					5,000
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D86-14	27,095		10-1-85					27,095
Departmental Administration									
Departmental administration	D86-15	8,501		10-1-85	8,501				0
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D86-16	3,000		10-1-85					3,000
Social Security Administration									
Limitation on administrative expenses (construction)	D86-28	6,489		11-25-85					6,489
DEPARTMENT OF JUSTICE									
Bureau of Prisons									
Buildings and facilities	D86-17	20,000		10-1-85					20,000
Office of Justice Programs									
Crime victims fund	D86-18	100,000		10-1-85					100,000
DEPARTMENT OF STATE									
Bureau of Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D86-19	18,082		10-1-85					18,082
Other									
Assistance for implementation of a Contadora agreement	D86-20	2,000		10-1-85					2,000
DEPARTMENT OF TRANSPORTATION									
Urban Mass Transportation Administration									
Discretionary grants	D86-21	223,600		10-1-85		223,600			0
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D86-29	686,438		11-25-85					686,438
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund	D86-30	7,743		11-25-85	0				7,742
Local government fiscal assistance trust fund	D86-31	54,349		11-25-85	0				54,349

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Attachment B - Status of Deferrals - Fiscal Year 1986

As of February 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 2-1-86
OTHER INDEPENDENT AGENCIES									
Pennsylvania Avenue Development Corporation Land acquisition and development fund.....	D86-22	10,947		10-1-85					10,947
Railroad Retirement Board Milwaukee railroad restructuring, administration.....	D86-23	243		10-1-85	43				200
TOTAL, DEFERRALS.....		3,652,093	0		253,372	223,600		787	3,175,907

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D86-30) of outlays only.

[FR Doc. 86-3463 Filed 2-14-86; 8:45 am]

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Federal Register

Vol. 51, No. 32

Tuesday, February 18, 1986

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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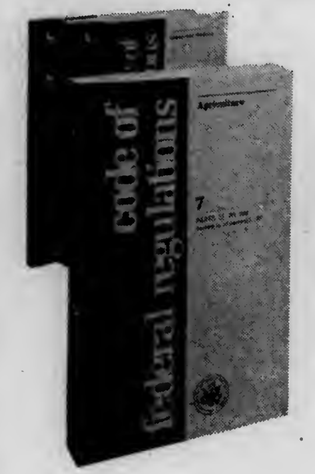
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For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

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Tobacco
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Presidential Documents

Title 3—

The President

Executive Order 12548 of February 14, 1986

Grazing Fees

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to provide for establishment of appropriate fees for the grazing of domestic livestock on public rangelands, it is ordered as follows:

Section 1. *Determination of Fees.* The Secretaries of Agriculture and the Interior are directed to exercise their authority, to the extent permitted by law under the various statutes they administer, to establish fees for domestic livestock grazing on the public rangelands which annually equals the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the Statistical Reporting Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; *provided,* that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee, and *provided further,* that the fee shall not be less than $1.35 per animal unit month.

Sec. 2. *Definitions.* As used in this Order, the term:

(a) "Public rangelands" has the same meaning as in the Public Rangelands Improvement Act of 1978 (Public Law 95–514);

(b) "Forage Value Index" means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the Statistical Reporting Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

(c) "Beef Cattle Price Index" means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the Statistical Reporting Service) divided by $22.04 per hundred weight and multiplied by 100; and

(d) "Prices Paid Index" means the following selected components from the Statistical Reporting Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

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Sec. 3. Any and all existing rules, practices, policies, and regulations relating to the administration of the formula for grazing fees in section 6(a) of the Public Rangelands Improvement Act of 1978 shall continue in full force and effect.

Sec. 4. This Order shall be effective immediately.

Ronald Reagan

THE WHITE HOUSE,
February 14, 1986.

[FR Doc. 86-3724
Filed 2-18-86; 10:32 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Inspection of Tobacco Under the Tobacco Inspection Act, Particularly Relating to the Flue-Cured Tobacco Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule.

SUMMARY: The Department has decided to leave in effect an interim final rule which amended the regulations governing the establishment of the Flue-Cured Tobacco Advisory Committee to permit an additional member and alternate representing a warehouse association.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2567.

SUPPLEMENTARY INFORMATION: This finalization of the interim final rule has been reviewed under the USDA procedures and Executive Order 12291 and has been classified as a "nonmajor rule." The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-354, (5 U.S.C. 601 *et seq.*) because (1) most tobacco warehousemen and producers fall within the definition of "small business" as defined in the Regulatory Flexibility Act; (2) however, certain of these entities are not considered "small business" because they are dominant in their respective areas of operation; (3) the duties of this Committee are solely advisory; and (4) this action imposes no additional duties or obligations on the business entities involved and will not affect normal competition in the marketplace.

In response to a request for representation on the Flue-Cured Tobacco Advisory Committee from the Florida Tobacco Warehouse Association, an interim final rule approving the request and seeking comments was published in the Federal Register November 4, 1985, (50 FR 45806).

The Florida Tobacco Warehouse Association, founded in 1976, represents the interests of tobacco warehousemen in that State. The Flue-Cured Tobacco Advisory Committee, since its inception in 1974, has assisted the Secretary in making an equitable apportionment and assignment of tobacco inspectors by recommending opening dates for marketing areas within the flue-cured tobacco growing areas and recommending selling schedules for marketing areas and each warehouse therein. All segments of the flue-cured tobacco industry—producers, warehousemen, and buyers—are represented on the Committee, and representatives and alternates are appointed by the Secretary, after nomination by the individual sectors of the industry. Accordingly, the Department has approved the request of the Florida Tobacco Warehouse Association for membership on the Committee in an effort to more adequately represent the various segments of the flue-cured tobacco industry, in this instance, the warehousemen. Therefore, § 29.9403(b) of the regulations was amended by interim final rule effective November 4, 1985, to increase membership on the Committee from 38 members and alternates to 39 and thereby increase the number of warehouse representatives from 9 to 10 members.

The Department also amended § 29.9403(d) of the regulations changing the number of warehouse representatives from 9 to 10.

Comments on the interim final rule on this matter were due on or before January 3, 1986. No comments were received.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

PART 29—[AMENDED]

Accordingly, the regulations contained in 7 CFR Part 29 are amended as follows:

1. The authority citation for Part 29 continues to read as follows:

Authority: Title II of Public Law 98-180, 49 Stat. 731; 7 U.S.C. 511 *et seq.*).

2. The interim final rule published in the November 4, 1985, Federal Register (50 FR 45806) is adopted as a final rule.

Dated: February 13, 1986.

Alan T. Tracy,
Acting Assistant Secretary, Marketing and Inspection Service.

[FR Doc. 86-3534 Filed 2-18-86; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Presidential Airways, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Presidential Airways, Inc. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: February 4, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Presidential Airways, Inc. on February 4, 1986, to guarantee passage through the United States in immediate and continous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international

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flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amened as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continuous to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* in amended by adding in alphabetical sequence, Presidential Airways, Inc.

Dated: February 13, 1986.

Lawrence J. Weinig,

Acting Associate Commissioner, Examinations; Immigration and Naturalization Service.

[FR Doc. 86-3558 Filed 2-18-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ASO-24]

Alteration of Transition Area, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Orlando, Florida, transition area to accommodate changes in an instrument approach procedure which serves Orlando Executive Airport. This alteration lowers the floor of controlled airspace in an area southwest of the airport from 1200 to 700 feet above the surface. In addition, the geographical coordinates of two airports are revised and an unneeded transition area extension is revoked.

EFFECTIVE DATE: 0901 UTC, May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 29, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering the Orlando, Florida, transition area to provide additional controlled airspace southwest of Orlando Executive Airport. This airspace is required to support Instrument Flight Rule (IFR) aeronautical activities in the Orlando area. The geographical coordinates of the two Orlando airports are incorrectly listed in the present transition area description and this amendment will correct them. In addition, a transition area extension south of Orlando International Airport which is in excess of needs is revoked (50 FR 49057). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations increases the size of the Orlando, Florida, transition area to accommodate revised instrument approach procedures, corrects geographical coordinates of two airports and revokes an unneeded transition area arrival extension.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-440, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Orlando, FL—[Amended]

By removing the words "That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Orlando Executive Airport (lat. 28°32'40"N., long. 81°19'55"W.); within an 8.5-mile radius of Orlando International Airport (lat. 28°25'55"N., long. 81°19'15"W.); within 3 miles each side of Orlando VORTAC 175° radial, extending from the 8.5-mile radius area to 23 miles south of the VORTAC; within 3 miles each side of McCoy ILS localizer south course, extending from the 8.5-mile radius area to 9.5 miles south of the OM;" and replacing them with the words "That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Orlando Executive Airport (lat. 28°32'43"N., long. 81°19'59"W.); within an 8.5-mile radius of Orlando International Airport (lat. 28°25'54"N., long. 81°19'29"W.); within 3 miles each side of Orlando VORTAC 175° radial, extending from the 8.5-mile radius area to 23 miles south of the VORTAC; within 4.5 miles north and 7 miles south of the 247° bearing from the Herny LOM, extending from the 8.5-mile radius area to 12 miles west of the LOM;".

Issued in East Point, Georgia, on February 7, 1986.

James L. Wright,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-3492 Filed 2-18-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 83-AWA-28]

Alteration of VOR Federal Airway V-181-SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Cancellation of final rule before effective date.

SUMMARY: This action cancels ASD 83-AWA-28 that was published in the **Federal Register** on November 22, 1985, and was to be effective March 13, 1986. The Yankton, SD, very high frequency omni-directional radio range distance measuring equipment (VOR/DME) has been relocated. However, due to engineering and technical problems associated with the new site location, Yankton VOR/DME has not received a satisfactory flight check for commissioning and acceptance into the National Airspace System (NAS). This action cancels ASD 83-AWA-28.

EFFECTIVE DATE: 0901 G.m.t, February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8686.

SUPPLEMENTARY INFORMATION:

History

On November 22, 1985, the FAA published a final rule which amended Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-181 located in the vicinity of Yankton, SD (50 FR 48178). The Yankton VOR/DME has been relocated on the Yankton Airport which is aproximately 1,350 feet north of its former location. Due to engineering and technical problems, Yankton VOR/DME has not received a satisfactory flight check. This action cancels ASD 83-AWA-28.

Reason For Cancellation

Yankton VOR/DME has not received a satisfactory flight check data report after numerous attempts. Therefore, ASD 83-AWA-28 is cancelled.

Cancellation of the Final Rule

The final rule issued in Airspace Docket No. 83-AWA-28 on November 12, 1985, which amended § 71.123, and which was published in the **Federal Register** on November 22, 1985 (50 FR 48178), and corrected January 2, 1986 (51 FR 6), is hereby cancelled.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69)

Issued in Washington, D.C., on February 12, 1986.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 86-3533 Filed 2-18-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Revised Medical Criteria for the Determination of Disability

Correction

In FR Doc. 85-28672 beginning on page 50068 in the issue of Friday, December 6, 1985, make the following corrections in Appendix 1 to Subpart P, Part 404:

1. On page 50092, in the first column, in paragraph 1, in the 11th line, insert "chest" after "of".

2. On page 50095, in the third column, in the first line, "Recent" should read "Recurrent".

3. On page 50098, in the second column, in the second line from the top of the page, insert "amenable" after "not".

4. On page 50099, in the second column, in the 26th line from the bottom of the column, "consideration" should read "considered".

5. On page 50103, in the second column, in the twelfth line above Table 1, "Tachycardia" should read "Tachypnea".

BILLING CODE 1505-01-M

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance; Indexing for Widow(er)'s Benefits; Effect of Remarriage on Widow(er)'s Entitlement; Retroactivity of Widow(er)'s Benefits

Correction

In FR Doc. 86-2364, beginning on page 4480 in the issue of Wednesday, February 5, 1986, make the following correction: On page 4481, in the first column, in the seventh line of the third complete paragraph, the word "not" should read "now".

BILLING CODE 1505-01

Food and Drug Administration

21 CFR Part 73

[Docket No. 85C-0415]

Listing of Canthaxanthin as a Color Additive Exempt From Certification, and Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 20, 1985, for a regulation that provides for the safe use of canthaxanthin as a color additive in broiler chicken feed to enhance the yellow color of broiler chicken skin. This action responds to a petition filed by Hoffmann-LaRoche, Inc.

EFFECTIVE DATE: Effective date confirmed: December 20, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of November 19, 1985 (50 FR 47532), FDA amended the color additive regulations (21 CFR 73.75) to provide for the safe use of canthaxanthin as a color additive in broiler chicken feed to enhance the yellow color of broiler chicken skin.

In the final rule, FDA gave interested persons until December 19, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of November 19, 1985, for the safe use of canthaxanthin as a color additive in broiler chicken feed to enhance the yellow color of broiler chicken skin should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376))

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and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the November 19, 1985, final rule. Accordingly, the amendments promulgated thereby became effective December 20, 1985.

Dated: February 11, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs

[FR Doc. 86-3496 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 74

[Docket No. 84N-0063]

Confirmation of Effective Date for D&C Blue No. 6 as a Color Additive

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 29, 1985, for a regulation that removes the provision that bars the migration of D&C Blue No. 6 from sutures to the surrounding tissues under conditions of use. FDA took this action because the restriction is not necessary to assure the safety and suitability of the use of D&C Blue No. 6 in sutures.

EFFECTIVE DATE: Effective date confirmed: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register of July 29, 1985 (50 FR 30697), FDA amended 21 CFR 74.3106 *D&C Blue No. 6* by removing paragraph (c)(3) from that regulation. That paragraph contained the provision that bars the migration of D&C Blue No. 6 from a suture to the surrounding tissues under conditions of use. FDA proposed to remove that paragraph in the Federal Register of July 25, 1984 (49 FR 29970). FDA removed the paragraph because the restriction is not necessary to assure the safety or suitability of the use of D&C Blue No. 6 in sutures. The restriction is also ambiguous when referring to absorbable sutures.

In the final rule, FDA gave interested persons until August 28, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the Federal Register of July 29, 1985, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)); and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the July 29, 1985, final rule. Accordingly, the amendments promulgated thereby became effective August 29, 1985.

Dated: February 11, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3497 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feed, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address for two new animal drug applications (NADA's) from Ivy-Gene Co., Inc., Washington, DC, to Ivy Laboratories, Inc., Overland Park, KS.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Inc., 8857 Bond St., Overland Park, KS 66214, has filed supplemental NADA's informing FDA of a sponsor name and address change for NADA 110-315 (progesterone and estradiol benzoate) and NADA 135-606 (estradiol benzoate and testosterone propionate) from Ivy-Gene Co., Inc., 1731 Connecticut Avenue, NW., Washington, DC 20009. The NADA's are amended to reflect the change. There is no change in manufacturing site. The regulations in 21 CFR 510.600 are amended accordingly.

List of Subjects in 21 CFR 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

PART 510—NEW ANIMAL DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by revising the entry for "Ivy-Gene Co., Inc.", and in paragraph (c)(2) by revising the entry for "021641", to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Ivy Laboratories, Inc., 8857 Bond Street, Overland Park, KS 66214	021641

(2) * * *

Drug labeler code	Firm name and address
021641	Ivy Laboratories, Inc., 8857 Bond Street, Overland Park, KS 66214.

Dated: February 12, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-3500 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed on behalf of Arkansas Micro Specialties, Inc., providing for manufacture of 5-, 10-, 20-, and 40-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens. The regulations are further amended to add the firm to the list of sponsors of approved applications.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Arkansas Micro Specialties, Inc., P.O. Box 308, Hwy. 71 North, Lowell, AR 72745, is the sponsor of NADA 139-600 submitted on its behalf by Elanco Product Co. The NADA provides for manufacture of 5-, 10-, 20-, and 40-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The NADA is approved and the regulations are amended to reflect the approval. The regulations are further amended to add the firm to the list of sponsors of approved NADA's.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedures, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Part 510 is amended in § 510.600 by adding a new entry alphabetically in paragraph (c)(1) and numerically in paragraph (c)(2), to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Arkansas Micro Specialties Inc., P.O. Box 308, Highway 71 North, Lowell, AR 72745	047863

(2) * * *

Drug labeler code	Firm name and address
047863	Arkansas Micro Specialties Inc., P.O. Box 308, Highway 71 North, Lowell, AR 72745

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. Part 558 is amended in § 558.625 by adding new paragraph(b)(86), To read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(86) To 047863: 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: February 3, 1986

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 3498 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Tylosin and Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Arkansas Micro Specialties, Inc. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin and sulfamethazine for use in making finished swine feeds.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Arkansas Micro Specialites, Inc., Highway 71 North, P.O. Box 308, Lowell, AR 72745, is the sponsor of NADA 139-601 submitted on its behalf by Elanco Products Co. The NADA provides for the manufacture of premixes containing 5, 10, 20, or 40 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine intended for use in making finished swine feeds. The resulting feeds are for use in maintaining weight gains and feed efficiency in the presence of atrophic rhinitis, lowering the incidence and severity of *Bordetella bronchiseptica* rhinitis, preventing swine dysentery (vibrionic), and controlling swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*). The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human

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environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343,351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.630 [Amended]

2. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by inserting numerically the number "047863".

Dated: February 3, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-3499 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 570 and 579

[Docket No. 84F-0441]

Food Additives; Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food; Ionizing Radiation for Treatment of Laboratory Animal Diets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to permit safe use of ionizing radiation for microbial disinfection of laboratory diets for rats, mice, and hamsters. This action responds to a food additive petition filed by Ralston Purina Co.

DATES: Effective February 19, 1986; objections by March 21, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John D. McCurdy, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5382.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 18, 1984 (49 FR 49181), FDA announced that a food additive petition (FAP 2198) had been filed by Ralston Purina Co., Checkerboard Square, St. Louis, MO 63164, proposing that the food additive regulations be amended to permit the safe use of ionizing radiation for microbial disinfection of laboratory diets for rats, mice, and hamsters. The radiation source is cobalt-60, cesium-137, or electron beam.

FDA received three comments in response to the notice of filing. All comments were favorable. Two were submitted by the laboratory animal breeding industry, and one by a drug research firm.

Currently, 21 CFR Parts 500 through 599 (animal drugs, feeds, and related products) do not contain regulations intended to deal specifically with use of radiation during production, processing, and handling of animal feed and pet food. Therefore, FDA is establishing Part 579—Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food. Existing § 570.12 *Irradiation in the production, processing and handling of animal feed and pet food* (incorporating those regulations in Part 179—Irradiation in the Production, Processing, and Handling of Food (21 CFR Part 179) which are applicable to animal feed and pet food products) is being recodified as § 579.12 *Incorporation of regulations in Part 179.*

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of ionizing radiation is safe that the regulations should be amended as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine (address above) by appointment with the information contact person listed above. As provided in 21 CFR 571.1(h)), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at time on or before March 21, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a wavier of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subject

21 CFR Part 570

Animal feeds, Animal foods, Food additives.

21 CFR Part 579

Animal feeds, Animal foods, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Title 21 of the Code of Federal Regulations is amended as follows:

PART 570—FOOD ADDITIVES

1. The authority citation for 21 CFR Part 570 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10, 5.61.

§ 570.12 [Removed]

2. Part 570 is amended by removing § 570.12 *Irradiation in the production, processing and handling of animal feed and pet food.*

3. By adding new 21 CFR Part 579 to read as follows:

PART 579—IRRADIATION IN THE PRODUCTION, PROCESSING, AND HANDLING OF ANIMAL FEED AND PET FOOD

Subpart A—General Provisions

Sec.
579.12 Incorporation of regulations in Part 179.

Subpart B—Radiation and Radiation Sources

579.22 Ionizing radiation for treatment of laboratory animal diets.

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10, 5.61.

Subpart A—General Provisions

§ 579.12 Incorporation of regulations in Part 179.

Regulations providing for irradiation in the production, processing, and handling of food in Part 179 of this chapter are incorporated in Subchapter E as applicable to use in the production, processing, handling, and labeling of animal feed and pet food, except where specifically provided for in this part.

Subpart B—Radiation and Radiation Sources

§ 570.22 Ionizing radiation for treatment of laboratory animal diets.

Ionizing radiation for treatment of complete diets for laboratory animals (mice, rats, and hamsters) may be safely used under the following conditions:

(a) *Energy sources.* Ionizing radiation is limited to:

(1) Gamma rays for sealed units of the radionuclides cobalt-60 or cesium-137.

(2) Electrons generated from machine sources at energy levels not to exceed 10 million electron volts.

(b) *Uses.* The ionizing radiation is used or intended for use in single treatment as follows:

Food for irradiation	Limitations	Use
Bagged complete diets for laboratory animals (mice, rats, and hamsters).	Absorbed dose: Not to exceed 25 kiloGrays (2.5 megarads).	Microbial disinfection.

Dated: February 7, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-3501 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

Policy Decision on Implementation of Bureau of Indian Affairs Land Acquisition Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of policy decision.

SUMMARY: The Assistant Secretary—Indian Affairs has announced that it will be the policy of the Department of the Interior to decline to accept off-reservation lands in trust for the purpose of establishing bingo or other gaming enterprises.

FOR FURTHER INFORMATION CONTACT:

William Bucholz, Chief, Division of Real Estate Services, Main Interior Building, Room 4518, 343-7737

Wayne Nordwall, Attorney Advisor—SOL-IA, Main Interior Building, Room 6457, 343-6331.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is vested by statute with broad discretionary authority to accept land in trust for individual Indians or Indian tribes, within or without existing Indian reservations. In order to assist the Secretary in making these discretionary decisions, the Secretary has issued regulations that, among other things, set forth a very generalized land acquisition policy, 25 CFR 151.3, and require the Secretary to consider such factors as the impact of removing land from local tax rolls, potential jurisdictional problems, and conflicts with local land use plans or zoning ordinances, 25 CFR 151.10. Because of the potential impact of taking land in trust, particularly land located outside of an existing reservation, all off-reservation land acquisition requests are reviewed in Washington by the Office of the Assistant Secretary—Indian Affairs. Since each tribe's circumstances are different, and because of the broad scope of the land acquisition policy statement at 25 CFR 151.3(a)(3), (the provision pursuant to which most off-reservation land acquisition requests are made) each request in the past was reviewed on a case-by-case basis.

Many of these requests have been for the acquisition of land in trust for bingo parlors and other gaming enterprises. In many cases, these proposed uses would not comply with state and local law. While such uses may be lawful on a tribe's existing lands, the Secretary must consider, under the criteria at 25 CFR 151.10, the impacts and wisdom of acquiring land in trust for the purpose of extending jurisdictional immunities beyond present reservation boundaries.

The new policy will have the effect of prohibiting all acquisitions of off-reservation lands in trust for Indian tribes and individuals where the proposed purpose is to establish a bingo operation or a gaming enterprise which would not conform with state and local laws. However, under this policy, lands will still be considered for trust status on a case-by-case basis for other purposes, such as housing and other business ventures.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-3117 Filed 2-18-86; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 51

[T.D. 8076]

Excise Tax Regulations Under The Crude Oil Windfall Profit Tax Act of 1980; Net Profits Interests

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final excise tax regulations relating to the rules applicable to a net profits interest for purposes of the windfall profit tax on domestic crude oil. Changes to the applicable law were made by sections 201(h) and 203(c) of the Technical Corrections Act of 1982. The regulations provide guidance for determining the portion of crude oil produced from the property attributable to the holder of a net profits interest. These regulations supersede § 150.4996-1(b)(3) of the Temporary Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980, 26 CFR Part 150, for those net profits interests for which these regulations would be effective. Those temporary regulations remain in effect for those net profits interests for which these regulations are not effective (e.g., a net profits interest established by an agreement entered into before April 1,

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1982, which is held by a profit making corporation).

DATES: The amendments are effective generally with respect to net profits agreements entered into (or renewed) after March 31, 1982. However, in the case of a 90 percent or more net profits interest held by an exempt charity or exempt governmental interest, these amendments are effective with respect to crude oil removed after February 29, 1980. For purposes of determining the category of crude oil removed (or deemed removed) from the premises before April 1, 1986, the taxpayer may determine the category of all such oil by allocating it among all categories of crude oil in proportion to the production from that property in each such category that was removed (or deemed removed) from the premises during the calendar quarter immediately preceding the calendar quarter of production.

FOR FURTHER INFORMATION CONTACT: David R. Haglund of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:

Background

On August 29, 1984, the Federal Register published proposed amendments to the Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980 (26 CFR Part 51) under sections 4988 and 4996 of the Internal Revenue Code of 1954 (49 FR 34242). The amendments were proposed to conform the regulations to sections 201(h) and 203(c) of the Technical Corrections Act of 1982. Two comments on the proposed amendments were received. A public hearing was not requested and one was not held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

The windfall profit tax imposes a tax on the producer of domestic crude oil except exempt oil. Section 4996(a)(1)(A) provides that the term "producer" generally means the holder of an economic interest with respect to the crude oil. The holder of a net profits interest in a property is generally considered to hold an economic interest with respect to the crude oil. Under § 150.4996-1(b)(3) of the Temporary Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980 (promulgated before enactment of the Technical Corrections Act of 1982), the holder of a net profits interest was only treated as the producer of the number of barrels of crude oil equal to the net profits interest holder's share of net profits divided by the removal price of the crude oil. For example, if X received $120 as his share of net profits and the removal price of the crude oil was $30 per barrel, X was treated as the producer of four barrels of crude oil.

Section 201(h) of the Technical Corrections Act of 1982 amended the definition of "producer" in section 4996(a) to provide special rules for producers subject to a net profits interest agreement. These special rules provide that for windfall profit tax purposes the amount of crude oil equal in value to the cost of operating the property (cost recovery oil) will be treated as produced by the net profits interest holder and the person holding the interest burdened by the net profits interest in the same proportion as their respective shares of net profits. Section 201(h) of the Act also amends section 4988(b) by adding a new paragraph (6) which provides that for purposes of the net income limitation the expenses of producing the crude oil will be allocated in the same manner as the cost recovery oil. Thus, the holder of a 10 percent net profits interest is treated as the producer of 10 percent of the barrels of cost recovery oil produced and will be attributed 10 percent of the expenses of producing that crude oil.

In response to comments received the final regulations modify the notice of proposed rulemaking in several respects. One commentator expressed the view that cost recovery oil and other oil (oil attributable to profits) should be treated differently because, in its view, the amount of other oil is governed by the rules applicable for percentage depletion purposes and should be calculated accordingly. This suggestion was not adopted. The Act provided that cost recovery oil shall be treated as shared in the same proportion as other oil is shared under the net profit agreement. Thus, the Act recognizes that other oil is shared according to the sharing ratio in the net profits agreement. Although section 4996(a)(1)(B) only addresses the treatment of cost recovery oil (because the treatment of that oil before the statutory change was the principal cause of distortion in windfall profit tax liabilities), it clearly indicates that other oil and cost recovery oil are to be determined under the same rules. Accordingly, the final regulations emphasize that each barrel of crude oil production covered by a net profits agreement, including all cost recovery oil, shall be treated as produced by the parties to such agreement in proportion to the respective shares (determined after reduction for such cost recovery oil) of the production of the crude oil covered by such agreement.

The final regulations also clarify that state and local property and severance taxes are qualified costs, and point out that a provision in a net profits agreement that reduces net profits by windfall profit tax has no effect on windfall profit tax.

Another modification in the final regulations is made in response to comments that the proposed rule requiring that categories of oil be determined by reference to production in the preceding calendar quarter is unduly burdensome. The final regulations provide simply that a net profits interest holder is the producer of a fraction of each barrel produced. Accordingly, the holder of a net profits interest takes its share of all categories of oil and of all base prices and all removal prices. For oil removed or deemed removed from the premises before April 1, 1986, taxpayers may base categories of crude oil upon the proposed rule.

Commentators suggested that the cost recovery rules should not apply unless there are actual net profits under the agreement. Section 4996(a)(1)(B)(ii) provides that the cost recovery rules shall not apply before payout. Payout is the time at which the holder of the net profits interest is first entitled to income under the net profits agreement. Because of lower production levels or increased costs subsequent to payout the holder of the net profits interest may not be entitled to any net profits. However, the statutory provision relating to the inapplicability of the cost recovery rules before payout would not have been necessary if the cost recovery rules only applied when there are net profits. Therefore, the statute reflects an intention that once payout occurs the holder of a net profits interest is attributed a share of the cost recovery oil even if there are no net profits in such periods. Moreover, this position is consistent with Congressional intent as indicated by the following statement from the Senate report:

> [The allocation of cost recovery oil] will be made beginning in the first taxable period with respect to which the owner or owners of the net profits interest receive a share of production remaining after cost recovery and for all taxable periods thereafter regardless of whether or not the property subsequently shows a loss.
>
> S. Rep. No. 97-592, 97th Cong., 2nd Sess. 43 (1982).

Special Analysis

The Commissioner of the Internal Revenue has determined that these final rules are not major rules as defined in Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Although a notice of proposed rulemaking which solicits public comments was issued, the Internal Revenue Service concluded that when notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, these final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these final regulations is David R. Haglund of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 51

Crude Oil Windfall Profit Tax Act of 1980; Excise tax, Petroleum.

Adoption of Amendments to the Regulations.

Accordingly, 26 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

Paragraph 1. The authority for Part 51 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 51.4996-1 (b) (3) is also issued under 26 U.S.C. 4998 (a) (1) (B) and 26 U.S.C. 4998 (h) (2).

Par. 2. Paragraph (c) of § 51.4988-2 is amended by redesignating subparagraphs (4), (5), and (6) as (5), (6), and (7), respectively, and by inserting a new subparagraph (4) to read as set forth below. The newly redesignated paragraph headings for (c)(5), (6) and (7) are set out for the convenience of the user.

§ 51.4988-2 Net income limitation on windfall profit.

* * * * *

(c) *Special rules.* * * *

(4) *Certain net profits interests.* (i) For purposes of determining the net income limitation under this section in the case of any person treated under paragraph (b) (3) of § 51.4996-1 (relating to net profits interests) as the producer of any portion of cost recovery oil (within the meaning of § 51.4996-1 (b) (3) [iv]) covered by a net profits agreement (within the meaning of § 51.4996-1 (b) (3) (iii))—

(A) Such person (and only such person) shall include in its gross income from the property the gross income from such portion, and

(B) The qualified costs (within the meaning of § 51.4996-1 (b) (3) (v)) allocable to such portion shall be treated as paid or incurred by such person (and only by such person).

The determination of cost depletion under paragraph (b) (3) of this section shall be made with regard to the principles of paragraph (b) (3) of § 51.4996-1. Thus, a person treated under that paragraph as the producer of any portion of cost recovery oil covered by a net profits agreement computes the cost depletion deduction allowable under paragraph (b) (3) of this section by using as the number of units sold that number of units which such person would have used for income tax purposes if such person's gross income from the property had included the gross income attributable to that portion of the cost recovery oil of which such person is treated as the producer.

(ii) The principles of this subparagraph may be illustrated by the following examples:

Example (1). B owns 100 percent of the working interest in Whiteacre. B's working interest is burdened by a 75 percent net profits interest held by C. The net profits agreement provides that the amount of net profits is determined by subtracting from gross income from the sale of crude oil or gas production from Whiteacre all payments to royalty holders and all operating expenses except the windfall profit tax. Whiteacre produces only taxable crude oil. For the taxable year, 20,000 barrels of crude oil are produced from Whiteacre and sold for $40 per barrel for a total of $800,000. Of this amount, $100,000 is paid to D for his ⅛ royalty interest ($40 × (20,000 × ⅛)). The operating expenses attributable to the production of the taxable crude oil (including state severance taxes) are $100,000. The net profits for the year are $600,000 ($800,000 (gross income)-($100,000 (royalty payment) + $100,000 (expenses)). C is entitled to $450,000 ($600,000 × .75). Under § 51.4996-1 (b) (3) C is treated as the producer of 13,125 barrels of crude oil (20,000 × ⅞ × .75). Thus, for purposes of determining C's hypothetical cost depletion deduction allowable for the taxable year under paragraph (b) (3) of § 51.4988-2, C would use the 13,125 barrels as his number of units sold and would attribute $75,000 of the costs ($100,000 × .75) to that production for purposes of calculating the net income limitation.

Example (2). Assume the same facts as example (1) except that the net profits agreement provides that the amount of net profits is reduced by the windfall profit tax. Because qualified costs as defined in § 51.4996-1 (b) (3) (v) do not include the windfall profit tax, the net profits interest holder's share of production attributable to his share of net profits under the agreement is determined without regard to any reduction in profits attributable to the windfall profit tax. The results are the same as in example (1).

(5) *Computation of the net income limitation for taxable year that includes March 1, 1980.* * * *

(6) *Election to capitalize qualified tertiary injectant expenses.* * * *

(7) *Computation of the net income limitation before October 27, 1981, under notice of proposed rulemaking.* * * *

* * * * * *

Par. 3. Paragraph (b)(3) of § 51.4996-1 is revised to read as follows:

§ 51.4996-1 Definitions.

* * * * *

(b) *Producer.* * * *

(3) *Certain net profits interests*—(i) *In general.* In the case of any property (within the meaning of paragraph (i) of this section), each barrel of crude oil production covered by a net profits agreement (within the meaning of paragraph (b)(3)(iii) of this section), including all cost recovery oil (within the meaning of paragraph (b)(3)(iv) of this section), shall be treated as produced by the parties to such agreement in proportion to the respective shares (determined after reduction for such cost recovery oil) of the production of the crude oil covered by such agreement. For example, the holder of a 5 percent net profits interest is the producer of 5 percent of each barrel of crude oil produced (both cost recovery oil and other oil) from the property burdened by the net profits interest. See example (1) of paragraph (b)(3)(viii) of this section. An economic interest in crude oil in place in the ground which is not a working interest (within the meaning of paragraph (d)(2) of § 51.4992-1) without regard to this subparagraph shall not be considered a working interest by reason of the allocation of costs to a holder of a net profits interest under this subparagraph. Notwithstanding the preceding provisions of this paragraph (b)(3)(i), in the case of crude oil removed (or deemed removed) from the premises before April 1, 1986, the taxpayer may determine the category of all such oil by allocating it among all categories of crude oil in proportion to the production from that property in each such category that was removed (or deemed removed) from the premises during the calendar quarter immediately preceding the calendar quarter of the production whose category is being determined.

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(ii) *General rule inapplicable before payout.* In the case of any property, the provisions of paragraph (b)(3)(i) of this section only shall apply for—

(A) The first taxable period in which, under the agreement with respect to such property, one or more persons receive a share described in paragraph (b)(3)(iii)(B) of this section, and

(B) All subsequent taxable periods to which such agreement applies (whether or not the property shows a loss in such period).

(iii) *Net profits agreement defined.* The term "net profits agreement" means an agreement entered into (or renewed) after March 31, 1982, that provides for sharing part or all of the production of curde oil from a property where—

(A) One or more persons are to be reimbursed for qualified costs (within the meaning of paragraph (b)(3)(v) of this section) by the allocation of cost recovery oil, and

(B) One or more persons are to receive a share of any production of crude oil from the property remaining after reduction for the cost recovery oil referred to in paragraph (b)(3)(iii)(A) of this section.

The term "net profits agreement" shall include an agreement that provides that a party to the agreement is entitled to the greater or lesser of a specified share of production of crude oil for the property remaining after reduction for cost recovery oil or some other amount (such as a specified share of total production or a maximum or minimum amount) provided the requirements of paragraph (b)(3)(iii) (A) and (B) of this section are satisfied. If a party to an agreement described in the preceding sentence receives a share of production other than the specified share of production of crude oil from the property remaining after reduction for cost recovery oil, such party shall be treated as receiving a share of production of crude oil from the property remaining after reduction for cost recovery oil in certain situations. If such party receives a maximum or minimum amount with respect to any crude oil production instead of a specified share of production, such party shall not be treated as receiving a share of production remaining after reduction for cost recovery oil with respect to such crude oil production. However, if such party is entitled to receive the greater of a specified share of production or a specified amount and receives the specified share of production remaining after reduction for cost recovery oil instead of the specified amount, such party shall be treated as receiving a share of production remaining after reduction for cost recovery oil to the extent that the amount of the share received exceeds the specified amount. See example (4) of paragraph (b)(3)(viii) of this section.

(iv) *Cost recovery oil defined.* The term "cost recovery oil" means crude oil produced from the property that is allocated to a person as reimbursement for qualified costs paid or incurred with respect to the property. Accordingly, cost recovery oil exists to the extent that the agreement provides that qualified costs are chargeable against profits and to the extent that the property has sufficient revenues to reimburse for the expenses (*i.e.*, the amount of cost recovery oil cannot exceed the amount of oil produced). If a net profits agreement provides that net profits are determined from proceeds other than proceeds solely from the production of crude oil, cost recovery oil shall be deemed to exist to the extent that, based on all the facts and circumstances, the expenses paid or incurred in producing the net profits are attributable to the production of crude oil. See example (7) of paragraph (b)(3)(viii) of this section.

(v) *Qualified costs.* The term "qualified costs" means any amount paid or incurred for exploring, developing, or producing natural gas or crude oil from a reservoir on the property. The term includes any overhead or indirect costs paid or incurred that are attributable to the activities described in the preceding sentence. The term includes any state or local property or severance taxes with respect to the oil, but does not include any amount that is paid or incurred with respect to the tax imposed by chapter 45.

(vi) *Scope of agreement.* A net profits agreement shall be treated as covering only shares of production of crude oil held by persons who hold economic interests in the property (determined without regard to paragraph (b)(3)(i) of this section).

(vii) *Effective date for certain governmental entities and certain charities.* If 90 percent or more of the remaining production referred to in paragraph (b)(3)(iii)(B) of this section is to be received by holders of a qualified governmental interest (within the meaning of section 4994 (a)) or holders of a qualified charitable interest (within the meaning of section 4994 (b)), or both, that do not share in the costs referred to in paragraph (b)(3)(iii)(A) of this section, then the requirement of paragraph (b)(3)(iii) that the agreement be entered into (or renewed) after March 31, 1982, shall not apply. Accordingly, the applicability of the provisions of this subparagraph is determined without regard to the date on which the net profits agreement was entered into.

(viii) The principles of this subparagraph may be illustrated by the following examples:

Example (1). A, an independent producer, holds the working interest in property X which produces tier 1 oil. A's interest is burdened by a 95 percent net profits interest held by B who is neither an independent producer nor an exempt producer. The agreement between A and B provides that the amount of net profits is determined by subtracting from gross income all operating expenses except windfall profit taxes. Property X produces 400 barrels of crude oil during the month of May. A is the producer of 5 percent of each of the 400 barrels produced in May and B is the producer of 95 percent of each of such barrels (totalling 20 barrels and 380 barrels, respectively).

Example (2). C, an independent producer, owns an oil and gas property that is burdened by an overriding royalty interest held by D. The overriding royalty interest agreement provides that D is entitled to the lesser of the proceeds from ¼ of the production from the property or 50 percent of the net profits from the property for a calendar quarter. The property produced 1,000 barrels at $30 per barrel for a calendar quarter and had net profits of $1,400. The proceeds from ¼ of the production for the quarter exceeded 50 percent of the net profits. D is treated as the holder of a 50 percent net profits interest with respect to those barrels of crude oil for which D's share of the proceeds from production is determined by reference to 50 percent of net profits. D is the producer of 500 barrels (50% of each of the 1000 barrels produced).

Example (3). E, an independent producer, owns an oil and gas property that is burdened by a net profits interest (determined before any reduction of the net profits for chapter 45 taxes) held by F. F is entitled to 10 percent of the net profits or $2,200 (or revenue from total production if revenue from production is $2,200 or less per calendar quarter) for a calendar quarter, whichever is greater. For a calendar quarter gross income from the property is $26,010 (867 barrels at $30 each) and expenses are $4,800. F's share of net profits is $2,121 (($26,010−$4,800)×10%). F receives $2,200 because this amount exceeds 10 percent of net profits. F is treated as the holder of an 8.45829% royalty interest ($2,200÷$26,010), and is treated as the producer of 73.33337 barrels of crude oil (867×8.45829%) with respect to that royalty interest.

Example (4). Assume the same facts as example (3) except that the expenses are $1,200. F's share of net profits is $2,481 (($26,010−$1,200)×10%). F is treated as the holder of an 8.45829% royalty interest ($2,200÷$26,010) because F is entitled to the $2,200 without regard to net profits. F is also treated as the holder of a 1.24281% net profits interest because $281 ($2,481−$2,200) are determined by reference to net profits from production ($281÷($26,010−($1,200+$2,200))). F is treated as the producer of 84.10853 barrels of crude oil. Of this amount, 73.33337 barrels are attributable to the royalty interest (867×8.45829%) and 10.77516 barrels are attributable to the net profits interest (867×1.24281%). F is treated as the producer of 1.24281% of the cost recovery oil, and, accordingly, is allocated $14,91372 of expenses (1.24281%×$1,200) for purposes of the net income limitation.

Example (5). On January 1, 1983, G and H enter into an agreement which provides for the following: (1) G) will incur all expenses of exploring for and developing property Y, (2) G will receive all production from Y until G has recovered all expenses for exploration and development, and (3) after G has recovered all expenses for exploration and development, G and H will share equally the production remaining after G has recovered operating costs [determined without regard to the tax imposed by chapter 45). Y begins producting crude oil on July 1, 1983. G recovers all expenses for exploration and development as of December 31, 1983, and on January 1, 1984, G and H begin sharing the production from Y remaining after G has recovered operating expenses. For purposes of paragraph (b)(3)(iii)(A) of this section, H is not treated as receiving a share described in paragraph (b)(3)(iii)(B) of this section until January 1, 1984.

Example (6). Assume the same facts as example (5) except that the agreement provides that after G has recovered all expenses for exploration and development, G and H will share equally the revenue and expenses of production from Y. The agreement between G and H is not a net profits agreement because H's share of production after G has recovered all expenses for exploration and development is burdened by the expenses of such production.

Example (7). J, an independent producer, owns property Z which produces tier 1 and tier 2 oil. J's interest is burdened by a 95 percent net profits interest held by K whose interest is a qualified charitable interest. The net profits agreement between J and K provides that the amount of net profits is determined by subtracting from gross income from the sale of crude oil and natural gas production from property Z all operating expenses except the windfall profit tax. The agreement also provides that the proceeds from the production of natural gas shall be used to reimburse J for all operating expenses for the production of crude oil and natural gas from property Z. Fifty percent of the gross income from property Z is attributable to the production of crude oil and 50 percent is attributable to the production of natural gas. However, 80 percent of the operating expenses of property Z are attributable to the production of crude oil while only 20 percent are attributable to the production of natural gas. During January of 1984, property Z produces 900 barrels of crude oil which sell for $27,000 ($30 per barrel) and 10,000 MCF of natural gas which also sell for $27,000. The operating expenses of property Z for that month are $4,500, $3,600 of which are attributable to the production of crude oil and $900 of which are attributable to the production of natural gas. Because 80 percent of the operating expenses are attributable to the production of crude oil, cost recovery oil shall be deemed to exist to the extent of 80 percent of the operating expenses. Accordingly, there are 120 barrels of cost recovery oil ($3,600 (operating expenses attributable to crude oil) ÷ $30 (removal price of each barrel of crude oil)).

* * * * *

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: December 12, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 86-3352 Filed 2-18-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Approval of Amendment to the Pennsylvania Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a program amendment submitted by Pennsylvania as an amendment to the State's permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment pertains to the remining of previously mined areas having preexisting pollutional discharges. OSMRE published a notice in the **Federal Register** on November 15, 1985, announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (50 FR 47230). The public comment period ended December 16, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations. The Federal rules at 30 CFR Part 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South Second Street, Suite L-4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 **Federal Register** notice (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.15 and 938.16.

II. Submission of Program Amendment

On December 23, 1983, Pennsylvania initially submitted a program amendment to OSMRE pertaining to the remining of previously mined land having preexisting pollutional discharges. This amendment was in the form of proposed regulations entitled Subchapter F of Chapter 87 and Subchapter 6 of Chapter 88 of Title 25 of the Pennsylvania Code. On February 8, 1984, OSMRE published a notice in the **Federal Register** inviting public comment on the amendment (49 FR 4791-4792).

The program amendment was subsequently revised and a follow-up

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submittal made to OSMRE on June 25, 1984. OSMRE reopened the comment period on July 24, 1984, for an additional 30 days to allow the public an opportunity to comment on the revisions submitted by the State (49 FR 29807).

Since that time the General Assembly of the Commonwealth of Pennsylvania enacted Act 158 of 1984 which amends the Surface Mining Conservation and Reclamation Act to specifically authorize the remining of previously mined areas having preexisting pollutional discharges. On March 26, 1985, the Pennsylvania Environmental Quality Board promulgated Subchapter F of Chapter 87 and Subchapter G of Chapter 88 as final regulations. On September 5, 1985, Pennsylvania submitted Act 158 and the final regulations adopted by the Board on March 26, 1985, for OSMRE's approval as an amendment to the Pennsylvania program. In addition to the Act and regulations, Pennsylvania submitted as part of its proposed program amendment a letter from the Pennsylvania Attorney General and a second letter from the Office of General Counsel to the Environmental Protection Agency dated August 19, 1985, and July 8, 1985, respectively. These letters pertain to the Environmental Protection Agency (EPA) concerns regarding Act 158 relative to the Federal Clean Water Act. Section 503(b)(2) of SMCRA requires that the Director, OSMRE, obtain the written concurrence of the Administrator of the EPA with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act and the Clean Air Act.

The State's submission of September 5, 1985, (OSMRE Administrative Record No. PA–566) supersedes the State's earlier program submission of December 23, 1983, and revised submittal of June 25, 1984, referenced above. Accordingly, OSMRE issued a proposed rulemaking on November 15, 1985, which superseded its previous proposed rulemakings published February 8, 1984, and July 24, 1984. In the Federal Register notice published November 15, 1985 (50 FR 47230), OSMRE invited public comment for 30 days on the State's submission of September 5, 1985. The comment period ended December 16, 1985. The purpose of the program amendment submitted by Pennsylvania on September 5, 1985, is to improve the quality of the waters of Pennsylvania by creating incentives for operators to enter, mine and reclaim areas that were previously affected by mining and which, as a result, have pollutional discharges. At the present time coal operators who re-affect previously mined areas with preexisting pollutional discharges are unable to obtain bond release unless they eliminate those discharges; in some circumstances operators would be required to permanently treat those discharges. The Department of Environmental Resources' (DER) existing bonding regulations prevent the Department from releasing bonds where there are pollutional discharges on the permit area even if those pollutional discharges were present before the operator began mining. The program amendment submitted by the State creates a limited exception to the existing regulations which allows for special permits for, and the subsequent release of bonds to, operators who mine areas with preexisting pollutional discharges. The amendment provisions obligate DER to release the bond if the operator, at a minimum, is satisfying the effluent limitations established by the Department and approved by EPA for areas with preexisting pollutional discharges, the operator has fully implemented the approved abatement and reclamation plan and the operator has not caused degradation of the baseline pollution load for a specified period of time.

III. Summary Description of Amendment

25 Pa. Code 87.201/88.501, Section 4.6(a) of the PSMCRA

Pennsylvania's Act and regulations provide that any operator who proposes to remine an area on which there are preexisting pollutional discharges resulting from previous mining may request special authorization from DER to conduct surface coal mining activities on such an area. Receipt of the authorization entitles an operator to later request bond release for areas which continue to discharge pollutional material.

25 Pa. Code 87.202/88/502, Section 3 of the PSMCRA

The following new terms are defined in Pennsylvania's Act and regulations: "abatement plan", "actual improvement", "baseline pollution load", "best professional judgment", "best technology", and "pollution abatement area".

25 Pa. Code 87.203/88/503, Section 4.6(b) of the PSMCRA

Pennsylvania's program amendment provides that authorizations to remine areas with pollutional discharges may be granted by DER only if the authorization request is made at the time of submittal of a permit application or prior to a Department decision to issue or deny a permit. Operators with current permits may revise their existing permits and obtain authorizations provided the operator satisfies certain requirements.

25 Pa. Code 87.204/88.504, Section 4.6(d) of the PSMCRA

These sections of the State Act and regulations establish the permit application requirements applicable to operators seeking authorizations to remine areas with preexisting pollutional discharges. In addition to the application requirements that apply to any surface mining operation, persons seeking special authorizations to mine areas with preexisting pollutional discharges must satisfy certain additional application requirements. The operator must define the pollution abatement area within the permit area, define the baseline pollution load from the pollution abatement area and provide an abatement plan which would describe the level of abatement to be achieved.

25 Pa. Code 87.205/88.505, Sections 4.6(b) and 4.6(j) of the PSMCRA

These provisions set forth the criteria to be used by DER in approving or denying authorizations to remine areas with pollutional discharges. Authorizations may not be granted unless the applicant demonstrates, among other things, that the proposed abatement plan will result in significant reduction of the baseline pollution load and represents best technology, the mining operation on the proposed pollution abatement area will not further degrade the ground water and the standard of success for revegetation will be achieved. Vegetation must be established on the mine site up to the usual coverage standards, regardless of the surface conditions inherited by the operator.

25 Pa. Code 87.206/88.506, Section 4.6(e) of the PSMCRA

These provisions establish special operational requirements for operators who receive authorizations to mine areas with pollutional discharges. These requirements are in addition to the general operational requirements under Chapter 86 and Chapters 87 or 88 that apply to all surface mining operations. An operator granted an authorization under Subchapter F or G must implement the water quality and quantity monitoring program for the abatement area until the requirements for bond release are met. Also, an operator is required to give DER progress reports at various stages during the mining operation on the implementation of the abatement plan.

25 Pa. Code 87.207/88.507, Sections 4.6 (f), (g), and (h) of the PSMCRA

These provisions establish the standards for treatment of discharges. The regulations provide that preexisting discharges directly encountered when remining, or any discharge that grows worse for reasons which the miner cannot demonstrate as other than the remining operation, must be treated to the usual effluent standards during active mining and in the interim before final bond release. With respect to preexisting discharges which are not encountered during remining (i.e., the discharges are not located within the active mining area) or implementation of the abatement plan, section 4.6(f)(2) of the PSMCRA provides that the treatment level will be the base line pollution load. Under the State Act the treatment requirement is triggered when the baseline pollution load is exceeded. The State's regulations establish a different standard than the PCSMCRA. They require a treatment level established by best professional judgment which is defined in the regulations as "the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the Department under sections 301 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1311 and 1342)".

The level of treatment set forth in the regulations reflects the interpretation of EPA as to what is required under Federal law. In order to approve Pennsylvania's program amendment, OSMRE is required to obtain the concurrence of the EPA in accordance with section 503(b) of SMCRA. EPA reviewed Pennsylvania's proposed program amendment and provided comments to the State.

25 Pa. Code 87.208 and. 209/88.508 and .509, Section 4.6(i) of the PSMCRA

Set forth under these sections of the Act and regulations are the criteria and schedule for bond release. If the operator implements his abatement plan which results in an improvement in the water quality of the area, DER is obligated to release the operator's bond not withstanding the presence of a pollutional discharge. The Department is obligated to release the operator's bond if the operator did not make the quality of the pre-existing discharge worse

provided that the operator implemented the abatement program as approved and reclaimed the area, eliminated public health and safety problems and initiated other steps that the Department deemed necessary to improve water quality. An operator may not seek and obtain bond release if the operator worsens the preexisting pollutional discharge or is responsible in the first place for creating the discharges.

IV. Director's Findings

Performance Standards

30 CFR 730.5(b) establishes as a standard of review that State regulatory amendments shall be no less effective than the Federal regulations. With respect to the treatment levels for pre-existing discharges required under the Pennsylvania program amendment the key Federal regulation which is the standard of review is 30 CFR 816/817.42. The Federal regulation requires that mining operations comply with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by EPA set forth in 40 CFR Part 434. No distinction is made between mining and remining. On October 16, 1985, OSMRE requested the concurrence of the EPA with respect to those aspects of the amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act. In order to approve Pennsylvania's program amendment, OSMRE is required to obtain the concurrence of the EPA in accordance with section 503(b) of SMCRA. In a letter to the Director dated November 15, 1985, EPA advised OSMRE that it had concluded that the Pennsylvania program, as amended, demonstrates the legal authority, administrative capability and technical conformity to OSMRE regulations necessary to maintain water quality standards under the Clean Water Act (13 U.S.C. 1251 *et seq.*). EPA determined that its Coal Mining Point Source category effluent limitation guidelines set forth at 40 CFR Part 434 do not apply to preexisting discharges which are not encountered. EPA determined that the level of treatment for preexisting discharges which are not encountered must be a treatment level established on a case-by-case basis under section 403(a)(1) of the Clean Water Act. It further determined that such limits must be based upon the best available technology economically achievable (BAT), as determined by the permit writer's best professional judgment or on any more stringent limitation necessary to ensure that the discharge does not cause or contribute to a violation of State water quality standards. Furthermore, EPA determined that an operator must be required to satisfy the required treatment level upon commencement of remining activities. The final regulations adopted by the State reflect EPA's determination regarding the treatment level required under Federal law for unencountered discharges. They require a treatment level established by best professional judgment. The definition of best professional judgment contained in the final regulations reflects EPA's interpretation regarding the treatment level required for preexisting dischages which are not encountered. In addition the rules require that preexisting discharges not encountered must satisfy the treatment level established by best professional judgment upon commencement of remining activities.

Section 4.6(b)(2) of the PSMCRA provides that the operator shall treat preexisting discharges which are not encountered during mining or implementation of the abatement plan to meet the baseline pollution load when the baseline pollution load is exceeded. EPA determined that Section 4.6(f)(2) of the PSMCRA will be inconsistent with Federal law under certain circumstances. EPA determined that section 4.6(f)(2) of the PSMCRA will be consistent with the Clean Water Act to the extent that baseline pollution load levels are as stringent as the treatment levels required by Federal law. However, the State Act will be inconsistent with Federal law when applied to cases in which baseline pollution load treatment levels are less stringent than the treatment levels required by Federal law.

Section 4.6(m) of the PSMCRA requires DER to suspend any provision of § 4.6 which EPA or OSMRE determines to be inconsistent with Federal law. Because the State statute is inconsistent with the Federal law under certain circumstances, the Department is required to suspend the treatment level required by Section 4.6(f)(2) of the PSMCRA in those instances in which the baseline pollution load treatment level required under the State Act is less stringent that the treatment level required under Federal law *and* under the final regulations adopted by the State. In meeting with the State to discuss the proposed remining amendment, EPA advised Pennsylvania that in order to concur with the amendment the State would be required to submit to OSMRE as part of its program amendment an opinion from the Commonwealth's Attorney General confirming that Pennsylvania law

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requires the case-by-case suspension of Section 4.6(f)(2) as discussed above. In accordance with EPA's request, Pennsylvania submitted as part of its program amendment statements from the Deputy General Counsel and First Deputy Attorney General confirming that Section 4.6(m) of the PSMCRA requires the case-by-case suspension of the statute in those cases in which the treatment level under the Act is less stringent than the treatment level required under Federal law. The submission of these statements enabled EPA to concur with the amendments. In summary, OSMRE finds that Pennsylvania's amendment establishes water quality standards which are no less effective than the Federal regulations at 30 CFR 816/817.42.

Permitting Requirements

With respect to the permitting requirements that apply to areas with preexisting pollutional discharges, the amendment provisions at 25 Pa. Code 87.203–.205/88.503–505 and Sections 4.6(b), (d) and (j) of the PSMCRA establish special requirements for such areas which are in addition to the permitting requirements that apply to any surface mining operation. The applicant must define the pollution abatement area within the permit area, define the baseline pollution load from the pollution abatement area and provide an abatement plan which would describe the level of abatement to be achieved. To approve an authorization to remine an area with a pollutional discharge, DER must find among other things, that the proposed abatement plan will result in significant reduction of the baseline pollution load and represents best technology, the mining operation on the proposed pollution abatement area will not further degrade the ground water and the standard of success for revegetation will be achieved. The Director has determined that these special permitting requirements should provide sufficient guarantees to ensure that an operator seeking an authorization to remine an area with a pollutional discharge must demonstrate that the proposed mining and reclamation operations will be conducted in accordance with the applicable performance standards. Therefore, the Director finds the State's amendment provisions no less effective than the Federal standards at 30 CFR Subchapter G.

Bond Release Requirements

Pennsylvania's regulations at 25 Pa. Code 87.208 and .209/88.508 and .509 and Section 4.6(i) of the PSMCRA concerning bond release requirements establish the criteria and schedule for bond release for areas with preexisting pollutional discharges.

In accordance with the Federal standards at 30 CFR 800.40, the State's amendment provides for Phase I bond release after the completion of backfilling and grading, Phase II bond release after revegetation has been established and Phase III bond release after the expiration of the extended liability period.

In addition the State's bond release provisions establish special criteria to ensure that final bond release will not be made unless the operator at a minimum, is satisfying the effluent limitations established by DER and approved by EPA for areas with preexisting pollutional discharges, the operator has fully implemented the approved abatement and reclamation plan and the operator has not caused degradation of the baseline pollution load for a specified period of time.

The Director has determined that the amendment provides sufficient guarantees to ensure that final release of the bond will not occur until the operation has satisfied the water quality standards established by EPA and met all other reclamation requirements that apply to any surface mining operation. Therefore, the Director finds the Pennsylvania amendment to be no less effective than the Federal bond release standards.

V. Public Comment

On November 15, 1985, a proposed rule was published in the **Federal Register** to announce receipt of the amendment provisions submitted by the State on September 5, 1985, and invite comment on the proposed provisions (50 FR 47230).

The amendment provisions submitted by the State on September 5, 1985, supersede the State's earlier program submission of December 23, 1983, and revised submittal of June 25, 1984. Accordingly, the proposed rule published by OSMRE on November 15, 1983, superseded OSMRE's previous proposed rulemaking published February 8, 1984, and July 24, 1984, which are referenced above.

The comment period on the State's submittal of September 5, 1985, closed on December 16, 1985. The comments received by OSMRE on the amendment provisions are discussed below:

The Pennsylvania Coal Mining Association commented that it supported the amendment submitted by Pennsylvania for remining areas with pollutional discharges and stated that the requirements established by the amendment are no less effective than the requirements of SMCRA. OSMRE must find the amendment to be consistent with SMCRA and no less effective than OSMRE's regulations. OSMRE has determined that the amendment submitted by the State meets this standard and, therefore, the Director is approving it.

The U.S. Soil Conservation Service commented it had no specific comments on the amendment but stated that it believed the amendment, if approved by OSMRE, would be beneficial to the State.

VI. EPA Concurrence

On October 16, 1985, OSMRE requested the concurrence of EPA on those aspects of the amendment submitted by Pennsylvania which relate to air or water quality standards promulgated under the authority of the Clean Water Act. OSMRE is required to obtain the concurrence of the EPA in accordance with section 503(b) of SMCRA. As noted above under the Director's findings, EPA provided concurrence on the amendments. EPA's letter of concurrence is dated November 15, 1985, and is filed in the OSMRE Administrative Record under number PA–583.

VII. Director's Decision

Based on the findings, the Director is approving the amendment to the Pennsylvania program as submitted September 5, 1985. The Director is amending Part 938 of 30 CFR Chapter VII to implement this decision.

VIII. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE on exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 12, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 938.15 is amended by adding a new paragraph (j) as follows:

§ 938.15 Approval of regulatory program amendments.

* * * * *

(j) The following amendment submitted to OSMRE on September 5, 1985 is approved effective February 19, 1986, Act 158 of 1984; Subchapter G of Chapter 87 and Subchapter G of Chapter 88 of the Pennsylvania code of regulations; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hanmer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.

[FR Doc. 86–3559 Filed 2–18–86; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 3F2907/R616; FRL–2971–6]

Pesticide Tolerances for (2-(3,5-Dichlorophenyl)-2-(2,2,2-Trichloroethyl)Oxirane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the herbicide (2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)oxirane, (referred to in the preamble of this document as "tridiphane"), in or on certain raw agricultural commodities. This regulation, to establish maximum permissible levels for residues of tridiphane in or on the commodities, was requested by the Dow Chemical Co.

EFFECTIVE DATE: February 19, 1986.

ADDRESS: Written objections identified by the document control number [PP 3F2907/R616] may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM–25), Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of July 13, 1983 (48 FR 32079), which announced that the Dow Chemical Co., P.O. Box 1706, Midland, MI 48640, submitted pesticide petition 3F2907 to EPA, proposing to amend 40 CFR 180 by establishing tolerances for residues of the herbicide tridiphane in or on the raw agricultural commodities field corn grain at .05 part per million (ppm) and corn fodder and forage at 0.1 ppm.

There were no comments received in response to the notice of filing.

The pesticide is considered useful for the purposes for which the tolerances are sought. The data submitted in the petition and other relevant material have been evaluated. The data considered include acute studies: an acute oral study in rats; an acute dermal study in rabbits; an acute inhalation study in rats; a primary eye irritation study in rabbits (mild irritant); a primary dermal irritation study in rabbits (moderate irritant); a rat teratology study with a teratogenic NOEL of > 200 mg/kg/day (highest dose tested, HDT) and a fetotoxicity NOEL of 30 mg/kg/day; a mouse teratology study with a teratogenic NOEL of > 250 mg/kg/day (HDT) and a fetoxicity NOEL of 75 mg/kg/day; a rat 90-day feeding study with a NOEL of < 20 mg/kg/day (lowest dose tested, LDT); a dog 6-month feeding study with an NOEL of 10 mg/kg/day; a two-generation rat reproduction study with a NOEL of 0.33 mg/kg/day; mutagenic testing including an unscheduled DNA synthesis test negative for mutagenicity, an Ames test negative for mutagenicity, and a gene mutation study in Chinese hamsters negative for mutagenicity; a two-year rat feeding/oncogenicity study using doses of 0, 0.3, 3, and 30 mg/kg/day in males and 0, 0.3, 5, 50 mg/kg/day in females with no oncogenic effects observed at any of the dose levels and a systemic NOEL in the male of 3 mg/kg/day and in the female of 5 mg/kg/day; a two-year mouse feeding/oncogenicity study using doses of 0, 1, 10 and 35 mg/kg/day with a statistically significant increase ($P<0.05$) in the incidence of hepatocellular adenomas and in the incidence of adenomas/carcinomas combined at the highest dose tested in female mice only and at terminal sacrifice and a systemic NOEL of 10 mg/kg/day for both males and females.

Based upon a weight-of-the-evidence analysis, the Agency has categorized tridiphane as a group C carcinogen (possibly carcinogenic to humans (49 FR 46294; November 23, 1984)). The Agency has concluded that the data available provide weak evidence of oncogenicity for the chemical in female mice. Therefore the Agency has classified tridiphane as a category C oncogen (possible human carcinogen with limited evidence of carcinogenicity in animals in the absence of human data). Tridiphane produced benign, but not malignant tumors in only one sex and one species of animal and did not show any positive response in a variety of short-term tests for mutagenicity. The Agency has further determined, based upon the weight-of-evidence that no quantitative risk assessment is needed.

An ADI (acceptable daily intake) of 0.0033 mg/kg/day has been established based on a NOEL of 0.33 mg/kg/day in a rat two-generation reproduction study using a safety factor of 100. The percent of the ADI utilized is 0.38 percent.

The nature of the residue of tridiphane in corn is adequately understood. From the proposed use on corn there is no reasonable expectation of future residues in meat, milk, poultry, and eggs (40 CFR 180.6(a)(3)), and tolerances are not required for these items. An adequate analytical method, liquid chromatography with an ultra-violet detector, is available for enforcement purposes.

Based on the information and data considered, the Agency has determined that the establishment of the tolerances for residues of the herbicide in or on the commodities will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk at the address given above. Such objections should

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specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: February 10, 1986.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.424 is added to read as follows:

§ 180.424 2-(3,5-Dichlorophenyl)-2-(2,2,2-trichloroethyl)-oxirane; tolerances for residues.

Tolerances are established for residues of the herbicide 2-(3,5-dichlorophenyl)-2-(2,2,2-trichloroethyl)-oxirane in or on the following raw agricultural commodities:

Commodities	Parts per million
Corn, grain, field	0.05
Corn, fodder	0.10
Corn, forage	0.10

[FR Doc. 86-3568 Filed 2-18-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6701]

Flood Insurance, Suspension of Community Eligibility; Connecticut, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street Southwest, FEMA—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flood. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register**.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended.) This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: Essex, town of, Middlesex County	090086C	Feb. 9, 1973, Emerg; July 16, 1980, Reg.; March 4, 1986, Susp.	Oct. 26, 1973, Aug. 20, 1976 and Mar. 4, 1986	Mar. 4, 1986.
Region III				
Pennsylvania: South Londonderry, township of, Lebanon County.	421043A	Feb. 15, 1974, Emerg.; Mar. 4, 1986, Reg.; Mar. 4, 1986, Susp.	Oct. 29, 1976 and Mar. 4, 1986	Do.
Region IV				
Alabama: Selma, city of, Dallas County	010065C	May 7, 1974, Emerg.; Mar. 4, 1986, Reg.; Mar. 4, 1986, Susp.	Dec. 17, 1973, May 21, 1976, July 8, 1979 and Mar. 4, 1986.	Do.
Kentucky: Magoffin County, unincorporated areas	210158B	Dec. 18, 1978, Emerg.; Mar. 4, 1986, Reg.; Mar. 4, 1986, Susp.	Aug. 26, 1977 and Mar. 4, 1986	Do.
Tennessee: Waverly, city of, Humphreys County	470095B	May 24, 1974, Emerg.; Mar. 4, 1986, Reg.; Mar. 4, 1986, Susp.	Feb. 15, 1975, July 2, 1976 and Mar. 4, 1986	Do.
Region IV				
Arkansas: ¹ Colt, city of, St. Francis County	050186A	Apr. 25, 1975, Emerg.; Mar. 4, 1986, Susp	Oct. 3, 1975	Do.
Region VIII				
Montana: Lima, town of, Beaverhead County	300177B	Oct. 22, 1975, Emerg.; Mar. 4, 1986, Reg.; Mar. 4, 1986, Susp.	Mar. 4, 1986	Do.
North Dakota: Mott, city of, Hettinger County	380039C	Dec. 15, 1976, Emerg.; Mar. 4, 1986, Reg.; Susp.	Jan. 9, 1974, Dec. 26, 1975, Mar. 4, 1986	Do.
California: Agoura Hills, city of, Los Angeles County.	065072A	July 5, 1984, Emerg.; Mar. 4, 1986, Reg.; Mar. 4, 1986, Susp.	Mar. 4, 1986	Do.
Nevada: Carson City, city of, Independent city	320001B	Aug. 6, 1975, Emerg.; Mar. 4, 1986, Reg.; Mar. 4, 1986, Susp.	May 24, 1974, Jan. 7, 1977 and Mar. 4, 1986	Do.
Region I				
Massachusetts: Beverly, city of, Essex County	250077B	Aug. 18, 1974, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Aug. 16, 1974, Dec. 10, 1976 and Mar. 18, 1986	Mar. 18, 1986.
Region II				
New Jersey: Middlesex, borough of, Middlesex County.	345395	Sept. 25, 1975, Emerg.; July 9, 1971, Reg.; Mar. 18, 1986, Susp.	July 10, 1971, July 1, 1974, Jan. 9, 1976, and Mar. 18, 1986.	Do.
New York: Lattingtown, village of, Nassau County	360474C	Nov. 20, 1974, Emerg.; Sept. 1, 1978, Reg.; Mar. 18, 1986, Susp.	May 17, 1974, Sept. 1, 1978, and Mar. 18, 1986	Do.
Region V				
Ohio: Cambridge, city of, Guernsey County	390200B	July 10, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	May 31, 1974, Nov. 21, 1975, and Mar. 18, 1986	Do.
Region VI				
Texas: Martindale, town of, Caldwell County	481587C	Nov. 18, 1983, Emerg., Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	May 27, 1977, Mar. 15, 1982, and Mar. 18, 1986	Do.
Region VII				
Nebraska: Lincoln, city of, Lancaster County	315273C	Apr. 17, 1970, Emerg.; Apr. 22, 1971, Reg.; Mar. 18, 1986, Susp.	Apr. 27, 1971, July 1, 1974, Sept. 3, 1976, and Nov. 7, 1980.	Do.
Region I Minimal Conversions				
Maine: Van Buren, town of, Aroostook County	230036B	July 3, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	June 14, 1974, Sept. 24, 1976, and Mar. 18, 1986	Mar. 18, 1986.
Region II				
New York:				
Brownville, village of, Jefferson County	361576A	Nov. 21, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Apr. 23, 1976 and Mar. 18, 1986	Do.
Hagaman, village of, Montgomery County	360450A	June 18, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Aug. 8, 1976 and Mar. 18, 1986	Do.

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State and location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified	Date certain Federal assistance no longer available in special flood hazard areas
Region III				
Pennsylvania: Allegheny, township of, Cambria County.	422265A	Aug. 26, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Jan. 24, 1975 and Mar. 18, 1986	Do.
Region IV				
Arkansas: Belleville, city of, Yell County	050384A	Aug. 26, 1976, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Apr. 18, 1975, Mar. 18, 1986	Do.
Region VIII Minimal Conversions				
Montana:				
Broadus, town of, Powder River County	300058C	Sept. 10, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Aug. 23, 1974, Dec. 26, 1975, Oct. 17, 1976, and Mar. 18, 1986.	Do.
Browning, town of, Glacier County	300030B	Apr. 29, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Mar. 15, 1974, Jan. 9, 1976, and Mar. 18, 1986	Do.
Roundup, city of, Musselshell County	300050B	Mar. 12, 1975, Emerg., Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	June 28, 1974, Apr. 9, 1976, and Mar. 18, 1986	Do.
South Dakota: Davis, town of, Turner County	460066A	Aug. 8, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	May 2, 1975, Mar. 18, 1986	Do.
North Dakota:				
Parshall, city of, Mountrail County	380073A	Aug. 18, 1978, Emerg., Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Nov. 29, 1974 and Mar. 18, 1986	Do.
Souris, city of, Bottineau County	380010A	Aug. 12, 1977, Emerg., Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Nov. 29, 1974 and Mar. 18, 1986	Do.
Utah:				
Green River, city of, Emery County	490062B	Apr. 7, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	June 21, 1974, Dec. 5, 1975, and Mar. 18, 1986	Do.
North Logan, city of, Cache County	490024B	Sept. 26, 1974, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	June 28, 1974, Nov. 21, 1975, and Mar. 18, 1986	Do.
Parowan, city of, Iron County	490076B	June 9, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Aug. 16, 1974, Dec. 19, 1975, Mar. 18, 1986	Do.
Piute County, unincorporated areas	490094B	Mar. 14, 1978, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Nov. 8, 1977, Mar. 18, 1986	Do.
Smithfield, city of, Cache County	490029B	Dec. 18, 1974, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	June 28, 1974, Dec. 26, 1975, Mar. 18, 1963	Do.
Vernal, city of, Uintah County	490148A	Apr. 18, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	June 30, 1976, Mar. 18, 1986	Do.
Washington County, unincorporated areas	490224B	Oct. 15, 1975, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Feb. 7, 1978 and Mar. 18, 1986	Do.
Wyoming:				
Lusk, town of, Niobrara County	560074	Aug. 30, 1976, Emerg.; Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Sept. 19, 1975 and Mar. 18, 1986	Do.
Pinedale, town of, Sublette County	560049B	Jan. 24, 1975, Emerg., Mar. 18, 1986, Reg.; Mar. 18, 1986, Susp.	Apr. 5, 1974, Jan. 23, 1976, and Mar. 18, 1986	Do.

[1] Emergency Program suspension.
Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: February 10, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-3529 Filed 2-18-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chs. 2 through 59

Federal Acquisition Regulations

Editorial Note.—At 51 FR 2649, January 17, 1986, Parts 5 and 6 of the Federal Acquisition Regulations in Title 48 of the Code of Federal Regulations were redesignated from Subchapter A to Subchapter B. Agency regulations in Chapters 2 through 59 of Title 48 which implement Parts 5 and 6 will be automatically recodified into Subchapter B. Since this is a technical, nonsubstantive change, agencies are not required to publish conforming amendments.

BILLING CODE 1505-02-M

VETERANS ADMINISTRATION

48 CFR Part 815

Unsolicited Proposals

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The VA (Veterans Administration) issued a Proposed Rule to add VA Acquisition Regulation (VAAR) Subpart 815.5, Unsolicited Proposals, published in the **Federal Register** of October 3, 1985, at 50 FR 40420–40422. Interested persons were given 30 days in which to comment. Written comments were received from the Office of Federal Procurement Policy and have resulted in two minor revisions as follows: (1) 815.506(c) is revised to add the requirement that the VA contact point for unsolicited proposals establish an estimated date for completion of the proposal review; and (2) 815.506–1(b) include the date the unsolicited proposal was received.

EFFECTIVE DATE: March 21, 1986.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, (202) 389–2334.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12291

Pursuant to the memorandum from David A. Stockman, Director, Office of Management and Budget, to Donald E. Sowle, Administrator, Office of Federal Procurement Policy, and Douglas H. Ginsburg, Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of the Executive Order 12291.

II. Regulatory Flexibility Act (RFA)

Because this rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the VAAR subpart will primarily implement management control over the disposition of unsolicited proposals, as required by Federal Acquisition Regulation Subpart 15.5.

III. Paperwork Reduction Act

This rule requires no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Part 815

Government procurement.

Approved: February 10, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

The proposed rule published on October 3, 1985, at 50 FR 40420–40422 is hereby adopted as a final rule with the following changes:

1. The authority citation for Part 815 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

PART 815—CONTRACTING BY NEGOTIATION

2. Part 815 is amended by adding Subpart 815.5 to read as follows:

Subpart 815.5—Unsolicited Proposals

Sec.
815.502 Policy.
815.504 Advance guidance.
815.506 Agency procedures.
815.506–1 Receipt and initial review.

Subpart 815.5—Unsolicited Proposals

815.502 Policy.

It is the policy of the VA to promote the submission of unsolicited proposals as a means to obtain technological and innovative efficiencies which will further the mission of the agency. However, it must be emphasized that such unsolicited proposals must meet the criteria set forth in FAR 15.507(b) before such a proposal can be considered for negotiation. Prior to investment of contractor effort and VA administrative processing advance guidance pursuant to FAR 15.504 and 815.504 is crucial.

815.504 Advance guidance.

(a) Any inquiries from a potential offeror of an unsolicited proposal shall be referred to the appropriate VA contact point designated in 815.506(a). The contact point will determine the nature of the potential proposal and determine what technical/professional disciplines need be consulted to determine the VA need for such a proposal and the likelihood that a formal proposal would be favorably reviewed. In consultation with such technical/professional offices, the VA contact point will inform the potential proposer of any additional information required to provide advance guidance as well as the information specified in FAR 15.504.

(b) The FAR contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

815.506 Agency procedures.

(a) The Chief, Supply Service, servicing the field facility and the Director, VA Marketing Center, Hines, Illinois are designated as the VA contact points for unsolicited proposals submitted at the facility level. The Director, Office of Procurement and Supply is designated as the VA contact point for all unsolicited proposals received at VA Central Office.

(b) Each unsolicited proposal received by the Veterans' Administration will be submitted to the appropriate contact point.

(c) The VA contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.505. If required information is not submitted, the VA contact point will:

(1) Determine if advance guidance as specified in FAR 15.504 is necessary (2) request that the offeror provide the necessary information if it is determined that the formal evaluation prescribed in FAR 15.506–2 is appropriate; and (3) establish an estimated due date for completion of the review process.

815.506–1 Receipt and initial review.

(a) When the VA contact point determines that a comprehensive evaluation is to be undertaken (i.e., the proposal complies with the requirements in FAR 15.506–1(a) and is related to the mission of the VA), the offeror will be contacted to ensure that all data that should be restricted in accordance with FAR 15.509 has been identified.

(b) The VA contact point will maintain a log of all unsolicited proposals which will be evaluated. The log will indicate; (1) The date the proposal was received; (2) the date that the unsolicited proposal has been determined to warrant a comprehensive evaluation; (3) a description of the proposal; (4) the offices requested to evaluate the proposal and the date such offices are requested to return their evaluations; (5) the date the reviewing offices finalize their respective evaluation; and (6) the final disposition of the proposal.

(c) Each office which is assigned responsibility for reviewing an unsolicited proposal will be advised of the need to evaluate the proposal against the criteria set forth in FAR 15.507(a) (1) through (3), i.e., is the proposal available to the Government without restriction from another source, does it closely resemble a pending competitive acquisition, is the proposal lacking in demonstrated innovation or uniqueness? If the reviewers conclude in the affirmative as to any one of these questions, the VA contact point shall be advised and return the proposal to the proposer.

(d) With regard to an unsolicited proposal being processed at a field facility, if the reviewing offices conclude that the unsolicited proposal should be accepted and provide the justification and certification required by FAR 15.507, the VA contact point will obtain the prior approval of the Director, Office of Procurement and Supply (93) prior to proceeding with negotiation. In order to obtain the approval, the VA contact point will submit all necessary documentation supporting the noncompetitive negotiation including any justification and approval required by FAR subpart 6.3 and results of any synopsis required by FAR subpart 5.2 The Director, Office of Procurement and Supply will coordinate the proposal with the cognizant VA Central Office program official(s) and furnish the VA contact point with the final decision.

(e) All copies of the unsolicited proposal will be controlled by the contact point by numbering each copy. If a reviewing office requires additional copies, the reviewing office will obtain approval of the VA contact point prior to duplication, numbering the copies as specified by the contact point. All copies will be returned to the VA contact point once review is completed.

[FR Doc. 86-3554 Filed 2-18-86; 8:45 am]

BILLING CODE 8320-01-M

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Proposed Rules

Federal Register
Vol. 51, No. 33
Wednesday, February 19, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 86-5]

National Bank; Rules, Policies and Procedures for Corporate Activities; Establishment of Domestic Branches, Seasonal Agencies and CBCTs; Withdrawal of Proposed Rule

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") has decided to withdraw its proposal to grant a national bank a single approval to establish multiple branches, CBCTs, and seasonal agencies within a three year period. The proposal was published in the **Federal Register** on November 14, 1984 (49 FR 45007). The decision to withdraw is due to the agency's concern about bank compliance issues and concern that improvement is needed in the ongoing dialogue between banks and their local community, consumer, and small business groups, and the general public.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Licensing Policy and Systems, Bank Organization and Structure, (202) 447-1184, Dorothy Sable, Senior Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule was part of the Office's Corporate Activities Review and Evaluation (CARE) Program. That program is described in the **Federal Register** (45 FR 68586) dated October 15, 1980, and involves a comprehensive review of Office rules, policies, procedures, and forms governing filings for corporate expansion and structural changes for national banks.

In November, 1984, the Office proposed that national banks which had been in operation for more than two years, had operated in a satisfactory manner, and had maintained a satisfactory CRA record could be granted a single blanket approval to establish multiple branches, CBCTs, and seasonal agencies within a three-year period. The use of the procedure would depend entirely upon a bank meeting these criteria. After careful consideration of the comments we received on this proposal and other information we developed about customer and community concerns, the Office has decided to withdraw the proposal at this time. The proposal may, however, be reintroduced at some later date.

The Office has a particular interest in banks' improving their dialogue with community, consumer and small business groups about local credit and deposit services. The Office will soon propose a disclosure regulation which will help the Office and the general public measure a bank's performance. Among other information, a bank would be required to disclose the nature of its business, types of services offered and fee schedules.

Dated: August 7, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 86-3553 Filed 2-18-86; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-ANM-3]

Proposed Alteration of Hoquiam Control Zone, Hoquiam, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the status of the Hoquiam Control Zone from full-time to part-time. The Hoquiam Flight Service Station has modified its hours of operation, and weather observations are not available from 0500 to 1400. Consequently, the control zone no longer qualifies to be operated on a full-time basis.

DATE: Comments must be received on or before April 18, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Fredric C. McDaniel, ANM-536, Federal Aviation Administration, Docket No. 86-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ANM-3". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the status of the Hoquiam Control Zone from full-time to part-time. The Hoquiam Flight Service Station has modified its hours of operation and weather observations are not available from 0500 to 1400.

The FAA has determined that this proposed regulations only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zone, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71 (as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.171 as follows:

Hoquiam, Washington, Control Zone (Amended)

By adding the following statement to the present description: "This control zone is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

Issued in Seattle, Washington, on February 7, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-3493 Filed 2-18-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ANM-4]

Proposed Alteration of Portland, OR, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to redefine the current geographical boundaries of the Portland, Oregon, 700' transition area. This action is necessary to ensure aircraft operating under Instrument Flight Rules would have exclusive use of that airspace when visibility is less than 3 miles, thereby, enhancing the safety of such operations.

DATES: Comments must be received on or before April 18, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 86-ANM-4, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 86-ANM-4, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-ANM-4". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & System Management Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to accommodate aircraft conducting a procedure turn on a Localizer DME Runway 20 approach to Portland International Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical

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regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) is not a "major rule" under Executive Order 12291; (2) is not a therefore; (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition Areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Portland, Oregon, Transition Area [Amended]

That airspace extending upward from 700' above the surface bounded on the north by lat. 46°00'00" N., on the east by long. 122°00'00" W.; thence via a line to lat. 45°51'00" N., long. 122°00'00" W.; to lat. 45°51'00" N., long. 122°05'00" N., long. 122°05'00" W.; bounded on the south by lat. 45°10'00" N., and on the west by long. 123°30'00" W.; that airspace extending upward from 1,200' above the surface bounded on the north by a line beginning at a point 3 miles offshore at lat. 46°30'30" N., extending easterly via lat. 46°30'30" N., to long. 121°40'00" W.; thence easterly along the south edge of V-204 to lat. 46°30'40" N., long. 120°36'00" W.; on the east by V-25, on the south by V-536 to corvallis, VOR; thence via lat. 44°30'00" N., to a point 3 miles offshore and on the west by a line 3 miles offshore to the point of beginning.

Issued in Seattle, Washington, on February 7, 1986.

David E. Jones,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 86-3494 Filed 2-18-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. 85N-0470]

Medical Device Registration; Proposed Recordkeeping Reduction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reduce the number of years that owners or operators of registered medical device establishments are required to keep a historical file of the labeling and advertisements for discontinued devices. The agency is proposing this reduction in response to Office of Management and Budget (OMB) guidelines. FDA also is proposing to revise and correct the authority citation for its device registration regulations.

DATE: Comments by April 21, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Section 807.31 (21 CFR 807.31) requires owners or operators of medical device establishments to mainain a historical file of certain labeling and advertisements for their medical devices for (1) 5 years after the date the owner or operator made the last shipment of a discontinued device or (2) the anticipated useful life of the device (approved by OMB under control number 0910-0057)

OMB's rule (5 CFR Part 1320) implementing the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) (44 U.S.C. 3501-3520) establishes policies and procedures for controlling paperwork burdens imposed by Federal agencies on the public. Section 1320.6(f) of OMB's rule sets forth general information collection guidelines which provide that an agency should not require persons to retain records, other than health, medical, or tax records, for more than 3 years, unless the agency demonstrates that the requirement is necessary to satisfy a statutory requirement or is justified by some other substantial need.

Based on its experience, and in consideration of OMB's guidelines, FDA believes that it is not necessary for the protection of the public health that the records required by § 807.31(c) be retained for 5 years.

FDA, therefore, is proposing to change its regulation to respond to OMB's guidelines by reducing the retention period applicable to labeling and advertising of devices to 3 years.

FDA is also proposing to revise the authority citation for 21 CFR Part 807. Reference to section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) was inadvertently omitted at the time Part 807 was originally promulgated. This section should have been cited as its provisions on classification of new devices are among the authorities for Part 807, Subpart E on premarket notification.

FDA has reviewed the proposed rule under Executive Order 12291 and concludes that it does not meet any of the criteria of a major regulation. Therefore, a regulatory impact analysis is not required. FDA certifies that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it does not impose any new requirements on any person. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, is not required.

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 21, 1986, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62. 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 807

Confidential business information, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 807 be amended as follows:

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS OF DEVICES

1. The authority citation for 21 CFR Part 807 is revised to read as follows:

Authority: Secs. 301(p), 501, 502, 510, 513, 701(a), 52 Stat. 1046-1051 as amended, 1055, 76 Stat. 794-795 as amended, 86 Stat. 562 as amended, 90 Stat. 540-546 (21 U.S.C. 331(p), 351, 352, 360, 360c, 371(a)); 21 CFR 5.10.

2. In § 807.31 by revising paragraph (c) to read as follows:

§ 807.31 Additional listing information.

* * * * *

(c) Each owner or operator may discard labeling and advertisements from the historical file 3 years after the date of the last shipment of a discontinued device by an owner or operator.

* * * * *

Dated: January 28, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3502 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 583; Ref. Notice Nos. 403, 410]

Alteration of Class and Type; Vodka

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF proposes to amend regulations concerning alteration of class and type of distilled spirits. This notice proposes to authorize the use of small quantities of sugar and citric acid in the production of vodka by incorporating Revenue Ruling 56-98, 1956-1, C.B. 811, into § 5.23, This would remove an apparent conflict between that ruling, and the provisions of § 5.23 which governs the addition of coloring, flavoring and blending materials to distilled spirits.

Adoption of this proposal will clarify what materials may be added to vodka.

DATE: Written comments or requests to hold a public hearing must be received by May 20, 1986.

ADDRESS: Send comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attention: Notice No. ———

FOR FURTHER INFORMATION CONTACT: John Linthicum, FAA, Wine and Beer Branch, Telephone: 202-566-7628

SUPPLEMENTARY INFORMATION:

Background

The standard of identity in 27 CFR 5.22(a)(1) defines vodka as "neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distincitve character, aroma, taste or color." Under the provisions of 27 CFR 5.23(a)(2) and (3), up to 2½ percent of harmless coloring, flavoring or blending materials may be added to distilled spirits without altering their class and type, except that such additions are prohibited for neutral spirits which includes vodka. Revenue Ruling 56-98 held that the use of sugar not exceeding two tenths of one percent, and a trace amount of citric acid would not materially affect vodka's taste or alter its basic character. Therefore, the ruling authorizes the use of limited amounts of sugar and citric acid in the production of vodka, and permits its labeling as "vodka." The ruling further states that "if any flavoring ingredients are used, the product must be designated and labeled as 'flavored vodka'."

In 1979, the ATF Laboratory tested samples of vodka produced in accordance with Revenue Ruling 56-98. The laboratory found that these samples contained a measurable solids content due to the presence of sugar, and that they also displayed a change in the titratable acidity due to the presence of citric acid. Based on these tests, ATF concluded that vodka treated under Revenue Ruling 56-98 has different chemical characteristics than vodka not treated with sugar or citric acid, and accordingly, did not meet the standard of identity for vodka in § 5.22(a)(1). Additionally, a conflict seemed to exist between the provisions of Revenue Ruling 56-98 authorizing treatment of vodka with sugar and citric acid, and § 5.23(a)(3) which prohibits any addition of harmless coloring, flavoring and blending materials to neutral spirits. To clarify these discrepancies, ATF issued an advance notice of proposed rulemaking, Notice No. 403, on January 11, 1982 [47 FR 1148]. This advance notice requested comments on whether ATF should revoke Revenue Ruling 56-98 and prohibit treatment of vodka with sugar and citric acid, or should established a separate class and type of vodka containing specified quantities of sugar and citric acid. Notice No. 410, April 15, 1982 [47 FR 16187] extended the comment period until July 11, 1982.

Comments to Notice No. 403

ATF received 16 comments regarding this advance notice of proposed rulemaking. Respondents were equally divided over the use of sugar and citric acid in vodka.

Eight respondents including two consumers, the David Sherman Corporation, Potter Distillers, National Distillers, Haas Brothers, the Buckingham Corporation, and the State of Michigan opposed the addition of sugar and citric acid to vodka, and favored revoking Revenue Ruling 56-98. Their reasons were:

1. The revenue ruling is inconsistent with § 5.23 which prohibits the addition of coloring, flavoring or blending materials to neutral spirits.

2. The public perceives vodka as a pure material spirit, without distinctive color, aroma, taste, or character, and without added substances such as sugar or citric acid.

3. There is no purpose served by adding sugar and citric acid to vodka.

4. Authorizing sugar and citric acid to be used in vodka will open a Pandora's box, and other substances will then be added to vodka.

5. Foreign products should conform to the long established U.S. standard of identity for vodka.

Seven respondents favored permitting the use of sugar and citric acid in the production of vodka by retaining Revenue Ruling 56-98. These included one consumer, Schenley Industries, the Distilled Spirits Council of the United States, Monsieur Henri, Sojuzplodoimport (a Russian import/export company), the National Association of Beverage Importers, and Heublein Spirits Group. Their comments are summarized as follows:

1. The standard of identity for vodka should be established on a organoleptic basis rather than on a chemical basis. If the addition of sugar and citric acid does not change the character, color, aroma, or taste, then the product is "vodka." Consumers judge vodka by taste, not by chemical standards.

2. Prohibiting use of sugar and citric acid in vodka is not in response to consumer interest or a perceived consumer need. Revenue Ruling 56-98 has been in effect for many years without harm or deception to the consumer, and no consumer benefit would accrue by revoking it.

3. Prohibiting use of sugar and citric acid in vodka would have an "unmeasurable competitive impact" on some industry members who market

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vodka made according to Revenue Ruling 56–98, and who would suffer financial harm by its elimination.

4. European vodkas have been made using trace amounts of sugar for many years. Prohibiting the labeling of a product containing sugar or citric acid as "vodka" would preclude some European vodkas from being labeled "vodka" in the United States, and would create a non-tariff trade barrier.

Eight respondents objected to the proposed establishment of a new class and type of vodka containing sugar and citric acid. The reasons were:

1. Present labeling requirements in Part 5 are adequate. Vodka with sugar and citric acid may already be designated "flavored vodka," or labeled with a fanciful name.

2. The revenue ruling should be retained, allowing use of sugar and citric acid in vodka; thus there is no reason to establish a separate class and type.

3. Addition of a separate class and type of vodka which does not look, smell, or taste differently than vodka, but which is labeled differently, would be very confusing to consumers.

Joseph E. Seagrams favored the establishment of a new class and type of vodka, "Vodka Schnapps," with prescribed amounts of sugar and citric acid. They suggested this would fill a void in the standards of identity not provided for by "cordials and liqueurs" or "flavored vodka."

Discussion of comments

ATF found support in the written comments for the incorporation of Revenue Ruling 56–98 into the regulations.

Several respondents noted that the standards of identity for most distilled spirits including whisky, gin, brandy, rum and some cordials and liqueurs are based on organoleptic factors: aroma, taste and smell. Logically, they suggest that the standard for vodka should also be based on organoleptic factors. Non-organoleptic factors such as titratable acidity or the solids content should not be used in determining whether a vodka meets the standard of identity requirements. Moreover, characteristics detectable only by chemical analysis have little meaning to consumers, and are not a factor in consumer selection of vodka.

A second theme was that the presence of sugar or citric acid in vodka is not an issue of interest to consumers. ATF has received no consumer inquiries or complaints regarding the presence of sugar of citric acid in vodka, and to prohibit their use would be to address a "problem" which does not exist. These substances have been used in at least some vodkas for over 27 years and their use has not raised any health, or safety problems, or resulted in consumer deception.

A third issue is that sugar or citric acid has been used to treat some European vodkas for many years, and that these products have always been accepted and marketed in the United States as "vodka." If ATF revoked Revenue Ruling 56–98 and prohibited their use in vodka, some traditional European vodkas would be denied entry into the United States, or would be required to be labeled "flavored vodka." Many foreign nations would view this as a non-tariff trade barrier.

ATF also finds limited support in the written comments to Notice No. 403 to proposed a separate class and type of vodka containing sugar and citric acid. Only one respondent favored a new class and type of vodka. Written comments pointed out that its establishment would create a new type of vodka which is indistinguishable from "regular" vodka by taste, aroma, or color, but which would be labeled separately, and thus would be very confusing to consumers.

Proposed Regulatory Change

As a result of the written comments, ATF is proposing to revoke Revenue Ruling 56–98, but incorporte its provisions into Part 5. Accordingly, it is proposed to amend § 5.23(a)(3)(ii) by authorizing the use of up to 2 grams per litre (2,000 parts per million) sugar, and a trace amount (defined as 150 milligrams per litre or 150 parts per million) of citric acid in the production of vodka, without changing its designation as vodka. Because neither sugar not citric acid are essential components of vodka, ATF is proposing to amend § 5.23 which regulates additions of substances to distilled spirits, rather than § 5.22(a)(1) which is the standard of identity of vodka.

Two thousand parts per million, by weight, is the same amount of sugar authorized by Revenue Ruling 56–98 (⅕ of 1%), and is the amount of sugar detected in Russian vodkas by the Alcohol and Tobacco Tax (A&TT) Laboratory, predecessor to ATF's Laboratory, at the time the ruling was issued.

Revenue Ruling 56–98 authorized the use of a trace amount of citric acid in vodka. An examination of the formula which resulted in the ruling reveals that citric acid was present in the vodka in a concentration of 0.0013% or 13 parts per million. In this trace amount, the A&TT Laboratory determined that the addition of citric acid would not materially affect the taste or change the basic character of vodka. Examination of formulas filed with ATF in the years since issuance of the revenue ruling reveals that a "trace amount" of citric acid has varied widely with different formulas, and that there is a need to define the term. Therefore, ATF is proposing to define "trace amount" of citric acid as 150 parts per million. ATF believes this concentration of citric acid is sufficient to neutralize residual alkalinity derived from the charcoal treatment of some vodkas, or from the use of certain glass in manufacting bottles. Under this proposal, vodka made with greater concentrations of sugar or citric acid would be designated "flavored vodka" or labeled with a fanciful name under Part 5.

Public Participation

ATF requests comments from all interested persons concerning the proposed regulatory change. While ATF has proposed limitations of 2,000 parts per million sugar, and 150 parts per million citric acid in vodka, we seek comment on whether other limits, either higher or lower, should be prescribed. Comments in support of different limitations should specify how different concentrations of sugar or citric acid would accomplish their intended use in vodka.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in comments. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90 day comment period. The request should include reasons why the respondent feels a public hearing is necessary. The Director reserves the right to determine whether a public hearing should be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities.

This proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities.

Compliance with Executive Order 12291

It has been determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment activity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act Notice

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulation, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

Drafting Information

The principal author of this document is Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Paragraph 1. The authority citation for 27 CFR Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 5.23(a)(3)(ii) is revised to read as follows:

§ 5.23 Alteration of class and type.

(a) Additions. * * *

* * * * *

(3) "Harmless coloring, flavoring, and blending materials" shall not include (i) any material which would render the product to which it is added an imitation; or (ii) any material whatsoever in the case of neutral spirits or straight whiskey, except that vodka may be treated with sugar in an amount not to exceed 2 grams per liter, and with citric acid in an amount not to exceed 150 milligrams per liter; or (iii) any material, other than caramel and sugar, in the case of Cognac brandy.

* * * * *

Signed: November 12, 1985.

Stephen E. Higgins,

Director.

Approved: November 14, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 86-3564 Filed 2-18-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF EDUCATION

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education.

AGENCY: Department of Education.

ACTION: Notice of intent to regulate.

SUMMARY: The Secretary provides notice that the Department intends to amend regulations to govern eligibility for payments under Section 3 of Pub. L. 81–874.

FOR FURTHER INFORMATION CONTACT: W. Stanley Kruger, Acting Director, Division of Impact Aid, U.S. Department of Education, Room 2107, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 245–8427.

SUPPLEMENTARY INFORMATION: Publ. L. 81–874, as amended (the Act), 20 U.S.C. 236–244, known as the Impact Aid Program, authorizes assistance to local educational agencies (LEAs) that are financially burdened by a reduced tax base resulting from the Federal acquisition of real property or an increased student population due to Federal activities. Section 3 of the Act addresses both types of burdens by authorizing payments to LEAs that are required to provide free public education to federally-connected students residing within their boundaries. These payments supplement local revenues and assist the LEAs in meeting the cost of maintenance and operations.

The Department has obtained information concerning a number of situations that raise difficult interpretive questions regarding eligibility for Section 3 payments. The basic question that has arisen in a variety of factual situations is how the Department should treat an application from a LEA that claims children who reside within its boundaries but attend schools that are not operated by the LEA. Under the terms of the Act, an LEA may not claim students for payment purposes if it is not providing them free public education. In some of these situations the applicant LEA appears to be providing the claimed students free public education within the meaning of the Act, and in others it does not. The Secretary believes that developing rules and inviting public comment would be useful and appropriate in resolving this matter and is publishing this notice of intent to regulate to give interested parties time to consider the questions raised prior to the publication of proposed regulations.

The Department intends to publish a notice of proposed rulemaking (NPRM) proposing standards to be use in determining the eligibility of an LEA for Impact Aid payments for students attending schools not operated by the LEA. Examples of the types of situations that would be addressed by the NPRM include those where an LEA claims students attending schools funded by the Bureau of Indian Affairs of the U.S. Department of the Interior and where an LEA claims students attending private schools under a tuition arrangement established by the LEA. The NPRM may also address situations in which an LEA claims students for full payment even though it provides only supplementary educational services to those students, not the basic educational program, and those in which an LEA claims students attending schools jointly operated by the LEA and another entity.

The Secretary expects that the NPRM will be published in the **Federal Register** in the near future. A 30-day comment period will be provided by the NPRM, and the public is encouraged to submit its views in response to the NPRM.

All comments will be carefully considered in the preparation of the final regulations. The Department anticipates that the final regulations will apply to fiscal year 1986 payments.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operations)

Dated: February 13, 1986.

[FR Doc. 86–3584 Filed 2–18–86; 8:45 am]

BILLING CODE 4000-01-M

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 522 and 552

[GSAR Notice No. 5–86]

Acquisition Regulations; Contract Clauses

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) which will revise the contract clauses at GSAR 552.219–71, Allocation of Orders—Partially Set-Aside Items, and GSAR 552.222–43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts). The revision to the allocation of orders clause would clarify when the splitting of orders will begin if the set-aside portion is awarded to a contractor other than the one receiving the award on the corresponding non-set-aside portion. The revisions to the price adjustment clauses at GSAR 552.222–43 would clarify the applicability of the ceiling to price adjustments when no Service Contract Act wage determination is issued by the Department of Labor (DOL). In addition, revisions to Section 522.1006, which would make inclusion of price adjustment clauses optional in fixed price service contracts that do not exceed the small purchase limitation, are proposed. The intended effect is to clarify contract clauses for the benefit of contractors and GSA contracting officers.

DATE: Comments are due in writing March 21, 1986.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Room 4026, Washington, DC 20405, (202) 523–3822.

FOR FURTHER INFORMATION CONTACT: Mrs. Shirley Scott, Office of GSA Acquisition Policy and Regulations on (202) 523–4765.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB) by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The proposed revisions clarify contract clauses which are already in use throughout the agency. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collections requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 522 and 552

Government procurement.

Dated: January 6, 1986.

Ida M. Ustad,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 86–3602 Filed 2–18–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Notification of Petition Regarding Implementation of Non-Toxic Shot Requirements; Comments Request

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Request for Comment on Notification of Petition.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) has received a petition, filed by the National Wildlife Federation (NWF), requesting the imposition of a ban on the use of lead shot for all waterfowl hunting in the 48 conterminous United States. The petition asks that the ban take effect for the 1987–88 hunting season.

DATE: Effective on February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building, Room 536, Washington, DC 20240 (202/254–3207).

SUPPLEMENTARY INFORMATION: Under 43 CFR 14.4 the FWS has discretion to publish petitions for rulemaking where public comment may aid in consideration of the petition. Such publication does not constitute a judgment as to the reasonableness or unreasonableness of the petition, nor a treatment of the petitioned action as a proposed rule. The FWS makes no judgment on the petition at this time. It seeks, and will consider, public comment in assessing whether the petition merits further consideration.

On January 14, 1986, the FWS received a petition from the FWS asking that the FWS, within 30 days, impose a ban on all use of lead shot for waterfowl hunting in the 48 conterminous United States, the ban to take effect beginning with the 1987–88 hunting season. The NWF's rationale for the petitioned action may be summarized as follows:

1. Use of lead shot in such hunting results in the taking (i.e., death) of bald eagles, an endangered species, that consume waterfowl with imbedded or ingested lead shot and are thereby poisoned. This taking violates the Endangered Species Act, as well as the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Thus, failure of the FWS to ban lead shot use will be a violation of these statutes, and the NWF will seek to enforce such a ban through court order.

2. Delaying the ban until the 1987–88 season will cause minimal disruption to ammunition suppliers and retailers, who will have the 1986–87 season in which to adjust and reduce inventories. This will also give a long lead-time to manufacturers and suppliers.

3. Because of the migratory nature of eagles and the waterfowl they feed upon, the only way to eliminate the threat of lead poisoning is to eliminate the use of lead shot throughout the 48 conterminous United States.

4. Flyway-wide imposition has been endorsed by the Atlantic, Mississippi and Central Flyway Councils, and by the Wildlife Society.

5. The steel shot zones proposed by the FWS on January 6, 1986 (51 FR 409), for eagle protection in 173 counties, will provide only marginal additional protection for the eagle.

By publishing this Notice the FWS neither endorses nor rejects these arguments. The purpose of publishing this Notice is to enable the FWS to obtain comment from wildlife professionals, ammunition suppliers, conservationists, sportsmen and other interested members of the public. Comments received on the petition on or before the closing date of the comment period for this Notice will be considered in preparation of the final Supplemental Environmental Impact Statement relating to the use of lead shot for hunting migratory birds that became available on December 19, 1985 (50 FR 51752). Any decisions will be made in full compliance with the National Environmental Policy Act, 43 U.S.C. 4321, *et. seq.*, and all other applicable laws. Comments are particularly solicited on whether the petitioned action: (1) Is likely to prove of benefit to eagle populations, and if so, to what degree; (2) is reasonable under the circumstances; (3) is practical within the designated timeframe; (4) can be accomplished without dislocation or, if not, the degree of such adverse economic impact to ammunition manufacturers; and (5) has other benefits or disadvantages.

The closing date for comments on the petition is 15 days after the effective date of this Notice.

Dated: February 14, 1986.

F. Eugene Hester,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 86–3857 Filed 2–18–86; 8:45 am]

BILLING CODE 4310–55–M

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Notices

Federal Register
Vol. 51, No. 33
Wednesday, February 19, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement: Forest Service Special Use Permits

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement under 36 CFR § 800.8 of its regulations, concerning the effects of certain classes of Forest Service Special Use Permits on historic properties. Proposed signatories will be the Council, the Forest Service, and the National Conference of State Historic Preservation Officers. The Agreement will deal with extension of Special Use Permits of some types, and new issuance of Special Use Permits of other types, that are likely to have little or no effect on historic properties.

Comments Due: March 21, 1986.

ADDRESS: Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW, Suite 809, Washington, DC 20004, Attn: Thomas F. King.

Dated: February 12, 1986.

Robert R. Garvey,

Executive Director.

[FR Doc. 86-3552 Filed 2-18-86; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Feed Grain Donation for the Kalispel and Spokane Reservations Indian Tribes in Washington State

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Kalispel and Spokane Indian Tribes of the Kalispel and Spokane Indian Reservations in Washington has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. These reservations are designated for Indian use and is utilized by members of the Kalispel and Spokane Tribes for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribes will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservations and grazing lands of these tribes to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribes utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 31, 1986, or such other date as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on February 10, 1986.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86-3535 Filed 2-18-86; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Intent To Prepare an Environmental Impact Statement; Noxious Weed Control in Kootenai National Forest

The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement to identify the planned method for controlling noxious weeds on the Rexford and Fortine Ranger Districts.

In addition to complying with the State Weed Law, the Kootenai National Forest is in a position to prevent a major infestation of weeds if immediate action is taken.

A range of alternatives will be considered. One of these will be to take no action at all to control the weeds. Other alternatives may include:

1. Hand application with either liquid or pelleted herbicides.
2. Biological control.
3. Mechanical control.
4. Preventive measures.
5. A combination of the above methods.

Federal, State, and Local agencies, and other individuals who may be interested in or affected by the Decision will be invited to participate in the scoping process.

This process will include:

1. Identification of those issues to be addressed.
2. Identification of those issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperative agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the area of consideration.

No public meetings are scheduled at this time, but the public in invited to comment. Written comments should be mailed to James F. Rathbun, Forest Supervisor, Kootenai National Forest, 506 U.S. Hwy 2 West, Libby, Montana, 59923 by March 15, 1986.

James F. Rathbun, Forest Supervisor, Kootenai National Forest, Libby, Montana, is the Responsible Official.

The Draft Environmental Impact Statement is scheduled to be completed by May 1, 1986. The Final Environmental Impact is to be completed about, June 15, 1986. Questions about the proposed actions and Environmental Impact Statement should be directed to H. Drew Bellon, District Ranger, Rexford Ranger District, Eureka, MT (406-296-2536).

Dated: February 10, 1986.

James F. Rathbun,

Forest Supervisor.

[FR Doc. 86-3570 Filed 2-18-86; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Salem Community Watershed, SC; Finding of No Significant Impact

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Soil Conservation Service Guidelines (7 CFR Part (650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Salem Community Watershed, Florence County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, Telephone 803-765-5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns enlargement of about 60 miles of stream channels to improve drainage outlets and reduce flooding. The work will primarily involve ephemeral streams and requires the clearing of about 501 acres.

Numerous road culverts and bridges will be modified to be compatible with the planned channels.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: January 8, 1986.

Billy Abercrombie,

State Conservationist.

[FR Doc. 86-3536 Filed 2-18-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Test Census—Prelist Operation
Form Number: Agency—DF-101A, DF-169; OMB—NA
Type of Request: New collection
Burden: 6,500 respondents; 179 reporting hours
Needs and Uses: This survey will be used to test and evaluate various methods of address list compilation and update methods to be used in the 1990 Decennial Census.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Current Retail Sales Reports
Form Number: Agency—B-101(87), B-102(87), B-103(87), B-111(87), B-112(87), B-113(87); OMB—0607-0187
Type of Request: Revision of a currently approved collection
Burden: 17,410 respondents; 30,560 reporting hours
Needs and Uses: The collected data is the basis for the official government measures of dollar volume of retail trade. Retail sales, representing a major portion of consumer spending, are used by government and nongovernment users interested in guaging economic trends.
Affected Public: Businesses or other for-profit institutions
Frequency: Monthly
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 10, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86-3587 Filed 2-18-86; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency.
Title: Business Development Report (BDR).
Form Number: Agency—MBDA 115; OMB—0640-0005.
Type of Request: Extension of a currently approved collection.
Burden: 100 respondents; 14,000 reporting hours.
Needs and Uses: The BDR is used to identify minority business clients receiving Agency-sponsored management and technical assistance and the kind of assistance each receives.
Affected Public: Individuals or households, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations.
Frequency: Quarterly.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 1986.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 86-3588 Filed 2-18-86; 8:45 am]

BILLING CODE 3510-CW-M

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Foreign-Trade Zones Board

[Docket No. 5-86]

Foreign-Trade Zone 102—St. Louis County, MO; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Louis County Port Authority, grantee of Foreign-Trade Zone 102, requesting authority to expand its zone to include a site in Woodson Terrace, Missouri, adjacent to the Lambert St. Louis International Airport within the St. Louis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zone Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 28, 1986.

On April 27, 1984, the Board authorized the Port Authority to establish a foreign-trade zone in the St. Louis area (Board Order 251, 49 FR 19540). The zone project presently consists of a facility with 160,000 square feet of space at 5000 Bussen Road, on the Mississippi River, in St. Louis County, operated by Bussen Underground Warehouse Corporation.

The proposed expansion site consists of 6.5 acres at 4508/4524 Woodson Road, in the Woodson Road Industrial Park, Woodson Terrace. The facility contains 5 warehouses operated by Red Arrow Corporation, which will operate the site.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William Duncan, District Director, U.S. Customs Service, North Central Region, 120 South Central Ave., St. Louis, MO 63105; and Colonel Daniel M. Wilson, District Engineer, U.S. Army Engineer District St Louis, 210 Tucker Blvd. N., St. Louis, MO 63101.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 19, 1986.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 120 South Central Ave., St. Louis, MO 63105.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: February 12, 1986.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 86-3593 Filed 2-18-86; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that petroleum wax candles from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of petroleum wax candles from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimate dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by April 28, 1986.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2613 or 377–1769.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that petroleum wax candles from the PRC are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margin applicable to all exporters is 60.66 percent.

Case History

On September 4, 1985, we received a petition in proper form filed by the National Candle Association, an organization of domestic manufacturers of petroleum wax candles. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on September 30, 1985 (50 FR 39743), and notified the ITC of our action.

On October 16, 1985, the ITC found that there is a reasonable indication that imports of petroleum wax candles from the PRC are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 1768, October 1985).

On November 27, 1985, we presented a questionnaire to counsel for the China National Native Produce & Animal By-Products Import & Export Corporation, a major PRC exporter of the subject merchandise to the United States. On January 3 and 15, 1986, we received replies to the questionnaire.

Scope of Investigation

The products covered by this investigation are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. The products are classified under the *Tariff Schedules of the United States* (TSUS) item 755.25, Candles an Tapers.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

We used the purchase price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise as provided in section 772 of the Act, on the basis of the C & F or CIF prices with deductions, where applicable, for ocean freight and marine insurance.

Foreign Market Value

In accordance with section 773(c) of the Act, we used the weighted-average price of candles imported into the United States from Guinea and Malaysia as the basis for foreign market value.

Petitioner alleged that the PRC is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a). After an analysis of the PRC economy, and consideration of the briefs submitted by the parties, we have preliminarily concluded that the PRC is a state-controlled-economy country for the purpose of this investigation.

As a result, section 773(c) of the Act requires us to use either the prices of or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a state of economic development comparable to the state-controlled-economy country.

We determined that Egypt, India, Indonesia, Morocco, Pakistan, Philippines, and Thailand were at a level of economic development comparable to the PRC and it would, therefore, be appropriate to base foreign market value on their prices. We sent questionnaires to known manufacturers of petroleum wax candles in each of these countries. However none of the manufacturers has to date replied to our questionnaire.

Lacking home market prices from non-state-controlled economy countries at a level of economic development comparable to that of the PRC, we have based foreign market value on the prices of imports into the U.S. from Guinea and Malaysia. Of the countries exporting candles to the United States, these countries are at a level of economic development most comparable to that of the PRC. Therefore, we based foreign market value on the basis of the average f.o.b. values of candles imported into the United States from these two countries during the six month period of investigation as provided in the IM–146, compiled by the Bureau of the Census. We adjusted this average value by the cost of materials supplied by purchasers of the PRC candles, where applicable.

We have preliminarily excluded from our weighted-average foreign market value the prices of imports from Thailand and Colombia because, based on information from previous investigations, shipments from these countries may benefit from export subsidies. We have also excluded shipments from Jamaica because, based on information submitted by petitioner, imports from Jamaica comprise candles which are not covered by this proceeding. We will consider any further information submitted on the appropriateness of including certain countries within the weighted-average foreign market value for our final determination.

Preliminary Negative Determination of Critical Circumstances

Petitioner alleged that imports of petroleum wax candles from the PRC present "critical circumstances." Under section 773(e)(1) of the Act, "critical circumstances" exist if we determine: (1) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

For purposes of this finding, we analyzed recent trade statistics on import levels and for petroleum wax candles from the PRC for equal periods immediately preceding and following the filing of the petition. We also took into consideration seasonal factors. Based on this analysis, we find that imports of the subject merchandise from the PRC during the period subsequent to receipt of the petition have not been massive when compared to recent import levels.

Since we do not find there have been massive imports, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of petroleum wax candles from the PRC.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of petroleum wax candles from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
China National Native Produce & Animal By-Products Import & Export Corporation	60.66
All others	60.66

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we made our preliminary affirmative determination or 45 days after we make our final affirmative determination.

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Public Comment

In accordance with § 353.47 of our Regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on March 12, 1986, at the United States Department of Commerce, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by March 5, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 11, 1986.

[FR Doc. 86-3515 Filed 2-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-601]

Initiation of Antidumping Duty Investigation; Certain Stainless Steel Cooking Ware From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain stainless steel cooking ware from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 7, 1986, and we will make ours on or before June 30, 1986.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Mary Martin; Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2438 or 377-2830.

SUPPLEMENTARY INFORMATION:

The Petition

On January 21, 1986, we received a petition filed on behalf of the Fair Trade Committee of the Cookware Manufacturers Association with respect to certain stainless steel cooking ware from Korea. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of this merchandise are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain stainless steel cooking ware and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain stainless steel cooking ware from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination on or before June 30, 1986.

Scope of Investigation

The products covered by this investigation are all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (*TSUS*). The products covered by this investigation are skillets, fry pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 *TSUS* classification.

United States Price and Foreign Market Value

Petitioner based United States price on price quotations by Korean exporters for sales to unrelated purchasers. Petitioner based foreign market value on both constructed value and, in the case of one company with significant home market sales, on actual home market prices. Based on the comparison of actual home market prices and United States price, petitioner alleges dumping margins ranging from 49 percent to 50 percent. Based on the comparison of the constructed value and United States price, petitioner alleges dumping margins ranging from 16 percent to 45 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 7, 1986, whether there is a reasonable indication that imports of certain stainless steel cooking ware from Korea materially injure, or threaten material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 10, 1986.

[FR Doc. 86-3516 Filed 2-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-603]

Initiation of Antidumping Duty Investigation; Certain Stainless Steel Cooking Ware From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain stainless steel cooking ware from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 7, 1986, and we will make ours on or before June 30, 1986.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Mary Martin, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438 or (202) 377-2830.

SUPPLEMENTARY INFORMATION:

The Petition

On January 21, 1986, we received a petition filed on behalf of the Fair Trade Committee of the Cookware Manufacturers Association with respect to certain stainless steel cooking ware from Taiwan. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of this merchandise are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a United States industry producing a like product.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain stainless cooking ware and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain stainless cooking ware from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination on or before June 30, 1986.

Scope of Investigation

The products covered by the investigation are all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States* (*TSUS*). The products covered by this investigation are skillets, fry pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles and other stainless steel vessels, all for cooking on stove top burners, except tea kettles. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 *TSUS* classification.

United States Price and Foreign Market Value

Petitioner based United States price on price quotations by Taiwanese exporters for sales to unrelated purchasers. Petitioner based foreign market value on both constructed value and, in the case of two companies with significant home market sales, on actual home market prices. Based on comparison of actual home market prices and United States price, petitioner alleges dumping margins ranging from six percent to 49 percent. Based on the comparison of the constructed value and United States price, petitioner alleges dumping margins ranging from eight percent to 27 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 7, 1986, whether there is a reasonable indication that imports of certain stainless steel cooking ware from Taiwan materially injure, or threaten material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 10, 1986.

[FR Doc. 86-3517 Filed 2-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-602]

Initiation of Countervailing Duty Investigation; Certain Stainless Steel Cooking Ware From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 7, 1986, and we will make ours on or before April 16, 1986.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone. (202) 377-2438 or 377-2830.

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SUPPLEMENTARY INFORMATION:

The Petition

On January 21, 1986, we received a petition filed on behalf of the Fair Trade Committee of the Cookware Manufacturers Association with respect to certain stainless steel cooking ware from Korea. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a United States industry producing a like product.

Since Korea is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain stainless steel cooking ware and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally we will make our preliminary determination on or before April 16, 1986.

Scope of Investigation

The products covered by this investigation are all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States (TSUS)*. The products covered by this investigation are skillets, fry pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 *TSUS* classification.

Allegation of Subsidies

The petition lists a number of practices by the government of the Republic of Korea which allegedly confer subsidies on manufacturers, producers, or exporters in Korea of certain stainless steel cooking ware. We are initiating an investigation on the following programs:

- Short-Term Export Financing,
- Accelerated Depreciation Under Article 25 of the "Act Concerning the Regulation of Tax Reduction and Exemption",
- Tax Incentives for Exporters,
- Export Credit Financing,
- Tariff Reductions on Plant and Equipment,
- Free Export Zone Program,
- Deferred Loans through the National Investment Fund,
- Export Guarantees.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 7, 1986, whether there is a reasonable indication that imports of certain stainless steel cooking ware from Korea materially injure, or threaten material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 10, 1986.

[FR Doc. 86-3518 Filed 2-18-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-583-604]

Initiation of Countervailing Duty Investigation; Certain Stainless Steel Cooking Ware From Taiwan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 7, 1986, and we will make ours on or before April 16, 1986.

EFFECTIVE DATE: February 19, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438 or (202) 377-2830.

SUPPLEMENTARY INFORMATION:

The Petition

On January 21, 1986, we received a petition filed on behalf of the Fair Trade Committee of the Cookware Manufacturers Association with respect to certain stainless steel cooking ware from Taiwan. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a United States industry producing a like product.

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain stainless steel cooking ware and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally we will make our preliminary determination on or before April 16, 1986.

Scope of Investigation

The products covered by this investigation are all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. These products are provided for in item number 653.94 of the *Tariff Schedules of the United States (TSUS)*. The products covered by this investigation are skillets, fry pans, omelette pans, sauce pans, double boilers, stock pots, sauce pots, dutch ovens, casseroles and other stainless steel vessels, all for cooking on stove top burners, except tea kettles. Excluded from the scope of investigation are stainless steel oven ware and stainless steel kitchen ware, which are included under the 653.94 TSUS classification.

Allegation of Subsidies

The petition lists a number of practices by the authorities in Taiwan which allegedly confer subsidies on manufacturers, producers, or exporters in Taiwan of certain stainless steel cooking ware. We are initiating an investigation on the following programs:

- Preferential Export Financing,
- Export Loss Reserves,
- Preferential Income Tax Rate Ceiling—22 percent,
- Accelerated Depreciation and Tax Holidays,
- Duty Exemptions and Deferrals on Imported Equipment,
- Preferential Long-Term Loans.

We are not initiating an investigation on the following programs:

- Business Tax Exemptions and Stamp Tax Reductions for Export Sales (Tax Exemptions for Export Sales),
- Preferential Income Tax Rate Ceiling—25 percent,
- Tax Credit for Investment in Production Equipment.

These programs were determined not to confer subsidies in *Final Negative Countervailing Duty Determination: Welded Carbon Steel Line Pipe from Taiwan* (50 FR 53363). Under the Act, the non-excessive remission of indirect taxes is not considered a subsidy. The amount of the business tax exemption or stamp tax reduction does not exceed the amount of tax due. Therefore, this program does not confer countervailable benefits within the meaning of the countervailing duty law. The benefits conferred by Tax Credit for Investment in Production Equipment, and Preferential Income Tax Rate Ceiling of 25 percent, are not limited to an industry or enterprise or group of industries or enterprises. Therefore, these programs do not confer countervailable benefits within the meaning of the countervailing duty law.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by March 7, 1986, whether there is a reasonable indication that imports of certain stainless steel cooking ware from Taiwan materially injure, or threaten material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 10, 1986.

[FR Doc. 86-3519 Filed 2-18-86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, Department of Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1986 Fall Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Technical Committee Reports are available for distribution on February 14, 1986. Comments received on or before May 2, 1986, will be considered by the NFPA before final action is taken on the proposals.

ADDRESSES: The 1986 Fall Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (The single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617)770-3000.

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 522(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each

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year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the form provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before May 2, 1986, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by September 26, 1986, prior to the Fall Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 17–20, 1986, at the Marriott City Center, Denver, Colorado, by NFPA members.

Dated: February 12, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

Action at the NFPA Fall Meeting in November 1986 is being proposed on the NFPA standards listed below:

1986 Fall Meeting

Technical Committee Reports

NFPA 13	Installation of Sprinkler Systems.	P
NFPA 13A	Inspection, Testing and Maintenance of Sprinkler Systems.	P
NFPA 20	Centrifugal Fire Pumps	P
NFPA 31	Installation of Oil Burning Equipment.	P
NFPA 34	Dipping and Coating Process Using Flam. or Comb. Materials.	P
NFPA 35	Manufacture of Organic Castings.	P
NFPA 51	Oxygen-Fuel Gas Sys. for Welding, Cutting & Allied Processes.	P
NFPA 61B	Grain Elev. & Fac. Handl. Bulk Raw Agricultural Commodities.	P
NFPA 65	Processing and Finishing of Aluminum.	P
NFPA 68	Explosion Venting	C
NFPA 70B	Electrical Equipment Maintenance.	P
NFPA 72A	Local Protective Signaling Systems.	C
NFPA 80A	Protection of Buildings from Exterior Fire Exposures.	R
NFPA 99	Health Care Facilities (incorporating existing NFPA 56F).	P
NFPA 99B	Hypobaric Facilities	N
NFPA 203M	Roof Coverings and Roof Deck Construction.	R
NFPA 231	General Storage	P
NFPA 256	Methods of Fire Tests of Roof Coverings.	P
NFPA 258	Method for Measuring the Smoke Generated by Solid Materials.	W
NFPA 259	Test Method for Potential Heat of Building Materials.	R
NFPA 321	Basic Classification of Flammable and Combustible Liquids.	P
NFPA 327	Cleaning or Safeguarding Small Tanks and Containers.	P
NFPA 328	Flammable/Combustible Liquids and Gases in Manholes, Sewers.	P
NFPA 329	Underground Leakage of Flammable and Combustible Liquids.	P
NFPA 480	Storage, Handling & Processing of Magnesium (existing NFPA 48).	R
NFPA 481	Production, Processing, Handling and Storage of Titanium.	R
NFPA 482	Production, Processing, Handling and Storage of Zirconium.	R
NFPA 651	Manufacture of Aluminum and Magnesium Powder.	P
NFPA 702	Classification of the Flammability of Wearing Apparel.	W
NFPA 1001	Fire Fighter Professional Qualifications.	P
NFPA 1003	Airport Fire Fighter Professional Qualifications.	C
NFPA 1122	Code for Unmanned Rockets	P

Types of Action:
C—Complete Revision; P—Partial Amendments; N—New; T—Tentative Adoption; R—Reconfirmation; W—Withdrawal.

[FR Doc. 86-3525 Filed 2-18-86; 8:45 am]
BILLING CODE 3510-13-M

National Fire Codes; Request for Proposals for Revision of Standards

AGENCY: National Bureau of Standards, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does, not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Each person who submits a proposal must include his or her name and address, must identify the notice and must give reasons for the proposal. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

The NFPA will publish a copy of each written proposal that it receives and the disposition of each proposal by the NFPA Committee as the Technical Committee Report. The NFPA will send a copy of the Technical Committee Report to each person who submits a proposal.

Dated: February 12, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

Committees Soliciting Proposals

The following Committees are planning to meet to begin preparation of their respective reports. In accordance with the Regulations Governing Committee Projects, committees are now accepting proposals for recommendations on document content on the documents listed below. Proposals received by 5:00PM E.D.S.T. on the closing date indicated will be acted on by the Committee, and that action will be published in the Committee's Report. Proposals must be submitted to Arthur E. Cote, Assistant Vice President/Standards, on Proposal Forms available from the NFPA Standards Administration Office.

Aviation

NFPA 410–1980, Aircraft Systems Maintenance; March 1, 1986

NFPA 418–1983, Roof-top Heliport Construction & Protection; July 11, 1986

NFPA 421–1983, Aircraft Interior Fire Protection Systems; March 1, 1986

Chimneys & Heating Equipment

NFPA 82–1983, Incinerators, Waste & Linen Handling Systems & Equipment; July 11, 1986

NFPA 97M–1984, Terms Relating to Chimneys, Vents & Heat Producing Appliances; July 11, 1986

NFPA 211–1984, Chimneys, Fireplaces & Vents; July 11, 1986

Dust Explosion Hazards

NFPA 61A–1984, Manufacturing and Handling of Starch; (open)

NFPA 61C–1984, Dust Explosions in Feed Mills; (open)

NFPA 61D–1984, Milling of Agricultural Commodities for Human Consumption; (open)

NFPA 654–1982, Dust Explosions in the Plastics Industry; July 11, 1986

NFPA 655–1982, Sulfur Fires & Explosions; July 11, 1986

Electrical Safety Requirements for Employee Workplaces

NFPA 70E–1983, Electrical Safety Requirements for Employee Workplaces; July 11, 1986

Emergency Power Supplies

NFPA 110–1985, Emergency Power Supplies; July 11, 1986

Fire Department Equipment

NFPA 1904–1980, Fire Dept. Aerial Ladders & Elevating Platforms; March 1, 1986

Fire Department Organization

NFPA 1202–1982, Organization of a Fire Department; July 11, 1986

Fire Fighter Professional Qualifications

NFPA 1002–1982, Fire Apparatus Driver/Operator Professional Qualifications; July 11, 1986

Fire Service Training

NFPA 1452–1981, Training Fire Department Personnel to Inspect Dwellings; July 11, 1986

Fire Tests

NFPA 260B–1983, Determining Resistance of Mock-up Upholstered Furniture Materials Assemblies to Ignition by Smoldering Cigarettes; July 11, 1986

Fixed Guideway Transit Systems

NFPA 130–1986, Fixed Guideway Transit Systems; July 11, 1986

Flammable Liquids

NFPA 395–1984, Storage of Flammable & Combustible Liquids on Farms & Isolated Construction Projects; July 11, 1986

Foam

NFPA 11–1983, Low Expansion and Combined Agent Systems; July 11, 1986

NFPA 11A–1983, High Expansion Foam Systems; July 11, 1986

Industrial Trucks

NFPA 505–1982, Powered Industrial Trucks; March 15, 1986

Libraries, Museums and Historic Buildings

Proposed NFPA 914, Fire Safety in Building Rehabilitation and Reuse; Jan. 16, 1987

Marine Fire Protection

NFPA 306–1984, Gas Hazards on Vessels; July 11, 1986

Mobile Homes

NFPA 501A, Mobile Home Installations, Sites and Communities; March 1, 1986

Motor Vehicle & Highway Fire Protection

NFPA 502–1981, Limited Access Highways, Tunnels, Bridges, Elevated Roadways & Air Right Structures; March 1, 1986

National Fuel Gas Code

NFPA 54–1984, National Fuel Gas Code; April 15, 1986

Public Fire Service Communications

NFPA 1221–1984, Public Fire Service Communications; July 11, 1986

Signaling Systems

NFPA 72H–1984, Testing Standard for Protective Signaling Systems; July 11, 1986

Static Electricity

NFPA 77–1983, Static Electricity; July 11, 1986

Water Cooling Towers

NFPA 214–1983, Water Cooling Towers; July 11, 1986

Water Extinguishing Systems

NFPA 21–1982, Fire Pumps; July 11, 1986

NFPA 26–1983, Supervision of Valves Controlling Water Supplies for Fire Protection; July 11, 1986

NFPA 291–1983, Marking of Hydrants; July 11, 1986.

[FR Doc. 86-3524 Filed 2-18-86; 8:45 am]
BILLING CODE 3510-13-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 26, 1986 beginning at 1:30 p.m. in the Governor Printz Room of the Holiday Inn Philadelphia International Airport at 45 Industrial Highway, Essington, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:30 a.m. at the same location.

The subjects of the hearing will be as follows:

Proposed Amendments to Comprehensive Plan and Basin Regulations—Water code and Water Quality Standards. Notice was given in the January 28, 1986 **Federal Register**, Vol. 51, No 18, that the Commission would hold a public hearing on February 26, 1986 to receive comments on proposed amendments to the Comprehensive Plan and Basin Regulations—Water Code and Water Quality Standards in relation to seasonal disinfection. The proposed amendments would allow disinfection to be practiced on a seasonal basis by dischargers to streams which do not form or cross a state boundary. Discharges to interstate steams would still be required to provide year-round disinfection in order to meet applicable Commission standards.

Application for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Holdover Project: Philadelphia Suburban Water Company—Great Valley Division D–85–19 CP.* Application for approval of a new well (No. 24—Radley Mews) which would provide 0.18 million gallons per day (mgd) (5.4 million gallons (mg)/30 days) of water to the applicant's Radley Run system in Birmingham Township, Chester County Pa. The 491 foot deep well is located approximately 200 feet south of the East Bradford Township line and 110 feet northwest of Plum Run, in the Southeastern Pennsylvania Gound Water Protected Area. This hearing continues that of January 22, 1986.

2. *Village of Monticello D–81–5 CP RENEWAL.* An application for the renewal of a gound water withdrawal project to supply up to 17.1 mg/30 days

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of water to the applicant's distribution system from Well Nos. 1 and 2. Commission approval was limited to five years and will expire unless renewed. The project is located in the Town of Thompson, Sullivan County, New York.

3. *Town of Rockland—Roscoe Manor Sewer District D–82–35 CP.* A revised application for the construction of a new sewage treatment plant to serve the Hamlet of Roscoe in the Town of Rockland, Sullivan County, New York. The existing plant will be abandoned. The new 0.2 mgd plant will discharge to the Beaver Kill. The revised application proposes to eliminate the chlorination facilities from the proposed project and requests a waiver from the current disinfection requirements of DRBC. The receiving waters are classified by the New York Department of Environment Conservation (NYDEC) as C(T) trout waters and as such do not require any disinfection. The New York State Health Department has stated that there is no demonstrated need for disinfection at this facility.

4. *Moon Nurseries Contracting Inc. D–84–61.* A revised application for a ground water withdrawal project to supply the applicant's nursery in Lower Makefield Township, Bucks County, Pennsylvania. The applicant proposes to withdraw up to 7.09 mg/30 days from new Well Nos. 3 and 3A, and to increase the total withdrawal from the proposed wells and existing Well Nos. 1 and 2 from 2.04 to 11.4 mg/30 days. The wells are located in the Core Creek watershed upstream of Lake Luxembourg.

5. *Public Service Electric & Gas Company D–85–60 CP.* Approval is sought to add a 35,000 gallons per day (gpd) extended aeration treatment plant to the existing 51,000 gpd sewage treatment plant serving the Hope Creek Generating Station on Artificial Island in Lower Alloway's Creek Township, Salem County, New Jersey. The existing treatment facility, approved April 25, 1984 (D–73–193 CP Revised), was designed to treat the domestic wastes from up to 5,700 workers. Wastewater flows are now predicted to peak at 70,000 gpd during the remainder of construction, and at periods of future scheduled plant outages.

6. *Town of Milton D–85–89 CP.* An Application for the expansion and upgrading of the existing 0.25 mgd Town of Milton Wastewater Treatment Plant to a new design flow of 0.35 mgd to serve an expanded sewage collection system in the Town of Milton, Sussex County, Delaware. New gravity sewers and force mains will convey sewage to the upgraded and expanded secondary treatment facility. Treated sewage will continue to discharge to the Broadkill River at River Mile 0.02–0.71–0.28–13.1 in Zone 6 of the Delaware River Basin.

7. *Cove Haven, Inc. D–86–2.* An application for upgrading and expansion of the existing 0.04 mgd Cove Haven Resort Wastewater Treatment Plant in Paupack Township, Wayne County, Pennsylvania, to provide tertiary treatment for a sewage flow of 0.094 mgd. A new splitter box will deliver flow to the existing facility and to two new 0.03 mgd extended aeration package treatment facilities to be constructed adjacent to the existing facility. All units will act in parallel. Treated effluent will continue to discharge through the existing outfall to an unnamed tributary of Lake Wallenpaupack at River Mile 277.7–16.4–8.0–0.8.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,
Secretary.
February 11, 1986.

[FR Doc. 86–3548 Filed 2–18–86; 8:45 am]
BILLING CODE 6360–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permission for Entry of Certain Man-Made Fiber Yarns Produced or Manufactured in Brazil

February 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 20, 1986. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

On December 23, 1985 a notice was published in the **Federal Register** (50 FR 52357) which announced that during negotiations of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985, the Governments of the United States and the Federative Republic of Brazil had agreed that 363,000 pounds of man-made fiber yarns in Category 604, produced or manufactured in Brazil and exported during the restraint period established prior to the current agreement year, which began on April 1, 1985 and extends through March 31, 1986, should be permitted entry without charge during the current agreement year. To the extent that this amount is utilized it will be charged to the agreement year which begins on April 1, 1986 and extends through March 31, 1987.

To effectively implement this agreed adjustment, the letter to the Commissioner of Customs, which follows this notice cancels and supersedes the letter of January 16, 1986 and directs that the limit established for Category 604 for the 1984/1985 agreement year in the directive of March 28, 1984 be increased by 363,000 pounds to 717,931 pounds. To the extent that this increase is utilized it will be charged to the limit for Category 604 during the agreement year beginning on April 1, 1986. It further directs that 519,036 pounds be deducted from the import charges made to the limit established for the category in that directive since these have been charged to the 1985/1986 and 1986/1987 agreement periods.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.
February 13, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: This letter cancels and supersedes the letter of January 16, 1986 concerning man-made fiber textile products in Category 604, produced or manufactured in Brazil.

To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and the Federative Republic of Brazil, I request that, effective on February 20, 1986, you deduct 519,036 pounds from imports charges made to the restraint limit established in the directive of March 28, 1984 for man-made fiber textile products in Category 604, produced or manufactured in Brazil and exported during the agreement year which began on April 1, 1984 and extended through March 31, 1985. In addition, the restraint limit for Category 604 should be increased to 717,931 pounds for the same agreement period.

To the extent that there is any unfilled balance in the adjusted restraint limit, goods exported during the agreement period cited, should be charged to that adjusted limit.

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–3590 Filed 2–18–86; 8:45 am]
BILLING CODE 3510–DR–M

Request for Public Comment on Bilateral Textile Consultations With Mauritius on Trade in Category 347/348

February 13, 1986.

On January 31, 1986 the Government of the United States, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of Mauritius to enter into consultations concerning exports to the United States of cotton trousers in Category 347/348, produced or manufactured in Mauritius.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in this category, produced or manufactured in Mauritius and exported to the United States during the twelve-month period which began on February 1, 1986 and extends through February 1, 1987, at a level of 331,332 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of Category 347/348 is invited to submit such comments or information in ten copies to the Chairman, Committee for the Implementation of Textile Agreement, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Mauritius—Market Statement

Category 347/348—Cotton Trousers, etc.

January 1986.

Summary and Conclusions

U.S. imports of cotton trousers from Mauritius were 332,611 dozens during the year ending November 1985, compared with 76,296 dozen a year earlier. Imports from Mauritius increased from 1,615 dozens in 1983 to 90,657 dozens in 1984.

These increased imports are substantial in quantity and in rate of growth and are disrupting the market for Categories 347/348. Continuation of the growth would intensify the market disruption.

U.S. Production and Market

In 1983 U.S. cotton trouser production declined by 419,000 dozens. In 1984, production rebounded slightly to 40,895,000 dozens, two percent above the 1983 level.

The market for domestically produced and imported trousers grew by 7.0 million dozens between 1982 and 1984. U.S. producers' participated little in this expansion as their share of the market fell from 75 to 66 percent.

U.S. Imports and Import Penetration

In 1983, imports of Categories 347/348 increased from 13,133,000 dozens to 16,076,000 dozens, a 38 percent increase. Import growth continued into 1984 with a 6 percent increase. The ratio of imports to domestic production increased from 32.9 percent in 1982 to 45.7 percent in 1983 to 46.9 percent in 1984.

Import Values vs Domestic Prices

Approximately 70 percent of Categories 347/348 imports from Mauritius entered under TSUSA Nos. 381.6210 (previously 379.6210)—mens and boys cotton shorts, not knit or ornamented and 384.4725 (previously 383.4725)—WGI other cotton shorts, not knit or ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 86–3591 Filed 2–18–86; 8:45 am]
BILLING CODE 3510–DR–M

Request for Public Comment on Bilateral Textile Consultations With the Republic of South Africa on Trade in Category 340

February 13, 1986.

On January 31, 1986 the Government of the United States, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of the Republic of South Africa to enter into consultations concerning exports to the United States of woven cotton shirts in Category 340, produced or manufactured in South Africa.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in this category, produced or manufactured in South Africa and exported to the United States during the twelve-month period which began on February 1, 1986 and extends through January 31, 1987 at a level of 97,263 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of Category 340 is invited to submit such comments or information in ten copies to the Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

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to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

South Africa—Market Statement

Category 340—Men's and Boys' Woven Cotton Shirts

January 1986.

Summary and Conclusions

United States imports of Category 340 from South Africa were 112,151 dozens during the year-ending November 1985, substantially higher than the 7,295 dozens imported during year-ending November 1984. In 1984, imports totalled 8,941 dozens, compared to 231 dozens in 1983.

The substantial increase of low-valued imports of Category 340 from South Africa is disrupting the U.S. market for cotton shirts. These low-valued imports not only displace U.S. produced goods but also undermine the price structure in the U.S. market.

General Imports

Imports of Category 340 from all sources increased 29 percent between 1983 and 1984. In the first eleven months of 1985 imports of this category increased 29 percent when compared to the same period in 1984. The overall growth from 1980 to 1984 was 45 percent.

U.S. Production and Market Share

U.S. production of this category has declined nearly 50 percent since 1973. Between 1980 and 1983 production declined from 5,528,000 dozens to 4,493,000 dozens, a drop of 19 percent. Production in 1984 reached 5,125,000 dozens, up 14 percent from 1983, but still below the 1980 level.

Imports not only captured all of the market growth but also displaced domestically produced cotton woven shirts. The U.S. market for Category 340 grew by 2.5 million dozens between 1980 and 1984. During that time imports increased by 2.9 million dozens, while domestic production was reduced by 400,000 dozens. The U.S. producers' market share for Category 340 declined from 46.7 percent in 1980 to only 35.8 percent in 1984.

Import Penetration

The import-to-production ratio for this category has increased sharply over the last 5 years. In 1980 the ratio surpassed 100 percent for the first time, reaching 114.3 percent. By 1983, the ratio had climbed over 44 percentage points to 158.5 percent. The substantial increase in imports in 1984 helped boost the ratio an additional 20.5 percentage points to 179.0 percent.

Import Value vs Domestic Producers' Price

Approximately ninety percent of South Africa's January–October 1985 imports of Category 340 entered under TSUSA number 381.5650 (previously 379.5550)—mens' cotton sport shirts, not knit or ornamented. These garments entered the U.S. at landed duty-paid values below the U.S. producers' price for comparable items.

[FR Doc. 86-3592 Filed 2-18-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Graduate Medical Education (GME) Advisory Committee

Under the provisions of Pub. L. 92-463, "Federal Advisory Committee Act," notice is hereby given that the Graduate Medical Education (GME) Advisory Committee has been found to be in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will serve the public interest by providing the Secretary of Defense with advice on the management of GME for the Military Departments, and making recommendations for aligning the GME system with DoD medical readiness goals.

Membership will reflect a cross section of professional medical organizations and military representatives who are involved with GME in the civilian and military academic communities. Civilian organizations to be represented include: American Medical Association, American Association of Medical Colleges, Accreditation Council on Graduate Medical Education, Residency Review Committee on Surgery and American College of Physicians. Each of the three Services will provide one non-voting member and additional resource personnel as required.

Dated: February 13, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-3539 Filed 2-18-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: 3 March 1986, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, DC.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on U.S. Strategic Defense Initiative.

Dated: February 13, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-3540 Filed 2-18-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee; Meetings

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on March 26-27, 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Policy Board is to advise the Secretary of Defense, Deputy Secretary and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters dealing with the Pacific area, nuclear deterrence and the Strategic Defense Initiative.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DPB Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: February 13, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-3541 Filed 2-18-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Thursday & Friday, 6-7 March 1986.

Times of Meeting: 0745-1700 hours.

Places: Ft. Monmouth, New Jersey.

Agenda: The Army Science Board FSG on C³I will meet to receive brifings and discuss strategies that pertain to integretion problems associated with Army C³ architectures. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-3610 Filed 2-18-86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

February 7, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Technologies for Monitoring Underground Nuclear Testing in the late 1990s will meet at Patrick AFB, FL on March 20 and 21, 1986, from 8:30 a.m. to 5:00 p.m. both days.

The purpose of the meeting will be to receive classified briefings on technology programs to improve the ability to monitor weapons development and testing.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-3549 Filed 2-18-86; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

February 10, 1986.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will meet at Griffiss AFB, NY on March 11, 1986, from 8:30 a.m. to 5:00 p.m. and on March 12, 1986, from 8:30 a.m. to 3:00 p.m.

The purpose of the meeting will be to receive classified briefings on C³I technology R&D programs and priorities.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-3547 Filed 2-18-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Reopening of Closing Date for Transmittal of Applications Under Services for Deaf-Blind Children and Youth—State and Multi-State Projects for Fiscal Year 1986.

Programmatic and Fiscal Information

The purpose of this notice is to establish a new closing date for transmittal of new applications under this program for fiscal year 1986 awards. The announcement was originally published in the Federal Register on Wednesday, July 31, 1985 (50 FR 30992-31000). The closing date for transmittal of applications was January 3, 1986. Very few applications were submitted in response to the July notice. Reopening the closing date is intended to provide an opportunity for additional applications to be submitted.

This program supports projects that enhance services to deaf-blind children and youth, particularly by providing technical assistance to State educational agencies and others who are involved in the education of deaf-blind children and youth.

Closing Dates for Transmittal of Applications and Intergovernmental Review Comments

Applications for new awards must be mailed or hand-delivered on or before March 6, 1986.

Comments under Executive Order 12372 from State Single Points of Contact and State, areawide, regional and local entities must be mailed or hand-delivered by March 17, 1986.

Application Forms: Application forms and program information packages may be obtained by writing to Special Needs Section, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511-M/S 2313), Washington, DC 20202.

Further Information: For further information contact Charles Freeman, Special Needs Section, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511-M/S 2313), Washington, DC 20202. Telephone: 732-1165.

(20 U.S.C. 1422)

(Catalog of Federal Domestic Assistance Number 84.025, Services for Deaf-Blind Children and Youth program)

Dated: February 12, 1986.

Madeleine Will,

Assistant Secretary, Special Education and Rehabilitative Services.

[FR Doc. 86-3585 Filed 2-18-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM85-1-153]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Columbia Gas Transmission Corp.; Denial of Rehearing

February 13, 1986.

On January 14, 1986, Columbia Gas Transmission Corporation filed a request for rehearing of the Commission's order issued on December 20, 1985, in this proceeding. The Commission has determined not to act on the request. Accordingly, the request is deemed denied by operation of law, effective February 13, 1986, pursuant to section 19(a) of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3566 Filed 2-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-304-000 et al.]

Natural Gas Certificate Filings; Columbia LNG Corp. et al.

Take notice that the following filings have been made with the Commission:

1. Columbia LNG Corporation

[Docket No. CP86-304-000]

February 11, 1986.

Take notice that on February 3, 1986, Columbia LNG Corporation (Columbia), 20 Montchanin Road, Wilmington, Delaware 19807, filed in Docket No. CP86-304-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Washington Gas Light Company (Washington) for an initial term of five years and the construction and operation of a new point of delivery to Washington, all as more fully set forth in the application

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which is on file with the Commission and open for inspection.

Columbia requests authorization to provide a transportation service for Washington of up to 300,000 dt of natural gas per day. It is explained that the transportation would be provided through Columbia's capacity entitlement in pipeline facilities which are jointly owned by Columbia and Consolidated System LNG Company (Consolidated LNG). Columbia states that the gas would be received by Columbia at an existing point of interconnection with the facilities of Columbia Gas Transmission Corporation (Columbia Transmission) in Loudoun County, Virginia, and then transported and redelivered by Columbia at a proposed point of interconnection with the facilities of Washington in Prince George's County, Maryland. It is indicated that the gas transported on behalf of Washington would be used for service by Washington to the Chalk Point electric generating station owned by Potomac Electric Power Company and located in Prince George's County, Maryland.

Columbia proposes to charge a transportation rate of $.0453 per dt of gas received. Columbia states that this is a unit rate based upon a cost of service for the pipeline facilities that has been developed in accordance with the cost-of-service billing procedures set forth in Section 3 of Columbia's Rate Schedule LNG. Columbia further states that those revenues ($.0158 per dt) collected which provide for the recovery of costs that already are recovered from Columbia Transmission pursuant to the minimum bill set forth in section 3.8 of Columbia's Rate Schedule LNG would be credited to the minimum bill. Columbia also states that the remaining $.0295 per dt equivalent of gas would be credited by Columbia to its depreciation reserve (Account 108) to reflect the appropriate recovery of its equity investment.

Columbia further states that because of the unique situation presented by its cost-of-service tariff and the minimum bill that is presently in effect, Columbia has chosen not to render this transportation service pursuant to a blanket certificate as provided for under the Commission's Order No. 436. However, Columbia states that it is prepared to consider all transportation requests and to render such transportation to the extent there is available capacity and operating conditions permit. Columbia also asserts that in view of its plans for the continued maintenance of the facilities, and since it seeks herein authorization to utilize only its half of the capacity in the Cove Point pipeline, final action by the Commission on Consolidated LNG's application in Docket No. CP83-75-000 should have no impact on the transportation authorization herein requested.

Comment date: March 4, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP86-275-000]

February 12, 1986.

Take notice that on January 16, 1986, East Tennessee Natural Gas Company (Applicant), P.O. Box 10245, Knoxville, Tennessee 379-0245, filed in Docket No. CP86-275-000 an application pursuant to section 7(c) of the Natural gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the purpose of selling natural gas for resale to Atlanta Gas Light Company (Atlanta Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell natural gas to Atlanta Gas pursuant to Applicant's existing Rate Schedule CD-1 with a proposed contract demand of 50,000 Mcf per day. Applicant estimated the annual sales to Atlanta Gas would reach approximately 10,950,000 Mcf of gas by 1987. It is further asserted that Atlanta Gas projects up to 250,000 Mcf per day of increase in contract demand on its distribution system which serves a large portion of Georgia.

To effectuate the proposed sale to Atlanta Gas, Applicant proposes to construct three new compressor stations near Maryville, Sweetwater and Estill Springs, Tennessee; to addd an additional engine at its Lobelville compressor station near Lobelville, Tennessee; to construct 13.25 miles of 16-inch pipeline loop near Columbia, Tennessee; to construct 10.3 miles of 16-inch pipeline near Ooltewah, Tennessee; and to construct 0.43 mile of 16-inch pipeline loop and 0.52 mile of 20-inch pipeline replacement near Knoxville, Tennessee.

The total estimated cost for the proposed facilities to be constructed is $18,747,481. Applicant states that financing would come from either funds on hand or funds generated within the Tenneco Inc. organization. Applicant states that it would deliver gas to Atlanta Gas at a proposed point of interconnection with facilities to be built by Atlanta Gas in Georgia near the Tennessee-Georgia border.

Comment date: March 5, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-290-000]

February 12, 1986.

Take notice that on January 24, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-290-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of M.A. Hanna Company (Hanna), as agent for the National Steel Pellet Company (National Steel), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that Hanna, managing agent for National Steel, has advised Northern that unless National Steel reduces its operating costs it would be forced to terminate its operations. It is explained that in an attempt to reduce its natural gas costs, Hanna entered into an agency agreement with Peoples Natural Gas Company, a Division of Utilicorp United Inc. (Peoples), wherein Peoples agreed to arrange for the purchase and transportation of natural gas to Hanna, as agent for National Steel. Northern states that, subsequently, Peoples has entered into a gas sales agreement with PeopleService Inc. (PSI), wherein Peoples, acting as agent for Hanna, has agreed to purchase up to 10 billion Btu of natural gas per day from PSI and that Peoples has authorized PSI to act as agent on behalf of Hanna in arranging for the transportation of such gas. Northern further explains that PSI has entered into a transportation agreement with Northern for a term expiring January 31, 1991. Northern states that it has agreed to transport up to 10 billion Btu of natural gas per day on behalf of Hanna on an interruptible basis, which gas would ultimately be delivered to National Steel, at interconnections on Northern's system. Northern then would transport thermally equivalent volumes to an existing interconnection between Northern and Peoples in St. Louis County, Minnesota for subsequent delivery by Peoples directly to National Steel's plant.

Northern proposes to charge a transportion rate of 63.76 cents per million Btu of gas transported which is equivalent to the currently effective non-gas component contained in Northern's Rate Schedule CD-1 for Rate Zone C.

Comment date: March 5, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP86-294-000]

February 11, 1986.

Take notice that on January 28, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-294-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Gulf Oil Corporation (Gulf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes, in accordance with a firm service agreement, dated June 6, 1984, to receive from Gulf at the Matagorda Island area Block 712 production platform, offshore Texas (Northern receipt point), and to transport on a firm basis a maximum daily quantity of 10,000 Mcf of natural gas per day (MDQ) for a primary term ending August 3, 1989, and year to year therafter. Northern states that it would deliver thermally equivalent volumes for Gulf's account at the interconnection of the Matagorda Offshore Pipeline System (MOPS) and Houston Pipe Line Company-Channel Industries Gas Company's (HPL-Channel) A-S 30-inch pipeline located near Tivoli, Refugio County, Texas (Northern delivery point). Northern further proposes to transport Matagorda Island Block 712 volumes in excess of the MDQ for Gulf's account on a best-efforts basis.

In addition to the firm and overrun services described above, Northern proposes to displace gas on a best-efforts basis for Gulf's account from Refugio County, Texas, to Calcasieu Parish, Louisiana. Under the terms of the displacement agreement, also dated June 6, 1984, Northern indicates that it has agreed to accept on a best-efforts basis up to 10,000 Mcf of natural gas per day at the interconnection of MOPS and HPL-Channel's A-S 30-inch pipeline near Tivoli, Refugio County, Texas.

Northern explains it would then cause the redelivery of thermally equivalent volumes to Texas Eastern Pipeline Company (Texas Eastern) for Gulf's account at the interconnection of Northern's facilities located at its Starks compressor station and Texas Eastern's facilities located in Calcasieu Parish, Louisiana.

For the services described herein, Northern proposes initially to charge Gulf cost of service based rates utilizing allocation and return factors presently set forth or utimately approved in Northern's general rate proceeding at Docket No. RP85-206-000. Using the factors contained in its rate proceeding, Northern explains that it would charge Gulf a monthly demand charge of $46,269 for the firm transportation service proposed herein. It is asserted that a rate of 15.22 cents per Mcf would be charged by Northern for the transportation of overrun volumes for Gulf's account. For the displacement of volumes from Refugio County, Texas, to Calcasieu Parish, Louisiana, Northern proposes to charge Gulf a rate of 8.71 cents per Mcf plus fuel.

Comment date: March 4, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. KN Energy, Inc.

[Docket No. CP86-293-000]

February 11, 1986.

Take notice that on January 27, 1986, KN Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-293-000 a request pursuant to § 157.205(b) of the Regulations under the Natural Gas Act [18 CFR 157.205(b)] for authorization to construct and operate sales taps for the delivery of gas to end-users under the certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct new sales taps in order to sell natural gas to the individuals listed in the attached appendix. Applicant asserts that the sales to each individual would be at the appropriate rate as provided by state authorities. The total cost to construct the proposed facilities would be $37,050.

Appendix

Customer	Location of Tap	Approximate quantity to be sold (Mcf)		End use of gas	Est. of cost facilities
		Peak day	Annual		
Resident/Occupant 86-1 Lovergrove Brothers	NW/4 Sec. 12-T8N-R2W Fillmore Co., NE	30	1,000	Irrigation	$1,150
Resident/Occupant 86-2 Frank Easton	SE/4 Sec. 18-T1N-R2W Thayer Co., NE	53	1,760	do	1,150
Resident/Occupant 86-3 Thomas L. Rath	SW/4 Sec. 22-T8N-R4W Fillmore Co., NE	43	1,440	do	1,150
Resident/Occupant 86-4 LaVern Hellmann	SW/4 Sec. 30-T1N-R4W Thayer Co., NE	21	720	do	850
Resident/Occupant 86-5 K & F Farms	NW/4 Sec. 36-T1N-R3W Thayer Co., NE	26	880	do	850
Resident/Occupant 86-6 Steve Meyer	SE/4 Sec. 3-T2N-R4W Thayer Co., NE	26	880	do	1,150
Resident/Occupant 86-7 Iris Adamson	NW/4 Sec. 30-T1N-R2W Thayer Co., NE	26	880	do	850
Resident/Occupant 86-8 Mark Hoops	SW/4 Sec. 6-T1S-R2W Republic Co., KS	26	880	do	850
Resident/Occupant 86-9 Roger Patton	SW/4 Sec. 32-T4S-R14W Smith Co., KS	5	180	do	850
Resident/Occupant 86-10 Frank C. Fisher	NW/4 Sec. 33-T8N-R6W Clay Co., NE	26	880	do	850
Resident/Occupant 86-11 Iona M. Campbell	SW/4 Sec. 28-T8N-R5W Clay Co., NE	21	720	do	850
Resident/Occupant 86-12 Scully Estates Limited Partnership	NE/4 Sec. 11-T4N-R5W Nuckolls Co., NE	21	720	do	850
Resident/Occupant 86-13 Tom A. Helvitche	NW/4 Sec. 7-T3N-R4W Thayer Co., NE	26	880	do	850
Resident/Occupant 86-14 Scully Estates Limited Partnership	SE/4 Sec. 18-T5N-R6W Clay Co., NE	50	1,680	do	1,150
Resident/Occupant 86-15 William Scully	NE/4 Sec. 21-T5N-R6W Clay Co., NE	26	880	do	850
Resident/Occupant 86-16 Scully Estates Limited Partnership	SW/4 Sec. 16-T5N-R6W Clay Co., NE	26	880	do	850
Resident/Occupant 86-17 John Low	NW/4 Sec. 7-T8N-R2W Fillmore Co., NE	26	88	do	850
Resident/Occupant 86-18 Ralph Sotley	SE/4 Sec. 14-T8N-R3W Fillmore Co., NE	24	800	do	850
Resident/Occupant 86-19 Clayton Friesen	SW/4 Sec. 18-T8N-R4W York Co., NE	26	880	do	850
Resident/Occupant 86-20 Kenneth Ray Smith	SE/4 Sec. 12-T1S-R4W Republic Co., KS	26	880	do	850
Resident/Occupant 86-21 Marlin Hellmann	SW/4 Sec. 12-T1S-R4W Republic Co., KS	26	880	do	850
Resident/Occupant 86-22 Raymond E. Griese	SE/4 Sec. 35-T8N-R6W Hamilton Co., NE	26	880	do	1,150
Resident/Occupant 86-23 Voigt Ag. Co	SW/4 Sec. 4-T3N-R4W Thayer C., NE	26	880	do	850
Resident/Occupant 86-24 L&M Schardt Farm, Inc	SE/4 Sec. 3-T3N-R4W Thayer Co., NE	26	880	do	850
Resident/Occupant 86-25 Wilfred Ficken	NW/4 Sec. 28-T4N-R6W Nuckolls Co., NE	26	880	do	850
Resident/Occupant 86-26 Don R. Holtzen	NE/4 Sec. 35-T4N-R4W Thayer Co., NE	24	800	do	850
Resident/Occupant 86-27 Dennis Goertzen	SW/4 Sec. 6-T10N-R4W York Co., NE	10	600	Small commercial	850
Resident/Occupant 86-28 Maurice Mitchell	SW/4 Sec. 33-T1N-R3W Thayer Co., NE	29	980	Irrigation	1,150
Resident/Occupant 86-29 Garden City Company	NE/4 Sec. 20-T23S-R34W Finney Co., KS	54	1,800	do	1,150
Resident/Occupant 86-30 Art Albrecht	SE/4 Sec. 3-T2N-R4W Thayer Co., NE	29	980	do	1,150
Resident/Occupant 86-31 W. Hilltop Farms, Inc	NE/4 Sec. 32-T6N-R6W Clay Co., NE	55	1,840	do	1,150
Resident/Occupant 86-32 C.W. Kettlehut	SW/4 Sec. 13-T1S-R4W Republic Co., KS	26	880	do	850

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Customer	Location of Tap	Approximate quantity to be sold (Mcf)		End use of gas	Est. of cost facilities
		Peak day	Annual		
Resident/Occupant 86-33 C.W. Kettlehut	SE/4 Sec. 12-T1S-R4W Republic Co., KS	26	880	do	850
Resident/Occupant 86-34 Larry Wulf	NE/4 Sec. 8-T2N-R4W Thayer Co., NE	26	880	do	850
Resident/Occupant 86-35 R.E. Vieselmeyer, Inc	NW/4 Sec. 13-T2N-R5W Nuckolls Co., NE	48	1,600	do	1,150
Resident/Occupant 86-36 Vieselmeyer Seed, Inc	NW/4 Sec. 20-T2N-R4W Thayer Co., NE	48	1,600	do	1,150
Resident/Occupant 86-37 Max Eggers	SW/4 Sec. 8-T1S-R3W Republic Co., KS	55	1,840	do	1,150
Resident/Occupant 86-38 Kahman Lands Ltd	NW/4 Sec. 17-T5N-R7W Clay Co., NE	22	720	do	850
Resident/Occupant 86-39 Terry Hedwiger	SE/4 Sec. 24-T10N-R17W Buffalo Co., NE	2	120	Domestic	850
Totals		1,144	27,928		37,050

Comment date: March 28, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natual Gas Act (18 CFR 157.10). All protests filed with Commission will be considered by it in determining the appropriation action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, Pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Nature Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3685 Filed 2-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-394-000]

Pacific Lighting Energy Systems, Oroville 2 Project; Correction

January 31, 1986.

On December 26, 1985, Pacific Lighting Energy Systems (Applicant), of 6055 East Washington Boulevard, Suite 600, City of Commerce, California 90040 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

In the Applicant's notice, issued January 15, 1986 (51 FR 2754, January 21, 1986), the primary energy source was incorrectly stated as geothermal resources. The applicant's primary energy source is biomass in the form of waste wood.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3586 Filed 2-18-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST86-573-000 et al.]

Transwestern Pipeline Co. et al.; Self-Implementing Transactions

February 12, 1986.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to subpart F of Part 157 and Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before March 27, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[1] Notice of transactions does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985).

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-573	Transwestern Pipeline Co	Energas Co	12-02-85	B		
ST86-574	Panhandle Eastern Pipe Line Co	Consolidated Edison Co. of NY, Inc., *et al.*	12-02-85	B		
ST86-575	ANR Pipeline Co	American Can Co., *et al.*	12-02-85	F(157)		
ST86-576	Southern Natural Gas Co	Alabama Gas Corp	12-02-85	B		
ST86-577	ANR Pipeline Co	Long Island Lighting Co	12-02-85	B		
ST86-578	do	Great River Gas Co	12-02-85	B		
ST86-579	Texas Gas Tranmission Corp	Colorite Ceramic Manufacturing Co	12-03-85	F(157)		
ST86-580	ANR Pipeline Co	Wisconsin Gas Co	12-04-85	B		
ST86-581	Midwestern Gas Transmission Co	Long Island Lighting Co	12-04-85	B		
ST86-582	United Gas Pipe Line Co	Armstrong World Industries, Inc., *et al.*	12-04-85	F(157)		
ST86-583	do	Columbia Gas of Pennsylvania, Inc	12-04-85	B		
ST86-584	ANR Pipeline Co	Krause Milling	12-04-85	F(157)		
ST86-585	United Gas Pipe Line Co	Mississippi River Transmission Corp	12-04-85	G		
ST86-586	Michigan Gas Storage Co	Hayes-Albion Corp	12-05-85	F(157)		
ST86-587	Texas Eastern Transmission Corp	Creole Gas Pipeline Corp	12-02-85	B		
ST86-588	do	Public Service Electric and Gas Co	12-02-85	B		
ST86-589	do	Brooklyn Union Gas Co	12-02-85	B		
ST86-590	do	New Jersey Natural Gas Co	12-02-85	B		
ST86-591	do	Philadelphia Electric Co	12-02-85	B		
ST86-592	do	Consolidated Edison Co. of NY, Inc	12-02-85	B		
ST86-593	do	Elizabethtown Gas Co	12-02-85	B		
ST86-594	Delhi Gas Pipeline Corp	Public Service Electric and Gas Co	12-06-85	C		
ST86-595	United Gas Pipe Line Co	Buckman Laboratories, Inc	12-05-85	F(157)		
ST86-596	do	Delta Brick and Tile Co., *et al.*	12-05-85	F(157)		
ST86-597	do	LGS Intrastate, Inc	12-05-85	B		
ST86-598	do	Ralston Purina Co	12-05-85	F(157)		
ST86-599	do	Logan Aluminum, Inc	12-05-85	F(157)		
ST86-600	do	LGS Intrastate, Inc	12-05-85	B		
ST86-601	do	do	12-06-85	B		
ST86-602	Delhi Gas Pipeline Corp	Spindletop Gas Distribution System	12-06-85	C		
ST86-603	Northwest Pipeline Corp	Cascade Natural Gas Corp	12-06-85	B		
ST86-604	Columbia Gas Transmission Corp	Honda of America, Inc	12-06-85	F(157)		
ST86-605	do	do	12-06-85	F(157)		
ST86-606	Transcontinential Gas Pipe Line Corp	Delmarva Power and Light Co	12-06-85	B		
ST86-607	do	ANR Pipeline Co	12-06-85	G		
ST86-608	Texas Gas Transmission Corp	B.F. Goodrich Co	12-06-85	F(157)		
ST86-609	do	Goodyear Tire and Rubber Co	12-06-85	F(157)		
ST86-610	do	Diamond-Bathurst, Inc	12-06-85	F(157)		
ST86-611	Texas Eastern Transmission Corp	Long Island Lighting Co	12-06-85	B		
ST86-612	do	TPC Pipeline, Inc	12-06-85	B		
ST86-613	do	Central Illinois Public Service Co	12-06-85	B		
ST86-614	do	National Gas and Oil Corp	12-06-85	B		
ST86-615	United Gas Pipe Line Co	IMC Pipeline Co., Inc	12-06-85	B		
ST86-616	do	Hammermill Paper Co	12-06-85	F(157)		
ST86-617	do	Corning Glass Works	12-06-85	F(157)		
ST86-618	do	Celotex Corp., *et al.*	12-06-85	F(157)		
ST86-619	do	Container Corp. of America	12-06-85	F(157)		
ST86-620	do	Corning Glass Works	12-06-85	F(157)		
ST86-621	Delhi Gas Pipeline Corp	Tennessee Gas Pipeline Co	12-06-85	C		
ST86-622	do	do	12-06-85	C		
ST86-623	do	Texas Eastern Transmission Corp	12-06-85	C		
ST86-624	Texas Gas Transmission Corp	Regional Medical Center	12-06-85	F(157)		
ST86-625	Arkla Energy Resources	International Minerals and Chemical Corp	12-06-85	F(157)		
ST86-626	do	W.R. Grace and Co	12-06-85	F(157)		
ST86-627	Texas Eastern Transmission Corp	Delhi Gas Pipeline Corp	12-06-85	B		
ST86-628	do	do	12-06-85	B		
ST86-629	do	do	12-06-85	B		

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Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-630	do	Brooklyn Union Gas Co	12-09-85	B		
ST86-631	do	Delhi Gas Pipeline Corp	12-09-85	B		
ST86-632	do	do	12-09-85	B		
ST86-633	do	Philadelphia Electric Co	12-09-85	B		
ST86-634	do	Delhi Gas Pipeline Corp	12-09-85	B		
ST86-635	do	do	12-09-85	B		
ST86-636	Texas Gas Transmission Corp	Bethlehem Steel Corp	12-09-85	F(157)		
ST86-637	Arkansas Oklahoma Gas Corp	[3]	12-09-85	C	05-09-86	31.62
ST86-638	Northern Natural Gas Co	Northern States Power Co	12-11-85	B		
ST86-639	do	Minnegasco, Inc	12-11-85	B		
ST86-640	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	12-11-85	B		
ST86-641	do	Union Gas Co	12-11-85	B		
ST86-643	do	South Jersey Gas Co	12-11-85	B		
ST86-644	do	Long Island Lighting Co	12-11-85	B		
ST86-645	do	Delmarva Power and Light Co	12-12-85	B		
ST86-646	do	Liberty Natural Gas Co	12-12-85	B		
ST86-647	Texas Eastern Transmission Corp	Columbia Gas of Ohio, Inc	12-12-85	B		
ST86-648	United Gas Pipe Line Co	Owens-Corning Fiberglass Corp	12-12-85	F(157)		
ST86-649	do	Tri-State Brick and Tile, Inc	12-12-85	F(157)		
ST86-650	Producer's Gas Co	Pacific Gas and Electric Co., *et al.*	12-12-85	C	05-11-86	25.20
ST86-651	Producer's Gas Co	ANR Pipeline Co	12-12-85	C	05-11-86	25.20
ST86-652	Valero Transmission Co	Trunkline Gas Co	12-12-85	C		
ST86-653	do	Texas Eastern Transmission Corp	12-12-85	C		
ST86-654	do	do	12-12-85	C		
ST86-655	El Paso Natural Gas Co	City of Deming	12-12-85	B		
ST86-656	do	EMW Gas Association	12-12-85	B		
ST86-657	do	Citizens Utilities Co	12-12-85	B		
ST86-658	do	Rio Grande Natural Gas Association	12-12-85	B		
ST86-659	do	Town of Benson	12-12-85	B		
ST86-660	do	City of Socorro	12-12-85	B		
ST86-661	Producer's Gas Co	Natural Gas Pipeline Co. of America	12-12-85	C	05-11-86	25.20
ST86-664	Columbia Gas Transmission Corp	Union Light, Heat and Power Co	12-02-85	B		
ST86-665	do	UGI Corp	12-02-85	B		
ST86-666	do	Waterville Gas Co	12-02-85	B		
ST86-667	do	West Ohio Gas Co	12-02-85	B		
ST86-668	do	Johns Hopkins University Hospital	12-02-85	F(157)		
ST86-669	Columbia Gulf Transmission Co	PPG Industries, Inc	12-02-85	F(157)		
ST86-670	Columbia Gas Transmission Corp	Pennsylvania Gas and Water Co	12-02-85	B		
ST86-671	do	Baltimore Gas and Electric Co	12-02-85	B		
ST86-672	do	Blackville Oil and Gas Co	12-02-85	B		
ST86-673	do	Bluefield Gas Co	12-02-85	B		
ST86-674	do	Cincinnati Gas and Electric Co	12-02-85	B		
ST86-675	do	City of Charlottesville	12-02-85	B		
ST86-676	do	Central Hudson Gas and Electric Co	12-02-85	B		
ST86-677	do	Suburban Fuel Gas Corp	12-02-85	B		
ST86-678	do	Sheldon Gas Co	12-02-85	B		
ST86-679	do	Roanoke Gas Co	12-02-85	B		
ST86-680	do	Pike Natural Gas Co	12-02-85	B		
ST86-681	do	Penn Fuel Gas Co	12-02-85	B		
ST86-682	do	Orange and Rockland Utilities, Inc	12-02-85	B		
ST86-683	do	New York State Electric and Gas Co	12-02-85	B		
ST86-684	do	Mountaineer Gas Co	12-02-85	B		
ST86-685	do	City of Lancaster	12-02-85	B		
ST86-686	do	Dayton Power and Light Co	12-02-85	B		
ST86-687	do	Delta Natural Gas Co	12-02-85	B		
ST86-688	do	Corning Natural Gas Corp	12-02-85	B		
ST86-689	do	Consumers Natrual Gas Co	12-02-85	B		
ST86-690	do	Commonwealth Gas Pipeline Corp	12-02-85	B		
ST86-691	do	Columbia Gas of Virginia, Inc	12-02-85	B		
ST86-692	do	Columbia Gas of Pennsylvania, Inc	12-02-85	B		
ST86-693	do	Columbia Gas of Ohio, Inc	12-02-85	B		
ST86-694	do	Columbia Gas of New York, Inc	12-02-85	B		
ST86-695	do	Columbia Gas of Maryland, Inc	12-02-85	B		
ST86-696	do	Columbia Gas of Kentucky, Inc	12-02-85	B		
ST86-697	Equitable Gas Co	UGI Corp	12-16-85	B		
ST86-698	Arkla Energy Resources	Louisiana Intrastate Segment, AER	12-16-85	C		
ST86-699	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	12-16-85	B		
ST86-700	do	Long Island Lighting Co	12-16-85	B		
ST86-701	Houston Pipe Line Co	Philadelphia Gas Works	12-16-85	C		
ST86-702	do	Philadelphia Electric Co	12-16-85	C		
ST86-703	do	Philadelphia Gas Works	12-16-85	C		
ST86-704	do	Philadelphia Electric Co	12-16-85	C		
ST86-705	do	do	12-16-85	C		
ST86-706	do	Long Island Lighting Co	12-16-85	C		
ST86-707	Somerset Gas Service	Brooklyn Union Gas Co	12-11-85	C		
ST86-708	Trunkline Gas Co	Consumers Power Co	12-17-85	B		
ST86-709	Texas Eastern Transmission Corp	American Distribution Co	12-17-85	B		
ST86-710	ANR Pipeline Co	Andrews University	12-17-85	F(157)		
ST86-711	do	ALRECO Metals, Inc	12-17-85	F(157)		
ST86-712	do	Mead Paperboard Products	12-17-85	F(157)		
ST86-713	do	Marco, Inc	12-17-85	F(157)		
ST86-714	United Gas Pipe Line Co	Southwest Gas Corp., *et al*	12-16-85	F(157)		
ST86-715	Colorado Interstate Gas Co	Intermountain Gas Co	12-16-85	B		
ST86-716	Delhi Gas Pipeline Corp	Wisconsin Natural Gas Co	12-16-85	C		
ST86-717	do	Consolidated Edison Co. of NY, Inc	12-16-85	C		
ST86-718	ANR Pipeline Co	Appleton Papers, Inc	12-19-85	F(157)		
ST86-719	do	Wisconsin Tissue Mills	12-19-85	F(157)		
ST86-720	do	Smurfit Paperboard	12-19-85	F(157)		
ST86-721	Arkla Energy Resources	Associated Natural Gas Co	12-19-85	B		
ST86-722	Mid Louisiana Gas Co	United Gas Pipe Line Co	12-19-85	G		
ST86-723	Northwest Pipeline Corp	Intermountain Gas Co	12-19-85	B		
ST86-724	do	Southwest Gas Corp	12-19-85	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-725	ANR Pipeline Co	Nabisco Brands, Inc	12-20-85	F(157)		
ST86-726	do	Acme Die Casting Corp	12-20-85	F(157)		
ST86-727	Columbia Gas Transmission Corp	Waterville Gas Co	12-19-85	B		
ST86-728	ANR Pipeline Co	Schreiber Melting Co	12-20-85	F(157)		
ST86-728	do	Bermet of Indiana, Inc	12-20-85	F(157)		
ST86-730	do	Illinois Power Co	12-20-85	B		
ST86-731	do	Sohio Chemical Co	12-20-85	F(157)		
ST86-732	do	Wisconsin Natural Gas Co	12-20-85	B		
ST86-733	do	Carnation Co	12-20-85	F(157)		
ST86-734	do	Mercy Medical Center	12-20-85	F(157)		
ST86-735	do	Lake to Lake, Division of Land O Lakes, Inc	12-20-85	F(157)		
ST86-736	do	Frito-Lay, Inc	12-20-85	F(157)		
ST86-737	do	American Can Co	12-20-85	F(157)		
ST86-738	Sea Robin Pipeline Co	Orange and Rockland Utilities, Inc	12-23-85	B		
ST86-739	Columbia Gulf Transmission Co	Baltimore Gas and Elect. Co., *et al*	12-23-85	B		
ST86-740	do	Johns Hopkins University Hospital	12-23-85	F(157)		
ST86-741	Delhi Gas Pipeline Corp	Northern Natural Gas Co	12-23-85	C		
ST86-742	do	Columbia Gas of Ohio, Inc	12-23-85	C		
ST86-743	ANR Pipeline Co	Simplex Industries, Inc	12-23-85	F(157)		
ST86-744	do	White, Pigeon Paper Co	12-23-85	F(157)		
ST86-745	do	Hasell Corp	12-23-85	F(157)		
ST86-746	do	Parke Davis and Co	12-23-85	F(157)		
ST86-747	do	Michigan Consolidated Gas Co	12-23-85	B		
ST86-748	do	BASF Wyandotte Corp	12-23-85	F(157)		
ST86-749	do	Great River Gas Co	12-23-85	B		
ST86-750	Producer's Gas Co	Mississippi River Transmission Corp	12-23-85	D		
ST86-751	do	Pacific Lighting Gas Supply Co., *et al*	12-23-85	D		
ST86-752	Texas Gas Transmission Corp	City of Elizabethtown	12-23-85	B		
ST86-753	do	do	12-23-85	B		
ST86-754	do	Mississippi Valley Gas Co	12-23-85	B		
ST86-755	do	Memphis Light, Gas and Water Division	12-23-85	B		
ST86-756	do	Jackson Utility Division	12-23-85	B		
ST86-757	do	Texas American Energy Corp	12-23-85	B		
ST86-758	do	Memphis Light, Gas and Water Division	12-23-85	B		
ST86-759	do	Indiana Gas Co., Inc	12-23-85	B		
ST86-760	do	Memphis Light, Gas and Water Division	12-23-85	B		
ST86-761	do	do	12-23-85	B		
ST86-762	do	do	12-23-85	B		
ST86-763	do	Texas American Energy Corp	12-23-85	B		
ST86-764	do	Mississippi Valley Gas Co	12-23-85	B		
ST86-765	do	Terre Haute Gas Corp	12-23-85	B		
ST86-766	do	Illinois Gas Co	12-23-85	B		
ST86-767	Northwest Pipeline Corp	Washington Water Power Co	12-26-85	B		
ST86-768	do	Northwest Natural Gas Co	12-26-85	B		
ST86-769	Trunkline Gas Co	Consumers Power Co	12-26-85	B		
ST86-770	do	Northern Indiana Public Service Co	12-26-85	B		
ST86-771	do	Illinois Power Co	12-26-85	B		
ST86-772	Colorado Interstate Gas Co	Peoples Natural Gas Co	12-26-85	B		
ST86-773	do	Public Service Co. of Colorado	12-26-85	B		
ST86-774	do	Cascade Natural Gas Corp	12-26-85	B		
ST86-775	Intrastate Gathering Corp	Illinois Power Co	12-27-85	C		
ST86-776	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	12-27-85	B		
ST86-777	Michigan Gas Storage Co	Consumers Power Co	12-27-85	B		
ST86-778	ANR Pipeline Co	Trinity Pipeline, Inc	12-27-85	B		
ST86-779	do	Pacific Lighting Gas Supply Co	12-27-85	B		
ST86-780	Delhi Gas Pipeline Corp	Southern California Gas Co	12-30-85	C		
ST86-781	do	Indiana Gas Co	12-30-85	C		
ST86-782	Transcontinental Gas Pipe Line Corp	South Carolina Pipeline Corp	12-31-85	B		
ST86-783	ANR Pipeline Co	Pontchartrain Natural Gas System	12-31-85	B		

[1] Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372, 10/16/85).

[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[3] Arkansas Oklahoma Gas Corp. (ST86-637) filed a petition for rate approval without identifying a specific recipient. They wish to obtain an approved rate with the Commission before commencing their transportation transactions.

[FR Doc. 86-3471 Filed 2-18-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00222; FRL-2971-7]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Evironmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Thursday, March 13, 1986, beginning at 8:30 a.m. and ending by lunch time.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202 (703-436-1234).

FOR FURTHER INFORMATION CONTACT:

By mail:

Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW. Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-7096).

SUPPLEMENTARY INFORMATION: The tentative agenda thus far includes the following topics:

1. Action items from the December 1985 meeting of the full Group.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may have arisen during the March 10 through 12, 1986,

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meeting of the Association of American Pesticide Control Officials.

Dated: February 10, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 86-3569 Filed 2-18-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-436; FRL-2969-8]

Pesticide Tolerance Petitions; American Hoechst Corp. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and fold additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-436] and the petition number, attention Product Manager (PM-23), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort (PM-23), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), feed, and food additive petitions (FAP), relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 6F3335.* American Hoechst Corp., Route 202-206 North, Somerville, NJ 08876. Proposes amending 40 CFR 180.385 by establishing a tolerance for the combined residues of the herbicide diclofop methyl, methyl 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoate and its metabolites 2-[4-(2,4-dichlorophenoxy)phenoxy] propanoic acid and 2-[4-(2,5-dichloro-5-phenoxy)phenoxy] propanoic acid, each expressed as dichlofop methyl in or on the commodity pea seeds (dry) at 0.1 part per million (ppm). The proposed analytical method for determining residues is gas chromatography using an electron capture detector.

2. *FAP 6H5463.* Chevron Chemical Co., Ortho Argicultural Chemical Division, 940 Hensley St., Richmond CA 94804-0036. Proposes amending 21 CFR 193.160 (food) and 561.215 (feed) by establishing regulations permitting residues of the herbicide/desiccant diquat [as the cation) in or on the commodity wheat milled fractions at 1.0 ppm. The proposed analytical method for determinig residues is extraction with boiling 1*N* sulfuric acid, dilution with water, ph adjustment, concentration and cleanup on an ion exchange column, reduction and measurement by spectrophotometry.

Authority: 21 U.S.C. 346a and 348.

Dated: February 4, 1986.

Douglas D. Campt.

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-3182 Filed 2-18-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180688-2970-2]

Florida Department of Agriculture and Consumer Services; Receipt of Application for Emergency Exemption to Use Avermectin B_1; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the active ingredient avermectin B_1 as an insecticide on 737 acres of ornamental flowers in Florida. It is the Agency's policy to solicit public comment on applications involving active ingredients which have not been previously registered. Accordingly, EPA is soliciting comment before making the decision whether or not to grant this specific exemption.

DATE: Comments must be received on or before March 6, 1986.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180688 "should be submitted by mail to:

Information Services Section Program Management and Support Division, (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Room 236, Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a commend concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not market confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Libby Pemberton, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1830).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p) the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of the unregistered insecticide, avermectin B_1; (CAS 63AB) on ornamental flowers grown throughout Florida. Information

in accordance with 40 CFR Part 166 was submitted as part of this request.

According to the Applicant, approximately 737 acres of chrysanthemums, gerbera daisies, snapdragons, and gypsophila will be planted in Florida during the 1986 crop year. It is stated that the Florida ornamental crop has been infested periodically be serpentine leafminers. The circumstantial evidence is that infestations break out and develop when resistance developes to a major pesticide, such as DDT, Diazinon, Disyston, Temik, or permethrin, according to the Applicant. The Applicant states that widespread use of these insecticides has resulted in the development of resistance to these chemicals and their consequent loss as control measures.

The affected crops are sold for their aesthetic qualities. The plants must be free of unsightly mines in order to warrant market price, if the plant remains saleable at all. It is estimated that treatment of affected acreage with Avid 0.15 EC in 1986 could save Florida growers at least $23 million. The Applicant indicates that without the use of Avid 0.15 EC a minimum of $11,746,750 will be lost by the Florida ornamental flower growers.

The Applicant proposes to treat 737 acres of ornamental flowers throughout the State with Avid 0.15 EC, manufactured by MSD AGVET, a division of Merck & Co., Inc. A maximum of 0.02 pound active ingredient will be applied per acre. Applications will occur throughout the year, with the exception of the hot summer months in the case of snapdragons, gerbera daisies, and gypsophila, with no more than 466.25 pounds of active ingredient to be used.

This notice does not constitute a decision by EPA on the application itself. Use of a chemical under section 18 of FIFRA for which no uses are registered has been determined to be of national interest, and, therefore, the Agency has decided that public notice and opportunity for public comment pursuant to 40 CFR 166.10 is called for as a part of the informal adjudication for specific exemptions. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 6, 1986 and should bear the identifying notation "OPP-180688." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8:00 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by Florida.

Dated: January 31, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-3183 Filed 2-18-86; 8:45 am]

BILLING CODE 6560-50-M

[(OPP-50648) FRL-2971-5]

Receipt of Application for an Experimental Use Permit for Genetically Engineered Microbial Pesticides; Monsanto Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application from the Monsanto Company for an EPA experimental use permit (EUP) for a genetically engineered microbial pesticide. This is one of the first genetically engineered microbial pesticides to be proposed for an EUP under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136(c). The Agency has determined that this application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATE: Written comments must be received on or before March 21, 1986.

ADDRESS: Comments in triplicate, should bear the docket control number OPP-50648 and be submitted to:

Information Services Section, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 236 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2690).

SUPPLEMENTARY INFORMATION: An application has been received from the Monsanto Company of 1101 17th Street, NW., Washington, DC 20036. This application was assigned EPA File Symbol 524-EUP-AA and proposed small scale field testing in corn of *Pseudomonas fluorescens* isolate Ps 3732-3-7 or isolate 112-12, engineered to contain the delta endotoxin gene from *Bacillus thuringiensis* var. *kurstaki*. The purpose of the EUP is to assess the efficacy of the product on root associated lepidopteran insects following the planting of corn seeds which have been treated with the product prior to planting.

The quantity of the product that will be applied per test site will not exceed 2.7×10^{12} colony forming units per year. The application proposes that a permit be issued for 2 years, allowing 2 applications on a single 1 acre test site. The same test site would be utilized both years; therefore, no more than 1 acre would be utilized in the program. The total quantity of product proposed for the program would not exceed 5.4×10^{12} colony forming units. The field testing will take place at Monsanto's research farm in St. Charles, Missouri. The tested seeds/plants will be destroyed or used for follow-up research purposes during or following the field trial.

The labeling proposed by Monsanto Company states:

Toxicological properties not fully investigated. Applicators should wear protective clothing including goggles, dust mask and gloves. Surfaces of planting equipment should be treated with 10% household bleach and wiped with paper towels after use. Dispose of unused materials, paper towels and rinse water by autoclaving or place in vessels containing 10% household bleach for disinfestation prior to disposal. For use only in accordance with the terms and conditions of the Experimental Use Permit.

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Following review of the Monsanto application and any comments received in response to this notice, EPA will decide whether to issue or deny the EUP and, if issued, under what conditions the experiment is to be conducted. Any issuance of an EUP by the Agency will be announced in the **Federal Register**.

Dated: February 13, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-3506 Filed 2-18-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0024.

Title: General Admissions Application and National Fire Academy Roster of Course Completion.

Abstract: Basic information is collected from students who attend the Fire Academy and EMI resident and field courses for inclusion into the student recordkeeping system in producing a student transcript for accreditation.

Type of respondents: Individuals or households, State or local governments, Federal agencies or employees.

Number of respondents: 15,000.

Burden hours: 3,000.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, S.W., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: February 6, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86-3530 Filed 2-18-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

Banc One Corp.; Columbus, OH; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio: to acquire HCL Leasing Corporation, Parsipanny, New Jersey, and thereby engage in commercial equipment leasing business within the parameters of § 225.25(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, February 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3507 Filed 2-18-86; 8:45 am]

BILLING CODE 6210-01-M

Bankers Trust New York Corp., New York, NY; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage in *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for banking holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated not later than March 13, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation*, New York, New York; to engage *de novo* through its subsidiary BT Trust Company of California, National Association, Los Angeles, California, in trust activities such as would be performed by a limited purpose trust company.

Board of Governors of the Federal Reserve System, February 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3508 Filed 2-18-86; 8:45 am]

BILLING CODE 6210-01-M

Depositors Bancorp et al.; Formations of: Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act of (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received no later than March 13, 1986.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Depositors Bancorp*, Lexington, Massachusetts; to become a bank holding company by acquiring 55.8 percent of the shares of Depositors Trust Company, Lexington, Massachusetts.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to acquire 80 percent of the voting shares of Citizens Bank of Hartselle, Hartselle, Alabama.

c. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Banks, Inc. Employee Stock Ownership Trust*, Middleton, Wisconsin; to become a bank holding company by acquiring 25 percent of the voting shares of Community Banks, Inc., Middleton, Wisconsin.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Simmer Development Company*, Chillicothe, Missouri; to become a bank holding company by acquiring at least 26.7 percent of the voting shares of C S Bancshares, Inc., Chillicothe, Missouri, which is also applying to acquire at least 50.8 percent of Chillicothe State Bank, Chillicothe, Missouri.

Board of Governors of the Federal Reserve System, February 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 3509 Filed 2-18-86; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Los Angeles Federal Center Master Plan, Los Angeles, CA; Availability of Record of Decision on the Final Environmental Impact Statement

Pursuant to section 1505.2 of the Council on Environmental Quality Regulations, the General Services Administration as the lead agency has prepared a Record of Decision on the Los Angeles Federal Center Master Plan, Los Angeles, California, Final Environmental Impact Statement (FEIS). This proposed Master Plan would provide for the construction of a Federal Building-Courthouse with underground parking by the General Services Administration, a Metorpolitan Detention Center by the Department of Justice-Bureau of Prisons, and a Veterans Administration Outpatient Clinic with underground parking by the Veterans Administration, on the undeveloped portion of an 11.1 acre site situated to the east of the present Federal Building which is located at 300 North Los Angeles Street in Los Angeles, California.

This Record of Decision identifies and discusses the alternatives, preferences among the alternatives, and other relevant factors and their effects as considered by the General Services Administration in arriving at its stated decision.

Copies of the FEIS and Record of Decision are available for inspection at the following location:

General Services Administration, Room 2037, 300 North Los Angeles Street, Los Angeles, California 90012.

Single copies of the Record of Decision on the FEIS may be obtained on request to the Chief, Planning Staff (9PEP), Office of Public Buildings and Real Property, General Services Administration Region IX, 525 Market Street, San Francisco, California 94105.

Dated: February 5, 1986.

Edwin W. Thomas,

Regional Administrator.

[FR Doc. 86-3550 Filed 2-18-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85D-0574]

Availability of Draft Revised Drug Stability Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft revised "Drug Stability Guideline" prepared by the Center for Veterinary Medicine. The guideline is intended for use in meeting the stability requirements for the manufacture of finished dosage forms (pharmaceutical and medicated feed products) as submitted in new animal drug applications and with the corresponding current good manufacturing practice regulations (21 CFR Parts 211, 225, and 226).

DATE: Comments by March 21, 1986.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests for copies of the draft revised "Drug Stability Guideline" to the Division of Drug Manufacturing and Residue Chemistry (HFV-142), Center for Veterinary Medicine, Food and Drug Administration, Rm. 6B-03, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the draft revised "Drug Stability Guideline" prepared by the Center for Veterinary Medicine. A notice of availability of the "Drug Stability Guideline" was first

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published in the Federal Register of November 2, 1976 (41 FR 48150). Since then, the guideline has been revised from time to time. The current guideline was announced in the Federal Register of July 22, 1980 (45 FR 48945).

The guideline is intended to be used as an aid in designing and conducting stability studies to meet the requirements of 21 CFR 514.1(b)(5)(x) and the appropriate good manufacturing practice regulations for veterinary products, 21 CFR Part 211 (specifically § 211.166), 21 CFR Part 226 (specifically § 226.58), and 21 CFR Part 225. Section 514.1 specifies the proper format and the information required for new animal drug approval under section 512(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)). The guideline applies to finished dosage form drugs and to drugs used in medicated feed products.

The draft revised guideline includes the following changes:

1. Editorial changes throughout the document.
2. An updated section on "Containers."
3. An updated section on "Analytical Methods." The update provides for a sequence of method format and a list of references related to stability applications.
4. Addition of guides for use of multidose containers under "Sterile Preparations."
5. A completely revised "Medicated Premix and Finished Feed" section. This section provides more detail to assist the user in conducting studies in these preparations. Information on interference, homogeneity, and segregation studies in listed.
6. A section on medicated liquid feed supplements. This section has been the subject of a notice of availability for public comment published in the Federal Register of October 1, 1984 (49 FR 38706, Docket No. 84D-0284). A notice of availability of the revised guideline for this type product is published elsewhere in this issue of the Federal Register. This section will be incorporated at a later date in the final version of the draft guideline. The final liquid feed supplement guideline is being issued as a separate guideline at this time.
7. A section on products containing DNA-derived active ingredient(s). This section merely advises the user that the stability of such products will be handled as normal drug or feed products. Specific requirements, if necessary, will be determined on a case-by-case basis.

This notice and the draft revised guideline are issued under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. If a person chooses to depart from the practices and procedures set forth in a guideline, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on work that may later be found to be unacceptable.

Interested persons may, on or before March 21, 1986, submit written comments on the draft revised guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments and related materials may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 4, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3503 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84D-0284]

Drug Stability of Liquid Feed Supplements; Availability of Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing the availability of a revised liquid feed supplements section of guidelines entitled "Drug Stability Guidelines." The guidelines were prepared by the Center for Veterinary Medicine and describe practices and procedures that FDA views as acceptable in complying with the requirements for the manufacture of finished dosage forms in new animal drug applications and the corresponding current good manufacturing practice regulations.

ADDRESS: The revised guidelines, the draft of the revised guidelines comments, and related materials are available for public examination at, and requests for single copies of the revised guidelines may be submitted to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

Requests for copies of the revised guidelines may also be submitted to the Division of Drug Manufacturing and Residue Chemistry (HFV-142), Center for Medicine, Food and Drug Administration, Rm. 6B-03, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of the revised section of the drug stability guidelines on liquid feed supplements as prepared by the Center for Veterinary Medicine.

A notice of availability of the drug stability guidelines was first published in the Federal Register of November 2, 1976 (41 FR 48150). Since then, the guidelines have been revised from time to time. In the Federal Register of July 22, 1980 (45 FR 48945), FDA announced the availability of the revised guidelines. The guidelines are intended to be used as an aid in designing and conducting stability studies to meet the requirements of § 514.1(b)(x) (21 CFR 514.1(b)(5)(x)). Section 514.1 specifies the proper form and the information required for new animal drug approval under section 512(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)). The guidelines apply to dosage form drugs and to drugs used in medicated feeds.

A notice of availability of the draft revised liquid feed supplement section of the guidelines was published in the Federal Register of October 1, 1984 (49 FR 38706).

Comments were received from the American Feed Manufacturers Association (now the American Feed Industry Association (AFIA)), the Animal Health Institute, and the Elanco Products Co. The comments made editorial and clarifying suggestions to provide a better understanding of the guidelines procedures. A meeting was held with AFIA members, at their request, on February 14, 1985, to discuss the document and their comments. The agency has incorporated AFIA's suggestions in the revised guidelines.

This notice and the revised guidelines are issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. If a person chooses to depart from the practices and procedures set forth in the guidelines, the person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on work that may later be found to be unacceptable.

The revised section of the guidelines supersedes the corresponding section of the existing guidelines and may be used immediately. The agency is issuing a draft revision of other parts of the Center's stability guidelines elsewhere in this issue of the Federal Register. The revised guidelines will include this liquid feed supplement section.

Interested persons may, at any time, submit additional written comments on the revised guidelines to the Dockets Management Branch. Such comments will be considered in determining if further revisions are required. Respondents should submit two copies (except that individuals may submit single copies) identified with Docket No. 84D-0284. Comments and all related materials may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

Dated: February 4, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3504 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0179]

Recommendations To Minimize Diagnostic Nuclear Medicine Exposure to the Embryo, Fetus, and Infant; Availability of Final Recommendations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Food and Drug Administration (FDA) is announcing the availability of final recommendations to minimize diagnostic nuclear medicine exposure to the embryo, fetus, and breastfeeding infant. The final recommendations, prepared by FDA's Center for Devices and Radiological Health (CDRH), include the agency's rationale for the recommendations as well as the endorsement of the recommendations by several professional organizations. The final recommendations are being published in a pamphlet that is being made available to interested persons.

ADDRESS: Requests for single copies of the final recommendations should be sent to Phyllis Segal, Center for Devices and Radiological Health (HFZ-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Phyllis Segal, Center for Devices and Radiological Health (HFZ-240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2436.

SUPPLEMENTARY INFORMATION: FDA is making available final recommendations entitled "Embryo, Fetus, Infant * * * Recommendations to Minimize Diagnostic Nuclear Medicine Exposure." These recommendations, prepared by CDRH's Office of Training and Assistance, are directed to nuclear medicine physicians, attending physicians, professional societies, and other persons who can influence decisions regarding the performance of nuclear medicine procedures. The recommendations are part of CDRH's radiation recommendations series. This series was established to provide guidance to those involved in the radiological process on appropriate principles to reduce radiation exposure.

In the Federal Register of July 11, 1985 (50 FR 28265), FDA published a notice of availability of the draft recommendations. The comments received in response to the notice of availability supported the development of recommendations and suggested only minor changes in the draft recommendations. These changes are reflected in the final recommendations. A copy of the final recommendations, comments received on the draft recommendations, and an analysis of the comments received are on file in FDA's Dockets Management Branch, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, under the docket number appearing in the heading of this notice and are available for public review between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 12, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3505 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79N-0156]

Evaluation of Radiation Exposure From Diagnostic Radiology Examinations; Availability of Final Recommendations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Recommendations for Evaluation of Radiation Exposure from Diagnostic Radiology Examinations." The recommendations, prepared by FDA's Center for Devices and Radiological Health (CDRH), encourage diagnostic radiology facilities to take voluntary action to: (1) Become aware of the radiation levels experienced by patients undergoing the projections commonly given in the facility; (2) compare their radiation levels to generally accepted levels for these projections; and (3) bring the exposures back into line if their levels fall consistently outside these generally accepted levels.

ADDRESS: A copy of the final recommendations is available for public review at the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Single copies may be obtained from Roger Burkhart, address below.

FOR FURTHER INFORMATION CONTACT: Roger Burkhart, Center for Devices and Radiological Health (HFZ-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3446.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 17, 1979 (44 FR 48354), FDA published a notice of inquiry announcing that the agency was considering the development of radiation exposure recommendations and inviting interested persons to comment on several concerns FDA had regarding the need to develop such recommendations and the means to provide useful recommendations to diagnostic radiology personnel. FDA's action responded to a suggestion of CDRH's Medical Radiation Advisory Committee, an FDA advisory committee that advises on the formulation of policy and the development of coordinated national programs relating to the use of ionizing radiation in the healing arts.

The comments received in response to the notice generally supported the provision of exposure evaluation guidance related to the techniques used, through educational means. The agency, therefore, decided to proceed with the development of recommendations to be published as part of CDRH's radiation recommendation series.

In the Federal Register of July 29, 1983 (48 FR 34520), FDA published a notice of availability of draft recommendations and invited interested persons to submit additional data and comments on the approach taken and the content of the recommendations. Again, the comments received were generally favorable. FDA took into account the comments received on the draft in developing the final recommendations.

The final recommendations, principles of use of the recommendations, and information on their development (including a summary of the comments received on the notice of intent and on the draft recommendations) are included

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in a document entitled "Recommendations for Evaluation of Radiation Exposure From Diagnostic Radiology Examinations." The final recommendations are part of CDRH's radiation recommendation series of educational activities under the generic title of technique/exposure guidance. Actions taken under this program are intended to aid the radiology community in evaluating the appropriateness of the exposures received by patients during diagnostic radiology examinations in radiology facilities.

As part of CDRH's radiation recommendation series and concurrent with development of the final recommendations, CDRH also developed four other related technical publications to provide additional guidance respecting diagnostic radiology examinations. The four supporting publications include: (1) A flyer entitled "Evaluation of Radiation Exposure From Diagnostic Radiology Examinations, General Recommendations" which provides the final recommendations and the principles of use, (2) a document entitled "Measurement Techniques For Use With Technique/Exposure Guides," which discusses factors for facility staff to consider in performing the radiation measurements in order to be aware of the exposure levels received by their patients, (3) a flyer entitled "Evaluation of Radiation Exposure From Diagnostic Radiology Examinations, Technique/Exposure Guides for the Dental Bitewing Projection," and (4) a flyer entitled "Evaluation of Radiation Exposure From Diagnostic Technique/Exposure Guides for the Craniocaudal Projection in Mammography." The last two flyers provide generally accepted technique/exposure values determined through CDRH's Dental Exposure Normalization Technique (DENT) and Breast Exposure: Nationwide Trends (BENT) programs. The values also serve as examples of the form which CDRH believes that generally accepted values for other specific examinations (projections) should take.

The final recommendations as well as an analysis of comments received and copies of the four concurrently developed supporting documents are on file in FDA's Dockets Management Branch (address above) under the docket number appearing in the heading of this notice and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. Single copies of any of the five publications may be obtained from the contact person listed above until CDRH's supply is exhausted.

CDRH encourages members of the diagnostic radiology community, either individually or through appropriate professional groups, to join in the effort to provide useful guidance on technique and exposure for other projections. CDRH would like to be informed of any progress made in this area by private individuals or groups.

Dated: February 3, 1986.

James C. Simmons,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3508 Filed 2-18-86; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Digestive Diseases Advisory Board; Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and its subcommittees on March 24, 1986, 8:00 a.m. to adjournment, at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limit to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, Federal Building, Room 616, Bethesda Maryland, 20892, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: February 12, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-3512 Filed 2-18-86; 8:45 am]

BILLING CODE 4140-01-M

National Arthritis Advisory Board; Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board and its subcommittees on April 1, 1986, 8:30 a.m. to adjournment at the Marriott Crystal Gateway Hotel, 1700 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Arthritis Advisory Board, Federal Building, Room 616, Bethesda, Maryland 20892, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: February 12, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-3513 Filed 2-18-86; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Privacy Act of 1974; Report of New Routine Use and Minor Revisions

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: New Routine Use and Minor Revisions.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), we are issuing public notice of our intent to establish a new routine use of information in the system of records entitled "Black Lung Payment System, HHS/SSA/OSR, 09-60-0045." The proposed routine use will permit disclosure of information to the Veterans Administration (VA) for the purpose of administering VA benefit programs pursuant to 38 U.S.C. 3006. We also are making minor revisions to the notice applicable to the Black Lung Payment System (BLPS). We invite public comments on this publication.

DATES: The proposed routine use will become effective as proposed without further notice on March 21, 1986, unless we receive comments on or before that date which would result in a contrary determination. The minor revisions are effective upon publication.

ADDRESSES: Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3-F-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Seaman, Chief, Disability Systems Branch, Office of Claims and Payment Requirements, Office of System Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (Area Code 301) 594-8818.

SUPPLEMENTARY INFORMATION:

I. Purpose and Background

The BLPS contains information pertaining to claims for Black Lung benefits payable under the provisions of the Black Lung Benefits Act which SSA is responsible for administering. This information is used primarily to determine the individual's eligibility for, and the amount of, benefits. We are proposing to establish a routine use which would permit disclosure of this information to VA pursuant to 38 U.S.C. 3006 for the purpose of determining eligibility for, and the amount of, benefits payable under the VA's pension and Dependency and Indemnity benefit programs. (38 U.S.C. 3006 requires Federal agencies to disclose information to the Administrator [VA], upon request, to determine eligibility for, or amount of, VA benefits or verify other information with respect thereto.) We are publishing the routine use to meet the requirements of the Privacy Act.

II. Compatibility of the Proposed Routine Use

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulation (20 CFR Part 401) permit us to disclose information under a routine use for use in administering income/health-maintenance programs of other agencies which are similar to our income-maintenance programs (e.g. Retirement, Survivors and Disability Insurance programs and the Supplemental Security Income program).

Section 401.310 of the regulation permits us to disclose information under a routine use for use in such programs when the information concerns eligibility, benefit amounts or other matters of benefit status in a Social Security program and is relevant to determining the same matters in the other program. The regulation also permits us to disclose information under a routine use in situations where disclosure is required by Federal law. In the subject instance, the VA benefit programs meet our criteria for income-maintenance programs; further, certain disclosures to administer these programs are required by 38 U.S.C. 3006. Thus, the proposed routine use meets these criteria and, therefore, is appropriate. The routine use statement is as follows:

Upon request, pursuant to 38 U.S.C. 3006, information may be disclosed to the Veterans Administration (VA) for the purpose of determining eligibility for, or amount of, VA benefits or verifying other information with respect to VA pension and Dependency and Indemnity Compensation benefit programs.

III. Effect of the Proposed Routine Use on Individuals

Information will be disclosed to VA under the proposed routine use only pursuant to a request under 38 U.S.C. 3006. As stated above, the information would be disclosed to determine individuals' eligibility for, or the amount of, benefits/payments under a VA income-maintenance program. We, therefore, do not anticipate that any disclosures under the routine use would result in any unwarranted effect upon the privacy rights of individuals.

IV. Minor Revisions

In addition to adding the proposed routine use, we have made general editorial changes throughout the notice of the BLPS which make it accurate and up-to-date.

Additionally, we have made the following minor revisions to the BLPS notice: (1) Revised the system name section to include the acronym of the SSA component which now has responsibility for the BLPS; (2) substituted the short title Black Lung Benefits Act for Federal Coal Mine Health and Safety Act in the categories of individuals section and the acronym BLBA in following sections in which reference is made to that Act; (3) revised the storage section to reflect the current storage media for records in the BLPS; (4) revised language in the safeguards section to include a reference to the Federal Register issue which contains an appendix discussing security measures; (5) clarified infomation in the retention and disposal section to reflect the current retention periods for records and the methods of disposal; (6) revised the system manager section to reflect the title and business address of the current system manager for the BLPS; and (7) revised the contesting record procedures section to include additional instructions an individual should follow when contesting a record in the BLPS.

Dated: February 10, 1986.

Martha A. McSteen,

Acting Commissioner of Social Security.

09-60-0045

SYSTEM NAME:

Black Lung Payment System, HHS/SSA/OSR.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Black Lung beneficiaries currently entitled to receive a Black Lung benefit and beneficiaries terminated because of a termination event as defined in the Black Lung Benefits Act (BLBA).

CATEGORIES OF RECORDS BY THE SYSTEM:

This system consists of a Payment Master Record and a Benefit Master Record which are matched once a month.

The Payment Master Record reflects the Social Security number (SSN) and the payment identification code under which Black Lung benefits are awarded and payment data such as the monthly payment amount; the scheduled payment amount; offset information; the number of beneficiaries on the account as well as the number of beneficiaries in the payment; the month of accrual; the month of debt; credit information; future month of adjustment dairy dates; cross-reference information; payee name and address information, direct deposit data, and statistical information.

The Benefit Master Record contains a benefit record for each beneficiary on the account and includes the SSN the payment and benefit identification codes; the payment status; the monthly benefit amount; the beneficiary's name; type of benefit; date of birth; race; sex; offset information credit information; date of filing; date of entitlement; representative payee information, and statistical information:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 413 and 415 of the BLBA (30 U.S.C. 923 and 925).

PURPOSE(S):

The data in this system are used by Social Security employees for responding to inquires; computer exception processing; conversion of benefits; end of the month reconciliations; statistical studies; to generate payment tapes for Treasury; and for exchange with the Department of Labor to administering provisions of the BLBA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

2. To the Department of Justice in the event of litigation where the defendant is:

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(a) The Department of Health and Human Services (HHS), any component of HHS or any employee of HHS in his/her official capacity;

(b) The United States where HHS determines that the claim, if successful, is likely is directly effect the operations of HHS or any of its components; or

(c) Any HHS employee in his/her individual capacity where the Justice Department has agreed to represent such employee;

HHS may disclose such records as it deems desirable or necessary to Justice to enable that department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

3. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry from that individual or from a third party on his/her behalf.

4. Upon request, information on the identify and location of aliens may be disclosed to the Department of Justice (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating, and where appropriate, taking legal action against suspected Nazi war criminals in the United States.

5. To third party contacts (including private collection agencies under contract with the Social Security Administration (SSA) for the purpose of their assisting SSA in recovering overpayments.

6. To the Department of the Treasury to issue Black Lung checks.

7. To the Department of Labor for administering provisions of BLBA.

8. Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

9. Upon request, pursuant to 38 U.S.C. 3006, information may be disclosed to the Veterans Administration (VA) for the purpose of determining eligibility for or amount of VA benefits or verifying other information with respect to VA pension and Dependency and Indemnity Compensation benefit programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in magnetic media, micro media, and paper form depending on operational need.

RETRIEVABILITY:

Records in this system are retrieved by SSN.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the HHS Automated Date Processing Manual, "Part S. ADP System Security." This includes storing the records in secured areas with armed security guards. Anyone entering or leaving the areas must have a special badge issued only to authorized personnel. The records are available to employees only in the performance of their official duties. Paper records are maintained in areas with limited access and offices are locked after business hours. All employees of SSA are periodically briefed on Privacy Act requirements and SSA confidentiality rules, including the criminal sanctions for unauthorized disclosure of or access to personal records. (See 47 FR 45671, October 13, 1982, Appendix J for additional information relating to safeguards the Social Security Administration employs to protect personal information).

RETENTION AND DISPOSAL:

Disk records are updated daily and retained indefinitely in a secured facility. Tape records used in processing are retained 90 days, then erased and returned to stock. Historical data are retained on tape indefinitely and stored in a secured facility. Microfiche records are made illegible by the application of heat after an updated version is produced or after a prescribed time period. Paper records not needed for documentation are shredded or disposed for through contractual arrangements with trash collectors who are required to destroy the records without disclosing confidential data. Paper documentation is retained for an indefinite period in secured SSA facilities or in the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Claims and Payment Requirements, Office of System Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting the system manager at the address shown above and providing his/her name, SSN, approximate date and place claim was filed, type of claim and return address. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and avoid delay.) These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD ACCESS PROCEDURE:

Same as notification procedures above. Also, requesters should reasonably specify the record contents they are seeking. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

CONTESTING RECORD PROCEDURES:

Some as notification procedures above. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with HHS Regulations 45 CFR Part 5b.

RECORD SOURCE CATEGORIES:

Information in this system is prepared from Black Lung claims folder which are maintained in the system of records 09–60–0089—Claims Folders, Folders System.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–3510 Filed 2–18–86; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Crow Indian Irrigation Project, Montana; Information Related to Collection of Operation and Maintenance Assessments

AGENCY: Bureau of Indian Affairs.

ACTION: Public Notice.

SUMMARY: This notice sets forth changes in collection dates and penalties to be made on Operation and Maintenance assessments made by the Crow Irrigation Project, Crow Agency, Montana. The annual operation and maintenance assesment bills will be sent out on or about March 1 of each year with the amount due and payable on April 1 of each calendar year. (This is not a change). To all charges assessed against lands in non-Indian ownership and Indian lands under lease to non-Indian lessees which are not paid on or before May 1 of each year, following the due date, shall be considered delinquent and shall be charged a penalty of 10 percent per annum or fraction thereof, from the due date of April 1, as long as the delinquency continues. (This change is to the penalty date of May 1 from June 30 of each calendar year and changing the rate of penalty from 6 percent to 10 precent per annum). The operation and maintenance rates will remain the same for the 1986 irrigation season as they were in the 1985 season.

EFFECTIVE DATE: This notice shall become effective when published and remain in effect until changed by public notice.

FOR FURTHER INFORMATION CONTACT: Walter R. Egged, Bureau of Indian Affairs, Crow Indian Agency, Montana 59022. Telephone: 406–638–2671, Extension 112.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to 25 CFR 171.1 under the authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8. This authority is vested in the Secretary of Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 385. The current regulations were established by public notice in the Federal Register (50 FR 7661, February 25, 1985). A public notice declaring the intent to change the past due date from June 30 to May 1 and changing the penalty rate from 6 percent per annum to 10 percent per annum for all non-Indian operators was published in the local newspaper and placed in all Federal Post Offices and other public buildings throughout the reservation. The Project Engineer presented the proposed changes in regulations to the District Water Users at a meeting on January 22, 1986. The Crow Tribal leaders and interested persons were also given notice of the proposed changes. The 30 day comment period ended on January 31, 1986, and no written or oral comments were received.

This notice does not change any assessment rates and the penalty rates do not apply to Indian operators.

Richard Whitesell,

Area Director.

[FR Doc. 86–3543 Filed 2–18–86; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[M 20500(SD)]

Partial Termination of Proposed Withdrawal and Reservation of Land in South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of Proposed Withdrawal Application.

SUMMARY: The following described lands being originally part of Mount Roosevelt Roadside Zone have been determined to be excess to the needs of the Forest Service

The Forest Service, United States Department of Agriculture, filed an application for withdrawal of the following described land from location and entry under the mining laws. The Notice of Proposed Withdrawal was published in the Federal Register on February 5, 1972, Vol. 37, Page 2793, document no. 72–1742 and republished in the Federal Register on June 24, 1979, Vol 44, No. 149, page 45268. The applicant agency has cancelled its application in part as to the following:

Black Hills Meridian, South Dakota

T. 5, N., R. 3 E.

A strip of land 150 feet each side of the centerline of Mount Roosevelt Road and a branch road through the following legal subdivisions:

Sec. 14, lot 4 and S½NW¼;
Sec. 15, lots 1, 2, and 3, SW¼NW¼ and NW¼SW¼; and
Sec. 16, lot 5, E½SE¼NE¼, NW¼SE¼NE¼, S½SW¼SE¼; and NE¼SE¼.

The area described contains 110.00 acres, more or less, in Lawrence County, South Dakota.

Therefore, pursuant to the regulation contained in 43 CFR 2091.2–5(b)(1), at 8 a.m. on March 17, 1986, such lands will be relieved of the segregative effect of the above-mentioned application.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, Chief, Land Adjudication Section, BLM, P.O. Box 36800, Billings, Montana 59107, Telephone (406) 657–6082.

Dated: February 11, 1986.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 86–3542 Filed 2–18–86; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement on Operation of the National Wildlife Refuge System

Correction

In FR Doc. 86–2680, beginning on page 5109 in the issue of Tuesday, February 11, 1986, one paragraph of the preamble was mistakenly omitted. On page 5110, in the first column, immediately after the paragraph headed **"ADDRESS"**, the following paragraph should appear:

FOR FURTHER INFORMATION CONTACT: Ms. Noreen Clough, NWRS EIS Leader, Division of Refuge Management, U.S. Fish and Wildlife Service, Room 2343, Main Interior Building, 18th and C Sts., NW, Washington, D.C. 20240, phone: 202–343–4313.

BILLING CODE 1505–01–M

Minerals Management Service

[DES 86–4]

Availability of Draft Environmental Impact Statement for the 5-year Outer Continential Shelf Oil and Gas Leasing Program for January 1987–December 1991

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service (MMS) has prepared a draft environmental impact statement (EIS) relating to the proposed 5-year Outer Continential shelf (OCS) Oil and Gas Leasing Program for January 1987–December 1991.

Information on the availability of the draft EIS can be obtained from the Regional Director—Altantic Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180; Regional Director—Gulf of Mexico Region, Minerals Management Service, Imperial Building, 3301 N. Causeway Blvd., Metairie, Lousiana 70010; Regional Director—Pacific Region, Minerals Management Service, 1340 West Sixth Street—Room 244, Los Angeles, California 90017; Regional Director—Alaska Region, Minerals Management Service, 949 East 36th Street, Anchorage, Alaska 99508.

Copies of the draft EIS will be available for review in public libraries located throughout the coastal States. Information regarding the locations of libraries where copies of the statement will be available may be obtained from the offices listed above.

In accordance with 30 CFR 256.2(b), public hearings are tentatively scheduled in April in Boston,

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Massachusetts; Washington, DC; Savannah, Georgia Tallahassee, Florida; New Orleans, Louisiana; Los Angeles, California; Portland, Oregon; and Anchorage, Alaska, for the purpose of receiving comments and suggestions relating to the draft EIS. The exact dates, times, and locatons of the hearings will be announced by **Federal Register** Notice in the Near future.

Comments resulting from review of the draft EIS and written materials prepared as part of testimony at the public hearings will be accepted until May 8, 1986. All comments should be mailed to the Deputy Associate Director, Offshore Leasing (MS 644), Minerals Management Service, Department of the Interior, 18th and C Sts. NW, Washington, DC 20240. Specify on the envelope: 5-Year OCS Program draft EIS.

After the public hearing testimony and written comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: February 12, 1986.

Wm. D. Bettenberg,

Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 86-3631 Filed 2-18-86; 8:45am]

BILLING CODE 4310-MR-M

National Park Service

Martin Luther King, Jr., National Historic Site Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 7:00 p.m. on Thursday, February 27, 1986, at The Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue, NE., Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park activities and operations.

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site. 522 Auburn Avenue, NE., Atlanta, Georgia 30312; Telephone 404-331-5190. Minutes will be available approximately 4 weeks after the meeting.

Dated: February 7, 1986

Robert M. Baker,

Regional Director, Southeast Region

[FR Doc. 86-3557 Filed 2-18-86; 8:45 am]

BILLING CODE 4310-70-M

Appalachian National Scenic Trail; Relocations of Rights-of-Way

AGENCY: National Park Service, Interior.

ACTION: Notice of relocations.

SUMMARY: The proposed relocations set forth below are deemed necessary to preserve the purpose for which the Appalachian National Scenic Trail was established. As a part of the program to protect and establish an Appalachian Trail corridor, the Department of the Interior, in consultation with affected landowners, Trail clubs, and state and Federal Government representatives, has determined that where the Trail is now along roads, close to houses or otherwise poorly located, the National Park Service, will seek an alternative location. When necessary, an alternative Trail route will be located outside the existing right-of-way pursuant to section 7 of the National Trails System Act, which established a process for necessary relocations after publication of notice in the **Federal Register** and appropriate consultation.

DATE: Written comments, suggestions or objections will be accepted until March 21, 1986.

ADDRESS: Comments should be directed to: Project Manager, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425.

FOR FURTHER INFORMATION CONTACT: David Richie, Manager, Appalachian Trail Project, Telephone (304) 535-2346.

SUPPLEMENTARY INFORMATION:

Background

The National Trails System Act became law October 2, 1968. The Act created a system to identify and establish a National Trails System. It also established the Pacific Crest Trail and the Appalachian Trail as the initial National Scenic Trails.

Section 7 of the National Trails System Act created a process for the administration and development of National Scenic Trails. This process included the responsibility to select an initial right-of-way for the National Scenic Trails and to publish notice of this right-of-way in the **Federal Register** together with appropriate maps and descriptions. In selecting this right-of-way, the Secretary was required to obtain the advice and assistance of the states, local governments, private organizations, and landowners and land users concerned. For a two-year period after selection, he was also required to with hold federal action and to encourage the states or local governments involved; (1) To enter into written cooperative agreements with landowners, private organizations and individuals to provide the necessary Trail right-of-way, or (2) to acquire such lands or interests therein to be utilized as segments of the National Scenic Trail. These responsibilities for the Appalachian Trail have been completed. A preliminary right-of-way and Trail route was selected after compliance with the consultation requirements of the Act and published in the **Federal Register**, Vol. 36, No. 197, Saturday, October 9, 1971, and the states and local governments have subsequently had the opportunity to act to protect the Trail.

Changes in the Trail route within the previously established right-of-way are routinely made. Section 7 also established a process for necessary relocations of the right-of-way after publication of notice in the **Federal Register**. This process includes the responsibility to relocate segments of a National Scenic Trail right-of-way if such a relocation is necessary to preserve the purpose for which the Trail was established.

On March 21, 1978, Pub. L. 95-248 was enacted amending the original National Trails System Act. The thrust of this Amendment was to further the Federal protection efforts under the original legislation, calling for an immediate Federal land acquisition program.

The original Act was further amended by Pub. L. 95-625 dated November 10, 1978. This Act eliminated the requirement for the Federal Government to wait two years after notice of selection of the right-of-way before acquisition could be initiated. We are kept advised on any action by States or localities to protect the Trail where relocations are involved.

As a part of this program to protect and establish an Appalachian Trail corridor, the Department of the Interior, in consultation with landowners, trail clubs, and government representatives, has determined that where the Trail is

along roads, closed to houses or otherwise poorly located, the National Park Service, will seek an alternative location, wherever possible, either pursuant to a change in Trail route, if feasible, within the existing right-of-way, or pursuant to the process outlined above by publishing a notice of right-of-way relocation in the **Federal Register** after appropriate consultation.

Consistent with this decision, the rights-of-way for the following sections of the Appalachian National Scenic Trail will be relocated outside of the originally designated rights-of-way to facilitate revised Trail routes that take advantage of the terrain and environment so that these portions of the Trail meet the criteria and the purpose for which this Trail was established.

Maine

Segment 102—Map No. 1
Encompasses the area of the eastern shoreline of Nahmakanta Lake—16A.

Segment 109—Map No. 6
Encompasses 4,500 feet, more or less, of the eastern and western shoreline of Pierce Pond, measured northerly from the mid point of the Appalachian Trail crossing over Pierce Pond Dam—67A.

Massachusetts

Beginning near the southwest corner of East Mountain State Forest, running southwesterly to the east side of RT#7, northerly along the east side of RT#7, crossing RT#7 and the Penn Central Railroad northwesterly to Vossburg Hill and then southwesterly to the Jug End, as indicated in Panels 266, 267, 267A and 269.

Virginia

Beginning at the easterly boundary of the Smithsonian Institution National Zoological Park Conservation and Research Center lands, running westerly and southerly, passing over U.S. Route 522, crossing out of said Research Center lands, continuing southerly and passing into Shenandoah National Park, westerly of Chester Gap, as indicated in Panels 489A, 489B and 490A.

Appropriate maps, as designated above, are provided as an appendix to this notice to indicate the revised rights-of-way and the Trail route within those rights-of-way. These changes are in compliance with provisions of Section 7 of the National Trails System Act, as amended, as discussed above.

Affected landowners have been contacted and afforded an opportunity to provide us their advice and assistance in selection of the revised rights-of-way and Trail routes within those rights-of-way. In addition, the rights-of-way and Trail have been selected in consultation with members of the Advisory Council for the Appalachian National Scenic Trail and with state and local officials.

The purpose of this notice is to request further public comment in the proposed relocation of the Trail right-of-way and Trail routes. Comments concerning relocations may also be provided to the Project Manager on or before March 21, 1986.

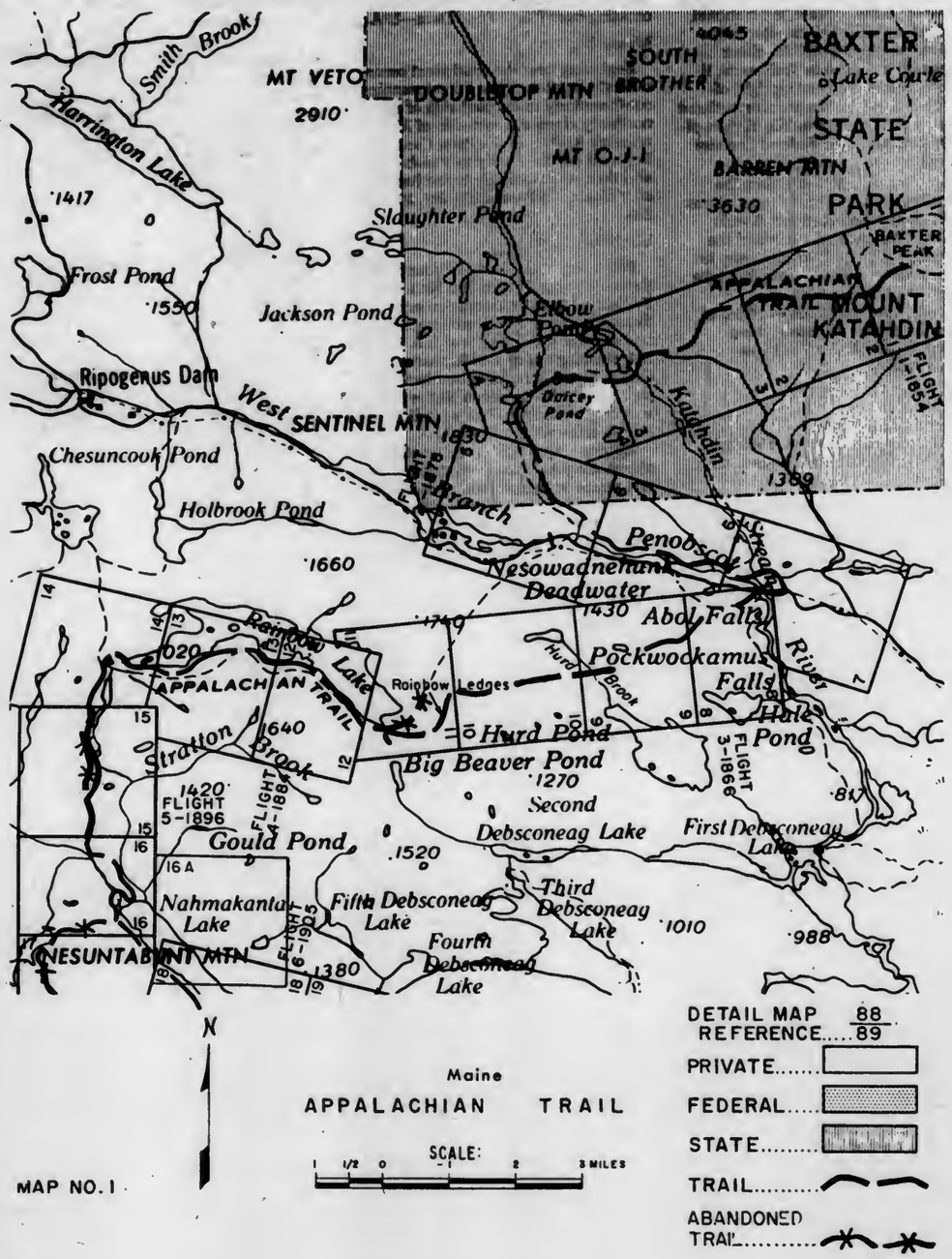
Following review of comments on the environmental assessment and the relocations, a decision regarding findings of significant impact pertaining to these relocations, and the implementation of the relocations, will be published.

William P. Mott, Jr.,

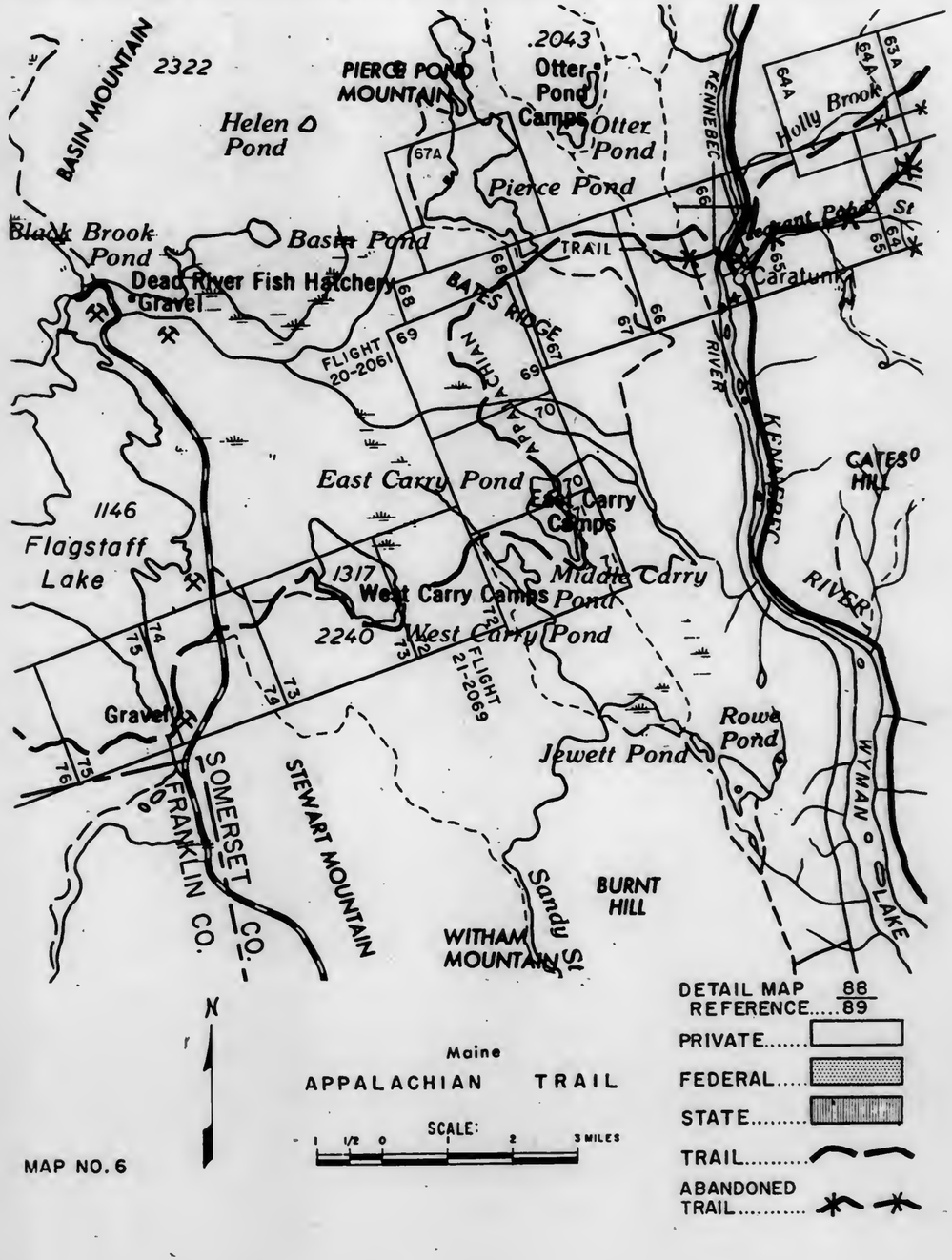
Director, National Park Service.

BILLING CODE 4310-70-M

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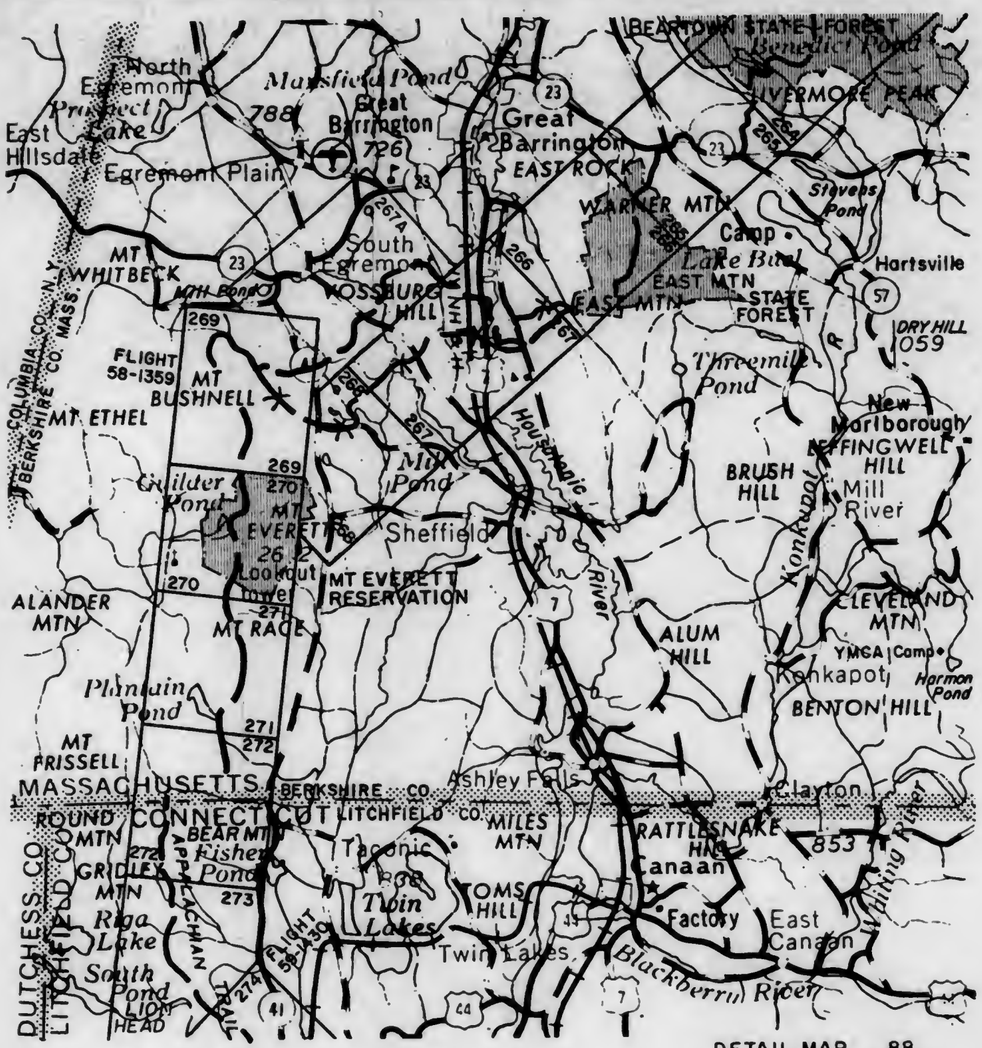


MAP NO. 1

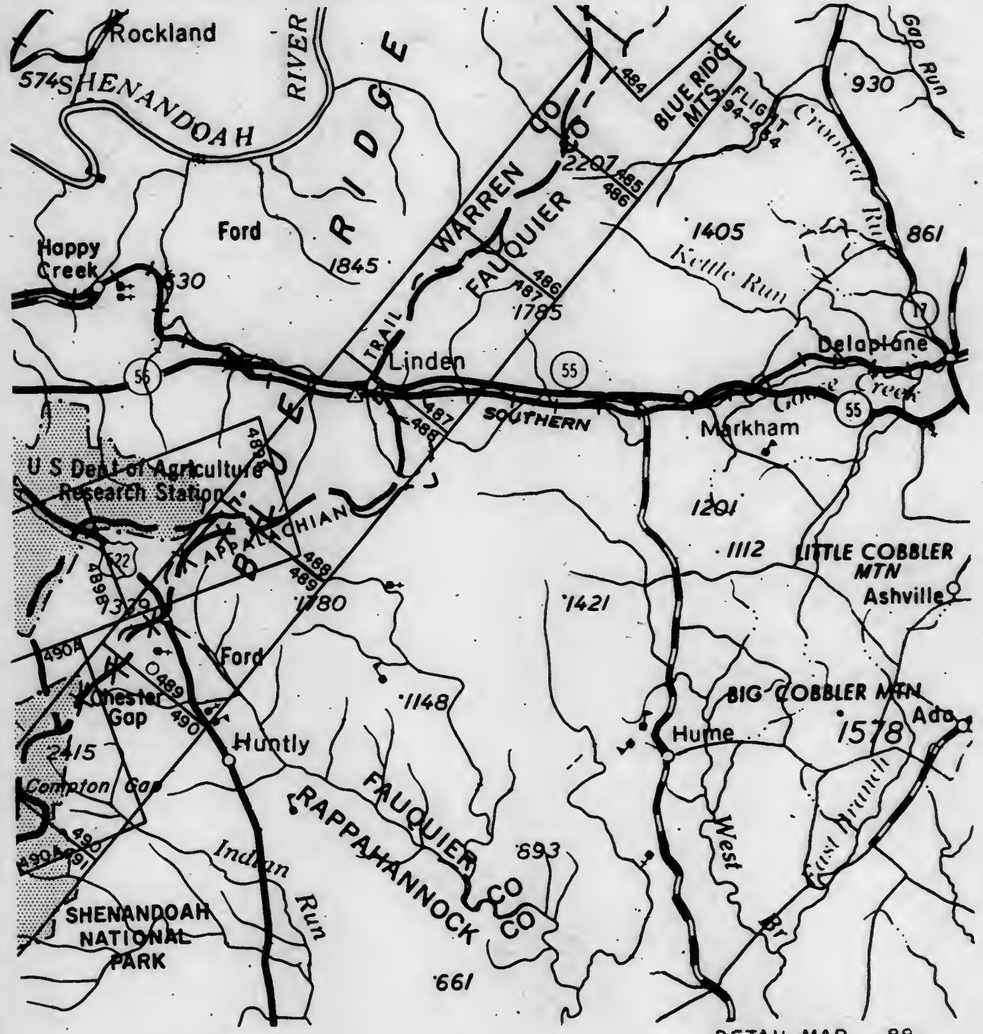


MAP NO. 6

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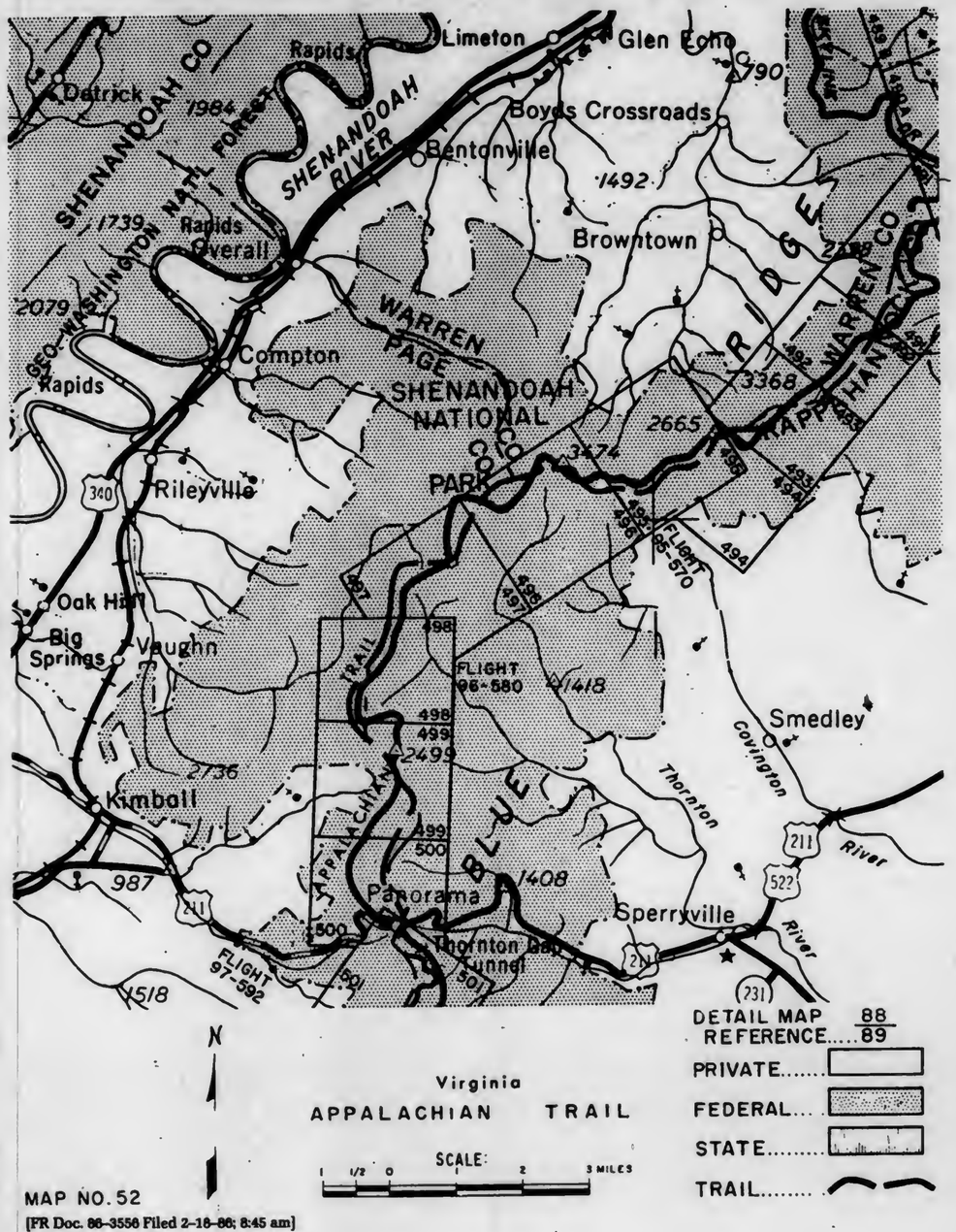


MAP NO.27



MAP NO. 51

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MAP NO. 52

[FR Doc. 86-3556 Filed 2-18-86; 8:45 am]

BILLING CODE 4310-70-C

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30769]

Railroad Operation Acquisition, Construction; Elgin, Joliet and Eastern Railway Co.; Trackage Rights; Norfolk and Western Railway Co.

Norfolk and Western Railway Company has agreed to grant overhead trackage rights to Elgin, Joliet and Eastern Railway Company at Burnham, IL, for a distance of approximately 4,710 feet. The trackage rights will be effective on January 31, 1986.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 10, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-3630 Filed 2-18-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-105 (Sub-No. 10X)]

Western Pacific Railroad Co.; Abandonment Exemption in Alameda County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Western Pacific Railroad Company, of 1.49 miles of main line extending between milepost 3.48 and milepost 4.97 in Oakland, Alameda County, CA, subject to standard labor protective conditions.

DATES: This exemption will be effective on March 20, 1986. Petitions to stay must be filed by February 28, 1986, and petitions for reconsideration must be filed by March 10, 1986.

ADDRESSES: Send pleadings referring to docket No. AB-105 (Sub-No. 10X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's respresentative: Joseph D. Anthofer, 1416 Dodge St., Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: October 7, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 86-3532 Filed 2-18-86; 8:45 am]

BILLING CODE 7035-01-M

LIBRARY OF CONGRESS

American Folklife Center and Board of Trustees; Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

DATE: February 28, 1986, 9:30 a.m. to 4:30 p.m.

ADDRESS: Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members of Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: February 10, 1986.

Glen A. Zimmerman,

Associate Librarian for Management.

FR Doc. 86-3544 Filed 2-18-86; 8:45 am]

BILLING CODE 1410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the annual list are effective on February 1, 1986.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, 601 D Street, NW., Attention: TEESS, Washington, DC 20213. Telephone: 202-376-6191.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General

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Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 11, 1985 (50 FR 41606).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the annual list of labor surplus areas, effective February 1, 1986.

The following additions to the annual list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on February 10, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas:

[Feb. 1, 1986]

Labor surplus area	Civil jurisdiction included
Wisconsin:	
Kenosha City	Kenosha City in Kenosha County.
Balance of Kenosha County.	Kenosha County less Kenosha City.

[FR Doc. 86-3599 Filed 2-18-86; 8:45 am]

BILLING CODE 4510-30-M

Adjustments Assistance, Investigations Regarding Certifications of Eligibility To apply for Worker Adjustment Assistance; Dart and Kraft Industries et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 3, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 3, 1986.

The petition filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 10th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/worker or former workers of—	Location	Date received	Date of Petition	Petition No.	Articles produced
Dart and Kraft Industries, Seamless Latex Division (wkrs)	Fayette, AL	2/4/86	1/15/86	TA-W-17,166	Surgical gloves.
Elgin Electronics (workers)	Erie, PA	1/30/86	1/20/86	TA-W-17,169	Transformers, telephone equipment and printed circuit boards.
Do	Waterford, PA	1/30/86	1/20/86	TA-W-17,170	Transformers, telephone equipment and printed circuit boards.
Haddad and Brooks, Inc. (Company)	Washington, PA	2/3/86	1/30/86	TA-W-17,171	Oil and gas exploration.
Hauser Products Co. (workers)	Akron, OH	2/3/86	1/29/86	TA-W-17,172	Rubber finger cots.
M & M Sportswear (company)	Warren, RI	1/31/86	1/27/86	TA-W-17,173	Womens apparel.
Oakley Fashions, Inc. (ILGWU)	Jackson, IN	2/4/86	1/31/86	TA-W-17,174	Ladies blouses, slacks, blazers and dresses.
SKF Industries, Inc. Tapered Bearings Division (USWA)	Massillon, OH	1/27/86	1/22/86	TA-W-17,175	Tapered roller bearings.
St. Marys Carbon Co. (IUE)	St. Marys, PA	1/21/86	1/16/86	TA-W-17,176	Automotive replacement brushes, industrial brushes, contacts & slip rings.
Monsanto Electronics Materials Co. (wkrs)	Moore, SC	1/31/86	1/13/86	TA-W-17,177	Silicon wafers.
U.S. Steel Corp., Irvin Works (USWA)	Dravosburg, PA	1/27/86	1/21/86	TA-W-17,178	Auto parts, tin products, appliance, coil and sheet products.
U.S. Steel Mining Co., Inc., Western Division (UMWA)	Paonia, CO	1/26/86	1/24/86	TA-W-17,179	Coal mining.
Hart Fireplace Furnishings (wkrs)	New Albany, IN	1/30/86	1/27/86	TA-W-17,180	Fireplace equipment.
Morganstern Pants Co. (workers)	Fredericksburg, VA	1/27/86	1/24/86	TA-W-17,181	Mens trousers.
Ormet Corporation (USWA)	Burnside, LA	1/27/86	1/21/86	TA-W-17,182	Alumina.
Scovill, Inc. (workers)	Victoria, VA	1/30/86	1/27/86	TA-W-17,183	Zipper tape.
U.S. Steel Corp., Saxonburg Sintering Plant (USWA)	Saxonburg, PA	1/27/86	1/21/86	TA-W-17,184	Sinter/sinlux.

[FR Doc. 86-3598 Filed 2-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,263]

Adjustment Assistance, Homestake Mining Co., Grants, NM; Affirmative Determination Regarding Application for Reconsideration

A company official requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of Homestake Mining Company, Grants, New Mexico. The determination was published in the Federal Register on January 7, 1986 (51 FR 694).

The company official claimed, among other things, that imported uranium concentrates were available to U.S. utilities below domestic producer costs and results of the Department survey of company customers did not reflect a cancelled agreement by a major customer.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore granted.

Signed at Washington, DC, this 6th day of February 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-3597 Filed 2-18-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,408]

Adjustment Assistance, Termination of Investigation; Westmoreland Manufacturing Co.

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 16, 1985 in response to a worker petition received on September 10, 1985 which was filed on behalf of workers at Westmoreland Manufacturing Company, Westmoreland, Tennessee. The workers produced ladies' sportswear.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 4th day of February 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

FR Doc. 86-3596 Filed 2-18-86; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Dockets Nos. 50-277 and 50-278]

Availability of Environmental Assessment and Finding of No Significant Impact; Philadelphia Electric Co. et al., Peach Bottom Atomic Power Station, Units Nos. 2 and 3

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-44 and DPR-56, issued to the Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees) for the Peach Bottom Atomic Power Station, Units 2 and 3, located in York County, Pennsylvania.

Identification of Proposed Action: The amendments would consist of changes to the Technical Specifications (TSs) and would authorize an increase of the storage capacity of the spent fuel pools (SFPs) for each unit farm 2,608 to 3,819 storage cells.

The amendments to the TSs are responsive to the licensees' application dated June 13, 1985 as supplemented by letters dated August 1, 1985, October 9, 1985 and December 26, 1985. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment By the Office of Nuclear Reactor Regulation Relating to the Modification of the Spent-Fuel Storage Racks, Facility Operating Licenses Nos. DPR-44 and DPR-56," dated February 18, 1986.

Summary of Environmental Assessment: The Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575) concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in SFP designs, the FGEIS recommended licensing SFP expansion on a case-by-case basis.

For Peach Bottom, Units 2 and 3, the expansion of the storage capacity of the SFP will not create any significant additional radiological effects or measurable non-radiological environmental impacts. The staff has estimated that the proposed modifications should add less than one (1) percent to the total annual occupational exposure at the plant. This small projected increase in radiation should not affect the licensees' ability to maintain individual occupational dose within the limits of 10 CFR Part 20 and as low as reasonably achievable. The staff's calculations indicate that the increased capacity of both SFPs will have no significant effect on the noble gas Krypton (Kr-85) which is the only radioactive gas of significance which could be attributable to storing spent fuel. Thus, the staff concludes that the proposed modifications will have an insignificant effect on offsite exposures.

Finding of No Significant Impact: The staff has reviewed these proposed facility modifications relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the license amendments will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the applications for approval of the SFP modifications dated June 13, 1985, August 1, 1985, October 9, 1985, December 26, 1985 and January 30, 1986. These documents are available for inspection by the public at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Dated at Bethesda, Maryland, this 12th day of February 1986.

For the Nuclear Regulatory Commission.

Marshall Grotenhuis,

Acting Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-3560 Filed 2-18-86; 8:45 am]

BILLING CODE 7590-01-M

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Environmental Assessment and Finding of No Significant Impact; Sacramento Municipal Utility District

[Docket No. 50-312]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix R to 10 CFR Part 50 to Sacramento Municipal Utility District (the licensee) for the Rancho Seco Nuclear Generating Station located in Sacramento County, California.

Environmental Assessment

Identification of Proposed Action

The exemption would relax the requirement of Subsection III.L.1 of Appendix R to 10 CFR Part 50 that alternative or dedicated shutdown capability be able to achieve cold shutdown conditions within 72 hours. The exemption would extend the time to reach cold shutdown to 205 hours under natural circulation conditions when offsite power is not available. When offsite power is available, cooldown could be accomplished within the 72-hour interval. The exemption is responsive to the licensee's application for exemption from this requirement dated February 28, 1985, as supplemented by letter dated November 7, 1985. The remainder of the items in the licensee's application for exemption are being handled separately.

The Need for the Proposed Action

The proposed exemption is needed because the existing design features relating to these fire protection items are the most practical method for meeting the intent of Appendix R to 10 CFR Part 50 and strict literal compliance would not enhance significantly fire protection capability at the facility.

Environmental Impact of the Proposed Action

The proposed exemption will provide a degree of fire protection equivalent to that required by Appendix R to 10 CFR Part 50 such that there is no increase in the risk from fires at the facility. The probability of fires is not increased and post-fire radiological risk is not greater than determined previously and the proposed exemption does not otherwise affect plant radioactive effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this exemption.

The proposed exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant nonradioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed exemption.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated February 28, 1985, and supplemental information submitted by letter dated November 7, 1985. These documents are available for inspection by the public at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Dated at Bethesda, Maryland, this 29th day of January 1986.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate No. 6, Division of PWR Licensing–B.

[FR Doc. 86-3561 Filed 2-18-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-498 OL, STN 50-499 OL, and ASLBP No. 79-421-07 OL]

Houston Lighting and Power Co. et al. (South Texas Project Units 1 and 2); Prehearing Conference

February 12, 1986.

Before Administrative judges Charles Bechhoefer, Chairman, Dr. James C. Lamb, and Frederick J. Shon.

Notice is hereby given that the seventh prehearing conference in this operating license proceeding will be held on Friday, March 21, 1986, commencing at 9:30 a.m., in the U.S. Nuclear Regulatory Commission Hearing Room, Fifth Floor, 4350 East West Highway, Bethesda, MD. At the conference, the Licensing Board will consider the further identification or specification of issues to be heard in Phase III of this proceeding, matters (if any) bearing on Phase II issues for which further hearings may be required, witnesses proposed to be presented by each party (if known), the scheduling and location of hearings, and other procedural matters bearing upon such hearings.

The public is invited to attend the prehearing conference, but oral limited appearance statements will not be entertained.

Dated at Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 86-3562 Filed 2-18-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289 OLA (Steam Generator Plugging Criteria) (ASLBP No. 86-520-01 LA]

Metropolitan Edison Co. et al. (Three Mile Island Nuclear Station, Unit No. 1); Hearing on Issuance of Amendment to Facility Operating License

February 12, 1986.

Before Administrative Judges: Sheldon J. Wolfe, Chairman, Frederick J. Shon, and Dr. Oscar H. Paris.

On January 6, 1986, at 50 FR 459, the Nuclear Regulatory Commission published a notice captioned "Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing." This notice stated that the Commission was considering issuance of an amendment to Three Mile Island Nuclear Station, Unit No. 1 (TMI-1) Facility Operating License No. DPR-50. Among other things, the notice stated that:

The amendment would revise the provisions in the Technical Specifications relating to the steam generator tube plugging limitations, in accordance with the licensees' application for amendment dated November 6, 1985. Basically, the present Technical Specifications require repairing or removing from service a steam generator tube when a defect exceeds 40% of the tube wall thickness. The proposed amendment would maintain the 40% through wall limit on the secondary side of the tube but replaces the limit on the primary side of the tube with a sliding scale which goes from 40% to 70% through wall depending on the size of the defect.

The notice also provided that, by February 6, 1986, any person whose interest might be affected by this proceeding and who wished to participate as a party must file a written petition for leave to intervene in accordance with the Commission's "Rules of Practice" in 10 CFR Part 2. On January 10, 1986, an Atomic Safety and Licensing Board was established to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered. The Board's Administrative Judges are Frederick J. Shon, Oscar H. Paris, and Sheldon J. Wolfe, who will serve as Chairman of the Board.

Three Mile Island Alert, Inc. (TMIA) filed a petition for leave to intervene. As indicated in its Memorandum and Order issued today, February 12, 1986, (unpublished), the Atomic Safety and Licensing Board provisionally grants TMIA's petition for leave to intervene and provisionally orders a hearing.

Pursuant to 10 CFR 2.751a, the Board will conduct a special hearing conference at the following location at 9:00 a.m. on March 27, 1986:

Department of Education, Harristown Building No. 2, Heritage Room B, 333 Market Street, Harrisburg, Pa. 17126-0333.

Counsel for the Licensees and for the Staff, and representatives for the Petitioner (TMIA) are directed to appear. This special prehearing conference is held in order to:

(1) Permit identification of the key issues in the proceeding;

(2) Take any steps necessary for further identification of the issues;

(3) Consider all intervention petitions to allow the presiding officer to make such preliminary or final determination as to the parties to the proceeding, as may be appropriate; and

(4) Establish a schedule for further actions in the proceeding.

In order that the Board will have sufficient time within which to review contentions proposed by TMIA and to review the responses of the Licensee and the NRC Staff, pursuant to §§ 2.711 and 2.712, the Petitioner shall serve, by personal delivery or by express mail so that the Licensee, the Staff and the Chairman will receive on March 10, 1986, a supplement to the petition for leave to intervene which must include a list of the contentions which it seeks to have litigated in the matter, and set forth the bases for each contention with reasonable specificity as required by § 2.714(b). Contentions shall be limited to matters within the scope of the amendment under consideration. The Licensee and the NRC Staff shall serve, by personal delivery or by express mail in order that Petitioner and the Chairman will receive on March 21, 1986, their responses to the proposed contentions.

The public is invited to attend the prehearing conference but members of the public may not participate in this conference. An opportunity will be provided for any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene. Any person may request permission to make a limited appearance in order to set forth his position on the issues pursuant to provisions of 10 CFR 2.715 of the Commission's "Rules of Practice." Subject to the conditions set forth in subsequent Orders, limited appearances will be permitted at the time a § 2.752 prehearing conference is held and also at the beginning of the hearing, if any. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Whether a hearing is ultimately held will depend upon whether one or more contentions suitable for hearing develop in the prehearing procedures to follow this Notice of Hearing.

It is so ordered.

Dated at Bethesda, Maryland, this 12th day of February, 1986.

The Atomic Safety and Licensing Board.

Sheldon J. Wolfe,

Chairman, Administrative Judge.

Frederick J. Shon,

Administrative Judge.

Dr. Oscar H. Paris,

Administrative Judge.

[FR Doc. 86-3563 Filed 2-18-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Medical Device Reporting; Open Meeting

ACTION: Notice of Meeting.

SUMMARY: There will be a public meeting soliciting comments on the existing requirements imposed by the Food and Drug Administration's Medical Device Reporting (MDR) rule (21 CFR 803). Members of the public are invited to provide comments and suggestions for improving the reporting system and reducing the paperwork burden associated with the MDR rule.

DATE: Thursday, March 6, 1986, beginning at 2:00 p.m. and concluding by 5:00 p.m.

ADDRESS: The meeting will be held at the New Executive Office Building Room 2010, 726 Jackson Place, NW., Washington, DC (use 17th Street entrance). To obtain entrance into the building, please call (202) 395-7316 and request that your name be placed on the Secret Service access list.

FOR FURTHER INFORMATION CONTACT: James B. MacRae, Jr., Chief, Reports Management Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503 (202/395-6880).

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to solicit the views of individuals and organizations that may have an interest in the development of a more effective and less burdensome MDR reporting system. The Office of Management and Budget and the Food and Drug Administration of the Department of Health and Human services are currently conducting a review of the existing data elements and reporting conditions mandated by the MDR regulations. The MDR requirements, issued pursuant to Section 519 of the Medical Device Amendments of 1976 (21 U.S.C. 360i), became effective on December 13, 1984. This meeting will provide a forum for discussion of the current reporting requirements with the goal of improving and, consistent with the public health, streamlining the MDR system. Although comment is welcomed on all aspects of the MDR rule, participants will be particularly encouraged to comment on the following issues:

A. Reporting Format

- Should FDA adopt a standardized reporting form for MDR reports?
- If a standardized form were adopted, how should the form be designed? (Prototype submissions will be appreciated.)
- What improvements can be made in the area of filing MDR reports via electronic data transmission techniques?

B. Reporting Timeframes

- Do the current 5-day, 15-day and followup report timeframes provide FDA with information in the most efficient fashion?

C. Reporting Thresholds

- Consistent with the public health, what specific data elements and reporting conditions warrant consideration for addition or modification to or deletion from the current reporting system?

Procedures: Participants will be asked to state briefly and succinctly their views at this meeting and are encouraged to submit written comments. If you anticipate that you will wish to

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make oral comments, please indicate so beforehand in order to assist in the scheduling. Persons who are unable to attend but wish to provide comment may do so in writing. Each comment should be submitted on or before April 1, 1986 to:

Mr. Bruce Artim, FDA Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3002, Washington, DC 20503.

All comments received in writing as well as a transcript of the meeting will be available for public inspection during normal business hours at the Office of Management and Budget, OIRA Docket Library, New Executive Office Building, Room 3201, Washington, DC 20503, (202) 395-6880.

James B. MacRae, Jr.,

Chief, Reports Management Branch, Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs.

[FR Doc. 86-3511 Filed 2-18-86; 8:45 am]

BILLING CODE 3110-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meeting

Notice is hereby given of a meeting of the Prospective Payment Assessment Commission on Wednesday, March 5, 1986. The meeting will convene at 10 o'clock a.m. in the Hampton Room of the Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC, and will be open to the public.

Donald A. Young, MD,

Executive Director.

[FR Doc. 86-3401 Filed 2-18-86; 8:45 am]

BILLING CODE 6820-SW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22694; SR-NASD-85-33]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc., Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD"), on November 25, 1985, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Part VII of Schedule D of of the NASD's By-Laws. The amendment adds maintenance criteria to the existing criteria for a security's inclusion in the NASDAQ National List identical to the maintenance criteria contained in the NASDAQ/National Market System ("NMS") Designation Plan filed with the Commission pursuant to Rule 11Aa2-1 under the Act.[1] For an issuer's security to remain eligible for inclusion in the National List, the rule change would require that the issuer have 200,000 publicly held shares with a market value of $2 million or more and either annual net income of $200,000 for the previous fiscal year or in two of the last three fiscal years or net worth of at least $1 million.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 22664, published in the **Federal Register** (50 FR 49644, December 3, 1985). No comments on the proposed rule change were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A and 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Dated: February 11, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3579 Filed 2-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22697; File No. SR-NASD-85-36]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K St., NW., Washington, DC 20006, submitted on December 23, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to permit automatic execution of round lot and mixed lot agency orders up to 1000 shares at the prevailing inside market in the NASD's Computer Assisted Execution System ("CAES").

Notice of the proposed rule change was given by the issuance of Securities Exchange Act Release No. 22750 (December 31, 1985) and by publication in the **Federal Register** (51 FR 799, January 8, 1986). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 12, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3580 Filed 2-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22696; File No. SR-NASD-85-31]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

February 12, 1986.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K St., NW., Washington, DC 20006, submitted on October 10, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to raise the size of orders eligible to be executed automatically in this Small Order Execution System ("SOES") from 500 shares in all NASDAQ stocks to 500 shares for NASDAQ and 1000 shares for NASDAQ/National Market System Securities.

Notice of the proposed rule change was given by the issuance of Securities Exchange Act Release No. 22546 (October 22, 1985) and by publication in the **Federal Register** (50 FR 43822, October 29, 1985). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

[1] Revised maintenance criteria were approved in November 1985 that reflected an amendment to the designation criteria for NMS Securities. *See* Securities Exchange Act Release No. 22865 (November 26, 1985), 50 FR 49642.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3581 Filed 2-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22693; File No. SR-PSDTC-85-12]

Self-Regulatory Organizations; The Pacific Securities Depository Trust Company; Order Approving a Proposed Rule Change

The Pacific Securities Depository Trust Company ("PDSTC") on December 9, 1985, submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission published notice of the proposal in the **Federal Register** to solicit public comment on January 6, 1986 (51 FR 464). No comments were received. This Order approves the proposal.

The proposal codifies PSDTC's procedures for complete and partial redemptions of PSDTC-eligible securities.[1] For partial redemptions, PSDTC will allocate called securities to PSDTC participants and pledgees through random selection based on positions on the business day before publication of redemption. On the business day before redemption date, or an earlier date designated by PSDTC, PSDTC will submit for redemption called certificates and will credit appropriate accounts under PSDTC procedures. For complete redemptions and payments at maturity, PSDTC will follow a similar procedure and submit all appropriate certificates on deposit for redemption or payment.[2] The proposal also enables PSDTC to adopt special procedures, which supersede rule procedures, where necessary for particular redemptions.

The proposal provides that PSDTC will be liable only for calls or redemptions that are published in a nationally recognized newspaper, service, or media as specified by PSDTC. In the proposal, PSDTC specifies the following as a nationally recognized newspaper, service, or other media: *The Wall Street Journal*, Kenney Information Service, Financial Information Cards, or written notification by the issuer or its agent to PSDTC by registered or certified mail, return receipt requested, and received by PSDTC.

PSDTC states in its filing that the proposal is intended to advise its participants of PSDTC procedures and define PSDTC's liability for missed calls and redemptions. PSDTC also states that the proposal is based on Midwest Securities Trust Company Rule 3, Article IV. PSDTC states that the proposal is consistent with section 17A(b)(3)(F) of the Act because it will promote the prompt and accurate clearance and settlement of securities transactions and facilitate the safeguarding of securities and funds in the custody or control of PSDTC or for which it is responsible.

The Commission agrees with PSDTC that the proposal is consistent with the Act and should be approved. The Commission believes that codification of PSDTC redemption procedures in PSDTC rules is appropriate and should increase PSDTC participant awareness of those procedures. The Commission also agrees with PSDTC that PSDTC should limit its liability for redemption notices not published nationally or communicated directly to PSDTC and that this limitation should be specified in PSDTC rules.

On the basis of the foregoing, the Commission finds PSDTC's proposed rule change consistent with the Act and, in particular, with Section 17A of the Act.

Accordingly, it is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 11, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3582 Filed 2-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24016; 70-7217]

Consolidated Natural Gas Co.; Supplemental Proposed Amendment of Certificate of Incorporation, Issuance of Common Stock in Connection With Two-For-One Stock Split; Authorization for Solicitation of Proxies

February 12, 1986.

Consolidated Natural Gas Company ("Consolidated"), Four Gateway Center, Pittsburgh, Pennsylvania 15222, a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 62 and 65 thereunder.

On January 27, 1986, the Commission issued a notice (HCAR No. 24000) regarding a proposal by Consolidated to amend its Certificate of Incorporation to increase and reclassify its authorized common stock from 50,000,000 shares ($4 par value) to 100,000,000 shares ($2.75 par value). Consolidated has since then amended its declaration proposing to amend its Certificate of Incorporation to increase and reclassify its authorized common stock from 50,000,000 shares ($4 par value) to 120,000,000 shares ($2.75 par value), primarily for the purpose of effecting a two-for-one stock split by changing each share of issued and unissued $4 par value common stock into two shares of $2.75 par value common stock. In connection therewith, Consolidated proposes to issue on or after May 20, 1986, such additional number of shares of common stock, $2.75 par value, as shall equal the total number of common shares outstanding on May 20, 1986, to common stockholders of record on that date. The company expects to have approximately 41,390,000 shares, $4 par value, outstanding on May 20, 1986. The excess of shares over those required for the stock split will be available to Consolidated for issuance in connection with its stockholder and employee plans and other corporate purposes.

Consolidated proposes to solicit proxies regarding the proposed amendment to its Certificate of Incorporation with respect to the annual meeting of common stockholders to be held May 20, 1986.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 10, 1986, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended declaration, as filed or as if may be further amended, may be permitted to become effective.

It appearing to the Commisson that Consolidated's declaration regarding the

[1] The proposal adds new section 3 to PSDTC Rule 4.

[2] PSDTC will not accept deliveries or withdrawals by transfer for securities subject to redemption from the date of the call for redemptions prior to maturity and for redemptions at maturity from a date set by PSDTC.

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proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered that the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3574 Filed 2-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 40-14934; 812-6253]

Dean Witter Reynolds Inc., et al.; Application for an Order Amending an Existing Order and Permitting Certain Additional Offers of Exchange

February 12, 1986.

Notice is hereby given that Sears Tax-Exempt Investment Trust, Sears Government Investment Trust, Sears Corporate Investment Trust, Sears Fixed Income Investment Trust, Sears Equity Investment Trust (collectively, the "Trusts," and individually, the "Trust"), unit investment trusts registered or to be registered under the Investment Company Act of 1940 (the "Act") and Dean Witter Reynolds Inc., sponsor of the Trusts (the "Sponsor") (collectively with the Trusts, the "Applicants"), % Dean Witter Reynolds Inc., 101 Barclay Street, New York, NY 10020, filed an application on November 20, 1985, and an amendment thereto on January 21, 1986, for an order of the Commission pursuant to Section 11 of the Act: (a) amending a prior order issued by the Commission approving certain offers of exchange (the "Exchange Option"); (b) approving, on substantially identical terms, an offer of exchange for Trusts not included in the prior order, including future unit investment trusts to be sponsored by the Sponsor (the "Future Trusts") and (c) approving an additional offer of exchange that Applicants propose to offer to holders of units in any registered unit investment trust with a minimum sales charge of 3%, exclusive of available sales charge discounts, such as volume discounts, employee discounts and exchange option discounts (the "Conversion Option"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants state that each Trust is a separate unit investment trust and that each series thereof has different investment objectives. Applicants also state that purchasers of units of any of the Trusts ("Certificateholders") will receive interest and principal distributions generally on a monthly basis, such distributions representing their proportionate share of interest and principal received in the respective Trust net of expenses and amounts required for redemptions of units.

Applicants represent that the Future Trusts will also be registered unit investment trusts under the Act, and that the Future Trusts will be structured and will function in substantially the same manner as the Trusts. With respect to the prospective relief sought on behalf of the Future Trusts, Applicants undertake to limit their activities, as they relate to the Exchange and Conversion Options, to the terms and conditions represented in the application.

By an order issued on June 21, 1983 (Investment Company Act Release No. 13341), the Commission permitted certain Trusts to participate in the Exchange Option. Applicants now request approval to expand the Exchange Option to all Trusts and Future Trusts (Trusts and Future Trusts, collectively, "Exchange Trusts"), subject to the modifications and conditions set forth in the application.

According to the application, although the composition of the particular Exchange Trusts and the particular series thereof differ in various respects depending on the nature of the underlying portfolios, their structures are substantially the same. The Sponsor acquires a portfolio of securities that it believes satisfies the standards applicable to the investment objectives of the particular series. These securities are then deposited in trust with a trustee in exhange for certificates representing units of undivided interest in the deposited portfolio ("Units"). These Units are then offered to the public at a public offering price that is based upon the offering prices of the underlying securities plus a sales load of up to 4.00% of the public offering price. The sales load applicable to the Exchange Trusts may be varied by the Sponsor.

Under the Exchange Option, Certificateholders may exchange Units held in any one of the Exchange Trusts for Units of other series of the same Trust or of any of the other Exchange Trusts that the Sponsor has repurchased and has not tendered for redemption. Although the Sponsor is not legally obligated to do so, the Sponsor intends to maintain a secondary market for Units of the Exchange Trusts and to continuously offer to purchase Units at prices based upon the market value determined in the manner set forth in the prospectus. The Exchange Option would apply only to Units of series of the Exchange Trusts for which a primary or secondary market is being maintained by the Sponsor. Upon notifying the Sponsor of a desire to exercise the Exchange Option, a Certificateholder will be delivered a current prospectus for one or more series of the Exchange Trusts for which the Certificateholder has indicated an interest and for which the Sponsor has Units available to offer in exchange for the Units being tendered.

Applicants contend that the Exchange Option will operate in a manner essentially identical to any secondary market transaction, except that the Sponsor intends to impose a reduced sales charge on certain exchanges. Pursuant to the Exchange Option, the Sponsor will sell Units of the Exchange Trusts at the net asset value per Unit (the "Unit Offering Price"), plus a fixed sales charge of $15 per Unit received or per 1,000 Units received for a series whose Units cost approximately $1.00 (the "Reduced Sales Charge"). Applicants represent that the Reduced Sales Charge can be expected to approximate 1.5% of the Unit Offering Price. In cases where Units of a series cost significantly less than $1.00 (i.e. discount or zero-coupon trusts), the sales charge pursuant to the Exchange Option will be 1.5% of the Unit Offering Price, rather than a fixed charge of $15 per 1,000 Units, which would result in a sales charge greater than 1.5% of the Unit Offering Price.

Applicants represent that a Certificateholder who purchased Units of a series and paid a per Unit or per 1,000 Unit sales charge that was less than the per Unit or per 1,000 Unit sales charge of the series of the Exchange Trusts for which such Certificateholder desires to exchange into, will be allowed to exercise the Exchange Option at the Unit Offering Price plus the Reduced Sales Charge, provided that the Certificateholder held the Units for at least five months. Any such Certificateholder who has not held the Units to be exchanged for the five-month period will be required to exchange them at the Unit Offering Price plus a sales charge based on the greater of the Reduced Sales Charge, or an amount which, together with the initial sales charge paid in connection with the acquisition of the Units being exchanged, equals the sales charge of the series of the Exchange Trusts for which the Certificateholder desires to exchange into, determined as of the date of the exchange.

According to the application, the minimum period for differentiating between short-term and long-term capital gains and losses under the Internal Revenue Code of 1954 ("Code") for property acquired on or after June 23, 1984, and before January 1, 1988, is currently "more than six months," decreased from "more than one year." Applicants submit that many exchanges between Exchange Trusts may be motivated by the desire to take profits as soon as the preferential long-term capital gains treatment under the Code is available; or, conversely, to realize short-term capital losses to be applied to reduce taxable income—an objective that could be impeded by an Exchange Option holding period requirement that exceeds six months. Therefore, in order to permit the Exchange Option to be utilized without forfeiting any such tax benefits. Applicants propose to institute the five-month holding period described above in place of the present eight-month holding period requirement in the prior order. Applicants assert that this modification would not materially reduce the protection against unfair pricing afforded by the holding period requirement, and that it would meet the objective of conforming such requirement to the terms of current Federal income tax policy.

Under the Exchange Option, Certificateholders will be further permitted to tender cash to make up any difference between the value of the Units being submitted for exchange and the value of the Units being acquired up to the next highest number of whole Units. Applicants assert that permitting Certificate holders to round up to the next highest number of Units does not create any significant potential for abuse or unfairness in pricing.

In addition to the Exchange Option, Applicants request an order to permit the Exchange Trusts to offer, on terms substantially the same as those applicable to the Exchange Option (including the ability to round up to the next highest number of whole Units), Units in exchange for beneficial interests in any and all registered unit investment trusts initially offered to the public at a minimum sales charge of 3%, exclusive of customary sales charge discounts, such as volume discounts, employee discounts or exchange option discounts (the "Conversion Trusts"). Applicants submit that the minimum sales load condition applied to the Conversion Option as well as the five-month holding period, diminishes the potential for unfairness or price discrimination and discourages Certificateholders from converting Units merely to pay a lower aggregate sales charge.

Applicants represent that unit investment trusts promoted by the Sponsor, but not included among the Exchange Trusts, may nonetheless be Conversion Trusts. All holders of Conversion Trusts will be eligible to participate in the Conversion Option regardless of whether they are or were the Sponsor's retail customers, and regardless of whether the Sponsor participated as an underwriter or dealer in the initial public offering of any of the Conversion Trusts. While holders of Conversion Trusts interests will, in general, be eligible to acquire Units of a series of the Exchange Trusts based on the Reduced Sales Charge. Applicants represent that in the future, and as a condition to the granting of the order requested, the Sponsor will not charge more than five dollars per Unit more for exercise of the Conversion Option than the corresponding fee being charged for exercise of the Exchange Option. The Sponsor intends to hold the Exchange and Conversion Options open under most circumstances, but reserves the right to modify, suspend or terminate them subject to the terms and conditions of Rule 22d-1 under the Act.

Applicants submit that the Reduced Sales Charge is a reasonable and justifiable expense to be allocated to the professional assistance and operational expenses contemplated in connection with the Exchange and Conversion Options. Applicants also submit that it is not abusive or unfair to permit purchasers who originally acquire Units at a discounted sales charge to participate in the proposed offers of exchange. The Sponsor represents that it will not solicit Certificateholders with respect to the Exchange or Conversion Options with a view to churning Certificateholders' accounts and that the proposed transactions will be done for the benefit of Certificateholders and in accordance with their investment objectives.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretay, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3575 Filed 2-18-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 40-14935; (811-3987)]

Federal Capital Appreciation Fund, Inc.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

February 12, 1986.

Notice is hereby given that Federated Capital Appreciation Fund, Inc. ("Applicant"), 421 Seventh Avenue, Pittsburgh, PA 15219, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on January 15, 1986, and an amendment thereto on January 30, 1986, for an order pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that its registration statement was filed on March 12, 1984, but that it never became effective. Applicant further states that it has never made a public offering, has no securityholders and has retained no assets. Applicant represents that it is not a party to any litigation or administrative proceeding and does not intend to engage in any business activities other than those necessary to effectuate the winding up of its business and affairs. Finally, Applicant states that, pursuant to the approval of its Board of Directors, and in accordance the law of the State of Maryland, it was dissolved on August 29, 1985.

Notice is further given that any interested person wishing to request a

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hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

FR Doc. 86-3578 Filed 2-18-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/940]

Fine Arts Committee; Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, March 15, 1986 at 10:00 a.m. in the John Quincy Adams State Drawing Room. The meeting will last approximately until 11:30 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in March 1985, the announcement of gifts, loans, and financial contributions during calendar year 1985, and a report on the architectural project on the 7th floor.

Public access to the Department of State is controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, March 10, 1986, telephone (202) 647-1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: January 22, 1986.

Clement E. Conger,

Chairman, Fine Arts Committee.

[FR Doc. 86-3528 Filed 2-18-86; 8:45 am]

BILLING CODE 4710-38-M

[CM-8/942]

Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 7, 1986 at 1:30 p.m. at GTE Telenet, 12490 Sunrise Valley Drive, Reston, Virginia.

The agenda for the meeting is as follows:

1. Report on Study Group XVIII Working Parties meeting (Kyoto, November-December 1985);

2. Consideration of contributions to the Study Group XVIII Rapporteurs meeting on supplementary services (Munich, March 17-19, 1986;

3. Consideration of contributions to the Study Group XI meeting (Geneva, May 5-23, 1986);

4. Consideration of contributions to the Study Group XVIII meeting (Geneva, June 30-July 18, 1986); and

5. Any other business.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend so advise the office of Earl Barbely, Department of State, Washington, D.C.; telephone (202) 647-6700.

Dated: February 10, 1986.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-3527 Filed 2-18-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 9-86]

Treasury Bonds of 2016

February 7, 1986.

The Secretary announced on February 6, 1986, that the interest rate on the bonds designated Bonds of 2016, described in Department Circular—Public Debt Series—No. 9-86 dated January 30, 1986, will be 9¼ percent. Interest on the bonds will be payable at the rate of 9¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-3520 Filed 2-18-86; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 7-86]

Treasury Notes, Series A-1996

February 6, 1986.

The Secretary announced on February 6, 1986, that the interest rate on the notes designated Series A-1996, described in Department Circular—Public Debt Series—No. 7-86 dated January 30, 1986, will be 8⅞ percent. Interest on the notes will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-3521 Filed 2-18-86; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 8-86]

Treasury Notes, Series B-1996

February 6, 1986.

The Secretary announced on February 5, 1986, that the interest rate on the notes designated Series B-1996, described in Department Circular-Public Debt Series-No. 8-86 dated January 29, 1986, will be 8⅞ percent. Interest on the notes will be payable at the rate of 8⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-3522 Filed 2-18-86; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 6-86]

Treasury Notes, Series Q-1989

February 5, 1986.

The Secretary announced on February 4, 1986, that the interest rate on the notes designated Series Q-1989, described in Department Circular-Public Debt Series-No. 6-86 dated January 30, 1986, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-3523 Filed 2-18-86; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 10-86]

Treasury Notes of February 29, 1988, Series W-1988

February 13, 1986.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of February 29, 1988, Series W-1988 (CUSIP No. 912827 TH 5), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated February 28, 1986, and will accrue interest from that date, payable on a semiannual basis on August 31, 1986, February 28, 1987, August 3, 1987 and February 29, 1988. They will mature February 29, 1988, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, February 19, 1986. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, February 18, 1986, and received no later than Friday, February 28, 1986.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers

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it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes alloted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, February 28, 1986. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, February 26, 1986. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes Allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, February 28, 1986. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-1974 Filed 2-14-86; 3:25 pm]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Charter Renewals

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), the Veterans Administration announces renewal of the following Merit Review Boards in designated medical specialties for the period February 6, 1986 through February 6, 1986.

Merit Review Board for Basic Science Programs
Merit Review Board for Cardiovascular Programs
Merit Review Board for Clinical Pharmacology, Alcoholism and Drug Dependence Programs
Merit Review Board for Endocrinology Programs
Merit Review Board for Gastroenterology Programs
Merit Review Board for Hematology Programs
Merit Review Board for Immunology Programs
Merit Review Board for Infectious Disease Programs
Merit Review Board for Mental Health and Behavioral Science Programs
Merit Review Board for Nephrology Programs
Merit Review Board for Neurobiology Programs
Merit Review Board for Oncology Programs
Merit Review Board for Respiration Programs
Merit Review Board for Surgery Programs

New charters for these committees have been filed in accordance with section 9 and 14 of Pub. L. 92-463.

Dated: February 6, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-3555 Filed 2-18-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 33
Wednesday, February 19, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1, 2
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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, February 19, 1986.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Management Review: Field Operations

The staff will brief the Commission on Field Operations as part of its ongoing management review.

Closed to the Public

2. Compliance Stotus Report

The staff will brief the Commission on various enforcement matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATON: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md., 20207 301—492-6800

February 13, 1986.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 86-3572 Filed 2-13-86; 4:24 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, February 20, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Methylene Choloride

The Commission will consider various options available to them on methylene chloride in paint strippers and spray paints.

2. Management Review: Matrix Management

The Commission will reconsider a decision related to matrix management as a part of the ongoing management review.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL 301—492-5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492-6800.

February 13, 1986.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 86-3573 Filed 2-13-86; 4:25 pm]

BILLING CODE 6355-01-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-07]

TIME AND DATE: Wednesday, February 26, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
5. Investigation No. TA-201-56 (Wood shakes and shingles)—briefing and vote on injury.
6. Any items left over from the previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3633 Filed 2-14-86; 11:42 am]

BILLING CODE 7020-02-M

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federal register

Wednesday
February 19, 1986

Part II

Department of Transportation

Coast Guard

33 CFR Parts 100, 110 and 165
Temporary Regulations, New York Harbor, July 2-5, 1986; Proposed Rules

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD3-86-02]

Temporary Regulations, New York Harbor, July 2-5, 1986

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is considering temporary regulations for New York Harbor and Upper New York Bay for Operation Sail 86 and the International Naval Review being held in conjunction with the Statue of Liberty ceremonies July 2-5, 1986. This document contains the proposed regulations necessary to conduct these activities in a safe and orderly manner. Among the proposals are: (1) The regulations for Parade of Sail and related events; (2) regulations for special anchorages for the International Naval Review, and (3) safety zones for fireworks displays to be held as part of the festivities. These temporary regulations are issued to augment those regulations which govern navigation in the Port of New York contained in Title 33, Code of Federal Regulations. These temporary local regulations will affect navigation in the Port of New York during the period 12:00 p.m., July 2 to 6:00 a.m., July 5, 1986, and are required because of hazardous conditions that will be occasioned by the arrival of a large number of sail training ships, naval vessels, and spectator craft participating in and observing an International Naval Review and Operation Sail 1986.

DATE: Comments must be received on or before April 7, 1986.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at the Vessel Movement Office, Bldg. 109, Governors, Island, New York. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade T.S. Kuhaneck, Vessel Movement Officer, Commander, Coast Guard Group New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3-86-02) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LCDR K.J. Eldridge and LTJG T.S. Kuhaneck, project officers, Coast Guard Group New York and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Coast Guard is considering establishing temporary regulations for New York and Upper and Lower New York Bay for Operation Sail 86 and the International Naval Review being held in conjunction with the Statue of Liberty ceremonies. These proposed regulations provide specific guidance on temporary anchorage regulations, vessel movement, and safety zones that will be in effect in New York Harbor and the vicinity July 2-5, 1986. The proposed regulations also provide for the temporary disestablishment of anchorage areas and the establishment of temporary speed limits in the Port of New York area. In conjunction with Statue of Liberty ceremonies and 4th of July festivities, several fireworks displays will be conducted.

Approximately fifty U.S. and foreign naval vessels will participate in our country's fifth International Naval Review and some one hundred "Tall Ships" and many other sailing vessels will participate in a Parade of Sail.

The "Tall Ships" and other participating sailing vessels will begin arriving in New York on July 1, and anchor in Lower New York Bay, Sandy Hook Bay and Gravesend Bay. Smaller sailing vessels will be transiting the East River from Long Island Sound on the morning of July 3 and proceeding to anchorages in Gravesend Bay (See Appendix A, chartlets I and II).

In conjunction with Operation Sail 1986, the Secretary of the Navy has invited 117 nations to participate by sending naval vessels to our country's fifth International Naval Review, and then to form an International Naval Review line for Operation Sail vessels to parade past. The review line of anchored vessels will stretch the length of the 18-mile parade route from the Verrazano Narrows Bridge to the George Washington Bridge (See Appendix A, chartlets III and IV).

At approximately 10:00 a.m., July 3, 1986, the International Naval Review participants will enter Ambrose Channel en route New York Harbor. The naval vessels will proceed directly to assigned anchorages and form the reviewing line (See Appendix A, chartlets III and IV). The International Naval Review will commence at 9:00 a.m., July 4, 1986.

On the evening of July 3, the Statue of Liberty—Ellis Island Foundation is planning to kick-off their salute to Lady Liberty with a television spectacular. This event will take place on both Liberty Island and a U.S. Navy aircraft carrier anchored in the vicinity of Liberty Island. It is geared to the television audience and will have minimal impact on the boating public with the exception of a closing fireworks display. A Safety Zone will be in effect around the Statue of Liberty from 8:00 a.m. on July 3, 1986 until 11:00 p.m. July 4, 1986. This zone will protect vessels from possible safety hazards associated with fireworks displays on both the 3rd and 4th of July.

On the evening of July 4, a fireworks display will be conducted in the Upper Bay. The fireworks sites are the Statue of Liberty and an area around the Battery in Manhattan from South Street Seaport around to the World Trade Center. The fireworks will be launched from approximately 41 barges (8 moored around the Statue, 11 groups of three positioned in the East and North Rivers). This arrangement of barges will require the establishment of two safety zones. The one already established around the Statue and another zone that will stretch from a point south of the Brooklyn Bridge at pier 13 along the Manhattan shoreline to the intersection of Franklin Street and West Street then across the Hudson River to Pier K, then south along the New Jersey pierhead to the tower at the end of Johnson Ave., Jersey City, NJ, then to the northwest corner of Governors Island, along the northern shoreline of Governors Island to the Battery Tunnel ventilator, and then to the southwest corner of Pier 5, Brooklyn, then along the Brooklyn Shoreline to the Nortwest corner of pier 3, then across the East River of Pier 13 Manhattan (See Appendix A, chartlet VI).

These safety zones are established to protect the maritime community and boating public from the hazards associated with fireworks displays. Persons violating these safety zones maybe liable for a civil penalty of up to $25,000 and criminal penalties of imprisonment for up to five years or fines of not more than $50,000, or both.

In addition to the various safety zones noted in these rgulatiions, it will be necessary for the Captain of the Port, New York to establish securtiy zones to safeguard dignitaries and certain vessels participating in the Statue of Liberty festivities. No person or vessel may enter or remain in a security zone without the permission of the Captain of the Port. Details are not available to date. These security zones will be published as part of the final rulemaking or when the details become available.

Chartlets I and II, App. A, indicate anchorages for the participants in Operation Sail. Chartlets III and IV, App. A, indicate anchorages for the participants in the International Naval Review. The chartlets show which areas have been set aside for boat and spectator vessel anchorages and specify which areas have been set aside for spectator vessels greater than 100 feet in length. The chartlets also indicate the route for the Parade of Sail. Mariners are advised that the areas representing OPSAIL 86 vessel anchorages, naval vessel anchorages and the Parade of Sail route are approximate positions.

The Narrows temporary anchorage located along the Brooklyn shore line just north of the Verranzano Narrows Bridge, the Governors Island temporary anchorage located along the southern shore of Governors Islnad, the Bay Ridge Temporary Anchorage located on the eastern side of the Upper Bay, and the two temporary anchorages between Robbins Reef and Liberty Island, are for boats and spectator vessels greater than 100 feet in length. Positioning within these five anchorages (Chartlet III, Appendix A) will be controlled by the Captain of the Port, New York. Persons desiring to use these anchorages should apply for a permit to Captain of the Port, New York, Building 109, Governors Island, NY, 10004 or telephone (212) 668-7933/34 during normal working hours.

It is recommended that boat and spectator vessel operators visiting the Port of New York for this event purchase the following charts of New York Harbor: Nos. 12327, 12334, 12335 and 12341. The chartlets in Appendix A are reduced prints of such charts and are not to be used for navigation purposes. All vessel operators and passengers are reminded that in addition to the safety equipment requirements for all pleasure motor boats, U.S. Federal safety laws also require compliance with certain additional rules and regulations pertaining to licensing of the operator and inspection of the vessel when that vessel is not being used exclusively for pleasure purposes but is engaged in carrying "passengers for hire." The term "passenger for hire" means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for his carriage on board the vessel. The same laws provide substantial penalties for any violation. If you have any questions concerning the application of the above laws to your particular case, you should either write the U.S. Coast Guard Marine Inspection Office, Battery Park Building, New York , NY 10004 or telephone (212) 668-7853 for information.

It is evident that with the many sailing and naval vessels in the Port of New York, it will be necessary to curtail normal port operations to some extent. This interference will be kept to the minimum considered necessary to ensure safety and to facilitate the success of Operation Sail 1986 and the International Naval Review.

Certain anchorages in the Port of New York are being temporarily disestablished for OPSAIL 86 and the International Naval Review. The following anchorages will be temporarily disestablished from 6:00 a.m., July 3, 1986 until 6:00 a.m., July 5, 1986: Anchorage Nos. 23A, 23B, 24 (Stapleton Anchorage); Anchorages Nos. 21A, 21B, 21C (Bay Ridge Anchorage); Anchorages Nos. 20A, 20B, 20C, 20D, 20E, 20F, 20G (New Jersey Shore Anchorages); Anchorage No. 19 (Hudson River); Anchorage No. 25 (Gravesend Bay Anchorage) (33 CFR 110.155(c)(5), (d) (1) through (15) and (e)(1)). From 6:00 a.m., July 3, 1986 until 12:00 p.m., July 4, 1986 Anchorage No. 49G (north of Naval Weapons Station Earle) is temporarily disestablished (33 CFR 110.155(m)(3)). From 6:00 a.m., July 3, 1986 until 12:00 p.m., July 4, 1986, that portion of Anchorage No. 26 (Sandy Hook Bay) bounded by the following coordinates is disestablished: Beginning at latitude 40°28'14" N., longitude 74°01'09" W., thence to latitude 40°28'05" N., longitude 74°02'24" W., thence to latitude 40°26'39" N., longitude 74°02'00" W., thence to latitude 40°26'39" N., longitude 74°01'00" W. thence to the beginning point (33 CFR 110.155(f)(1)).

The anchorage regulations in this document are issued pursuant to 33 U.S.C. 471 as set out in the authority citation for all of Part 110. The safety zone regulations are issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal will be so minimal that a full regulatory evaluation is unnecessary. These regulations will be in effect for only four days. Commercial traffic will be prohibited from the Upper New York Bay for only a portion of that four day period. At no time during the four day period will commercial shipping access to Port Newark/Port Elizabeth facilities be prohibited. Access to Port Newark/Port Elizabeth can be accomplished via Raritan Bay, Arthur Kill, Kill Van Kull and Newark Bay. This will allow the majority of the maritime industrial activity in the Port of New York to continue unaffected. Staten Island Ferry service will be curtailed for only the minimum amount of time necessary to ensure safe operation during the increased harbor activities. OPSAIL 1986, the International Naval Review, and the July 4th Fireworks display may attract additional recreational boaters and tourists to the port area which would have a favorable economic impact on commercial facilities providing services to these boaters and tourists.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water).

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Parts 100, 110 and 165 of Title 33, Code of Federal Regulations as follows (these are all temporary amendments and will not appear in the Code of Federal Regulations):

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PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: *33 U.S.C.; 49 CFR 1.46 and 33 CFR 100.35.*

2. PART 100 is amended by adding a temporary § 100.35–323 to read as follows:

§ 100.35–323 Operation Sail 1986 and International Naval Review, Port of New York.

(a) *Definitions.* As used in this section and § 110.T301:

(1) "Boat" means any vessel manufactured or used primarily for non-commercial use; leased, rented, or chartered to another for the latter's non-commercial use, or engaged in the carrying of six or fewer passengers, and all tugboats and towboats not engaged in towing operations.

(2) "Coast Guard Auxiliary Vessel" means a vessel accepted by the Director of Auxiliary as an Operational Facility and operated by a member of the Coast Guard Auxiliary under official Coast Guard orders.

(3) "Commercial Vessel" includes any vessel subject to the regulations contained in Title 46, Code of Federal Regulations, Chapter I, Subchapter D (Tank Vessels), Subchapter H (Passenger Vessels) or Subchapter I (Cargo and Miscellaneous Vessels), including foreign vessels otherwise exempt by virtue of 46 CFR 30.01–5(e), 70.05–3(b), and 90.05–1(a)(1), except that vessels that meet the definition of a "boat" in this section shall not be included.

(4) "Narrows" means the waters of New York Harbor bounded by the following coordinates: From latitude 40°36'00" N. to latitude 40°37'00" N.

(5) "Naval Vessels" includes United States Navy and Coast Guard vessels and foreign naval vessels participating in the International Naval Review on July 4, 1986 in New York Harbor sponsored by the United States Navy.

(6) "Navigate" includes being underway or anchored.

(7) "New York Harbor" includes the following waterways: The Lower Bay, Narrows, Upper Bay, East River, and Hudson River to latitude 40°54'00" N. It does not include the Kill Van Kull, Newark Bay, and Arthur Kill.

(8) "OPSAIL '86 Vessels" includes all vessels participating in Operation Sail 1986 under the auspices of the Marine Event Permit submitted by OPERATION SAIL 1986, Inc. and approved by the Captain of the Port, New York.

(9) "Public Vessel" means a vessel owned, employed, or bare-boat chartered and operated by the United States or by a State or political subdivision thereof.

(10) "Spectator Vessel" includes any commercial vessel primarily carrying passengers but not engaged in an international voyage, or any vessel subject to the regulations contained in Title 46, Code of Federal Regulations, Chapter I, Subchapter R (Nautical Schools) or Subchapter T (Small Passenger Vessels).

(11) "Upper Bay" means the waters of New York Harbor bounded by the following coordinates: From latitude 40°37'00" N. (0.65 nautical miles North of the Verrazano Bridge) to 40°42'00" N. (The Battery).

(12) "Vessel" includes every description of watercraft or other artificial contrivance, used or capable of being used, as means of transportation on the water, except "Public Vessels" and "Coast Guard Auxiliary Vessels".

(b) *Vessel Movement.* (1) Hell Gate, East River. From 8:00 a.m. until 1:00 p.m., July 3, 1986 the area north of latitude 40°46'00" N. and west of longitude 73°55'00" W. in the East River shall be restricted to one-way southbound traffic. No vessel shall transit this area northbound during this period (See chartlet V).

(2) Ambrose Channel, the Narrows and Upper Bay. From 10:00 a.m. until 1:00 p.m., July 3, 1986, no commercial vessel shall navigate in Ambrose Channel and the Narrows. From 11:30 a.m. until 4:00 p.m., 3 July, 1986, no commercial vessel shall navigate in the Upper Bay. This closure is to ensure the safe and orderly transit of U.S. and foreign naval vessels to assigned anchorages in the Upper Bay in preparation for the International Naval Review.

(3) Staging area, South of the Verrazano Bridge. From 6:00 a.m. until 1:00 p.m., July 4, 1986, no commercial or spectator vessel shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°33'30" N. longitude 74°02'00" W., thence to latitude 40°36'21" N., longitude 74°02'50" W., thence to latitude 40°36'33" N., longitude 74°02'11" W., thence to latitude 40°33'30" N. longitude 74°01'13" W., thence to the beginning point. (See Chartlet I).

(4) Upper Bay and Narrows. From 6:00 a.m. July 4, 1986, until 6:00 a.m., July 5, 1986, no commercial vessel shall navigate in the Upper Bay and Narrows without the permission of the Coast Guard Captain of the Port, New York.

(5) Hudson River. From 10:00 a.m. until 11:00 p.m., July 4, 1986, no commercial vessel shall navigate in the Hudson River from latitude 40°42'00" N. to latitude 40°54'00" N.

(6) Chapel Hill South Channel. From 6:00 a.m. until 12:00 p.m., July 4, 1986, no vessel except OPSAIL '86 vessels and assisting tugs shall navigate in Chapel Hill South Channel.

(7) Marine Parade route, Narrows. From 8:30 a.m. until 1:30 p.m., July 4, 1986, no vessel other than OPSAIL '86 vessels, naval vessels and assisting tugboats shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°36'21" N., longitude 74°02'51" W., thence to latitude 40°38'39" N., longitude 74°03'37" W., thence to latitude 40°38'39" N., longitude 74°03'21" W., thence to latitude 40°36'26" N., longitude 74°02'36" W., thence to the beginning point.

(8) Marine Parade Route, Upper Bay. From 10:00 a.m. until 2:30 p.m., July 4, 1986, no vessel other than OPSAIL 86 vessels, naval vessels and assisting tugboats shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°38'39" N., longitude 74°03'37" W., thence to latitude 40°39'23" N., longitude 74°03'25" W., thence to latitude 40°42'00" N., longitude 74°01'43" W., thence to latitude 40°42'00" N., longitude 74°01'25" W., thence to latitude 40°39'23" N., longitude 74°03'09" W., thence to latitude 40°38'39" N., longitude 74°03'21" W., thence to the beginning point.

(9) Marine Parade route south of George Washington Bridge, Hudson River. From 11:00 a.m. and until 6:00 p.m., July 4, 1986, no vessel except OPSAIL 86 vessels, naval vessels, and assisting tugboats shall navigate in the area bounded by the following coordinates: Beginning at latitude 40°42'00" N., longitude 74°01'43" W., thence to latitude 40°45'15" N., longitude 74°01'04" W., thence to latitude 40°47'38" N., longitude 74°59'33" W., thence along western edge of WEEHAWKEN-EDGEWATER CHANNEL to latitude 40°49'32" N., longitude 73°58'15" W., thence to latitude 40°50'18" N., longitude 73°58'28" W., thence to latitude 40°51'05" N., longitude 73°57'10" W., thence to latitude 40°51'02" N., longitude 73°57'55" W., thence to latitude 40°50'11" N., longitude 73°57'15" W., thence to latitude 40°49'24" N., longitude 73°58'02" W., thence to latitude 40°48'23" N., longitude 73°58'42" W., thence to latitude 40°45'14" N., longitude 74°00'47" W., thence to latitude 40°42'00" N., longitude 74°01'25" W., thence to the beginning point.

(10) Marine Parade Route North of George Washington Bridge, Hudson River. From 1:00 p.m. until 5:00 p.m., July 4, 1986, no vessel other than OPSAIL 86 vessels, naval vessels, and assisting tugboats shall navigate in the Hudson River from latitude 40°51'00" N., to latitude 40°53'00" N.

(11) Staten Island Ferries. The City of New York Department of Marine and Aviation ferries, while engaged in normal ferry service, are exempt from the requirements of paragraph (b)(2) of this section and from the requirements of paragraph (b)(4) from 6:00 a.m. to 8:30 a.m. and from 1:00 p.m. to 7:30 p.m. on July 4 and from 11:00 p.m. July 4 to 6:00 a.m. July 5, 1986.

(c) *Speed Limit.* (1) From 10:00 a.m. until 4:00 p.m., July 4, 1986, no vessel shall navigate in the Upper Bay and Narrows at a speed in excess of 8 knots, except by authorization of Captain of the Port, New York.

(2) From 11:00 a.m. until 8:00 p.m., July 4, 1986, no vessel shall navigate in the Hudson River from latitude 40°42'00" N., to latitude 40°53'00" N., at a speed in excess of 8 knots, except by authorization of Captain of the Port, New York.

(d) *Penalties.* Violators of these regulations shall be subject to the penalties provided in 33 U.S.C. 1236 and 33 CFR 100.50.

PART 110–ANCHORAGE REGULATIONS

3. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. In §110.155, paragraphs (c)(5), (d)(1) through (15), and (e)(1) are suspended for the period from 6:00 a.m. July 3, 1986 until 6:00 a.m. July 5, 1986.

5. In §110.155 paragraph (m)(3) is suspended for the period from 6:00 a.m. July 3, 1986 until 12:00 p.m. July 4, 1986.

6. In §110.155 a temporary paragraph (f)(1)(iii) is added to read as follows:

§110.155 Port of New York.

* * * * *

(f) * * *

(1) * * *

(iii) For the period from 6:00 a.m. July 3, 1986, until 12:00 p.m. July 4, 1986, the area enclosed by the following coordinates is excluded from Anchorage No. 26: Beginning at latitude 40°28'14" N., longitude 74°01'06" W., thence to latitude 40°28'05" N., longitude 74°02'24" W., thence to latitude 40°26'39" N., longitude 74°02'00" W., thence to latitude 40°26'39" N., longitude 74°01'00" W., thence to the beginning point.

* * * * *

7. A temporary §110.T301 is added to read as follows:

§110.T301 New York Harbor.

The following temporary anchorage grounds are established for the classes of vessels specified. (See Chartlet III). Mariners are cautioned that the areas designated as anchorage grounds have not been subject to any special survey or inspection and that charts may not show all sea-bed obstructions or the shallowest depths. In addition, the anchorages are in areas of substantial currents, and not all anchorages are over good holding ground. Mariners are advised to take appropriate precautions when using these temporary anchorages. These are not special anchorage areas. Vessels must display anchor lights required by the navigation rules. The anchorages in paragraphs (a) through (d) of this section require a permit from Captain of the Port, New York. The anchorages in paragraph (e) of this section do not require a permit and space in these anchorages will not be assigned. The definitions set forth in §100.35–323 apply to this section.

(a) *Governors Island Temporary Anchorage.* From 6:00 a.m. July 3, 1986, until 6:00 a.m., July 5, 1986, the area bounded by the following coordinates is established as a temporary anchorage for boats and spectator vessels greater than 100' LOA, and OPSAIL vessels: Beginning at latitude 40°40'46" N., longitude 74°01'58" W., thence to latitude 40°41'08" N., longitude 74°01'42" W., thence to latitude 40°40'57" N., longitude 74°01'28" W., thence to latitude 40°40'54" N., longitude 74°01'28" W., thence to latitude 40°40'47" N., longitude 74°01'34" W., thence along the shoreline to the beginning point.

(b) *Narrows Temporary Anchorage.* From 6:00 a.m. July 3, 1986 until 6:00 a.m., July 5, 1986, the area bounded by the following coordinates is established as a temporary anchorage for boats and spectator vessels greater than 100' LOA, and OPSAIL vessels: Beginning at latitude 40°38'20" N., longitude 74°02'14" W., thence to latitude 40°38'22" N., longitude 74°02'22" W., thence to latitude 40°38'00" N., longitude 74°02'40" W., thence to latitude 40°37'21" N., longitude 74°02'50" W., thence to latitude 40°36'30" N., longitude 74°02'24" W., thence to latitude 40°38'34" N., longitude 74°02'12" W., thence along the shoreline to the beginning point.

(c) *New Jersey Temporary Anchorage.* From 6:00 a.m. July 3, 1986, until 6:00 a.m., July 5 1986, the areas bounded by the following coordinates are established as a temporary anchorage for boats and spectator vessels greater than 100' LOA, and OPSAIL vessels:

(1) Beginning at latitude 40°40'04" N., longitude 74°03'04" W., thence to latitude 40°40'10" N., longitude 74°03'15" W., thence to latitude 40°39'40" N., longitude 74°03'36" W., thence to latitude 40°39'36" N., longitude 74°03'23" W., thence to the beginning point.

(2) Beginning at latitude 40°40'59" N., longitude 74°02'28" W., thence to latitude 40°41'09" N., longitude 74°02'50" W., thence to latitude 40°40'43" N., longitude 74°03'08" W., thence to latitude 40°40'24" N., longitude 74°03'24" W., thence to latitude 40°40'09" N., longitude 74°03'01" W., thence to the beginning point.

(d) *Bay Ridge Temporary Anchorage.* From 6:00 a.m. July 3, 1986, until 6:00 a.m., July 5, 1986, the area bounded by the following coordinates is established as a temporary anchorage for boats and spectator vessels greater than 100' LOA, and OPSAIL vessels: Beginning at latitude 40°40'22" N., longitude 74°01'35" W., thence to latitude 40°40'20" N., longitude 74°01'28" W., thence to latitude 40°39'49" N., longitude 74°01'23" W., thence to latitude 40°38'54" N., longitude 74°02'19" W., thence to latitude 40°39'03" N., longitude 74°02'26" W., thence to the beginning point.

(e) *Boat and Spectator Vessel Anchorages.* From 6:00 a.m. until 4:00 p.m., July 4, 1986, the naval vessels anchorages established by paragraph (g) of this section shall be available to boats and spectator vessels. Mariners are cautioned to anticiapte larger vessels swinging at anchor and to take appropriate precautions. From 6:00 a.m. July 3, 1986 until 6:00 a.m. July 5, 1986, the areas bounded by the following coordinates are established as anchorages for boats and spectator vessels:

(1) Beginning at latitude 40°39'28" N., longitude 74°03'43" W., thence to latitude 40°39'32" N., longitude 74°03'55" W., thence to latitude 40°39'28" N., longitude 74°04'10" W., thence to latitude 40°39'47" N., longitude 74°05'02" W., thence to latitude 40°39'20" N., longitude 74°04'57" W., thence to latitude 40°38'58" N., longitude 74°03'55" W., thence to the beginning point.

(2) Beginning at latitude 40°40'07" N., longitude 74°03'18" W., thence to latitude 40°40'16" N., longitude 74°03'39" W., thence to latitude 40°39'50" N., longitude 74°03'57" W., thence to latitude 40°39'40" N., longitude 74°03'36" W., thence to the beginning point.

(3) Beginning at latitude 40°41'09" N., longitude 74°02'50" W., thence to latitude 40°41'25" N., longitude 74°03'23" W., thence to latitude 40°40'33" N., longitude 74°03'35" W., thence to latitude 40°40'24" N., longitude 74°03'24" W., thence to latitude 40°40'43" N., longitude 74°03'08" W., thence to latitude 40°40'52" N., longitude 74°03'03"

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W., thence to latitude 40°40'56" N., longitude 74°03'07" W., thence to the beginning the point.

(f) *OPSAIL '86 Vessel Anchorages.* From 6:00 a.m. July 3, 1986 until 12:00 p.m. July 4, 1986, the area bounded by the following coordinates are established as temporary anchorages for OPSAIL '86 vessels:

(1) Gravesend Bay, beginning at latitude 40°36'03" N., longitude 74°00'52" W., thence to latitude 40°36'12" N., longitude 74°01'28" W., thence to latitude 40°35'58" N., longitude 74°02'19" W., thence to latitude 40°34'53" N., longitude 74°01'56" W., thence to latitude 40°34'40" N., longitude 74°01'03" W., thence to latitude 40°34'57" N., longitude 74°00'25" W., thence to the beginning point. (See Chartlet I).

(2) Sandy Hook Bay, beginning at latitude 40°28'31" N., longitude 74°01'43" W., thence to latitude 40°28'05" N., longitude 74°02'24" W., thence to latitude 40°28'39" N., longitude 74°02'00" W., thence to latitude 40°26'39" N., longitude 74°01'00" W., thence to latitude 40°27'50" N., longitude 74°01'06" W., thence to latitude 40°27'57" N., longitude 74°01'36" W., thence to the beginning point. (See Chartlet II).

(3) North of Naval Weapons Station Earle, beginning at latitude 40°28'33" N., longitude 74°03'02" W., thence to latitude 40°28'23" N., longitude 74°02'19" W., thence to latitude 40°27'47" N., longitude 74°02'42" W., thence to latitude 40°27'56" N., longitude 74°03'03" W., thence to thence to the beginning point.

(g) *Naval Vessel Anchorages.* From 6:00 a.m. July 3, 1986 until 6:00 a.m., July 5, 1986, the areas bounded by the following coordinates are established as temporary anchorages for naval vessels (See Chartlets III and IV):

(1) Beginning at latitude 40°38'37" N., longitude 74°03'49" W., thence to latitude 40°38'23" N., longitude 74°03'37" W., thence to latitude 40°36'26" N., longitude 74°02'57" W., thence to latitude 40°36'21" N., longitude 74°03'11" W., thence to latitude 40°37'30" N., longitude 74°04'04" W., thence to latitude 40°38'06" N., longitude 74°04'13" W., thence to the beginning point.

(2) Beginning at latitude 40°40'23" N., longitude 74°02'11" W., thence to latitude 40°40'22" N., longitude 74°01'36" W., thence to latitude 40°39'03" N., longitude 74°02'26" W., thence to latitude 40°38'44" N., longitude 74°02'30" W., thence to latitude 40°38'43" N., longitude 74°02'30" W., thence to latitude 40°38'03" N., longitude 74°02'49" W., thence to latitude 40°38'03" N., longitude 74°03'04" W., thence to latitude 40°38'38" N., longitude 74°03'16" W., thence to latitude 40°39'19" N., longitude 74°03'04" W., thence to latitude 40°40'19" N., longitude 74°02'26" W., thence to the beginning point.

(3) Beginning at latitude 40°45'18" N., longitude 74°01'14" W., thence to latitude 40°45'18" N., longitude 74°01'00" W., thence to latitude 40°41'55" N., longitude 74°01'41" W., thence to latitude 40°41'26" N., longitude 74°02'00" W., thence to latitude 40°41'41" N., longitude 74°02'29" W., thence to latitude 40°42'18" N., longitude 74°02'02" W., thence to the beginning point.

(4) Beginning at a point on the Manhattan shoreline at latitude 40°50'05" N., longitude 73°57'02" W., thence to latitude 40°50'11" N., longitude 73°57'15" W., thence to latitude 40°49'24" N., longitude 73°58'02" W., thence to latitude 40°48'23" N., longitude 73°58'42" W., thence to latitude 40° 46'56"N., longitude 73°59'42" W., thence to latitude 40°46'48" N., longitude 73°59'23" W., thence following the shoreline to the beginning point.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

8. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04.1, 6.04–6, and 160.5.

9. Part 165 is amended by adding temporary §§ 165.T388 and 165.T389 to read as follows:

§ 165.T388 Safety Zone: New York Upper Bay, Statue of Liberty.

(a) *Location.* The following area is a safety zone: Beginning on the shoreline at latitude 40°41'25" N., longitude 74°03'23" W.; thence to 40°41'51" N., longitude 74°03'00" W.; thence to latitude 40°41'25" N., longitude 74°02'27" W.; thence to latitude 40°41'02" N., longitude 74°02'50" W.; thence to latitude 40°41'09" N., longitude 74°02'50" W.; thence to the beginning point. (See Chartlet VI.)

Effective Date. This section becomes effective on July 3, 1986 at 8:00 a.m. It terminates on July 4, 1986 at 11:00 p.m.

(c) *Regulation:* (1) In accordance with the general regulations in Section 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(2) Persons violating this regulation are subject to a civil penalty not to exceed $25,000 or a criminal penalty of imprisonment for not more than five years or a fine of not more then $50,000, or both.

§ 165.T389 Safety Zone: New York Upper Bay, The Battery.

(a) *Location.* The following area is a safety zone: Beginning on the shoreline at the base of pier 13 East River thence along the Manhattan shoreline to latitude 40°43'13" North, longitude 74°01'01' W., thence across the Hudson River to the Pier K Latitude 40°43'17" North, Longitude 74°01'48" W., thence along the pierhead line to the tower at latitude 40°42'23" N., longitude 74°02'05" W., thence to a point on the Governors Island shoreline at latitude 40°41'35" N., longitude 74°01'12" W., thence east along the Northern shoreline to the ventilator at latitude 40°41'32" N., longitude 74°00'43" W., thence to the Southwest corner of pier 5, Brooklyn; and thence along the shoreline to Northwest corner pier 3, Brooklyn and thence across East River to Southeast corner of pier 13, Manhattan. (See Chartlet VI).

(b) *Effective Date.* This section becomes effective on July 4, 1986 at 7:00 p.m. It terminates on July 4, 1986 at 11:00 p.m.

Regulation: (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, New York.

(2) Persons violating this regulation are subject to a civil penalty of not to exceed $25,000 or a criminal penalty of imprisonment for not more than five years or a fine of not more then $50,000, or both.

Dated: January 31, 1986.

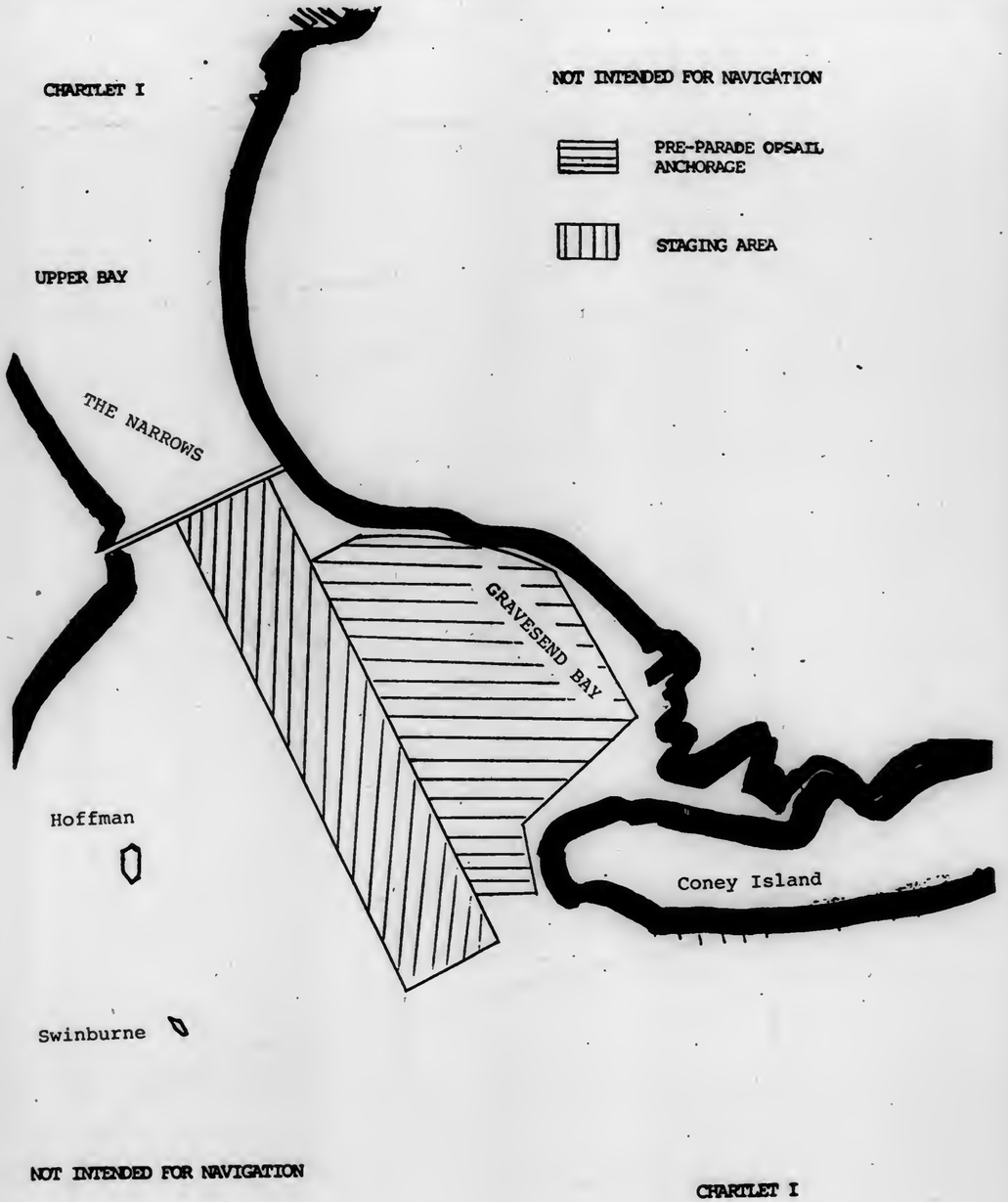
Paul A. Yost,

Vice Admiral, United States Coast Guard Commander, Third Coast Guard District.

Appendix A

Chartlet I—Gravesend Bay, Anchorage and Staging Area
Chartlet II—Sandy Hook Bay, Anchorages
Chartlet III—Upper New York Bay, Anchorages and Parade Route
Chartlet IV—Upper New York Bay and Hudson River, Parade Route
Chartlet V—East River, One Way Traffic Area
Chartlet VI—Upper New York Bay, Fireworks Safety Zones

BILLING CODE 4910-14-M



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CHARTLET II

NOT INTENDED FOR NAVIGATION

CHAPEL HILL SOUTH CHANNEL

OPSAIL VESSEL ANCHORAGE

SANDY HOOK

SANDY HOOK BAY

CHARTLET II

NOT INTENDED FOR NAVIGATION

CHARTLET III

NOT INTENDED FOR NAVIGATION

NEW JERSEY

MANHATTAN

BROOKLYN

NAVAL ANCHORAGES

OPSAIL PARADE ROUTE

SPECTATOR ANCH. LESS THAN 100 FT.

SPECTATOR ANCH. LESS THAN 100 FT.

STATEN ISLAND

VERRAZANO BRIDGE

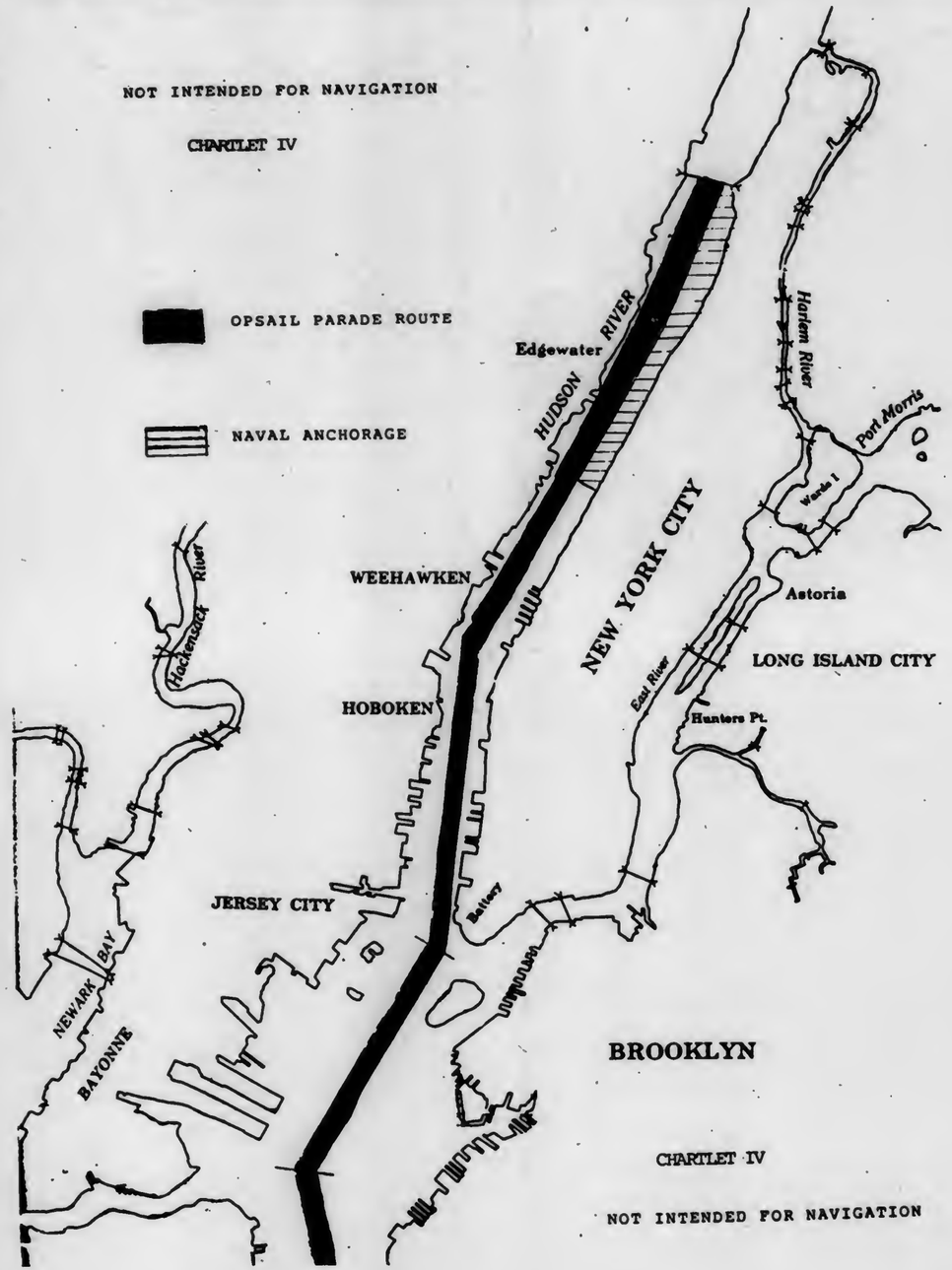
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NOT INTENDED FOR NAVIGATION

CHARTLET IV

OPSAIL PARADE ROUTE

NAVAL ANCHORAGE

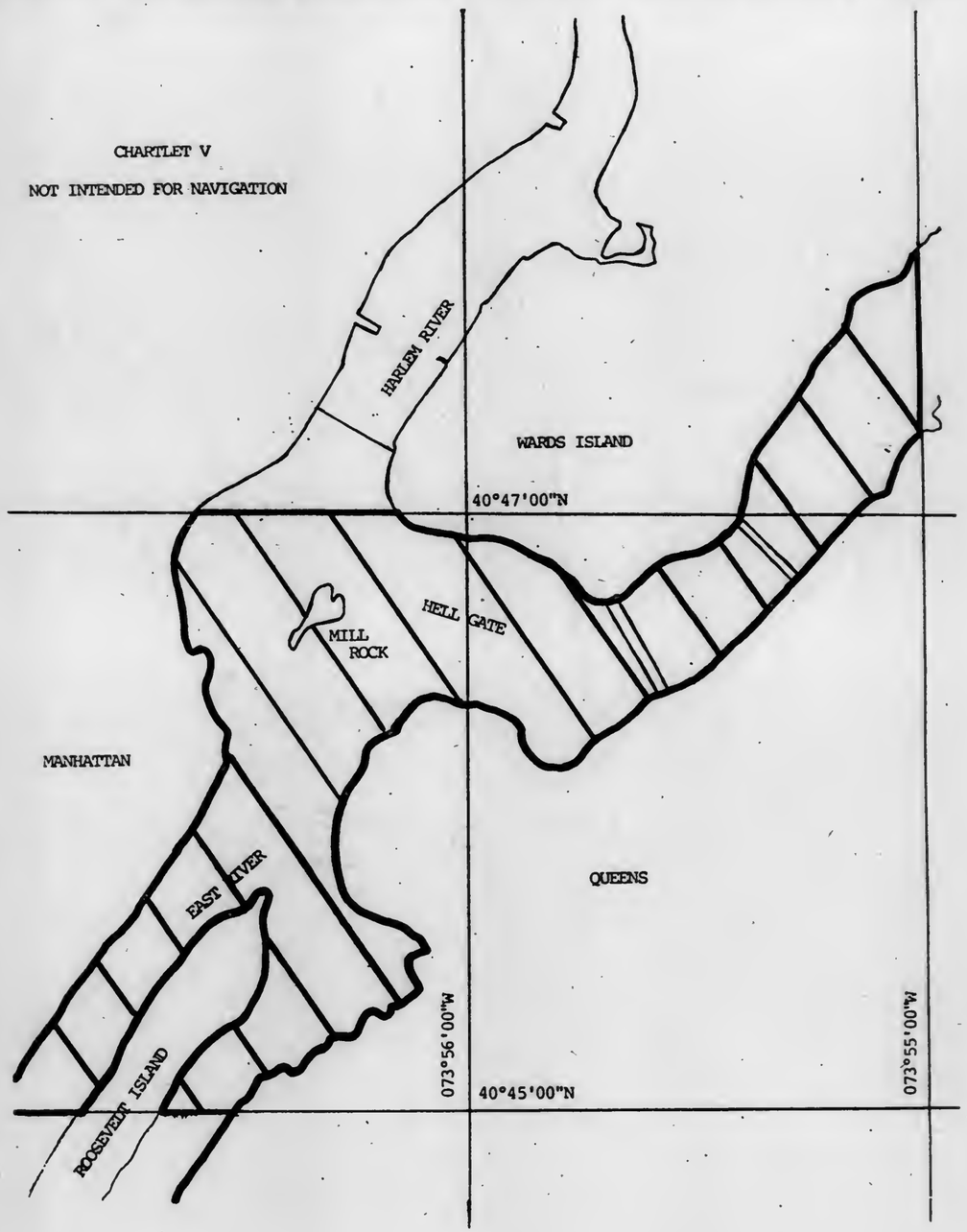


CHARTLET IV

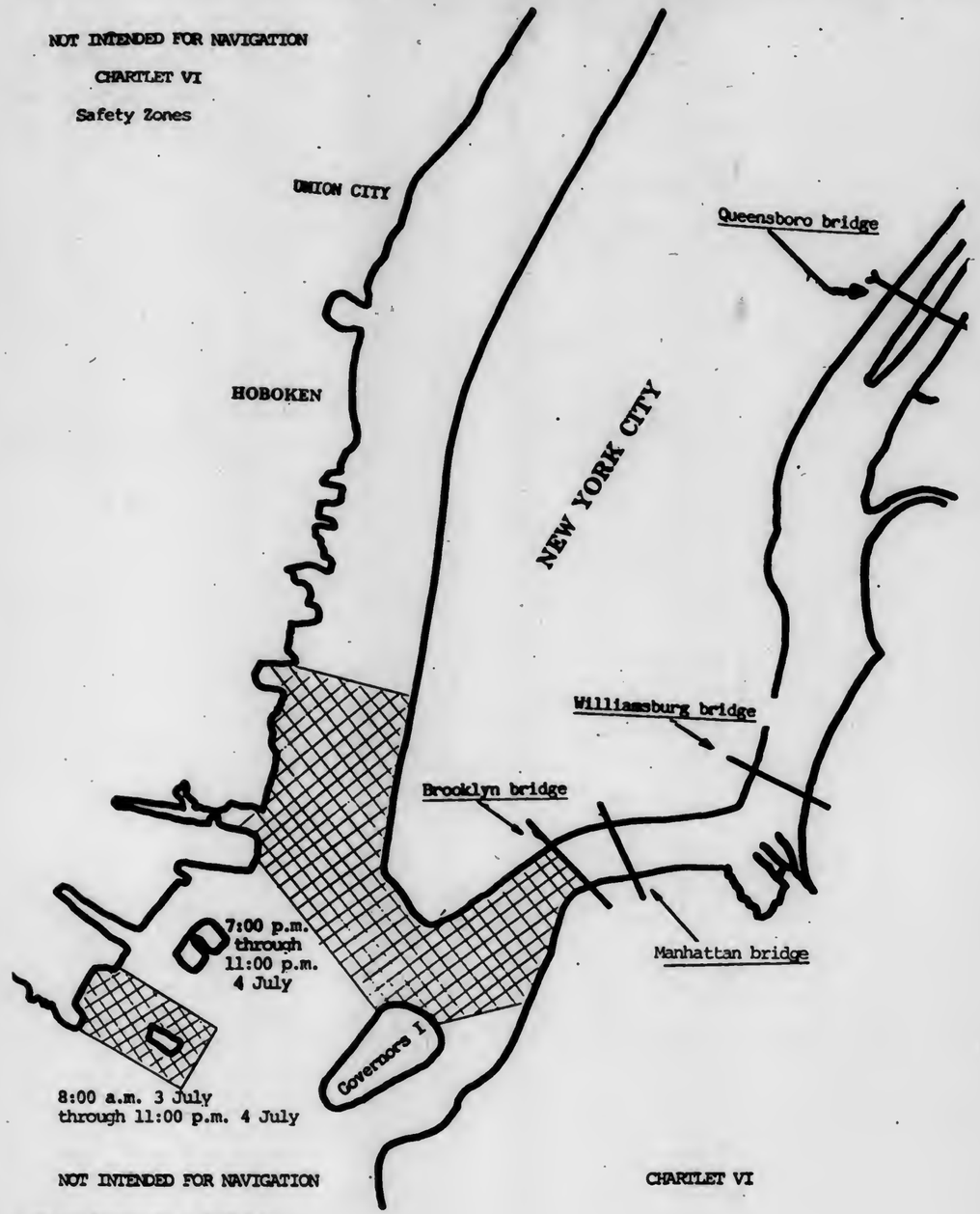
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CHARTLET V

NOT INTENDED FOR NAVIGATION



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[FR Doc. 86-3215 Filed 2-18-86; 8:45 am]
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federal register

Wednesday
February 19, 1986

Part III

Department of Agriculture

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1986; Proposed Solicitation of Applications; Notice

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VOL 51 ISS 33 FE 19 1986 UMI

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Rangeland Research Grants Program for Fiscal Year 1986; Proposed Solicitation of Applications

This is a proposed solicitation. The Cooperative State Research Service (CSRS), U.S. Department of Agriculture, intends to propose to administer a Rangeland Research Grants Program in accordance with the administrative provisions set forth in 7 CFR Part 3400 (with certain portions excluded). A proposed rule to this effect will be published in the **Federal Register**. Upon issuance of a final rule, a final solicitation will be published in the **Federal Register** containing a firm deadline date for submission of proposals. This proposal solicitation is issued to alert potential applicants of the existence of this program and to inform them that a relatively short period of time will be provided for submission of such proposals after issuance of a final solicitation. Both this proposed solicitation and the final solicitation will be distributed to those currently on the mailing list maintained for this program by Grants Administrative Management, Office of Grants and Program Systems, U.S. Department of Agriculture.

Accordingly, subject to any changes which may occur in the underlying regulations, it is proposed that the solicitation for the Rangeland Research Grants Program read as follows:

Notice is hereby given that under the authority contained in section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), the Cooperative State Research Service (CSRS) of the United States Department of Agriculture (USDA) anticipates awarding standard project grants for basic studies in certain areas of rangeland research. The total amount expected to be available for this program during fiscal year 1986 is approximately $476,000. No more $80,000 will be awarded for the support of any one project, regardless of the amount requested. The award of any grant is contingent upon the availability of funds.

Under this program, the Secretary may award grants to land-grant colleges and universities, State agricultural experiment stations, and to colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research. Except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. Proposals received from scientists at non-United States organizations or institutions will not be considered for support.

Applicable Regulations

This program is subject to the provisions found at 7 CFR Part 3401. (For purposes of this program, CSRS proposes to add a new Part 3401 which will cross-reference the Administrative Provisions governing the Special Research Grants Program, 7 CFR Part 3400 (excluding the following portions: §§ 3400.1, 3400.3(a), the last sentence of § 3400.4(c)(11), the parenthetical phrase in the last sentence of §§ 3400.7(c), 3400.7(d)(1), 3400.7(d)(2), and 3400.7(d)(3)), found at 50 FR 5497, February 8, 1985.) These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and regulations relating to the post-award administration of grant projects. Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program shall not be subject to reduction for indirect costs or for tuition remission; therefore, funds should not be requested for these costs. In addition, USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015, as amended will apply to this program.

How to Obtain Application Materials

Copies of this proposed solicitation, the Research Grant Application Kit, and the proposed Administrative Provisions for this program, 7 CFR Part 3401, may be obtained by writing to the address or calling the telephone number which follows:

Proposal Services Unit, Grants Administrative Management, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251, Telephone Number (202) 475–5048.

What to Submit

An original and nine copies of each proposal submitted under this program are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made. In addition to other required forms and certifications included in the Research Grant Application Kit, an original and nine copies of Form S&E–661, "Grant Application," are requested. Proposers should submit the original copy of this form which must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative.

All copies of each proposal must be mailed in one package. Please see that each copy of each proposal is *stapled securely* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the Application Requirements checklist contained in the Research Grant Application Kit and instructions found in 7 CFR Part 3401. If applicable, the research grant proposal must state that the 50 percent non-Federal funding requirement will be met.

Where and When to Submit Grant Applications

Each research grant application must be submitted to: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, Justin Smith Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251.

To be considered for funding during Fiscal Year 1986, proposals must be postmarked by May 15, 1986. (This is an estimated deadline only. The final solicitation will contain the actual date for submission of proposals. Interested parties should use this proposed solicitation to begin preparing their proposals. *It is expected that the final solicitation will allow only 30 days for applicants to prepare and submit proposals.*) One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Specific Areas of Research to be Supported in Fiscal Year 1986

Standard project grants will be awarded to support basic research in certain areas of rangeland research. Proposals will be considered in the following specific areas: (1) Management of rangelands and agricultural land as integrated systems for more efficient utilization of crops and waste products in the production of food and fiber; (2) methods of managing rangeland watersheds to maximize efficient use of water and improve water yield, water quality, and water conservation, to protect against onsite and offsite damage to rangeland resources from floods, erosion and other

detrimental influences, and to remedy unsatisfactory and unstable rangeland conditions; and (3) revegetation and rehabilitation of rangelands including the control of undesirable species of plants.

If necessary, further information may be obtained by calling Wayne K. Murphey, CSRS–USDA; telephone: (202) 447–2044.

Supplementary Information

For reasons set forth in the Final rule-related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0525–0001.

Done at Washington, D.C., this 12th day of February 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86–3537 Filed 2–18–86; 8:45 am]

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federal register

Wednesday
February 19, 1986

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Utah; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements; Utah

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to adopt a cooperative agreement between the Department of the Interior and the State of Utah for the regulation of surface coal mining and reclamation operations and certain coal exploration operations on lands subject to the Federal lands program in Utah. Such a cooperative agreement is provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977. This proposed rule provides the proposed terms of the cooperative agreement and additional information on other issues.

DATES: Written Comments: OSMRE will accept written comments on the proposed rule until 5:00 p.m. eastern time on March 21, 1986.

Public Hearing: Upon request, OSMRE will hold a public hearing on the proposed rule on March 13, 1986, beginning at 9:00 a.m. local time. The public hearing will be held at the location shown in **"ADDRESSES"** below.

OSMRE will accept requests for a public hearing until 5:00 p.m. eastern time on March 6, 1986. If no person has contacted OSMRE by that date to express an interest in testifying at the hearing, it will not be held.

ADDRESSES: *Written Comments:* Mail to the Office of Surface Mining, Administrative Record, Room 5315–L, 1951 Constitution Avenue, NW., Washington, D.C. 20240; or hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315–A, 1100 L Street, NW., Washington, D.C.

Public Hearing: If requested, a public hearing will be held at the Utah Division of Oil, Gas and Mining, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, Utah 84180–1203.

Requests for a public hearing should be made by contacting the individual listed under **"FOR FURTHER INFORMATION CONTACT."**

Availability of Copies: Copies of the proposed agreement and the related information required under 30 CFR Part 745 are available for inspection Monday through Friday, 8:30 a.m. to 4 p.m., excluding holidays, at the following addresses:

Utah Division of Oil, Gas and Mining, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, Utah, 84180–1203

Office of Surface Mining, Technical Center West, Brooks Towers, 1020 15th Street, Denver, Colorado 80202

Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sharon Kliwinski, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–7930.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. The State of Utah's Application
III. Summary of the Terms of the Proposed Cooperative Agreement
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments on the proposed agreement should be specific, should be confined to issues pertinent to the agreement, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) may not be considered or included in the Administrative Record for the final rule.

Public Hearing

The hearing will begin at 9:00 a.m. and continue until all persons then in attendance wishing to testify have been heard. The hearing will be transcribed by a court reporter. To assist the court reporter and to ensure an accurate record, OSMRE requests that persons who testify give the reporter a written copy of their testimony. To assist OSMRE in preparing appropriate questions to clarify issues, OSMRE also requests that persons planning to testify submit an advance copy of their testimony to the OSMRE address for submission of written comments (see **"ADDRESSES"**).

Persons interested in attending the hearing but not testifying should contact the individual listed under **"FOR FURTHER INFORMATION CONTACT"** prior to the scheduled hearing date to see if the hearing has been cancelled.

Public Meetings

Representatives of OSMRE will be available to meet during the comment period at the request of members of the public to receive their recommendations and comments concerning the proposed cooperative agreement. Persons wishing to schedule or attend such meetings, should contact the individual listed under **"FOR FURTHER INFORMATION CONTACT."** OSMRE representatives will be available for these meetings between 9 a.m. and 4 p.m. local time, Monday through Friday, excluding holidays. All such meetings will be open to the public. Notices of such meetings and where they will be held will be posted in advance in the Administrative Record Room, Room 5315, 1100 L Street, NW., Washington, D.C. 20005.

Contacts With State Representatives

The Department has previously announced (45 FR 58378, September 3, 1980) its intention to follow the "Guidelines for Contacts with Employees and Officials During Consideration of State Permanent Regulatory Programs" published at 44 FR 54444 (September 19, 1979), during the process of developing cooperative agreements with the States. As written, the guidelines apply only to the State program review and decision process under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or Act). However, the Department believes that the guidelines should also be applied in the development of State-Federal permanent program cooperative agreements because of the close interrelationship between each cooperative agreement and the approved State program. The need to preserve the ability of the Department and the State to work together through the stages of the cooperative agreement and the right of the public to be informed and to have the opportunity to comment meaningfully on issues raised are principles applicable to permanent program cooperative agreement rulemakings.

This decision requires that minor changes in the guidelines be made to clarify their applicability to cooperative agreement rulemakings. Accordingly, revised guidelines for contacts with Department employees and officials during permanent program cooperative agreement rulemakings are given below. See the notice of September 19, 1979, 44 FR 54444, for a full discussion of the guidelines and supporting principles. The September 19, 1979, guidelines remain fully applicable to the State program review process.

1. Upon request the Department will meet with any member of the public through the end of the public comment period. Notices of scheduled meetings will be posted in a public place. The meetings will be open.

2. The Department will meet the State representatives or have telephone conversations with them, upon the initiative of either party, up to the point of the Secretary's decision to enter into a permanent program cooperative agreement with a State. These meetings will be open to the public unless the Department decides an executive session is appropriate. Advance notice of scheduled meetings will be posted in a public place. Notice of the executive session will be posted in a public place.

3. The Department will keep a summary record of all meetings and discussions, whether in person or by telephone, on a proposed cooperative agreement. This record will include a summary of the discussion and a list of all written information OSMRE receives. All such records along with all written communications relating to the cooperative agreement shall be made available to the public.

4. In those instances where the Department has conducted meetings or discussions with a State after the close of the public comment period, the Department will include summaries of the meetings in the record and, if necessary to assure an effective opportunity for public participation, provide an opportunity for the public to review the record of such meetings and discussions and to comment on them before a decision is made to enter into a permanent program cooperative agreement.

II. The State of Utah's Application

The purpose of this proposed rulemaking is to adopt a permanent program cooperative agreement between the Department of the Interior and the State of Utah which will give Utah primacy in the administration of its approved permanent regulatory program on lands subject to the Federal lands program in the State.

Section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR Part 745, allow a State and the Secretary of the Interior to enter into a permanent program cooperative agreement if the State has an approved State program for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands. Permanent program cooperative agreements are authorized by the first sentence of section 523(c), which provides that [a]ny State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provision of this Act. 30 U.S.C. 1273(c).

On March 3, 1980, Utah submitted its proposed permanent regulatory program. The Secretary reviewed and partially approved and partially disapproved the permanent regulatory program on October 24, 1980 (45 FR 47481). Utah resubmitted its program on December 23, 1980. The Secretary conditionally approved the Utah program on January 21, 1981 (46 FR 5899). The State has operated under Funding Cooperative Agreements with OSMRE since January 21, 1981.

Utah submitted a proposed permanent program cooperative agreement as part of its March 3, 1980, proposed permanent program submission. On February 3, 1982, Utah submitted a revised permanent program cooperative agreement.

OSMRE proposed the Utah cooperative agreement in a notice published in the **Federal Register** on March 31, 1982 (47 FR 13738). That notice announced that a public comment period would close on June 1, 1982, and tentatively scheduled a public hearing for May 13, 1982. Because no one asked to testify at the hearing, it was cancelled on May 10, 1982 (47 FR 20002).

OSMRE completed its first interim oversight report in March 1982. In October 1982, OSMRE completed a formal evaluation of the Utah program, recommending changes to improve performance of permitting, inspection, and enforcement responsibilities. OSMRE deferred further action on the cooperative agreement until those changes were implemented.

Under new management, the State revised or established new procedures in implementing its program. OSMRE reevaluated the State's progress in resolving problems through its FY 85 oversight evaluation of the State program. On the basis of that annual report, OSMRE determined that the State had substantially resolved earlier concerns.

On April 4, 1984, the State of Utah submitted a revised permanent program cooperative agreement which is the subject of this proposed rulemaking.

Sections 745.11(b) (1) through (8) of OSMRE's regulations require that certain information be submitted with a request for a permanent program cooperative agreement, if the information has not previously been submitted in the State program. The State of Utah submitted an initial draft of a proposed permanent program cooperative agreement and the supporting information required by 30 CFR 745.11(b) on March 3, 1980. Most of the information relating to the budget, staffing, organization and duties of the State regulatory authority, the Utah Division of Oil, Gas and Mining (DOGM), was described in Utah's Proposed Permanent Coal Program Text. See 30 CFR 745.11(b) (1), (2), (3), (4), (5), and (6). In addition, the State of Utah submitted a written certification from the Attorney General of the State of Utah that no State statutory, regulatory or other legal constraint exists which would limit the capability of the Department of Natural Resources, acting through DOGM, to fully comply with section 523(c) of the Act, as implemented by 30 CFR 745. See 30 CFR 745.11(b)(3).

III. Summary of the Terms of the Proposed Cooperative Agreement

A summary of the proposed cooperative agreement appears below. OSMRE emphasizes that the proposed permanent program agreement is subject to further change because of public comments and/or further discussion with the State of Utah.

The nature and extent of the Secretary's ability to delegate authority for surface coal mining operations on Federal lands to States through cooperative agreements was a subject of a recent Federal District Court opinion in *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144 (D.D.C.; July 6, 1984). The Utah cooperative agreement proposed here is consistent with that opinion and delegates the Secretary's authority under SMCRA which is required to be covered under the Federal lands program and retains the Secretary's non-delegable responsibilities under the Mineral Leasing Act.

Although OSMRE has not yet amended the scope of the Federal lands program, 30 CFR Subchapter D, to be consistent with the District Court decision, this agreement encompasses the salient features of that decision. If changes to the Federal lands program are adopted which are not covered by this agreement, OSMRE and the Secretary will promptly initiate the steps necessary to conform the agreement.

Article I: Introduction, Purposes, and Responsible Agencies

Paragraph A of Article I would set forth the legal authority for the Utah Cooperative Agreement (Agreement), which is provided by section 523(c) of

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the Surface Mining Control and Reclamation Act (Federal Act or Act). This paragraph would state that the Agreement provides for State regulation of coal exploration operations not subject to 43 CFR Parts 3480–3487 and surface coal mining and reclamation operations in Utah on lands subject to the Federal lands program. Paragraph B would set out the purposes of the Agreement.

Coal exploration prior to commencement of mining would be handled by the Bureau of Land Management in accordance with their regulations. Background and application procedures for exploration after commencement of mining within an approved permit area would be handled by the State.

Paragraph C would name the Utah Division of Oil, Gas and Mining (DOGM) as the agency responsible for administering the Agreement on behalf of the Governor of Utah (Governor), and the Office of Surface Mining Reclamation and Enforcement (OSMRE) as the agency responsible for administering the Agreement on behalf of the Secretary of the Department of the Interior (Secretary).

Article II: Effective Date

Article II would provide that after it has been signed by the Secretary and the Governor, the Agreement would become effective 30 days after publication as a final rule in the **Federal Register**. It would remain in effect until terminated as provided in Article XI.

Article III: Definitions

Article III would provide that any terms and phrases used in the Agreement have the same meanings as set forth in the Federal and State Acts, regulations promulgated pursuant to those Acts, 30 CFR Parts 700, 701 and 740, and the approved State program (Program). Defining terms and phrases in this manner would ensure consistency between applicable regulations and the Agreement. Where there are conflicts in definitions, those included in the State Program would apply, except where the term being defined relates to those responsibilities of the Secretary that cannot be assumed by the State under the Agreement.

Article IV: Applicability

Article IV would state that the laws, regulations, terms, and conditions of Utah's approved State program are applicable to lands in Utah subject to the Federal lands program except as otherwise stated in the Agreement, the Federal Act, 30 CFR 740.4 and 745.13, and other applicable laws, Executive Orders, or regulations. This provision is consistent with the Federal lands program, which made the Utah State program Federal law on all Federal lands in Utah.

The reference to the Utah State Program is intended to encompass the approval of that State program on January 21, 1981, and any amendments thereto which are approved in accordance with 30 CFR 732.17. Excluded from the scope of the Agreement are the authorities and responsibilities reserved to the Secretary pursuant to the Act, 30 CFR 740.4 and 745.13 and other applicable laws, Executive Orders, or regulations.

Article V: General Requirements

Article V would mutually bind the Governor and the Secretary to the provisions of the Agreement.

Paragraph A would require that DOGM continue to have authority under State law to carry out the Agreement.

Paragraph B (Funds) would provide that upon application for funds the State shall be reimbursed by OSMRE pursuant to section 705(c) of the Act if necessary funds have been appropriated to OSMRE by Congress. Section 705(c) of the Act provides that a State with a cooperative agreement may receive an increase in its annual grant for the development, administration and enforcement of a State program on Federal lands by an amount which the Secretary determines is approximately equal to the amount the Federal government would otherwise have expended to regulate surface coal mining and reclamation operations on the Federal lands within the State. See 30 U.S.C. 1285(c). The reference in section 705(c) to section 523(d) is obviously a typographical error; the correct reference is section 523(c). The regulations implementing section 705(c) appear at 30 CFR 735.16 through 735.26.

If, when requested by the State, adequate funds have not been appropriated, OSMRE and the DOGM would meet and decide on appropriate measures to ensure that mining operations are regulated in accordance with the approved State program. Any funds granted to the State pursuant to the Agreement would be reduced by the amount of any fees collected by the State that are attributable to the Federal lands covered by the Agreement, in accordance with the Office of Management and Budget (OMB) Circular A–102 (Uniform Requirements for Assistance to State and Local Governments), Attachment E (Program Income).

Paragraph C of Article V would require the State to make annual reports to OSMRE with respect to compliance with this Agreement. Paragraph C would also provide for a general exchange of information developed under the Agreement, unless such an exchange is prohibited by Federal law. Final evaluation reports prepared by OSMRE on State administration and enforcement of this Agreement would be provided to DOGM. The Agreement would require that DOGM's comments on the report be appended before being sent to Congress and other interested parties.

Paragraph D would require DOGM to maintain the necessary personnel to fully implement this Agreement.

Paragraph E would require that DOGM avail itself of the facilities necessary to carry out the requirements of the Agreement. This provision would ensure that the State has access to and would utilize any resources necessary to conduct inspections, investigations, studies, tests, and analyses required to fulfill the requirements of this Agreement.

Paragraph F of Article V concerns permit application fees and civil penalties. Permit fees would be determined according to 40–10–6(5), Utah Code Annotated 1953 as amended, section 771.25 of the State regulations, and the applicable provisions of the State program and Federal law. Permit fees would be considered program income and the State would retain all fees from operations on Federal lands and deposit them with the State Treasurer. The State would report the amount of these fees in the financial status report required under 30 CFR 735.26. State funding (under paragraph B of Article V) would be reduced by the amount collected from mining on Federal lands. Civil penalties or fines collected by the State would not be considered program income and would be deposited into a State abandoned mine fund.

Readers should be aware that OSMRE has recently proposed rules governing the collection of fees for certain activities related to the review of permits and mining plans. (50 FR 7522; February 22, 1985). As proposed, the permit fee rule would involve recovery by the Department of costs incurred by the Department; it would not affect fees charged by the State. Should the final permit fee rule require modification of any cooperative agreement. OSMRE will propose appropriate changes in the **Federal Register**.

Article VI: Review of a Permit Application Package

Paragraphs A through C of Article VI would generally describe the procedures that the State and OSMRE would follow in the review and analysis of permit application packages for operations subject to the Federal lands program.

Under paragraph A, an applicant proposing to conduct surface coal mining and reclamation operations and activities on lands subject to the Federal lands program would be required by DOGM and the secretary to submit a permit application package (PAP) in an appropriate number of copies to DOGM and OSMRE. "Permit application package" is a term adopted by OSMRE in the Federal lands program (48 FR 6912, February 16, 1983). It is the material submitted by an applicant proposing to mine on Federal lands, including permit revisions and renewals.

OSMRE adopted the term because there are requirements for mining on Federal lands in addition to those required by a permit application under the approved State program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency under Federal laws other than the Act. The package concept allows for such information to be included with the permit application required by the approved State program. See the definition of "permit application package" under 30 CFR 740.5.

The PAP would be in the form required by DOGM and include any supplemental information required by OSMRE or the Federal land management agency. At a minimum, the PAP would be required to satisfy the requirements of 30 CFR 740 and must include the information necesary for DOGM to make a determination of compliance with the approved State program and appropriate Federal agencies to make determinations of compliance with applicable requirements of other Federal laws and regulations for which they are responsible.

Paragraph B of Article VI would describe the procedures that DOGM and OSMRE will follow in review of a PAP where leased Federal coal is not involved.

Under Paragraph B.1., DOGM would assume the responsibilities listed in 30 CFR 740.4(c) (1), (4), (5), (6), and (7) where a PAP does not involve leased Federal coal.

Paragraph B.2. would assign to DOGM the primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP. DOGM would also be the principal contact for the applicant on issues concerned with the development, review and approval of the permit application package or an application for permit revision or renewal for mining on lands in Utah subject to the Federal lands program and would be responsible for informing applicants of determinations.

Under paragraph B.3., DOGM would request that OSMRE determine whether the proposed mining operation is limited or prohibited under section 522(e) (1) or (2) of the Act. Under 30 CFR 740.4(a)(4), the Secretary remains responsible for determining valid existing rights (VER) for surface coal mining operations on Federal lands within the boundaries of any area specified under section 522 (e) (1) or (e) (2) of the Act. In accordance with the July 6, 1984, and March 22, 1985, opinions in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1984 and 1985), the Secretary will also perform VER determinations for proposed surface coal mining operations within section 522(e)(1) areas affecting the Federal interest within such areas.

OSMRE would make its non-delegable determinations under the Act such as those of Section 522(b). OSMRE would also obtain the views of other Federal agencies that would be affected by operations proposed under the PAP.

Under paragraph B.4., DOGM would receive, upon request, assistance from OSMRE. OSMRE would be responsible for forwarding any information from applicants to DOGM. Any information in DOGM files concerning operations on lands subject to the Federal lands program would be available to OSMRE. The Secretary would reserve the right to act independently of DOGM and to carry out responsibilities under laws other than the Act.

Under paragraph B.5., DOGM would review the PAP for compliance with the Program and State laws and regulations.

Paragraph B.6., would require DOGM to include in a permit any terms or conditions imposed by the Federal land management agency and would require that the requirements of that agency be met. The permit would also be required to include the terms and conditions required by other applicable Federal laws and regulations. DOGM would give written notification to the Federal land management agency, the applicant, and OSMRE of decisions and findings on the PAP.

Paragraph C of Article VI discusses review procedures for PAP's where leased Federal coal is involved and, consequently, where the Secretary must make a decision on a mining plan.

Under paragraph C.1., DOGM would have lead responsibility for analysis and review of the permit application part of the PAP for mining such coal. The Department would retain those responsibilities that cannot be delegated to the State, including those under the Mineral Leasing Act (MLA) and the National Environmental Policy Act (NEPA). Working agreements between OSMRE and DOGM, with concurrence of any Federal agency involved, would specify those additional responsibilities that DOGM may assume.

Paragraph C.2. would designate DOGM as the primary contact for applicants in matters regarding the PAP. As such, DOGM would inform the applicant of all joint State-Federal determinations. DOGM would provide OSMRE with any information regarding the PAP, and OSMRE would in turn, provide DOGM with information affecting decisions on PAPs. OSMRE would not ordinarily contact the applicant regarding the PAP, although there is no prohibition against doing so.

Under paragraph C.3., the responsibilities of OSMRE and DOGM in reviewing PAP's involving Federal coal would be as follows: DOGM would take on the responsibilities in 30 CFR 740.4(c) (1), (4), (5), (6), and (7); OSMRE would retain the responsibilities in 30 CFR 740.4(c) (2) and (3) and the exceptions in 30 CFR 740.4(c)(7) (i) through (vii).

OSMRE would assist the State by coordinating the review of the PAP between those Federal agencies involved. OSMRE would request that the involved Federal agencies submit their findings or any requests for additional data to OSMRE within 45 days of receiving the PAP. OSMRE would then provide DOGM with these findings. OSMRE would further assist the State by addressing conflicts with the involved Federal agencies and by helping to schedule meetings between the agencies and the State.

OSMRE would exercise its responsibilities in a timely manner and would provide DOGM with a work product within 50 days of receiving the State's request for assistance in reviewing the permit application. Also, OSMRE would be responsible for Federal lessee protection bond requirements.

Paragraph C.4. would describe the procedures that OSMRE and the State would follow in reviewing the PAP. OSMRE and DOGM would coordinate their activities and exchange information during the review process. The State would review the PAP to ensure compliance with the Program and

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State law and regulations, while OSMRE would review the PAP to ensure compliance with the non-delegable responsibilities of the Act and other Federal laws and regulations. Review of the MLA mining plan would include review of the operation and reclamation plan component of the SMCRA permit application to ensure that it complies with the Surface Mining Act. OSMRE and the State would plan and schedule PAP review and each would choose a project leader, who would serve as the primary points of contact for both during the review process. OSMRE would provide the State with its review comments within 50 days of receiving the PAP.

The State would prepare a State decision package indicating whether the PAP complies with the Program. The review and finalization of the State's decision package would be conducted in accordance with procedures agreed upon by DOGM and OSMRE for processing PAPs.

DOGM could issue a SMCRA permit before the necessary Secretarial approval. However, DOGM must advise the operator that Secretarial approval of the mining plan must be obtained before the operator enters the Federal lease. The permit issued by the State would be required to include the terms and conditions required by the lease and those required by other applicable Federal laws and regulations.

Paragraph D of Article IV addresses review procedures for permit revisions, amendments, or renewals.

Paragraph D.1 would assign to DOGM the authority to review, approve or disapprove permit revisions, amendments of renewals not constituting modifications of a mining plan. DOGM must consult with OSMRE on whether any permit revision, amendment, or renewal constitutes a mining plan modification. OSMRE would inform DOGM within 30 days of receiving a copy of the permit revision, renewal, or amendment as to such a decision. Where approval of a mining plan modification in required, OSMRE and DOGM would follow the procedures outlined in paragraphs C.1 through C.4. of this Article.

Under paragraph D.2., OSMRE may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions, amendments, or renewals clearly do not constitute mining plan modifications. Those meeting the criteria may be approved by DOGM prior to contacting OSMRE.

Under Paragraph D.3., permit revisions, renewals, or amendments not constituting mining plan modifications and meeting the criteria outlined in paragraph D.2. would be reviewed and approved or disapproved by the State following the procedures outlined in paragraph B of this Article.

Article VII: Inspections

Article VII would specify that DOGM must conduct inspections on lands covered by this Agreement and prepare and file State inspection reports in accordance with its approved Program.

Paragraph C designates DOGM as the point of contact and primary inspection authority in dealing with the operator. However, the Department would retain the right to conduct inspections of surface coal mining and reclamation operations covered by the Federal lands program without prior notice to DOGM for the purpose of evaluating the manner in which the cooperative agreement is being carried out and insuring that performance and reclamation standards are being met. OSMRE would ordinarily give DOGM reasonable notice before conducting an inspection so that State inspectors can join in the inspection. Under extraordinary circumstances, such as the threat of imminent harm to the public or the environment, OSMRE would give DOGM at least 24 hours notice prior to a Federal inspection, unless this proves impractical.

The Article would preserve OSMRE's obligation and authority to conduct inspections pursuant to 30 CFR Parts 842 and 843. The right of Federal and State agencies to conduct inspections for purposes outside the scope of the proposed cooperative agreement would not be affected.

Article VIII: Enforcement

Article VIII would set forth the enforcement obligations and authorities of OSMRE and DOGM.

Under paragraph A, DOGM would have primary enforcement authority on lands covered by the Federal lands program in accordance with the requirements of the cooperative agreement and the approved State program.

Under paragraph B, DOGM has primary responsibility for enforcement during joint inspections with OSMRE. Paragraph B also would include a requirement that DOGM notify OSMRE prior to suspending or revoking a permit.

Paragraph C would preserve OSMRE's authority to take enforcement action to comply with 30 CFR Parts 843 and 845, where OSMRE conducted an inspection or where, during a joint inspection with DOGM, the two could not agree on the appropriateness of a particular enforcement action. Such action would be based upon the Act or the substantive provisions contained in the approved State program, but would use the Federal procedures and penalty system.

Paragraph D would provide that OSMRE and DOGM notify each other of all violations of applicable regulations and all actions taken on the violations. Paragraph E would provide that personnel of DOGM and OSMRE be mutually available to serve as witnesses in enforcement actions taken by either party. Finally, paragraph F would specify that this Agreement would not limit the Department's authority to enforce Federal laws other than the Act.

Article IX: Bonds

Under paragraph A, DOGM and the Secretary would require each operator conducting operations on lands covered by the Federal lands program to submit a single performance bond payable to both the State and the United States. All applicable State and Federal requirements must be fulfilled prior to releasing an operator from any obligation covered by the performance bond. If the Agreement is terminated, paragraph A would require that the portion of the bond covering lands subject to the Federal lands program bond revert to being payable solely to the United States. Under paragraph B, DOGM would advise OSMRE of annual adjustments to the bond and release a bond only after OSMRE concurrence. Such concurrence would include coordination with other Federal agencies having jurisdiction over the lands involved. Under Paragraph C, bonds would be subject to forfeiture with the concurrence of OSMRE and in accordance with the State program.

Paragraph D clarifies that the performance bond does not meet the requirement for a Federal lease bond under 43 CFR 3474, or for the lessee protection bond required in certain circumstances by section 715 of the Act.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities

Article X assigns to DOGM authority to designate State and private lands as unsuitable for surface coal mining, while reserving to the Secretary such authority over Federal lands. DOGM and OSMRE would each notify the other of any petition to designate lands as unsuitable that could impact adjacent Federal and non-Federal lands, and solicit and consider each other's views on a petition.

Article XI: Termination of Cooperative Agreement

Article XI would specify that this cooperative agreement may be terminated as specified under 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

Article XII would provide that, if terminated, the cooperative agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of a cooperative agreement upon application by the State after remedying the defects for which the Agreement was terminated and the submission of evidence to the Secretary that the State can and will comply with all of the provisions of the Agreement.

Article XIII: Amendment of Cooperative Agreement

Article XIII would provide that the cooperative agreement may be amended by mutual agreement of the Governor and Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

Paragraph A of Article XIV would recognize that the Department or the State may, from time to time, promulgate new or revised performance or reclamation requirements, or enforcement and administration procedures. If it is determined to be necessary to keep the Agreement in force, the State would request necessary legislative action and either the State or OSMRE would change or revise its regulations or promulgate new regulations, as applicable. Such changes would be made in accordance with 30 CFR Part 732 for changes to the approved State program and section 501 of the Act for changes to the Federal lands program.

Paragraph B would require the State and OSMRE to provide each other with copies of changes in their respective laws and regulations.

Article XV: Changes in Personnel and Organization

Article XV would require DOGM and OSMRE to advise each other of substantial changes in organization, funding, staff, or other changes which could affect administration or enforcement of the Agreement.

Article XVI: Reservation of Rights

Article XVI would recognize that the Act, 30 CFR 745.13, and other legal authorities prohibit the Secretary from delegating certain authorities to the State. Article XVI would state that this Agreement does not delegate nor shall it be construed to delegate any responsibility that the Secretary has under 30 CFR 745.13, or under laws other than the Act, including those listed in Appendix A of this Agreement.

IV. Procedural Matters

1. E.O. 12291 and Regulatory Flexibility Act

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget an exemption for Federal/State cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this proposed agreement in light of the Regulatory Flexibility Act (Pub. L. 96–354). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the proposed agreement.

2. Paperwork Reduction Act of 1980

There are recordkeeping and reporting requirements in the proposed Utah Cooperative Agreement which are the same as and required by the permanent program regulations. Those regulations required clearance from the Office of Management and Budget under 44 U.S.C. 3507 and were assigned the following clearance numbers:

Location, Requirement and OMB Clearance No.

Article VI.A. (Required by 30 CFR Part 773)—1029–0041
Article VII.A. (Required by 30 CFR Part 840)—1029–0051
Article IX.A. (Required by 30 CFR Part 800)—1029–0043

3. National Environmental Policy Act

Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Indexing Requirements

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining; Underground mining.

For the reasons set forth herein, it is proposed to amend 30 CFR Part 944 as follows.

Dated: February 6, 1986.

James E. Cason,

Deputy Assistant Secretary, Land and Minerals Management.

PART 944—[AMENDED]

1. The authority citation for Part 944 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* Pub. L. 95–87.

2. Section 944.30 is added to read as follows:

§ 944.30 State-Federal Cooperative Agreement.

The Governor of the State of Utah and the Secretary of the Department of the Interior enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes and Responsible Agencies

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an agreement for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR Parts 3480–3487 and surface coal mining and reclamation operations and activities in Utah on lands subject to the Federal lands program (30 CFR Subchapter D), consistent with the State and Federal Acts governing such activities and the Utah State Program (Program).

B. Purposes: The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and activities and coal exploration operations not subject to 43 CFR Parts 3480–3487; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Progam on all lands in Utah in accordance with the Federal Act, the Program, and this Agreement.

C. Responsible Administrative Agencies: The Utah Division of Oil, Gas and Mining (DOGM) will be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) will administer this Agreement on behalf of the Secretary.

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Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the Federal Register as a final rule. This Agreement will remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in the Federal Act, 30 CFR Parts 700, 701 and 740, the Program and the State Act, and the rules and regulations promulgated pursuant to those Acts, will be given the meanings set forth in said definitions.

Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the Program will apply, except in the case of a term which defines the Secretary's continuing responsibilities under the Federal Act or other Federal laws.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to lands in Utah subject to the Federal lands program except as otherwise stated in this Agreement, the Federal Act, 30 CFR 740.4 and 745.13, and other applicable laws, Executive Orders, or regulations.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency: DOGM Has and Will Continue To Have the Authority Under State Law To Carry Out This Agreement.

B. Funds: 1. Upon application by DOGM and subject to appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 375.16. Such funds will cover the full cost incurred by DOGM in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement; and provided that such State-incurred cost per permitted acre of Federal lands does not exceed the per permitted acre costs for administration and enforcement of the Program on non-Federal and non-Indian lands during the same time period.

2. The ratio or cost split of Federal to non-Federal dollars allocated under the cooperative agreement will be determined by OSMRE and DOGM based on the projected costs for regulation of mines with Federal lands, in consideration of the relative amounts of Federal and non-Federal land involved. The designation of mines, based on Federal and non-Federal land, will be prepared by DOGM and submitted to OSMRE's Albuquerque Field Office. OSMRE's Albuquerque Field Office and OSMRE's Western Technical Center will work with DOGM to estimate the amount the Federal government would have expended for regulation of Federal lands in Utah in the absence of this Agreement.

3. OSMRE and the State will discuss the OSMRE Federal lands cost estimate, the DOGM-prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, DOGM will submit its grant application to OSMRE's Albuquerque Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. Assuming timely submission, this ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimating regulatory costs for the following grant year. OSMRE will notify DOGM as soon as possible if such projections are unrealistic.

4. If DOGM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and DOGM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Utah are regulated in accordance with the Program.

5. Funds provided to the DOGM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A–102, Attachment E.

C. Reports and Records: DOGM will make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). DOGM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide DOGM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOGM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel: DOGM will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal Act, the Federal lands program, and the Program.

E. Equipment and Laboratories: DOGM will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties: The amount of the fee accompanying an application for a permit for operations on Federal lands in Utah will be determined in accordance with 40–11–6 (5), Utah Code Annotated 1953 as amended and section 771.25 of the State regulations, and the applicable provisions of the Program and Federal law. All permit fees, civil penalties, and fines collected from operations on Federal lands will be retained by the State and will be deposited with the State Treasurer. Permit fees will be considered program income. Fines and civil penalties will not be considered program income and will be deposited in an account for use in reclaiming abandoned mine sites. The financial status report submitted pursuant to 30 CFR 735.28 will include a report of the amount of fees collected during the State's prior fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package: DOGM and the Secretary will require an applicant proposing to conduct surface coal mining and reclamation operations and activities on lands subject to the Federal lands program to submit a permit application package (PAP) in an appropriate number of copies to DOGM and OSMRE. The PAP will be in the form required by DOGM and include any supplemental information required by the OSMRE or the Federal land management agency. At a minimum, the PAP will satisfy the requirements of 30 CFR Part 740 and will include the information necessary for DOGM to make a determination of compliance with the Program and for the appropriate Federal agencies to make determinations of compliance with applicable requirements of the Federal Act, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

B. Review Procedures Where Leased Federal Coal Is Not Involved: 1. DOGM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (4), (5), (6), and (7).

2. DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations and activities in Utah subject to the Federal lands program not requiring a mining plan pursuant to the Mineral Leasing Act. DOGM will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. Upon receipt of a PAP that involves surface coal mining and reclamation operations and activities on lands subject to the Federal lands program not containing leased Federal coal, DOGM will request that OSMRE determine whether the operations are prohibited or limited by the requirements of section 522(e) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR Part 761 with respect to areas designated therein by Congress as unsuitable for mining. OSMRE will make its non-delegable determinations under the Federal Act and will be responsible for obtaining, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP.

4. OSMRE will provide technical assistance to DOGM when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under section 522(e) (1) or (2) of the Federal Act relating to areas designated by Congress as unsuitable for mining. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DOGM. OSMRE will have access to DOGM files concerning operations on lands subject to the Federal lands program. The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than the Federal Act. OSMRE will send to the State copies of all resulting correspondence between OSMRE and the applicant that may have a bearing on decisions regarding the PAP.

5. DOGM will review the PAP for compliance with the Program and State law and regulations.

6. The permit issued by DOGM will incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will condition the initiation of surface coal mining and reclamation operations and activities on compliance with the requirements of the Federal land management agency. The permit will also include terms and conditions required by other applicable Federal laws and regulations. After making its decision on the PAP, DOGM will send a notice to the applicant, the Federal land management agency, and OSMRE, with a copy of the permit and written findings.

C. Review Procedures Where Leased Federal Coal Is Involved: 1. DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Utah where a mining plan is required. OSMRE will, at the request of the State, assist as possible in this analysis and review. The Department will concurrently carry out its responsibilities under the Federal lands program, the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws that cannot be delegated to the State. The Department will carry out these responsibilities in a timely manner so as to avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by the Federal Act, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE and the State, with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOGM will be the primary point of contact for applicants regarding the review of the PAP, except on matters concerned exclusively with 43 CFR Parts 3480–3487 regulations administered by the Bureau of Land Management (BLM). DOGM will be responsible for informing the applicant of all joint State-Federal determinations. The Department reserves the right to act independently of DOGM to carry out its responsibilities under laws other than the Federal Act or provisions of the Federal Act not covered by the Program, and in instances of disagreement over the Federal Act and the Federal lands program. DOGM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to DOGM copies of all OSMRE correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSMRE will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

3. DOGM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (4), (5), (6) and (7). OSM will retain the responsibilities listed in 30 CFR 740.4(c) (2), and (3), and the exceptions in 30 CFR 740.4(c)(7)(i)–(vii). OSMRE will assist DOGM in carrying out DOGM's responsibilities by:

(a) Distributing copies of the PAP to, and coordinating the review of the PAP among, all Federal agencies which have responsibilities relating to decisions on the package. This will be done in a manner which ensures timely identification, communication and resolution of issues relating to those Federal agencies' statutory requirements. OSMRE will request that such other Federal agencies furnish their findings or any requests for additional data to OSMRE within 45 calendar days of the date they receive a copy of the PAP.

(b) Providing DOGM with the analyses and conclusions of other Federal agencies.

(c) Addressing conflicts and difficulties of the other Federal agencies in a timely manner.

(d) Assisting in scheduling joint meetings as necessary between State and Federal agencies.

(e) Where OSMRE is assisting DOGM in reviewing the permit application, furnishing to DOGM the work product within 50 calendar days of receipt of the State's request for such assistance, or earlier if mutually agreed upon by OSMRE and DOGM.

(f) Exercising its responsibilities in a timely manner as set forth in a mutually agreed upon schedule, governed to the extent possible by the deadlines established in the Program.

(g) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

4. Review of the PAP:

(a) OSMRE and DOGM will coordinate with each other during the review process as needed. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to DOGM.

(b) DOGM will review the PAP for compliance with the Program, and State law and regulations.

(c) OSMRE will review the operation and reclamation plan portion of the permit application for compliance with the Act, and any other appropriate portions of the PAP for compliance with the non-delegable responsibilities of the Act and for compliance with the requirements of other Federal laws and regulations.

(d) OSMRE and DOGM will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and DOGM throughout the review process. Not later than 50 days after receipt of the PAP, OSMRE will furnish DOGM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, DOGM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) DOGM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by DOGM and OSMRE.

(f) DOGM may proceed to issue the permit in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that DOGM advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may enter the Federal lease. The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the Mineral Leasing Act and by any other applicable Federal laws and regulations. DOGM will reserve the right to amend or rescind any requirements of the approved permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

D. Review Procedures for Permit Revisions, Amendments, or Renewals: 1. Any permit revision, amendment, or renewal for an operation on lands subject to the Federal lands program will be reviewed and approved or disapproved by DOGM after consultation with OSMRE on whether such revision, amendment, or renewal constitutes a mining plan modification. OSMRE will inform DOGM within 30 days of receiving a copy of a proposed revision, amendment, or renewal, whether the permit revision, amendments, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and DOGM will follow the procedures outlined in paragraph C.1. through C.4. of this Article.

2. OSMRE may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions, amendments, and renewals clearly do not constitute mining plan modifications.

3. Permit revisions, amendments, or renewals that are determined by OSMRE to not constitute mining plan modifications under paragraph D.1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures outlined in paragraphs B.1. through B.6. of this Article.

Article VII: Inspections

A. DOGM will conduct inspections on Federal lands and prepare and file inspection reports in accordance with the Program.

B. DOGM will, subsequent to conducting any inspection, and on a timely basis, file with OSMRE a legible copy of the completed State inspection report.

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C. DOGM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843 and its obligations under laws other than the Federl Act.

D. OSMRE will ordinarily give DOGM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DOGM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to DOGM for action. The Secretary reserves the right to conduct inspections without prior notice to DOGM to carry out his responsibilities under the Federal Act.

Article VIII: Enforcement

A. DOGM will have primary enforcement authority under the Federal Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority given to the Secretary under other laws and orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and DOGM, DOGM will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. DOGM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on lands subject to the Federal lands program.

C. During any inspection made solely by OSMRE or any joint inspection where DOGM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR Parts 843. Such enforcement action will be based on the standards in the Program, the Federal Act, or both, and will be taken using the procedures and penalty system contained in the Program and 30 CFR Parts 843 and 845.

D. DOGM and the Department will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of DOGM and representatives of the Department will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than the Federal Act.

Article IX: Bonds

A. DOGM and the Secretary will require each operator who conducts operations on lands subject to the Federal lands program to submit a single performance bond payable to Utah and the United States to cover the operator's responsibilities under the Federal Act and the Program. Such performance bond will be conditioned upon compliance with all requirements of the Federal Act, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering lands subject to the Federal lands program will be payable only to the United States.

B. Prior to releasing the operator from any obligation under such bond, DOGM will obtain the concurrence of OSMRE. DOGM will also advise OSMRE of annual adjustments to the performance bond, pursuant to the Program. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Federal Act.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities

A. When either DOGM or OSMRE receives a petition that could impact adjacent Federal and non-Federal lands, the agency receiving the petition will (1) notify the other of receipt and the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and recommendations of the other.

B. Authority to designate State and private lands as unsuitable for mining is reserved to the State. Authority to designate Federal lands as unsuitable for mining is reserved to the Secretary.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR Part 732 for changes to the Program and under the procedures of section 501 of the Federal Act for changes to the Federal lands program.

B. DOGM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that will affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement will not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Dated: _____

Signed: Governor of Utah _____

Dated: _____

Signed: Secretary of the Interior _____

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, implementing regulations, including 43 CFR Part 3480.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR Part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.
6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
10. Executive Order 1593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.
13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*
14. The Constitution of the United States.
15. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201.
16. 30 CFR Chapter VII.
17. The Constitution of the State of Utah.
18. Utah Code Annnotated 40-10-1 *et seq.*
19. Utah Code Annotated 40-8-1 *et seq.*
20. Utah Coal Mining and Reclamation Permanent Program, Chapters I and II, Final Rules of the Board of Oil, Gas and Mining, UMC/SMC 700 *et seq.*

[FR Doc. 86-3514 Filed 2-18-86; 8:45 am]
BILLING CODE 4310-05-M

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federal register

Wednesday
February 19, 1986

Part V

Department of Agriculture

Office of Grants and Program Systems; Competitive Research Grants Program for Forest and Rangeland Renewable Resources for Fiscal Year 1986; Proposed Solicitation of Applications; Notice

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DEPARTMENT OF AGRICULTURE

Office of Grants and Program Systems; Competitive Research Grants Program for Forest and Rangeland Renewable Resources for Fiscal Year 1986; Proposed Solicitation of Applications

This is a proposed solicitation. The Office of Grants and Program Systems (OGPS), U.S. Department of Agriculture, intends to propose to administer a Competitive Research Grants Program for Forest and Rangland Renewable Resources for Fiscal Year 1986 in accordance with the administrative provisions set forth in 7 CFR Part 3200 (with certain portions excluded). A proposed rule to this effect will be published in the **Federal Register**. Upon issuance of a final rule, a final solicitation will be published in the **Federal Register** containing a firm deadline date for submission of proposals. This proposed solicitation is issued to alert potential applicants of the existence of this program and to inform them that a relatively short period of time will be provided for submission of such proposals after issuance of a final solicitation. Both this proposed solicitation and the final solicitation will be distributed to those currently on the mailing list maintained for this program by Grants Administrative Management, Office of Grants and Program Systems, U.S. Department of Agriculture.

Accordingly, subject to any changes which may occur in the underlying regulations, it is proposed that the solicitation for the Competitive Research Grants Program for Forest and Rangeland Renewable Resources read as follows:

Notice is hereby given that pursuant to the authority contained in section 5 of the Forest and Rangeland Renewable Resouces Research Act of 1978, as amended (16 U.S.C. 1644), the Office of Grants and Program Systems (OGPS), United States Department of Agriculture (USDA), anticipates awarding standard project grants for basic research in the areas of harvesting, wood utilization and forest biology. The total amount expected to be available for this program during Fiscal Year 1986 is approximately $6,445,452. Long-term projects, up to a limitation of five years, will be encouraged. Grants will be awarded by OGPS to the extent that funds are available.

Pursuant to the Secretary's Memorandum 1030–14 dated January 31, 1986, the authority to administer the $6,445,452 made available by the Continuing Appropriations Act for fiscal year 1986 for a competitive research grants program for forest research authorized by Section 5 of the Forest and Rangeland Renewable Resources Research Act of 1978 has been transferred to the Office of Grants and Program Systems. Under this authority the Office of Grants and Program Systems may award grants to Federal, State, and other governmental agencies, public or private agencies, institutions, universities, and organizations, and businesses and individuals in the United States. Only proposals from applicants in the United States will be considered for support.

Applicable Regulations

This program is subject to the provisions found at 7 CFR Part 3201. (For purposes of this program, OGPS proposes to add a new Part 3201 which will cross-reference the Administrative Provisions governing the Competitive Research Grants Program, 7 CFR Part 3200 (excluding the following portions: §§ 3200.1, 3200.3(a), 3200.4(c), the material found in the second sentence of § 3200.6(c)(3) beginning with "the results of which" and ending with "food and agricultural sciences," and the parenthetical phrase in the last sentence of § 3200.7(c)), found at 49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985.) These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015, as amended will apply to this program.

How to Obtain Application Materials

Copies of this proposed solicitation, the Research Grant Application Kit, and the proposed Administration Provisions for this program, 7 CFR Part 3201, may be obtained by writing to the address or calling the telephone number which follows: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, J.S. Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251; telephone number (202) 475–5049.

What to Submit

An original and 15 copies of each proposal submitted under this program are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made. In addition to other required forms and certifications included in the Research Grant Application Kit, an original and 15 copies of Form S&E–661, "Grant Application," are requested. Proposers should note that one copy of this form must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative.

All copies of each proposal should be mailed in one package if at all possible. Due to the volume of proposals received, applications submitted in several packages are very difficult to identify. Please see that each copy of each proposal is *stapled securely* in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only.

Every effort should be made to ensure that the proposal contains all pertinent information when submitted. Prior to mailing, compare your proposal with the Application Requirements checklist contained in the Research Grant Application Kit and instruction found in 7 CFR Part 3201.

Where and When to Submit Grant Applications

Each research grant application must be submitted to: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, J.S. Morrill Building, 15th and Independence Avenue SW., Washington, DC 20251.

To be considered for funding during Fiscal Year 1986, proposals must be postmarked by May 15, 1986. (This is an estimated deadline only. The final solicitation will contain the actual date for submission of proposals. Interested parties should use this proposed solicitation to begin preparing their proposals. *It is Expected That the Final Solicitation Will Allow Only 30 Days for Applicants to Prepare and Submit Proposals.*)

Introduction to Program Description

Standard research grants will be awarded to support basic research in selected areas of: (1) Harvesting, processing, and utilization of timber resources, with special emphasis on the chemical, mechanical, and engineering properties of wood and wood materials and (2) forest biology, including biotechnology, that are considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on important wood utilization and forestry problems. This grants program recognizes that new, innovative approaches and enhanced levels of funding are essential as we seek ways to improve the economic and environmental value of our forest resources.

Consideration will be given to research proposals that address fundamental questions in the areas noted below and that are consistent with the long-range missions of USDA. Basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed. However, these guidelines are also meant to be flexible and should not detract from the creativity of potential investigators. OGPS encourages the submission of innovative projects in the so-called "high-risk" category, as well as those that may have greater probability of success.

Workshops or symposia that bring together scientists to identify research needs, update information, or advance an area of research are recognized as an integral part of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this Competitive Research Grants Program for Forest and Rangeland Renewable Resources will be considered for partial or, if modest, complete support.

This program is divided into the two program areas outlined below, and at least half of the funding will go to the subprogram areas of Forest Biology. Proposals submitted in response to this solicitation must be identified as to the program area under which they are to be considered for funding (e.g., Wood Chemistry and Biochemistry).

First, the Department will fund proposals concerning the improved utilization of wood and wood fiber. Public and private forests in the United States contain one of our most important renewable natural resources, providing a continuing supply of wood for industrial materials, chemicals, and energy, as well as other resources and benefits. National requirements for wood, wood fiber, and chemical products, however, increasingly demand the development of innovative and economical conversion processes that effectively utilize total available wood resources. Thus, as the diverse demands placed upon forest resources grow, the Department of Agriculture is encouraging the development of more efficient harvesting, processing, utilization, and management practices.

Second, the Department will fund proposals concerning forest biology (including biotechnology). Forest systems generally are dominated by long-lived trees in either planted or naturally regenerated stands that may vary in composition from one species to complex mixtures of many. These primarily undomesticated populations of forest trees, while dominant, are but one component of lafger communities of diverse numbers and combinations of associated organism. Productivity of the forest ecosystem is thus dependent upon the many complex processes and interactions among trees, other organisms and the physical factors of the environment. While many of these processes and interactions have been identified, studied and described, very little is known of the basic biological mechanisms that underlie and determine their directions and rates.

The following guidelines are provided as a base from which proposals may be developed.

Specific Areas of Research To Be Supported in Fiscal Year 1986

1. Improved Utilization of Wood and Wood Fiber

Improved wood utilization practices depend upon a continually advancing scientific foundation of basic research in wood properties and fundamental components of wood science. This program area encourages research that addresses critical barriers to improved wood utilization and that will provide the scientific base from which new research and development can proceed. Grants will be awarded to support basic research in the following three categories of wood science:

Wood Chemistry and Biochemistry represents an important area where new basic information is vitally needed and where breakthroughs have a virtually unlimited potential for expanding wood utilization. Basic questions that need to be addressed include the nature of underlying principles governing enzymatic, microbial, and other chemical reactions. Examples of research subjects of interest include bioconversion and deterioration mechanisms, lignin and cellulose polymer modification, surface chemistry, bonding chemistry, and thermal reactions.

Physical/Mechanical Properties of Wood and Basic Processing Technology constitutes an area of investigation in which an improved base of scientific knowledge can ensure future development of new products and processes. Research is encouraged that furthers our understanding of basic mechanisms that impinge upon the structure, physical properties, and basic processing characterics of wood and reconstituted wood materials. Examples of such research include, but are not limited to, anatomy, wood formation, viscoelasticity and quality investigations, machining processes, heat and mass transfer phenomena, lignocellulose modification, particle/fiber consolidation, non-destructive property evaluation, and materials science principles.

Structural Wood Engineering has developed empirically over time and has typically involved incremental improvements upon conventional concepts. Significant improvements depend upon developing and expanded scientific base of knowledge about the use and performance of wood as a structural material. The goal of basic research in this field is to support and encourage innovative approaches to the structural use of wood. Examples of research in this category include reliability-based design, systems modeling and validation, wood/non-wood composites, fasteners, and basic failure mechanisms.

To be considered for support, grant proposals should demonstrate applicability to one of the described areas of research emphasis and must offer a reasonable probability of contributing significantly to the present body of scientific knowledge. The Department encourages proposals that emphasize innovative approaches to solving fundamental problems in the field of wood science and technology. Although this program area will emphasize research in the above categories, other new or unusual approaches will not be excluded.

If necessary, further information may be obtained from the Associate Program Manager at (202) 475–3310.

2. Forest Biology (Including Biotechnology)

The primary goals of the Forest Biology program area are to promote and fund research that will further the basic knowledge of mechanisms of biological processes in forest organisms and systems and that will contribute to overcoming barriers to optimize the health and productivity of the forest resource. Emphasis will be placed on research proposals that deal with the woody plant component of the forest system. Also, grants will be awarded to support basic studies in the following two categories of forest biology research, each of which has been judged to offer exceptional opportunities for scientific advancement. Thus, proposals in this area of fundamental research are encouraged, but the program will not

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exclude other new or unusual research approaches.

Genetic Structure and Function is an area of research in which new basic knowledge and technology development are critically needed to support future efforts in more intensive forest management. Forest organisms, by virtue of their wide distribution and occurrence in both natural and manipulated ecosystems, offer unique opportunities to analyze, identify and utilize a broad spectrum of variations and adaptations that still persist in the gene pools of existing populations.

Research should address the genetic limits to the health and productivity of woody species, including: Development of techniques for genetic engineering, including those for DNA transfer systems and for determining molecular mechanisms of gene expression; elucidation of mechanisms of morphogenesis at the cellular and organismal levels, including those controlling the development of productive plants from tissue or cell culture; identification and characterization of valuable genes and simply/inherited traits; and determinations of the organization, structure, and function of genomes.

Mechanisms of Interactions in Forest Systems is an area of research which requires a significant increase in basic knowledge to support subsequent studies of a more applied nature. Forest productivity is determined by complex climatic, geochemical and physical forces interacting with the living component of the ecosystem, the diverse mixtures of woody species of varying genotype, size and age that exist in various stages of equilibria with each other and with a host of other forest organisms. Understanding basic mechanisms that underlie the dynamic changes that occur as a forest regenerates and matures is essential to determining constraints and opportunities to improve the health and productivity of the forest resource.

Areas in which research is needed to understand mechanisms involved in some of those processes include, but are not limited to: Determining mechanisms driving processes such as mycorrhizal symbioses, carbon and nitrogen metabolism, and elucidating mechanisms involved in antagonistic relationships between forest organisms (interspecific interference) such as allelopathy and host-parasite interactions.

To be considered for support, grant proposals should demonstrate applicability to one of the described areas of research emphasis and must offer a reasonable probability of contributing significantly to the present body of scientific knowledge. It is especially important that proposals emphasize innovative approaches to solving fundamental problems in forest biology.

If necessary, further information may be obtained from the Associate Program Manager at (202) 475–3310.

Supplementary Information

For reasons set forth in the final rule related notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0525–0001.

Done at Washington, D.C., this 12th day of February 1986.

John Patrick Jordan,

Acting Administrator, Office of Grants and Program Systems.

[FR Doc. 86–3538 Filed 2–18–86; 8:45 am]

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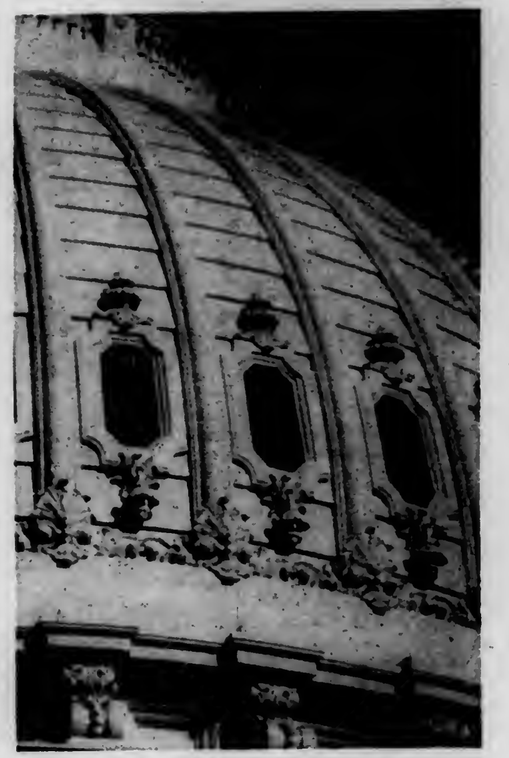
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Pesticides and Pests
Environmental Protection Agency

Radio
Federal Communications Commission

Radio Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
Minerals Management Service

Surface Mining
Surface Mining Reclamation and Enforcement Office

Television Broadcasting
Federal Communications Commission

Trade Practices
Federal Trade Commission

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

Revised Rules for Collecting Cotton Research and Promotion Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the Cotton Board's rules and regulations governing the collection of cotton research and promotion assessments. The Cotton Board determined that collection procedures needed to be revised to reduce the risk of non-collection of assessments and permit the early detection of program violations. Revisions require all collecting handlers to submit a no cotton purchased handler report when appropriate and also set forth specific measures to be taken if collecting handlers fail to comply with the regulations, including escrow accounts and interest charges on delinquent accounts. In addition, miscellaneous changes are made for clarity.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Naomi Hacker, Chief, Research and Promotion Staff, Cotton Division, AMS, USDA, Washington, DC 20250, (202) 447–2259.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Department Regulation 1512–1 and was determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. William T. Manley, Deputy Administrator, AMS, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The costs of compliance will not be significantly increased in that most of the changes reflect practices that are presently used by the Cotton Board. In addition, while the changes in the regulations will revise collection procedures, such changes will not affect the competitive position or market access of small entities in the cotton industry. The addition of interest charges will apply to only those entities that do not comply with current collection procedures and the addition of a "no cotton purchased" form is a self-certification form only. The changes will be applied to all entities regardless of size.

The information collection provisions in this rule have been given the OMB clearance number 0581–0115.

Background

The Cotton Research and Promotion Act (7 U.S.C. 2101 *et seq.*) provides for the collection of assessments on each bale of upland cotton marketed to support cotton research and promotion activities. The Cotton Research and Promotion Order (7 CFR 1205.301 *et seq.*), which implements the Act, was approved in a beltwide referendum of cotton producers. A 19-member Cotton Board appointed by the Secretary of Agriculture administers the program and collects the assessments. Collecting handlers, generally the first buyers of cotton from producers, are required to collect and remit the assessments to the Cotton Board. Producers who do not wish to participate in the research and promotion program may request a refund of any assessments paid.

The Cotton Research and Promotion Order authorizes the Cotton Board, subject to the Secretary of Agriculture's approval, to make rules and regulations to effectuate the terms and provisions of the Order, and to investigate and report to the Secretary violations of the Order (7 CFR 1205.327). The collection, remittance and reporting requirements are set forth in the Cotton Board Rules and Regulations (7 CFR 1205.500 *et seq.*).

The Cotton Board Rules and Regulations provide in § 1205.514 that each collecting handler shall transmit assessments to the Cotton Board as follows:

a. Each calendar month is a reporting period ending at the close of business on the last day of the month;

b. Collecting handlers prepare a report for each reporting period that cotton is handled on which the handler is required to collect the assessments. These reports are to be mailed to the Cotton Board along with the collected assessments within 10 days after the close of the reporting period.

The Cotton Board collects the research and promotion assessments with the cooperation of collecting handlers and followup efforts by the Cotton Board staff as needed. The objective of this action is to further strengthen the program's collection procedures. Collecting handlers will be more closely monitored to detect actual violations soon after they occur and to help prevent potential violations. The revisions will also enable the Cotton Board to more effectively deal with the small number of collecting handlers who are found to be in violation of the Act and Order. The collection procedures will be strengthened as follows.

First, the Cotton Board Rules and Regulations are amended to require collecting handlers to submit a report to the Cotton Board for reporting periods when no cotton was handled on which assessments were due. This "no cotton purchased" report form will be provided to collecting handlers each month by the Cotton Board. To accommodate handlers who purchase cotton only during certain months, provision will be made for the filing of a final no cotton purchased report at the conclusion of his/her marketing season. The report will be in the form of a certification. It will contain a statement that the collecting handler did not and, for a final report, would not handle any cotton on which assessments were due during the month(s) covered by the report. The handler will be required to sign, date and return the form to the Cotton Board.

Handlers will be required to mail the report to the Cotton Board within 10 days after the close of the reporting period when no cotton was handled on which assessments are due. If a collecting handler handles cotton during any month following submission of the final report for his/her marketing season, such handlers shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The report will be a monitoring tool which will allow the

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Cotton Board to detect violations earlier than under current procedures.

Further, the regulations are revised by adding a new section 1205.515 to specify certain of the actions that will be available for use by the Cotton Board whenever a collecting handler failed to report and remit assessments that were collected as required by § 1205.514. The actions available to the Cotton Board include: (a) Audits of the collecting handler's books and records to determine assessments due the Cotton Board; (b) requiring the establishment of an escrow account for the deposit of assessments collected, with the frequency and schedule of withdrawals and deposits to be determined by the Cotton Board with the approval of the Secretary; and (c) referral of the matter to the Secretary for appropriate legal action against the collecting handler. The Cotton Board will employ these measures singly or in combination in light of the circumstances of the particular case.

In addition, a new paragraph (d) is added to § 1205.514 to provide that if a collecting handler does not remit his assessments when due the assessments will be increased by an interest charge at rates prescribed by the Cotton Board with the approval of the Secretary. A 5-percent late charge will also be authorized if overdue assessments are not received prior to the subsequent report and assessment payment due from the handler. These provisions are expected to provide further incentive to collecting handlers to pay their assessment obligations promptly.

This rule is intended to reduce the risk of non-collection of research and promotion assessments, thereby enhancing the integrity of the program by helping to ensure that all funds collected are properly transmitted to the Cotton Board.

Proposed Rule

The revisions in the Cotton Board Rules and Regulations were published as a proposed rule in the January 3, 1986 **Federal Register** 51 FR 209.

Comments

Comments on the proposed rule were solicited from interested parties until February 1, 1986. Only one comment was received from a handler of cotton in overall opposition to the proposal. No other comments were received.

Final Rule

The Department believes that there is a need to strengthen regulations to ensure that all funds collected are properly transmitted to the Cotton Board. Therefore, after careful evaluation of all relevant factors, the Department has decided to finalize as proposed the revisions to the Cotton Board's rules and regulations governing the collection of cotton research and promotion assessments.

In 7 CFR Part 1205, § 1205.514 is revised and reorganized to include the no cotton purchased collecting handler report. The heading is changed to "Reports and remittance to Cotton Board." The first sentence of the section is amended because not all reports would transmit assessments. Paragraph (a) remains unchanged. The introductory text of paragraph (b) is shortened for clarity and the remainder of the paragraph is divided into two subparagraphs.

Subparagraph (1) describes the collecting handler report and lists the information needed in the report. Generally the information is the same as that which is currently required except for the deletion of the reference to PIK cotton.

Section 1205.514(b) is amended to clarify the requirement that collecting handler reports be mailed within 10 days after the close of the reporting period. The Cotton Board will use the postmarked date to determine whether a report was mailed on time.

Additionally, § 1205.514(b)(3) now requires the gin code number or, for PIK cotton, the county in which PIK cotton was earned. The provision regarding PIK cotton was promulgated on October 19, 1983 (48 FR 48451) and refers to cotton received by producers as payment-in-kind for acreage diversion. Since this program is no longer in effect, such a provision is obsolete and the revised § 1205.514 requires only the gin code number.

Subparagraph (2) describes the newly proposed no cotton purchased handler report. The collecting handler or the handler's agent will be required to sign and date the report form.

Paragraph (c) of § 1205.514 remains unchanged.

A new paragraph (d) is added to § 1205.514 to provide that if a collecting handler does not remit assessments when due, interest will be charged on the overdue assessments at rates prescribed by the Cotton Board with the approval of the Secretary. In addition to the interest charge, if assessments are not remitted within 10 days after the end of the next reporting period, there shall be a late payment charge of 5 percent of the value of the overdue assessments.

The present § 1205.515, covering receipts for payments of assessments, is redesignated § 1205.516, with paragraph (b) amended to remove as obsolete and unnecessary the reference to the county in which PIK cotton was earned.

Similarly, paragraph (n) of § 1205.500, defining the term "PIK cotton", is removed because it is obsolete.

A new § 1205.515 is added to set forth the actions that could be taken by the Cotton Board against collecting handlers who fail to comply with the requirements of § 1205.514.

Additionally, the procedure cotton producers must follow to obtain refunds of assessments in § 1205.520 is amended to clarify the requirement that producers mail refund applications within 90 days from the date assessments were collected. Paragraph (b) is changed to require that mailed refund applications be postmarked within 90 days from the date assessments were paid. The Cotton Board will use the postmark date to determine whether a refund application was mailed on time.

List of Subjects in 7 CFR Part 1205

Cotton, Administrative practice and procedure, Research and promotion, Cotton Board, Producer assessments, Producer refunds, Reporting and recordkeeping requirements.

Accordingly, Part 1205 of Chapter II, Title 7 of the Code of Federal Regulations of Part 1205 is amended as shown. The Table of Contents is amended accordingly.

PART 1205—[AMENDED]

1. The authority citation for Subpart—Cotton Board Rules and Regulations of Part 1205 is revised to read as follows:

Authority: Sec. 15, 80 Stat. 285; 7 U.S.C. 2114.

§ 1205.500 [Amended]

2. Section 1205.500 is amended by removing paragraph (n).

3. Section 1205.514 is amended by revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 1205.514 Reports and remittance to Cotton Board.

Each collecting handler shall transmit assessments and reports to the Cotton Board as follows:

(a) *Reporting periods.* Each calender month shall be a reporting period and the period shall end at the close of business on the last day of the month.

(b) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each report shall be mailed to the Cotton Board and postmarked within 10 days after the close of the reporting period.

(1) *Collecting handler report.* Each collecting handler shall prepare a separate report form each reporting period for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board and shall contain the following information:

(i) Date of report.

(ii) Reporting period covered by report.

(iii) Gin code number,

(iv) Name and address of handler.

(v) Listing of all producers from whom the handler was required to collect the assessments, their addresses, total number of bales, and total assessments collected and remitted for each producer.

(vi) Date of last report remitting assessments to the Cotton Board.

(2) *No cotton purchased report.* Each collecting handler shall submit a no cotton purchased report form for each reporting period in which no cotton was handled for which the handler is required to collect assessments during the reporting period. A collecting handler who handles cotton only during certain months shall file a final no cotton purchased report at the conclusion of his/her marketing season. If a collecting handler handles cotton during any month following submission of the final report for his/her marketing season, such handler shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The no cotton purchased report shall be signed and dated by the handler or the handler's agent.

* * * * *

(d) *Interest and late payment charges.* (1) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler failing to remit assessments to the Cotton Board when due.

(2) In addition to the interest charge specified in paragraph (d)(1) above, there shall be a late payment charge on any handler whose remittance has not been received by the Cotton Board within 10 days after the close of the next reporting period. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

4. Section 1205.515 is redesignated as § 1205.516. Paragraph (b) of newly designated § 1205.516 is revised to read as follows:

§ 1205.516 Receipts for payment of assessments.

* * * * *

(b) Gin code number of gin at which cotton was ginned.

* * * * *

5. A new § 1205.515 is added to read as follows:

§ 1205.515 Failure to report and remit.

Any collecting handler who fails to submit reports and remittances according to reporting periods and time schedules required in § 1205.514 shall be subject to appropriate action by the Cotton Board which may include one or more of the following actions:

(a) Audits of the collecting handler's books and records to determine the amount owed the Cotton Board.

(b) Require the establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Cotton Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

6. Paragraph (b) of § 1205.520 is revised to read as follows:

§ 1205.520 [Amended]

* * * * *

(b) *Submission of refund application to Cotton Board.* Any producer requesting a refund shall mail an application on the prescribed form to the Cotton Board. The application shall be postmarked within 90 days from the date the assessments were paid on the cotton by such producer. The refund application shall show (1) producer's name and address; (2) collecting handler's name and address; (3) gin code number; (4) number of bales on which refund is requested; (5) total amount to be refunded; (6) date or inclusive dates on which assessments were paid; and (7) the producer's signature or properly witnessed mark. Where more than one producer shared in the assessment payment on cotton, joint or separate refund application forms may be filed. In any such case the refund application shall show the names, addresses and proportionate shares of all such producers. The refund application form shall bear the signature or properly witnessed mark of each producer seeking a refund.

* * * * *

Dated: February 13, 1986.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 86-3646 Filed 2-19-86; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Statement of General Policy, SBA Size Policy Statement No. 1.

SUMMARY: The Small Business Administration (SBA) hereby gives notice of its intended application and interpretation of the definition of "number of employees," at 13 CFR 121.2(b). This Agency regulation has for a number of years provided for the calculation of the number of employees of a business for size standard purposes on several alternative bases, including employees retained on a ". . . full-time, part-time, temporary or other basis . . . ." The Agency has examined its administrative precedents interpreting 13 CFR 121.2(b) as it applies to the treatment of employees not clearly full-time, part-time or temporary employees of a business, and finds that a line of cases exists which deal with employees provided by temporary employment agencies and other employment contractors (hereafter jointly referred to as employment contractors) in a way which is overly mechanical and has the potential for subjecting SBA size determinations to abuse. In these cases, the Agency has merely applied the common law indicia of an employee/employer relationship, i.e., who hires, fires, pays and withholds taxes and provides benefits, to determine whether such individuals should be treated as employees of the business or not. This approach creates a potential for firms to avoid the consequences of their true size by imaginative use of employment contractors. Recognizing this potential for abuse and seeking a way to fairly ascertain which businesses are truly small and which are truly large, the Agency hereby announces that it shall examine the totality of the circumstances under which businesses have obtained employees from employment contractors to determine whether such employees should be considered employees of the subject business on some "other basis," under the existing regulatory language even if not temporary employees of the business under the common law. This general statement of policy also provides specific guidelines as to how the Agency intends to apply the language "other basis" contained in 13 CFR 121.2(b).

EFFECTIVE DATE: February 20, 1986.

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ADDRESS: Written comments should be addressed to Robert J. Moffitt, Chairman, Size Policy Board, U.S. Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: David R. Kohler, Associate General Counsel, Office of General Law, (202) 653-6660.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) has determined that the definition of "number of employees" at 13 CFR 121.2(b) requires clarification in light of the decisions issued to date by the former Size Appeals Board (Board) and the current Office of Hearings and Appeals (OHA). This determination is based on the Agency's conclusion that certain size appeal determinations could be read to *necessarily* exclude employees obtained through employment contractors from the number of employees of a business considered in determining such business' size status. Two cases have directly addressed this particular issue: *Appeal of Marinette Marine Corporation and Marine Power Equipment Co.*, No. 1495, September 28, 1981, [*affirmed*, 527 F. Supp. 587 (D.D.C. 1981)], and *Size Appeal of Aeromech Industries, Inc.*, No. 1979, June 22, 1984. The purpose of this statement of general policy is to clarify the approach the Agency intends to take in the future for resolving questions arising under 13 CFR 121.2(b) and involving employment contractors.

Before discussing the specific question of whether individuals whose services are procured through an employment contractor should be counted as employees of a business for size determination purposes, a brief review of the Agency's interpretation of the language "number of employees" is in order. Two general principles have governed size determinations where the number of employees of the business has been in issue. Foremost of these is that all employees of a business, including those of its affiliates, whether full-time, part-time, temporary or otherwise (including floaters), and regardless of whether they are engaged in industries related to the procurement involved in the size protest, count as employees of the business for size status purposes. Second, individuals who are clearly employees of *bona fide* independent contractors/consultants of the business whose size is in question have not been generally considered as temporary employees of that business.

The Agency's decisions in *Marinette Marine* and *Aeromech* follow these general principles. In *Marinette Marine*, the Board held that employees retained for a short period of time through an employment contractor were not "temporary" employees of the protested concern since they were *bona fide* employees of the employment contractor, an unaffiliated business. In that case, the protested concern had utilized replacement workers for the completion of a Navy Contract. While the protested concern maintained surpervision and control over the worker's performance, all other incidents of employment were supplied by the employment contractor. The Board held that the term "temporary" employee in the size regulations does not include employees of other concerns, even if they are performing work on the premises of the prime contractor and subject to its supervision. *See Also Marinette Marine Corp. v. Department of Navy*, 527 F. Supp. 587, 590-92 (D.D.C. 1981). The Board appeared to draw on the precedent it established in *Size Appeal of Newton Lumber Co., Ltd.*, No. 502, July 14, 1971, where the status of certain logging contractors was in issue. There, the Size Appeals Board expressly applied the common law test for finding a master/servant relationship, i.e., who hires, fires, pays and withholds taxes, provides benefits and supervises performance. In *Aeromech*, where the status of certain consultants was in issue, OHA referred without further discussion to *Marinette Marine* as standing for the proposition that "persons on the payroll of a temporary personnel agency are not treated as employees of the firm whose small business size status is under consideration." *Aeromech, supra*, p. 6. The decisions in both of these cases follow the reasoning first applied in the context of the independent contractor/consultant cases not involving temporary personnel agencies. The rationale used was that where an individual was either self-employed or employed in the traditional sense by an independent company, i.e., such company selected him or her, paid his or her wages, withheld and paid employment taxes and benefits, etc., he or she could not be considered as also being an employee of the concern whose size was in question. While the Agency does not dispute the general wisdom of this rationale, it is concerned that mechanical application of this rationale ignoring the "other basis" portion of its regulations will result in decisions at variance with the spirit of the Small Business Act and the small business size standards promulgated pursuant thereto.

This concern is based, in part, on the manner in which the Board, and later OHA, analyzed the cases presenting the issue. In the decisions discussed above, the Board and OHA focused on only the common law indicia of an employer/employee relationship, without addressing the totality of the circumstances under which the individuals in question came to labor for the business whose size was in issue.

The mechanical exclusion of employees retained through an employment contractor from the number of employees counted in determining a business' size status would encourage circumvention of the size standards by means of creative employment practices. Therefore, in order to preserve the integrity of its size regulations, the SBA has determined that in appropriate cases individuals whose services have been procured through an employment contractor should be considered "individuals employed on . . . [an] other basis," under 13 CFR 121.2(b) and be counted as part of that business' "number of employees" even if technically the employees of the contractor under common law principles. To do otherwise would be to permit form to prevail over substance. The Agency will not condone the use of employment practices that allow a business to create the facial appearance of being small under the size standards while at the same time deriving the usual benefits from the services of individuals in excess of those standards.

Agency officials charged with the responsibility of making size determinations shall take special care in such cases to determine whether any "other basis," aside from whether a full-time, part-time or temporary employee/employer relationship exists, to properly treat such employees as employees of the subject firm. In doing so, they should consider any information or data relevant to the question of whether an employer is deriving the usual benefits incident to employment of such individuals, and the circumstances under which the situation came to exist. The totality of the circumstances should be considered in order to prevent circumvention of SBA's size regulations, including, but not limited to:

1. Did the company engage and select the employees?

2. Does the company pay the employees wages and/or withhold employment taxes and/or provide employment benefits?

3. Does the company have the power to dismiss the employees?

4. Does the company have the power to control and supervise the employees' performance of their duties?

5. Did the company procure the services of the employees from any employment contractor involved in close proximity to the date of self-certification as a small business?

6. Did the company dismiss employees from its own payroll and replace them with the employees from any employment contractor involved? Were they replaced soon after their dismissal?

7. Are the individual employees supplied by any employment contractor involved the same individuals that were dismissed by the company?

8. Do the employees possess a type of expertise or skill that other companies in the same or similar lines of business normally employ in-house (as opposed to procuring by sub-contract or through an employment contractor)?

9. Do the employees perform tasks normally performed by the regular employees of the business or which were previously performed by the company's own employees?

10. Were the employees procured through an employment contractor to do other than fill in for regular employees of the company who are temporarily absent?

11. Does the contract with the independent contractor have a term based on the term of an existing Government contract?

The presence of one or more single factors on the list in a particular case may but will not necessarily support a finding that the employees should be attributed to the business whose size is in issue. This listing is not meant to be exhaustive, and other factors not listed that demonstrate an effort on the part of the firm to satisfy the SBA size standard in form, while deriving the benefits of a much larger number of employees in fact, must be considered.

In announcing this policy, the Agency recognizes that in the normal course of business operations there are legitimate business reasons in some cases for procuring employees through employment contractors or other kinds of independent contractors. The policy expressed herein should not be construed so as to penalize a business engaging in legitimate business arrangements to adversely affect its size status. The Agency believes that the regulatory language "other basis" was intended to reach situations where the number of employees is *artificially* reduced to meet particular size standards for the purpose of becoming eligible for a particular procurement or for receipt of some other SBA program benefit, while the firm continues to operate or be capable of operating for all intents and purposes as though it employed a larger number of individuals.

Dated: February 10, 1986.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 86-3647 Filed 2-19-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-103-AD; Amdt. 39-5241]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1087

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) 85-01-02 applicable to certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, that requires inspection and repairs, if necessary, of certain aft pressure bulkheads. This amendment requires a modification that is referenced in the existing AD as an optional terminating action. This amendment is necessary to clarify the intent of AD 85-01-02, regarding those airplanes modified in accordance with McDonnell Douglas DC-9 Service Bulletins 53-139, 53-139 R1, or production equivalent.

EFFECTIVE DATE: March 31, 1986.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California 90808.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend an existing airworthiness directive (AD) 85-01-02 to require inspection and repair, as necessary, of the aft pressure bulkhead on certain McDonnell Douglas DC-9 series airplanes was published in the **Federal Register** on October 22, 1985 (50 FR 42714). The comment period for the proposal closed December 10, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

The first commenter suggested the addition of an alternative initial compliance period of 15,000 landings after accomplishment of the modification or after aircraft delivery (as applicable), or prior to the accumulation of 5,400 additional landings after the effective date of this amendment. The FAA agrees with the addition of an alternative initial compliance period based upon the anticipated effective date of this rule, and supplemental data received. The final rule has been changed accordingly.

The second comment, though received late, is being considered herein. The commenter disagreed with the proposed requirements of paragraph K., to accomplish rework of previously modified pressure bulkheads, unless a crack has been detected. The FAA disagrees. In view of the results of fatique testing of the ventral aft pressure bulkhead by McDonnell Douglas, and the relatively low fatigue life associated with these cracks, the FAA has determined that the accomplishment of paragraph k. of this rule is necessary for all affected airplanes.

Paragraphs K. and L. of the final rule have been changed to incorporate an alternative terminating action. This has been done to clarify the original intent of the rule, and is based on the fact that no viable nondestructive inspection presently exists for the required modifications.

It is estimated that 221 airplanes of U.S. registry will be affected by this AD, that it will take approximately 245 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $2,165,800.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant

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under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1345(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 85-01-02, Amendment 39-4978 (50 FR 2043; January 15, 1985), as follows:

McDonnell Douglas: Applies to Model DC-9 and C-9 (Military) series airplanes, Fuselage Numbers 1 through 1067, certificated in any category. Compliance required as indicated, unless previously accomplished.

A. Revise paragraph A. to read as follows:

"A. Except for those airplanes that are subject to paragraph K., below, for airplanes with 15,000 or more landings. . . ."

B. Reidentify paragraphs K. through P. as L. through Q., respectively.

Add a new paragraph K. to read as follows:

"K. For airplanes previously modified in accordance with DC-9 Service Bulletin 53-139 (Original Issue or Revision 1), or production equivalent, accomplish modification of the pressure bulkhead in accordance with Part 2 of the Accomplishment Instructions of DC-9 Service Bulletin 53-165 prior to the accumulation of 15,000 cycles after accomplishment of the modification or aircraft delivery (as applicable) or prior to the accumulation of the 5,400 landings after the effective date of Amendment 39-5241, whichever occurs later. Accomplishment of the modification referenced above constitutes terminating action for the requirements of this AD."

C. Revise reidentified paragraph L. to read as follows:

"L. For airplanes not previously modified in accordance with DC-9 Service Bulletin 53-139 (Original Issue and Revision 1), or production equivalent, accomplishment of modifications in accordance with DC-9 Service Bulletin 53-165, Revision 1, dated January 31, 1983, or later FAA-approved revision, constitutes terminating action for the requirements of this AD."

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective March 31, 1986.

Issued in Seattle, Washington, on February 12, 1986.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 86-3616 Filed 2-19-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-29]

Alteration of VOR Federal Airways; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; change of effective date.

SUMMARY: ASD 85-AWA-29 was published in the **Federal Register** on January 2, 1986, and this action corrects that docket by changing the effective dates for certain NAVAID name changes. Due to technical and administrative problems associated with the implementation of name changes to several NAVAID's located in California, FAA finds it necessary to change the effective dates for implementation of these new name changes on a scheduled basis.

DATES: For the specific effective dates see the amendatory text under "Adoption of the Correction."

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-30934, published on January 2, 1986, amended the descriptions of all airways where the NAVAID's with new names appeared in the descriptions (51 FR 7). Due to technical, procedural and administrative problems, the effective dates for certain NAVAID name changes will be implemented on a scheduled basis. This action corrects the effective dates for the NAVAID name changes described in the final rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85-30934, as published in the **Federal Register** on January 2, 1986, (51 FR 7) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.123 is amended as follows:

V-283 and V-372 [Amended]

For the substitution of "Box Springs" for "March," the effective date is March 13, 1986.

V-8, V-32, V-28, V-113, V-269 and V-452 [Amended]

For the substitution of "Mustang" for "Reno," the effective date is March 13, 1986.

V-12, V-25, and V-186 [Amended]

For the substitution of "San Marcus" for "Santa Barbara," the effective date is August 28, 1986.

V-109 [Amended]

For the substitution of "Manteca" for "Stockton," the effective date is August 28, 1986.

Issued in Washington, D.C., on February 12, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-3617 Filed 2-19-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWA-30]

Alteration of VOR Federal Airways and Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; change of effective date.

SUMMARY: ASD 85-AWA-30 was published in the **Federal Register** on January 2, 1986, and this action corrects that docket by changing the effective dates for certain NAVAID name changes. Due to technical and administrative problems associated with the implementation of name changes to several NAVAID's located in California, FAA finds it necessary to change the effective dates for implementation of these new name changes on a scheduled basis.

DATES: For the specific effective dates see the amendatory text under "Adoption of the Correction."

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

Federal Register Docket 85-30935, published on January 2, 1986, amended the discriptions of all airways and changed the names of compulsory reporting points where the NAVAID's with new names appeared (51 FR 8). Due to technical, procedural and administrative problems, the effective dates for certain NAVAID name changes will be implemented on a scheduled basis and Section 71.127 will be withdrawn from this docket action. This action corrects the effective dates for the NAVAID name changes described in the final rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85-30935, as published in the **Federal Register** on January 2, 1986, 51 FR 8) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69

2. § 71.123 is amended as follows:

V-23, V-165, V-183, V-197 and V-248 [Amended]

For the substitution of "Shafter" for "Bakersfield," the effective date is July 3, 1986.

V-23, V-165 and V-230 [Amended]

For the substitution of "Pinedale" for "Fresno," the effective date is August 28, 1986.

V-23, V-113 and V-244

For the substitution of "Manteca" for "Stockton," the effective date is August 28, 1986.

V-165, V-105 and V-113 [Amended]

For the substitution of "Mustang" for "Reno," the effective date is March 13, 1986.

V-183 [Amended]

For the substitution of "San Marcus" for "Santa Barbara," the effective August 28, 1986.

V-113 and V-27 [Amended]

For the substitution of "Morro Bay" for "San Luis Obispo," the effective date is August 28, 1986.

3. § 71.127 is amended as follows:

V-5, V-7, V-20 and V-11 [Amended]

The substitution of "Kailua" for "Kona," is being withdrawn from this docket.

4. § 71.203 is amended as follows:

For the substitution of "Shafter, CA" for "Bakersfield, CA," the effective date is July 3, 1986.

For the substitution of "Pinedale, CA" for "Fresno, CA," the effective date is August 28, 1986.

For the substitution of "Morro Bay, CA" for "San Luis Obispo, CA," the effective date is August 28, 1986.

For the substitution of "Manteca, CA" for "Stockton, CA," the effective date is August 28, 1986.

For the substitution of "Mustang, NV" for "Reno, NV," the effective date is March 13, 1986.

For the substitution of "San Marcus, CA" for "Santa Barbara, CA," the effective date is August 28, 1986.

Issued in Washington, DC, on February 12, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and, Aeronautical Information Division.

[FR Doc. 86-3618 Filed 2-19-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 85-AWA-31]

Alteration of Jet Routes and Compulsory Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; change of effective date.

SUMMARY: ASD 85-AWA-31 was published in the **Federal Register** on January 2, 1986, and this action corrects that docket by changing the effective dates for certain NAVAID name changes. Due to technical and administrative problems associated with the implementation of name changes to several NAVAID's located in California, FAA finds it necessary to change the effective dates for implementation of these new name changes on a scheduled basis.

DATES: For the specific effective dates see the amendatory text under "Adoption of the Correction."

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-30937, published on January 2, 1986, amended the descriptions of all jet routes and changed the names of compulsory reporting points where the NAVAID's with new names appeared (51 FR 9). Due to technical, procedural and

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administrative problems, the effective dates for certain NAVAID name changes will be implemented on a scheduled basis. This action corrects the effective dates for the NAVAID name changes described in the final rule.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Jet routes and compulsory reporting points.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 85-30937, as published in the Federal Register on January 2, 1986 (51 FR 9) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. § 71.207 is amended as follows:

For the substitution of "Shafter, CA" for "Bakersfield, CA," the effective date is July 3, 1986.

For the substitution of "Pinedale, CA" for "Fresno, CA," the effective date is August 28, 1986.

For the substitution of "Mustang, NV" for "Reno, NV," the effective date is March 13, 1986.

For the substitution of "Manteca, CA" for "Stockton, CA," the effective date is August 28, 1986.

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

4. § 75.100 is amended as follows:

J-5, J-50 and J-65 [Amended]

For the substitution of "Shafter, CA" for "Bakersfield, CA," the effective date is July 3, 1986.

J-5, J-65, J-94, J-7 and J-53 [Amended]

For the substitution of "Mustang, NV" for "Reno, NV," the effective date is March 13, 1986.

J-65 and J-110 [Amended]

For the substitution of "Pinedale, CA" for "Fresno, CA," the effective date is August 28, 1986.

J-94, J-58 and J-80 [Amended]

For the substitution of "Manteca, CA" for "Stockton, CA," the effective date is August 28, 1986.

Issued in Washington, DC, on February 13, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-3619 Filed 2-19-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. C-3042]

Bendix Corp.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set Aside Order.

SUMMARY: The Federal Trade Commission has modified a 1980 consent order with the Bendix Corporation by setting aside portions of the order that required prior approval by the FTC before the respondent could acquire any interest in companies that manufacture or sell certain machine-tool products. The Commission ruled that the provision has no longer necessary since Bendix, and its parent company, Allied Corp., no longer manufacture or sell any kind of machine-tool product referred to in the order.

DATES: Consent Order issued Sept. 23, 1980. Set Aside Order issued Feb. 6, 1986.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, FTC/L-301, Washington, D.C. 20580. (202) 634-4604.

SUPPLEMENTARY INFORMATION: In the Matter of The Bendix Corporation, a corporation. The prohibited trade practices and/or corrective actions, as set forth at 45 FR 74469, remain unchanged.

List of Subjects in 16 CFR Part 13

Industrial machines, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Before Federal Trade Commission

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, and Mary L. Azcuenaga.

[Docket No. C-3042]

Order Reopening and Setting Aside Portions of Order Issued September 23, 1980

In the Matter of The Bendix Corporation, a corporation.

On October 16, 1985, Allied Corporation ("Allied") filed a Request pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b) and § 2.51 of the Commission's Rules of Practice. The Request asked the Commission to reopen the consent order issued on September 23, 1980 ("the order") and terminate Paragraphs VIII and X thereof. Allied became subject to the order when it acquired the Bendix Corporation ("Bendix") on January 31, 1983.

Paragraph VIII, the only substantive provision of the order which still has prospective application, prohibits Bendix, for a ten year period, from acquiring without prior Commission approval, any company engaged in the manufacture or sale in the United States of rotating toolholders, external cylindrical grinding machines, or numerically controlled machine tools. Paragraph VIII exempts from this requirement any company engaged in the manufacture of numerically controlled machine tools whose assets devoted to such manufacture or whose sales thereof during the year preceding such acquisition were not in excess of $10 million. Paragraph X of the order requires respondent to report its compliance with Paragraph VII annually for a ten-year period.

After reviewing Allied's Request, the Commission has concluded that changed conditions of fact and the public interest warrant reopening the proceeding and setting aside Paragraphs VIII and X of the order. Allied has divested or sold off all of the product lines that gave rise to the order and the concerns that led to the order are no longer applicable to Allied's current operations. The Commission believes that under the circumstances presented here the costs, both to Allied and to the Commission, associated with continuing the moratorium provision, are sufficient to outweigh the need for the order and the general presumption in favor of the repose and finality of Commission orders.

Accordingly, it is ordered that this matter be, and it hereby is reopened and that Paragraphs VIII and X of the Commission's order issued on September 23, 1980, shall terminate as of the effective date of this order.

By the Commission. Commissioner Bailey was recorded as recused.

Issued: February 6, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-3644 Filed 2-19-86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket C-3177]

Roy B. Kelly; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a former corporate officer of a Washington, DC-based employment counseling service, among other things, to cease misrepresenting: (1) The basis on which clients are accepted; (2) the number of clients who have obtained interviews, job offers, or jobs through respondent's services; and (3) the chances that the clients' fees would be refunded because the employer would likely pay the respondent a finder's fee. Additionally, respondent is required to have a reasonable basis for any placement claims he makes, and whenever such placement claims are made, to maintain records of his placements and make a composite of these records available to clients on request. Further, respondent is prohibited from accepting a fee until a client has obtained employment through respondent's services.

DATE: Compliant and order issued Feb. 4, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Charles Lane, FTC/H-272, Washington, DC 20580. (202) 523-3937.

SUPPLEMENTARY INFORMATION: On Wednesday, Nov. 27, 1985, there was published in the Federal Register, 50 FR 48791, a proposed consent agreement with analysis In the Matter of Roy B. Kelly, individually and as a former officer of John William Costello Associates, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.115 Jobs and employment service. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures; 13.533-45 Maintain records; 13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Business Status, Advantages or Connections: § 13.1553 Services.—Services: § 13.1843 Terms and conditions. Subpart—Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.1995 Job guarantee and employment.

List of Subjects in 16 CFR Part 13

Employment counseling services, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-3643 Filed 2-19-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

16 CFR Part 13

[Docket C-3179]

National Energy Associates, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a Norcross, Ga. manufacturer and marketer of home energy controlling devices, and its corporate officer, among other things, to cease making claims of energy savings associated with the product "Cyclematic", or any other energy-control device, without competent and reliable substantiation. Additionally, respondents are prohibited from representing that consumers are eligible for a federal income tax credit with the purchase of their products, unless that is true.

DATE: Complaint and Order issued February. 5, 1986 [1].

FOR FURTHER INFORMATION CONTACT: FTC/B-407, Michael Dershowitz, Washington, DC 20580. (202) 376-8720.

SUPPLEMENTARY INFORMATION: On Thursday, November. 14, 1985, there was published in the Federal Register, 50 FR 47063, a proposed consent agreement with analysis In the Matter of National Energy Associates, Inc., a corporation, and James B. Brooks, individually and as an officer of said corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170-34 Economizing or saving; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities of properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Energy controlling devices, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-3641 Filed 2-19-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

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16 CFR Part 13

[Docket C-3176]

Wyoming State Board of Registration in Podiatry; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Wyoming State Board of Registration in Podiatry ("Board"), among others things, to cease restricting or discouraging podiatrists from truthfully advertising their goods and services by: (1) Adopting rules or policies prohibiting such advertising; (2) suspending or revoking podiatrists' licenses as a result of such advertising; or (3) declaring such advertising illegal or unethical. Under the terms of the order, the Board is allowed to prohibit and enforce restrictions that ban false or misleading ads or to seek legislation related to the practice of podiatry.

DATE: Complaint and Order issued January 24, 1986.[1]

FOR FURTHER INFORMATION CONTACT: Dean Graybill, FTC/H-272, Washington, DC 20580. (202) 523-3914.

SUPPLEMENTARY INFORMATION: On Friday, November. 8, 1985, there was published in the **Federal Register**, 50 FR 46453, a proposed consent agreement with analysis In the Matter of Wyoming State Board of Registration in Podiatry, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in dispositing of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements; § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 maintain records. Subpart—Cutting Off Supplies or Service: § 13.655 Threatening disciplinary action or otherwise.

List of Subjects in 16 CFR Part 13

Advertising, Podiatrists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 86-3642 Filed 2-19-86; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

RAILROAD RETIREMENT BOARD

20 CFR Parts 234, 237, and 238

Annuities; Lump-Sum Payments

Correction

In FR Doc. 85-1420 beginning on page 3035 in the issue of Thursday, January 23, 1986, make the following corrections:

1. On page 3035, in the last line of the third column, "1977" should read "1974".

2. On page 3036, the second column, in the first column of the Distribution Table, the section number "237.502" in the fourth line from the bottom of the page should read "237.503"

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 107

[Docket No. 82N-0270]

Exempt Infant Formula; OMB Approval of Collection of Information Requirement

AGENCY: Food and Drug Administration.

ACTION: Announcement of OMB approval of collection of information requirement.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Management and Budget (OMB) has approved a collection of information requirement in the final rule that establishes the terms and conditions under which certain specialty infant formulas will be exempt from some of the requirements established by the Infant Formula Act of 1980 (50 FR 48183; November 22, 1985).

EFFECTIVE DATE: February 20, 1986.

FOR FURTHER INFORMATION CONTACT: Nicholas Duy, Center for Food Safety and Applied Nutrition (HFF-204), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 22, 1985 (50 FR 48183), FDA published a final rule that amended the infant formula regulations (21 CFR Part 107; Subpart C) to establish the terms and conditions under which certain specialty infant formulas will be exempt from some of the requirements established by the Infant Formula Act of 1980. The final rule also established quality control, nutrient, and labeling requirements for exempt formulas.

OMB Approval

In the preamble to the final rule (50 FR 48186), FDA stated that it had submitted to OMB the collection of information requirements in 21 CFR 107.50 for review and approval. The requirements were approved by OMB and assigned OMB control number 0910-0158.

In response to comments received on the proposed rule (48 FR 31875; July 12, 1983), FDA amended 21 CFR 107.50 by adding new paragraph (b)(4) to make explicit a notification requirement that was implicit in the proposal. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), FDA submitted to OMB for its review and approval the new collection of information requirement contained in new § 107.50(b)(4). FDA also stated that § 107.50(b)(4) would not be effective until OMB approved this requirement. FDA stated that it would publish a notice in the **Federal Register** regarding the effective date of these requirements once the approval had been obtained.

On December 3, 1985, OMB approved without change the information collection requirement in 21 CFR 107.50(b)(4) and included it under OMB control number 0910-0158 that it assigned to the collection of information requirements in 21 CFR 107.50(b) (3) and (5), (c) (3) and (5), and (e)(2). This approval for 21 CFR 107.50(b) (3), (4), and (5), (c) (3) and (5), and (e)(2) is until December 31, 1988. The effective date for compliance with the final rule remains February 20, 1986.

Dated: February 14, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3618 Filed 2-18-86; 3:37 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 256

Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is revising 30 CFR 256.22, General, by replacing the phase "The Director shall request . . ." with the phrase "The Director may request. . . ." The revision is necessary to remove a burdensome and unnecessary requirement that commits MMS to request other Federal Agencies to prepare reports on other resources or potential effects of mineral operations upon offshore lands being considered for leasing. The need for these reports does not exists in every case.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 860-7916 or FTS 928-7916.

SUPPLEMENTARY INFORMATION: The imposition of a requirement on MMS to request other interested Federal Agencies to prepare reports on the impact of leasing OCS lands is not appropriate in every case and creates unnecessary paperwork for MMS. The revision will reduce this burden and at the same time maintain the present level of intergovernmental information exchange. It would also more accurately reflect the practical situtation addressed by the requirement. The MMS normally contacts all Federal Agencies having an interest in a particular sale area and actively solicits their input on the impact that mineral operations would have on the environment or upon other uses of the area. In a Notice of proposed rulemaking (NPR) published on October 3, 1985 (50 FR 40406), MMS announced its intent to revise the existing regulation at 30 CFR 256.22. The MMS provided a 30-day public comment period on the NPR.

Comments

One timely comment was received in response to the NPR. It was from the regulated industry.

Discussion of Comments

The commenter agreed in principle with changing the requirement on MMS to request other interested Federal Agencies to prepare reports discretionary rather than mandatory. Moreover, the commenter suggested that MMS place a deadline of 30 days upon any Agency from which a report is requested in order to expedite rights-of-way decisions.

While MMS is supportive of eliminating unnecessary delays in the permitting and approval process, it must be recognized that this section refers to the entire leasing process and not solely rights-of-way. A 30-day timeframe would not be appropriate in all leasing activities which necessitate a report from other Federal Agencies. Consequently, DOI is promulgating the final rule as originally proposed.

Differences Between Proposed Rule and Final Rule

There are no differences between the Proposed rule and the Final rule.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the proposed revision is an administrative change. There are no economic effects associated with the revision.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as the revision to the rule is procedural, and no economic effect is expected.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author

The document was prepared by William S. Cook, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure; Continental shelf; Government contracts; Oil and gas exploration; Pipelines; Public lands/mineral resources; Public lands/rights-of-way; Reporting and recordkeeping requirements; Surety bonds.

Dated: January 3, 1986.

John B. Rigg,

Acting Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 256, Subpart C, is amended as follows:

PART 256—[AMENDED]

1. The authority citation for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amdt. No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629.

2. Section 256.22 is proposed to be revised as follows:

§ 256.22 General.

For oil and gas lease sales shown in an approved leasing schedule and as the need arises for other mineral leasing, the Director shall prepare a report describing the general geology and potential mineral resources of the area under consideration. The Director may request other interested Federal Agencies to prepare reports describing, to the extent known, any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment or other uses of the area.

[FR Doc. 86-3605 Filed 2-19-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends certain provisions of the regulations governing the program of school assistance authorized by Pub. L. 81-874 (the Act), as amended. The Act authorizes maintenance and operations assistance for local educational agencies (LEAs) in federally affected areas. The provisions that are substantively revised by these final regulations concern applications, payments, and records and reports required by the Secretary relating to sections 2, 3, 4, and 5 of the Act.

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EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. David G. Phillips, Division of Impact Aid, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2100, Washington, DC 20202-6272. Telephone: (202) 245-1975.

SUPPLEMENTARY INFORMATION: Under sections 2, 3, and 4 of the Act, commonly referred to as the Impact Aid program, the Secretary provides financial assistance to certain LEAs for financial burdens that result from Federal activity. Section 2 of the Act authorizes financial assistance for LEAs that experience a substantial and continuing financial burden as the result of the Federal Government's acquisition of real property in their districts. Section 3 of the Act authorizes financial assistance for LEAs that provide a free public education to certain types of federally connected children: children residing on Federal property; children residing with parents who are employed on Federal property; children residing with parents who both reside on and are employed on Federal property; and children whose parents are on active duty in one of the uniformed services. Section 4 of the Act, which the Congress has not funded for the past several years, authorizes financial assistance for LEAs that are unable to adjust financially to a sudden and substantial increase in attendance caused by Federal activity. Finally, section 5 provides, among other things, for the submission of applications and for payments of entitlements under sections 2, 3, and 4.

The Commissioner of Education published a notice of proposed rulemaking (44 FR 38223) on June 29, 1979, that contained the provisions in these regulations, among others. Since publication of the notice of proposed rulemaking (NPRM), the Division of Impact Aid has continued to review the regulations that implement the Act. The provisions in these regulations, which concern sections 2, 3, 4, and 5 of the Act, are being published now as a part of the Division of Impact Aid's on-going review of those regulations. Because of the complex and lengthy nature of the drafting and review process, only a portion of the provisions in the NPRM are being published at this time.

When the NPRM was published in 1979, the regulations implementing the Act were designated as 45 CFR Part 115. The specific provisions concerning sections 2, 3, 4, and 5 of the Act that are published in these regulations, that is, Subpart B—Applications, Subpart C—Payments, and Subpart E—Records and Reports Required by the Secretary, were proposed in the NPRM as 45 CFR 115.9 et seq., 45 CFR 115.20 et seq., and 45 CFR 115.45 et seq., respectively. The public was invited to comment on the NPRM. Nine substantive comments were received from the public concerning the provisions published in these final regulations. Those comments are summarized and responded to in this preamble.

The NPRM provisions published here as final regulations delete the requirement that an LEA file a final report on fiscal and student data and make corresponding changes that are necessary because of that deletion. For example, because a final report is no longer required, the ratio of an LEA's ADA for the previous year to its membership for the previous year is used to calculate the ADA of its federally connected children for the year of application. These provisions are consistent with current policy. Consistent with the NPRM, these final regulations also delete the requirement that a parent who is a member of the uniformed services on active duty provide his or her serial number on the parent-pupil survey questionnaire.

In addition, other NPRM provisions published here as final regulations make changes to promote the efficient administration of the program. These changes include requiring that: (1) Certain new applications and all amendments to applications be filed by the end of the Federal fiscal year, and (2) applicants retain records proving their entitlement to payment for five years after the end of the Federal fiscal year for which the funds were received.

Summary of Changes From the NPRM

These final regulations contain two changes from the NPRM which are made for the purpose of clarification. First, consistent with current policy, these regulations clarify that an LEA may amend its application based upon "actual satisfactory data" only if that data regards "eligible Federal property or federally connected children" (§ 222.11(b)(2)). Second, consistent with current policy and the previous regulations, § 222.15 clarifies that the survey date for the first or only membership count must be before January 31 of the fiscal year for which assistance is sought.

In addition to these changes, other minor technical and editorial changes are made in these regulations. For example, "Commissioner" is changed to "Secretary"; certain sections are removed because the statutory authority for those sections has expired (§§ 222.27 and 222.21(f)); certain sections in Subparts B, C, and E are renumbered; and other sections, such as § 222.22, are reworded to make them more easily understood. Other than the changes explained here, the provisions in these final regulations are the same as the applicable provisions proposed in the NPRM that was published in the Federal Register on June 29, 1979.

Summary of Public Comments on the NPRM and the Department's Responses

Part 222—Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education (Impact Aid Program)

The regulations implementing the Act, which are now designated as 34 CFR Part 222, were designated as 45 CFR Part 115 at the time the NPRM was published. For ease of reference, each section of the final regulations referred to in this summary is followed by the citation of the corresponding NPRM section.

Section 222.15 (§ 115.16) First or only membership count.

Comment.—One commenter stated that the parent-pupil survey form should indicate the survey date.

Response.—No change has been made. Section 222.15 requires only that a survey date be established and that the same date be used in surveying all schools within the school district. It is not necessary for the parent-pupil survey form to indicate the survey date. However, applicants must keep documentation to substantiate their compliance with the requirements of this section and may wish to indicate the survey date on the form for their own convenience in meeting those requirements.

Section 222.16 (§ 115.17) Second membership count.

Comment.—One commenter questioned the need and rationale for a second membership count.

Response.—No change has been made. The option of conducting a second membership count benefits an applicant district that has experienced an increase in federally connected children during the school year. It provides the district an opportunity to average a larger second count with a smaller first count to establish a larger entitlement that takes the increase in federally connected children into account.

Section 222.17 (§ 115.18) Alternative methods for making membership counts.

Comment.—One commenter asked in what instances either of the two methods for obtaining federally connected membership data is more appropriate.

Response.—No change has been made. The parent-pupil survey is the most frequently used method of obtaining the necessary membership data. However, an applicant should use whichever method is the most helpful and convenient in obtaining an accurate membership count.

Section 222.22 (§ 115.28) Computation of ADA of federally connected children.

Comment.—One commenter asked, if the child counts are done on the basis of membership, where the average daily attendance (ADA) figures come from that are used with membership figures to obtain a ratio to compute the ADA of federally connected children.

Response.—No change has been made. In its application for the current year, each applicant reports its ADA for all children for the previous year.

Comment.—One commenter stated that, according to the amendment in section 1014 of Pub. L. 95-561, the Secretary only has to convert average daily membership (ADM) into ADA for LEAs in States which do not require LEAs to keep records on ADA. The commenter asked why this section of the regulations seems to apply to all LEAs.

Response.—No change has been made. This section of the regulations does apply to all applicant LEAs under sections 3 and 4 of the Act. Section 1014 of Pub. L. 95-561 amended section 403(10)(B) of the Act to require the Secretary to provide a method for converting ADM to ADA for States that distribute State aid to LEAs on the basis of ADM. However, § 222.22 of these regulations does not implement that portion of the law. Rather, § 222.22 implements a portion of section 403(10)(A) of the Act which requires the Secretary to determine the ADA of federally connected children for payment purposes for all applicant LEAs under sections 3 and 4 of the Act.

Comment.—One commenter asked whether in those States that keep records based on ADA, it would be simpler to count attendance instead of membership in the surveys.

Response.—No change has been made. The Secretary has determined that a count of attendance for any single day does not result in an accurate reflection of ADA for the entire school year.

Comment.—One commenter indicated that the method of tabulating ADA by using the previous year's percentage relationship of ADM to ADA resulted in 40 fewer students for his school district over a five-year period. The commenter is concerned that there is no alternative method of using actual ADA for final payment purposes.

Response.—No change has been made. This section of the regulations provides for the determination of ADA of federally connected children for payment purposes by using a ratio of final ADA for the previous year to membership on the survey date for the previous year, not a ratio of ADA to ADM. Using actual ADA for final payments would delay those payments for all applicants until well into the following school year.

Section 222.40 (§ 115.45) Maintenance of records.

Comment.—One commenter questioned that 20 U.S.C. 1232f (section 437 of the General Education Provisions Act (GEPA)) was cited following this section, rather than a provision of the Act.

Response.—A change has been made. In these final regulations, specific provisions of the Act are cited following this section. In some instances, however, section 437 of GEPA also applies to records and reports required of applicants under the Act, see e.g., 34 CFR 75.730 and § 222.79 which concern claims for financial assistance under section 3(d)(2)(C) of the Act related to the provision of a free public education to handicapped children and children with specific learning disabilities.

Section 222.41 (§ 115.46) Retention of records.

Comment.—One commenter stated that the law does not require a grantee to keep all records substantiating its entitlement to payment until any question raised in a Federal audit or review is finally resolved and the necessary adjustments to payments have been made. The commenter asked why the regulations add this requirement.

Response.—No change has been made. The requirement in § 222.41(b) that a grantee keep all records substantiating its entitlement to payment until any question raised in a Federal audit or review is finally resolved and the necessary adjustments to payments have been made, is similar to provisions in the previous regulations. Under section 401(b) of the Act, the Secretary has general authority to administer the Impact Aid program. He may require an applicant to keep any records that may be necessary for that administration.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.041, School Assistance in Federally Affected Areas—Maintenance and Operation)

Dated: February 13, 1986.

William J. Bennett,

Secretary of Education.

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

The Secretary amends Part 222 of Title 34 of the Code of Federal Regulations as follows:

1. The Table of Contents for Subparts B, C, and E of Part 222 and the authority citation for Part 222 are revised to read as follows:

• • • • •

Subpart B—Applications

Sec.

222.9 Applications.
222.10 Final date for filing applications.
222.11 Amendments to applications: Filing dates.
222.12 Applications under sections 2, 3, and 4 received after deadline not considered for payment.
222.13 Notification to applicants.
222.14 How membership data must be obtained: General.
222.15 First or only membership count.
222.16 Second membership count.
222.17 Alternative methods for making membership counts.

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Sec.
222.18 Assurances and parental participation with respect to Indian children for applications under section 3.
222.19 Civil rights.

Subpart C—Payments

222.20 Changes in boundaries, classification, and governing authority of applicants.
222.21 Payments under section 3 when percentage eligibility requirement is not met.
222.22 Computation of ADA of federally connected children.
222.23 Entitlements under section 3(e).
222.24 Payments under section 4(a).
222.25 Election under section 4(c).
222.26 Reduction of financial assistance under sections 2, 3, and 4 due to insufficient appropriations.

* * * * *

Subpart E—Records and Reports Required by the Secretary

222.40 Maintenance of records.
222.41 Retention of records.
222.42 Adjustment for or recovery of overpayment.
222.43 Information submitted after deadlines.
222.44 Reports from other Federal agencies.

* * * * *

Authority: Titles I and IV, Pub. L. 81–874, 64 Stat. 1100 (20 U.S.C. 236–244), as amended, unless otherwise noted.

2. Section 222.3 is amended by removing paragraphs (e) and (f), redesignating paragraphs (g) through (q) as paragraphs (e) through (o), and by revising redesignated paragraphs (h)(2)(iv) and (m)(3) to read as follows:

§ 222.3 Definitions.

* * * * *

(h)(2)(iv) If the parent is a member of the uniformed services on active duty, the name, the rank, and branch of service of such parent;

* * * * *

(m)(3) A portion, to be determined by the Secretary, of the persons working on commingled Federal and non-Federal properties other than those covered by paragraph (m)(1) of this section.

* * * * *

§ 222.10 [Redesignated as § 222.9]

3. Section 222.10 is redesignated as § 222.9.

4. Section 222.11 is redesignated as § 222.10, and is amended by removing paragraphs (c), (d), and (f), redesignating paragraphs (e) and (g) as paragraphs (c) and (d), respectively, and revising paragraph (b) to read as follows:

§ 222.10 Final date for filing applications.

* * * * *

(b)(1) If any of the following events, giving rise to eligibility or entitlement, occurs within the fiscal year for which assistance is sought, an LEA seeking assistance shall file an application within the time limits required by paragraph (b)(2) of this section:

(i) The United States Government initiates or reactivates a Federal activity, or acquires real property.

(ii) The United States Congress enacts new legislation.

(iii) A reorganization of school districts takes place.

(iv) Property, previously determined in writing by the Secretary not to be Federal property, is determined to be Federal property.

(2) An LEA shall file an application as permitted by paragraph (b)(1) of this section on or before January 31 of the fiscal year for which assistance is sought or within 60 days after the applicable event occurs, whichever date is later, but not later than the end of the fiscal year for which assistance is sought.

* * * * *

5. A new § 222.11 is added to read as follows:

§ 222.11 Amendments to applications: Filing dates.

(a) An LEA may amend its application following any of the events described in § 222.10(b). The LEA shall file an amendment permitted by this paragraph within 60 days after the applicable event occurs, or by the end of the fiscal year for which assistance is sought, whichever is earlier.

(b) The LEA may also amend its application no later than the end of the fiscal year for which assistance is sought—

(1) For an adjustment to its entitlement based on data obtained from a second membership count; or

(2) For an adjustment to its entitlement based on actual satisfactory data regarding eligible Federal properties or federally connected children if that data were not available at the time the LEA filed its application.

(20 U.S.C. 240(a))

6. Section 222.12 is revised to read as follows:

§ 222.12 Applications under sections 2, 3, and 4 received after deadline not considered for payment.

The Secretary does not accept or consider for payment applications for assistance under sections 2, 3, and 4 of the Act which are received by the Secretary after the applicable filing date prescribed by § 222.10.

(20 U.S.C. 240(a))

§ 222.14 [Redesignated as § 222.18]

7. Section 222.14 is redesignated as § 222.18.

8. A new § 222.14 is added to read as follows:

§ 222.14 How membership data must be obtained: General.

(a) The Secretary determines the amount of an LEA's entitlement on the basis of information in the LEA's application including information regarding membership of federally connected children.

(b) In its application the LEA shall supply information regarding membership on the basis of any count described in §§ 222.15 through 222.17.

(20 U.S.C. 240(a))

(Approved by OMB under Control No. 1810–0036)

9. A new § 222.15 is added to read as follows:

§ 222.15 First or only membership count.

(a)(1) An applicant shall select a given day in the current school year as the survey date for making the membership count.

(2) The survey date must be at least three days after the start of the school year and before January 31 of the fiscal year for which assistance is sought.

(3) The applicant shall use the same survey date for all schools in the school district.

(b)(1) As of the survey date, the applicant shall count the membership of all federally connected children within the categories described in sections 3 and 4 of the Act.

(2) The LEA shall also count as of that same date the membership of all its children—federally connected and non-federally connected.

(20 U.S.C. 238, 239, 240(a))

(Approved by OMB under Control No. 1810–0036)

§ 222.16 [Redesignated as § 222.19]

10. Section 222.16 is redesignated as § 222.19.

11. A new § 222.16 is added to read as follows:

§ 222.16 Second membership count.

(a) The applicant may, but is not required to, make a second count of membership during the last quarter of the current school year.

(b) For this count the applicant shall select a survey date in that quarter.

(c) The applicant shall use the same survey date for all schools in the school district.

(d) Information obtained from this count is used in amending the LEA's application as described in § 222.111 (b)(1).

(20 U.S.C. 238, 239, 240(a))

(Approved by OMB under Control No. 1810–0036)

12. A new § 222.17 is added to read as follows:

§ 222.17 Alternative methods for making membership counts.

The applicant may use one of two alternative methods in making the membership counts:

(a) The applicant may conduct a parent-pupil survey to determine federally connected membership. Information that the applicant shall collect in the survey is described in § 222.3(h).

(b) The applicant may determine federally connected membership by obtaining certificates from—

(1) Employers as to the employment of parents of children claimed; or

(2) Housing officials as to the residence of the children on the survey date; or

(3) Both (b) (1) and (2), if necessary.

(20 U.S.C. 238, 239, 240(a))

(Approved by OMB under Control No. 1810–0036)

13. Section 222.20 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 222.20 Changes in boundaries, classification, and governing authority of applicants.

* * * * *

(c) Except as provided in § 222.21(d), an LEA which assumes administrative control and direction of free public education in all or a portion of the area of a previously existing applicant, may (if it is not already an applicant under the section involved or if it files an application in accordance with § 222.10(b)(1)(iii)) have its entitlement under section 3(d)(1) or 4(a)(1) of the Act for the entire fiscal year determined by either of the following, whichever is more favorable to it:

* * * * *

14. Section 222.21 is amended by removing paragraphs (e) and (f) and revising paragraph (d)(1) to read as follows:

§ 222.21 Payments under section 3 when percentage eligibility requirement is not met.

* * * * *

(d)(1) Files an application in accordance with § 222.10(b)(1)(iii) (unless already an applicant under section 3); and

* * * * *

§ 222.25 [Redesignated as 222.26]

15. Section 222.25 is redesignated as § 222.26.

16. Section 222.24 is redesignated as § 222.25, and is amended by revising paragraph (b) to read as follows:

§ 222.25 Election under section 4(c).

* * * * *

(b) Otherwise eligible to be counted under section 3 of the Act. This election may be made only if an application under section 4 is filed in a timely manner in accordance with § 222.10.

(20 U.S.C. 239(c))

§§ 222.22 and 222.23 [Redesignated as §§ 222.23 and 222.24]

17. Sections 222.22 and 222.23 are redesignated as §§ 222.23 and 222.24, respectively.

18. A new § 222.22 is added to read as follows:

§ 222.22 Computation of ADA of federally connected children.

This section describes the manner in which the Secretary computes the average daily attendance (ADA) of federally connected children for each category in sections 3 and 4 of the Act—for the application year—in order to determine an applicant's entitlements under those sections. The Secretary—

(a) Determines the ratio of the applicant's final ADA of all children for the previous year to the applicant's membership of all children on the previous year survey date (or, in the case of an applicant that conducted two membership surveys in the previous year, the average of the applicant's membership of all children on the two survey dates); and

(b) Multiplies this ratio by the number of federally connected children in each subcategory for the application year (obtained as described in § 222.15). The product obtained the ADA of federally connected children in each subcategory.

(c) If the applicant is making two counts; the Secretary—

(1) Adds the total federally connected membership for each subcategory for each count;

(2) Divides that sum by two to compute the average federally connected membership for each subcategory for both counts;

(3) Determines the ratio of total ADA to total membership for the previous school year; and

(4) Multiplies this ratio by the average federally connected membership in each subcategory obtained as described in paragraph (c)(2) above.

The product is the ADA of federally connected children in each subcategory.

(20 U.S.C. 238, 239, 240(a)

§ 222.27 [Removed]

19. Section 222.27 is removed.

20. Section 222.40 is amended by redesignating paragraph (b) as paragraph (c), and by revising paragraph (a) and adding a new paragraph (b) to read as follows:

§ 222.40 Maintenance of records.

(a) An LEA shall maintain adequate written records to prove its entitlement to whatever amount of payment it received under this part for any fiscal year.

(b) On request the LEA shall make its records available to the Secretary for the purpose of examination or audit.

* * * * *

(20 U.S.C. 237, 238, 239, 240, 224(b))

§ 222.41 [Removed]

21. Section 222.41 is removed.

22. Section 222.42 is redesignated as § 222.41 and is revised to read as follows:

§ 222.41 Retention of records.

An LEA shall retain all the records referred to in § 222.40(a) until the later of the following:

(a) Five years after the end of each fiscal year for which funds were received.

(b) If the records have been questioned on Federal audit or review, until the question is finally resolved and the necessary adjustments to payments have been made.

(20 U.S.C. 237, 238, 239, 240, 242(b))

23. A new § 222.42 is added to read as follows:

§ 222.42 Adjustment for or recovery of overpayment.

(a) If the Secretary determines that an LEA has received a payment in excess of what it should have received under the Act and this part, the Secretary deducts the amount of the overpayment

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from subsequent payments to which the LEA is entitled under the Act.

(b) If the LEA is not entitled to subsequent payments under the Act, the LEA shall refund the amount of the overpayment to the Secretary.

(20 U.S.C. 240, 242(b), 1226a–1)

§ 222.43 [Redesignated as § 222.44]

24. Section 222.43 is redesignated as § 222.44.

25. A new § 222.43 is added to read as follows:

§ 222.43 Information submitted after deadlines.

(a) *General.* Except as indicated in paragraph (b) of this section, the Secretary does not consider information submitted by an applicant after the deadlines prescribed in Subpart B for submission of applications and amendments to applications.

(b) *Information solicited by the Secretary.* After the deadlines prescribed in Subpart B the Secretary may solicit from the applicant, in writing, additional clarifying information for the purpose of processing an application.

(20 U.S.C. 240, 242(b))

26. Section 222.66 is amended by revising paragraph (d)(1) to read as follows:

§ 222.66 Proportion of funds that may be taken into consideration.

* * * * *

(d) *Application of proportion to payments under the Act.* (1) The proportion established under this section (or a lesser proportion) for any local educational agency receiving payments under the Act may be applied by a State to actual receipts of those payments or to the prorated entitlements provided for under section 5 of the Act and § 222.26 of Subpart C.

* * * * *

[FR Doc. 86–3583 Filed 2–19–86; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6702]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or Federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities

List of Subjects in 44 CFR Part 64.

Flood insurance—floodplains

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Florida: Levy	Inglis, town of	120586A	Jan. 10, 1986, Emerg.; Jan. 10, 1986, Reg	Dec. 29, 1978 and Mar. 1, 1984.
Texas:				
Brazos	Unincorporated areas	481195A	Jan. 13, 1986, Emerg	Oct. 18, 1977.
Travis	Jonestown, city of [1]	481567-New	Jan. 29, 1986, Emerg.; Apr. 1, 1982, Reg	Do.
Utah: Salt Lake	Sandy City, city of	490108B	Feb. 3, 1975, Emerg.; Dec. 16, 1985, Reg.; Dec. 16, 1985, Susp.; Jan. 13, 1986, Rein.	July 26, 1974, Jan. 16, 1976, and Dec. 16, 1985.
Illinois: Alexander	Unincorporated areas	170611B	June 6, 1974, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.; Jan 15, 1986, Rein.	Dec. 27, 1974, July 22, 1977, and Jan. 3, 1986.
New Jersey: Bergen	Fairview, borough of	340034B	July 16, 1975, Emerg.; Aug. 2, 1982, Reg.; Aug. 2, 1982, Susp.; Jan 3. 1986, Rein.	Feb. 1, 1974 and July 30, 1976.
Connecticut: Windham	Hampton, town of [2]	090170A	Dec. 29, 1975, Emerg.; Dec. 4, 1985, Reg.; Dec. 4, 1985, Susp.; Jan. 8, 1986, Rein.	Jan. 10, 1975 and Dec. 4, 1985.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Pennsylvania: Chester	West Sadsbury, township of	422291A	Mar. 28, 1978, Emerg.; Aug. 5, 1985, Reg.; Aug. 5, 1985, Susp.; Jan. 21, 1986, Rein.	Apr. 11, 1975 and Aug. 5, 1985.
Vermont: Orleans	Albany, town of [2]	500243	Feb. 18, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.; Jan. 21, 1986, Rein.	Feb. 7, 1975 and Jan. 3, 1986.
Pennsylvania: Huntingdon	Dublin, township of [2]	421689B	Jan. 20, 1978, Emerg.; Dec. 4, 1985, Reg.; Dec. 4, 1985, Susp.; Jan. 22, 1986, Rein.	Dec. 13, 1974, Oct. 31, 1986, and Dec. 4, 1985.
Illinois: Pike	Unincorporated areas	170551A	May 1, 1974, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.; Jan. 27, 1986, Rein.	Dec. 13, 1974, Feb. 18, 1977, and Jan. 3, 1986.
Connecticut: Tolland	Union, town of [2]	090190B	Nov. 7, 1975, Emerg.; Dec. 4, 1985, Reg.; Dec. 4, 1985, Susp.; Jan. 29, 1986, Rein.	Jan. 31, 1975, May 21, 1976, and Dec. 4, 1985.
Pennsylvania: Wayne	Cherry Ridge, township of	422161A	Nov. 14, 1975, Emerg.; Dec. 4, 1985, Reg.; Dec. 4, 1985, Susp.; Jan. 29, 1986, Rein.	Dec. 20, 1974 and Dec. 4, 1985.
Florida: Flagler	Beverly Beach, town of	120569B	May 12, 1977, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.; Jan. 31, 1986, Rein.	June 24, 1977 and Jan. 3, 1986.
Ohio: Erie	Kelleys Island, village of	390738A	Apr. 30, 1975, Emerg.; Aug. 17, 1981, Reg.; Aug. 17, 1981, Susp.; Oct. 7, 1981, Rein.; Nov. 18, 1981, Susp.; Dec. 6, 1982, Rein.; Jan. 29, 1986, Withdrawn.	Apr. 18, 1975 and Aug. 17, 1981.
Region I				
Maine: Cumberland	Brunswick, town of	230042B	Jan. 3, 1986, Suspension withdrawn	Nov. 1, 1974, June 14, 1977, and Jan. 3, 1986.
Rhode Island:				
Washington	South Kingstown, town of	445407D	do	Nov. 1, 1974, June 14, 1977, and Jan. 3, 1986.
Providence	Pawtucket, city of	440022D	do	July 16, 1971, July 1, 1974, June 11, 1976, Apr. 1, 1982, and Jan. 3, 1986.
Region II				
New Jersey: Bergen	Ho-Ho-Kus, borough of	340044B	do	June 22, 1973 and Jan. 3, 1986.
New York: Jefferson	West Carthage, village of	360356B	do	May 10, 1974, Nov. 26, 1975, and Jan. 3, 1986.
Region IV				
North Carolina:				
Beaufort	Belhaven, town of	370015	do	Apr. 13, 1973, May 16, 1977, and Jan. 3, 1986.
Do	Aurora, city of	370014B	do	May 3, 1974, May 26, 1976, and Jan. 3, 1986.
Georgia Glynn	Brunswick, city of	130093B	Jan. 14, 1986, Suspension withdrawn	May 24, 1974, Jan. 9, 1976, and June 19, 1986.
Region V				
Illinois:				
Mercer	Unincorporated areas	170606	Jan. 3, 1986, Suspension withdrawn	Dec. 23, 1977 and Jan. 3, 1986.
Scott	do	170605B	do	Jan. 28, 1977 and Jan. 3, 1986.
Ohio: Richland	Mansfield, city of	390477C	do	May 17, 1974, Oct. 17, 1975, Mar. 2, 1979, and Jan. 3, 1986.
Region VII				
Missouri: Moniteau	Lupus, city of	290239A	do	Jan. 3, 1986.
Colorado: Garfield	Unincorporated areas	080205B	do	Dec. 15, 1977 and Jan. 3, 1986.
Region I				
Maine: Oxford	Stoneham, town of [2]	230340A	Jan. 3, 1986, Suspension withdrawn	Feb. 21, 1975 and Jan. 3, 1986.
Rhode Island: Kent	West Greenwich, town of [2]	440037A	do	Jan. 24, 1975 and Jan. 3, 1986.
Region II				
New York: Otsego	Cherry Valley, village of	361449B	do	Nov. 15, 1974, May 28, 1976 and Jan. 3, 1986.
Region VI				
Arkansas: Lonoke	England, city of	050133B	do	May 10, 1974, Oct 3, 1975 and Jan. 3, 1986.
Region V				
Wisconsin:				
Walworth	Genoa City, village of	550465B	do	Jan. 9, 1974, May 15, 1976 and Sept. 4, 1985.
Bayfield	Bayfield, city of	550017A	do	July 16, 1976 and Sept. 16, 1985.
Region VII				
Nebraska: Buffalo	Shelton, village of	310019B	do	Mar. 18, 1976, Sept. 3, 1976 and Sept. 27, 1985.
Region I				
Maine: Sagadahoc	Bath, city of	230118B	Jan. 17, 1986, Suspension withdrawn	Nov. 1, 1974, May 10, 1977 and Jan. 17, 1986.
Massachusetts: Essex	Gloucester, city of	250082C	do	July 26, 1974, Feb. 18, 1977, Oct. 1, 1986 and Jan. 17, 1986.
Region II				
New Jersey: Morris	East Hanover, village of	340341C	do	Aug. 31, 1973, Apr. 16, 1979 and Jan. 17, 1986.
Region V				
Illinois:				
Champaign	Sidney, village of	170033B	do	Jan. 16, 1974, Oct. 10, 1975 and Jan. 17, 1986.
Morgan	Unincorporated areas	170909B	do	May 13, 1977 and Jan. 17, 1986.
Michigan: Shiawassee	Corunna, city of	260602A	do	Sept. 16, 1975 and Jan. 17, 1986.
Ohio:				
Hocking	Logan, city of	390274C	do	May 31, 1974, Sept. 10, 1976, July 16, 1979 and Jan. 17, 1986.

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State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Athens	Nelsonville, city of	390020B	do	May 10, 1974, Apr. 16, 1976 and Jan. 17, 1986.
Do.	Chauncey, village of	390017B	do	June 21, 1974, Apr. 16, 1976 and Jan. 17, 1986.
Region VI				
Texas: Brazoria	Freeport, city of	485467D	do	Nov. 17, 1970, July 1, 1974, Oct. 31, 1975 and Jan. 17, 1986.
Region VII				
Kansas: Barton	Albert, city of	200017A	do	Dec. 27, 1974 and Jan. 17, 1986.
Region I				
Rhode Island: Providence	Foster, town of [1]	440033B	Jan. 17, 1986, suspension withdrawn	Sept. 13, 1974, Sept. 10, 1976 and Dec. 4, 1985.
Region VI				
Arkansas:				
Mississippi	Dyess, town of	050143A	do	Oct. 18, 1974 and Jan. 17, 1986.
Prairie	De Valls Bluff, city of	050238A	do	Dec. 27, 1974 and Jan. 17, 1986.
Arkansas	Gillett, city of	050325A	do	Apr. 11, 1975 and Jan. 17, 1986.

[1] The City of Jonestown (Travis County) Texas is a newly incorporated community eligible 1-13-86 that was participating in the Regular Program as an unincorporated area of Travis County. The City has adopted the County's FIRM for floodplain management and insurance purposes.
[2] Minimal conversions.
Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: February 10, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-3528 Filed 2-19-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 62

[CC Docket No. 84-1330; FCC 86-53]

Common Carrier Services; Interlocking Directorates, Applications for Authorizations.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On July 19, 1985, the Commission adopted proposed revisions to Part 62 or the Commission's Rules, 47 CFR 62.1 *et seq.*, 50 FR 31370 (August 2, 1985). Part 62 Implements section 212 of the Communications Act of 1934, as amended, 47 U.S.C. 212, dealing with interlocking directorates. In this Memorandum Opinion and Order the Commission resolves petitions for reconsideration, retaining the rules as adopted with one further revision. In future, interlocks involving parents or holding companies or carriers will be monitored by receipt or reports, pursuant to 47 CFR 62.26. This action was taken in response to petitions for reconsideration and comments in this proceeding.

EFFECTIVE DATE: March 24, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Lerner, Gay Ludington, Enforcement Divsion, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 62

Antitrust, Communications Common Carriers, Reporting and recordkeeping requirements.

Memorandum Opinion and Order

In the Matter of Amendment of Part 62 of the Commission's Rules (CC Docket No. 84-1330).

Adopted January 21, 1986.
Released January 28, 1986.
By the Commission.

I. Introduction

1. On December 31, 1984, the Commission issued a Notice of Proposed Rulemaking [1] in this proceeding seeking to simplify and streamline requirements for compliance with Part 62 of the Commission's Rules, 47 CFR 62.1, *et seq.* Part 62 implements section 212 of the Act, 47 U.S.C. 212, which sets out the Commission's responsibility to protect against anticompetitive behavior arising from the interlocking of common carriers through shared officers or directors. In the Order adopted pursuant to the NPRM,[2] we eliminated the filing of Part 62 applications for interlocks involving non-dominant carriers or cellular licensees operating in different geographic markets, perceiving no potential harm to competition in these instances. We required instead that any of these interlocks should be reported to the Commission within 30 days after the interlock occurred, in order to facilitate our oversight of carrier interlocks. We continued for the present time to require pre-interlock applications where the interlocked position was with a dominant carrier. We also clarified our position that pre-interlock authorization was required for positions with parent and holding companies of carriers.

2. Seven parties [3] filed petitions for reconsideration or comments.

These pleadings are confined to three assertions: (1) Part 62 applications should not be required for interlocks involving radio common carriers (RCCs), which have not yet been found non-dominant; (2) the Commission lacks jurisdiction to require Part 62 applications for positions with parent or holding companies; and (3) the requirement of reporting interlocks within 30 days of occurrence, pursuant to § 62.26, should be replaced by an annual report.[4] Based upon the recent submissions and upon further consideration, we have decided to modify our Part 62 requirements where the interlocked position is with a parent of a dominant carrier to further reduce the regulatory burden imposed by these rules consonant with our statutory mandate.

II. Discussion

3. The largest portion of the comments were submitted by radio common carriers (RCCs) arguing that they should not be required to file pre-interlock applications. The RCCs argued that they should be found to be non-dominant. We believe that the record in this proceeding is insufficient to support such a determination. Nevertheless, we note that in another proceeding this

[1] Notice of Proposed Rulemaking, 50 FR 976 (January 8, 1985) (NPRM).
[2] First Report and Order, 50 FR 31370 (August 2, 1985) (*Order*).
[3] *See*, Appendix A.
[4] *See* Appendix B for a summary of the comments filed in this proceeding.

Commission has proposed to treat RCCs as non-dominant, and the comments received in that proceeding largely support the proposal.[5] If we finally adopt that proposal the RCCs will automatically be exempted from filing pre-interlock applications.[6] We stated in our *Order*, 50 FR 31373, that as additional categories of carriers are found to be non-dominant, pre-interlock Part 62 applications would not be required for positions with such entities. We note that international record carriers have been determined to be non-dominant during the time period since these comments were filed.[7] As other classes of carriers are found to be non-dominant, the post-interlock reporting requirement will become automatically applicable to such carriers.

4. Second, while several parties question our jurisdiction to require Part 62 applications for positions with parent and holding companies of carriers, our *Order* clearly did not find it necessary to conclude that parents or holding companies are common carriers in order to make such interlocks subject to Part 62. We again decline to make any such determination here. The parties questioning this determination have presented no new arguments not already fully addressed in the Order which would cause us to change this finding.[8] In sum, we possess jurisdiction over parents and holding companies of carriers to require them to comply with Part 62's filing requirements.

5. It appears, however, that in many instances interlocks with parents of carriers will not pose the threat of harm to the public or private interests which section 212 was designed to prevent. Therefore, we will not require that applications for prior approval be submitted. First of all, the interlock is indirect (i.e., not with the carrier itself) and thus the possibility of anticompetitive or other harm is more attenuated than with a direct interlock.[9] In addition, the filings here have demonstrated that the interlock often involves companies primarily engaged in businesses unrelated to telecommunications.[10] Further, the commenting parties concede that this Commission can "pierce the corporate veil" on an appropriate record to prevent carriers from using corporate structure to avoid their statutory obligations under the Communications Act. An appropriate record can be compiled to pierce the corporate veil once the report of the potentially offending interlock is filed in those rare instances in which an interlock with a parent of a dominant carrier poses significant anticompetitive concerns.

6. In order to obtain the information necessary to ensure that carriers are not using corporate structures to engage in anticompetitive or other illegal practices via interlocking directorates involving their affiliated companies, we will amend part 62 to require that such interlocks be reported within 30 days of assuming office. *See* 47 CFR 62.26. Our decision to monitor interlocks involving parent or holding companies by post-interlock reports is consistent with our goal of employing the least intrusive or burdensome procedure to accomplish our statutory obligations.[11]

7. Our action today renders even more important the timely receipt of reports concerning interlocking directorates. The annual filing urged by some parties will not inform the Commission and the public of interlocks as they occur, and thus will interfere with obtaining prompt comments and with the Commission taking any necessary remedial action. We believe the 30 day filing requirement is best suited for enforcing Part 62 and section 212, and imposes a minimal burden on persons seeking interlocking positions. As we stated in our *Order*, we will reexamine this requirement as our experience and circumstances warrant.[12]

8. As a final matter, we have clarified the language in § 62.26 to reflect that applications for findings of common ownership must be filed only if dominant carriers are involved, as explained in our *Order*, 50 FR 31376.

III. Ordering Clauses

9. Accordingly, it is ordered that Part 62 of the Commission's Rules and Regulations is further amended as specified in Appendix C to the *Order*, effective thirty days after publication of this Memorandum Opinion and Order in the Federal Register.

10. Authority for this action is contained in sections 1, 4(i), 4(j), 201-209, 212, 218, 219, 301, 303, 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-209, 212, 218, 219, 301, 303, 309, and 403 and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Petitions for Reconsideration:
- Telocator Network of America/Radio Common Carrier Division (Telocator/RCC)
- Telocator Network of America/Cellular Telecommunications Division (Telocator/Cellular)
- Metromedia, Inc. (Metromedia)
- American Information Technologies Corporation (Ameritech)

Petition for Clarification or, in the Alternative, Reconsideration:
- General Motors Corporation (GM)

Comments in Support of Petitions filed by Ameritech and GM:
- US West, Inc. (US West)
- United Telecommunications, Inc. (United)

Appendix B—Summary of Comments

Three parties took issue with our requirement that RCCs, not yet found to be non-dominant, should continue to file applications under Part 62. Telocator/RCC maintained that RCCs lack market

[5] *See*, Preemption of State Entry Regulations in the Public Land Mobile Service, CC Docket 85-88, FCC 85-147 (released May 17, 1985) (ROC NPRM).
[6] As we noted in our *Order*, 50 FR 32373 n. 9, it may be appropriate in the future to undertake a further rulemaking regarding our Part 62 treatment of carriers whose status as dominant or non-dominant remains undecided and whether further modifications to Part 62 are required for all carriers. However, until that time, we will require the filing of Part 62 applications for positions with such carriers.
[7] International Competitive Carrier Policies, CC Docket No. 85-107, FCC 85-585 (released November 15, 1985).
[8] *See* Order, 50 FR 31374-5 nn. 15, 16. In addition, it is not disputed that the Commission possesses authority to require such disclosue pursuant to Sections 215, 218 and 219 of the Communications Act, 47 U.S.C. 215, 218 and 219. *Accord*, US West, Inc. v. FCC, No. 84-1449 (D.C. Cir. December 6, 1985); North American Telecommunications Association v. FCC, F.2d 1282 (7th Cir. 1985).
[9] Depending upon the degree of involvement in carrier operations and decisions of the interlocked officer or director and the number of intermediary corporations between the parent and the carrier itself, the interlocked individual may have almost no influence whatsoever on carrier affairs.
[10] *See, e.g.*, Applications involving positions with the boards of General Motors (Applications of Catherine B. Cleary, EID-543; James H. Evans, EID-544; Thomas H. Wyman, EID-546) and Sears, Roebuck and Co., (Application of Warren L. Batts, EID-569). Carriers involved in such interlocks are several levels removed from the direct control of the applicant and the parent involvement in the communications business is minor. It appears that prior approval procedures are unnecessary to insure against anticompetitive harm in such instances.
[11] Almost all of the applications received are unopposed, and we have not found that the interlocks requested would have anticompetitive implications. This is not to say, however, that no situation exists where an illegal interlock might occur, even when the interlock involves a parent of a carrier. As we noted in the Order, there are situations where an interlock with a parent of a dominant carrier may raise significant anticompetitive concern. Order at 31375, n.16. Given this concern, we advise, but do not require, the reporting of potentially illegal interlocks before the appointment occurs to ensure that any Commission action found necessary would be as non-disruptive to corporate affairs as possible.
[12] *Order*, 50 FR 31370, August 2, 1985.

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power as a result of the advent of cellular radio, FM radio and TV station broadcast use of subcarrier frequencies and aggressive competition by paging systems. Operation in such a competitive climate, claimed Telocator/RCC, qualifies RCCs for the same "blanket authorization" of section 212 authority granted non-dominant carriers in the *Order*. Metromedia agreed, and argued further that while there is a pending proceeding in which the Commission is addressing the issue of whether RCCs should be considered non-dominant, the record is sufficient in this proceeding to make such a finding here, at least for purposes of section 212. In the alternative, Metromedia asked that we defer imposition of Part 62 application requirements on non-wireline RCCs pending the outcome of that proceeding. Telocator/Cellular maintained that the Commission should not require section 212 applications for interlocks between cellular carriers and RCCs. Since the Commission has encouraged applicants to form partnerships to capitalize on ownership experience, it argues, to then require that such combinations be approved does not make sense. Further, Telocator/Cellular took issue with our reporting requirement, urging that the Commission's filing requirements for cellular interlocks be limited to an annual filing only.

Comments from the remaining four parties generally centered on our treatment of parent and holding companies of carriers. Ameritech maintained that the Commission specifically lacks authority to extend the reach of section 212 and Part 62 to require applications for positions on holding companies. Our decision to impute carrier status to parents and holding companies of carriers, says Ameritech, is an illegal attempt to circumvent the language of section 212 which applies to carriers only. However, it concedes that the Commission can, if necessary, pierce the corporate veil to address abuses caused by interlocking directorates involving parent or holding companies upon an appropriate record. General Motors echoed Ameritech's concerns; it was also troubled that an expansive reading of section 212 could have a "chilling effect on future acquisitions by General Motors" (GM comments at 5) and that it might make it difficult to find quelified candidates willing to serve on the GM board in the future. It asked that we clarify that our interpretation of the reach of section 212 and Part 62 extends only to parents of carriers and not to grandparents or further removed corporate generations. In the alternative, it urged us to reconsider our conclusion that we can impute carrier status to parent and holding companies, stating that the legislative history shows a clear intent by Congress to limit the reach of section 212 to carriers only. It pointed to sections 216 and 219, which give the Commission limited authority over "persons controlling carriers" as the Congressionally approved means of monitoring corporate behavior, including interlocks involving parent or holding companies. US West and United filed comments in support of the petitions filed by GM and Ameritech.

Appendix C

PART 67—[AMENDED]

Part 62 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 62 continues to read as follows:

Authority: Sec. 1, 4(i), 4(j), 201–209, 212, 218, 219, 301, 303, 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 154(j), 201–209, 212, 218, 219, 301, 303, 309, and 403, and Section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 62.1 is revised in its entirety as follows:

§ 62.1 Scope and method of securing authorization.

No person may hold the position of officer or director in more than one carrier subject to the Communications Act of 1934, as amended, unless duly authorized to do so pursuant to the regulations set forth in this part:

(a) Application must be made to hold interlocking positions with more than one carrier subject to the Act where any carrier sought to be interlocked has been found by the Commission to have market power and is therefore defined as a dominant carrier under 47 CFR Part 61, or where any carrier has not yet been found to be non-dominant, except for cellular licensees in different geographic markets.

(b) Persons seeking positions as officers or directors of (1) cellular radio licensees in different geographic markets; (2) carriers which have been found to be non-dominant; and (3) holding or parent companies of carriers, are authorized to serve in those capacities without making application to this Commission.

3. The introductory paragraph to § 62.12 is revised to read as follows:

§ 62.12 Information required for findings of common ownership.

Authorization to hold interlocking directorates based upon a finding of common ownership must be obtained where a carrier found to be dominant under 4 CFR Part 61 or where any carrier not yet found to be non-dominant is involved. Each application for such authorization shall state the following:

* * * * *

§ 62.26 [Amended]

4. The reference to "§ 62.1(b)" in § 62.26 is removed, and reference to "§ 62.12," is inserted in its place.

[FR Doc 86–2264 Filed 2–19–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 69

[CC Docket No. 85–385; FCC 86–70]

Common Carrier Services, Interstate Services; Authorized Rates of Return

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In its September 30, 1985 *Rate of Return Order* in CC Docket No. 84–800, the Commission revised the schedule for filing annual, comprehensive revisions in the access tariffs. The current June 1 through May 31 effective period was shifted to a calendar year period, January 1 through December 31. The *Rate of Return Order* provided, however, that the initial period for review would be for the period from June 1, 1986 through December 31, 1986. Under the current rules, therefore, carriers would be obliged to make three comprehensive access filings over a period of 27 months. In a Notice of Proposed Rulemaking released December 6, 1985, the Commission proposed amendment of § 69.3 of the Rules to eliminate the comprehensive filing scheduled to become effective June 1, 1986. The Notice also proposed deletion of § 69.3(e)(6) of the Rules and that (NECA) carriers participating in the National Exchange Carrier Association pools would continue to do so. This Report and Order adopts the amendments proposed regarding the comprehensive filing requirement, but permits all carriers which elected in November 1985 either to join or withdraw from a NECA pool to make such elections effective June 1, 1986.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Pat McQuin Nagel at (202) 632–6917.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 69

Exchange Carrier Association, Revenue pooling, Communications Common Carriers, Reporting and recordkeeping requirements, Telephone.

Report and Order

In the matter of Revision of Part 69 of the Commission's Rules and Regulations; CC Docket No. 85–385.

Adopted: February 3, 1986.

Released: February 6, 1986.

By the Commission.

I. Introduction

1. We initiated this proceeding[1] to consider amendment of Part 69 of the Commission's Rules to eliminate the requirement that carriers file comprehensive revisions to their access tariffs, to be effective June 1, 1986.[2] Our *Notice* expressed our concern that the recent revision of the schedule for filing annual, comprehensive revisions to the access tariffs[3] had placed unnecessarily burdensome filing requirements on carriers.[4] Under the current Part 69 rules, local exchange companies (LECs) are required to make comprehensive access tariff filings on an annual basis. The annual period is currently defined as June 1 to May 31. In CC Docket No 84–800,[5] we modified the definition of the annual period to coincide with the calendar year, beginning in January 1987. Under the current rules, therefore, carriers would be required to make comprehensive access tariff filings on March 3, 1986 and again on October 3, 1986. We stated in our *Notice* that it was our tentative view that a comprehensive March filing appeared to be both unnecessary and undesirable in light of the brief periods during which the current and prospective June 1 rates would remain in effect, the limited data base which would be available for the preparation of revised rates, and the burdens imposed by the preparation and review of such filings.[6] We therefore proposed amendment of that portion of § 69.3(e) relating to the scheduled June 1, 1986 access tariff and a companion revision in § 69.3(e)(6) to delete references to notification to the National Exchange Carrier Association (NECA) regarding election to continue participation in the NECA pool for that period. We also proposed repeals of § 69.(e)(8) to eliminate the requirement that carriers file with NECA projections of private line terminations that would be subject to the access charge.[7]

II. Comments of the Parties

2. Our proposal to eliminate the requirement for a comprehensive access tariff filing in March was greeted with unanimous approval from the 20 parties filing comments.[8] The Ameritech Operating Companies (Ameritech) state that "the clear benefits of the proposals and the absence of identified harms argue forcefully for adoption of the proposed rule revision." Ameritech Comments at 1. The BellSouth Corporation (BellSouth) observes that, because the current access rates did not become effective until October 1, 1985, unless the filing were eliminated, insufficient data would be available for the development of new forecasts of demand and costs in compliance with § 61.38 of the Commission's Rules. BellSouth Comments at 2. Moreover, BellSouth states, if revised access rates become effective on June 1, 1986, the companies would experience the same difficulties in making the required comprehensive filing on October 3, 1986. Other parties echoed these sentiments. Nonetheless, while supporting the proposed rule changes, several parties request clarification or modification of the proposal described in the *Notice*. Parties request, variously, that this Commission modify the treatment accorded carrier participation in the NECA voluntary pools; [9] that we clarify the meaning of "less than comprehensive filing"; [10] and that we coordinate the effective date of rule changes associated with the direct assignment of closed-end WATS [11] and the allocation of Account 645 [12] with the date of the next-scheduled comprehensive filing.[13]

III. Discussion

A. Pool Participation

3. Our *Notice* proposed that carriers participating in the NECA pool would continue to do so.[14] NECA argues against this proposal. It states that, consistent with § 69.3(e)(6) of the Commission's Rules, the November 1985 pool elections have been completed and that NECA has reviewed the results of this election and determined that the shifts requested involve only a few small companies which will have an "imperceptible" effect on the pools.[15] NECA reports that it could accommodate the pool changes resulting from the November 1985 election in its tariff filing.[16] NTCA, on the other hand, argued initially that carriers might be allowed to join the NECA pools but should not be permitted to withdraw from them.[17] Subsequently, in light of the assurances offered by NECA regarding the minor effect of such pool elections, NTCA withdrew its objections to permitting small carriers to vacate the NECA pools.[18] OPASTCO suggests that companies be permitted the option of effecting the November 1985 election either on June 1, 1986 or January 1, 1987.[19] Pioneer reports that it elected in November to withdraw from the Billing and Collection pool and that, inasmuch as the *Notice* does not address the issue of whether carriers have the right to withdraw from one of the NECA pools, Pioneer concludes that its right to

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[1] Revision of Part 69 of the Commission's rules and regulations, notice of proposed rulemaking, CC Docket No. 85–385, FCC 85–631, 50 FR 50183 (Dec. 9, 1985) (*Notice*).

[2] *See* § 69.3 of the Commission's rules, 47 CFR 69.3.

[3] *See* Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84–800, Phase I, Report and Order, FCC 85–527, 50 FR 41350 (Oct. 10, 1985) (*Rate of Return Order*).

[4] *Notice* at para. 1.

[5] *See* n. 3, *supra*.

[6] *Notice* at para. 3.

[7] The proposed amendments are set forth in Appendix A, *infra*.

[8] Parties filed comments on December 23, 1985 and reply comments on December 30. Parties filing such comments are listed at Appendix B.

[9] *See* Comments of National Telephone Cooperative Association (NCTA) at 3; Comments of National Exchange Carrier Association, Inc. (NECA) at 3; Comments of the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) at 2; Comments of Pioneer Telephone Cooperative, Inc. (Pioneer) at 1–2.

[10] *See* Comments of Cincinnati Bell Telephone Company (CBT) at 2; Comments of GTE Sprint Communications Corporation (GTE Sprint) at 2; Comments of MCI Telecommunications Corporation (MCI) at 1.

[11] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78–72 and 80–286, Decision and Order, FCC 85–655 (released Jan. 7, 1985) (*Direct Assignment Order*).

[12] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78–72 and 80–286, Recommended Decision and Order, FCC 85–611 (released Nov. 15, 1985).

[13] *See* Comments of Continental Telecom Inc. (Contel) at 1–2; Comments of the NYNEX Telephone Companies (NYNEX) at 4; Comments of CBT at 1–2; Comments of GTE Sprint at 3.

[14] *Notice* at para. 7.

[15] NECA Comments at 3.

[16] *Id.*

[17] NTCA Comments at 3–4.

[18] NTCA Reply Comments at 1.

[19] OPASTCO Comments at 2. OPASTCO also suggests that existing waivers related to access tariffs be permitted to remain in effect through 1986. *Id.* In the absence of any demonstration that extensions of existing waivers is necessary, we decline to grant such blanket extensions.

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withdraw from the pool has been preserved.[20]

4. We conclude that permitting the companies to exercise their elections on June 1, 1986 would have an inconsequential effect on the NECA pools and that the necessary tariff revisions impose a minimal burden. We will therefore permit all carriers which elected in November 1985 either to join or to withdraw from a NECA pool to file tariff revisions reflecting such elections effective June 1, 1986. Carriers may also elect to change their pool participation effective January 1, 1987.

B. March Filing Requirements

5. We stated in our *Notice* that deferral of comprehensive revisions of access rates need not delay implementation of steps necessary to achieve the recovery of local loop costs by carriers from customers who actually cause those costs. We noted that the one dollar increase in the end user charge and the attendant reduction in the carrier common line (CCL) element could be effectuated through "a filing that is less comprehensive than an annual filing for all access elements."[21] Parties seeking a definition of "less than comprehensive" suggest that a broad range of matters be addressed in this abbreviated filing. MCI proposes that this Commission require that substantial supporting cost materials be submitted with the access tariffs and appends to its Comments a list of materials which it identifies as "necessary cost support material for effective evaluation of access tariff rate changes."[22] The materials listed by MCI range from "description and justification," through "development of the total company budget" to "access computer models." GTE Sprint suggests that, if the Commission requires the March 3 filing to reflect changes due to the dedicated treatment of WATS closed end facilities, carriers should also be required to reflect "all changes which would have an impact upon interstate traffic volume and revenue requirements."[23] NECA recommends that the filing include the implementation of new average schedules as well as the direct assignment of closed end WATS.[24]

6. NECA also asserts that retention of the March 3 filing date "may jeopardize the ability of NECA and the exchange carriers to reflect the Commission's decision" in CC Docket No. 78-72 and proposes April 1, 1986 as a more reasonable target date for the less than comprehensive filing.[25] Inasmuch as final decisions in CC Docket No. 86-1 and the proceeding to revise the apportionment of commercial expenses probably could not be reflected in a March 3 filing, we have decided to adopt NECA's suggestion and will defer the filing of tariffs to become effective June 1, 1986, until April 1, 1986.

7. MCI and GTE Sprint seek to impose filing requirements as burdensome as those which we proposed to eliminate. The data requested by both these parties would be far more extensive than that which should accompany a simplified filing and would include many more carriers. MCI and GTE Sprint have not demonstrated that such filing requirements are warranted in the present circumstances. The April filing must include those tariff revisions and cost support material necessitated by changes in pool participation and by implementation of the increased subscriber line charge and the resultant flow-through to CCL charges.

8. As indicated in our *Notice* at para. 25, elimination of the comprehensive filing does not foreclose any carrier from filing any revision it chooses to make with a June 1 or any other effective date and would not excuse such a carrier from filing cost support that is as comprehensive as the filing warrants. It also does not excuse the carrier from its obligation to maintain just and reasonable rates. We will require, however, as a procedural matter, that any voluntary tariff revisions be filed separately from the required filings.

C. Relationship to Other Commission Decisions

9. Contel, NYNEX, GTE Sprint and CBT request coordination of the revisions proposed in this *Notice* with anticipated revisions to Part 67 and Part 69 consequent to the Commission's decisions regarding allocation of Account 645 and the direct jurisdictional assignment of costs relating to WATS service.[26] Contel advocates delay in the implementation of direct assignment of closed-end WATS and other Part 67 regulatory changes until the next comprehensive filing.[27] Were Part 67 changes implemented in June 1986, Contel argues annual cost companies would lose most of the benefits derived from eliminating the June 1986 tariff filing requirements since a filing to implement the Joint Board's recommendations would require that carriers marshal the same types of resources needed to prepare a comprehensive one.[28] CBT, on the other hand, suggests that the direct assignment of WATS and Account 645 changes could be accommodated by tariff text changes.[29] NYNEX also indicates that these changes can be accommodated in a less than comprehensive filing.[30] GTE Sprint, as discussed at para. 3, *supra*, would have the Commission expand the March filing requirements if carriers are required to include adjustments to interstate traffic volume and revenue requirements due to the revised treatment of WATS closed ends.[31]

10. Substantial revisions in access charges would be required to reflect all rule changes proposed in the January 7 and January 8 *Notices* in addition to the increased subscriber line charge, changes in separation rules that have already been adopted and any other June 1 changes that we may require in collateral proceedings. All such changes can be implemented through adjustments to investment, expense and demand data that were used to compute the access charges that are currently in effect. Such an adjustment process would impose a smaller burden upon exchange carriers, participants in the tariff review process and our staff than a comprehensive filing based upon *de novo* projections for a June–December 1986 period. These additional burdens would not be warranted even if we adopt all changes that are presently being considered.

11. In light of the burdens which would be imposed by a comprehensive filing on April 1, 1986, we are adopting the proposed revision of § 69.3(a) to accept a less than comprehensive filing for tariff changes that become effective on June 1, 1986.

IV. Ordering Clauses

12. Accordingly, it is ordered that §§ 69.3(a) and 69.3(e)(8) of the Commission's Rules, 47 CFR 69.3(a) and 69.3(e)(8), are amended as set forth at Appendix A of this Order, effective March 17, 1986.

[20] Pioneer Comments at 2. Pioneer's conclusion is erroneous, though as discussed at para. 4, *infra*, it may exercise its November election in this instance.

[21] *Notice* at para. 4.

[22] MCI Comments at 2–3.

[23] GTE Sprint Comments at 4.

[24] NECA Comments at 2.

[25] *Id.* at 4.

[26] *See* WATS-Related and Other Amendments of Part 69 of the Commission's Rules, Notice of Proposed Rulemaking, CC Docket No. 86-1, FCC 86-1 (released Jan. 7, 1986); MTS and WATS Market Structure, CC Docket No. 78-72, FCC 86-12, Notice of Proposed Rulemaking (released Jan. 8, 1986).

[27] Contel Comments at 1–3.

[28] *Id.* at 3.

[29] CBT Comments at 2.

[30] NYNEX Comments at 4.

[31] GTE Sprint Comments at 3.

13. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), it is certified that sections 603 and 604 of the Act do not apply to this proceeding because this rule change will not have a significant impact on a substantial number of entities. *See* 5 U.S.C. 603 and 605(b).

14. It is further ordered, pursuant to section 220(i) of the Communications Act, 47 U.S.C. 220(i), that the Secretary shall serve a copy of this Order on each state commission.

15. It is further ordered that CC Docket No. 85-385 is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 69—[AMENDED]

Part 69, Chapter 1 of Title 47, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 69 continues to read:

Authority: Sections 4, 201, 202, 203, 205, 218, 403, 48 stat. 1066, 1070, 1072, 1077, 11094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. In § 69.3, paragraph (a) is revised and (e)(8) is removed to read as follows:

§ 69.3 Filing of access service tariffs.

(a) A tariff for access service shall be filed with this Commission for an annual period. Such tariffs shall be filed so as to provide a minimum of 90 days notice with a scheduled effective date of January 1.

* * * * *

Appendix B

Comments were filed by:

Alltel Corporation
The Ameritech Operating Companies
The Bell Atlantic Telephone Companies
BellSouth Corporation
Centel Telephone Company
Cincinnati Bell Telephone Company
Continental Telecom Inc.
GTE Sprint Communications Corporation
MCI Telecommunications Corporation
Mountain Bell, Northwestern Bell, Pacific Northwest Bell
National Exchange Carrier Association, Inc.
National Telephone Cooperative Association
NYNEX Telephone Companies
OPASTO
Pacific Bell
Pioneer Telephone Cooperative, Inc.
Southern New England Telephone Company
Southwestern Bell Telephone Company
United Telephone System, Inc.
Waitsfield-Fayston Telephone Company, Bay Springs Telephone Company, Elkhart Telephone Company and S&T Telephone Cooperative Association

Reply Comments were filed by:

NYNEX Telephone Companies
Pacific Bell
Southwestern Bell Telephone Company

[FR Doc. 86-3621 Filed 2-19-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-211; RM-4740]

FM Broadcast Station in Santa Isabel, PR and Christiansted, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein dismisses the request to allocate Class B Channel 258 to Santa Isabel, Puerto Rico, and substitute Channel 288 for Channel 258 at Christiansted, Virgin Islands. The allocation was requested by Pablo Rodriguez.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order

(Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Santa Isabel, Puerto Rico, and Christiansted, Virgin Islands); (MM Docket No. 85-211, RM-4740).

Adopted: January 31, 1986.
Released: February 13, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 50 Fed. Reg. 29450, published July 19, 1985, proposing the allocation of Class B Channel 258 to Santa Isabel, Puerto Rico, at the request of Pablo Rodriguez ("petitioner" or "Rodriguez"). The allocation requires the substitution of Channel 288 for Channel 258 at Christiansted, Virgin Islands, licensed to Leisure Market Radio of St. Croix, Inc., Station WIVI-FM, in order for the Santa Isabel allocation to comply with the Commission's minimum distance separation requirement.[1] Further, the Commission held in abeyance an application filed by Estereotempo, Inc. ("Estereotempo"), licensee of Station WIOB(FM), Channel 260, San Juan, Puerto Rico, to move its transmitter site and improve its facilities since its new site would be short-spaced to a Channel 258 operation at Santa Isabel. Petitioner filed untimely comments supporting the new allotment. Estereotempo filed comments in opposition as well as a "Petition to Vacate the Notice of Proposed Rule Making and Order to Show Cause."

2. Estereotempo opposes the Santa Isabel allocation as it would preclude grant of its application to change site (BPH-831116AK). It states that the Commission has ruled on two occasions prior to the release of the *Notice* herein that the pendency of the Santa Isabel request could not be used to defeat or preclude final action on the WIOB application. Therefore, while it does not oppose the allocation of an FM channel to Santa Isabel, it argues that its application must be considered prior to the allocation of a conflicting channel at Santa Isabel.

3. In order to put this proceeding into perspective, we believe a discussion of the background surrounding this proposal to be in order. On November 16, 1983, Estereotempo filed its application to move its transmitter site and improve Station WIOB's facilities. On January 5, 1984, Rodriguez filed his petition for the allocation of Channel 258 at Santa Isabel and simultaneously filed a Petition to Deny WIOB's application. On March 20, 1984, Rodriguez also filed a Petition to Dismiss the application. By letter of October 19, 1984, the Commission, by delegated authority, denied the Petitions to Deny and Dismiss the application. This letter also advised Rodriguez that any petition for rule making filed after December 16, 1983, such as the Santa

[1] By Public Notice of September 13, 1985, Report No. 1537, the Commission extended the reply comment deadline to September 30, 1985, and stated that this proceeding would be consolidated with the *Notice of Proposed Rule Making* in MM Docket 85-209 which proposed the allocation of Channel 288A to Naguabo, Puerto Rico, 50 FR 29447, published July 19, 1985. However, we now find that the two rule makings can proceed independently and therefore will not be consolidated.

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Isabel request, would be subject to inclusion in the omnibus FM proceeding and failing to meet the necessary criteria for inclusion would not be acted upon until the Commission again permitted the filing of new FM allocation petitions.[2] On December 19, 1984, petitioner filed an untimely petition for reconsideration of the denial of his earlier Petitions to Deny and Dismiss. Although procedurally defective, the Commission nevertheless considered Rodriguez' petition for reconsideration and denied it by letter of February 1, 1985. He responded to this denial by filing an Application for Review, again in an untimely fashion.

4. As noted above, petitioner filed his Santa Isabel request after December 16, 1983. Since the request did not conflict with any proposal in the Docket 84–231 omnibus FM proceeding, the Commission took no action until after the *Report and Order* in that proceeding was adopted.[3] See *Second Report and Order*, 50 FR 15558, published April 19, 1985. The Commission adopted this *Notice of Proposed Rule Making* since it found the proposed allocation to be technically acceptable even though mutually exclusive with Station WIOB's application. Indeed, the application has not yet been granted and therefore the interim protection afforded during the Docket 84–231 rule making had expired. Thus, the Commission believed the public interest woud best be served by issuing the instant *Notice* and permitting comparative consideration of the two proposals.[4]

5. By the terms of the *Notice*, petitioner was requested to file comments supporting the allocation and reiterating his intention to apply for the channel by the close of the comment period and that absent such continuing interest, the channel would not be allocated. He was also alerted to the fact that the Commission still has before it the mutually exclusive application of Station WIOB to change transmitter site and improve its facilities. In response to the *Notice*, petitioner again failed to timely file his pleadings with the Commission. His supporting comments, filed over a month late, fail to include any reason for their lateness and are not accompanied by a request for waiver of the Commission's rules to permit their consideration. Further, Estereotempo served Rodriguez with a copy of its opposition, in compliance with the Commission's rules, but petitioner's late-filed comments, which also appear to respond to the opposition, were not served on Estereotempo, thus raising the possibility of a violation of our *ex parte* rules.

6. Normally, in the interest of administrative convenience, late-filed comments in support of a proposal are accepted to the extent of permitting continuing interest to be shown. Typically, no opposition to the proposal is received and the petitioner shows good reason for its lateness. Here, we believe this situation to be quite different. Our procedural rules, for which Rodriguez has consistently shown a patent disregard, are designed to provide adequate time for parties to fully participate in the decision-making process while also permitting the Commission to conduct its business within a reasonable period of time so as to avoid undue delay in service to the public. In this case, the Commission's desire to fully consider Rodriguez' objections to the grant of Station WIOB's application followed by this proceeding proposing a new channel at Santa Isabel, have, at best, caused the residents of San Juan to suffer an inordinate delay in receiving improved radio service. While we ascribe no other motivation to the manner in which Rodriguez has participated in this proceeding than a sincere desire to provide Santa Isabel with its first local FM service, we find that the consistent disregard for the Commission's procedures, coupled with the resulting delay in effectuating improved coverage to the San Juan area by Station WIOB, compels us to deny acceptance of Rodriguez' late-filed comments and to dismiss his proposal.

7. Accordingly, it is ordered, that the petition for rule making filed by Pablo Rodriguez is dismissed and this proceeding is terminated.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–3625 Filed 2–19–86; 8:45 am]

BILLING CODE 6712-01-M

[2] Public Notice, Mimeo No. 1306, December 9, 1983.

[3] *Notice of Proposed Rule Making*, 49 FR 11214, published March 26, 1984.

[4] As stated in *Andalusia, Alabama*, 49 FR 32201, published August 13, 1984, the Commission generally favors the new service that an allotment can provide as a greater public benefit over a change in coverage area unless the applicant can demonstrate an overriding public interest justification.

47 CFR Part 73

[MM Docket No. 85–220; RM–4928]

FM Broadcast Station in Davenport, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Wheat Waves, Inc., allots FM Channel 273A to Davenport, Washington, as that community's first FM service.

EFFECTIVE DATE: March 24, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1062, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1061, 1082, as amended, 1063, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Davenport, Washington) (MM Docket No. 85–220, RM–4928).

Adopted: January 24, 1986.
Released: February 13, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 30975, published July 31, 1985, proposing the allotment of Channel 273A to Davenport, Washington, as that community's first FM service. The *Notice* was adopted in response to a petition filed by Wheat Waves, Inc. ("petitioner"). Petitioner submitted supporting comments reaffirming its interest in the channel. Supporting comments were also filed by the Davenport Chamber of Commerce.

2. The channel can be allotted in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Since Davenport is located within 320 kilometers (199 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained.

PART 73—[AMENDED]

3. Accordingly, pursuant to the authority contained in section 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended and § 0.61, 0.204(b) and 0.283 of the Commission's Rules it is ordered, That effective March 24, 1986, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Davenport, WA	273A

4. The filing window for application on this channel will open on March 25, 1986, and close on April 23, 1986.

5. It is further ordered, that this proceeding is terminated.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–3627 Filed 2–19–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85–178; RM–4916]

TV Broadcast Station in Mayville, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of The Pacer Television Company, assigns UHF Television Channel 52 to Mayville, Wisconsin, as that community's first commercial television service.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73:

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.606(b) Table of Assignments, TV Broadcast Stations. (Mayville, Wisconsin) (MM Docket No. 85–178, RM–4916).

Adopted: January 24, 1986.
Released: February 13, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 26011, published June 24, 1985, proposing the assignment of UHF Television Channel 52 to Mayville, Wisconsin, as that community's first commercial television service. The *Notice* was issued in response to a petition filed by The Pacer Television Company ("petitioner"). Petitioner filed supporting comments reaffirming its intention to apply for the channel.

2. Mayville (population 4,333) [1] in Dodge County (population 75,064) is located in approximately 75 kilometers (45 miles) northwest of Milwaukee.

3. We believe the public interest would be served by the assignment of Channel 52 to Mayville, Wisconsin, in order to provide that community with its first commercial television service. The assignment can be made in compliance with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules.

PART 73—[AMENDED]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 24, 1986, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
Mayville, WI	52

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–3628 Filed 2–19–86; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are from the 1980 U.S. Census.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 394

[BMCS Docket No. MC–117; Amdt. No. 83–16]

Notification and Reporting of Accidents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: Section 206 of the Motor Carrier Safety Act of 1984 directs the Secretary of Transportation to reissue regulations pertaining to commercial motor vehicle safety. Pursuant to this provision, the FHWA is amending Part 394 of the Federal Motor Carrier Safety Regulations (FMCSR's) by revising those sections relating to the notification and reporting of accidents. This amendment raises the reporting threshold for property damage accidents from the present $2,000 to $4,200. In addition, under the accident reporting criteria, the definition of "bodily injury" is clarified for reporting purposes. The FHWA is further clarifying the reporting requirements under Part 394 by addressing the instances when an accident report was not timely filed, because a carrier was unaware of the accident at the time or was unaware that it was reportable. These revisions will reduce the accident reporting burden on motor carriers and clarify reporting requirements.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755–1011; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426–0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Section 394.3 of the FMCSR (49 CFR 394.3) presently specifies that an accident involving a motor vehicle used in interstate, foreign, or intrastate commerce by a motor carrier who is subject to the Department of Transportation Act resulting in (1) the death of a human being; (2) bodily injury to a person who, as a result, receives medical treatment away from the scene of the accident; or (3) total damage to all property aggregating $2,000 or more, based on actual costs or reliable

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estimates, constitutes a "reportable accident."

Currently, all interstate motor carriers, except private carriers engaged wholly in farm-to-market agricultural transportation, must report to the FHWA's Regional Offices accidents which result in a fatality, bodily injury, or $2,000 or more property damage.

The FHWA, anticipating the need for revision or extension of its accident reporting system, selected Part 394 for priority review in 1982. The priority review report is available for inspection in the public docket. The review team recommended that the property damage reporting criterion be raised to $4,000.

The FHWA issued a notice of proposed rulemaking (NPRM) (49 FR 1912; Docket No. MC–109) on January 16, 1984. The FHWA proposed to (1) revise the accident report forms, (2) raise the property damage reporting criterion from $2,000 to $4,000, and (3) clarify the definition of "bodily injury." All comments to the docket were to be received on or before March 16, 1984. The comment period was extended to June 1, 1984, in response to a petition from the American Trucking Associations, Inc. (ATA).

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2829) (the Act) was enacted on October 30, 1984. Section 206 of the Act mandated repromulgation of the regulations pertaining to commercial motor vehicle safety. The Department of Transportation (DOT), in its continuing effort to ensure safety on the Nation's highways, has reviewed its existing regulations and is making appropriate revisions as necessary.

On January 23, 1985, the FHWA issued an advance notice of proposed rulemaking (ANPRM) (50 FR 2998, Docket No. MC–114; Notice No. 85–1) to (1) advise the public of the areas of the FMCSR's being considered for revision, rescission, or additions, (2) request comments on those areas under consideration, and (3) incorporate several dockets and comments into that rulemaking action. By this ANPRM, the docket of the January 16, 1984, NPRM was closed and incorporated into Docket No. MC–114.

Pursuant to section 206 of the Act and after careful review of the comments made to the dockets, this final rule is revising those provisions that were strongly supported by the comments. The proposal to revise the accident report forms is not being adopted at this time because the FHWA received a wide range of divergent views from the commenters which failed to reflect a clear consensus. The FHWA has decided to consider this proposal further before taking action on it.

Summary of Comments

An overwhelming majority of the commenters were in support of raising the reporting threshold for property damage accidents from the present $2,000 to $4,000.

The ATA, a major motor carrier association, supports raising the reporting threshold for property damage accidents and stated that this action is long overdue and should be implemented as quickly as possible. The ATA noted that the results of a recent survey showed that the trucking industry has witnessed massive increases in the cost of repair and replacement as a result of property damage in accidents. Consequently, motor carriers must report accidents which, but for the effects of inflation, would not be reportable. Raising the minimum reporting dollar level should do much to alleviate this problem. The ATA also stated that the industry supports the change in the definition of "bodily injury" which will reduce the number of reported injury accidents and the potential for carriers to be in violation of the reporting requirements where the existence of an injury was not known at the time of the accident.

Likewise, the Interstate Carriers Conference, an affiliate of the ATA, supports the proposed increase in the minimum reporting dollar amount of property damage, from $2,000 to $4,000. The conference urges that the $4,000 limit be implemented immediately, and states that the advantages, in terms of dollars and time with immediate implementation of a $4,000 minimum, will be beneficial to both the industry and the FHWA. Additionally, to further clarify the reporting requirements, the conference asked that new definitions be applied to "injuries" triggering the necessity for an accident report.

Motor Convoy, Inc., also agreed with the ATA's position in support of the proposed increase in the reporting threshold. Motor Convoy further commented that the requirement for reporting an injury should be "transportation from the accident scene for the person to receive medical attention."

Similarly, the Private Truck Council of America, Inc., (PTCA) supports the efforts of the FHWA in increasing the reporting threshold for property damage accidents from $2,000 to $4,000. The PTCA commented that this increase should prove to be of significant benefit to motor carriers.

Others commenters, such as United Parcel Service, stated that "an increase in the reporting threshold to $4,000 is an appropriate recognition of the fact that years of inflation have greatly expanded the accident universe reportable under the regulations. The new reporting threshold will reduce the number of minor accidents reported, which contribute no useful data to those monitoring highway safety."

Likewise, the Motor Vehicle Manufacturers Association (MVMA) stated that paperwork reduction aims can be achieved by raising the threshold for reporting property damage accidents from the current $2,000 to $4,000, thus reducing the number of minor accidents reported by approximately 17 percent.

Similarly, United Van Lines, Inc., commented that, "We feel with the raising of the property damage from $2,000 to $4,000 for a reportable accident, a reduction in paperwork of approximately 20 percent will be achieved."

Motor Freight Lines, Inc., stated: "Due to the fact that we are overly burdened with paperwork, any proposal which would lessen that burden without jeopardizing safety would be most desirable. If the reportable figure was increased to $4,000, our reportable accidents would decrease immensely."

The American Bus Association (ABA) agreed that the increase in the reporting threshold would ease the reporting burden and favors adoption of the proposed change. The ABA also commented that the death and injury reporting criteria should not be changed except with respect to the bodily injury definition. The ABA agreed that bodily injury should be defined with reference to person who "is transported away from the accident scene to receive medical treatment."

Other commenters in support of raising the reporting threshold to $4,000 include: Wheaton Cartage Company, Mayflower Corporation, Black Hills Trucking, Inc., Getty Refining and Marketing Company, Agway, Inc., Westinghouse Electric Corporation, Jack B. Kelley, Inc., Thurston Motor Lines, Inc., Milliken & Company, Daily Express, Inc., Kroeger Company, Gulf Oil Products Company, ANR Freight System and Kuella, Inc. These respondents concurred with the FHWA's proposal to increase the reporting threshold and agree that this objective will reduce the reporting burden placed upon motor carriers. One commenter stated that raising the property damage reporting threshold to $4,000 will eliminate the need for reporting many of the "fender bender" type accidents which are now reported. "It doesn't take much of an accident

today, involving property damage only, to add up to $2,000."

Several of the commenters favored raising the reporting threshold even higher than the proposed $4,000. Among these was the National Tank Truck Carriers, Inc., (NTTC) who stated: "We believe that the current report trigger of $2,000 in property damage is too low. Court awards, settlements and inflation have reached such large proportions that $2,000 include many minor incidents." NTTC supports the increase to $4,000 as a minimum and suggests that a $10,000 level is more in keeping with today's accident costs. Another motor carrier, Yellow Freight System, Inc., supports a reporting threshold of $10,000.

Another commenter in support of a reporting threshold higher than the proposed $4,000 was Steinbecker Brothers, Inc., a private carrier. Steinbecker Brothers, Inc., stated that, "with the tremendous increase in costs of repair over the last several years, the monetary threshold for reporting accidents has made very minor accidents fall under the reportable category." They also believe that the amount of aggregate property damage should be raised to $6,000 for a non-injury accident and supports the proposed change in the definition of what constitutes an injury.

Other commenters such as United Bus Owners of America (UBOA) and Western Express stated: "if a study of the inflation rate was applied to the $2,000 limit that now exists, the new dollar amount would come close to $4,000. In order to prevent a regulation from becoming outdated before it is published, the limit should be increased to $5,000." The Truck Renting and Leasing Association (TRALA) also concurred in this matter.

Conversely, the Oregon Department of Transportation, Highway Division, Salem, Oregon, stated that increasing the amount of property damage required for reporting of accidents from $2,000 to $4,000 is too large a step. They recommended that the minimum amount remain at $2,000 or, at the most, be increased to $3,000.

Similarly, the International Brotherhood of Teamsters (IBT) requested that the $2,000 property damage criterion not be amended since "the FHWA has found that the cost savings benefits from raising the property damage threshold to $4,000 is not significant." The IBT recognizes that for administrative reasons, a threshold must be set, but recommends that a higher threshold not be set for the reason stated. Also, the IBT disagrees with the FHWA is the proposed change in the definition of "bodily injury."

The American Automobile Association (AAA) does not believe the proposed change in the property damage criterion will seriously affect the availability of key accident data, although the AAA believes the change is bound to have some effect on the continuity of data collected in prior years. The AAA commented that the higher threshold for reporting property damage ($4,000 vs. $2,000) will reduce the number of reportable accidents which, but for chance, might otherwise have resulted in a fatality or injury. The AAA stated that "elimination of reports will reduce the size of the data base and make it difficult to determine causative factors and formulate counter measures." The AAA would prefer to leave the reporting requirements as they are.

Under the present system, the data base in being skewed because the $2,000 figure is not in keeping with inflation. While FHWA recognizes that raising the minimum dollar limit for reporting accidents resulting in property damage will lead to certain accidents not being reported which otherwise would have been, FHWA also recognizes that, as a result of inflation over the past 12 years since the adoption of the $2,000 limit, accidents are now being reported which would not have been reported in 1973. Thus, the effects of inflation have included an increased burden on industry to report accidents and a distortion in the year to year data collected by BMCS.

The FHWA has also considered that adopting any fixed dollar figure for this criteria will, over time, become out of date. Therefore, the FHWA has decided to (1) update the $2,000 criteria for reporting accidents by applying the Gross National Product (GNP) deflator to the 1973 figure, and (2) by undertaking an annual adjustment of property damage amount for reportable accidents. The DOT will adjust the reporting amount for property damage accidents using the GNP deflator as published by the Department of Commerce.

The reporting minimum was originally set at $2,000 in 1973. In 1973 the GNP deflator was 105.75, on a 1972 base. In 1984 the GNP deflator was 223.38. Multiplying $2,000 by 223.38 and dividing by 105.75 yields an equivalent level of $4,224.68. Rounding to the nearest hundred dollars yields an equivalent price of $4,200, which will be adopted as the current year base, on which the GNP deflator will be applied to derive future reporting minimums.

The DOT realizes the need for periodic adjustments to the reporting minimums, therefore, the regulations will be updated annually so that the accident reporting requirements will reflect changes attributable to inflation or deflation. With an annual adjustment for inflation, we foresee no reduction in the number of accident reports filed in future years since the adjustment merely reflects the economic condition of the country and the current costs for repairs. We realize that during the first year the number of accident reports received will be reduced. In 1984, 36,500 accidents were reported. Of that amount 17,043 were accidents involving property damage only. Those property damage accidents which involved less that $4,000 of damage but more than $2,000 totaled 7,390. Based on these figures, we anticipate a 20 percent reduction in the number of accidents reported to the FHWA. However, such a reduction will not degrade the FHWA's ability to determine causative factors and formulate countermeasures. Further, we anticipate no adverse effect on the validity of the statistics generated.

Section 394.9 of the FMCSR specifies that within 30 days after a reportable accident occurs, the motor carrier must file the original and two copies of Form MCS 50–T (property) or Form MCS 50–B (passengers), with the Director, Regional Motor Carrier Safety Office of the Federal Highway Administration. It has come to the attention of the BMCS that some motor carriers have found this provision of the FMCSR to be ambiguous. As a result of contact with motor carriers by BMCS field personnel, the BMCS has learned that there is considerable confusion on the part of some motor carriers as to their responsibility under the regulations to file accident reports (1) in those instances when a motor carrier discovers that a driver neglected to notify it that the driver was involved in a reportable accident, and (2) when a motor carrier, after first believing an accident to be not reportable, learns that the accident was in fact, reportable. Some motor carriers have advised BMCS field personnel that they were reluctant to report accidents more than 30 days after the occurrence of the accident, even though the motor carrier had only learned that the accident was, in fact, reportable only after 30 days had elapsed, because they believed they would be considered, by the BMCS, to be in violation of the requirement to report an accident within 30 days and thus subject to penalty.

It was not the intention of the BMCS to create a situation where a motor

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carrier, who in good faith and exercising proper diligence did not know of an accident or did not believe an accident to be reportable, would be in violation of this regulation for failing to report such an accident within 30 days of its occurrence. Notwithstanding this however, when a motor carrier does learn of such an accident, the BMCS believes that it is imperative for the motor carrier to report that accident even if more than 30 days have elapsed since its occurrence.

This subject was not addressed in the NPRM of January 16, 1984 or the ANPRM of January 23, 1985. However, as stated above, this question or interpretation of the current regulations has been brought to the Agency's attention. Because of the confusion referred to above, and the Bureau's need for data which is as accurate as possible, the Bureau believes that 49 CFR 394.9 should be amended to eliminate any ambiguity or source of confusion.

According, § 394.9 of the FMCSR is amended to make clear that motor carriers are to make a report within 30 days of when a reportable accident occurs; or, when the motor carrier learns or should have learned that an accident was reportable after 30 days have elaped, then the motor carrier shall, immediately upon learning of such accident, make a report to the BMCS. This requirement is applicable to accidents which a motor carrier learns of or should have learned of. This is to make clear that motor carriers can not evade the requirement to report an accident by not making reasonable inquiries. Motor carriers are expected to establish procedures for the reporting of accidents to them by their drivers. When a motor carrier learns of an accident, these regulations require the motor carrier to make further reasonable inquiry to establish whether the accident was reportable.

Because this amendment merely clarifies an existing requirement, does not impose any new requirement or burden on motor carriers, and since further opportunity for comment is not anticipated to result in further useful information, this change will take effect without further opportunity for public comment thereon. Thus, this amendment is effective immediately. Affected parties or other interested persons may, however, submit comments on this amendment to the Agency, addressed to the docket number indicated above, if they so desire.

Conclusion

Upon reviewing and evaluating the comments submitted to both dockets (BMCS Docket No. MC–109, Notice No. 84–1, 49 FR 1912, January 16, 1981, and BMCS Docket No. MC–114, Notice No. 85–1, 50 FR 2998, January 23, 1985), it is evident that the majority of the commenters favor the amendments to 49 CFR 394 described herein and are convinced that such action will result in a decrease in burden on the motor carrier industry.

Currently, interstate and foreign commerce motor carriers are required to report accidents involving death, injury, or at least $2,000 property damage. Under the revised rule, the death and injury criteria would remain the same except for a change in the bodily injury definition (49 CFR 394.3(a)(2)). The change in the definition of "bodily injury" is being made to clarify the FMCSR's reporting requirements and to promote more uniform reporting.

Section 394.3(a) defines "reportable accident" in part to include an accident resulting in "Bodily injury to a person who, as a result receives medical treatment away from the scene of the accident." This language was proposed to be changed in the January 16, 1984 NPRM to read "Bodily injury to a person who, as a result, is transported away from the accident scene to receive medical treatment." After careful consideration, the FHWA has concluded that the existing language will remain as is, except that the word "immediately" will be added to further clarify the bodily injury definition.

The word "immediately" will be inserted in the existing language to read, "Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident." The insertion of the word "immediately" will lead to additional uniformity in accident reportings.

The FHWA believes that this change will reduce uncertainty and resultant discrepancies in accident reporting. It is the intent of this definition to require the reporting of accidents which result in injuries which are serious enough to warrant immediate treatment away from the accident scene, and to exclude the instances when an injury is not severe or when the injury is only discovered at some later time.

A person who is treated at the accident scene and then transported away from the scene to immediately receive medical treatment at a nearby hospital or medical facility would satisfy the intent of the "bodily injury" definition. An injured person may be transported away from an accident scene by an ambulance; a friend or someone else at the scene; or the person may wish to transport himself to a medical facility, and yet the intent of the definition will be met.

On the other hand, the "bodily injury" definition does not include an instance where a person is transported away from an accident scene, receives a routine examination, and is released from further treatment. The "bodily injury" definition does not include routine examinations, but injury treatment only. Further, a person who is treated at an accident scene (i.e. receives first-aid for an abrasion or cut, where a bandage is applied) and released to resume regular activities, would not satisfy the intent of the definition. Additionally, a person who seeks medical treatment at some later date (other than the date of the actual occurrence) would not be within the intent of the definition.

A new reporting threshold for property damage accidents was recommended to normalize the data over time. The purchasing power of the dollar has changed during the past 12 years since the $2,000 reporting figure was instituted in 1973. Bureau historical data indicates that increasing the reporting threshold from $2,000 to $4,200 will result in a burden reduction of approximately 5,500 hours (20 percent). The current burden is approximately 28,698 hours. The estimated burden for calendar year 1986 is approximately 23,198 hours.

Although this rulemaking action will reduce the accident reporting burden industry-wide by approximately 20 percent, it will not have a significant economic effect because a burden reduction of approximately 5,500 hours is considered to be relatively minimal given the magnitude of the motor carrier industry. Accordingly, a regulatory evaluation is not required.

Inasmuch as a NPRM proposing the changes here adopted was published on January 16, 1984, and since the comments in response to both the January 1984 NPRM and the January 1985 ANPRM overwhelmingly supported these changes, the FHWA finds good cause to make the amendments final without additional notice and opportunity for comment. For the same reason, additional notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of further useful information.

The reporting requirements under § 394.9 will remain the same except that new language will be added to clarify the motor carrier's responsibility to file an accident report after learning that a reportable accident has occurred. This change in paragraph (a) of § 394.9 is intended to clarify the existing rule and promote reporting uniformity. Therefore, we believe that inasmuch as this change will have no adverse impact on the motor carrier industry notice and opportunity for comment is not required.

The FHWA has determined that this document contains neither a major proposal under Executive Order 12291, nor a significant proposal under the regulatory policies and procedures of the Department of Transportation.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 394

Motor carriers, Highway safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number, 20.217, Motor Carrier Safety)

Accordingly, 49 CFR 394.3(a)(2) is amended to change the definition of "bodily injury"; 49 CFR 394.3(a)(3) is amended to change the property damage reporting criterion from $2,000 to $4,200; and 49 CFR 394.9(a) is amended as set forth below.

Issued on: February 14, 1986

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

In consideration of the foregoing, the Federal Highway Administration is amending Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by revising Part 394 as set forth below.

PART 394—[AMENDED]

1. The authority citation for Part 394 is revised to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

2. In § 394.3, paragraphs (a) (2) and (3) are revised to read as follows:

§ 394.3 Definition of "reportable accident."

(a) * * *

(2) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(3) Total damage to all property aggregating $4,200 or more based upon actual costs or reliable estimates.

* * * * *

3. In § 394.9, paragraph (a) is revised to read as follows:

§ 394.9 Reporting of accidents.

(a) Within 30 days after a motor carrier learns or should have learned that a reportable accident occurred, the motor carrier must file the original and two copies of Form MCS 50–T (property) or Form MCS 50–B (passengers), completed as specified in paragraph (b) of this section, with the Director of the Regional Motor Carrier Safety Office of the Federal Highway Administration region in which the carrier's principal place of business is located. The addresses and jurisdictions of the Federal Highway Administration regions are specified in § 390.40 of this subchapter.

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[FR Doc. 3607 Filed 2–19–86; 8:45 am]
BILLING CODE 4910–22–M

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Proposed Rules

Federal Register
Vol. 51, No. 34
Thursday, February 20, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance; Supplemental Adjusted Capital Proposal

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for comments.

SUMMARY: Capital adequacy is one of the critical factors the Federal Deposit Insurance Corporation ("FDIC") is required to analyze in taking action on various types of applications, such as mergers and branches, and in the conduct of the FDIC's various supervisory activities related to the safety and soundness of individual banks and the banking system. In February 1985, the FDIC's Board of Directors adopted a capital regulation and related policy statement that set forth minimum standards for adequate capital for insured state nonmember banks and set forth standards to determine when an insured bank is operating in an unsafe or unsound condition by reason of the amount of its capital (50 FR 11128, March 19, 1985). This regulation, contained in Part 325 of the FDIC's Rules and Regulations, 12 CFR Part 325, was designed to establish, in conjunction with the other federal bank regulatory agencies, uniform capital standards for all federally regulated banking organizations regardless of size. These uniform capital standards were based on ratios of primary and total capital to total assets.

The FDIC historically has taken account of risk factors in addition to relying on capital-to-total-assets ratios, and the nature and degree of risk exposure have always been important subjective factors in assessing capital adequacy. The FDIC belives that it may be useful to modify its capital regulation to be more explicitly and systematically sensitive to the risk exposure of individual banks. Consequently, the FDIC is requesting comment on the following proposed supplemental adjusted capital measure that the FDIC would consider in tandem with existing minimum primary and total capital-to-total-assets ratios in analyzing the capital levels of insured state nonmember banks.

DATE: Comments on the proposal must be received by May 21, 1986.

ADDRESS: All comments should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or delivered to Room 6108 at the same address, between the hours of 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, or Stephen G. Pfeifer, Examination Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–6903 (after February 23, 1986); (202) 389–4761 (before February 24, 1986).

SUPPLEMENTARY INFORMATION:

Background

The Need for a Supplemental Adjusted Capital Measure

In July 1984, the FDIC issued for public comment a proposed capital maintenance regulation designed to raise the minimum capital requirements, expressed in terms of ratios of capital to total assets, for insured state nonmember banks. 49 FR 29399 (1984). Commenters raised concerns about various aspects of the proposal and the FDIC took note of these comments in adopting its current capital regulation (12 CFR Part 325) with its capital-to-total-assets ratios in February 1985. 50 FR 11128 (1985). A number of respondents pointed out that capital standards based on total assets fail to recognize the different risk profiles in individual banks. Others suggested that higher capital requirements would result in banks taking on greater risks and that banks would reduce liquidity by reducing high quality, low risk assets.

The FDIC responded to these concerns by indicating that these comments did not fully consider the overall thrust of the proposed regulation. The regulation specifies minimum capital ratios which are applicable *only* to banks whose overall financial condition is fundamentally sound, which are well-managed, and which have no material or significant financial weaknesses. It also provides that the minimum capital requirements of banks which assume inordinate risks, either on or off their balance sheets, or decrease the level of liquid assets relative to total assets will be set at a higher level consistent with the level of risk in each institution. Hence, the emphasis in the regulation on ratios based on the total amount of assets was not to be interpreted to mean that the FDIC views the regulation as a substitute for effective risk management. Rather, the FDIC would continue to perform independent evaluations of capital adequacy in banks on a case-by-case basis, taking into account all of the many types of risks to which banks are exposed. Moreover, the FDIC stated that it would encourage even fundamentally sound, well-managed banks to maintain capital above the minimums.

Since the adoption of its current capital regulation last year, the FDIC has also pursued other initiatives related to capital and risk-taking by banks.

In May 1985, the FDIC requested comment on two possible methods of enhancing market discipline on banks, one of which would involve a significant increase in the total capital requirement from the present six percent to about nine percent of total assets. 50 FR 19088 (1985). The primary capital requirement would be kept relatively constant, rising from five and one-half to six percent. Subordinated debt could be used to meet a substantial portion of the total capital requirement. The FDIC is continuing to evaluate the merits of such a higher capital requirement in light of the comments received on this approach. In September 1985, the FDIC provided a discussion paper on risk-based deposit insurance to all insured banks (FDIC Bank Letter BL–33–85). Risk-related premiums would provide a significant, though not overwhelming, financial incentive for banks to avoid excessive risk-taking. The system proposed in that paper for evaluating the perceived risk in commercial banks would include a capital adequacy measure, the ratio of primary capital to total assets, along with measures of credit quality and other risks.

While the FDIC's commitment to factoring risk into its assessment of each bank's capital adequacy is clear, the process by which the FDIC (through its examiners) evaluates risk involves judgment. For purposes of capital planning, bankers must also be evaluating risk continually so that they can assure themselves that they are maintaining capital levels that are appropriate for the changing circumstances within their institutions. Accordingly, the FDIC believes that, in addition to the assessment of minimum acceptable capital levels measured solely on the basis of total assets, there may be significant analytical value to a systematic evaluation of appropriate capital levels based upon consideration of the degree of risk associated with such assets.

Several developments over the last few years suggest the possible need for the FDIC to modify its capital regulation to make it more sensitive to certain risk exposures of individual banks. First, there has been a substantial growth in off-balance-sheet risks, a phenomenon that does not appear to have been significantly tempered by the subjective factoring of these risks into overall assessments of capital adequacy. One indication of this trend has been the growth in standby letters of credit issued by multinational banks, which have increased, on average, from 5.8 percent of the aggregate assets of those banks at the end of 1981 to 11.4 percent of assets at midyear 1985. Among multinational bank holding companies, this one category of off-balance-sheet risk ranges from less than five percent to well over 15 percent of total assets. In absolute terms, the volume of standby letters of credit for the multinational institutions has more than doubled from $49 billion in 1981 to $105 billion at midyear 1985.

Significant growth has also occurred in legally binding loan commitments, including those issued in connection with commercial paper programs and Euromarket note issuance facilities. The advent of other financial innovations, such as interest rate swaps, has also had the result of creating significant off-balance-sheet exposure. Taken together, off-balance-sheet items represent a very substantial exposure that is not now factored *explicitly* into the FDIC's minimum capital ratios.

Second, there is some evidence that the holdings of low-risk, liquid assets in relation to total assets, particularly by the larger banking organizations, have declined over recent years. This suggests that, while capital-to-*total*-assets ratios may have improved over time, capital in relation to risk exposure may not have improved commensurately. For the multinational banks, liquid assets (defined as bank certificates of deposit, Federal funds sold, and securities maturing within one year) have declined as a percent of total assets from 15.6 percent at the end of 1981 to 12.8 percent at June 30, 1985. Beyond this, examiners have generally observed decreases in liquid assets at banks regarded as more aggressive with respect to capital management and growth, and it has been argued that existing capital policies provide incentives to deemphasize low-risk, low-yield business.

While there may be a number of reasons for these balance sheet adjustments, the FDIC is concerned that they may be, in part, a response to the imposition of capital requirements that do not distinguish explicitly among various risk categories of assets and that do not make explicit allowance for the lessened threat to capital inherent in low-risk activities. Thus, some banks appear to be reducing their holdings of low-risk assets and deemphasizing their conduct of low-risk activities, in an effort to meet more stringent capital requirements. Although these adjustments may improve or otherwise maintain capital ratios at what appear to be acceptable levels, they do not, especially in conjunction with the growth in off-balance-sheet risks, strengthen an institution's risk profile. Indeed, such developments could, under certain circumstances, undermine and institution's financial condition.

Third, increased international competition points toward the need for a greater degree of convergence in the policies of various countries for supervising the capital adequacy of multinational banking organizations. In this regard, many European countries have developed risk-based capital measures and a similar supervisory approach is evolving in Japan.

Finally, the growth and change in the nature of risks to which banks have become exposed suggest the need to provide more explicit guidance to bankers and examiners for assessing capital needs in relation to risk.

The Purpose of the Proposed Supplemental Adjusted Capital Measure

The FDIC believes that the introduction of a supplemental adjusted capital measure that is based upon an assessment of distinct but necessarily broad risk categories may provide a valuable additional analytical tool in evaluating the financial strength and stability of individual institutions and the banking system as a whole. Even such a limited risk-adjusted measure of capital adequacy might provide the FDIC with a supplemental means of assessing whether the capital level of individual banks is fully adequate to serve the key functions of capital, namely to provide a buffer to absorb losses in time of poor performance, to promote the safety of depositors' funds, to help maintain public confidence in banking institutions, and to support the reasonable growth of such institutions. To achieve these purposes, it is essential that an institution's capital base should bear a reasonable relationship to the risk of that institution.

In addition to providing another tool for assessing capital adequacy, the proposed supplemental adjusted capital measure has been designed to further certain policy objectives. By including an assessment of off-balance-sheet risk as part of the supplemental adjusted capital ratio, the proposal would permit the FDIC to deal with off-balance-sheet exposures, which, as indicated above, have expanded rapidly over the last several years. The proposed measure would also temper somewhat the disincentives inherent in the FDIC's existing capital regulation to hold low-risk, relatively liquid assets. In addition, consideration of this proposal may begin to move capital adequacy policies in the United States more closely in line with those of other major industrial countries. Finally, the proposal would provide more explicit guidance to bankers and examiners for relating capital to risk profiles.

Description of the Proposal

Introduction and Overview

This proposal involves a risk-sensitive capital measure that would supplement the FDIC's existing capital regulation. The proposal is based upon an additional capital ratio, in this case a ratio of primary capital to total assets adjusted for risk, that the FDIC would consider in tandem with, rather than in place of, the minimum primary and total capital ratios defined in the current regulation. If the FDIC were to propose to adopt such an approach to capital, it could take the form of either an amendment to the current capital maintenance regulation or a separate statement of policy.

Moreover, while the proposal endeavors to relate to a more *systematic* fashion an institution's capital needs to its overall risk profile, the proposed supplemental adjusted capital ratio does not purport to take explicit account of *all* of the many types of risks to which banks are exposed. For example, the proposal does not take explicit account of the risks associated with significant asset concentrations or with exposure to

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interest rate changes. In addition, the measure is not intended to substitute for examiner judgment in the assessment of an institution's capital adequacy. Examiners and regulators would still be required to consider the entire range of qualitative and subjective factors, such as the quality of an institution's management, internal systems and controls, and lending standards, as well as other relevant financial factors, such as the quality of assets, the strength, trend, and variability of earnings, and liquidity, in order to fully assess an institution's capital adequacy.

The Supplemental Adjusted Capital Ratio

The proposed supplemental adjusted capital measure would relate primary capital, as defined in the FDIC's current regulation, to total assets weighted for risk considerations. To determine the asset portion of the supplemental adjusted capital ratio, assets and certain off-balance-sheet items are assigned to one of four broad risk categories and weighted according to the relative risk of that category. The determination of asset groupings and the assignment of weights primarily reflect credit risk considerations, with some sensitivity to liquidity concerns. The types of assets and off-balance-sheet items in each category and the rationale for assigning certain items to a particular category are discussed below.

(a) *Category I: Cash and Equivalents.* This category includes assets generally considered to be riskless such as vault cash, balances due from Federal Reserve Banks, balances due from foreign central banks in immediately available funds, and "near cash" assets, such as cash items in the process of collection and transaction accounts due from U.S. depository institutions.[1]

In addition, U.S. Treasury securities held in the investment account with original or remaining maturities of one year or less are included in this category. These items are assigned a zero weight.

(b) *Category II: Money Market Risk.* The assets included in this category generally have little or no risk of default and a high degree of liquidity. This category includes all holdings of long-term (remaining maturity of over one year) U.S. Treasury Securities, all U.S. Government agency securities, and those portions of loans that are fully guaranteed by the U.S. Government, as well as short-term (90 days or less) claims on U.S. depository institutions. Other money market instruments comprise a significant portion of the remaining assets in this category, including acceptances of other U.S. banks, all Federal funds sold, loans to broker/dealers secured by U.S. Treasury or agency securities, and securities purchased under agreement to resell. In addition, this category includes all trading account assets, which are typically marked to market on a regular basis. Finally, all legally binding loan commitments, including note issuance facilities,[2] are inluded in this category. These items are assigned a 30 percent risk weight.

(c) *Category III: Moderate Risk.* This category is composed of those assets with more credit and liquidity risk than those in Category II, but significantly less risk than the standard bank loan portfolio. Included in this category are all state, county, and municipal ("SCM") securities (excluding industrial development bonds); longer-term claims (over 90 days) on U.S. depository institutions; all claims on governments and banks of industrial countries (as defined herein); holding of acceptances of banks in industrial countries; and local currency claims on governments and banks of non-industrial countries to the extent funded by local currency liabilities.[3] Also included are loans to broker/dealers collateralized by other marketable securities (as defined by the Securities and Exchange Commission), commercial letters of credit, and standby letters of credit which are performance-related, issued on a secured basis to support broker/dealers, or issued in support of SCM securities (excluding those supporting industrial development bonds). This risk category is assigned a 60 percent weight.

(d) *Category IV: Standard Risk.* This category generally comprises those assets found in a typical bank loan portfolio and those not included in the categories above. Thus, this category includes commercial and industrial loans and leases, loans to individuals, loans secured by real estate, farm-related loans, and all other claims on foreign borrowers. This category also includes loans to nondepository financial institutions including insurance companies, mortgage companies, finance companies, and bank holding companies. The category is further comprised of all corporate securities and commercial paper, industrial development bonds, and all other standby letters of credit (including those backing industrial development bonds) that are not included in categories above. This risk group contains the bulk of banking assets, including many of significantly dissimilar risk characteristics. This category is assigned a 100 percent risk weight.

The aggregate dollar value of the assets and off-balance sheet items in each category would be multiplied by the weight assigned to that category. The sum of these weighted values would be the weighted risk asset and off-balance-sheet total against which actual primary capital would be compared. The ratio derived by dividing primary capital by this weighted total would be defined as the supplemental adjusted capital ratio. Table I contains a list of the types of assets and off-balance-sheet items found in each risk category and the weighting of each category. Table II provides an example of how this supplemental adjusted capital ratio would be calculated.

Table I.—Risk Categories and Weights

Cash and Equivalents (Weight 0 percent):
- U.S. currency and coin and balances due from Federal Reserve Banks.
- Cash items in process of collection.
- Transaction accounts due from U.S. depository institutions[1].
- Short-term U.S. Treasury securities (original or remaining maturity of one year or less) in investment account.
- Foreign currency and balances due from foreign central banks in immediately available funds.

Money Market Risk (Weight 30 percent):
- Long-term U.S. Treasury securities held in investment account.
- U.S. Government agency securities held in investment account.
- Those portions of loans that are fully guaranteed by the U.S. Government.
- Short-term claims (90 days or less) on U.S. depository institutions.
- Acceptances of other U.S. banks.
- Federal funds sold.
- Loans to broker/dealers collateralized by U.S. Treasury and agency securities.
- Securities purchased under agreements to resell.
- Assets held in trading account.
- Legally binding loan commitments (including note issuance facilities).

Moderate Risk (Weight 60 percent):
- All state, county, and municipal (SCM) securities in investment account (excluding industrial development bonds).
- All other claims on U.S. depository institutions.
- All claims on governments and banks of industrial countries.
- Acceptances of banks in industrial countries.
- Local currency claims on governments and banks of non-industrial countries.[3]
- Loans to broker/dealers collateralized by other marketable securities.
- Commercial letters of credit.
- Standby letters of credit backing SCM securities (excluding those backing industrial development bonds), supporting broker/dealers on secured basis, or performance related.

Standard Risk (Weight 100 percent):
- All assets found in a typical bank loan portfolio, including:
  - All commercial and industrial loans and leases.
  - Residential real estate loans and loans to individuals.
  - Loans to nondepository financial institutions.
- All other claims on foreign obligors.
- Corporate securities and commercial paper, and industrial development bonds.
- Customers' acceptance liabilities.[3]
- All assets not included elsewhere.
- All other standy letters of credit (net), including those backing industrial development bonds.

[1] The terms "U.S. banks" and "U.S. depository institutions" for purposes of this proposal refer to depository institutions chartered under the laws of the United States and include the foreign branches of these institutions. While banks chartered in the U.S. that are subsidiaries of foreign banking organizations are also included in the definition, U.S. branches and agencies of foreign banks are *not* considered to be U.S. banks or depository institutions for purposes of the proposed risk asset measure.

[2] A note issuance facility is a medium-term (five to seven years) commitment to help a borrower obtain short-term financing. Participating banks commit to provide funds under a revolving credit or standby arrangement if the client fails to sell within a range of predetermined contractual rates.

[3] "Banks" are defined to include their foreign branches and are categorized by the country under whose laws they are chartered.

Table I.—Risk Categories and Weights—Continued

[1] "U.S. depository institutions" refers to depository institutions chartered under the laws of the United States and the foreign branches of those institutions and includes U.S. depository institutions that are subsidiaries of foreign banking organizations. U.S. branches and agencies of foreign banks are not U.S. depository institutions.

[2] To the extent funded by local currency liabilities. If not funded by local currency liabilities, such local currency claims are included in the Standard Risk category.

[3] Include customers' liabilities associated with acceptance participations purchased. Participations sold are included in Money Market Risk if the purchaser is a U.S. depository institution, Moderate Risk if the purchaser is a bank in an industrial country, and Standard Risk for all other purchasers.

TABLE II.—ILLUSTRATION OF CALCULATION OF SUPPLEMENTAL ADJUSTED CAPITAL RATIO

[Dollar amounts in thousands]

Risk category	Amounts of items in category		Risk weight	Weighted risk assets and off-balance-sheet items
Cash and equivalents	$5,000	X	0	0
Money market risk	35,000	X	.30	$10,500
Moderate risk	30,000	X	.60	18,000
Standard risk	60,000	X	1.00	60,000
Total (including $100,000 in aggregate assets and $50,000 in off-balance-sheet items)	150,000			108,500
Primary capital	7,000			
Primary capital to total assets ratio (as defined in existing regulation)	7,000			
	100,000	=	7.0%	
Supplemental adjusted capital ratio (as proposed)	7,000			
	108,500	=	6.5%	

NOTE.—This example assumes a bank with total assets (before deducting the allowance for loan losses) of $100,000, off-balance-sheet items of $50,000, and primary capital of $7,000.

The choice of groupings for assets and off-balance-sheet items reflects an effort to delineate reasonable risk categories, while avoiding excess complexity. In addition, close attention was paid to the treatment afforded assets and off-balance-sheet items in similar risk asset systems abroad. Finally, decisions on where to slot certain items and where to set relative risk weights were influenced by a desire to avoid artificial pricing distortions which might lead to awkward or undesirable changes in credit flows or financing practices, and to temper the gradation of implied capital costs between items in the various risk categories.

In developing this proposal, policy decisions were made involving the treatment of country risk and off-balance-sheet items. First, the proposal draws a distinction between claims on governments and banks of industrial countries, i.e., those presently designated as such by the International Monetary Fund ("IMF") and World Bank, versus claims on governments and banks in all other countries.[4] This distinction represents the most acceptable alternative among a variety of possible groupings intended to distinguish, in a broad sense, among differences in transfer risk, that is, the possibility that an asset cannot be serviced in the currency of payment because of a lack of foreign exchange needed for payment in the country of the obligor. The approach embodied in this proposal is viewed as more workable than a country by country evaluation of transfer risk that would require frequent updating and revision.

All claims on banks and governments of industrial countries would be included in the Moderate Risk category. This treatment is designed to minimize the possible distortions in credit flows in the international interbank money market which would result from substantially different capital requirements for claims on domestic and foreign banks competing alongside one another in the market. The list of industrial countries includes just about all countries with significant international banks, while avoiding the countries viewed by the markets as likely to entail a meaningful degree of transfer risk. Claims involving transfer risk on banks and governments of non-industrial countries, and all claims on *private* nonbank borrowers in foreign countries, would be included in the Standard Risk category. Although the proposed group of industrial countries for risk asset purposes currently comprises those nations designated as such by the IMF and World Bank, developments in the future could warrant a modification of this designation. Thus, the designation for risk asset purposes may not at all times coincide with the IMF and World Bank lists.

The treatment of claims on foreign banks incorporated in this proposal differs from the typical approach in supplemental adjusted capital measures used in other industrial countries. Generally speaking, those measures assign a very low (often zero) risk weight to claims on their own government, while assigning claims on all other governments to the equivalent of a Standard Risk category. In terms of interbank claims, however, the typical approach is to combine claims on *all* foreign and domestic banks and place both of these types of assets in the same relatively low risk category. By and large, this latter approach was developed prior to the advent of significant concerns over country or transfer risk. Therefore, it does not recognize how claims on banks in different countries can be affected by transfer risk, including those claims on banks in the less developed countries which have been involved in extensive debt restructurings. Moreover, such an approach has the anomalous effect of placing claims on foreign banks in a lower risk category than claims on the governments that are generally viewed as providing the safety net for these banks. Finally, assigning a lower risk treatment to claims on foreign banks than on their governments could create unintended incentives to substitute claims on banks for claims on other parties that may be involved in debt restructurings. For these reasons, it was deemed necessary to depart from the more or less typical approach to the treatment of interbank claims.

Certain basic decisions were also made involving the treatment of various types of off-balance-sheet items. The proposal divides standby letters of credit into two broad components. The first such component, which is included in the Moderate Risk category, consists of performance bonds, secured letters of credit supporting broker/dealers, and standbys supporting state and local government securities (excluding those supporting industrial development bonds). The second component, which would be assigned to the Standard Risk category, consists of all other standbys, including those backing commercial paper, industrial development bonds, and other loans and financial instruments included in the Standard Risk category. This broad distinction is based on the nature of the underlying credit risk and how that risk would be

[4] Industrial countries as currently designated by the IMF and World Bank include Australia, Austria, Belgium, Canada, Denmark, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom, and West Germany.

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treated if it were on the balance sheet. The distinction also is generally consistent with the way in which comparable off-balance-sheet items are treated in risk asset frameworks abroad.

The proposal places two other off-balance-sheet items, legally binding commitments and note issuance facilities, in the Money Market Risk category.

The placement of these items in the Money Market Risk category, rather than a higher risk category, was influenced by the following considerations: (1) These commitments often retain a conditional, as well as a contingent, character as a consequence of "adverse material change" clauses and other covenants which may enable banks to avoid losses by avoiding or curtailing drawdowns; (2) unlike standby letters of credit, when drawings on commitments do occur they carry a greater likelihood that the resulting assets will be of higher quality; (3) supervisors should be evaluating the volume of these commitments in terms of the overall funding capacity of a bank, not just its capital adequacy; and perhaps most importantly given the preceding considerations, (4) it seems appropriate to impose a relatively low capital charge to give banks time to adjust their commitment policies while the merits of adopting supplemental adjusted capital standards are under study by the FDIC.

There are other aspects of off-balance-sheet risk associated with securities and foreign exchange trading activities and managing interest rate risk, including interest rate swaps. In this regard, adoption of a supplemental capital measure that takes account of some types of risk may require the use of more refined supervisory techniques to measure (1) risk involved in securities and foreign exchange trading activities at those banks which are heavily involved in such activities and (2) interest rate exposure resulting from the rate sensitivity and maturity of assets, liabilities, and off-balance-sheet activities. As discussed below, the FDIC is seeking comment on how some of these risks might be assessed within the proposed supplemental adjusted capital framework.

Administration of a Risk-Based Capital Measure

As the FDIC's current capital regulation emphasizes with respect to the primary and total capital ratios, the proposed supplemental adjusted capital ratio would be used as a starting point in the assessment of capital adequacy. It should be noted that the introduction and calculation of a supplemental capital measure adjusted to account for some forms of risk would in no way lessen the need for supervisors and examiners to make judgments on capital adequacy, judgments which reflect a broad mix of qualitative and quantitative considerations. Thus, in assessing an institution's capital adequacy, examiners must consider, among other things, the quality, trend, and variability of earnings; liquidity and the structure of liabilities; vulnerability to interest rate changes; the quality of management, internal systems and controls, and operating procedures; the effectiveness of loan and investment policies; and the quality of loans and investments.

In the assessment of capital adequacy, asset quality considerations are especially critical. These include the risk composition and profile of the loan portfolio, credit and sovereign risk concentrations, and the level and severity of examiner classified and criticized assets. Before an overall assessment of capital adequacy can be made, therefore, examiners must take into account all of these factors, including, in particular, the level and severity of classified assets.

The FDIC would propose to use the supplemental adjusted capital ratio in tandem with the current primary and total capital-to-total-assets ratios as a guide to determining minimum capital requirements. Thus, even if a supplemental adjusted capital approach were adopted by the FDIC, individual banks would still be subject to an overall constraint on total leverage, with the supplemental adjusted capital measure used as an additional guideline designed to encourage banks to make appropriate adjustments in either the risk composition of their portfolios or their overall level of primary capital. The FDIC's current minimum standards for the primary and total capital ratios (five and one half and six percent, respectively) would be retained for all insured state nonmember banks.

As is the case under the FDIC's current capital regulation, this proposal envisions that supplemental adjusted capital ratios would be calculated for all insured state nonmember banks. The risk asset framework would be employed to evaluate the capital of all banks regardless of size since the rationale for relating capital needs to risk profiles applies to both large and small institutions. Nonetheless, it is important to point out that many of the considerations driving the development of this supplemental adjusted capital proposal at this time are primarily operative at larger commercial banks. In particular, these institutions collectively have been the primary participants in those off-balance-sheet activities that the proposed standards seek to address, and these banks in recent years have also decreased their relative holdings of liquid assets.

Given these considerations, the FDIC proposes to differentiate between banks with assets of $1 billion or more and smaller banks in the administration of the supplemental adjusted capital ratio. For larger banks, calculated supplemental adjusted capital ratios would be compared to a specific minimum standard. For banks with assets totaling less than $1 billion, which comprise all but a small number of insured state nonmember banks, supplemental adjusted capital ratios would be computed in the same manner as for larger institutions, but they would not be compared to the minimum standard. Rather, the ratios of smaller banks would be calculated and considered in light of the quality and diversification of their loan portfolios and other local risk considerations. In this regard, it is important to note that the proposed risk-adjusted asset measure is not particularly sensitive to large concentrations of exposure within local communities and lending markets, exposures to which small banks are particularly susceptible. Therefore, small (as well as large) banks with significant asset concentrations would generally be expected to operate above the minimum primary and total capital-to-total-assets ratios, even if they have relatively high supplemental adjusted capital ratios.

The proposal does not specify at this time the actual minimum acceptable supplemental adjusted capital ratio for larger banks. Instead, it woud appear to be more appropriate to receive and evaluate public comments on the supplemental adjusted capital measure and, should the FDIC determine to proceed with this measure, to use the information received in establishing the minimum. The FDIC hopes to encourage commenters to focus their comments on the underlying policy considerations of this proposal rather than on the mechanical features. If the FDIC were to formally propose to adopt a supplemental adjusted capital measure in the future, the public would have an opportuntiy to comment on the minimum acceptable supplemental ratio that would be specified in such a proposal.

The FDIC does invite comment on the factors that it should consider in setting the minimum standard for larger banks. To that end, the FDIC offers that following comments on how it would propose to set the minimum. Since a

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principal goal of the supplemental adjusted capital measure is to relate capital needs to risk profiles, the FDIC would attempt to establish the minimum standard at a level that would affect primarily those institutions with assets in excess of $1 billion that have less than fully adequate capital positions in relation to their risk profiles. Moreover, the FDIC would attempt to establish a minimum atandard that would be broadly consistent with prevailing aggregate capital levals in the banking system and with the banking system's ability to generate capital from retained earnings and from the issuance of primary capital securities.

Banks would be able to comply with a supplemental adjusted capital measure in several ways, some of which do not require raising new external captial. For example institution can moderate their growth and/or increase their earnings retention. More importantly, however, within a risk sensitive capital framework, an institution can raise its supplemental adjusted capital ratio by reducing its risk profile over time, even though such on- or off-balance-sheet adjustments may not necessarily result in lower total assets. This could be done by reducing off-balance-sheet risk or by placing proportionately greater emphasis on those balance sheet activities that carry lower risk weights.

For all of these reasons, it is not possible to state with certainty how much, if any, additional capital would have to be raised in response to the advent of a risk asset measure. It can be said, however, that a measure that relates capital needs to risk profiles should temper the unintended incentives associated with sole reliance on capital-to-total-assets ratios and should encourage those banks with high risk profiles either to raise additional primary capital to support their risk-bearing activities or to curtail the scope of these activities. The FDIC believes both of these responses would enhance the financial strength of individual banks and promote the safety and soundness of the banking system.

Issues for Further Consideration

While seeking public comments on all aspects of the proposal, the FDIC requests comment in the specific areas described below.

(a) The FDIC proposes to distinguish between banks on the basis of total assets for purposes of administering the supplement adjusted capital measure. A desirable feature of this administrative approach is that it would require the computation of the same supplemental adjusted capital ratio for all banks regardless of size. At the same time, however, evaluation of the ratios in relation to a specific standard would be limited to larger institutions, which collectively have been the primary participants in those activities and forms of behavior that the new standard seeks to address.

The FDIC is interested in receiving comments about this proposed administrative approach. Hence, for purposes of evaluating the calculated supplemental adjusted capital ratios of banks, should the method used by the FDIC be a function of bank size in total assets, as proposed, or some other criterion, or should a single method apply to all banks? Moreover, since the composition of the four risk categories in part reflects an attempt to address certain recent tendencies of larger banks, should the FDIC calculate supplemental adjusted capital ratios in an identical manner for all banks? If not, what alternative calculation would be preferable and to which banks should such a calculation apply?

(b) Should the Standard Risk category be further refined by adding an additional category that would contain certain specified assets that entail risks higher than those typically associated with the Standard Risk group? In particular, should a separate category be included to take account of the higher risks associated with certain nontraditional banking activities authorized under the laws of certain states and the holding of nontraditional loans or assets? The FDIC, could, for example, assign a weight substantially above 100 percent for all assets held by an institution in connection with certain high risk activities not considered traditional activities for banks. Where such activities are conducted in bank subsidiaries, another option would be to deduct the capital invested in these high risk subsidiaries from the bank's primary capital before calculating the supplemental adjusted capital ratio.

Similarly, the FDIC seeks comments on whether it should attempt to identify certain types of loans that would be moved from the Standard Risk category and placed in a separate category with a risk weight below 100 percent?

By grouping together a wide array of risks in the Standard Risk category, the proposed supplemental adjusted capital measure could still have some unintended incentives for banks to pursue riskier types of lending or high risk nontraditional activities to bolster income, while, possibly, curtailing loans to high quality, low risk borrowers. In light of this concern, certain assets felt to be significantly riskier than others could have been grouped in a separate high risk category with a risk weight above 100 percent. Similarly, several types of assets included in the Standard Risk category, such as loans to high quality, high rated borrowers, arguably could be included in a lower risk category. The principal benefit of such an approach would be that it would relate capital needs more closely to an institution's risk profile. It could also serve to discourage certain high risk activities while avoiding disincentives to direct bank lending to high quality, low risk customers.

The major practical drawback, on the other hand, would be the difficulty of defining the boundary line between the types of financing activities that would be included in high or low risk categories. More importantly, this approach could heighten concern over the potential for the supplemental adjusted capital measure to evolve into a credit allocation device, and could be interpreted by some institutions as an indication that they were free to expand the volume of high risk lending provided they held the "correct" amount of capital to support that lending. This would go far beyond the intent of the proposed supplemental adjusted capital measure and could potentially undercut other sources of supervisory discipline designed to limit excessive risk-taking. For these reasons, the FDIC is not proposing the division of the Standard Risk category into either an additional higher or lower risk category.

(c) Should the supplemental adjusted capital measure attempt to take account of concentrations of assets? A major factor in analyzing the overall risk of banks is the degree of diversification in the loan and investment portfolios. Because undue asset concentrations violate the widely accepted principle of risk diversification, in theory the supplemental adjusted capital ratio could be further refined by including an explicit factor for the level of asset concentrations. Practical difficulties exist, however, in defining appropriate business categories for risk assessment purposes and in assigning a meaningful primary business classification to companies that have diversified into many different types of financial and nonfinancial activities. While the proposal contemplates continuation of the current policy whereby examiners subjectively evaluate asset concentrations, the FDIC seeks comment on whether asset concentrations should be factored *explicitly* into the supplemental adjusted capital ratio and, if so, how this might be done on a practical basis.

(d) The treatment of country risk in the proposal represents a choice among

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imperfect alternatives. The segregation of industrial economies from all others was based on the view that, among the various alternatives, such a treatment would minimize possible distortions in credit flows within the interbank market and among countries. The FDIC also seeks comment on the most appropriate way to deal with broad country risk considerations.

(e) While the supplemental adjusted capital measure attempts to deal with the major forms of off-balance-sheet risk, some off-balance-sheet activities that typically involve risk are not included in the framework. For example, interest rate swaps, in which a bank acts as a counterparty in arranging the exchange of interest payment streams between two third-party borrowers, can involve risk if one party defaults and the bank is obligated to assume the role of the defaulting party and replace the stream of cash flows at current market rates. In light of these considerations, the FDIC seeks comment on how best to assess and incorporate the credit risks associated with interest rate swaps into the proposed supplemental adjusted capital framework. Moreover, commenters are also asked to identify other significant types of off-balance-sheet risks not addressed by the proposal and how such risks could best be factored into the proposed measure.

An additional example of risk exposure not captured in the proposed supplemental adjusted capital measure involves unconsolidated joint ventures. Banks can be exposed to considerable risks through unconsolidated joint ventures if these entities issue significant amounts of debt and undertake risk-bearing activities. Despite the fact that such risks may not be fully reflected on the bank's consolidated balance sheet, the bank may, in effect, be obligated to support at least its proportionate share of the risk assets of the joint venture or all of the joint venture's assets if the joint venture encounters problems and the other joint venture partners are unable to provide assistance. The FDIC seeks public comment on whether to deduct investments in unconsolidated joint ventures from primary capital for the purpose of calculating supplemental adjusted capital ratios or whether to employ an alternative technique to capture the exposure of banks to such joint ventures.

(f) It would be desirable to supplement the proposed capital measure with more refined techniques to measure the risk involved in securities and foreign exchange trading activities at those banks which are heavily involved in these activities. This could entail applying to banks some of the guidelines and principles on evaluating trading risks that have been developed by the Federal Reserve Bank of New York for evaluating risk at U.S. Government securities dealers. Thus, the FDIC seeks comment on techniques for evaluating foreign exchange risk, including how the supplemental adjusted capital measure could treat (i) exchange rate and interest rate risk, (ii) counterparty credit risk, and (iii) futures, options, and swaps used in foreign exchange operations.

Similarly, it may be appropriate to develop a more systematic approach to assessing overall interest rate risks (as distinct from credit risks) resulting from the rate sensitivity of assets, liabilities, and off-balance-sheet activities. Such an approach might be used in conjunction with an adjusted capital measure to evaluate vulnerability to changes in interest rates. Therefore, the FDIC seeks comment on how to factor interest rate risk into the assessment of capital adequacy.

(g) The minimum capital-to-total-assets standards in the FDIC's current capital regulation apply to both commercial banks and savings banks. The concept that an institution's capital needs should be related to the risks present in the institution is valid for both classes of banks. Nevertheless, the proposed supplemental adjusted capital framework is in many respects oriented toward recent on- and off-balance-sheet trends at large commercial banks. The FDIC therefore requests specific comment on whether the broad risk categories and weights that were designed for commercial banks are equally applicable to the savings banks insured by the FDIC. If so, should the FDIC's evaluation of the resulting supplemental adjusted capital ratios of savings banks employ the same two-tier approach based on bank size that has been proposed for commercial banks?

(h) The FDIC seeks comment on the long-run administration of the supplemental adjusted capital measure in relation to the existing minimum primary and total capital-to-total-assets ratios. As indicated above, the supplemental adjusted capital ratio is intended to be used in tandem with the FDIC's existing minimum primary and total capital ratios. However, as banks restructure their balance sheets and reduce their risk profiles, the minimum capital-to-total-assets ratios may become binding and prevent further leveraging, even though an individual institution may have a high and strong supplemental adjusted capital ratio. As experience is gained with a supplemental adjusted capital measure, it may be appropriate to place greater emphasis on this measure over time relative to the capital-to-total-assets ratios. In this regard, it may be appropriate in the long run to reconsider the role of the capital-to-total-assets ratios, especially if the supplemental adjusted capital ratio proves to be a reliable measure of capital needs in relation to overall risk.

(i) Final issue on which the FDIC invites comment relates to all institutions insured by the FDIC. In order for insured banks to retain their federal deposit insurance, they are expected to remain in a safe and sound condition. The FDIC's current capital regulation prescribes that any insured bank whose ratio of primary capital to total assets is or falls below three precent is deemed to be operating in an unsafe or unsound condition and, as a consequence, the bank may be subject to a termination-of-insurance action by the FDIC. Alternatively, the bank may enter into and comply with a written agreement to increase its capital to such levels and to take such other actions as the FDIC deems appropriate to ensure the safe and sound operation of the bank.

If the FDIC were to adopt a supplemental adjusted capital measure, should there be a supplemental adjusted capital ratio below which any insured bank would be regarded as being in an unsafe or unsound condition? If so, what factors should enter into the determination of this ratio? Moreover, how would the supervisory response to a bank with such a low supplemental ratio relate to the available responses to a bank with less than three percent primary capital, particularly in the long run if the supplemental adjusted capital ratio were to supersede capital-to-total-assets ratios as the primary tool for evaluating capital adequacy?

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Federal Deposit Insurance Corporation, Capital adequacy, State nonmember banks.

By order of the Board of Directors this 15th day of January, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-3652 Filed 2-19-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 556

[No. 86-131]

Interstate Branching

Dated: February 12, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Extension of comment period.

SUMMARY: The Federal Home Loan Bank Board ("Board") is extending the comment period on its proposed amendment to its regulation relating to the statement of policy on branching by Federal associations.

DATE: Comments must be received by March 5, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Stuart Rolfe, Attorney, Office of General Counsel, (202) 377-6755, at the above address.

SUPPLEMENTARY INFORMATION: The Board is extending the comment period on a proposed amendment to its statement of policy on branching by Federal associations, 12 CFR 556.5, which would provide (1) general equility of Federal associations with the state-chartered associations of a Federal association's home state with respect to branching across state lines, and (2) possibly broader branching rights for a Federal association acquiring a failing institution in the form of regional branching rights as well as single target state branching rights. Interstate Branching, Board Res. No. 85-1198, 51 FR 33 (Jan. 2, 1986).

Because it wished to expedite the rulemaking process in order to better serve the business planning of the Board and because there have been several previous cycles of comments on earlier branching rules proposed by the Board, the Board provided for an initial 30-day period for comment on the proposal, requesting that comments be received by February 3, 1986. The Board has determined to extend this comment period for an additional 30 days to March 5, 1986, because the technical complexity of issues raised in comments received has persuaded the Board that a longer period is appropriate to permit thorough evaluation of such issues.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-3620 Filed 2-19-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250 and 251

Outer Continental Shelf Operations; Disclosure of Data and Information From Areas Unavailable for Leasing

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed rule would amend the regulations to provide for extensions of the terms during which data and information are not releasable to the public without the consent of the lessee or permittee. The terms would be extended for data and information from areas of the Outer Continental Shelf (OCS) that have been designated by the Secretary of the Interior (Secretary) as unavailable for leasing. The rule is necessary to protect the proprietary nature of data and information during periods when an area is unavailable for leasing.

DATE: Comments must be hand-delivered or postmarked no later than March 24, 1986.

ADDRESS: Comments should be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone: (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION: Section 26(c) of the OCS Lands Act requires that—

> The Secretary shall prescribe regulations to (1) assure that the confidentiality of privileged or proprietary information received by the Secretary under this section will be maintained, and (2) set forth the time periods and conditions which shall be applicable to the release of such information.

Current regulations at 30 CFR 350.3 and 251.14 provide 2-year terms during which geological data and analyzed geological information collected from a lease are not available to the public without the consent of the lessee or permittee; 10-year terms for geological data and analyzed geological information collected under a permit; and 10-year terms for geophysical data, processed geophysical information, and interpreted geological and geophysical (G&G) information collected from a lease or a permit. Industry has suggested to the Department of the Interior (DOI) that these time-frames are inadequate at times to protect the collector or the data and information from loss of its commerical value. Lessees and permittees gather data and information in expectation of its use in a lease sale. If sales are held according to the 5-year lease schedule, data collection can be timed to receive the greatest value. However, many sales in the recent past have been delayed or indefinitely postponed as a result of litigation or moratoria.

The most significant delays have arisen from riders on DOI appropriation bills for Fiscal Year's (FY) 1982-85 prohibiting leasing activity off California, Massachusetts, and parts of Florida. Such delays create a double-edged problem. Companies that have already collected data and information will see such data and information release to the public and their competition before it can be used in a lease sale. In addition, companies will be hesitant to gather data and information for fear of losing the exclusive use of them prior to a lease sale. This lack of data and information gathering not only affects the oil and gas industry but also reduces the amount being provided to the Government for use in resource and economic evaluations. For example, during the last 4 years of moratoria off California, 68 permits were issued in anticipation of upcoming sales being held. These permittees stand to lose the commercial value of their data and information if a sale is not held over the next 10 years. Numerous bills are pending in Congress, and negotiations have been held between DOI and the California congressional delegation to extend the moratorium to the year 2000, 5 years after all the data and information already collected will be available to the public. Further, the Minerals Management Service (MMS) has estimated that 225 permits could be issued by the year 2000 if there are yearly sales but only 17 permits if there is a moratorium. This low level of activity would provide little information on which to make resource estimates in the best of circumstances.

To address this problem, MMS is proposing to extend the terms during which data and information are not releasable to the public without the consent of the lessee or permittee. The terms would be extended for a period of time equal to the time that the area

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remains unavailable for leasing as determined by the Secretary. For example, if a lessee has submitted geological data and information under § 250.3 with a 2-year term of protection and 1 year later the Secretary designates the area as unavailable for leasing because of litigation, the data and information would have 1 year remaining of its period of protection when the area is once again available for leasing. It is anticipated that the Secretary might designate areas as unavailable for a number of reasons including, but not limited to, congressional moratoria, litigation, use conflicts with other Agencies such as the Department of Defense, or boundary disputes with other countries. It is not intended that areas be designated by the Secretary as unavailable for leasing under this rule as a result of normal fluctuations in sale scheduling or sale size or configuration. The rule would apply to data and information in the possession of MMS at the time of the Secretary's designation for which the term has not expired and to data and information received by MMS during the time the area(s) is unavailable.

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an environmental impact statement is not required.

The DOI has also determined that this document is not a major rule under Executive Order 12291 because the annual economic effect is less than $100 million. The annual estimated effect is $20 million. An estimated 20 permits represent commercial benefits of $1 million per permit each year.

The DOI also certifies that the rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) as the entities that engage in offshore activities are not considered small due to the technical complexity and financial resources necessary to conduct offshore activities.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author: The document was prepared by Jane A. Roberts, Rules and Orders, Standards Branch, Offshore Rules and Operations Division, Minerals Management Service.

List of Subjects

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 251

Continental shelf, Freedom of information, Public lands/mineral resources, Reporting and recordkeeping requirements, Science and technology.

Dated: January 14, 1986.

Wm. D. Bettenberg,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 250 and 251 are proposed to be amended as follows:

1. The authority citation for Part 250 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.

2. Section 250.3 is amended by adding paragraph (d) to read as follows:

§ 250.3 Data and information to be made available to the public.

* * * * *

(d) If the Secretary designates area(s) of the OCS to be unavailable for consideration for leasing, the term during which data and information from such area(s) are not to be available for public inspection without the consent of the lessee, as provided for in paragraphs (a) and (b) of this section, shall be extended by the length of time that the area(s) remains designated as unavailable for leasing.

The extension of such terms shall be applicable to data and information in the possession of MMS at the time of the Secretary's designation and for which the term during which such data and information are not to be available for public inspection without the consent of the lessee has not expired and to data and information received by MMS during the time the area(s) is unavailable for leasing.

3. The authority citation for Part 251 continues to read as follows:

Authority: Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq., as amended, 92 Stat. 629; National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (1970); Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.

4. Section 251.14–1 is amended by adding paragraph (e) to read as follows:

§ 251.14–1 Disclosure of information and data to the public.

* * * * *

(e) If the Secretary designates area(s) of the OCS to be unavailable for consideration for leasing, the term during which data and information from such area(s) are not to be available for public inspection without the consent of the permittee, as provided for in paragraphs (c) and (d) in this section shall be extended by the length of time that area(s) remains designated as unavailable for leasing. The extension of such terms shall be applicable to data and information in the possession of MMS at the time of the Secretary's designation and for which the term during which such data and information are not to be available for public inspection without the consent of the permittee has not expired and to data and information received by MMS during the time the area(s) is unavailable for leasing.

* * * * *

[FR Doc. 86–3606 Filed 2–19–86; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: On March 25, 1985, the Commonwealth of Kentucky submitted to OSM a proposed amendment to its abandoned mine land reclamation (AMLR) plan. The proposed plan amendment provides new procedures for the ranking of eligible reclamation projects which qualify for funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87. (Lands are eligible for reclamation funding if they were mined for coal and left abandoned and inadequately reclaimed prior to August 3, 1977, and there is no continuing reclamation responsibility under State or other Federal laws.) In addition, the amendment provides procedures for selecting from the lists of ranked eligible sites those projects which will be included in the State's annual reclamation grant request. OSM is seeking public comment on the proposed changes.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. eastern time on March 24, 1986.

Public Hearing: Upon request, OSM will hold a public hearing on the proposed rule in Lexington, Kentucky, at 9:30 a.m. local time on March 17, 1986. OSM reserves the right to cancel the hearing without further notice if insufficient requests are received.

Public Meetings: Scheduled on request only.

ADDRESSES: *Written comments:* Hand deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record, Room 5315 L, 1951 Constitution Avenue, NW., Washington, DC, or mail to the Office of Surface Mining, Administrative Record, Room 5315–L., 1951 Constitution Avenue, NW., Washington, DC 20240.

Public Hearing: Office of Surface Mining, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Public Meetings: OSM offices in Washington, DC, and Lexington, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, telephone (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Commenting Procedures

Written Comments

Written comments submitted on the proposed rule should be specific and should be confined to issues pertinent to the proposed rule. Comments are requested on whether the proposed changes are no less effective than the Federal regulations and meet the standards for approval set out in 30 CFR Part 884. Where possible, commenters should submit five copies of their comments (see "Addresses"). Comments received after the close of the comments period (see "Dates") may not necessarily be considered or included in the Administrative Record for the final rule. Copies of the full text of the proposed amendment are available at the following locations: Kentucky Natural Resources and Environmental Protection Cabinet, Division of Abandoned Mine Lands, 618 Teton Trail, Frankfort, Kentucky 40601, and the Office of Surface Mining, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Public Meetings: Representatives of OSM'S Lexington Field Office will be available to meet Monday through Friday, excluding holidays, between 8 a.m. and 4 p.m. at the OSM address indicated above to hear comments from the general public concerning the proposed amendment. Persons wishing to meet with OSM representatives should make their interest known by contacting David D. Beals, AML Program Specialist, Lexington Field Office, telephone (606) 233–7327.

Public Hearing: Any person interested in participating at a hearing in Lexington, Kentucky, should inform W. Hord Tipton (see "For Further Information Contact") either orally or in writing of the intent to testify by 5:00 p.m. eastern time on March 12, 1986. If no one has contacted W. Hord Tipton to express an interest in participating in a hearing by that date, the hearing will not be held. If only a few persons express an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "Addresses") advance copies of their testimony.

II. Background

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, Establishes an abandoned mine land reclamation program for the purpose of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law.

Each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA may submit to the Secretary a State Reclamation Plan demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). Of relevance to this rulemaking is § 884.13(c)(2). This section provides that a State must provide as a part of its reclamation plan a description of the policies and procedures to be followed by the designated agency in conducting the reclamation program, including "(2) the specific criteria, consistent with Section 403 of the Act, for ranking and identifying projects to be funded."

The Kentucky AMLR plan was approved on May 18, 1982. On March 25, 1985, Kentucky submitted a proposed amendment to the plan. An approved State AMLR plan can be amended under the provisions of 39 CFR 884.15. Under these provisions, if the amendment of revision changes the objectives, scope, or major policies followed by the States in the conduct of its reclamation program, the Director should follow the procedures set out in 30 CFR 884.14 in approving an amendment or revision of a State reclamation plan. This notice of proposed rulemaking begins the process of review of the proposed amendment.

III. Discussion of Proposed Rule

Project ranking and selection procedures are described in general terms in 30 CFR 874.13. Specifically, reclamation projects should reflect the priorities set out in section 403 of SMCRA and should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819, March 6, 1980).

OSM regulations do not provide any specific methodology for selecting and ranking projects. However, OSM did develop a model AML Plan to assist the States in developing their reclamation plans and as part of this model, a site evaluation matrix was designed together with an objective, quantifiable method for ranking specific priority problems. Most States, including Kentucky, adopted this methodology when developing their plans. See Chapter 4 of Kentucky's AMLR Plan. the site-matrix contains certain environmental, socio-economic, programmatic and technological factors. Each site of a

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specific priority, therefore, could be numerically ranked depending on the matrix score. The higher ranking projects within each priority were then selected for funding in a State's annual grant request.

Kentucky's amendment would replace the site-matrix selection process with a more programmatic decisionmaking process.

All eligible sites in Kentucky would be ranked in accordance with the criteria in section 403 of SMCRA. Because priority one and two projects have been and continue to be the thrust of Kentucky's AML program, emphasis would be placed on those problem areas exhibiting an adverse impact, either present or potential, on public health, safety and general welfare. Kentucky's AML staff would evaluate each site and measure the on-site and off-site AML impacts.

All eligible priority one and two projects which have been investigated by Kentucky's AML staff would then be put on a grant development action list. The Division of Abandoned Mine Lands would select projects from this list for inclusion in the State's annual grant request. Factors considered in selecting projects for final application would be:

1. Has the project area been thoroughly investigated and scoped?
2. Has the final eligibility been resolved?
3. Does the project have local public support?
4. Is remining by private enterprise anticipated? If so, in what timeframe?
5. Has the area been investigated by OSM for potential emergency declaration? What is the likelihood of such a declaration?

OSM is requesting specific comments on the adequacy of Kentucky's new ranking and selecting procedures.

IV. Procedural Matters

The Department intends to continue to discuss the State's amendment with representatives of the State throughout the review process. All contacts between Department personnel and representatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 (44 FR 54444).

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule requiring submittal to the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined, based on available quantitative data, that it is not major and does not require a regulatory impact analysis. The reasons underlying this determination are as follows:

1. Approval would not have any effect on costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; and

2. Approval would not have adverse effects on competition, employment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This proposed Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Office of Surface Mining has determined that the rule would not have significant economic effects on a substantial number of small entities. The reason for this determination is that approval would not have demographic effects, direct costs, nonquantifiable costs, competitive effects, enforcement costs or aggregate effects on small entities.

National Environmental Policy Act

Further, the Office of Surface Mining has determined that the Kentucky AML Plan amendment does not have a significant effect on the quality of the human environment because the decision relates only to the policies, procedures and organization of the State's Abandoned Mine Land Reclamation Program. Therefore, OSM has determined that this rule is categorically excluded from compliance with the National Environmental Policy Act in accordance with 40 CFR 1507.3.

As a result, no environmental assessment (EA) or environmental impact statement (EIS) has been prepared on this action. It should be noted that a programmatic EIS has been prepared by OSM in conjunction with the implementation of Title IV in general. Moreover, an EA or an EIS will be prepared for the approval of grants for the abandoned mine land reclamation projects under 30 CFR Part 886.

List of Subjects in 30 CFR Part 917

Coal mining, Noncoal reclamation, Surface mining, Underground mining.

Accordingly, it is proposed that 30 CFR Part 917 be amended as set forth below.

Dated: February 9, 1986.

James E. Cason,

Deputy Assistant Secretary for Land and Minerals Management.

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

2. § 917.21 is amended by designating existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 917.21 Amendments to Approved Kentucky Abandon Mine Land Reclamation Plan.

* * * * *

(b) The Kentucky Abandoned Mine Reclamation Amendment, as submitted on March 25, 1985, is approved. Copies of the approved plan are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504

Kentucky Department of Natural Resources and Environmental Protection, Frankfort, Kentucky 40601

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, DC 20240.

[FR Doc. 86–3411 Filed 2–19–86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 2F2709/P385; FRL–2971–9]

Pesticide Tolerances for Fluridone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes that tolerances for the combined residues of the herbicide fluridone and its metabolite be established in edible fish and various raw agricultural commodities. This regulation to establish maximum permissible levels for residues of fluridone in these commodities was requested by the Elanco Products Co.

DATES: Written comments must be received on or before March 24, 1986.

ADDRESS: Written comments, identified by the document control number [PP 2F2709/P385], may be submitted to the:

Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Richard F. Mountfort, Product Manager (PM–23), Registration Division (TS–767C), Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Room 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of July 28, 1982 (47 FR 32602), which announced that Elanco Products Co., Division of Eli Lilly and Co., 740 South Alabama St., Indianapolis, IN 46285, had filed pesticide petition 2F2709 to EPA. This petition proposed to amend 40 CFR Part 180 by establishing a tolerance for the combined residues of the herbicide fluridone [1-methyl-3-phenyl-5-[3-(trifluoromethyl)phenyl]-4(1*H*)-pyridinone] and its metabolite [1-methyl-3-(4-hydroxyphenyl)-5-[3-(trifluoromethyl)phenyl]-4(1*H*)-pyridinone in the commodity fish at 0.5 part per million (ppm). In the same issue of the Federal Register (47 FR 32602), EPA announced receipt of a concurrent proposal from Elanco to amend 21 CFR Part 193 by establishing a food additive regulation permitting residues of fluridone in potable water at 0.15 ppm. In the Federal Register of March 30, 1983 (48 FR 13256), EPA announced that Elanco had amended pesticide petition 2F2709 by proposing tolerances for residues of fluridone in or on:

1. Eggs, fat, meat, and meat byproducts (except liver and kidney) of cattle, goats, hogs, horses, poultry, sheep, and milk at 0.05 ppm.
2. Liver and kidney of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm.

The petitioner had further amended the petition by proposing tolerances for the herbicide in or on the commodities citrus, cucurbits, fruiting vegetables, grain crops, leafy vegetables, nuts, pome fruit, root crop vegetables, seed and pod vegetables, small fruit, and stone fruit at 0.05 ppm and forage grasses and legumes at 0.15 ppm.

The petitioner later revised the proposed levels for the above-listed crop groupings, except forage grasses and legumes, to 0.1 ppm and included the specific commodities avocados, cottonseed, and hops at 0.1 ppm. These proposals apply to residues of fluridone transferring to these commodities through irrigation water.

Because of a change in procedures, the Agency is not establishing food additive regulations for pesticides that are directly added to potable water (47 FR 25746; June 15, 1982). The Agency is evaluating the safety of such residues under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, and the Safe Drinking Water Act (SDWA) to ensure that an acceptable residue level is not exceeded and that provisions of the SDWA are met.

The data submitted in the petition and other relevant material have been evaluated. The data include a rat acute-oral median lethal dose (LD_{50}) of >10,000 milligrams per kilogram (mg/kg); an Ames test, negative at the level of test compound solubility (2,000 µg/plate); an Unscheduled DNA Synthesis (UDS) assay in rat hepatocytes, negative; a Sister Chromatid Exchange (SCE) assay in Chinese hamster bone marrow, negative; a rabbit teratology study with a teratogenic no-observed-effect level (NOEL) of 750 mg/kg/day and a NOEL for fetotoxicity of 125 mg/kg/day; a 3-generation rat reproduction study with a NOEL for reproductive effects of 650 ppm (35 mg/kg of body weight (bwt)); a 2-year rat chronic feeding/oncogenicity study with a NOEL of 200 ppm (8 mg/kg/day) and no estabilsed dose-related oncogenic response for any level up to and including the highest dose tested (2,000 ppm, 81 mg/kg/day) (this study is discussed further below); a 2-year mouse oncogenicity study with increased incidences of skin fibrosarcomas in females at 330 ppm (49 mg/kg/day, highest dose tested [HDT]) (this study is also further discussed below); and a 1-year dog feeding study with a NOEL of 75 mg/kg/day.

In the 2-year rat study, there were observed increased incidences of skin papillomas and mononuclear cell leukemia (MCL) in some treatment groups of male rats. After careful consideration of complete histopathological findings reported, including historical data for controls of the strain (Fisher 344 rat) and the laboratory conducting the study, the Agency's conclusion is that these results did not indicate an oncogenic response to the test chemical and were within spontaneous levels reported for control animals. The papillomas do not represent a life-threatening lesion and there is no evidence that treatment resulted in malignant transformation or progression to squamous cell carcinomas of the skin. Because of smallness in size, half the skin masses diagnosed grossly were lost before histological examination. Considering only those papillomas which were histopathologically confirmed, the incidences do not support a compound-related effect.

High mortality among males at 2,000 ppm (HDT) confounded initial evaluation of an apparent trend, although not statistically significant, toward a dose response for MCL in surviving male rats. After broadening consideration of the effect to include animals not surviving, as well as those surviving to term, the apparent trend is no longer evident. The incidence of MCL in fluridone-treated rats fell within the range of historical control data for MCL observed in this and other testing laboratories. The Agency, thus, concludes that the occurrence of MCL in male rats was not related to fluridone admininstration.

In the mouse oncogenicity study, the Agency concludes that the increased incidence of skin fibrosarcomas in high-dose females was not biologically significant. Two studies were performed one week apart with discrete populations of animals on test, including separate controls. A statistically significant increase for the combined incidences of fibromas and fibrosarcomas in the high dose females as compared to control females was reported for only one of the studies. The statistically significant increase in the one study may reflect a lower spontaneous incidence of the lesion in its control animals compared with historical data for the strain and laboratory. There was no corresponding increased incidence of other subcutaneous tumors, such as mammary gland tumors in treated females, and treatment did not appear to shorten time-to-tumor appearance (no effect on longevity).

Moreover, the fibrosarcomas were larger in size in control than in treated groups. The fibrosarcomas of treated mice showed no evidence of greater cellular anaplasia than control mice. The dose levels employed by the petitioner in the chronic mouse study [HDT 330 ppm (49 mg/kg/day)] were based on results from 90-day studies in the same strain of mouse. In these short-term studies, from 10 to 17 percent of the animals at the 330 ppm dose level exhibited centrilobular hypertrophy of the liver and relative liver weights were increased. Centrilobular hypertrophy was not produced in the liver of high dose animals in the chronic study. However, relative liver to body weight ratios were elevated in females in the high dose group at 12 months but not at 24 months. There were also increased serum alkaline phosphatase (AP) levels, and hepatic enzyme induction occurred at the 330 ppm dose level. The Agency

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concludes that a maximum tolerated dose (MTD) was not achieved in this study, but that the study is adequate to satisfy the guideline requirement for a second species oncogenicity study. The Agency intends to develop criteria for determining MTD levels in toxicity studies, and applying these criteria as a generic issue.

Although the rabbit teratology study was negative and acceptable, the 1980 rat teratology study showed neither maternal nor fetal toxicity at the highest dose tested (200 mg/kg/day). Therefore, the rat study was classified as supplementary requiring a new teratology study to be performed in a second species. The petitioner is repeating this study using higher dose levels. The high dose tested in the existing study is considered a NOEL for teratogenesis in that study.

Based on the NOEL of 8 mg/kg/day in the chronic rat feeding study and a hundred-fold safety factor, the acceptable daily intake (ADI) is proposed to be set at 0.08 mg/kg/day with a proposed maximum permissible intake (MPI) of 4.8 mg/day for a 60-kg person. There are no previously established tolerances for this herbicide.

The Agency is proposing an acceptable residue level for fluridone in potable water at 0.15 ppm. This concentration reflects the maximum application rate for the herbicide described in the petition and to be permitted on approved labeling under registration(s) issued pursuant to FIFRA. Consumption of water is estimated at 2.0 liters per day for a 60-kg adult. The proposed tolerances for fish, raw agricultural commodities, secondary residues in animal tissues, and acceptable residue level in potable water would result in a theoretical maximum residue contribution of 0.4112 mg/day in a 1.5-kg diet (including 2 liters of water) and use 8.57 percent of the ADI.

The metabolism of the pesticide in irrigated crops and animals is adequately understood for the purposes of this aquatic use only, and an adequate analytical method, highpressure liquid chromatography, is available for enforcement purposes. There are no regulatory actions pending against the pesticide, and it is considered useful for the purpose for which the tolerances are sought.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition and document control number [PP 2F2709/P385]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of Richard Mountfort from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

In addition to the proposed rule, and within the time period specified for comment, the Agency is also inviting comment on the proposed registration of fluridone pesticides. Applications for registration of two products containing fluridone have been submitted by Elanco Products Company. The products are Sonar A.S., a 4-pound per gallon liquid formulation, EPA file symbol 1471–RET, and Sonar 5P, a 5 percent pellet formulation, EPA file symbol 1471–REA. The Agency has evaluated the data submitted by the manufacturer and is proposing to issue registrations under the authority of section 3(c)(5) of FIFRA for use of fluridone for aquactic vegetation control in freshwater ponds, lakes, reservoirs, drainage canals, irrigation canals, and rivers.

Fluridone is the accepted American National Standards Institution name for the chemical, 1-methyl-3-phenyl-5-[3-(trifluoromethyl)phenyl]-4 (1*H*)-pyridinone. The trade name for fluridone is Sonar®. Technical fluridone is a white (to off-white), odorless, crystalline solid. The chemical has a molecular weight of 329.3. Fluridone has a melting point of 154° to 155°C and a vapor pressure of $<10^{-7}$ Torr at 25 °C. Fluridone has the empirical formula $C_{19}H_{14}F_3NO$.

Environmental fate data indicate that fluridone is stable to hydrolysis. It will photograde (half-life of 34 hours in natural pond water). Under anaerobic aquatic conditions, fluridone has a half-life of 9 months. Half-life for fluridone in water is estimated to be 20 days; for hydrosoil, 90 days. Fluridone has a low potential for bioaccumulation in fish.

Environmental effects data submitted and used to evaluate fluridone include:

Avian species—an acute oral study (bobwhite quail) >2,000 mg/kg (slightly toxic); dietary studies (bobwhite quail and mallard duck) >5,000 ppm; reproduction studies with no effects for the above species up to 1,000 ppm dietary exposure.

Aquatic species—Daphnia magna 48-hour acute is 6.3 mg/L (moderately toxic); a bluegill sunfish 96-hour acute is 12 mg/L (moderately toxic); a rainbow trout 96-hour acute is 11.7 mg/L (moderately toxic); a sheepshead minnow 96-hour acute is 10.91 mg/L (moderately toxic); oyster embryo-larvae 48-hour acute is 16.51 mg/L (moderately toxic). The maximum acceptable theoretical concentration (MATC) value for fathead minnow (second generation fry) was calculated to be >0.48 <0.96 mg/L. No treatment-related effects were observed at or below 0.48 mg/L. Total length of 3-day-old fry was reduced at 2 mg/L fluridone.

The acute and MATC values indicate a potential hazard for aquatic organisms in shallow areas at the higher treatment rates. The Agency has determined that the labeling must specify that users consult their State Fish and Game Agency or the U.S. Fish and Wildlife Service before making applications in order to avoid impact on threatened or endangered equatic plant or animal species. It is intended that private applicators be limited to use of fluridone only in small bodies of water with little or no outflow and totally under the control of the user. For other aquatic sites, application would be through programs of Federal, State or local public agencies or contractors or licensees under their direct control.

Comments may be submitted on all aspects of the Agency's proposed decision to register fluridone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticide and pests.

Dated: February 14, 1986.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation of Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.420 is added to read as follows:

§ 180.420 Fluridone; tolerances for residues.

(a) A tolerance is established for the combined residues of the herbicide fluridone (1-methyl-3-phenyl-5-[3-trifluoromethyl)phenyl]-4(1*H*)-pyridinone) and its metabolite (1-methyl-3-(4-hydroxyphenyl)-5-[3-(trifluoromethyl)phenyl]-4(1*H*)-pyridinone) in fish at 0.5 ppm.

(b) Tolerances are established for residues of the herbicide fluridone in the following raw agricultural commodities.

Commodities	Parts per million
Cattle, fat	0.05
Cattle, kidney	0.1
Cattle, liver	0.1
Cattle, meat (except liver and kidney)	0.05
Cattle mbyp	0.05
Eggs	0.05
Goats, fat	0.05
Goats, kidney	0.1
Goats, liver	0.1
Goats, meat (except liver and kidney)	0.05
Goats, mbyp	0.05
Hogs, fat	0.05
Hogs, kidney	0.1
Hogs, liver	0.1
Hogs, meat (except liver and kidney)	0.05
Hogs, mbyp	0.05
Horses, fat	0.05
Horses, kidney	0.1
Horses, liver	0.1
Horses, meat (except liver and kidney)	0.05
Horses, mbyp	0.05
Milk	0.05
Poultry, fat	0.05
Poultry, kidney	0.1
Poultry, liver	0.1
Poultry, meat (except liver and kidney)	0.05
Poultry, mbyp	0.05
Sheep, fat	0.05
Sheep, kidney	0.1
Sheep, liver	0.1
Sheep, meat (except liver and kidney)	0.05
Sheep, mbyp	0.05

(c) Tolerances are established in the following irrigated crops and crop groupings for residues of the herbicide fluridone resulting from use of irrigation water containing residues of 0.15 ppm following applications on or around aquatic sites. Where tolerances are established at higher levels from other uses of fluridone on the following crops, the higher tolerance also applies to residues in the irrigated commodity. The tolerances follow:

Commodities	Parts per million
Avocados	0.1
Citrus	0.1
Cottonseed	0.1
Cucurbits	0.1
Forage grasses	0.15
Forage legumes	0.15
Fruiting vegetables	0.1
Grain crop	0.1
Hops	0.1
Leafy vegetables	0.1
Nuts	0.1
Pome fruit	0.1
Root crops, vegetables	0.1
Seed and pod vegetables	0.1
Small fruit	0.1
Stone fruit	0.1

[FR Doc. 86–3709 Filed 2–19–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–325–P]

Medicare Program; Changes to the Return on Equity Capital Provisions and the Exception From the Cost Limits for Newly-Established Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule

SUMMARY: We are proposing to amend the regulations used for computing Medicare reimbursement for certain providers of covered health care services, as follows:

- The allowance for a return on equity capital, which currently applies to all proprietary health care providers, would apply only to proprietary hospitals and skilled nursing facilities. In addition, the allowance for outpatient hospital services and skilled nursing facility services would be reduced.
- The exception to the home health agency cost limits for new agencies would be eliminated.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. March 24, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–325–P, P.O. Box 26676, Baltimore, Maryland 21207

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC,

or

Room 132 East High Rise Bldg., 6325 Security Blvd., Baltimore, Maryland.

In commenting, please refer to BERC–325–P.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m., phone (202) 245–7890.

FOR FURTHER INFORMATION CONTACT: Return on Equity Capital: Anthony Coates, (301) 597–2886; Elimination of New HHA Exception: Steve Kirsch, (301) 594–9465.

SUPPLEMENTARY INFORMATION:

I. Modifications to Return on Equity Capital

Section 1861(v) of the Social Security Act (the Act) defines "reasonable cost" and provides that the necessary costs incurred by a provider (both direct and indirect) in the delivery of covered health care services are included in this definition. A return on equity capital is paid as an allowance in addition to the reasonable cost of covered services furnished to beneficiaries by proprietary providers.

Section 7 of Pub. L. 89–713, enacted November 2, 1966, added what is now section 1861(v)(1)(B) to require the Secretary to prescribe regulations that provide for the recognition of a reasonable return on equity capital for extended care services furnished to Medicare beneficiaries by proprietary facilities (skilled nursing facilities (SNFs)). The legislative history expressed congressional concern that a return on equity capital was necessary for the following reasons:

- As a means of saving Medicare Part A trust funds, Congress wanted to encourage the transfer of hospital patients to SNFs when further hospitalization was no longer necessary.
- It was doubtful whether nonprofit organizations would be able to provide a sufficient number of beds to meet the needs of the aged.
- Private investors in SNF facilities should be guaranteed a fair return on the money that they put into the operation.

112 Cong. Rec. 28.220 (1966) (Statement of Rep. Byrnes).

In addition, the conference committee report (H.R. Rep. No. 2317, 89th Cong., 2nd Sess. 3 (1966)) suggested that proprietary hospitals should be treated comparably to proprietary SNFs with respect to the return on equity capital provisions.

In response to these congressional concerns, we issued what is now 42 CFR 405.429 on November 22, 1966 (31 FR 14816). Under section 1861(v)(1)(B) of the Act, the Secretary determined that SNFs, the primary provider of extended care services, should receive an allowance for the net equity of the capital invested by private owners. Section 405.429 provides that the return on equity capital provisions apply not only to proprietary SNFs but also to all other proprietary providers (which, at that time, encompassed hospitals and home health agencies (HHAs)).

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Subsequent to that time, the Medicare program has recognized other proprietary health care providers and entities (comprehensive outpatient rehabilitation facilities (CORFs), providers of outpatient physical therapy and speech pathology services (OPTs), independent organ procurement agencies (OPAs), histocompatability laboratories (Histo-Labs), and rural health clinics (RHCs)) to which the provisions in § 405.429 apply. For purposes of discussion below, when we use the term "providers", that term encompasses both "providers" and "entities" that furnish health care services to beneficiaries under the Medicare program.

The annual rate of return, paid on this investment relative to all provider services furnished to Medicare beneficiaries, is calculated by applying a percentage equal to one and one-half times the average of the rates of interest on special issues of public debt obligations issued for purchase by the Medicare Part A Trust Fund. This rate, as prescribed in § 405.429, is the *maximum* amount allowed for return on equity to SNFs under section 1861(v)(1)(B) of the Act.

Section 601(e) of Pub. L. 98–21 amended section 1886 of the Act by adding section 1886(g)(2), which provides that, effective with cost reporting periods beginning on or after April 20, 1983, the Secretary's return on equity capital provisions apply to inpatient hospital services but that the allowable return for those services is reduced from a percentage equal to one and one-half times to one times the average of the rates of interest on special issues of public debt obligations issued for purchase by the Medicare Part A Trust Fund. It is noteworthy that this is the only amendment to the Medicare provisions of the Social Security Act that has ever explicitly addressed the payment of a return on equity capital for proprietary hospitals.

A. Elimination of the Return on Equity Capital for Proprietary Providers Other than Hospitals and SNFs

Congress has provided allowances for a return on equity capital to specified proprietary providers (SNFs and hospitals). In addition, under section 1881(b)(2)(C) of the Act, the Secretary has the authority to provide an allowance for a return on equity capital to end-stage renal disease (ESRD) facilities. However, in establishing a prospective payment system for ESRD facilities (48 FR 21254 (1983)), we excluded an allowance for equity capital from the composite rates used in determining the ESRD prospective payment rates. We did so because the inclusion of a return in the rate base for ESRD facilities would weaken the incentives established through the prospective payment rates (48 FR 21281 (1983)). These facilities are expected to earn a return on investment by reducing per treatment costs below their payment rates through management efficiencies.

There has been no congressional interest expressed as to whether or not a return on equity capital should be paid to classes of providers as they come to be recognized under the Medicare program (other than to SNFs, hospitals, and ESRD facilities). However, the interpretation of the current regulatory provisions at § 405.429 has permitted application of the return on equity capital provisions to other classes of proprietary providers in addition to SNFs and hospitals. We reasoned that as new classes of providers entered the Medicare program, it was necessary to provide sufficient incentives so that private owners would be willing to invest in them to ensure that an adequate number of items and services would be made available to Medicare beneficiaries.

As noted above, it was the stated intent of Congress that proprietary SNFs and hospitals be allowed a return on equity capital. For these providers, the purpose was to ensure that an adequate number of beds were available by providing the necessary monetary incentives for investment. With respect to other providers for which Congress has not expressed similar concern or an intent that a return on equity capital be allowed, we believe it is no longer appropriate to allow such a return. We believe that the reimbursement rates paid are adequate to maintain the availability of such services to beneficiaries.

In addition, the Department's Office of the Inspector General (OIG) issued a report recommending that we discontinue providing an allowance for a return on equity capital to providers other than hospitals and SNFs (Audit Control No. 09–32607, October 12, 1983).

B. Reduction to the Rate of Return on Equity Capital for SNFs and Outpatient Hospital Services

Section 1861(v)(1)(B) of the Act requires that the level of the rate of return on equity capital for SNFs does *not exceed* one and one-half times (150 percent) the average of the rates of interest on obligations issued for purchase by the Medicare Part A Trust Fund. The 150 percent level, which is the maximum level, applies to both SNFs and outpatient hospital services as provided in § 405.429, whereas inpatient hospital services are reimbursed at a 100 percent level. The lower level for inpatient hospital services was mandated by Congress under section 1886(g)(2) of the Act, effective with cost reporting periods beginning on or after April 20, 1983. We do not have the discretion to raise or lower this level.

We believe, however, that the disparity in reimbursement levels between that for inpatient hospital services on the one hand and that for SNFs and outpatient hospital services on the other, can no longer be justified for the following reasons:

- For inpatient and outpatient hospital services and hospital-based SNF services, the same capital plant and equipment (for example, laboratory or radiology equipment) may be used without regard to the incentives of the investors or benefits obtained from the capital investment.
- There seems to be no good reason why investors in SNFs and outpatient hospital services should receive a higher level of return based upon the setting or the type of services furnished as distinguished from the type and setting involved with inpatient hospital services.
- As noted above, section 1861(v)(1)(B) of the Act sets the 150 percent level as a ceiling. The statute does not mandate that the level be set at 150 percent. In fact, in *Humana, Inc.* vs. *Schweiker*, Civil Action No. 81–1311 (D.D.C. Aug. 19, 1982), the court noted that the legislative history of section 1861(v)(1)(B) of the Act did not impose a 150 percent level on the rate of return.
- The OIG report referred to above also recommends that the reduction to the 100 percent level, required for inpatient hospital services, be applied to the allowance for outpatient hospital services and SNFs.

II. Elimination of the Exception for Newly-Established HHAs From the Cost Limits

Section 1861(v)(1) of the Act authorizes the Secretary to set prospective limits on the costs that are reimbursed under Medicare. The limits may be applied to the direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider. Regulations implementing this authority are set forth at § 405.460. In addition to establishing limits on provider costs, § 405.460(f) specifies exceptions under which providers may request relief from the cost limits. The exception for a "newly-established HHA" (§ 405.460(f)(7)) defines one of the bases for which an HHA's limits may be adjusted.

Section 405.460(f)(7), as amended July 2, 1984 (49 FR 27286), enables a newly-established HHA to file for an exception to the cost limits if it can demonstrate that—

- It has provided, under present and previous ownership for a period of less than three full years, home health care services equivalent to those that would have been covered if the agency had a Medicare provider agreement in effect;
- Its variable operating costs were reasonable in relation to its utilization during the fiscal cost reporting period for which the exception is requested; and
- Its fixed operating costs are reasonable in relation to a realistic projection of utilization to be achieved at the end of the provider's second full year of operation in the program; that is, the reporting year containing the 24th month after the start of the provider's first cost reporting period.

When the newly-established HHA exception was initially adopted in 1979, there were approximately 2,500 HHAs participating in the Medicare program. The original intent of the exception was to encourage home care by neutralizing the effects of reimbursement limits upon new health care agencies. Representatives of HHAs contended that new agencies were financially at risk because they were unable to enter the market with a sufficient patient population to generate the volume of visits required to offset their fixed costs. They maintained that initial years of growth are dependent upon establishing sound referral arrangements.

Since HHA's, unlike inpatient facilities, can enter the market with little invested capital, a new provider exemption such as that granted to new hospitals and SNFs was determined to be inappropriate. At that time, we concluded that a blanket exemption would have resulted in an unwarranted competitive advantage for new market entrants.

However, in order to encourage growth of HHAs in underserved areas, a "new-HHA" exception was established to grant relief to those new agencies whose higher initial costs of operation can be traced to low utilization associated with entering the health care market without an established referral system. HHAs that have merely changed ownership or have been operating in the health care field providing substantially the same type of services as a participating HHA to private pay patients have not qualified under this section.

Subsequent to the creation of this exception in 1979, the number of participating HHAs has dramatically increased to over 5,000 in 1984. This significant increase is partially the outgrowth of a legislative change to section 1861(o) of the Act that relaxed the licensure requirements for proprietary HHAs (section 930(n)(2) of the Omnibus Budget Reconciliation Act of 1980 (Pub. L. 96–499)). From July 1, 1981, when the proprietary licensure requirement was deleted, to July 1, 1984, approximately 1700 new agencies were approved for participation in Medicare. While the new-HHA exception was intended to be the catalyst in promoting the expansion of new health care agencies, this unanticipated statutory amendment has vastly accelerated market growth since 1981. The average annual rate of growth of participating HHAs between 1981 and 1984 (14 percent) was twice that experienced between 1979 and 1981 (seven percent).

We believe it desirable for all new agencies to monitor their costs and growth in each discipline, to institute sound management planning and to make prudent management decisions to minimize the disallowance of costs due to cost limitations. Therefore, elimination of the "new HHA" exception is intended to prevent the sheltering of inefficient providers and to reduce inappropriate payment from the Medicare Trust Fund to these agencies. Continuing to recognize higher costs simply because an HHA is "new" may merely support the ongoing operation of certain HHAs that otherwise are not viable enterprises. Payments for higher costs based on exceptions granted to new agencies result in increased expenditures, exacerbating the fiscal problems of the Medicare Trust Fund. Therefore, considering the recent increase in the number of HHAs nationwide, and the need to protect the Trust Fund from unnecessary expenditures, we believe continuation of this specific exception would be an imprudent decision.

In addition, as a result of the influx of new agencies, many established providers located in areas where the beneficiary population does not support additional agencies have become more vocal in expressing their belief that they are disadvantaged by the new-HHA exception, which they believe subsidizes a newly-established agency. They argue that this provision absolves health care providers expanding into the home care market from assuming the normal risk of opening a new business enterprise and diminishes the need for sound management planning. Since many of the costs directly related to initial development are start-up and organizational costs reimbursable under the Medicare program, established agencies contend that the new-HHA exception provides a program subsidy where none is warranted. They believe that other costs that are directly related to patient care are controllable through careful management planning.

For these reasons, we believe that our original justification for establishing a distinct exception for new HHAs is no longer valid. Therefore, we are proposing to eliminate this exception. We note that § 405.460(f) contains other exception provisions that would continue to apply to all HHAs.

III. Summary of Proposed Regulations

A. Return on Equity Capital Modification

We are proposing to amend § 405.429(a) to provide that, applicable with cost reporting periods beginning on or after the effective date of the final rule, the allowance for a return on equity capital applies only to proprietary hospitals and SNFs. These provisions would no longer apply to proprietary HHAs, CORFs, OPTDs, OPAs, Histo-Labs, and RHCs.

In addition, we are revising § 405.429(a) to reduce the rate of return on equity capital for SNFs and outpatient hospital services to the same rate as that which applies to inpatient hospital services.

We are also proposing to make a clarifying change in § 405.402(f) to conform the language in this section with that in the proposed § 405.429(b).

B. Elimination of Exception to the Cost Limits for Newly-Established HHAs

We are proposing to remove § 405.460(f)(7), applicable with cost reporting periods beginning on or after the effective date of the final rule, because we believe that an exception to the cost limits for newly-established HHAs is no longer appropriate.

IV. Regulatory Impact Statement

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that are likely to have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumer, individual industries, Federal, state or local government agencies, or geographic regions; or result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

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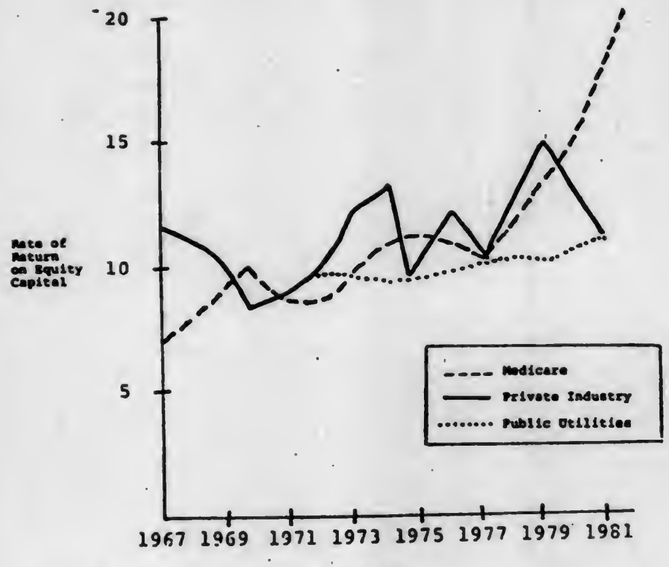
based enterprises in domestic or export markets. In addition, the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 605(b)), requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities.

We have determined that a regulatory impact analysis is not required for this proposed rule. However, in the following discussions regarding the return on equity capital and the exception for newly-established HHAs provisions, we are providing a voluntary regulatory flexibility anlaysis because both proposals are marked changes from our current policies and because we expect numerous comments from the affected portions of these industries regarding the expected impacts of these proposed changes.

B. Modifications To Return on Equity

As is noted in the OIG report, "Medicare has paid the return on equity capital at the highest rate allowed by law . . . The rate of increase in Medicare return on equity capital payments in recent years seems excessive when compared to the historical profit patterns (that is, increased) of both private industry generally and the public utilities segment of it." The OIG report compared the Medicare return on equity rates with the after-tax profits earned by 950 private industries as reported by The Value Line Investment Survey from 1967 through 1981, and with those earned (since 1972) by the public utilities included in the overall industry figures. The rates of return are presented below and support the OIG finding and the need for a change in policy, accordingly.

COMPARISON OF MEDICARE, PRIVATE INDUSTRY AND PUBLIC UTILITY RATES OF RETURN



1. Impact on Providers

We expect this proposed change to result in both budget savings to the Federal government and in economic effects on proprietary providers. We believe that any adverse economic consequences would be mitigated, in great part, by several viable options available to proprietary providers to create necessary amounts of equity capital for improvements or expansion of existing facilities and equipment.

If this rule had an effective date of October 1, 1985, we estimate that fiscal year (FY) 1986 savings would have been:

Proprietary Provider	Dollars medicare savings (millions)
Hospital outpatient	[1]10.4
SNFs	[1]13.0
HHAs	[2]7.5
CORFs	[3]
OPTs	[3]
RHCs	[3]
OPAs	[4]
Histo-Labs	[4]

[1] Assumes a reduction from 150 percent to 100 percent of the average of the rates of interest on special issues of public debt obligations issued for purchase by the Medicare Part A Trust Fund. Also, assumes increasing savings in future years.
[2] Assumes elimination of the return on equity allowance. Also, assumes increasing savings in furture years.
[3] Due to absence of cost report data, impact is inestimable.
[4] Assumes elimination of the return on equity allowance. Savings estimated to be no more than $100,000.

These estimated savings would result from either the elimination of or reduction of reimbursement for affected providers' return on equity allowances. Our data and those of the American Hospital Association (*Hospital Statistics*, 1984), indicate that affected proprietary hospitals represent about 11 percent of participating hospitals; affected proprietary SNFs represent about 66 percent of those approved for participation; affected proprietary HHAs represent about 28 percent of participating home health agencies; and, that most OPTs and a few RHCs would be affected. CORFs, OPAs, and Histo-Labs are primarily non-profit organizations and would not be significantly affected by this proposal.

Since it is clear that a substantial number of some proprietary providers are affected, we examined available information to determine whether the impacts would be significant for any of these groups of providers. ("Significance" can be measured, for example, in terms of a relative impact on provider's income, whether one's competitive status is affected adversely; or, whether a provider's ability to invest in its future growth is hindered).

Hospitals. We believe that proprietary hospitals would be affected directly by the reduction in their apportioned allowance for outpatient hospital services. However, under our proposed policy, proprietary hospitals would still be reimbursed adequately (one-hundred percent instead of one-hundred fifty percent of the average of the rates of interest on obligations issued for purchase by the Medicare Part A Trust Fund) for a reasonable return on equity.

Furthermore, the economic impact of this reduction could be mitigated by proprietary hospitals' use of alternative forms of financing to help create necessary amounts of new equity. For example, many financial analysts are predicting that during the next several years, investor-owned hospital management companies will continue to generate strong earnings from their stocks. These earnings should compensate for some of the financial impact incurred by these hospitals from our reducing their equity allowance and should contribute toward the financing of capital replacement or improvement projects.

Another potential effect on some hospitals, and on our projected budget savings, could result from certain hospitals incurring the expense related to debt financing of capital replacement and improvement projects. Hospitals, and other providers, might find this alternative attractive because interest on capital indebtedness is considered an allowable cost under our cost reimbursement principles. This example of a possible shift of financing mechanisms to one that is reimbursed by Medicare, could increase the financial debt of some hospitals as well as reduce some of the estimated savings generated by this proposal. However, we cannot estimate either the number of providers that would elect this financing alternative or the amount of estimated savings that would be offset by the shift to debt financing.

SNFs. Proprietary SNFs also face a reduction in their apportioned allowance for return on equity, which would reduce Medicare income to affected proprietary SNFs. The significance of this impact for any particular SNF would depend, in great part, on two factors: whether a SNF is hospital-based or freestanding; and, the amount of Medicare business that a SNF is engaged in. Hospital-based SNFs have access to more alternative sources of capital funding to offset this payment reduction than do freestanding SNFs. On the other hand, urban hospital-based facilities have the highest SNF Medicare use rate (34 percent (Urban Institute Medicare *SNF Cost Study, 1985*)), and would experience, correspondingly, a greater reduction in revenue than SNFs with lower Medicare utilization. Thus, while being small in number relative to the number of participating freestanding SNFs, these facilities are an important source of care for Medicare patients.

While recongnizing that proprietary SNFs would be affected, we conclude that the economic effect would not be significant for the following reasons. First, we would continue to reimburse each SNF an apportioned amount of equity sufficient to recover their reasonable costs incurred in furnishing services to Medicare beneficiaries. Second, proprietary SNFs that are chain affiliates generally have access to alternative forms of financing, like issuing stocks on the open market. Finally, we believe that incentives for timely discharge from hospital care, coupled with the continued growth of the portion of the population likely to use SNF services, will tend to increase the market demand for SNF services. This trend in turn will provide sufficient incentive for interested parties to invest in the creation of new SNFs and the expansion of existing facilities.

HHAs and OPTs. The return on equity allowance would be eliminated for proprietary HHAs. If the effective date of this rule were October 1, 1985, we estimate the financial impact would have been a reduction of $7.5 million in Medicare revenue to certified proprietary HHAs in FY 1986. (We cannot quantify an estimate for OPTs). As with SNFs, the significance of this reduction, in individual cases, is relative to whether an HHA is hospital-based or freestanding and to its percentage of Medicare utilization.

We do not believe that the estimated $7.5 million reduction in Medicare reimbursement is significant relative to the Medicare revenue of HHAs. Furthermore, most HHAs are not capital-intensive in their operation and, in fact, many HHAs lease their facilities and thus are not dependent on a return on equity payment to operate and remain competitive.

Many OPTs are organized as proprietary entities and would be impacted by this proposal. However, due to the absence of adequate cost report data form certified OPTs, we cannot quantify possible effects resulting from this proposal. We do believe that affected OPTs would face a reduction in Medicare revenues, but this impact could be offset by several alternatives including expanded affiliation with HHAs or pursuing the use of alternative forms of financing, such as debt financing. Thus, in the absence of adequate information, we cannot estimate for certain the potential effects of the elimination of the return on equity allowance, but we believe that there are viable options available for OPTs to mitigate potential negative impacts.

CORFs, OPAs, Histo-Labs, and RHCs. Most CORFs, OPAs, Histo-Labs, and RHCs are not-for-profit entities and, as such, are not affected by this proposal. While the few proprietary CORFs would not receive return on equity reimbursement, along with the affected RHCs, we believe that for the following reasons the need to eliminate this payment outweights reasons for retaining it. First, as noted in section I.A. of the preamble, there are generally a sufficient number of providers and practitioners to provide access to needed services for Medicare beneficiaries. Second, we believe that a growing beneficiary population coupled with the need to provide cost effective, outpatient care to Medicare beneficiaries would provide sufficient incentive for these providers to remain competitive through additions to, or expansion of, their business activities. Therefore, we believe that CORFs, OPAs, Histo-Labs, and RHCs would not be significantly impacted.

C. Elimination of the Exception for Newly Established HHAs From the Cost Limits

As stated previously in this preamble, the initial reason for providing the exception to the cost limits for new HHAs was to minimize financial barriers to HHAs wanting to enter Medicare markets for the first time, especially in underserved areas. However, because of the rapid increase in the number of new HHAs that have entered the market following the adoption of more lenient licensure requirements for proprietary HHAs, this rationale no longer appears to be valid. Such recent increases raise questions about the actual existence of financial barriers to market entry.

Additional evidence, suggesting that financing may no longer be a significant obstacle to entering the market place, is the changing composition of new HHAs. In FY 1980 (the first year of the "new HHA" exception), slightly more than one-half (57.7 percent) of all the new HHAs certified under Medicare were either hospital-based or proprietary agencies, which then represented less than 25 percent of the total Medicare participating HHAs. In FY 1981, the percentage of new hospital-based and proprietary agencies entering the market increased to 61.7 percent. By the end of FY 1985, slightly more than 80 percent (81.1 percent) of all new agencies being certified for participation in the Medicare program were either hosptial-based or proprietary. We expect this trend to continue for the foreseeable future.

As explained above in our discussion of the effects of lowering the return on equity allowance for SNFs, we believe

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that eight out of ten new agencies (hospital-based or proprietary agencies) have access to alternative sources of financing that are not available to nonprofit agencies, which dominated the home health industry prior to 1981. Moreover, hospital-based HHAs (which comprise nearly 40 percent of the new market entrants) enter with an established market, thereby further minimizing the need for the financial relief intended by the "new HHA" exception. Also, hospital-based programs can significantly reduce their start-up costs for service delivery by utilizing existing staff and facilities to perform patient care services.

While hospital-based and proprietary agencies may have access to financial resources and patient populations that nonprofit and free-standing agencies may not have, we believe that the service delivery mode and the relatively small capital investment required to start an agency make it quite easy for new free-standing and nonprofit agencies to come into the Medicare market without the aid of a "new HHA" exception. On average, capital-related costs for an HHA represent less than three percent of its total operating costs. By comparison, capital-related costs for the average SNF will be three times as much as for an HHA. Also, the nature of home health services enables HHAs to adopt extremely flexible staffing patterns and to maintain minimal fixed assets, thereby giving them a degree of control over their costs during the initial years of service that hospitals and SNF do not have.

We are presently unable to quantify the savings that may result from the proposed elimination of the "new HHA" exception. Historically, exception amounts requested by new providers have ranged from less than $1,000 to over $100,000, with an average request of $20,000. The amount approved, however, frequently is lower than the amount requested, sometimes by as much as 50 percent. Yet, because most exceptions that we approve are interim approvals, pending audit, we do not know what the final exception amounts will be. Thus far, we have very few "final" exceptions. In addition, the rapid growth of the home health agency industry makes prediction of number of future "new HHA" exceptions very uncertain. Also, the total number of HHAs affected by elimination of the "new HHA" exception is likely to be small, since all agencies would continue to be eligible to apply for other exceptions under § 405.460(f).

Based on program experience, we expect the amount of monies involved in the elimination of this exception to be insignificant in relation to overall average Medicare revenues to HHAs.

D. Summary

As stated above, we find no indications that any of the three provisions would meet the threshold criteria noted in the Executive Order or in the Regulatory Flexibility Act. Therefore, we conclude, and the Secretary certifies under 5 U.S.C. 605(b), that these proposed rules would not result in a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

These proposed changes would not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

V. Other Required Information

A. Public comments

Because of the large number of pieces of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that final rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are proposing to amend 42 CFR Part 405 as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart D is amended to read as follows:

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1935x(v), 1395hh, 1995rr, 1995ww, and 1395xx).

2. Section 405.402 is amended by revising paragraph (f) to read as follows:

§ 405.402 Cost reimbursement; general.

* * * * *

(f) A return on the equity capital of propietary facilities, as described in § 405.429, is an allowance in addition to the reasonable cost of covered services furnished to beneficiaries by profit-making organizations.

* * * * *

3. Section 405.429 is amended by revising paragraph (a); redesignating the current paragraph (b) as paragraph (c); adding a new paragraph (b); and revising the redesignated paragraph (c)(1) to read as follows:

§ 405.429 Return on equity capital of proprietary providers.

(a) *Definition.*

Proprietary providers. For the purposes of this section the term "proprietary provider" means a provider that is organized and operated with the expectation of earning a profit for its owners (as distinguished from a provider that is organized and operated on a nonprofit basis). Proprietary providers may be sole proprietorships, partnerships, or corporations. Effective for cost reporting periods beginning on or after [the effective date of the final rule], proprietary providers, for the purposes of this section, includes only proprietary hospitals and SNFs.

(b) *General rule.* A reasonable return on equity capital invested and used in the provision of patient care is paid as an allowance in addition to the reasonable cost of covered services furnished to beneficiaries by proprietary providers.

(1) *Rate of return applicable to all proprietary providers for cost reporting periods beginning before [the effective date of the final rule].* Except as provided in paragraph (b)(2) of this section for inpatient hospital services, the amount allowable on an annual basis, for cost reporting periods beginning before [the effective date of the final rule], is determined by multiplying the provider's equity capital by a percentage equal to one and one-half times the average of the rates of interest on special issues of public debt obligations issued for purchase by the Medicare Part A Trust Fund for each of the months during the provider's reporting period or portion thereof covered under the program.

(2) *Rate of return related to inpatient hospital services furnished by proprietary hospitals for cost reporting periods beginning on or after April 20, 1983.* For cost reporting periods beginning on or after April 20, 1983, the amount allowable in determining the return related to inpatient hospital services is determined using a percentage equal to the average of the rates of interest as described in paragraph (b)(1) of this section.

(3) *Rate of return related to proprietary SNFs and outpatient hospital services furnished by proprietary hospitals for cost reporting periods beginning on or after [the effective date of the final rule].* For cost reporting periods beginning on or after [the effective date of the final rule], the amount allowable in determining the return related to SNFs and outpatient hospital services is determined using a percentage equal to the average of the rates of interest as described in paragraph (b)(1) of this section.

(c) *Application—(1) Computation of equity capital.* For purposes of computing the allowable return, the provider's equity capital means—

(i) The provider's investment in plant, property, and equipment related to patient care (net of depreciation) and funds deposited by a provider who leases plant, property, or equipment related to patient care and is required by the terms of the lease to deposit such funds (net of noncurrent debt related to such investment or deposited funds); and

(ii) Net working capital maintained for necessary and proper operation of patient care activities. However, debt representing loans from partners, stockholders, or related organizations on which interest payments would be allowable as costs but for the provisions of § 405.419(b)(3)(ii), is not subtracted in computing the amount of equity capital in order that the proceeds from such loans be treated as a part of the provider's equity capital. In computing the amount of equity capital upon which a return is allowable, investment in facilities is recognized on the basis of the historical cost, or other basis, used for depreciation and other purposes under Part A of Medicare.

* * * * *

4. Section 405.460 is amended by removing and reserving paragraph (f)(7) as follows:

§ 405.460 Limitation on reimbursable costs.

* * * * *

(f) *Exceptions.*

* * * * *

(7) [Reserved]

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: October 30, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: January 23, 1986.

Otis R. Bowen, M.D.,

Secretary.

[FR Doc. 86-3551 Filed 2-19-86; 8:45 am]

BILLING CODE 4120-01-M

LEGAL SERVICES CORPORATION

45 CFR Parts 1600 and 1631

Expenditure of Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: The proposed regulation provides that carryover funds of grant recipients, except those permitted to be used for representation of ineligible aliens pursuant to 45 CFR 1626.6(a)(3), will be expended with 1986 funds on a first-in, first-out basis. Section 112 of Pub. L. 99–190 provides that prior year funds carried over into fiscal year 1986 by the Corporation and by any recipient will be expended in accordance with Pub. L. 99–180 which appropriates 1986 funds for the Corporation. The regulation will assure that in monitoring and auditing recipients, the Corporation will be able to track carryover funds from prior years to determine that they are not being used for purposes not authorized by Congress.

DATE: Comments must be received on or before March 24, 1986.

ADDRESS: Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue SW., Washington, DC 20024–2751.

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Comptroller, (202) 863–1820.

SUPPLEMENTARY INFORMATION: This regulation responds to concerns that certain activities, such as grassroots lobbying, which Congress restricted in 1982, 1983, 1984, and 1985 appropriations measures would be continued into 1986 and beyond with pre-1982 carry-over funds. The Audit and Accounting Guide for Recipients and Auditors contains a short provision establishing a first-in, first-out requirement (50 FR 48276, 48283, Nov. 29, 1985). Proposed Part 1631 sets forth this requirement in greater detail and provides standards for enforcement and penalties for violations. Section 112 of Pub. L. 99–190 (99 Stat. 1185) requires LSC and its grantees to comply with current restrictions on the use of prior funds.

The proposed regulations amend Part 1600 to add three new definitions, including "control" as used in Section 7 of Chapter 1 of the Audit Guide referred to above. They permit the completion of cases on behalf of aliens commenced prior to January 1, 1983, and require recipients and subrecipients to submit an annual report documenting the expenditure of all carryover funds on a first-in, first-out basis. The report must include a statement of what efforts have been made to avoid the need for the use of LSC funds to represent ineligible aliens. A conforming amendment will be made to Part 1626 in the final regulation to require recipients to make good faith efforts to avoid the use of LSC funds to represent ineligible aliens—including a requirement for good faith efforts to ascertain whether all clients are, in fact, either citizens, or aliens lawfully within the United States.

Paragraph (a) of § 1631.5 provides for repayment to the Corporation of funds spent in violation of Part 1631, either in a lump sum or by pro rata deductions. The Office of Monitoring, Audit, and Compliance will determine which of the specified methods of repayment is reasonable and appropriate in each case after consultation with the recipient.

Section 4 clarifies the separation a recipient or subrecipient must maintain between restricted and unrestricted funds if it wants to use unrestricted funds for purposes not allowed for restricted funds.

List of Subjects

45 CFR Part 1600

Legal services.

45 CFR Part 1631

Aliens, Grant programs—Legal services.

For the reasons stated in the preamble, 45 CFR Part 1600 is proposed to be amended and new Part 1631 is proposed to be added as follows:

PART 1600—DEFINITIONS

1. Section 1600.1 is proposed to be amended by inserting these new definitions alphabetically as follows:

§ 1600.1 Definitions.

* * * * *

"Carryover funds" means any funds or support not expended at the end of a fiscal year and remaining as a program asset on the first day of the succeeding fiscal year.

"Control" means the direct or indirect ability to determine the direction of

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management and policies or to influence the management or operating policies of another organization to the extent that an arm's length transaction may not be achieved.

* * * * * *

"First-in, first-out basis" means a method of operation under which a recipient expends all funds carried over from a fiscal year before it expends any funds that have been made available to it for a subsequent fiscal year.

* * * * * * *

2. New Part 1631 is proposed as follows:

PART 1631—EXPENDITURE OF GRANT FUNDS

Sec.
1631.1 Purpose.
1631.2 Policy.
1631.3 Representation of certain aliens.
1631.4 Annual reports.
1631.5 Refunds to the Corporation.
1631.6 Separation of funds.
1631.7 Dates.

Authority: Sec. 1006(b)(1)(A), 1007(a)(3) Legal Services Corporation Act, as amended (42 U.S.C. 2996e(b)(1)(A), 2996f(a)(3)); Pub. L. 99-190, 99 Stat. 1185; Pub. L. 99-180, 99 Stat. 1136

§ 1631.1 Purpose.

This part is designed to ensure the timely allocation of Legal Services Corporation (LSC) funds for the effective and economical provision of high quality legal assistance to eligible clients and to provide notice and direction to recipients of LSC funding regarding the use of carryover funds. To that end, recipients are required to expend all funds on a first in, first out basis.

§ 1631.2 Policy.

Except as specified in § 1631.3, all LSC funds and all revenue derived from the use or investment of LSC funds, including those held by separate entities that are under the control of the recipient or subrecipient or its agents or employees are required to be expended on a first-in, first-out basis.

§ 1631.3 Representation of certain aliens.

LSC carryover funds may be reserved and expended, pursuant to the provisions of § 1626.6(a)(3) (Disposition of cases involving representation of ineligible aliens) for completion of cases on behalf of aliens commenced prior to January 1, 1983.

§ 1631.4 Annual reports

Recipients and subrecipients shall provide an annual report to the Office of Monitoring, Audit, and Compliance documenting that they have complied with the provisions of § 1631.2. The report shall state whether the recipient or subrecipient represents any group or class which may include any ineligible alien and its efforts to ensure that no LSC funds are or have been used to represent ineligible aliens through such group or class representation. If the recipient or subrecipient expended funds pursuant to § 1626.6(a)(3) in the preceeding year or has reserved carryover funds pursuant to § 1631.3, it shall provide for each case:

(a) Date of case acceptance;

(b) A certified copy from each court or administrative agency in which an action has been filed or, if no such docket is available, a detailed statement of what actions have been taken with respect to any such matter, relevant dates, and the name of the forum;

(c) A list of the individual attorneys who have appeared for or otherwise represented the client, the time period during which each represented the client, the extent of direct contact each had with the client, and whether each is still an employee of the program;

(d) A statement of what efforts have been made to terminate its representation of the client(s) (consistent with relevant ethical obligations) and to find alternative funding to cover these expenditures;

(e) Estimated cost of completion, including, in separate categories, attorney costs and other costs; and

(f) Estimated date of completion.

§ 1631.5 Refunds to the Corporation.

(a) Any funds spent in violation of the provisions of §§ 1631.2 and 3 of this part shall be repaid to the Corporation in a lump sum or by one or more deductions from the recipient's grant checks for a specific number of months. The Office of Monitoring, Audit, and Compliance shall determine the amount of such repayment and which of the specified methods or repayment is reasonable and appropriate in each case after consultation with the recipient.

(b) No less than 30 days prior to the effective date for repayment either to occur or commence in accordance with paragraph (a) of this section, the Corporation shall provide written notice to the recipient of the amount of funds not expended in accordance with the provisions of §§ 1631.2 and 1631.3 of this part as well as of the method of repayment.

(c) Within ten days after receipt of the notice specified in paragraph (b), the recipient may request the President to review the determination. The President's decision shall be final.

(d) In no way shall any such reduction in LSC support be construed to affect permanently the annualized funding level of the recipient, nor shall any such reduction in LSC support to considered to be a termination or denial of refunding under 45 CFR Parts 1606 and 1625 respectively.

§ 1631.6 Separation of funds.

(a) If a recipient or subrecipient has placed funds subject to restrictions contained in a federal statute, a Corporation rule, regulation, instruction or guideline, or a grant or contract condition in the same account with funds not subject to such restrictions, all the funds in such account shall be deemed subject to the restriction.

(b) If funds in separate accounts are controlled by the same person or are under common control, and clear, objective, prior standards are not consistently followed as to what expenses will be paid from which account, all funds in all such accounts shall be subject to all the restrictions.

(c) If funds in separate accounts are controlled by the same person or are under common control, the recipient shall submit an annual report specifying the institution(s) in which the funds are held, each account number, the balance of each account, and for each account, the formal style or designation of all cases for which any expenses have been paid from the account. Such annual report must be approved by the recipient's governing body.

§ 1631.7 Dates.

The annual reports specified in §§ 1631.4 and 1631.6 shall be received by the Corporation no later than 30 days after the end of each calendar year. Initial reports shall be due no later than 30 days after the effective date of this regulation.

Dated: February 12, 1986.

John H. Bayly,
General Counsel.

[FR Doc. 86-3404 Filed 2-19-86; 8:45 am]

BILLING CODE 6820-35-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-50 RM-5140]

Radio Stations; FM Broadcast Station in McCook, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 230A to McCook, Nebraska, at the request of Donna Goad, to provide the community with its third local FM service.

DATES: Comments must be filed on or before April 7, 1986, and reply comments on or before April 22, 1986.

ADDRESS: Federal Communications, Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of Amendment of § 73.202(b), Table of Allotments FM Broadcast Stations, (McCook, Nebraska); MM Docket No. 86-50 and RM-5140.

Adopted: January 31, 1986.
Released: February 13, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making submitted by Donna Goad ("petitioner") requesting the allocation of Channel 230A to McCook, Nebraska, as the community's third local FM service. Petitioner states that she will apply for the channel, if allocated. Channel 230A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements.

2. We believe the public interest would be served by soliciting comments on the proposal as it could provide McCook with an additional local FM service. Accordingly, the Commission proposes to amend § 73.202(b) of the Rules, the FM Table of Allotments, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
McCook, NE	241,267	230A, 241, and 287.

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before April 7, 1986, and reply comments on or before April 22, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Donna Goad, 402 East 4th McCook, Nebraska 69001 (petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,
Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. If should also restate its present intention to apply for the channel if it is alloted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisons of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

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6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-3626 Filed 2-19-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-51; RM-5123]

Radio Stations; FM Broadcast Station in Altus, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 300A to Altus, Oklahoma, as that community's second local FM service, at the request of Robert M. Kerr.

DATES: Comments must be filed on or before April 7, 1986, and reply comments on or before April 22, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Altus, Oklahoma); MM Docket No. 86-51 and RM-5123.

Adopted: January 24, 1986.

Released: February 13, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Robert M. Kerr ("petitioner") seeking the allocation of Channel 300A to Altus, Oklahoma, as the community's second FM service. Channel 300A can be allocated in compliance with the Commission's minimum distance separation and other technical requirements. Petitioner has stated that he will apply for the frequency, if allocated.

2. We believe the public interest would be served by seeking comments on the requested allotment. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Altus, OK	226A	226A, 300A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before April 7, 1986, and reply comments on or before April 22, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Robert Clifton Burns, Esq., Cohn and Marks, 1333 New Hampshire Avenue, NW., Suite 600, Washington, D.C. 20036 (his counsel).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification thot Sections 603 and 604 of the Regulatory Flexibility Act do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the preceeding.

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceedings.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the preceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-3624 Filed 2-19-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 86-37; FCC 86-64]

Radio Services; Amendment of the Rules To Restrict the Use of Radio Transmitters With External Frequency Controls

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The Commission has adopted a *Notice of Proposed Rule Making* which proposes to amend Part 90, Subpart 1 of its rules (which apply to Private Land Mobile Radio Services) to restrict the use of radio transmitters with external frequency controls that would allow the selection of unauthorized frequencies. The proposal is prompted by increasing use of radio transmitters with external frequency selection capabilities. The proliferation of such radio equipment dramatically increases the potential for interference in the Private Land Mobile Radio services. Restricting the use of such equipment reducea the likelihood of abuse in frequency selection.

DATES: Comments are due March 21, 1986, and reply comments on or before April 7, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas L. Johnson, Operations Review Branch, Land Mobile & Microwave Division, Private Radio Bureau, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Notice of Proposed Rulemaking

In the matter of amendment of Part 90 of the Commission's Rules to Restrict the use of Radio Transmitters with External Frequency Controls; PR Docket No. 86-37.

Adopted: January 30, 1986.

Released: February 12, 1986.

By the Commission.

Summary

1. We have become increasingly concerned by the growth in the use of externally controlled synthesized radio transmitters. Because of the grave potential for interference this equipment presents for accidental or intentional off-frequency operation, we are initiating this proceeding on our own motion proposing to restrict the operation of radio equipment with external frequency selection capability on frequencies (above 25 MHz) allocated to the Private Land Mobile Radio Services (47 CFR 90.1 et. seq.).

Background

2. In Gen. Docket No. 83-322, we, *inter alia*, amended Part 90 of the Rules to no longer require transmitters to be installed, maintained, and serviced by persons holding a commercial radio operator license.[1] With this change a variety of technical rules were eliminated, including § 90.433(c). This Section had specified, in effect, that transmitters designed with readily accessible external controls, which during normal rendition of service could result in improper operation, off-frequency operation or unauthorized radiation, had to be operated by a person holding a first or second class commercial radio operator license, either radiotelephone or radiotelegraph, as might be appropriate for the type of emission being used. With the removal of this requirement and the increasing attractiveness of synthesized transmitters, some manufacturers have begun to make available to the public transmitters with external frequency controls that would permit the selection of unauthorized frequencies.

Proposal

3. We are concerned that the proliferation of such radio equipment markedly increases the potential for interference and could significantly degrade operations in the private land mobile radio services. We have received and dealt with many interference complaints over the years involving land mobile systems operating off-frequency. The incidence of these problems, however, has been moderated by the necessity of having to go inside the transmitter housing to install crystals and retune the transmitter to operate on unauthorized frequencies. Today, with the advent of inexpensive, synthesized radio units with external tuning controls, this deterrent no longer exists. Using these types of transmitters, it is fairly simple to tune, at will, to any frequency within the design range of the equipment, including channels allocated to such safety services as Marine, Aviation, Public Safety and federal government operations.

4. The radio units which are now being manufactured enable telecommunications dealers or users to select frequencies at will. There is no impediment in the equipment which confines operation to authorized channels. We are concerned that as more and more of these units are sold, the probability of interference increases dramatically from inadvertent or deliberate improper frequency selection. The potential harmful interference problems created by such operations could have a severe adverse impact on all the land mobile radio services.

5. The land mobile services are already experiencing severe frequency congestion in nearly all major metropolitan areas of the country. To mitigate this problem to the extent possible the radio spectrum has been channelized in such a way that enable radio systems to be spaced relatively close to each other. Additionally, most licensees must cooperatively share their assigned frequency with co-channel users in any given geographical area of operation. Consequently, a single radio transmitter operating off-frequency can cause harmful interference to a substantial number of co-channel and/

[1] *In the Matter of Requirements for Licensed Operators in Various Radio Services.* Report and Order, Gen. Doc. 83-322, (FCC 84-56), released May 3, 1984.

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or adjacent channel operations. This problem will be magnified by off-frequency interference created, accidentally or intentionally, by transmitters with external frequency selection capabilities. The proliferation of interference complaints and other improper operations of the equipment have the potential for generating a very substantial enforcement workload for the Commission, as well as causing serious disruption to a large number of our licensees. We, therefore, deem it prudent and in the public interest to curtail the use of equipment that would permit the selection of unauthorized frequencies.

6. In order to achieve our objectives of reducing potential interference problems and making more effective use of the spectrum, we propose to amend § 90.203 of our rules to proscribe external frequency controls on transmitters designed to operate above 25 MHz. Specifically, we propose to prohibit the manufacture and sale of such equipment for use in the Private Land Mobile Radio Services upon adoption of the Report and Order in this proceeding.[2] Although we anticipate that the major direct impact of the proposal will be on manufacturers and retailers of equipment designed to operate in the spectrum above 25 MHz, we are unable to predict the magnitude of the impact at this time.

7. We propose these restrictions because we believe they will benefit users in the shared private radio bands. Inaction by the Commission would likely lead to higher interference levels and a significant deterioration in communications quality for these users. Further, we do not expect these restrictions to result in significantly increased equipment costs for users. However, we encourage interested parties to provide us with their assessments of the benefits and costs of the proposed regulations and to suggest alternatives which may more cost-effectively meet our goal of controlling interference. In addition, comments are requested regarding the impact of the effective date of the proposed prohibition, including any impact on the value of manufacturers' and retailers' inventories.

Initial Regulatory Flexibility Analysis

Objectives

8. This action is being taken to incorporate into the Commission's Rules a prohibition against the use of radio transmitters with external frequency selection capabilities that would permit the selection of unauthorized frequencies. The use of such units by those who would willfully or inadvertently select unauthorized frequencies has the likely potential of degrading the land mobile radio spectrum to the detriment of the public as a whole.

Description, Potential Impact and Number of Small Entities Affected

9. The major impact of the proposed rules will be on equipment manufacturers. This action will require manufacturers to modify the design specifications for radio units with external controls and construct these features on the units in such a manner that they will not allow the selection of unauthorized frequencies. Since we are unable to determine the impact, we specifically request affected manufacturers to participate in this proceeding.

Any Significant Alternatives Minimizing Impact on Small Entities and Existing Licensees and Consistent with the Stated Objective

10. None. Enhanced enforcement programs are not possible under current budget constraints.

Paperwork Reduction Act Statement

11. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Procedural Matters

12. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex-parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex-parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex-parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex-parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation. On the day of that oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex-parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231. A summary of the Commission procedures governing *ex-parte* presentations in formal rule making is available from the Commission's Consumer Assistance office, FCC Washington, DC 20554.

13. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), and 331 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 332. Interested persons may file comments on or before March 21, 1986, and replay comments on or before April 7, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public files, and provided that the Commission's reliance on such information is noted in its final decision.

14. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy of their comments without regard to form (as long as the docket number is clearly stated in the heading). All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters, Room 239, 1919 M Street NW., Washington, DC.

15. For further information on this proceeding, contact Thomas L. Johnson at (202) 632-6497, Private Radio Bureau, Federal Communications Commission, Washington, DC.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

Section 90.203 is amended by adding paragraphs (e) and (f) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(e) Transmitters designed to operate above 25 MHz with external frequency selection capability that would permit the selection of unauthorized frequencies shall not be type accepted for use under this part.

(f) Transmitters designed to operate above 25 MHz with external frequency selection capability that would permit the selection of unauthorized frequencies that have been type accepted prior to [insert effective date of R & O] shall not be manufactured or marketed on or after [insert effective date of R & O] for use under this part.

[FR Doc. 86-3623 Filed 2-19-86; 8:45 am]

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[2] We also invite comments as to whether equipment used in the General Mobile Radio Service authorized under Part 95 should be included in this proceeding.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 677

Bering Sea King Crab Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing.

SUMMARY: In accordance with the provisions of the Joint Statement of Principles for king crab management between the North Pacific Fishery Management Council and the Alaska Board of Fisheries, the Council and Board will hold their annual public hearing to take testimony on regulatory proposals for the 1986 Bering Sea and Aleutian Islands king crab fishery. The hearing may be cancelled if it appears that there are no issues of a controversial nature.

DATE: The hearing is scheduled to be held on March 7, 1986, and will begin at 9:30 a.m.

ADDRESSES: The hearing will be held at the Northwest and Alaska Fisheries Center, 7600 Sand Point Way NE., Seattle, Washington. Copies of the proposals may be obtained from the Alaska Board of Fisheries, P.O. Box 3-2000, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Jim Glock, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage 99510, 907-274-4563.

Dated: February 13, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-3651 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-22-M

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Notices

Federal Register
Vol. 51, No. 34
Thursday, February 20, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement; Department of the Interior, Assistant Secretary for Territorial and International Affairs

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement (PMOA) under 36 CFR 800.8 of its regulations (36 CFR Part 800) with the Assistant Secretary of the Interior, Territorial and International Affairs. The PMOA will provide for the consideration of effects on historic properties, as required by section 106 of the National Historic Preservation Act, when the Assistant Secretary provides financial or technical assistance to the Governments of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau. The PMOA as now drafted envisions that the Assistant Secretary's responsibilities under Section 106 will be carried out largely through the Governments of the various insular jurisdications, with oversight and review by the Assistant Secretary.

Comments Due: March 24, 1986.

ADDRESS: Advisory Council on Historic Preservation, 1100 Pennsylvania Ave. NW, Suite 809, Washington DC 20004, Attn: Dr. Thomas F. King.

Dated: February 13, 1986

Robert R. Garvey,

Executive Director.

[FR Doc. 86-3692 Filed 2-19-86; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

February 14, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection: (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250 (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Cooperative Service
  Compliance Review (Farmers Cooperatives)
  ACS-40
  On occasion
  Businesses or other for-profit; 30 responses; 15 hours; not applicable under 3504(h)
  Donald W. Street (202) 447-8148
- Food and Nutrition Service
  Civil Rights Title VI Collection
  Reports
  FNS-101 and FNS 191
  Annually
  State or local governments; 4,600 responses; 8,802 hours; not applicable under 3504(h)
  Peggy Hickman (703) 756-3710

New

- Food Safety and Inspection Service
  Survey on Rapid Test Methods for Detection of Tuberculosis, Cysticuscoisis, and Eosinophilic Myositis
  One-time survey
  Non-profit institutions; Small businesses or organizations; 45 responses; 135 hours; not applicable under 3504(h)
  Roy Purdie, Jr. (202) 447-5372

Reinstatement

- Food and Nutrition Service
  7 CFR Part 235—State Administrative Expense Funds
  Recordkeeping
  State or local governments; 27,647 hours; not applicable under 3504(h)
  Marian Stroud (703) 756-3600

Revision

- Agricultural Marketing Service
  Apricots Grown in Designated Counties in Washington—Marketing
  Order No. 922
  Committee forms used, not agency report forms
  On occasion; Annually
  Farms; Businesses or other for-profit; Small businesses or organizations; 113 responses; 27 hours; not applicable under 3504(h)
  Gary D. Rasmussen (202) 447-4552

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 86-3693 Filed 2-19-86; 8:45 am]

BILLING CODE 3410-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Brookhaven National Laboratory; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-034. Applicant: Brookhaven National Laboratory, Upton, NY 11973. Instrument: Circular Dichroism Spectrophotometer, Model J-500C and Accessories. Manufacturer: Jasco, Japan. Intended use: See notice at 50 FR 51445.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides measurement of circular dichroism spectra and high frequency switching (50,000 times per second) between left- and right-circularly polarized light. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3686 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Department of the Interior; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-015. Applicant: Department of the Interior, NSTL, MS 39529. Instrument: Ring Shear Type Debris Flow Apparatus. Manufacturer: Marui and Company Limited, Japan. Intended use: See notice at 50 FR 46806.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument measures the rheological properties of debris (soil, sediment/water mixtures) using a unique, dynamic torsional shear apparatus. The National Bureau of Standards advises in its memorandum dated January 15, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3687 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Memorial Hospital for Cancer and Allied Disease et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85-143R. Applicant Memorial Hospital for Cancer & Allied Diseases, New York, NY 10021. Instrument: Electron Microscope, Model EM 410LS. Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Original notice of this resubmitted application was published in the **Federal Register** of May 3, 1985. Instrument ordered: February 22, 1985.

Docket No.: 85-144R. Applicant: New Jersey Department of Health, Trenton, NJ 08625. Instrument: Electron Microscope, Model EM420T with Accessories. Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Original notice of this resubmitted application was published in the **Federal Register** of May 3, 1985. Instrument ordered: February 27, 1985.

Docket No.: 86-013. Applicant: Children's Hospital and Health Center, San Diego, CA 92123. Instrument: Electron Microscope, Model EM 410LS with Accessories; Manufacturer: Philips, The Netherlands. Intended use: See notice at 50 FR 46807. Instrument ordered: August 5, 1985.

Docket No.: 86-019. Applicant: University of California, Los Angeles, CA 90024. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Japan. Intended use: See notice at 50 FR 46150. Instrument ordered: February 21, 1985.

Docket No.: 86-020. Applicant: Clarkson University, Potsdam, NY 13676. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL Limited, Japan. Intended use: See notice at 50 FR 46149. Instrument ordered: See notice at 50 FR 46148. Instrument ordered: August 5, 1985.

Docket No.: 86-022. Applicant: University of New Hampshire, Durham, NH 03824. Instrument: Electron Microscope with Scanning Attachment, Model H-600 and Accessories. Manufacturer: Hitachi Limited, Japan. Intended use: See notice at 50 FR 46806. Instrument ordered: July 18, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3688 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

New York Medical College; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85-087R. Applicant: New York Medical College, Valhalla, NY 10595. Instrument: Automatic Recording Spectropolarimeter, Model J-500. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Original notice of this

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resubmitted application was published in the **Federal Register** of February 27, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides measurement of circular dichroism spectra and high frequency switching (50,000 times per second) between left- and right-circularly polarized light. The National Institutes of Health advises in its memorandum dated Jnauary 2, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3669 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

The Pennsylvania State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85-048R. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Electro Optical Extensometer, Model 200X. Original notice of this resubmitted application was published in the **Federal Register** of January 8, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a scan range of 2×10^{-3}m with a resolution of 0.008% (1.6×10^{-7}m) of the range and a zero drift of <5mV per 24 hours. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3670 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers—The State University of New Jersey; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-131R. Applicant: Rutgers—The State University of New Jersey, Piscataway, NJ 08854. Instrument: Refrigerated Microcentrifuge with Accessories. Original notice of this resubmitted application was published in the **Federal Register** of April 19, 1985.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument is capable of centrifuging up to 24 microcentrifuge tubes to 10,000 rpm and decelerating to zero within three minutes while maintaining temperature control. The National Institutes of Health advises in its memorandum dated January 2, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3671 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Rutgers University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Docket No.: 85-298. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: Piezo-electric Fabry-Perot Interferometer and Controller. Manufacturer: Queensgate Instruments Limited, United Kingdom. Intended use: See notice at 50 FR 41379.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) direct optical coupling to a telecope, (2) a clear aperture of 50 millimeters and, (3) a bandwidth from 360 to 720 nanometers (nm) with a resolution to .05 nm.

This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials).

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3672 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

University of California et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFT Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 86-091. Applicant: University of California, San Francisco, Department of Anatomy, School of Medicine, 513 Parnassus, San Francisco, CA 94143. Instrument: Electron Microscope, Model JEM-100CXII. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument is intended to be used to study the fine structure of nerve cells from particular regions of the brain and spinal cord which are concerned with the processing of neural information related to pain. In addition, the instrument will be used for the training of advanced graduate students and post-doctoral fellows in sophisticated, advanced research methods in neurobiology. Application received by Commissioner of Customs: January 17, 1986.

Docket No.: 86-099. Applicant: Johns Hopkins University, Charles & 34th Streets, Baltimore, MD 21218. Instrument: Positron Emission Detection (Two-Probe System), Model APS-2. Manufacturer: Qnix Co., Ltd., Korea. Intended use: Monitor the uptake, in the living human brain, of positron-emitting neuroreceptor binding radiopharmaceuticals to deduce information about living human neuroreceptors. In addition other positron-emitting radiopharmaceuticals including F-18 labeled fluorodeoxyglucose and the C-11 labeled amino acid methinonine will be monitored. Application received by Commissioner of Customs: January 23, 1986.

Docket No.: 86-101. Applicant: The Research Foundation of State University of New York, Office of Contract and Grant Administration, P.O. Box 9, Albany, NY 12201. Instrument: Fluorescence Lifetime Instrumentation. Manufacturer: PRA International, Inc., Canada. Intended use: Investigation of transition metal and organometallic compounds to characterize the rapid relaxation processes in molecules following light absorption. The instrument will be used for independent study and advanced independent study chemistry courses to enable students to acquire the laboratory and interpretative skills necessary to carry out advanced research. Application Received by Commissioner of Customs: January 27, 1986.

Docket No.: 86-102. Applicant: Washington University Medical School, 660 South Euclid Avenue, St. Louis, MO 63110. Instrument: Mass Spectrometer, Model ZAB-SE and 11/250 Data System. Manufacturer: VG Analytical, Ltd., United Kingdom. Intended use: Studies of biologically related molecules such as peptides, proteins, sugars, prophyrins and lipids. Experiments will be conducted to assist in the structural identification of novel compounds of biochemical or biomedical significance or to assist in the quantitation of material whose concentration is of functional significance. In addition, studies of the fundamental physics underlying the mass spectrometry of these classes of compounds will be conducted with the aim of improving the sensitivity with which these compounds may be examined. The instrument will also be used to train students in the operation and application of mass spectrometers. Application Received by Commission of Customs: January 27, 1986.

Docket No.: 86-103. Applicant: University of California, Los Alamos National Laboratory, SM-30, Bikini Road, P.O. 990, Los Alamos, NM 87545. Instrument: Streak Camera. Manufacturer: Delli Delti Ltd., United Kingdom. Intended use: Study of high speed phenomena related to testing of thermonuclear devices and related proceses for a better understanding of weapons related physics. Application Received by Commissioner of Customs: January 27, 1986.

Docket No.: 86-104. Applicant: University of California, Los Alamos National Laboratory, P.O. Box 990, Bikini Street, Los Alamos, NM 87545. Instrument: Streak Camera System, Model IMACON 501. Manufacturer: Marco Scientific Inc., United Kingdom. Intended use: The instrument is intended to be used for the study of high speed phenomena related to testing of thermonuclear devices and related processes. The properties of the materials investigated include equation-of-state, opacity, x-ray spectra and temperature measurements. Application Received by Commissioner of Customs: January 27, 1986.

Docket No.: 86-105. Applicant: The Methodist Hospital, 6565 Fannin Street, Houston, TX 77030. Instrument: Kidney Lithotripter. Manufacturer: Dornier Medizintechnik GmbH, West Germany. Intended use: The instrument is intended to be used for training residents and active staff members in the Urology Service. Application Received by Commissioner of Customs: January 30, 1986.

Docket No.: 86-106. Applicant: University of Chicago, Northwestern Memorial Group, 750 N. Lake Shore Drive, Chicago, IL 60611. Instrument: Extracorporeal Shock Wave Lithotripter. Manufacturer: Dornier, West Germany. Intended use: The instrument is intended to be used to conduct various experiments involving extracorporeal shock wave lithotripsy (ESWL) with the following objectives:

(1) To find if ESWL causes infections by distintegrating bacteria contained within kidney stones.

(2) To obtain follow-up data on significant numbers of patients for a long enough period of time to see if these fragments will eventually lead to: new stones, infections, kidney damage or painful symptoms.

(3) To test the appropriateness of elective removal of kidney stones which are producing no symptoms, both from a health and cost perspective.

(4) To determine by electrocordiogram observations the effects of ESWL on the heartbeat rhythm of patients with heart disease.

(5) To determine what degree of permanent damage kidneys may suffer from ESWL.

(6) To determine whether the shock waves can reach kidney stones overshadowed by ribs and pelvic bones if bone must be traversed, and if the bone will be damaged.

(7) To further man's understanding of the painful, frequent, and disabling disease of kidney stones.

In addition, the instrument will be used for the training of urology specialists, residents and third and fourth year medical students assigned to the urology service. Application Received by Commissioner of Customs: January 29, 1986.

Docket No.: 86-107. Applicant: UCLA, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: ph Electrodes, Model Lot 440-M4/20/3m-15.30. Manufacturer: InGold AG Industrie Nord, Switzerland. Intended use: The instrument will be used to identify and validate the profile of gastric acid secretion in man in the outpatient setting. Application Received by Commissioner of Customs: January 30, 1986.

Docket No.: 86-109. Applicant: North Carolina State University, School of Textiles, P.O. Box 8301, Raleigh, NC 27695-8301. Instrument: Sized Yarn Testing Instrument. Manufacturer: Sulzer-Ruti, Switzerland. Intended use: The instrument will be used to simulate the forces to which the warp yarns are subjected during weaving in research to generate correlation between the test result and actual warp performance during weaving. In addition, the instrument will be used to study the new sizing technologies and to compare the effectiveness of different size materials. Application Received by Commissioner of Customs: January 30, 1986.

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(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3674 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Illinois, Urbana-Champaign Campus; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-036. Applicant: University of Illinois, Urbana-Champaign Campus, Urbana, IL 61801. Instrument: Excimer Laser-Dye Laser System with Power Supply, Model EMG 203MSC. Manufacturer: Lambda Physik, West Germany. Intended use: See notice at 50 FR 48451.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides an average power of 150 watts and 250 Hz repetition rate. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3675 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Notre Dame; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket No. 85-314. Applicant: University of Notre Dame, Notre Dame, IN 46556. Instrument: FT Interferometric Spectrophotometer, Model DA3.10 with Accessories. Manufacturer: Bomem Incorporated, Canada. Intended use: See notice at 50 FR 45846.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides an unapodized resolution of 0.02 cm^{-1}. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3676 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Rochester Medical Center; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

DOCKET NO. 85-211. Applicant: University of Rochester Medical Center, Rochester, NY 14620. Instrument: Microscope Photometer, Model MPV 3 with Accessories. Manufacturer: Leitz Wetzlar, West Germany. Intended Use: See notice at 50 FR 28000.

COMMENT: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument can measure reflected or transmitted light at four wavelengths from a 220 to 800 millimeter area at a low temperature (−110 degrees centigrade). The National Institutes of Health advises in its memorandum dated January 2, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel

Director, Statutory Import Programs Staff.

[FR Doc. 86-3677 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

University of Texas et al.; Applications for Duty-free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket No. 83-065R. Applicant: University of Texas, Department of Chemistry, Austin, TX 78712. Instrument: X-ray Photoelectron Spectrometer (ESCALAB 5). Original notice of this resubmitted application was published in the **Federal Register** of December 14, 1982.

Docket No. 86-067. Applicant: Case Western Reserve University, 10900 Euclid Avenue, Cleveland, OH 44106. Instrument: Electron Microscope, Model JEM-4000 EX/THG with Accessories. Manufacturer: JEOL, Japan. Intended use: The instrument is intended to be used for research projects involving:

1. Coherent and incoherent interfaces in ZrO_2-toughened ceramics,
2. Oxygen electrocatalysts,
3. High resolution electron microscopy of polymers,
4. Interface between oxide scales and structural alloys,
5. Titanium alloys,
6. Microstructure of thin films,
7. Interface structures and microstructures in electronic materials and

8. Structure of stacked macrocycles.

In addition the instrument will be used to teach students the practical use, theory and applications of electron microscopy to metallurgy and materials science. Application Received by Commissioner of Customs: December 13, 1985.

Docket No. 86-090. Applicant: Brookdale Hospital Medical Center, Linden Boulevard and Rockaway Parkway, Brooklyn, NY 11212. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: The intended to be used in medical science to generate diagnostic pathological data from human tissue specimens. Application received by Commissioner of Customs: January 16, 1986.

Docket No. 86-092. Applicant: The Mount Sinai Hospital, One Gustave L. Levy Place, New York, NY 10029. Instrument: Lithotripter. Manufacturer: Dornier Medical Systems, Inc., West Germany. Intended use: The instrument is intended to be used in experiments conducted to determine differences in the effects of shock waves on the different types of renal calculi and whether the presence of infection and the possible proteinaceous matrix is a factor in preventing the transmission of the shock waves and dispersion of the calculus. In addition, the instrument will be used to train urological residents and medical students in the overall management of kidney stone problems. Application received by Commissioner of Customs: January 17, 1986.

Docket No. 86-094. Applicant: Vanderbilt University School of Medicine, Nashville, TN 37232. Instrument: Electron Microscope, Model H-600-3. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: Analysis of structural features of tissues, cells and subcellular fractions important to biomedical research projects such as studies on the developing visual system, the developmental biology of reproductive organs, and factors which regulate the proliferation of cells. Application received by Commissioner of Customs: January 23, 1986.

Docket No. 86-095. Applicant: University of Utah, Salt Lake City UT 84112. Instrument: Mass Spectrometer, Model 70SEQ/11-250J and Accessories. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: Investigation of nucleic acids and their constituents to determine new, natural, chemical structures in the subunits of RNA and DNA. Studies of mass spectrometry methods of analysis of biological mixtures to develop new analytical procedures based on tandem mass spectrometry. Application received by Commissioner of Customs: January 23, 1986.

Docket No. 86-096. Applicant: University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. Instrument: ICP/Mass Spectrometer System, Model PlasmaQuad. Manufacturer: VG Instruments, Inc., United Kingdom. Intended use: Studies of rocks, soils, natural waters, vegetation and human or animal tissues to determine elemental and isotopic compositions of the major, minor and trace constituents. Application received by Commissioner of Customs: January 23, 1986.

Docket No. 86-097. Applicant: U.S. Department of Commerce, NOAA, Air Resources Laboratory, Atmospheric Turbulence & Diffusion Division, Post Office Box E, 456 S. Illinois Avenue, Oak Ridge, TN 37831. Instrument: Nitrogen Dioxide Analyzer, Model #LMA-3. Manufacturer: Scintrex/Unisearch, Canada. Intended use: Studies of nitrogen dioxide, an air pollutant important to research on acid rain. Application received by Commissioner of Customs: January 23, 1986.

Docket No. 86-098. Applicant: Tulane University School of Medicine, 1430 Tulane Avenue, New Orleans, LA 70112. Instrument: Electron Microscope, Model EM 109 and Accessories. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: Morphological studies on interaction of different neurons which contain or transmit different neurotransmitters. The materials investigated consist of properly fixed tissue, mainly brain tissue, obtained from experimental animals. Application received by Commissioner of Customs: January 23, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3678 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 86-042. Applicant: Texas A&M University, College Station, TX 77843-3255. Instrument: Fourier Transform Interferometric Spectrophotometer, Model IZMO5 with Accessories. Manufacturer: Bomem Incorporated, Canada. Intended use: See notice at 50 FR 48451.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides an unapodized resolution of 0.002 cm^{-1}. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-3673 Filed 2-19-86; 8:45 am]

BILLING CODE 3510-DS-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held March 13 and 14, 1986, in the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. On March 13 the meeting will be held in Room 5230 from 9:30 am to 12:00 pm, and in Room 1092 from 1:00 pm to 5:00 pm. The meeting on March 14 will be in Room 6029 from 9:30 am to 4:00 pm. The Committee advises the Office of export Administration with respect to technical questions that affect the level of export controls applicable to computer systems or technology.

Agenda

General Session

March 13, 1985—Open CSTAC Meeting—9:30 a.m. to 12 p.m.

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Nomination and election of Committee Chairman.
4. Discussion of the establishment of new subcommittees.
5. Software items proposed for changes in regulations.
6. Hardware items proposed for changes in regulations.

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Executive Session

March 13, 12:00–5:00 p.m.; March 14

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classfied under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Liga L. Hagenah, 202/377–4959.

Dated: February 14, 1986.

Margaret Cornejo,

Acting Director, Technical Support Staff Office of Technology & Policy Analysis.

[FR Doc. 86–3687 Filed 2–19–86; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery Experimental Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of experimental fishing permits.

SUMMARY: This notice announces the issuance of four experimental fishing permits (EFPs) to U.S. fishermen to harvest soupfin shark (*Galeorhinus galeus*) and other groundfish species using gillnets in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California. The permits allow experimental fishing which otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations.

EFFECTIVE DATES: August 10, 1985, through July 31, 1986.

ADDRESS: Further details or copies of the permits may be obtained from Rolland A. Schmitten, Director, Northwest Rgion, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR Part 663 specify that EFPs may be issued to authorize fishing that would otherwise be prohibited. The procedures for issuing EFPs appear at § 663.10.

Soupfin, leopard, and spiny dogfish sharks are species regulated under the FMP. The FMP bans the use of drift gillnets except as authorized under California State law. The use of set nets north of 38°00′ N. latitude is also banned.

Two EFP applications to harvest groundfish species using gillnets in the FCZ off the coasts of Washington, Oregon, and California were received by the NMFS Northwest Regional Office on April 5, 1985. Three individuals were signatory to one of the EFP applications for retention and utilization of soupfin, leopard, and spiny dogfish taken in a drift gillnet fishery that targets on thresher shark (a species not managed under the FMP). The same three individuals and three others were signatory to the other application for an experimental gillnet fishery targeting on soupfin shark. A notice acknowledging receipt of the applications, describing the proposals, and requesting public comment was published in the **Federal Register** on May 16, 1985 (50 FR 20470). The applications were considered by the Pacific Fishery Management Council at its July public meeting in Los Angeles, California. The Council recommended that NMFS issue EFPs for the purposes described in both applications and NMFS issued the EFPs under § 663.10. Three of the six individuals signatory to the applications subsequently advised us they were no longer interested in obtaining permits. Therefore, EFPs were only executed with three individuals, one of whom was signatory to both applications and was thereby issued two EFPs.

Three of the EFPs, executed on August 19, August 30, and December 18, 1985, provide for experimental use of drift gillnets and set nets (anchored gillnets) to target fishing on soupfin sharks with an incidental catch of other groundfish species in the FCZ north of 40°30′ N. latitude from August 10, 1985 to July 31, 1986. Under the terms and conditions of the EFP, the permittees are authorized to use a minimum nine-inch mesh webbing and may fish no more than 1800 fathoms of net simultaneously. Sets may not be made in areas shallower than thirty fathoms nor closer than five nautical miles to shore to minimize incidental interaction with marine mammals. Prmittees are required to maintain logs and allow an observer to accompany the vessel if so requested.

The other EFP, executed on August 19, 1985, provides for the retention and marketing of soupfin, leopard, and spiny dogfish sharks taken incidentally in drift gillnets in a fishery that targeted on thresher shark from August 1, 1985, to December 31, 1985, in the FCZ off the coasts of Washington, Oregon, and California. The terms and conditions of this EFP are similar to the other three EFPs except that no groundfish species other than sharks may be retained and the minimum mesh size is sixteen inches.

(16 U.S.C. 1801 *et seq.*)

Dated: February 14, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86–3679 Filed 2–19–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permit Modification: Southwest Fisheries Center Modification No. 2 to Permit No. 404; Correction

In **Federal Register** Volume 51, Number 18, published January 28, 1986, pages 3489–3490, Item B.5 reads:

"The Permit is valued with respect to the taking authorized herein until November 31, 1987."

It should read:

"The Permit is valid with respect to the taking authorized herein until December 31, 1987."

Dated: February 11, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries service.

[FR Doc. 86–3705 Filed 2–19–86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Restraint Limit for Certain Cotton Textile Products, Produced or Manufactured in India

February 14, 1986.

On October 31, 1985 the United States Government, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, requested the Government of India to enter into consultations concerning exports to the United States of cotton printcloth in Category 315, produced or manufactured in India.

No agreement has been reached in consultations on a mutually satisfactory solution. The Committee for the Implementation of Textile Agreements has decided, therefore, to establish a specific limit for imports of cotton printcloth in Category 315, exported during the twelve-month period which began January 1, 1986 and extends through December 31, 1986 at a level of 6,085,776 square yards. A prorated limit of 966,120 square yards has also been established for the category for the period which began on October 31, 1985 and extended through December 31, 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton printcloth in Category 315, exported during the twelve-month period which began January 1, 1986 and extends through December 31, 1986.

For further information contact: Claudia Wolfe, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212)

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 14, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 20, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 315, produced or manufactured in India and exported during the period which began on January 1, 1986 and extends through December 31, 1986 in excess of 6,085,776 square yards.[1]

Textile products in Category 315 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Category 315 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–3688 Filed 2–19–86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on March 25, 1986, in Washington, DC. The purpose of the meeting is to consider reports on: (1) Testing conducted by the National Bureau of Standards to measure the ignition propensity of cigarettes; (2) gathering and analyzing data to support a cost-benefit study; and (3) testing of cigarettes which have been produced in accordance with various patents but which are not manufactured commercially.

DATE: The meeting will be on March 25, 1986, from 9:30 a.m. to 5:00 p.m.

ADDRESS: The meeting will be in the first floor auditorium of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Hylton, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98–567, 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress within 30 months concerning the technical and commercial feasibility of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on March 25, 1986, to consider reports on the following topics:

(1) Testing conduoted by the National Bureau of Standards to measure the ignition propensity of cigarettes.

(2) Gathering and analyzing the data needed to make the analysis of costs and benefits required by the Cigarette Safety Act.

(3) Testing cigarettes which have been produced in accordance with various patents but which are not manufactured commercially.

(4) Other activities necessary to implement the Cigarette Safety Act.

The meeting will be open to observation by members of the public, buy only members of the Technical

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Study Group may participate in the discussion.

Dated: February 10, 1986.

Colin S. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 86-3600 Filed 2-19-86; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday and Wednesday, 18-19 March 1986.

Times of Meeting: 0630-1600 hours.

Places: US Army Missile Command, Redstone Arsenal, AL.

Agenda: The Army Science Board AHSG on MICOM Lab Effectiveness Review will visit the Research, Development and Engineering Center for the purpose of gathering data for conducting the effectiveness review of that facility. Briefings will be presented by each directorate covering their work program. The panel will meet in executive session to discuss the methodology for conducting the review and to discuss observations as a result of the briefings. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-3611 Filed 2-19-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: Wednesday & Thursday, 26-27 March 1986

Times of Meeting: 0800-1700 hours

Place: The Pentagon, Room 2E715B, Washington, DC

Agenda: The Army Science Board 1986 Summer Study on Technology Forecast for the Key Operational Capabilities will meet for information briefings and planning for the conduct of the Summer Study. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-3612 Filed 2-19-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Management

Federal Education Data Acquisition Council

AGENCY: Department of Education.

ACTION: Notice of data acquisition activities approved prior to February 15, 1986.

SUMMARY: Under section 400A of the General Education Provisions Act (the Act), the Secretary publishes this notice of education-related data acquisition activities, approved before February 15, 1986, that Federal agencies will use to collect data during school year 1986-87.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret B. Webster, Division of Education Information Management, U.S. Department of Education, Room 4074, Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 426-7304.

SUPPLEMENTARY INFORMATION: Under section 400A of the General Education Provisions Act, the Secretary of Education is responsible for reviewing and coordinating the collection of information and data acquisition activities of Federal agencies—

(a) Whenever the respondents are primarily educational agencies or institutions; or

(b) Whenever the purpose of the activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

Under section 400A the Secretary also publicly announces the data acquisition activities that were approved prior to February 15, 1986. These data acquisition activities are considered information collection requests under the Paperwork Reduction Act of 1980. The title of each information collection request approved before February 15, 1986, is published in this document with the Office of Management and Budget approval number for the request. These information collection requests are approved for use during school year 1986-87.

Dated: February 13, 1986.

William J. Bennett,

Secretary of Education.

OMB control No.	Title of Information Collection
	US International Development Cooperation Agency
0412-0018	Certificate of Eligibility for Exchange Visitor (J-1) Status.
0412-0522	Historically Black Colleges and Universities—Individual Profile.
	Department of Agriculture—Office of Grants and Program Systems
0525-0001	Research Grant Application Kit.
0525-0002	Financial Report, Morrill-Nelson Funds for Food and Agricultural Higher Education.
	Food and Nutrition Service
0584-0002	Report of Schools Program Operations.
0584-0006	7 CFR Part 215—Special Milk Program for Children Reporting.
0584-0008	7 CFR Part 210—National School Lunch Program.
0584-0026	7 CFR Part 245—Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—Reporting.
0584-0046	Cash in Lieu of Donated Foods.
0584-0062	Nutrition Education and Training Program—Annual Participation Report, State Plan and Recordkeeping.
0584-0327	Federal-State Agreement.
0584-0335	7 CFR Part 250—Food Service Equipment Assistance Program—Recordkeeping.
	Department of Commerce—Bureau of the Census
0607-0165	Survey of Local Government Finances (School System).
0607-0459	School Enrollment Report.
	National Oceanic and Atmospheric Administration
0648-0019	Sea Grant Project Summary.
0648-0034	Sea Grant Budget.
0648-0147	Application for Designation as a Sea Grant College or Regional Consortia.
	Department of Defense—Department of the Air Force
0701-0001	Application for Training Leading to a Commission in the United States Air Force.
0701-0063	Air Force Academy Candidate Activities Record.
0701-0066	Air Force Academy Request of Secondary School Transcript.
0701-0090	Air Force ROTC Preapplicant Questionnaire.
0701-0101	Air Force ROTC Four Year Scholarship Application.
0701-0103	Air Force ROTC Scholarship Nomination.
	Department of the Army
0702-0013	Application for Establishment of an Army Senior Reserve Officers' Training Corps Unit.
0702-0015	Information on Applicant for U.S. Army Nurse Corps.
0702-0021	Application and Agreement for Establishment of a Junior Reserve Officers' Corps Unit.
	Department of the Navy
0703-0011	Academic Certification Form for Marine Corps Officers Candidate Programs.
0703-0024	Drug Statement for NROTC Application.
0703-0026	Reference Questionnaire—Reserve Officers Training Corps.
0703-0029	NROTC Navy-Marine Corps Scholarship Application.

OMB control No.	Title of Information Collection
	Departmental and Others
0704-0035	Professional Evaluation.
0704-0200	Annual Report on Uniform Commutation Fund.
	Department of Health and Human Services—Health Services Administration
0915-0026	Application-Scholarship Program for First-Year Students of Exceptional Financial Need.
0915-0033	Health Education Assistance Loan (HEAL) Borrower Status Form.
0915-0034	Lender's Manifest for Health Education Assistance Loan (HEAL) Program.
0915-0035	Health Education Assistance Loan Program Loan Transfer Statement.
0915-0036	Lender's Application for Insurance Claim on a Health Education Assistance Loan (HEAL).
0915-0037	Lender's Application for Contract of Federal Loan Insurance (HEAL).
0915-0038	Health Education Assistance Loan (HEAL) Student Loan Application.
0915-0044	Health Professions Student Loan and Nursing Student Loan Programs—Administrative Requirements (Forms).
0915-0047	Health Professions Student Loan (HPSL) & Nursing Student Loan Programs—Administrative Requirements (Forms).
0915-0048	Nursing Student Loan (NSL) Program-Financial Aid Transcript, Costs of Attendance & Evidence of Loans—NPRM.
0915-0054	Health Education Assistance Loan (HEAL) Program School Recordkeeping Requirements.
0915-0056	Annual Space Utilization and Enrollment Report for Nursing and Health Professions.
0915-0060	HRSA Competing Training Grant Application and Supplements.
0915-0061	HRSA NON-Competing Training Grant Application and Supplement.
0915-0073	Nursing Student Loan (NSL) Program Promissory Note.
0915-0074	Health Professions Student Loan (HPSL) Program Promissory Note.
0915-0080	Indian Health Service Scholarship Application and Progress Reports.
0915-0083	Nurse Practitioner Traineeship Grant Program.
0915-0088	Application to Participate in Health Professions Capitation Program.
0915-0100	Request for Collection Assistance Under the Health Education Assistance Loan (HEAL) Program.
	National Institutes of Health
0925-0022	National Research Service Award Research Training, Competing and Noncompeting Applications.
0925-0137	Protection of Human Subjects—Certification and Recordkeeping Requirements.
	Office of Assistant Secretary for Health
0937-0148	Presidents Council on Physical Fitness and Sports School Population Survey.
	Social Security Administration
0960-0064	Report of Individual With Childhood Impairment.
0960-0069	Report of Student Beneficiary at end of School Year.
0960-0322	Report of Black Lung Student Beneficiary at end of School Year.
	Office of Human Development Services
0960-0172	Program Performance Report—Developemental Disabilities.
	Department of the Interior—Bureau of Mines
1032-0116	Mining and Materials Resources and Research Institutes Program (MMRR I).
	Department of Justice—Immigration and Naturalization Service
1115-0119	Student Status Form.

OMB control No.	Title of Information Collection
	Department of Labor—Employment Standards Administration
1215-0060	Application for Authority for an Institution of Higher Education to employ its Full-Time Students at Subminimum Wage.
1215-0121	Work Experience and Career Exploration Program.
	Departmental Management
1225-0033	Women in Non-Traditional Program Questionnaire.
	Department of State—Administration of Foreign Affairs
1405-0031	Approval of Funding to Support Educational Projects.
1405-0033	Overseas Schools-Grant Status Reform.
1405-0037	Overseas Schools Request for Assistance.
	Department of the Treasury—Internal Revenue Service
1545-0213	Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.
1545-0244	Certification of Youth Participating in a Qualified Cooperative Education Program.
1545-0471	Student Tax Clinic Pattern Letter (Application Package).
1545-0779	Understanding Taxes (Teacher Evaluation Guide).
	Department of Education—Office of Elementary and Secondary Education
1810-0003	Application for Continuations for the Follow Through Program.
1810-0020	Indian Fellowship Application (New and Continuation).
1810-0021	Application for Grants Under Indian Education Act Program.
1810-0026	Nomination for the National Advisory Council on Indian Education.
1810-0027	Application for Disaster Assistance Under Section 7 of P.L. 81-874.
1810-0028	Application for Grants Under Section 143: The Migrant Education Interstate and Intrastate Coordination Program.
1810-0029	Application for Migrant Educational Program.
1810-0030	Application for Civil Rights Technical Assistance and Training State Educational Agency Program.
1810-0031	Indian Student Certification Form—Indian Education Programs.
1810-0036	School Assistance in Areas Affected by Federal Activity Application.
1810-0037	State Performance Report (ECIA, Chapter 1).
1810-0051	High School Equivalency and College Assistance Migrant Programs, Financial Status and Performance Reports.
1810-0053	State Application, Chapter 2 of the Education Consolidation and Improvement Act of 1981.
1810-0054	Application for Grant Under the High School Equivalency Program (HEP).
1810-0055	Application for Grant Under the College Assistance Migrant Program (CAMP).
1810-0060	Annual Survey of Children in Institutions for Neglected or Delinquent Children or in Adult Correctional Institutions.
1810-0062	Application Package: Women's Educational Equity Act (WEEA) Program.
1810-0502	Preapplication for Federal Assistance (Construction) P.L. 81-815 & Application for Federal Assistance.
1810-0503	Project Performance Report—Indian Education Programs.
1810-0504	Recordkeeping Requirements 34 CFR, Parts 201, 203 & 204 Pursuant to the Education Consolidation & Improvement Act, 1981.
1810-0506	Instructions for Performance Status Report—State Educational Agency & Desegregation Assistance Center Programs.
1810-0507	Law-Related Education Grant Application Package.
1810-0508	Women's Educational Equity Act Performance Report.
1810-0510	Law-Related Education Grant Financial and Performance Reports.

OMB control No.	Title of Information Collection
1810-0511	Migrant Education Interstate & Intrastate Coordination Program Financial Status & Performance Report.
1810-0512	State Assessment of Need, Title II of the Education for Economic Security Act.
1810-0513	Performance/Financial Reports, Postsecondary Education Programs, Title II of the Education for Economic Security Act.
1810-0514	Performance/Financial Reports, Elementary & Secondary Education, Title II of the Education for Economic Security Act.
1810-0515	State Application, Title II of the Education for Economic Security Act.
1810-0516	Application for the Magnet Schools Assistance Program.
1810-0517	Application for Civil Rights Technical Assistance & Training Desegregation Assistance Center Program.
1810-0518	Form for Nomination of Successful Chapter 1 Projects.
1810-0519	State Performance Report (ECIA, Chapter 1, Migrant Program).
1810-0520	Annual Report of the Number of Full Time Equivalent Migratory Children.
1810-0525	Local Educational Agency Application, Title II of Education for Economic Security Act.
1810-0526	Performance Status Report for Magnet Schools Assistance Program.
	Office of Special Education and Rehabilitative Services
1820-0002	Performance Report for Special Education Program Discretionary Grant Programs.
1820-0009	Report of Vending Facility Program.
1820-0013	Quarterly Cumulative Caseload Report.
1820-0014	Annual Report on State Vocational Rehabilitation Agency Post-Employment Services and Annual Reviews.
1820-0017	Annual Vocational Rehabilitation Program/Cost Report.
1820-0018	RSA Discretionary Grant Application (34 CFR 396—Training of Interpreters for Deaf Individuals Program).
1820-0027	Application for Grants Under Rehabilitation Research and Demonstration Program.
1820-0028	Grant Applications Under Education for the Handicapped Programs.
1820-0041	Performance Report for P.L. 94-142 and P.L. 89-313.
1820-0500	Three-Year State Plan for Vocational Rehabilitation Services Under Title I of the Rehabilitation Act, as Amended.
1820-0508	Program Impact Reporting System (PIRS).
1820-0509	List of Hearing Officers (Recordkeeping).
1820-0510	State Agency Project and Local Educational Agency Recordkeeping.
1820-0513	Report of Children Transferring to Local Agency Programs (Recordkeeping).
1820-0514	Captioned Films for the Deaf: Application for Loan Service, User Response Forms (2).
1820-0517	Implementation of Least Restrictive Environment Requirements.
1820-0518	Number of Personnel Employed to Provide Special Education & Related Services to Handicapped Children & Youth.
1820-0520	Client Assistance Program Request for Assistance.
1820-0521	Report of Handicapped Children and Youth Exiting the Educational System.
1820-0522	Report of Special Education/Related Services in Need of Improvement.
1820-0523	Number of Additional Personnel Needed to Provide Special Education & Related Services to Handicapped Children & Youth.
1820-0524	Report of Federal, State, and Local Funds Expended for Special Education and Related Services.
1820-0525	Final Report for Rehabilitation Research.
1820-0527	Three-Year State Plan for Independent Living Rehabilitation Services Under Title VII, Part A, of the Rehabilitation Act.
1820-0528	Annual Client Assistance Program Report.
1820-0529	Evaluation of the Impact of the Projects With Industry Program.
1820-0530	Training Personnel for the Education of the Handicapped.
1820-0531	Comprehensive Evaluation of the Title VII, Part B, Independent Living Program.
1820-0532	Services for Deaf-Blind Children and Youth.
1820-0533	Renewal of Architectural Barriers to the Handicapped Program Financial Report.

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OMB control No.	Title of Information Collection
1820-0534	Removal of Architectural Barriers to the Handicapped Program Application for Federal Assistance.
1820-0537	Longitudinal Study on a Sample of Handicapped Students.
1820-0538	Survey of Expenditures for Special Education and Related Services at the State and Local Level.
1820-0539	Evaluation of the Client Assistance Program (CAP).
	Office of Vocational and Adult Education
1830-0011	State-Administered Vocational Education Program Improvement Projects—Abstracts and Final Reports.
1830-0013	Application for Vocational and Adult Education Direct Grant Programs.
1830-0026	State Plan for Adult Education.
1830-0027	Financial Status and Performance Reports for the Adult Education State-Administered Program.
1830-0029	The Carl D. Perkins Vocational Education Act of 1984 (P.L. 98-524)—State Plan.
1830-0030	State Council on Vocational Education—Narrative Report.
1830-0501	Financial Status and Performance Report for Direct Grants-OVAE.
1830-0505	Vocational Education Accountability Report.
	Office of Postsecondary Education
1840-0002	Guarantee Agency Quarterly/Annual Report.
1840-0005	Application for Fulbright-Hays Training Grants: Faculty Research and Doctoral Dissertation Research Abroad Programs.
1840-0008	Request for Payment of Pell Grant Award, Notice of Termination/Leave of Absence, & Ads Student Report.
1840-0013	Pell Grant Program Student Validation Roster.
1840-0017	Application for Noncompeting Continuation Grants Under the Special Services for Disadvantaged Students Program.
1840-0028	Physicians Certification of Borrower's Total and Permanent Disability for Student Loan Program.
1840-0034	Lender's Request for Interest and Special Allowance-GSL and Plus Programs.
1840-0041	Application for Grants Under the Law School Clinical Experience Program.
1840-0042	Financial Status and Performance Reports for Veterans' Cost-of-Instruction Payments Program.
1840-0053	Performance/Financial Status Report Forms for the Cooperative Education Program.
1840-0054	Application for Grants and Contracts Under the Veterans' Cost-of-Instruction Payments Program (VCIP).
1840-0065	Application for the Educational Opportunity Centers Program.
1840-0068	Application for Foreign Language and Area Studies.
1840-0073	Fiscal Operations Report/Application to Participate in the Campus-Based Student Aid Programs.
1840-0077	Student Confirmation Report for the Federal Insured Student Loan Program.
1840-0079	Call Report—Lender's Annual Report on Guaranteed Student Loan and Parent Loans for Undergraduate Students Outstanding.
1840-0082	Loan Transfer Statement for the Federal Insured Student Loan Program.
1840-0091	National Direct (Defense) Student Loan Assignment Form.
1840-0093	Lenders Manifest for Federal Insured Student Loans.
1840-0095	Application for Assistance Under the College Housing Program.
1840-0099	Application for State Student Incentive Grant Program.
1840-0106	Guarantee Agency Request for Reimbursement for Claims Paid, Agreements Under Reinsurance & on Death/Disability.
1840-0109	Application (Program Announcement) for Grants and Contracts Under the Minority Institutions Science Improvement Program.
1840-0110	Application for Federal Student Aid.
1840-0111	Special Condition Application for Federal Student Aid.
1840-0112	Evaluation of Training Activities on the Title IV Student Financial Assistance Programs.
1840-0114	Application for Strengthening Special Needs and Challenge Grant Programs.
1840-0117	Program Announcement—Fund for the Improvement of Postsecondary Education-Comprehensive Program Final Year Dissemination.
1840-0125	Application for the Training Program for Special Programs Staff and Leadership Personnel.
1840-0126	Cooperative Education Program Application Form.
1840-0129	Report of Defaulted Loans as of December 31.
1840-0130	Summary Data Sheet/Listing Form (National Direct Student Loan.)
1840-0132	Student Aid Report.
1840-0133	Request for Collection Assistance Under the Federal Insured Student Loan Program.
1840-0500	Federal Loan Transaction Statement Federal Insured Loan Program.
1840-0501	Fulbright Seminars Abroad Program Application for Seminar Position Abroad.
1840-0503	Performance/Financial Reports for the Supplemental Funds Program for Cooperative Education.
1840-0504	Application for the Supplemental Funds Program for Cooperative Education.
1840-0505	State Student Incentive Grant Performance Report and Financial Status Report.
1840-0507	Training Programs for Social Programs Personnel Performance and Financial Status Report.
1840-0508	Application for Grants Under the Graduate and Professional Study Fellowships Program.
1840-0509	Application for Grants Under the Education for Public Service Fellowships Program.
1840-0514	Program Announcements-Fund for the Improvement of Postsecondary Education—New Awards and Continuations.
1840-0515	Application for Nina Shaughnessy Scholars Program.
1840-0517	Lender's Application for Payment of Insurance Claim Under the Federal Insured Student Loan Program.
1840-0525	Performance Report for the Special Services for Disadvantaged Students Program.
1840-0526	Certification of Project Costs for College Housing Program and Academic Facilities Programs.
1840-0529	Foreign Language and Area Studies Fellowship Information Reports.
1840-0531	Application Form for the Endowment Grant Program.
1840-0535	Recordkeeping Requirement for the Campus-Based Student Aid Programs.
1840-0536	Pell Grant Administrative and Technical Regulations (Final).
1840-0537	NPRM-Student Assistance General Provisions (Recordkeeping).
1840-0538	Guaranteed Student Loan Program (Recordkeeping).
1840-0540	Institutional Payment Summary (IPS) and IPS Batch Report for Pell Grants.
1840-0544	State Student Incentive Grant Program Recordkeeping Requirement.
1840-0549	Application for Grants Under The Talent Search Program.
1840-0550	Application for Grants Under Upward Bound Program.
1840-0553	Certification Form for the Endowment Grant Program.
1840-0554	Tax-Exempt Obligations to Finance Student Loans Under the GSL and Plus Programs (Final Regulations).
1840-0555	Performance Report Under the Minority Institutions Science Improvement Program (MISIP).
1840-0556	A Demonstration of Behavior Scoring Models to Prevent Defaults and to Collect Defaulted Loans in the GSL Program.
1840-0558	National Direct/Defense Student Loan Program.
1840-0559	Institutional Release of 1984-85 Unexpended Balances for the CWS, SEOG and NDSL Programs.
1840-0560	Performance Report for International Education Programs.
1840-0561	Performance Report for the Talent Search, Upward Bound and Educational Opportunity Centers Program.
1840-0562	National Graduate Fellows Program.
1840-0563	Performance Report for the Graduate and Professional Opportunity and the Public Service Education Programs.
1840-0564	Performance Report Form for the Endowment Grant Program.
1840-0567	Institutional Quality Control Pilot Project.
	Office of Educational Research and Improvement
1850-0022	Standard Application for Grants Under Library Career Training Program (HEA Title II-B).
1850-0036	State-Level Personnel Exchange (Elementary-Secondary).
1850-0053	Degrees and Other Formal Awards Conferred Between July 1, 1984 and June 30, 1985.
1850-0054	Application for Grants Under the Strengthening Research Library Resources Program.
1850-0067	Common Core of Data (CCD).
1850-0072	Final Financial Status and Performance Report For HEA Library Programs—Title II-B and Title II-C.
1850-0086	Application for Grants Under the National Diffusion Network.
1850-0095	State-Level Personnel Exchange (Postsecondary).
1850-0099	Survey of College and University Libraries, Fall 1985.
1850-0515	National Survey of Private Schools. 1985-86.
1850-0529	Library Services and Construction Act, State Administration Program Application & Annual Program, Titles I, II & III.
1850-0547	Verification of the Universe of Postsecondary Education Poviders (VUPEP) Survey.
1850-0557	High School & Beyond Third Follow-up & National Longitudinal Study of the Class of 1972 Fifth Follow-up Field test.
1850-0565	Application for Special Project Grants Under Library Services for Indian Tribes & Hawaiian Natives Program.
1850-0568	Application for Basic Grants Under Library Services for Indian Tribes and Hawaiian Natives Program.
1850-0569	Survey of Public and Private School Libraries and Media Centers, 1985.
1850-0571	NAEP-Part II: Background/Attitude, Math, Reading, Science, Computers, OBEMLA, Foundations of Literature-U.S. History & Lit.
1850-0572	Preapplications and Applications for Educational Research Grant Program.
1850-0573	Performance Report for the Library Services for Indian Tribes and Hawaiian Natives Program and Recordkeeping.
1850-0578	National Assessment of Educational Progress (NAEP) Part II Bridge Assessments.
1850-0580	A Study of Local Implementation of Chapter I of the Education Consolidation and Improvement Act (ECIA).
1850-0581	Institutional Characteristics of Postsecondary Institutions, 1985-86.
1850-0582	The Integrated Postsecondary Education Data System (IPEDS).
1850-0583	ESCA (P.L. 98-480) Financial, Performance & Completion Reports for State-Administered Programs—Titles I, II & VI.
1850-0585	Field Study For the National Postsecondary Student Aid Survey.
	Office of Intergovernmental and Interagency Affairs
1850-0501	Presidential Academic Fitness Award (PAFA) School Participation Order Form.
	Office of Planning and Budget and Evaluation
1875-0004	State Uses of Federal Funds Under State-Administered Federal Education Programs.
1875-0006	National Longitudinal Evaluation of Services to Language Minority & Limited English Proficient Students.
1875-0007	Longitudinal Study of Immersion Programs for Language Minority Children.
1875-0012	Selection Procedures for Identifying Students in Need of Special Services.
1875-0013	Assessment of Chapter I Grant Programs for the Handicapped.
	Departmental Management
1880-0172	Computer Generated Recipient Report of Expenditures.
1880-0173	Computer Generated "Recipient Cash Advance Request".
1880-0505	Application for the Secretary's Discretionary Program.

OMB control No.	Title of Information Collection
1880-0507	Student Rights in Research, Experimental Activities and Testing Information Collections.
1880-0508	Recordkeeping Requirement Under the Family Educational Rights and Privacy Act.
1880-0509	Information Collection Requirements for Cost Principles for Non-Profit Organizations.
1880-0510	Application for the Excellence in Education Program.
1880-0511	The Secretary's Discretionary Program for Mathematics, Science, Computer Learning & Critical Foreign Languages.
1880-0512	Authorization for Automatic Preauthorized Debits.
1880-0513	Education Department General Administrative Regulations (EDGAR).
	Office of Bilingual Education and Minority Languages Affairs
1885-0001	Application for New & Continued Participation in Bilingual Education Fellowship Program.
1885-0002	Application for Grants Under Bilingual Vocational Training and Instructor Training Programs.
1885-0005	Demonstration of Compliance with Terms and Conditions of the Bilingual Education Fellowship Program Contract.
1885-0503	Application for Grants Under Transition Program for Refugee Children.
1885-0505	National Clearinghouse for Bilingual Education.
1885-0506	Performance Report and Recordkeeping—Bilingual Education Programs.
1885-0507	Application for the Emergency Immigrant Program and Recordkeeping.
1885-0508	Application & Survey Form for the Bilingual Education State Educational Agency Program.
	Environmental Protection Agency—Pesticides and Toxic Substances
2070-0062	Application for Loan/Grant Under the Asbestos School Hazard Abatement Act of 1984.
	Department of Transportation—US Coast Guard
2115-0012	Application and supplementary Forms for Admission to the U.S. Coast Guard Academy.
2115-0111	Course Approvals for Merchant Marine Training Schools.
	Veterans Administration
2900-0014	Authorization and certification of Entrance or Reentrance into Rehabilitation and Certification of Status.
2900-0034	Trainee Request for leave—Chapter 31, Title 38, U.S. Code.
2900-0057	School Attendance Report.
2900-0073	Enrollment Certification (under Chapter 32, 34, or 35 Title 38, USC).
2900-0099	Request for Change of Program or Place of Training Survivors' and Dependents' Educational Assistance.
2900-0160	Compliance Report of Propriety Institutions.
2900-0209	Veterans Application for Work-Study Allowance.
2900-0236	Application for Education Loan.
2900-0262	Designation of Certifying Official(s).
2900-0263	Application for Educational Assistance Under the Veterans Education Assistance Program.
2900-0353	Certification of Lessons completed.
2900-0354	Certification of Attendance for Courses not Leading to a Standard College Degree and Farm Cooperative Courses.
2900-0355	Verification of Pursuit of Course Leading to a Standard College Degree.
2900-0356	Supplemental Information for Change of Program or Reenrollment after Unsatisfactory Progress or Conduct.
2900-0368	Monthly Statement of Wages Paid to Trainee.
2900-0394	Certification of School Enrollment.
2900-0414	Nondiscrimination on the Basis of Handicap in Programs and Activities, as Required by 38 CFR 18.422(E).
2900-0455	Equal Opportunity Compliance Review Report.
2900-0456	Supplement to Equal Opportunity Compliance Review Report.
2900-0457	Self-evaluation Supplement to Equal Opportunity Compliance Review Report.
	Action
3001-0097	Nomination Form for "The President's Volunteer Action Awards."
	Commission on Civil Rights
3035-0019	Elementary and Secondary School Desegregation Study.
	Equal Employment Opportunity Commission
3046-0003	Elementary-Secondary Staff Information.
3046-0009	Higher Education Staff Information.
	United States Information Agency
3116-0011	Update of Information on Exchange Visitor Program Sponsor.
3116-0166	President's International Youth Exchange Initiative Program Report.
3116-0170	Exchange Visitor Programs.
3116-0173	Bureau of Educational and Cultural Affairs Grant Application Cover Sheet.
3116-0179	University Affiliated Program.
3116-0167	International Youth Exchange Organization Index.
	Merit Systems Protection Board
3124-0001	Evaluating the Attractiveness of Federal Employment for College Students.
	National Endowment for the Humanities
3136-0052	Financial Status Report for Individuals.
3136-0057	Division of Education Programs Summary Report on Institute Participants (ES).
3136-0058	Division of Education Programs Summary Report on Institute Participants (EH).
3136-0059	Division of Education Programs application instructions.
3136-0060	Guidelines and Application Materials-High School Humanities Institutes for Historically Black Colleges and Universities.
3136-0062	NEH Challenge Grant Guidelines and Application Instructions.
3136-0063	NEH Challenge Grants Administrative Regulations.
3136-0067	Humanities, Science and Technology Guidelines.
3136-0069	NLH Performance Reporting Requirements.
3136-0075	Reviewer Comment Sheets.
3136-0077	Division of State Programs: Interim Progress Report Format.
3136-0078	Division of State Programs Plan for Compliance by State Humanities Councils Operating as State Agencies.
3136-0079	Division of State Programs Plan for Compliance by State Humanities Councils Operating as Citizens' Committees.
3136-0080	Division of State Programs: Guidelines for Biennial Proposals.
3136-0081	NEH Planning and Assessment Studies Program Grant Application Review Process.
3136-0084	Division of State Programs: Application Cover Sheet.
3136-0093	Guidelines and Application Form for Directors in Summer Seminars for College Teachers Program.
3136-0095	Guidelines and Application Forms for Directors in the Summer Seminars for Secondary School Teachers Program.
3136-0097	Guidelines and Application Forms for Participants in the Summer Seminars for Secondary School Teachers Program.
3136-0100	NEH Planning and Assessment Studies Program Grant Application Review Process.
3136-0101	NEH Financial Status Report.
3136-0103	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs and Activities.
3136-0106	Process of Appl., Evaluation, Award, and Report, for NEH Faculty Grad. Study Programs for Historically Black Colleges.
	National Science Foundation
3145-0009	Higher Education Statistical Survey Panel.
3145-0015	Survey of Scientific and Engineering Expenditures at Universities and Colleges: FY 1984, 1985 and 1986.
3145-0019	Survey of Earned Doctorates in U.S.
3145-0035	National Science Foundation Science Awards.
3145-0062	Survey of Graduate Science and Engineering Students and Postdoctorates.
3145-0084	Patents.
3145-0087	Compliance Information Under 45 CFR Part 611.
3145-0091	Research Participation and Characteristics of Science and Engineering Faculty.

[FR Doc. 86-3571 Filed 2-14-86; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Intergovernmental Advisory Council of Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: March 7, 1986.

ADDRESS: National Press Club Building, 14th and F Streets, NW., 13th floor, Washington, DC 20045.

FOR FURTHER INFORMATION CONTACT: Jacqueline E. McGregor, Executive Director, Intergovernmental Advisory Council of Education, Department of

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Education, 300 7th Street, SW., Washington, DC 20202, (202) 472–6464.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education was established under section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education. The meeting of the Intergovernmental Advisory Council on Education is open to the public. The meeting is scheduled from 2:00 p.m. to 4:00 p.m. on March 7, 1986.

The proposed agenda includes: Conference on job training and retraining; Report to the President.

Records are kept of all Council proceedings and are available for public inspection at the office of the Intergovernmental Advisory Council on Education 300 7th Street, SW., Room 513, Washington, DC.

Signed at Washington, DC on Tuesday, February 11, 1986.

A. Wayne Roberts,

Deputy Under Secretary for Intergovernmental & Interagency Affairs.

[FR Doc. 86–3614 Filed 2–19–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council Refinery Survey Task Group; Meeting

Notice is hereby given that the Refinery Survey Task Group will meet in March 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Survey Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data gathered by the various task groups.

The Refinery Survey Task Group will hold its eighth meeting on Wednesday, March 12, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street, NW., Washington, DC.

The tentative agenda for the Refinery Survey Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review individual drafting assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Survey Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Survey Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids. Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 12, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–3706 Filed 2–19–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy; Public Meeting

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of public meeting: Cost sharing requirements for Magnetohydrodynamics (MHD) Program.

DATE: February 28, 1986 1:00–5:00 p.m.

ADDRESS: U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E–245, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Georgia Benjamin, U.S. Department of Energy, 301/353–3966.

SUPPLEMENTARY INFORMATION:

I. Purpose of Meeting

Senate Report 99–141, the report from the Committee on Appropriations, requires the Department of Energy to enter into discussions with private sector companies involved in the magnetohydrodynamics (MHD) program, for the purpose of implementing the Bill's cost sharing requirements. The purpose of this public meeting is to discuss with the private sector the Department's policy for implementing the cost-sharing requirements for the MHD program for FY 1986.

II. Public Participation

The meeting is open to the public. Any member of the public who wishes to attend the meeting should contact Ms. Georgia Benjamin at 301/353–3966 within one day prior to the meeting, in order to provide for admittance.

III. Transcripts

Available for public review and copying at the Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except federal holidays.

Issued at Washington, DC on February 11, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86–3708 Filed 2–19–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

[Docket No. CE–RM–86–101]

The Least-Cost Utility Planning Project

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Public Briefing.

SUMMARY: The Department of Energy (DOE) announces a new project, the Least-Cost Utiltiy Planning Program. This project represents an approach to utility resource planning, where a variety of demand-side and supply-side options will be assessed for their potential contribution to providing adequate and reliable energy services at the least cost. DOE, with appropriate fiscal year 1986 funds, is initiating research to identify existing least-cost programs and to develop recommendations for Federal support of least cost intiatives. A public briefing will be held to announce the research plans and to introduce the staff who will be working on the project. Additionally, DOE in this notice and at the briefing will request that ideas and information be submitted in writing from knowledgeable individuals and organizations. Specific questions will be raised by the staff for consideration in preparation of written comments.

DATES: A public briefing will be held on March 12, 1986, 9:30 a.m. in Washington, DC, at the Department of Energy, 1000 Independence Avenue, SW, Room 6E–069. Written comments must be received no later than March 24, 1986.

ADDRESSES: Send written comments (five copies) to: Office of Conservation and Renewable Energy, Hearings and Dockets Branch, U.S. Department of Energy, Least Cost Planning Project, Docket Number CE–Rm–86–101, 1000 Independence Avenue, SW, Room 6B–025, Washington, DC 20585, (202) 252–9319.

FOR FURTHER INFORMATION CONTACT: Joseph Cooper, Least-Cost Utility Planning Project, Building and Community Systems, Conservation and Renewable Energy, Department of Energy, Room GF–231, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–1665.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comment Procedures

I. Background

The business of utility provided energy services is currently going through a complex and profound change that is likely to affect virtually every aspect of utility operations. On the demand-side, there has been a substantial increase in competition between energy forms (e.g., electricity versus gas), emergence of viable alternatives to purchases of energy from the local utility (e.g., insulation, cogeneration, passive solar, high-efficiency appliances), and a resulting trend for utilities to become more customer-driven and less production-driven.

On the supply-side, lengthened construction times, high interest rates, construction cost increases, and extreme variability in fuel prices have made electric utilities' traditional reliance on supply-side strategies a more risky strategy. Profound changes in regulation (e.g., common carriage, price controls), world oil prices, and gas prices have also introduced uncertainty into supply planning for gas utilities.

The common denominator is the substantial increase in uncertainty that now permeats the entire utility planning process. The implication of this increase is that forecasting efforts are inevitably going to be wrong and suggests that utility planning in the future should have several important characteristics:

- It must go beyond sensitivity analysis (e.g., examining several sets of alternatives) to risk analysis in order to address explicitly the cost of being wrong.
- It must incorporate a much greater understanding of the needs, attitudes, and options of consumers.
- It must improve flexibility for drawing on a broader portfolio of supply and demand options including a wide variety of demand-side options, refurbishing and upgrading existing supply capability, and new energy resources.

The DOE Least-Cost Utility Planning Project will focus on supplementing, rather than duplicating, existing planning efforts by utilities, regulators, trade associations, public interest groups, and national laboratories. The Project will pay particular attention to the "customer side of the meter" options, and include technology transfer mechanisms as well as tools, data, and information.

An initial research phase will be conducted to identify recent past, existing, and planned research programs of relevant organizations. Analyses will be made of these research programs to identify both areas for additional research and how to effectively transmit the research among interested organizations.

DOE has basic questions to be considered during preparation of written comments:

- What barriers exist within the utility industry to the adoption of least-cost programs, with special attention to conservation, demand side, and load shaping programs? What should DOE consider doing to remove or reduce these barriers?
- What barriers exist to public utility commissions giving greater attention to the adoption of least-cost planning programs, with special attention to conservation, demand side, and load shaping programs? What should DOE consider doing to remove or reduce these barriers?
- What should be the role of DOE in the development of the data bases that can be used in estimating the effect of conservation, demand side, and load shaping programs? How can any DOE activity in this area be more effectively coordinated with the activity of States, utilities and other organizations?
- What should be the role of DOE in the development of models and other analytical tools for estimating and planning the effect of conservation, demand side, and load shaping programs? How can DOE activity in this area be most effectively coordinated with the activity of States, utilities, and other organizations?
- What should be the role of DOE in the information, education, and technology transfer area to accelerate the adoption by utilities and public service commissions of conservation, demand side, and load shaping programs? How can DOE activity in this area be most effectively coordinated with the activity of States, utilities, and other organizations?

II. Comment Procedures

All interested persons are invited to submit written comments to DOE. The correspondence should be mailed to: Office of Conservation and Renewable Energy, Hearings and Docket Branch, Department of Energy, 1000 Independence Avenue, SW., Room 6B–025, Washington, DC 20585. (202) 252–9319 Comments should be identified on the document and envelopes submitted to DOE with the designation "Least-Cost Utility Planning Project." Docket No. CE–RM–86–101. Three (3) copies should be submitted. All written comments and related information should be received by DOE March 24, 1986.

Issued in Washington, DC, February 7, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86–3707 Filed 2–19–86; 8:45 am]

BILLING CODE 6450–01–M

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy is forcasting the representative average unit costs of five residential energy sources for the year 1986. The five sources are electricity, natural gas, No. 2 heating oil, propane and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective March 24, 1986, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9513

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SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619), (Act) [1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer products specified in the Act. DOE has prescribed test procedures for the types of products listed in section 322(a)(1)–(13) of the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating cost of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these cost are used under the Federal Trade Commission labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

DOE last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products on February 4, 1985 (50 FR 4888). Effective March 24, 1986, the cost figures published on February 4, 1985, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 1986 representative average unit costs of electricity, natural gas and No. 2 heating oil found in this notice. These costs were taken from the October 1985 "EIA Short-Term Energy Outlook", DOE/EIA–0202(85/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices and established trends in margins and operating expenses. The development of these costs is discussed in detal in the October 1985 issue of this report which is EIA's quarterly publication of historical and forecasted energy consumption and prices. The costs appear in Table 3 of this report.

[1] Reference to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act.

Copies of this report are available at the National Energy Information Center, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

In the cases of kerosene and propane, the 1986 representative average unit costs found in this notice were developed by other means since BIA's "Short-Term Energy Outlook" does not provide a forecast of the retail costs of these fuels. However, historical refiner and gas plant operator sales prices for kerosene and propane, and residential prices for No. 2 heating oil are available from another EIA publication, "Petroleum Marketing Monthly," DOE/EIA–0380. Referring to Table 10 of the September 1985 issue of "Petroleum Marketing Monthly," and Table 23 of the issues from February 1985 through September 1985, DOE obtained refiner and gas plant operator average sales prices to end users (excluding major refiners) for kerosene and propane, and for No. 2 heating oil prices to residential consumers for each month of the period January 1985 to the most recent month for which data were available, September 1985. Based on these data, DOE computed the average monthly sales prices for each of these fuels. To forecast 1986 representative average unit costs for kerosene and propane, DOE made the assumption that the percentage change in 1986 from the January–September 1985 period for No. 2 heating oil prices to residential customers also would be applied to kerosene and propane prices. Non-major refiner and gas plant operator prices to end users for kerosene and propene were used since, of the comparable recent data available, these are believed to be most representative of prices to residential consumers. On the basis of this assumption, DOE computed the relative difference between the 1986 representative average unit cost of No. 2 heating oil (taken from the October 1985 issue of "Short-Term Energy Outlook") and the average monthly residential price for No. 2 heating oil over the period January 1985 through September 1985. DOE then applied this computed value to the average monthly non-major refiner and gas plant operator sales prices to end users for kerosene and propane over the period January 1985 through September 1985 to forecast its 1986 representative average unit costs.

The 1986 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(2) of the Act and will become effective March 24, 1986. They will remain in effect until further notice.

Issued in Washington, DC, February 12, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1986)

Type of energy	In common terms	As required by test procedure	Dollars per million Btu[1]
Electricity.	6.20 ¢/kWh[2, 3]	$0.0620/kWh	$24.09
Natural gas.	62.0 ¢/therm[4] or $8.30/MCF[5, 6]	$0.00000620/Btu	6.20
No. 2 heating oil.	$1.04/gal[7]	$0.00000750/Btu	7.50
Propane	$1.9 ¢/gal[8]	$0.00000697/Btu	6.97
Kerosene.	$1.15/gal[9]	$0.00000854/Btu	8.54

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] kWh = 3,413 Btu.
[4] 1 therm = 100,000 Btu.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,016 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 136,700 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,000 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 134,700 Btu.

[FR Doc. 86–3655 Filed 2–19–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. CAS–RM–80–304]

Industrial Energy Conservation Program; Exempt Corporations and Adequate Reporting Programs

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of Proposed Exempt Corporations and Adequate Reporting Programs.

SUMMARY: As an annual part of the Department of Energy's (DOE) Industrial Energy Conservation Program, DOE is proposing to exempt certain corporations from the requirement for filing corporate energy efficiency progress reports directly with DOE and is proposing to determine as adequate certain industrial reporting programs for third party sponsor reporting. This notice is required pursuant to section 376(g)(1) of the Energy Policy and Conservation Act (EPCA) and DOE's regulation set forth at 10 CFR Part 445, Subpart D. DOE has compiled this list based on submissions filed by corporations and third party sponsors in accordance with 10 CFR 445.34 and 445.35. The deadline for these filings was January 27, 1986. These procedures, which allow identified corporations to be exempted from filing energy data directly with DOE, assist in maintaining

the confidentiality of consumption information and reduce the reporting burden for corporations. Parentheses with the word "partial" follow any corporation which reports less than its total energy data in a particular 2-digit SIC code through the program sponsor under which it is listed. The corporation reports the rest of its efficiency data through another sponsor or directly to DOE. The proposed exempt corporations and the respective sponsors of adequate reporting programs are listed alphabetically by industry in the appendix to this notice. DOE will accept written comments with respect to this proposed list and will publish a final list in the **Federal Register.**

DATE: Written comments must be received by March 24, 1986.

ADDRESS: Comments should be addressed to: Conservation and Renewable Energy, Department of Energy, Office of Hearings and Dockets, Docket Number CAS–RM–80–304, Forrestal Building Room 6B–025, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–9319. (3 copies).

FOR FURTHER INFORMATION CONTACT:

Charles J. Glaser, Office of Industrial Programs, CE–14, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–2429

Vivian S. Lewis, Office of General Counsel, GC–12, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–9507.

Issued in Washington, DC, January 17, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Proposed Exempt Corporations and Sponsors of Adequate Reporting Programs

SIC 20—Food and Kindred Products

American Bakers Association
- Anheuser-Busch Co
- Campbell Soup Company (partial)
- Flowers Industries Inc.
- G. Heileman Brewing Company, Inc. (partial)
- Interstate Bakeries Corporation
- Ralston Purina (partial)
- Sara Lee Corporation (partial)

American Feed Manufacturers Association
- Bell Grain
- Bell Mining
- Cargill Inc.
- Central Soya Company Inc. (partial)
- Gold Kist Inc.
- Land O'Lakes, Inc. (partial)
- Moorman Manufacturing Company
- Quincy Soy Bean Company
- Ralston Purina Company (partial)

American Frozen Good Institute
- Campbell Soup Company (partial)
- J.R. Simplot Company

American Meat Institute
- Beatrice Foods Company (partial)
- Consolidated Foods Corporation (partial)
- Farmland Industries Inc.
- FDL Foods, Inc.
- George A. Hormel & Company
- IBP Inc.
- Oscar Mayer & Company
- Sara Lee Corporation (partial)
- Swift Independent Packing Company
- Wilson Foods Corporation

Biscuit & Cracker Manufacturers Association
- Keebler Company
- Lance, Inc.
- Nabisco Brands, Inc. (partial)
- Sunshine Biscuits, Inc.

Chemical Manufacturers Association
- National Distillers Association

Corn Refiners Association
- A.E. Staley Manufacturing Company (partial)
- American Maize-Products Company
- CPC International Inc.
- Grain Processing Corporation
- Hubinger Company
- National Starch & Chemical Corporation
- Univar Corporation

Grocery Manufacturers of America, Inc.
- A.E. Staley Manufacturing Company (partial)
- American Home Products Corporation
- Amstar Corporation
- Anderson Clayton & Company
- Archer Daniels Midland Company (partial)
- Basic American Foods
- Beatrice Foods Company (partial)
- Borden Inc. (partial)
- Cadbury Schweppes
- Carnation Company
- Central Soya Company, Inc. (partial)
- Chesebrough-Ponds Inc.
- Coca Cola Company
- E.J. Brach & Sons
- General Foods Corporation
- General Mills Inc.
- H.J. Heinz Company (partial)
- Hershey Foods Corporation
- Kellogg Company
- Kraft Inc.
- Lance Inc.
- Mars Inc.
- Nabisco Brands, Inc. (partial)
- PepsiCo Inc.
- Pet Inc.
- Pillsbury Company
- Procter & Gamble Company
- Quaker Oats Company
- Ralston Purina Company (partial)
- R.T. French Company
- Sara Lee Corporation (partial)
- Thomas J. Lipton Inc.
- Universal Foods Corporation

National Food Processors Association
- Campbell Soup Company
- Castle & Cooke Inc.
- Curtice-Burns Inc.
- Del Monte Corporation
- Gerber Products Company
- H.J. Heinz Company (partial)
- Star-Kist Foods Inc.
- Sunkist Growers Inc.
- Tri/Valley Growers Inc.

Pharmaceutical Manufacturers Association
- Eli Lilly and Company

U.S. Beet Sugar Association
- Amalgamated Sugar Company
- American Crystal Sugar Company
- Delta Sugar Company
- Holly Sugar Corporation
- Michigan Sugar Company
- Minn-Dak Farmers Cooperative
- Monitor Sugar Company
- Southern Minnesota Sugar Cooperative
- Union Sugar Company

U.S. Brewers Association
- Adolph Coors Company
- Anheuser-Busch Inc. (partial)
- Archer Daniels Midland Company (partial)
- Froedtert Malt Corporation
- Ladish Malting Company
- Miller Brewing Company
- Pabst Brewing Company
- The Stroh Companies Inc.

U.S. Cane Sugar Refiners Association
- California & Hawaiian Sugar Company
- Colonial Sugars Inc.
- Georgia Sugar Refinery
- Imperial Sugar Company
- Refined Sugars Inc.
- Revere Sugar Corporation
- Savannah Foods & Industries Inc. (partial)
- Supreme Sugar Company, Inc.

SIC 22—Textile Mill Products

American Textile Manufacturers Institute
- Avondale Mills Inc.
- Bibb Company
- Burlington Industries Inc.
- Clinton Mills Inc.
- Coats & Clark Inc.
- Colgate-Palmolive Company
- Collins & Aikman Corporation
- Cone Mills Corporation
- Cranston Print Works Company
- Crompton Company Inc.
- Dan River Inc.
- Dixie Yarns Inc.
- Fieldcrest Mills Inc.
- Goodyear Tire & Rubber Company
- Graniteville Company
- Greenwood Mills Inc.
- J.P. Stevens & Company Inc.
- Johnson & Johnson
- Kimberly-Clark Corporation
- M. Lowenstein & Sons Inc.
- Milliken & Company
- Northwest Industries Inc.
- Reeves Brothers Inc.
- Riegel Textile Corporation
- Russell Corporation
- Sayles Biltmore Bleacheries Inc.
- Spartan Mills Inc.
- Sperry and Hutchinson Company (partial)
- Springs Industries Inc.
- Standard-Coosa-Thatcher Company
- Thomaston Mills Inc.
- Ti-Caro Inc.
- United Merchants & Manufacturers Inc.
- West Point-Pepperell Inc.

Carpet & Rug Institute
- Bigelow-Sanford Inc.

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Mohasco Corporation
Shaw Industries Inc.
Standard Oil Company (Indiana)
World Carpets Inc.

SIC 24—Lumber and Wood Products

National Forest Products Association

Abitibi-Price Corporation
Boise Cascade Corporation
Champion International Corporation
Georgia-Pacific Corporation
Koppers Corporation (partial)
Louisiana-Pacific Corporation
Masonite Corporation
Weyerhaeuser Company
Willamette Industries Inc.

Chemical Manufacturers Association

Koppers Co. Inc. (partial)

SIC 26—Paper and Allied Products

American Paper Institute

Abitibi-Price Southern Corporation
Alabama River Pulp Company Inc.
Appleton Papers Inc.
Arcata National Corporation
Bell Fibre Products Corporation
Blandin Paper Company
Boise Cascade Corporation
Bowater Incorporated
Carauster Industries Company
Champion International Corporation
Chesapeake Corporation
Consolidated Packaging Corporation
Consolidated Papers Inc.
Crown Zellerbach Corporation
Deerfield Specialty Papers, Inc.
Dennison Manufacturing Company
Dexter Corporation
Eddy Forest Products Limited
Erving Paper Mills Inc.
Federal Paper Board Company Inc.
Finch Pruyn & Company Inc.
Fort Howard Paper Company
Fraser Paper Limited
GAF Corporation
Garden State Paper Company Inc.
Georgia-Pacific Corporation
Gilman Paper Company
Great Northern Nekoosa Corporation
Green Bay Packaging Inc.
Gulf States Paper Corporation
Hammermill Paper Company
Hearst Corporation
International Paper Company
International Telephone & Telegraph Corporation
James River Corporation of Virginia
Jefferson Smurfit Corporation
Kimberly-Clark Corporation
Longview Fibre Company
Macmillan Bloedel Inc.
Marcal Paper Mills Inc.
Mead Corporation
Menasha Corporation
Mobil Oil Corporation (partial)
Mosinee Paper Corporation
Newark Group
Newton Falls Paper Mill Inc.
Olin Corporation
Owens-Illinois Inc.
PH Glatfelter Company
Penntech Papers Inc.
Pentair Industries Inc.
Pope and Talbot Inc.
Potlatch Corporation
Procter & Gamble Company
Rhinelander Paper Company
Scott Paper Company
Simpson Timber Company
Sonoco Products Company
Southeast Paper Manufacturing Company
Southwest Forest Industries
St. Joe Paper Company
Stone Container Corporation
Technographics Inc.
Temple-Inland Inc.
Tenneco Inc.
Times Mirror Company
Union Camp Corporation
Virginia Fibre Corporation
Wausau Paper Mills Company
Weston Paper & Manufacturing Company
Westvaco Corporation
Weyerhaeuser Company
Willamette Industries Inc.

Chemical Manufacturers Association

Minnesota Mining & Manufacturing Company

Glass—Pressed and Blown (Battelle Institute)

Owens-Corning Fiberglas

SIC 28—Chemicals and Allied Products

Aluminum Association

Aluminum Company of America
Reynolds Metals Company

American Feed Manufacturers Association

Cargill Inc.

Chemical Manufacturers Association

Air Products & Chemicals Inc.
Airco Inc.
Akzona Inc.
Allied Corporation
American Cyanamid Company
American Hoechst Corporation
Arizona Chemical Company
Ashland Oil Inc.
Atlantic Richfield Company
Avtex Fibers Inc.
BF Goodrich Company
Badische Corporation
BASF Wyandotte Corporation
Baxter Travenol Laboratories, Inc.
Big Three Industries Inc.
Borden Inc.
Borg-Warner Corporation
Buffalo Color Corporation
Cabot Corporation
Carus Chemical Company Inc.
Celanese Corporation
Chemplex Corporation
Chemtech Industries Inc.
Chevron Chemical Company
CIBA-GEIGY Corporation
Columbia Nitrogen Corporation
Corpus Christi Petrochemical Company
Cosden Oil & Chemical Co.
CPC International Inc.
Diamond Crystal Salt Company
Diamond Shamrock Corporation
Dow Chemical Company
Dow Corning Corporation
E.I. du Pont de Nemours & Company
Eastmand Kodak Company
Emery Industries
Essex Chemical Corporation
Ethyl Corporation
Exxon Corporation
Firestone Tire & Rubber Company
First Chemical Corporation
FMC Corporation
Freeport Minerals Company
GAF Corporation
Georgia-Pacific Corporation
Goodyear Tire & Rubber Company
Great Lakes Chemical Corporation
Greyhound Corporation
Gulf Oil Corporation
Hanshaw/Filtrol Partnership
Henkel Corporation
Hercules Inc.
ICI Americas Inc.
International Minerals & Chemicals Corporation (partial)
Inter North Inc.
Kaiser Aluminum & Chemical Corporation
Kay-Fries Inc.
Kerr-McGee Corporation
Koppers Company Inc.
LCP Chemicals & Plastics, Inc.
Lever Brothers Company
Lubrizol Corporation
Mallinckrodt Inc.
Merichem Company
Minnesota Mining & Manufacturing Company
Mobay Chemical Corporation
Mobil Oil Corporation
Monsanto Company
Morton Thiokol, Inc.
Nalco Chemical Company
National Starch & Chemical Corporation
Neville Chemical Company
Occidental Chemical Corporation
Olin Corporation
Pennwalt Corporation
Pfizer Inc.
Phillips Chemical Company
Pilot Chemical Company
Polysar Gulf Coast, Inc.
Procter & Gamble Company
Reilly Tar & Chemical Corporation
Rohm and Haas Company
Shell Oil Company
Shepherd Chemical Company
Sherex Chemical Company Inc.
Soltex Polymer Corporation
Standard Chlorine of Delaware, Inc.
Standard Oil Company (Indiana)
Stauffer Chemical Company
Sun Olin Chemical Company
Texaco Inc.
Texasgulf Chemicals Co.
Travenol Laboratories Inc.
Union Carbide Corporation
Uniroyal Chemical
United States Borax & Chemical Corporation
United States Industrial Chemicals Corporation
United States Steel Corporation (partial)
Upjohn Company (partial)
USS Chemicals
Velsicol Chemical Corporation
Vertax Inc. (partial)
Vista Chemical Company
Vulcan Materials Company
W.R. Grace & Company
Westvaco Corporation
Weyerhauser Company
Witco Chemical Corporation

Ferilizer Institute

Arcadian Corporation
Atlas Power Company

Beker Industries Corporation
CF Industries Inc.
CPEX Pacific
Cominco America Inc.
Estech General Chemicals Corporation
Farmland Industries Inc. (partial)
First Mississippi Corporation
Gardinier Inc.
Green Valley Chemical Company
Hawkeye Chemical Company
International Minerals & Chemical Corporation (partial)
J.R. Simplot Company
Mississippi Chemical Corporation
Occidental Petroleum Corporation (partial)
Terra Chemicals International Inc.
Union Oil Company of Californie
United States Steel Corporation (partial)
Williams Companies
Wycon Chemical Company

Pharmaceutical Manufacturers Association

Abbot Laboraties
A.H. Robins Company
American Home Products Corporation (partial)
Beecham Laboratories
Eli Lilly & Company
G.D. Searle & Company
Hoffman-La Roche Inc.
Johnson & Johnson
Merck & Company Inc.
Miles Laboratories Inc.
Schering-Plough Corporation
Squibb Corporation
Upjohn Company (partial)
Warner-Lambert Company

SIC 29—Petroleum and Coal Products

American Petroleum Institute

Agway Inc.
Amber Refining
American Petrofina Inc.
Amoco Corporation
Asamera Oil (US) Inc.
Ashland Petroleum Company
Atlantic Richfield Company
Atlantic Refining & Marketing Co.
Beacon Oil Company
Champlin Petroleum Company
Charter International Oil Company
Chevron Corporation
Clark Oil & Refining Corporation
Coastal Corporation
Conoco Inc.
CRA Inc.
Crown Central Petroleum Corporation
Diamond Shamrock Corporation
Exxon Corporation USA
Farmers Union Central Exchange Inc.
Flecther Oil & Refining Company
Hunt Oil Company
Husky Oil Company
Indiana Farm Bureau Cooperative Association
Kerr-McGee Corporation
Koch Refining Company
Marathon Petroleum
Mobil Oil Corporation
Murphy Oil Corporation
National Cooperative Refinery Association, Inc.
Pacific Resources Inc.
Pennzoil Company
Phillips Petroleum Company
Placid Refining Company
Quaker State Oil Refining Corporation
Rock Island Refining Corporation
Shell Oil Company
Sinclair Oil Corporation
Southland Oil Company
Standard Oil Company (Ohio)
Sun Company Inc.
Tenneco Oil Company
Tesoro Petroleum Company
Texaco Inc.
Texas Eastern Corporation
Time Oil
Tosco Corporation
Total Petroleum Inc.
Unocal
Witco Chemical Corporation

Chemical Manufacturers Association

GAF Corporation
Great Lakes Carbon Corporation
Koppers Company Inc. (partial)

Glass—Pressed and Blown (Battelle Institute)

Owens-Corning Fiberglass Corporation

SIC 30—Rubber and Miscellaneous Plastic Products

Chemical Manufacturers Association

American Cyanamid Company
Dart Industries Inc.
Ethyl Corporation
Exxon Corporation
Minnesota Mining & Manufacturing Companyo
Travenol Laboratories Inc.
Union Carbide Corporation
W.R. Grace & Company

Rubber Manufacturers Association

Ames Rubber Corporation
Armstrong Rubber Company
B.F. Goodrich Company
Carlisle Corporation
Cooper Tire & Rubber Company
Dayco Corporation
Dunlop Tire & Rubber Corporation
Firestone Tire & Rubber Company
Gates Rubber Company
General Tire & Rubber Company
Goodyear Tire & Rubber Company
Owens-Illinois Inc.
Teledyne Monarch Rubber Company
Uniroyal Inc.

SIC 32—Stone, Clay and Glass Products

Brick Institute of America

Belden Brick Company
Bickerstaff Clay Products Company Inc.
Boren Clay Products Company
Delte Brick & Tile Company Inc.
General Dynamics Corporation (partial)
General Shale Products Corporation
Glen-Gery Corporation
Justin Industries Inc.
Maryland Clay Products, Inc.
Merry Companies, Inc.
Pine Hall Brick & Pipe Company
Richards Brick Company
Robinson Brick & Tile Company
Victor Cushwa & Sons, Inc.

Chemical Manufacturers Association

GAF Corporation
Minnesota Mining & Manufacturing Company
Vulcan Materials Company

Glass—Flat (Eugene L. Stewart)

AFG Industries Inc.
Ford Motor Company
Guardian Industries Corporation
Libbey-Owens-Ford Company
PPG Industries Inc.

Glass—Pressed & Blown (Battelle Institute)

Anchor Hocking Corporation (partial)
CertainTeed Corporation
Corning Glass Works (partial)
Owens-Corning Fiberglas Corporation
Owens-Illinois Inc. (partial)

Gypsum Association

Domtar Industries, Inc. (partial)
Genstar Gypsum Products Company
Georgia-Pacific Corporation
Jim Walter Corporation (partial)
National Gypsum Company (partial)
Pacific Coast Building Products Company (partial)
United States Gypsum Company (partial)

National Lime Association

Ash Grove Cement Company (partial)
Bethlehem Steel Corporation (partial)
Blue Circle Inc.
Can-Am Corporationo
Continental Lime Company
Cutler-Magner Company
Detroit Lime Company
Dravo Lime Company
General Dynamics Corporation (partial)
Genstar Lime Company
National Lime & Stone Company
Pete Lien & Sons
Rockwell Lime Company
St. Clair Lime Company
Streetley Resources, Inc.
Tenn-Luttrell Lime Companies
United States Gypsum Company (partial)
Vulcan Materials Company (partial)
Warner Company

Portland Cement Association

Aetna Cement Corporation
Arkansas Cement Corporation
Ash Grove Cement Company (partial)
Atlantic Cement Company Inc.
Blue Circle Industries
California Portland Cement Company
Capitol Aggregates Inc.
Centex Corporation
Columbia Cement Corporation
Coplay Cement Manufacturing Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
General Portland Inc.
Genstar Cement & Company
Giant Portland & Masonary Cement Co.
Gifford-Hill & Co. Inc.
Ideal Basic Industries
Independent Cement Corporation
Kaiser Cement Corporation
Keystone Portland Cement Company
Lehigh Portland Cement Company (partial)
Lone Star Industries Inc.
Louisville Cement Company
Medusa Corporation
Missouri Portland Cement Company
Monarch Cement Company
Monolith Portland Cement Company
Moore McCormack Cement, Inc.
National Cement Company

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Northwestern State Portland Cement Company
Rinker Portland Cement Corporation
River Cement Company
South Dakota Cement Company
Southwestern Portland Cement Company
St. Marys Peerless Cement Co.
Texas Industries Inc. (partial)

Refractories Institute
Allied Chemical Corporation (partial)
Corning Glass Works (partial)
Dresser Industries Inc. (partial)
Kaiser Aluminum & Chemical Corporation (partial)
Martin Marietta Corporation (partial)
National Refractories & Minerals Corporation
Norton Company (partial)
United States Gypsum Company (partial)

Tile Council of America
American Olean Tile Company

SIC 33—Primary Metal Industries

Aluminum Association
Alcan Aluminum Corporation
Alumax
Aluminum Company of America
American Can Company
Atlantic Richfield Company (partial)
Cabot Corporation
Consolidated Aluminum Corporation
Ethyl Corporation
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
National Steel Corporation (partial)
Noranda Aluminum Inc.
Ormet Corporation
Pechiney Ugine Kuhlmann Corporation (partial)
Revere Copper and Brass Inc. (partial)
Reynolds Metals Company
Southwire Company

American Die Casting Institute
Hayes-Albion Corporation (partial)

American Foundrymen's Society
American Cast Iron Pipe Company
Amcast Corporation
Grede Foundries Inc.
Mead Corporation
Teledyne Inc. (partial)
United States Pipe Company

American Iron & Steel Institute
A. Finkl & Sons Company
Allegheny Ludlum
Atlantic Steel Company
Armco Inc.
Babcock & Wilcox
Bethlehem Steel Corporation
Cargill, Inc.
Carpenter Technology Corporation
Colt Industries Inc.o
Cyclops Corporation
Florida Steel Corporation
Ford Motor
Georgetown Steel Corporation
Inland Steel Company
Interlake
Jessop Steel
Keystone Consolidated Industries Inc.
Lone Star Steel Company
LTV Steel
Lukens Steel Corporation
McLaclede
National Steel Corporation (partial)
Northwest Steel Rolling Mills Inc.
Northwestern Steel & Wire Company
Pheonix Steel
Sharon Steel Corporation
Shenago
Teledyne Inc. (partial)
Timken Company
United States Steel Corporation
Washington Steel Corporation
Wheeling Pittsburgh Steel Corporation

American Mining Congress
Amax Inc.
Asarco Inc.
Inspiration Consolidated Copper Company
Kennecott Corporation (partial)
Louisiana Land & Exploration Company (partial)
Marmon Group Inc.
Newmont Mining Corporation (partial)
Phelps Dodge Corporation (partial)
St. Joe Minerals Corporation

Chemical Manufacturers Association
Dow Chemical Company
N.L. Industries

Construction Industry Manufacturers Association
J.I. Case—Tenneco Inc.

Copper & Brass Fabricators Council
Atlantic Richfield Company (partial)o
Bridgeport Brass Corporation
Cerro Copper Products Co.
Cerro Metal Products Co.
Chicago Extruded Metals Company
Extruded Metals
Hussey Copper Ltd.
Kennecott Corporation (partial)
Olin Corporation
Revere Copper & Brass Inc. (partial)

SIC 34—Fabricated Metal Products

Aluminum Association
Aluminum Company of America
Kaiser Aluminum & Chemical Corporation
Martin Marietta Corporation
Reynolds Metals Company

American Boiler Manufacturers Association
Combustion Engineering Inc.
McDermott Inc.

Can Manufacturers Institute
American Can Company
Campbell Soup Company
Continental Group Inc.
Crown Cork & Seal Company Inc.
Miller Brewing Company
National Can Corporation
Stroh Brewery Company

Chemical Manufacturers Association
E.I. du Pont de Nemours & Company

SIC 35—Machinery, Except Electrical

Air Conditioning & Refrigeration Institute
Emerson Electric Company
Honeywell Inc.
Huseman Refrigeration Company
Johnson Controls Inc.
Sundstrand Corporation
Trane Company

Computer & Business Equipment Manufacturers Association
Control Data Corporation
Digital Equipment Corporation
International Business Machines Corporation
Sperry UNIVAC Corporation
TRW Inc.
Xerox Corporation

Construction Industry Manufacturers Association
Caterpillar Tractor Company
Clark Equipment Company
Cummins Engine Company Inc.
Ford Motor Company
Harnischfeger Corporation
Ingersoll-Rand Company
J.I. Case—Tenneco Inc.

SIC 36—Electric, Electronic Equipment

Chemical Manufacturers Association
Great Lakes Carbon Corporation
Minnesota Mining & Manufacturing Company
Airco Inc.
Allied Corporation
Emerson Electric Company
Harvey Hubbell Inc.
Johnson Controls Inc.
Reliance Electric Company
Square D Company
Union Carbide Corporation

SIC 37—Transportation Equipment

Aerospace Industries Association of America
Boeing Company
General Dynamics Corporation (partial)
Grumman Corporation
Hughes Aircraft Corporation
Lockheed Corporation
LTV Aerospace and Defense Company
Marquardt Company
Martin Marietta Corporation
McDonnell Douglas Corporation
Morton Thiokol Corporation
Northrop Corporation
Textron Inc.
TRW Inc.

Chemical Manufacturers Association
Hercules Incorporated

Motor Vehicle Manufacturers Association
American Motors Corporation
Chrysler Corporation
Ford Motor Company (SIC Code 33, Recovered Materials)
General Motors Corporation (SIC Code 30, 33, Recovered Materials)

SIC 38—Instruments and Related Products

Chemical Manufacturers Association
Eastman Kodak Company
Minnesota Mining & Manufacturing Company

Pharmaceutical Manufacturers Association
Johnson & Johnson

[FR Doc. 86-3656 Filed 2-19-86; 8:45 am]
BILLING CODE 6460-01-M

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Federal Energy Regulatory Commission

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Federal Energy Regulatory Commission (FERC) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: A request for Public Comment was published Monday, December 30, 1985 (50 FR 53190).

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252-2308.

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503 (202) 395-7313.

SUPPLEMENTARY INFORMATION: Copies of the proposed collection and supporting documents may be obtained from Mr. Gross. Comments and questions about the item on this list should be directed to the OMB reviewer for the Federal Energy Regulatory Commission.

If you anticipate commenting on the collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, DC, February 14, 1986.

Kenneth M. Pusateri,
Acting Director, Office of Hydropower Licensing.

[FR Doc. 86- Filed —86; 8:45 am]

FERC Collection Under Review By OMB

Collection No.: FERC-587
Docket No.: EL85-40-000
Collection title: Index of Essential Power Site Withdrawals
Type of request: New
Response frequency: On occasion
Response obligation: Mandatory
Respondent Description: Individuals or households; State or Local Government; Businesses or other profit; Non-profit institutes; Small businesses or organizations.
Estimated number of respondents: 1,000
Annual respondent burden hours: 25,000

Abstract: Section 24 of the Federal Power Act provides for the automatic withdrawal of federally-owned lands within the proposed boundaries of hydropower projects when an application for preliminary permit or license is filed with the Commission. FERC-587 will collect information to enable the Commission to determine which reserved Federal lands should be released for other possible uses, and which must remain reserved in order to protect the rights of the license and permit holders.

[FR Doc. 86-3794 Filed 2-19-86; 8:45 am]
BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Louis C. Peterson dba American Global Services, 28200 SW 159th Avenue, Homestead, FL 33033.

Felix A. Paredes, 38 West 37th Street, Hialeah, FL 33012.

By the Federal Maritime Commission.

Dated: February 14, 1986.

John Robert Ewers,
Secretary.

[FR Doc. 86-3613 Filed 2-19-86; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License; Caltrex Forwarders Corp.

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name and address	Date reissued
2065	Caltrex Forwarders Corp., 7901 N.W. 67th Street, Miami, FL 33166.	Oct. 17, 1985.

Eugene P. Stakem,
Deputy Director, Bureau of Tariffs.

[FR Doc. 86-3683 Filed 2-19-86; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants; Combined Transport Systems, Inc., et al.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Combined Transport Systems, Inc., 815 Elizabeth Avenue, Elizabeth, NJ 07201, Officers: Craig B. Huston, President/Director, Per Ulf Vranum, Vice President/Director, Lona Winblad Vranum, Secretary/Treasurer/Director

Clearfreight, 8647 Aviation Blvd., Inglewood, CA 90301, Officers: Kevin W. Maloney, President/Director, Richard Anderson, Vice President/Director, Janet Swain, Secretary/Treasurer.

By the Federal Maritime Commission.

Dated: February 14, 1986.

John Robert Ewers,
Secretary.

[FR Doc. 86-3684 Filed 2-19-86; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations; Schaefer & Krebs, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 271
Name: Schaefer & Krebs, Inc.
Address: One Exchange Place, #308, Jersey City, NJ 07302

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Date Revoked: December 31, 1985
Reason: Requested revocation voluntarily
License Number: 1035
Name: Arrow International, Inc.
Address: 7001 SW 15th Street, Miami, FL 33144
Date Revoked: January 15, 1986
Reason: Failed to maintain a valid surety bond
License Number: 2378
Name: Wesco Shipping (U.S.A.) Ltd.
Address: 4700 Broadway, New York, NY 10040
Date Revoked: January 30, 1986
Reason: Failed to maintain a valid surety bond
License Number: 2148
Name: Euramex International Forwarding, Inc.
Address: Hook Creek Blvd., Valley Stream, NY 11581
Date Revoked: February 5, 1986
Reason: Failed to maintain a valid surety bond
License Number: 2954
Name: Cargonet (N.Y.) Inc.
Address: 145 Hook Creek Blvd., Valley Stream, NY 11581
Date Revoked: February 5, 1986
Reason: Failed to maintain a valid surety bond
License Number: 2027
Name: A. H. International Freight Forwarding Corp.
Address: 44 New Street, New York, NY 10004
Date Revoked: February 5, 1986
Reason: Requested revocation voluntarily
License Number: 2751
Name: Wyndam Young dba Wyndam Company
Address: 240 Chattanooga Street, San Francisco, CA 94114
Date Revoked: February 6, 1986
Reason: Requested revocation voluntarily
License Number: 2283
Name: United Export Company
Address: P.O. Box 17205, Washington, D.C. 20041
Date Revoked: February 6, 1986
Reason: Requested revocation voluntarily

Eugene P. Stakem,
Deputy Director, Bureau of Tariffs.
[FR Doc. 86-3685 Filed 2-19-86; 8:45 am]
BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010286-008
Title: Italy-U.S.A. North Atlantic Pool Agreement
Parties:
Costa Container Lines
Farrell Lines
Jugolinja
Med-America Express Service
Nedlloyd Lines
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendment would further define cargo which is not suitable for containerization under the agreement.

Agreement No.: 223-010888
Title: Sea-Land Service/Hanjin Container Terminal Services Agreement
Parties:
Sea-Land Service, Inc. (Sea-Land)
Hanjin Container Lines, Ltd. (Hanjin)
Synopsis: The proposed agreement would permit Sea-Land to provide appropriate container terminal services to Hanjin at the Port of Elizabeth, New Jersey with respect to Hanjin's all-water service between Asia and the Port of Elizabeth. The parties have requested a shortened review period.

Dated: February 14, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,
Secretary.
[FR Doc. 86-3690 Filed 2-19-86; 8:45 am]
BILLING CODE 6730-01-M

Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice that on February 10, 1986, the following argeement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201-000089-003
Title: Morehead City, Wilmington, Southport, Georgetown, Charleston, Port Royal, Savannah, Port Monatee, Brunswick, St. Mary's Fernandina, Jacksonville, Tampa; Tonnage Assessment Agreement
Parties:
South Atlantic Employers Negotiating Committee
International Longshoremen's Association, AFL-CIO
Synopsis: This amendment lowers the overall assessment per ton and that unit assessment. The agreement is a tonnage assessment agreement covering the aforementioned ports. The agreement is designed to obtain funds necessary to meet the fringe benefits obligations under the Employers-ILA collective bargaining agreement. It contains a tonnage assessment formula for funding the fringe benefits obligations for guaranteed annual income, vacation and holiday, and administrative support for these benefits.

By Order of the Federal Maritime Commission.

John Robert Ewers,
Secretary.
[FR Doc. 86-3691 Filed 2-19-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

President's Advisory Committee on Mediation and Conciliation; Meeting.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, (Pub. L. 92-463, as amended), notice is hereby given that the President's Advisory Committee on Mediation and Conciliation will meet on the 9th Floor of the Federal Mediation and Conciliation Service on Tuesday, March 4, 1986 from 9:00 a.m. to 5:00 p.m.

The proposed meeting is for the purpose of discussing and reviewing negotiation strategies and discussion of confidential bargaining and mediation information. Because the proposed meeting is likely to disclose: (1) Trade secrets and commercial or financial information obtained from persons which is privileged and confidential strategy; and (2) information the premature disclosure of which would significantly frustrate the implementation of proposed agency action, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4) and (9)(b) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Dennis R. Minshall, Executive Director, President's Advisory Committee on Mediation and Conciliation, 2100 K Street, NW., Washington, DC 20427 or call (202) 653-5290.

Kay McMurray,
Director.
[FR Doc. 86-3658 Filed 2-19-86; 8:45 am]
BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

Goodhue County Financial Corp., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) and (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1986.

A. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Goodhue County Financial Corporation*, Red Wing, Minnesota; to acquire Red Wing Loan and Investment Company, Red Wing, Minnesota, and thereby engage in making and servicing loans in accordance with § 225.25(b)(1) of Regulation Y and operating an industrial loan and thrift company in accordance with § 225.25(b)(2) of Regulation Y.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, VIce President) 400 South Akard Street, Dallas, Texas 75222:

1. *Haleco Bancshares, Inc.*, Plainview, Texas, to acquire First Mortgage Services and Investment, Inc., Plainview, Texas, and thereby engage in origination, sale, and servicing of mortgage loans pursuant to section 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 13, 1986.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-3606 Filed 2-19-86; 8:45 am]
BILLING CODE 6210-01-M

National City Financial Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 14, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *National City Financial Group, Inc.*, Coral Springs, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of National City Bank, Coral Springs, Florida.

2. *Mid State Banks, Inc.*, Dublin, Georgia; to acquire 100 percent of the voting shares of Planters Bank, Hawkinsville, Georgia; Pineview Bankshares, Inc., Pineview, Georgia, thereby indirectly acquiring Pineview State Bank, Pineview, Georgia; and Flint Bancshares, Inc., Cordele, Georgia, thereby indirectly acquiring Cordele Banking Company, Cordele, Georgia.

b. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Stratford Bancshares, Inc.*, Stratford, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Stratford State Bank, Stratford, Wisconsin.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Commerce Financial Corporation*, Alma, Arkansas; to become a bank holding company by acquiring at least 99.76 percent of the voting shares of Commercial Bank at Alma, Alma, Arkansas.

2. *King Financial Corporation*, Louisville, Kentucky; to become a bank holding company by acquiring at least 85.5 percent of the voting shares of The Central Bank of North Pleasureville, Kentucky, Pleasureville, Kentucky.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Alpine, Inc.*, Alpine, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Alpine, Alpine, Texas.

Board of Governors of the Federal Reserve System, February 13, 1986.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 86-3609 Filed 2-19-86; 8:45 am]
BILLING CODE 6210-01-M

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FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 86-0484—Keith Rupert Murdoch's proposed acquisition of voting securities of Twentieth Holdings (The News Corp., Limited, UPE).	Jan. 22, 1986.
(2) 86-0496—Keith Rupert Murdoch's proposed acquisition of assets of Metromedia, Inc. and certain voting securities of its subsidiaries.	Do.
(3) 86-0514—The Philip Co. Trust's proposed acquisition of voting securities of WMF Container Corp. (Melville Wier, UPE).	Do.
(4) 86-0515—The Philip Co. Trust's proposed acquisition of voting securities of WMF Container Corp. (Warren Florkiewicz, UPE).	Do.
(5) 86-0485—The Hearst Corp.'s, (The Hearst Trust, UPE) proposed acquisition of assets of VHF television broadcasting station WCVB-TV in Boston, Massachusetts (John W. Kluge, UPE).	Jan. 24, 1986.
(6) 86-0596—John CHR. M.A.M. Duess' proposed acquisition of assets of Northeast Petroleum Corp. (The Charter Co., UPE).	Do.
(7) 86-0534—Convergent Technologies, Inc.'s proposed acquisition of voting securities of 3 Com Corp.	Jan. 27, 1986.
(8) 86-0579—Beneficial Corp.'s proposed acquisition of assets of Commercial Credit Services Corp. (Control Data Corp., UPE).	Do.
(9) 86-0367—Hospital Service Plan of New Jersey's (New Jersey Blue Cross Plan) proposed acquisition of assets of Medical-Surgical Plan of New Jersey (New Jersey Blue Shield Plan).	Jan. 28, 1986.
(10) 86-0513—Louis Marx, Jr.'s proposed acquisition of voting securities of The Prospect Group, Inc.	Do.
(11) 86-0550—Illinois Tool Works, Inc.'s proposed acquisition of assets of Olin Corp. and voting securities of Spit Holding, Inc. and foreign subsidiaries.	Do.
(12) 86-0576—Lennox International, Inc.'s proposed acquisition of assets of Grenada Operations of McQuay, Inc. (Snyder General Corp., Richard W. Snyder, UPE).	Do.
(13) 86-0456—A.B. Artimos, a Swedish Corp.'s proposed acquisition of assets of Etonic, Inc. (Colgate-Palmolive Co., UPE).	Jan. 29 1986.
(14) 86-0536—Erskine Bronson Ingram's proposed acquisition of voting securities of Micro D, Inc.	Do.
(15) 86-0540—The Goodyear Tire & Rubber Company's proposed acquisition of assets of Mark Bloom Co.; Aurora Tire Co.; Gerard Tire Service; Sims Tire & Auto Service Centers (Texas Eastern Corp.).	Do.
(16) 86.0551—James Crean plc's proposed acquisition of assets of United Foods, Inc.	Do.
(17) 86-0561—Hellig-Meyers Co.'s proposed acquisition of voting securities of Starchi Bros. Stores, Inc.	Do.
(18) 86-0564—Days Inns Corp.'s proposed acquisition of assets of a Chicago Hotel, H.L.S.D. Venture, a limited partnership.	Do.
(19) 86-0574—Forest Laboratories, Inc.'s proposed acquisition of assets of Berlex Laboratories, Inc. (Schering A.B.).	Do.
(20) 86-0582—Mason Best Co.'s proposed acquisition of voting securities of BBL Industries, Inc. and Decibel Products, Inc. (Communications Industries, Inc., UPE).	Do.
(21) 86-0585—Public Service Co. of New Mexico's proposed acquisition of voting securities of BBL Industries, Inc. and Decibel Products, Inc. (Communications Industries, Inc., UPE).	Do.
(22) 86-0215—Rodney L. Propps's proposed acquisition of voting securities of Cadillac Fairview Corp., Limited, UPE).	Jan. 30, 1986.
(23) 86-0599—Harvard Industries, Inc.'s proposed acquisition of voting securities of Trim Trends Inc. (George W. Walker, Jr., Trust U/A, UPE).	Do.
(24) 86-0525—J. Rothschild Holdings, plc's proposed acquisition of voting securities of L.F. Rothschild, Unterberg, Towbin Holdings, Inc. (L.F. Rothschild, Unterberg, Towbin, UPE).	Jan. 31, 1986.
(25) 86-0528—Westinghouse Electric Corporation's proposed acquisition of assets of Royal Crown Beverage Companies of Southern California (Commercial Lea Alturas, S.A., UPE).	Do.
(26) 86-0593—GFI/Knoll International Holding Company's proposed acquisition of voting securities of Foamex Products, Inc. (Foamex Partners, Ltd., UPE).	Do.
(27) 86-0584—Forbes Healthmark's proposed acquisition of voting securities of Metrocare, Inc.	Do.
(28) 86-0588—Trio-Tech International's proposed acquisition of voting securities of MOS Inspection, Inc. (GEO International Corp., UPE).	Do.
(29) 86-0594—Wyndham Foods, Inc.'s proposed acquisition of voting securities of Zaiarski's, Inc. (Shamrock Capital, L.P., UPE).	Do.
(30) 86-0597—ITT Corp.'s proposed acquisition of assets of Standard's Heat Transfer Division (American Standard, Inc., UPE).	Do.
(31) 86-0535—Nalco Chemical Co.'s proposed acquisition of assets of Penray Co., X-Laboratories, Inc. & U.S. Packaging Corp. (Robert Latousek, UPE).	Feb. 3, 1986.
(32) 86-0545—TLC Associates' proposed acquisition of voting securities of GATX Corp.	Do.
(33) 86-0548—Exxon Corp.'s proposed acquisition of voting securities of Cities Australia Petroleum Ltd. (Occidental Petroleum Corp., UPE).	Do.
(34) 86-0573—The Coca-Cola Co.'s proposed acquisition of voting securities of The Louisiana Coca-Cola Bottling Co., Ltd.	Do.
(35) 86-0630—Dillard Department Stores, Inc.'s proposed acquisition of assets of R.H. Macy & Co., Inc.	Feb. 4, 1986.
(36) 86-0556—Akzo N.V.'s proposed acquisition of assets of Wilson-Fiberfil International (Plastic Specialties & Technologies, Inc., UPE).	Feb. 5, 1986.
(37) 86-0609—Mid-South Bottling Co.'s proposed acquisition of voting securities of Buchanan Enterprises, Inc. (Sam Buchanan, UPE).	Do.
(38) 86-0540—Snap-On Tools Corp.'s proposed acquisition of voting securities of ATI Industries, Inc. (Industrial Capital Group, UPE).	Feb. 7, 1986.
(39) 86-0616—International Multifoods Corp.'s proposed acquisition of voting securities of Shamrock Capital, L.P.	Do.
(40) 86-0617—Philbro-Salomon, Inc.'s proposed acquisition of assets of Charter International Oil Co. and Acorn Pipe Line Co. (The Charter Co., UPE).	Do.
(41) 86-0634—United States Leasing International, Inc.'s proposed acquisition of assets of The Hertz Corp. (UAL, Inc., UPE).	Do.
(42) 86-0559—Emerson Electric Co.'s proposed acquisition of voting securities of Amarace Corp. (Bass Investment Limited Partnership, UPE).	Feb. 10, 1986.
(43) 86-0614—Alan Bond's proposed acquisition of voting securities of Pittsburgh Brewing Co.,	Do.
(44) 86-0561—William Lyon's proposed acquisition of voting securities of Golden West Homes, Inc.,	Feb. 11, 1986.
(45) 86-0602—International Technology Corp.'s proposed acquisition of voting securities of McKittrick Mud Co. (William A. Wheeler, UPE).	Do.
(46) 86-0603—William A. Wheeler's proposed acquisition of voting securities of International Technology Corp.	Do.
(47) 86-0605—DMC/WSU Health System's proposed acquisition of voting securities of Woodland Medical Group, P.C.,	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-3640 Filed 2-19-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1986:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: March 10-12, 1986, 8:30 a.m.-5:00 p.m.

Place: East Bay Inn, 225 East Bay Street, Savannah, Georgia 31401.

Site visit will be made to the Beaufort-Jasper Community Health Center in Ridgeland, South Carolina, on Tuesday, March 11. Transportation will not be provided for visitors and observers.

The entire meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provisions of the legislation.

Agenda: The agenda will include: discussion of Region IV activities, overall National Health Service Corps policies and budget and the visit to the Beaufort-Jasper Community Health Center.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Dr. Kenneth P. Moritsugu, Director, National Health Service Corps, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 6-40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443-2900.

Agenda items are subject to change as priorities dictate.

Dated: February 14, 1986.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 86-3665 Filed 2-19-86; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N.86-1589]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Departement. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission Proposed Information Collection to OMB

Proposal: Memorandum of Acceptance for Occupancy (MAO), 24 CFR 841.117/504
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 52
Status: Extension
Contact: Raymond W. Hamilton, HUD, (202) 426-0938; Robert Fishman, OMB, (202) 395-6880

Authority: Sec: 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 8, 1986.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Determination of Eligibility as Nonprofit Sponsor and/or Mortgagor
Office: Housing
Form Number: FHA-3433
Frequency of Submission: Annually
Affected Public: Non-Profit Institutions
Estimated Burden Hours: 1,400
Status: Reinstatement
Contact: Robert Wilden, HUD, (202) 426-8730; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 23, 1986.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Lead-Based Paint Hazard Elimination in Public Housing
Office: Public and Indian Housing
Form Number: None
Frequency of Submission: Recordkeeping
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 92,400
Status: New
Contact: Thomas Sherman, HUD, (202) 755-5380; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 10, 1986.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Title I Property Improvement and Manufactured Home Programs (24 CFR 201)
Office: Housing
Form Number: FH-1(HP), FH-13(MH), HUD-8399, 50083, 56001, 58001(MH), 56004, and 92802
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations
Estimated Burden Hours: 142,343
Status: Revision
Contact: James L. Anderson, HUD, (202) 755-6880; Robert Fishman, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 3, 1986.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Agency (PHA) and Indian Housing Authorities (IHA) Automation Questionnaire
Office: Public and Indian Housing
Form Number: HUD-52492.4
Frequency of Submission: Single-Time

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Affected Public: State or Local Governments
Estimated Burden Hours: 6,320
Status: New
Contact: Fred Hurd, HUD, (202) 755–7920; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 31, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 86–3659 Filed 2–19–86; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–86–1581]

Office of Lender Activities and Land Sales Registration, Interstate Land Sales Registration Division; Order of Suspension

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Interstate Land Sales Registration, Interstate Land Sales Registration Division, HUD.

ACTION: Order of Suspension.

SUMMARY: The Department is issuing an Order of Suspension to each developer listed on the attached Appendix. These developers have failed to either file amendments to their registrations or file documentation establishing that no such amendments were necessary.

The Order of Suspension is issued pursuant to the Interstate Land Sales Full Disclosure Act.

EFFECTIVE DATE: February 20, 1986.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Branch Chief, Land Sales Enforcement Branch, Department of HUD, Room 6278, Washington, DC 20410. Telephone: (202) 755–0502. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Interstate Land Sales Registration Division gives public notice of its attempt to serve upon certain persons at their last known address a notice requiring revisions to their Statement of Record. Although service of notice by certified mail was attempted in accordance with 24 CFR 1720.170, it was not possible. Consequently, on January 13, 1986 the Department of Housing and Urban Development, pursuant to 44 U.S.C. 1508, published in the **Federal Register** a Notice of Proceedings and Opportunity for Hearing (51 FR 1444) effecting constructive notice on certain Developer respondents. The Notice informed these persons of omissions of material provisions required by law in their Statement of Record and Property Reports, and advised them of their rights to request a hearing within 15 days of publication of the Notice. More than 15 days have now elapsed since the publication of the Notice and the persons listed in the attached Appendix and referred to in the Order of Suspension as "Developer" have not requested a hearing; therefore, the Department is required to issue this Order of Suspension.

Order of Suspension

1. The Developer being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90–448) (15 U.S.C. 1701 et seq.) and the Rules and Regulations lawfully promulgated thereto pursuant to 15 U.S.C. 1718, has filed its Statement of Record and Property Report covering its subdivision which became effective pursuant to 24 CFR 1710.21 of the Interstate Land Sales Regulations. Said Statement is still in effect.

2. Pursuant to lawful delegation, as authorized by 15 U.S.C. 1715, the authority and responsibility for administration of the Interstate Land Sales Full Disclosure Act has been vested in the Secretary or designee.

3. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1), if it appears to the Secretary or designee at any time that a Statement of Record which is in effect includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading the Secretary or designee may after notice and after an opportunity for a hearing requested within 15 days of receipt of such notice issue an order suspending the Statement of Record.

4. A Notice of Proceedings and Opportunity for Hearing was published in the **Federal Register** on January 13, 1986, (51 FR 1444), informing the Developer of information obtained by the Interstate Land Sales Registration Division stating an untrue statement of a material fact or an omission of a material fact required to be stated therein or necessary to make the statements therein not misleading in the Developer's Statement of Record. The Developer was constructively notified of its right to request a hearing and that if it failed to request a hearing it would be deemed in default and the proceedings would be determined against it, the allegations of which would be determined to be true. The Developer has failed to answer or to request a hearing pursuant to 24 CFR 1720.220 within 15 days of publication of said Notice of Proceedings and Opportunity for Hearing.

Therefore, pursuant to the provision of 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) the Statement of Record filed by the developer covering its subdivision is hereby suspended, effective as of February 20, 1986. This Order of Suspension shall remain in full force and effect until the Statement of Record has been properly amended as required by the Interstate Land Sales Full Disclosure Act and the Implementing Regulations.

Pursuant to 44 U.S.C. 1508, service of this Order upon the Respondent is constructively noticed by publication of this Order in the **Federal Register.**

Unless otherwise exempt any sales or offers to sell made by the Developer or its agents, successors, or assigns while this Order of Suspension is in effect will be in violation of the provisions of said Act.

Dated: February 3, 1986.

Janet Hale,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

Appendix

The captioned matters in this Appendix are listed alphabetically by subdivision in each State. The list contains the name of the subdivision developer representative and title. OILSR number and Land Sales Enforcement Division Docket number.

California

Tahoe Donner. Dart Resorts. Justin Dart. Chairman of the Board; c0 01700 04 330 plus (A–F) and (I–L), M–85–070

Morro Strand Units 1–4, Morro Strand, Inc., Joseph Rizzo, President c0–04535–04–0813, M–85–101

Florida

St. Johns Riverdale Estates. Highland Continental-Southwest Land Corporation. Robert Kaufman, President; 0–02590–09–774, M–85–020

Georgia

Sea Plam Gold and Country Club, Sea Palm, Incorporated, Charlie A. Evans II. President 0–01393–10–10, M–85–064

Idaho

Thunder Mountain Ranch, Thunder Mountain Ranch Joint Venture, Scott W. Bennett, President; 0–05212–12–79 and (A–B), M–85–080

Hawaii

Wailoloa Urban Reserve, Boise Cascade Home and Land Corp., Ann L. Davie, Agent; 0–04064–14–69, M–85–083

Kentucy

Beach Bend Estates, Trigg Lands, Inc., Fred Beach, President; 0–04939–20–101 and (A), M–85–090

Michigan

Forest Lake, Stanton Properties, Ltd., John M. Stanton, President; 0–05641–26–148, M–85–086

New Hamphsire

Gunstock Acres, Steven H. Byrne and Paul Woods, Joint Owners; 0–05583–34–103, M–85–022

New Mexico

Happy Valley, Kaneoke Land Company, Ltd., Morris Moche, President; 0–05874–36–250, M–85–087

Oregon

Newberry Estates, Sun Country Land and Cattle Corp., Wayne Roan, President; 0–05223–43–115 and (A), M–85–088

Vermont

Ascutney Mountain Village, Mt. Ascutney Corporation, Robert C. Williams, President; 0–01295–53–24, M–85–078

Virginia

Carisbrooke Sections 1,2, and 3, Tidewater Virginia Properties, Inc., Elmon T. Gray and Horace A. Gray, III, Principals; 0–04738–54–233, M–85–015

Washington

Arthur's Tranquil Acres and Lazy River Farmettes, Arthur's Land Co., Inc., Robert C. Authur, President; 0–03430–56–80, M–85–045

Wisconsin

Greenwood Acres, Waushara Land Corp., William W. Creamer, Secretary; 0–04089–58–87, M–85–089

[FR Doc. 86–3660 Filed 2–19–86; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. D–86–813, FR–2220]

Organization, Functions, and Authority Delegations; Buffalo

AGENCY: Department of Housing & Urban Development.

ACTION: Designation of Order of Succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: This designation is effective January 22, 1986.

FOR FURTHER INFORMATION CONTACT: Administrative and Management Services Division, Office of Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–2761. (This is not a toll-free number.)

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager
2. Director, Community Planning and Development Division
3. Director, Housing Management Division
4. Director, Housing Development Division
5. Director, Fair Housing and Equal Opportunity Division
6. Chief Counsel

This designation supersedes the designation effective July 11, 1984.

Authority: Delegation of Authority by the Secretary effective October 1, 1970; 36 FR 3369, February 23, 1971.

Dated: January 22, 1986.

Joseph D. Monticciolo,

Regional Administrator, Regional Housing Commissioner, Region II.

[FR Doc. 86–3661 Filed 2–19–86; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–86–812; FR–2219]

Organization, Functions, and Authority Delegations; Chicago

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of Order of Succession.

SUMMARY: The Regional Administrator-Regional Housing Commissioner is designating officials who may serve as Acting Regional Administrator-Regional Housing Commissioner during the absence, disability or vacancy in the position of the Regional Administrator-Regional Housing Commissioner.

EFFECTIVE DATE: This designation is effective January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis Nixon, Regional Counsel, Chicago Regional Office, 300 South Wacker Drive, Chicago, Illinois, 60606–6765, (312) 353–4881. (This is not a toll-free number).

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator-Regional Housing Commissioner during the absence, disability or vacancy in the position of the Regional Administrator-Regional Housing Commissioner, with all the powers, functions and duties redelegated or assigned to the Regional Administrator-Regional Housing Commissioner: Provide that no official in this designation is authorized to serve as the Regional Administrator-Regional Housing Commissioner unless all other officials whose title precedes his or hers in this designation are unable to act by reason of absence, disability or vacancy.

1. Deputy Regional Administrator
2. Regional Counsel
3. Executive Assistant to the Regional Administrator
4. State Program Director

This designation supersedes the designation published May 15, 1984 (at Docket No. D–84–752) and FR (Citation) Vol. 49, No. 95, effective September 15, 1983.

Authority: Delegation of Authority, 27 FR 4319 (1962): section 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note: and Interim Order II, 31 FR 815 (1966).

Dated: January 27, 1986.

Gertrude W. Jordan,

Regional Administrator, Regional Housing Commissioner, Region V, Chicago Regional Office.

[FR Doc. 86–3662 Filed 2–19–86; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–86–814; FR–2218]

Organization, Functions, and Authority Delegations; Sacramento

AGENCY: Department of Housing and Urban Development.

ACTION: Designation and Order of Succession.

SUMMARY: The Manager of the Sacramento Office in Region IX is designating Officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Beverly G. Agee, Regional Counsel, Department of Housing and Urban

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Development, Region IX, 450 Golden Gate Avenue, Box 36003, San Francisco, CA 94102. Telephone (415) 556-6110. This is not a toll-free number.

Designation of Acting Manager: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: *Provided,* that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unable to act by reason of absence, disability, or vacancy in said position:

1. Deputy Manager/Director, Housing Management
2. Director, Housing Development
3. Chief Attorney
4. Supervisory Loan Specialist Realty and Property Disposition
5. Supervisory Housing Management Officer
6. Supervisory Loan Specialist Realty (Mortgage Credit)
7. Supervisory Appraiser
8. Supervisory Construction Analyst

This designation supersedes and cancels any previous designation, published or unpublished, that may be in effect prior to the effective date of this document.

Authority: Delegation of Authority by the Secretary of Housing and Urban Development effective October 1, 1970; 36 FR 3369, February 23, 1971.

Dated: January 17, 1986.

Anthony A. Randolph,

Manager, Sacramento Office, Department of Housing and Urban Development, Region IX.

Concur:

Duncan Lent Howard,

Regional Administrator, Regional Housing Commissioner, Region IX.

[FR Doc. 86-3663 Filed 2-19-86; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D-86-815; FR-2217]

Organization, Functions, and Authority Delegations; Seattle

AGENCY: Department of Housing and Urban Development, HUD.

ACTION: Designation of order of succession.

SUMMARY: The Regional Administrator-Regional Housing Commissioner of Region X (Seattle) is designating officials who may serve as Acting Regional Administrator-Regional Housing Commissioner during the absence, disability, or vacancy in the position of Regional Administrator-Regional Housing Commissioner.

EFFECTIVE DATE: January 15, 1986.

FOR FURTHER INFORMATION CONTACT: Waller Taylor, III, Regional Counsel, Seattle Regional Office, Department of Housing and Urban Development, 1321 Second Avenue, Seattle, Washington, 98101, (206) 442-4970. (This is not a toll-free number.

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Regional Administrator-Regional Housing Commissioner during the absence, disability, or vacancy in the position of the Regional Administrator-Regional Housing Commissioner with all the powers, functions, and duties redelegated or assigned to the Regional Administrator-Regional Housing Commissioner: provided, that no official is authorized to serve as Acting Regional Administrator-Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position.

1. Deputy Regional Administrator
2. Director, Office of Administration
3. Regional Counsel
4. Director, Office of Fair Housing and Equal Opportunity
5. Director, Office of Community Planning and Development
6. Director, Operational Support

Authority: Delegation of Authority, 27 FR 4319 (1962): Section 9(c). Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 815 (1966).

Dated: January 13, 1986.

William Y. Nishimura,

Regional Administrator—Regional Housing Commissioner, Seattle Regional Office.

[FR Doc. 86-3664 Filed 2-19-86; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20530, telephone 202-395-7340.

Title: Coal Management—Federally Owned Coal, 43 CFR Group 3400.

Abstract: Respondents supply information on coal quality and quantity, their interest in leasing coal, their qualifications to hold Federal coal leases, and, if the respondents are qualified surface owners, their preference for or against surface mining. This information allows the bureau to comply with statutory provisions pertaining to Federal coal leasing.

Bureau Form Number: None.

Frequency: Non-recurring.

Description of Respondents: Prospective coal lessees and licensees and qualified surface owners.

Annual Response: 762.

Annual Burden Hours: 8,685.

Bureau Clearance Officer: Rose Marie Berezowsky, 202-653-8860.

July 24, 1985.

Arnold E. Petty,

Director.

[FR Doc. 86-3603 Filed 2-19-86; 8:45 am]

BILLING CODE 4310-84-M

[M 66761]

Montana; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 320 acres of public land to protect a rare paleontological site 25 miles southeast of Lewistown, Montana. This notice closes the land for up to 2 years from surface entry, mining, and surface use and occupancy under the mineral leasing laws.

DATE: Comments and requests for a public meeting should be received by May 15, 1986.

ADDRESS: Comments and meeting requests should be sent to: Montana State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office (406) 657-6090.

On January 28, 1986, a petition was approved allowing the Bureau of Land

management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws and surface use and occupancy under the mineral leasing laws, subject to valid existing rights:

Principal Meridian

T. 19 N., R. 22 E.,
Sec. 6, W½SE¼;
Sec. 6, SW¼NW¼.
T. 14 N., R. 22 E.,
Sec. 33, N½SE¼;
Sec. 34, N½SW¼ and SE¼NE¼.
The area described contains 320 acres in Fergus County.

The purpose of the proposed withdrawal is to protect the land for its valuable paleontological properties.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the terms and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregation period are limited to archeological exploration and any approved surface uses.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

February 10, 1986.

[FR Doc. 86-3604 Filed 2-19-86; 8:45 am]

BILLING CODE 4310-DN-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Advisory Committee on Voluntary Foreign Aid; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on the theme: "The Field Perspective—Small Scale Projects for Long-Term African Development". This is a preparatory meeting for the Advisory Committee's June 1986 meeting in Lome, Togo. The meeting will be *one day only*, Thursday, March 6, 1986, in the Loy Henderson International Conference Room, Department of State, Washington, DC. To enter the building, use C Street (Diplomatic Entrance) between 21st and 23rd Streets, NW., Washington, DC.

Thursday, March 6, 1986

Registration:

The meeting is free and open to the public. However, *PRE-REGISTRATION BY MARCH 1, 1986 THROUGH ADVISORY COMMITTEE HEADQUARTERS IS REQUIRED BY THE DEPARTMENT OF STATE FOR SECURITY REASONS.*

8:30 a.m.—On-site registration will begin for PRE-REGISTERED participants.

9:00-9:15 a.m.—*INTRODUCTORY REMARKS.*

9:15-10:15 a.m.—*TOPIC I*—Review of Committee's preliminary recommendations from December 1985 meeting—Question and Answer Period.

10:15-10:45 a.m.—*TOPIC II*—Discussion of ACVFA objectives for Africa meeting.

10:45-11:00 a.m.—*BREAK.*

10:00-12:15 p.m.—*TOPIC III*—Review of draft agenda and identification of resources—e.g., speakers, organizational contacts, site visits etc., for Africa meeting.

12:15-2:00 p.m.—*LUNCH.*

2:00-2:30 p.m.—*TOPIC IV*—Report on Gramm-Rudman-Hollings Bill.

2:30-3:15 p.m.

TOPIC V—Report on Privateness Update.

TOPIC VI—Report to Congress on NGO effectiveness; highlights in relation to Africa meeting; recommendations regarding future areas that PVOs and/or AID should be tracking.

3:15-3:30 p.m.—*TOPIC VII*—Report of African Famine Supplemental.

3:30-3:45 p.m.—*BREAK.*

3:45-4:00 p.m.—*TOPIC VIII*—Briefing update on upcoming DAC meeting on NGO role in Africa.

4:00-4:30 p.m.—Final review of agenda and logistics for Africa meeting.

There will be AID representatives at the meeting. Any interested person may attend, request to appear before, or file statements with the Advisory Committee. Written statements should be filed prior to the meeting and should be available in twenty five (25) copies.

Persons wishing to attend the meeting must call (703) 235-2708/3336, or write, or send registration form to arrive *NLT March 1, 1986*, to arrange entrance to the Department of State Building. The address is: The Advisory Committee on Voluntary Foreign Aid, Room 227, SA-8, Agency for International Development, Washington, DC 20523.

Dated: February 7, 1986.

Julia Chang Bloch,

Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.

[FR Doc. 86-3601 Filed 2-19-86 8:45 am]

BILLING CODE 6116-01-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-222, A Competitive Assessment of the U.S. Jewelry Industry.

Summary of Proposals:

(1) Number of forms submitted: six;

(2) Title of forms: Questionnaire for Producers of Costume Jewelry and/or Parts Thereof; Questionnaire for Importers of Costume Jewelry and/or Parts Thereof; Questionnaire for Purchasers of Costume Jewelry and/or Parts Thereof; Questionnaire for Producers of Precious Metal Jewelry and/or Parts Thereof; Questionnaire for Importers of Precious Metal Jewelry and/or Parts Thereof; Questionnaire for Purchasers of Precious Metal Jewelry and/or Parts Thereof;

(3) Type of Request: new;

(4) Frequency of use: non-recurring;

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(5) Description of respondents: U.S. jewelry producers, importers and purchasers;

(6) Estimated number of respondents: 590;

(7) Estimated total number of hours to complete the forms: 7,728;

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed forms and supporting documents may be obtained from Brian Garbecki (USITC, tel. no. 202-724-1731). Comments and questions about the proposals should be directed to Ms. Francine Picoult, Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503 (202-395-7231). If you anticipate commenting on a form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent within two weeks of the date this notice appears in the **Federal Register**. Copies of any comments should be provided to Charles Ervin (United States Internaitonal Trade Commission, 701 E Street, NW., Washington, DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

By order of the Commission.

Issued: February 14, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3681 Filed 2-19-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-232]

Import Investigations; Certain Glass Firescreens for Fireplaces; Termination of Investigation

AGENCY: International Trade Commission.

SUMMARY: Termination of investigation as to all respondents on the basis of a settlement agreement; termination of investigation.

ACTION: The Commission has determined not to review the presiding administrative law judge's initial determination (ID) (Order No. 5) terminating the above-captioned investigation with respect to all parties on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: E. Clark Lutz, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1164.

SUPPLEMENTARY INFORMATION: On December 20, 1985, complainants Cumberland Valley Metals, Inc., and Niles Mfg. & Finishing, Inc., and the only respondents in the investigation, Thomas Industries, Inc., and Oliver-MacLeod, Ltd., filed a joint motion to terminate the investigation as to all parties on the basis of a settlement agreement. The motion was supported by the Commission investigative attorney. The administrative law judge (ALJ) issued an ID granting the joint motion for termination on January 9, 1986. No petitions for review or comments from Government agencies or the public were received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.,) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: February 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3636 Filed 2-19-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-306 and 307 (Preliminary)]

Glyoxal From the Federal Republic of Germany and France

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-306 and 307 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany and France of glyoxal, provided for in item 427.53 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by March 31, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed on February 12, 1986, by counsel on behalf of the American Cyanamid Company of Wayne, NJ.

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later then seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m., on March 7, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Cynthia Wilson (202-523-0291) not later than March 5, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before March 11, 1986, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: February 14, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-3682 Filed 2-19-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-240]

Import Investigations; Certain Laser Inscribed Diamonds

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and 19 U.S.C. 1337a.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 9, 1986, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and under 19 U.S.C. 1337a, on behalf of Lazare Kaplan, Inc., 529 Fifth Avenue, New York, New York 10017. Amendments to the complaint were filed on January 22, 1986 and January 30, 1986. The complaint as amended alleges unfair methods of competition and unfair acts in the importation of certain laser inscribed diamonds into the United States, and in their sale, by reason of alleged (1) infringement of claims 1-4, 7, 9, 11-13, 15, and 18-20 of U.S. Letters Patent 4,392,476; and (2) false description and representation in violation of Section 43(a) of the Lanham Act and false advertising under the common law of unfair competition. The complaint further alleges that the effect of tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary L. Kaplan, Esq., or Robert D. Litowitz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1088 and 202-523-4693, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 6, 1986, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain laser inscribed diamonds, or in their sale, by reason of alleged (1) infringement of claims 1-4, 7, 9, 11-13, 15, and 18-20 of U.S. Letters Patent 4,392,476; and (2) false advertising, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Lazare Kaplan, Inc., 529 Fifth Avenue, New York, New York 10017.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

I.B. Goodman Mfg. Co., Inc., 420 Plum Street, Fourth Floor, Cincinnati, Ohio 45202

Sears, Roebuck & Co., Sears Tower, Chicago, Illinois 60684.

(c) Gary L. Kaplan, Esq., and Robert D. Litowitz, Esq., Office of Unfair Import Investigations, United States International Trade Commission, 701 E Street NW., Room 128, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 710 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471. Hearing-impaired individuals are advised that information on this matter can be obtained by

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contacting the Commission's TDD terminal on 202–724–0002.

Issued: February 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–3635 Filed 2–19–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–226]

Import Investigation; Certain Mass Spectrometers and Components Thereof; Commission Decision To Review Initial Determination

AGENCY: International Trade Commission.

ACTION: Review of initial determination.

SUMMARY: Notice is hereby given that the Commission has determined to review the administrative law judge's initial determination (ID) (Order No. 3) granting a joint motion to terminate the investigation filed by complainant Finnigan Corporation and S.N. Nermag and Delsi, Inc., the only respondents remaining in the investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0375.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in §§ 210.53–210.55 of the Commission's rules (19 CFR 210.53–.55).

On January 9, 1986, the presiding administrative law judge (ALJ) issued an ID granting the joint motion to terminate the investigation filed by complainant and the remaining respondents in the investigation. The joint motion to terminate was based on a proposed consent order. Respondents filed a petition for review of the ID pursuant to § 210.54(a) of the Commission's rules. Complainant and the Commission investigative attorney filed responses to that petition. No Government agency or public comments were received with respect to the ID.

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents file in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: February 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–3635 Filed 2–19–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–237]

Import Investigations; Certain Miniature Hacksaws; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: Scotty's Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the dermination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 11, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: February 11, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–3638 Filed 2–19–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–237]

Import Investigations; Certain Miniature Hacksaws; Receipt of Initial Determination Terminating Respondent on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a consent order agreement: U.S. General Supply Corp.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on February 10, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the

Commission's TDD terminal on 202–724–0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: February 10, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–3637 Filed 2–19–86; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–241]

Import Investigations; Certain Prefabricated Bow Forms

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 15, 1986, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133. The complaint alleges unfair methods of competition and unfair acts in the importation into the United States of certain prefabricated bow forms, and in their sale, by reason of alleged infringement of claims 1 and 2 of U.S. Letters Patent 3,637,455. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Deborah S. Strauss, Esq. or Gary L. Kaplan, Esq, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–1233 and 202–523–1088, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 12, 1986 ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain prefabricated bow forms into the United States, or in their sale, by reason of alleged infringement of claims 1 and 2 of U.S. Letters Patent 3,637,455, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complaint is: Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133.

(b) The respondents are following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sky Blue Import/Export, P.O. Box 757, Manila, Philippines
Nastrificio Angelo Bolis S.p.A, 24036 Ponte S. Pietro, Bergamo, Italy
Celifix & Co., Ltd., Room 906–907 Man Yee Building, Des Voeux Road, Central G.P.O. Box 4901, Hong Kong
Gen Art Co., Ltd., P.O. Box 87–327, Taipei, Taiwan
Sunny Valley, Inc., P.O. Box 58460, Taipei, Taiwan
Berwick Industries, Inc., 80 East Ridgewood Avenue, Paramus, New Jersey 07652
McGinley Mill, Inc., P.O. Box 68, Phillipsburg, New Jersey 08865
Tracy Hamilton, Inc., 20 Maple Place, Freeport, New York 11520
Sterling Novelty Products, 2139 North Elston Avenue, Chicago, Illinois 60614
Harvard Fair Corporation, P.O. Box 2317, Del Mar, California 92014.

(c) Deborah S. Strauss, Esq., and Gary L. Kaplan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E. Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorneys, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and the authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: February 13, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–3634 Filed 2–19–86; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation 332-223]

Impact of Increased U.S.-Mexican Trade on Southwest-Border Development

Correction

In FR Doc. 86-2562 beginning on page 4665 in the issue of Thursday, February 6, 1986, make the following correction: The investigation number was inaccurate in the heading and should read as set forth above.

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30746 (Sub-1)]

Southern Railway Co. & Southern Railway—Carolina Division; Construction of Connection Tracks; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission, under 49 U.S.C. 10505, exempts from the requirements of 49 U.S.C. 10901, the construction of three connection tracks totaling 719 feet at Shelby, near Conshel, and at Forest City, NC, by the Southern Railway Company and the Southern Railway—Carolina Division.

DATES: The decision is effective on February 20, 1986, and petitions to reopen must be filed by March 12, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30746 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Nancy S. Fleischman, Norfolk Southern Corporation, 1050 Connecticut Avenue NW., Suite 740, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Interstate Commerce Commission Building, Room 2229, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: January 30, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley commented with a separate expression.

James H. Bayne.

Secretary.

[FR Doc. 86-1873 Filed 2-19-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Ciba-Geigy Corp.

By Notice dated October 29, 1985, and published in the **Federal Register** on November 15, 1985; (50 FR 47293), Pharmaceuticals Division, Ciba-Geigy Corporation, Attention: Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: February 10, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-3653 Filed 2-19-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Knoll Pharmaceuticals

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 18, 1985, Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Any other such applicant and any person who is presently registered with the DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 24, 1986.

Dated: February 12, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-3654 Filed 2-19-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time, and place: March 11, 1986, 9:30 a.m., Rm./ S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss Trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC this 13th day of February, 1986.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 86-3680 Filed 2-19-86; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL TRANSPORTATION SAFETY BOARD

Safety Recommendations Issued; Availability

NATIONAL TRANSPORTATION SAFETY BOARD

[Safety recommendations issued]

Recommendation No.	Issued to	DAte	Subject
A-85-141	Federal Aviation Administration (FAA)	12/31/85	JT8D outer combustion case cracking and evidence of high temperature burner air impingement.
A-86-7 through -12	FAA	1/15/86	Washington National Airport—air traffic rules, procedures, routes.
A-86-142 through -144	FAA	1/16/86	Cessna 12, 206, 207, 210, and 337 model airplanes; control wheel switch wire ribbons.
A-86-13	FAA	2/11/86	Nose gear centering spring bolt on Piper PA-34-200 airplanes.
A-86-4 and -5	FAA	2/11/86	Cessna T310, 320, 340, 401, 411, and Model 402, 402A, 402B, 414, 421, 421A, and 421.B airplanes; inspection of engine exhaust manifold assemblies, wye assemblies, turbo inlet elbow assemblies, and collector assemblies.
A-86-6	FAA	2/11/86	Beech series 33, 35, 36, 55, 58, and 95-57 airplanes; sponge-filled fuel reservoir tanks.
Highway			
H-85-56	South Carolina Office of Transportation and Alabama Office of Pupil Transportation.	2/5/86	Hiring of 16- and 17-year-old schoolbus drivers.
H-85-53	National Highway Traffic Safety Administration	2/5/86	Student behavior on schoolbuses.
H-85-59	North Carolina Department of Transportation	2/5/86	Installation of a guardrail on North Carolina State Route 88 from 0-.05 to 0.66 mile west of Jefferson, North Carolina.
H-85-56 through -58	North Carolina State Board	2/5/86	Practice of hiring 16- and 17-year old schoolbus drivers, passenger discipline.
H-85-54 and -55	Ashe County School Board, Jefferson, North Carolina.	2/5/86	Emergency evacuation drills; monthly schoolbus inspections followup.
H-85-52	Federal Highway Administration	2/6/86	Re-audit of motor carriers or hazardous materials shippers within 1 year after completion of an enforcement action.
H-85-51	National Highway Traffic	2/6/86	School Bus Body Joint Strength.
Marine			
M-85-120 and -121	U.S. Coast Guard	1/15/86	Remote release of barges from the pilothouse and EPIRBs (emergency position indicating radio beacons.
M-85-122	M.J. Rudolph Corporation	1/15/86	Barge maintenance program; watertight compartmentation.
M-85-123	Island Park Tanker Corp	1/15/86	Quick-release devices on tugs that tow scrap barges.
M-85-124	Jacob Brothers, Inc	1/15/86	Safe depth for barge drafts.
M-86-6 through -10	Dakota Creek Industries, Inc	2/6/86	Stability test for vessels;
M-86-4 through -7	Jeff Hendricks & Associates	2/5/86	Stability tests for new & modified vessels and training for fishing vessel captains in vessel stability.
M-86-11	U.S. Coast Guard	2/6/86	Stability tests for commercial fishing vessels.
M-86-1 through -3	North Pacific Fishing Vessel Owners Association	2/6/86	Stability tests for commercial fishing vessels; deadweight surveys; operator compliance with stability letters & booklets.
RAILROAD			
R-85-130 and -131	National Oceanic and Atmospheric Administration	1/15/86	Voluntary citizen submission of real-time severe weather observations; criteria for tone alert signal use.
R-85-125 through -128	National Railroad Passenger Corporation (Amtrak)	1/15/86	Relocation of battery boxes in carbody, replacement of existing mirrors with shatterproof material, modification of seatback cushions; overhead luggage retention.
R-85-129	Federal Railroad Administration	1/15/86	Regulations for radio use for operational purposes on trains.
R-85-118	Chemical Manufacturers Association	1/15/86	Determineiton of the quantity of material remaining in rail tankcars after unloading.
R-85-119 and -120	Association of American	1/15/86	Pre-shipment and interchange inspection of "empty" placarded tankcars; inspection practices for suspected leaking or venting hazardous materials tankcars.
R-85-117	North American Car Corporation	1/15/86	Stub-sill tankcars fabricated before 1967; weld undercuts in tankheads.
R-85-121	allied Corporation-Chemical Corporation	1/15/86	Hydrogen fluoride unloading procedures.
R-85-123	Burlington Northern Railroad Co. and Consolidated	1/15/86	Yard procedures for handling tankcars suspected to be leaking.
R-85-124	Federal RAilroad Administration	1/15/86	Undercut welds in tankcar heads.
R-86-01	Association of American Railroads	2/11/86	Identification of railroad car roller bearings.
R-86-02 and -03	Federal Railroad Administration	2/11/86	Railroad freight car bearings manufactured from 1978 through 1980 by Brenco Inc.

Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include addressee's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Federal Register Liaison Officer.

February 14, 1986.

[FR Doc. 86-3694 Filed 2-19-86; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270, 50-287, 50-289, 50-302, 50-312, 50-313]

Director's decisions; Arkansas Power and Light Co. et al.

In the Matter of Arkansas Power and Light Company, [Arkansas Nuclear One, Unit No.1]; Sacramento Municipal Utility District, [Rancho Seco Nuclear Generating Station]; Florida Power Corporation, [Crystal River Unit No. 3 Nuclear Generating Plant]; Duke Power Company, [Oconee Nuclear Station, Unit Nos, 1, 2, and 3]; General Public Utilities Nuclear Corporation, [Three Mile Island Nuclear Station, Unit No.1]; Issuance of Director's Decision Under 10 CFR 2.206.

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a modified decision concening a petition dated June 11, 1985, submitted by John F. Doherty. The petition requested the issuance of an order under 10 CFR 2.202 to the licensees of the following Babcock and Wilcox facilities to show cause why the operating licenses for those facilities should not be suspended or revoked

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until the problem identified in IE Information Notice 85-38 is resolved: Arkansas Nuclear One, Unit No. 1; Rancho Seco Nuclear Generating Station; Crystal River Unit No. 3 Nuclear Generating Plant]; Oconee Nuclear Station, Unit Nos. 1, 2 and 3; and Three Mile Island Nuclear Station, Unit 1. The IE Notice concerned loose parts which had been found to obstruct certain control rod drive mechanisms at the Davis-Besse facility of the Toledo Edison Company.

The Director, Office of Nuclear Reactor Regulation, has determined to deny the petitioner's request to initiate such show cause orders. The reasons for this decision are explained in a "Director's Decision under 10 CFR 2.206" (DD-85-19) issued this date which is available for public inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and the local public document room for each affected facility as follows:

Arkansas Nuclear One, Unit No.1, Tomlinson Library, Arkansas Tech University, Russellville, Arkansas
Rancho Seco Nuclear Generating Station, Sacramento City-County Library, 828 I Street, Sacramento, California
Crystal River Unit No. 3 Nuclear Generating Plant, Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida
Oconee Nuclear Station, Unit Nos, 1, 2 and 3, Oconee County Library, 501 West Southboard Street, Walhalla, South Carolina
Three Mile Island Nuclear Station, Unit No. 1, Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania

An earlier Director's Decision in this matter dated December 4, 1985, is hereby withdrawn.

A copy of the Decision will be filed with the Secretary of the Commission for its review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Bethesda, Maryland, this *29th* day of January, 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-3695 Filed 2-19-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-220]

Niagara Mohawk Power Corp.; Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

Correction

In FR Doc. 86-3217 beginning on page 5285 in the issue of Wednesday, February 12, 1986, make the following correction: On page 5285, in the third column, in the third complete paragraph, in the first line, the date should read "March 14, 1986".

BILLING CODE 1505-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Losses and Goals Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4, Activities will include:

- Contributions issue scoping
- Goal issue scoping
- Other
- Public comment.

DATE: February 19, 1986. 9:30 a.m.

ADDRESS: The meeting will be held at the Council's Meeting Room, 850 SW Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-3629 Filed 2-19-86; 8:45 am]

BILLING CODE 6000-00-M

POSTAL RATE COMMISSION

[Docket No. SS86-1]

Preferred Rate Study; Hearing

February 14, 1986.

Notice is hereby given that the Postal Rate Commission will commence hearings on the study of federally subsidized mail, pursuant to Notice dated January 24, 1986 (51 FR 3867-3869).

The opening hearing will be held on Wednesday, March 12, 1986 at 9:30 a.m., Commission Headquarters, 1333 H Street NW., Suite 300, Washington, DC. Similar hearings will be conducted in New York, Atlanta, Chicago, Denver, Dallas and Los Angeles. Further information on these hearings will be announced at a later date.

Charles L. Clapp,

Secretary.

[FR Doc. 86-3632 Filed 2-19-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22877; File No. 4-268]

Applications, Hearings and Determinations; William Higgins and Michael Robbins

February 7, 1986.

On April 9 and May 31, 1985, the Commission received applications from New York Stock Exchange ("NYSE") floor brokers William Higgins and Michael Robbins, respectively, seeking Commission review of decisions by the NYSE Board of Directors denying their applications to provide their non-member customers with direct telephone access to the NYSE floor.[1] As discussed below, the Commission has instituted proceedings under section 19(d) of the Securities Exchange Act of 1934 ("Act") to determine whether the NYSE's denials of the Higgins and Robbins applications were consistent with the Act.

I. Background

A. Requests for Review

After Higgins' application to the NYSE for direct telephone access to non-member customers had been denied by the NYSE Operations and Administration Group ("Operations Group"), he appealed to the NYSE Board, which deferred action on his application pending its receipt of a report from an *ad hoc* Commission on Telephone Access ("Committee"), specially established by the Board after

[1] *See* letters from John T. Buckley, Werner, Kennedy & French ("Buckley"), counsel to Higgins, to John Wheeler, Secretary, SEC, dated April 9, 1985, ("Higgins letter") and attached Notice of Appearance, and Michael D. Robbins to Shirley Hollis, Assistant Secretary, SEC, dated May 22, 1985 ("Robbins letter"). While the applications of Higgins and Robbins were submitted to the Commission separately, the Commission has joined the applications in view of the similarity of the issues presented.

it received Higgins' appeal, to study NYSE policies in this area.[2]

In his letter to the Commission, Higgins contended, among other things, that the NYSE Board's decision to defer action in his case unduly delayed resolution of the matter and therefore denied Higgins access to a service—on-floor telephone access between himself and his customers—to which he was entitled under exisiting NYSE Rules.

The Commission staff contacted the NYSE and was informed that the Committee intended to expedite its review of the telephone access question.[3] The Commission staff then decided to postpone further consideration relating to Higgins' application pending a determination of the matter by the NYSE Board.

On March 7, 1985, the Committee issued a report stating that non-member access to on-floor brokers is not a service provided by the NYSE and recommending denial of Higgins' request.[4] The Board then voted to deny his appeal.[5] On April 9, 1985, the Commission's Office of the Secretary received a letter from Buckley stating that, to preserve Higgins' appeal rights, he was filing for Commission review of the NYSE Board's decision.[6]

Following the NYSE Board's determination in Higgins' case, Michael Robbins filed an application with the Director of Floor Services of the NYSE to install a telephone link-up in his floor booth enabling him to communicate with off-floor non-members. His request was denied by the floor operations committee and the denial was upheld by the NYSE Board on May 2, 1985. On May 31, 1985, Robbins filed his application for review with the Commission's Office of the Secretary.[7]

[2] John T. Buckley, Higgins' counsel, initially contacted the Commission staff concerning the issue of non-member telephone access to the NYSE floor in October 1984. *See* letter from Buckley to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated October 9, 1984 ("October 9 Letter"). Higgins previously had requested a telephone on the NYSE floor in 1981. This request was denied by a floor operations group; that denial was not formally pursued by Higgins at that time.

[3] *See* letter from Henry Poole, General Counsel, NYSE, to Michael Cavalier, dated October 26, 1984.

[4] Report of the Committee on Telephone Access, dated March 1, 1985 ("1985 Report").

[5] *See* letter from James E. Buck, Secretary, NYSE, to Buckley, dated March 12, 1985.

[6] *See* Higgins letter, *supra* note 1.

[7] *See* Robbins letter, *supra* note 1. Although both Higgins and Robbins requested on-floor access to non-member customers, Higgings' application is for a portable radio phone that would enable him to speak with customers while in a trading crowd, whereas Robbins has requested access to non-member customers on the phone he currently has in his floor booth.

B. The NYSE Position on Non-Member Access

In recommending against granting Higgins' request,[8] the Committee's 1985 Report stated that the competitive benefits which might arise from unrestricted floor broker access to customers were outweighed by several disadvantages. The 1985 Report acknowledged that potential competitive benefits to both floor brokers and institutional customers might arise from granting Higgins' application. The Report indicated that, if Higgins' request were granted, floor brokers could provide customers with immediate and continuous floor intelligence [9] and, in particular, could provide benefits to institutional customers by enabling them to better direct how their orders should be handled by floor brokers. In addition, the Report noted that heightened competition for institutional order flow might decrease the commission rates paid by institutions.[10]

On the other hand, the Report identified certain concerns with granting non-member telephone access. In particular, it noted that upstairs firms might be encouraged to forego NYSE membership and internalize order flow if they lost significant institutional business to independent and small firm-affiliated floor brokers.[11] In addition, according to the Report, permitting non-member access could create the public perception that the market unfairly favored those customers with direct access to the trading floor.[12]

Subsequently, the Commission staff contacted the NYSE to inquire whether, in light of the Board's decision, the NYSE planned to file: (1) A notice of final action pursuant to section 19(d)(1) of the Act regarding Higgins' appeal, or (2) a proposed rule change pursuant to section 19(b)(2) of the Act of codify the policies adopted in the 1985 Report. The NYSE indicated that it did not intend to pursue either course of action. The NYSE stated that it did not intend to file a notice of final action regarding Higgins' request because it did not deem its action regarding Higgins to constitute a prohibition of access to Exchange services. Specifically, the NYSE indicated that it did not regard non-member telephonic access to the trading floor to be a service offered by the Exchange within the meaning of section 19(d) of the Act. The NYSE also indicated that it did not intend to file a proposed rule change with the Commission codifying the Committee's Report. The NYSE contended that its "longstanding policy" of limiting direct access to the floor to members was a direct application of existing provisions of the NYSE Constitution and rules as well as of NYSE policy statements such as the 1985 Report and an earlier 1976 Report on Access.[13] In the NYSE's view, in addition to the policy concerns noted above, the NYSE's rules that provide by their terms for members' access to services thereby exclude non-members by implication.

Specifically, the NYSE believes that Article I, Section 2 and Article III, Sections 5 and 6 of its Constitution and NYSE Rules 36 and 54 govern non-member telephonic access.[14] Thus, the NYSE stated, that "[Article III, Section 5] in granting the Board of Directors the power to make rules with respect to 'the access of members to . . . the Floor of the Exchange and their use of Floor facilities . . . ,' strongly suggests that Exchange members have reserved the power to permit non-member access and have denied that power even to the Board of Directors." [15] In addition, the NYSE has stated that:

[t]elephonic, electronic order and other forms of access to the Floor will be limited to members. In the opinion of the Committee, the essential characteristic of membership on the Exchange is access to the Floor. . . . All such access [physical and electronic] should be a prerequisite of membership, and non-members should have access to the Exchange, only through members. This basic concept has always been true at the New

[8] The 1985 Report stated that "[t]he Committee . . . recognized that Exchange staff had properly interpreted existing Exchange policy in this matter." The Committee pointed out, however, that "the issues raised by Mr. Higgins' proposal were complex and had not been reviewed in-depth by the Board since 1977." The Committee recommended a review of these issues "[i]n view of the . . . many technological changes that had occurred since then, and the importance of the issues involved. . . ." Id. at 2.

[9] *Id.* at 10-11.

[10] *Id.* at 11.

[11] *Id.* at 15-17.

[12] *Id.* at 12-14.

[13] *See* NYSE Committee on Access, Achieving Greater Access to the NYSE, dated December 1976.

[14] *See* letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC, dated May 1, 1978 ("1978 letter"). The 1978 letter followed publication of a Commission release approving an NYSE proposed rule change creating a category of "electronic access" memberships on the Exchange. *See* Securities Exchange Act Release No. 14535, 43 FR 10869 (1978) ("1978 release").

[15] 1978 letter, *id.*, at 3-4. Regarding the other cited provisions, Article III, Section 6 empowers the Board ". . . to approve or disapprove of any connection or means of communication with the Floor . . ." In addition, NYSE Rule 36 prohibits any member from ". . . establish[ing] or maintain[ing] any telephonic or electronic communication between his . . . office and the Exchange without the aproval of the Exchange." Rule 54 provides that "[o]nly members shall be permitted to make or accept bids and offers, consummate transactions or otherwise transact business on the Floor. . . ."

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York Stock Exchange and the Committee reaffirms that principle.[16]

C. Prior Commission Review of the Access Question

The Commission discussed the significance of the non-member access question in a 1978 release approving the NYSE rule creating categories of physical and electronic access memberships.[17] In that release, the Commission indicated that ". . . no existing NYSE rule or stated policy requires membership as a prerequisite to the establishment of a direct communications link to any particular NYSE member on the floor." Thus, under NYSE rules in effect at that time (which have not been amended in any relevant respect since then), the Commission concluded that "electronic access membership should not be viewed as the exclusive means by which non-members may obtain direct communications access to the NYSE floor."[18]

The 1978 release also stated that, absent Commission approval of an NYSE rule or an effective interpretation of existing rules concerning non-member access to the trading floor, "non-members who wish to forego the opportunity to become electronic access annual members may continue to pursue the alternative of negotiating with the NYSE floor member for direct communication links to that member on the floor."[19] The Commission noted that the NYSE had "declined to provide [it] with a new rule or an interpretation of existing rules concerning non-member communications access to the floor" and suggested that "the NYSE make an appropriate filing under section 19(b) of the Act to clarify [the] matter."[20]

The Commission pointed out, however, that it was reserving judgment on the merits of any NYSE rule proposal to permit only members to have direct communications access to floor members, and as to whether such proposal would be consistent with the Act.[21] As noted above, in response to the Commission order, the NYSE declined to submit a proposed rule change under section 19(b)(2) of the Act, but instead sent its 1978 letter strongly contesting the Commission's views on the matter.

II. The Commission's Review Authority

Under section 19(d)(2) of the Act, the Commission's review authority extends to prohibitions of, and limitations on, any person's access to services offered by an SRO or member thereof. Further, section 19(d)(1) provides that an SRO taking final action regarding an alleged prohibition of, or limitation on access to SRO or member services must promptly file notice of its action with the Commission. Under section 19(d)(2), however, filing by the SRO is not the exclusive method of commencing a Commission review procedure. Rather, section 19(d)(2) provides that "[a]ny action with respect to which an SRO is required by [Section 19(d)(1)] to file notice shall be subject to review by [the Commission] on its own motion. . . ." The Commission may commence such a review irrespective of whether a filing is, in fact, submitted by the SRO.

A. Services offered by an SRO or Member Thereof

As discussed above, the NYSE has contended that the Exchange is not required to file notice of its determinations regarding Higgins' and Robbins' request (and that such requests are not a proper subject for review under section 19(d) of the Act) because it believes that, under its existing rules, non-member telephone access to the floor is not a "service" offered by the NYSE within the meaning of section 19(d)(1).

The Commission believes, however, that operation of a trading floor and access to that floor is perhaps the principal service offered by a national securities exchange to its members and by its members to customers.[22] In the 1978 release, the Commission stated that, absent an NYSE rule prohibiting non-member telephone access to the trading floor, such access constituted a service that could be offered by members to non-members.[23] The release stated that until the NYSE submitted a rule proposal for Commission review "to establish the principle that direct communications access to the [NYSE] floor may be made available only to [members]," non-members could continue to negotiate with on-floor brokers for access to the trading floor.[24]

The Commission continues to believe that no NYSE rule prohibits non-member communication with the trading floor, that such communication capabilities constitute a service that members may offer customers, and that therefore the Exchange's denials of Higgins' and Robbins' appeals constitute prohibitions of, or limitations on, access to such services.[25]

B. Statutory Framework

Section 19(f) of the Act sets forth the standard for determining whether the NYSE properly may prohibit non-member telephone access to its members while they are on the floor.[26] In brief, section 19(f) provides that an SRO may prohibit access to services offered by an SRO or member thereof only if: (1) The "specific grounds" for such prohibition "exist in fact," (2) the prohibition "is in accordance with the rules of the [SRO]," (3) those rules "were applied in a manner consistent with the purposes of [the Act]," and (4) the prohibition does not impose "any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." If the prohibition fails to meet any of these standards, the Commission is directed by the Act to "set aside" the SRO action.

As a preliminary matter, the Commission believes that the NYSE's prohibition of non-member telephone access to members raises questions under section 19(f). For example, the prohibition does not appear to be in accordance with any existing Exchange rule, because there is no rule authorizing it to deny access in this manner.[27] In addition, in view of the prohibition's effect on a floor broker's ability to attract institutional order flow, the prohibition appears to impose a burden on competition. The Commission, however, is unable to determine, on the record before it, whether such a burden is necessary or appropriate in furtherance of the purposes of the Act.[28] In this connection, the Commission will examine separately whether institutional access through a portable phone which may be carried into trading crowds raises different issues than telephonic access to the member's floor booth.

III. The Order

In light of the foregoing, the Commission has determined to institute denials of access proceedings to review whether these denials to access by the NYSE are appropriate under the Act, the rules under the Act and the NYSE's rules. Pursuant to its authority under sections 19(d)(1) and (2) of the Act, the Commission hereby orders that a proceeding be instituted to review the determinations of the NYSE that Messrs. Higgins and Robbins be precluded from having on-floor, telephonic access to off-floor, non-member customers.

The NYSE is directed to certify and file with the Commission pursuant to Rule 19d–3 under the Act, one copy of the records upon which the action complained of by Messrs. Higgins and Robbins were taken, together with seven copies of an index to such record within 10 days following the NYSE's receipt of this order.

Within 20 days after receipt of a copy of the SRO index from the Secretary of the Commission, the applicants shall file a brief or other statement in support of their applications, pursuant to Rule 19d–3(c). Further, within 20 days after receipt of the applicants' brief or statement, the NYSE may file an answer thereto, and within 10 days of receipt of any such answer the applicant may file a reply, pursuant to paragraph (d) of Rule 19d–3.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86–3699 Filed 2–19–86; 8:45 am]

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[16] *Id.* at 5, citing 1976 Report at 6. In response to the 1978 letter, the Commission wrote to the NYSE, reaffirming its views expressed in the 1978 release. *See* letter from George A. Fitzsimmons, Secretary, SEC, to James E. Buck, Secretary, NYSE, dated August 31, 1978.

[17] Article IX, section 1(b) of the NYSE Constitution provides for a maximum of 24 NYSE physical access members who, on payment of annual dues, may ". . . enter physically upon the trading floor and . . . have facilities thereon for the execution of orders . . . "

In addition, Article IX, section 1(c) under NYSE Article IX provides for NYSE electronic access memberships which permit "electronic or telephonic access to (i) the floor facilities of a member, member firm or member corporation, and (ii) the Designated Order Turnaround System of the Exchange, and (iii) such other automated trading systems of the Exchange as the Board of Directors may from time to time determine. . . ."

[18] *See* 1978 release, *supra* note 14. *See also* note 17 *supra*, regarding physical access and electronic access memberships.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] In addition, the Commission notes that Section 19(d) was intended to encompass "all final quasi-adjudicatory actions [by SROs] affecting members and non-members." [Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S. 249: Securities Acts Amendments of 1975* at 26 ("Senate Report"), S. Rep. No. 94–75, 94th Cong., 1st Sess. (1975)] including SRO decisions to require "members to cease doing business . . . in specified ways with a particular non-member . . . ." *Id.* at 24. Moreover, Section 19(d)(2) of the Act provides for Commission review of SRO denials of access to services offered by members of the SRO as well as by the SRO itself.

[23] *See* 1978 release, *supra* note 14.

[24] *Id.*

[25] As noted above, the NYSE has indicated that it disagrees with these points. The Commission, of course, will make its final determination on these issues in the context of the proceedings instituted today. The Commission expects the parties will address these issues in their submissions to the Commission.

[26] While the Commission recognizes that other regulatory concerns may support an SRO argument for prohibiting non-member telephone access (*see* 1985 Report, *supra* notes 8–12 and accompanying text), the NYSE's refusal to file a rule proposal under section 19(b)(2) of the Act expressly addressing this matter has denied the Commission the opportunity to review those concerns, and evaluate, with the benefit of public comment, the important issues involved in the access issue. Absent a section 19(b)(2) filing from the NYSE, the Commission must consider instead, under section 19(f) of the Act, whether the NYSE's denials of the two applications were consistent with the Act and the rules under the Act, *i.e.*, whether they were "proper" prohibitions of access within the meaning of that Section.

[27] *See* 1978 release, *supra* note 14. The Commission notes, however, that, even if the NYSE could show that one of its rules applied to such a prohibition, the Commission still would have to consider whether the application and effect of such a prohibition was consistent with section 19(f), including, for example, the requirement that such a prohibition not impose any unnecessary or inappropriate burden on competition.

[28] The NYSE has furnished the Commission a copy of the 1985 Committee Report. In addition, the Commission has received previous material prepared by the NYSE on this subject, such as the 1978 Committee Report.

[File No. 22–14642]

Application and Opportunity for Hearing; Storage Equities, Inc.

Notice is hereby given that Storage Equities, Inc., a California corporation ("Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Trust Services of America, Inc., a California corporation ("TSA") (as successor trustee to First Interstate Bank of California, a California banking corporation), under a twelfth supplement of an existing indenture qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify TSA from acting as trustee under such twelfth supplement.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issue are outstanding.

However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. TSA, as successor trustee, currently is acting as trustee under an indenture (the "Indenture") and several prior supplements thereto under which the Applicant is an obligor. The Indenture, dated as of August 9, 1983, is between Applicant and TSA and provides for the periodic issuance of secured notes in partial consideration for the purchase of property by Applicant. This indenture was filed as Exhibit 4.3 to Applicant's registration statement no. 2–80650 filed under the Securities Act of 1933, and has been qualified under the Trust Indenture Act in connection with a Form T–1 filing, File No. 22–12633.

Applicant has also entered into, and filed by way of post-effective amendments to the registration statement stated above, prior supplements under which TSA is a trustee. Applicant has issued several series of its secured notes under the prior supplements.

2. Applicant wishes TSA to continue as Trustee under the twelfth supplemental indenture executed December 6, 1985.

3. The Applicant is not in default in any respect under the Indenture or prior supplements thereto.

4. Each series of secured notes issued under the prior supplements is secured by separate and distinct assets of Applicant so that should TSA have occasion to proceed against the security under any series of notes, such action would not affect the security, or the use of any security, under any other series. Thus, the existence of the other trusteeships should not inhibit or discourage TSA's actions under any one series.

The Applicant has waived notice of hearing, hearing on the issues raised by its Application and all rights to specify procedures under Rule 8(b) of the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application File No. 22–14642, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than March 10, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or

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law raised by said Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3700 Filed 2-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22896; SR-MSE-85-11]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc., Order Approving Proposed Rule Change

The Midwest Stock Exchange, Inc. ("MSE") submitted on September 4, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend its rules regarding the use of Midwest's Automatic Execution System ("MAX") in order to facilitate the routing and execution of transactions in a portfolio of equity securities ("portfolio execution").

The four proposed changes to MAX procedures apply only to portfolio executions and will be implemented on a one-year pilot basis.[1] The first of these changes will allow principal orders for portfolio executions to be sent over MAX. This change will enable member firms to execute more efficiently a portfolio for the firm's own account as well as for customers.

Second, the time frame between the time a market order is entered into MAX and the time it is automatically executed will be reduced from 15 seconds to 0 seconds. According to the MSE, the need for a timely execution is significantly more important to the customer and the firm in this type of transaction than the possibility that a better fill may be obtained in a particular issue in a portfolio by exposing the order for 15 seconds.

The third change clarifies that specialist participation in a portfolio execution is voluntary for principal orders or agency orders above 1,099 shares. The MSE notes that this is consistent with the current MAX requirements. Portfolio executions over MAX beyond the existing MAX requirements only will be executed in accordance with arrangements agreed upon in advance by the specialist and the order entry firm.

The fourth change precludes the use of the MAX System for portfolio executions before 9:30 a.m. and after 2:45 p.m. (Central Standard Time). According to the MSE, this restriction will avoid creating any problems at the opening or closing in periods of heavy volume.

A limited number of portfolio executions have taken place using the MAX system under the preceding parameters. The MSE anticipates that further enhancements to the system may be developed as experience shows where the system can be improved. Such enhancements also will be submitted to the Commission where appropriate.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22734, December 20, 1985) and by publication in the Federal Register (50 FR 53045, December 27, 1985). No comments were received with respect to the proposed rule change.

The Commission believes that approval of the proposed modifications to MSE's MAX procedures for purposes of portfolio execution is appropriate on a one-year pilot basis to permit the MSE to assess and develop further its procedures under the program. The MSE has stated that many MSE member firms wish to utilize portfolio executions to hedge against their own positions as well as customer positions in index options and futures, and for arbitrage activities for their proprietary accounts. Appropriate modifications to MAX can provide efficient executions of portfolios for the firm's account and for customers.[2]

The Commission notes that the reduction of order exposure time through MAX from 15 seconds to zero seconds for portfolio executions represents an exception from procedures for executing orders in individual securities based on the need by member firms for timely execution of portfolios. The Commission recognizes that the pricing benefits that may adhere to the exposure of orders in individual securities are significantly reduced in the context of the simultaneous execution of a number of securities comprising a portfolio. The Commission will continue to examine, however, the appropriateness of eliminating any exposure time for portfolio excutions.[3]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Sections 6 and 11A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 12, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3701 Filed 2-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22895; SR-PSE-85-34]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

Dated: February 12, 1986.

The Pacific Stock Exchange,

[1] The MSE has agreed that its procedures applying to portfolio executions will be implemented as a one-year pilot. Telephone conversation between Michael Cavalier, Branch Chief, Division of Market Regulation, and Patrick Conroy, Midwest Stock Exchange, January 30, 1986.

[2] The Commission notes that the proposed changes are similar to the Philadelphia Stock Exchange's ("Phlx") pilot program implementing procedures regarding the delivery and pricing of orders in Phlx-traded securities that compose an index—the Designated Underlying Index Transaction ("DUIT") program. The Commission approved the DUIT proposal on a nine-month pilot basis in Securities Exchange Act Release No. 20928 (May 4, 1984), 49 FR 20097 (SR-Phlx-83-26). The program was extended for an additional year in Securities Exchange Act Release No. 21709 (February 4, 1985), 50 FR 5828. The Commission understands, however, that the Phlx has not yet implemented its DUIT system.

[3] Both the MSE and the Pacific Stock Exchange ("PSE") have implemented pilot programs reducing the order exposure time for executions through the MAX and SCOREX systems, respectively, from 30 seconds to 15 seconds. *See* Securities Exchange Act Release No. 22357 (August 28, 1985), 50 FR 35660 (order approving MSE procedures); Securities Exchange Act Release No. 21329 (September 17, 1984), 49 FR 57199 (order approving PSE's procedure on a one-year pilot basis); Securities Exchange Act Release No. 22614 (January 21, 1986), 51 FR 3558 (order approving one-year extension of PSE pilot procedures).

Incorporated ("PSE") submitted on November 20, 1985, copies of a proposed rule change (SR-PSE-85-34) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend the structure of its Pilot Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts, and to extend the pilot through June 1986.

The changes consist of revisions relating to the guidelines used for specialist evaluation which will be based on National Market System Quote Performance (45% of total score), Specialist Evaluation Questionnaire (45% of total score), and SCOREX Limit Order Acceptance (10% of total score). The Exchange is amending sections 1(l) and 11(t) of Rule II of the Rules of the Board of Governors of the PSE to conform Exchange rules to these adjustments in the Specialist Evaluation System. The PSE is also amending section 11(s) of Rule II to conform to the adoption of a new Specialist Evaluation Questionnaire Survey.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22720, December 18, 1985), and by publication in the Federal Register (50 FR 52398, December 23, 1985). No comments were received by the Commission with respect to the proposed rule change.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3702 Filed 2-19-86; 8:45 am]

BILLING CODE 8010-01-M

[1] The PSE received several comments from specialists expressing concern over the proposed guidelines for National Market System Quote Performance. These comments were discussed in the notice of the proposed rule change and are on file at the PSE.

[Release No. 34-22891; File No. SR-MCC-86-01]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Clearing Corporation Relating to Its Schedule of Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 17, 1986, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the Midwest Clearing Corporation's Fee Schedule for 1986.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.

The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MCC Board of Directors annually reviews MCC's fee schedules to insure that service fees fairly cover the cost of providing services. In order to keep a proper balance between fees and the costs of providing clearing and depository services, MCC is proposing a revised fee schedule for 1986. Where MCC has experienced increased costs associated with manual processing, such as physical deliveries, service fees have been increased accordingly. When costs associated with automated services have remained relatively constant, fees have been adjusted where appropriate or have remained unchanged.

The proposed fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that the proposed fee schedule will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies there of with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commissions's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 13, 1986.

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 11, 1986.

John Wheeler,

Secretary.

Exhibit A—Midwest Clearing Corporation Schedule of Charges 1986 Pricing Revisions, Effective January 1, 1986

	1985	1986
Account Maintenance		
Participant account maintenance fee:		
Local and out of town accounts.	$160.00/mo	$170.00/mo.
Specialist and trading accounts.	150.00/mo	160.00/mo.
Secondary account, (specialist, trading or market maker accounts).	117.00/mo	125.00/mo.
Trade Recording (Previously Announced and Effective October 1, 1985)		
Trade size/shares (until October the trade recording fee was $.57/side):		
1 to 499		0.40.
500 to 999		0.45.
1,000 to 1,499		0.50.
1,500 to 1,999		0.60.
2,000 to 2,499		0.70.
2,500 to 2,999		0.85.
3,000 to 3,499		1.00.
3,500 to 3,999		1.15.
4,000 to 4,499		1.30.
4,500 to 4,999		1.45.
5,000 and up		1.65.
Less trades per day discounts:		
100+		0.05.
150+		0.06.
300+		0.08.
500+		0.10.
750+		0.15.
Correspondent Delivery and Collection Service (CDCS)		
Service charge	8.00/item	10.00/item.
Correspondent Receipt and Payment Service (CRPS)		
Service charge	8.00/item	10.00/item.
Dividend and Bond Interest Settlement Service		
Claimant (claiming participant).	$2.00/item	$2.00/item.
Recipient (participant charged).	1.00/item	2.00/item.
Rejection by recipient of an invalid claim (charged to claimant).	50.00/item	50.00/item.
Automatic Securities Loan Program		
'Loan value position (annual rate).	5.8⅓ percent	Half average; Broker call; Rate for month.
Percentage charge of the daily average loan value. The annual rate will be half the average of the broker call rate for the month.		
MST Communications System		
Line:		
Leased line 4800—(rebilled at cost).	253.00	335.00/mo.
Long distance line charges.	0.18/mile/mo	No change.
Access fee	280.00/mo	No change.
Additional account access fee.	25.00/mo/symbol.	No change.
Port:		
Port charges for customer providing own line.	N/A	15.00/port.

Equipment is rebilled at cost:

Terminal	CTL unit	CRT	PRT
30 day lease	$230	$153	$230
1 year	(1)	(1)	(1)
2 year	190	127	190
4 year	170	115	170

[1] Upon availability.

[FR Doc. 86-3577 Filed 2-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22690; Filed No. SR-MSTC-86-1]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company Relating to the Fee Schedule for 1986

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 30, 1986 the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is the Midwest Securities Trust Company's Fee Schedule for 1986.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The MSTC Board of Directors annually reviews MSTC's fee schedules to insure that service fees fairly cover the cost of providing services. In order to keep a proper balance between fees and the costs of providing clearing and depository services, MSTC is proposing a revised fee schedule for 1986. Where MSTC has experienced increased costs associated with manual processing, such as physical movements or deposits, service fees have been increased accordingly. When costs associated with automated services decreased on a unit or transaction basis, such as Depository Delivery Instructions, fees have been reduced to reflect costs recouped through increased volume.

The proposed fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) The Midwest Securities Trust Company Does Not Believe That the Proposed Fee Schedule Will Impose Burdens on Competition

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 13, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 11, 1986.

John Wheeler,

Secretary.

Exhibit A—Midwest Securities Trust Company Schedule of Charges

	1985	1986
Account maintenance:		
Participant account maintenance fee (local and out of town accounts).	$150.00/mo	$160.00/mo.
Corporate equity/debt issue service.	100.00/mo	105.00/mo.
Municipal issues service.	100.00/mo	105.00/mo.
Pledgee bank account maintenance fee.	125.00/mo	135.00/mo.
CNS Inter-Activity Movements (IAL, IAS): (Book-entry settlement from or to MCC).	0.90/item	0.88/item.
Depository delivery instruction (DDI):		
Inter-participant delivery.	0.75/del	0.72/del.
Inter-participant receipt.	0.75/receipt	0.72/rec.
Intra-account delivery.	0.75/del	0.72/del.
Third Party DDI (exclusive participants)	0.75/del. or receipt.	0.72/del. or rec.
Third party add-ons (third party DDI processed after 10:00 a.m. CST cut-off).	25.00/item surcharge.	27.00/item surcharge.
Certificate deposits:		
7:30 a.m.-11:00 a.m. CST.	0.94/item	1.00/item.
11:00 a.m.-11:30 a.m. CST.	7.50/item	10.00/item.
11:30 a.m.-4:00 p.m. CST (next day credit).	0.79/item	.85/item.
Depository input satellite (DIS):	0.94/item	1.00/item.
Deposit charge (exclusive of DIS bank charge, if applicable).		
Safekeeping:		
Equity shares and registered corporate/municipal bonds.		No charge.
Safekeeping cap per month.	$3,000/mo	$4,000/mo.
Each issue with free or pledge position (corporate equities/, bonds or registered municipal bonds).	0.57/pos/mo	0.58/pos/mo.
Street withdrawals: Withdrawal by street request.	5.00/request	6.00/request.
Reorganizations and redemptions:		
Mandatory reorganizations.	25.00/symbol	26.50/symbol.
Non-mandatory reorganizations.	25.00/processing authorization.	26.50/proc. authorization.
Execution of liability notice to short position.	25.00/item	26.50/item.
Pledge loan program:		
Pledge movement (to both pledgee bank and broker/dealer).	0.75/item	0.72/item.
Release movement (to both pledgee bank and broker/dealer).	0.75/item	0.72/item.
Institutional pledge account:		
Pledge account ("X" account symbol).	50.00/mo	50.00/mo.
Pledge	0.75/mvmt	0.72/mvmt.
Release	0.75/mvmt	0.72/mvmt.
Option pledge program:		
Broker pledge account ("X" account symbol).	50 00/mo	50.00/mo.
Pledge	0.75 mvmt	0.72/mvmt.
Release	0.75/mvmt	0.72/mvmt.
Microfilm services for research records:		
Current	$0.75/pg	$0.75/pg.
More than one year-old.	1.50/pg	2.50/pg.
Overnight safekeeping: Overnight safekeeping.	5.00/night	5.00/item, .50/cert./night.
Reports produced at N.Y. Center (Activity, net position and purchase and sales reports):		
Regular account—New York printing only.	50.00/mo	50.00/mo.
Regular account—New York and Chicago printing.	160.00/mo	175.00/mo.
Participant directory: Directory of eligible securities (reflects the cost of producing the directory).	22.00	40.00.
Bearer municipal bond service fees—Position value fee per thousands of par value:		
$0 to $0.5 billion	.015/mo	.013/mo.
$5 to $1 billion	.01/mo	.0085/mo.
$1 to $5 billion	.008/mo	.00325/mo.
over— $5 billion	.0045/mo	.001625/mo.
Book-entry depository delivery instruction (DDI).	$1.75	$1.60.
Withdrawal	$5.00 and .04/1,000 over $50,000.	$6.00 and .04/1,000 over $50,000.
Interest fee	$1.00 per credit	$1.50 per credit.
MST Communications System:		
Line:		
Leased line 4800—(rebilled at cost).	253.00	335.00/mo.
Long distance line charges.	0.18/mile/mo	No change.
Access fee	280.00/mo	No change.
Additional account access fee.	25.00/mo. symbol.	No change.
Port: port charges for customer providing own line.	N/A	15.00/port.

Equipment is rebilled at cost:

Terminal	CTL unit	CRT	PRT
30 day lease	$230	$153	$230
1 year	(1)	(1)	(1)
2 year	190	127	190
4 year	170	115	170

[1] Upon availability.

[FR Doc. 86-3578 Filed 2-19-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Small Business Computer Security and Education Advisory Council; Public Meeting

The U.S. Small Business Administration will hold a public meeting on Thursday and Friday, March 6 and 7, 1986, from 9:00 A.M. to 5:00 P.M.

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The meeting will be held in a Conference Room Level Two at the Georgetown Marbury House Hotel, 3000 "M" Street, N.W., Washington, DC 20007. The purpose of the meeting is to discuss such matters as may be presented by Advisory Council Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John J. Sweeney, SBA Member, U.S. Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416; telephone number: (202) 653-7875.

Jean M. Nowak,

Director.

[FR Doc. 86-3650 Filed 2-19-86; 8:45 am]

BILLING CODE 8025-01-M

Little Rock Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI, located in the geographical area of Little Rock, Arkansas, will hold a public meeting at 11:30 a.m., on Wednesday, February 26, 1986, at the Legacy Hotel, 625 West Capitol Avenue, Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Lavan D. Alexander, Acting District Director, U.S. Small Business Administration, 320 West Capitol, Suite 601, Little Rock, Arkansas 72201, (501) 378-5871.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 10, 1986.

[FR Doc. 86-3649 Filed 2-19-86; 8:45 am]

BILLING CODE 8025-01-M

El Paso Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI, located in the geographical area of El Paso, Texas, will hold a public meeting 10:00 a.m. thru 12:00 a.m., on Friday, February 21, 1986, at the District Office Conference room, 10737 Gateway West, Suite 320, El Paso, Texas 79935, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Henry Zuniga, District Director, U.S. Small Business Administration, 10737 Gateway Boulevard West, Suite 320, El Paso, Texas 79935—915-541-7586.

Jean M. Nowak,

Director, Office of Advisory Councils.

February 10, 1986.

[FR Doc. 86-3648 Filed 2-19-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 42425]

Southwest Airlines Co. Enforcement Proceeding; Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to commence on February 13, 1986, has been postponed, and will commence on April 14, 1986 at 9:30 a.m. (local time) in Room 5332, Nassif Bldg., 400 7th Street, SW., Washington, DC, before the undersigned Chief Administrative Law Judge.

Dated at Washington, DC, February 12, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-3615 Filed 2-19-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: February 14, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0279
Form Number: Letter 124(c)
Type of Review: Reinstatement
Title: Employer Requested to Clarify Discrepancy Between Employee's Records and Form W-2 Carrier Certification and Release Order

OMB Number: 1545-0309
Form Number: Form 5422
Type of Review: Extension
Title: Visitor Register

OMB Number: 1545-0649
Form Number: Form 6420 and 6421
Type of Review: Reinstatement
Title: Sales Taxes: Items Taxed and Not Taxed (Form 6420) and State Sales Tax Checksheet (Form 6420)

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86-3689 Filed 2-19-86; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Amdt. to Dept. Circ.—Public Debt Series—No. 21-85]

10-3/4% Treasury Bonds of 2005

Washington, February 13, 1986.

Department of the Treasury Circular, Public Debt Series—No. 21-85, dated June 19, 1985, as supplemented, descriptive of 10-3/4% Treasury Bonds of 2005, hereafter referred to as Bonds, is hereby amended effective February 18, 1986.

The following Section and Subsection in the original circular dated June 19, 1985, are hereby redesignated:

from 6. to 7.
from 6.1 to 7.1.
from 6.2 to 7.2.

Subsections 2.6. and 6.3. in the original circular are replaced by the Subsections 2.6 and 7.3 below and, in addition, the following Sections and Subsections are now included. The other terms and conditions remain unchanged.

2. Description of Securities

2.6. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsection 2.1. through 2.5. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future semiannual interest payment (hereafter referred to as an Interest Component) and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Subsection 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $800,000.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the effective date of the amendment to this circular until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on August 15, 2005.

6.5 Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8. Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Component and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulation governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incoporated as part of this circular.

The foregoing amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF 10¾ PERCENT TREASURY BONDS OF AUG. 15, 2005, CUSIP NO. 912810 DR 6

[The Principal Component is designated 10% Percent Treasury Principal (TPRN) 2005 due Aug. 15, 2005, CUSIP No. 912803 AG 6]

Designation	CUSIP No. 912833
INTEREST COMPONENTS	
Treasury Interest (TINT) 2005 due:	
Aug. 15, 1986	AY 8
Feb. 15, 1987	AZ 3
Aug. 15, 1987	BA 7
Feb. 15, 1988	BB 5
Aug. 15, 1988	BC 3
Feb. 15, 1989	BD 1
Aug. 15, 1989	BE 9
Feb. 15, 1990	BF 6
Aug. 15, 1990	BG 4
Feb. 15, 1991	BH 2
Aug. 15, 1991	BJ 8
Feb. 15, 1992	BK 5
Aug. 15, 1992	BL 3

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF 10¾ PERCENT TREASURY BONDS OF AUG. 15, 2005, CUSIP NO. 912810 DR 6—Continued

[The Principal Component is designated 10¾ Percent Treasury Principal (TPRN) 2005 due Aug. 15, 2005, CUSIP No. 912803 AG 6]

Designation	CUSIP No. 912833
Feb. 15, 1993	BM 1
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	Bu 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CG 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8

[FR Doc. 86-3686 Filed 2-19-86; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Medical Care Reimbursement Rates for Fiscal Year 1986

In accordance with provisions of OMB Circular A-11, § 13.5(a), revised reimbursement rates have been established by the Veterans Administration for inpatient and outpatient medical care furnished to beneficiaries of other Federal Agencies during Fiscal Year 1986. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Administrator on and after December 1, 1985:

Medicine	$340
Spinal cord injury	345
Surgery	360
Psychiatry	281
Drug and alcohol	162
Nursing home	119
Outpatient	64
Pharmacy-prescription refill	11
Hemodialysis:	
Hospital component	116
Physician component	12

The hospital component for hemodialysis will be charged in addition to the inpatient per diem rate except

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when billing Medicare for maintenance dialysis, in which case the physician component will be charged in addition to the hospital component.

If other than maintenance dialysis care is provided a Medicare beneficiary treated as a humanitarian service in an emergency, an additional charge for an outpatient visit may be made by the VA. Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal Agencies are obtained by the VA from private sources, the charges to the other Federal Agencies will be the actual amounts paid by the VA for such medical services.

Inpatient charges to other Federal Agencies will be at the current interagency per diem rate as set forth above for the type of bed section or discrete treatment unit providing the care.

Dated: February 12, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

[FR Doc. 86-3645 Filed 2-19-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 34
Thursday, February 20, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, February 24, 1986, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Countrywide Thrift and Loan, an operating noninsured industrial bank located at 155 N. Lake Avenue, Pasadena, California.

Jefferson Industrial Bank, an operating noninsured industrial bank located at 3520 North Highway 74, Evergreen, Colorado.

Applications for consent to purchase assets and assume liabilities:

First National Bank of Columbiana, Columbiana, Alabama, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the Alabaster and Columbiana Branches of First Southern Federal Savings and Loan Association, Mobile, Alabama, a non-FDIC-insured institution.

NCNB National Bank of North Carolina, Charlotte, North Carolina, for consent to purchase certain assets of and assume the liability to pay deposits made in seven branches of First American Savings Bank, F.S.B., Greensboro, North Carolina, a non-FDIC-insured institution.

First Interstate Bank of Washington, National Association, Seattle, Washington, for consent to purchase certain assets of and assume the liability to pay deposits made in the Vancouver (1800 Main Street) branch of Central Evergreen Federal Savings and Loan Association, Chehalis, Washington, a non-FDIC-insured institution.

Request for waiver of a condition imposed in approval of application for consent to acquire assets and assume liabilities and to establish one branch:

Bank of A. Levy, Oxnard, California.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,356-L (Amendment)
United American Bank in Knoxville, Knoxville, Tennessee and
United Southern Bank of Nashville, Nashville, Tennessee and
First Peoples Bank of Washington County, Johnson City, Tennessee and
City and County Bank of Knox County, Knoxville, Tennessee and
City and County Bank of Anderson County, Lake City, Tennessee and
City and County Bank of Roane County, Kingston, Tennessee and
United American Bank in Hamilton County, Chattanooga, Tennessee and
City and County Bank of Jefferson County, White Pine, Tennessee

Case No. 46,432-L
United American Bank in Knoxville, Knoxville, Tennessee and
City and County Bank of Jefferson County, White Pine, Tennessee and
City and County Bank of Knox County, Knoxville, Tennessee

Case No. 46,433-L
The First National Bank of Woodbine, Woodbine, Iowa

Memorandum regarding purchase agreements.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: South Coast Bank, Costa Mesa, California, AP-455 (Memo dated January 7, 1986)
Summary Audit Report re: First Enterprise Bank, Oakland, California, SR-599 (Memo dated January 21, 1986)
Summary Audit Report re: Farmers Savings Bank, Massena, Iowa, AP-460 (Memo dated January 28, 1986)
Summary Audit Report re: Peoples State Bank, Odebolt, Iowa, AP-458 (Memo dated January 21, 1986)
Summary Audit Report re: Story County State Bank, Story City, Iowa, AP-462 (Memo dated January 24, 1986)
Summary Audit Report re: The Bank of Commerce, Chanute, Kansas, AP-459 (Memo dated January 27, 1986)
Summary Audit Report re: The Mississippi Bank, Jackson, Mississippi, AP-386 (Memo dated January 29, 1986)
Summary Audit Report re: Farmers State Bank, St. Joseph Missouri, St. Joseph, Missouri, AP-461 (Memo dated January 28, 1986)
Summary Audit Report re: State Bank of Alexandria, Alexandria, Nebraska, SR-553 (Memo dated January 6, 1986)
Summary Audit Report re: First State Bank of Elgin, Oregon, Elgin, Oregon, AP-454 (Memo dated January 7, 1986)
Summary Audit Report re: The Peoples National Bank of Lampasas, Lampasas, Texas, AP-456 (Memo dated January 13, 1986)
Summary Audit Report re: Chicago Regional Office, Cost Center—3200 (Memo dated January 17, 1986)
Summary Audit Report re: Midland Consolidated Office, Cost Center—3440 (Memo dated January 17, 1986)

Reports of the Director, Division of Liquidation:

Memorandum re: Loan Sales—Reports Due Under Delegated Authority
Memorandum re: Quarterly Report for Actions Approved Under Delegated Authority as of September 30, 1985.

Discussion Agenda:

Memorandum and resolution re: Notice of an extension to September 8, 1986 of the time which the Corporation may take under its internal policy statement for the consideration, adoption and publication of a final amendment to Part 332 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," which amendment, as proposed, would, among other things, prohibit insured banks, subject to certain exceptions, from directly engaging in real estate development and insurance underwriting activities and establish

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certain restrictions on the indirect conduct of such activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: February 14, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–3773 Filed 2–18–86; 12:48 pm]

BILLING CODE 6714–01–M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, February 24, 1986, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Lewis County Savings and Loan Company, an operating noninsured industrial bank located at 119 East Second Street, Weston, West Virginia.

Applications for consent to transfer assets in consideration of the assumption of deposit liabilities:

Valley National Bank, The Household Bank, Salinas, California, for consent to transfer certain assets to The Household Bank, f.s.b., Westminster, California, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in Valley National Bank, The Household Bank.

Household Aurora Industrial Bank, Aurora, Colorado; Household Weld County Industrial Bank, Greeley, Colorado; and Household Longmont Industrial Bank, Longmont, Colorado, for consent to transfer certain assets to The Household Bank, f.s.b., Westminster, California, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in Household Aurora Industrial Bank, Household Weld County Industrial Bank, and Household Longmont Industrial Bank.

Memorandum regarding the Corporation's assistance agreements with insured banks.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: February 14, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–3774 Filed 2–18–86; 12:49 pm]

BILLING CODE 6714–01–M

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 25, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, February 27, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates or Future Meetings
Correction and Approval of Minutes
Draft AO 1986–4 Emmett W. Hines, Jr., Armstrong World Industries
Draft AO 1986–5 Donald J. Messaglia, The Barnes for Congress Committee
1986 Legislative Recommendations
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86–3839 Filed 2–18–86; 3:29 pm]

BILLING CODE 6715–01–M

4

FEDERAL MINE SAFETY AND HEALTH COMMISSION

February 14, 1986.

TIME AND DATE: 2:00 p.m., Wednesday, February 12, 1986.

PLACE: Room 600, 1730 K St., NW., Washington, DC.

STATUS: Open.

MATTERS CONSIDERED: In addition to the already published items heard, the Commission also discussed the following:

2. Robert Simpson v. Kenta Energy, Inc., and Roy Dan Jackson, Docket No. KENT 83–155–D, (Consideration of a procedural motion.)

3. Pyro Mining Company, Docket No. KENT 83–212, (Consideration of a remand from the United State Court of Appeals for the Sixth Circuit.)

It was determined by a unanimous vote of Commissioners that these items be included in the meeting and that no earlier announcement of the additions was possible. 5 U.S.C. 552(b)(e)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, 202–653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86–3772 Filed 2–18–86; 12:47 pm]

BILLING CODE 6735–01–M

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FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, February 24, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–3704 Filed 2–18–86; 8:54 am]

BILLING CODE 6210–01–M

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SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 5009 February 10, 1986].

STATUS: Close/open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, February 3, 1986.

CHANGE IN THE MEETING: Additional meeting/deletion.

The following item was considered at a closed meeting held on Monday, February 10, 1986, at 3:00 p.m.

Settlement of injunctive action.

The following items were not considered at an open meeting scheduled for Thursday, February 13, 1986, at 10:00 a.m.

1. Consideration of whether to withdraw Temporary Exemptive Rule 206A–1(T) under the Investment Advisers Act of 1940 for certain broker-dealers which, by its terms, expired. For further information, please contact Stephanie M. Monaco at (202) 272–2031.

2. Consideration of whether to propose for public comment Rule 202(a)(1)–1 under the Investment Advisers Act of 1940 which would deem a transaction not resulting in a change of actual control or management of an investment adviser not to be an "assignment" requiring approval of the adviser's clients. For further information, please contact Stepanie M. Monaco at (202) 272–2031.

Commissioner Cox, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272–3195.

Dated: February 13, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–3696 Filed 2–14–86; 4:15 pm]

BILLING CODE 8010–01–M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 17, 1986.

Open meetings will be held on Wednesday, February 19, 1986, at 10:00 a.m. and on Thursday, February 20, 1986, at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4),, (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, February 19, 1986, at 10:00 a.m., will be:

The Commission will meet with representatives of the legal, financial, and business communities to discuss issues of mutual interest and concern, including, but not limited to, market rumors, trading halts, and the disclosure obligations of issuers under the securities laws and exchange listing agreements. For further information, please contact Alan L. Dye at (202) 272–2014.

The subject matter of the open meeting scheduled for Thursday, February 20, 1986, at 10:00 a.m., will be:

1. Consideration of whether to authorize the Division of Investment Management to seek the views of the North American Securities Administrator Association on certain draft rule proposals and draft legislation affecting the Commission's administration of the Investment Advisers Act of 1940 ("Act"). The draft rule proposals would exempt from federal registration certain classes of small investment advisory businesses in states that regulate advisers. The draft legislation would (i) clarify the Act's application to publishers, (ii) specifically authorize the Commission to regulate advertising and custody, (iii) impose new fees on registrants, (iv) grant explicit authority to prescribe the form of filings and records made pursuant to the Act and (v) facilitate sharing of adviser inspection and investigation information with state and federal law enforcement officials. For further information, please contact Carol H.I. Martin at (202) 272–3031.

2. Consideration of whether to propose for public comment Rule 202(a)(1)–1 under the Investment Advisers Act of 1940 which would deem a transaction not resulting in a change of actual control or management of an investment adviser not to be an "assignment" requiring approval of the adviser's clients. For further information, please contact Stepanie M. Monaco at (202) 272–2031.

3. Consideration of a proposed rule change submitted by the National Association of Securities Dealers ("NASD") to establish a charge of $79.00 per month per subscriber terminal receiving full quotation information in NASDAQ securities through vendors other than the NASD. For further information, please contact William W. Uchimoto at (202) 272–2409.

The subject matter of the closed meeting scheduled for Thursday, February 20, 1986 following the 10:00 a.m. open meeting, will be:

Formal order of investigation.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administration proceeding of an enforcement nature.
Institution of injunctive actions.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald A. Schy at (202) 272–2468.

Dated: February 11, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–3697 Filed 2–14–86; 4:16 pm]

BILLING CODE 8010–01–M

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federal register

Thursday
February 20, 1986

Part II

Environmental Protection Agency

40 CFR Part 251

Guideline for Federal Procurement of Asphalt Materials Containing Ground Tire Rubber for Construction and Rehabilitation of Paved Surfaces; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 251

[SWH-FRL 2939-8]

Guideline for Federal Procurement of Asphalt Materials Containing Ground Tire Rubber for Construction and Rehabilitation of Paved Surfaces

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing a guideline for Federal procurement of asphalt materials containing ground tire rubber for construction and rehabilitation of paved surfaces. The guideline implements section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). Section 6002 states that if an agency uses appropriated Federal funds to purchase certain designated items, such items must contain the highest percentage of recovered materials practicable. EPA is required to designate items subject to the requirements of section 6002 and to issue guidelines to assist procuring agencies in complying with these requirements.

DATE: EPA will accept public comments on this proposed guideline until April 21, 1986.

ADDRESS: Comments on this proposed guideline should be mailed to the Docket Clerk [Docket No. 6002, Asphalt-Rubber Procurement Guideline], Office of Solid Waste, WH-565A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments received by EPA may be inspected in Room S-212, U.S. EPA, 401 M Street SW., Washington, DC from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

SUPPLEMENTARY INFORMATION:

I. Authority

This guideline is proposed under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

Purpose and Scope

The Environmental Protection Agency (EPA) today is proposing the third of a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA" or "Act"), 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses appropriated Federal funds to purchase certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate these items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230). A second guideline, for paper and paper products containing recovered materials, was proposed on April 9, 1985 (50 FR 14076). This proposed guideline applies to procurement of certain asphalt materials containing ground scrap tire rubber used for construction and rehabilitation of paved surfaces.

Requirements of Section 6002

Section 6002 of the Act, titled Federal Procurement, directs all procuring agencies which use appropriated Federal funds to procure items containing the highest percentage of recovered materials practicable, provide that reasonable levels of competition, cost, availability, and technical performance are maintained. This requirement applies only to those items (or products) which are designated by EPA under section 6002(e). Further, the requirement only applies when the purchase price of the item exceeds $10,000 or when the cost of such items purchased during the preceding year exceeded $10,000.

Federal procuring agencies responsible for drafting or reviewing specifications are required to review and revise their specifications for items designated by EPA in order to eliminate any unfair discrimination against the use of recovered materials. They must remove requirements that items be manufactured from virgin materials and remove unreasonable prohibitions against the use of recovered materials.

Vendors are required to estimate the percentage of recovered materials to be utilized for the performance of the contract and to certify that it is at least the amount called for by the specifications or other contractual requirements.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 (HSWA) added paragraph (i) to section 6002 of RCRA. This new provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program, which must be consistent with Federal procurement requirements, must contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Section 6002 gives the Environmental Protection Agency responsibility for promulgating guidelines to assist procuring agencies in carrying out these requirements. The EPA guidelines must designate those products which can be produced with recovered materials and whose procurement by procuring agencies will fulfill RCRA objectives. The EPA guidelines must also provide specific recommendations with respect to the procurement of products containing recovered materials.

Section 6002 is aimed at reducing the quantity of materials in the solid waste stream. Since Federal procurement of products made from recovered materials can demonstrate their technical and economic viability, it will promote usage of these materials by Federal, State, and local agencies, and thereby encourage their removal from the solid waste stream.

Rationale for Selecting Aspholt Materials Containing Ground Tire Rubber for a Procurement Guideline

In the preamble to the fly ash guideline, EPA established criteria for the selection of procurement items for which guidelines will be prepared. However, section 6002(e) of RCRA, as amended by HSWA, specifically directs the EPA Administrator to issue procurement guidelines for tires. The Congressional conference committee report on HSWA specifies that the term "tires" includes asphalt materials containing recycled rubber. [Cong. Rec. H 11138 (Oct. 3, 1984)]. Since Congress already has designated this product as an appropriate subject for a procurement guideline, it is not necessary for EPA to demonstrate in this preamble that it satisfies the EPA criteria.

Guidelines for Other Uses of Scrap Tires

The Congressional conference committee report also states that the term "tires" in section 6002(e) includes the use of retreaded tires. In addition, EPA is directed to investigate other uses of scrap tires such as in construction of artificial reefs. [Cong. Rec. H11138 (Oct. 3, 1984)].

EPA is gathering information on retread tire procurement programs in order to determine whether a Federal guideline is advisable. In addition, EPA has researched use of scrap tires in construction of artificial reefs and has determined that no Federal procurement is involved. Therefore, EPA will not issue a guideline for this item; however, EPA encourages state and local governments to continue using scrap tires in such an innovative manner.

III. Background Information on Using Ground Tire Rubber in Asphalt Materials

Scrap automotive and truck tires contribute approximately 240 million units (about 2 million tons) of solid waste to be disposed of annually. Some of these tires can be removed from the solid waste stream by recycling the rubber for use in other applications. One such application is the use of ground tire rubber in asphalt materials for construction and maintenance of paved surfaces.

Asphalt cement, cutback asphalt, and emulsified asphalts are the most common asphalt products used by the paving industry. They are used in a variety of applications. Several of these applications can incorporate recycled rubber, including seal coats (stress absorbing membranes), stress absorbing membrane interlayers, asphalt concrete, crack and joint sealants, and waterproof pavement underlayers.

While the tonnage of ground tire rubber used as a component of asphalt materials is not precisely known, it is known that asphalt materials containing ground tire rubber have been used in projects in the United States since the mid 1960's. For example, rubber filled asphalt concrete has been used in the United States for six years. Rubber modified asphalt concrete has been used in Europe for at least 15 years and in the United States for about 6 years. It is estimated that at a minimum, 39 states, Canada, Australia, and African and European countries have used some form of recycled rubber in asphalt mixtures.

Seal Coats (Stress Absorbing Membranes)

Conventional seal coats (also known as stress absorbing membranes) consist of spraying a layer of asphalt and spreading aggregate chips onto a road surface. The road surface can be an old pavement surface or a prepared base course. The treatment is used widely to seal existing surfaces to prevent water intrusion into the underlying system and to provide a skid resistant surface. Seal coats have been used on all types of pavements, ranging from the lowest volume streets and roads to higher capacity highways to commercial and military airport runways and paved surfaces.

Asphalt materials containing ground tire rubber have been used as a seal coat (stress absorbing membrane). They have been demonstrated to be effective in preventing certain types of pavement cracking by placing on the surface a membrane which is waterproof, elastic, stress-absorbing, and strain-absorbing. The membrane also reduces the susceptibility of the pavement to oxidation and temperature changes.

Stress Absorbing Membrane Interlayers

Stress absorbing membrane interlayers (SAMIs) are intended to reduce reflection cracking of asphalt overlays over existing pavement surfaces. Reflection cracking is a form of distress that occurs when cracks in the existing surface (asphalt or Portland cement concrete) occur in a recently placed overlay layer of asphalt concrete. Interlayers are placed between the existing surface and the new overlay to reduce and to retard this reflection cracking.[2]

Asphalt materials containing ground tire rubber have been used as an interlayer between existing pavement surfaces and new overlays in both highways and airfield pavements. The material has the same composition as that used for seal coats.

Asphalt Concrete

Ground tire rubber can be used either as a binder or as a filler in asphalt concrete.

(a) *Binder for Asphalt Concrete.* Pre-treated asphalt rubber is used as a binder for asphalt concrete, both dense and open-graded. The more viscous product creates thicker films that allow an increase in binder content of 15 to 20 percent above the amount of conventional asphalt binders. It is not necessary to modify the aggregate gradation.

(b) *Filler for Asphalt Concrete.* Ground tire rubber can also be used as an aggregate in asphalt concrete. This application generally uses 3 percent ground tire rubber by weight of the total mix (30 to 35 percent by weight of asphalt and rubber). The rubber replaces and acts as aggregate in the mix. This rubber is incorporated with the mineral aggregates and asphalt at the time of mixing these components at any conventional plant. This process is commonly known as rubber modified asphalt.

Sealants

Sealants are used to fill and to seal cracks and joints in paved surfaces. Sealing prevents intrusion of water and foreign material and extrusion of fines and subbase, thereby increasing pavement life and reducing maintenance costs. Sealants are used on both asphalt concrete and Portland cement concrete pavements.

Asphalt materials containing ground tire rubber are widely used as a crack and joint sealant. Ground tire rubber is added to hot asphalt cement to produce a blend. Fifteen or more percent rubber by weight is used. The blend is usually produced from a master batch of concentrated materials manufactured in a central location and sold to users. This concentrate is heated at the job site prior to filling cracks or joints. The blend can be applied by contractors or by highway agency personnel.

Waterproof Pavement Underlayers

A hot applied membrane of asphalt containing ground tire rubber may be spray applied directly to the compacted subgrade soil under a pavement and/or shoulders. The resultant waterproof membrane prevents water intrusion from the top or sides into the soil, thus protecting the strength of the total pavement structure.

Other Uses

Ground tire rubber can be used for other applications, as well, including geomembranes for pond liners, flat deck roofing materials, bridge deck membranes, and certain athletic and safety uses.

Limitations

The initial purchase price of asphalt materials containing ground tire rubber may be higher than conventional asphalt. However, on a life-cycle cost basis, these materials may be more economical than conventional asphalt materials. There is evidence that (1) they are more durable and (2) pavements containing ground tire rubber require less maintenance than conventional pavements. For example,

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life-cycle cost evaluations done by the City of Phoenix, Arizona have proven asphalt rubber systems to be cost effective.[2]

In addition, ground tire rubber cannot be used in all asphalt paving applications, nor can all ground tire rubber be used with all asphalts for given applications where asphalt rubber or rubber filled asphalt concrete has been found effective. Some asphalts and certain recycled rubbers are not compatible from a physio-chemical point of view. Reasons for this are not fully understood, but experience has shown this to be the case often enough that a determination of compatibility is required for each use. Presently, suppliers of asphalt materials containing recycled rubber make these compatibility determinations.

IV. Discussion of Guideline

This section of the preamble summarizes and explains the basis for each section of the guideline.

Purpose

The purpose of this proposed guideline is to increase the use of ground tire rubber in asphalt materials which are purchased with Federal funds for use in highway construction and maintenance. Ground tire rubber is produced by recycling used automotive and truck tires that would ordinarily be disposed of by placement in landfills or by other disposal procedures. Increased use in asphalt materials should help to remove tires from the solid waste stream. At the same time, such use will assist in conserving both energy and natural resources used in constructing and maintaining pavement systems. Cost savings may be possible if the product produced is superior to conventional asphalt concrete products.

This proposed guideline is intended to foster the use of recycled tire rubber in federally-funded construction. Increased demand should improve the marketability of ground tire rubber and promote wider acceptance of it as a component in asphalt materials used in pavement construction and maintenance. This, together with the possible cost savings from reduced maintenance when asphalt materials containing ground tire rubber are used, may result in its more widespread use in non-federally funded construction as well.

Although the guidelines contain recommendations rather than requirements, EPA is of the opinion that compliance with the guidelines constitutes compliance with the statute. However, there may be alternative methods of complying with the statute not specifically addressed by the guidelines.

Scope

The scope of this guideline is limited to the use of ground tire rubber in certain asphalt materials used in construction and rehabilitation of paved surfaces. The guideline identifies five uses of asphalt materials containing ground tire rubber: joint and crack sealants, seal coats (stress absorbing membranes), stress absorbing membrane interlayers, asphalt concrete (both rubber binders and rubber modified), and waterproof pavement underlayers.

Applicability

The requirements of section 6002 apply, for the most part, to procuring agencies. The term "procuring agency" is defined by the Act as "any Federal agency, or any State agency, or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." The requirements of section 6002 apply when a procuring agency's purchases of an item exceed $10,000, or when the cost of functionally equivalent purchases in the preceding fiscal year exceeded $10,000.

(1) Procuring Agency

(a) *Direct Purchases.* With regard to direct purchases, there are several situations to which the Agency believes this guideline would apply. Although the language on applicability in section 6002 leaves room for interpretation, the Agency believes the recommendations here best describe the intent and practical applications of section 6002.

The first is where a Federal agency or other authority using Federal funds purchases ground tire rubber, to be mixed with asphalt. The agency may use this material, or it may supply these materials to other persons, or the materials may be used by persons performing construction services for the agency. An example of this occurs when the Department of Defense, Army, purchases ground tire rubber for use on a construction job, or its general contractor or subcontractor purchases these materials for use on such a job. The guideline would apply in each of these situations.

A second case occurs when pre-mixed asphalt materials containing ground tire rubber are purchased directly by a Federal agency. The same scenarios applied to direct purchases of ground tire rubber apply here. If a Federal agency purchases asphalt rubber materials for its own use or, more likely, if a person under contract to or in support of a Federal agency purchases these materials, then the provisions of this guideline would apply.

(b) *Indirect Purchases.* Indirect purchases of asphalt materials by Federal or other procuring agencies also would be subject to this guideline. This is where the coverage of the term "procuring agency" becomes critical. Foremost among indirect consumers of asphalt materials is the Department of Transportation (including the Federal Highway Administration, the Federal Aviation Administration, and the Urban Mass Transit Administration). All these agencies are involved in the Federal funding of construction programs for or through state and local government authorities.

Any purchase of at least $10,000 worth of asphalt materials by States and localities or their contractors, subcontractors, grantees, or other persons which is funded by grants, loans, funds, or similar forms of disbursement of monies from Federal agencies would also be subject to the provisions of this guideline.

(2) $10,000 Threshold

Section 6002 and this guideline only apply when the purchase price of an item exceeds $10,000 or when the quantity of such items purchased during the preceding year exceeded $10,000. Clearly, the guideline applies when a procuring agency directly purchases more than $10,000 worth of asphalt paving materials for a designated item during the course of any fiscal year. This requirement is more difficult to interpret, however, when a procuring agency purchases asphalt paving materials "services," which would not only involve the supply of the product but also placement, finishing, etc. Even more complex is the common case where a contractor is assigned all construction activities for a particular agency project, including subcontracting authority for paving work. In such cases, the actual cost of the paving materials may not be readily determinable.

EPA leaves it to the discretion of the procuring agency as to the appropriate method for identifying the cost of asphalt materials for purposes of determining the applicability of RCRA Section 6002 and this guideline. EPA urges agencies to keep in mind the intent of RCRA, i.e., increased use of recovered materials, in developing their approach to determining RCRA's applicability. Imposition of new paperwork or estimation procedures for this purpose should be avoided.

Definitions

Most of the definitions used in this guideline are the same definitions used in RCRA and therefore do not require further explanation. Other definitions, such as "asphalt materials containing ground tire rubber," incorporate standard industry definitions.

The guideline recommends that procuring agencies use asphalt materials containing ground tire rubber whenever such use would be "technically appropriate and economically feasible." The proposed guideline defines the term "technically appropriate and economically feasible" by five criteria: (1) There is an American Society for Testing and Materials (ASTM) or American Association of State Highway and Transportation Officials (AASHTO) specification for a designated application of asphalt materials containing ground tire rubber, (2) the materials meet the specification, (3) the materials will be reasonably available to the procuring agency within a reasonable period of time, (4) the materials are available at a reasonable price, and (5) a satisfactory level of competition will be maintained. As discussed later in this preamble, these criteria are limitations on the requirement to procure asphalt materials containing ground tire rubber. Therefore, if these limitations are satisfied, it should be technically appropriate and economically feasible to use asphalt materials containing ground tire rubber.

Specifications

Section 6002(d) of the Act requires revision of all specifications for procurement items designated under Section 6002 for which Federal agencies have drafting and review responsibility so that they no longer exclude the use of recycled materials (in this case, ground tire rubber) or require use of virgin materials, and so that they incorporate the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the items.

While this requirement applies nominally only to Federal agencies, EPA believes that the elimination of specifications which unreasonably discriminate against the use of ground tire rubber is implicitly required by the affirmative procurement provisions of sections 6002(c) and (i) as well. A procuring agency could not realistically fulfill its section 6002(c) and (i) obligation to procure items composed of the highest percentage of recovered materials practicable if, in procuring asphalt paving materials, it relied upon specifications which unreasonably discriminated against ground tire rubber use. Accordingly, EPA construes the specifications requirement to apply to all procuring agencies.

EPA recommends that the specifications identify the pavement construction and rehabilitation uses for which asphalt materials containing ground tire rubber are appropriate. Thereafter, the contract specifications for individual construction/rehabilitation projects must allow these materials to be used as long as such use is technically appropriate and economically feasible.

Procuring agencies are reminded that section 6002(d) of RCRA requires all Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies to revise such specifications no later than eighteen (18) months after the enactment of HSWA (i.e., by May 8, 1986).

Federal specifications and national consensus standards (i.e., ASTM or AASHTO standards) currently exist for the use of asphalt paving materials in general and for asphalt crack and joint sealants containing ground tire rubber. However there are currently no consensus standards for the other designated uses of asphalt containing ground tire rubber, namely: stress absorbing membranes, stress absorbing membrane interlayers, waterproof pavement underlayers, and asphalt concrete. Although national consensus standards have not yet been written for these other uses, there are many state specifications for them. These are included as Appendix A to this guideline. Procuring agencies should find it helpful to make maximum use of these specifications.

Affirmative Procurement Program

RCRA section 6002(i) requires procuring agencies to adopt an affirmative procurement program to ensure that designated procurement items containing recovered materials are purchased to the maximum extent practicable. The program must be developed within one year after the promulgation of this guideline and must contain four elements: (1) A preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification; and (4) procedures for annual review and monitoring of the program's effectiveness.

(1) Preference Program

Under section 6002(i), procuring agencies have three options for implementing the preference program. They can employ a case-by-case approach, adopt minimum content standards, or choose a substantially equivalent alternative.

(a) *Case-by-case Approach.* The case-by-case approach applies to contract awards. Under this approach, vendors of items not containing recovered materials compete with vendors of items that do contain recovered materials. The contract is awarded to the lowest priced responsible bidder. In the case of identical bids, the contract is awarded to the responsible bidder offering to provide the highest percentage of recovered materials.

EPA believes that the case-by-case approach is inappropriate for procurement of asphalt materials containing ground tire rubber. Decisions to use these materials are made by the project engineer prior to issuance of the bid solicitation. Asphalt materials containing ground tire rubber may be the preferred material for the job, in which case the bid solicitation will not include other materials. In addition, the amount of ground tire rubber is limited to a specified amount or range (such as 18–20 percent by weight) suitable for the planned application, so a procurement approach that awards the contract to the vendor offering "the highest percentage of recovered materal" is inappropriate.

(b) *Minimum content standards.* Minimum content standards are specifications which identify the amount of recovered material which a procurement item should contain. It is not possible for EPA to establish minimum ground tire rubber content standards because there is no technical basis for doing so. As before, decisions to use these materials are made by the project engineer prior to issuance of the bid solicitation. For an individual construction or paving project this decision depends on a number of factors, including the costs of the materials and the compatibility of the asphalt and the ground tire rubber. If asphalt rubber is specified in a solicitation a minimum content may also be specified, but EPA knows of no way to make that determination in advance.

(c) *Substantially equivalent approach.* The affirmative procurement program which EPA is recommending in this guideline is one in which procuring agencies require the use of asphalt materials containing ground tire rubber in projects when such use would be technically appropriate and economically feasible. Under the case-by-case approach, the decision to procure these materials is made after bids are received, whereas under the proposed approach, the decision is made prior to issuance of the bid solicitation.

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The bid solicitation or specifications would specifically require asphalt materials containing ground tire rubber.

Asphalt materials containing ground tire rubber currently are used for a limited number of applications, such as those designated by this guideline. Therefore, when preparing the specifications for individual projects, procuring agencies (i.e., project engineers) should determine whether use of asphalt materials containing ground tire rubber is technically appropriate and economically feasible. Such determinations normally will be made by consulting the agency's specifications, which will identify the uses for which asphalt materials containing ground tire rubber are appropriate. If the use is technically appropriate and economically feasible, the contract specifications for the project must specify that asphalt materials containing ground tire rubber will be used.

The recommended procedure is consistent with existing procurement practices. Before a bid solicitation is announced, the project engineer prepares the contract specifications, which contain such items as design, performance, and material requirements for that project. The materials requirements are very specific, identifying alternate materials only when appropriate.

EPA notes that, for the uses designated by this guideline, asphalt materials containing ground tire rubber may be the only appropriate material. The contract specifications therefore may identify only that material, rather than both asphalt concrete and asphalt materials containing ground tire rubber. If both products are equally technically appropriate and economically feasible, then preference must be given to asphalt materials containing ground tire rubber.

Contract awards should be made in accordance with normal bid evaluation procedures—i.e., to the lowest priced responsive, responsible bidder.

The procurement approach recommended by the proposed guideline is subject to five limitations. Four of these limitations appear in section 6002(c) of RCRA. They are (1) maintenance of a satisfactory level of competition, (2) availability within a reasonable period of time, (3) ability to meet the contract specification, and (4) availability at a reasonable price. These limitations are discussed in Section V of this preamble.

The fifth limitation, imposed by this guideline, is the availability of AASHTO and/or ASTM material and construction specifications. A procuring agency can decide not to procure asphalt materials containing ground tire rubber if there are no AASHTO and/or ASTM specifications for the planned application of the materials. The AASHTO and ASTM specifications, which contain acceptance criteria for the materials, usually are adopted by state highway and transportation agencies or used by these agencies as models during specification development. Currently, AASHTO and ASTM have developed specifications only for asphalt rubber materials used as crack and joint sealants. As AASHTO and ASTM specifications are issued for the other items designated by this guideline, procuring agencies must expand their procurement programs to include those items as well.

There are many state specifications for the other uses of asphalt materials containing ground tire rubber designated by this guideline. (See Appendix A.) EPA encourages procuring agencies to use these materials in the other applications, making use of the state specifications and the studies/reports in Appendix B to the proposed guideline to the maximum extent practicable.

(2) Promotion Program

The second requirement of the affirmative procurement program is a promotional effort by procuring agencies. The proposed guideline recommends several methods for procuring agencies to use for disseminating information about their preference programs, such as placing statements in bid solicitations and discussing the program at bidders' conferences.

(3) Estimates, Certification, and Verification

The third requirement of the affirmative procurement program set forth in section 6002(i) concerns estimates, certification, and verification. The procuring agency must require contractors to estimate the total percentage of recovered material used in the performance of the contract and to certify the minimum recovered material content actually used. In addition, the procuring agency must use reasonable verification procedures for estimates and certification. Section 6002(c)(3) contains similar provisions, providing that contracting officers must require vendors to certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual arrangements. Vendors also must estimate the percentage of recovered materials used in the performance of the contract.

EPA believes that the requirements for estimates and certification in sections 6002(i) and 6002(c)(3) are the same; procuring agencies need use only one set of procedures to satisfy these provisions. (See 50 FR 14076, April 9, 1985.) Further, since procuring agencies already use certification procedures as part of their normal procurement procedures, EPA believes that new procedures will not be required to satisfy the RCRA requirements.

(a) *Estimates.* As required by section 6002, the proposed guideline specifies that procuring agencies must require vendors to estimate the percentage of ground tire rubber used in the performance of a contract.

(b) *Certification.* The proposed guideline specifies that procuring agencies must require vendors to certify that the percentage of ground tire rubber included in the asphalt material supplied under the contract meets the contract specification. Rather than requiring these agencies to develop new certification forms and procedures, EPA is recommending simply that existing mechanisms be used for certification of rubber content. For example, certification normally may be done on a per project or per shipment basis. Either type of certification procedure meets the section 6002 requirements.

(c) *Verification.* The proposed guideline recommends that procuring agencies use their normal verification procedures for verifying estimates and certifications. Procuring agencies normally verify that the materials supplied meet the contract specifications by testing materials and/or requiring vendors to establish quality assurance programs.

EPA notes that test methods for verifying that asphalt meets the contract specifications are available. However, these methods are inappropriate for testing asphalt materials containing ground tire rubber. Certain properties of rubber-containing asphalt materials can be tested, but there are no equipment, test methods, and acceptance criteria for testing the rubber/ asphalt mixture as a whole. Rubber and asphalt undergo changes when mixed together and form a new material. Molecular bonding occurs, so that it becomes physically and chemically impossible to separate the rubber from the asphalt. Thus, analytical verification of rubber content is not possible.[3]

Procuring agencies therefore should rely on other methods of verification. In particular, procuring agencies should require vendors to establish and to follow quality assurance/quality control procedures because it is the vendor's responsibility to supply a product that meets the contract specifications. The vendors are responsible for ensuring that the ground tire rubber is tested to determine that it meets the specifications.

(4) Annual Review and Monitoring

The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. The review should include an assessment of the effectiveness of the agency promotion program and an assessment of remaining barriers to procurement of asphalt materials containing ground tire rubber.

V. Recommendations as to Price, Competition, Availability, and Performance

Section 6002(c)(1) provides that the affirmative procurement requirement is subject to four limitations. First, the price of the item must not be unreasonable. Second, a satisfactory level of competition must be maintained. Third, the item must be reasonably available. Fourth, the item must meet the specifications established by the procuring agency.

Price

Section 6002 provides that a procuring agency can decide not to purchase asphalt materials containing ground tire rubber if the price is "unreasonable." This guideline leaves the determination of reasonable price to the discretion of the procuring agency. The procedures contained in applicable provisions of Federal procurement law should be used. However, the Agency cautions against determining reasonableness of price by comparing spot prices for relatively small quantities of asphalt paving materials containing ground tire rubber with competitive bids for volume purchases of conventional paving materials without ground tire rubber.

The costs of asphalt materials containing ground tire rubber initially are higher than the costs of conventional asphalts. However, these materials have a longer life than conventional asphalts and, therefore, have a lower life cycle costs.[4] Therefore, EPA recommends that procuring agencies use life-cycle cost analyses (see Reference 1) containing ground tire rubber.

Competition

The primary purpose of competition is to secure the lowest price for a given product. Federal procurement procedures state that adequate competition is usually presumed to exist if: (i) At least two responsible offerors (ii) who can satisfy the Government's requirement (iii) independently compete for a contract to be awarded (iv) by submitting priced offers responsive to the expressed requirements of solicitation. In addition, the prices should be examined for reasonableness.

Availability and Delays

The Agency does not believe that procuring agencies should have to tolerate any unreasonable delays in obtaining asphalt materials which contain ground tire rubber, other than delays which may be typically associated with asphalt paving projects. As specifications and purchasing practices are revised to allow for the use of ground tire rubber, this material should become more widely available both geographically and in terms of the number of businesses willing and able to supply it. However, if the material is unavailable, procuring agencies are not required to purchase it.

Central tire collection and grinding plants are located throughout the United States. These plants currently produce ground tire rubber in several types and grades adequate for use in some types of pavement construction and maintenance operations. Therefore, EPA does not expect availability to be a problem.

Performance

The issue of reasonable performance is addressed in this preamble under the subsections on "Background Information on Using Ground Tire Rubber in Asphalt" and "Specifications." Additional technical performance information is contained in the "References" section of this guideline.

VI. Regulatory Analysis

Effects

(1) *Environmental Effects.* The proposed guideline will have a positive impact on the environment. More than 500 tires are consumed to produce rubber for a one-lane, one-mile stretch of road. By encouraging the use of ground tire rubber, the guideline should result in a decrease in the number of tires going to landfills or to tire stockpiles.

In addition, the increased use of rubber in asphalt materials will result in reduced generation of solid wastes, air pollutants, and water pollutants. These pollutants are generated during the production of asphalt and the aggregates used in asphalt concrete pavements. To the extent that ground tire rubber replaces the asphalt or the aggregate, these pollutants will be reduced.

(2) *Energy Impacts.* The production of conventional asphalt requires energy-intensive processes such as crude oil production and transportation and asphalt cement production. When asphalt materials contain ground tire rubber, some of the asphalt is replaced with ground rubber, which is less energy-intensive to produce; asphalt rubber production requires only two-thirds of the energy for conventional asphalt concrete production. Thus, increased usage of asphalt materials containing ground tire rubber will result in an energy savings.

Executive Order 12291.

Under Executive Order 12291, EPA must determine whether a regulation is major or nonmajor. The proposed guideline is not a major rule because it is unlikely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Use of asphalt materials containing ground tire rubber for construction and rehabilitation of paved surfaces has not been widespread. While ¾ of the states have used it to some extent as a crack and joint sealant, it has not yet gained universal acceptance in SAMs, SAMis, waterproof underlayers, or asphalt concrete binder or filler. Even when it is used, it is used as a thin (¼"–2") membrane under or over a thick (3"–18") asphalt concrete or Portland cement concrete pavement. Thus, its use represents a small percentage of the materials used in a pavement system.

The price per ton of asphalt materials containing ground tire rubber is currently somewhat higher than the price of conventional asphalt concrete systems. However, because the life of an asphalt rubber product is greater than an asphalt concrete product, there will not be an increase in costs, on a life cycle cost basis, to procuring agencies.

There may be an increase in employment investment in the rubber grinding industry as a result of the proposed guideline. No adverse effects on the asphalt or aggregate producing industries are expected because the amount of asphalt or aggregate replaced by rubber would be small.

EPA has prepared a background document supporting the above analysis. This document may be

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examined at the RCRA Docket Office, during the times identified above under the heading "Address."

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Primarily because of the $10,000 threshold, EPA does not expect a substantial number of small entities to be affected. The Agency also believes that the flexible approach to procurement of asphalt materials containing ground tire rubber provided in the proposed guideline will not impose a significant regulatory or economic burden on small procuring agencies, manufacturers, or vendors. Detailed information on this assessment can be found in the RCRA docket for this guideline.

For the above reasons, I hereby certify that this proposed guideline would not have a signficant economic impact on a substantial number of small entities. This guideline does not, therefore, require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 251

Asphalt rubber, Government procurement, Recycling, Resource recovery.

Dated: February 8, 1985.

Lee M. Thomas,

Administrator.

[1] Monismith, C.L. and Coetzee, N.F., "Analytical Study of Reflection Cracking in Asphalt Concrete Overlay by Use of Rubber Asphalt Interlayer," *TRB Record* #700, pp. 100–106.

[2] Schnormeier, R.H., "Eleven-Year Pavement Condition History of Asphalt Rubber Seals in Phoenix, Arizona."

Schnormeier, R.H., "Use of Asphalt-Rubber on Low-Cost, Low-Volume Streets: A Review After 13 Years," *Transportation* Research Record #898, pp. 344–346.

Schnormeier, R.H., "The Fifteen Year Pavement Condition of Asphalt Rubber Membranes in Phoenix, Arizona."

[3] While there is no nationally accepted method for testing rubber content, test methods are under development. For example, methods for testing rubber content have recently been verified by Western Technologies, Inc., in a study commissioned by the industry and the Arizona Department of Transportation. There are five phases to the entire evaluation, the first three have been completed, and phase III addresses the rubber content problem. (Western Technologies, Inc., "Evaluation of McDonald Compression/Recovery Test, Phase III," April 1985.)

[4] Blais, Ernest J., "Value Engineering Study of Crack and Joint Sealing," Report No. FHWA-TS-84-221, p. 7 (US DOT, December 1984).

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations by adding a new Part 251 reading as follows:

PART 251—GUIDELINE FOR FEDERAL PROCUREMENT OF ASPHALT MATERIALS CONTAINING GROUND TIRE RUBBER FOR CONSTRUCTION AND REHABILITATION OF PAVED SURFACES

Subpart A—Purpose, Applicability, and Definitions

Sec.
251.01 Purpose.
251.02 Designation.
251.03 Applicability.
251.04 Definitions.

Subpart B—Specifications

251.10 Revisions.
251.11 Reference specifications.
251.12 References.

Subpart C—Affirmative Procurement Program

251.20 General.
251.21 Preference program.
251.22 Promotion program.
251.23 Annual review and monitoring.

Subpart D—Certification, Estimates, and Verification

251.30 Recommendations for measurement.
251.31 Recommendations for verification.

Appendix A—State Specifications
Appendix B—References

Authority: Secs. 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

Subpart A—Purpose, Applicability, and Definitions

§ 251.01 Purpose.

(a) The purpose of the guideline is to assist procuring agencies in the procurement of asphalt materials which contain rubber from scrap tires in accordance with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended ("RCRA" or "Act"), 42 U.S.C. 6962.

(b) This guideline contains recommendations for implementing section 6002 requirements, including revisions of specifications and the establishment of an affirmative program for the procurement of asphalt materials containing ground tire rubber. The guideline also makes recommendations for certification and verification procedures.

(c) The agency believes that adherence to the practices recommended in the guideline constitutes compliance with section 6002 of RCRA, as it relates to the purchase of asphalt materials containing ground tire rubber.

§ 251.02 Designation.

EPA hereby designates asphalt materials used for joint and crack sealants, seal coats (stress absorbing membranes), stress absorbing membrane interlayers, asphalt concrete, and waterproof pavement underlayers as product areas for which affirmative procurement actions are required on the part of procuring agencies under the requirements of section 6002 of RCRA.

§ 251.03 Applicability.

(a) This guideline applies to all procuring agencies and to all procurement actions involving purchase of the items listed in § 251.02 where the procuring agency purchases, in total, $10,000 or more worth of these items during the course of a fiscal year, or where the quantity of such items purchased during the preceding fiscal year was $10,000 or more. EPA leaves the precise method of calculating or estimating the applicability of this provision to specific construction activities of a procuring agency to the discretion of that agency.

(b) Procurement actions covered by this guideline include all purchases made directly by a procuring agency or by any person directly in support of work being performed for a procuring agency, as in the case of general construction contractors and/or subcontractors.

(c) Such procurement actions also include any purchases made "indirectly" by a procuring agency, as in the case of purchases resulting from grants, loans, funds, and similar forms of disbursements of monies which the procuring agency intended to be used for the procurement of the items listed in § 251.02.

(d) The guideline does not apply to purchases which are unrelated to or incidental to Federal funding, i.e., not the direct result of a Federal contract, grant, loan, funds disbursement, or agreement with a procuring agency.

§ 251.04 Definitions.

As used in this guideline:

(a) "Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*

(b) "Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

(c) "Asphalt materials containing ground tire rubber" means asphalt material mixed with recycled rubber from scrap automobile, truck, or bus tires. (Solid tires; forklift, aircraft, earthmoving equipment, and other nonautomotive tires; and nontire rubber sources are excluded.) The term includes asphalt rubber (asphalt and rubber that is pre-blended and reacted) and rubber modified asphalt (gap graded mineral aggregate filled with rubber granules).

(d) "Person" means an individual, trust, firm, joint stock company, Federal agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

(e) "Procurement item" means any device, goods, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

(f) "Procuring agency" means any Federal agency, or any State agency, or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

(g) "Specification" means a clear and accurate description of the technical requirement for materials, products, or services, and/or their performance, which specifies the minimum requirement for quality and construction of materials, equipment, and/or performance necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references.

(h) "Technically appropriate and economically feasible" means that (1) there is an American Society for Testing and Materials (ASTM) or American Association of State Highway and Transportation Officials (AASHTO) specification for a designated application of asphalt materials containing ground tire rubber, (2) the materials meet the specification(s), (3) the materials will be reasonably available to the procuring agency within a reasonable period of time, (4) the materials are available at a reasonable price, and (5) a satisfactory level of competition will be maintained.

Subpart B—Specifications

§ 251.10 Revisions.

(a) By May 9, 1986, each Federal agency must assure that its specifications do not unfairly discriminate against the use of ground tire rubber in asphalt materials. Procuring agencies must review and revise specifications, standards, or procedures which currently prohibit using ground tire rubber in asphalt materials or which require that asphalt materials be manufactured from virgin materials to eliminate these restrictions. Procuring agencies also must revise their specifications for the items designated in § 251.02 to require the use of asphalt materials containing ground tire rubber to the maximum extent possible without jeopardizing the intended end use of these items.

(b) Procuring agencies which use reference specifications which are maintained by national organizations, such as AASHTO and ASTM, must review and modify them, if necessary, to remove and discrimination against the use of ground tire rubber in asphalt materials.

§ 251.11 Reference specifications.

Each procuring agency should make use of voluntary consensus standards and state and Federal material specifications for asphalt materials which contain ground tire rubber. A list of current state specifications is provided in Appendix A. The voluntary consensus standards applicable to asphalt-rubber that currently are available are:

(a) *Joint sealers.*

(1) AASHTO M-173—"Concrete Joint-Sealer, Hot-Poured Elastic Type."

(2) ASTM D-3405—"Joint Sealants, Hot-Poured for Concrete and Asphalt Pavements."

(3) ASTM D-1190—"Concrete Joint-Sealer, Hot-Poured Elastic Type."

§ 251.12 References.

Information on using ground tire rubber in asphalt materials is contained in Appendix B. These sources should be consulted in the design and evaluation of the proper blend of ingredients for a given material for a specific use. These sources include an extensive bibliography on the use of ground tire rubber in asphalt materials.

Subpart C—Affirmative Procurement Program

§ 251.20 General.

Within one year after the date of publication of this guideline as a final rule, procuring agencies must develop an affirmative procurement program which will assure that asphalt materials containing ground tire rubber will be purchased to the maximum extent practicable. The affirmative procurement programs must be consistent with applicable provisions of Federal procurement law. This subpart and Subpart D contain EPA's recommendations regarding this affirmative procurement program.

§ 251.21 Preference Program.

(a) EPA recommends the following affirmative procurement program: that procuring agencies require the use of asphalt materials containing the maximum amount of ground tire rubber possible in paved surface construction and rehabilitation projects whenever such use would be technically appropriate and economically feasible.

(b) Award should be made in accordance with an agency's customary award procedures, typically to the lowest priced responsive, responsible bidder.

(c)(1) The recommendations in paragraph (a) are subject to the following limitations provided in section 6002(c)(1) of RCRA:

(i) Maintenance of a satisfactory level of competition.

(ii) Availability within a reasonable period of time.

(iii) Ability to meet the contract specifications.

(iv) Availability at a reasonable price.

(2) In addition, the recommendations in paragraph (a) are subject to the availability of AASHTO and/or ASTM material and construction specifications for asphalt materials containing ground tire rubber.

(d) Procuring agencies should make determinations regarding competition, availability, and price in accordance with applicable procurement law, including appropriate provisions of Title 23 of the Code of Federal Regulations.

§ 251.22 Promotion program.

EPA recommends that procuring agencies use the following methods, at a minimum, to promote their preference programs:

(a) Describe the preference program in asphalt or construction solicitations.

(b) Discuss the preference program at bidders' conferences.

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§ 251.23 Annual review and monitoring.

(a) Each procuring agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(b) EPA recommends that the annual review include the following items:

(1) An assessment of the effectiveness of the program.

(2) An assessment of barriers to purchase of asphalt materials containing ground tire rubber to determine whether they are internal (e.g., resistance to use) or external (e.g., unavailable, technically inappropriate or economically infeasible).

Subpart D—Certification, Estimates, and Verification

§ 251.30 Recommendations for measurement.

(a) The procuring agency must require the vendor to:

(1) Certify that the percentage of ground tire rubber included in the asphalt material supplied under the contract is in accordance with the amount required by specifications referenced in the solicitation or contract. The vendor's certification of ground tire rubber content should not require separate reporting forms, but should make use of existing mechanisms.

(2) Estimate the total percentage of ground tire rubber used in the performance of the contract.

§ 251.31 Recommendations for verification.

The affirmative procurement program must contain reasonable verification procedures for estimates and certifications. Procuring agencies should use their normal procedures for verifying that asphalt materials containing ground tire rubber meet the contract specifications, such as requiring vendors to ensure that the rubber is tested to determine that it meets the specifications. In the case of rubber modified asphalt, the rubber content is an integral part of the user-owner's published key design and the percentage must be met by the contractor receiving the bid.

Appendix A—State specifications

Texas Department of Highways and Public Transportation Special Specification, Item 3288, Hot Asphalt-Rubber Seal Coat.

Arizona Department of Transportation, Highways Division, Special Provisions for Project FR-026-1 (20), Addendum (2).

Arizona Department of Transportation, Special Provisions for Projects IR-40-3(55) and IR-40-3(60), Item 4060053-Asphaltic Concrete (Modified) (Asphalt-Rubber).

Arizona Department of Transportation, Highways Divisions, Special Provisions for Projects F-044-1-913, RSR-594(1) P, and S-390-903.

Maricopa Association of Governments, Arizona, Section 335-Hot Asphalt Rubber Seal.

Oregon Department of Transportation, Specification M 106-85, Asphalt-Rubber Bridge Deck Membrane.

Washington Department of Transportation, Specification M 106-85, Asphalt-Rubber Bridge Deck Membrane.

Appendix B—References

EPA recommends that these documents be used by procuring agencies and those persons wishing to familiarize themselves with issues related to use of asphalt materials containing ground tire rubber.

1. Blais, Ernest J., "Value Engineering Study of Crack and Joint Sealing," Federal Highway Administration Report No. FHWA-TS-84-221, US DOT, Washington, DC, December 1984.

2. Rutherford, Norman, F., "Pavement and Shoulder Maintenance Performance Guides," Federal Highway Administration Report No. FHWA-TS-84-206, US DOT, Washington, DC, August 1984.

3. Rostler, F. S., "An Annotated Bibliography on the Use of Rubber in Asphalt Pavements," Federal Highway Administration Report Number FHWA-RD-72-1, U.S. D.O.T., Washington, D.C. May 1971.

4. Stephens, J. E., and Mokrzewski, S. 7A., "The Effect of Reclaimed Rubber on Bituminous Paving Mixtures," School of Engineering Report CE 74-75, University of Connecticut, Stoors, Connecticut, March 1974.

5. Olsen, R. E., "Rubber-Asphalt Binder for Seal Coat Construction," Implementation Package 73-1, FHWA, 1973.

6. "National Seminar on Asphalt-Rubber," October 1981, San Antonio, Texas, Summary Report, FHWA, D.O.T., Washington, D.C. October 1981.

7. Way, G. R., "Prevention of Reflective Cracking at Minnetonka East (1979 Addendum Report)," Report ADOT-RS015(13), Arizona DOT, August 1979.

8. Shuler, T. S., Pavlovich, R. D., Epps, J. A., and Adams, C. K., "Investigation of Materials and Structural Properties of Asphalt Rubber Paving Mixtures", FHWA Project DTFH61-82-C0074, Federal Highway Administration, Washington, D.C., March 1985.

9. Shuler, T. S., Gallaway, B. M., and Epps, J. A., "Evaluation of Asphalt-Rubber Membrane Field Performance," Texas Transportation Research Report 287-2, May 1982.

10. Oliver, J. W. H., "A Critical Review of the Use of Rubbers and Polymers in Bitumen Bound Paving Materials," Interim Report AIR-1037-1, Australian Research Board, 1977.

11. Pavlovich, R. D., Shuler, T. S., and Rosner, J. C., "Chemical and Physical Properties of Asphalt-Rubber," Report ADOT-RS-15(133), Arizona DOT, November 1979.

12. Green, E. and Tolonen, W. J., "Chemical and Physical Properties of Asphalt-Rubber Mixtures," Report ADOT-RS-14(162), ADOT, July 1977.

13. Shuler, T.S. and Hamberg, D.J., "A Rational Investigation of Asphalt-Rubber Properties," University of New Mexico Engineering Research Institute, August 1980.

14. Jimenez, R.A., "Testing Methods for Asphalt-Rubber," Report ADOT-RS-15(164), ADOT, January 1978

15. Shuler, T.S., Adams, C.K., and Lamborn, M., "Asphalt-Rubber Binder Laboratory Performance," Texas Transportation Institute Research Report 347-1, March 1985.

16. Stokely, James A., and McDonald, C.H., "Hot Rubber-Asphalt Seal Costs to Cure Cracking Streets," July 1972.

17. McDonald, C.H., "Rubberized Asphalt Pavements," presented at the 58th Annual Meeting of the American Association of State Highway Officials, November 27 to December 1, 1972, Phoenix, AZ.

18. McDonald, C.H., "Practical Aspects of the Use of Asphalt-Rubber Compositions in the Prevention of Reflective Cracking," presented for publication in Public Roads, a research publication of the Federal Highway Administration, U.S. Department of Transportation, Washington, DC.

19. Morris, Gene and McDonald, C.H., "Asphalt-Rubber Stress Absorbing Membranes, Field Performance and State of Art," TRB Record #595.

20. McDonald C.H., "Correction of Fatigue Failure in Bituminous Paving as Related to Large Airports," presented at the Airfield Pavement Symposium on Airfield Pavement Maintenance at the Naval Air Station, Alameda, California, September 18 to 22, 1972.

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[FR Doc. 86-3403 Filed 2-19-86; 8:45 am]

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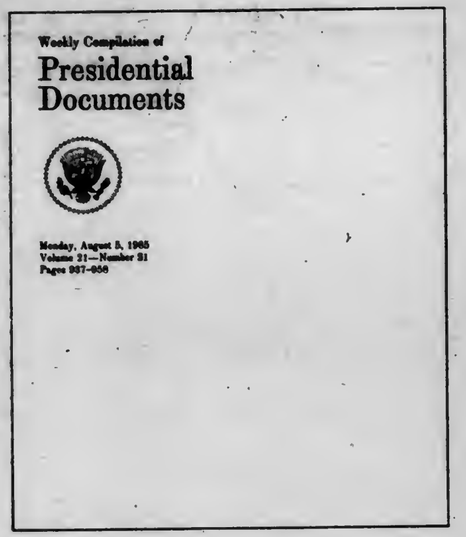
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To amend the Arms Export Control Act to require that congressional vetoes of certain arms export proposals be enacted into law. (Feb. 12, 1986; 100 Stat. 9; 2 pages) Price: $1.00

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85-393]

Ethylene Dibromide; Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations captioned "Subpart-Fruits and Vegetables" by adding provisions to allow for fumigation with ethylene dibromide (EDB) as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, Brazil, and Mexico. This action is necessary in order to provide a mechanism for continuing to allow mangoes to be imported into the United States from the specified places.

EFFECTIVE DATE: The effective date of this document is February 14, 1986. Written comments concerning this interim rule must be received on or before April 22, 1986.

ADDRESSES: Written comments concerning this document should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, USDA, APHIS, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 85-393. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: James Fons, Acting Senior Staff Officer, Technology Analysis and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 671, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8896.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations) regulate the importation of fruits and vegetables into the United States.

Prior to September 17, 1985, regulations in § 319.56-2h provided for fumigation with ethylene dibromide (EDB) in the country of origin as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, and Brazil. Also, prior to September 17, 1985, the regulations in § 319.56-2i contained provisions that provided for fumigation with EDB in Mexico as a condition-of-entry treatment for the importation of mangoes into the United States from Mexico. A document published in the **Federal Register** on September 17, 1985, removed all of these provisions concerning the fumigation of mangoes (50 FR 37637-37638).

The provisions concerning the fumigation of mangoes were removed solely because of action taken by the Environmental Protection Agency (EPA). Prior to September 1, 1985, a tolerance of .03 ppm (in the edible pulp) for residues of EDB per se in or on mangoes had been established by EPA for the use of EDB in foreign countries as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. However, effective September 1, 1985, the tolerance expired, and consequently the tolerance for residues of EDB per se in or on mangoes was zero (see 50 FR 2546-2550). There was no basis for retaining the provisions for fumigation of mangoes since EDB cannot be used as a fumigant for mangoes without leaving residues.

In a document published in the **Federal Register** on February 14, 1986, EPA changed its regulations to again allow a tolerance of .03 ppm (in the edible pulp) for residues of EDB per se in or on mangoes if the fumigant was applied in foreign countries after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture.

Under these circumstances, this document amends the regulations to put back in the regulations all of the fumigation provisions referred to above that were deleted from the regulations by the document of September 17, 1985.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period of this interim rule. It is necessary to make this interim rule effective immediately in order to provide a mechanism for continuing to allow mangoes to be imported into the United States from Central America, the West Indies, Brazil, and Mexico. Importers currently are ready to import mangoes under the provisions of this interim rule.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**.

Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete

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with foreign-based enterprises in domestic or export markets.

As noted above, the provisions concerning the fumigation of mangoes were removed solely because of action taken by EPA. Since EPA has changed its regulations to reestablish the previous provisions allowing residues of EDB in or on mangoes, this document reestablishes the provisions allowing fumigation with EDB as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, Brazil, and Mexico. This action allows mangoes from the specified places to continue to be imported into the United States. The importation of mangoes under the interim rule would not be the primary business activity of any business in the United States.

Also, under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Mangoes, Plant pests, Plant diseases, Plants (agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Under the circumstances referred to above, 7 CFR Part 319 is amended to read as follows:

1. The authority citation for 7 CFR Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51 and 371.2(c).

2. "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) is amended by adding new §§ 319.56–2h and 319.56–2i to read as follows:

§ 319.56–2h Administrative instructions concerning handling and treatment of mangoes from Central America, the West Indies and Brazil.

(a) *Condition of entry.* Fumigation with ethylene dibromide, in accordance with the procedures described in this section, is hereby authorized as a condition-of-entry treatment for mangoes from Central America, the West Indies, and Brazil in connection with the issuance of permits for entry under § 319.56–2.

(b)(1) *Central America.* As used in this section, the term "Central America" means the southern portion of North America from the southern boundary of Mexico to South America, including Guatemala, Belize, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama.

(2) *West Indies.* As used in this section, the term "West Indies" means the foreign islands lying between North and South America, the Caribbean Sea, and the Atlantic Ocean, including, among others, Cuba, Jamaica, Hispaniola, and the Bahama, Leeward, and Windward Islands, but excluding the chain of islands adjacent and parallel to the north coast of South America (the largest of which are Aruba, Curacao, Bonaire, Tortuga, Margarita, Trinidad and Tobago).

(c) *Ports of entry.* Mangoes certified by an inspector as having received treatment in the country of origin under supervision of an inspector, as provided in paragraphs (d) and (e) of this section, may be admitted at any port in the United States.

(d) *Approved fumigation.* (1) The approved fumigation shall consist of fumigation with ethylene dibromide for 2 hours at normal atmospheric pressure, in a tight fumigation chamber which has been approved by an inspector as meeting the criteria specified in this paragraph. The fumigation chamber is acceptable as tight when an open-arm manometer indicates a positive pressure recession from 25 mm. to no less than 2.5 mm. in the open arm in a period of no less than 22 seconds. The ethylene dibromide must be applied as a liquid and volatilized within the sealed fumigation chamber in an electrically heated vaporizing pan. The electrically heated vaporizing pan shall be controlled by a switch outside the chamber and shall be equipped with a signal light to indicate when the current is on or off. Fifteen minutes after all liquid ethylene dibromide has been injected into the vaporizing pan inside the fumigation chamber, the electric current for the vaporizing pan must be turned off, and the 2-hour period of exposure shall begin. The gas shall be circulated within the chamber continuously for the 2-hour period by electric fans or blowers. The fans or blowers must be of a capacity to circulate the entire air mass within the chamber in 1 minute. Post-treatment aeration is required by forced circulation of air in the fumigation chamber for 30 minutes following treatment.

(2)(i) Mangoes treated because of fruit flies of the genus *Anastrepha* from the countries of the West Indies and Central America, except Bermuda, Costa Rica, Nicaragua, and Panama, shall be fumigated in accordance with the following schedule:

Dosage of EDB in ounces per 1,000 ft[3] per 2 hours	Fruit load in chamber[1]		
	50 °F to 60 °F	Above 60 °F to 70 °F	70 °F or above
	oz.	oz.	oz.
25 pct or less	12	10	8
More than 25 pct to 50 pct	14	12	10
50 pct to 80 pct	16	14	12

[1] Percent of chamber capacity.

The temperature shall be that of the fruit. Cubic feet of space shall be that of the unloaded chamber.

(ii) Mangoes treated because of fruit flies of the genus *Anastrepha* and the Mediterranean fruit fly (*Ceratitis capitata* Wiedemann) from the countries of Bermuda, Costa Rica, Nicaragua, and Panama shall be fumigated in accordance with the following schedule:

Dosage of EDB in ounces per 1,000 ft[3] per 2 hours	Fruit load in chamber[1]	
	60 °F to 70 °F	70 °F or above
	oz.	oz.
25 pct or less	10	8
More than 25 pct to 50 pct	12	10
50 pct to 80 pct	14	12

[1] Percent of chamber capacity.

The temperature shall be that of the fruit. Cubic feet of space shall be that of the unloaded chamber.

(iii) Mangoes from Brazil, treated because of *Anastrepha fraterculus* (Wiedemann), *Ceratitus capitata* (Wiedemann), and fruit flies of the genus *Anastrepha*, shall be fumigated in accordance with the following schedule:

Dosage of EDB in ounces per 1,000 ft[3] per 2 hours 70 °F or above	Fruit load in chamber[1] (Ounce)
50 pct or less	16

[1] Percent of chamber capacity.

The temperature shall be that of the fruit. Cubic feet of space shall be that of the unloaded chamber.

(3)(i) Mangoes may be fumigated in accordance with this section if packed in wooden field boxes of prepacked slatted wooden crates with wood excelsior. Individually wrapped mangoes may be fumigated if individually wrapped with conventional citrus tissue. Other containers or wrappers may be approved for fumigation purposes by the Deputy Administrator of Plant Protection and Quarantine if he determines that such containers are of substantially nonabsorbent material with respect to ethylene dibromide, or such wrappers are permeable with respect to ethylene dibromide.

(ii) When loaded in the fumigation chamber, the crates or containers must be stacked evenly over the floor surface, and the crates or containers in a stack shall be separated at least 2 inches on all sides by wooden strips or other means, to insure adequate gas circulation.

(e) *Supervision of treatment.* The treatment approved in this section must be conducted under the supervision of an inspector. The inspector shall require such safeguards in each specific case for unloading and handling of the mangoes at the port of entry, and their handling during fumigation and aeration as required by paragraph (d) of this section and as he deems necessary to prevent the spread of plant pests and assure compliance with the provisions of this section. When treatment is conducted in the country of origin, those in interest must make advance arrangements for supervision and for approval of the fumigation plant in accordance with this section and furnish the Deputy Administrator of Plant Protection and Quarantine with acceptable assurances that they will provide to the U.S. Department of Agriculture funds to cover all salaries, transportation, per diem, and other administrative and incidental expenses for the supervising inspectors, including funds to compensate inspectors for requested inspectional services in excess of 40 hours weekly, according to the rates established for the payment of inspectors of Plant Protection and Quarantine.

(f) *Costs.* All costs of treatment, required safeguards, and supervision, other than the services of the supervising inspector during regularly assigned hours of duty and at the usual place of duty, shall be borne by the owner of the fruit or his representative. When treatment is given in foreign countries, all costs of treatment, required safeguards, and supervision of treatments by the inspector shall be borne by the owner of the fruit or his representative.

(g) *Department not responsible for damage.* The treatments prescribed in paragraph (d) of this section are judged from experimental tests to be safe for use with mangoes. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatments or because of safeguards required under paragraph (e) of this section.

§ 319.56–2i Administrative instructions prescribing method of fumigation of mangoes from Mexico.

(a) *Authorized procedure.* Fumigation of mangoes in Mexico with ethylene dibromide at normal atmospheric pressure, in accordance with the following procedures and as so certified by an inspector, is hereby prescribed as a condition of entry under permit in accordance with § 319.56–2, through ports specified in the permit, for mangoes produced in Mexico. This treatment is specific for fruit flies of the genus *Anastrepha* known to occur in these countries, and will not qualify for entry shipments of fruits therefrom should other dangerous pests of mangoes be found in these countries for which the treatment is not effective.

(b)(1) *Approved fumigation.* (i) The approved fumigation shall consist of fumigation with ethylene dibromide at normal atmospheric pressure in a fumigation chamber which has been approved for that purpose by Plant Protection and Quarantine. The chamber must be equipped with a gastight glass window to permit viewing the electrically heated vaporizing pen inside the chamber while fumigation is in progress, or be provided with an outside signal light to indicate when the vaporizing current is on or off. Plant Protection and Quarantine will approve only those chambers which are properly constructed, satisfactorily maintained, adequately equipped, and at locations where required supervision can be furnished. The chamber load shall not exceed 80 percent of the chamber's volume when mangoes are fumigated.

(ii) The ethylene dibromide, a liquid at ordinary temperatures, must be volatilized within the sealed fumigation chamber in an electrically heated vaporizing pan. The gas within the chamber shall be circulated by an electric fan or blower during the period of volatilization and continuously thereafter during the exposure period. The exposure period shall begin when volatilization is complete. The fan or blower must be of a capacity to circulate the entire air mass within the chamber in 1 minute.

(iii) Mangoes to be fumigated may be fumigated in open field boxes or may be packed prior to fumigation in export flats with wood excelsior. Paper wrappings for individual fruits may not be used for mangoes unless authorized in advance by Plant Protection and Quarantine. When loaded in the fumigation chamber the boxes or containers shall be separated by at least 1 inch on all sides by wooden strips or other means.

(iv) The period of fumigation, the dosage, and the temperature at which the fumigation is applied shall be in accordance with such conditions and procedures as may be prescribed by the Deputy Administrator of Plant Protection and Quarantine, and under the supervision of a Plant Quarantine Inspector of the U.S. Department of Agriculture.

(2) *Supervision of fumigation.* (i) Inspectors of Plant Protection and Quarantine will supervise the fumigation of mangoes in Mexico and will prescribe such safeguards as may be necessary for the handling, packing, and transportation of the fruit from the time it leaves the treating plant until it reaches the U.S. port of entry. The final release of the fruit for entry into the United States will be conditioned upon compliance with the prescribed safeguards.

(ii) Supervision of fumigation at places in Mexico contiguous to ports of entry where inspectors are regularly stationed will, if practicable, be carried out as a part of normal inspection activities and when so available will be furnished without cost to the owner of the fruit or his representative.

(3) *Costs.* All costs of constructing, equipping, maintaining and operating fumigation plants and facilities, and carrying out precautions prescribed for posttreatment safeguards shall be borne by the owner of the fruit or his representative. Where normal inspection activities preclude the furnishing of supervision during regularly assigned hours of duty, supervision will be furnished on a reimbursable overtime basis and the owner of the fruit or his representative will be charged in accordance with §§ 354.1 and 354.2 of this chapter.

(4) *Approval of fumigation plants.* Approval of fumigation plants in Mexico will be contingent upon compliance with the provisions of paragraph (a)(2)(i) of this section and upon the availability of qualified personnel for assignment to supervise the treatment and posttreatment handling of mangoes. Those in interest must make advance arrangements for approval of the fumigation plant and for supervision, and furnish the Deputy Administrator of the appropriate Plant Protection and Quarantine [1] with acceptable

[1] Preliminary inquiries should be directed to the Regional Director, Plant Protection and Quarantine, Apartado Postal No. 615, Monterrey, Nuevo Leon, Mexico.

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assurances that they will provide, to the U.S. Department of Agriculture, funds to cover all salaries, transportation, per diem, and other administrative and incidental expenses for the supervising inspectors, including funds to compensate inspectors for requested inspectional services in excess of 40 hours weekly, according to the rates established for the payment of inspectors of Plant Protection and Quarantine.

(5) *Department not responsible for damage.* While the prescribed treatment is judged from experimental tests to be safe for use with mangoes, the Department assumes no responsibility for any damage sustained through or in the course of treatment, or because of posttreatment safeguards.

Done at Washington, DC, this 14th day of February 1986.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-3755 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 419

[Doc. No. 0070A]

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a Final Rule in the **Federal Register** on Wednesday, June 26, 1985, at 50 FR 26349, revising and reissuing the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1986 and succeeding crop years. Section 419.8 containing the provisions for the Malting Barley Option was inadvertently omitted from these regulations. This notice is published to correct that error.

ADDRESS: Written comments on this correction should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. 85-15342, appearing at page 26350 is corrected as follows:

1. On page 26350, 7 CFR Part 419 is corrected by adding § 419.8 to the Table of Contents to read as follows:

Sec.
419.8 Malting Barley Option.

2. FR Doc. 85-15342, is further corrected by adding § 419.8 to read as follows:

§ 419.8 Malting barley option.

(a) Notwithstanding the provisions of subsection (d) 9c and e of the policy found at § 419.7, an insured producer may, upon submission and approval by the Corporation of a Malting Barley Option Amendment, elect to insure all insurable acreage in which the insured has a share which is grown under contract or agreement with a company in the business of buying Malting Barley: *providing* (1) all acreage of malting barley in the county in which the insured has a share and which is grown under the contract or agreement which is executed by both parties before the acreage report, must be insured, and (2) the Malting Barley Option Amendment will be applicable only for the crop year for which it is submitted. A new Amendment must be submitted for each subsequent crop year.

(b) For those insured who elect to insure malting barley under the Malting Barley Option Amendment, all provisions of the Barley crop insurance policy will apply, except those in conflict with the Amendment. The terms of the Amendment are:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Barley—Crop Insurance Policy
Malting Barley—Option Amendment

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____ Tax _____

It is hereby agreed that a signed Malting Barley Option Amendment will be submitted to us on or before the final date for accepting applications for each crop year you wish to insure your malting barley under this Amendment and upon our approval, the following terms and conditions will apply:

(1) You must have a Federal Crop Insurance Barley Policy (Basic Policy) in force.

(2) All acreage of malting barley in the county in which you have a share grown under contract or agreement (contract) with a company in the business of buying Malting Barley (company) must be insured under this Amendment. All other barley acreage will be insured under the terms of the basic policy. The contract must be executed and binding on both the insured and the company before the acreage report is due.

(3) Failure to submit an Amendment for the crop year will result in your barley being insured under the terms of the basic policy.

(4) Your production guarantee will be based on your actual production history of malting barley.

(5) In lieu of section 9c of the basic policy, the indemnity will be determined on each unit by:

a. Multiplying the number of bushels of malting barley under contract (not to exceed your production guarantee) by your price election for malting barley;

b. Adding to that product the amount obtained by subtracting from your production guarantee the number of bushels under contract, if any, and multiplying that reminder by your price election for other barley;

c. Subtracting from this product, the dollar amount obtained by multiplying the number of bushels of malting barley to count by your price election for malting barley plus the dollar amount obtained by multiplying the number of bushels of barley that does not qualify as Malting Barley to count by your price election for barley under the basic policy;[1] and

d. Multiplying this result by your share.

(6) In lieu of section 9e of the basic policy, the production to count for any acreage designated for malting barley will be adjusted as follows:

a. Any mature production which is not eligible for quality adjustment under subsection (6)(b) will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.0 percent;

b. Any mature harvested malting production, or any appraised production which, due to insurable causes, has a test weight of less than 46 pounds per bushel or as determined by a Federal or State licensed grain grader in accordance with the Official United States Grain Standards, contains less than 95 percent suitable malting types; less than 93 percent sound barley; more than 10 percent thin barley; or more than 2 percent black barley; or is smutty, garlicky, or ergoty shall be adjusted by:

(1) Dividing the value of such barely by the contract price; and

2. Multiplying the results by the number of bushels of harvested or appraised production.

(7) If a fixed contract price is not included in your contract with the company, prior to the time acreage report is due, we will determine the contract price.

(8) Notwithstanding the provision of section 17j of the basic policy, we may agree that insurable acreage grown under the provisions of this amendment will be designated as separate unit(s).

(9) Your premium rate for malting barley will be set by the actuarial table.

(10) All provisions of the basic policy not in conflict with this amendment are applicable.

(11) The price election is $____ per bushel. The coverage level election will be the election under your basic barley.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 522(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring barley under the Barley Crop Insurance Regulations (7 CFR Part 419). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the option to insure malting barley, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, administrative tribunal or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested other than the Social Security Number may result in rejection of the option for insuring malting barley, and subsequent denial of any claim for indemnity which may be filed under such option, or may substantially delay acceptance of the Malting Barley Option, and any subsequent claim for indemnity.

3. The Authority Citation for 7 CFR Part 419 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 11, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-3781 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-08-M

[1] To determine Malting Barley to count and Barley to count see subsection 9e of the basic policy.

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 627]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 627 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 21-27, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 627 (§ 907.927) is effective for the period February 21-27, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985-86 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 18, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges is improving. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Arizona, California, Marketing Agreements and orders, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1-19, 48 Stat. 31, as amended 7 U.S.C. 601-674.

2. Section 907.927 Navel Orange Regulation 627 is hereby added to read:

§ 907.927 Navel Orange Regulation 627.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 21, 1986, through February 27, 1986, are established as follows:

(a) *District 1:* 1,400,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons;

Dated: February 19, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-3959 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-23]

Revised Description of the Santa Maria, CA, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the revised description of the Santa Maria, California, Control Zone and Transition Area that was published in the **Federal Register** on December 26, 1985 (50 FR 52767) (Airspace Docket No. 85-AWP-23). This action corrects that error.

EFFECTIVE DATE: 0901 G.m.t., March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Torikai, Airspace Branch, Air Traffic Division, Federal Aviation Administration; 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1649.

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SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-30396 was published on December 26, 1985 which revised the description of the Santa Maria, California, Control Zone and Transition Area. An error was discovered in the description of the Control Zone and Transition Area, and this action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones; Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 85-30396, as published in the Federal Register on December 26, 1985 (50 FR 52767) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1347(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Revised]

2. Section 71.171 is revised as follows:

Santa Maria, CA

"Within a 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.) beginning at lat. 34°50'15" N., long. 120°24'34" W.; clockwise via the 5-mile radius to lat. 34°52'14" N., long. 120°22'31" W.; to lat. 34°51'16" N., long. 120°21'16" W.; to lat. 34°49'32" N., long. 120°23'37" W.; to the point of beginning."

§ 71.181 [Revised]

3. Section 71.181 is revised as follows:

Santa Maria, CA

"That airspace extending upward from 700 feet above the surface beginning at lat. 34°45'08" N., long. 120°20'16" W.; to lat. 34°49'41" N., long. 120°26'12" W.; thence clockwise via the 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.); to lat. 34°54'09" N., long. 120°32'40" W.; to lat. 35°00'50" N., long. 120°37'56" W.; to lat. 35°03'40" N., long. 120°32'36" W.; to lat. 34°58'13" N., long. 120°28'18" W.; thence clockwise via the 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.); to lat. 34°53'41" N., long. 120°22'07" W.; to lat. 34°48'57" N., long. 120°15'57" W.; to the point of beginning."

Issued in Los Angeles, California, on February 11, 1986.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 86-3711 Filed 2-20-86; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 237

Annuities; Lump-Sum Payments; Correction

AGENCY: Railroad Retirement Board.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on January 23, 1986, by adding an instruction to the Federal Register which was inadvertently left out.

EFFECTIVE DATE: January 23, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Drantz, (312) 751-4710.

SUPPLEMENTARY INFORMATION: In FR Doc. 86-1420, published on January 23, 1986, beginning on page 3035, an instruction to remove and reserve Subpart E of Part 237 of the Railroad Retirement Board's regulations was inadvertently left out. The regulation published on January 23, 1986, updated and replaced the information previously contained in Subpart E of Part 237. The purpose of this document is to remove and reserve Subpart E of Part 237.

Accordingly, in FR Doc. 86-1420 on page 3040 in column 3 Part 237 is corrected by adding to action number 2 the following heading and paragraph C:

Subpart E—[Removed and Reserved]

C. Subpart E—Lump-Sum Death Payments consisting of §§ 237.501 through 237.504 is removed and reserved.

Dated: February 14, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-3745 Filed 2-20-86; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium for Oral Suspension

Correction

In FR Doc. 86-2484 beginning on page 4483 in the issue of Wednesday, February 5, 1986, make the following correction:

On page 4483, in § 540.103h(a)(1), the seventh line from the top of the third column should read "contain. Its clavulanate potassium content is satisfactory if".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8069]

Income Taxes; Qualified Conservation Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to Treasury Decision 8069, which was published in the Federal Register on January 14, 1986 (51 FR 1496). Treasury Decision 8069 issued final regulations relating to contributions not in trust of partial interests in property for conservation purposes.

EFFECTIVE DATE: The regulations that are the subject of this correction are effective December 18, 1980. This correction is also effective December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1986, the Federal Register published final regulations relating to contributions not in trust of partial interests in property for conservation purposes. The provisions

set forth in those regulations reflected changes made by the Tax Reform Act of 1984 and the Temporary Tax Provisions, Extension.

Need for Correction

As published, Treasury Decision 8069 contains a typographical error in the text of § 1.170A-14(g)(2) where the subject of conservation contributions made prior to February 12, 1986, is discussed. The correct, and intended, date is February 14, 1986.

Correction of Publication

Accordingly, the publication of Treasury Decision 8069, which was the subject of FR Doc. 86-727 (51 FR 1496), is corrected as follows:

Para. 1. In § 1.170A-14(g)(2) on page 1504, first column, paragraph numbered (2), line 13, the language "February 12," is removed and the language "February 14," is added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-3861 Filed 2-20-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[T.D. 8074]

Income Taxes; Stock Acquisitions and Target Corporation Assets; Section 338 International Aspects

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to Treasury Decision 8074, which was published in the Federal Register on February 12, 1986 (51 FR 5163). Treasury Decision 8074 issued temporary regulations relating to international aspects of section 338 of the Internal Revenue Code of 1954.

EFFECTIVE DATE: The regulations that are the subject of these corrections are effective February 12, 1986. These corrections are also effective February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202-566-3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1986, the Federal Register published temporary regulations relating to international aspects of section 338 of the Internal Revenue Code of 1954, as added by the Tax Equity and Fiscal Responsibility Act of 1982 and amended by the Technical Corrections Act of 1982 and the Tax Reform Act of 1984.

Need for Corrections

As published, Treasury Decision 8074 contains some typographical errors with respect to dates (page 5189, first column, *Examples (1)* and *(2)*(ii)) and in the text of § 1.338-4T(f)(6)(ii) Answer 1 (ii)(C) (page 5196, first column).

Correction of Publication

Accordingly, the publication of Treasury Decision 8074, which is the subject of FR Doc. 86-2951 (51 FR 5163), is corrected as follows:

Para. 1. In § 1.338-5T(j)(7)(vii) on page 5189, first column, *Example (1)*, line 13, and *Example (2)*(ii), line 6, the language "March 15, 1986," is removed and the language "February 12, 1986," is added in its place in both locations.

Para. 2. In § 1.338-4T(f)(6)(ii) Answer 1(ii)(C) on page 5196, first column, paragraph (C), captioned *Certain foreign P group members*, is amended as follows:

(1) In line 4, the language "carryover election if *(1)* it is not subject" is removed and the language "carryover election unless *(1)* it is subject" is added in its place.

(2) In line 11, the language "it does not purchase any of the stock" is removed and the language "it purchases any of the stock" is added in its place.

(3) In line 13, the language "of T or of an affected target, and *(3)* it" is removed and the language "of T or of an affected target, or *(3)* it" is added in its place.

(4) In line 14, the language "does not directly or indirectly hold stock" is removed and the language "directly or indirectly (in the manner described in section 958 (a)) holds stock" is added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-3863 Filed 2-20-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1, 20 and 25

[T.D. 8069]

Income Taxes; Qualified Conservation Contributions

Correction

In FR Doc. 86-727 beginning on page 1496 in the issue of Tuesday, January 14, 1986, make the following corrections:

1. On page 1500, second column, in § 1.170A-14(d)(4)(ii)(A) introductory text, fifth line from the bottom, remove the word "in". In § 1.170A-14(d)(4)(ii)(A)*(3)*, second line, insert the word "in" between "factor" and "an".

2. On page 1504, second column, in § 1.170A-14(g)(4)(ii)(A)*(2)*, fifth line, "of" should read "or".

3. On page 1507, first column, in § 1.170A-14(h)(4), Example (10), sixth line from the bottom, insert the following between "the" and "deduction": "taxpayer's contiguous land, the amount of the". In Example (12), second line, "two-building" should read "two-story building". In the fifteenth line, "or" should read "of". In the twenty-second line, "and" should read "an".

4. On the same page, second column, in Par. 6(c), second line, "and" should read "are". In the third column, in Par. 8(a), fifth line, "of" should read "a". In (b), fourth line, insert the word "an" between "of" and "open".

BILLING CODE 1505-01-M

26 CFR Part 301

[T.D. 8077]

Income Tax; Procedures and Administration; Restrictions on Church Tax Inquiries and Examinations

AGENCY: Internal Revenue Service; Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the procedures for conducting church tax inquiries and examinations. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide guidance concerning the procedures described in the Act and affect church tax inquiries and examinations within the scope of section 7611 of the Internal Revenue Code of 1954 as well as certain other requests for information relating directly or indirectly to churches.

DATES: The regulations apply to all church tax inquiries and examinations beginning after December 31, 1984 and are effective after December 31, 1984. Church examinations commenced prior to January 1, 1985, will be conducted pursuant to section 7605(c) of the Internal Revenue Code of 1954.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington,

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DC 20224 (Attention CC:EE) Telephone 202–566–3938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1985, the **Federal Register** published proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301), in the form of temporary regulations, under section 7611 of the Internal Revenue Code of 1954 (50 FR 9614). The amendments were proposed to conform the regulations to changes made by the addition of section 7611 by section 1033 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 1034–1039). The temporary regulations were accompanied by a notice of proposed rulemaking published in the **Federal Register** on March 11, 1985 (50 FR 9678) soliciting public comments.

Public comments on the proposed regulations were received. A public hearing was held on July 16, 1985. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Public Comments

Commentators suggested that the language of Q and A–3, defining what is a "church" for purposes of the section 7611 procedures, was inadequate in the case of an organization which operates at multiple locations or in the case of an organization composed of various functions some of which may or may not be separately incorporated. The text of Q and A–3 is not changed in these final regulations because the application of the section 7611 procedures to any organization "claiming to be a church" is deemed sufficiently broad to cover those situations where the Internal Revenue Service contacts the organization in a manner inconsistent with the section 7611 procedures on the assumption that the entity is not a church. Any organization claiming to be a church, and thus included under the procedures of section 7611, should advise the Internal Revenue Service of its claim when contacted.

Commentators questioned whether Q and A–5, concerning the extent to which the Internal Revenue Service may use third party records, an Q and A–11, concerning circumstances in which the Internal Revenue Service may, in lieu of an examination, propose to revoke an organization's exemption, were to be applied without regard to the procedures of section 7611. Qs and As 5 and 11, that refer to these situations, each contains specific language which requires the Internal Revenue Service to provide the organization with notice and offer of a conference.

Commentators noted that Q and A–15 provides that the Internal Revenue Service may examine records of a year earlier than the year, or years, specified in the examination notice. An examination of records of an earlier year may be made if material to a determination of exempt status during the period under examination or if material to a determination of unrelated business income tax liability. An examination of records of an earlier year may be necessary, for example, in cases concerning adjustments to basis, depreciation or amortization. The number of years under examination or for which an assessment of tax may be made are limited by section 7611(d)(2); however, section 7611(b)(4) authorizes the examination of any records not specified in the examination notice to the extent necessary to determine tax liability.

Other comments received have been addressed in the Internal Revenue Manual provisions relating to church tax inquiries and examinations.

A change has been made to Q and A–9 in response to a comment suggesting that the Internal Revenue Service be required to request information during the inquiry notice stage in an effort to alleviate the concerns which gave rise to the inquiry.

A change has been made to Q and A–10 in response to a comment that the expansion of an examination should be a result of facts and circumstances which subsequently come to the attention of the Internal Revenue Service after issuance of the notice of examination.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, after careful consideration of all comments received, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Para. 1. The authority for Part 301 continues to read in Part:

Authority: 26 U.S.C. 7805. * * *.

§ 301.7611–1T [Amended]

Para. 2. Section 301.7611–1T is amended by removing "T" from the section number and removing the word "(Temporary)" from the title.

§ 301.7611–1 [Amended]

Para. 3. The last sentence of the first paragraph of A–9 of section 301.7611–1 is amended by removing the words "may also" and adding in their place the words "will generally".

§ 301.7611–1 [Amended]

Para. 4. The last sentence of the second paragraph of A–10 of section 301.7611–1 is amended by removing the words "(see Q and A–9)". The following new sentence is added to the end of that paragraph:

Thus, the Internal Revenue Service is not precluded from expanding its inquiry beyond the concerns expressed in the examination notice (second notice) as a result of facts and circumstances which subsequently come to its attention (including, where appropriate, an expansion of an unrelated business income examination to include questions of tax-exempt status, and vice versa).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: January 28, 1986.

J. Roger Mentz,
Acting Assistant Secretary of the Treasury.

[FR Doc. 86–3864 Filed 2–20–86; 8:45 am]
BILLING CODE 4830–01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action NE 1732; A–5–FRL–2944–3]

Revision to State Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On May 30, 1985, EPA reproposed action on a State Implementation Plan (SIP) revision from Nebraska which deleted the review requirements for complex sources of air pollution from four State regulations. In the May 30 action, EPA proposed to approve the State's deletion of complex source review requirements for all areas of the State except the carbon monoxide (CO) nonattainment areas of Lincoln and Omaha. EPA further proposed to retain these requirements in Lincoln and Omaha until the State can demonstrate that these requirements are unnecessary for attaining and maintaining the CO standards in these two areas.

The purpose of today's notice is to take final action on the May 30 proposed revisions. No comments were received in response to the proposed rulemaking.

EFFECTIVE DATE: This action is effective March 24, 1986.

ADDRESSES: Copies of the State submission are available for review during normal business hours at the following locations:

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460
The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC
Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101
State of Nebraska, Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (913) 236–2893, FTS 757–2893.

SUPPLEMENTARY INFORMATION: On October 6, 1983, the State of Nebraska submitted a SIP revision comprised of amendments to various regulations, including requirements for complex or indirect sources of air pollution. On May 30, 1985, EPA proposed action on the amendments to the complex source review requirements (see 50 FR 23031) and took final action on the remainder of the amended regulations (see 50 FR 23003). Today's action will only discuss the State's amendments to the complex source review requirements.

In the May 30, 1985, notice, EPA proposed to approve the State's deletion of the review requirements in all areas of the State except the Lincoln and Omaha carbon monoxide (CO) nonattainment areas, where the indirect source review program will be retained until the State can demonstrate that the program is unnecessary for attainment and maintenance of the CO standards in these two areas of the State.

A complex or indirect source is a facility which attracts or may attract mobile sources of pollution; e.g., a shopping center or highway. One of the pollutants emitted by mobile sources is CO. The State has reported that the complex source review requirements are ineffective and unnecessary. Only two applications have been reviewed since 1974, and the State has concluded that the program has a minimal impact on control of mobile source emissions.

Section 110(a)(5)(A)(iii) of the Clean Air Act provides that a state may revise its approved SIP to suspend or revoke an indirect source review program included in it, provided that the SIP meets all the substantive and procedural requirements of section 110. EPA believes that the revocation of the indirect source review program (excluding the CO nonattainment plans for Lincoln and Omaha which will be discussed in separate rulemakings) meets the substantive and procedural requirements of Section 110 of the Act. Further, with the exception of the Lincoln and Omaha CO nonattainment areas, all other areas of Nebraska are considered to be in attainment of the CO standards.

On April 12 and May 6, 1985, the State submitted final plan revisions for the Lincoln and Omaha CO nonattainment areas. EPA is taking action on the indirect source review program separately for these two areas in connection with rulemaking on the CO plans.

The October 6, 1983, submission from Nebraska, which is discussed in this rulemaking, was proposed for approval on May 30, 1985 (50 FR 23031). The reader is referred to the proposal for further discussion. No comments were received on the May 30 proposal.

ACTION: EPA approves the State's deletion of the indirect source review requirements, except as they pertain to the Lincoln and Omaha CO nonattainment areas.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Note.—Incorporation by reference of the SIP for the State of Nebraska was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 16, 1985.

Lee M. Thomas,
Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart CC—Nebraska

1. The Authority Citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1420 is amended by adding a new paragraph (c)(32) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(32) Revisions to Chapter 1, "Definitions"; Chapter 4, "Reporting and Operating Permits for Existing Sources; When Required"; and Chapter 5, "New, Modified, and Reconstructed Sources; Standards of Performance, Application for Permit, When Required", were submitted by the Governor on October 6, 1983. These revisions deleted the review requirements for complex sources of air pollution for the entire State. These review requirements were adopted by the State on February 22, 1974 (submitted on February 27, 1974) and were approved by EPA on September 9, 1975. See paragraph (c)(8) above. Approval action was taken on the deletion of these requirements except as they pertain to the Lincoln and Omaha CO nonattainment areas.

[FR Doc. 86–969 Filed 2–20–86; 8:45 am]
BILLING CODE 6560–50–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-273-F]

Medicare Program; Procedures for Determining Whether Providers, Practitioners, or Other Suppliers of Services Are Liable for Certain Noncovered Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These regulations revise the way we apply limitation of liability for certain noncovered services furnished by providers, practitioners, and suppliers of Medicare services under section 1879 of the Social Security Act.

We will no longer apply an administrative mechanism, commonly known as the favorable presumption, in determining whether a hospital, skilled nursing facility, or home health agency should be held liable for furnishing a noncovered service. The decision to make or deny payment for these noncovered provider services will now be made after an analysis of the circumstances, without the use of a presumption as to whether the provider did not know or could not be expected to know that furnished services were noncovered.

EFFECTIVE DATE: This rule is effective for services furnished by providers, practitioners, and suppliers on or after March 24, 1986. Paragraphs (b) and (c) of § 405.334 and paragraphs (b), (c), and (d) of § 405.338 of this rule contain information collection requirements with which the public is not required to comply until the Executive Office of Management and Budget approves those requirements. (See section VI.B of this preamble for a discussion of information collection.)

FOR FURTHER INFORMATION CONTACT: Denis M. Garrison, (301) 594-9435.

SUPPLEMENTARY INFORMATION:

I. Background

Under title XVIII of the Social Security Act (the Act), HCFA pays for covered services furnished to Medicare beneficiaries. In some instances, the Act defines covered and excluded services; in other instances, regulations (42 CFR Part 405, Subpart C) and program instructions distinguish covered from noncovered services. Despite the guidance provided in these materials, circumstances arise that result in bills being submitted by providers, practitioners, and suppliers of services for what are later determined to be noncovered services. A question then arises as to whether the beneficiary, provider, practitioner, supplier, or Medicare should be liable for payment for the furnished care.

Section 1879 of the Act provides financial relief for a beneficiary, provider, practitioner, or supplier by permitting payment in some cases, if a claim is denied because the services are found not to be medically reasonable and necessary under section 1862(a)(1) of the Act, or to constitute custodial care under section 1862(a)(9) of the Act. (These provisions are implemented in our regulations at 42 CFR 405.310(k) and 405.310(g), respectively.) Under section 1879(a) of the Act, if a finding is made that neither the beneficiary nor the provider, practitioner, or supplier, knew or could reasonably have been expected to know that the services were not covered, Medicare will pay the claims. However, under section 1879(b) of the Act, if it is determined that the provider, practitioner, or supplier, but not the beneficiary, knew or could reasonably have been expected to know that the services were not covered, that entity will be held liable for the charges for the denied services. If the provider, practitioner, or supplier seeks and collects payment for these charges from the beneficiary, the program will reimburse the beneficiary, less applicable deductible and coinsurance amounts. These payments are considered overpayments to the provider, or assignee practitioner or supplier and are recovered by us. Under section 1879(c) of the Act, we make no payment if both the beneficiary and the provider, practitioner, or supplier knew or could reasonably have been expected to know that the services were not covered.

Under 42 CFR Part 405, Subpart G, a party found to have knowledge that a furnished Medicare Part A (Hospital Insurance) service was noncovered can obtain a reconsideration of the limitation of liability determination by the appropriate medical review entity (either a Utilization and Quality Control Peer Review Organization (PRO) or an intermediary) that made the initial determination. If $100 or more is at issue, the beneficiary may appeal the reconsidered limitation of liability determination to an administrative law judge (ALJ) and then, if still dissatisfied, to the Appeals Council of the Social Security Administration's Office of Hearings and Appeals. If, at that point, $1,000 or more is still in controversy, the beneficiary may appeal further to a Federal court. The provider has the same appeal rights as the beneficiary on the issue of limitation of liability if the provider is found liable and the beneficiary who made the request for payment will not exercise his or her appeal rights.

Under 42 CFR Part 405, Subpart H, the party found liable for a furnished noncovered Medicare Part B (Supplementary Medical Insurance) service can obtain a review by the intermediary or carrier that made the determination. During that review, the party may argue that its liability should be limited because it did not know and could not reasonably have been expected to know that a furnished service would not be covered because it was not reasonable and necessary or constituted custodial care. 42 CFR Part 405, Subpart H, also provides for a hearing by a carrier hearing officer if $100 or more is still in controversy after the carrier review has been completed.

In 1972, when Congress enacted the limitation of liability provisions in section 1879 of the Act (Section 213 of the Social Security Amendments of 1972, Pub. L. 92-603), providers were not as knowledgeable about Medicare coverage rules as they later became and our written guidelines were not as explicit as they are now. Therefore, we developed a formula to allow providers who usually make correct coverage determinations to be paid for their few incorrect coverage determinations.

In §§ 405.195 andf 405.196, we established five performance criteria for determining whether providers of services are liable for services found to be not medically reasonable and necessary, or found to constitute custodial care. A provider that met those five criteria had the advantage of a presumption (in the absence of specific evidence to the contrary) that it neither knew nor could reasonably have been expected to know of the noncoverage of the items or services. The criteria were as follows:

- The provider complied with applicable standards for utilization review.
- The provider complied with procedures that were designed to assure that bills for payment and medical documentation were submitted in a timely manner.
- The provider established procedures that ensured prompt notification to the beneficiary if the beneficiary was being furnished services or was to be furnished services that were determined by the provider or the intermediary to be noncovered.

- On the basis of the bills it submitted, the provider demonstrated that it could effectively distinguish between cases in which services furnished by the provider were covered under Medicare and cases in which furnished services were not covered under Medicare; that is, the provider's "denial rate" was under a certain level for the previous calendar quarter.
- The provider demonstrated that it was effectively applying conditions for certification and recertification as required by the regulations.

A provider was deemed to have met these five criteria described in §§ 405.195 and 405.196, as follows: If a hospital or a home health agency (HHA) experienced a denial rate of its Medicare claims of five percent or less during a calendar quarter, we presumed during the next calendar quarter that that provider did not know that a particular service was not reasonable and necessary or was custodial in nature. For a skilled nursing facility (SNF), the denial rate could not exceed 10 percent. The denial rate was determined by the percentage of days or visits billed by the provider as covered but that were later determined to be noncovered when the bill was reviewed. Application of this formula, which went into effect in July 1973, became known as the "favorable presumption."

Subsequently, in 1978 over 90 percent of each type of provider had the benefit of the favorable presumption. At that point, we determined that the majority of each type of provider had denial rates significantly lower than the 10 percent standard for SNFs and the five percent standard for hospitals and HHAs that were then in use. This meant that, without adversely affecting many providers, we could lower the denial rates, which would get us closer to the goal of section 1879 of the Act that we pay for noncovered care only if both the provider and the beneficiary did not know and could not reasonably be expected to know that a service is not covered by Medicare. Therefore, we tightened our standards for application of the favorable presumption by lowering the denial rate to five percent for SNFs and to 2.5 percent for hospitals and HHAs. (See Medicare Intermediary Manual, Part 3, Transmittal No. 670, issued April 1978.)

Since that time, use of the favorable presumption has some under increasing scrutiny. Questions have arisen about the continued justification for use of an administrative presumption to determine a provider's liability for services not reasonable and necessary or determined to be custodial care. Various program experiences, changes in the operation of the program (including the prospective payment system for hospitals, as discussed below) and legislative changes since the limitation of liability provision (section 1879 of the Act) was enacted have been cited as reasons why use of the favorable presumption can be ended.

In March 1983, the General Accounting Office (GAO) recommended (GAO/HRD-83-38) that HCFA "establish more stringent eligibility requirements for the application of waiver of liability for health care providers under Part A of Medicare." It is GAO's view, as expressed in the report, that a provider that has participated in Medicare over a period of several years should generally have knowledge of which services are covered, based on its experience with the program. GAO found that tightening the requirements for the limitation of provider liability would achieve savings and increase incentives for providers to furnish only covered care.

In addition, with respect to most hospitals, Medicare payment for inpatient services is now based on the prospective payment system (42 CFR Part 412). Certain aspects of this system have raised additional questions about the continued need to apply the favorable presumption to hospitals. For example—

- Under the prospective payment system, which became effective with hospital cost-reporting periods that began on or after October 1, 1983, hospitals are paid (with some exceptions) in accordance with a predetermined rate for medically necessary services furnished during an inpatient stay, regardless of the number of days of the hospital stay. Consequently, we expect that the number of claims for services denied because part of a hospitalization was not reasonable and necessary, or constituted custodial care, will decline.
- As a result of the expected reduction in the volume of claims involving length of stay denials subject to limitation of liability considerations brought about by the prospective payment system, PROs are in a better position to devote resources to the review of specific denials under the prospective paymant system.

II. Provisions of the Proposed Rule

On February 12, 1985, we published a notice of proposed rulemaking (50 FR 5787) (NPRM or proposed rule) to change the way we apply the limitation of liability provision for providers, practitioners, and suppliers. We did not propose any changes in the way we apply the limitation of liability provisions for beneficiaries.

- We proposed to discontinue use of the favorable presumption in determining whether a provider should have known that a particular service would not be covered because it was not reasonable and necessary or constituted custodial care. We proposed, instead, to make case by case determinations of liability.
- In addition, we proposed that, under both Part A and Part B, a provider, practitioner, or supplier would be deemed to have knowledge that payment cannot be made if an intermediary, carrier, PRO, or utilization review committee had given written notice that there had been a pattern of inappropriate utilization of the same, similar, or reasonably comparable services.
- Finally, we also proposed that knowledge by a provider, practitioner, or supplier could be established based on its specific experience with the Medicare program.

We also proposed specific rules concerning implementation of the patterns of inappropriate utilization provision that, for the reasons discussed in section IV.L., below, we have decided not to finalize.

III. Decision To Discontinue the Favorable Presumption

We have decided that discontinuing use of the favorable presumption, as we proposed to do, is necessary and proper. In arriving at this decision, we have given careful consideration to the comments we received from the public on the proposed rule, and we have analyzed the alternatives suggested in those comments. Our decision is based on many reasons, as discussed throughout this preamble. In addition, we have concluded that discontinuing the favorable presumption will result in significant cost savings to the Medicare program, and second, that the discontinuance will neither adversely affect hospitals, SNFs or HHAs, nor result in any appreciable loss of patient access to care or quality of care.

Following is a summary of the reasons for our decision, all of which are discussed in greater detail below:

- We have observed that, since the favorable presumption was implemented through regulations in 1973, providers working closely with their intermediaries and Professional Standards Review Organizations (or, beginning in 1984, with PROs) have significantly reduced the number of incorrect coverage determinations. This is borne out by the fact that the great

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majority (over 80 percent) of all categories of providers make coverage determinations with almost no errors, as evidenced by their ability to qualify for the favorable presumption. For example, during the period April 1985 through June 1985, 83 percent of hospitals and 82 percent of all HHAs made accurate medical necessity and custodial care coverage decisions in 97.5 percent or more of their bills to Medicare. Eighty-five percent of all SNFs made correct decisions in more than 95 percent of their bills.

- With regard to hospitals, PROs currently review some hospital admissions prior to admission and proposed inpatient procedures. Thus, in more cases, the hospital knows beforehand whether the admission or procedure is covered by Medicare.
- Beginning in October 1983, most hospitals have been paid under the prospective payment system in accordance with a predetermined rate. This rate is based on one of 470 diagnosis-related groups (DRGs). Thus, as long as an admission is covered under Medicare, this minimum payment is made regardless of the number of days of the hospital stay. Consequently, denials of partial stays only occur in extraordinarily long hospital stays. Prior to implementation of the prospective payment system, most hospital denials were related to length of stay. This fact bolsters our conclusion that fewer denials are likely now on that basis. Thus, most hospitals will not be adversely affected by elimination of the favorable presumption.
- The prospective payment system has tended to shorten hospital stays, making it more readily determinable whether the post hospital care will be covered under the Medicare rules. This should result in lowering the number of SNF and HHA bills denied.
- Descriptions of what constitutes covered SNF and HHA levels of care are contained in Medicate regulations (§§ 409.30 through 409.35 and §§ 409.40 through 409.43, respectively) and program manuals.
- HHAs will now be assured of receiving more consistent coverage decisions due to a new Home Health Certification and Plan of Treatment form (HCFA–485). Completion of this form assures that medical information necessary for a proper coverage decision will be submitted initially.
- Under section 1816(e)(4) of the Act, which was amended by section 2328(b) of the Deficit Reduction Act of 1984 (Pub. L. 98–369), HCFA is in the process of transferring the servicing of all free-standing HHAs to 10 regional intermediaries (see 51 FR 5403, February 13, 1986). This change is expected to improve the administration of the home health benefit because we expect more consistent coverage determinations because fewer intermediaries will be making HHA determinations.

Finally, two points of importance must be kept in mind.

- Whenever a provider is in doubt about whether a service is covered, the provider may contact the PRO or intermediary to receive advice.
- It is only the regulatory favorable presumption that we are eliminating. The statutory limitation of liability provision has not been altered. Therefore, providers still may show, on a case by case basis, that they did not know or could not reasonably have been expected to know that services were not covered by Medicare.

IV. Analysis and Response to Public Comments

We received 248 letters about the proposed rule from individuals and organizations. These commenters included providers, members of Congress, associations representing providers, medical associations, an association that represents PROs, an association that represents physical therapists, an intermediary, a legal advocate for the elderly, and a consumer advocate. We discuss the comments and provide our responses below:

A. Coverage Guidelines

Comment: Providers need the leeway for making occasional incorrect coverage decisions that the favorable presumption mechanism affords because HCFA coverage guidelines are unclear and are inconsistently applied by the medical review entities. Also, there is a need for revised national guidelines before the use of the presumption is discontinued.

Response: Generally, it is not difficult to establish the need for the Medicare inpatient hospital benefit.

Since Medicare began in 1966, Congress has always intended, under sections 1862 (a)(1) and (a)(9) of the Act, that the program cover only medically necessary inpatient hospital care. There is a broad consensus concerning which patients should be admitted to hospitals and for how long the patients should remain in the hospital.

In the hospital setting, the publication of specific admission guidelines is already provided because, under section 1154(a)(6) of the Act, the PROs utilize medical criteria based on local norms and practice patterns to screen cases. The medical criteria are provided to hospitals, and, therefore, hospitals are aware of the admission guidelines. Cases in which the admission does not meet the criteria are referred to a physician advisor to determine whether the admission is medically necessary and appropriate, or whether Medicare payment should be denied. In addition, part of PRO review is performed on a preadmission basis and another part on a preprocedure basis (that is, after admittance to the hospital but prior to an inpatient procedure). In these cases, the hospital knows the payment status of the case prior to admission or prior to performance of an inpatient procedure.

When the Medicare statute was enacted, the idea of a skilled nursing facility was a new one and home care was furnished by few HHAs. Over time, the understanding of the nature of these providers and their proper function has grown, and today we believe that the idea of a continuum of care has wide acceptance and that there is general understanding of the points in the treatment of patients at which movement from one level of care to another is appropriate.

Post-hospital extended care (skilled nursing care) was included under Medicare, not as a long term care or nursing home benefit, but as a complementary benefit to hospital care that was intended to substitute for the final days of a hospital stay. In determining whether an individual requires covered skilled nursing care, an SNF's administrative staff is expected to exercise the expertise that they have gathered during their years of participation in the program. It should be noted that HCFA's detailed regulations describing SNF care (see §§ 409.30 through 409.35) are supplemented by manual instructions. These instructions provide examples of what constitutes skilled care, including rehabilitation care; and other requirements for the care; for example, the need for the services to be provided on an inpatient basis as a practical matter. While it is certainly true that medical judgment must be used to apply these guidelines properly, we believe that the staff of an SNF have sufficient understanding of HACF's regulations and administrative procedures so that, after a careful review of the services a patient needs, the staff can determine whether the patient's overall condition and his or her medical needs meet the requirements for covered skilled nursing care. An SNF experienced with Medicare should be able to determine whether the services to be furnished a Medicare patient can only "as a practical matter" be provided in an SNF, as required by section 1814(a)(2)(B) of the Act. Also, SNFs that are new to the Medicare program (or any other new provider as well), or experienced SNFs with borderline cases, can contact the intermediary in advance of providing services to ascertain whether the services would be covered.

Under the Medicare program, home health care is intended as the last stop on the "continuum of care" that frequently begins in the hospital, progresses through the SNF, and ends in the home. Although Congress eliminated the 100 day limit on home health care coverage (section 930(c) of Pub. L. 96–499), it did not eliminate the provisions that make it strictly a medically oriented benefit. The requirements in the Act for home health care state clearly that a patient must be "homebound" and in need of "intermittent" skilled nursing services, or physical therapy or speech therapy services, in order to qualify for coverage (see sections 1814(a)(2)(C), 1835(a)(2)(A), and 1861(m) of the Act).

HCFA has several initiatives underway that will improve the consistency of claims review and the application of coverage guidelines on home health claims. For example, HHAs will be assured that consistent home health benefit coverage decisions are being made by means of a new Home Health Certification and Plan of Treatment form (HCFA–485). The new form, which became effective August 31, 1985, was developed to assure that essential home health medical information is submitted to intermediaries in a consistent fashion to facilitate an appropriate coverage decision. Also, training sessions for all intermediaries and HCFA Regional offices are being held to reinforce their knowledge of coverage rules and to ensure optimum and uniform use of the new form. In addition, under the provisions of section 1816(e)(4) of the Act, HCFA is in the process of the transfering of all free-standing HHAs to 10 regional intermediaries. We expect that the HCFA–485 form and the advent of fewer intermediaries for reviewing HHA claims will improve uniformity in the administration of home health benefits by Medicare.

We pointed out earlier that approximately 85 percent of all SNFs make accurate coverage decisions in more than 95 percent of their bills, and that 83 percent of all hospitals and 82 percent of all HHAs have been able to make accurate coverage decisions in at least 97.5 percent of their bills. Thus, while there may be some room for improvement in applying coverage guidelines to achieve even greater consistency by providers and intermediaries and other medical review entities, our latest data indicate that the vast majority of all providers are applying existing coverage guidelines appropriately. We, therefore, do not perceive a need for revision of the national guidelines that are contained in some detail in the Medicare regulations (§§ 409.10 through 409.43) and the Medicare manuals.

Finally, it must be noted that the limitation of liability provision will still operate to protect a provider from liability in cases where the ambiguity of the situation or a lack of information leads it to make an incorrect decision about Medicare's coverage of the care. In revising these regulations, we are simply ensuring that limitation of liability payments will be confined to those ambiguous situations noted by the commenters and will not be inappropriately made for a broader set of cases merely on the basis of an administrative presumption.

Comment: HCFA should issue criteria for acceptable standards of medical practice to put the provider on notice when services will be considered noncovered. In addition, HCFA should require that PROs publish the criteria that they use in making coverage determinations because PROs employ standards that differ from those formerly used by intermediaries in reviewing claims under the prospective payment system. Also, HCFA is wrong in claiming that hospitals already have knowledge of which services are covered by Medicare.

Response: Since standards of medical practice vary from place to place, it would not be appropriate to attempt to capture them in a regulation with nationwide applicability. However, HCFA does make available to providers and the medical community generally, listings and other informational issuances that specify certain items, services and procedures that are not covered by Medicare. HCFA attempts to inform the medical community on a timely basis whenever changes are made in coverage policy or new medical treatments are either approved or disapproved for payment. Thus, we do not intend to issue national guidelines for determining when care is covered under Medicare in every conceivable situation.

PRO operating procedures already require that a PRO's review criteria be made routinely available to those providers that a PRO reviews. The screening criteria used by PROs are available to hospitals under § 476.120 (50 FR 15361, April 17, 1985). Under this section, a hospital may contact a PRO at any time and request a copy of these criteria. Screening criteria are used by PRO non-physician reviewers to approve hospital admissions or hospital care. Therefore, hospitals are aware of which cases are approvable without further review by the PRO and of those that may not be approved. Hospitals should look closely at the latter as they may well be noncovered. If the reviewer cannot approve a case based on the screening criteria, the reviewer will refer the case to a PRO physician for review. If the PRO physician believes a denial should be made, under § 466.93 (50 FR 15333; April 17, 1985), the attending physician and a physician representing the hospital are also given an opportunity to discuss the case with the PRO physician before the denial is made.

Comment: If the favorable presumption is eliminated, HCFA should create some type of assurance of payment mechanism for providers by publishing specific admission guidelines.

Response: We believe that an assurance of payment mechanism for providers should not be used because providers should have a comprehensive understanding of the Medicare coverage rules, sufficient to make an assurance of payment mechanism unnecessary. We do not believe that a real need for an assurance of payment mechanism exists for hospitals since the PROs already base their decisions on medical criteria based on local practice patterns that have been provided to hospitals. Some PRO review is done on a preadmission basis and some is done prior to inpatient procedures. Therefore, in some cases the hospital would know before an admission or before an inpatient procedure whether the services are covered.

One type of assurance of payment mechanism for SNFs and HHAs was implemented by HCFA under section 228(a) of Pub. L. 92–603. This provision permitted us to establish a presumed period of coverage based on the attending physician's diagnosis. However, although this procedure was developed for certain diagnoses, physicians and providers did not use it, and in 1980 Congress enacted section 941(a) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499), which repealed section 228(a) of Pub. L. 92–603.

Comment: HCFA should not eliminate the favorable presumption for HHAs due to a lack of clarity and consistency in coverage determinations regarding whether patients are "homebound" or whether skilled nursing and home health aide sevices are "intermittent". HHAs should not be held liable for the costs of

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denials on these bases absent clear and consistently applied policy.

Response: We disagree that currently there is an absence of clarity with respect to coverage policy regarding the homebound and intermittent requirements under sections 1814(a)(2)(C), 1835(a)(2)(A), and 1861(m) of the Act, respectively. We have, however, undertaken administrative efforts to enhance consistent and uniform application of current policy. These efforts include HHA and intermediary training and the implementation of the new certification and plan of treatment form (as discussed above).

We note, however, that the issues raised by the commenters concern coverage requirements that, if not met, would result in denials under sections 1814(a)(2)(C), 1835(a)(2)(A), and 1861(m) of the Act rather than under paragraphs (a)(1) or (a)(9) of section 1862 of the Act, the only provisions under which limitation of liability may apply. Thus, limitation of liability would have no bearing on these situations and any payments made under the limitation of liability provisions for these denials in the past were made erroneously.

In the context of the Medicare home health benefit, it is important to remember that the limitation of liability protection does not apply to noncovered home health services if the reason for the denial is anything other than the reasonable and necessary exclusion (section 1862(a)(1) of the Act) or the custodial care exclusion (section 1862(a)(9) of the Act). For example, if services are not covered because the patient was not confined to the home or because the patient needed skilled nursing care on other than an intermittent basis, the denial would be made under section 1814(a)(2)(C) or 1835(a)(2)(A) of the Act and the limitation of liability provision would not apply. Similarly, if the services of home health aides were provided on other than an intermittent basis, or if the services that were provided failed to meet the Medicare definition of what constitutes a covered service (for example, skilled nursing care or physical therapy), the denial would be made under section 1861(m) of the Act and the limitation of liability provisions would not apply.

Comment: Although providers will have no leeway in making inaccurate coverage determinations without losing payment for services furnished to Medicare beneficiaries, HCFA does not hold its intermediaries to the same standard.

Response: To enhance the quality of contractor performance through a system of onsite review and appraisal, HCFA has implemented the Contractor Performance Evaluation Program (CPEP). This program contains performance standards for intermediaries that measure the accuracy of their coverage decisions. Furthermore, the intermediary must perform necessary medical review activities as required by HCFA instructions in a timely, accurate, and cost effective manner. In addition, CPEP contains standards for processing bills in a timely manner. If it is determined that intermediaries are not meeting the standards, they will be subject to adverse action by HCFA.

Comment: The high reversal rate (about one-third) of denials must be taken into account since it indicates that the intermediaries have difficulty making correct coverage decisions.

Response: The reversal rate of about one-third in Federal fiscal year (FY) 1984 is actually misleading. It represents only the ratio of reversed reconsideration determinations compared to the total number of reconsiderations requested. A more accurate picture can be obtained by considering the following: Although a considerable number of the denials were reversed on reconsideration, the reversals represented only 1.6 percent of the total number of medical denials. Ninety-two percent of these reversals were based on the receipt of additional medical evidence. Therefore, a high percentage of those cases would have been paid initially if more evidence had been submitted initially. In calendar year (CY) 1984, HCFA's intermediaries processed a total of 18.1 million Part A bills of which 310,000 resulted in medical denials (62,400 hospital inpatient, 188,000 SNF and 59,600 HHA). Reconsiderations were requested for only 6.8 percent of these denials. Analysis of the reversal rate in relation to the number of denials actually shows that, for the most part, intermediaries do make correct initial determinations.

We also want to point out generally that reversal rates not only include full and partial reversals that are more favorable to the claimant, but also some reversals of the original determination that result in a more negative outcome than the initial determination. (Data for these decision are not separately maintained).

B. Beneficiary Access and Expense

Comment: Providers generally will not always know for certain whether their services will be covered under Medicare. Without the favorable presumption, pressure will be created either to refuse to provide marginal services or to bill beneficiaries as private patients. One commenter stated that avoidable deaths might result.

Response: Due to beneficiary safeguards, we do not believe that Medicare beneficiaries will be denied access to care. We base this on our belief that providers will not want to risk HCFA sanctions that include termination of their participation in the Medicare program, and that they will either furnish services to Medicare beneficiaries, or will properly issue notices of noncoverage. A beneficiary who receives such a notice and believes that services should be furnished to him or her can then request a formal determination from HCFA. The authority for review of a hospital's notice of noncoverage is under § 412.42(c) for a notice issued by a prospective payment hospital and under § 405.308(b) for a hospital that would be a prospective payment system hospital except for its participation in a state reimbursement control system or demonstration project. Although not provided for in regulations, beneficiaries also may seek review of admission notices, preadmission notices, and continued stay notices. PROs perform these reviews under authority contained in their contracts with HCFA.

More specifically, the regulations at §§ 489.53(a)(2) require that a Medicare participating provider that places restrictions on the persons it will accept for treatment must either exempt Medicare beneficiaries from those restrictions or must apply them to Medicare beneficiaries in the same manner as to all other persons seeking care. Failure to comply with this provision is cause for terminating the participation of the provider in the program. Under § 412.42 of the regulations, if a Medicare beneficiary elects to receive care and have a claim submitted to Medicare, the hospital, in order to avoid being held liable, must furnish a written notice to the beneficiary or to the person acting on behalf of the beneficiary, advising that Medicare will not pay for the services. If such a claim is submitted at the request of the beneficiary, the HCFA medical review entity reviews the claim to make sure that the hospital is not making incorrect coverage decisions. PROs and intermediaries routinely review a sampling of the providers' notices of noncoverage for which beneficiaries have not requested a formal HCFA determination.

In any case where the provider had denied the admission and failed to issue a notice of noncoverage, the provider will be found liable under the limitation of liability provision. A provider abusing

the use of written notices of noncoverage so that the notices preclude or discourage the admission of eligible Medicare beneficiaries for covered services would be found in violation of its Medicare agreement not to discriminate against Medicare beneficiaries, and could be terminated from the program on these grounds.

Comment: If the favorable presumption were eliminated completely, the increased risk in accepting Medicare beneficiaries would force SNFs to consider withdrawing from the Medicare program. Many SNFs already have waiting lists, and they question whether the volume of clearly covered days would justify program participation.

Response: We have no data on which to project possible decisions by SNFs to eliminate their participation in Medicare. Our January 1985 report to Congress, *Study of the Skilled Nursing Facility Benefit under Medicare*, based on 1980 data, suggested that retroactive denial of Medicare claims adversely affected participation by SNFs in the Medicare program. The report makes clear, however, that a number of Federal and State policies play a larger role in limiting the supply of beds available to Medicare patients needing skilled nursing services. Nevertheless, as of July 1985, 6,451 SNFs were participating in Medicare. This represents an eight percent increase since July 1984.

With the shortening of hospital stays under the prospective payment system (discussed below in section III.H), there may be a greater need for skilled nursing care. We believe that for virtually all of these shorter hospital stay patients, SNFs are able to make clear judgments concerning whether skilled nursing care is covered under Medicare. Therefore, given this point, the low percentage of denials for most SNFs, and the availability of intermediary consultation for questionable cases, we do not believe that SNFs will withdraw from Medicare solely because of this regulation.

Comment: If beneficiaries are denied services more frequently, they will be forced to appeal the denials, which will cause them and HCFA to spend additional money, and the beneficiaries may have to delay obtaining needed services.

Response: We agree that due to an increase in the number of denials there may be an increase in the number of beneficiaries who file appeals. However, the beneficiary does not incur any significant cost in filing a request for reconsideration (or a request for a hearing if the beneficiary is dissatisfied with a reconsidered determination) since the beneficiary merely makes a written request under, for example, § 473.18(a) for hospital care, and the beneficiary does not bear any expense for duplication of the provider records. In addition, for services furnished before receipt of a written notice of noncoverage, the beneficiary is not liable for payment under § 405.334.

We have already discussed above our reasons why we do not believe that a provider will deny a Medicare beneficiary access to care. Moreover, if the initial denial is made by a PRO prior to an elective hospital admission, or after the beneficiary is an inpatient (that is, before a procedure is performed), an expedited reconsideration is available under 42 CFR 473.32, under which the PRO must complete its reconsidered determination within three working days.

The cost to HCFA for processing additional reconsiderations is discussed in section VI below.

C. Coverage Decisions Made by Attending Physicians

Comment: Because providers cannot control a physician's admission decisions and other coverage decisions, HCFA should hold the attending physician, rather than the provider, liable for a poor coverage determination that results in a noncovered admission or a noncovered extended stay in a hospital subject to the prospective payment system.

Response: There is no authority in section 1879 of the law to adopt this suggestion. If a provider believes that the inpatient care that a physician proposes to provide is medically unnecessary, it may protect itself by notifying the patient so that it will not be held liable.

D. Denial Notices and Notices of Noncoverage

Comment: If a medical review entity finds that a furnished service is noncovered, the notice to the beneficiary, provider, and practitioner should clearly define which services are noncovered and why these services would not be covered in the future for this patient or any other Medicare beneficiary.

Response: We agree that denial letters need to be understandable to beneficiaries, providers, and physicians. The HCFA regional offices monitor denial notices issued by PROs and intermediaries to assure that they are both understandable and accurate and that the notices explain why a claim was denied. In addition to the existing model denial notices used by intermediaries, model denial notices are being developed for use by the PROs.

Comment: A provider should not be allowed to furnish a notice of noncoverage to a beneficiary. There is a conflict of interest when it does so because the beneficiary will be held liable after he or she has received the notice of noncoverage.

Response: Since Medicare makes payment to the provider when the provider furnishes services to a Medicare beneficiary, a provider is responsible for assuring that it only provides services that it knows to be medically reasonable and necessary and that do not constitute custodial care. A provider must inform a beneficiary of noncoverage when it has reason to believe the services to be furnished do not meet Medicare's coverage requirements. If a beneficiary has been informed by the provider in writing that Medicare will not cover the services in question, HCFA considers the beneficiary to have known of the noncoverage of services. Thus, should services be furnished and the claim denied, payment would not be made under section 1879 of the Act. The commenter implies that providers will indiscriminately advise beneficiaries of noncoverage in marginal cases to protect themselves from liability under section 1879 of the Act. We do not believe that this will occur because of the beneficiary safeguards discussed in the responses in IV.B, above.

Not allowing a provider to issue written notices of noncoverage in appropriate situations would deprive the provider of protection against liability if the furnished services are later denied because they were unreasonable, unnecessary or constituted custodial care.

The provider's notice of noncoverage must advise the beneficiary of his or her right to request a formal determination from Medicare if the beneficiary disagrees with the provider's notice of noncoverage. HCFA is monitoring the use of provider notices of noncoverage very closely. In extreme cases, a provider found to be abusing the written notice procedures could be terminated from the program on the grounds that it is unfairly discriminating against Medicare beneficiaries.

E. Provider Representation of Beneficiaries

Comment: HCFA should allow a provider to represent a beneficiary in a limitation of liability appeal. A provider is best able to do so because of its familiarity with the Medicare rules; otherwise a beneficiary (who is less

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familiar with Medicare rules) may not appeal a limitation of liability determination that is erroneous. Even though HCFA claims that there may be a conflict of interest in these kinds of situations, it is unproven.

Response: The issue of allowing providers to represent beneficiaries in order to pursue an appeal is currently being litigated in U.S. District Court. (*National Association for Home Care, et al.* v. *Heckler,* No. 84-057 (D.D.C. filed March 26, 1984).)

We maintain that permitting a provider to act as the beneficiary's representative is of dubious value to the beneficiary. There is potential conflict of interest between a provider and a beneficiary because of the provider's interest in appealing a limitation of liability determination. Also, a provider's and beneficiary's interest may conflict under section 1870 of the Act, because of beneficiary rather than a provider is considered to have received an overpayment if the provider can show that it was without fault and acted in good faith. Further, a serious conflict of interest arises when a provider represents a beneficiary in a claim for indemnification under section 1879(b) of the Act since the provider may be relieved of liability for the overpayment by showing that the beneficiary knew that the services were not covered. In that case, no Medicare payment would be made, but the provider could be permitted to bill the beneficiary for its charges, for example, under §412.42.

F. Increases in Costs and Paperwork for HCFA and Providers

Comment: Eliminating the favorable presumption will require more paperwork for providers, who will have to submit more extensive documentation in each questionable case, which will place an additional cost burden on providers and will result in cash flow problems due to delays in processing the appealed cases.

Response: It is true that providers may have more paperwork in questionable cases in establishing that the beneficiary required covered services, and if coverage is denied, in showing that the providers did not know, nor could reasonably have been expected to know, that the services were not covered under Medicare. However, of the total number of bills processed by intermediaries in FY 1984 for all provider services, including outpatient services, only 0.22 percent (that is, about one-fifth of one percent) were paid under the limitation of liability provision.

Of the total number of inpatient hospital bills processed in FY 1984, only 0.17 percent (that is, less than one-fifth of one percent) were paid under the limitation of liability provision, either under the favorable presumption or on a case by case review. This represents a total of only 21,596 limitation of liability cases out of a total of 12.1 million inpatient hospital bills. The total number of SNF bills paid under this provision was 8,596 out of a total of 865,109 bills or one percent. The total number of limitation of liability determinations for HHAs was 45,856 out of a total of 5.2 million HHA claims or about 0.9 percent (that is, less than one percent).

We project that from March 15, 1986 through September 30, 1986, there will be 6.86 million inpatient bills, 0.49 million SNF bills, and 3.27 million HHA bills. Of these, it is estimated that not more than 20,580 hospital inpatient bills, 103,390 SNF bills, and 55,590 HHA bills will be subject to limitation of liability considerations.

Because the paperwork associated with appealing cases previously subject to favorable presumption will be spread out among all providers who are appealing decisions and who previously would have qualified for the presumption, we expect that the additional paperwork for an individual provider will be minimal.

With regard to cash flow problems, providers receiving interim reimbursement under the periodic interim payment method of reimbursement (PIP) will not experience immediate cash flow problems. This also includes PIP hospitals under the prospective payment system. These estimated payments are subject to final settlement. Thus, only at the time of settlement will the financial effect of eliminating the favorable presumption be felt by providers that are paid under the PIP method (and then only to the extent that cases which previously would have been paid under the presumption were appealed by the provider and were denied or were not yet adjudicated). The number of claims in which adjudication might still be pending at the time of settlement should be few, if any, given the requirement for prompt action on appeal (see below).

Comment: PROs are already experiencing backlogs in meeting their current review commitments and a case-by-case review for limitation of liability cases will aggravate the situation.

Response: Because of delays in receipt of the data from the Professional Standards Review Organizations and the intermediaries' medical review personnel that were needed by the PROs to review the claims, some PROs did have backlogs. However, this problem has now been alleviated. In addition, if a hospital files a request for reconsideration with a PRO, the PRO has 30 working days to make the reconsidered determination and send written notices to the hospital, practitioner, and beneficiary. If a beneficiary who is still an inpatient or whose preadmission review by a PRO resulted in a denial, files a request for an expedited reconsideration, the PRO must complete its determination within three working days. The HCFA regional offices are closely monitoring the PROs' appeals activity on an ongoing basis.

Comment: Eliminating the favorable presumption and substituting case by case review will increase the number of provider appeals, thereby increasing the cost to both the government and the providers in addition to increasing processing time. The time and cost required for a provider in pursuing a reconsideration and appeal may act as a deterrent. In addition, the cost analysis contained in the proposed rule greatly underestimated the cost impact on providers because the analysis underestimated the cost to providers for appeals.

Response: We agree that eliminating the favorable presumption will probably initially increase the number of reconsiderations and increase the processing cost to the Federal government. In fact, HCFA is assuming on the basis of a "worst-case" estimate that 85 percent of all claims denied for medical reasons will result in reconsiderations at an additional administrative cost to the Federal government of $13 million for FY 1987. This is considerably higher than the current rate of requests for reconsiderations, which was only 6.8 percent of all Part A medical denials.

We do not agree that the costs to providers of filing appeals are so great that they deter providers from pursuing their appeal rights. We base this conclusion on the fact that during CY 1984 the average Medicare payment per hospital bill was $3,290, per SNF bill $630, per HHA bill $380. As discussed in section VI below, it is not possible for us to determine the cost to a provider for a reconsideration. However, we believe that a provider's cost for a reconsideration is much less than the average Medicare Part A payment and should not deter a provider from filing for a reconsideration.

G. Coverage and Limitation of Liability Determinations Made by PROs

Comment: HCFA needs to monitor PRO performance to determine the adequacy of PRO review procedures before we publish our final limitation of liability regulations.

Response: PROs are monitored on an ongoing basis. The HCFA regional office project officers perform onsite review at each PRO at least quarterly. In addition, HCFA developed a detailed monitoring system, the PRO Monitoring Protocol and Tracking System (PROMPTS), which addresses the issue of whether the PRO is applying screening criteria correctly and making accurate determinations. Specific PRO determinations are now being monitored by an independent organization that is validating PRO medical review decisions, that is, admission review, DRG validation, and length of stay determinations. Appropriate actions, including, but not limited to, intensified monitoring, withholding of funds, and so forth, will be taken against a PRO that is not making accurate decisions in performing reviews.

H. Impact of the Prospective Payment System

Comment: Although HCFA may be correct in asserting that the implementation of the prospective payment system reduces the number of hospital cases subject to limitation of liability under section 1879 of the Act, there is no reason to believe that the amount of payment under the limitation of liability provision has been reduced because not enough time has passed under the new payment system to determine that this is so.

Response: It is true that some denials under the prospective payment system may represent large amounts of money in cases where the entire stay is found not to be reasonable and necessary. In these instances, a hospital may still show in a particular case that it did not know nor could reasonably have been expected to know that the care was not covered. However, we expect denials under the prospective payment system to involve comparatively few length of stay cases. Prior to implementation of the prospective payment system there were many cases where the admission was justified, but some days were not covered because the care was no longer reasonable and necessary. This kind of case was previously the major area requiring coverage determinations in which limitation of liability could apply. Except for outlier cases, we anticipate that most of the hospital denials under the prospective payment system will involve inappropriate admissions where the basis for denial by the PRO is clear cut and where we would expect that the provider should have known that the admission was inappropriate.

In FY 1984, the first year of the new payment system, only 0.17 percent (that is less than one-fifth of one percent) of inpatient hospital bills processed were paid under the limitation of liability provision.

Comment: The need for HHA and SNF services has increased because the prospective payment system has reduced the average length of a hospital stay, thereby increasing the potential for more denials of post-hospital services provided by HHAs and SNFs.

Response: While we agree that hospital stays have tended to be shorter under the prospective payment system than under the cost reimbursement system, we do not agree that shorter hospital stays lead to increased denials for SNFs or HHAs or have any other adverse impacts. We believe that one impact of the prospective payment system on Medicare will be to make it more likely that SNF and HHA coverage determinations are correct. That is, we expect that it will be easier for SNFs and HHAs to determine whether services they propose to provide are covered. This is because the prospective payment system has made both hospitals and physicians more sensitive to the need to evaluate continuously a patient's condition and the type and level of services that the patient requires in order to determine the earliest point at which care can be appropriately provided at a lower level (that is, in an SNF or by an HHA at home). In addition, the prospective payment system has given hospital social workers and discharge planners a greater incentive to be familiar with available alternatives to institutional care than under cost reimbursement. There is some anecdotal evidence to suggest that these factors have led more physicians to become familiar with services furnished by SNFs and HHAs. Of course, a physician's concern with the continued quality of patient care also leads to physician involvement in the development of home health plans of care. Therefore, we believe that an SNF or an HHA will be receiving more information about a patient's condition and needs than was received previously and, thus, will be better able to determine potential coverage.

Before the prospective payment system existed, some hospitals sometimes retained patients inappropriately; that is, hospitals furnished services that could appropriately have been furnished in an SNF or in the home by an HHA. However, the incentives provided under the prospective payment system are such that a patient is likely to be discharged to an SNF or to home care when the need for skilled nursing care or therapy outside the hospital is clearly supportable. Therefore, the operation of the prospective payment system will increase the likelihood that SNFs and HHAs will be receiving patients who clearly require covered care. This should have the effect of lowering the percentage of denied bills.

In addition, as fewer SNF and HHA patient bills are denied, because the services are covered, SNFs and HHAs will no longer have an incentive to bill for marginal services for beneficiaries that no longer need Medicare covered care.

Comment: The prospective payment system has caused an increase in the discharge of acutely ill patients from hospitals. This is increasing the utilization of skilled nursing care and home health care. SNFs and HHAs must make coverage determinations as quickly as possible and the leeway afforded by use of a favorable presumptive mechanism is necessary for the continued financial stability of SNFs and HHAs.

Response: We agree that many Medicare beneficiaries discharged from hospitals under the prospective payment system will clearly need covered skilled nursing or home health services. During the longer hospital stays prior to the implementation of the prospective payment system, acute inpatient hospital care was often given that could more appropriately have been given on a post-hospital basis. The need for post hospital care (that is, SNF and HHA services) should be more readily recognizable where a hospital is under the prospective payment system. Thus it should be easier for SNFs and HHAs to determine more expeditiously whether their services will be covered under Medicare when they are asked to treat a patient who has just been discharged from a hospital under the prospective payment system because such a patient is more likely to require Medicare covered post hospital services than might have been the case prior to implementation of that system.

I. Other Reasons To Retain the Favorable Presumption

Comment: HCFA should retain the favorable presumption because it offers protection against the risk of provider admission denials in cases in which a provider thought that there was a real

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need to admit the beneficiary. Because the practice of medicine is governed by conditions of uncertainty and variability, a provider that furnished services in good faith should be protected from retroactive denials. By removing the presumption, those providers, which in doubtful cases act in the best interest of the patient, would be exploited.

Response: We agree that some uncertainty exists regarding the most effective methods of treatment. This is the reason for section 1879 of the Act. Except on the basis of section 1879 of the Act, the Medicare program pays only for covered services. The medical review entities base their determinations on the rules that distinguish covered care from noncovered care. These rules are found in the Medicare statute (title XVIII of the Act), the regulations (42 CFR Chapter IV), and HCFA instructions that are made available to providers on an ongoing basis. The medical review entities apply the rules to each particular case. Experienced providers should also be able to apply these rules to each particular case to determine whether the services are covered under Medicare. The great majority of providers are able to make accurate coverage decisions most of the time. A provider also can establish in an individual case that it lacked knowledge that the services were noncovered.

Comment: The discussion in the preamble of the proposed rule about the anticipated reduction of length of stay denials due to the prospective payment system applies only to hospitals. Since SNFs and HHAs are not under the prospective payment system and have to make coverage decisions that are more difficult than those made by hospitals, a retention of the presumption for SNFs and HHAs is justified.

Response: We grant that special considerations are involved in making Medicare coverage decisions as to the need for skilled nursing services and home health services that are different than those pertaining to hospital care.

The concept of skilled nursing care (rather than convalescent care, which has a broad meaning to the public) originated with the Medicare program. Because this service was new, we developed very detailed rules concerning skilled nursing care (§§ 409.30—409.35).

As explained above in section IV.A, the Medicare home health benefit is intended as the last stop on the "continuum of care" that frequently begins in the hospital, progresses through the SNF, and ends in the home. National guidelines concerning home health care are contained in some detail in regulations at §§ 409.40–409.43.

In addition, as required by section 1816(e)(4) of the Act (amended by section 2326(b) of Pub. L. 96–369), the workloads for all freestanding HHAs will be processed by only 10 intermediaries nationwide rather than 47 intermediaries nationwide. Also, as noted earlier, HCFA has initiated a standard form for HHAs to submit medical data (Home Health Certification and Treatment Plan, HCFA–485). The use of the new form will improve the uniformity of data used in medical review determinations. Hence, with increased data uniformity, fewer intermediaries, and enhanced intermediary expertise, HHAs will find it much easier to make proper coverage decisions.

We believe that all of these efforts will improve the uniformity of review and warrant elimination of the favorable presumption for SNFs and HHAs.

Comment: A margin for error must continue to be made available to providers. A presumptive mechanism for providers should, therefore, be retained but denial rates at a lower percentage should be substituted for the current denial rates used for providers.

Response: The limitation of liability provisions in section 1879 of the Act provide a margin for error in that a provider is protected against liability if the provider could not have been expected to know that furnished services were not covered. We do not believe that there is a continuing justification for providing an additional margin by retaining the favorable presumption even with reduced denial rates.

After nearly 20 years of experience with the Medicare program, providers working closely with their intermediaries and PROs have significantly reduced the percentage of medical determinations subject to coverage disputes. This fact is borne out by the previously cited data which showed that the great majority (over 80 percent) of all categories of providers are able to qualify for a favorable presumption. It is not unreasonable to expect that this past provider performance will improve even further in the future as a result of the initiatives HCFA has under way to improve the consistency of claims review.

Comment: As HCFA begins phasing out the current intermediaries for all free-standing HHAs and replacing them with 10 regional intermediaries, the elimination of the favorable presumption and substitution of case by case review will create a large increase in the new intermediaries workload that will result in a tremendous backlog of claims.

Response: We grant that the change in administration of the home health benefit will entail some adjustments as the 10 regional intermediaries assume the entire national workload of freestanding HHAs. However, this consolidation will result in greater specialization in regard to home health benefits, which should aid significantly in the efficient administration of the home health benefit. In addition, the 10 intermediaries will assume the national workload over a one-year period. Therefore, we do not expect any backlog of claims to develop due to this change.

J. HCFA's Proposal is Contrary to the GAO Recommendation and the Intent of Congress

Comment: HCFA's proposal to discontinue use of the favorable presumption is contrary to GAO's recommendations because GAO found that "reasonableness and medical necessity of services often are not clear cut and therefore providers acting in good faith should not be penalized by having their claims for payment denied."

Response: GAO did recommend as one alternative that HCFA consider modifying the limitation of liability rules so that the favorable presumption would be eliminated and the applicability of the limitation of liability provision be determined on a case by case basis. In fact, the approach we are adopting is one of three alternative recommendations made in the GAO report (GAO/HRD–83–38, March 4, 1983). The GAO quotation was taken out of context by the commenter. GAO was merely reporting that the providers argue that reasonableness and medical necessity often are not clear cut issues and that providers acting in good faith should not be penalized by having their claims denied. GAO did not reject the elimination of the favorable presumption.

Comment: When GAO suggested that HCFA could reduce the HHA denial rate from two and one half percent to a lower percentage rate in order for an HHA to be eligible for a favorable presumption, GAO was not aware of the 32.4 percent reconsideration reversal rate of intermediary determinations involving HHA coverage issues.

Response: Our latest data indicate that in CY 1984 about 30.3 percent (less than one third) of all reconsidered HHA coverage determinations resulted in reversals. However, because reconsidered determinations were made for only 5.5 percent (about 3,448 of 63,000) of initial determinations, only 1.7 percent (about 1,044 of 63,000) of all initial denials were reversed by reconsidered determinations. Although GAO is knowledgeable about HCFA procedures, it may be true that GAO did not take into consideration the reversal rate of intermediary determinations concerning HHA coverage issues. However, we do not consider this as flawing the GAO recommendation since reversed determinations as a percentage of total denials are low. We discussed this matter at greater length above in the section concerning provider reconsideration reversal rates.

Comment: HCFA's proposed rule is against the intent of Congress to protect providers as well as beneficiaries from liability for the cost of noncovered services ordered by staff physicians whose practices cannot be controlled by the providers.

Response: The favorable presumption is only an administrative mechanism. Its elimination still leaves in place the basic protection for providers available under section 1879 of the Act, as authorized by Congress. Clearly, the intent of the original limitation of liability legislation was to hold the beneficiary harmless for furnished services that were not medically necessary and reasonable or constituted custodial care if the beneficiary was not at fault. Congress intended to shift the financial liability to the provider unless the provider utilized due care in applying Medicare policy (S. Rep. 92–1230, 92d Congress, 2d Session, 294 (1972)). This report by the Senate Committee on Finance also stated that when payment is made under the limitation of liability provision, Medicare is to make certain that the provider and patient are put on notice that the furnished service is noncovered so that in subsequent similar cases neither the beneficiary nor the provider could be found to be without fault. The Senate Finance Committee clearly indicated that its intent was to limit Medicare's liability whenever the provider or beneficiary has knowledge that a service is noncovered: "Thus, the Government's liability would be progressively limited." Congress has intended since 1972 that the Medicare payment for noncovered care would be reduced and that providers or beneficiaries who knew services were not covered would be held liable.

The favorable presumption was added by HCFA as an administrative device, which can be modified or eliminated as changing circumstances warrant. Concerning the comment about decisions by staff physicians, providers should make their personnel (including their staff physicians) aware of Medicare coverage requirements.

K. Rights of a Provider

Comment: Whenever HCFA finds that a provider has acted in good faith in furnishing noncovered services, the provider should be allowed to charge the beneficiary.

Response: To permit a provider to bill a beneficiary if the provider acted in good faith is counter to the congressional intent in passing the original limitation of liability provision. As quoted elsewhere in this preamble, Congress intended that the beneficiary would be held harmless if he or she received services that were not reasonable or necessary for the diagnosis or treatment of an illness or injury or if the services were found to constitute custodial care and the beneficiary was without fault. If the provider is also found to be without fault, the liability is borne by the Government.

A provider can charge a beneficiary for these services if the provider notifies the beneficiary in writing of the noncoverage of the services before they are furnished. See for example § 412.42, which involves notice by a hospital under the prospective payment system.

Comment: It is unfair that, under the Part A reconsideration and appeals procedures, only in the reconsideration proceeding may a provider argue that its liability should be waived because a furnished service *is covered* under Medicare. A provider should also have the right to make this argument during an appeal before an ALJ instead of being allowed to argue only that *it did not know* that a furnished service was not covered.

Response: The issues that can be raised at the hearing level and the question of who can raise them are specified by statute. Section 1155 of the Act states that a reconsideration is available to any party to a PRO denial, that is, the beneficiary, hospital, or practitioner. However, section 1155 of the Act also specifies that only the beneficiary is entitled to further appeal of coverage determinations made under title XI of the Act, that is, determinations involving the issues of medical necessity and appropriateness. However, both the liable provider and practitioner are entitled under section 1879 of the Act to an administrative hearing on the issue of whether they knew, or should have known, that the furnished services were not covered or constituted custodial care. These appeals by providers and practitioners are available only if the beneficiary is not going to exercise his or her appeal rights on the issue of whether the beneficiary knew or should have known that the furnished services were not covered or constituted custodial care.

Under § 405.710(b), if an intermediary denies a provider's claim, and finds the provider or the beneficiary liable, the provider has all the appeal rights of the beneficiary, including an appeal on the issue of coverage. However, the provider has these appeal rights only if the beneficiary will not exercise his or her appeal rights.

L. Patterns of Inappropriate Utilization

We received several comments concerning implementation of the patterns of inappropriate utilization provision contained in the last sentence of section 1879(a) of the Act (enacted by section 145 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)). Our intent in proposing to implement this provision was to provide medical review entities with an additional means of denying program payment under the limitation of liability provision to a provider that furnished noncovered care and that continued the practice after being notified that the services were noncovered. This provision was to apply even when the provider qualified for the favorable presumption. However, we have decided not to finalize the regulations concerning this provision.

Elimination of the favorable presumption and the use of case by case review preclude the need for application of the pattern of inappropriate utilization provision. This is so because now each specific case will be under review. Thus, the question of whether the provider had knowledge that a specific service was not covered will always include situations in which the provider was previously notified that the same or similar service was not covered.

The comments we received about the "patterns" provision generally concerned the following matters:

- Because the proposed rule was unclear about what HCFA considers to be a pattern of inappropriate utilization and what will be considered corrective action, both terms should be clarified in the regulations text of the final rule.
- Providers would benefit from a followup PRO determination after the end of the 30-day period extended to a provider for correction of a pattern of inappropriate utilization.
- Allowing a PRO to require a provider to submit a description of corrective steps violates section 1801 of the Act because requiring a description of corrective steps will interfere with

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management of a facility, which is prohibited by section 1801 of the Act.

• HCFA should not establish a national basis for identifying a pattern of inappropriate utilization because circumstances differ in each case and the views of an admitting physician may differ from those of a physician hired by the PRO to review a case.

As a result of our decision not to finalize the paragraph of the regulations that would have implemented the patterns of inappropriate utilization provision, it is unnecessary that we respond to the comments. However, one comment reflected a misunderstanding about the way in which the patterns provision could be used. The comment and our response are as follows:

Comment: The favorable presumption should be revoked only when actual notice to a specific provider is given that a pattern of inappropriate utilization persists despite efforts to work with the provider toward making corrections.

Response: The commenters have confused section 145 of Pub. L. 97–248 with the administrative mechanism, the favorable presumption, that HCFA *used in addition to case by case review* to determine whether a provider should be liable for a furnished noncovered service. The key point is that section 145 of Pub. L. 97–248 does not preclude the elimination of the favorable presumption, which was never required by Congress.

M. The 30-day Comment Period Was Too Short and We Should Have Provided Public Meetings

Comment: The 30-day comment period did not provide enough time for the public to comment effectively on so many complex, critical policies. In addition, public meetings should have been arranged for discussion of the proposed rule.

Response: We publish a proposed rule in the **Federal Register** so that interested persons are provided an opportunity to participate in the rulemaking process by submitting correspondence to the agency. Similarly, we consider relevant comments and discuss in the final rule the basis and purpose of the public comments. Although there is no specified minimum time for the length of the public comment period, the courts have consistently held that a 30-day comment period is sufficient.

We received 248 items of correspondence from hospitals, SNFs, HHAs, practitioners, suppliers, organizations, advocates, members of Congress, and PROs.

The issues raised covered a broad range of concerns, as demonstrated by the discussion of the comments, above. Therefore, we do not believe that the length of the comment period was inappropriate or that holding a public meeting would have enabled the public to make comments that they could not have made in writing.

N. Impact Analysis Did Not Adequately Assess Effects of Proposed Rule

Comment: By not providing an impact analysis in a proposed rule that, if adopted, would have an effect on the economy of $100 million and impact significantly on a substantial number of providers, HCFA violated Executive Order 12291. Therefore, before implementing any changes to the limitation of liability provisions, HCFA should publish a proposal that conforms with Executive Order 12291.

Response: In promulgating new regulations, a Federal agency is required to adhere to regulatory principles that require decisions to be based on the best available information concerning the consequences of the proposed action. In addition, an agency must select an approach that maximizes aggregate net benefits to society.

An agency must also prepare and publish an impact analysis if a proposed rule—

• Meets at least one of the threshold criteria of section 1(b) of Executive Order 12291 (an annual effect on the economy of $100 million, a major increase in costs or prices, or a significant adverse effect on competition, employment, investment, productivity, innovation or competition with foreign-based enterprises); or

• Would have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612), if applicable.

In an impact analysis under either procedure, an agency must discuss cost, benefits, number of affected entities, and alternative approaches considered and rejected.

In preparing an analysis, if we determine, as we did in the proposed rule, that none of the criteria is met, our practice is to explain how we concluded that none of the criteria is met and to provide adequate documentation to support our determination.

We believe that we complied with the provisions of the Executive Order and the Regulatory Flexibility Act by using our best available data in developing the estimate in the proposed rule. In this final rule, we have developed an impact analysis that reflects issues and concerns raised by various commenters, as well as our best estimate of the effects of this final rule.

O. Minimal Savings for HCFA Versus Hardship to Providers

Comment: HCFA did not seem to consider the amount of hardship the proposed rule would create for providers while only increasing savings to HCFA by an expected $48.3 million.

Response: Our estimated savings have been revised based on the latest data available. Regardless, we believe these savings and the need to refine good management practice for the Medicare program warrant the elimination of the favorable presumption. These considerations are reinforced by current Federal budget constraints and the need to strengthen the integrity of the Medicare trust funds. This will provide a remedy for the situation in which the Medicare program makes payment for noncovered services even though a provider, practitioner, or supplier knew or should have known that a furnished service is not covered. Any provider stress that results should be limited to the phase-in period of the new procedure. We expect the impact on any individual provider to be minimal. We do not believe it is reasonable to continue to pay substantial sums of money for noncovered services if the provider knew or could reasonably have been expected to know that the services were not covered by Medicare.

V. Summary of Changes to the Regulations

• We eliminated §§ 405.195 and 405.196, the sections that contained the criteria that providers had to meet to receive a favorable presumption.

• We redesignated § 405.331 as § 405.332.

• A new § 405.334 has been added to replace former § 405.332(a). This section contains the rules for determining whether a beneficiary who received noncovered services knew that the services were not covered by Medicare.

• A new § 405.336 has been added to replace the old § 405.332(b). It applies when a determination is made as to whether a hospital, an SNF, or an HHA has knowledge that furnished services were not reasonable and necessary or constituted custodial care. We replaced the term "other person" by "practitioner or supplier" for greater specificity.

• We added a criterion in § 405.336(d) under which a provider is deemed to have knowledge that a service is not covered if it informed the beneficiary that the service to be furnished is not covered. This criterion was issued in 1978 in Medicare administrative manuals to all Medicare providers.

• We eliminated the proposed criterion under which we would have considered knowledge based on a provider's "ongoing relationship with the Medicare program" because it is covered under the new § 405.336(e)(1). Under this new paragraph, we will find that a provider, practitioner, or supplier has knowledge based on its receipt of HCFA material.

VI. Regulatory Impact Analysis

A. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices, for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, we treat all providers and suppliers as small entities.) Under both the Executive Order and the Regulatory Flexibility Act, these analyses must, when prepared, how that the agency issuing the regulations has examined alternatives that might minimize an unnecessary burden or otherwise assure that the regulations are cost-effective.

In the proposed rule published February 12, 1985, the preamble discussion noted the potential effects of the proposed regulations. We stated both the projected budget impact and our determination that a substantial number of providers would not be affected significantly. We also included a brief discussion of policy alternatives considered and reasons for not selecting them. For purposes of this final rule, we are presenting an impact analysis that represents the anticipated effects of the rule on the Medicare program, providers, and beneficiaries.

Medicare Program

The Medicare program will realize both benefits and costs from the implementation of this final rule. One primary benefit is assuring the continued integrity of the Medicare trust funds. This will be accomplished by the elimination of the favorable presumption and is signified by the projected benefit payment savings resulting from decreased amounts of payments for noncovered care. Assuming implementation effective March 15, 1986, we estimate gross benefit savings for the first five affected Federal fiscal years (FYs) to be as follows:

Fiscal year	*Gross savings (millions)*[1]
1986	$47
1987	93
1988	104
1989	114
1990	125

[1] These estimates and the figures in the following tables are rounded to the nearest million dollars. Addition may appear to be inexact due to this rounding.

Most of the savings will result from reduced payments to hospitals, but other providers will also be affected. This is illustrated by the apportionment of savings for the first full fiscal year (FY 1987) among affected providers.

	Million[2]
Hospitals	$50
Skilled Nursing Facilities	18
Home Health Agencies	22
Other	4
Total	93

[2] The favorable presumption has been applied to comprehensive outpatient rehabilitation facilities, freestanding rehabilitation centers, hospices, rural health clinics, and organ transplant centers, although the regulations did not provide for this. The change to our current regulations will generate savings from these providers as noted here in the analysis.

These gross savings will be offset to some extent by expected increased costs to administer case by case review for providers. We project loss of gross benefit savings due to reconsideration reversals and increased costs to process additional provider claims that will no longer qualify for waiver. Specifically, we project the following "worst case outcome" for program costs and loss of savings for FY 1987:

[Dollars in millions]

Provider type	Reconsideration[3] reversal dollar amounts	Processing[4] costs	Total[5] costs
Hospital:			
Inpatient	$11	$2	$13
Outpatient	3	1	4
Total[5]	13	3	17
Skilled Nursing Facility	4	2	6
Home Health Agency	7	7	14
Other	1	(6)	2
Total[5]	25	13	38

[3] The reconsideration reversal amounts reflect estimated provider reversal rates based on the few bills that are filed for reconsideration currently. The rates reflect both full and partial reversals as well as determinations against the parties filing for reconsideration.

[4] Our assumptions for calculating FY 1987 processing costs were: (1) Additional claims, to the nearest thousand, to be processed in FY 1987: hospital–57,000, SNF–17,000, HHA–76,000, and other–13,000; (2) An estimate of denials that will result in reconsiderations (85 percent); and (3) Cost per reconsideration of about $100 per case for inpatient hospital services, about $115 per case for SNFs and HHAs, and $40 per case for outpatient hospital services and other providers.

[5] Addition may appear to be inexact due to rounding.

[6] Less than $0.5 million.

However, these estimates do not take into account the changes of provider behavior that may be expected to result from the increased incentive for providers to ensure that they bill only for covered services. We do not expect that these worst case estimates will materialize in full. To the extent that the proportion of reconsiderations resulting in reversals of denial determinations declines from current levels, net savings should approach our estimated gross savings.

Other benefits that accrue to the Medicare program can be characterized as management improvements. More precisely, the elimination of the favorable presumption will: (1) Reaffirm that we will pay for noncovered services only if there is no reason for the provider to have knowledge of noncoverage; (2) provide support for other initiatives intended to improve the consistency of claims review and the application of coverage guidelines (for example, new home health medical information form (HCFA–485) being submitted to intermediaries and the transferring of all free-standing HHAs to 10 regional intermediaries); and (3) give incentives for improved documentation accompanying the initial claims, since it is advantageous for a practitioner, provider, or beneficiary to submit adequate documentation of services provided or received.

While the Medicare program will incur costs through implementation of this rule, we believe the benefits of Trust Fund integrity and management improvements exceed the projected costs previously discussed.

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Providers

These final regulations remove the favorable presumption from those providers that currently qualify for the favorable presumption and will generate certain effects on all providers. First, we anticipate that this modification will result in a gross reduction of benefit payments to affected providers. For hospitals, we estimate a gross reduction of $50 million in FY 1987 benefit payments. The reduced benefit payments are apportioned between inpatient and outpatient services as follows:

	Million
Inpatient	$41
Outpatient	9
Total	50

Note that this reduction in expenditures results from nonpayment for noncovered services, not a reduction of amounts paid for covered services. It represents a reduction of only 0.001 percent from projected inpatient and outpatient Medicare benefit expenditures to hospitals in FY 1987.

We also estimate a gross reduction in FY 1987 benefit payments of $18 million for SNFs, $22 million for HHAs, and $84 million for other providers due to the elimination of the favorable presumption. These estimated decreases in FY 1987 benefit payments, as with hospitals, represent insignificant reductions in estimated total Medicare benefit payments to these providers. In total, we estimate a gross reduction in benefit payments to all affected providers of $93 million in FY 1987.

For each provider we expect the estimated gross reduction in benefit payments to be partially offset by payments resulting from those reconsideration reversals, in full or part, that are decided in favor of the provider. To illustrate, we estimate the reconsideration reversal payments to each provider type in FY 1987 [7] as follows:

	Million
Hospitals:	$13
Skilled Nursing Facility's	4
Home Health Agency's	7
Other	1
Total	25

[7] As disussed above, these are worst-case estimates that may not be fully realized. The corresponding estimated figures for FYs 1988 through 1990 are $28 million, $30 million, and $33 million, respectively.

A second impact on providers is increased paperwork associated with initiating additional reconsideration. However, we cannot determine expected provider costs, either in the aggregate or on an individual basis, resulting from the increased paperwork. This is due to several factors including: (1) The additional incremental amount of paperwork that will have to be submitted to the fiscal intermediaries may vary from case to case; and (2) the flexibility afforded to providers in presenting their reconsideration requests. For example, a provider may mail documentation to its fiscal intermediary, travel to and meet onsite with its intermediary, or in some cases, may submit the pertinent information by way of a telephone conversation. Thus, we cannot establish a base from which to project providers' costs associated with reconsiderations.

A further measure of the potential incremental cost of the paperwork burden for affected providers is that in FY 1984 only 0.22 percent (112,000 bills) of 49.9 million bills processed were paid under the limitation of liability provision. Thus, although this change in our policy will cause an increase in the number of bills denied and submitted for reconsideration, accompanying paperwork burden will not be significant relative to the total volume of bills submitted by providers.

Therefore, while participating providers could be affected by this regulation, for the reasons just stated, we do not believe that they will be affected significantly by the estimated reduction in payments. In addition, while we cannot estimate the costs associated with an incremental increase in paperwork burden, we do not expect it to be significant.

Beneficiaries

Earlier in the preamble, we discussed two key aspects of possible effects on beneficiaries—access to care and personal expense. In addition to what was discussed in section III.B, we include the following information regarding beneficiary impact.

There is no immediate indication that, as some commenters suggested, providers will drop out of the program due to these changes to our regulations. Our data show that while the total percentage or payments made under the limitation of liability provision has been declining, the number of providers participating in the program has increased. FY 1984 payments under the limitation of liability provision approximated only 0.14 percent of total provider benefit payments. Thus, the changes to our current policy regarding limitation of liability should have minimal impact on the financial incentives to continue participating in the Medicare program. Therefore, we expect needed access to care to be maintained. Furthermore, as noted earlier, we believe that there are sufficient program safeguards and an adequate application of existing coverage guidelines by a vast majority of providers to ensure that beneficiaries should not be denied needed access to care. Examples of existing safeguards include: Timely notices of noncoverage; various management improvements aimed at more consistent interpretations of coverage issues; and further improvements in the management of hospital, SNF, and home health benefits. These and other program initiatives will help maintain access to needed care for all beneficiaries.

Regarding beneficiary expenses, we believe that certain expenses previously related to the provision of noncovered or unnecessary care will be reduced. By eliminating the administrative presumption for hospitals, we expect to create a strong incentive for providers to increase the accuracy with which they apply coverage guidelines. In response to this incentive, we anticipate a reduction in the incidence of noncovered care and associated beneficiary deductible and coinsurance expenses. We expect this reduction to more than offset the additional expense that will be borne by those beneficiaries who might otherwise have benefited from the existing administrative presumption. A potential beneficiary expense is the cost related to filing a reconsideration after a denial is issued. Of all claims submitted for reconsideration in CY 1984, there were only 15,379 reconsiderations initiated by beneficiaries. Therefore, we do not expect a significant number of beneficiary-initiated reconsiderations under these new rules. Although we have no basis to quantify the cost for initiating a reconsideration, just as we cannot quantify provider costs associated with reconsiderations, as discussed above, our program experience suggests that beneficiary costs will not be significant.

In summary, we believe that beneficiaries, as a whole, will not be adversely affected, and will in fact be benefited by these changes in our current policy. We recognize that there will remain questions concerning the HHA and SNF coverage benefits. However, we anticipate that, as many of the improvements in the management of the Medicare program are implemented, the incidence of noncovered care and related beneficiary expenses will be reduced.

Summary

We believe that these revisions to our application of the limitation of liability for Medicare providers will create numerous benefits that will more than compensate for any costs incurred by the Medicare program, beneficiaries and providers. For example, we noted earlier such benefits as maintenance of the Medicare trust funds and support of other program initiatives aimed at improving the performance of the Medicare program.

While we recognize that some providers will incur costs because of the program changes in this final rule, these costs should not be significant either to individual providers or, in the aggregate, to all providers. Furthermore, most of the incurred costs will be related to the provision of noncovered care.

Alternatives to the policy in this final rule that we considered and rejected include:

- Tightening the denial rate criteria used to determine eligibility for a favorable presumption. However, tightening the denial rate criteria would still allow some providers to receive payment for noncovered services in spite of the Congressional objective of section 1879 of the Act of paying for noncovered services only when the provider and beneficiary actually did not know nor could reasonably have been expected to know that the services were not covered.
- Providing that after a provider furnishes Medicare services for a period of time and gains experience with Medicare coverage determinations, we would require case by case limitation of liability determinations. However, permitting payment for noncovered services, for any length of time, reinforces a misplaced economic-incentive among providers in that we would continue to pay for improper coverage decisions even though it had not been determined that the provider and beneficiary actually did not know nor could reasonably have been expected to know that the services were not covered.

B. Paperwork Reduction Act

Paragraphs (b) and (c) of § 405.334 and paragraphs (b), (c), and (d) of § 405.336 of this final rule contain information collection requirements that are subject to review by the Executive Office of Management and Budget (EOMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). A notice will be published in the Federal Register when approval is obtained.

VII. List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as set forth below:

Subpart A—Hospital Insurance Benefits

A. Subject A is amended as follows:

1. The authority for Subpart A continues to read as follows:

Authority: Secs. 1102, 1814, 1815, 1861, 1866(d), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395g, 1395x, 1395cc(d), and 1395hh)

2. The table of contents for Subpart A is amended by removing the titles of §§ 405.195 and 405.196.

§ 405.195 and § 405.196 [Removed]

3. Sections 405.195 and 405.196 are removed.

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

B. Subpart C is amended as follows:

1. The table of contents for Subpart C is amended by redesignating the title of § 405.331 as § 405.332; revising and redesignating the title of § 405.332 as § 405.334, adding the title of a new § 405.336; and revising the authority citation to read as follows:

Subpart C—Exclusions, Recovery of Overpayment Liability of a Certifying Officer and Suspension of Payment

Sec.

* * * * *

405.332 Liability for certain noncovered items or services.

405.334 Criteria for determining that a beneficiary has knowledge that services were excluded from coverage as custodial care or as not reasonable and necessary.

405.336 Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

* * * * *

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871 and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

§ 405.301 [Amended]

2. Section 405.301 is amended by revising the citation "405.332" to read "405.336".

§ 405.330 [Amended]

3. In § 405.330, paragraph (b)(1) is amended by revising the citation "§ 405.332(a)" to read "§ 405.334(a)" and paragraph (b)(2) is amended by revising the citation "§ 405.332(b)" to read "§ 405.336(b)".

§ 405.331 [Redesignated as § 405.332]

4. Section 405.331 is redesignated as § 405.332.

5. Section 405.332 is redesignated as 405.334 and revised to read as follows:

§ 405.334 Criteria for determining that a beneficiary has knowledge that services were excluded from coverage as custodial care or as not reasonable and necessary.

(a) *Basic rule.* A beneficiary who receives noncovered services that constitute custodial care under § 405.310(g), or that are not reasonable and necessary under § 405.310(k), will be found to have known that these services were not covered if the criteria in paragraphs (b) and (c) of this section are met.

(b) *Written notice.* Written notice has been given to the beneficiary, or to someone acting on his or her behalf, that the services were not covered because they did not meet Medicare coverage guidelines. A notice concerning similar or reasonably comparable services furnished on a previous occasion also meets this criterion. For example, program payment may not be made for the treatment of obesity, no matter what form the treatment may take. After the beneficiary who is treated for obesity with dietary control is informed in writing that Medicare will not pay for treatment of obesity, he or she will be presumed to know that there will be no Medicare payment for any form of subsequent treatment of this condition, including use of a combination of exercise, machine treatment, diet, and medication.

(c) *Source of notice.* The notice was given by one of the following:

(1) The PRO, intermediary, or carrier.

(2) The group or committee responsible for utilization review for the provider that furnished the services.

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(3) The provider, practitioner, or supplier that furnished the service.

6. A new § 405.336 is added to read as follows:

§ 405.336 Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

(a) *Basic rule.* A provider, practitioner, or supplier that furnished services that constitute custodial care under § 405.310(g), or that are not reasonable and necessary under § 405.310(k), will, under any one of the circumstances described in paragraphs (b) through (f) of this section, be found to have known that these services were not covered.

(b) *Notice from the PRO, intermediary or carrier.* The PRO, intermediary, or carrier had informed the provider, practitioner, or supplier that the services furnished were not covered, or that similar or reasonably comparable services were not covered.

(c) *Notice from the utilization review committee or the beneficiary's attending physician.* The utilization review group or committee for the provider or the beneficiary's attending physician had informed the provider that these services were not covered.

(d) *Notice from a provider to the beneficiary.* The provider had informed the beneficiary that he or she no longer required covered services or that, before services were furnished. the services were not covered.

(e) *Knowledge based on experience, actual notice, or constructive notice.* It is clear that the provider, practitioner, or supplier could have been expected to have known that the services were excluded from coverage on the basis of—

(1) Its receipt of HCFA notices, including manual issuances, bulletins or other written guides or directives from intermediaries, carriers or PROs, including notification of PRO screening criteria specific to the condition of the beneficiary for whom the furnished services are at issue and of medicial procedures subject to preadmission review by the PRO; or

(2) Its knowledge of what are considered acceptable standards of practice by the local medical community.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: February 5, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration

Approved: February 18, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-3847 Filed 2-19-86; 9:34 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-174; RM-4876]

TV Broadcast Station in St. George, UT

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Steven D. King, assigns VHF Television Channel 12 to St. George, Utah, as that community's first commerical television service.

EFFECTIVE DATE: March 25, 1986.

ADDRESS: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1061, 1062, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments TV Broadcast Stations (St. George, Utah); MM Docket No. 85-174, RM-4876.

Adopted: January 24, 1986.

Released: February 14, 1986.

By the Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 50 FR 26010, published June 24, 1985, to assign VHF Television Channel 12 to St. George, Utah, as that community's first commercial television service. The *Notice* was issued in response to a petition filed by Steven D. King ("petitioner"). Petitioner filed supporting comments reiterating his interest in the channel.

2. St. George (population 11,350),[1] seat of Washington County (population 26,065) is located in southwestern Utah, approximately 170 kilometers (110 miles) northeast of Las Vegas, Nevada.

3. We believe the public interest would be served by the assignment of Channel 12 to St. George, Utah, in order to provide that community with its first commercial television service. The assignment can be made in compliance with the minimum distance separation requirements of §§73.610 and 73.698 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective March 25, 1986, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
St. George, UT	12, +18-

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-3716 Filed 2-20-86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1132 and 1139

[Ex Parte No. MC-82 (Sub-1)]

Procedures in Motor Carrier Revenue Proceedings—Intercity Bus Industry

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending 49 CFR 1139.20 to permit motor common carriers of passengers to file schedules proposing general increases in fares to be effective at least 30 days after the date of filing rather than 45 days as presently required. In addition, the Commission is amending 49 CFR 1132.1

[1] Population figures are taken from the 1980 U.S. Census.

to change the protest and reply filing times for these proceedings to 8 days before the effective date of the proposal and 2 working days before the effective date, respectively.

The present 45-day notice provision constitutes a regulatory burden for individual carriers and the industry, and is inconsistent with the Bus Act reforms. To summarize, the concerns that gave rise to the 45-day requirement—limited entry and ratemaking primarily through collective action—no longer exist.

Reduction of the notice period will reduce regulatory lag in the review of proposed general increases of the intercity bus industry. It will increase the ability of bus carriers to respond to new market demands, and adjust rates to meet sudden or unanticipated cost increases. This action also is consistent with our continuing efforts to reduce unnecessary and burdensome rate regulation. Since the bus industry has become more competitive as a result of the Bus Act, a carrier's ability to respond to new market demands, free of regulatory interference, has increased in importance.

EFFECTIVE DATE: These rules will be effective March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Leonard L. Arnaiz, (202) 275-7831

or

Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Proposed rules in this proceeding were published at 49 FR 21553, May 22, 1984.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Energy and Environmental Analysis

This action does not appear to affect significantly the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

We affirm our prior determination that adoption of the regulations in this decision will not have a significant economic impact on a substantial number of small entities. The rule changes will reduce regulatory lag, without affecting the ability of small entities to challenge proposed fare changes.

List of Subjects in 49 CFR 1132 and 1139

Motor carriers.

Adoption of Rules

We adopt the amendments to Title 49, Parts 1132 and 1139, of the Code of Federal Regulations described in the Appendix.

Decided: February 11, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

Appendix

Parts 1132 and 1139 of Title 49 of the Code of Federal Regulations are amended as follows:

PART 1132—[AMENDED]

1. The authority citations following § 1132.1 and § 1132.2 are removed, and an authority citation for part 1132 is added to read as follows:

Authority: 49 U.S.C. 10321, 10707, 10708, and 10726; 5 U.S.C. 553 and 559.

2. Section 1132.1 is amended by revising paragraphs (b) and (f), and by adding a new paragraph (j), to read as follows:

§ 1132.1 Protests against tariffs

* * * * *

(b) *When filed.* Protests against, and requests for suspension of, tariffs, or schedules filed under the Act will not be considered unless made in writing and filed with the Commission at Washington, DC. Protests and requests for suspension shall reach the Commission at least 12 days (except as provided in paragraphs (c), (g), and (j) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer, unless the protested publications were filed on less than 30 days' notice in which even the protests (except as provided in paragraph (g) of this section) must reach the Commission not less than 5 days before the effective dates. Protests or petitions for investigation and suspension of tariffs filed on less than 10 days' notice will be accepted, *provided* that they reach the Suspension Board not later than 9:00 a.m. on the last workday before the tariffs' scheduled effective date. Appeals from decisions by the Suspension Board not to suspend or not to investigate matters in which the protests reached the Board later than 9 a.m. on the second working day before the protested tariffs' scheduled effective date will not be accepted. In an emergency, telegraphic protests will be acceptable if received within the time limits herein specified, provided they also fully comply with paragraphs (a) and (g) of this section and copies are immediately telegraphed by protestants to the proponent carriers or their publishing agents. However, protests against and requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, must reach the Commission no later than 27 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. Six copies of such telegrams should immediately be mailed by the protestants to the Commission at Washington.

* * * * *

(f) *Reply to protest.* A reply to a protest filed under this section must reach the Commission not later than the fourth working day prior to the scheduled effective date of the protested schedules unless otherwise provided. Replies to protests against motor carrier rate bureau proposals other than proposals affecting tariffs for the transportation of household goods as defined in 49 CFR 1056.1(a) subject to Ex Parte No. MC-82 procedures to be assured of consideration, must reach the Commission no later than 14 days before the scheduled effective date of the protested schedules. Replies to protests against tariffs applicable on household goods (as defined in 49 CFR 1056.1(a)), published for the account of household goods carriers (as defined in 49 CFR 1040.2(b)) on not less than 45 days' notice shall be filed with the Commission not more than 5 days after the protest is filed. Replies to protests against motor common carrier of passengers general increase proposals subject to Ex Parte No. MC-82 procedures filed on not less than 30 days' notice must reach the Commission not later than the second working day prior to the effective date of the protested schedules.

* * * * *

(j) *Motor carriers of passengers filings.* When motor common carriers of passengers file schedules of proposed general increases in rates and charges subject to the special procedures adopted in Ex Parte No. MC-82 (Sub-No. 1), *Procedures in Motor Carrier Revenue Proceedings—Intercity Bus Industry*, 357 I.C.C. 35 (1977) and set forth at 49 CFR Part 1139, protests thereto must reach the Commission at least 8 days before the proposed effective date of the protested matter.

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PART 1139—[AMENDED]

3. The authority citation for Part 1139 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10706; 5 U.S.C. 553 and 559.

4. Section 1139.20 is amended by revising paragraph (a) to read as follows:

§ 1139.20 Application

(a) Upon the filing by the National Bus Traffic Association, Inc., (NBTA) on behalf of its carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain proposed general increases in fares or charges where such proposal would result in an increase of $1 million or more in the annual operating revenues on the traffic affected by the proposal, the motor common carriers of passengers on whose behalf such schedules are filed shall, concurrently with the filing of those schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 30 days later than the date of filing, to enable proper evaluation of the evidence presented. Date to be submitted in accordance with §§ 1139.21 through 1139.23 represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the current situation.

* * * * *

[FR Doc. 86-3748 Filed 2-20-86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 35
Friday, February 21, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Nectarine Reg. 14, Amdt. 6; Peach Reg. 14, Amdt. 8]

Nectarines, Pears, Plums, and Peaches Grown in California; Proposed Amendment of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend size requirements for shipments of fresh nectarines and peaches grown in California. These proposed requirements are designed to promote the marketing of suitable quality and sizes of such fresh fruit in the interest of producers and consumers during the 1986 season.

DATE: Comments due March 24, 1986.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069-S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, DC 20250. Telephone 202-447-5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This proposed rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, plums and peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Shipments of these California fruits are regulated by grade and size under Nectarine Regulation 14 (7 CFR Part 916) and Peach Regulation 14 (7 CFR Part 917). Because these regulations do not change substantially from season to season, they are issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committees and approved by the Secretary.

The Nectarine Administrative Committee and the Peach Commodity Committee recommended amendment of the size requirements for nectarines and peaches for the 1986 season, which is expected to begin in April. This proposed rule is based upon those recommendations, information submitted by the committees, and other available information. The proposed changes reflect crop and market conditions experienced last season and expected in 1986. The changes are designed to provide ample supplies of good quality fruit in the interest of producers and consumers pursuant to the declared policy of the act.

This proposal would change the size requirements for nectarines and peaches by adding several new varieties now produced in commercially significant quantities, and by deleting from size regulation certain varieties no longer produced in significant quantities. The proposed rule also would change the weight count standards (i.e. the maximum number of fruit permitted in a 16-pound sample) for certain varieties and sizes of peaches and nectarines packed in volume-fill containers. Additionally, weight count standards are proposed for nectarines packed in tray packs (molded forms).

With respect to nectarines, §§ 916.356 (a)(2), (a)(3), and (a)(4) would be amended to add new varieties to the minimum size requirements. Specifically, the May Glo variety would be added to § 916.356(a)(2), the Ama Lyn, Mike Grand, Star Brite, and Tina Red varieties would be added to §916.356(a)(3), and the Super Star variety would be added to § 916.356(a)(4). Finally, the Ambrosia and Desert Dawn nectarine varieties would be deleted from minimum size requirements.

For peaches, §§ 917.459 (a)(4) and (a)(5) would be amended to add new varieties to the minimum size requirements. Specifically, the Ray Crest variety would be added to § 917.459(a)(4). The Autumn Crest, Berenda Sun, and Ryan's Sun varieties would be added to § 917.459(a)(5). In addition, size requirements would be deleted for the Early Royal May, Early Fairtime, Fiesta, and July Elberta peach varieties. The July Elberta is also known as Early Elberta, Kim Elberta, and Socala.

Shipments of the above-named nectarine and peach varieties that would be regulated exceeded 10,000 packages during the prior season, and shipments of the above-name varieties that would be eliminated from variety-specific size regulation fell below 5,000 packages during the prior season. The industry practice is to implement variety-specific size regulations for varieties of nectarines and peaches which are produced in commercially significant quantities. When varieties are no longer produced in significant quantities they are deleted from variety-specific size regulations.

Also, under the proposal all types of containers of nectarines would be checked on the basis of weight count standards (§§ 916.356 (a)(2)(ii), (a)(3)(ii), and (a)(4)(ii)). Currently, the weight count standards apply to all containers other than tray packs. This proposal would extend these standards to nectarine tray packs to lessen the chances of fruit size variability.

Further, minor adjustments are proposed in the weight count standards for nectarines to improve maturity. The maximum number of nectarines in a 16-pound sample for the 108 size would be reduced from 98 to 95, and the maximum number of nectarines in a 16-pound sample for the 96 size would be reduced from 90 to 87. Since the sample size of 16-pounds is relatively large, the overall effect on fruit size would be minimal and should not have the effect of reducing supplies of a particular size or variety of nectarines. In fact, the proposed changes may have the reverse effect if growers leave the fruit on the tree for longer periods to gain size and

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maturity, which would be desirable to consumers.

In a similar weight count action, the proposal also would increase the maximum number of size 80 peaches which would be permitted in a 16-pound sample from 71 to 73 pieces of fruit when they are packed in loose-filled containers [§ 917.459(a)(4)(iii)]. Slightly larger fruit has been packed in loose-filled containers than in tray packs. Therefore, the result of this relaxation should be more uniformly sized peaches, regardless of type of pack.

List of Subjects

7 CFR Part 916

Marketing agreements and orders, Nectarines, California.

7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–9, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposal is as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

2. The text of paragraphs (a)(2), (a)(3), and (a)(4) of § 916.356 (50 FR 27813) would be revised to read:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(2) Any package or container of Aurelio Grand, Mayfair, Maybelle, May Glo, or Royal Delight variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 95 nectarines.

(3) Any package or container of Ama Lyn, Apache, Armking, Early May, Early May Grand, Mike Grand, Early Star, Gee Red, June Belle, June Glo, June Grand, May Grand, Red June, Spring Grand, Star Brite, Sunfre, Tina Red, or Zee Gold variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

(4) Any package or container of Autumn Delight, Autumn Grand, Bob Grand, Clinton-Strawberry, Early Sun Grand, Fairlane, Fantasia, Firebrite, Flamekist, Flavortop, Flavortop I, Gold King, Granderli, Hi-Red, Independence, Kent Grand, Late Le Grand, Le Grand, Moon Grand, Niagara Grand, P–R Red, Red Diamond, Red Free, Red Grand, Regal Grand, Richards Grand, Royal Giant, Ruby Grand, September Grand, Tasty Free, Tom Grand, Larry's Grand, Son Red, Spring Red, Late Tina Red, Red Jim, Summer Beaut, Sparkling Red, Star Grand, Summer Grand, Sun Grand, Sherri Red, Super Star or 20 G 836 variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 84 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 75 nectarines.

* * * * *

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. The text of paragraphs (a)(4) introductory text, (a)(4)(iii), and (a)(5) introductory text of § 917.459 (50 FR 27813) would be revised to read:

§ 917.459 Peach Regulation 14.

(a) * * *

(4) Any package or container of Babcock, Coronet, Early Coronet, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Lady, Honey Red, JJK–1, June Crest, June Lady, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Ray Crest, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50–178 variety of peaches unless: * * *

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(4) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches.

(5) Any package or container of Angelus, August Sun, Autumn Crest, Autumn Gem, Autumn Lady, Belmont, Berenda Sun, Blum's Beauty, Cassie, Cal Red, Carnival, Early O'Henry, Elberta, Elegant Lady, Fairtime, Fay Elberta, Fayette, Fire Red, Flamecrest, Fortyniner, Franciscan, Halloween, July Lady, July Sun, Kings Lady, Lacey, Mardigras, O'Henry, Pacifica, Parade, Preuss Suncrest, Red Cal, Redglobe, Red Lady, Rio Oso Gem, Royal Flame, Ryan's Sun, Scarlet Lady, Sparkle, Summerset, Suncrest, Sun Lady, Toreador, or Windsor variety of peaches unless:

* * * * *

Dated: February 13, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–3758 Filed 2–20–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, and 1099

[Docket Nos. AO–366–A25–R01 et al.]

Milk in the Georgia and Certain Other Marketing Areas; Termination of Proceeding on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR parts	Marketing area	Docket Nos.
1007	Georgia	AO–366–A25–R01
1006	Upper Florida	AO–356–A23–R01
1011	Tennessee Valley	AO–251–A28–R01
1012	Tampa Bay	AO–347–A26–R01
1013	Southeastern Florida	AO–286–A33–R01
1046	Louisville-Lexington-Evansville.	AO–123–A54–R01
1093	Alabama-West Florida	AO–366–A4–R01
1094	New Orleans-Mississippi	AO–103–A46–R01
1096	Greater Louisiana	AO–257–A39–R01
1097	Memphis, Tennessee	AO–219–A41–R01
1098	Nashville, Tennessee	AO–184–A46–R01
1099	Paducah, Kentucky	AO–183–A40–R01

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This action terminates the current rulemaking proceeding on proposals to increase Class I milk prices under 12 southeastern Federal milk marketing orders.

At the request of Dairymen, Inc., a public hearing was held at Atlanta, Georgia, on June 25–28, 1985, to consider the cooperative's proposals to increase Class I price differentials. The hearing was reopened at the same location on October 2–3, 1985, to obtain testimony missing from the transcript of the prior hearing and to receive additonal evidence concerning economic and marketing conditions that had developed subsequent to the initial hearing. Proponent cooperative has now requested that this proceeding be terminated in view of recent legislation, The Food Security Act of 1985 (Pub. L. 99–198), providing for a higher level of Class I differentials for the 12 markets than the Class I differentials proposed at the Atlanta hearing.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2069.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 24, 1985; published May 30, 1985 (50 FR 23021).

Extensions of Time for Filing Briefs: Issued July 18, 1985; Issued August 1, 1985.

Proposed Termination of Proceeding: Issued August 16, 1985; published August 21, 1985 (50 FR 33761).

Notice of Reopened Hearing and Termination of Proposed Termination of Proceeding; Issued September 25, 1985; published September 27, 1985 (50 FR 39133).

Statement of Consideration

This action terminates the proceeding on proposals that would have increased the Class I price differentials under 11 of the 12 orders listed above, increased the plant location adjustment rates under all 12 orders, and modified a pooling provision of the Louisville-Lexington-Evansville Federal order.

The public hearing on the proposals was held in Atlanta, Georgia, on June 25–28, 1985. The Department received on August 2, 1985, (28 days after the date when the transcript was due) the reporting contractor's transcript of the last day of the hearing. Due to mechanical problems encountered by the court reporter, the third and fourth days' transcript of the hearing did not contain a verbatim account of the testimony given on those days. In view of the testimony missing from the transcript and increased milk production that occurred during June and July 1985 relative to demand, interested parties were asked on August 16, 1985, to comment on a proposed termination of the proceeding that was initiated for the purpose of increasing prices to assure adequate milk supplies for the region.

Proponent cooperative opposed terminating the proceeding and requested that the hearing be reopened. A notice of reopened hearing and termination of the proposed termination of proceeding was issued on September 25, 1985. The reopened hearing was held at Atlanta, Georgia, on October 2–3, 1985, to obtain testimony missing from the transcript of the prior hearing session and to receive additional evidence concerning economic and marketing conditions that had developed subsequent to the initial session of the hearing.

Proponent cooperative has now requested that the current rulemaking proceeding be terminated in view of recent legislation, The Food Security Act of 1985 (Pub. L. 99–198), providing for a much higher level of Class I differentials for the 12 markets than the Class I differentials proposed at the Atlanta hearing.

The cooperative's request that the current rulemaking proceeding in this matter be terminated should be granted. As noted by proponent, consideration of changes in the location adjustment provisions for the southeastern Federal milk orders can best be accomplished in new rulemaking proceedings that are not encumbered by the two sessions of the Atlanta hearing.

Termination Order

In view of the foregoing, it is hereby determined that the aforesaid proceeding with respect to proposed amendments to the tentative marketing agreements and to the orders should be and is hereby terminated.

List of Subjects in 7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, and 1099

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, and 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Signed at Washington, DC, on February 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–3754 Filed 2–20–86; 8:45 am]

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7 CFR Parts 1030, 1032, 1033, 1036, 1049, and 1050

[Docket Nos. AO–361–A24 etc.]

Milk in the Chicago Regional and Certain Other Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	AO Nos.
1030	Chicago Regional	AO–361–A24
1032	Southern Illinois	AO–313–A35
1033	Ohio Valley	AO–160–A55
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A49–R01
1049	Indiana	AO–319–A35
1050	Central Illinois	AO–355–A24

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to amend the Chicago Regional, Southern Illinois, Ohio Valley, Eastern Ohio-Western Pennsylvania, Indiana, and Central Illinois milk orders. The principal proposals would change the location adjustment provisions of the above listed orders to conform with the higher Class I differentials mandated by the Food Security Act of 1985. Proponents contend that such changes are necessary in order to maintain historical inter-market price alignment. In order to provide that proposals for adjacent markets be presented together, the hearing is being held on a regional basis, as requested by several of the proponents.

Because the Food Security Act of 1985 mandates that the higher Class I differentials be effective May 1, 1986, proponents have asked that the issues presented at the hearing be dealt with on an expedited basis.

DATE: The hearing will convene at 9:30 a.m., on March 12, 1986.

ADDRESS: The hearing will be held at the Holiday Inn Airport, 2501 South High School Road, Indianapolis, Indiana 46241 (317) 244–6861.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public

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hearing to be held at the Holiday Inn Airport, 2501 South High School Road, Indianapolis, Indiana 46241, beginning at 9:30 a.m., on March 12, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

This hearing represents a reopening of the public hearing previously held with respect to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania (Docket No. A0-179-A49) marketing area for the limited purpose of receiving evidence regarding the mandated higher Class I differential as it may relate to the proposal to change the location adjustment provision of the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Proposals that would revise the present pricing zones of the several marketing areas do not open for consideration at the hearing any changes in the presently defined territory included in such marketing areas.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1030, 1032, 1033, 1036, 1049, and 1050

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1030, 1032, 1033, 1036, 1049, and 1050 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Central Milk Producers Cooperative:

Proposal No. 1:

In § 1030.52, add two new paragraphs (a)(1) and (a)(2) to read as follows:

§ 1030.52 Plant location adjustments for handlers.

* * * * *

(a) * * *

(1) For any plant located in Lake County, Indiana the applicable adjustment rate per hundredweight shall be plus 20 cents.

(2) For any plant physically located in a regulated marketing area having a Class I differential greater than $1.40 which becomes regulated under Order 30, in any month, adopt such schedule of location adjustments as may be necessary to preserve competitive equity between such Order 30 regulated handlers and handlers regulated under the higher Class I differential order.

* * * * *

Proposed by Dean Foods Company:

Proposal No. 2:

In § 1030.52, add a new paragraph (a)(1) to read as follows:

§ 1030.52 Plant location adjustments for handlers.

* * * * *

(a) * * *

(1) For any plant located in the counties of Lake, Porter, La Porte, and Starke in the State of Indiana, the applicable adjustment rate per hundredweight shall be a plus 30 cents.

Proposed by Associated Milk Producers, Inc.:

Proposal No. 3:

In § 1032.2, revise the "Base zone" and the "Northern zone" to read as follows:

§ 1032.2 Southern Illinois marketing area.

* * * * *

Base Zone

Clinton, Madison (Alton Township only), and Washington.

Northern Zone

Bond, Calhoun, Champaign, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Greene, Jasper, Jefferson, Jersey, Lawrence, Logan, Macon, Macoupin, Madon, McLean, Menard, Montgomery, Morgan, Moultrie, Piatt, Richland, Sangamon, Shelby, Vermillion, Wabash, and Wayne.

* * * * *

Proposal No. 4:

In § 1032.52, *Plant location adjustments for handlers*, revise the table in paragraph (a)(1) from "Southern Zone . . . Plus 7 cents" to "Southern Zone . . . Plus 22 cents", revise paragraph (a)(3) by changing "15 cents" and "1.5 cents" to "20 cents" and "2.0 cents" respectively, and revise paragraph (a)(2)(i) and add a new paragraph (d) to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(2) * * *

(i) *Plus 7 cents.* St. Clair County (Scott Military Reservation, East St. Louis, Centerville, Canteen, and Stites Townships and the City of Belleville only) in the State of Illinois and the State of Missouri.

* * * * *

(d) Diverted milk shall be priced at the location of the plant to which diverted, except that, in the case of a distributing plant, if during the month not more than 4 days' production of a producer is diverted from such plant, such milk shall be priced at the location of the plant from which diverted.

Proposed by Beatrice Dairy Products:

Proposal No. 5:

In § 1032.52, *Plant location adjustments for handlers*, revise the table in paragraph (a)(1) from "Northern Zone . . . Minus 7 cents" to "Northern Zone . . . Minus 21 cents".

Proposed by Land O'Lakes, Mid-America Dairymen, Inc., Midwest Dairymen's Co., Prairie Farms Dairy, Inc. and Wisconsin Dairies:

Proposal No. 6:

Revise § 1032.52 to read as follows:

§ 1032.52 Plant location adjustments for handlers.

For producer milk received at a pool plant which is classified as Class I milk, the price specified in § 1032.50(a) shall be adjusted for the location of such plant by the following amount:

(1) At a plant in the Southern Zone except Randolph Co., Illinois, and the Missouri county of Cape Girardeau, plus 22 cents.

(2) At a plant in the Northern Zone, minus 12 cents.

(3) At a plant in the Missouri county of St. Louis, the city of St. Louis, and the territory within Scott Military Reservation, East St. Louis, Centerville, Canteen, and Stites Townships, and the city of Belleville, all in St. Clair County, Illinois, and Randolph County, Illinois, plus 7 cents.

(4) At a plant in the Illinois counties of Calhoun, Greene, Jersey, Macoupin, Montgomery, Christian, Shelby, Coles, Cumberland, Clark, Fayette, Effingham, Jasper, Crawford, Marion, Clay, Richland, Lawrence, Jefferson, Wayne, Edwards, Wabash, minus 2 cents.

(5) At a plant outside the marketing area, minus 20 cents if such plant is 100 or more miles from the city or village limits of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus an additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles: Provided, That the adjustment at a plant outside the marketing area and in the Indiana counties of Fountain, Parke, Vermillion, and Warren shall be the same as for a pool plant located in the northern zone; and

(6) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator. The market administrator shall use the latest edition of the *Household Carriers' Guide* in determining such mileages.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 110 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1032.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to receipts of fluid milk products from pool plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply; and

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

Proposed by Arps Dairy, Inc.:

Proposal No. 7:

In § 1033.53, *Plan location adjustments for handlers*, revise the table in (a)(1) from "Northwestern zone . . . Minus 5 cents" to "Northwestern zone . . . Minus 25 cents".

Proposed by Milk Marketing, Inc.:

Proposal No. 8:

Revise § 1033.6 to read as follows:

§ 1033.6 Ohio Valley marketing area.

* * * * *

(a) "Zone 1" shall include the following territory:

Ohio Counties

Fulton, Hancock, Henry Lucas, Putnam, Sandusky (Woodville and Madison Townships only), Seneca, Wood.

Michigan Counties

Lenawee (Blissfield, Deerfield, Ogden, Palmyra, and Riga Townships only).

Monroe (except Ash, Berlin, Dundee, Exeter, London, and Milan Townships).

(b) "Zone 2" shall include the following territory:

Ohio Counties

Allen, Auglaize, Crawford, Darke, Hardin, Logan, Marion, Mercer, Morrow, Richland, Shelby, Union, Van Wert (city of Delphos only) Wyandot.

(c) "Zone 3" shall include the following territory:

Ohio Counties

Butler, Champaign, Clark, Clinton, Coshocton (except Adams Township), Delaware, Fairfield, Fayette, Franklin, Greene, Guernsey (except Oxford, Londonberry, and Millwood Townships), Hocking, Knox, Licking, Madison, Miami, Montgomery, Morgan, Muskingum, Noble, Perry, Pickaway, Preble, Warren.

(d) "Zone 4" shall include the following territory:

Ohio Counties

Adams, Athens, Brown, Clermont, Gallia, Hamilton, Highland, Jackson, Lawrence, Meigs, Pike, Ross, Scioto, Vinton, Washington.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Grant, Greenup, Harrison, Kenton, Lewis, Mason, Pendleton, Robertson.

Indiana Counties

Dearborn, Ohio.

West Virginia Counties

Calhoun, Gilmer, Pleasants, Ritchie, Wirt, Wood.

(e) "Zone 5" shall include the following territory:

Kentucky Counties

Floyd, Johnson, Lawrence, Magoffin, Martin, Pike.

West Virginia Counties

Boone, Cabell, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Roane, Wayne.

(f) "Zone 6" shall include the following territory:

West Virginia Counties

Fayette, Raleigh, Wyoming.

Proposal No. 9:

In § 1033.53, revise paragraphs (a), (a)(1), (a)(2), (a)(3), redesignate (a)(4), as (a)(5), and add a new paragraph (a)(4) to read as follows:

§ 1033.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers that is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies the price specified in § 1033.51(a) shall be adjusted on the basis of where the plant receiving the milk is located, as follows: Provided, That the resulting adjusted price for fluid milk at a pool plant located in the Indiana or Eastern Ohio-Western Pennsylvania marketing area under Parts 1049 and 1036, respectively, of this chapter shall not be less than the Class I price under such other Federal orders applicable at the location of the pool plant:

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows: Except, That no minus location adjustment shall apply on the milk of any producers located in the State of Ohio and the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson, and Washtenow, if such milk is diverted from a plant located within the marketing area:

Zone	Adjustment per hundredweight
1	Minus 24 cents.
2	Minus 14 cents.
3	No adjustment.
4	Plus 7 cents.
5	Plus 15 cents.
6	Plus 21 cents.

(2) At a point located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta, or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, no minus

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location adjustment shall apply at any plant located in the Louisville-Lexington-Evansville marketing area under Part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia, or Virginia;

(4) At a plant located in the Kentucky counties of Anderson, Clark, Fayette, Garrard, Jessamine, Madison, Mercer, or Woodford, the adjustment shall be plus 17 cents;

(5) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

* * * * *

Proposed by Southern Belle Dairy:

Proposal No. 10:

In § 1033.6, revise paragraph (b), redesignate paragraph (c) as paragraph (d), and add a new paragraph (c) to read as follows:

§ 1033.6 Ohio Valley marketing area.

* * * * *

(b) The "Central Zone" shall include the following territory:

Ohio Counties

Adams, Champaign, Clark, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Miami, Montgomery, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Union, Vinton.

Kentucky Counties

Boyd, Greenup, Lewis.

(c) The "Southwestern Zone" shall include the following territory:

Ohio Counties

Brown, Butler, Clermont, Hamilton, Warren.

Kentucky Counties

Boone, Bracken, Campbell, Grant, Harrison, Kenton, Mason, Pendleton, Robertson.

Indiana Counties

Dearborn, Ohio.

* * * * *

Proposal No. 11:

In § 1033.53, redesignate (a)(1), (a)(2), and (a)(3) as (a)(2), (a)(3), and (a)(4) respectively, and add a new paragraph (a)(1) to read as follows:

§ 1033.53 Plant location adjustments for handlers.

(a) * * *

(1) At a plant in the Southwestern Zone, the Class I price shall be increased by 7 cents;

* * * * *

Proposed by Dean Foods Company:

Proposal No. 12:

Amend § 1049.52(a) by deleting paragraph (a)(2) and revising paragraphs (a) and (a)(1) to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in paragraph (a)(1) of this section, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to paragraph (a)(1) of this section, except that in no event shall the adjustment result in a price less than the Class III price for the month.

(1) Each plant location adjustment rate per hundredweight for this section and § 1049.75 shall be computed on the basis of the shortest hard-surfaced highway distances as determined by the market administrator. These location adjustments shall be based from a zero zone located zero to ten miles from the Monument Circle, Indianapolis, Indiana, and shall be a minus 2 cents for each ten miles or fraction thereof beyond the zero zone.

* * * * *

Proposed by Hoosier Milk Marketing Agency, Inc.:

Proposal No. 13:

In § 1049.52, revise paragraph (a)(1) to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) * * *

(1) At any plant located within:

Rate of adjustment per hundredweight (cents)

(i) The State of Ohio or any Indiana county not specifically named in paragraph (a)(1) (ii) through (vii) of this section	0
(ii) Any of the Indiana counties of: Benton, White, Carroll, Cass, Fulton, Miami, Wabash, Huntington, Allen, Wells, Adams, Blackford and Jay	20
(iii) Any of the Indiana counties of: Kosciusko and Whitely	24
(iv) Any of the Indiana counties of: Newton, Jasper, Pulaski, Starke, Marshall La Porte, St. Joseph and Elkhart	29
(v) Any of the Indiana counties of: Lagrange, Steuben, Noble and De Kalb	32
(vi) Any of the Michigan counties of: Berrien, Cass, St. Joseph and Branch	36
(vii) Any of the Indiana counties of: Lake and Porter	40

* * * * *

Proposed by the Milk Foundation of Indiana:

Proposal No. 14:

In § 1049.52, revise paragraph (a), to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in paragraph (a)(1) of this section, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to paragraphs (a)(1) through (5) of this section; respectively, except that in no event shall the adjustment result in a price less than the Class III price for the month. For the purpose of this section and § 1049.75, the distances to be computed shall be on the basis of the shortest hard-surfaced highway distances as determined by the market administrator:

(1) At any plant located within the State of Ohio or south of the Ohio river or any Indiana county not named in paragraphs (a)(2) through (5) of this section: 0 cents adjustment.

(2) At any plant located within the Indiana counties of: Bartholomew, Boone, Brown, Clay, Clinton, Delaware, Grant, Fountain, Hancock, Hamilton, Howard, Henry, Hendricks, Johnson, Morgan, Marion, Madison, Monroe, Montgomery, Owen, Putnam, Parke, Shelby, Tipton, Tippecanoe, Randolph, Vermillion, Vigo, Wayne, Warren: 6 cent adjustment.

(3) At any plant located within the Indiana counties of: Adams, Allen, Blackford, Cass, Carroll, De Kalb, Huntington, Jay, Lagrange, Miami, Noble, Steuben, Wabash, Wells, White, Whitley: 14 cent adjustment.

(4) At any plant located within the Indiana counties of: Benton, Elkhart, Fulton, Jasper, Kosciusko, Marshall, Newton, Pulaski, St. Joseph and Berrien and Cass counties, Michigan: 21 cent adjustment.

(5) At any plant located within the Indiana counties of: Lake, La Porte, Porter, Starke: 28 cent adjustment.

(6) For any plant at a location outside the territory specified above, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be 2.0 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to this section applicable at the respective point.

* * * * *

Proposed by Associated Milk Producers, Inc.:

Proposal No. 15:

In § 1050.52, revise paragraphs(a)(1) and (a)(2) to read as follows:

§ 1050.52 Plant location adjustments for handlers.

(a) * * *

* * * * * * *

(1) At a plant in Zone II of in the Illinois counties of Henry and Mercer, the Class I price shall be the same as Zone I; and

(2) At a plant located outside the State of Illinois, the Class I price shall be reduced 7.5 cents if such plant is 50 or more miles by the shortest highway distance, as determined by the market administrator from the City Hall in Peoria, Ill., plus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles.

* * * * *

Proposed by Prairie Farms Dairy, Inc.:

Proposal No. 16:

§ 1050.52, *Plant location adjustments for handlers,* revise paragraph (a)(2) by changing "7.5 cents" and "1.5 cents" to "10.0 cents" and "2.0 cents" respectively, and by revising paragraphs (a) and (b) to read as follows:

§ 1050.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk for which a location adjustment is applicable at a plant that is outside Zone I shall be adjusted as follows:

* * * * *

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee plant only to the extent that 105 percent of Class I disposition at the transferee plant exceeds the sum of receipts at such plant from producers and cooperative associations pursuant to § 1050.9(c), and the volume assigned as Class I to receipt from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 17:

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture

Office of the Administrator, Agricultural Marketing Service

Office of the General Counsel

Dairy Division, Agricultural Marketing Service (Washington office only)

Office of the Market Administrator of each of the 6 orders.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on February 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-3757 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1036

[Docket No. A0-179-A49]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Admendments to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This partial decision recommends certain changes in the Eastern Ohio-Western Pennsylvania milk order based on industry proposals considered at a public hearing held August 7-8, 1985. The recommended changes would: (1) Reduce the pooling requirements for cooperative balancing plants; (2) Permit the Director of the Dairy Division to adjust the pooling standards for pool supply plants and cooperative balancing plants when temporary aberrations occur in the market's supply-demand conditions; (3) Provide handlers more flexibility in moving milk directly from producer farms to nonpool manufacturing plants. The proposed changes are needed to reflect current marketing conditions and to assure orderly marketing in the area.

DATE: Comments are due on or before March 13, 1986.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Administrator of the Agricultural Marketing Service has determined that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued July 19, 1985; published July 24, 1985 (50 FR 30204).

BEST COPY AVAILABLE

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Suspension Order: Issued September 4, 1985; published September 10, 1985 (50 FR 36865).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250 by the 20th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Strongsville, Ohio, on August 7–8, 1985, pursuant to a notice of hearing issued July 19, 1985 (50 FR 30204).

The material issues on the record of hearing relate to:

1. Pool plant qualifications.
2. Diversions to nonpool plants.
3. Location adjustments.

This decision deals only with issues 1 and 2. The remaining issue 3 is reserved for a later decision.

Findings and Conclusion

1. *Pool plant qualifications. (a) Pooling standards for balancing plants.* Several modifications should be made in the pooling standards for any non-distributing plant operated by a cooperative association as a balancing plant for the regulated market.

First, the minimum monthly delivery requirement to pool distributing plants to qualify a balancing plant as a pool plant under the order should be reducted to 35 percent of a cooperative association's total receipts. The delivery requirement to pool distributing plants can be met either by direct delivery from member producer's farms or by transfer from such cooperative's plant(s).

Second, the delivery requirement can be met on the basis of the cooperative's deliveries to pool distribution plants during the current month or based on such delivers during the preceding 12-month period ending with the current month.

Third, credit would be given in meeting the delivery requirement to a cooperative's shipments to nonpool plants so long as such shipments are not made on an agreed-upon Class II or Class III basis.

Presently, the order provides that a cooperative can attain pool status for its balancing plant(s) if during the month the quantity of fluid milk products either shipped to pool distributing plants from the cooperative's plants or directly delivered to pool distributing plants from the farms of cooperative producer members is not less than 65 percent in any month of September through April, and not less than 50 percent in any other month of the cooperative association members' producer milk.

The principal cooperative in the market, Milk Marketing Inc. (MMI), proposed that the pooling standards for balancing plants operated by cooperatives be reduced from 65 percent in September through April and 50 percent in any other month to 35 percent for each month. As proposed, the delivery requirement could be met either on a monthly basis or on the basis of deliveries over the preceding 12 months. The cooperative also proposed that qualifying deliveries would include those that are made to nonpool plants when a Class II or III classification is not requested.

MMI currently operates two plants under the order which are qualified as pool supply plants. One plant, in Orrville, Ohio, manufactures dairy products and the other plant, in Greensburg, Pennsylvania, is a receiving station. The cooperative's spokesman stated that these plants balance most of the market's daily and seasonal milk supplies. Based on data presented at the hearing by the proponent cooperative, the amount of milk MMI delivered to pool distributing plants in 1983 expressed as a percent of its total supply of producer-member milk ranged from a high of 50.45 percent in January to a low of 32.64 percent in June. The same comparison for 1984 revealed that a high of 51.35 percent was delivered in November and a low of 33.16 percent was delivered in June.

Daily balancing is reflected in figures for the cooperative's Orrville plant. During November and December 1984, when bottling needs were greatest on certain weekdays, receipts at the plant were relatively low, and often no milk was received. However, on weekends and holidays the plant received milk in excess of 1 million pounds per day.

The spokesman pointed out that MMI's plants have been pooled as supply plants under the order, even though it is apparent that they operate as balancing plants, because the total delivery requirements of the order for cooperative balancing plants are unrealistic in terms of current supply-demand conditions. However, he added that the 40 percent shipping requirement for pool supply plants during each month of September through February in the past has caused MMI to make unnecessary and uneconomic shipments to distributing plants in order to pool all of its member milk. This, he said, is not only costly, but it also reduces milk quality. The spokesman emphasized that relaxing the pooling standards for balancing plants as proposal would enable the cooperative to pool all of its member milk regularly associated with the market on an efficient basis.

The National Farmers Organization (NFO), also proposed that the pooling standards for balancing plants operated by cooperatives be reduced. However, its proposal would reduce the standards from the present levels to 40 percent each month. Additionally, NFO proposed that the delivery requirement could be met either on the basis of deliveries for the current month or during the preceding 12-month period ending with the current month. The spokesman stated that since the intent and operation of NFO's proposal is very similar to what MMI proposed, NFO could accept the proposed lower 35-percent delivery requirement.

The present delivery requirements for pool balancing plants were established in 1972, reflecting approximately the Class I utilization percentage of the milk of MMI members at fluid plants and also the market's Class I utilization percentage. However, the 65-percent delivery requirement for each month of September through April and the 50-percent requirement for the remaining months have proved to be unattainable rates in qualifying the two balancing plants operated by MMI. In fact, not one plant operated by a cooperative since the balancing plant provisions were implemented has ever qualified pursuant to these requirements. Instead, MMI has qualified its two plants as pool supply plants.

The record establishes that marketing conditions have changed significantly since the present pooling standards for balancing plants were established in 1972. Data for the market indicates a significant change has occurred in the supply-demand relationship for milk associated with the market since that

time.[1] For example, during the 12-year period from 1972 to 1984, producer milk receipts increased from 3.32 billion pounds in 1972 to 3.67 billion pounds in 1984 (an 11 percent increase).

During this same period, producer milk classified as Class I milk declined from 2.15 billion pounds in 1972 to 2.02 billion pounds in 1984 (a 6 percent decrease). Consequently, the market's Class I utilization percentage of producer milk has decreased substantially since 1972 (from 65 percent in 1972 to 55 percent in 1984). These data clearly indicate significant changes in the market's supply-demand relationship for milk since the present delivery requirement for balancing plants was adopted in 1972.

Another changed marketing condition described on the record supporting a reduction in the delivery requirements for a balancing plant concerns the substantial change in the market's fluid milk processing operations. Not only has there been a substantial reduction in the number of pool distributing plants on the market but also the relatively few remaining operations have become large, specialized distributing plants that process fluid milk not more than five days per week. As a result, the day-to-day fluid milk requirements at such specialized plants fluctuate widely. An exhibit of proponent MMI clearly demonstrated the wide day-to-day fluctuations in fluid milk requirements of distributing plants. On the heavy bottling days of the week, such plants need significant quantities of milk for their fluid operations, while on weekends, the plants are closed and no milk is received. This pattern of fluctuating demand for milk at these specialized distributing plants requires larger quantities of reserve milk than when such plants were less specialized and operated six or seven days per week.

To accommodate the pooling of the increased volume of reserve milk supplies, it has been necessary to suspend various pooling provisions of the order during the 1983–1985 period. Such suspensions have involved pool supply plant shipping percentages, balancing plant delivery requirements, and diversion limits. The suspension of these several provisions enabled MMI to move its total milk supply associated with the market on an efficient basis and maintain pool status for its two balancing plants.

[1] Official notice is taken of the 1973–1984, annual summaries of "Federal Milk Order Statistics" published by the Dairy Division, Agricultural Marketing Service, USDA.

The record establishes that at other times in the absence of any suspension MMI had to make inefficient movements of milk to other pool plants solely for the purpose of pooling its two balancing plants and the milk of member producers who have regularly supplied the fluid needs of the market. When this occurred, it significantly increased milk transportation and hauling costs. Such inefficient marketing practices can be avoided by reducing the order's pooling requirements for balancing plants.

In view of the significance of the changed marketing conditions described above, lowering the minimum delivery requirement for balancing plants operated by a cooperative association will permit a cooperative to serve the fluid needs of the market in an efficient manner. It will likewise permit a cooperative to perform needed balancing functions for the market without causing inefficient deliveries of milk merely for the purpose of meeting the pooling requirements of the order. The proposed 35 percent delivery requirement will best accomplish these results under the market's current supply-demand conditions and in terms of the principal cooperative's market participation in performing the balancing function.

As noted previously, a cooperative should be able to meet the requirement for certain minimum deliveries to pool distributing plants not only on the basis of such deliveries during the current month but also on the basis of deliveries during the preceding 12-month period. The 12-month rolling average concept was proposed by both MMI and NFO. It is needed to offset the potentially disruptive impact of a significant short-term change in marketing conditions on a cooperative's ability to qualify its balancing plant(s) for pooling. Allowing a cooperative such flexibility will assist in maintaining orderly marketing conditions for the regulated area.

In meeting the delivery requirement, a cooperative should receive credit on shipments to nonpool plants that are not made on an agreed-upon Class II or Class III basis. Shipments to another market for Class I purpose would benefit producers in this market since such shipments would enhance total pool proceeds. Not to count such shipments in meeting the delivery requirements could discourage such shipments, when in fact, such shipments may be needed in other markets.

A producer supplying an Order 36 pool plant testified in opposition to the proposals on the basis that their effect would be to facilitate the pooling of additional milk on the market with the consequences of reducing producer returns. A reduction in the delivery requirements for member producer milk will not, in any substantive way, provide the opportunity to pool additional milk not already associated with the market.

Although the handler did not testify at the hearing, a proprietary handler, in its post-hearing brief, opposed the proposals to relax the pool balancing plant previsions. It was the handler's position that the record evidence does not support these proposals. However, the record evidence developed in this proceeding does not support he poistion of the handler. To the contrary, the record establishes, as described previously, that relaxing the pooling standards for a balancing plant operated by a cooperative is necessary for the maintenance of orderly marketing.

(b) Temporary revision of pooling standards. The order should be amended to provide that the Director of the Dairy Division may increase or decrease the supply plant shipping percentage and the delivery percentages for qualifying a balancing plant operated by a cooperative association when a determination is made that additional supplies are needed at distributing plants or to prevent uneconomic deliveries for pooling purposes. The adjustment should be limited to 10 percentage points.

Before making any revision, the Director should investigate the need for revision, either on the Director's own initiative or at the request of interested persons. If the investigation shows that a revision may be appropriate, the Director should issue a notice stating that a temporary revision of the shipping standards is being considered and inviting interested persons to comment on the proposed revision.

MMI proposed that the Director of the Dairy Division be given the authority to increase or decrease by up to 10 percentage points both the supply plant shipping percentages and the pooling standards for balancing plants operated by cooperatives if the Director finds that such revisions are necessary to obtain needed shipments or to prevent uneconomic shipments. The cooperative proposed further that before making such a finding, the Director shall investigate the need for revision either on the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice which states that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed revision. At

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the hearing, MMI modified the proposal to apply the revision only to pool balancing plants.

NFO also proposed flexible performance requirement percentages for supply plants and cooperative balancing plants that could be adjusted monthly in multiples of five percentage points. The maximum adjustment in such requirements, as proposed, would be the lesser of the supply plant and balancing plant requirements or the average non-Class I utilization percentage for the previous 12 months. Further, NFO proposed that the Secretary may adjust the requirements for a period not to exceed 6 months with increases from previous adjustments being made prior to the month for which they are effective.

There was not opposition to the proposals at the hearing.

The record of the hearing suggests the possibility that an emergency situation affecting the market's supply-demand situation could develop for a short time which would warrant an immediate adjustment (up or down) for either type of plant. Under the current order provisions, a change in a pool plant's performance requirements can be made only through a time-consuming amendment proceeding or by suspension Although a suspension action can be accomplished relatively quickly, it is limited becaue of procedural requirements to relaxing rather than increasing performance requirements. Inclusion of a provision to adjust temporarily supply plant shipping percentages and the delivery requirement percentages that a cooperative must meet in qualifying a balancing plant will enhance the ability of the order to deal with short emergency situations on a timely basis.

The limited modification of the delivery requirements for both supply plants and cooperative balancing plants by the Director of the Dairy Division, as provided herein, would permit downward and upward changes to be made. Thus the shipping percentages could be adapted to temporary aberrations in supply and demand. Should some unforeseen circumstance temporarily alter the relationship of supplies to sales in such a way that a temporary increase in shipping percentages is necessary to associate adequate supplies of milk and fluid use outlets in the market, the Director would have the authority to temporarily modify the shipping standards upward. Similarly the Director may temporarily adjust the standards downward in order to prevent uneconomic shipments made solely for pooling purposes. The provisions provided herein for temporary changes in the shipping percentages will provide a desirable degree of flexibility to augment both the pooling provisions for supply plants and the revised performance requirements for cooperative balancing plants.

The maximum adjustment adopted herein, which is limited to 10 percentage points, is somewhat less than what was proposed by NFO. However, past experience in the market does not indicate that there would be occasions when a temporary aberration in the supply-demand situation of distributing plants would warrant adjusting the shipping percentages for supply plants and the revised performance requirements for balancing plants beyond 10 percentage points. Accordingly, limiting such adjustment to 10 percentage points is appropriate under the market's current marketing situation.

2. *Diversions to nonpool plants.* Rules concerning the diversion of producer milk from pool plants to nonpool plants should be modified as follows:

(a) The limit on the aggregate quantity of milk that may be diverted to nonpool plants by a handler during certain months should be 40 percent of a handler's producer milk, i.e., the quantity delivered to or diverted from pool plants.

(b) March and December should be eliminated as months during which the limit on diversions to nonpool plants applies.

Presently, the order limits the total amount of milk that a cooperative or other handlers may divert to nonpool plants to 40 percent during the months of September through March of the total quantity of producer milk physically received at a pool plant(s) during the month. Determining diversion limitations of the alternative basis of allowing the same number of days' production of an individual producer to be diverted that is actually delivered to a pool plant should be continued without any change.

Both MMI and NFO proposed that the limitation on the aggregate amount of producer milk that a cooperative association or other handlers may divert be expanded from an amount equivalent to 40 percent the quantities physically received at pool plants to an amount equivalent to 40 percent of the total producer milk supply of the handler. In addition, NFO proposed that the months during which a handler may divert producer milk without limit to nonpool plants be extended from April through August to include March and December. There was no opposition to the proposals at the hearing.

The main thrust of proponents' arguments in support of their proposals was that in light of the market's current supply-demand conditions, the diversion limits are too restrictive and cause handlers to make uneconomic shipments of milk solely for the purpose of pooling all of the milk that historically has been associated with the market. They stated that such shipments are only costly, but also reduce the quality of the milk because of the extra pumping and handling involved. Both spokesmen believe that adoption of the proposed changes to the diversion provisions will eliminate inefficient movements of reserve milk supplies while maintaining an adequate supply of milk for fluid purposes.

Limiting the total amount of milk that a handler may divert to a quantity equivalent to 40 percent of the producer milk physically received at a pool plant amounts to a limit of about 29 percent of a handler's total supply of producer milk. This actual diversion limit is too stringent in view of the market's Class I use of Producer milk. For instance, over the past 3 years Class I utilization during the months when diversion limits apply has rarely exceeded 60 percent. Furthermore, expectations are that future increases in milk production will exceed any increeses in Class I use.

In computing a handler's diversion allowance, the base to which the diversion percentage applies should include the amount of producer milk delivered to pool plants plus the amount diverted from such plants. This change will increase the amount of milk a handler may divert to nonpool plants from about 29 to 40 percent of a handler's total receipts of producer milk. Such an increase should permit handlers adequate flexibility to operate more efficiently. They will be able to move all of the milk not needed at pool plants for fluid purposes directly from the farm to a manufacturing outlet rather than delivering the milk first to a pool plant and then transferring it to a nonpool manufacturing plant. Such efficient movement of milk promotes orderly marketing.

NFO proposed that the change in computing diversion allowances apply to cooperatives only. However, it is appropriate to relax the corresponding diversion limit for pool plant operators also, as proposed by MMI. Considering the market's supply-demand situation, proprietary handlers would likely need less-restrictive diversion limits as much as cooperative associations. Under the revisions adopted herein, both proprietary operators and cooperative associations will be subject to the same limitation on diversions to nonpool plants.

As noted previously, NFO also proposed that diversion limitations not apply during the months of December and March. The spokesman stated that in March, Class I utilization usually declines substantially from that of the preceding month (February). Thus, it becomes difficult to maintain pool status for their members' milk. In December, the problem, as stated by the spokesman, stems from the erratic demand for milk at fluid plants on certain days within the month because of the holiday season.

Data contained in the record indicate that there is a seasonal buildup in producer receipts beginning in March. For example, producer receipts on a daily basis for the four-year period, 1982–85, increased an average of 3.1 percent in March over those for February. During this same period, Class I utilization in March increased only an average of 0.6 percent over February. Consequently, there are substantial quantities of reserve milk on the market in March that must be moved to manufacturing plants. In such circumstances, continuance of diversion limitations for March could adversely affect the orderly and efficient disposition of milk not needed at pool plants for fluid purposes. Accordingly, the months during which a handler may divert producer milk to nonpool manufacturing plants should be extended from the period April–August to include March. Likewise, because of the erratic daily demand pattern for milk at fluid plants during December due to the holiday season and school closings, December should be eliminated as a month in which diversion limitations apply.

In his post-hearing brief, the same proprietary handler who opposed any change in the performance standards for a cooperative balancing plant objected to any revision of the order's present diversion rules. No significant basis was provided in the handler's brief to warrant not revising the diversion provisions as described above.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Eastern Ohio-Western Pennsylvania order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1036

Dairy products, Milk, Milk marketing orders.

PART 1036—MILK IN THE EASTERN OHIO–WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. Section 1036.7 is amended by revising paragraph (d) and adding a new paragraph (f) to read as follows:

§ 1036.7 Pool plant.

* * * * *

(d) A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s) when a Class II or Class III classification is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 35-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

* * * * *

(f) The percentage delivery requirement in paragraphs (b) and (d) of this section may be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if the Director finds that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision on either the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed revision.

3. Section 1036.13 is amended by revising paragraph (e), the introductory text of paragraph (f), and paragraphs (f)(1)(ii) and (f)(2)(ii) to read as follows:

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§ 1036.13 Producer milk.

* * * * *

(e) During March through August and December, subject to the conditions of paragraph (g) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) During September through February excluding December and subject to the conditions of paragraph (g) of this section:

(1) * * *

(ii) The plant operator may divert an aggregate quantity of milk of producers not exceeding 40 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator.

(2) * * *

(ii) The cooperative association may divert an aggregate quantity of milk not exceeding 40 percent of the producer milk that the cooperative association causes to be delivered to pool plants or diverted therefrom.

* * * * *

Signed at Washington, DC on February 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-3753 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1126, 1064, 1097, 1102, 1106, 1108, and 1138

[Docket Nos. AO-231-A54 et al.]

Milk in the Texas and Certain Other Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing Area	Docket Nos.
1126	Texas	AO-231-A54
1064	Greater Kansas City	AO-29-A57
1097	Memphis, Tennessee	AO-219-A43
1102	Fort Smith, Arkansas	AO-237-A34-RO1
1106	Southwest Plains	AO-210-A45-RO1
1108	Central Arkansas	AO-249-A39
1138	Rio Grande Valley	AO-335-A32

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by cooperative associations and dairy processors to amend the above-listed Federal milk marketing orders. Proponents indicate that the proposals are designed to change the location adjustment provisions in the orders to conform with the Class I differentials mandated by the Food Security Act of 1985. Consideration will also be given to whether these provisions should be adopted on an expedited basis.

This hearing also represents a reopening of a hearing that was held on November 6, 1985, to consider a merger of the Southwest Plains and Fort Smith, Arkansas marketing areas and expansion of the Southwest Plains marketing area to include additional territory in southwest Missouri and northeast Arkansas.

DATE: The hearing will convene at 9:30 a.m., local time, on March 4, 1986.

ADDRESS: The hearing will be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061 (214/399-1010).

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061 (214/399-1010), beginning at 9:30 a.m., on March 4, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Texas and certain other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

The hearing, with respect to the Southwest Plains and Fort Smith, Arkansas orders, is a reopening of a hearing held November 6, 1985, to consider a merger of the two marketing areas and expansion of the Southwest Plains marketing area to include additional territory in southwest Missouri and northwest Arkansas. The hearing is reopened for the limited purpose of receiving evidence with respect to the economic and marketing conditions which relate to the location adjustment provisions of the proposed merged and expanded Southwest Plains marketing area.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1126, 1064, 1097, 1102, 1106, 1108, and 1138

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1126, 1064, 1097, 1102, 1106, 1108, and 1138 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.:

Proposal No. 1—Memphis, Tennessee, Part 1097:

Amend § 1097.52 Plant location adjustment for Handlers to read as follows:

(a) For milk received at a fluid milk plant from producers or a handler described in § 1097.9(c) and which is classified as Class I milk without movement to another fluid milk plant, the price specified in § 1097.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (4) of this section for the location of such plant.

(1) For a plant located in the State of Tennessee and more than 50 miles from the City Hall in Memphis, Tennessee, minus 25 cents;

(2) For a plant located in the State of Mississippi and adjustment shall be as follows:

(i) For a plant located within the counties of Itawamba, Lafayette, Lee, Panola, Pontotoc, Prentiss, Tate, Tunica or Union plus 18 cents; and

(ii) For a plant located in any Mississippi county not specified in paragraph (a)(2)(i) of this section and more than 50 miles from the City Hall in Memphis, Tennessee, plus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee.

(3) For a plant located in the State of Arkansas the adjustment shall be as follows:

(i) For a plant located within the counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Springs, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sabastian, Sevier, Van Buren, White, Woodruff or Yell no location adjustment shall apply;

(ii) For a plant located in that portion of the State of Arkansas lying to the north of the counties specified in paragraph (a)(3)(i) of this section minus 22 cents;

(iii) For a plant located in that portion of the State of Arkansas lying south of the counties specified in paragraph (a)(3)(i) of this section plus 31 cents.

(4) For a plant located outside the areas specified in paragraphs (a) (1), (2) and (3) of this section the adjustment shall be minus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee.

(b) For fluid milk products transferred between fluid milk plants and classified as Class I milk such location adjustments shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made in sequence beginning with the transferor plant with the highest Class I price.

Proposed by Malone and Hyde Dairy:

Proposal No. 2—Memphis, Tennessee, Part 1097:

In § 1097.52, plant location adjustments for handlers, revise the schedule prescribing location adjustments for plants located in the State of Tennessee to read as follows:

Location of plant	Rate per hundredweight
In the State of Tennessee and 50 or more miles from the city hall in Memphis.	Subtract 25 cents.

* * * * *

Proposed by Mid-America Dairymen, Inc.:

Proposal No. 3—Greater Kansas City, Part 1064: Amend § 1064.52 to read as follows:

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the Missouri counties of Andrew, Atchison, Bates, Buchanan, Cass, Clay, Clinton, Daviess, De Kalb, Gentry, Henry, Holt, Jackson, Johnson, Lafayette, Nodaway, Pettis, Platte, St. Clair, and Worth and the Kansas counties of Atchison, Brown, Doniphan, Douglas, Jefferson, Johnson, Leavenworth, Nemaha, and Wyandotte.

(2) Zone 2 shall include the Kansas counties of Franklin, Jackson, Lyon, Marshall, Miami, Osage, Pottawatomie, Republic, Shawnee, Wabaunsee, and Washington.

(3) Zone 3 shall include the Kansas counties of Clay, Cloud, Dickinson, Geary, Morris, Ottawa, Riley and Saline.

(b) For producer milk received at a pool plant (or diverted to a nonpool plant) and which is classified as Class I milk, the Class I price specified § 1064.50(a) shall be adjusted for the location of the plant receiving the milk as follows:

(1) In Zone 1, no adjustment.

(2) In Zone 2, plus 10 cents.

(3) In Zone 3, plus 20 cents.

(4) For milk received from producers at a pool plant located outside Zones 1, 2, and 3 and more than 70 miles by the shortest highway distance as measured by the market administrator from the city hall in Kansas City, Missouri, the price shall be reduced 15 cents, plus an additional 2.0 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from the city hall.

(c) Same as the present paragraph (b).

(d) Same as the present paragraph (c).

Proposed by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.:

Proposal No. 4—Southwest Plains, Part 1106:

A. Revise § 1106.2 to read as follows:

The "Southwest Plains marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishment if any part thereof is within any of the listed counties:

Zone I.—In the State of Oklahoma

Caddo	Lincoln
Canadian	McClain
Cleveland	McIntosh
Coal	Okfuskee
Garvin	Oklahoma
Grady	Pittsburg
Haskell	Pontotoc
Hughes	Pottawatomie
Latimer	Seminole
LeFlore	Sequoyah

Zone II.—In the State of Oklahoma

Atoka	Johnston
Bryan	Kiowa
Carter	Love
Choctaw	Marshall
Comanche	McCurtain
Cotton	Murray
Greer	Pushmataha
Harmon	Stephens
Jackson	Tillman
Jefferson	

Zone III.—In the State of Oklahoma

Adair	Mayes
Alfalfa	Major
Beaver	Muskogee
Beckham	Noble
Blaine	Nowata
Cherokee	Okmulgee
Cimarron	Osage
Craig	Ottawa
Creek	Pawnee
Custer	Payne
Deleware	Roger Mills
Dewey	Rogers
Ellis	Texas
Garfield	Tulsa
Grant	Wagoner
Harper	Washita
Kay	Washington
Kingfisher	Woods
Logan	Woodward

Zone IV.—In the State of Kansas

Allen	Labette
Bourbon	Montgomery
Chautauqua	Neosho
Cherokee	Wilson
Crawford	

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V.—In the State of Kansas

Barber	Marion
Barton	McPherson
Butler	Pawnee
Comanche	Pratt
Cowley	Reno
Edwards	Rice
Ellis	Rush
Herper	Russell
Hervey	Sedgwick
Kingman	Stafford
Kiowa	Sumner

Zone VI.—In the State of Kansas

Clark	Hamilton
Finney	Haskell
Ford	Hodgeman
Gove	Kearny
Grant	Lane
Gray	Meade
Greeley	Morton

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Ness	Stevens
Scott	Trego
Seward	Wichita
Stanton	

B. Revise § 1106.52(a) (1) through (9) to read as follows:

(1) For a plant located within one of the zones set forth in § 1106.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone I	No Adjustment.
Zone II	Plus 23 cents.
Zone III	Minus 19 cents.
Zone IV	Minus 47 cents.
Zone V	Minus 37 cents.
Zone VI	Minus 27 cents.

(2) For a plant located in any of the following Kansas counties, the adjustment shall be as follows:

(i) *Minus 85 cents.* Anderson, Atchison, Brown, Chase, Clay, Cloud, Coffey, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington, Wyandotte.

(ii) *Minus 42 cents.* Elk, Greenwood, Woodson.

(iii) *Minus 20 cents.* Cheyenne, Decatur, Ellsworth, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Phillips, Rawlins, Rooks, Sheridan, Sherman, Smith, Thomas, Wallace.

(3) For a plant located in any of the following Missouri counties, the adjustment shall be as follows:

(i) *Minus 85 cents.* Adair, Andrew, Atchison, Audrain, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Chariton, Clark, Clay, Clinton, Cole, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, Knox, Lafayette, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Mercer, Miller, Moniteau, Monroe, Montgomery, Morgan, Nodaway, Osage, Pettis, Pike, Platte, Putnam, Ralls, Randolph, Ray, Saline, Schuyler, Scotland, Shelby, Sullivan, St. Clair, Worth.

(ii) *Minus 78 cents.* Bollinger, Cape Girardeau, Franklin, Jefferson, Perry, St. Charles, St. Louis, City of St. Louis, St. Francois, Ste. Genevieve, Warren, Washington.

(iii) *Minus 47 cents.* Barry, Butler, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Gasconade, Greene, Howell, Iron, Laclede, Lawrence, Madison, Maries, McDonald, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Phelps, Polk, Pulaski, Reynolds, Ripley, Scott, Shannon, Stoddard, Stone, Taney, Texas, Wayne, Webster, Wright.

(4) For a plant located in any of the following Louisiana parishes the adjustments shall be as follows:

(i) *Plus 51 cents.* Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, Winn.

(ii) *Plus 77 cents.* Allen, Avoyelles, Beauregard, East Feliciana, Evangeline, Livingston, Rapides, St. Helena, St. Tammany, Tangipahoa, Vernon, Washington, West Feliciana.

(iii) *Plus 101 cents.* Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, West Baton Rouge.

(5) For a plant located in any of the following Texas counties the adjustments shall be as follows:

(i) *Plus 26 cents.* Archer, Baylor, Clay, Hardeman, Montague, Wichita, Wilbarger.

(ii) *Plus 31 cents.* Bowie and Cass.

(iii) *Minus 28 cents.* Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(iv) *Plus 51 cents.* Camp, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Grayson, Hill, Hood, Hopkins, Hunt, Johnson, Kaufman, Lamar, Morris, Parker, Rains, Red River, Rockwall, Somervell, Tarrant, Titus, Upshur, Van Zandt, Wise, Wood.

(v) *Minus 42 cents.* El Paso.

(vi) *Plus 51 cents.* Gregg, Harrison, Marion, Panola, Rusk Smith.

(vii) *Minus 28 cents.* Bailey, Castro, Cochran, Cottle, Crosby, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Terry, Yoakum.

(viii) *Plus 98 cents.* Anderson, Fell, Bosque, Cherokee, Comanche, Coryell, Erath, Falls, Freestone, Hamilton, Henderson, Lampasas, Limestone, McLennan, Mills, Navarro.

(ix) *Plus 73 cents.* Angelina, Houston, Jasper, Leon, Nacogdoches, Newton, Polk, Sabine, San Augustine, Shelby, Trinity, Tyler.

(x) *Plus 77 cents.* Brazos, Burleson, Grimes, Madison, Milam, Robertson, Walker.

(xi) *Plus 51 cents.* Andrews, Borden, Brown, Callahan, Coke, Coleman, Dawson, Eastland, Ector, Fisher, Foard, Glasscock, Haskell, Howard, Jack, Jones, Kent, King, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Runnels, Scurry, Shackelford, Stephens, Sterling, Stonewall, Taylor, Throckmorton, Tom Green, Young.

(xii) *Plus 86 cents.* Bastrop, Burnet, Lee, Travis, Williamson.

(xiii) *Plus 105 cents.* Austin, Brazoria, Chambers, Colorado, Fayette, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto, Waller, Washington.

(xiv) *Plus 93 cents.* Bexar, Caldwell, Comal, DeWitt, Gonzales, Guadalupe, Hays, Jackson, Lavaca, Matagorda, Wharton, Wilson.

(xv) *Plus 104 cents.* Aransas, Bee, Calhoun, Goliad, Karnes, Live Oak, Refugio, Victoria.

(xvi) *Plus 117 cents.* Brooks, Duval, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio.

(xvii) *Plus 126 cents.* Cameron, Hidalgo, Willacy.

(xviii) All other areas in the State of Texas not listed shall be plus 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the city hall in Oklahoma City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(6) For a plant located in any of the following New Mexico counties the adjustments shall be as follows:

(i) *Minus 57 cents.* Chaves, Colfax, Curry, DeBaca, Eddy, Lea, Quay, Roosevelt, San Juan, Union.

(ii) *Minus 42 cents.* Bernalillo, Catron, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia.

(7) For a plant located in any of the following Colorado counties the adjustments shall be as follows:

(i) *Minus 17 cents.* Baca, Bent, Cheyenne, Kiowa, Kit Carson, Lincoln, Logan, Phillips, Prowers, Sedgwick, Washington, Yuma.

(ii) *Minus 57 cents.* Archuleta, La Plata, Montezuma.

(iii) *Minus 4 cents.* Adams, Arapahoe, Boulder, Clear Creek, Crowley, Custer, Denver, Douglas, Elbert, El Paso, Gilpin, Huerfano, Jefferson, Larimer, Las Animas, Morgan, Otero, Park Pueblo, Teller, Weld.

(iv) *No adjustment.* Any Colorado county not specified in paragraph (a)(7) (i), (ii) or (iii) of this section.

(8) For a plant located in any of the following Arkansas counties the adjustments shall be as follows:

(i) *Minus 22 cents.* Benton, Boone, Carroll, Madison, Marion, Washington.

(ii) *Plus 31 cents.* Little River and Miller.

(iii) *No adjustment.* Any Arkansas county not specified in paragraph (a)(8) (i) or (ii) of this section.

(9) For a plant located outside the areas described in paragraph (a) (1) through (8) of this section, the adjustment shall be minus 22 cents plus an additional reduction of 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the City Halls in Tulsa or Ponca City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

Proposed by Land O'Lakes, Mid-West Dairymen's Co., Prairie Farms Dairy, Inc., and Wisconsin Dairies:

Proposal No. 5—Southwest Plains, Part 1106:

Revise § 1106.52(a)(3)(iii) so that the net effect would price a plant located in Greene County, Missouri, at the same Class I differential as Kansas City, Missouri, or St. Louis, Missouri, whichever is higher.

Proposed by Jackson Ice Cream Co., Inc.:

Proposal No. 6—Southwest Plains, Part 1106:

Revise § 1106.52(a)(1) to set the location adjustment for Zone V at minus 60 cents.

Proposed by Steffen Dairy Foods Company:

Proposal No. 7—Southwest Plains, Part 1106:

Revise § 1106.52(a)(1) to set the location adjustment for Zone V at minus 78 cents.

Proposed by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.:

Proposal No. 8—Central Arkansas, Part 1126:

Revise § 1126.52(a) to read as follows:

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to another pool plant at which a higher Class I price applies the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (4) of this section for the location of such plant.

(1) For a plant located within the Arkansas counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Springs, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff, or Yell or in the States of Oklahoma or Tennessee, no location adjustment shall apply:

(2) For a plant located in that portion of the State of Arkansas lying south of the no location adjustment zone specified in paragraph (a)(1) of this section or located in the Texas counties of Bowie or Cass, the adjustment shall be plus 31 cents;

(3) For a plant located in that portion of the State of Arkansas lying to the north of the no location adjustment zone specified in paragraph (a)(1) of this section the adjustment shall be minus 22 cents;

(4) For a plant located outside the areas specified in paragraphs (a) (1), (2), and (3) of this section the adjustment shall be 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the county courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas (based on the shortest hard-surfaced highway distance as determined by the market administrator) as follows:

(i) For a plant located in the States of Louisiana, Mississippi, or Texas (except the counties of Bowie or Cass) the adjustment shall be plus; and

(ii) For all other plants the adjustment shall be minus.

* * * * *

Proposed by Dean Foods, Inc.:

Proposal No. 9—Rio Grande Valley, Part 1138:

Revise § 1138.52 (a) and (b) by putting the entire order area under the same price as stated in § 1138.50(a).

Proposal No. 10—Texas, Part 1126:

Revise the table of location adjustments in § 1126.52(a)(1) by changing the Zone 6 location adjustment to minus 50 cents from plus 25 cents.

Proposed by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.:

Proposal No. 11—Texas, Part 1126:

Revise § 1126.52(a) to read as follows:

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraph (a) (1) through (7) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1-A	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 19 cents.
Zone 4	Plus 22 cents.
Zone 5	Plus 30 cents.
Zone 6	No adjustment.
Zone 7	Plus 39 cents.
Zone 8	Plus 54 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents
Zone 12	Plus 77 cents.

(2) For a plant located in the following Federal order marketing areas, the adjustment shall be as set forth herein:

(i) Lubbock-Plainview, Texas (Order 1120), minus 79 cents.

(ii) Texas Panhandle (Order 1132), minus 79 cents.

(iii) For a plant located in or regulated by the Fort Smith, Arkansas, order (Order 1102), the price adjustment under this order shall equate prices determined pursuant to the Fort Smith order.

(iv) For a plant located in or regulated by the Central Arkansas order (Order 1106), the price adjustment under this order shall equate prices determined pursuant to the Central Arkansas order.

(3) For a plant located in the Southwest Plains marketing area or which is regulated by such order (Order 1106), the price adjustment under this order shall equate prices determined pursuant to Order 1106;

(4) For a plant located in Bowie or Cass Counties, Texas, or in Little River or Miller Counties, Arkansas, the adjustment shall be minus 20 cents;

(5) For a plant located in the States of Louisiana or New Mexico or in El Paso County, Texas, no adjustment shall apply;

(6) For a plant located in the State of Texas but outside any area described in paragraphs (a) (1), (2) and (4) of this section, the adjustment shall be the adjustment applicable at Corpus Christi, San Angelo, or San Antonio, Texas, whichever city is nearest; and

(7) For a plant located outside the areas described in paragraphs (a) (1) through (6) of this section, the adjustment shall be minus 2.1 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the Dallas, Texas, city hall, such distance to be based on the shortest hard-surfaced highway distance as determined by the market administrator.

* * * * *

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Proposed by the Southland Corporation and Hygeia Dairy Co.:

Proposal No. 12—Texas, Part 1126:

A. Revise § 1126.2 to reflect the following:

Zone 1

Camp, Collin, Dallas, Denton, Ellis, Hill (Blum and Itasca divisions only), Hood, Hunt, Johnson, Kaufman, Parker, Rains, Rockwall, Somervell, Tarrant, Upshur, Van Zandt, Wise, wood.

Zone 1–A

Archer, Baylor, Clay, Hardeman, Montague, Wichita, Wilbarger.

Zone 1–B

Cooke, Delta, Fannin, Franklin, Grayson, Hopkins, Lamar, Morris, Red River, Titus.

B. Revise § 1126.52(a) to read as follows:

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraph (a) (1) through (9) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1–A	Minus 12 cents.
Zone 1–B	Minus 18 cents.
Zone 2	Plus 9 cents.
Zone 3	Plus 15 cents.
Zone 4	Plus 18 cents.
Zone 5	Plus 20 cents.
Zone 6	Plus 25 cents.
Zone 7	Plus 30 cents.
Zone 8	Plus 36 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents.
Zone 12	Plus 75 cents.

(2) For a plant located in any of the following Texas counties, the adjustment shall be as follows:

(i) *Minus 79 cents.* Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Gaines, Garza, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randell, Roberts, Sherman, Swisher, Terry, Wheeler, Yoakum.

(3) For a plant located in any of the following Oklahoma counties, the adjustment shall be as follows: (align with Southwest Plains order).

(4) For a plant located in Bowie or Cass Counties, Texas, or in Little River or Miller County, Arkansas, the adjustment shall be minus 18 cents.

(5) For a plant located in Concho, Edwards, Kimble, Kinney, Llano, Mason, McCulloch, Menard, San Saba, Schleicher, Sutton, or Val Verde, Texas, the adjustment shall be plus 25 cents.

(6) For a plant located in Atascosa, Bandera, Blanco, Dimmit, Frio, Gillespie, Kendall, Kerr, La Salle, Maverick, McMullen, Medina, Real, Uvalde, or Zavala, Texas, the adjustment shall be plus 42 cents.

(7) For a plant located in Jim Hogg, Starr, Webb, or Zapata, Texas, the adjustment shall be plus 66 cents.

(8) For a plant located in the State of Louisiana no adjustment shall apply.

(9) For a plant located outside the areas described in paragraphs (a) (1) through (8) of this section, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or a fraction thereof that such plant is located from the Dallas, Texas, city hall, such distance to be based on the shortest hard-surfaced highway distance as determined by the market administrator.

Proposed by Borden, Inc.:

Proposal No. 13—Texas, Part 1126:

Revise § 1126.52(a)(1) to reduce the Zone 8 location adjustment from plus 54 cents to plus 36 cents.

Proposed by Schepps Dairy, Inc.:

Proposal No. 14—Texas, Part 1126:

Revise § 1126.52(a)(1) to increase the Zone 8 location adjustment from plus 54 cents to plus 75 cents.

Proposed by The Kroger Co.:

Proposal No. 15—Texas, Part 1126:

A. Revise § 1126.2 by deleting Montgomery County from Zone 8 and by adding a new Zone 8A to include Montgomery County.

B. Revise § 1126.52(a)(1) to increase the Zone 8 location adjustment from plus 54 cents to plus 64 cents and adding a new Zone 8A with adjustment per hundredweight of plus 54 cents or as an alternative, a rate from Zone 8A of plus 44 cents.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 16:

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator of each of the 7 orders

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on February 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-3756 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information; Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures for selecting nominees or appointment to the initial National Pork Producers Delegate Body as provided for in the Pork Promotion, Research, and Consumer Information Act (Title XVI, Subtitle B, of the Food Security Act of 1985, approved December 23, 1985). The Delegate Body would nominate persons for appointment to the National Pork Board, recommend the rate of assessment under the order, and determine the amount of assessments collected in a State that each State association would receive.

DATE: Comments must be received by March 10, 1986.

ADDRESS: Send two copies of comments to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; USDA; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250; where they will be available for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTRACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch; Livestock and Seed Division; AMS, USDA; Washington, DC 20250. (Telephone: 202/447–2650).

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures and Executive Order No. 12291 and has been designated as a "non-major" rule.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small business entities. The rule proposed herein pertains only to the procedures as set forth in the Pork Promotion, Research, and Consumer Information Act, hereinafter referred to as the Act, for (1) establishing the eligibility of assocations, organizations, and individuals to make nominations, (2) submitting nominations of candidates for election, and (3) conducting statewide elections.

The period for filing comments is limited to 15 days so that State associations, organizations, and others who may select nominee for the Delegate Body may begin planning for the nomination process as soon as possible. Nomination procedures may take considerable time to complete, and early establishment of such procedures should prevent unnecessary delay in selecting and appointing a Delegate Body in the event an order is issued.

The Act authorizes the establishment of a national pork promotion, research, and consumer information order. The order would provide for the establishment of a Delegate Body which would nominate members to a 15 member National Pork Board.

The initial Delegate Body would be comprised of 165 pork producers and importers appointed by the Secretary not later than 60 days after the effective date of the order from nominations submitted by the industry. The duties and responsibilities of the Delegate Body shall be specified in the order.

The number of producer members from each State would be determined pursuant to section 1617 of the Act, based upon statistics published in the "Livestock and Meat Statistics" (statistical bulletin No. 715) and the "Meat, Animal, Production, Disposition, and Income (1984 Summary)." (Copies of the former document may be obtained by calling the Crop Reporting Board Publications office at 202/783–3238. Copies of the latter document may be obtained by calling the Crop Reporting Board Publications office at 202/447–4021.)

The number of importer members would be determined based upon statistics published by the Foreign Agricultural Service in "Dairy, Livestock, and Poultry Trade and Prospects." (Copies can be obtained by requesting in writing subscription No. 10005 from: Foreign Agricultural Service, Information Division, Room 4644–S, USDA, Washington, DC 20250.)

To ensure that nominees represent the interests of pork producers and importers, State associations and importer organizations as well as other eligible organizations and individuals would be able to nominate members for appointment to the Delegate Body. Under the Act, State association means the single organization of pork producers in a State that is organized under the laws of the State in which such association operates and is recognized by the chief executive officer of such State as representing the pork producers of such State, or if such organization did not exist on January 1, 1986, an organization that represents not fewer than 50 pork producers who market annually, in the aggregate, not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State. Qualified individuals could be nominated as candidates for the elections by the filing of a written petition with the Secretary.

A State association wishing to make nominations would be required to furnish the Secretary with a written statement signed by an official of that association attesting that it meets the State association requirements under the Act as well as any other information deemed relevant by the Secretary. Individual pork producers who are residents of a State could be nominated as candidates for the Delegate Body by a written petition containing the signatures of at least 100 pork producers or 5 percent of the pork producers in such State, whichever is less. The number of signatures required would be determined from statistics published in the December 1985 issue of "Hogs and Pigs" to establish compliance with the 5 percent requirement. (Copies may be requested from Crop Reporting Board Publications, telephone 202/447–4021.) Importer organizations wishing to make nominations would be required to submit written evidence that they are established, stable organizations representing a large number of importers. The required written statements or information necessary for an eligibility determination could be submitted with the official nomination forms or in connection with requests for the official nomination forms. Nomination forms may be obtained by contacting the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650).

Statewide elections would be held to determine the nominees who would be among those considered by the Secretary for appointment to the Delegate Body. Ballots containing the names of candidates nominated from each State would be prepared and distributed to the States that the candidates represent.

The Secretary would have the authority to verify information submitted, if necessary, to determine an individual's, an association's, or an organization's eligibility to nominate members to the Delegate Body.

Information obtained from individuals, associations, and organizations would be kept confidential, except that the Secretary could release general statements based upon data obtained from a number of individuals, associations, or organizations which do not identify the information obtained from any specific individual, association, or organization.

The Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In March 1983, the Office of Management and Budget (OMB) implemented the Act by adopting procedures contained in Part 1320 of 5 CFR Chapter III. According to these procedures, the information collection request contained in this proposed subpart has been approved by OMB and has been assigned OMB Control No. 0581–0151.

Because of the need for expedited handling, it is found to be impractical, unnecessary, and contrary to the public interest to provide a comment period which is longer than 15 days. The numbers of each section under this proposed subpart have been assigned to facilitate the publication of the proposed rule. Consequently, these sections may be revised and/or renumbered in the final rule.

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List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Pork and pork products.

It is proposed that Chapter XI of Title 7 of the Code of Federal Regulations be amended by adding a new Part 1230 to read as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

Sec.

1230.501 General.
1230.502 Definitions.
1230.503 Administration.
1230.504 Eligibility to nominate candidates for election and appointment to the initial Delegate Body.
1230.505 Nominations of members for appointment to the Delegate Body.
1230.506 Initial Delegate Body membership.
1230.507 Nominations of producers as candidates for election.
1230.508 Election process.
1230.509 Acceptance of appointment.
1230.510 Verification of information.
1230.511 Confidential treatment of information.
1230.512 Paperwork Reduction Act assigned number.

Authority: 7 U.S.C. 4801 note–4819.

Subpart A—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

§ 1230.501 General.

Associations, organizations, or individuals must be recognized by the Secretary as being eligible to participate in nominating pork producers as candidates for statewide elections of nominees for appointment to the initial Delegate Body. The number of nominees required for each alloted position will be determined by the Secretary. Additionally, the Secretary shall provide that organizations or associations which represent importers of porcine animals, pork, and pork products may nominate such importers for appointment as members of the Delegate Body. The making and receiving of nominations and the election process shall be conducted in accordance with this subpart.

§ 1230.502 Definitions.

As used in this subpart:

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985, Title XVI, Subtitle B, of Pub. L. 99–198, approved December 23, 1985.

"Delegate Body" means the National Pork Producers Delegate Body established by the Secretary.

"Department" means the United States Department of Agriculture.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

"Livestock and Seed Division" means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

"Person" means and individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

"Porcine animal" means a swine raised for slaughter, feeder pigs, or seed stock.

"Pork" means the flesh of a porcine animal.

"Pork product" means a product produced or processed in whole or in part from pork.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead.

"State" means each of the 50 States.

"State association" means the single organization of pork producers in a State that is (1) organized under the laws of the State in which such association operates; and (2) recognized by the chief executive officer of such State as representing the pork producers of such State; or if such organization did not exist on January 1, 1986, an organziation that represents not fewer than 50 pork producers who market annually, in the aggregate, not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State.

§ 1230.503 Administration.

The Livestock and Seed Division shall have the responsibility for administrating the provisions of this subpart.

§ 1230.504 Eligibility to nominate candidates for election and appointment to the initial Delegate Body.

(a) *States with existing State associations.* Existing State associations are eligible to submit names of candidates for election as producer nominees for appointment by the Secretary to the Delegate Body. However, such State associations must provide the Department with written verification that they comply with the definition of a State association in § 1230.502.

(b) *States without existing State associations.* In the absence of an existing State association referred to in paragraph (a) of this section, an organization which represents not fewer than 50 pork producers who market annually in the aggregate not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State is eligible to submit candidates for election and appointment to the Delegate Body. Such organization must provide the Department with a written statement containing the number of pork producers in the State that it represents and the aggregate volume in pounds of porcine animals marketed annually by those producers in that State.

(c) *Qualified individuals.* Individual pork producers may be nominated as candidates from the State in which they reside for election and appointment to the Delegate Body. A nomination must be supported by a written petition signed by 100 producers or 5 percent of the pork producers in such State, whichever is less. Written petitions must be submitted to the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Divisions; Agricultural Marketing Service, USDA; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250.

(d) *Associations and organizations representing importers.* The determination by the Secretary as to the eligibility of importer associations and organizations to nominate members to the Delegate Body shall be based on a factual written report submitted to the Department by importer organizations or associations. The report shall contain:

(1) The number of importer members by type of product (i.e., porcine animals, pork, pork products).

(2) Annual imported volume in pounds of pork and pork products and/or the number of head of porcine animals.

(3) Evidence as to the stability and permanency of the organization (i.e., years in existence).

(4) The names of the countries of origin of such imported porcine animals, pork, and pork products.

(5) Such other information as the Secretary may require.

(e) The information required in paragraphs (a), (b), (d), or the petition required in paragraph (c) of this section may be submitted to the Secretary either with completed nomination forms or at the time a request is made for official nomination forms. The Secretary may also consider additional relevant information. The Secretary's determination of eligibility to nominate shall be final.

(f) *Official Nomination Forms.* Official nomination forms, "Nomination of Pork Producers for Election and Appointment to the National Pork Producers Delegate Body," must be used to submit the names of producers nominated as candidates for statewide elections. A biographical data sheet for each nominee listed on the "Nomination of Pork Producers for Election and Appointment to the National Pork Producers Delegate Body" must be attached to that form. Official nomination forms, biographical data sheets, and additional information on nominations can be obtained by calling or writing the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Services, U.S. Department of Agriculture; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650).

§ 1230.505 Nomination of members for appointment to the Delegate Body.

All nominations to the initial Delegate Body shall be made in the following manner:

(a) *Producer members.* The producer nominees from each State for appointment by the Secretary to the Delegate Body shall be determined by statewide elections as described in § 1230.508.

(b) *Importer members.* (1) Eligible importer associations or organizations shall submit to the Department the names of nominees for each of the allotted importer positions on the Delegate Body. Each nomination must be accompanied by biographical data which shall include the following information: (i) Name, date and place of birth, U.S. citizenship, Social Security number, residence address and telephone number; (ii) business address, telephone number, and brief description of business including volume and types of products imported, and (iii) a list of importer organizations of which the nominee is a member and current positions in such organizations held by the nominee.

(2) Eligible importer associations or organizations will be given 45 days in which to submit nominations to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250.

(3) If there are two or more eligible importer associations or organizations, they may jointly nominate importers for each allotted position on the Delegate Body.

§ 1230.506 Initial Delegate Body membership.

(a) *Producers.* The number of producer members appointed to the initial Delegate Body shall be determined pursuant to the following criteria.

(1) Shares shall be assigned to each State for the 1986 calendar year on the basis of one share for each $400,000 of farm market value of porcine animals marketed from such State as determined by the Secretary based on the annual average of farm market value for the calendar years 1982 through 1984 rounded to the nearest $400,000.

(2) If the number of shares assigned to a State is:

(i) Less than 301, the State shall receive a total of two producer members;

(ii) More than 300 but less than 601, the State shall receive a total of three producer members;

(iii) More than 600 but less than 1,001, the State shall receive a total of four producer members; and

(iv) More than 1,000, the State shall receive four producer members, plus one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(3) Based on the criteria contained in paragraph (a) (1) and (2) of this section, the number of members on the Delegate Body allotted to each State shall be: Alabama 2; Alaska 2; Arizona 2; Arkansas 2; California 2; Colorado 2; Connecticut 2; Delaware 2; Florida 2; Georgia 3; Hawaii 2; Idaho 2; Illinois 10; Indiana 7; Iowa 23; Kansas 4; Kentucky 3; Louisiana 2; Maine 2; Maryland 2; Massachusetts 2; Michigan 3; Minnesota 7; Mississippi 2; Missouri 6; Montana 2; Nebraska 6; Nevada 2; New Hampshire 2; New Jersey 2; New Mexico 2; New York 2; North Carolina 4; North Dakota 2; Ohio 4; Oklahoma 2; Oregon 2; Pennsylvania 2; Rhode Island 2; South Carolina 2; South Dakota 4; Tennessee 3; Texas 2; Utah 2; Vermont 2; Virginia 2; Washington 2; West Virginia 2; Wisconsin 4; and Wyoming 2.

(b) *Importers.* The number of importer members to be appointed to the initial Delegate Body shall be determined pursuant to the following criteria.

(1) Shares shall be assigned on the basis of one share for each $575,000 of market value of marketed porcine animals, pork, or pork products based on the annual average of imports for the calendar years 1982 through 1984 rounded to the nearest $575,000.

(2) The number of importer members appointed to the Delegate Body shall equal a total of:

(i) Three members for the first 1,000 such shares; and

(ii) One additional member for each 300 additional shares in excess of 1,000 shares rounded to the nearest 300.

(3) Based on the criteria contained in paragraph (b) (1) and (2) of this section, importers shall be entitled to four members on the Delegate Body.

§ 1230.507 Nominations of producers as candidates for election.

(a) The candidates for election in each State shall be nominated by eligible State associations, organizations, and qualified individuals as described in § 1230.504. Nominees must be pork producers and reside in the State they will represent as candidates in the election. Official nomination forms, listing the names of the nominees and a completed and signed Biographical Data Sheet for each nominee shall be submitted to the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250. A 45-day time period will be provided for submitting nominations for candidates in the elections.

(b) In the case of a State that does not have an eligible State association, or if an eligible State association, other organization, or an eligible qualified individual does not submit nominations, the Secretary shall obtain nominations in such States from one or more of the following: (1) General farm organizations, (2) State Departments of Agriculture, and (3) individuals considered by the Secretary to be knowledgeable about the pork industry in such States.

§ 1230.508 Election process.

(a) *General.* To appoint the initial Delegate Body, the Secretary shall call for statewide elections of producers nominated as candidates for appointment. To facilitate the timely implementation of the pork promotion, research, and consumer information program, the elections shall be conducted prior to the effective date of the final order. The decision to conduct an election in each State shall be based on the number of candidates nominated in each State.

(b) *Preparation and distribution of ballots.* A master ballot shall be

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prepared for each State containing the names of eligible candidates nominated by State associations, organizations, or interested individuals under § 1230.507. A master ballot will list the names of nominees from each State and the cities in which the nominees reside. The master ballot for each State will be reproduced and distributed to designated voting places within the State. Each ballot will contain instructions for its completion.

(c) *Notice.* The Secretary shall give public notice of the statewide elections by publication in one or more newspapers of general circulation in each State and in pork production and agricultural trade publications at least 1 week prior to the election and in any other reasonable manner determined by the Secretary. The notice shall set forth the dates, times, and places for voting and such other information as the Secretary considers necessary.

(d) *Time and place of voting.* Statewide elections will be held in a timely manner following the distribution of the ballots to the designated voting places in each State. Persons eligible to vote shall register to vote and complete their ballots simultaneously at the designated voting places in each State. Voting shall take place over a 1-week period, Monday through Friday, during normal business hours of the designated voting places.

(e) *Voting eligibility requirements.* Any person who produces procine animals in the United States for sale in commerce shall be eligible to vote in the election in the State in which such person resides.

(f) *Voting procedures.* (1) *Voting in person.* Each eligible voter shall register at the time of voting by signing a voter registration list which will signify that such voter is a pork producer as defined in § 1230.502 and a resident of that State. Upon registration, each eligible voter will receive a ballot containing the names and the resident cities of the pork producer candidates. Voting shall be by secret ballot under the supervision of the Secretary's designated representative. All ballots shall be placed in sealed ballot boxes or other suitable receptacles.

(2) *Absentee ballot.* Eligible voters, unable to vote in person, may obtain a ballot and a voter registration form by mail. To ensure confidentiality of the vote, the voter shall seal the completed ballot in a separate envelope and include it in another envelope containing the signed registration form. The ballot shall remain sealed until the counting of all such ballots. Absentee ballots may be obtained from and must be returned to the address designated by the Secretary, which will be provided in public announcements of the statewide elections.

(g) *Procedures for determining the elected candidates.* After the voting period ends, the ballots cast in each designated voting place including any absentee ballots shall be counted in a manner and by a person or persons designated by the Secretary. The results of the election in each State shall be forwarded to the Department. Those candidates in each State receiving the highest number of votes shall be submitted to the Secretary for consideration as appointees to the Delegate Body.

§ 1230.509 Acceptance of appointment.

Producers and importers nominated to the Delegate Body must signify in writing their intent to serve if appointed.

§ 1230.510 Verification of information.

The Secretary may require verification of any information submitted and may procure such other information as may be required to determine whether an association, organization, or individual is eligible to nominate or be nominated for appointment to the initial Delegate Body under the Act.

§ 1230.511 Confidential treatment of information.

All documents submitted by associations, organizations, and individuals and information otherwise obtained by the Department pursuant to this subpart shall be kept confidential by all employees of the Department. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed and then only in the issuance of general statements based upon the reports of a number of persons subject to the order or statistical data collected therefrom, when such a statement or data does not identify the information furnished by any one person.

§ 1230.512 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581-0151 has been assigned.

Signed at Washington, DC: February 18, 1986.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 86-3835 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1260

Beef Promotion and Research; Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish nomination procedures and procedures for determining the eligibility of State and importer organizations, associations, and others to make nominations for appointment to a Cattlemen's Beef Promotion and Research Board, as provided for in the Beef Promotion and Research Act of 1985, which amended the Beef Research and Information Act (7 U.S.C. 2901-2918). The Board would administer the industry-funded promotion and research program authorized by the Act.

DATE: Comments must be received by March 10, 1986.

ADDRESS: Send two copies of comments to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW.; Room 2610-S; Washington, DC 20250; where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250. (Telephone: 202/447-2650.)

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures and Executive Order No. 12291 and has been designated as a "nonmajor" rule.

The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. The rule proposed herein pertains only to (1) the procedures for establishing the eligibility of organizations, associations, and others to nominate cattle producers and importers for appointment by the Secretary of the Cattlemen's Beef Promotion and Research Board and (2) the procedures for submitting such nominations.

The period for filing comments is limited to 15 days so that State organizations, associations, and others who may select nominees for the Cattlemen's Beef Promotion and Research Board may begin planning for a nomination process as soon as possible. Nomination procedures may take considerable time to complete, and early establishment of such procedures should prevent unnecessary delay in selecting nominees and appointing a Board.

The Beef Promotion and Research Act of 1985, approved December 23, 1985, authorizes the establishment of a national beef promotion and research order. The order would provide for the establishment of a Cattlemen's Beef Promotion and Research Board which would elect 10 members to a 20 member beef promotion operating committee. The remaining 10 members would be elected by a federation that includes as members the qualified State beef councils.

The Cattlemen's Beef Promotion and Research Board would be comprised of approximately 120 cattle producers and importers nominated for appointment by the Secretary to the Board. The duties and responsibilities of the Board would be specified in the order.

The Act provides that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations, associations, or others to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Certification procedures are set forth in this proposed rule. The certification of State producer organizations or associations representing cattle producers would be based on a factual report containing information required by the Act including, but not limited to (1) size and composition of active membership, (2) the proportional representation of cattle producers within the membership, (3) the evidence that the State organizations or associations are well-established and permanent, and (4) the function and purpose of the State organizations or associations as they relate to cattle producers and their economic welfare. State organizations or associations would submit completed application forms to the Department containing the above specified information.

Importer organizations and those wishing to submit nominations from States where there are no certifiable organizations would submit such information as required by the Secretary pursuant to the rules proposed herein.

The Secretary would have the authority to require verification of any information submitted to determine the eligibility to nominate persons for membership on the Board.

Information obtained by the Secretary would be kept confidential, except that the Secretary could release general statements based upon data obtained from a number of organizations. The Secretary would not disclose the information obtained from any specific organization or person.

The Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In March 1983, the Office of Management and Budget (OMB) implemented the Act by adopting procedures contained in Part 1320 of 5 CFR Chapter III. In accordance with these procedures, the information collection request contained in this subpart has been approved by OMB and has been assigned OMB Control No. 0581-0152.

Because of the need for expedited handling, it is found to be impractical, unnecessary, and contrary to the public interest to provide a comment period which is longer than 15 days.

The numbers of each section under this proposed subpart have been assigned to facilitate the publication of the proposed rule. Consequently, these sections may be revised and/or renumbered in the final rule.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef and beef products.

Chapter XI of Title 7 of the Code of Federal Regulations is proposed to be amended by revising Part 1260 to read as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

Subpart A—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

Sec.

1260.500 General.
1260.510 Definitions.
1260.520 Responsibility for administration of regulations.
1260.530 Certification of eligibility.
1260.540 Application for certification.
1260.550 Verification of information.
1260.560 Review of certification.
1260.570 Notification of certification and the listing of certified organizations.
1260.580 Nomination of producers for appointment to the initial Board.
1260.590 Nomination of importers for appointment to the initial Board.
1260.600 Determining allotted positions on the Board.
1260.610 Acceptance of appointment.
1260.620 Confidential treatment of information.
1260.630 Paperwork Reduction Act assigned number.

Authority: 7. U.S.C. 2901-2918

Subpart A—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

§ 1260.500 General.

State organizations or associations shall be certified by the Secretary as provided for in the Beef Promotion and Research Act of 1985 to be eligible to make nominations of cattle producers to the Board. Additionally, where there is no eligible organization or association in a State, the Secretary may provide for nominations in the manner prescribed in this subpart. Organizations or associations determined by the Secretary to represent importers of cattle, beef, and beef products may submit nominations for membership on the Board in a manner prescribed by the Secretary in this subpart. The number of nominees rquired for each allotted position will be determined by the Secretary.

§ 1260.510 Definitions.

As used in this subpart:

"Act" means the Beef Promotion and Research Act of 1985, 7 U.S.C. 2901-2918.

"Beef" means the flesh of cattle.

"Beef products" means edible products produced in whole or in part from beef, exclusive of milk and milk products produced therefrom.

"Board" means the Cattlemen's Beef Promotion and Research Board established under section 5(1).

"Cattle" means live, domesticated bovine animals regardless of age.

"Department" means the United States Department of Agriculture.

"Importer" means a person who imports cattle beef, or beef products from outside the United States.

"Livestock and Seed Division" means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

"Producer" means a person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to

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whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

"State" means each of the 50 States.

"Unit" means a State or combination of States which has a total inventory of not less than 500,000 head of cattle.

§ 1260.520 Responsibility for administration of regulations.

The Livestock and Seed Division shall have the responsibility for administering the provisions of this subpart.

§ 1260.530 Certification of eligibility.

(a) *State organizations or associations: requirements for certification.*

(1) To be eligible for certification to nominate producer members to the Board, State organizations or associations must meet all of the following criteria:

(i) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(ii) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(iii) There must be a history of stability and permanency.

(iv) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(2) Written evidence of compliance with the certification criteria shall be contained in a factual report submitted to the Secretary by all applicant State organizations or associations.

(3) The primary consideration in determining the eligibility of a State organization or association shall be based on the criteria set forth in this section. However, the Secretary may consider any additional information that the Secretary deems relevant and appropriate.

(4) The Secretary shall certify any State organization or association which he determines complies with the criteria in this section, and his eligibility determination shall be final.

(b) *Organizations or associations representing importers.* The determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef, cattle, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

§ 1260.540 Application for certification.

(a) *State organization or associations.* Any State organization or association which meets the eligibility criteria specified in § 1260.530(a) for certification is entitled to apply to the Secretary for such certification of eligibility to nominate producers for appointment to the Board. To apply, such organization or association must submit a completed "Application for Certification of Organization or Association," Form LS-25. Copies may be obtained from the Livestock and Seed Division; Agricultural Marketing Service, USDA; 15th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250. (Telephone: 202/447-2650.)

(b) *Importer organizations or associations.* Any organization or association whose members import cattle, beef, or beef products into the United States may apply to the Secretary for determination of eligibility to nominate importers under the Act. Applications shall be in writing and shall contain the information required by § 1260.530. Interested organizations or associations may contact the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610-S; Washington, DC 20250; (Telephone: 202/447-2650) for information concerning application procedures.

§ 1260.550 Verification of information.

The Secretary may require verification of the information to determine eligibility for certification to make nominations under the Act.

§ 1260.560 Review of certification.

The Secretary may terminate or suspend certification or eligibility of an organization or association if it ceases to comply with the certification or eligibility criteria set forth in this subpart. The Secretary may require any information deemed necessary to ascertain whether the organization or association may remain certified or eligible to make nominations.

§ 1260.570 Notification of certification and the listing of certified organizations.

Organizations and associations shall be notified in writing as to whether they are eligible to nominate producer members to the Board. A copy of the certification or eligibility determination shall be furnished to certified or eligible organizations and associations. Copies shall also be maintained on file in the Livestock and Seed Division office, where they will be available for inspection.

§ 1260.580 Nomination of producers for appointment to the initial Board.

Nominations to the initial Board shall be made in the following manner:

(a) When notifying a State organization or association that it has been certified, the Secretary shall concurrently advise the organization or association of the number of positions on the Board allotted to that organization's or association's respective State. The Secretary also shall request the names of the certified organization's or association's nominees for each allotted position.

(b) When more than one State organization or association in a State or unit is certified, the Secretary shall provide each such certified State organization or association with a list of all other certified State organizations or associations in the same State or unit.

(c) If there is more than one certified State organization or association within a State or unit, such State organizations and associations may jointly nominate producers for each allotted position on the Board.

(d) Nominations shall be submitted by certified State organizations or associations pursuant to this section.

(e) If the Secretary determines that there is no eligible organization or association in a State which can be certified pursuant to paragraph § 1260.530, the Secretary may obtain nominations from one or more of the following: (1) Other related organizations, (2) State Department of Agriculture, and (3) individuals determined by the Secretary to be knowledgeable about the beef industry in such State.

§ 1260.590 Nomination of importers for appointment to the initial Board.

(a) The Secretary shall notify in writing applicant importer organizations or associations of their eligibility to nominate importer members to the Board and advise them of the allotted number of importer positions on the Board. Eligible organizations or associations may nominate members for each position allotted to importers.

(b) The Secretary shall provide importer organizations or associations with the names of all other eligible importer organizations.

(c) If there are two or more eligible importer organizations or associations, they may jointly nominate importers for each allotted position on the Board.

§ 1260.600 Determining allotted positions on the Board.

(a) *Producers.* The number of positions on the initial Board shall be determined by the Secretary in accordance with the provisions of the Act. For purposes of determining and allocating producers positions on the initial Board, the United States shall be divided into geographical areas, called units.

The number of allotted positions for producers on the initial Board for each unit shall be 1 position for the first 500,000 head of cattle and 1 additional position for each additional 1,000,000 head of cattle. The number of cattle for each State or unit shall be obtained from the most recent January 1 cattle inventory published in the Statistical Reporting Service's report on cattle numbers. (Copies of the applicable report can be obtained by contacting the Crop Reporting Board Publications; Room 5829-S.; USDA; Washington, DC 20250. Telephone: 202/447-4021.)

(b) *Importers.* For the purpose of determining and allocating the number of importer positions on the initial Board, importers shall be considered as a single unit. The number of allotted positions shall be based on 1 member for each 500,000 head of cattle imported and 1 additional member for each additional 1,000,000 head imported. Imported beef and beef products will be converted to live animal equivalencies and included in the total number of head of imported cattle in the unit. The Secretary shall use the most recent compilation of official import data available to determine the number of positions allotted to importers.

§ 1260.610 Acceptance of appointment.

Producers and importers nominated to the Board must signify in writing their intent to serve if appointed.

§ 1260.620 Confidential treatment of information.

All documents and information submitted to or obtained by the Department shall be kept confidential by all employees of the Department, except that the Secretary may issue general statements based upon the information collected from a number of different sources. These general statements will not identify any information as having been furnished by any one source.

§ 1260.630 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581-152 has been assigned.

Signed at Washington DC: February 18, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs

[FR Doc. 86-3836 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 505a

[No. 86-89]

Privacy Act of 1974; New System of Records

Dated: February 3, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 ("Privacy Act") (5 U.S.C. 552a), the Federal Home Loan Bank Board ("Board") is proposing to establish a new system of records, to exempt a proposed system of records which will contain information concerning enforcement actions, crimes, and suspected crimes, and is further proposing to exempt the system, if adopted, from meeting certain requirements of the Privacy Act.

DATE: Comments must be received by March 24, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 377-6434, or Rosemary Stewart, Director, Office of Enforcement, 377-6437 at the above address.

SUPPLEMENTARY INFORMATION: In order to collect information concerning individuals who are the subject of enforcement actions or have violated or are suspected of violating criminal laws in connection with financial institutions, the Board issued a notice of a proposed new system of records entitled "Confidential Individual Information System," as required by the Privacy Act appearing in the Notice Section in this Federal Register.

The Privacy Act provides that the head of an agency may promulgate rules exempting any system of records within the agency from various provisions of that Act, among which is the requirement to make the records available to individuals to which they pertain, if the system of records contains "investigatory material compiled for law enforcement purposes," provided that the agency includes in the rules it adopts the reason why the system of records qualifies for exemption under 12 U.S.C. 552a(k).

As discussed at greater length in the rule itself, failure to obtain exemption from certain specific requirements of the Privacy Act would interfere with investigations and enforcement proceedings by endangering confidentiality and disclosing investigative techniques and procedures, and would invade the privacy of persons identified in the records.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1166 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated in the supplementary information regarding the proposal and in the proposed rule itself.

2. *Small entities to which the proposed rule would apply.* The proposed rule would govern agency internal procedures and does not require any actions by small entities. However, the proposed system would contain information concerning persons associated with both small and large institutions.

3. *Impact of the proposed rule on small institutions.* The proposed rule would govern agency internal procedures and does not require any actions by small institutions. However, the rule would benefit small institutions by increasing the ability of the Board to determine the character of potential acquirers of those institutions, and to bring enforcement actions or make criminal referrals against persons who have violated laws, rules or regulations or participated in unsafe or unsound practices.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

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5. *Alternatives to the proposed rule.* The only alternative to the proposed rule would be not to establish the system of records, or not to exempt the system of records from certain provisions of the Privacy Act. Such an alternative would impede the gathering of material for law enforcement purposes, as described in the proposed rule. Moreover, because the rule does not require action by small entities, the alternative would not lessen any burden on them.

The Board seeks comments on all aspects of this proposal. However, because the proposal is a matter of internal agency procedure and because the Board believes that the information is critical to the performance of its enforcement and examination functions, the Board has limited the public comment period to 30 days.

List of Subjects in 12 CFR Part 505a

Privacy.

Accordingly, the Board hereby proposes to amend Part 505a, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter A—General

PART 505A—RECORDS MAINTAINED ON INDIVIDUALS

1. The authority citation for Part 505a is revised to read as follows:

Authority: 5 U.S.C. 552a; 12 U.S.C. 1437, 1464, 1725; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071.

2. Add new § 505a.13 to read as follows:

§ 505a.13 Exemptions of records containing investigatory material compiled for law enforcement purposes.

(a) *Scope.* The Board has established a new system of records, entitled the "Confidential Individual Information System." The purpose of this system is to assist the Board in the accomplishment of its statutory and regulatory responsibilities in connection with the supervision of financial institutions. This system will be exempt from certain provisions of the Privacy Act of 1974 for the reasons set forth in paragraph (c) of this section.

(b) *Exemptions Under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of an agency may issue rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system contains investigatory material compiled for law enforcement purposes.

(2) Provisions of the Privacy Act of 1974 from which exemptions will be made under 5 U.S.C. 552a(k)(2) are as follows:

(i) 5 U.S.C. 552a(c)(3);

(ii) 5 U.S.C. 552a(d) (1), (2), and (4);

(iii) 5 U.S.C. 552a(e)(1);

(iv) 5 U.S.C. 552a(e)(4) (G), (H), and (I); and

(v) 5 U.S.C. 552a(f).

(c) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would make known to subjects of an investigation that an investigation is taking place and that they are the subjects of it. Release of such information could result in the alteration or destruction of documentary evidence, improper influencing of witnesses, and reluctance of witnesses to offer information, and could otherwise impede or compromise an investigation.

(2) 5 U.S.C. 552a (c)(4), (d) (1), (2), (3), and (4), (e)(4) (G) and (H), and (f), relate to an individual's right to be notified of the existence of, and the right to examine, records pertaining to such individual. Notifying an individual at the individual's request of the existence of records and allowing the individual to examine an investigative file pertaining to such individual, or granting access to an investigative file, could: (i) Interfere with investigations and enforcement proceedings; (ii) constitute an unwarranted invasion of the personal privacy of others; (iii) disclose the identity of confidential sources and reveal confidential information supplied by those sources; or (iv) disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system. Application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality, thus compromising the agency's ability to conduct investigations and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. Limiting the system as described would impede enforcement activities because:

(i) It is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation; and

(ii) In any investigation the Board may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Board should retain this information to aid in establishing patterns of criminal activity, and to provide leads for those law enforcement agencies charged with enforcing criminal or civil laws.

(d) *Documents exempted.* Exemptions will be applied only when appropriate under 5 U.S.C. 552a(k).

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-3817 Filed 2-20-86; 8:45 am]

BILLING CODE 6720-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 148

Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to its rules governing the Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission. These amendments are being proposed to conform the rules to the Equal Access to Justice Act, as recently amended by the Equal Access to Justice Act Amendments, and to make certain minor clarifying changes.

DATES: Comments may be filed on or before March 24, 1986.

ADDRESS: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: James T. Kelly, Assistant Chief, Opinions Section, Office of General Counsel, Commodity Futures Trading Commission, at the address above. Telephone (202) 254-7110.

SUPPLEMENTARY INFORMATION: Shortly after the Equal Access to Justice ("EAJ") Act, Pub. L. No. 96-481, 94 Stat. 2325, 5 U.S.C. 504 and 28 U.S.C. 2412, took effect on October 1, 1981, the Commission published procedural rules to govern the processing of EAJ Act fee applications.

See 46 FR 57669 (Nov. 25, 1981), reprinted in [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,283 and codified at 17 CFR Part 148. In doing so, the Commission adopted model rules recommended by the Administrative Conference of the United States, making certain minor additions, deletions, or substitutions as necessary to reflect existing Commission practice and procedures. The EAJ Act, which was designed as a three year experiment, expired on September 30, 1984, and Congressional efforts to reenact and revise it were the subject of a Presidential veto in November 1984.

On August 5, 1985, President Reagan signed into law a permanent reauthorization and revision of the Equal Access to Justice Act, Pub. L. No. 99-80, 99 Stat. 183. The new law makes clarifying technical and substantive amendments to the original legislation. Accordingly, these recent statutory changes necessitate corresponding revisions to the Commission's implementing regulations.

The statutory changes enacted by Pub. L. No. 99-80 apply to adjudicatory proceedings pending on or commenced after August 5, 1985, the date the EAJ Act amendments became law. The former statute applies to adjudicatory proceedings completed prior to October 1, 1984, the expiration date of the former EAJ Act. The Commission is not aware of any covered adjudicatory proceedings that were commenced on or after October 1, 1984, and finally disposed of before August 5, 1985. The amendments to Part 148 proposed in this Federal Register notice shall apply to EAJ Act applications filed on or after the effective date of the amendments. The former regulations in Part 148 shall apply to EAJ Act applications filed before the effective date of the amendments. Except to the extent that the approach in proposed § 148.2 (effective date) would preserve the old rules for cases filed before the EAJA amendments, the Commission's proposals in this Notice are consistent with the revised model rules, as drafted by the Administrative Conference of the United States. *See* 50 FR 46250 (Nov. 6, 1985).

The following discussion will identify those sections of the existing regulations where changes are proposed and will explain the changes.

Subpart A—General Provisions

Section 148.1 Purpose of these rules.

The Commission proposes to amend § 148.1 of the rules by deleting the phrase "in the proceeding" from the second sentence of the existing regulation. This change is necessary to conform the regulation to the revised EAJ Act, which now provides that an agency's position, which must be substantially justified, includes not only its posture in the adversary adjudication, but also the action or failure to act upon which the adversary adjudication is based. The proposed change to § 148.1 is similar to that proposed in § 148.11(a), *infra*.

Section 148.2 When the act applies.

The Commission proposes to amend § 148.2 to clarify that EAJ Act applications may be filed in connection with any covered adjudicatory proceedings pending before the Commission on or after October 1, 1981. This includes proceedings begun before that date, regardless of when they were initiated or when final Commission action occurs. The Commission also proposes to amend § 148.2 to clarify that awards may be sought for fees and other expenses incurred before October 1, 1981, in any such covered proceeding.

Section 148.3 Proceedings covered.

The Commission proposes to amend § 148.3(a) of the regulations to revise the definition of covered adjudicatory proceedings to comport with the reenacted EAJ Act. The proposal also makes clear that reparation proceedings under section 14 of the Act, 7 U.S.C. 18, Commission review of exchange disciplinary and access denial actions under section 8c of the Act, 7 U.S.C. 12c, and registered futures association disciplinary and membership denial actions under section 17 of the Act, 7 U.S.C. 21, are not "adversary adjudications" for purposes of EAJ Act fee claims under the revised 5 U.S.C. 504(a)(1).

Both the expired and reenacted EAJ Act, 5 U.S.C. 504(b)(1)(C), apply only to an "adversary adjudication . . . under section 554 of [Title 5, U.S.C.] in which the position of the United States is represented by counsel or otherwise." As relevant here, 5 U.S.C. 554, which is part of the Administrative Procedure Act, applies to "every case of adjudication required by statute to be determined on the record after opportunity for any agency hearing." [1] This statutory framework does not apply to Commission reparation proceedings or review of self-regulatory organizations' disciplinary, access denial, and membership denial actions.

Through its reparation program, the Commission provides a neutral forum to hear money damage claims by customers against their brokers arising out of commodity transactions.[2] In resolving these disputes between private parties, the Commission acts as a tribunal—it is not "represented by counsel or otherwise." It is not a party to the transaction in dispute, and prior to a claim being filed, has no control over, or knowledge of, the identity, net worth or size of the parties who will appear before it. The parties develop their own record and the Commission's decision on whether a violation of law occurred and damages are appropriate must be made on the basis of that record. Payment of any damages awarded is made by one party to the other. The Commission has no responsibility to pay the award or to enforce the judgment.

In addition, reparation proceedings are not "adversary adjudications" because they are not "required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. 554. The statutory provisions governing reparations have never contained this requirement. Although many reparation cases are commonly held before an Administrative Law Judge in an on-the-record type procedure, Congress has always permitted claims for small damage awards to be resolved by written submissions without a hearing before an Administrative Law Judge. *See* 7 U.S.C. 18(c) (1976). And to provide additional flexibility to the program, Congress in 1982 expressly empowered the Commission to design its reparation procedures without regard to 5 U.S.C. 554 or any other provision of the Administrative Procedure Act. *See* 7 U.S.C. 18(b) (1982) ("notwithstanding any other provision of law," the Commission "may prescribe, or otherwise condition, without limitation . . . all . . . matters governing [reparation] proceedings before the Commission. . . .").[3]

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[1] Agency rulemaking and granting and renewal licensing decisions are specifically excluded from the term agency adjudication.

[2] In promulgating regulations to implement the original EAJ Act, the Commission excluded reparation proceedings from coverage because the Commission was not a party to the proceeding. *See* 17 CFR 148.3(a) (1983). This exclusion was based in part on the fact that the original EAJ act definitional structure applied only to otherwise-covered proceedings where the agency "was a party." While the recent statutory changes are eliminated that definitional criterion, the Commission is convinced that Congress did not intend to broaden the classes of adjudicatory proceedings in which an agency may incur EAJ Act liability. Indeed, when Congress wanted to expand the class of covered proceedings—as it did with agency board of contract appeals proceedings—it did so in explicit statutory language. *See* section 1(c)(2)(B) of Pub. L. No. 99-80.

[3] The EAJ Act prohibits the federal courts from awarding fees against an agency in whose civil

Continued

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For similar reasons, the Commission also believes that its review of disciplinary actions, access denials and membership denials taken by futures exchanges and registered futures associations are exempt from EAJ Act coverage. Insofar as 5 U.S.C. 554 is concerned, the Administrative Procedure Act does not apply to exchange disciplinary proceedings or access denials. *See Cardoza* v. *CFTC*, 588 F. Supp. 621, 626 n.5 (N.D. Ill. 1984), *aff'd on other grounds*, 768 F.2d 1542 (7th Cir. 1985); *cf. Schultz* v. *SEC*, 614 F.2d 561, 569 (7th Cir. 1980). Nor does Section 8c of the Commodity Exchange Act require the Commission's review to be "determined on the record". And in reviewing an exchange disciplinary action or access denial, the Commission, as in the case of reparations, is not "represented by counsel or otherwise." Instead the Commission would review the exchange action based on a record developed by and before the exchange. 17 CFR 9.34 and 9.37(a). In these circumstances, as in reparation cases, the Commission sits as a decisionmaker to resolve disputes that have arisen between private parties. The same rationale applies to Commission review of membership denials or disciplinary actions taken by registered futures associations against their members, involving acts or practices in violation of association rules. 7 U.S.C. 21.

The Commission also proposes to amend Section 148.3(b) of the regulations. The original provision, stating that the Commission might designate a specific proceeding as a covered proceeding even though that type of proceeding was not otherwise identified in paragraph (a), was intended to defer particularly difficult decisions about which proceedings were "under 5 U.S.C. 554." However, it could be read to suggest that the Commission has the power to award fees in proceedings that are not explicitly covered by the statute. Accordingly, the Commission proposes to eliminate the ambiguous language, as recommended by the Administrative Conference of the United States.

Section 148.4 Eligibility of applicants.

The Commission is proposing to amend § 148.4(b) to incorporate the expanded net worth thresholds of the revised and reenacted EAJ Act. Individuals with a net worth of $2 million or less and businesses with a net worth of $7 million or less are now eligible applicants under the revised Act. The proposed change to § 148.4(b) parallels that proposed in § 148.11(b), *infra*. In addition, the revised Act adds units of local government to the entities that can receive awards, if they meet the limits on net worth and number of employees. The Commission's proposal reflects this change, as well.

The Commission also proposes to amend Section 148.4(e) of the regulation to make clear that the term "employee" embraces all the agents of an applicant, by whatever title or label they may be known. This is consistent with the principal-agent liability provision of the Commodity Exchange Act, 7 U.S.C. 4, which states that the "act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust as well as of such official, agent, or other person." Thus, for example, an EAJ Act applicant registered as a futures commission merchant would have to identify the number of its guaranteed introducing brokers, and the number of persons associated with such introducing brokers, in order to establish its eligibility for a fee award.

Section 148.5 Standards for awards.

The Commission proposes to amend § 148.5(a) by incorporating the provision of Pub. L. No 99-80 that "position of the agency" includes any action or failure to act on which the proceeding is based, in addition to the agency's litigation position. The Commission also proposes to amend § 148.5(a) by deleting the provision that the Commission's position may be found to be substantially justified if it is demonstrated to be "reasonable in fact and law." This change is recommended by the Administrative Conference of the United States as necessary to conform the regulation to the Congressional directive concerning substantial justification. *See* H.R. Rept. No. 120, 99th Cong., 1st Sess. at 9 and n.15 and *Russell* v. *National Mediotion Board*, 775 F.2d 1284, 1288-89 (5th Cir. 1985). The Commission notes that substantial justification is a different and lesser standard than substantial evidence. *See* 131 Cong. Rec. H 4763 (June 24, 1985) (remarks of Cong. Kindness and Moorhead) (disavowing certain language in the Judiciary Committee's report). *See also* 21 Weekly Compilation of Presidential Documents 966, 967 (Aug. 5, 1985) (remarks of President Reagan to the same effect). As intended by Congress, the decision of whether agency action was or was not substantially justified will continue to be made on a case-by-case basis.

Subpart B—Information Required From Applicants

Section 148.11 Contents of application.

The Commission is proposing to amend §148.11(a) by deleting the phrase "in the adjudicatory proceeding" from the second sentence of the existing regulation. This change is designed to conform the regulation to the revised EAJ Act, which now provides that an agency's position, which must be substantially justified, includes not only its posture in the adversary adjudication, but also the underlying action or failure to act which led to the adversary adjudication.

The Commission is also proposing to amend § 148.11(b) to incorporate the expanded net worth thresholds of the revised and reenacted EAJ Act. Individuals with a net worth of $2 million or less and businesses with a net worth of $7 million or less are eligible applicants under the revised Act. The proposed change to § 148.11(b) is identical to that proposed in § 148.4(b)(1) and (2), *supra*.

Subpart C—Procedures for Considering Applications

Section 148.26 Further proceedings.

The Commission proposes to amend § 148.26(a) of the rules to bar discovery and/or evidentiary proceedings into the question of whether the government's position was substantially justified. This discovery limitation was designed by the Congress to respond to concerns raised by the President's veto of earlier EAJ Act Amendment legislation. *See* H.R. Rept. 99-120, 99th Cong., 1st Sess. at 13 (1985) ("the 'substantial justification determination' will not involve additional evidentiary proceedings or additional discovery of agency files, solely for EAJA purposes."); 131 Cong. Rec. S. 9992 (July 24, 1985) (remarks of Senator Grassley) (". . . this bill responds to the President's stated objections about unbridled discovery of the agency deliberative process . . . No 'fishing expeditions' will be allowed, so as to turn the fees case into a second major litigation."); and 131 Cong. Rec. H 4762 (June 24, 1985) remarks of Cong. Kastenmeier) ("The bill would limit the determination of whether the position of the United States was substantially justified to the record . . . which is made in the adversary adjudication . . . for which fees and other expenses are sought. The effect of this amendment, which is designed to respond to concerns raised by the President's veto message, will be to limit discovery in EAJA fee proceedings.") *See also* 21 Weekly Compilation of Presidential Documents 966, 967 (Aug. 5 1985) (Statement of President Reagan) (". . . the bill strictly limits . . . the agency's fee inquiry to the agency action that is at issue in the . . . proceeding and does not permit the examination of any other agency conduct . . . . the Congress has specifically instructed . . . (parties) . . . not to engage in additional discovery or evidentiary proceedings in considering the question of substantial justification . . . It is with these understandings that I sign this bill.")

Section 148.28 Commission review.

The Commission proposes to modify the rule by which parties can obtain Commission review of initial decisions on fee applications. Instead of the existing two-step discretionary review procedure, the Commission proposes to adopt a one-step appeal-of-right procedure. Under this proposal, an aggrieved party would have a right to appeal an initial decision to the Commission by filing a notice of appeal within fifteen days after service of an initial decision. The notice of appeal need only contain a very brief expression of the appealing party's intention to appeal the initial decision. After timely filing the notice of appeal, the party would have thirty days to perfect the appeal by filing an appeal brief identifying the issues to be raised for Commission consideration. The opposing party would have thirty days to respond. The timely filing and timely perfecting of an administrative appeal to the Commission would be a mandatory prerequisite to judicial review of a final decision, and the failure timely to file and perfect will subject an appeal to dismissal.

This change in the appellate review rule will bring the Commission's Part 148 rules into harmony with its existing appeal procedures in Parts 10 and 12 of this Chapter. It will be more efficient and expeditious because it will spare the Commission from having to consider an application for review, followed by, if review is granted, a brief in support of the application for review. Under the proposed procedure, the Commission would only have to consider a matter once.

After the appellate briefing is completed, the Commission will issue a final decision or will remand the fee application to the Presiding Officer for further action.

The Commission notes that the provisions of the Regulatory Flexibility Act do not apply to these rule modifications. The rules are procedural in nature and have a potential beneficial, rather than adverse, impact on small businesses. Accordingly, the Chairman, on behalf of the Commission, certifies that the rules proposed in this notice, if adopted, will not have a significant economic impact on a substantial number of small entities. Moreover, the provisions of the Paperwork Reduction Act do not apply to these rule modifications. The rules do not call for the collection of information from the general public by the Commission, but simply implement statutory changes in the context of particular ongoing adjudicatory proceedings. Notwithstanding these proposed determinations, the Commission welcomes comments on these matters.

List of Subjects in 17 CFR Part 148

Claims, Equal access to justice, Lawyers.

The Commission proposes to amend Part 148 of Chapter I of Title 17 of the Code of Federal Regulations, as specified below:

The authority citation for 17 CFR Part 148 would be revised to read as follows:

Authority: Equal Access to Justice Act, 5 U.S.C. 504(c)(1), and in sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5).

Subpart A—General Provisions

Section 148.1 is proposed to be revised as follows:

§ 148.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in the part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing private parties in adjudicatory proceedings before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this Part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

Section 148.2 is proposed to be revised as follows:

§ 148.2 When the Act applies.

The Act applies to any covered adjudicatory proceeding pending before the Commission on or after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date. Awards may be sought for fees and other expenses incurred before October 1, 1981, in any such covered proceeding.

Section 148.3, paragraphs (a) and (b), are proposed to be revised as follows:

§ 148.3 Proceedings covered.

(a) The Act applies to adjudicatory proceedings conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Reparation proceedings under section 14 of the Commodity Exchange Act, 7 U.S.C. 18, Commission review of exchange disciplinary and access denial actions under Section 8c of the Commodity Exchange Act, 7 U.S.C. 12c, and registered futures association disciplinary and membership denial actions under section 17 of the Commodity Exchange Act, 7 U.S.C. 21, are not covered by the Act. Proceedings brought to determine whether or not to grant or renew registrations pursuant to sections 8a or 17(o) of the Commodity Exchange Act, 7 U.S.C. 12a and 21(o), or contract market designations pursuant to section 6 of the Commodity Exchange Act, 7 U.S.C. 8, are excluded, but proceedings brought to suspend or revoke registrations or contract market designations are covered if they are otherwise adjudicatory proceedings. For the Commission, the types of proceedings generally covered are adjudicatory proceedings as defined in § 10.2(b) of this Chapter; Part 14 proceedings, if they involve a hearing, are also covered.

(b) The Commission's decision not to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in the proceedings on the application.

* * * * *

Section 148.4, paragraph (b)(1)(2), and (5), and (e), are proposed to be revised as follows:

§ 148.4 Eligibility of applicants.

(a) * * *.

(b) The types of eligible applicants are as follows:

cases "sounding in tort." 28 U.S.C. 2412(d)(1)(A). Since reparation proceedings regularly involve allegations of fraud (a tort at common law), the Commission believes that such cases should be categorically excluded from fee awards, both at the administrative level and on judicial review.

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(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) * * *

(4) * * *

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(c) * * *

(d) * * *

(e) The employees of an applicant include all persons who regularly perform services for compensation for the applicant, under the applicant's direction and control. The term "employee" also embraces all the agents of an applicant, by whatever title or label they may be known, for whose acts or omissions the applicant may be held liable under the Commodity Exchange Act. *See* 7 U.S.C. 4. Part-time employees shall be included on a proportional basis.

(f) * * *

(g) * * *

Section 148.5, paragraph (a), is proposed to be revised as follows:

§ 148.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adjudicatory proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Commission was substantially justified. The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the Commission upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Commission.

(b) * * *

* * * * *

Subpart B—Information Required From Applicants

Section 148.11, paragraph (a) and the introductory text of paragraph (b), are proposed to be revised as follows:

§ 148.11 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adjudicatory proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agency that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) * * *

(2) * * *

(c) * * *

(d) * * *

(e) * * *

* * * * *

Subpart C—Procedures for Considering Applications

* * * * *

Section 148.26, paragraph (a), is proposed to be revised as follows:

§ 148.26 Further Proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Commission or for another relevant agency, or on his or her own initiative, the Presiding Officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the Commission was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought. No discovery and/or evidentiary proceedings shall be permitted into the question of whether the agency's position was substantially justified.

(b) * * *

* * * * *

Section 148.28 is proposed to be revised as follows:

§ 148.28 Appeal to the Commission.

(a) Either the applicant or counsel for the Commission or for another relevant agency may appeal the initial decision on the fee application by complying with the requirements of this section. An appealing party shall serve upon opposing parties and shall file with the Proceedings Clerk a notice of appeal within fifteen (15) days after service of the initial decision. The notice need consist only of a brief statement indicating the filing party's intent to appeal the initial decisions, and shall include the date upon which the initial decision was rendered, the name of the proceeding, and the docket number of the proceeding. The failure of a party timely to file and serve a notice of appeal in accordance with this paragraph, or to perfect the appeal in accordance with paragraph (b) of this section, shall constitute a voluntary waiver of any objection to the initial decision, and of all further administrative or judicial review under these rules and the Equal Access to Justice Act.

(b) An appeal shall be perfected by the appealing party by timely filing with the Proceedings Clerk an appeal brief which meets the requirements of paragraphs (b) and (d) of this section. An original and one copy of the appeal brief shall be filed within thirty (30) days after filing of the notice of appeal. By motion of the appealing party, the Commission may, for good cause shown, extend the time for filing the appeal brief. If the appeal brief is not filed within the time prescribed in this subparagraph, the Commission may, upon its own motion or upon motion by a party, dismiss the appeal, in which event the initial decision shall become the final decision and order of the Commission, effective upon service of the order of dismissal.

(c) The opposing party may, within thirty (30) days after service of the appeal brief, file an original and one copy of an answering brief, and serve one copy thereof, unless the time limit is extended by the Commission upon motion of the party and for good cause shown.

(d) Parties filing an appeal brief or answering brief shall meet the requirements of § 10.12 of this Chapter as to form. The content of briefs shall satisfy the requirements of § 10.102(d) of this Chapter, except that any party, with leave of the Commission, may file an informal document in lieu of a brief. No brief shall exceed thirty-five (35) pages in length without advance leave of the Commission.

(e) On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

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Dated: February 14, 1986.

* * * * *

Jean A. Webb,

Secretary to the Commission Commodity Futures Trading Commission.

[FR Doc. 86-3722 Filed 2-20-86; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 230, 240, 250, 260, 270, and 275

[Release Nos. 33-6625; 34-22903; 35-24017; 39-1077; IC-14936; IA-1012; File No. S7-6-86]

Remittance of Fees to Lockbox

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to a temporary rule that currently permits filers to remit filing and other fees to a United States Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. The amendments would change the provisions of the rule from permissive to mandatory and at the same time permit fees to be remitted to a second designated depository located in Los Angeles, California. In addition, to increase its visibility, the rule would be redesignated as a rule under the Securities Act of 1933. The proposed amendments respond to the efforts of the U.S. Treasury Department to reform its cash management in accordance with the Deficit Reduction Act of 1984, and will put the Commission in compliance with a new Treasury Department regulation,[1] effective October 3, 1985, promulgated under authority of that Act. The Treasury regulation, designed to increase the efficiency of collection of monies owed to Federal agencies, imposes heavy administrative burdens on those agencies. One important requirement under the regulation is that agencies must achieve same-day or next-day deposit of monies. An agency that fails to implement improved methods of cash management may have charges assessed against it by the Treasury. The payment of fees to the lockbox will provide the U.S. Treasury with funds on the date of receipt rather than later, as may be the case with current procedures, resulting in substantial cost savings for the Commission and the Federal Government.

Adoption of the proposed amendment will enable the Commission to comply with the Treasury regulation without increasing its staff. Moreover, the additional demands imposed by the regulation, given current staffing levels, would result in the Commission being unable to process filings within acceptable time frames in peak filing seasons. The Commission, therefore, is proposing mandatory use of a lockbox, which will ensure that the Commission meets its obligations.

In a related release, the Commission has extended for nine months the effectiveness of a temporary rule adopted in June 1984, which permits the submission of filing and other fees to the Commission's lockbox. This action will permit the continuation of current procedures pending adoption of the proposed amendments.

This proposed amendment involves a procedural rule and, under the Administrative Procedure Act, may be adopted without notice and comment. However, because the Commission is changing longstanding practices concerning fee collection, the Commission is inviting comments on the proposal.

DATE: Comments should be received on or before April 14, 1986.

ADDRESSES: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-6-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel (202-272-2700), Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Since August 1984, the Commission has offered filers the option of remitting fees via mail or wire transfer to a U.S. Treasury Department designated lockbox. The lockbox has been available for receipt of accounts receivable payments since August 1, 1984 and for filing fees since August 15, 1984. Participants in the pilot phase of the Commission's Edgar project who make direct electronic submissions have been required to use the lockbox.

When temporary rule 202.3a (17 CFR 202.3a) was proposed, the Commission stated that in approximately twelve months it would consider whether to make payment of fees to the lockbox mandatory. Since that time, the lockbox system has worked well overall. Moreover, strong direction from Congress that federal agencies should be more efficient in their handling of receipts supports the adoption of a mandatory rule. Therefore, the Commission is proposing amendments to rule 202.3a which change its character from permissive to mandatory.

The Commission also has extended the effectiveness of temporary rule 202.3a for a period of 9 months (to November 1, 1986) to permit consideration of the proposed changes. Release No. 33-6623, January 30, 1986 (51 FR 4160, February 3, 1986).

Comments Received on Temporary Rule 202.3a

At the time temporary rule 202.3a was proposed, the Commission solicited comments on whether it should adopt a rule mandating use of a lockbox or other depository arrangement for all fee payments. Three comment letters were received. Two commentators suggested that the Commission consider allowing personal checks for filings under the Securities Act of 1933. However, the Securities Act of 1933 specifies that registration fees must be in the form of a United States postal money order, a certified bank check or cash, *i.e.*, money guaranteed at the time of filing. The Commission does not believe it has the authority, absent statutory change, to allow personal checks for filings under that Act.

Two commentators expressed concern over the possibility of lengthened time to verify receipt of payments and delays in processing critical filings. The Commission is aware of these concerns and has developed procedures with the Treasury Department and the current lockbox to eliminate technical problems associated with this arrangement. For example, the Commission can now verify receipt of payments almost instantaneously with arrival at the lockbox. The commentators also requested that messenger delivery and delivery of cash to the lockbox be permitted. Under the proposed amendments both methods will be acceptable as long as such deliveries are made only to the lockbox located in Pittsburgh, Pennsylvania and proper indentifying data accompanies payments.

Finally, two commentators expressed concern that mandatory use of the lockbox will double delivery requirements and increase associated expenses. The Commission believes that duplicate delivery charges can be

[1] Management of Federal Agency Receipts and Operation of the Cash Management Improvements Fund, 50 FR 35547 (1985) (to be codified at 31 CFR Part 206).

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avoided, as well as any potential delay of critical filings, if fee payments are submitted or mailed in sufficient time to be received before or simultaneously with the filing. While preparation of filings may prevent their submission until the last possible moment before a deadline, the same is not necessarily true of fees, which generally can be mailed or delivered in advance. The Commission is aware that in some circumstances it may be more costly to send a fee payment in advance of the filing. However, such a procedure may be necessary to accommodate the time schedule of filers. While public filings are made available as soon as they are accepted by the Commission, information concerning receipt of payments is not. Thus, there should be no real concern that plans for sensitive filings will be prematurely exposed.

Current SEC Regulations Affected by the Proposed Amendments

The Commission is proposing to require that filing and other fees be remitted to the lockbox depository beginning approximately October, 1986.[2] if the proposed amendments are adopted, payment of fees required by the following current rules would be required to comply with the amended procedures: Rule 111 under the Securities Act of 1933, rule 0–9 under the Securities Exchange Act of 1934, rule 107 under the Public Utility Holding Company Act of 1935, rule 0–8 under the Investment Company Act of 1940 and rule 203–3(b) under the Investment Advisers Act of 1940.[3] To increase the visibility of the new mandatory procedures, the Commission is proposing to remove these procedures from rule 202.3a, incorporating them instead into the text of rule 111 under the Securities Act. Temporary rule 202.3a would be revised to provide that the payment of fees pursuant to specified rules should be made in accordance with the procedures stated in rule 111. In addition, proposed amendments to rule 0–9 under the Securities Exchange Act, rule 107 under the Public Utility Holding Company Act, rule 0–8 under the Investment Company Act and rule 203–3(b) under the Investment Advisers Act would add a cross reference, in each rule, to rule 111.

The Commission also is proposing conforming amendments to rules 255 and 455 [4] under the Securities Act. Rule 255, which now requires fees for offering statements under Regulation A to be paid at the Regional Offices where the filing is made would require such fees to be paid in accordance with rule 111, as amended. The proposed amendment to rule 455, which relates to Form S–18 under the Securities Act of 1933 and offers registrants the option of filing either at the Commission's principal office or at any of its regional offices, would require fees to be paid in accordance with amended rule 111 regardless of where Form S–18 is filed. Further, a proposed amendment to rule 7a–3 [5] under the Trust Indenture Act of 1939 would add a new section (d) to direct that payment of fees pursuant to section 307(d) of that Act be made in accordance with rule 111. The Commission has not previously promulgated procedural rules for payment of fees under the Trust Indenture Act.

Proposed Procedures

Under the proposed amendments, filers would be required to transmit fees to a Treasury Department designated lockbox depository in either Pittsburgh, Pennsylvania or Los Angeles, California. Filers that chose to transmit fees to the Pennsylvania lockbox would be able to use any of three methods: Mail, wire transfer, or hand delivery. Fees transmitted to the California depository would be accepted only if sent via wire transfer. Filers would continue to send or deliver filings to the Commission at its headquarters or regional offices, as appropriate.

Payments in the form of money order, certified check, cashier's check, cash, wire transfer or, in certain limited cases, personal check, will be considered received by the Commission at the time of their receipt by the lockbox depository. The Commission will verify receipt of fees through direct computer access to both the Pennsylvania and California facilities.[6] Deposits of personal checks will continue to be an unacceptable method of fee payment under the Securities Act of 1933 and section 307(a) of the Trust Indenture Act of 1939.

Request for Comments

In addition to its general request for comments on the proposed amendments, the Commission is requesting specific comment on three matters. First, as amended, paragraph (b)(2) of rule 111 would permit wire transfer of funds for all filings, including those under section 6(c) of the Securities Act of 1933 and section 24(e) of the Investment Company Act. The Commission believes that wire transfers are the functional equivalent of cash, but is requesting specific comment on this provision of the proposal. Second, the amendments provide that fees may be transmitted to the California depository only in the form of wire transfers and, with the exception of Good Friday,[7] only between the hours of 4:30 and 5:30 p.m. Eastern Time. The Commission is requesting comment on whether it is necessary or desirable for the California depository also to accept fees delivered by hand or mail, or both, and whether the hours during which fees may be transmitted to the California depository should be expanded and, if so, to cover what specific times. Finally, the Commission requests specific comment on any foreseeable practical problems that would be created by adoption of the proposed changes. These problems might involve such matters as variations in the procedures employed by different banks in accepting and handling wire transfers, the priority given to wire transfers of small amounts or the advance submission of fees. All comments must be received no later than April 14, 1986.

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that the foregoing amendment to rule 111 relates solely to agency organization, procedure or practice and that advance notice and opportunity for comment are not necessary. Nonetheless, the Commission believes that it is in the public interest to solicit and accept public comments and will do so until April 14, 1986. In addition, the Commission has considered the impact this proposed rule will have on competition, and, pursuant to section 23(a)(2) of the Securities

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[2] This proposed amendment will not apply to fees paid by national securities exchanges under section 31 of the Securities Exchange Act that must be wired to the Federal Reserve Bank of New York pursuant to directions issued by the Commission's Office of the Comptroller. In addition, fees paid pursuant to Commission rules 200.80e (17 CFR 200.80e), 200.310 (17 CFR 200.310), 200.506 (17 CFR 200.506) and 203.4 (17 CFR 203.6), will continue to be paid in accordance with the directions in those rules. These rules generally establish charges for records services such as searching and attestation, facsimile copies of documents, public reference copying, subscription services and microfiche copies, Privacy Act and Freedom of Information Act searches, and copies of transcripts.

[3] 17 CFR 230.111, 240.0–9, 250.107, 270.0–8, 275.203–3(b).

[4] 17 CFR 230.255 and 230.455.

[5] 17 CFR 260.7a–3.

[6] If, due to system breakdown or otherwise, Commission staff is unable to verify receipt of the fees, the staff will accept filings subject to verification of the fee payment. The filing date will be the later of the date the fees are actually received at the lockbox, or the date the filing is received at the Commission.

[7] The only day on which Mellon Bank is closed, that is not a federal holiday, is Good Friday. During this day, payments may be made only by wire transfer to Bank of America.

Exchange Act of 1934, finds that any burden on competition imposed by the proposed rule is necessary or appropriate in furtherance of the purposes of that Act.

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Investigations, Securities.

17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Accounting, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities. Indentures.

17 CFR Parts 270 and 275

Investment advisers, Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In consideration of the foregoing, Chapter II, Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for Part 202 continues to read as follows:

Authority: 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f.(b) and 77f.(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended.

2. Section 202.3a is proposed to be revised as follows:

§ 202.3a Instructions for payment of fees.

Payment of fees required by the following rules shall be made according to the directions listed in paragraph (b) of § 230.111: § 230.255(b) (17 CFR 230.255(b)), § 230.455 (17 CFR 230.455), § 240.0–9 (17 CFR 240.0–9), § 250.107 (17 CFR 250.107), § 260.7a–3(d) (17 CFR 260.7a–3(d)), § 270.0–8 (17 CFR 270.0–8) and § 275.203–3(b) (17 CFR 275.203–3(b)).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation appearing under the center heading "General" continues to read as follows:

Authority: Sections 230.100 to 230.174 issued under section 19, 48 Stat. 85, as amended; 15 U.S.C. 77s, unless otherwise noted.

3a. The authority citation under the center heading "Regulation A—General Exemptions" continues to read as follows:

Sections 230.251 to 230.263 also issued under sections 3 and 19, 48 Stat. 85, as amended; 15 U.S.C. 77c, 77s, unless otherwise noted.

3b. The authority citation for § 230.455 continues to read as follows:

Section 230.455 also issued under sections 6, 7, 8, 10 and 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2) 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; sec. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498–1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 79t(e), 77sss(a), 80a–37.

4. Section 230.111 is proposed to be amended by designating the existing text paragraph (a) and striking the last sentence thereof and adding paragraph (b) as follows:

§ 230.111 Payment of fees.

* * * * *

(b) Payment of fees required by paragraph (a) of this section and the following rules shall be made according to the directions stated in this part: Section 230.255(b) (17 CFR 230.255(b)), § 230.455 (17 CFR 230.455), § 240.0–9 (17 CFR 240.0–9), § 250.107 (17 CFR 250.107), § 260.7a–3(d) (17 CFR 260.7a–3(d)), § 270.0–8 (17 CFR 270.0–8) and § 275.203–3(b) (17 CFR 275.203–3(b)). All such fees must be transmitted to either a U.S. Treasury designated lockbox, currently in Pittsburgh, Pennsylvania, by mail, wire transfer, or hand delivery or to a U.S. Treasury designated depository currently in Los Angeles, California, by wire transfer. Payments must be made in the form specified in the Commission's rules or by wire transfer, and will be considered received by the Commission at the time of their receipt by the lockbox or depository. For purposes of payment of fees, the term "accompanied," as used in section 6(c) of the Securities Act of 1933, section 24(e) of the Investment Company Act of 1940, and section 307(b) of the Trust Indenture Act of 1939, means submission of the applicable fee to either the lockbox or the depository prior to or simultaneously with submission of the filing to the Commission. The following instructions apply:

(1) *Mail.* Fees transmitted by mail must be addressed to the Securities and Exchange Commission, Post Office Box 360005M, Pittsburg, PA 15251. Checks and money orders are to be made payable to the Securities and Exchange Commission. Checks must contain the following information (data elements) for each individual payment (preferably on the front of the check): Entity name, IRS identification number (domestic issuers), form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific data elements for each filing for which payment is being made if a check covers payment for more than one filing. Each response should be clearly labeled to indicate the data element to which it refers, *e.g.*, "IRS #: 53–0040540." Cash payments and money orders must be accompanied, on a separate sheet of paper, by the same information required for checks.

(2) *Wire.* Payors who wish to wire fee payments to either the lockbox or the depository must contact their respective banks to determine the specific procedures used by that bank for wire transfer of funds. In addition, payors must inform their banks that the wire is to be sent to the Securities and Exchange Commission account at either the Pittsburg, Pennsylvania depository, Mellon Bank, or the Los Angeles, California depository, the Bank of America, and that the Commission is the recipient. The payor's bank also must be advised of the American Bankers Association number and the Securities and Exchange Commission account number at either Mellon or Bank of America. Mellon Bank's American Bankers Association number is *043000261* and its Securities and Exchange Commission Account number is *910–6739*. Bank of America's American Bankers Association number is *1200358* and its Securities and Exchange Commission Account number is *12330–08784*. The wire transfer must contain the following data elements (clearly identified) for each individual payment: entity name, dollar amount, IRS identification number (domestic issuers), form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific data elements for each filing if a wire transfer covers payment for more than one filing. Wire transfers will be accepted at Mellon Bank weekdays from 8:30 a.m. to 4:30 p.m. Eastern Time (exlcuding federal holidays and Good Friday). Wire transfers will be accepted at Bank of America weekdays from 4:30 to 5:30 p.m. Eastern Time (excluding

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federal holidays) and from 12:00 to 5:30 p.m. Eastern Time on Good Friday.

(3) *Hand Delivery.* Fees that are hand delivered must be brought to the Mellon Bank, 27th Floor, Three Mellon Bank Center, Fifth Avenue at William Penn Way, Pittsburgh, PA 15259–0003. Hand deliveries will be accepted weekdays from 7:30 a.m. to 4:00 p.m. Eastern Time (excluding federal holidays and Good Friday). All hand deliveries must be in a sealed envelope, with the Commission's lockbox number *360055M* written on the outside. The envelope must contain documentation setting forth the Commission's account number at Mellon Bank *910–8739* and the data elements as set forth below. Checks and money orders are to be made payable to the Securities and Exchange Commission. Checks must contain the following information (data elements) for each individual filing (preferably on the front of the check): Entity name, IRS identification number (domestic issuers), form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific data elements for each filing if a check covers payment for more than one filing. Each response should be clearly labeled to indicate the data elements to which it refers, e.g., "IRS #: 53:0040540." Cash payments and money orders must be accompanied, on a separate sheet of paper, by the same information required for checks.

5. Section 230.255 is proposed to be amended by revising paragraph (b) to read as follows:

§ 230.255 Filing of offering statement.

* * * * *

(b) The offering statement shall be signed by the issuer and each person, other than the issuer, for whose account any of the securities are to be offered. If the offering statement is signed by any person on behalf of any other person, evidence of authority to sign on behalf of such other person shall be filed with the offering statement, except where an officer of the issuer signs on behalf of the issuer. At the time of filing an offering statement, the applicant shall pay to the Commission a fee of $100.00, in accordance with the directions set forth in § 230.111(b) of this chapter, no part of which shall be refunded.

* * * * *

6. Section § 230.455 is proposed to be revised to read as follows:

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission shall be filed at its principal office, except for statements on Form S–18 (§ 239.28) and except as otherwise provided in Rule 445 (§ 230.445). Registration statements on Form S–18 may be filed with the Commission either at its principal office or at the Commission's regional offices as specified in General Instruction B to Form S–18. Such materials may be filed by delivery to the Commission through the mails or otherwise. All fees shall be paid in accordance with the directions set forth in § 230.111(b) of this chapter.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

7. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173; 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, unless otherwise noted.

8. Section 260.7a–3 is proposed to be amended by revising the section heading and adding paragraph (d), to read as follows:

§ 260.7a–3 Number of copies; filings; signatures, binding; payment of fees.

* * * * *

(d) All payments of fees for applications pursuant to section 307(b) of the Act shall be made in cash, or by U.S. postal money order, certified check, bank cashier's check, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by the Act shall be made in accordance with the directions set forth in § 230.111(b) of this chapter.

PARTS 240, 250, 270 AND 275—[AMENDED]

9. The authority citation for Part 240 is amended by adding the following citation: (Citation before * * * indicates General Rulemaking Authority):

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w, unless otherwise noted; * * * § 240.0–9 also issued under 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f(b) and 77f(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended. The Authority citation for Part 250 is amended by adding the following citation (Citation before * * * indicates General Rulemaking Authority):

Authority: Secs. 3, 20, 49 Stat. 810, 833, 15 U.S.C. 79c, 79t, unless otherwise noted; * * * § 250.107 also issued under 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f(b) and 77f(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended.

The authority citation for Part 270 is amended by adding the following citation (Citation before * * * indicates General Rulemaking Authority):

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, unless otherwise noted; * * * § 270.0–8 also issued under 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f(b) and 77f(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended. The authority citation for Part 275 is amended by adding the following citation (Citation before * * * indicates General Rulemaking Authority):

Authority: Secs. 203, 204, 211, 54 Stat. 850, as amended, 852, as amended, 855, as amended, 15 U.S.C. 80b–3, 80b–4, 80b–11 unless otherwise noted; * * * § 275.203–3(b) also issued under 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f(b) and 77f(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended.

10. Section 240.0–9, 250.107, 270.0–8 and 275.203–3(b) are proposed to be amended by striking "§ 202.3a" from the last sentence of each section and replacing it with "§ 230.111(b)."

* * * * *

Dated: February 13, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86–3696 Filed 2–20–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–157–84]

Income Taxes; $40 Million Limitation Upon Beneficiaries of Certain Tax-Exempt Bond Issues

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that relate to certain industrial development tax-exempt bonds and to certain beneficiaries of such bond issues. Changes to the applicable tax law were made by the Tax Reform Act of 1984 that generally deny Federal income tax exemption for a small issue of industrial development bonds if any of its test-period beneficiaries is allocated more than $40 million of outstanding industrial development bonds, including its allocated portion of the small issue in question. This provision restricts the amount of small issues of industrial development bonds that may be issued for a beneficiary when that person already benefits from a significant amount of tax-exempt industrial development bonds.

DATES: Written comments must be delivered or mailed by April 22, 1986. These regulations are proposed to be effective after August 20, 1986 in determining the tax-exempt status of obligations issued after August 20, 1986. However, these regulations would not apply to certain obligations described in section 631(f) of the Tax Reform Act of 1984 and to certain obligations with respect to facilities described in section 631(c)(3) of the Tax Reform Act of 1984. The provisions of § 1.103–10(i)(4)(vi) are generally proposed to be effective after December 31, 1983, in determining the tax-exempt status of obligations issued after December 31, 1983.

ADDRESS: Please mail or deliver comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–157–84), 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of Chief Counsel, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (Telephone: 202–566–3590, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(b)(15) of the Internal Revenue Code of 1954. These proposed amendments provide needed guidance regarding the provisions of section 103(b)(15) concerning the $40 million limitation which were enacted by section 623 of the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 921).

Explanation of Provisions

The $40 million limitation applicable to small issues of tax-exempt industrial development bonds was enacted in the Tax Reform Act of 1984. This limitation generally denies Federal income tax exemption for a small issue of industrial development bonds if any test-period beneficiary is allocated more than $40 million of outstanding industrial development bonds, including its allocated portion of the issue in question. A person is a "test-period beneficiary" of the bond-financed facility, if he is an owner or a principal user of a facility financed by the issue at any time during the 3-year period after the issue is issued, or after the facility is placed in service, whichever occurs later. A person who is related to a principal user at any time during the test period is also a test-period beneficiary, unless the principal user ceased using the facility before the two persons became related.

These proposed regulations provide guidance on the allocation of the proceeds of an issue of industrial development bonds among test-period beneficiaries. In determining whether the $40 million limitation has been exceeded with respect to a test-period beneficiary, the portions of the outstanding amounts of all industrial development bonds (not just small issues allocable to the beneficiary are aggregated.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

Comments—Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accordance with the notice of hearing published in this issue of the **Federal Register**.

List of Subjects in 26 CFR Parts 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Par. 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.103–10(i) also issued under 26 U.S.C. 103(b)(15).

Par. 2. Section 1.103–10 is amended by adding a new paragraph (i) immediately following paragraph (h) therein. The new paragraph reads as follows:

§ 1.103–10 Exemption for certain small issues of industrial development bonds.

* * * * *

(i) *$40 million limitation for beneficiaries of small issues of industrial development bonds*—(1) *General rule.* Section 103(b)(6) and § 1.103–10(a) do not apply to an issue of obligations ("issue in question") if—

(i) The portion of the aggregate authorized face amount of the issue in question allocated to any test-period beneficiary, as defined in paragraph (i)(3) of this section, of the issue, plus

(ii) The portion of the outstanding principal amount of prior bonds, as defined in paragraph (i)(2) of this section, allocated—

(*a*) To the test-period beneficiary described in paragraph (i)(2)(i) of this section, or

(*b*) To a person who at any time during the test period of the issue in question is related to such beneficiary,

exceeds $40 million. If interest on the issue is question would, but for this paragraph and section 103(b)(15), be exempt from Federal income taxation solely because of section 103(b)(6), the issue is treated as an issue of obligations not described in section 103(a) on and after the date of issuance. For purposes of this paragraph (i), the aggregate authorized face amount of the issue in question and the outstanding principal amount of a prior bond shall be determined without regard to section 103(b)(6) (B) or (D) (requiring certain amounts of prior issues or capital expenditures to be taken into account in determining the aggregate face amount of the issue in question or of the prior bond).

(2) *Prior bonds.* For purposes of this paragraph (i), "prior bonds" means prior or simultaneous issues of industrial development bonds described in paragraph (4), (5), or (6) of section 103(b) the interest on which is exempt from tax pursuant to section 103(a), including such bonds issued before January 1, 1984. For purposes of paragraph (i)(1)(ii) of this section, "outstanding principal amount of prior bonds" means the principal amount that is outstanding at the time of issuance of the issue in question, not including the amount to be redeemed from the proceeds of the issue in question. Thus, the outstanding principal amount of prior bonds does not include the portion of the original face amount that has been discharged,

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nor does it include any amount to be issued in the future.

(3) *Test-period beneficiary*—(i) *In general.* For purposes of this paragraph (i), a "test-period beneficiary" of the issue in question or of an issue of prior bonds means any person who at any time during the test period for the issue is a principal user, as defined in paragraph (h)(1) of this section, of a facility financed by the proceeds of the issue, including a person who is related to a principal user. For purposes of the preceding sentence, a person shall be treated as related to a principal user only if that person is related to such user within the meaning of section 103(b)(6)(C) and paragraph (e) of this section at any time during the test period, and such user has not ceased to use the facility before the persons became related. See paragraph (h)(2)(iv) if this section for circumstances in which a person will be treated as ceasing to use a facility. A test-period beneficiary does not cease to be a test-period beneficiary if he ceases to use the facility; the portion of the issue allocated to the test-period beneficiary continues to be so allocated until the issue is no longer outstanding.

(ii) *Test period.* The "test period" for an issue means the 3-year period beginning on the later of the date the facility financed by the proceeds of the issue is placed in service or the date of issue of such issue. A facility shall be considered as being placed in service at the time the facility is placed in a condition or state of readiness and availability for a specifically assigned function. If separate facilities are financed by an issue and the facilities are placed in service at different times, there shall be separate test periods for the portions of the issue financing each separate facility. If a single facility (consisting of separately depreciable items of property) is placed in service in stages, then the entire facility will be deemed placed in service when its last portion is placed in service.

(4) *Allocation of issue*—(i) *In general.* The portion of the amount of an issue allocated to a test-period beneficiary is the highest percent of the facility financed by proceeds of the issue that the beneficiary owned or used on a regular basis during the test period. For example, a person that owns the entire facility shall be allocated 100 percent of the issue; a person that leases 90 percent of a facility for two years of the test period and leases 35 percent for the third year shall be allocated 90 percent of the issue.

(ii) *Portion allocable to lessee and output purchaser.* The portion of a facility used by a lessee is generally determined by reference to its fair rental value. The portion of a facility used by a principal output purchaser, as defined in paragraph (h)(1)(iii) of this section, is the highest portion of the facility's total output purchased by such purchaser during any of the three years of the test period.

(iii) *Portion allocable to related person.* The portion of an issue allocable to a person who is a test-period beneficiary because he is related to a principal user is the same portion allocated to such principal user.

(iv) *Double allocation.* The total amount of an issue allocated to test-period beneficiaries may exceed 100 percent of its outstanding face amount, such as when one test-period beneficiary is an owner and another person leases the facility for over a year. However, if a beneficiary is the owner of all or a portion of a facility that is leased to or otherwise used by such beneficiary or by a related person, then the portion of the issue the proceeds of which were used to finance the facility is allocated only once to the beneficiary. For example, if Corporation X owns an undivided 50 percent of a facility while related Corporation Y is the lessee of 60 percent of the facility, the portion of the issue financing the facility allocable to X is 80 percent (50 percent plus 30 percent), because one-half of the 60-percent portion used by Y (30 percent) is considered attributable to the portion owned by X.

(v) *Allocation of remainder of issue to owners.* If the portion of an issue allocated to all test-period beneficiaries of the bank-financed facility (other than related persons) is less than 100 percent, the remainder shall be allocated to test-period beneficiaries who are owners of the facility in proportion to the amount of the issue otherwise allocable to such persons by reason of their ownership interests during the test period.

(vi) *Bond redeemed before person becomes principal user.* If all or some of the outstanding principal amount of the issue in question or of prior bonds is redeemed other than from the proceeds of a refunding issue described in section 103(a) either before or as soon as reasonably practicable after a person becomes a test-period beneficiary with respect to the issue in question, but in no event later than 180 days after the date such person becomes a test-period beneficiary, then the amount of the issue so redeemed will not be allocated to such person (or to a related person) in determining whether the issue in question exceeds the $40 million limitation. With respect to obligations that are issued after August 22, 1986 paragraph(i) (4) (vi) shall not apply if the terms of the issue provide for a delay in redemption a principal purpose of which is to benefit from the 180-day period referred to therein. In the case of a person who becomes a test-period beneficiary before February 21, 1986, bonds redeemed before August 22, 1986 shall be considered redeemed as soon as reasonably practicable for purposes of the first sentence of this paragraph (i) (4) (vi) and the 180-day limitation referred to therein shall not apply.

(5) *Treatment of certain successors as test-period beneficiaries.* If a corporation, partnership, or other entity which is a test-period beneficiary with respect to one or more issues transfers substantially all of its properties to another person (or to two or more related persons within the meaning of section 103(b)(6)(C)), or if a corporation acquires the assets of a test-period beneficiary in a transaction described in section 381(a), the transferee shall be treated as a test-period beneficiary with respect to such issues and shall be allocated the portion of such issues that were allocated to the transferor prior to the transfer. The preceding sentence shall not apply to the extent that it would result in double allocation of an issue, such as in the case of a transfer to a related person. This paragraph (i)(5) shall apply regardless of whether gain is required to be recognized by the transferor for Federal income tax purposes and regardless of whether the transferor remains in existence after the transfer. If the transferor remains in existence after the transfer, this paragraph (i)(5) shall not relieve the transferor of its allocation of any issue. This paragraph (i)(5) shall apply only for purposes of determining the tax exemption of issues of which the transferee becomes the test-period beneficiary after the transfer described herein.

(6) *Examples.* The application of section 103(b) (15) and this paragraph (i) may be illustrated by the following examples:

Example (1). On September 1, 1986, City M issues a $9 million obligation to finance acquisition of a newly constructed shopping center that is placed in service on September 1, 1986, and is owned and managed by Corporation X. Half of the shopping center (determined by fair rental value) is leased for a term exceeding 1 year to Corporation Y. X owns 60 percent of the shares of Y. The other half of the shopping center (also determined by fair rental value) is leased in equal shares for a term exceeding 1 year to A and B, two unrelated corporations. As of September 1, 1986, $30 million of prior issues of obligations are outstanding and are allocable to X as a test-period beneficiary under the rules of § 1.103–10(i)(4). As of that date there is no prior issue of obligations outstanding and allocable to Y, A, or B as test-period beneficiaries. Because X owns 100 percent of the shopping center, 100 percent of the 1986 issue ($9 million) is allocated to X. Therefore, for purposes of determining whether the 1986 issue exceeds the $40 million limitation of section 103(b)(15), the $30 million of outstanding prior issues must be added to the $9 million 1986 issue. Because Y leases 50 percent of the shopping center, 50 percent of the 1986 issue ($4.5 million) is allocated to Y. Although Y is related to X under section 103(b)(15)(E), the $4.5 million of the 1986 issue that is allocated to Y is not added to the $39 million allocated to X under paragraph (i)(4)(iv) of this section since such amount has already been allocated to X as owner of the shopping center. Because A and B each leases 25 percent of the shopping center, each is allocated 25 percent ($2.25 million) of the 1986 issue.

Example (2). The facts are the same as in *Example (1)* except that A owns a 60-percent interest in an airport hotel described in § 1.103–8(e)(2)(ii)(*d*) and, because of such ownership interest, is allocated $15 million of prior outstanding obligations described in section 103(b)(4)(D). In addition, County N issues $25 million of obligations described in section 103(b)(4)(E) on October 1, 1986, to finance construction of a solid-waste disposal facility that will be owned by C, A's wholly-owned subsidary corporation. In this case, with respect to the September 1, 1986 issue, A is allocated the $15 million prior issue that is outstanding with respect to A's share of the airport hotel bond and the $2.25 million that is A's allocable share of the September 1, 1986, issue for a total of $17.25 million. Because the solid waste disposal facility bonds had not yet been issued when the September 1, 1986, obligation was issued, no portion of the $25 million of obligations to finance C's solid-waste disposal facility will be treated as part of A's allocable obligations with respect to the September 1, 1986, issue even though A and C are related persons. In addition, even though A and C are related persons and even though on the date of issue of the solid-waste disposal bonds C will be allocated more than $40 million of outstanding obligations for purposes of section 103(b)(15) (including A's $17.25 million of outstanding prior obligations), the $40 million limitation of section 103(b)(15) does not render the interest on the October 1, 1986, bonds taxable since the October 1, 1986 issue, qualifies for tax exemption under section 103(b)(4), and the $40 million limitation of section 103(b)(15) does not apply to render taxable bonds issued under section 103(b)(4).

Example (3). On October 1, 1986, City K issues an $8 million issue of obligations exempt under section 103(b)(6) to finance acquisition of a newly-constructed manufacturing plant owned by Corporation L. On October 1, 1986, Corporation M has $35 million of prior outstanding obligations allocable to it under section 103(b)(15). On October 1, 1986, L has no prior outstanding obligations allocable to itself. On April 1, 1988, M acquires 100 percent of the stock of L, which still owns the plant financed by the 1986 issue. Since M and L became related to each other during the 3-year test period of the 1986 issue and L had not ceased to use the facility, the $8 million issue is allocated to M under section 103(b)(15). This allocation causes the 1986 issue to exceed the $40 million limitation of section 103(b)(15) and the interest upon the issue to become taxable on and after October 1, 1986. However, if at least $3 million of the 1986 issue or of other issues allocated to M are redeemed as soon as reasonably practicable, and no later than 180 days after M's acquisition of L's stock then the 1986 issue would not exceed the $40 million limitation.

Example (4). The facts are the same as in *Example (3)*, except the October 1, 1986, bonds were issued on January 1, 1985, the plant acquired with the proceeds of the issue was placed in service on January 1, 1985, and M had $39 million of prior outstanding obligations allocable to it on January 1, 1985. Because M and L became related to each other after the test period for the January 1, 1985, issue ended, M is not a test-period beneficiary, and the January 1, 1985, issue does not exceed the $40 million limitation of section 103(b)(15). However, if either M or L subsequently becomes a test-period beneficiary of an issue of obligations, then the outstanding principal amount of the January 1, 1985, issue and of the other issues allocable to M would be taken into account in applying the $40 million limitation to that issue.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–3859 Filed 2–20–86; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[LR–157–84, LR–59–74]

Income Taxes; $40 Million Limitation Upon Beneficiaries of Certain Tax-Exempt Bond Issues and Definition of the Term "Principal User" Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on two proposed regulations. One of the two proposed regulations (LR–157–84) relates to certain industrial development tax-exempt bonds and to certain beneficiaries of such bond issues. The other proposed regulations (LR–59–74) define the term "principal user" for purposes of paragraphs (6) and (15) of section 103(b) of the Internal Revenue Code of 1954.

DATES: The public hearing will be held on Wednesday, June 4, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, May 21, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–157–84 and LR–59–74), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: One of the two subjects of the public hearing is proposed regulations under section 103(b)(15) of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the Federal Register (FR Doc. 86–3859).

The second subject of the public hearing is proposed regulations under section 103(b)(6) of the Internal Revenue Code of 1954. The proposed regulations also appear in this issue of the Federal Register (FR Doc. 86–3858).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Wednesday, May 21, 1986, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86–3860 Filed 2–20–86; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR-59-74]

Income Taxes; Definition of the Term "Principal User"

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations which would define the term "principal user" for purposes of paragraphs (6) and (15) of section 103(b) of the Internal Revenue Code of 1954. The regulations would affect issuers, holders, and recipients of the proceeds of industrial development bonds issued under section 103(b)(6) of the Code.

DATES: Written comments must be delivered or mailed by April 22, 1986. The amendments are proposed to be effective after August 22, 1986 in determining the tax-exempt status of obligations issued after August 22, 1986.

ADDRESS: Send comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-59-74), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (Telephone: 202-566-3590, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed clarifying amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(b)(6) of the Internal Revenue Code of 1954.

Explanation of Provisions

The amendments clarify the term "principal user" for purposes of applying the provisions of Code section 103(b)(6) and (15) and the regulations thereunder with respect to small issues of industrial development bonds. Section 103(b)(6) provides, among other things, that an issue of $1 million or less of industrial development bonds financing the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the depreciation allowance (or an issue to redeem such a prior issue) is not exempt from Federal taxation when the issue in question combined with the outstanding face amount of prior issues financing certain similar facilities exceeds $1 million; the facilities which are taken into account for this purpose are those the "principal user" of which is or will be the same or two or more related persons, and which are located within the same county or incorporated municipality.

Section 103(b)(6) also provides that, if an issuer makes the necessary election, the limit for an exempt small issue of industrial development bonds is increased from $1 million to $10 million. In such case, however, certain other amounts must also be aggregated with the issue of obligations in question for purposes of determining whether the $10 million limitation has been exceeded and whether the interest upon the issue of obligations in question is thus subject to Federal income taxation. The additional amounts to be taken into account are certain capital expenditures, made within a 6-year period beginning 3 years before the date of issue of the obligations in question and ending 3 years after the date of issue, with respect not only to the facility financed by the issue, with respect not only to the facility financed by the issue in question, but also with respect to other facilities within the same county or incorporated municipality of which the "principal user" is or will be the same person or a person related to the "principal user" of the facility financed with the issue of obligations in question.

The proposed regulations provide, in general, that the principal users are persons who for tax purposes currently hold more than a 10-percent ownership interest in a facility. In addition, lessees or sublessees who use a sufficiently valuable portion of the facility pursuant to a sufficiently long-term lease are also principal users. Persons with interests comparable to that of an owner or lessee who is a principal user and some purchasers of the output of certain facilities are also treated as principal users.

The proposed regulations provide that, when a facility has more than one principal user, certain issues of obligations with respect to all principal users must be aggregated with the issue of obligations in question for purposes of determining whether the $1 million or $10 million limitation has been exceeded. Similarly, if the $10 million limitation has been elected by the issuer, certain capital expenditures with respect to all principal users must also be aggregated to determine whether the $10 million limitation has been exceeded.

For purposes of aggregating issues of obligations or capital expenditures of persons who are principal users, only issues and capital expenditures with respect to persons who are principal users of the facility before the expiration of the test period described in section 103(b)(15)(D) are aggregated. Accordingly, if a person who is a principal user of a facility financed by an exempt small issue becomes the principal user of another facility financed by a second exempt small issue more than 3 years after the later of the date of the second issue or the date the facility financed by the second issue was placed in service, the two issues are not aggregated. Similarly, capital expenditures during the 6-yeaar period described in section 103(b)(6)(D)(ii) with respect to a principal user are not taken into account if that person does not become a principal user of the facility until more than 3 years after the later of the date of the issue or the date the facility financed by the issue is first placed in service.

The test-period concept was adopted for purposes of section 103(b)(b)(6) for reasons of administrative convenience. The statutory reference to a person who "is or will be" a principal user could be construed as referring to a person who at any time is a principal user; as referring only to a person who is or is about to be a principal user on the date of issuance; or as referring to a person who becomes a principal user within some intermediate time period. In adopting the test-period concept, the Service attempted to reach a result which gives effect to the statutory language while also being administrable. Adoption of the tests period described in section 103(b)(15)(D) serves the additional function of limiting the period for determination of the principal user status to a single period for purposes of both paragraphs (6) and (15) of section 103(b).

The proposed regulations provide special rules for exempt persons, *i.e.*, State and local governments and organizations that are tax-exempt under section 501(c)(3), that are principal users of facilities financed with exempt small issues of industrial development bonds. For purposes of determining whether the small-issue limitation has been exceeded with respect to any facility of which an exempt person is a principal user, certain industrial development bonds issued with respect to the exempt person and, for purposes of the $10 million limitation, certain capital expenditures must be aggregated with the issue in question. This does not include capital expenditures with respect to other facilities used by the exempt person in an activity other than an unrelated trade or business (as defined by section 513).

Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Comments—Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accordance with the notice of hearing published in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Parts 1.61–1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Par. 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.103–10 is amended by adding a new sentence after the second sentence of paragraph (b)(2)(i); by deleting "(e)" and adding "(*f*)" in lieu thereof in the first sentence of paragraph (b)(2)(iv) introductory text and by adding a new subdivision (*f*) at the end of subdivision (iv) thereof; by adding two new sentences after the first sentence of paragraph (d)(1); by revising paragraph (d)(2)(ii); by adding two new flush sentences at the end of paragraph (d)(2); by revising the introductory text of paragraph (g); and by adding a new paragraph (h). The revised and added provisions read as follows:

§ 1.103–10 Exemption for certain small issues of industrial development bonds.

* * * * * *

(b) *Small issue exemption.* * * *

(2) *$10 million or less.* (i) * * * All capital expenditures decribed in paragraph (b)(2)(ii) with respect to each principal user and each related person must be aggregated with the issue of obligations in question for purposes of determining whether the $10 million limitation of section 103(b)(6)(D) is exceeded. * * *

(iv) * * *

(*f*) A capital expenditure with respect to a facility other than the bond-financed facility ("other facility") is an excluded expenditure if the principal user of the other facility does not become a principal user of the facility financed by the proceeds of the issue in question ("bond-financed facility") until after the last day of the test period described in paragraph (i)(3)(ii) of this section. In addition, a capital expenditure with respect to an "other facility" becomes an excluded expenditure on and after the date the principal user of the other facility ceases to use the bond-financed facility; if, however, the issue financing the bond-financed facility lost its tax-exempt status on or before that date, this sentence will not apply to restore its tax-exempt status. * * *

* * * * * *

(d) *Certain prior issues taken into account*—(1) *In general.* * * * Thus, the outstanding face amount of all prior issues specified in paragraph (d)(2) with respect to each principal user and each related person and taken into account under this paragraph (d)(1) must be aggregated with the issue of obligations in question for purposes of determining whether the $1 million limitation of section 103(b)(6)(A) or the $10 million limitation of section 103(b)(6)(D) has been exceeded with respect to the issue in question. The outstanding face amount of the prior exempt small issue is the principal amount outstanding at the time of issuance of the subsequent exempt small issue. * * *

(2) *Prior issues specified.* * * *

(ii) The principal user of the facilities described in paragraph (d)(2)(i) of this section is the same person or two or more related persons (as defined in section 103(b)(6)(C) and in paragraph (e) of this section) at any time on or after the date of issue of the subsequent issue but before the expiration of the test period described in paragraph (i)(3)(ii) of this section with respect to the subsequent issue.

The loss of tax exemption with respect to the interest on the subsequent issue shall be effective on the date of issue of the subsequent issue. For purposes of this paragraph (d), when a person ceases to use a facility financed by either the prior issue or the subsequent issue, the prior issue will no longer be taken into account under paragraph (d)(1) with respect to the subsequent issue; if, however, the subsequent issue loses its tax-exempt status on or before the date the person ceases to use either of the facilities described in this subparagraph, this paragraph will not apply to restore the tax-exempt status of the subsequent issue. * * *

* * * * * *

(g) *Examples.* The application of the rules contained in section 103(b)(6) and in paragraphs (e) through (f) of this section are illustrated by the following examples: * * *

* * * * * *

(h) *Rules relating to principal users*—(1) *Definition of principal user.* For purposes of section 103(b)(6) and § 1.103–10, the term "principal user" means a person who is a principal owner, a principal lessee, a principal output purchaser, or an "other" principal user. The term "principal user" also includes a person who is related to another person who is a principal user under section 103(b)(6)(C) and paragraph (e) of this section, unless the other person ceased to use the facility before the two persons become related. For purposes of this paragraph (h)—

(i) *Principal owner.* A principal owner is a person who at any time holds more than a 10-percent ownership interest (by value) in the facility or, if no person holds more than a 10-percent ownership interest, then the person (or persons in the case of multiple equal owners) who holds the largest ownership interest in the facility. A person is treated as holding an ownership interest if such person is an owner for Federal income tax purposes generally. Thus, for example, where a facility constructed on land subject to a ground lease has an economic useful life less than the noncancellable portion of the term of the ground lease, the ground lessor shall not, merely by reason of that reversionary interest, be treated as the principal user of the facility before the ground lease expires.

(ii) *Principal lessee.* A principal lessee is a person who at any time leases more than 10 percent of the facility (disregarding portions used by the

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lessee under a short-term lease). The portion of a facility leased to a lessee is generally determined by reference to its fair rental value. A short-term lease is one which has a term of one year or less, taking into account all options to renew and reasonably anticipated renewals.

(iii) *Principal output purchaser.* A principal output purchaser is any person who purchases output of an electric or thermal energy, gas, water, or other similar facility, unless the total output purchased by such person during each one-year period beginning with the date the facility is placed in service is 10 percent or less of the facility's output during each such period.

(iv) *Other principal user.* An "other" principal user is a person who enjoys a use of the facility (other than a short-term use) in a degree comparable to the enjoyment of a principal owner or a principal lessee, taking into account all the relevant facts and circumstances, such as the person's participation in control over use of the facility or its remote or proximate geographic location. For example, a party to a contract who would be treated as a lessee using more than 10 percent of a facility on a long-term basis but for the special rules of section 7701(e) (3) and (5) (relating to service contracts for certain energy and water facilities and low-income housing) is an "other" principal user. A short-term use means use that is comparable to use under a short-term lease.

(2) *Operating rules.* (i) In determining whether a person is a principal user of a facility, it is irrelevant where in a chain of use such person's use occurs. For example, where a sublessee subleases more than 10 percent of a facility from a lessee, both the lessee and the sublessee are principal lessees.

(ii) In determining whether a person owns or uses more than 10 percent of a facility or whether he uses it for more than one year, the person is treated as owning or using the facility to the extent that any person related to such person under section 103(b)(6)(C) and paragraph (e) of this section owns or uses the facility. For purposes of the preceding sentence, the term "use" includes use pursuant to an output purchase arrangement.

(iii) Co-owners or co-lessees who are collectively treated as a partnership subject to subchapter K under section 761(a) are not treated as principal users merely by reason of their ownership of partnership interests; such ownership is, however, taken into account in determining whether persons are related under section 103(b)(6)(C) and paragraph (e) of this section.

(iv) For purposes of this section, a principal user of a facility is treated as ceasing to use the facility when he ceases to own, lease, purchase the output of, or otherwise use the facility, as the case may be. A person who is a principal user of a facility because he is related to another person who is a principal user is treated as ceasing to use the facility when the other person ceases to use the facility or when the two persons cease to be related. A principal user who ceases to use a facility continues to be a principal user. See, however, paragraph (b)(2)(iv)(*f*) of this section (relating to excluded expenditures), paragraph (d)(2) (relating to prior issues), and paragraph (h)(1) (defining principal user), which may apply when a principal user ceases to use a facility.

(3) *Special rule for exempt persons.* If an exempt person, as defined in section 103(b)(3) and § 1.103–7 (b)(2), is a principal user of a facility financed with an issue of obligations described in section 103(b)(6), the following amounts must be aggregated with the issue in determining whether the $1 million limit of section 103(b)(6)(A) or the $10 million limit of section 103(b)(6)(D) has been exceeded:

(i) The outstanding face amount of any prior exempt small issue of industrial development bonds described in paragraph (d) of this section that financed a facility of which the exempt person is a principal user,

(ii) For purposes of the $10 million limitation, capital expenditures described in paragraph (b)(2) (ii) of this section paid or incurred with respect to other facilities used by the exempt person in an unrelated trade or business (within the meaning of section 513 and § 1.513–1) and of which the exempt person is a principal user, and

(iii) Any section 103(b)(6)(D) capital expenditures paid or incurred with respect to the facility financed by the issue in question.

(4) *Examples.* The application of the rule of section 103(b)(6) and this paragraph (h) is illustrated by the following examples:

Example (1). On September 1, 1986, City L, after making the section 103(b)(6)(D) election, issues $6 million of obligations to finance the costs of acquiring a newly constructed warehouse within City L, owned by Corporation Z, a non-exempt person, which thus is a principal user of the warehouse. Beginning on September 1, 1986, the entire warehouse is leased to Corporation Y, an unrelated non-exempt person, for a 2-year term; thus, Y is also a principal user of the warehouse. On June 30, 1986, Y ceases to lease the warehouse. On October 1, 1986, Y incurs $20 million of capital expenditures in connection with its purchase of an office building in City L. Although Y continues to be a principal user of the warehouse under paragraph (h)(2)(iv) of this section, Y's capital expenditures after the date it ceases to use the warehouse are excluded expenditures under paragraph (b)(2)(iv)(*f*) of this section. Accordingly, the $20 million Y incurred with respect to the office building is not taken into account for purposes of determining whether the $10 million limitation of section 103(b)(6)(D) has been exceeded.

Example (2). The facts are the same as in Example (1), except that on October 1, 1985, City L issued an exempt small issue to finance acquisition of a newly constructed office building in the amount of $5 million, of which $4 million is outstanding on September 1, 1986. On December 1, 1986, Corporation Z leases 15 percent (by fair rental value) of the office building financed by the 1985 issue for a 2-year term. Thus, beginning on December 1, 1986, Z is a principal user of the office building. On December 1, 1986, Z still owns the warehouse financed by the 1986 issue. Because Z became a principal user of the office building before the end of the 3-year test period described in paragraph (i)(3)(ii) of this section with respect to the 1986 issue, the $4 million outstanding amount of the 1985 issue must be aggregated with the $6 million 1986 issue for purposes of determining whether the 1986 issue has exceeded the $10 million limitation of section 103(b)(6)(D). Because the sum of the two issues ($4 million of the prior 1985 issue outstanding on September 1, 1986, and the $6 million subsequent issue issued on September 1, 1986) exceeds $10 million, the interest on the 1986 issue ceases to be tax-exempt on September 1, 1986. Had Z's lease begun after September 1, 1986, the two issues would not have to be aggregated.

Example (3). On June 1, 1985, City O issues $15 million of its obligations to finance an expansion of a hospital owned by H, an organization described in section 501(c)(3) exempt from taxation under section 501(a). None of the proceeds of the issue will be used by H in an unrelated trade or business or in the trade or business of non-exempt persons. On November 1, 1986, City O, after making the section 103(b)(6)(D) election, issues $5 million of its obligations to construct a medical office building which will be owned by H for Federal income tax purposes and which will be entirely leased (for terms in excess of one year) to physicians, none of whom will lease over 10 percent of the building by value. On July 1, 1987, H incurs a $500,000 capital expenditure for permanent improvements to the medical office building. In addition, on August 1, 1987, W, a non-exempt person related to H, incurs a $1 million capital expenditure with respect to a facility that W owns within City O and uses in its trade or business. For purposes of determining whether the $10 million limitation of section 103(b)(6)(D) has been exceeded with respect to the November 1, 1986, issue for the medical office building, H must take into account the $5 million issue, the $500,000 of capital expenditures made with respect to the medical office building, and W's $1 million capital expenditure.

Because the sum of these amounts is less than $10 million, interest on the issue does not cease to be tax-exempt. H is not required to take into account the June 1, 1985, issue financing the hospital expansion because that issue is not an exempt small issue as defined in section 103(b)(6) (see paragraph (h)(3)(i) of this section) and because the cost of the facility financed by the June 1, 1985, issue is neither a section 103(b)(6)(D) capital expenditure with respect to the medical office building owned by H (see paragraph (h)(3)(iii) of this section) nor a section 103(b)(6)(D) capital expenditure for a separate facility used by H in an unrelated trade or business (see paragraph (h)(3)(ii) of this section).

* * * * *

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

[FR Doc. 86–3858 Filed 2–20–86; 8:45 am]
BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–2972–4]

Approval and Promulgation of Implementation Plans; Air Pollution Control Regulations, State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Sanat Barbara County Air Pollution Control District (SBCAPCD) adopted a New Source Review Rule on April 2, 1984. The Rule contains provisions comparable to EPA's requirements for both New Source Review (NSR) and Prevention of Significant Deterioration (PSD). It regulates construction and operation of new and modified major stationary sources of both nonattainment and attainment pollutants. The District adopted the Rule to satisfy conditions on the approval of its previous NSR Rule and to obtain authority from EPA to issue permits for PSD. This Rule was submitted to EPA as a State Implementation Plan (SIP) revision on May 21, 1984. EPA is proposing to approve the Rule but to disapprove four exemptions. The approval of the major portions of Rule 205.C is contingent on resolution of issues necessary to fully meet EPA's requirements. The District has been extremely cooperative in resolving EPA's concerns.

DATE: Comments may be submitted up to March 24, 1986.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, New Source Section (A–3–1), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the District's Rule and EPA's Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office listed above and at the following locations:

California State Air Resources Board, Public Information Office, 1102 "Q" Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, Health Care Service, 315 Camino del Remedio, Santa Barbara, CA 93110.

FOR FURTHER INFORMATION CONTACT: Willard Chin, State Liaison Section (A–2–2), Air Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105 (415) 974–8071.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1982 (47 FR 19330), EPA approved the Nonattainment Area Plan and NSR Rule for the Santa Barbara County APCD, subject to certain conditions. One of the conditions was that the NSR Rule be revised to satisfy EPA's regulations of August 7, 1980 (40 CFR 51.18).

The new Rule 205.C was written to satisfy the NSR condition imposed by EPA in 1982 and also to serve as the basis for securing full authority from EPA for issuing PSD permits. The Rule follows the NSR/PSD Rule developed by the California Air Pollution Control Officers' Association (CAPCOA) and the California Air Resources Board. It combines NSR and PSD in a single review program and includes specific procedures to plan and regulate sources in areas where clean air is particularly important. EPA requires NSR Rules for pollutants of which an area is designated nonattainment. PSD rules apply to pollutants for which an area is designated attainment. The entire County is attainment for nitrogen oxides, carbon monoxide and unclassified for sulfur dioxide. The Southern Coastal area of the County is nonattainment for ozone and the Santa Maria area is nonattainment for TSP.

NSR—Part D of the Clean Air Act (Sections 171 to 173) and EPA regulations (40 CFR 51.18) define the requirements for NSR programs. The most important requirements are that the rules require applicants for new sources or modifications to: (a) Meet the Lowest Achievable Emission Rate, (b) provide emission reductions (offsets) at least equal to the proposed emission increases and consistent with RFP, and (c) certify that all of their sources in the State comply with all emission limitations. Where growth allowances are provided, offsets may not be needed. Santa Barbara County currently administers the NSR program under its conditionally approved Rule.

PSD—Subpart 1 of Part C of the Clean Air Act (Sections 160 to 169) and EPA regulations (40 CFR 51.24) contain requirements for PSD. The PSD requirements apply to criteria pollutants which are designated attainment and to the non-criteria pollutants which are also regulated under Sections 111 and 112 of the Act. Santa Barbara APCD is currently administering the PSD program under a delegation agreement with EPA. When PSD regulations for the Santa Barbara County are approved, the delegation agreement will terminate. The District will continue to issue federally valid PSD permits, but the Santa Barbara rule will replace 40 CFR 52.21 as the federally enforecable PSD regulation. The primary requirements for a PSD program include: (1) The application of "Best Available Control Technology" (BACT) to new or modified major stationary sources; (2) requiring applicants to demonstrate that the increased emissions will not cause violations of any National Ambient Air Quality Standard (NAAQS) or air quality increments; and (3) requiring protection of Class I areas, where very little air quality deterioration is allowed.

Description of Regulations

The District adopted Rule 205.C on April 2, 1984. It was submitted to EPA by the Governor's designee as an official SIP revision on May 21, 1984. The new Rule 205.C adopted by the District supersedes and entirely replaces the old rule.

Evaluation

EPA has evaluated Rule 205.C against its NSR and PSD approval criteria. The District's Rule satisfies EPA's requirements, except as described below and in the Evaluation Report: The Rule will: (1) Require preconstruction review of those sources for which EPA requires it; (2) require BACT and air quality protection consistent with EPA's PSD requirements; and (3) require certification of statewide compliance, application of LAER, and offsets in a manner consistent with EPA's NSR requirements.

EPA found several deviations from EPA requirements. Specifically, EPA

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found several deficiencies which will require District remedies and several less significant issues which can be resolved by District commitments or clarifications.

EPA explained all these issues to the District. Agreement has been reached on resolution of all the issues. The District presented information that shows EPA's requirements have already been met in some cases. The District has been very cooperative.

EPA's Evaluation Report explains all the issues in detail. The Report is available at the locations listed in the **ADDRESSES** section of this Notice.

The major problems described in the Evaluation Report are:

(1) The definition of Good Engineering Practice Stack Height is not consistent with EPA's final regulation (FR 27892 7/8/85).

(2) For NSR, the rule exempts cogeneration and resource recovery projects from required emission reductions by means of an offsets or an approved growth allowance (CAA 173 (1)). The exemptions are not in the existing SIP.

(3) For the PSD program, the rule exempts cogeneration and resource recovery projects from the increment protection requirements.

(4) EPA needs to be assured that the District use of offsets from non-stationary sources meets federal offset requirements.

A potential issue is the nitrogen dioxide (NO_x) relationship as a precusor to ozone. The District is currently nonattainment for ozone but is projected to attain the standard by 1987. Rule 205.C implies that NO_2 is to be treated as a precusor to ozone. The District has informed EPA that where Rule 205.C makes general references to precursor regulation, the references incorporate the NO_2 and Ozone relationship. Thus, the rule implicitly subjects to both NSR and PSD requirements all major sources of NO_2 locating in the ozone nonattainment portion of the County. Such a policy helps assure expeditious attainment of the ozone standard and is consistent with the modeling assumptions in the ozone attainment demonstration in the AQAP control strategy. To clarify District and federal enforcement of Rule 205.C, the District must provide EPA with an explicit written statement that the rule will be implemented to consider NO_2 as a precursor to ozone and thus subject to the requirements of new source review as well as PSD, in the ozone nonattainment areas. This clarification can be made in a letter to EPA signed by the Chair of the Santa Barbara County Air Pollution Control Board.

EPA's review of Rule 205.C has determined that the use of emissions reductions of attainment pollutants from the Outer Continental Shelf (OCS) will under limited provisions meet federal requirements. The following section discusses the different elements and the EPA's interpretation of the OCS provisions.

The PSD section contains a provision (2.b.5) which exempts a source from the offset requirements for attainment pollutants if the emissions reduction from the overall project (onshore and offshore) is greater than the reduction that would have resulted if the offset requirement had been applied to the onshore component of the project. The source applicant must demonstrate to the APCO that the combined use of new and innovative technology, BACT or emissions tradeoffs applied to the sources both subject to and outside the APCD's jurisdiction, or through the use of other project mitigation can accomplish a lower level of emissions relative to reductions from offsets as specified in (3.b.2). The exemption in (2.b.5) also contains language to assure that: (1) Legally mandated emissions reductions (i.e., reductions otherwise required by law) cannot be counted as reductions in the project overall; (2) emissions from the overall project will not cause the violation of any ambient air quality standard or maximum allowable air quality increment; (3) a source using emissions reductions beyond District jurisdiction must submit necessary information to disclose the nature, extent, quantity or degree of air contaminants to the extent provided as emissions reductions; (4) the APCD may require compliance testing with reasonable frequency.

Net reductions from an overall project (as opposed to a single source) is an innovative concept but given the restrictions and conditions of this provision, this exemption for attainment pollutant offset is approvable. EPA's main concern is the enforceability of such reductions. Offshore facilities located three miles beyond the Santa Barbara coast could provide valid, federally enforceable offsets for attainment pollutants if a specific enforcement mechanism exists whereby the District and EPA legal representatives could enforce the offsets in accordance with the District legal authority and the Clean Air Act. Rule 205.C defines a stationary source as either: (1) Any building, structure, or facility, or (2) an installation which includes any operation, article, machine, equipment, contrivance or grouping of equipment belonging to the same two-digit standard industrial classification code, or (3) a part of common operations, related through dependent process, storage or transportation of the same or similar production or raw material. It is typically the common operations provision that allows the District to review emissions of related onshore and offshore facilities. The District can require emissions reductions from either the onshore or offshore portion of the operation (or both) in order to meet the requirements of Rule 205.C.

There are two potential New Source Review (NSR) issues related to the coastal areas' nonattainment status and offshore reductions which need to be clarified: (1) The qualitative difference between reductions from offshore and reductions from onshore and (2) the Outer Continental Shelf (OCS) emissions' impact on the Air Quality Attainment Plan.

It is conceivable that nonattainment sources located beyond District boundaries will be used to provide offsets for onshore facilities located in a nonattainment area. Because of distance and meteorology, the impacts of such offshore reductions may be different than those reductions from offsets found near the source.

However, the provisions of (3.a.3) (Air Quality Impact Analysis); (3.a.4) (Emissions Trade-offs) and (1.a.22) (Net Air Quality Benefit) require the District to determine that offshore or onshore reductions be sufficient to offset any net emissions increase and result in a net air quality benefit. The District can require the applicant to demonstrate that the offset ratio results in a net air quality benefit for the project consistent with the RFP provision of the County AQAP.

For both attainment and nonattainment offshore emissions credits, EPA will pursue discussions with the Department of Interior's Minerals Management Service and the District to develop an enforcement protocol agreement which stipulates the roles of the respective agencies involved. A variety of enforcement mechanisms will be explored but one possibility is an EPA to validate such emissions reductions' conformity to federal requirements. EPA believes that, assuming federal enforceability of such offshore reductions can be established, the above provisions provide the safeguards necessary to prevent misapplication of offshore emissions reductions.

Another potential issue is the need for a complete analysis of the cumulative OCS emissions' impact on attainment of the ambient standards. The current AQAP does not include OCS emissions in the attainment demonstration. Santa Barbara County, California Air Resources Board (ARB), U.S. Minerals Management service (MMS) and EPA ar engaged in the Joint Interagency Modeling Study in order to quantify the impact of all OCS emissions on the Santa Barbara nonattainment area. This study should form the basis for the Air Quality Attainment Plan revision in 1986. EPA has informed the District that it may have to require greater onshore and offshore controls at a future date as a part of the 1986 AQAP revision in order to continue expeditious attainment of the anbient standards.

Proposed Action

Under section 110, Subpart 1 of Part C, and Part D of the Clean Air Act, EPA proposes to approve Rule 205.C, with the exception of sections (2.a.2), (2.a.3.), (2.b.2), and (2.b.3) (the NSR and PSD exemptions for cogeneration and resource recovery sources constitute a relaxation of the SIP) which will be disapproved. Before EPA final approval can be given, the District must resolve the issue listed and described above (and described in more detail in EPA's evaluation report). Specifically, EPA will not go to final rulemaking until the District revises its GEP definition. Many of the issues can be resolved by a written commitment submitted by the District: ozone precursor, health and welfare impact, exemption, Class I, Impact Area, BACT definition, innovative control technology, emissions calculation and transportation offsets (see evaluation report for complete discussion of all the issues). EPA will assist the District in its effort to resolve the problems rapidly. Based on these expectations, EPA proposes to approve the main portions of Rule 205.C and to disapprove provisions (2.a.3), (2.a.2), (2.b.2), and (2.b.3). If all the problems are corrected, EPA proposes to rescind 40 CFR 52.270 for most sources in Santa Barbara County. 40 CFR 52.270 gives EPA the authority to regulate and permit PSD sources in Santa Barbara County. Since EPA intends to terminate the PSD delegation agreement upon final rule approval, this rescission would grant Santa Barbara that authority except for PSD cogeneration and resource recovery sources and projects locating in Indian lands for which EPA will retain permitting authority.

EPA also proposes to rescind 40 CFR 52.232(a)(9)(i)(A) and once these problems are remedied, Santa Barbara County will have satisfied the 1982 NSR revision condition included in 40 CFR 52.232.

Regulatory Process

Under Executive Order 12291, today's action is not major. It has been submitted to the Office of Management and Budget (OMB) for review. I certify that this action will not have a significant economic impact on a substantial number of small entities, since only those sources which are cogeneration or resource recovery sources that would reach permitting threshold levels of rule 205.C may be affected by the disapproval.

List of Subjects in 40 CFR Part 52

Air pollution control.

Authority: 42 U.S.C. 7401–7642.

Dated: September 27, 1985.

John Wise,

Acting Reginol Administrator.

[FR Doc. 86–3828 Filed 2–20–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–17; RM–4973]

FM Broadcast Station in Kings Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On February 3, 1986, the Commission, by its Mass Media Bureau, published a Notice of Proposed Rule Making in this proceeding concerning the allotment of an FM broadcast station in Kings Beach, CA (51 FR 4191). In the preamble, the comment and reply comment dates were incorrectly referred to as March 6, 1986, and March 21, 1986, respectively.

DATES: The correct filing dates for comments and reply comments are March 21, 1986, and April 7, 1986, respectively.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, Washington, DC 20554, (202) 634–6530.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 86–3719 Filed 2–20–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–52; RM–4946; RM–5097]

FM Broadcast Station in Quincy, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channels 262A and 276A to Quincy, California, as that community's second and third FM service, in response to petitions filed by Judith Anne Wittick and Ronald Trumbo d/b/a New Life Broadcasting.

DATES: Comments must be filed on or before April 7, 1986, and reply comments on or before April 22, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Quincy, California), MM Docket No. 86–52, RM–4946, and RM–5097.

Adopted: January 24, 1986.

Released: February 14, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration two separate petitions for rule making. The first, filed by Judith Anne Wittick ("Wittick") requests the allotment of Channel 262A to Quincy, California, as that community's second local FM service. Additionally, a separate petition was filed by Ronald Trumbo ("Trumbo") d/b/a New Life Broadcasting, requesting the allotment of Channel 276A to Quincy.[1] Both parties have indicated their intention to apply for the respective channels.

2. A staff engineering study reveals that both Channels 262A and 276A can

[1] Initially, Trumbo also requested the allotment of Channel 261A to Quincy but subsequently withdrew his interest in that proposal.

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be allotted to Quincy in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. In view of the fact that the proposed allotments could provide a second and third local FM service to Quincy, California, for the expression of diversified viewpoints and programming, the Commission believes it is appropriate to elicit comments on the proposals to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with regard to that community, as follows:

City	Channel No.	
	Present	Proposed
Quincy, CA	270	262A, 270, and 276A.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 7, 1986, and reply comments on or before April 22, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Chester J. Stuart, P.O. Box 1236, Susanville, CA 96130, (Consultant to petitioner)

and

Peter A. Casciato, Esq., Media Building, 943 Howard Street, San Francisco, CA 94103, (Counsel for Ronald Trumbo)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.*

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix—MM Docket No. 86-52, RM-4946, and RM-5097

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is proposed to amend the FM Table of Allotments, §§ 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-3718 Filed 2-20-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-54; RM-5012; RM-5050]

FM Broadcast Station in Rancho Mirage and La Quinta, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein considers two mutually-exclusive proposals. The first, filed by RWR Associates seeks the allotment of FM Channel 258A to Rancho Mirage, California, while the second, filed by Kern Broadcasting Co., seeks to allot Channel 258A to La Quinta, California. The channel could provide a first local service to either community.

DATES: Comments must be filed on or before April 7, 1986, and reply comments on or before April 22, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancey V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Rancho Mirage and La Quinta, California); MM Docket No. 86-54, RM-5012, and RM-5050.

Adopted: January 24, 1986.
Released: February 14, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers two separately filed petitions for rule making. The first, filed by RWR Associates ("RWR") requests the allotment of FM Channel 258A to Rancho Mirage, California, while the second, filed by Kern Broadcasting Co. ("Kern") seeks to allot Channel 258A to La Quinta, California. The channel could provide a first local service to either community.

2. Rancho Mirage (population 6,281),[1] in Riverside County (population 663,199), is located approximately 18 kilometers (12 miles) southeast of Palm Springs, California. La Quinta (population 3,328) also in Riverside County, is located 36 kilometers (22 miles) southeast of Palm Springs.

3. A staff engineering study reveals that Channel 258A can be alloted to either community in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules. However, the distance between Rancho Mirage and La Quinta, California, is approximately 12.7 kilometers, whereas 105 kilometers is required between co-channel Class A allotments. Therefore, the proposals are mutually exclusive.

4. As a result of the above-noted conflict, petitioners may wish to consider whether other channels may be available to their community. If no other channels are available, interested parties should make a comparative evaluation of the proposals. See *Revision of FM Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

5. Since both of the proposals are located within 320 kilometers (199 miles) of the common U.S.-Mexico border, concurrence of the Mexican Government must be obtained.

6. We believe both proposals merit consideration since they could provide a first local service to either community. Therefore, we consider it appropriate to seek comments on the proposals to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Rancho Mirage, CA		258A
or		
La Quinta, CA		258A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before April 7, 1986, and reply comments on or before April 22, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Martin R. Leader, Esq., Fisher, Wayland, Cooper and Leader, 1255-23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for RWR Associates)

and

Riley M. Murphy, Esq., Fawer, Brian, Hardy & Zatzkis, 700 Camp Street, New Orleans, Louisiana 70130-3702 (Counsel for Kern Broadcasting Co.)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, Certification *that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix—MM Docket No. 86-54, RM-5012, and RM-5050

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g), and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached.

[1] Population figures were extracted from the 1980 U.S. Census.

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Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments as reply comments shall be accompanied by a certificate of service. (See §§ 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-3717 Filed 2-20-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-82; RM-4901]

TV Broadcast Station in Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: Action taken herein denies a petition for rule making filed by Valley Associates, seeking the substitution of UHF television Channel 47 for Channel 42 at Little Rock, Arkansas, for failure to establish alleged siting constraints.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Little Rock, Arkansas); (MM Docket No. 85-82, RM-4901).

Report and Order (Proceeding Terminated)

Adopted: January 29, 1986.
Released: February 14, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 50 FR 14285, published April 11, 1985, proposing the substitution of UHF television Channel 47 [1] for Channel 42 at Little Rock, Arkansas, in order to provide greater site flexibility for potential applicants, in response to a petition filed by Valley Associates ("petitioner"). Supporting comments were filed by petitioner indicating it would apply for the channel, if it is assigned. No reply comments were received.

2. Since the *Notice* herein was adopted, four applications for Channel 42 at Little Rock have been filed.[2] A review of the proposed transmitter locations contained in those applications establishes compliance with the minimum distance separation and other technical requirements of the Commission's Rules. Therefore, we find no merit to the petitioner's contention that Channel 42 is unfavorable for purposes to site availability.

3. Accordingly, in view of the above finding, it is ordered, that the petition for rule making filed by Valley Associates to substitute Channel 47 for Channel 42 at Little Rock, Arkansas, is denied.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-3720 Filed 2-20-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-53; RM-5027]

TV Broadcast Station in Twentynine Palms, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign UHF television Channel 31 to Twentynine Palms, California, as that community's first local television broadcast service, in response to a petition filed by Pacer Television Company.

DATES: Comments must be filed on or before April 7, 1986, and reply comments on or before April 22, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

[1] Petitioner initially requested the substitution of Channel *54 for unused Channel *28 at Russellville, Arkansas, to alleviate alleged siting constraints on Channel 42 at Little Rock. However, the Commission determined that Channel 47 could be substituted for Channel 42 at Little Rock, thus precluding the necessity for the requested substitution at Russellville.

[2] Applications have been filed by Dale Leininger (BPCT-850007KO); Capital Communications Corporation (BPCT-850725LB); Maumelle TV (BPCT-850725LF); and Magnolia Communications (BPCT-850725KE).

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of §73.606(b), Table of Assignments, TV Broadcast Stations. (Twentynine Palms, California); (MM Docket No. 86-53, RM-5027)

Adopted: January 24, 1986.
Released: February 14, 1986.

By the Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Pacer Television Company ("petitioner") requesting the assignment of UHF television Channel 31 to Twentynine Palms, California, as that community's first local television broadcast service. Petitioner stated that he will apply for the channel, if assigned.

2. Twentynine Palms (population 7,465), [1] in San Bernardino County (population 895,016), is located approximately 210 kilometers (130 miles) east of Los Angeles.

3. A staff engineering study reveals that UHF television Channel 31 can be assigned to Twentynine Palms, California, in conformity with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. Since Twentynine Palms is within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission must obtain the concurrence of the Mexican government in the proposal.

4. In view of the above, we believe the petitioner's proposal warrants consideration since it could provide a first local television broadcast service to Twentynine Palms. Accordingly, the Commission proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with respect to Twentynine Palms, California, as follows:

[1] Population figures were extracted from the 1980 U.S. Census.

City	Channel No.	
	Present	Proposed
Twentynine Palms, CA		31

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 17, 1986, and reply comments on or before April 21, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, or consultant, as follows: Lyle R. Evans, 1145 Pine Street, Green Bay, WI 54301 (consultant to petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex-parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutues an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1) 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, They will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate

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pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§ 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-3721 Filed 2-20-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Federal Acquisition Regulation Supplement Limitation of Progress Payments

AGENCY: Department of Defense.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering changes to the coverage in the DoD FAR Supplement regarding Limitation of Progress Payments in DoD contracts. The purpose of the proposed change is to implement section 916 of the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145).

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before March 24, 1986, to be considered in the formulation of the final rule. Please cite DAR Case 85-218 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145) placed the following limitations on progress payments: (1) Must be commensurate with work accomplished and (2) may not exceed 80 percent if the contract action is undefinitized. The changes included in this notice will, if adopted, implement those limitations.

B. Regulatory Flexibility Act

This Regulatory Flexibility Analysis Summary is provided in accordance with 5 U.S.C. 603(a). The proposed changes to DFARS 232 and 252 will apply to all small entities receiving or requesting progress payments under defense contracts. About 7,600 small entities hold approximately 15,700 defense contracts containing the Progress Payments Clause. This analysis assumes that each small business having such a contract is requesting progress payments. However, the number of small businesses having undefinitized defense contracts to which the 80 percent limitation will apply is unknown because such data is not collected.

A complete Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the analysis may be obtained from the Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, 1441 L Street NW. (Room 1012), Washington, DC 20416.

C. Paperwork Reduction Act Information

The proposed rule, if adopted, would apply to undefinitized Basic Ordering Agreements and Letter Contracts. Contractors already keep records on these contractual instruments. All that would be needed is changing the new progress payment rate on the request for such payments. It is expected that the impact would be so minimal as to be immeasurable.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 232 and 252 be amended as follows:

PART 232—CONTRACT FINANCING

1. The authority citation for 48 CFR Part 232 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 232.070 is added to read as follows:

232.070 Definition.

"Contract action", as used in this part, means an action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Change clause, or funding and other administrative changes.

3. Section 232.102 is amended by revising paragraph (e)(2) to read as follows:

232.102 Description of Contract Financing Methods.

* * * * *

(e)(2) Progress payments based on a percentage or state of completion will be confined to contracts for construction, shipbuilding, and ship conversion, alteration or repair. Agency procedures must ensure that payments are commensurate with work accomplished, which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

4. Section 232.111 is amended by adding paragraphs (S-71), (S-72), to read as follows:

232.111 Contract Clauses.

* * * * *

(S-71) The contracting officer shall insert the clause at 252.232-7005, Payments Under Fixed-Price Construction Contracts, in lieu of FAR clause 52.232-5, in solicitations and contracts for construction when a fixed-price contract if contemplated.

(S-72) The contracting officer shall insert the clause at 252.232-7006, Payments Under Fixed-Price Architect-Engineer Contracts, in lieu of FAR clause 52.232-10, appropriately modified with respect to payment due dates, in fixed-price architect-engineer contracts.

5. Section 232.501-1 is amended by revising in the second sentence of paragraph (a) the term "CASH II" to read "CASH III"; by deleting the last sentence of paragraph (a); and by

adding paragraph (S-70) to read as follows:

232.501-1 Customary Progress Payment Rates.

* * * * *

(S-70) The Defense Procurement Improvement Act of 1986 (Pub. L. 99-145) limits progress payments to 80% on work accomplished under undefinitized contract actions. A higher rate is not authorized and is not within the meaning of unusual progress payments.

6. Section 232.502-4 is amended by adding paragraphs (S-72), (S-73), and (S-74) to read as follows:

232.502-4 Contract Clauses.

* * * * *

(S-72) The contracting officer shall insert the clause at 252.232-7007, Progress Payments, in lieu of FAR clause 52.232-16 and its Alternates I and II, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

(S-73) If the contract contains a contract action that is not definitized, the contracting officer shall use the clause with its Alternate I.

(S-74) If the contract is a letter contract, the contracting officer shall use the clause with its Alternate II.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. The authority for Part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

8. Sections 252.232-7005, 252.232-7006, and 252.232-7007 are added to read as follows:

252.232-7005 Payments Under Fixed-Price Construction Contracts.

As prescribed in 232.111(S-71), insert the following clause:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (JAN 1986) (DEV.)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets standards of quality established under the contract, as approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if—

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) In making these progress payments, the Contracting Officer may retain a maximum of ten percent (10%) of the approved estimated amount until final completion and acceptance of the contract work. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize payment to be made in full without retention of a percentage. However, by the time the work is substantially complete, the Contracting Officer shall have retained an amount that the Contracting Officer considers adequate protection of the Government and may then release to the Contractor all or a portion of any excess amount. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment may be made for the completed work without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall apply to that portion of progress payments attributable to bond premiums.

(f) The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15).

(g) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of Clause)

252.232-7006 Payments Under Fixed-Price Architect-Engineer Contracts.

As prescribed in 232.111(S-72), insert the following clause:

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (JAN 1986) (DEV.)

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Office.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of ninety percent (90%) of the approved amount, less all previous payments; *Provided*, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. If the Government exercises the option under the Option for Supervision and Inspection Services clause, progress payments as provided for in (a) and (b) above will be made for this portion of the contract work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

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(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of Clause)

252.232-7007 Progress Payments.

(a) As prescribed in 232.502-4(S-72), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs. A different customary rate for other than small business concerns may be substituted in accordance with FAR 32.501-1 for the progress payment and liquidation rate indicated.

(b) If an unusual progress payment rate is approved for the prime contractor (see FAR 32.501-2), the rate approved shall be substituted for the customary rate in paragraph (a)(1).

(c) If the liquidation rate is changed from the customary progress payment rate (see FAR 32.503-8 and FAR 32.503-9), the new rate shall be substituted for the rate in paragraphs (a)(4), (a)(5), and (b).

(d) If advance and progress payments are authorized in the same contract, the words "less any unliquidated advance payments" may be deleted from paragraph (a)(4) of this clause.

(e) If an unusual progress payment rate is approved for a subcontract (see FAR 32.504(b) and FAR 32.501-2), subparagraph (j)(4) shall be modified to specify the new rate, the name of the subcontractor, and that the new rate shall be used for that subcontractor in lieu of the customary rate.

PROGRESS PAYMENTS (JAN 1986) (DEV.)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.*

(1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) eighty percent (80%) of the Contractor's cumulative total costs under this contract, as shown by records maintained by the Contractor for the purpose of obtaining payment under Government contracts, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) The following conditions apply to the timing of including costs in progress payment requests:

(i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(ii) Costs for the following may be included when incurred, even if before payment, when the Contractor is not delinquent in payment of the costs of contract performance in the ordinary course of business:

(A) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract.

(B) Direct labor, direct travel, and other direct in-house costs.

(C) Properly allocable and allowable indirect costs.

(iii) Accrued costs of Contractor contributions under employee pension, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

(A) The Contractor's practice is to contribute to the plans quarterly or more frequently; and

(B) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(iv) If the contract is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than—

(A) Five million dollars ($5 million); or

(B) The value of the work-in-process inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this contract).

(3) The Contractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(5) The total amount of progress payments shall not exceed eighty percent (80%) of the total contract price.

(6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or eighty percent (80%) of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) *Title.*

(1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or

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should have been allocable or properly chargeable to this contract.

(2) "Property", as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of Loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) *Control of Costs and Property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and Access to Records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) *Special Terms Regarding Default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of Rights.*

(1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under the clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Progress Payments to Subcontractors.* The amounts mentioned in (a)(1)(ii) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Contractor has approved for current payment in the ordinary course of business.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately six (6) months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four (4) months.

(3) The terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of the clause 52.232-16, Progress Payments, of the Federal Acquisition Regulation (or that clause with its Alternate I for any subcontractor that is a small business concern);

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (A) the Contractor defaults or (B) the subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the subcontract is the customary rate used by the Contracting Activity, depending on whether the subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Government to the Contractor under this contract.

(6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(7) The Contractor shall pay the subcontractor's progress payment request under subparagraph (j)(1)(ii) above, within a reasonable time after receiving the Government progress payment covering those amounts.

(8) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on Undefinitized Contract Actions.* Nothwithstanding any other progress payment provision in this contract, progress payments may not exceed eighty percent (80%) of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (e), and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b), progress payments for undefinitized contract actions shall be liquidated at eighty percent (80%) of the amount invoiced for work performed under the undefinitized contract

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action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed eighty percent (80%) of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(End of Clause)

Alternate I (Jan 1986)

If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of ninety percent (90%) for small business concerns (see FAR 32.501-1), delete subparagraphs (a)(1) and (a)(2) from the basic clause, and substitute the following subparagraphs (a)(1) and (a)(2):

(a) *Computation of amounts.*

(1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) ninety percent (90%) of the Contractor's total costs incurred under this contract whether or not actually paid, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs of for progress payments until paid).

Alternate II (Jan 1986)

If the contract is a letter contract, add paragraphs (l) and (m) shown below: The amount specified in paragraph (m) shall not exceed eightly percent (80%) applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(l) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b), be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (1) and (2) above.

(4) If the method of liquidating progress payments provided above does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(m) The amount of unliquidated progress payments shall not exceed . . . . . *(specify dollar amount).*

[FR Doc. 86-3867 Filed 2-20-86; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC-169 (Sub-1)]

Automatic Expansion of Zone of Rate Freedom for Motor Common Carriers of Property and Freight Forwarders

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Motor Carrier Act of 1980 permits motor common carriers of property and freight forwarders to reduce or increase rates within a 10 percent zone of rate freedom (ZORF) without investigation, suspension, revision, or revocation on the grounds that the changed rate is unreasonable because it is too high or too low. The Commission can increase the zone by up to five percentage points during any one-year period if it finds that there is sufficient actual and potential competition to regulate rates and that carriers or freight forwarders, shippers, and the public will benefit from increased rate flexibility.

In Ex Parte No. MC-169, *Expansion of Zone of Reasonableness*, 367 I.C.C. 907 (1984), the Commission exercised its authority to expand the ZORF by increasing the zone to 15 percent. As a result of that decision, motor common carriers of property and freight forwarders may now reduce or increase rates by up to 15 percent without Commission interference. The Commission now proposes a rule that for each future year makes a five percent increase in the ZORF automatic in the absence of Commission action to the contrary. Adoption of this proposal will require revision of the rules established by the Commission in Docket No. 37416, *Identification of Rates Filed Under Zone of Rate Freedom By Motor Common Carriers of Property and Freight Forwarders* (not printed), decided July 15, 1980, as amended in Ex Parte No. MC-169, *supra*, which set forth the manner in which carriers must notify the Commission when they wish to have rates considered under the zone.

DATE: Comments are due March 24, 1986.

ADDRESS: Send comments (original and 15 copies) to: Ex Parte No. MC-169 (Sub-No. 1), Rm. 1312, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leonard L. Arnaiz, (202) 275-7831, or Howell I. Sporn, (202) 275-7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Energy and Environmental Considerations

This action does not appear to affect significantly the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant economic impact on a substantial number of small entities because we are only affecting the timing of the approval of the ZORF increase

List of Subjects in 49 CFR Part 1312

Buses, Freight, Freight Forwarders, Maritime Carriers, Motor carriers, Passengers vessels, Pipelines, Railroads.

Decided: February 11, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

Appendix

Part 1312 is proposed to be amended as follows:

PART 1312—[AMENDED]

1. The authority citation for Part 1312 is revised to read as follows:

Authority: 49 U.S.C. 10708(d)(2) and 10762; 5 U.S.C. 553.

2. Paragraphs (b)(7) (ii), (iii) and (iv) of § 1312.4 are proposed to be revised to read as follows:

§ 1312.4 Filing tariffs.

* * * * *

(b) *Letters of transmittal.* * * *

(7) * * *

(ii) If the application of the proposed rate, charge, or provision would result in an increase in charges, the letter shall state that the proposed increase in the aggregate is not more than 15 percent[1] above that in effect 1 year prior to the effective date of the proposed increase.

(iii) If the application of the proposed rate, charge, or provision would result in a reduction in charges, the letter shall state that the proposed reduction in the aggregate shall be no more than 15 percent[1] below the lesser of that in effect on July, 1, 1980 (or the date, if after July 1, 1980, on which a rate, charge, or provision first became effective for a service not provided by the freight forwarder, or the carrier, on July 1, 1980), or that in effect 1 year prior to the effective date of the proposed reduction.

(iv) The carrier or freight forwarder will also be required in the letter to certify that the rates or provisions do not exceed the amount allowed by section 10708(d)(3)(A or B); and that the rates or provisions fall within the 15 percent[1] zone; also, if the rate is more than 15 percent[1] above the rate in effect one year earlier, to include in the statement whether the proposed rate has been subject to general rate increases during the previous year, what percent increase was taken, the bureaus which published the increase, and the effective date.

* * * * *

[FR Doc. 86-3747 Filed 2-20-86; 8:45 am]

BILLING CODE 7035-01-M

[1] Commencing of [effective date of the rule change] and at the end of each one-year period thereafter, this percentage shall be automatically increased by 5 percentage points, in the absence of Commission action to the contrary. In addition, the applicable percentage shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the one-year period prior to the effective date of the proposed rate. [49 U.S.C. 10708(d)(3)(F).]

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Notices

Federal Register
Vol. 51, No. 35
Friday, February 21, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-402]

Adoption of a Final Environmental Impact Statement for Animal Damage Control

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Adoption of the Final Environmental Impact Statement for Animal Damage Control (ADC).

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture (USDA) gives notice that it intends to adopt the Final Environmental Impact Statement (FEIS) prepared by the Fish and Wildlife Service of the U.S. Department of the Interior (USDI) for the ADC program.

ADDRESS: Requests for a copy of the FEIS should be addressed to the Animal Damage Control Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600A, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: John R. Wood, Environmental Coordinator, 301-436-8896.

SUPPLEMENTARY INFORMATION: On June 29, 1979, The Fish and Wildlife Service of the USDI published in the **Federal Register** (44 FR 38005), a notice of the availability of the FEIS on the ADC program. The ADC program was transferred to APHIS on December 19, 1985, by Pub. L. 99-190, 465. Since the FEIS complies with 40 CFR Part 1500-17, and since the transferred ADC activities are substantially the same as those previously administered by USDI, APHIS will recirculate it as a final statement in accordance with 40 CFR 1502.19 and 1506.3(b) and will adopt the FEIS for the ADC program.

Done at Washington, DC, this 19th day of February.

Bert W. Hawkins,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 86-3920 Filed 2-20-86; 8:45 am]
BILLING CODE 3410-34-M

Forest Service

Pesticide Use for Mountain Pine Beetle Control; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to use pesticides to control mountain pine beetle in the Homestake, Delmoe Lake, and Elder Creek campgrounds and picnic areas on the Deerlodge National Forest.

A range of alternatives will be considered including alternate methods of mountain pine beetle control and a no action alternative.

Federal, state, and local agencies; other individuals; and organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Frank Salomonsen, Forest Supervisor, Deerlodge National Forest, Butte, Mountana is the responsible official.

The analysis is expected to take about four months. The draft environmental impact statement should be available for public review by March, 1986. The final environmental impact statement is scheduled to be completed by June, 1986.

Written comments and suggestions concerning the analysis should be sent to Frank Salomonsen, Deerlodge National Forest, Butte, Montana 59701, by March 3, 1986.

Questions about the proposed action and environmental impact statement should be directed to Roger Siemens, Jefferson District Ranger, Deerlodge National Forest, phone 406-287-3223.

Dated: February 12, 1986.

Frank E. Salomonsen,
Forest Supervisor.

[FR Doc. 86-3762 Filed 2-20-86; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Cobb Brook Watershed, MA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cobb Brook Watershed, Bristol County, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Rex Tracy, State Conservationist, Soil Conservation Service, 451 West Street, Amherst, Massachusetts 01002, telephone (413) 256-0441.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rex Tracy, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing flood damages in the West Water Street industrial area along Cobb Brook in the City of Taunton. The planned works of improvement consists of the realignment of the lower end of Cobb Brook where it flows under an industrial plant and through a series of deteriorated, inadequately sized pipes and culverts into a new 825-foot long closed culvert to be constructed through industrial land.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. Copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment is on file and may be reviewed by contacting Rex Tracy.

No administrative action on implementation of the proposal will be taken until March 24, 1986.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: February 11, 1986.

Rex Tracy,
State Conservationist.

[FR Doc. 86-3760 Filed 2-20-86; 8:45 am]
BILLING CODE 3410-16-M

Environmental Statement; Chunky River Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Chunky River Watershed, Newton and Neshoba Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: A. E. Sullivan, State Conservationist, Soil Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601-965-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, A.E. Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a supplemental plan for watershed protection. The planned works of improvement include accelerated financial and technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting A.E. Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials

Dated: February 13, 1986.

A.E. Sullivan,
State Conservationist.

[FR Doc. 86-3744 Filed 2-20-86; 8:45 am]
BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission originally scheduled for February 28, 1986, convening at 7:00 p.m. and adjourning at 9:00 p.m., at the U.S. Commission on Civil Rights, 3660 Wilshire Blvd., Room 810, Los Angeles, California (FR Doc 86-2819, Page 4947) has been cancelled.

Dated at Washington, DC, February 14, 1986.

Bert Silver,
Assistant Staff Director for Regional Programs.

[FR Doc. 86-3768 Filed 2-20-86; 8:45 am]
BILLING CODE 6335-01-M

New Jersey Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m., on March 11, 1986, at the Plainfield City Hall, Library Conference Room, 515 Watchung Avenue, Plainfield, New Jersey. The purpose of the meeting will be to plan community forum on the racially motivated incidents that have occurred in Maplewood and South Orange.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Stephen Balch or Ruth Cubero, Director of the Eastern Regional Office at (212) 264-0400 (TDD 212/264-0400). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1986.

Bert Silver,
Assistant Staff Director for Regional Programs.

[FR Doc. 86-3769 Filed 2-20-86; 8:45 am]
BILLING CODE 6335-01-M

West Virginia Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission originally scheduled for February 20, 1986, convening at 1:00 a.m. and adjourning at 4:30 a.m., at the Christ Church United Methodist Building, Quarrier and Morris Streets, Charleston, West Virginia (FR Doc 86-1968, Page 3816) has been cancelled.

Dated at Washington, DC, February 14, 1986.

Bert Silver,
Assistant Staff Director for Regional Programs.

[FR Doc. 86-3771 Filed 2-20-86; 8:45 am]
BILLING CODE 6335-01-M

West Virginia Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission originally scheduled for February 20, 1986, convening at 9:00 a.m. and adjourning at 11:00 a.m., at the KB & T Center, Wheath First Securities, 10th Floor Conference Room, 500 Virginia Street, Charleston, West Virginia (FR Doc 86-1968, Page 3816) has been cancelled.

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Dated at Washington, DC, February 14, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3770 Filed 2-20-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-429-101]

Unrefined Montan Wax From the German Democratic Republic; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on unrefined montan wax from the German Democratic Republic. The review covers the one known exporter of this merchandise to the United States and the period September 1, 1983, through April 30, 1984. The review indicates the existence of no dumping margins during the period.

As a result of the review the Department intends to revoke the order. Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: February 21, 1986.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18343) a tentative determination to revoke the antidumping duty order on unrefined montan wax form the German Democratic Republic ("GDR") (46 FR 45177, September 10, 1981). On June 22, 1984, the Department published in the **Federal Register** (49 FR 25654) the final results of its last administrative review of the antidumping duty order. We received a request for an administrative review from an importer in accordance with § 353.53a(e) of the Commerce Regulations, and we published a notice of initiation of antidumping and countervailing duty administrative reviews in the **Federal Register** (50 FR 48825, November 27, 1985).

Scope of the Review

Imports covered by the review are shipments of unrefined montan wax, which is a non-oxidized mineral extracted from lignite, not advanced beyond extraction or cleaning by solvent. This product is primarily used as a flow agent in one-time carbon ink formulas. It is also used for producing polishes, mold release agents and for casting, and is currently classifiable under item 494.2000 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of unrefined montan wax from the GDR to the United States, VEB Braunkohlenwerk "Gustav Sobottka," and the period September 1, 1983, through April 30, 1984.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the f.o.b. price to unrelated purchasers in the United States, with deductions, where applicable, for foreign inland freight and harbor charges. No other adjustments were claimed or allowed.

Foreign Market Value

Since the economy of the GDR is state-controlled, the Department used the provisions in section 773(c) of the Tariff Act to establish foreign market value. We constructed a value based on specific components or factors of production in the GDR, valued on the basis of prices in the Federal Republic of Germany, a country with a non-state-controlled economy. For purposes of the review we constructed a value for unrefined wax, equal to the sum of materials, fabrication costs, general expenses, profit and the cost of packing. The amount added for general expenses constituted at least ten percent of the sum of materials and fabrication costs. We used the statutory minimum for profit as provided for in section 773(e) of the Tariff Act.

Preliminary Results of the Review and Intent To Revoke

As a result of our review, we preliminarily determine that no dumping margins exist for the period.

Consequently, we intend to revoke the order on unrefined montan was from the GDR. VEB Braunkohlenwerk "Gustav Sobottka" made all sales at not less than fair value during the period September 1, 1981, through April 30, 1984, the date of our tentative determination to revoke. As provided for § 353.54(e) of the Commerce Regulations, VEB Braunkohlenwerk "Gustav Sobottka" has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances as specified in the written agreement. If this revocation is made final it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse for consumption on or after April 30, 1984.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

This administrative review, intent to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and § 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985; 353.54).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 13, 1986.

[FR Doc. 86-3806 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-404]

Bars and Shapes From Mexico; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on bars and shapes from Mexico. The review covers the period from October 1, 1984. The petitioner has notified the Department that it is no longer interested in the countervailing duty order. This affirmative statement of no interest from a domestic interested party provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all bars and shapes from Mexico entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 32667) a countervailing duty order on bars and shapes from Mexico.

The petitioner, the Labor-Management Committee for Fair Foreign Competition, Inc., informed the Department that it was no longer interested in the order and stated its support for revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by the review are shipments of Mexican certain deformed concrete reinforcing bars, hot-rolled carbon steel bars, and hot-rolled carbon steel bar-size shapes. For a further description of these products, see Appendix A of this notice. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested party's affirmative statement of no interest in continuation of the countervailing duty order on bars and shapes from Mexico provides a reasonable basis for revocation of the order. In light of the October 1, 1984 effective date for revocation requested by the domestic party, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on bars and shapes from Mexico effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

Appendix A—Product Description

1. The term "certain deformed concrete reinforcing bars" covers hot-rolled steel bars, of solid cross-section, having deformations of various patterns on their surfaces, as currently provided for in items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated (TSUSA).

2. The term "hot-rolled carbon steel bars" covers hot-rolled carbon steel products of solid section not conforming completely to the respective specifications given in the headnotes to Schedule G, Part 2, Subpart B of the TSUSA for blooms, billets, slabs, sheet pads, wire rods, plates, sheets, strip, wire, rails, joint bars or tie plates which have cross-sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons, as currently provided for in items 606.8310, 606.8330, 606.8350, and 606.8600 of the TSUSA. Includes flat hot-rolled carbon steel products in coils or cut to length with a width of 8 inches or less and a thickness of 0.1875 inch or more.

3. The term "hot-rolled carbon steel bar-size shapes" covers hot-rolled carbon steel angles, shapes and sections, not drilled, not punched and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule G, Part 2, Subpart B of the TSUSA for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates or any tubular products set forth in the TSUSA having a maximum cross-sectional dimension of less than 3 inches, as currently provided for in items 609.8050, 609.8070 and 609.8090. This definition includes carbon steel angles, channels, special sections and other assorted carbon steel shapes with a maximum cross-sectional dimension of less than 3 inches.

This notice does not cover unliquidated entries of bars and shapes from Mexico which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: February 13, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-3807 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-DS-M

Johns Hopkins University School of Medicine et al.; Consolidated Decision of Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of

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applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No.: 85-095. Applicant: The Johns Hopkins University School of Medicine, Baltimore, MD 21205. Instrument: Gas Chromatograph/Mass Spectrometer System, Model MS 80. Date of denial without prejudice to resubmission: September 24, 1985.

Docket No.: 84-138. Applicant: Stanford University, Palo Alto, CA 94304. Instrument: Excimer Laser/Excimer-Pumped Dye Laser, Model EMG 203/FL 2002. Date of denial without prejudice to resubmission; November 20, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 86-3806 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Minority Enterprise Development Week; Meetings

AGENCY: Minority Business Development Agency.

ACTION: Notice of Meeting.

SUMMARY: This Notice sets forth a schedule of public meetings. The purpose of these meetings is to obtain public input in planning Minority Enterprise Development Week (MED Week), 1986.

DATES: Meetings will be held the fourth Tuesday of every month from February through September, 1986. For further information and/or confirmation call Hattie M. Bickmore, (202) 377-5196.

ADDRESS: Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Madonna Bradley (202) 377-5196 or 377-3717.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, MBDA is charged with promoting the development of minority business enterprise. The Third Annual Celebration of MED Week will aid in achieving this goal by providing the Agency with a means of recognizing the contributions made by minority entrepreneurs.

The purpose of these meetings is to obtain public input in the planning of MED Week, 1986. We are seeking the input of individuals who work closely with minority entrepreneurs or are assisting in the development and expansion of the Nation's minority-owned businesses, that will enable us to put together a program which will address the needs of minority business.

Dated: January 30, 1986.

Hattie M. Bickmore,

National Coordinator for MED Week.

[FR Doc. 86-3775 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Civil Designs, Inc.

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeals.

On February 3, 1986, Civil Designs, Inc. filed a notice of appeal with the Secretary of Commerce (Secretary) under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A). The appeal is taken from an objection by the Massachusetts Coastal Zone Management Office (MCZM), which found that Civil Designs' alteration of a marina in Quincy was inconsistent with the Massachusetts Coastal Zone Management Program. Specifically, MCZM found that two retaining walls were built and approximately 3300 square feet of fill were placed in wetland without appropriate federal, state or local permits.

Civil Designs has been granted a 15-day extension of time to file supporting information in its appeal. When this information has been supplied, MCZM will have thirty days to respond.

FOR FURTHER INFORMATION CONTACT: L. Pittman, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, 2001 Wisconsin Avenue, NW., Washington, DC 20235; 202/254-7512.

Dated: February 13, 1986.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration]

James W. Brennan,

Deputy General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86-3763 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Cotton and Man-Made Fiber Textile Products, Produced or Manufactured in Portugal

February 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 24, 1986. For further information contact Ann Fields International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 19, 1985, a notice was published in the **Federal Register** (50 FR 51741) which announced that, on October 31, 1985 the Government of the United States had requested the Government of Portugal to enter into consultations concerning exports to the United States of cotton yarn-dyed fabrics in Category 310/318 and acrylic yarn in Category 604pt. (only TSUSA Number 310.5049), produced or manufactured in Portugal and exported during the twelve-month period which began on October 31, 1985 and extends through October 30, 1986. Inasmuch as no solution has been reached in consultations on mutually satisfactory limits for these categories, the United States Government has decided to control imports in Category 310/318 and in Category 604pt. (only TSUSA Number 310.5049), exported during the twelve-month period which began on October 31, 1985 at levels of 6,735,536 square yards and 573,563 pounds, respectively.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Portugal, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the tariff schedules of the United States annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 310/318 and 604pt., produced or manufactured in Portugal, in excess of the following levels of restraint:

Category	12-mo restraint level [1]
310/318	6,733,536 square yards.
604pt.[2]	573,563 pounds.

[1] The levels have not been adjusted to account for any imports exported after October 30, 1985. Charges for Category 604pt. for the period November 1985 through December 1985 are 38,115 lbs; charges for Category 310/318 for the period November 1985 through December 1985 are 309,516 square yards.

[2] In Category 604pt., only TSUSA Number 310.5049.

Textile products in Categories 310/318 and 604pt. which have been exported to the United States prior to October 31, 1985 shall not be subject to this directive.

Textile products in Categories 310/381 and 604pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the tariff schedules of the United States annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 18, 1986

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 24, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 310/318 and 604pt., produced or manufactured in Portugal, in excess of the following levels of restraint:

Category	12-mo restraint level [1]
310/318	6,733,536 square yards.
604pt.[2]	573,563 pounds.

[1] The levels have not been adjusted to account for any imports exported after October 30, 1985. Charges for Category 604pt. for the period November 1985 through December 1985 are 38,115 lbs; charges for Category 310/318 for the period November 1985 through December 1985 are 309,516 square yards.

[2] In Category 604pt., only TSUSA Number 310.5049.

Textile products in Categories 310/318 and 604pt. which have been exported to the United States prior to October 31, 1985 shall not be subject to this directive.

Textile products in Categories 310/381 and 604pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the tariff schedules of the United States annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-3810 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Wool Textile Products, Produced or Manufactured in Portugal

February 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 24, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 19, 1985, a notice was published in the **Federal Register** (50 FR 51741) which announced that, on November 25, 1985 the Government of the United States had requested the Government of Portugal to enter into consultations concerning exports to the United States of wool trousers in Category 448, produced or manufactured in Portugal and exported during the twelve-month period which began on November 25, 1985 and extends through November 24, 1986. Inasmuch as no solution has been reached in consultations on a mutually satisfactory limit for this category, the United States Government has decided to control imports in Category 448, exported during the twelve-month period which began on November 25, 1985 at a level of 9,916 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Portugal, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754, November 9, 1984 (49 FR 44782, and in statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Anotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 18, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 24, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Portugal, and exported during the twelve-month period which began on November 25, 1985 and extends through November 24, 1986, in excess of the following level of restraint:

Category	12-mo restraint level [1]
448	9,916 dozen.

[1] The level has not been adjusted to reflect any imports exported after November 24, 1985. Charges for Category 448 for November 25, 1985 through December 31, 1985 are 648 dozen.

Textile products in Category 448 which have been exported to the United States prior to November 25, 1985 shall not be subject to this directive.

Textile products in Category 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709) as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annoteted (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-3809 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERLY HANDICAPPED

Procurement List 1986; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

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ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1986 commodities and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: March 26, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodities

Bag, Carrying, 8465-01-216-6259
Mat, Sleeping, Cold Weather, 8465-01-109-3369

Service

Subtechnical Support Services, Naval Air Rework Facility, Building V-88, Norfolk, Virginia

Deletion

It is proposed to delete the following service from Procurement List 1986, October 15, 1985 (50 FR 41809):
Commissary Shelf Stocking and Custodial, Fort Monmouth (Ocean Port), New Jersey.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-3837 Filed 2-20-86; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange; Five-Year U.S. Treasury Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Cotton Exchange ("NYCE") has applied for designation as a contract market in the Five-Year U.S. Treasury Index ("FYTR"). The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 22, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE FYTR futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed NYCE FYTR futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYCE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the NYCE in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, 20581, by April 22, 1986.

Issued in Washington, DC on February 14, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-3723 Filed 2-20-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DOD FAR Supplements Part 42, Related Clauses in Part 52.242 and related forms.

Information concerns certain information required to support certain contract administration requirements including unique requirements related to the acquisition of petroleum products.

Reporting is required for bid evaluation purposes and production maintenance purposes.

Businesses or others for profit/small businesses or organizations.

Responses: 17,054.

Burden hours: 9,102.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Managment and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301-8000, telephone (202) 697-8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternote OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86-3778 Filed 2-20-86; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding he information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DOD FAR Supplements Part 51, Related Clauses in Part 52.251 and related forms.

Information principally concerns certain data required to enable the processing of contractors' requests to use government sources of supply.

Reporting is required to authorize use of government sources of supply.

Businesses or others for profit/small businesses or organizations.

Responses: 10,500.

Burden hours: 5,250.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301-8000, telephone (202) 697-8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternote OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86-3777 Filed 2-20-86; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DOD FAR Supplements Part 70, Related Clauses in Part 52.270 and related forms.

Information principally concerns certain data required to enable evaluation of offers to provide computer resources.

Reporting is required for bid evaluation purposes and contract management.

Businesses or others for profit/small businesses or organizations.

Responses: 6,362.

Burden Hours: 127,240.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301-8000, telephone (202) 697-8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternote OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86-3778 Filed 2-20-86; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 44, Related Clauses in part 52.244 and Related Forms.

Information concerns subcontracting matters including contractor's purchasing system reviews.

Reporting is required to process approvals of contractors' subcontract systems.

Businesses or others for profit/small businesses or organizations.

Responses: 2,500.

Burden Hours: 44,400.

ADDRESSES: Comments are to be fowarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301-8000,

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telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3779 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Appendix I, DD 250 Series Forms.

Information principally concerns certain data required to inspect and accept materials and pay contractors.

Reporting is required for material inspection, acceptance purposes, and payment of contractors.

Businesses or others for profit/small businesses or organizations.

Responses: 1,640,416.

Burden Hours: 956,909.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000,

telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3780 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD far supplements Part 36, Related Clauses in Part 52, 236 and Related Forms.

Information principally concerns certain data required to enable evaluation and administration of construction and A–E contracts.

Reporting is required for bid evaluation purposes and contract administration.

Businesses or others for profit/small businesses or organizations.

Responses: 28,200.

Burden Hours: 290,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD (P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000,

telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3781 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DOD FAR Supplements Part 29, Related Clauses in Part 52.229 and Related Forms.

Information principally concerns certain data required to enable evaluation of requests from overseas into-plane refueling contractors for reimbursement for nonrefundable taxes.

Reporting is required to authorize such reimbursements.

Businesses or others for profit/small businesses or organizations.

Responses: 372.

Burden Hours: 372.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone

(202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3782 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 12, Related Clauses in Part 52.212 and Related Forms.

Information principally concerns certain data required to support certain delivery requirements. These principally concern special requirements for the acquisition of fuels.

Reporting is required for bid evaluation purposes and production/delivery planning purposes.

Businesses or others for profit/small businesses or organizations.

Responses: 300.

Burden Hours: 5,625.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000,

telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3783 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

Defense Logistics Agency Clause 52.210–9001.

Information concerns certain data required to process offers from contractors proposing to use government surplus material in contract performance.

Reporting is required to obtain information necessary to determine the condition and advisability of using such materials.

Reports do not cover matters required by the Service Contract Act.

Businesses or others for profit/small businesses or organizations.

Responses: 4,000.

Burden Hours: 1,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA. Room 3D116, Pentagon, Washington, DC 20301–8000,

telephone (202) 697–8334. This is a revision of an existing collection.

Dated: February 14, 1986.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–3784 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 35, Related Clauses in Part 52.235 and Related Forms.

Information principally concerns certain data required to enable evaluation of short form R&D proposals, and to obtain information concerning hazardous risks and indemnification matters.

Reporting is necessary as the data can only be obtained from contractor sources.

Businesses or others for profit/small businesses or organizations.

Responses: 13,100.

Burden Hours: 25,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000,

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telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3785 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Appendix K.

Information principally concerns certain data required to provide additional support during the preaward survey process.

Reporting is required to support determination of contractor responsibility.

Businesses or others for profit/small businesses or organizations.

Responses: 10,600.

Burden Hours: 222,600.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3786 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 47 and Related Clauses in Part 52.247.

Information principally concerns certain data required to support evaluation of offers for transportation and related services contracts.

Reporting is required for such matters as assuring that insurance coverage is present and to process claims for damages, etc.

Businesses or others for profit/small businesses or organizations.

Responses: 64,700.

Burden Hours: 64,700.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3787 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 45, Related Clauses in Part 52.245 and Related Forms.

Information principally concerns certain data required to control and account for government furnished property furnished contractors.

Reporting is required for accountability purposes.

Businesses or others for profit/small businesses or organizations.

Responses: 161,000.

Burden Hours: 397,100.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone

(202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3788 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 10, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Unmanned Air Reconnaissance Vehicles will meet March 11–13, 1986, from 8:00 a.m. to 5:00 p.m. each day at Aeronautical Systems Division, Headquarters, Building 14, Area B, Wright Patterson, AFB, OH.

The purpose of this meeting is to receive briefings on and to discuss sensor, navigation, communications, and aircraft systems applicable to unmanned tactical reconnaissance systems.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–3784 Filed 2–20–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE: March 10, 1986.

ADDRESS: Hyatt Arlington Hotel, 1325 Wilson Boulevard, Arlington, Virginia 22209–9990 (Hollow Square Conference Room).

FOR FURTHER INFORMATION CONTACT: Harry M. Gardner, Postsecondary Relations Staff, ROB–3, Room 3082, 400 Maryland Avenue, SW., Washington, DC 20202, (202/245–9700).

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96–374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public. The agenda includes a review of the status of the reauthorization of Title VI of the Higher Education Act. In addition, it will include a review of the International Education Programs.

The meeting will be held from 9:00 a.m. to 4:30 p.m., the 10th of March at the Hyatt Arlington Hotel (the Hollow Square Conference Room), Arlington, Virginia.

Records are kept on the Board proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th & D Streets, SW., Room 3082, Washington, DC.

Signed at Washington, DC, on February 19, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86–3909 Filed 2–20–86; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Adult Education; Closed Meeting

AGENCY: National Advisory Council on Adult Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 23, 1986, 6:00 p.m. to 11:00 p.m.; February 24, 1986, 8:00 a.m. to 5:00 p.m.

ADDRESS: February 23, 1986, Gramercy Hotel, 1616 Rhode Island Ave., NW., Washington, DC 20036; February 24, 1986, 2000 L Street, NW., Room 555, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Helen Banks, National Advisory Council on Adult Education, 2000 L Street, NW., Suite 570, Washington, DC 20036, 202/634–6303.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 312 of the Adult Education Act (20 U.S.C. 1201). The Council is established to advise the Secretary on policy matters concerning the management of the Act, review program and administration effectiveness, and make reports and submit recommendations to the President and Congress relating to Federal adult education activities and services.

The Executive Committee meeting will be closed to the public to discuss staff performance and other related personnel matters. This review and subsequent discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C., and under the authority of section 10(d) of the Federal Advisory Committee Act.

The public is being given less than fifteen days notice of this closed meeting due to the exceptional emergency nature of the situation, and scheduling dates to correspond with the Executive Committee.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Signed at Washington, DC, on February 14, 1986.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 86–3751 Filed 2–20–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86–269–000, et al.]

Electric Rate and Corporate Regulation Filings; Pennsylvania Power and Light Co. et al.

February 12, 1986.

Take notice that the following filings have been made with the Commission:

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[Docket No. ER86-289-000]

1. Pennsylvania Power and Light Co.

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on February 7, 1986 an executed Power Supply Agreement dated as of February 4, 1986 between PP&L and Allegheny Electric Cooperative, Inc. (Allegheny). Under this agreement, PP&L provides wholesale electric service to Allegheny for the benefit of Sullivan County Rural Electrical Cooperative.

PP&L requests an effective date of February 12, 1986, and therefore requests waiver of the Commission's notice requirements of section 205 of the Federal Power Act, 16 U.S.C. 824d, and § 35.3 of the Commission's regulations, 18 CFR § 35.3.

Copies of this filing have been served upon Allegheny and the Pennsylvania Public Utility Commission.

Comment date: February 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Co.

[Docket No. ER82-427-000, ER83-301-000, ER84-75-000]

Take notice that on January 30, 1986, Southern California Edison Company tendered for filing the following data:

A. Summary of all securities issued between October 1, 1985, and December 31, 1985.

B. Summary of its fourth Quarter 1985 construction budget.

C. Mergers, consolidations, or other major changes in the utility's corporate organization.

D. Fourth quarter 1985 capital structure information.

E. Copies of all orders issued and applications submitted between October 1, 1985 and December 31, 1985.

Comment date: February 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. EL86-21-000]

Take notice that on February 3, 1986, city of Vernon, California (Vernon) submitted for filing a petition for declaratory order pursuant to Rule 702(a)(2) of the Commission's Rules of Practice and Procedure. The relief that Vernon seeks is more fully stated as follows:

• A declaratory order reciting that (a) effective as of February 1, 1986, Vernon is entitled under the Integrated Operations Agreement (IOA) to receive capacity and energy from Vernon's interest in Palo Verde Nuclear Generating Station, Unit No. 1 (PVNGS 1) to displace capacity and energy purchases by Vernon from Edison under Edison's partial requirements rate schedule; (b) as of that date, Edison is required to perform services provided for in the IOA in connection with integrated operations of such Vernon capacity resource, including transmission services and scheduling and dispatching services; and (c) such date, February 1, 1986, shall be deemed the date of firm operation of Vernon's PVNGS 1 interest for all purposes under the IOA.

• An order on Vernon's complaint directing Edison to tender an appropriate transmission service agreement and supplemental agreement for filing with the Commission pursuant to Section 205 of the Federal Power Act to implement all necessary procedural and mechanical arrangements for integration of Vernon's PVNGS 1 interest with a February 1, 1986 date of firm operation, with commencement of Vernon's capacity and energy credits as of that date, and reserving Vernon's right to contest and to litigate before the Commission any of the provisions of such agreements being tendered for filing.

• Expedited Commission processing of this pleading and a waiver of any applicable procedural requirements of the Commission's regulations in order to assure that Vernon receives appropriate and timely credits for its PVNGS 1 ownership interest under the Vernon-Edison IOA as aforesaid.

Comment date: February 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

Manti City, Utah and the Utah Municipal Power Agency v. Utah Power and Light Co.

[Docket No. EL86-20-000]

Take notice that on February 3, 1986 Manti City, Utah and Utah Municipal Power Agency (UMPA) tendered for filing an application for orders pursuant to sections 210 and 211 of the Federal Power Act pursuant to Rule 204 of the Commission's Rules of Practice and Procedure (18 CFR 385.203).

The filing parties request the Commission order:

(1) Utah Power and Light (UP&L) to provide transmission service to Manti on a long-term basis under fair and reasonable terms and at non-discriminatory rates beginning on the later of February 4, 1986 or the date the Commission establishes for termination of the current UP&L/Manti Resale Electric Service Agreement which UP&L has informed Manti it intends to terminate as of February 4, 1986; or,

(2) UP&L to interconnect its transmission facilities with the facilities of UMPA and Manti under fair and reasonable terms and at non-discriminatory rates if the Commission deems such an interconnection necessary under PURPA beginning on the later of or the date the Commission establishes for termination of the current UP&L/Manti Resale Electric Service Agreement which UP&L has informed Manti it intends to terminate as of February 4, 1986; and

(3) Any other relief it deems appropriate.

Comment date: February 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3795 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Natural Gas Pipelines After Partial Wellhead Decontrol (United Cities Gas Co.); Order Denying Request for Clarification or Waiver

Issued: February 18, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 15, 1986, United Cities Gas Company (United Cities) filed an emergency request for clarification or waiver of the Commission's regulations to permit Southern Natural Gas Company (Southern) and Transcontinental Gas Pipe Line Company (Transco) to continue providing transportation service on behalf of United Cities pursuant to section 311(a)(1) of the Natural Gas Policy Act (NGPA).[1] Southern informed United Cities that the section 311 arrangement would be terminated in the absence of an order clarifying that continuance of the arrangement would not subject Southern to the nondiscriminatory access requirements of Order No. 436.[2]

United Cities states that, under the extended transportation agreement, Southern (pursuant to section 311(a)(1) of the NGPA) and Transco (pursuant to a certificate sought in Docket No. CP86-202) will continue to aid United Cities in moving excess system supplies available in Columbus, Georgia to its distribution system in Gainsville, Georgia, where there are peak-day demand shortages for high-priority users. Southern and United Cities amended their transportation agreement on October 2, 1985 to provide for the continuation of Southern's transportation service for an additional two-year period ending January 11, 1988, but Southern's extension report was not filed with the Commission until October 10, 1985.

Section 284.105 of the regulations adopted by Order No. 436 provides for transitional treatment of existing 311 transportation arrangements if they were "authorized and commenced . . . on or before October 9, 1985 . . ." In order for an extension to be authorized on or before October 9, 1985, the extension report had to be filed by that date. This requirement must be met irrespective of whether the extension report satisfies the 90 day requirement of former section 284.106.[3] Accordingly, since the proposed extension of the section 311 arrangement was not authorized on or before October 9, 1985, it does not qualify for transition treatment under § 284.105.

We will also deny United Cities' alternative request for waiver. Southern's failure (either through clerical error, an oversight, or otherwise) to acquire authorization to extend the transaction by filing the extension report on or before October 9, 1985 does not justify extending the original authorization by waiver.[4]

[1] On January 23, 1986, United Cities filed an amendment to its emergency request.

[2] 33 FERC ¶ 61,007; 50 FR 42408 (October 18, 1985); Technical corrections, FERC Statues and Regulations ¶ 30,668, 50 FR 45607 (November 5, 1985).

[3] We note that, despite United Cities' initial concern, Southern's filing of the extension report met the requirements of former § 284.106, since the filing was received by the Commission on October 10, 1985, 90 days prior to the January 11, 1986 expiration of the transportation agreement between United Cities and Southern.

[4] The facts presented herein do not satisfy the "economic subetance" exception set forth in Judel Glassware Company, Inc., 33 FERC ¶ 61,386 (1985), because there is no allegation of substantial expenditures or construction in reliance on the transportation agreement.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3797 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Natural Gas Pipelines After Partial Wellhead Decontrol (U.S. Steel); Order Denying Request for Clarification and Denying Waiver

Issued: February 13, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 10, 1986, United States Steel Corporation (U.S. Steel) filed a petition for clarification of the Commission's Order No. 436.[1] U.S. Steel states that on May 6, 1985, it entered into a transportation agreement with Natural Gas Pipeline Company of America (Natural) to transport up to 35,000 MMBtu of gas per day for end use at U.S. Steel's plant in Gary, Indiana. Transportation commenced on September 1, 1985, and continued until October 31, 1985, when it was interrupted by Natural after the issuance of Order No. 436.

U.S. Steel states, among other things, that although the contract references transportation authorization under § 157.209 (e)(1) and (e)(2) of the Commission's regulations, the gas would have qualified as high priority end-use gas. U.S. Steel requests clarification: (1) That the May 6, 1985 agreement is a valid agreement underlying transportation started before October 9, 1985; (2) that although the gas was transported under the automatic authorization in § 157.209(e)(1), the transportation was also automatically authorized under § 157.209(a)(1); and (3) that Natural may continue transporting the gas under the May 6, 1985 agreement pursuant to § 284.223(g)(1).

U.S. Steel states in its petition that approximately 43,000 MMBtu per day of gas is used for high-priority end uses, an amount in excess of the 35,000 MMBtu per day deliveries under the transportation arrangement. In our rehearing of *Midwest Solvents*,[2] involving a somewhat similar situation, we concluded that Midwest Solvents' transportation agreement qualified under § 157.209(a)(1) even though the pipeline had filed an application under the notice and protest procedures of § 157.209(e)(2). We do not, however, need to reach the question of whether the transportation here qualified for continuation under the rationale of *Midwest Solvents*. Even if the transportation arrangement qualified for transition treatment under § 284.223(g)(1), the term of the agreement has expired.

We disagree with U.S. Steel that its arrangement may qualify for transition treatment for a two-year term. Clause 8.1 of its agreement with Natural states, in revelant part, that:

> this Agreement shall be effective as of the date thereof, and shall be for a primary term of the lesser of one hundred twenty (120) days from the date of first deliveries at the Natural Receipt Point/s or the date upon which this transaction under § 157.209(e)(1), as amended from time to time, ceases, unless earlier terminated. *Following the receipt of the necessary regulatory authorization under* § 157.209(e) the primary term shall extend until two (2) years from the date of first delivery of gas hereunder at the Natural Receipt Point/s unless earlier terminated. (Emphasis added.)

This contract clause only provides contractual authorization for a period of 120 days from the date of first deliveries at the Natural receipt point(s). Since U.S. Steel and Natural never filed for and never received authorization under § 157.209(e)(2), their contract does not authorize transportation beyond this single 120 day period. Under § 284.223(g)(1), transportation authorized under § 157.209(a)(1) and commenced on or before October 9, 1985, is authorized "for the full term originally certificated" subject to the conditions in § 284.7. In this case, the full term originally certificated is a single 120 day period since the two year contract authorization never became effective.

Accordingly, even if the transportation qualified under § 284.223(g)(1), that provision would authorize Natural to transport gas to U.S. Steel only for the term of their agreement, *i.e.*, for a period not to exceed 120 days from the date of first deliveries at Natural's receipt point(s). Inasmuch as transportation under the contract commenced on September 1, 1985, the 120-day term of the contract has elapsed. Thus, the transportation arrangement would no longer qualify for transition treatment under § 284.223(g)(1).

Finally, U.S. Steel does not qualify for a waiver under our decision in *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386, 51 FR 434 (1986). In that order, we decided that applicants may qualify for a waiver of the transitional rules provided the applicants demonstrated that there was

[1] 33 FERC ¶ 61,157.

[2] 33 FERC ¶ 61,395.

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"economic substance" to their transportation transactions prior to October 9, 1985. To demonstrate economic substance, the purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9. *Judel, mimeo.* at 16. U.S. Steel has not demonstrated that it qualifies for a waiver because U.S. Steel does not allege that it expended substantial funds or constructed significant facilities in reliance on its agreement with Natural.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3798 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D) and Docket No. RM85-1-146]

Natural Gas Pipelines After Partial Wellhead Decontrol United Gas Pipe Line Co., Natural Gas Pipeline Co. of America and Delhi Gas Pipeline Corp.; Order Granting in Part and Denying in Part Requests for Clarification and Rehearing

Issued: February 18, 1986.

The Commission has issued two orders [1] granting clarification of Order No. 436 [2] with respect to transitional treatment of the transportation of gas to correct imbalances arising from transportation that was performed prior to October 31, 1985. Briefly, those orders permit a pipeline to correct such imbalances by February 15, 1986, without subjecting the transporter to the conditions in §§ 284.8, 284.9, 284.10 of our regulations.

On January 14, 1986, United Gas Pipeline Company filed a request for clarification or, alternatively, for waiver of the regulations adopted in Order No. 436. On January 16, 1986, Natural Gas Pipeline Company of America filed a request for rehearing and clarification of the clarification order issued in response to Natural or December 17, 1985.[3] These requests involve, *inter alia*, correction of imbalances that arise out of transportation transactions performed after October 31, 1985, pursuant to the transition provisions of Order No. 436.

Natural requests that the time period for correcting imbalances be extended to the later of (a) April 30, 1986, or (b) the last day of the third month following the date on which the authorized transportation arrangement terminates. It states that pipelines need at least three months to correct imbalances because the exact imbalance is not known until a month after the transportation arrangement terminates.

Natural also requests clarification on specific methods for correcting imbalances. It describes two ways in which these imbalances have traditionally been corrected in the past:

1. Volumes owed are credited as volumes delivered under an existing authorized transportation amendment, or another expired transportation arrangement in which the opposite imbalance exists; or
2. Volumes owed are delivered at a new delivery point.

It states that these two methods should be available for correcting imbalances if: (1) The imbalance volumes cannot practicably be delivered under the applicable contract; and (2) these methods are used soley to correct imbalances due to deliveries prior to the termination of the transportation arrangement.

United requests a similar clarification for correcting imbalances, including a request to extend the February 15, 1986 date for correcting imbalances. For inactive contracts, United requests a deadline of March 31, 1986. For active contracts (those authorized under § 284.105 and § 284.223(g)), it proposes a rolling time prior to 90 days from the date the contract terminates. United also requests clarification that it may correct imbalances by

1. Allocating the imbalance owed to the shipper/broker under one contract (the original nongrandfathered contract) to another, grandfathered (active) transportation contract between United and the same shipper.
2. Allocating the lock-in balance to one or more nongrandfathered (inactive) transportation contracts.

United also states that, in one instance, a final accounting resulted in a negative balance, i.e., a balance owed to United. However, the source of gas originally used by the shipper is insufficient to balance the account within a reasonable period of time. To repay that imbalance, the shipper must obtain additional supplies at new locations not described in the transportation agreement as it existed on October 9, 1985.

We agree with the applicants that, due primarily to operational problems and practical considerations, additional time may be needed in many instances to correct imbalances. For inactive contracts (those which have terminated or ceased to be authorized, under the transition rules, beyond October 31, 1985), we are permitting the parties to correct their imbalances by April 30, 1986.

With respect to active contracts, we agree that a rolling time period is the most appropriate manner for correcting imbalances. Therefore, we will permit the parties to correct the imbalances for a period extending 90 days from the date the transportation arrangement terminates.

With respect to the procedures for correcting the imbalances, we have stated in the *Natural* order that "deliveries or other types of adjustments" made solely for the purpose of correcting deliveries made on or prior to October 31, 1985, will not subject the pipeline to §§ 284.8, 284.9, 284.1). We entend this language to provide the parties with flexibility in selecting the method for correcting the imbalances, provided that is their sole purpose. We view this authorization merely as a short-lived problem associated with the implementation of Order No. 436. The methods which Natural and United have described in their pleadings are permissible, as are other methods which the Commission has authorized in the past for correcting imbalances, provided they are used for the stated purpose.

Finally, Natural and Delhi Gas Pipeline Corporation request rehearing of the ruling (Item 6) in the *Natural* order that extensions of contracts which are for a two-year initial term plus two-year extension periods qualify for transition treatment under § 284.105(a) only to the extent that the extensions were authorized on or before October 9, 1985. Natural states that since these extensions were contemplated in the contract, there is no reason to require that the extensions be authorized on or before October 9, 1985, especially since there is no opportunity to circumvent Order No. 436.

Delhi states that, for its affected transactions, Natural filed an extension report, as requested by Delhi, on October 15, 1985, but that its section 311 transportation will not qualify for the transitional rules since the authorization was not obtained on or before October 9, 1985. It contends, among other things, that the Commission should accord transition treatment to such arrangements because it will carry out the expectations of the parties without permitting any circumvention of Order No. 436.

Neither Natural nor Delhi has raised any new matters not previously considered in formulating and clarifying

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[1] *Natural Gas Pipeline Company*, 33 FERC ¶ 61,401, 54 FR 438 (1986); *Entrade Corporation*, 33 FERC ¶ 61,451, 51 FR 440 (1986).

[2] 33 FERC ¶ 61,007, 50 FR 41,406 (1985).

[3] Natural, *supra*.

Order No. 436.[4] The purpose of the transition rules is to permit transportation arrangements that were authorized and in effect as of October 9, 1985 to continue for a specified time period. Accordingly, Natural's and Delhi's request for rehearing on this issue is denied. Delhi's request for a waiver of this requirement also is denied, because it has not demonstrated any circumstances not applicable to other pipelines affected by Order No. 436.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3796 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-33-006]

El Paso Natural Gas Co.; Compliance; Purchased Gas Cost Adjustment Filing

February 14, 1986.

Take notice that on February 7, 1986, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with the Commission's order issued February 7, 1986 at Docket No. TA85-1-33-005, the following tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	First Substitute Sixth Revised Sheet No. 100.
Third Revised Volume No. 2	First Substitute Thirty-first Revised Sheet No. 1-D.
Original Volume No. 2A	First Substitute Thirty-second Revised Sheet No. 1-C.

The Commission's February 7, 1986 order denies El Paso's request for rehearing of the Commission's October 30, 1985 order in this proceeding. The October 30, 1985 order directed El Paso to reinstate $11,444,412 of unpaid accruals in Account 191 for purposes of calculating the surcharge effective October 1, 1985. Rejecting El Paso's arguments on the matter, the order denying rehearing requires El Paso to file revised tariff sheets to include the unpaid accrual amounts in its Account 191 balance effective October 1, 1985.

The filing reflects a $0.2882 per dth decrease in El Paso's rates as compared to the $0.3182 per dth decrease reflected in El Paso's September 30, 1985 PGA filing.

In accordance with the requirements set forth in ordering paragraph (B), El Paso has recalculated the unrecovered purchase gas cost surcharge included in its September 30, 1985 PGA filing to reflect the inclusion of $11,444,412 attributable to unpaid accruals. The revised balance in Account 191 for the block ended June 30, 1985 after such adjustment is $16,922,869. When the recalculated Account 191 balance of $16,922,869 is divided by El Paso's estimated jurisdictional sales of 381,244,387 dth for the six (6) month period commencing October 1, 1985, the deferred amount equates to a surcharge rate of $.0444 per dth in El Paso's rates which is a $0.0300 increase in those rates filed September 30, 1985.

El Paso also tendered for filing Substitute Thirty-third Revised Sheet No. 1-C to its FERC Gas Tariff, Original Volume No. 2A, effective December 1, 1985. By letter order dated December 27, 1985 issued at Docket No. CP84-718-001 by the Director of the Office of Pipeline and Producer Regulation, Thirty-third Revised Sheet No. 1-C was accepted and made effective December 1, 1985 and reflected the deletion of special Rate Schedules FS-25 through FS-30. Therefore, Substitute Thirty-third Revised Sheet No. 1-C is being tendered to be effective December 1, 1985.

Further, by order issued December 17, 1985 at Docket No. RP85-154-000 by the Director of the Office of Pipeline and Producer Regulation certain tariff sheets were made effective January 1, 1986 which reflected a 0.10¢ increase per dth in rates attributable to the increase in the Gas Research Institute Funding Unit Adjustment. That component of El Paso's rates thus rises from 1.18¢ per dth (1.25¢ per Mcf) to 1.28¢ per dth (1.35¢ per Mcf). El Paso tendered the following tariff sheets as part of El Paso's FERC Gas Tariff to be effective January 1, 1986 to reflect the change:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Substitute Seventh Revised Sheet No. 100.
Third Revised Volume No. 2	Substitute Thirty-second Revised Sheet No. 1-D.
Original Volume No. 2A	Substitute Thirty-fourth Revised Sheet No. 1-C.

El Paso respectfully requests waiver of Section 19 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 and, pursuant to § 154.51 of the Commission's Regulations, waiver of the notice requirements of § 154.22 of the Commission's Regulations and any other of the Commission's applicable rules, regulations and orders as may be necessary to permit the tendered revised tariff sheets, as described herein, to become effective on October 1, 1985, December 1, 1985, and January 1, 1986, respectively.

El Paso states that the filing has been served upon all interstate pipeline system customers of El Paso, all interested state regulatory commissions and otherwise all parties of record in Docket No. TA86-1-33-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3799 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-53-003]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 14, 1986.

Take notice that K N Energy, Inc. (K N) on January 31, 1986, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1:

Sixth Revised Sheet No. 26
Fifth Revised Sheet No. 26A
Fifth Revised Sheet No. 26B

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 7, 1986.

K N states that this filing is made in compliance with the Commission's order issued November 27, 1985, requiring the elimination of the effects of concurrent exchange imbalances from Account No. 191. K N states that it will institute the methodology recently approved by the Commission in a proceeding including United Gas Pipe Line Co.

Copies of this filing were served upon K N's jurisdictional customers and all parties to the proceeding.

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[4] *See, e.g., Western Gas Supply Company* and *Tennessee Gas Pipeline Company*, 34 FERC ¶ 61,036 (1986).

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Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 21, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3800 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-14-002]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

February 14, 1986.

Take notice that on February 11, 1986 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing two (2) substitute revised gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, both of which are dated as issued on February 10, 1986 proposed to become effective February 1, 1986 and, identified as follows:

Substitute Thirty-eighth Revised Sheet No. 4
Substitute Thirty-fourth Revised Sheet No. 18

Lawrenceburg states that its substitute revised tariff sheets were filed under its Purchased Gas Adjustment (PGA) Provision and to comply with the Commission's January 27, 1986 order in this docket that required Lawrenceburg to track any reduction in the rates being tracked of its pipeline supplier. On February 6, 1986, Texas Gas Transmission Corporation filed to reduce its February 1, 1986 PGA, prompting Lawrenceburg to refile its previously approved February 1, 1986 PGA.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3801 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-27-000, 001]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

February 15, 1986.

Take notice that North Penn Gas Company (North Penn) on February 10, 1986, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause for rates to be effective March 1, 1986.

Specifically, North Penn has included in its semiannual PGA, to be effective March 1, 1986, the following:

1. A decrease of 19.056¢ per Mcf (Appendix A) to reflect changes in the cost of gas purchased.

2. A surcharge credit of 5.381¢ per Mcf (Appendix B) resulting from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period June 30, 1985 through December 31, 1985; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with the Federal Energy Regulatory Commission's (Commission) Regulations; and a carry-over balance from the surcharge credit effective for the period March 1, 1985 through August 31, 1985.

3. A TOP surcharge of 9.160¢ (Appendix C) to recover North Penn's funding of Take-or-Pay payments made to Tennessee Gas Pipeline Co. (Tennessee) under procedures approved by the Commission in Docket No. RP83-8 et al. issued April 16, 1985.

Included in North Penn's rates effective September 1, 1985, was a TOP Surcharge of 13.666¢. A reconciliation of actual TOP payments, including interest, with amounts recovered from its customers for the period September, 1985 through February, 1986, will be included in North Penn's next regularly scheduled semiannual PGA filing.

As part of this filing, North Penn has also included Thirteenth Revised Sheet No. 15H which reflects no incremental pricing surcharges under section 15 of the General Terms and Conditions of its tariff.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective March 1, 1986 as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3802 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-167-003]

Sea Robin Pipeline Co.; Compliance Filing

February 14, 1986.

Take notice that on January 31, 1986, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Original Volume No. 1:

Forty-Third Revised Sheet No. 4
Twenty-Third Revised Sheet No. 4-A
Original Sheet No. 4-C
Twenty-Sixth Revised Sheet No. 127-D
Twenty-Sixth Reviseds Sheet No. 135-C

Sea Robin requests an effective date of February 1, 1986, for these sheets.

Sea Robin states this filing is in compliances with Article III of the Stipulation and Agreement filed with the Commission on December 20, 1985, in Docket No. RP85-167 and that it implements the terms of the settlement agreement.

Sea Robin has served a copy of this filing on all participants listed on the official service list in this proceeding.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 21, 1986 (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3803 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-9-003]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Tariff Revisions

February 14, 1986.

Take notice that on January 29, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), tendered for filing the following revised tariff changes to First Revised Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1986.

First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 22

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 7, 1986.

Tennessee states that the purpose of these revised tariff sheets is to restate on a dekatherm basis certain of the rates and charges reflected on tariff sheets submitted with its purchased gas adjustment filing in Docket No. TA86-2-9 and accepted by Commission order in that proceeding dated December 31, 1985. Further, Tennessee states that restatement on a dekatherm basis is in accord with Tennessee's filing on December 31, 1985 in accord with Commission Opinion Nos. 240 and 240-A.

Tennessee states that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 21, 1986 (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3804 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-141-006]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 14, 1986.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on February 5, 1986 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 and FPC Gas Tariff, Original Volume No. 2:

FERC Gas Tariff, Original Volume No. 1

Effective November 1, 1985

Substitute Original Sheet No. 1
Third Substitute Original Sheet No. 10
Original Sheet No. 10A
Third Substitute Original Sheet No. 11
Third Substitute Original Sheet No. 12
Substitute Original Sheet Nos. 15 thru 22
Original Sheet Nos. 22A and 22B
Substitute Original Sheet Nos. 23 thru 35, 40, 42, 44, 79, 88, 96, 106, and 107
Second Substitute Original Sheet No. 108
Substitute Original Sheet Nos. 109 thru 114
Second Substitute Original Sheet No. 115
Original Sheet Nos. 116 and 117
Substitute Original Sheet No. 118
Original Sheet Nos. 184 and 185

Effective December 1, 1985

Second Substitute First Revised Sheet No. 10
First Revised Sheet No. 10A

Effective January 1, 1986

Second Substitute Second Revised Sheet No. 10
Second Revised Sheet No. 10A
Substitute First Revised Sheet No. 11
Substitute First Revised Sheet No. 12

Effective February 1, 1986

Substitute Third Revised Sheet No. 10
Third Revised Sheet No. 10A

Effective February 5, 1986

First Revised Sheet Nos. 1, 51 thru 54
Original Sheet Nos. 55 and 56
First Revised Sheet No. 154

FPC Gas Tariff, Original Volume No. 2

Effective November 1, 1985

Second Substitute Fifth Revised Sheet No. 82
Third Substitute Twentieth Revised Sheet No. 333
Second Substitute Sixth Revised Sheet No. 547
Third Substitute Ninth Revised Sheet No. 643
Third Substitute Fifth Revised Sheet No. 919
Third Substitute Seventh Revised Sheet No. 982
Third Substitute Sixth Revised Sheet No. 1005

Effective January 1, 1986

Substitute Twenty-First Revised Sheet No. 333
Substitute Sixth Revised Sheet No. 919
Substitute Eighth Revised Sheet No. 982.

The revised tariff sheets are being filed in compliance with the "Order Approving Contested Offer Of Settlement Subject to Modifications" issued by the Federal Energy Regulatory Commission (Commission) on January 22, 1986, in Docket Nos. RP85-141-005 and RP85-141-002 (34 FERC Para. 61,054).

Texas Gas respectully request a waiver of the requirements of Part 154 of the Commission's regulations under the Natural Gas Act to the extent necessary to permit all of the tariff sheets listed above to be accepted for filing and effective on the dates indicated.

Copies of this filing were served on all parties in Docket No. RP85-141, as well as nonintervenor customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or

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protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make proteatants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3805 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18765-000 et al.]

Tenneco Oil Co. et al.; Applications for Certificates, Abandonments of Service and Petition To Amend Certificates

Correction

In the document beginning on page 5781 in the issue of Tuesday, February 18, 1986, make the following correction:

On page 5783, the file line was omitted and should have appeared as follows:

[FR Doc. 86-3469 Filed 2-14-86; 8:45 am]

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2972-2]

California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity for public hearing.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its exhaust emission standards and test procedures governing the certification of heavy-duty vehicles and engines. California has requested EPA to determine that these amendments are within the scope of previous waivers granted to California pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). These amendments pertain to heavy-duty diesel vehicles and engines. However, EPA considers these to be, in effect, new standards and test procedures. This notice announces that EPA has tentatively scheduled a public hearing for March 27, 1986 to consider CARB's requests and to hear comments from interested parties regarding CARB's amendments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by March 17, 1986. If no party informs EPA that it wishes to testify on the heavy-duty amendments, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA will hold a public hearing on March 27, 1986, beginning at 2:00 p.m., if any party notifies EPA by March 17, 1986, that it wishes to present oral testimony regarding CARB's requests. Any party may submit written comments regarding CARB's requests by April 28, 1986. ADDRESSES: EPA will hold the public hearing announced in this notice at: U.S. Environmental Protection Agency, Regional Office (Region IX), Marianas Room, 6th Floor, 215 Fremont Street, San Francisco, California. Parties wishing to present oral testimony at the public hearing should notify in writing: Donald E. Zinger, Acting Director, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Any party may also submit written comments regarding the waiver request to the same address to the attention of the Docket EN-85-10. Copies of material relevant to the waiver request (Docket EN-85-10) will be available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven M. Spiegel, Attorney/Advisor, Manufacturers Operations Division (EN-340-F) U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8657.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act, as amended, 42 U.S.C. 7543(a), provides in part:

> "No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part . . . [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent . . . to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the state determines that [its] . . . standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. . . . [unless] the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such . . . standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity of receiving a further waiver of Federal preemption. If California acts to amend previously waived emission standards or accompanying enforcement procedures, the change may be considered to be within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with respect to section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver determinations.

By a letter dated July 11, 1985, CARB submitted to EPA a request for a determination that certain amendments are within the scope of previous waivers of Federal preemption. These amendments revise California's current heavy-duty diesel program which provides for primary standards measured by way of steady-state test procedures and optional standards measured by transient test procedures. The amendments provide only for standards measured by means of transient cycle test procedures for 1985 and subsequent model years. This change aligns California's test procedures with Federal test procedures. In addition, the amendments incorporate EPA's full-life useful life periods for heavy-duty diesel engines. The amendments also include revised procedures for establishing engine durability based upon individual manufacturers' durability test methods, and incorporate procedures for small-volume manufacturers which are based on the Federal procedures and adjusted to be appropriate for the California market. Other amendments include minor conforming changes to California's Motor Vehicle In-Use Label Specification and California's Emissions-Related Defects Reporting Procedures.

California states in its July 11, 1985 letter that it has determined that these amendments do not undermine its determination that its standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards since these amendments do not change California exhaust emission standards. Further, California states that these amendments are consistent with section 202(a) of the Clean Air Act since the amendments incorporate in significant part the current Federal transient cycle test procedures. Finally, California states that the amendments raise no new issues affecting previous waiver decisions. However, EPA believes that by removing the manufacturer's option to certify pursuant to transient test procedures or steady-state standards and test procedures, these amendments do raise significant new issues not considered in prior waiver decisions. In effect, California's amendments establish new standards and test procedures for heavy-duty diesel-powered vehicles and engines.

Since EPA believes California's request should be considered according to the requirements for a full waiver determination, an opportunity for a hearing is being provided to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether or not California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether or not California needs its standards to meet compelling and extraordinary conditions; and

(3) Whether or not California standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file 10 copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the address listed above not later than March 17, 1986. In addition, the party should submit 25 copies, if feasible, of the proposed statement to the Presiding Officer at the time of the hearing.

Since a public hearing is designed to give interested persons an opportunity to participate in this proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants without special approval by the Presiding Officer. The Presiding Officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statements of any witness.

If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. The Administrator will base his determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and consider other scientific, engineering or other pertinent information. This information will be available for public inspection at the EPA Centeral Docket Section.

Dated: February 5, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-3831 Filed 2-20-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66126; FRL-2954-9]

Certain Pesticide Products; Intent to Cancel Registrations; Bonide Chemical Co. et al.

Correction

In FR Doc. 86-849 beginning on page 2956 in the issue of Wednesday, January 22, 1986, make the following corrections:

1. On page 2956, in the table, in the first column, "140-1" should read "140-41".

2. On page 2959, in the table, in entry 20004-4, in the third column, the zip code should read "32804".

BILLING CODE 1505-01-M

[OPP-240065; FRL-2953-7]

State Registration of Pesticides

Correction

In FR Doc. 86-667 beginning on page 1844 in the issue of Wednesday, January 15, 1986, make the following correction: On page 1845, in the second column, in the second complete paragraph, in the fifth line, "(0,005%)" should read "(0.005%)".

BILLING CODE 1505-01-M

[ER-FRL-2972-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed February 10, 1986 Through February 14, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860045, Final, Adopted, APH, SEV, Western United States Mammalian Predator Damage Management for Livestock Protection, Due: March 24, 1986, Contact: John Wood (301) 436-8896.

EIS No. 860046, Draft, FHW, AZ, Arizona Forest Highway/OR-67 Reconstruction, Jacob Lake to Grand Canyon National Park, Coconino County, Due: April 9, 1986, Contact: Robert Arensdorf (303) 236-3468.

EIS No. 860047, Draft, COE, IN, Indiana Harbor Confined Disposal Facility and Maintenance Dredging, Construction, Lake Michigan, Lake County, Due: April 7, 1986, Contact: Keith Ryder (312) 353-7795.

EIS No. 860048, Draft, FHW, FL, Northwest Hillsborough Expressway Construction, I-275 to FL-597/Dale Mabry Highway, Hillsborough County, Due: April 7, 1986, Contact: P.E. Carpenter (904) 681-7223.

EIS No. 860049, Draft, CDB, MI, Oakland Technology Park Development, CDBG, Oakland County, Due: April 7, 1986, Contact: Joseph Joachim (313) 858-0497.

EIS No. 860050, Final, COE, AL, Huntsville Spring Branch and Indian Creek System, DDT Contamination Isolation, Olin's Remedial Action Plan, Permits, Madison County, Due: March 24, 1986, Contact: Ray Hedrick (615) 736-5028.

EIS No. 860051, Final, AFS, PR, Caribbean National Forest and Luquillo Experimental Forest, Land and Resource Management Plan, Due: March 24, 1986, Contact: John Alcock (404) 681-4177.

EIS No. 860052, Draft IBR, CO, Stagecoach Reservoir Project, Construction, Upper Yampa River Valley, Yampa River, Routt County, Due: April 14, 1986, Contact: Harold Serseland (801) 524-5580.

EIS No. 860053, Draft, FHW, OR, Airport Way Widening and Extension, I-205 to I-84, Multnomah County, Due: April

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7, 1986, Contact: Dale Wilken (503) 399–5749.

EIS No. 860054, Draft, FHW, OR, Cornell Road Improvements, 185th Avenue to N.W. 242nd Avenue, Washington County, Due: April 7, 1986, Contact: Dale Wilken (503) 399–5749.

EIS No. 860055, Final, BLM, WY, MT, ND, SD, Bairoil/Dakota Carbon Dioxide Projects, Approval, Right-of-Way Grants and Issuance of Permits, Due: March 24, 1986, Contact: Eugene Jonart (307) 772–2219.

EIS No. 860056, Final, FHW, PA, Bayfront-Port Access Road/LR–1003 Section A100 Construction I–79/West 12th Street to East 6th Street/East Lake Road, Erie County, Due: March 24, 1986, Contact: Manuel Marks (717) 782–2222.

EIS No. 860057, Draft, MMS, SEV, January 1987–December 1991 Outer Continental Shelf (OCS) Oil and Gas Sales, 5 Year Program, Leasing, Due: May 8, 1986, Contact: Daniel Henry (202) 343–6264.

EIS No. 860058, Draft, VAD, FL, Northern Palm Beach County Veterans Administration Medical Center, Construction, Palm Beach County, Due: April 7, 1986, Contact: Susan Livingstone (202) 389–3316.

Amended Notice:

EIS No. 860013, Drevised, AFS, NM, Santa Fe National Forest, Land and Resource Management Plan, Published FR 1–24–86—Incorrect status.

Dated: February 18, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–3865 Filed 2–20–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2972–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 3, 1986 through February 7, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated February 1986 (51 FR 4804).

DRAFT EISs

ERP No. D–FHW–J40112–MT, Rating LO, I–15 Beltview Interchange Construction, I–15 to Colonial Drive, MT. Summary: EPA has no objections to the proposed project.

ERP No. D–SCS–G36131–LA, Rating LO, Mill Haven Watershed Flood Prevention and Drainage Plan, LA. Summary: EPA has no objections to the proposed action. However, EPA requests that additional information in areas of 404 jurisdiction, mitigation maintenance procedures, and pesticides application be included in the final EIS.

Final EISs

ERP No. FS–COE–E32028–AL, Mobile Harbor Channel Improvements, Construction and Maintenance, Offshore Dredged Material Disposal Site, Designation, AL. Summary: EPA continues to object to the use of a portion of the dredged material from the upper channel to create approximately one thousand (1,000) acres of fastland in the shallow water adjacent to Brookley Complex. Mobile Bay has over many years lost substantial acreage of wetlands and bay bottoms, and the cumulative impact of these losses is substantial. EPA is concerned that the functioning of the Mobile estuary will be further damaged by this action.

ERP No. FS–COE–E35079–AL, Upper Mobile Harbor Dredged Material Disposal, Maintenance Dredging, Long Range Disposal Plan, AL. Summary: EPA has reviewed the final supplement to the EIS and is waiting for the Mobile District to determine a selected alternative.

ERP No. F–FHW–G40035–TX, Beltway 8 (Sect. III) Construction, US 59 South to I–10 West, Right-of-Way Acquisition, TX. Summary: EPA does not object to the proposed action provided the mitigation measures described are properly implemented.

ERP No. F–SCS–E36153–00, Wolf and Loosahatchie R. Basins Multipurpose Land and Water Mgmt. Plan, 404 Permit, TN and MS. Summary: EPA has no objections to the proposed project.

Amended Notice

The following review was completed during the week of November 18, 1985 through November 22, 1985 and should have appeared in the **Federal Register** Notice published on December 6, 1985.

ERP No. F–USA–D11005–VA, Ft. Story Ongoing Mission, Logistics-Over-the-Shore (LOTS) Training, Continued Operation and LOTS Units Modernization, VA. SUMMARY: EPA identified a number of areas in the EIS which were insufficient including noise issues, impacts to the ecosystem, and incomplete discussion of alternatives. EPA recommends submission of supplemental information.

Dated: February 18, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–3866 Filed 2–20–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51611; FRL–2973]

Premanufacture Notices Receipts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86–496, 86–497, 86–498, 86–499, 86–500, 86–501, 86–502 and 86–503; May 7, 1986

P 86–504, 86–505, 86–506, 86–507, 86–508, 86–509, 86–510, 86–511, 86–512, 86–513, 86–514 and 86–515; May 10, 1986

P 86–516, 86–517, 86–518, 86–519, 86–520, 86–521 and 86–522; May 11, 1986

P 86–523, 86–524, 86–525, 86–526, 86–527, 86–528, and 86–529; May 12, 1986

P 86–530, 86–531, 86–532, 86–533, 86–534, 86–535, 86–536, 86–537, 86–538, 86–539, and 86–540, May 13, 1986

Written comments by:

P 86–496, 86–497, 86–498, 86–499, 86–500, 86–501, 86–502 and 86–503; April 7, 1986

P 86–504, 86–505, 86–506, 86–507, 86–508, 86–509, 86–510, 86–511, 86–512, 86–513, 86–514; April 10, 1986

P 86–516, 86–517, 86–518, 86–519, 86–520, 86–521 and 86–522; April 11, 1986

P 86–523, 86–524, 86–525, 86–526, 86–527, 86–528, and 86–529; April 12, 1986

P 86–530, 86–531, 86–532, 86–533, 86–534, 86–535, 86–536, 86–537, 86–538, 86–539 and 86–540; April 13, 1986

ADDRESS: Written comments, identified by the document control number "[OPTS–51611]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86–496

Manufacturer. Givaudan Corporation.

Chemical. (S) Benzoic acid, 4-[[[[4-ethoxycarbonyl)phenyl] amino]methylene]-amino]-ethyl ester.

Use/Production. (S) Industrial, commercial and consumer ultraviolet absorber. Prod. range: Confidential.

Toxicity Data. Skin sensitization: Non-sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Release to air and water. Disposal by publicly owned treatment works (POTW).

P86–497

Manufacturer. Eastman Kodak Company.

Chemical. (S) 3,3'-Carbonylbis[7-(diethylamino)-2H-1-benzopyran-2-one].

Use/Production. (G) Highly controlled non-dispersive use. Prod. range: 25–50 kg/yr.

Toxicity Data. Acute oral: >3,200 mg/kg; Irritation: Skin—Slight; Skin sensitization: Sensitizer.

Exposure. Manufacturer and processing: dermal, a total of 3 workers, up to 0.8 hr/da, up to 3 da/yr.

Environmental Release/Disposal. No release. Less than 20 kg/batch incinerated.

P86–498

Manufacturer. Confidential.

Chemical. (S) 3-Acetyl-4-oxopentanoic acid, ethyl ester.

Use/Production. (G) Chemical intermediate. Prod. range: 3,000–5,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 8 workers, up to 0.5 hr/da, up to 10 da/yr.

Environmental Release/Disposal. No release. Less than 20 kg/batch incineration.

P86–499

Manufacturer. Confidential.

Chemical. (G) Salt of substituted phenyl hydrazinoaltanoic acid derivative.

Use/Production. (G) Chemical intermediate. Prod. range: 5,000–11,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 15 workers, up to 0.7 hr/da, up to 10 da/yr.

Environmental Release/Disposal. No release. Less than 5 kg/batch incinerated.

P86–500

Manufacturer. Shell Oil Company.

Chemical. (G) Tetraglycidylamine.

Use/Production. (S) Site-limited epoxy resin varnish for production of carbon fiber reinforced prepregs for aerospace applications. Prod. range: 2,300–14,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal.

Environmental Release/Disposal. 1 to 2 kg/batch released to air with 0.01 kg/batch to water. Disposal by navigable waterway.

P86–501

Manufacturer. Shell Oil Company.

Chemical. (G) Aromatic diamine.

Use/Production. (G) Chemical intermediate epoxy resin curing agent. Prod. range: 4,500–13,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. 1.0 to 2.0 kg/batch released to air.

P86–502

Manufacturer. Shell Oil Company.

Chemical. (G) Tetraglycidylamine.

Use/Production. (S) Site-limited epoxy resin varnish for production of carbon fiber reinforced prepregs for aerospace industry. Prod. range: 2,300–7,000 kg/yr.

Toxicity Data. Non data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. 1 to 2 kg/batch released to air with 0.01 kg/batch to water. Disposal by navigable waterway.

P86–503

Manufacturer. Shell Oil Company.

Chemical. (G) Aromatic diamine.

Use/Production. (G) Chemical intermediate expoxy curing agent. Prod. range: 4,500–23,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. 1.0 to 2.0 kg/batch released to air.

P86–504

Importer. Confidential.

Chemical. (G) Alkaline metal salt of mercapto substituted heterocycle.

Use/Production. (G) Oil well fluid additive. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P86–505

Manufacturer. Mallinckrodt, Inc.

Chemical. (S) Propane,2,2-bis[p(p-nitrophenoxy)phenyl].

Use/Production. (G) Destructive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P86–506

Manufocturer. Confidential.

Chemical. (G) Halogenated aromatic ether.

Use/Production. (S) Flame retardant for thermoplastics (molded products), textile back coatings, and reinforced polyester resins. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Mild, Eye—Mild; Ames test: Non-mutagenic; Inhalation: 1.77 mg/l.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P86–507

Manufacturer. Wickhen Products, Inc.

Chemical. (G) Acrylate terpolymer.

Use/Production. (G) Carrier for disinfectants and fungicides. Prod. range: 2,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 4 hrs/yr.

Environmental Release/Disposal. No release.

P86–508

Importer. Ciba-Geigy Corporation.

Chemical. (G) Azo triazinyl benzothiazolesulfonic acid.

Use/Import. (G) Textile dye. Import range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative; Skin sensitization: Non-sensitizer; LC_{50} 96 hr (Zebra fish): >1,000 mg/l; COD: 100.1 mg/g O_2; BOD: 0 mg/g O_2; IC_{50}: −>1,000 mg/l; Biodegradability: Not biodegradable

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Exposure. Processing: dermal, a total of 2 workers, up to 0.5 hr/da.
Environmental Release/Disposal. 0.3 kg/batch released to water. Disposal by POTW.

P 86-509

Manufacturer. Hach Company.
Chemical. (S) Furoic acid, barium salt.
Use/Production. (S) Industrial and commercial reagent for sulfate in water. Prod. range: 400-799 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 15 workers, up to 4 hrs/da, up to 16 da/yr.
Environmental Release/Disposal. Less than 1 kg/batch released to water. Disposal by POTW and treatment facility.

P 86-510

Manufacturer. Owens Corning Fiberglass Corporation.
Chemical. (G) Amine modified polyester polyol.
Use/Production. (S) Industrial molding resin. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 2-5 workers.
Environmental Release/Disposal. Release to air. Disposal by incineration.

P 86-511

Manufacturer. Mazer Chemicals, Inc.
Chemical. (G) Modified glycol polymer.
Use/Production. (G) Manufacturing intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-512

Manufacturer. Confidential.
Chemical. (G) Aromatic polyether.
Use/Production. (S) Commercial protective coatings. Prod. range: 9,090-18,180 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 1 hr/da, up to 20 da/yr.
Environmental Release/Disposal. Less than 10 lb/batch released to land. Disposal by landfill.

P 86-513

Importer. Confidential.
Chemical. (G) Substituted nitrogen heterocycle.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-514

Manufacturer. Confidential.
Chemical. (G) Acrylic resin solution.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-515

Manufacturer. Confidential.
Chemical. (G) Acrylic resin solution.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-516

Exporter. Charkit Chemical Corporation.
Chemical. (S) Benzenediazonium, 2-methoxy-4-(phenylamino), sulfate (1:1).
Use/Import. (S) Industrial condensation polymer, graphic art plate coatings. Import range: 300-1,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-517

Manufacturer. Lithium Corporation of America.
Chemical. (S) Magnesium 2-methyl-1-pentoxide.
Use/Production. (S) industrial magnesium precursor for poly olefin catalysts, reagent for synthesis; drying agent for alcohols, catalyst for transesterfication condensation, cross-linking agent, manufacture of performance chemicals, e.g., lubricant, additive and grease. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 0.1 kg/batch released to floor. Disposal by navigable waterway.

P 86-518

Manufacturer. Lithium Corporation of America.
Chemical. (S) Sodium *n*-butyl-, *sec.*-butyl-, 2-ethylhexylmagneslate.
Use/Production. (S) Industrial polymerization initiator, general organic synthesis reagent metallation, used to manufacture performance chemicals, such as greases, cosmetics and lubricants. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 0.1 kg/batch released by floor. Disposal by navigable waterway.

P 86-519

Manufacturer. Confidential.
Chemical. (G) Polycondensate of aromatic carboxylic acid and two kinds of alcohols.
Use/Production. (G) Additives for printing material. Prod. range: Confidential.
Toxicity Data. Ames test: Non-mutagenic; PEX test: Not a bioaccumulative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-520

Importer. Western Lithotech.
Chemical. (G) Substituted naphthothiazoline.
Use/Import. (G) Additive for printing material. Import range: Confidential.
Toxicity Data. Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by incineration.

P 86-521

Manufacturer. The Dow Chemical Company.
Chemical. (G) Brominated aromatic hydrocarbon.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by navigable waterway.

P 86-522

Manufacturer. Confidential.
Chemical. (G) Fatty alkyl dithiocarbamate.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-523

Manufacturer. Confidential.
Chemical. (G) Amine salt of sulfonated heterocyclic compound.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-524

Importer. Marubeni America Corporation.
Chemical. (G) Copolymer of vinyl compounds.
Use/Import. (S) Paint additive (solvent base paint antifoam agent). Import range: 100,000-200,00 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-525

Importer. Wacker-Chemie Gmbh.
Chemical. (G) Vinyl resin of vinyl chloride-acrylic acid ester copolymer with OH functional sites.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-526

Manufacturer. Rohm and Haas Company.
Chemical. (G) Acrylic copolymer.
Use/Production. (S) Binder coating for high performance industrial adhesive tapes additives for a open, non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant; Eye—Irritant.
Exposure. Manufacture: dermal, a total of 16 workers.
Environmental Release/Disposal. Release to land. Disposal by approved landfill.

P 86-527

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Intermediate for use in a dry cement modifier. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.
Exposure. Manufacture: dermal, a total of 20 workers.
Environmental Release/Disposal. Release to air Disposal by permit requirement.

P 86-528

Manufacturer. Rohm and Haas Company.
Chemical. (G) Modified acrylic polymer.
Use/Production. (G) Intermediate for use in a dry cement modifier. Prod. range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.
Exposure. Manufacture: dermal, a total of 20 workers.
Environmental Release/Disposal. Release to air. Disposal by permit requirement.

P 86-529

Manufacturer. Rohm and Haas Company.
Chemical. (G) Aqueous acrylic polymer.
Use/Production. (G) Intermediate for use in a dry cement modifier. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 14 workers.
Environmental Release/Disposal. Release to land.

P 86-530

Manufacturer. Condidential.
Chemical. (S) Substituted acetic acid, mixed sodium and potassium salts.
Use/Production. (G) Open, non-dispersive uses, smaller quantities will be used for open dispersive uses. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 18 workers.
Environmental Release/Disposal. 15 to 30 kg/batch released to water. Disposal by POTW and navigable waterway.

P 86-531

Manufacturer. Confidential.
Chemical. (S) Substituted acetic acid, potassium salt.
Use/Production. (G) Open, non-dispersive uses, smaller quantities will be used for open dispersive uses. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 18 workers.
Environmental Release/Disposal. 15 to 30 kg/batch released to water. Disposal by POTW and navigable waterway.

P 86-532

Manufacturer. Confidential.
Chemical. (G) Substituted acetic acid, sodium salt.
Use/Production. (G) Open, non-dispersive and dispersive uses. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 18 workers.
Environmental Release/Disposal. 15 to 30 kg/batch released to water. Disposal by POTW and navigable waterway.

P 86-533

Manufacturer. Confidential.
Chemical. (G) Substituted acetic acid.
Use/Production. (G) Open, non-dispersive and dispersive uses. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 18 workers.
Environmental Release/Disposal. 15 to 12,950 kg/batch released to water. Disposal by POTW and navigable waterway.

P 86-534

Importer. Confidential.
Chemical. (G) Substituted bis 1,3,2-dioxaphosphorinane, 2,2' dioxide.
Use/Production. (S) Industrial and flame retardant for polyacrylates. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Ames test: Negative.
Exposure. Manufacture, processing and use: 2 to 4 persons/shift, 2 to 3 hrs/shift.
Environmental Release/Disposal. Little leaching released. Disposal by landfill.

P 86-535

Importer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Industrial and commercial surface coating for wood. Import range: 5,400-10,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing and use: a total of 50 to 100 workers.
Environmental Release/Disposal. None anticipated.

P 86-536

Manufacturer. Confidential.
Chemical. (S) Substituted phenylpyrazolone.
Use/Production. (G) Chemical intermediate. Prod. range: 250 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 9 workers, up to 0.5 hr/da, up to 3 da/yr.
Environmental Release/Disposal. No release. Less than 1 kg/batch incinerated.

P 86-537

Manufacturer. Confidential.
Chemical. (S) Substituted phenylphyrazolone.
Use-Production. (G) Contained use. Prod. range: 250 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 12 workers, up to 0.7 hr/da, up to 6 da/yr.

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Environmental Release/Disposal. No release. Disposal by biological treatment system and less than 1 to 2 kg/batch incinerated.

P 86-538

Manufacturer. Confidential.
Chemcial. (S) Substituted phenylacetamide.
Use/Production. (G) Chemical intermediate. Prod. range: 100 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 7 workers, up to 0.6 hr/da, up to 3 da/yr.
Environmental Release/Disposal. No release. Less than 1 kg/batch incinerated.

P 86-539

Manufacturer. Confidential.
Chemical. (S) Substituted phenylacetamide.
Use/Production. (G) Chemical intermediate. Prod. range: 150 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 5 workers, up to 0.7 hr/da, up to 3 da/yr.
Environmental Release/Disposal. No release. Less than 1 kg/batch incinerated.

P 86-540

Manufacturer. Ethyl Corporation.
Chemical. (G) Mixture of metallic aromatic amides.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. Confidential.

Dated: February 14, 1986.

Denise Devoe,
Acting Director, Information Management Division.

[FR Doc. 86-3826 Filed 2-20-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-59753; FRL-2972-9]

Premanufacture Notices Receipts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provides a summary of each.

DATES: Close of Review Period: Y 86-73, February 27, 1986; Y 86-74, 86-75, and 86-76, March 2, 1986; Y 86-77, 86-78 and 86-79, March 3, 1986; Y 86-80, and 86-81, March 4, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-73

Importer. Nuodex Inc.
Chemical. (S) Dodecanedioic acid, polymer with azacyclo-tridecan-2-one and alpha-hydro-omega-hydroxypoly(oxy-1.4-butanediyl).
Use/Import. (S) Industrial tubings, mechancial parts, e.g. cock wheels. Import range: 10,000-35,000 kg/yr.
Toxicity Data. Acute oral: 10,000 mg/kg; Irritation: Skin—Non-Irritant, Eye—Non-Irritant; Ames test: Non-mutagenic.
Exposure. No exposure.
Environmental Release/Disposal. No release.

Y 86-74

Importer. Confidential.
Chemical. (G) Styrenated acrylic modified polyester.
Use/Import. (G) Component in automotive body paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-75

Importer. Confidential.
Chemical. (G) Thermosetting alkyd resin.
Use/Import. (G) Component in automotive body paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-76

Importer. Confidential.
Chemical. (G) Alkyd resin.
Use/Import. (G) Component in automotive body paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-77

Importer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Import. (G) Component in automotive body paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-78

Manufacturer. The Dow Chemical Company.
Chemical. (G) Crosslinked acrylate copolymer.
Use/Production. (G) Intermediate in polymer manufacturing. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by incineration, navigable waterway after treatment and on-site waste water treatment plant.

Y 86-79

Manufacture. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86-80

Manufacture. Confidential.
Chemical. (G) Oil modified alkyd resin.
Use/Production. (S) Commercial protective coating. Prod. range: 550,000-1,100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 42 da/yr.

Environmental Release/Disposal. 2 to 5 kg released to land. Disposal by landfill and sawdust.

Y 86-81

Manufacture. Confidential.
Chemical. (G) Short oil coconut alkyd resin.
Use/Manufacturer. (G) Polymeric binder for lacquers and baking enamel. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: February 14, 1986.

Denise Devoe,
Acting Director, Information Management Division.

[FR Doc. 86-3825 Filed 2-20-86; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-40013; FRL-2968-9]

Interagency Testing Committee; Placement of Isopropanol in the Intent-to-Designate Category

Correction

In FR Doc. 86-3047 appearing on page 5250 in the issue of Wednesday, February 12, 1986, the document number should have appeared as it does in the heading.

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act [44 U.S.C. Chapter 35).

Type: Extension of 3067-0039
Title: Recertification Questionnaire and Recommendation
Abstract: This form is used to document information obtained from Occupants of temporary housing relative to their need for continued assistance. The form also documents the Housing Official's recommendation concerning each family's recertification or termination of assistance.
Type of Respondents: Individuals or households
Number of Respondents: 2,125
Burden Hours: 708.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 12, 1986.

Walter A. Girstantas,
Director, Administrative Support.

[FR Doc. 86-3749 Filed 2-20-86; 8:45 am]
BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-465]

First Federal Savings Bank of Georgia, Winder, GA; Final Action Approval of Conversion Application

Dated: February 14, 1986.

Notice is hereby given that on February 7, 1986, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings Bank of Georgia, Winder, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,
Acting Secretary.

[FR Doc. 86-3812 Filed 2-20-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-466]

Home Federal Savings & Loan Association of Ada, Ada, OK; Final Action Approval of Conversion Application

Dated: February 14, 1986.

Notice is hereby given that on February 7, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association of Ada, Ada, Oklahoma for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Topeka, Post Office Box 176, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,
Acting Secretary.

[FR Doc. 86-3813 Filed 2-20-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-467]

Lake Sunapee Savings Bank, fsb Newport, NH; Final Action Approval of Conversion Application

Dated: February 14, 1986.

Notice is hereby given that on February 7, 1986, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Lake Sunapee Savings Bank, fsb, Newport, New Hampshire, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Boston, Post Office Box 9106, Boston, Massachusetts.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,
Acting Secretary.

[FR Doc. 86-3814 Filed 2-20-86; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-468]

Newnan Federal Savings and Loan Association, Newnan, GA; Final Action Approval of Conversion Application

Dated: February 14, 1986.

Notice is hereby given that on February 6, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Newnan Federal Savings and Loan Association, Newnan, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta,

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P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 86-3815 Filed 2-20-86; 8:45 am]
BILLING CODE 6720-01-M

[No. 86-90]

Privacy Act of 1974; New System of Records

Dated: February 3, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of proposed new system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Federal Home Loan Bank Board ("Board") is notifying the public of its proposal to establish a new system of records in order to collect information on known or suspected criminal violations and enforcement actions taken against persons in connection with the operation of financial institutions, their holding companies or service corporations, as well as change-of-control applications filed by, and other significant business transactions with, individuals concerning institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC").

DATE: Comments must be received by March 24, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 377-6434 or Rosemary Stewart, Director, (202) 377-6437, Office of Enforcement, at the above address.

Authority: 5 U.S.C. 552a.

FHLBB-29

SYSTEM NAME:

Confidential Individual Information System.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records may contain information concerning individuals who have filed notices of intention to acquire control of an insured institution, controlling persons of companies that have filed applications to acquire control of an insured institution, organizers of institutions seeking FSLIC insurance of accounts or federal charters, individuals who have been the subject of administrative enforcement actions or other civil actions by any agency with authority to supervise or regulate federally insured financial institutions, those who have been named in criminal referrals by such agencies or by federally insured institutions or have been referred to professional societies, licensing authorities or ethics committees for disciplinary purposes, individuals identified as the subjects of criminal investigations by the Department of Justice or state law enforcement authorities in connection with the operation of federally insured financial institutions, and persons engaging in significant business transactions with FSLIC-insured institutions. This system also contains the identity of the custodian of any documents describing the specific event causing entry into the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records identify the individual involved and his relationship to the institution, service corporation or holding company; the event causing entry of information into the system (e.g., a change-of-control filing, an enforcement action, a criminal referral naming an individual or a referral of information to a professional group for disciplinary action, or receipt of information concerning a criminal or civil violation involving an insured institution); any regulatory or judicial action taken as a result; and the location and nature of any additional records concerning the specific event.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1464 and 1730.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) To provide the Board's Office of Examinations and Supervision ("OES") and Office of Enforcement ("Enforcement") and the Federal Home Loan Banks with information concerning the current status of suspected criminal violations in connection with institutions the accounts of which are insured by the FSLIC, their holding companies, and service corporations, which have been referred to the Department of Justice or other law enforcement agencies for possible investigation and prosecution.

(b) To provide information to government agencies that supervise or regulate any of the operations of financial institutions concerning whether persons connected with these institutions have been the subject of administrative or civil enforcement actions.

(c) To provide information concerning a violation or potential violation of civil or criminal law, rule, order or regulation to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or implementing the statute, rule regulation, or order.

(d) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(e) To respond to requests from the Congress.

(f) To provide information to the Office of General Counsel ("OGC"), OES and the Federal Home Loan Banks concerning groups or individuals applying for permission to organize a Federal association and/or making *de novo* applications for FSLIC insurance and the officers and directors of those proposed institutions, and concerning officers and directors of existing financial institutions applying for FSLIC insurance for use in considering those applications.

(g) To provide information to OGC, OES, Enforcement, and the Federal Home Loan Banks concerning persons who have filed notices of intention to acquire control of insured institutions and controlling persons of companies filing applications to acquire control of insured institutions to determine if any agency action is required.

(h) To provide information (1) to OES, Enforcement and the Federal Home Loan Banks examining and supervisory staffs with regard to persons transacting business with or for savings institutions in connection with the Board's examination and supervision of insured institutions, service corporations and savings and loan holding companies, and (2) to persons designated by the Board as representatives of the Corporation to conduct investigations of insured institutions, their service corporations, or their holding companies.

(i) To provide information to receivers or conservators of insured institutions or formerly insured institutions for use in determining the background and reliability of persons with whom they are considering entering into transactions or with whom the institution previously has entered into transactions.

(j) To OGC, Enforcement and persons representing the Board in legal matters, and to other persons having access to legal papers connected with such matters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained on fixed disks.

RETRIEVABILITY:

Records are retrievable by name of individual or by the individual's relationship to the insured institution involved.

SAFEGUARDS:

Access to the system will be available only to Board employees and agents who have been issued the system passwords, which will be revealed only to those persons who have need for information from the system in the performance of their duties.

RETENTION AND DISPOSAL:

Records will be retained for up to 25 years after the date of entry. Records will then be sent to the Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Database Administrator, Office of Examinations and Supervision, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552

NOTIFICATION PROCEDURES:

This system will be exempt from notification and record-access requirements and requirements that an individual be permitted to contest its content under 5 U.S.C. 552a(k)(2) because it contains investigatory material compiled for law enforcement purposes.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

See Notification procedures.

RECORD SOURCE CATEGORIES:

This system will be exempt under 5 U.S.C. 552a(k)(2) from the requirement that the sources of records used in the system be published, because it contains investigatory material compiled for law enforcement purposes.

By the Federal Home Loan Bank Board.
Nadine Y. Penn,
Acting Secretary.
[FR Doc. 86-3816 Filed 2-20-86; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 225-010887.

Title: General Agency Agreement between Hanjin Container Lines, Ltd. and Sea-Land Service, Inc.

Parties: Hanjin Container Lines, Ltd. (Hanjin) and Sea-Land Service, Inc. (Sea-Land).

Synopsis: The proposed agreement would permit Sea-Land to act on behalf of Hanjin as its general agent at the Port of Elizabeth, New Jersey for the carriage of cargo between ports and points in the Far East, and the United States. The parties have requested a shortened review period.

Dated: February 18, 1986.

By Order of the Federal Maritime Commission.
John Robert Ewers,
Secretary.
[FR Doc. 86-3845 Filed 2-20-86; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

February 14, 1986.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below: Federal Reserve Board Clearance Officer, Martha Bethea, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension with revisions of the following report:

1. Report title: Survey of Terms of Bank Lending (STBL)
Agency form number: FR 2028A, 2028A-S, 2028B
OMB Docket number: 7100-0061
Frequency: Quarterly
Reporters: Commercial banks

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Small businesses are affected.

General description of report: This information collection is voluntary 12 U.S.C. 248(a)(2) and is given confidential treatment 5 U.S.C. 552(b)(4).

The STBL collects information on interest rates, including the prime rate, and selected nonprice terms of lending on individual loans to businesses and farmers from a sample of insured commercial banks.

Board of Governors of the Federal Reserve System, February 14, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-3738 Filed 2-20-86; 8:45 am]

BILLING CODE 6210-01-M

LBT Corp.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1986.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *LBT Corporation*, Shreveport, Louisiana; to engage *de novo* through its subsidiary, LBT Brokerage Services, Inc., Shreveport, Louisiana, in providing discount securities brokerage activities.

Board of Governors of the Federal Reserve System, February 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3739 Filed 2-20-86; 8:45 am]

BILLING CODE 6210-01-M

Teambanc, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under section 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Rgulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding ocmpanies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Teambanc, Inc.*, employee stock ownership plan and its subsidiary, Teambanc, Inc., both of Paola, Kansas; to become a bank holding company by merging with Miami Agency, Inc., Paola, Kansas, and thereby indirectly acquiring Miami County National Bank, Paola, Kansas.

Applicant also proposes to engage in general insurance agency activities currently being conducted by Miami Agency, Inc., in a town of less than 5,000 persons pursuant to section 4(c)(8)(C)(I) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, February 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3740 Filed 2-20-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 14, 1986.

Health Care Financing Administration

Subject: Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report—NEW
Respondents: State or Local Governments; Non-profit Institutions; Small Business or Organizations

Subject: Hospice Home Visits—Section 3901.5 of the Intermediary Manual—NEW
Respondents: Individuals or Households
Subject: Medicaid Program Characteristics Questionaire—Existing Collection
Respondents: State or Local Governments
Subject: Information Collection Requirements in Subpart A 42 CFR 481.9 and 481.10 Conditions of Participation for Rural Health Clinics-HCFA-R-38—Extension—(0938-0334)
Respondents: Business or other for-profit institutions; Small Businesses or Organizations
Subject: Regulation BERC-273F (Sec. 405.334 (b) and (c), and 405.338 (b), (c), (d)) Procedures for Determining whether Providers, Practitioners, or Other Suppliers of Services are Liable for Certain Noncovered Services—NEW
Respondents: Business or other for-profit institutions
Subject: Rural Health Clinics-Request for Medical Information HCFA-Pub. 13.3 Intermediary Manual Sec. 3640.14—Extension—(0938-0209)
Respondents: Small Businesses or Organizations

OMB Desk Officer: Fay S. Iudicello

Public Health Services

Food and Drug Administration

Subject: International Drug Scheduling—NEW
Respondents: Individuals or Households; State or Local Governments; Business or other for-profit institutions; Federal Agencies or Employees; Small Businesses or Organizations

National Institutes of Health

Subject: Coronary Primary Prevention Trial: Physician Practices Post-Trial Results—NEW
Respondents: Business or other for-profit institutions

Office of Assistant Secretary for Health

Subject: 1987 National Medical Expenditure Survey (Pretest for Household Survey, Survey of American Indians and Alaska Natives, Institutional Population Components; screening interview for National Household Survey)—Revision—(0937-0153)
Respondents: Individuals or Households

Centers for Disease Control

Subject: Dioxion Morbidity and Reproductive Study of U.S. Chemical Workers—NEW
Respondents: Individuals or Households

OMB Desk Officer: Bruce Artim

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Date: February 18, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-3759 Filed 2-20-86; 8:45 am]

BILLING CODE 4150-04-M

Statement of Organization, Functions, and Delegation of Authority; Office of the General Counsel

Part A of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services covers the Office of the Secretary. Chapter AG of Part A, which was published at 38 FR 17032 on June 28, 1973 and most recently amended at 47 FR 25775 on June 15, 1982, is amended to reflect organizational changes in the Office of the General Counsel which were approved January 3, 1986, by the Secretary. The changes (1) abolish the positions of three Deputy General Counsels and two Associate General Counsels, (2) establish the positions of (a) Principal Deputy General Counsel, (b) Deputy General Counsel, and (c) Deputy General Counsel—Legal Counsel, a new position, and (3) redesignate each Assistant General Counsel as Associate General Counsel/Chief Counsel (program).

The following changes to Chapter AG reflect these organizational changes:

Section AG.12 *The General Counsel.*

Amend Subsections B and C to read:

B. In the event of the General Counsel's absence or disability or during a vacancy in the office of General Counsel, the Principal Deputy General Counsel shall act in his place. In the event of a vacancy in the offices of General Counsel and Principal Deputy General Counsel, the Secretary shall designate an Acting General Counsel.

C. Each division is under the general supervision of the General Counsel, the Principal Deputy General Counsel and, to the extent applicable, the Deputy General Counsel. Each division is under the immediate supervision of an Associate General Counsel/Chief Counsel (program).

Section AG.14 *Immediate Office of the General Counsel.*

Amend to read:

A. The Immediate Office of the General Counsel consists of: 1. The General Counsel; 2. Principal Deputy General Counsel; 3. Deputy General Counsel; 4. Deputy General Counsel—Legal Counsel; 5. Executive Assistant to the General Counsel.

Section AG.18 *Divisions in the Office of the General Counsel.*

Add: Inspector General Division.

Section AG.21 *Immediate Office of the General Counsel.*

Amend to read:

A. The General Counsel:

1. Is responsible to and serves as Special Advisor to the Secretary on legal matters in connection with the administration of the Department.

2. Exercises general direction and supervision over all legal activities carried on by the Department.

B. The Principal Deputy General Counsel assists the General Counsel in developing formal and informal advice issued by the Office of the General Counsel and supervises the Associate General Counsels/Chief Counsels (program) in the issuance of legal advice. In the absence or disability of the General Counsel or during a vacancy in the office of General Counsel the Principal Deputy General Counsel shall serve as the Acting General Counsel.

C. The Deputy General Counsel assists the General Counsel by coordinating efforts by the Offices of the Regional Attorney, carrying out office-wide management responsibilities, and performing such other duties as the General Counsel prescribes.

D. The Deputy General Counsel—Legal Counsel assists the General Counsel in providing formal and informal legal advice and opinions to the Secretary, the Under Secretary, and the Assistant Secretaries relating to major new policy directions, innovative programs not clearly delineated by statutory authority, and Departmental programs and initiatives involving more than a single operating component of the Department.

E. The Executive Assistant performs such administrative tasks in accordance with established procedures as are necessary to maintain routine operation of the Office of the General Counsel.

Section AG.22 *Divisions in the Office of the General Counsel.*

Amend Section AG.22A to read:

A. The Divisions in the Office of the General Counsel, under the direction of

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an Associate General Counsel/Chief Counsel (program) have the following responsibilities:

* * * * *

Section AG.30 *Department Claims Officer*, AG.35 *Department Patent Officer*, AG.40 *Delegation by Secretary of Authority*, AG.41 *Redelegation by the General Counsel* and AG.42 *Redelegations by the Assistant General Counsel, Business and Administrative Law Division.*

Amend each reference to the Assistant General Counsel, Business and Administrative Law Division to read Associate General Counsel, Business and Administrative Law Division.

This action is effective January 22, 1986.

Dated: February 10, 1986.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 86-3848 Filed 2-20-86; 8:45 am]

BILLING CODE 4110-12-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's Boards of Scientific Counselors. These committees will be open for a report on administrative developments. The remainder of the sessions will be devoted to a review and evaluation of intramural projects and performance of individual staff scientists and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. section 210(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: March 20-22: 9:00 a.m.

Place: National Institutes of Health, Building 36, Conference Room 1B-07 Bethesda, Maryland 20892.

Status of Meeting:

Open—March 20: 9:00-9:15 a.m.

Closed—Otherwise.

Contact: Dr. Frederick K. Goodwin, National Institute of Mental Health, National Institutes of Health, Room 4N-224, Bethesda, Maryland 20892, (301) 496-3501.

Purpose: The Board provides expert service to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaulation of productivity and performance of staff scientists.

Committee Name: Board of Scientific Counselors, NIAAA.

Date and Time: March 24-25: 9:00 a.m.

Place: Flow Building, Room 51, 12501 Washington Avenue Rockville, Maryland 20852.

Status of Meeting:

Open—March 24: 9:00-9:30 a.m.

Closed—Otherwise.

Contact: Dr. Boris Tabakoff, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Building 10, Room 3C-103, Bethesda, Maryland 20892, (301) 496-8996.

Purpose: The Board provides expert advice to the Director, DICBR, NIAAA, and through him to the Director, NIAAA on the alcohol intramural research program. This advice is derived from periodic visits to the laboratories for assessment of the research in progress and evaulation of productivity and performance of staff scientists.

Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375. NIMH: Ms. Helen Garrett, Committee Management Officer, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: February 14, 1985.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-3736 Filed 2-20-86; 8:45 am]

BILLING CODE 4160-20-M

Advisory Committee Meetings

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 section 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Epidemiologic Research Subcommittee of the Epidemiologic and Services Research Review Committee.

Date and Time: March 3-5: 8:30 a.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.

Status of Meeting:

Open—March 3: 8:30-9:30 a.m.

Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C06, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Committee is charge with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Research Subcommittee of the Epidemiologic and Services Research Review Committee.

Date and Time: March 5-7: 1:30 p.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209

Status of Meeting:

Open—March 5: 1:30-2:30 p.m.

Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C06, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and personality Research Review Committee.

Date and Time: March 7-9: 9:00 a.m.

Place: The Henley Park Hotel, 926 Massachusetts Avenue, NW., Washington, DC 2001.

Status of Meeting:

Open—March 7: 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Doris East, Room 9C26, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Mental Health Council

Date and Time: March 10-12: 9:00 a.m.

Place: March 10: National Institutues of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20205; March 11-12: Parklawn Building, Conference Room E, 5600 Fishers Lane, Rockvill, Maryland 20857.

Status of Meeting:

Open—March 10: 9:00 a.m.—5:00 p.m.

Closed—Otherwise.

Contact: Rachel Driver, Room 9-105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Summaries of the meetings and rosters of committee members may be obtained from Ms. Helen Garrett, Committee Management Officer, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: February 14, 1985.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-3737 Filed 2-20-86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 86F-0060]

American Feed Industry Association; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the American Feed Industry Association (AFIA) has filed a petition proposing that the food additive regulations be amended by revising the regulation providing for the safe use of selenium when added to animal feeds as a nutritional supplement.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2201) has been filed by the American Feed Industry Association, 1701 North Fort Myer Dr., Arlington, VA 22209. The petition proposes that 21 CFR 573.920 *Selenium* be amended to provide for the safe use of up to 0.3 part per million selenium in animal feeds as a nutritional supplement when used in accordance with current good manufacturing and feeding practice.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: February 12, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86-3735 Filed 2-20-86; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following District consumer exchange meeting: Baltimore District Office, chaired by Richard A. Baldwin, Director, Science Branch. The topic to be discussed is Home Use of In-Vitro Diagnostic Kits.

DATE: Thursday, February 27, 10 a.m. to 12 p.m.

ADDRESS: Maryland State Highway Auditorium Building, 300 West Preston Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Mildred A. Voss, Public Affairs Specialist, Food and Drug Administration, 900 Madison Avenue, Baltimore, MD 21202, 301-962-3731.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: February 14, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-3734 Filed 2-20-86; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Oncologic Drugs Advisory Committee

Date, time, and place. March 14, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, March 14, 8:30 a.m. to 3:15 p.m.; open public hearing, 3:15 p.m. to 4:15 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer patients.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Novantrone (mitoxantrone) in advanced breast cancer; (2) Daunorubicin (cerubidine) in adult lymphocytic leukemia; (3) Investigational drug use in patients entering a second institution; and (4) Problems in achieving long-term

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followup in cancer studies when investigators move.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverge of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to cetain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested peson who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 14, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–3819 Filed 2–20–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N–42565]

Airport Lease Application; Nevada

February 14, 1986.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), the City of Mesquite has applied for an airport lease for the following land:

Mount Diablo Meridian

T. 13 S., R. 70 E.,
Sec. 15, all,
Sec. 16, E½,
Sec. 21, E½,
Sec. 22, W½,
Sec. 27, NW¼,
Sec. 28, NE¼.

The area described is located in Clark County, Nevada. The application was filed on August 21, 1985, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

Ben F. Collins,

District Manager.

[FR Doc. 86–3728 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–HC–M

[N–43266]

Airport Lease Application; Nevada

February 14, 1986.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), the City of Mesquite has applied for an airport lease for the following land:

Mount Diablo Meridian

T. 13 S., R. 71 E.,
Sec. 3, all,
Sec. 4, E½,
Sec. 9, NE¼,
Sec. 10, N½.

The area described is located in Clark County, Nevada. The application was filed on August 21, 1985, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

Ben F. Collins,

District Manager.

[FR Doc. 86–3729 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–HC–M

Availability of Environmental Impact Statements; Great Salt Lake, UT; Extension of Comment Period

SUMMARY: The public comment period for the West Desert Pumping Project Draft Environmental Impact Statement, published January 16, 1986 (51 FR 2439), has been extended through April 22, 1986.

John Stephenson,

Acting District Manager.

[FR Doc. 86–3733 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–84–M

Management Framework Plans; Idaho, Cascade Resource Area, Plan Amendment and Planning Analysis for Bureau Motion Land Sales

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice of Intent to Initiate a Plan Amendment for the Black Canyon Management Framework Plan (MFP) and a Planning Analysis for Lands Outside a Land Use Plan to Consider Bureau Motion Land Sales of Specific Tracts Prior to Completing the Cascade Resource Management Plan.

Description of proposed action: The Bureau of Land Management, Boise District, Cascade Resource Area, Idaho, is considering for sale, nine (9) tracts of land. Eight (8) tracts have been occupied through unintentional trespass and one (1) unoccupied tract is needed by a local county for a sanitary landfill site expansion. These disposals are to be

initiated prior to completing the Cascade Resource Management Plan. The eight (8) occupied tracts (approximately three acres) are currently being farmed or are encumbered by structures. The one unoccupied tract (80 acres) is located adjacent to an active landfill. The nine land tracts contain approximately 83 acres.

Geographic Area: All nine tracts are located in the south half of the Cascade Resource Area. Three of the occupied tracts are within the area covered by the Black Canyon MFP in Gem County. Five occupied tracts are in Boise County and the one unoccupied tract is located in Ada County.

Public Participation: A Plan Amendment/Planning Analysis, Land Report, and Notice of Action/Notice of Realty Action will be prepared to: Identify the specific sale tracts, analyze the sales and environmental consequences, and provide details of the sale offerings including special patent reservations.

The proposed Plan Amendment/Planning Analysis will be subject to a consistency review with State and Local plans by the Governor for a period of 60 days. Following the Governor's review and with State Director approval of the Plan Amendment/Planning Analysis, the District Manager will publish a Notice of Action/Notice of Realty Action (NORA) in the **Federal Register**. Such notice will initiate a 45-day protest period on the NORA. Protests would be directed to the Idaho State Director. A concurrent 30-day protest period on the planning decision would also be initiated and would be directed to the National Director.

FOR FURTHER INFORMATION CONTACT: Richard Geier, Cascade Area Manager, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. Telephone: (208) 334–1582 (commercial) and 554–1582 (FTS).

Dated: February 12, 1986.

J. David Brunner,

Associate District Manager.

[FR Doc. 86–3732 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–GG–M

Motor Vehicles; Off-Road Vehicle Designations, King Range National Conservation Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off-Road Vehicle Interim Designations.

SUMMARY: Pursuant to Executive Orders 11644 and 11989, and 43 CFR Part 8340, the lands within the King Range National Conservation Area under administration of the Bureau of Land Management are designated as open, limited or closed to motorized vehicle use. These designations will remain in effect until a comprehensive review is made during preparation of a resource management plan for the King Range Area. An appeal may be filed within 30 days from the date of this notice with the Ukiah District Office (43 CFR 4.411).

DATE: These designations are effective on February 21, 1986.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Arcata Resource Area Manager, 1125 16th Street, P.O. Box II, Arcata, CA 95521 (Telephone: (707) 822–7648 or District Manager, Ukiah District Office, 555 Leslie Street, P.O. Box 940, Ukiah, CA 95482 (Telephone: (707) 462–3873).

SUPPLEMENTARY INFORMATION: All public lands within the King Range National Conservation Area are designated "CLOSED" to vehicle use with the following exceptions:

The following areas and roads are designated "OPEN":

1. Approximately 50 acres within the zone lying between the ordinary tide levels (foreshore) from Telegraph Creek to Gitchell Creek.

2. Nooning Creek Access Road from its intersection with Shelter Cove Road to the slide in Section 31, T. 4 S., R. 2 E., HM.

3. Paradise Ridge Access Road from its intersection with Shelter Cove Road to where the road crosses the northwest corner of Section 1, T. 5 S., R. 1 E., HM.

4. Saddle Mountain Road from its intersection with Horse Mountain Road to its intersection with Horse Pasture Ridge Road.

5. King Range Road.

6. Prosper Ridge Road from its intersection with Lighthouse Road to the private property boundary in Section 30, T. 2 S., R. 2 W., HM.

7. Kaluna Cliff Road to the private property boundary.

The following roads are designated "LIMITED", with specified seasonal restrictions; vehicle limitations are advisory:

1. Nooning Creek Access Road from the slide in Section 31, T. 4 S., R. 2 E., HM. to its terminus is advised for 4WD's, motorcycles and ATV's only.

2. Paradise Ridge Access Road from where the road crosses the northwest corner of Section 1, T. 5 S., R. 1 E., HM. to its terminus in Section 15, T. 4 S., R. 1 E., HM. is advised for 4WD's, motorcycles and ATV's only.

3. Windy Point Road from its intersection with Prosper Ridge Road to the private property boundary near Four Mile Creek is advised for 4WD's, motorcycles and ATV's only, from April 1 to October 31; closed from November 1 to March 31.

4. Johnny Jack Road to the bluff is advised for 4WD's, motorcycles and ATV's only, from April to October 31; closed from November 1 to March 31.

5. Horse Pasture Ridge Road is advised for 4WD's, motorcycles, and ATV's only.

6. Telegraph Ridge Road is advised for 4WD's, motorcycles and ATV's only, from April 1 to October 31; closed from November to March 31.

7a. Smith-Etter Road from its intersection with Wilder Ridge Road to Telegraph Ridge Road is open from April 1 to October 31; closed from November 1 to March 31.

7b. Smith-Etter Road from its intersection with Telegraph Ridge Road to the last switchback approximately one quarter mile from the beach is advised for 4WD's, motorcycles and ATV's only, from April 1 to October 31; closed from November 1 to March 31.

8. Cooskie Creek Road from its intersection with Telegraph Ridge Road to Johnny Jack Ridge Road is advised for 4WD's, motorcycles and ATV's only, from April 1 to October 31; closed from November 1 to March 31.

9. Finley Ridge Road is advised for 4WD's, motorcycles and ATV's only.

Dated: February 14, 1986.

Van W. Manning,

District Manager.

[FR Doc. 86–3731 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–84–M

Oil and Gas Leasing; Request for Public Comments Regarding Leasing in the National Petroleum Reserve—Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Solicitation of Comments Regarding Oil and Gas Leasing in the National Petroleum Reserve—Alaska.

SUMMARY: The public is requested to give comments on its interest in competitive leasing in the National Petroleum Reserve—Alaska (NPR–A) during fiscal year 1987 for the purpose of determining a general and relative level of interest. Specific public comments are requested regarding future NPR–A lease sales, and current lease terms and stipulations:

1. If a lease sale were scheduled in the NPR–A in fiscal year 1987, would you submit a bid at such a sale?

2. Please comment on whether any of the tracts selected to be offered in the

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1985 sale, which was not held, should be deleted from consideration for a 1987 lease sale, and identify any additional tracts of specific interest which have not been previously offered or you would like to have reoffered in 1987.

3. Would other leasing opportunities in Alaska impact your participation in an NPR–A lease sale in fiscal year 1987? If so, please identify these leasing opportunities.

4. Are there any terms, conditions, stipulations or other factors currently imposed on NPR–A lease sales and leases that you would like to see changed if a sale were offered in fiscal year 1987?

Any comments that contain proprietary information should be so marked, and, to the extent possible under the Freedom of Information Act, will be treated confidentially.

A map of the NPR–A and those tracts which were tentatively selected to be offered in 1985 is available upon request from the Public Room, Alaska State Office, BLM, 701 C Street, Box 13, Anchorage, Alaska 99513. Copies will be mailed upon request.

DATE: Comments should be submitted by April 1, 1986.

ADDRESS: Direct your responses to: The Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, AK 99513.

Comments will be available for public review in the Public Room at the above address during regular business hours (7:30 am–4:15 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: William S. Hauser, (907) 271–3114.

Fred Wolf,

Acting State Director.

[FR Doc. 86–3730 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–JA–M

Bairoil/Dakota CO_2 Projects; Wyoming

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD).

SUMMARY: Pursuant to section 102(2)(C) of the National Enviromental Policy Act of 1969, BLM has prepared an FEIS and Record of Decision for the proposed Bairoil/Dakota CO_2 Projects.

DATES: The FEIS and record of decision will be released February 21, 1986. Comments on the FEIS will be accepted until March 24, 1986. Protests on the decision will be accepted until March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Eugene Jonart (934), BLM, Wyoming State Office, 2515 Warren Ave., P.O. Box 1828, Cheyenne, WY 82003, FTS 328–2219, Comm. (307) 772–2219.

SUPPLEMENTARY INFORMATION: The FEIS analyzes three CO_2 projects. Exxon Company, USA applied for rights-of-way to build and operate a CO_2 pipeline from near Rock Springs, Wyoming, to Tioga, North Dakota. Amoco Production Company applied for rights-of-way for a CO_2 pipeline from near Rock Springs to Bairoil, Wyoming, plus a gas separation plant and various product pipelines and tank facilities at Bairoil. Shell Pipe Line Corporation applied for rights-of-way for a CO_2 distribution pipeline along the Cedar Creek Anticline near Baker, Montana. Each project would include various ancillary facilities. The FEIS which will be available February 21, 1986, is a supplement to the DEIS, which was published September 13, 1985. Reviewed together, the DEIS and FEIS incorporate the analyses of the affected environment and environmental consequences resulting from the proposed projects.

It is the Bureau's intent to implement the record of decision by granting the rights-of-way. The action proposed to be taken may be protested under the terms of 43 CFR 4.450–2. The protest period will run concurrently with the 30-day comment period for the FEIS from the date of filing for the final EIS with the EPA. Comments or protests should be submitted to Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003. All protests should be received no later than March 24, 1986. No actions will be taken by BLM until after the close of the protest and review period.

Copies of the FEIS and record of decision may be obtained at the above address.

Copies of the FEIS may be inspected, and a limited number of single copies may be obtained at the following addresses.

Bureau of Land Management, Public Affairs, Interior Building, 18th and C Street, NW., Washington, DC 20240
Bureau of Land Management, Rawlins District Office, P.O. Box 670, Rawlins, Wyoming 82301
Big Sandy/Salt Wells Resource Area, Gateway Building, 79 Winston Drive, P.O. Box 1170, Rock Springs, Wyoming 82902
Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107
Bureau of Land Management, Dickinson District Office, P.O. Box 1229, Dickinson, North Dakota 58602
Bureau of Land Management, Casper District Office, 951 N. Poplar Street, Casper, Wyoming 82601
Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82901
Buffalo Resource Area, 300 Spruce Street, Buffalo, Wyoming 82834
Miles City District Office, West of Miles City, P.O. Box 940, Miles City, Montana 59301

Hillary A. Oden,

Wyoming State Director.

[FR Doc. 86–3031 Filed 2–18–86; 8:45 am]

BILLING CODE 4310–22–M

Exchange of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1610.2(c) that the Burley District is proposing to amend the Cassia Resource Management Plan to allow the exchange of the following described public and private lands:

Exchange Proposal No. 1

T. 14 S., R. 29 E., Boise Meridian, Idaho,
Sec. 14: N½NW¼;
Sec. 27: W½NW¼, SW¼.
320 Acres (Public Land).

T. 14 S., R. 30 E., Boise Meridian, Idaho,
Sec. 16: N½.
320 Acres (Private Land).

Exchange Proposal No. 2

T. 12 S., R. 25 E., Boise Meridian, Idaho,
Sec. 3: N½SW¼, NW¼SE¼.
120 Acres (Public Land).

T. 11 S., R. 25 E., Boise Meridian, Idaho,
Sec. 27: SE¼NE¼, E½SE¼.
120 Acres (Private Land).

The general location of the subject lands in exchange proposal No. 1 is about 20 miles southeast of Idaho and three miles north of Juniper, Idaho. The general location of the subject lands in exchange proposal No. 2 is about 3 miles east of Albion, Idaho.

A land use plan amendment document and a land report will be prepared for the subject lands. The documents will be reviewed by BLM interdisciplinary resource specialists. Public participation will involve the publication of this notice in the **Federal Register** and local newspapers. The adjoining land owners, grazing permittees, County commissioners, the Burley District Grazing Advisory Board and Advisory Council, and the Idaho Fish and Game Department will be asked for comments. As public controversy is anticipated to be low for the proposed action, no public meetings, hearings or conferences are planned.

The main issue that is anticipated for exchange proposal No. 1 is whether it in the public interest to exchange 320 acres of public land having potential for dryfarming for 320 acres of private land having value for livestock grazing, wildlife habitat, and public access values. The main issue that is anticipated for exchange proposal No. 2 is whether it is in the public interest to exchange 120 acres of public land valuable for livestock grazing but with no legal access for 120 acres of private land valuable for livestock grazing with legal access.

The existing land use plan and maps are available for review at the Burley District Office, Burley, Idaho.

The public may obtain additional information about these exchange proposals by contacting Bureau of Land Management, Attn: Terrance M. Costello, Route 3, Box 1, Burley, Idaho 83318, (208) 678–5514.

Dated: February 6, 1986.

John Davis,

District Manager.

[FR Doc. 86–3765 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–GG–M

[ES 32999]

Realty Action; Proposed Exchange in Itasca County, MN

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The legal description in the Notice published in the **Federal Register**, January 30, 1986, Vol. 51, No. 2, p. 3850–3851, should be corrected as follows:

Under the offered lands line 10 should be T. 61 N., R. 22 W., Sec. 34: *W½SE¼*.

Under the offered lands line 14 should be T. 59 N., R. 27 W., Sec. 35: *SE¼NW¼, SW¼SW¼*; line 18 should be T. 60 N., R. 27 W., Sec. 13: *NE¼SE¼*; lines 39 and 40 which read T. 148 N., R. 25 W., Sec. 1: Lot 5 should be deleted entirely; and line 44 should read T. 148 N., R. 25 W., Sec. 8: *NW¼NW¼*.

FOR FURTHER INFORMATION CONTACT: Milwaukee District Bureau of Land Management, Suite 225, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Bert Rodgers,

Acting District Manager.

[FR Doc. 86–3725 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–PN–M

[NM 63428–OK]

Recreation and Public Purposes Sale in LeFlore County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public sale notice.

SUMMARY: The Tulsa District proposes to dispose of 0.30 acres of public land in LeFlore County, Oklahoma, to the City of Heavener for a water development project under the Recreation and Public Purposes Act.

DATE: For a period of 45 days after the date of publication of this Notice, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, 9522–H East 47th Place, Tulsa, Oklahoma, 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this ralty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, 405–231–5491.

The following described land has been examined and is classified as suitable for sale under the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.), and the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701):

T. 5 N., R. 26 E., Indian Meridian,
Sec. 19: City of Heavener, Second Edition, Block 104, Lot 1.
Approximately 0.30 acres.

The proposed use of the land is for a storage tank. The project is needed to upgrade the City of Heavener's water system to make it more energy-efficient and to improve the water pressure on the east side of the community during peak usage periods. It has been determined that the proposed use is in the public's interest, and is consistent with the Bureau's planning for the land involved in this action.

The patent will be subject to all existing rights and reservations of record, and all minerals will be reserved to the Federal government, excepting coal and asphalt.

Publication of this Notice will segregate the subject land from all appropriations under the public land laws, but not the mineral leasing laws. This segregation will terminate upon issuance of a patent, or 18 months from the date of this Notice, or upon publication of a Notice of Termination.

Jim Sims,

District Manager.

[FR Doc. 86–3726 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–FB–M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given the Exxon Company U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1090 and 1091, Blocks 91 to 92, respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on February 10, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certificaiton area also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838–0676.

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SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OSC Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised governing practices and procedures under which the Minerals Mangement Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: February 14, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-3743 Filed 2-20-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act; Inmont Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 13, 1986 a proposed consent decree in *United States* v. *Inmont Corp.* et al., Civil Action No. 86-0029-B was lodged with the United States District Court for the District of Maine. The proposed consent decree concerns the release of hazardous substances from a landfill/dump located in Winthrop, Maine. The proposed consent decree requires Inmont Corporation to pay the United States $400,000 as reimbursement for response costs incurred by the United States. The consent decree also obliges the defendants to undertake various response actions at the landfill and surrounding area in order to remedy the hazardous conditions presented by releases from the landfill.

The Departmnt of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Inmont Corp.*, et al. DJ Ref. 90-11-2-130.

The proposed consent decree may be examined at the office of the United States Attorney, District of Maine, Federal Building, Room 321, Bangor, Maine 04401 and at the Region I Office of the United States Environmental Protection Agency, Office of Regional Counsel, J.F. Kennedy Federal Building, Boston, Mass. 02203. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. If requesting a copy of the consent decree, please enclose a check in the amount of $3.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division.

[FR Doc. 86-3766 Filed 2-20-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Judgment Pursuant to Clean Air Act; Jefferson Smurfit Corp. et al.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on February 19, 1986, a proposed consent judgment in *United States* v. *Jefferson Smurfit Corporation, et al.*, Civil Action No. C-8-84-1617, was lodged with the United States District Court for the Southern District of Ohio. The proposed consent judgment requires the Jefferson Smurfit Corporation, *inter alia*, to comply with the Ohio State Implementation Plan and the Clean Air Act by installing pollution control devices on their rotogravure presses. The devices must be installed by January 31, 1987, and compliance demonstrated by March 31, 1987. The company must also pay a cash penalty of $120,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20503, and should refer to *United States* v. *Jefferson Smurfit Corporation, et al.*, D.J. Ref. 90-5-2-1-696.

The proposed consent judgment may be examined at the office of the United States Attorney, Southern District of Ohio, 220 U.S. Post Office and Courthouse, 5th and Walnut Streets, Cincinnati, Ohio 45202, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Department of Justice, Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Jefferson Smurfit Corporation, et al.*, D.J. Ref. 90-5-2-1-696, and include a check in the amount of $1.80 ($0.10 per page reproduction charge) payable to the United States Treasury.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-3908 Filed 2-20-86; 8:45 am]

BILLING CODE 4410-04-M

Lodging of Consent Decree Pursuant to the Clean Water Act in United States v. City of Rogersville and the State of Tennessee

In accordance with Departmental policy, 28 CFR 50.7., notice is hereby given that on *February 6, 1986* a proposed Consent Decree in *United States* v. *City of Rogersville and the State of Tennessee*, Civil Action No. CIV-2-85-175 was lodged with the United States District Court for the Eastern District of Tennessee. The Complaint in this enforcement action was filed on April 30, 1985 against the city of Rogersville ("City") and the State of Tennessee under section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, seeking civil penalties and injunctive relief for the city's discharge of pollutants from its sewage treatment plant ("STP") into the Holston River in violation of sections 301 and 402 of the Act, 33 U.S.C. 1311 and 1342. The proposed Consent Decree ("Decree") requires that the city comply with a schedule or plan for upgrading of its STP and institute immediate remedial actions designed to bring the city into full compliance with final effluent limitations established in its National Pollutant Discharge Elimination System ("NPDES") permit by October 15, 1987. The decree sets interim effluent limitations at levels which should provide maximum pollution abatement pending completion of required repairs, modifications and improvements to the sewage treatment plant. The city is also required to retain the services of a qualified operations consultant to assure that its STP is operated at optimum efficiency during the compliance period and the city must rehabilitate those portions of its sewer lines with the highest infiltration and inflow problems by July 31, 1986. Finally, the decree provides for payment by the city of a $20,000.000 civil penalty for past violations of the Clean Water Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Rogersville et al.*, D.J. Ref. 90-5-1-1-2274.

The proposed Consent Decree may be examined at the office of the United States Attorney, 318 Federal Building, 101 W. Summer Street, Greenville, Tennessee and at the United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $2.10 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-3792 Filed 2-20-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Ruth Bailey, D.O.; Revocation of Registration

On October 18, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed on order to show cause to Ruth Bailey, D.O., Four Brook Street, Scituate, Massachusetts. The order sought to revoke DEA Certificate of Registration AB1900124 issued previously to Dr. Bailey. The statutory predicate for the order to show cause was the suspension of Dr. Bailey's medical license, effective October 1, 1985, by the Massachusetts Board of Registration in Medicine, thereby terminating her authority to possess, dispense; prescribe, administer or otherwise handle controlled substances in Massachusetts.

A registered mail receipt shows that the order to show cause was received on October 24, 1985, and thus was returnable on or before November 25, 1985. No response was forthcoming from Dr. Bailey. Therefore, the Administrator finds that Dr. Bailey waived her opportunity for a hearing on the issues raised by the order to show cause and enters this final order on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator is permitted to register a practitioner under 21 U.S.C. 823 only if the practitioner is authorized to handle controlled substances under the law of the State in which he practices. The Administrator cannot lawfully register a practitioner who lacks state authorization to handle controlled substances. This precedent has been consistently followed by this Administrator and his predecessors. See *Avner Kauffmon, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Floyd A. Santner, M.D.*, Docket No. 79-23, 47 FR 51831 (1982); *David Sachs, M.D.* Docket No. 77-2, 44 FR 29112 (1977).

The Administrator finds that the Massachusetts Board of Registration in Medicine, the regulatory body responsible for licensing physicians in Massachusetts, indenfinitely suspended Dr. Bailey's authority to handle controlled substances under Massachusetts law. Therefore, the Administrator cannot register Dr. Bailey, and must revoke the Certificate of Registration, AB1900124, previously issued to her.

The Administrator notes that the order to show cause also alleged that Dr. Bailey's continued registration would be inconsistent with the public interest. The Administrator need not reach that ground, since lack of state authorization summarily disposes of the Matter. However, the Administrator is in total accord with the decision of the Massachusetts Board. As late as August, 1985, Dr. Bailey sold a prescription for a Schedule II narcotic without any medical justification to a DEA Special Agent acting in an undercover capacity. Should the Board lift its suspension of Dr. Bailey's license, DEA will commence action again to deny any application for registration which she might file.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 823, and redelegated to the Administrator in 21 U.S.C. 871 and 28 CFR 0.100, the Administrator hereby revokes DEA Certification of Registration AB1900124 previously issued to Ruth Bailey, D.O., and denies any pending applications for registration for reason that Dr. Bailey is without authorization to handle controlled substances in Massachusetts. Since Dr. Bailey is without lawful authority to practice medicine or handle controlled substances in any manner, this order is effective upon publication.

Dated: February 18, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-3821 Filed 2-20-86; 8:45 am]

BILLING CODE 4410-09-M

Richard T. Lowe, M.D.; Revocation of Registration

On November 1, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Richard T. Lowe, M.D. of 807 19th Street, Haleyville, Alabama 35565 (Respondent), an Order to Show Cause proposing to revoke DEA Certificate of Registration AL0478138, and to deny his application, executed March 27, 1985, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action is that Respondent is not authorized to handle controlled substances in the State of Alabama due to the revocation of his Alabama controlled substances registration certificate on August 15, 1984.

In a letter dated November 25, 1985, Respondent specifically waived his opportunity for a hearing and set out a statement regarding his position on the matters of fact and law involved. 21 CFR 1301.54(c). The Administrator has considered the entire investigative file in this matter, including Respondent's written statement, and hereby issues this final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that on August 15, 1984, the State of Alabama, Board of Medical Examiners ordered the revocation of the Alabama controlled substance registration certificate issued to Richard T. Lowe, M.D. The revocation of Respondent's registration certificate came as a result of a state investigation into Respondent's prescription practices. The Alabama Board found that, between April 1983 and June 1984, Respondent had excessively dispensed controlled substances to ten individuals for no legitimate medical purpose. During a four month period, almost nine hundred

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prescriptions for controlled substances were written by Respondent.

On September 13, 1984, DEA requested from Respondent the voluntary surrender of his controlled substances registration. On September 20, 1984, Respondent's counsel advised DEA that an appeal of the Alabama Board's ruling was filed on September 13, 1984 in the Montgomery County Circuit Court and that Respondent would not, therefore, voluntarily surrender his controlled substances privileges. On September 30, 1985, a joint motion to dismiss Respondent's appeal was granted by the Montgomery County Circuit Court.

In his November 25, 1985 letter in response to the Order to Show Cause, Respondent indicated that he was currently under consideration for reinstatement of his controlled substance registration certificate in Alabama, and that he had complied with his agreement with the Board. He also stated that he has not prescribed controlled substances in approximately two years.

The Administrator finds that Respondent is not authorized to handle controlled substances in the State of Alabama since the Board of Medical Examiners revoked his state registration certificate. The Administrator has consistently held that when a DEA registrant is not authorized to handle controlled substances under the laws of the state in which he practices, DEA is without lawful authority to maintain a registration. See *Avner Kaufman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985), *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983), and *Thomas E. Woodson, D.O.*, Docket No. 81–4, 47 FR 1353 (1982).

Finally, the Administrator finds the fact that the reinstatement of Respondent's state registration is pending irrelevant to the present action. Respondent is not currently authorized to handle controlled substances in the State of Alabama. At this time, there is a lawful basis for the revocation of Respondent's registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AL0478138, issued to Richard T. Lowe, M.D., be, and hereby is revoked effective March 24, 1986. Any outstanding applications for renewal for that registration are hereby denied.

Dated: February 18, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–3822 Filed 2–20–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 85–49]

William J. Powell, M.D., Richardson, TX; Hearing

Notice is hereby given that on October 1, 1985, the Drug Enforcement Administration, Department of Justice, issued to William J. Powell, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AP2238500, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, March 5, 1986, in the Fifth Floor Courtroom, 17th District Court, Civil Courts Building, 100 Houston Street, Fort Worth, Texas.

Dated: February 18, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–3823 Filed 2–20–86; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statues referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Devis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY86–1 (Jan. 3, 1986) ..... p. 642.
NY86–10 (Jan. 3, 1986) ..... pp. 727–728.
NY86–17 (Jan. 3, 1986) ..... pp. 777–778.
Pennsylvania
PA86–2 (Jan. 3, 1986) ..... p. 804.
PA86–5 (Jan. 3, 1986) ..... pp. 829–831.
PA86–6 (Jan. 3, 1986) ..... p. 843.
PA86–11 (Jan. 3, 1986) ..... p. 885.
PA86–17 (Jan. 3, 1986) ..... p. 906.
PA86–20 (Jan. 3, 1986) ..... pp. 926–927.
PA86–22 (Jan. 3, 1986) ..... pp. 937–938, p. 940.
Puerto Rico:
PR86–1 (Jan. 3, 1986) ..... p. 959.
West Virginia:
WV86–2 (Jan. 3, 1986) ..... p. 1124.

Volume II

Illinois:
IL86–7 (Jan. 3, 1986) ..... p. 127.
Iowa:
IA86–5 (Jan. 3, 1986) ..... p. 45.
Michigan:
MI86–7 (Jan. 3, 1986) ..... pp. 446, 448.
MI86–14 (Jan. 3, 1986) ..... p. 480.
Minnesota:
MN86–5 (Jan. 3, 1986) ..... p. 497.
MN86–7 (Jan. 3, 1986) ..... p. 507–511.
MN86–8 (Jan. 3, 1986) ..... p. 525, pp. 527–529.
Nebraska:
NE86–1 (Jan. 3, 1986) ..... p. 616.
Ohio:
OH86–1 (Jan. 3, 1986) ..... pp. 665–666, pp. 669–670.
OH86–2 (Jan. 3, 1986) ..... pp. 676–686, pp. 691–692.
OH86–4 (Jan. 3, 1986) ..... p. 704.
OH86–19 (Jan. 3, 1986) ..... pp. 733–734.
OH86–28 (Jan. 3, 1986) ..... pp. 752–754.
OH86–29 (Jan. 3, 1986) ..... pp. 764–765, p. 782.
Oklahoma:
OK86–15 (Jan. 3, 1986) ..... pp. 839a–839c.
Texas:
TX86–4 (Jan. 3, 1986) ..... p. 852.
Wisconsin:
WI86–4 (Jan. 3, 1986) ..... p. 956.
WI86–9 (Jan. 3, 1986) ..... p. 986.

Volume III

Alaska:
AK86–1 (Jan. 3, 1986) ..... pp. 2–5.
California:
CA86–2 (Jan. 3, 1986) ..... pp. 45–48, pp. 53–54.
CA86–4 (Jan. 3, 1986) ..... pp. 65–68, pp. 71, 73, pp. 75–76, pp. 80–84, p. 95.
Nevada:
NV86–1 (Jan. 3, 1986) ..... p. 213–215.
NV86–2 (Jan. 3, 1986) ..... pp. 236–239.
NV86–4 (Jan. 3, 1986) ..... p. 247, pp. 249–250.
North Dakota:
ND86–2 (Jan. 3, 1986) ..... p. 209, pp. 211–212.
Oregon:
OR86–1 (Jan. 3, 1986) ..... p. 259, 286.
Utah:
UT86–1 (Jan. 3, 1986) ..... pp. 282–284, pp. 286–287.
Washington:
WA86–1 (Jan. 3, 1986) ..... p. 313.
WA86–4 (Jan. 3, 1986) ..... p. 354.
Listing by Location (Index) ..... pp. xxi–xxii.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State (s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th day of February 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–3703–Filed 2–20–86; 8:45 am]

BILLING CODE 4501–27–M

Occupational Safety and Health Administration

[V–85–2]

AMAX Lead Company of Missouri

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of Change of Hearing Date on Application for Permanent Variance.

SUMMARY: This notice announces a change of the hearing date of the application of AMAX Lead Company of Missouri for a permanent variance from Table II of the standard prescribed in 29 CFR 1910/1025(f)(2). The variance application concerns the limitation on use of half-mask, air-purifying respirators to areas where the lead concentration in air is less than 10 times the permissible exposure limit (PEL).

The notice announcing the application for a permanent variance was published in the **Federal Register** on April 16, 1985 (50 FR 15004). The notice of hearing on the application, which announced the date and place for the hearing, summarized the record to date, set forth the issues for the hearing, and the procedures for participation, was published in the **Federal Register** on October 8, 1985 (50 FR 41039). A notice announcing a deferral of that hearing date from December 4, 1985, to February 25, 1986, was published in the **Federal Register** on November 22, 1985 (50 FR 48282). This notice announces a deferral of that hearing date from February 25, 1986, to May 6, 1986, by order of the hearing examiner, the Honorable Daniel J. Roketenetz.

DATE: The hearing will begin at 9:30 a.m. on May 6, 1986, at the Federal Building, Courtroom No. 1, Room 516, U.S. Court of Appeals, U.S. Courthouse and Custom House, 1114 Market Street, St. Louis, Missouri 63101.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, U.S. Department of Labor, Room N–3656, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–523–7193.

Authority: This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; and Secretary of Labor's Order No. 9–83 (48 FR 35736))

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Signed at Washington, DC, this 18th day of February, 1986.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 86-3811 Filed 2-19-86; 2:32 pm]

BILLING CODE 4510-29-M

Pension and Welfare Benefits Administration

[Application No. D-6270 et al.]

Proposed Exemptions; Kenneth M. Spain, D.D.S., M.S., P.C. Pension Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kenneth M. Spain, D.D.S., M.S., P.C. Pension Plan (the Plan) Located in Bozeman, Montana

[Application No. D-6270]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the plan of a parcel of unimproved real property from Donna M. Spain (Mrs. Spain), a trustee of the Plan, provided that such transaction is on terms at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with three participants and total net assets of $118,252.28 as of April 30, 1984. The Plan is sponsored by Kenneth M. Spain, D.D.S., M.S. P.C. (the Employer), which is totally owned by Kenneth M. Spain, D.D.S. (Dr. Spain), who is also a participant and trustee of the Plan and Mrs. Spain's spouse. The Employer is a Montana professional Corporation engaged in the practice of general dentistry. Investment authority with respect to Plan assets rests with the Plan's trustees, Dr. & Mrs. Spain (the trustees).

2. The current Plan assets, primarily bonds and stocks, do not include any investments in real property, and the Trustees have determined that the Plan assets are in need of diversification which could be achieved by a prudent and appropriate investment in real property. Mrs. Spain is in possession of a parcel of unimproved real property (the Property) which is available for sale and which is particularly attractive to the Spains (as Trustees) as an investment for the Plan due to favorable investment conditions affecting the Property. The Trustees are requesting an exemption to permit the Plan's purchase of the Property from Mrs. Spain under the terms and conditions described herein.

3. The interests of the Plan with respect to the proposed transaction are represented by an independent fiduciary, Burton Wastcoat (the Fiduciary), who represents himself to be independent of and unrelated to the Employer and the Trustees. The Fiduciary is a real estate broker who represents tht he is sufficiently familiar with the fiduciary responsibility provisions of the Act and that he has conferred with counsel knowledgeable with the Act. The Property is a vacant, unencumbered residential lot of 17,000 square feet in a developing subdivision of Bozeman, Montana, and is identified as Lot 34, Graf's Second Addition, Bozeman. The Trustees represent that the Property is particularly attractive to achieve the Plan's diversification into real property for the following reasons: (1) The greater metropolitan area of Bozeman is experiencing substantial economic growth, creating substantial building activity which is creating an increasing demand for vacant residential lots; (2) The recent increased demand has resulted in a shortage of residential building lots in the area; (3) The Property is unique and likely to remain a choice residential building site because it is a hillside lot which will retain an unobstructed view even after development of the surrounding lots; and (4) The property is located near certain developing property which will become Bozeman's only hospital complex, adding to the Property's potential value upon eventual resale by the Plan. The Trustees intend that the Plan will hold the Property for its appreciation and do not intend that the Plan will develop the Property.

4. The Fiduciary has investigated the Property, its surrounding conditions and the residential development market of the area, and as a result of such investigation confirms the aforementioned positive conditions currently affecting the Property and rendering it attractive as a real estate investment. The Fiduciary projects steady appreciation of the Property for the foreseeable future, characterizing the Property's location as excellent, and he notes that the Property is particularly valuable as a site for a residential structure featuring solar energy. It is proposed that the Plan will pay Mrs. Spain a cash purchase price of $18,000 for the Property, such amount representing the Property's appraised fair market value as of June 3, 1983, according to an appraisal performed by Robert K. Powell (Powell), an independent professional real estate appraiser in Bozeman, Montana. Powell's appraisal will be updated as of the date of the sale, and if he finds the Property has decreased in value the purchase price paid by the Plan will be the lower appraisal value. In no event, however, will the Plan's purchase price exceed $18,000. The Fiduciary has determined that Powell's appraisal of the Property is fair. The Trustees represent that Mrs. Spain is willing to sell the Property to the Plan for a price representing the 1983 appraised value because her spouse is the primary beneficiary/participant of the Plan, even though it is likely the Property has increased in value since Powell's appraisal. After an examination of the Plan's current assets, the Fiduciary has determined that the Plan assets, otherwise soundly invested, are in need of diversification and that the Plan's investment in Property will achieve this needed diversification while providing an appropriate and promising investment asset for the Plan. The Fiduciary will oversee the proposed sale transaction to ensure that it proceeds as described herein. All expenses related to the sale transaction will be borne by Mrs. Spain, who will also insure title to the Property as free and clear.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The Plan is in need of diversification which can be achieved by acquisition of the Property; (2) The Property is a promising investment for the Plan due to a combination of positive factors such as its uniqueness, its location, and the residential real estate market of the surrounding area; (3) The interests of the Plan with respect to the proposed transaction are represented by an independent fiduciary who has determined that the proposed transaction will be in the best interests of the Plan; and (4) Mrs. Spain, the seller, will bear all expenses of the proposed transaction.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Richland Corporation Pension Plan (the Plan) Located in Dallas, Texas

[Application No. D-6403]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedures 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the contribution to the Plan of certain improved real property (the Property) by the Richland Corporation (Richland), the Plan sponsor, provided the Property will be valued for contribution purposes at no greater than its fair market value at the time of contribution.

Summary of Facts and Representations

1. Richland is a family-owned beverage sales and distribution company located in Dallas, Texas. All of the Richland stock is owned by Manny B. Zelzer, who is president of Richland. The Plan is a defined benefit pension plan with 5 participants. As of October 2, 1984, the Plan had assets with a fair market value of $472,125. Manny Zelzer and his daughter Martha are the Plan trustees.

2. Richland proposes to contribute the Property to the Plan in lieu of a portion of Richland's cash contribution for the fiscal year ending September 30, 1985. Richland proposes to contribute the Property, together with cash equal to the difference between the minimum required contribution and the appraised fair market value of the Property.

3. The Property consists of a convenience store and the underlying real property located at 112 Sam Houston Drive, Victoria, Texas. The store is subject to a lease to Circle K Corporation (Circle K), a publicly owned corporation whose headquarters are in Phoenix, Arizona. Circle K is totally unrelated to Richland. Circle K is the second largest operator of convenience stores in the United States and operates a chain of convenience stores, in the South, the West and the Midwest. The subject store was purchased by Richland from Circle K for $70,356 on April 24, 1974. The store was leased back to Circle K pursuant to a separate agreement made at the time of the sale. The Property is not subject to a mortgage. The Property consists of 0.482 acres with a building containing 2,850 square feet. All trade fixtures located in the store were installed by and will remain the property of Circle K after expiration of the lease.

4. The lease to Circle K, which was executed on April 24, 1974, is for a term of 20 years, with three renewal options not to exceed five years each. The lease is a percentage rent lease with a minimum monthly rental of $557, or $6,684 per year. Circle K is required to pay an additional bonus rental of any amount by which 2% of the store's gross sales for the year exceeds the minimum annual rent plus the sum of the real estate taxes and insurance premiums on the leased premises for the year. Over the last six years, the average bonus payment under the leases amounted to $6,701.94 with an average total annual rental of $13,385.94. The lease is a triple net lease which makes Circle K responsible for most costs associated with the Property, including all real estate taxes and assessments, all personal property taxes levied on any of Circle K's property which is located on the premises and all utility charges Circle K is also required to pay the cost of insurance coverage for the Property. No management services are required of or performed by Richland under the lease. The lease grants Circle K a first option to purchase or lease the Property on the same terms that the lessor proposes to sell or lease to a third party. Circle K has a right to sublet the Property, but remains liable for all payments and performance of all obligations contained in the lease.

5. The Property has been appraised by Mark Mellard. MAI, of the Ron Brown Company, an independent appraiser in Victoria, Texas, as having a fair market value as encumbered by the lease of $100,000 as of September 24, 1985.

6. For purposes of the transaction, the Plan has retained Mr. Ronald S. Fiedelman (Fiedelman) as an independent fiduciary. Fiedelman has been a CPA and a financial adviser since 1960. He had 25 years of extensive experience in analyzing potential real estate investments for his clients, as well as generating tax projections for several real estate syndications. He has also assisted numerous clients in establishing various qualified plans

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Accordingly, Fiedelman represents that he is extremely familiar with real estate transactions and requirements of the Act with respect to qualified plans. Fiedelman represents that he understands and accepts his obligations, responsibilities and potential liabilities as a fiduciary under the Act. Fiedelman also represents that he is totally unrelated to Richland, and his sole business relationship with Richland and the Zelzers consists of his role as independent Plan fiduciary with respect to the subject transaction.

7. Feidelman represents that his review of the proposed transaction has included: (a) The size of the investment base; (b) the composition of the portfolio of the Plan with regard to diversification; (c) the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the Plan; (d) the projected return of the Plan portfolio relative to the funding objectives of the Plan; (e) the terms of the contribution; and (f) the appraisal of the Property and lease agreement to which the Property is subject. Based on his review considering these factors and considering the risk of loss and opportunity for gain associated with the Property, Fiedelman believes that the Property investment is reasonably designed as part of the Plan portfolio to further the purposes of the Plan. Fiedelman thus represents that he has determined that the proposed contribution of the Property would be protective of all rights of the Plan participants and in the best interests of the Plan and its participants and beneficiaries.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) the Property represents less than 25% of the Plan's assets; (b) the Property has been appraised by a qualified independent appraiser; and (c) Feidelman, the Plan's independent fiduciary, has determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Optical Corporation of America, Inc. Restated Retirement Plan (the Plan) Located in Louisville, Kentucky

[Application No. D-6420]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed sale to the Plan of one parcel of improved real property (the Property) by FoCal Reality Company (FoCal), a party in interest with respect to the Plan; and (2) the proposed lease (the Lease) of the Property to Optical Corporation of America, Inc. (Optical), a party in interest with respect to the Plan; provided that the sales price is not greater than the fair market value of the Property and that the terms and conditions of the proposed transactions are at least as favorable to the Plan as those obtainable from an unrelated third party.

Summary of Facts and Representations

1. The Plan is a defined beneft pension plan with total assets of $4,077,324 as of June 30, 1985. As of July 1, 1984, the Plan had 172 participants, including Frank B. Sanning (Mr. Sanning) and H. Lyle Duerson (Mr. Duerson). The named fiduciary for the Plan is a retirement committee of which Mr. Duerson is the chairman. The trustee for the Plan is the First Kentucky Trust Company (First Kentucky) which has discretionary authority to direct the investments of the Plan.

2. The sponsoring employer of the Plan is Optical, a Kentucky corporation with principal offices located in Louisville, Kentucky. Optical's three wholly-owned subsidiaries, Kentucky Optical Company, Lugene, Inc., and Southern Optical Company (Southern), are participating employers of the Plan. Southern's subsidiaries, Southern Optical Hearing Aid Center, Inc., and SCL Laboratories, Inc., are also participating employers of the Plan.

3. Prior to July 1, 1985, Mr. Duerson and Mr. Sanning owned approximately equal interests in Optical totaling about 54% of outstanding shares. As of July 1, 1985, Mr. Sanning retired from employment as president of Optical, and Optical redeemed his shares. After the redemption, Mr. Duerson became the principal shareholder of Optical with approximately 36-37% of the outstanding shares. Mr. Duerson is the Chairman of the Board of Optical and currently performs the duties of the chief executive officer of Optical, since no successor to Mr. Sanning as president of Optical has been named to date.

4. The Property is a four story multi-use office building with full basement, located at 640 South 4th Avenue, Louisville, Jefferson County, Kentucky and is situated in the heart of the Broadway Renaissance Project (the Project), a downtown Louisville historical and commercial redevelopment project. As part of the Project, modifications on the facade of the Property will be made. The Property was constructed in 1915 and was purchased in November 1962 by FoCal. FoCal is a Kentucky corporation of which Mr. Duerson and Mr. Sanning each own 50% of the outstanding shares. Mr. Sanning and Mr. Duerson, as the owners of FoCal, propose to sell the Property to the Plan for $950,000. Thereafter, Optical proposes to enter into the Lease of the Property with the Plan.

5. First Kentucky, as of Novemer 13, 1985, acknowledged and assumed the role of independent fiduciary with respect to the subject transactions. First Kentucky maintains its independence to act as independent fidicuary on behalf of the Plan for the following reasons: (a) No officer or employee of First Kentucky is a member of the board of directors of Optical, and no officer or employee of Optical is a member of the board of directors of First Kentucky; (b) no shareholder of Optical owns any substantial interest in First Kentucky, and no shareholder of First Kentucky owns any substantial interest in Optical; and (c) First Kentucky has no trust relationships with FoCal. It is represented that the individual trust accounts of Mr. Duerson and Mr. Sanning and the Plan's trust account with First Kentucky constitute approximately twelve hundredths of one percent (.12%) of First Kentucky's approximately $4 billion in trust assets. While Optical has a line of credit of $400,000 with the First National Bank of Louisville (the Bank), an affiliate of First Kentucky, and Mr. Duerson has an outstanding demand loan obligation of $10,000 with the Bank, such loan obligation and line of credit constitute approximately two hundredths of one percent (.02%) of the Bank's loan portfolio which was in excess of $2 billion for 1984.

6. Two appraisals of the value of the Property were submitted with the application. The first was prepared on November 14, 1984, at the request of Mr. Duerson by Mr. Ronnie L. Galloway (Mr. Galloway), M.A.I., S.R.P.A., of Galloway Appraisal Company in Louisville, Kentucky. Mr. Galloway appraised the Property at $930,000. The second appraisal was prepared on April 12, 1985, at the request of First Kentucky by Mr. Lin E. Bell (Mr. Bell), M.A.I., S.R.P.A., with the assistance of Mr. C. Marty Michaels (Mr. Michaels), who inspected the Property and prepared the analysis. Both Mr. Bell and Mr. Michaels are employed by Chapman and Company in Louisville, Kentucky. Mr. Bell appraised the fair market value of the Property to be $975,000, assuming that the existing facade on the Property had been renovated and restored to original condition. Mr. Galloway, Mr. Bell, and Mr. Michaels represent that they are independent in that they have no present or future contemplated interest in the Property and that they have no personal interest or bias with respect to the Property or the parties involved.

7. First Kentucky represents that the $950,000 sales price for the Property sufficiently approximates the fair market value of the Property based upon consideration of the two appraisals. The $950,000 sales price constitutes 23% of the current assets of the Plan. It is represented that the acquisition of the Property by the Plan would not imperil or unduly affect the diversity or liquidity of the Plan's investments. Over 29% of the value of the Plan's current assets are invested in cash equivalents, such that the Plan will not have to liquidate longer-term investments prior to maturity in order to purchase the Property. Further, it is represented that the Property would be the Plan's only illiquid investment in real estate. FoCal and not the Plan, has agreed to pay up to $50,000 of the cost of facade improvements on the Property required under the terms of the Project and the remaining cost of facade improvements, if any, will be paid for by Optical. It is represented that FoCal will take no commission on the sale, and all closing costs, fees, and other charges attendant upon the sale will be borne either by FoCal or Optical and not by the Plan.

8. Mr Bell has also appraised the fair market rental value of the Property. Mr. Bell states that, excluding the basement, the total gross area (exterior measurement) of the Property is 32,434 square feet of which approximately 27,228 square feet is rentable. Mr. Bell states that the current net economic rent for the Property on a triple net basis should be in the range of $3.55 per square foot or approximately $96,769.

9. First Kentucky has on behalf of the Plan negotiated the Lease with Optical, the terms of which are summarized below:

(i) The entire Property will be leased to Optical for the term of 10 years with one 5-year renewal option.

(ii) The rental will be $95,000 per year for the first 5 years, with an increase of 10% to $104,500 for years 6-10. The rental rate for the 5-year option term (years 11-15) will be based upon the appraised fair market rental value as determined in 10th year before the beginning of the option period by an appraiser mutually agreed upon by First Kentucky and Optical.

(iii) The Lease will be triple net "plus" in that Optical will pay not only the costs of operation, ordinary repair and maintenance, insurance, and all real estate taxes, but also will pay for structural improvements and repairs to the Property.

(iv) Optical will be empowered to sublet any portion of the Property which it does not use but will be required to provide for the upkeep and operation of common areas made necessary by the presence of more than one tenant on the Property. The Plan and First Kentucky will have power of approval over such subletting but may not unreasonably withhold such approval.

(v) Under the Lease, the Plan and First Kentucky will have the powers of management necessary to assure that Optical carries out its promises and covenants under the Lease, but Optical will be obligated to engage in the actual day-to-day operational management of the Property.

10. First Kentucky represents that the proposed Lease is in the best interest of the Plan and its participants and beneficiaries in that (1) the Plan is obtaining at no cost the benefit of structural improvements on the Property; (2) the proposed Lease would generate a 10% income return to the Plan on its investment in the Property during the first 5 years of the Lease and an 11% income return in years 6-10; and (3) the negotiated rental rate of return when taken into account with the other Lease terms approximates the fair market rental value on the Property.

11. As independent fiduciary, First Kentucky, has taken the following actions with respect to the proposed transactions: (a) It has required and obtained an independent appraisal of the value of the Property and of the fair market rental rate by an appraiser of its own chosing; (b) it has negotiated at arm's-length with Optical and FoCal regarding the terms of the proposed transactions; and (c) it has made an independent determination that the proposed transactions would be within the requirement of prudence regarding the investments of the Plan's assets and would be in the interests of the Plan and protective of the rights of the participants and beneficiaries of the Plan.

12. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase price of the Property and the initial rental rate were based upon consideration of independent appraisals; (b) the future rental rates under any renewal option on the Lease will be determined by an independent appraiser; (c) the terms and conditions of the proposed transactions have been reviewed and negotiated by First Kentucky, the independent fiduciary of the Plan; and (d) First Kentucky has determined that the proposed transactions are in the best interest of the Plan and protective of the participants and beneficiaries of the Plan.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404, and 415.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

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(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of February, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-3857 Filed 2-20-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge Section) to the National Council on the Arts will be held on March 10, 1986 from 9:00 a.m. to 5:30 p.m., Room M0-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-3789 Filed 2-20-86; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Meeting) to the National Council on the Arts will be held on March 11, 1986 from 9:00 am-7:00 pm in Room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 11, 1986, from 9:00 am-5:30 pm, to discuss Guidelines for Dance and Dance/InterArts/State Presenting & Touring Initiative, the budget and miscellaneous policy questions.

The remaining session of this meeting on March 11, 1986, from 5:30 pm-7:00 pm are for the purpose of Application review udner the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1110 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-3790 Filed 2-20-86; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on March 13, 1986 from 9:00 a.m.-5:30 p.m., March 14, 1986 from 9:00 a.m.-5:30 p.m. and March 15, 1986 from 9:00 a.m.-4:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 15, 1986, from 9:00 a.m.-10:30 a.m., to discuss Policy and guidelines.

The remaining sessions of this meeting on March 13, 1986 and March 14, 1986 from 9:00 a.m.-5:30 p.m. and March 15, 1986 from 10:30 a.m.-4:00 p.m. are for the purpose of Application review under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-3792 Filed 2-20-86; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Services/Artists Colonies Section) to the National Council on the Arts will be held on March 12, 1986 from 9:30 a.m. to 6:00 p.m., March 13, 1986 from 9:30 a.m. to 5:30 p.m. and March 14, 1986 from 9:00 a.m. to 3:00 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open on March 14, 1986 from 11:00 a.m. to 3:00 p.m. Topics for discussions will be guidelines and policy.

The remaining sessions of this meeting on March 12, 1986 from 9:30 a.m. to 6:00 p.m., March 13, 1986 from 9:30 a.m. to 5:30 p.m. and March 14, 1986 from 9:00 a.m. to 11:00 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-3791 Filed 2-20-86; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9421

OMB Desk Officer: Carlos Tellez, (202) 395-7340

Title: Personal Data Questionnaire

Affected Public: Individuals

Number of Responses: 3,000 responses; total of 150 burden hours.

Abstract: Data are required to ensure compliance with laws cited in Part I and regulations cited in Part III. Data will be used to analyze Foundation recruitment and selection practices and/or to defend the Foundation's practices in discrimination cases.

Dated: February 18, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86-3846 Filed 2-20-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Babcock and Wilcox Water Reactors; Postponed

The ACRS Subcommittee on Babcock and Wilcox Water Reactors scheduled for February 25, 1986 has been postponed until early April. This meeting notice was previously published in the **Federal Register** (51 FR 4833) on February 7, 1986.

Dated: February 18, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-3853 Filed 2-20-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee On Reactor Safeguards, Subcommittee on Spent Fuel Storage Facility Design; Meeting

The ACRS Subcommittee on Spent Fuel Storage Facility Design will hold a meeting on March 12, 1936, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, March 12, 1986—1:30 P.M. until the conclusion of business.*

The Subcommittee will review a proposed revision to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High Level Radioactive Waste."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and question s may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 18, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-3851 Filed 2-20-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Standard Plant Design; Meeting

The ACRS Subcommittee on Standard Plant Design will hold a meeting on March 12, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, March 12, 1986—8:30 a.m. until the conclusion of business

The Subcommittee will continue discussion of standard plants. Particularly, FAA certification, GE power worthiness, industry perceptions, DOE views, and an update on a policy statement.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring

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to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 18, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-3852 Filed 2-20-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Revised Notice of Meeting

An additional topic has been scheduled for the February 26, 1986 ACRS Subcommittee on Emergency Core Cooling Systems, 8:30 A.M., Room 1046, 1717 H Street, NW., Washington, DC. This meeting notice was previously published in the **Federal Register** (51 FR 5007) on February 10, 1986. The other items regarding this meeting remain the same as previously published.

Topics for discussion:

(1) Review Duke Power Company's request to delete use of the ECCS UHI system.

(2) The AEOD Report on inadvertent overpressurization of the low-pressure portion of the ECCS systems for BWRs, and the NRR Action Plan that encompasses this issue.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 14, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-3854 Filed 2-20-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352-OLA; ASLBP No. 86-522-02-LA]

Philadelphia Electric Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Philadelphia Electric Company, Limerick Generating Station, Unit No. 1, Facility Operating License No. NPF-39

This Board is being established pursuant to a notice published by the Commission on December 26, 1985 in the **Federal Register** (50 FR 52874) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The amendment would revise the Technical Specifications to allow a one-time-only extension of time to satisfy a limited number of testing requirements for the excess flow check valves in certain instrumentation lines which must be performed every 18 months and which require a plant shutdown.

The Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Mr. Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 12th day of February 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-3855 Filed 2-20-86; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notification of extension request of Peace Corps Candidate Selection Inventory.

SUMMARY: The information collection inventory described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Current authorization for use of the subject inventory expires March 31, 1986. In accordance with OMB instructions, Peace Corps wishes to continue research into the effectiveness of the subject inventory as a selection tool. This request then is for a continuation of the previously approved study which was ultimately not implemented in FY '85. Peace Corps will not use the subject inventory as a selection tool unless results from the proposed follow-up study warrant such a step.

ADDRESS: Intersted persons are invited to submit comments regarding this proposal by name to Francine Picoult, OMB Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard Haag, Technical Adviser, Peace Corps, 806 Connecticut Avenue NW., Room P-400, Washington, DC 20526, telephone (202) 254-5650. This is not a toll-fee number. For a copy of the scale contact Dr. Haag.

SUPPLEMENTARY INFORMATION: Peace Corps proposes to incorporate a self-administered paper-and-pencil inventory to help staff improve the selection of Peace Corps Volunteers. Current research with the inventory, the Overseas Assessment Inventory (OAI), originally developed and validated to screen naval and private sector personnel for overseas assignments, and recently tested on a sample of Peace Corps candidates suggests the tool is a cost effective and systematic means for measuring and predicting Peace Corps Volunteer candidates' cross-cultural adjustment overseas. Use of this inventory by the U.S. Navy, Peace Corps and others has not produced any evidence that it discriminates among groups on the basis of gender, race or ethnic background. Information derived from the inventory predicts the suitability of a Peace Corps Volunteer candidate as he or she goes through Peace Corps' Volunteer Delivery System and overseas service.

All persons who submit an application to serve as a Peace Corps Volunteer will fill out the inventory. It is estimated that 15,000+ people would be involved per annum. Respondents will be mailed and requested to complete a copy of the OAI, along with their application to serve.

Participants will need to provide personal identifying information in order that later status changes can be tracked and linked to OAI scores. The proposed information collection requirement is described below.

List of subjects: Volunteers, Information, Privacy

Proposal: Overseas Assessment Inventory, PC Form 1556

Office: Office of Volunteer Recruitment and Selection

Frequency of Submission: On occasion

Affected Public: Individuals who apply for Peace Corps Volunteer services.

Estimated Burden Hours: 7,500 per annum.

This is not a request to which 44 U.S.C. 350(h) applies.

This notice is issued in Washington, DC, on February 14, 1986.

Linda Rae Gregory,

Associate Director for Management.

[FR Doc. 86-3545 Filed 2-20-86; 8:45 am]

BILLING CODE 6051-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of an Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of information collection, BRI 49-224, Certification of Full-Time School Attendance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of a form that collects information from the public. BRI 49-224, Certification of Full-Time School Attendance, is used by the Civil Service Retirement System, Office of Personnel Management, to survey survivor annuitants who have reached age 18 through 22 to determine if survivor benefits should be continued. Information received as a result of the survey may lead to the suspension of benefits to ineligible recipients as provided by section 8341(a)(4)(c), title 5, U.S. Code. For copies of this proposal, call James M. Farron, Agency Clearance Officer, on 632-7714.

ADDRESSES: Send or deliver comments within 10 working days from the date of publication to:

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-3752 Filed 2-20-86; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1986, shall be at the rate of 22.5 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1986, 27.8 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 72.2 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 14, 1986.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-3746 Filed 2-20-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22906; File No. SR-NSCC-86-02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change

On January 30, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Commission a proposed rule change under section 19 (b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this notice to solicit public comment on the proposal. The proposal modifies NSCC's municipal bond when-issued comparison system to process more effectively syndicate takedown transactions. The proposal provides for one-sided trade data input by the syndicate manager resulting in compared trades reported to the syndicate manager and syndicate members. Those compared trades will be reported on syndicate takedown when-issued contract sheets.

The proposal also enables syndicate members and the syndicate manager to delete a compared takedown trade by using a one-sided delete on the day the compared trade appears on the contract sheet or on the next business day. In the event of a syndicate buy-back, the syndicate manager can submit a sell-side withhold of the takedown trade, which results in a compared withhold trade reported on takedown contract sheets. For buy-backs, syndicate members' contracts will show automatically a purchase-withhold matching the sell-side withhold. Syndicate members will not be able to submit purchase-withholds for takedown trades.

The proposal further provides that compared takedown trades will result in syndicate-identified receive and deliver tickets for trade-for-trade settlement. The proposal provides that extended settlement and clearing-agent standing instructions cannot be used for takedown trades.

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NSCC states in its filing that the proposal's special procedures will enable more efficient processing of syndicate takedown trades by distinguishing takedown trades from other transactions and by providing timely one-sided input by the syndicate manager. NSCC states that these procedures should reduce uncompared trades and trade input duplication. NSCC also states that the proposal is consistent with the Act and Section 17A of the Act because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the Federal Register. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 5th Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-86-2 and should be submitted by March 14, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 13, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-3844 Filed 2-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14936; File No. 811-4211]

Application and Opportunity for Hearing; American General Series Portfolio Co.

February 13, 1986.

Notice is hereby given that American General Series Portfolio Company ("Applicant"), 2929 Allen Parkway, Houston, Texas 77019, registered an open-end, diversified management company under the Investment Company Act of 1940 (the "Act"), filed an application on Form N-8F on October 3, 1985, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant states that on January 28, 1982, it filed a Form N-8A Notification of Registration under the Act and a registration statement on Form N-1A pursuant to the Securities Act of 1933, to register an indefinite number of shares of its common stock. The application states that on September 13, 1985, the securityholders of the Applicant at their annual meeting approved a Plan and Articles of Merger. The application states that on September 25, 1985, the Applicant, a Maryland corporation, merged with and into VALIC Capital Accumulation Fund, Inc. and VALIC Timed Opportunity Fund, Inc. and under Maryland law, became the surviving entity and successor corporation after the merger. The Applicant succeeded to the registration statements of VALIC Timed Opportunity Fund, Inc.

Applicant states that it has no securityholders, no assets, no outstanding liabilities, and that it has not, within the last 18 months, transferred any of its assets to a separate trust. Applicant submits that pursuant to the merger, no distributions were made to securityholders, it is not a party to any litigation or administrative proceeding and that it is not engaged and does not propose to engage in any business activity except as may be necessary to wind up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3840 Filed 2-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14940; 812-6294]

MetLife-State Street Investment Trust and MetLife-State Street Tax-Exempt Trust; Application for an Order Permitting Assessment and Waiver of Contingent Deferred Sales Load

February 13, 1986.

Notice is hereby given that MetLife-State Street Investment Trust and MetLife-State Street Tax-Exempt Trust (the "Trusts" or "Applicants"), One Financial Center, Boston, Massachusetts 02111, filed an application on January 15, 1986, and an amendment thereto on January 30, 1986, for an order pursuant to section 6(C) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the assessment (and waiver) of a contingent deferred sales load ("CDSL"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants represent that they are open-end, diversified, management investment companies organized as Massachusetts business trusts. According to the application, MetLife-State Street Management Company, Inc. (the "Adviser") will serve as investment adviser for the Trusts, and MetLife-State Street Investment Service Company, Inc. (the "Distributor") will serve as distributor and principal underwriter of each Trust's shares and will receive the proceeds from the CDSL.

Applicants state that the Trusts are each presently comprised of two portfolio series. Applicants further state that both Trusts may from time to time offer one or more new series to the public. Applicants therefore request that the requested exemptive relief extend to any additional series which may be offered by either Trust subject to a CDSL assessed on substantially the same basis as the CDSL described in the application. With respect to the prospective relief requested on behalf of any such additional series Applicants undertake to utilize such relief pursuant to the terms and conditions set forth in the application.

Applicants state that an initial sales load of up to 2% generally will be imposed upon purchases of shares of either Trust. Moreover, each Trust has adopted a distribution plan pursuant to Rule 12b-1 under the Act which provides for monthly payments to the Distributor at the annual rate of 0.5% of the average daily value of its assets. In addition, Applicants represent that certain redemptions of shares during the first four years following the purchase of such shares, generally will be subject to a CDSL.

Applicants state that when a CDSL is imposed upon redemptions, the amount of such charge will be 2.5% of the net asset value of the shares redeemed if the redemption occurs during the first twelve-month period following the date upon which the shares being redeemed were purchased; 2% if the redemption occurs during the next twelve-month period; 1.5% if the redemption occurs during the third twelve-month period, and 1.0% if the redemption occurs during the fourth twelve-month period. If the redemption occurs during the fifth or any subsequent year following the date of purchase, no CDSL will be imposed. According to the application, for ease of administration, in calculating the CDSL all purchases of shares will be deemed to have been made on the last day of the month in which the purchase was made. Moreover, Applicants reserve the right to change the initial sales load and/or the CDSL provided that the aggregate of both sales charges does not exceed applicable limitations imposed by the National Association of Securities Dealers, Inc.

Applicants represent that no CDSL will be imposed on redemptions of (a) shares redeemed as a result of exercising an exchange privilege, (b) shares acquired through reinvestment of dividends or distributions, and (c) that number of shares having a value equivalent to the net appreciation of shares purchased by the redeeming shareholder within the prior four years. Applicants represent that in effecting any redemption, those shares held longest are assumed the first to be redeemed and that shares received by virtue of exercising an exchange privilege or upon a transfer (including any transfer to a securities dealer in connection with a repurchase) will be deemed to have been held for as long as the shares exchanged or transferred.

Applicants represent that no initial sales charge or CDSL will be imposed in connection with the sale of shares to, and the redemption of shares by, officers, directors, trustees, employees and sales representatives of the Trusts, the Adviser, the Distributor, State Street Research & Management Company (the parent company of the Adviser), or any spouse or minor child of the foregoing, provided that each purchaser has submitted to the applicable Trust at the time of purchase a written assurance that the purchase is being made for investment purposes and that the shares purchased will not be resold except through redemption.

Applicants contend that the proposed CDSL is consistent with all provisions of the Act and that it is fair and in the best interests of the Trusts' shareholders. Applicants believe that when amounts attributable to the initial value of the shares purchased are redeemed, it is equitable to impose a CDSL to compensate the Distributor for its sales efforts and distribution expenses incurred in connection with sales of shares. Applicants assert that the amount and timing of the CDSL are designed to promote fair treatment of all shareholders. Applicants represent that the proposed waivers of the CDSL will be fully disclosed in the applicable prospectus, that there will be no discrimination among the members of each class who would benefit from the waivers, and that existing shareholders will be advised of any future variations of the CDSL within one year of the date such variation is made available to purchasers of the Trusts' shares.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued the Commission orders a hearing upon request or unless upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3841 Filed 2-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14937; File No. 812-6244]

Application and Opportunity for Hearing; Monarch Life Insurance Co. et al.

February 13, 1986.

Notice is hereby given that Monarch Life Insurance Company ("Monarch"), 1250 State Street, Springfield, Massachusetts 01133, Variable Account A of Monarch ("Variable Account A") and Variable Account B of Monarch ("Variable Account B") (collectively known as "Applicants"), filed an application on November 6, 1985, and an amendment thereto on January 10, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), amending certain prior orders that granted exemptions from sections 12(d)(1), 26(a)(2) and 27(c)(2) of the Act and granting exemptive relief from subsections (a)(2) and (b)(15) of Rule 6e-2 in connection with certain flexible premium variable life insurance contracts ("Flexible Contracts") issued through Variable Accounts A and B and future separate accounts of Monarch (together, "Accounts"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant provisions.

Applicants state that Monarch is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts. Applicants assert that Monarch currently issues various annual and single premium variable life insurance contracts ("VLI Contracts") through two separate accounts, Variable Account A and Variable Account B. Applicants state that in the future, other separate accounts may be established to provide basic funding to support the benefits under Monarch's VLI Contracts and Flexible Contracts.

Applicants state that the Variable Accounts A and B are each registered as a unit investment trust under the Act. Applicants state that each consists of several investment divisions, and all assets held in the designated account's investment divisions currently are used to purchase shares or units issued by registered investment companies organized either as open-end management investment companies or unit investment trusts.

Applicants state that the Flexible Contracts, like the VLI Contracts, will be designed to provide insurance coverage on the life of the insured.

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Applicants assert that the death benefit and cash values under a particular Flexible Contract, will vary based upon the investment performance of the chosen investment divisions of the Account funding the contract.

Applicants state that unlike the VLI Contracts, the Flexible Contracts will not necessarily provide guaranteed lifetime insurance coverage; however, so long as the contract remains in force the death benefit will be the greater of the current face amount and the variable insurance amount. Applicants state that another difference is that the VLI Contract did not permit partial withdrawals and, therefore, no charge was made for such transactions; the Flexible Contracts do permit such transactions and levy a charge therefor.

Applicants state that the Flexible Contract will continue in force and pay death benefit proceeds, which at a minimum equal the current face amount of the contract, regardless of whether there is sufficient cash value to pay the charges under the contract, for a specified Guarantee Period (unless the contract debt becomes excessive). Applicants state that the length of the Guarantee Period is determined by the relationship between the net premiums paid and the face amount of the contract. Applicants state that as the current Flexible Contract requires only a single premium payment, the length of the Guarantee Period will originally be determined by the relationship between the initial net premium and the face amount. Applicants state that the owner may select the face amount within certain limitations. Applicants state that the minimum face amount for a given premium will be the amount that will produce a Guarantee Period for the insured's entire life, while the maximum face amount for a given premium will be the amount that will produce a Guarantee Period of at least 10 years. Applicants note that the Guarantee Period will be determined based upon the initial net premium and face amount, using the guaranteed maxium mortality rates in the contracts, and a 4% interest assumption. Applicants note that after the initial premium is paid, the Guarantee Period may be adjusted upon the payment of additional premiums or by partial withdrawals of cash value.

Applicants state that other versions of Flexible Contract may be created in the future which provide for different structures for premium payments or certain other characteristics. Applicants state that in such cases, the operation of the Guarantee Period may differ.

Applicants represent that in other respects the Flexible Contracts will operate in much the same fashion as the VLI Contracts. The application states that contractowners will be permitted to allocate their investment base among the various investment divisions which invest in the underlying vehicles, including both mutual funds and the Trusts. The application states the contract loading, which consists of sales load (which is a maximum of 4.0% of premiums paid), a first year administrative expense and state and local premium tax charges, will be deducted from the premium, but advanced by Monarch and included in the policyowner's investment base. Applicants represent that the contract loading will then be deducted in equal installments on the next ten contract anniversaries. Applicants state that in addition, mortality costs will be assessed to compensate Monarch for the cost of providing life insurance coverage on the insured. Applicants note the mortality costs, which are based upon the Commission's 1980 Standard Mortality Tables (and may be based on a multiple thereof for substantial risks), are deducted from the investment base quarterly on the policy processing dates. The application states that other charges deducted from the contract include an asset charge to cover the mortality, expense and guaranteed benefit risks computed at a maximum effective annual rate of .60% of assets at the beginning of the year and a charge against the assets of each division investing in the Trusts, currently at an effective annual rate of .25% at the beginning of the year (which can be increased to no more than .30%), which compensates Monarch for its costs in acquiring units of the Trusts for those divisions. The application states these charges are deducted on a daily basis in determining a contract's net rate of return.

Relief Requested

Applicants state that in connection with the VLI Contracts issued by Variable Account A and Variable Account B, Monarch and those accounts sought and obtained certain exemptive relief. An order was issued regarding Variable Account A on May 1, 1984 (Release No. IC-13914) (File No. 812-5724) and Variable Account B on April 9, 1985 (Release No. IC-14460) (File No. 812-6026) ("prior orders"). Applicants assert that the exemption granted were necessitated primarily as a result of those Accounts' investments in other investment companies that were organized as unit investment trusts ("Trusts"). Applicants note that the Trusts provide a "zero coupon" investment vehicle for the VLI Contracts. The specific exemptive relief granted under the prior orders included relief from section 12(d)(1) of the Act, to the extent necessary to permit the purchase of shares of the Trusts, and from sections 26(a)(2) and 27(c)(2) to permit Monarch to recover amounts, through asset charges against the Variable Accounts A and B, paid by Monarch to the Trust sponsors in connection with the acquisition of Trust units. Applicants incorporate by reference the applications requesting such relief.

Applicants submit that there may be a question whether the relief granted in the prior orders would extend to the Flexible Contracts, given the differences in policy design and in the exemptive rules under which the Flexible and VLI Contracts are regulated. Applicants also are concerned that using the same separate accounts to support both the VLI Contracts and Flexible Contracts may bring into question the continued qualification of the VLI Contracts under Rule 6e-2. Applicants are therefore seeking an order amending the prior orders to (a) provide exemptive relief from paragraph (a)(2) and (b)(15) of Rule 6e-2 to permit both the VLI Contracts and Flexible Contracts to be issued through the same separate account and (b) extend, to the extent necessary, the prior exemptive relief granted from sections 12(d)(1), 26(a)(2) and 27(c)(2), pursuant to section 6(c) under the Act, to Flexible Contracts issued by any Account.

Applicants note that paragraph (a)(2) of Rule 6e-2 prescribes that, except for certain advances made by the life insurance company, the assets of the separate account must be derived solely from the sale of variable life contracts as defined in Rule 6e-2. Applicants state that since the Commission has adopted a second rule, Rule 6e-3(T), which defines a second type of variable life contract, it could be argued that a contract falling within the definition in paragraph (c)(1) of Rule 6e-3(T) would not be a "contract as defined in Rule 6e-2." Applicants believe that the Flexible Contracts currently being registered should be treated as flexible premium variable life contracts under Rule 6e-3(T). Thus, an issue is raised whether, upon the sale of the Flexible Contracts, the assets of the Accounts would be derived solely from the specified type of contract so as to permit the VLI Contracts to continue to be issued in reliance on the relief granted by Rule 6e-2.

Applicants submit that there is no reason why one separate account should be prohibited from issuing contracts qualifying under both Rule 6e-2 and Rule 6e-3(T). Applicants assert that no apparent conflicts of interest would arise as a result of one contract having scheduled premiums and another allowing flexible premiums. Applicants state that in adopting 6e-3(T), the Commission placed no such restriction on the separate account. In addition, Applicants note, the Commission has proposed an amendment to Rule 6e-2 to permit the use of the same account for both types of contracts. (Release IC-14421, March 15, 1985.)

With regard to the extension of the prior orders to the Flexible Contracts, Applicants assert that although there are differences between the Flexible Contracts and the VLI Contracts, none of the differences have a bearing on the appropriateness of the relief granted in the prior orders. Applicants represent that the basic investment structure of the Flexible Contracts is the same as for the VLI Contracts. Applicants state that the same basic types of charges or deductions are made under the Flexible Contracts and the VLI Contracts. Applicants assert that the arguments made in the applications for the prior orders are equally applicable in the case of the Flexible Contracts, and are incorporated by reference. Moreover, Applicants represent that the Accounts and the Flexible Contracts will be subject to the same representations and limitations as discussed in the prior applications.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3843 filed 2-20-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14839; File No. 811-3507]

Application and Opportunity for Hearing: VALIC Capital Accumulation Fund, Inc.

February 13, 1986.

Notice is hereby given that VALIC Capital Accumulation Fund, Inc. ("Applicant"), 2929 Allen Parkway, Houston, Texas 77019, registered as an open-end, diversified management company under the Investment Company Act of 1940 (the "Act"), filed an application on Form N-8F on October 3, 1985, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant states that on June 30, 1982, it filed a Form N-8A Notification of Registration under the Act and filed a registration statement on Form N-1 pursuant to the Securities Act of 1933, to register an indefinite number of shares of its common stock. The application states that on September 10, 1985, the security-holders of the Applicant at their annual meeting approved a Plan and Articles of Merger. The application states that on September 26, 1985, the Applicant, formerly a Maryland corporation, merged with and into American General Series Portfolio Company and under Maryland law, ceased its independent existence.

Applicant states that it has no securityholders, no assets, no outstanding liabilities, and that it has not, within the last 18 months, transferred any of its assets to a separate trust. Applicant submits that pursuant to the merger no distributions were made to securityholders, it is not a party to any litigation or administrative proceeding and that it is not engaged and does not propose to engage in any business activity except as may be necessary to wind up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3842 Filed 2-20-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to the Congress

The attached document, *Automotive Fuel Economy Program, Tenth Annual Report to the Congress*, has been prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513), as amended by the Energy Policy and Conservation Act (Pub. L. 94-163) which requires in pertinent part that "each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the Federal Register, a review of average fuel economy standards under this part."

Barry Felrice,

Associate Administrator For Rulemaking.

Automotive Fuel Economy Program

Tenth Annual Report to the Congress

January 1986

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Section I: Introduction

This Tenth Annual Report to the Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1985 regarding the implementation of applicable sections of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report by January 15th of each year. Included in this report are sections summarizing rulemaking activities

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during 1985 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III of the Department of Energy Act of 1978 (Pub. L. 95-238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States (U.S.) market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include: (1) Establishing and amending average fuel economy standards for manufacturers of passenger automobiles and light trucks as necessary; (2) promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards; (3) considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them; (4) preparing reports to Congress annually on the progress of the fuel economy program, (5) enforcing the fuel economy standards and regulations; and (6) responding to petitions concerning domestic production by foreign manufacturers and other matters.

To date, passenger car fuel economy standards have been established by the Congress for model years (MY's) 1978 through 1980 and for 1985 and thereafter, and by NHTSA for the 1981 through 1984 model years. In addition, during 1985 NHTSA amended the MY 1986 passenger car standard. Standards for light trucks have been established by NHTSA for MY's 1979 through 1987. All current standards are listed in Table I-1.

TABLE I-1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS FOR THE 1978 THROUGH 1987 MODEL YEARS (IN MPG)

	Passenger cars	Light trucks [1]		
		Two-wheel drive	Four-wheel drive	Composite [2]
1978	[3] 18.0			
1979 [4]	[3] 19.0	17.2	15.8	17.2
1980 [5]	[3] 20.0	16.0	14.0	

TABLE I-1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS FOR THE 1978 THROUGH 1987 MODEL YEARS (IN MPG)—Continued

	Passenger cars	Light trucks [1]		
		Two-wheel drive	Four-wheel drive	Composite [2]
1981 [6]	22.0	16.7	15.0	
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[7] 27.5	19.7	18.9	19.5
1986	[7] 26.0	20.5	19.5	20.0
1987	[8], [9] 27.5	21.0	19.5	20.5

[1] Standards for 1979 model year light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY's 1980 through 1987 are for light trucks with a GVWR of up to and including 8,500 lbs.

[2] For model years 1982-1987, manufacturers may comply with the two-wheel and four-wheel drive standards or may combine their two-wheel and four-wheel drive light trucks and comply with the composite standard.

[3] Established by Congress in Title V of the Motor Vehicle Information and Cost Savings Act.

[4] For MY 1979, light truck manufacturers may comply seperately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[5] Light trucks manufactured by a manufacturer whose fleet is powered exclusively by basic engines which are not also used in passenger automobiles, must meet standards of 14 mpg and 14.5 mpg in model years 1980 and 1981, respectively.

[6] For MY 1987 and thereafter.

[7] Title V established a standard of 27.5 mpg for 1985 and subsequent model years, but provided the Department of Transportation with the authority to amend the standard. In October 1985, NHTSA published a final rule changing the MY 1986 standard to 26.0 mpg.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements of both domestic and foreign manufacturers in MY 1984 have been updated since their publication in the *Ninth Annual Report to the Congress* and, together with current data for MY 1985, are listed in Tables II-1 and II-2. Although there was some fuel economy improvement over MY 1984, lower fuel prices continued to stimulate consumer demand for larger cars and larger engines in MY 1985. These lower prices also contributed to reduced demand for diesel engines. Consequently, MY 1985 Corporate Average Fuel Economy (CAFE) values increased over MY 1984 levels for only 5 of the 26 passenger car manufacturers listed in Table II-1. However, these 5 companies account for about 74 percent of total MY 1985 production. Manufacturers did continue to introduce new technologies and more fuel-efficient models. In general, the domestic companies improved their passenger car CAFE levels, while imported car CAFE levels declined. MY 1985 is the second consecutive year in which imported car CAFE levels declined and domestic car CAFE levels increased.

For light trucks, the average MY 1985 CAFE for manufacturers using the two-wheel drive standard for compliance declined 0.2 miles per gallon from MY 1984 levels, and the average CAFE for manufacturers using the four-wheel-drive standard increased by 0.3 mpg. CAFE levels for two- and four-wheel drive domestic and four-wheel drive imported light truck manufacturers generally increased, but the overall fleet fuel economy level changed very little because the import share of total production declined.

TABLE II-1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER AND MODEL YEAR [1]

Manufacturer	Model year—CAFE [2] (MPG)	
	1984	1985
Domestic		
AM	35.5	33.5
Chrysler	27.8	27.9
Ford	25.8	26.3
GM	24.9	25.5
Sales weighted average	25.6	26.1
Imported		
Alfa Romeo	26.8	27.3
Bertone	29.8	29.2
BMW	28.0	25.8
Chrysler Imports	36.4	35.5
Ford Imports	35.6	24.9
GM Imports		47.7
Honda	35.2	33.9
Isuzu	29.2	27.7
Jaguar	19.4	19.2
Mazda	30.6	29.8
Mercedes Benz	26.2	23.0
Mitsubishi	31.8	31.4
Nissan	31.8	29.4
NUMMI (GM-Toyota)		35.7
Peugeot	25.0	24.7
Pininfarina	29.0	27.9
Porsche		25.5
Renault	33.2	28.9
Saab	26.0	25.8
Subaru	33.3	33.0
Suzuki		57.5
Toyota	33.5	32.9
Volvo	27.0	26.5
VW [3]	29.1	30.2
Sales Weighted Average	31.5	30.8
Total Fleet Average	26.9	27.3
Fuel Economy Standards	27.0	27.5

[1] Manufacturers of fewer than 10,000 passenger cars annually are not listed.

[2] Corporate Average Fuel Economy.

[3] Includes VW domestic production as well as VW, Audi, and Porsche imports for MY 1984. For MY 1985, Porsche is considered a separate manufacturer.

NOTE.—Many MY 1984 CAFE values differ from those used in the Ninth Annual Report to the Congress due to the inclusion of EPA test procedure adjustment credits in the current data.

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER AND MODEL YEAR

Manufacturer	Model year cafe (MPG)					
	Two-wheel drive		Four-wheel drive		Composite [1]	
	1984	1985	1984	1985	1984	1985
DOMESTIC						
AM		23.5	20.5	20.3		
Chrysler					18.4	19.0
Ford	19.0	19.8	18.3	18.7		
GM	19.9	20.1	19.9	20.1		
Sales weighted average	19.5	19.9	19.3	19.7	18.4	19.0
IMPORTED						
Chrysler Imports	27.9		25.2			27.8
Ford Imports	29.6	26.0				
Isuzu	33.0	33.5	24.7	24.9		
Mazda	29.7	(*)				
Mitsubishi	28.3	28.7	23.2	24.6		
Nissan	27.9	26.7	22.7	22.9		
Subaru			26.8	26.1		
Suzuki			26.8	26.8		
Toyota	26.2	27.8	22.6	23.9		
VW	20.7	21.3				
Sales weighted average	27.7	27.4	24.4	24.6		27.8
Total fleet average	21.3	21.1	20.2	20.5	18.4	19.4
Fuel economy standards	20.3	19.7	18.5	18.9	20.0	19.5

[1] In model years 1984 and 1985, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine their two-wheel and four-wheel drive trucks and comply with the composite standards.

[2] Early introduction of 1986 models, no 1985 models produced.

Because of continued consumer demand for larger vehicle and engines, a number of passenger car and light truck manufacturers did not achieve the levels of the CAFE standards for MY 1985. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some of the MY 1985 CAFE projections will change by the time final MY 1985 CAFE figures are provided to NHTSA in the spring and summer of 1986. For example, many of the current MY 1985 CAFE estimates do not include Environmental Protection Agency (EPA) test procedure adjustment credits. These credits are granted to compensate for the effects of past test procedure changes (see the EPA final rule, July 1, 1985, 50 FR 27172) and differ among the manufacturers. Thus, the precise level for each manufacturer is not known at this time. Adding these credits would increase CAFE values. In addition, many manufacturers are not expected to pay civil penalties because in earlier years they earned sufficient credits by exceeding fuel economy standards to offset later shortfalls. Other manufacturers will file carryback plans to demonstrate they anticipate earning credits in future model years to eliminate current deficits.

The total fleet average fuel economy for the MY 1985 passenger car fleet falls short of the standard by 0.2 mpg, but this shortfall may be reduced once final CAFE values are determined for each manufacturer. Total fleet average fuel economy values of light trucks exceeded the separate two- and four-wheel drive MY 1985 standards. NHTSA estimates that by 1995 the projected cumulative passenger car and light truck fuel savings, due to manufacturers' achievements through 1985 and assuming they meet and continue to achieve the fuel economy levels of existing standards for the post-1985 period, would amount to approximately 420 billion gallons, compared to consumption projected at MY 1976 new vehicle fuel economy levels. This calculation is based on the assumption that on-road fuel economy average 15 percent below EPA ratings. This adjustment is consistent with current EPA labeling requirements.

The characteristics of the MY 1985 passenger car fleet reflect a slight trend toward larger, higher performance cars in both the import and the domestic fleets (see Table II-3). The domestic fleet average curb weight increased by 9 pounds over MY 1984, as did the import fleet. However, the total MY 1985 fleet average curb weight decreased by 12 pounds because of the larger share taken by imports, which have a lower fleet average curb weight than the domestics. The average engine displacement increased by 2 cubic inches for the domestic fleet and did not change on the import fleet. Performance as measured by fleet average engine horsepower to curb weight increased by 0.14 horsepower per 100 pounds in the domestic fleet and 0.24 horsepower per 100 pounds in the import fleet. The size of domestic automobiles increased as the market shares of mid- and full-size cars increased at the expense of smaller size classes. Similarly, the shares of mid-size and compact cars in the import fleet increased while the subcompact share of the import fleet declined.

CAFE for the total new passenger car fleet increased by 0.5 mpg in MY 1985, consisting of an improvement in the domestic fleet and a decline in the imported fleet CAFE. The domestic fleet improvement is particularly notable since average curb weight increased slightly, performance levels increased, and fuel efficient diesel engines have virtually disappeared from the MY 1985 fleet. Some of the factors accounting for this improvement are increased use of front-wheel drive (reducing driveline losses by replacing inefficient hypoid gears with spiral bevel or helical gears), engine friction reduction techniques (such as the use of reduced piston ring tension and roller camshift followers) increased use of fuel injection (up from 39 percent in MY 1984 to 58 percent in MY 1985), and refinement of engine calibrations.

In the import fleet, the decline in CAFE is due to a shift toward larger vehicles, increased performance levels and decline in diesel engine sales, which more than offset the increased use of front-wheel drive, lock-up clutches on automatic transmission torque converters, and fuel injection.

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TABLE II-3.—PASSENGER CAR FLEET CHARACTERISTICS

	Total	Fleet	Domestic	Fleet	Import	Fleet
	MY 1984	1985	1984	1985	1984	1985
Fleet average fuel economy, mpg	26.8	27.3	25.8	26.1	31.5	30.8
Fleet average curb weight, pounds	2678	2666	3009	3018	2446	2457
Fleet average engine displacement, inches [3]	178	177	197	199	118	119
Fleet average horsepower/weight ratio, HP/100 pounds	3.66	3.64	3.63	3.77	3.77	4.01
Percent of fleet	100	100	75.8	72.8	24.2	27.2
Segmentation by EPA size class, percent:						
Two-seater	3.2	3.3	2.5	1.7	5.4	7.8
Minicompact	0.3	0.8	0.0	0.0	1.4	2.3
Subcompact [1]	25.8	21.1	12.4	8.8	66.9	51.3
Compact [1]	27.9	31.0	30.2	29.8	20.5	34.8
Mid-size [1]	29.2	26.8	37.2	37.7	2.9	3.8
Full size [1]	13.5	15.4	17.8	21.2	0.0	0.0
Percent diesel engines	1.7	0.9	0.9	0.2	4.3	2.7
Percent turbocharged engines	2.7	3.7	2.0	3.0	5.3	5.8
Percent fuel injection	41.0	56.4	39.1	57.5	47.4	53.9
Percent front-wheel drive	54.7	63.3	51.5	60.0	65.3	72.3
Percent automatic transmissions	76.1	76.9	86.2	88.8	43.2	45.4
Percent of automatic transmissions with lock-up clutches or split torque	61.9	62.3	87.7	86.1	55.3	62.5

[1] Includes associated station wagons.

Section III: 1985 Activities

A. MY 1986 Passenger Car Fuel Economy Standard

On March 1, 1985, General Motors Corporation (GM) and Ford Motor Company (Ford) petitioned the agency to reduce passenger car fuel economy standards for 1986 and subsequent model years from 27.5 mpg to 26.0 mpg. In general, both companies argued that changes in the passenger car market beyond their control, such as declining fuel prices and increased import competition, had reduced their fuel economy capability.

On March 28, 1985, NHTSA published a notice in the **Federal Register** (50 FR 12344) granting the petitions, and requested public comment on the petitions. In that notice, NHTSA combined rulemaking on these petitions with that of a petition submitted earlier by the Center for Auto Safety (CFAS) and the Environmental Policy Institute (EPI). The CFAS/EPI petition, submitted to the agency in a letter dated July 26, 1984, requested that the agency raise the existing passenger car fuel economy standard for model years 1987–90. Those two organizations requested that the existing 27.5 mpg standard for those years be increased to 31.5, 34.5, 37.5, and 40.5 mpg respectively. The CFAS/EPI petition was granted by NHTSA in a **Federal Register** notice on November 28, 1984 (49 FR 46770). In both **Federal Register** notices, the agency noted that the granting of a petition does not mean that a rule will necessarily be issued. The determination of whether to issue a rule is made in the course of rulemaking, in accordance with statutory criteria.

In the March 28, 1985, grant notice, NHTSA stated it was focusing its attention on MY 1986, due to the possibility of serious economic harm cited by GM and Ford, as well as the limited remaining time for amending the MY 1986 standard. Amendments reducing a standard for a particular model year may be made until the beginning of that model year, but not after that time.

On July 22, 1985, after considering comments submitted in response to the March 1985 notice, NHTSA published in the **Federal Register** (50 FR 22912) a notice of proposed rulemaking (NPRM) to amend the MY 1986 standard by reducing it to 26.0 mpg. The NPRM outlined the agency's tentative conclusions that the maximum average fuel economy level for MY 1986 was 26.0 mpg. NHTSA concluded that GM and Ford, together constituting a substantial part of the industry, had made significant efforts to meet the 27.5 mpg standard, but that these efforts had been overtaken by unforseen events. The agency also concluded that the only actions available to GM and Ford to significantly raise their MY 1986 fuel economy levels would involve product restrictions resulting in adverse economic impacts, including sales losses well into the hundreds of thousands, job losses into the tens of thousands, and unreasonable restrictions on consumer choice. The agency requested public comment on its tentative conclusions, and scheduled a public meeting for August 8, 1985 to receive oral comments.

On September 30, 1985, after receiving extensive comments on its proposal and holding the public meeting, NHTSA issued a final rule amending the MY 1986 standard to 26.0 mpg (published in the **Federal Register** on October 4, 1985 (50 FR 40528)). The agency's analysis for the final rule was similar to the analysis used to support the NPRM. The agency noted that both GM and Ford projected they could achieve 26.3 mpg in MY 1986, but these estimates are subject to a number of risks. One risk is the likelihood of increased competition in the small car segment of the market, with the liberalization of Japanese auto export restraints and the introduction of new low-cost, foreign competition from Yugoslavia, Korea, and Greece. To the extent that this increased competition in the small car market results in fewer small car sales for GM and Ford, their MY 1986 CAFE levels would be reduced. Another risk is that fuel prices may decline further, reducing demand for smaller cars and engines, with concomitant increases in consumer demand for larger cars and engines. The inability of the Organization of Petroleum Exporting Countries to agree upon pricing and production levels has led to some estimates that petroleum prices may decline by 30 percent or more between Fall 1985 and Spring 1986 As the agency's experience with uncertainties that could reduce manufacturers' CAFE levels has indicated that there is a substantial risk that such uncertainties will come to fruition, NHTSA concluded that the maximum feasible standard for MY 1986 of 26.0 mpg.

B. Post-1986 Passenger Car Fuel Economy Standards

As noted above, the agency was petitioned by GM and Ford to reduce passenger car fuel economy standards for 1986 and subsequent model years, which the Center for Auto Safety and the Environmental Policy Institute petitioned NHTSA to raise standards for MY 1987–90. During 1985, however, NHTSA concentrated its rulemaking on MY 1986, due to the possibility of serious economic harm cited by GM and Ford, as well as the limited remaining time for amending the MY 1986 standard. In the final rule amending the MY 1986 standard, the agency noted it was in the process of analyzing data for MY 1987 and subsequent years. On January 16, 1986, NHTSA issued an NPRM proposing a range of average fuel economy standards for model years 1987–1988.

C. Light Truck Standards

NHTSA published a final rule establishing MY 1987 light truck fuel economy standards on October 3, 1985 (50 FR 40398). The agency set a composite standard of 20.5 mpg, with optional standards of 21.0 mpg for two-wheel drive trucks and 19.5 mpg for four-wheel drive trucks.

Proposed standards for model years 1986 and 1987 light trucks had been published on March 8, 1984 (49 FR 8637). That rule proposed that final composite standards be set within the range of 20.0 mpg to 21.5 mpg for MY 1986 and 20.0 to 22.5 mpg for MY 1987. A final rule for MY 1986 trucks (and also amending the MY 1985 light truck standards) was published on October 22, 1984 (49 FR 41250). Among other things, that rule established a MY 1986 composite light truck standard of 20.0 mpg.

In the final rule for MY 1987 trucks, the agency determined that Ford was the "least capable" manufacturer with regard to improving the average fuel efficiency of its light trucks. The agency projected that Ford could achieve an average MY 1987 fuel economy level of 20.3–21.0 mpg. In contrast, NHTSA concluded that GM could achieve 21.1–22.4 mpg and Chrysler could achieve 21.6 mpg. The 21.0 mpg figure for Ford was subject to a potential loss of 0.4 mpg due to sales shifts towards larger engines and vehicles (primarily due to possible decline in fuel prices and consequent increased consumer demand for larger trucks and engines), as well as a potential loss of 0.3 mpg due to technological risks. The agency selected 20.5 mpg as the final composite standard because it balanced the potentially serious adverse economic consequences associated with market and technological risks against Ford's opportunities to further increase its fuel economy levels. Since Ford produces more than 30 percent of all light trucks subject to fuel economy standards, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of standards. In the final rule, the agency estimated that the 1987 light truck fleet will consume 520 million fewer gallons of gasoline over its lifetime that it would have consumed if light truck fuel economy levels were to remain at the levels of the 1986 standards.

A notice of proposed rulemaking establishing light truck standards for MY's 1988–1989 was issued on January 21, 1986.

D. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one which manufactures fewer than 10,000 passenger automobiles, worldwide, in the model year for which the exemption is sought (the affected model year) and which manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year.

During 1985, the agency issued three **Federal Register** notices regarding low volume fuel economy standards. On February 8, 1985, NHTSA published a proposal (50 FR 5405) to grant Rolls-Royce an alternative fuel economy standard of 11.0 mpg for MY 1986, in response to a petition from Rolls-Royce. The agency tentatively concluded that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its 1986 cars above an average of 11.0 mpg, that compliance with other Federal automobile standards would not adversely affect achievable fuel economy, and that the national effort to conserve energy would not be substantially affected by granting the requested exemption and establishing the alternative standard. Public comment was requested on the agency's proposal.

On August 12, 1985, NHTSA published a final rule in the **Federal Register** (50 FR 32424) granting the Rolls-Royce exemption for MY 1986, and establishing an alternative standard of 11.0 mpg. The agency's rationale for the final rule was unchanged from the proposal; NHTSA had received no comments on the proposed decision.

On June 5, 1985, NHTSA published a proposal (50 FR 23738) to grant Rolls-Royce alternative fuel economy standards for model years 1987 through 1989. As in the case of the MY 1986 notice, this proposal was issued in response to a petition from Rolls-Royce. The agency proposed a standard of 11.2 mpg for all three model years. The rationale for the proposal was similar to that used for the proposed MY 1986 Rolls-Royce alternative standard. The 0.2 mpg increase in fuel economy over the MY 1986 level was projected to be due primarily to the use of a lower rear axle ratio in MY 1987–89 Rolls-Royce cars. A final rule on this issue is expected to be issued shortly.

The agency is also evaluating four other petitions from low volume manufacturers; Lamborghini, Lotus, Maserati, and LondonCoach. Action on these petitions is anticipated early in 1986.

E. Civil Penalties

During 1985, NHTAS assessed civil penalties of $6,015,990 against Jaguar Cars, Inc. for failing to meet MY 1983 and 1984 passenger car fuel economy standards. This marks the first time an automobile manufacturer has been assessed penalties for not achieving fuel economy standards. Jaguar's MY 1983 CAFE was 19.2 mpg, versus a standard of 26.0 mpg. Jaguar's MY 1984 CAFE was 19.4 mpg, while the standard was 27.0 mpg.

In model year 1983, Jaguar imported 12,639 cars. The company's penalty for that year would have been $4,297,260. However, Jaguar had $4,239,290 in carryforward credits, reducing the MY 1983 penalty to $57,970. Jaguar imported 15,079 cars in MY 1984, which resulted in a $5,958,020 penalty. The company was assessed the full amount for MY 1984 because no credits were available to offset the shortfall.

Section IV: Impact of Domestic Content Amendment

The Automobile Fuel Efficiency Act of 1980 (Act of 1980) modified several provisions of the Motor Vehicle Information and Cost Savings Act. One of these modifications concerned the domestic content provision in section 503 of Title V. Section 503 specifies that passenger cars having less than 75 percent of the cost to the manufacturer attributable to value added in the United States or Canada are considered to be foreign manufactured. Conversely, vehicles with at least 75 percent value added in the U.S. or Canada are considered to be domestically manufactured for the purposes of complying with fuel economy regulations. Since section 503 also requires that domestically and foreign produced passenger automobiles not be grouped together for the purpose of complying with fuel economy standards, highly fuel-efficient vehicles with less than 75 percent value added in the United States or Canada may not be used by a manufacturer to offset the lower fuel economy of its domestically produced cars.

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The domestic content provision was included in Title V to promote employment in the U.S. automobile industry by encouraging manufacturers to produce high fuel economy vehicles in this country, instead of relying on the importation of such cars which they produce or purchase abroad. However, foreign manufacturers choosing to build their most fuel-efficient vehicles in the U.S. or Canada, with at least 75 percent domestic content, would not, under the original domestic content provision, be permitted to average such cars with their less fuel-efficient foreign-produced models. Thus, there existed a disincentive for foreign manufacturers to initiate U.S. production and to achieve high levels of domestic content. The Act of 1980 permits manufacturers completing their first year of production in the period 1975–85 to petition NHTSA for exemption from the separate compliance provisions of section 503 of Title V. Such a petition must be granted unless the agency finds that doing so would result in reduced employment in the U.S. automobile industry.

Volkswagen of America, Inc. (VWoA) has been the only manufacturer to petition NHTSA for an exemption from the separate compliance provision. The agency granted the petition for relief on October 23, 1981. The agency concluded that granting the petition would not result in adverse effects on employment in the U.S. automobile industry.

As required by the Act of 1980 (section 512(c)(1) of Title V), the Secretaries of Transportation and Labor have made during 1985 their fourth annual examination of the impact of the domestic content amendment to Title V. During 1985, domestic auto industry employment grew as production increased. Through September 1985 (the latest figures available when this report was prepared), domestic passenger production rose 6.5 percent over the same period in 1984. VWoA car production grew 20.2 percent; however, VWoA accounts for only 1.1 percent of total domestic car production. According to the U.S. Department of Labor, total employment in SIC (Standard Industrial Classification) 371 (Motor Vehicles and Equipment) rose from an average of 853,400 in January through September 1984 to 872,600 for the same period in 1985.

VWoA expects that its MY 1986 U.S. produced vehicles, like its 1985 models, will contain over 75 percent domestic content. There is no reason, at present, to change the 1981 findings of NHTSA that granting VWoA's petition will promote employment in the U.S. automobile industry without causing undue harm to domestic manufacturers. Also, no evidence has been found that the domestic content provision has permitted a manufacturer of domestically produced cars to attain the 75 percent level, and then subsequently to fall below the 75 percent requirement.

Section V: Use of Advanced Technology

This section fulfills the statutory requirement of the Department of Energy Act of 1978 (Pub. L. 95–238) Title III section 305, which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronics and engine technology which improved fuel economy in model year 1985.

New Models

In 1985 domestic manufacturers introduced new products and replaced or supplemented existing product lines with new, lighter-weight, front-wheel drive models.

General Motors introduced two new front-wheel drive models, the C-body and N-body. C-bodies (the Cadillac Fleetwood/Deville, Buick Electra and Oldsmobile 98) were being built and sold as 1985 models during the second half of the 1984 model year. The C-bodies are designed to replace larger luxury, rear-drive models using the same model names. The new C-bodies weigh over 650 pounds less than the cars they replace. The N-body, the other new GM front-drive car introduced in 1985, is sold under the names of Buick Somerset Regal, Oldsmobile Calais and Pontiac Grand Am. The N-body is sized between the mid-sized A-body (Chevrolet Celebrity, etc.) and the compact J-body (Pontiac Sunbird, etc.)

In 1985, Chrysler introduced the new H-body, a front-wheel drive 4-door sedan. This expanded Chrysler's range of light-weight, front-wheel drive product offerings in the mid-size class. In December 1985, Ford plans to introduce the new Taurus/Sable, which has a lower aerodynamic drag and front-wheel drive design, to compete in the mid-size segment of the market.

New light trucks included GM's new compact van, the Chevrolet Astro and GMC Safari, as well as Ford's new compact van, the MY 1986 Aerostar. American Motors has introduced a new compact Jeep pickup (the Comanche). The new 1985 models introduced by the light truck manufacturers provide consumers a wide choice of fuel-efficient light truck models.

Materials

Reducing weight to improve fuel economy has resulted in new applications for plastics and lightweight metals. Ford Motor Company has introduced a fiber-reinforced plastic driveshaft in the Econoline vans. These non-metallic, one piece driveshafts are made of plastic resin, reinforced with both glass and graphite fibers. They are the first production driveshafts of their kind. Ford expects to save 11 pounds for each application compared to conventional steel shafts.

In model year 1985 GM used glass fiber-reinforced sheet molding compounds (SMC) in the hood, rear doors and roof extension inserts of the Cadillac limousine. These body components are a combination of glass fibers and polyester to achieve the strength, stiffness, and appearance required in exposed body components. The doors were the first compression-molded plastic units to be used on a predominantly steel body. Another, new GM application for plastic in 1985 models is the single-leaf glass fiber-reinforced rear spring design on GM's new compact vans. These new springs saved 54 pounds on each vehicle.

Volkswagen of America is using polyethylene fuel tanks on the Golf automobile. Other new applications for plastics in the auto industry include SMC finishing panels on the back of the Buick Electra, two-piece SMC in the Oldsmobile Firenza line, and soft-fascia (urethane) bumpers on Chrysler's new Lancer and LeBaron GTS models.

Aluminum is being used in a significant number of new applications, involving castings, stampings, extrusions and forgings. Some of the biggest applications from both a materials weight and technological standpoint involved imported components used in domestic automobiles. American Motors Corporation used an all-aluminum turbocharged diesel engine in its 1985 Jeep Cherokee and Wagoneer models. This optional, fuel-efficient power plant was imported from AMC's French partner, Regie Nationale des Usines Renault. Another aluminum engine is featured in Chevrolet's imported Sprint minicar from GM's Japanese affiliate, Suzuki Motor Co., Ltd.

Applications of aluminum radiators are also increasing. Ford has put these into its Ranger pickup trucks after introducing them earlier in the Escort/Lynx, Mark VII, and Tempo/Topaz cars. GM is installing aluminum radiators in its large front-wheel drive Cadillac, Buick and Oldsmobile cars.

In most applications, the aluminum radiators weigh 20 to 40 pounds less than their copper and brass counterparts. Other applications for aluminum include: a forged engine mount for 4-cylinder GM cars, a stamped aluminum front bumper impact bar on the Oldsmobile Cutlass Ciera, intake manifolds on Chevrolet Corvettes, bumper reinforcements on Chrysler's LeBaron GTS, and driveshafts on the Ford Aerostar.

In 1985, new applications of High Strength Steel (HSS) to replace mild steels extended the growth in the use of this material. Examples of applications are: the front bumper of the Chevrolet Astro, which was integrated into the body of this new van, as well as the platform rear bumper of this van; use of tubular impact bars in GM's Calais, Somerset, and Grand Am models; stamped beams in the doors of Ford's large cars; and rear bumper reinforcement bars on Chrysler's LeBaron GTS.

New applications of other lightweight materials include Chrysler's use of powder metal in rocker arm inserts in the 2.2 liter engine, synchronizer clutch hubs and exhaust valve guides. Cast magnesium electronic fuel injection housings are being used by Chrysler in LeBaron GTS and Lancer cars. Stainless steel manifolds made from lightweight tubular components are being introduced in automobiles produced by GM.

Electronics

The use of electronics continues to increase in new cars. For example, domestic automakers are continuing to increase the application of electronic engine controls. According to Ward's, 1985 *Automotive Yearbook*, electronic spark timing was used in 87.7 percent of the 1984 automobiles. Application of every electronic engine component in the Ward's survey except feedback carburetors increased in 1984, and this trend continued in 1985. GM added electronic port fuel injection to Chevrolet's 2.8 liter V–6 and their 5.0 liter V–8. A new version of Buick's 3.0 liter V–6 includes multi-point injection and computer controlled coil ignition. Ford offers an optional multi-point fuel-injected 1.9 liter 4-cylinder engine in the Escort/Lynx carline, and has also added an electronic fuel injection system to its 2.3 liter Tempo/Topaz engine. Honda now offers electronic fuel injection on the Accord, and Volkswagen has installed an electronically controlled mechanical fuel injection system on the Golf. Another electronic device that has experienced increased application is shift indicator lights which provide a mileage bonus on manual transmission automobiles.

The present stable supply of moderately-priced fuel has supported consumer preference for larger cars and for performance. Diesel sales have almost disappeared. However, manufacturers continue to introduce fuel-efficient technology. New models are being introduced with rounder contours to improve aerodynamics. Electronic applications have improved engine performance and fuel economy. Front-wheel drive automobiles continue to replace less efficient rear-wheel drive automobiles, and new uses of alternative materials are being tried. These changes have helped the domestic auto industry to continue to improve the CAFE of their fleets.

[FR Doc. 86–3712 Filed 2–20–86; 8:45 am]
BILLING CODE 4910–59–M

Rulemakings, Research, and Enforcement Programs; Public Meeting and Announcement of Technical Meeting on Current, Planned and Prospective Research on Crash Avoidance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research, and enforcement programs, and at which NHTSA's current, planned and prospective research on crash avoidance will be discussed. The agency seeks papers and oral presentations from industry and the private sector on crash avoidance research and development. The agency has chosen to combine the quarterly public meeting with a technical meeting to reduce the costs which would be incurred if separate meetings were held.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on April 15, 1986, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs must be submitted in writing by April 4, 1986. If sufficient time is available, questions received after the April 4 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by April 4 and the issues to be discussed will be mailed to interested persons on April 9, 1986 and will be available at the meeting.

Requests to make a formal presentation on crash avoidance research must be submitted not later than March 21, 1986.

ADDRESSES: Questions for the April 15, meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street SW., Washington, DC 20590

Requests to make a formal presentation on crash avoidance should be addressed to Robert Nicholson, NRD–50, Office of Crash Avoidance Research, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

The public meeting will be held in Room 2230, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA will hold a meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on April 15, 1986. The meeting will begin at 10:30 a.m., and will be held in Room 2230, Department of Transportation, 400 Seventh Street SW., Washington, DC. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington DC 20590.

At the close of the usual question and answer session a discussion of the agency's crash avoidance research program will be held. Immediately thereafter (or on the following day, April 16, 1986, depending on the number of participants desiring to make presentations), the agency will conduct a technical meeting at which presentations will be made regarding the agency's crash avoidance research program. Several agency officials involved in the program will make presentations, and industry representatives and other interested individuals are invited to make similar technical presentations.

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The complete details on the technical meeting on crash avoidance research will be provided in a subsequent notice.

Issued on February 18, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-3715 Filed 2-20-86; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held March 5, 1986, in Room 600, 301 4th Street SW., Washington, DC at 11:05 a.m.

The Commission will meet with Mr. Carl Gershman, President, National Endowment for Democracy, to discuss Endowment projects and programs.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: February 12, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86-3783 Filed 2-20-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 35
Friday, February 21, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

February 14, 1986.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Friday, February 21, 1986, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: The need to promote competition and efficient use of Spectrum for Radio Common Carrier Services. Summary: The Commission will consider proposals for the designation of a Mobile Services Interconnection Ombudsman and for the institution of a fact-finding inquiry into post-divestiture BOC practices in the provision of paging and conventional mobile services.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: February 14, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-3921 Filed 2-19-86; 1:52 pm]

BILLING CODE 8712-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 26, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3868 Filed 2-19-86; 10:08 am]

BILLING CODE 6210-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, March 4, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington DC 20594.

STATUS: The first two items to be discussed will be open to the public. The last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* China Airlines, Boeing 747 SP, N4522V, 300 Nautical Miles Northwest of San Francisco, California, February 19, 1985.

2. *Marine Accident Report and Recommendation Letters:* Collision between the charter fishing vessel GULF QUEEN and the crewboat M/V ALAN McCALL, Gulf of Mexico, March 9, 1985.

Opinion and Order: Administrator V. Crawford, Docket SE-6544; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382-6525.

Dated: February 19, 1986.

Catherine T. Kaputa,

Federal Register Liaison Officer.

[FR Doc. 86-3907 Filed 2-19-86; 12:45 pm]

BILLING CODE 7533-01-M

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 17, 24, March 3, and 10, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 17

Wednesday, February 19

2:00 p.m.
Staff Briefing on Integrated Safety Assessment Program (Public Meeting)

Thursday, February 20

2:00 p.m.
Report on Safety Goal Evaluation (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule Establishing Criteria for Reopening Records to Formal Licensing Proceedings (postponed from February 13)
b. Petitions for Hearing on Licensee Requests for Authorization for Onsite Disposal of Low-Level Radioactive Waste Under 10 CFR § 20.302(a)

Week of February 24—Tentative

Tuesday, February 25

10:00 a.m.
Briefing by Incident Investigation Team on Status of Rancho Seco (Public Meeting)

Wednesday, February 26

2:00 p.m.
Briefing on NUMARC Initiatives (Public Meeting)

Thursday, February 27

10:00 a.m.
Discussion of DOE High Level Waste Program (Public Meeting)

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)

Week of March 3—Tentative

Wednesday, March 5

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 10—Tentative

Tuesday, March 11

10:00 a.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)

2:00 p.m.
Briefing by DOE on R&D Results from TMI-2 Cleanup (Public Meeting)

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Wednesday, March 12

10:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7) (Tentative)

Thursday, March 13

10:00 a.m.
Briefing by Staff and Licensee on Status of Kerr-McGee Sequoyah Fuel Facility (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 14

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Request for Reconsideration of TMI-2 Leak Rate Proceeding Notice of Hearing" and "Order on Shoresham Emergency Exercise" were held on February 13.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,
Office of the Secretary.
February 13, 1986.

[FR Doc. 86-3850 Filed 2-18-86; 4:45 pm]
BILLING CODE 7590-01-M

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POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, March 3, 1986, in Washington, D.C., and at 8:30 a.m. on Tuesday, March 4, 1986, in the Benjamin Franklin Room U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC. As indicated in the following paragraph, the March 3 meeting is closed to public observation. The March 4 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, (202) 268-4800.

By telephone vote on February 7 and 10, 1986, a majority of the Members contacted and voting, the Board voted to close to public observation its meeting scheduled for March 3. (See 51 FR 5637, February 14, 1986.) The meeting will concern the January 24, 1986, recommended decision of the Postal Rate Commission on the *Complaint of ADVO-SYSTEM, Inc.*

Agenda

Monday Session

March 3, 1986—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission's recommended decision in *Complaint of ADVO-SYSTEM, INC.*, (Docket No. C85-1).

Tuesday Session

March 4, 1986—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 3-4, 1986.
2. Remarks of the Postmaster General.
3. Consideration of rates for preferred rate mail.
4. Amendment to the Bylaws of the Board of Governors.
5. Annual Testimony to Legislative Committees.
6. Report on Law Department.
7. Report on Administration Group Programs.
8. Capital Investments:
a. Integrated Retail Terminals.
b. Flat Sorter Machine Enhancements.
c. Pasco., Washington, Main Post Office and Main Vehicle Maintenance Facility.
9. Tentative agenda for April 7-8, 1986, meeting in Atlanta, Georgia.

David F. Harris,
Secretary.

[FR Doc. 86-3892 Filed 2-19-86; 10:42 am]
BILLING CODE 7710-12-M

federal register

Friday
February 21, 1986

Part II

Environmental Protection Agency

40 CFR Part 30
Audit Requirements for State and Local Government; General Regulation for Assistance Programs; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[OA-FRL 2996-3]

Audit Requirements for State and Local Government; General Regulation for Assistance Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising EPA's General Regulation for Assistance Programs (40 CFR Part 30) which establishes EPA's requirements for collecting interest, processing and handling (collection), and penalty charges on recipients' debts under EPA assistance agreements. This rule makes interest accrue from the date of the Agency's decision that a debt is owed and requires EPA to charge recipients other than State and local governments a penalty on debts which are more than 90 days past due. EPA is also revising the audit requirements for State and local government recipients and adding OMB Circular A–128 as Appendix E.

DATES: The interest, collection, and penalty provisions of this rule are effective for debts EPA determines are due after February 21, 1986. The audit provision of this rule is effective February 21, 1986. Although the audit provision is effective immediately, comments on the provision are solicited. Submit comments to the address below within 60 days after publication of this document.

ADDRESS: Grants Administration Division (PM–216), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Scott McMoran (202) 382–5293.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency's (EPA) General Regulation for Assistance Programs (40 CFR Part 30, September 30, 1983) provides general administrative requirements for all EPA assistance programs. On February 8, 1985, we issued a proposed rule to revise the interest, collection, and penalty provisions of the regulation (40 CFR 30.802 (b) and (c), and 30.1230(a)). This document responds to comments on the proposed revision and makes the change final. This document also implements OMB Circular A–128 issued on April 12, 1985, which establishes audit requirements for State and local government recipients of Federal financial assistance.

Debt Related Charges. 40 CFR 30.802(b) and 30.1230(a) of the current regulation generally provide that EPA will charge recipients interest, collection costs, and a 6% per annum penalty if the debt is not paid within 30 days from the date of the final Agency action. Under EPA's dispute resolution process (40 CFR Part 30, Subpart L), the date of the final Agency action depends on whether recipients request administrative review. After an EPA disputes decision official issues a final decision, the recipient may, within 30 days of the decision, request review of that decision by the appropriate EPA Regional Administrator or Assistant Administrator. In such cases, interest is not charged between the date of the disputes decision official's decision and the review decision issued by the Regional Administrator or the Assistant Administrator.

Delays in repaying debts result in an undue financial loss to the Government and taxpayers in general by reducing the Department of Treasury's investment opportunities and increasing its borrowing costs.

We are amending § 30.802 (b) to make interest accrue on debts not paid within 30 days from the date of the Agency's decision that a debt is owed. We are also amending § 30.1230(a) to make it clear that, for disputed amounts, interest will accrue if payment is not made within 30 days of the disputes decision official's final decision, regardless of whether the recipient requests review of the decision.

Under §§ 30.802 (b) and (c) and 30.1230 (a) and (b) of the current regulation, EPA charges recipients other than State and local governments a penalty of 6% per annum of the amount of the debt if the recipient does not pay the debt within 30 days of the final Agency action. The Debt Collection Act of 1982 (Pub. L. 97–365), however, requires agencies to charge these recipients a penalty on debts which are more than 90 days past due. This rule amends §§ 30.802 (b) and (c) and 30.1230(a) to make EPA's rule consistent with the Debt Collection Act. EPA will charge recipients other than State and local governments a penalty on debts not paid within 120 days of the Agency's decision that a debt is owed.

Under §§ 30.802 (b) and (c) and 30.1230 (a) and (b) of the current regulation, EPA charges recipients other than State and local governments the cost of collecting a debt not paid within the time specified. This rule makes a technical amendment to § 30.802 by moving the collection cost provisions for overdue debts from paragraph (b) to paragraph (c). This rule also revises § 30.1230(a) to explain that any collection costs paid are refundable only if EPA determines that the entire amount of the debt is not owed.

We received five sets of comments on the proposed rule. The most often repeated comment was that if EPA is going to charge recipients interest, collection, and penalty charges on overdue debts, then EPA should pay interest on refunds due recipients and on late EPA payments to recipients. The Federal Prompt Payment Act (Pub. L. 97–177) requires Federal agencies to pay interest on bills under contracts they fail to pay within 30 days. That Act does not apply to grant programs and there is no corresponding authority requiring or allowing payment of interest under grants. EPA should not, however, routinely delay payments under its grant programs. If delays occur, recipients should contact the grants administration staff in the appropriate EPA regional or Headquarters office to determine the problem.

A second comment was that EPA auditors do not conduct exit conferences with recipients nor do recipients have an opportunity to comment on audit report findings before the disputes decision official makes a final decision. EPA Directive 2750 provides that our auditors may conduct exit conferences with recipient officials. If EPA's auditors do not conduct exit conferences, recipients should contact EPA's Divisional Inspectors General. Also, EPA should generally afford recipients the opportunity to comment on final EPA audit reports before issuing final decisions.

A third comment was that EPA should not delay its request for a repayment and then charge interest from the "due" date. A debt is due only after EPA notifies the recipient that the debt is owed.

The final comment was that EPA should refund a portion of the processing and handling charges when, as a result of review under 40 CFR Part 30, Subpart L, the amount of the debt is reduced. The proposed regulation stated that recipients would not receive a refund of the processing and handling charge even if their debt was reduced as a result of administrative review. This is because the processing and handling charge is based on the cost to EPA of processing a claim against recipients. That cost is the same for a large debt as for a small one. We have revised § 30.1230(a) to make it clear that if EPA determines that the recipient's entire debt should be refunded, the recipient will receive a complete refund.

Audit provisions. On April 12, 1985, the Office of Management and Budget issued OMB Circular A–128 which implements the Single Audit Act of 1984 (Pub. L. 98–502). The Single Audit Act establishes audit requirements for State and local government recipients of Federal assistance. EPA's general regulation for assistance programs currently requires State and local government recipients to comply with the audit requirements of OMB Circular A–102, Attachment P.

Although we did not solicit comments on the implementation of OMB Circular A–128 with our proposed revisions to Part 30 for debt related charges, we are amending Part 30 with this document to implement this new Circular. The change is essentially a technical one and will only minimally affect recipients. The amendment incorporates A–128 as Appendix E to the regulation and eliminates the reference to Attachment P. We are making this change effective immediately, but if you have comments, please submit them to the address noted previously in this preamble within 60 days after publication of this document.

Regulation Development

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order. We have determined that this regulation is not "major" as it will not have a substantial impact on the Nation's economy or a large number of individuals or businesses. There will be no major increase in costs or prices for consumers, individuals, industries, or Federal, State, or local governments.

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. This rule is designed to reduce regulation burden to a minimum.

This proposed regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and have been assigned OMB clearance number 2010–0004.

List of Subjects in 40 CFR Part 30

Administrative practice and procedure, Grant programs, Inventions and patents, Copyright, Reporting, Recordkeeping.

Dated: February 8, 1986.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Chapter I, Part 30 is amended as follows:

PART 30—GENERAL REGULATION FOR ASSISTANCE PROGRAMS

1. The Authority Citation for Part 30 continues to read as follows:

'Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.

2. In § 30.510 paragraph (g) is revised to read as follows:

§ 30.510 What type of financial management system must I maintain?

* * * * *

(g) Audits at least every other year on an organization-wide basis or as required by OMB Circular A–128, if applicable (see § 30.540); and

* * * * *

3. In § 30.540 paragraph (b) is revised to read as follows:

§ 30.540 Who will audit my project?

* * * * *

(b) *State and local governments.* (1) State and local governments must comply with the audit requirements of OMB Circular A–128 (see Appendix E). Generally, under A–128 you must conduct an audit each year, unless the Circular permits you to conduct less frequent audits. The Circular provides:

(i) State and local governments that receive $100,000 or more in Federal financial assistance in a year must have an audit made in accordance with the Circular.

(ii) State and local governments that receive $25,000 or more, but less than $100,000, in a year must have an audit made in accordance with the Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

(iii) State and local governments that receive less than $25,000 in a year are exempt from compliance with the Circular and are subject only to the audit requirements prescribed by State and local law or regulation.

(2) EPA will keep audit cognizance over subagreements under the wastewater treatment construction grants program.

* * * * *

4. In § 30.802 paragraphs (b) and (c) are revised to read as follows:

§ 30.802 Under what conditions will I owe money to EPA?

* * * * *

(b) EPA will charge you interest if you fail to pay within 30 days from the date of the Agency's decision that a debt is owed. The interest rate will be the rate established by the Secretary of the Treasury in accordance with the Treasury Fiscal Requirements Manual 6–8020.20. The rates are published quarterly in the Federal Register.

(c) If you are not a State or local government, EPA will charge you its cost to process and handle the overdue debt at the end of each 30 day period the debt is overdue, and a penalty of 6% per annum if the debt is not paid within 120 days after the date of the Agency's decision that a debt is owed.

* * * * *

5. In § 30.1230 paragraph (a) is revised to read as follows:

§ 30.1230 Will I be charged interest if I owe money to EPA?

(a) Interest will accrue on any amounts of money due and payable to EPA from the date of the disputes decision official's final decision, even if you request review of the decision under this subpart. Only full payment of the debt within 30 days of the disputes decision officials' final decision will prevent EPA from charging interest. If you pay a debt but request review under this subpart and the amount of the debt is reduced as a result of the review, EPA will refund the interest and penalty charges that you paid on the adjustment. However, processing and handling charges which you may have paid are refundable only if EPA determines that the entire amount of the debt is not owed.

* * * * *

6. Add a new Appendix E to read as follows:

Appendix E—Part 30 Audit Requirements for State and Local Government Recipients

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A–128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

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2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards for Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110. "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles:

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110. "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurance they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in additon to the audits made by recipients pursuant to

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this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective actionis not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits build up such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also program 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assitance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The author's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit its completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

Attachment—Circular A–128

Definition of Major Program as Provided in Pub. L. 98–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$18 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

[FR Doc. 86–3400 Filed 2–20–86; 8:45 am]
BILLING CODE 6560–50–M

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federal register

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February 21, 1986

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 45 and 52

Federal Acquisition Regulation (FAR); Use of Property Clauses in Service Contracts; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

Federal Acquisition Regulations (FAR); Use of Property Clauses in Service Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulations (FAR) 45.103, 45.106 and 52.245–4 to clarify the contractor's responsibility for Government-furnished property under service contracts performed at Government installations.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 22, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–75 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Questions have arisen concerning contractor responsibility for Government-furnished property during the performance of service contracts when the property is located at Government installations where the contractor has less than full control over the property. The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have determined that under this circumstance the Government should be responsible for the property and propose to revise FAR 45.103, 45.106 and 52.245–4 to reflect this policy.

B. Regulatory Flexibility Act Analysis Summary

Economic Impact of Proposed Rule

Incorporation of the proposed rule in the Federal Acquisition Regulation may result in a significant economic impact on a substantial number of small entities. However, information currently available is insufficient to permit a determination as to the extent of such economic impact, and comments that will permit a determination are hereby solicited.

Alternatives to the Proposed Rule

The proposed rule is expected to have a favorable economic impact on small entities. The proposed language should lower contract costs and encourage small and disadvantaged businesses to compete.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR 45.103, 45.106, and 52.245–4 clarify the contractor's responsibility for Government-furnished property and do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: February 14, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 45 and 52 be amended as set forth below:

1. The authority citation for Parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 45—GOVERNMENT PROPERTY

2. Section 45.103 is amended by removing in paragraph (b)(2) the word "or"; by removing in paragraph (b)(3) the period at the end of the sentence and inserting in its place the words "; or" and by adding paragraph (b)(4) to read as follows:

§ 45.103 Responsibility and liability for Government property.

* * * * *

(b) * * *

(4) Negotiated or sealed bid service contracts performed on a Government installation where the contracting officer determines that the contractor has little direct control over the Government property because it is located on a Government installation and is subject to accessibility by personnel other than the contractor's employees and that by placing the risk on the contractor, the cost of the contract would be substantially increased.

* * * * *

3. Section 45.106 is amended by revising paragraph (b)(2) and paragraph (d) to read as follows:

§ 45.106 Government property clauses.

* * * * *

(b) * * *

(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see § 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

* * * * *

(d) The contracting officer may insert the clause at 52.245–4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-priced, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is $50,000 or less unless a contract with an educational or nonprofit organization is contemplated.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.245–4 is amended by revising the introductory text to read as follows:

§ 52.245–4 Government-Furnished Property (Short Form).

As prescribed in 45.106(d), insert the following clause:

* * * * *

[FR Doc. 86–3710 Filed 2–20–86; 8:45 am]

BILLING CODE 6820–61–M

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 606, 610 and 640

General Biological Products Standards, Additional Standards for Human Blood and Blood Products; Serologic Test for Antibody to Human T-Lymphotropic Virus Type III (HTLV–III); Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 85N-0032]

General Biological Products Standards, Additional Standards For Human Blood and Blood Products; Serologic Test For Antibody to Human T-Lymphotropic Virus Type III (HTLV-III)

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations to require that each unit of human blood and blood components intended for use in preparing a product be tested and found nonreactive by an approved serologic test for antibody to human T-lymphotropic virus type III (HTLV-III), using the licensed reagent "Human T-Lymphotropic Virus Type III." HTLV-III is believed to be the etiologic agent of acquired immunodeficiency syndrome (AIDS). FDA believes that the routine testing of blood by an approved serologic test for antibody to HTLV-III should decrease the risk of transmitting AIDS by the transfusion of blood and blood components and by the parenteral use of certain plasma derivatives.

DATES: Written comments by March 24, 1986. FDA is proposing that any final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steve F. Falter, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: Under the Public Health Service Act (42 U.S.C. 262), FDA is proposing to amend the biologics regulations (21 CFR Parts 606, 610, and 640) to require that each donation of blood or blood components intended for use in a biological product be tested by a serologic test for antibody to HTLV-III approved for such use by the Director, Office of Biologics Research and Review (OBRR). The proposed requirements would apply to all blood and blood components intended for use in preparing any product, including products not subject to licensure, such as in vitro diagnostic reagents derived from human blood source material. Accumulated evidence has shown that HTLV-III, also called lymphadenopathy-associated virus (LAV), is the probable etiologic agent of AIDS. Currently, the only approved serologic test for HTLV-III detects antibody to HTLV-III.

The test uses a reagent licensed under the Public Health Service Act with the proper name "Human T-Lymphotropic Virus Type III." FDA is proposing to use the general term "a serologic test for HTLV-III" in the regulations so that any improved test developed in the future may be put into use immediately upon approval by the Director, OBRR, without further amendment of the regulations being required. Routine screening of blood by a serologic test for HTLV-III is expected to decrease the risk of transmitting AIDS by blood transfusion and parenteral use of other products derived from blood.

Throughout this proposed rule, FDA is using the proper names for biological products established in a final rule published in the **Federal Register** of January 29, 1985 (50 FR 4128); effective January 29, 1986.

I. Background

AIDS is a serious, often fatal, disease affecting the immune system. AIDS is known to be transmitted by contact with the blood or semen of a person carrying the virus. Certain population groups are at a higher risk than the general population for contracting AIDS. These high-risk groups include any male who has had sex with a male since 1977, abusers of intravenous drugs, hemophiliacs, and the sexual partners of individuals in a high-risk group. A donor carrying HTLV-III may also transmit the virus to another person by transfusion of blood or a blood component or by the parenteral administration of certain high-risk plasma derivatives made from the donor blood, such as Antihemophilic Factor. Only a small fraction, slightly more than 2 percent, of the persons with AIDS are believed to have contracted the illness from blood and blood products carrying HTLV-III. Nevertheless, the potential for blood, blood components, and blood products to transmit HTLV-III virus has caused great concern within the Department of Health and Human Services, the blood bank community, plasma collection centers, and among the users and recipients of blood and blood products.

In early 1983, FDA issued letters to all establishments that collect blood and blood components or use blood components for further manufacture into blood derivatives. The letters contained recommendations to decrease the potential risk of transmitting HTLV-III virus by transfusion or by the use of certain plasma derivatives. Basically the recommendations were to: (1) Provide educational material relating to AIDS so that donors would know when they were in a high-risk group; (2) screen donors by history and examination for the early signs and symptoms of AIDS and AIDS-related conditions; and (3) advise donors that members of high-risk groups should voluntarily exclude themselves from donating. FDA updated these recommendations in December 1984 (Ref. 1). Blood establishments are continuing to follow these recommendations. However, because apparently healthy individuals unknowingly may be carrying the AIDS virus in their blood, some cases of transfusion-related AIDS and AIDS transmitted by certain plasma derivatives will continue to occur.

In early 1984, scientists at the National Institutes of Health published evidence that HTLV-III was the probable etiologic agent of AIDS (Ref. 2). The scientists also identified a laboratory test for detecting antibody to HTLV-III (Ref. 3). The Department of Health and Human Services, recognizing that the laboratory test could be used for the routine screening of blood by blood banks and plasma centers published a notice in the **Federal Register** of May 3, 1984 (49 FR 18899), soliciting applications to develop and distribute an assay system for the detection of antibody to HTLV-III. Five applicants were selected, and they immediately began to develop and test the assay system. FDA has issued a license to the five manufacturers to manufacture the reagent, Human T-Lymphotropic Virus Type III, to be used in the test system to detect antibody to HTLV-III. In the near future, FDA may license other manufacturers of the reagent. Adequate supplies of the licensed reagent are now available to perform routine testing of blood to detect antibody to HTLV-III by blood banks and plasma centers. Indeed, such establishments already have begun testing donor blood for antibody to HTLV-III.

It is important to note that the available test system detects human antibody to HTLV-III produced in response to exposure to the HTLV-III virus. The test does not detect the presence of the virus itself. In several studies, HTLV-III has been recovered from a high percentage of individuals in high-risk groups who concurrently have detectable antibody to HTLV-III (Refs. 4 and 5). Similarly, from 22 to 87 percent of asymptomatic persons in various high-risk groups were found to have detectable antibody to HTLV-III (Refs. 6 through 13). In contrast, antibody to HTLV-III has been detected in less than 1 percent of asymptomatic individuals not known to be in a high-risk group (Refs. 3, 6, 7, 8, 14, 15, and 16). Recent limited studies suggest that HTLV-III can be isolated from some asymptomatic individuals who do not have detectable antibody to the virus (Refs. 17 and 18). This would be expected, for example, during the early stage of infection when the body's immunologic defense system has not had time to develop the antibody. Therefore, FDA expects that routine use of this test will reduce greatly the possibility of transmitting the HTLV-III virus by transfusion or parenteral use of certain plasma derivatives, but testing may not eliminate completely the occurrence of such cases.

Results are not yet available from a study designed to provide information concerning the significance of antibody-positive results for asymptomatic individuals, such as blood donors, who are not known to be in a high-risk group. Based on the available information, FDA expects that the routine screening of blood and blood components for antibody to HTLV-III should decrease the risk of transmitting AIDS by transfusion or by parenteral use of blood products.

FDA is proposing in these regulations only the appropriate requirements for the proper testing and labeling of blood necessary to assure the continued safety of blood, blood components, and blood products. In the *Morbidity and Mortality Weekly Report* of January 11, 1985 (Ref. 19), the Public Health Service (PHS) has provided provisional recommendations concerning testing for antibody to HTLV-III and the interpretation and implications of serologic test results. On February 19, 1985, FDA issued a letter to all registered blood establishments providing additional advice for implementing the PHS provisional recommendations (Ref. 20). FDA updated these recommendations by a letter to all blood establishments dated May 7, 1985 (Ref. 21). On May 25, 1985, PHS published recommendations concerning the testing of donors of organs, tissues, and semen for antibody to HTLV-III (Ref. 22).

II. Proposed Amendments to The Regulations

To assure proper understanding of this discussion and the proposed rule, FDA is defining certain terms applicable to the test for antibody to HTLV-III as follows. During routine testing, each blood sample is tested according to the directions supplied by the manufacturer of the test kit and, as described in the directions, each sample is determined to be *reactive* or *nonreactive*. A reactive result indicates the possible presence of HTLV-III antibody in the sample. Reactive samples are tested again and a sample that is found to be reactive on two independent assays is considered to be *repeatedly reactive*. A sample is considered to be *positive* for antibody to HTLV-III when it has tested repeatedly reactive.

In the following paragraphs, FDA is discussing each of the proposed amendments to the regulations:

A. Instruction Circular

In the **Federal Register** of August 30, 1985 (50 FR 35458), FDA published a final rule that revised the labeling requirements for blood and blood components. The final rule becomes effective on September 2, 1986. In that final rule, FDA codified under § 606.122 requirements for the content of an instruction circular that must be made available to users of blood and blood components intended for transfusion. The instruction circular provides the users with the information necessary for the proper use of blood and blood components. FDA believes that the results of the serologic test for HTLV-III are necessary information of which the user should be made aware. Accordingly, FDA is proposing to amend § 606.122(e) to require that blood establishments revise their instruction circulars to include a statement that all blood products are nonreactive by a serologic test for HTLV-III. Although FDA is not proposing to require a specifically worded statement, the agency recommends that all instruction circulars be consistently worded. Accordingly, FDA recommends that either of the following statements be included on the instruction circular: "Nonreactive by serologic test for HTLV-III," or, if combined with the existing statement concerning hepatitis B testing, "Nonreactive when tested for HBsAg and HTLV-III by FDA required tests." FDA also recommends that either of these statements be included on the container label of Source Plasma (see paragraph II. G. of this preamble) or other blood and blood components intended for further manufacture.

FDA proposes to require that the instruction circular be revised to include the proposed statement by 30 days after the date of publication in the **Federal Register** of a final rule resulting from this proposal. In lieu of reprinting the entire circular, blood establishments may stamp or type an appropriate statement on existing instruction circulars in accordance with the proposed requirement. FDA believes that blood establishments will have revised printed labeling including the proposed statement in use within 1 year after the date of publication in the **Federal Register** of a final rule resulting from this proposal.

FDA believes that most blood establishments will begin routine tests of blood and blood components for antibody to HTLV-III before any final rule based on this proposal is published in the **Federal Register**. FDA recommends that each blood establishment notify the users of its products in writing of the date of initiation of the routine testing program and revise their instruction circular to include one of the proposed statements. Licensed blood establishments should submit to the Director, OBRR, a copy of the revised instruction circular at the time of its distribution.

The instruction circular and Source Plasma label statements recommended in the proposed rule are identical with the labeling statements recommended by FDA for use during the voluntary phase of the testing program (Ref. 20). FDA recognizes that the phrase "by FDA required tests" used in one of the recommended labeling statements is inaccurate during the time that use of the serologic test for HTLV-III is voluntary. However, FDA decided to permit this minor inaccuracy so that blood establishments will not be required to relabel their products at the time the test becomes mandatory.

The proposed rule would require that all source blood and blood components used to manufacture blood derivatives be nonreactive to a serologic test for HTLV-III and labeled as nonreactive to the HTLV-III test. However, FDA is not proposing to require that labeling for each of the various blood derivatives manufactored from blood and blood components contain a similar statement that the source materials used to make the products were tested for HTLV-III and found nonreactive. FDA is confident that by the time a final rule based on this proposal is published, manufacturers of derivatives at risk for transmitting HTLV virus will be using voluntarily only source materials found nonreactive to a serologic test for HTLV-III. Therefore, FDA has decided not to require use on labeling for blood derivate products of a standard labeling statement that the derivative product was prepared from source materials found nonreactive to a serologic test for HTLV-III, because such a labeling

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requirement would provide no information to users that is essential for the proper use of the products. FDA intends to permit manufacturers to voluntarily amend product labeling for derivatives to include such information.

Manufacturers of licensed in vitro diagnostic products label their products with general cautionary statements such as "Caution: Human Blood Was Used in Manufacturing this Product. Handle as if Capable of Transmitting Infectious Agents." Accordingly, FDA is not proposing labeling changes for in vitro diagnostic products at this time.

B. HTLV–III Testing Requirements

FDA is proposing to add § 610.45 *HTLV–III requirements* that would include: (1) testing requirements; (2) requirements concerning who may perform the test; and (3) restriction on the use of products testing positive by a serologic test for HTLV–III.

In proposed § 610.45(a), FDA is proposing to require that each unit of human blood or blood components intended for use in preparing a biological product to be tested by a serologic test for HTLV–III approved for such use by the Director, OBRR. Currently, FDA has approved only the test for detecting antibody to HTLV–III. FDA would permit testing establishments to put into use the approved test for detecting antibody to HTLV–III without further FDA approval, provided the test method is used as recommended by the manufacturer of the licensed reagent.

Proposed § 610.45(a) would provide that a blood establishment may issue blood and blood components before the serologic test for HTLV–III is completed under circumstances approved in writing by the Director, OBRR, providing the testing is completed as soon as possible thereafter. This provision would allow for the manufacture of certain highly perishable blood products, such as interferon, which are manufactured from source leukocytes (white blood cells). For optimal production, interferon should be manufactured within 24 hours after the leukocytes are collected. Performance of the complete HTLV–III test before shipping the leukocytes may not provide sufficient time to ship the leukocytes to the manufacturing site. To obtain FDA approval for shipment prior to completion of testing, the agency would require that both the collection and manufacturing facility establish specific procedures for collection, shipment, and quarantine of a blood product before testing is completed. FDA has in § 610.40(b)(4) a similar provision applicable to the testing of blood and blood components for hepatitis B surface antigen (HBsAg). (See the Federal Register of June 29, 1984; 49 FR 26717).

In proposed §§ 610.45(a), FDA also is proposing to permit blood establishments to issue blood and blood products in dire emergencies before the results of a serologic test for HTLV–III are available. FDA considers a "dire emergency" to be a life-threatening situation where the patient's need for the blood or blood components is so acute as to preclude the completion of testing before administration of the blood or blood components. The proposed language is consistent with current requirements in 21 CFR 610.40(b)(4) that apply to the testing of blood of hepatitis B surface antigen (HBsAg).

FDA is proposing to amend existing § 640.2(f) to reference the testing requirements of proposed 610.45(a). (FDA revised § 640.2(f) previously in the final rule of August 30, 1985.) Section 640.2(f) prescribes procedural requirements applicable to blood and blood components intended for transfusion that are issued before one or more of the tests required by the regulations are completed. Establishments issuing blood and blood components in a dire emergency in accordance with § 610.45(a) would also be required to meet the requirements of § 640.2(f).

FDA notes that tests systems other than the currently approved test are being developed to detect antibody to HTLV–III. These test systems, such as the Western blot method, are very useful for research purposes but are not suitable at this time for routine use for screening large numbers of samples. At this time, FDA is neither requiring nor specifically recommending that the Western blot method be used for testing donor blood. FDA believes that the test methods and reagents of these systems need further standardization and the available data are incomplete concerning the sensitivity and reliability of these tests.

c. Testing Responsibility

In proposed § 610.45(b), FDA is proposing to permit qualified establishments other than the collecting establishments to perform the serologic test for HTLV–III. This proposed amendment is consistent with current requirements in 21 CFR 610.40(b) that apply to the testing of blood for HBsAg.

D. Restrictions on Use

In proposed § 610.45(c), FDA is proposing to require that blood and blood components that are positive to a serologic test for HTLV–III, or collected from a donor known to be positive to a serologic test for HTLV–III, may not be used for preparing any product, including products not subject to licensure, except as described below. FDA recognizes that valuable diagnostic or therapeutic agents may be developed in the future for which blood or blood components containing antibody to HTLV–III are essential source materials. However, FDA believes that inappropriate handling, labeling, or use of such blood could be hazardous to the public health. Therefore, FDA is proposing to restrict the use of blood and blood components containing antibody to HTLV–III to assure that FDA may adequately monitor the handling, labeling, and use of such blood and blood components.

Under proposed § 610.45(c)(1), blood establishments intending to distribute blood or blood components positive to a serologic test for HTLV–III would apply for approval to the Director, OBRR. The written application would describe the intended use of the positive blood, including identification of all consignees and the procedures for collecting, handling, labeling, and shipping the blood.

Under proposed § 610.45(c)(2), FDA would not apply these restrictions to certain cases when the positive blood or blood components are not intended for commercial distribution or for use in preparing a product. Such cases include: (1) The distribution of small blood, plasma, or serum samples, if not intended for use in manufacturing a product; (2) the in-house use of positive blood and blood components for research purposes; and (3) the noncommercial distribution of blood and blood components for research purposes. FDA believes that the proposed restrictions will assure the continued public health while not impeding continuing research efforts directed toward AIDS.

E. Laboratory Tests and Testing the Blood (§§ 640.5, 640.14, 640.23, 640.33, 640.53)

FDA is proposing to amend the sections listed above to reference the testing requirements in § 610.45(a). In § 640.5, FDA proposes to add paragraph (f) to reference the testing requirements in § 610.45. In effect, FDA is proposing to require that the source blood of all blood and blood components intended for transfusion be tested by a serologic test for HTLV–III. FDA also is proposing to amend §§ 640.14 and 640.53 editorially so that the language is consistent.

F. Testing Source Plasma

FDA is proposing to redesignate the existing text in § 640.67 as § 640.67(a) and add § 640.67(b). In § 640.67(b), FDA is proposing to require that Source Plasma be found nonreactive (nonpositive) by an approved serologic test for HTLV–III. Plasma centers would be required to perform a serologic test for HTLV–III on a blood sample collected from a plasma donor at each visit. A unit of Source Plasma testing positive by a serologic test for HTLV–III could not be used for further manufacture except as provided in proposed § 610.45(c). Under proposed § 610.45(c), FDA would permit the use of positive plasma only for purposes and under conditions specifically approved in writing by the Director, OBRR.

G. Labeling

FDA is proposing to add § 640.70(a)(11) to require that the statement "Nonreactive by serologic test for HTLV–III", or an equivalent statement, be included on the container label of Source Plasma. The proposed label statement would inform users of the Source Plasma that the product was properly tested and found nonreactive by a serologic test for HTLV–III. (See also paragraph II.A. of this preamble).

FDA recognizes that by the proposed effective date of the final rule, 30 days after its publication in the Federal Register, appropriately revised container labels may not be available at all plasma centers. Plasma centers may use means such as an ink stamp or stick-on label to include the information on the container label required by § 640.70(a)(11).

FDA believes that source plasma establishments will have revised printed container labels including the proposed statement in use within 1 year after the date of publication in the Federal Register of a final rule resulting from this proposal.

H. Manufacturing Responsibility

FDA is proposing to amend § 640.71 to permit establishments other than the establishment collecting the Source Plasma to perform the serologic test for HTLV–III. The proposed amendment is consistent with the intent of proposed § 610.45(b).

I. Records

FDA is proposing to amend § 640.72 to provide that negative test results for the serologic test for HTLV–III need not be kept in individual Source Plasma donor records if the test results are maintained elsewhere at the center where the donor's plasma was collected. This amendment will allow plasma centers to avoid duplicative and unnecessary recordkeeping.

III. Regulations Affected by the Proposed Amendments

In the following paragraphs, FDA discusses the effect of the proposed rule on existing requirements in the current good manufacturing practice for blood and blood components regulations at 21 CFR Part 606.

A. Facilities

Under § 606.40(a) (4) and (6), all blood establishments would be required to provide adequate space in a designated location to quarantine blood and blood components that were tested by a serologic test for HTLV–III and the test results were either questionable or reactive. Test results are questionable when, for example, the test results are close to the cut-off value, the control samples are out of range, or duplicate samples run at the same time have conflicting results. Such blood and blood components should remain in quarantine until test results show the blood and blood components to be nonreactive for antibody to HTLV–III. Under § 606.40(d)(2), blood establishments would be required to have adequate facilities to provide for the safe and sanitary disposal of blood and blood components positive by a serologic test for HTLV–III. FDA considers either autoclaving or incineration to be appropriate means for the safe and sanitary disposal of blood and blood components.

B. Standard Operating Procedures

Under § 606.100(b)(7), each blood establishment would be required to maintain on the premises and follow a written standard operating procedure describing the procedures for the serological test for HTLV–III, including followup procedures for any reactive tests.

C. Records

Under § 606.160(a) (1) and (2), blood establishments would be required to keep adequate records of the results of the serologic test for HTLV–III, including a record of the master lot number of the test kit and lot number of the HTLV–III reagent used for each test. The test results should be traceable to the individual donor and blood product.

Like all medical records, the test results should be recorded and stored in a manner to protect their continued confidentiality. Blood establishments should exercise particular care to assure confidentiality of positive test results. Disclosure of this information for other than medical or public health purposes could lead to serious consequences for the individual. Donor screening procedures should also be designed with safeguards to protect against unauthorized disclosure.

Under § 606.160(e), blood establishments would be required to maintain a permanent record identifying those donors whose blood is positive by a serologic test for HTLV–III so that in the future, blood and blood components from such individuals are not distributed. Whenever appropriate, donor deferral lists should be general, without indication of the reason for deferral. At the present time, there is inadequate evidence to determine how long an asymptomatic individual may carry HTLV–III virus in the blood. Until adequate data are available to show that infection with HTLV–III is self-limiting within a specific time period, individuals who have tested positive to a serologic test for HTLV–III should be permanently deferred from donating blood and blood components for routine purposes.

D. Donor Notification

At this time, FDA is not proposing specific regulations requiring the notification of a donor when the test for antibody to HTLV–III is repeatably positive. (A test is repeatably positive when upon retest using the licensed test system is repeatably reactive or upon retest using another technique, such as the Western blot, is positive for HTLV–III antibody.) However, FDA continues to support the recommendations of PHS for notification of donors, issued on January 11, 1985 (Ref. 19). Whatever procedures are selected, the blood establishment should assure that the donor is notified in as sensitive and informative a manner as possible.

IV. References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday. FDA intends to supplement the materials on file for this document as additional information, such as information related to licenses issued subsequent to this notice, becomes available.

1. FDA letter to all registered blood establishments dated December 14, 1984.

2. Gallo, R.C., et al., "Frequent Detection and Isolation of Cytopathic Retroviruses (HTLV–III) from Patients with AIDS and at Risk for AIDS," *Science*, 224:500–503, 1984.

3. Sarngadharan, M.G., et al., "Antibodies Reactive with Human T-Lymphotropic Retroviruses (HTLV–III) in the Serum of

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Patients with AIDS," *Science*, 244:506–508, 1984.
4. Groopman, J.E., et al., "HTLV–III in Saliva of People with AIDS-Related Complex and Healthy Homosexual Men at Risk for AIDS," *Science*, 228:447–449, 1984.
5. Zagury, D., et al., "HTLV–III in Cells Cultured from Semen of Two Patients with AIDS," *Science*, 228:449–451, 1984.
6. Melbye, M., et al., "Seroepidemiology of HTLV–III Antibody in Danish Homosexual Men: Prevalence, Transmission, and Disease Outcome," *British Medical Journal*, 289:573–575, 1984.
7. CDC, "Antibodies to a Retrovirus Etiologically Associated with Acquired Immunodeficiency Syndrome (AIDS) in Populations with Increased Incidences of the Syndrome," *Morbidity and Mortality Weekly Report*, 3:377–379, 1984.
8. Weiss, S.H., et al., "Screening Test for HTLV–III (AIDS Agent) Antibodies: Specificity, Sensitivity, and Applications," *Journal of the American Medical Association*, 253:221–225, 1985.
9. Goedert, J.J., et al., "Determinants of Retrovirus (HTLV–III) Antibody and Immunodeficiency Conditions in Homosexual Men," *Lancet*, 2:711–716, 1984.
10. Spira, T.J., et al., "Prevalence of Antibody to Lymphadenopathy-Associated Virus Among Drug-Detoxification Patients in New York," *New England Journal of Medicine*, 311:467–468, 1984.
11. Ramsey, R.B., et al., "Antibody to Lymphadenopathy-Associated Virus in Hemophiliacs with and without AIDS," *Lancet*, 2:397–398, 1984.
12. Tsoukas, C., et al., "Association of HTLV–III Antibodies and Cellular Immune Status of Hemophiliacs," *New England Journal of Medicine*, 311:1514–1515, 1984.
13. Harris, C.A., et al. "Antibodies to a Core Protein (p. 25) of Lymphadenopathy Associated Virus (LAV) and Immunodeficiency in Heterosexual Partners of AIDS Patients," presentation at 24th Interscience Conference on Microbial Agents and Chemotherapy, Washington, DC, 1984.
14. Levy, J.A., et al., "Isolation of Lymphocytopathic Retroviruses from San Francisco Patients with AIDS," *Science*, 225:840–842, 1984.
15. Safai, B., et al., "Seroepidemoliogical Studies of Human T-Lymphotropic Retrovirus Type III in Acquired Immunodeficiency Syndrome," *Lancet*, 1:1438–1440, 1984.
16. Laurence, J., et al., "Lymphadenopathy Associated Viral Antibody in AIDS," *New England Journal of Medicine*, 311:1269–1273, 1984.
17. Salahuddin, S.Z., et al., "HTLV–III in Symptom-Free Seronegative Persons," *Lancet*, 2:1418–1420, 1984.
18. Groopman, J.E., unpublished data.
19. CDC, "Provisional Public Health Service Inter-Agency Recommendations for Screening Donated Blood and Plasma for Antibody to the Virus Causing Acquired Immunodeficiency Syndrome," *Morbidity and Mortality Weekly Report*, 34:1–5, 1985.
20. FDA letter to all registered blood establishments, dated February 19, 1985.
21. FDA letter to all registered blood establishments, dated May 7, 1985.
22. PHS, "Testing Donors of Organs, Tissues, and Semen for Antibody to Human T-Lymphotropic Virus Type III/ Lymphadenopathy-Associated Virus," *Morbidity and Mortality Weekly Report*, 34:294, 1985.
23. Transcript of Feb. 22, 1985 meeting.
24. Transcript of July 31, 1985 public meeting (when available).
25. Data summaries supporting licensure of Human T-Lymphotropic Virus Type-III (when available).

V. Economic and Environmental Considerations

The agency has determined pursuant to 21 CFR 25.24(c)(10) (April 26, 1985; 50 FR 16636) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as specified in the Regulatory Flexibility Act (Pub. L. 96–354).

FDA concludes that a little over 2,000 establishments, about half of which are small businesses, would be affected by the proposed rule. FDA estimates that the proposed rule would require the performance of about 22 million serologic tests for HTLV-III antibody each year: 12 million tests on units of blood and 10 million tests on units of Source Plasma. The majority of the nation's blood banks and plasmapheresis centers, both large and small, are expected to perform the HTLV-III antibody test voluntarily even in the absence of this regulation. Officials of the American Blood Resources Association, the American Red Cross, the American Association of Blood Banks, and the Council of Community Blood Centers have stated that their organizations will voluntarily undertake to perform the test, even in the absence of a regulation requiring it. These organizations comprise the majority of the blood and plasma collections facilities in the United States. However, while some facilities that are not members of these organizations may not voluntarily undertake the testing program (in the absence of a regulation), their number is not known. Therefore, most of the costs of testing cannot be said to result from the regulation, and the agency has concluded that the regulation does not warrant either inclusion as a "major" rule as defined in Executive Order 12291 or a Regulatory Flexibility Analysis under Public Law 96–354. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch.

The major direct cost element, the cost of conducting the serological tests for the HTLV-III antibody, is expected initially to be about $3 per test for plasmapheresis centers and about $3 to $5 per test for blood banks. The expectations for testing cost estimates are based on information provided by plasmapheresis centers, blood banks, and independent testing laboratories. It should be noted that their expectations varied widely. For example, the American Red Cross indicated that the $3 to $5 cost figures may be low for their operations, citing their own estimates of from $5 to $10 per test, which may include costs not resulting from this regulation, such as overhead burden and independent HTLV-III tests for high risk populations. Current indications suggest that economies of scale for the HTLV-III antibody test operate to increase the test costs for small-volume testing centers. However, large-volume centers account for the majority of blood processed. Over time, the costs—particularly those at the higher end of this range—are expected to decrease as experience, increased use of computers, and automation, and competition among producers of the test kits bring costs down. If these expected cost decreases indeed occur, and the average overall cost were on the order of $3, then the nationwide costs of processing the 12 million blood units and 7.5 million plasma donations collected annually would be somewhat less than $66 million. FDA estimates that at least 95 percent of blood establishments will initiate voluntarily a testing program for HTLV-III antibodies even in the absence of the proposed rule. Therefore, FDA estimates that direct costs of the proposed rule itself amount to a maximum of 5 percent of the total direct costs of the testing program.

Other direct costs of the testing program include the cost of retesting blood that has ambiguous or positive test results, the cost of disposing of and replacing discarded blood, and modest costs associated with labeling changes. It is expected that less than 1 percent of blood will have positive test results, but that an as-yet-unknown portion of these will be false positives. It is also expected that some negative test results (amount unknown) will be false negatives but, because false negative results due to laboratory error are believed to be quite rare, no retesting of negative results is required or planned at this time. Furthermore, indirect costs resulting from the tests may be substantial. Although indirect costs cannot be quantified at this time, they include the costs of additional testing that may occur as part of the medical evaluation, notifying and counseling persons with positive test results, and the increased medical costs for followup of persons with positive test results. These medical costs will be partially or totally offset by the reduction in medical costs for those who are spared from AIDS as a result of the testing program. Another effect of the regulation will be to facilitate third-party payment for the incremental cost of performing the HTLV-III tests.

FDA cannot at this time quantify the benefits of the proposed rule, which are related primarily to the expected decrease in the risk of transmitting AIDS by transfusion. Much of this benefit would take place even in the absence of this regulation, since most of the blood industry is expected to institute HTLV-III antibody testing even without the regulation. The main benefits of the regulation are to standardize industry practices, thereby providing a more complete and timely assurance of the continued safety of the nation's blood supply.

The anticipated costs are insufficient to warrant designation of this proposal as a major rule under any of the criteria specified under section 1(b) of Executive order 12291 or to require a regulatory flexibility analysis. Accordingly, under section 605(b) of the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rulemaking, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch.

Sections 640.2(f) and 640.72(a)(2) of this proposed rule contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collections of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

In addition, the proposed rule would continue present collection of information requirements already submitted to OMB under section 3507 of the Paperwork Reduction Act (§§ 606.100 and 606.160, OMB control number 0910–0116).

VI. Comments

Interested persons may, on or before March 24, 1986, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm., 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. FDA is proposing this rule with a 30-day comment period to expedite publication of any final rule based on this proposal to decrease the risk of transmitting AIDS by blood transfusion and parenteral use of other products made from blood. Accordingly, good cause exists for a comment period of less than 60 days. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be indentified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

List of subjects

21 CFR Part 606

Blood, Laboratories.

21 CFR Part 610

Biologics, Labeling

21 CFR Part 640

Blood, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act, it is proposed that Parts 606, 610, and 640 be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for Part 606 continues to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 701–706)); 21 CFR 5.10.

2. In § 606.122 by revising paragraph (e) to read as follows:

§ 606.122 Instruction circular.

* * * * *

(e) Statements that the product was prepared from blood that was nonreactive when tested by a serologic test for HTLV–III and for hepatitis B surface antigen by FDA required tests and nonreactive when tested for syphilis by a serologic test for syphilis (STS).

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCT STANDARDS

3. The authority citation for Part 610 continues to read as follows:

Authority: Sec. 215, 58 Stat. 690 as amended; 42 U.S.C. 216, sec. 351, 58 Stat. 702 as amended, 42 U.S.C. 262; 21 CFR 5.10 and 5.11.

4. In Part 610 by adding § 610.45, to read as follows:

§ 610.45 HTLV–III requirements.

(a) *Testing requirements.* Each donation of human blood or blood components intended for use in preparing a product shall be tested by a serologic test for HTLV–III approved for such use by the Director, Office of Biologics Research and Review. In dire emergency situations, or as otherwise approved in writing by the Director, Office of Biologics Research and Review, blood and blood products may be issued before the results of the serologic test for HTLV–III are available, provided the test required by this paragraph is performed as soon as possible after issuance of the blood or blood product.

(b) *Testing responsibility.* The serologic test for HTLV–III shall be performed by the collection facility, by personnel of an establishment licensed to manufacture blood or blood derivatives under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or by a clinical laboratory which meets the standards of the Clinical Laboratory Improvement Act of 1967 (CLIA) (42 U.S.C. 263a), provided the establishment or clinical laboratory is qualified to perform the test.

(c) *Restrictions on use.* (1) Blood, plasma or other blood components that are positive to a serologic test for HTLV–III, or that were collected from a donor known to be positive to a serologic test for HTLV–III, shall not be shipped or used to prepare my product, including products not subject to licensure; except that such blood and blood components shall be shipped or used only for purposes and under conditions specifically approved in writing by the Director, Office of Biologics Research and Review.

(2) The restrictions on use contained in this paragraph shall not apply in the following cases:

(i) The distribution of blood, plasma, or serum samples, except when intended for use in the manufacture of a product;

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(ii) The in-house use of blood and blood components for research purposes; or

(iii) The distribution of blood and blood components for research purposes, if not distributed by sale, barter or exchange.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

5. The authority citation for Part 640 continues to read as follows.

Authority: Sec. 215, 58 Stat. 690 as amended; 42 U.S.C. 216; sec. 351, 58 Stat. 702 as amended, 42 U.S.C. 262; 21 CFR 5.10 and 5.11.

6. In Part 640:

a. In § 640.2 by revising paragraph (f), to read as follows:

§ 640.2 General requirements.

* * * * *

(f) *Issue prior to determination of test results.* Notwithstanding the provisions of § 610.1 of this chapter, blood may be issued by the manufacturer on the request of a physician, hospital, or other medical facility before results of all tests prescribed in § 640.5, the test for hepatitis B surface antigen prescribed in § 610.40(a) of this chapter, and a serologic test for HTLV–III prescribed in § 610.45(a) of this chapter have been completed, where such issue is essential to allow time for transportation to assure arrival of the blood by the time it is needed for transfusion: *Provided,* That (1) the blood is shipped directly to such physician or medical facility, (2) the records of the manufacturer contain a full explanation of the need for such issue, and (3) the label on each container of such blood bears the information required by § 606.121(h) of this chapter.

b. In § 640.5 by adding paragraph (f), to read as follows:

§ 640.5 Testing the blood.

* * * * *

(f) *Serologic test for HTLV–III.* Whole Blood shall be tested by a serologic test for HTLV–III as prescribed in § 610.45 of this chapter.

c. By revising § 640.14, to read as follows:

§ 640.14 Testing the blood.

Blood from which Red Blood Cells are prepared shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

d. In § 640.23 by revising paragraph (a), to read as follows:

§ 640.23 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Platelets shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

e. In § 640.33 by revising paragraph (a), to read as follows:

§ 640.33 Testing the blood.

(a) Blood from which plasma is separated shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

f. In § 640.53 by revising paragraph (a), to read as follows:

§ 640.53 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Cryoprecipitated AHF shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a) (b), and (c).

* * * * *

g. By revising § 640.67, to read as follows:

§ 640.67 Laboratory tests.

(a) *Hepatitis B surface antigen.* Each unit of Source Plasma shall be nonreactive to a test for hepatitis B surface antigen as prescribed in §§ 610.40 and 610.41 of this chapter, except insofar as permitted in § 610.40(d) (2) and (3) of this chapter.

(b) *HTLV–III.* Each unit of Source Plasma shall be nonreactive by a serologic test for HTLV–III as prescribed in § 610.45 of this chapter, except as provided in § 610.45(c) of this chapter.

h. In § 640.70 by adding paragraph (a)(11), to read as follows:

§ 640.70 Labeling.

(a) * * *

(11) The statement "Nonreactive by serologic test for HTLV–III", or equivalent statement.

* * * * *

i. In § 640.71 by adding paragraph (a)(4), to read as follows:

§ 640.71 Manufacturing responsibility.

(a) * * *

(4) A serologic test for HTLV–III.

* * * * *

j. In § 640.72 by revising paragraph (a)(2), to read as follows:

§ 640.72 Records.

(a) * * *

(2) For each donor, a separate and complete record of all initial and periodic examinations, tests, laboratory data, interviews, etc., undertaken pursuant to §§ 640.63, 640.5, 640.66, and 640.67, except that negative test results for hepatitis B surface antigen, negative test results for the serologic test for HTLV–III, and the volume or weight of plasma withdrawn from a donor need not be kept on the individual donor record: *Provided,* That such information is maintained on the premises of the plasmapheresis center where the donor's plasma has been collected.

* * * * *

Frank E. Young,
Commissioner of Food and Drugs.

Dated: January 27, 1986.

Otis R. Bowen,
Secretary of Health and Human Services.

[FR Doc. 86–3820 Filed 2–20–86; 8:45 am]
BILLING CODE 4160–01–M

federal register

Friday
February 21, 1986

Part V

The President

Executive Order 12549—Debarment and Suspension

Office of Management and Budget

Guidelines for Nonprocurement Debarment and Suspension; Request for Comments

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Federal Register
Vol. 51, No. 35
Friday February 21, 1986

Presidential Documents

Title 3—

The President

Executive Order 12549 of February 18, 1986

Debarment and Suspension

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1. (a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.

(b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.

(c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Sec. 2. To the extent permitted by law, Executive departments and agencies shall:

(a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.

(b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

(c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

Sec. 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.

Sec. 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The

Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

Sec. 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

Sec. 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

Sec. 7. The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make such recommendations as are appropriate further to curb fraud, waste, and abuse.

Ronald Reagan

THE WHITE HOUSE,
February 18, 1986.

[FR Doc. 86-3897
Filed 2-19-86; 10:56 am]
Billing code 3195-01-M

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OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Nonprocurement Debarment and Suspension

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice contains a draft memorandum to executive departments and agencies setting forth guidelines called for in Section 6 of Executive Order 12549, "Debarment and Suspension." The Notice seeks public comment on the proposed guidelines and asks for special public attention to several areas.

DATE: To be assured of consideration, comments on the proposed guidelines must be in writing and must be received by April 22, 1986.

ADDRESS: Barbara F. Young-Kahlow, Grants Management, Financial Management Division, Office of Management and Budget, Room 10215 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara F. Young-Kahlow, Grants Management, Financial Management Division, Office of Management and Budget, Room 10215 New Executive Office Building, Washington, DC 20503. Telephone - 202-395-3050.

SUPPLEMENTARY INFORMATION: Executive Order 12549 "Debarment and Suspension," was signed by President Reagan on February 18, 1986. Section 6 of the Order states that "The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe governmentwide criteria and governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines."

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council on Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The Task Force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment. The Task Force recommended, in its November 1984 report, that a governmentwide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. This could be the first step towards a comprehensive system, including both procurement and nonprocurement.

The proposed OMB guidelines cover the subjects indicated in Section 6 of Executive Order 12549, including: scope, governmentwide criteria, and minimum due process procedures. They are prepared in regulation format to facilitate their use by the executive departments and agencies in preparing agency regulations called for by Section 3 of the Order.

The Task Force on Nonprocurement Suspension and Debarment considered many issues in developing the proposed guidelines. It concluded that the system should be as compatible as possible with the procurement debarment and suspension system included in the Federal Acquisition Regulation (FAR), while fully addressing the needs and concerns of nonprocurement programs. As a result, the guidelines generally use the due process procedural structure of the FAR. Also, the proposed grounds for debarment and suspension are substantially similar to those in the FAR. The proposal combines the criteria common to the existing agency nonprocurement regulations with the criteria in the FAR.

The Task Force further concluded that each agency should issue its own regulations governing implementation of the Order, consistent with the OMB guidelines. This approach would facilitate, where possible, integration of the nonprocurement procedures into each agency's existing procurement system.

OMB and the interagency Task Force invite comments on all aspects of the proposed guidelines. In particular, comments are encouraged in the three areas described below: scope, nonperformance as criterion for governmentwide debarment, and access to the list of excluded parties.

Scope

A wide range of options was considered in determining the scope of the proposed nonprocurement debarment and suspension program. There are a number of factors related to both the breadth and depth of coverage which may be appropriate for comment. For each of these factors there is a variety of possible options, as illustrated on the following chart. The range of options presented is not all-inclusive. For each factor, the options represent points on a continuum; in most cases, other points could also have been selected. Generally, the factors are not interdependent; the choice of the option providing broad coverage (column C) for one factor does not dictate a similar choice for another factor.

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FACTORS	EXTENT OF COVERAGE		
	COLUMN A — NARROW	COLUMN B — MEDIUM	COLUMN C — BROAD
1. What types of programs should be covered?	Direct Federal financial assistance (e.g., grants, cooperative agreements, loans, scholarships, fellowships, contracts of assistance).	All Column A programs plus other Federal assistance and indirect financial assistance (e.g., insurance, loans and loan guarantees placed by banks and intermediaries).	All Column A and Column B programs plus other nonprocurement activities, including technical assistance, technical services, Federal employment, licenses, permits, regulatory activities.
2. To what extent should lower tier subagreements be covered:			
a. Under discretionary programs?	No subagreement coverage.	Include all subagreements which require Federal approval or which involve substantive programmatic work.	Include all subagreements at any tier.
b. Under statutorily mandated (entitlement) awards?			
3. Should there be dollar thresholds for coverage?	Yes, cover only Federal award and subagreement transactions greater than $25,000 or a higher level.	Yes, cover only those greater than $10,000.	No, cover all Federal award and subagreement transactions regardless of dollar level.
4. To what extent should employees of assistance participants be covered?	Do not cover employment.	Cover "key" employees.	Cover all employees.
5. With regard to dollar thresholds and employment, what types of costs should be covered?	Direct charges only.	Direct charges only.	Direct as well as indirect (overhead) charges.

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The proposed scope embodied in the OMB guidelines represents the following choices on the chart:

1. Program coverage	Column B
2. Lower tier awards:	
a. Discretionary	Column C
b. Entitlement	Column C
3. Thresholds	Column C
4. Employees	Column B
5. Types of costs	Column B

Two other alternatives, representing the extremes of possible options, would be:

A. Only cover large Federal awards of grants and cooperative agreements. This option would represent the following choices:

1. Program coverage	Column A
2. Lower tier awards:	
a. Discretionary	Column A
b. Entitlement	Column A
3. Thresholds	Column A
4. Employees	Column A
5. Types of costs	Column A

B. Cover all Federal nonprocurement programs (except where prohibited by statute), all subtier agreements and expenditures whether or not the first tier awards were excluded, regardless of size or type of cost, and all personnel working in the program without regard to the nature of the position. This option would represent the following choices:

1. Program coverage	Column C
2. Lower tier awards:	
a. Discretionary	Column C
b. Entitlement	Column C
3. Thresholds	Column C
4. Employees	Column C
5. Types of costs	Column C

Nonperformance as Criterion for Governmentwide Debarment

The criteria proposed for a governmentwide debarment or suspension include willful or material failure to perform, similar to the FAR. Another option would be for actions based on willful or material nonperformance to be included on the governmentwide list but flagged so that each agency could determine whether that party should be excluded from its programs, i.e., not necessarily have governmentwide effect. This option is based on the belief of some that the area of acceptable performance under assistance is too subjective to impose a governmentwide debarment and suspension on the basis of a single agency's experience. Those who disagree with this criterion for governmentwide debarment raise the following question. Should a recipient or third party contractor who performs very well under one agency's assistance programs but poorly under the assistance programs of another agency be automatically debarred or suspended governmentwide? Those who agree with this criterion for governmentwide debarment believe willful, material or historical nonperformance anywhere should be controlling, as is the case for all other criteria for governmentwide debarment. Such nonperformance has long been a factor in procurement debarments.

Access to the List of Excluded Parties

The means of providing access to the consolidated list to recipients and lower tier participants to enable them to fulfill their obligations under the program is still undermined. There are a number of different approaches currently in use in the existing Federal assistance debarment programs and the Federal procurement debarment programs. These include, among others:

1. Periodic distribution of a hard copy of the list to an agency in each state for inquiry by other agencies, recipients and participants in the state.

2. Periodic distribution of a hard copy of the list to all recipients for their direct use (free or by paid subscription).

3. Federal agency retention of the list for inquiry by all its recipients and participants.

4. Maintenance of the list on a computer which can be dialed up by all recipients and participants, under funding arrangements with the awarding agency.

Access through an "800" telephone number(s) is a possible enhancement to these approaches.

In addition to these methods, more technologically advanced approaches have been suggested, such as automated, computer-voice response capability on an "800" number. A numerical identifier (e.g., Employer Identification Number (EIN)) for every party on the list would be needed and would have to be known to the inquiring recipient or participant.

Comments are invited on what means of access is regarded as minimally acceptable and what would be considered as most desirable.

Joseph R. Wright, Jr.,
Deputy Director.

DRAFT

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Governmentwide Nonprocurement Debarment and Suspension System

On February 18, 1986, the President signed Executive Order 12549. The Order directs Federal executive branch departments and agencies to participate in a system for nonprocurement debarment and suspension under which an agency's debarment or suspension of a nonprocurement program participant will have governmentwide effect.

Pursuant to Section 6 of the Order, the attached OMB guidelines prescribe the scope, governmentwide criteria, minimum due process procedures, and other guidance for this system. The guidelines are prepared in regulation format to facilitate their use in preparing agency regulations.

Section 3 of the Order directs agencies to issue regulations to implement the system. Proposed agency regulations, which are to be consistent with these guidelines, should be submitted to OMB for review no later than four months from the date of this memorandum in accordance with Section 3 of the Order. Please submit a copy after **Federal Register** publication to [lead agency, Attention:].

Further information regarding implementation of the Order may be obtained from the Grants Management staff, Financial Management Division, at 395-3050.

Deputy Director.

Attachment.

PART _____—GUIDELINES FOR GOVERNMENTWIDE NONPROCUREMENT DEBARMENT AND SUSPENSION

Subpart A—General

Sec.

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____.400 General.
____.405 Causes for suspension.
____.410 Procedures.
____.415 Period of suspension.
____.420 Scope of suspension.

Authority: _____.

Subpart A—General

§____.100 Purpose.

(a) These guidelines implement Section 6 of Executive Order 12549 by:

(1) Prescribing the nonprocurement programs and activities that are covered by the Order;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that Federal agencies shall use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in assistance transactions, and participants declared ineligible (see the definition of "ineligible" in §____.120);

(4) Setting forth the consequences of the actions under paragraph (a)(3) of this section;

(5) Offering such other guidance as necessary for the effective implementation and administration of the Order.

(b) Although these guidelines cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(c) The procedures set forth in §§____.310 and ____.410 are the minimum due process procedures which agencies must follow. However, agencies are free to supplement them in any way not inconsistent with those sections.

§____.105 Authority.

(a) These guidelines are issued pursuant to Executive Order 12549 of February 18, 1986.

§____.110 Scope.

(a) These guidelines apply to executive branch domestic assistance transactions described below.

(1) *Covered transactions.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(3) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements; subawards, subcontracts and transactions at any tier that are charged as direct costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, and insurance programs of the Departments of Agriculture and Housing and Urban Development and of the Veterans Administration, and in the interstate land sales and manufactured housing programs of the Department of Housing and Urban Development, and those in business relationships with such participants to the extent of their connection with such programs, are also subject to the provisions of these guidelines, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* Statutory entitlement or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted), incidental benefits derived from ordinary governmental operations, and other transactions where the application of Executive Order 12549 and these guidelines would be prohibited by law are not covered.

(b) *Relationship to Federal acquisition activities.* Executive Order 12549 and these guidelines do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4. However, agencies are encouraged to integrate their administration of these complementary debarment and suspension programs.

§____.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these guidelines, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these guidelines.

§____.120 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one owns, controls, or can control another or they are under common ownership or control of a third person.

Agency. Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

Assistance transactions. Those covered executive branch domestic assistance transactions denoted by §____.110(a)(1) and (a)(2).

Consolidated List. A list compiled, maintained and distributed by [lead agency] containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

Control. The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these guidelines, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence.

Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with agency regulations implementing Executive Order 12549 to exclude a person from participating in assistance

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transactions. A person so excluded is "debarred."

Debarring official. An agency head or a designee authorized by the agency head to impose debarment.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in Federal assistance transactions, programs or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

Nonprocurement. Refers to activities of the Federal Government other than direct procurement of goods and services for the use of the Federal Government, including assistance transactions.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a Federal assistance transaction.This term also includes any person who conducts business with a Federal agency as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit under an assistance transaction, whether directly or indirectly.

Respondent. A person against whom a debarment or suspension action has been initiated.

Subsidiary. Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

Suspending official. An agency head or a designee authorized by the agency head to impose suspension.

Suspension. An action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in assistance transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensure. A person so excluded is "suspended."

Voluntary exclusion. A status of nonparticipation or limited participation in assistance transactions assumed by a person pursuant to the terms of a settlement.

Subpart B—Effect of Action

§ ___.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment shall be effective throughout the executive branch of the Federal Government. Except as provided in § ___.215, persons who are debarred or suspended under these provisions are excluded from participation in all assistance transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, individuals who are debarred or suspended are excluded from participation in or under any assistance transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participating person; as a principal investigator, project director, or other position involved in management of the assistance transaction; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under an assistance transaction.

§ ___.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § ___.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

§ ___.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§ ___.215 Exception provision.

In ususual circumstances, an agency may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the compelling reason(s) for doing so.

§ ___.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § ___.215.

§ ___.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with an assistance transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except in accordance with these guidelines, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

Subpart C—Debarment

§ ___.300 General.

The debarring official may debar a participant for any of the causes in § ___.305, using procedures established in accordance with § ___.310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any debarment decision.

§ ___.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ ___.300 and ___.310 for:

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors; allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § ___.305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with an assistance transaction, where it is known or reasonably should have been known that the person in debarred, suspended of otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ ___.310 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of proposed debarment.* A debarment proceeding shall be initiated by notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under § ___.305 for proposing debarment;

(iv) Of the provisions of § ___.310(b)(1)–(b)(6) and the agency's specific procedures governing debarment decisionmaking;

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) *Additional proceedings as to disputed material facts.* (i) In actions not based upon a conviction or judgment, if it is found that there exists a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents.

(ii) A transcribed record of any additional proceedings shall be made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Debarring official's decision.* (i) *No additional proceedings necessary.* In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Standard of evidence.* In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(6) *Notice of debarring official's decision.*

(i) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

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(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for assistance transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes the determination referred to in §____.215.

(ii) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§___.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the debarring agency shall not make any new assistance awards to the respondent. That agency may waive this exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver, the provisions of §____.215 allowing exceptions for particular transactions may be applied.

§___.320 Voluntary exclusion.

A participant and an agency may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

§___.325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period. Where circumstances warrant, a longer term of debarment may be imposed, up to an indefinite period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §____.310 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§___.330 Scope of debarment.

(a) *Scope in general.*

(1) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of agreements.

(2) The debarment action may include any other affiliate of the participant that is—

(i) Specifically named and

(ii) Given notice of the proposed debarment and an opportunity to respond (see §____.310).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

Subpart D—Suspension

§___.400 General.

(a) The suspending official may suspend a participant for any of the causes in §____.405 using procedures established in accordance with §____.410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in §____.405 when it has been determined that immediate action is necessary to protect the public interest.

§___.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§____.400 and ____.410 upon adequate evidence:

(1) To suspect the commission of an offense listed in §____.305 (a); or

(2) That a cause for debarment under §____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§___.410 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of suspension.* When a respondent is suspended, notice shall immediately be given:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(iii) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(iv) Of the cause(s) relied upon under §____.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(vi) Of the provisions of §____.410(b)(1)–(b)(5) agency's specific procedures governing suspension decision decisionmaking; and

(vii) Of the effect of the suspension.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) *Additional proceedings as to disputed material facts.*

(i) If it is found that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, unless—

(A) The action is based on an indictment, conviction or judgment, or (B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Suspending official's decision.* The suspending official may modify or terminate the suspension (for example, see §____.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions (A) based on an indictment, conviction, or judgment, (B) in which there is no genuine dispute over material facts, or (C) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent and any affiliates involved.

§___.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§___.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of a debarment (see §____.330), except that the procedures of §____.410 shall be used in imposing a suspension.

Subpart E—Consolidated List of Debarred, Suspended, Voluntarily Excluded, and Ineligible Participants

§___.500 [Lead agency] responsibility.

(a) [Lead agency] shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§___.505 Responsibilities of Federal agencies.

(a) Each agency shall designate a liaison who shall be responsible for providing [lead agency] with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by that agency. Until [three years from the date of Executive Order 12549], the liaison shall also provide [lead agency] and OMB with information concerning all transactions in which the agency has granted exceptions under §____.215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by [lead agency], each agency shall advise [lead agency] of the information set forth in §____.500(b) and of the exceptions granted under §____ within five working days after taking such actions.

(c) Each agency shall establish procedures to provide for the effective dissemination and use of the list, in order to ensure that listed persons do not participate in any assistance transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these guidelines.

(d) Each agency shall direct inquiries concerning listed persons to the agency that took the action.

[FR Doc. 86-323 Filed 2-19-86; 11:50 am]
BILLING CODE 3110-01-M

VOL
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ISS
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federal register

Friday
February 21, 1986

Part VI

Environmental Protection Agency

40 CFR Part 61
National Emissions Standards for Hazardous Air Pollutants; Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings; Proposed Rule and Announcement of Public Hearing

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL 2961-6]

National Emissions Standards for Hazardous Air Pollutants; Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Announcement of Public Hearing.

SUMMARY: This proposed standard considers alternative work practice standards for limiting radon-222 emissions from tailings at licensed uranium mill sites. EPA is taking the action because EPA has preliminarily concluded that radon-222 emissions from uranium mill tailings cause significant risks to nearby people and to populations. The proposed rule is intended to reduce these risks to levels that are protective of public health with an ample margin of safety.

DATES: A public hearing on the proposed rule will be held on February 27 and 28, 1986, in Denver, Colorado. Interested parties are invited to testify. Requests to participate in the hearing should be made in writing by February 25, 1986. Written statements and comments on the proposed rule may be entered into the record by March 31, 1986.

ADDRESSES: The hearing will be held at the Holiday Inn, 1450 Glenarm Place, Denver, Colorado, from 9:00 a.m. to 5:00 p.m. each day. Requests to participate in the hearing should be made in writing to Richard J. Guimond, Director, Criteria and Standards Division (ANR-460), U.S. Environmental Protection Agency, Washington, DC 20460. All requests should include an outline of the topics to be addressed in the opening statements and the names of the participants. Presentations should be limited to 30 minutes. Please indicate a preferred date for testimony.

Comments should be submitted to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, Washington, DC 20460, Attention: Docket No. A-79-11. The rulemaking docket, containing information used by EPA in developing the proposed standard, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at EPA's Central Docket Section, West Tower Lobby, Gallery One, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Terrence A. McLaughlin, Chief, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460, (703) 557-8977.

SUPPLEMENTARY INFORMATION:

I. Supporting Documents

A draft background information document and a draft economic analysis have been prepared and are titled respectively "Draft Background Information Document—Proposed Standard for Radon-222 Emissions from Licensed Uranium Mill Tailings" (EPA 520/1-86-001) and "Draft Economic Analysis—Proposed Standard for Radon-222 Emissions from Licensed Uranium Mill Tailings" (EPA 520/1-86-002). Single copies of these documents may be obtained from the Program Management Office (ANR-458), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460; (703) 557-9351.

The documents contain projections of radon-222 emissions and the resulting risks to nearby individuals and to populations due to the operation of the uranium milling industry, a description of radon-222 control technology and associated costs, and an environmental and economic analysis of the effects of alternative control strategies on the industry.

II. History of Standards Development

The Agency's standards for Nuclear Power Operation (40 CFR Part 190) issued under the Atomic Energy Act (42 FR 2858, January 13, 1977) limit the total individual radiation dose caused by emissions from facilities that make up the uranium fuel cyle, including licensed uranium mills. However, when 40 CFR Part 190 was promulgated, considerable uncertainty existed about the public health impact of existing levels of radon-222 in the air, as well as uncertainty about the best method for management of new man-made sources of radon-222. EPA then exempted radon-222 from control since the problems associated with emissions of this radionuclide were sufficiently different from those of other radioactive materials associated with the fuel cycle to warrant separate consideration.

Control of radon-222 emissions from uranium mill tailings was later considered under the Uranium Mill Tailings Radiation Control Act (UMTRCA). EPA standards (50 CFR Part 192, subparts D and E) issued for the management of tailings at locations that are licensed by the NRC or the States under Title II of the UMTRCA, limit radon-222 emissions from mill tailings piles after closure of the facility (40 FR 45926; October 7, 1983). Included in these standards was an Agency commitment to issue an Advance Notice of Proposed Rulemaking under section 112 of the Clean Air Act to consider controlling radon-222 emissions from uranium mill tailings piles during the operational period of a mill. In 1977, Congress amended the Clean Air Act (the Act) to address airborne emissions of radioactive materials. The Administrator of EPA, after seeking public comment (44 FR 21704), April 11, 1979), then listed radionuclides as hazardous air pollutants under section 112 of the Act (44 FR 76738, December 27, 1979). EPA has promulgated emission standards for Department of Energy (DOE) facilities, NRC-licensed facilities and non-DOE Federal facilities, elemental phosphorus plants and underground uranium mines (50 FR 5190, February 6, 1985 and 50 FR 15386, April 17, 1985).

On October 31, 1984, EPA issued an Advance Notice of Proposed Rulemaking to inform interested parties that the Agency was considering issuing standards under the Clean Air Act to limit radon-222 emissions from licensed uranium mill tailings. (49 FR 43916, October 31, 1984). Subsequently, EPA entered into an agreement with the Sierra Club to promulgate such standards by May 1, 1986. This agreement was formalized as a Court stipulation by the United States District Court for the Northern District of California (Civil No. C-84-0658 WHO).

III. Comments Received in Response to the Advance Notice of Proposed Rulemaking

In its advance Notice of Proposed Rulemaking, the Agency requested information on:

(1) Radon-222 emissions from uranium mills;

(2) Applicable control options and strategies, including work practices;

(3) Feasibility and cost of control options and strategies;

(4) Local and regional impacts due to emissions of radon-222 for licensed uranium mills;

(5) Methods of determining compliance with a work practice type of standard; and

(6) Effect on the industry if controls are required.

Only the American Mining Congress responded to this request. It made three major points in its comments: (1) The Agency has no jurisdiction to issue standards that are effective within the boundaries of mill site locations or that

impose management, design or engineering requirements; (2) radon-222 emissions from tailings piles during the operational phase of uranium mills do not pose a significant risk of harm to public health or the environment; and (3) even if the potential risks from uncontrolled tailings could be characterized as significant, current Nuclear Regulatory Commission (NRC) standards and practices provide more than adequate protection to the public health and the environment.

The Agency considered these comments in the preparation of this proposed standard. In response to each point the Agency found:

(1) The 1977 Clean Air Act amendments give EPA and the States authority to regulate all airborne emissions of radioactive materials, including those occurring within site boundaries;

(2) The lifetime risk of lung cancer to a person living near a uranium mill is about one chance in one hundred and, even if a person lives near a pile only a few years, the risk is still significant; and

(3) Existing NRC standards and practices allow a lifetime risk of greater than one in one hundred to individuals living near the largest tailings piles. The number of fatal cancers each year to the U.S. population from all existing licensed piles is estimated to be between 3 and 6, depending on the condition of piles. Consequently, the Agency does not consider existing standards and practices to be sufficiently protective of public health.

The Agency preliminarily concluded that development of the standard should continue.

IV. Basic Terms Used in this Notice

Definitions of basic terms used in this notice are given below:

1. *Radon-222*—An inert radioactive gas.

2. *Radon-222 decay products*—The seven principal radionuclides that are produced as radon-222 decays to nonradioactive lead. Radon-222 short-lived decay products means the four radionuclides produced as radon-222 decays to lead-210.

3. *Mill tailings*—The waste resulting from conventional milling of uranium ore. Tailings are classified as either sands or slimes depending on size. Processing one ton of ore produces approximately one ton of tailings.

4. *Tailings pile*—The on-site waste impoundment in which tailings are deposited.

5. *Single cell disposal*—A method of tailings management which uses a large impoundment designed to contain all tailings generated during the lifetime of the mill. At the end of the mill life the impoundment is actively dewatered by means of pumps or allowed to air dry and then is immediately reclaimed.

6. *Phased disposal*—A method of tailings management and disposal which uses a series of small impoundments. Tailings are pumped to one impoundment until it is filled and then pumped to the next impoundment. The filled impoundment is dried, or allowed to dry naturally, and then immediately reclaimed.

7. *Continuous disposal*—A method of tailings management and disposal in which tailings are dewatered by mechanical methods soon after generation. The dried tailings are then placed in trenches or other disposal areas and immediately reclaimed.

8. *Covered or reclaimed*—Disposal of tailings to specifications required by 40 CFR Part 192 (UMTRCA).

9. *ALARA*—A practice in radiation protection which encourages that radionuclide emissions be kept "as low as reasonably achievable."

V. Summary of Proposed Standard

Based on currently available information, EPA has determined that it is not feasible to prescribe an emission standard for radon-222 emissions from uranium mills. Therefore, the Agency is proposing a work practice standard to limit radon-222 emissions from licensed uranium mills.

EPA is presenting three work practices, including improved methods of disposal for newly generated tailings, various timing requirements for use of these improved methods, and interim covers. The improved methods of disposal are a large single pile with immediate closure, phased disposal, and continuous disposal involving dewatering and covering of tailings. In addition EPA is considering alternatives allowing new tailings to be added to existing piles over a range of times, including 5 years, 10 years, 15 years and an indefinite period into the future. Costs and benefits are presented in supporting documents to assist those who wish to comment on a specific alternative. Multiple alternatives are proposed for public comment due to the Agency's desire to maximize information received through the public comment period before making a final decision.

In those cases where the Agency would ban the addition of tailings to a pile at a specified future date, the Agency would provide an exemption for existing tailings impoundments which are lined. However, any exemption must be approved by the Administrator. These lined impoundments are capable, in many cases, of maintaining a water cover over most of the tailings to control radon-222 emissions.

VI. Rationale for the Proposed Standard

A. Industry Description

Uranium milling involves the handling of large quantities of ore containing uranium and its decay products. The concentration of uranium and its decay products is about one thousand times greater in ore than in other rocks and soils. Conventional uranium milling involves the recovery of the uranium content of the ore by mechanical and chemical processes that generate waste tailings. The ore is first crushed, blended, and ground to the proper size for the leaching process which extracts uranium. Several leaching processes are used, including acid, alkaline, and a combination of the two. After uranium is leached from the ore, it is concentrated from the leachate through ion exchange or solvent extraction. The concentrated uranium is then stripped or extracted from the concentrating medium, precipitated, dried, and packaged. The depleted ore, in the form of tailings, is pumped to a tailings pile as a slurry mixed with water.

Since ore generally contains less than 0.5 percent uranium by weight, every ton of ore processed results in almost a ton of tailings. The tailings contain virtually all of the uranium decay products present in the ore, including thorium-230 and radium-226, which decay to radon-222. Previous risk analyses have shown that radon-222 is the most significant radionuclide released to air at uranium mills, and that the tailings pile is the most significant source of radon-222. [See draft Background Information Document—Proposed Standard for Radon-222 Emissions from Licensed Uranium Mill Tailings (EPA 520/1-86-001).]

The 26 licensed uranium mills in the United States are located in Colorado, New Mexico, South Dakota, Texas, Utah, Washington, and Wyoming. In addition, four mills have been licensed but not built, and one unconventional mill has had its license suspended. The milling industry is depressed due to a decline in the demand for uranium and competition from low-cost foreign sources. Three mills are actively processing ore; 17 are on standby and could process ore in the future if market conditions improve; six are being decommissioned and will no longer process ore. The 20 licensed mills that are actively processing ore or are on standby were considered in the

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analyses reported in the supporting documentation. These 20 mills have about 35 tailings impoundments associated with them.

Past milling activities have generated about 175 million tons of tailings. Production at conventional mills peaked in 1980, when 21 mills recovered more than 17 thousand tons of uranium and generated more than 14 million tons of tailings. The industry is currently operating at less than 10 percent of capacity due to the depressed market. At this level of production, the industry is recovering about 1.8 thousand tons of uranium and generating about 1.4 million tons of new tailings annually. At full capacity, the industry could generate approximately 14 million tons of tailings a year.

B. Estimates of Exposure and Risk

Exposure estimates are based solely on radon-222 emissions from the tailings piles since emissions and risks from other parts of a uranium mill are small in comparison. Radon-222 emission rate estimates are based on the radium-226 concentration in the tailings using the relationships: One picocurie of radon-222 per square meter-second to one picocurie of radium-226 per gram of tailings. It is assumed that the radium-226 is evenly mixed throughout the tailings and that radon-222 is emitted from all exposed surfaces of tailings. The radium-226 content of the tailings is derived from the relationship: one-tenth of one percent of uranium in ore equals 280 picocuries of radium-226 per gram of ore.

Standard meteorological transport models are used to estimate radon-222 concentrations in air at various distances from the piles. Exposure to radon-222 decay products is then estimated from the radon-222 concentration in air. The final risk estimates are a product of the units of radon-222 decay product exposure levels and a risk factor that relates risk to a single unit of exposure.

Two summary measures are of particular interest: "nearby individual risk" and "total population impact." The former refers to the estimated increased lifetime risk to individuals who spend their entire life at the point where predicted concentrations of the pollutant are highest. Nearby individual risk is expressed as a probability; a risk of one in one thousand, for example, means that a person spending his lifetime at the point of maximum exposure has an estimated increased risk of developing a fatal cancer of one in one thousand. Estimates of nearby individual risk are upper bound estimates and must be interpreted cautiously.

The second measure, "total population impact," considers people exposed at all concentrations, low as well as high, and it considers people exposed throughout the United States, as appropriate. It is expressed in terms of annual number of cancer cases, and provides a measure of the overall impact on public health. A total population impact of 0.5 fatal cancer cases per year, for example, means that emissions of the specific pollutant are expected to cause one case of cancer every two years. At distance from a source, risks to specific persons are extremely small, but considering the total population exposed, the sums of these risks may be significant.

The two estimates together provide a better description of the magnitude and distribution of risk in a community than either number alone. "Nearby individual risk" tells us the highest risk, but not how many people may bear that risk. "Total population impact" describes the overall health impact on the entire exposed population, but not how much risk the most exposed persons may bear. Two sources of radionuclide or chemical emissions could have similar population impacts, but very different maximum individual risks, or vice versa. Both estimates are important and are used in making risk management decisions. The risk estimates should not be viewed as precise estimates of likely health damage, but rather as a general indication of a reasonable upper-limit estimate.

EPA's analysis of risks due to radon-222 emissions from existing uranium tailings piles concluded:

(a) Lung cancer caused by the short-lived decay products of radon-222 is the dominant radiation hazard from tailings. Estimated effects of gamma radiation and of long-lived decay products of radon-222 are less significant, although high gamma radiation exposures may sometimes occur.

(b) Individuals living near an uncontrolled tailings pile are subject to high risks due to radon-222 emitted from tailings. Radon-222 contained in the outside air enters homes and other structures built near the mill through doors and windows, as well as other openings in the structure. The resulting radon-222 decay products tend to concentrate indoors, thus exposing the occupants to potentially harmful levels of these radionuclides. It is estimated that persons living continuously next to some tailing sites can have lifetime lung cancer risks as high as about one in a hundred due to the radon-222 emissions from the tailings.

(c) Based on models for the risk to all exposed populations (local, regional, and national), about one to three fatal cancers per year are estimated from emissions of radon-222 from tailings at the 20 mill sites being considered here, if no controls are present. If the tailings at all sites were to dry out completely, this detriment is estimated to be about two to six fatal cancers per year. Approximately one-half of these deaths are estimated to occur within 80 kilometers of the tailings piles.

There is substantial uncertainty in these estimates because of uncertainties in the emission rates of radon-222 from tailings sites, the exposure people will receive from it decay products, and from incomplete knowledge of the effects on people due to these exposures. The values presented here represent best estimates based on current knowledge. Additionally, these estimates are based on current (1980 and 1983) pile sizes and geographical distributions of populations. As populations increase in the future, the estimated impacts will be larger.

Several factors suggest that actual exposure levels to nearby individuals will be lower than those estimated. In estimating exposure, the most exposed individuals are hypothetically subjected to the maximum annual average concentration of the emissions for 24 hours every day for 70 years (roughly a lifetime). This does not consider, for instance, the fact that most people in their daily routines move in and out of the specific areas where the radon-222 decay product concentrations are the highest or that tailings may be reclaimed before a lifetime exposure occurs.

Much more is known about the risks from exposure to radiation than exposure to most chemicals. While there is uncertainty in risk estimates from assessments of chemical emissions and radionuclide emissions, there is likely to be much less uncertainty in estimates of risk from radionuclide emissions because of the extensive data base on human exposure to radiation. Therefore, a risk estimate of one in one thousand resulting from exposure to radionuclides is likely to be more accurate than the same estimate for chemical exposures. Estimates of risk from radionuclides are much less likely to exaggerate hypothetical maximum risks than are estimates made for chemical exposure.

C. Control Technology

Water is very effective in controlling radon-222 emissions. It is estimated that saturated tailings and tailings covered with a thin layer of water emit only two percent of the radon-222 emitted by dry tailings. Deeper water covers (greater than about 1 meter) effectively eliminate radon-222 emissions.

For most existing piles, radon-222 control using a water cover is not viable because keeping the tailings saturated or covered with water causes serious ground water contamination at most locations. Also, some tailings piles' retention dikes were not designed to retain water since they lack clay cores. However, if impermeable liners are placed on the sides and bottom of tailings impoundments, water cannot easily escape. Thus, ground water resources are protected and the pile can successfully be covered with water to prevent emissions of radon-222. Only five of the 35 existing impoundments considered in developing this rule have synthetic liners.

Earthen covers are also effective in controlling radon-222 if they are thick enough. It is estimated that one third meter of earthen material reduces radon-222 emissions by about 20 percent, one meter by about 65 percent and three meters about 95 percent, on the average. The amount of moisture held in this material determines its effectiveness in delaying the movement of radon-222. Since clay material (fine size particles) retain moisture much better than sandy materials (larger size particles), clays are more effective in controlling radon-222 than sands. The major problem with earthen covers when used on an interim basis is that their retention value is negated once additional tailings are placed on top of them, as frequently occurs at an operating mill. However, earthen covers should be effective on an interim basis when covering those portions of a pile that will not be used for extended periods.

Federal standards for disposal (reclamation) of tailings piles (40 CFR Part 192 and 10 CFR Part 40) require that disposal methods be designed so that radon-222 emissions do not exceed 20 pico-curies per square meter-second averaged over the entire tailings area for one thousand years. The Agency expects this to be accomplished in most cases by grading the tailings to gentle slopes, placing a cover of about three meters of earthen material over the tailings, and fortifying this cover with rock (rip rap) and gravel to last a long time. In a few existing cases, additional stabilization may be needed to assure long-term protection against flooding. The licensing agencies (NRC and the States) will approve disposal plans and the timing of reclamation. Currently, no licensed tailings impoundments have been disposed of.

The Agency reviewed various options for controlling radon-222 emissions from currently licensed piles. It was concluded that two options were available. First, earthen covers could be placed over dry tailings beaches and over embankments constructed of sand tailings. Dry beaches typically cover 60% of the total tailings area during the operating phase of a mill and may cover significantly larger areas during periods of extended shutdown. Twelve tailings piles constructed early in the industry's history have sand tailings embankments which, if covered with earth, would have reduced radon-222 emissions. Water covers were judged impractical unless the pile has an impermeable liner. Where there is a liner, piles tend to remain saturated with water and radon-222 emissions are greatly reduced.

Second, use of existing tailings piles could be terminated. The pile would then be disposed of expeditiously, following dry out. Newly generated tailings would then be managed by one of the three methods discussed below. It is estimated that radon-222 emissions are about 7,000 curies per year for an average site under typical operating conditions. Emissions would increase to about 12,000 curies per year when the piles dry out. Disposal of the tailings to Federal standards would reduce emissions to about 440 curies per year. Different termination times were considered as options in estimating the residual risk.

The Agency reviewed technologies that would reduce radon-222 emissions during the operating phase of a new uranium mill tailings pile. Three methods were selected for analysis: single cell impoundment; phased disposal; and continuous disposal.

Single cell impoundment

Using this method of disposal, a large impoundment would be constructed of earthen materials with clay cores and an impermeable liner. This impoundment would cover about 120 acres and have capacity to store all tailing generated during the life of the mill. [Previous NRC and EPA analyses assume the lifetime of the average uranium mill to be 15 years.] This design permits the impoundment to retain water without contaminating ground water.

During the operating life of the mill, the tailings would be covered with water thus minimizing radon-222 emissions. During the five-year dry out period necessary to allow final reclamation, the Agency estimates radon-222 emissions would gradually increase until they were similar to emissions from existing dry piles. Once the pile was dry, disposal to Federal standards would be performed immediately.

The Agency estimates radon-222 emissions would be about 800 curies per year during the operational period of the mill and about 2,500 curies per year during the dry out period for a total of 24,000 curies over the lifetime of the pile. If the tailings were not covered, emissions would be about 4,200 curies per year. Emissions would be about 300 curies per year, once the pile has been disposed of in accordance with existing Federal standards.

Phased Disposal

In this disposal scheme, series of small impoundments would be constructed over the lifetime of the mill. Each small impoundment would be constructed with clay-core earthen dikes or in an excavated pit and would have an impermeable liner. As each impoundment filled it would be dried out and covered with earthen materials immediately. The total area of all impoundments would be about 120 acres at the end of the average mill's lifetime. The design permits the use of a water cover over all tailings without the risk of contaminating ground water. It also greatly reduces the amount of unreclaimed tailings at the end of mill's lifetime because only one or two small impoundments would still require closure.

Radon-222 emissions are estimated to average about 700 curies per year over the lifetime (15 years use and 5 years dry out) of the mill; total emissions would be about 14,000 curies of radon-222.

Continuous Disposal

This disposal method calls for tailings to be dewatered as they are generated, placed in pits or on pads, and covered with about three meters of earthen materials on a continuous basis. Disposal pits or pads would be constructed with impermeable liners. This method would rely on the thick earthen cover to reduce radon-222 emissions, rather than water as in the previous two methods. The total area having covered tailings at the end of a mill's lifetime would be limited to about 120 acres. Since this method does not rely on water to reduce emissions of radon-222, the potential for ground water contamination is negligible.

The Agency estimates that only about ten acres of tailings would not be covered at any given time during operations. This method would have an average emission rate of about 500 curies per year for a total lifetime emission of about 10,000 curies.

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D. The Proposed Standard

EPA is proposing a number of work practice standards for radon-222 emissions from licensed uranium mill tailings. Based on currently available information, EPA believes that it is not feasible to prescribe an emissions standard since most of the radon-222 emitted by a uranium mill comes mainly from the surface of mill tailings piles. A typical pile may be hundreds of acres in area and emissions from its surface cannot be controlled through a conveyance designed and constructed to emit or capture radon-222. EPA, however, requests comments specifically on whether an emission standard or standards for some tailings piles is appropriate in some circumstances. For instance, is an emission standard appropriate in the case of existing piles that are on standby for long periods?

The Agency has drafted a proposed rule that encompasses a range of alternative work practices considered feasible to control radon-222 emissions from uranium mill tailings.

The proposed rule displays, in the format of a rule, the alternatives considered. The Agency believes that the best way to explain these alternatives is to pose a series of questions with alternative answers followed by a discussion.

1. New Tailings Management

Should uranium mill tailings generated in the future be managed differently than in the past? If so, what improved methods should be used? The three alternatives considered are the single cell impoundment, phased disposal, and continuous disposal.

It is clear that past practices using unlined impoundments with dams made of mill tailings will not be allowed in the future due to other existing EPA and NRC requirements. However, there remains considerable licensed capacity in existing impoundments, many of which are unlined. Some have dams made of tailings.

The Agency estimated the costs and benefits of the alternatives based on a scenario that describes how the industry might operate over the next 100 years. A base situation was used for comparison that assumed single large impoundments were constructed, operated for 15 years, dried for 5 years and then remained on standby uncovered for an additional 40 years. The number of new single large impoundments required was estimated using a scenario for yellowcake demand based primarily on the Department of Energy's low growth projections for the nuclear power industry with reasonable assumptions made as to the amount of uranium required to be produced by uranium mills located in the United States. These estimates cannot be made precise due to the numerous assumptions necessary to make distant future projections.

The continuous method of disposal is the alternative that avoids the most fatal cancers (about 278) in the industry scenario selected, but is the most uncertain alternative because it has never been carried out in practice. However, this method has been licensed for use by State regulatory agencies and NRC requires its consideration. The assumption that 10 acres of dry tailings are exposed at one time, the efficiency and reliability of dewatering equipment and the costs of this alternative are quite uncertain. However, this alternative may be the most protective of groundwater, which is a very serious problem with some existing systems.

Phased disposal is intermediate in avoiding fatal cancers (about 266), appears to be the least costly and is the latest technology licensed by the NRC and Agreement States that has been used by industry. The Agency considered a series of 20-acre impoundments for analysis which is somewhat smaller than those phased systems now in use.

The single large impoundment is the least protective of public health (about 251 fatal cancers avoided) and between the others in cost. The practicality of maintaining the integrity of the liner in a large pond for 15 years (as opposed to 3 years for each cell of the phased disposal) is uncertain. Failures in liners for both this alternative method and the phased disposal alternative (to a lesser degree) can lead to groundwater contamination and costly measures to mitigate such groundwater contamination. Such costs were not considered quantitatively in the Agency's analyses.

2. Timing of New Tailings Management by an Improved Method

Should mill operators be required to begin managing new tailings by an improved method? As alternatives EPA is considering requiring mill operators to manage new tailings with improved methods immediately, in five years (a three-year requirement plus a potential waiver of compliance for two additional years), in ten years (eight plus two), in fifteen years (thirteen plus two) and no specific timing requirement (existing piles would be closed at the end of their useful life).

The Agency estimated the costs and benefits of the timing alternatives with respect to existing piles by comparing them to a base situation which assumed that existing piles reached the end of their useful lives over the next 15 years, then dried out over the next 5 years and remained unreclaimed for the next 40 years. This condition is considered conservative, but could arise if existing mills and, thus their tailings, are kept on standby on and off for extended periods as has happened in the past, since operators have a strong economic incentive to delay reclamation.

The costs attributed to an alternative are due to actions being required sooner in time than might ordinarily have occurred (i.e., the opportunity value of the money required to cover piles that might not have been required for about 40 years later), the costs of replacement impoundments for the capacity of the existing piles that could no longer be used, and costs of interim covers when considered. Costs of remedial actions required when groundwater is contaminated were not estimated.

As might be expected, as the time for managing the new tailings by a new method is extended, less public health protection is afforded. If an immediate change to a new method is made, then about 177 fatal cancers would be averted. In a five-year time frame about 158 would be avoided, about 140 for 10 years, and about 121 for 15 years. Also, the present value costs decrease as the time is extended. The costs involve a component for replacing lost pile capacity (to the extent that capacity is projected to be used before reclamation) and a component for disposal of the tailings pile earlier than would normally be done.

There may also be important implications for groundwater contamination. Management of tailings piles under improved methods will require opening piles at new locations. What are the groundwater implications of this requirement? What are other environmental implications of opening other tailings piles? At the same time, the Agency is concerned that groundwater contamination could be exacerbated by any extended use of the existing unlined tailings impoundments. It is estimated that 95% of the groundwater contamination is caused by seepage of water used to pump tailings to the pile during mill operation. At every mill tailings site studied for potential groundwater contamination such contamination has been found. The earliest practical time to design, license by the Nuclear Regulatory Commission and build a new lined tailings impoundment is approximately three years and perhaps longer if extensive NEPA review is required. We specifically request comment on the groundwater issue.

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3. Interim Earth Cover of Existing Tailings

Should an immediate interim earth cover be used to decrease radon–222 emissions at existing piles until final cover at disposal? If so, how much? The Agency has considered: (1) One-third meter of earth cover on the top, dry portions of existing piles with no requirement to shift to new tailings management techniques; (2) one meter of earth cover on the top, dry areas and sides (if sides are constructed of tailings) of existing piles with no requirement to shift to new tailings management techniques; and (3) interim cover of one meter as in (2) above but with newly generated tailings being managed by a new technology in fifteen years, ten years, five years, and at promulgation.

The Agency estimated the costs and benefits of these alternatives with respect to existing piles in a fashion equivalent to the anlysis for the required use of new management methods for newly generated tailings. For those cases where no requirement for improved management methods for new tailings was specified, a five-year dry out and forty years lag to disposal were assumed. The assumed time lag to disposal may be a conservative assumption, but there are some very old piles in existence and there is considerable economic incentive for owners to delay final disposal. If capacity remains for an existing pile, an owner avoids economic loss by remaining open. Also, postponing final closure costs reduces present value costs of closure.

The number of fatal cancers avoided for each of the alternatives increase in order of the alternative given; from about 30 deaths avoided for one-third meter of earth cover, about 114 avoided deaths for one meter of cover, about 159 avoided deaths for one meter of cover and requirement of 15 years to improve management methods, about 166 avoided deaths for one meter and a 10-year requirement, about 174 avoided deaths for one meter and a 5-year requirement, and about 182 avoided deaths for one meter and immediate new tailings management by improved methods.

As would be expected, costs rise with, but not in proportion to, the rise in fatal cancers avoided. The alternatives with an application of a single interim cover can be more costly than those without. If the pile is used to manage new tailings, then multiple interim covers are required, raising costs and lowering benefits.

A number of concerns and uncertainties arise from the consideration of interim earth cover. The interim cover would have to be immediate to be effective, coverage of steep tailings dams may not be practical, there may be extensive maintenance requirements, and such requirements may prove difficult to implement and enforce.

The use of an interim cover implies that *all* existing piles would have to place earth cover immediately (perhaps with a waiver of compliance for two years). The immediate cost to industry is $34 to $110 million, the value of which would probably be lost when final disposal takes place. This is because most piles should be recontoured before final cover is added. In addition, interim covers on the tops of piles could be lost if the pile is reactivated.

The use of interim cover for control of radon–222 has not been practiced. There are concerns regarding the difficulties of covering steep tailings slopes and the expected need for frequent inspection and repair of erosions caused by wind and water.

EPA would have to enter into an agreement with the NRC in order to avoid inconsistent duplication of requirements for NRC licensees. NRC requires cover for different purposes such as prevention of wind blown tailings to meet 40 CFR Part 190 or heavier earth covers to compress the tailings and thus dewater. Also, for NRC Agreement States that license such sites under their own laws, the Agency would have to decide if the States' rules were compatible with EPA's. Thus, there is the potential for unnecessary duplication of regulation and inspection. For the final rule, EPA will estimate the effects of current NRC requirements.

4. Selection of a Final Rule

The Agency has arrayed the alternatives in Tables 1 and 2, in which is presented the basic information on benefits and costs for each alternative and combinations of alternatives. Additional details may be found in the economic assessment produced during the development of this rule. In selecting the final rule, EPA will consider risks, feasibility, and cost.

Additionally, an extremely important consideration is the risk to individuals living near tailings piles. A survey conducted in 1983 found a small number of occupied dwellings within two kilometers of existing tailings piles. For current conditions of partial water cover on the piles, individual maximum lifetime risks are estimated to be as high as one in one hundred with the potential to two in one hundred if the piles were allowed to completely dry out. If interim covers were placed on the dry portions of the piles as they currently exist, a one-third meter cover could reduce the maximum individual risks to about eight in one thousand; a one meter cover to about four in one thousand; and final cover of approximately three meters to about five in ten thousand. Only a few piles actually expose people to such risks. Most tailing piles are in remote areas.

Another consideration is the impact of this rule on groundwater protection. Contamination of groundwater has been discovered at sites that have been investigated for contamination and there is no reason to believe that such contamination does not exist at all tailing piles that are unlined. Radionuclides, selenium arsenic, sulfate, molybdenum, and other contaminants have been found. Remedial actions have been taken at some sites by drilling wells to interdict groundwater and pump it back to the pond. In one case city water was provided to about 200 people and the use of wells stopped.

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Table 1

Benefits and Costs of
Alternative Work Practices - Interim Cover Not Included (a)

Alternative	Population Benefit		Other Benefits	Present Value of Costs ($ Million)		Annualized Cost ($ Million)	
	Deaths Avoided	Time Span (years)		5% Discount	10% Discount	5% Discount	10% Discount
Work practices for existing piles - Cease placing tailings on piles at:							
15 years	120	60	Increasing protection of ground water depending on time.	179	89	9.4	9.0
10 years	140	60		280	170	14.8	17.0
5 years	158	60		424	311	22.4	31.2
Promulgation	177	60		608	538	32.1	54.0
Work practices for new piles:							
Single large pile	251	100	No large tailings pile to reclaim.	25.6	3.4	1.3	0.3
Phased disposal	268	100		22.2	-13.4	1.1	-1.3
Continuous disposal	276	100		94.8	8.3	4.8	0.8

(a) Numbers are given in three significant figures for comparison purposes only.

Table 2

Benefits and Costs of
Alternative Work Practices - Interim Cover Included (a)

Alternative	Population Benefit		Other Benefits	Present Value of Costs ($ Million)		Annualized Cost ($ Million)	
	Deaths Avoided	Time Span (years)		5% Discount	10% Discount	5% Discount	10% Discount
Work practices for existing piles - Cease placing tailings on piles at:							
Not specified - 1 foot cover	30	60	Increasing protection of ground water depending on time.	34	28	1.8	2.8
Not specified - 1 meter cover	114	60		110	90	5.8	9.0
15 years - 1 meter cover	159	60		283	177	15.0	17.8
10 years - 1 meter cover	166	60		380	256	20.1	25.6
5 years - 1 meter cover	174	60		523	396	27.6	39.7
Promulgation - 1 meter cover	182	60		640	570	33.8	57.2

(a) Interim covers placed as soon as possible. Numbers are given in three significant figures for comparison purposes only.

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E. Request for Comments

EPA is particularly interested in receiving comments and recommendations on the following issues:

1. Is it feasible to dewater (or dry) tailings, as would be required under the continuous disposal alternative? What percent of water by volume can be removed from the associated waste? To the Agency's knowledge, dewatering large volumes of uranium mill wastes is unproven technology. The Agency specifically requests information related to tailings dewatering from pilot plants, laboratory experiments, or other feasibility studies.

2. What is the minimum period for the design, licensing, and construction of new tailings management processes? The Agency considers a three-year period reasonable, based on two years for the design and licensing phase and one year for construction. The views of the regulatory agencies (NRC and the States) are of interest to the Agency, particularly the experience gained in previous licensing actions.

3. Is the size limit of 20 acres for the phased disposal method reasonable? This limit was selected from previous NRC and EPA analyses. The assessment presented in the Background Information Document indicates this limit provides significant radon-222 control without a cost penalty. The Agency is particularly interested in any studies that support a different maximum size for this phased disposal method.

4. Are current levels or potential increases in levels of radionuclide or other contaminants in ground water around uranium mills sufficiently elevated to warrant immediate termination of pumping tailings into unlined impoundments? Ground water contamination is occurring at all tailings sites where groundwater has been evaluated and the existing impoundment has no liner. The most effective long-term solution to this problem, other than pumping and treatment, is to stop placing tailings into unlined impoundments. The Agency requests more information on concentration levels of hazardous constituents in ground water around uranium mills and the potential public health and environmental effects. Also, information is needed on the impact on the uranium industry if this action is taken.

5. Are there any unidentified public health or environmental problems with evaporation ponds? Both the phased disposal and continuous disposal methods require evaporation ponds to dispose of excess water. The Agency believes most existing evaporation ponds have synthetic liners to prevent infiltration of hazardous constituents into ground water. However, some of these ponds may contain significant quantities of tailings, which are likely to be carried over from the impoundment area. The Agency seeks any information that may be pertinent to the potential public health and environmental impact from evaporation ponds at uranium milling sites.

6. Are interim controls for tailings piles a practical alternative? In particular, can dikes made of tailings sands be successfully covered on an interim basis? If so, are there maintenance problems? If not, what risks would result if they remain uncovered? Also, are dry tailings beach areas frequently flooded with additional tailings, or does a dry beach tend to remain dry until the end of impoundment design capacity? The Agency believes a variety of tailings management practices are conducted, so that in some cases interim controls would be effective for only a few years while in other cases interim controls would be effective until closure. Any information that pertains to the effectiveness of interim controls or engineering and maintenance problems is requested.

7. EPA's assessment of the costs and benefits associated with the enactment of UMTRCA assumed that existing piles would be promptly closed and covered when they are no longer of use. However, for the analysis of the costs and benefits of the various regulatory alternatives for licensed uranium mill tailings piles, the Agency has altered this assumption to reflect a 40 year lag before existing piles, once they are no longer used, are covered with the final covers prescribed by UMTRCA. Furthermore, the Agency has assumed in its analysis of the various regulatory options for licensed uranium mill tailings piles that if these regulations prevent further use of existing tailings piles, those existing piles will be promptly covered with the final covers prescribed by UMTRCA. The opportunity costs and the reductions in health effects which result from the moving forward in time of the application of UMTRCA final covers are significantly large contributors to the costs and benefits, respectively, of the various regulatory options. Therefore the specific assumptions made concerning the likely promptness of UMTRCA compliance under various regulatory scenarios may strongly influence the estimated costs and benefits of the regulatory options.

The Agency seeks comments on two questions: Is it reasonable to assume, as a reference case condition, a 40 year lag before compliance with UMTRCA once an existing pile is no longer used? Is it reasonable to assume that once existing piles are no longer used they will be promptly covered with the final covers prescribed by UMTRCA?

8. Tables 1 and 2 show the costs and risk reductions associated with ceasing to place tailings in existing piles at different points in time. The risk reductions of the alternative options for ceasing to place tailings on existing piles reflect the assumption that the earlier the date that new tailings cannot be added to existing piles, the earlier those piles will be covered under current UMTRCA requirements. The costs of these alternatives are attributable to (1) the increased cost of final cover under current UMTRCA requirements caused by incurring these costs sooner, (2) the cost of pile capacity replacement where current useable capacity was eliminated by the work practice requirements, and (3) the cost of interim covers where considered. EPA invites comment on the extent to which the timing of UMTRCA requirements should be factored into the decision-making associated with the choice of a control option.

VII. Miscellaneous

A. Docket

The docket is an organized and complete file of all information considered by EPA in the development of this proposed standard. The docket allows interested persons to identify and locate documents so they can participate effectively in the rulemaking process. It also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's response to comments, and other relevant documents will be placed in the docket and will be available for inspection and copying during normal working hours.

B. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this rule is not a major rule as defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be less than $100 million per year. Also, it will not cause a major increase in costs or prices for any geographic region. Further, it will not result in any significant adverse effects on

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competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. Under Executive Order 12291, this proposed rule was submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response to those comments are included in the docket.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements on operators or unranium mills tailings piles. (However, if the interim control alternative is selected, there will be reporting and recordkeeping requirements and Form SF 83 will be submitted to OMB.)

D. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published.

However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed . . . rule if the head of the Agency certifies that the rule will not, if promulgated have a significant economic impact on a substantial number of small entities."

EPA believes this proposed rule will have little or no impact on small business because the total costs associated with the standards will have relatively little impact on the total cost of producing uranium oxide.

For the preceding reasons, I certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl chloride, Benzene, Arsenic and Radionuclides.

Dated: February 14, 1985.

Lee M. Thomas,

Administrator.

PART 61—[AMENDED]

It is proposed to amend Part 61 of Chapter 1 of title 40 of the Code of Federal Regulations as follows:

1. The authority Citation for Part 61 continues to read as follows:

Authority: Secs. 112 and 301(a) Clean Air Act, as amended [42 U.S.C. 7412, 7601 (a)].

2. By adding a new Subpart W to read as follows:

Subpart W—National Emission Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings

Sec.

61.250 Applicability.
61.251 Definitions.
61.252 Standard.
61.253 Recordkeeping and reporting requirements.
61.254 Source reporting and waiver requests.

Subpart W—National Emission Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings

§ 61.250 Applicability.

This subpart applies to licensed sites that manage uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings.

§ 61.251 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Clean Air Act or Subpart A of Part 61. The following terms shall have the following specific meanings given below:

(a) "Covered" or "reclaimed" means to cover with earth sufficient to meet Federal standards for the management of uranium byproduct materials pursuant to section 84 of the Atomic Energy Act of 1954, as amended.

(b) "Dewatered" means to remove the water from recently produced tailings by mechanical or evaporative methods such that the remaining water does not exceed 30 percent by weight.

(c) "Licensed site" means the area contained within the boundary of a location under the control of persons generating or storing uranium byproduct materials under a license issued pursuant to section 89 of the Atomic Energy Act of 1954, as amended. This includes such areas licensed by Agreement States, i.e., those States which have entered into an effective agreement under section 274(b) of the Atomic Energy Act of 1954, as amended.

(d) "Liner" means the material placed in the bottom and sides of a waste management area. This material must meet the requirements of 40 CFR Parts 264.220, 264.221, 264.300, and 264.301.

(e) "New tailings" means uranium tailings produced after the promulgation of this rule.

(f) "Single cell impoundment" means a method of tailings management which uses a large lined impoundment designed to contain all tailings generated during the lifetime of the mill. At the end of the mill life the impoundment is actively dewatered by means of pumps or allowed to air dry, and immediately reclaimed.

(g) "Phased disposal" means a method of tailings management and disposal which uses lined impoundments, no greater than 20 acres in area, which are filled, dried, and immediately reclaimed to Federal standards in series.

(h) "Continuous disposal" means a method of tailings management and disposal in which tailings are dewatered by mechanical methods immediately after generation. The dried tailings are then placed in trenches or other disposal areas and immediately reclaimed.

(i) "Uranium byproduct material" or "tailings" means the wastes produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extractions and which remain underground do not constitute byproduct material for the purposes of this subpart.

§ 61.252 Standard.

[Note.—A final rule will be made by selecting one of the various alternatives or combination of alternatives placed in each of the brackets.]

(a) Owners or operators of licensed uranium mill sites subject to this subpart shall process new tailings by [single cell impoundment; phased disposal; continuous disposal]. An exception is granted to new tailings added to existing piles as allowed by paragraph (b) of this section.

Alternative 1

[(b)(1) Owners or operators of licensed uranium mill sites subject to this subpart shall not add new tailings to any existing tailings pile after the effective date of this paragraph. For existing tailings piles, owners or operators shall begin negotiating a reclamation plan and an agreement to implement the plan with the Nuclear Regulatory Commission within one year of the effective date of this subsection. The effective date of this subsection shall be [at promulgation of this rule; three (3) years from May 1, 1986; eight (8) years from May 1, 1986; thirteen (13) years from May 1, 1986; or indefinite].

[(2) An exception with regard to continued use of an existing tailings pile may be granted upon petition to the Administrator provided the existing tailings pile has an impermeable liner.]

(3) Owners or operators of existing tailings piles shall add an interim cover by May 1, 1987. This interim cover shall consist of no less than [one-third (0.33) meter of earth on all dry areas on top of the pile; one (1) meter of earth on all dry areas on top of the pile and on the sides of the piles where sides are constructed of tailings sands.]

§ 61.253 Recordkeeping and reporting requirements.

There are no recordkeeping or reporting requirements associated with §§ 61.252(a) and 61.252(b), alternative 1, of this subpart. Section 61.252 (b), alternative 2, has the following recordkeeping and reporting requirements:

(a) Records of the application of interim covers required under § 61.252 (b), alternative 2 shall be maintained as described below:

(1) A current map of each tailings pile showing the locations of dry, wet, and ponded areas and the interim covers.

(2) A record of interim cover applied including depth, approximate moisture content, date of application, location of application.

(3) A record of past (last 5 years) operations that placed tailings on the pile.

(4) A record of inspections made to insure the integrity of the interim cover.

(b) An owner or operator of an uranium mill site subject to the requirements of § 61.252(b), alternative 2 shall submit a certification to the Administrator by May 1, 1987, and annually thereafter. This certification shall be based on information concerning the calendar year immediately preceding. The certification shall consist of a statement that the interim cover requirements of § 61.252(b), alternative 2, have been implemented.

If a waiver of compliance is granted, this certification is to be submitted on a date scheduled by the Administrator.

§ 61.254 Source reporting and waiver requests.

(a) Source reporting is not required since the information is a matter of public record for licensed uranium mill sites.

(b) An owner or operator of an existing uranium mill site (i.e., existing source) unable to operate in compliance with the standard prescribed under this subpart may request a waiver of compliance with such standard for a period not exceeding two years from the effective date. Any request shall be in writing and shall include the following information:

(1) The reasons for requesting the waiver;

(2) A schedule for achieving compliance with this subpart, including the steps which will be taken to come into compliance and a date by which each step will be achieved; and

(3) Interim emission control steps that will be taken during the waiver period.

(c) Changes in the information provided under paragraph (a) of this section shall be provided to the Administrator within 30 days after such change, except that if changes will result from modification of the source, as defined in § 61.02, the provisions of §§ 61.07 and 61.08 are applicable.

[FR Doc. 86-3834 Filed 2-20-86; 8:45 am]

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this subpart shall not add new tailings to any existing tailings pile after the effective date of this paragraph. For existing tailings piles, owners or operators shall begin negotiating a reclamation plan and an agreement to implement the plan with the Nuclear Regulatory Commission within one year of the effective date of this subsection. The effective date of this subsection shall be [at promulgation of this rule; three (3) years from May 1, 1986; eight (8) years from May 1, 1986; thirteen (13) years from May 1, 1986; or indefinite].

[(2) An exception with regard to continued use of an existing tailings pile may be granted upon petition to the Administrator provided the existing tailings pile has an impermeable liner.]

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(1) A current map of each tailings pile showing the locations of dry, wet, and ponded areas and the interim covers.

(2) A record of interim cover applied including depth, approximate moisture content, date of application, location of application.

(3) A record of past (last 5 years) operations that placed tailings on the pile.

(4) A record of inspections made to insure the integrity of the interim cover.

(b) An owner or operator of an uranium mill site subject to the requirements of § 61.252(b), alternative 2 shall submit a certification to the Administrator by May 1, 1987, and annually thereafter. This certification shall be based on information concerning the calendar year immediately preceding. The certification shall consist of a statement that the interim cover requirements of § 61.252(b), alternative 2, have been implemented.

If a waiver of compliance is granted, this certification is to be submitted on a date scheduled by the Administrator.

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(a) Source reporting is not required since the information is a matter of public record for licensed uranium mill sites.

(b) An owner or operator of an existing uranium mill site (i.e., existing source) unable to operate in compliance with the standard prescribed under this subpart may request a waiver of compliance with such standard for a period not exceeding two years from the effective date. Any request shall be in writing and shall include the following information:

(1) The reasons for requesting the waiver;

(2) A schedule for achieving compliance with this subpart, including the steps which will be taken to come into compliance and a date by which each step will be achieved; and

(3) Interim emission control steps that will be taken during the waiver period.

(c) Changes in the information provided under paragraph (a) of this section shall be provided to the Administrator within 30 days after such change, except that if changes will result from modification of the source, as defined in § 61.02, the provisions of §§ 61.07 and 61.08 are applicable.

[FR Doc. 86-3834 Filed 2-20-86; 8:45 am]

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S.J. Res. 150/Pub. L. 99-248

To designate the month of March 1986 as "National Hemophilia Month". (Feb. 18, 1986; 100 Stat. 11; 1 page) Price: $1.00

S.J. Res. 231/Pub. L. 99-249

To designate the period commencing January 1, 1986, and ending December 31, 1986, as the "Centennial Year of the Gasoline Powered Automobile". (Feb. 18, 1986; 100 Stat. 12; 1 page) Price: $1.00

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2-24-86
Vol. 51 No. 36

federal register

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February 24, 1986

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VOL
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2-24-86
Vol. 51 No. 36
Pages 6393-6496

federal register

Monday
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Aviation Safety
Federal Aviation Administration
Education
Veterans Administration
Flood Insurance
Federal Emergency Management Agency
Food Labeling
Food Safety and Inspection Service
Government Securities
Fiscal Service
Hazardous Substances
Environmental Protection Agency
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Federal Communications Commission

Reporting and Recordkeeping Requirements
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Federal Home Loan Bank Board

Trade Practices
Federal Trade Commission

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ST. LOUIS, MO	WASHINGTON, DC	DENVER, CO	DALLAS, TX
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WHERE: Room 1612, Federal Building, 1520 Market Street, St. Louis, MO.	**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC	**WHERE:** Room 239, Federal Building, 1961 Stout Street, Denver, CO.	**WHERE:** Room 7A23, Earl Cabell Federal Building, 1100 Commerce St Dallas, TX.
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Rules and Regulations

Federal Register
Vol. 51, No. 36
Monday, February 24, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1822, 1872, 1930, 1944, 1951 and 1980

Revision of Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts its interim rule published October 1, 1985 (50 FR 39959), as amended by a correction published November 25, 1985. (50 FR 48372), to implement the provisions of Pub. L. 98–181, the Rural Housing Amendments of 1983, which was signed into law on November 30, 1983. This action is necessary to discussion the comments received and to finalize the interim rule.

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Ruth Corcoran, Senior Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5344, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1488.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor, because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Only two comments were received on the October 1, 1985, interim rule. Both commenters were concerned that FmHA did not make provisions in the interim rule implementation to "grandfather in" those tentatively eligible applicants for a rural housing loan who were in the process of optioning a property or obtaining a sales contract on a dwelling. It was contended that implementation of new income limits scaled for size of family which decreased the income eligibility limits for 1 through 3 person households in many counties was unfair to those persons who had been advised by FmHA to furnish all documents and information necessary to approve a loan but whose loan was not approved prior to October 1, 1985. FmHA agreed with the commenters and a Notice was published in the **Federal Register** on November 8, 1985 (50 FR 46471), to reinstate the eligibility of such applicants under the previous income limits. Applicants with applications in process prior to October 1, 1985, were given until January 31, 1986, to furnish the information necessary for loan approval. If they have done so, a loan will be approved for them provided they are otherwise eligible, subject to the availability of funds.

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan program—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural housing, Subsidies.

Accordingly, the interim rule published in the **Federal Register** on October 1, 1985 (50 FR 39959), and amended by a correction published in the **Federal Register** on November 25, 1985 (50 FR 48372), is adopted as a final rule.

Dated: February 13, 1986.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 86–3898 Filed 2–21–86; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 561

[86–155]

Brokered Deposits; Limitations Applicable to Institutions With Low Net Worth; Correction

Dated: February 19, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; technical correction.

SUMMARY: The Federal Home Loan Bank Board ("Board") is correcting the language of the heading of 12 CFR 561.2a so that it will conform to the language contained in the headings of the other sections of Part 561 of the Board's regulations and as enumerated in the table of contents of Part 561 of the Code of Federal Regulations ("CFR").

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Carol J. Rosa, Paralegal Specialist, Regulations and Legislation Divisions, Office of General Counsel, (202) 377–6464, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On January 31, 1985, the Board adopted a final regulation that added § 561.2a to Part 561 of the CFR regarding brokered deposits, limitations applicable to institutions with low net worth. Board Res. No. 85–78, 50 FR 5232 (Feb. 7, 1985). During the drafting of the final rule an

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error was made in the language of the heading of § 561.2a in that the language used did not conform to the language contained in the headings of the other sections of Part 561 and as enumerated in the table of contents of Part 561. This action corrects that error.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of this corrective amendment, notice and public comment are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 561

Savings and loan associations.

Accordingly, the Board hereby amends Part 561, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1724–26, 1730; Reorg. Plan No. 3 of 1947, 3 CER, 1943–48 Comp., p. 1071, unless otherwise noted.

§ 561.2a [Corrected]

2. The heading of 12 CFR 561.2a, added at 50 FR 5232, 5233 (Feb. 7, 1985), is corrected to read "§ 561.2a Deposit broker.".

§ 561.2a Deposit broker.

* * * * *

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86–3930 Filed 2–21–86; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ANE–14; Amdt. 39–5239]

Airworthiness Directives: Rolls-Royce Limited RB211–22B and –524 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Rolls-Royce RB211–22B and RB211–524 series turbofan engines. The amendment is needed because the FAA has determined that the original compliance date is unnecessarily restrictive. Reevaluation of the initial risk analysis by Rolls-Royce and the Civil Aviation Authority (CAA) of the United Kingdom, based on more current service experience, shows that the compliance date can be extended while maintaining a lower risk of failure than was originally required.

DATE: Effective March 28, 1986.

Compliance Schedule—As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7084.

SUPPLEMENTARY INFORMATION: A proposal to amend Amendment 39–5063 (50 FR 23109), AD 85–10–05, to extend the compliance deadline from April 1, 1986, to December 31, 1987, was published in the **Federal Register** on October 24, 1985 (50 FR 43223). Amendment 39–5063 required modification of the location bearing area in accordance with Rolls-Royce SB RB.211–72–6847, dated March 30, 1984, prior to April 1, 1986. After issuing Amendment 39–5063, the FAA determined, based on current service experience and reevaluation of the CAA and Rolls-Royce risk analysis, that the compliance date can be extended from April 1, 1986, to December 31, 1987, without increasing the risk of a failure. This amendment also adopts two paragraphs at the end of the AD which provide for a means for adjusting the compliance schedule and ferrying aircraft to a repair station. Interested persons have been afforded the opportunity to participate in the making of this amendment and due consideration has been given to all relevant data and comments received. One response was received concerning the proposed amendment. Because the response received is in total agreement with the proposed amendment, the proposal is adopted without change.

Conclusion

The FAA has determined that, since this amendment extends the compliance date, there would be no additional costs relative to the cost of Amendment 39–5063. This amendment affects 277 RB211–22B and –524 series turbofan engines on Lockheed L–1011 and Boeing 747 aircraft, the operators of which are not believed to be small entities. Therefore, I certify that this proposed action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR 39

Air Transportation; Aircraft, Aviation Safety, Engines.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending § 39.13, Amendment 39–5063 (50 FR 23109), AD 85–10–05, as follows:

(a) Revise the compliance statement to read "Prior to December 31, 1987".

(b) By adding the following paragraphs at the end thereof:

"Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD."

This amendment becomes effective on March 28, 1986.

This amendment amends Amendment 39–5063 (50 FR 23109), AD 85–10–05.

Issued in Burlington, Massachusetts, on February 11, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–3876 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AWP–31]

Alteration of Alturas, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule; change of effective date.

SUMMARY: An error was noted in the effective date of the correction to the final rule of the alteration of the Alturas, California, Transition Area that was published in the **Federal Register** on December 17, 1985 (50 FR 51384) (Airspace Docket No. 85–AWP–31). This action corrects the effective date of the correction.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Torikai, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1649.

SUPPLEMENTAL INFORMATION:

History

Federal Register Document 85–29745 was published on December 17, 1985, corrected the description of the Alturas, California, Transition Area. An error was discovered in the effective date of the correction and this action corrects that error.

List of Subjects in 14 CFR Part 71

Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85–29745, as published in the **Federal Register** on December 17, 1985, is corrected by removing "Effective Date: March 13, 1986" and substituting "Effective Date: January 16, 1986."

Issued in Los Angeles, California, on February 13, 1986.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 86–3877 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AWP–28]

Alteration of the Santa Rosa, CA, Transition Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction to final rule; change of effective date.

SUMMARY: An error was noted in the effective date of the correction to the final rule of the alteration of the Santa Rosa, California, Transition Area that was published in the **Federal Register** on December 12, 1985 (50 FR 50778) (Airspace Docket No. 85–AWP–28). This action corrects the effective date of the correction.

EFFECTIVE DATE: 0901 G.m.t., January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Torikai, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1649.

SUPPLEMENTAL INFORMATION:

History

Federal Register Document 85–29430, published on December 12, 1985, corrected the description of the Santa Rosa, California, Transition Area. An error was discovered in the effective date of the correction and this action corrects that error.

List of Subjects in 14 CFR Part 71

Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** document 85–29430, as published in the **Federal Register** on December 12, 1985, is corrected by removing "Effective Date: March 13, 1986" and substituting "Effective Date: January 16, 1986."

Issued in Los Angeles, California, on February 13, 1986.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 86–3878 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AWP–19]

Alteration and Redefinition of the Fresno, CA; Fresno Air Terminal Control Zone

AGENCY: Federal Aviation Administration, DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the description of the Fresno Air Terminal Control Zone that was published in the **Federal Register** on December 16, 1985, (50 FR 51238) (Airspace Docket No. 85–AWP–19). This action corrects that error.

EFFECTIVE DATE: 0901 G.m.t., March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Torikai, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1649.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 85–29621, published on December 16, 1985, amended controlled airspace in the State of California. An error was discovered in the description of the Fresno Air Terminal Control Zone and this action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zone, Transition areas.

Adoption of the Correction

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85–29621, as published in the **Federal Register** on December 16, 1985, is corrected as follows:

Beginning with the first line from the top of the Fresno Air Terminal Control Zone description, remove "at lat. 36°45'30" N., long. 119°37'36" W." and substitute "at lat. 36°45'50" N. long. 119°37'44" W."

Beginning with the third line from the top of the Fresno Air Terminal Control Zone description, remove "to lat. 36°43'20" N., long. 119°30'40'30" W." and substitute "to lat. 36°42'57" N., long. 119°40'07" W."

Beginning with the fifth line from the top of the Fresno Air Terminal Control Zone description, remove "to lat. 36°46'40" N., long. 119°47'30" W." and substitute "to lat. 36°46'21" N., long. 119°47'15" W."

Beginning with the seventh line from the top of the Fresno Air Terminal Control Zone description, remove "to lat. 36°51'30" N., long. 119°44'30" W." and substitute "to lat. 36°50'53" N., long. 119°44'03" W."

Issued in Los Angeles, California, on February 13, 1986.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 86–3879 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 24910; Amdt. No. 1314]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that the notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, D.C. on February 7, 1986.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective 8 May 1986

Yankton, SD—Chan Gurney Muni, VOR RWY 31, Amdt. 3, Cancelled
Yankton, SD—Chan Gurney Muni, VOR RWY 31, Orig.

Yankton, SD—Chan Gurney Muni, VOR RWY 13, Amdt. 5, Cancelled
Yankton, SD—Chan Gurney Muni, VOR RWY 31, Orig.
McAllen, TX—Miller Intl, VOR RWY 13, Amdt. 13
McAllen, TX—Miller Intl, VOR-A, Amdt. 12
McAllen, TX—Miller Intl, LOC BC RWY 31, Amdt. 6
McAllen, TX—Miller Intl, NDB RWY 13, Amdt. 5
McAllen, TX—Miller Intl, ILS RWY 13, Amdt. 6

. . . Effective 10 April 1986

Denver, CO—Front Range, NDB RWY 26, Orig.
Delaware, OH—Delaware Muni, VOR RWY 28, Amdt. 2
Delaware, OH—Delaware Muni, VOR RWY 10, Amdt. 2
Eau Claire, WI—Eau Claire County, VOR-A, Amdt. 20
Eau Claire, WI—Eau Claire County, LOC/DME BC RWY 4, Amdt. 5
Eau Claire, WI—Eau Claire County, NDB RWY 22, Amdt. 5
Eau Claire, WI—Eau Claire County, ILS RWY 22, Amdt. 5
Stevens Point, WI—Stevens Point Muni, VOR RWY 3, Amdt. 11
Stevens Point, WI—Stevens Point Muni, VOR RWY 21, Amdt. 15
Stevens Point, WI—Stevens Point Muni, VOR RWY 30, Amdt. 14
Waukesha, WI—Waukesha County, NDB RWY 18R, Amdt. 1
Waukesha, WI—Waukesha County, NDB RWY 28, Amdt. 1

. . . Effective 13 March 1986

Greenville, AL—Greenville Muni, NDB RWY 32, Amdt. 4
Troy, AL—Troy Muni, VOR RWY 7, Amdt. 3
Troy, AL—Troy Muni, NDB RWY 7, Amdt. 5
Troy, AL—Troy Muni, ILS RWY 7, Amdt. 5
Ft. Huachuca/Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, VOR RWY 26, Orig.
Ft. Huachuca/Sierra Vista, AZ—Libby AAF/Sierra Vista Muni, NDB-B, Amdt. 1, Cancelled
Macon, GA—Lewis B. Wilson, ILS RWY 5, Amdt. 23
Elizabethtown, KY—Elizabethtown, VOR-A, Amdt. 1
Hattiesburg, MS—Bobby L Chain Muni, VOR RWY 13, Amdt. 10
Laurel, MS—Hesler-Noble Field, NDB RWY 13, Amdt. 6
Laurel/Hattiesburg, MS—Pine Belt Regional, VOR RWY 36, Amdt. 3
Laurel/Hattiesburg, MS—Pine Belt Regional, VOR RWY 18, Amdt. 5
Tupelo, MS—C. D. Lemons Muni, ILS RWY 6, Amdt. 4
Batavia, NY—Genesee County, VOR RWY 28, Amdt. 4, Cancelled
Batavia, NY—Genesee County, VOR/DME-A, Amdt. 3
Batavia, NY—Genesee County, ILS RWY 28, Amdt. 2
Millbrook, NY—Sky Acres, VOR-A, Amdt. 6
Newburgh, NY—Stewart, NDB RWY 9, Amdt. 5
Stormville, NY—Stormville, VOR-A, Amdt. 4
White Plains, NY—Westchester County, ILS RWY 16, Amdt. 21
White Plains, NY—Westchester County, ILS RWY 34, Amdt. 2
Coatesville, PA—Chester County G.O. Carlson, NDB RWY 11, Amdt. 7, Cancelled
Monongahela, PA—Rostraver, VOR-A, Amdt. 4
Seven Springs Borough, PA—Seven Springs, VOR-A, Amdt. 2
Sumter, SC—Sumter Muni, RADAR-1, Amdt. 6
San Antonio, TX-San Antonio Intl, VOR RWY 3, Orig.
San Antonio, TX-San Antonio Intl, VOR RWY 21, Orig.
Portsmouth, VA—Hampton Roads, NDB RWY 2, Amdt. 4
Bluefield, WV-Mercer County, ILS RWY 23, Amdt. 8

. . . Effective 6 February 1986

Asheboro, NC—Asheboro Muni, NDB RWY 21, Amdt. 2

. . . Effective 5 February 1986

Clinton, NC—Sampson County, VOR/DME-A, Amdt. 4
Houston, TX—William P. Hobby, VOR RWY 12R, Amdt. 16
Houston, TX—William P. Hobby, VOR/DME RWY 30L, Amdt. 13
Houston, TX—William P. Hobby, ILS RWY 12R, Amdt. 9

. . . Effective 3 February 1986

Cortez, CO—Cortez-Montezuma County, VOR RWY 21, Amdt. 5
Kansas City, MO—Kansas City Intl, ILS RWY 9, Amdt. 10

. . . Effective 31 January 1986

North Little Rock, AR—North Little Rock Muni, VOR RWY 35, Amdt. 3
North Little Rock, AR—North Little Rock Muni, VOR/DME RWY 35, Amdt. 4

. . . Effective 30 January 1986

Ocala, FL—Ocala Muni/Jim Taylor Field, VOR RWY 36, Amdt. 14
Ocala, FL—Ocala Muni/Jim Taylor Field, LOC RWY 36, Amdt. 5
Ocala, FL—Ocala Muni/Jim Taylor Field, NDB RWY 36, Amdt. 1
McCook, NE—McCook Muni, VOR RWY 30, Amdt. 7
McCook, NE—McCook Muni, VOR/DME RWY 30, Amdt. 1

. . . Effective 29 January 1986

Orlando, FL—Orlando Executive, RADAR-1, Amdt. 22
Leonardtown, MD—St Marys County, VOR RWY 29, Amdt. 3

. . . Effective 23 January 1986

Montrose, CO—Montrose County, VOR RWY 12, Amdt. 6
Montrose, CO—Montrose County, VOR/DME RWY 12, Amdt. 7

The FAA published an Amendment in Docket No. *24900*, Amdt. No. *1313* to Part 97 of the Federal Aviation Regulations (VOL *51* FR No. *22* Page *4159*; dated *3 FEB 1986*) under § *97.27* effective *13 MAR 86*, which is hereby amended as follows:

Cordele, GA—Crisp County-Cordele, NDB RWY 9, Amdt. 2, Rescinded.

[FR Doc. 86-3880 Filed 2-21-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3180]

North American Philips Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a New York City marketer of Norelco Clean Air Machines, among other things, to cease misrepresenting the ability of air cleaners to eliminate or help eliminate indoor pollutants or the irritation they cause, or the results of smoke chamber demonstrations or other tests, surveys or demonstrations of air cleaning appliances. Additionally, respondent is required to have competent and reliable substantiation for all future claims about its products' efficacy.

DATE: Complaint and Order issued Feb. 10, 1986 [1].

FOR FURTHER INFORMATION CONTACT: FTC/B-407, Brinley H. Williams, Washington, DC 20580. (202) 376-8720.

SUPPLEMENTARY INFORMATION: On Friday, Nov. 29, 1985, there was published in the **Federal Register**, 50 FR 49060, a proposed consent agreement with analysis In the Matter of North American Philips Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

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properties of product or service; § 13.170–16 Cleaning, purifying: § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–45 Maintain records. Subpart—Disseminating Advertisements, Etc.: § 13.1043 Disseminating advertisements, etc. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1762 Tests, purported. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1885 Qualities or properties; § 13.189 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Indoor air cleaners, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,
Secretary.

[FR Doc. 86–3896 Filed 2–21–86; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM85–1–000; RM 85–1–148, RM85–1–150 and RM85–1–152 (Part A)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: February 14, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Granting in Part Petitions for Rehearing and Reconsideration.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting in part three petitions for rehearing of its Order No. 436–A, issued December 12, 1985, 50 FR 52217 (Dec. 23, 1985), and is granting three related petitions for reconsideration of that order. The Commission is permitting the transportation of natural gas by interstate pipelines or local distribution companies, under arrangements commenced on or after October 9, 1986, to continue through June 30, 1986, before customer rights to reduce or convert firm sales entitlements under § 284.10 of the Commission's regulations are triggered.

EFFECTIVE DATE: February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8400.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting in part three petitions for rehearing of its Order No. 436–A [1] and is granting three related petitions for reconsideration of that order. The Commission is permitting the transportation of natural gas by interstate pipelines on behalf of intrastate pipelines or local distribution companies, under arrangements commenced on or after October 9, 1985, to continue through June 30, 1986, before customer rights to reduce or convert firm sales entitlements under § 284.10 of the Commission's regulations are triggered.

This order is not a decision on the merits of any other issue or application before the Commission on rehearing of Order No. 436–A.[2] The amendment to the Commission's regulations is effective immediately.

II. Background

In Part A of Order No. 436 [3], the Commission adopted a comprehensive program for the interstate transportation of natural gas. That final rule, issued pursuant to the Natural Gas Act (NGA) [4] and the Natural Gas Policy Act of 1978 (NGPA) [5], substantially changed Commission regulation of interstate natural gas transportation. As an alternative to the traditional "merchant" function played by natural gas pipelines, the Commission provided the regulatory framework under which both interstate and intrastate pipelines could transport gas for others on a non-discriminatory basis, thereby ensuring that the benefits of competitively-priced gas supplies and transmission services are available to all consumers. This program is implemented by means of blanket certificates issued to interstate pipelines [6] and self-implementing transportation arrangements conducted under section 311 of the NGPA by either interstate and intrastate pipelines.[7]

As a condition of accepting a blanket certificate under § 284.221 or commencing any self-implementing NGPA section 311 transaction after December 15, 1985, interstate pipelines were required by Order No. 436 to offer their firm sales customers the opportunity to reduce or convert to firm transportation service any firm sales entitlements to gas supplies. 18 CFR 284.10(a).

In Order No. 436–A, the Commission granted rehearing in part to extend the date for applying the CD reduction/conversion provision in § 284.10 to interstate pipelines that commenced new NGPA section 311 arrangements authorized under § 284.102 or § 284.243. The amendment allowed transportation arrangements that commenced after October 9, 1985, to continue through February 16, 1986, without triggering the § 284.10 conditions.

III. Discussion

In applications for rehearing of Order No. 436–A, Texas Eastern Transmission Corporation, Southern Natural Gas Company, Natural Gas Pipeline Company of America, the Interstate Natural Gas Association of America, ANR Pipeline Company, Coastal Corporation, and Colorado Interstate Gas Company raise serious concerns regarding disruption of gas markets as a result of the requirements of § 284.10. In addition, the American Gas Association and Arkla Energy Resources, Northwest Pipeline Corporation and its major customers, the Citizens Energy Corporation, Texas Eastern, Dome Petroleum Limited, United Gas Pipe Line Company, and Trunkline Gas Company request postponement of the trigger date to forestall disruptions in ongoing transactions that will occur on February 15, 1986.[8] These petitioners request an extension to various dates beyond February 15, 1986. In requesting the extension, they note the existence of significant and promising negotiations involving several major pipelines which may lead to open access transportation under Order No. 436. They urge the Commission to permit these negotiations to proceed without risking the hardships to consumers that will arise if pipelines discontinue NGPA section 311 transactions. Two of the petitioners request a postponement of the trigger date up to July 1, 1986, consistent with the date on which revised rates for Order No. 436 transportation must be proposed to be effective.

The Commission is persuaded that postponement of the February 15 trigger date for the CD reduction/conversion options through June 30, 1986, is appropriate. In granting this extension, the Commission reaffirms its commitment to the concepts embodied by Order No. 436. At the same time, the Commission notes that the postponement of the § 284.10 trigger date provided by Order No. 436–A had a specific purpose, namely to enable all segments of the gas industry to adjust their commercial relationships so that they would be in the most advantageous position possible to maximize their opportunities under Order No. 436. The Commission explained, in granting this extension, that

> Because the bulk of self-help transportation services are those implemented under section 311 and because Order No. 436 provides pipelines new flexibility to provide section 311 services to local distribution systems for both system supply and direct end-uses, the change to § 284.10(a) would extend the CD reduction/conversion "trigger" date for new section 311 arrangements from December 15, 1985, to February 15, 1986. However, all other Order No. 436 conditions applicable to such 311 services, such as the non-discriminatory access condition, would continue to apply as required by Order No. 436.
>
> Under this change, all segments of the industry more readily will be able to adjust their commercial relationships, while at the same time meeting Order No. 436's overall goal of permitting pipelines and their customers to maximize the movement of gas on a non-discriminatory basis in response to competitive conditions.[9]

The Commission believes that the goals articulated in Order No. 436–A can be furthered by this extension and that it will serve the public interest for the following reasons.

Several pipelines have taken steps to participate in the Order No. 436 transportation program. Nine pipelines have filed applications for blanket transportation certificates, while two others have filed settlements which claim to include transportation service pursuant to Order Nos. 436 and 436–A. We believe that an evolution toward flexible, nondiscriminatory transportation and greater competition in gas markets is occurring. The petitions before us note that many major pipelines currently are meeting with customers to determine their participation in the Order No. 436 transportation program. We therefore expect that many pipelines are in the process of attempting to restructure their traditional relationships with customers and suppliers to allow a smooth transition toward that transportation program.

The Commission recognizes that Order Nos. 436 and 436–A represent a major change in the regulation of transportation. Accordingly, and as experience since issuance of these orders has shown, the transition to this new regulatory environment will take time. We must give pipelines the opportunity to meet with their customers and suppliers to work out new requirements and new relationships. The Commission, too, is facing many issues of first impression as pipelines file applications for blanket certificates, settlements involving flexible, nondiscriminatory transportation, and operating conditions and requirements for implementation of new transportation service. From experience, we know that sufficient time is required to give the necessary level of consideration to these new issues to find appropriate resolutions. Postponement of the trigger date will assure that pipelines will have the necessary time to work with their customers and suppliers to determine participation and file for transportation authorizations and the Commission will have the necessary time to respond to the filings granting authorizations, where it is appropriate.

Although we are postponing the trigger date, we do not expect that all pipelines which will participate in the flexible, nondiscriminatory transportation program will wait until July 1 to file for any necessary approval and/or authorization. As noted in the petitions and discussed earlier in this order, several pipelines have already made the decision to participate in Order No. 436 transportation, and many others are currently meeting with their customers to determine participation in that program.

Finally, postponing the trigger date does not mean that nondiscriminatory transportation will not occur before July 1. New NGPA section 311 transportation must be on a nondiscriminatory basis. Postponement of the trigger date will permit pipelines and their customers to gain further experience in operating in a nondiscriminatory transportation environment, without the need of customers to commit immediately to changes in current contract demand. Customers converting or reducing their contract demand will be permitted to base their decisions on recent experience with transportation opportunities.

IV. Effective Date

The change to the Commission's regulations in this order is effective immediately. The Commission finds good cause under the Administrative Procedure Act, 5 U.S.C. 553(d) (1982), to amend § 284.10(a) to defer the application of the CD reduction/conversion provisions to new transactions under NGPA section 311(a)(1), that is, those transactions that the Commission authorizes under 18 CFR 284.102 or 284.243. The amendment will prevent the imminent disruption of natural gas markets on February 15, 1986. Therefore, immediate effectiveness is essential.

In light of the foregoing, the Commission grants rehearing in part, grants reconsideration, and amends accordingly, Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective immediately.

By the Commission. Commissioner Stalon dissented with a separate statement to be issued later.

Kenneth F. Plumb,
Secretary.

List of Subjects in 18 CFR Part 284

Natural gas, Reporting and recordkeeping requirements.

PART 284—[AMENDED]

1. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–1352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

§ 284.10 [Amended]

2. In § 284.10, paragraph (a)(1) is amended by removing the words "February 15, 1986; and by inserting in lieu thereof the words "June 30, 1986;".

[FR Doc. 86–3933 Filed 2–21–86; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8059]

Income Taxes; Statutory Merger Using Voting Stock of Controlling Corporation (Reverse Triangular Merger); Correction

AGENCY: Internal Revenue Service, Treasury.

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1 50 FR 52217 (Dec. 23, 1985).

2 On February 4, 1986, the Commission issued an "Order Granting Rehearing of Order No. 436–A for the Purpose of Further Consideration." All issues raised on rehearing, other than those specifically addressed herein, remain tolled pending further Commission action.

3 50 FR 42408 (Oct 18, 1985).

4 15 U.S.C. 717–717w (1982).

5 15 U.S.C. 3301–3432 (1982).

6 18 CFR Part 284, Subparts G and H.

7 18 CFR Part 284, Subparts B, C, and H.

8 These filings, variously requesting extension or waiver, are treated as petitions for reconsideration of Order No. 436–A. The Commission notes that it also received letters from the Maryland People's Counsel and Michigan Consolidated Gas Company and from the Illinois Commerce Commission in opposition to such an extension. For the reasons stated in this order, the Commission believes that an extension is appropriate.

9 50 FR at 52273.

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ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the Federal Register publication on Tuesday, October 22, 1985, beginning at 50 FR 42688 of the final regulations which were the subject of Treasury Decision 8059. T.D. 8059 relates to the statutory merger of a controlled corporation into an acquiring corporation using the voting stock of the corporation controlling the merged corporation (reverse triangular merger).

EFFECTIVE DATES: The final regulations that are the subject of this correction apply to statutory mergers occurring after December 31, 1970, and are effective October 22, 1985. This correction is also effective October 22, 1985.

FOR FURTHER INFORMATION CONTACT: Carroll Yue of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. (Attention: CC:LR:T). Telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1985, final regulations relating to the statutory merger of a controlled corporation into an acquiring corporation using the voting stock of the corporation controlling the merged corporation (reverse triangular merger) were published in the **Federal Register** (50 FR 42688). These regulations apply to statutory mergers occurring after December 31, 1970, and are effective October 22, 1985. These amendments were made to conform the regulations to changes made by Public Law 91–693, which added section 368(a)(2)(E) to the Internal Revenue Code of 1954.

Need for Correction

As published, Treasury Decision 8059 incorrectly includes the word "controlling" rather than the word "surviving". This error appears on page 42690, second column, paragraph (4), eleventh line.

Correction of Publication

Accordingly, FR Doc. 85–25174, § 1.368–2(j) is corrected on page 42690, second column, paragraph (4), eleventh line, by removing the word "controlling" and adding the word "surviving" in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86–3862 Filed 2–21–86; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 22

Confidentiality of Identification Research and Statistical Information

AGENCY: Office of Justice Programs, Department of Justice.

ACTION: Final rule.

SUMMARY: 28 CFR Part 22 is being amended to comply with the nomenclature changes in the Justice Assistance Act of 1984, Chapter VI, Division I, of Title II of Pub. L. 98–473 (Oct. 12, 1984), and the Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984, Chapter VI, Division II, of Title II of 98 Stat. 1837 (Oct. 12, 1984). These amendments establish the Office of Justice Programs as successor to the Office of Justice Assistance, Research, and Statistics and a Bureau of Justice Assistance as successor to the Law Enforcement Assistance Administration. Part 22 is also made applicable to recipients of financial assistance awarded under the Victims of Crime Act of 1984, Chapter XIV of Title II of Pub. L. 98–473.

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Charles A. Lauer, General Counsel, Office of Justice Programs, Department of Justice, 633 Indiana Avenue, NW., Room 1288, Washington, DC 20531. Telephone number (202) 724–7792.

SUPPLEMENTARY INFORMATION: The Justice Assistance Act of 1984 amends Title II of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, to establish an Office of Justice Programs within the Department of Justice under the general authority of the Attorney General. The Office of Justice Programs is headed by an Assistant Attorney General. The Assistant Attorney General provides staff support and coordinates the activities of the National Institute of Justice, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Assistance, and the Office for Victims of Crime. In addition, the Victims of Crime Act of 1984 contains a confidentiality provision identical to the Justice Assistance Act confidentiality provision. The regulations are being amended to implement both provisions.

List of Subjects in 28 CFR Part 22

Crime, Juvenile delinquency; Privacy, Research, and Statistics.

Part 22 of Title 28 is amended as follows:

PART 22—[AMENDED]

1. The authority citation for Part 22 is revised to read as follows:

Authority: Secs. 801(a), 812(a), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473); secs. 262(b), 262(d), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–509, and Pub. L. 98–473); and secs. 1407(a) and 1407(d) of the Victims of Crime Act of 1984, 42 U.S.C. 10601, et seq., Pub. L. 98–473.

2. Part 22 is amended by removing the Editorial Note at the end of the table of contents.

3. Section 22.1 is amended by adding a new paragraph (f) to read as follows:

§ 22.1 Purpose.

* * * * *

(f) Insure the confidentiality of information provided by crime victims to crisis intervention counselors working for victim services programs receiving funds provided under the Crime Control Act, and Juvenile Justice Act, and the Victims of Crime Act.

4. 28 CFR 22.2 is amended by adding a new paragraph (k) and by revising paragraph (b) to read as follows:

§ 22.2 Definitions.

* * * * *

(b) Private person—means any person defined in § 22.2(a) other than an agency, or department of Federal, State, or local government, or any component or combination thereof. Included as a private person is an individual acting in his or her official capacity.

* * * * *

(k) The Victims of Crime Act—means the Victims of Crime Act of 1984.

§ 22.20 [Amended]

5. Section 22.20(a) is amended by substituting "the Crime Control Act, the Juvenile Justice Act, and the Victims of Crime Act" for "the Crime Control Act and Juvenile Justice Act."

6. 28 CFR 22.22 is amended by revising paragraph (a)(2) to read as follows:

§ 22.22 Revelation of identifiable data.

(a) * * *

(2) Such individuals as needed to implement sections 202(c)(3), 801, and 811(b) of the Act; and sections 223(a)(12)(A), 223(a)(13), 223(a)(14), and 243 of the Juvenile Justice and Delinquency Prevention Act.

§ 22.29 [Amended]

7. Section 22.29 is amended by changing "section 818(a)" to read "section 812(a) of the Act or section 1407(d) of the Victims of Crime Act."

§§ 22.20, 22.23, 22.24, 22.26, and 22.29 [Amended]

8. Sections 22.20, 22.23, 22.24, 22.26 and 22.29 are amended by changing the acronym "LEAA" to "BJA" and the acronym "OJARS" to "OJP" and by inserting "OJJDP," after "BJA," in the following places:

(a) 28 CFR 22.20(a);
(b) 28 CFR 22.23(a) and (b)(6);
(c) 28 CFR 22.24;
(d) 28 CFR 22.26(b); and
(e) 28 CFR 22.29.

Dated: February 19, 1986.

Lois Haight Herrington,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 86–3957 Filed 2–21–86; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 317

Regulations Governing Agencies for Issue of United States Savings Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The regulations published by the Bureau of the Public Debt governing agencies that issue United States Savings Bond provide, at § 317.8, that such agencies shall remit bond sales proceeds promptly in accordance with instructions issued by the Department of the Treasury. The instructions are set forth in the Appendix to § 317.8, published in conjunction with the regulations. In the interest of improved cash management, the Appendix is being revised to provide that the remittance of sales proceeds be made in immediately available funds.

DATE: June 24, 1986.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, or Susan J. Klimas, Attorney-Adviser, Bureau of the Public Debt, Savings Bond Operations Office, Parkersburg, WV 26101 (304) 420–6506.

SUPPLEMENTARY INFORMATION: The regulations governing agencies for the issue of United States Savings Bonds (31 CFR Part 317), at § 317.8, require that issuing agents remit "promptly" all bond sales proceeds. The Appendix to § 317.8 specifies the ways in which the sales proceeds should be remitted: (1) By check, or (2) by charge to a reserve account at a Federal Reserve Bank. Also, agents that are note option Treasury tax and loan depositaries are permitted to remit by credit to the tax and loan account.

The above authorization is being modified to specify that payments be made in "immediately available funds," and, in the case of issuing agents that are financial institutions, to preclude payment by them to the Department of the Treasury, or its fiscal agents, by ordinary check. Upon implementation of the rule, payment must be made by financial institutions by a charge to a reserve account at a Federal Reserve Bank, or by credit to a tax and loan account, as currently authorized, or by one of three other forms of remittance that permit immediate collection.

In the case of issuing agents that are not financial institutions, the rule admonishes them to submit sales proceeds in immediately available funds.

Procedural Requirements

This rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

The notice and public procedures of the Administrative Procedure Act are inapplicable pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Part 317

Banks and banking, Federal Reserve System, Government securities.

Dated: February 13, 1986.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

PART 317—[AMENDED]

For the reasons set out in the summary, Part 317 of Chapter II, Subchapter B, Title 31 of the Code of Federal Regulations, is hereby amended, as set forth below:

1. The authority citation for Part 317 continues to read as follows:

Authority: Sec. 22, 49 Stat. 21, as amended; 31 U.S.C. 757c.

§ 317.8 [Amended]

2. The appendix to § 317.8 is amended by adding paragraphs (f), (g), and (h) to Subpart A, 2. *Definition of terms* and by revising 4. *Forms of remittance* of Subpart A, to read as follows:

Appendix to § 317.8—Remittance of Sales Proceeds, Department of the Treasury Circular, Public Debt Series No. 4–87, Revised (31 CFR Part 317), Fiscal Service, Bureau of the Public Debt

Subpart A—General Information

* * * * *

2. *Definition of terms.* As used in this appendix:

* * * * *

(f) "Immediately available funds" are remittances of funds which are available for the use by the Department of the Treasury immediately upon receipt by the Department or its fiscal agents, and include, but are not limited to:

(1) A charge to the remitter's (or a correspondent depository institution's) reserve account with a Federal Reserve Bank;

(2) A credit to the tax and loan account of an agent which is a note option Treasury tax and loan depositary, subject to the provisions of § 203.9 of Department of the Treasury Circular No. 92, as revised (31 CFR Part 203), the regulations governing Treasury Tax and Loan Depositaries;

(3) A Federal funds check;

(4) A United States Government check; or

(5) A postal money order.

(g) "Financial institutions" refers to banks, trust companies, credit unions, and savings institutions chartered by or incorporated under the laws of the United States, or those of any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(h) "Nonfinancial institutions" refers to any issuing agent not described under (g), above.

* * * * *

4. *Forms of remittance.* Issuing agents shall remit sales proceeds in timely fashion as follows:

(a) Issuing agents which are financial institutions must remit in immediately available funds.

(b) Issuing agents which are nonfinancial institutions should remit in immediately available funds.

(c) The Commissioner of the Public Debt, as designee of the Secretary of the Treasury, may waive or modify this provision. The Commissioner may do so in any particular case or class of cases for the convenience of the United States or in order to relieve any agent of agents of unusual hardship: (1) If such action would not be inconsistent with law or equity, (2) if it does not impair any existing rights, and (3) if the Commissioner is satisfied that such action would not subject the United States to any substantial expense or liability.

* * * * *

[FR Doc. 86–3741 Filed 2–21–86; 8:45 am]

BILLING CODE 4810–10–M

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket RM 84-2]

Copyright Deposit Requirements

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is amending 37 CFR 202.19, 202.20, and 202.21 of its regulations. Those regulations implement portions of sections 407 and 408 of the Copyright Act of 1976, title 17 of the U.S. Code. Those sections embody the deposit requirements for the benefit of the Library of Congress and for copyright registration. The amendments revise certain requirements governing such deposits.

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20540, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Under 17 U.S.C. 407 the owner of copyright, or of the exclusive right of publication, in a work published with notice of copyright in the United States is required to deposit copies of the work in the Copyright Office for the use or disposition of the Library of Congress. Section 408 of the statute also requires deposit of material in connection with applications for copyright registration of published and unpublished works.

On September 18, 1978, the Copyright Office published in the **Federal Register** (43 FR 41975) final regulations implementing the deposit requirements of sections 407 and 408. The Office decided, however, on the basis of its experience with the deposit regulations over the past several years, that a number of amendments were needed to liberalize, clarify or, in limited instances, expand the requirements. Proposed amendments to the deposit regulations were published in the **Federal Register** on February 14, 1985 (50 FR 6208) for public comment. The Copyright Office received eight comment letters from the public addressing the proposed amendments.

1. *Multimedia kits.*

One comment suggested a more liberal approach in § 202.19(d)(2)(ii) to allow use of the Motion Picture Agreement for motion pictures deposited as parts of multimedia kits. There are substantial handling and processing procedures associated with multimedia kits which would be further complicated by making the Agreement applicable to part of the kit. Furthermore, the application of the Agreement to motion pictures that comprise a part of multimedia kits would render the kits useless for Library purposes.

Another comment noted the deletion of the "systematic instructional" limitation on the single-copy deposit of published multimedia kits for registration in § 202.20(c)(2)(i)(F), and questioned the lack of a similar deletion in § 202.19(d)(2)(vi). The deletion was inadvertent and the change has been made in the final regulation.

2. *Use of Mandatory Deposit to Satisfy Registration Requirements.*

Two comments objected to the Office's stated intention to apply more strictly the requirement in § 202.19(f)(1) that all copyright deposits must be accompanied by an application and fee to be considered to satisfy the deposit provisions for registration under section 408. The first comment referred to motion picture industry practices, and stated that the Office's policy is inconsistent with the industry practice of permitting local film exchanges to make motion picture deposits while at the same time allowing studio attorneys to prepare the required paper work. A narrow exception was requested for the deposit of motion pictures.

The second comment had similar objections with respect to books and journals. Copies are often forwarded to the Copyright Office from "geographically and logistically separate" locations from where the applications are completed. If copyright owners are required to have deposits strictly accompany registration applications, it was argued, some publishers may be forced to forego registration. Both comments also maintained that workflow, administrative procedures and expenses would be increased by the strict requirement that deposits accompany applications.

The Office intends to construe strictly the requirement that the deposit be "accompanied by the prescribed application and fee." It was believed that when the 1976 Act became effective the public needed time to become familiar with the new law and to change mailing procedures. The "accompanied by" requirement was, therefore, interpreted liberally. However, the volume of registration material sent separately has increased and the impact on workflow has been significant. The efficiency of the automation procedures being instituted in the Copyright Office has likewise been impaired. For these reasons, the Office intends to apply more strictly the requirement of 17 U.S.C. 408(b) that one deposit may satisfy the requirements of both 17 U.S.C. 407 and 408 only if a deposit is "accompanied by the prescribed application and fee."

3. *Computer Programs Embodied in Machine-readable Copies.*

Two comments suggested the addition of the term "semiconductor chip products" to § 202.20(c)(2)(vii), which relates to the forms of machine-readable copies embodying computer programs. In keeping with that suggestion we have added "semiconductor chip products" to § 202.20(c)(2)(vii) in the final regulations as an example of a machine-readable copy in which a computer program may be embodied.

4. Deposit of "Identifying Portions" of Computer Programs.

Two comments addressed the required deposit for revised computer programs. The first suggested an alternative definition for the term "identifying portions" in § 202.20(c)(2)(vii)(A), that would allow the deposit of any 50 pages of representative material for all computer programs. It was maintained that because computer programs have a modular structure, with one or more major components and numerous subprograms and subroutines often longer and more complex than the main program itself, copyright owners should be permitted to submit a portion of each module as identifying material for the program.

The Office has decided, however, to retain the current required deposit of the first and last 25 pages or equivalent units for original versions and, where revisions do not occur within the first and last 25 pages, any 50 representative pages for revised programs. For examining purposes, the first and last 25 pages are optimal since they contain the table of contents and other material describing the program, and also indicate the program's length. The final regulations, however, do contain the additional specification not in the proposed regulations that, for programs of 50 pages or less, deposit of the entire work is required.

The other comment on this provision expressed concern that revised computer programs and programs with confidential matter would receive less favorable special relief treatment than original versions. It is not the Office's intention, however, to favor any type of program in the granting of special relief.

5. *Copies Containing Both Visually-perceptible and Machine-readable Material.*

The heading of § 202.20(c)(2)(ix), that was entitled "Works with visually-perceptible and machine-readable copies" in the proposed regulations, has been changed to "Copies containing both visually-perceptible and machine-readable materials," in an attempt to clarify the type of material to which it applies since two comments indicated uncertainty as to the requisite deposit. The first questioned whether deposit of the actual diskette was required. The second comment assumed that the deposit consists of a copy of a manual, for example, and a listing or printout from a diskette, and that the diskette itself is not required.

By way of explanation, where a published literary work is embodied in copies containing both visually-perceptible and machine-readable material, § 202.20(c)(2)(ix) requires the deposit of both the visually-perceptible material and identifying material for the machine-readable portions, such as the first and last 25 pages of a computer program; deposit of the diskette itself is not required.

The second comment also raised questions about the required deposit where registration for only part of a work is sought. The deposit must, in any event, comply with the complete copy requirement of § 202.20(b)(2)(ii).

6. *Non-viewable Copies of Motion Pictures Submitted for Copyright Registration.*

The proposed regulations provided that for motion pictures and phonorecords in formats that cannot be examined on equipment in the Examining Division of the Copyright Office, the deposit be accompanied by a description which includes enough information to enable the Examining Division to determine copyrightability. Two comments argued that the Office's treatment of non-viewable motion pictures and non-playable phonorecords is inconsistent with registration of claims to copyright in computer programs under the rule of doubt where the deposit consists of object code, because in each case the Office cannot "read" the deposit; yet in the case of motion pictures and phonorecords, depositors are allowed to deposit identifying material. To be consistent, the comments stated that the Office should permit the use of alternate means to identify the copyrightable content of computer programs.

In most cases, the reason object code is deposited is to preserve possible trade secret protection that might be in the program. A proceeding is presently pending concerning the deposit of computer programs and other works containing trade secrets (48 FR 22951) and commentators will have the opportunity to make their positions known on these issues in connection with that proceeding.

7. *Registration and Deposit of Databases.*

The Office also received comments related to the registration and deposit of databases, which have not been included as part of these amended regulations. A separate Notice of Inquiry has been issued, specifically limited to this rapidly developing technology of storing and retrieving information. *See* 50 FR 24240 (June 10, 1985). Accordingly, the feasibility of group and other registration of databases is presently under review and will be the subject of a separate rulemaking.

8. *Regulatory Flexibility Act Statement.*

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act effects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small businesses.

List of Subjects in 37 CFR Part 202

Claims, Claims to copyright, Copyright, Registration requirements.

[1] The Copyright Office was not subject to the Administration Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e., "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 708(b)]. The copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

Final Regulations

PART 202—[AMENDED]

In consideration of the foregoing, Part 202 of 37 CFR, Chapter II is amended in the manner set forth below.

1. The authority citation for Part 202 is revised to read as follows:

Authority: Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; §§ 202.19, 202.20 and 202.21 are also issued under 17 U.S.C. 407 and 408.

2. Sections 202.19, 202.20, and 202.21 are revised to read as follows:

§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published works for the Library of Congress under section 407 of title 17 of the United States Code, as amended by Pub. L. 94-553. The provisions of this section are not applicable to the deposit of copies and phonorecords for purposes of copyright registration under section 408 of title 17, except as expressly adopted in § 202.20 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) (i) The "best edition" of a work is the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.

(ii) Criteria for selection of the "best edition" from among two or more published editions of the same version of the same work are set forth in the statement entitled "Best Edition of Published Copyrighted Works for the Collections of the Library of Congress" (hereafter referred to as the "Best Edition Statement") in effect at the time of deposit. Copies of the Best Edition Statement are available upon request made to the Deposits and Acquisitions Division of the Copyright Office.

(iii) Where no specific criteria for the selection of the "best edition" are established in the Best Edition Statement, that edition which, in the judgment of the Library of Congress, represents the highest quality for its purposes shall be considered the "best edition". In such cases:

(A) When the Copyright Office is aware that two or more editions of a work have been published it will consult with other appropriate officials of the Library of Congress to obtain instructions as to the "best edition" and (except in cases for which special relief is granted) will require deposit of that edition; and

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(B) When a potential depositor is uncertain which of two or more published editions comprises the "best edition", inquiry should be made to the Deposits and Acquisitions Division of the Copyright Office.

(iv) Where differences between two or more "editions" of a work represent variations in copyrightable content, each edition is considered a separate version, and hence a different work, for the purpose of this section, and criteria of "best edition" based on such differences do not apply.

(2) A "complete" copy includes all elements comprising the unit of publication of the best edition of the work, including elements that, if considered separately, would not be copyrightable subject matter or would otherwise be exempt from mandatory deposit requirements under paragraph (c) of this section. In the case of sound recordings, a "complete" phonorecord includes the phonorecord, together with any printed or other visually perceptible material published with such phonorecord (such as textual or pictorial matter appearing on record sleeves or album covers, or embodied in leaflets or booklets included in a sleeve, album, or other container). In the case of a musical composition published in copies only, or in both copies and phonorecords:

(i) If the only publication of copies in the United States took place by the rental, lease, or lending of a full score and parts, a full score is a "complete" copy; and

(ii) If the only publication of copies in the United States took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a "complete" copy.

In the case of a motion picture, a copy is "complete" if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms "copies," "collective work," "device," "fixed," "literary work," "machine," "motion picture," "phonorecord," "publication," "sound recording," and "useful article," and their variant forms, have the meanings given to them in section 101 of title 17.

(4) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94–553.

(c) *Exemptions from deposit requirements.* The following categories of material are exempt from the deposit requirements of section 407(a) of title 17:

(1) Diagrams and models illustrating scientific or technical works or formulating scientific or technical information in linear or three-dimensional form, such as an architectural or engineering blueprint, plan, or design, a mechanical drawing, or an anatomical model.

(2) Greeting cards, picture postcards, and stationery.

(3) Lectures, sermons, speeches, and addresses when published individually and not as a collection of the works of one or more authors.

(4) Literary, dramatic, and musical works published only as embodied in phonorecords. This category does not exempt the owner of copyright, or of the exclusive right of publication, in a sound recording resulting from the fixation of such works in a phonorecord from the applicable deposit requirements for the sound recording.

(5) Literary works, including computer programs and automated databases, published in the United States only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, or the like) from which the work cannot ordinarily be visually perceived except with the aid of a machine or device. Works published in a form requiring the use of a machine or device for purposes of optical enlargement (such as film, filmstrips, slide films and works published in any variety of microform), and works published in visually perceivable form but used in connection with optical scanning devices, are not within this category and are subject to the applicable deposit requirements.

(6) Three-dimensional sculptural works, and any works published only as reproduced in or on jewelry, dolls, toys, games, plaques, floor coverings, wallpaper and similar commercial wall coverings, textiles and other fabrics, packaging material, or any useful article. Globes, relief models, and similar cartographic representations of area are not within this category and are subject to the applicable deposit requirements.

(7) Prints, labels, and other advertising matter, including catalogs, published in connection with the rental lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services.

(8) Tests, and answer material for tests when published separately from other literary works.

(9) Works first published as individual contributions to collective works. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the collective work as a whole, from the applicable deposit requirements for the collective work.

(10) Works first published outside the United States and later published in the United States without change in copyrightable content, if:

(i) Registration for the work was made under 17 U.S.C. 408 before the work was published in the United States; or

(ii) registration for the work was made under 17 U.S.C. 408 after the work was published in the United States but before a demand for deposit is made under 17 U.S.C. 407(d).

(11) Works published only as embodied in a soundtrack that is an integral part of a motion picture. This category does not exempt the owner of copyright, or of the exclusive right of publication, in the motion picture, from the applicable deposit requirements for the motion picture.

(12) Motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(d) *Nature of required deposit.* (1) Subject to the provisions of paragraph (d)(2) of this section, the deposit required to satisfy the provisions of section 407(a) of title 17 shall consist of:

(i) In the case of published works other than sound recordings, two complete copies of the best edition; and

(ii) In the case of published sound recordings, two complete phonorecords of the best edition.

(2) In the case of certain published works not exempt from deposit requirements under paragraph (c) of this section, the following special provisions shall apply:

(i) In the case of published three-dimensional cartographic representations of area, such as globes and relief models, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(ii) In the case of published motion pictures, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section. Any deposit of a published motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library with respect to such copies. In the event of termination of such an agreement by the Library it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement.

(iii) In the case of any published work deposited in the form of a hologram, the deposit shall be accompanied by: (A) Two sets of precise instructions for displaying the image fixed in the hologram; and (B) two sets of identifying material in compliance with § 202.21 of these regulations and clearly showing the displayed image.

(iv) In any case where an individual author is the owner of copyright in a published pictorial or graphic work and (A) less than five copies of the work have been published, or (B) the work has been published and sold or offered for sale in a limited edition consisting of no more than three hundred numbered copies, the deposit of one complete copy of the best edition of the work or, alternatively, the deposit of photographs or other identifying material in compliance with § 202.21 of these regulations, will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(v) In the case of a musical composition published in copies only, or in both copies and phonorecords, if the only publication of copies in the United States took place by rental, lease, or lending, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(vi) In the case of published multimedia kits, that include literary works, audiovisual works, sound recordings, or any combination of such works, the deposit of one complete copy of the best edition will suffice in lieu of the two copies required by paragraph (d)(1) of this section.

(e) *Special relief.* (1) In the case of any published work not exempt from deposit under paragraph (c) of this section, the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation:

(i) Grant an exemption from the deposit requirements of section 407(a) of title 17 on an individual basis for single works or series or groups of works; or

(ii) permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the two copies or phonorecords required by paragraph (d)(1) of this section; or

(iii) permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or

(iv) permit the deposit of identifying material which does not comply with §202.21 of these regulations.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force.

(3) Requests for special relief under this paragraph shall be made in writing to the Chief, Deposits and Acquisitions Division of the Copyright Office, shall be signed by or on behalf of the owner of copyright or of the exclusive right of publication in the work, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit made earlier under the grant of special relief.

(f) *Submission and receipt of copies and phonorecords.* (1) All copies and phonorecords deposited in the Copyright Office will be considered to be deposited only in compliance with section 407 of title 17 unless they are accompanied by an application for registration of a claim to copyright in the work represented by the deposit, and either a registration fee or a deposit account number on the application. Copies or phonorecords deposited without such an accompanying application and either a fee or a deposit account notation will not be connected with or held for receipt of separate applications, and will not satisfy the deposit provisions of section 408 of title 17 or § 202.20 of these regulations.

(2) All copies and phonorecords deposited in the Copyright Office under section 407 of title 17, unless accompanied by written instructions to the contrary, will be considered to be deposited by the person or persons named in the copyright notice on the work.

(3) Upon request by the depositor made at the time of the deposit, the Copyright Office will issue a certificate of receipt for the deposit of copies or phonorecords of a work under this section. Certificates of receipt will be issued in response to requests made after the date of deposit only if the requesting party is identified in the records of the Copyright Office as having made the deposit. In either case, requests for a certificate of receipt must be in writing and accompanied by a fee of $2. A certificate of receipt will include identification of the depositor, the work deposited, and the nature and format of the copy or phonorecord deposited, together with the date of receipt.

§ 202.20 Deposit of copies and phonorecords for copyright registration.

(a) *General.* This section prescribes rules pertaining to the deposit of copies and phonorecords of published and unpublished works for the purpose of copyright registration under section 408 of title 17 of the United States Code, as amended by Pub. L. 94–553. The provisions of this section are not applicable to the deposit of copies and phonorecords for the Library of Congress under section 407 of title 17, except as expressly adopted in § 202.19 of these regulations.

(b) *Definitions.* For the purposes of this section:

(1) The "best edition" of a work has the meaning set forth in § 202.19(b)(1) of these regulations.

(2) A "complete" copy or phonorecord means the following:

(i) *Unpublished works.* Subject to the requirements of paragraph (b)(2)(vi) of this section, a "complete" copy or phonorecord of an unpublished work is a copy or phonorecord representing the entire copyrightable content of the work for which registration is sought;

(ii) *Published works.* Subject to the requirements of paragraphs (b)(2) (iii) through (vi) of this section, a "complete" copy or phonorecord of a published work includes all elements comprising the applicable unit of publication of the work, including elements that, if considered separately, would not be copyrightable subject matter. However, even where certain physically separable elements included in the applicable unit of publication are missing from the deposit, a copy or phonorecord will be

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considered "complete" for purposes of registration where:

(A) The copy or phonorecord deposited contains all parts of the work for which copyright registration is sought; and

(B) The removal of the missing elements did not physically damage the copy or phonorecord or garble its contents; and

(C) The work is exempt from the mandatory deposit requirements under section 407 of title 17 of the United States Code and § 202.19(c) of these regulations, or the copy deposited consists entirely of a container, wrapper, or holder, such as an envelope, sleeve, jacket, slipcase, box, bag, folder, binder, or other receptacle acceptable for deposit under paragraph (c)(2) of this section;

(iii) *Contributions to collective works.* In the case of a published contribution to a collective work, a "complete" copy or phonorecord is the entire collective work including the contribution or, in the case of a newspaper, the entire section including the contribution;

(iv) *Sound recordings.* In the case of published sound recordings, a "complete" phonorecord has the meaning set forth in § 202.19(b)(2) of these regulations;

(v) *Musical scores.* In the case of a musical composition published in copies only, or in both copies and phonorecords:

(A) If the only publication of copies took place by the rental, lease, or lending of a full score and parts, a full score is a "complete" copy; and

(B) If the only publication of copies took place by the rental, lease, or lending of a conductor's score and parts, a conductor's score is a "complete" copy;

(vi) *Motion pictures.* In the case of a published or unpublished motion picture, a copy is "complete" if the reproduction of all of the visual and aural elements comprising the copyrightable subject matter in the work is clean, undamaged, undeteriorated, and free of splices, and if the copy itself and its physical housing are free of any defects that would interfere with the performance of the work or that would cause mechanical, visual, or audible defects or distortions.

(3) The terms "copy," "collective work," "device," "fixed," "literary work," "machine," "motion picture," "phonorecord," "publication," "sound recording," "transmission program," and "useful article," and their variant forms, have the meanings given to them in section 101 of title 17.

(4) A "secure test" is a nonmarketed test administered under supervision at specified centers on specific dates, all copies of which are accounted for and either destroyed or returned to restricted locked storage following each administration. For these purposes a test is not marketed if copies are not sold but it is distributed and used in such a manner that ownership and control of copies remain with the test sponsor or publisher.

(5) "Title 17" means title 17 of the United States Code, as amended by Pub. L. 94–553.

(6) For the purposes of determining the applicable deposit requirements under this § 202.20 only, the following shall be considered as unpublished motion pictures: motion pictures that consist of television transmission programs and that have been published, if at all, only by reason of a license or other grant to a nonprofit institution of the right to make a fixation of such programs directly from a transmission to the public, with or without the right to make further uses of such fixations.

(c) *Nature of required deposit.* (1) Subject to the provisions of paragraph (c)(2) of this section, the deposit required to accompany an application for registration of claim to copyright under section 408 of title 17 shall consist of:

(i) In the case of unpublished works, one complete copy or phonorecord.

(ii) In the case of works first published in the United States before January 1, 1978, two complete copies or phonorecords of the work as first published.

(iii) In the case of works first published in the United States on or after January 1, 1978, two complete copies or phonorecords of the best edition.

(iv) In the case of works first published outside of the United States, whenever published, one complete copy or phonorecord of the work as first published. For the purposes of this section, any works simultaneously first published within and outside of the United States shall be considered to be first published in the United States.

(2) In the case of certain works, the special provisions set forth in this clause shall apply. In any case where this clause specifies that one copy or phonorecord may be submitted, that copy or phonorecord shall represent the best edition, or the work as first published, as set forth in paragraph (c)(1) of this section.

(i) *General.* In the following cases the deposit of one complete copy or phonorecord will suffice in lieu of two copies or phonorecords:

(A) Published three-dimensional cartographic representations of area, such as globes and relief models;

(B) Published diagrams illustrating scientific or technical works or formulating scientific or technical information in linear or other two-dimensional form, such as an architectural or engineering blueprint, or a mechanical drawing;

(C) Published greeting cards, picture postcards, and stationery;

(D) Lectures, sermons, speeches, and addresses published individually and not as a collection of the works of one or more authors;

(E) Musical compositions published in copies only, or in both copies and phonorecords, if the only publication of copies took place by rental, lease, or lending;

(F) Published multimedia kits or any part thereof;

(G) Works exempted from the requirement of depositing identifying material under paragraph (c)(2)(xi)(B)(*5*) of this section;

(H) Literary, dramatic, and musical works published only as embodied in phonorecords, although this category does not exempt the owner of copyright in a sound recording;

(I) Choreographic works, pantomimes, literary, dramatic, and musical works published only as embodied in motion pictures;

(J) Published works in the form of two-dimensional games, decals, fabric patches or emblems, calendars, instructions for needle work, needle work and craft kits; and

(K) Works reproduced on three-dimensional containers such as boxes, cases, and cartons.

(ii) *Motion pictures.* In the case of published or unpublished motion pictures, the deposit of one complete copy will suffice. The deposit of a copy or copies for any published or unpublished motion picture must be accompanied by a separate description of its contents, such as a continuity, pressbook, or synopsis. In any case where the deposit copy or copies required for registration of a motion picture cannot be viewed for examining purposes on equipment in the Examining Division of the Copyright Office, the description accompanying the deposit must comply with § 202.21(h) of these regulations. The Library of Congress may, at its sole discretion, enter into an agreement permitting the return of copies of published motion pictures to the depositor under certain conditions and establishing certain rights and obligations of the Library of Congress with respect to such copies. In the event

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of termination of such an agreement by the Library, it shall not be subject to reinstatement, nor shall the depositor or any successor in interest of the depositor be entitled to any similar or subsequent agreement with the Library, unless at the sole discretion of the Library it would be in the best interests of the Library to reinstate the agreement or enter into a new agreement. In the case of unpublished motion pictures (including television transmission programs that have been fixed and transmitted to the public, but have not been published), the deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of an actual copy.

(iii) *Holograms.* In the case of any work deposited in the form of a three-dimensional hologram, the copy or copies shall be accompanied by:

(A) Precise instructions for displaying the image fixed in the hologram; and

(B) Photographs or other identifying material complying with § 202.21 of these regulations and clearly showing the displayed image.

The number of sets of instructions and identifying material shall be the same as the number of copies required. In the case of a work in the form of a two-dimensional hologram, the image of which is visible without the use of a machine or device, one actual copy of the work shall be deposited.

(iv) *Certain pictorial and graphic works.* In the case of any unpublished pictorial or graphic work, deposit of identifying material in compliance with § 202.21 of these regulations may be made and will suffice in lieu of deposit of an actual copy. In the case of a published pictorial or graphic work, deposit on one complete copy, or of identifying material in compliance with § 202.21 of these regulations, may be made and will suffice in lieu of deposit of two actual copies where an individual author is the owner of copyright, and either:

(A) Less than five copies of the work have been published; or

(B) The work has been published and sold or offered for sale in a limited edition consisting of no more than 300 numbered copies.

(v) *Commercial prints and labels.* In the case of prints, labels, and other advertising matter, including catalogs, published in connection with the rental, lease, lending, licensing, or sale of articles of merchandise, works of authorship, or services, the deposit of one complete copy will suffice in lieu of two copies. Where the print or label is published in a larger work, such as a newspaper or other periodical, one copy of the entire page or pages upon which it appears may be submitted in lieu of the entire larger work. In the case of prints or labels physically inseparable from a three-dimensional object, identifying material complying with § 202.21 of these regulations must be submitted rather than an actual copy or copies except under the conditions of paragraph (c)(2)(xi)(B)(*4*) of this section.

(vi) *Tests.* In the case of tests, and answer material for tests, published separately from other literary works, the deposit of one complete copy will suffice in lieu of two copies. In the case of any secure test the Copyright Office will return the deposit to the applicant promptly after examination: Provided, That sufficient portions, description, or the like are retained so as to constitute a sufficient archival record of the deposit.

(vii) *Computer programs and databases embodied in machine-readable copies.* In cases where a computer program, database, compilation, statistical compendium or the like, if unpublished is fixed, or if published is published only in the form of machine-readable copies (such as magnetic tape or disks, punched cards, semiconductor chip products, or the like) from which the work cannot ordinarily be perceived except with the aid of a machine or device, the deposit shall consist of: (A) For published or unpublished computer programs, one copy of identifying portions of the program, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes, "identifying portions" shall mean either the first and last 25 pages or equivalent units of the program if reproduced on paper, or at least the first and last 25 pages or equivalent units of the program if reproduced in microform, together with the page or equivalent unit containing the copyright notice, if any. If the program is 50 pages or less, the required deposit will be the entire work. In the case of revised versions of such works, if the revisions occur throughout the entire computer program, the deposit of the first and last 25 pages will suffice; if the revisions are not contained in the first and last 25 pages, the deposit should consist of any 50 pages representative of the revised material.

(B) For published and unpublished automated databases, compilations, statistical compendia, and other literary works so fixed or published, one copy of identifying portions of the work, reproduced in a form visually perceptible without the aid of a machine or device, either on paper or in microform. For these purposes: (*1*) "identifying portions" shall mean either the first and last 25 pages or equivalent units of the work if reproduced on paper, or at least the first and last 25 pages or equivalent units of work if reproduced in microform, or, in the case of automated databases comprising separate and distinct data files, representative portions of each separate data file consisting of either 50 complete data records from each file or the entire file, whichever is less; and (*2*) "data file" and "file" mean a group of data records pertaining to a common subject matter, regardless of the physical size of the records or the number of data items included in them. (In the case of revised versions of such databases, the portions deposited must contain representative data records which have been added or modified.) In any case where the deposit comprises representative portions of each separate file of an automated database as indicated above, it shall be accompanied by a typed or printed descriptive statement containing: The title of the database; the name and address of the copyright claimant; the name and content of each separate file within the database, including the subject matter involved, the origin(s) of the data, and the approximate number of individual records within the file; and a description of the exact contents of any machine-readable copyright notice employed in or with the work and the manner and frequency with which it is displayed (e.g., at user's terminal only at sign-on, or continuously on terminal display, or on printouts, etc.). If a visually perceptible copyright notice is placed on any copies of the work (such as magnetic tape reels or their container) a sample of such notice must also accompany the statement.

(viii) *Machine-readable copies of works other than computer programs and databases.* Where a literary, musical, pictorial, graphic, or audiovisual work, or a sound recording, except for literary works which are computer programs, databases, compilations, statistical compendia or the like, if unpublished has been fixed or, if published, has been published only in machine-readable form, the deposit must consist of identifying material. The type of identifying material submitted should generally be appropriate to the type of work embodied in machine-readable form, but in all cases should be that which best represents the copyrightable content of the work. In all cases the identifying material must include the title of the work. A synopsis may also be requested in addition to the other deposit materials as appropriate in

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the discretion of the Copyright Office. In the case of any published work subject to this section, the identifying material must include a representation of the copyright notice, if one exists.
Identifying material requirements for certain types of works are specified below. In the case of the types of works listed below, the requirements specified shall apply except that, in any case where the specific requirements are not appropriate for a given work the form of the identifying material required will be determined by the Copyright Office in consultation with the applicant, but the Copyright Office will make the final determination of the acceptability of the identifying material.

(A) For pictorial or graphic works, the deposit shall consist of identifying material in compliance with § 202.21 of these regulations;

(B) For audiovisual works, the deposit shall consist of either a videotape of the work depicting representative portions of the copyrightable content, or a series of photographs or drawings, depicting representative portions of the work, plus in all cases a separate synopsis of the work;

(C) For musical compositions, the deposit shall consist of a transcription of the entire work such as a score, or a reproduction of the entire work on an audiocassette or other phonorecord;

(D) For sound recordings, the deposit shall consist of a reproduction of the entire work on an audiocassette or other phonorecord;

(E) For literary works, the deposit shall consist of a transcription of representative portions of the work including the first and last 25 pages or equivalent units, and five or more pages indicative of the remainder.

(ix) *Copies containing both visually-perceptible and machine-readable material.* Where a published literary work is embodied in copies containing both visually-perceptible and machine-readable material, the deposit shall consist of the visually-perceptible material and identifying portions of the machine-readable material.

(x) *Works reproduced in or on sheetlike materials.* In the case of any unpublished work that is fixed, or any published work that is published, only in the form of a two-dimensional reproduction on sheetlike materials such as textiles and other fabrics, wallpaper and similar commercial wall coverings, carpeting, floor tile, and similar commercial floor coverings, and wrapping paper and similar packaging material, the deposit shall consist of one copy in the form of an actual swatch or piece of such material sufficient to show all elements of the work in which copyright is claimed and the copyright notice appearing on the work, if any. If the work consists of a repeated pictorial or graphic design, the complete design and at least part of one repetition must be shown. If the sheetlike material in or on which a published work has been reproduced has been embodied in or attached to a three-dimensional object, such as furniture, or any other three-dimensional manufactured article, and the work has been published only in that form, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy. If the sheet-like material in or on which a published work has been reproduced has been embodied in or attached to a two-dimensional object such as wearing apparel, bed linen, or a similar item, and the work has been published only in that form, the deposit must consist of identifying material complying with § 202.21 of these regulations instead of a copy unless the copy can be folded for storage in a form that does not exceed four inches in thickness.

(xi) *Works reproduced in or on three-dimensional objects.* (A) In the following cases the deposit must consist of identifying material complying with § 201.21 of these regulations instead of a copy or copies:

(*1*) Any three-dimensional sculptural work, including any illustration or formulation of artistic expression or information in three-dimensional form. Examples of such works include statues, carvings, ceramics, moldings, constructions, models, and maquettes; and

(2) Any two-dimensional or three-dimensional work that, if unpublished, has been fixed, or, if published, has been published only in or on jewelry, dolls, toys, games, except as provided in paragraph (c)(2)(xi)(B)(*3*) below, or any three-dimensional useful article.

(B) In the following cases the requirements of paragraph (c)(2)(xi)(A) of this section for the deposit of identifying material shall not apply:

(*1*) Three-dimensional cartographic representations of area, such as globes and relief models;

(2) Works that have been fixed or published in or on a useful article that comprises one of the elements of the unit of publication of an educational or instructional kit which also includes a literary or audiovisual work, a sound recording, or any combination of such works;

(3) Published games consisting of multiple parts that are packaged and published in a box or similar container with flat sides and with dimensions of no more than 12x24x6 inches;

(4) Works reproduced on three-dimensional containers or holders such as boxes, cases, and cartons, where the container or holder can be readily opened out, unfolded, slit at the corners, or in some other way made adaptable for flat storage, and the copy, when flattened, does not exceed 96 inches in any dimension; or

(5) Any three-dimensional sculptural work that, if unpublished, has been fixed, or, if published, has been published only in the form of jewelry cast in base metal which does not exceed four inches in any dimension.

(xii) *Soundtracks.* For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, the deposit of identifying material in compliance with § 202.21 of these regulations will suffice in lieu of an actual copy of the motion picture.

(xiii) *Oversize deposits.* In any case where the deposit otherwise required by this section exceeds 96 inches in any dimension, identifying material complying with § 202.21 of these regulations must be submitted instead of an actual copy or copies.

(xiv) *Pictorial advertising material.* In the case of published pictorial advertising material, except for advertising material published in connection with motion pictures, the deposit of either one copy as published or prepublication material consisting of camera-ready copy is acceptable.

(xv) *Contributions to collective works.* In the case of published contributions to collective works, the deposit of either one complete copy of the best edition of the entire collective work, the complete section containing the contribution if published in a newspaper, the entire page containing the contribution, the contribution cut from the paper in which it appeared, or a photocopy of the contribution itself as it was published in the collective work, will suffice in lieu of two complete copies of the entire collective work.

(xvi) *Phonorecords.* In any case where the deposit phonorecord or phonorecords submitted for registration of a claim to copyright is inaudible on audio playback devices in the Examining Division of the Copyright Office, the Office will seek an appropriate deposit in accordance with paragraph (d) of this section.

(d) *Special relief.* (1) In any case the Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress and upon such conditions as the Register may determine after such consultation:

(i) Permit the deposit of one copy or phonorecord, or alternative identifying material, in lieu of the one or two copies or phonorecords otherwise required by paragraph (c)(1) of this section;

(ii) Permit the deposit of incomplete copies or phonorecords, or copies or phonorecords other than those normally comprising the best edition; or

(iii) Permit the deposit of an actual copy or copies, in lieu of the identifying material otherwise required by this section; or

(iv) Permit the deposit of identifying material which does not comply with § 202.21 of these regulations.

(2) Any decision as to whether to grant such special relief, and the conditions under which special relief is to be granted, shall be made by the Register of Copyrights after consultation with other appropriate officials of the Library of Congress, and shall be based upon the acquisition policies of the Library of Congress then in force and the archival and examining requirements of the Copyright Office.

(3) Requests for special relief under this paragraph may be combined with requests for special relief under § 202.19(e) of these regulations. Whether so combined or made solely under this paragraph, such requests shall be made in writing to the Chief, Examining Division of the Copyright Office, shall be signed by or on behalf of the person signing the application for registration, and shall set forth specific reasons why the request should be granted.

(4) The Register of Copyrights may, after consultation with other appropriate officials of the Library of Congress, terminate any ongoing or continuous grant of special relief. Notice of termination shall be given in writing and shall be sent to the individual person or organization to whom the grant of special relief had been given, at the last address shown in the records of the Copyright Office. A notice of termination may be given at any time, but it shall state a specific date of termination that is at least 30 days later than the date the notice is mailed. Termination shall not affect the validity of any deposit or registration made earlier under the grant of special relief.

(e) *Use of copies and phonorecords deposited for the Library of Congress.* Copies and phonorecords deposited for the Library of Congress under section 407 of title 17 and § 202.19 of these regulations may be used to satisfy the deposit provisions of this section if they are accompanied by an application for registration of claim to copyright in the work represented by the deposit, and either a registration fee or a deposit account number on the application.

§ 202.21 Deposit of identifying material instead of copies.

(a) *General.* Subject to the specific provisions of paragraphs (f) and (g) of this section, and to §§ 202.19(e)(1)(iv) and 202.20(d)(1)(iv), in any case where the deposit of identifying material is permitted or required under § 202.19 or § 202.20 of these regulations for published or unpublished works, the material shall consist of photographic prints, transparencies, photostats, drawings, or similar two-dimensional reproductions or renderings of the work, in a form visually perceivable without the aid of a machine or device. In the case of pictorial or graphic works, such material should reproduce the actual colors employed in the work. In all other cases, such material may be in black and white or may consist of a reproduction of the actual colors.

(b) *Completeness; number of sets.* As many pieces of identifying material as are necessary to show the entire copyrightable content in the ordinary case, but in no case less than an adequate representation of such content, of the work for which deposit is being made, or for which registration is being sought shall be submitted. Except in cases falling under the provisions of § 202.19(d)(2)(iii) or § 202.20(c)(2)(iii) with respect to holograms, only one set of such complete identifying material is required.

(c) *Size.* Photographic transparencies must be at least 35mm in size and, if such transparencies are 3x3 inches or less, must be fixed in cardboard, plastic, or similar mounts to facilitate identification, handling, and storage. The Copyright Office prefers that transparencies larger than 3x3 inches be mounted in a way that facilitates their handling and preservation, and reserves the right to require such mounting in particular cases. All types of identifying material other than photographic transparencies must be not less than 3x3 inches and not more than 9x12 inches, but preferably 8x10 inches. Except in the case of transparencies, the image of the work must be either lifesize or larger, or if less than lifesize must be large enough to show clearly the entire copyrightable content of the work.

(d) *Title and dimensions.* At least one piece of identifying material must, on its front, back, or mount, indicate the title of the work; and the indication of an exact measurement of one or more dimensions of the work is preferred.

(e) *Copyright notice.* In the case of works published with notice of copyright, the notice and its position on the work must be clearly shown on at least one piece of identifying material. Where necessary because of the size or position of the notice, a separate drawing or similar reproduction shall be submitted. Such reproduction shall be no smaller than 3×3 inches and no larger than 9×12 inches, and shall show the exact appearance and content of the notice, and its specific position on the work.

(f) For separate registration of an unpublished work that is fixed, or a published work that is published, only as embodied in a soundtrack that is an integral part of a motion picture, identifying material deposited in lieu of an actual copy of the motion picture shall consist of:

(1) A transcription of the entire work, or a reproduction of the entire work on a phonorecord; and

(2) Photographs or other reproductions from the motion picture showing the title of the motion picture, the soundtrack credits, and the copyright notice for the soundtrack, if any.
The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material deposited under this paragraph (f).

(g) (1) In the case of unpublished motion pictures (including transmission programs that have been fixed and transmitted to the public, but have not been published), identifying material deposited in lieu of an actual copy shall consist of either:

(i) An audio cassette or other phonorecord reproducing the entire soundtrack or other sound portion of the motion picture, and description of the motion picture; or

(ii) A set consisting of one frame enlargement or similar visual reproduction from each 10-minute segment of the motion picture, and a description of the motion picture.

(2) In either case the "description" may be a continuity, a pressbook, or a synopsis but in all cases it must include:

(i) The title or continuing title of the work, and the episode title, if any;

(ii) The nature and general content of the program;

(iii) The date when the work was first fixed and whether or not fixation was simultaneous with first transmission;

(iv) The date of first transmission, if any;

(v) the running time; and

(vi) The credits appearing on the work, if any.

(3) The provisions of paragraphs (b), (c), (d), and (e) of this section do not apply to identifying material submitted under this paragraph (g).

(h) In the case where the deposit copy or copies of a motion picture cannot be viewed for examining purposes on equipment in the Examining Division of

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the Copyright Office, the "description" required by §202.20(c)(2)(ii) of these regulations may be a continuity, a press-book, a synopsis, or a final shooting script but in all cases must be sufficient to indicate the copyrightable material in the work and include

(1) The continuing title of the work and the episode title, if any;

(2) The nature and general content of the program and of its dialogue or narration, if any;

(3) The running time; and

(4) All credits appearing on the work including the copyright notice, if any. The provisions of paragraphs (b), (c), and (d) of this section do not apply to identifying material submitted under this paragraph (h).

Dated: February 7, 1986.

Ralph Oman,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 86-3838 Filed 2-21-86; 8:45 am]

BILLING CODE 1410-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Active Military Service Certification

AGENCY: Veterans Administration.

ACTION: Final Regulation Amendment.

SUMMARY: The Veterans Administration (VA) has amended its regulation concerning persons who are included as having served on active duty. The need for this action results from a recent decision of the Secretary of the Air Force, acting in accordance with authority delegated to him by the Secretary of Defense, that the service of members of the group known as the United States Merchant Seamen Who Served on Blockships in Support of Operation Mulberry constitutes active military service in the Armed Forces of the United States for purposes of all laws administered by the Veterans Administration. Under section 401 of Pub. L. 95-202, GI Bill Improvement Act of 1977, the effect of this action was to confer veteran status for VA benefit purposes on former members of that group who were discharged under honorable conditions.

DATE: This amendment is effective October 18, 1985, the date that the Secretary of the Air Force held that such service constitutes active duty.

FOR FURTHER INFORMATION CONTACT: Robert M. White (211B), Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 389-3005.

SUPPLEMENTARY INFORMATION: Pursuant to 38 CFR 1.12(b) the Veterans Administration finds that prior publication of this change for public notice and comment is impracticable and unnecessary. The Veterans Administration has no discretion in this matter. The decision of the Secretary of the Air Force concerning active duty status is binding on the Veterans Administration. Consequently, a proposed notice will not be published. For this reason, this change is also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it does not come within the term "rule" as defined in that act.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulation change is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

There is no affected Catalog of Federal Domestic Assistance program number.

Approved: January 31, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

38 CFR Part 3, *Adjudication*, is amended by adding paragraph (x)(14) to § 3.7 to read as follows:

§ 3.7 Persons included.

* * * * *

(x)* * *

(14) United States Merchant Seamen Who Served on Blockships in Support of Operation Mulberry. (Pub. L. 95-202, sec. 401)

[FR Doc. 86-3901 Filed 2-21-86; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 4

Disabilities Rating Schedules for Bilateral Blindness and Multiple Losses of Extremities

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: Legislative enactments have provided for a more equitable assessment of special monthly compensation for veterans suffering from anatomical loss and loss of use of extremities; severe loss of vision, and veterans with combined vision and hearing impairments. Section 3.350, title 38, Code of Federal Regulations has been amended to reflect these recent enactments. The corresponding tables in 38 CFR Part 4 are amended by this final rule to conform to Part 3.

DATES: Table II incorporated in 38 CFR 4.71a, concerning anatomical loss and loss of use of extremities, is retroactively effective from October 1, 1981 in accordance with Pub. L. 97-66. Table IV incorporated in 38 CFR 4.85a, concerning loss of vision, and combined vision and hearing impairments, is retroactively effective from October 1, 1983 in accordance with Pub. L. 98-223.

FOR FURTHER INFORMATION CONTACT: Lawrence Wheeler, Compensation and Pension Staff (211B), Department of Veterans Benefits, (202) 389-2635.

SUPPLEMENTARY INFORMATION: On pages 24549-52 of the **Federal Register** dated June 7, 1982, final rules amending 38 CFR Part 3 were published implementing Pub. L. 97-66; and on pages 47002-04 of the **Federal Register** dated November 30, 1984, final rules were published implementing Pub. L 98-223. These rules, implementing the two respective public laws provided for a more equitable assessment in the special monthly compensation payable to veterans having multiple loss of extremities, or bilateral blindness or blindness combined with hearing loss. No comments were received on either of the above published final rules.

Changes to 38 CFR § 3.350 have been promulgated to implement Pub. L. 97-66 and 98-223. The effect of this amendment is to change 38 CFR 4.71a and 4.84a so that the tables therein conform to 38 CFR 3.350.

Pursuant to 38 CFR 1.12 the Veterans Administration finds that prior publication of these changes for public notice and comment is not required and is unnecessary. These changes simply incorporate in tabular form certain substantive changes in 38 CFR § 3.350 which have already been published for notice and comment. Consequently, a proposed notice will not be published. For this reason, these changes are also not subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, since they do not come within the term "rule" as defined in that Act.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these changes are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more;

(2) They will not cause a major increase in costs or prices;

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 4

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

The Catalog of Federal Domestic Assistance program number is 64.109.

Approved: January 29, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

38 CFR Part 4, Schedule for Rating Disabilities, is amended as follows:

1. Section 4.71a is amended by revising Table II to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

TABLE II.—RATINGS FOR MULTIPLE LOSSES OF EXTREMITIES WITH DICTATOR'S RATING CODE AND 38 CFR CITATION

Impairment of one extremity	Impairment of other extremity					
	Anatomical loss or loss of use below elbow	Anatomical loss or loss of use below knee	Anatomical loss or loss of use above elbow (preventing use of prosthesis)	Anatomical loss or loss of use above knee (preventing use of prosthesis)	Anatomical loss near shoulder (preventing use of prosthesis)	Anatomical loss near hip (preventing use of prosthesis)
Anatomical loss or loss of use below elbow.	M Code M-1 a, b, or c, 38 CFR 3.350 (c)(1)(i).	L Codes L-1 d, e, f, or g, 38 CFR 3.350(b).	M½ Code M-5, 38 CFR 3.350 (f)(1)(v).	L½ Code L-2 c, 38 CFR 3.350 (f)(1)(v).	M Code M-3 a, 38 CFR 3.350 (f)(1)(iv).	M Code M-3 c, 38 CFR 3.350 (f)(1)(vii).
Anatomical loss or loss of use below knee.		L Codes L-1 a, b, or c, 38 CFR 3.350(b).	L½ Code L-2 b, 38 CFR 3.350 (f)(1)(iii).	L½ Code L-2 a, 38 CFR 3.350 (f)(1)(ii).	M Code M-3 b, 38 CFR 3.350 (f)(1)(v).	M Code M-3 a, 38 CFR 3.350 (f)(1)(ii).
Anatomical loss or loss of use above elbow (preventing use of prosthesis).			N Code M-1, 38 CFR 3.350 (c)(1)(i).	M Code M-2 a, 38 CFR 3.350 (c)(1)(ii).	N½ Code N-4, 38 CFR 3.350 (f)(1)(iv).	M½ Code M-4 c, 38 CFR 3.350 (f)(1)(vi).
Anatomical loss or loss of use above knee (preventing use of prosthesis).				M Code M-2 a, 38 CFR 3.350 (c)(1)(ii).	M½ Code M-4 b, 38 CFR 3.350 (f)(1)(vi).	M½ Code M-4 a, 38 CFR 3.350 (f)(1)(v).
Anatomical loss near shoulder (preventing use of prosthesis).					O Code O-1, 38 CFR 3.350 (e)(1)(i).	N Code N-2 b, 38 CFR 3.350 (d)(3)
Anatomical loss near hip (preventing use of prosthesis).						N Code N-2 a, 38 CFR 3.350 (d)(2)

NOTE.—Need for aid attendance or permanently bedridden qualifies for subper. t. Code L-1 h, i (38 CFR 3.350(b)). Paraplegia with loss of use of both lower extremities and loss of anal and bladder sphincter control qualifies for subper. O. Code O-2 (38 CFR 3.350(e)(2)). Where there are additional disabilities rated 50% or 100%, or anatomical or loss of use of a third extremity see 38 CFR 3.350(f) (3), (4) or (5).

(38 U.S.C. 315; Pub. L. 97-66)

* * * * *

2. Section 4.84a is amended by revising Table IV to read as follows:

§ 4.84a Schedule of ratings—eye.

* * * * *

TABLE IV.—TABLE FOR RATING BILATERAL BLINDNESS OR BLINDNESS COMBINED WITH HEARING LOSS WITH DICTATOR'S CODE AND 38 CFR CITATIONS

Vision one eye	Vision other eye			Plus service-connected hearing loss				
	5/200 (1.5/60), or less	Light perception only	No light perception or anatomical loss	Total deafness one ear	10% or 20% at least one ear SC	30% at least one ear SC	40% at least one ear SC	60% or more at least one ear SC
5/200 (1.5/60) or less.	L + ½ Code LB-1 38 CFR 3.350(b)(2).	L + ½ Code LB-2 38 CFR 3.350(f)(2)(i).	M Code MB-2 a or b 38 CFR 3.350(f)(2)(ii).	Add ½ step Code PB-1 38 CFR 3.350(f)(2)(iv).	No additional SMC.	Add a full step Code PB-3 38 CFR 3.350(f)(2)(iv).	Add a full step Code PB-3 38 CFR 3.350(f)(2)(v).	O Code OB-1 38 CFR 3.350(e)(1)(iii)
Light perception only.		M Code MB-1 a 38 CFR 3.350(c)(1)(ii).	M + ½ Code MB-3 a or b 38 CFR 3.350(f)(ii).	O Code OB-2 38 CFR 3.350(e)(1)(iv).	Add ½ step Code PB-2 38 CFR 3.350(f)(2)(v).	Add a full step Code PB-3 38 CFR 3.350(f)(2)(iv).	O Code OB-2 38 CFR 3.350(e)(1)(iii).	O Code OB-1 38 CFR 3.350(e)(1)(iii)
No light perception or anatomical loss.			N Code NB-1, a-b or c 38 CFR 3.350(d)(4).	O Code OB-2 38 CFR 3.350(e)(1)(iv).	Add ½ step Code PB-2 38 CFR 3.350(f)(2)(v).	Add full step Code PB-3 38 CFR 3.350(f)(2)(v).	O Code OB-2 38 CFR 3.350(e)(1)(iii).	O Code OB-1 38 CFR 3.350(e)(1)(iii)

* With need for aid and attendance qualifies for Subper. m. code MB-1, lc, 38 CFR 3.350(c)(1)(ii).

NOTE.—(1) Any of the additional SMC payable under Dictator's Codes PB-1, PB-2, or PB-3 is not to exceed the rate payable under Subper. O. (2) If in addition to any of the above the veteran has the service-connected loss or loss of use of an extremity, additional SMC is payable, not to exceed the rate payable under Subper. O. See Dictator's Codes PB-4, PB-5, PB-6, and 38 CFR 3.350(f)(2)(vi); (A); (B), (C).

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(38 U.S.C. 315; Pub. L. 98-223)

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[FR Doc. 86-3902 Filed 2-21-86; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

Veterans Education; Measurement of Undergraduate Courses

AGENCY: Veterans Administration.

ACTION: Final regulation.

SUMMARY: Title 38 of the Code of Federal Regulations has permitted VA to measure, in a number of ways, undergraduate courses which have fewer than one 50-minute class sessions per week per hour of credit. One of these ways required the VA to estimate the quality of the course. The VA does not believe it should be estimating the quality of courses for measurement purposes. This final regulation rescinds the portion of the regulations which permitted the agency to do so.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service (225), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2092.

SUPPLEMENTARY INFORMATION: On pages 42191 and 42192 of the **Federal Register** of October 18, 1985, there was published a notice of intent to amend Part 21 to eliminate from VA consideration, the quality of a course when the agency determines how to measure the training of veterans and eligible persons enrolled in it. Interested persons were given 28 days to submit comments, suggestions or objections.

The VA received two letters. One was from a college official. The other was from an educational organization. Both supported the proposal. Accordingly, the VA is making the amended regulation final.

The VA has determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs certifies that this amended regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification can be made because this regulation removes a potential, but not an actual, information collection burden from schools, since the VA has never implemented this authority. Any economic impact it may have on small entities would be favorable, but not economically significant.

The Catalog of Federal Domestic Assistance numbers for the program affected by this regulation are 64.111, 64.117 and 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 30, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising § 21.4272(f)(2) introductory text and (f)(2)(i) to read as follows:

§ 21.4272 Collegiate undergraduate, credit-hour basis.

* * * * *

(f) *Course measurement, insufficient standard class sessions.* * * *

* * * * *

(2) When a course includes one or more weeks with more than one regularly scheduled class for every 2 credit hours, but less than one regularly scheduled class session for each credit hour.

(i) The VA will determine training time for those weeks by using the table in § 21.4270(b) without adjustment when the published accrediting standards of the accrediting agency that accredits the course or the educational institution offering the course permit a class session which is somewhat shorter than that stated in § 21.4200(g) while requiring an overall level of educational pursuit that approximates the level required by courses offered on a standard quarter- or semester-hour basis. (38 U.S.C. 1788(b))

* * * * *

[FR Doc. 86-3904 Filed 2-21-86; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

Veterans Education; Extension of the Emergency Veterans' Job Training Act

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Emergency Veterans' Job Training Act has been amended. The Act contains a deadline for beginning training programs under the Act. The amendment changes the date from September 1, 1985 to July 1, 1986. The regulation which concerns this part of the law is amended accordingly.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 389-2092.

SUPPLEMENTARY INFORMATION: Public Law 99-108 changed the deadline for beginning a program of training under the Emergency Veterans' Job Training Act from September 1, 1985 to July 1, 1986. 38 CFR 21.4632 is amended to bring it into agreement with the law.

The VA finds that good cause exists for making this regulation final without previous publication of a notice of proposed rulemaking. The change contained in this regulation is directly based upon the law. The VA must make the Code of Federal Regulations agree with the law. Public participation in this rulemaking is, therefore, unnecessary. Since a Notice of Proposed Rulemaking is unnecessary and will not be published, this change does not come within the term "rule" as defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2), and is therefore not subject to the requirements of that Act.

Nevertheless, this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-602. Although small entities will be affected by the extension of the Emergency Veterans' Job Training Act, all the effects will derive from the change in the law upon which the regulation is based. The regulation itself will have no effect upon small entities.

The VA has determined that this regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.121)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 28, 1986.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

1. The authority citation for § 21.4632 is amended by adding the following citation:

Authority: * * * Pub. L. 99-108).

§ 21.4632 [Amended]

2. 38 CFR 21.4632(e)(2)(ii) is amended by removing the words "September 1, 1985" and inserting, in their place, the words "July 1, 1986,".

[FR Doc. 86-3903 Filed 2-21-86; 8:45 am]
BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Third-Class Bulk Rate Merchandise Samples

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends postal regulations pertaining to merchandise samples to make it clear that detached address cards may be used to deliver merchandise samples on all types of carrier routes. In addition, a new provision is added specifying that when a portion of a merchandise sample mailing must be or may be prepared using detached address cards, the remaining portion which does not meet the general distribution test may, at the mailer's option, be prepared with detached address cards. Certain other minor and editorial changes are also made to make the third-class bulk rate merchandise sample regulations consistent with other detached address card regulations.

EFFECTIVE DATE: March 26, 1986.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 245-4749.

SUPPLEMENTARY INFORMATION: On January 9, 1986, the Postal Service published for comment in the **Federal Register** (51 FR 993-994) proposed changes in sections of the Domestic Mail Manual pertaining to merchandise samples. Interested persons were invited to submit comments on the proposed changes by February 10, 1986.

Written comments were received from four mailers, all of whom support the proposed changes.

One commenter observed that the proposed changes would standardize handling of all merchandise samples, provide for greater efficiency and less chance of error in preparing a mailing, and reduce costs by allowing manufacturers to manufacture one standardized sample rather than two samples. This would provide the mailer greater flexibility and easier use of the postal system for sample mailings.

Another commenter believed his company could not use detached address cards for mailing merchandise samples which destinate on rural routes and therefore was prevented from claiming the carrier route rate for pieces which were at least ¾-inch thick. The commenter also requested assurance that the simplified form of address could be used to address detached address cards for merchandise samples which destinate on rural routes. The simplified form of address as provided for in Domestic Mail Manual 122.41 may be used to address detached address cards for merchandise samples which destinate on rural routes.

The other two commenters supported the proposed rule because it further clarifies and provides uniformity of handling.

List of Subjects in 39 CFR Part 111

Postal Service

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3621; 42 U.S.C. 1973cc-13, 1973cc-14.

PART 664—MERCHANDISE SAMPLES

2. In 664, revise and renumber 664.1 and revise 664.22 to read as follows:

664.1 General.

.11 City Delivery Routes. Merchandise samples which exceed 5 inches in width (height) or ¼ of an inch in thickness, or which are nonuniform in thickness, mailed at bulk third-class rates for general distribution on city delivery routes must be prepared by the mailer in accordance with 664.2-664.4. For purpose of this section, GENERAL DISTRIBUTION means distribution of samples to at least 25 percent of the addresses in a 5-digit ZIP Code delivery area.

.12 Other Types of Routes (Such as Rural). Mailers who wish to use detached address cards with merchandise samples (of the kind described in .11 above) intended for general distribution on other types of routes, such as rural routes, must be prepared in accordance with 664.2-664.4.

.13 Optional Preparation of Residual Samples. When a portion of a merchandise sample mailing must or may be prepared with detached address cards under 664.11 or 664.12, that portion of the mailing for distribution to less than 25 percent of the addresses in a 5-digit ZIP Code delivery area may, at the mailer's option, also be prepared in accordance with 664.2-664.4.

664.2 Address Cards.

* * * * *

.22 The recipient's address, the mailer's return address, and the words, "Postal Service regulations require that the address card be delivered together with its accompanying postage paid sample. If you should receive this card without its accompanying sample, please notify your local postmaster." must be placed on the address card. The brand name, color coding, or other identifying symbols must also be placed on the address card to clearly associate it with the accompanying sample.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Admininstration.

[FR Doc. 86-3894 Filed 2-21-86; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 702, 707, 710, 723, 747, 750, 762, 775, 791, and 792

[OPTS-00068; FRL-2972-8]

Authority Citations; Revision of Format

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; Technical Amendments.

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SUMMARY: EPA is revising the authority citations in 40 CFR Parts 702, 707, 710, 723, 747, 750, 762, 775, 791, and 792 to conform to the requirements of 1 CFR Part 21. These are non-substantive, technical amendments that do not require an opportunity for public comment or a 30-day delay in effective date under the Administrative Procedure Act, 5 U.S.C. 553.

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-603, 401 M St., SW., Washington, D.C. 20460, (202-382-2253).

List of Subjects in 40 CFR Parts 702, 707, 710, 723, 747, 750, 762, 775, 791, and 792

Administrative practice and procedure, Chemicals, Data reimbursement, Environmental protection, Exports, Fully halogenated chlorofluoroalkanes, Good laboratory practice, Hazardous substances, Imports, Metalworking fluids, Premanufacture notification exemptions, Recordkeeping and reporting requirements, Waste treatment and disposal.

Dated: February 6, 1986.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I Subchapter R is amended as follows:

PART 702—GENERAL PRACTICE AND PROCEDURE

1. The authority citation for Part 702 is revised to read as follows:

Authority: 15 U.S.C. 2619.

PART 707—CHEMICAL IMPORTS AND EXPORTS

2. The authority citation for Part 707 is revised to read as follows and the authority citations following all the sections in Part 707 are removed:

Authority: 15 U.S.C. 2611(b) and 2612.

PART 710—INVENTORY REPORTING REGULATIONS

3. The authority citation for Part 710 is revised to read as follows:

Authority: 15 U.S.C. 2607(a).

PART 723—PREMANUFACTURE NOTIFICATION EXEMPTIONS

4. The authority citation for Part 723 is revised to read as follows and the authority citations following all the sections in Part 723 are removed:

Authority: 15 U.S.C. 2604.

PART 747—METALWORKING FLUIDS

5. The authority citation for Part 747 is revised to read as follows:

Authority: 15 U.S.C. 2604 and 2605.

PART 750—PROCEDURES FOR RULEMAKING UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

6. The authority citation for Part 750 is revised to read as follows:

Authority: 15 U.S.C. 2605.

PART 762—FULLY HALOGENATED CHLOROFLUOROALKANES

7. The authority citation for Part 762 is revised to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611.

PART 775—STORAGE AND DISPOSAL OF WASTE MATERIAL

8. The authority citation for Part 775 is revised to read as follows:

Authority: 15 U.S.C. 2605.

PART 791—DATA REIMBURSEMENT

9. The authority citation for Part 791 is revised to read as follows:

Authority: 15 U.S.C. 2603 and 2607.

PART 792—GOOD LABORATORY PRACTICE STANDARDS

10. The authority citation for Part 792 is revised to read as follows:

Authority: 15 U.S.C. 2603.

[FR Doc. 86-3824 Filed 2-21-86; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register

Vol. 51, No. 36

Monday, February 24, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 84-019P]

Deletion of Certain Labeling Requirements for "Pork With Barbecue, Sauce" or "Beef With Barbecue Sauce"

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the standard in the Federal meat inspection regulations for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" by deleting the requirement that the product name be qualified whenever thickeners, binders, or extenders are used in the barbecue sauce. This would result in consistent labeling provisions for all meat and poultry products made with barbecue sauce. This action is in response to a petition filed by the Pillsbury Company.

DATE: Comments must be received on or before April 25, 1986.

ADDRESS: Written comments to: Policy Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets because no mandatory labeling changes will be required.

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because no mandatory labeling changes will be required.

Comments

Interested persons are invited to submit comments concerning the proposal. Written comments must be sent in duplicate to the Policy Office and should refer to the docket number located in the heading of this document. All comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The present standard in the Federal meat inspection regulations for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" (9 CFR 319.312) was adopted in 1952. The standard provides, among other things, that when cereal, vegetable flour, soy flour, or similar substances are used to prepare the barbecue sauce, they must be prominently identified in the product name such as "Pork with Barbecue Sauce—Cereal Added."

Information on file with the Standards and Labeling Division shows that the use of barbecue sauce and labeling of products containing it was addressed by the Department as early as 1930. Approval for a pork sausage product with barbecue sauce was granted in December 1930. The records show that the approval was granted on the basis that the barbecue sauce was used as a type of dressing rather than a cooking process. The approval also noted the ingredients of the barbecue sauce—a traditional recipe containing no thickeners, binder or extenders. At that time, these added thickening ingredients were not expected ingredients in barbecue sauce.

The records indicate that the Agency considered barbecue sauce to be "a hot sauce composed of combinations of spices, flavorings, with or without tomato, and with or without fat." The records also show an approval for "Pork Sausage, Barbecue Sauce Added" with a sauce consisting of red pepper, Worcestershire sauce, sugar, salt, allspice, black pepper, paprika and onion powder. In 1944, a sketch label for "Cooked Beef, Barbecue Sauce Added" was approved. The barbecue sauce consisted of beef fat, paprika, pepper and salt.

The present standard for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" (9 CFR 319.312), adopted in 1952, requires special labeling of thickeners, binders or extenders when added to the barbecue sauce because at that time they were not common or usual ingredients in that product. Present day barbecue sauce recipes in several leading cookbooks call for only traditional ingredients without the use of thickeners, binders, or extenders. However, some barbecue sauces are available to consumers in retail stores that do contain vegetable gums and thickening agents.

The Pillsbury Company has petitioned the Agency to amend the standard for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" contained in § 319.312 of the Federal meat inspection regulations by deleting the requirement that the product name be qualified whenever thickeners, binders or extenders are used in the barbecue sauce. The petitioner asserts that the requirement is not consistent with the labeling policy for all other meat and poultry products prepared with barbecue sauce and is also not consistent with the Food and Drug Administration's (FDA) labeling requirements for barbecue sauce.

The standardized products "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" are the only meat or poultry products that, when made with a barbecue sauce containing a thickening agent, must be labeled to identify the

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presence of the thickening agent in the product name such as "Pork with Barbecue Sauce—Cereal Added." For example, "Barbecue Sauce with Beef" and "Chicken in Barbecue Sauce" may be made with a barbecue sauce that contains a thickening agent without further identification in the product name. These products are considered different from the standardized products and have not been subject to the labeling requirements of § 319.312 of the Federal meat inspection regulations. In addition, the FDA regulations do not provide a standard for barbecue sauce and, therefore, thickeners, binders or extenders may be used in barbecue sauce under the FDA regulations without any further identification in the product name.

A review of approved labels for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" revealed that 313 establishments have approved labels for these products. Of these, 147 establishments produce the products without thickening agents while 166 establishments produce the products with and without thickening agents. There appears to be a market both for the traditional barbecue sauce without thickeners and for the nontraditional barbecue sauce with thickeners.

Proposed Amendment

The proposed amendment would remove the labeling distinction that is now required when a nontraditional barbecue sauce, i.e., one containing thickening agents, is used in the standardized products "Pork with Barbecue Sauce" or "Beef with Barbecue Sauce." This would result in consistent labeling of all meat and poultry products made with barbecue sauce and would eliminate any confusion resulting from different labeling requirements. Consumers who desire to purchase barbecue sauce products without thickening agents could still do so by examining the list of ingredients on the label. The proposal would also benefit processors by eliminating a burdensome labeling requirement and would permit fair competition among all products made with a barbecue sauce.

Presently, the standard for "Pork with Barbecue Sauce and Beef with Barbecue Sauce" (9 CFR 319.312) reads as follows:

"Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" shall contain not less than 50 percent meat of the species specified on the label, computed on the weight of the cooked and trimmed meat. Mechanically Separated (Species) may be used in accordance with § 319.6. The weight of the cooked meat used in this calculation shall not exceed 70 percent of the uncooked weight of the meat. If uncooked meat is used in formulating the products, they shall contain at least 72 percent meat computed on the weight of the fresh uncooked meat. When cereal, vegetable flour, soy flour, soy protein concentrate, isolated soy protein, nonfat dry milk, dry or dried whey, reduced lactose whey, reduced mineral whey, whey protein concentrate, calcium reduced dried skim milk, or similar substances are used in preparing products, there shall appear on the label in a prominent manner, the name of the product, the name of each added ingredient as, for example, "Cereal Added" or "With Cereal and Nonfat Dry Milk".

FSIS is proposing to amend Part 319 of the Federal meat inspection regulations (9 CFR 319.312) by deleting the last sentence. The requirement that the product name be on the label, although deleted from this section, is still required under § 317.2(c)(1) of this subchapter.

List of Subjects in 9 CFR Part 319

Meat and meat food products, Standards of identity, Food labeling.

PART 319—AMENDED

Accordingly, Part 319 of the Federal meat inspection regulations would be amended as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended, (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended, (7 U.S.C. 19d *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 319.312 (9 CFR Part 319) would be revised to read as follows:

§ 319.312 Pork with barbecue sauce and beef with barbecue sauce.

"Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" shall contain not less than 50 percent meat of the species specified on the label, computed on the weight of the cooked and trimmed meat. Mechanically Separated (Species) may be used in accordance with § 319.6. The weight of the cooked meat used in this calculation shall not exceed 70 percent of the uncooked weight of the meat. If uncooked meat is used in formulating the products, they shall contain at least 72 percent meat computed on the weight of the fresh uncooked meat.

Done at Washington, DC on: November 12, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-3900 Filed 2-21-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number 85-ANE-35]

Airworthiness Directives: Rolls-Royce Limited RB211-22B Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This summary proposes to adopt an airworthiness directive (AD) that would require removal from service of the intermediate pressure compressor (IPC) stage 6 to 7 rotor assemblies on Rolls-Royce RB211-22B series turbofan engines in accordance with Rolls-Royce Mandatory Service Bulletin (SB) RB.211-72-6427, Revision 2, dated June 30, 1984. The proposed AD institutes a reduction in published cyclic life and is needed to assure timely removal of the identified assemblies and prevent uncontained engine failures.

DATES: Comments must be received on or before April 30, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 85-ANE-35, 12 New England Executive Park, Burlington, Massachusetts 01803.

or delivered in duplicate to Room Number 311 at the above address.

Comments delivered must be marked: Docket Number 85-ANE-35.

Comments may be inspected at the New England Regional Office, Office of the Regional Counsel, Room Number 311, between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable SB may be obtained from Rolls-Royce Limited, Technical Publications Department, P.O. Box 31, Derby DE2 8BJ, England. A copy of the SB is contained in Rules Docket Number 85-ANE-35 in the Office of the Regional Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7084

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85-ANE-35". The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that certain IPC stage 6 to 7 rotor assemblies on Rolls-Royce RB211-22B series engines, reworked per Rolls-Royce SB RB.211-72-5126, may not reach their published in-service cyclic life. There have been no reported in-service failures to date, but rig testing undertaken by Rolls-Royce has demonstrated the need to remove certain assemblies that have been reworked per Rolls-Royce SB RB.211-72-5126. Those assemblies must be removed from service in accordance with Rolls-Royce Mandatory SB RB.211-72-6427, Revision 2, dated June 30, 1984.

Conclusion: The FAA has determined that this proposed regulation involves 40 Rolls-Royce RB211-22B engines installed on Lockheed L-1011 series aircraft and the approximate total cost is $72,000. It is also determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using Lockheed L-1011 aircraft in which the RB211-22B engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

List of Subjects in 14 CFR 39

Aircraft, Air transportation, Aviation safety, Engines, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new AD:

Rolls-Royce Limited: Applies to Rolls-Royce RB211-22B series turbofan engines:

Compliance is required as indicated, unless already accomplished.

To prevent disk failures that can cause uncontained engine failures, accomplish the following:

(a) Remove from service all IP Compressor stage 6 to 7 rotor assemblies listed individually by serial number in Appendix 1 of Rolls-Royce Mandatory SB RB.211-72-6427, Revision 2, dated June 30, 1984, or FAA approved equivalent, on or before attaining the service life specified in that appendix.

(b) Remove from service all IP compressor state 6 to 7 rotor assemblies listed individually by serial number in Appendix 2 of Rolls-Royce Mandatory SB RB.211-72-6427, Revision 2 dated June 30, 1984, or FAA approved equivalent, on or before attaining the service life specified in that appendix.

(c) Remove from service prior to further flight all IP compressor stage 6 to 7 rotor assemblies listed individually by serial numbers in Appendices 1 and 2 of Rolls-Royce Mandatory SB RB.211-72-6427, Revision 2, dated June 30, 1984, or FAA approved equivalent, that have accumulated total cycles since new, in excess of the service lives specified in those appendices.

Upon request, an equivalent means of compliance may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance time specified in this AD.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's SB identified and described in this document.

Issued in Burlington, Massachusetts, on February 11, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86-3881 Filed 2-21-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AGL-18]

Proposed Realignment of Federal Airway V-78

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airway V-78 to the north between the Eau Clair, WI, and Gopher, MN, very high frequency omni-directional radio range and tactical air navigational and (VORTAC) facilities. This action would provide the necessary increased separation between established routes to ensure the safe and expeditious flow of air traffic in the area.

DATES: Comments must be received on or before April 11, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 85-AGL-18, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800

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Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AGL–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign V–78 to the north between the Eau Claire, WI, (EAU) and Gopher, MN, (GEP), VORTACs. At the present time the Judas Standard Terminal Arrival Route (STAR) and V–78 are in close proximity to one another that constant scrutiny by air traffic controllers is required to ensure against possible conflicts. To provide increased separation on these routes, V–78 would be realigned farther north. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–78 [Amended]

By removing the words "Eau Claire, WI;" and substituting the words "INT Gopher 001°T(085°M) and Eau Claire, WI, 290°T(286°M) radials; Eau Claire;"

Issued in Washington, DC, on February 12, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–3882 Filed 2–21–86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 85-ANM-7]

Proposed Alteration of Restricted Areas R–5701 and R–5706, Boardman, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions, altitudes, and times of use of Restricted Areas R–5701 and R–5706 located near Boardman, OR. After reviewing their oveall training and operational requirements, the Department of the Navy has requested changes in R–5701 and R–5706 to accommodate changes in weapons delivery tactics.

DATES: Comments must be received on or before April 11, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85–ANM–7, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ANM–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to alter the descriptions, altitudes, and times of use of Restricted Areas R–5701 and R–5706 located near Boardman, OR. The Department of Navy has performed a review of their overall training and operational requirements and has requested changes in R–5701 and R–5706 to accommodate changes in weapons delivery tactics. In order to achieve their training and operational requirements, it will be necessary to restrict airspace from the surface to and including 23,000 feet MSL in R–5701 and from 3,500 feet MSL to and including 23,000 feet MSL in R–5706. This proposal will also include minor extensions to the existing areas and will reduce the amount of time the restricted area airspace will be in use. Restricted Area R–5706 will also be added to the Continental Control Area. Sections 71.151 and 73.57 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally currently. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. § 71.151 is amended as follows:

R–5706 Boardman, OR [New]

PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§73.57 [Amended]

4. § 73.57 is amended as follows:

R–5701 Boardman, OR [Amended]

Boundaries. Beginning at lat. 45°36'00" N., long. 120°02'00" W.; to lat. 45°36'00" N., long. 119°46'00" W.; to lat. 45°39'00" N., long. 119°31'00" W.; to lat. 45°41'25" N., long. 119°31'00" W.; to lat. 45°42'25" N., long. 119°25'00" W.; to lat. 45°45'00" N., long. 119°22'00" W.; to lat. 45°47'30" N., long. 119°23'00" W.; to lat. 45°46'10" N., long. 119°35'00" W.; to intercept 5 NM arc centered at lat. 45°43'36" N., long. 119°41'03" W.; thence via 5 NM arc to lat. 45°46'35" N., long. 119°47'00" W.; to lat. 45°46'35" N., long. 120°02'25" W.; to the point of beginning.

Altitudes. Surface to FL 230.

Time of designation. 0600–2359 local time, Monday-Friday; 0800–1600 Saturday.

R–5706 Boardman, OR [Amended]

Boundaries. Beginning at lat. 45°36'00" N., long. 120°02'00" W.; to lat. 45°39'00" N., long. 120°09'00" W.; to lat. 45°45'45" N., long. 120°09'00" W.; thence along south shore of the Columbia River to lat. 45°51'00" N., long. 119°40'00" W.; to lat. 45°53'00" N., long. 119°31'00" W.; to lat. 45°46'35" N., long. 119°31'00" W.; to lat. 45°46'10" N., long. 119°35'00" W.; to intercept 5 NM arc centered at lat. 45°43'36" N., long. 119°41'03" W.; thence via 5 NM arc to lat. 45°46'35" N., long. 119°47'00" W.; to lat. 45°46'35" N., long. 120°02'25" W.; to the point of beginning.

Altitudes. 3,500 feet MSL to FL 230.

Time of designation. 0600–2359 local time, Monday–Friday; 0600–1600 Saturday.

Issued in Washington, DC, on February 12, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–3883 Filed 2–21–86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 85-AAL-9]

Proposed Establishment of VOR Federal Airway V–308 and Jet Route J–188—AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a new Federal Airway V–308 and Jet Route J–188 between Bethel and Sparrevohn, AK. The additional Federal Airway and Jet Route would expedite traffic and reduce sector workload by providing an alternate route for aircraft departing Bethel and climbing eastbound. This would alleviate opposite direction climb situations.

DATE: Comments must be received on or before April 11, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 85–AAL–9, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief

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Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AAL–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, DC 20 591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to establish a new Federal Airway V–308 and Jet Route J–188 between Bethel and Sparrevohn, AK. The additional Federal Airway and Jet Route would expedite traffic and reduce sector workload by providing an alternate route for aircraft departing Bethel and climbing eastbound. This would alleviate opposite direction climb situations. Sections 71.125 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is sd minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that his rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.125 [Amended]

2. § 71.125 is amended as follows:

V–308 [New]

From Bethel, AK, via INT Bethel 066 °T(047 °M) and Sparrevohn, AK, 279 °T(257 °M) radials; to Sparrevohn.

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority, 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. § 75.100 is amended as follows:

J–188 [New]

From Bethel, AK, via INT Bethel 066 °T(047 °M) and Sparrevohn, AK, 279 °T(257 °M) radials; to Sparrevohn.

Issued in Washington, DC, on February 12, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–3884 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 85–AWA–48]

Proposed Realignment and Revocation of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Jet Routes J–4, J–104, J–169 and J–50. Also, this notice proposes to revoke Jet Route J–181. These route changes are in conjunction with planned or future changes to the descriptions of several special use airspace areas located in Arizona and California. This action would increase safety and improve air traffic control efficiency and service to users.

DATES: Comments must be received on or before April 11, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85–AWA–48, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWA–48". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign J–4, J104, J–169, J–50 and revoke J–181 located in southern California and Arizona. These changes would increase safety, permit more efficient use of the airspace and allow more flexibility for military operations. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA had determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

PART 75—[AMENDED]

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. § 75.100 is amended as follows:

J–4 [Amended]

By removing the words "Twentynine Palms, CA; via intersection of Twentynine Palms 103 ° and Stanfield, AZ , 299 ° radials; Stanfield; San Simon, AZ;" and substituting the words "Twentynine Palms; Parker, CA; Buckeye, AZ; San Simon, AZ;"

J–104 [Amended]

By removing the words "Twentynine Palms; via intersection Twentynine Palms 103° and Gila Bend, Az, 312 ° radials; Gila Bend," and substituting the words "Twentynine Palms; Parker, CA; Gila Bend, AZ;"

J–169 [Amended]

By removing the words "Blythe, CA" and substituting the words "Blythe, CA; INT Blythe 066 °T(112 °M) and Stanfield, AZ, 297 °(304 °M) radials; to Stanfield."

J–50 [Amended]

By removing the words "Blythe; INT Blythe 066° and Gila Bend, AZ, 290° radials; Gila Bend;" and substituting the words "Blythe, INT Blythe 066°T(104°M) and Gila Bend, AZ, 312°T(316°M) radials; Gila Bend;"

J–181 [Revoked]

Issued in Washington, DC on February 14, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–3885 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Franchising and Business Opportunities Rule

AGENCY: Federal Trade Commission.

ACTION: Request for comments.

SUMMARY: The Federal Trade Commission ("the Commission") in accordance with the Regulatory Flexibility Act and published of a Plan for the Periodic Review of Commission Rules, 46 FR 35118 (July 7, 1981), is soliciting comments and data on whether its trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunities Ventures", 16 CFR Part 436 ("the Rule"), has had a significant economic impact on small entities and, if so, whether the Rule should be rescinded or amended to minimize any such significant economic impact on small entities.

DATE: All comments and data should be received by the Commission no later than April 25, 1986.

ADDRESS: Comments and data should be sent to: Secretary, Federal Trade Commission, Washington, D.C. 20580. Submissions should be identified as "Franchise Rule—RFA Comment".

FOR FURTHER INFORMATION CONTACT: John M. Tifford, Program Advisor for Franchising, Division of Enforcement, Bureau of Consumer Protection, Federal

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Trade Commission, Washington, D.C. 20580. (202) 376-2605.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (the "RFA"), requires that the Commission conduct a periodic review of rules that have or will have a significant economic impact upon a substantial number of small entities.

The Commission promulgated the Rule on December 21, 1978, with an effective date of October 21, 1979. On August 24, 1979, compliance guidelines were issued to assist sellers of franchises and business opportunities in complying with the Rule's obligations.

The Rule was adopted in response to evidence of deceptive and unfair practices in connection with the sale of the types of businesses covered by the Rule. In some, instances, prospective franchisees lacked a ready means of obtaining essential and reliable information about their proposed business investment. This lack of information reduces the ability of prospective franchisees either to make an informed investment decision or otherwise verify the representations of the business' salespersons. The Rule attempts to deal with these problems by requiring franchisors and franchise brokers to furnish prospective franchisees with information about the franchisor, the franchise business and the terms of the franchise agreement. Franchisors and franchise brokers must furnish additional information if they make any claim about actual or potential earnings, either to the prospective franchisee or in the media. All disclosures must be made (i) before any sale is made and (ii) by means of disclosure documents whose form and content are set forth in the Rule. The Rule requires disclosure of certain information. It does not interfere with the substantive terms of the franchisor-franchisee relationship, a subject which is left to the parties' own negotiation and agreement.

The Commission sought to minimize compliance burdens in two ways. First, no registration or filing of the proposed offers, or the disclosure documents and other agreements which accompany such offers, need be made with the Commission. In this way, compliance expense, management time, paperwork and potential delays are reduced. Second, use of a state developed disclosure format known as the Uniform Franchise Offering Circular may be substituted for the disclosure format set forth in the Rule. In this way, no duplicative Rule disclosure document need be prepared, so that sellers either may continue to use their existing disclosure document or prepare whichever disclosure format is more appropriate to their needs.

For the purpose of this review under the RFA, the term "small entity" is defined as franchisors whose gross revenues were below three million dollars in their most recently completed fiscal year.

Two impact evaluation studies of the Rule have been conducted to date. Each study was funded by the Commission and conducted by an independent research organization. One study, entitled "A Study of The Impact of the Franchise Disclosed Rule On Franchisees and Potential Investors" was conducted by Audits and Surveys and is directed at the efficacy of disclosure for franchisees and potential investors. It was released by the Commission in January 1985. The other study, entitled "Final Report of A Survey to Evaluate the Economic Impact On Franchisors of the FTC Trade Regulation Rule Entitled 'Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures' " was conducted by Opinion Research Corporation and is directed at the costs and perceived benefits and burdens of the Rule on franchisors. It was released by the Commission in October 1985. Copies of both studies are available, free of charge, from the Commission's Public Reference Section, Room 130, Pennsylvania Avenue and 6th Street, NW., Washington, DC 20580 (202) 523-3598.

The purpose of this RFA review is limited to determine whether the Rule should be (1) continued without change, (ii) rescinded or (iii) amended, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the Rule upon a substantial number of small entities.

The Commission is soliciting public comment on the Rule as part of its periodic review in accordance with the RFA, and is especially interested in comments, including the factual data (*e.g.*, economic and accounting information, statistical analysis, surveys, studies, *etc.*) upon which submitted comments are based, on the following topics:

(1) Has the Rule had a significant economic impact (costs and/or benefits) on a substantial number of small entities? Please describe the details of any such significant negative and/or positive economic impact.

(2) Is there a continued need for the Rule and all of its requirements?

(3)(a) What burdens, if any, does compliance with the Rule place on small entities? (b) To what extent are these burdens similar to those which small entities also would experience under standard and prudent business practices or other existing federal, state or local laws or regulations?

(4) What changes, if any, should be made to the Rule in order to minimize the economic effect on small entities?

(5) To what extent does the Rule overlap, duplicate or conflict with other federal, state and local government rules?

(6) Have technology, economic conditions or other factors changed in the area affected by the Rule since its promulgation and, if so, what effect do these changes have on the Rule or those covered by it?

(7) Is three million dollars an appropriate size standard for purposes of this RFA review in defining a small entity; if not, what is a more appropriate size standard and how would the results of the Commission's RFA review differ if the different size standard were adopted?

List of Subjects in 16 CFR Part 436

Federal Trade Commission, Advertising, Business and industry, Trade practices.

Authority: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1980).

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-3695 Filed 2-21-86; 8:45 am]

BILLING CODE 6750-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 395

Regulations Under Title VII of the Regional Rail Reorganization Act

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board hereby proposes to amend its regulations pertaining to reviews and appeals of initial determinations under the benefit schedules promulgated by the Secretary of Labor pursuant to section 701 of the Regional Rail Reorganization Act. The benefit schedules are administered by the Board.

DATE: Comments must be received on or before March 26, 1986.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Arthur A. Arfa, Assistant to the Associate Executive Director for Legal and Administrative Services, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4970 (FTS 387-4970).

SUPPLEMENTARY INFORMATION: Section 395.9 of the Board's current rules provides for certain time limits during which a claimant who wishes to appeal an initial adverse determination may file such an appeal. The current regulations are not precise as to when the time period begins to run since they use the phrase, "communicated" to the claimant as the start of the appeal time period. The use of this phrase makes it unclear whether the appeal period starts on the date the notice of the decision is sent to the claimant or when it is received by the claimant. The amendment to the regulations will clarify that the appeal period begins to run from the date the notice in mailed. The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 395

Employee benfit plans, Employee protection benefits, Railroad employees, Railroad retirement.

PART 395—[AMENDED]

Title 20 CFR Part 395 is proposed to be amended as follows:

1. The authority citation for Part 395 is proposed to be revised to read:

Authority: 45 U.S.C. 362(1); 45 U.S.C. 797.

§ 395.9 [Amended]

2. Section 395.9 is proposed to be amended by adding at the end of paragraphs (c)(1) and (d)(1) of this section the following new sentence to read as follows: Notice shall be deemed to have been communicated to the claimant when it is mailed to the claimant at the latest address furnished by him or her.

Dated: February 13, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-3767 Filed 2-21-86; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-165-84]

Below-Market Loans

Corrections

In FR Doc. 19785 beginning on page 33553 in the issue of Tuesday, August 20, 1985, make the following corrections:

1. On page 33560 in the first column, in the ninth line of § 1.7872-3(e)(3), Example (3), "September 20" should read "September 30";

2. On page 33565 in the second column, in the seventh line of § 1.7872-8(c)(6), "proportion" was misspelled;

3. On the same page in the third column, in § 1.7872-8(c)(9), Example (2):

a. The thirteenth line should read "imputed interest payment attributable to each loan", and

b. In the second line of the second paragraph, "lander" should read "lender"; and

4. On page 33566 in the second column, in § 1.7872-10(a)(6):

a. In the thirteenth line, "outstanding" was misspelled, and

b. The last line should read "variable balances, see § 1.7872-13(c)".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[OPTS-211017; FRL 2962-1]

Hazardous Waste; Polychlorinated Biphenyls (PCBs); Response to Citizens' Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Response to Citizens' Petitions.

SUMMARY: This notice responds to citizens' petitions submitted by Citizens for Healthy Progress and Valley Watch under section 21 of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2620) and section 7004 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6974).

Each TSCA petition is a request that EPA exercise authority under TSCA section 5(e) to prevent the construction of a PCB disposal facility in Henderson, Kentucky, pending the development of additional information regarding the health and environmental effects arising from the operation of the proposed facility. An application for an approval under TSCA section 6(e) for this proposed PCB disposal facility is pending before EPA Region IV.

As explained in Unit II, EPA is denying the TSCA requests of both petitions on two grounds: (1) EPA cannot amend TSCA, as requested by Citizens for Healthy Progress; and (2) EPA does not have the authority under section 5(e) of TSCA to issue a proposed order to prevent construction of a proposed facility when a proposed process does not involve either a "new chemical substance" or a "significant new use" of a substance.

In addition, Valley Watch has petitioned for rulemaking under RCRA, seeking regulation of the Henderson facility and, if possible, seeking to halt construction and operation. EPA regulations issued under RCRA impose additional notice and comment procedures which are applicable only to RCRA section 7004 petitions. These regulations require EPA to publish a tentative decison to grant or deny the petition, to solicit public comment on that tentative decision, and then, to issue and publish its final decision.

In this notice, EPA has tentatively decided to deny the Valley Watch petition under RCRA. The Agency solicits public comment on this tentative denial; interested persons may also request an informal public hearing regarding this tentative decision.

However, the Agency notes that it intends to list wastes containing PCBs as hazardous wastes under RCRA, thereby subjecting PCB waste management facilities to RCRA regulation.

ADDRESSES: Copies of the petitions and all related information are located in: Document Control Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-107, 401 M St., SW., Washington, DC 20460.

They are available for review and copying from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

Comments on EPA's Tentative Decisions under RCRA and any requests for an informal public meeting under RCRA should be in writing and sent to: Francine Jacoff, Waste Identification Branch (WH-562B), Office of Solid Waste, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

DATES: Comments on EPA's Tentative Decision under RCRA and any written requests for an informal public hearing under RCRA should be sent to the above address by April 25, 1986.

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FOR FURTHER INFORMATION (TSCA PETITIONS) CONTACT: Edward Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll Free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of Petitions

On November 20, 1985, Citizens for Healthy Progress (CHP) petitioned the EPA under section 21 of TSCA to take action under section 5(e) of TSCA to halt construction of a planned PCB disposal facility in Henderson, Kentucky. The petitioner asserts that the Agency lacks sufficient information at this time to make a decision on the safety of the facility and that construction of the facility should not be allowed to occur until such information is available for the Agency to evaluate. The petitioner argues that the fact that funds have been expended for construction of a costly facility could bias the Agency's decision to permit or not permit the facility in favor of the applicant and could, therefore, place the public at unreasonable risk.

The CHP petition specifically requests that the Agency "amend an order" under TSCA section 5(e) by adding language to paragraph (1)(A) of the TSCA section 5(e) which would, among other things, enable the Administrator to issue a "proposed order" to prohibit the construction or completion of a facility such as the one planned for Henderson, Kentucky, pending the development of information.

On December 9, 1985, Valley Watch (VW) petitioned the EPA under section 21 of TSCA to take action similar to that requested on November 20, 1985, by Citizens for Healthy Progress. Valley Watch petitioned EPA under section 5(e), to issue either a "proposed order" or an injunction which would prohibit the commencement of construction of the Henderson facility pending the development of additional information. Specifically, VW argues that the authority to enjoin the construction of the Henderson, Kentucky, facility is "inherent" in the authority reposed in the Administrator by TSCA section 5(e) to prohibit or limit activities involving a new chemical substance pending the development of information. The Valley Watch petition is premised upon the belief that the Agency lacks information with respect to the health and environmental risks posed by the proposed PCB disposal facility, the processes to be employed in the facility, and the chemicals to be used and manufactured in the facility. In particular, the identity of and possible risks associated with the material known as "TF-1" appears to be at the heart of VW's concern that insufficient information is available regarding the proposed disposal facility. VW asserts that construction of the Henderson facility should not occur until such time as this information is available and has been subjected to reasoned evaluation by the Agency.

In addition, Valley Watch petitioned for the issuance of a regulation under section 7004(a) of RCRA (42 U.S.C. 6974(a)). The petition did not request any specific rules or cite specific provisions of RCRA as possible authority for rulemaking but generally sought regulation of the PCB facility in Henderson under RCRA and, if possible, a ban on construction and operation. The basis for the petition is that there is insufficient information available to the Agency to evaluate health and environmental effects from the activities at the facility. The Agency is treating the RCRA request as a petition seeking rulemaking under Subtitle C of RCRA (Hazardous Waste Management).

B. TSCA Section 21

Section 21 of the Toxic Substances Control Act (TSCA) provides that any person may petition the Administrator of EPA to initiate a proceeding for the issuance of rules under section 4 (rules requiring chemical testing), section 6 (rules imposing substantive controls on chemicals), or section 8 (information-gathering rules). Also, section 21 authorizes a petitioner to request the issuance, amendment, or repeal of orders under section 5(e) (orders affecting chemicals involved in premanufacture notification) or section 6(b)(2) (orders affecting quality control procedures). Section 21(b)(3) requires that EPA grant or deny citizens' petitions within 90 days of the filing of the petitions (15 U.S.C. 2620(b)(3)).

If the Administrator grants a section 21 petition, the Agency must promptly commence an appropriate proceeding. If the Administrator denies the petition, the reasons for denial must be published in the Federal Register.

If EPA denies the petition, or fails to grant or deny the petition within 90 days of the filing date, the petitioners may commence a civil action in a Federal district court to compel the Agency to initiate the requested action. This suit must be filed within 60 days of the denial, or within 60 days of the expiration of the 90-day period if the Agency fails to grant or deny the petition within that period (15 U.S.C. 2620(b)(4)).

In the case of a section 21 petition which requests an order which can be issued under section 5(e), EPA may issue such an order if EPA determines that information is insufficient to evaluate a subject chemical, and that in the absence of sufficient information, the chemical may present an unreasonable risk or, may cause substantial or significant human or environmental exposure (15 U.S.C. 2604(e)(1)(A)).

C. RCRA Regulations Governing Citizens' Petitions

EPA regulations set out a process for addressing petitions for rulemaking under RCRA Subtitle C at 40 CFR 260.20. They provide that the Administrator is to issue for publication in the Federal Register a tentative decision to grant or deny a petition and solicit public comment on the tentative decision. That notice may take the form of an advance notice of proposed rulemaking, a proposed rule, or a tentative decision to deny the petition. Upon written request of any interested person, the Administrator may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a public hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Administrator may, in any event, decide to hold an informal public hearing on his own initiative. After evaluating all public comments, EPA is to make a final decision by issuing for publication in the Federal Register a regulatory amendment or a final denial of the petition.

This notice contains EPA's tentative decision on the RCRA petition. A subsequent Federal Register notice will announce the Agency's final decision.

II. Response to TSCA Petitions

The Citizens for Healthy Progress and Valley Watch petitions are motivated by concerns that allowing the construction of the Henderson PCB disposal facility might bias the Agency's ultimate permitting decision in favor of the applicant. EPA addresses these concerns in Unit III. However, in requesting relief from EPA under TSCA section 21, the petitioners rely exclusively upon the remedies set forth in TSCA section 5(e). Therefore, the decision to grant or deny petitioners' requests depends upon whether CHP and VW have presented circumstances which suggest the proper application of section 5(e) authority. EPA must deny all of petitioners' TSCA requests because of congressionally mandated limitations on the applicability of section 5(e) authority. This unit sets forth the reasons for these denials.

A. Request To Amend TSCA Section 5(e)

While phrased as a request to "amend an order," the Citizens for Healthy Progress in effect ask EPA to amend TSCA section 5(e) by adding to paragraph (1)(A) of section 5(e) language which would enable the Administrator to initiate necessary legal proceedings to prohibit construction of a facility intended primarily for activities involving a substance which EPA can subject to a proposed order.

EPA denies the CHP petition, because EPA cannot amend TSCA. Any such request should be addressed to Congress, rather than this Agency.

B. Requests for Issuance of Proposed Order

The Valley Watch petition requests that EPA issue a TSCA section 5(e) proposed order or injunction which would prohibit construction of the Henderson PCB disposal facility until sufficient information is developed regarding the health and environmental effects associated with the facility. Likewise, the Citizens for Healthy Progress petition could be construed to request the same relief.

When construed in this manner, both the CHP and VW petitions must be denied because the petitioners have not alleged circumstances which would trigger the availability of either a proposed order or an injunction under section 5(e).

The "proposed order" provision of section 5(e) does not apply to all chemical substances; rather, the provision applies only to those chemical substances with respect to which notice is required by section 5(a). Section 5(a) requires persons who intend to manufacture or import a "new chemical substance," (or, who intend to manufacture, import, or process a chemical substance in a "significant new use") to notify EPA at least 90 days before any such activity begins (15 U.S.C. 2604(a)(1)). TSCA defines a "new chemical substance" in section 3(9) as a substance not included on the inventory compiled under section 8(b).

It is true that under TSCA section 5(a)(2), EPA has authority to designate uses of chemical substances as "significant new uses." But, such a designation must be undertaken through rulemaking after EPA has considered the statutory factors enumerated in section 5(a)(2). In this instance, however, the components of TF-1 are not "new chemical substances." Nor are these components subject to any "significant new use" rules.

EPA understands that the petitioners are unaware of the precise nature of the material identified as TF-1. This circumstance arises from the claim to business confidentiality asserted by Union Carbide under TSCA section 14 with regard to the composition of TF-1. Nevertheless, EPA is aware of the identity of the TF-1 components, and there is available to EPA a considerable amount of information regarding the effects of the TF-1 components. The PCB disposal permitting process (described in Unit III) enables the EPA to consider comprehensively the possible health and environmental effects presented by the proposed Henderson PCB disposal facility, including the effects of TF-1.

EPA has determined that the substances comprising TF-1 are contained on the section 8(b) inventory of exisiting chemical substances. Thus, TF-1 is not composed of "new chemical substances" subject to section 5(a)(1)(A) premanufacture notification. Likewise, the use of TF-1 components as organic solvents or dielectric fluids is not currently subject to a rule designating such uses as "significant new uses," and thus, would not give rise to section 5(a)(1)(B) significant new use notification. Because TF-1 and its components are not subject to any section 5(a) notification requirements, TF-1 cannot be the subject of a proposed order under section 5(e)(1) or an injunction under section 5(e)(2). TSCA section 5 affords EPA the opportunity to screen new substances for their health and environmental effects prior to their being manufactured and introduced into commerce, but it does not extend to other chemical substances (such as those comprising TF-1) unless a designated "significant new use" is involved.

However, the CHP and VW petitions do raise an issue of significance in the PCB disposal permitting program: whether construction of a PCB disposal facility should be prohibited during the pendency of the permitting review for a disposal process.

While the petitioners did not specifically request that the PCB disposal permitting process be altered, the Agency believes that the construction issue merits consideration in this response. EPA has concluded that the existing permitting process, which allows construction of a facility prior to the granting of an approval, provides the best assurance that a PCB disposal process will in fact achieve safe and effective disposal of PCBs. As an essential part of the permitting process, EPA requires that PCB disposal facilities be demonstrated to meet EPA's regulatory requirements. Necessarily, a facility must be constructed before it can be demonstrated.

To aid in understanding EPA's conclusion that the existing permitting process should not be altered, EPA has included below a description of the PCB disposal permitting process.

III. The PCB Disposal Permitting Program Under TSCA

A. The Application and Review Process

EPA, under section 6(e) of TSCA, issued regulations in the Federal Register of May 31, 1979 (44 FR 31514) governing the disposal of PCBs and PCB Items. These regulations, codified at 40 CFR 761.60 et seq., contain requirements for the disposal of PCBs and PCB Items and detailed specifications that must be met by incinerators, high efficiency boilers, landfills, and alternative methods of disposal in order to be approved by EPA for the disposal of PCBs and PCB Items. For example, 40 CFR 761.70 requires that incinerators used for incinerating PCBs be approved by EPA and meet specific standards for dwell time, temperature, excess oxygen, and combustion efficiency. In practical terms, these incineration standards mean that PCB incinerators must achieve a destruction efficiency for PCBs of 99.9999 percent. The owner operator of a proposed facility is required by EPA to submit an application which contains information on the location of the incinerator, a detailed description of the incinerator, including general site plans and design drawings, engineering reports on the anticipated performance of the incinerator, the availability of sampling and monitoring equipment and facilities, estimates of waste volumes expected to be incinerated, any local, State, or other Federal permits or approvals, and schedules and plans for complying with the approval requirements (e.g., the trial burn requirement) (40 CFR 761.70(d)(1)).

The owner or operator is also required to subject the incinerator to a trial burn and to submit to EPA a full plan for conducting the trial burn. EPA requires trial burns to monitor destruction efficiency and safe operation prior to full permitting and commercial operation. Monitoring data and results from the trial burn are analyzed by EPA to insure that the applicant meets the regulatory requirements regarding

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destruction efficiency and safety (40 CFR 761.70(d)(2)).

EPA engineers and scientists review the material provided in the application and the results of trial burns and make determinations on whether the incinerator meets the regulatory requirements for effective and safe destruction of PCBs (40 CFR 761.70(d)(4)).

The proposed PCB disposal facility which is the subject of the Citizens for Healthly Progress petition and the Valley Watch petition is what EPA terms an alternative method for PCB destruction. Alternative methods of PCB destruction include, but are not limited to, catalytic dehydrochlorination, chlorolysis, plasma arc, ozonation, catalyzed oxidation, and microbiological and sodium-catalyzed decomposition of the PCB molecules.

Methods for decontamination of PCB-contaminated materials by concentration and removal of the PCBs also are considered alternative methods of PCB destruction. The planned Henderson, Kentucky facility is an example of an alternative method, employing a physical separation technique the particulars of which are protected by a claim to business confidentiality asserted by Union Carbide under TSCA section 14.

The proposed PCB disposal facility in Henderson, Kentucky would house material and personnel necessary to accomplish the physical separation of PCBs from a solvent (which also serves as a temporary dielectric fluid). The solvent (hereafter referred to as TF-1) is then intended to be recycled for future use and the PCBs will be shipped to an EPA-approved PCB incinerator for final destruction.

For such an alternative method of PCB destruction, EPA requires that this method achieve a "level of performance" or "destruction efficiency" equal to or greater than high temperature incineration (40 CFR 761.60(e)). For physical separation processes, the requirement of 99.9999 percent PCB destruction efficiency translates into a requirement of complete separation of the PCBs from the solvent. The person proposing such an alternative disposal process must demonstrate that after separation has occurred, there are no PCBs present in the solvent above the practical limits of detection. This is demonstrated by chemical analysis of the solvent after separation has occurred. EPA requires that the solvent contain less than 2 parts per million (ppm) PCBs, which is the lowest level of PCBs which is practically detectable or measurable in the solvent. Further, EPA requires that the process operate in a manner which will not present unreasonable risk to public health or the environment.

In the first phase of the permitting procedure for alternative methods of destruction, EPA requires the submission of an application. The applicant must provide complete information on the proposed process, including:

1. A description of the project organization including persons responsible for obtaining permits, the project manager, facility manager, and safety officer.
2. A description of waste intended to be treated in the unit, including the type of waste to be destroyed (liquid or solid), the proposed total waste and PCB feed rates, and the matrix and composition of the waste including major and minor constituents, and PCB content.
3. A process engineering description including process flow diagram, and narrative description of the system, description of the theoretical basis for the destruction process, layout diagrams and descriptions of the plant or mobile unit; detailed engineering drawings, intended location of the facility and intended location when in storage.
4. A narrative description of the waste feed system, description of waste preparation, and estimate of waste volume.
5. A description of the automatic waste feed cutoff system when process conditions exceed normal bounds, a description of the procedures to shut off the waste feed line and whole process in the event of an equipment malfunction.
6. A narrative description of the destruction system (e.g., description of chemical reactions, stoichiometry, reagents, catalysts, process design capacity), and a list of products and by-products and their concentrations.
7. A description of the pollution control system for process effluents (air emissions, liquid effluents, sludge, solid waste, etc.), design parameters, and important operating parameters of the pollution control system and how they will be monitored.
8. A summary of process operating parameters which lists target values as well as upper and lower boundaries for all measured operating parameters, instrument settings and control equipment parameters.
9. A sampling and monitoring program to monitor process operation and to verify PCB destruction is equivalent to or greater than 99.9999 percent.
10. Sampling procedures including an explanation of the apparatus, calibration procedures, and maintenance procedures.
11. Analytical procedures (e.g., methods, instruments, etc.).
12. Monitoring procedures (methods, instruments, etc.).
13. A spill prevention control and countermeasure plan.
14. A safety plan.
15. A training plan.
16. A demonstration test plan.
17. Test data or engineering performance calculations.
18. Copies of other required permits/approvals.
19. Schedule for operation.
20. A quality assurance plan.
21. A copy of the plant or facility operational plan.
22. A closure plan for the facility.

A full description of what EPA requires of applicants for approval to dispose of PCBs is contained in "Guidelines for PCB Destruction Permit Applications and Demonstration Test Plans" (April 16, 1985).

Once EPA has received and evaluated the information contained in the application, a demonstration test of the effectiveness and safety of the disposal process is scheduled. However, if technical information contained in an application (or in an applicant's demonstration test plan) indicates to EPA that a process cannot achieve safe and effective PCB disposal, the demonstration test will not be scheduled, and the application proceeds no further. Thus, there is conducted a phased review of a proposed alternative disposal process.

At the process demonstration test, EPA completes an audit of plant operations, an audit of the laboratory which will be routinely conducting analyses of process samples, and takes samples to verify independently the effectiveness of the process. EPA ensures that the process is operating in the manner described in the application, that the process is as effective as high temperature incineration in destroying PCBs (i.e., that the process meets the 99.9999 percent PCB destruction requirement), and that it is being operated in a manner that does not present unreasonable risks to public health or the environment. The process demonstration test is critical to EPA's evaluation of applications for approval to dispose of PCBs under TSCA. EPA will deny a permit if the applicant cannot successfully demonstrate a process.

Since EPA Headquarters began reviewing applications in March of 1983 for mobile and alternative methods of PCB destruction, EPA Headquarters has received 11 complete applications. Demonstrations have been completed by

the 11 applicants, and EPA has granted permits to operate to 7 of the applicants. Four of the eleven applicants that have filed complete applications and have held demonstrations have been denied permits based on EPA's determination that the process does not meet the required level of PCB destruction, or, that it presents unreasonable risks to public health or the environment. Simply put, the PCB destruction equivalency criterion and the unreasonable risk standard which govern the review of alternative disposal processes assure an objective permit review that is insulated from concerns for the applicant's financial commitments.

EPA agrees with the general premise that a proposed PCB disposal facility should not be permitted under TSCA until there has been conducted a reasoned evaluation of the health and environmental effects posed by the operation of such a facility. The Agency believes that a reasoned evaluation requires that there is sufficient information available concerning the proposed disposal process and the substances involved in the process. A particularly valuable information element is actual data on the effectiveness of the alternative process as demonstrated.

The description of the PCB permitting process set forth above (and in much greater detail in "Guidelines for PCB Destruction Permit Applications and Demonstration Test Plans" [April 16, 1985]), underscores EPA's commitment to conducting a thorough and reasoned evaluation. Indeed, the TSCA permitting process for PCB disposal requires a great deal of information on proposed PCB disposal facilities and requires that the facilities meet standards for safety and destruction efficiency prior to EPA permitting.

B. Benefits of Existing Permitting Process

It is true that prohibiting the construction of a disposal facility before the permitting evaluation has been completed might avoid wasteful expenditures on ineffective disposal processes, and might also avoid any appearance of bias in the permitting review process. But, the Agency believes that these concerns are outweighed by the value of obtaining actual data to assess the safety and effectiveness of PCB disposal processes. Such data are particularly valuable in the case of a proposed alternative method of disposal.

The approval process for alternative disposal methods was designed to encourage new PCB disposal technologies which could be demonstrated to be as effective as incineration in their ability to destroy or remove PCBs. Incineration capacity is scarce, and the alternative technologies hold out the greatest prospects for assuring an adequate capacity for safe, yet cost-effective disposal. While EPA requires a demonstration test in the case of a proposed PCB incinerator, the reasons for requiring a demonstration are much more compelling when an alternative disposal process is proposed. Unlike an incinerator, for which the design and operation conditions required to accomplish PCB destruction are well established, the design and operation parameters for an alternative process are not always amenable to being prescribed by this Agency in advance of actual demonstration. Because of the innovative nature of these technologies, it is essential that the safety and efficacy of these processes be thoroughly demonstrated to the Agency prior to the issuance of a permit. The existing permit review process assures that the Agency can evaluate a disposal facility on the basis of actual operations on a commercial scale, rather than relying upon mere "paper proof," theoretical yields, and the like.

Moreover, it is demonstrably wrong that the mere expenditure of funds for the construction of a PCB disposal facility influences the Agency's decision to permit or not permit a facility in favor of the applicant. Rather, the efficacy of PCB destruction and the "unreasonable risk" determination are the crucial considerations in the TSCA PCB permitting decision. The PCB disposal regulations contain objective destruction criteria for evaluating the efficacy of a disposal process, and these criteria, combined with the process test demonstration, assure a thorough and unbiased evaluation. But, as a practical matter, construction of a facility is necessary under the TSCA permitting process before EPA can hold a demonstration and then make a determination whether the facility meets the regulatory requirements for disposal of PCBs.

The current permitting process allows EPA personnel to be on site at the trial demonstration, and to take samples to verify destruction effectiveness and process safety. The Agency believes that this process is the optimal mechanism for assuring that the operation of a process does not present unreasonable risks to public health or the environment.

The existing permitting process may encourage the commitment of considerable resources to the construction and demonstration of TSCA disposal facilities, but EPA believes that this review procedure best accomplishes the Agency's mandate to protect human health and the environment, without unduly impeding innovation. Moreover, the record of EPA denials of proposed disposal processes shows that the permitting process is not swayed by factors irrelevant to the regulatory standards governing approvals. For these reasons, EPA would deny any request that the Agency alter its PCB disposal permitting program to prohibit construction of a facility before an approval is issued. EPA believes that the existing permitting process represents a reasonable exercise of the discretion granted EPA by Congress to prescribe disposal methods for PCBs under TSCA section 6(e)(1)(A).

IV. Response to RCRA Petition

The VW petition seeks the issuance of a regulation under RCRA which would prohibit the construction and operation of the Henderson facility. The Agency has tentatively decided that VW's petition for rulemaking under RCRA should be denied.

However, EPA intends to regulate facilities managing wastes containing PCBs under RCRA Subtitle C. Such regulation would be accomplished by an Agency rulemaking listing wastes containing PCBs as RCRA hazardous wastes.

RCRA hazardous waste regulations do not currently apply to the Henderson facility. EPA regulates the generation, transportation, treatment, storage, and disposal (management) of hazardous wastes under Subtitle C of RCRA. However, the management requirements apply only to substances "identified" or "listed" by regulation as hazardous wastes. (See RCRA section 3001, 42 U.S.C. 6921; 40 CFR Part 261.) Therefore, until a waste is identified or listed as hazardous in a final regulation, the management requirements of EPA's regulations do not apply. Neither the wastes coming to the Henderson facility nor any wastes generated in the PCB disposal process have been listed as hazardous or exhibit a characteristic of hazardous waste (i.e., ignitability, corrosivity, reactivity, or extraction procedure (EP) toxicity), based upon the tests performed by Union Carbide and other information available to EPA.

Petitioners have requested that EPA promulgate RCRA regulations covering the Henderson facility, arguing that there is insufficient information to determine the health and environmental risks from the facility. The petition does not provide any information on the risks

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of managing the wastes at the Henderson facility.

Under RCRA section 1004(5) (42 U.S.C. 6903(5)), a hazardous waste means a solid waste which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (1) Cause or significantly contribute to serious irreversible illness or an increase in mortality, or (2) pose a substantial present or potential hazard to health or the environment when improperly managed. To identify or list such hazardous wastes and thereby subject their management to RCRA standards, EPA must possess or obtain information on the hazardous nature of the substances or evidence of substantial risk if mismanaged. The Agency generally conducts an industry-wide study to identify the different wastes which are generated, how they are managed, and the potentially hazardous constituents in these wastes. The Agency then gathers and evaluates any toxicity data available on the wastes and their hazardous constituents.

EPA must make a decision to list or not list a waste based upon its consideration of several factors set forth in the RCRA regulations (40 CFR 261.11(a)(3)). These factors include the nature of the toxicity, the concentration of the toxic constituent, the potential for degradation into non-harmful constituents, the degree of bioaccumulation in ecosystems, the persistence of the toxic constituent (or degradation product), the potential for the toxic constituent or degradation product to migrate into the environment, and the plausible types of improper management to which the waste could be subjected. Should this analysis suggest that listing is appropriate, the listing must be accomplished through rulemaking proceedings which require the publishing of the proposed listing rule, the opportunity for public comment on the proposed rule, the consideration of comments received on the proposed rule, and the promulgation of a final listing rule.

EPA has information on both PCBs and TF-1 (and its constituents) and intends to propose listing wastes containing PCBs as hazardous wastes. After opportunity for comment and consideration of any comments, EPA may promulgate the rule listing wastes containing PCBs as hazardous wastes. The Agency, in fact, tentatively decided to propose this listing before the VW petition was received. (The primary reason for deciding to regulate wastes containing PCBs under RCRA was a desire to regulate all hazardous wastes under the RCRA program, but not any concern that these wastes were not being properly managed under TSCA regulations.) Also, EPA is now investigating several of the constituents of TF-1 to determine their toxicity and whether they should also be listed.

If EPA lists wastes containing PCBs as RCRA hazardous wastes (as intended), the Henderson facility probably will be brought under RCRA jurisdiction at that time. Whether the Henderson facility will be regulated under RCRA depends on whether the PCR waste listing covers the wastes processed at the facility. Based on EPA's very tentative plans, the PCB waste listing regulation would include the wastes managed by the Henderson facility. However, RCRA requirements will not apply to the facility until the Agency lists PCBs as a hazardous waste. Since listing of PCBs has not yet occurred, EPA cannot now speculate as to which particular management standards will apply to the activities at the Henderson facility.

Because the Henderson facility is not now subject to RCRA jurisdiction, neither RCRA nor the RCRA regulations prohibit construction or operation. EPA could ban operation by regulation in response to this petition only if EPA found that wastes containing PCB or constitutents of TF-1 were currently within RCRA jurisdiction.

While RCRA and the RCRA regulations require a permit before construction may commence, this restriction applies only to waste management facilities that are constructed after a final listing regulation has been issued for wastes being managed at the facility (RCRA section 3005(a), 42 U.S.C. 6925(a); see also 40 CFR 270.10(f)). Should the Henderson facility ultimately receive a TSCA section 6(e) approval to dispose of PCBs, it would likely be constructed and operating by the time the Agency lists wastes containing PCBs as hazardous wastes under RCRA. Thus, the construction or operation of the Henderson facility would not be banned by this provision of RCRA. Rather, at such time as listing occurs, the Henderson plant would likely be subject to RCRA management standards necessary to protect human health and the environment for existing facilities (i.e., the "interim status" management standards) (see 40 CFR Part 265). To continue operation, the facility would later be required to obtain a final RCRA permit. Such a permit may require compliance with management standards more stringent than interim status standards (see 40 CFR Part 264).

For the above reasons, the Agency has tentatively decided to deny Valley Watch's RCRA petition seeking the issuance of a RCRA regulation.

EPA requests comment on all aspects of this tentative decision under RCRA. (Note, however, that the decisions to deny the TSCA section 21 petitions are final Agency decisions). After consideration of comments on its tentative RCRA decision, EPA will make a final decision, and will issue it for publication in the **Federal Register**.

V. Official Record for the Petition

The following documents constitute the record for this action:

1. Citizen's for Healthy Progress Petition to the Environmental Protection Agency, dated November 15, 1985.
2. Valley Watch Petition to the Environmental Protection Agency, dated December 2, 1985.
3. USEPA, "Guidelines for PCB Destruction Permit Applications and Demonstration Test Plans," dated April 16, 1985.
4. Union Carbide Corporation, Public Information Copy of Permit Application for PCB Destruction Unit, dated November 21, 1984 (document available at OPTS Document Control Office, Room E-107, Environmental Protection Agency, 401 M Street SW., Washington, DC).
5. Union Carbide, Permit for PCB Destruction (complete application), dated November 21, 1984 (confidential business information contained in this document not available for public viewing, but document filed for record at OPTS Document Control Office, Room E-201, Environmental Protection Agency, 401 M Street SW., Washington, DC).
6. Official rulemaking record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions Rule" published in the **Federal Register** of May 31, 1979 (44 FR 31514).
7. Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Disposal and Making Final Regulation" published in the **Federal Register** on February 17, 1978 (43 FR 7150).
8. USEPA, Polychlorinated Biphenyls (PCBs); Procedural Amendmemt of the Approval Authority for PCB Disposal Facilities and Guidance for Obtaining Approval (48 FR 13181, March 30, 1983).
9. USEPA, document dated January 8, 1986, summarizing data reflecting number of firms applying the PCB disposal approvals, number of firms conducting demonstrations, and number of firms granted approvals.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: February 18, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-3999 Filed 2-21-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 434

[BERC-293-P]

Medicare/Medicaid Program; Revisions in Reporting and Recordkeeping Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to set forth changes in several regulations containing collection of information requirements. These requirements affect the providers of outpatient physical therapy and speech pathology services; physical therapists in independent practice; portable X-ray services; and Medicaid contracts with health maintenance organizations (HMOs) and prepaid health plans (PHPs). OMB has extended its approval of the questioned requirements for the period of review. This proposed rule solicits public comments on the collection of information requirements and our proposed revisions. This proposed rule also sets forth other changes affecting outpatient physical therapy and speech pathology services and physical therapists in independent practice. These changes authorized by sections 2341 and 2342 of Pub. L. 98-369, the Deficit Reduction Act of 1984 amend the definition of "physician", and modify the plan of care requirement.

DATE: To ensure consideration, comments should be received by April 25, 1986.

ADDRESS: Address comments in writing to:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-293-P, P.O. Box 26676, Baltimore, Maryland 21207

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for HCFA.

In commenting, please refer to file code BERC-293-P.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION CONTACT:

For issues related to outpatient physical therapy and speech pathology services, physical therapists in independent practice, and portable x-ray suppliers: Stefan Miller, (301) 597-6394;

or

For issues related to HMOs and PHPs: Joan Mahanes, (301) 594-8046.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980, 44 U.S.C 3504(h), and implementing regulations authorize the Office of Management and Budget (OMB) to review all collection of information requirements in Federal regulations. (On March 31, 1983, OMB published regulations at 5 CFR 1320.14 to impletment its authority to review (48 FR 13666)). OMB has the authority to require agencies to initiate a proposal for a change in information collection requirements, if they are unnecessarily burdensome, duplicative, or lack practical utility. The agency responsible for the regulations is required to publish a notice in the **Federal Register** informing the public that OMB has directed the Agency to revise certain requirements for the collection of information. OMB has granted approval of the collection of information requirements for the period necessary for consideration of the proposed change.

In its review of collection of information requirements in the regulations listed below, OMB identified requirements in need of revision. In accordance with the requirements in 5 CFR 1320.14 (f), a notice was published in the **Federal Register** on August 20, 1984 to inform the public of OMB's action and to state that OMB has granted approval of the questioned requirements for the period necessary for consideration of the proposed changes (49 FR 33051).

The purpose of this proposed rule is to set forth changes in several regulations containing collection of information requirements. We are soliciting comments on the proposal as required by 5 CFR 1320.14(g).

Sections 2341 and 2342 of Pub. L. 98-369, the Deficit Reduction Act of 1984, mandate that the definition of "physician" be expanded to include podiatrists, and that a physical therapist be permitted to establish a plan of care without being under the direction of a physician. These changes affect outpatient physical therapy and speech pathology organizations and physical therapists in independent practice.

II. Specific Proposals

OMB directed HCFA to review the Medicare requirements for providers of outpatient physical therapy and speech pathology services, physical therapists in independent practice, and portable x-ray services, and to revise the respective regulations to remove those papework requirements that are overly prescriptive. For issues related to HMOs and PHPs in the Medicaid program, OMB has similarly directed that the regulations be revised with a view toward removing requirements which are overly prescriptive. The objective is to give States the flexibility to determine the need for reviews of marketing materials for HMOs and PHPs and terminations of recipients from participation in an HMO or PHP.

A. 42 CFR Part 405, Subpart N—Conditions for Coverage of Portable X-Ray Services

Section 405.1413 Condition for Coverage—Qualifications and orientation of technical personnel and employee records.

Standard: Employee records. This standard requires employee records of suppliers of portable x-ray services to include a resume of each employee's training and experience and evidence of health supervision of employees. It also specifies what that evidence includes.

Statutory Requirement

Under section 1861(s)(3) of the Social Security Act there is no explicit statutory provision for personnel policies for x-ray suppliers. The current regulation is based on section 1861(s)(12) of the Act, which provides that laboratories must meet health and safety requirements prescribed by the Secretary.

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Revision/Rationale

We propose to remove the unnecessary papework burdens in the existing regulation. We would require that records be maintained to demonstrate that (1) each employee is qualified for his or her position by means of training and experience and (2) employees receive adequate health supervision. However, we would not impose Federal requirements on how these records are to be structured.

B. 42 CFR Part 405, Subpart Q—Conditions of Participation: Clinics, Rehabilitation Agencies and Public Health Agencies as Providers of Outpatient Physical Therapy and/or Speech Pathology Services; and Conditions for Coverage: Outpatient Physical Therapy Services Furnished by Physical Therapists in Independent Practice

1. Section 405 1716(c) Condition of Participation—Administrative Management

Standard: Personnel policies. This standard requires personnel practices to be supported by appropriate written policies, and specifies what must be included in personnel records.

Statutory Requirement. There is no explicit statutory provision dealing with personnel policies. The current regulation is based on section 1861(p)(4)(A)(v) of the Act, which provides that providers meet health and safety requirements prescribed by the Secretary.

Revision/Rationale. We propose to modify the requirement in existing regulations that detailed lists of records must be maintained. Some items in the list of personnel record requirements are too prescriptive and thus inappropriate for application at the Federal level. We have deleted the requirements that personnel records include job descriptions, performance evaluations and health examinations.

2. Section 405.1716(d) Condition of Participation—Administrative Management

Standard: Patient care policies. This standard requires that patient care practices and procedures be supported by written policies, lists the kinds of issues the policies should cover, and requires at least an annual review of the policies by a professional group.

Statutory Requirement. Current law at section 1861(p)(4)(A)(ii) of the Act requires a facility furnishing outpatient physical therapy services or speech pathology (or others furnishing those services under arrangement with the facility) to have policies established by a group of professional personnel, including one or more physicians associated with the facility, and one or more qualified physical therapists or speech pathologists to govern the physical therapy and speech pathology services.

Revision/Rationale. We propose to remove the detailed list of requirements from the existing regulation. The statute does not specify that patient care policies must be written; however, we would retain the requirement that they be written to assure that they are applied consistently to patient plans of care. We would remove the detailed list of items to be covered in the policies to allow facilities the flexibility to structure the policies to fit their individual administrative needs.

3. Section 405.1717(b) Condition of Participation—Physician's Direction and Plan of Care

Standard: Plan of care. This standard requires that each patient's plan of care be written and include anticipated goals as well as the type, amount, frequency, and duration of physical therapy or speech pathology services.

Statutory Requirement. Sections 1835 (a)(2) (C) and (D) and 1861(p)(2) of the Act require, as an element of the definition of outpatient physical therapy services, the establishment and periodic review of a physician's plan of care delineating the type, amount and duration of physical therapy and speech pathology services which are to be furnished. The statute does not explicitly provide that the plan of care be in writing or that it make reference to anticipated goals or frequency of treatment.

Revision/Rationale. We propose to delete the requirements that (1) the plan be developed in consultation between specifice practitioners; and (2) other appropriate professional staff be required to participate in the plans of care. We would also delete the reference to the date "December 31, 1980", which is now annecessary. Regarding the requirement for consultation, it is standard practice for plans of care to result from a collaborative effort between physicians and the other practitioners furnishing care. Therefore, we believe that formal consultation need not be addressed at the Federal level, and its deletion from regulations will have no adverse affect upon the quality of patient care. Regarding the requirement for participation by other professional staff, it is standard practice that the physician, based upon his or her knowledge of the patient and upon information submitted by the other practitioners furnishing care, determines the plan of care changes as often as necessary. Therefore, the proposed regulations would delete the requirement that other appropriate professional staff be required to participate in the plans of care. While health professionals would not be required to participate in the formal plan of care review, they nevertheless could furnish information essential to the physician's review.

We believe that no further revisions are prudent. The statute stipulates sufficient detail regarding the content of plans of care to suggest to us that the nature of the regulation, as a requirement designed to protect the health and safety of patients, would not be satisfied by broad requirements or by plans not committed to writing. For that reason, we propose to retain the requirement that the plan be written. We are equally committed to the goal of assuring that program monies are not expended for unnecessary services provided because plans of care that are so vague that assessment of medical necessity for the services by fiscal agents is made unduly difficult. We believe that the retention in the plan of care of anticipated goals and frequency of treatment is also crucial to this assessment and is an important adjunct to patient health and safety.

4. Section 405.1717(e) Condition of Participation—Physician's Direction and Plan of Care

Standard: Availability of physicians for emergency. This standard requires a facility to have one or more physicians available on call to provide medical care in case of emergency, and to post a schedule listing the names and telephone numbers of these physicians and the specific days each is on call.

Statutory Requirement. Current law at section 1861(p)(4)(A)(v) gives broad authority to the Secretary to promulgate regulations relating to the health and safety of patients as he or she determines are necessary.

Revision/Rationale. We propose to delete the requirement that the provider post the names and phone numbers of the "on call" physicians as well as their specific days of availability. We believe that the concept of physician availability is medically sound, but the details of the procedures by which this goal is achieved need not be prescribed by Federal regulation.

5. Section 405.1725(a) Condition of Participation—Disaster Preparedness.

Standard Disaster plan. This condition and standard requires a disaster plan that is written and

procedures for the management of a disaster and resulting casualties. The regulations include the stipulation that the plan be supported by written policies and procedures.

Statutory Requirement. Current law at section 1861(p)(4)(8)(v) gives broad authority to the Secretary to promulgate regulations relating to the health and safety of patients as he or she determines are necessary.

Revision/Rationale. We propose to retain items to be included in structuring a disaster plan because they are instructive to providers, but we would remove the specific requirements that the plan include "instructions", "information" and "specifications" because they require paperwork which may not contribute to readiness for disaster.

6. Section 405.1733(b) Condition for coverage— Physician's Direction and Plan of Care.

Standard: Plan of care. The standard requires that each patient's plan of care be written and include anticipated goals as well as specifiy the type, amount, frequency, and duration of physical therapy services.

Statutory Requirements. Sections 1835(a)(2) (C) and (D) and 1861(p)(2) of the Act require, as an element of the definition of outpatient physical therapy services (relating to services furnished by a physical therapist in independent practice), the establishment and periodic review of a physician's plan of care delineating the type, amount and duration of physical therapy which are to be furnished. The statute does not explicitly provide that the plan of care be in writing or that it make reference to anticipated goals or frequency of treatment.

Revision/Rationale. We propose to delete the requirements that (1) the plan be developed in consultation between specified practitioners; and (2) that other appropriate professional staff be required to participate in the plans of care. Regarding the requirement for consultation, it is standard practice for plans of care to result from a collaborative effort between physicians and the other practitioners furnishing care. Therefore, we believe that formal consultation need not be addressed at the Federal level, and its deletion from regulations will have no adverse affect upon the quality of patient of care. Regarding the requirement for participation by other professional staff, it is standard practice that the physician, based upon his or her knowledge of the patient and upon information submitted by the other practitioners furnishing care, determines the plan of care changes as often as necessary. Therefore, the proposed regulations would delete the requirement that other appropriate professional staff be required to participate in the plans of care. While health professionals would not be required to participate in the formal plan of care review, they nevertheless could furnish information essential to the physician's review.

We believe that no further revisions are prudent. The statute stipulates sufficient detail regarding the content of plans of care to suggest to us that the nature of the regulation, as a requirement designed to protect the health and safety of patients, would not be satisfied by broad requirements or by plans not committed to writing. For that reason, we propose to retain the requirement that the plan be written. We are equally committed to the goal of assuring that program monies are not expended for unnecessary services provided because plans of care that are so vague that assessment of medical necessity for the services by fiscal agents is made unduly difficult. We believe that the retention in the plan of care of anticipated goals and frequency of treatment is also crucial to this assessment and is an important adjunct to patient health and safety.

In addition to comments concerning the proposed changes to information collection requirements in Subpart Q included in this document, we are requesting comments on the need to revise or eliminate any other information collection requirements in Subpart Q, as well.

C. 42 CFR Part 434, Subpart C—Contracts with HMOs and PHPs: Contract Requirements

1. Section 434.27(a)(3) Termination of Enrollment

This section requires that health maintenance organization (HMO) or prepaid health plan (PHP) contracts with the Medicaid program specify that each termination of a Medicaid recipient's enrollment in an HMO or PHP be submitted for approval by the State Medicaid Agency.

Statutory Requirement. Under section 1903(m)(2)(A)(v) of the Social Security Act there is no explicit statutory provision for requiring State Medicaid agencies to review each termination of enrollment by an HMO or PHP, but only a requirement that such terminations not discriminate against individuals on the basis of their health status or need for health care services.

Revision Rationale. We propose to continue to require only that the contract between the HMO or PHP and the agency specify the methods by which the HMO or PHP will assure the agency that termination of individuals from participation is for the reasons permitted under the contract. However, these methods will be left to agency discretion.

2. Section 434.36 Marketing

This section requires the HMO or PHP contract to provide for submitting marketing plans, procedures, and materials to the Medicaid State agency for approval before using the plans.

Statutory Requirement. Under section 1903(m)(2)(A)(v) of the Social Security Act there is not explicit statutory provision for requiring agencies to review marketing plans, procedures or materials prior to their use, but only a requirement that the contract specify that the HMO's enrollment procedures will not discriminate among individuals on the basis of health status.

Revision/Rationale. We propose to require that the contract specify the methods by which the HMO or PHP will assure the agency that marketing plans, procedures and materials are accurate, and do not mislead, confuse, or defraud either the recipients or the agency. However, approval of these methods would be left to the discretion of the Medicaid State agency.

3. Section 434.55 Approval of Marketing plans, Procedures, and Materials.

This section requires a Medicaid agency to provide written requirements for approval of the HMOs' or PHPs' marketing plans, procedures, and materials.

Statutory Requirement. As stated above, section 1903(m)(2)(A)(v) of the Act provides no explicit statutory provision for requiring the Medicaid State agencies to review marketing plans, procedures, or materials before their use.

Revision/Rationale. We propose to delete the existing requirement since § 434.36 has been clarified to indicate that the Medicaid State agency may adopt whatever method it chooses to assure that marketing materials are accurate. However, § 434.36 would be expanded to specify the requirement that the system provide that marketing practices not mislead, confuse, or defraud either recipients or the agency.

III. Proposed Changes Per Legislation

As mandated by sections 2341 and 2342 of Pub. L. 98–369, the Deficit Reduction Act of 1984 (DRA), we would

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make the following revisions to 42 CFR Part 405, Subpart Q.

A. Definition of Physician

We would include a definition of physician to apply to 42 CFR Part 405, Subpart Q. This definition would expand the use of the term " physician" as it relates to outpatient physical therapy services to include a podiatrist in all but the following two instances:

1. Qualifications of a Physical Therapist

As set forth in current regulations at §§ 405.1702(d)(4)(ii) and 405.1731(a)(4)(ii), an individual may qualify as a Medicare physical therapist if he or she has had, prior to 1970, fifteen years of full-time experience in the practice of physical therapy services that were furnished under the order and direction of a physician. Historically, we have only recognized a doctor of medicine or osteopathy as a physician for the purposes of this requirement. Redefining the term physician to include a podiatrist would alter the original intent of this provision since during the timeframe embodied under this regulation, physical therapists were restricted to treating only those patients referred by doctors of medicine or osteopathy.

2. Emergency Staffing Requirements

Section 405.1717(e) specifies requirements concerning the availability of physicians for emergency care. Since patients treated in outpatient providers generally present a broad array of symptoms, we believe that patient health and safety requires the availability of personnel with broad medical knowledge in the event that emergency care is needed. Therefore, in this standard, we have specified that a doctor of medicine or osteopathy must be available.

B. Physical Therapists

We would revise §§ 405.1717(b) and 405.1733(b) to permit a physical therapist to establish a plan of care for physical therapy without being under the direction of a physician.

IV. Impact Analysis

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in the Executive Order. In addition, the Regulatory Flexibility Act, Pub. L. 96-354, requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, small entities include all nonprofit and most for-profit providers.) Under both the Executive Order and the Regulatory Flexibility Act, such analysis must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize an unnecessary burden or otherwise ensure that the regulations are cost-effective.

We examined each provision noted in the preamble for their potential impacts (costs and benefits) on affected providers and suppliers. Most of the proposed changes would benefit providers and suppliers by reducing certain recordkeeping and reporting requirements (e.g., removing unnecessary burdens related to employee records as noted in 42 CFR 405.1413).

Furthermore, we examined the economic implications of the proposed changes. We conclude that the effect is a negligible savings over current expenditures incurred by providers to meet the requirements of these provisions. Savings for some of these provisions are very minimal.

Since the estimated impact of this proposed rule would not meet any of the threshold criteria of E.O. 12291 or of the Regulatory Flexibility Act (Pub. L. 96-354), we have determined, and the Secretary certifies, that the annual economic impact is not likely to result in a significant impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

Sections 405.1413(c), 405.1716 (c) and (d), 405.1717 (b) and (e), 405.1725(a), 405.1733(b), 434.27(a)(3), and 434.36 contain collection of information requirements. As required by section 3504] of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), we have submitted a copy of this proposed rule to the Executive Office of Management and Budget (EOMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comment on the information collection requirement should follow the directions in the ADDRESS section of this preamble.

V. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to the issues in the preamble to that rule.

VI. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 434

Capitation, Contracts, Fiscal agents, Health insuring organizations, Health maintenance organizations (HMO), Prepaid health plans (PHP).

We are proposing to amend 42 CFR Chapter IV as set forth below:

I. Part 405 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart N is amended as follows:

1. The authority citation for Subpart N is revised to read as follows:

Authority: Secs. 1102, 1861(s) (3), (11) and (12), 1864, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(s) (3), (11), and (12), 1395aa and 1395hh).

2. Section 405.1413 is amended by revising the section title and paragraph (c) to read as follows:

§ 405.1413 Condition for coverage—qualifications, orientation and health of technical personnel.

* * * * *

(c) *Standard: Employee records.* Records are maintained and include evidence that—

(1) Each employee is qualified for his or her position by means of training and experience; and

(2) Employees receive adequate health supervision.

B. Subpart Q is amended as follows:

The authority citation for Subpart Q continues to read as follows:

Authority: Secs. 1102, 1861(p), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(p), 1395hh).

1. In § 405.1702, the introductory language for the section, the introductory language in paragraph (d) and paragraph (d)(4)(ii) are revised; the current paragraphs (f)–(k) are redesignated as (g)–(l); and, a new paragraph (f) is added to read as follows:

§ 405.1702 Definitions relating to clinics, rehabilitation agencies, and public health agencies.

As used in §§ 405.1702–405.1726, the following definitions apply:

* * * * *

(d) *Physical therapist.* A person who is licensed as a physical therapist by the State in which he is practicing if the State licenses physical therapists, and—

* * * * *

(4) * * *

(ii) Prior to January 1, 1970, had 15 years of fulltime experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

* * * * *

(f) *Physician.* A person who is—

(1) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs those functions or actions; or

(2) A doctor of podiatric medicine, but only with respect to the functions which he or she is legally authorized to perform by the State in which he or she performs them.

* * * * *

2. Section 405.1716 is amended by revising paragraphs (c) and (d) to read as follows:

§ 405.1716 Condition of participation—administrative management.

* * * * *

(c) *Standard: Personnel policies.* Personnel practices are supported by appropriate written personnel policies, that are kept current. Personnel records include the qualifications of all professional and assistant level personnel as well as evidence of State licensure, where applicable.

(d) *Standard: Patient care policies.* Patient care practices and procedures are supported by written policies established by a group of professional personnel including one or more physicians associated with the clinic or rehabilitation agency and one or more qualified physicial therapists (if physical therapy services are provided) and one or more qualified speech pathologists (if speech pathology services are provided). The policies govern the outpatient physical therapy and/or speech pathology services and related services which are provided. These policies are evaluated at least annually by the group of professional personnel, and revised as necessary based upon this evaluation.

3. Section 405.1717 is amended by revising paragraphs (b) and (e) to read as follows:

§ 405.1717 Condition of participation—physician's direction and plan of care.

* * * * *

(b) *Standard: Plan of care.* For each patient there is a written plan of care established by the physician or, for speech pathology services, by the speech pathologist who furnishes the services, or for physical therapy services, by the physical therapist who furnishes the services which indicates anticipated goals and specifies the type, amount, frequency, and duration of physical therapy or speech pathology services. The plan of care and results of treatment are reviewed at least once every 30 days, by the attending or other physician, and the indicated action is taken.

* * * * *

(e) *Standard: Emergency care.* The organization provides for one or more doctors of medicine or osteopathy to be available on call to furnish necessary medical care in case of emergency. There are established procedures to be followed by personnel in an emergency which cover immediate care of the patient, persons to be notified and reports to be prepared.

4. Section 405.1725 is amended by revising paragraph (a) to read as follows:

§ 405.1725 Condition of participation—disaster preparedness.

* * * * *

(a) *Standard: Disaster plan.* The organization has a written plan in operation, with procedures to be followed in the event of fire, explosion, or other disaster. The plan is developed and maintained with the assistance of qualified fire, safety, and other appropriate experts, and includes:

(1) Transfer of casualties and records;

(2) The location and use of alarm systems and signals;

(3) Methods of containing fire;

(4) Notification of appropriate persons; and

(5) Evacuation routes and procedures.

* * * * *

5. In § 405.1731, the introductory language is revised; in paragraph (a) which defines "physical therapist", the introductory language is amended by adding two dashes following the word "and"; paragraph (a)(4)(ii) is revised; the current paragraph (c) is redesignated as (d); and a new paragraph (c) is added to read as follows:

§ 405.1731 Definitions relating to physical therapists in independent practice.

As used in §§ 405.1731 through 405.1737, the following definitions apply:

(a) *Physical therapist.* A person who is licensed as a physical therapist by the State in which he is practicing if the State licenses physical therapists, and—

* * * * *

(4) * * *

(ii) Prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

* * * * *

(c) *Physician.* A person who is—

(1) A doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs these functions or actions; or

(2) A doctor of podiatric medicine, but only with respect to the functions which he or she is legally authorized to perform by the State in which he or she performs them.

6. In § 405.1733, paragraph (a)(7) is amended by replacing the word "rendered" with "provided" and paragraph (b) is revised to read as follows:

§ 405.1733 Condition for coverage—physician's direction and plan of care.

* * * * *

(b) *Standard: Plan of care.* For each patient there is a written plan of care established by the physician or by the physical therapist who furnishes the services which indicates anticipated goals and specifies the type, amount, frequency, and duration of physical therapy services. The plan of care and results of treatment are reviewed at least once every 30 days by the attending physician; and the indicated action is taken.

* * * * *

II. Part 434 is amended as set forth below:

PART 434—CONTRACTS

The authority citation for Part 434 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

1. In § 434.27, the introductory language in paragraph (a) is reprinted for the convenience of the user and paragraph (a)(3) is revised to read as follows:

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§ 434.27 Termination of enrollment.

(a) All HMO and PHP contracts must specify—

* * * * *

(3) The methods by which the HMO or PHP will assure the agency that terminations are consistent with the reasons permitted under the contract, and are not due to an adverse change in the recipient's health;

* * * * *

2. Section 434.36 is revised to read as follows:

§ 434.36 Marketing.

The contract must specify the methods by which the HMO or PHP will assure the agency that marketing plans, procedures, and materials are accurate, and do not mislead, confuse, or defraud either recipients or the agency.

§ 434.55 [Removed]

3. Section 434.55 is removed.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance Program; No. 13.714, Medical Assistance)

Dated: September 17, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: October 21, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 86-3849 Filed 2-21-86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6703]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations proscribe how high to build in the flood plain and do not prescribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ARIZONA	
Carefree (Town), Maricopa County	
Andora Hills Wash: At upstream side of Holiday Lane Bridge	*2,267
Galloway Wash: At center of Scopa Trial Bridge	*2,313
Maps available for inspection at the Town Engineer's Office, P.O. Box 740, Carefree, Arizona 85377.	
Send comments to The Honorable Merrit Bigelow, Mayor, Town of Carefree, P.O. Box 740, Carefree, Arizona 85377.	
Ore Valley (Town), Pima County	
Canada del Oro Wash: Approximately 180 feet upstream from center of La Canada Drive Bridge	*2,737
Pusch Wash: At upstream face of El Conquistador Way culvert	*2,637
Pusch Wash, East Fork: Approximately 1,180 feet upstream from the confluence with Pusch Wash	*2,637
Pusch Wash, West Fork: Approximately 180 feet upstream from the confluence with Pusch Wash	*2,637
Pinetop-Lakeside (Town), Navajo County	
Billy Creek: Approximately 200 feet above center of Porter Mountain Road	*6,706
Walnut Gulch Creek: At center of Nadean Drive	*6,937
Maps available for inspection at the Planning and Zoning Department, P.O. Drawer 1459, Pinetop-Lakeside, Arizona.	
Send comments to The Honorable Jay Natoli, Mayor, P.O. Drawer 1459, Pinetop-Lakeside, Arizona 85935.	
COLORADO	
Estes Park (Town), Larimer County	
Big Thompson River: Approximately sixty feet upstream from center of St. Vrain Avenue	*7,506
Big Thompson River Overflow: Approximately three hundred twenty feet upstream from confluence with Big Thompson River	*7,485
Fall River: Approximately sixty feet upstream from center of Spruce Drive	*7,549
Fall River Overflow: Approximately eighty feet upstream from confluence with Fall River	*7,561
Black Canyon Creek: Approximately three hundred fifty feet upstream from center of West Wonderview Avenue (U.S. Highway 34)	*7,546
Dry Gulch: Approximately three thousand feet north of intersection of Dry Gulch Road and U.S. Highway 34, along center of Dry Gulch Road	*7,481
Maps available for inspection at the Building Inspector's Office, 170 McGregor Street, Estes Park, Colorado.	
Send comments to The Honorable Bernard Dennels, Mayor, Town of Estes Park, P.O. Box 1200, Estes Park, Colorado 80517.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Holyoke (City), Phillips County	
Frenchman Creek: Approximately 30 feet north of the centerline of US route 6, along Frenchman Creek	*3,728
North Fork Frenchman Creek: Approximately 395 feet upstream of the confluence with Frenchman Creek	*3,744
South Fork Frenchman Creek: Approximately 110 feet upstream of the centerline of Denver Street	*3,746
Maps available for inspection at the City Superintendent's Office, 207 West Denver, Holyoke, Colorado.	
Send comments to The Honorable Tom Heithcote, Mayor, City of Holyoke, 207 West Denver, Holyoke, Colorado 80734.	
CONNECTICUT	
Hartford (City), Hartford County	
North Branch Park River:	
Upstream side of conduit entrance	*37
Upstream side of Asylum Avenue	*45
Upstream side of Albany Avenue	*54
Upstream corporate limits	*59
South Branch Park River:	
Upstream side of conduit entrance	*34
Upstream side of Flatbush Avenue	*44
Upstream corporate limits	*47
Connecticut River:	
Downstream corporate limits	*29
Upstream corporate limits	*31
Maps available for inspection at the Flood Commission Office and the City Clerk's Office; and The Department of Environmental Protection, Responsible Person: Ms. Patricia Williams, City Planning Department, City Hall, Hartford, Connecticut 06103.	
Send comments to The Honorable Milner L. Thirman, Mayor of the City of Hartford, Hartford County, City Hall, Hartford, Connecticut 06103.	
GEORGIA	
Chatham County (Unincorporated Areas)	
Savannah River:	
Just upstream of City of Port Wentworth Corporate Limits	*12
At upstream County Boundary	*15
Ogeechee River:	
Just upstream of Interstate 95	*12
About 2.1 miles upstream of State Route 204	*30
St. Augustine Creek:	
About 1,000 feet downstream of an unnamed road (about 0.7 mile upstream of Interstate 95)	*12
About 3.2 miles upstream of an unnamed road (about 0.7 mile upstream of Interstate 95)	*19
St. Augustine Creek Tributary:	
Just upstream of Godley Road	*12
About 4.9 miles upstream of Interstate 95	*19
Pipe Makers Canal:	
Just upstream of Norfolk Southern Railway	*12
Just downstream of U.S. Route 80	*22
Hardin Canal:	
Just upstream of Interstate 16	*12
About 1.9 mile upstream of Wildcat Dam Road	*16
Dundee Canal:	
Just upstream of Norfolk Southern Railway	*12
About 1.5 miles upstream of Louisville Road	*15
Salt Creek Tributary:	
Just upstream of Interstate 16	*12
Just downstream of Louisville Road	*16
Lower Springfield Canal Tributary:	
Just upstream of Seaboard Coast Line Railroad	*12
Just downstream of Gerrard Avenue (about 1.7 miles upstream of mouth)	*12
Springfield Canal: Within community	*13
Springfield Canal Tributary A:	
Just downstream of Seaboard Coast Line Railroad	*13
Just downstream of U.S. Route 17 (about 1.9 mile upstream of Lynes Parkway)	*15

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Casey Canal: Within community	*18
Atlantic Ocean:	
Along Middle River from mouth to U.S. Route 17	*11
At Atlantic Coastal Highway over Little Ogeechee River	*12
Just west of confluence at Williamson Creek with Herb River	*12
At Pennyworth Island	*22
At intersection of Barbam Road and Landings Way	*13
At confluence of Lazaretto Creek with Bull River	*17
Just northwest of divergence of Bear River from Ogeechee River	*19
Along shoreline	*20
Maps available for inspection at the County Engineer's Office, County Courthouse, Savannah, Georgia.	
Send comments to Honorable Charles C. Brooks, Chairman, Board of Commissioners, Chatham County Courthouse, 133 Montgomery Street, Savannah, Georgia 31412.	
Rincon (City), Effingham County	
Dasher Creek:	
About 1.3 miles downstream of State Route 21	*29
About 2,500 feet upstream of Seaboard Coast Line Railroad	*47
Polly Creek:	
About 1,100 feet downstream of State Route 21	*57
About 2,100 feet upstream of State Route 21	*62
Rincon Branch:	
At mouth	*34
Just downstream of Fourth Street	*46
Just upstream of Fourth Street	*56
Just downstream of Seaboard Coast Line Railroad	*57
Just upstream of Seaboard Coast Line Railroad	*67
About 2,500 feet upstream of Old Columbia Avenue	*67
Swaigofter Creek:	
About 1,850 feet downstream of confluence of Willowpeg Creek	*21
At confluence of Willowpeg Creek	*23
Willowpeg Creek:	
At mouth	*23
Just downstream of State Route 21	*36
Maps available for inspection at the City Hall, Rincon, Georgia.	
Send comments to The Honorable George Sanzi, Mayor, City of Rincon, P.O. Box 232, Rincon, Georgia 31326.	
ILLINOIS	
Highland (City), Madison County	
Lindenthal Creek:	
About 3,000 feet downstream of Easy Street	*487
About 200 feet downstream of Poplar Street	*507
About 880 feet upstream of Conrail	*521
Laurel Branch:	
About 800 feet downstream of Park Hill Drive	*489
Just upstream of Poplar Street	*501
Maps available for inspection at the City Manager's Office, City Hall, 1115 Broadway, Highland, Illinois.	
Send comments to Honorable Clarence T. Payne, Mayor, City of Highland, City Hall, 1115 Broadway, Highland, Illinois 62249.	
IOWA	
Muscatine County (Unincorporated Areas)	
Mississippi River:	
At downstream county boundary	*555
At upstream county boundary	*561
Cedar River:	
About 2.1 miles downstream of confluence of Sugar Creek	*636
At upstream county boundary	*647
Wapsinonoc Creek:	
Just downstream of county road	*639

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At upstream county boundary	*668
West Branch Wapsinonoc Creek:	
At mouth	*645
About 4.1 miles upstream of U.S. Highway 6	*669
East Branch Wapsinonoc Creek:	
At mouth	*669
At upstream county boundary	*671
Mud Creek:	
Just upstream of U.S. Highway 6	*682
About 2.4 miles upstream of Liberty Street	*682
Hockey's Slough:	
At mouth	*648
About 900 feet downstream of County Road	*819
Just upstream of County Road	*824
Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*834
Maps available for inspection at the County Engineer's Office, 1631 Iseit Avenue, Muscatine, Iowa.	
Send comments to Honorable Sandra Huston, Chairperson, Board of Supervisors Muscatine County, County Courthouse, Muscatine, Iowa 52761.	
Nichols (City), Muscatine County	
Hockey's Slough:	
About 1,225 feet downstream of State Highway 70	*630
Just upstream of Abandoned Railroad	*634
Maps available for inspection at the City Hall, Nichols, Iowa.	
Send comments to Honorable Warren Roth, Mayor, City of Nichols, 605 Broadway, Nichols, Iowa 52766.	
North Liberty (City), Johnson County	
Muddy Creek:	
About 1.0 mile downstream of Cedar Rapids and Iowa City Railway	*730
Just upstream of Zeller Street	*754
Maps available for inspection at the City Hall, North Liberty, Iowa.	
Send comments to Honorable David Roberts, Mayor, City of North Liberty, P.O. Box 258, North Liberty, Iowa 52317.	
West Liberty (City), Muscatine County	
Wapsinonoc Creek:	
About 250 feet downstream of Chicago, Rock Island and Pacific Railroad	*653
About 1,900 feet downstream of Rainbow Drive	*658
West Branch Wapsinonoc Creek:	
Just downstream of Chicago, Rock Island and Pacific Railroad	*660
About 1,100 feet upstream of Prairie Street	*685
Maps available for inspection at the City Hall, West Liberty, Iowa.	
Send comments to Honorable Larry Combs, Mayor, City of West Liberty, City Hall, 101 West 4th Street, West Liberty, Iowa 52776.	
KANSAS	
Andover (City), Butler County	
Republican Creek:	
Just upstream of Thirteenth Street	*1,328
Just downstream of Interstate 35	*1,331
Spring Branch:	
At mouth	*1,287
Just downstream of County Road 841	*1,290
Faucette Creek:	
About 14,100 feet downstream of Rose Hill Road	*1,288
Just downstream of County Road 632	*1,287
Maps available for inspection at the City Hall, Andover, Kansas.	
Send comments to The Honorable Zack Wilkerson, Mayor, City of Andover, 999 North Andover Road, Box 395, Andover, Kansas 67002.	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Park City (C), Sedgwick County	
Shallow flooding (ponding from rainfall): Just south of levee along eastern overbank of Chisholm Creek (east of Interstate 35)	*1,347
Chisholm Creek:	
About 1,800 feet downstream of Interstate 35	*1,347
Just downstream of 69th Street North	*1,358
West Branch Chisholm Creek: Within community	*1,336
Maps available for inspection at the City Hall, 6125 North Hydraulic, Wichita, Kansas.	
Send comments to The Honorable Raymond Reles, Mayor, City of Park City, City Hall, 6125 North Hydraulic, Wichita, Kansas 67219.	
Peabody (City), Marion County	
Doyle Creek:	
Just upstream of County Road	*1,354
About 1,200 feet upstream of Chicago, Rock Island and Pacific Railroad	*1,366
Spring Creek:	
At mouth	*1,360
About 1,200 feet upstream of U.S. Highway 50	*1,376
Prairie Creek:	
At mouth	*1,368
About 3,800 feet upstream of Elbing Road	*1,389
Maps available for inspection at the City Offices, 300 North Walnut, Peabody, Kansas.	
Send comments to The Honorable Jay Cook, Mayor, City of Peabody, City Offices, 300 North Walnut, Peabody, Kansas 66866.	
Syracuse (City), Hamilton County	
Arkansas River:	
About 1,800 feet downstream of State Highway 27	*3,226
About 1,400 feet upstream of State Highway 27	*3,233
Shallow flooding (overflow from Syracuse Creek): About 600 feet south of Atchison, Topeka and Santa Fe Railroad along western corporate limits	#3
Shallow flooding (ponding from overflow of Syracuse Creek):	
Just north of Atchison, Topeka and Santa Fe Railroad	*3,246
Just north of Avenue D	*3,249
Maps available for inspection at the City Offices, 220 North Main Street, Syracuse, Kansas.	
Send comments to Honorable O.L. Meyers, Mayor, City of Syracuse, P.O. Box 148, Syracuse, Kansas 67878.	
KENTUCKY	
Clark County (Unincorporated Areas)	
Strodes Creek:	
About 300 feet upstream of confluence of Hancock Creek	*873
Just downstream of Interstate 64	*910
Just upstream of Interstate 64	*915
About 0.9 mile upstream of the Chessie System	*953
Tributary S1:	
Just downstream of the Chessie System	*924
Just upstream of the Chessie System	*937
Just downstream of State Route 1958	*937
Just upstream of State Route 1958	*942
Just downstream of Colby Road	*954
Tributary S4:	
At mouth	900
Just downstream of Louisville and Nashville Railroad	*922
Just upstream of Louisville and Nashville Railroad	*928
Just upstream of Interstate 64	*939
Tributary S5:	
About 600 feet upstream of mouth	*918
About 1,400 feet upstream of mouth	*921
Tributary S6:	
At mouth	*937
About 1,200 feet upstream of mouth	*951
Railroad Pond: Along shoreline	*953

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Lower Howard Creek:	
Just upstream of Fish and Game Club Road	*853
Just downstream of State Route 627	*896
Just upstream of State Route 627	*903
About 200 feet upstream of Colby Road	*962
Tributary H2:	
Just upstream of Colby Road	*959
About 650 feet upstream of Colby Road	*962
Tributary H3:	
Just downstream of Ashford Drive	*843
About 800 feet upstream of Ashford Drive	*851
Tributary H5: Within unincorporated areas	*907
Tributary H7:	
At mouth	*808
Just downstream of McClure Road	*830
Tributary M:	
At mouth	*810
Just downstream of West Meade Drive	*839
Tributary H8:	
At mouth	*875
Just downstream of McClure Road	*844
Tributary H10:	
At mouth	*895
Just downstream of McClure Road	*840
Tributary H11:	
At mouth	*900
Just downstream of Hillcrest Drive	*910
Just upstream of Hillcrest Drive	*922
About 700 feet upstream of Hillcrest Drive	*928
Town Branch:	
At mouth	*899
Just downstream of Louisville and Nashville Railroad	*906
Just upstream of Louisville and Nashville Railroad	*914
About 2,300 feet upstream of Louisville and Nashville Railroad	*915
Tributary T2:	
About 200 feet downstream of Interstate 64	*820
Just downstream of U.S. Route 60	*847
Just upstream of U.S. Route 60	*852
Just downstream of Abandoned Railroad	*962
Just upstream of Abandoned Railroad	*966
About 600 feet upstream of Winn Avenue	*978
Tributary T3:	
At mouth	*906
Just upstream of Interstate 64	*934
Maps available for inspection at the Clark County Courthouse, Winchester, Kentucky.	
Send comments to The Honorable James B. Allen, Judge Executive, Clark County, County Courthouse, Winchester, Kentucky 40391.	
Hawesville (City), Hancock County	
Ohio River: Within community	*401
Maps available for inspection at the City Hall, Hawesville, Kentucky.	
Send comments to Honorable Rick Embry, Mayor, City of Hawesville, City Hall, Hawesville, Kentucky 42348.	
Lewis County (Unincorporated Areas)	
Ohio River:	
At downstream county boundary	*518
At upstream county boundary	*535
Maps available for inspection at the County Courthouse, Vanceburg, Kentucky.	
Send comments to Honorable Jackie Ray Cooper, Judge Executive, Lewis County, County Courthouse, Vanceburg, Kentucky 41179.	
Lewisport (City), Hancock County	
Ohio River: Within community	*395
Maps available for inspection at the City Hall, Lewisport, Kentucky.	
Send comments to Honorable James B. Pell, Mayor, City of Lewisport, City Hall, Lewisport, Kentucky 42351.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Shepherdsville (City), Bullitt County	
Salt River:	
About 3 miles downstream of State Route 61	*447
About 1.5 miles upstream of Interstate 65	*451
Floyds Fork: Within community	*451
Maps available for inspection at the City Hall, P.O. Box 396, Shepherdsville, Kentucky.	
Send comments to The Honorable Adrain Jones, Mayor, City of Shepherdsville, City Hall, P.O. Box 396, Shepherdsville, Kentucky 40165.	
Vanceburg (City), Lewis County	
Ohio River: Within community	*527
Maps available for inspection at the Municipal Building, 609 Front Street, Vanceburg, Kentucky.	
Send comments to Honorable M.J. Cooper, Mayor, City of Vanceburg, Municipal Building, 609 Front Street, Vanceburg, Kentucky 41179.	
Wilmore (City), Jessamine County	
Town Branch:	
About 1,200 feet downstream of Butler Boulevard	*827
About 200 feet upstream of Bellview Avenue	*860
Maps available for inspection at the City Hall, 335 East Main Street, Wilmore, Kentucky.	
Send comments to Honorable Harold Rainwater, Mayor, City of Wilmore, City Hall, 335 East Main Street, Wilmore, Kentucky 40390.	
MAINE	
Belgrade (Town), Kennebec County	
Great Pond: Entire shoreline within the community	*249
Long Pond: Entire shoreline within the community	*242
Messalonskee Lake: Entire shoreline within the community	*236
Belgrade Stream: Entire shoreline within the community above Wings Mills Dam	*242
Belgrade Stream: Entire shoreline within the community below Wings Mills Dam	*236
Salmon Lake: Entire shoreline within the community	*279
Maps available for inspection at the Town Administrative Office Vault, Belgrade, Maine.	
Send comments to The Honorable Dorothy Guillotte, Chairman of the Town of Belgrade Board of Selectmen, Kennebec County, Town Office, Belgrade, Maine 04917.	
Litchfield (Town), Kennebec County	
Cobbosseecontee Stream:	
At downstream corporate limits	*139
Upstream side of Pond Road	*140
Upstream side of Dennis Hill Road	*141
Confluence of Dennis Brook	*142
Upstream corporate limits	*143
Cobbosseecontee Lake: Entire shoreline within community	*170
Little Purgatory Pond: Entire shoreline within community	*178
Woodbury Pond: Entire shoreline within community	*178
Sand Pond: Entire shoreline within community	*178
Pleasant Pond: Entire shoreline within community	*178
Baker Pond: Entire shoreline within community	*178
Jimmy Pond: Entire shoreline within community	*178
Upper Pleasant Pond: Entire shoreline within community	*139
Maps available for inspection at the Town Clerk's Office, Litchfield, Maine.	
Send comments to The Honorable Neal Bowdoll, Chairman of the Board of Selectmen of the Town of Litchfield, Kennebec County, Box 1290, Litchfield, Maine 04350.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
MARYLAND	
Prince Georges County (Unincorporated Areas), Maryland	
Potomac River:	
Downstream County boundary	*9
Upstream County boundary	*9
Piscataway Creek:	
At confluence with Potomac River	*9
Approximately 100 feet upstream of Indian Head Highway	*18
Upstream side of Piscataway Road	*23
Approximately 125 feet upstream of Wind Brook Drive	*49
Upstream side of Brandywine Road	*100
Upstream side of Surratts Road	*135
At confluence of House Branch	*155
Approximately 120 feet upstream of Woodyard Road	*193
Timkers Creek:	
At confluence with Piscataway Creek	*22
Upstream side of Rickety Bridge Farm Road	*47
Approximately 0.56 mile downstream of Steed Road	*100
Upstream side of Steed Road	*143
Upstream side of Temple Hills Road	*169
At confluence with Meetinghouse Branch	*215
Pea Hill Branch:	
At confluence with Timkers Creek	*143
Upstream side of Temple Hills Road	*170
Approximately 130 feet upstream of Old Branch Avenue	*211
Burch Branch:	
At confluence with Piscataway Creek	*47
Approximately 175 feet upstream of Springfield Road	*96
Meetinghouse Branch:	
At confluence with Timkers Creek	*215
Approximately 315 feet upstream of Old Branch Avenue	*238
Broad Creek:	
At confluence with Potomac River	*10
At confluence with Henson Creek	*19
Henson Creek:	
At confluence with Broad Creek	*19
Approximately 50 feet upstream of Tucker Road	*70
Approximately 100 feet upstream of Brinkley Road	*119
Upstream side of Interstate 95 (Capital Beltway) downstream crossing	*146
Upstream side of Sultland Road	*197
Approximately 100 feet upstream of Interstate 95 (Capital Beltway) upstream crossing	*236
Hunters Mill Branch:	
At confluence with Broad Creek	*19
Upstream side of Indian Head Highway	*39
Approximately 1.1 miles upstream of Indian Head Highway	*105
Unnamed Tributary to Broad Creek:	
At confluence with Broad Creek	*10
Approximately 1,050 feet downstream of Parkton Street	*33
Mattawoman Creek:	
At downstream County boundary	*83
Upstream side of Beatie Hill Road	*100
Upstream side of Gardener Road	*152
Approximately 0.21 mile downstream of Cedarville Road	*189
Timothy Branch:	
At confluence with Mattawoman Creek	*170
Upstream side of Crain Highway	*187
Approximately 1.34 miles upstream of Crain Highway	*200
Approximately 1,000 feet upstream of Brandywine Road	*216
Oxon Run:	
At downstream County boundary	*11
At confluence of Barnaby Run	*22
Approximately 1,100 feet downstream of 23rd Parkway	*107
Upstream side of Branch Avenue	*151
Upstream side of Sultland Road	*175
Approximately 0.24 mile upstream of Pennsylvania Avenue	*203

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Patuxent River:	
At downstream County boundary	*7
Upstream side of State Route 214	*29
Upstream side of CONRAIL	*68
Upstream side of Baltimore Washington Parkway	*115
Downstream side of Rocky Gorge Dam	*172
Western Branch:	
At confluence with Patuxent River	*8
Upstream side of State Route 4	*25
Upstream side of State Route 202	*61
Approximately 0.43 mile upstream of Lottsford Road	*92
Collington Branch:	
At confluence with Western Branch	*26
Upstream side of Oak Grove Road	*82
Upstream side of Mount Oak Road	*100
Approximately 500 feet downstream of CONRAIL	*120
Charles Branch:	
At confluence with Western Branch	*8
Approximately 120 feet upstream of CONRAIL	*43
Upstream side of Crain Highway	*75
Approximately 130 feet upstream of Woodyard Road	*150
Southwest Branch:	
At confluence with Western Branch	*58
Upstream side of Harry S. Truman Drive	*86
Approximately 200 feet upstream of Interstate 95 (Capital Beltway)	*116
Approximately 120 feet upstream of Walker Mill Road	*145
Approximately 0.25 mile downstream of Kipling Parkway	*183
Lottsford Branch:	
At confluence with Western Branch	*82
Upstream side of Chantilly Lane	*108
Approximately 260 feet upstream of Annapolis Road	*129
Northeast Branch Western Branch:	
At confluence with Western Branch	*74
Approximately 270 feet upstream of Woodmore Road	*106
Folly Branch:	
At confluence with Lottsford Branch	*98
Upstream side of U.S. Route 50	*108
Upstream side of Baltimore Lane	*115
Approximately 300 feet upstream of Lanham Severn Road	*127
Bald Hill Branch:	
At confluence with Bald Hill Branch	*92
Upstream side of George N. Palmer Highway	*115
Upstream side of State Route 450	*124
Approximately 0.2 mile upstream of Good Luck Road	*142
Federal Spring Branch:	
At confluence with Western Branch	*29
Upstream side of State Route 408	*37
Approximately 170 feet upstream of Ritchie Marlboro Road	*85
Ritchie Branch:	
At confluence with Southwest Branch	*145
Upstream side of Ritchie Road	*161
Approximately 0.42 mile upstream of Ritchie Road	*170
Horsepen Branch:	
At confluence with Patuxent River	*51
Upstream side of Laurel Bowie Road	*77
Upstream side of High Bridge Road approximately 60 feet upstream of CONRAIL	*100
Approximately 600 feet upstream of Hillmeade Road	*129
Bear Branch:	
At downstream County boundary	*145
At most upstream County boundary	*194
Approximately 70 feet upstream of Van Dusen Road	*223
Approximately 220 feet upstream of Contee Road	*236
Anacostia River:	
At downstream County boundary	*16
Upstream side of Bladensburg Road	*17
At confluence with Northeast and Northwest Branch Anacostia River	*16

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Northeast Branch Anacostia River:	
At confluence with Anacostia River	*16
Upstream side of Riverdale Road	*32
At confluence with Indian Creek and Paint Branch	*47
Northwest Branch Anacostia River:	
At confluence with Anacostia River	*16
Approximately 50 feet upstream of Queens Chapel Road	*35
Upstream side of East West Highway	*54
Upstream side of Riggs Road	*92
Approximately 140 feet upstream of Piney Branch Road	*120
Paint Branch:	
At confluence with Northeast Branch Anacostia River	*47
Upstream side of Metzerott Road	*75
Upstream side of Interstate 95 (southbound)	*114
Approximately 500 feet upstream of County boundary	*156
Indian Creek:	
At confluence with Northeast Branch Anacostia River	*47
Upstream side of Cherrywood Lane	*72
Upstream side of Old Baltimore Pike	*107
Upstream side of Ammendale Road	*166
Approximately 400 feet upstream of Interstate 95	*194
Beaverdam Creek:	
At confluence with Anacostia River	*16
Upstream side of CONRAIL (2nd upstream crossing)	*29
Upstream side of Beaver Road	*41
Upstream side of Old Landover Road	*53
Upstream side of CONRAIL (5th upstream crossing)	*78
Approximately 300 feet upstream of John Hanson Highway	*80
Little Paint Branch:	
At confluence with Paint Branch	*84
Upstream side of Interstate 95 (Capital Beltway)	*106
Upstream side of Sellman Road	*134
Upstream side of Briggs Chaney Road	*166
Approximately 400 feet upstream of Greencastle Road	*243
Sligo Creek:	
At confluence with Northwest Branch Anacostia River	*41
Upstream side of East West Highway	*79
Upstream side of New Hampshire Avenue	*101
At upstream County boundary	*135
Brier Ditch:	
At confluence with Northeast Branch Anacostia River	*39
Approximately 140 feet upstream of Baltimore Washington Parkway	*56
Approximately 230 feet upstream of Auston Road	*62
Long Branch:	
At confluence with Sligo Creek	*104
Approximately 0.31 mile upstream of confluence with Sligo Creek	*140
At upstream County boundary	*164
Cabin Branch:	
At confluence with Beaverdam Creek	*30
Approximately 100 feet upstream of Sheriff Road	*60
Upstream side of Seat Pleasant Road	*74
Approximately 200 feet upstream State Route 214	*105
Ammendale Branch:	
At confluence with Indian Creek	*123
Upstream side of Ammendale Road	*141
Approximately 460 feet upstream of Virginia Manor Road	*172
Muirkirk Branch:	
At confluence with Indian Creek	*120
Approximately 0.55 mile upstream of confluence with Indian Creek	*127
Barnaby Run:	
At confluence with Oxon Run	*22
Upstream side of Southern Avenue	*42
At upstream County boundary	*49

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cowe Branch:	
Approximately 720 feet downstream of Bowie Road	*139
At U.S. Route 1	*153
Maps available for inspection at the Construction Standards Division, County Administration Building, Upper Marlboro, Maryland.	
Send comments to The Honorable Parris Glendening, Prince Georges County Executive, County Administration Building, Upper Marlboro, Maryland 20772.	
MASSACHUSETTS	
Braintree (Towns) Norfolk County	
Weymouth Fore River:	
Shoreline at Argyle Road (extended)	*12
Shoreline at View Avenue (extended)	*15
Monatiquot River:	
Upstream of Quincy Avenue	*12
Upstream side of McCuster Drive	*31
Upstream side of Middle Street	*56
Upstream side of State Route 3	*65
Upstream side of Lower Armstrong Dam	*89
Confluence with Farm and Cochato Rivers	*105
Cochato River:	
Confluence with Monatiquot River	*105
Upstream side of Richard Reservoir Dam No. 1	*107
Approximately 120 feet upstream of upstream corporate limits	*108
Farm River:	
Confluence with Monatiquot river	*105
Upstream side of Granite Street	*119
At upstream corporate limits	*121
Town Brook:	
At downstream corporate limits	*84
Upstream side of Walnut Street	*54
Upstream side of Braintree Dam	*92
Upstream side of Interstate 93/State Route 128	*95
Approximately 270 feet upstream of Wood Road	*98
Maps available for inspection at the Engineering Department, Town Hall, 1 JFK Memorial Drive, Braintree, Massachusetts.	
Send comments to Honorable Edward Wynot, Chairman of the Board of Selectmen for the Town of Braintree, Town Hall, 1 JFK Memorial Drive, Braintree, Massachusetts 02157.	
MICHIGAN	
Huron (Township), Wayne County	
North Branch Swan Creek:	
About 400 feet upstream from Will Carleton Drive	*613
About 300 feet downstream of confluence of Townline Drain	*623
Hand Drain:	
Just upstream of confluence with Silver Creek	*689
Just downstream of Van Buren Lane	*646
Maps available for inspection at the Supervisor's Office, Huron, Township Hall, 37280 Huron River Drive, New Boston, Michigan.	
Send comments to Honorable Ralph V. Dugan, Supervisor, Township of Huron, 37280 Huron River Drive, New Boston, Michigan 48164.	
Taylor (City), Wayne County	
Sexton—Hilloll Drain:	
Just upstream of Pelham Road	*602
About 1,750 feet upstream of Holland Road	*624
North Branch Eccorse Creek:	
Just upstream of Pelham Road	*604
About 775 feet upstream of Harold Road	*621
Reark and Reel Drain:	
Just upstream of Allen Road	*601
Just downstream of Inkster Road	*624
Sutliff and Kenaga Drain:	
Just upstream of North Line Road	*609
Just downstream of Inkster Road	*627

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Stately Drain:	
Just upstream of Pennsylvania Road (near Conrail)	*609
Just downstream of Pennsylvania Road (at upstream corporate limits)	*615
Brighton Drain: Within community	*606
Maps available for inspection at the Director of Public Works Office, City Hall, 23555 Goddard, Taylor, Michigan.	
Send comments to Honorable Cameron G. Preba, Mayor, City of Taylor, City Hall, 23565 Goddard, Taylor, Michigan 48180.	
MISSOURI	
Annada (Village), Pike County	
Mississippi River: Within community	*454
Maps available for inspection at the Mayor's House, Annada, Missouri.	
Send comments to The Honorable Rose Cank, Mayor, Village of Annada, P.O. Box 85, Annada, Missouri 63330.	
Augusta (Village), St. Charles County	
Missouri River: Within Community	*484
Maps available for inspection at the Chairman's House, 311 Green Street, Augusta, Missouri.	
Send comments to The Honorable Melvin Fuhr, Chairman, Town Board, Village of Augusta, P.O. Box 87, Augusta, Missouri 63332.	
Carroll County (Unincorporated Areas)	
Missouri River:	
At confluence of Grand River	*646
About 1.9 miles upstream of confluence of Tabo Creek	*682
Maps available for inspection at the County Assessor's Office, County Courthouse, Carrollton, Missouri.	
Send comments to The Honorable Charles Lybarger, County Commissioner, Carroll County Courthouse, Carrollton, Missouri 64633.	
Flinthill (Village), St. Charles County	
Dry Branch:	
About 0.32 mile downstream of U.S. Highway 61	*466
Just downstream of U.S. Highway 61	*479
Maps available for inspection at the City's Clerk's House, 5040 Highway P, Flinthill, Missouri.	
Send comments to The Honorable Barry Auchly, Mayor, Village of Flinthill, Town Hall, Flinthill, Missouri 63346.	
Manitreau County (Unincorporated Areas)	
Missouri River:	
About 3.4 miles downstream of confluence of Factory Creek	*572
About 3.7 miles upstream of confluence of Petite Saline Creek	*588
Maps available for inspection at the County Commission, California, Missouri.	
Send comments to The Honorable J. George Allen, Presiding Commissioner, County Commission, Montreau County, County Courthouse, California, Missouri 65018.	
NORTH DAKOTA	
Minden (City), Morton County	
Missouri River: 800 feet upstream from centerline of Burlington Northern Railroad Bridge	*1,886
Heart River—With consideration of Levees: 50 feet upstream from State Highway 6 (40th Avenue SW) bridge	*1,656
Heart River—Without Consideration of Levees: At the intersection of 3rd Street SW and State Highway 6 (10th Avenue SW)	*1,660

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for review at the City Engineer's Office 205 2nd Avenue, NW, Minden, North Dakota.	
Send comments to The Honorable Sharon Schafer, 205 2nd Avenue, NW, Minden, North Dakota 58554.	
Morton County (Unincorporated Areas)	
Missouri River: At the confluence with the Heart River	*1,634
Heart River—With Consideration of Levees: 50 feet upstream from center of Burlington Northern Railroad Bridge	*1,668
Heart River—Without Consideration of Levees: At intersection of Dead Heart Slough and an Unnamed Road approximately 300 feet South of the Burlington Northern Railroad along the Channel of Dead Heart Slough	*1,659
Maps available for review at the County Engineer's Office, 205 2nd Avenue, NW, Minden, North Dakota.	
Send comments to The Honorable Ray Knoll, Chairman, Morton County Commissioners, Morton County Courthouse, Minden, North Dakota 58554.	
OREGON	
Malheur County (Unincorporated Areas)	
Snake River (Vicinity of Annex): At the intersection of 1st Street and River Road	*2,103
Snake River (Vicinity of Ontario): At Union Pacific railroad	*2,142
Snake River (Vicinity of Adrian): At County Road 454	*2,201
Malheur River (Vicinity of Ontario): At the intersection of Malheur drive and Clark Boulevard	*2,158
Malheur River (Vicinity of Vale): At the center of the west bound lane of U.S. Highway 20 and 26	*2,236
Bully Creek: At the center of U.S. Highway 20	*2,258
Willow Creek: At the intersection of road and Vale View Road, 200 feet north of southwest corner of Section 8, T16S, R45E	*2,252
Willow Creek Shallow Flooding: 300 feet north from the intersection of Foothill Drive and Pioneer Lane	*2,230
Jordan Creek: Approximately 1,950 feet southeast on U.S. Highway 95 from the intersection of U.S. Highway 95 and Ackerman Road	*4,367
Maps available for inspection at the Malheur County Courthouse, 251 B Street, SW., Vale, Oregon.	
Send comments to the County Judge Maxwell Lieurance, Malheur County Courthouse, 251 B Street, SW, Vale, Oregon 97918.	
Pendleton (City), Umatilla County	
Umatilla River: At Main Street	*1,067
Tutuilla Creek: Approximately 100 feet upstream of the center of Tutuilla Street (County Road 382)	*1,069
Motley Creek: At the intersection of Southwest Perkins and Southwest 44th street	*1,060
Nelson Creek: Approximately 500 feet upstream of the center of Northgate Bridge	*1,059
Raines Creek: Approximately 470 feet upstream of the center of Tutuilla Street	*1,066
Maps available for inspection at the Planning Department, City Hall, P.O. Box 688, Pendleton, Oregon.	
Send comments to Mr. John S. Nelson, City Manager, P.O. Box 160 Pendleton, Oregon 97801.	
Tualatin (City), Washington County	
Tualatin River: Along Opata Road 1,600 feet south of Southwest Pacific Highway (West 99)	*129
Nyberg Slough: At Interstate Highway 5	*122
Maps available for review at the City Engineer's Office, 18880 SW Martinazzi Avenue, Tualatin, Oregon.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to the Honorable Lusanne Thielke, Mayor, City of Tualatin, P.O. Box 369, Tualatin, Oregon 97062.	
PENNSYLVANIA	
Carrion (Township), Washington County	
Chartiers Creek:	
Downstream corporate limits	*996
Upstream side of Wallace Lane	*1,006
Upstream side of West Wylie Avenue	*1,012
Downstream side of Caldwell Avenue	*1,024
Upstream corporate limits	*1,030
Log Pile Run:	
Confluence with Chartiers Creek	*1,025
Downstream side of Prigg Road	*1,040
Downstream side of Weirich Avenue	*1,066
Catfish Creek:	
Confluence with Chartiers Creek	*1,013
Upstream side of Interstate Route 70	*1,017
Upstream corporate limits	*1,025
Georges Run:	
Confluence with Chartiers Creek	*1,006
Appoximately 0.5 mile upstream of Chartiers Creek confluence	*1,006
Woltdale Run:	
Confluence with Chartiers Creek	*1,008
Downstream side of Boone Avenue	*1,020
Upstream side of Hewitt Avenue	*1,030
Downstream side of McCley Road	*1,050
Downstream side of Old Johnson Lane	*1,064
Downstream side of Jefferson Avenue	*1,076
Approximately 1,500 feet upstream of Jefferson Avenue	*1,062
Maps available for inspection at the Township Building, 655 Grove Avenue, Washington, Pennsylvania.	
Send comments to The Honorable Eugene Foster, Chairman of the Township of Canton Board of Supervisors, Washington County, R.D. 3, Box 237, Washington, Pennsylvania 15301.	
Ferndale (Borough), Cambria County	
Stony Creek:	
Approximately 450 feet downstream of State Route 403	*1,191
Approximately 100 feet upstream of upstream corporate limits	*1,204
Maps available for inspection at the Municipal Building, 109 Station Street, Johnstown, Pennsylvania.	
Send comments to The Honorable John A. Robinson, Mayor of the Borough of Ferndale, Cambria County, 900 Suter Street, Johnstown, Pennsylvania 15905.	
Harmony (Township), Forest County	
Allegheny River:	
Downstream corporate limits	*1,059
Approximately 450 feet upstream of West Hickory Highway	*1,074
At County boundary	*1,089
Maps available for inspection with the Township Secretary, Mary Remington, Box 208, West Hickory, Pennsylvania.	
Send comments to The Honorable David W. Manross, Chairman of the Township of Harmony Board of Supervisors, Forest County, Box 166, R.D. 1, Tidioute, Pennsylvania 16351.	
Hickory (Township), Forest County	
Allegheny River:	
At corporate limits	*1,061
Approximately 700 feet upstream of West Hickory Highway	*1,074
At County boundary	*1,089
Maps available for inspection with Secretary Mary A. Goochee, Box 485, East Hickory, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Alton Z. Hall, Chairman of the Township of Hickory Board of Supervisors, Forest County, Box 605, East Hickory, Pennsylvania 16321.	
Hunker (Borough), Westmoreland County	
Belson Run:	
Downstream corporate limits	*935
Upstream side of Walnut Street	*957
Approximately .26 mile upstream of Walnut Street	*960
Upstream corporate limits	*1,008
Maps available for inspection at the Borough Building, Hunker, Pennsylvania.	
Send comments to The Honorable Daniel Muir, Mayor of the Borough of Hunker, Westmoreland County, Box 31, Hunker, Pennsylvania 15639.	
Paint (Borough), Somerset County	
Paint Creek:	
Downstream corporate limits	*1,590
Upstream side of State Route 56	*1,815
Upstream side of State Route 601	*1,662
Upstream corporate limits	*1,668
Approximately 400 feet upstream of corporate limits	*1,670
Maps available for inspection at the Borough Building, 807 Main Street, Windber, Pennsylvania.	
Send comments to The Honorable Richard P. Divido, Council President of the Borough of Paint, 701 Main Street, Windber, Pennsylvania 15963.	
Scalp Level (Borough), Cambria County	
Paint Creek:	
Downstream corporate limits	*1,548
Upstrelm side of State Route 56	*1,610
At confluence of Little Paint Creek	*1,626
Little Paint Creek:	
At confluence with Paint Creek	*1,626
Upstream side of Bridge Street	*1,674
Upstream corporate limits	*1,735
Sheet flow: South of CONRAIL and North Brantly Road	#1
Maps available for inspection at the Borough Building, 152 Richland Avenue, Scalp Level, Pennsylvania.	
Send comments to The Honorable Leonard Gosnell, Mayor of the Borough of Scalp Level, 152 Richland Avenue, Scalp Level, Pennsylvania 15963.	
Southwest Greensburg (Borough), Westmoreland County	
Jacks Run:	
Downstream corporate limits	*986
Upstream corporate limits	*997
Zellers Run:	
At confluence with Jacks Run	*987
Upstream corporate limits	*1,018
Maps available for inspection at the Municipal Building, 422 Brandon Street, Greensburg, Pennsylvania.	
Send comments to The Honorable James L. Hayden, Jr., Mayor of the Borough of Southwest Greensburg, Westmoreland County, 703 Green Street, Greensburg, Pennsylvania 15601.	
Tionesta (Borough), Forest County	
Allegheny River:	
Approximately 0.61 mile downstream of U.S. Route 62	*1,049
Approximately 1.21 mile upstream of U.S. Route 62	*1,052
Maps available for inspection at the Borough Building, 210 Elm Street, Tionesta, Pennsylvania.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Thomas Greenlee, Mayor of the Borough of Tionesta, Forest County, P.O. Box 98, Tionesta, Pennsylvania 16353.	
Washington (City), Washington County	
Catfish Creek:	
Approximately 950 feet downstream of the downstream corporate limits	*1,021
Upstream side of West Maiden Street	*1,041
Upstream side of South College Street	*1,063
Upstream side of Rosewood Avenue	*1,097
At upstream corporate limits	*1,127
Chartiers Creek:	
Approximately 1,130 feet downstream of most downstream CONRAIL bridge	*999
Approximately 375 feet upstream of upstream corporate limits	*1,010
Maps available for inspection at the City Hall, 55 West Maiden Street, Wshington, Pennsylvania.	
Send comments to The Honorable L. Anthony Sposesy, Mayor of the City of Washington, Washington County, City Hall, 55 West Maiden Street, Washington, Pennsylvania 15301.	
South Carolina	
Charleston (City), Charleston County	
Atlantic Ocean:	
About 1,980 feet west along Bees Ferry Road from the intersection of Bees Ferry Road and Shadowmoss Drive	*8
At the intersection of U.S. Route 17 and Farmfield Avenue	*11
Along Ashley River from State Route 7 to the confluence of Church Creek	*13
About 1.5 miles west of the intersection of McIntyre Road and Ferguson Road	*15
At the intersection of Laurens Street and Marsh Street	*16
Entire shoreline of Town Creek	*17
Maps available for inspection at the City Hall, 80 Broad Street, Charleston, South Carolina.	
Send comments to Honorable Joseph P. Riley, Jr., Mayor, City of Charleston, City Hall, 80 Broad Street, Charleston, South Carolina 29402.	
Hollywood (Town), Charleston County	
Atlantic Ocean:	
Just downstream of U.S. Route 17 bridge over Wallace River (about 1.85 miles east of the intersection of State Route 162 and U.S. Route 17)	*7
At the mouth of Log Bridge Creek	*12
At the intersection of Baptist Hill Road and Toogoodoo Road	*12
Maps available for inspection at the City Hall, Hollywood, South Carolina.	
Send comments to Honorable Lela Dickerson, Mayor, Town of Hollywood, City Hall, P.O. Box 619, Hollywood, South Carolina 29448.	
Isle of Palms (City), Charleston County	
Atlantic Ocean:	
At the intersection of Palm Boulevard and 30th Avenue	*12
At the intersection of Palmetto Drive and Racquet Club Road	*13
Along shoreline	*19
Maps available for inspection at the Town Hall, Isle of Palms, South Carolina.	
Send comments to Honorable Carmen Bunch, Mayor, City of Isle of Palms, Town Hall, 1301 Palm Boulevard, Isle of Palms, South Carolina 29451.	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Meggett (Town), Charleston County	
Atlantic Ocean:	
At the confluence of Lower Toogoodoo Creek with Toogoodoo Creek	*12
At the intersection of Church Street and State Route 165	*12
About 1.0 mile south of the intersection of Little Britton Road and Kings Point Road	*15
Maps available for inspection at the City Hall, Meggett, South Carolina.	
Send comments to Honorable G.S. Coffin, Mayor, Town of Meggett, P.O. Box 34A, Meggett, South Carolina 29460.	
Mount Pleasant (Town), Charleston County	
Atlantic Ocean:	
At the intersection of Cesseque Province and Chersonese Round	*11
Along Shem Creek from Bowman Road to U.S. Route 17	*12
At the intersection of Center Street and Yonge Street	*13
Just upstream of U.S. Route 17 bridge over Cooper River	*14
About 600 feet south of the intersection of William Street and Pitt Street	*15
Maps available for inspection at the Town Hall, Mt. Pleasant, South Carolina.	
Send comments to Honorable Richard L. Jones, Mayor, Town of Mount Pleasant, Town Hall, 302 Pitt Street, Mt. Pleasant, South Carolina 29404.	
North Charleston (City), Charleston County	
Atlantic Ocean:	
Along Popperdam Creek from Dorchester Road to about 0.64 mile upstream of Dorchester Road	*7
About 600 feet south of the intersection of Gwinett Street and Dedrich Street	*9
Along Filbin Creek from Virginia Avenue to Interstate 26	*12
At the mouth of Shipyard Creek	*15
About 2,500 feet Southeast of the intersection of Interstate 26 and State Route 7	*16
Maps available for inspection at the City Hall, P.O. Box 10100, North Charleston, South Carolina.	
Send comments to Honorable John Bourne, Mayor, City of North Charleston, City Hall, P.O. Box 10100, North Charleston, South Carolina 29411.	
Sullivans Island (Township), Charleston County	
Atlantic Ocean:	
At the intersection of Middle Street and Station 16 Street	*12
At the intersection of Conquest Avenue and Middle Street	*14
Along shoreline from about 1,500 feet south of intersection of Atlantic Avenue and Station 17 Street to about 400 feet east of the intersection of Station 30 Street and Marshall Boulevard	*19
Maps available for inspection at the Town Hall, 1610 Middle Street, Sullivans Island, South Carolina.	
Send comments to Honorable C. Melvin Andergg, Mayor, Township of Sullivans Island, Town Hall, 1601 Middle Street, Sullivans Island, South Carolina 29492.	
TEXAS	
Fort Bend County MUD #26	
Red Gully:	
Upstream side of Old Richmond Road	*80
Approximately 0.66 mile upstream of Old Richmond Road	*82

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at 1901 Fannin Street, Houston, Texas.	
Send comments to Mr. Larry Nettles, Vinson & Elkins, Attorneys at Law, 2800 First City Tower, Houston, Texas 77002.	
WEST VIRGINIA	
Mannington (City), Marion County	
Buffalo Creek:	
Downstream corporate limits	*964
Upstream side of High Street (downstream crossing)	*972
Upstream side of Haugh Street	*976
Upstream corporate limits	*977
Pyles Fork:	
Confluence with Buffalo Creek	*975
Upstream corporate limits	*976
Maps available for inspection at the City Hall, 206 Main Street, Mannington, West Virginia.	
Send comments to The Honorable Delbert Huey, Mayor of the City of Mannington, Marion County, City Hall, 206 Main Street, Mannington, West Virginia 26582.	
WISCONSIN	
Belmont (Village), Lafayette County	
Bonner Branch:	
Just downstream of County Highway G	*1,004
About 1,800 feet upstream of Chicago, Milwaukee, St. Paul & Pacific Railroad	*1,024
Unnamed Tributary:	
At mouth	*1,014
Just downstream of U.S. Highway 151	*1,019
Maps available for inspection at the Village Hall, Box 192, Belmont, Wisconsin.	
Send comments to The Honorable Cletus Cushion, Village President, Village of Belmont, Village Hall, Box 192, Belmont, Wisconsin 53510.	
Boyceville (Village), Dunn County	
Tiffany Creek:	
At northern corporate limits	*939
About 1,400 feet upstream of Duffy Street	*956
East Drainageway:	
At mouth	*944
About 1,500 feet upstream of Second Street	*949
West Drainageway:	
At mouth	*946
About 1,950 feet upstream of Field Road	*951
Maps available for inspection at the Village Hall, Boyceville, Wisconsin.	
Send comments to Honorable E.S. Evenson, Village President, Village of Boyceville, Village Hall, Box 363, Boyceville, Wisconsin 54725.	
Gratiot (Village), Lafayette County	
Pecatonica River: Within community	*803
Maps available for inspection at the Clerk Treasurer's Office, Village Hall, Gratiot, Wisconsin.	
Send comments to The Honorable LaVerne Griffiths, Village President, Village of Gratiot, Village Hall, Box 182, Gratiot, Wisconsin 53541.	
Lafayette County (Unincorporated Areas)	
Pecatonica River:	
At downstream county boundary	*790
Just downstream of U.S. Highway 151	*862
East Branch Pecatonica River:	
At mouth	*790
About 3.4 miles upstream of State Highway 78	*820
Blue Mounds Branch: Within county	*820
Vinegar Branch:	
About 0.14 mile upstream of mouth	*824
Just downstream of County Highway F	*832
Wood Branch:	
At mouth	*892
Just downstream of County Highway O	*897

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Bonner Branch:	
At mouth	*834
Just upstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad (about 18.5 miles above mouth	*1,036
Mineral Point Branch:	
At mouth	*839
About 0.84 mile upstream of East Oak Park Road	*861
Galena River:	
About 0.68 mile downstream of County Highway H	*852
About 0.31 mile upstream of confluence of Pat's Creek	*866
New Diggings Tributary:	
About 0.14 mile upstream of mouth	*737
About 0.18 mile upstream of Ollie Bell Road	*797
Maps available for inspection at the Zoning Administrator's Office, County Courthouse, Darlington, Wisconsin.	
Send comments to The Honorable Richard McKnight, Chairman, County Board of Commissioners, Lafayette County, County Courthouse, Darlington, Wisconsin 53530.	
Mellen (City), Ashland County	
Bad River:	
About 0.75 mile downstream of East Tyler Street	*1,223
At western corporate limits	*1,237
Devils Creek:	
At mouth	*1,227
About 4,200 feet upstream of First Avenue	*1,250
Maps available for inspection at the Clerk's Office, City Hall, 102 Bennett Street, Mellen, Wisconsin.	
Send comments to The Honorable Robert Holmes, III, Mayor, City of Mellen, City Hall, 102 Bennett Street, Mellen, Wisconsin 54546.	
South Wayne (Village), Lafayette County	
Pecatonica River: Within community	*790
Maps available for inspection at the Village Clerk's Office, Village Hall, South Wayne, Wisconsin.	
Send comments to The Honorable Buddy E. Mau, Village President, Village of South Wayne, Village Hall, P.O. Box 305, South Wayne, Wisconsin 53587.	

Issued: February 12, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-3750 Filed 2-21-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-57; RM-4940]

FM Broadcast Station, Hazard, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot FM Channel 284A to Hazard, Kentucky as that community's first FM channel in response to a petition filed by Perry Broadcasting.

DATES: Comments must be filed on or before April 11, 1986, and reply comments on or before April 28, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 308. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 308, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Hazard, Kentucky).

Adopted: January 29, 1986.
Released: February 18, 1986.
By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by Perry Broadcasting, a partnership consisting of John E. Edwards and Kenneth R. Comb ("petitioner") requesting the allotment of FM Channel 223A to Hazard, Kentucky as that community's first FM channel. Petitioner has expressed an intention to apply for the channel, if allotted. In order to avoid a conflict with another pending proposal to allot Channel 222A to Hyden, Kentucky (RM-4930), we have determined that, as an alternative, Channel 284A can be allotted to Hazard. Channel 284A can be allocated in compliance with the Commission's minimum distance separation requirements.

2. In view of the fact that the proposed allotment could provide a first FM service to Hazard, Kentucky, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules for the following community.

City	Channel No.	
	Present	Proposed
Hazard, KY		284A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before April 11, 1986, and reply comments on or before April 28, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John E. Edwards, President, Perry Broadcasting, P.O. Box 928, Hazard, Kentucky 41701.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes and *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceedings, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

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5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished to the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-3824 Filed 2-21-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-55; RM-5161]

FM Broadcast Station in Atmore, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 290A at Atmore, Alabama, as that community's second local FM service, in response to a petition filed by Alabama Native American Broadcasting Company.

DATES: Comments must be filed on or before April 11, 1986, and reply comments on or before April 28, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, Atmore, Alabama; MM Docket No. 86-55 and RM-5161.

Adopted: January 24, 1986.
Released: February 18, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rulemaking filed by Alabama Native American Broadcasting Company ("petitioner") seeking the allotment of Channel 254A [1] to Atmore, Alabama, as that community's second local FM service. Petitioner indicates that it will apply for the channel, if it is allotted.

2. A staff engineering study has determined that Channel 254A at Atmore would be short-spaced to two pending proposals to allot that channel to either Chatom, Alabama (RM-4629) or to Chickasaw, Alabama (RM-5108). Moreover, petitioner's proposal would not provide the 16 kilometer protected buffer zone to Class C Stations WKYD-FM (Channel 251), Andalusia, Alabama and WPMO (FM) (Channel 256), Pascagoula, Mississippi. However, in an effort to accommodate petitioner's expressed interest, we have determined that Channel 290A can be allotted to Atmore with a site restriction 4.8 kilometers (3.0 miles) southwest of the community to negate a short-spacing to Class C Station WRJM(FM) (Channel 289), Troy, Alabama.

3. Although petitioner indicated an interest in applying for Channel 254A, in view of our proposed action herein, it should advise in its comments whether it now will apply for Channel 290A, if it is indeed allotted to Atmore.

4. We believe the petitioner's proposal warrants consideration since it could provide a second local FM service at Atmore for the expression of diverse comments and programming. Therefore, we shall seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Atmore, AL	261	261, 290A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 11, 1986, and reply comments on or before April 28, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: M. Scott Johnson, Esq., Lynn M. Clancy, Esq., Gardner, Carton & Douglas, Suite 1050, 1875 Eye Street, NW., Washington, DC 20006-5472, (Counsel for Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-3822 Filed 2-21-86; 8:45 am]

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[1] Initially, petitioner requested Channel 254C2. However, in a Supplement to its petition for rule-making, petitioner corrected its proposal to request consideration of Channel 254 as a Class A facility.

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47 CFR Part 73

[MM Docket No. 86-56; RM-5128]

FM Broadcast Station in Mariposa, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 280A to Mariposa, California, as that community's second local FM broadcast service, in response to a petition filed by Charles S. Hughes.

DATES: Comments must be filed on or before April 11, 1986, and reply comments on or before April 28, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, Mariposa, California; MM Docket No. 86-56 and RM-5128.

Adopted: January 24, 1986.
Released: February 18, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Charles S. Hughes ("petitioner") requesting the allotment of Channel 280A to Mariposa, California, as that community's second local FM service. Petitioner indicates that he will apply for the channel, if allotted.

2. A staff engineering study reveals that Channel 280A can be allotted to Mariposa in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided the transmitter is sited in an area approximately 0.8 kilometers (0.5 miles) north of the community to avoid short-spacing to Station KMGX(FM) (Channel 279), Hanford, California.

3. In view of the fact that the proposal could provided a second local FM service to Mariposa for the expression of diverse viewpoints and programming selection, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Mariposa, CA	242	242, 280A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note. A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 11, 1986, and reply comments on or before April 28, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, as follows: Charles S. Hughes, Box 2442, Merced, CA 95344.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 F.R. 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte*

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presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is proposed to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room and its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-3923 Filed 2-21-86; 8:45 am]

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47 CFR Part 73

[MM Docket No. 86-59; RM-5062]

FM Broadcast Station in Eagle and Lincoln, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 287A to Lincoln, Nebraska, as that community's sixth local FM service or to Eagle, Nebraska, as that community's first local service, at the request of Jerrell E. Kautz.

DATES: Comments must be filed on or before April 11, 1986, and reply comments on or before April 28, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rulemaking

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, Eagle and Lincoln, Nebraska; MM Docket No. 86-59 and RM-5062.

Adopted: January 29, 1986.
Released: February 18, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Jerrell E. Kautz ("petitioner") requesting the allocation of FM Channel 287A on a hyphenated basis to Eagle-Lincoln, Nebraska. Petitioner states that he will apply for the frequency, if allocated.

2. Petitioner states that if the allocation is made to Eagle-Lincoln, it would provide a sixth local service to Lincoln and a first local service to Eagle and would serve a population of over 250,000 persons. Hyphenation is an allocation tool which we have used very sparingly. In the past, we have done so only where it appeared that the communities should be treated as one due to their nearness and mutual economic, trade, cultural and social interests, etc. Lincoln (population 171,932,)[1] in Lancaster County (population 192,884), is the capital of the State of Nebraska. It currently receives local FM service from five stations. Eagle, located 21 kilometers (13 miles) from Lincoln, is not listed in the U.S. Census nor in the Rand-McNally Atlas (1984 Edition). Petitioner has not provided us with any information to justify allocating Channel 287A to Lincoln-Eagle on a hyphenated basis.

3. Further, as noted above, we are unable to confirm that Eagle is a community for allocation purposes. Section 307(b) of the Communications Act of 1934, as amended, requires that channel allocations be made to a "community" which has been defined as a geographically identifiable population grouping. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. However, absent such

[1] Population figures are taken from the 1980 U.S. Census.

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recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a "community" for allocation purposes. See, *e.g., Ansley, Alabama*, 48 FR 48688, published December 3, 1981; *Cascade Village, Colorado*, 48 FR 19917, published May 3, 1983; *Red Rock, Georgia*, 48 FR 36170, published August 9, 1983, and cases cited therein. Therefore, petitioner should submit information to demonstrate whether it has any business, social organizations, or governmental units that identify themselves with Eagle, if he desires the allotment at Eagle.

4. We believe that petitioner's proposal to provide Lincoln with its sixth local FM service or to provide Eagle with its first such service, should it ultimately be deemed to be a community, warrants further consideration. Channel 287A can be allocated to Lincoln if the transmitter site is restricted to an area at least 3.2 kilometers (2 miles) east to avoid a short-spacing to Channel 287 at Orchard, Nebraska. If allocated to Eagle, no site restrictions is necessary. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Lincoln, NE	237A, 270, 274, 292A, and 297.	237A, 270, 274, 287A, 292A, and 297.
OR		
Eagle, NE		287A.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note. A showing of continuing interest is required by paragraph 2 of Appendix before a channel will be allotted.

6. Interested parties may file comments on or before April 11, 1986, and reply comments on or before April 28, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Jerrell E. Kautz, Rte. 1, Box 24A, Utica, Nebraska 68456 (Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making To Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g), and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-3925 Filed 2-21-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 86-3]

Amendment of the Rules Governing Eligibility for the Specialized Mobile Radio Services

AGENCY: Federal Communications Commissions.

ACTION: Order extending time to file comments and replies.

SUMMARY: The Commission has received a motion from the National Association of Business and Educational Radio, Inc. seeking an extension of the time to comment on the *Notice of Proposed Rule Making*, Docket No. 86-3, 51 Fed. Reg. 2,910 (January 22, 1986). By this action the Commission has granted, in part, the motion extending the deadline for comments and reply comments to May 19, 1986 and July 3, 1986.

DATES: Comments are now due on May 19, 1986 and reply comments are due on July 3, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nia Chirigos Cresham, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private Land Mobile Radio Services, Radio.

Order

In the matter of amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Private Land Mobile Band, PR Docket No. 86-3.

Adopted: February 14, 1986.
Released: February 18, 1986.

By the Acting Chief, Private Radio Bureau:

1. On January 10, 1986, the Commission released a *Notice of Proposed Rule Making*, Docket No. 86-3, 51 FR 2,910 (January 22, 1986). The *Notice* proposed to amend the Commission's rules governing the eligibility requirements for licensees in the Specialized Mobile Radio (SMR) Services. Current rules prohibit wire line telephone common carriers from being licensed in the SMR Service. We proposed to allow wire line telephone carriers to be eligible to apply for an SMR license. We designated thirty days for interested persons to file comments and fifteen days to file reply comments. Therefore, the current deadline for filing comments is February 18, 1986, and the deadline for filing reply comments is March 5, 1986.

2. On January 15, 1986, we received a Motion for Extension of Time in which to file comments, filed by the National Association of Business and Educational Radio, Inc., (NABER) pursuant to 47 C.F.R. § 1.46. We received comments in support of the Motion for Extension of Time from the American SMR Network Association, Inc. (ASNA). Both NABER and ASNA are non-profit associations representing the interests of SMR Service Licensees.

3. In support of its request for an extension of time, NABER states that additional time is necessary to develop a complete record addressing the significant impact that the proposed rule making would have on the private land mobile services. NABER notes the need to analyze several factors, such as: the economic impact on the SMR market; the legality of the proposal under the Communications act of 1934, as amended, and the post-divestiture policies for wire line carriers; the prospective increase in the use of interconnection; the impact on allocation and assignment policies for the SMR Service; and the arrangements necessary to ensure a "level playing field" among the users of interconnection.

4. We recognize the complexity of the issues involved in this proceeding and the need to develop a complete record. Therefore, an extension of time will be granted. We will allow an additional ninety (90) days within which to file comments and an additional forty-five (45) days within which to file reply comments. Accordingly, it is ordered, pursuant to the authority set forth in § 0.331 of the Commission's rules, that interested parties are to file comments by May 19, 1986 and reply comments by July 3, 1986.

5. For further information in this matter contact Nia Chirigos Cresham of the Rules Branch Land Mobile and Microwave Division, (202) 634-2443.

Federal Communications Commission.

Michael T.N. Fitch,

Acting Chief, Private Radio Bureau.

[FR Doc. 86-3926 Filed 2-21-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 97

[PR Docket No. 86-63; RM-4991; FCC 86-73]

Examination Credit for Written Examination Elements Above the Novice Class

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This document proposes rules to give examination credit for written elements for amateur radio operator examinations. These rules are being proposed in order to allow Volunteer-Examiner Coordinators (VEC's) and volunteer examiners greater latitude in the administration of amateur operator examinations, and to give applicants additional examination opportunities.

DATE: Comments are due April 30, 1986. Reply comments are due May 31, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554 (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur Radio,
Examinations.

The collection of information requirement contained in this proposed rule has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for Federal Communications Commission.

In the matter of Amendment of Part 97 of the Commission's Rules to Provide for Examination Credit for Written Examination Elements above the Novice Class. PR Docket No. 86-63, RM-4991.

Notice of Proposed Rulemaking

Adopted: February 7, 1986.
Released: February 12, 1986.

By the Commission:

1. Robert A. Scupp has filed a petition for rule making (RM-4991) proposing "to amend §§ 97.25(b) and 97.28(e) of the Commission's Rules to authorize currently licensed amateur radio operators to receive examination element credit upon successfully completing Elements 1(A), 1(B), 1(C), 2, 3, 4(A) and 4(B)," except for examinations for the Novice license.[1]

[1] Scupp also filed a Motion for Amendment of RM-4991. The purpose of the amendment was to illustrate how to use Form 610 in the event of adoption of his proposal so as to avoid any need to revise it, at least for the short term. We will treat this motion as a comment upon this rule making petition.

The volunteer examination system for amateur operator licenses above the Novice class went into effect December 1, 1983.[2] In some respects it was patterned after the examination system previously employed by the Commission.

2. For administrative convenience we routinely administered any required telegraphy examination element before administering any required written examination element to a license applicant. Our rules provided for examination credit for telegraphy elements to accommodate those applicants who successfully completed the telegraphy element but failed the written element. The one-year credit for the telegraphy element enabled them to retake the written element without having to again demonstrate the required proficiency in the international Morse code. There was no provision for credit for written elements since a successful applicant would be issued a license.

3. It appears that under the volunteer examination system, it is sometimes desirable to administer written examination elements prior to administering telegraphy examination elements. In instances where an applicant without a license initially seeks a class higher than Novice, or where an applicant with a license seeks to upgrade to a class two or more levels higher than his/her current class, volunteer examiners (VE's) may prefer not to follow the former approach.

4. Our rules make no provision for examination credit for written elements. Thus, an applicant under the volunteer examination system who successfully completes a required written element but fails a required telegraphy element in an examination session must re-take the written element at a later session. The object of Scupp's petition is to eliminate the need for an applicant to re-take written examination elements which have already been successfully completed. Scupp expressed particular concern about applicants seeking to further upgrade while awaiting FCC processing of a previously upgraded license.

5. William G. Welsh filed comments concurring with Scupp's proposal. Jonathan C. Higbee supported Scupp's proposal, but added that the certificate of successful completion of examination issued last in time should state all elements (both telegraphy and written) successfully completed to date. Richard S. Moseson proposed to extend temporary operating authority to persons who have successfully completed examinations for but not yet received their first amateur license.

6. We see no reason to continue the procedures of the former examination structure in the existing volunteer examination system. If examiners and volunteer-examiner coordinators (VEC's) find it useful and convenient to offer examination elements in a different order, our rules should not hinder them. We therefore propose rules to offer examination credit for all written and telegraphy elements administered under the volunteer examination system above the Novice class, as set forth in Appendix A.

7. We do not propose to extend temporary operating authority in the Amateur service to persons who have successfully completed the examinations for but not yet received their first amateur license. Written and telegraphy examinations are only part of the qualifications procedure. We must make many determinations based upon FCC Form 610 before we may issue an amateur operator license, including that the applicant is not a representative of a foreign government, that the applicant has a mailing address in the United States, and that the applicant's station application is not a major action for purposes of environmental impact. See also 47 U.S.C. 303(1). Before issuing an amateur operator license we must know the associated station's land location and control point(s), without which we cannot provide effective enforcement to resolve interference problems. For these reasons temporary operating authority is only appropriate for those applicants who seek to upgrade existing amateur operator licenses.

8. Nor do we propose to require that the most recent certificate of successful completion of examination include all previous successfully completed elements, for that information may not be readily available or verifiable by the examiners or the VEC's with which they are associated. We do, however, seek comment on whether expansion of the use of certificates of successful completion of examination to written examination elements is workable.

9. We also seek comment on another aspect of the volunteer examination system. If we give examination credit for all elements coordinated by VEC's, is it necessary to require an application before a candidate may take an element? We do not wish to receive and hold applications until an applicant has accumulated required elements, due to the increased administrative burden this would place upon our processing staff. However, we do seek comment on whether VEC's could be the repository of such pending applications, or whether we should allow a candidate to accumulate certificates of successful completion and to later submit an FCC Form 610 through a VEC when that candidate has fulfilled the requirements for the desired class of operator license.

10. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation to the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates.

See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, DC 20554 (202) 632-7000.

11. Authority for issuance of this Notice is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules (47 CFR 1.415 and 1.419) interested parties may file comments on or before April 30, 1986, and reply comments on or before May 31, 1986. All relevant and timely comments will be considered by the

[2] See *Report and Order*, PR Docket No. 83-27, 47 FR 45852, October 6, 1983.

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Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Docket Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW. Washington, DC 20554.

12. The proposal contained herein would require slight modification of FCC Form 610. Specifically, Part B. of the Volunteer Examiner Team Report would need to be revised to permit examiners to give examination credit for written elements to holders of certificates of successful completion of examination for those elements. Additionally, Instruction Number 6 to Volunteer Examiner Teams for Section II–B of Application Form 610 would need to be revised to permit administration of examination elements in any order. The proposed modifications to FCC Form 610 are set forth in Appendix B.

13. These changes to FCC Form 610 would, if promulgated, impose new or modified requirements or burden upon the public with respect to the Paperwork Reduction Act of 1980. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

14. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), we certify that this rule change would not, if promulgated, have a significant economic impact on a substantial number of small entities, because these entities may not use the Amateur Radio Service for commercial radio communication. (See 47 CFR 97.3(b)).

15. It is ordered, That the Secretary shall cause a copy of this *Notice* to be served upon the Chief Counsel for Advocacy of the Small Business Administration.

16. For information concerning this proceeding, contact John J. Borkowski, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554 (202) 632–4964.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachments: Appendices.

APPENDIX A

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations would be amended as follows:

1. The authority citation for Part 97 would continue to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082, 47 U.S.C. 154, 303.

2. Paragraph (b) of § 97.25 would be revised to read:

§ 97.25 Examination credit.

* * * * *

(b) A certificate of successful completion of an examination will be issued by the examiners to applicants who successfully complete an examination element coordinated by a VEC under Subpart L. Upon presentation of this certificate examiners shall give the applicant for an amateur radio operator license examination credit for the previously completed element. A certificate is valid only for a period of one year from the date of its issuance.

* * * * *

§ 97.28 [Amended]

3. Paragraph (e) of § 97.28 would be removed and reserved.

APPENDIX B

FCC Form 610 would be revised as follows: (Form 610 does not appear in the Code of Federal Regulations).

1. Line B. of the Volunteer Examiner Team Report would be revised to read:

* * * * *

B. CERTIFICATE OF SUCCESSFUL COMPLETION OF AN EXAMINATION HELD (97.25(b)):	Dated: →							

* * * * *

2. Paragraphs 4 and 6 of the Instructions to Volunteer Examiner Teams under Section II–B of the Instructions for Section II of Application Form 610 would be revised to read:

* * * * *

4. If the applicant holds a valid CERTIFICATE OF SUCCESSFUL COMPLETION OF AN EXAMINATION issued within the previous one year period for any element, enter the date of issuance of the Certificate in ITEM B of the VET REPORT. Make a check mark in the box which corresponds to the element to be credited to the applicant.

* * * * *

6. Administer the examination by administering any required telegraphy and written elements. If the applicant fails Element 1(C), Element 1(B) may be administered. If the applicant fails Element 1(B), Element 1(A) may be administered. Written elements should be administered in ascending order of difficulty. If the applicant fails a written element, no additional written elements should be administered. Make check marks in the appropriate boxes in ITEM D of the VET REPORT for those elements the applicant passes.

* * * * *

[FR Doc. 86–3822 Filed 2–21–86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 36
Monday, February 24, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1985 Tobacco Price Support Level; Burley Tobacco

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of determination of level of price support for 1985-crop Burley Tobacco.

SUMMARY: The purpose of this notice is to affirm the level of price support for the 1985 crop of burley tobacco which was announced by press release by the Executive Vice President, Commodity Credit Corporation (CCC), on November 15, 1985. The level of price support is determined in accordance with Section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: November 15, 1985.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy or Robert H. Miller, (202) 447–8839. The Final Regulatory Impact Analysis describing the impact of implementing the prescribed support level is available from Dr. Miller or Mr. Tarczy.

SUPPLEMENTARY INFORMATION: This notice of determination has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loans and Purchases, Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

Price support is required to be made available for burley tobacco for the 1985 crop since producers approved marketing quotas for the 1983, 1984, and 1985 marketing years. Section 106 of the Agricultural Act of 1949 (the "1949 Act") was amended by Pub. L. 99–157, approved November 15, 1985, to add a new subsection (f)(5) which provides that the level of price support for 1985 crop of burley tobacco shall be 148.8 cents per pound. Earlier, the level of price support for the 1985 crop of burley tobacco was determined to be 178.8 cents per pound. (See 50 FR 37557). On November 15, 1985, the Department of Agriculture announced by press release that the level of price support for the 1985 crop of burley tobacco is 148.8 cents per pound. In addition, the Department also announced at that time the grade loan rates which reflect this level of price support.

Since the only purpose of this notice is to affirm the announcement of the statutory level of price support for the 1985 crop of burley as announced on November 15, 1985, it has been determined that no further public rulemaking is required.

Determination

Accordingly, it has been determined that the level of price support for the 1985 crop of burley tobacco is 148.8 cents per pound. The grade loan rates reflecting this level of price support for the 1985 crop of tobacco are available at county Agricultural Stabilization and Conservation Service offices, producer associations, and the Tobacco and Peanuts Division, Agricultural Stabilization Conservation Service, Washington, DC.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 406, 63 Stat. 1051 as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended, 63 Stat. 1055, as amended (7 U.S.C. 1441, 1445, 1421, 1423, 1426).

Signed at Washington, DC on February 4, 1986.

John R. Norton,

Acting Secretary.

[FR Doc. 86–3899 Filed 2–21–86; 8:45 am]

BILLING CODE 3410-05-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:00 p.m., on April 5, 1986, at the Rodarte Center, 920 A Street, Greeley, Colorado. The sub-committee will conduct a forum to gather information on problems related to Hispanic dropouts.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., February 18, 1986.

Ann Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–3951 Filed 2–21–86; 8:45 am]

BILLING CODE 6335-01-M

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 10:00 p.m. on March 20, 1986, at the Plymouth Hilton, Conference Room A, 14707 Northville Road, Plymouth, Michigan. The purpose of the meeting is to discuss the status of civil rights in the

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State of Michigan and to select and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Tobias or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., February 19, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86–3952 Filed 2–21–86; 8:45 am]

BILLING CODE 6335–01–M

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 10:00 p.m., on March 12, 1986, at the State Office of Education Building, 200 East 500 South, Salt Lake City, Utah. The purpose of the meeting is to plan a community forum on pay equity and discuss current civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Wilfred Bocage or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., February 18, 1986.

Ann Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–3953 Filed 2–21–86; 8:45 am]

BILLING CODE 6335–01–M

Wisconsin Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on March 12, 1986, at the Pfister Hotel, 424 E. Wisconsin, Mirror Room, Milwaukee, Wisconsin. The purpose of the meeting is to discuss Indian issues in Wisconsin, as well as Committee projects on Milwaukee growth industries and affirmative action.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kwame Salter or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., February 18, 1986.

Yvonne Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86–3954 Filed 2–21–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Number of Employees, Payrolls, Geographic Location, and Kind of Business for Single-Establishment Employers; Determination for Surveys

In conformity with Title 13, United States, sections, 182, 224, and 225 and due notice of consideration having been published on December 12, 1985 (50 FR 50819), I have determined that a 1985 Company Organization Survey is needed to update the single-establishment employers in the Standard Statistical Establishment List. The survey is designed to collect information on the number of employees, payrolls, geographic location, and kind of business for single-establishment employers. These data will have significant application to the needs of the public and to governmental agenices and are not publicly available from nongovernmental or governmental sources.

Report forms will be furnished to organizations included in the survey and additional copies of the form are available on request to the Director, Bureau of the Census, Washington, DC 20233.

I have, therefore, directed that a survey be conducted for the purpose of collecting these data.

Dated: February 19, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86–3911 Filed 2–21–86; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[C–201–005]

Litharge, Red Lead and Lead Stabilizers From Mexico; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On September 10, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on litharge, red lead and lead stabilizers from Mexico. The review covers the period January 1, 1983, through December 31, 1983, and 11 programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of all comments received, the Department has determined the bounty or grant during the period of review to be 5.16 percent *ad valorem*.

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 36912) the preliminary results of its administrative review of the countervailing duty order on litharge, red lead, and lead stabilizers from Mexico (47 FR 54847, December 6, 1982). In accordance with § 355.10(a) of the Commerce Regulations, a domestic

interested party and the Mexican government on October 21, 1985, and November 15, 1985, respectively, requested that we complete the administrative review. The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Mexican litharge, red lead, and lead stabilizers, which include lead compounds "not specifically provided for" ("NSPF") and pigments containing lead NSPF. Such merchandise is currently classifiable under the following items of the Tariff Schedules of the United States Annotated: litharge, 473.5200; red lead, 473.5600; lead compounds NSPF, 419.0400; and pigments containing lead NSPF, 473.9000.

The review covers the period January 1, 1983, through December 31, 1983, and 11 programs: (1) FOMEX; (2) Article 94 of the Banking Law; (3) CEPROFI; (4) state tax incentives; (5) FONEI; (6) FOGAIN; (7) import duty reductions and exemptions; (8) CEDI; (9) discounts on lead purchases through the Boletin price mechanism; (10) accelerated and immediate depreciation allowances; and (11) FOMIN.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the two exporters, Pigmentos y Oxidos, S.A. ("PYOSA") and Productos Industriales de Plomo, S.A. ("PIPSA").

Comment 1: The exporters contend that the rate of cash deposit of estimated countervailing duties should reflect their discontinuance in 1984 of FOMEX benefits on U.S. sales. Although the Department was not able to verify the discontinuance as part of its verification for the 1983 review period, there is no statutory requirement that information used to establish the rate of cash deposit be verified. The Department should have used as the best information available the certifications from the FOMEX trustee that in 1984, both PYOSA and PIPSA stopped using, FOMEX financing on U.S. sales. Although the certifications were submitted after the verification, the Department should not consider the date of verification to be the cutoff point for accepting information relating to cash deposits. Such a cutoff is not mandated by statute or by regulation and its selection is entirely arbitrary, especially in view of the long delay between the date of verification and the date of publication of the preliminary results.

Department's Position: We disagree. Although there is no statutory requirement to use verified information in establishing the rate of cash deposit, the Department uses verified information whenever possible. Here, the exporters made the claim of cessation before our verification for all but PIPSA's use of FOMEX export financing. We attempted to verify the three cessations that the exporters claimed to have occurred by the time of verification. The exporters only produced documents regarding PIPSA's cessation of FOMEX pre-export financing, and those documents did not demonstrate cessation. The certifications from the FOMEX trustee, submitted after the verification, cannot resolve the issue in light of the failed verification. We therefore consider the level of FOMEX borrowing during the review period to be the best estimate for the level of borrowing on U.S. sales after the review period.

Comment 2: The exporters contend that the Department erred in not using the most recent FOMEX pre-export interest rate in the administrative record for purposes of establishing the cash deposit rate. That interest rate became effective on October 1, 1984, well before the signing of the preliminary results of the review. Furthermore, the Department should have considered the stipulations in the Understanding between the United States and Mexico regarding Subsidies and Countervailing Duties ("the Understanding"), signed on April 23, 1985. In the Understanding, the Government of Mexico agreed to eliminate, by September 1, 1985, one-third of the export subsidy element of its pre-export and export financing with a maturity of less than two years. Therefore, the Department should further reduce the cash deposit rate for both FOMEX pre-export and export financing by one-third.

Department's Position: In establishing a rate of cash deposit, the Department normally considers program-wide changes that occur before signature of the notice of preliminary results. On September 2, 1985, before signature of the notice, the Mexican government raised the interest rate on FOMEX pre-export financing to 39.6 percent and on FOMEX export financing to 6.6 percent. The Mexican government made these changes in observance of the stipulation in the Understanding that one-third of the subsidy element of such financing would be eliminated by September 1, 1985. Therefore, to calculate the cash deposit rate, we have now compared the September FOMEX rates to our most recent commercial benchmarks.

For purposes of assessment, we used as a peso benchmark for the pre-export loans the nominal Mexican interest rates published in the *Indicadores Economicos* ("IE") by the Banco de Mexico. As of 1985, the Banco de Mexico no longer publishes those rates. We therefore consider the most appropriate benchmark to be the Banco de Mexico's Costo Porcentual Promedio ("CPP"), the average cost of funds to Mexican banks, plus a spread equal to the average differential between the CPP and the nominal IE rates from 1981 to 1984, the only period for which we have nominal IE rates. Using that information, we calculate the comparable peso-denominated loan rate to be 65.77 percent in September 1985.

In calculating the benefits from the short-term dollar-denominated FOMEX export loans for purposes of assessment, we used as the benchmark the weighted average of the interest rates for loans of less than one million dollars for commercial and industrial loans from table 1.34 of the Federal Reserve Bulletin. The Federal Reserve no longer publishes that table, but includes similar information in table 4.23. The main difference for our purpose is that table 4.23 differentiates between fixed-rate and floating-rate loans. Since FOMEX loans carry fixed rates, we have considered only the fixed-rate section of the commercial and industrial loans reported in table 4.23. We continue to exclude loans of greater than one million dollars. Using that information, we conclude that comparable dollar-denominated loans were available commercially at 12.88 percent during the third quarter of 1985.

On this basis, we determine, for purposes of cash deposit of estimated countervailing duties, the potential bounty or grant from FOMEX pre-export loans to be 1.17 percent *ad valorem*, and from FOMEX export loans, 2.20 percent *ad valorem*.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be 5.16 percent *ad valorem* during the period of review.

The Department therefore will instruct the Customs Service to assess countervailing duties of 5.16 percent of the f.o.b. invoice price on any shipments of this merchandise exported on or after January 1, 1983, and on or before December 31, 1983.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing

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duties, as provided by section 751(a)(1) of the Tariff Act, of 3.38 percent of the entered value on any shipment of Mexican litharge, red lead, or lead stabilizers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: Februry 18, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-3893 Filed 2-21-86; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Roberts Laboratories, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc., having a place of business at 230 Half Mile Road, Red Bank, New Jersey 07701, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Hydantoin Compounds and Methods of Use Thereof," U.S. Patent 4,105,774. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the attention of Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-3873 Filed 2-21-86; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on the LHX Helicopter; Closed Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on the LHX Helicopter will meet in closed session on February 27 and 28, March 31 and April 1, April 28 and 29, and May 22 and 23, 1986 at the MITRE Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting this Task Force will evaluate the Army's requirements for the LHX Helicopter.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1986.

FR Doc. 86-3916 Filed 2-21-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Agency Information Collection Under OMB Review

ACTION: Public information collection requirement submitted to OMB review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in use Without an OMB Number

Parents'/Parents-In-Law's Dependency Statement

Forms are used to obtain information from Parents, Parents-In-Law, to determine dependency upon service member, retired member, or surviving spouse for entitlement to basic allowance for quarters with dependent rate, travel, or ID card privileges.

Individuals:

Responses, 3,900.

Burden hours, 3,900.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Courtney Collier, AFAFC/AJCD, Denver, CO 80279-5000, telephone number (303) 370-7907.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 19, 1986.

[FR Doc. 86-3912 Filed 2-21-86; 8:45 am]

BILLING CODE 3810-01-M

Agency Information Collection Under OMB Review

ACTION: Public information collection requirement submitted to OMB review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in use Without an OMB Number

Childrens' Dependency Statement

Forms are used to obtain information from Child's Custodian, or Retired member to determine dependency upon service member, or surviving spouse for entitlement to basic allowance for quarters with dependent rate, travel, or ID care privileges.

Individuals:

Responses, 9,000.

Burden hours, 4,950.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Courtney Collier, AFAFC/AJCD, Denver, CO 80279-5000, telephone number (303) 370-7907.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 19, 1986.

[FR Doc. 86-3913 Filed 2-21-86; 8:45 am]

BILLING CODE 3810-01-M

Existing Collection in Use Without an OMB Number

Students' Dependency Statement

Forms are used to obtain information to verify dependency of college student upon service member, retired member, or surviving spouse for entitlement to basic allowance for quarters with dependent rate, travel, or ID card privileges.

Individuals:

Response, 1,600.

Burden hours, 1,600.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Courtney Collier, AFAFC/AJCD, Denver, CO 80279-5000, telephone number (303) 370-7907.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 19, 1986.

[FR Doc. 86-3914 Filed 2-21-86; 8:45 am]

BILLING CODE 3810-01-M

Existing Collection in Use Without an OMB Number

Parent's/Parents-In Law's Optional Dependency Certification

Forms are used under certain circumstances to certify dependency of Parents or Parents-In-Law upon service member, retired member, or surviving spouse for entitlement to basic allowance for quarters with dependent rate, travel, or ID card privileges.

Individuals:

Responses, 1,100.

Burden hours, 275.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone number (202) 746-0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Courtney Collier, AFAFC/AJCD, Denver, CO 80279-5000, telephone number (303) 370-7907.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 19, 1986.

[FR Doc. 86-3915 Filed 2-21-86; 8:45 am]

BILLING CODE 3810-01-M

Agency Information Collection Under OMB Review

ACTION: Public Information Collection Requirement Submitted to OMB Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Agency Information Collection Under OMB Review

ACTION: Public information collection requirement submitted to OMB review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Agency Information Collection Under OMB Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number or responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy of the information proposal may be obtained.

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Extension

Unescorted Entry Authorization Certificate (AF Form 2586)

The information collected on AF Form 2586 is needed to identify individuals who require entry into controlled or restricted areas on Air Force installations.

Individuals, Local Governments, Businesses.

Responses, 120,000.

Burden hours, 6,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 2335, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Chief Master Sergant George Gould, Kirtland AFB, NM 87117–6001, telephone number (505) 844–9091.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 19, 1986.

[FR Doc. 86–3916 Filed 2–21–86; 8:45 am]

BILLING CODE 3810–01–M

Agency Information Collection Under OMB Review

AGENCY: Public information collection requirement submitted to OMB for review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Visitor Register for Controlled/Restricted Area (AF Form 1109)

AF Form 1109 is used by Air Force Security Police to maintain the security of restricted areas on Air Force installations. Visitors requesting access to such areas are required to furnish personal identification and their destination within the area. They are also required to sign in and, when leaving, indicate time of departure.

Individuals, Local Governments, Businesses:

Responses, 120,000.

Burden hours, 6,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Chief Master Sergeant George Gould, Kirtland AFB, NM 67117–6001, telephone number (505) 844–9091.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

February 19, 1986.

[FR Doc. 86–3917 Filed 2–21–86; 6:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Reference Questionnaire, Naval Reserve Officers Training Corps

Navcruit 1131/8

An assessment of an applicant's qualifications for an NROTC scholarship is necessary to ensure that the Selection Board has the information needed to select the best qualified candidates. Collection is necessary to have information from teachers and other adults on the applicant's academic ability and eligibility for an NROTC scholarship.

Individuals or teachers.

Responses, 36,000.

Burden hours, 12,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Commander J. M. Thomas, Navy Recruiting Command, Washington, DC, College Programs Branch, telephone (202) 696–4581.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 19, 1986.

[FR Doc. 86–3919 Filed 2–21–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–FC–85–026; OFP Case No. 61052–9287–01–24]

Dartmouth College; Exemption From Prohibitions of Powerplant and Industrial Fuel Use

AGENCY: Economic Regulatory Administration Energy.

ACTION: Order granting to Dartmouth College, exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. § 8301 *et seq.* ("FUA" or "the Act"), to Dartmouth College of Hanover, New Hampshire. The permanent cogeneration exemption permits the use of oil as the primary energy source for a proposed boiler to replace the aging capacity of its Hanover, New Hampshire campus heating plant. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on April 25, 1986.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–045, Washington, D.C. 20585, Telephone (202) 252–4706.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252–6749.

SUPPLEMENTARY INFORMATION: On August 19, 1985, Dartmouth College of Hanover, New Hampshire filed a petition requesting a permanent cogeneration exemption from the prohibitions of FUA for a proposed 90,000 lb/hr oil-fired boiler. The oil or gas that will be consumed by the heating plant with the new boiler is designed to be less than that which would otherwise be consumed with the continuation of the present system. All electricity produced by cogeneration will be used by Dartmouth.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Dartmouth College of hanover new Hampshire's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on September 30, 1985 (50 FR 39755), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period interested persons were afforded an opportunity to request a public hearing. The comment period closed on November 13, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Dartmouth College of Hanover, New Hampshire has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Dartmouth College of Hanover, New Hampshire, to permit the use of oil as the primary energy source for its cogeneration facility.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, D.C. on February 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–3970 Filed 2–21–86; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–C&E–85–31; OFP Case No. 65040–9307–20–24]

Acceptance of Petition for Exemption and Availability of Certification by Oceanside Refrigeration, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Oceanside Refrigeration, Inc.

SUMMARY: On January 13, 1986, Oceanside Refrigeration, Inc. (ORI), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its facility in San Diego County, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption

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from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before April 10, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–045, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Docket No. ERA–C&E–86–31 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–045, Washington, DC 20585. Telephone (202) 252–9506

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: ORI proposes to construct and operate a 40.9 MW cogeneration facility in San Diego County, California, which will (1) generate electrical power for sale to San Diego Gas and Electric Company and (2) produce steam to meet the requirements of the adjoining cold storage and ice making complex. The system will consist of a gas turbine, a heat recovery steam generator, a steam turbine generator, an absorption refrigeration package, and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold in San Diego Gas & Electric Co., Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), ORI has certified to ERA that:

1. The gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), ORI has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) An Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that ORI is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on February 10, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–3968 Filed 2–21–86; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Managment and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections, listed at the end of this notice, to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection: (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Tuesday, February 11, 1986 (51 FR 5100).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to Mr. Broussalian within 30 days of this notice.

If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, DC, February 14, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Informotion Administration.

DOE Collections Under Review by OMB

Collection No. (1)	Collection title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated No. of respondents (7)	Annual respondent burden hrs. (8)	Abstract (9)
FE								
FE–748	Enhanced Oil Recovery Annual Report.	Reinstatement.	Annually	Voluntary	Businesses or other for profit.	83	516	FE–748 collects data on changes in well data and description of operation, and average monthly production and injection on projects in the enhanced oil recovery incentive program. Data are published. Respondents are individuals or companies that have enhanced oil recovery projects approved for the incentive program.
FERC								
FERC–531	Gas Producer Certificates: New Service/Amendments.	Extension	Event oriented.	Mandatory	Businesses or other for profit.	210	1,275	Producers who make certain sales of natural gas in interstate commerce pursuant to Section 7(c) of the Natural Gas Act, Section 2(18) of the Natural Gas Policy Act, and Part 157 of the Commission's regulations must file this information for certificates of public convenience and necessity.
FERC–576	Report by Certain Natural Gas Companies on Service Interruptions.	Extension	On occasion	Mandatory	Businesses or other for profit.	16	48	The information collected is required to give the Commission sufficient data to oversee pipeline safety and continuity of service.
FERC–587	Indexes of essential power site withdrawals.	New	On occasion	Mandatory	Business or other for profit, non-profit organizations, small business organizations.	1,000	25,000	Section 24 of the Federal Power Act provides for the automatic withdrawal of Federally-owned lands within the proposed boundaries of hydropower projects when an application for preliminary permit or license is filed with the Commission. FERC–587 will collect information to enable the Commission to determine which reserved Federal lands should be released for other possible uses, and which must remain reserved in order to protect the rights of the license and permit holders.

[FR Doc. 86–3969 Filed 2–21–86; 8:45 am]

BILLING CODE 6450–01–M

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(3), the Energy Information Administration (EIA) herewith published for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective March 1, 1986. These prices are based on the prices of alternative fuels.

For further information contact: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, DC 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

State	Dollar per million BTU's
Alabama	2.89
Arizona [1]	3.20
Arkansas	3.10
California [1]	3.20
Colorado [2]	3.13
Connecticut [1]	3.15
Delaware [1]	3.40
Florida	3.14
Georgia [1]	3.22
Idaho [2]	3.13
Illinois [1]	2.93
Indiana [1]	2.93
Iowa [1]	2.83
Kansas [2]	2.83
Kentucky [1]	2.93
Louisiana [1]	3.17
Maine	3.10
Maryland [1]	3.40
Massachusetts [1]	3.15
Michigan	2.87
Minnesota	2.83
Mississippi [1]	3.22
Missouri [1]	2.83
Montana [2]	3.13
Nebraska [2]	2.83
Nevada [1]	3.20
New Hampshire	3.10
New Jersey [1]	3.40
New Mexico	2.97
New York	3.39
North Caroline [1]	3.22
North Dakota [1]	2.83
Ohio	2.76
Oklahoma [1]	3.17
Oregon	3.17
Pennsylvania	3.36
Rhode Island [1]	3.15
South Caroline [1]	3.22
South Dakota [1]	2.83
Tennessee [1]	3.22
Texas	2.97
Utah [2]	3.13
Vermont [1]	3.15
Virginia	3.15
Washington	3.07
West Virginia [1]	2.93
Wisconsin [1]	2.93
Wyoming [2]	3.13

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.

[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

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Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during December 1985 was $34.74 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in Platt's Oilgram Price Report are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending February 14, 1986, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of December 1985. This lag adjustment factor was applied to the December price yielding $22.48 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective March 1, 1986, is $5.04 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79-21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81-27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81-28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA a sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of October 1985, November 1985, and December 1985.[a] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price. The prices which will become effective March 1, 1986, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, October 1985, November 1985, and December 1985. Reported prices for sales in October 1985 were adjusted by the percent change in the nationwide volume-weighted average price from October 1985 to December 1985. Prices for November 1985 were similarly adjusted by the percent change in the nationwide volume-weighted average price from November 1985 to December 1985. The volume-weighted 3-month average of the adjusted October 1985 and November 1985, and the reported December 1985 prices were then computed for each State.

(2) Adjustment for Price Variation. States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price. The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of October 1985, November 1985, and December 1985. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, and Region G, and Region H.

(4) Lag Adjustment. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending February 14, 1986, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of December 1985. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

[a] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A
Connecticut
Maine
Massachusetts
New Hampshire
Rhode Island
Vermont

Region B
Delaware
Maryland
New Jersey
New York
Pennsylvania

Region C
Alabama
Florida
Georgia
Mississippi
North Carolina
South Carolina
Tennessee
Virginia

Region D
Illinois
Indiana
Kentucky
Michigan
Ohio
West Virginia
Wisconsin

Region E
Iowa
Kansas
Missouri
Minnesota
Nebraska
North Dakota
South Dakota

Region F
Arkansas
Louisiana
New Mexico
Oklahoma
Texas

Region G
Colorado
Idaho
Montana
Utah
Wyoming

Region H
Arizona
California
Nevada
Oregon
Washington

Issued in Washington, DC February 19, 1986.

L.A. Pettis,
Acting Deputy Administrator, Energy Information Administration.

[FR Doc. 86-4005 Filed 2-20-86; 2:17 pm]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 5865-000]

Availability of Environmental Assessment and Finding of No Significant Impact; David Cereghino

February 7, 1986

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for exemption listed below and has assessed the environmental impacts of the proposed development.

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemption		
5865-000	John Day Creek	ID	John Day Creek	Lucile	David Cereghino.

An Environmental Assessment (EA) was prepared for the above proposed project. Based on an independent analysis of the above action, as set forth in the EA, the Commission's staff concludes that the project would not have a significant effect on the quality of the human environment. Therefore, an environmental impact statement for this project will not be prepared.

Copies of the EA are available for review in the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3934 Filed 2-21-86; 8:45 am]
BILLING CODE 6717-01-M

[Project No. 7162-000]

Availability of Supplement to Environmental Assessment and Finding of No Significant Impact; Gerald and Lois Simms

February 7, 1986

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for exemption listed below and has assessed the environmental impacts of the proposed development.

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemption		
7162-000	Davis Creek	WA	Davis Creek	Silver Brook	Gerald and Lois Simms

A Supplemental to the Environmental Assessment (Supplement) was prepared for the above proposed project. Based on an independent analysis of the above action, as set forth in the Supplement, the Commission's staff concludes that the project would not have a significant effect on the quality of the human environment. Therefore, an environmental impact statement for this project will not be prepared.

Copies of the Supplement are available for review in the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-3935 Filed 2-21-86; 8:45 am]
BILLING CODE 6717-01-M

Availability of Environmental Assessment and Finding of No Significant Impact; Summit Hydropower; et al.

February 12, 1986

	Project No.
Summit Hydropower	8264-001
Northern States Power Company	9003-000
City of Boulder	6282-003

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	Project No.
Batten Kill Hydro Associates	6904-001
Idaho Renewable Resources, Bonneville Pacific Corporation, and Big Wood Canal Co.	6909-000
Birch Power Company	7194-001
Holden Village, Inc.	6758-003
City of Kaukaua	2715-005
David O. Harde	8722-000
Town of Gassaway	3344-002
Prodek, Inc.	8492-002
Geoffrey Shadroui	7746-001
Wisconsin Public Service Corp. and Wisconsin Public Power Inc. System	1966-003 and 8243-000
Manti City Corp	7342-001
Owyhee Project Irrigation Districts	4359-001
Western Hydro, Inc.	8800-000
Ptarmigan Energy and Resources, Inc.	3174-002
Pacific Gas & Electric Company	2310-015
Rochester Gas & Electric and City of Rochester	2582-000 and 6379-001

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
Exemptions					
8264-001	Falls Mill Dam No. 2	CT	Yantic River	Norwich	Summit Hydropower
9003-000	Riverdale Hydro	WI	Apple River	Somerset	Northern States Power Company
6282-003	Orodell	CO	City of Boulder Water Distribution System.	Boulder	City of Boulder
Licenses					
6904-001	Upper Greenwich	NY	Batten Kill River	Easton and Greenwich	Batten Kill Hydro Associates
7194-001	Birch Creek	ID	Birch Creek	Clark County	Birch Power Co.
6758-003	Railroad Creek	WA	Railroad Creek	Chelan	Holden Village, Inc.
2715-005	Combined Locks	WI	Fox River	Combined Locks	City of Kaukauna
8722-000	Landis-Harde	CA	Perry Creek	Placerville	David O. Harde
3344-002	Sutton Dam	WV	Elk River	Sutton	Town of Gassaway
8492-002	McGee Creek Dam	OK	McGee Creek	Farris	Prodek, Inc.
7746-001	Stevens Water	VT	Stevens Branch of the Winooski River.	Barre	Geoffrey Shadroui
1966-003 and 8243-000.	Grandfather Falls	WI	Wisconsin River	Merrill	Wisconsin Public Service Corps. & Wisconsin Public Power Inc. System
7342-001	Manti Canyon	UT	Manti Creek	Manti City	Manti City Corp.
4359-001	Owhyee Tunnel #1	OR	Owyhee River/Lake Owyhee	Nyssa	Owyhee Project Irrigation Dist.
8800-000	Goose Creek	ID	Goose & Brundage Creeks	Payette National Forest	Western Hydro, Inc.
Amendments					
3174-002	Vallecito	CO	Los Pinos River	Durango	Ptarmigan Energy & Resources, Inc.
2310-015	Drum-Spaulding	CA	Lake Valley Canal, Bear River Canal, and Wise Canal.	Auburn	Pacific Gas and Electric Co.
2582-000 and 6379-001	Station No. 2 / Upper Falls	NY	Genesee River / Genesee River	Rochester / Rochester	Rochester Gas & Electric and City of Rochester

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environment impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3936 Filed 2-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8174-001]

Surrender of Preliminary Permit; YZ Cattle Company

February 10, 1986.

Take notice that YZ Cattle Company, Permittee for the proposed Stillwater Project No. 8174, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 4, 1984, and would have expired on August 31, 1986. The project would have been located on the South Fork of the White River, in Rio Blanco County, Colorado.

The Permittee filed the request on January 13, 1986, and the preliminary permit for Project No. 8174 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3937 Filed 2-21-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP76-492-037]

Informal Settlement Conference; Penn-York Energy Corp.; National Fuel Gas Supply Corp.

February 14, 1986.

Take notice that, at the request of Penn-York, an informal settlement conference is scheduled for February 26, 1986, at 10:00 a.m., to discuss the possibilities of settlement in the above-captioned docket. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426.

All interested persons and Commission Staff are invited to attend; however, attendance at the conference will not confer party status. Any person wishing to become a party to this proceeding must file a Motion to Intervene in accordance with Rule 214(d) of the Commission's rules of practice and procedure (18 CFR 385.214(d)).

For further information contact Joel L. Saltzman (202) 357-5354, or Robert Woods (202) 357-5738, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3938 Filed 2-21-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $25,000 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Fine Petroleum Company of Norfolk, Virginia.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to the Case No. HEF-0072.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Fine Petroleum Company (Fine) of Norfolk, Virginia. The Consent Order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The Consent Order settled possible pricing violations in Fine's sales of refined petroleum products to customers during the period November 1, 1973 through February 29, 1976.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Fine pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Fine who establish that they were injured by Fine's alleged overcharges. Such customers will receive refunds proportionate to the volume of petroleum products they purchased from Fine during the consent order period. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: February 7, 1986.

George S. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

February 7, 1986.

Name of Firm: Fine Petroleum Company
Date of Filing: October 13, 1983
Case Number: HEF-0072.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983 requesting that the OHA implement a proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Fine Petroleum Company (Fine) of Norfolk, Virginia.

I. Background

Fine is a "reseller-retailer" of "refined petroleum products", as these terms were defined in 10 CFR 212.31. An ERA audit of Fine's operations during the period November 1, 1973 through February 29, 1976 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Fine and the DOE regarding Fine's compliance with the DOE price regulations in sales of No. 2 fuel oil, kerosene, solvents,[1] and motor gasoline during the audit period (hereinafter referred to as the consent order period), the firm entered into a Consent Order with the DOE on July 13, 1979. Under the terms of the Consent Order, Fine agreed to deposit $25,000 in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Fine does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds, where appropriate. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Fine consent order fund. We therefore

[1] Solvents (special naphthas) were defined in the DOE price regulations as "all finished products within the gasoline range, not otherwise defined as aviation fuels or gasoline specially refined to specified flash point and boiling range, for use as paint thinners, cleaners, solvents, etc." 10 CFR 212.31.

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propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

A. Eligible Claimants

We propose to establish a claims procedure whereby claimants who can demonstrate that they were injured as a result of Fine's pricing practices during the consent order period will be eligible to receive a refund. In the present case, the Consent Order specifies the portion of the consent order amount allocable to each of Fine's ten classes of purchaser. These classes of purchaser are listed in the Appendix to this Proposed Decision. We propose to allow any customer who was a member of one of these classes and who purchased No. 2 fuel oil, kerosene, solvents, or motor gasoline from Fine during the consent order period to apply for a refund in this proceeding.

B. Showing of Injury

We propose that claimants who resold refined petroleum products purchased from Fine be required to demonstrate that they did not pass on to their customers the price increases implemented by Fine. Accordingly, in order to qualify for a refund, a reseller claimant (including retailers) must show that it would have maintained its prices for the product purchased from Fine at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased refined petroleum products from Fine, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller will be required to show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by increasing its prices. The maintenance of banks will not, however, automatically establish injury. *See, e.g., Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

C. Applicants Claiming a Refund of $5,000 or Less

In the present case, we propose to adopt a presumption of injury for small claims which has been used in many previous special refund cases. We will presume that reseller applicants claiming small refunds ($5,000 or less) were injured by the alleged overcharges. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of product from Fine. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs or to show that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984) *(Marion)*. We propose to adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[2]

D. Spot Purchasers

We further propose that resellers who made spot purchases from Fine be ineligible to receive a refund, even a refund at or below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser tends to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of Fine's product at increased prices unless it was able to pass through the full amount of the alleged overcharges to its own customers. *See Vickers*, 8 DOE at 85,396–97. Accordingly, in order to overcome the rebuttable presumption that it was not injured, a spot purchaser must submit evidence to establish that it was unable to recover the prices it paid for Fine's product and did not have discretion as to where and when to make the purchase(s) upon which its refund claim is based.

E. End-Users

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to make a detailed showing of injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Id.* We have therefore concluded that end-users of Fine products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Fine products for consumption as fuel or raw materials will not be considered end-users for the purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

F. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method generally presumes that the alleged overcharges were spread equally over all the gallons of the consent order product(s) sold by a consent order firm. *See, e.g., Vickers.* As mentioned above however, the Consent Order in this proceeding specifies different consent order amounts for each Fine class of purchaser, thereby suggesting that the alleged overcharges were not spread equally among these classes. We therefore propose to adopt a more narrow presumption, which holds that the alleged overcharges to each class of purchaser were spread equally over all gallons of the consent order product sold *to that class* during the consent order period. Accordingly, we propose to establish a separate volumetric factor for each class of purchaser.[3] We have calculated the volumetric factors by dividing the maximum refund amount allocable to each class of purchaser under the terms of the Consent Order by the total volumes sold to that class by Fine. The classes of purchaser, maximum refund amounts, volumes, and volumetric refund factors are set forth in the Appendix to this Proposed Decision and Order. In each instance, a successful applicant will receive a volumetric refund amount for each gallon of refined petroleum products which it purchased from Fine during the consent order period. Any interest which accrued on the money in the escrow account will be added to the refund of each successful applicant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum refund amount of $15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Ubon Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

Refund applications in the Fine proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds recieved as a result of the Consent Order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the event that money remains after all first stage claims have been processed, undistributed funds could be disbursed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Fine Oil, Inc. pursuant to the Consent Order executed on July 13, 1979 will be distributed in accordance with the foregoing Decision.

Appendix

Product/class	(Dollars) refund amount	(Gallons) volumes	(Dollars) volumetric
No. 2 Fuel Oil:			
50 gallons	$86.89	362,095	.002347
100 gallons	9,716.68	2,331,915	.004167
Rack buyers	730.43	133,467	.005472
Kerosene:			
50 gallons	1,907.70	179,410	.010633
100 gallons	4,841.47	730,779	.006625
Rack buyers	184.83	44,466	.004155
Solvents:			
50 gallons	1,200.93	36,254	.033126
100 gallons	3,623.07	256,520	.014015
Motor Gasoline:			
Service stations	833.23	167,567	.004976
Farmers & Commercial	964.77	425,729	.002266

[FR Doc. 86-3967 Filed 2-21-86; 8:45 am]

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[2] As in prior refund cases, resellers whose calculated refund exceeds the threshold amount may elect to apply for a refund of $5,000 without being required to make a detailed demonstration of injury.

[3] Any customer who was in more than one class of purchaser during the consent order period may apply for a refund based on more than one volumetric refund amount. Under these circumstances, the applicant must provide separate documentation of volumes purchased from Fine as a member of each relevant class of purchaser.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning procedures to be followed in refunding to adversely affected parties $368,000 in consent order funds obtained as a result of a consent order which the DOE entered into with American Pacific International, Inc., a crude oil producer and reseller of motor gasoline. This money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0316.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a May 13, 1983 consent order between the DOE and American Pacific International, Inc. That consent order settled all disputes between the firm and DOE concerning API's possible violations of DOE crude oil and motor gasoline price regulations during the period November 1, 1973 through the end of federal price controls on January 27, 1981.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by the firm pursuant to the consent order. Under the DOE's tentative procedures, purchasers of API motor gasoline during the consent order period may file claims for refunds from the escrow fund. Applications for refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. The Proposed Decision notes that after all applications for refund are processed, some funds may remain after all meritorious claims have been satisfied. OHA therefore invites interested parties to submit comments concerning alternative methods of distributing any remaining motor gasoline funds in a subsequent proceeding.

With regard to the portion of the consent order fund attributable to alleged crude oil violations, the decision proposes to place the money into a pool of crude oil moneys pursuant to the DOE's Statement of Restitutionary Policy for crude oil claims. *See* 50 FR 27400 (1985), Fed. Energy Guidelines ¶ 90,508 (1985).

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: February 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

February 10, 1986.

Name of Petitioner: American Pacific International, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0316.

On October 13, 1983, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a petition with the Office of Hearings and Appeals (OHA), requesting that the OHA formulate and implement procedures for distributing funds obtained through the settlement of enforcement proceedings involving American Pacific International, Inc. (API). *See* 10 CFR Part 205, Subpart V. This proposed decision contains OHA's tentative plan for distributing funds the DOE received from API to qualified refund applicants. Information necessary to prepare motor gasoline refund applications appears at Section II of this decision. The decision first sets

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forth specific requirements applicable to each of the various types of claimants that are likely to file applications in Section II–A. A claimant should take particular note of those requirements applicable to its particular circumstances. The specific application requirements are followed at Section II–B by a discussion of general requirements which apply to all motor gasoline refund applications.

API was a producer of crude oil and a reseller of motor gasoline. DOE audits of API revealed possible regulatory violations in the firm's first sales of crude oil and its sales of motor gasoline during the period of federal price controls. In order to settle all claims and disputes between API and the DOE, the two parties entered into a consent order on May 13, 1983. Under the terms of the consent order, API agreed to remit $368,000 plus interest to the DOE in 36 monthly installments beginning June 30, 1983, in settlement of alleged violations occurring between November 1, 1973 and January 27, 1981 (the Consent Order period). As of December 31, 1985, the API escrow account contained approximately $415,000 including accrued interest, although API has not completed making the scheduled payments. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution.

Because the Consent Order resolves alleged violations involving both sales of crude oil and refined products, we propose to divide the fund into two pools. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). From our review of the Proposed Remedial Order (PRO) issued to the firm by ERA, it appears that 39.82% of the aggregate amount of the alleged violations settled by the Consent Order concern API's production and sales of crude oil. We therefore propose that 39.82 percent of the principal contained in the API escrow account be set aside in a pool of crude oil funds. We further propose that the remaining 60.18 percent of the API funds be made available for distribution to claimants who demonstrate that they were injured by API's alleged violations in sales of motor gasoline.

I. Proposed Refund Procedures for Crude Oil Claims

API, like other producers of crude oil, was subject to the Mandatory Petroleum Price Regulations set forth in 6 CFR Part 150 and 10 CFR Part 212.[1] To the extent that API miscertified old crude oil as new or stripper well crude oil, the impact of the violations was spread throughout the domestic refining industry by the operation of the Entitlements Program, 10 CFR § 211.67. *See, e.g., Union Oil Co. v. DOE*, 688 F.2d 797 (Temp. Emer. Ct. App. 1982), *cert. denied*, 459 U.S. 1202 (1983). Based on the OHA's report to the District Court in the Stripper Well Exemption Litigation, *see Report of the Office of Hearings and Appeals, In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., filed June 21, 1985), Fed. Energy Guidelines ¶ 90,507 at 90,620 (1985) (the OHA Stripper Well Report), the DOE announced that no claims for direct restitution would be accepted, and the Department would maintain overcharges associated with such violations in escrow to afford Congress the opportunity to select the means of making indirect restitution. *See* Statement of Restitutionary Policy, 50 FR 27400 (1985), Fed. Energy Guidelines ¶ 90,508 (1985). In light of the DOE policy determination, the OHA issued an order in June 1985 announcing that it intended to apply the policy in special refund proceedings involving overcharge funds attributable to Entitlements-period crude oil certification violations. 50 FR 27402 (1985). After soliciting comments from potentially aggrieved parties regarding the OHA's application of the policy to pending refund proceedings, the OHA stated in *Amber Refining, Inc.*, 13 DOE ¶ 85,217 (1985), that it would apply the Statement of Restitutionary Policy in crude oil refund cases. Thus, the OHA will pool the American Pacific funds attributable to alleged crude oil violations with other crude oil funds for distribution in accordance with department policies. *See* 50 FR 27402 (1985); 50 FR 27400 (1985); 50 FR 1919 (1985).

II. Proposed Refund Procedures for Motor Gasoline Refund Claims

With regard to the remainder of the API settlement fund, we propose to implement a two-stage refund proceeding in which purchasers of API motor gasoline will be afforded an opportunity to submit refund applications during the initial stage. It appears from examination of audit records that Tesoro Petroleum Corporation bought significant volumes of API motor gasoline during the consent order period, although it is likely that there are other potential claimants as well. From our experience with Subpart V proceedings, we believe that potential claimants will fall into the following categories: (1) End users, i.e., consumers who used the API motor gasoline; (2) regulated non-petroleum entities which used API products in their businesses or cooperatives which sold API products in their businesses; (3) and refiners, resellers or retailers who resold the API motor gasoline.

In establishing the procedures which will govern the API Special Refund Proceeding, we are adopting certain presumptions which will permit claimants to participate in the refund process without incurring inordinate expense and enable OHA to consider the refund applications in the most efficient manner possible.[2] First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of motor gasoline made by API during the consent order period and that refunds should therefore be made on a pro-rata or volumetric basis. In the absence of better information, such a volumetric refund assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser might have been greater, and any purchaser may file a refund application based on a claim that the impact of the alleged overcharge on it was greater than the pro rata share calculated by the use of the volumetric presumption. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

Under the volumetric refund approach we are adopting, a claimant will be eligible to receive a refund equal to the product of the number of gallons purchased times the per gallon refund factor.[3] At the present, however, we cannot determine precisely what the per gallon refund amount will be. Information set forth in the PRO suggests that API may have sold as little as 3.7 million gallons of motor gasoline during the audit period. If this figure represents the totality of API's motor gasoline sales during the consent order period, the per gallon refund amount would be approximately $.06 per gallon plus a share of the accrued interest. However, we note that information relating to API's motor gasoline sales contained in the PRO encompasses only the period from January 14 through March 31, 1974, whereas the consent order period spans the entire period during which petroleum prices were subject to federal regulation. Thus, there may be additional volumes of motor gasoline to be accounted for in determining a reasonably reliable per gallon refund amount. The Office of Hearings and Appeals has been unable to obtain gasoline sales volume figures for the entire consent order period because the firm has been unable to locate revelant records. *See* Memorandum of Telephone Conversation between Lorraine Loder, Esq. and Meri Arnett-Kremian, OHA Staff Attorney, dated May 20, 1985. For this reason, we propose to hold all refund applications until the close of the application period in order to determine whether the per gallon refund shares of applicants should be reduced by some amount in order to insure that sufficient funds are available to pay all claims established.

A. Specific Application Requirements for Each Category of Refined Product Refund Applicants

(1) Refund Applications by End Users. We will adopt a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM Oil Associates*). *See also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of API motor gasoline need only document that they were ultimate consumers of a specific amount of API gasoline to make a sufficient showing that they were injured by the alleged overcharges.

(2) Refund Applications by Regulated Firms or Cooperatives.

In addition, we will adopt the presumption that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged motor gasoline overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of API's alleged violations would routinely be passed through to the firms' customers. Consequently, we will add such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). Instead, those firms and cooperative groups should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of refund money. We note, however, that a cooperative's sales of API products to non-members will be treated in the same manner as sales by other resellers.

(3) Refund Applications by Resellers, Retailers and Refiners

a. *Spot Purchasers.* If a claimant made only spot purchases, we believe that in most circumstances it should not receive a refund since it is unlikely to have experienced injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of API product at increased prices unless they were able to pass through the full amount of the quoted selling price at the time of purchase to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Therefore, a firm which made only spot purchases from API will not receive a refund unless it presents evidence rebutting the spot purchaser presumption and establishes the extent to which it was injured as a result of its purchases of API motor gasoline during the consent order period.

b. *Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less.* Another presumption we will adopt is that purchasers of API motor gasoline seeking small refunds were injured by API's pricing practices. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). With small claims, the cost to the firm of gathering evidence of injury to support a refund claim could exceed the expected refund. Consequently, without simplified procedures, some injured parties would be effectively denied an opportunity to obtain a refund. Under the small-claims presumption, a claimant seeking a refund of $5,000 or less will not be required to submit any evidence of injury beyond establishing the volume of API gasoline it purchased during the consent order period. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). In addition to the general information required from all applicants, it need only establish that it is a small-claims applicant.

c. *Refiners, Resellers and Retailers Seeking Large Refunds.* Unlike small-claims applicants, a firm which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury in addition to providing purchase volume information. It will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers. In addition, a claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Panhandle Eastern Pipeline Co./I.V. Cole Petroleum Co.*, 10 DOE ¶ 85,051 (1983); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). For periods in which the DOE regulations did not require retailers to compute cost banks, a retailer will only be required to show that market conditions prevented it from recovering increased costs. Such a showing might be made through a demonstration of lowered profit margins, decreased market shares, or depressed sales volume during the period of purchases from the consent order firm.

B. General Refund Application Requirements

In addition to the specific requirements outlined above, all applications for refund must be in writing and signed by the applicant. An application must make reference to the American Pacific International, Inc. Special Refund Proceeding (Case No. HER–0316). Each applicant must submit a monthly purchase schedule for API motor gasoline purchases during the consent order period, November 1, 1973 through January 27, 1981. If an applicant purchased API motor gasoline from a reseller, it must establish its basis for belief that the motor gasoline originated with API and identify the reseller from whom the product was purchased. Indirect purchasers who either fall

[1] The DOE regulations, in effect from August 19, 1973 until January 27, 1981, governed prices charged in crude oil sales to first purchasers by defining ceiling prices for various tier classifications of crude oil. The regulations permitted producers to sell certain crude oil, such as crude oil produced from a "stripper well property," at market price levels. When a producer sold crude oil, it was required to certify in writing to the purchaser the respective volumes of crude oil belonging to each tier classification in each purchase. When a refiner processed to the crude oil, it was required to report these certifications to the DOE to enable the agency to administer the Crude Oil Entitlements Program. 10 CFR § 211.67.

[2] The Subpart V regulations specifically authorize the use of presumptions in special refund proceedings. *See* 10 CFR Part 205, Subpart V.

[3] A volumetric refund amount will be calculated by dividing the motor gasoline portion of the settlement amount by our estimate of the total gallonage of motor gasoline sold by API during the period encompassed by the consent order.

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within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of API products passed through the alleged API overcharges to its own customers.

An applicant for refund should furnish us with the name, position or title, and telephone number of a person who may be contacted by us for additional information concerning the applicant. If the applicant is affiliated or associated with API in any manner, it must so indicate and provide information explaining the nature of its relationship with the consent order firm. If the applicant has been involved in enforcement proceedings brought by the DOE, it must provide a summary of the present status of the proceeding, or if the matter is no longer pending, it must indicate how the proceeding was resolved. If the applicant is a firm which did not actually purchase gasoline from API, but is a successor to an API customer, the applicant must provide evidence establishing that it, rather than API's former customer, is entitled to a refund. Finally, each application must include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c) 18 U.S.C. 1001.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential. Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

C. Distribution of the Remainder of the Consent Order Funds Attributable to API's Motor Gasoline Sales

In the event that money remains after all first stage claims have been disposed of, undistributed funds attributable to API's alleged motor gasoline violations could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by API's alleged overcharges. *See, e.g., Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by the American Pacific International, Inc. pursuant to the consent order executed on May 13, 1983 will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-3966 Filed 2-21-86; 8:45 am]
BILLING CODE 6450-01-M

Western Area Power Administration

California-Oregon Transmission Project (Third 500-KV AC Transmission Line Intertie) Southern Oregon to South Central California; Amendment to Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Western Area Power Administration, DOE.

ACTION: Amend notice of intent to prepare an environmental impact statement.

SUMMARY: The Western Area Power Administration (Western) intends to expand the scope of the environmental impact statement (EIS) being prepared for the California-Oregon Transmission Project (Project). The expansion is proposed as a result of new information provided by the Pacific Gas and Electric Company (PG&E) who is a participant in the Project. The information indicates that approximately 85 miles of new 500 kilovolt (kV) (500,000 volt) alternating current transmission line may be required between the Los Banos and Gates substations in Merced and Fresno Counties, California, in order that PG&E could fulfill its obligations under the Memorandum of Understanding signed by all Project participants. In addition to the new transmission line, other system modifications may be required, for example, expansion of existing substations to accommodate new electrical equipment. These system additions and modifications will be identified and analyzed in the EIS.

Background

Western, as the lead Federal agency under the National Environmental Policy Act of 1969 (NEPA), announced its intention to prepare an EIS for the Project on November 7, 1984 (49 FR 44546). Western announced the locations of public scoping meetings and its intent to coordinate with the Transmission Agency of Northern California (TANC) to produce a joint environmental document that would serve as an EIS under NEPA and an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) on April 26, 1985 (50 FR 16538). TANC is the lead State agency for the purpose of complying with the CEQA. The Bonneville Power Administration; U.S. Department of the Interior, Bureau of Land Management; U.S. Department of Defense, Army Corps of Engineers; and the U.S. Department of Agriculture, Forest Service, are cooperating agencies. The California Public Utilities Commission (CPUC) is involved as a result of the participation of the Investor Owned Utilities.

At the time the Notice of Intent to Prepare an EIS was published, the Project consisted of substation modifications in the Northwest, a new substation located along the Malin-Meridian 500-kV transmission line in southern Oregon, a new 500-kV transmission line from that substation to a new substation in the vicinity of Redding, California, the possibility of a 500-kV connection between the existing Round Mountain Substation and the new Redding area substation, upgrading of Western's existing double-circuit, 230-kV Central Valley Project line between Redding and the Tracy Substation, and a new 500-kV tranmission line between the Tracy Substation and PG&E's existing 500-kV Tesla Substation.

Meetings

Western, TANC, and the CPUC will jointly conduct a series of public meetings in the area of the proposed Los Banos to Gates 500-kV transmission line. The purposes of the meetings are: (1) To inform the public and Federal, State, and local agencies of the proposed project; and (2) to receive information and comments that will assist in identifying the environmental issues to be addressed in the EIS-EIR. The meetings will be conducted at the locations listed below.

February 26, 1986

9:30 a.m., Centre Plaza Holiday Inn, 2233 Ventura Street, Fresno, California

7:30 p.m., City Hall Annex, Elm and 6th Street, Coalinga, California

February 27, 1986

7:30 p.m., Masonic Lodge, 1510 Canal Farm Lane, Los Banos, California

FOR FURTHER INFORMATION CONTACT: Persons wanting to be included on the mailing list to receive information as the Project progresses or who would like additional information about the meetings may contact:

James C. Feider, Deputy Area Manager, Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Sacramento, CA 95825, (916) 978-4455, FTS 460-4455

Lawrence T. Klein, Project Director, California-Oregon Transmission Project, P.O. Box 660970, Sacramento, CA 95866, (916) 924-3995

Issued at Golden, Colorado: February 7, 1986.

William H. Clagett,
Administrator.

[FR Doc. 86-4054 Filed 2-21-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2972-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Preliminary Assessment Information Rule (EPA No. 0566). (This is an extension of an existing ICR; no change is proposed.)

Abstract: The Preliminary Assessment Information Rule (PAIR) authorizes EPA to collect production, use, and exposure information from manufacturers and importers of chemical substances listed by rule. The information will support EPA risk analysis and risk management programs.

Respondents: Manufacturers and importers of chemical substances listed by rule.

Agency PRA Clearance Request Completed by OMB

EPA No. 1287; National Operations and Maintenance Excellence Awards, was appoved 1/22/86 (OMB No. 2040-0101; expires 1/31/89).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW, Washington, DC 20460
and
Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW, Washington, DC 20503.

Dated: February 14, 1986.

Daniel J. Fiorino,
Acting Director, Information and Regulatory Systems Division.

[FR Doc. 86-3627 Filed 2-21-86; 8:45 am]
BILLING CODE 6560-50-M

[SAB-FRL-2973-5]

Science Advisory Board, Clean Air Scientific Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting will be held March 11-12, 1986, starting at 9:30 a.m. on March 11 and ending at approximately 2:00 p.m. on March 12. The meeting will be held at the U.S. Environmental Protection Agency, Environmental Research Center, Main Auditorium, Route 54 and Alexander Drive, Research Triangle Park, North Carolina.

The purpose of the meeting is to allow the Committee to review and provide its advice to the Agency on: (1) The February 1986 *Addendum to the Air Quality Criteria Document for Lead;* and (2) the February 1986 draft of the *Review of the National Ambient Air Quality Standards for Lead: Assessment of Scientific and Technical Information—Draft Staff Paper.*

Copies of the February 1986 Addendum to the Criteria Document may be obtained by writing or calling the Office of Research and Development Publications Center, CERI-FRN, U.S. EPA, 26 West St. Clair Street, Cincinnati, Ohio, 45268 (513) 648-7562. Please ask for EPA document 600/8-83-028B, February 1986. Copies of the February 1986 draft Staff Paper may be obtained from Jeff Cohen, Strategies and Air Standards Division, Office of Air Quality Planning and Standards (MD-12), U.S. EPA, Research Triangle Park, North Carolina, 27711, (CML) (919) 541-5531, (FTS)-629-5531. Written comments on the draft staff paper will be accepted through May 12, 1986. Comments should be sent to Jeff Cohen at the previous address.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Mr. Robert Flaak, Executive Secretary, Clean Air Scientific Advisory Committee (CASAC), Science Advisory Board (A-101F), U.S. EPA, Washington, DC, 20460 (202) 382-2552, prior to the meeting. Persons wishing to make statements at the meeting must contact Mr. Flaak no later than close of business on March 3, 1986.

Dated: February 18, 1986.

Terry F. Yosie,
Director, Science Advisory Board.

[FR Doc. 86-3942 Filed 2-21-86; 8:45 am]
BILLING CODE 6560-50-M

[SAB FRL-2973-6]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Metals Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on March 24, 1986, in the Barney House of the University of Connecticut at 11 Mountain Spring Road, Farmington, CT, 06032. The meeting will start at 9:00 a.m. and adjourn no later than 4:00 p.m.

The purpose of the meeting will be to review the scientific adequacy of a draft final Health Assessment Document for Nickel (EPA/600/8-83/012F; September, 1985) which has been prepared by EPA's Office of Research and Development, and to discuss upcoming issues of current interest to the Subcommittee.

The document is available in single copy quantity at the ORD Publications Center (CERI-FRN), U.S. EPA, 26 West Saint Clair Street, Cincinnati, Ohio 45268 by phone at (513) 569-7562. Requestors should provide their name, address and the EPA document number with their request. The document also is available for public inspection and copying at the EPA library, 401 M Street SW., Washington, DC 20460. For other information about the document, contact

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Ms. Diane Ray in the Environmental Criteria and Assessment Office (MD–52), Research Triangle Park, N.C. 27711, by phone at (919) 541–3637.

The meeting will be open to the public. Any member of the public wishing to attend, present information or desiring further information, should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Brenda Johnson, by telephone at (202) 382–2552 or by mail to Science Advisory Board (A–101F), 401 M Street SW., Washington, DC 20460, no later than c.o.b. Thursday, March 20, 1986.

Dated: February 18, 1986.

Terry F. Yosie,

Director Science Advisory Board.

[FR Doc. 86–3941 Filed 2–21–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44014; FRL–2973–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the data submissions received by EPA during the fourth quarter of 1985 from negotiated testing programs accepted by EPA in lieu of requiring testing under section 4 of the Toxic Substances Control Act (TSCA). These submissions include results of certain studies and tests on 10 chemical substances or groups of chemicals.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M Street SW., Washington, DC 20460, Toll Free: (800–424–9065), in Washington, DC: (554–1404), Outside the USA: (Operator 800–554–1404).

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires the EPA to issue a notice in the **Federal Register** reporting on any test data received pursuant to test rules promulgated under section 4(a). Although not required by section 4(d), EPA also periodically publishes notices of receipt of data from negotiated testing programs and other industry programs the conduct of which led EPA not to require testing through test rules.

I. Test Data Submissions

This notice announces test data submissions received during the fourth quarter of 1985 from such industry testing programs under TSCA.

A. Aryl Phosphates

Ciby-Geigy PLC has voluntarily submitted test data on members of the aryl phosphates category. This category of chemicals is used primarily as fire-retardant plasticizers and as hydraulic fluids and lubricant additives. EPA issued an Advance Notice of Proposed Rulemaking on December 29, 1983 (48 FR 47452) on this category.

On October 22, 1985 EPA received results of a study conducted to investigate the permeability of human epidermis to typical tris(isopropylated phenol) phosphates. The two substances tested differ in degrees of isopropylation.

B. Alkyl Phthalates

The Chemical Manufacturers Association (CMA), on behalf of the Phthalates Esters Program Panel, is conducting testing on a number of alkyl phthalates, alkyl diesters of 1,2-benzenedicarboxylic acid, which are primarily used as plasticizers. The CMA's proposal was accepted by the Agency in lieu of a test rule under section 4 of TSCA and is described in the **Federal Register** of October 30, 1981 (46 FR 53775).

On November 20, 1985, EPA received the results of a mouse lymphoma forward mutation assay and an *in vitro* transformation of BALB/3T3 cells assay on dimethyl phthalate (CAS No. 131–11–3), di-n-butyl phthalate (CAS No. 84–74–2), butyl benzyl phthalate (CAS No. 85–68–7), di(n-hexyl, octyl, decyl) phthalate (CAS No. 25724–58–7), di-isononyl phthalate (CAS No. 28553–12–0), di-isodecyl phthalate (CAS No. 26761–40–0), di-undecyl phthalate (CAS No. 3648–20–2), and di(heptyl, nonyl, undecyl) phthalate (CAS No. 39393–37–8). Results of a CHO/HGPRT forward mutation assay were submitted for 2-ethyl hexanol, mono-2-ethylhexyl phthalate, and di-2-ethylhexyl phthalate. A 21-day dose response relationship study of di(2-ethyl-hexyl) phthalate was also submitted.

On November 13, 1985, EPA received the results of a 21-day dose response relationship study on diundecyl phthalate.

C. Phenylenediamines

DuPont has voluntarily submitted test data on members of the phenylenediamine category. The Agency issued an Advance Notice of Proposed Rulemaking on this category on January 8, 1982 (47 FR 973). In response to public comments, the category was divided into three subcategories, one of which includes the unsubstituted phenylenediamines, (pdas), *o*-pda (CAS No. 95–54–5), *m*-pda (CAS No. 108–45–2), and *p*-pda (CAS No. 106–50–3). The Agency published a proposed rule for these chemicals on January 6, 1986 (51 FR 472).

On October 31, 1985, the Agency received the results of the following studies: Static acute 96-hour LC_{50} of *o*, *m*, and *p*-pda to fathead minnow *(Pimephales promelas)*; static acute 48-hour EC_{50} of *o*-, *m*-, and *p*-pda to *Daphnia magna*; chronic toxicity (MATC) of *m*-pda to *Daphnia magna*; oxidative half-life of *o*-, *m*-, and *p*-pda in well water; oxidative half-life determination of *p*-pda in river water; and summary of the results of algal testing of *o*-, *m*-, and *p*-pda.

D. Hydroquinone

Eastman Kodak Co. has voluntarily submitted test data on hydroquinone (CAS No. 123–31–9) a photographic developing agent and chemical intermediate in rubber production.

EPA issued a proposed rule on January 4, 1984 (49 FR 438); the final rule was published on Dec. 30, 1985 (50 FR 53145).

On November 25, 1985 EPA received the results of a developmental toxicity study in rats, a metabolic fate study in male rats, a metabolic fate study in female rats, and a percutaneous absorption study in beagle dogs.

E. Propylene Oxide

Dow Chemical U.S.A., Arco Chemical Co., and Shell International Petrochemical Co. have voluntarily sponsored testing on propylene oxide (CAS No. 75–56–9), a chemical intermediate, solvent stabilizer, and sterilant for plastic medical equipment and foodstuffs. The test for which data was submitted was included in the proposed testing requirements published in the **Federal Register** of January 4, 1984 (49 FR 430).

On October 31, 1985, the Agency received the results of a 24-week neurotoxicity test on male rats.

F. 2-Chlorotoluene

Occidental Chemical Corp. is conducting a negotiated testing program on 2-chlorotoluene (CAS No. 95–49–8), a solvent for agricultural pesticides and a general solvent replacement for 1,2-dichlorobenzene. EPA's decision to adopt this negotiated testing program, which describes this testing, was published in the **Federal Register** of April 28, 1982 (47 FR 18172).

On November 27, 1985, EPA received the results of a mouse lymphoma mutation assay.

G. 1,3-Dioxolane

Ferro Corp. and PPG Industries are conducting a negotiated testing program on 1,3-dioxolane (CAS No. 646–06–0), a stabilizer in production and distribution of 1,1,1-trichloroethane. EPA's decision to adopt this negotiated testing program, which describes this testing program, was published in the **Federal Register** of August 10, 1984 (49 FR 32113).

On August 21, 1985 the Agency received an independent laboratory audit of a 2-year chronic oral toxicity study with 1,3-dioxolane in drinking water of albino rats, which was performed by Industrial Biotest Laboratory in 1975. The audit was submitted as part of the negotiated testing agreement for 1,3-dioxolane.

H. Antimony Trioxide

The Antimony Oxide Industry Association is conducting a testing program on antimony trioxide (CAS No. 1309–64–4), a flame retardant in textiles and plastics. This program was accepted by the Agency in lieu of rulemaking under section 4 of TSCA and is summarized in the **Federal Register** of September 2, 1983 (48 FR 39979).

On November 27, 1985, EPA received the results of a 3-month subchronic inhalation study on rats.

I. Tris(2-Ethylhexyl) Trimellitate

The Chemical Manufacturers Association (CMA) is sponsoring a testing program on tris(2-ethylhexyl) trimellitate (TOTM, CAS No. 3319–31–1), a substance used as a specialty plasticizer in electronics insulation.

This program was accepted by the Agency in lieu of a test rule under section 4 of TSCA; details of the program are published in the **Federal Register** of June 4, 1984 (49 FR 23116).

On November 19, 1985, the Agency received the results of a 28-day subchronic oral toxicity study in rats, a 21-day *Daphnia magna* chronic toxicity study, and method validation and solubility studies. EPA also acknowledges a previously unreported mutagenicity test of urine from rats dosed with TOTM received on February 3, 1984.

J. Bis(2-Ethylhexyl) Terephthalate

Eastman Kodak Co. is conducting a testing program on bis(2-ethylhexyl) terephthalate (DOTP, CAS No. 6422–86–2), a plasticizer for polyvinly chloride and related plastics. This program was accepted by the Agency in lieu of rulemaking under section 4 of TSCA, and is summarized in the **Federal Register** of June 4, 1984 (49 FR 23110).

On November 22, 1985 EPA received the results of a 28-day shake-flask biodegradation study.

Other previously unreported studies were received: on February 3, 1984, mutagenicity testing of urine from rats dosed with DOTP; and on December 27, 1984, the results of a CHO/HGPRT forward mutation assay and an *in vitro* cytogenetic assay measuring chromosome aberration frequencies in CHO cells.

II. Public Record

EPA has established a public record for this quarterly receipt of data notice (docket number OPTS–44014). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS reading room, E–107, 401 M St., SW., Washington, DC, 20460.

Dated: February 14, 1986.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 86–3943 Filed 2–21–86; 8:45 am]

BILLING CODE 6560–50–M

[FRL–2973–9]

Air Pollution Control; Removal From List of Violating Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of removal of facility from EPA List of Violating Facilities.

SUMMARY: On August 21, 1985, the Las Vegas, New Mexico, facility of Sierra Transit Mix, Inc. was placed on Sublist 2 of EPA's List of Violating Facilities based upon continual or recurring violations of an administrative order issued under section 113 of the Clean Air Act [See 50 FR 37423].

On February 10, 1986, the EPA Assistant Administrator for Enforcement and Compliance Monitoring determined that the conditions which gave rise to the listing of the facility have been corrected. Accordingly, pursuant to 40 C.F.R 15.21(a)(2), the facility has been removed from the List of Violating Facilities and is eligible for use by Agencies in the performance of Federal contracts, grants, and loans.

FOR FURTHER INFORMATION CONTACT: Allen Danzig, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. W1037 (LE–133), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382–4146.

SUPPLEMENTARY INFORMATION: Pursuant to Section 306 of the Clean Air Act [42 U.S.C. 1857 et seq., as amended by Pub. L. 91–604], section 508 of the Clean Water Act [33 U.S.C. 1251 et seq., as amended by Pub. L. 92–500], and Executive Order 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to Federal contracts, grants, or loans. On April 16, 1975, regulations implementing the requirements of the statutes and the Executive Order were promulgated in the **Federal Register** (see 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979]. On September 5, 1985, revisions to those regulations were promulgated in the **Federal Register** [see 50 FR 36188, September 5, 1985]. The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt Federal contracts, grants or loans.

The List of Violating Facilities is contained in two sublists. Sublist 1 includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Act or section 309(c) of the Federal Water Pollution Control Act. Sublist 2 includes those facilities listed on the basis of continuing or recurring noncompliance with clean air or clean water standards and: A conviction by a federal court under section 113(c)(2) of the Clean Air Act; any injunction, order, judgment, decree or other form of civil ruling by a Federal, State or local court issued as a result of noncompliance with clean air or water standards; a conviction in a State or local court for noncompliance with clean air or water standards; noncompliance with an order under sections 113(a), 113(d), 167, or 303 of the Clean Air Act or section 309(a) of the Clean Water Act; a Notice of Noncompliance issued by EPA under section 120 of the Clean Air Act; or an enforcement action filed in federal court due to noncompliance with clean air or water standards.

A facility shall be removed from Sublist 2: If the conviction, decree, order, judgment, or form of civil ruling which formed the basis for the listing has been reversed or otherwise modified to remove the basis for the listing; if the Assistant Administrator has determined that the condition(s) which gave rise to the listing have been corrected; automatically after one year of a listing; or if the Assistant Administrator determines that the facility is on a plan for compliance which will ensure that

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the condition(s) which gave rise to the listing will be corrected.

The purpose of this notice is to remove from Sublist 2 the Las Vegas, New Nexico facility of Sierra Transit Mix, Inc. based upon a determination by the Assistant Administrator that the conditions which gave rise to the listing of the facility have been corrected.

Pursuant to the above-referenced authority, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the Sierra Transit Mix, Inc. Las Vegas, New Mexico facility has been removed from the List of Violating Facilities as of February 10, 1986. The List of Violating Facilities will be revised periodically as any listings or delistings occur.

Dated: February 10, 1986.

Courtney M. Price,

Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 86-3945 Filed 2-21-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL 2974-1]

Air Pollution Control; Addition to List of Violating Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of addition of facility to EPA List of Violating Facilities.

SUMMARY: On February 10, 1986, the EPA Listing Review Panel decided to add to Sublist 2 of EPA's List of Violating Facilities the Louisville, Kentucky facility of the B.F. Goodrich Company based on the filing of an enforcement action under section 113 of the Clean Air Act and adequate evidence of continuing or recurring violations of the Act pursuant to 40 CFR 15.20. Accordingly, the facility has been placed on the List of Violating Facilities and is ineligible for use by any department, agency, establishment or instrumentality in the Executive Branch of the Federal Government in the performance of Federal contracts, grants, and loans.

FOR FURTHER INFORMATION CONTACT: Allen Danzig, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. W1037 (LE-133), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382-4146.

SUPPLEMENTARY INFORMATION: Pursuant to section 306 of the Clean Air Act [42 U.S.C. 1857 et seq., as amended by Pub. L. 91604], section 508 of the Clean Water Act [33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500], and Executive Order 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to Federal Contracts, grants, requirements of the statutes and the Executive Order were promulgated in the **Federal Register** [see 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979]. On September 5, 1985, revisions to those regulations were promulgated in the **Federal Register** [see 50 FR 36188, September 5, 1985]. The regulations provide for the establishment of a List of Violating Facilities which reflects those facilities ineligible for use in nonexempt Federal contracts, grants or loans.

The List of Violating Facilities is contained in two sublists. Sublist 1 includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act. Sublist 2 includes those facilities listed on the basis of continuing or recurring noncompliance with clean air or clean water standards and: a conviction by a federal court under section 113(c)(2) of the Clean Air Act; any injunction, order, judgment, decree or other form of civil ruling by a Federal, State or local court issued as a result of noncompliance with clean air or water standards; a conviction in a State or local court for noncompliance with clean air or water standards; noncompliance with an order under sections 113(a), 113(d), 167, or 303 of the Clean Air Act or section 309(a) of the Clean Water Act; a Notice of Noncompliance issued by EPA under section 120 of the Clean Air Act; or an enforcement action filed in federal court due to noncompliance with clean air or water standards.

A facility shall be removed from Sublist 2 if the conviction, decree, order, judgment, or form of civil ruling which formed the basis for the listing has been reversed or otherwise modified to remove the basis for the listing; if the Assistant Administrator has determined that the condition(s) which gave rise to the listing have been corrected; automatically after one year of a listing; or if the Assistant Administrator determines that the facility is on a plan for compliance which will ensure that the condition(s) which gave rise to the listing will be corrected.

The purpose of this notice is to add to Sublist 2 the Louisville, Kentucky facility of the B.F. Goodrich Company based upon a determination by the Listing Review Panel that: (1) An enforcement action has been filed in federal court under section 113(b) of the Clean Air Act and (2) there is adequate evidence of continuing or recurring noncompliance with Clean Air Act standards. The List of Violating Facilities will be revised periodically as any listings or delistings occur.

List of Violating Facilities

Sublist 1: Chemical Formulators Inc., Nitro, West Virginia Facility.

Sublist 2: B.F. Goodrich Company, Louisville, Kentucky Facility.

Dated: February 10, 1986.

Richard H. Mays,

Acting Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 86-3944 Filed 2-21-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review

February 14, 1986.

The following information collection requirement has been approved by the Office of Management and Budget. For further information contact Doris Benz, FCC, (202) 632-7513.

OMB No.: 3060-0095

Title: Annual Employment Report—Cable Television

Form No.: FCC 395-A.

A revised report form FCC 395-A has been approved for use through 1/31/89. This revision is dated January 1986 and will be effective with the report for 1986. All previous editions are obsolete.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-3927 Filed 2-21-86; 8:45 am]

BILLING CODE 6712-01-M

Memorandum Opinion and Order Designating Applications for Hearing; Comex, Inc., et al.

In re application of CC Docket No. 86-68:

	File No.
Comex, Inc. To establish additional facilities for one-way Station KCI295 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Nashua and Epsom, New Hampshire.	23196-CD-P/L-1-85.
RAM Communications of Massachusetts, Inc. To establish an additional facility for one-way Station KSV956 to operate on frequency 152.24 MHz in the Public Land Mobile Service at Andover, Massachusetts.	21859-CD-P/L-1-85.

Adopted February 12, 1986.

Released February 14, 1986.

By the Common Carrier Bureau.

1. On November 26, 1985, the Federal Communications Commission held a lottery in the Common Carrier Public Mobile Service in which RAM Communications of Massachusetts, Inc. (RAM) was ranked first and Comex, Inc. (Comex) second, the only applicant with which RAM was mutually exclusive.[1] On October 30, 1985, Comex had filed a Petition for Comparative Hearing, which should have been resolved prior to including RAM and Comex in a lottery.

2. We find that Comex in its Petition has satisfied the requirements of § 22.33(c)(i) of our Rules necessary for it to qualify for a comparative hearing instead of a lottery. Comex has shown that it proposes to add additional transmitter locations to an authorized station on the same frequency for which it is already licensed and within 40 miles of its existing transmitter locations on that frequency. Comex has also demonstrated a demand by its existing subscribers for the expanded service.

3. Consequently we find that a comparative hearing and not a lottery was proper in this case and the results of the lottery must be set aside. We further find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We also find that the proposals of Comex and RAM to use frequency 152.24 MHz in the same geographical area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest.

4. Accordingly, It Is Ordered, That the Petition for Comparative Hearing filed by Comex Is Granted.

5. It Is Further Ordered, That the results of lottery case PMS 17-11, held November 26, 1984, are SET ASIDE and the applications of RAM, Filed No. 21859-CD-P-85, and Comex, File No. 23196-CD-P-85, are Returned To Pending Status.

[1] See Public Notice released November 29, 1985. PMS 17-11.

6. It Is Further Ordered, That the applications of Comex, File No. 23196-CD-P/L-1-85, and RAM, File No. 21859-CD-P/L-1-85, Are Designated For Hearing In A Consolidated Proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[2] based upon the standards set forth in § 22.504(a) of the Commission's Rules [3] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

7. It Is Further Ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

8. It Is Further Ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

9. It Is Further Ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

10. This order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Applications for review under § 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* § 1.4(b)(2).

11. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division Common. Carrier Bureau.

[FR Doc. 86-3928 Filed 2-21-86; 8:45 am]

BILLING CODE 6712-01-M

[2] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[3] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits).

FEDERAL HOME LOAN BANK BOARD

Mt. Whitney Savings and Loan Association, Exeter, CA.; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in Section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Mt. Whitney Savings and Loan Association, Exeter, California on February 12, 1986.

Dated: February 18, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-3875 Filed 2-21-86; 8:45 am]

BILLING CODE 6720-01-M

American Diversified Savings Bank, Costa Mesa, CA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in § 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for American Diversified Savings Bank, Costa Mesa, California on February 14, 1986.

Dated: February 19, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-3931 Filed 2-21-86; 8:45 am]

BILLING CODE 6720-01-M

Intercapital Savings Bank, Jacksonville Beach, FL; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in § 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. § 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance

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Corporation as sole receiver for Intercapital Savings Bank, Jacksonville Beach, Florida on February 14, 1986.

Dated: February 19, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-3932 Filed 2-21-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

ASB Bankcorp, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 17, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ASB Bankcorp, Inc.*, Adrian, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Adrian State Bank, Adrian, Michigan.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lincoln County Bancorp, Inc.*, Troy, Missouri; to acquire 18.15 percent of the voting shares of Warren County Bancshares, Inc., thereby indirectly acquiring Commerce Warren County Bank, both of Warrenton, Missouri. The comment period of this application ends March 10, 1986.

Board of Governors of the Federal Reserve System, February 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3890 Filed 2-21-86; 8:45 am]

BILLING CODE 6210-01-M

Barnett Banks of Florida, Inc.; Extension of Comment Period

This notice corrects a previous Federal Register document (FR Doc. No. 86-3373), published at page 5802 of the issue for Tuesday, February 18, 1986.

Barnett Banks of Florida, Inc., Jacksonville, Florida; to engage *de novo* through its subsidiary, Statewide Administrative Services, Inc., Jacksonville, Florida, in data processing activities pursuant to § 225.25(b)(7) of Regulation Y by monitoring the loan portfolios of affiliated banks in order to identify loans with uninsured collateral, by force-placing vendor's single interest insurance with respect to such collateral, and by performing recordkeeping and administrative functions on behalf of the insurer, including the collection of premiums. These services would be conducted in the State of Florida. Comments on this application must be received not later than March 5, 1986.

Board of Governors of the Federal Reserve System, February 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3890 Filed 2-21-86; 8:45 am]

BILLING CODE 6210-01-M

Franklin Capital Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 CFR 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Franklin Capital Corporation*, Wilmette, Illinois; to engage *de novo* directly in making loans which total no more than $250,000 to an affiliated holding company.

Board of Governors of the Federal Reserve System, February 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3891 Filed 2-21-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1986:

Name: National Advisory Council on Health Professions Education.

Date and Time: March 24-26, 1986, 9:00 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on March 24, 1986, 9:00 a.m. to 5:00 p.m.

Closed for the remainder of meeting.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover: welcome and opening remarks; report of the Acting Administrator; report of the Director, Bureau of Health Professions; financial management update; discussion on dealing with perspective reimbursement of clinical education costs, options for coordinating geriatric activities in Area Health Education Centers, with Geriatric Educations Centers; and future agenda items. The meeting will be closed to the public on March 25, at 9:00 a.m. for the remainder of the meeting, for the review of grant application from Family Medicine Predoctoral Training, Area Health Education Centers, Physician Assistants, General Internal Medicine/General Pediatrics Residencies, Health Career Opportunity Program, Health Administration and General Practice Dental Residencies. The closing is in accordance with the provisions set forth in section 552b(2)(6), Title 5, U.S.C., and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Robert L. Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Bureau of Health Professions, Health Resources and Services Administration, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Agenda items are subject to change as priorities dictate.

Dated: February 18, 1986.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 86-3869 Filed 2-21-86; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202-395-7313.

Title: Waterfowl Harvest Surveys.

Abstract: Waterfowl, Wildlife Conservation. Migratory waterfowl hunting is authorized throughout the United States including Alaska. Information on the magnitude and composition of the harvest is needed for sound management and to preclude overharvest of the species involved. The forms used in these surveys provide the major part of that information.

Form Number(s): 3-1823, 3-2056G, 3-165

Frequency. Annually

Description of Respondents: Individuals or households

Annual Responses: 73,800

Annual Burden Hours: 23,474

Alternate Service Clearance Officer: James E. Pinkerton, 202-653-7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: January 23, 1986.

Walter O. Stieglitz,

Acting Associate Director—Wildlife Resources.

[FR Doc. 86-3872 Filed 2-21-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

The first quarterly meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held in Washington, D.C., on March 18, 1986. The meeting will take place in the Main Auditorium at the Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., from 9:30 a.m. to 12 noon. The public is welcome.

The Council will discuss missing children, school crime, and alcohol and drug abuse.

For further information, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, D.C. 20531, (202) 724-7655.

Dated: February 19, 1986.

Approved:

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86-3958 Filed 2-21-86; 8:45 am]

BILLING CODE 4410-08-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-12]

NASA Advisory Council (NAC), Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Space Applications Advisory Committee (SAAC), Informal Advisory Committee on Communications.

Date and Time: March 11, 1986, 8:30 a.m. to 4:30 p.m.; March 12, 1986, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Communications will meet to consider the strategic plan for satellite communications. The Subcommittee is chaired by Mr. Leonard Jaffe and is composed of 7 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including subcommittee members and other participants).

Type of Meeting: Open.

Dated: February 14, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86-3874 Filed 2-21-86; 8:45 am]

BILLING CODE 7510-01-M

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: March 14, 1986.
Time: 9:00 a.m. to 5:00 p.m.
Room: M–14
Program: This meeting will review applications for support of fellowship programs in the humanities at Centers for Advanced Study submitted to the Regrants Program in the Division of Research Programs, for projects beginning after July 1, 1986.

The proposed meeting is for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C., or call (202) 786–0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 86–3910 Filed 2–21–86; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Industrial Science and Technological Innovation; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Industrial Science and Technological Innovation.

Date and time: March 11, 1986: 8:30 a.m. to 5:00 p.m.

Place: Room 1242–A, National Science Foundation, 1800 G St., NW, Washington, DC 20550.

Type of meeting: Open.

Contact person: Mr. Robert D. Lauer, Section Head, Division of Industrial Science and Technological Innovation, Room 1250, National Science Foundation, Washington, DC 20550. Telephone (202) 357–7527.

Summary of minutes: May be obtained from contact person at address above.

Purpose of committee: To provide advice and recommendations concerning support of research in NSF programs administered by the Division of Industrial Science and Technological Innovation.

Agenda: March 11, 1986: 8:30 a.m.–11:45 a.m.

Briefing on Division of Industrial Science and Technological Innovation (ISTI) Activities for new members of the advisory committee and update for old members—advisory committee communications for rapid response—update on GAO Small Business Report—review status of multiple Phase I SBIR awards with respect to impact of the Gramm-Rudman Bill and authorization of Pub. L. 97–219—status report on Annual ISTI Conference scheduled for April 24–29, 1986.

Lunch—March 11, 1986: 1:15 p.m.–5:00 p.m.

Review university/SBIR initiative discussion that took place at a meeting with the National Academy of Sciences Industry/University/Government Roundtable, followed by discussion of future course of action for the initiative—in-depth review of the Equipment Donation and Discount procedures—administrative procedural discussion on Advisory Committee membership—new business—review of action items generated during meeting.

M. Rebecca Winkler,
Committee Management Officer.

February 18, 1986.

[FR Doc. 86–3905 Filed 2–21–86; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Issuance of New Environmental Standard Review Plan; Radiological Impacts, Releases to Groundwater

The U.S. Nuclear Regulatory Commission (NRC) has completed the development of Environmental Standard Review Plan (ESRP) Section 7.1.1 entitled "Environmental Impacts of Postulated Accidents Involving Radioactive Materials—Releases to Groundwater." ESRP 7.1.1 was published for comment in the **Federal Register** on May 23, 1985 (50 FR 21375). The final version of the ESRP was published as NUREG 1165.

This ESRP provides guidance to the staff for preparation of environmental assessments of "Radiological Impacts—Releases to Groundwater," an input to the staff's Environmental Statement which addresses the groundwater pathway consequences from postulated reactor core-melt accidents. The ESRP lists the type of information which should be collected, references that may be useful, and provides a procedure for uniform staff review of applicant analyses. The ESRP is applicable to both Construction Permit and Operating License Stage reviews.

Since July 1980 the staff has been required to include in Commercial Reactor Environmental Impact Statements an analysis of the radiological exposure pathways to humans (including groundwater) from a postulated core-melt accident. This requirement was contained in the Commission's Statement of Interim Policy Regarding Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969 (45 FR 40101, June 13, 1980). The ESRP is a codification of staff review practice that has developed in response to the Interim Policy Statement. The ESRP does not place any new requirements on applicants. The ESRP also permits the use of future source term and probabilistic studies when they become available.

Copies of NUREG 1165 and of the NUREGs referenced in NUREG 1165 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may be purchased also from the National Technical Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available also for inspection and/or copying for a fee in the NRC

Public Document Room, 1717 H Street NW, Washington, DC 20555.

Dated at Bethesda, Maryland, this 13th day of February 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,
Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86–3847 Filed 2–21–86; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529]

Arizona Public Service Co. et al. (Palo Verde Nuclear Generating Station, Units Nos. 1 and 2); Receipt of Requests for Action

Notice is hereby given that, by a Petition dated January 17, 1986 and supplemented January 21, 1986, and February 1, 1986, Barbara Bush and Myron Scott, on behalf of the Coalition for Responsible Energy Education (CREE), requested that the Nuclear Regulatory Commission suspend the low power operating license for Palo Verde Nuclear Generating Station (PVNGS) Unit 2 of the Arizona Public Service Co., et al (Licensee) and defer any further licensing action with respect to Unit 2 pending resolution of a number of issues raised by the Petitioner. The Petitioner alleges that management incompetence and schedular pressure in the PVNGS Nuclear Program calls into question the safe conduct of start-up operations and power ascension at PVNGS Unit 2. Relief requested includes a hearing to resolve the issues raised in the Petition of January 17, 1986, as supplemented January 21, 1986, and initiation of a special NRC Inspection and Oversight Team to closely monitor the Licensees' activities in the future.

A second Petition dated February 3, 1986 alleges that the containment leak test of PVNGS Unit 1 was not conducted in accordance with the applicable NRC regulations. Relief requested includes immediate shutdown of the reactor, retest of the containment using test procedures complying with all applicable NRC requirements, and placement of all test data associated with containment leak rate testing at PVNGS into the public domain.

The Petitions are being handled as requests for action pursuant to 10 CFR 2.206 and, accordingly, appropriate action will be taken on the Petitions within a reasonable time.

Copies of the Petitions are available for public inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, AZ 85004.

Dated at Bethesda, Maryland this 18th day of February 1986.

For the Nuclear Regulatory Commission.

Harold R. Denton,
Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86–3948 Filed 2–21–86; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The amendments relate to primary containment leak rate. Surveillance Specification 4.6.1.2 requires that primary containment leak rates periodically be demonstrated in conformance with criteria specified in Appendix J of 10 CFR 50. (Appendix J defines three types of leakage tests, identified as Types A, B and C.) Subparagraph d of this Specification states that Type B and C tests are to be conducted with gas at a specified pressure and test interval with three indicated exceptions. The proposed amendments would add NRC approved exemptions to Appendix J as a fourth exception to Subparagraph d. These changes were requested in the licensee's application for amendments dated January 21, 1986.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Basis for Proposed No Significant Hazards Consideration Determination

Pursuant to 10 CFR 50.12(a) (50 FR 50764), the Commission may, in cases where special circumstances are present and upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

The proposed amendments would eliminate the potential for conflict between Specification 4.6.1.2.d and exemptions to Appendix J to 10 CFR 50 (relative to Type B and C leakage tests), once granted by the Commission. An example of such potential conflict is illustrated by the licensee's letter to NRC of September 24, 1985. The letter requests partial exemption to 10 CFR 50 Appendix J to leak test two mechanical penetrations for the Ice Condenser Refrigeration System using glycol as the test medium rather than gas. (The licensee also proposed an acceptance criterion of zero leakage for the test using glycol, and if not met, the penetration would then be drained and tested with gas in accordance with Appendix J.) The Commission is presently reviewing the licensee's request for exemption. If granted, this exemption permitting the use of glycol could not be implemented without violating existing Specification 4.6.1.2d which requires use of gas.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and has determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated or (2) involve a significant reduction in a margin of safety because the Commission's review and approval process for exemptions would assure that containment integrity would not be compromised and that only exemptions meeting the criteria of 10 CFR 50.12(a) above would be granted. The proposed amendments, if implemented, also would not (3) create the possibility of a new or different kind of accident from any accident previously evaluated because Appendix J exemptions would involve only testing aspects rather than

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hardware changes or operating procedure changes. Accordingly, the Commission proposes to determine that the change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room 1717 H Street, N.W., Washington, D.C.

By March 26, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to B.J. Youngblood: petitioner's name and telephone number; date petition was mailed, plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 19th day of February 1986.

For the Nuclear Regulatory Commission.

Darl Hood,

Acting Director, PWR Project Directorate #4 Division of PWR Licensing–A

[FR Doc. 86-3949 Filed 2-21-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling System; Cancellation

The ACRS Subcommittee on Emergency Core Cooling Systems scheduled for February 26, 1986 has been cancelled. This meeting notice was previously published in the Federal Register (51 FR 5007) on February 10, 1986.

Dated: February 19, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-3946 Filed 2-21-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Motion Picture and Videotape Production Contracting and Audiovisual Productions Acquisition System; Invitation for Public Comment

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: The Office of Federal Procurement Policy (OFPP) is requesting comments on proposed revisions to OFPP Policy Letter 79-4, "Contracting for Motion Picture and Videotape Productions," and OFPP Pamphlet #3, "Federal System for Acquiring Audiovisual Productions."

SUMMARY: OFPP Policy Letter 79-4 was issued in November 1979 and Pamphlet #3 in August 1980. The Policy Letter established a Government-wide system for contracting for motion picture and videotape productions. The pamphlet supplemented the Policy Letter by providing information about using the Government-wide system. The revised pamphlet and policy letter propose to: (1) eliminate the need for producers to sign contracts prior to placement on the Government-wide Qualified Film or Videotape Producers Lists; (2) reduce from five to three the number of Interagency Audiovisual Review Committee members that must be present to evaluate sample productions; (3) eliminate the descriptions contained in 79-4 of the treatment and scripting approaches to audiovisual production; and (4) generally update the policies contained in both documents.

The intended effect of the proposed changes is to simplify Federal audiovisual contracting practices. Since the changes will not have a $100 million (or greater) effect on the economy, will not result in major increases in price or cost, and will not have adverse affects on employment, investment, competition, productivity or innovation, it is not a major rule, as defined in Executive Order 12291.

DATE: Comments must be received on or before April 1, 1986.

ADDRESS: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9025, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Deputy Associate Administrator for Policy Development (202) 395-6803. Copies of Pamphlet #3, Revised, may be obtained from Mr. Clark.

David F. Baker,

Acting Administrator.

Policy Letter No. 79-4 (Revised)

To the Heads of Executive Departments and Establishments

Subject: Contracting for Motion Picture Productions and Videotape Productions.

1. *Purpose.* This Policy Letter replaces Policy Letter 79-4 issued by the Office of Federal Procurement Policy (OFPP) on November 28, 1979. The Policy Letter modifies and updates the uniform Government-wide procedures for contracting for motion picture and videotape productions previously prescribed by Policy Letter 79-4.

2. *Background.* Beginning in the early 1970's, various management studies were made of the Government's audiovisual contracting programs. These studies indicated widespread dissatisfaction with the policies and procedures followed by Federal agencies and departments in contracting for the production of audiovisuals. OFPP Policy Letter 79-4 established a Government-wide system to correct many of the contracting problems identified in the studies. The Government-wide contracting system established by Policy Letter 79-4, however, has not been incorporated in the Federal Acquisition Regulation (FAR) and has not been uniformly applied. Accordingly, this Policy Letter is intended to update the procurement policies and provisions contained in Policy Letter 79-4 and to provide for their inclusion in the FAR.

3. *Policy.* Executive agencies and departments shall use the uniform Government-wide system described in paragraph 7 below in contracting for motion picture and videotape productions. The uniform system is intended to:

a. Reduce waste and inefficiency in audiovisual contracting practices;

b. Ensure that the Government obtains quality motion picture and videotape productions at fair, competitive prices;

c. Provide a central point within the Government where producers can obtain information on motion picture and videotape contracting procedures; and

d. Increase competiton for Government contracts.

4. *Implementation.* This Policy Letter will be effective when implemented in the FAR. Under provisions of the OFPP Act and OFPP Policy Letter 85-1, implementation in the FAR 90 days after the date of this Policy Letter shall be considered timely.

5. *8(a) Contracts.* Contracts made pursuant to Section 8(a) of the Small Business Act will be handled in accordance with existing regulations and use of the uniform system is not required.

6. *Definitions.* As used in this Policy Letter:

a. "Motion picture production" refers to those productions on motion picture film, developed according to plan or script, containing visual imagery, sound, or both, and used to convey information.

b. "Videotape production" refers to those productions on videotape, cassette, or disc, developed according to a plan or script, containing visual imagery, sound, or both, and used to convey information.

c. "Treatment" refers to a written overview of a producer's proposed creative approach and storyline. It includes a description of participants, their roles, and their general conversation or narration. Scene descriptions, animation (if any), and locations are provided by the treatment.

d. "Executive Agent" refers to the Office for Defense Audiovisual Policy of the American Forces Information Service. The Executive Agent is designated by OFPP and is responsible for administering and maintaining the qualified film and videotape producers list described in Paragraph 7 below. The Executive Agent also serves as the central information source about Federal motion picture and videotape contracting procedures.

e. "Interagency Audiovisual Review Board" (IARB) refers to a committee consisting of representatives from various Federal agencies. Members of the IARB are designated by an agency's central audiovisual management office. The IARB is chaired by the Executive Agent and is used in an advisory

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capacity by the Executive Agent in the evaluation of sample motion picture and videotape productions submitted by producers.

7. *Uniform System.*

a. *Open Invitation.* Persons interested in competing for Government motion picture or videotape production contracts shall contact the Executive Agent (Office for Defense Audiovisual Policy), Room 208, Plaza West; 1735 North Lynn Street; Arlington, Virginia 22209; telephone (202) 696–5260. The Executive Agent will provide each interested producer a standard application form, which shall be completed by the producer and returned to the Executive Agent.

b. *Submission of Work Sample.* Each application submitted to the Executive Agent must be accompanied by a sample motion picture or videotape production. Sample motion picture productions must be in the 16-mm optical sound format. Sample videotape productions must be on ¾-inch, U-format or ½-inch VHS videocassette. Sample productions must have been produced within the past 3 years, and a letter so stating from the client or sponsor of the sample production must be included in the application.

c. *Review of Work Samples.* Work samples submitted to the Executive Agent will be reviewed and evaluated by the IARB on a first-in, first-out basis. A minimum of three IARB members must participate in the evaluation of each work sample. The public may attend meetings of the IARB, during which sample motion picture and videotape productions are viewed. The public may not, however, be present nor participate during the formal evaluation of the productions.

d. *Criteria for Evaluating Work Samples.* The IARB will evaluate sample motion picture and videotape productions on the basis of the following criteria:

(1) Achievement of Purpose:

—Did the production accomplish its stated purpose?

—Was it appropriate for the intended audience? 0–15 Points

(2) Creativity:

—Did the production provide a fresh or innovative way of conveying the message? Was the manner of presentation appropriate? 0–15 Points.

(3) Continuity:

—Did the subject develop in a logical or understandable manner? 0–15 Points.

(4) Technical Factors:

—Did the following elements, if included in the production, exhibit technical competence?

—Direction
—Writing
—Photography/Camera Work
—Editing
—Artwork/Animation
—Narration/Dialogue
—Music and Sound
—Special Effects

—0–60 Points.

e. *Placement on Qualified Producers Lists.*

(1) The IARB will recommend to the Executive Agent that all producers whose work samples receive a composite score of 70 or more be included on the Qualified Film Producers List (QFPL) or Qualified Videotape Producers List (QVPL). The Executive Agent will then review and verify all application information and, if valid, will assign a QFPL or QVPL number to those producers. This number will be cited by the producers in all responses to Government solicitations.

(2) In the case of a sample which receives a composite score of less than 70, the IARB will recommend that the producer not be placed on the QFPL or QVPL. The IARB will provide the rationale for their recommendation to the Executive Agent, and the Agent will explain the shortcomings of the work sample to the producer. A producer who has additional facts or data which might offset the IARB recommendation may present these to the Executive Agent for consideration. Also, any producer whose sample is scored at less than 70 will be afforded an immediate opportunity to reapply with a different sample.

(3) A producer will normally remain on the QFPL or QVPL until he or she requests removal. The Executive Agent will verify (annually) the name, address, QFPL/QVPL number, and business size of each producer on the lists. Producers not responding to this verification will be removed from the lists. If a producer performs unsatisfactorily for an agency, the agency will take appropriate contractual action and also submit documentation on the unsatisfactory performance to the Executive Agent. The Executive Agent may reevaluate the producer's capabilities and reconsider the producer's qualifications for the QFPL or QVPL.

(4) Firms placed on the QFPL or QVPL will not be classified by subject matter or geographic area unless they so request. Copies of the qualified lists will be distributed by the Executive Agent to all using agencies and to other persons requesting them.

f. *The Solicitation and Contracting Process.*

(1) All notices and synopses published in accordance with FAR Part 5 shall advise interested producers that in order to qualify for contract award, they must first apply to the Executive Agent and be placed on the QFPL or QVPL, as appropriate. Persons and firms not on the QFPL or QVPL may submit proposals in response to Commerce Business Daily or other notices, but they must be placed on the appropriate list prior to award.

(2) When an agency is prepared to solicit production or treatment proposals for a motion picture or videotape, the contracting officer will contact the Executive Agent and request the names of producers from the QFPL or QVPL. The Executive Agent will furnish names in increments of five. The names furnished will be selected from the QFPL or QVPL on a random number basis.

(3) Use of Names. The agency will solicit proposals from all firms referred by ther Executive Agent. Proposals must be solicited from at least ten producers for each requirement (unless a noncompetitive acquisition is justified in accordance with the FAR). Agencies will determine, in light of the specific film or videotape to be produced, whether more than ten proposals should be solicited. As a general guide, however, agencies should not request more than ten names from the Executive Agent for productions estimated to cost less than $100,000. Any producer on the QFPL or QVPL may request a copy of an agency's request for proposals. Offers received from such producers shall be evaluated in the same manner as offers received from solicited producers.

g. *Soliciting Proposals.* Standard formats have been developed for soliciting proposals for: (1) the preparation of treatments and; and (2) the production of specific motion pictures and video tapes. Those formats are published in OFPP Pamphlet No. 3, Revised. Copies of the pamphlet may be obtained from the Executive Agent or OFPP.

h. *Reporting Requirements.* All motion picture and videotape productions acquired through contract, including those specifically exempted from this contracting system by Paragraph 8 below, will be reported to the Federal Procurement Data Center under Service Code T006 and, annually, to the National Audiovisual Center, using the Standard Form 203 in accordance with OMB Circular A–114. The Executive Agent will monitor these reports to ensure appropriate use of the QFPL and QVPL.

8. *Exceptions to Mandatory use of the QFPL or QVPL.*

a. The QFPL or QVPL is mandatory for use by all Federal agencies, except as follows:

(1) Noncompetitive (sole source) acquisitions justified and conducted in accordance with existing regulations.

(2) When a contract is required for work in which the development of motion picture or videotape productions represents less than 50% of the cost of that contract, an agency may determine that the involvement or production by the prime contractor is essential for continuity or is more cost effective than separately contracting for the audiovisual productions. If, however, such productions are to be accomplished through a subcontract, the prime contractor should be encouraged to use producers from the QFPL and QVPL.

(3) Agencies will follow existing regulations or directives when contracting for sound slide or multimedia productions or for separate media production support services, such as photography, editing, sound recording or rerecording, sound mixing, artwork, etc. If production support services are obtained by contract, the total cost of the services shall not exceed 30% of the estimated total cost of the production.

(b) these exceptions do not exempt agencies from the reporting requirements specified in paragraph 7.1.

9. *Effective Date.* This Policy Letter shall be effective ____

10. *Concurrence.* The Director of the Office of Management and Budget concurs in the issuance of this policy directive.

David F. Baker,

Acting Administrator.

[FR Doc. 86–3871 Filed 2–21 86: 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of forms submitted to the Office of Management and Budget (OMB) for clearance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35, we are announcing a proposed extension to forms which collect information from the public. OPM Form 1203 (Occupational Supplement series—Form B) and OPM Form 1280 (Applicant Data Sheet) are optical scan and key entry documents, respectively. These forms are used by our automated processing center to create basic applicant records for an automated examining system. We will be using these forms to carry out our responsibility for open competitive examining for admission to the competitive service in accordance with section 3302, 5 U.S.C. For copies of this proposal, call James M. Farron, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 20 working days from date of this publication.

ADDRESS: Send or deliver comments to—

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James M. Farron, (202) 632–7714.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86–3971 Filed 2–21–86; 8:45 am]

BILLING CODE 6325–01–M

PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[86–14]

Presidential Commission on the Space Shuttle Challenger Accident; Meeting

AGENCY: Presidential Commission on the Space Shuttle Challenger Accident.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the forthcoming meetings.

DATE AND TIME: February 25, 1986, beginning at 10:00 a.m. and February 26, 1986, beginning at 10:00 a.m.

ADDRESS: Department of State Auditorium, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director, Presidential Commission on the Space Shuttle Challenger Accident. (202/395–6190)

Purpose of meeting: To consider matters relevant to the decision to launch the Space Shuttle Challenger on January 28, 1986, including weather and launch pad conditions and concerns about the condition of the solid rocket boosters.

SUPPLEMENTARY INFORMATION: The Presidential Commission on the Space Shuttle Challenger Accident was established as a group of distinguished leaders of the government and the scientific, technical and management communities to investigate the accident of the Space Shuttle Challenger which occurred on January 28, 1986.

Exceptional circumstances requiring less than 15 days notice: The meetings were required to be held promptly due to the President direction that the Commission investigate the January 28, 1986 Space Shuttle Challenger accident and submit a final report to the Presidential and the Administrator of National Aeronautics and Space Administration within one hundred and twenty days of issuance of Executive Order 12546 dated February 3, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

February 20, 1986.

[FR Doc. 86–4006 Filed 2–21–86; 8:45 am]

BILLING CODE 7510–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14942; File No. 812–6233]

Application and Opportunity for Hearing; Bankers Security Life Insurance Society et al.

February 19, 1986.

Notice is hereby given that Bankers Security Life Insurance Society ("Company"), a New York stock life insurance company with executive offices at 1701 Pennsylvania Avenue NW., Washington, DC 20006; Bankers Security Variable Life Separate Account I, Bankers Security Variable Life Separate Account II, registered under the Investment Company Act of 1940 (the "Act") as open-end management investment companies ("Accounts I and II"); USLICO Securities Corporation, the principal underwriter; and Bankers Centennial Management Corp., the investment advisor (collectively, "Applicants"), filed an application on October 24, 1985, and an amendment thereto on January 29, 1986, for an order of the Commission pursuant to section 6(c) of the Act exempting Applicants from sections 2(a)(32), 2(a)(35), 18(i), 22(c) and 22(d), 26(a)(1), 26(e)(2), 27(c)(1), 27(c)(2), 27(f), and 27(h) of the Act and Rules 6e–2 (b)(1), (b)(10), (b)(12), (b)(13), and (c), 22c–1 and 27f–1

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thereunder in connection with the issuance and funding of certain single premium variable life insurance contracts ("contracts"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and are referred to the Act and the rules thereunder for a statement of the relevant provisions.

Applicants represent that Accounts I and II are segregated accounts to which assets are allocated from time to time to support benefits payable under scheduled permium insurance contracts offered by the Company. Applicants propose to offer a single premium contract to be funded by Accounts I and II. The new contract will differ from the existing scheduled premium contract in certain respects, including the fact that no front-end sales charge will be deducted. In the single premium contract's first ten years, the cash surrender value will be lower than its benefit base, a value used to claculate death benefits and cash surrender values. Therefore, Applicants note, surrender values are structured in such a manner which may be considered to impose a "contingent deferred sales charge" ("CDSL"). Applicants request exemptive relief to eliminate any doubt regarding full compliance with the Act and the rules thereunder in light of the CDSL.

Applicants state that cash surrender values under the single premium contract are structured so that they are less than the benefit base for the first ten years of the contract. Assuming a net investment return of 4½%, the benefit base will be the net single premium for the attained age (found in the single premium contract) multiplied by the guaranteed insurance amount under the contract. Using the same investment return assumption, the cash surrender value would always equal the tabular cash value. The relationship between the tabular cash value and the benefit base is such that at the end of the first contract year it equals 91% of the benefit base. At the end of each subsequent contract year it increases by 1% until at the end of the tenth year, and thereafter, it is always 100%. Applicants represent the CDSL will not exceed 9% of the single premium paid by the contractowner. It will apply upon the full surrender of a contract and upon an exchange of a contract for a fixed-benefit contract.

Applicants assert that both the language and the history of Rule 6e–2 anticipated variable life insurance contracts with CDSLs, and that the sales load under their contract is consistent with the rule in terms of amount and timing. Applicants also assert that contractowners benefit from CDSLs in that the net amount invested is increased, and the elimination of the front-end sales load permits higher minimum death benefits for the same premium.

Applicants assert section 2(a)(35) and 27(h) contemplate a sales load that is deducted at the time payment for the securities is made, and Rule 6e–2, paragraphs (b)(1) and (c)(4) may not cover a CDSL. Applicants seek exemptive relief to permit such a sales load on the grounds that it is consistent with the intent of the Act and that the timing of the deduction does not change the basic nature of the charge, which is in every other respect a sales charge. Applicants seek exemptive relief from sections 2(a)(32) and 27(c)(1) and from Rule 6e–2, paragraphs (b)(12) and (b)(13)(iv), to the extent such provisions do not recognize a sales charge at redemption. Applicants argue that the deferral of a sales load does not restrict the contractowner from receiving his proportionate value of the account on redemption. Applicants request exemption from section 22(c) of the Act and from Rules 6e–2(b)(12) and 22c–1 to the extent necessary to permit a CDSL. Applicants argue that Rule 6e–2(b)(12) was intended to afford exemptive relief from Rule 22c–1 with respect to redemption procedures in the context of variable life insurance, including surrender and exchange procedures, but the Rule 6e–2(b)(12) could be read as not recognizing a CDSL. Applicants point out Rule 22c–1 was intended to minimize dilution of interests and unfair speculative trading and that a CDSL would not have a dilutive effect and would actually discourage speculative short-term trading. With regard to Rule 6e–(c)(1)(i), which defines "variable life insurance contract" in terms of cash surrender values which vary to reflect investment experience, Applicants assert the single premium contract provides for a cash surrender value that also varies. Applicants seek relief from section 22(d) and Rule 6e–2(b)(12)(ii), which concern uniform price requirements. Applicants assert that although the exemption afforded in the Rule may not contemplate situations where separate accounts fund variable life insurance contracts, one with a front-end sales load and the other with a CDSL, any variation is reasonable, fair and non-discriminatory to the owners of the same class.

Applicants also request relief from section 27(h)(1) and Rules 6e–2 (b)(1), (b)(13), and (c)(4) to the extent necessary to permit use of the 1980 Commissioners Standard Ordinary Mortality Tables ("CSO Tables") instead of the 1958 CSO Table to measure the cost of insurance charge in determining what is deemed to be sales load. Applicants will use separate 1980 CSO Tables in computing sales load for male and female insureds and they state that these tables correspond to those guaranteed by the single premium contracts. Applicants state the 1980 CSO Tables reflect more contemporary mortality assumptions and, in most cases, the use of these tables will result in lower cost of insurance deductions than would use of the 1958 CSO Table. However, Applications acknowledge that for contractowners between ages 17 and 22 inclusive, the 1980 CSO Tables result in higher cost for the purchase of insurance. In addition, Applicants request relief from sections 26(a)(1), 26(a)(2), and 27(c)(2) and Rule 6e–2(b)(13)(iii) to permit the deduction of insurance charges from the benefit base value. Applicants believe their request for relief is consistent with amendments to Rule 6e–2 proposed in Investment Company Act Release 14421 (March 15, 1985).

Finally, Applicants request exemption from sections 22(e), 27(c)(1), and 27(f), and from Rules 6e–2 (b)(12), (b)(13)(iv), (b)(13)(viii)(C), (c)(1)(i), and (c)(4), and 22c–1 and 27f–1 to the extent necessary to permit them to use the structure of cash surrender values under the contract. They also request exemption from section 18(i) and Rule 6e–2(b)(10) to allow voting rights based on the value of the benefit base rather than the cash surrender value of the single premium contract. The calculation of the benefit base reflects the investment experience of the separate account to determine death benefits and cash surrender values. Applicants assert that voting rights based on the owner's participation in the separate account are the most appropriate way to determine voting rights.

Applicants represent they will conform to any rules and amendments the Commission may adopt under Rule 6e–2, or will seek exemptive relief from such amendments.

Notice is further given that any interestd person wishing to request a hearing on the application may, not later than March 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3960 Filed 2–21–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14941 (File No. 812–6176)]

Kemper Investment Trust Series I and Subsequent Series et al.; Application for Order Exempting Applicants and Approving Certain Affiliated Transactions

February 14, 1986.

Notice is hereby given that Kemper Investment Trust, Series 1 and Subsequent Series ("Trust"), 120 South LaSalle Street, Chicago, Illinois 60603, a series unit investment trust ("UIT") registered under the Investment Company Act of 1940 ("Act"), Technology Fund, Inc., Kemper Total Return Fund, Inc., Kemper Growth Fund, Inc., Kemper Summit Fund, Inc., Kemper Option Income Fund, Inc., Kemper International Fund, Inc., Kemper Income and Capital Preservation Fund, Inc. Kemper High Yield Fund, Inc., Kemper Municipal Bond fund, Inc., Kemper U.S. Government Securities Fund, Inc., any future fixed income or equity mutual funds which are part of the Group of Kemper Mutual Funds (collectively, "Funds") and Kemper Sales Company ("KSC"), sponsor/depositor of all of the Kemper unit investment trust (all of the above, "Applicants") filed an application on August 12, 1985, and an amendment thereto on January 24, 1986, and a second amendment to be filed during the notice period, for an order of the Commission, pursuant to section 6(c) of the Act, exempting Applicants from the provisions of section 12(d)(1) of the Act, and, pursuant to section 17(d) of the Act and Rule 17d–1 thereunder, permitting the Trust series to invest in portfolios consisting of zero-coupon obligations and underlying Fund shares. Interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and Rules thereunder for the complete text of the applicable provisions.

The application indicates that the Trust will consist of a series of UITs, each of which will be similar but separate and designated by a different series number. Applicants represent that each Trust series will be created, pursuant to a Trust Indenture and Agreement ("Trust Agreement") between KSC as depositor and Investors Fiduciary Trust Company ("Trustee"). Applicants state that the Trust intends to pursue its objective of seeking to provide protection of capital while providing for capital appreciation through investments in U.S. Government and other types of zero-coupon obligations or evidences thereof ("zero-coupon obligations") and shares of the Funds. Applicants further represent that KSC will act as principal underwriter and depositor of the Trust series, which are intended to be initially offered to the public at prices based on the net asset value of the shares of the Fund selected for deposit in that series of the Trust, plus the offering side value of the zero-coupon obligations contained therein, plus a sales charge.

The application states that KSC is a Delaware corporation and a wholly owned subsidiary of Kemper Investors Life Insurance Company which, in turn, is a wholly-owned subsidiary of Kemper Financial Service, Inc. ("KFS"), a registered investment adviser and broker-dealer; KFS is also a Delaware corporation and a wholly-owned subsidiary of Kemper Corporation, a diversified insurance and financial services holding company. Applicants state that each of the Funds is an open-end, diversified, management investment company registered under the Act. The Funds are part of a group of mutual funds known as the Kemper Mutual Funds for which KFS serves as investment adviser and/or principal underwriter.

Applicants propose that each series of the Trust would have a portfolio consisting of zero-coupon obligations purchased by KSC from third parties, all of which would have an essentially identical maturity. In addition to the zero-coupon obligations, each series would have deposited in it shares of one of the Funds. Applicants state that the Trust would be structured so that each series would contain a sufficient amount of zero-coupon obligations to insure that, at the specified maturity date for that series, an investor purchasing units of beneficial interest ("Units") of a Trust series on the date of deposit would receive back the approximate total amount of this original investment in the Trust, including the sales charge thereon. Applicants further state that at the maturity of a Trust series, the minimum which any investor in a series would receive would be the amount of his original investment (even if the Fund shares were worthless), since the principal value of the maturing zero-coupon obligations would approximately equal the original purchase price of the Unit of the Trust. To the extend that the Fund paid dividends or made capital gains distributions during the life of the Trust, the value of the purchaser's investment would be increased.

Applicants represent that shares of the Funds will be sold to the Trust at net asset value and that, since Fund shares have their net asset values calculated daily and that value is readily available to KSC, no evaluation fee will be charged with respect to determining the value of the Fund shares. Applicants state that an evaluation fee will be charged only with respect to that portion of the Trust's portfolio which consists of zero-coupon obligations. Applicants state that KSC intends to maintain a secondary market for Units of the Trust, although it is not obligated to do so. Applicants further state that the existence of a secondary market reduces or eliminates the number of Unit tendered to the Trustee for redemption and thus alleviates the necessity to sell portfolio securities to raise the cash necessary to meet those redemptions. Applicants represent that in the event that KSC does not maintain a secondary market, Fund shares held in the Trust series will first be sold to meet redemptions of Units. To insure that the benefit of zero-coupon obligations is not impaired, the Trust Agreement provides that KSC will not instruct the Trustee to sell zero-coupon obligations from any Trust series until Fund shares have been liquidated, unless KSC is able to sell those zero-coupon obligations and still maintain the original proportional relationship to Unit value. The Trust Agreement provides, further, that zero-coupon obligations may not be sold to meet Trust expenses.

Applicants note that section 12(d)(1) of the Act is intended to prevent the duplication of costs and other adverse consequences to investors incident to the pyramiding of investment companies. Applicants submit that their proposal is structured so as to eliminate such pyramiding and that the UIT format is uniquely adaptable to avoiding the problems with which section 12(d)(1) is concerned.

Applicants state that there will be no duplicative sales charges to Trust

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investors. Fund shares will be sold to the Trust at net asset value and the sales load charged by the Trust will be, in most cases, equal to or less than the sales loads charged by the Funds. The Funds' principal underwriter has agreed to waive the usual sales charge in light of the minimal direct sales effort required to sell Fund shares to the Trust. Applicants indicate that since a UIT has an unmanaged portfolio, there are no duplicative investment advisory fees as there would be where a mutual fund purchased shares of other mutual funds. Furthermore, the normal evaluation fee on Fund shares deposited in any Trust series will not be charged since the pricing of such shares is readily available to KSC, although an evaluation fee will be charged with respect to the zero-coupon obligations in the Trust. Applicants assert that the administrative costs to both the Trust and the underlying Fund should be reduced by the proposed arrangement for the reasons set forth above.

Applicants submit that shareholders of each of the Funds selected for deposit in various series (one Fund per series) will benefit from the additional economies of scale resulting from the sale of a large number of shares to a Trust Series, each of which will be carried on the books of the Fund as a single shareholder account, rather than multiple shareholder accounts.

Applicants further note that another concern of section 12(d)(1) was potentially abusive control problems resulting from concentration of voting power in a fund holding company or from the threat of large-scale redemptions by the fund holding company. The voting of shares of the Fund which are held by a series of the Trust will be done by the Trustee of the Trust. The trust indenture for each series of the Trust will provide that the Trustee must vote all shares of a Fund held in a Trust series in the same proportion as all other shares of that Fund, which are not held by the Trust, are voted.

Regarding large-scale redemptions, Applicants assert that the requirements of the trust indenture, which permit the Trust to sell shares *only* when necessary to meet redemptions and which will occur only if KSC is not maintaining a secondary market, should alleviate any concerns with this problem. The application states that neither the Trustee nor KSC will have discretionary authority to determine when shares of the underlying Fund are to be sold or to substitute shares of another Fund for those deposited in the Trust.

According to the application, the Trust has taken certain steps to reduce the impact of the termination of a series of the trust on the Fund deposited therein. Applicants state that the Trust will, with respect to all Unitholders still holding Units at maturity, transfer the registration on their proportionate number of Fund shares from the Trust to a registration in the investor's name in lieu of redeeming those shares, and the Trust will also offer all such Unitholders the option of reinvesting the proceeds of the zero-coupon obligations in Fund shares at net asset value. Proceeds from the zero-coupon obligations will be paid in cash unless the Unitholder elects reinvestment.

Applicants believe that the threats of large-scale redemptions will be further reduced by imposing a requirement that no particular series of the trust could acquire more than 10% of the then outstanding shares of a Fund. Applicants argue that it is appropriate that this condition relate to each series of the Trust individually, because the purchasers of Units of each series are essentially different. Applicants further undertake that not more than 10% of a Fund's shares will be deposited in multiple Trust series having zero-coupon obligations that mature within a 30-day period.

Applicants assert that the restriction on levels of ownership contained in section 12(d)(1) was imposed primarily to deal with a situation where a mutual fund manager might be able to exert some degree of control over an acquired fund by threatening large-scale redemptions and that the unmanaged nature of a UIT precludes any necessity for concern in this area. Applicants note that the trustee of the Trust, as noted, has no discretionary ability to demand a redemption of a Fund's shares and may do so only to meet redemption requests (and then only to the extent that KSC does not purchase the Units in order to resell them in the secondary market). Any attempt to vary the portfolio of any series of the Trust, except under certain very narrowly defined conditions, would, according to the application, be contrary to the Trust Agreement and would, more than likely, cause the Trust to lose its status as a grantor trust under the provisions of the Internal Revenue Code.

Applicants also seek an order under section 17(d) of the Act and Rule 17d–1 thereunder, approving certain affiliated transactions associated with their proposal. Applicants state that they have structured the Trust to eliminate as many potential areas of concern with respect to any affiliated transactions as possible. There will be no duplication of sales charges with respect to the Fund shares and Trust Units, there will be no overlap of fees for managing the portfolio since there is no management fee at the Trust level and, because the price of the Funds' shares can be easily obtained, the evaluation fee with respect to that portion of the Trust's portfolio represented by Fund shares has been waived. Applicants state that, for the reasons cited above and in light of the restrictions imposed in connection with the proposed transactions, neither the Funds nor the Trust will be disadvantaged by the arrangement and that each stands to gain significant benefits from the proposed transaction.

Applicants submit that the proposed arrangement is consistent with the purposes, policies, and provisions of the Act and no less advantageous to any one of the Applicants. Finally, Applicants represent that, with respect to any future Fund, they will substantially comply with the representations contained in their application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interests, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued, unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3961 Filed 2–21–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14944; (812–6237)]

PaineWebber Special Income Fund, Inc.; Application for Order Permitting Assessment (and Variation) of a Contingent Deferred Sales Load

February 18, 1986.

Notice is hereby given that PaineWebber Special Income Fund, Inc. ("Applicant"), 1285 Avenue of the Americas, New York, NY 10019 filed an application on October 29, 1985, and an amendment thereto on February 4, 1986, for a Commission order, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting it from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit assessment (and variation) of a contingent deferred sales load ("CDSL") on certain redemptions of shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicant, a Maryland corporation organized in October 1985, states it is registered under the Act as an open-end, diversified, management investment company. Further, Applicant states that PaineWebber Incorporated ("PaineWebber") is expected to serve as Applicant's principal underwriter, administrator and investment adviser. Mitchell Hutchins Asset Management Inc. ("Mitchell"), an affiliate of PaineWebber, is expected to serve as sub-adviser to Applicant.

Applicant proposes to impose a CDSL if during the six years preceding the redemption, an investor redeems an amount which causes the value of his account to fall below the total amount of his purchase payments. Applicant represents that no CDSL will be imposed upon redemption on amounts derived from (i) increases in the value of the account above the total dollar amount of purchase payments made during the six years preceding the redemption (either through appreciation or through reinvestment of dividends and capital gains contributions) or (ii) purchase payments made more than six years prior to the redemption. Applicant states that such amounts would be considered the amounts first redeemed upon any redemption request.

Applicant states that where a CDSL is imposed, the amount will depend upon when the shares being redeemed were purchased. During the first 12 months after purchase, the CDSL would be 5% of the amount subject to a redemption charge. Thereafter, the CDSL would be 4% for shares redeemed during the second year after purchase, 3% during the third year, 2% during the fourth and fifth years and 1% during the sixth year. Applicant represents that the shares first purchased will be assumed to be the first redeemed. Applicant also represents that the maximum amount on which a CDSL may be imposed on a cumulative basis will not exceed the total purchase payments made by an investor. Further, Applicant represents that in no event could the aggregate amount of the CDSL exceed 5% of the aggregate purchase payments made by an investor.

According to the application, Applicant proposes to finance its distribution expenses pursuant to a plan ("Plan") adopted under Rule 12b–1 under the Act. The Plan currently provides that Applicant will pay PaineWebber a monthly distribution fee of 1% per annum of the lesser of (a) the original purchase price of Applicant's shares less the original purchase price of Applicant's shares redeemed since inception upon which (i) a CDSL was imposed or could have been imposed but for the fact that such shares were purchased six years or more prior to redemption and (ii) a CDSL was imposed but waived or (b) Applicant's average daily net assets. Applicant represents that PaineWebber will also receive the proceeds of the CDSL.

Applicant proposes to waive the CDSL on redemptions (i) following the death or disability of an investor, (ii) in connection with certain distributions from qualified retirement plans and (iii) by officers, directors and employees of Applicant, PaineWebber, Mitchell and their affiliates. Applicant also proposes to reduce the CDSL on certain redemptions by investors who at the time of redemption hold shares of Applicant worth at least $1,000,000.

Applicant requests relief from sections 2(a)(32), 2(a)(35) and 22(c) of the Act and Rule 22c–1 thereunder to the extent necessary to allow it to impose a CDSL. Applicant supports such request by alleging that the CDSL in no way restricts an investor from receiving his proportionate share of Applicant's current net assets, but merely defers the deduction of a sales load and makes it contingent upon an event which may never occur. Because a CDSL may be considered a sales load under the Act, Applicant also requests an exemption from section 22(d) of the Act permitting the proposed waivers and reduction. Applicant represents that upon the granting of the requested relief it will comply with Rule 22d–1 under the Act in connection with such waivers and reduction.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3962 Filed 2–21–86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14943; 812–6236]

Prudential-Bache Securities Inc., et al.; Application for an Order Amending an Existing Order and Permitting Certain Additional Offers of Exchange

February 18, 1986.

Notice is hereby given that Prudential-Bache Securities Inc. (the "Sponsor") on behalf of all existing and future trusts in any series of the Prudential Unit Trusts or any other similar series for which Prudential-Bache Securities Inc. is the Sponsor (collectively, the "Trusts", and individually, the Trust, the Sponsor and the Trusts, collectively, "Applicants"), unit investment trusts registered or under the Investment Company Act of 1940 (the "Act"), c/o Prudential Bache Securities Inc., 100 Gold Street, New York, NY 10292, filed an application on October 18, 1985, and amendments thereto on December 5, 1985, January 24 and 29, 1986, for an order of the Commission pursuant to Section 11 of the Act (a) amending a prior order issued by the Commission approving certain offers of exchange (the "Exchange Option"); (b) approving, on substantially identical terms, an offer of exchange for Trusts not included in the prior order, including future unit investment trusts to be sponsored by the Sponsor (the "Future Trusts") and (c) approving an additional offer of exchange that Applicants propose to offer to holders of units in any registered unit investment trust with a minimum sales load of 3%, exclusive of available sales charge discounts, such as volume discounts, employee discounts and exchange option discounts (the "Conversion Option"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below,

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and to the Act for the applicable provisions thereof.

Applicants state that each Trust is a separate unit investment trust and that each series thereof may have different investment objectives. Applicants represent that the Future Trusts will also be registered unit investment trusts under the Act and will be sponsored by the Sponsor (but may be sponsored by additional sponsors). With respect to the prospective relief sought on behalf of the Future Trusts, Applicants undertake to limit their activities, as they relate to the Exchange and Conversion Options, to the terms and conditions represented in the application.

By an order issued on June 26, 1984 (Investment Company Act Release No. 14010), the Commission permitted certain Trusts to participate in the Exchange Option. Applicants now request approval to expand the Exchange Option to all Trusts and Future Trusts (Trusts and Future Trusts, collectively, "Exchange Trusts"), subject to the modifications and conditions set forth in the application.

According to the application, although the particular Exchange Trusts and the particular series thereof will differ in various respects depending on the nature of the underlying portfolios, the investment procedure followed in all cases is the same. The Sponsor acquires a portfolio of securities that it believes satisfies the standards applicable to the investment objectives of the particular series. These securities are then deposited in trust with a corporate fiduciary in exchange for certificates representing units of undivided interest in the deposited portfolio ("Units"). These Units are then offered to the public at public offering price that is based upon the offering prices of the underlying securities plus a sales load that is generally 4.5% of the public offering price (purchasers of Units, "Certificateholders").

Under the Exchange Option, Certificateholders may exchange Units held in any one of the Exchange Trusts for Units of other series of the same Trust or of any of the other Exchange Trusts that the Sponsor has repurchased and has not tendered for redemption. Upon notifying the Sponsor of a desire to exercise the Exchange Option, a Certificateholder will be delivered a current prospectus for one or more series of the Exchange Trusts for which the Certificateholder has indicated an interest and for which the Sponsor has Units available to offer in exchange for the Units being tendered. Although the Sponsor is not legally obligated to do so, the Sponsor intends to maintain a secondary market for Units of the Exchange Trusts and to continuously offer to purchase Units at prices based upon the market value determined in the manner set forth in the prospectus. The Exchange Option would apply only to Units of series of the Exchange Trusts for which a secondary market is being maintained by the Sponsor. Applicants request, however, that the order sought herein approve exchanges for Units available on original issue in the event that at some future date the Sponsor determines to permit such exchanges.

Applicants contend that the Exchange Option will operate in a manner essentially identical to any secondary market transaction, except that the Sponsor intends to impose a reduced sales charge on certain exchanges. Pursuant to the Exchange Option, the Sponsor will sell Units of the Exchange Trusts at the public offering price, plus a fixed sales charge of $15 per Unit received by the Certificateholder (the "Reduced Sales Charge"). Applicants represent that the Reduced Sales Charge can be expected to approximate 1.5% of the public offering price.

Applicants represent that a Certificateholder who purchased Units of a series and paid a per Unit sales charge that was less than the per Unit sales charge of the series of the Exchange Trusts for which such Certificateholder desires to exchange into, will be allowed to exercise the Exchange Option at the public offering price plus the Reduced Sales Charge, provided that the Certificateholder held the Units for at least five months. Any such Certificateholder who has not held the Units to be exchanged for the five-month period will be required to exchange them at the public offering price plus a sales charge based on the greater of the Reduced Sales Charge, or an amount which, together with the initial sales charge paid in connection with the acquisition of the Units being exchanged, equals the sales charge of the series of the Exchange Trusts for which the Certificateholder desires to exchange into, determined as of the date of the exchange. Applicants submit that the five month holding period requirement sufficiently evidences a Certificateholder's intent to make a *bona fide* investment and that it is unlikely that a Certificateholder would purchase Units with a view to exchanging such Units in order to pay a lesser aggregate sales charge.

Under the Exchange Option, Certificateholders will also be permitted to tender cash to make up any difference between the value of the Units being submitted for exchange and the value of the Units being acquired up to the next highest number of whole Units. Applicants assert that permitting Certificateholders to round up to the next highest number of Units does not create any significant potential for abuse or unfairness in pricing.

In addition to the Exchange Option, Applicants request an order to permit the Exchange Trusts to offer, on terms substantially the same as those applicable to the Exchange Option (including the ability to round up to the next highest number of whole Units), Units in exchange for beneficial interests in any and all registered unit investment trusts initially offered to the public at a minimum sales charge of 3%, exclusive of customary sales charge discounts, such as volume discounts, employee discounts or exchange option discounts (the "Conversion Trusts"). Applicants submit that the minimum sales load condition applied to the Conversion Option, as well as the five-month holding period, limits potential for abuses of the Conversion Option. Applicants state that the fixed sales charge for exercise of the Conversion Option will be $20.00 per Unit received. Applicants represent that in the future, and as a condition to the granting of the order requested, the Sponsor will not charge more than five dollars per Unit more for exercise of the Conversion Option than the corresponding fee being charged for exercise of the Exchange Option. Applicants reserve the right to increase or decrease the fixed sales charge relating to the Exchange and Conversion Options subject to the terms and conditions of Rule 22d-1 and may otherwise modify, suspend or terminate either exchange privilege.

Applicants submit that the fixed sales charge assessed in connection with the proposed exchange transactions is a reasonable and justifiable expense to be allocated to the professional assistance and operational expenses contemplated in connection with the Exchange and Conversion Options. Applicants also submit that it is not abusive or unfair to permit purchasers who originally acquire Units at a discounted sales charge to participate in the proposed offers of exchange. The Sponsor represents that it will not solicit Certificateholders with respect to the Exchange or Conversion Options with a view to churning Certificateholders' accounts and that the proposed transactions will be done for the benefit of Certificateholders and in accordance with their investment objectives.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 11, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-3963 Filed 2-21-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/944]

Advisory Committee on International Investment, Technology, and Development; Subcommittee on Transborder Data Flows; Meeting

The Department of State will hold a meeting of the Subcommittee on Transborder Data flows of the Advisory Committee on International Investment, Technology, and Development on March 11, 1986 from 10:00 a.m. to noon. The meeting will be held in the East Auditorium at the Department of State, 2201 "C" Street, NW., Washington, D.C. 20520.

The purpose of the meeting will be to discuss the U.S. proposals for the 1987 OECD/ICCP work program, the Secretariat's proposals, and the March meetings of the Working Party on Transborder Data Flows and the ICCP Committee.

Access to the State Department is controlled. Therefore, members of the public wishing to attend the meeting must contact the Office of Investment Affairs, (202) 647-2728, in order to arrange admittance. Please use the "C" street entrance.

The Chairman of the Subcommittee will, as time permits, entertain comments from members of the public at the meeting.

Dated: February 18, 1986.

Walter B. Lockwood, Jr.,

Executive Secretary.

[FR Doc. 86-3955 Filed 2-21-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Agreements Filed; During the Week Ending February 14, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Feb. 10, 1986	43787, R-1-R-42	Members of International Air Transport Association	Africa—TC3 Fares	Feb. 15, 1986.
Do	43788, R-1-R-10	do	Composite Passenger-Conf. North/Mid-Atlantic	Apr. 1, 1986.
Do	43789	do	Tokyo-Cairns General Cargo Rates	Do.
Do	43790, R-1-R-8	do	TC1 Longhaul Amending Reso	Do.
Do	43791, R-1-R-4	do	Europe-Asia Cargo	Mar. 10, 1986.
Do	43792, R-1-R-3	do	TC31 Circle Pacific Fares	Feb. 15, 1986.
Do	43793	do	Cargo Increase Jugoslovia	Apr. 1, 1986.
Do	43794	do	North Atlantic Proportionals-Canada	Do.
Do	43795	do	Egypt/Syria Rates	Dec. 21, 1985, Jan. 1, 1985.
Do	43796, R-1-R-8	do	Cargo Agency Conferegpe	Apr. 1, 1986.
Feb. 13, 1986	43799	do	Cargo Agents Reporting/Remittance in Argentina	Feb. 15, 1986.
Do	43800	do	Increase Fares to/from Algeria	Apr. 1, 1986.
Do	43302	do	Specific Commodity Rates TC1	Feb. 8, 1986.
Feb. 14, 1986	43803, R-1-R-12	do	Southwest Pacific/Australia to Europe Fares	Apr. 1, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-3964 Filed 2-21-86; 8:45 am]

BILLING CODE 4910-62-M

[CM-8/943]

Advisory Committee on South Africa; Closed Meetings

The Advisory Committee on South Africa will meet in closed sessions on March 11, 1986 and May 6, 1986. The meetings will commence at 9 a.m. and will be held in Room 7220, Department of State, Washington, D.C.

The sessions will be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (c)(9)(B). The Committee will have access to and will discuss classified information. Disclosure of the Committee's deliberations could adversely affect the Committee's ability to function as a group in providing the Secretary of State with advice on matters of critical importance to the conduct of United States foreign policy. The purpose of the meetings will be to discuss the current situation in South Africa and the evaluation of U.S. policy toward South Africa.

Requests for further information should be directed to: Peter Jensen, (202) 647-8971, Room 3513, Department of State.

Dated: February 13, 1986.

C. William Kontos,

Executive Director.

[FR Doc. 86-3956 Filed 2-21-86; 8:45 am]

BILLING CODE 4710-26-M

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Federal Aviation Administration

Advisory Circular; Initial Maintenance Inspection Test Run for Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Draft AC No. 33.90–1.

SUMMARY: This notice is to notify the aviation public of the withdrawal of Draft Advisory Circular (AC) No. 33.90–1, "Initial Maintenance Inspection Test Run for Turbine Engines." This draft AC (33.90–1) was initiated to provide guidance for meeting the test requirements for Federal Aviation Regulation (FAR) Part 33 establishing when the initial maintenance inspection is required for an engine being type certificated.

FOR FURTHER INFORMATION CONTACT: H. Alden Jackson, Engine and Propeller Standards Staff, ANE–110, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone 617–273–7078.

SUPPLEMENTARY INFORMATION: Interested parties were given the opportunity to review and comment on the Draft AC during the proposal and development phases. Notice was published in the **Federal Register** (50 FR 25645) to announce the availability of and request comments to the Draft AC. Comments were received from public organizations, the Air Transportation Association (ATA) and the Aerospace Industries Association (AIA) who recommended cancelling the AC on the grounds that it implied that life limits would be established, and the functions of the MRB team would be compromised in establishing an approved maintenance plan. The AC has been reexamined in light of the comments, and it has been determined that they are valid. Accordingly, the FAA has determined that the AC be cancelled.

Issued in Burlington, Massachusetts, on February 11, 1986.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 86–3886 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 159—Minimum Aviation System Performance Standards for GPS; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standards for GPS to be held on March 13–14, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Meeting Held on December 12–13, 1985; (3) Review Modified Committee Terms of Reference; (4) Review and Discussion of European Organization for Civil Aviation Electronics (EUROCAE) Working Group 28 Activities; (5) Briefings on GPS Topics Requested at Previous Meeting; (6) Develop Committee Work Program and Schedule for Accomplishment; (7) Assignment of Tasks; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on February 13, 1986.

Karl F. Bierach,

Designated Officer.

[FR Doc. 86–3887 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 150—Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation Above Flight Level 290 to be held on March 18–20, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: Chairman's Introductory Remarks; (2) Approval of the Minutes of the Committee Meeting Held on November 13–14, 1985; (3) Review of Task Assignments from the Previous Meeting; (4) Status Report on European Organization for Civil Aviation Electronics (EUOCAE) Data Collection Activities; (5) Canadian Data Collection Activities; (6) FAA Report on Data Analysis Activity; (7) Review and Discuss Committee Programs and Plan Future Activities; and (8) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on February 13, 1986.

Karl F. Bierach,

Designated Officer.

[FR Doc. 86–3888 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket No. S–784]

United States Lines Inc.; Application for Waiver

By order served December 3, 1984 (approved November 30, 1984—Docket S–760), the Maritime Administrator waived the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), to allow United States Lines, Inc. (USL) to enter into certain foreign-flag vessel charters and spece charters. The foreign-flag vessels serve as feeders in support of USL's unsubsidized Jumbo Econship container vessels which operate in Round-the-World service eastbound. The waiver specified the ports to be served, the number of vessels to be operated in each port range, and the maximum FEU capacity per vessel.

The December 3, 1984 Order allowed USL to, among other things, charter two foreign-flag vessels of up to 275 FEU capacity each to relay cargo at a single port in the U.A.E. to and from a U.A.E. port, Ad Dammam, and Kuwait.

USL has been operating one vessel in such a feeder sevice between the U.A.E. port of Khor al Fakkan on the Gulf of Oman and Ad Dammam and Kuwait in the Persian Gulf.

USL, buy letter of December 23, 1985, requests an amendment to the december 3 Order to permit USL to add a port in Bahrain to the permitted feeder service described above.

The requested addition if granted would result in the waiver of section 804(a) of the Act for theparticular vessel charter arrangement to read, as amended:

Line haul port	Feeder ports	Number of vessels	Maximum FEU capacity per vessel
A single port in the U.A.E.	A U.A.E. port, Ad Dammam (Saudi Arabia), Kuwait, Bahrain.	2	275

USL has served the demand for Bahrain cargo movements by utilizing a foreign-flag common carrier. USL desires to call its chartered vessel at Bahrain, thus saving the expense of common carrier charges. Bahrain island is about twenty miles offshore from Ad Dammam, therefore the chartered vessel could accommodate the additional call within existing schedules.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 P.M. on March 7, 1986. This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Dated: February 19, 1986.

Georgia P. Stamas,

Secretary.

[FR Doc. 86–3950 Filed 2–21–86; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. 85–16; Notice 1]

Evaluation Report on Child Passenger Safety; Federal Motor Vehicle Safety Standards; Child Retraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard No. 213, *Child Restraint Systems*. This staff report evaluates safety effectiveness, benefits and usage of child safety seats for motor vehicle passengers aged 0–4. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than May 25, 1986.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C., 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, D.C., 20590. [Docket hours, 8:00 a.m.–4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Standards Evalution, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street SW., Washington, D.C., 20590 (202–426–1574).

SUPPLEMENTARY INFORMATION: Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) specifies performance and labeling requirements for child safety seats used in motor vehicles. The purpose of safety seats is to reduce the number of children killed or injuried in motor vehicle crashes. The primary function of child safety seats is to hold children in place during a crash and prevent them from being thrown into the instrument panel or other parts of the vehicle or from being ejected from the passenger compartment. Moreover, the seats must be specifically tailored to a child's anatomy and designed to restrain a child without applying dangerous forces to vulnerable body regions. The seats must be convenient and easy to use, labeled with clear instructions on how they are to be used correctly. The current version of Standard No. 213 took effect on January 1, 1981.

Pursuant to Executive Order 12291, NHTSA recently conducted an evaluation of child passenger measures to determine the effectiveness of the technology selected by safety seat manufacturers in preventing fatalities and injuries and to determine the benefits and costs of the technology to consumers. Under the Executive Order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This evaluation is an analysis of the effectiveness, benefits and usage of safety seats and other safety measures for child passengers aged 0–4.

The principal findings and conclusions of the report are the following:

- It is estimated that child safety seats saved the lives of 158 children aged 0–4 during 1984. Lap belts saved an additional 34 lives. In all, 192 children were saved by child passenger safety measures in 1984—up from just 38 children in 1979.
- 46 percent of child passengers aged 0–4 were in a safety seat in 1984. An additional 14 percent used the lap belt only. Thus 60 percent of child passengers used a child restraint or lap belt in 1984—up from 18 percent in 1979.
- 39 percent of safety seats were correctly used in 1984, while 61 percent were misused to a greater or lesser extent. But in 1979, only 18 percent were correctly used while 82 percent were misused.
- A correctly used safety seat reduces fatality risk by 71 percent and serious injury risk by 67 percent. But misuse can partially or completely nullify this effect. In 1984, the average overall effectiveness of safety seats (correct uses plus misusers) was 46 percent. In 1979, when more seats were misused, the average effectiveness was just 27 percent.
- Lap belts in passenger cars reduce fatality risk of 1–4 year old children by 33 percent. Moving an unrestrained child age 0–4 from the front seat to the back seat reduces fatality risk in the event of a crash by 27 percent.
- All types of safety seats tested in this evaluation were highly effective in frontal crashes when they were correctly used.

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The report was developed from statistical analyses of the National Accident Sampling System, Fatal Accident Reporting System, and State accident data files; analyses of sled test and compliance test data; and observational surveys of restraint system usage and misuse.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: February 14, 1986.

Adele Spielberger,

Associate Adminstrator for Plans and Policy.

[FR Doc. 86-3870 Filed 2-21-86; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 36
Monday, February 24, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Postal Rate Commission	7

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Tuesday, February 25, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

1. Pressed Wood Project/Petition CP82-6

The Commission will consider the Consumer Federation of America's petition CP 82-6 requesting a mandatory standard on formaldehyde emissions from pressed wood products.

2. ATVs: Preliminary Hazard Analysis

The staff will brief the Commission on the preliminary injury survey of all-terrain vehicles.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492-6800.

Sheldon D. Butts,

Deputy Secretary.

February 19, 1986.

[FR Doc. 86-3996 Filed 2-20-86; 12:00 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, February 27, 1986.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, DC.

STATUS:

MATTERS TO BE CONSIDERED:

Open to the Public

Monitoring Voluntary Standards

The staff will brief the Commission on recent comments received on efforts by staff to monitor industry enforcement of voluntary standards. The staff will also present options for carrying out this effort in the future.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492-6800.

Sheldon D. Butts,

Deputy Secretary.

February 19, 1986.

[FR Doc. 86-3997 Filed 2-20-86; 12:00 pm]

BILLING CODE 6355-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

February 19, 1986.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: 10:00 a.m., February 26, 1986.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 639th Meeting—February 26, 1986, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 9009-001, Pan Pacific Hydro, Incorporated

CAP-2.
Project No. 9613-001, Ashuelot Hydro Partners, Ltd.

CAP-3.
Project No. 7395-002, W.M. Lewis & Associates, Inc.

CAP-4.
Project Nos. 9270-001, 9271-001 and 9272-001, Cook Electric, Inc.

CAP-5.
Project Nos. 7285-003 and 7295-003, F&T Energy Corporation

CAP-6.
Project No. 6352-001, Trinity County, California

CAP-7.
Project No. 4660-002, Independence County, Arkansas

CAP-8.
Project No. 7387-001, Niagara Mohawk Power Corporation

CAP-9.
Project No. 3286-009, Puget Sound Power and Light Company

CAP-10.
Project No. 2758-003, city of Burlington Electric Department
Project No. 9413-001, Winooski One Partnership

CAP-11.
Omitted

CAP-12.
Project No. 3856-004, Reed Hydro-Electric Corporation

CAP-13.
Project No. 2541-002, Cascade Power Company

CAP-14.
Docket Nos. ER86-236-000 and ER86-239-000, New England Power Company

CAP-15.
Docket No. ER86-170-002, New England Power Company

CAP-16.
Docket Nos. ER86-107-002 and ER86-120-002, Pacific Gas and Electric Company

CAP-17.
Docket Nos. ER85-424-004, ER85-425-003, ER85-634-004 and ER85-692-002, Southwestern Electric Power Company

CAP-18.
Docket No. ER80-259-009, Kansas Gas and Electric Company

CAP-19.
Docket No. ER85-106-002, Montaup Electric Company

CAP-20.
Docket No. ER85-515-006, Florida Power & Light Company

CAP-21.
Docket No. ER85-412-000, Central and South West Services, Inc.

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CAP-22.
Docket No. ER85-582-001, Gulf States utilities Company
CAP-23.
Docket Nos. ER85-775-001 and 002, Central Vermont Public Service Corporation
CAP-24.
Docket No. EL85-4-000, Congressman Ed Bethune v. Arkansas Power & Light Company, Mississippi Power & light Company, Louisiana Power & light Company, New Orleans Public Service, Inc., Middle South Energy, Inc. and Middle South Utilities, Inc.

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA84-13-000, Canal Electric Company
CAM-2.
Docket No. RM83-69-002, qualifying facility status for hydroelectric projects under sections 201 and 210 of the Public Utility Regulatory Policies Act of 1978
CAM-3.
Docket No. RM85-1-154 (parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Midwestern Gas Transmission Company)
CAM-4.
Docket No. RM85-1-155 (parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Carbonaire Company, Inc.)
CAM-5.
Omitted
CAM-6.
Docket No. GP82-45-000, Independent Oil & Gas Association of West Virginia and Ashland Exploration, Inc.

Consent Gas Agenda

CAG-1.
Docket Nos. TA86-1-22-000 and 001 (PGA86-1, IPR86-1 and RD&D86-1), Consolidated Gas Transmission Corporation
CAG-2.
Docket Nos. TA86-1-60-000 and 001 (PGA86-1), Locust Ridge Gas Company
CAG-3.
Docket Nos. TA86-2-28-000 and 001 (PGA86-1 and IPR86-1), Panhandle Eastern Pipe Line Company
CAG-4.
Docket Nos. TA86-2-30-000 and 001, Trunkline Gas Company
CAG-5.
Docket Nos. TA86-3-21-000 and 001 (PGA86-3), Columbia Gas Transmission Corporation
CAG-6.
Docket Nos. TA86-3-25-000 and 001 (PGA86-2 and IPR86-1), Mississippi River Transmission Corporation
CAG-7.
Docket Nos. TA86-3-34-000 and 001 (PGA86-3), Florida Gas Transmission Company
CAG-8.
Docket No. TA86-3-46-001, Kentucky West Virginia Gas Company
CAG-9.
Docket No. RP86-41-000, Algonquin Gas Transmission Company
CAG-10.
Docket No. RP86-42-000, El Paso Natural Gas Company
CAG-11.
Docket No. RP86-44-000, Valero Interstate Trans... ission Company
CAG-12.
Docket No. RP86-45-000, El Paso Natural Gas Company
CAG-13.
Docket Nos. ST85-2-001, ST85-466-001, ST85-471-001, ST85-475-001, ST85-513-001, ST85-647-001, ST85-624-001, ST85-621-001, ST85-708-001 and ST85-1145-001, Gulf South Pipeline Company
CAG-14.
Docket No. ST85-1397-001, The Kansas Power and Light Company
CAG-15.
Docket No. RP86-14-003, Columbia Gulf Transmission Company
Docket No. RP86-15-003, Columbia Gas Transmission Corporation
CAG-16.
Docket No. RP86-27-001, Midwestern Gas Transmission Company
CAG-17.
Docket No. RP86-32-001, Northwest Central Pipeline Corporation
CAG-18.
Docket No. RP79-10-022, Great Lakes Gas Transmission Company
CAG-19.
Docket No. RP85-194-004, Panhandle Eastern Pipe Line Company
CAG-20.
Omitted
CAG-21.
Docket No. TA83-2-30-001, Trunkline Gas Company
CAG-22.
Docket No. TA86-1-59-002, Northern Natural Gas Company, Division of Internorth, Inc.
CAG-23.
Docket Nos. TA86-1-53-000, 002 and RP82-8-000, K N Energy, Inc.
CAG-24.
Docket Nos. RP85-13-008, 009 and 010, Northwest Pipeline Corporation
CAG-25.
Docket Nos. RP86-39-000, East Tennessee Natural Gas Company
CAG-26.
Docket Nos. RP85-178-007, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG-27.
Docket Nos. RP85-167-000, Sea Robin Pipeline Company
CAG-28.
Docket Nos. RP85-21-000, Panhandle Eastern Pipe Line Company
CAG-29.
Docket Nos. TA83-1-37-004, et al., Northwest Pipeline Corporation
CAG-30.
Docket Nos. ST86-62-000, Louisiana Intrastate Gas Corporation
CAG-31.
Docket Nos. CI85-516-000, Shell Western E&P Inc.
CAG-32.
Docket No. CI80-70-000, Phillips Petroleum Company v. McCulloch Gas Processing Corporation and McCulloch Interstate Gas Corporation, Dinah Conrad, MHF Enterprises, Inc., Dol Resources, Inc., the Hawks Company and K. A. Thomas
CAG-33.
Docket Nos. RI74-188-075 and RI75-21-070, Independent Oil & Gas Association of West Virginia
CAG-34.
Docket No. CP85-718-000, Northwest Central Pipeline Corporation and Zenith Natural Gas Company
CAG-35.
Docket No. CP85-829-000, Granite State Gas Transmission, Inc.

I. Licensed Project Matters

P-1.
(A) Project Nos. 2082-001 through 014, Public Utility District No. 1 of Okanogan County
(B) Project No. 7037-001, Public Utility District No. 1 of Okanogan County

II. Electric Rate Matters

ER-1.
Docket Nos. ER85-785-002 and 003, Wisconsin Electric Power Company
ER-2.
Docket Nos. EF85-2011-002 and EF85-2021-002, United States Department of Energy—Bonneville Power Administration
ER-3.
Docket Nos. ER86-230-000 and ER86-76-001, Commonwealth Edison Company

Miscellaneous Agenda

M-1.
Docket No. RM86-6-000, Construction of Work In Progress—Anticompetitive implications
M-2.
Reserved
M-3.
Reserved
M-4.
Docket No. RM83-31-000, emergency natural gas sale, transportation and exchange transactions
M-5.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Clarco Gas Company, Inc.)
M-6.
Docket Nos. RM80-8-001 through 005, bona fide offers; right of first refusal
M-7.
Docket Nos. GP80-43-001 through 016 (phase I), Northern Natural Gas Company, division of Internorth, Inc.
M-8.
Docket No. GP85-32-000, Mountaineer Gas Company
M-9.
Docket Nos. GP84-56-001 through 004, Northwest Central Pipeline Corporation
Docket Nos. RP83-42-002 through 005, Midwest Gas Users Association v. Northwest Central Pipeline Corporation
M-10.
Docket No. SA85-23-001, Kaneb Production Company

I. Pipeline Rate Matters

RP-1.
Docket No. TA86-1-26-003 (PGA86-1b), Natural Gas Pipeline Company of America
RP-2.
Docket No. RP84-59-003, Northwest Pipeline Corporation v. Colorado Interstate Gas Company
RP-3.
Docket No. TA83-1-59-007, Northern Natural Gas Company, division of Internorth, Inc.

II. Producer Matters

CI-1.
Docket Nos. CI84-10-001 through 004, Felmont Oil Corporation and Essex Offshore. Inc.
CI-2.
Docket No. CI86-54-000, Pennzoil Producing Company
Docket No. CI86-57-000, Pennzoil Gas Marketing Company
CI-3.
Docket No. CI85-270-000, Panhandle Eastern Pipe Line Company v. TXO Production Corporation, Essex Exploration, Inc. and Graham Exploration, Ltd.

III. Pipeline Certificate Matters

CP-1.
Docket No. TC82-43-000, K N Energy, Inc.
CP-2.
Docket No. CP84-379-015, United Gas Pipe Line Company
CP-3.
Docket Nos. CP85-557-000 and 001, United Gas Pipe Line Company

Kenneth F. Plumb,
Secretary
[FR Doc. 86-4007 Filed 2-20-86; 2:19 pm]
BILLING CODE 6717-01-M

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, March 3, 1986, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization: General Counsel Recommendations; Discussion of Certain Commissioners' Charges

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated: February 19, 1986.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.
[FR Doc. 86-3985 Filed 2-20-86; 11:13 am]
BILLING CODE 6750-06-M

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FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:25 a.m. on Wednesday, February 19, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding an administrative enforcement proceeding involving an officer, director, employee, agent, or other person participating in the conduct of the affairs of an insured bank (name of person and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii))).

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: February 19, 1986.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-4000 Filed 2-20-86; 1:08 pm]
BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:57 p.m. on Friday, February 14, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A) consider a recommendation regarding a regional realignment of the Corporation's area offices;

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First National Bank of Tipton, Tipton, Iowa, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Friday, February 14, 1986; (2) accept the bid for the transaction submitted by Citizens Savings Bank, Anamosa, Iowa, an insured State nonmember bank; (3) approve the application of Citizens Savings Bank, Anamosa, Iowa, for consent to purchase certain assets of and assume the liability to pay deposits made in First National Bank of Tipton, Tipton, Iowa, and for consent to establish the sole office of First National Bank of Tipton as a branch of Citizens Savings Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(C) adopt a resolution making funds available for the payment of insured deposits made in Executive Center Bank, National Association, Dallas, Texas, which was closed by the Comptoller of the Currency on Friday, February 14, 1986.

The meeting was recessed at 5:01 p.m., and at 7:17 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Park Bank of Florida, St. Petersburg, Florida, which was closed by the State Comptroller for the State of Florida on Friday, February 14, 1986; (2) accepted the bid for the transaction submitted by The Chase Bank of Florida, National Association, St. Petersburg, Florida, a newly-chartered national bank; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 18, 1986.

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Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-4001 Filed 2-20-86; 1:09 pm]
BILLING CODE 6714-01-M

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POSTAL RATE COMMISSION

TIME AND DATE: 9:00 a.m., March 6, 1986.
PLACE: 1333 H Street, NW., Suite 300 (Commissioners' Conference Room) Washington, DC 20268-0001.
STATUS: Open.
MATTERS TO BE CONSIDERED: Docket No. RM86-1, consideration of a final rule.
CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington DC 20268-0001, Telephone (202) 789-6840.
Cyril J. Pittack,
Acting Secretary.
[FR Doc. 86-3998 Filed 2-20-86; 12:33 pm]
BILLING CODE 7715-01-M

federal register

Monday
February 24, 1986

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 700

Cosmetics; Proposed Ban on the Use of Methylene Chloride as an Ingredient of Aerosol Cosmetic Products; Extension of Comment Period; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 700

[Docket No. 85N-0536]

Cosmetics; Proposed Ban on the Use of Methylene Chloride as an Ingredient of Aerosol Cosmetic Products; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending for 45 days the period for submitting comments on the agency's assessment of the safety of methylene chloride's food additive use as an extraction solvent in decaffeinating coffee beans.

DATE: Comments by April 4, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John M. Taylor, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0160.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 18, 1985 (50 FR 51551), FDA issued a proposed rule that would ban the use of methylene chloride as an ingredient of aerosol cosmetic products. The agency proposed this action because recent scientific studies have revealed that inhalation of methylene chloride causes cancer in laboratory animals. These studies have shown that the continued use of methylene chloride in cosmetic products may pose a significant risk to the public health, especially to specific segments of the population that are continually exposed to cosmetics containing methylene chloride. In the preamble to the proposal to ban the use of methylene chloride in cosmetics, FDA announced its assessment of the safety of methylene chloride for its food additive use in decaffeinating coffee beans. Based on its assessment, the agency did not propose to lower the maximum permitted residue level of methylene chloride in decaffeinated coffee because that level is considered to be safe.

FDA received two requests for a 45-day extension of the comment period. The requestors indicated that this additional time is needed to review adequately all of the evidence and references associated with the use of methylene chloride for decaffeination. The agency believes that good cause has been shown and is extending until April 4, 1986, the period for all interested persons to submit comments regarding the agency's assessment of the safety of methylene chloride for food additive use as a decaffeinating agent.

This extension of the comment period does not apply to the agency's proposal to ban the use of methylene chloride as an ingredient in cosmetic products.

Interested persons may, on or before April 4, 1986, submit to the Dockets Management Branch (address above) written comments regarding the agency's assessment of the safety for the food additive use of methylene chloride as a decaffeinating agent. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 20, 1986.

Joseph P. Hile,

Acting Commissioner of Food and Drugs.

[FR Doc. 86-4081 Filed 2-21-86; 10:26 am]

BILLING CODE 4160-01-M

federal register

Monday
February 24, 1986

Part III

Department of the Treasury

Customs Service

Reimbursable Services; Excess Cost of Preclearance Operations

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DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 86-50]

Reimbursable Services; Excess Cost of Preclearance Operations

February 2, 1986.

Notice is hereby given that pursuant to 24.18(d), Customs Regulations (19 CFR 24.18(d)), the biweekly reimbursable excess costs for each preclearance installation are determined to be as set forth below and will be effective with the pay period beginning February 2, 1986.

Installation	Biweekly excess cost
Montreal, Canada	$22,043
Toronto, Canada	33,125
Kindley Field, Bermuda	12,273
Nassau, Bahama Islands	16,600
Vancouver, Canada	16,372
Winnipeg, Canada	3,483
Freeport, Bahama Islands	16,356
Calgary, Canada	9,893
Edmonton, Canada	8,592

D. Lynn Gordon,

Acting Comptroller.

[FR Doc. 86-4113 Filed 2-21-86; 12:26 pm]

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Monday, February 24, 1986

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[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

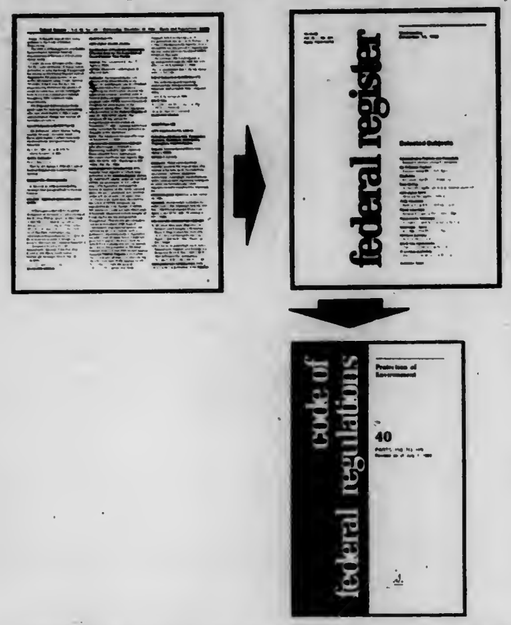
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